

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANTONIO SOFO & SON
IMPORTING CO., et al.

Plaintiffs,

vs.

MARCO'S FRANCHISING, LLC, et al.

Defendants.

CASE NO. 3:10-CV-01066

JUDGE: JAMES G. CARR

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION AND
REQUEST FOR HEARING PRIOR TO
JUNE 30, 2010 TO PRESENT
WITNESS TESTIMONY**

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*Counsel For Plaintiffs Antonio Sofo & Son
Importing Co. and A&M Cheese, Co.*

Now comes Plaintiffs, Antonio Sofo & Son Importing Co., (“Sofo”), and A&M Cheese Co., (“A&M” or collectively “Plaintiffs”), by and through the undersigned counsel and pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, and hereby move this Court for a preliminary injunction enjoining Defendants Marco’s Franchising, LLC, (“MFL”); Marco’s Pizza Distribution, LLC, (“MPD”); Jack Butorac, (“Butorac”); Kenneth Switzer, (“Switzer”); Don Vlcek, (“Vlcek”); and John Bryon Stephens, (“Stephens”), (collectively “Defendants”), from:

1. Terminating Sofo and A&M’s relationship with any Marco’s Pizza franchisees;
2. Interference with Supplier Products:
3. Coercing and/or pressuring franchisees to terminate business relationships with Sofo’s in favor of distributor MPD;
4. Making derogatory comments about Sofo, A&M or any agents, officers and/or employees of Sofo or A&M;
5. Terminating or limiting in any way Sofo’s status as an Approved Supplier/Distributor within the Marco’s system; and
6. Breaching their promise to continue utilization of Sofo as a distributor of products and as an Approved Supplier/Distributor; and
7. Attempting to terminate or otherwise limit the status of Sofo, or its affiliate Belissimo Foods, as an Approved Supplier/Distributor in the Marco’s systems.

The facts supporting this request for Preliminary Injunction are stated in the Complaint and will be supplemented by witness testimony at hearing on this matter. Based upon the agreement of the parties, Defendants have temporarily ceased removing or attempting to remove Sofo’s as an Approved Supplier/Distributor through June 30, 2010. However, damage was done prior to the Defendants agreement to “stand down” after the initiation of this suit, and based

upon the representations of Defendants, Plaintiffs will be irreparably harmed on July 1, 2010 if Defendants continue on their illegal and destructive path.

PRELIMINARY STATEMENT

This motion seeks injunctive relief. MFL had ongoing business relationships with Sofo and A&M whereby MFL approved Sofo as an authorized supplier and distributor for the Marco's System. A&M has been and continues to be in the business of shredding, processing and manufacturing various cheese blends since 1976. Sofo purchases, markets, warehouses, conducts quality control, product research and development as well as coordinates transportation and distribution services. Through these activities Sofo, in conjunction with the services of A&M, has been an approved supplier for Marco's Pizza stores for decades.

In 2010, after physically inspecting the facilities at Sofo and A&M, under the guise of a quality control audit, MFL documented methods of business, including confidential and proprietary information specific to the processes of Sofo and A&M. MFL and its agents – Butorac, Switzer and Vlcek then created a competing model – MPD. MPD converted the methods, policies and procedures of A&M and Sofo, utilized confidential information and defamed Sofo and A&M to steal business from Sofo. Simultaneously, MFL, Butorac, Switzer and Vlcek tried to revoke Sofo's status as an approved supplier. Thus, MPD attempted to commence operations in place of Sofo as an authorized supplier and distributor of the Marco's System. Pursuant to agreement of the parties, Sofo is an approved and authorized supplier for the Marco's System until June 30, 2010 without geographical limitations. However, after that date, Sofo will be barred from supply of all products for the Marco's System.

MPD, a newly formed and related company to MFL, and for the benefit of Butorac, Switzer, Vlcek and Stephens, essentially converted the business methods of Plaintiffs;

disparaged Plaintiffs to the Marco's Pizza franchisees and the community; coerced franchisees to utilize MPD in place of Plaintiffs; and are now eliminating Plaintiffs as approved suppliers effective June 30, 2010. Plaintiffs, in reliance upon a relationship that spanned decades and repeated promises for a formal written contract and continued relationship with Marco's Pizza franchisees, expended great resources to remain an approved supplier in numerous geographic locations, extended credit to numerous franchisees and was illegally forced from the marketplace for the personal gain of Defendants.

After initiation of this suit on May 12, 2010, Defendants, through counsel, agreed to honor Sofo's status as an approved supplier and cease any interference with Sofo's distribution through June 30, 2010. (Prior to suit, this date was May 31, 2010.)

STATEMENT OF THE FACTS

The Marco's System was initially developed, implemented and outlined by Marco's, Inc. founder, Pasquale Giammarco nearly three decades ago. MFL purchased the Marco's System from Marco's, Inc. in an asset sale in November 2003. Prior to the asset sale, Sofo was an authorized supplier and distributor of food product for Marco's Pizza products for over thirty years.¹

After the asset sale in November 2003, Sofo's continued as an approved and authorized supplier and distributor of the Marco's System with MFL, the new owner of the Marco's System. In fact, MFL and Sofo entered into a three-year exclusive Food Distribution Agreement, ("Distribution Agreement"),² on or about April 24, 2010, whereby Sofo's was the only approved, recommended and authorized supplier and distributor of the Marco's System at all locations whereby Sofo's chose to do business. The Distribution Agreement permitted physical inspection

¹ See Affidavit of P. Giammarco attached hereto as Exhibit "A".

² Complaint at Ex. 1.

of any Sofo warehouse for the limited purposes of “cleanliness of equipment, warehouse, surrounding areas, proper rotation of products, rodent and insect control, safety procedures, etc. In addition to the physical inspection, financial audits of all vendor invoices and purchase order relating the Marco’s proprietary products, as well as individual franchise invoices, credit and debit memos, and financial statements relating to the Marco’s Pizza account” were permitted twice annually.³

Shortly after inception of the 2004 Distribution Agreement, MFL, through Switzer, instituted a price increase on the food products supplied by Sofo and also asked for execution of the Trademark and Product Standards Maintenance Agreement which was executed by Sofo.⁴ In the agreement, MFL acknowledged that Sofo provided “purchasing, marketing, warehousing, quality control, product research and development, transportation and distribution services for Marco’s Pizza stores in a wide geographical area.”⁵ Additionally, Sofo was required to pay a 1% Trademark Maintenance Fee which has and continues to be paid current.⁶ By 2006, MFL owed Sofo approximately \$150,000 for outstanding food product associated with a Marco’s franchisee called Grand Slam.

In May 2007, when the initial contract between Sofo and MFL expired, MFL repeatedly and continuously promised Sofo an additional four-year contract. Sofo and MFL continued their business relationships under the same terms as the initial three-year contract between MFL and Sofo. From 2006 to present, MFL, Butorac, Switzer and Vlcek have repeatedly and continuously promised Sofo an extension of the Distribution Agreement. Throughout this time, MFL and Sofo continued pursuant to the terms and conditions of the Distribution Agreement.

³ Id. at Ex. 1, Section 6.

⁴ Id. at Ex. 2 and 3.

⁵ Id.

⁶ Id.

Additionally, Sofo, upon promises by Butorac and MFL, extended additional credit to franchisees that were not paying for product and continued food distribution so that franchisees could maintain their businesses.

To further service the growing Marco's Pizza franchisees throughout the United States, Sofo made further expenditures in reliance upon the promises of MFL, Butorac, Switzer and Vlcek. Specifically, Sofo entered into agreements with Bellissimo Foods to assist with distribution in geographic markets far from Sofo. Further, Sofo purchased and generated infrastructure in Georgia to provide service for southern franchisees.

However, unbeknownst to Sofo and A&M, MFL, Butorac, Switzer and Vlcek were actually in the process of developing a company to replace Sofo – MPD. To further support MPD and eliminate Sofo from the marketplace, Butorac, Switzer and Vlcek proceeded to issue statements and make false representations to franchisees regarding the quality of product received from Sofo and A&M. Specifically, Butorac, Switzer and Vlcek untruthfully indicated that Sofo and A&M were providing cheese products that did not have the specified weight; that Sofo and A&M's pricing was unauditable, unfair and convoluted; and that their pricing was too high.

To further accomplish elimination of Sofo and A&M, MFL conducted a permitted audit of Sofo and A&M in February 2009. However, the audit delved into issues that exceeded the scope of the relationship between MFL and Plaintiffs. Specifically, the audit inquired and documented detailed issues related to reproduction of Sofo and A&M's entire process. In November 2009, when Vlcek issued a Major Announcement to franchisees indicating that MPD would be the new distributor.⁷ In January 2010, MPD began taking and servicing orders. However, it wasn't until much later that Plaintiffs realized that their entire method had been

⁷ Id. at Ex. 5.

converted by MFL for development of MPD so that Plaintiffs would be eliminated as an approved distributor and supplier. This realization prompted the instant lawsuit.

For over three decades, Sofo has provided food product to Marco's Pizza franchisees. Throughout this time, Sofo has developed a strong reputation for quality and consistent service and product. However, the recent events, initiated by MFL, Butorac, Switzer and Vlcek in an effort to oust Sofo and allow MPD to monopolize the market have severely disrupted the business of Sofo and have and continue to harm the reputation of Sofo built through decades of work.

MEMORANDUM IN SUPPORT

Under Federal and Ohio law, the Court must consider and balance the following four factors in determining whether to issue a preliminary injunction:

- (1) whether plaintiff has a substantial likelihood of success on the merits;
- (2) whether plaintiff will suffer irreparable injury;
- (3) whether the granting of relief would cause substantial harm to others; and
- (4) whether the public interest would be served by granting the relief.⁸

These four factors "do not establish a rigid and comprehensive test for determining the appropriateness of preliminary injunctive relief."⁹ Rather, they are "factors to be balanced, not prerequisites that must be met."¹⁰ As shown below, a balancing of these factors here demonstrates Plaintiffs are entitled to temporary injunctive relief.

⁸ See *Chabad of Southern Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 432, 2004 Fed.App. 0098P (6th Cir. 2004); *Thomas J. Dyer v. Franklin County Convention Facilities*, (1990), 61 Ohio Misc. 2d 132, 133-34, 575 N.E.2d 532, 533; *Diamond Co. v. Gentry Acquisition Corp.* (1988), 48 Ohio Misc. 2d 1, 2, 531 N.E.2d 777, 778-79.

⁹ *Frisch's Restaurant, Inc. v. Shoney, Inc.*, 759 F.2d 1261, 1263 (6th Cir. 1985). (Internal citations omitted.)

¹⁰ *Id.*

A. Plaintiffs Have a Strong Likelihood of Success on the Merits.

In this case, Plaintiffs have presented numerous claims including breach of contract, tortious interference with business relationships, defamation/business disparagements, misappropriation of trade secrets, negligence, fraud, unjust enrichment, deceptive trade practices, unfair competition, civil conspiracy, alter ego and violations of RICO. Review of the elements of each of these causes of action in conjunction with the facts outlined in the complaint and the evidence to be presented at the preliminary injunction hearing will clearly establish that Plaintiffs have a likelihood of success on the merits of the claims presented.¹¹

At hearing on this matter, Plaintiffs intend to present the testimony of approximately ten (10) witnesses to substantiate, under oath, the facts and allegations contained in the Complaint that will support the conclusion that Plaintiffs are likely to succeed on the merits of this case.

B. A Preliminary Injunction is Necessary to Prevent Irreparable Harm to Plaintiffs and to Franchisees.

Irreparable harm is one that cannot be compensated by calculable money damages.¹² At times, the denial of a preliminary injunction creates irreparable harm.¹³ Here, any denial of the injunction will harm Plaintiffs. The “loss of customer goodwill often amounts to irreparable injury because the damages flowing from such losses are difficult to compute.”¹⁴ Further, irreparable harm is presumed where it is shown that Defendants misappropriated Plaintiffs’ trade secrets.¹⁵

Here, Defendants repeatedly and consistently promised Plaintiffs a renewed four-year contract to distribute and provide quality services and product to Marco’s Pizza franchisees

¹¹ While Plaintiffs strongly feel that they will be victorious on every claim presented in the complaint, Plaintiffs recognize the inability to obtain injunctive relief on all claims presented, and as such, limit their request for injunctive relief to the applicable causes of action.

¹² *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992).

¹³ *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.*, 511 F.3d 535, 550 (6th Cir. 2007).

¹⁴ *Id.* at 512.

¹⁵ *Very Dennison Corp. v. Kitsonas*, 118 F. Supp.2d 848, 855 (S.D. Ohio 2000).

through the nation. In reliance on the relationship as a provider of Marco's Pizza franchise products, Sofo continued to provide product to franchisees that were behind on payments and extend credit to MFL based upon promises of Butorac and Switzer. Additionally, in reliance on the past relationship and continued promises for a four-year contract, Sofo made great expenditures in markets beyond northwest Ohio to service Marco's Pizza franchisees including infrastructure in the south and a partnership with Bellissimo Foods.

In addition, Sofo and A&M's entire method and procedure were stolen by MFL, Butorac, Switzer and Vlcek to create a competing company that would utilize the information converted from Sofo and A&M to create a competing business. Simultaneous with the inception of MPD, Butorac, Switzer and Vlcek – in contravention of earlier promises and representations – made false and unfounded allegations defaming Sofo, A&M and officers/employees of both companies severely damaging the reputation of the companies and individuals to Marco's Pizza franchisees and in the industry.

Here, MFL, Butorac, Switzer and Vlcek need to be enjoined from interference in Sofo's relationship with Marco's Pizza franchisees. Sofo and A&M have developed a relationship built on providing quality service and product through decades. Defendants threatened termination of Sofo's ability to provide product as an approved supplier and distributor and publication to franchisees of this termination destroys the goodwill of Plaintiffs as well as their business relationships with franchisees. Additionally, this prohibition on use of Plaintiffs' products severely disrupts the franchisees ability to create Marco's Pizza products as their trusted supplier and distributor is not permitted to provide product.¹⁶ Moreover, MFL has been advised of the franchisees' concerns regarding elimination of Sofo as a supplier.¹⁷ Also, Pasquale Giammarco,

¹⁶ See Ex. A, generally.

¹⁷ See May 24, 2010 correspondence from counsel fro MPS Franchisees attached hereto as Exhibit "B".

the founder of the Marco's brand has an agreement with MFL whereby he can utilize Sofo as a distributor.¹⁸ However, the threatened exclusion of Sofo will disrupt his business and violate his rights under agreements with MFL.¹⁹

In addition, Defendants have made numerous false, misleading and baseless statements regarding the quality of Sofo and A&M products, services and employees. Additionally, Defendants have informed numerous raw material suppliers that they are not to permit Sofo and/or A&M to purchase products that would enable them to create the Marco's Pizza products for the franchisees. Further, Defendants have informed Marco's Pizza franchisees that MPD is a company related to MFL and that products need to be purchased from MPD (a company that directly benefits the interests of Butorac, Switzer and Vlcek) rather than Sofo or A&M. Thus, franchisees are placed in the precarious position of choosing between their trusted supplier for over three decades or a company related to the franchisor that controls most of the aspects of their daily business and profitability.²⁰

Here, MFL, Butorac, Switzer, Vlcek and Stephens made numerous representations to Sofo and A&M to allow Defendants to commence and coordinate the inception of a competing company, MPD. While competition is favored, it is not favored through unfair and illegal tactics. Specifically, Defendants repeated promises to Sofo for a four-year Distribution Agreement caused Sofo to expand excess costs and contractual relations with third parties to service the Marco's Pizza franchisees. However, the efforts of Defendants to undermine Sofo and A&M, while stealing the procedures and methods to create a competing company should not be permitted.

¹⁸ See Ex. A.

¹⁹ See Ex. A.

²⁰ See Ex. B, generally.

Plaintiffs had a business in place and worked and negotiated in good faith with Defendants. However, Defendants self-serving actions to elevate MPD and monopolize the Marco's Pizza supplier chain are creating irreparable harm to Sofo and A&M's reputation, goodwill in the Marco's Pizza franchisee community and the food distribution community. As a result, Defendants actions must be enjoined and Sofo and A&M must be permitted to continued distribution of Marco's Pizza supplies until conclusion of this matter.

C. A Preliminary Injunction Will Prevent Plaintiffs from Irreparable Harm, While Causing No Harm to Defendants.

Defendants have commenced a related company that competes with Plaintiffs through use of information improperly gained from Plaintiffs. Use of this converted information should not be permitted. Additionally, Defendants have continuously attempted to eliminate Sofo and A&M as a choice to Marco's Pizza franchisees through coercion, false statements and pressure from the corporate franchisor, MFL. That behavior cannot be condoned or sanctioned. As such, this Court needs to enter the requested preliminary injunction banning Defendants from these continued activities while permitting Sofo and A&M to continue supplier services to Marco's Pizza franchisees.

While Plaintiffs would like to suggest that MPD could continue in competition with Sofo and A&M, this is not the case. Here, MPD is only in existence because of the information taken from Sofo and A&M. Thus, the very existence of MPD is entirely dependent upon the methods, policies and procedures illegally and unethically elicited from Sofo and A&M. Additionally, Defendants franchisees will continue to receive the same quality and service that has been provided for decades. As such, Defendants will continue to have Marco's Pizza franchisees conducting business and the status quo will be maintained. However, Defendants will be enjoined from competing with Sofo and A&M throughout the pendency of this litigation as MPD

and benefiting from the converted information and underhanded and unethical statements and coercion.

D. The Public Interest Will Be Served by Issuance of the Order.

Clearly competition is strongly encouraged and usually generates a better product. However, unfair competition through conversion and utilization of trade secrets and defamation of other companies are not in the public interest. Here, the public interest of the protection of trade secrets, the prevention of unfair competition and the support of truthful and ethical business practices would be supported by issuance of this preliminary injunction. As such, Plaintiffs believe that the public interest would be strongly supported by issuance of this order.

Further, franchisees and business owners should be permitted to utilize companies that they have developed a relationship with for provisions of supplies. Furthermore, allowing Defendants to eliminate all competition and create a monopoly for franchisee product is not in the public interest and freedom of choice is removed, prices will likely increase and royalties may diminish.²¹ In the end, not only will the franchise owners suffer, the entire marketplace will be adversely affected through the illegal, underhanded and unethical actions of Defendants that eliminate Plaintiffs for personal gain. As such, the public interest in free enterprise, ethical practices and fair competition will be supported by this injunction.

E. Conclusion

Here, Plaintiffs will present testimony at hearing on this matter. It is anticipated that Plaintiffs will have approximately 10 witnesses to substantiate the claims and allegations asserted and support their request for injunctive relief. It is further requested that this Court schedule hearing on this matter **prior the deadline of June 30, 2010 established by Defendants in this matter.**

²¹ See Ex. B, generally.

WHEREFORE, Plaintiffs respectfully request that this Court set a hearing date and time to take testimony to support Plaintiffs request for preliminary injunction. Plaintiff anticipates calling multiple Marco's Pizza Franchisees and related parties as witnesses in support of their motion. At the conclusion of the hearing, Plaintiffs will ask that this Court enter an preliminary injunction order against Defendants to:

1. Stop termination of Sofo's relationship with any Marco's Pizza franchisees;
2. Cease termination or limiting in any way Sofo's status as an Approved Supplier/Distributor within the Marco's system;
3. Stop interference with Supplier Products to Plaintiffs;
4. Cease coercion and/or pressure to franchisees to terminate business relationships with Sofo's in favor of distributor MPD;
5. Cease and retract any and all derogatory comments about Sofo, A&M or any agents, officers and/or employees of Sofo or A&M;
6. Not breach their promise to utilize Sofo as distributor of products and as an Approved Supplier/Distributor; and
7. Stop any attempt to terminate or otherwise limit the status of Sofo, or its affiliate Bellissimo Foods, as an Approved Supplier/Distributor in the Marco's systems.

Respectfully submitted,

/s/ Anthony J. Calamunci
Anthony J. Calamunci, Esq. (0063937)
Amy L. Butler (0075714)
Counsel for Plaintiffs
Antonio Sofo & Son Importing Co., A&M
Cheese, Co., and Bellissimo Foods

Exhibit B

EASTMAN & SMITH LTD.

ATTORNEYS AT LAW

Established 1844

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May 24, 2010

VIA FACSIMILE ((419) 885-5215)
AND ORDINARY MAIL

Mr. John A. Butorac, Jr., President
Marco's Franchising, LLC
5252 Monroe Street
Toledo, Ohio 43623-3140

Re: **Association of MPS Franchisees – Sofo Foods Dispute**
Our File No.: A1199-190381

Dear Mr. Butorac:

Our firm represents the Association of MPS Franchisees (the "Association"), which is an Ohio unincorporated association made up of Marco's Franchising, LLC franchisees. Currently, the Association has twenty-four (24) franchisee stores as members and anticipates more than doubling that number in the near future.

The Association is well aware of the dispute between Marco's Franchising, LLC and Sofo Foods, which led to the ongoing lawsuit between the parties. The substance and outcome of the dispute and lawsuit is critical to the operations and success of the Association's members. Therefore, the Association and its members wish to express their concerns regarding the dispute and ask that Marco's Franchising, LLC take these concerns into consideration when dealing with Sofo Foods or any other Marco's Pizza product supplier.

The recent letter sent by Marco's Franchising, LLC to its franchisees declaring that Sofo Foods will no longer be a qualified Marco's Pizza supplier as of May 31, 2010 deeply troubles the Association and its members. Sofo Foods has been a long-time supplier available to the Association's members; in some cases, the relationship some member-franchisees have had with Sofo Foods extends nearly two decades. The Association's members have developed strong working relationships with Sofo Foods, and rely upon this relationship for consistent service, quality, and competitive pricing. In fact, it is difficult to believe that Sofo Foods has met the Marco's Pizza franchisor's standards for over thirty (30) years, including Marco's Franchising, LLC's standards since its inception in 2003, but no longer does. The member-franchisees' operational success and profitability are, in part, related to their relationships with Sofo Foods.

Notwithstanding the personal relationship many of the member-franchisees have with Sofo Foods, the elimination of any reliable supplier to the franchisees is disconcerting.

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Mr. John A. Butorac, Jr., President
Marco's Franchising, LLC
May 24, 2010
Page 2

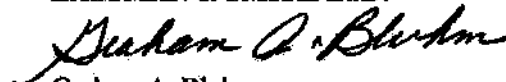
Eliminating the number of available suppliers in the marketplace diminishes competition for the member-franchisees' business. Not only do the member-franchisees lose the freedom to choose with whom they do business, but product pricing is likely to rise as a result. These consequences stand to curtail the profitability, and in some cases the viability, of the member-franchisees, which will also negatively affect the royalties paid to Marco's Franchising, LLC. While Marco's Franchising, LLC may well make up lost royalties by forcing franchisees to purchase products from its affiliated distribution company, the elimination of available suppliers will have only a detrimental financial impact on the member-franchisees.

The Association acknowledges that there are two sides to every dispute. Nonetheless, there are numerous franchisees that stand to be harmed by a dispute not of their doing. Thus, the Association and its members request that Marco's Franchising, LLC consider the needs, wishes, and concerns of its franchisees and resolve the dispute with Sofo Foods in a productive fashion. The Association and its members urge Marco's Franchising, LLC to generally permit and encourage the availability of multiple qualified suppliers from which the franchisees may choose (some of which should not be affiliated to the franchisor) and specifically not to interfere with the franchisees continuing their long-standing, positive relationships with Sofo Foods.

The impact of the dispute between Marco's Franchising, LLC and Sofo Foods on the franchisees should not be ignored or taken lightly. The Association and its members will closely monitor the dispute and look forward to a quick and positive resolution thereof.

Very truly yours,

EASTMAN & SMITH LTD.


Graham A. Bluhm

GAB/hlh

Exhibit A

9. Marco's Inc. is now a master franchisee of Marco's Franchising, LLC .
10. In the MFA's, an exclusive license was granted to Marco's, Inc. for twenty (20) years with options to utilize the Marco's System and my established standards for the operation Marco's Pizza Stores in specifically licensed territories.
11. As a result of the exclusive license, Marco's, Inc. has the exclusive and unfettered right to the Marco's System and its marks which includes the absolute and uncontested right to determine the specifications for authorized food products, methods of inventory control and certain operational and business standards and policies.
12. As an owner and operator of Marco's Pizza Stores for over thirty (30) years, I have utilized Sofo Foods as my distributor and they have complied with all specifications for authorized food products.
13. Marco's Franchising, LLC, has threatened to remove Sofo Foods as an approved supplier and distributor as of June 30, 2010. I have notified Marco's Franchising, LLC of my intent to continue to utilize Sofo Foods as a distributor. Any attempt to prevent me from utilizing Sofo Foods as my distributor will effect the quality that my customers have grown accustomed to.
14. I refuse to contract with any of the proposed suppliers that Marco's Franchising, LLC have now approved.
15. Sofo Foods has always provided consistent service, quality food product and fair pricing.
16. Removal of Sofo Foods by Marco's Franchising, LLC as an approved supplier to my Marco's Pizza Stores violates the MFA's with my company and I may seek a judicial remedy if Sofo's is removed from the system.
17. Under the MFA's, I am allowed to use any supplier that I choose for Marco's, Inc.'s Marco's Pizza Stores.

18. As the founder of Marco's and as president of Marco's, Inc., Marco's, Inc. I have chosen and will continue to utilize Sofo Foods pursuant to the terms of a separate distribution agreement with Sofo Foods.

19. Given that Sofo Foods will remain an approved distributor for Marco's, Inc, other franchisees should retain the option to have their product delivered by Sofo Foods.

20. Many Franchisees within the system have expressed a concern that they may not be permitted to continue to use Sofo Foods as a distributor given the threats to remove Sofo Foods from the system.

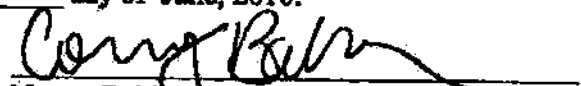
21. I have been advised that certain Marco's Proprietary items, specifically Marco's logo napkins, have been withheld by the manufacturer from Sofo Foods.

22. Preventing manufactures from delivering Marco's Proprietary products without my consent is directly interfering with my rights under the MFA and my separate distribution agreement with Sofo Foods.

FURTHER AFFIANT SAYETH NAUGHT


PASQUALE GRAMMARCO

Sworn to and subscribed in my presence this 2 day of June, 2010.


Notary Public
My commission expires:


CORRY M. BAKER
Notary Public, State of Ohio
My Commission Expires 1-16-12