

STATE OF INDIANA) IN THE MARION COUNTY COMMERCIAL COURT
) SS:
COUNTY OF MARION) CAUSE NO.

ALFARAH RESTAURANT GROUP)
OF IN, INC.,)
)
 Plaintiff,)
)
 v.)
)
TACO BELL FRANCHISOR, LLC, and)
FLYNN RESTAURANT GROUP, LP,)
)
 Defendants.)

COMPLAINT

Plaintiff, Alfarah Restaurant Group of IN, Inc. (“Plaintiff”), by counsel, for its Complaint against Defendants, Taco Bell Franchisor, LLC (“Taco Bell®”) and Flynn Restaurant Group, LP (“Flynn”) (Taco Bell and Flynn are collectively referred to hereinafter as “Defendants”), alleges and states as follows:

INTRODUCTION

1. Taco Bell® and Flynn have agreed for Flynn to open a Taco Bell Cantina, a franchise of Taco Bell®, that will unfairly compete with Plaintiff’s Taco Bell® franchise which is less than one-tenth of a mile away in violation of the Indiana Deceptive Franchise Practices Act, I.C. §23-2-2.7-1.

PARTIES

2. Plaintiff is an Indiana corporation with its principal place of business at 14600 John Humphrey Drive, Orland Park, Illinois 60462.

3. Taco Bell® is a Delaware limited liability company with its principal place of business at 1 Glen Bell Way, Irvine, California 92618.

4. Flynn Restaurant Group LP is a Delaware limited partnership with its principal place of business at 225 Bush Street, Suite 1800, San Francisco, CA 94104.

5. Flynn Restaurant Group is one of the largest operators of franchises in the United States.

6. Nick Enterprises, Inc. (“Nick Enterprises”) is an Illinois Corporation with its principal place of business located at 14600 John Humphrey Drive, Orland Park, Illinois 60462.

THE LICENSE AGREEMENT

7. On or about March 8, 2018, Nick Enterprises, Inc., entered into a Successor License Agreement with Taco Bell® (the “License Agreement”). A true and accurate copy of the License Agreement is attached hereto as **Exhibit 1**.

8. On or about March 21, 2018, Nick Enterprises and Taco Bell® entered into an Addendum to the License Agreement for the State of Indiana (“Addendum”). A true and accurate copy of the Addendum is attached hereto as **Exhibit 2**.

9. On or about June 29, 2020, Nick Enterprises, Inc., assigned the License Agreement to Plaintiff (“Assignment”) with Taco Bell®’s consent. A true and accurate copy of the Assignment is attached hereto as **Exhibit 3**.

10. Plaintiff operates a Taco Bell® restaurant in the Food Court of Circle Centre Mall located at 49 West Maryland Street, Indianapolis, Indiana 46255 (“Restaurant”).

11. On or about July 25, 2023, officials with Newbridge Commercial Real Estate, Inc., announced that it had leased 2,858.5 square feet of the Lieber Building located at 24 West Washington Street for operation of a Taco Bell Cantina.

12. The Taco Bell Cantina is expected to occupy the ground floor, basement, and mezzanine of the Lieber Building with a plan to be open for business prior to the National Basketball Association All-Star Game festivities by February 2024.

13. Upon information and belief, Flynn or a related affiliate will operate the Taco Bell Cantina as a franchisee of Taco Bell®.

14. Plaintiff first learned of the proposed Taco Bell Cantina on or about August 5 or 6, 2023.

15. On or about August 11, 2023, Tara Hinkle, Senior Director of Franchising and Development at Taco Bell Corporation, in an email to Mr. Al-Farah, President of Plaintiff, confirmed the plans to open the Taco Bell Cantina. A true and accurate copy of the August 11, 2023, email is attached hereto as **Exhibit 4**.

16. The August 11, 2023, email from Ms. Hinkle stated, “I can confirm Taco Bell’s approval of the ... [Taco Bell Cantina] is a valid and consistent with the Integrated Expansion and TBX Development Policy (IE Policy) because your existing location is considered “captive.” *Id.*

17. According to Taco Bell, captive restaurants include those locations in malls and travel centers.

18. Plaintiff’s License Agreement does not identify Plaintiff’s Taco Bell franchise as “captive.”

19. Likewise, the License Agreement does not define a “captive” Taco Bell franchise. *See **Exhibit 1***.

20. Sections 14.1 and 14.2 of the License Agreement purports to allow Taco Bell to compete with Plaintiff and establish that no exclusive territory is assigned to Plaintiff.

21. The Addendum, however, supersedes Section 14.1 and 14.2 by incorporating elements of the Indiana Deceptive Franchise Practices Act, Indiana Code § 23-2-2.7-1 et seq (the “Act”). See **Exhibit 2**.

22. Specifically, Paragraph 1 of the Addendum supplements Section 1 of the License Agreement, “Grant of Rights” and supersedes Section 14.1 and 14.2 of the License Agreement as follows:

Section 23-2-2.7-1(2) of the Indiana Code states that “if a license agreement does not grant an exclusive territory, then the licensor may not compete unfairly with the licensee within a reasonable area.

Id (emphasis added).

23. The Addendum also states in paragraph 4 that restricting venue under the License Agreement to Orange County, California and mandating that the License Agreement be interpreted using New York law is also deemed void and replaced by venue within Indiana and the application of Indiana law. *Id*.

24. The Taco Bell Cantina will be located .1 miles from the Restaurant.

25. A tenth of a mile is within a reasonable area.

26. Taco Bell and Flynn’s Taco Bell Cantina will unfairly compete with Plaintiff within a reasonable area in breach of the License Agreement and in violation of the Act.

27. The Act makes no distinction between a “captive” licensee or some other licensee, it simply states that the licensor or franchisor may not compete unfairly within a reasonable area.

28. Circle Centre Mall incorporates existing downtown structures and houses a number of non-traditional uses including office space for the Indianapolis Star newspaper.

29. Downtown visitors and workers utilize indoor skywalks, some of which pass directly through the mall, to access hotels, event space and business establishments.

30. The Restaurant's sales surge at lunch time and dinner demonstrating that the Restaurant's sales are not limited to shoppers at the mall.

31. Office workers, conventioners, and others are entering the Circle Center Mall to eat at the Restaurant.

32. Plaintiff is the only downtown Indianapolis Taco Bell Restaurant within reasonable walking distance to downtown hotels and business establishments.

33. Those craving Taco Bell® food have one choice, Plaintiff's Restaurant.

34. The Taco Bell Cantina, which will serve the same or substantially similar Taco Bell® food as the Restaurant, will rob Al-Farah's business.

35. Indiana Code § 23-2-2.7-1(2) specifically states:

It is unlawful for any franchise agreement entered into between any franchisor and a franchisee who is either a resident of Indiana or a nonresident who will be operating a franchise in Indiana to contain any of the following provisions:

(2) Allowing the franchisor to establish a franchisor-owned outlet engaged in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement; or, **if no exclusive territory is designated, permitting the franchisor to compete unfairly with the franchisee within a reasonable area.**

Id. (emphasis added).

36. Similarly, Indiana Code § 23-2-2.7-2 (4) states in pertinent part that it is unlawful for any franchisor who has entered into any franchise agreement with a franchisee who is either a resident of Indiana or a nonresident who will be operating a franchise in Indiana to engage in any of the following acts and practices in relation to the agreement:

(4) Establishing a franchisor-owned outlet engaged in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement or, **if no exclusive territory is designated, competing unfairly with the franchisee within a reasonable area.**

Id. (emphasis added).

COUNT I – VIOLATION OF INDIANA FRANCHISE DECEPTIVE PRACTICES ACT

37. Plaintiff restates and incorporates herein the allegations made in Paragraphs 1 through and including 36 of its Complaint.

38. The License Agreement and the Addendum grant rights to Plaintiff to operate a Taco Bell®.

39. Because Plaintiff is an Indiana corporation and because the Restaurant is operated in Indiana, the License Agreement and the Addendum thereto are subject to the Act.

40. Upon information and belief, Taco Bell will receive royalties from Flynn pursuant to their respective License Agreement for the Taco Bell Cantina.

41. Taco Bell and Flynn will unfairly compete within a reasonable area with Plaintiff's Restaurant because of the proximity of the two Taco Bell franchises.

42. As a result, Plaintiff will be damaged by Taco Bell and Flynn's unfair competition.

WHEREFORE, Plaintiff, Alfarah Restaurant Group of IN, Inc., by counsel, respectfully requests the Court enter judgment in its favor and against Defendants, Taco Bell Franchisor, LLC and Flynn Restaurant Group, on Count I – Violation of Indiana Franchise Disclosure Act, for an amount to be determined, plus consequential damages, interest at eight percent (8%) on the judgment, reasonable attorney's fees, and for all other relief just and proper in the premises.

COUNT II – INJUNCTION

43. Plaintiff restates and incorporates herein the allegations made in Paragraphs 1 through and including 43 of its Complaint.

44. Plaintiff will suffer irreparable harm if it cannot obtain preliminary and permanent injunctive relief against Taco Bell and Flynn.

45. Plaintiff will continue to suffer not only monetary losses, but also interference with its customer relationships, lost business, and goodwill, for which there is an inadequate remedy at law if Taco Bell and Flynn are not enjoined from their unlawful activities.

46. The threatened injury to Plaintiff outweighs any threatened harm that would be placed upon Taco Bell and Flynn upon the granting of injunctive relief, as the granting of such relief will merely stop unlawful behavior being conducted by Taco Bell and Flynn and will protect Plaintiff from further harm to its business and goodwill.

47. The granting of an injunction will best serve the public interest by returning the parties to fair and lawful competition and not rewarding parties who breach their duties and violate the law to gain unfair advantages.

48. The equities favor the granting of such preliminary and permanent injunctive relief.

WHEREFORE, Plaintiff, Alfarah Restaurant Group of IN, Inc., by counsel, respectfully requests the Court enter judgment in its favor and against Defendants, Taco Bell Franchisor, LLC and Flynn Restaurant Group, on Count II – Injunctive Relief, as follows:

a) Enter a preliminary injunction, and permanent injunction enjoining Taco Bell and Flynn from opening the Taco Bell Cantina in violation of the Act and the License Agreement;

b) Enter a preliminary injunction, and permanent injunction enjoining Taco Bella and Flynn from entering competition with Plaintiff within a reasonable area of Plaintiff's Restaurant;

c) Upon a final hearing, enter an order that grants a permanent injunction against Taco Bell and Flynn, and all other persons associated with and acting in concert,

understanding, or participation with her, enjoining and restraining them, as specifically prayed for above;

- d) Award compensatory damages and exemplary damages;
- e) Award Plaintiffs their costs and attorneys' fees; and
- f) All other just and proper relief.

Respectfully submitted,

/s/ Stephen E. Ferrucci

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