

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE WORLD FESTIVAL, INC.,
a Wisconsin Corporation,

Plaintiff,

v.

Case No. _____

RED LOBSTER MANAGEMENT, LLC,
a Delaware Limited Liability Company,

Defendant.

COMPLAINT

Milwaukee World Festival, Inc. ("Milwaukee World Festival" or "Plaintiff"), by and through its attorneys Reinhart Boerner Van Deuren s.c., for its complaint against Red Lobster ("Defendant"), hereby alleges as follows:

1. This is an action for trademark infringement and unfair competition brought pursuant to the Lanham Act, 15 U.S.C. § 1114 and 15 U.S.C. § 1125(a), and Wisconsin common law.
2. Milwaukee World Festival brings this suit to protect its long-held, valuable interest in its SUMMERFEST trademark, federally registered since 1972 and in use since 1968 in connection with Summerfest, the World's Largest Music Festival.
3. Milwaukee World Festival has recently become aware that Defendant has begun using the SUMMERFEST trademark in connection with its restaurant promotions, specifically its "Lobster and Shrimp Summerfest," without permission or authorization from Milwaukee World Festival.

4. This is not the first time that Defendant has misappropriated the SUMMERFEST mark to promote its restaurant campaigns: in 2016, Defendant engaged in identical behavior by running a promotion it called "Lobster and Shrimp Summerfest." To protect its intellectual property, Milwaukee World Festival reached out to Defendant to demand that it cease and desist infringing the SUMMERFEST mark, and Defendant eventually ceased its use of the SUMMERFEST mark and rebranded its promotion to "Crabfest," without requiring Milwaukee World Festival to resort to litigation.

5. Milwaukee World Festival has recently learned that this year, Defendant once again has misappropriated the SUMMERFEST Mark in connection with its summertime restaurant promotion, returning to the infringing "Lobster and Shrimp Summerfest."

6. Milwaukee World Festival has repeatedly reached out to Defendant to demand that it cease its infringing activity, but Defendant has not only refused to stop using the SUMMERFEST mark, it has also refused to engage in meaningful discussions in order to come to a resolution of this matter.

7. This year, Summerfest began on June 28, 2017, and will run until July 9, 2017.

8. On information and belief, Defendant plans to continue its infringing use of Milwaukee World Festival's mark throughout the entire period of Summerfest's 2017 festival.

9. Milwaukee World Festival is in need of immediate relief to prevent Defendant from infringing the SUMMERFEST mark, causing substantial consumer confusion during the 2017 festival, and unjustly profiting off the goodwill associated with Summerfest.

THE PARTIES

10. Plaintiff Milwaukee World Festival is a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin.

11. On information and belief, Defendant Red Lobster is a Delaware limited liability company with its principal place of business in Orlando, Florida.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over the present action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1331 and § 1338(a) and (b) in that it involves claims arising under the federal Lanham Act.

13. This Court also has supplemental jurisdiction over Milwaukee World Festival's state law claim pursuant to 28 U.S.C. § 1367, because it is so related to the Lanham Act claims that it forms part of the same Article III case or controversy.

14. This Court has personal jurisdiction over Defendant because Defendant has purposefully availed itself of the laws of the State of Wisconsin by directing its infringing promotion and advertisements into that State.

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), in that a substantial part of the events giving rise to Milwaukee World Festival's claims occurred in this district.

BACKGROUND OF SUMMERFEST AND THE SUMMERFEST MARK

16. Milwaukee World Festival is the owner and producer of Summerfest, an eleven-day music festival that has occurred annually in Milwaukee, Wisconsin, for the past forty-nine years. This year, 2017, marks the festival's fiftieth anniversary.

17. Summerfest is a well-established part of Wisconsin culture and attracts hundreds of thousands of visitors per year from all over the United States. In 2016, a total of 804,116 people attended Summerfest.

18. Summerfest also attracts world-renowned entertainers to perform at its festival. For example, Summerfest has featured (or will feature this year) such performers as Paul McCartney, Paul Simon, Bob Dylan, Stevie Wonder, and the Rolling Stones.

19. In connection with its operation and production of Summerfest, Milwaukee World Festival owns a number of trademarks.

20. One such trademark is SUMMERFEST, Registration No. 0940211 (the "SUMMERFEST Mark"), for use in connection with "arranging and conducting an annual summer entertainment festival." A true and correct copy of Milwaukee World Festival's trademark registration for the SUMMERFEST Mark is attached to this Complaint as **Exhibit A**.

21. The SUMMERFEST Mark has been federally registered since August 1, 1972 and has been in continuous use by Milwaukee World Festival since February 1968.

22. The Summerfest festival, and the SUMMERFEST Mark are well-known throughout the United States and are particularly famous in the immediate vicinity in which Summerfest operates, a territory including Wisconsin and northern Illinois.

23. Milwaukee World Festival advertises Summerfest through a variety of media, including radio, television, print, and internet advertising.

24. The SUMMERFEST Mark is valuable to Milwaukee World Festival and represents a valuable asset in Plaintiff's business.

25. As part of operating Summerfest, Milwaukee World Festival offers a variety of food and beverage options at the festival through various vendors.

26. Milwaukee World Festival authorizes these vendors to use the SUMMERFEST Mark in promoting their goods in conjunction with the festival. Such authorizations are short-

term and expire upon termination of the food and beverage agreements that exist between Summerfest and its vendors.

27. Milwaukee World Festival also enters into sponsorship agreements with other restaurants, which pay for the right to use the SUMMERFEST Mark for a limited time.

DEFENDANT'S 2016 INFRINGEMENT

28. In June of 2016, just days before Summerfest was scheduled to open, Milwaukee World Festival became aware that Defendant was running a food promotion under the confusingly similar name "Lobster and Shrimp Summerfest."

29. Defendant was not authorized to use the SUMMERFEST Mark in connection with its promotion, nor had it paid for the right to use the SUMMERFEST Mark for a limited time.

30. Defendant's use of the SUMMERFEST Mark in connection with its "Lobster and Shrimp Summerfest" engendered actual confusion, with numerous city officials and business leaders inquiring whether there was an affiliation between Plaintiff and Defendant.

31. On or about June 16, 2016, Milwaukee World Festival contacted Defendant to apprise it of its infringement and to demand that Defendant cease and desist its unauthorized use of the SUMMERFEST Mark. A true and correct copy of Plaintiff's June 16, 2016 letter is attached hereto as **Exhibit B**.

32. On or about June 17, 2016, Defendant responded and denied infringing Milwaukee World Festival's SUMMERFEST Mark. A true and correct copy of Defendant's June 17, 2016 letter is attached hereto as **Exhibit C**.

33. The parties exchanged three more letters, dated June 21, 2016; June 24, 2016; and July 8, 2016. True and correct copies of these letters are attached hereto as **Exhibits D, E, and F**, respectively.

34. Defendant did not respond to Milwaukee World Festival's July 8 letter.

35. Nevertheless, following this correspondence, Defendant ceased its use of the SUMMERFEST Mark and rebranded its promotional event as "Crabfest."

DEFENDANT'S 2017 INFRINGEMENT

36. In or about May of 2017, Milwaukee World Festival became aware that Defendant was once again advertising a summertime food promotion under the name "Lobster and Shrimp Summerfest."

37. The "Lobster and Shrimp Summerfest" name appropriates the SUMMERFEST Mark wholesale, without alteration.

38. Defendant is advertising the promotion nationwide via a variety of media, including, upon information and belief, radio, television, print, and internet advertising.

39. Consumers are likely to believe that Defendant's promotion is affiliated with, sponsored by, or otherwise associated with Milwaukee World Festival and Summerfest due to Defendant's use of the SUMMERFEST mark.

40. As was the case in 2016, Defendant is not authorized to use the SUMMERFEST Mark in connection with its promotion, nor has it paid for the right to use the SUMMERFEST Mark for a limited time.

41. Accordingly, on June 6, 2017, Milwaukee World Festival contacted Defendant to apprise it of its infringement, demand that Defendant cease and desist its infringing use of the SUMMERFEST Mark, and request that Defendant return to the "Crabfest" mark or employ an

alternative non-infringing mark. A true and correct copy of Plaintiff's June 6, 2017 letter is attached hereto as **Exhibit G**.

42. On June 9, 2017, Defendant responded, denying that it was infringing Milwaukee World Festival's SUMMERFEST Mark and referring Plaintiff to its June 17, 2016 correspondence. A true and correct copy of Defendant's June 9, 2017 letter is attached hereto as **Exhibit H**.

43. On June 22, 2017, Milwaukee World Festival wrote to Defendant, again requiring that Defendant cease its infringing use of the SUMMERFEST Mark and explaining Plaintiff's position. A true and correct copy of Plaintiff's June 22, 2017 letter is attached hereto as **Exhibit I**.

44. On June 23, 2017, counsel for Defendant responded via e-mail. The body of that e-mail stated, in its entirety:

I understand that you sent me a letter regarding our Lobster & Shrimp Summerfest promotion. I will respond after I return to the office on July 5th.

A true and correct copy of Defendant's June 23 e-mail is attached hereto as **Exhibit J**.

45. Defendant's use of the SUMMERFEST Mark in connection with its food promotion is highly likely to cause consumer confusion in the marketplace.

46. Despite receiving notice of Milwaukee World Festival's intellectual property rights and the harm caused by Defendant's infringement, Defendant has continued to use the SUMMERFEST Mark without authorization and over Milwaukee World Festival's written objections.

47. On information and belief, Defendant's continued use of the SUMMERFEST Mark is willful and intentional, done for the purpose of trading upon the valuable goodwill and public recognition that Milwaukee World Festival has established in the SUMMERFEST Mark.

48. Absent immediate relief, upon information and belief, Defendant will continue to use the SUMMERFEST Mark in connection with its food promotion throughout the course of the 2017 Summerfest festival, engendering substantial confusion in the marketplace.

COUNT I -

TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. § 1114(1)(a)

49. Plaintiff repeats and incorporates by reference each and every allegation contained in the paragraphs above with the same force and effect as if said allegations were fully set forth herein.

50. Plaintiff is the owner of the SUMMERFEST Mark, Federal Registration No. 0940211.

51. The SUMMERFEST Mark has been registered in the principal register since August 1, 1972 and has developed incontestable status under 15 U.S.C. § 1065.

52. Defendant is presently using the SUMMERFEST Mark in commerce in connection with the sale, offering for sale, and advertising of goods.

53. Plaintiff has not consented to or authorized Defendant's use of the SUMMERFEST Mark.

54. Defendant's use of the SUMMERFEST Mark is likely to cause confusion, cause mistake, or deceive consumers:

- a. Defendant has misappropriated the SUMMERFEST Mark without alteration.
- b. The marks are confusingly similar in terms of how they will be encountered in the marketplace.
- c. The goods and services in connection with which Defendant is using the SUMMERFEST Mark are similar to Plaintiff's such that consumers are likely

to believe they come from the same source, or that Defendant's goods and services are sponsored or endorsed by Plaintiff. Summerfest already offers food and beverage services through its approved vendors, many of whom are authorized to use the SUMMERFEST Mark on a temporary basis. Consumers are likely to believe that Defendant is one of those vendors.

- d. There is substantial overlap in the area and manner of use of the marks. Both parties advertise in the same channels, including in the Wisconsin-Northern Illinois market where the SUMMERFEST Mark is most famous.
- e. Consumers are unlikely to exercise substantial care in the purchase of Defendant's goods and services.
- f. The SUMMERFEST Mark is strong.
- g. Defendant's misappropriation of the SUMMERFEST Mark in 2016 engendered numerous instances of actual consumer confusion.
- h. On information and belief, Defendant's use of the SUMMERFEST Mark is a willful and intentional attempt to trade off the goodwill and fame that Plaintiff has established in the SUMMERFEST Mark by creating the impression that Defendant's promotion is affiliated with, authorized by, or sponsored by Summerfest.

55. As a result of Defendant's conduct, Plaintiff has suffered and will continue to suffer damages.

56. As a result of Defendant's conduct, Plaintiff has suffered and will continue to suffer substantial and irreparable harm, including the ability to control the consumer perception of its goods and services, the loss of goodwill and reputation it has established in the

SUMMERFEST Mark, and the ability to control the food and beverage vendors with whom it partners.

57. Upon information and belief, Defendant's infringement of the SUMMERFEST Mark is knowing, intentional, and willful.

58. Defendant will be unjustly enriched as a result of its unauthorized use of the SUMMERFEST Mark.

59. An award of Defendant's profits is necessary to deter Defendant from again misappropriating Plaintiff's SUMMERFEST Mark.

60. The intentional nature of the aforementioned acts renders this an exceptional case under 15 U.S.C. § 1117(a).

61. Milwaukee World Festival will continue to suffer irreparable harm unless this Court enjoins Defendant's conduct.

COUNT II -

UNFAIR COMPETITION UNDER THE LANHAM ACT, 15 U.S.C. § 1125(a)

62. Plaintiff repeats and incorporates by reference each and every allegation contained in the paragraphs above with the same force and effect as if said allegations were fully set forth herein.

63. Plaintiff's right to use the SUMMERFEST Mark is incontestable.

64. Plaintiff has also established federal common law rights in the SUMMERFEST Mark based on continuous use of that mark in connection with its annual entertainment festival since February 1968.

65. On information and belief, Plaintiff's use of the SUMMERFEST Mark predates Defendant's by approximately forty-eight years.

66. Defendant is presently using the SUMMERFEST Mark in commerce in connection with the sale, offering for sale, and advertising of goods.

67. Plaintiff has not consented to or authorized Defendant's use of the SUMMERFEST Mark.

68. Defendant's use of the SUMMERFEST Mark is likely to cause confusion, cause mistake, or deceive consumers:

- a. Defendant has misappropriated the SUMMERFEST Mark without alteration.
- b. The marks are confusingly similar in terms of how they will be encountered in the marketplace.
- c. The goods and services in connection with which Defendant is using the SUMMERFEST Mark are similar to Plaintiff's such that consumers are likely to believe they come from the same source, or that Defendant's goods and services are sponsored or endorsed by Plaintiff. Summerfest already offers food and beverage services through its approved vendors, many of whom are authorized to use the SUMMERFEST Mark on a temporary basis. Consumers are likely to believe that Defendant is one of those vendors.
- d. There is substantial overlap in the area and manner of use of the marks. Both parties advertise in the same channels, including in the Wisconsin-Northern Illinois market where the SUMMERFEST Mark is most famous.
- e. Consumers are unlikely to exercise substantial care in the purchase of Defendant's goods and services.
- f. The SUMMERFEST Mark is strong.

- g. Defendant's misappropriation of the SUMMERFEST Mark in 2016 engendered numerous instances of actual consumer confusion.
- h. On information and belief, Defendant's use of the SUMMERFEST Mark is a willful and intentional attempt to trade off the goodwill and fame that Plaintiff has established in the SUMMERFEST Mark by creating the impression that Defendant's promotion is affiliated with, authorized by, or sponsored by Summerfest.

69. As a result of Defendant's conduct, Plaintiff has suffered and will continue to suffer damages.

70. As a result of Defendant's conduct, Plaintiff has suffered and will continue to suffer substantial and irreparable harm, including the ability to control the consumer perception of its goods and services, the loss of goodwill and reputation it has established in the SUMMERFEST Mark, and the ability to control the food and beverage vendors with whom it partners.

71. Upon information and belief, Defendant's infringement of the SUMMERFEST Mark is knowing, intentional, and willful.

72. Defendant will be unjustly enriched as a result of its unauthorized use of the SUMMERFEST Mark.

73. An award of Defendant's profits is necessary to deter Defendant from again misappropriating Plaintiff's SUMMERFEST Mark.

74. The intentional nature of the aforementioned acts renders this an exceptional case under 15 U.S.C. § 1117(a).

75. Milwaukee World Festival will continue to suffer irreparable harm unless this Court enjoins Defendant's conduct.

COUNT III -

COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

76. Plaintiff repeats and incorporates by reference each and every allegation contained in the paragraphs above with the same force and effect as if said allegations were fully set forth herein.

77. The SUMMERFEST Mark is a protectable trademark.

78. Plaintiff has established common law rights in the SUMMERFEST Mark based on continuous use of that mark in connection with its annual entertainment festival in Milwaukee, Wisconsin since February 1968.

79. On information and belief, Plaintiff's use of the SUMMERFEST Mark predates Defendant's by approximately forty-eight years.

80. Defendant is presently using the SUMMERFEST Mark in the State of Wisconsin in connection with the sale, offering for sale, and advertising of goods.

81. Plaintiff has not consented to or authorized Defendant's use of the SUMMERFEST Mark.

82. Defendant's use of the SUMMERFEST Mark is likely to cause confusion, cause mistake, or deceive consumers:

- a. Defendant has misappropriated the SUMMERFEST Mark without alteration.
- b. The marks are confusingly similar in terms of how they will be encountered in the marketplace.
- c. The goods and services in connection with which Defendant is using the SUMMERFEST Mark are similar to Plaintiff's such that consumers are likely

to believe they come from the same source, or that Defendant's goods and services are sponsored or endorsed by Plaintiff. Summerfest already offers food and beverage services through its approved vendors, many of whom are authorized to use the SUMMERFEST Mark on a temporary basis. Consumers are likely to believe that Defendant is one of those vendors.

- d. There is substantial overlap in the area and manner of use of the marks within the Wisconsin market and throughout the United States.
- e. Consumers are unlikely to exercise substantial care in the purchase of Defendant's goods and services.
- f. The SUMMERFEST Mark is strong. The Summerfest music festival is well-established in the State of Wisconsin and is celebrating its fiftieth anniversary of operation this year.
- g. Defendant's misappropriation of the SUMMERFEST Mark in 2016 engendered numerous instances of actual consumer confusion.
- h. On information and belief, Defendant's use of the SUMMERFEST Mark is a willful and intentional attempt to trade off the goodwill and fame that Plaintiff has established in the SUMMERFEST Mark by creating the impression that Defendant's promotion is affiliated with, authorized by, or sponsored by Summerfest.

83. As a result of Defendant's conduct, Plaintiff has suffered and will continue to suffer damages, alongside substantial and irreparable harm, including the ability to control the consumer perception of its goods and services, the loss of goodwill and reputation it has

established in the SUMMERFEST Mark, and the ability to control the food and beverage vendors with whom it partners.

84. Defendant will be unjustly enriched as a result of its unauthorized use of the SUMMERFEST Mark.

85. Upon information and belief, Defendant's infringement of the SUMMERFEST Mark is knowing, intentional, and willful.

86. Milwaukee World Festival will continue to suffer irreparable harm unless this Court enjoins Defendant's conduct.

JURY DEMAND

87. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff requests a jury trial of all issues that may be tried to a jury in this action.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment:

A. Preliminarily and permanently enjoining and restraining Defendant, its employees, agents and representatives, and all persons acting in concert or in participation with them, from using on or in connection with any business, service, or the sale, offering for sale, distribution, advertising, promotion, labeling, or packaging, of any services or goods, or from using for any commercial purpose whatsoever, the SUMMERFEST Mark or any other name confusingly similar to the SUMMERFEST Mark, including but not limited to "Lobster and Shrimp Summerfest";

B. Requiring Defendant to deliver up to the Court for destruction, or to show proof (upon the oath of Defendant made subject to penalty of perjury) of said destruction, of any and all products, promotional and business materials, and all other matter in the possession, custody,

or control of Defendant or its agents, distributors, or franchisees, including any materials posted on Defendant's website, which bear or depict the SUMMERFEST Mark or any other name confusingly similar to the SUMMERFEST Mark, including but not limited to "Lobster and Shrimp Summerfest";

C. Directing Defendant to recall any products and advertising and promotional materials bearing any matter in violation of any injunction entered in this action, or bearing or depicting the SUMMERFEST Mark or any other name confusingly similar to the SUMMERFEST Mark, including but not limited to "Lobster and Shrimp Summerfest";

D. Directing Defendant to account to Plaintiff for its profits and ordering that Plaintiff shall recover from Defendant all of its damages, reasonable attorneys' fees and costs arising from the foregoing acts, and a sum equal to three times these profits and damages, pursuant to 15 U.S.C. § 1117;

E. Awarding to Plaintiff its actual, compensatory, consequential, and incidental damages, in an as-yet undetermined amount, resulting from the acts of Defendant complained of herein, and that such damages be trebled;

F. Awarding Plaintiff exemplary damages against Defendant in an amount sufficient to deter similar future conduct;

G. Awarding Plaintiff the costs of this action, including expert witness fees, in accordance with applicable law;

H. Awarding Plaintiff prejudgment and post-judgment interest on any monetary award according to the maximum allowable legal rate; and

I. Awarding Plaintiff such other and further relief as this Court may deem just and proper.

Dated this 30th day of June, 2017.

s/ Jessica H. Polakowski
Jessica H. Polakowski
WI State Bar ID No. 1061368
jpolakowski@reinhartlaw.com
Monica A. Mark
WI State Bar ID No. 1082428
mmark@reinhartlaw.com
Reinhart Boerner Van Deuren s.c.
P.O. Box 2018
Madison, WI 53701-2018
Telephone: 608-229-2200
Facsimile: 608-229-2100

*Attorneys for Plaintiff, Milwaukee World
Festival, Inc.*