

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 initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

TRB IP HOLDINGS, LLC

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Law Offices of David T. Denney, PC, 8350 N. Central Expressway,
Suite 925, Dallas, TX 75206, (214) 739-2900

DEFENDANTS

TWISTED ROOT RESTAURANT & BAR LLC

County of Residence of First Listed Defendant **SHEBOYGAN COUNTY**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 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)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Med. Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 463 Habeas Corpus - Alien Detainee (Prisoner Petition) ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☒ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395f) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

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 1051, et seq.

Brief description of cause:

Trademark infringement, unfair competition, trademark dilution, and breach of contract

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
100,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S)

PENDING OR CLOSED: (See instructions):

JUDGE

DOCKET NUMBER

DATE

01/17/2014

SIGNATURE OF ATTORNEY OF RECORD

/s/ David T. Denney

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRB IP HOLDINGS, LLC,
Plaintiff,

v.

TWISTED ROOT RESTAURANT
& BAR LLC
Defendant.

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§

Civil Action No. _____

PLAINTIFF TRB IP HOLDINGS, LLC'S ORIGINAL COMPLAINT

COMES NOW, Plaintiff TRB IP HOLDINGS, LLC (herein referred to as "Plaintiff" or "Twisted Root"), by and through its attorneys, and submits this, its *Original Complaint* ("Complaint") against Defendant TWISTED ROOT RESTAURANT & BAR LLC ("Defendant") and for causes of action would respectfully aver as follows:

I. NATURE OF THE ACTION

1. This is an action for (a) trademark infringement and related claims under the United States Trademark (Lanham) Act of 1946, 15 U.S.C. § 1051 *et seq.* (as amended) and Texas common law, and (b) breach of contract. This Complaint arises from Defendant's unauthorized use of Twisted Root's famous name and trademarks in the casual dining business. Defendant has established, and continues to operate, a competing business which mimics Twisted Root with the intent to trade-off, confuse, mislead, and deceive the public and customers by the similarity of the name, trade dress, product offerings and advertisement. Twisted Root has repeatedly provided Defendant with detailed notice of its intellectual property rights and Defendant's violation of such

rights. Defendant even negotiated a settlement agreement whereby Defendant agreed to cease using Twisted Root's mark, change its name, and relinquish its web domain in exchange for Plaintiff's release of the trademark claims set forth herein. Thereafter, Defendant refused to honor these terms and breached the settlement agreement. It is clear that Defendant will not stop its wrongdoing unless ordered to do so by this Court. As a result of Defendant's willful conduct, Twisted Root seeks relief and recovery of actual damages, treble damages, profits, costs, attorneys' fees, permanent injunctive relief, and other relief as more fully set forth herein.

II. PARTIES

2. Plaintiff, TRB IP HOLDINGS, LLC is a Texas limited liability company owning the trademark rights to the name and doing business as "Twisted Root" and "Twisted Root Burger Co."

3. Defendant, TWISTED ROOT RESTAURNT & BAR LLC is a limited liability company. Citation may be served on its registered agent, Shaun Riley, at W2873 County Road C, Sheboygan Falls, Wisconsin, 53085. Defendant operates a casual restaurant and bar in Sheboygan Falls, Wisconsin.

III. JURISDICTION AND VENUE

4. The first, second, and third causes of action arise under the United States Trademark (Lanham) Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.* The fourth and fifth causes of action arise under Texas common law and are based upon the same operative facts as the first through third causes of action. Subject matter jurisdiction in this Court over the first through third causes of action is proper pursuant to 28 U.S.C. §

1338(a) and on the basis of supplemental jurisdiction under subsection (b). This Court has personal jurisdiction over the Defendant because Defendant purposely availed itself of the privilege of conducting activities with the forum state and invoked the benefits and protection of state law. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). More specifically, Defendant sent written and verbal communications to Twisted Root in Texas as well as negotiated the terms of the settlement agreement with a Texas entity.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(2), (b) and (c) in that a substantial part of the claims arose in this district.

IV. CONDITIONS PRECEDENT

6. All conditions precedent have been performed or have occurred.

V. STATEMENT OF FACTS

7. Twisted Root is in the casual restaurant and bar business, and has been continuously since 2005. Currently, Twisted Root operates nine restaurants in the greater Dallas market, with two more in development, and has two leases signed in the Austin, Texas market. Twisted Root launched its national franchise program in August, 2011, after winning a “Hot Concept!” award from *Nation’s Restaurant News*, a national restaurant trade publication. Since then, Twisted Root has been contacted by prospective franchisees located in twenty-four states,¹ Puerto Rico, and six countries.² Its first franchised unit outside of Texas opened in the summer of 2013. Two other franchised locations are currently in development. Since August, 2010, Twisted Root has been

¹ Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Virginia

² Canada, Kuwait, Mexico, Peru, Philippines, and Saudi Arabia

under contract to open a restaurant in Terminal A of the Dallas-Fort Worth International Airport, which has been under development since June, 2011. Twisted Root's menu consists of hamburgers made from a special blend of select cuts of beef, game meats, hot dogs, fried side dishes, including its signature fried green beans, and homemade shakes.

8. Twisted Root is the owner of multiple trademarks registered with the U.S. Patent and Trademark Office, two of which are at issue in the instant case, having Registration Numbers 3,657,091 and 4,225,117, issued on July 21, 2009, and October 16, 2012, respectively (collectively, the "Marks").³ Twisted Root has continuously used the logo⁴ and name "Twisted Root" in connection with its casual dining and bar business since 2005, and has never abandoned its trademarks.

9. The aforementioned registrations are currently valid, subsisting in full force and effect, and registered on the Principal Trademark Register of the United States Patent and Trademark Office.⁵ The name and mark "Twisted Root" is inherently distinctive, as it neither serves as a name for the goods themselves nor describes any quality, characteristic, or ingredient of the goods.

10. The name and mark "Twisted Root" has been extensively used by Twisted Root in connection with the advertising, promotion, and marketing of Twisted Root's restaurant and bar business on its website on the internet at www.twistedrootburgerco.com, as well as in newspapers, consumer magazines, television

³ True and correct copies of the Marks are attached hereto and marked as Exhibit "A" and "B," respectively.

⁴ See Exhibit "A"

⁵ See Exhibits "A" and "B"

and radio. The Mark is also prominently displayed on Twisted Root's product packaging.

11. Since at least as early as 2005, Twisted Root has operated its website available at the URL www.twistedrootburgerco.com. Twisted Root's website is viewed as an important resource by the general public. In addition to providing information such as Twisted Root's history and menu, the website is also the means by which prospective franchisees begin the franchising process. Twisted Root frequently receives franchising inquiries from prospective franchisees both nationally and internationally through its website.

12. Twisted Root also markets itself on social media websites and has a FaceBook page at URL www.facebook.com/TwistedRoot, and a Twitter handle @twisted_root. Twisted Root has invested, and will continue to invest, substantial monies in operating, maintaining, promoting, and advertising its website and presence on the internet.

13. A significant amount of time, effort and money has been expended over the years in ensuring that the purchasing public associates the Marks exclusively with Twisted Root. Since 2005, Twisted Root has expended over \$300,000.00 in advertising and promoting of its restaurants. As a result of the time, effort and money in its business, and the quality of its goods and services, Twisted Root has achieved a reputation for excellence not just in Texas, but nationally as well.

14. For example, Twisted Root has been recognized and promoted in several national magazines and television shows. Twisted Root was named "Best burger joint in

America” by *Burger Business Magazine* in 2009, was featured in *Men’s Health Magazine* in 2010, and named a “Hot Concept!” by *Nation’s Restaurant News Magazine* in August, 2011. Twisted Root was featured on the Food Network’s television show, *Diners, Drive-ins, and Dives* in April, 2009, and on ABC’s *20/20* in April, 2013. Twisted Root is diligent in protecting its Marks throughout the United States due to Twisted Root’s national presence. Most recently, Twisted Root sent cease and desist letters to a restaurant in Ohio under similar circumstances contained in this complaint. However, the Ohio establishment agreed to stop infringing on Twisted Root’s rights, agreeing to change its name, among other things. Twisted Root’s Marks are strong and entitled to broad protection.

15. Defendant is also in the restaurant business and attempts through the acts described herein to create a restaurant that mimics in every way possible that which has been developed and is protected by law of Twisted Root. Not surprisingly, one of the founders of Defendant is from Texas.⁶ Defendant began operating a restaurant in Sheboygan, Wisconsin sometime in the fall of 2011 under the name “Twisted Root Restaurant and Bar.” At the time Defendant began operating as “Twisted Root Restaurant and Bar,” it had actual notice and knowledge, or had constructive notice, of the existence of Twisted Root and its uses and ownership of its Marks.

16. Defendant operates a website with the URL of www.twisted-root.com, has a FaceBook page at URL <http://www.facebook.com/pages/Twisted-Root-Restaurant-Bar/138244736256340>, and Twitter handle @_twisted_root, all of which is confusingly

⁶Twisted Root Restaurant and Bar, WWW.TWISTED-ROOT.COM, <http://www.twisted-root.com/#!/press> (last visited January 17, 2014).

similar to Twisted Root's website, FaceBook page, and Twitter handle (where only one “_” separates Defendant's handle from Twisted Root's handle).

17. Long after Twisted Root's first use of its Marks, Defendant prominently, repeatedly, and without the permission or authorization of Twisted Root, with complete knowledge and notice of Twisted Root's intellectual property rights, used Twisted Root's Marks in a manner that was likely to confuse consumers into believing (falsely) that Defendant's business is owned and operated, affiliated with, sponsored, or approved by Twisted Root.⁷ Further, when searching for Twisted Root on Google Maps, Defendant's restaurant appears as an option.

18. On information and belief, Defendant has created a similar atmosphere and menu **including Twisted Root's signature side item**. Defendant has prominently and repeatedly used Twisted Root's name and Marks in its advertisements and on its website in a manner which suggests (falsely) that Defendant is Twisted Root, or is affiliated with Twisted Root.

19. On information and belief, Defendant's use of Twisted Root's Marks are conducted with actual knowledge of the reputation and goodwill in the Twisted Root Marks, and Twisted Root's ownership of the name and Marks, and has been and continues to be done in bad faith.

20. Despite the limitless other marks and names that Defendant could have chosen for its restaurant business, it wrongfully appropriated a mark identical to Twisted Root's without permission.

⁷ A true and correct copy of Defendant's logo from its website is attached hereto and marked as Exhibit “C.”

DEFENDANT'S WILLFULLNESS

21. Defendant's wrongful activities are willful for the following reasons:
- a. Defendant chose a trademark identical to Twisted Root's Marks though the most rudimentary trademark search would have revealed Plaintiff's federal registration for the identical mark for identical types of products and services;⁸
 - b. Defendant has continued to use the confusingly similar designation after Twisted Root notified it of Twisted Root's prior rights to the Marks;
 - c. Defendant has gone to great lengths to mimic the unique characteristic of Twisted Root's restaurants and even mimics Twisted Root's signature dish.
 - d. Defendant's co-owner is from Texas, where the Marks are best known.

22. Twisted Root sent its first cease and desist letter to Defendant in February, 2012 (immediately after discovering a news article referring to Defendant's opening), and provided Defendant with notice of Twisted Root's intellectual property rights, and demanded that Defendant correct the known violations and cease and desist from infringing on Twisted Root's Marks.

23. Defendant agreed to stop the infringement and negotiated, then entered into a settlement agreement wherein it would change its name to one approved by Twisted Root. Many names were rejected by Twisted Root, such as "Twisted Rt.," but one was eventually agreed to. Defendant proposed changing its name to "Twisted Road," which Twisted Root accepted. In April, 2012, Plaintiff and Defendant reached an

⁸ See Exhibit "A" compared to Exhibit "C"

agreement whereby Defendant would change its name to “Riley’s Twisted R” and give up the domain <http://www.twisted-root.com>.

24. After Defendant breached its agreement with Twisted Root and refused to execute the parties’ written memorandum of that agreement, Twisted Root sent its second letter to Defendant in October, 2012, providing notice to Defendant’s new counsel and demand for Defendant to correct its known violations and cease and desist from infringing on Twisted Root’s Marks, which was ignored. Finally, Twisted Root sent Defendant a third cease and desist letter in January, 2013, which was also ignored.

25. Defendant’s continued wrongdoing is willful, in bad faith, with complete knowledge and notice, and in utter disregard for Twisted Root’s intellectual property rights.

VI. DAMAGE TO PLAINTIFF

26. Twisted Root is a national brand that continues to market its franchises both nationally and internationally. The relevant public has been, and will continue to be, confused, mistaken, and deceived into wrongfully attributing to Twisted Root’s goods and services as a result of Defendant’s unlawful use of Twisted Root’s Marks. Twisted Root has no control over the quality of Defendant’s goods and services and such confusion and misappropriation will continue to irreparably injure Twisted Root’s profits, goodwill, intellectual property and trademarks.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Federal Trademark Infringement – 15 U.S.C. § 1114(a)

27. Twisted Root re-alleges and incorporates by reference the allegations of paragraphs 1-26 of this Complaint as if fully set forth herein.

28. Defendant's unauthorized use, advertising, marketing and sale of products of Twisted Root's name and Marks falsely indicates to consumers that Defendant's restaurant and products and services originate from, are approved by, are sponsored by, are licensed by, or are affiliated or associated with Twisted Root.

29. Defendant's unauthorized use, advertising, marketing and sale of products under the Twisted Root name and Marks, as alleged herein, has and will continue to deceive, mislead, and confuse the relevant public.

30. Defendant's actions constitute trademark infringement in violation of 15 U.S.C. § 1114.

31. As a proximate result of Defendant's acts as alleged herein, Twisted Root has suffered, and will continue to suffer, great damage to its business, goodwill, and profits, while Defendant unfairly profits at Twisted Root's expense. Twisted Root has no adequate remedy at law for Defendant's infringement of Twisted Root's name and Marks, and will continue to suffer irreparable harm unless Defendant is permanently enjoined from using same.

SECOND CAUSE OF ACTION
Federal Unfair Competition – 15 U.S.C. § 1125(a)

32. Twisted Root re-alleges and incorporates by reference the allegations of paragraphs 1-26 of this Complaint as if fully set forth herein.

33. Twisted Root's name and Marks used in connection with a casual restaurant and bar are distinctive, and have become exclusively associated with Twisted Root though its continuous, extensive, and widespread use in advertising, promotion, and marketing of its products and services over the past eight years. As a result, Twisted Root's name and Marks exclusively identify its business, products and services.

34. By reason of Defendant's wrongful use of Twisted Root's name and Marks in connection with a casual restaurant and bar, as well as copying of menu items, purchasers and prospective purchasers of Defendant's products are deceptively led to believe that Defendant's products are that of Twisted Root's when in fact Defendant has no present connection or affiliation whatsoever with Twisted Root.

35. Defendant's unauthorized use in commerce of Twisted Root's name and Marks constitutes unfair competition, passing off, false designation of origin, false or misleading descriptions or representations of fact, and false advertising, which has and is likely to continue to cause confusion, mistake, or cause to deceive consumers as to the nature, quality, and characteristics of Defendant's goods and commercial activities to that of an affiliation between Defendant and Twisted Root, in and affecting interstate commerce, all in violation of 15 U.S.C § 1125(a).

36. As a proximate result of Defendant's acts as alleged herein, Twisted Root has suffered, and will continue to suffer, great damage to its business, goodwill, and

profits, while Defendant profits at Twisted Root's expense. Twisted Root has no adequate remedy at law for Defendant's infringement of Twisted Root's name and Marks and will continue to suffer irreparable harm unless Defendant is permanently enjoined.

THIRD CAUSE OF ACTION
Federal Trademark Dilution – 15 U.S.C. § 1125(c)

37. Twisted Root re-alleges and incorporates by reference the allegations of paragraphs 1-26 of this Complaint as if fully set forth herein.

38. As a direct result of Twisted Root's long and extensive experience, care, and skill in marketing, advertising, and operating casual restaurants and bars (and related goods and services) under the Twisted Root name and Marks, Twisted Root has acquired a reputation for excellence and enjoys strong demand for its goods and services. In addition, Twisted Root has expended large sums of money in brand development, marketing and public relations to create substantial goodwill and an image of very high quality for its goods and services in its name and Marks.

39. Defendant, by wrongfully using Twisted Root's name and Marks, is misleading the public into believing that its products, services, advertisements, internet sites, and business are connected to Twisted Root when in fact they are not in any way. Defendant's false representations will inevitably deceive customers as to the nature, quality, and characteristics of Twisted Root's goods and services. Such action tarnishes, dilutes, and disparages Twisted Root's goodwill, reputation, and Marks.

40. Defendant's acts will deprive Twisted Root of the benefit of the goodwill attached to Twisted Root's Marks, injure Twisted Root's business reputation, and dilute the distinctive quality of Twisted Root's Marks in violation of 15 U.S.C. § 1125(c).

41. As a proximate result of Defendant's acts as alleged herein, Twisted Root has suffered, and will continue to suffer, great damage to its business, goodwill, and profits while Defendant profits at Twisted Root's expense. Twisted Root has no adequate remedy at law for Defendant's infringement of Twisted Root's name and Marks, and will continue to suffer irreparable harm unless Defendant's infringement is permanently enjoined.

FOURTH CAUSE OF ACTION
Common Law Trademark Infringement

42. Twisted Root re-alleges and incorporates by reference the allegations of paragraphs 1-26 of this Complaint as if fully set forth herein.

43. Twisted Root owns all rights, title, and interest in and to the Marks, including all common law rights in such marks.

44. Defendant's unauthorized use, advertising, marketing and sale of products under the Twisted Root name and Marks, as alleged herein, has and will continue to deceive, mislead, and confuse the relevant public

45. The foregoing acts of Defendant are intended to cause, have caused, and are likely to continue to cause confusion, mistake, and deception among consumers, the public, and the trade as to whether Defendant's restaurant, products and services originate from, are approved by, are sponsored by, are licensed by, are endorsed by, or are affiliated with or associated with Twisted Root.

46. Upon information and belief, Defendant has acted with knowledge of Twisted Root's ownership of the Marks and with deliberate intention or willful blindness to unfairly benefit from the incalculable goodwill symbolized thereby.

47. Defendant's acts constitute trademark infringement in violation of the common law of the State of Texas.

48. Upon information and belief, Defendant has made and will continue to make substantial profits and gains to which it is not in law or equity entitled.

49. Upon information and belief, Defendant intends to continue its infringing acts, unless restrained by this Court.

50. Defendant's acts have damaged and will continue to damage Twisted Root, and Twisted Root has no adequate remedy at law.

FIFTH CAUSE OF ACTION
Breach of Contract

51. Twisted Root re-alleges and incorporates by reference the allegations of paragraphs 1-26 of this Complaint as if fully set forth herein.

52. In April, 2012, after receipt of Twisted Root's second cease and desist letter, Defendant agreed to stop infringing on Twisted Root's name and Marks by changing its name and giving up its website domain. Defendant proposed various names which were rejected by Twisted Root however the names "Twisted Road" and "Riley's Twisted R" were accepted. Defendant agreed to change its name to "Riley's Twisted R" in all areas and items where it currently uses "Twisted Root" including but not limited to all advertising, marketing, web URLs (include FaceBook page and Twitter handle), menus, and signage. In return, Twisted Root agreed to refrain from filing suit against Defendant for trademark infringement.

53. Despite entering into the foregoing settlement agreement, Defendant thereafter flatly refused to perform its duties, instead, informing Twisted Root that

Defendant's owners had changed their minds. As such, and pursuant to Texas common law, Defendant is in breach of the settlement agreement Defendant had with Twisted Root.

54. As a result of Defendant's breach of said agreement, Twisted Root has been damaged, and for such sum sues Defendant.

VIII. REQUEST FOR PERMANENT INJUNCTION

55. Twisted Root re-alleges and incorporates by reference the allegations of paragraphs 1-26 of this Complaint as if fully set forth herein.

56. Twisted Root seeks to enjoin Defendant, its agents, and representatives from using Twisted Root's name and Marks because this activity infringes upon Twisted Root's intellectual property rights.

57. Defendant does not have any trademarks, and its actions to date are, at minimum, flagrant violations of the Lanham Act and Texas common law as set forth above. Defendant has gone out of its way to copy the unique character and nature of Twisted Root's business, including the use of Twisted Root's name, Marks, and certain menu items.

58. If the Court does not grant a permanent injunction, Defendant will continue its activities infringing on Twisted Root's trademarks. Twisted Root will suffer irreparable injury if the Court does not enjoin Defendant from utilizing its trademarks because actual confusion in the market is occurring and will in all likelihood continue to occur.

59. Defendant will not suffer undue hardship or loss as a result of the issuance of a permanent injunction. Defendant can simply use the formerly agreed-upon name of "Twisted Road" or "Riley's Twisted R," or find another acceptable name under which to conduct business. Issuance of a permanent injunction would not adversely affect the public interest. In fact, it will eliminate the confusion that exists in the marketplace.

IX. DAMAGES

60. As a direct and proximate result of Defendant's conduct, Twisted Root has suffered actual damages and enhanced damages for willful infringement.

61. Defendant knew that its unauthorized use of Twisted Root's name and Marks is confusingly similar to Twisted Root and would result in a benefit to Defendant. Defendant has been unjustly enriched at the expense of Twisted Root's reputation and goodwill.

X. PRAYER FOR RELIEF

For these reasons, Twisted Root requests for judgment against Defendant for the following:

a. Defendant, its owners/shareholders, officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, be preliminarily, and upon final trial, permanently enjoined from the following:

(1) Using the designation "Twisted Root" or any other confusingly similar designation, in connection with the promotion, advertising, or offering of a casual restaurant and bar business.

(2) Competing unfairly with Twisted Root in any manner, including unlawfully adopting or using any other marks or designations that are confusingly similar to Twisted Root's trademarks.

(3) Conspiring, aiding, abetting, or assisting any other person or entity in engaging or performing any of the activities referred to in subparagraphs (1) and (2) above.

b. Defendant, its owners/shareholders, officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, deliver for destruction, or show proof of destruction of, any and all products, labels, signs, prints, packages, wrappers, receptacles, and advertisements, and any other materials in their possession or control that depict or reference the designation "Twisted Root" or any other confusingly or substantially similar mark, and any materials or articles used for making or reproducing the same, as provided by 15 U.S.C. § 1118.

c. Defendant file with the Court and serve on Twisted Root, within 30 days after the entry and service on Defendant of an injunction, a report in writing and under oath setting forth the manner and form in which Defendant has complied with the provisions of subparagraphs (a) and (b) above.

d. Twisted Root recover all damages it has sustained as a result of Defendant's infringement and unfair competition.

e. Twisted Root be awarded treble damages under 15 U.S.C. § 1117(b).

f. An accounting be directed to determine Defendant's profits resulting from its infringement and unfair competition and that the profits be paid over to Twisted Root, increased as the Court determines is appropriate to the circumstances of this case.

g. The Court declare this case an exceptional case and award Twisted Root its reasonable attorneys' fees for prosecuting this action under 15 U.S.C. § 1117(a) in the face of Defendant's continued refusal to acknowledge Twisted Root's rights.

h. Twisted Root recover its costs of this action and both pre- and post-judgment interest.

i. Twisted Root recover all other relief the Court deems appropriate.

Respectfully submitted this 17th day of January, 2014.

THE LAW OFFICES OF DAVID T. DENNEY, PC

By: /s/ David T. Denney
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ATTORNEYS FOR PLAINTIFF

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,657,091

Registered July 21, 2009

**SERVICE MARK
PRINCIPAL REGISTER**

**TWISTED
BURGER CO.
ROOT**

TRB IP HOLDINGS, LLC (TEXAS LIMITED LIABILITY COMPANY)
2615 COMMERCE STREET
DALLAS, TX 75226

FOR: RESTAURANT, BAR AND CATERING SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 11-1-2005; IN COMMERCE 11-1-2006.

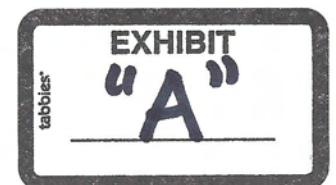
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BURGER CO.", APART FROM THE MARK AS SHOWN.

THE COLOR(S) RED IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE STYLIZED WORDS "TWISTED ROOT BURGER CO." IN RED. THE COLOR WHITE REPRESENTS TRANSPARENT AREAS AND IS NOT A FEATURE OR PART OF THE MARK.

SER. NO. 77-605,773, FILED 11-2-2008.

TEJBIR SINGH, EXAMINING ATTORNEY



United States of America

United States Patent and Trademark Office

Twisted Root

Reg. No. 4,225,117

Registered Oct. 16, 2012

Int. Cl.: 43

SERVICE MARK

PRINCIPAL REGISTER

TRB IP HOLDINGS, LLC (TEXAS LIMITED LIABILITY COMPANY)
SUITE 925
8350 N CENTRAL EXPY
DALLAS, TX 75206

FOR: RESTAURANT, BAR AND CATERING SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 11-1-2005; IN COMMERCE 6-1-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 3,657,091.

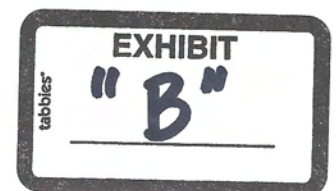
SER. NO. 85-550,501, FILED 2-23-2012.

KIMBERLY PERRY, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office



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Twisted Root

Restaurant & Bar

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The Root Gumbo: Uter in bread bowl
Penne Pasta Sauced with Mozzarella &
Barnyard Cheese, Cheese and Smokey
Corn Crusted Garlic Bread, Twisted Root Sub
with Cheddar and Bacon, Twisted Burger to
top, Root Beer, Grilled Chicken with Cheddar
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Twisted Root

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