

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

HOT N’ SWEET CONCEPTS, LLC, a )  
Missouri limited liability company, )  
 )  
Plaintiff, )

v. )

Case No. CIV-20-793-R

NEXTBITE BRANDS, LLC, a Delaware )  
limited liability company, )  
 )  
Defendant. )

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff, Hot N’ Sweet Concepts, LLC (“HNS”), for its complaint against Defendant Nextbite Brands, LLC (“Defendant”), alleges and states as follows:

**Parties and Personal Jurisdiction**

1. HNS is a Missouri limited liability company with an address at 994 SW Ayshire Drive, Lee’s Summit, Missouri, 64081.

2. Upon information and belief, Defendant is a Delaware limited liability company, having its office and principal place of business at 1610 Little Raven Street, #100, Denver, Colorado, 80202.

3. Upon information and belief, Defendant is advertising, offering for sale and selling goods and services infringing HNS’ MOTHER CLUCKER word mark and logo (“MOTHER CLUCKER Marks”) to consumers within the United States and this judicial district.

**Subject Matter Jurisdiction and Venue**

4. This is an action for federal trademark infringement, common law trademark infringement, and unfair competition. The Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. §1121, 28 U.S.C. § 1338(a), and 28 U.S.C. § 1331.

5. This Court has supplemental jurisdiction over certain claims in this Complaint under 28 U.S.C. § 1367(a) as they arise under the statutory and common law of the State of Oklahoma. HNS's state law claims are so related to its federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b). The acts of infringement that are the subject of this litigation occurred and are occurring in the Western District of Oklahoma; Defendant's infringing activities may be found in the Western District of Oklahoma; the claims alleged in this action arose in the Western District of Oklahoma; and victims of Defendant's infringing activities may be found in the Western District of Oklahoma.

**Nature of Business and Trademarks Involved**

7. HNS is the owner of restaurants operating under the MOTHER CLUCKER Marks in Oklahoma and Missouri. HNS' Mother Clucker restaurants feature a Nashville style hot-chicken based menu that emphasizes Nashville style hot-chicken sandwiches featuring fried chicken, coleslaw, pickles, proprietary seasoning and large buns.

8. HNS has been offering its restaurant services under the MOTHER CLUCKER Marks in Kansas City, Missouri since as early as September 4, 2018, and has been offering restaurant services under the MOTHER CLUCKER Marks in Oklahoma City,

Oklahoma since as early as August 28, 2019. The MOTHER CLUCKER Marks signify the quality and reputation of HNS' products and services.

9. HNS began promoting its Mother Clucker restaurants using the MOTHER CLUCKER Marks on Instagram as early as August 14, 2018 and currently its Instagram page has over 14,900 followers.

10. HNS is the owner of a valid United States federal trademark registration for MOTHER CLUCKERS, United States Reg. No. 5,288,452 (the "Registered Mark"). The Registered Mark was filed on January 2, 2014 by Pass Restaurant Group, LLC and assigned to HNS on February 10, 2020. A copy of the Certificate of Registration for the Registered Mark is attached hereto as **Exhibit 1**. A copy of the Assignment from Pass Restaurant Group, LLC to HNS is attached hereto as **Exhibit 2**.

11. The MOTHER CLUCKER Marks have been used in interstate commerce to identify and distinguish HNS' restaurant products and services for an extended period of time and serves as a symbol of HNS' quality, reputation, and goodwill.

12. HNS has extensively used, advertised and promoted the MOTHER CLUCKER Marks in the United States, including in Oklahoma and Missouri, in association with the sale of high quality restaurant products and services.

13. As a result of HNS' efforts, members of the consuming public readily identify food and drink related products and services bearing or sold under the MOTHER CLUCKER Marks as being high quality products and services sponsored and approved by HNS.

14. Through its continued use of the MOTHER CLUCKER Marks, HNS has established strong common law trademark rights in the MOTHER CLUCKER Marks.

**Defendant's Unlawful Activities**

15. Defendant is promoting, advertising, distributing, selling and/or offering for sale chicken related goods and services in interstate commerce that bear the mark "Mother Clucker" (the "Infringing Mark") that is confusingly similar to the MOTHER CLUCKER Marks by offering virtual restaurant and home delivery restaurant services throughout the United States. *See Exhibit 3* showing Defendant's promotion of its services.

16. Defendant promotes its services using the MOTHER CLUCKER Marks by offering food and beverages through delivery services such as Door Dash, Postmates, and Grub Hub.

17. Defendant utilized HNS' MOTHER CLUCKER Marks, including its copyrighted logo, to promote its products and services through the Door Dash and Grub Hub applications as shown in **Exhibit 4** attached hereto.

18. The goods and services distributed, offered for sale and sold by Defendant are not manufactured by HNS, nor is Defendant associated with or connected with HNS, or licensed, authorized, sponsored, endorsed or otherwise approved by HNS to use HNS' MOTHER CLUCKER Marks in any way.

19. Defendant's use of the Infringing Mark is for goods and services which are similar or identical to the goods and services offered by HNS and is likely to cause substantial consumer confusion.

20. Defendant's use of the Infringing Mark has already caused actual confusion as to the source of goods and services offered by Defendant. *See Exhibit 5* attached hereto showing evidence of actual confusion over Defendant's use of the Infringing Mark. HNS has received and continues to receive numerous customer complaints concerning the goods and services offered by Defendant.

21. Defendant is using the Infringing Mark for commercial gain.

22. Defendant's past and continuing unauthorized use of the Infringing Mark that is the same or similar to the MOTHER CLUCKER Marks is likely to cause confusion, mistake, and/or deceive customers and potential customers of the respective parties, as to some presumed but nonexistent affiliation, connection, sponsorship, and/or association of Defendant with HNS, and/or as to the origin, sponsorship, or approval of Defendant's products and services by HNS.

23. Defendant's unauthorized use of the Infringing Mark falsely designates the origin of Defendant's products, and falsely and misleadingly describes and represents Defendant and its products.

24. Defendant is being unjustly enriched at the expense of HNS by Defendant's unauthorized use of the Infringing Mark.

25. Defendant's continued use of the Infringing Mark may overwhelm HNS' MOTHER CLUCKER Marks and cause, and has caused, reverse confusion.

26. Defendant's unauthorized use of the Infringing Mark places the valuable reputation and goodwill of HNS' MOTHER CLUCKER Marks improperly in the hands of Defendant.

27. Unless this Court restrains these acts of Defendant and its agents and franchisees, Defendant will continue to cause irreparable injury to HNS and to the public, for which there is no adequate remedy at law.

**COUNT I**  
**FEDERAL TRADEMARK INFRINGEMENT**

28. HNS repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint and incorporates them herein by reference.

29. Defendant's wrongful use of the Infringing Mark infringes HNS' federally Registered Mark, in violation of Section 32 of the Lanham Act (15 U.S.C. § 1114 *et seq.*). Defendant is using in interstate commerce a reproduction, counterfeit, copy, or colorable imitation of HNS' federally Registered Mark in connection with the sale, offering for sale, distribution, or advertising of goods under circumstances that are likely to cause confusion, or to cause mistake, or to deceive, all in violation of 15 U.S.C. § 1114(1)(a).

30. Defendant has reproduced, counterfeited, copied, or colorably imitated HNS' federally Registered Mark and has used such reproductions, counterfeits, copies, or colorable imitations of HNS' federally Registered Mark in commerce in connection with the sale, offering for sale, distribution, or advertising of goods under circumstances that are likely to cause confusion, or to cause mistake, or to deceive, all in violation of 15 U.S.C. § 1114(1)(b).

31. Defendant's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with HNS' Registered Mark to HNS' great and irreparable injury.

32. Defendant's conduct has injured HNS by impairing the goodwill associated with HNS' federally Registered Mark, has resulted in profits that unjustly enrich Defendant, and has caused other damage to be proven at trial.

33. Defendant's conduct has caused and will continue to cause irreparable injury to HNS unless Defendant's conduct is permanently restrained and enjoined by this Court.

**COUNT II**  
**UNFAIR COMPETITION**

34. HNS repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint and incorporates them herein by reference.

35. Defendant's wrongful use of the MOTHER CLUCKER Marks in interstate commerce in connection with the advertising, distribution, and sale of Defendant's goods and services is in violation of 15 U.S.C. § 1125(a). Such wrongful use by Defendant is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with HNS, or as to the origin, sponsorship, or approval by HNS of Defendant or Defendant's goods and services or commercial activities.

36. Defendant's acts alleged herein constitute a false designation of origin and a false or misleading description and misrepresentation of fact in violation of 15 U.S.C. §1125(a). Defendant's acts have injured HNS and will continue to cause irreparable injury unless restrained, and have resulted in unlawful profits to Defendant, all in an amount to be proven at trial.

**COUNT III**  
**DECEPTIVE TRADE PRACTICES**

37. HNS repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint and incorporates them herein by reference.

38. Defendant, through its use in commerce of a reproduction, counterfeit, copy, or colorable imitation of the MOTHER CLUCKER Marks and Registered Mark, has passed off their goods and services as those of HNS.

39. Defendant, through its use in commerce of a reproduction, counterfeit, copy, or colorable imitation of the MOTHER CLUCKER Marks and Registered Mark, has knowingly made a false representation as to the source, sponsorship, approval or certification of their goods and services.

40. Defendant, through its use in commerce of a reproduction, counterfeit, copy, or colorable imitation of the MOTHER CLUCKER Marks and Registered Mark, has knowingly made a false representation as to the affiliation, connection, association with, or certification by another.

41. Such use by the Defendant is willful and constitutes deceptive trade practices in violation of the Oklahoma Deceptive Trade Practices Act, 78 O.S. § 51 *et. seq.*

42. HNS has been damaged and is likely to continue to be damaged by Defendant's deceptive trade practices and is entitled to damages under 78 O.S. § 54.

43. Defendant's deceptive trade practices have caused and will continue to cause serious and irreparable injury to the reputation and goodwill of HNS for which HNS is without adequate remedy at law.

**COUNT IV**  
**COMMON LAW UNFAIR COMPETITION AND TRADEMARK  
INFRINGEMENT**

44. HNS repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint and incorporates them herein by reference.

45. The acts and conduct of Defendant alleged herein are likely to cause confusion in the trade as to the source of Defendant's goods and services and are likely to lead the public to mistakenly believe that Defendant is in some way connected with HNS.

46. Defendant's actions constitute intentional and willful unfair competition and trademark infringement in violation of the common law of Oklahoma. As set forth more fully above, HNS has invested a substantial amount of time, skill and money in its products and developing the MOTHER CLUCKER Marks. Defendant's acts and conduct were done without HNS' authorization.

47. The intentional and willful unfair competition and trademark infringement by Defendant has caused and will continue to cause serious and irreparable injury to the reputation and goodwill of HNS for which HNS is without adequate remedy at law.

48. As a direct and proximate result of Defendant's unfair competitive acts, HNS has been injured and damaged, and is entitled to injunctive relief and to recover actual damages, costs, and reasonable attorneys' fees.

49. Defendant's conduct was fraudulent, oppressive, malicious, and in conscious and reckless disregard of the rights of HNS, and HNS is therefore entitled to punitive damages against Defendant.

**Attorneys' Fees**

50. This is an exceptional case making HNS eligible for an award of attorneys' fees under 15 U.S.C. § 1117.

**PRAYER FOR RELIEF**

WHEREFORE, HNS requests that judgment be entered in its favor and against Defendant as indicated below:

A. That this Court grant a permanent injunction pursuant to the powers granted it under 15 U.S.C. § 1116, 78 O.S. § 54, and at common law, enjoining and restraining Defendant and its agents, servants, franchisees and employees directly or indirectly (i) from using or displaying any mark that is identical or confusingly similar to the MOTHER CLUCKER Marks and Registered Mark (including, but not limited to, all of Defendant's restaurant related products and services, websites, exterior and interior signage, banners and labeling, trade names, advertising, invoices, stationery, directory listings, and domain names), and (ii) from continuing any and all acts of deception, conspiracy, or unfair competition as alleged herein;

B. That this Court, pursuant to the powers granted it under 15 U.S.C. § 1117(b), award to HNS and against Defendant, treble damages or profits, whichever is greater, and reasonable attorneys' fees because there has been intentional use of counterfeit marks or designations;

C. That this Court, pursuant to the powers granted it under 15 U.S.C. § 1117 and 78 O.S. § 54, award to HNS and against Defendant, damages, profits, and costs;

D. That this Court, pursuant to the powers granted it under 15 U.S.C. § 1117 and 78 O.S. § 54, award to HNS and against Defendant, HNS's reasonable attorneys' fees because this is an exceptional case and Defendant has willfully engaged in a deceptive trade practice;

E. That the Court award punitive and exemplary damages against Defendant and in favor of HNS by reason of Defendant's intentional or reckless disregard for HNS' rights;

F. That costs of this action be awarded to HNS; and

G. That the Court grant such other and further relief as it deems just and reasonable.

**JURY TRIAL DEMANDED**

Dated: August 10, 2020

Respectfully submitted,

s/Tynia A. Watson

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