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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DOCTOR'S ASSOCIATES INC., a Florida  
corporation d/b/a SUBWAY,  
  
Plaintiff,  
  
vs.  
  
GEVORK BOYADZHYAN, an individual d/b/a  
SUBWAY AVENUE; and DOES I through X,  
inclusive,  
  
Defendants.

CASE NO.

**COMPLAINT**

- 1) Infringement of Federally Registered Trademarks Under 15 U.S.C. § 1114(1)**
- 2) Unfair Competition Under 15 U.S.C. § 1125(a)**
- 3) Dilution Under 15 U.S.C. § 1125(c)**
- 4) Cybersquatting Under 15 U.S.C. § 1125(d)**

Plaintiff DOCTOR'S ASSOCIATES INC. d/b/a SUBWAY, ("Plaintiff") by and through counsel, the law firm of Gordon Silver, hereby complains and alleges against Defendant, GEVORK BOYADZHYAN d/b/a SUBWAY AVENUE ("Defendant"), as follows:

**I.**

**NATURE OF ACTION**

1. This is an action for trademark infringement, cybersquatting, and unfair competition under federal statutes. Plaintiff seeks damages, attorney's fees, costs and preliminary and permanent injunctive relief.

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**II.**

**JURISDICTION**

2. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a) as it arises under Acts of Congress related to trademarks.

3. This Court has personal jurisdiction over Defendant based upon the following:

(a) He operates a business located in Las Vegas, Nevada; and

(b) He operates a website on the Internet that is accessible to residents of the State of Nevada.

4. Venue is proper in the United States District Court for the District of Nevada under 28 U.S.C. § 1391(b) and (c).

**III.**

**PARTIES**

5. Plaintiff is a corporation existing by virtue and under the laws of Florida with its principal place of business in Florida and with offices in Connecticut.

6. Defendant owns and operates a restaurant "Subway Avenue" at 9440 W. Sahara Ave., Las Vegas, Nevada 89117. In addition, Defendant owns and operates a website promoting the Subway Avenue restaurant at [www.subwayavenue.com](http://www.subwayavenue.com).

**IV.**

**ALLEGATIONS COMMON TO ALL CLAIMS**

7. Plaintiff is the owner of the Subway System for operating restaurants, and franchises the Subway chain of sandwich shops.

8. Plaintiff owns the United States Federal Trademarks Registration Nos. 1,174,608, 1,307,341, 1,387,847, 1,524,986, 1,737,353, 2,591,069, 2,678,351, 2,504,512, 2,678,350, 3,013,320, 3,503,521 for the SUBWAY® trademark (the "Mark") in connection with sandwich shops, restaurant services, and other related goods and services.

9. Plaintiff has made extensive use of the Mark, on signage, wearing apparel, and promotional materials.

...

1 10. In or around June 2009, Defendant opened, and has subsequently continued to  
2 operate a restaurant under the name "Subway Avenue" located at 9440 W. Sahara Ave., Las  
3 Vegas, Nevada 89117.

4 11. In addition, Defendant owns and operates a website (the "Infringing Website")  
5 promoting the Subway Avenue restaurant, accessible to the public at www.subwayavenue.com  
6 (the "Infringing Domain Name").

7 12. On or about August 18, 2009, Plaintiff sent Defendant a letter requesting that  
8 Defendant cease and desist all use of the "Subway Avenue" name and/or Plaintiff's Mark or  
9 confusingly similar variations thereof. Defendant, however, has continued to use the "Subway  
10 Avenue" name in connection with his restaurant and related services.

11 13. Moreover, Defendant continues to use the "Subway Avenue" name in  
12 advertisements for the restaurant and on the Infringing Website, accessible through the  
13 Infringing Domain Name, promoting the "Subway Avenue" restaurant.

14 14. By operating a restaurant using Plaintiff's Mark, Defendant was and is attempting  
15 to trade on the good will of Plaintiff.

16 15. By operating a restaurant using Plaintiff's Mark, Defendant was and is attempting  
17 to create an association between Subway Avenue and Plaintiff.

18 16. By registering, and/or using the Infringing Domain Name containing Plaintiff's  
19 Mark, Defendant was and is attempting to trade on the good will of Plaintiff.

20 17. By registering, and/or using the Infringing Domain Name containing Plaintiff's  
21 Mark, Defendant was and is attempting to create an association between the Infringing Domain  
22 Name and Plaintiff's Mark.

23 18. By operating the Infringing Website, accessible through the Infringing Domain  
24 Name, Defendant was and is attempting to create an association between the Infringing Domain  
25 Name and Plaintiff's Mark.

26 19. Plaintiff's Mark at issue in this case was distinctive and famous at the time  
27 Defendant opened the "Subway Avenue" restaurant.

28 ...

1 20. Plaintiff's Mark at issue in this case was distinctive and famous at the time  
2 Defendant registered the infringing Domain Name and set up the Infringing Website.

3 21. Defendant registered the Infringing Domain Name with the bad-faith intent to  
4 profit from Plaintiff's Mark.

5 22. Defendant has no trademark or other intellectual property rights in the Infringing  
6 Domain Name.

7 23. Upon information and belief, the Defendant had no prior use of the Infringing  
8 Domain Name in connection with the bona fide offering of any goods or services.

9 24. The Defendant intended to divert customers from the Plaintiff's restaurants in a  
10 manner that could harm the good will represented by Plaintiff's Mark.

11 25. Upon information and belief, the Defendant did not believe or have reasonable  
12 grounds to believe, that the use of Plaintiff's Mark in the Infringing Domain Name or website  
13 was done with permission of Plaintiff.

14 V.

15 **CLAIMS FOR RELIEF**

16 **FIRST CLAIM FOR RELIEF**

17 **Infringement of Federally Registered Trademarks (15 U.S.C. § 1114(1))**

18 26. Plaintiff incorporates the allegations in paragraphs 1 through 25 as if fully set  
19 forth herein.

20 27. Plaintiff owns U.S. Trademark Registration Nos. 1,174,608, 1,307,341,  
21 1,387,847, 1,524,986, 1,737,353, 2,591,069, 2,678,351, 2,504,512, 2,678,350, 3,013,320,  
22 3,503,521 for the Mark in connection with sandwich shops, restaurant services, and other related  
23 goods and service.

24 28. Defendant has used in commerce Plaintiff's Mark in connection with the  
25 advertising and operation of a restaurant selling and/or offering for sale sandwich and related  
26 food items.

27 ...

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1           29. Defendant's use of Plaintiff's Mark within the name of its restaurant and related  
2 services will likely cause confusion or mistake, or will likely deceive the public as to Defendant's  
3 food products and restaurant as being associated or identified with or being the same as those of  
4 Plaintiff.

5           30. Defendant's use of Plaintiff's Mark within the name of its restaurant and related  
6 services is intended to cause confusion or mistake, and/or to deceive the public as to Defendant's  
7 food products and restaurant as being associated or identified with or being the same as those of  
8 Plaintiff.

9           31. Plaintiff did not consent to or authorize Defendant's adoption or commercial use  
10 of Plaintiff's Mark.

11           32. Defendant, therefore, has infringed Plaintiff's trademarks in violation of its federal  
12 trademark rights under the Lanham Act, 15 U.S.C. §§ 1051 et seq., particularly 15 U.S.C §  
13 1114(1).

14           33. Plaintiff's Mark is strong in light of substantial marketing and promotion, and  
15 substantial sales volume under the Plaintiff's Mark. Defendant's use of the confusingly similar in  
16 connection with his restaurant creates a likelihood of confusion.

17           34. Defendant's use of the Mark has been with knowledge of Plaintiff's prior rights to  
18 the federally registered trademarks listed above and, therefore, constitutes willful infringement.

19           35. Plaintiff has no control over the composition or quality of the food products sold  
20 under the confusingly similar name. As a result, Plaintiff's valuable goodwill, developed at great  
21 expense and effort, is being harmed by Defendant's unauthorized use of the confusingly similar  
22 mark, and is at risk of further damage.

23           36. As a direct and proximate result of Defendant's infringement of Plaintiff's Mark,  
24 Plaintiff has suffered and will continue to suffer, monetary damages, and irreparable injury to its  
25 business, reputation and good will.

26           37. Defendant's infringement will continue unless enjoined.

27           38. Plaintiff has been required to retain the assistance of counsel and is entitled to  
28 compensation for the attorneys' fees and costs incurred in the prosecution of this action.

**SECOND CLAIM FOR RELIEF**  
**Unfair Competition Under the Lanham Act, 15 U.S.C. § 1125(a)**

1  
2 39. Plaintiff incorporates the allegations in paragraphs 1 through 38 as if fully set  
3 forth herein.

4 40. Defendants use in commerce of a mark identical and/or confusingly similar to  
5 Plaintiff's Mark in connection with Defendant's services, website, and internet domain name,  
6 constitutes a false designation of origin and/or a false or misleading description or representation  
7 of fact, which is likely to cause confusion, cause mistakes, or deceive as to affiliation, connection  
8 or association with Plaintiff, or as to the origin, sponsorship, or approval of Defendant's services  
9 or commercial activities by Plaintiff.

10 41. Defendant's use in commerce of Plaintiff's Mark and/or marks confusingly  
11 similar to Plaintiff's Mark with the knowledge that Plaintiff owns and has used, and continues to  
12 use, its Mark constitutes an intentional conduct by Defendant to make false designations of  
13 origin and false descriptions about Defendant's services and commercial activities.

14 42. As a direct and proximate result of such unfair competition, Plaintiff has suffered,  
15 and will continue to suffer, monetary loss and irreparable injury to his business, reputation, and  
16 good will.

17 43. Plaintiff has been required to retain the assistance of counsel and is entitled to  
18 compensation for the attorneys' fees and costs incurred in the prosecution of this action.

**THIRD CLAIM FOR RELIEF**  
**Dilution Under the Lanham Act, 15 U.S.C. § 1125(c)**

19  
20 21 44. Plaintiff incorporates the allegations in paragraphs 1 through 43 as if fully set  
22 forth herein.

23 45. Plaintiff's Mark has become famous and distinct through continuous use of the  
24 name and Mark in connection with its products and services.

25 46. Plaintiff's Mark has gained a reputation as a distinctive indication of origin and  
26 quality of Plaintiff's products and services.

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47. Defendant has used and continue to use in commerce the confusingly similar "Subway Avenue" mark in connection with the advertising, operation, and sale of sandwich and related food items.

48. Defendant's use of its "Subway Avenue" mark in connection with advertising and marketing of its services and goods wills continue to cause injury to and dilution of the distinctive quality of Plaintiff's Mark in violation of Plaintiff's rights under 15 U.S.C. 1125(c).

49. Defendant has engaged in these actions willfully, recklessly, wantonly, and unlawfully and with the intent to dilute Plaintiff's Mark, and with the intent to trade on Plaintiff's goodwill and reputation.

50. Plaintiff has been required to retain the assistance of counsel and is entitled to compensation for the attorneys' fees and costs incurred in the prosecution of this action.

**FOURTH CLAIM FOR RELIEF**  
**Cybersquatting Under the Lanham Act, 15 U.S.C. § 1125(d)**

51. Plaintiff incorporates the allegations in paragraphs 1 through 50 as if fully set forth herein.

52. Defendant has registered, trafficked and/or used a domain name that is identical or confusingly similar to and/or dilutive of Plaintiff's Mark, which was distinctive at the time of registration of the Infringing Domain Name.

53. Upon information and belief, Defendant has or had a bad-faith intent to profit from Plaintiff's Mark.

54. As a direct and proximate result of such conduct, Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation and good will.

55. Plaintiff has been required to retain the assistance of counsel and is entitled to compensation for the attorneys' fees and costs incurred in the prosecution of this action.

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WHEREFORE, Plaintiff respectfully prays for relief as follows

1. A preliminary and permanent injunction prohibiting Defendant from:

(a) Using Plaintiff's federally registered Mark, or confusingly similar variations thereof; alone or in combination with any other letters, words, letter strings, phrases or designs, in commerce or in connection with any business for any other purpose, (including, but not limited to, on Websites and in domain names);

(b) Registering, owning, leasing, selling or trafficking any domain names containing Plaintiff's registered trademarks or confusingly similar variations thereof, alone or in combination with any other letters, words or designs.

2. A preliminary and permanent injunction requiring the current domain name registrar to transfer the www.subwayavenue.com domain to Plaintiff.

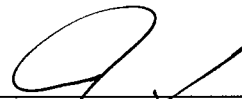
3. An award of compensatory, consequential, statutory, and punitive damages to Plaintiff in an amount to be determined at trial;

4. An award of interest, costs and attorney's fees incurred by Plaintiff in prosecuting this action; and

5. All other relief to which Plaintiff is entitled.

DATED this 15<sup>th</sup> day of October, 2009.

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