

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 §

Plaintiffs, §

VS. §

CAUSE NO. _____

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

Defendant. §

AFFIDAVIT OF RICKY B. PERRITT

THE STATE OF TEXAS §

COUNTY OF DENTON §

BEFORE ME, the undersigned authority on this date personally appeared Ricky B. Perritt who being by me duly sworn did depose and state as follows:

1. My name is Ricky B. Perritt. I reside in Denton County, Texas within the Eastern District of Texas.
2. I am above the age of 21 years, I have never been convicted of a felony or a misdemeanor involving moral turpitude and am in all things qualified to make this Affidavit.
3. I have read the Plaintiffs' Original Complaint in the above styled and numbered lawsuit. I have personal knowledge of all the facts alleged therein, and the facts alleged therein are true and correct.

4. I am well acquainted with Pamela F. Jenkins. Pamela Jenkins is my niece. She is my sister's daughter. Ms. Jenkins and I were in business together in a company known as The Cupcakery, LLC, a Nevada Limited Liability Company.
5. As alleged in my Original Complaint disputes arose concerning the operation of that business and in September 2009 I filed suit in this Court for Declaratory Judgment and other relief in an attempt to resolve those disputes. After I filed the suit, we reached a settlement agreement. A true and correct copy of that settlement agreement is attached to our Complaint and incorporated herein by reference.
6. Among the items which were most important in settling the previous lawsuit was the right to use and own all the intellectual property of The Cupcakery, LLC, a Nevada Limited Liability Company. Before I filed the previous lawsuit, a third party began using the name "The Cupcakery" to operate a business in the State of California. This individual copied our name, our recipes, and our décor to the extent that her business appeared to be the same as ours. In order to protect our tradename, trademarks, and other intellectual property we sued this individual in Federal Court in Las Vegas, Nevada. That suit was settled on favorable terms, the most important being the renunciation by the Defendant of any claim of our name and other intellectual property.
7. When the previous lawsuit between Pamela Jenkins and me was settled, a crucial part of the settlement was the ownership of the intellectual property including the trademark and trade name. I have opened three stores in Texas as alleged in our Complaint and each goes by the name "The Cupcakery" pursuant to our settlement agreement. Under the agreement Pamela Jenkins and I own the tradename, trademark

and intellectual property equally. Ms. Jenkins was given the rights to develop and use the intellectual property including the tradename and trademark in the State of Nevada. I was given the right to use and develop that tradename and trademark elsewhere in the United States for a period of time. Thereafter, Ms. Jenkins would have the right to go into other states if I did not open a store in those states within a set period of time, all as specified in the settlement documents.

8. The most essential aspect of the intellectual property that I own is the website called "TheCupcakery.com". A central part of the dispute which was settled had to do with the means and manner in promoting the business and of Ms. Jenkins inability to provide any financial support. A tremendous amount of the business of the stores, both in Nevada and in Texas comes directly from the website. The website is designed to separate the Nevada operations from those in Texas and elsewhere. It is designed so that all inquiries concerning ordering, catering and business development are channeled to Pamela Jenkins if the matter pertains to Nevada and to Ricky B. Perritt if the matter pertains to any other state. That was an essential and central part of our settlement agreement, and Defendants are threatening unilaterally to usurp the website "TheCupcakery.com" and have demanded that I obtain another website for my other companies.
9. Another central part of the settlement agreement was being active in promoting and protecting the trademark "The Cupcakery TM".
10. In addition to spending money in California to pursue the lawsuit against the individual wrongfully using our intellectual property, including our tradename, I have been active in spending money with intellectual property lawyers to have the

trademark registered with the United States office of patents, copyrights and trademarks.

11. In recent months Pamela Jenkins has reneged on our agreement to protect the intellectual property of the company. She has refused to pay her share of attorneys fees and expenses to defend the trademark and tradename from those who attempt to use it. She has refused to pay her share of the attorney's fees and expenses to have the mark properly registered. She has stated that she will give the right to use the trademark and tradename to third parties without payment of any licensing fee or other consideration, which is in direct breach of our agreement.
12. On the 12th day of January, 2011 I received an email from her in which she states that she will no longer share the website. The host of the website is BannerView.com. Although our settlement agreement gives me one half (½) ownership in the website and all other intellectual property, the contract between the website host is with The Cupcakery, LLC, a Nevada Limited Liability company. In the settlement agreement I received one half (½) of that intellectual property, but pursuant to our agreement that website host is to continue to host the website as they had a preexisting 5 year contract with The Cupcakery, LLC, a Nevada Limited Liability Company to do so.
13. I cannot over emphasize the significance of the website to me and to my businesses. We do not do yellow page advertising as we find it expensive and inefficient. We have found that most people today go to the internet to research and find business. We receive many orders each day at our stores from customers who find us on the internet and call in an order. Some of these orders are for large parties or catering and represent a significant portion of our revenue. Also, I receive many calls from

persons inquiring about investment opportunities. I presently am in the process of opening an additional store in Texas and have had serious discussions with investors who wish to open stores in Florida, Massachusetts and other states. Even one day without customers and investors having access to the website would do substantial harm to me, my investment and my business' daily operations. I have spent and am committed to spend hundreds of thousands of dollars to develop these businesses, the tradename, and the trademarks.

14. Paragraph 15 of our Settlement Agreement requires each of us to refrain from taking any action "which might damage the trademarks, tradenames, or intellectual property of The Cupcakery™. Ms. Jenkin's threatened actions will do such damage.
15. Paragraph 12 provides that the "[P]arties shall maintain a joint Cupcakery™ website which format shall be agreed to by the Parties. The website shall clearly and prominently direct all inquiries about development opportunities outside Nevada to Perritt. Ms. Jenkins threatened action would be not only a breach of the agreement, but also cause immediate and irreparable damages to Plaintiffs.
16. Paragraph 7 states that the parties will each own an individual 50% interest in "all The Cupcakery™ trademarks, tradenames and intellectual property". It further provides that each party is obligated to protect the names and marks. Defendants conduct will make it impossible for Plaintiffs to protect the mark.
17. Paragraph 2 also makes clear that the landing page of the website shall direct inquiries to Perritt and that Perritt has the sole right to design the landing page.
18. I have attempted to discuss with Pamela Jenkins her threat to usurp the website. She will not discuss it with me, curses me and has hung up the phone.

19. At the present time Pamela Jenkins owes \$7,989.65 for her share of attorney's fees and other expenses that I have advanced to protect the intellectual property and tradename of The Cupcakery™. When I have tried to discuss this matter with her, Ms. Jenkins refuses to acknowledge that she owes the money and gets angry. I find it impossible to deal with her on a rational, intelligent and business like basis.
20. I am asking the Court to grant a temporary restraining order restraining and enjoining the Defendant Pamela F. Jenkins and The Cupcakery, LLC, a Nevada Limited Liability Company and their agents, servants, employees and attorneys and those persons in active concert and participation with them from acting in any fashion to disrupt the current content and operations of the website "TheCupcakery.com", or doing any act which might damage the trademark, tradename or intellectual property of The Cupcakery™ pending a hearing and disposition of Plaintiffs' Motion for a Preliminary Injunction on the ground that immediate and irreparable loss, damage and injury will result to Plaintiff as set forth in my verified Complaint and my Affidavit.
21. Since Ms. Jenkins refuses to discuss this matter with me I believe that she intends to do exactly what she said, to take the website "TheCupcakery.com" and use it for her purposes, excluding me and my companies from its use and ownership. That website is owned 50% by me, and I have no adequate remedy other than injunctive relief to redress this threatened conduct.
22. If the Court goes to Google, Yahoo or any other search engine and types in the word "Cupcakery" "TheCupcakery.com" is the first item that will appear. Although there are other entities using the term "cupcakery" in their name, "The Cupcakery™"

belongs 50% to me and 50% to Pamela Jenkins and neither of us has the right to deprive the other of its use and benefit.

23. I seek this temporary restraining order only to maintain the status quo until such time that this Court can hold a hearing on my application for preliminary injunction. Because Ms. Jenkins made her threat so recently and I signed this Affidavit on a Friday, there is insufficient time to notify her or her attorney, if she has one, and hold a hearing before the threatened action.

Further affiant sayeth not.



RICKY B. PERRITT

SUSCRIBED AND SWORN TO BEFORE ME this 14 day of January, 2011, to certify which witness my hand and seal of office.



NOTARY PUBLIC, STATE OF TEXAS

