

Jeffrey G. Sheldon (SBN 67516)
jsheldon@cislo.com
Katherine M. Bond (SBN 263020)
kbond@cislo.com
CISLO & THOMAS LLP
12100 Wilshire Blvd., Ste. 1700
Los Angeles, California 90025
Telephone: (310) 979-9190

Attorneys for Plaintiff
Lucky Boy Hamburgers, Inc.

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

LUCKY BOY HAMBURGERS, INC.,
a California corporation,

Plaintiff,

v.

NEWS MERGER COMPANY LLC
d/b/a POSTMATES, a Delaware
limited liability company,

Defendant.

Case No. 2:21-cv-01706-AB-E

FIRST AMENDED COMPLAINT

1. TRADEMARK INFRINGEMENT;
2. FALSE DESIGNATION OF
ORIGIN;
3. TRADEMARK INFRINGEMENT
STATE LAW;
4. COMMON LAW TRADEMARK
INFRINGEMENT;
5. STATUTORY UNFAIR
COMPETITION;
6. COMMON LAW UNFAIR
COMPETITION;
7. INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE; AND
8. NEGLIGENT INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE

REQUEST FOR JURY TRIAL

1 Plaintiff Lucky Boy Hamburgers, Inc., through its attorneys Cislo & Thomas LLP,
2 alleges as follows:

3 **THE PARTIES**

4 1. Plaintiff Lucky Boy Hamburgers, Inc. (“Plaintiff” or “Lucky Boy”) is a
5 California corporation having a principal place of business located at 830 N.
6 Gainsborough Drive, Pasadena, California, 91107 and is the owner of Lucky Boy, a
7 restaurant in Pasadena.

8 2. Upon information and belief, Defendant News Merger Company LLC is
9 d/b/a Postmates (“Defendant” or “Postmates”), is a limited liability company
10 organized under the laws of Delaware with a principal place of business at 1455
11 Market Street, 4th Floor, San Francisco, California, 94103. Postmates is an on-
12 demand food delivery platform.

13 **JURISDICTION AND VENUE**

14 3. The Court has subject matter jurisdiction over this matter pursuant to 15
15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367. Plaintiff’s claims are, in part,
16 based on violations of the Lanham Act, as amended, 15 U.S.C. §§ 1051, et seq. The
17 Court has jurisdiction over the state law claims pursuant to 28 U.S.C. §§ 1338(b),
18 and 1367.

19 4. This Court has personal jurisdiction over Defendant, and for similar
20 reasons, venue is proper in the Central District of California pursuant to 28 U.S.C.
21 § 1391(b). Plaintiff is informed and believes that Defendant operates its food
22 delivery business throughout the Central District of California, including throughout
23 Los Angeles County and Orange County. Further, upon information and belief, a
24 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in
25 this District.

26 **LUCKY BOY HAMBURGERS**

27 5. Lucky Boy is a family-owned corporation that has been in business since
28 1960. Lucky Boy was founded by two brothers from Greece who started over in the

1 San Gabriel Valley after Europe was decimated from war. With its third generation
2 of family leadership currently at the helm, the company has succeeded in the
3 exceedingly competitive restaurant industry.

4 6. There are two Lucky Boy locations in Pasadena. The walk-up diner
5 located off of Arroyo Parkway is owned by Plaintiff while the Walnut Street location
6 is licensed to family members.

7 7. The Los Angeles Times rated Lucky Boy as a Top 100 Los Angeles
8 restaurant and Zagat calls the walk-up diner, "...pretty damn good."

9 8. Lucky Boy is famous for their ultimate breakfast burrito- a fan favorite
10 with both customers and critics drawing hundreds of fans daily from across Los
11 Angeles County. In addition to breakfast burritos the restaurants also offer
12 vegetarian dishes, specialty sandwiches, salads and burgers.

13 9. Plaintiff Lucky Boy is the owner of U.S. Trademark Registration Nos.
14 5,406,126 and 5,673,259 for Lucky Boy for use in connection with restaurant
15 services with a first use in commerce date of May 30, 1960. The company also owns
16 California Trademark Registration No. 18088 issued on November 16, 1983 for
17 Lucky Boy. The Lucky Boy trademarks are collectively referred to as the "Lucky
18 Boy Mark". Attached as Exhibit "1" are true and correct copies of Plaintiff's federal
19 trademark registrations.

20 10. Plaintiff Lucky Boy's registrations are valid, subsisting and in full force
21 and effect evidencing the validity of the Lucky Boy Mark and Plaintiff's exclusive
22 right to use the mark in connection with the services identified in the registrations.

23 11. The presence of the Lucky Boy Mark for use with Plaintiff's services
24 indicates to the public that the services provided under the Lucky Boy Mark originate
25 with, or are provided by, Lucky Boy. Plaintiff adheres to strict quality standards in
26 the preparation and service of its food and beverages including all requirements of
27 the California Retail Food Code. Thus, the consuming public has come to associate
28 the Lucky Boy Mark with food and restaurant services of the highest quality.

12. As a consequence of all of the foregoing, the Lucky Boy Mark has attained considerable value and the goodwill associated with it represents a valuable business asset.

POSTMATES INFRINGEMENT

13. Defendant Postmates is a third-party courier service similar to DoorDash, Uber Eats or GrubHub that have become popular in recent years due to the Covid pandemic. Consumers use an online platform, usually an app, to order food, a driver picks up the order at the location, and delivers the food to the consumer.

14. On information and belief, Postmates generates revenue by charging delivery service fees to both the consumer and the eating establishment. For example, a restaurant has to pay a commission on the food that it sells and the consumer pays a percentage of the sales price.

15. Not all restaurants want to be associated or affiliated with third party food delivery services.

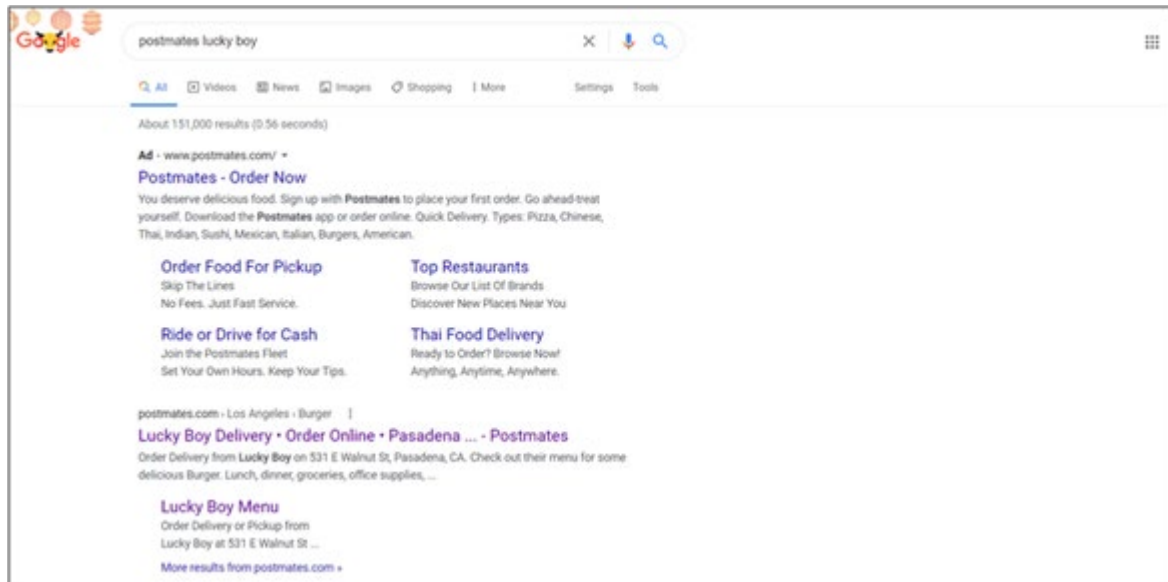
16. The delivery service fees are high. Upon information and belief, Defendant Postmates charges restaurants approximately thirty (30) percent of each food order which causes some restaurants to actually lose money. Also Postmates only pays monthly. The high rates and slow pay are unacceptable. This is especially true in a pandemic when restaurants have faced unprecedented challenges in trying to remain open and pay overhead.

17. Further, upon information and belief, Defendant does not comply with Food Code requirements and its drivers do not possess the appropriate licenses and permits required to safely handle food on behalf of consumers. There have been numerous articles in the press about delivery service apps providing poor service and the improper handling of food, and even drivers who eat the food.

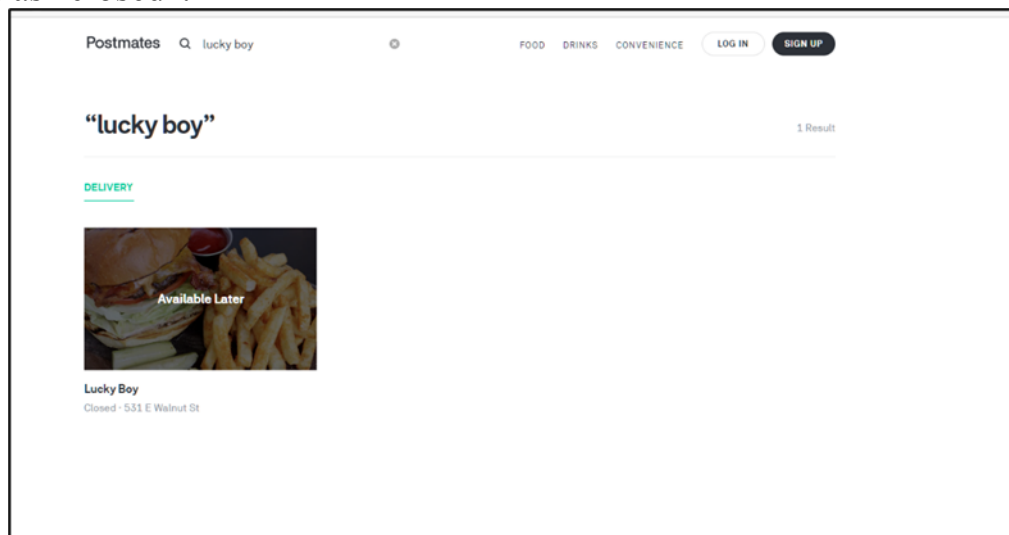
18. Lucky Boy does not want to be affiliated or associated with Defendant. However, Postmates operated its business to penalize Lucky Boy for not signing up

by intentionally diverting business from Lucky Boy.

19. Despite Defendant not having authorization to use the Lucky Boy Mark it continued to use LUCKY BOY in its online platforms.



20. Prior to the filing of this complaint, if one conducted a search for “Lucky Boy” using Defendant Postmates’ mobile app, the restaurant sometimes appeared as “closed”.



This was not true. The dining establishments were not closed at the time this image was taken. This diverts consumers to other restaurants because they falsely believe Lucky Boy is closed.

21. Defendant Postmates had a “menu” posted for Lucky Boy but it has incorrect information including lower prices. This causes issues for Lucky Boy

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