

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY**

TOMMY'S DESTINY, INC.,)	
)	
and)	Case No.:
)	
POPPY, INC.,)	JURY TRIAL DEMANDED
)	
Plaintiffs,)	
)	
v.)	
)	
FURY ASIAN FOODS, INC.,)	
)	
Defendant.)	

VERIFIED COMPLAINT

Tommy's Destiny, Inc. and Poppy, Inc., by and through their undersigned counsel, file this verified complaint for trademark infringement and unfair competition under federal and state law against Fury Asian Foods, Inc. and allege as follows:

NATURE OF THE CASE

1. This is an action for trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. § 1051, et seq., and Kentucky common law.

2. Plaintiffs are commonly-owned, family-run businesses that own and operate two Japanese hibachi-style restaurants in the greater Cincinnati metropolitan region under the name or trademark "Sakura Japanese Steakhouse." "Sakura," the predominant term in Plaintiffs' restaurant name and for which they own common law trademark rights, is a word with Japanese origins meaning "cherry blossom." Plaintiffs opened their first Sakura Japanese Steakhouse restaurant in Lawrenceburg, Indiana in 2004 and opened their second Sakura Japanese Steakhouse restaurant in Cincinnati, Ohio in 2008. Both restaurants have been in continuous operation under the Sakura

Japanese Steakhouse name and trademark since their openings. Since opening these restaurants, Plaintiffs have developed significant consumer recognition, goodwill, and reputation in the Sakura trademark, including with consumers in the areas of Ohio, Indiana, and Kentucky that comprise the greater Cincinnati metropolitan region and surrounding areas.

3. The United States Census Bureau's designates the Cincinnati metropolitan region to include the Ohio counties of Hamilton, Clermont, Warren, Butler, and Brown; the Indiana counties of Dearborn, Franklin, Ohio, and Union; and the Kentucky counties of Boone, Kenton, Campbell, Gallatin, Grant, Pendleton, and Bracken ("Cincinnati Metropolitan Region") (*see* https://en.wikipedia.org/wiki/Cincinnati_metropolitan_area)).

4. Defendant is making plans to open and operate a Japanese hibachi-style restaurant under the exact same name as Plaintiffs' restaurants, i.e., "Sakura Japanese Steakhouse" or under the confusingly similar "Saku Japanese Steakhouse." "Saku" also has Japanese origins and, similar to "Sakura," means "blossom" or "bloom" and is spelled and pronounced much like "Sakura."

5. Plaintiffs' understanding is that Defendant's restaurant will be located in Newport, Kentucky, which is within the greater Cincinnati Metropolitan Region, just 32.2 miles from Plaintiffs' Lawrenceburg location and just 15.9 miles from Plaintiffs' Cincinnati location, and will serve the same or similar consumers of the Japanese hibachi-style restaurant experience as Plaintiffs' current restaurants.

6. Defendant's conduct constitutes trademark infringement and unfair competition under federal and state common law and demonstrates Defendant's attempt to trade off and profit from the reputation and goodwill Plaintiffs have developed over more than a decade and a half of service to the greater Cincinnati Metropolitan Region.

7. Despite Plaintiffs' efforts to resolve this matter without judicial intervention,

Defendant has made it clear that it does not intend to stop its wrongful conduct unless forced to do so by a Court. Therefore, Plaintiffs submit this verified complaint to address the harm caused by Defendant, including irreparable harm, to recover monetary damages resulting from Defendant's unlawful actions, and to enjoin Defendant's willful trademark infringement and unfair competition.

THE PARTIES

8. Plaintiff Tommy's Destiny, Inc. ("Tommy's Destiny") is an Ohio corporation owned and operated by John Anevski with a corporate address of 6800 Cambridge Grove Court, Cleves, OH, 45002 (Hamilton County). Tommy's Destiny runs the "Sakura Japanese Steakhouse & Sushi" located at 5510 Rybolt Road, Cincinnati, OH 45248, which has been in continuous operation under the same trademark since 2008.

9. Plaintiff Poppy, Inc. ("Poppy") is an Indiana corporation owned and operated by John Anevski with a corporate address of 208 Walnut Street, Lawrenceburg, IN, 47025 (Dearborn County). Poppy runs the "Sakura Japanese Steakhouse" located at 1059 West Eads Parkway, Lawrenceburg, IN 47025, which has been in continuous operation under the same trademark since 2004.

10. On information and belief, Defendant is a Kentucky corporation owned and operated by Azhen Qiu with a corporate address of 165 Pavilion Parkway, Newport, KY 41071 (Campbell County).

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over Plaintiffs' federal statutory claims based on the Lanham Act under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338.

12. This Court has subject matter jurisdiction over Plaintiffs' state common law claims under either (1) 28 U.S.C. § 1332 (diversity jurisdiction) because the amount in controversy

between the diverse parties at issue here exceeds the jurisdictional amount or (2) 28 U.S.C. § 1367 (supplemental jurisdiction) because Plaintiffs' state common law claims arise from the same case or controversy as Plaintiffs' federal statutory claims.

13. The Court has personal jurisdiction over Defendant at least because Defendant resides within the jurisdiction of this Court by virtue of being a Kentucky corporation with a principal place of business at 165 Pavilion Parkway, Newport, KY 41071 (Campbell County), because Defendant as a Kentucky corporation with a principal place of business located at 165 Pavilion Parkway, Newport, KY 41071 has consented to the jurisdiction of this Court, because Defendant's wrongful conduct has taken place within this Court's jurisdiction, and because a substantial portion of the operative facts of wrongdoing alleged herein have taken place within this jurisdiction, in Campbell County.

14. Venue is proper in this Court under 28 U.S.C. § 1391.

FACTUAL BACKGROUND

Plaintiffs and Their Trademarks

15. "Sakura" is a Japanese word for "cherry blossom" (*see* Exhibit A).

16. "Saku" is a Japanese word for "blossom" or "bloom" (*see* Exhibit B).

17. Plaintiffs' restaurants are Japanese hibachi-style restaurants where consumers have the option to sit at tables immediately adjacent the grill where their food is being prepared. Often the chef interacts with the consumers as their food is prepared and demonstrates entertaining cooking techniques to the consumers that add to the experience of the Japanese hibachi-style restaurant. Plaintiffs have advertised and promoted their "Sakura Japanese Steakhouse" restaurants as Japanese hibachi-style restaurants and provided this type of dining experience to consumers since their inception.

18. There are other "Sakura" Japanese hibachi-style restaurants in the United States that are not affiliated with Plaintiffs' restaurants. Those restaurants operate in different geographic regions than Plaintiffs' restaurants. There are no federal trademark registrations for the trademark "Sakura Japanese Steakhouse" or "Sakura" alone used in connection with Japanese hibachi-style restaurants. On information and belief, each of the Sakura Japanese hibachi-style restaurants located in other geographic locations rely on common law trademark rights in their respective geographic regions as Plaintiffs are doing in this matter.

19. Until the events leading up to this complaint, Plaintiffs' "Sakura" restaurants have been the only Japanese hibachi-style steakhouses in the greater Cincinnati Metropolitan Region operating under the name or trademark "Sakura Japanese Steakhouse" or a name or trademark containing the word "Sakura" since at least 2004. An internet search now shows Defendant's planned location to be the only other "Sakura Japanese Steakhouse" in Newport Kentucky (*see* Exhibit C). On information and belief, Defendant's planned restaurant will be a Japanese hibachi-style restaurant as described above.

20. Plaintiffs spend \$15,000 annually on advertising and promoting their respective restaurants under the "Sakura Japanese Steakhouse" trademark, including to consumers in the counties of northern Kentucky, such as Boone, Kenton, Campbell, Carroll, Gallatin, Owen, Grant, Pendleton, and Bracken.

21. Plaintiffs' efforts to advertise and promote their respective restaurants under the "Sakura Japanese Steakhouse" trademark in the past have included running a front page advertisement and inside advertisement in the April-May 2019 Greater Cincinnati/Northern Kentucky edition of Prestige Living magazine (*see* Exhibit D) and running several Facebook ads for jobs and services (*see* Exhibit E). These advertising and promotional efforts target the entire

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