

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

BUC-EE'S, LTD.,

Plaintiff,

v.

SHEPHERD RETAIL, INC. ET AL,

Defendants.

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CIV. ACTION NO. 4:15-CV-03704

JURY REQUESTED

**SUPPLEMENTAL FILING IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**

Defendants file this notice of supplemental filing in support of Defendants' Opposed Motion to Dismiss for Failure to State a Claim and Motion to Transfer Venue and Brief in Support (Dkt. No. 24) and supplemental to Defendants' Reply Brief (Dkt. No. 30).

Attached Exhibit A is an certified, status copy of Defendants' Alligator Logo that is registered in the U.S. Patent and Trademark Office, U.S. service mark registration No. 5,010,931, filed June 17, 2015, granted August 02, 2016 for "Restaurant services; Restaurant services featuring barbeque dishes and traditional Southern cuisine; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises." The USPTO required the disclaimer "NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE THE FOLLOWING APART FROM THE MARK AS SHOWN: 'CHOKE CANYON BAR-B-Q.'" Defendants' additional registration is "prima face" evidence of the ownership and validity of the trademark. The Alligator Logo remains the dominant portion of Defendant's mark in view of the disclaimer. It is what people see from a distance until they get close enough to read the words.

Defendants federal registration on its Alligator Logo, is also a “complete bar” to Plaintiff’s state law claims for “dilution by blurring or dilution by tarnishment” and “any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement” based on the use of the Alligator Logo. See 35 USC §1125(c)(6).

DATED this 24th day of August, 2016.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles W. Hanor", written over a horizontal line.

Charles W. Hanor
Texas Bar No. 08928800

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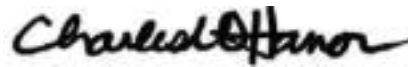
CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2016, the foregoing document is being served this day on all counsel of record identified in the manner indicated:

BBBucees@bakerbotts.com

BWBucees@bannerwitcoff.com

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles W. Hanor".

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