

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

<p>PHILIP MORRIS USA INC.,</p> <p>Plaintiff,</p> <p>vs.</p> <p>LATIN BAKERY, INC., EDUARDO FERNANDEZ, PALMAR CAFETERIA, INC., CLARA MARTINEZ, WOODLAND INVESTMENTS, INC., MERIDA VIVAS, ROBLES ADMINISTRATION CORP., RAMON ROBLES, EL GRAN SHANGHAI CORP., HELIODORO HUNG, FRITANGA TERRABONA, INC., ARACELLY SUAREZ, AFG ADVANCE CORP., ADEL F. GARCIA JR., VILLA DOLLAR DISCOUNT, CORP., MARIA BORRERO DE BAYER, D.G.L. CORPORATION, ALEXIS GONGORA, HELLEN'S DOLLAR DISCOUNT, INC., YAMATSYS VARONA, PRANTA INC., MOHAMMED F. AHMED, ALMONTE ENTERPRISES, INC., LEONARDO D. ALMONTE, NASER FOOD MARKET INC., NASER A. QURAAAN, CLY MINIMARKET CORP., LILIANA PERDOMO, FAMA DISCOUNT & DOLLAR STORE, INC., JUAN U. JIMENEZ ROBAINA, L&I CAFÉ CORP., ISRAEL SALAZAR, TAMIAMI GAS, INC., ANGELINA FLORES, and J. DOES 1 through 10,</p> <p>Defendants.</p>	<p>Case No. 11-CIV-_____</p>
--	------------------------------

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff, PHILIP MORRIS USA INC. (“Philip Morris USA”), for its Complaint herein against Defendants, LATIN BAKERY, INC., EDUARDO FERNANDEZ, PALMAR CAFETERIA, INC., CLARA MARTINEZ, WOODLAND INVESTMENTS, INC., MERIDA VIVAS, ROBLES ADMINISTRATION CORP., RAMON ROBLES, EL GRAN SHANGHAI CORP., HELIODORO HUNG, FRITANGA TERRABONA, INC., ARACELLY SUAREZ,

AFG ADVANCE CORP., ADEL F. GARCIA JR., VILLA DOLLAR DISCOUNT, CORP., MARIA BORRERO DE BAYER, D.G.L. CORPORATION, ALEXIS GONGORA, HELLEN'S DOLLAR DISCOUNT, INC., YAMATSYS VARONA, PRANTA INC., MOHAMMED F. AHMED, ALMONTE ENTERPRISES, INC., LEONARDO D. ALMONTE, NASER FOOD MARKET INC., NASER A. QURAAAN, CLY MINIMARKET CORP., LILIANA PERDOMO, FAMA DISCOUNT & DOLLAR STORE, INC., JUAN U. JIMENEZ ROBAINA, L&I CAFÉ CORP., ISRAEL SALAZAR, TAMIAMI GAS, INC., ANGELINA FLORES (collectively, "Defendants"), and J. DOES 1 through 10, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to: (i) 28 U.S.C. §§ 1331, 1338(a) and (b) and 15 U.S.C. §1121, as an action for violation of the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*; and (ii) 28 U.S.C. § 1367(a), pursuant to the principles of supplemental jurisdiction.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) in that, among other things, Defendants reside or are found in this judicial district and a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

NATURE OF THE ACTION

3. This is an action for: (i) infringement of registered trademarks in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114; (ii) false designation of origin and trademark and trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (iii) unfair competition and trademark infringement in violation of the common law of the State of Florida; and (iv) violation of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201 *et seq.* As described more fully below, Defendants have sold, offered for sale, or otherwise contributed to the sale of counterfeit

MARLBORO® brand cigarettes, and are therefore liable for direct and/or contributory infringement of Philip Morris USA's lawfully owned trademarks and trade dress. Defendants' conduct has produced and, unless enjoined by this Court, will continue to produce a likelihood of consumer confusion and deception as well as irreparable injury to Philip Morris USA.

4. For several decades, Philip Morris USA has used, in connection with its tobacco products, the MARLBORO® trademark and various other trademarks incorporating the word MARLBORO®, including, without limitation, multiple varieties of MARLBORO® brand cigarettes and/or the MARLBORO® Roof Design trademark, a pentagonal figure with a horizontal top and two vertical sides with two upwardly and inwardly sloping diagonals (collectively, the "**MARLBORO® Trademarks**"). Philip Morris USA has spent substantial time, effort and money advertising and promoting the MARLBORO® Trademarks throughout the United States, and these marks have consequently developed significant goodwill, have become distinctive, and have acquired secondary meaning.

5. In an attempt to profit from Philip Morris USA's substantial investment in its MARLBORO® Trademarks, Defendants have sold cigarettes in packaging that bears spurious marks that are either identical to or substantially indistinguishable from the MARLBORO® Trademarks. Consumers naturally would expect that cigarettes sold in packaging that bears the famous MARLBORO® Trademarks would be manufactured, licensed or sponsored by Philip Morris USA or its affiliates. However, Philip Morris USA has confirmed that the cigarettes at issue were not manufactured, licensed or sponsored by Philip Morris USA or its affiliates, and are counterfeit. Thus, consumers are likely to be confused and/or disappointed by obtaining counterfeit cigarettes when they intended to purchase genuine MARLBORO® brand cigarettes manufactured and sold by Philip Morris USA or its affiliates.

6. As a result of Defendants' actions, Philip Morris USA is suffering a loss of the enormous goodwill Philip Morris USA created in its MARLBORO® brand products and is losing profits from lost sales of genuine products. This action seeks permanent injunctive relief and damages for Defendants' infringement of Philip Morris USA's intellectual property rights.

THE PARTIES

7. Plaintiff Philip Morris USA is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal place of business at 6601 West Broad Street, Richmond, Virginia 23230.

8. Defendant Latin Bakery, Inc. is a Florida corporation conducting business at 1275 W. Flagler Street, Miami, FL 33135.

9. Defendant Eduardo Fernandez is an individual who resides at 1085 W. 50th Street, Hialeah, FL 33012-3415. Mr. Fernandez is an officer and/or director of Latin Bakery, Inc., who, on information and belief, controls Latin Bakery, Inc.

10. Defendant Palmar Cafeteria, Inc. is a Florida corporation conducting business at 6927 NW 77th Avenue, Miami, FL 33166-2835.

11. Defendant Clara Martinez is an individual who resides at 16402 NW 82nd Place, Miami Lakes, FL 33016-3476. Ms. Martinez is an officer and/or director of Palmar Cafeteria, Inc., who, on information and belief, controls Palmar Cafeteria, Inc.

12. Defendant Woodland Investments, Inc. is a Florida corporation conducting business as Granada Liquors at 4821 SW 8th Street, Miami, FL 33134.

13. Defendant Merida Vivas is an individual who resides at 12825 SW 104th Terrace, Miami, FL 33186. Ms. Vivas is an officer and/or director of Woodland Investments, Inc., who, on information and belief, controls Woodland Investments, Inc.

14. Defendant Robles Administration Corp. is a Florida corporation conducting business as 12 Ave. Sunoco at 641 NW 12th Avenue, Miami, FL 33136.

15. Defendant Ramon Robles is an individual who resides at 14989 SW 22nd Street, Miami, FL 33185. Mr. Robles is an officer and/or director of Robles Administration Corp., who, on information and belief, controls Robles Administration Corp.

16. Defendant El Gran Shanghai Corp. is a Florida corporation conducting business as El Gran Shanghai, a/k/a "El Gran Shangi" at 1225 W. Flagler Street, Miami, FL 33135.

17. Defendant Heliodoro Hung is an individual who resides at 129 NW 59th Court, Miami, FL 33126-4747. Mr. Hung is an officer and/or director of El Gran Shanghai Corp., who, on information and belief, controls El Gran Shanghai Corp.

18. Defendant Fritanga Terrabona, Inc., is a Florida corporation conducting business as "Las Palmas," at 1100 E. 25th St., Hialeah, FL 33013.

19. Defendant Aracelly Suarez is an individual who resides at 5460 NW 182nd Street, Opa Locka, FL 33055. Mr. Suarez is an officer and/or director of Fritanga Terrabona, Inc., who, on information and belief, controls Fritanga Terrabona, Inc.

20. Defendant AFG Advance Corporation is a Florida corporation conducting business at 4401 SW 8th Street, Miami, FL 33134.

21. Defendant Adel F. Garcia Jr. is an individual who resides at 4190 SW 138th Avenue, Miami, FL 33175-6484. Mr. Garcia is an officer and/or director of AFG Advance Corporation, who, on information and belief, controls AFG Advance Corporation.

22. Defendant Villa Dollar Discount Corp. is a Florida corporation conducting business at 1829 W. Flagler Street, Miami, FL 33135.

23. Defendant Maria Borrero De Bayer, is an individual who resides at 9189 Fontainebleau Boulevard, Apt. 13, Miami, FL 33172-6311. Ms. Borrero De Bayer is an officer and/or director of Villa Dollar Discount Corp., who, on information and belief, controls Villa Dollar Discount Corp.

24. Defendant D.G.L. Corporation is a Florida corporation conducting business as Super Cafeteria, a/k/a "DGL Super Cafeteria" at 8248 W. 8th Avenue, Hialeah, FL 33014.

25. Defendant Alexis Gongora, is an individual who resides at 1525 NW 111th Street, Miami, FL 33167. Mr. Gongora is an officer and/or director of D.G.L. Corporation, who, on information and belief, controls D.G.L. Corporation.

26. Defendant Hellen's Dollar Discount, Inc. is a Florida corporation conducting business at 1710 NW 7th Street, Suite 1, Miami, FL 33125.

27. Defendant Yamatsys Varona, is an individual who resides at 10020 SW 82nd Street, Miami, FL 33173-4008. Ms. Varona is an officer and/or director of Hellen's Dollar Discount, Inc., who, on information and belief, controls Hellen's Dollar Discount, Inc.

28. Defendant Pranta Inc. is a Florida corporation conducting business as "Collins Food Market," at 7335 Collins Avenue, Miami Beach, FL 33141.

29. Defendant Mohammed F. Ahmed, is an individual who resides at 1551 NE 167th Street, Apt. 216, North Miami Beach, FL 33162. Mr. Ahmed is an officer and/or director of Pranta, Inc., who, on information and belief, controls Pranta, Inc.

30. Defendant Almonte Enterprises, Inc. is a Florida corporation conducting business as 71 Street Liquor, at 211 71st Street, Miami Beach, FL 33141.

31. Defendant Leonardo D. Almonte is an individual who resides at 6985 Abbott Avenue, Front, Miami Beach, FL 33141. Mr. Almonte is an officer and/or director of Almonte Enterprises, Inc., who, on information and belief, controls Almonte Enterprises, Inc.

32. Defendant Naser Food Market, Inc. is a Florida corporation conducting business as "Naser Supermarket" at 5845 NE 2nd Avenue, Miami, FL 33137.

33. Defendant Naser A. Quraan, is an individual who resides at 1200 NE 206th Street, Miami, FL 33179-2017. Mr. Quraan is an officer and/or director of Naser Food Market, Inc., who, on information and belief, controls Naser Food Market, Inc.

34. Defendant CLY Minimarket Corp. is a Florida corporation conducting business at 600 NE 36th Street, Miami, FL 33137.

35. Defendant Liliana Perdomo, is an individual who resides at 9064 Carlyle Avenue, Surfside, FL 33154. Ms. Perdomo is an officer and/or director of CLY Minimarket Corp., who, on information and belief, controls CLY Minimarket Corp.

36. Defendant FAMA Discount & Dollar Store, Inc. is a Florida corporation conducting business at 6783 SW 8th Street, Miami, FL 33144.

37. Defendant Juan U. Jimenez Robaina, is an individual who resides at 10735 SW 3rd Street, Miami, FL 33174. Mr. Jimenez Robaina is an officer and/or director of FAMA Discount & Dollar Store, Inc., who, on information and belief, controls FAMA Discount & Dollar Store, Inc.

38. Defendant L&I Café Corp. is a Florida corporation conducting business as Latin Café on the Beach at 441 W. 41st Street, Miami Beach, FL 33140.

39. Defendant Israel Salazar, is an individual who resides at 457 Desoto Drive, Miami Springs, FL 33166. Mr. Salazar is an officer and/or director of L&I Café Corp., who, on information and belief, controls L&I Café Corp.

40. Defendant Tamiami Gas Station, Inc. is a Florida corporation conducting business at 6401 SW 8th Street, Miami, FL 33144.

41. Defendant Angelina Flores, is an individual who resides at 12970 SW 2nd Street, Miami, FL 33184. Ms. Flores is an officer and/or director of Tamiami Gas Station, Inc., who, on information and belief, controls Tamiami Gas, Inc.

42. Philip Morris USA does not know the true names and capacities of the Defendants sued as J. Does 1 through 5 inclusive, and therefore sues these Defendants by such fictitious names. Philip Morris USA will amend this Complaint to allege the true names and capacities of these Defendants when it ascertains the same.

FACTS GIVING RISE TO THIS ACTION

A. The Infringed Trademarks

43. Philip Morris USA is the United States owner of the famous MARLBORO® Trademarks under which the MARLBORO® cigarettes are sold. Philip Morris USA has invested substantial time, effort and money in advertising and promoting the MARLBORO® Trademarks throughout the United States. The vast majority of MARLBORO® advertising and promotional activities display the MARLBORO® Roof Design label trademark and/or a MARLBORO® word trademark. As a result, the MARLBORO® Trademarks are reportedly among the most widely recognized trademarks in the United States, and Philip Morris USA has developed significant goodwill in these marks. Today, the MARLBORO® brands are the most popular brands of cigarettes sold in the United States.

44. Philip Morris USA is the registered owner of the following trademarks on the Principal Register of the United States Patent and Trademark Office (“USPTO”), all of which are valid, subsisting and incontestable pursuant to 15 U.S.C. § 1065:

Registration Number	Registration Date	Trademark
68,502	April 14, 1908	MARLBORO
938,510	July 25, 1972	MARLBORO Red Label

45. True and correct copies of these registration certificates and computer printouts from the records of the USPTO are attached hereto as **Exhibits “B”** and **“C”**.

46. Defendants are likely to continue to commit the acts complained of herein, and unless restrained and enjoined, will continue to do so, all to Philip Morris USA’s irreparable damage.

B. Defendants’ Sale of Counterfeit Cigarettes

47. Philip Morris USA manufactures cigarettes, including the famous MARLBORO® brand, for sale in the United States. Retail establishments throughout the United States offer these cigarettes for sale to the adult public.

48. Between January 11, 2011 and June 3, 2011, investigators retained on behalf of Philip Morris USA purchased one or more packs of MARLBORO® brand cigarettes from the named Defendants’ retail establishments, which Philip Morris USA subsequently confirmed to be counterfeit. The dates of these purchases and brands purchased are listed in **Exhibit “A”** attached hereto. Philip Morris USA is informed and believes that Defendants have offered and continued to offer additional counterfeit MARLBORO® brand cigarettes for sale at their retail establishments.

C. The Likelihood of Confusion and Injury Caused by Defendants' Actions

49. The counterfeit MARLBORO® brand cigarettes are not the same or of the same quality as those manufactured and sold by Philip Morris USA under the same brand name. As such, consumers who purchase the counterfeit MARLBORO® brand cigarettes are likely to be confused and/or disappointed by obtaining counterfeit cigarettes when they intended to purchase genuine MARLBORO® brand cigarettes. In addition, the sale of counterfeit MARLBORO® brand cigarettes is likely to cause confusion among consumers regarding Philip Morris USA's sponsorship or approval of the counterfeit cigarettes. As a result of Defendants' actions, Philip Morris USA is suffering a loss of the enormous goodwill Philip Morris USA created in its MARLBORO® brand products and is losing profits from lost sales of genuine products.

FIRST CLAIM FOR RELIEF

(For Infringement of Registered Trademarks in Violation of
Section 32 of the Lanham Act, 15 U.S.C. § 1114(1))

50. Philip Morris USA specifically realleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 49 hereof.

51. The acts of Defendants alleged herein constitute the use in commerce, without the consent of Philip Morris USA, of a reproduction, counterfeit, copy or colorable imitation of one or more of the MARLBORO® Trademarks in connection with the sale, offering for sale, distribution, or advertising of goods, which use is likely to cause confusion or mistake, or to deceive consumers and therefore infringe Philip Morris USA's rights in one or more of the MARLBORO® Trademarks, in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

52. Philip Morris USA has no adequate remedy at law for the foregoing wrongful conduct. Philip Morris USA has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

SECOND CLAIM FOR RELIEF

(For False Designation of Origin and Trademark and Trade Dress Infringement in Violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A))

53. Philip Morris USA specifically realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 52 hereof.

54. The acts of Defendants alleged herein constitute the use in interstate commerce of a word, term, name, symbol, or device, or any combination thereof, or false designation of origin, in connection with the sale, or offering for sale, of goods in violation of section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A). These acts of Defendants are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants with Philip Morris USA, or as to the origin, sponsorship or approval of counterfeit cigarettes by Philip Morris USA.

55. Philip Morris USA has no adequate remedy at law for the foregoing wrongful conduct. Philip Morris USA has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

THIRD CLAIM FOR RELIEF

(For Unfair Competition in Violation of Florida Common Law)

56. Philip Morris USA specifically realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 55 hereof.

57. Defendants' conduct, as alleged above, constitutes unfair competition under Florida common law. Defendants' acts have resulted in the "passing off" of Defendants' products as those of Philip Morris USA, or as somehow related or associated with, or sponsored or endorsed by, Philip Morris USA.

58. Philip Morris USA has no adequate remedy at law for the foregoing wrongful conduct. Philip Morris USA has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

FOURTH CLAIM FOR RELIEF

(For Violation of Florida's Deceptive and Unfair Trade Practices Act,
Fla. Stat. §§ 501.201 *et seq.*)

59. Philip Morris USA specifically realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 58 hereof.

60. Defendants' conduct, as alleged above, constitutes unfair competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.204.

61. Philip Morris USA, as an aggrieved party, is entitled to injunctive relief against Defendants and those acting in concert with them pursuant to Fla. Stat. § 501.211(1).

62. Philip Morris USA has no adequate remedy at law for the foregoing wrongful and continuing conduct. Philip Morris USA has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

63. Philip Morris USA is entitled to recover its attorneys' fees pursuant to Fla. Stat. § 501.211(2).

WHEREFORE, Plaintiff Philip Morris USA prays for judgment as follows:

A. For a judgment that:

- (i) Defendants have violated Section 32 of the Lanham Act, 15 U.S.C. § 1114;
- (ii) Defendants have violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

- (iii) Defendants have engaged in unfair competition in violation of the common law of the State of Florida; and
- (iv) Defendants' conduct constitutes unfair competition, unconscionable acts or practices and unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 *et seq.*;

B. For an injunction restraining and enjoining Defendants and their divisions, subsidiaries, officers, agents, employees, and attorneys, and all those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from (i) purchasing, distributing, selling, or offering for sale, counterfeit MARLBORO® brand cigarettes, or assisting, aiding or abetting any other person or entity in doing so; or (ii) using the MARLBORO® Trademarks or trademarks confusingly similar therewith or the MARLBORO® trade dress or trade dress confusingly similar therewith with the exception of the sale and offering for sale of genuine MARLBORO® cigarettes;

C. For an order requiring Defendants to cooperate in good faith with Philip Morris USA in its investigations of counterfeit sales at their retail establishments, including, without limitation, by: (a) permitting representatives and/or designees of Philip Morris USA to conduct inspections, without notice, of Defendants' cigarette inventories to determine whether any packs of cigarettes bearing the MARLBORO® Trademarks are counterfeit and to retain possession of any such cigarettes that are determined to be counterfeit; (b) responding to reasonable requests for information about Defendants' suppliers of MARLBORO® brand cigarettes; and (c) cooperating with Philip Morris USA's representatives and/or designees in their investigations of any suppliers of MARLBORO® brand cigarettes.

D. For an order (i) requiring Defendants to account for and pay over to Philip Morris USA all of Defendants' profits derived from their unlawful conduct, to the full extent provided for by Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a), including treble damages where appropriate; (ii) as an alternative to awarding profits under Section 35(a), awarding Philip Morris USA statutory damages as provided for by Section 35(c) of the Lanham Act, 15 U.S.C. § 1117(c); and (iii) awarding Philip Morris USA general and special damages to the full extent provided for by the common law of the State of Florida and the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 *et seq.*;

E. For costs of suit, including attorneys' fees, where appropriate; and

F. Granting such other and further relief as the Court shall deem appropriate.

Dated: June 17, 2011

/s/ Samuel A. Danon

Samuel A. Danon
Fla. Bar No. 0892671
Paulo R. Lima
Fla. Bar No. 0064364
Camilo A. Mejia
Florida Bar No. 72187
HUNTON & WILLIAMS LLP
1111 Brickell Avenue, Suite 2500
Miami, FL 33131
Tel: (305) 810-2500
Fax: (305) 810-2460
Email: sdanon@hunton.com
Email: plima@hunton.com
Email: cmejia@hunton.com
*Attorneys for Plaintiff Philip
Morris USA Inc.*