

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No.: \_\_\_\_\_

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Lulu's Food Mart & Deli Inc.,  
d/b/a Lulu's Market & Deli,

Plaintiff,

vs.

The Firefly Group, Inc.,  
d/b/a Lulu's Public House,

Defendant.

**MEMORANDUM IN SUPPORT OF  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
TEMPORARY INJUNCTION**

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**INTRODUCTION**

This motion seeks an emergency order to put an end to any further unlawful competition and trademark infringement by the Defendant, The Firefly Group, Inc., doing business as Lulu's Public House ("Defendant" or "Lulu's Public House"). The Plaintiff, Lulu's Food Mart & Deli Inc., doing business as Lulu's Market & Deli ("Plaintiff," "Lulu's," or "Lulu's Market & Deli"), learned that the Defendant intends to operate as a food vendor at the Minnesota State Fair under the name Lulu's Public House. The Defendant's use of the name "Lulu's" in connection with its food concessions stand at the Fair has already confused, misled, or deceived several consumers into believing that the Defendant's operation is affiliated, associated, or connected with Lulu's Market & Deli. The Defendant also intends to offer menu items that will add to the likelihood of consumer confusion. The Plaintiff has acquired rights under the common law in the Lulu's service mark, and Lulu's has never given the Defendant permission, license, or authorization to use that mark in its business operations. Thus, the Defendant's use of the name Lulu's Public House in its food vendor operations at the upcoming Minnesota State Fair constitutes unfair

competition and trademark infringement under the common law. Unless this Court issues an immediate temporary restraining order enjoining the Defendant from using the Lulu's name in connection with its State Fair business or other food service operations, the Plaintiff will irreparably lose control over the goodwill and reputation it has worked for several years to build through operating under the Lulu's name.

### **FACTUAL BACKGROUND**

Lulu's Market & Deli is a delicatessen style restaurant and food market located at the intersection of Selby Avenue and N. Fry Street in St. Paul, Minnesota, where it has operated for the past seventeen years under the Lulu's name. (Aff. of Rouzbeh Toliati in Supp. of Mot. for TRO ("Toliati Aff.") ¶ 4.) Lulu's derives its name from the original owner's last name, Lulu, which the business's new ownership has chosen to continue using based on its longstanding consumer recognition in the St. Paul market. (See Toliati Aff. ¶ 5.) Lulu's serves a fusion of American and Mediterranean style foods, which it offers to consumers who wish to dine-in at Lulu's, pick up for take-out, and delivers. (Toliati Aff. ¶ 8; *see also id.* ¶ 8, Ex. 1, Lulu's Menu.)

Throughout Lulu's Market & Deli has consistently used the Lulu's service mark in its marketing and advertising efforts (Toliati Aff. ¶ 4), and since it came under new ownership in 2010, Lulu's has focused its business on operating a restaurant. (Toliati Aff. ¶ 7.) To accomplish that rebranding effort, Lulu's remodeled its interior, developed a new menu, and invested heavily in print, radio, social media, and internet marketing. (Toliati Aff. ¶¶ 7-10, 12.) Several publications have printed stories or other media accounts about Lulu's since 2010. (Toliati Aff. ¶ 11; *see also id.* ¶ 11, Ex. 2 (print media stories about Lulu's restaurant).) Lulu's has advertised and marketed extensively at several colleges and universities in the St. Paul area, at the Grand Ol' Days street festival, with several professional sports teams based in the Twin

Cities, and has run promotions on prominent e-commerce sites. (Toliati Aff. ¶¶ 13-16.) And Lulu's has sponsored and catered events for collegiate and high school student groups and events. (Toliati Aff. ¶ 17.) Lulu's has also sponsored local recreational adult sports teams. (Toliati Aff. ¶ 17, Ex. 3, Sports Jerseys.) Since 2010, the Plaintiff has spent over \$15,000 on advertising and marketing using the Lulu's name, and engaged in extensive non-monetary efforts to promote the Lulu's brand. (Toliati Aff. ¶¶ 19-20.) The Plaintiff uses the Lulu's name on all of its printed promotional and advertising material, including variations of a logo prominently featuring the Lulu's name. (Toliati Aff. ¶ 18.) By virtue of these efforts, the Plaintiff has acquired common law trademark rights and a protectable interest in the Lulu's name throughout the St. Paul market.

Despite the fact that Lulu's Market & Deli has built its brand through use of the Lulu's name over years of hard work and significant investment, the Defendant intends to cavalierly appropriate that name to offer its own food products at the 2014 Minnesota State Fair. On or about June 26, 2014, the St. Paul Pioneer Press newspaper ran a story indicating that an operation known as Lulu's Public House would be one of the new food vendors doing business at the Minnesota State Fair between August 21, 2014, and September 1, 2014. (Toliati Aff. ¶ 21.) Several other media outlets have also publicized the entry of Lulu's Public House into the State Fair. (*See* Toliati Aff. ¶ 21.) No one affiliated with Lulu's Market & Deli has given the operators of Lulu's Public House permission, a license, or other authorization to use the Lulu's name in its food sales. (Toliati Aff. ¶ 29.)

Since the publicity surrounding the entry of Lulu's Public House at the State Fair, many of Lulu's Market & Deli's ordinary consumers have been confused, mistaken, or deceived as to a believed association, affiliation, or connection between the Plaintiff and the Defendant. The

owner of Lulu's Market & Deli has been contacted by five to ten people each week since the June 26, 2014 Pioneer Press story was published who have expressed a mistaken belief that the Defendant's Lulu's Public House operation was affiliated with the Plaintiff. (Toliati Aff. ¶ 22.) Some consumers contacted Lulu's Market & Deli's owner to congratulate him on entering the State Fair or seeking employment at Lulu's Public House, which required the Plaintiff's owner to inform them that the Defendant's operation at the State Fair was not affiliated with the Plaintiff. (Toliati Aff. ¶¶ 23-24.) Lulu's Market & Deli's owner provided several ordinary consumers who approached him about their confusion with a questionnaire that asked them, *inter alia*, to describe how they heard about Lulu's Public House and whether they believed it was associated, affiliated, or connected with the Plaintiff's business. (Toliati Aff. ¶ 25.) Several of these individuals provided affidavit testimony explaining that the similarity of the Plaintiff's and Defendant's names, as well as the similarity of several menu items, led to a mistaken belief that there was a relationship between the Plaintiff's and the Defendant's businesses. (*See, e.g.*, Aff. of Kevin McComas ("McComas Aff.") ¶¶ 5-6; Aff. of Patrick Imholte ("Imholte Aff."); Aff. of Steven Henry ("Henry Aff.") ¶¶ 5-6; Aff. of Mark Sewer ("Sewer Aff.") ¶¶ 5-6; Aff. of Aaron Zach ("Zach Aff.") ¶¶ 5-6.) Although Lulu's Public House's full menu is not currently known, some food items they will be serving appear to be in direct competition with items on the Plaintiff's menu, and are similar to items the Plaintiff already serves. (*See* Toliati Aff. ¶¶ 26-28.)

Lulu's Market & Deli's most popular menu item is a "Juicy Lucy" style stuffed cheeseburger branded as "The Fair Lucy." (Toliati Aff. ¶ 27.) Lulu's Public House intends to serve a similar item, which consists of sausage patties stuffed with melted cheese known as the "Breakfast Juicy LuLu." (Toliati Aff. ¶ 27; *id.* ¶ 27, Ex. 5.) The similarity between the Defendant's "Breakfast Juicy Lulu" and the Plaintiff's "Fair Lucy" has caused actual confusion

among the Plaintiff's ordinary consumers. (*See, e.g.*, Aff. of Shea Tarnow ("Tarnow Aff.") ¶ 6.) Other menu items that Lulu's Public House will be offering also contribute to the confusion ordinary consumers are likely to experience as to an affiliation, association, or connection between the Plaintiff and the Defendant. (Toliati Aff. ¶ 28.)

As a result of the consumer confusion caused by Defendant's use of the Lulu's name, the Plaintiff's owner has lost the ability to control the nature and the quality of the products that ordinary consumers associate with the Lulu's Market & Deli brand. (Toliati Aff. ¶¶ 30-32.) After learning that Lulu's Public House was causing the Plaintiff's ordinary consumers to be confused or mistakenly believe that there is an affiliation between the Plaintiff and the Defendant, Lulu's Market & Deli contacted the operators of Lulu's Public House to complain about its trademark infringement and unfair competition. In response, the Defendant has informed the Lulu's Market & Deli that it will continue to promote, advertise, and operate its food vendor business at the Minnesota State Fair using the name "Lulu's." (Toliati Aff. ¶ 33.) To protect itself from the irreparable harm that will result if the Defendant is allowed to move forward with its use of the Lulu's name, the Plaintiff has brought this lawsuit seeking *inter alia* injunctive relief prohibiting further unauthorized use of the Lulu's name by the Defendant.

### ARGUMENT

A temporary restraining order should be issued when "[i]t clearly appears . . . that immediate and irreparable injury, loss or damage will result to the applicant[.]" Minn. R. Civ. P. 65.01; *see also Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). The purpose of such relief is "to preserve the status quo until opportunity is afforded to decide the matter on the merits." *Prolife Minn. v. Minn. Pro-Life Comm.*, 632 N.W.2d 748, 753 (Minn. App. 2001). The

Minnesota Supreme Court has established five factors to guide a district court's discretion in considering a request for a temporary restraining order:

1. The nature and background of the relationship between the parties pre-existing the dispute giving rise to the request for relief;
2. The harm to be suffered by the plaintiff if the TRO is denied as compared to that inflicted on the defendant if the injunction issues pending trial;
3. The likelihood that one party or the other will prevail on the merits;
4. The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal; and
5. The administrative burdens involved in judicial supervision and enforcement of the TRO.

*Dahlberg Bros, Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314 (1965).

Minnesota courts have issued temporary injunctions in cases involving claims of common law unfair competition and trademark infringement. *See North Star State Bank of Roseville v. North Star Bank Minn.*, 361 N.W.2d 889 (Minn. App. 1985) (affirming the trial court's entry of a temporary injunction barring the defendant from referring to itself by an infringing name without clearly indicated distinguishing language).

Here, Lulu's Market & Deli is entitled to a temporary restraining order because (1) the irreparable harm that Lulu's will suffer in the absence of a temporary restraining order far outweighs any harm to the Defendant if such an order is granted; (2) Lulu's is likely to prevail on the merits of its claims; and (3) the parties' relationship, public policy and the administrative ease of enforcing the requested restraining order weigh strongly in favor of it.

**I. The Irreparable Harm to Lulu's Market & Deli Substantially Outweighs Any Harm to Lulu's Public House.**

The temporary restraining order and temporary injunction requested here would prevent irreparable harm to Lulu's Market & Deli. The record demonstrates that Lulu's Public House

will operate under a name that has already caused significant confusion among the Plaintiff's ordinary consumers. (Tolati Aff. ¶¶ 22-25.) If Lulu's Public House is allowed to move forward with its use of the Lulu's name, Lulu's Market & Deli will lose the valuable ability to control the nature and quality of its products that ordinary consumers will associate with its name.

Customers who have positive experiences at Lulu's Public House while mistakenly believing that it is affiliated with the Plaintiff's restaurant may later be disappointed to learn that the Plaintiff does not serve the exact items Lulu's Public House offers. One bad experience at a restaurant can poison the mind of the consumer against Lulu's Market & Deli. Customers who have a negative experience at Lulu's Public House and mistakenly believe it is affiliated with the Plaintiff will not patronize the Plaintiff's restaurant in the future. Unless the Court issues a temporary injunction, Lulu's Public House will also be able to derive business from consumers who mistakenly believe that they are supporting the Plaintiff's business. For example, due to the close proximity of the Plaintiff's store to the Minnesota State Fair, loyal Lulu's customers may opt to take the short trip to the Fair under the In this way, Lulu's Public House will be able to appropriate the goodwill and reputation the Plaintiff has worked for years to create based on reasons that have nothing to do with the merits of Lulu's Public House's own products and services.

The harm to Lulu's Public House of a temporary injunction will be minimal by comparison. The Plaintiff is asking the Court to issue an injunction that prohibits the Defendant from further use of the Lulu's name. The Defendant is certain to argue that the injunction should not issue because it will incur some additional costs in excising the name from its menus and other promotional material and otherwise complying with any injunction. However, such lost investments do not overcome a strong showing in favor of a temporary restraining order and

injunction. See *North Star State Bank*, 361 N.W.2d at 895 (rejecting the appellant’s argument that “[the plaintiff] demonstrated no more than a hypothetical potential for injury while appellant has spent \$62,000 advertising its new name and . . . logo and will necessarily spend more to satisfy the trial court’s order”). Thus, the balance of harms weighs heavily in favor of protecting the *status quo* by enjoining the Defendant from continuing to infringe on the Plaintiff’s valuable trademark.

## **II. Lulu’s Market & Deli Is Certain to Prevail on the Merits of its Common Law Unfair Competition and Trademark Infringement Claims.**

There are three elements that a plaintiff must prove in an action for unfair competition and infringement of a tradename:

(a) That plaintiff’s name has a special significance or secondary meaning in the trade;

(b) That plaintiff has an exclusive right, or a protectible interest in, the tradename with reference to his goods, service, or business and with reference to the territorial or special group market in which his tradename is used; and

(c) That defendant has unfairly used plaintiff’s tradename, or a confusing simulation thereof (although not necessarily with a fraudulent intent), whereby the ordinary purchaser, to plaintiff’s or the public’s detriment, has been, or is reasonably likely to be, deceived as to the true identity of the goods, services, or business, and is misled into believing that he is getting plaintiff’s products when he is in fact getting that of defendant.

*North Star State Bank v. North Star Bank Mn.*, 361 N.W.2d 889, 894 (Minn. App. 1985) (quoting *Howard Clothes, Inc. v. Howard Clothes Corp.*, 236 Minn. 291, 296-97, 52 N.W.2d 753, 757-58 (1952)). Lulu’s Market & Deli will prevail on the merits on each of these elements.

### **A. Lulu’s Market & Deli has a special significance or secondary meaning.**

Lulu’s Market & Deli will prevail on the merits of each of the elements of common law unfair competition and trademark infringement. First, Lulu’s Market & Deli is indeed a name with special significance or secondary meaning in the food service business. Minnesota law

distinguishes between types of marks in determining how much protection the mark will receive. *See Imported Auto Parts v. RB Shaller & Sons*, 258 N.W.2d 797, 799 (Minn. 1977); *North Star State Bank*, 361 N.W.2d at 894 (“Whether a business acquires a protectable trademark depends on the nature of the mark it adopts.”). A business that “selects a mark that is arbitrary with respect to its trade or merely suggestive of it . . . will establish common-law rights” with its first use of the mark. *Imported Auto Parts*, 258 N.W.2d at 799. Arbitrary marks are those which have “no relation to the nature of the product being sold” and receive the highest level of trademark protection. *North Star State Bank*, 361 N.W.2d at 895. Other categories of marks include: (a) the generic mark, which is afforded no trademark protection; (b) the descriptive mark, which “conveys an immediate idea of the . . . characteristics of goods [or services] and is only entitled to protection if it has acquired secondary meaning”; and (c) the suggestive mark, which “falls between the descriptive category and the arbitrary and fanciful category [and] is entitled to protection without proof of secondary meaning.” *North Star State Bank*, 361 N.W.2d at 894. “A secondary meaning attaches when a substantial number of prospective purchasers of the product associate the mark not with a characteristic of the product as sold by various companies but with the particular company that distributes the product under that mark.” *Imported Auto Parts*, 258 N.W.2d at 799.

The name Lulu’s Market & Deli combines the arbitrary term “Lulu’s” with descriptive elements “Market & Deli,” into a composite mark where, at a minimum, the “Lulu’s” portion of the name deserves the highest protection. *See, e.g., Sensient Tech. Corp. v. SensoryEffects Flavor Company*, 613 F.3d 754, 764 (8th Cir. 2010) (agreeing with district court that the “composite” mark combining “Sensient” with “Flavor” was deserving of protection for the fanciful term “Sensient”). The name Lulu’s is arbitrary; it has no direct or descriptive

relationship to the food items that Lulu's Market & Deli serves. It does not describe an ingredient or a characteristic of the type of products or services consumers receive when they visit the Plaintiff's restaurant. The Lulu's name is more prominently featured in the Lulu's Market & Deli logo than the other terms, which is used on the business's website, on its storefront awning, its advertising, and on its merchandise. (Toliati Aff. ¶ 17.) The Plaintiff has used the Lulu's name since it took over ownership of the Lulu's Market & Deli business, but the Lulu's name has been associated with the deli and market for nearly seventeen years. (Toliati Aff. ¶ 4.) Through the Plaintiff's consistent use of the name Lulu's Market & Deli in connection with its advertising, promotion, and marketing, many employees and customers know the Plaintiff's business by the shorthand "Lulu's." (Toliati Aff. ¶ 6.)

Because it combines an arbitrary mark with descriptive words, the Plaintiff's trade name, Lulu's Market & Deli, is similar to the plaintiff's trade name in *North Star State Bank* for which no proof of secondary meaning was required. In *North Star State Bank*, the Minnesota Court of Appeals affirmed the district court's conclusion that the term "North Star" was arbitrary because "it has no relation to the services offered by a bank." 361 N.W.2d at 894-95. The fact that the plaintiff combined that arbitrary name "North Star" with the more descriptive or generic terms "State Bank" did not affect the court's conclusion that no proof of secondary meaning was necessary. *Id.* at 895. As discussed above, the same is true of the Plaintiff's trade name in this case. "Lulu's" is arbitrary because it has no relation to the service of a restaurant or deli, and its combination with the more descriptive terms "Market & Deli" does not affect this conclusion.

For all these reasons, the Plaintiff will prevail on the merits on its unfair competition and trademark infringement claims because Lulu's Market & Deli has acquired rights in the Lulu's service mark that are deserving of the highest level of trademark protection.

**B. Lulu's Market & Deli Has an Exclusive Right or a Protectable Interest in the Lulu's Name with Reference to its Goods, Services, and Business and with Reference to the Territorial or Special Group Market in which the Lulu's Name is Used.**

The record demonstrates that Lulu's Market & Deli has an exclusive right and a protectable interest with reference to the food service business within the geographic area in which the Plaintiff uses the Lulu's name. As set forth above, the Plaintiff has submitted evidence demonstrating extensive efforts to market, advertise, and promote its business under the Lulu's name. Lulu's has been delivering its food products throughout the geographic area in which the Defendant's operation will be selling food during the Minnesota State Fair. (Toliati Aff. ¶ 9.) Lulu's has advertised and marketed itself in print, on the internet, and through social media since its new ownership took over in 2010. (Toliati Aff. ¶¶ 10-17.) Lulu's has also invested in print advertisements with professional sports teams' publications based in the Twin Cities. (Toliati Aff. ¶ 15.) These efforts have also included redesigning the logo that Lulu's uses on its website, its signage, and its promotional material to prominently feature the Lulu's name. (Toliati Aff. ¶ 18.) Lulu's has invested more than \$15,000 on advertising and marketing using the business's name since 2010. (Toliati Aff. ¶ 19.) Through these marketing and advertising efforts, and by virtue of the fact that it has not licensed, authorized, or given permission to the Defendant or any other business to use its name (Toliati Aff. ¶ 30), Lulu's Market & Deli will prevail on the merits in demonstrating that it has acquired an exclusive right and a protectable interest with respect to using the Lulu's name in connection with the sale of food in St. Paul, Minnesota. *See North Star State Bank*, 361 N.W.2d at 892, 895 (noting that the plaintiff, which had referred to itself by a specific name in advertising over several years and invested significant sums in advertising and marketing through various media outlets for a long period of time had a protectable interest in its trade name with respect to banking services).

**C. Lulu’s Public House is Using Lulu’s Market & Deli’s Tradename, in a Manner that Has Already Caused Actual Consumer Confusion and is Likely to Deceive the Ordinary Purchaser.**

The likelihood of confusion test is the hallmark of any trademark infringement claim.

Actual confusion is strong evidence that a plaintiff will succeed on the merits on a common law unfair competition and trademark infringement claim, and justifies the entry of a temporary restraining order and injunction. *See North Star State Bank*, 361 N.W.2d at 895 (concluding that “[t]he trial court did not err in assuming that the [plaintiff] would likely prevail with regard to the [likelihood of confusion element of an unfair competition and trademark infringement claim]”); *Northland Ins. Cos. v. Blaylock*, 115 F. Supp. 2d 1108, 1118 (D. Minn. 2000) (noting that “while actual confusion is not essential to a finding of infringement, its existence is positive proof of the likelihood of confusion”).

The evidence in this case of actual consumer confusion is both strong and widespread. Lulu’s Market & Deli’s owner explains that several customers have mistakenly congratulated him on entering the Minnesota State Fair after reading the newspaper account of the Defendant’s operation being a new food vendor at the Fair for 2014. (Toliati Aff. ¶¶ 22-23.) Lulu’s owner has also provided evidence that several individuals have mistakenly contacted him inquiring whether he could employ them at the Lulu’s Public House booth during the 2014 Minnesota State Fair. (Toliati Aff. ¶ 24.) Lulu’s owner estimates that between five and ten people per week have indicated confusion as to an affiliation, association, or confusion between Lulu’s Market & Deli and Lulu’s Public House since the Pioneer Press ran its June 26, 2014 story concerning the latter’s presence at the Minnesota State Fair (Toliati Aff. ¶ 22), which represents between forty and eighty ordinary consumers who have actually been confused.

Not only has Lulu's Market & Deli's owner described the confusion many ordinary consumers have experienced as a result of the Defendant's use of the Lulu's name, but several ordinary consumer who mistakenly believed that Lulu's Public House is affiliated, associated, or connected with the Plaintiff's restaurant have provided affidavits in response to a questionnaire explaining their reactions to learning that Lulu's Public House was entering the Minnesota State Fair. For example, one consumer, who heard about Lulu's Public House entering the State Fair through newspaper reports, the television, and the internet has indicated that he "thought Lulu's Public House entering the State Fair was affiliated and associated with the original Lulu's Market and Deli because the names were very similar[.]" (Aff. of Kevin McComas ("McComas Aff.") ¶¶ 5-6.) Other consumers provided similar accounts of learning about Lulu's Public House entering the Fair and believing that it was affiliated with the Plaintiff. (Aff. of Patrick Imholte ("Imholte Aff.") ¶¶ 5-6; Aff. of Steven Henry ("Henry Aff.") ¶¶ 5-6; Aff. of Mark Sewer ("Sewer Aff.") ¶¶ 5-6; Aff. of Aaron Zach ("Zach Aff.") ¶¶ 5-6.) Several of these affiants also stated that their confusion stemmed from the presence of similar menu items, including the "Breakfast Juicy LuLu" on Lulu's Public House's menu and its similarity to "The Fair Lucy," which is served by Lulu's Market & Deli. (Aff. of Shea Tarnow ("Tarnow Aff.") ¶ 6; Aff. of Evan Walde ("Walde Aff.") ¶ 6; Aff. of Richard H. Octavius III ("Octavius Aff.") ¶ 6.)

The foregoing instances of actual consumer confusion are likely to be repeated. Many of the affiants who have indicated their actual confusion as to a relationship between Lulu's Market & Deli and Lulu's Public House are already familiar with Lulu's Market & Deli's name, its store, and its menu. It is telling that these individuals could be misled as to an association between the Plaintiff and the Defendant even though they have a significant experience with the original Lulu's restaurant. The similarity of the name the Defendant has chosen to use at the

State Fair is striking, and unless the Plaintiff receives a temporary restraining order and injunction prohibiting the Defendant from using the Lulu's name, the Defendant's State Fair operation will continue deceiving consumers into believing that the Defendant's business is affiliated, associated, or connected with Lulu's Market & Deli. For all these reasons, the Plaintiff will prevail on the merits as to this element of common law unfair competition and trademark infringement.

**III. The Remaining *Dahlberg* Factors Weigh in Favor of a Temporary Restraining Order.**

The remaining *Dahlberg* factors also weigh heavily in favor of granting a temporary restraining order. The nature and background of the relationship between the parties is one where the Plaintiff has invested significant resources and effort over a period of several years in building the goodwill and reputation associated with the Lulu's name, whereas the Defendant acts as a recent interloper that stands to benefit not solely from its own hard work and investment, but from appropriating a name that any internet search would immediately reveal is associated with the Plaintiff's restaurant.

The administrative burdens upon the Court of enforcing a temporary restraining order and temporary injunction will be minimal. The Court will merely need to issue an order enjoining the Defendant's use of the name Lulu's in connection with its food service operations and address any disputes as to whether the Defendant complies with that injunction. This slight burden is warranted to protect the Plaintiff's economic interests and prevent the Plaintiff's brand from being misappropriated.

The public policy concerns in this case are self-evident. Both Minnesota and federal law protect entrepreneurs who make concerted efforts to use their intellectual property to grow a business. *See* 15 U.S.C. § 1125(a) (creating a civil cause of action for claims of false designation

of origin and false advertising); Minn. Stat. § 333.29 (providing remedies for trademark infringement including injunctive relief, the recovery of all benefits the defendant derives from the infringement, and/or any damages suffered by a party that registers a trademark with the state). That is exactly what the Plaintiff has done here with the Lulu's name. The Court should not permit the Defendant to piggy-back on the Plaintiff's hard work.

### **CONCLUSION**

For the foregoing reasons, the Plaintiff moves this Court for a temporary restraining order and a temporary injunction prohibiting the Defendant from further using the Lulu's mark in connection with its operations at the Minnesota State Fair.

Respectfully submitted,

Dated: August 22, 2014

s/ Paul Applebaum

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