

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

LITTLE CAESAR ENTERPRISES, INC.,)

a Michigan corporation,)

LC TRADEMARKS, INC.,)

a Michigan corporation,)

Plaintiffs,)

v.)

Case No. _____

ZUGARE, INC.,)

a Pennsylvania corporation, and)

JOSEPH C. SCIANDRA,)

a Pennsylvania resident,)

Defendants.)

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, the failure of Defendants Zugare, Inc. and Joseph Sciandra to comply with their in-term covenant not to compete. Defendants are associated with a competing pizza restaurant that is located approximately ten miles from their Little Caesars restaurant. Little Caesar has terminated Defendants’ Franchise Agreement based on their impermissible competition, and Defendants’ continued use and enjoyment of the Little Caesar trademarks, trade name, and trade dress outside the

scope of the Franchise Agreement is a violation of the Lanham Act, 15 U.S.C. §§ 1114 *et seq.* Little Caesar seeks 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. Little Caesars 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, chicken wings, 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 Caesars franchisees.

3. Defendant Zugare, Inc. is a Pennsylvania corporation with its principal place of business in the Commonwealth of Pennsylvania. It was the owner and operator of a Little Caesars restaurant located at 248 West Side Mall, Edwardsville, PA 18704 pursuant to a Franchise Agreement with an effective date of December 14, 2004.

4. Defendant Joseph C. Sciandra is a natural person and a citizen and resident of the Commonwealth of Pennsylvania. Sciandra signed the Franchise Agreement and personally guaranteed the obligations of Defendant Zugare, Inc. under the Franchise Agreement pursuant to an executed personal guarantee.

JURISDICTION AND VENUE

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

6. This Court has *in personam* jurisdiction over Defendants because they conduct business in this district and the events giving rise to Plaintiffs' claims occurred in this district.

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

8. Venue is also proper pursuant to the forum selection clause in paragraph 23.2 of the Franchise Agreement 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

9. Little Caesar Enterprises, Inc. is the franchisor of the Little Caesar System.

10. LC Trademarks, Inc. owns numerous federal registrations for the mark “Little Caesar” and related marks. Among those registrations are Registration Nos. 842,596; 2,036,763; 842,595; 2,028,607; 2,259,637 and others. Each of these registrations is in full force and effect, and is incontestable pursuant to 15 U.S.C. § 1065.

11. 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.

12. 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.

13. The Little Caesars trade dress consists of arbitrary embellishments

primarily adopted for the purpose of identification and individuality, and is nonfunctional.

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

The Parties' Rights and Obligations Under the Franchise Agreement

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

16. Under the terms of the Franchise Agreement, Defendants agreed that their right to use Little Caesar's proprietary marks was limited to uses authorized by the Franchise Agreement, and that "any unauthorized use thereof shall constitute an infringement." (Franchise Agreement § 7.2.5.)

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

18. 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 [p]roprietary [m]arks." (*Id.* § 7.1.3.)

19. Defendants agreed that, during the term of the Franchise Agreement 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.)

20. By signing the Franchise Agreement, Defendants acknowledged that they received “valuable specialized training and confidential information,” and agreed not to directly or indirectly, for themselves, or through, on behalf of, or in conjunction with any person or legal entity, “[o]wn, maintain, advise, operate, engage in, be employed by, make loans to, have any interest in or relationship or association with, a business which offers a quick or fast service restaurant primarily engaged in the sale of pizza, pasta, sandwiches, and/or related products.” (*Id.* §§ 15.2, 15.2.2.)

21. Defendants also covenanted not to “[d]ivert or attempt to divert any business or customer of the Restaurant to any competitor by inducement or otherwise, or do or perform any act injurious or prejudicial to the goodwill associated with the [p]roprietary [m]arks” and the Little Caesars System. (*Id.* § 15.2.1.)

22. Defendants agreed that it would be a breach of the Franchise Agreement, and grounds for immediate termination without the opportunity to cure, to fail to comply with the noncompetition covenants contained in Section 15.2. (*Id.* §§ 13.2, 13.2.5.)

23. In the event of a breach of the noncompetition covenants contained in Section 15, Defendants agreed that Little Caesar would suffer irreparable injury “for which no adequate remedy at law may be available,” and agreed to pay all court costs and reasonable attorneys’ fees incurred by Little Caesar in obtaining injunctive or other equitable relief with respect to such breach. (*Id.* § 15.4.)

Post-Termination Obligations

24. Defendants agreed that in the event that any Franchise Agreement was terminated, they would “immediately cease to operate” the restaurant 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.)

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

26. They also agreed to return all confidential manuals and other confidential information of Little Caesar. (*Id.* § 14.8.)

27. 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

restaurants. In addition, Defendants agreed to assign to Little Caesar, at its request, any interests they have in any lease for the restaurant premises. (*Id.* §§ 14.9, 14.4.)

28. 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 primarily engaged in the sale of pizza, pasta, sandwiches, and/or related products,” for a continuous uninterrupted period of one (1) year following the termination of the Franchise 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 Franchise Agreement (or a final court order regarding the same), in the Designated Market Area in which Defendants’ former Little Caesar restaurant is located. (*Id.* § 15.3.)

29. Defendants further agreed they would pay to Little Caesar all sums owing, including damages, costs and expenses, and reasonable attorneys’ fees incurred by reason of any default or termination of the Franchise Agreement and in enforcing Defendants’ obligations upon termination. (*Id.* §§ 14.6, 14.7.)

30. Pursuant to the personal guarantee attached as Exhibit A to the Franchise Agreement, Sciandra agreed to be personally bound by the covenants of the Franchise Agreement.

Defendants' Defaults of the Franchise Agreement

31. Little Caesar has discovered that Defendants have committed a terminable and incurable breach of the Franchise Agreement.

32. Defendants have an association with a competing pizza restaurant known as Uncle Joe's Pizza & Subs, which is owned by Kristene Sciandra, the wife of Defendant Sciandra.

33. Kristene Sciandra has identified herself to media outlets as the owner of Uncle Joe's Pizza in Pittston.

34. She is also the registrant for the Uncle Joe's Pizza & Subs domain name, UNCLEJOESPIZZASUBS.com, and is prominently featured on its website.

35. Uncle Joe's Pizza & Subs is located at 320 PA-315 Pittston, PA, approximately ten miles from Defendants' Little Caesars restaurant and is within Defendants' Designated Market Area.

36. Uncle Joe's Pizza & Subs serves products specifically prohibited by the Franchise Agreement. As demonstrated by the menu found at <http://unclejoespizzasubs.com/menu/>, Uncle Joe's Pizza & Subs offers for sale

products such as pizza and wings, which directly compete with the products sold at Defendants' Little Caesars restaurant.

37. Upon information and belief, Defendants have a relationship with, have an interest in, and benefit from the operations of Uncle Joe's Pizza & Subs. By way of example, Defendant Sciandra and Kristene Sciandra have shared assets, including a residential property located at 1487 Murray St., Forty Fort PA, 18704. Defendant Sciandra has provided this address to Little Caesar as a contact address as well.

Termination of Defendants' Franchise Agreement

38. Defendants' acts breach material terms of the Franchise Agreement going to the essence of the Franchise Agreement and constitute grounds for immediate termination. Accordingly, pursuant to a Notice of Franchise Agreement Termination dated June 17, 2016, Little Caesar terminated Defendants' Franchise Agreement.

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

40. 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

41. The allegations of paragraphs 1 through 40 are hereby incorporated by reference.

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

43. Defendants' breaches constitute grounds for terminating the Franchise Agreement.

44. 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

45. The allegations of paragraphs 1 through 44 are hereby incorporated by reference.

46. The use in commerce of Little Caesar's trademarks and trade names by the Defendants outside the scope of the Franchise Agreement 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.

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

48. 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

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

50. The use in commerce of Little Caesar's trademarks, trade names and trade dress by Defendants outside the scope of the Franchise Agreement 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.

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

52. 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

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

54. 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.

55. Defendants' use of trade dress that is identical or confusingly similar to the Little Caesar trade dress outside the scope of the Franchise Agreement 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.

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

57. 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 Agreement;

B. Enter an injunctive order ratifying and enforcing the termination of the Franchise Agreement as of the effective date of Little Caesar's Notice of Franchise Agreement Termination, 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 Agreement, 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 it or any of its affiliates or subsidiaries might have in such interests;

E. Enter an order enjoining Defendants, and all those acting by, through, or in concert with them, by preliminary and permanent injunction, from owning, maintaining, advising, operating, engaging in, being employed by, making loans to, or having any interest in, or relationship or association with, a business which is a quick or fast service restaurant primarily engaged in the sale of pizza, pasta, sandwiches, and/or related products, for a continuous uninterrupted period of one (1) year following the termination of the Franchise 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 Franchise Agreement (or a final court order regarding the same), in the Designated Market Area in which Defendants' former Little Caesar restaurant is located.

F. Award Little Caesar judgment against Defendants for the damages 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;

G. Enter judgment in favor of Little Caesar for the damages they have suffered as a result of Defendants' conduct, plus prejudgment interest allowed by law;

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

I. 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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