

THE HONORABLE JAMES L. ROBERT

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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06-CV-01362-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PORT OF SUBS, INC., a Nevada corporation,

Plaintiff,

v.

TAMARA FLEISCHER, individually and dba
PORT OF SUBS STORE #33,

Defendant.

NO. CV 06-1362 JLR

STIPULATED ORDER AND
PERMANENT INJUNCTION

~~PROPOSED~~

Plaintiff Port of Subs, Inc. ("Port of Subs"), a Nevada corporation, and Defendant Tamara Fleischer, individually and doing business as Port of Subs Store #33 ("Defendant"), wishing to avoid the expense, uncertainty, inconvenience and other burdens of litigating the above-entitled action, agree to a settlement of their dispute and hereby stipulate to the entry of this Stipulated Order and Permanent Injunction.

1. The Court has jurisdiction over the Parties and the subject matter at issue in this action.

2. Port of Subs owns numerous federally-registered trademarks (the "Port of Subs Marks") associated with its fast-casual restaurants which sell submarine sandwiches and other

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(NO. 06-1362 JLR) - 1

58441-0002/LEGAL11987371.2

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1 items. The Port of Subs Marks are valid and enforceable, uniquely associated with Port of Subs'
2 business, and assets of great value to Port of Subs.
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5 3. On or about December 10, 1996, Port of Subs entered into a written Franchise
6 Agreement with Scott Lether, whereby Port of Subs granted Lether the right to operate a Port
7 of Subs sandwich shop, commonly known as Store #33 at 3411 169th Place, NE, Suite E,
8 Arlington, Washington. On or about February 19, 1999, the Franchise Agreement was amended
9 by written agreement entered into by and between Port of Subs, Lether, and Fleischer, assigning
10 the original Franchise Agreement to Fleischer.
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14 4. In 2005 and 2006, Fleischer failed to make certain monthly or annual reports as
15 required by the Franchise Agreement. Fleischer also failed to make certain royalty and
16 advertising fund payments for 2005 and 2006. Port of Subs terminated the franchise on
17 August 9, 2006, effective August 11, 2006, in accordance with the Franchise Agreement.
18 Subsequent to her termination as a Port of Subs franchisee, Fleischer continued to use, market,
19 and advertise the Port of Subs Marks and held herself out as and did business as a Port of Subs
20 franchise, despite demands that she cease doing business as and representing herself as a Port
21 of Subs franchisee and using the Port of Subs marks.
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25 5. By continuing to operate as a Port of Subs franchise after the termination of the
26 Franchise Agreement, Defendant infringed the following marks:
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- 28 • 1255638 (for PORT OF SUBS; incontestable)
- 29 • 3,135,258 (for PORT OF SUBS with new design and font)
- 30 • 1,255,645 (for the Port of Subs sub design; incontestable)
- 31 • 3,111,551 (for PORT OF SUBS—SLICED FRESH SANDWICHES)
- 32 • 3,114,003 (for the Port of Subs sliced fresh sandwiches character trademark)
- 33 • 3,119,680 (for Port of Subs character logo)

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35 6. **Permanent Injunction.** Defendant, along with her agents, servants, employees,
36 representatives, successors and assigns, and all those persons or entities acting in concert or
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1 participation with her, shall be and hereby are PERMANENTLY ENJOINED and restrained
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3 from:

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5 (a) using, or inducing or enabling others to use, the Port of Subs Marks, or any
6 reproduction, counterfeit, copy, or colorable imitation of said Port of Subs marks in any manner
7 in connection with the manufacture, printing, distribution, advertising, offering for sale or sale of
8 any goods or services;
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11 (b) representing herself in any way as a Port of Subs franchise or otherwise doing
12 anything to suggest that she is a Port of Subs franchise;
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15 (c) using or disclosing Port of Subs proprietary business information of any kind,
16 including methods of preparation of sandwiches and other food products, product formulae,
17 standards, marketing procedures, and restaurant operating procedures; and
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20 (d) using the names, logos, or other variations thereof of any Port of Subs Marks in
21 any of Defendant's trade or corporate names;
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24 7. **Other Relief.** Additionally, for a period of two (2) years commencing on the date
25 this Permanent Injunction is entered by the Court, Defendant is enjoined from engaging as an
26 owner (except of publicly traded securities), partner, director, officer, employee, consultant,
27 representative or agent, or in any other capacity, in a restaurant, facility or business offering or
28 selling prepared food products and/or products similar to that sold in the Port of Subs System and
29 located within ten (10) miles of the designated area.
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32 8. **Monetary Payment.** Defendant is also ordered to pay Port of Subs outstanding
33 royalties in the amount of \$10,913.07 and outstanding advertisement and development fees in the
34 amount of \$2,274.19 within five (5) business days of the date of this Permanent Injunction.
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37 9. **Future Claims Unaffected.** Nothing in this Stipulated Order and Permanent
38 Injunction precludes Port of Subs or Fleischer from asserting any claims or rights that arise
39 solely after the Defendant's stipulation to this Stipulated Order and Permanent Injunction or that
40 are based upon any breach of, or the inaccuracy of, any representation or warranty made by the
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1 Defendant or Port of Subs in this Stipulated Order and Permanent Injunction or the settlement
2 agreement reached by the Parties.
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5 10. **Claims Against Third Parties Unaffected.** Nothing in this Stipulated Order and
6 Permanent Injunction precludes Port of Subs or Defendant from asserting any claims or rights as
7 against any other party to this action, nor any third party.
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10 11. **Non-Appealability.** This Stipulated Order and Permanent Injunction is final and
11 may not be appealed by either party.
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14 12. **Rule 65(d).** The Defendant waives any objection under Federal Rule of Civil
15 Procedure 65(d) (pertaining to injunctions) to paragraphs 6 and 7 above.
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18 13. **Dismissal.** Port of Subs' claims against Defendant are hereby dismissed with
19 prejudice and without costs to either Party, except the Court shall retain jurisdiction to enforce
20 this Stipulated Order and Permanent Injunction and the settlement agreement between the
21 Parties.
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29 DATED: December 13, 2006

PORT OF SUBS, INC.

30
31 By: /s/ Amanda J. Beane
32 William C. Rava, WSBA #29948
33 Amanda J. Beane, WSBA #33070
34 PERKINS COIE LLP
35 1201 Third Avenue, Suite 4800
36 Seattle, WA 98101-3099
37 email: wrava@perkinscoie.com
38 abeane@perkinscoie.com
39 Attorneys for Plaintiff Port of Subs
40
41
42

43
44 DATED: December ____, 2006

**TAMARA FLEISCHER, individually and dba
PORT OF SUBS STORE #33**

45
46
47 By: _____
48 Tamara Fleischer, *pro se*
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50
51

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(NO. 06-1362 JLR) - 4

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10. ~~Claim Against Third Parties Unaffected~~ Nothing in this Stipulated Order and Permanent Injunction precludes Port of Subs or Defendant from asserting any claims or rights as against any other party to this action, nor any third party.

11. **Non-Appealability.** This Stipulated Order and Permanent Injunction is final and may not be appealed by either party.

12. **Rule 65(d).** The Defendant waives any objection under Federal Rule of Civil Procedure 65(d) (pertaining to injunctions) to paragraphs 6 and 7 above.


13. ~~Dismissed.~~ Port of Subs' claims against Defendant are hereby dismissed with prejudice and without costs to either Party, except the Court shall retain jurisdiction to enforce this Stipulated Order and Permanent Injunction and the settlement agreement between the Parties.

DATED: December __, 2006

PORT OF SUBS, INC.

By: _____
William C. Rava, WSBA #29948
Amanda J. Beane, WSBA #33070
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
email: wrava@perkinscoie.com
abeane@perkinscoie.com
Attorneys for Plaintiff Port of Subs

DATED: December __, 2006

TAMARA FLEISCHER, Individually and dba
PORT OF SUBS STORE #33

Tamara Fleischer, pro se

STIPULATED PERMANENT INJUNCTION
NO. 06-1362 JLR-A

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ORDER

Based upon the foregoing Stipulation,

IT IS SO ORDERED.

DATED: Dec. 13, 2006



THE HONORABLE JAMES L. ROBERT
UNITED STATES DISTRICT JUDGE

Presented by:

PERKINS COIE LLP

By /s/ Amanda J. Beane

William C. Rava, WSBA #29948

Amanda J. Beane, WSBA #33070

Attorneys for Plaintiff

By _____

Tamara Fleischer, *pro se*

STIPULATED PERMANENT INJUNCTION
(NO. 06-1362 JLR) - 5

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ORDER

Based upon the foregoing Stipulation,

IT IS SO ORDERED.

DATED: _____

THE HONORABLE JAMES L. ROBERT
UNITED STATES DISTRICT JUDGE

Presented by:

PERKINS COIE LLP

By _____

William C. Rava, WSBA #29948

Amanda J. Beane, WSBA #33070

Attorneys for Plaintiff


Tamara Fleischer, pro se

CERTIFICATE OF SERVICE

On December 13, 2006, I filed via the CM/ECF system the foregoing STIPULATED ORDER AND PERMANENT INJUNCTION [PROPOSED], and I served a true and correct copy of the same document on the *pro se* defendant at the following address via the method of service indicated:

Tamara Fleischer
3411 - 169th Place NE
Arlington, Washington 98223

☒ Via hand delivery
☒ Via U.S. Mail, 1st Class,
Postage Prepaid
☐ Via Overnight Delivery
☐ Via Facsimile
☐ Via E-filing

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED at Seattle, Washington, this 13th day of December, 2006.

/s/ Amanda J. Beane
Amanda J. Beane, WSBA #33070
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