

06-CV-05594-CMP

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THE WEDGE CORPORATION, a Washington corporation,

Plaintiff,

vs.

ROCKO BROTHERS PIZZA CORPORATION, a Washington corporation,

Defendant.

CV 06-5594 FDB

COMPLAINT

JURY DEMAND

JURISDICTION

1. This is an action for federal trademark infringement, unfair competition, and false designation of origin, and arises under the trademark laws of the United States, namely, 15 U.S.C. §§ 1114, 1116-17, 1121, and 1125(a), and related causes of action under the laws of the State of Washington and common law arising from the wrongful use by Defendant of Plaintiff's trademarks and trade names as described below. This Court has jurisdiction pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338(a) and (b).

2. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) with respect to claims arising under the laws of the State of Washington in that such claims are so related to the claims under the trademark laws of the United States that they form part of the same case or controversy under Article III of the United States Constitution.

COMPLAINT -- 1

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SEA 4745 S/ISS

ORIGINAL

1 VENUE

2 3. Venue is vested in this Court pursuant to 28 U.S.C. Sections 1391(b) in that the
3 asserted claims arose within the district and that this Defendant, or its agents, conducts business,
4 resides, or may be found within this district.

5 PARTIES

6 4. Plaintiff The Wedge Corporation is a corporation duly organized and existing
7 under the laws of the State of Washington. Its principal place of business is located in Auburn,
8 Washington.

9 5. Defendant Rocko Brothers Pizza Corporation, d/b/a Rocko's Brick Oven Pizza, is
10 a corporation duly organized and existing under the laws of the State of Washington. Its
11 principal place of business is located in Tumwater, Washington.

12 FACTS

13 6. Plaintiff is, and for years before the acts complained of, has been engaged in
14 selling restaurant services under the trade names and trademarks THE ROCK and THE ROCK
15 WOOD FIRED PIZZA & SPIRITS.

16 7. On February 28, 2002, plaintiff obtained a federal trademark registration on the
17 Principal Register for THE ROCK in International Class 043 for restaurants (Registration No.
18 3,095,500). A copy of the registration certificate for THE ROCK is attached hereto as Exhibit A.
19 Plaintiff has used the mark continuously in commerce in connection with restaurant services at
20 least as early as May 1999.

21 8. Plaintiff provides its pizza restaurant services under the names and marks from its
22 restaurants located in Lacey, Tacoma, Lynnwood, and Auburn, Washington.

23 9. As a result of Plaintiff's expenditure of a considerable amount of money in
24 continuously marketing its restaurant services in connection with its distinctive names and
25 marks, the consuming public has come to recognize all restaurant services sold in connection
26

1 with the THE ROCK and THE ROCK WOOD FIRED PIZZA & SPIRITS as originating from or
2 otherwise approved or sponsored by or affiliated or connected with Plaintiff.

3 10. Defendant is preparing to open a pizza restaurant in Tumwater, Washington,
4 under the trade names and trademarks ROCKO'S and ROCKO'S BRICK OVEN PIZZA. A
5 photograph of Defendant's restaurant bearing these names and marks is attached hereto as
6 Exhibit B.

7 11. Defendant's forthcoming restaurant is located at 111 Tumwater Boulevard,
8 Southeast, Suite A, Tumwater, Washington. Plaintiff's Lacey restaurant is located at 5400
9 Martin Way, Lacey, Washington. The driving distance between the two restaurants is
10 approximately 8.0 miles, with an approximate driving time of 10 minutes.

11 12. Plaintiff has informed Defendant of Plaintiff's prior use of and rights to the THE
12 ROCK and THE ROCK WOOD FIRED PIZZA & SPIRITS names and marks. Plaintiff has
13 demanded that Defendant cease and desist from using the word or word fragment "ROCK" as
14 part of Defendant's names and marks in connection with its competing pizza restaurant.

15 13. Defendant has refused to eliminate the word or word fragment "ROCK" from its
16 names and marks.

17 14. Defendant is not owned by or affiliated with anyone named "Rocko" or even
18 "Rocco."

19 **CAUSES OF ACTION**

20 **Claim 1 – Trademark Infringement (Federal)**

21 15. Plaintiff re-alleges and incorporates by this reference the allegations contained in
22 Paragraphs 1 through 14 above.

23 16. Defendant's restaurant services sold in connection with ROCKO'S and
24 ROCKO'S BRICK OVEN PIZZA are sold in and/or otherwise affect interstate commerce to the
25 same consuming public and travel through the same trade channels as the restaurant services
26 Plaintiff sells in connection with its registered trademark THE ROCK.

COMPLAINT -- 3

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1 17. Defendant's pizza restaurant will compete with Plaintiff's pizza restaurant.

2 18. In preparing to open its restaurant, Defendant is willfully and knowingly
3 infringing and will continue to further infringe the rights of Plaintiff and its federally registered
4 mark THE ROCK in violation of 15 U.S.C. § 1114, as a result of the continued, unauthorized use
5 of the word or word fragment "ROCK" in Defendant's ROCKO'S and ROCKO'S BRICK
6 OVEN PIZZA names and marks, with the intention of deceiving and misleading the consuming
7 public, and by wrongfully trading on Plaintiff's goodwill and reputation.

8 19. Defendant's use of ROCKO'S and ROCKO'S BRICK OVEN PIZZA names and
9 marks is likely to cause confusion or mistake or deception of purchasers as to the source, origin,
10 sponsorship, affiliation, approval or connection of Defendant and its services in that purchasers
11 and others are likely to believe that Plaintiff authorizes and/or controls the operation of
12 Defendant's business or that Defendant is associated with Plaintiff.

13 20. By its wrongful acts, Defendant is likely to continue to cause great injury and
14 damage to Plaintiff, which cannot now be accurately computed and, unless restrained by the
15 Court, Defendant has and will cause irreparable injury and damage to Plaintiff and to the
16 goodwill associated with Plaintiff's registered mark.

17 21. As a result of the foregoing, Plaintiff has and will suffer damages in an amount to
18 be proven at trial. Consistent with 15 U.S.C. § 1117(a), among other remedies, Plaintiff is
19 entitled to recover its damages, Defendant's profits, and the cost of this suit.

20 **Claim 2 – False Designation of Origin (Federal)**

21 22. Plaintiff re-alleges and incorporates by this reference the allegations contained in
22 Paragraphs 1 through 21 above.

23 23. Defendant's use of the word or word fragment "ROCK" as part of its ROCKO'S
24 and ROCKO'S BRICK OVEN PIZZA names and marks in connection with the promotion and
25 distribution of its restaurant services in commerce has caused or is likely to cause confusion,
26

1 mistake and deception among the consuming public as to the origin, sponsorship, and/or
2 approval of the Defendant's restaurant services.

3 24. As a result of Defendant's intentional and wrongful acts, purchasers are likely to
4 purchase Defendant's services in connection with ROCKO'S and ROCKO'S BRICK OVEN
5 PIZZA instead of Plaintiff's services in connection with THE ROCK and THE ROCK WOOD
6 FIRED PIZZA & SPIRITS, thereby injuring Plaintiff by diverting sales to Defendant.

7 25. Plaintiff has no control over the quality of the services sold by Defendant and,
8 because of the confusion as to the origin, sponsorship or approval of the Defendant's services
9 engendered by Defendant, Plaintiff's extensive and valuable goodwill is at the mercy of
10 Defendant, and Plaintiff will suffer irreparable harm should such conduct be allowed to occur.

11 26. Such acts by Defendant are willful and deliberate, designed specifically to trade
12 upon the valuable goodwill of Plaintiff. Defendant's acts constitute a false representation and a
13 false designation of origin in violation of 15 U.S.C. § 1125(a).

14 27. By its wrongful acts, Defendant has and will cause great harm and damage to
15 Plaintiff, which cannot now be assessed or computed and, unless restrained by the Court, has and
16 will continue to cause irreparable injury and damage to Plaintiff and to the goodwill associated
17 with THE ROCK and THE ROCK WOOD FIRED PIZZA & SPIRITS names and marks.

18 28. Defendant knew or should have known that it had no legal basis to use the word
19 or word fragment "ROCK" in connection with Defendant's restaurant services. Despite this
20 knowledge, Defendant willfully violated 15 U.S.C. § 1125(a).

21 29. As a result of Defendant's willful Lanham Act violations, Plaintiff requests the
22 Court enter judgment for three times Plaintiff's damages, together with reasonable attorney's fees
23 pursuant to 15 U.S.C. § 1117(b).

24 **Claim 3 – Unfair Competition (Washington Common Law)**

25 30. Plaintiff re-alleges and incorporates by this reference the allegations contained in
26 Paragraphs 1 through 29 above.

COMPLAINT -- 5

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1 31. Defendant's conduct of marketing and preparing to distribute and sell its
2 restaurant services in connection with ROCKO'S and ROCKO'S BRICK OVEN PIZZA, which
3 are colorable, confusing and deceptive variants of Plaintiff's THE ROCK and THE ROCK
4 WOOD FIRED PIZZA & SPIRITS names and marks, are calculated to and are likely to confuse,
5 deceive and mislead the consuming public into believing that Defendant's restaurant services
6 originate with, are associated with, are authorized by, or are otherwise related to Plaintiff.

7 32. Plaintiff believes that Defendant, with full knowledge of the favorable notoriety,
8 acclaim and popularity of Plaintiff's restaurant services sold in connection with THE ROCK and
9 THE ROCK WOOD FIRED PIZZA & SPIRITS intends to trade on the goodwill associated with
10 Plaintiff's names and marks.

11 33. Defendant's conduct constitutes unfair competition, palming off, unjust
12 enrichment, and misappropriation of rights and goodwill of Plaintiff and it's The ROCK and
13 THE ROCK WOOD FIRED PIZZA & SPIRITS names and marks and, unless enjoined by this
14 Court, will result in the unjust enrichment of Defendant.

15 34. For these reasons, the passing off of restaurant services under the colorable,
16 confusingly and deceptively similar of variant ROCKO's and ROCKO'S BRICK OVEN PIZZA
17 names and marks, unless enjoined has and will continue to irreparably injure Plaintiff, and to
18 damage Plaintiff in an amount to be proven at trial.

19 **Claim 4 – Washington State Consumer Protection Act**

20 35. Plaintiff re-alleges and incorporates by this reference the allegations contained in
21 Paragraphs 1 through 34 above.

22 36. Defendant has intentionally advertised and prepared to sell its restaurant services
23 under the ROCKO'S and ROCKO'S BRICK OVEN PIZZA names and marks so as to pass off
24 its services as those of Plaintiff, to cause confusion and deceive purchasers as to the source,
25 sponsorship, approval or certification of, or the affiliation, connection or association with
26 Defendant's services, and to obtain the acceptance of Defendant's services based on the

1 reputation and goodwill of Plaintiff and its high quality services sold in connection with THE
2 ROCK and THE ROCK WOOD FIRED PIZZA & SPIRITS names and marks.

3 37. Defendant's actions will cause confusion, mistake and deception among the
4 purchasing public as to the source of Defendant's services. Further, Defendant's actions are
5 likely to deceive others into believing that Defendant's restaurant services are sponsored by,
6 approved by, or affiliated with Plaintiff.

7 38. Defendant's unauthorized use of names and marks that are confusingly similar to
8 Plaintiff's names and marks constitutes an unfair or deceptive act or practice and an unfair
9 method of competition in the conduct of trade or commerce, which is and will be injurious to the
10 public interest, in violation of the Washington State Unfair Business Practices Consumer
11 Protection Act, RCW 19.86.020, *et seq.* This statute also applies to the present cause pursuant to
12 the principles of *Nordstrom v. Tampourlos*, 107 Wn.2d 735 (1987), which provides that unfair
13 trade name infringement violates the Washington State Unfair Business Practices Consumer
14 Protection Act.

15 39. As a result of these acts of infringement, deception, and unfair competition,
16 Plaintiff has and will continue to suffer great injury and damage in an amount to be proven at
17 trial. Plaintiff also will continue to suffer irreparable injury to its reputation and goodwill unless
18 restrained by this Court, which cannot be adequately remedied at law.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays this Court grant the following relief against Defendant:

21 1. For a preliminary and permanent injunction enjoining Defendant, his agents,
22 servants, employees, successors, and assigns, and all others acting in concert or participating with
23 it as follows:

24 a. From infringing Plaintiff's registered trademark THE ROCK (U.S.
25 Trademark Registration No. 3,095,500) in violation of 15 U.S.C. § 1114 through the display of
26 any name or mark containing the word or word fragment "ROCK" in connection with restaurant

1 services by requiring the removal of all such marks from Defendant's signs, menus, vehicles,
2 stationery, business cards, invoices, packaging, containers, advertising, uniform or any other
3 business equipment or marketing materials, or otherwise infringing Plaintiff's registered
4 trademark;

5 b. From falsely representing affiliation with Plaintiff and falsely designating
6 the origin of Defendant's restaurant services in violation of 15 U.S.C. § 1125(a) through the
7 display of any name or mark containing the word or word fragment "ROCK" in connection with
8 restaurant services by requiring the removal of all such marks from Defendant's signs, menus,
9 vehicles, stationery, business cards, invoices, packaging, containers, advertising, uniform or any
10 other business equipment or marketing materials, or otherwise falsely representing affiliation
11 with Plaintiff or falsely designating Plaintiff as the origin of Defendant's restaurant services;

12 c. From causing confusion, mistake and deception among the purchasing
13 public as to the source or affiliation of Defendant's restaurant services in violation of the
14 Washington Consumer Protection Act through the display of any name or mark containing the
15 word or word fragment "ROCK" in connection with restaurant services by requiring the removal
16 of all such marks from Defendant's signs, menus, vehicles, stationery, business cards, invoices,
17 packaging, containers, advertising, uniform or any other business equipment or marketing
18 materials or otherwise unfairly competing with Plaintiff.

19 2. For an order directing Defendant to file with the Court and serve on Plaintiff an
20 affidavit setting forth in detail the manner and form in which Defendant has complied with the
21 terms of the injunction, in accordance with 15 U.S.C. § 1116.

22 3. For an order directing that Defendant account for and pay over to Plaintiff:

23 a. All profits derived by Defendant from its acts of trademark infringement
24 and unfair competition in accordance with 15 U.S.C. § 1117, 15 U.S.C. § 1125, and the laws of
25 the State of Washington;

1 b. Damages (including treble damages) by reason of Defendant's acts of
2 infringement and competition in accordance with 15 U.S.C. § 1117, 15 U.S.C. § 1125, and the
3 laws of the State of Washington.

4 4. That Plaintiff be awarded its reasonable attorney's fees and costs pursuant to
5 15 U.S.C. § 1117 and RCW 19.86.090, or as otherwise provided by law; and

6 5. Such other further relief as the Court deems just and proper.

7 DATED this 17th day of October, 2006.

8 GRAHAM & DUNN PC

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Trademarks > Trademark Electronic Search System(Tess)

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THE ROCK

Word Mark	THE ROCK
Goods and Services	IC 043. US 100 101. G & S: Restaurants. FIRST USE: 19990501. FIRST USE IN COMMERCE: 19990501
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	78643156
Filing Date	June 3, 2005
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	February 28, 2006
Registration Number	3095500
Registration Date	May 23, 2006
Owner	(REGISTRANT) The Wedge Corporation CORPORATION WASHINGTON 1508 O Street, NW, Suite 105 Auburn WASHINGTON 98001
Attorney of Record	Robert C. Cumbow
Prior Registrations	2305793;2628701
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

Exhibit A

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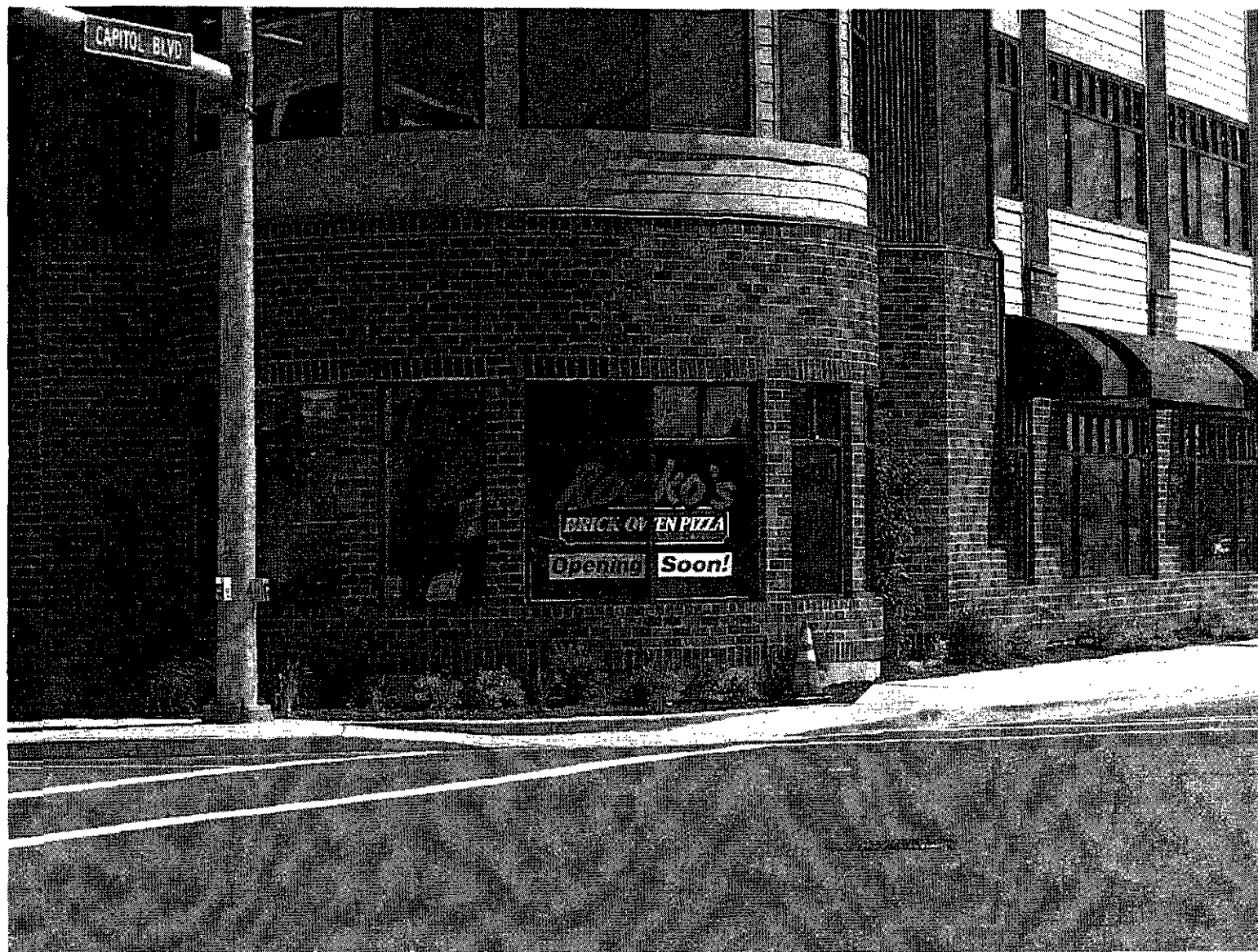


Exhibit B