

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

LISA CARNLEY and  
LITTLE BIT INC. d/b/a  
CALLIOPE’S PO-BOY,  
  
Plaintiffs /Counter-Defendants

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Case No. 4:12-cv-01887

vs.

CULOM INCORPORATED d/b/a  
CALLIOPE’S PO-BOY #2,  
THUANRON, INC., RON CAMPBELL,  
ANH NGUYEN CAMPBELL, CELINE LE,  
and TRUONG NGUYEN

Defendants /Counter-Plaintiffs

**DEFENDANTS’ ANSWER AND COUNTERCLAIMS**

Defendants Culom Incorporated d/b/a Calliope’s Po-Boy #2; Thuanron, Inc.; Ron Campbell; Anh Nguyen Campbell; Celine Le; and Truong Nguyen file this Answer and Counterclaims.

**INTRODUCTION**

This is a trademark case. Defendant Thuanron owns the marks “CALLIOPE’S” and “CALLIOPE’S PO-BOY” in connection with restaurant services that it has been delivering for over three years, and vigorously disputes Plaintiffs’ claims that Plaintiffs own those trademarks, including any trademark, service mark, trade name, “d/b/a” or other term that includes the term “CALLIOPE’S” (hereinafter, referred to collectively as the “Marks”).

**ANSWER**

This document serves as Defendants' answer to the Plaintiffs' Application for Temporary Restraining Order, Temporary Injunction and Original Petition ("Original Petition"), which was filed in the 129<sup>th</sup> Judicial District of Harris County (the "State Court Action"), and has been removed to this Court. This document also sets forth Defendants' counterclaims. Accordingly, Defendants are also Counter-Plaintiffs, and allege as follows:

The following paragraphs are directed to the allegations in the Original Petition, and reference that Original Petition by section and paragraph numbers (to the extent the paragraphs are numbered).

Referring to the opening paragraph of the Original Petition, Defendants admit that Plaintiffs, Lisa Carnley ("Carnley) and Little Bit Inc. ("Little Bit") d/b/a/Calliope's Po-Boy ("Plaintiffs"), alleged to have filed a document entitled "Application for Temporary Restraining Order and Petition for Temporary Injunction" and set forth the allegations contained in the document alleged to have that title. Otherwise, except as expressly and specifically admitted, Defendants deny the allegations of that opening paragraph of the Original Petition.

1. Defendants deny the allegations of Paragraph No. 1 of the Original Petition.
2. Defendants are without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph No. 2 of the Original Petition, and therefore deny those allegations.
3. Defendants admit the allegations of Paragraph No. 3 of the Original Petition.
4. Defendants admit the allegations of Paragraph No. 4 of the Original Petition.
5. Defendants admit the allegations of Paragraph No. 5 of the Original Petition.
6. Defendants admit the allegations of Paragraph No. 6 of the Original Petition.

7. Defendants admit the allegations of Paragraph No. 7 of the Original Petition.

8. Defendants admit the allegations of Paragraph No. 8 of the Original Petition.

9. Defendants deny the allegations of Paragraph No. 9 of the Original Petition.

10. Defendants deny the allegations of Paragraph No. 10 of the Original Petition.

11. Defendants deny the allegations of Paragraph No. 11 of the Original Petition.

12. Defendants deny the allegations of Paragraph No. 12 of the Original Petition.

13. Defendants deny the allegations of Paragraph No. 13 of the Original Petition.

14. Defendants' admit that the restaurant located on Jefferson Street, which was owned and operated by Defendant Thuanron, was started in early 2009. Defendants admit it quickly garnered accolades from local food critics and customers. Defendant denies that Carnley "started" the restaurant, although she participated in the start-up as a Thuanron employee, along with Defendants Ron Campbell and Anh Campbell Nguyen, who are the only owners, officers and directors of Thuanron. Defendants are without sufficient information to form a belief as to the truth or falsity of how well known the restaurant is and therefore deny those allegations. Otherwise, except as expressly and specifically admitted, Defendants deny the allegations of Paragraph No. 14 of the Original Petition.

15. Defendants deny the allegations of Paragraph No. 15 of the Original Petition.

16. Defendants deny the allegations of Paragraph No. 16 of the Original Petition.

17. Defendants admit that Plaintiffs have sought court intervention and requested an injunction. Otherwise, except as expressly and specifically admitted, Defendants deny the allegations of Paragraph No. 17 of the Original Petition.

18. Defendants are without sufficient information to form a belief as to the truth or falsity of whether any "customers who have visited the other restaurant" have "expressed

disappointment in the food and service,” and therefore deny those allegations. Otherwise, except as expressly and specifically admitted, Defendants deny the allegations of Paragraph No. 18 of the Original Petition.

19. Defendants deny the allegations of Paragraph No. 19 of the Original Petition.

20. Defendants deny the allegations of Paragraph No. 20 of the Original Petition.

21. Defendants admit that Plaintiffs have sought, upon the trial of the matter, a permanent restraining order and injunction against Defendants, as described in Paragraph 21 of the Original Petition. Otherwise, except as expressly and specifically admitted, Defendants deny the allegations of Paragraph No. 21 of the Original Petition.

22. Defendants deny the allegations of Paragraph No. 22 of the Original Petition.

23. Defendants deny the allegations of Paragraph No. 23 of the Original Petition.

24. Defendants are not required to admit or deny the allegations of Paragraph No. 24 of the Original Petition. Defendants admit that Plaintiffs have requested that they be awarded a judgment as set forth in Paragraph 24 of the Original Petition. Otherwise, except as expressly and specifically admitted, Defendants deny the allegations of Paragraph No. 24 of the Original Petition.

#### **AFFIRMATIVE DEFENSES**

25. Defendants incorporate by reference all paragraphs of this Answer, including paragraphs 1-24 above.

26. Defendants assert that Plaintiffs lack standing.

27. Defendants assert that Plaintiffs have failed to state a claim upon which relief can be granted.

28. Defendants Ron Campbell, Anh Nguyen Campbell, Celine Le and Truong Nguyen assert that they are not liable in the capacity in which they have been sued.

29. Defendants assert the defense of license and abandonment.

30. Defendants assert the defense of unclean hands.

31. Defendants assert the defenses of laches and estoppel.

32. Defendants assert the defense of acquiescence.

33. Plaintiffs' request for punitive damages violates the Fifth and Fourteenth Amendments to the U.S. Constitution in that, for example, any award of punitive damages would violate Defendants' right to due process. Furthermore, any alleged punitive or exemplary damages requested by Plaintiffs under Texas law are also subject to the Texas Damages Act.

#### **COUNTERCLAIMS**

34. Defendants hereby incorporate by reference all paragraphs of this document, including paragraphs 1-33 above.

#### **PARTIES**

35. Defendant /Counter-Plaintiff Thuanron, Inc. ("Thuanron") is a Texas corporation, having its principal place of business in Houston, Texas.

36. Defendant /Counter-Plaintiff Culom Incorporated, *d/b/a* Calliope's Po-Boys #2 ("Culom") is a Texas corporation, having its principal place of business in Houston, Texas.

#### **JURISDICTION AND VENUE**

37. These counterclaims include an action for, *inter alia*, trademark infringement and dilution under the federal Lanham Act and Texas common law. Accordingly, the Court has original subject matter jurisdiction over the counterclaims under 15 U.S.C. §§ 1051 *et seq.*

("Lanham Act") and also 28 U.S.C. § 1338 (federal jurisdiction over trademarks and unfair competition) and 28 U.S.C. § 1331 (federal question). The Court has supplemental subject matter jurisdiction over the Texas state law counterclaims under 28 U.S.C. § 1367.

38. A real, immediate and justiciable controversy exists between Plaintiffs and Defendants with respect to any trademark, or service mark, or trade name, or "d/b/a" that includes the term "CALLIOPE'S," including but not limited to CALLIOPE'S, CALLIOPE'S PO-BOY and CALLIOPE'S PO BOYS #2 (any of which are referred to herein as the "Marks") and other disputes presented in Plaintiff's Original Petition, and as stated below. Accordingly, the Court has subject matter jurisdiction over the federal and state law counterclaims under the Declaratory Judgments Act 28 U.S.C. §§ 2201-2201. The Court also has subject matter jurisdiction over the Texas law counterclaims based on the Texas Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem Code, § 37.001 *et seq.*

39. This Court has personal jurisdiction over Plaintiffs/Counter-Defendants Carnley and Little Bit, based on least on the allegations set forth in Plaintiffs' Original Petition, the fact that Plaintiffs filed their original state court action in the state district court for Harris County and the fact that this action was properly removed to this Court. Furthermore, Plaintiffs reside in this Judicial District.

40. Venue over the counterclaims and parties is proper in this Court under 28 U.S.C. §§ 1391(b)(1) and (2).

#### **FACTS COMMON TO ALL COUNTERCLAIMS**

41. Plaintiffs have alleged that Defendants have infringed the "CALLIOPE'S" and "CALLIOPE'S PO-BOY" service marks and trade names ("Marks"), which Plaintiffs alleges to own. But it is Defendant Thuanron that owns those Marks, under both federal and state law, not

Plaintiffs. None of Defendants infringes or dilutes those Marks. Rather, it is Plaintiffs Carnley and Little Bit who have infringed Defendant Thuanron's rights in the Marks, both under federal law (Lanham Act) and state law.

**Formation of Thuanron and opening of CALLIOPE'S PO-BOY restaurant in 2009**

42. Defendant Thuanron, Inc. was formed as a Texas corporation in January 2009. Defendant Anh Nguyen Campbell was made President and Defendant Ron Campbell was Secretary/Treasurer, each of whom was also named as a Director. Each owned 50% of the shares in the corporation.

43. The purpose of forming the corporation was for Thuanron to open, own and operate a Cajun-style restaurant modeled after "Peter's Po-Boy," a Cajun-style restaurant owned and operated by the Nguyen family (Anh's parents) in Hattiesburg, Mississippi for over 15 years. Thuanron signed a sub-lease agreement for the space at 2130 Jefferson Street, Houston, Texas 77003, and identified its trade name as "CALLIOPE'S POBOYS."

44. Thuanron adopted, promoted, and began to use the Marks in connection with its restaurant services.

45. Carnley worked for Thuanron, as one of its employees. She played a role in the starting up of the restaurant at the Jefferson location, working closely with Ron and Anh Campbell, but always under their direction and supervision.

46. Anh Campbell Nguyen's parents, who still operated the original Peter's Po-Boy in Mississippi, provided Thuanron with the recipes that would be used at the new restaurant. They even provided Thuanron with a copy of the Peter's Po-Boy menu.

47. Carnley was eventually installed as the restaurant manager at the Jefferson location. Carnley was neither an officer nor a director of Thuanron, nor did she ever own any shares in Thuanron. From 2009 through recently in 2012, she was paid by Thuanron.

48. From the restaurant's inception in 2009 through May 2012, Thuanron paid all of the business expenses associated with operating the restaurant. Those expenses were for a wide variety of items, including purchases of food, ingredients, payments to employees, taxes, etc. Payments were made from using company credit cards, as well as checks from a Wells Fargo operating account, which were captioned "THUANRON, INC. DBA CALLIOPE'S POBOY." It was Thuanron that paid federal income taxes for the restaurant operations.

49. It was not until May 2012 that Thuanron agreed to allow the sub-lease to the restaurant to be assumed by Defendant Little Bit, an entity that Carnley had formed at the insistence of Ron Campbell. Thuanron wanted Carnley and Little Bit to assume financial and operational responsibility for the restaurant at the Jefferson Street location.

**Decision to open CALLIOPE'S PO-BOY #2 in 2011**

50. As is often the case with restaurants, Thuanron did not turn a profit during 2009. But by the end of 2010, it became clear that the restaurant would be successful. Other family members, namely Truong Nguyen and Celine Le, expressed an interest in starting another CALLIOPE'S PO-BOY restaurant, in a different part of town.

51. Thuanron agreed to help them with that venture. But opening another CALLIOPE'S PO-BOY location was not a "betrayal" by any stretch of imagination, as alleged in Plaintiffs' Petition, ¶ 15. Indeed opening new locations was part of the plan from the outset in early 2009. Thus, Defendants' plans to open this new restaurant were certainly not made



“surreptitiously” as alleged in Plaintiffs’ Petition, ¶ 15, nor was there any reluctance by Defendants to either “tell her of their plans” or “seek her expertise.”

52. Thuanron entered into a franchise agreement in September 2011 with Culom in which Thuanron granted Culom certain limited rights to use the trade name “CALLIOPE’S PO-BOY #2” at a particular location on West Bellfort. Also, in September 2011, Defendants Nguyen and Le officially formed Culom Incorporated, a Texas corporation, for purposes of operating that restaurant. Culom filed an Assumed Name Certificate for “CALLIOPE’S PO-BOY #2” with the State of Texas. Thuanron leased the new location from the landlord, and sub-leased the premises to Culom in October 2011.

53. Under the authority granted by the franchise agreement, Culom began operations at the new location in November 2011 using the name “CALLIOPE’S PO-BOY #2,” and has been operating the restaurant ever since.

54. Plaintiff Lisa Carnley was fully aware of the new restaurant during 2011. Throughout 2011 she knew it would be named “CALLIOPE’S PO-BOYS #2,” and that it would be modeled after the original CALLIOPE’S PO-BOY.

55. Plaintiff Carnley assisted in the start-up of the new restaurant, and had input into certain aspects of the new restaurant, including the menu and the signage. She expressly approved the signage and the sub-lease between Thuanron and Culom. She knew that the “trade name” of Culom’s restaurant would be CALLIOPE’S PO-BOY #2. She also knew that Thuanron owned the CALLIOPE’S PO-BOY #2 name.

56. At no point during this start-up of the new restaurant did Carnley ever tell any of the Defendants that she was claiming ownership of the CALLIOPE’S PO-BOY #2 name nor did Carnley ever object to Culom using the CALLIOPE’S PO-BOY #2 name for the new restaurant,

until May 24, 2012, when Carnley's trademark lawyers at the Los Angeles law firm Yang & Wang delivered the cease-and-desist letter to Culom.

**The secret filing of the federal trademark application**

57. In July 2011, unbeknownst to any of the Defendants, Plaintiff Lisa Carnley had secretly instructed the Los Angeles trademark law firm, Yang & Wang, to file an application with the U.S. Patent and Trademark Office (USPTO) for federal registration of "CALLIOPE'S."

58. On information and belief, Carnley secretly filed this trademark application after she knew of the Defendants' decision to open a new CALLIOPE'S PO-BOY restaurant. So, while she was busy assisting the Defendants in the starting up of the new restaurant, she was simultaneously pursuing federal registration of the mark CALLIOPE'S in her personal name.

59. At no time in 2011 did either of Plaintiffs ever tell any of the Defendants of this trademark application.

60. It was not until late February 2012 that Celine Le stumbled across the trademark application filed by Lisa Carnley, as part of a Google search for other users of "CALLIOPE'S." She advised Anh and Ron Campbell of the existence of this trademark application. Shockingly, it was learned that Lisa had filed the application in July 2011, without informing any of Defendants. Recently, Defendants learned that Carnley actually used Thuanron's own funds to pay the Yang & Wang law firm to file and pursue the federal trademark application and perform other legal services on behalf of Carnley. As of June 29, 2012, the trademark application is still pending in the U.S. Patent and Trademark Office, and has not issued as a federal registration.

**The cease and desist letter from Yang & Wang**

61. Then, surprisingly, and without warning, the Yang & Wang law firm delivered a "cease-and-desist" letter to Defendants Culom and Truong on May 24, 2012 (see Exhibit 2 of

Original Petition). Outrageously, the letter accused Defendants Culom and Truong of infringing the trademark, by virtue of their using the term “CALLIOPE’S” as part of the restaurant name, notwithstanding they had used the name “CALLIOPE’S PO-BOYS #2” for over six months without any objections from Plaintiffs.

62. The cease-and-desist letter was not authorized by Thuanron.

63. On or about June 12, 2012, Thuanron formally terminated Carnley’s employment with Thuanron, and the Yang & Wang law firm was contacted by counsel for Thuanron to discuss resolution of the dispute. Rather than enter into negotiations, on June 15, 2012, Plaintiffs filed their State Court Action. They did not notify any of Defendants of this filing, nor of their effort (albeit unsuccessful) to obtain an *ex parte* Temporary Restraining Order.

64. Rather than granting the *ex parte* TRO, the state court entered an order setting a temporary injunction hearing. On June 25, 2012, Defendants removed the action to this federal court.

**COUNT I**  
**(Federal Trademark Infringement and Unfair Competition Under the Lanham Act)**

65. The allegations set forth above in paragraphs 1-64 are hereby repeated and incorporated by reference as if set forth expressly herein.

66. Thuanron first used the marks “CALLIOPE’S” and “CALLIOPE’S PO-BOY” (“Marks”) in commerce, in the United States specifically, in Houston, Texas, in early 2009. Thuanron advertised and promoted the Marks in connection with their restaurant services, and began providing those services to consumers in March 2009.

67. Thuanron owns all right, title and interest in and to the Marks.

68. During the last part of 2011, Thuanron granted a non-exclusive license to Defendant Culom to use the Marks, specifically, "CALLIOPE'S PO BOY'S #2," at its West Belfort location.

69. Thuanron invested substantial time, energy and money over the years 2009-2012 developing the original CALLIOPE'S PO BOY restaurant on Jefferson Street, and has acquired and now enjoys substantial goodwill in connection with the Marks.

70. Plaintiffs have taken actions that are not authorized by Thuanron, which are damaging to Thuanron's trademark rights. Such unauthorized actions include but are not limited to, the filing of the federal trademark application for CALLIOPE'S; sending the cease-and-desist letter to Culom; and alleging ownership of the Marks.

71. Such actions by Plaintiffs are likely to cause confusion, to cause mistake and/or to deceive the public into believing that those actions originate with Defendant Thuanron, or are sponsored by Thuanron, and/or are performed under Thuanron's supervision and control.

72. Plaintiffs' actions complained of above constitute infringement of Thuanron's Marks, and unfair competition under 15 U.S.C. §§ 1125.

73. As a result of Plaintiffs' unauthorized acts, Defendants have suffered, and continue to suffer damage; and Plaintiffs are profiting at Defendant Thuanron's expense. Plaintiffs' activities entitle Defendant Thuanron to recover those profits, and also compensation for its own damages from Plaintiffs.

74. Plaintiffs' acts have been and are still deliberate willful, reckless and malicious, entitling Defendant Thuanron to enhanced damages and attorney's fees under 15 U.S.C. §§ 1125.

75. Unless Plaintiffs are enjoined, Defendant Thuanron has no adequate remedy at law, and will be irreparably harmed.

**COUNT II**  
**(Trademark Infringement Under Texas Common Law)**

76. The allegations set forth above in paragraphs 1-75 are hereby repeated and incorporated by reference as if set forth expressly herein.

77. Plaintiffs' acts complained of above constitute infringement (i.e., trademark and service mark infringement) under the Texas common law.

78. Plaintiff's acts of infringement have damaged Defendant Thuanron.

79. As a result of Plaintiffs' unauthorized acts, Defendant Thuanron has suffered, and continues to suffer damage; and Plaintiffs are profiting at Defendant Thuanron's expense. Plaintiffs' infringing activities entitle Defendant Thuanron to recover those profits, and also compensation for its own damages from Plaintiffs.

80. Plaintiffs' acts have been and are still deliberate willful, reckless and malicious, entitling Defendant Thuanron to enhanced damages and attorney's fees.

81. Unless Plaintiffs are enjoined, Defendant Thuanron has no adequate remedy at law, and will be irreparably harmed.

**COUNT III**  
**(Unfair Competition under Texas Common Law)**

82. The allegations set forth above in paragraphs 1-81 are hereby repeated and incorporated by reference as if set forth expressly herein.

83. Plaintiffs' acts complained of above constitute unfair competition under the Texas common law.

84. Plaintiff's acts of unfair competition have damaged Defendant Thuanron.

85. As a result of Plaintiffs' unauthorized acts, Defendant Thuanron has suffered, and continues to suffer damage; and Plaintiffs are profiting at Defendant Thuanron's expense.

Plaintiffs' activities entitle Defendant Thuanron to recover those profits, and also compensation for its own damages from Plaintiffs.

86. Plaintiffs' acts of unfair competition have been and are still deliberate willful, reckless and malicious, entitling Defendant Thuanron to enhanced damages and attorney's fees.

87. Unless Plaintiffs are enjoined, Defendant Thuanron has no adequate remedy at law, and will be irreparably harmed.

#### **COUNT IV**

##### **(Declaratory Judgment #1: No Infringement by Defendants under Federal Lanham Act)**

88. The allegations set forth above in paragraphs 1-87 are hereby repeated and incorporated by reference as if set forth expressly herein.

89. None of Defendants have engaged in any activity or conduct that constitutes infringement or unfair competition under the Lanham Act.

90. Defendants request a declaration by the Court, under 28 U.S.C. §§ 2201-2202, that Defendants have not infringed any of Plaintiffs alleged trademarks nor committed unfair competition under the federal Lanham Act.

#### **COUNT V**

##### **(Declaratory Judgment #2: Thuanron Owns Marks Under Federal Lanham Act)**

91. The allegations set forth above in paragraphs 1-90 are hereby repeated and incorporated by reference as if set forth expressly herein.

92. Defendant Thuanron owns the Marks, including "CALLIOPE'S" and "CALLIOPE'S PO BOY," under the Lanham Act.

93. Defendants request a declaration by the Court, under 28 U.S.C. §§ 2201-2202, that Defendant Thuanron owns the Marks under the federal Lanham Act.

**COUNT VI**

**(Declaratory Judgment #3: Thuanron Owns Marks Under Texas Common Law)**

94. The allegations set forth above in paragraphs 1-93 are hereby repeated and incorporated by reference as if set forth expressly herein.

95. Defendant Thuanron owns the Marks, including “CALLIOPE’S” and “CALLIOPE’S PO BOY,” under the Texas common law.

96. Defendants request a declaration by the Court, under 28 U.S.C. §§ 2201-2202, that Defendant Thuanron owns the Marks under the Texas common law.

**COUNT VII**

**(Declaratory Judgment #4: Culom is licensed to use the Marks)**

97. The allegations set forth above in paragraphs 1-96 are hereby repeated and incorporated by reference as if set forth expressly herein.

98. Defendant Thuanron owns the Marks, including “CALLIOPE’S” and “CALLIOPE’S PO BOY,” under the Texas common law.

99. Defendant Culom has granted Culom a license to use the Marks, including a license to use the term “CALLIOPE’S PO-BOY #2,” in connection with its restaurant.

100. Defendant Culom requests a declaration by the Court, under 28 U.S.C. §§ 2201-2202, that it is licensed by Thuanron to use the Marks under the federal Lanham Act and Texas common law.

**PRAYER FOR RELIEF**

WHEREFORE, Defendants respectfully request the Court to:

A. Deny all relief requested by Plaintiffs including but the not limited to denying all the relief requested by Plaintiffs in the Original Petition;

B. Enter a finding and declaration that Defendants have not infringed or engaged in unfair competition under the Lanham Act or any Texas common law or statutory law, or committed dilution or injury to business reputation under any Texas law;

C. Enter a finding and declaration that Plaintiffs have infringed Defendant Thuanron's trademark rights in the Marks, and engaged in unfair competition under the federal Lanham Act and Texas common law.

D. Enter a finding and declaration that neither of the Plaintiffs owns any of the Marks, including either CALLIOPE'S or CALLIOPE'S PO-BOY, or any trademark rights or service mark rights, or trade name rights, or any other exclusive rights in any term or mark that includes the phrase "CALLIOPE'S."

E. Enter a finding and declaration that Plaintiff Lisa Carnley is not properly named as "Applicant" in the application Serial No. 85-376,458, filed in the U.S. Patent and Trademark Office, for "CALLIOPE'S," and that neither Carnley nor Little Bit owns any trademark rights identified in that application.

F. Enter a judgment that Plaintiffs Carnley and Little Bit, and each of their affiliates, subsidiaries, agents, servants, employees, attorneys and all persons acting in concert or participation with either of them be preliminarily and permanently enjoined from: asserting exclusive rights in, or ownership of, any of the Marks, including any trademark, service mark, or trade name that includes the term "CALLIOPE'S," or engaging in unfair competition, or instructing any other entity to stop using any of the Marks; committing any acts likely to cause the public to believe that any of Plaintiffs' use of any of the Marks, or any of Plaintiffs' products or services, or business operations, or restaurant, are authorized by Defendants, including the



restaurant at the Jefferson Street location; or attempting, causing, or assisting any of the above-described acts.

G. Plaintiffs/ Counter-Defendants be ordered to pay all damages, including but not limited to Plaintiffs' profits and any corrective advertising done by Defendants and including but not limited to those damages available under at least 15 U.S.C. § 1117, including attorneys' fees, court costs, expenses and enhanced damages;

H. Plaintiffs be ordered to pay Defendants interest on all amounts awarded, and post-judgment interest until paid, at the highest lawful rate; and

I. Award Defendant such other and further relief as the Court deems just and equitable.

Respectfully submitted,

POLASEK, QUISENBERRY & ERRINGTON, LLP

Dated: June 29, 2012

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**ATTORNEYS FOR DEFENDANTS  
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CALLIOPE'S PO-BOY #2  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served this 29<sup>th</sup> day of June 2012 with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by: hand-delivery, electronic mail, facsimile transmission and/or first class mail on this same date, including the following counsel:

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