

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

7-ELEVEN, INC.,

Plaintiff,

v.

KINNARI PATEL,

Defendant.

CIVIL ACTION NO.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff, 7-Eleven, Inc. ("**7-Eleven**"), sues Defendant, Kinnari Patel ("**Ms. Patel**"), and alleges:

Parties

1. 7-Eleven is a corporation organized and existing under the laws of the state of Texas with its principal place of business in Dallas, Texas.

2. Ms. Patel is an individual residing in and a citizen of Edison, Middlesex County, New Jersey.

Jurisdiction, Venue and Vicinage

3. Subject matter jurisdiction in this matter is founded upon 15 U.S.C. § 1121 and 29 U.S.C. §§ 1331 and 1338. The Court has supplemental jurisdiction over the remaining claims under 28 U.S.C. § 1367.

4. The Court also has diversity jurisdiction over this case pursuant to 28 U.S.C. § 1332 because the parties to this action are diverse and the amount in controversy exceeds \$75,000.00.

5. Venue is proper in this District and within the Trenton Vicinage because Ms. Patel operates the business that is the subject of this action in East Windsor, Mercer County, New Jersey.

The 7-Eleven Franchise System

6. 7-Eleven is an operator and franchisor of convenience store retailing businesses and is the premiere brand in that industry.

7. 7-Eleven created the convenience store industry. It was the first store to operate on a 24-hour schedule, first to offer self-service fountain drinks, take out coffee, and many other innovations.

8. 7-Eleven evolved from an ice company in the 1920s that began selling milk, eggs, and bread from an improvised storefront. The company's stores were originally known as "Tote'm Stores" but in 1946 the name of the stores was changed to "7-Eleven" to reflect the hours of operation—7 a.m. to 11 p.m.—and has been in continuous use since.

9. Today, there are more than 50,000 7-Eleven® stores throughout the world, with some 10,000 of those located in North America. In substantial part, this growth has been the result of 7-Eleven's immense popularity – so much so that it has ubiquitous presence in American culture with 7-Eleven® stores and parodies of them featured in countless films and songs, such as Back to the Future, The Simpson's Movie, and the song The Magnificent Seven by The Clash.

10. 7-Eleven has developed methods and procedures—called a "system"—used in the operation of convenience store businesses. Its system is the culmination of decades of 7-Eleven's experience and investment of resources into its development and refinements.

11. 7-Eleven owns a number of federally registered trademarks and service marks, including 7-Eleven®, Slurpee®, and Big Gulp® used in the operation of its convenience stores. These marks, and the 7-Eleven® mark in particular, identify and distinguish 7-Eleven's products and services from its competitors. Use of these marks provide a sense of familiarity to customers and assurance that they can receive the same types of products and high levels of service that are provided in other 7-Eleven® stores.

12. The majority of 7-Eleven stores have prototypical architecture of rectangular-shaped single-story stores having brick fronts with distinctive fascia, door, and window treatments. Likewise, the interior of 7-Eleven® stores often feature white walls with green and red horizontal striping near the ceilings. These are important features and components of 7-Eleven's image.

13. In addition, the red, orange, and green striping against a white field is the subject of numerous trademark registrations owned by 7-Eleven (one use being flanking the display of the 7-Eleven® logo—a multicolored Arabic numeral "7" displayed against a white rectangular background), including Nos. 2,135,385 and 2,295,753 for use respectively in retail convenience store services and retail gasoline station services.

14. 7-Eleven's registered marks and trade dress are often part of the building structure and inseparable from its realty. The marks are also incorporated into certain functional components and products of the equipment used in 7-Eleven® stores, such as fountain backsplashes and its point-of-sale register terminals, which print receipts displaying the 7-Eleven® marks.

15. Over many years, 7-Eleven has expended untold resources and efforts in advertising and other efforts to gain customer association of 7-Eleven® and its stores with speed, convenience, and quality along with the availability of 7-Eleven's popular private brands, like Big Gulp® fountain sodas, Big Bite® hot dogs, and Slurpee® frozen drinks.

16. 7-Eleven has been franchising since the 1960s and approximately 75% of its North American stores are franchised.

17. Through its franchise agreements, 7-Eleven licenses the use of its marks and its system of operating convenience stores to others, requiring them to operate uniformly and in accordance with 7-Eleven's specifications in order to protect 7-Eleven's image and brand. In addition, a 7-Eleven® franchisee must pay to 7-Eleven a defined percentage of its gross income, called the "7-Eleven Charge."

18. Other salient features of the 7-Eleven® franchise system include:
- A. The Open Account: 7-Eleven extends financing to its franchisees for use in the operation of franchised stores. The amount financed by 7-Eleven and the balance due from its franchisee is maintained in an account defined in the franchise agreement as the "Open Account." Essentially, the Open Account is a running working capital account that carries the outstanding balance that 7-Eleven has loaned to the franchisee.
 - B. Retail Information Systems: 7-Eleven® franchisees must use a proprietary Retail Information System computer system and software having various point-of-sale, inventory management, and back-office functions. Through this Retail Information System, a franchisee reports virtually all store transactions to 7-Eleven, including sales, inventory acquisitions and adjustments, payroll, etc.
 - C. Inventory Reporting & Accounting: A franchisee can finance its purchase of store inventory through the Open Account or purchase inventory with cash. In either instance, the franchisee is obligated to report the inventory transaction and submit the related invoice to 7-Eleven. This inventory is accounted under 7-Eleven's system using a retail accounting system, meaning that inventory in a store is valued at the retail selling price determined by the franchisee.
 - D. Cash Reports: 7-Eleven® franchisees must prepare and transmit to 7-Eleven a daily cash report ("Cash Report"). Among other things, the Cash Report sets forth the daily sales and whether those sales were for cash or credit. The Cash Report also accounts for deductions from cash receipts that affect the daily deposit, such as a franchisee's cash payment to a vendor to acquire merchandise for sale in the store.
 - E. Minimum Net Worth: Most 7-Eleven® franchised stores must maintain a "Minimum Net Worth" of \$15,000. A franchisee's "Net Worth" is essentially the sum total of its assets minus its liabilities. The Minimum Net Worth requirement is intended to protect 7-Eleven's investment in the store, its exposure for the Open Account, and to assure that 7-Eleven® franchisees are financially vested in the operation of their stores.
 - F. Monthly Financials: 7-Eleven prepares monthly financial statements (called "Financial Summaries") for each store from its bookkeeping records. This information in its bookkeeping records is supplied primarily by the franchisee through the Cash Reports. The Financial Summaries are provided to the franchisee usually by the tenth day of the following month and include, among other things, an income statement, balance sheet, and calculation of the Open Account balance and Net Worth.

The Franchise Agreement with Ms. Patel

19. On August 12, 2004, Kinnari Patel ("**Ms. Patel**") and her spouse, Bharat Patel ("**Mr. Patel**"), entered a franchise agreement, ancillary agreements, and addenda (collectively the

"**Franchise Agreement**") for 7-Eleven Store No. 10983 located at 46 South Twin Rivers Drive, East Windsor, New Jersey 08520 (the "Store"). A copy of the Franchise Agreement is attached hereto as Exhibit "A".

20. Mr. and Ms. Patel subsequently executed an amendment to the Franchise Agreement removing Mr. Patel from the Franchise Agreement and designating Ms. Patel as the sole franchisee. A copy of the amendment is appended to the Franchise Agreement.

21. Prior to franchising the Store, 7-Eleven had selected its location, entered into a lease with the property owner, and made physical improvements to the premises. The Store's premises are subleased to Ms. Patel through the Franchise Agreement.

22. 7-Eleven also outfitted the Store with equipment for the operation of a convenience store, such as coolers, soda fountains, grills, a safe, cash registers, and so on (the "**Equipment**"). Ms. Patel leases the Equipment from 7-Eleven through the franchise agreement.

23. The lease provisions of the Franchise Agreement contain exclusive use clauses. The purpose of these clauses is to ensure that only a 7-Eleven® business is operated on premises where 7-Eleven has made these investments, that is, on real property it owns or has acquired via a long-term lease from a third party so that locational goodwill is retained and 7-Eleven property is used only for its intended purpose—to operate and use as a 7-Eleven® store.

Ms. Patel's Breach of the Franchise Agreement

24. Paragraph 26 of the Franchise Agreement specifies that upon Ms. Patel's "Material Breach", 7-Eleven may notify Ms. Patel of the violation. If Ms. Patel does not cure within the allowed time corresponding to the nature of the breach, 7-Eleven may then terminate the Franchise Agreement.

25. Ms. Patel's franchise agreement requires her to maintain a Minimum Net Worth of \$15,000, and it is a Material Breach of the Franchise Agreement for the Store's Net Worth to fall below the Minimum Net Worth.

26. Ms. Patel has repeatedly violated the Minimum Net Worth obligation. Since March of 2015, 7-Eleven has issued to Ms. Patel multiple notices of Material Breach based on Minimum Net Worth violations.

27. Despite 7-Eleven's warnings, Ms. Patel has not cured her breaches and the Store's equity position has continued to decline. For example, on October 31, 2015, the Store had a Net Worth of negative \$164,095.73. By November 30, 2015, Ms. Patel's Net Worth dropped an additional \$15,000 to negative \$179,735.74, and by December 31, 2015, Ms. Patel's Net Worth has declined a further \$10,000 to \$190,616.10.

28. Because of the Store's dire financial condition and Ms. Patel's refusal (or inability) to improve it, on December 11, 2015, 7-Eleven issued and delivered to the Store a Notice of Material Breach of her Minimum Net Worth violation ("**Breach Notice**"). A copy of the Breach Notice is attached as Exhibit "B."

29. Paragraph 26 of the Franchise Agreement provides that if 7-Eleven issues at least three prior notices of Material Breach within the two years before a fourth Material Breach, 7-Eleven may, at its option, terminate the Franchise Agreement immediately and without any opportunity to cure, and in fact, Ms. Patel has received more than three prior notice of Material Breach within the past two years.

30. Thus, Ms. Patel had no contractual right to cure because she had already exhausted the cure opportunities allowed under the Franchise Agreement. Nonetheless, in its December 11th Notice 7-Eleven allowed Ms. Patel a further opportunity to cure by increasing the Store's Net Worth to the required \$15,000.

Termination of the Franchise Agreement

31. The Breach Notice warned Ms. Patel that if she did not cure her serious breach of the Franchise Agreement within the permitted time, 7-Eleven elected to terminate the Franchise Agreement to be effective sixty-days following delivery of the Notice. 7-Eleven delivered the Breach Notice to the Store on December 11, 2015, and the end of the sixty-day period was on February 9, 2016.

32. The Breach Notice also specified that, upon termination, Ms. Patel's right to use 7-Eleven's marks ceased and 7-Eleven was likewise terminating her lease of the Store premises and Equipment.

33. Ms. Patel did not cure her breach, much less attempt to do so or any time following delivery of the notice through the present day.

34. The financial condition of the Store has not improved since 7-Eleven issued its December 11, 2015 breach notice. Ms. Patel's Net Worth has, in fact, continued to decline and the harm to 7-Eleven has continued to mount. As previously explained, 7-Eleven finances operational expenses for Ms. Patel's Store through the Open Account. Thus, even though Ms. Patel long ago exhausted any capital she had invested in the business, she has continued to use 7-Eleven's credit, for example, to pay vendors for merchandise delivered to the Store.

35. On January 29, 2016, a 7-Eleven representative discussed with Ms. Patel the breach notice and her intentions in light of the upcoming termination date. Although Ms. Patel acknowledged receiving the notice and that she was in breach, she refused to disclose whether she would attempt a tardy cure, vacate or conduct herself otherwise at the end of the sixty-day period.

36. On February 9, 2016, Ms. Patel's Franchise Agreement terminated per the December 11, 2015 notice. On that day, 7-Eleven wrote to Ms. Patel, reminding her that the Franchise Agreement was terminated and demanded that she surrender the Store's premises,

Equipment and inventory to 7-Eleven. A copy of this Termination Notice is attached as Exhibit "C".

37. Ms. Patel, through her lawyer, has rejected 7-Eleven's demand that she leave the Store or in any fashion otherwise comply with 7-Eleven's demands as set forth in its Notice of Termination.

Ms. Patel's Violation of Post-Termination Covenants and Infringement

38. Notwithstanding the Franchise Agreement's termination continues to operate the Store and is falsely holding it out to the consuming public as an authorized and duly licensed 7-Eleven® store.

39. To protect itself, 7-Eleven has advised its vendors that the store operated by Ms. Patel, is no longer a 7-Eleven®, despite its appearance otherwise, and that she is not authorized to carry or purchase 7-Eleven's proprietary brands.

40. The Store's condition and operations will deteriorate as time progresses because Ms. Patel is unable to comply with 7-Eleven's system.

41. There is no reasonable way for a customer to know that Ms. Patel's store is not authorized to use 7-Eleven's marks and not associated with the 7-Eleven system. By all appearances, the Store remains, and its premises appear to be, a 7-Eleven® store, although it is not.

42. It is impractical if not impossible for Ms. Patel to sufficiently separate the distinguishing characteristics of the Store from 7-Eleven. Consequently, unless Ms. Patel is prohibited from continuing her operations, 7-Eleven's brand and image are at risk and impaired by a customer's negative views and association of experiences at Ms. Patel's location with the 7-Eleven® brand.

43. 7-Eleven is prevented from making productive use of its own property as a consequence of Ms. Patel's conduct. In particular, Ms. Patel has no right of continued possession of the premises or Equipment following termination of the Franchise Agreement.

44. All conditions precedent to bringing this suit have occurred, have been satisfied, or have been waived.

COUNT I -- INFRINGEMENT

45. 7-Eleven realleges paragraphs 1 through 44 above.

46. The marks being used by Ms. Patel are identical to 7-Eleven's marks.

47. Ms. Patel offers identical goods to the public and moves in identical channels of trade as 7-Eleven and duly licensed 7-Eleven® franchisees.

48. Ms. Patel's use of 7-Eleven's marks is without any oral or written consent of 7-Eleven and is likely to cause mistake or confusion in the minds of the public in violation of 15 U.S.C. § 1114(1)(a).

49. Ms. Patel's actions charged above are being done knowingly and intentionally to cause confusion, mistake, or to deceive.

50. Ms. Patel has profited from her acts of infringement and 7-Eleven has suffered damages.

51. 7-Eleven is without an adequate remedy at law because its marks are unique and represent to the public the identity, reputation, and goodwill of 7-Eleven and its authorized franchisees, such that damages alone cannot adequately compensate for Ms. Patel's misconduct.

52. Unless enjoined, Ms. Patel and those acting in concert with her will continue to use and infringe upon 7-Eleven's marks. This threat of future injury to 7-Eleven's business identity, goodwill, and reputation requires injunctive relief to prevent Ms. Patel's continued use of 7-Eleven's marks and to ameliorate and mitigate the harm being caused to 7-Eleven.

COUNT II - UNFAIR COMPETITION

53. 7-Eleven realleges paragraphs 1 through 52 above.

54. Ms. Patel's use of 7-Eleven's marks along with any colorable variation thereof constitutes a passing off of the goods of Ms. Patel as those of 7-Eleven in violation of 15 U.S.C. § 1125(a).

55. By reason of the foregoing, 7-Eleven is substantially injured in its business, including harm to the goodwill associated with its marks.

56. Ms. Patel's actions charged above are being done knowingly and intentionally to cause confusion, mistake, or to deceive.

57. 7-Eleven is without an adequate remedy at law because its marks are unique and represent to the public the identity, reputation, and goodwill of 7-Eleven and its authorized franchisees, such that damages alone cannot adequately compensate for Ms. Patel's misconduct.

58. Unless enjoined, Ms. Patel and those acting in concert with her will continue to use and infringe upon 7-Eleven's marks. This threat of future injury to 7-Eleven's business identity, goodwill, and reputation requires injunctive relief to prevent Ms. Patel's continued use of 7-Eleven's marks and to ameliorate and mitigate the harm being caused to 7-Eleven.

COUNT III -- BREACH OF POST-TERMINATION OBLIGATIONS

59. 7-Eleven realleges paragraphs 1 through 58 above.

60. Ms. Patel and 7-Eleven are parties and signatories to the Franchise Agreement.

61. Ms. Patel has breached the Franchise Agreement's post-termination obligations, including without limitation those specified in Paragraphs 28(a) by, among other things:

- A. Failing to surrender the Store and the Equipment;
- B. Failing to transfer to 7-Eleven the Store's inventory; and
- C. Failing to cease using the 7-Eleven marks and system.

62. As a direct and proximate result of these breaches, 7-Eleven has been substantially and irreparably injured.

63. 7-Eleven is being deprived of the beneficial use of its real property and Equipment, and its business identity, customer and locational goodwill and reputation are impaired by Ms. Patel's conduct and continued possession. Ms. Patel is exacerbating this harm by operating and holding out her business as a 7-Eleven® store, when it is not.

64. 7-Eleven is without an adequate remedy at law to address this harm and protect its interests, and until Ms. Patel is ordered to abide by the post-termination promises she made to 7-Eleven, it will continue to suffer substantial, irreparable injury to its business and reputation.

COUNT IV -- MANDATORY INJUNCTION

65. 7-Eleven realleges paragraphs 1 through 64 above.

66. 7-Eleven is being, and will continue to be, irreparably damaged and injured by the aforementioned practices of Ms. Patel, including interference with 7-Eleven's property rights, and unless Ms. Patel is directed to quit and deliver to 7-Eleven possession of the Store, including the Equipment and Inventory, 7-Eleven will be caused irreparable injury and damage.

67. 7-Eleven has no adequate remedy at law.

COUNT V -- BREACH OF FRANCHISE AGREEMENT (DAMAGES)

68. 7-Eleven realleges paragraphs 1 through 67 above.

69. In the Franchise Agreement, Ms. Patel promised to:

A. Maintain at all times during the Term of the Franchise Agreement a Minimum Net Worth of at least \$15,000.00;

B. Provide 7-Eleven with truthful, accurate and complete information in compliance with all applicable laws and such policies that 7-Eleven implemented from time to time;

C. Only take draws when financially appropriate in accordance with the procedures contained in the Franchise Agreement;

D. Maintain a high ethical standard in the conduct of the franchised business and in the operation of the Store;

E. Not commit any act which may adversely affect or be detrimental to 7-Eleven, other 7-Eleven franchisees, the 7-Eleven Image, or the 7-Eleven System (as defined in the Franchise Agreement);

F. Devote her best efforts to the business of the Store and maximization of the Store's sales and gross profit, and cause the Store to be operated only pursuant to the 7-Eleven System and in a manner that will enhance the 7-Eleven Image; and

G. Pay her open account balance as demanded and/or upon the discontinuance of 7-Eleven's financing.

70. Ms. Patel breached each of her above obligations, causing 7-Eleven to suffer damages.

COUNT VI -- RECOVERY OF CHATTELS

71. 7-Eleven realleges paragraphs 1 through 70 above.

72. 7-Eleven holds a perfected security interest in the inventory and proceeds of the Store.

73. The security agreement for the Store provides that, upon termination of the Franchise Agreement, Ms. Patel must assemble the collateral and make it available to 7-Eleven at the Store. Further, 7-Eleven has the right to take possession of the collateral in the event of default.

74. On February 10, 2016, 7-Eleven exercised its right under the Franchise Agreement to discontinue the financing of any unpaid balance in the Open Account at the Store and demanded immediate repayment of the unpaid balance in the Open Account.

75. As a consequence of Ms. Patel's failure to pay the unpaid balance, 7-Eleven has made demand, pursuant to the Franchise Agreement, that Ms. Patel permit 7-Eleven to take immediate possession of the Equipment, Inventory and its proceeds at the Store.

76. Ms. Patel has declined to voluntarily vacate the Store and has wrongfully refused to turn over 7-Eleven's property to it.

77. As a direct result of Ms. Patel's actions as set forth above, 7-Eleven's security interest has been harmed.

78. 7-Eleven will be irreparably injured if Ms. Patel is permitted to retain possession of the Equipment, Inventory, proceeds, and other property subject to its security interest and has no adequate remedy at law for such injury.

79. Pursuant to Federal Rule of Civil Procedure 64, expressly permitting this Court to order a recovery of chattels by 7-Eleven under New Jersey law, 7-Eleven files this claim for recovery of chattels against Ms. Patel who has unjustly detained all Inventory, supplies, sales proceeds, Equipment and fixtures of the Store, in which property 7-Eleven has a valid security interest. Such property is estimated to have a retail value in excess of \$75,000.00.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, 7-Eleven, Inc. requests the following relief:

- A. An order preliminarily and permanently enjoining Ms. Patel, her agents, servants and employees, and those people in active concert or participation with her, from:
 - 1. Using the 7-Eleven marks or any trademark, service mark, logo or trade name that is confusingly similar thereto;
 - 2. Otherwise infringing upon 7-Eleven's marks or using any similar designation, along or in combination with any other components;
 - 3. Causing a likelihood of confusion or misunderstanding as to the source or sponsorship of Ms. Patel's business, goods, or services; and
 - 4. Causing a likelihood of confusion or misunderstanding as to Ms. Patel's affiliation, connection or association with 7-Eleven and its franchisees or any of their goods and services.
- B. An order, pursuant to 15 U.S.C. § 1118, that all labels, signs, prints, packages, wrappers, receptacles, uniforms, logo items, and advertisements in the possession of Ms. Patel, her affiliates, subsidiaries, officers, agents, servants and employees, and those people in active concert or participation with her bearing 7-Eleven's marks, and all plates, molds, and other means of making the same, if any, be delivered to 7-Eleven at Ms. Patel's cost;
- C. An order requiring Ms. Patel to eliminate her advertising under 7-Eleven's marks or

any other confusingly similar designations from all media including, but not limited to, websites, newspapers, flyers, coupons, promotions, signs, telephone books, telephone directory assistance listings and mass mailings, all at Ms. Patel's cost;

- D. An order requiring Ms. Patel to file with the Court and to serve upon 7-Eleven's counsel within thirty (30) days after entry of any injunction or order, a written report, under oath, setting forth in detail the manner in which she has complied with such injunction or order;
- E. An award and judgment for damages, including all profits made by Ms. Patel, caused by Ms. Patel's infringement and unfair competition;
- F. An order preliminarily granting 7-Eleven possession of the Store and permitting it to assume operation of the Store pending a trial on the merits of the case;
- G. An award and judgment for possession of the Store premises and such writs and executions as may be necessary to aid 7-Eleven in dispossessing Ms. Patel from the same;
- H. An order and judgment for replevin of the Equipment leased to Ms. Patel and such writs and executions as may be necessary to aid 7-Eleven in dispossessing Ms. Patel from the same;
- I. An order and judgment for replevin of the collateral pledged to 7-Eleven as security for Ms. Patel's debt and such writs and executions as may be necessary to aid 7-Eleven in dispossessing Ms. Patel from the same;
- J. An award and judgment for damages arising from Ms. Patel's breach of the Franchise Agreement;
- K. An award to 7-Eleven of its attorneys' fees and costs pursuant to the Lanham Act and the Franchise Agreement; and
- L. Such other and further relief as the Court deems just and appropriate.

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