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**Document Filed Electronically**

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEW JERSEY

RUTT'S HUT, INC.,	:	
	:	Civil Action No.
Plaintiff,	:	
	:	District Judge
v.	:	Magistrate Judge
	:	
MUTT'S HUT INTERNATIONAL, ADAM'S	:	
BAGEL & DELI, MAGDI MUHAMMAD, and	:	
ED MADSEN,	:	
	:	
Defendants.	:	
	:	X

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Rutt's Hut, Inc. ("Rutt's Hut"), a New Jersey corporation doing business at 413-417 River Road, Clifton, New Jersey 07036, for its complaint against defendants Mutt's Hut International, Adam's Bagel & Deli, Magdi Muhammad, and Ed Madsen, doing business at 741 Broad Street, Clifton, New Jersey 07013 (collectively "defendants"), says:

**NATURE OF THE SUIT**

This is an action for trademark infringement and unfair competition arising from defendants' improper use of Rutt's Hut's trademark and goodwill. Such acts have injured the goodwill and reputation of Rutt's Hut and have damaged its business, and unless restrained will continue to damage Rutt's Hut.

## **JURISDICTION AND VENUE**

1. This is an action between citizens of this state in which Rutt's Hut seeks declaratory, pecuniary, and injunctive relief from acts of the defendants arising under the trademark and unfair competition laws of the United States, 15 U.S.C. §§ 1114(1) and 1125(a) ("the Lanham Act") and the unfair competition laws of the State of New Jersey.

2. The claims alleged in this Complaint arise in the State and District of New Jersey.

3. This Court has original jurisdiction over this dispute pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a), as this action arises under the Lanham Act (15 U.S.C. §§ 1051 *et seq.*).

4. This Court has jurisdiction over Rutt's Hut's claims of unfair competition arising under state law pursuant to 28 U.S.C. § 1338(b), as well as pendent jurisdiction over those and the remaining claims.

5. This Court has supplemental jurisdiction over Rutt's Hut's state law claims set forth in this Complaint pursuant to 28 U.S.C. § 1367(a).

6. Venue is proper in this district under 28 U.S.C. § 1391, as defendants do business in this district, and upon information and belief, have sold products in this district that are the subject of this suit.

7. Defendants are now, and at all times relevant to this Complaint have been, subject to personal jurisdiction in the State and District of New Jersey.

## **PARTIES**

8. Rutt's Hut is a New Jersey corporation with offices at 413-417 River Road, Clifton, New Jersey 07036.

9. Upon information and belief, defendant Mutt's Hut International is a corporation of the State of New Jersey, doing business as Mutt's Hut at 741 Broad Street, Clifton, New Jersey 07013.

10. Upon information and belief, defendant Adam's Bagel & Deli is a corporation of the State of New Jersey, doing business at 741 Broad Street, Clifton, New Jersey 07013.

11. Upon information and belief, Magdi Muhammad is an owner of and is operating Mutt's Hut, doing business at 741 Broad Street, Clifton, New Jersey 07013.

12. Upon information and belief, Ed Madsen, a resident of Clifton, New Jersey, is an owner of and is operating Mutt's Hut, doing business at 741 Broad Street, Clifton, New Jersey 07013.

13. Defendants Mutt's Hut International, Magdi Muhammad, and Ed Madsen are hereinafter collectively referred to as "defendants."

## **BACKGROUND**

### **Rutt's Hut And Its Trademark**

14. Rutt's Hut has operated its restaurant in Clifton, New Jersey since 1928.

15. Rutt's Hut provides restaurant services, and most notably, sells unique and famous hot dogs called "RIPPERS."

16. Rutt's Hut uses the trademark RUTT'S HUT in United States commerce to refer to its goods and services, and prominently displays such trademark on its storefront sign, and on its products.

17. Rutt's Hut owns the trademark for RUTT'S HUT in the United States, a copy of which is attached as Exhibit A:

<b>Reg. No.:</b>	<b>Registered:</b>	<b>First Used:</b>	<b>Goods/Services:</b>
1,368,370	October 29, 1985	1928	Restaurant Services

18. Rutt's Hut's restaurant services are nationally recognized and plaintiff is dedicated to providing the highest quality of food to the community of Clifton, New Jersey as well as patrons visiting Clifton, New Jersey from all around the world.

19. Rutt's Hut prides itself on its quality restaurant services and customer service and expends considerable time and effort in marketing and advertising to cultivate the goodwill and reputation that it has developed with its patrons.

20. Rutt's Hut is a famous restaurant that has been, and continues to be, featured on television programs, including on the Travel Channel, the Food Network, and PBS, and in magazines such as *Gourmet Magazine* and *Details Magazine*, and has and continues to be included in several lists of famous American restaurants as well as restaurants you would want to go to for a hot dog.

21. Rutt's Hut is the owner of extensive common-law trademark rights under Federal and New Jersey statutory and common law by virtue of continuous use of the mark for over 80 years.

22. As part of its promotion and advertisement of its services, plaintiff has used the RUTT'S HUT trademark in New Jersey and in regional advertisements to identify its restaurant services for over 80 years. During that time, the RUTT'S HUT trademark has become imbued with goodwill and renown, which is exclusively associated with plaintiff.

23. An example of plaintiff's use of the RUTT'S HUT trademark is reproduced below:



### **Defendants' Wrongful Conduct**

24. Defendants operate a restaurant in Clifton, New Jersey, offering a variety of restaurant services.

25. Defendants are using the designation "MUTT'S HUT" as the name of their restaurant.

26. An example of defendants' use of the MUTT'S HUT designation ("the Infringing Designation") is reproduced in a picture of their storefront shown below:



27. Defendants have advertised their restaurant services; namely, the sale of hot dogs, using the Infringing Designation in flyers sent to many of the residents of Clifton, New Jersey (attached as Exh. B).

28. Several references to the sale of hot dogs are included on the flyer as well as a prominently displayed hot dog included with the name of the restaurant; namely, Mutt's Hut.

29. Upon information and belief, defendants were aware of the RUTT'S HUT trademark and plaintiff's rights in and to such trademark, prior to adopting and using the Infringing Designation.

30. Upon information and belief, defendants chose the Infringing Designation to confuse and deceive customers that their goods were associated with, approved by, or sponsored by Rutt's Hut.

31. The services offered by defendants in connection with the Infringing Designation are highly similar to and directly competitive with the services provided by plaintiff under their RUTT'S HUT trademark.

32. Plaintiff has no association, affiliation, sponsorship, or any other connection to defendants.

33. Upon information and belief, such deception and confusion was intentional and designed by defendants to trade off of and capitalize on plaintiff's goodwill and reputation.

34. When Rutt's Hut learned of defendants' conduct, it notified the defendants that they had been infringing Rutt's Hut's trademark and the goodwill and reputation thereof.

35. Despite having such notice, defendants have not ceased nor desisted from their wrongful conduct.

## **FIRST CLAIM FOR RELIEF**

### **Infringement Of Registered Trademarks In Violation Of 15 U.S.C. § 1114(1)**

36. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

37. Defendants' use of the MUTT'S HUT designation is likely to cause confusion, or to cause mistake, or to deceive as to origin, sponsorship, or approval of defendants' goods, services, or commercial activities, in violation of Section 32(1) of the Lanham Act (15 U.S.C. § 1114(1)).

38. The aforesaid infringement by defendants was committed willfully, knowingly, maliciously, and in conscious disregard of Rutt's Hut's rights.

39. The aforesaid infringement by defendants has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to Rutt's Hut's property and business.

40. Upon information and belief, defendants' conduct, including their continuing infringement after notice, constitutes willful and malicious infringement of the RUTT'S HUT trademark under 15 U.S.C. § 1114, thus rendering the present case as an "exceptional" case as that term is employed in 15 U.S.C. § 1117.

41. Rutt's Hut has no adequate remedy at law.

## **SECOND CLAIM FOR RELIEF**

### **Trademark Infringement In Violation Of 15 U.S.C. § 1125(a)**

42. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

43. Defendants' use of the MUTT'S HUT designation is likely to cause confusion, or to cause mistake, or to deceive as to origin, sponsorship, or approval of defendants' goods,

services, or commercial activities, in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

44. The aforesaid infringement by defendants was committed willfully, knowingly, maliciously, and in conscious disregard of Rutt's Hut's rights.

45. The aforesaid infringement by defendants has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to Rutt's Hut's property and business.

46. Rutt's Hut has no adequate remedy at law.

### **THIRD CLAIM FOR RELIEF**

#### **Unfair Competition In Violation Of 15 U.S.C. § 1125(a)**

47. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

48. Defendants' use of the MUTT'S HUT designation constitutes unfair competition, in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

49. The aforesaid infringement by defendants was committed willfully, knowingly, maliciously, and in conscious disregard of Rutt's Hut's rights.

50. The aforesaid infringement by defendants has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to Rutt's Hut's property and business.

51. Rutt's Hut has no adequate remedy at law.

### **FOURTH CLAIM FOR RELIEF**

#### **Common-Law Unfair Competition**

52. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.



53. The aforementioned acts of defendants constitute unfair competition and unfair business practices contrary to the common laws of the United States and the State of New Jersey.

54. The aforesaid infringement by defendants was committed willfully, knowingly, maliciously, and in conscious disregard of Rutt's Hut's rights.

55. The aforesaid infringement by defendants has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to Rutt's Hut's property and business.

56. Rutt's Hut has no adequate remedy at law.

#### **FIFTH CLAIM FOR RELIEF**

##### **Unfair Competition Under N.J.S.A. §§ 56:4-1 *et seq.***

57. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

58. Defendants' unauthorized use of the MUTT'S HUT designation in advertising constitutes acts of unfair competition through defendants' appropriation for their own use of the name, brand, trademark, reputation, and goodwill of Rutt's Hut in violation of N.J.S.A. §§ 56:4-1 *et seq.*

59. The aforesaid infringement by defendants was committed willfully, knowingly, maliciously, and in conscious disregard of Rutt's Hut's rights.

60. The aforesaid infringement by defendants has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to Rutt's Hut's property and business.

61. Rutt's Hut has no adequate remedy at law.

## **SIXTH CLAIM FOR RELIEF**

### **Deceptive Acts And Practices In Violation Of The Common Law Of The State Of New Jersey**

62. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

63. Defendants' unauthorized use of the MUTT'S HUT designation in advertising constitutes deceptive trade practice in violation of the common law of the State of New Jersey.

64. The aforesaid infringement by defendants was committed willfully, knowingly, maliciously, and in conscious disregard of Rutt's Hut's rights.

65. The aforesaid infringement by defendants has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to Rutt's Hut's property and business.

66. Rutt's Hut has no adequate remedy at law.

## **PRAYER FOR RELIEF**

WHEREFORE, plaintiff Rutt's Hut, Inc., demands judgment as follows:

A. A preliminary and permanent injunction enjoining defendants, their officers, agents, servants, employees, attorneys, and those in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from:

1. using, reproducing, advertising, or promoting in connection with any product or service the RUTT'S HUT name or mark or any name or mark confusingly similar therewith;

2. using, reproducing, advertising or promoting any slogan, mark, or name that may be calculated to represent or that has the effect of representing that the products or services of defendants or any other person are sponsored by, authorized by, or in some way associated with Rutt's Hut;

3. injuring the commercial reputation, renown, and goodwill of Rutt's Hut or the RUTT'S HUT trademark;

4. using or reproducing any word, term, name, symbol, or device, or any combination thereof, on any product or in connection with any service that confuses or falsely represents or misleads, is calculated to confuse, falsely represent, or mislead, or that has the effect of confusing, falsely representing, or misleading, that the products, services, or activities of defendants or another are in some way connected with Rutt's Hut, or is sponsored, approved, or licensed by Rutt's Hut.

5. unfairly competing with Rutt's Hut in any way whatsoever; and

6. causing a likelihood of confusion with respect to Rutt's Hut or any injury to the business reputation of Rutt's Hut;

B. An award of damages to Rutt's Hut under the Lanham Act, and in particular pursuant to 15 U.S.C. § 1117(a), of up to three times the damages suffered by Rutt's Hut and three times the profits earned by any and all of the defendants;

C. An award to Rutt's Hut of compensatory, consequential, and/or incidental damages;

D. An award to Rutt's Hut of treble, exemplary, and/or punitive damages;

E. An award to Rutt's Hut of its reasonable attorney fees and the costs of this action;

F. Prejudgment and postjudgment interest on the above monetary awards; and

G. Such other and further relief as this Court deems equitable and just.

**DEMAND FOR JURY TRIAL**

Plaintiff Rutt's Hut, Inc. demands a trial by jury of twelve on all issues so triable.

Respectfully submitted,  
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Dated: March 9, 2011

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**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that with respect to the matter in controversy herein, neither plaintiff nor plaintiff's attorney is aware of any other action pending in any court, or of any pending arbitration or administrative proceeding, to which this matter is subject.

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Dated: March 9, 2011

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