

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE CHORK, INC.)	CASE NO. 4:20-cv-2631
a Florida corporation,)	
)	
Plaintiff)	JUDGE
)	
vs.)	
)	
BERK ENTERPRISES, INC.,)	
an Ohio corporation,)	<u>COMPLAINT</u>
)	
and)	[Jury Demand Endorsed Hereon]
)	
SYSCO CORPORATION,)	
a Delaware corporation,)	
)	
and)	
)	
TERIYAKI MADNESS,)	
a Colorado corporation,)	
)	
Defendants)	

Plaintiff The Chork, Inc. (“The Chork”), for its Complaint against Defendants, Berk Enterprises, Inc. (“Berk”), Sysco Corp. (“Sysco”), and Teriyaki Madness (“TMad”), (collectively, “Defendants”), states and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. The Chork is a Florida corporation having a principal place of business at 310 Marion Rd., Princeton, KY 42445.
2. Upon information and belief, Berk is an Ohio corporation with its principal place of business at 1554 Thomas Rd. S.E., Warren, OH 44484.

3. Upon information and belief, Sysco is a Delaware corporation with its principal place of business at 1390 Enclave Pkwy., Houston, TX 77077, and one or more satellite offices in the Northern District of Ohio.

4. Upon information and belief, Teriyaki Madness is a Colorado corporation with its principal place of business at 950 S. Cherry St., Ste. 850, Denver, CO 80246.

5. The Chork brings this action under U.S. Patent laws, 35 U.S.C. §§ 1 et seq., and under various other Ohio state statutory and common law provisions.

6. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 (federal question) and 1338 (patent infringement).

7. Upon information and belief, this Court has specific personal jurisdiction over each of the Defendants because each has purposefully directed its activities to the state of Ohio, and this action is based upon and/or arises out of those activities and contacts.

8. This Court has personal jurisdiction over each of the Defendants under the Ohio long-arm statute, Ohio Rev. Code § 2307.382, at least because: (i) upon information and belief, each of the Defendants regularly does and solicits business, engages in other persistent courses of conduct, and derives substantial revenue from goods used or consumed or services rendered in Ohio; and, as set forth more fully below, (ii) The Chork's claims arise out of Defendants (1) transacting business in Ohio, (2) causing tortious injury by acts in Ohio, and (3) causing tortious injury in Ohio.

9. Additionally, upon information and belief, this Court has general personal jurisdiction over each of the Defendants since the contacts of each with Ohio are substantial, continuous, and systematic.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

GENERAL ALLEGATIONS

THE CHORK'S PRODUCT AND INTELLECTUAL PROPERTY

11. The Chork (previously known as “Brown Innovation Group”) is in the business of inventing, developing, manufacturing, distributing, and selling a “Combination Chopstick Utensil” or the “Chork” branded utensil.

12. United States Patent No. D601,389 S (“the ‘389 Patent”) is titled “Combination Chopstick Utensil” and was filed on June 2, 2009 and issued on October 6, 2009. A copy of the ‘389 patent is attached as **Exhibit A**.

13. By assignment, The Chork owns all right, title, and interest in and to the ‘389 Patent.

DEFENDANTS' INFRINGING ACTS

14. In August and September of 2017, The Chork had serious discussions with Berk and TMad about The Chork manufacturing its patented Chork utensil for distribution to Berk and TMad.

15. The Chork even discussed with TMad the possibility of TMad purchasing The Chork.

16. Ultimately, no agreement was reached between the parties.

17. In September 2017, The Chork discovered that Berk had manufactured an infringing utensil.

18. On or about September 28, 2017, The Chork called Berk to request that Berk cease and desist manufacturing the infringing utensil.

19. On October 4, 2017, Berk agreed to destroy the temporary mold, send it to The Chork, and not proceed with a stocking agreement.

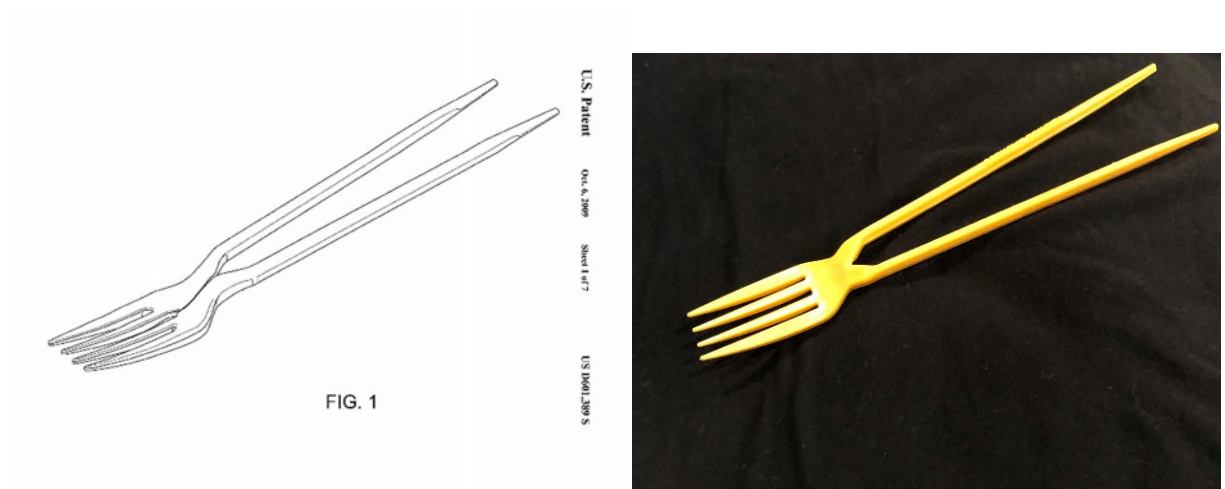
20. On August 14, 2020, The Chork discovered that TMad was producing and utilizing an infringing utensil identical or substantially similar to the Chork branded and patented utensil, which TMad called the “fork-chop/left-handed fork-chop” (hereafter “the infringing fork-chop utensil”). This infringement was discovered on TMad’s Instagram and Twitter accounts. Screen shots from these social media accounts are attached as **Exhibit B**.

21. TMad was even recognized by QSR Magazine and Food Service Packaging Institute and received a First Place “Wow Factor” Award for its use of its infringing fork-chop utensil.

22. On August 20, 2020, Sysco advised that it initially ordered the infringing fork-chop utensil from Berk, and Sysco distributed it to the new TMad locations. Thereafter, those locations were to order the infringing fork-chop utensil directly from Berk.

23. Upon information and belief, Berk initially manufactured the infringing fork-chop utensil. Berk and Sysco then sold the infringing fork-chop utensil to TMad and others.

24. Below are exemplary Figures of the ‘389 Patent compared with photos of the infringing fork-chop utensil:



U.S. Patent Oct. 6, 2009 Sheet 4 of 7 US D601,389 S



FIG. 4



U.S. Patent Oct. 6, 2009 Sheet 5 of 7 US D601,389 S



FIG. 5



U.S. Patent Oct. 6, 2009 Sheet 6 of 7 US D601,389 S

FIG. 6



U.S. Patent Oct. 6, 2009 Sheet 7 of 7 US D601,389 S

FIG. 7



25. As shown above, the infringing fork-chop utensil appropriates the novel ornamental features set forth in the '389 Patent such that an ordinary observer, giving such attention as a purchaser usually gives, would find The Chork's patented design and the design of

the infringing fork-chop utensil to be substantially the same, and the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other.

26. Upon information and belief, Berk has actively induced others to infringe the ‘389 Patent. Upon information and belief, Berk knew that use of the infringing fork-chop utensil by end users would directly infringe the ‘389 Patent. Upon information and belief, Berk had specific intent to thus induce infringement of the ‘389 Patent.

27. Thereafter, TMad was utilizing the infringing fork-chop utensil in its restaurants in Bend, Oregon, among other locations.

28. TMad had authorized the manufacture of the infringing fork-chop utensil because it had “Teriyaki Madness” printed on it. A photo depicting “Teriyaki Madness” printed on the infringing fork-chop utensil is attached as **Exhibit C**.

29. On August 28, 2020, legal counsel for The Chork sent a second cease and desist letter to Berk. See attached **Exhibit D**.

30. On September 30, 2020, The Chork’s legal counsel sent cease and desist letters to TMad and Sysco. Copies of these letters are attached as **Exhibit E** and **Exhibit F**, respectively.

31. On information and belief, Defendants have continued making, using, selling, offering for sale, and distributing the infringing fork-chop utensil. The distribution of the infringing fork-chop utensil has injured, is injuring, and will continue to cause irreparable injury to The Chork’s valuable patent rights.

32. Additionally, upon information and belief, Berk and TMad have each acted in an objectively reckless manner with respect to The Chork’s patent rights. Upon information and belief, Berk made, sold, and offered for sale its infringing fork-chop utensil knowing that it was highly likely that its acts would constitute infringement of a valid patent. Likewise, TMad

authorized the production of, purchased, and used the infringing fork-chop utensil. Upon information and belief, Berk and TMad knew or should have known, that their actions were highly likely to result in the infringement of a valid patent. Consequently, Berk and TMad have engaged in willful infringement of the '389 Patent, and The Chork is therefore entitled to treble damages and attorneys' fees as well as costs incurred in this action along with prejudgment interest under 35 U.S.C. §§ 284 and 285.

FIRST CAUSE OF ACTION

(PATENT INFRINGEMENT OF THE '389 PATENT UNDER 35 U.S.C. § 271)

33. The Chork incorporates herein by reference each and every statement and allegation set forth in the foregoing paragraphs 1-32 of this Complaint as if set forth fully herein.

34. By assignment, The Chork owns all right, title and interest in and to the '389 Patent.

35. The infringing fork-chop utensil appropriates the novel ornamental features set forth in the '389 Patent such that an ordinary observer, giving such attention as a purchaser usually gives, would find The Chork's patented design and the design of the infringing fork-chop utensil to be substantially the same, and the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other.

36. Berk makes, sells, and offers for sale the infringing fork-chop utensil that directly infringes one or more claims of the '389 Patent.

37. Sysco sells and offers for sale, the infringing fork-chop utensil that directly infringes one or more claims of the '389 Patent.

38. TMad has authorized the manufacture, production, purchase, and use of the infringing fork-chop utensil that directly infringes one or more claims of the '389 Patent.

39. At no time has The Chork granted permission, license, or authorization to any of the Defendants to make, use, sell or offer for sale any of the protected designs claimed by The Chork in the '389 Patent.

40. By their foregoing acts, Defendants each have infringed the '389 Patent.

41. Berk, Sysco, and TMad's infringing activities have damaged and continue to damage The Chork in an amount to be proven at trial. Among other remedies, The Chork is entitled to its lost profits or, in the alternative, a reasonable royalty to adequately compensate The Chork for the Defendants' infringing activities under 35 U.S.C. §284.

42. Additionally, the harm to The Chork arising from these acts by Defendants is not fully compensable by money damages. The Chork has suffered and continues to suffer irreparable harm and injury that has no adequate remedy at law and that will continue unless this infringing conduct by Defendants is preliminarily and permanently enjoined.

43. Upon information and Defendants each have acted in a knowing and objectively reckless manner with respect to The Chork's patent rights. Consequently, Defendants each have engaged in willful infringement of the '389 Patent. The Chork is therefore entitled to treble damages and attorneys' fees as well as costs incurred in this action, along with prejudgment interest under 35 U.S.C. §§ 284 and 285.

SECOND CAUSE OF ACTION

(UNFAIR COMPETITION/DECEPTIVE TRADE PRACTICES, R.C. §4165.01 ET SEQ.)

44. The Chork incorporates herein by reference each and every statement and allegation set forth in the foregoing paragraphs 1-43 of this Complaint as if set forth fully herein.

45. Defendants' actions as described above constitute unfair deceptive practices in the course of their business and in the conduct of trade or commerce, in violation of Ohio Rev. Code

§ 4165.01, et seq. In that regard, Defendants' actions have caused and will continue to cause a likelihood of confusion or misunderstanding as to the source, affiliation, sponsorship, approval or certification of the infringing fork-chop utensil manufactured, distributed, advertised and/or copied by Defendants.

46. Defendants' conduct as alleged above has damaged and will continue to damage The Chork and has resulted in losses to The Chork and an illicit gain of profit to Defendants in an amount that is unknown at the present time.

47. The Defendants' conduct through their intentional business acts and practices has led to a material diminution in value of The Chork's intellectual property.

48. The Chork has suffered actual damages as a result of Defendants' unfair business practices in an amount to be proven at trial. Additionally, the harm to The Chork arising from these acts by the Defendants is not fully compensable by money damages. The Chork has suffered and continues to suffer irreparable harm and injury that has no adequate remedy at law and that will continue unless this unfair conduct by the Defendants is preliminarily and permanently enjoined.

49. Upon proving unfair competition and deceptive trade practices due to the infringement, The Chork should recover treble damages and attorney's fees and costs from the Defendants pursuant to Ohio Rev. Code §4165.03.

THIRD CAUSE OF ACTION

(UNJUST ENRICHMENT)

50. The Chork incorporates herein by reference each and every statement and allegation set forth in the foregoing paragraphs 1-49 of this Complaint as if set forth fully herein.

51. Defendants have received and retained a benefit from the improper, unfair, and unauthorized use of designs claimed in the '389 Patent as alleged herein.

52. Defendants have, or should have knowledge of, and fully appreciate the benefits received and retained by each of them as a result of their actions as alleged herein.

53. Defendants have been and will continue to be unjustly enriched if permitted to retain the benefits and proceeds received by each of them from their actions.

54. Equity and good conscience require that Defendants be required to account for and pay to The Chork an amount equal to value of the benefits conferred upon them.

55. As a direct and proximate result of Defendants' unjust enrichment, The Chork has been injured and is entitled to restitution in the amount of such unjust enrichment, which amount cannot presently be ascertained, but which will be determined at trial.

WHEREFORE, it is respectfully requested that the Court enter judgment in favor of The Chork as follows:

1. That the Court enter judgment that each of the Defendants has infringed the '389 Patent.

2. That Defendants be ordered to pay damages to The Chork together with interest, in an amount to be determined by this Court, but in no event less than \$100,000.00.

3. That the Court award The Chork treble damages pursuant to 35 U.S.C. §284 and 15 U.S.C. §1117.

4. That the Court award The Chork its costs and attorney's fees related to this action pursuant to 35 U.S.C. §285 and Ohio Rev. Code § 4165.01, et seq.

5. That the Court award The Chork prejudgment interest, and such other and further relief as shall seem just and proper to the Court.

6. That the Court grant preliminary and permanent injunctive relief enjoining each of the Defendants, together with each of their officers, directors, principals, agents, servants, employees, retailers, distributors, successors and assigns, and all other aiding, abetting, or acting in concert or active participation therewith, from directly or indirectly infringing the '389 Patent.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff The Chork, Inc. hereby demands a trial by jury.

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