UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BUC-EE'S, LTD. **Plaintiff,** **v.** **BUCKS, INC., d/b/a BUCKY'S, and STEVEN BUCHANAN,** **Defendants.**	**CIVIL ACTION No. 8:17-CV-00287** **AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FOR:** **(1) TRADEMARK INFRINGEMENT IN VIOLATION OF TEX. BUS. COMM. § 16.102;** **(2) TRADEMARK DILUTION IN VIOLATION OF TEX. BUS. COMM. § 16.103;** **(3) TRADEMARK INFRINGEMENT IN VIOLATION OF 15 U.S.C. § 1114(1);** **(4) TRADEMARK INFRINGEMENT IN VIOLATION OF 15 U.S.C. § 1125(a);** **(5) UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN IN VIOLATION OF 15 U.S.C. § 1125(a);** **(6) COMMON LAW TRADEMARK INFRINGEMENT;** **(7) COMMON LAW UNFAIR COMPETITION;** **(8) UNJUST ENRICHMENT;** **(9) INDUCEMENT BY FRAUDULENT AND MATERIAL MISREPRESENTATION;** **(10) FRAUDULENT MISREPRESENTATION;** **(11) NEGLIGENT MISREPRESENTATION; AND** **(12) BREACH OF CONTRACT** **Jury Trial Demanded**

BUC-EE'S FIRST AMENDED COMPLAINT

Plaintiff, Buc-ee's, Ltd. ("Buc-ee's" or "Plaintiff"), for its complaint against Defendants Bucks, Inc., d/b/a/ Bucky's ("Buck's") and Steven Buchanan ("Buchanan") alleges as follows:

The Parties

1. Plaintiff Buc-ee's, Ltd., a citizen of Texas, is a Texas limited partnership, having a principal place of business at 327 FM 2004, Lake Jackson, Texas 77566.

2. On information and belief, Defendant Bucks, Inc., doing business as "Bucky's," is a corporation organized under the laws of the State of Nebraska, and having a principal place of business at 7315 Mercy Road, Omaha, Nebraska, 68124. On information and belief, Bucks, Inc. is a citizen of Nebraska.

3. On information and belief, Defendant Steven Buchanan is an individual that is the President, Treasurer, and Director of Bucks, Inc., owns all of the capital stock of Bucks, Inc., is the central figure of Bucks, Inc., and is actively involved in running and directing the business of Bucks, Inc.

4. On information and belief, Steven Buchanan is a citizen of Nebraska and has an address of 1326 N 143rd Ave. Cir., Omaha, NE 68154.

Jurisdiction and Venue

5. This is an action for trademark infringement, trademark dilution, unfair competition and false designation of origin, unjust enrichment, inducement by fraudulent and material misrepresentation, fraudulent misrepresentation, negligent misrepresentation, and breach of contract. This action arises under the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq*. ("the Lanham Act"), the Texas Business and Commerce Code, and federal and state common law, including the law of the State of Texas and the law of the State of Nebraska.

6. The parties are completely diverse in citizenship, and the amount in controversy, without interest and costs, exceeds $75,000.

7. This Court has subject matter jurisdiction over this action pursuant to at least 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1332, 1338(a) & (b), and 1367(a).

8. This Court has personal jurisdiction over Buck's due to its intentional contacts with this forum, including at least Buck's tortious acts giving rise to this lawsuit within this District, Buck's conduct of business within the state of Nebraska and this District, and Buck's residency within Nebraska, and within this District.

9. This Court has personal jurisdiction over Buchanan due to his intentional contacts with this forum, including at least his tortious acts giving rise to this lawsuit within this District, Buchanan's conduct of business within the state of Nebraska and this District, and Buchanan's residency within Nebraska, and within this District.

10. Venue is proper in this District pursuant to at least 28 U.S.C. §§ 1391(b) and (c).

General Allegations – the Buc-ee's Trademark

11. For over three decades, Buc-ee's has offered quality convenience store services and has offered quality products to the public under the Buc-ee's mark, "Buc-ee's." Buc-ee's has used the Buc-ee's mark since at least as early as July of 1982. As a result of such use, Buc-ee's has become a household name across Texas and other states. Buc-ee's started as a single convenience store in Lake Jackson, Brazoria County, Texas, and has now established its famous presence across the State, with more than thirty stores operating across Texas, in such cities as League City, Pearland, Baytown, New Braunfels, Bastrop, Madisonville, Luling, Fort Worth, Terrell, Temple, Waller, Texas City and of course Lake Jackson. Buc-ee's has prided itself in providing premium goods and services to its customers, standing by its motto of "Clean, Friendly, and In Stock.[SM]"

12. Because of Buc-ee's extensive and long-standing use and promotion of the "Buc-ee's" mark in Texas and elsewhere, consumers have come to associate "Buc-ee's" as a source identifier of Buc-ee's, and Buc-ee's owns registered and common law trademark rights in the "Buc-ee's" trademark (Buc-ee's mark, "Buc-ee's," may be hereafter referred to as "the Buc-ee's mark"). For example, Buc-ee's owns trademark rights granted via Texas Trademark Registration Nos. TX 45055 and TX 800478216 and U.S. Federal Trademark Registration Nos. 3,763,277; 4,973,184; 4,007,063; 4,973,076; 4,316,457; 4,455,099; and 4,585,744, which consist of or include the mark "Buc-ee's" and are attached to this Complaint as Exhibits 1-9, as indicated below:

Mark	Registration No.
BUC-EE'S	TX 45055
	TX 800478216
BUC-EE'S	3,763,277
BUC-EE'S	4,973,184
BUC-EE'S	4,007,063
BUC-EE'S	4,973,076
	4,316,457
	4,455,099
	4,585,744

13. As a result of Buc-ee's extensive use of the Buc-ee's mark, including in its advertising and promotion of Buc-ee's products and services, as well as Buc-ee's investment in the Buc-ee's mark, Buc-ee's has developed and continues to maintain highly valuable trademark rights and significant goodwill in the Buc-ee's mark. Through extensive, continuous, and exclusive use, the Buc-ee's mark has become a well-known indicator of the origin and quality of the Buc-ee's goods and services offered at its locations, and the products and services of Buc-ee's promoted under the Buc-ee's mark have become favorably accepted by the consuming public. The Buc-ee's mark has also acquired substantial secondary meaning in Texas and elsewhere, as consumers have come to uniquely associate it as a source identifier of Buc-ee's in Texas, including geographic areas within Texas, and elsewhere.

14. The Buc-ee's mark has also become famous within Texas due to at least the years of extensive, continuous, and exclusive promotion and use of the Buc-ee's mark within the State of Texas. Through that extensive, continuous, and exclusive use, the Buc-ee's mark has become a famous and well-known indicator of the origin and quality of Buc-ee's products and services, and the Buc-ee's mark is widely recognized by the public throughout Texas and in geographic areas within Texas as a designation of source.

15. In view of its investment and strong reputation, Buc-ee's takes seriously the need to protect the Buc-ee's mark and the valuable goodwill associated with the Buc-ee's mark.

General Allegations – Defendants' Unlawful Activities

16. On June 13, 2007, Buc-ee's filed Opposition No. 91/177,801 with the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office against Buck's Trademark Application Serial No. 76/653,211 for the mark "Bucky's" (the "Opposition"). In its Trademark Application Serial No. 76/653,211, Buck's identified that its date of first use of "Bucky's" was in

1989. In the Opposition, Buc-ee's asserted priority of use of the mark "Buc-ee's" based on Buc-ee's first use of "Buc-ee's" in July of 1982.

17. On December 2, 2008, Buck's filed a complaint in the United States District Court for the District of Nebraska against Buc-ee's, Case No. 8:08-cv-519, asserting that "Bucky's made first use of the BUCKY's trademark in interstate commerce at least as early as May of 1982 at a retail store location in Omaha, Nebraska." (Ex. 10 at ¶3).

18. On March 4, 2009, Buchanan, as the owner, sole shareholder, and president of Buck's, declared under penalty of perjury that he "first began operating Bucky's Amoco on or before May 19, 1982 at 50th and Dodge Streets in Omaha, Nebraska" and that he has used the mark "Bucky's" "since at least as early as May 19, 1982." (Ex. 11 at ¶1, 8). Buck's submitted Buchanan's declaration to the Nebraska District Court in support of its opposition to Buc-ee's motion to dismiss Buck's complaint in the District of Nebraska.

19. On September 16, 2009, in reliance on Buck's and Buchanan's statements submitted to the Court in the District of Nebraska, and declared by Buchanan under penalty of perjury, that Buck's and Buchanan began using the mark "Bucky's" at least as early as May of 1982, Buc-ee's entered into a Co-Existence and Settlement Agreement with Buck's dated September 16, 2009. The Agreement was signed by Buchanan.

20. On information and belief, Buck's and Buchanan did not begin using the mark "Bucky's" in commerce until at least 1989, years after Buc-ee's began using its mark "Buc-ee's."

21. Buck's knew its statements that it began using the mark "Bucky's" at least as early as May of 1982 were false. Buck's failed to exercise reasonable care or competence to obtain or communicate true information or, in the alternative, made the statements recklessly without any knowledge of the truth and as a positive assertion.

22. Buck's stated that its first use of the mark "Bucky's" was at least as early as May of 1982 with the intent that Buc-ee's would rely on and act on this misinformation.

23. Buchanan knew his statements that he and Buck's began using the mark "Bucky's" at least as early as May of 1982 were false. Buchanan failed to exercise reasonable care or competence to obtain or communicate true information or, in the alternative, made the statements recklessly without any knowledge of the truth and as a positive assertion.

24. Buchanan stated that his and Buck's first use of the mark "Bucky's" was at least as early as May of 1982 with the intent that Buc-ee's would rely on and act on this misinformation.

25. Buc-ee's learned that Buck's and Buchanan misrepresented their date of first use of the mark "Bucky's" when Buck's represented in verified interrogatory responses served June 13, 2017 that its first use in commerce was in 1989 at its 30th and Dodge location, and that "prior to 1989 Buck's operated a traditional gas station at the 5001 Dodge Street, Omaha, Nebraska, location . . . [using] the names 'Buchanan's Standard Service' [and] 'Buchanan's Service Center.'" (Ex. 12 at 9, 12).

26. The September 16, 2009 Agreement between Buc-ee's and Buck's is expressly conditioned and qualified by the requirement that the parties' actions not cause actual confusion or likelihood of confusion.

27. In the Agreement, Buck's agreed that, "in the event that either party encounters any instances of actual consumer confusion between the parties' respective trademark uses, such party will promptly notify the other party."

28. Buck's also agreed not to use "the trademark or service mark BUC-EE'S or any trademark or service mark that contains the word BUC-EE'S."

29. On information and belief, Buck's operates a number of convenience store locations under the term "Bucky's."

30. Buck's, and other entities, recently began using the term "Bucky's" in connection with convenience stores and gas stations in Texas.

31. On information and belief, Buchanan is the principal decision maker responsible for overseeing Buck's infringing use of the mark "Bucky's" and personally participates in authorizing, directing, and approving Buck's infringing use of the mark "Bucky's."

32. On information and belief, all of Buck's uses and activities regarding the term "Bucky's" are being performed at the direction of Buchanan.

33. On information and belief, Buck's, Buchanan, and others are involved in developing and promoting convenience stores and gas stations and related services using the term "Bucky's" at several locations in and near Houston, Texas. Land has been purchased and zoning approvals have been sought for convenience stores and gas stations. These convenience stores and gas stations have been represented to various city councils, on signage, and on permits as including the term "Bucky's."

34. On information and belief, Buck's, Buchanan, and others are involved with a "Bucky's" convenience store and gas station that is being developed at 1306 NASA Parkway, Houston, Texas. A sign that contains the term "Bucky's" has been placed at 1306 NASA Parkway, Houston, Texas, as shown below in a picture dated August 10, 2017. The term "Bucky's" also appears on a Construction Site Notice dated July 19, 2017. The term "Bucky's" also appears in images of a proposed convenience store and gas station presented to the City Council for the City of Nassau Bay.

August 10, 2017 photograph at 1306 NASA Parkway, Houston, Texas

SMALL CONSTRUCTION SITE NOTICE

FOR THE
Texas Commission on Environmental Quality (TCEQ)
Storm Water Program

TPDES GENERAL PERMIT TXR150000

The following information is posted in compliance with **Part II.E.2.** of the TCEQ General Permit Number TXR150000 for discharges of storm water runoff from small construction sites. Additional information regarding the TCEQ storm water permit program may be found on the internet at:

http://www.tceq.state.tx.us/nav/permits/wq_construction.html

Operator Name:	Cactus Commercial, Inc.
Contact Name and Phone Number:	Daniel Trudeau (281) 802-8944
Project Name Project Description: *Physical address or description of the site's location, estimated start date and projected end date, or date that disturbed soils will be stabilized*	**Bucky's #1204** **1300 Nasa Road 1** **Nassau Bay, TX 77058** Start Date: 07/05/17 End Date: 11/02/17
Location of Storm Water Pollution Prevention Plan:	In The Onsite: Trailer

For Small Construction Activities Authorized Under Part II.E.2. (Obtaining Authorization to Discharge) the following certification must be completed:

I Brent Richardson (Typed or Printed Name Person Completing This Certification) certify under penalty of law that I have read and understand the eligibility requirements for claiming an authorization under Part II.E.2. of TPDES General Permit TXR150000 and agree to comply with the terms of this permit. A storm water pollution prevention plan has been developed and will be implemented prior to construction, according to permit requirements. A copy of this signed notice is supplied to the operator of the MS4 if discharges enter an MS4. I am aware there are significant penalties for providing false information or for conducting unauthorized discharges, including the possibility of fine and imprisonment for knowing violations.

Signature and Title Vice President Date 7/21/2017

By checking this box,

☐ I authorize Construction EcoServices to make any necessary changes to this document once signed, in order to keep the line items as up to date as possible throughout the duration of the listed project.

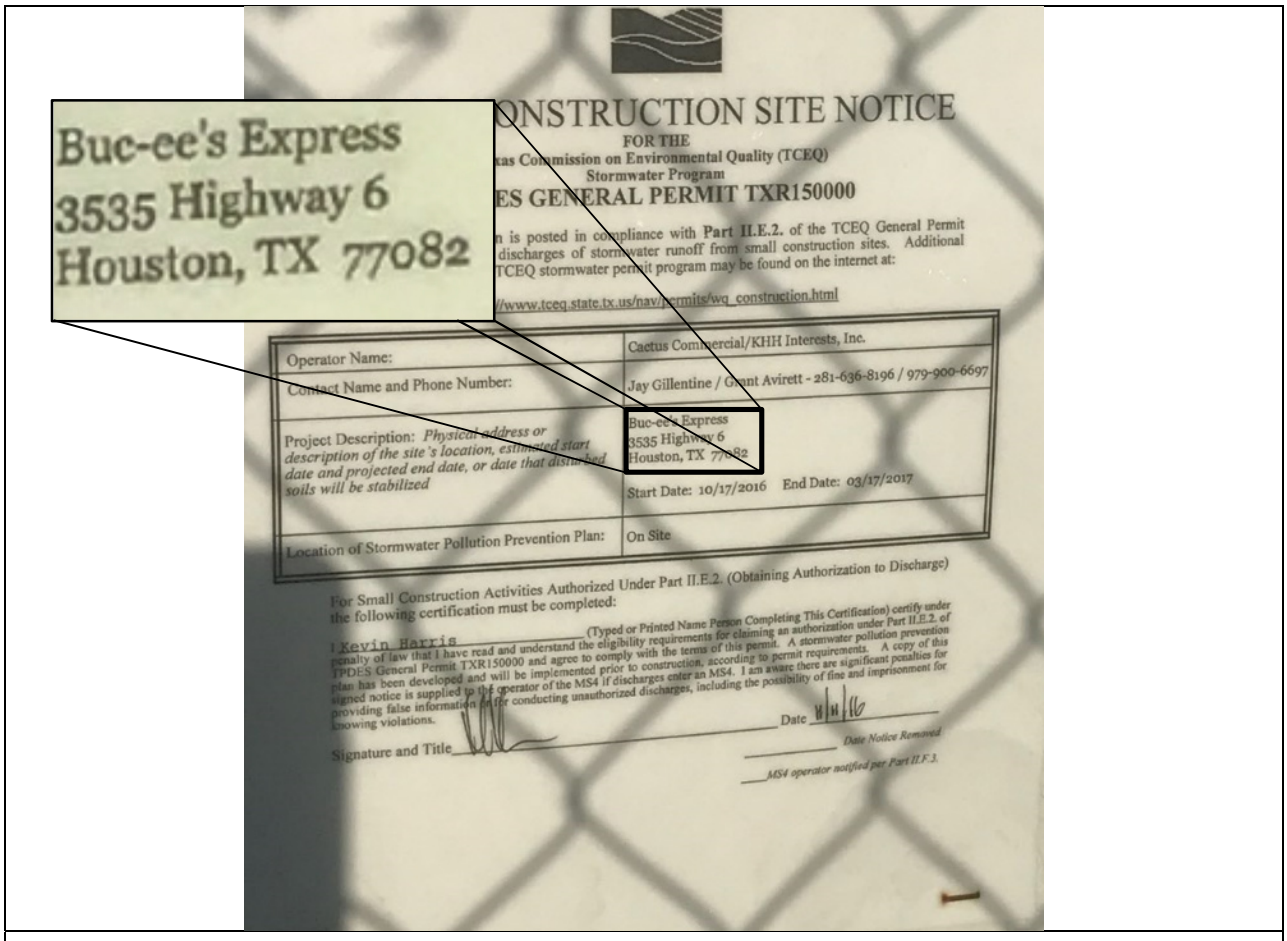
OR

☐ I do NOT authorize Construction EcoServices to make any necessary changes to this document once signed, and would like to be contacted prior to any changes.

☐ Date Notice Removed
MS4 operator notified per Part II.F.3.

Construction Site Notice at 1306 NASA Parkway, Houston, Texas

35. On information and belief, Buck's, Buchanan, and others are involved with a "Bucky's" or "Buc-ee's" convenience store and gas station that is being developed at 3535 Highway 6 South, Houston, Texas. A Construction Site Notice at 3535 Highway 6 South, Houston, Texas, identifies the Project Description as a "Buc-ee's Express," as shown by the Construction Site Notice below.



Construction Site Notice at 3535 Highway 6 South, Houston, Texas

36. On May 16, 2016, plans for a "Bucky's" convenience store and gas station were presented in Pearland, Texas before the Pearland City Council.

37. Buck's and Buchanan's activities and use of the term "Bucky's" are causing actual confusion in at least Texas, and are creating a strong likelihood of confusion between Buck's and Buc-ee's.

38. Use of the term "Bucky's" in connection with the development of convenience stores and gas stations at city council meetings has caused actual confusion with Buc-ee's. Buck's failed to tell Buc-ee's about this confusion.

39. Consumers have expressed actual confusion between the use of "Bucky's" on the sign at 1306 NASA Parkway, Houston, Texas and Buc-ee's to Buc-ee's employees. Buck's failed to tell Buc-ee's about any similar confusion.

40. Members of the Nassau Bay City Council and the Mayor Pro Tem expressed concern regarding confusion caused by the planned "Bucky's" gas station and convenience store at 1306 NASA Parkway, Houston, Texas. Consumers also were confused between this planned "Bucky's" gas station and convenience store and Buc-ee's:

- "Holy cow turds! Is Nassau Bay is getting a Buc-ees at the corner of Nasa 1 and Nassau Bay Dr.? From the City of Nassau Bay council meeting: Consider and take action on an ordinance approving a request by BSD BRIGHT SITE Development LLC, (Bucky's) for current zoning C (Commercial) to be approved for a PUD (Planned Unit Development) for convenience store with retail motor fuel sales…"
- "A Buccee's? Really?? I may come back for a visit."
- "It will probably be a 'baby' Buc-ee's, like they have in League City (which is basically a gas station and small convenience store)."
- "Love to stop at Buc-ee's for a big Iced Tea and a Buc-ee Club sandwich. I'm excited."
- "Who cares. They've got 'BUCCEES.'"
- "Buc ees beaver nuggets!!"
- "@BAHEP in your latest Business Development Update you say "Bucky's" is coming to Nassau bay. Is that different from Buc-ee's" (Exs. 13-15).

Buck's failed to tell Buc-ee's about this confusion.

41. Buck's has not notified Buc-ee's of any actual confusion between Buck's use of "Bucky's" and "Buc-ee's" in connection with actual and planned "Bucky's" gas stations and convenience stores.

42. Buc-ee's used the mark "Buc-ee's" extensively, continuously, and exclusively before Buck's and Buchanan began their infringing use of a confusingly similar mark.

43. Buck's and Buchanan's actions have and will continue to result in direct, substantial overlap with Buc-ee's current customer base within the State of Texas, as well as overlap between the Parties' channels of trade.

44. Buck's and Buchanan's actions are unfair and unlawful. Buck's and Buchanan's intentional and unauthorized actions further constitute infringement and dilution of Buc-ee's mark, "Buc-ee's" and an attempt to unfairly compete in violation of Federal and Texas State law, and constitute common law trademark infringement, unfair competition, and unjust enrichment.

General Allegations – Injury to Buc-ee's

45. Buck's and Buchanan's unauthorized use of a trademark confusingly similar to the Buc-ee's mark will allow Buck's and Buchanan to receive the benefit of the goodwill built up at the great labor and expense by Buc-ee's in the Buc-ee's mark, and further will allow Buck's and Buchanan to gain acceptance for their products and services based not on their own merits, but on an association with the reputation and goodwill of Buc-ee's.

46. Buck's and Buchanan's unauthorized use of a mark confusingly similar to the Buc-ee's mark constitutes an invasion of Buc-ee's valuable property rights in a manner that unjustly enriches Buck's and Buchanan.

47. Buck's and Buchanan's use of a trademark confusingly similar to the Buc-ee's mark, and in relation to the same products and services as Buc-ee's, falsely indicates to the purchasing public that Buck's and Buchanan and/or their products and services are in some manner connected with, sponsored by, affiliated with, or related to Buc-ee's and/or its products and services.

48. Use by Buck's and Buchanan of a trademark confusingly similar to the Buc-ee's mark places the valuable reputation and goodwill of Buc-ee's in the hands of Buck's and Buchanan, over whom Buc-ee's has no control.

49. The above-mentioned activities of Buck's and Buchanan are causing actual confusion, and Buck's and Buchanan have failed to promptly notify Buc-ee's of any of these

instances of actual confusion. The above-mentioned activities are also likely to cause confusion, or to cause mistake, or to deceive customers or potential customers wishing to purchase services or products sponsored by, associated with, or affiliated with Buc-ee's. Buck's and Buchanan's use is causing actual confusion and is likely to cause confusion, mistake or deception as to the affiliation, connection, and/or association of Buck's and Buchanan with Buc-ee's, and as to the origin, sponsorship, and/or approval of Buck's and Buchanan, and their use of "Bucky's," at least by creating the false and misleading impression that Buck's and Buchanan and/or their products or services are from Buc-ee's, are authorized by Buc-ee's, or are otherwise associated with Buc-ee's.

50. The Buc-ee's mark is famous, distinctive and is entitled to protection under Texas and federal law. Buc-ee's has extensively, continuously and exclusively promoted and used the Buc-ee's mark for years in the State of Texas. Through that extensive, exclusive and continuous use, the Buc-ee's mark has become a famous and well-known indicator of the origin and quality of Buc-ee's products and services, and the Buc-ee's mark is widely recognized by the public, including the public throughout Texas and in geographic areas of Texas as a designation of source. The Buc-ee's mark has also acquired substantial secondary meaning in Texas and elsewhere. The Buc-ee's mark is also inherently distinctive. Moreover, the Buc-ee's mark became famous and acquired secondary meaning before Buck's and Buchanan commenced use of a mark in Texas that is confusingly similar to the Buc-ee's mark.

51. Buck's fraudulent statements that it has used the mark "Bucky's" at least as early as May of 1982 induced Buc-ee's into entering into the Agreement.

52. Buchanan's fraudulent statements that he, and his company Buck's, used the mark "Bucky's" at least as early as May of 1982 induced Buc-ee's into entering into the Agreement.

53. Accordingly, this action is being brought to prevent any further infringement of the Buc-ee's Trademark under federal and Texas law and to compensate Buc-ee's for the harm caused by Buck's and Buchanan's actions and any future actions.

Count I:
Trademark Infringement in Violation of Tex. Bus. & Comm. Code § 16.102

54. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 53 as though fully set forth herein.

55. Buck's and Buchanan's actions described above constitute trademark infringement of Buc-ee's Texas State Registration Nos. TX 45055 and TX 800478216, in violation of Texas Business & Commerce Code § 16.102. Buck's and Buchanan's use of a trademark confusingly similar to Buc-ee's Texas state registrations, in connection with providing Buck's and Buchanan's goods and services in Texas, is likely to deceive or cause confusion or mistake as to the source or origin of Buck's and Buchanan's goods and/or services.

56. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's Trademark is causing actual confusion and likely to further cause confusion, or cause mistake, or to deceive.

57. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's Trademark has caused and, unless enjoined, will continue to cause substantial and irreparable injury to Buc-ee's for which Buc-ee's has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with Buc-ee's goods and services.

58. On information and belief, Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's Trademark has been intentional.

59. Buck's and Buchanan have infringed and continue to infringe the Buc-ee's Texas state registrations. Because of Buck's and Buchanan's infringement, Buc-ee's has been injured and damaged, and is entitled to injunctive relief, and is further entitled to recover damages, profits, enhanced profits and damages, and its attorney's fees, pursuant to Texas Business & Commerce Code § 16.102.

Count II:
Trademark Dilution in Violation of Tex. Bus. & Comm. Code § 16.103

60. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 59 as though fully set forth herein.

61. Based on the activities described above, Buck's and Buchanan have diluted and continue to dilute the Buc-ee's Trademark under §16.103 of the Texas Business & Commerce Code.

62. Buck's and Buchanan's acts complained of above are likely to injure Buc-ee's business reputation and/or are likely to dilute the famous, distinctive quality of the Buc-ee's mark, at least by eroding the public's exclusive identification of Buc-ee's famous Buc-ee's mark with Buc-ee's, by lessening the capacity of Buc-ee's famous Buc-ee's mark to identify and distinguish Buc-ee's products and services, and by impairing the distinctiveness of Buc-ee's famous Buc-ee's mark.

63. Buck's and Buchanan's unauthorized activities are likely to weaken or otherwise jeopardize Buc-ee's highly valuable rights. Pursuant to Texas Business & Commerce Code § 16.103, Buc-ee's is entitled to bring this action to enjoin Buck's and Buchanan from injuring Buc-ee's business reputation or diluting the distinctive quality of the Buc-ee's mark.

64. Buck's and Buchanan's use of a mark similar to the Buc-ee's mark has caused and, unless enjoined, will continue to cause substantial and irreparable injury to Buc-ee's for

which Buc-ee's has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with Buc-ee's goods and services.

65. On information and belief, Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has been intentional.

66. Buc-ee's is entitled to injunctive relief, and due to Buck's and Buchanan's intentional dilutions within Texas, Buc-ee's is also entitled to recover at least damages, profits, enhanced profits and damages, as well as an award of Buc-ee's reasonable attorneys' fees.

Count III:
Trademark Infringement Under § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)

67. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 66 as though fully set forth herein.

68. Based on the activities described above, including, for example, Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark, Buck's and Buchanan have infringed and will continue to infringe the Buc-ee's mark under § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1). Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark is causing actual confusion and likely to further cause confusion, or cause mistake, or to deceive.

69. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has caused and, unless enjoined, will continue to cause substantial and irreparable injury to Buc-ee's for which Buc-ee's has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with Buc-ee's goods and services.

70. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has been intentional.

71. Buc-ee's is entitled to injunctive relief, and Buc-ee's is also entitled to recover at least Buck's and Buchanan's profits, actual damages, enhanced profits and damages, costs, and Buc-ee's reasonable attorney fees under at least 15 U.S.C. §§ 1114(1), 1116, and 1117.

Count IV:
Trademark Infringement Under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)

72. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 71 as though fully set forth herein.

73. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark violates § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) by infringing the Buc-ee's mark. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark is causing actual confusion and likely to further cause confusion, mistake or deception as to the affiliation, connection, and/or association of Buck's and Buchanan with Buc-ee's and as to the origin, sponsorship, and/or approval of Buck's and Buchanan, at least by creating the false and misleading impression that Buck's and Buchanan, and/or their products or services are from Buc-ee's, are authorized by Buc-ee's, or are otherwise associated with Buc-ee's.

74. The Buc-ee's mark is entitled to protection under the Lanham Act. Buc-ee's has extensively and continuously promoted and used its trademark in Texas and elsewhere. Through that extensive and continuous use, the Buc-ee's mark has become a well-known indicator of the origin and quality of Buc-ee's products and services. The Buc-ee's mark has also acquired substantial secondary meaning in Texas and elsewhere.

75. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has caused and, unless enjoined, will continue to cause substantial and irreparable injury to Buc-ee's for which Buc-ee's has no adequate remedy at law, including at least substantial and

irreparable injury to the goodwill and reputation for quality associated with the Buc-ee's mark and Buc-ee's products and services.

76. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has been intentional.

77. Buc-ee's is entitled to injunctive relief, and Buc-ee's is entitled to recover at least Buck's and Buchanan's profits, Buc-ee's actual damages, enhanced damages, costs, and reasonable attorney fees under at least 15 U.S.C. §§ 1125(a), 1116, and 1117.

Count V:
Unfair Competition and False Designation of Origin Under § 43(a)
of the Lanham Act, 15 U.S.C. § 1125(a)

78. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 77 as though fully set forth herein.

79. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark, in direct competition with Buc-ee's, violates § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and constitutes unfair competition and false designation of origin, at least because Buck's and Buchanan have obtained an unfair advantage as compared to Buc-ee's through their use of a mark confusingly similar to the Buc-ee's mark, and because such use is causing actual confusion and likely to further cause consumer confusion as to the origin and/or sponsorship/affiliation of Buck's and Buchanan and their products and services, at least by creating the false and misleading impression that Buck's and Buchanan's use of the term "Bucky's" is authorized by or otherwise associated with Buc-ee's.

80. The Buc-ee's mark is entitled to protection under the Lanham Act. Buc-ee's has extensively and continuously promoted and used its trademark in Texas and elsewhere. Through that extensive and continuous use, the Buc-ee's mark has become a well-known indicator of the

origin and quality of Buc-ee's products and services. The Buc-ee's mark has also acquired substantial secondary meaning in Texas and elsewhere.

81. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has caused and, unless enjoined, will continue to cause substantial and irreparable injury to Buc-ee's for which Buc-ee's has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the Buc-ee's mark and Buc-ee's products and services.

82. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has been intentional.

83. Buc-ee's is entitled to injunctive relief, and Buc-ee's is also entitled to recover at least Buck's and Buchanan's profits, Buc-ee's actual damages, enhanced damages, costs, and reasonable attorney fees under at least 15 U.S.C. §§ 1125(a), 1116, and 1117.

Count VI:
Common Law Trademark Infringement

84. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 83 as though fully set forth herein.

85. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark, in direct competition with Buc-ee's, constitutes common law trademark infringement, at least because Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has caused actual confusion and is likely to cause consumer confusion as to the origin and/or sponsorship/affiliation of Buck's and Buchanan and their products and services, at least by creating the false and misleading impression that Buck's and Buchanan's use of the term "Bucky's" is authorized by or otherwise associated with Buc-ee's.

86. The Buc-ee's mark is entitled to protection under the common law. Buc-ee's has extensively and continuously promoted and used its trademark in Texas and elsewhere. Through that extensive and continuous use, the Buc-ee's mark has become a well-known indicator of the origin and quality of Buc-ee's products and services. The Buc-ee's mark has also acquired substantial secondary meaning in Texas and elsewhere.

87. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has caused and, unless enjoined, will continue to cause substantial and irreparable injury to Buc-ee's for which Buc-ee's has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the Buc-ee's mark and Buc-ee's products and services.

88. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has been intentional.

89. Buc-ee's is entitled to injunctive relief, and Buc-ee's is also entitled to recover at least Buc-ee's damages, Buck's and Buchanan's profits, punitive damages, costs, and reasonable attorney fees.

Count VII:
Common Law Unfair Competition

90. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 89 as though fully set forth herein.

91. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark, in direct competition with Buc-ee's, constitutes common law unfair competition, at least by palming off/passing off of Buck's and Buchanan's goods and services and/or by simulating the Buc-ee's mark in an intentional and calculated manner that is causing actual confusion and likely to further cause consumer confusion as to origin and/or sponsorship/affiliation of Bucky's, at

least by creating the false and misleading impression that Buck's and Buchanan's use of the term "Bucky's" is authorized by or otherwise associated with Buc-ee's. Buck's and Buchanan have also interfered with Buc-ee's business.

92. The Buc-ee's mark is entitled to protection under the common law. Buc-ee's has extensively and continuously promoted and used its trademark in Texas and elsewhere. Through that extensive and continuous use, the Buc-ee's mark has become a well-known indicator of the origin and quality of Buc-ee's products and services. The Buc-ee's mark has also acquired substantial secondary meaning in Texas and elsewhere.

93. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has caused and, unless enjoined, will continue to cause substantial and irreparable injury to Buc-ee's for which Buc-ee's has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the Buc-ee's Trademark and Buc-ee's products and services.

94. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has been intentional.

95. Buc-ee's is entitled to injunctive relief, and Buc-ee's is also entitled to recover at least Buc-ee's damages, Buck's and Buchanan's profits, punitive damages, costs, and reasonable attorney fees.

Count VIII:
Unjust Enrichment

96. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 95 as though fully set forth herein.

97. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark, in direct competition with Buc-ee's, constitutes unjust enrichment, at least because Buck's and

Buchanan have wrongfully obtained benefits at Buc-ee's expense. Buck's and Buchanan have also, *inter alia*, operated with an undue advantage.

98. Buc-ee's creation of goodwill in the Buc-ee's mark required extensive time, labor, effort, skill, and money. Buck's and Buchanan have wrongfully used and are wrongfully using a mark confusingly similar to the Buc-ee's mark in competition with Buc-ee's, and have gained and are gaining a wrongful benefit by undue advantage. Buck's and Buchanan have not been burdened with the expenses incurred by Buc-ee's, yet Buck's and Buchanan are obtaining the resulting benefits for their own business and products.

99. The Buc-ee's mark is entitled to protection under the common law. Through the extensive and continuous use, the Buc-ee's mark has become a well-known indicator of the origin and quality of Buc-ee's products and services. The Buc-ee's mark has also acquired substantial secondary meaning in Texas and elsewhere.

100. Buck's and Buchanan's use of a mark confusingly similar to the Buc-ee's mark has caused and, unless enjoined, will continue to cause substantial and irreparable commercial injury to Buc-ee's for which Buc-ee's has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with Buc-ee's mark and its products and services. Buc-ee's accumulated this goodwill and reputation through extensive time, labor, effort, skill, and investment. Buck's and Buchanan have wrongfully obtained and are wrongfully obtaining a benefit at Buc-ee's expense by taking undue advantage and free-riding on Buc-ee's efforts and investments, and enjoying the benefits of Buc-ee's hard-earned goodwill and reputation.

101. Buck's and Buchanan's unjust enrichment at Buc-ee's expense has been intentional.

102. Buc-ee's is entitled to injunctive relief, and Buc-ee's is also entitled to recover at least Buck's and Buchanan's profits.

Count IX:
Inducement by Fraudulent and Material Misrepresentation

103. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 102 as though fully set forth herein.

104. Buck's and Buchanan made multiple statements, including in Buck's 2008 complaint in the United States District Court for the District of Nebraska against Buc-ee's and in Buchanan's declaration, as owner, sole shareholder, and president of Buck's made under penalty of perjury, that they first used "Bucky's" as a mark at least as early as May of 1982.

105. Buck's and Buchanan did not begin using "Bucky's" as a mark in or before May of 1982, and therefore Buck's and Buchanan's statements were false.

106. At the time the statements were made, Buck's and Buchanan failed to exercise reasonable care or competence to obtain or communicate true information regarding the date of first use of "Bucky's" as a mark.

107. Buck's and Buchanan knew their statements regarding the date of first use of "Bucky's" as a mark were likely to induce Buc-ee's to enter the Agreement.

108. Buck's and Buchanan's false statements were material to Buc-ee's assent to entering into the Agreement.

109. Buck's and Buchanan made the false statements with the intent that Buc-ee's would rely on them.

110. Buc-ee's detrimentally relied on Buck's and Buchanan's misrepresentations. Buc-ee's was justified in relying on Buck's and Buchanan's false statements regarding the date they first used the mark "Bucky's" in commerce.

111. Buc-ee's entered into the Agreement in reliance on Buck's and Buchanan's false statements that they first used the mark "Bucky's" at least as early as May of 1982.

112. Buck's and Buchanan's fraudulent misrepresentations caused damage to Buc-ee's.

113. Buc-ee's is entitled to rescission of the Agreement, and Buc-ee's is also entitled to recover at least Buc-ee's damages.

Count X:
Fraudulent Misrepresentation

114. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 113 as though fully set forth herein.

115. Buck's and Buchanan made multiple statements, including in Buck's 2008 complaint in the United States District Court for the District of Nebraska against Buc-ee's and in Buchanan's declaration, as owner, sole shareholder, and president of Buck's made under penalty of perjury, that they first used "Bucky's" as a mark at least as early as May of 1982.

116. Buck's and Buchanan did not begin using Bucky's as a mark in or before May of 1982, and therefore Buck's and Buchanan's statements were false.

117. At the time the statements were made, Buck's and Buchanan knew their statements regarding the date of first use of "Bucky's" as a mark were false, or, in the alternative, made them recklessly without any knowledge of the truth and as a positive assertion.

118. Buck's and Buchanan's false statements were material to Buc-ee's assent to entering in to the Agreement.

119. Buck's and Buchanan made the false statements with the intent that Buc-ee's would rely on them.

120. Buc-ee's detrimentally relied on Buck's and Buchanan's misrepresentations. Buc-ee's was justified in relying on Buck's and Buchanan's false statements regarding the date they first used the mark "Bucky's" in commerce.

121. Buc-ee's entered into the Agreement in reliance on Buck's and Buchanan's false statements that they first used the mark "Bucky's" at least as early as May of 1982.

122. Buc-ee's suffered damages as a result of the reliance. Buck's and Buchanan's fraudulent misrepresentations caused damage to Buc-ee's and render the Agreement voidable.

123. Buc-ee's is entitled to recover at least Buc-ee's damages.

Count XI:
Negligent Misrepresentation

124. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 123 as though fully set forth herein.

125. Buck's and Buchanan made multiple statements, including in Buck's 2008 complaint in the United States District Court for the District of Nebraska against Buc-ee's and in Buchanan's declaration, as owner, sole shareholder, and president of Buck's made under penalty of perjury that they first used "Bucky's" as a mark at least as early as May of 1982.

126. Buck's and Buchanan did not begin using Bucky's as a mark in or before May of 1982, and therefore Buck's and Buchanan's statements were false.

127. At the time the statements were made, Buck's and Buchanan failed to exercise reasonable care or competence to obtain or communicate true information regarding the date of first use of "Bucky's" as a mark.

128. Buck's and Buchanan's false statements were material to Buc-ee's assent to entering into the Agreement.

129. Buck's and Buchanan made the false statements with the intent that Buc-ee's would rely on them.

130. Buc-ee's detrimentally relied on Buck's and Buchanan's misrepresentations. Buc-ee's was justified in relying on Buck's and Buchanan's false statements regarding the date they first used the mark "Bucky's" in commerce.

131. Buc-ee's entered into the Agreement in reliance on Buck's and Buchanan's false statements that they first used the mark "Bucky's" at least as early as May of 1982.

132. Buc-ee's suffered damages as a result of the reliance. Buck's and Buchanan's fraudulent misrepresentations caused damage to Buc-ee's and render the Agreement voidable.

133. Buc-ee's is entitled to recover at least Buc-ee's damages.

Count XII:
Breach of Contract

134. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 133 as though fully set forth herein.

135. Buck's breached the Agreement through the actions described above.

136. Buc-ee's and Buck's entered into the Agreement on September 16, 2009. Buchanan signed the agreement on behalf of Buck's. Under the Agreement, Buck's agreed that, "in the event that either party encounters any instances of actual consumer confusion between the parties' respective trademark uses, such party will promptly notify the other party." Buck's also agreed "that it shall not use the trademark or service mark BUC-EE'S or any trademark or service mark that contains the word BUC-EE'S." Buck's also agreed to other obligations in the Agreement.

137. Buck's failed to comply with the terms of the Agreement at least because it failed to notify Buc-ee's of any of the instances of actual confusion described above or any other instances of actual confusion.

138. Buck's also failed to comply with the terms of the Agreement at least because it used, or directed the use of, a trademark or service mark that contains the word BUC-EE'S—"Buc-ee's Express"—in connection with the planned convenience store or gas station to be located at 3535 Highway 6 South, Houston, Texas.

139. Buck's breaches of the Agreement have been intentional.

140. Buck's breaches of the Agreement caused damage to Buc-ee's.

141. Buc-ee's is entitled to recovery of its damages sustained as a result of the breaches of the Agreement.

Application for Injunction

142. Buc-ee's realleges and incorporates the allegations set forth in paragraphs 1 through 141 as though fully set forth herein.

143. There is a substantial likelihood that Buc-ee's will prevail on its claims against Buck's and Buchanan, based on Buck's and Buchanan's intentional use of a mark confusingly similar to the Buc-ee's mark in connection with the promotion and sale of similar or identical services and goods, in the same markets and channels of trade, and with the same customers.

144. Buck's and Buchanan's actions complained of above are jeopardizing, and, if allowed to proceed, will continue to jeopardize the goodwill of Buc-ee's in its valuable brand, concept, and the Buc-ee's mark. Such acts have caused, are causing and will continue to cause, irreparable injury to Buc-ee's and the consuming public, and the threatened injury outweighs any hypothetical damage that the proposed injunction may cause Bucky's. Finally, the public interest

favors the issuance of an injunction in this case.

145. Unless the acts of Buck's and Buchanan complained of above are restrained by this Court, they will be continued and will continue to cause irreparable injury to Buc-ee's and to the public, for which there is no adequate remedy at law.

146. Buc-ee's seeks a preliminary and permanent injunction against Buck's and Buchanan, prohibiting them from any and all use of a mark confusingly similar to the Buc-ee's mark, in conjunction with the promotion or sale or offer of sale for any goods or services by Buck's or Buchanan.

Demand for Jury Trial

147. Buc-ee's hereby demands a jury trial on all issues so triable.

Relief Sought

WHEREFORE, Plaintiff respectfully prays for:

1. Judgment that Buck's and Buchanan have: (i) infringed the Buc-ee's mark in violation of § 16.102 of the Texas Business and Commerce Code; (ii) diluted the Buc-ee's mark in violation of § 16.103 of the Texas Business and Commerce Code; (iii) infringed the Buc-ee's mark in violation of § 1114(1) of Title 15 in the United States Code; (iv) infringed the Buc-ee's mark in violation of § 1125(a) of Title 15 in the United States Code; (v) engaged in unfair competition and false designation of origin in violation of § 1125(a) of Title 15 in the United States Code; (vi) violated Buc-ee's common law rights in the Buc-ee's mark; (vii) engaged in common law unfair competition; (viii) been unjustly enriched at Buc-ee's expense, and that all of these wrongful activities by Buck's and Buchanan were willful; (ix) made fraudulent misrepresentations; and (x) made negligent misrepresentations

2. Judgment that the Agreement is voidable based on the fraudulent and material misrepresentations made by Buck's and Buchanan.

3. Alternatively, judgment that Buck's breached the Agreement.

4. A preliminary and permanent injunction against further infringement and dilution of the Buc-ee's mark, further acts of unfair competition, and unjust enrichment by Buck's and Buchanan, and each of their agents, employees, servants, attorneys, successors and assigns, and all others in privity or acting in concert with any of them, including at least from any use of a copy, reproduction, or colorable imitation of the Buc-ee's mark, pursuant to at least Texas Business and Commerce Code §§ 16.102, 16.103 and 16.104, and 15 U.S.C. § 1116;

5. An award of Buck's and Buchanan's profits, Buc-ee's actual damages, enhanced damages, exemplary damages, costs, prejudgment and post judgment interest, and reasonable attorney fees pursuant to at least Texas Business and Commerce Code §§ 16.102, 16.103 and 16.104, and 15 U.S.C. §§ 1114, 1116, 1117, and 1125(a);

6. Such other and further relief as this Court deems just and proper.

Dated: September 6, 2017

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF BUC-EE'S, LTD.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon all counsel of record on September 6, 2017, via the Court's CM/ECF filing system.

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