

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW ORLEANS**

ATLANTIC NATURAL FOODS, LLC)	
)	
Plaintiff,)	Civil Action No. _____
v.)	
)	
CHIPOTLE MEXICAN GRILL, INC., and)	
CMG PEPPER, LLC)	
)	
Defendants.)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Atlantic Natural Foods, LLC (“ANF” or “Plaintiff”), by and through its attorneys, for its complaint against Chipotle Mexican Grill, Inc. (“CMG”) and CMG Pepper, LLC (“CMG Pepper”) alleges as follows:

NATURE OF ACTION AND RELIEF SOUGHT

1. This is an action under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, for a declaratory judgement of non-infringement of Defendants’ CHIPOTLE trademarks. Plaintiff seeks a declaration that its use of the term “Chipotle Bowl with Black Beans” as a product description on a packaged plant-based food product (the “Product”) does not infringe Defendants’ rights in the CHIPOTLE trademarks.

2. This action arises out of Defendant CMG’s demands that ANF cease selling its Product and all related advertising that contain the term “Chipotle Bowl”, and further demands that ANF agree to never use the term “Chipotle Bowl” or “Chipotle” as a source identifier on ANF’s packaging, advertising, or website.

PARTIES

3. Atlantic Natural Foods, LLC, is a Delaware limited liability company having its principal place of business in Nashville, North Carolina.

4. Upon information and belief, Chipotle Mexican Grill, Inc., is a corporation organized under the laws of Delaware, having its principal place of business in Denver, Colorado.

5. Upon information and belief, CMG Pepper, LLC, is a limited liability company organized under the laws of Colorado, having its principal place of business in Newport Beach, California.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338. The claims alleged in this Complaint arise under the Declaratory Judgment Act, 28 U.S.C. § 2201, and the Lanham Act, 15 U.S.C. §§ 1052 and 1125, *et seq.* Moreover, this Court possesses diversity jurisdiction pursuant to § 1332 because Plaintiff is completely diverse from Defendants and the amount in controversy exceeds \$75,000.

7. This Court has personal jurisdiction over Defendants because, upon information and belief, Defendants have established minimum contacts with this forum and further, Defendants have substantial, continuous, and systematic contacts with the State of Louisiana. Upon information and belief, Defendant CMG operates at least ten restaurants located in the State of Louisiana. In addition, upon information and belief, Defendant CMG operates at least five restaurants in the greater New Orleans area. Further, Defendant CMG has directed infringement allegations and enforcement actions to Plaintiff's products which are sold to consumers in this District. Upon information and belief, Defendant CMG Pepper is the record owner of all the asserted Chipotle Marks, Defendant CMG is the exclusive licensee of the Chipotle Marks used in Defendant CMG's restaurant operations in this District, and Defendant CMG Pepper controls the nature and quality of the goods sold by Defendant CMG under the Chipotle Marks, wherein Defendant CMG Pepper has directed and authorized Defendant CMG to exclusively use the Chipotle Marks across the United States and specifically in this District. By virtue of these actions

and contractual relationships, Defendants have purposefully availed themselves of the privilege of conducting business in this state and in this judicial District.

8. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) because, upon information and belief, a substantial part of the events giving rise to Plaintiff's claims occurred in this District and because the Defendants are subject to personal jurisdiction in this District. Specifically, the Product which Defendant CMG alleges to be infringing is sold within the state of Louisiana, including within this District.

9. An actual case or controversy exists between the parties. Defendant CMG has repeatedly threatened to take legal action against ANF, has asserted that ANF is engaging in acts of trademark infringement and unfair competition, and has demanded that ANF immediately cease and desist from selling the Product.

GENERAL ALLEGATIONS

10. ANF sells shelf-stable, sustainable, plant-based food products to persons desiring a plant-based diet or who prefer a vegetarian lifestyle. Many of these products, including the Product, are sold under the Loma Linda brand as further described below, and as shown in Exhibit A attached hereto. In the United States, ANF products are sold throughout a wide range of retail outlets, including Costco, Walmart, Target, Food Lion, Albertson's, Kroger, Publix, and other stores, as well as through online sales via Amazon.

11. Upon information and belief, Defendant CMG operates numerous Mexican-themed restaurants under the CHIPOTLE brand.

12. Upon information and belief, CMG Pepper, LLC, is an affiliated company to Defendant CMG and is the record owner of U.S Registration Nos. 2,317,718, 2,317,719, 3,325,609, 3,523,738, 3,412,092, 3,618,866, 3,618,869, 3,622,272, 3,698,498, 3,698,499, 3,779,316, and 3,779,317 for the mark CHIPOTLE in International Classes 29, 30, and 43, for use

in connection with various restaurant foods and restaurant services (the “Chipotle Marks”), as well as several other marks. Defendant CMG Pepper became the record owner of the Chipotle Marks by an assignment of those marks from Defendant CMG dated September 30, 2019, and recorded in the U.S. Patent and Trademark Office on October 17, 2019. True and correct copies of the foregoing registrations from the U.S. Patent and Trademark Office Trademark Status and Document Retrieval (TSDR) system are attached hereto as Exhibit B. A true and correct copy of the recorded assignment of the Chipotle Marks to Defendant CMG Pepper is attached hereto as Exhibit C.

13. Upon information and belief, Defendant CMG is the exclusive licensee of the Chipotle Marks via license from Defendant CMG Pepper.

14. ANF designed its packaging for the Product to be consistent with the blue Loma Linda brand that is applied across a wide range of packaged plant-based products as shown in Exhibit A. Among the product descriptions sold under this branding style are Chipotle Bowl with Black Beans, Pad Thai with Konjac Noodles, Taco Filling, Thai Green Curry with Chik’n and Rice, Sloppy Joe, Hearty Stew with Meatless Beef Chunks, Chorizo, and TUNO Thai Sweet Chili.

15. A more detailed image of the Product is attached hereto as Exhibit D, which includes the blue Loma Linda brand packaging and a product description “Chipotle Bowl with Black Beans”.

16. ANF describes the Product as “Chipotle Bowl with Black Beans”, because a primary flavoring spice in the Product is the chipotle pepper. The ingredient list on the rear side of the Product packaging includes water, non-GMO textured soy protein, brown rice, diced tomatoes, chipotle paste (water, tomato paste, chipotle pepper puree (water, chipotle peppers), salt, onion, paprika, spices, turmeric, garlic, sesame seed oil, vinegar), black beans, diced red bell

peppers, sweet corn, onion, salt, lemon juice, coriander, cumin, garlic powder, black pepper, chili, spices, and yeast extract. An image of the rear side of the Product packaging is attached hereto as Exhibit E.

17. By letter dated April 16, 2020, counsel for Defendant CMG wrote to ANF counsel and claimed that ANF's sale of the Product constituted trademark infringement and unfair competition in violation of federal and state law, including the Lanham Act, demanding that ANF cease all use of "Chipotle Bowl" on packaging and advertising. Counsel for Defendant CMG further demanded that ANF's pending trademark application for "Chipotle Bowl", U.S. Application No. 88/837,666 (the "ANF Application"), be expressly abandoned. Counsel for Defendant CMG further threatened to "immediately commence litigation for damages without further notice to Atlantic". A true and correct copy of Defendant CMG counsel's April 16, 2020, letter is attached hereto as Exhibit F.

18. By letter dated April 30, 2020, counsel for Plaintiff responded on behalf of ANF and explained why ANF's Product description of "Chipotle Bowl with Black Beans" is descriptive of the Product, that the Product packaging under ANF's Loma Linda brand made consumer confusion unlikely apart from any descriptive use of the word "chipotle", and that there was little chance that consumers would believe that there is some sponsorship or affiliation with Defendant CMG. A true and correct copy of ANF counsel's April 30, 2020, letter is attached hereto as Exhibit G.

19. By letter of May 4, 2020, counsel for Defendant CMG reiterated its demands and further claimed that ANF's Product was "likely to dilute" the Chipotle Marks. The letter further stated that the ANF Application "forecloses any attempt to now argue descriptive fair use". A true and correct copy of Defendant CMG counsel's May 4, 2020, letter is attached hereto as Exhibit H.

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