

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CELEBRITY CAFÉ TEXAS LLC,
a Texas Limited Liability Company,
Plaintiff,

v.

CULINARY COOKS, INC., Texas
Corporation, WILLIAM E. HARRIS,
BARBARA V. HARRIS, VICKI NORTHEN
Defendants.

§
§
§
§
§
§
§
§
§
§

CASE NO: 3:12-cv-3732

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff CELEBRITY CAFÉ TEXAS LLC for its Complaint against Defendants CULINARY COOKS, INC., WILLIAM E. HARRIS, BARBARA V. HARRIS, and VICKI NORTHEN would respectfully show the Court as follows:

THE PARTIES

1. Plaintiff Celebrity Café Texas LLC (“Celebrity Café Texas”) is a Texas Limited Liability Company with a principal place of business at 6333 Berkshire Lane, Suite 450, Dallas, TX 75225.

2. Defendant Culinary Cooks, Inc. (“Culinary Cooks”) is a Texas corporation with a principal place of business at 621 E. Southlake Blvd. Ste 100, Southlake, TX 76092. Culinary Cooks may be served with process via its registered agent Amy Hoepker at 300 East Basse Road, San Antonio, TX 78209.

3. Defendant William E. Harris (“Bill Harris”) is an individual residing in Southlake, Texas who may be served with process wherever he may be found. Bill Harris is the President of Defendant Culinary Cooks.

4. Defendant Barbara V. Harris (“Barbara Harris”) is an individual residing in Southlake, Texas who may be served with process wherever she may be found. Barbara Harris is the Vice President of Defendant Culinary Cooks.

5. Defendant Vicki Northen is an individual residing in Plano, Texas who may be served with process wherever she may be found.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction in this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) because it arises under the Federal Trademark Act, 15 U.S.C. § 1052 *et. seq.* Jurisdiction over the state law cause of action is proper under 28 U.S.C. § 1338(b) because it asserts a claim of unfair competition and is joined with substantial and related claims under the Federal Trademark laws. This Court has supplemental jurisdiction over the claims in this Complaint that arise under the common law of Texas pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

7. This Court has personal jurisdiction over Defendants because Defendants have minimum contacts with the state of Texas and maintaining this action in Texas will not offend traditional notions of fair play and substantial justice. The individual defendants are Texas residents and the corporate defendant is a Texas corporation.

8. Venue is appropriate pursuant to 28 U.S.C. §§ 1391(b)-(c) because a substantial part of the events or omissions giving rise to the claims and the actual harm to Celebrity Café Texas

occurred in this District. Venue is also mandated by the “Asset Purchase Agreement” that is the basis for Celebrity Café Texas’ breach of contract claims.

FACTUAL BACKGROUND

Celebrity Cafe & Bakery

9. Plaintiff Celebrity Café Texas is the owner of the chain of restaurants offering a variety of food and beverage items operating under the Celebrity Cafe & Bakery trade name and business system (“Celebrity Cafe & Bakery”), which it acquired from Defendants and those in privity with Defendants via a contract entitled “Asset Purchase Agreement” dated December 8, 2006 and a contract entitled “Bill of Sale” with an effective date of January 31, 2007. Its ownership rights include all trademarks, including the trade name and trade dress, pertaining Celebrity Cafe & Bakery.

10. The Celebrity Cafe & Bakery concept and system evoke traditional Texas ladies’ luncheon fare, as well as offering the take home comfort foods and bakery items reminiscent of Texas ladies’ home cooking. The café menu features both a unique take on and combination of traditional tea sandwiches and salads (albeit with many modernizations) and original menu items and recipes. Celebrity Cafe & Bakery also offers a wide variety of cakes, cookies, and other baked treats and take-away family-sized entrees and casseroles, all of which appeal to patrons, particularly those longing for the Texas and Southern comfort foods with which they were raised.

11. Celebrity Cafe & Bakery’s take-away family-sized entrees and casseroles, take-away sandwiches and salads, and bakery items are showcased in thoughtfully arranged displays, tempting patrons to bring home their next family meal and dessert.

12. As a result of the Celebrity Cafe & Bakery concept and system, the Celebrity Cafe & Bakery restaurants have been extremely successful. Currently, there are four Celebrity Cafe & Bakery locations operating in Texas. All use a distinct trade dress consisting of:

- A pink-accented exterior;
- Interior walls painted in shades of pink;
- Tri-fold menus dominated by pink; and
- Feminine flourishes for décor and service pieces.

13. The trade dress was carefully chosen to evoke traditional feminine style reminiscent of the Texas and Southern luncheon and comfort foods offered by Celebrity Cafe & Bakery.

14. Defendants are (1) the former owners and operators of the Celebrity Cafe & Bakery chain who sold all rights and interest in the Celebrity Cafe & Bakery concept and system on or about December 8, 2006, and (2) the company purposely formed by such former owners and operators as their successor-in-interest, who is likewise bound to the terms of the sale of the Celebrity Cafe & Bakery concept and system.

15. After selling the Celebrity Cafe & Bakery chain, concept, and system, Defendants recently opened and currently operate a restaurant under the “Silver Spoon Cafe & Bakery” trade name. The “Silver Spoon Cafe & Bakery” is a purposeful knock-off of the Celebrity Cafe & Bakery concept and trade dress. Defendants efforts to copy its former restaurant concept, Celebrity Cafe & Bakery, reach so far that:

- “Silver Spoon Cafe & Bakery” displays the exact printed and framed art work displayed at Celebrity Cafe & Bakery;
- “Silver Spoon Cafe & Bakery” features flower-shaped sculptural glass art work nearly identical to the flower-shaped sculptural glass art displayed at Celebrity Cafe & Bakery;

- “Silver Spoon Cafe & Bakery” not only uses a pink-accented exterior, but uses an almost identical pink awning as the pink awning at Celebrity Cafe & Bakery;
- “Silver Spoon Cafe & Bakery” uses Celebrity Cafe & Bakery’s color scheme for its interior;
- The “Silver Spoon Cafe & Bakery” menus are virtually indistinguishable from the Celebrity Cafe & Bakery menus in terms of appearance, item content, and commitment to quality theme;
- Defendants use the same recipes and visual presentation for the duplicative menu items; and
- The “Silver Spoon Cafe & Bakery” attempts to invoke the same feel of traditional Texas ladies’ luncheon fare, take home comfort foods, and bakery items reminiscent of Texas ladies’ home cooking as Celebrity Cafe & Bakery (down to the same take-away casseroles in the same display and arrangement).

16. Indeed, Defendants’ efforts to associate Silver Spoon with the Celebrity Cafe & Bakery System include an advertisement that “Bill and Barbara Harris, former owners of Celebrity Cafe and Bakery in Highland Park and Colleyville have settled down in Southlake and *now open* as Silver Spoon Cafe and Bakery located at 621 E. Southlake Blvd.,” misleading consumers into the false belief that Celebrity Cafe and Bakery is “now open” as Silver Spoon Cafe and Bakery.

The Asset Purchase Agreement and Bill of Sale

17. In 2006, Investar Financial Corporation, on behalf of its assign Celebrity Café Texas, acquired the Celebrity Cafe & Bakery chain from a multitude of sellers, including Defendants Bill and Barbara Harris and their daughter Defendant Vicki Northen (collectively the “Harris Family”), via execution of an Asset Purchase Agreement. Upon information and belief, the other

sellers of the Celebrity Cafe & Bakery chain were all entities either owned and/or controlled by the Harris family.

18. The Asset Purchase Agreement specified that Investar Financial Corporation could set up a new business entity to perform all its obligations and to receive all its rights and assignment. Investar Financial Corporation organized Celebrity Café Texas pursuant to this provision. Consistent with the terms of the Asset Purchase Agreement and Investar Financial Corporation's election to organize Celebrity Café Texas to receive its rights and assignment thereunder, the parties (including the Harris Family) executed a Bill of Sale recognizing Celebrity Café Texas as the Purchaser of the Celebrity Cafe & Bakery chain and the rights thereto.

19. The terms of the purchase of the Celebrity Cafe & Bakery chain were carefully and specifically delineated in the Asset Purchase Agreement. Defendants the Harris Family were parties to the Asset Purchase Agreement as sellers. Pursuant to the Asset Purchase Agreement, Celebrity Café Texas acquired, *inter alia*, the name Celebrity Cafe & Bakery and variations on that name, and all trademarks and trade names relating to the Celebrity Cafe & Bakery business.

20. Article XVIII of the Asset Purchase Agreement specifically details the sale and transfer of the "Celebrity Cafe & Bakery System" to Celebrity Café Texas. The "Celebrity Cafe & Bakery System" is defined to include

- The **distinctive** exterior and interior design, decor, color scheme and trade dress;
- All service marks, trademarks, trade names, logos, and other symbols or marks used to promote the System; and
- All recipes, including special recipes, menu items and menus.

21. After the acquisition, Celebrity Café Texas made no substantive changes to the admittedly distinctive exterior and interior design, decor, color scheme and trade dress.

The “Silver Spoon Cafe & Bakery”

22. On or about July 29, 2009, Defendants Bill and Barbara Harris incorporated Culinary Cooks in Texas.

23. Recently, Celebrity Café Texas learned that the Harris Family and their company Culinary Cooks had opened the “Silver Spoon Cafe & Bakery” in Southlake, Texas. As shown below, “Silver Spoon Cafe & Bakery” is a direct and intentional knock-off of the Celebrity Cafe & Bakery System, and Defendants are intentionally attempting to trade on the goodwill of the Celebrity Cafe & Bakery System trade dress.

24. In selling the “Celebrity Cafe & Bakery System” to Celebrity Café Texas, Defendants admitted—and are estopped from denying—that the transferred assets included the “distinctive exterior and interior design, decor, color scheme and trade dress” used in the Celebrity Cafe & Bakery locations, as set forth in Article XVIII of the Asset Purchase Agreement. Despite this, and in direct violation of these provisions, Defendants copied such admittedly distinctive exterior and interior design, decor, color scheme and trade dress and are wrongfully using such at the “Silver Spoon Cafe & Bakery.”

25. Indeed, Defendants’ scheme to copy Celebrity Cafe & Bakery’s admittedly distinctive exterior and interior design, decor, color scheme and trade dress was so thorough that Defendants display the same art work that is displayed at Celebrity Cafe & Bakery:

**Art Work Displayed at
Celebrity Cafe & Bakery**



**Art Work Displayed at
Silver Spoon Cafe & Bakery**



**Art Work Displayed at
Celebrity Cafe & Bakery**



**Art Work Displayed at
Silver Spoon Cafe & Bakery**



26. Defendants also copied the flower-shaped sculptural glass art work used at Celebrity Cafe & Bakery:

**Art Work Displayed at
Celebrity Cafe & Bakery**



**Art Work Displayed at
Silver Spoon Cafe & Bakery**



27. Likewise, in selling the “Celebrity Cafe & Bakery System” to Celebrity Café Texas, Defendants admitted—and are estopped from denying—that the transferred assets included “all recipes, including special recipes, menu items and menus.” Despite this, Defendants copied Celebrity Cafe & Bakery’s recipes, including special recipes, menu items and menus. Indeed, the vast majority of sandwiches and salads have been copied. The following items appear on both the Celebrity Cafe & Bakery and the Silver Spoon menus:

Celebrity Cafe & Bakery

Menu Item

Cranberry Chicken Salad sandwich

Tuna Salad sandwich (albacore “traditional style” with lettuce)

Pimento Cheese sandwich (cheddar cheese, pimentos, and mayonnaise)

Ham & Imported Swiss (“thin slices of ham,” swiss, lettuce, and mayonnaise)

Club sandwich (turkey, bacon, American cheese, lettuce, mayonnaise on toast)

Roasted Chicken sandwich

Chicken Salad sandwich

Sandwich Trio (three finger sandwiches, served with fresh fruit and a cup of soup)

Santa Barbara sandwich (turkey, cheese, bacon, avocado, lettuce, tomato and “Special Sauce served opened face on Marbled Rye”

Oven Roasted Turkey Breast sandwich (roasted turkey with lettuce and mayonnaise)

Customer’s Choice (choice of two or three items)

Ham & Pineapple Sandwich (“thin slices of ham over a mixture of Cream Cheese, Cheddar Cheese, and Pineapple. Served on a toasted Cinnamon Raisin Bread”)

Bacon, Lettuce and Tomato sandwich

Chicken Salad Plate (chicken with avocado, served with fruit)

Cranberry Chicken Salad Plate (chicken, apple, dried cranberries, nuts, served with fruit)

Tuna Salad Plate (albacore tuna “traditional style” with avocado and fresh fruit)

Cobb Salad (chicken, avocado, bacon, egg, bleu cheese, choice of dressing)

Silver Spoon Cafe & Bakery

Menu Item

Cranberry Chicken Salad sandwich

Tuna Salad sandwich (albacore “traditional style” with lettuce)

Pimento Cheese sandwich (cheddar, pimentos, and mayo)

Ham & Swiss (“thinly sliced ham,” swiss, lettuce, and mayo)

Club sandwich (turkey, bacon, American cheese, lettuce, tomato, mayonnaise on toast)

Roasted Chicken Sandwich

Chicken Salad sandwich

Silver Spoon Trio (three finger sandwiches, served with fresh fruit and a cup of soup)

California Open Face sandwich (turkey, cheese, bacon, avocado, lettuce, tomato and “special sauce on rye”)

Breast of Turkey sandwich (roasted turkey with lettuce and mayo)

Customer’s Choice (choice of two or three items)

Hawaiian Pineapple (“thinly sliced ham, Cheddar, cream cheese & pineapple w/ lettuce on raisin toast”)

BLT sandwich

Classic Chicken Salad Plate (chicken with avocado, served with fruit)

Cranberry Chicken Salad Plate (chicken, apple, dried cranberries, nuts, served with fruit)

Tuna Salad Plate (albacore tuna “traditional style” with avocado and fresh fruit)

Cobb Salad (chicken, avocado, bacon, egg, bleu cheese, choice of dressing)

Celebrity Cafe & Bakery
Menu Item

Turkey Bistro Salad (roasted turkey breast, dried cranberries, candied pecans, citrus vinaigrette)

Silver Spoon Cafe & Bakery
Menu Item

Silver Spoon Salad (roasted turkey breast, dried cranberries, candied pecans, citrus vinaigrette)

28. Notably, the Defendants efforts to copy Celebrity Cafe & Bakery extend so far as to duplicate precisely the presentation of signature dishes. For just one example, Celebrity Cafe's Turkey Bistro Salad (roasted turkey breast, dried cranberries, candied pecans, citrus vinaigrette) and Defendant's Silver Spoon Salad (roasted turkey breast, dried cranberries, candied pecans, citrus vinaigrette) are *served in the same distinct bowl in which the interior is molded into a star formation*. Moreover, both serve the citrus vinaigrette on the side in a disposable plastic container on a small round plate that also has two packages of saltine crackers and a mini-muffin:

Silver Spoon Cafe & Bakery

"Silver Spoon Salad"



Celebrity Cafe & Bakery

"Turkey Bistro Salad"



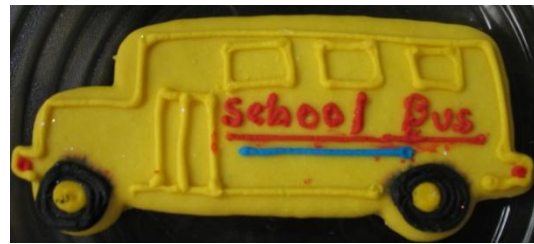
29. Likewise, Defendants have copied Celebrity Cafe & Bakery's signature seasonal Iced Cookies, which are large sugar cookies dipped in thick icing and hand-decorated in accordance with thematic designs that reflect the fondest memories of each season. For example, in the weeks prior to the commencement of the school year, Celebrity Cafe & Bakery always offers "back to school" Iced Cookies, including (1) an apple-shaped cookie (decorated with a single

leaf near the stem) with the words “Back to School” written in frosting; (2) a school bus-shaped cookie (with three windows and a two-panel door outlined in frosting) with the words “School Bus” written in frosting; and (3) an early Fall apple tree-shaped cookie (with icing piping at the borders and red frosting “apples”). Defendants copied each of these seasonal Iced Cookies:

Celebrity Cafe & Bakery



Silver Spoon Cafe & Bakery



30. In addition, Defendants have copied Celebrity Cafe & Bakery’s recipes and menu for take-out family size casseroles. The following items appear on both the Celebrity Cafe & Bakery and the Silver Spoon menus:

Celebrity Cafe & Bakery
Menu Item

Chicken Spaghetti casserole (chicken, peppers, mushrooms, and cheese in cream sauce)

Turkey Tetrazzini casserole (turkey breast, noodles, bell peppers, mushrooms in cheese sauce)

Chicken & Artichoke casserole (chicken, rice, artichoke, cheese)

Beef Goulash casserole (ground beef, macaroni, tomatoes, cheddar)

Cheese Enchiladas

Green Chicken Enchiladas

King Ranch Chicken casserole (chicken, tortillas, spicy sauce, cheddar)

Beef Enchilada Casserole (ground beef, beans, corn tortillas, spicy tomato sauce, cheddar)

Beef Lasagna (“traditional” style)

Silver Spoon Cafe & Bakery
Menu Item

Chicken Spaghetti casserole (chicken, peppers, mushrooms, and cheese in cream sauce)

Turkey Tetrazzini casserole (turkey breast, noodles, bell peppers, mushrooms in cheese sauce)

Chicken & Artichoke casserole (chicken, rice, artichoke, cheese)

Beef Goulash casserole (ground beef, macaroni, tomatoes, cheddar)

Cheese Enchiladas

Green Chicken Enchiladas

King Ranch Chicken casserole (chicken, tortillas, spicy sauce, cheddar)

Beef Enchilada Casserole (ground beef, beans, corn tortillas, spicy tomato sauce, cheddar)

Beef Lasagna (“traditional” style)

31. In sum, Defendants have wrongfully and illegally misappropriated both (1) the distinctive exterior and interior design, decor, color scheme and trade dress, and (2) the recipes, including special recipes, menu items and menus dress that Celebrity Café Texas acquired via the Asset Purchase Agreement to open a competing restaurant that is an obvious knock-off of the successful Celebrity Cafe & Bakery System.

**COUNT ONE: TRADE DRESS INFRINGEMENT
IN VIOLATION OF THE LANHAM ACT [15 U.S.C. § 1125(a)]**

32. Celebrity Café Texas incorporates the allegations of paragraphs 1-31 as if fully set forth at this point.

33. Defendants have infringed upon the trade dress used in Celebrity Cafe & Bakery locations within the meaning of 15 U.S.C. § 1125(c).

34. Celebrity Café Texas' trade dress is inherently distinctive and/or has acquired secondary meaning.

35. Celebrity Café Texas' trade dress is non-functional.

36. Defendants have infringed Celebrity Café Texas' trade dress by using marks and/or dress that are confusingly similar to Celebrity Café Texas' trade dress.

37. Defendants' infringement has not been authorized by Celebrity Café Texas. Such use is likely to cause confusion, to cause mistake, or to deceive the public as to the affiliation, connection, or association of Defendants with Celebrity Café Texas, or as to source, origin, sponsorship, or approval of Defendants' products by Celebrity Café Texas or a single source. Additionally, such use misappropriates the extensive goodwill built up by Celebrity Café Texas.

38. Defendants' acts of trade dress infringement have been committed with the intent to cause confusion, mistake, and to deceive, and were otherwise deliberate, knowing, willful and/or in bad faith.

39. Defendants' acts of trade dress infringement have damaged and are likely to continue to damage Celebrity Café Texas' business, reputation, and goodwill.

40. Unless Defendants are restrained from continuing their unlawful conduct now, Celebrity Café Texas will suffer irreparable injury.

41. Celebrity Café Texas is entitled to monetary damages in an amount to be proven at trial.

COUNT TWO: BREACH OF CONTRACT

42. Celebrity Café Texas incorporates the allegations of paragraphs 1-41 as if fully set forth at this point.

43. Celebrity Café Texas (as assignee of Investar Financial Corporation) and Defendants the Harris Family are parties to the Asset Purchase Agreement. The Asset Purchase Agreement is binding on Defendant Culinary Cooks as successor and/or assign.

44. Celebrity Café Texas and Defendants Bill and Barbara Harris and Vicki Northen are parties to the Bill of Sale. The Bill of Sale is binding on Defendant Culinary Cooks as successor and/or assign.

45. Celebrity Café Texas has fully performed and/or is excused from performance of its obligations under the contracts.

46. Defendants have breached their contractual obligations by, *inter alia*, misappropriating the distinctive exterior and interior design, decor, color scheme, trade dress, recipes, including special recipes, menu items and menus acquired by Celebrity Café Texas via the Asset Purchase Agreement and Bill of Sale.

47. Celebrity Café Texas has been damaged by such breaches in an amount to be proven at trial.

48. Celebrity Café Texas is entitled to actual damages and attorneys' fees.

COUNT THREE: UNFAIR COMPETITION

49. Celebrity Café Texas incorporates the allegations of paragraphs 1-48 as if fully set forth at this point.

50. In addition to selling the distinct trade dress to Celebrity Café Texas, Defendants sold the entire "Celebrity Café and Bakery System" to Celebrity Café Texas. Defendants' current use of such System constitutes not just a breach of contract, but unfair competition as well.

51. Defendants' acts of unfair competition have damaged and are likely to continue to damage Celebrity Café Texas' business, reputation, and goodwill.

52. Unless Defendants are restrained from continuing their unlawful conduct now, Celebrity Café Texas will suffer irreparable injury.

53. Celebrity Café Texas is entitled to monetary damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

(1) that this Court preliminarily and permanently enjoin Defendants, their officers, employees, agents, licensees and franchisees, and all persons acting in participation or concert with Defendants:

(a) from using the distinctive exterior and interior design, decor, color scheme and trade dress that Celebrity Café Texas acquired via the Asset Purchase Agreement;

(b) from using recipes, including special recipes, menu items and menus that Celebrity Café Texas acquired via the Asset Purchase Agreement; and

(c) from using in commerce any other word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact which is likely to cause confusion or to cause mistake or to deceive as to the affiliation, connection, or association of Defendants with Celebrity Café Texas, or as to the origin, sponsorship, or approval of Defendants' goods, services or commercial activities by Celebrity Café Texas.

(2) that in any injunction the Court direct Defendants to file with this Court and serve on Celebrity Café Texas, within thirty (30) days after the service on Defendants of the injunction, a report in writing under oath setting forth in detail the manner and form in which the Defendants have complied with the injunction;

(3) that Celebrity Café Texas recover any damages sustained and the costs of this action, pursuant to 15 U.S.C. § 1117(a);

(4) that Celebrity Café Texas recover Defendants' profits resulting from its acts of infringement in order to redress Defendants' unjust enrichment and to deter its infringement of Celebrity Café Texas' trade dress. 15 U.S.C. § 1117(a);

(5) that any damages awarded be tripled and any profits awarded be increased to the amount this Court finds just;

(6) that Celebrity Café Texas recover its attorneys' fees pursuant to the Asset Purchase Agreement and 15 U.S.C. § 1117(a), as well as pre- and post-judgment interest; and

(7) that Celebrity Café Texas recover such further and other relief, legal or equitable, that this Court finds just.

JURY DEMAND

Celebrity Café Texas hereby requests a trial by jury of this action.

Dated: September 14, 2012

Respectfully submitted,

/s/ John L. Hendricks

John L. Hendricks (TX00785954)

E-Mail: jhendricks@hitchcockevert.com

Megan M. O'Laughlin (TX24013263)

E-Mail: molaughlin@hitchcockevert.com

HITCHCOCK EVERT LLP

750 North St. Paul Street, Suite 1110

Dallas, TX 75201

Telephone: (214) 953-1111

Facsimile: (214) 953-1121

COUNSEL FOR PLAINTIFF