

FRANCIS M. WIKSTROM (3462)  
MARGARET NIVER MCGANN (7951)  
Parsons Behle & Latimer  
One Utah Center  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
Telephone: (801) 532-1234  
Facsimile: (801) 536-6111  
E-mail: fwikstrom@parsonsbehle.com  
mmcgann@parsonsbehle.com

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DISTRICT OF UTAH  
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Attorneys for Plaintiff  
In-N-Out Burgers

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH**

IN-N-OUT BURGERS, a California  
corporation,

Plaintiff,

vs.

CHADDER'S RESTAURANT, an unknown  
entity; CSSR HOLDINGS, LLC, a Utah  
limited liability company; CHADDER'S  
HOLDING, LLC, a Utah limited liability  
company; and CHAD STUBBS, an  
individual,

Defendants.

Case No.

**VERIFIED COMPLAINT FOR:**

- (1) TRADE DRESS INFRINGEMENT;**
- (2) FEDERAL TRADEMARK  
INFRINGEMENT;**
- (3) UTAH UNFAIR COMPETITION**

**JURY TRIAL DEMANDED**

**Case: 2:07cv00394  
Assigned To : Stewart, Ted  
Assign. Date : 6/14/2007  
Description: InNOut Burgers v.  
Chadders Restaurant et al**

For its Complaint, Plaintiff IN-N-OUT BURGERS ("In-N-Out") alleges as follows:

1. This is an action under the Trademark Laws of the United States, 15 U.S.C. § 1051, et seq., for trade dress and trademark infringement pursuant to § 43(a) and § 32, and of

the Trademark Act of 1946 (the Lanham Act), as amended, 15 U.S.C. § 1125(a) and § 1114. In addition, this is an action for unfair competition in violation of the laws of the State of Utah.

#### THE PARTIES

2. In-N-Out is a corporation duly organized and existing under the laws of the State of California, having offices at 4199 Campus Drive, 9th Floor, Irvine, California (“In-N-Out”).

3. Defendant CHADDER’S RESTAURANT is an unknown entity owning, operating, and/or controlling a fast-food business with both sit-down and drive-through service located at 599 West Pacific Drive, American Fork, Utah 84003.

4. Upon information and belief, Defendant CSSR HOLDINGS, LLC is a limited liability company organized and existing under the laws of the State of Utah, and owns, operates and/or controls in full or in part Defendant CHADDER’S RESTAURANT and/or the above-identified business in American Fork, Utah, and itself has offices at 313 South 740 East, American Fork, Utah 84003.

5. Upon information and belief, Defendant Chadder’s Holdings, LLC, is a limited liability company organized and existing under the laws of the State of Utah, and owns, operates, and/or controls in full or in part Defendant CHADDER’S RESTAURANT and/or the above-identified business in American Fork, Utah, and itself has offices at 313 South 740 East, American Fork, Utah 84003.

6. Upon information and belief Chad Stubbs is an individual residing at 1913 Glendon Ct., Pleasant Grove, Utah 84062, who owns, operates, and controls the above-identified entities and/or that business and/or has been personally directing or involved in the infringing and/or unlawful act alleged herein.

### **JURISDICTION AND VENUE**

7. The jurisdiction of this Court over the subject matter of this action is predicated on 28 U.S.C. § 1338(a) as a federal question pertaining to trademarks. This Court has supplemental jurisdiction over the related state law claim pursuant to 28 U.S.C. § 1367(a).

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) as Defendants reside here, have committed acts of infringement, and/or have a regular and established place of business and are thus subject to personal jurisdiction in this judicial district.

### **BACKGROUND FACTS**

9. In-N-Out has been engaged in the business of restaurant services and other businesses since 1948, and currently has 207 restaurant locations in California, Arizona, and Nevada.

10. Since long prior to the acts of Defendants herein alleged, In-N-Out has continuously used trade dress consisting of a combination of features, including a red-and-white color scheme with other minor accent colors such as yellow; employee uniforms that are white with red aprons and hats; interior flooring featuring a checkerboard pattern with white and gray tile; an open interior layout so that customers can observe the food preparation—including the slicing of fresh (never frozen) potatoes to make fries; a seating area including booths with white tables and red-backed seats. In addition, the interior menu is typically displayed above the cash register on a rectangular-shaped predominantly white menu board with a red frame and red lettering. The menu board features only a few items, no size options, and a simple font and presentation. A similar predominantly white with red menu board is found outside drive through lanes. The outside of the building typically incorporates the red-and-white color scheme with

other minor accent colors such as yellow. In addition, the food presentation is in rectangular cardboard boxes, with the hamburger partially wrapped with the unwrapped side face up and accompanied by French fries in a second, generally rectangular white boat-like structure (served with a white paper napkin covering the fries). This scheme and overall image and the like is of such an unusual design that a customer would immediately rely on it to differentiate the source of the services; in addition, the scheme and overall image and the like have been used in interstate and intrastate commerce and in connection with the advertising, promotion, offering, and provision of its products and services consistently and continuously by In-N-Out.

11. In-N-Out also has a secret menu or code menu of sorts, and in connection therewith has, for many, many years, offered various non-menu items or preparation styles sold under the trademarks Protein® Style burger, Animal® Style burger, 3 x 3® burger, and 4 x 4® burger. The menu is considered 'secret' by consumers because the items and trademarks are not listed on the menu.

12. In-N-Out has obtained federal registrations of the above referenced marks.

13. In-N-Out has offered its products under its unique trade dress and various marks, and the trade dress and trademarks have continuously appeared at In-N-Out's locations and in substantial advertising and promotional activities. In-N-Out has extensively used and promoted the trade dress and marks such that they are closely identified with the goods and services of In-N-Out and have gained widespread public recognition.

14. In-N-Out trade dress and marks are valid and subsisting and are evidence of In-N-Out's exclusive right to use said trade dress and marks in commerce throughout the United States for restaurant products and other goods and services related thereto.

15. As a result of the care and skill exercised by In-N-Out in the conduct of its business, the high quality of In-N-Out's products offered under its trade dress and marks, the unique nature of the trade dress and the extensive advertising, sale and promotion of In-N-Out's products including the same, the trade dress and marks are either inherently distinctive or have acquired strong secondary meaning. The trade dress and marks identify In-N-Out's popular products as those of In-N-Out exclusively, and distinguish them from the products of others. The distinctive trade dress and marks are well known and symbolize the goodwill that In-N-Out has created by its offering of its products.

16. Recently In-N-Out became aware of Defendants' use of a deceptively similar trade dress, including the use of simple red-and-white menu boards with red lettering and a red-and-white color scheme with yellow accents, on the exterior and interior of its restaurant. The layout of Defendants' restaurant is open, allowing a consumer to view the kitchen area; the interior has grey-and-white checkerboard flooring, red and white tables and chairs and includes booth seating with white tables and red seat backing. Moreover, while the options are not listed on the menu board, one can order using In-N-Out's federally registered marks— such as Animal® Style.

17. In-N-Out learned of the unlawful imitation upon receiving numerous emails from customers of In-N-Out inquiring as to the relationship between Defendants' restaurant and Plaintiff, or simply informing Plaintiff that its trade dress was being "ripped off."

18. Upon learning of the same, In-N-Out immediately sent several initial communications to Chadder's attorneys who initially responded indicating immediate willingness to make changes.

19. On or about June 6, 2007, In-N-Out's counsel received a letter from a second set of attorneys for Chadder's seeming to withdraw any willingness to make any timely changes.

20. Counsel for In-N-Out responded that same day, renewing its demands for immediate and substantial changes in their trade dress and business practices and allowing a short extension of time to respond.

21. New counsel responded, but the response was not satisfactory to In-N-Out.

22. The use by Chadder's of such colorable imitations of In-N-Out's trade dress and marks is likely to cause confusion, mistake, or deception, as those encountering Defendants' business may mistakenly assume, at least initially, that said business is in some way sponsored, endorsed, approved by, or connected with In-N-Out when in fact it is not.

23. Upon information and belief, Defendants have performed the aforesaid acts with fraudulent purpose and knowledge to inappropriately trade upon In-N-Out's extensive goodwill, including using In-N-Out's trade dress and marks to draw customers to their business and unlawfully profit.

24. In-N-Out's trade dress and marks are wholly associated with In-N-Out due to their long use, and as such In-N-Out is deserving of having its trade dress and marks adequately protected with respect to the conduct of its business.

**COUNT I**  
**Trademark Dress Infringement Under Federal Law**  
**(Against All Defendants)**

25. In-N-Out repeats and alleges each and every allegation contained in paragraphs 1-24 of this Complaint and incorporates them herein.

26. By the aforesaid acts, Defendants have infringed upon In-N-Out's federal trademark rights in its trade dress described above, in violation of section 32 of the Lanham Act, 15 U.S.C. § 1125(a).

27. Defendants' acts have been willful and in conscious disregard of the trade dress rights of In-N-Out.

28. In-N-Out has suffered, is suffering, and will continue to suffer irreparable injury for which In-N-Out has no adequate remedy at law.

29. In-N-Out is entitled to an immediate temporary restraining order (TRO) and preliminary injunction to be made permanent upon entry of final judgment, preventing Defendants' further infringement.

30. Further, In-N-Out is entitled to damages and enhanced damages in amounts to be proven at trial.

**COUNT II**  
**Trademark Infringement Under Federal Law**  
**(Against All Defendants)**

31. In-N-Out repeats and alleges each and every allegation contained in paragraphs 1-30 of this Complaint and incorporates them herein.

32. By the aforesaid acts, Defendants have infringed upon In-N-Out's federal trademark rights described by its trademark registrations, in violation of section 32 of the Lanham Act, 15 U.S.C. § 1114.

33. Defendants' acts have been willful and in conscious disregard of the trademark rights of In-N-Out.

34. In-N-Out has suffered, is suffering, and will continue to suffer irreparable injury for which In-N-Out has no adequate remedy at law.

35. In-N-Out is entitled to an immediate temporary restraining order (TRO) and preliminary injunction to be made permanent upon entry of final judgment, preventing Defendants' further infringement.

36. Further, In-N-Out is entitled to damages and enhanced damages in amounts to be proven at trial.

**COUNT III**  
**Unfair Competition Under Utah Law**  
**(Against All Defendants)**

37. In-N-Out repeats and alleges each and every allegation contained in paragraphs 1-36 of this Complaint and incorporates them herein.

38. Defendants have knowingly and intentionally engaged in unlawful, unfair, or fraudulent business practices and infringed Plaintiff's trademarks and trade dress, in violation of the Utah Unfair Competition Act.

39. In-N-Out has suffered, is suffering, and will continue to suffer irreparable harm and injury for which In-N-Out has no adequate remedy at law.

40. In-N-Out is entitled to an immediate temporary restraining order (TRO) and preliminary injunction to be made permanent upon entry of final judgment, preventing Defendants' further unfair competition.

41. Further, In-N-Out is entitled to damages and enhanced damages in amounts to be proven at trial.



WHEREFORE, In-N-Out prays for judgment as follows:

1. That Defendants and their officers, agents, servants, employees, attorneys, and all persons in active concert or participating with any of them be immediately restrained, and then preliminarily and thereafter permanently enjoined:

(a) from using, in connection with their business affairs, In-N-Out's trade dress or colorable imitations thereof;

(b) from using predominantly white menu boards with a red-colored border and red lettering, from using red and white uniforms, from using red trays and food presentation boxes including a french fries boat-like structure, from using gray and white checkered tile and red-colored seat back materials in combination with white colored tables, from using red and white in exterior signage and building trim;

(c) from using, in connection with their business affairs, any of In-N-Out's registered marks or colorable imitations thereof;

(d) from using the terms: Protein® Style, Animal® Style, 3 x 3®, 4 x 4®; and,

(e) from engaging in unfair competition including knowing and intentional unlawful, unfair, or fraudulent business practices that tend to harm Plaintiff.

2. Damages including lost profits in amounts to be proven at trial;

3. For a finding this is an exceptional case pursuant to the Lanham Act;

4. Enhanced damages as authorized by the Lanham Act and Utah Unfair Competition Act;

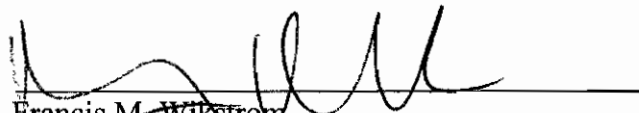
5. Reasonable attorneys' fees, as authorized by the Lanham Act and Utah Unfair Competition Act, and costs of this action; and
6. Such other and further relief as this Court may deem just and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby requests trial by jury on all claims asserted.

DATED this 13 day of June, 2007.

Respectfully submitted,



Francis M. Wikstrom  
Margaret N. McGann  
PARSONS BEHLE & LATIMER

Attorneys for Plaintiff In-N-Out Burgers

Plaintiff's Address:

4199 Campus Dr., 10<sup>th</sup> Floor  
Irvine, CA 92612

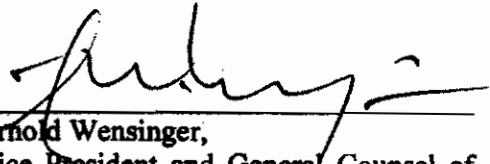
**VERIFICATION**

I am a Vice President for the Plaintiff In-N-Out Burgers; I have carefully read and reviewed the foregoing Complaint and have personal knowledge of the matters stated and events described therein; the Complaint is true to the best of my knowledge, except as to matters stated in it on information or belief, and as to those I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13<sup>th</sup> day of June, 2007, in Irvine, California.

By: \_\_\_\_\_

  
Arnold Wensinger,  
Vice President and General Counsel of  
In-N-Out Burgers, Inc.