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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FOOD EXPERIENCES OF NEW YORK, LLC,

Plaintiff,

v.

MANHATTAN WALKING TOUR.COM LLC,
MORRIS GARRY ZAFRANI, GOOGLE LLC,
TRIPADVISOR LLC, and VIMBLY LLC,

Defendants.

Case No.

**VERIFIED COMPLAINT
FOR UNFAIR COMPETITION
AND FALSE ADVERTISING**

Plaintiff Food Experiences of New York, LLC (“Plaintiff” or “Food Experiences”), for its complaint for damages and injunctive relief against Manhattan Walking Tour.com LLC, Morris Gary Zafrani, Google LLC, TripAdvisor LLC and Vimibly LLC (collectively “Defendants”) alleges as follows:

PARTIES

1. Plaintiff Food Experiences is a limited liability company duly organized and existing under the laws of the New York, with a principle place of business of 9 Barrow Street, New York, New York 10014.

2. Upon information and belief, defendant Manhattan Walking Tour.com LLC (“MWT”) is a New York limited liability company, with a principle place of business of 590 Flatbush Ave, Apt. 14M, Brooklyn, NY 11225.

3. Upon information and belief, Morris Garry Zafrani (“Zafrani,” together with MWT, the “MWT Defendants”), is an individual who owns, directs, and/or controls MWT, is domiciled in the State of New York, at 590 Flatbush Ave, Apt. 14M, Brooklyn, NY 11225.

4. Upon information and belief, there exists, and at all times herein mentioned herein, there existed, a unity of interest between and among the MWT Defendants vis-à-vis the ownership, operation and/or management of MWT.

5. Upon information and belief, MWT is so dominated and controlled by Zafrani, such that the MWT Defendants may be considered interchangeable with one another.

6. Upon information and belief, defendant TripAdvisor LLC (“TripAdvisor”) is a Delaware limited liability company with a principal place of business of 400 1st Ave., Needham, Massachusetts 02494.

7. Upon information and belief, Defendant Google LLC (“Google”) is a Delaware limited liability company with a principal place of business of 1600 Amphitheatre Parkway, Mountain View, California 94043.

8. Upon information and belief, Defendant Vimibly LLC (“Vimibly”) is a New York limited liability company with a principal place of business of 349 5th Avenue, New York, New York 10016.

9. At all times material to this action, each of Defendants was the agent, servant, employee, partner, alter ego, subsidiary, or joint venture of the other Defendant, and the acts

of each Defendant were in the scope of such relationship; in doing the acts and failing to act as alleged in this Complaint, each of the Defendants acted with the knowledge, permission, and the consent of the other Defendant; and each Defendant aided and abetted the other Defendant in the acts of omissions alleged in this Complaint.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action pursuant to the Lanham Act, 15 U.S.C. § 1051 *et seq.* and the laws of the State of New York. This Court has subject matter jurisdiction, *inter alia*, pursuant to 28 U.S.C. §§ 1331, 1338, and 1367 *et seq.*

11. This Court has personal jurisdiction over Defendants because, upon information and belief, they reside in and/or regularly do business in this judicial district and a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

12. Venue in this judicial district is proper under 28 U.S.C. § 1391 in that Defendants reside in and/or conduct substantial business in this judicial district and a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

FACTS RELEVANT TO ALL CLAIMS

A. Plaintiff's Business and Goodwill

13. Plaintiff is a pioneer in the business of providing food tastings and food tasting events, and conducting cultural and culinary guided walking tours of neighborhoods, restaurants, specialty food shops, and ethnic eateries throughout New York City.

14. The idea for Plaintiff's business began in 1998 when its owner Todd Lefkovic put a print ad in *New York Magazine*. He advertised his new concept called "A Walking and Tasting Tour" with a date and his phone number, although he had no tour officially set up. That ad sealed his fate.

15. Mr. Lefkovic came home to an answering machine with a blinking light and 60 phone calls. He called each and every person back. He told them this 'Food Tour' tour was sold out, but would keep their name and number for the next one. That first real tour was launched, with 20 of those original guests in attendance, in the Spring of 1998. On April 30, 1999, Mr. Lefkovic quit his day job in Graphic Design to run Plaintiff's business full time.

16. Since launching in 1999, Plaintiff's business has grown into an internationally-recognized company, which now offers six well-researched and curated Food Tasting Tours. In addition to Mr. Lefkovic, there are now 18 tour guides, and an office staff of six. Food Experiences estimates that over the past 20 years, over 300,000 individuals have taken one of its tours.

B. Plaintiff's FOODS OF NY TOURS Trademark

17. At all times relevant herein, Plaintiff consistently and extensively used the phrase "FOOD OF NY TOURS" ("the FOOD OF NY TOURS Mark"), which it has used in commerce as a designator of origin for its high quality tour guide services continuously since April 1999.

18. Through Plaintiff's advertising, online coverage, and continuous and exclusive use over a period of over 20 years, the FOOD OF NY TOURS Mark has acquired distinctiveness and secondary meaning in the minds of consumers, such that a person encountering websites, advertisements and other materials displaying "Foods of NY Tours"

and offering similar services, is likely to believe that the source or sponsor of those websites or advertisements is Food Experiences.

19. The FOODS OF NY TOURS Mark is a distinctive trademark to both the public and trade in connection with Plaintiff's websites and services. Plaintiff's mark serves primarily as a designator of origin of services originating from, sponsored by or licensed by Plaintiff.

20. Plaintiff promotes its services, including those of the FOODS OF NY TOURS Mark, through various online and print channels, including the use of Google Adwords advertising.

21. As a result of the widespread use and display of Plaintiff's FOODS OF NY TOURS Mark, both the public and trade use the FOODS OF NY TOURS Mark to identify and refer to Plaintiff's products and services.

22. As a result of the high quality tour guide services offered by Plaintiff, Plaintiff's FOODS OF NY TOURS service enjoys a "five star" rating on all of the largest internet review sites, including Yelp and defendants Google and TripAdvisor's own sites.

23. Plaintiff has prior and superior use of the FOODS OF NY TOURS Mark over any other entity in the world by using the marks to identify the source of goods, services, and information through its Internet websites located <foodsofny.com>. A printout of a sample of Food Experiences' website showing its use of the trademark is annexed hereto as Exhibit A.

24. As a result of the length, widespread use and display of Plaintiff's FOODS OF NY TOURS Mark, the FOODS OF NY TOURS Mark has built up secondary meaning and extensive goodwill.

25. Plaintiff's use of the FOODS OF NY TOURS Mark has continued uninterrupted since as early as 1999 and Plaintiff has never abandoned its use of the FOODS OF NY TOURS Mark for the aforementioned services.

26. Plaintiff owns significant and protectable common law rights to the FOOD OF NY TOURS Marks acquired through continuous, exclusive and extensive use in commerce for over 20 years.

27. The FOODS OF NY TOURS Mark is a famous trademark that is widely recognized by both the public and trade and has built up substantial goodwill.

C. Defendants' Competing Business and Trademark Infringement

28. Like Plaintiff, the MWT Defendants also provide cultural and culinary guided walking tours of neighborhoods and restaurants throughout New York City.

29. According to Mr. Zafrani's LinkedIn profile, MWT was not formed until 2010—over a decade after Plaintiff began using the FOODS OF NY TOURS Mark in commerce.

30. Upon information and belief, the MWT Defendants have engaged Google, TripAdvisor and Vimby to assist MWT in selling tickets to their competing tour guide services.

31. As a part of Google's online services, when a consumer searches for information about a local business, Google will present, along with relevant search results, a business listing, which includes an exterior Google Maps Streetview photo, interior user-submitted photos, and a pinpoint location on a map, as well as the business's address, hours of operation, website, social media profiles and reviews (the "Google Business Listing").

32. The Google Business Listing sometimes provides for additional functionality, whereby the consumer may set up bookings, reserve a table, or purchase tickets for the business.

33. Plaintiff has recently discovered that Defendants have caused the Google Business Listing for *Plaintiff* to cause users to purchase tickets to *Defendant MWT's* tours, while the user is duped into thinking they are buying tickets for *Plaintiff's* services.

34. A true and accurate depiction of the Google Business Listing for Plaintiff's business is below (on the right hand side) and attached hereto as Exhibit B:

The screenshot shows a Google search for "foods of ny tours" on 7/25/2019. The search results include several links to food tour websites. On the right side, there is a detailed Google Business Listing for "Foods of NY Tours".

Search Results:

- Foods of NY Tours: Since 1999 | 6 Delicious Food Tours**
www.foodsofny.com/ (917) 639-2932
Food Tastings, History, Culture and Lots of Fun. Join us and discover where the locals go. Greenwich Village, Chelsea Market, The Highline, Chinatown, Nolita, Brooklyn. 7 Days. Small groups & top guides. 6 distinct tours to try. NYC's Original Food Tours.
- Foods of New York Tours: Since 1999 - NY's top rated food tours**
https://www.foodsofny.com/ - NYC's original and #1 rated food tours. Indulge in New York City's most delicious & historic neighborhoods. It's so much more than just a food tour!
- THE 10 BEST New York City Food Tours (with Photos) - TripAdvisor**
https://www.tripadvisor.com - Top New York City Food Tours: See reviews and photos of food tours in New York City, New York on TripAdvisor.
- Foods of NY Tours - Check Availability - 421 Photos & 311 Reviews ...**
https://www.yelp.com - 311 reviews of Foods of NY Tours "This is a great tour even if you're slightly familiar with the Village. This tour wasn't just rich in calories but also in history of the ..."
- New York Food Tours | Free Tours by Foot**
https://freetoursbyfoot.com/new-york-tours/food-tours/ - We also offer several self-guided New York Food Tours. Greenwich Village. Chelsea Market. Harlem Soul Food. Arthur Avenue in the Bronx. Lower East Side Food and History. Chinatown. Historic New York City Bars. Where to Find New York's Best Bagels.
- THE TOP 10 New York City Food Tours (w/Prices) - Viator**

Business Listing: Foods of NY Tours

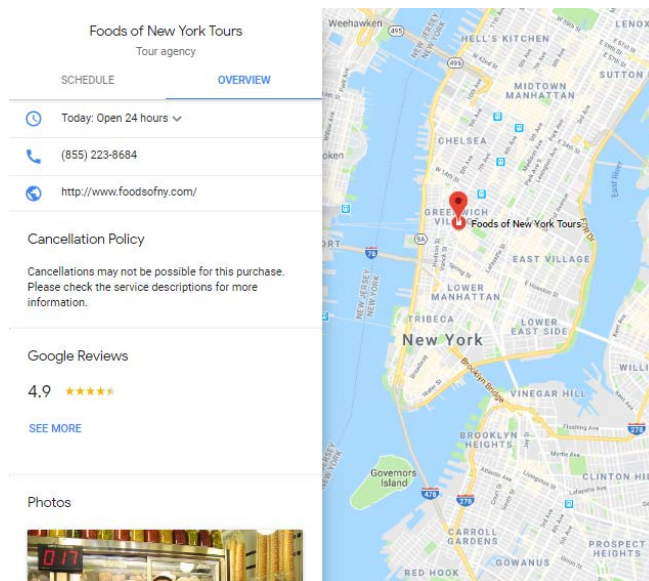
- Address: 9 Barrow St, New York, NY 10014
- Hours: Open 24 hours
- Products and Services: places.singleplatform.com
- Appointments: foodsofny.com
- Phone: (855) 223-8684
- 5.0 rating, 177 Google reviews
- Tour agency in New York City, New York
- BUY TICKETS button
- Reviews:
 - "The delicious tastings included bisque, steak, salad, meat pie, gelato and more!"
 - "The Indian offered was mostly just eggs in a wrap from a fast food joint."
 - "Quickly the room filled with an eclectic, friendly group."
- Profiles: Instagram, Twitter, LinkedIn
- People also search for

35. Plaintiff's Google Business Listing Prominently displays Plaintiff's FOODS OF NY TOURS Mark, along with plaintiff's accurate phone number, website, and business address. The listing also includes accurate (positive) reviews of Plaintiff's business. The icons below link to Plaintiff's actual Instagram, Twitter, and LinkedIn social media pages.

36. Plaintiff's Google Business Listing also includes a link to "BUY TICKETS" such that a consumer could, presumably, purchase tickets to one of Plaintiff's tours. However, at no time did Plaintiff ever authorize anyone to sell or purchase tickets in this fashion. Plaintiff does *not* use Google's functionality to sell tickets to its tours and does not receive any of the revenues from the sale of tickets in this manner.

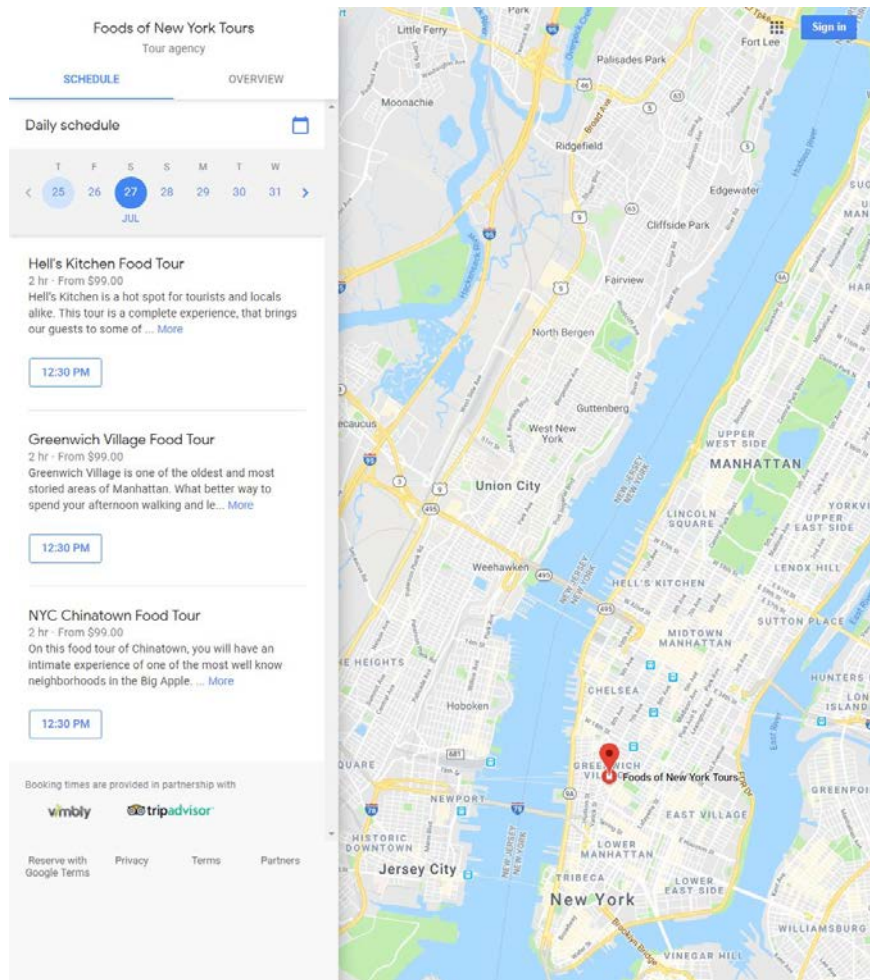
37. Upon clicking the "BUY TICKETS" button, the consumer is brought to a "Reserve with Google" page. The "Reserve with Google" page includes a "Schedule" tab, which is an order form that allows the consumer to book tours, and an "Overview" tab, which provides information about the business.

38. A true and accurate copy of the "Overview" tab is below and attached hereto as Exhibit C.



39. The “Overview” tab includes a derivation of plaintiff’s FOODS OF NY TOURS Mark, which is indicated as the “Tour Agency,” along with Plaintiff’s accurate telephone number and website.

40. A true and accurate copy of the “Schedule” tab is below and attached hereto as Exhibit D:

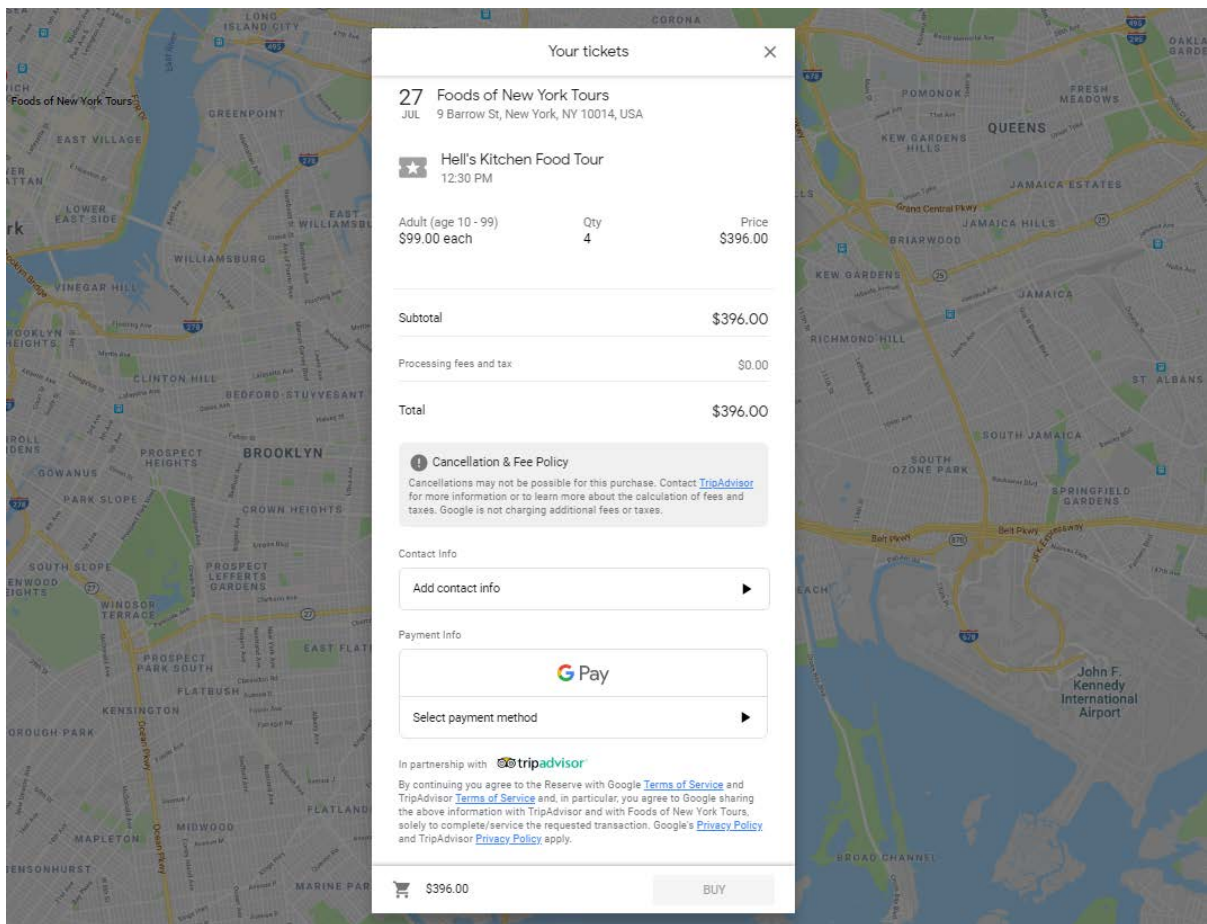


41. The “Schedule” tab allows the user to purchase three different tours, *none of which are offered by Plaintiff*. At \$99.00 each, the tours are also offered at substantially higher prices than the ones that Plaintiffs provides, which generally cost only \$54.00.

42. On the contrary, Defendant MWT, from its website <ManhattanWalkingTour.com>, offers the very same tours indicated on the “Schedule” tab, for the exact same price (\$99.00), at the exact same time (12:30 pm daily).

43. The “Schedule” tab indicates: “Booking times are provided in partnership with VIMBLY [and] TRIPADVISOR.”

44. Finally, should the user purchase any tour tickets, a pop-up screen indicates that the user is purchasing tours from FOODS OF NEW YORK TOURS, with Plaintiff’s business address, as indicated below, and attached as Exhibit E:



45. However, none of the revenue from any of the sales of tour tickets goes to Plaintiff.

46. Thus, when users purchase tours via the “BUY TICKETS” link on Plaintiff’s Google Business Listing, they are unwittingly purchasing tickets for Defendant MWT’s competing tours.

47. Upon information and belief, through revenue sharing or otherwise, each of the Defendants reap the benefit of sales made through Plaintiff’s Google Business Listing of tickets to Defendant MWT’s services.

48. Despite Plaintiffs’ request to defendants Google and TripAdvisor, Plaintiff was informed that the defendants were unwilling or unable to remove the “BUY TICKETS” functionality from Plaintiff’s Google Business Listing.

49. A review of Google’s Help Community message board indicates that this situation occurs with some frequency, with both Defendants Google and TripAdvisor. *See, e.g.*, <https://support.google.com/business/thread/4247228?hl=en>.

50. Plaintiff has been and continues to be damaged by Defendants’ continued actions.

FIRST CAUSE OF ACTION

False Designation of Origin in Violation of 15 U.S.C. § 1125(a)(1)(B)

51. Plaintiff realleges and incorporates by reference Paragraphs 1 through 50 as though fully set forth herein.

52. Plaintiff’s FOODS OF NY TOURS Mark is entitled to protection under Section 43(a) of the Lanham Act.

53. Defendants’ use of Plaintiff’s FOODS OF NY TOURS Mark, in conjunction with Plaintiff’s address, phone number, website, and social media profiles, to unwittingly

cause consumers looking for Plaintiff and Plaintiff's services to purchase tickets for Defendants' competing services is likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of Defendants' goods in violation of the Lanham Act, 15 U.S.C. § 1125(a).

54. Upon information and belief, Defendants' conduct, including their continuing infringement after notice, was committed willfully, knowingly, maliciously, and in conscious disregard of Plaintiff's rights.

55. The aforesaid infringement by Defendants has caused and, unless enjoined, will continue to cause, immediate and irreparable injury to Plaintiff's business, goodwill and reputation.

56. Because Plaintiff's remedy at law is inadequate, Plaintiff seeks, in addition to damages, temporary, preliminary and permanent injunctive relief to protect its trademark and other legitimate business interests. Plaintiff is reliant on its business reputation and its ability to maintain and grow its client base in a competitive market and will continue suffering irreparable harm absent injunctive relief.

57. Plaintiff has a substantial likelihood of success on the merits because of Defendants' blatant, willful and malicious infringement on Plaintiff's FOODS OF NY TOURS Marks, especially after notice and opportunity to cease and desist were provided.

58. By reason of Defendants' acts alleged herein, Plaintiff is entitled to recover profits, actual damages, and the costs of the action, or statutory damages under 15 U.S.C. § 1117.

59. The foregoing acts have been, and continue to be, deliberate, willful and wanton, making this an "exceptional" case within the meaning of 15 U.S.C. § 1117.

SECOND CAUSE OF ACTION
Common Law Unfair Competition

60. Plaintiff realleges and incorporates by reference Paragraphs 1 through 50 as though fully set forth herein.

61. Defendants are diverting users searching for Plaintiff's services to unwittingly purchase tickets for Defendants' competing business.

62. Upon information and belief, Defendants intended to use their diversion of ticket sales as a means to generate business by turning customers away from Plaintiff, and redirecting them to Defendants.

63. The aforesaid acts by Defendants have caused and, unless enjoined, will continue to cause, immediate and irreparable injury to Plaintiff's business, goodwill and reputation.

64. These acts and others stated above constitute a pattern of common law unfair competition, entitling Plaintiff to the recovery of compensatory and punitive damages.

THIRD CAUSE OF ACTION
Unfair and Deceptive Trade Practices in Violation of N.Y. GBL § 349

65. Plaintiff realleges and incorporates by reference Paragraphs 1 through 50 as though fully set forth herein.

66. Defendants' unauthorized use of the FOODS OF NY TOURS Mark, in conjunction with Plaintiff's address, phone number, website, and social media profiles, in advertising constitutes deceptive practices through Defendants' appropriation for its own use of the name, brand, trademark, reputation, and goodwill of Plaintiff in violation of N.Y. Gen. Bus. Law § 349.

67. The aforesaid acts by Defendants have caused and, unless enjoined, will

continue to cause, immediate and irreparable injury to Plaintiff's business, goodwill and reputation.

68. These acts and others stated above entitle Plaintiff to the recovery of compensatory and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the Court enter a judgment in its favor and against Defendants Carson and Cameron, granting, as follows:

- a. That Plaintiff recovers from Defendants all damages sustained pursuant to 15 U.S.C. § 1125(d), 15 U.S.C. § 1114 and/or 15 U.S.C. § 1125(a);
- b. That Defendants be ordered to pay Plaintiff all damages sustained, reasonable costs, expenses, and attorneys' fees in prosecuting this action, pursuant to 15 U.S.C. 1117;
- c. That Defendants be ordered to relinquish control over any videos, websites, webpages, web hosting, social media and/or email accounts which include, are associated with, or similar to Plaintiff's trademarks;
- d. An Order directing Defendants to engage in appropriate and commensurate corrective advertising;
- e. A Temporary, Preliminary and Permanent Injunction enjoining and restraining Defendants and their respective agents, servants, employees, successors and assigns, and all other persons acting in concert with or in conspiracy with or affiliated with Defendants, from using Plaintiff's trademarks or any designation confusing similar thereto;

- f. Actual damages in an amount to be determined at trial, but in no event less than \$1,000,000, due to common law unfair competition;
- a. An Order requiring a disgorgement of profits from Defendants to Plaintiff for all claims so applicable;
- b. Exemplary or punitive damages in an amount appropriate to punish Defendants and to make an example of Defendants to the community;
- c. That Plaintiff be awarded pre- and post-judgment interest to the maximum extent allowed by law;
- d. An Order awarding attorneys' fees, costs and expenses incurred in connection with this action to Plaintiff; and
- e. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all issues so trial pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: Brooklyn, New York
July 25, 2019

LEWIS & LIN, LLC

By: /s/ David D. Lin
David D. Lin (DL-3666)

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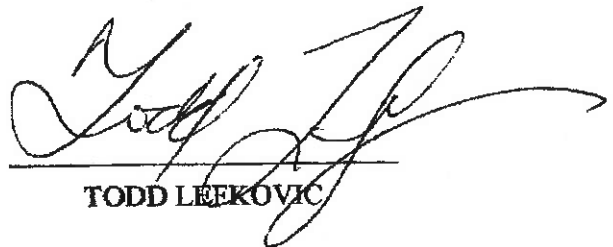
VERIFICATION

I, Todd Lefkovic, verify under penalty of perjury under the laws of the United States of America that the following is true and correct:

I am the founder and owner of Plaintiff Food Experiences of New York, LLC (“Plaintiff” of “Food Experiences”), and am familiar with the Verified Complaint’s factual allegations.

I have reviewed the Verified Complaint and, based upon personal knowledge and/or the business records of Food Experiences, aver that the foregoing factual allegations contained herein are true to the best of my knowledge, except those matters stated upon information and belief, which I believe to be true.

Dated: July ²⁵ 2019


TODD LEKOVIC