

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:26-cv-26230-BLOOM

BURGER KING COMPANY LLC,

Plaintiff,

v.

J.F.M. 6090, INC.; JFM SPRING, LLC; JFM
SPARTA, LLC; and RANJANA JETHWA

Defendants.

**PLAINTIFF BURGER KING COMPANY, LLC'S MOTION FOR TEMPORARY
RESTRAINING ORDER OR, IN THE ALTERNATIVE, MOTION
FOR PRELIMINARY INJUNCTION**

Plaintiff Burger King Company, LLC (“BKC”), pursuant to Fed. R. Civ. P. 65(a) and (b), submits this Motion for Temporary Restraining Order or, in the Alternative, Preliminary Injunction, requesting that this Court enjoin Defendants J.F.M. 6090, Inc. (“JFM 6090”), JFM Spring, LLC (“JFM Spring”), JFM Sparta, LLC (“JFM Sparta”) and Ranjana Jethwa (“Jethwa”) (collectively “Defendants”) from violating post-termination restrictive covenants and unlawfully infringing on BKC’s trademarks (the “Marks”) and states:

INTRODUCTION

Defendants are former BURGER KING® franchisees who have refused to comply with their post-termination obligations to stop using BKC’s Marks and to refrain from operating a hamburger business. Specifically, in violation of their agreements with BKC and in violation of the Lanham Act, Defendants now operate their former BURGER KING® restaurants as “JUMBO KING BURGER” restaurants and continue to use BKC’s Marks on food packaging and other items. Customers have already expressed confusion regarding Defendants’ affiliation with BKC.

Defendants, who are fully aware of this lawsuit and BKC’s intent to seek a preliminary injunction, and who have already opposed BKC’s request for leave to file this action to obtain an injunction in related bankruptcy proceedings, are now evading service in an effort to avoid a preliminary injunction. Despite that BKC has diligently attempted to serve Defendants, including Jethwa who is listed as the registered agent for two of her companies, at the addresses registered by Defendants (which are the same addresses recently used on their bankruptcy forms), BKC has been unable to effectuate service because the corporate Defendants do not have offices or agents at the addresses they designated, Defendant Jethwa is evading service and Defendants’ various attorneys in New Jersey (who are currently representing Defendants in related matters) have stated that they are not authorized to accept service or simply ignore BKC’s communications regarding

service. Defendant Jethwa has also ignored BKC's attempts to contact her directly and hung up on BKC's process servers. Defendants should not be allowed to avoid complying with their obligations and the law by making service impossible.¹

Clearly, absent a temporary restraining order or injunction from this Court, Defendants will continue to violate BKC's trademark rights and Defendants' restrictive covenants. Given that Defendants are fully aware of these proceedings but have successfully evaded service, and given the irreparable harm BKC is currently suffering, a temporary restraining order should be entered.

FACTUAL BACKGROUND²

A. The Parties, BKC's System and BKC's Trademarks

BKC is engaged in the business of operating a system of company-owned and franchised BURGER KING® restaurants. [Ex. A, Mencia Decl. at ¶ 3]. To identify the source and sponsorship of BKC's facilities and products, BKC has advertised trademarks, including "BURGER KING," and the BURGER KING & Hamburger Refresh Design  (the "Bun Mark") [Ex. B, Griffith Decl. at ¶¶ 3-4]. BKC's marketing, including on social media sites and its website, has created widespread recognition and goodwill for its restaurants. [Ex. A, at ¶ 12].

BKC grants franchisees a limited license to use the Marks, but only in such manner and times authorized by BKC. [*Id.* at ¶ 13]. In no event is a licensee authorized to use the Marks after the expiration or termination of its franchise agreement or license agreement. [*Id.* at ¶ 14].

BKC has developed a comprehensive operating system (the "System") in order to protect

¹ As explained in BKC's counsel's declaration [Ex. J, Blynn Decl.] and as described below, BKC has been diligently attempting to serve Defendants and have even asked Defendants and attorneys representing Defendants in connection with their bankruptcies and their efforts to register "Jumbo King Burger" as a trademark to accept service or to arrange for Defendants to waive service.

² This Court has jurisdiction based upon Section 39 of the Lanham Act, 15 U.S.C. § 1121, and 28 U.S.C. §§ 1337, and 1338(a), the doctrine of supplemental jurisdiction. Venue is proper pursuant to 28 U.S.C. § 1391 and the forum selection clause is the parties' written agreements.

the image of the BURGER KING® restaurants and to ensure high-quality standards. [*Id.* at ¶ 16]. The detailed standards are set forth in BKC’s Operating Standards Manual (the “Manual”). [*Id.* at ¶ 17]. The Manual sets forth the mandatory operating specifications, including rules governing food preparation, quality, and service. [*Id.* at ¶ 18]. The Manual contains confidential information a franchisee is permitted to have only during the term of their license. [*Id.* at ¶ 19].

Defendants JFM 6090, JFM Spring and JFM Sparta (collectively the “Corporate Defendants”) were formerly franchisees for numerous BURGER KING® restaurants in New York and New Jersey pursuant to franchise agreements. [*Id.* at ¶¶ 6-8]. Through her entry into a settlement agreement with BKC, Defendant Jethwa agreed to be personally bound by the franchise agreements’ terms. [*Id.* at ¶ 9]. She also personally guaranteed JFM Spring’s and JFM Sparta’s obligations pursuant to guaranty agreements (the “Guaranties”). [*Id.*; Ex. C, Guaranty].

JFM 6090 previously owned BURGER KING® restaurant No. 6090 located at 12-14 Spruce Street, Paterson, New Jersey (the “Paterson Restaurant”) pursuant to a February 26, 2015, franchise agreement (the “Paterson FA”). [*Id.* at ¶ 6]. A copy of the Paterson FA is attached as Exhibit “D.” [*Id.*]. JFM Sparta owned BURGER KING® restaurant No. 1877 located at 49 Sparta Avenue, Sparta, New Jersey 07871 (the “Sparta Restaurant”) pursuant to a franchise agreement dated July 13, 2015 (the “Sparta FA”). [*Id.* at ¶ 7]. A copy of the Sparta FA is attached as Exhibit “E.” [*Id.*]. JFM Spring owned BURGER KING® restaurant No. 10481 located at 160 Spring Valley Marketplace, Spring Valley, New York 10977 (the “Spring Valley Restaurant”) (the Paterson Restaurant, Sparta Restaurant and Spring Valley Restaurants shall be referred to as the “Restaurants”) pursuant to a franchise agreement dated July 27, 2015 (the “Spring Valley FA”) (the Paterson FA, the Sparta FA and the Spring Valley FA are referred to as the “FAs”). [*Id.* at ¶ 8]. A copy of the Spring Valley FA is attached as Exhibit “F.” [*Id.* at ¶ 8].

Each FA states that Defendants’ right to use the Marks ends when the FA expires and that, upon the expiration of the FAs, Defendants were obligated to return the Manual, refrain from using the Marks and to de-identify the Restaurants. [*Id.* at ¶ 14; Exs. 1-3 to Mencia Decl. at §§ 18.B.].³ Each of the FAs contain a covenant not to compete stating: “Franchisee further covenants and agrees that for a period of one (1) year after any . . . termination or expiration of this Agreement, these entities will not own, operate or have any interest in any hamburger business . . . either at or within two (2) miles of the Premises.” [*Id.* at ¶ 21-22; Exs. 1-3 to Mencia Decl. at § 19].

B. The Termination of the Franchise Agreements and the Entry of the Settlement

To resolve disputes between BKC and Defendants, on July 31, 2023, BKC and Defendants entered a settlement agreement (the “Settlement”). [*Id.* at ¶ 32; Ex. “6” to Mencia Decl.]. A true and correct copy of the Settlement is attached as Exhibit “G.” [*Id.* at ¶ 32; Ex. 6 to Mencia Decl.].

Pursuant to the Settlement, each of the FAs was deemed terminated. [Ex. G, Settlement at § II.A.]. Defendants were, however, given a temporary license to operate the Restaurants in accordance with the FAs through a date certain (the “Sale Date”) to give them an opportunity to sell the Restaurants. [*Id.* at § II.B.]. The Sale Date was originally May 31, 2025. [*Id.*]. On June 3, 2025, the Settlement was amended to extend the Sale Date to July 30, 2025. [Ex. A, Mencia Decl. at ¶ 36; Ex. “7” to Mencia Decl. at § 2]. On September 3, 2025, the Sale Date was extended by amendment to September 30, 2025. [*Id.* at ¶ 37; Ex. “8” to Mencia Decl. at § 2]. The Sale Date was extended to April 1, 2026, by a March 13, 2026, email. [*Id.* at ¶ 38; Ex. “9” to Mencia Decl.].

C. The Expiration of the Settlement and Defendants’ Post-Term Misconduct

Defendants did not sell the Restaurants by the April 1, 2026, Sale Date. [*Id.* at ¶ 39]. On April 2, 2026, BKC informed Defendants that they were in default of the Settlement but were

³ The relevant terms of each of the FAs are identical. [Ex. A, Mencia Decl. at ¶ 8].

being provided a cure period of 60 days (i.e. by June 1, 2026). [*Id.* at ¶ 40; Ex. 10 to Mencia Decl.].

Before 60 days expired, each of the Corporate Defendants filed for bankruptcy. [*Id.* at ¶ 41]. On May 5, 2026, JFM 6090 and JFM Sparta each filed for chapter 11 bankruptcy in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”) and on May 11, 2026, JFM Sparta filed for chapter 11 bankruptcy in the Bankruptcy Court. [*Id.* at ¶ 42]. Due to the bankruptcy filings (the “Bankruptcy Proceedings”), and by operation of section 108(b) of the Bankruptcy Code, the rights of JFM 6090 and JFM Spring to operate as Burger King® licensees expired on July 4, 2026, and the right of JFM Sparta to operate expired on July 10, 2026.

Following the termination of the Settlement, all of the Defendants continued to operate the Restaurants as if they were BURGER KING® restaurants. [*Id.* at ¶ 43]. Recently, Defendants have begun operating each of the Restaurants as “Jumbo King Burger” restaurants, but continue to use BKC’s Marks. [*Id.* at ¶¶ 44-45]. For example, as of September 2, 2026, Defendants served food in packaging bearing the famous “Bun Mark” and provided receipts which bear the Bun Mark and the WHOPPER® mark. [*Id.* at ¶ 45; Ex. “11” to Mencia Decl.].

Additionally, from their “Jumbo King Burger” restaurants (located at the same address as before), Defendants sell almost all of the same items (mostly with different names) that they sold previously as BURGER KING® franchisees. [*Id.* at ¶ 46]. For example, while BKC’s franchisees, Defendants were permitted to sell the “Bacon King” burger, they now offer and sell the “Jumbo King Bacon” burger. [*Id.*; Ex. “12” to Mencia Decl.].

Defendants have adopted the following website in connection with the operation of their competing “Jumbo King Burger” restaurants: www.jumbokingburgers.com (“Defendants’ Jumbo King Website”). [*Id.* at ¶ 47; Ex. “13” to Mencia Decl.]. Defendants also market their restaurants on social media sites such as Instagram (@jumbokingburger). [*Id.* at ¶ 48; Ex. 14 to Mencia Decl.].

Members of the consuming public have expressed confusion regarding the relationship between Defendants' "Jumbo King Burger" restaurants and the BURGER KING® brand, with some expressing a belief that Defendants' "Jumbo King Burger" restaurant in Paterson, New Jersey, is still a BURGER KING® restaurant which changed its signage as part of the production of a new movie. [*Id.* at ¶ 49]. For example, one user on TikTok posted a video of Defendants' Paterson Jumbo King Burger restaurant and wrote "I was trying to figure out 'what was going on here?' However on August 17, 2026, **Burger King temporarily changed their name** to fit a set design for a movie they are filming in our city. Look out for 'Jumbo King Burger' in Adam Sandler's new movie Grown Ups 3." [*Id.* at ¶ 50; Ex. 15 to Mencia Decl. (emphasis added)].⁴

Another TikTok user posted a video which depicts Defendants' Paterson "Jumbo King Burger" restaurant and claims that it is being used for a movie, but reflecting a belief that the restaurant remained a BURGER KING® restaurant, the user wrote "**[t]he restaurant is expected to revert to its standard Burger King branding** once the film crew wraps up production." [*Id.* at ¶ 51; Ex. 16 to Mencia Decl. (emphasis added)]. The referenced TikTok video is available at https://www.tiktok.com/@sakinahstudio_1/video/7677637155988049182. [*Id.*].⁵

Moreover, an individual posted a video from one Defendants' restaurants during which, while looking at the menu board, the poster states "I think that it's just like a normal Burger King but they changed the name." [*Id.* at ¶ 53]. Later when standing outside of the restaurant, the poster states: "[s]o its really just a normal Burger King, I kid you not." [*Id.*]. At the end of the video, the

⁴ The referenced TikTok video is available at: https://www.tiktok.com/@princess_mommy.5/video/7674971999386471710. [*Id.* at ¶ 50].

⁵ Another visitor to Defendants' Paterson "Jumbo King Burger" posted a video which states "Burger King in Paterson is called Jumbo Burger King." [*Id.* at ¶ 52; Ex. 17 to Mencia Decl.]. The referenced TikTok video is available at: <https://www.tiktok.com/@jani.talks.alot/video/7672215383075523870>. [*Id.* at ¶ 52].

poster films an outdoor trash can which bears BKC's  trademark and notes that he found something that still says "Burger King." [*Id.*]. The TikTok video is available at: https://www.tiktok.com/@theyfwsher_42/video/7673647345338256653. [*Id.*].

D. The Bankruptcy Proceedings and the Stay Relief

On August 14, 2026, BKC filed a Motion for Relief from Automatic Stay to Seek Injunctive Relief with the Bankruptcy Court. On August 23, 2026, the Corporate Defendants filed their opposition. On September 3, 2026, the Bankruptcy Court entered an Order lifting the automatic stay so that BKC could pursue an injunction from this Court. [Exhibit "H"].

ARGUMENT

A. BKC Satisfies the Requirements for a TRO and a Preliminary Injunction

"To prevail on a motion for a preliminary injunction, a plaintiff must establish: (1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998).

"Additionally, a court may only issue a temporary restraining order without notice to the adverse party or its attorney if: (A) specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury . . . will result to the movant before the adverse party can be heard in opposition [and] (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required." *Gucci Am., Inc. v. 99storeonline*, No. 14-62748, 2014 WL 11716169, at *2 (S.D. Fla. Dec. 8, 2014) (Bloom J.).

Here, as explained below and in Mencia's Declaration, BKC has and will continue to suffer irreparable injury [Ex. A, Mencia Decl. at ¶¶ 23-30 and 45-61] and as explained in further detail

in BKC's counsel's declaration, having already opposed BKC's request for relief from the automatic stay to even file this action, Defendants are fully aware of this action and BKC's intent to seek injunctive relief. [Ex. J, Blynn Decl. at ¶¶ 4-11]. Additionally, BKC has been diligently attempting to serve Defendants, including by asking Defendants themselves, and their various attorneys (including their present bankruptcy and trademark lawyers), to accept service. [*Id.* at ¶¶ 12-26]. BKC was previously unable to effectuate service because the Corporate Defendants' registered agents' offices no longer exist (and may have never existed)⁶ and Defendant Jethwa, who refuses to answer BKC's counsel's calls and who answers calls from BKC's process servers, but hangs up on them after they identify themselves, appears to be evading service. [*Id.*]. Courtesy copies of this Motion are being sent to Defendants by email, federal express and courier to the addresses listed on their bankruptcy forms and to the Restaurants and courtesy copies are being sent to Defendants' attorneys. [*Id.* at ¶¶ 27-33]. See *WhiteSource Software, Inc. v. Coscina*, 2021 WL 1259215, at *2 (S.D. Fla. Apr. 2, 2021) (Rule 65(b)(1)'s requirements satisfied where movant established defendants were aware of the lawsuit and motion and that defendants were likely evading service); *Xu v. Lai*, No. 25-02587, 2025 WL 3049594, at *1 (C.D. Cal. Sept. 5, 2025) (same); *Ashmore v. Carr*, No. 12-434, 2012 WL 1032548, at *1 (D.S.C. Mar. 27, 2012) (same).

B. BKC is Entitled to a TRO or Preliminary Injunction to Enforce the Franchise Agreements' Covenants not to Compete

1. BKC Will Prevail on its Breach of Restrictive Covenant Claim⁷

A restrictive covenant is enforceable if it "is reasonable in time, area and line of business"

⁶ Notably, the person listed by Defendant JFM 6090 as its registered agent is deceased and despite that he passed away in December of 2018, Defendant JFM 6090 has not replaced him as its registered agent to accept service of process. [Ex. J, Blynn Decl. at ¶ 18]. A copy of the summons and complaint have been given to JFM Sparta's manager at the Sparta Restaurant. [*Id.* at ¶ 30].

⁷ Florida law governs. [Ex. G, Settlement at 10, VIII.A.; Exs. D-F, Franchise Agreement at § 19].

and seeks to protect “one or more legitimate business interests” including but not limited to the protection of: (1) valuable confidential business or professional information that otherwise does not qualify as trade secrets; and (2) customer goodwill. Fla. Stat. § 542.335(1)(b)(2.)-(4.). “Florida law particularly recognizes covenants not to compete arising from franchise agreements.” *R.J. Gators Franchise Sys., Inc. v. MBC Rests., Inc.*, 2005 WL 4655379, at *4 (M.D. Fla. Nov. 9, 2005).

Here, the scope of the FAs’ covenants not to compete are reasonable in geographical scope (within two miles of the Restaurants) and duration (one year). Florida Statute § 542.335(1)(d)(2.) expressly provides that restrictive covenants in franchise agreements that are one year or less are presumed to be reasonable, and courts consistently find franchise agreements’ covenants not to compete with the same or even greater geographical and temporal scopes to be reasonable. *FLSC Recycling, LLC v. OC Textile Recycling, Inc.*, No. 22-20081, 2022 WL 21778323, at *4 (S.D. Fla. Mar. 30, 2022) (franchise agreement’s three-year and 25-mile non-compete reasonable); *HRB Green Res., LLC v. Leonard*, No. 18-478, 2018 WL 3390345, at *1-2 (M.D. Fla. Apr. 18, 2018) (franchise agreement’s 50-mile scope reasonable); *7-Eleven, Inc. v. Kapoor Bros., Inc.*, 977 F. Supp. 2d 1211, 1228-29 (M.D. Fla. 2013) (franchise agreement’s one-year covenant reasonable).

BKC has pled and proven multiple legitimate business interests including protecting confidential information, protecting the goodwill associated with the System and its Marks, furthering the re-franchising of the territory, protecting neighboring franchisees and protecting its franchise system as a whole. [Ex. A, Mencia Decl. at ¶¶ 23-30]. See *The Filta Group, Inc. v. LXU, Ltd.*, No. 25-00914, 2025 WL 3718465, at *4 (M.D. Fla. Dec. 23, 2025) (enjoining former franchisee from violating non-compete and finding franchisor had legitimate interests in protecting marks and goodwill, preventing unauthorized use of confidential information and observing that without injunction it would be more difficult or impossible to re-franchise territory of terminated

franchisee); *U.S. Lawns, Inc. v. Landscape Concepts of CT, LLC*, No. 16-929, 2016 WL 9526340, at * (M.D. Fla. Oct. 31, 2016) (franchisor had legitimate interest in protecting viability of franchise system, preventing previous franchisees from breaching their franchise agreements and protecting goodwill); *Medi-Weightloss Franchising USA, LLC v. Las Colinas Medi Weightloss Clinics, LLC*, No. 13-990, 2013 WL 12122070 (M.D. Fla. Sept. 4, 2013) (franchisor's interests in protecting its ability to re-franchise territory and protecting its right to ensure continued compliance with its agreements by other franchisees deemed legitimate business interest).

Here, Defendants never stopped operating burger restaurants following the termination of their license. As a result, BKC will prevail on its breach of contract claims.

2. Without a TRO or Injunction BKC Will Suffer Irreparable Harm

“The Eleventh Circuit deems injunctions the normal and favored remedy for violations of [franchise agreement's] restrictive covenants because monetary damages are typically quite difficult to establish and often cannot adequately compensate for that type of breach.” *Bahia Bowls Franchising, LLC v. DJS, LLC*, No. 23-94, 2023 WL 2303048, at *5 (M.D. Fla. Mar. 1, 2023).

“[T]he violation of an enforceable restrictive covenant creates a presumption of irreparable injury . . .” Fla. Stat. § 542.335(1)(j); *Filta*, 2025 WL 3718465, at *7 (franchisor entitled to presumption of irreparable harm). Here, given that BKC has established the breach of the FAs' covenants not to compete, BKC is entitled to the presumption of irreparable harm.

Even without the presumption, BKC has demonstrated that it has and will continue to suffer irreparable harm. Namely, BKC and neighboring authorized BURGER KING® franchisees will have to compete with a former franchisee who agreed not to engage in such competition, will lose the exclusivity and confidentiality of its confidential information, will suffer dilution and confusion associated with its Marks and will not be able to enforce its agreements with other franchisees who will see that they too can get away with violating the non-compete. *See Bahia*

Bowls, 2023 WL 2303048, at *4 (irreparable harm where franchisor forced to compete with franchisee who agreed not to compete); *Medi-Weightloss*, 2012 WL 260902, at *5 (irreparable harm if terminated franchisee permitted to operate competing business); *Caring Senior Serv. Franchise P'ship L.P. v. Batson*, 2006 WL 8442200, at *5 (E.D. Tenn. July 7, 2006) (irreparable harm if noncompete not enforced because “[s]uch a situation could suggest to other franchisees that noncompete provisions of their franchise agreement are of no effect”).

3. The Balance of Harms Weighs in Favor of BKC

“Generally, a franchisee that has breached the terms of its franchise agreement cannot then complain of harm from an injunction preventing further violations of the agreement.” *Bahia Bowls*, 2023 WL 2303048, at *5. Here, compared to BKC’s irreparable harm described above, Defendants will be unable to show any harm if the Court enjoins them from further violating the non-compete since any harm would be self-inflicted. *See HRB Green*, 2018 WL 3390345, at *2 (“If an injunction is issued, [Defendants] will be required to adhere to the terms of the [Franchise Agreement] . . . a sacrifice [Defendants] agreed to in good faith when entering into the [Franchise Agreement]”).

4. A TRO or Injunction Will not be Adverse to the Public Interest

“A preliminary injunction [to enforce a non-compete] will not be adverse to the public interest because it will encourage parties to adhere to contractual obligations.” *PWG*, 2015 WL 12684458, at *5. “As Florida has recognized by the enactment of section 542.335, there is an especially strong public interest in enforcing restrictive covenants, as that promotes legitimate business.” *7-Eleven*, 977 F. Supp. 2d at 1230.

5. The Injunction Should Last From One-Year From This Court’s Order

Defendants have previously taken the position that an injunction should not issue because, according to Defendants, any injunction could only last through September 30, 2026. Defendants’ position is neither legally nor factually supportable. First, Defendants’ license to operate BURGER

KING® restaurants did not end on September 30, 2025, but instead on July 4, 2026 (for JFM 6090 and JFM Spring) and July 10, 2026 (for JFM Sparta). [Ex. A, Mencia Decl. at ¶¶ 35-42]. Indeed, the Corporate Defendants acknowledged that the license expired in July 2026 when they stated in a July 20, 2026 filing with the Bankruptcy Court that their license with BKC “expired in July 2026.” [Ex. I, Second Amended Disclosure Statement, at 15].

Even if Defendants’ license to operate ended on September 30, 2025, “[c]ourts have equitably extended the expiration date of a non-competition provision to ensure enforcement for the originally contemplated length.” *Frye v. Wild Bird Ctrs. of Am., Inc.*, 237 F. Supp. 3d 302, 310 (D. Md. 2017) (franchisor entitled to full 24-month term of franchise agreement’s covenant not to compete, even though more than 24 months had passed since franchise agreement terminated, because franchisee had not previously complied with non-compete); *Home Point Fin. Corp. v. Lane*, 2022 WL 22866392, at *3 n.2 (M.D. Fla. Dec. 14, 2022) (“[i]t would be stunningly unfair if the law held that a valid [restrictive covenant] could be nullified because the [it] was devoured by the time it took for the Court to enforce the restraint”). The “[f]ailure to enforce such provisions for the originally agreed-upon time period would reward the breach of contract, encourage protracted litigation and provide an incentive to dilatory tactics.” *Frye*, 237 F. Supp. 3d at 310.

C. BKC is Entitled to a TRO or Injunction to Stop Defendants’ Infringement

1. BKC Will Prevail on its Trademark Infringement Claims

The Lanham Act “creates a claim for trademark infringement when a trademark holder can demonstrate that the use of its trademark by another is likely to confuse consumers as to the source of the product.” *Burger King Corp. v. E-Z Eating 8th Corp.*, 2008 WL 384554, at *1 (S.D. Fla. Feb. 11, 2008). As to Count 1 for trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114, infringement “occurs when a defendant, without consent, uses ‘in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark’ that ‘is likely to cause

confusion’ that a relationship exists between the parties.’” *FCOA LLC v. Foremost Title & Escrow Servs. LLC*, 57 F.4th 939, 946 (11th Cir. 2023). “For a trademark infringement claim, a plaintiff must demonstrate (1) that it owns a valid mark with priority,⁸ and (2) that the defendant's mark is likely to cause consumer confusion with the plaintiff's mark.” *Id.*⁹ A trademark infringement claim is established so long as the trademark was employed in a manner that was likely to cause confusion. *See Burger King Corp. v. Mason*, 710 F.2d 1480, 1491-92 (11th Cir. 1983).

(1) There is a Great Likelihood of Confusion

To determine whether marks are likely to be confused, seven factors are considered: (1) the type of mark; (2) the similarity of the marks at issue; (3) the similarity of the services the marks represent; (4) the similarity of the parties’ outlets and customers; (5) the nature and similarity of the parties’ advertising media; (6) the defendant’s intent; and (7) any actual confusion. *You Fit, Inc. v. Pleasanton Fitness, LLC*, No. 12-1917, 2013 WL 521784, at *2 (M.D. Fla. Feb. 11, 2013). Here, every one of these factors heavily favor a finding of a likelihood of confusion.

i. BKC’s Marks are Strong and Afforded Great Protection

“There are four recognized types of marks, ranging from weakest to strongest: generic, descriptive, suggestive and arbitrary. The stronger the mark, the greater the scope of protection accorded it.” *Aronowitz v. Health-Chem Corp.*, 513 F.3d 1229, 1240 (11th Cir. 2008). This Court long ago found that BKC’s Marks, including BURGER KING®, are “arbitrary” marks. *See Burger*

⁸ There is no dispute that BKC owns valid Marks which, at this point, are incontestable. [Ex. B, Griffith Decl. at ¶¶ 3-7]. 15 U.S.C. § 1065. As a result, BKC’s registrations are conclusive evidence of BKC’s right to exclusive use of the Marks. 15 U.S.C. §§ 1057(b) and 1115(a).

⁹ As to Count II, “[t]he same facts which would support an action for trademark infringement [under section 32(1)] would also support an action for unfair competition [under section 43(a)].” *John H. Harland*, 711 F.2d at 981. And as to Counts III and IV for common law trademark infringement and unfair competition under Florida law, the analysis is substantially the same. *Popeyes*, 2024 WL 1564668, at *7.

King Corp. v. Hall, 770 F. Supp. 633, 637 (S.D. Fla. 1991) (holding BKC’s Marks, including BURGER KING®, are “highly fanciful, arbitrary in their selection” and “enjoy a distinctiveness and recognition which sets them apart as having BKC as their source”); *Burger King Corp. v. Majeed*, 805 F. Supp. 994, 1002 (S.D. Fla. 1992) (same).¹⁰ Given that BKC’s Marks, including BURGER KING®, are arbitrary, they are accorded heightened protection.

ii. There has Been Actual Confusion

Although “actual confusion is the best evidence of likelihood of confusion,” “[e]vidence of actual confusion is not necessary in order to find a likelihood of confusion.” *Preferred Care Partners, Inc. v. PartnerCare Health Plan, Inc.*, No. 07-20593, 2007 WL 9709724, at *11 (S.D. Fla. June 6, 2007). For example, in finding a likelihood of confusion, the *You Fit* court observed that an internet posting on www.yelp.com demonstrated that at least one consumer was actually confused about the difference between franchisor’s “You Fit” gyms and former franchisee’s competing “Fit U” gyms. *You Fit*, 2013 WL 521784, at *4. The court observed that the posts were “indicative of potential consumer confusion” so that the confusion factor weighed in favor of a finding of a likelihood of confusion. *Id.* at *5.

Here, like in *You Fit*, there are multiple posts on social media, such as TikTok, reflecting actual confusion between BKC and Defendants’ “Jumbo King Burger” restaurants. For example, members of the public have stated their belief that Defendants’ “Jumbo King Burger” restaurant in Paterson is still a BURGER KING® restaurant, that its name and signage were temporarily changed to facilitate the production of a movie, and that the restaurant will be returned to its prior

¹⁰ At worse, BURGER KING® is a suggestive mark because a consumer must, at the very least, “use imagination or any type of multistage reasoning to understand the mark’s significance . . . [.] the mark does not *describe* the product’s features, but *suggests* them.” *You Fit*, 2013 WL 521784, at *3.

BURGER KING® image at a later date. [Ex. A, Mencia Decl. at ¶¶ 49-53].¹¹ Thus, the second factor weighs heavily in favor of the entry of a preliminary injunction in BKC’s favor.

It is also well-established that there is an extremely strong risk of customer confusion where, as here, a terminated franchisee continues to operate a previously franchised restaurant and uses a franchisor’s trademarks. *Burger King*, 710 F.2d at 1492-93 (“[c]ommon sense compels the conclusion that a strong risk of consumer confusion arises when a terminated franchisee continues to use the former franchisor’s trademarks . . . Consumers automatically would associate the trademark user with the registrant and assume that they are affiliated); *E-Z Eating*, 2008 WL 384554, at *1 (stating that “[w]hen a terminated [Burger King] franchisee continues to use [BKC’s] trademarks, a strong risk of consumer confusion arises”). Here, given that Defendants continue to use some of the exact same Marks at their “Jumbo King Burger” restaurants that they did as licensed BURGER KING® franchisees [Ex. A, Mencia Decl. at ¶ 45; Ex. 11 to Mencia Decl.], the second factor again weighs heavily in favor of the entry of a preliminary injunction.

iii. There is a Great Similarity Between the Marks

It is undeniable that the parties’ respective marks are highly similar visually, aurally and in terms of overall commercial impression. Indeed, a mere side-by-side comparison of the marks demonstrates their confusing similarity. “BURGER KING” and “JUMBO KING BURGER” are plainly very similar marks. Although the inclusion of the word “Jumbo” and the inversion of “Burger” and “King” in Defendants’ mark provides a slightly different appearance from BKC’s Mark, “a holistic examination of the marks reveals that they are very similar.” *You Fit*, 2013 WL 521784, at *4-5 (observing that “YOUFIT” and “Fit U” “are plainly very similar marks”)

Defendants’ practice of simply inverting the words “Burger” and “King” does not change

¹¹ This Court may consider hearsay on a motion for preliminary injunction. *Id.* at *5.

the fact that their marks remain confusingly similar to BKC's BURGER KING® mark. *See Rustica Franchise Co. v. Rusticana Pizza & Restaurant Corp.*, No. 08-80316, 2008 WL 11331769, at *3 (S.D. Fla. Apr. 21, 2008) (finding marks confusingly similar where defendant's "Rusticana Pizza" mark only "transposed" the two words of plaintiff's "Pizza Rustica" mark and added a letter); *Preferred Care Partners*, , 2007 WL 9709724, at *9 (entering injunction and concluding likelihood of confusion between "Preferred Care Partners" and "PartnerCare" marks because "both marks contain the words 'partner' and 'care,'" noting that "a senior or disabled individual reading the parties' advertisements could easily transpose the words 'partner' and 'care,'" and stating that although plaintiff's mark included the extra word "preferred," the word "merely modifies the terms 'care' and 'partners'"); *N.Y. State Elec. & Gas Corp. v. U.S. Gas & Elec., Inc.*, 697 F. Supp. 2d 415, 432-33 (W.D.N.Y. 2010) (finding "New York State Electric & Gas" and "New York Gas & Electric" to be confusingly similar because the only difference between them are the omission of the word "state" and the transposition of the words). Thus, this factor favors an injunction.

iv. There is a Great Similarity of the Services, Service Outlets and Customers

With respect to the third and fourth factors, "[t]he greater the similarity between the products offered by the parties, the more likely that confusion will result between their respective trademarks." *Preferred Care*, 2007 WL 9709724, at *9 (finding likelihood of confusion where plaintiff and defendants offered similar medicare plans that focused specifically on the participation of doctors in the management of their companies). Likewise, this factor "takes into consideration where, how and to whom the parties' products are sold." *Id.* at *10.

Following the rebranding of the Restaurants to "Jumbo King Burger," Defendants have continued to offer almost all of the same products and services, to the same customer base (i.e., consumers of quick service restaurants), from the exact same locations from which they operated their BURGER KING® restaurants. [Ex. A, Mencia Decl. at ¶¶ 43-46]. This factor weighs heavily

in favor of a likelihood of confusion. *See You Fit*, 2013 WL 521784, at *5.

v. There is a Great Similarity of the Parties' Advertising Media

“This factor focuses on each party’s method of advertisement and whether there is likely to be a significant overlap in the readership of the publications in which the parties advertise that a possibility of confusion could result.” *Preferred Care*, 2007 WL 9709724, at *10. If advertisements are disseminated via the same media and target the same segment of the population then there is a possibility of confusion. *Id.* Here, the similarity of advertising media factor weighs heavily in favor of a likelihood of confusion. Both BKC and Defendants utilize websites and social media platforms such as Instagram to market their businesses. [Ex. A, Mencia Decl. at ¶¶ 11-12 and 47-48].

vi. Defendants Clearly Intended to Copy BKC’s Marks

“If the defendant intentionally and in bad faith chose a trademark to derive a benefit from the plaintiff’s business reputation, then this factor may be enough to justify the inference of confusing similarity.” *Id.* “The defendant’s knowledge of the plaintiff’s mark is demonstrative of bad faith . . .” *Id.* Given that Defendants are former franchisees who previously utilized BKC’s Marks, Defendants cannot pretend that their adoption of similar marks was unintentional. Defendants could have chosen to adopt any new name for their restaurants but chose to adopt a name which shares two out of the three same words as BURGER KING® and Defendants offer almost all of the same products as BKC, sometimes with nearly the same name (such as Defendants’ “King Bacon,” compared to BKC’s “Bacon King”). As a result, this Court should have no difficulty determining that Defendants’ intent to copy.

2. BKC Will Suffer Irreparable Harm From Defendants’ Infringement

As an initial matter, based on the Trademark Modernization Act of 2020, given that BKC has established a likelihood of success on its infringement claims, BKC is entitled to a rebuttable

presumption of irreparable harm. *See* 15 U.S.C. § 1116(a); *Filta*, 2025 WL 3718465, at *4 (franchisor entitled to presumption of irreparable harm on its trademark claims).

Even without the presumption, BKC's loss of the ability to control the quality of the goods and services being offered under its Marks, as well as consumers' confusion with regard to whether Defendants' Restaurants are affiliated with or sponsored by BKC, results in irreparable harm. [Ex. A, Mencia Decl. at ¶¶ 55-61]. Consumers will attribute any difference or shortfall in the quality in Defendants' goods and services to BKC since the products and services are sold under Defendants' confusingly similar mark, and using BKC's actual Marks, which suggests sponsorship by BKC. [*Id.*]. As a result, Defendants' use of the Marks creates the likelihood of damage to BKC's reputation and goodwill, and ultimately a loss of customers, the amounts of which are incalculable.¹² [*Id.*]. *Ferrellgas Partners, L.P. v. Barrow*, 143 F. App'x 180, 190 (11th Cir. 2005) (stating that "[g]rounds for irreparable injury include loss of control of reputation, loss of trade, and loss of goodwill. Irreparable injury can also be based upon the possibility of confusion").

3. The Balance of Harms Tips Heavily in Favor of an Injunction

Clearly, the threatened harm to BKC outweighs any harm Defendants may suffer from the grant of injunctive relief. "[C]ourts in this and other circuits have found that a franchisee that has breached the terms of its franchise agreement cannot complain of the harm it would suffer if a court enjoins it from the continued use the franchisor's trademarks." *Popeyes Louisiana Kitchen, Inc. v. Florida Pop, LLC*, No. 23-23955, 2024 WL 1564668, at *11 (S.D. Fla. Apr. 4, 2024). And, as stated in another case where a franchisor was seeking an injunction against a terminated

¹² Defendants also "acknowledge[d] and agree[d] that monetary damages will be inadequate to remedy the damage caused to BKC in the event that [Defendants] operate[d] any Franchised Restaurant after termination of the Limited License without BKC's written authorization." [Ex. F, Settlement at V.E.]. *See Popeyes*, 2024 WL 1564668, at *11 (irreparable harm element satisfied because, among other things, franchisee acknowledged in limited license agreement that franchisor would suffer irreparable harm).

franchisee, “[o]ne who adopts the mark of another for similar goods acts at his own peril,” since he has no claim to the profits or advantages thereby derived. *Campero USA Corp. v. PCNY, LLC*, No. 11-21094, 2011 WL 13319576, at *8 (S.D. Fla. Sept. 8, 2011). Plainly, Defendants have no equitable standing to complain of injury should their infringement be enjoined.

4. The Public Interest Will be Furthered by an Injunction

“[T]he public interest is served by the entry of a preliminary injunction in a trademark infringement case because an injunction prevents confusion in the marketplace.” *Id.* Thus, an injunction would serve the public interest by preventing further confusion.

D. Either no Bond or a Bond of no Greater Than \$5,000 Should be Required

“District courts have declined to require the movant to post a bond based on the large size and strong financial condition of a movant.” *Id.* at *12. “In trademark cases, they have also declined to impose a bond where the movant had a high probability of success.” *Id.* Courts also consider stipulations regarding the amount of a bond which must be posted if an injunction is entered. *Id.* at *11. Here, given BKC’s relative size and financial condition [Ex. A, Mencia Decl. at ¶¶ 4-5], coupled with the facts that Defendants agreed that a bond of \$5,000 or less would be sufficient [Ex. G, Settlement, at § V.E] and that it is extremely likely that BKC will succeed on the merits of its claims, BKC should not be required to post any bond in this matter. If a bond is required, it should be less than \$5,000.00.

WHEREFORE, BKC respectfully requests the entry of a preliminary injunction:

1. Enjoining Defendants, and all persons acting on their behalf, in concert with, or under their control, from: (a) manufacturing, packaging, distributing, selling, advertising, displaying, or promoting any product or service bearing any of the Marks or imitations of the Marks, including “Jumbo King Burger,” or any other imitation of the Marks at the Restaurants; (b) displaying or using any of the Marks or imitations of the Marks including “Jumbo King Burger”

to advertise or promote the sale of, or to identify, the Restaurants, or any product or service provided therein; and (c) making in any manner whatsoever any statement or representation, or performing any act, likely to lead members of the public to believe the Restaurants and the products and services provided therein, are in any manner, directly or indirectly, associated, affiliated, or connected with, or licensed, sponsored, authorized, or approved by BKC.

2. Directing Defendants and all persons acting on their behalf, in concert with them, or under their control to: (a) recall and deliver to BKC all signs, banners, labeling, packaging, advertising, promotional display and point-of-purchase materials which bear, or make reference to, any of the Marks, or any colorable imitation of the Marks at the Restaurants; (b) recall and deliver up to BKC on all copies of the Manual that are in their actual, direct or indirect, possession, custody or control, including all supplements and addenda thereto and all other materials containing restaurant operating instructions, restaurant business practices, or plans of BKC to the extent that there are any at the Restaurants; and (c) allow BKC, at a reasonable time, to enter the premises of the Restaurants and make whatever changes, including removal of tangible assets, that are necessary to distinguish the premises from its appearance as a BURGER KING® restaurant.

3. Enjoining Defendants from owning, operating, or having any interest in any hamburger business, within a two-mile radius of the Restaurants for a one-year period from the date on which this Court first enters an injunction against Defendants;

4. Directing Defendants to file with the Court, and to serve on BKC's counsel within ten days after service of any injunction or order issued herein, a report, in writing and under oath, setting forth in detail the manner in which they have complied with such injunction or order; and

5. Awarding all such other relief as this Court may deem just and proper.

Dated: October 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served *via electronic mail* on all parties identified on the attached service list this 2nd day of October, 2026. Additionally, courtesy copies of the foregoing document will be sent *via Federal Express* to all parties identified on the attached service list (as well as their counsel) on this 2nd day of October, 2026.

/s/ Aaron S. Blynn

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¹³ A courtesy copy has been emailed and sent via Federal Express to the Corporate Defendants' bankruptcy counsel at: Richard D. Trenk, Esq., Trenk Isabel Siddiqi & Shahdanian, P.C., 290 W. Mt. Pleasant Avenue, Suite 2370, Livingston, NJ 07039 (rtrenk@trenkisabel.law).

¹⁴ This is the address designated by Defendant J.F.M. 6090, Inc. as its mailing address on its Petition for Bankruptcy. A copy of this Motion is also being delivered by both Federal Express and hand delivery to Defendant JFM 6090's Restaurant at: 12-14 Spruce Street, Paterson, New Jersey 07501.

¹⁵ This is the address designated by Defendant JFM Sparta, LLC as its mailing address on its Petition for Bankruptcy. A copy of this Motion is also being delivered by both Federal Express and hand delivery to Defendant JFM Sparta's Restaurant at: 49 Sparta Avenue, Sparta, New Jersey 07871.

¹⁶ A courtesy copy has been emailed and sent via Federal Express to attorney James Klobucar, who is Defendant Jethwa's counsel of record in her application to register "Jumbo King Burger" as a trademark with the U.S. Patent and Trademark Office. His Address is: James Klobucar, Esq., 41 River Road, Summit, New Jersey 07901 and his email address is james@gearhartlaw.com.

¹⁷ A copy has also been sent via Federal Express to 2 Market Street, Floor 2, Paterson, New Jersey, 07501, which is the address designated by Defendant Jethwa as her address in her application to register "Jumbo King Burger" as a trademark with the U.S. Patent and Trademark Office.

¹⁸ This is the address designated by Defendant JFM Spring, LLC as its mailing address on its Petition for Bankruptcy. A copy of this Motion is also being delivered by both Federal Express and hand delivery to Defendant JFM Spring's Restaurant at: 160 Spring Valley Marketplace, Spring Valley, New York 10977.