

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GRUBHUB INC. AND
TAKEAWAY.COM CENTRAL CORE B.V.,

Plaintiffs,

v.

THE KROGER CO., and
RELISH LABS LLC,

Defendants.

Case No.: 1:21-CV-05312

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs Grubhub Inc. and Takeaway.com Central Core B.V. (collectively referred to herein as “Grubhub” unless specifically identified by their full names), by their attorneys Quinn Emanuel Urquhart & Sullivan, LLP and Flaster Greenberg, P.C., for their amended complaint against The Kroger Co. and Relish Labs, LLC d/b/a Home Chef (collectively referred to herein as “Home Chef”), allege upon personal knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This is an action for a Declaratory Judgment under 28 U.S.C. § 2201. Grubhub seeks a declaration from this Court that its use of branding that combines Grubhub’s long-standing, famous, and well-known **GRUBHUB** house mark combined with a house/cutlery logo that its new parent company has used consistently for *more than seven years* throughout the world: (1) does not infringe Home Chef’s alleged trademark rights under 15 U.S.C. § 1114(1)(a); (2) does not constitute unfair competition or false designation of origin under 15 U.S.C. § 1125(a); (3) does not

constitute trademark dilution under 15 U.S.C. § 1125(c), and (4) does not constitute unfair competition under state law.

2. Grubhub has made repeated attempts to resolve this dispute amicably and without having to resort to litigation, including as recently as on the date of the filing of this Complaint and on the preceding day, but Home Chef has both delayed in responding to Grubhub and shown an ambivalence toward Grubhub's attempts to discuss the dispute.

3. The trademarks at issue are the following:



4. There is no likelihood of confusion between the marks, notwithstanding Home Chef's allegations, demands, and baseless threats of litigation against Grubhub. This is particularly the case because Grubhub always uses its well-known and famous **GRUBHUB** house mark as part of its logo trademark. The law is very well-established that the use of a well-known and famous house mark like the **GRUBHUB** trademark precludes any confusion from arising between the respective marks in this matter. In addition, the logos themselves are *extremely different*. Grubhub's logo is bright orange, while Home Chef's logo is green. Grubhub's logo includes a unique, cartoon-like house with a chimney, rounded-edges, and an overhanging roofline, whereas

Home Chef's logo includes a simple, straight-lined pentagon. In short, there could be no confusion between the two logos.

5. Grubhub also seeks a declaration of equitable estoppel prohibiting the enforcement against Grubhub of any alleged trademark rights Home Chef claims it has in any mark incorporating a house logo or logos containing the depiction of a fork and knife, or any other kind of cutlery.

6. Finally, Grubhub seeks its attorney fees, expenses, and costs incurred in this action, and any other relief the Court deems just and proper.

STATEMENT OF FACTS COMMON TO ALL CAUSES OF ACTION

GRUBHUB'S BUSINESS AND BRANDING

7. **GRUBHUB** is among the most well-known brands in the United States. Founded in 2004, Grubhub is a leading global online food-ordering and delivery marketplace. With a significant share of the restaurant delivery market in the United States, Grubhub is dedicated to connecting its more than 33 million diners with the food they love from their favorite local restaurants, and elevating food ordering through innovative restaurant technology, easy-to-use platforms and an improved delivery experience. Grubhub features more than 300,000 restaurant partners in over 4,000 U.S. cities. Grubhub provided nearly \$9 billion in gross food sales to local takeout restaurants in 2020, processes more than 745,000 daily restaurant orders, serves 33 million active diners, and sent more than \$4 billion in total tips to drivers to date.

8. In addition to its consumer-facing services, Grubhub provides a range of products and services for restaurants, drivers, and other businesses. In particular, Grubhub provides a suite of tools and services to restaurants aimed at growing their digital presence and increasing their business, including, among many others, the Grubhub for Restaurants restaurant portal and

Grubhub Direct. With these products, restaurants are able to obtain additional online exposure, manage and fulfill pickup and delivery orders, receive payment for orders, view order and transaction histories, obtain financial statements and other information, and access customized ordering websites along with loyalty and customer data. Grubhub's services encompass on-demand order management and dispatching; procurement and development of restaurant-dedicated products to manage promotions, order volume, and menus; onboarding delivery couriers, including background checks; compensating delivery couriers for their work; managing safety of delivery couriers; and providing dedicated customer service support for restaurants, couriers, consumers, and other businesses.

9. Among Grubhub's other brands is its well-known **SEAMLESS** brand, through which Grubhub offers services that are similar to those provided under the **GRUBHUB** brand. Formerly an independent company with a focus in the greater New York City area, Seamless merged with Grubhub in 2013.

10. Prior to July of 2021, Grubhub Inc. had long used the following logo format and color scheme for its **GRUBHUB** trademark:

The image shows the word "GRUBHUB" in a bold, red, sans-serif font. The letters are slightly shadowed, giving it a 3D appearance as if it's floating above a white surface.

11. Likewise, Grubhub had used the following format for its **SEAMLESS** trademark:

The image shows the word "seamless" in a white, lowercase, sans-serif font. It is centered within a red rounded rectangle that has a slight drop shadow, making it appear to float above a white surface.

12. Through its subsidiary, Grubhub Holdings Inc., Grubhub owns numerous registrations for its **GRUBHUB** and **SEAMLESS** trademarks in the U.S. Patent and Trademark Office, and in numerous foreign trademark offices.

JET'S BUSINESS AND LONGSTANDING BRANDING

13. Similar to Grubhub Inc., Takeaway.com Central Core B.V. (based in Amsterdam, The Netherlands) (“JET”) and its group companies (together, “JET Group”) is a leading global online food ordering and delivery marketplace, connecting consumers and restaurants through its platform in 24 countries. Founded in 2000 and formerly known as Takeaway.com, Takeaway.com merged with United Kingdom-based food ordering and delivery platform Just Eat, in February 2020. JET Group provides its services throughout Europe, in Canada, South America, Australia, New Zealand, and Israel.

14. Since at least as early as June 2014, and following its filing of a trademark application for the mark in the Benelux Office for Intellectual Property (the combined trademark office of Belgium, The Netherlands, and Luxembourg) on March 10, 2014, JET has used the following **JET House Logo** in connection with its above-described business, and has displayed the mark prominently on its publicly available websites at www.takeaway.com, at the various country-specific websites through which it conducts business, through its various social media accounts, and with its business names more generally throughout the 24 countries in which it provides its services. The **JET House Logo** is the following:



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