

1 Michael G. Atkins
2 Kathleen T. Petrich
3 GRAHAM & DUNN PC
4 Pier 70, 2801 Alaskan Way, Suite 300
5 Seattle, WA 98121-1128
6 (206) 624-8300
7 Attorneys for Acapulco Restaurants, Inc.

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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JAMES R. LARSEN, CLERK
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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 ACAPULCO RESTAURANTS, INC., a) No.
11 California corporation,)
12 Plaintiff,)
13 vs.)
14 ANTONIO CHAVEZ and MARIA M.)
15 CHAVEZ, husband and wife, and marital)
16 community comprised thereof; and JOHN)
17 DOES 1-20,)
18 Defendants.)

Complaint CV-07-3091-RHW

17 Plaintiff Acapulco Restaurants, Inc., a California Corporation (hereinafter
18 "ARI"), by and through its undersigned counsel, hereby files its Complaint against
19 defendants Antonio Chavez and Maria M. Chavez, husband and wife, and the
20 marital community comprised thereof, and John Does 1-10 as follows:

21 **INTRODUCTION**

22 1. This action concerns defendants' use of the word "ACAPULCO" as a
23 name and trademark in connection with restaurant and cantina services, which is
24 confusingly similar with senior rights that ARI has established in its ACAPULCO
25 name and trademarks that ARI also uses in connection with restaurant and cantina
26

COMPLAINT -- 1

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

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1 services. For these reasons, ARI seeks injunctive relief and damages against
2 defendants based on their trademark infringement and unfair competition.

3 **PARTIES, JURISDICTION, AND VENUE**

4 2. Plaintiff ARI is a California corporation with its principal place of
5 business in Cypress, California. ARI wholly owns its subsidiary, Acapulco Mark
6 Corporation.

7 3. Upon information and belief, defendants Antonio Chavez and Maria
8 M. Chavez are married persons who reside in Washington. Upon information and
9 belief, Mr. and Mrs. Chavez own and operate a Mexican restaurant and cantina
10 known as the "Acapulco Restaurant" or "Acapulco Buffet" located at 111 North
11 6th Street, Sunnyside, Washington 98944 ("Defendants' Restaurant"). All of the
12 acts and omissions that Mr. and Mrs. Chavez committed as described herein were
13 done for the benefit of their marital community.

14 4. John Does 1-20 are sued herein under fictitious names. The true
15 names and capacities of these defendants are unknown to ARI, and ARI will seek
16 leave to amend its complaint when it discovers that information. On information
17 and belief, the John Doe defendants also own and operate the Defendants'
18 Restaurant.

19 5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §
20 1331 in that ARI asserts claims arising under federal law. This Court has
21 supplemental jurisdiction over ARI's remaining claim pursuant to 28 U.S.C. §
22 1367.

23 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because
24 the resides in the Eastern District of Washington and a substantial part of the
25 events giving rise to ARI's claims arose in this District.
26

1 to continue use of the Registered Marks in interstate commerce in connection with
2 ARI's restaurant services.

3 14. ARI has invested millions of dollars in advertising its Registered
4 Marks in the United States over the years in an effort to create a strong association
5 between ARI's services and its Registered Marks.

6 15. As a result of the care and skill exercised by ARI in the conduct of its
7 business, the high quality of ARI's products and services offered under its
8 Registered Marks, and the extensive advertising, sale and promotion of ARI's
9 products bearing its Registered Marks, its Registered Marks have acquired
10 substantial good will, as well as secondary meaning, throughout the United States,
11 including within the State of Washington.

12 **DEFENDANTS' INFRINGING ACTIVITIES**

13 16. Defendants' Restaurant provides restaurant and cantina services to
14 consumers in Sunnyside, Washington, under the ACAPULCO RESTAURANT
15 and/or ACAPULCO BUFFET trademarks ("the Infringing Mark").

16 17. The Infringing Mark is a colorable imitation of ARI's Registered
17 Marks.

18 18. ARI did not authorize, and would never authorize, Defendants to use
19 the Infringing Mark or any other colorable imitation of the Registered Marks.

20 19. ARI has demanded that defendants cease and desist from all present
21 and future uses of any Infringing Mark or any colorable imitation of the
22 Registered Marks. Defendants have ignored ARI's demands.

23 **COUNT I – FEDERAL TRADEMARK INFRINGEMENT**

24 20. ARI re-alleges the allegations contained in Paragraphs 1-19.

25 21. The Registered Marks are valid and enforceable.

26 22. ARI is the exclusive owner of the Registered Marks.

1 23. Defendants' Infringing Mark infringes ARI's Registered Marks and
2 has caused, and will likely cause, confusion, mistake or deception as to the source,
3 sponsorship, affiliation or approval of defendants' restaurant and cantina services.

4 24. Defendants' unauthorized use of the Infringing Mark constitutes
5 trademark infringement in violation of 15 U.S.C. §§ 1114.

6 25. Defendants acted willfully and in bad faith in adopting their
7 Infringing Mark in connection with the sale of restaurant and cantina services in
8 an effort to reap the benefits of the good will associated with ARI's Registered
9 Marks.

10 26. Defendants' trademark infringement has caused, and will continue to
11 cause, ARI to suffer irreparable injuries to its reputation and good will. ARI does
12 not have an adequate remedy at law to recover for this harm, and therefore, ARI is
13 entitled to injunctive relief

14 27. As a result of defendants' trademark infringement, plaintiff is entitled
15 to damages, lost profits, and costs of suit in an amount to be proven at trial.

16 **COUNT II – FEDERAL UNFAIR COMPETITION**

17 28. ARI re-alleges the allegations contained in Paragraphs 1-27.

18 29. Defendants' unauthorized use of the Infringing Mark constitutes a
19 false designation of origin, a false or misleading description of fact, and/or a false
20 or misleading representation of fact, and has caused and is likely to cause
21 confusion, mistake, and/or deception as to the affiliation, connection, or
22 association with ARI; the origin, sponsorship, or approval of ARI; and the nature,
23 characteristics, or qualities of Defendants' goods and services.

24 30. Defendants' use of the Infringing Mark constitutes unfair
25 competition in violation of 15 U.S.C. § 1125(a).
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1 31. Defendants' unfair competition has caused, and will continue to
2 cause, ARI to suffer irreparable injuries to its reputation and good will. ARI does
3 not have an adequate remedy at law to recover for this harm, and therefore, ARI is
4 entitled to injunctive relief.

5 32. As a result of defendants' trademark infringement, plaintiff is entitled
6 to damages, lost profits, and costs of suit in an amount to be proven at trial.

7 **COUNT III – STATE UNFAIR COMPETITION**

8 33. ARI re-alleges the allegations contained in Paragraphs 1-32.

9 34. This claim arises under the Washington Consumer Protection Act,
10 RCW 19.86.020, *et seq.*, which declares unlawful all methods of unfair
11 competition and unfair or deceptive acts or practices in the conduct of trade or
12 commerce. This statute applies to the present case pursuant to the principles of
13 *Nordstrom v. Tampourlos*, 107 Wn.2d 735 (1987), which provides that unfair
14 trade name infringement violates the Consumer Protection Act. This statute also
15 applies in that defendants' unauthorized use of the Infringing Mark constitutes a
16 false representation to the public concerning association with, sponsorship by or
17 approval from ARI.

18 35. As a consequence of these infringing and wrongful acts, defendants
19 are liable pursuant to the Consumer Protection Act, which entitles ARI to
20 injunctive relief, plus its costs and reasonable attorneys' fees pursuant to RCW
21 19.86.090

22 36. As a result of defendants' trademark infringement, plaintiff is entitled
23 to damages in an amount to be proven at trial.
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PRAYER FOR RELIEF

WHEREFORE, ARI demands judgment against defendants as follows:

1. An injunction preliminarily and permanently enjoining and restraining defendants, including their officers, agents, servants, employees, and attorneys, and all those in active concert or participation with them, from advertising, promoting, offering to provide, and providing restaurant or cantina services under or in connection with the word "Acapulco" or any other trademark or formative that is confusingly similar with plaintiffs' trademarks that contain the word ACAPULCO, namely, Reg. Nos. 1,128,023; 1,411,761; 2,115,063; and 2,868,568;

2. For damages, defendants' profits, and costs of the action;

3. For an award of ARI's reasonable attorney's fees;

4. For an award of post-judgment interest; and

5. For such other relief that the Court deems just and proper.

DATED this 9th day of October, 2008.

GRAHAM & DUNN PC

By 

Michael G. Atkins

WSBA# 26026

Email: matkins@grahamdunn.com

Kathleen T. Petrich

WSBA# 22143

Email: kpetrich@grahamdunn.com

Attorneys for Plaintiff