

The Honorable Paul B. Snyder  
Chapter 7

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

In re  
RICHARD LEE SAULS,  
  
Debtor.

NO. 05-46440

QFA ROYALTIES, LLC and  
QIP HOLDER, LLC

Plaintiffs,

v.

RICHARD L. SAULS,  
  
Defendant,

Adversary Proceeding No. 05-\_\_\_\_\_

COMPLAINT FOR PRELIMINARY AND  
PERMANENT INJUNCTIVE RELIEF,  
DAMAGES AND OTHER RELIEF, AND  
FOR NON-DISCHARGE OF CERTAIN  
DEBTS PURSUANT TO 11 U.S.C.  
§523(a)(6)

Plaintiffs QFA Royalties, LLC (“Quizno’s”) and QIP Holder, LLP (“QIP”) (Quizno’s and QIP are sometimes collectively referred to as the “Quizno’s Entities”), by its attorneys, and for their Complaint for Preliminary and Permanent Injunctive Relief, Damages and Other Relief and to Determine Non-Dischargeability of Certain Debts (“Complaint”) against the debtor herein, Richard L. Sauls (“Sauls”, “Debtor” or “Defendant”), allege as follows:

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## I. Nature of the Action

1. This is an action arising under the trademark laws of the United States for infringement, cyber piracy and unfair competition, as well as an action for defamation, business disparagement, breach of contract, and tortious interference with prospective business advantage. Plaintiffs seek, among other things, a preliminary and permanent injunction (i) enjoining Debtor and those acting in concert with him from wrongful and unlawful use of Quizno's federally registered trademarks, and (ii) enforcing Debtor's post-termination obligations set forth in the Franchise Agreement entered into by and between Debtor and Quizno's predecessor in interest. Quizno's further seeks its damages, including, but not limited to amounts owed for past due royalties, fees and lost future royalties. Finally, Quizno's seeks a determination from this Court that Debtor's willful and malicious conduct precludes discharge of certain of Debtor's debts pursuant to 11 U.S. C. §523(a)(6).

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## II. Parties

2. Plaintiff Quizno's is a Delaware limited liability company with its principal place of business located in Denver, Colorado.

3. Quizno's is engaged in the business of operating and granting franchises to qualified persons to operate Quiznos Sub Restaurants using a unique business format, system of operations, and proprietary names and trademarks (defined as Quizno's Marks, below).

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4. Quizno's is the assignee and successor in interest to The Quizno's Corporation for purposes of the Franchise Agreement entered into by and between Defendant and The Quizno's Corporation on or about December 31, 2001 (the "Franchise Agreement").

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5. Section 21.1 of the Franchise Agreement specifies that, except to the extent governed by the United States Trademark Act of 1946 or other federal law, the Franchise Agreement shall be governed by the laws of the State of Colorado.



1 other things, oven-baked submarine sandwiches, salads, and other food products and  
2 beverages.  
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4 13. Quizno's has extensively used certain trademarks, service marks, trade names,  
5 logos, emblems and indicia of origin, including but not limited to the name and mark  
6 Quizno's® (collectively, the "Quizno's Marks") for the purpose of identifying the source,  
7 origin and sponsorship of Quiznos Sub Restaurants and the products and services they offer.  
8 The use of the Quizno's Marks also distinguishes Quizno's restaurants, products and services  
9 from those established, made, offered and sold by others.  
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16 14. The Quizno's Marks are registered on the Principal Register of the United  
17 States Patent Office. The registrations of the Quizno's Marks continue in full force and  
18 effect, and all those eligible are incontestable under Section 15 of the Lanham Act, 15 U.S.C.  
19 § 1065.  
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24 15. Quizno's has given notice to the public of the registration of the Quizno's  
25 Marks as provided in 15 U.S.C. § 1111 and complies with all legal requirements to ensure  
26 Quizno's remains the exclusive user and licensor of the Quizno's Marks.  
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30 16. Quizno's and its predecessors have continuously used the Quizno's Marks in  
31 interstate commerce in connection with (i) the promotion, sale and franchising of Quiznos  
32 Sub Restaurants and (ii) the promotion and sale of the products and services offered by  
33 Quizno's and its franchises throughout the United States, including the State of Washington,  
34 since the date of registration of the Quizno's Marks.  
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40 17. Quizno's and certain affiliates have the exclusive right to use and license the  
41 Quizno's Marks and derivations thereof, as well as the distinctive Quizno's System with  
42 which franchisees offer Quizno's products to the public under the Quizno's Marks. Pursuant  
43 to Franchise Agreements entered into by and between Quizno's and its authorized and  
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1 approved franchisees, Quizno's grants franchises to qualified persons to own and operate  
2 Quiznos Sub Restaurants using the Quizno's Marks and the Quizno's System, but only in  
3 such manner and at such locations as are expressly authorized by Quizno's pursuant to the  
4 Franchise Agreement.  
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9 18. Quizno's and their authorized franchisees use the Quizno's Marks as the  
10 Marks and trade identity by which the products and services offered by Quizno's and their  
11 franchisees are distinguished from other quick service restaurants and the products and  
12 services made and sold by them.  
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17 19. Quizno's, its predecessors and their authorized franchisees have extensively  
18 advertised and promoted Quiznos Sub Restaurants and the products and services they offer  
19 under the Quizno's Marks throughout the United States and through various media. As a  
20 result of such efforts and the considerable money spent in connection therewith, the products  
21 offered by Quizno's and their franchisees under the Quizno's Marks have met with  
22 widespread public approval and have established demand and goodwill among consumers  
23 throughout the United States, including the State of Washington.  
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31 **B. The Parties' Written Quizno's Franchise Agreement**

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33 20. On or about December 31, 2001, Quizno's predecessor, The Quizno's  
34 Franchise Company, and Sauls entered into a written contract entitled "The Quizno's  
35 Franchise Company Franchise Agreement," a true and correct copy of which is annexed  
36 hereto as Exhibit A.  
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41 21. On or about December 19, 2002, Sauls transferred the Franchise Agreement to  
42 RL Sauls, a Washington limited liability company organized by Defendant, pursuant to the  
43 terms of a written contract entitled "Agreement and Conditional Consent to Transfer," a true  
44 and correct copy of which is annexed hereto as Exhibit B.  
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1           22.     As an inducement to Quizno's to approve the transfer of the Franchise  
2 Agreement to RL Sauls, and as a condition of the transfer, Sauls executed a written contract  
3 entitled "Guaranty and Assumption of Franchisee's Obligations," pursuant to which he  
4 agreed to personally guarantee punctual payment and performance of each and every  
5 undertaking, agreement, covenant and obligation of RL Sauls set forth in the Franchise  
6 Agreement. A true and correct copy of the Guarantee is annexed hereto as Exhibit 6 to  
7 Exhibit A.  
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15           23.     Pursuant to the Franchise Agreement, Quizno's granted RL Sauls the right to  
16 operate a Quizno's Sub Restaurant No. 3075 located at One Tacoma Avenue North, Suite  
17 101, Tacoma, Washington 98403 (the "Restaurant") and a license to use the Quizno's System  
18 and the Quizno's Marks in connection therewith. Sauls personally guaranteed the obligations  
19 under the Franchise Agreement and agreed to remain personally bound by and liable for each  
20 and every provision therein.  
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26           24.     In executing the Franchise Agreement, Sauls and RL Sauls expressly  
27 acknowledged (i) that the license to use the Quizno's Marks applied only to the use of those  
28 marks in connection with the operation of the Restaurant, (ii) that "such Marks shall remain  
29 under the sole and exclusive ownership and control of [Quizno's]," (iii) that Sauls and RL  
30 Sauls had not acquired "any right, title, or interest in the Marks except for the right to use the  
31 Marks in" the operation of its Restaurant as it is governed by the Franchise Agreement, and  
32 (iv) that Sauls and RL Sauls "may not use any of the Marks . . . as part of any domain name  
33 or electronic address it maintains on the Internet, the World Wide Web, or any other similar  
34 proprietary or common carrier electronic delivery system." (Exhibit A, § 14.1.)  
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44           25.     In Section 20.5 of the Franchise Agreements, Sauls and RL Sauls agreed to  
45 take the following steps to protect Quizno's Licensed Marks:  
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1 Franchisee acknowledges that the Marks . . . have valuable goodwill  
2 attached to them, that their protection and maintenance are essential to  
3 . . . Franchisor, and that any *unauthorized use . . . of the Marks . . . will*  
4 *result in irreparable harm to . . . Franchisor.*  
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6 (Exhibit A, § 20.5) (emphasis added.)  
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8 26. As part of their obligations under the Franchise Agreements, Sauls and RL  
9 Sauls further agreed to pay Quizno's a weekly royalty equal to seven percent (7%) of the  
10 total amount of gross sales generated from or through the Restaurant. (Exhibit A, § 5.1.)  
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12 27. As part of their obligations under the Franchise Agreement, Sauls and RL  
13 Sauls further agreed to pay Quizno's a marketing and promotion fee in weekly installments  
14 of an amount equal to one percent (1%) of the total amount of gross sales generated from or  
15 through the Restaurant. (Exhibit A, § 12.3)  
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17 28. As part of their obligations under the Franchise Agreements, Sauls and RL  
18 Sauls further agreed to spend not less than three percent (3%) of the total amount of gross  
19 sales generated from or through the Restaurant, on a quarterly basis, for local advertising or  
20 to participate in a regional advertising program for the benefit of the Quizno's restaurants  
21 located in Restaurant's region, provided that amounts they could be required to spend in  
22 aggregate on marketing and promotional fees, local advertising fees, and regional advertising  
23 fees would not exceed five percent (5%) of the total amount of gross sales generated from or  
24 through the Restaurant. (Exhibit A, §§ 12.4 and 12.5)  
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26 29. Both the royalty and other amounts due under the Franchise Agreement,  
27 including, but not limited to, the marketing and promotion fee, were to be paid by Sauls and  
28 RL Sauls by electronic funds transfer. Sauls and RL Sauls agreed to have sufficient funds in  
29 their account to make these payments or be subject to the specified penalties. (Exhibit A,  
30 §§ 5.3, 12.3.)  
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1           30.     Along with their monetary obligations, Sauls and RL Sauls were obliged to  
2 maintain and operate the Restaurant in strict compliance with the standards and specifications  
3 set forth in the Franchise Agreement and Quizno's Operations Manual and were responsible  
4 for assuring that Restaurant employees and all other persons under their control similarly  
5 complied in all respects. (Exhibit A, § 8.1.)  
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10           31.     To monitor this compliance, Quizno's retained the right to interview  
11 customers or inspect the Restaurant, "including, without limitation, the inventory, products,  
12 equipment, materials, or supplies, to ensure compliance with all standards and specifications  
13 set by Franchisor." (Exhibit A, § 13.2.)  
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18           32.     In the event Sauls or RL Sauls failed to comply with certain terms of the  
19 Franchise Agreement, Quizno's had the right to terminate the Franchise Agreement. As  
20 relevant here, Sauls and RL Sauls agreed that Quizno's had the right to immediately  
21 terminate the Franchise Agreement if Sauls or RL Sauls abandoned the Restaurant for a  
22 period of five (5) consecutive days. (Exhibit A, § 18.2(d) ). Sauls and RL Sauls did abandon  
23 the Restaurant for five (5) or more consecutive days, and the Franchise Agreement was  
24 terminated by notice dated October 29, 2004.  
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32           33.     Upon termination of the Franchise Agreement, Sauls and RL Sauls expressly  
33 agreed that they would, among other things:  
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36                   (a)     Pay all Royalties and other amounts then owed Quizno's or their  
37 affiliates pursuant to the Franchise Agreement;  
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39                   (b)     Cease to identify themselves as a Quizno's franchisee or *use any of the*  
40 *Quizno's Marks*, trade secrets, signs, symbols, devices, trade names, or other  
41 materials of Quizno's;  
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1 (c) Immediately cease to identify the Restaurant as being, or having been,  
2 associated with Quizno's, and immediately cease using any proprietary mark of  
3 Quizno's or any mark in any way associated with the Quizno's Marks or Licensed  
4 Methods;  
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8 (d) Deliver to Quizno's all signs, sign-faces, advertising materials, forms  
9 and other materials bearing any of the Quizno's Marks or otherwise identified with  
10 Quizno's;  
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13 (e) Immediately deliver to Quizno's the Operations Manual and all other  
14 information, documents and copies thereof which are proprietary to Quizno's;  
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17 (f) Promptly take any such action as may be required to cancel all  
18 fictitious names or assumed names or equivalent registrations relating to the use of  
19 the Quizno's Marks; and  
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22 (g) Notify the telephone company and all telephone directory publishers  
23 of the termination or expiration of his right to use any telephone number and any  
24 regular, classified or other telephone directory, and authorize the transfer thereof to  
25 Quizno's.  
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33 (Exhibit A, § 18.7.) (emphasis added)

34 34. Sauls and RL Sauls further agreed in section 23.6 of the Franchise Agreement  
35 that, in the event of any default, the party in default would pay the prevailing party, among  
36 other things, all reasonable attorneys' fees incurred by the prevailing party in any legal action  
37 or other proceeding as a result of such default. (Exhibit A, § 23.6.)  
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43 **C. Breach of the Franchise Agreement**

44 35. Sauls and RL Sauls consistently maintained the Restaurant in substandard  
45 conditions during its operation of the Restaurant as a Quizno's franchisee; they were  
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1 repeatedly in default of various terms of the Franchise Agreement and failed to cure the  
2 defaults.  
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5 36. With respect to the Restaurant, these defaults included repeatedly offering  
6 expired food products, improperly transporting food products, failing to properly maintain  
7 food products, failing to carry specified food products and/or offering non-specified food  
8 products, failing to pass inspection, failing to operate in accordance with the Operations  
9 Manual, failing to have a certified manager at the Restaurant, failing to maintain required  
10 days and/or hours of operation at the Restaurant, abandonment of the Restaurant, failure to  
11 comply with third party agreements related to the Restaurant (e.g., to pay rent pursuant to the  
12 Restaurant lease), and failing to submit royalty, marketing, and/or promotion fees. *See e.g.*,  
13 Default Notices for the Restaurant dated September 30, 2003, October 14, 2003, May 25,  
14 2004, June 1, 2004, June 16, 2004, July 14, 2004, August 10, 2004, August 30, 2004,  
15 October 29, 2004, and December 9, 2004 (collectively, the “Notices”). The Notices  
16 demonstrate Sauls' and RL Sauls' consistent failure to comply with the Quizno's standards  
17 and specifications in the operation of the Restaurant. The Notices are annexed hereto a  
18 Exhibit C.  
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33 37. The aforementioned Notices were sent to RL Sauls consistent with the terms  
34 of the Franchise Agreements; that is, in writing by certified mail, return receipt requested, or  
35 by an overnight delivery service providing documentation of receipt, at the addresses set  
36 forth in the Franchise Agreement. (Exhibit A, § 23.11.)  
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41 38. According to the Franchise Agreement, the Notices were “deemed delivered  
42 (a) on the date shown on the return receipt or in the courier's records as the date of delivery  
43 or (b) on the date of first attempted delivery, if actual delivery cannot for any reason be  
44 made.” (Exhibit A, § 23.11.)  
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1           39.     Prior to October 29, 2004, RL Sauls unilaterally closed and abandoned the  
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3 Restaurant for a period of not less than five (5) consecutive days by failing to open and  
4  
5 operate the Restaurant during such period.

6           40.     Sauls and RL Sauls' abandonment of the Restaurant during such five (5)  
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8 consecutive day period was not due to fire, flood, earthquake or other similar cause beyond  
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10 their control and not related to the availability of funds to RL Sauls.

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12 **D.     Termination of the Franchise Agreement**

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14           41.     Consistent with section 18.2(d) of the Franchise Agreement regarding Sauls'  
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16 and RL Sauls' abandonment of the Restaurant for a period of five consecutive days, Quizno's  
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18 served Sauls and RL Sauls with a written Notice of Termination for the Restaurant dated  
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20 October 29, 2004, effective immediately. (See Exhibit C, Notice dated October 29, 2004).  
21  
22 Quizno's sent the Notice of Termination by overnight delivery service.

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24           42.     The Notice of Termination demanded that Sauls and RL Sauls immediately  
25  
26 comply with each of the post-termination obligations set forth in the Franchise Agreement,  
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28 including the obligation to cease all use of the Quizno's Marks, System and Licensed  
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30 Methods and pay all outstanding amounts owed under the Franchise Agreement.

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32           43.     Defendant, as more particularly described below, has willfully and  
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34 maliciously refused to cease using Quizno's Marks and continues, in bad faith, to use  
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36 Quizno's Marks as part of a domain name or electronic address maintained on the Internet or  
37  
38 World Wide Web.

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41 **E.     Debtor's Infringement of the Quizno's Marks**

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43           44.     Internet domain names serve as electronic addresses for sending and receiving  
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45 e-mail and for posting information or providing other services through a website on the  
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1 Internet or World Wide Web. A domain name serves as a unique gateway for locating and  
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3 accessing information, products, or services on the Internet.

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5 45. On November 29, 2004, one month after Sauls and RL Sauls received the  
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7 October 29, 2004 Notice of Termination, Sauls registered the following domain names for  
8  
9 use on the Internet or World Wide Web:

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11 Quiznossucks.com  
12 Quiznossucks.net  
13 Quiznossucks.biz  
14 Quiznossucks.info  
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16 (collectively, with QuiznoSucks.com, below, the "Infringing Domain Names") by entering  
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18 into Domain Name Registration Agreements with Go Daddy Software, Inc. for each of the  
19  
20 above listed domain names, and listing the administrative contact and technical contact for  
21  
22 such domain names as "Richard Sauls." (See, WHOIS database registrant information  
23  
24 annexed hereto as Exhibit D.)  
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26 46. On or about April 15, 2005, Sauls also registered the domain name  
27  
28 "QuiznoSucks.com" by entering into a Domain Name Registration Agreement with Go  
29  
30 Daddy Software, Inc. The administrative contact and technical contact for this domain name  
31  
32 is also listed as "Richard Sauls." (See, WHOIS database registrant information annexed  
33  
34 hereto as Exhibit D.)  
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36 47. Debtor did not schedule any of the Infringing Domain Names as assets of the  
37  
38 estate.  
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40 48. After registering the Infringing Domain Names, Sauls began posting and  
41  
42 publishing false and defamatory, untrue and injurious statements concerning Quizno's, its  
43  
44 franchise System and Licensed Methods through a website (the "Sauls Website") accessed  
45  
46 using the Domain Names.  
47

1           49.     Sauls' use of the Quizno's Marks, including use of the Quizno's name as part  
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3 of a domain name or electronic address maintained on the Internet or World Wide Web, is  
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5 without the license or consent of Quizno's, and has caused or is likely to cause mistake,  
6  
7 confusion or deception in the minds of the public as to source, affiliation and sponsorship.  
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9           50.     Quizno's delivered three<sup>1</sup> separate written requests to Sauls, (a) advising him  
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11 of the improper and unlawful use of the Quizno's Marks as part of a domain name or  
12  
13 electronic address maintained on the Internet or World Wide Web; (b) requesting Sauls to  
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15 cease all use of the Quizno's Marks as part of any domain name or electronic address  
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17 maintained on the Internet or World Wide Web; and (c) identifying for Sauls various false,  
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19 defamatory, untrue, and injurious statements contained on the Sauls Website, indicating  
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21 where the true and correct information was previously published or made publicly available,  
22  
23 and requesting Sauls to cease publishing and remove such false, defamatory, untrue and  
24  
25 injurious statements concerning Quizno's, its franchise System and Licensed Methods from  
26  
27 the Sauls Website.

28           51.     Sauls ignored each of Quizno's written cease and desist requests and  
29  
30 continues to use the Infringing Domain Names to publish false and defamatory, untrue and  
31  
32 injurious, statements concerning Quizno's, its franchise System and Licensed Methods at the  
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34 Sauls Website.<sup>2</sup>  
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40 <sup>1</sup> Quizno's inadvertently issued one such request after the Petition Date but before it learned of the  
41 bankruptcy filing. Immediately upon learning of the filing, Quizno's ceased all such activities.  
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43 <sup>2</sup> The content of the Sauls Website has changed over time, and continues to change from time to time  
44 as Defendant has complete control over the information published on the Sauls Website.  
45 Nevertheless, the recent addition of general disclaimers, which disclaimers can be removed by  
46 Defendant at anytime, should not frustrate the purpose of this action nor shield Defendant's prior  
47 unlawful acts.

1           52.     Sauls has indicated that he would be willing to cease use of or sell the  
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3     Infringing Domain Names in exchange for payment by Quizno's of a significant sum of  
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5     money.

6           53.     In addition, in or about early August 2005, several weeks after the filing of his  
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8     chapter 7 petition, Sauls contacted a Quizno's executive and stated that he was going to  
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10    initiate an "illegal" pop-up campaign in which he would cause the words "Quizno's sucks" or  
11  
12    similar derogatory words to appear on personal computers across the country. Sauls  
13  
14    specifically stated he was launching this pop-up campaign from out of the country because he  
15  
16    knew that it is illegal to initiate this type of campaign in the United States.

17           54.     So long as Sauls continues to use the Quizno's Marks as part of any domain  
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19    name or electronic address maintained on the Internet or World Wide Web, he damages and  
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21    irreparably harms the goodwill associated with, and value of, the Quizno's Marks, which  
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23    goodwill and value are depended upon by each and every other Quizno's franchisee lawfully  
24  
25    making use of the Quizno's Marks, System and Licensed Methods in connection with the  
26  
27    operation of their Quizno's franchised businesses in Washington and elsewhere.

28           55.     Sauls has received actual notice of his violations and infringement of the  
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30    Quizno's Marks and has constructive notice of the rights of Quizno's in the Marks and the  
31  
32    registrations thereof pursuant to 15 U.S.C. § 1072. Sauls' continued infringement is willful,  
33  
34    malicious, fraudulent and deliberate.

35           56.     Quizno's has at all times complied with and performed all of its obligations  
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37    under the Franchise Agreement.  
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**FIRST CLAIM FOR RELIEF  
LANHAM ACT - TRADEMARK INFRINGEMENT**

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4 57. Plaintiffs repeat and reallege ¶¶ 1 through 56 of their Complaint as if fully set  
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6 forth herein.

7  
8 58. Defendant's acts, practices, and conduct constitute an infringing use in  
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10 interstate commerce of a reproduction, counterfeit, copy, or colorable imitation of the  
11  
12 Quizno's Marks, and are likely to cause confusion or mistake or to deceive the public in  
13  
14 violation of 15 U.S.C. § 1114(l).

15  
16 59. As a direct and proximate result of Defendant's infringement, the Quizno's  
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18 Entities have been and are likely to be substantially injured in their business, including their  
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20 goodwill and reputation, resulting in lost revenues and profits, and diminished goodwill.

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22 60. The Quizno's Entities have no adequate remedy at law because the Quizno's  
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24 Marks are unique and represent to the public the identity, reputation, and goodwill of  
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26 Quizno's such that damages alone cannot fully compensate Quizno's for Defendant's  
27  
28 misconduct.

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30 61. Unless enjoined by the Court, Defendant will continue to use and infringe the  
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32 Quizno's Marks, to the irreparable injury of the Quizno's Entities. This threat of future  
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34 injury to the business identity, goodwill, and reputation of Quizno's requires injunctive relief  
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36 to prevent Defendant's continued use of the Quizno's Marks, and to ameliorate and mitigate  
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38 injuries of Quizno's.

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40 62. The Quizno's Entities have suffered, and are continuing to suffer, economic  
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42 losses directly and proximately caused by Defendant's infringement; accordingly, the  
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44 Quizno's Entities are entitled to damages in an amount to be proven at trial.  
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**SECOND CLAIM FOR RELIEF  
LANHAM ACT - UNFAIR COMPETITION**

63. Plaintiffs repeat and reallege ¶¶ 1 through 62 of their Complaint as if fully set forth herein.

64. Defendant's acts, practices, and conduct constitute unfair competition, false designation of origin, and false or misleading descriptions or representations of fact, in that they are likely to cause confusion or to cause mistake, to deceive others as to the affiliation, connection, or association of the parties, and/or to misrepresent the nature, characteristics, qualities, or geographic origin of the parties' goods, services and commercial activities, all in violation of 15 U.S.C § 1125(a).

65. As a direct and proximate result of Defendant's unfair competition, the Quizno's Entities have been and are likely to be substantially injured in their business, including their goodwill and reputation, resulting in lost revenues and profits, and diminished goodwill.

66. The Quizno's Entities have no adequate remedy at law because the Quizno's Marks are unique and represent to the public Quizno's identity, reputation, and goodwill, such that damages alone cannot fully compensate Quizno's for Defendant's misconduct.

67. Unless enjoined by the Court, Defendant will continue to compete unfairly with Quizno's, to the irreparable injury of the Quizno's Entities. This threat of future injury to the business identity, goodwill, and reputation of the Quizno's Entities requires injunctive relief to prevent Defendant's continued unfair competition, and to ameliorate and mitigate the injuries of the Quizno's Entities.

1           68.     The Quizno's Entities have suffered, and are continuing to suffer, economic  
2 losses directly and proximately caused by Defendant's unfair competition; accordingly, the  
3 Quizno's Entities are entitled to damages in an amount to be proven at trial.  
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7                                   **THIRD CLAIM FOR RELIEF**  
8                                   **LANHAM ACT – CYBER PIRACY PREVENTION**  
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10           69.     Plaintiffs repeat and reallege ¶¶ 1 through 68 of their Complaint as if fully set  
11 forth herein.  
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14           70.     Defendant's acts, practices, and conduct, demonstrate, without regard to the  
15 goods or services of the parties, that Defendant has registered, trafficked in, or used a domain  
16 name that is identical, confusingly similar, or dilutive to the Quizno's' Marks with the bad  
17 faith intent to profit from the Quizno's Marks, all in violation of 15 U.S.C § 1125(d).  
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20           71.     As a direct and proximate result of Defendant's cyber piracy, the Quizno's  
21 Entities have been and are likely to be substantially injured in their business, including their  
22 goodwill and reputation, resulting in lost revenues and profits, and diminished goodwill.  
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25           72.     The Quizno's Entities have no adequate remedy at law because the Quizno's  
26 Marks are unique and represent to the public Quizno's identity, reputation, and goodwill,  
27 such that damages alone cannot fully compensate Quizno's for Defendant's misconduct.  
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30           73.     Unless enjoined by the Court from using the Infringing Domain Names,  
31 Defendant, to the irreparable injury of the Quizno's entities, will continue to use the  
32 Quizno's' Marks with the bad faith intent to profit therefrom. This threat of future injury to  
33 the business identity, goodwill, and reputation of the Quizno's Entities requires injunctive  
34 relief to prevent Defendant's unlawful use of the Quizno's Marks, and to ameliorate and  
35 mitigate the injuries of the Quizno's Entities.  
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1 publication of false, derogatory, and injurious statement, and to ameliorate and mitigate the  
2 injuries of the Quizno's Entities.  
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5 **FIFTH CLAIM FOR RELIEF**  
6 **BUSINESS DISPARAGEMENT**  
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8 79. Plaintiffs repeat and reallege ¶¶ 1 through 78 of their Complaint as if fully set  
9 forth herein.  
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11 80. Defendant's acts, practices, and willful and malicious conduct, including  
12 Defendant's publishing on the Sauls Website of false statements that Defendant knew or, but  
13 for Defendant's reckless disregard for the truth, should have known to be false, derogatory  
14 and injurious to Plaintiffs' business or property, including the Quizno's Marks, with the  
15 intent to injure the Quizno's Entities, constitute business disparagement.  
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22 81. As a direct and proximate result of Defendant's willful and malicious business  
23 disparagement, the Quizno's Entities have been damaged and will continue to be damaged  
24 with respect to their business, including their goodwill and reputation, resulting in lost  
25 revenues and profits, and diminished goodwill in amounts to be determined at trial.  
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28 82. Unless enjoined by the Court from engaging in his wrongful conduct,  
29 including use of the Infringing Domain Names for the publication of false, derogatory and  
30 injurious statements, Defendant will continue engaging in unlawful conduct, to the  
31 irreparable injury of the Quizno's Entities, with the bad faith intent to profit therefrom. This  
32 threat of future injury to the business identity, goodwill, and reputation of the Quizno's  
33 Entities requires injunctive relief to prevent Defendant's unlawful use of the Quizno's Marks,  
34 publication of false, derogatory, and injurious statement, and to ameliorate and mitigate the  
35 injuries of the Quizno's Entities.  
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**SIXTH CLAIM FOR RELIEF  
TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS  
ADVANTAGE**

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83. Plaintiffs repeat and reallege ¶¶ 1 through 82 of their Complaint as if fully set forth herein.

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84. Defendant's acts, practices, and conduct, including Defendant's publishing on the Sauls Website of false statements that Defendant knew or should have known to be false, derogatory, and injurious to Plaintiffs' business or property, including the Quizno's Marks, constitute an intentional and improper interference by Defendant with the Quizno's Entities' prospective contractual relations.

85. As a direct and proximate result of Defendant's intentional and improper interference with the Quizno's Entities' prospective contractual relations, the Quizno's Entities have been damaged with respect to their business, including their goodwill and reputation, resulting in lost revenues and profits, and diminished goodwill in amounts to be determined at trial.

**SEVENTH CLAIM FOR RELIEF  
BREACH OF CONTRACT**

86. Plaintiffs repeat and reallege ¶¶ 1 through 85 of their Complaint as if fully set forth herein.

87. Defendant and RL Sauls have failed and refused to perform their post-termination obligations under the Franchise Agreement, including but not limited to their obligations to (i) pay all amounts owed to Quizno's, and (ii) cease using the Quizno's Marks.

88. In addition, Defendant's continued operation of the Sauls Website through the use of the Infringing Domain Names is contrary to Defendant's specific contractual agreement to refrain from using the Quizno's Marks as part of any domain name or

1 electronic address Defendant maintains on the Internet, the World Wide Web, or any other  
2 similar proprietary or common carrier electronic delivery system.  
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5 89. Unless and until Defendant is ordered to perform his post-termination  
6 obligations under the Franchise Agreements, including the obligation not to use the Quizno's  
7 Marks as part of any domain name or electronic address Defendant maintains on the Internet  
8 or the World Wide Web, Quizno's is likely to be substantially injured in its business,  
9 including its goodwill and reputation, resulting in lost revenues and profits, for which  
10 Quizno's has no adequate remedy at law.  
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13 90. This threat of future injury to the business identity, goodwill, and reputation of  
14 Quizno's requires that Defendant be ordered to perform his contractual post-termination  
15 obligations under the Franchise Agreement to prevent continued breach and to ameliorate  
16 and mitigate the injuries to Quizno's.  
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19 91. In addition to the injuries inflicted on Quizno's business identity, goodwill,  
20 and reputation, Quizno's continues to be damaged in an amount equal to all outstanding  
21 monies owed under the Franchise Agreement.  
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24 92. Defendant expressly agreed in the Franchise Agreement, and in the Guarantee,  
25 that, in the event of default, Defendant "shall be liable to Quizno's for a lump sum amount  
26 equal to the net present value of the Royalties and Marketing and Promotion Fees that would  
27 have become due following termination of this Agreement for the period this Agreement  
28 would have remained in effect but for Franchisee's default." (Exhibit A, § 21.3.)  
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31 93. Section 23.6 of the Franchise Agreements provides that in the event of any  
32 default on the part of either party, the party in default will pay the prevailing party, among  
33 other things, all reasonable attorneys' fees incurred by the prevailing party in any legal action  
34 or other proceeding as a result of such default. (Exhibit A, § 23.6.)  
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- 1           ii.       Using the Quizno's Marks or any trademark, service mark, logo or  
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3           trade name that is confusingly similar to Quizno's Marks, as part of any domain  
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5           name or electronic address Defendant maintains on the Internet, the World  
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7           Wide Web, or any other similar proprietary or common carrier electronic  
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9           delivery system;  
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11          iii.       Using the Infringing Domain Names;  
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13          iv.       Otherwise infringing Quizno's Marks or using any similar designation,  
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15           alone or in combination with any other components;  
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17          v.        Causing a likelihood of confusion or misunderstanding as to  
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19           Defendant's affiliation, connection or association with Quizno's and its  
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21           franchisees or any of Quizno's Marks; and  
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23          vi.       Unfairly competing with Quizno's or its franchisees in any manner;

24           B.       An order that Defendant be required to file with the Court and to serve upon  
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26           Quizno's counsel within ten (10) days after entry of any injunction or order issued herein, a  
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28           written report, under oath, setting forth in detail the manner in which he has complied with  
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30           such injunction or order;

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32           C.       A judgment against Defendant and in favor of Plaintiffs in an amount equal to  
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34           such damages as the Quizno's Entities have sustained, to the full extent provided for by  
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36           Section 35 of the Lanham Act, 15 U.S.C. § 1117, and by the controlling principles of  
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38           common law, by reason of Defendant's infringement of Quizno's Marks; cyber piracy; unfair  
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40           competition; defamation; business disparagement; tortious interference with prospective  
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42           business advantage; and breach of contract, and, because of the willful nature of said  
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44           infringement, the Court enter judgment for three times the amount of said damages, pursuant  
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46           to Section 35 of the Lanham Act, 15 U.S.C. § 1117;  
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