

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
Southern Division - Detroit**

	)	
LITTLE CAESAR ENTERPRISES, INC.,	)	
a Michigan corporation, and	)	
	)	
LC TRADEMARKS, INC.,	)	
a Michigan corporation,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. _____
	)	
HEWETT FAM LLC	)	
a Georgia limited liability company,	)	
	)	
MARK JENNINGS,	)	
a Georgia citizen,	)	
	)	
KELLY JENNINGS,	)	
a Georgia citizen,	)	
	)	
CHRIS HEWETT,	)	
a Georgia citizen, and	)	
	)	
CHEYENNE HEWETT,	)	
a Georgia citizen,	)	
	)	
Defendants.	)	

COMPLAINT

Plaintiffs Little Caesar Enterprises, Inc. and LC Trademarks, Inc. (collectively, “Little Caesar”) bring this action for breach of contract, trademark

infringement, unfair competition, and trade dress infringement arising from, among other things, Defendants' failure to comply with Little Caesar's standards for health, food safety, and sanitation as mandated by the applicable terms of the parties' Franchise Agreements. Despite having been given multiple opportunities and significant time to cure these defaults and come into compliance with the requisite standards, Defendants refused to do so. Plaintiffs have terminated Defendants' Franchise Agreements based on Defendants' refusal to cure their defaults, and Defendants' continued use and enjoyment of the Little Caesar trademarks, trade name, and trade dress outside the scope of the Franchise Agreements is a violation of the Lanham Act, 15 U.S.C. § 1114 *et seq.* Plaintiffs seek injunctive, monetary, and other relief against Defendants for the reasons set forth below.

THE PARTIES

1. Plaintiff Little Caesar Enterprises, Inc. is a Michigan corporation with its principal place of business in Detroit, Michigan. It is engaged in the business of franchising independent businesspersons to operate Little Caesars restaurants throughout the United States and eighteen (18) foreign countries and United States territories. Little Caesar's franchisees are licensed to use the trade names, service marks, and trademarks of Little Caesar and to operate under the Little Caesars System, which involves the production, merchandising, and sale of pizza and

related products utilizing special equipment, equipment layouts, interior and exterior accessories, identification schemes, products, management programs, standards, specifications, proprietary marks, and information.

2. Plaintiff LC Trademarks, Inc. is a Michigan corporation with its principal place of business in Detroit, Michigan. LC Trademarks, Inc. is the owner of the trademark, service mark, and trade name “Little Caesars,” and related marks. It licenses these marks to Plaintiff Little Caesar Enterprises, Inc., which in turn licenses them to Little Caesar’s franchisees.

3. Defendant HEWETT FAM LLC, is a Georgia company with its principal place of business in Watkinsville, Georgia. Upon information and belief, the sole members of HEWETT FAM LLC are Defendants Chris Hewett and Cheyenne Hewett, both citizens of the State of Georgia. Defendant HEWETT FAM LLC was the owner and operator of Little Caesars restaurants located at 4375 Lexington Road, Athens, GA and 1021 Parkway Blvd., Athens, GA pursuant to Franchise Agreements with effective dates of November 6, 2012, and April 25, 2015, respectively (the “Franchise Agreements”).

4. Defendant Mark Jennings is a citizen of the State of Georgia. Defendant Mark Jennings signed the Franchise Agreements on behalf of Defendant HEWETT FAM LLC and personally guaranteed the company’s obligations under the Franchise Agreements pursuant to executed personal guarantees.

5. Defendant Kelly Jennings is a citizen of the State of Georgia. Defendant Kelly Jennings signed the Franchise Agreements on behalf of Defendant HEWETT FAM LLC and personally guaranteed the company's obligations under the Franchise Agreements pursuant to executed personal guarantees.

6. Defendant Chris Hewett is a citizen of the State of Georgia. Defendant Chris Hewett signed the Franchise Agreements on behalf of Defendant HEWETT FAM LLC and personally guaranteed the company's obligations under the Franchise Agreements pursuant to executed personal guarantees.

7. Defendant Cheyenne Hewett is a citizen of the State of Georgia. Defendant Cheyenne Hewett signed the Franchise Agreements on behalf of Defendant HEWETT FAM LLC and personally guaranteed the company's obligations under the Franchise Agreements pursuant to executed personal guarantees.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to Sections 34(a) and 39 of the Lanham Act, 15 U.S.C. §§ 1116(a) & 1121, and 28 U.S.C. §§ 1331, 1332(a), 1338, and 1367(a).

9. This Court has *in personam* jurisdiction over Defendants because they conduct business in this district and some of the events giving rise to Little

Caesar's claims occurred in this district. Moreover, Defendants contractually waived any objection to this Court's personal jurisdiction.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

11. Venue is also proper pursuant to the forum selection clause in the Franchise Agreements between the parties, which permits Little Caesar to bring this action in this district, where its principal place of business is located.

BACKGROUND FACTS

Little Caesar

12. Little Caesar is the franchisor of the Little Caesars franchise system.

13. LC Trademarks, Inc. owns numerous federal registrations for the mark "Little Caesars" and related marks. Among those registrations are Registration Nos. 0842596, 2036763, 2028607, and 2259637. Each of these registrations is in full force and effect, and is incontestable pursuant to 15 U.S.C. § 1065.

14. Little Caesar has the exclusive license to use and license others to use its marks and trade name and has used them at all times relevant to this action to identify its restaurants and the pizza and other products associated with those restaurants.

15. The trade dress of Little Caesars restaurants includes the signage, lettering style, color scheme, exterior appearance, floor plans, and décor

(including, without limitation, menu boards, display racks, and servers' uniforms) that are featured at the restaurants operated by Little Caesar franchisees.

16. The Little Caesars trade dress consists of arbitrary embellishments primarily adopted for the purpose of identification and individuality, and is nonfunctional.

17. The Little Caesars trademarks and trade dress are utilized in interstate commerce.

Rights and Obligations Under the Franchise Agreements

18. Defendants were formerly licensed to use the Little Caesars trademarks, trade name, and trade dress in accordance with the terms of the Franchise Agreements.

19. Little Caesar provides each of its franchisees with a set of manuals and guidelines (collectively, the "Manuals"), which set forth in detail the procedures, methodology, and standards applicable to the operation of a Little Caesars restaurant.

20. Taken together, the Manuals provide detailed and specific guidance and standards regarding, among other things, health, sanitation, and safety.

21. The Franchise Agreements executed by Defendants contain acknowledgments and agreements by Defendants concerning the importance of maintaining Little Caesar's standards, including its standards for health, sanitation,

and safety. For example, relevant parts of applicable paragraphs of the Franchise Agreements provide:¹

- a. **5.1 Importance of Compliance with System Standards.** Franchisee understands and acknowledges that every detail of the System and the Restaurant is essential to Franchisee, Little Caesar, and other System franchisees in order to (i) develop and maintain quality and uniform operating standards, (ii) increase the demand for the products and services sold by all franchisees operating under the System, and (iii) protect Little Caesar's reputation and goodwill. Franchisee shall maintain Little Caesar's high standards with respect to facilities, services, products, and operations.
- b. **5.3 Conformance to System Standards.** To insure that the highest degree of quality and service is maintained, Franchisee shall operate the Restaurant in strict conformity with such methods, standards, procedures, and specifications as Little Caesar may from time to time prescribe in the Manuals or otherwise in writing. Franchisee shall refrain from (a) deviating from such methods, standards, procedures, and specifications without Little Caesar's prior written consent, and (b) otherwise operating in any manner which reflects adversely on the Proprietary Marks or the System.
- c. 5.3.1 Franchisee shall maintain in sufficient supply, and use at all times, only such products, equipment, materials, signs, menu items, ingredients, supplies, and paper goods, as conform to Little Caesar standards and specifications, and shall refrain from using non-conforming items[.]
- d. 5.3.2 Franchisee shall sell or offer for sale only such products and services as (a) meet Little Caesar's uniform standards of quality, (b) have been expressly approved for sale in writing by Little Caesar, and (c) have been prepared in accordance with Little Caesar's methods

¹ Because the Franchise Agreements were executed in different years, the wording of the provisions or the provision numbers cited may vary from one Franchise Agreement to the other. For ease of reference, the citations contained in this Complaint can be found in Defendants' more recent Franchise Agreement. That Franchise Agreement also amends certain applicable provisions of the prior Franchise Agreement to comport to its terms. (Franchise Agreement § 25.2.)

and techniques for product preparation Franchisee shall not deviate from Little Caesar's methods, standards, procedures and specifications regarding, without limitation, ingredients, recipes, methods of preparation and service, and weight and quality of products served.

- e. **5.5 Maintenance of Restaurant Premises.** Franchisee shall maintain the Restaurant premises and adjacent public areas in a clean, orderly, and excellent condition and in excellent appearance to the public.

22. The Franchise Agreements generally provide Defendants with an opportunity to cure defaults of Little Caesar's system standards. (Franchise Agreement §§ 13.3, 13.6.)

23. Defendants agreed that their right to use Little Caesar's proprietary marks is limited to uses authorized under the Franchise Agreements, and that "any unauthorized use thereof shall constitute an infringement[.]" (*Id.* § 7.2.5.)

24. Defendants agreed that they would use Little Caesar's proprietary marks, including, but not limited to, its trade names, service marks, trademarks, logos, emblems, trade dress and other indicia of origin, "only in the manner authorized and permitted by Little Caesar[.]" (*Id.* § 7.2.1.)

25. Defendants further agreed that, during the term of the Franchise Agreements and after termination, they would not take any action "which may tend to derogate or jeopardize Little Caesar's interest" in its proprietary marks. (*Id.* § 7.3.2.)

26. Defendants also covenanted not to “do or perform any . . . act injurious or prejudicial to the goodwill associated with [Little Caesar’s] Proprietary Marks” and the System[.]” (*Id.* § 15.2.1.)

27. Defendants were permitted to use the Little Caesars proprietary marks only in accordance with the Little Caesars System, standards, and specifications, which “underlie the goodwill associated with and symbolized by the proprietary marks. (*Id.* § 7.1.3.)

28. Under the Franchise Agreements, the failure to timely cure a default constitutes good cause for the immediate termination of the Franchise Agreements. (*Id.* § 13.3.)

29. Moreover, Defendants agreed under the Franchise Agreements that the repeated failure “to meet any requirements or specifications established by Little Caesar with respect to product quality, physical property, condition of equipment or materials used, products manufactured, [or] menu constitutes good cause for the termination of the Franchise Agreements without an opportunity to cure, “even if Franchisee did not receive written notice of prior failures and/or cured the prior failures[.]” (*Id.* § 13.2.14.)

30. Under the Franchise Agreements, the termination of any Franchise Agreement between Little Caesar and Defendant constitutes good cause for the termination of any other Franchise Agreement between the parties. (*Id.* §§ 13.2.21, 13.4.)

Post-Termination Obligations

31. Defendants agreed that in the event that the Franchise Agreements were terminated, they would “immediately cease to operate” the restaurants and would not thereafter, directly or indirectly, “represent to the public or hold [themselves] out as a present or former franchisee of Little Caesar.” (*Id.* § 14.1.)

32. In addition, Defendants agreed that they would immediately and permanently cease to use, any trade secrets, confidential methods, procedures, and techniques associated with the Little Caesars System and/or its proprietary marks. (*Id.* § 14.2.)

33. They also agreed to return all confidential manuals and other confidential information of Little Caesar. (*Id.* § 14.9.)

34. Defendants agreed that upon termination or expiration they would not use any designation, description, or representation that falsely suggests or represents an association or connection to Little Caesar. (*Id.* § 14.5.)

35. Defendants agreed to take any actions necessary to cancel any assumed name or equivalent registration that contains the Little Caesar proprietary

marks, and to furnish evidence of compliance within thirty (30) days after the termination or expiration of the Franchise Agreements. (*Id.* § 14.3.)

36. Under the Franchise Agreement, Defendants agreed that upon termination Little Caesar would have the option to purchase any or all of the furnishings, equipment, signs, fixtures, or supplies related to the operation of the restaurant. In addition, Defendants agreed to assign to Little Caesar, at its request, any interests they have in any leases for the restaurant premises. (*Id.* §§ 14.10, 14.4.)

37. Defendants agreed to a reasonable post-termination covenant against competition, which states that they may not, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any person, persons, or legal entity “own, maintain, advise, operate, engage in, be employed by, make loans to, or have any interest in or relationship or association with a business which is a quick or fast service restaurant engaged in the sale of pizza, pasta, sandwiches, chicken wings, and/or related products[,]” for a continuous uninterrupted period of one (1) year following the termination of the Agreement (or a final court order regarding the same), in any Designated Market Area of any Little Caesar restaurant, and for a continuous uninterrupted period of two (2) years following the termination of the Agreement (or a final court order regarding the same), in the Designated Market

Area in which Defendants' former Little Caesar restaurant was located. (*Id.* § 15.3.)

38. Defendants also agreed that they would pay to Little Caesar all damages with interest, costs, and expenses, including liquidated damages and reasonable attorneys' fees incurred by Little Caesar in enforcing Defendants' post-termination obligations and the covenants contained in Section 15 of the Franchise Agreements. (*Id.* §§ 14.7, 14.8, 15.4.)

39. Defendants Mark Jennings, Kelly Jennings, Chris Hewett, and Cheyenne Hewett personally guaranteed the obligations of Defendant HEWETT FAM LLC. As guarantors, they have financially benefited from the economic activity of HEWETT FAM LLC and are jointly and severally liable for the acts set forth in the paragraphs below.

Defendants' Defaults of the Franchise Agreements

40. Little Caesar conducted an inspection of Defendants' former Little Caesars franchises in February 2016. Defendants received a copy of the Peak Performance Reviews completed during the inspections identifying specific deficiencies in their restaurants that posed an unacceptable risk to the health and safety of Little Caesar's customers, deviated from Little Caesar's operational standards, and constituted irreparable injury to the reputation and goodwill associated with the Little Caesars trade name and trademarks. Defendants also

received a letter from Little Caesar, dated February 16, 2016, that specifically referenced and reiterated the need to cure the deficiencies noted during the inspections.

41. Little Caesar re-inspected Defendants' former Little Caesars franchises on March 16, 2016, and found many of the same violations, as well as new violations. Defendants, again, received a copy of the Peak Performance Reviews completed during the inspections specific deficiencies in their restaurants.

42. Pursuant to the applicable provisions of the Franchise Agreements, Defendants were sent a Notice of Default and Notice to Cure dated May 2, 2016, notifying them of their defaults under the Franchise Agreements for repeatedly failing to comply with Little Caesar's operational standards, including, but not limited to, those involving health, food, safety, and sanitation.

43. Defendants were given twenty-four (24) hours from the receipt of the Notice of Default and Notice to Cure to remedy all defaults identified in the Notice as Health, Safety, and Critical Operational Defaults, and thirty (30) days from the receipt of the Notice to cure all other defaults identified in the Notice. The Notice further informed Defendants that their failure to cure the defaults may result in the termination of their Franchise Agreements.

44. Despite written notice and opportunity, Defendants failed to cure the defaults. Specifically, Little Caesar re-inspected Defendants' former Little Caesars

franchises shortly after sending the May 2, 2016 Notice of Defaults and Notice to Cure and found that Defendants had failed to cure many of the Health, Safety, and Critical Operational Defaults identified in the Notice. Little Caesar again inspected Defendants' former Little Caesars franchises on June 2, 2016. Many of the same defaults of Little Caesar's health, food safety, and sanitation standards observed during the prior inspections remained uncured, and new deficiencies were observed.

Termination of Defendants' Franchise Agreements

45. Defendants' acts constitute breaches of the Franchise Agreements that are grounds for immediate termination. Accordingly, by letter dated July 12, 2016, Little Caesar notified Defendants that their Franchise Agreements had been terminated based on, among other breaches, failure to cure the defaults set forth in the prior Notice and their systematic and repeated failure to comply with Little Caesar's operational standards.

46. As part of its notice of the termination of the Franchise Agreements, Little Caesar demanded that Defendants immediately cease using its proprietary marks and comply with the Franchise Agreements' post-termination obligations. To date, Defendants have refused to comply with the notice of termination and their post-termination obligations under the Franchise Agreements.

47. Defendants' actions have caused and continue to cause monetary damage and irreparable harm to Little Caesar, including harm to Little Caesar's reputation and goodwill.

COUNT I
Breach of Contract

48. The allegations of paragraphs 1 through 47 are hereby incorporated by reference.

49. The conduct described in this Complaint constitutes material breaches of the contractual provisions of the Franchise Agreements cited herein.

50. Defendants' breaches constitute grounds for terminating the Franchise Agreements.

51. As a direct and proximate result of these actions, Little Caesar has suffered and is continuing to suffer irreparable injury, and has incurred and is continuing to incur monetary damages in an amount that has yet to be determined.

COUNT II
Trademark Infringement

52. The allegations of paragraphs 1 through 52 are hereby incorporated by reference.

53. The use in commerce of Little Caesar's trademarks and trade names by the Defendants outside the scope of the Franchise Agreements and without Little Caesar's consent is likely to confuse or deceive the public into believing,

contrary to fact, that the unauthorized activities of Defendants are licensed, franchised, sponsored, authorized, or otherwise approved by Little Caesar. Such unauthorized use of Little Caesar's trademarks and trade names infringes its exclusive rights in its trademarks under § 32 of the Lanham Act, 15 U.S.C. § 1114, and applicable state law.

54. The acts of Defendants were and are being done knowingly and intentionally to cause confusion, or to cause mistake, or to deceive.

55. As a direct and proximate result of Defendants' actions, Little Caesar has suffered and is continuing to suffer irreparable injury, and has incurred and is continuing to incur monetary damages in an amount that has yet to be determined.

COUNT III

Unfair Competition

56. The allegations of paragraphs 1 through 55 are hereby incorporated by reference.

57. The use in commerce of Little Caesar's trademarks, trade names and trade dress by Defendants outside the scope of the Franchise Agreements and without the consent of Little Caesar is likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of their goods, services, or commercial activities. Such unauthorized use of Little Caesar's trademarks and trade names violates § 43 of the Lanham Act, 15 U.S.C. § 1125(a), and applicable state law.

58. The acts of Defendants were and are being done knowingly and intentionally to cause confusion, or to cause mistake, or to deceive.

59. As a direct and proximate result of Defendants' actions, Little Caesar has suffered and is continuing to suffer irreparable injury, and has incurred and is continuing to incur monetary damages in an amount that has yet to be determined.

COUNT IV
Trade Dress Infringement

60. The allegations of paragraphs 1 through 59 are hereby incorporated by reference.

61. Defendants' restaurant is identified by signs, exterior appearance, packaging, containers, and other items on which the Little Caesar Proprietary Marks appear in the same distinctive style and color scheme as Little Caesar uses for the pizza restaurants operated by Little Caesar licensees.

62. Defendants' use of trade dress that is identical or confusingly similar to the Little Caesar trade dress outside the scope of the Franchise Agreements constitutes a false designation of the origin of Defendants' restaurant, which is likely to cause confusion, or to cause mistake, or to deceive the public as to the affiliation, connection, or association of their restaurant with the Little Caesar restaurants operated by Little Caesar licensees. Such adoption of Little Caesar's trade dress violates § 43 of the Lanham Act, 15 U.S.C. § 1125, and the common law.

63. Defendants' acts were and are being done knowingly and intentionally to cause confusion, or to cause mistake, or to deceive.

64. As a result of Defendants' actions, Little Caesar has suffered and is continuing to suffer irreparable injury, and has incurred and is continuing to incur monetary damages in an amount that has yet to be determined.

PRAYER FOR RELIEF

WHEREFORE, Little Caesar prays that this Court:

A. Enter a declaratory judgment holding that Defendants' conduct violated the terms of the Franchise Agreements and constitutes good cause for terminating the Franchise Agreements;

B. Enter an injunctive order ratifying and enforcing the termination of the Franchise Agreements as of the effective date of Little Caesar's notice of the termination of the Franchise Agreements, or as otherwise provided by applicable law;

C. Enter an order enjoining Defendants, and all those acting by, through, or in concert with them, by preliminary and permanent injunction, from using the Little Caesars trademarks, trade names, and trade dress, and from otherwise engaging in unfair competition with Little Caesar;

D. Enter an injunctive order directing Defendants, and all those acting by, through, or in concert with them, to comply with all applicable post-

termination obligations as provided in the Franchise Agreements, including, but not limited to, promptly paying all sums owed to Little Caesar, complying with any request from Little Caesar to purchase any equipment or other assets of the franchise, and taking all steps to transfer their leasehold interests in the franchise to Little Caesar or its designee in the event that Little Caesar elects to exercise any rights they or any of their affiliates or subsidiaries might have in such interests;

E. Award Little Caesar judgment against Defendants for the damages that Little Caesar has sustained and the profits Defendants have derived as a result of their trademark infringement, trade dress infringement, and unfair competition, assessing such damages in a separate accounting procedure, and then trebling those damages in accordance with Section 35 of the Lanham Act, 15 U.S.C. § 1117;

F. Enter judgment in favor of Little Caesar for the damages it has suffered as a result of Defendants' conduct including, but not limited to, liquidated damages, and for other relief, plus prejudgment interest allowed by law.

G. Award Little Caesar its costs and attorneys' fees incurred in connection with this action, pursuant to the Franchise Agreements and Section 35 of the Lanham Act, 15 U.S.C. § 1117, including the costs incurred in conducting any and all necessary inspections; and

H. Award Little Caesar such other relief in its favor as this Court may deem just and proper.

Respectfully submitted,

s/Larry J. Saylor

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Dated: July 12, 2016

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