

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-cv-00039

QFA ROYALTIES LLC and  
THE QUIZNO'S MASTER LLC,

Plaintiffs,

v.

BLS GROUP, LLC, RAKESH SINGH,  
SANGEETA SINGH, SAVITRI SINGH,  
and SHRI SINGH,

Defendants.

**COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

Plaintiffs QFA Royalties LLC (“QFA”) and The Quizno’s Master LLC (“TQM”) (collectively, “Quiznos”), by their attorneys, and for their Complaint against defendants BLS Group, LLC (“BLS”), Rakesh Singh, Sangeeta Singh, Savitri Singh, and Shri Singh (collectively, the “Singhs”), state as follows:

**INTRODUCTION**

1. Defendants are the former franchisee and guarantors of a franchised Quiznos restaurant in Kentucky. Despite termination of the franchise agreement for cause, defendants continue to operate a competitive business at the same location under Quiznos’ federally-protected trademarks, trade names, and trade dress.

2. Quiznos brings this action to obtain an injunction prohibiting defendants from continuing to infringe Quiznos’ trademarks, trade names, and trade dress and compete unfairly

against Quiznos in violation of the Lanham Act. Quiznos further seeks an injunction enjoining defendants from continuing to violate the franchise agreement's post-termination covenants and an award of money damages arising out of defendants' violation of the Lanham Act and material breaches of the franchise agreement and its personal guarantees.

### **PARTIES**

3. Plaintiff QFA is a Delaware limited liability company with its principal place of business at 7595 Technology Way, Suite 200, Denver, Colorado 80237. QFA is the franchisor of the network of franchised Quiznos restaurants in the United States.

4. Plaintiff TQM is also a Delaware limited liability company with its principal place of business at 7595 Technology Way, Suite 200, Denver, Colorado 80237. TQM owns and licenses to QFA the intellectual property used in connection with QFA's franchising program.

5. Defendant BLS is a Kentucky limited liability company with its principal place of business in Kentucky. BLS is the former franchisee under the franchise agreement at issue.

6. Upon information and belief, the Singhs are each citizens and residents of Kentucky. They collectively own 100% of the membership interest in BLS and each personally guaranteed BLS's obligations under the franchise agreement.

### **JURISDICTION AND VENUE**

7. The Court has original subject matter jurisdiction of this civil action under 28 U.S.C. §§ 1331, 1338, and 1367, in that this is a civil action involving claims arising under the laws of the United States, including an Act of Congress relating to trademarks, and wherein all other claims are so related to the claims within the Court's original jurisdiction that they form part of the same case or controversy.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391, in that a substantial part of the events or omissions giving rise to the claims asserted in this complaint occurred in this judicial district.

9. Jurisdiction and venue are also proper in this judicial district because defendants expressly agreed in writing in both the franchise agreement and its guaranty that any action between the parties would be brought exclusively in this Court, and they irrevocably consented to, and waived any objection to, jurisdiction of and venue in this Court.

### **RELEVANT FACTS**

#### **The Quiznos Franchise System**

10. QFA is the franchisor of the approximately 950 Quiznos restaurants located across the country, Canada, and in 30 additional foreign countries.

11. Quiznos restaurants offer submarine-style sandwiches, salads, and other food products and beverages.

12. QFA grants franchises to qualified persons to establish and operate Quiznos restaurants under written franchise agreements with QFA, together with a limited license to use certain Quiznos trademarks and the Quiznos trade dress in connection therewith.

#### **The Quiznos Name, Marks, and Trade Dress**

13. To identify the source, origin, and sponsorship of Quiznos products and services, and to distinguish those products and services offered and sold by others, Quiznos and its authorized franchisees have extensively used certain trademarks, trade names, and service marks, including the “Quiznos” mark, “Q” mark, “Toasty” mark, and related marks (the “Quiznos Marks”), in connection with the operation of authorized Quiznos restaurants.

14. TQM is the owner of the Quiznos Marks and licenses them to QFA, which in turn sublicenses them to authorized Quiznos franchisees for use solely in connection with their operation of franchised Quiznos restaurants pursuant to written franchise agreements with QFA.

15. The Quiznos Marks are registered on the Principal Register of the United States Patent and Trademark Office. The registration of the Quiznos Marks continues in full force and effect.

16. Quiznos has given notice to the public of the registration of the Quiznos Marks as provided in 15 U.S.C. § 1111 and complies with all legal requirements to ensure that it and its authorized franchisees remain the exclusive users of the Quiznos Marks.

17. Quiznos and its authorized franchisees have continuously used the Quiznos Marks in interstate commerce in connection with the operation of Quiznos restaurants and the promotion, offer, and sale of the products and services they offer throughout the United States since the date of their registration.

18. Quiznos and its authorized franchisees have extensively advertised and promoted the Quiznos Marks and the products and services offered in association with those marks throughout the United States and through various media. As a result of such efforts and the substantial sums spent in connection therewith, the products and services offered at Quiznos restaurants under the Quiznos Marks have met with widespread public approval and have established demand and goodwill among consumers throughout the United States.

19. Quiznos has also developed a unique and distinctive design and décor for authorized Quiznos restaurants that has become uniquely associated in the mind of the consuming public with Quiznos restaurants.

20. All authorized Quiznos restaurants are required to comply with Quiznos' design and décor specifications such that there will exist system-wide uniformity in the appearance of Quiznos restaurants, thereby strengthening the association in the public's mind between that trade dress and authorized Quiznos restaurants.

21. Quiznos is the sole and exclusive owner of its unique and distinctive trade dress for authorized Quiznos restaurants, which trade dress is nonfunctional.

**Defendants' Franchise Agreement and Guaranty**

22. Effective December 28, 2005, the Singhs, as franchisees and personal guarantors, and QFA's predecessor in interest, as franchisor, entered into a written franchise agreement for the operation of a franchised Quiznos restaurant at 2717 Fort Campbell Boulevard, Hopkinsville, Kentucky 42240 (the "Restaurant") for an initial fifteen-year term.

23. The Singhs later transferred and assigned the franchise agreement to BLS. In connection with the transfer, the Singhs expressly acknowledged that they had each personally guaranteed BLS's obligations under the franchise agreement and agreed to be personally bound by, and personally liable for the breach of, each and every provision of the franchise agreement.

24. Under the franchise agreement, BLS agreed to operate the Restaurant in accordance with the franchise agreement and QFA's operational standards and specifications, including offering only those products and services authorized by QFA, for the agreement's full term.

25. BLS also agreed to pay QFA a weekly royalty in an amount equal to seven percent of the Restaurant's Gross Sales (as that term is defined in the franchise agreement), as well as a weekly marketing and promotion fee in an amount equal to an additional one percent of

the Restaurant's Gross Sales. BLS was required to spend an amount equal to at least three percent of Gross Sales on local advertising quarterly, although QFA was entitled to collect this amount and designate it for regional advertising programs or the marketing and promotion fund.

26. BLS acknowledged and agreed that, as a Quiznos franchisee, it would receive, and in fact received, Quiznos' trade secrets, confidential information, and know-how that comprise Quiznos' proprietary operating systems (the "Quiznos Licensed Methods") for the operation of Quiznos restaurants, which afforded BLS a significant competitive advantage over competitors who had no access to or knowledge of the Quiznos Licensed Methods. BLS agreed not to use or disclose any of the Quiznos Licensed Methods and to use them solely in connection with the operation of the Restaurant and only as expressly authorized under the franchise agreement. BLS further acknowledged and agreed that any unauthorized use or disclosure of the Quiznos Marks and Licensed Methods would result in irreparable harm to QFA and its affiliates.

27. BLS also acknowledged that failure to comply with any provisions of the franchise agreement within 30 days after BLS received notice of such noncompliance would result in termination of the franchise agreement.

28. In the event of termination, BLS and the Singhs expressly agreed that they would comply with the franchise agreement's post-termination obligations, including, without limitation:

- a. pay all royalties and other amounts owed to QFA or its affiliates;
- b. cease identifying itself as a Quiznos franchisee and cease using any of the Quiznos Marks, trade secrets, signs, symbols, devices, trade names, or other materials of QFA and its affiliates;

- c. cease identifying the franchised location as being, or having been, associated with Quiznos and immediately cease using the Quiznos Marks and Licensed Methods;
- d. not use or disclose Quiznos' proprietary and confidential information, including any of the information comprising of the Quiznos Licensed Methods;
- e. return to QFA all proprietary and confidential information and material;
- f. cease using or operating any websites or other online presences or electronic mediums related to the Restaurant or the Quiznos Marks; and
- g. assign to QFA all telephone and other directory listings used in connection with the Restaurant.

29. In addition, defendants agreed that they would not have any direct or indirect interest in any capacity in a Competitive Business (as that term is defined in the franchise agreement) located within five miles of the Restaurant for a period of two years from the later of the effective date of termination or the date on which they begin to comply with their noncompetition covenant.

30. Defendants also acknowledged and agreed that in the event of termination of the franchise agreement based on the franchisee's default, it would be difficult, if not impossible, to determine the amount of damages that QFA would suffer. The parties therefore agreed that a reasonable estimate of QFA's damages would be the net present value of the royalties, marketing and promotion fees, local advertising fees, and regional advertising fees, that, but for defendants' default and the resulting termination, would have become due during the remainder of the

franchise agreement's term. The Restaurant's average monthly Gross Sales for the twelve months preceding termination serves as the basis for calculating the fees owed for the duration of the franchise agreement's term.

31. The franchise agreement further provides that the prevailing party in any judicial proceeding will be entitled to reasonable costs and expenses, including attorneys' fees, incurred in connection with such proceeding.

#### **Defendants' Material Breach of the Franchise Agreement**

32. In March 2017, QFA discovered that defendants were advertising and offering unapproved products at the Restaurant in violation of Section 11.1(d) of the franchise agreement.

33. On April 18, 2017, QFA issued a written default notice regarding defendants' failure to comply with Section 11.1(d) and demanded that they correct such deficiencies within 30 days after their receipt of the default notice.

34. On May 23, 2017, QFA notified defendants that the franchise agreement had been terminated based on their failure to cure the defaults within the cure period afforded to them. The May 23, 2017 notice demanded that defendants comply with their post-termination obligations under the franchise agreement, including their obligation to cease any use of the Quiznos Marks, to comply with their noncompetition covenant, to not use or disclose Quiznos' proprietary or confidential information, and to immediately pay to QFA all amounts owed under the franchise agreement, which as of that date totaled not less than \$22,117.39.

#### **Defendants' Violations of their Post-Termination Obligations**

35. Despite termination of the franchise agreement, defendants continue to operate a competitive business at the same location as their formerly franchised Restaurant.

36. The competitive business operates under the Quiznos Marks, offers the same or substantially similar products as the franchised Restaurant, and uses Quiznos' confidential information, unique design and décor, and proprietary equipment and materials.

37. Upon information and belief, the telephone number associated with the formerly franchised Restaurant also continues to be listed in the telephone book and in online directories and websites as a Quiznos restaurant.

38. Put simply, defendants continue to falsely hold their Competitive Business out to the public as an authorized and authentic Quiznos restaurant when it is not, causing confusion in the consumer market and damage to the Quiznos brand.

39. Indeed, despite Quiznos' repeated requests that defendants at the very least de-brand the Competitive Business, defendants have refused and instead insisted Quiznos obtain a court order before they will agree to remove the many signs bearing the Quiznos Marks at the competitive business.

40. Defendants also have not returned to QFA all manuals, information, and materials which are proprietary to QFA.

41. Additionally, defendants have failed to pay QFA the amounts owed under the franchise agreement.

42. QFA and its predecessor in interest at all times fully performed all of their obligations under the franchise agreement.

### **COUNT I – TRADEMARK INFRINGEMENT**

43. Quiznos repeats and realleges ¶¶ 1 through 42 of its Complaint as and for this ¶ 43, as if fully set forth herein.

44. Defendants' acts, practices, and conduct constitute an infringing use in interstate commerce of the Quiznos Marks, and have caused and are likely to continue to cause consumer confusion or mistake and to deceive the public in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

45. Defendants' misconduct has been, and continues to be, knowing and willful, as evidenced by their complete disregard of Quiznos' requests that they cease using the Quiznos Marks and comply with their other post-termination obligations.

46. As a direct and proximate result of defendants' infringement, Quiznos has suffered and, unless defendants' infringement is enjoined, will continue to suffer actual, substantial, and irreparable harm, including without limitation, diminution in the value of the Quiznos Marks, diminution in the value of its goodwill and reputation, and incalculable lost revenues and profits.

47. Quiznos has no adequate remedy at law because the Quiznos Marks are unique and represent to the public the Quiznos identity, reputation, and goodwill, such that damages alone cannot fully compensate Quiznos for defendants' misconduct.

48. Unless enjoined by the Court, defendants will continue to use and to infringe the Quiznos Marks to Quiznos' irreparable injury. This threat of future injury to Quiznos' business, identity, goodwill, and reputation requires injunctive relief to prevent defendants' continued use of the Quiznos Marks and to ameliorate and mitigate Quiznos' injuries.

#### **COUNT II – TRADE DRESS INFRINGEMENT**

49. Quiznos repeats and realleges ¶¶ 1 through 48 of its Complaint as and for this ¶ 49, as if fully set forth herein.

50. Defendants' acts, practices, and conduct have infringed upon Quiznos' rights in its unique trade dress, in that defendants are likely to cause confusion or mistake, to deceive others as to the affiliation, connection, or association of the parties, and/or to misrepresent the nature, characteristic, qualities, or geographic origin of the food products being offered and sold by defendants, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

51. Defendants' misconduct has been, and continues to be, knowing and willful.

52. As a direct and proximate result of defendants' trade dress infringement, Quiznos has suffered and, unless defendants' infringement is enjoined, will continue to suffer actual, substantial, and irreparable harm, including, without limitation, diminution in the value of its trade dress, diminution in the value of and damage to its goodwill and reputation, and incalculable lost revenues and profits.

53. Quiznos has no adequate remedy at law because Quiznos' trade dress is unique and represents to the public Quiznos' identity, reputation, and goodwill, such that damages alone cannot fully compensate Quiznos for defendants' misconduct.

54. Unless enjoined by the Court, defendants will continue to use and to infringe Quiznos' trade dress to Quiznos' irreparable injury. This threat of future injury to Quiznos' business, identity, goodwill, and reputation requires injunctive relief to prevent defendants' continued use of Quiznos' trade dress and to ameliorate and mitigate Quiznos' injuries.

### **COUNT III – UNFAIR COMPETITION**

55. Quiznos repeats and realleges ¶¶ 1 through 54 of its Complaint as and for this ¶ 55, as if fully set forth herein.

56. Defendants' acts, practices, and conduct constitute unfair competition and false or misleading descriptions or representations of fact, in that they are likely to cause confusion or mistake, to deceive others as to the affiliation, connection, or association of the parties, and/or to misrepresent the nature, characteristic, qualities, or geographic origin of the food products being offered and sold by defendants, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

57. Defendants' misconduct has been, and continues to be, knowing and willful, as evidenced by their complete disregard of Quiznos' requests that they cease using the Quiznos Marks and comply with their other post-termination obligations.

58. As a direct and proximate result of defendants' infringement, Quiznos has suffered and, unless defendants' infringement is enjoined, will continue to suffer actual, substantial, and irreparable harm, including, without limitation, diminution in the value of its trade dress, diminution in the value of and damage to its goodwill and reputation, and incalculable lost revenues and profits.

59. Quiznos has no adequate remedy at law because the Quiznos Marks are unique and represent to the public Quiznos' identity, reputation, and goodwill, such that damages alone cannot fully compensate Quiznos for defendants' misconduct.

60. Unless enjoined by the Court, defendants will continue to compete unfairly with Quiznos to its irreparable injury. This threat of future injury to Quiznos' business, identity, goodwill, and reputation requires injunctive relief to prevent defendants' continued unfair competition and to ameliorate and mitigate Quiznos' injuries.

**COUNT IV – BREACH OF CONTRACT – SPECIFIC PERFORMANCE**

61. Quiznos repeats and realleges ¶¶ 1 through 60 of its Complaint as and for this ¶ 61, as if fully set forth herein.

62. Defendants' failure and refusal to comply with their post-termination obligations under the franchise agreement and its guaranty, including their noncompetition covenant and their obligations to de-identify the Restaurant, cease all use of the Quiznos Marks and trade dress, and cease all use of Quiznos' proprietary and confidential information, constitute material breaches of those agreements.

63. As a result of defendants' continuing breaches, Quiznos has suffered and will continue to suffer actual, substantial, and irreparable harm, including, but not limited to, loss of customer goodwill and loyalty, franchise system instability, the inability to relicense the territory formerly serviced by defendants' Restaurant, lost profits, diminution in the value of Quiznos' proprietary and confidential information, and loss of competitive advantage.

64. Further, Quiznos has been and will be irreparably harmed by defendants' actions, and monetary damages are an insufficient remedy in that they cannot fully and adequately compensate Quiznos for the continuing damage to Quiznos' goodwill and reputation, proprietary and confidential information, system stability, and inability to relicense the territory, all of which are caused by defendants' continuing material breaches.

65. Absent injunctive relief enjoining their misconduct and ordering specific performance of their post-termination obligations, defendants' material breaches will continue to cause Quiznos irreparable harm.

**COUNT V – BREACH OF CONTRACT – DAMAGES**

66. QFA repeats and realleges ¶¶ 1 through 65 of its Complaint as and for this ¶ 66, as if fully set forth herein.

67. BLS's failure to pay all amounts owed to QFA and operate the Restaurant in accordance with the terms of the franchise agreement and for the agreement's full term constitute material breaches of the franchise agreement.

68. As a direct and proximate result of BLS's material breaches and the resulting termination for cause of the franchise agreement, QFA has sustained substantial damages in an amount to be proved at trial.

#### **COUNT VI – BREACH OF GUARANTY – DAMAGES**

69. QFA repeats and realleges ¶¶ 1 through 68 of its Complaint as and for this ¶ 69, as if fully set forth herein.

70. The Singhs personally guaranteed BLS's obligations under the franchise agreement and agreed to be personally bound by, and personally liable for the breach of, each and every provision of that agreement.

71. The Singhs' failure to ensure that BLS fully performed all of its obligations under the franchise agreement constitutes a material breach of their personal guarantees.

72. As a direct and proximate result of the Singhs' material breach of their guarantees, QFA has sustained damages in an amount to be proved at trial.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Quiznos respectfully prays for the following relief against defendants, jointly and severally:

- A. A preliminary and permanent injunction enjoining defendants, and each of them, and their respective agents, servants and employees, and all persons in active concert or participation with them from:
1. Using any of the Quiznos Marks and trade dress, or any trademark, service mark, logo, trade name, or elements of design and décor that is confusingly similar to the Quiznos Marks and trade dress;
  2. Otherwise infringing the Quiznos Marks or trade dress using any similar designation, alone or in combination with any other components, or any other similar design or décor, alone or in combination with other components;
  3. Passing off any products or services as those of authorized Quiznos franchisees or as genuine Quiznos products or services;
  4. Causing a likelihood of confusion or misunderstanding as to the source or sponsorship of their business, products, or services with Quiznos;
  5. Causing a likelihood of confusion or misunderstanding as to their affiliation, connection, or association with Quiznos, or with any of its products or services; and
  6. Unfairly competing with Quiznos, in any manner.
- B. A preliminary and permanent injunction directing defendants, and each of them, and their respective agents, servants and employees, and all persons in active concert or participation with them, to fully perform their post-termination obligations, including, without limitation, their obligations to (1) refrain from

competing with Quiznos in the manner required by the franchise agreement and guaranty and (2) cease any and all use or disclosure of Quiznos' proprietary and confidential information and Licensed Methods;

- C. An order that defendants, and each of them, account and pay to Quiznos all gains, profits, and advantages derived by them as a result of their infringement of the Quiznos Marks and trade dress and unfair competition, to the full extent provided for by Section 35 of the Lanham Act, 15 U.S.C. § 1117;
- D. An order that defendants file with the Court and serve upon Quiznos' counsel within ten days after entry of any injunction issued herein, a sworn written report setting forth in detail the manner in which they have complied with such injunction;
- E. An order that defendants, and each of them, pay to Quiznos such damages as it has sustained by reason of defendants' trademark and trade dress infringement and unfair competition, and that, because of the willful nature of such infringement, judgment in Quiznos' favor in an amount equal to three times the amount of such damages, pursuant to Section 35 of the Lanham Act, 15 U.S.C. 1117;
- F. Damages for defendants' breaches of the franchise agreement and personal guaranty, including past due amounts owed, lost future royalties, and other fees, in amounts to be proved at trial;

- G. An award of the costs and expenses, including reasonable attorneys' fees, incurred by Quiznos in connection with this action, as provided by the franchise agreement and guaranty;
- H. Judgment in favor of Quiznos and against defendants, jointly and severally, in amounts to be proved at trial; and
- I. Such other and further relief as the Court deems just and proper.

Dated: January 5, 2018

Respectfully submitted,

QFA ROYALTIES LLC and  
THE QUIZNO'S MASTER LLC,

By: s/ Aaron-Michael Sapp  
One of their Attorneys

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