

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

POTBELLY SANDWICH WORKS, LLC,)

Plaintiff,)

v.)

Case No.: 1:05-cv-0221(HHK)

FARRO ENTERPRISES, INC.; J.D.)
COGGINS SM LLC, COGGINS SANDWICH)
MANUFACTORY – WASHINGTON, DC,)
LLC, AND COGGINS SANDWICH)
MANUFACTORY - FAIRFAX LLC, D/B/A)
COGGINS’ SANDWICH MANUFACTORY,)

Defendants.)

STIPULATED JUDGMENT

On this ____ day of _____, 2006, the Court, having been advised that the within action has been settled, and pursuant to stipulation of the parties, enters judgment as follows:

1. All claims asserted by POTBELLY SANDWICH WORKS, LLC (“POTBELLY”) against defendant FARRO ENTERPRISES, INC. and all counterclaims asserted by FARRO ENTERPRISES, INC. against POTBELLY are dismissed, with prejudice.

2. The Court finds that the trade dress of plaintiff’s restaurants (“POTBELLY TRADE DRESS”) is distinctive and, taken as a whole, primarily non-functional.

3. The Court makes the following findings with respect the POTBELLY TRADE DRESS:

The POTBELLY TRADE DRESS is comprised of and includes at least the following elements:

- a. Floors made of natural wood and concrete;

- b. Natural wooden tables and chairs;
- c. Natural wooden molding, casing and trim;
- d. Tin panel ceilings;
- e. Signs with a hand-painted appearance;
- f. Signs with a vintage appearance;
- g. Fixtures (including lighting fixtures and ceiling fans) with a vintage appearance;
- h. Black and white photographs with a vintage appearance;
- i. Chalkboard-style menu boards; and
- j. Iron outdoor tables and chairs;

The POTBELLY TRADE DRESS incorporates the following menu features:

- k. Smoothies and shakes;
- l. Store-made desserts (cookies, desert bars)
- m. Single price point sandwiches;
- n. Single-size, six inch conveyor oven toasted-sub style sandwiches;
- o. Sandwiches wrapped in wax paper once, cut after first wrap, then wrapped a second time;
- p. To-go orders placed in brown paper "liquor" bags;
- q. Eat-in sandwich orders placed in open-weave baskets;
- r. Assorted beverages placed in built-in, glass-fronted, self serve cooler; and
- s. Chips and pretzels placed in cubby-hole shelving unit.

The POTBELLY TRADE DRESS incorporates the following layout features:

- t. Built-in glass-fronted, self-serve refrigerator located before ordering station;
- u. Barrier separating customer line from order counter with entry point at ordering station;
- v. Chest high ordering station for specialty drinks and basic sandwiches;
- w. Conveyor-belt toasting oven;
- x. Cubby-hole shelves holding chips and pretzels located at shoulder height at the counter-top middle point;
- y. Chest height dressing station for condiments and double-wrapping and cutting of sandwich; and
- z. Waist high pay-point with selection of store-made desserts.

The POTBELLY TRADE DRESS incorporates the following logo features:

- aa. Circular;
- bb. Comprised of concentric circles;
- cc. Scalloped outer edge;
- dd. First name of restaurant placed diagonally across logo;
- ee. First name of restaurant depicted in fanciful yellow serif font; and
- ff. First name of restaurant overlaps edges of logo.

4. Judgment is entered against defendants J.D. COGGINS SM LLC, COGGINS SANDWICH MANUFACTORY – WASHINGTON, DC, LLC, and COGGINS SANDWICH MANUFACTORY - FAIRFAX LLC, D/B/A COGGINS' SANDWICH MANUFACTORY (collectively "DEFENDANTS"), and in favor of plaintiff POTBELLY on POTBELLY'S claims

for: (1) trade dress infringement under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (2) unfair trade practices under D.C. Code 28-3901 et seq.; (3) common law unfair competition.

5. DEFENDANTS are permanently enjoined from directly or indirectly operating:
 - a. Any restaurant where sandwiches account for 25 percent or more of its gross sales;
 - b. Any restaurant, whether now open or to be opened in the future, that uses a trade dress that is confusingly similar to the POTBELLY TRADE DRESS; and/or
 - c. Any restaurant, whether now open or to be opened in the future, that uses a trade dress that contains more than half of the individual design elements, menu features, layout features or logo elements, of the POTBELLY TRADE DRESS.

The foregoing restrictions shall not prohibit (x) the operation by a Defendant of any TGI Fridays or Baja Fresh restaurants in accordance with the requirements of their applicable franchise or license agreements, or (y) the sale of hamburgers that are not cooked or warmed in a toaster oven or served on hoagie, hero or sub-style rolls, or (z) the ownership of less than five percent of the publicly traded shares of a company that operates a restaurant.

6. The Counterclaim filed in this action is dismissed, with prejudice.
7. Each party shall bear its own attorneys' fees and costs.

Date: _____

UNITED STATES DISTRICT JUDGE