

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

**GRUMA CORPORATION  
d/b/a MISSION FOODS**

**Plaintiff,**

**v.**

**MISSION TACO INC.**

**Defendant.**

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**Case No. 2:24-cv-2760**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Gruma Corporation, doing business as Mission Foods (“Mission Foods”), respectfully states as follows for its Complaint against Defendant Mission Taco Inc. (“Mission Taco”):

**INTRODUCTION**

1. The MISSION brand is famous in the U.S. and throughout the world for food products, especially tortillas and tortilla chips. Mission Foods, its predecessors, and related companies have spent over 60 years to make it that way, including expending many millions of dollars to build the goodwill and reputation of the brand.

2. Mission Foods recently became aware of a Mexican food restaurant in New York—which sells the same types of food products as Mission Foods—calling itself “Mission Taco.” Mission Taco uses the names and images “MISSION” and “MISSION TACO” in its advertising and sale of Mexican food products. These

names and images are similar to Mission Foods' federally registered trademarks, including MISSION and MISSION with multiple designs.

3. In light of these facts and the further detail provided below, it is apparent that Mission Taco is attempting to trade on Mission Foods' reputation, commercially benefit from association with the MISSION trademarks, and deceive the purchasing public. This trademark infringement, unfair competition, and dilution of the MISSION trademarks is causing irreparable injury.

4. Mission Foods has repeatedly asked Mission Taco to change its use of "MISSION" and "MISSION TACO" without litigation, through three letters and a telephone call to Mission Taco. Mission Taco is aware of Mission Foods' concern and position, but has refused to respond or stop its misconduct.

5. Missions Foods therefore turns to this Court for assistance with Mission Taco's trademark infringement, unfair competition, and trademark dilution.

### **THE PARTIES**

6. Plaintiff Gruma Corporation is a corporation organized and existing under the laws of the State of Nevada. Its principal place of business is at 5601 Executive Drive, Suite 800, Irving, Texas 75038. Gruma does business as Mission Foods.

7. Defendant Mission Taco Inc. is a corporation incorporated in the State of New York, and with its principal place of business at 371 New York Ave., Huntington, NY 11743.

## JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction in this action under 28 U.S.C. §§ 1331, 1338, and 1367. The first two causes of action, for trademark infringement and false and misleading representations, arise under the federal Lanham Act (15 U.S.C. §§ 1114, 1125). The causes of action under New York law, for unfair competition and trademark dilution, are related to the substantial causes of action under federal trademark law.

9. Venue is proper in this District under 28 U.S.C. § 1391(b) because it is a judicial district in which Defendant resides. Alternatively, a substantial part of the events or omissions giving rise to the claims occurred in this District.



## FACTS






10. MISSION brand tortillas, chips and other food products are the leader in grocery store sales in the Mexican food products category. MISSION brand tortillas hold approximately a 40% market share in the U.S. tortilla industry. The labels and packaging for MISSION brand food products usually feature a design element depicting a bell and a bell tower, recognizable as being in the style of a Spanish mission. A rendition of the mark as used by Mission Foods is:







11. Mission Foods' trademark MISSION is well known to the purchasers


of tortillas, tortilla chips, and other Mexican food products. Mission Foods is the owner of a family of federally registered trademarks for MISSION and MISSION and Design, including the trademarks listed below (collectively, the “MISSION Marks”):

Mark	Reg. No.	Goods/Services
MISSION	RN: 1216032	Int'l Class: 30 (Int'l Class: 30) Corn Tortillas, Wheat Flour Tortillas, Taco Shells, Tostados Shells
MISSION	RN: 1785711	Int'l Class: 29, 30 (Int'l Class: 29) processed jalapeno peppers and fried pork rinds (Int'l Class: 30) tortilla chips, salsas, taco sauce, and cheese sauce
MISSION	RN: 3243446	Int'l Class: 30 (Int'l Class: 30) tortilla products, namely, wraps
MISSION and Design 	RN: 3243447	Int'l Class: 30 (Int'l Class: 30) tortilla products, namely, wraps
MISSION and Design 	RN: 3539989	Int'l Class: 30 (Int'l Class: 30) tortillas; tortilla products, namely, wraps; taco shells, salsas, cheese sauces

Mark	Reg. No.	Goods/Services
<p>MISSION and Design</p> 	<p>RN: 3634622</p>	<p>Int'l Class: 43, 44                      (Int'l Class: 43)                      providing a database in the field of recipes and cooking information                      (Int'l Class: 44)                      providing nutritional information via an online website</p>
<p>MISSION and Design</p> 	<p>RN: 3731022</p>	<p>Int'l Class: 30                      (Int'l Class: 30) tortillas</p>
<p>MISSION and Design</p> 	<p>RN: 3818319</p>	<p>Int'l Class: 30                      (Int'l Class: 30) tortillas</p>
<p>MISSION and Design</p> 	<p>RN: 3818317</p>	<p>Int'l Class: 30                      (Int'l Class: 30) tortillas</p>
<p>MISSION and Design</p> 	<p>RN: 3818353</p>	<p>Int'l Class: 30                      (Int'l Class: 30) tortillas</p>

Mark	Reg. No.	Goods/Services
<p>MISSION and Design</p> 	<p>RN: 3818320</p>	<p>Int'l Class: 30 (Int'l Class: 30) tortillas</p>
<p>MISSION and Design</p> 	<p>RN: 3818321</p>	<p>Int'l Class: 30 (Int'l Class: 30) tortillas</p>
<p>MISSION GREEN</p>	<p>RN: 3998756</p>	<p>Int'l Class: 43 (Int'l Class: 43) providing a database in the field of recipes, providing recipes via a web site</p>
<p>ONE PLANET. ONE MISSION.</p>	<p>RN: 3998757</p>	<p>Int'l Class: 43 (Int'l Class: 43) providing a database in the field of recipes, providing recipes via a web site</p>
<p>MISSION HEARTY GRAINS</p>	<p>RN: 4329258</p>	<p>Int'l Class: 30 (Int'l Class: 30) Tortillas</p>

Mark	Reg. No.	Goods/Services
MISSION	RN: 4339381	Int'l Class: 30 (Int'l Class: 30) flatbreads
MISSION and Design 	RN: 4339382	Int'l Class: 30 (Int'l Class: 30) flatbreads
MISSION	RN: 4343167	Int'l Class: 30 (Int'l Class: 30) crackers
MISSION and Design 	RN: 5702134	Int'l Class: 30 (Int'l Class: 30) Cheese sauce; Salsa; Tortilla chips
MISSION	RN: 5817159	Int'l Class: 43 (Int'l Class: 43) Providing a database in the field of recipes; providing websites featuring recipes, cooking information and food preparation techniques

Mark	Reg. No.	Goods/Services
<p>MISSION and Design</p> 	<p>RN: 5854850</p>	<p>Int'l Class: 30 (Int'l Class: 30) tortilla chips; tostadas</p>

12. Long after Mission Foods, its predecessors, and related companies had started using MISSION, and established the MISSION brand for Mexican food products, Defendant Mission Taco started operating a restaurant using the names and images “MISSION” and “MISSION TACO.” Mission Taco opened its “MISSION TACO” restaurant in Huntington, New York in 2019.<sup>1</sup>

13. Mission Taco currently operates its restaurant under the following logo:



<sup>1</sup> *Mission Taco Debuts In Huntington*, DAILY VOICE (June 16, 2019), <https://dailyvoice.com/new-york/suffolk/lifestyle/mission-taco-debuts-in-huntington/770009/> (accessed Mar. 27, 2024).



14. Mission Taco also currently uses the name and image “MISSION,” as depicted below, at the top of its food menu. This food menu includes categories of food—such as tacos, quesadillas, fajitas, nachos, and salsa—that use the types of Mexican food products that Mission Foods sells under its MISSION brand—such as tortillas, tortilla chips, and salsa.<sup>2</sup>



15. Mission Taco has referred to items on its menus with the term “MISSION,” including “MISSION MARGARITA”<sup>3</sup> and “MISSION LOADED NACHO.”<sup>4</sup>

16. In 2023, Mission Foods became aware of Mission Taco and its use of “MISSION” and “MISSION TACO.”

17. Given the fame of the MISSION brand for Mexican food products, it is inevitable that Mission Taco’s use of “MISSION” and “MISSION TACO” will

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<sup>2</sup> Compare *Food Menu*, Mission Taco, <https://www.missiontacoli.com/wordpress/wp-content/uploads/2021/03/download-takeout-mission-taco.pdf> (last accessed Mar. 27, 2024), with *Products*, Mission Foods, <https://www.missionfoods.com/products/> (last accessed Apr. 3, 2024).

<sup>3</sup> *Cocktails & Wine*, Mission Taco, <https://www.missiontacoli.com/wordpress/wp-content/uploads/2021/03/download-wine-cocktails-mission-taco.pdf> (last accessed Mar. 27, 2024); *Inspired By Street Eats, Served With City Style*, LONG-ISLANDER NEWS (July 27, 2019), <https://www.longislandernews.com/the-foodies-archives/2019/7/27/inspired-by-street-eats-served-with-city-style> (accessed Mar. 27, 2024).

<sup>4</sup> *Food Menu*, Mission Taco, <https://www.missiontacoli.com/wordpress/wp-content/uploads/2021/03/download-takeout-mission-taco.pdf> (last accessed Mar. 27, 2024).

confuse the purchasing public, who both eat at Mission Taco's restaurant and buy Mission Foods' MISSION brand food products.

18. Although Mission Taco sells its similar Mexican food products from a restaurant, rather than a grocery store, there is evidence from a marketing survey that the purchasing public believes Mission Foods could operate restaurants that sell Mexican food products. This increases the likelihood that the purchasing public are confused and deceived into believing that Mission Taco has an affiliation, connection, or association with Mission Foods, that Mission Foods has approved or sponsored Mission Taco, or that Mission Taco's products originate from Mission Foods. Indeed, in the similar situation of Mission Burrito restaurants in Texas, the U.S. Court of Appeals for the Fifth Circuit relied on that survey evidence, in part, to ultimately conclude there was a likelihood of confusion with Mission Foods' MISSION trademark in that case. Mission Burrito changed the name of its restaurants. Mission Taco must as well.

**COUNT I**  
**TRADEMARK INFRINGEMENT (15 U.S.C. § 1114)**

19. Mission Foods incorporates by reference its allegations above. As detailed, Defendant Mission Taco is using in commerce reproductions, counterfeits, and colorable imitations of the MISSION Marks in connection with the sale, offering for sale, distribution, and advertising of its goods and services. This use is likely to cause consumers confusion and mistake, and to deceive consumers, as to Mission Taco's affiliation, connection, and association with Mission Foods, and as to the lack of origin, sponsorship, or approval by Mission Foods of the Mission Taco's goods,

services, or commercial activities.

20. The MISSION Marks are valid trademarks entitled to protection. Mission Foods has objected to, and not consented to, Mission Taco's use of reproductions, counterfeits, and colorable imitations of the MISSION Marks.

21. Mission Taco's infringement of Mission Foods' MISSION Marks is causing damage and immediate and irreparable harm to Mission Foods, which will continue unless Mission Taco is enjoined by this Court.

**COUNT II**  
**FALSE AND MISLEADING REPRESENTATIONS (15 U.S.C. § 1125)**

22. Mission Foods incorporates by reference its allegations above. The word mark MISSION is inherently distinctive. In addition, as a result of continuous and extensive use of the MISSION trademark for over 60 years by Mission Foods, its predecessors, and related companies, the trademark has come to denote Plaintiff's goods.

23. Mission Taco's use of the names and images "MISSION" and "MISSION TACO" constitutes use in connection with Defendant's goods and services of a false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive purchasers as to the affiliation, connection, or association of Mission Taco with Mission Foods, or as to the origin, sponsorship, or approval of Mission Taco's goods and services by Mission Foods.

24. Mission Taco's use of the names and images "MISSION" and "MISSION TACO" is likely to cause confusion among the relevant purchasing

public, thus causing damage to Mission Foods. This confusion constitutes immediate and irreparable harm to Mission Foods, which will continue unless Mission Taco is enjoined by this Court.

**COUNT III  
UNFAIR COMPETITION UNDER NEW YORK LAW**

25. Mission Foods incorporates by reference its allegations above. MISSION is distinctive and has become associated in the mind of the public as identifying Mission Foods as the source of the goods sold by Mission Foods.

26. Mission Taco's use of the names and images "MISSION" and "MISSION TACO" is likely to deceive or mislead prospective purchasers by causing the mistaken belief that Mission Taco's business is actually Mission Foods' business; or that Defendant is the agent, affiliate, or associate of Mission Foods; or that the goods or services that Mission Taco markets are produced, sponsored, or approved by Mission Foods. Based on Defendant's use of "MISSION" and "MISSION TACO," in light of the fame and value of MISSION Marks, and Defendant's refusal to respond to Mission Foods or stop using "MISSION" and "MISSION TACO" in response to Mission Foods' notification letters, it is apparent that Defendant uses "MISSION" and "MISSION TACO" in an attempt to deceive the ordinary buyer, trade on Mission Foods' reputation, and commercially benefit from association with the MISSION Marks.

27. Defendant's use of "MISSION" and "MISSION TACO" constitutes unfair competition under New York law, thus causing damage to Mission Foods. This unfair competition constitutes immediate and irreparable harm to Mission

Foods, which will continue unless Defendant is enjoined by this Court.

**COUNT IV**  
**TRADEMARK DILUTION (N.Y. Gen. Bus. Law § 360-1)**

28. Mission Foods incorporates by reference its allegations above. The word mark MISSION and Plaintiff's MISSION Marks are inherently distinctive. In addition, as a result of continuous and extensive use of the MISSION trademark for over 60 years by Mission Foods, its predecessors, and related companies, the trademark has come to denote Plaintiff's goods and earn renown.

29. Mission Taco uses the names and images "MISSION" and "MISSION TACO" in its advertising and sale of Mexican food products, including several of the same types of Mexican food products that Mission Foods sells: tortillas, tortilla chips, and salsa. These names and images Mission Taco uses are substantially similar, if not identical, to Mission Foods' federally registered trademarks MISSION and the federally registered trademarks for MISSION and multiple designs and, if not enjoined, are likely to cause dilution of the distinctive quality of the MISSION Marks.

30. Because of the relatively low price of tortillas, tortilla chips, and salsa, customers of Mission Taco are unlikely to research whether Mission Taco's food products actually have an association with Mission Foods.

31. Mission Taco has benefited commercially from its falsely represented association with the MISSION Marks. There is apparent predatory intent from Mission Taco's use of "MISSION" and "MISSION TACO" because of the fame and value of the MISSION Marks, Defendant's refusal to stop using them, and

Defendant's refusal to even respond to Mission Foods' repeated communications.

32. Defendant's use of "MISSION" and "MISSION TACO" constitutes dilution under New York law, resulting in immediate and irreparable harm to Mission Foods, which will continue unless Defendant is enjoined by this Court.

### **PRAYER**

In light of these facts and causes of action, Mission Foods respectfully requests that this Court:

(1) preliminarily and permanently enjoin Defendant, its parents, subsidiaries, officers, directors, employees, agents, licensees and franchisees, and all persons acting in participation or concert with Defendant:

(a) from using the name and mark "MISSION," "MISSION TACO," or any other name or mark confusingly similar to the MISSION Marks, or any copy or colorable imitation of any of the MISSION Marks, in connection with the sale, advertising, or promotion of any foods or food services;

(b) from using the name and mark "MISSION," "MISSION TACO," or any other trademark or trade name confusingly similar to the MISSION Marks in any manner likely to injure Mission Foods' business reputation, or to dilute the distinctive quality of the MISSION Marks;

(c) from using in commerce the name and mark "MISSION," "MISSION TACO," or any other word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact which is likely to

cause confusion or to cause mistake or to deceive as to the affiliation, connection, or association of Defendant with Mission Foods, or as to the origin, sponsorship, or approval of Defendant's goods, services or commercial activities by Mission Foods; and

(d) from opening any new restaurants under the names or images "MISSION" or "MISSION TACO," or from otherwise expanding use of the names or images "MISSION" or "MISSION TACO," including but not limited to use in grocery stores and supermarkets, or use in any venue other than use in Defendant's already established restaurant, while this lawsuit is pending.

(2) that in any injunction the Court direct Defendant to file with this Court and serve on Mission Foods, within thirty (30) days after the service on Defendant of the injunction, a report in writing under oath setting forth in detail the manner and form in which the Defendant has complied with the injunction.

(3) find the case to be exceptional and award appropriate relief thereunder.

(4) award Mission Foods reasonable attorneys' fees.

(5) award Mission Foods interest and costs.

(6) order Defendant to deliver up for destruction any and all labels, signs, prints, packages, wrappers, receptacles, menus, and advertising in the Defendant's possession bearing the "MISSION" or "MISSION TACO" name and mark; and

(7) find that Mission Foods recovers such further and other relief that this Court finds just.

**JURY DEMAND**

Mission Foods hereby requests a trial by jury of this action on issues so triable.

Date: April 12, 2024.

Respectfully submitted,

/s/ Alyssa Helfer

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