

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Honorable Marcia S. Krieger

Civil Action No. 12-cv-00930-MSK-BNB

CHIPOTLE MEXICAN GRILL, INC.,

Plaintiff,

v.

THE KROGER CO.,

Defendant.

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**CONSENT DECREE**

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The matter before the Court is the parties' Joint Motion for Entry of Consent Decree, by which the parties through their respective attorneys have agreed to the following terms for resolving this litigation:

1. The Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1131, 1338 and 1367.
2. Plaintiff Chipotle Mexican Grill, Inc. ("Chipotle") is the owner of several trademark and service mark registrations for CHIPOTLE, including U.S. Registration Nos. 2,344,423, 3,523,738, and 3,698,498, issued by the United States patent and Trademark Office.
3. Defendant The Kroger Co. ("Kroger") has sold and offered for sale chicken food items with a label featuring the term "chipotle," a depiction of which is attached as Exhibit A ("the Accused Label").
4. Chipotle has asserted that Kroger's use of the Accused Label infringes Chipotle's trademark rights in CHIPOTLE, and Kroger denies these allegations, and agrees to enter this Consent Decree solely to avoid the cost of litigating this matter and without admitting any

liability of any kind on behalf of it, or any of its agents, employees, representatives, administrators, attorneys, insurers, lenders, shareholders, officers, directors, divisions, affiliates, partnerships, partners, joint ventures, parent and/or subsidiary corporations, assigns, heirs, next-of-kin, and successors in interest.

5. Nonetheless, Kroger and each of its affiliates, subsidiaries, officers, agents, servants, and employees, and all others aiding, abetting or in active concert or participation therewith, are permanently enjoined from using or displaying the Accused Label. This injunction extends to all containers, food items, packaging, or advertising on or to which the Accused Label may appear or be affixed.

6. If Chipotle believes that Kroger is in violation of the terms of this Consent Agreement, Chipotle shall give written notice to Kroger's General Counsel, identifying the specific stores(s) in which the violation occurred or is occurring, and a minimum of fifteen (15) days from the date such written notice is delivered to address and cure the identified violation(s) before filing to enforce this Consent Decree.

7. So long as the terms and conditions of the Consent Decree are met, each of the Parties hereby and forever releases and discharges the other (Including, where appropriate, each of the Parties' respective predecessors, successors, parents, subsidiaries, affiliates, assigns, legal representatives, agents, employees, servants, attorneys, officers, and directors) from any and all causes of action, suits, appeals, damages (including, but not limited to, compensatory damages, tort damages, contract damages and punitive damages), arbitration or other claims, demands, actions, warranties (whether express or implied), indemnification or subrogation demands, covenants, debts, dues, duties, rights, costs, fees, and any and all other liabilities and obligations of any nature whatsoever, whether at law or in equity, tort or contract, statutory or otherwise,

that relate to the Accused Label or the claims and allegations raised in this action.

8. This Consent Decree will bind and benefit the parties and their respective successors and assigns.

**IT IS THEREFORE ORDERED** that:

1. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree as may be necessary or appropriate for the construction or to carry out the terms of this Consent Decree.
2. Subject to the terms set forth herein and the Court's ongoing jurisdiction to enforce the terms and conditions, this case is otherwise dismissed.
3. The parties shall bear their own costs and attorneys' fees.
4. The Clerk shall close this case.

DATED this 19<sup>th</sup> day of June, 2012.

**BY THE COURT:**



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Marcia S. Krieger  
United States District Judge