

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**NBC Franchisor, LLC. d/b/a Nothing Bundt Cakes**, a Delaware limited liability company,

Plaintiff,

vs.

**Phat Cakes N’ More, LLC**, a Texas limited liability company,

Defendant.

**Case No.: 4:26-cv-67**

**Complaint for Trademark Infringement Under § 43(A) of the Federal Lanham Act and Unfair Competition**

**Injunctive Relief Requested**

**Jury Demand Requested**

Plaintiff, NBC FRANCHISOR, LLC, d/b/a NOTHING BUNDT CAKES, a Delaware limited liability company corporation (“Nothing Bundt Cakes”), for its claim against the Defendant PHAT CAKES N’ MORE, LLC (“PhatCakes”), alleges as follows:

**Jurisdictional Allegation**

1. This Court has subject matter jurisdiction for this action under 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121 in that the case arises under § 43(a) of the Lanham Act for Trademark Infringement. This Court has ancillary jurisdiction to hear all pendant claims under 28 U.S.C. § 1367.
2. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c).

### **Background Facts**

3. At all times, Plaintiff Nothing Bundt Cakes was and now is, a limited liability company, formed and validly existing in the State of Delaware with its principal place of business in Dallas, Texas, which is in Dallas County.

4. On information and belief, at all times described in this complaint, Defendant PhatCakes was, and now is, a Texas limited liability company with its principal location in Greenville, Texas, which is in Hunt County.

5. NBC Franchisor is the owner of the subject trademarks and licenses the use of the trademarks to its operating company as well as its retail franchise stores. Nothing Bundt Cakes' principal business is the production and retail sale of Bundt-shaped cakes and novelty gift items, balloons, and gift baskets sold with its Bundt-shaped cakes, as well as providing retail bakery services whereby it sells its cakes and novelty items.

6. Nothing Bundt Cakes began its retail business in Las Vegas, Nevada, and began using its NOTHING BUNDT CAKES trademark in interstate commerce on September 8, 1997.

7. Initially, Nothing Bundt Cake operated its business out of one of the original two founders' kitchens.

8. Nothing Bundt Cakes opened its first two retail storefront bakeries in Las Vegas in October 1998 and June 2002.

9. Nothing Bundt Cakes opened its first bakery outside Nevada when it opened a bakery in Phoenix, Arizona. Since then, Nothing Bundt Cakes has expanded its business domestically and internationally throughout the entire U.S. and in parts of Canada. Today, it operates over 750 franchise locations

10. The Nothing Bundt Cakes trademark has become well known and has achieved national fame. The Nothing Bundt Cakes brand is one of the most well-known brands for retail bakeries in the United States.

11. Since its inception, Nothing Bundt Cakes has used the name “Nothing Bundt Cakes” on every cake and packaging it has ever sold. It also uses the name on the store signs and menus of every retail bakery it operates to advertise and promote its retail bakery services.

12. In July 2000, Nothing Bundt Cakes began filing federal trademark applications for the variations of its mark, NOTHING BUNDT CAKES, with the U.S. Patent and Trademark Office. The first registration was issued on March 18, 2003, for the word mark NOTHING BUNDT CAKES (U.S. Registration No. 2,697,008).

13. On October 9, 2007, the U.S. Patent and Trademark Office issued Registration No. 3,309,781 for the Nothing Bundt Cakes’ logo, as shown below. Nothing Bundt Cakes began using this mark in interstate commerce on October 15, 2006.



14. On August 5, 2014, the U.S. Patent and Trademark Office issued Registration No. 4,579,282 for a new Nothing Bundt Cakes’ linear logo, as shown below. Nothing Bundt Cakes began using this mark in interstate commerce on March 31, 2011, for signs for its retail bakeries.



15. On August 5, 2014, the U.S. Patent and Trademark Office also issued Registration No. 4,579,284 for a new Nothing Bundt Cakes’ stacked vertical logo, as shown below. Nothing Bundt Cakes also began using this mark in interstate commerce on March 31, 2011, for signs for its retail bakeries.



16. On July 30, 2024, Nothing Bundt Cakes filed for the stylized mark NOTHING BUNDT CAKES as shown below with the U.S. Patent and Trademark Office (Application Ser. No. 98/674672). The USPTO has allowed the mark and is currently awaiting the registration to issue.



17. In addition to its highly valuable trademarks for its names and logos, since October 1998, Nothing Bundt Cakes has continuously used a unique frosting pattern in interstate commerce that distinguishes the cakes it advertises and sells from its competitors.

18. Specifically, Nothing Bundt Cakes' frosting pattern for its Bundt cakes consists of long, narrow strips of tubular ring-shaped frosting that expand radially outward from the center of each Bundt cake to a point on the outer edge of the cake. The frosting strips are applied around the entire perimeter of the Bundt cake's ring shape. Three representative examples of this pattern are shown below:



19. Nothing Bundt Cakes used this unique frosting pattern on its large Bundt cakes and its smaller Bundt cakes known as Bundtlets for several years since first using it in October 1998. And after intentionally and consistently using the unique frosting pattern for several years, the pattern became a unique identifier of the Bundt cakes from Nothing Bundt Cakes in the markets where it advertised and sold its cakes.

20. As the company expanded throughout the U.S. and developed a national brand, Nothing Bundt Cakes' frosting pattern became recognizable throughout the entire U.S.

21. The unique frosting pattern indicated to the consuming public that any Bundt cake with the unique frosting pattern originated solely from Nothing Bundt Cakes.

22. On September 11, 2007, Nothing Bundt Cakes filed for a federal trademark application on the Principal Register for the frosting pattern. On November 4, 2008, the U.S. Patent and Trademark Office issued Registration No. 3,526,479 for the frosting pattern under § 2(f) of 15 U.S.C. § 1051. This designation indicates that the mark has acquired secondary meaning among the consuming public that the frosting pattern is uniquely associated with Nothing Bundt Cakes.

23. Nothing Bundt Cakes not only utilizes local advertising campaigns where its franchises exist, but it also advertises internationally through its website located at [nothingbundtcakes.com](http://nothingbundtcakes.com), and third-party delivery service websites and applications, such as DoorDash and UberEats. Through these forms of advertisements, Nothing Bundt Cakes advertises and promotes its business, allowing consumers to order its cakes from anywhere in the world and have them delivered to virtually any location in the United States and parts of Canada.

24. All of Nothing Bundt Cakes' federally registered trademarks for use with dessert food products and the retail sale of baked goods and related items have been renewed and are currently in good standing with the U.S. Patent and Trademark Office.<sup>1</sup>

25. Furthermore, under 15 U.S.C. § 1065, the U.S. Patent and Trademark Office has designated all of Nothing Bundt Cakes' federally registered trademarks as incontestable.

26. During its nearly 28 years of continuous use, Nothing Bundt Cakes has developed an international customer base and has built a brand that is synonymous with the highest in quality dessert foods, and in particular, cakes, as well as the highest in quality retail bakery services.

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<sup>1</sup> A copy of each issued federal trademark registration is attached as Exhibit A.

27. It also follows that Nothing Bundt Cakes uses its distinctive brand and cake frosting pattern for Bundt cakes to distinguish its business and services from other similar companies.

28. Nothing Bundt Cakes has spent hundreds of thousands of dollars to develop and protect its NOTHING BUNDT CAKES trademarks, its unique frosting pattern, and its brand.

29. Nothing Bundt Cakes believes that protecting and enforcing its trademark rights is crucial to maintaining its business and reputation for providing the highest quality dessert food products and retail bakery services.

30. Nothing Bundt Cakes relies extensively on its name and logo trademarks and its unique frosting pattern to direct its customers to: (1) the proper physical locations to patronize its business; (2) its website for maintaining its customer base by enabling them to learn about its company and order its dessert foods; and (3) third-party vendors such as DoorDash and UberEats, where customers may order cakes from Nothing Bundt Cakes.

31. Nothing Bundt Cakes also relies on its trademarks and unique frosting pattern to enable its current customer base to properly direct and refer new customers to its physical locations, website, and other sales channels. By doing so, these new customers can obtain more information about Nothing Bundt Cakes' business.

32. When Nothing Bundt Cakes' current or future customer base is confused or misled by confusingly similar uses of its trademarks or its unique frosting pattern, Nothing Bundt Cakes may lose business due to the confusion.

### **The Defendant's Acts of Trademark Infringement**

33. PhatCakes operates a retail bakery business under the name PhatCakes and advertises and promotes its business through various social media sites, including Facebook, Instagram, and TikTok.

34. PhatCakes' primary business address is located in Greenville, Texas, which is approximately 50 miles from the center of Dallas, Texas.

35. PhatCakes also sells its cakes at various third-party retail locations in and around Greenville, Texas.

36. There are currently 113 Nothing Bundt Cakes franchises located in Texas.

37. PhatCakes' bakery business primarily advertises and sells Bundt cakes and related goods, and these are identical to the goods that Nothing Bundt Cakes advertises and sells.

38. On information and belief, PhatCakes began operating its business under the mark PHATCAKES in mid-2023 to advertise and promote its bakery services and its Bundt cakes dessert products in interstate commerce.

39. According to its Facebook page, PhatCakes' earliest post dates back to at least as early as June 6, 2023, which suggests it could not have advertised or promoted its business any earlier than that date.

40. During this same period, PhatCakes began using a tubular frosting pattern for its Bundt cakes that is substantially similar, if not identical, to the trademarked frosting pattern that Nothing Bundt Cakes uses. A sample of the frosting pattern that PhatCakes uses, which was obtained from its Facebook storefront page, is shown below.



41. At no time before Nothing Bundt Cakes' first use of its marks and frosting pattern did PhatCakes use its PHATCAKES name or the tubular frosting pattern for its Bundt cakes.

42. Therefore, Nothing Bundt Cakes has established first use and priority to the exclusive right to use its NOTHING BUNDT CAKES trademark and its unique tubular frosting pattern.

43. Any use of a confusingly similar mark as a trademark/service mark under federal trademark law in the markets where it has established priority of use would constitute an infringement of Nothing Bundt Cakes' intellectual property rights.

44. In mid-June 2025, Nothing Bundt Cakes discovered PhatCakes' advertising efforts after it began receiving complaints from its local franchises about PhatCakes' unauthorized use of the infringing frosting pattern on its Bundt cakes.

45. Shortly thereafter, Nothing Bundt Cakes' counsel sent a demand letter to PhatCakes alleging that its use of its tubular frosting pattern on its Bundt cakes was likely to cause confusion with Nothing Bundt Cakes' trademarked frosting pattern.

46. The letter threatened PhatCakes with a lawsuit for trademark infringement if it did not stop using the infringing frosting pattern.

47. PhatCakes ignored the demand letter and never responded. In early September 2025, Nothing Bundt Cakes sent a second letter demanding that PhatCakes respond and cease using the infringing frosting pattern. But once again, PhatCakes ignored the letter and continued to use the infringing frosting pattern.

48. In early October 2025, Nothing Bundt Cakes contacted PhatCakes for a third time, via Facebook Messenger, demanding that PhatCakes respond and cease using the infringing frosting pattern. Nothing Bundt Cakes clearly communicated to PhatCakes that it is permitted to sell bundt cakes with cream cheese frosting, but that it cannot infringe on Nothing Bundt Cakes' trademark by using its trademarked frosting pattern. PhatCakes viewed the message on Facebook Messenger, but never responded.

49. Later the same day in early October 2025, Nothing Bundt Cakes made a fourth attempt to reach PhatCakes by emailing it the same letters sent previously, reiterating that it may not continue to sell its bundt cakes with the infringing frosting pattern. PhatCakes never responded to that email either.

50. Since that time, Nothing Bundt Cakes has received additional complaints from its local franchisees of PhatCakes' unauthorized use.

51. As of this complaint's filing date, PhatCakes' business remains operational and is still using the infringing frosting pattern.

### **Causes of Action**

#### **Count 1 – Trademark Infringement – Nothing Bundt Cakes Frosting Pattern (15 U.S.C. § 1125(A))**

52. Nothing Bundt Cakes incorporates all previous statements as if fully stated herein.

53. In September 1997, Nothing Bundt Cakes began using a unique tubular frosting pattern to decorate the Bundt cakes it sold in interstate commerce.

54. From its first use date until the present day, Nothing Bundt Cakes has continuously and extensively used its unique tubular frosting pattern with its dessert foods, namely Bundt cakes.

55. Nothing Bundt Cakes owns a federally registered trademark for its unique tubular frosting pattern under U.S. Registration No. 3,526,479.

56. Nothing Bundt Cakes has spent substantial sums promoting and advertising its dessert foods and cakes to deliberately associate the unique tubular frosting pattern with its Bundt cakes by using the unique tubular frosting pattern in interstate commerce and throughout the entire United States through over 600 retail franchise locations.

57. On information and belief, in June 2023, PhatCakes began using a tubular frosting pattern on its Bundt cakes that is substantially similar or identical to

the trademarked tubular frosting pattern that Nothing Bundt Cakes uses in interstate commerce.

58. The respective parties provide substantially similar or identical goods and services to the public in interstate commerce.

59. PhatCakes' acts of using its tubular frosting pattern have caused and are likely to continue to cause confusion, mistake, or deception in that the public is likely to believe mistakenly that the Bundt cakes PhatCakes offer originate from Nothing Bundt Cakes, or is in some manner approved by, associated with, sponsored by or connected with Nothing Bundt Cakes, all in violation of 15 U.S.C. § 1125(a) et seq.

60. Upon information and belief, PhatCakes acted willfully and with the intent to confuse and deceive the public.

61. Ultimately, PhatCakes' acts have damaged Nothing Bundt Cakes' business, reputation, and goodwill and have interfered with Nothing Bundt Cakes' use of its names and marks.

62. PhatCakes' acts have already caused actual confusion in the marketplace among consumers.

63. Moreover, PhatCakes has caused, and unless enjoined, will continue to cause, irreparable harm and injury to Nothing Bundt Cakes for which there is no adequate remedy at law.

### **Count 2 – Common Law Unfair Competition (Frosting Pattern)**

64. Nothing Bundt Cakes incorporates all previous statements as if fully stated herein.

65. On information and belief, at some time in June 2023, and continuously since that time, PhatCakes has utilized a confusingly similar frosting pattern to decorate Bundt cakes that it sells in commerce that is confusingly similar to the trademarked frosting pattern that Nothing Bundt Cakes uses to decorate its Bundt cakes that it sells in interstate commerce.

66. By engaging in these acts, PhatCakes has thereby engaged in unfair trade practices and unfair competition under § 43(a) of the Lanham Act against Nothing Bundt Cakes.

67. PhatCakes has damaged Nothing Bundt Cakes by this behavior and will continue to be damaged by the action.

68. There is a substantial likelihood that Nothing Bundt Cakes will succeed on the merits of this action.

WHEREFORE, Plaintiff Nothing Bundt Cakes prays for judgment against PhatCakes, as follows:

- A. For damages in an amount to be proven at trial for trademark infringement.
- B. For injunctive relief under § 43(a) of the Lanham Act and related federal trademark laws.
- C. For costs and attorney's fees under federal trademark laws, as this is an exceptional case that PhatCakes has willfully caused.
- D. For interest on any fees and costs at the statutory rate of 10% per annum, until paid in full;
- E. For a temporary restraining order and permanent injunction against PhatCakes ordering it to cease any further use of the frosting pattern it currently uses to decorate its Bundt cakes or any other similar frosting pattern that is likely to cause confusion or mistake with Nothing Bundt Cakes' trademarked frosting pattern among consumers.
- F. For any other relief as the Court may consider just and equitable.

Dated this 20th day of January 2026

By /s/ Theodore G. Barody

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