

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

DIETGOAL INNOVATIONS LLC,

*Plaintiff,*

v.

BIGLARI HOLDINGS INC.; STEAK 'N  
SHAKE ENTERPRISES, INC.; AND STEAK  
'N SHAKE OPERATIONS, INC.,

*Defendants.*

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Civil Action No. 2:12-cv-\_\_\_\_\_

Jury Trial Demanded

**PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff DietGoal Innovations LLC files this Complaint against Biglari Holdings Inc., Steak 'N Shake Enterprises, Inc., and Steak 'N Shake Operations, Inc. (collectively, "Defendants") and alleges as follows:

**PARTIES**

1. Plaintiff DietGoal Innovations LLC ("DietGoal") is a Texas Limited Liability Company based in Austin, Texas.

2. Upon information and belief, Defendants are corporations organized and existing under the laws of the State of Indiana, with their principal place of business located at 17802 IH-10 West, Suite 400, San Antonio, Texas 78257. Defendants may be served with process through their registered agent CT Corporation System, 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code.

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Defendants are subject to this Court's general and/or specific personal jurisdiction because it (a) are residents of the State of Texas; and/or (b) have designated an agent for service of process in the State of Texas; and/or (c) have committed acts of infringement in the State of Texas as alleged below; and/or (d) are engaged in continuous and systematic activities in the State of Texas. Therefore, this Court has personal jurisdiction over Defendant under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendants have a regular and established place of business in this district, and/or have transacted business in this district and have committed and/or induced acts of patent infringement in this district.

#### **THE PATENT-IN-SUIT**

7. On July 1, 2003, the United States Patent and Trademark Office issued United States Patent No. 6,585,516 ("the '516 Patent") entitled "Method and System for Computerized Visual Behavior Analysis, Training, and Planning," a true copy of which is attached as Exhibit A.

8. DietGoal is the exclusive licensee of the '516 Patent and possesses all rights to sue for and recover all past, present and future damages for infringement of the '516 Patent.

#### **CLAIM 1 -- INFRINGEMENT OF U.S. PATENT NO. 6,585,516**

9. Defendants have been and now are directly infringing one or more claims of the '516 Patent, in violation of 35 U.S.C. § 271(a), by making and/or using in the United States the computer implemented website [www.steakshake.com](http://www.steakshake.com), which has a computerized meal planning

interface at <http://www.steaknshake.com/menu> and its related webpages such as <http://www.steaknshake.com/menu/dine-in/original-steakburgers/the-original-double-n-cheese-steakburger-n-fries> (“Meal Builder”).

10. In addition and/or in the alternative, the Defendants have been and/or are now indirectly infringing one or more claims of the ‘516 Patent, in violation of 35 U.S.C. § 271(b), by inducing visitors to their website and their Meal Builder (“End Users”) to directly infringe the ‘516 Patent through their use of the infringing instrumentality. The Defendants induce such infringement by at least making their website available to End Users and providing links and/or other directions on their website and/or the internet for End Users to visit their Meal Builder. The Defendants engage in such activities knowingly and, at least from the time of receipt of the present Complaint, have done so with the knowledge that such activity encourages End Users to directly infringe the ‘516 Patent.

11. As a direct and proximate consequence of the acts and practices of the Defendants in infringing, directly and/or indirectly, one or more claims of the ‘516 Patent, DietGoal has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 in an amount to be determined at trial.

12. The limitation of damages provision of 35 U.S.C. § 287(a) is not applicable to DietGoal.

13. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and DietGoal is thus entitled to an award of its reasonable attorneys’ fees.

#### **DEMAND FOR JURY TRIAL**

14. DietGoal, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

## **PRAYER FOR RELIEF**

WHEREFORE, DietGoal requests entry of judgment that:

1. Defendants have infringed the patent-in-suit;
2. Defendants account for and pay to Plaintiff all damages caused by their respective infringement of the patent-in-suit; and
3. Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of one or more of Defendants' patent infringement;
4. The Court declare this an exceptional case and that Plaintiff be granted reasonable attorneys' fees in accordance with 35 U.S.C. § 285;
5. Costs be awarded to Plaintiff; and
6. Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: December 7, 2012

Respectfully submitted,

**BUETHER JOE & CARPENTER, LLC**

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