

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

MATT'S EL RANCHO, INC.,

Plaintiff

v.

HORSESHOE HILL COWBOY CAFE,  
LLC, GRADY SPEARS BR, LLC, and  
GRADY SPEARS,

Defendants

Civil Action No. \_\_\_\_\_

**JURY DEMANDED**

**COMPLAINT**

Plaintiff Matt's El Rancho, Inc. submits this complaint for trademark infringement, unfair competition, trademark dilution, and unjust enrichment.

**I. The Parties**

1. Matt's El Rancho is a Texas corporation with an address of 2613 South Lamar Boulevard, Austin, Texas 78704.

2. Defendant Horseshoe Hill Cowboy Cafe, LLC is a Texas limited liability company with an address of 2730 Meadowbrook Drive, Fort Worth, Texas 76103.

3. Defendant Grady Spears BR, LLC is a Texas limited liability company with an address of 204 West Exchange Avenue, Fort Worth, Texas 76164.

4. Defendant Grady Spears is an individual with an address of 204 West Exchange Avenue, Fort Worth, Texas 76164. Mr. Spears is the owner and sole

manager of Defendant Grady Spears BR, LLC. He is the founder of the restaurant Horseshoe Hill Café in Fort Worth, Texas, discussed below.

## II. Jurisdiction & Venue

5. This complaint alleges trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a). The Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121(a).

6. The Court has supplemental jurisdiction to hear the state-law claims under 28 U.S.C. § 1367(a).

7. Venue is proper under 28 U.S.C. § 1391(b)(1), (b)(2), (c)(2), and (d).

## III. Facts

### Matt's El Rancho and its BOB ARMSTRONG DIP Signature Appetizer

8. Matt's El Rancho is a family-owned restaurant in Austin, Texas. Matt Martinez and his wife Janie Martinez opened the restaurant in 1952, serving home-cooked meals based on Janie's recipes. Under their guidance, Matt's El Rancho grew to become one of the most iconic restaurants in Austin, with a loyal customer base. The restaurant is famous for its welcoming atmosphere and Tex-Mex specialties.

9. Since at least 1986, Matt's El Rancho has offered its signature cheese-dip appetizer under the mark BOB ARMSTRONG DIP (the "Mark").

10. The signature appetizer was created by Matt's El Rancho for the famous Texas politician Robert Landis Armstrong (commonly known as Bob Armstrong), who was a frequent patron of Matt's El Rancho. During one visit in the early 1970s, Bob Armstrong asked the chef—Matt and Janie's son, Matt Jr.—to make an appetizer

that was not on the menu. Matt Jr. improvised and created the BOB ARMSTRONG DIP appetizer, which was an immediate hit. The signature appetizer has been on Matt's El Rancho's permanent menu under the Mark ever since.

11. The screenshot below shows an example of how Matt's El Rancho uses the Mark in connection with its signature appetizer:



Matt's El Rancho's Trademark Rights

12. Matt's El Rancho has used the Mark in commerce in connection with the restaurant's signature appetizer continuously since at least November 1986.

13. The media has widely reported the story of the Mark and Matt's El Rancho's signature appetizer, including in books, news articles, and television segments.

14. Matt's El Rancho has for years used the Mark to advertise and promote its signature appetizer, both through traditional advertising and online. As a result, the Mark has developed significant consumer goodwill and recognition.

15. The Mark is inherently distinctive of Matt's El Rancho and its offerings.

16. Also, due to Matt's El Rancho's longstanding use and promotion of the Mark, the Mark has become distinctive of Matt's El Rancho and its offerings.

17. Matt's El Rancho owns strong common law rights in the Mark.

18. The Mark is famous within the State of Texas. It is widely recognized by the consuming public within Texas.

19. In addition to its common law rights in the Mark, Matt's El Rancho owns a registration for the Mark on the Principal Register of the U.S. Patent and Trademark Office (PTO). *See* U.S. Reg. No. 5,135,570. The registration covers "Dips; cheese in the form of dips; snack dips, namely, cheese dips and queso dips" in Class 29 and claims November 1986 as the date of first use. A copy of the registration certificate is attached as **Exhibit 1**.

Defendants' Unlawful Activities

20. On information and belief, Defendants own and operate Horseshoe Hill Café (<https://www.horseshoehillcafe.com/>), a restaurant in Fort Worth, Texas that serves cowboy cooking and Tex-Mex.

21. On information and belief, sometime before February 2018, Defendants began using the Mark as the name of an appetizer on Defendants' menu. The screenshot below shows an example of Defendants' use of the Mark:



22. On information and belief, Defendants use the Mark on the same type of goods as Matt's El Rancho (i.e., a cheese-dip appetizer).

23. On information and belief, the parties target similar consumers and use similar advertising media and channels.

24. On information and belief, Defendants adopted and began using the Mark with full knowledge of Matt's El Rancho and its rights.

25. Matt's El Rancho began using the Mark long before Defendants began their use.

26. Defendants' use of the Mark began after the Mark had become famous within the State of Texas.

27. Matt's El Rancho did not authorize or permit Defendants' use of the Mark.

Matt's El Rancho's Cease-and-Desist Letters

28. In approximately February 2018, Matt's El Rancho discovered Defendants' unauthorized use of the Mark.

29. Counsel for Matt's El Rancho sent a cease-and-desist letter to Defendants<sup>1</sup> on March 9, 2018. The letter noted Matt's El Rancho's longstanding trademark rights in the Mark and its federal registration. The letter requested that Defendants stop using the Mark, providing some amicable options for Defendants to address Matt's El Rancho's concerns. A copy of the letter is attached as **Exhibit 2**.

---

<sup>1</sup> Counsel mailed this letter to Defendants' physical restaurant location in Fort Worth. Counsel also emailed it to the restaurant's founder, Defendant Spears.

30. On March 15, 2018, counsel for Matt's El Rancho spoke with Defendant Spears by phone about the cease-and-desist letter. During the call, Spears verbally agreed that Defendants' restaurant would stop using the Mark, but when asked for a timeframe, he refused to give one.

31. Defendants did not honor this verbal agreement to stop using the Mark. Defendants' online menu still uses the Mark in connection with an appetizer, as shown above. On information and belief, the Mark also remains on Defendants' physical menus and may appear elsewhere in Defendants' marketing materials.

32. On May 15, 2019, counsel for Matt's El Rancho sent a follow-up letter. The follow-up letter demanded that Defendants honor the verbal agreement from March 15, 2018 and "immediately and permanently stop using the Mark." A copy of this follow-up letter is attached as **Exhibit 3**. Defendants did not respond.

33. On June 10, 2019, one of Matt's El Rancho's owners emailed Defendant Spears personally, asking him again to stop using the Mark. Spears did not respond.

#### Effects of Defendants' Unlawful Activities

34. Defendants' unauthorized use of the Mark is likely to cause confusion, to cause mistake, or to deceive customers and potential customers. Consumers and potential consumers will likely perceive some connection between Defendants and Matt's El Rancho as to source, sponsorship, or affiliation, even though no such connection exists.

35. Defendants' actions falsely designate the origin of their goods and falsely describe or represent facts with respect to those goods.

36. Defendants' actions enable them to trade off and receive the benefit of the goodwill built up by Matt's El Rancho over decades of continuous and exclusive use of the Mark.

37. Defendants' actions effectively remove from Matt's El Rancho the ability to control the quality of the goods offered under the Mark. This places Matt's El Rancho's reputation and goodwill at least partially in the hands of Defendants, whose goods Matt's El Rancho cannot control.

38. Defendants' actions are likely to dilute the distinctiveness of the famous Mark within Texas.

39. Defendants' actions have caused them to become unjustly enriched at the expense of Matt's El Rancho.

#### **IV. Causes of Action**

##### **Count 1: Federal Trademark Infringement** **Under 15 U.S.C. § 1114**

40. Matt's El Rancho incorporates and re-asserts the paragraphs above.

41. Matt's El Rancho owns protectable, federally registered rights in the Mark.

42. Matt's El Rancho has priority over Defendants.

43. Defendants' unauthorized use of the Mark is likely to cause confusion, to cause mistake, or to deceive.

44. Defendants have thus infringed Matt's El Rancho's registered trademark rights in violation of the Lanham Act, 15 U.S.C. § 1114.



Count 2: Federal Unfair Competition  
Under 15 U.S.C. § 1125(a)

45. Matt's El Rancho incorporates and re-asserts the paragraphs above.

46. Matt's El Rancho owns protectable federal trademark rights in the Mark.

47. Matt's El Rancho has priority over Defendants.

48. Defendants' unauthorized use of the Mark is likely to cause confusion, to cause mistake, or to deceive.

49. Defendants have thus infringed Matt's El Rancho's trademark rights in violation of the Lanham Act, 15 U.S.C. § 1125(a).

Count 3: Texas Common Law Trademark Infringement &  
Unfair Competition

50. Matt's El Rancho incorporates and re-asserts the paragraphs above.

51. Matt's El Rancho owns protectable state common law trademark rights in the Mark.

52. Matt's El Rancho has priority over Defendants.

53. Defendants' unauthorized use of the Mark is likely to cause confusion, to cause mistake, or to deceive.

54. Defendants have thus infringed Matt's El Rancho's trademark rights and committed unfair competition under Texas common law.

Count 4: Texas Statutory Trademark Dilution

55. Matt's El Rancho incorporates and re-asserts the paragraphs above.

56. Defendants' actions are likely to cause dilution of the famous Mark within the State of Texas.

57. The Mark became famous within the State of Texas before Defendants' unauthorized use began.

58. Defendants are thus liable for Texas trademark dilution in violation of Texas Business and Commerce Code section 16.103.

Count 5: Texas Common Law Unjust Enrichment

59. Matt's El Rancho incorporates and re-asserts the paragraphs above.

60. Defendants' actions have unjustly enriched Defendants at the expense of Matt's El Rancho.

61. By using the Mark without authorization, Defendants have obtained a benefit to which they are not entitled.

62. Defendants are thus liable for unjust enrichment under Texas common law.

**V. Willfulness of Defendants' Violations**

63. With respect to each cause of action above, Defendants' violations are and have been willful.

64. Defendants adopted the Mark with full knowledge of Matt's El Rancho and its identical Mark.

65. Defendants have continued using the Mark after receiving notice from Matt's El Rancho that their unauthorized use violates Matt's El Rancho's rights. Defendants have also continued using the Mark after and despite Defendant Spears' verbal agreement to stop using the Mark.

## **VI. Damages; Profits; Injunctive Relief**

66. Matt's El Rancho has been and will continue to be irreparably harmed by Defendants' unlawful actions described above.

67. Matt's El Rancho is entitled to money damages. However, money damages cannot fully compensate Matt's El Rancho for the harm it has suffered and continues to suffer. Matt's El Rancho is entitled to an injunction to remedy this ongoing and irreparable harm.

## **VII. Prayer**

Matt's El Rancho asks the Court to:

- A. enter judgment for Matt's El Rancho on all of its claims;
- B. preliminarily and permanently enjoin Defendants from using the mark BOB ARMSTRONG DIP and any other confusingly similar marks;
- C. award Matt's El Rancho all monetary remedies to which it is entitled under federal and Texas law, including all profits realized by Defendants (adjusted upward as the Court deems just), all damages (trebled) sustained by Matt's El Rancho, exemplary damages, and nominal damages;
- D. order the seizure and destruction of all items and materials in Defendants' possession, custody, or control that use the mark BOB ARMSTRONG DIP or any other confusingly similar mark;
- E. award Matt's El Rancho its costs and reasonable attorney's fees; and
- F. award any other relief the Court deems just and proper.

## **VIII. Jury Demand**

Matt's El Rancho demands a jury on all issues triable by a jury.

DATED: June 28, 2019

Respectfully submitted,

/s/ Travis R. Wimberly

Travis R. Wimberly

State Bar No. 24075292

Elizabeth Stafki

State Bar No. 24086835

PIRKEY BARBER PLLC

1801 East 6<sup>th</sup> Street, Suite 300

Austin, TX 78702

(512) 322-5200

(512) 322-5201 (fax)

[twimberly@pirkeybarber.com](mailto:twimberly@pirkeybarber.com)

[estafki@pirkeybarber.com](mailto:estafki@pirkeybarber.com)

*Counsel for Plaintiff Matt's El Rancho, Inc.*