

IN THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF ILLINOIS

JAYMO’S SAUCES, LLC, an Illinois)	
Limited Liability Corporation,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 19-cv-1026
)	
THE WENDY’S COMPANY, a Delaware)	
Corporation,)	
)	
Defendant.)	

Complaint for Damages and Injunctive Relief

Plaintiff, Jaymo’s Sauces, LLC, an Illinois Limited Liability Corporation, through counsel, Segal McCambridge Singer & Mahoney, Ltd. and Meyer & Kiss, LLC, and for its Complaint at Law against Defendant, The Wendy’s Company, a Delaware Corporation, states as follows:

THE PARTIES

1. Plaintiff, Jaymo’s Sauces, LLC (“Jaymo’s”) at all relevant times was and is an Illinois Limited Liability Corporation with its principal place of business located in Dunlap, Illinois.

2. At all relevant times Jaymo’s engaged in the manufacture, bottling, packaging, and selling of sauces, and specifically its “S’Awesome” sauce, to be used for marinating and seasoning all types of foods.

3. Defendant, The Wendy’s Company (“Wendy’s”), at all relevant times was and is a Delaware Corporation with its principal place of business located in Dublin, Ohio.

4. The Wendy's Company is the parent company of its 100% owned subsidiary holding company Wendy's Restaurants, LLC.

5. Wendy's Restaurants, LLC is the parent company of Wendy's International, LLC, formerly known as Wendy's International, Inc.

6. Wendy's International, LLC is the indirect parent company of Quality is Our Recipe, LLC, which is the owner and franchisor of the Wendy's chain of fast food restaurants in the United States.

7. At all relevant times Defendant, Wendy's, operated and continues to operate a fast food restaurant business throughout the United States of American and in the State of Illinois.

8. Wendy's is involved in operating, developing, and franchising fast food restaurants specializing in hamburger sandwiches.

9. Wendy's restaurants also offer chicken breast sandwiches, chicken nuggets, French fries, baked potatoes, salads, soft drinks, deserts, and kids' meals, among other food items.

10. At all relevant times, Wendy's operated approximately 6,100 franchise and company-operated restaurants across America and throughout the world, including in 56 company-owned restaurants and 137 franchise restaurants in Illinois alone, one of which is located less than three miles from this courthouse.

11. Wendy's stock is publicly traded on the Nasdaq stock exchange and as of this filing it has a market capitalization of more than \$3.8 billion. It is the third largest fast food restaurant company in the hamburger sandwich segment of the restaurant industry.

JURISDICTION

12. This Court has jurisdiction over this matter under 28 U.S.C. §1332 as Plaintiff and Defendant are citizens of different states and because the amount in controversy in this matter exceeds \$75,000.00 [seventy-five thousand dollars].

13. This Court also has jurisdiction over this matter under 28 U.S.C. §1331 at this civil action arises under the laws of the United States as outlined in Counts III and IV below.

STATEMENT OF FACTS

I. Jaymo's and S'Awesome Sauce

14. Jamison Shefts is the owner and president of Jaymo's Sauces, LLC ("Jaymo's"). He lives and works in Dunlap, Illinois, a small town located about 15 miles northwest of Peoria, Illinois.

15. For years Mr. Shefts was a "home chef" who always enjoyed cooking and experimenting with different types of cuisine, especially sauces.

16. Over the years, Mr. Shefts developed his own type of all-purposes sauces that could be used as a marinade for meats and vegetables or simply used as a sauce for all types of foods such as beef, pork, chicken, fish, seafood, rice, eggs, and vegetables, among other things.

17. In 2013, at the urging of his friends and family, Mr. Shefts began exploring the idea of bottling, labeling, and selling his sauces commercially.

18. He eventually formulated his original sauce called All Purpose "S'Awesome" Sauce.

19. In November of 2013, Mr. Shefts formed a limited liability corporation, Jaymo's Sauces, LLC ("Jaymo's"), registered with the Illinois Secretary of State.

20. Jaymo's is the Plaintiff in this lawsuit and remains an Illinois limited liability corporation to this date.

21. Shortly after forming Jaymo's Sauces, LLC in 2013, Mr. Shefts obtained the internet uniform resource locator ("URL") or domain name "jaymosauces.com" and started Jaymo's website on that domain advertising and selling Jaymo's sauces online.

22. He also obtained the internet domain names "jaymos.com" and "jaymossaues.com." These websites take the viewer to the same "jaymosauces.com" website referenced in Paragraph 21 above.

23. In 2014, Jaymo's began selling its all-purpose sauces online and in numerous central Illinois grocery stores.

24. In early 2014, Jaymo's expanded its sale of its all-purpose sauces via Direct Store Delivery at Kroger, Schnuck's, Hy-Vee, and other specialty stores in Illinois.

25. In early September of 2015, Mr. Shefts conceived the idea of branding Jaymo's all-purpose sauces with the "S'Awesome" trademark.

26. Mr. Shefts chose the "S'Awesome" mark for purposes of differentiating his sauces from other products on the market.

27. Working with a product labeling company --Reliable Label based in Downers Grove, Illinois-- Mr. Shefts created the first stylized label for his "S'Awesome" Sauce on September 8, 2015.

28. Mr. Shefts and Jaymo's began selling Jaymo's sauces with the "S'Awesome" trademark online and in stores on September 22, 2015.

29. On January 12, 2016, Jaymo's Sauces, LLC, began using the "S'Awesome" Sauce mark on the "jaymosauces.com" website.

30. A photograph of Jaymo's Classic "S'Awesome" sauce product is below.



31. The "S'Awesome" mark, as used by Jaymo's, was and is a distinctive mark that functions to distinguish Jaymo's sauces from sauces manufactured and sold by Jaymo's competitors.

32. By using the "S'Awesome" mark for the commercial sale of its sauces, Jaymo's acquired the common law rights to the "S'Awesome" trademark under 765 ILCS 1036/5(i), (k) and 765 ILCS 1036/80.

33. Jaymo's eventually developed "Bourbon," "Spicy," and "Sweet n Heat" versions of its "S'Awesome" Sauce, each of which was bottled and sold with the "S'Awesome" Sauce trademark and continues to be sold in commerce with that trademark.

34. Mr. Shefts began selling the “Classic” and “Spicy” sauces with the “S’Awesome” trademark on the “jaymosauces.com” website on May 19, 2016.

35. Based on product testing and consumer feedback, Jaymo’s eventually changed the name of it’s “Spicy” sauce to “Bold.”

36. Bottles of Jaymo’s “Classic,” “Bourbon,” “Bold,” and “Sweet n Heat” sauces using the “S’Awesome” trademark as sold in commerce are pictured below.



37. Over the course of the next year, Mr. Shefts worked tirelessly to advertise, promote, and sell his different “S’Awesome” sauces in grocery store locations in Illinois from Chicago, Illinois to Anna, Illinois and throughout the Midwest as well as nationally via the Jaymo’s websites.

38. In December of 2016, Jaymo's Sauces, LLC entered into an agreement with The Kroger Co. ("Kroger"), which operates a nationwide chain of grocery stores and is the largest supermarket chain in the United States by revenue and is the seventeenth largest company in the United States.

39. Jaymo's consistently sold its sauces with the "S'Awesome" trademark in Illinois throughout the duration of 2016 and into 2017.

40. In March of 2017, Kroger began selling Jaymo's "S'Awesome" sauces in 909 Kroger grocery stores across 15 States including Illinois, Indiana, Michigan, Ohio, Tennessee, Kentucky, North Carolina, South Carolina, Alabama, Georgia, Mississippi, West Virginia, Missouri, Texas, and Louisiana.

41. Jaymo's "S'Awesome" sauces have been, and continue to be, sold in interstate commerce at Kroger stores as of this filing.

42. In addition to being sold nationally in Kroger and online stores Jaymo's "S'Awesome" sauces are currently sold by grocery store companies such as Alwan and Sons Meat Company, College Hills Meat Shop, Country Fresh Farm Market and Wine Depot, Dixon's Seafood Shoppe, Food 4 Less, Hy-Vee, Jay-C, Pottstown Meat and Deli, and Schnucks Markets, Inc.

43. Jaymo's continues to promote and market its "S'Awesome" sauces and is on a natural progression towards having its sauces distributed and sold in all 50 U.S. States.

44. At all relevant times, Jaymo's had and continues to have a protectible ownership interest in the "S'Awesome" trademark, including holding the registration for "S'Awesome" with the Illinois Secretary of State.

II. Wendy's Infringing Use of Jaymo's "S'Awesome" Trademark

45. Wendy's, in its 2017 annual form 10-K filing with the United States Securities and Exchange Commission, listed as part of its business the ownership of certain trademarks and service marks, specifically "Wendy's," "Old Fashioned Hamburgers," and "Quality is Our Recipe," which Wendy's claimed are "of material importance to its business."

46. This filing did not include "S'Awesome" sauce as one of its proprietary trademarks.

47. Among Wendy's competitors are "major grocery store chains and other retail outlets which sell food that will be prepared at home," according to Wendy's 2017 annual form 10-K filing.

48. Wendy's advertises its goods and services on local and national levels via television, radio, the internet, social media, and other promotional campaigns.

49. In October of 2017, Wendy's for the first time began advertising and selling a line of chicken tenders with a sauce that it called "S'Awesome" sauce. A photo of one of Wendy's container's of its "S'Awesome" sauce is shown below:



50. This advertising took place in the State of Illinois and at Wendy's locations in Peoria, Illinois.

51. Also, in October of 2017, Wendy's advertised its "S'Awesome" sauce in a national television commercial during the Major League Baseball's World Series broadcast on the Fox Broadcasting Company.

52. Within days of the airing of that commercial Jaymo's received multiple telephone calls and personal inquiries from friends and customers expressing confusion and asking if Jaymo's was somehow affiliated with Wendy's or if Mr. Shefts had sold Jaymo's or his "S'Awesome" sauce business to Wendy's.

53. Mr. Shefts also received inquiries from his business partners expressing concern about the long-term viability of Jaymo's and its "S'Awesome" sauce because of Wendy's use of Jaymo's "S'Awesome" trademark.

54. On December 5, 2017, Jaymo's, through counsel, sent correspondence to counsel for Wendy's demanding that Wendy's "cease and desist" its use of Jaymo's "S'Awesome" sauce trademark.

55. On January 3, 2018, in an attempt to remedy its infringement of Jaymo's "S'Awesome" mark, Wendy's initiated a process to purchase the federally registered trademark "it's Saucesome!", which was originally registered with the United States Patent and Trademark Office in July of 2011, more than seven years earlier.

56. The original owner of the "it's Saucesome!" mark was an individual named Troy Miller, who has no affiliation whatsoever with Wendy's or any of its subsidiaries or affiliates.

57. On January 3, 2018, Mr. Miller assigned his interest in “it’s Saucesome!” to an entity named Investigative Network, Inc. with a listed address of 424 E. Gurley St. in Prescott, Arizona.

58. That same day Investigative Network assigned its in interest in “it’s Saucesome!” to Quality is Our Recipe, LLC, one of Wendy’s corporate entities as identified above in paragraph 6.

59. The next business day, on January 5, 2018, Quality is our Recipe, LLC filed a Section 8 Declaration of Use for the “it’s Saucesome” mark with the United States Patent and Trademark Office.

60. On January 16, 2018, Quality is our Recipe, LLC conveyed a security interest in the “it’s Saucesome” mark to Citibank, N.A.

61. Instead of ceasing its use of Jaymo’s “S’Awesome” trademark, Wendy’s willfully and wantonly expanded its use of the “S’Awesome” sauce mark beyond chicken tenders by using it in conjunction with its “bacon classic” cheeseburger in the fall of 2018.

62. For example, Wendy’s aired television commercials for its Bacon Classic Cheeseburger with “S’Awesome” sauce during the Chicago Bears versus New England Patriots football game broadcast in several national media markets via the Columbia Broadcasting System (“CBS”) on October 21, 2018. A photo of this television advertisement is below.



63. Counsel for Jaymo's sent correspondence to counsel for Wendy's the next day, on October 22, 2018, notifying counsel of Wendy's continued and expanded use of Jaymo's "S'Awesome" trademark and again demanding that Wendy's "cease and desist" the use of Jaymo's "S'Awesome" trademark.

64. Also in the fall of 2018, Wendy's began using Jaymo's "S'Awesome" trademark in conjunction with the sale of its bacon cheese french fries, marketing and selling "S'Awesome Bacon Cheese Fries."

65. A photograph of a local Wendy's advertising the "S'Awesome Bacon Classic" cheeseburgers and "S'Awesome Bacon Fries" is below.



66. As of this filing Wendy's continues to use Jaymo's "S'Awesome" trademark for purposes of advertising and selling its food products.

Count I
Trademark Infringement
(765 ILCS 1036/60)

67. Jaymo's re-alleges and incorporates by reference its allegations contained in Paragraphs 1 through 66 of this Complaint for Damages and Injunctive Relief as its allegations 1 through 66 of Count I of this Complaint for Damages and Injunctive Relief.

68. Jaymo's acquired the common law trademark for the "S'Awesome" mark for its all-purpose sauces on September 22, 2015 when it began commercially selling its "S'Awesome" sauces in Illinois.

69. Through Jaymo's continued and expanded sales of its all-purpose sauces with the "S'Awesome" trademark on the product labeling, Jaymo's "S'Awesome" trademark has become a "famous" mark under Illinois law. 765 ILCS 1036/65(a)

70. At all relevant times, Jaymo's "S'Awesome" sauces were and are unique products.

71. At all relevant times, Jaymo's used the "S'Awesome" trademark as a means of identifying the source of its unique "S'Awesome" sauces to its consumers and distributors.

72. At all relevant times Jaymo's used, and continues to use, the "S'Awesome" mark to identify and distinguish Jaymo's sauces from other sauces manufactured and sold by others in commerce, including, but not limited to, Wendy's.

73. At all relevant times Jaymo's maintained its common law trademark for the "S'Awesome" mark by continuously using that mark in commerce in conjunction with its all-purpose sauce business.

74. Jaymo's continues to use the "S'Awesome" mark in conjunction with the commercial sale of its all-purpose sauces.

75. Wendy's has used Jaymo's "S'Awesome" trademark in conjunction with the advertising and sale of its own sauces without the consent of Jaymo's.

76. Wendy's unauthorized use of Jaymo's "S'Awesome" trademark has caused consumer confusion among Jaymo's customer base and business partners.

77. Wendy's has committed and continues to commit trademark infringement of Jaymo's "S'Awesome" trademark.

78. Wendy's continued and expanded use of Jaymo's "S'Awesome" mark was committed with knowledge and in bad faith long after Jaymo's advised Wendy's and its counsel of Wendy's violations of Jaymo's trademark rights.

79. By reason of Wendy's acts, Jaymo's has suffered and will continue to suffer damage and injury to its business in excess of \$75,000, its reputation, and goodwill and will continue to sustain loss of revenues and profits.

80. Wendy's has benefitted and, if not enjoined, will continue to benefit from its improper bad faith use of Jaymo's "S'Awesome" trademark to the detriment of Jaymo's.

Count II
Injury to Business Reputation; Dilution
(765 ILCS 1036/65)

81. Jaymo's re-alleges and incorporates by reference its allegations contained in Paragraphs 1 through 80 of this Complaint for Damages and Injunctive Relief as its allegations 1 through 80 of Count II of this Complaint for Damages and Injunctive Relief.

82. For the reasons stated above and through its use of the "S'Awesome" trademark for years in association with its all-purpose sauces in commerce throughout the state of Illinois and in interstate commerce, Jaymo's "S'Awesome" trademark has become a famous mark under 765 ILCS 1036/65(a).

83. Wendy's infringing use of Jaymo's "S'Awesome" mark is not merely similar to Jaymo's "S'Awesome" mark, it is identical.

84. Due to the identical nature of Wendy's "S'Awesome" mark for its sauces and Jaymo's "S'Awesome" mark for its sauces, Wendy's use of the mark has lessened the capacity of

Jaymo's to distinguish its goods or services from similar goods or services on the market, including Wendy's sauces.

85. Wendy's continued and expanded use of Jaymo's "S'Awesome" mark was committed with knowledge and in bad faith long after Jaymo's advised Wendy's and its counsel of Wendy's violations of Jaymo's trademark rights.

86. By reason of Wendy's acts, Jaymo's has suffered and will continue to suffer damage and injury to its business in excess of \$75,000, its reputation, and goodwill and will continue to sustain loss of revenues and profits.

87. Wendy's has benefitted and, if not enjoined, will continue to benefit from its improper bad faith use of Jaymo's "S'Awesome" trademark to the detriment of Jaymo's.

Count III
Trademark Infringement
(15 U.S.C. §1125(a))

88. Jaymo's re-alleges and incorporates by reference its allegations contained in Paragraphs 1 through 87 of this Complaint for Damages and Injunctive Relief as its allegations 1 through 87 of Count III of this Complaint for Damages and Injunctive Relief.

89. Under Federal Law, "[a]ny person who, or in connection with any goods or services...uses in commerce any word, term, name, symbol, or device, or any combination thereof...which (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person...shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act." 15 U.S.C. § 1125 (a)

90. As alleged above, Jaymo's was the owner of the "S'Awesome" mark for its all-purposes sauces on September 22, 2015, when it began selling its "S'Awesome" sauces commercially.

91. In complete disregard of Jaymo's "S'Awesome" mark, Wendy's began a national advertising campaign for its own "S'Awesome" sauce and sale of that sauce in its restaurants in October of 2017.

92. As a result of Wendy's improper and infringing use of Jaymo's "S'Awesome" mark, Jaymo's customers and business partners were confused as to whether Jaymo's was somehow affiliated with Wendy's or if Mr. Shefts had sold Jaymo's or its "S'Awesome" sauce business to Wendy's.

93. Mr. Shefts also received inquiries from his business partners expressing concern about the long-term viability of Jaymo's and its "S'Awesome" sauce.

94. By reason of Wendy's acts, Jaymo's has suffered and will continue to suffer damage and injury to its business in excess of \$75,000, its reputation, and goodwill and will continue to sustain loss of revenues and profits.

95. Wendy's has benefitted and, if not enjoined, will continue to benefit from its improper bad faith use of Jaymo's "S'Awesome" trademark to the detriment of Jaymo's.

Count IV
Dilution by Tarnishment
(15 U.S.C. §1125(c))

96. Jaymo's re-alleges and incorporates by reference its allegations contained in Paragraphs 1 through 95 of this Complaint for Damages and Injunctive Relief as its allegations 1 through 95 of Count IV of this Complaint for Damages and Injunctive Relief.

97. Through its use of the “S’Awesome” trademark for years in association with its all-purpose sauces in commerce throughout the state of Illinois and in interstate commerce, Jaymo’s “S’Awesome” trademark has become a famous mark under 15 U.S.C. §1125(c)(2)(A).

98. Due to the similarity between Wendy’s “S’Awesome” brand for its sauces and Jaymo’s “S’Awesome” mark for its sauces, Wendy’s use of the mark has harmed the reputation of Jaymo’s famous mark via dilution by tarnishment under 15 U.S.C. §1125(c)(2)(C).

99. By reason of Wendy’s acts, Jaymo’s has suffered and will continue to suffer damage and injury to its business in excess of \$75,000, its reputation, and goodwill and will continue to sustain loss of revenues and profits.

100. Wendy’s has benefitted and, if not enjoined, will continue to benefit from its improper bad faith use of Jaymo’s “S’Awesome” trademark to the detriment of Jaymo’s.

Count V
Illinois Consumer Fraud and Deceptive Trade Practices
(815 ILCS 505-1)

101. Jaymo’s re-alleges and incorporates by reference its allegations contained in Paragraphs 1 through 100 of this Complaint for Damages and Injunctive Relief as its allegations 1 through 100 of Count V of this Complaint for Damages and Injunctive Relief.

102. As a result of Wendy’s unauthorized use of Jaymo’s “S’Awesome” mark in connection with the advertising, preparation, and sale of its restaurant products, Wendy’s has and continues to cause confusion, or to cause mistake or to deceive the public, in violation of the statutory and common laws of various States, including the State of Illinois’ Consumer Fraud and Deceptive Business Practices Act. 815 ILCS 505

103. Wendy's has and continues to mislead prospective purchasers and retailers as to an affiliation, connection, or association of Wendy's or its "S'Awesome" sauce with Jaymo's or its "S'Awesome" sauce, or as to the origin, sponsorship, or approval by Jaymo's or Wendy's "S'Awesome" sauce, causing purchasers to rely thereon, in violation of the statutory and common law of various States, including the State of Illinois

104. Wendy's acts were and continue to be undertaken in bad faith and in a deliberate attempt to capitalize on the goodwill and reputation of Jaymo's and Jaymo's "S'Awesome" trademark for its all-purpose sauces, and to mislead the public into believing that there is a connection, affiliation, or association between Wendy's or its "S'Awesome"-branded sauce and Jaymo's and its "S'Awesome" sauces.

105. By reason of Wendy's acts, Jaymo's has suffered and will continue to suffer damage and injury to its business in excess of \$75,000, its reputation, and goodwill and will continue to sustain loss of revenues and profits.

106. Unless enjoined by this Court, Wendy's will continue to perform the acts complained of herein and cause said damages and injury, all to the immediate and irreparable harm of Jaymo's, for which Jaymo's has no adequate remedy at law.

107. Jaymo's demands a trial by jury in this case.

WHEREFORE, Plaintiff, Jaymo's Sauces, LLC, prays for a judgment:

1. Permanently enjoining and restricting Wendy's, its officers, agents, employees, representatives, franchises, and all others acting in concert or participation with any of them from:
 - (a) Using the trademark "S'Awesome," or any other colorable imitation of the "S'Awesome" mark, or any mark that is confusingly similar to the "S'Awesome" mark on Wendy's

products within the State of Illinois pursuant to 765 ILCS 1036/65 and 70;

- (b) Using the trademark "S'Awesome," or any other colorable imitation of the "S'Awesome" mark, or any mark that is confusingly similar to the "S'Awesome" mark on Wendy's products; and
 - (c) Doing any other act or thing likely to induce the belief that Wendy's business or products are in any way connected with Jaymo's business or products, or are sponsored or approved by Jaymo's.
2. Directing Wendy's to:
- (a) Account for and pay over to Jaymo's all profits derived by Wendy's from its acts complained of herein, together with prejudgment interest;
 - (b) Pay to Jaymo's all the damages it has suffered as a result of the acts of Wendy's complained of herein, including an assessment or trebled actual damages, together with prejudgment interest;
 - (c) Pay to Jaymo's its attorneys fees and costs in this action; and
 - (d) File with this Court and serve on Wendy's counsel, within 30 [thirty] days after entry of an injunction issued by this Court, a sworn written statement as provided in 15 U.S.C. §1116.
3. Awarding Plaintiff such further relief as this Court deems just and equitable.

Dated: January 22, 2019

By: /s/ Mitch Morinec
Mitchell P. Morinec, Esq. (ARDC #: 6290282)
SEGAL MCCAMBIRDGE SINGER & MAHONEY, LTD.
233 S. Wacker Drive, Suite 5500
Chicago, Illinois 60606
Ph: (312) 645 7800
Fx: (312) 645 7711
mmorinec@smsm.com

Louis Meyer, Esq. (ARDC #: 6290221)
MEYER & KISS, LLC
311 West Stratford Drive
Peoria, Illinois 61614
Ph: (309) 713 3751
louismeyer@meyerkiss.com

Attorneys for Plaintiff, Jaymo's Sauces, LLC