

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MAIN COURSE FOODSOLUTIONS, INC.

Plaintiff

v.

KRAFT HEINZ PUERTO RICO, LLC;
KRAFT HEINZ COMPANY;
CORPORATIONS A & B

Defendants

CIVIL NO. 21-1033

*Removed from:
Commonwealth of Puerto Rico
Court of First Instance,
Superior Court of San Juan*

Case No. SJ2021CV00243

NOTICE OF REMOVAL

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TO THE HONORABLE COURT:

COME NOW co-defendants The Kraft Heinz Company (“Kraft Heinz”) and Kraft Heinz Puerto Rico, LLC (“Kraft Heinz PR”) (together, “Defendants”), through the undersigned attorneys, and, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, hereby remove the above entitled action pending before the Commonwealth of Puerto Rico’s Court of First Instance, San Juan Part, reserving all defenses and rights available to it, and state as follows:

I. STATE COURT ACTION

1. On January 14, 2021, Plaintiff, Main Course Foodsolutions Inc. (“Plaintiff”), filed a Complaint, including a request for injunctive relief, before the Commonwealth of Puerto Rico’s Court of First Instance, San Juan Part (“State Court”), captioned SJ2021CV00243

and entitled *Main Course Foodsolutions Inc. v. Kraft Heinz Puerto Rico, LLC; Kraft Heinz Company; A & B Corporaciones* (“State Court Action”). See **Exhibit A**, Complaint.¹

2. On the same date, the State Court issued an Order to Show Cause within five days as to why the requested injunction should not be granted. See **Exhibit B**, Order to Show Cause.
3. On January 15, 2021, Defendants were served with copies of the Complaint and the Order to Show Cause. The summons directed to Kraft Heinz were delivered to the Puerto Rico Secretary of State, because Kraft Heinz is a foreign corporation and does not have a registered resident agent. The summons directed to Kraft Heinz PR were delivered to its resident agent. See **Exhibit C**, Motion Informing Service of Summons and Proof of Service.
4. However, Defendants became aware of the claim on January 19, 2021, when Plaintiff’s attorneys sent a courtesy copy of the State Court Action documents to Defendants’ attorneys in a previous case.

II. PLAINTIFF’S ALLEGATIONS

5. The Complaint states that Plaintiff executed an agreement in 2013 with Heinz Management, LLC, which later merged into Kraft Heinz, to act as its broker or sales representative in relation to certain Heinz products in Puerto Rico (“Agreement”). See **Exhibit A**, ¶¶6-7.
6. Plaintiff alleges that, since 2013, it has consistently been successful in developing the Puerto Rico market for those Heinz products and has produced more than \$13,464,000.00

¹ Defendants are filing copies of the motions filed by Plaintiff in State Court and the State Court orders in Spanish, as Exhibits A, B, and C to this Notice of Removal. On this day, Defendants are also filing a Motion for Leave and Extension to File Certified English Translations.

in sales of those products in Puerto Rico between 2013 and 2020, for which sales Plaintiff receives a commission. *See Exhibit A*, ¶¶ 8-12.

7. As per the Complaint, on December 16, 2020, Plaintiff received a letter signed by a representative of Kraft Heinz PR, notifying the termination of the Agreement with Kraft Heinz, effective on January 15, 2021, and requesting Plaintiff to return materials and confidential documents related to Heinz. *See Exhibit A*, ¶20.
8. Plaintiff alleges that it is an exclusive sales representative and the termination of the Agreement was done without just cause as defined in Puerto Rico's Act of Sales Representatives, Act No. 21 of December 5, 1990 ("Act 21"), which prohibits terminations without just cause of sales representative contracts and would provide a compensation for the significant loss that the termination of the Agreement represents to its operations. *See Exhibit A*, ¶¶22-23, 27-29, 31-32.
9. Therefore, Plaintiff requests a temporary restraining order under Act 21 to maintain the effectiveness of the Agreement while the claim is pending and a compensation for the termination of the Agreement without just cause of 5% of the total sales of Heinz in Puerto Rico during the time in which Plaintiff has acted as its broker. The total sales are estimated in \$14,868,000. *See Exhibit A*, ¶33.
10. Alternatively, Plaintiff alleges that Kraft Heinz PR, which is not a party to the Agreement, tried to interfere in its contractual relationship with Kraft Heinz by sending the termination letter. *See Exhibit A*, ¶¶21, 24-26, 30.
11. In said regard, Plaintiff requests a preliminary injunction to stop Kraft Heinz PR from disturbing its commercial relation with Kraft Heinz and a compensation of \$200,000 for

the damages caused due to Kraft Heinz PR's alleged wrongful intervention. *See Exhibit A*, ¶¶34-44.

III. BASIS FOR JURISDICTION

12. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §1332, because there is complete diversity of citizenship between Plaintiff and Defendants, and the amount in controversy exceeds \$75,000.
13. The Complaint identifies one plaintiff and two defendants. *See Exhibit A*, ¶¶1-3.
14. In determining whether a civil action is removable on the basis of diversity jurisdiction, the citizenship of defendants sued under fictitious names shall be disregarded. *See* 28 U.S.C. §1441(b)(1). Thus, A&B Corporations are not part of the analysis.
15. A corporation shall be deemed to be a citizen of every state by which it has been incorporated and where it has its principal place of business. *See* 28 U.S.C. §1332(c)(1).
16. For diversity jurisdiction purposes, citizenship of a LLC is determined by the citizenship of all of its members. PRAMCO, LLC v. San Juan Bay Marina, Inc., et al., 435 F.3d 51, 54-55 (2006).
17. Plaintiff is a domestic corporation incorporated in Puerto Rico and has its principal place of business in San Juan, Puerto Rico. *See Exhibit A*, ¶1.
18. None of the Defendants' citizenship for removal purposes is Puerto Rico.
19. Co-defendant Kraft Heinz is a Delaware corporation co-headquartered in Pennsylvania and Illinois.²
20. Although co-defendant Kraft Heinz Puerto Rico is organized under the laws of Puerto Rico, it is a limited liability company and its sole member is Kraft Foods Group Puerto Rico

² The Complaint states that Kraft Heinz is also known as Kraft Heinz Foods Company, but they are two different entities. *See Exhibit A*, ¶2.

LLC. Kraft Foods Group Puerto Rico LLC's sole member is Kraft Heinz Foods Company, which is a limited liability company whose members are Kraft Heinz Intermediate Corporation II and HJH Development Corporation, both of which are corporations organized under the laws of Delaware with their principal place of business in Pennsylvania. As such, Kraft Heinz Puerto Rico is a citizen of Delaware and Pennsylvania.

21. It should be noted that the original party to the Agreement with Plaintiff, Heinz Management LLC, merged into Kraft Heinz Foods Company in 2016. *See Exhibit D, Certificate of Merger.* Kraft Heinz Foods Company functions as an operating entity and is a subsidiary of co-defendant Kraft Heinz.
22. All the named Defendants are citizens of states different from Plaintiff's, so the first prong for diversity jurisdiction is met. *See* 28 U.S.C. §1332(a)(1).
23. The second prong for diversity jurisdiction is also met, given that the Complaint requests the payment of \$943,400: \$743,400 in compensation under Act 21 (5% of the \$14,868,000 total sales)³ and \$200,000 in damages, exclusive of interests and costs. *See Exhibit A, ¶¶33, 36. See also St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1938)* (The amount in controversy can be determined from the allegations or prayer of the complaint.).
24. The amount claimed far exceeds the \$75,000 threshold. *See* 28 U.S.C. §1332(a)(1).
25. Because there is complete diversity and the amount in controversy is met, the requirements for removal under 28 U.S.C. §1441(a) and (b) are satisfied.

³ Plaintiff claims in its allegations that the total sales of the Heinz products it sold between 2013 and 2020 amounted to \$13,464,000, but later in the Complaint claims the total sales were \$14,868,000. *See Exhibit A, ¶¶12, 33.* Nevertheless, the 5% of any of these amounts - \$673,200 or \$743,400- is greater than \$75,000, so the difference in the allegations does not have any effect on diversity jurisdiction for removal purposes.

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