

HOUSE OF BRYANT PUBLICATIONS, LLC)	Civil No.:
<i>Plaintiff,</i>)	District Judge:
)	
v.)	
)	
CITY OF LAKE CITY, TENNESSEE;)	
ROCKY TOP TENNESSEE MARKETING)	
AND MANUFACTURING CO.; TIM ISBEL;)	
BRAD CORIELL; MARK SMITH; MICHAEL)	
LOVELY; and CARL “BUDDY” WARREN,)	
<i>Defendants.</i>)	<u>JURY TRIAL DEMANDED</u>
)	

House of Bryant Publications, LLC (hereinafter “House of Bryant” or “Plaintiff”) files this Complaint for: declaratory judgment establishing likelihood of confusion and/or trademark infringement, false designation or false description, unfair competition, passing off, false advertising, declaratory judgment establishing likelihood of dilution, dilution, willful and/or exceptional conduct, unlawful taking, deceptive trade practices, common law trademark infringement, Tennessee dilution and injury to business reputation, civil conspiracy, and other claims not yet discovered arising from infringing activities undertaken by City of Lake City, Tennessee (hereinafter “Lake City”), Rocky Top Tennessee Marketing and Manufacturing Co., Tim Isbel, Brad Coriell, Michael Lovely, Mark Smith, Carl “Buddy” Warren, and other unknown defendants not yet named (hereinafter collectively “Defendants”). House of Bryant seeks immediate injunctive relief in the form of a Preliminary Injunction prohibiting Lake City from changing its name to “Rocky Top” and declaring that such an act would infringe House of Bryant’s rights. Finally, House of Bryant requests immediate injunctive relief in the form of a

Preliminary Injunction to prevent Defendants from further tarnishing House of Bryant's trademarks and harming the goodwill associated with its brands.

THE PARTIES

1. House of Bryant is a Tennessee limited liability company having its principal place of business at 315 Historic Nature Trail, Gatlinburg, Tennessee 37738-3346.

2. House of Bryant is a small, family business that was founded by songwriters Boudleaux and Felice Bryant in the living room of their home; House of Bryant is still owned by the two sons of Boudleaux and Felice Bryant. House of Bryant has one employee.

3. Upon information and belief, Lake City is an incorporated municipality chartered by the State of Tennessee, and as such it is a political subdivision of Tennessee. It is located in Anderson and Campbell counties in east Tennessee. The mailing address for Lake City is 195 South Main Street, P. O. Box 66, Lake City, Tennessee 37769.

4. Upon information and belief, Rocky Top Tennessee Marketing and Manufacturing Co. is a Tennessee corporation with its principal office at 150 Luke Leinart Lane, Lake City, Tennessee 37769-5824. It was formed on or around October 1, 2013, and its registered agent is Tim Isbel.

5. Upon information and belief, the board of directors, shareholders, and/or principals of this corporation include: Tim Isbel, Michael Lovely, Brad Coriell, Buddy Warren, and Mark Smith (hereinafter referred to collectively as the "Principals").

6. Upon information and belief, Brad Coriell is a principal, shareholder, and/or board member of Rocky Top Tennessee Marketing and Manufacturing Co. and upon information and belief, Brad Coriell resides at 491 Sadler Way, Franklin, Tennessee 37069-4320.

7. Upon information and belief, Tim Isbel is an Anderson County Commissioner

representing Lake City, chairman of the Anderson County Beer Board, Executive Board Member of the Tourism Council, and a director on the boards of the Anderson County and Lake City Chamber of Commerce. He also is a principal, shareholder, and/or board member of Rocky Top Tennessee Marketing and Manufacturing Co. and its president. Upon information and belief, his address is 150 Luke Leinart Lane, Lake City, Tennessee 37769.

8. Upon information and belief, Michael Lovely is a resident of and is the Vice Mayor of Lake City. He is also a principal, shareholder, and/or board member of Rocky Top Tennessee Marketing and Manufacturing Co. Michael Lovely resides at 621 Wallace Avenue, Lake City, Tennessee 37769.

9. Upon information and belief, Mark Smith is a resident of Andersonville, Tennessee who owns “Mark’s Pharmacy” and other businesses in Lake City. Upon information and belief, he is also a principal, shareholder, and/or board member of Rocky Top Tennessee Marketing and Manufacturing Co. Mark Smith is an Anderson County Election Commissioner and resides at 129 Hobert Lane, Winfield, Tennessee 37892.

10. Upon information and belief, Carl “Buddy” Warren resides or works at 9303 Barrington Boulevard, Knoxville, Tennessee 37922 or at 790 North Cedar Bluff Road, Apartment 1101, Knoxville, Tennessee 37923-2246. Upon information and belief, he is also a principal, shareholder, and/or board member of Rocky Top Tennessee Marketing and Manufacturing Co.

11. Upon information and belief, there are other people, including representatives of the Lake City and/or county governments of Anderson and Campbell counties, and other principals of Rocky Top Tennessee Marketing and Manufacturing Co., who are not yet discovered but who may also bear liability for the actions complained of herein.

JURISDICTION AND VENUE

12. This complaint for trademark infringement and other torts arises under the laws of the United States, Title 15, United States Code, and this Court has jurisdiction over those claims pursuant to 28 U.S.C. §§ 1331 and 1338, which directs that district courts shall have exclusive original jurisdiction of any civil action arising under any Act of Congress relating to trademarks or copyrights, as well as original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the trademark laws.

13. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the claims which arise under the laws of the State of Tennessee since those claims are so closely related to the trademark infringement, copyright infringement, and unfair competition claims that the state law claims rely on many of the same operative facts and thus form part of the same case or controversy under Article III of the United States Constitution.

14. Venue is proper pursuant to 28 U.S.C. § 1391(b), since all but one of the Defendants are believed to reside within the Eastern District of Tennessee, House of Bryant is based in the Eastern District of Tennessee, and the tortious action by Lake City will take place in the Eastern District of Tennessee.

FACTS

15. The founders of House of Bryant, Boudleaux and Felice Bryant, wrote the song “Rocky Top” and registered their copyright for the song in 1967 (hereinafter the “Copyrighted Song”). (See Rocky Top Copyright Registration Certificate, hereinafter “Ex. A.”)

16. House of Bryant owns the registered copyright for the song “Rocky Top” and has licensed the Copyrighted Song to many artists and organizations who desired to perform or utilize the song, including the University of Tennessee, Buck Owens, The Osborne Brothers,

Lynn Anderson, Terry Gibb, Dinah Shore, Chet Atkins, Boots Randolph, Glen Campbell, and Dolly Parton. Rocky Top is also one of the state songs of Tennessee. (See List of Rocky Top Licensees, hereinafter “Ex. B,” p. 2)

17. Licensed and authorized copies and recordings of the Copyrighted Song also are sold and distributed in interstate and foreign commerce.

18. House of Bryant subsequently registered the federal trademark for the phrase ROCKY TOP for nine different categories of goods and services (hereinafter the “Marks” or the “ROCKY TOP Marks”). All nine of the Marks were granted and certificates of registration have been issued. (See Rocky Top Trademark Registration Certificates, hereinafter “Ex. C.”)

19. Goods and services bearing the Marks are sold and distributed in interstate and foreign commerce.

20. As indicated in the multiple trademark filings, the Marks cover the following goods: license plates, decorative magnets, mouse pads, lapel pins, bumper stickers and decals, temporary tattoos, drinking glasses, mugs, plastic cups, foam drink holders, insulating sleeves for bottles and/or cans, baby blankets, lap blankets, banners, flags, baseball caps, golf shirts, hats, jackets, sweatshirts, t-shirts, buttons, and Christmas tree ornaments and decorations. (Ex. C.)

21. House of Bryant also has operated a hotel called the Rocky Top Village Inn in Gatlinburg, Tennessee since 1982.

22. ROCKY TOP is a world-famous and distinctive mark that popularly conjures notions of the Copyrighted Song owned by House of Bryant and of the goods and services protected by the Marks.

23. ROCKY TOP is very recognizable among the consuming public with whom the Marks and the Copyrighted Song have commercial appeal.

24. In addition to licensing the Copyrighted Song, House of Bryant also has entered into trademark licensing arrangements with entities including the University of Tennessee in which such entities pay an annual royalty or a royalty-per-sale on merchandise sold bearing the ROCKY TOP Marks.

25. Due to the licensing arrangement with the University of Tennessee and the permitted adoption of the Copyrighted Song by the state of Tennessee as one of the official state songs, the Marks invoke ideas of the state of Tennessee and the University of Tennessee and other entities with which House of Bryant shares beneficial relationships.

26. ROCKY TOP is a highly distinctive trademark and is popular in Tennessee, the American South, and throughout the world.

27. Accordingly, in part due to the licensing arrangement with the University of Tennessee, the ROCKY TOP Marks have nationwide popularity and recognition, independent of the Copyrighted Song.

28. However, the Copyrighted Song and the ROCKY TOP Marks are most recognized, most popular, and strongest in the state of Tennessee, particularly in the eastern part of the state, in Knoxville, and in surrounding areas due to the affiliation with the University of Tennessee and its location in East Tennessee.

29. Lake City is located approximately 26 miles from Knoxville, Tennessee and the University of Tennessee.

30. As of the 2010 Census, Lake City had a population of 1,781 people. (See 2010 Census, hereinafter “Ex. D.”).

31. Lake City was formerly named Coal Creek, which is also the name of a creek that runs through the city. (See Lake City History 1, hereinafter “Ex. E.”).

32. It renamed itself to Lake City to associate with a lake that formed after the Tennessee Valley Authority (“TVA”) built Norris Dam, the first dam in what would become the TVA system of hydroelectric dams. (See Lake City History 2, hereinafter “Ex. F.”)

33. Norris Dam is approximately six miles from Lake City.

34. There is not a lake in Lake City.

35. Boudleaux and Felice Bryant did not write the Copyrighted Song “Rocky Top” about Lake City, nor is anyone ever known to have referred to Lake City as “Rocky Top.”

36. Lake City is not popularly known, in fact or legend, as the inspiration for the song “Rocky Top.”

37. Boudleaux and Felice Bryant were not referring to any known city as “Rocky Top” when they wrote the song but were instead referring to a fictional or idyllic place conjured for purposes of the song.

38. There is no geographical location known or otherwise referred to as “Rocky Top” in Lake City.

39. In late 2013, news reports surfaced suggesting that Lake City intended to change its name to ROCKY TOP in order to cash in on the famous connotations of the Copyrighted Song and the ROCKY TOP Marks.

40. Concerned about the threat to its intellectual property rights, including the use of the ROCKY TOP Marks, the Copyrighted Song, and other applications of ROCKY TOP, House of Bryant sent an urgent letter to the mayor and city council of Lake City on November 7, 2013, the day the city was supposed to vote to change its name.

41. The letter advised that there were serious implications in using House of Bryant’s ROCKY TOP Marks and the Copyrighted Song without its permission and that House of Bryant

would pursue all available remedies if Lake City proceeded with the decision to change its name. (See Letter to Lake City, hereinafter “Ex. G.”)

42. Nonetheless, Lake City ignored the warning and proceeded with the vote anyway. On November 7, the city council of Lake City voted to change the city’s name to ROCKY TOP by a vote of 4 to 0.

43. The remaining steps for the Lake City name change to take effect include the Tennessee General Assembly approving the name change and the city council of Lake City ratifying the change.

44. On January 14, 2014—the first day of the legislative session—the representative for Lake City in the General Assembly, Representative John Ragan, introduced a bill to effectuate the name change of Lake City to ROCKY TOP as HB1469. (See HB1469, hereinafter “Ex. H.”)

45. The House Local Government Committee passed HB1469 on February 4, 2014 and referred it to the House Finance, Ways & Means Committee for consideration.

46. The House Finance, Ways & Means Committee passed HB1469 on February 18, 2014 and referred the bill to the House Calendar & Rules Committee.

47. On January 23, 2014, Senator Randy McNally introduced companion legislation to achieve the same goal in the Senate. (See SB2323, hereinafter “Ex. I.”)

48. Beyond the legislative efforts to advance the name change in the General Assembly, Lake City’s plans are real, moving forward, and pose a direct threat to House of Bryant’s rights under copyright and trademark law.

49. Upon information and belief, the desire to benefit Lake City by associating with the Copyrighted Song and the ROCKY TOP Marks stems in part from Lake City’s relative lack

of industry, manufacturing, tourism, or any other employment base or economic driver.

50. News outlets attribute the impetus for the name change to “marketing possibilities,” presumably associated with the famous Copyrighted Song and ROCKY TOP Marks. (See News Article 1, hereinafter “Ex. J.”)

51. Before Lake City’s city council voted to change the name, the developers supporting the name change effort—Rocky Top Tennessee Marketing and Manufacturing Co. and its principals (hereinafter the “Developers”)—promised the residents and officials of Lake City that they would build a \$20 million theme park in Lake City. That grandiose promise came with one condition: that Lake City change its name to Rocky Top. (See News Article 2, hereinafter “Ex. K.”)

52. Upon information and belief, despite developing a business plan presuming the city’s name change, Rocky Top Tennessee Marketing and Manufacturing Co. is not contractually obligated to invest any money or construct any project if Lake City in fact does change its name.

53. The Developers apparently believe that if Lake City changes its name to ROCKY TOP, numerous attractions will be developed there and the city will see a subsequent influx of tourists with a much needed positive economic impact.

54. The plans for development, endorsed by the Developers and by Lake City’s government representatives—several of whom are Lake City or Anderson County government officers—include multiple stages. (See Developers’ Business Plan, hereinafter “Ex. L.”)

55. The Developers’ business plan includes the following information:

Phase 1: includes a \$4.5-6 million “3d interactive theater;” a \$5-7.5 million “train ride” and “laser tag arena;” a separate \$3-4.5 million, 1,500-seat theater; \$200,000 renovation of existing buildings on Main Street for a “Rocky Top Sweets & Candies Emporium;” various merchandising including food products and packaging, clothing, toys, books, and other knickknacks; and assorted “intellectual properties.” (Ex. L, pp. 4-20.)

Phase 2: includes a \$1.5-2.225 million 250-seat, river pirate-themed restaurant called the “Jenny Lea” located on a “dried up river bed;” a \$3.5 million water park; a \$900,000-1.5 million train depot, loading dock, and shopping center; and a functioning train called the “Rocky Top Express” running from Lake City to the University of Tennessee campus in Knoxville during football season. No cost projection is provided to account for the costs of operating and maintaining a seasonal train line. (Ex. L, pp. 21-26.)

Phase 3: includes an \$8.5-11 million 24,000 square foot-hotel and banquet hall; a \$5-6.5 million “Rocky Top Sports Arena” with baseball, football, and soccer fields and a 15,000 square foot-museum; and a \$3-4.5 million office and administrative building. The sports arena allegedly will cooperate with the University of Tennessee Athletic Department to run buses from the arena to Knoxville for UT football games; upon information and belief, the University of Tennessee is not aware of this plan. (Ex. L, pp. 27-32.)

Phase 4: includes an \$80-100 million amusement park. (Ex. L, pp. 33-35.)

56. The business plan suggests the construction projects will cost \$147,425,000 (\$147.425 million). The number may be preposterous, but the intent to exploit the Marks is real.

57. Many aspects of the proposed development will seek to trade on the fame, goodwill, and name of the Copyrighted Song and the ROCKY TOP Marks.

58. Some such uses are as yet undetermined, but one known example is the proposed candy company, which will feature candy corn prominently, according to the Business Plan. It is meant to trade on the fame of the lyrics from the Copyrighted Song that read, “Corn don’t grow at all on Rocky Top, dirt’s too rocky by far. / That’s why all the folks on Rocky Top get their corn from a jar.” (See News Article 3, hereinafter “Ex. M.”)

59. One of the people supporting Lake City’s name change is Tim Isbel, the Anderson County official representing Lake City who is also a principal of Rocky Top Tennessee Marketing and Manufacturing Co.

60. In a clear example of seeking to trade on the fame, popularity, and goodwill of ROCKY TOP, Tim Isbel wore a shirt apparently bearing the House of Bryant’s ROCKY TOP Mark when he pitched the name change at an informational meeting in Lake City before the

vote. (See News Article 4, hereinafter “Ex. N.”)

61. Brad Coriell, another principal, has asserted that part of the reason Lake City should change its name is to cash in on “Rocky Top” because “[t]he magic of that name is going to bring [tourists] in.” (See News Article 5, hereinafter “Ex. O.”)

62. Moreover, Coriell reasoned that if other licensees were willing to pay for a license to use the Copyrighted Song, then that lends support to the idea that there is “magic” in the ROCKY TOP name and brand. (Ex. O.)

63. Coriell has admitted that the Developers have been contacted by other companies looking to benefit from the marketing prospects of Rocky Top, including hoteliers and restaurateurs. (Ex. N.)

64. Isbel similarly attributed the name change to a desire to profit from House of Bryant’s protected rights when he said “[s]uccess comes in a name — the name of Rocky Top.” (Ex. O.)

65. On December 18, 2013, representatives of Lake City and the Developers met with House of Bryant to discuss the city’s name change and the effects such an action would have on House of Bryant’s rights.

66. Some of the Defendants, acting indistinguishably with respect to their government official and Developer capacities, admitted to representatives of House of Bryant that the scheme to change Lake City’s name is driven in part by the city’s efforts to improve economic conditions and promote growth within Lake City.

67. In the same conversation, House of Bryant representatives encouraged the Developers and Lake City to proceed with the development plans, but simply use a name other than ROCKY TOP.

68. The Developers and Lake City admitted that no other name would work for the purposes of Lake City, and they insisted that the fame of ROCKY TOP was key to their scheme's success and that the name had to be changed to ROCKY TOP.

69. The December 18th meeting concluded without a resolution to the dispute.

70. Isbel, among others, previously has struggled to differentiate between his actions as a government official and as one of the Developers. When Lake City approved the name change in November, Isbel said, "Everything we've done so far has been perfectly legal because we've used the name Rocky Top Tennessee Marketing and Manufacturing . . . It's a corporation that has been approved by the Secretary of State. We are Rocky Top Tennessee Marketing and Manufacturing. We're not just Rocky Top." (Ex. N.)

71. The Developers have asserted that the development project can only proceed if the city changes its name to ROCKY TOP. (Ex. J; see also News Article 6, hereinafter "Ex. P.")

72. Real steps have been taken to advance the name change and begin the development process and injury to House of Bryant's Marks is imminent.

73. For example, the Developers have already retained legal counsel and an architect to design the project. (Ex. L.)

74. The Business Plan reveals that actual steps have been taken, taking for granted that Lake City will change its name.

75. Moreover, around January 9, 2014, Lake City sent a letter to House of Bryant explaining in clear terms that Lake City intended to proceed with the name change, despite House of Bryant's assertion of its rights, because the name change would be beneficial to Lake City. Furthermore, Lake City advised House of Bryant that the matter was "not negotiable." (See Letter to House of Bryant, hereinafter "Ex. Q.")

76. By declaring the intent to proceed with the name change, Lake City's letter indicated that injury to House of Bryant's Marks is imminent.

77. The advancement of HB1469 and the filing of SB2323 in the General Assembly further underscore the imminence of the injury to House of Bryant.

78. If Lake City changes its name to ROCKY TOP, House of Bryant will lose significant control of its intellectual property and will be damaged by consumer confusion, brand erosion, dilution of its Marks, loss of profits, loss of goodwill, and other commercial and reputational harms.

79. Moreover, allowing a city to change its name to what is currently a protected trademark that is popular in the area in which the city is located immediately undermines any subsequent efforts by the owner to protect the trademark by allowing subsequent users to claim that the phrase is unprotectable since it is a geographical indicator.

80. Based on the foregoing allegations, House of Bryant makes the following federal and state claims jointly and in the alternative.

FEDERAL CLAIMS

COUNT I:

DECLARATORY JUDGMENT ESTABLISHING LIKELIHOOD OF CONFUSION AND/OR TRADEMARK INFRINGEMENT

81. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

82. Defendants' current and future use of ROCKY TOP is and will be a violation of 15 U.S.C. § 1114(1)(a).

83. House of Bryant is the owner of the ROCKY TOP Marks and the Copyrighted Song, and therefore owns valid, protectable trademarks and copyrights.

84. House of Bryant has used its validly registered ROCKY TOP Marks and the Copyrighted Song in commerce via licensing agreements and the sale and distribution of merchandise bearing the Marks.

85. Without the consent of House of Bryant, Defendants have and intend to use in commerce a reproduction, counterfeit, copy, or colorable imitation of House of Bryant's Marks in connection with the sale, offering for sale, distribution, profitable use, or advertising of goods and services provided by Defendants, including by sale of merchandise, by the renaming of Lake City to ROCKY TOP, and from future investment in the city derived from its association with ROCKY TOP.

86. Without the consent of House of Bryant, Defendants have used and intend to use ROCKY TOP in such a manner as is likely to cause confusion, mistake, or deceive, since the supporters of Lake City's name change openly admit to wanting to closely associate with the famous ROCKY TOP mark and since many of the merchandising proposals, which inevitably will include the city's new name, will infringe upon House of Bryant's Marks.

87. The parties in this action are adverse because Defendants seek to use House of Bryant's ROCKY TOP Marks and Copyrighted Song without the permission, and against the explicit, expressed desire of House of Bryant. The parties have exchanged letters explaining their stances and beliefs as to their rights, including that Lake City intends to proceed with the name change to ROCKY TOP, and the parties met on multiple occasions in good faith to try to settle this dispute but were unable to come to agreement. The dispute is ripe for resolution.

88. Judicial resolution and judgment of this dispute will be conclusive; a final judgment is the only solution to this dispute because the parties have been unable to resolve their legal differences.

89. Judicial resolution will settle this dispute by determining whether a city and developers, who openly claim to seek to trade off the goodwill of intellectual property, can take that property without the owner's permission and rename the city purely for financial gain. Such resolution also will clarify to Defendants whether they can take for their own use another's trademarks and copyrights.

90. ROCKY TOP is a strong mark having great association with the Mark owners, the copyright owners, and the various licensees. This association is strongest in East Tennessee and the region surrounding Knoxville, where Lake City and the University of Tennessee are located.

91. Defendants have expressed intent to use ROCKY TOP in myriad ways including attractions, entertainment, merchandise, restaurants, and other uses. House of Bryant uses ROCKY TOP in many of the same fields and intends to expand its commercial uses in the future.

92. Defendants also have expressed the desire to benefit from changing its name to ROCKY TOP so as to attract tourists.

93. The Defendants' proposed name is exactly the same as House of Bryant's Marks and seeks to benefit from an association with those Marks.

94. The likely degree of care of a purchaser will be very low, since ROCKY TOP is a brand-heavy and famous mark that people seek out. Moreover, the fan base of the University of Tennessee—a House of Bryant licensee—is famously loyal and thus likely to be attracted to any iteration of ROCKY TOP.

95. Defendants have been very explicit in explaining their reasons for use of the ROCKY TOP and in their desire to associate with ROCKY TOP.

96. Defendants have expressed interest in multiple phases of development that envision almost every conceivable commercial use and marketing channel for goods and services

bearing the ROCKY TOP name, including those that encroach on House of Bryant's marketing channels.

97. Defendants have expressed their desire for development and for the use of ROCKY TOP as part of the business plan included earlier in this complaint.

98. Defendants have used and seek to use the imitation ROCKY TOP name in such a manner as is likely to cause confusion or mistake or to deceive.

99. Defendants' acts were and are committed with knowledge that the imitation was intended to be used to cause confusion or mistake or to deceive.

100. House of Bryant has been and will continue to be damaged by Defendants' use of the Marks.

101. Plaintiff requests that the Court immediately declare that Defendants' current and intended use of Plaintiff's ROCKY TOP Marks will infringe House of Bryant's trademark rights and that there is a likelihood of confusion of Defendants' use with House of Bryant's registered Marks.

102. There is no action pending in state court, and many of the issues between the parties are federal in nature.

103. There is no alternative, better, or more effective remedy than a declaration affirmatively establishing that Lake City currently has no right to change its name to ROCKY TOP and that it would be infringing House of Bryant's trademark rights and other rights by doing so.

COUNT II:

FALSE DESIGNATION OR FALSE OR MISLEADING DESCRIPTION

104. Plaintiff hereby re-alleges and incorporates by reference the allegations of all

preceding paragraphs of this Complaint.

105. Defendants have violated 15 U.S.C. § 1125(a) in that they have, on or in connection with Defendants' goods or services, used and intend to use the Plaintiff's ROCKY TOP Marks, which represents a false designation of origin, false or misleading description, and/or a misrepresentation of fact that has caused or will cause confusion or mistake or has deceived or will deceive as to the affiliation, connection, or association of Defendants with Plaintiff, or which is likely to cause confusion, mistake, or deceit as to whether Plaintiff has any association with the origin, sponsorship, or approval of the goods, services, or commercial activities of Defendants.

106. House of Bryant is the owner of the ROCKY TOP Marks.

107. House of Bryant has used the ROCKY TOP Marks since at least the time of their registrations.

108. There is a great likelihood of confusion amongst consumers due to the contemporaneous use of the ROCKY TOP Marks by House of Bryant and by Defendants' use of ROCKY TOP, including in changing Lake City's name to ROCKY TOP. This likelihood of confusion is enhanced due to Defendants' expressed desire to benefit from an association with the ROCKY TOP Marks.

109. Defendants have also violated 15 U.S.C. § 1125(a) in that Defendants' commercial advertising or promotion using the name ROCKY TOP misrepresents the nature, characteristics, and/or qualities of their goods, services, and commercial activities.

110. House of Bryant has been and will continue to be damaged by Defendants intentional confusion, false designation, and misrepresentation of the Marks.

COUNT III:

UNFAIR COMPETITION

111. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

112. House of Bryant is the owner of the ROCKY TOP Marks and the Copyrighted Song.

113. Defendants have copied the Marks belonging to Plaintiff and have sought to associate their marketing efforts with the Copyrighted Song in violation of 15 U.S.C. § 1125(a).

114. They have done so, by their own admission, to deceive the public in order to draw tourists to Lake City.

115. They seek to benefit from the fame of the Marks and the Copyrighted Song and thereby to obtain the benefits belonging to Plaintiff.

116. Plaintiff has been, and will be, harmed, and is entitled to monetary and equitable relief.

COUNT IV:

PASSING OFF

117. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

118. Defendants have sought to create an association of origin between Defendants' use of ROCKY TOP and the rights in ROCKY TOP belonging to House of Bryant, in violation of 15 U.S.C. § 1125(a).

119. Defendants have sought to encourage consumers to make such a connection.

120. There is a great likelihood of consumer confusion when the Plaintiff's rightful

ROCKY TOP Mark is used by Defendant to market goods and services and in changing the name of Lake City to ROCKY TOP.

121. House of Bryant has been and will be damaged by the confusion and loss of profits and goodwill that will result from such passing off.

COUNT V:

FALSE ADVERTISING

122. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

123. Defendants have made and will make false or misleading statements of fact concerning Lake City's association with the ROCKY TOP Marks in violation of 15 U.S.C. § 1125(a)(1)(B).

124. The use of ROCKY TOP actually or tends to deceive, and will deceive, a substantial portion of the intended audience.

125. The statement is material, and intended to be so, in that it will likely influence the deceived consumer's purchasing decisions because Lake City seeks to attract tourists to visit a city known as ROCKY TOP.

126. The misleading advertisements will be introduced into interstate commerce once the name change takes effect.

127. The false advertisements will detract from House of Bryant's profits by threatening House of Bryant's federal trademark registrations, diverting customers from House of Bryant's (and its licensees') properly marked merchandise, threatening House of Bryant's licensing arrangements, and negatively impacting House of Bryant's goodwill.

COUNT VI:

DECLARATORY JUDGMENT ESTABLISHING LIKELIHOOD OF DILUTION

128. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

129. Plaintiff's ROCKY TOP Marks and the Copyrighted Song are famous, well-known, and registered.

130. Defendants' use of ROCKY TOP will cause dilution of the distinctive qualities of Plaintiff's rights in its ROCKY TOP Marks if Lake City changes its name to ROCKY TOP and because Defendants will employ dilutive marketing schemes as a result of the name change.

131. Defendants' use of ROCKY TOP is a violation of 15 U.S.C. § 1125(c), since Plaintiff's Marks are distinctive and famous within the meaning of the statute, and Defendants' use of ROCKY TOP in commerce will begin, if the name of Lake City is changed, after Plaintiff's mark became distinctive and famous.

132. Defendants willfully intend to trade on Plaintiff's reputation or cause dilution of Plaintiff's Marks by their use of ROCKY TOP as the new name of Lake City.

133. House of Bryant will be damaged by loss of profits, loss of goodwill associated with its ROCKY TOP Marks, dilution of its Marks, loss of distinction in its Marks, and other harms.

COUNT VII:

DILUTION

134. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

135. Plaintiff's ROCKY TOP Marks and the Copyrighted Song are famous, distinctive,

and well-known.

136. Defendant's use of ROCKY TOP will cause dilution by blurring of the distinctive quality of Plaintiff's ROCKY TOP Marks.

137. Defendants' proposed uses of ROCKY TOP are violations of 15 U.S.C. § 1125(c), Plaintiff's mark being distinctive and famous within the meaning of the statute and Defendant's use of ROCKY TOP in commerce will have begun after Plaintiff's mark became distinctive and famous.

138. Defendants willfully intend to trade on Plaintiff's reputation or cause dilution of Plaintiff's Marks by their proposed uses of the name ROCKY TOP.

139. House of Bryant has been and will be damaged by loss of profits, loss of goodwill, and other harms.

COUNT VIII:

WILLFUL AND/OR EXCEPTIONAL CONDUCT

140. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

141. Defendants have acted willfully and have proceeded with their plans despite notice by Plaintiff of their rights and intent to pursue their rights.

142. Defendants were given notice of House of Bryant's rights in the Marks and in the Copyrighted Song.

143. Defendants were warned not to pursue their current course of action in a letter and in a private meeting.

144. Defendants have continued with their plans to infringe House of Bryant's ROCKY TOP Marks.

145. Defendants announced their intent to proceed with the name change and other uses of the Plaintiff's ROCKY TOP Marks in a letter. See Exhibit Q.

146. A finding of willfulness is proper pursuant to 15 U.S.C. § 1117(c).

COUNT IX:

UNLAWFUL TAKING

147. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

148. Lake City's attempt to change its name to ROCKY TOP represents an unlawful government taking and violation of House of Bryant's due process rights.

149. Lake City is a municipality that is a subdivision of the State of Tennessee and is therefore a governmental entity.

150. House of Bryant owns property rights and interests in the ROCKY TOP Marks and the Copyrighted Song.

151. Lake City acknowledges the value of House of Bryant's ROCKY TOP Marks because Lake City has admitted that it seeks to benefit from the fame of the ROCKY TOP Marks.

152. Lake City seeks to damage, take from, and/or siphon the benefits of House of Bryant's property by renaming itself after House of Bryant's Copyrighted Song and ROCKY TOP Marks.

153. In changing its name to ROCKY TOP without the permission of the rightsholder, Lake City is depriving House of Bryant of its due process rights guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

154. House of Bryant requests that this Court enjoin Lake City from the unlawful

taking of private property by a government entity.

STATE LAW CLAIMS

COUNT X:

DECEPTIVE TRADE PRACTICES

155. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

156. Defendants have infringed House of Bryant's ROCKY TOP.

157. In violation of T.C.A. § 47-18-104, Defendants have carried on unfair or deceptive trade practices, including seeking to associate the city's name and affiliated entertainment options with Plaintiff's protected ROCKY TOP Marks.

158. Such unfair and deceptive methods have been carried on by Defendants in connection with Defendants' infringing acts, including developing plans to profit from Lake City's being renamed to ROCKY TOP.

159. Defendants are aware of House of Bryant's rights in the ROCKY TOP Marks and Copyrighted Song and other rights, yet have chosen to proceed anyway.

160. Plaintiff has been damaged by loss of profits and goodwill.

COUNT XI:

UNFAIR COMPETITION

161. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

162. House of Bryant is the owner of the ROCKY TOP Marks and the Copyrighted Song.

163. Defendants have copied the Marks belonging to Plaintiff and have sought to

associate their marketing efforts with Plaintiff's Marks in violation of T.C.A. § 47-18-104.

164. They have done so, by their own admission, to deceive the public in order to draw tourists to Lake City, as well as other deceptive conduct.

165. They seek to benefit from the fame of the Marks and the Copyrighted Song and thereby obtain the benefits belonging to Plaintiff.

166. Plaintiff will be harmed and is entitled to monetary and equitable relief.

COUNT XII:

COMMON LAW TRADEMARK INFRINGEMENT

167. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

168. Defendants' use of ROCKY TOP constitutes common law trademark infringement (T.C.A. § 47-25-516) in that the Defendants, without the consent of Plaintiff who is the registrant of the ROCKY TOP Marks, plan to use in commerce a reproduction, counterfeit, copy, or colorable imitation of that registered mark in connection with the sale, offering for sale, distribution, or advertising of goods and services provided by Defendants.

169. Defendants plan to use ROCKY TOP in such a manner as is likely to cause confusion or mistake or to deceive, since the supporters of Lake City's name change openly admit to wanting to closely associate with the famous ROCKY TOP mark.

170. ROCKY TOP is a strong mark with significant association with the owners of the ROCKY TOP Marks and the current licensees.

171. Lake City has expressed interest in myriad uses for ROCKY TOP including entertainment, merchandise, restaurants, and other uses. House of Bryant uses its ROCKY TOP Marks in many of the same fields.

172. The name Lake City seeks to adopt and use is exactly the same and seeks to benefit from an association with House of Bryant's Marks.

173. The likely degree of care of a purchaser will be very low, since ROCKY TOP is a brand-heavy and famous mark that people seek out.

174. Lake City has been very intentional in its desire to associate with ROCKY TOP.

175. Lake City has expressed interest in multiple phases of business development to maximize its profits derived from ROCKY TOP.

176. Defendants' acts were committed with knowledge that the imitation was intended to be used to cause confusion or mistake or to deceive.

177. House of Bryant has been damaged by loss of profits and goodwill.

COUNT XIII:

DILUTION AND INJURY TO BUSINESS REPUTATION

178. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

179. Defendants' use of ROCKY TOP will cause dilution of the distinctive quality of Plaintiff's ROCKY TOP Marks pursuant to T.C.A. § 47-25-513.

180. Plaintiff's mark is distinctive and famous, and Defendants' use of ROCKY TOP in commerce will have begun after Plaintiff's Marks became distinctive and famous.

181. Defendants willfully intend to trade on Plaintiff's reputation or cause dilution of Plaintiff's Marks by their proposed use of the name ROCKY TOP.

182. House of Bryant has been damaged by the current public dispute over the rights to ROCKY TOP, and House of Bryant will continue to be injured by this dispute. Moreover, House of Bryant will be damaged in its business reputation, lost profits, and goodwill if a city is

allowed to change its name to ROCKY TOP.

COUNT XIV:

CIVIL CONSPIRACY

183. Plaintiff hereby re-alleges and incorporates by reference the allegations of all preceding paragraphs of this Complaint.

184. Defendants entered into a civil conspiracy unlawfully and unfairly to compete with House of Bryant and/or deprive House of Bryant of the benefit of its goodwill and reputation and the benefits it derives from its registered ROCKY TOP Marks.

185. Defendants, including the Developers and Lake City, have coordinated their actions and entered into a common design to effect Lake City's name change to enable the Developers to profit from subsequent developments based on that name change to ROCKY TOP.

186. The Defendants seek to accomplish a lawful purpose—developing a business—by unlawful means—infringing on trademark rights and copyrights.

187. Defendants have taken several overt acts in furtherance of this conspiracy, namely orchestrating the vote of Lake City's city council, proposing legislation in the General Assembly, and sending a letter to House of Bryant indicating their intent to move forward with their plan.

188. Defendants have by their conduct unlawfully traded on the goodwill and reputation of House of Bryant and its Marks and trade name, and will damage Plaintiff by way of lost profits and loss of goodwill and reputation, and will otherwise infringe and dilute Plaintiff's ROCKY TOP Mark.

OTHER CLAIMS

189. Plaintiff hereby reserves the right to amend its complaint and make other claims against Defendants as they are discovered.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief jointly and in the alternative:

A. That the Court enter a Preliminary Injunction, pursuant to 15 U.S.C. § 1116, at the earliest possible date enjoining Defendants (including subsidiaries, affiliates, officers, agents, servants, employees, attorneys, heirs, successors, assignees, and all persons acting in concert or participation with Defendants) from changing the name of Lake City to ROCKY TOP or to any iteration, derivation, or resemblance thereof; to be in effect until the resolution of this dispute.

B. That the Court enter a Permanent Injunction, pursuant to 15 U.S.C. § 1116, forever prohibiting Lake City from changing its name to ROCKY TOP or to any iteration, derivation, or resemblance thereof.

C. That the Court enter a Declaratory Judgment holding that Lake City's efforts to change its name to ROCKY TOP would likely cause confusion and/or irredeemably infringe the trademarks of and/or dilute and/or injure the reputation, goodwill, and business value of House of Bryant's interests in the ROCKY TOP Marks.

D. That the Court hold Defendants' conduct is willful and/or exceptional as defined in the Lanham Act and/or in T.C.A. § 47-25-513(b).

E. That the Court award House of Bryant actual or statutory damages in an amount to be determined at trial or the Court's discretion, but at least an amount greater than the jurisdictional or statutory requirements, including costs, attorneys' fees, monetary award, treble damages, and punitive damages, for the infringing activities, lost profits, and other torts committed and for the use of House of Bryant's Marks, pursuant to 15 U.S.C. §§ 1117, 1125, *et al.* and/or pursuant to T.C.A. § 47-25-513(b).

F. That the Court award pre-judgment and post-judgment interest.

G. That the Court enjoin Lake City from improperly taking the intellectual property of House of Bryant by unlawful government taking.

H. Such other, further, or different relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff, pursuant to Rule 38 of the Federal Rules of Civil Procedure, respectfully demands a trial by jury of any issues triable of right by a jury.

Dated: *March 7, 2014*

Respectfully submitted,

WADDEY & PATTERSON, P.C.

By: 

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