

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

JIM'S ORIGINAL INCORPORATED	)	
an Illinois Corporation	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. _____
	)	
JIM'S ORIGINAL CHICAGO, INC.,	)	
An Illinois Corporation,	)	
JAFFAR SADIQ an Individual,	)	
MIRZA N. HUSAIN, an Individual and	)	
RAVINDER K. AHUJA, an Individual	)	
	)	
Defendant.	)	

**COMPLAINT FOR INJUNCTIVE RELEIF AND DAMAGES  
FOR SERVICEMARK INFRINGEMENT,  
DECEPTIVE TRADE PRACTICES AND UNFAIR COMPETITION  
UNDER FEDERAL, ILLINOIS AND COMMON LAW CAUSES OF ACTION**

**PARTIES AND JURISDICTION**

1. Plaintiff, JIM'S ORIGINAL INCORPORATED, is an Illinois corporation with its principal place of business in Chicago, Illinois.
  
2. On information and belief, Defendant, JIM'S ORIGINAL CHICAGO, INC., is an Illinois corporation with its principal place of business in Chicago, Illinois, and is doing business in the State of Illinois and in this judicial district.
  
3. On information and belief, Defendants, JAFFAR SADIQ, MIRZA HUSAIN and RAVINDER K. AHUJA are individuals who reside in the State of Illinois and are principles of the Defendant JIM'S ORIGINAL CHICAGO, INC.
  
4. This Court has subject matter jurisdiction which arises from the fact this is an action brought under the Trademark Laws of the United States, 15 U.S.C. §§1051 – 1129, jurisdiction conferred by 15 U.S.C. §1121 and 28 U.S.C. §§1331 and 1338 and also has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over all the parties hereto because they are all residents of the State of Illinois.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 because all the parties to this action do business in this district and a substantial part of the events giving rise to the subject claims arose in this district.

### **FACTS COMMON TO EACH COUNT**

7. In 1939, James Stefanovic ("Jim") arrived in Chicago and began working at his Aunt's hot dog stand at the northwest corner of Maxwell and Halsted streets.

8. In 1941, he purchased the hot dog stand from his aunt and continued to operate the business there on Maxwell Street.

9. In 1943, Jim creates the "Maxwell Street Polish Sausage Sandwich" which he begins selling at his stand and 4 years later in 1947 began selling the Pork Chop Sandwich "with the bone on the bun."

10. Since at least as early as 1943, the business has sold its Maxwell Street Polish Sausage Sandwich and subsequent Pork Chop Sandwich on Maxwell Street until its eventual relocation in 2001 as part of the University of Illinois expansion.

11. Currently, the business, still owned by Jim's descendants, operates two stands under the corporate identity of JIM'S ORIGINAL INCORPORATED d/b/a JIM'S ORIGINAL, one at 1250 S. Union, Chicago and a second at 16 E. 95th Street, Chicago.

12. Since as early as 1985, the business has operated under the business name and mark of "JIM'S ORIGINAL" and is the original providers of MAXWELL STREET POLISH SAUSAGE SANDWICH and PORK CHOP SANDWICH. *See Exhibit A (specimens of JIM's ORIGINAL service mark).*

13. On September 10, 2007, Plaintiff registered the mark bearing the logo "JIM'S ORIGINAL" with the Illinois Secretary of State Reg. No. 098050 listing the first use date

of September 19, 2005. That registration has become incontestable in accordance with 15 U.S.C. §§1065 and 1115(b). A copy of this Secretary of State Registration Report is attached hereto as *Exhibit B*.

14. On September 10, 2007, Plaintiff registered the mark bearing the phrase "THE ORIGINAL MAXWELL STREET POLISH SAUSAGE STAND" with the Illinois Secretary of State Reg. No. 098050 listing the first use date of August 1, 2001. That registration has become incontestable in accordance with 15 U.S.C. §§1065 and 1115(b). A copy of this Secretary of State Registration Report is attached hereto as *Exhibit C*.

15. Plaintiff has sold over a Million Dollars (\$1,000,000.00) worth of the Maxwell Street Polish and Pork Chop Sandwich under the name and mark of JIM'S ORIGINAL in Chicago, and has spent thousands of dollars annually in advertising and promoting the name and mark throughout Chicago, Illinois and the Midwest.

16. By virtue of Plaintiff's continued use, advertising, and promotion, its name and mark have become and are still distinctive, well-recognized, and famous, possess a strong secondary meaning, and represent an extremely valuable goodwill.

17. On information and belief, Defendants, JIM'S ORIGINAL CHICAGO, INC., and, its principles, JAFFAR SADIQ, MIRZA HUSAIN and RAVINDER K. AHUJA opened and operate a restaurant located at 1938 E. 95<sup>th</sup> Street, in Chicago Illinois which is believed to have been open to the public in 2010, under the name "JIM'S ORIGINAL CHICAGO" which bears the service mark "JIM'S ORIGINAL" (Photographs of the business attached as *Group Exhibit D*)

18. On information and belief, Defendants, JIM'S ORIGINAL CHICAGO, INC., and, its principles, JAFFAR SADIQ, MIRZA HUSAIN and RAVINDER K. AHUJA, its principles, advertise, and offer for sale items described as the "ORIGINAL MAXWELL STREET POLISH." And "ORIGINAL MAXWELL STREET PORK CHOPS." under the

business name bearing the service mark "JIM'S ORIGINAL.". (A menu from Defendant's restaurant, bearing the marks "JIM'S ORIGINAL" and "ORIGINAL MAXWELL STREET POLISH," and "ORIGINAL MAXWELL STREET PORK CHOP" is attached hereto as *Exhibit E*).

19. On information and belief, in 2010, Defendant began to market, and sell its food products from its business bearing the service mark JIM'S ORIGINAL with knowledge of Plaintiff's rights in the name and mark for the business name and for these same products.

20. Defendant's use of the service mark JIM'S ORIGINAL together with the ORIGINAL MAXWELL STREET POLISH and ORIGINAL MAXWELL STREET PORK CHOP for its products and business name is without the consent or authorization of Plaintiff, JIM'S ORIGINAL INCORPORATED.

21. That Defendants were given notices of Plaintiff's registration and service mark rights by written notice in the form of a cease and desist letter conforming to the language required under 15 USC § 1111. Defendants ignored the notice and continue to use Plaintiff's service marks despite Plaintiff's express objections.

**COUNT I**  
**SERVICEMARK INFRINGEMENT**  
**FALSE DESIGNATION OF ORIGIN**

22. Plaintiff incorporates and restates all allegations as set forth in paragraphs 1 through 22 as though fully set forth herein

23. As a result of its unauthorized use of the marks JIM'S ORIGINAL and ORIGINAL MAXWELL STREET POLISH in connection with its manufacture, advertising, and sale of food products, Defendant is likely to cause confusion or mistake or to deceive the public, in violation of the Trademark Laws of the United States, 15 U.S.C. §1114.

24. As a result of its unauthorized use of the mark JIM'S ORIGINAL and ORIGINAL MAXWELL STREET POLISH in connection with its manufacture, advertising, and sale of food products, Defendant is likely to mislead prospective purchasers as to the affiliation, connection, or association of Defendant or Defendant's products with Plaintiff or Plaintiff's products, or as to the origin, sponsorship or approval of Defendant's business by Plaintiff, causing purchasers to rely thereon, in violation of the Lanham Act, 15 U.S.C. §1125(a).

25. Unless enjoined by this Court, Defendant will continue to perform the acts complained of herein and cause damages and injury, all to the immediate and irreparable harm of Plaintiff, for which Plaintiff has no adequate remedy at law.

26. Defendant's acts were undertaken in bad faith and in a deliberate attempt to capitalize on the goodwill and reputation of Plaintiff and Plaintiff's servicemarks and to mislead the public into believing that there is a connection, affiliation, or association between Defendant or its food products, its business and its origins and Plaintiff and its origins and marks.

27. Defendant's acts are deliberate, willful, fraudulent and without any extenuating circumstances and are an exceptional case within the meaning of the Lanham Act section 35, 15, U.S.C. § 1117 and Plaintiff should be entitled to recover three (3) times the amount of actual damages, reasonable attorneys' fees and costs incurred in this action.

**COUNT II**  
**SERVICEMARK INFRINGEMENT**  
**DILUTION**

28. Plaintiff incorporates and restates all allegations as set forth in paragraphs 1 through 27 as though fully set forth herein

29. By virtue of Plaintiff's continued use, advertising, and promotion, its name and mark have become and are still distinctive, well-recognized, and famous, possess a strong secondary meaning, and represent an extremely valuable goodwill.

30. Defendants' unauthorized use of Plaintiff's marks with its acquired distinctiveness and designation of origins is likely to cause dilution by blurring or dilution by tarnishment of its marks in violation of the Lanham Act, 15 U.S.C. §1125(c).

31. Unless enjoined by this Court, Defendant will continue to perform the acts complained of herein and cause said damages and injury, all to the immediate and irreparable harm of Plaintiff, for which Plaintiff has no adequate remedy at law.

32. Defendant's acts were undertaken in bad faith and in a deliberate attempt to capitalize on the goodwill and reputation of Plaintiff and Plaintiff's service marks and to mislead the public into believing that there is a connection, affiliation, or association between Defendant or its food products, its business and its origins and Plaintiff and its origins and marks.

33. Defendant's acts are deliberate, willful, fraudulent and without any extenuating circumstances and are an exceptional case within the meaning of the Lanham Act section 35, 15, U.S.C. § 1117 and Plaintiff should be entitled to recover three (3) times the amount of actual damages, reasonable attorneys' fees and costs incurred in this action.

**COUNT III**  
**ILLINOIS SERVICEMARK INFRINGEMENT,**

34. Plaintiff incorporates and restates all allegations as set forth in paragraphs 1 through 33 as though fully set forth herein

35. As a result of its unauthorized use of the marks JIM'S ORIGINAL and ORIGINAL MAXWELL STREET POLISH in connection with its manufacture, advertising, and sale of food products, Defendant is likely to cause confusion or mistake or to deceive the public, in violation of the Illinois Trademark Registration and Protection Act, 765 ILCS 1036/1 *et seq.*

36. As a result of its unauthorized use of the mark JIM'S ORIGINAL and ORIGINAL MAXWELL STREET POLISH in connection with its manufacture, advertising, and sale of food products, Defendant is likely to mislead prospective purchasers as to the affiliation, connection, or association of Defendant or Defendant's products with Plaintiff or Plaintiff's products, or as to the origin, sponsorship or approval of Defendant's business by Plaintiff, causing purchasers to rely thereon, in violation of Section 60 of the Illinois Trademark Registration and Protection Act, 765 ILCS 1036/60.

37. Defendants' unauthorized use of Plaintiff's marks with its acquired distinctiveness and designation of origins is likely to cause dilution by blurring or dilution by tarnishment of its marks and causing injury to Plaintiff's business reputation in violation of Section 65 of the Illinois Trademark Registration and Protection Act, 765 ILCS 1036/65.

38. Unless enjoined by this Court, Defendant will continue to perform the acts complained of herein and cause said damages and injury, all to the immediate and irreparable harm of Plaintiff, for which Plaintiff has no adequate remedy at law.

39. Defendant's acts were undertaken in bad faith and in a deliberate attempt to capitalize on the goodwill and reputation of Plaintiff and Plaintiff's service marks and to mislead the public into believing that there is a connection, affiliation, or association between Defendant or its food products, its business and its origins and Plaintiff and its origins and marks.

40. Defendant's acts are deliberate, willful, fraudulent and without any extenuating circumstances and are an exceptional case within the meaning of Section 70 of the Illinois Trademark Registration and Protection Act, 765 ILCS 1036/70 and Plaintiff should be entitled to recover three (3) times the amount of actual damages, reasonable attorneys' fees and costs incurred in this action.

**COUNT IV**  
**ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES**

41. Plaintiff incorporates and restates all allegations as set forth in paragraphs 1 through 40 as though fully set forth herein

42. As a result of its unauthorized use of the marks JIM'S ORIGINAL, ORIGINAL MAXWELL STREET POLISH and ORIGINAL MAXWELL STREET PORK CHOPS in connection with the manufacture, advertising, and sale of either the food product and/or the business, Defendants have violated the Illinois Uniform Deceptive Trade Practice Act, 815 ILCS 510/1 *et seq.* in one or more of the following ways:

- a) Passed off food products as those of Plaintiffs;
- b) Causes likelihood of confusion or of misunderstanding that the source, sponsorship and/or approval of the food products is from the Plaintiff;
- c) Causes likelihood of confusion or of misunderstanding as to affiliation, connections, or association with Plaintiff;
- d) Uses deceptive representations or designations that Defendant's food products originated from Plaintiff's business;
- e) Represents that food products has Plaintiff's sponsorship, approval, characteristics, and ingredients, which it does not have, or that the Defendants' business has the sponsorship, approval, status, affiliation, or connection to Plaintiff, which it does not have;
- f) Engaged in any other conduct which creates a likelihood of confusion or misunderstanding in to the consumer.

43. Defendant is likely to cause confusion or to cause mistake or to deceive the public, in violation of the statutory and common law of the State of Illinois pursuant to 765 ILCS 1036/60 and 815 ILCS 510/2



44. Defendant is likely to mislead prospective purchasers and retailers as to an affiliation, connection, or association of Defendant or its business and products with Plaintiff's business and products, or as to the origin, sponsorship, or approval by Plaintiff of Defendant's use of Plaintiff's marks, causing purchasers to rely thereon, in violation of the statutory and common laws of the State of Illinois pursuant to 815 ILCS 510/2 and 765 ILCS 1036/65.

45. Unless enjoined by this Court, Defendant will continue to perform the acts complained of herein and cause said damages and injury, all to the immediate and irreparable harm of Plaintiff, for which Plaintiff has no adequate remedy at law.

46. Defendant's acts were undertaken in bad faith and in a deliberate attempt to capitalize on the goodwill and reputation of Plaintiff and Plaintiff's servicemarks, and to mislead the public into believing that there is a connection, affiliation, or association between Defendant's business and products to Plaintiff.

47. Defendant's acts are deliberate, willful, fraudulent and without any extenuating circumstances and are an exceptional case within the meaning of Section 3 of the Illinois Deceptive Trade Practices Act, 815 ILCS 510/3 and Plaintiff should be entitled to recover reasonable attorneys' fees and costs incurred in this action.

**COUNT V**  
**COMMON LAW UNFAIR COMPETITION**

48. Plaintiff incorporates and restates all allegations as set forth in paragraphs 1 through 47 as though fully set forth herein

49. By virtue of Plaintiff's registration, continued use, advertising, and promotion, its name and mark have become and are still distinctive, well-recognized, and famous, possess a strong secondary meaning, and represent an extremely valuable goodwill.

50. As a result of its unauthorized use of the marks JIM'S ORIGINAL and ORIGINAL MAXWELL STREET POLISH in connection with its manufacture, advertising, and sale of food products, Defendant is likely to cause confusion or mistake or to deceive the public, in violation of the Illinois Trademark Registration and Protection Act, 765 ILCS 1036/1 *et seq.*

51. Defendants' unauthorized use of Plaintiff's marks with its acquired distinctiveness and designation of origins is likely to cause dilution by blurring or dilution by tarnishment of its marks and causing injury to Plaintiff's business reputation in violation of Section 65 of the Illinois Trademark Registration and Protection Act, 765 ILCS 1036/65.

52. By reason of Defendant's acts, Plaintiff has suffered and will continue to suffer damage and injury to its business, reputation, and goodwill, and will sustain loss of revenues and profits.

53. Unless enjoined by this Court, Defendant will continue to perform the acts complained of herein and cause said damages and injury, all to the immediate and irreparable harm of Plaintiff, for which Plaintiff has no adequate remedy at law.

#### **COUNT VI** **UNJUST ENRICHMENT**

54. Plaintiff incorporates and restates all allegations as set forth in paragraphs 1 through 53 as though fully set forth herein

55. By virtue of Plaintiff's registration, continued use, advertising, and promotion, its name and mark have become and are still distinctive, well-recognized, and famous, possess a strong secondary meaning, and represent an extremely valuable goodwill.

56. Defendant's acts are a deliberate attempt to capitalize on the goodwill and reputation of Plaintiff and Plaintiff's service marks and to mislead the public into believing that there is a connection, affiliation, or association between Defendant or its food products, its business and its origins with the Plaintiff and its origins and marks.

57. By reason of Defendant's acts, Plaintiff has suffered and will continue to suffer damage and injury to its business, reputation, and goodwill, and will sustain loss of revenues and profits.

58. Based on information and belief, Defendants have received substantial financial gain as a result of its willful use of Plaintiff's service mark, goodwill and reputation of Plaintiff and Plaintiff should be entitled to an equitable portion of the enrichment Defendants obtained unjustly.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment:

1. Declaring that the Defendants have infringed on Plaintiff's servicemarks in violation of the Lanham Act as defined in 15 U.S.C. §1125 (a) - (c)
2. Declaring that the Defendants willfully violated said Lanham Act
3. Declaring that the Defendants have committed acts in violation of the Illinois Deceptive Trade Practices Act, as defined in 815 ILCS 510/1 *et seq.*
4. Declaring that the defendants willfully violated said Illinois Deceptive Trade Practices Act.
5. Declaring that the Defendants have committed acts of common law Unfair Competition
6. Declaring that the Defendants were unjustly enriched by its willful acts
7. Permanently enjoining and restraining Defendant, its officers, agents, employees, representatives, and all others acting in concert or participation with any of them from:

- (a) using the servicemark JIM'S ORIGINAL and ORIGINAL MAXWELL STREET POLISH, or any other colorable imitation of the servicemark, or any mark that is confusingly similar to the mark; and
  - (b) doing any other act or thing likely to induce the belief that Defendant's business or products are in any way connected with Plaintiff's business or products, or are sponsored or approved by Plaintiff.
8. Directing Defendant to:
- (a) account for and pay over to Plaintiff all profits derived by Defendant from its acts complained of herein, together with prejudgment interest;
  - (b) pay to Plaintiff all the damages it has suffered as a result of the acts of Defendant complained of herein, including an assessment of trebled actual damages, together with prejudgment interest;
  - (c) pay to Plaintiff its attorneys' fees and costs in this action; and
  - (d) file with this Court and serve on Plaintiff's counsel, within 30 days after entry of an injunction issued by this Court, a sworn written statement as provided in 15 U.S.C. §1116.
9. Awarding Plaintiff such further relief as this Court deems just and equitable.

Respectfully submitted,

JIM'S ORIGINAL, INC.

By: /s/ Jin B. Kim  
Jin B. Kim (ARDC #6231041)  
Attorney for Plaintiff

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