

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PAPA JOHN’S INTERNATIONAL, INC.,)
a Delaware corporation, et al.)
))
Plaintiffs,)
))
v.)
))
ANTOIN S. REZKO,)
an individual resident of Illinois, et al.)
))
Defendants.)
))

Civil Action No. 04-C-3131

**PAPA JOHN’S RESPONSE TO DEFENDANTS’ MOTION TO ENTER
INJUNCTIVE ORDER, QUASH DISCOVERY AND STRIKE HEARING DATE**

Plaintiffs Papa John’s International, Inc. and Papa John’s Food Service, Inc. (collectively referred to as “Papa John’s”), by counsel, respectfully state as follows in response to the Motion to Enter Injunctive Order, Quash Discovery and Strike Hearing Date (“Defendants’ Motion”) filed by Defendants Antoin S. Rezko (“Rezko”), PJ Chicago, LLC (“PJ Chicago”), Chicago PJ, LLC (“Chicago PJ”) and East Coast PJ, LLC (“East Coat PJ”) (collectively referred to as the “Rezko Defendants”).

1. For the past 18 months, the Rezko Defendants have continued to use Papa John’s intellectual property in violation of the contracts between the parties, federal law, and this Court’s May 20, 2004 Order. Defendants’ Motion represents the latest in a series of attempts — which so far have been successful — to avoid having to answer for their wrongdoing. Faced with a hearing on Papa John’s pending preliminary injunction motion, the Rezko Defendants claimed to have “sold” the various restaurants whose operation Papa John’s sought to enjoin. Before the alleged “sale,” the Rezko Defendants operated these restaurants using Papa John’s

intellectual property in violation of this Court's May 20, 2004 preliminary injunction and in violation of various non-competes. The scope of further injunctive relief necessary to protect Papa John's depends in part upon the answers to certain questions that this Court has agreed should be answered before the pending preliminary injunction motion is heard. These include whether the recent alleged "sale" to LayaZia LLC ("LayaZia") was bona fide or whether it was yet another corporate shell game. Either way, the Rezko Defendants have been unjustly enriched by their infringing and otherwise wrongful conduct. Even if the "sale" was a bona fide, arms length transaction, Papa John's needs preliminary injunctive relief to which the Rezko Defendants will not consent voluntarily. Specifically, the Rezko Defendants should be required to account for the revenues from operating these restaurants and for the proceeds of any alleged "sale." By resisting even the most basic discovery — including production of the alleged Asset Purchase Agreement — the Rezko Defendants have made it impossible for this Court to fashion meaningful injunctive relief and ensure compliance with orders of the U.S. District Court for the Northern District of Illinois.

2. The pending preliminary injunction motion is actually the second time that Papa John's has sought preliminary injunctive relief. Papa John's first preliminary injunction motion resulted in entry of this Court's Order of May 20, 2004. This preliminary injunction required the Rezko Defendants to de-identify their restaurants from the Papa John's franchise system and otherwise stop using Papa John's intellectual property. The Rezko Defendants' continuing violations of this Court's May 20, 2004 preliminary injunction prompted Papa John's to move for contempt sanctions on June 30, 2004. Through a series of subterfuges, the Rezko Defendants managed to postpone — time after time — a series of scheduled hearings on Papa John's contempt motion. Today, Papa John's still has not had its day in court on the contempt motion.

Meanwhile, discovery taken just last week has confirmed that the Rezko Defendants are still using Papa John's intellectual property in violation of the May 20, 2004 preliminary injunction.

3. In June of this year, the Rezko Defendants began reopening their former Papa John's restaurants under the name "Pizzeria Zia." These restaurants used Papa John's intellectual property in violation of this Court's May 20, 2004 preliminary injunction. By owning and operating these restaurants, the Rezko Defendants also violated covenants-not-to-compete contained in a series of contracts that they had signed. As a result, in July of this year, Papa John's filed another motion for preliminary injunction — this time to enforce the covenants-not-to-compete.

4. Rather than allow this Court to decide the merits of Papa John's preliminary injunction, the Rezko Defendants engaged in "self-help" — opening numerous additional "Pizzeria Zia" restaurants in violation of their non-competes. As the date of the hearing on Papa John's preliminary injunction motion approached, Papa John's received word that the Rezko Defendants were planning to "cash out" their violations of the first preliminary injunction motion and their non-competes by purporting to sell their restaurants.

5. After learning that the Rezko Defendants intended to sell the Pizzeria Zia restaurants, Papa John's filed a Motion to Amend Request for Relief in Preliminary Injunction on September 22, 2005 (the "Motion to Amend"). A copy of the Motion to Amend is attached as Exhibit A. Papa John's Motion to Amend requested that the Court enjoin the Rezko Defendants from selling the Pizzeria Zia restaurants and impose a constructive trust on the Rezko Defendants' revenues derived from operating or selling the Pizzeria Zia restaurants that they had opened and operated in violation of their covenants-not-to-compete.

6. On September 22, 2005, this Court held another status conference: the sixteenth in the history of this case. At that time, the Rezko Defendants' counsel advised that the Rezko Defendants had already sold the Pizzeria Zia restaurants to LayaZia. Papa John's expressed concerns about whether the sale to LayaZia was a bona fide sale and whether any of Papa John's intellectual property had been wrongfully conveyed to LayaZia in the alleged "sale." At the September 22, 2005 status conference, this Court continued the Motion to Amend. At that time, this Court also rescheduled the hearing on Papa John's Motion for a Preliminary Injunction, which was then scheduled to take place on October 13, 2005. The stated purpose of this latest delay was to afford Papa John's the opportunity to take discovery on whether the alleged sale of the Pizzeria Zia restaurants to LayaZia was a bona fide sale.

7. For nearly two months, Papa John's has diligently attempted — first informally and then through formal discovery — to obtain information to ascertain whether the alleged sale of the Pizzeria Zia restaurants to LayaZia was a bona fide sale and whether any of Papa John's intellectual property was conveyed to LayaZia in connection with the sale. The Rezko Defendants have thwarted Papa John's discovery efforts at every turn. For example, Papa John's has served document subpoenas on Newco Pizza, LLC ("Newco"), the entity through which the Rezko Defendants operated Pizzeria Zia, and LayaZia. These document subpoenas, served October 4, 2004, remain unanswered. Today, Papa John's has yet to receive production of any documents — including the Asset Purchase Agreement (if it exists) by which LayaZia allegedly purchased these restaurants from Newco. While awaiting production of these documents, Papa John's also sought to depose the two individuals most knowledgeable about the alleged "sale": Antoin Rezko, the principal of Newco, and Khaled A. Shair, the purported principal of LayaZia. After numerous delays, both individuals were scheduled to be deposed this week (Mr. Shair on

November 7, 2005, and Mr. Rezko on November 8, 2005). As their respective depositions approached, both witnesses — through counsel — reneged on their prior commitments to appear.

8. While ignoring the most basic discovery responses, the Rezko Defendants did propose yet another agreed order. Whether this agreed order would benefit Papa John's depends in part on the actual relationship between Newco and the latest corporate entity behind which Mr. Rezko now seeks to hide. Like any preliminary injunction, the agreed order would bind not only "the parties to the action" but also "their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." Fed. R. Civ. P. 65(d). Contrary to the Rezko Defendants' statement in Defendants' Motion, Papa John's has specifically responded to the Rezko Defendants' proposed agreed order. By letter dated October 24, 2005, Papa John's specifically advised:

Papa John's is willing to consider a consent decree to resolve the preliminary injunction motion. To do so, however, Papa John's needs information related to the sale of the Pizzeria Zia restaurants to LayaZia LLC ("LayaZia"). As we have told you since we first learned of this potential sale, Papa John's has concerns about whether it is a bona fide sale. We have repeatedly asked for documentation related to the sale but received nothing. We also subpoenaed the documents related to the sale from LayaZia and Newco Pizza, LLC ("Newco") but those Subpoena have been ignored.

A copy of the October 24, 2005 letter from Papa John's counsel is attached as Exhibit B.

9. In addition, at the deposition of Gary Glielmi on November 1, 2005, counsel for Papa John's told counsel for the Rezko Defendants that the parties might be able to reach an agreed resolution of the preliminary injunction order but that Papa John's first needed to review the documents related to the alleged sale. By letter dated November 2, 2005, counsel for Papa John's followed up on this discussion and again requested the documentation related to the alleged sale. A copy of this November 2, 2005 correspondence is attached as Exhibit C.

10. Papa John's concerns about information that may have been given to LayaZia in connection with the sale have been heightened as a result of the deposition testimony of Mr. Glielmi on November 1, 2005. Most recently, Mr. Glielmi was Newco's operating manager for the operation of the Pizzeria Zia restaurants. Mr. Glielmi testified that Papa John's software was conveyed to LayaZia and that he understood from a conversation with a current LayaZia employee that LayaZia was attempting to access that information. An excerpt of the rough draft of the deposition transcript of Mr. Glielmi (pp. 59-60, 62-63) is attached as Exhibit D. Pursuant to Papa John's franchise agreements, the Rezko Defendants acquired a license to use Papa John's software. Papa John's software is proprietary to Papa John's, to be treated as confidential, and to be returned to Papa John's upon expiration or termination of the franchise relationship. *See* Franchise Agreement §§ 10 & 17.¹ The Rezko Defendants never returned Papa John's software. It now appears from Mr. Glielmi's testimony that Papa John's software was given to LayaZia.

11. The Rezko Defendants had no right to convey any of Papa John's intellectual property, including Papa John's Software, to LayaZia. LayaZia has no right to use Papa John's intellectual property.

12. In addition, as has been set forth in the documentation supporting Papa John's preliminary injunction motion, Newco used a copyrighted Papa John's photograph to promote Pizzeria Zia. According to Mr. Glielmi, the person responsible for preparing that promotional advertisement was Rowan Shair. Ms. Shair is the daughter of Khaled Shair, who owns LayaZia. Ms. Shair is now employed by LayaZia and may still be using Papa John's intellectual property to promote Pizzeria Zia. *See* Glielmi Deposition, pp. 23, 39-41, 65-66, attached as Exhibit E.

¹ Tab B to the Third Supplemental Declaration of Charles Schnatter, which was previously filed with Papa John's Preliminary Injunction Motion.

13. The Rezko Defendants allegedly sold their assets related to the operation of the Pizzeria Zia restaurants to LayaZia while Papa John's motion to enjoin the operation of such restaurants was pending. The Rezko Defendants had no right to "sell" restaurants that were created and operated in violation of their covenants-not-to-compete and that were wrongfully using Papa John's intellectual property.

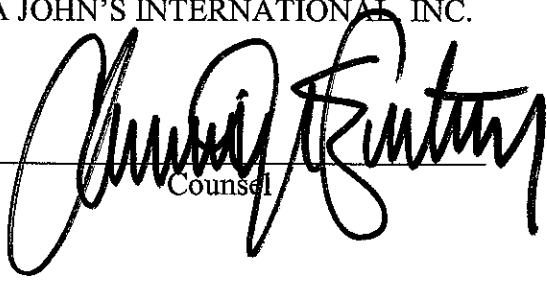
14. At this juncture, Papa John's needs the additional preliminary injunctive relief set forth in the draft Consent Order attached as Exhibit F. The attached Consent Order: (a) enjoins the Rezko Defendants from operating or participating in competing businesses, (b) requires the Rezko Defendants to account for the gross profits for the operation of the Pizzeria Zia restaurants, (c) requires the Rezko Defendants to account for the gross proceeds of the sale of the Pizzeria Zia restaurants; and (d) requires the Rezko Defendants to return all of Papa John's intellectual property. The Rezko Defendants will not consent to the foregoing relief voluntarily.

Dated: November 8, 2005

Respectfully submitted,

PAPA JOHN'S INTERNATIONAL, INC.

By: _____



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Counsel for Papa John's International, Inc.
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CERTIFICATE OF SERVICE

I hereby certify that before 5:00 p.m. on this 8th day of November, 2005, a true and correct copy of the foregoing **PAPA JOHN'S RESPONSE TO DEFENDANTS' MOTION TO ENTER INJUNCTIVE ORDER, QUASH DISCOVERY AND STRIKE HEARING DATE** was served via the Court's electronic filing system upon the following counsel of record for Defendants:

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s/ Christopher E. Paetsch