

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

RICKY B. PERRITT, Individually;  
The Cupcakery, LLC, a Texas Limited  
Liability Company; Buster Baking, LLC,  
a Texas Limited Liability Company; and the  
Woodlands Baking, LLC, a Texas Limited  
Liability Company

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Plaintiffs,

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VS.

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CAUSE NO. 4:11-CV-23

PAMELA F. JENKINS, Individually; and  
The Cupcakery LLC, a Nevada Limited  
Liability Company

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Defendant.

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**PLAINTIFFS' FIRST AMENDED APPLICATION FOR TEMPORARY RESTRAINING  
ORDER WITHOUT NOTICE**

**TO THE COURT:**

Since the Court made its Order of January 18, 2011 setting a hearing on Plaintiffs' Application for Temporary Restraining Order, circumstances have arisen which require Plaintiffs to ask the court for an immediate Temporary Restraining Order Without Notice.

1. Plaintiffs incorporate by reference herein Plaintiffs' Original Complaint and the Affidavit of Ricky B. Perritt heretofore filed on January 14, 2011.
2. The Original Complaint included a verified Application for Temporary Restraining Order without Notice, and was supported by the Affidavit of Perritt.
3. Defendants were duly served with Summons and a copy of the Complaint on January 18, 2011. The court elected not to restrain and enjoin Defendants without notice but set the

matter down for hearing on January 31, 2011. Defendants were also served on January 18, 2011 with a copy of that Order.

4. Through a series of emails, attached hereto as a group as Exhibit "A" Plaintiffs' attorney gave actual notice to the Defendants by email of the complaint and application for temporary restraining order. Defendant Pamela Jenkins sent several emails to Plaintiff's attorney, making clear that she had actual notice of the relief sought by Plaintiffs.
5. Plaintiffs' attorney sent copies of all the above filings to Kirk Kaplan, an attorney in Las Vegas, Nevada who had represented the Defendants in previous litigation.
6. Defendant Jenkins told Plaintiffs' lawyer in an email that Kaplan would represent her in this matter, but later sent an email stating that Kaplan did not represent Defendants.
7. Defendant sent an email to counsel for Plaintiffs stating that she was represented by another law firm. Counsel for Plaintiffs contacted that law firm and they have no record that either Defendant is a client.
8. Since Defendants are not represented counsel has communicated with them by email to see if they will waive service. They would not respond so Plaintiffs had them served.
9. Counsel also sent a proposed agreed temporary restraining order to Defendants. They will not agree to it.
10. On January 25, 2011 Plaintiffs learned that Defendant Jenkins has given an interview to the Las Vegas Sun. A true copy is attached hereto as Exhibit "B". In this interview Jenkins stated in effect that she would not act to protect the Trademark and Trade name "The Cupcakery™". Jenkins stated, in part:

Through research, I've found that the word cupcakery existed before I opened The Cupcakery. I believe the use of cupcakery as a noun can only maximize the exposure for myself and others who believe in the delicious spirit of cupcakes and cupcakeries. It is not, and never has been, my intent to limit the use of the word

cupcakery or purport to own the word, as my former partner is attempting to do. As I have received numerous requests nationwide regarding the phenomenon of cupcakes, the word cupcakery and other cupcake-related questions of late, I felt it was the right time to share the glory of The Cupcakery and all cupcakeries freely...

11. Jenkins repeated this same statement and other in a press release. This release has appeared on line. A true copy is attached hereto as Exhibit "C".
12. The above language and other inflammatory statements by Jenkins in the article and press release violate Jenkins contractual obligations, damage Plaintiffs, disparage Plaintiffs and damage the trademark, tradename and intellectual property of "The Cupcakery™."
13. The parties spent approximately \$70,000.00 litigating to protect the intellectual property of the enterprise, resulting in a settlement favorable to them.
14. Perritt has invested hundreds of thousands of dollars in opening new stores and developing the trademark and other intellectual property of the country. Jenkins, as alleged in the complaint has threatened to harm the trademark, and has now done so publically by falsely stating that the mark is not legally protectable and that she intends to "share the glory" by letting anyone who wishes to use the mark appropriate it for his own use and benefit without paying for the privilege.
15. Perritt's business plan includes opening a chain of stores across the United States, and ultimately selling them for a profit or taking them public. Jenkins has been paid or received credit for \$5000 each time a new store is opened plus a percentage of gross sales on each of Perritt's stores.
16. Jenkins' conduct is that of one who made a business deal—the settlement agreement in the previous lawsuit—and, having become dissatisfied with the deal, determines to destroy the business if she does not get her way.

17. Defendants, having been put on notice and served have shown by their conduct that they restrain themselves from violating the party's settlement agreement until the scheduled hearing. They cannot even wait until January 31, 2011 before affirmatively acting to harm Plaintiffs. This conduct has shown that they have no respect for this court of its procedures, and that they are unwilling to have this matter decided in an orderly process before an impartial Court. Rather Ms. Jenkins has chosen to flagrantly violate the agreement which Plaintiffs are trying to enforce.
18. To name just one specific area of potential damage that Ms. Jenkins' statements that the Mark is not protectable, the Monte Carlo Hotel and Casino is obligated under a licensing agreement to use "The Cupcakery™" marks and product. It pays for this privilege, and Mr. Perritt receives half the licensing fee, as does Ms. Jenkins. Her comments are calculated to encourage that licensee to refuse to pay the fee for what the owner claims is a trademark not protectable by law. Moreover, it greatly hampers Mr. Perritt's efforts to promote the trademark and to negotiate joint ventures, license agreements, or franchises, all of which he is actively doing.
19. Plaintiffs presently have pending applications for registration of "The Cupcakery™" with the United States Patent and Trademark office under application numbers 77562561; 77562548; 77562526; and 77562515. Such application process had been entrusted to a nationally known law firm, Greenberg Taurig LLP. Such applications are being paid for by Ricky B. Perritt, who is the owner of a 50% interest in the mark. Defendant's conduct endangers the granting of the application process because the United States Patent and Trademark office might consider Defendant Jenkins' statements, if repeated, to be an abandonment of the Application.

20. Plaintiffs understand the reluctance of this Court to grant injunctive relief without giving all sides an opportunity to be heard. Defendant Jenkins, rather than avail herself of that opportunity has deliberately and intentionally chosen to land as many low blows as possible before this Court has had an opportunity to review the matter and see if the implementation of a temporary restraining order or temporary injunction is appropriate. Her conduct can only be viewed as motivated by malice, and an attempt to hurt Mr. Perritt, even if it ultimately costs her financially.

21. Indeed Defendant Jenkins has done so by doing exactly what Plaintiffs feared. She has violated the agreement in each and all of the following respects:

- a. By acting through words and deeds to damage or destroy Perritt's undivided fifty percent (50%) interest in all the trademarks, tradenames, and other intellectual property of The Cupcakery, LLC, a Nevada Limited Liability Company.
- b. By acting through words and deeds to damage, destroy or interfere with the right given under the Settlement Agreement to control the Landing Page of the website "TheCupcakery.com."
- c. By acting through words and deeds to interfere with, delay and hamper Perritt's exclusive right during the four (4) year period from the date of the settlement Agreement to develop "The Cupcakery™" in all states except Nevada.
- d. By acting through words and deeds to violate her contractual obligation to conduct her business in such a fashion to protect the intellectual property of "The Cupcakery™."

- e. By acting through words and deeds in violation of her contractual obligation not to disparage the other party in any way or take any action which might damage the Trademarks, Tradenames or Intellectual Property of “The Cupcakery™.”
- f. By making statements which could be interpreted by third parties as an abandonment of the trademark and tradename, to the detriment of the Plaintiffs.
- g. By acting in any fashion to interfere with the current operation of the website “TheCupcakery.com” or from pulling down, modifying, amending, or otherwise changing any of the content of said website.
- h. By acting to abandon the trademark “The Cupcakery™” or making any statement that might be interpreted as an abandonment of the trademark.

22. Plaintiffs therefore again move this Court to grant a Temporary Restraining Order without further notice to Defendants, restraining and enjoining the Defendants, their agents, servants, employees, contractors, public relations advisors, attorneys and those persons in active concert and participation with them from the following:

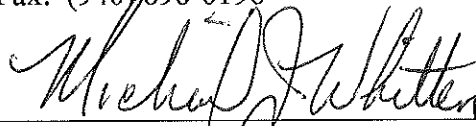
- a. Acting in any manner to damage or destroy Perritt’s undivided fifty percent (50%) interest in all the trademarks, tradenames, and other intellectual property of The Cupcakery, LLC, a Nevada Limited Liability Company.
- b. Acting in any manner to damage, destroy or interfere with the right given to Perritt under the Settlement Agreement to control the Landing Page of the website “TheCupcakery.com.”
- c. Acting in any manner to interfere with, delay and hamper Perritt’s exclusive right during the four (4) year period from the date of the settlement Agreement to develop “The Cupcakery™” in all states except Nevada.
- d. Acting in any manner to violate her contractual obligation to conduct her business in such a fashion to protect the intellectual property of “The Cupcakery™.”

- e. Acting in any manner to violate her contractual obligation not to disparage Ricky B. Perritt or his businesses in any way or taking any action which might damage the Trademarks, Tradenames or Intellectual Property of "The Cupcakery™."
- f. Making any statements which could be interpreted by third parties as an abandonment of the trademark and tradename, to the detriment of the Plaintiffs.
- g. Acting in any manner to interfere with the current operation of the website "TheCupcakery.com" or from pulling down, modifying, amending, or otherwise changing any of the content of said website.
- h. Speaking to the media about this case, on or off the record, or issuing any further press releases during the pendency of the case.
- i. By acting to abandon the trademark "The Cupcakery™" or making any statement that might be interpreted as an abandonment of the trademark.

Plaintiffs further move that this Court, after proper notice and hearing, grant a preliminary injunction granting the injunctive relief specified in the amended application for temporary restraining order, such injunctive relief to be effective until the conclusion of this lawsuit, or until further ORDER of this Court.

Respectfully submitted,

MICHAEL J. WHITTEN & ASSOCIATES, PC  
218 North Elm Street  
Denton, TX 76201  
(940) 383-1618 or Metro (972) 434-3833  
Fax: (940) 898-0196




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MICHAEL J. WHITTEN  
Texas SBN: 21392000

**VERIFICATION**


I have read the above and foregoing First Amended Application for Temporary Restraining Order. I have personal knowledge of the facts alleged therein and they are true and correct.

Dated January 25, 2011

  
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RICKY B. PERRITT

SWORN TO SUBSCRIBED BEFORE ME on. this 25th day of January, 2011.



  
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Notary Public, State of Texas

Date commission expires: \_\_\_\_\_