

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

AURELIO’S IS PIZZA FRANCHISE, LTD.,	)	
an Illinois limited liability company,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	No.
PFC OF ILLINOIS, INC. an Illinois	)	
corporation; JOSEPH PASCALE, an individual;	)	
and TERESA FOODS, INC., an Illinois	)	
corporation,	)	
	)	
Defendants.	)	

**COMPLAINT**

1. Aurelio’s Is Pizza Franchise, Ltd. (“Aurelio’s”) brings this lawsuit against PFC of Illinois, Inc. (“PFC”), Joseph Pascale, and Teresa Food, Inc. (“Teresa Food”) to stop their intentional counterfeiting and infringement of Aurelio’s federally registered trademarks. Mr. Pascale and his company PFC have contracted with Teresa Food to manufacture uncooked, frozen pizzas and to wrongfully place Aurelio’s name and registered trademarks on these pizzas (the “Counterfeit Pizzas”). The Counterfeit Pizzas are not associated with Aurelio’s and are inferior to authentic, Aurelio’s® brand pizzas in numerous ways, including their ingredients, portions, and taste. Moreover, the Counterfeit Pizzas’ crusts are machine-made, unlike authentic Aurelio’s® brand pizzas, which are all handmade. Mr. Pascale and PFC have been passing off Counterfeit Pizzas as authentic, Aurelio’s® brand pizzas in wholesale sales to sports teams to re-sell as fundraisers. This attempt to trade on Aurelio’s goodwill constitutes the intentional and willful infringement, dilution, and counterfeiting of Aurelio’s trademarks. Aurelio’s seeks immediate injunctive relief to protect its trademarks, as well as various actual, statutory, and enhanced damages.

## **JURISDICTION AND VENUE**

2. This Court has original jurisdiction over this matter pursuant to the Lanham Trademark Act of 1946, as amended, 15 U.S.C. § 1051, *et seq.*, 28 U.S.C. §§ 1331 and 1338(a) & (b).

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

## **PARTIES**

4. Plaintiff Aurelio's is a family-owned pizzeria company. Since they opened their first restaurant in Homewood, Illinois over fifty years ago, the Aurelio family has made high quality pizza, pasta and sandwiches, and offers them in generous portions. Aurelio's uses only high quality ingredients from specific suppliers in its secret recipes and its Aurelio's® brand pizzas have developed an almost cult-like following. Aurelio's owns a number of federally registered trademarks, including "Aurelio's Is Pizza" along with its shield design and the trademark "Aurelio's." Aurelio's offers limited licenses to franchisees that allow the franchisees to use Aurelio's trademarks solely for retail restaurant operations under strict quality and consistency controls.

5. Defendant Joseph Pascale is an individual living in Illinois and an owner of PFC of Illinois, Inc.

6. Defendant PFC is an Illinois company headquartered at 9901 West Lincoln Highway, Frankfort, Illinois. PFC is a franchisee of Aurelio's. It presently has a limited franchise license to run a retail Aurelio's franchise at its headquarters in Frankfort, Illinois. As part of its limited franchise agreement, PFC acknowledged Aurelio's trademark ownership and promised that it would only use Aurelio's trademarks at the franchise location on authentic Aurelio® brand pizzas. PFC further agreed that it would not engage in any wholesale sales.

7. Defendant Teresa Food is an Illinois company with offices at 116 Main Street, Peotone, Illinois. It has no affiliation with Aurelio's. On information and belief, Teresa Food is a manufacturer of frozen pizzas.

### **FACTUAL BACKGROUND**

8. In 1959, Joseph Aurelio, Sr. opened a pizzeria in Homewood, Illinois. He used high quality ingredients in his food and served generous portions. Mr. Aurelio developed a secret recipe for the key elements of every one of his pizzas, which includes a secret sauce and low moisture mozzarella cheese. Then and now, every pizza was and is handmade. On the meat pizzas, Mr. Aurelio used high quality meat toppings, which themselves are made with a secret recipe.

9. Mr. Aurelio's pizza became widely popular and he built enormous good will among pizza fans. Mr. Aurelio incorporated Aurelio's and began to expand.

10. As part of the expansion, Aurelio's began offering limited licenses to franchisees. Even as Aurelio's has expanded into franchises, it has maintained strict controls over the quality of food served in every Aurelio's pizzeria. For example, every Aurelio's® brand pizza uses the same ingredients, including the same secret sauce and meats, that Mr. Aurelio used. Aurelio's sources its ingredients from a small group of exclusive suppliers from which every Aurelio's pizzeria purchases. Every Aurelio's® brand pizza crust is still handmade. None of Aurelio's crusts contain preservatives, which can negatively impact the taste of the crust, or soy products, which can cause allergic reactions.

11. Pizza consumers associate Aurelio's trademarks, including "Aurelio's," "Aurelio's Is Pizza," and the shield logo, with Aurelio's® brand pizza.

12. Aurelio's Pizza, Inc. registered the trademark "Aurelio's" with the United States Patent and Trademark Office (the "USPTO") under registration number 1230599. The registration for the "Aurelio's" mark is attached hereto as Exhibit A.

13. Aurelio's Pizza, Inc. also registered the mark "Aurelio's Is Pizza" with the USPTO under registration number 3393848. The registration for the "Aurelio's Is Pizza" mark is attached hereto as Exhibit B. The registration includes a prototype and description of the shield design logo.

14. Aurelio's Pizza, Inc. also registered, among other trademarks, "Life Begins at Aurelio's," "Aurelio's, the Family Pizzeria," "TELL 'EM 'JOE SENT ME,'" "LIL' PIE," and "Mama Aurelio's Spinach Calabrese." All of these trademarks are in good standing.

15. Aurelio's Pizza, Inc. assigned the ownership of its various logos and trademarks to Aurelio's.

16. Sometime around 1976, Mr. Pascale formed PFC to become a franchisee of Aurelio's. PFC has operated the Frankfort, Illinois Aurelio's franchise through limited franchise agreements since then.

17. Mr. Pascale currently has ownership interests in two other Aurelio's franchises, which each operate under their own limited franchise agreements.

18. On or about February 7, 2010, PFC entered the current agreement with Aurelio's for a limited license to conduct a retail Aurelio's pizzeria franchise at 310 West Lincoln Highway, Frankfort, Illinois (the "Franchise Agreement"), later changed to 9901 West Lincoln Highway, Frankfort, Illinois. In this agreement, Aurelio's granted PFC the right to use certain of Aurelio's trademarks "solely at the franchised location." PFC also promised that it would run its Aurelio's franchise as "a sit-down type of pizzeria." The agreement did not provide PFC with the right to make any wholesale sales. To the contrary, it prohibited PFC from

“sell[ing] at wholesale or for redistribution or resale” pizza and any other products offered at the store, “either with or without the use of [Aurelio’s] marks.”

19. A true and accurate copy of the Franchise Agreement is attached hereto as Exhibit C.

20. Aurelio’s has not licensed the use of its trademarks for any wholesale sales.

### **FACTS ESTABLISHING DEFENDANTS’ ILLEGAL CONDUCT**

21. Despite PFC’s limited license to use Aurelio’s trademarks only at the franchise location and its recognition that it had no rights to make wholesale sales, PFC has been selling 12” diameter frozen Counterfeit Pizzas at wholesale for sports teams to re-sell as fundraisers.

22. Aurelio’s understands that Mr. Pascale and PFC offer these Counterfeit Pizzas to coincide with the sports’ seasons.

23. PFC contracts with frozen pizza manufacturers, such as Teresa Food, to manufacture these frozen pizzas. PFC and Mr. Pascale arrange for Teresa Food to place Aurelio’s name and its trademarked shield on these frozen Counterfeit Pizzas.

24. For example, Mr. Pascale or PFC recently sold frozen Counterfeit Pizzas at wholesale for resale by the Homewood-Flossmoor High School girls’ field hockey team. The team members took orders for what they incorrectly understood to be authentic Aurelio’s® brand 12” diameter frozen pizzas and collected prepayments from their customers.

25. On October 7, 2011, Mr. Pascale, PFC or Teresa Food sent a refrigerated truck to the Homewood-Flossmoor High School parking lot to distribute a large number of frozen Counterfeit Pizzas that were sold wholesale as part of the fundraiser.

26. A woman wearing an Aurelio's uniform T-shirt and nametag oversaw the distribution, falsely reinforcing that the shipment was an Aurelio's-sanctioned event. She distributed the Counterfeit Pizzas to members of the girls' field hockey team and their parents for delivery to their customers.

27. Mr. Pascal has arranged for PFC to make similar wholesale sales of Counterfeit Pizzas to several local softball teams and to Olympia Gymnastics, which is located in Joliet, Illinois.

28. On information and belief, Mr. Pascal has made additional wholesale sales of Counterfeit Pizzas to other sports teams that are currently unknown to Aurelio's.

29. The following two photographs are true and accurate depictions of 12" diameter Counterfeit Pizzas sold at wholesale by PFC:



**12" COUNTERFEIT PIZZA**



**CLOSE UP -- COUNTERFEIT PIZZA LABEL**

30. The logo that Mr. Pascale, PFC and Teresa Food used on the Counterfeit Pizzas is virtually identical to Aurelio's trademarked shield. A true and accurate depiction of Aurelio's trademark shield is below:



**CLOSE UP - AUTHORIZED PIZZA BOX**

31. The Counterfeit Pizzas made by Teresa Food are not of the same high quality for which Aurelio's® brand pizza is well known.

32. Long ago, Aurelio's made the decision not to sell machine-made manufactured pizzas for any reason. Aurelio's has never allowed anyone put Aurelio's trademarks on any pizza that is not handmade.

33. Unlike the crusts of authentic Aurelio's® brand pizzas, the crusts of the Counterfeit Pizzas made by Teresa Food are not handmade. The Counterfeit Pizzas made by Teresa Food also contain soy and preservatives, which are not part of authentic Aurelio's® brand pizza crusts.

34. Aurelio's cannot determine without further testing whether the Counterfeit Pizzas used Aurelio's secret sauce, high quality cheese or exclusive meats, which are only sold through Aurelio's authorized suppliers.

35. The toppings on the Counterfeit Pizzas made by Teresa Food are not as generous as those on authentic Aurelio's® brand pizzas.

36. The Counterfeit Pizzas made by Teresa Food are 12" in diameter. Authentic Aurelio's® brand pizzas are only available in 10"-, 13"- and 15"-diameter pies.

37. On information and belief, Mr. Pascale and PFC began having Counterfeit Pizzas manufactured for sale at wholesale at least six years ago.

38. Aurelio's was unaware of the existence of the Counterfeit Pizzas until this month, October, 2011.

39. Although Aurelio's is not currently aware of the extent of sales of Counterfeit Pizzas by Mr. Pascale and PFC using Aurelio's trademark, such sales could exceed 100,000 pizzas over the last six years.



40. Aurelio's confronted Mr. Pascale about his participation in the unauthorized sale of Counterfeit Pizzas to the Homewood-Flossmoor High School girls' field hockey team shortly after Aurelio's learned of it. Mr. Pascale stated that such conduct would not occur again. However, the last time that Mr. Pascale made such a promise, he broke it.

41. More than eight years ago, a member of Aurelio's management came upon a gas station selling pizzas under the Aurelio's trademark. Aurelio's does not sell pizzas at wholesale, so he knew that the pizzas were counterfeit. After investigating their origin, Aurelio's learned that Mr. Pascale had sold the unauthorized pizzas at wholesale through PFC's Frankfort franchise. Aurelio's brought the violation to Mr. Pascale's attention and Mr. Pascale promised that PFC would not repeat the conduct.

42. On information and belief, Mr. Pascale or PFC will again contract with a frozen pizza manufacturer, such as Teresa Food, to make Counterfeit Pizzas bearing Aurelio's trademarks and will again sell Counterfeit Pizzas at wholesale.

43. Aurelio's has invested substantial time and resources over several decades building up the good will and reputation associated with its trademarks. It has built its good will and reputation through the operation of its retail store, as well as through Aurelio's franchises around the Chicago area and the country, including in states as far away as Florida and Nevada.

44. Aurelio's is famous for producing high quality handmade pizzas.

45. The Defendants' production of Counterfeit Pizzas using Aurelio's trademarks has damaged and continues to damage Aurelio's good will and reputation. The Defendants' misappropriation of Aurelio's trademarks has also diverted sales that rightfully belong to Aurelio's.

**COUNT I**  
**FALSE DESIGNATION OF ORIGIN AND TRADEMARK INFRINGEMENT**  
**(15 U.S.C. §§ 1114 & §1125)**  
**(AGAINST ALL DEFENDANTS)**

46. Aurelio's incorporates paragraphs 1 through 45 as if fully stated herein.

47. Aurelio's owns the "Aurelio's" trademark and the "Aurelio's Is Pizza" trademark along with the shield logo.

48. Aurelio's trademarks are registered with the United States Trademark and Patent Office.

49. The unauthorized use of Aurelio's trademarks in commerce by Mr. Pascale, PFC, and Teresa Food has misled the purchasing public into believing that the counterfeit frozen pizzas are associated, sponsored, endorsed, or in some other manner affiliated or connected with Aurelio's.

50. The continued unauthorized use of Aurelio's trademarks by Mr. Pascale, PFC, and Teresa Food will mislead the purchasing public to believe that the counterfeit frozen pizzas are still associated, sponsored, endorsed, or in some other manner affiliated or connected with Aurelio's.

51. The Defendants' production of low quality pizzas with machine-made crusts has eroded the strength of Aurelio's good will, built up over decades of producing high quality products.

52. By reason of Mr. Pascale's and PFC's willful infringement of the Aurelio's trademarks as alleged above, Mr. Pascale and PFC have realized, and will continue to realize, profits, and Aurelio's has suffered, and will continue to suffer, damage.

53. Mr. Pascale and PFC have promised to refrain from selling counterfeit Aurelio's products in the past and failed to keep the promise. Aurelio's has no reason to believe

that Mr. Pascale and PFC will refrain from infringing Aurelio's trademarks unless they are enjoined from doing so.

54. The infringement of Aurelio's trademarks causes irreparable damage to Aurelio's. Ascertaining the amount of compensation that would afford Aurelio's adequate relief for such continuing acts will be difficult. Therefore, Aurelio's remedy at law is not adequate to compensate it for its ongoing injuries.

55. The Defendants' infringement has been willful and deliberate. This is an exceptional case.

### **PRAYER FOR RELIEF**

WHEREFORE, Aurelio's respectfully requests that the Court:

- A. enter preliminary and permanent injunctions against PFC, Joseph Pascale, and Teresa Food prohibiting further infringement of Aurelio's trademarks;
- B. enter an order that requires PFC, Joseph Pascale, and Teresa Food to deliver or destroy all infringing labels, signs, prints, packages, wrappers, receptacles, and advertisements in its possession bearing the marks "Aurelio's" or "Aurelio's Is Pizza" and all plates, molds and other means of making the same;
- C. award Aurelio's damages adequate to compensate it for the Defendants' infringement, together with prejudgment interest;
- D. award Aurelio's an amount equal to the Defendants' profits earned as a result of their infringement of Aurelio's trademarks;
- E. award Aurelio's treble damages;
- F. award Aurelio's punitive damages;
- G. award Aurelio's its reasonable attorneys' fees and costs;
- H. award Aurelio's all other damages permitted by 15 U.S.C. §§ 1114, 1116 & 1125; and
- I. grant such additional relief as this Court deems appropriate.

**COUNT II**  
**TRADEMARK DILUTION (15 U.S.C. § 1125(c))**  
**(AGAINST ALL DEFENDANTS)**

56. Aurelio's incorporates paragraphs 1 through 55 as if fully stated herein.

57. Aurelio's owns the "Aurelio's" trademark and the "Aurelio's Is Pizza" trademark along with the shield logo.

58. Aurelio's trademarks are registered with the United States Trademark and Patent Office.

59. The Aurelio's trademarks are famous in the Chicago area and in the other locations that Aurelio's serves.

60. The unauthorized use of Aurelio's trademarks by Mr. Pascale, PFC, and Teresa Food on low quality pizzas with machine-made crusts in the Chicago area has eroded the strength of the good will associated with Aurelio's trademarks, built up over decades of producing high quality products.

61. The continued unauthorized use of Aurelio's trademarks by Mr. Pascale, PFC, and Teresa Food on low quality pizzas with machine-made crusts will continue to erode the strength of the good will associated with Aurelio's trademarks, built up over decades of producing high quality products.

62. Mr. Pascale and PFC have promised to refrain from selling counterfeit Aurelio's products in the past and failed to keep the promise. Aurelio's has no reason to believe that Mr. Pascale and PFC will refrain from infringing Aurelio's trademarks unless they are enjoined from doing so.

63. The infringement of Aurelio's trademarks causes irreparable damage to Aurelio's. Ascertaining the amount of compensation that would afford Aurelio's adequate relief

for such continuing acts will be difficult. Therefore, Aurelio's remedy at law is not adequate to compensate it for its ongoing injuries.

64. The Defendants' infringement has been willful and deliberate. This is an exceptional case.

### **PRAYER FOR RELIEF**

WHEREFORE, Aurelio's respectfully requests that the Court:

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- B. enter an order that requires PFC, Joseph Pascale, and Teresa Food to deliver or destroy all infringing labels, signs, prints, packages, wrappers, receptacles, and advertisements in its possession bearing the marks "Aurelio's" or "Aurelio's Is Pizza" and all plates, molds and other means of making the same;
- C. award Aurelio's damages adequate to compensate it for the Defendants' infringement, together with prejudgment interest;
- D. award Aurelio's an amount equal to the Defendants' profits earned as a result of their infringement of Aurelio's trademarks;
- E. award Aurelio's treble damages;
- F. award Aurelio's punitive damages;
- G. award Aurelio's its reasonable attorneys' fees and costs;
- H. award Aurelio's all other damages permitted by 15 U.S.C. §§ 1114, 1116 & 1125; and
- I. grant such additional relief as this Court deems appropriate.

### **COUNT III**

#### **TRADEMARK COUNTERFEITING (15 U.S.C. § 1114(a)) (AGAINST MR. PASCALE & PFC)**

65. Aurelio's incorporates paragraphs 1 through 64 as if fully stated herein.

66. Aurelio's owns the "Aurelio's" trademark and the "Aurelio's Is Pizza"

trademark along with the shield logo.

67. Aurelio's trademarks are registered with the United States Trademark and Patent Office.

68. For decades, Aurelio's has continuously used the trademarks on the goods and services it offers and to identify numerous authentic Aurelio's locations across the country.

69. PFC and Mr. Pascale infringed Aurelio's trademarks by using them in an unauthorized manner in an attempt to confuse the buying public into thinking that the counterfeit frozen pizzas were associated with Aurelio's good name.

70. PFC and Mr. Pascale used a virtually identical Aurelio's Is Pizza trademark in the shield design on goods that were expressly not authorized in the Franchise Agreement.

71. PFC and Mr. Pascale had been warned before that they were not entitled to use the Aurelio's trademarks on any wholesale goods. They also knew that they were not permitted to use the Aurelio's trademarks on pizzas that were not handmade and that were not made with the secret ingredients. As such, PFC and Mr. Pascale were aware that their use of Aurelio's trademarks on manufactured frozen pizzas was a counterfeit use.

72. PFC and Mr. Pascale trafficked the counterfeit goods.

73. PFC and Mr. Pascale's counterfeit trademark was placed on pizzas, the most recognizable of Aurelio's products, in the market in which Aurelio's is most famous.

74. PFC's and Mr. Pascale's application of counterfeit trademarks was intended to and did cause customers confusion, mistake or deceit as to the origin of the frozen pizzas with machine-made crusts.

75. The Defendants' counterfeiting scheme was willful and deliberate.

## **PRAYER FOR RELIEF**

WHEREFORE, Aurelio's respectfully requests that the Court:

- A. enter preliminary and permanent injunctions against PFC and Joseph Pascale prohibiting further counterfeiting of Aurelio's trademarks;
- B. enter an order that requires PFC and Joseph Pascale to deliver or destroy all counterfeit labels, signs, prints, packages, wrappers, receptacles, and advertisements in its possession bearing the marks "Aurelio's" or "Aurelio's Is Pizza" and all plates, molds and other means of making the same;
- C. award Aurelio's damages adequate to compensate Aurelio's for PFC's and Joseph Pascale's counterfeiting, together with prejudgment interest;
- D. award Aurelio's an amount equal to PFC's and Joseph Pascale's profits earned as a result of their counterfeiting of Aurelio's trademarks;
- E. award Aurelio's statutory damages;
- F. award Aurelio's treble damages;
- G. award Aurelio's punitive damages;
- H. award Aurelio's its reasonable attorneys' fees and costs;
- I. award Aurelio's all other damages permitted by 15 U.S.C. §§ 1114, 1116 & 1125; and
- J. grant such additional relief as this Court deems appropriate.

### **COUNT IV BREACH OF CONTRACT (AGAINST PFC)**

- 76. Aurelio's incorporates paragraphs 1 through 75 as if fully stated herein.
- 77. The Franchise Agreement is a valid contract supported by consideration.
- 78. Aurelio's has performed its obligations under the Franchise Agreement.
- 79. PFC repeatedly promised in the Franchise Agreement not to exceed the

bounds of its entitlement to use Aurelio's trademarks and to promptly report to Aurelio's any unauthorized use of Aurelio's trademarks. PFC breached these promises.

80. PFC also promised in the Franchise Agreement not to sell products at wholesale and acknowledged that such right was reserved solely to Aurelio's. PFC breached these promises.

81. Aurelio's has been damaged by PFC's breaches.

82. PFC agreed to be liable to Aurelio's for the costs and expenses of Aurelio's enforcement of the Franchise Agreement, court costs and reasonable attorneys' fees.

WHEREFORE, Aurelio's respectfully request that the Court:

- A. enter preliminary and permanent injunctions against PFC prohibiting further infringement of Aurelio's trademarks;
- B. award Aurelio's damages adequate to compensate Aurelio's for PFC's breaches of contract, together with prejudgment interest;
- C. award Aurelio's an amount equal to PFC's profits;
- D. award Aurelio's their reasonable attorneys' fees and costs; and
- E. grant Aurelio's such additional relief as this Court deems appropriate.

**PLAINTIFF DEMANDS A TRIAL BY JURY.**

Dated: October 20, 2011

Respectfully submitted,

/s/ Ian H. Fisher

One of the Attorneys for Aurelio's Is Pizza Franchise, Ltd.

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