

3. This action seeks injunctive relief, and other appropriate relief, arising from Solis-Martinez's willful acts of trademark infringement, unfair competition, and dilution.

JURISDICTION AND VENUE

4. This is an action for infringement of federally registered trademarks, in violation of Section 32(1) of the Lanham Act (15 U.S.C. § 1114(1)), for unfair competition, in violation of Texas common law, and for dilution of trademarks, in violation of Section 16.29 of the Texas Business and Commerce Code.

5. This Court has subject matter jurisdiction over this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338, because this action involves a substantial claim arising under the Lanham Act.

6. This Court has supplemental jurisdiction over MCL's state law claims under 28 U.S.C. § 1367.

7. Solis-Martinez's acts of infringement of MCL's registered marks were committed in the Northern District of Texas, Dallas Division, within the jurisdiction of this Court. Upon information and belief, Solis-Martinez has advertised his services under the infringing mark in this state, and Solis-Martinez has provided his services under the infringing mark in this state.

8. Venue is proper in this Court, under 28 U.S.C. § 1391, because all, or a substantial part, of the events or omissions giving rise to the claims occurred, and continue to occur, in this district.

PARTIES

9. MCL is a limited partnership organized and existing under the laws of the State of Texas, having an office and a place of business at

350 Royal Lane, Suite 126, Irving, Texas 75039.

10. Solis-Martinez is an individual. Upon information and belief, Solis-Martinez is doing business at 220 West Kingsley Road, Suite 410, Garland, Texas 75041.

BACKGROUND

11. In or about March 1991, Mico Preston Forest Ltd. ("Mico Preston Forest") began using the service mark "Mi Cocina" for restaurant services. And, on February 8, 2000, the standard character mark "Mi Cocina," and two stylized forms of the "Mi Cocina" mark, all for restaurant services, were all registered to Mico Preston Forest, on the Principal Register of the United States Patent and Trademark Office (the "USPTO").

12. MCL has succeeded to all of Mico Preston Forest's rights in the "Mi Cocina" marks.

13. Two of the three "Mi Cocina" marks have been in continuous use for restaurant services — first by Mico Preston Forest, and then by MCL — since in or about March 1991. The other "Mi Cocina" mark has been in continuous use for restaurant services — first by Mico Preston Forest, and then by MCL — since in or about February 1993.

14. MCL is the owner of federal trademark registration 2,315,142, which issued on February 8, 2000, on the principal register of the USPTO. This registration, which is for the standard character mark "Mi Cocina," covers restaurant services. A true copy of this registration is attached as Exhibit A. On March 23, 2006, this registration became incontestable under the provisions of 15 U.S.C. § 1065. The trademark is valid and subsisting, and its registration has never been cancelled.

15. MCL is the owner of federal trademark registration 2,315,143, which issued on February 8, 2000, on the principal register of the USPTO. This registration, which is for a stylized form of "Mi Cocina," covers restaurant services. A true copy of this registration is attached as Exhibit B. On March 23, 2006, this registration became incontestable under the provisions of 15 U.S.C. § 1065. The trademark is valid and subsisting, and its registration has never been cancelled.

16. MCL is the owner of federal trademark registration 2,315,144, which issued on February 8, 2000, on the principal register of the USPTO. This registration, which is for a second stylized form of "Mi Cocina," covers restaurant services. A true copy of this registration is attached as Exhibit C. On March 23, 2006, this registration became incontestable under the provisions of 15 U.S.C. § 1065. The trademark is valid and subsisting, and its registration has never been cancelled.

CAUSES OF ACTION

I. FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. § 1114)

17. MCL realleges, and incorporates by reference, the allegations of paragraphs 1-16, inclusive, as though fully set forth.

18. As its first ground for relief, MCL alleges federal trademark infringement under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

19. MCL has invested substantial time, effort, and financial resources promoting its "Mi Cocina" trademarks for restaurant services. The "Mi Cocina" trademarks have become, through favorable public acceptance and recognition, an asset of substantial value as a symbol of MCL, its high quality restaurant services provided in interstate commerce, and its good will. The consuming public recognizes the "Mi Cocina"

trademarks, and it associates them with MCL.

20. The "Mi Cocina" marks have become distinctive of MCL's restaurant services.

21. Despite MCL's established rights in the "Mi Cocina" trademarks, on information and belief, Solis-Martinez adopted and uses the confusing similar mark "Mi Cocina Hondurena" for restaurant services offered in interstate commerce.

22. Without MCL's consent, Solis-Martinez has, on information and belief, used the "Mi Cocina Hondurena" mark for providing, offering to provide, and advertising his restaurant services.

23. Solis-Martinez has engaged in his infringing activity despite having constructive notice of Mi Cocina's federal registration rights under 15 U.S.C. § 1072.

24. Solis-Martinez's actions are likely to lead the public to conclude, incorrectly, that his restaurant services originate with, or are authorized by, MCL, which will damage both MCL and the public.

25. MCL has requested, in writing, that Solis-Martinez cease and desist from his infringing activities, but Solis-Martinez has not responded to that request, and has failed to comply with it.

26. Solis-Martinez's unauthorized use of the "Mi Cocina Hondurena" mark in interstate commerce, as described above, constitutes trademark infringement under 15 U.S.C. § 1114(1), and it is likely to cause consumer confusion, mistake, or deception.

27. Solis-Martinez's acts of infringement will cause irreparable injury to MCL if Solis-Martinez is not restrained by this Court from further violation of MCL's rights. MCL has no adequate remedy at law.

II. TEXAS COMMON LAW UNFAIR COMPETITION

28. MCL realleges, and incorporates by reference, the allegations of paragraphs 1-27, inclusive, as though fully set forth.

29. As its second ground for relief, MCL alleges violation of Texas common law unfair competition.

30. Solis-Martinez's acts of infringement constitute a violation of Texas common law unfair competition. MCL has no adequate remedy at law for the damages that will be caused thereby.

III. DILUTION (TEXAS BUSINESS AND COMMERCE CODE SECTION 16.29)

31. MCL realleges, and incorporates by reference, the allegations of paragraph 1-30, inclusive, as though fully set forth.

32. As its third ground for relief, MCL alleges violation of Texas Business and Commerce Code Section 16.29.

33. Solis-Martinez has been using, and is commercially using, the "Mi Cocina Hondurena" mark, which mark is likely to cause dilution of the distinctive quality of MCL's "Mi Cocina" marks. Specifically, Solis-Martinez's use of the "Mi Cocina Hondurena" mark is likely to cause the public to associate MCL's "Mi Cocina" marks with restaurant services of lesser quality than those provided by MCL under its "Mi Cocina" marks. Thus, Solis-Martinez's conduct violates Texas Business and Commerce Code Section 16.29. Unless Solis-Martinez is restrained from the acts complained of, MCL and the public will suffer irreparable harm, for which MCL has no adequate remedy at law.

REQUEST FOR RELIEF

WHEREFORE, in consideration of the foregoing, MCL respectfully requests that this Court enter an order granting it the following relief:

(a) Entering a judgment that MCL's "Mi Cocina" trademarks have been, and continue to be, infringed by Solis-Martinez, in violation of 15 U.S.C. § 1114(1);

(b) Entering a judgment that Solis-Martinez's use of the "Mi Cocina Hondurena" mark violates Texas common law unfair competition laws;

(c) Entering a judgment that Solis-Martinez's use of the "Mi Cocina Hondurena" mark violated Texas Business and Professions Code Section 16.29;

(d) Permanently enjoining and restraining Solis-Martinez, and each of his agents, employees, attorneys, successors, assigns, affiliates, and any persons in privity, or in active concert or participation, with any of them, from using the mark "Mi Cocina Hondurena," or any other designation, whether alone, or in combination with other words or symbols, as a trademark, trade name component, or otherwise, to market, advertise, or identify Solis-Martinez's services, where that designation would create a likelihood of confusion, mistake, or deception with MCL's "Mi Cocina" marks.

(e) Under 15 U.S.C. § 1116(a), directing Solis-Martinez to file with the Court, and serve on MCL, within 30 days after issuance of an injunction, a report, in writing and under oath, setting forth, in detail, the manner and form in which Solis-Martinez has complied with the injunction;

(f) Under 15 U.S.C. § 1118, requiring that Solis-Martinez, and all others acting under Solis-Martinez's authority, at their cost, be required to deliver up and destroy all devices, literature, advertising, labels, and other

material in their possession bearing the infringing designation;

(g) Awarding MCL its attorneys' fees and costs pursuant to 15 U.S.C. § 1117, because of the exceptional nature of this case, resulting from Solis-Martinez's deliberate infringing actions; and

(h) Granting MCL such other and further relief as the Court may deem just.

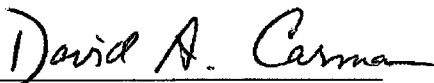
DEMAND FOR JURY TRIAL

MCL demands trial by jury on all issues so triable.

Dated: September 5, 2012

Respectfully submitted,

BENENATI LAW FIRM, P.C.

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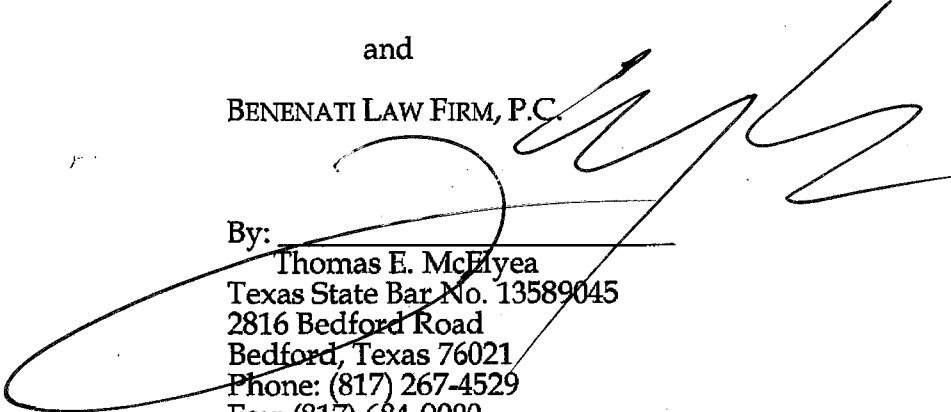
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EXHIBIT A

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,315,142

United States Patent and Trademark Office

Registered Feb. 8, 2000

**SERVICE MARK
PRINCIPAL REGISTER**

MI COCINA

MICO PRESTON FOREST LTD. (TEXAS LIMITED PARTNERSHIP)
11661 PRESTON ROAD, SUITE 138
DALLAS, TX 75230

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 3-0-1991; IN COMMERCE 3-0-1991.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COCINA", APART FROM THE MARK AS SHOWN.

THE ENGLISH TRANSLATION FOR THE WORD "MI COCINA" IN THE MARK IS "MY KITCHEN".

SER. NO. 75-047,114, FILED 1-21-1996.

HENRY S. ZAK, EXAMINING ATTORNEY

EXHIBIT B

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,315,143

United States Patent and Trademark Office

Registered Feb. 8, 2000

**SERVICE MARK
PRINCIPAL REGISTER**

Mi Cocina

MICO PRESTON FOREST LTD. (TEXAS LIMITED PARTNERSHIP)
11661 PRESTON ROAD, SUITE 138
DALLAS, TX 75230

FOR: RESTAURANT SERVICES, IN CLASS
42 (U.S. CLS. 100 AND 101).

FIRST USE 2-0-1993; IN COMMERCE
2-0-1993.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "COCINA", APART FROM
THE MARK AS SHOWN.

THE ENGLISH TRANSLATION OF THE
WORD "MI COCINA" IN THE MARK IS "MY
KITCHEN."

SER. NO. 75-047,333, FILED 1-23-1996.

HENRY S. ZAK, EXAMINING ATTORNEY

EXHIBIT C

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,315,144

United States Patent and Trademark Office

Registered Feb. 8, 2000

SERVICE MARK
PRINCIPAL REGISTER

Mi Cocina

MICO PRESTON FOREST LTD. (TEXAS LIMITED PARTNERSHIP)
11661 PRESTON ROAD, SUITE 138
DALLAS, TX 75230

FOR: RESTAURANT SERVICES, IN CLASS
42 (U.S. CLS. 100 AND 101).

FIRST USE 3-0-1991; IN COMMERCE
3-0-1991.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "COCINA" APART FROM
THE MARK AS SHOWN.

THE ENGLISH TRANSLATION OF THE
WORD "MI COCINA" IN THE MARK IS "MY
KITCHEN."

SER. NO. 75-047,335, FILED 1-23-1996.

HENRY S. ZAK, EXAMINING ATTORNEY

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of maintaining the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

RECEIVED SEP - 7 2012 CLERK U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS ORIGINAL

I. (a) PLAINTIFFS
Mi Cocina, Ltd.
(b) County of Residence of First Listed Plaintiff Dallas, Texas
(c) Attorneys (Firm Name, Address, and Telephone Number)
David A. Carman, Benenati Law Firm, P.C., 360 N. Bedford Dr., Ste. 204, Beverly Hills, CA 90210; (818) 916-2171

DEFENDANTS
Martin E. Solis-Martinez
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
3-12CV3652-N

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

Table with 6 columns and multiple rows listing various legal categories such as Insurance, Personal Injury, Real Property, and Immigration with checkboxes for selection.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. section 1114
Brief description of cause:
federal trademark infringement, common law unfair competition, dilution

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
injunctive relief
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) PENDING OR CLOSED: (See instructions)
JUDGE
DOCKET NUMBER

DATE 09/05/2012
SIGNATURE OF ATTORNEY OF RECORD David A. Carman

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE