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Attorneys for Plaintiffs
Egg Works, Inc., Egg Works 2, Inc., and Bradley J. Burdsall

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

EGG WORKS, INC., a Nevada corporation,
EGG WORKS 2, LLC, a Nevada limited liability
company, and BRADLEY J. BURDSALL, an
individual,

Plaintiffs,

vs.

EGG WORLD LLC, a Nevada corporation,
GABRIEL KRSTANOVIC, an individual, and
DEJAN DEBELJAK, an individual,

Defendants.

Case No. 2:10-cv-1013

COMPLAINT

JURY DEMAND

Plaintiffs Egg Works, Inc., Egg Works 2, LLC, and Bradley J. Burdsall allege the following:

NATURE OF THE CASE

This is an action by Plaintiffs Egg Works, Inc., Egg Works 2, LLC, and Bradley J. Burdsall (together “Plaintiffs” and/or “Egg Works”) against Defendants Egg World LLC, Gabriel Krstanovic, and Dejan Debeljak (together “Defendants” and/or “Egg World”) arising from Defendants’ adoption and use of the EGG WORLD trademark. Defendants’ use of EGG WORLD infringes upon Plaintiffs’ federally registered EGG WORKS trademark, which Plaintiffs have used continuously since February 21, 2005, to render restaurant services in Las Vegas, Nevada. Plaintiffs seek a temporary restraining order, preliminary and permanent injunctive relief, damages, attorneys’ fees and costs.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) & (b).

2. This Court has general and specific personal jurisdiction over the Defendants because they reside in this judicial district and are presently within this judicial district and actively engaged in preparations to conduct business within this judicial district. The Court also has general and specific personal jurisdiction over the Defendants because the claims asserted by Plaintiffs arise out of the Defendants' conduct occurring within this judicial district.

3. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2), because Defendants reside in this judicial district within the meaning of 28 U.S.C. § 1391(c) and a substantial part of the events giving rise to Plaintiffs' claims occurred in this judicial district.

PARTIES

4. Plaintiff Egg Works, Inc. ("EWI") is a Nevada corporation. Its principal place of business is located in Las Vegas, Nevada. EWI operates a restaurant under the name EGG WORKS at 9355 West Flamingo Road, Las Vegas, Nevada 89147.

5. Plaintiff Egg Works 2, LLC ("EW2") is a Nevada limited liability company. Its principal place of business is located in Las Vegas, Nevada. EWLLC operates a restaurant under the name EGG WORKS at 2490 East Sunset Road, Las Vegas, Nevada 89120.

6. Plaintiff Bradley J. Burdsall ("Burdsall") is an individual who resides in Las Vegas, Nevada. Burdsall is the President of EWI and a managing member of EW2.

7. Defendant Egg World LLC ("EWLLC") is a Nevada limited liability company formed on or about March 23, 2010. Its principal place of business is located at 7905 West Sahara Avenue, Las Vegas, Nevada 89117.

8. Defendant Gabriel Krstanovic ("Krstanovic") is an individual who resides in Las Vegas, Nevada. Upon information and belief, Krstanovic is the registered agent for, and a managing member of, EWLLC.

9. Defendant Dejan Debeljak ("Debeljak") is an individual who resides in Las Vegas, Nevada. Upon information and belief, Debeljak is a managing member or member of, EWLLC.

FACTUAL ALLEGATIONS

10. In 1998, Burdsall acquired The Egg & I, a restaurant located at 4533 West Sahara Avenue, Las Vegas, Nevada, 89102. Burdsall's business expanded in 2005 with the addition of two "Egg Works" restaurants. One is located at 9355 West Flamingo Road, Las Vegas, Nevada, and is owned and operated by Plaintiff EWI. The other is located at 2490 East Sunset Road, Las Vegas, Nevada, and is owned operated by Plaintiff EW2. Each restaurant offers breakfast and lunch only, operating daily from 6:00 a.m. to 3:00 p.m., and uses a "country" or "farm" theme and décor in connection with its services.

11. In 2005, Burdsall adopted and began using the EGG WORKS mark first in connection with the Egg Works restaurant located on West Flamingo Road (EWI) and subsequently with the second Egg Works location on Sunset Road (EW2) in Las Vegas, Nevada.



12. On February 27, 2005, Burdsall filed a federal trademark application for the EGG WORKS word mark for restaurant services in International Class 43, with a date of first use of February 21, 2005. The application matured into a federal trademark registration on August 22, 2006 and bears U.S. Registration No. 3,132,146. A copy of the certificate of registration is attached hereto as **Exhibit A**.

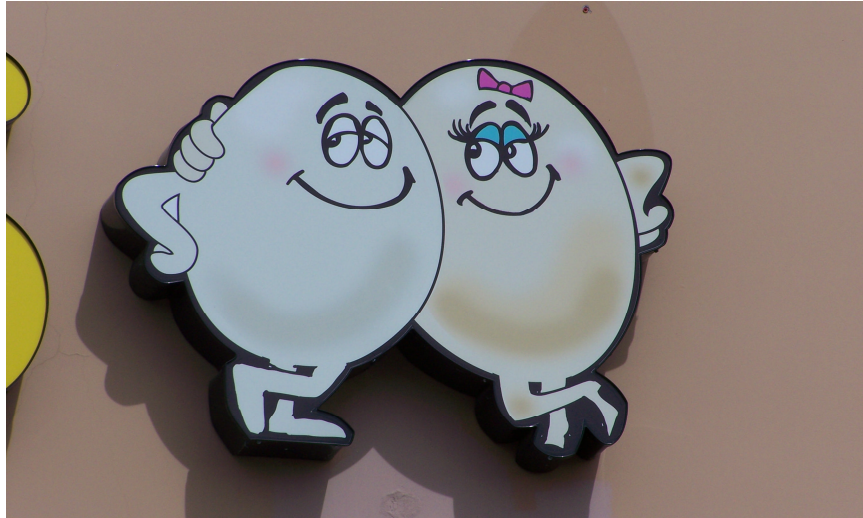
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13. In 2007, Burdsall adopted and began using the EGG WORKS stylized mark featuring the EGG WORKS word mark along with two “humanized” eggs, one male, and one female.



14. On January 24, 2008, Burdsall filed a federal trademark application for the EGG WORKS stylized mark for restaurant services in International Class 43, with a date of first use of October 1, 2007. The application matured into a federal trademark registration on February 24, 2009 and bears U.S. Registration No. 3,578,910. A copy of the certificate of registration is attached hereto as **Exhibit B**.

15. Collectively, Burdsall’s federal trademark registrations are referred to herein as the EGG WORKS Registrations.

16. Burdsall has licensed EWI and EW2 to use the EGG WORKS trademarks in connection with restaurant services.

17. Burdsall’s Egg Works and Egg & I restaurants have been enormously successful. Burdsall and his Egg Works restaurants have acquired substantial goodwill and notoriety in the Egg Works name, having received attention from both the local and national media. For example, Burdsall’s Egg Works restaurants have been featured on the Rachael Ray Show, have received a 2010 “Best of Las Vegas” award from the Las Vegas Review Journal, and have been mentioned in the Las Vegas Business Press.

18. Plaintiffs have spent substantial time, effort, and money advertising and marketing

1 the EGG WORKS mark. During its five (5) years of use of the EGG WORKS mark, Plaintiffs
2 have spent thousands of dollars on advertising and marketing using the EGG WORKS mark.
3 Plaintiffs have used the EGG WORKS mark on the Internet at <theeggworks.com>, in newspaper
4 and magazine advertisements, and in radio and television ads.

5 19. Thousands of consumers have been exposed to Plaintiffs' EGG WORKS mark
6 since Plaintiffs began using the mark in 2005. As a result of Plaintiffs' use, advertising, and
7 marketing using the EGG WORKS mark, consumers uniquely associate the EGG WORKS mark
8 with Plaintiffs. Plaintiffs' EGG WORKS mark is its most important brand identifier.

9 20. Based upon their EGG WORKS Registrations and their use of the EGG WORKS
10 mark in commerce, Plaintiffs own the exclusive right to use the EGG WORKS mark for restaurant
11 services throughout the United States.

12 21. Now, well over five years after Burdsall first began using the EGG WORKS mark
13 in commerce, the Defendants have adopted the EGG WORLD mark, and are preparing to open a
14 competing restaurant located at 7905 West Sahara Avenue, Las Vegas, Nevada 89117, under the
15 EGG WORLD mark.

16 22. In connection with their planned opening of their EGG WORLD restaurant,
17 Defendants have constructed signage bearing the EGG WORLD mark advertising their EGG
18 WORLD restaurant. Defendants' signage is visible from the street.



23. Defendants have also used the EGG WORLD mark to advertise for employees on the Internet through a website called “Craigslisr.” (A copy of Defendants’ advertisement is attached hereto as **Exhibit C.**)

24. Plaintiffs first learned of Defendants’ adoption of the EGG WORLD marks in late May 2010. Plaintiffs’ counsel wrote to Defendants concerning their adoption of the EGG WORLD mark and asked Defendants to adopt a mark that was not confusingly similar to Plaintiffs’ EGG WORKS mark.

25. Defendants’ EGG WORLD mark is confusingly similar to Plaintiffs’ EGG WORKS mark:



26. Defendants are using the EGG WORLD mark for the same services covered by Plaintiffs’ federal trademark registrations for EGG WORKS, namely, by advertising and preparing to open their EGG WORLD restaurant.

27. Defendants are using the EGG WORLD marks in direct competition with Plaintiffs. Defendants and Plaintiffs directly compete with each other for breakfast and lunch customers in the Las Vegas market. Moreover, Defendants intend to offer similar products as Plaintiffs (*i.e.*, egg-based breakfast items and lunch items including sandwiches and salads).

28. Defendants are using the EGG WORLD mark in the same marketing channel utilized by Plaintiffs to promote their EGG WORKS mark, including on signage and on the Internet.

29. Defendants have adopted and begun using the EGG WORLD mark after knowing of Plaintiffs’ rights in their EGG WORKS mark. Given the many marks available, Defendants’

1 selection of the EGG WORLD mark knowing of Plaintiffs' federal trademark registrations for the
 2 EGG WORKS mark indicates that the Defendants intended to cause confusion among consumers
 3 and trade off of Plaintiffs' goodwill and reputation. Thus, the Defendants have knowingly and
 4 willfully adopted the EGG WORLD mark despite the fact that Plaintiffs have been using the EGG
 5 WORKS mark since 2005, and despite Plaintiffs' request that they cease and desist from using the
 6 EGG WORLD mark.

7 30. Defendants' use of the EGG WORLD mark will cause Plaintiffs to suffer
 8 irreparable injury. The advertising and imminent opening of a competing restaurant will
 9 doubtless cause Plaintiffs to suffer lost customers and lost goodwill. Plaintiffs have already
 10 experienced instances of actual confusion where Plaintiffs' suppliers and customers have
 11 commented about Plaintiffs' "new" restaurant, erroneously referring to Defendants' EGG
 12 WORLD restaurant. Plaintiffs have also received job applications from persons responding to
 13 Defendants' Internet employment advertisement on Craigslist.

14 31. Plaintiffs have used their EGG WORKS mark to distinguish their services from
 15 those of competitors. But now, Defendants are attempting to trade off of the substantial goodwill
 16 Plaintiffs have developed in the EGG WORKS mark through their five-year exclusive use of that
 17 mark in the Las Vegas Valley by adopting the confusingly similar EGG WORLD mark. By doing
 18 so, Defendants are attempting to obtain an unearned advantage in the marketplace.

19 **COUNT I**
 20 **(Trademark Infringement under**
 21 **the Lanham Act, 15 U.S.C. § 1114)**

22 32. Plaintiffs reallege each allegation set forth in the preceding paragraphs as if set
 23 forth herein.

24 33. Defendants have used and/or are using in commerce the EGG WORLD mark,
 25 which is a reproduction, counterfeit, copy, or colorable imitations of Plaintiffs' registered EGG
 26 WORKS mark, in connection with the sale, offering for sale, or advertising of services on or in
 27 connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

28 34. By adopting the EGG WORLD mark, Defendants have reproduced, counterfeited,
 copied, or colorably imitated Plaintiffs' EGG WORKS mark and are using such reproduction,

1 counterfeit, copy, or colorable imitation in advertisements in commerce in connection with the
2 sale, offering for sale, or advertising of services on or in connection with which such use is likely
3 to cause confusion, or to cause mistake, or to deceive.

4 35. As a direct and proximate result of such trademark infringement, Plaintiffs have
5 suffered and will suffer monetary loss and irreparable injury to their businesses, reputations, and
6 goodwill.

7 36. Defendants have committed such acts with the intent to cause confusion, or to
8 cause mistake, or to deceive.

9 **COUNT II**
10 **(Unfair Competition under the**
Lanham Act, 15 U.S.C. § 1125(a))

11 37. Plaintiffs reallege each allegation set forth in the preceding paragraphs as if set
12 forth herein.

13 38. Defendants' use of the EGG WORLD mark in commerce in connection with the
14 sale of its services constitutes a false designation of origin, false or misleading description of fact,
15 or false or misleading representation of fact, which is likely to cause confusion, or to cause
16 mistake, or to deceive as to the affiliation, connection, or association of Defendants with
17 Plaintiffs, or as to the origin, sponsorship, or approval of Defendants' services, by Plaintiffs.

18 39. As a direct and proximate result of such unfair competition, Plaintiffs have
19 suffered and will suffer monetary loss and irreparable injury to their businesses, reputations, and
20 goodwill.

21 **COUNT III**
22 **(Common law trademark infringement)**

23 40. Plaintiffs reallege each allegation set forth in the preceding paragraphs as if set
24 forth herein.

25 41. By virtue of having adopted, used, and with their continuing use of the EGG
26 WORKS mark, Plaintiffs have acquired common law trademark rights in the EGG WORKS mark.

27 42. The use of the EGG WORLD mark on or in connection with Defendants' goods
28 and services is likely to cause confusion among consumers as to the source or origin of its goods

1 and services.

2 43. By such wrongful acts, Defendants have caused, and unless restrained by the
3 Court, will continue to cause serious irreparable injury and damage to Plaintiffs and to the
4 goodwill associated with Plaintiffs' EGG WORKS mark, including diversion of customers, lost
5 sales and lost profits. Accordingly, Plaintiffs are entitled to damages.

6 44. By reason of Defendants' acts alleged herein, Plaintiffs' remedy at law is not
7 adequate to compensate for the damages caused by Defendants' infringing use of the EGG
8 WORLD mark. Accordingly, Plaintiffs are entitled to temporary, preliminary, and permanent
9 injunctive relief.

10 **COUNT IV**
(Common law unfair competition)

11 45. Plaintiffs reallege each allegation set forth in the preceding paragraphs as if set
12 forth herein.

13 46. Defendants have engaged in or are imminently poised to engage in unfair
14 competition under common law by palming off and/or passing off their goods and services as
15 those rendered by Plaintiffs.

16 47. As a direct and proximate result of such unfair competition, Plaintiffs have
17 suffered and will suffer monetary loss and irreparable injury to their businesses, reputations, and
18 goodwill.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff Plaintiffs respectfully requests that the Court:

A. Grant temporary, preliminary and permanent injunctive relief prohibiting Defendants from using the EGG WORLD mark and any confusingly similar marks, in connection with any restaurant services and the advertising, promotion and marketing thereof;

B. Award compensatory, consequential, statutory, exemplary, and other damages (including, but not limited to, profits and an award for corrective advertising) to Plaintiffs in an amount to be determined at trial;

C. Award attorneys' fees and costs to Plaintiffs; and

D. Grant to Plaintiffs whatever other relief is just and proper.

DATED: this 24th day of June 2010.

LEWIS AND ROCA LLP

By _____/s/

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Attorneys for Plaintiffs
Egg Works, Inc., Egg Works 2, Inc., and Bradley J. Burdsall

Exhibit A

Exhibit A

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,132,146

Registered Aug. 22, 2006

**SERVICE MARK
PRINCIPAL REGISTER**

EGG WORKS

**BURDSALL, BRADLEY J. (UNITED STATES IN-
DIVIDUAL)
2717 TIDEWATER COURT
LAS VEGAS, NV 89117**

**FOR: RESTAURANT SERVICES. IN CLASS 43
(U.S. CLS. 100 AND 101).**

FIRST USE 2-21-2005; IN COMMERCE 2-21-2005.

**THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.**

OWNER OF U.S. REG. NO. 2,972,785.

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "EGG", APART FROM THE MARK
AS SHOWN.**

SER. NO. 78-576,006. FILED 2-27-2005.

ARETHA SOMERVILLE, EXAMINING ATTORNEY

Exhibit B

Exhibit B

Int. CL: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,578,910

Registered Feb. 24, 2009

**SERVICE MARK
PRINCIPAL REGISTER**



BURDSALL, BRADLEY J. (UNITED STATES IN-
DIVIDUAL)
6753 TURINA ROAD
LAS VEGAS, NV 891466207

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "EGG". APART FROM THE MARK
AS SHOWN.

FOR: RESTAURANT SERVICES, IN CLASS 43
(U.S. CLS. 100 AND 101).

THE MARK CONSISTS OF TWO FRIENDLY
HUMANIZED EGGS.

FIRST USE 10-1-2007; IN COMMERCE 10-1-2007.

SER. NO. 77-379,503, FILED 1-24-2008.

OWNER OF U.S. REG. NOS. 2,972,785 AND
3,132,146.

BARBARA GAYNOR, EXAMINING ATTORNEY

Exhibit C

Exhibit C

[las vegas craigslist > jobs > food/beverage/hospitality jobs](#)[email this posting to a friend](#)

Avoid scams and fraud by dealing locally! Beware any deal involving Western Union, Moneygram, wire transfer, cashier check, money order, shipping, escrow, or any promise of transaction protection/certification/guarantee. [More info](#)

Restaurant Servers (7905 W. Sahara Las Vegas, NV 89117)

Date: 2010-06-08, 12:23PM PDT

Reply to: job-xy3vd-1767970687@craigslist.org [\[Errors when replying to ads?\]](#)

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[best of craigslist](#)

Egg World is currently hiring SERVERS for a Breakfast and Lunch Restaurant Experience in this field is preferred but not required. The Grand Opening is scheduled for end of June 2010. Please call 702-504-4882 for information regarding applications and interviews.

- Location: 7905 W. Sahara Las Vegas, NV 89117
- Compensation: Minimum Wage and Tips
- Principals only. Recruiters, please don't contact this job poster.
- Please, no phone calls about this job!
- Please do not contact job poster about other services, products or commercial interests.

PostingID: 1767970687

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