

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
LATTANZIO & DE RUVO CORP. d/b/a	:
PANZEROTTI BITES OF BROOKLYN,	:
	:
Plaintiff,	:
	:
- against -	:
	:
I LOVE PANZEROTTI NY, LLC, ANGELO MAGNI	:
and MICHELE CEA,	:
	:
Defendants.	:
	:
-----X	

Civil Action No. 20-cv-02080
(AKH)

AMENDED COMPLAINT

**JURY TRIAL
DEMANDED**

Plaintiff Lattanzio & De Ruvo Corp. d/b/a Panzerotti Bites of Brooklyn, through its undersigned counsel, as and for its Amended Complaint against Defendants I Love Panzerotti NY, LLC, Angelo Magni and Michele Cea (collectively, “Defendants”), alleges as follows:

NATURE OF THE ACTION

1. This is an action for trademark infringement, infringement of trade dress, unfair competition, violations of the New York General Business law and breach of fiduciary duty.
2. Plaintiff Lattanzio & De Ruvo Corp. d/b/a Panzerotti Bites of Brooklyn (“Plaintiff”) is the owner of the restaurant Panzerotti Bites (“Panzerotti Bites”), located in Brooklyn, New York. Panzerotti Bites’ specialty is the panzerotti, which is similar to a calzone, but differs in certain significant ways.
3. In order to open Panzerotti Bites, Plaintiff’s principals, Vittoria Lattanzio and Pasquale De Ruvo, were required to obtain E-2 visas, as they are citizens of Italy. As part of the E-2 visa application process, Plaintiff was required to submit its business plan for Panzerotti Bites, which contained Plaintiff’s trade secrets, to the Department of Homeland Security, where

it would remain confidential. Accordingly, on or about September 2017, Plaintiff's business plan for Panzerotti Bites was provided to Defendant Michele Cea ("Cea"), the attorney retained to help Plaintiff obtain E-2 visas for Vittoria Lattanzio and Pasquale De Ruvo.

4. While in the process of obtaining the E-2 visas for Ms. Lattanzio and Mr. De Ruvo, Plaintiff retained Defendant Cea as its counsel to negotiate the lease for Panzerotti Bites. After obtaining the E-2 visas and after signing its lease, Plaintiff retained Defendant Cea to represent Plaintiff to obtain a liquor license for Panzerotti Bites. As part of Cea's representation of Plaintiff in negotiating its lease and the obtention of a liquor license, Plaintiff provided Defendant Cea with additional confidential information concerning Panzerotti Bites and its operations.

5. Plaintiff opened Panzerotti Bites on or about January 7, 2018. Panzerotti Bites has been an enormous success and has obtained an excellent reputation, in America and in Europe, particularly in Italy.

6. Unbeknownst to Plaintiff, Defendant Cea, in breach of the fiduciary duty he owed to Plaintiff, used Plaintiff's business plan and other confidential and privileged information he was provided by Plaintiff to form Defendant I Love Panzerotti NY, LLC ("Panzerotti") with Defendant Angelo Magni, the President of Defendant Panzerotti, who visited Panzerotti Bites before Defendant Panzerotti opened its own panzerotti restaurant.

7. Improperly using Plaintiff's business plan and other of Plaintiff's confidential information, Panzerotti then opened a restaurant in Manhattan, named I♥ Panzerotti ("Love Panzerotti"). Love Panzerotti is a similar styled restaurant as Panzerotti Bites, serving panzerotti in Manhattan. Love Panzerotti's logo, signage, styling and menu are confusingly and

substantially similar to those of Plaintiff’s Panzerotti Bites, and infringe Plaintiff’s trademarks and trade dress.

8. Plaintiff Panzerotti is the owner of United States Trademark Registration for the mark PANZEROTTI BITES ORIGINAL APULIAN FOOD, which includes the below logo (the “Mark”), which appears on Plaintiff’s web site and elsewhere:



9. Plaintiff also uses the below logo (the “Flag Mark”) in connection with Panzerotti Bites, which appears on its signage and elsewhere:



10. When Defendant Panzerotti opened Love Panzerotti, its logo and signage (the “Infringing Signage Mark”), pictured below, was confusingly and substantially similar to Plaintiff’s Mark and Plaintiff’s Flag Mark (collectively, the “Marks”):



11. In addition, on Defendant Panzerotti's website ilovepanzerotti.com, they were using the logo pictured below (the "Infringing Website Mark") until at least October 3, 2019, which also is substantially similar to Plaintiff's Marks, and were using the Infringing Website Mark on Defendant Panzerotti's ilp-partners.com website until after this action was commenced:



12. In Love Panzerotti, Defendant Panzerotti also improperly employs substantially similar decor, menus, kitchen equipment and serving platters, as well as a substantially similar restaurant design, as used by Plaintiff in Panzerotti Bites.

13. It is not surprising that Defendant Panzerotti is using confusingly and substantially similar marks as Plaintiff's Marks and using confusingly and substantially similar decor, menus, kitchen equipment, serving platters and restaurant design as Plaintiff, because Defendant Magni visited Panzerotti Bites before opening Love Panzerotti and Defendant Cea obtained confidential information concerning Plaintiff's Marks, decor, menus, kitchen equipment, serving platters and restaurant design from Plaintiff while he represented Plaintiff as its attorney. Defendants Magni and Cea then contacted the same company to design Defendant Love Panzerotti's Infringing Signage Mark and Infringing Website Mark (collectively, the "Infringing Marks") as Plaintiff had used, a company named The Creative Shake. They also caused Defendant Panzerotti to retain the same architect to design Love Panzerotti as Plaintiff had used for Panzerotti Bites. During the course of his representation of Plaintiff, Plaintiff had

provided the identities of these companies to Defendant Cea, as well as additional information which Defendants improperly incorporated into the formation of Love Panzerotti.

14. As a result of Defendant Panzerotti's improper infringement of Plaintiff's Marks and trade dress, and use of the Infringing Marks, there exists not only the likelihood of consumer confusion, but actual consumer confusion.

15. As is more fully discussed below, Plaintiff has received numerous posts on Facebook and Instagram, as well as numerous telephone calls and numerous emails, in which consumers expressed their inaccurate belief that Love Panzerotti was owned by Plaintiff and was an expansion of Panzerotti Bites. To make matters worse, customers have posted complaints concerning their experiences at Love Panzerotti on *Plaintiff's* Facebook page and Instagram account, incorrectly believing Love Panzerotti was owned by Plaintiff and is a second location of Panzerotti Bites.

THE PARTIES

16. Plaintiff Lattanzio & De Ruvo Corp. d/b/a Panzerotti Bites of Brooklyn is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 235 Smith Street, Brooklyn, New York, 11231.

17. Upon information and belief, Defendant I Love Panzerotti NY, LLC is a limited liability company organized and existing under the laws of the State of New York, with its principal place of business located at 201 Eastern Parkway, Brooklyn, New York.

18. Upon information and belief, Defendant Angelo Magni is an individual who resides in the State of New York and who works in an office located at 201 Eastern Parkway, Brooklyn, New York.

19. Upon information and belief, Defendant Michele Cea is an individual who resides in the State of New York, with an office located at 40 Wall Street, 28th Floor, New York, New York.

JURISDICTION AND VENUE

20. The Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. 1121(a) and/or 28 U.C.A. 1367(a).

21. Venue is proper in this judicial district pursuant to 28 U.S.C. 1391(b)(1) and/or (b)(2) because Panzerotti Bites is located in this judicial district and/or a substantial part of the events and omissions giving rise to the Plaintiff's claims occurred in this judicial district.

FACTS COMMON TO ALL CAUSES OF ACTION

Background

22. The concept of Panzerotti Bites was created in 2015 by Vittoria Lattanzio and Pasquale De Ruvo, Plaintiff's principals. They are a married couple from the Puglia region of Italy, who longed to bring one of the most famous and appreciated apulian traditional foods to New York, the panzerotti.

23. More specifically, a panzerotti is a half-moon-shaped pocket of dough filled with any number of sweet and savory ingredients. It is then wrapped and delicately fried until golden. During this process, the panzerotti rises, creating a pocket of hot filling, ready to be eaten bite after bite. Its name comes from the word "panza," used to refer to the rounded shape. There is a strong tradition in Puglia to prepare panzerotti at home with family and friends to celebrate important occasions. The panzerotti is very important to the people of Puglia, almost sacred.

24. Motivated by their love of their region, Vittoria and Pasquale began

studying and perfecting the bread-making process of the panzerotti until they achieved dough that was rich in flavor and Italian history. They then left Italy to realize their dream and to bring Puglia and its important traditions, particularly the panzerotti, to the United States.

25. Before Plaintiff could open Panzerotti Bites, however, Plaintiff was required to obtain E-2 visas for Vittoria Lattanzio and Pasquale De Ruvo, as they are citizens of Italy. In or about June 2016, to help obtain E-2 visas for Ms. Lattanzio and Mr. De Ruvo, Plaintiff retained ExportUSA, which is an Italian company that provides services for potential investors in the United States. ExportUSA helped Plaintiff prepare the documents required to obtain the E-2 visas for Ms. Lattanzio and Mr. De Ruvo, and ExportUSA hired Defendant Cea, an attorney, on behalf of Plaintiff, to file the documents with the Department of Homeland Security.

26. As part of the E-2 visa application process, Plaintiff was required to submit its business plan for Panzerotti Bites to the Department of Homeland Security, where it would remain confidential. Accordingly, in or about September 2017, Plaintiff and ExportUSA created the business plan for Panzerotti Bites, , which contained trade secrets, and ExportUSA provided Plaintiff's business plan to Defendant Cea, the attorney retained by ExportUSA to represent Plaintiff.

27. On or about April 3, 2017, while in the process of obtaining the E-2 visas, for its principals, Plaintiff retained Defendant Cea as its counsel to help negotiate Plaintiff's lease for Panzerotti Bites.

28. Plaintiff opened Panzerotti Bites at 235 Smith Street in Brooklyn, New York on or about January 7, 2018, which prominently features the Flag Mark on its signage and elsewhere throughout Panzerotti Bites.

29. After obtaining the E-2 visas and entering into a lease, in or about April 2018 (after Panzerotti Bites opened), Plaintiff retained Defendant Cea to help Plaintiff obtain its liquor license. As part of Defendant Cea's representation of Plaintiff concerning its lease and liquor license, Plaintiff provided Defendant Cea with its confidential information, including its business plan (as part of his representations concerning the E-2 visas), descriptions of its equipment and the identity of its architect, logo designer and public relations agency.

30. Panzerotti Bites has been an enormous success. It has a stellar international reputation, as it is well known in America and Europe, as there have been dozens and dozens of newspaper articles available online and on the website www.panzerottibites.com concerning the success of Panzerotti Bites, as well as television interviews, participation in trade fairs, television broadcasts, events and mentions in company meetings. Panzerotti Bites was ranked number 8 of the top 100 places to eat in New York by Yelp in 2019. Panzerotti Bites' customers include famous and influential personalities such as the president of the Emiliano region of Italy (who complimented Ms. Lattanzio and Mr. De Ruvo personally), as well as Roberto Saviano and Michele Mirabella. In addition, Plaintiff has received over 40 requests from others to open a Panzerotti Bites franchise.

Defendants' Infringement

31. Aware of the success of Panzerotti Bites, and improperly armed with Plaintiff's business plan and other of its confidential and proprietary information and trade secrets, Defendant Cea formed Defendant Panzerotti with Defendant Magni. Defendant Cea is the Treasurer of Defendant Panzerotti and Defendant Magni is the President of Defendant Panzerotti and controls its operations.

32. In order to open Love Panzerotti, Defendants used Plaintiff's confidential

information and Marks, as Defendant Cea had obtained Plaintiff's confidential information from Plaintiff while he represented Plaintiff as its counsel and Defendant Magni visited Panzerotti Bites on at least one occasion before opening Love Panzerotti.

33. Defendant Panzerotti opened the restaurant Love Panzerotti in or about early April, 2018, located at 220 Varick Street in New York City, which prominently displayed the Infringing Marks.

34. Defendants posted their business plan on the internet and it is substantially similar to Plaintiff's business plan, and also posted the Infringing Website Mark on the internet, both at its website www.ilp-partner.com.

35. Not only have Defendant Cea and Defendant Panzerotti improperly used Plaintiff's business plan to open Love Panzerotti, they also have unlawfully violated Plaintiff's trademark rights concerning Plaintiff's Marks and trade dress, and used the Infringing Marks in violation of Plaintiff's rights. If not for their improper use of Plaintiff's trade secrets and the Infringing Marks, Defendants could not have opened Love Panzerotti.

36. Indeed, Love Panzerotti is a similar styled restaurant as Panzerotti Bites, serving panzerotti in Manhattan. Defendant Panzerotti's restaurant's styling and menu is so similar to those of Plaintiff and Panzerotti Bites that Plaintiff has received numerous inquiries from customers believing that Plaintiff has opened a new second location in Manhattan.

37. Defendant Cea and Defendant Magni as officers of Defendant Panzerotti directly participated in creating Defendant Panzerotti's Infringing Marks, business plan and decor.

38. As stated, among other trademarks, Plaintiff is the owner of United States Trademark Registration No. 5,488,442 for the mark PANZEROTTI BITES ORIGINAL

APULIAN FOOD, as well as the owner of United States Trademark Registration No. 5,935,828 for the mark PANZEROTTI BITES ORIGINAL APULIAN FOOD, which includes the below Mark:



39. Plaintiff also uses the Flag Mark, which is based on the Mark:



40. As stated, Love Panzerotti was using the following Infringing Marks, which are impermissibly similar to Plaintiff's Marks:



41. The Marks and Infringing Marks, displayed, *inter alia*, on the signage of the respective businesses and on Defendant Panzerotti's web site, use an identical or almost identical font and the exact same gold and black color scheme, complete with black lettering showing three dimensional shading in gold behind the black letter as shown below

42. Further, the dimensions of the words on both signs and marks appear to be the same, the colors and color scheme of both trademarks on the signage are identical – even the color of the heart is gold as is the color of the word “Bites.” As can be seen, the font, style, look and feel of the respective trademarks shown on the signage provides the same commercial impression leaving customers believing that both restaurants are related or emanate from the same source.

43. Making it even more confusing is that the signage of the respective businesses also use the exact same rendition of the Italian flag in their marks. In addition, the cursive writing of the word “BITES” and the similar cursive writing of the phrase “ITALIAN HEART,” both showing centered right beneath the word PANZEROTTI, is also confusingly similar.

44. All of these factors are such that the entire look and commercial impression of the trademarks on the signage is likely to be confused by consumers in the marketplace and lead consumers to believe Plaintiff has opened a second location of its restaurant, which confusion has already occurred. Indeed, this confusion is exacerbated by the fact that both restaurants are very close to each other, as Plaintiff is in Brooklyn and Love Panzerotti is in downtown Manhattan.

45. Defendant Cea and Defendant Magni, as officers of Defendant Panzerotti, directly participated in the creating the Infringing Marks.

46. In addition to the signage, the interior of the respective kitchens of the restaurants are also almost identical: both restaurants have open kitchens with white rectangular tiles installed in exactly the same pattern making up the back wall of the kitchen area where the panzerotti are prepared in full view of the customers:



47. Not only is the white tile the same, and installed in the same pattern, but both restaurants use the same “open kitchen” concept so that customers can view the preparation and cooking of the panzerotti.

48. The comparisons of the restaurants go even further, the exterior of the Love Panzerotti restaurant contains large windows with black frames for the purpose of looking inside the restaurant right into the kitchen preparation area. Similarly, the interior of Plaintiff’s Panzerotti Bites contains large windows with black frames for looking inside the kitchen preparation area.

49. The serving dishes for the panzerotti served at both restaurants are also almost identical:



50. Wooden cutting boards are not an Italian tradition, and they are not the manner in which panzerotti is served in Italy. Rather, the wooden cutting boards were chosen particularly by Plaintiff, including the name stamped onto the board itself, both of which has been copied by Defendant Panzerotti. In addition, the Panzerotti is not cut open when it is served. To the best of Plaintiff's knowledge, Plaintiff's Panzerotti Bites is the first restaurant in the world to serve panzerottis which are cut open. This was done so that Americans would be able to see what is inside the panzerotti. That Defendant Panzerotti is the second store to serve panzerottis cut open further demonstrates their infringement of Plaintiff's trade dress rights.

51. The menus of the two restaurants are also almost identical, including the gold and black color scheme of the names of the restaurants at the top of both menus, the identical rendition of the Italian flag at the top of both menus, the background color of the respective menus, the types of panzerotti offered on the menus, and the display and names of each food item on each menu.

52. In addition, the equipment that Plaintiff uses is not commonly used for the preparation of panzerotti, as Plaintiff uses a funnel cake fryer. Yet, so too does Defendant Panzerotti use a funnel cake fryer, as well as the same type of dough cutter, sheeter and refrigerated countertop as Plaintiff uses. It is no coincidence that Defendants are using the same equipment in Love Panzerotti as Plaintiff uses in Panzerotti Bites, because Plaintiff provided information concerning its equipment to Defendant Cea when he was Plaintiff's counsel. Plaintiff also provided this same information to its architect, Modalita, who *was retained by Defendants to design Love Panzerotti*.

53. Further demonstrating Defendant Panzerotti's unlawful infringement of Plaintiff's trade dress, there are certain items on Plaintiff's menu which are not typical of the

panzerotti as made in Italy, but were developed for the American market. For example, the artichoke, mortadella, Nutella, parma ham and salmon panzerotti are not typically served in Italy, but are of appeal to American customers. Yet, these same panzerotti are now also being served by Defendant Panzerottis at Love Panzerotti.

54. Even the take-out bags are confusingly similar, in that both bags are white with the logo on the lower outside of the bag.



55. The restaurants are similar in the exterior signage, the interior signage, the materials of the interior walls themselves, the windows and frames, the serving boards, the food packaging, the display of the food, the menu, the food preparation equipment, and not to mention, when Love Panzerotti opened, the exact same black and gold color scheme and identical black font used in the trademarks of both restaurants. Under the relevant trademark law, trade dress is defined as the total image of a business and may include the shape and general appearance of the exterior of the restaurant, the identifying sign, the interior kitchen floor plan, the decor, the menu, the equipment used to serve food, the servers' uniforms and any other features reflecting the total image of the restaurant. The purpose of trade dress protection is to secure to the owner of the trade dress the goodwill of his business and to protect the ability of consumers to distinguish among competing producers.

56. Defendant Cea and Defendant Magni, as officers of Defendant Panzerotti,

directly participated in creating Defendant Panzerotti's infringing trade dress. Defendant Cea obtained information concerning the decor and equipment used by Plaintiff in the course of his representation of Plaintiff and Defendant Magni visited Panzerotti Bites. They then caused Defendant Panzerotti to adopt the infringing trade dress by, *inter alia*, causing Defendant Panzerotti to hire the same architect to design their store, Love Panzerotti, as Plaintiff used to design Panzerotti Bites (Modalita), and hired the same public relations firm as Plaintiff uses (Barabino and Partners).

57. Further, Defendant Panzerotti has opened two additional locations, which both use the Infringing Marks and infringing trade dress discussed above. Defendant Panzerotti opened a Love Panzerotti in Gansevoort Market in 2019 and on St. Marks Place in 2020.

58. Plaintiff opened its restaurant on January 7, 2018, well prior to the April 8, 2019 opening of Defendant Panzerotti's restaurant. In fact, after the opening of Plaintiff's Panzerotti Bites, on or about August 16, 2018, Plaintiff received an inquiry from Angelo Magni via social media concerning the opening of Panzerotti Bites and he commented on the restaurant, acknowledging that Plaintiff had done an "excellent job." As stated, Angelo Magni is the President of Defendant Panzerotti. It is no coincidence that or about October 19, 2018, after visiting Panzerotti Bites, Magni created Defendant Panzerotti with his cousin Giovanni Bonati and Plaintiff's former lawyer, Cea.

59. Further, Giulia Sambugaro, an attorney who works with Defendant Cea and assisted Plaintiff in obtaining its liquor license, is also an investor in Defendant Panzerotti. Defendant Panzerotti then opened Love Panzerotti in or about early April 2018. One week after the opening of Love Panzerotti, Defendant Cea contacted Plaintiff and admitted that he was involved in helping Defendant Panzerotti, but falsely claimed he only worked on its lease.

60. Since the opening of Defendant Panzerotti's restaurant, Plaintiff has received numerous inquiries from customers and other individuals as to whether it had opened a second location in Manhattan. As such, not only are customers likely to be confused that the two locations are owned and operated by the same entity, but customers have actually been confused into believing that the restaurants are one and the same. Many if not all of the elements of Plaintiff's trade dress of its restaurant have been incorporated into Defendant Panzerotti's restaurant, such that consumers believe that the restaurants are owned by the same entity. As Plaintiff clearly has senior rights in the Mark, its trade dress and trademarks, such use of Plaintiff's Mark and trade dress by Defendant Panzerotti are infringing.

Plaintiff Provides Notice to Defendant Panzerotti of Its Infringement

61. By letter dated June 19, 2019, Plaintiff's then counsel informed Defendant Panzerotti of its unlawful infringement of Plaintiff's trademark rights regarding the Marks and Plaintiff's trade dress, and demanded that Defendant Panzerotti cease and desist from further infringing conduct by changing its logo, signage, the Infringing Marks and trade dress.

62. After the exchange of additional correspondence between counsel for Plaintiff and Defendant Panzerotti, Defendant Panzerotti agreed to change the Infringing Marks.

63. Although Defendant Panzerotti changed its signage and logo, its revised signage and logo still infringe on Plaintiff's trademark rights. Below is Defendant Panzerotti's revised logo (the "Revised Infringing Mark"):



64. Defendant Panzerotti's revised logo is still confusingly and substantially similar to Plaintiff's Marks, for many of the same reasons discussed above.

COUNT I

(Violation of Section 32(1) of the Lanham Act
- Trademark Infringement Against All Defendants)

65. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1-64 above, as if fully set forth herein.

66. The United States Patent and Trademark Office (“USPTO”) has determined that the Mark meets all of the requirements for federal registration and has issued a Certificate of Registration for the Mark.

67. Plaintiff has been using the Flag Mark in commerce since on or about January 7, 2018 and has been using the Mark in commerce since on or about March 15, 2018, both of which are distinctive.

68. Plaintiff is the lawful owner of the Mark.

69. The use of the Mark by Plaintiff occurred prior to Defendants’ unlawful use of the Infringing Marks and/or Revised Infringing Mark.

70. Defendant Panzerotti has been using the Infringing Marks and/or Revised Infringing Mark in interstate commerce in its restaurants, Love Panzerotti, which are fast-food or casual restaurants, the same use for which the Mark was registered.

71. Defendant Panzerotti’s purpose and intent in adopting the Infringing Marks and/or Revised Infringing Mark is to deceive consumers as to the ownership or sponsorship of their retail locations and web site and to confuse consumers as to the affiliation or relationship between Defendant Panzerotti’s Infringing Marks and/or Revised Infringing Mark, and the Mark and/or Plaintiff.

72. Defendant Panzerotti has committed and, unless enjoined by the Court, will continue to commit the infringing acts discussed above, with full knowledge of Plaintiff’s

prior rights in its trademark, with willful and intentional disregard for Plaintiff's rights.

73. Defendant Panzerotti's use of the Infringing Marks and/or Revised Infringing Mark is likely to cause and has caused, and unless enjoined by the Court, will continue to cause confusion in the mind of consumers as to the relationship or affiliation between Defendant Panzerotti and Plaintiff and/or the Mark, and such confusion has already occurred.

74. Defendant Magni and Defendant Cea, as officers of Defendant Panzerotti, directly participated in the creation and use of the Infringing Marks and/or Revised Infringing Mark, as they, among other things, caused Defendant Panzerotti to hire the same company to create the Infringing Marks and/or Revised Infringing Mark as Plaintiff had used to create its Marks and caused the Infringing Marks and/or Revised Infringing Mark to be confusingly and substantially similar to Plaintiff's Mark. They also caused and approved Defendant Panzerotti's use of the Infringing Marks and/or Revised Infringing Mark.

75. As a proximate result of Defendant Panzerotti's use of the Infringing Marks in violation of Section 32(1) of the Lanham Act (15 U.S.C. § 1114(1)), Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial, but in no event less than \$1,000,000.00, for which Defendants Panzerotti, Magni and Cea are liable, plus costs, interest and attorney's fees.

76. Unless Defendant Panzerotti's conduct is enjoined, Plaintiff's acquired rights to enjoy and profit by the reputation and goodwill associated with the Marks will continue to suffer irreparable injury that cannot adequately be calculated or compensated by money damages alone. Accordingly, Plaintiff seeks injunctive relief and monetary damages to compensate it for its actual harm.

COUNT II

(Common Law - Trademark Infringement Against All Defendants)

77. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1-76 above, as if fully set forth herein.

78. Plaintiff has been using the Flag Mark in commerce since on or about January 7, 2018 and has been using the Mark in commerce since on or about March 15, 2018, both of which are distinctive.

79. Plaintiff is the lawful owner of the Marks.

80. The use of the Marks by Plaintiff occurred prior to Defendants' unlawful use of the Infringing Marks and/or Revised Infringing Mark.

81. Defendant Panzerotti has been using the Infringing Marks and/or Revised Infringing Mark in interstate commerce in its restaurants, Love Panzerotti, which are fast-food or casual restaurants featuring panzerotti, the same use for which the Mark were registered.

82. Defendant Panzerotti's purpose and intent in adopting the Infringing Marks and/or Revised Infringing Mark is to deceive consumers as to the ownership or sponsorship of their retail locations and web site and to confuse consumers as to the affiliation or relationship between Defendant Panzerotti's Infringing Marks and/or Revised Infringing Mark, and the Mark and/or Plaintiff.

83. Defendant Panzerotti has committed and, unless enjoined by the Court, will continue to commit the infringing acts discussed above, with full knowledge of Plaintiff's prior rights in its trademarks, with willful and intentional disregard for Plaintiff's rights.

84. Defendant Panzerotti's use of the Infringing Marks and/or Revised Infringing Mark is likely to cause and has caused, and unless enjoined by the Court, will continue to cause confusion in the mind of consumers as to the relationship or affiliation between

Defendant Panzerotti and Plaintiff and/or the Marks, and such confusion has already occurred.

85. Defendant Magni and Defendant Cea, as officers of Defendant Panzerotti, directly participated in the creation and use of the Infringing Marks and/or Revised Infringing Mark, as they, among other things, caused Defendant Panzerotti to hire the same company to create the Infringing Marks and/or Revised Infringing Mark as Plaintiff had used to create its Marks and caused the Infringing Marks and/or Revised Infringing Mark to be confusingly and substantially similar to Plaintiff's Marks. They also caused and approved Defendant Panzerotti's use of the Infringing Marks and/or Revised Infringing Mark.

86. As a proximate result of Defendant Panzerotti's use of the Infringing Marks in violation common law, Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial, but in no event less than \$1,000,000.00, for which Defendants Panzerotti, Magni and Cea are liable, plus costs, interest and attorney's fees.

87. Unless Defendant Panzerotti's conduct is enjoined, Plaintiff's acquired rights to enjoy and profit by the reputation and goodwill associated with the Marks will continue to suffer irreparable injury that cannot adequately be calculated or compensated by money damages alone. Accordingly, Plaintiff seeks injunctive relief and monetary damages to compensate it for its actual harm.

COUNT III

(Violation of Section 43(a) of the Lanham Act - False Designation of Origin/Unfair Competition Against All Defendants)

88. Plaintiff repeats and realleges each and every allegation found in paragraphs 1-87, *supra*, as if fully set forth herein.

89. Plaintiff is the owner of the entire right, title and interest in and to, *inter alia*, the Marks and has been using the Flag Mark in commerce since on or about January 7, 2018

and using the Mark in commerce since on or about March 15, 2018, both of which are distinctive.

90. The Marks have been widely promoted both in the United States and throughout the world, are widely recognizable and the public associates the Marks with quality products.

91. Plaintiff's Marks have become uniquely associated with and identifies Panzerotti Bites as associated with Plaintiff and/or the Marks.

92. As a result of the use of the Marks, the Marks has been distinctive and was distinctive when Defendant Panzerotti began using the Infringing Marks and/or Revised Infringing Mark.

93. Since at least April 2018, Defendant Panzerotti has been using the Infringing Marks and/or Revised Infringing Mark in bad faith, *i.e.*, with actual knowledge that its use of them was unauthorized by Plaintiff and with actual knowledge of Plaintiff's trademark rights, and with an intent to unlawfully profit from its continued use of the Infringing Marks and/or Revised Infringing Mark, which are confusingly similar to the Plaintiff's Marks.

94. Defendant Panzerotti's Infringing Marks and/or Revised Infringing Mark are virtually identical to Plaintiff's Marks in appearance, impression and aurally.

95. The use by Defendant Panzerotti of the Infringing Marks and/or Revised Infringing Mark constitutes deliberate and willful copying of Plaintiff's Marks.

96. Defendant Panzerotti's intention in adopting and using the Infringing Marks and/or Revised Infringing Marks was to deceive, mislead and confuse consumers to enable Defendant to trade-off of the reputation and goodwill associated with the Marks.

97. Defendant Panzerotti's use of the Infringing Marks and/or Revised

Infringing Mark is likely to cause and has caused, and unless enjoined by the Court will continue to cause, confusion, mistake and/or deception among the general public and in the mind of consumers as to the origin of the Infringing Marks and/or Revised Infringing Mark and is likely to deceive the public into believing that Defendant Panzerotti's Infringing Marks and/or Revised Infringing Mark originate from, continue to be associated with or are otherwise authorized and approved by Plaintiff, all to the damage and detriment of Plaintiff and/or the Marks' reputation, goodwill and sales.

98. Defendant Magni and Defendant Cea, as officers of Defendant Panzerotti, directly participated in the creation and use of the Infringing Marks and/or Revised Infringing Mark, as they, among other things, caused Defendant Panzerotti to hire the same company to create the Infringing Marks and/or Revised Infringing Mark as Plaintiff had used to create its Mark and caused the Infringing Marks and/or Revised Infringing Mark to be confusingly and substantially similar to Plaintiff's Mark. They also caused and approved Defendant Panzerotti's use of the Infringing Marks and/or Revised Infringing Mark

99. Defendant's improper conduct constitutes unfair competition in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

100. As a proximate result of Defendants' use of the Infringing Marks and/or Revised Infringing Mark in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)), Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial, but in no event less than \$1,000,000.00, for which Defendants Panzerotti, Magni and Cea are liable, plus costs, interest and attorney's fees.

101. Unless Defendant Panzerotti's conduct is enjoined, Plaintiff's acquired rights to enjoy and profit by the reputation and goodwill associated with the Marks will continue

to suffer irreparable injury that cannot adequately be calculated or compensated by money damages alone. Accordingly, Plaintiff seeks injunctive relief and monetary damages to compensate it for its actual harm.

COUNT IV

(Violation of Section 35(a) of the Lanham Act – Infringement
of Trade Dress Against All Defendants)

102. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1-101 above, as if fully set forth herein.

103. As discussed above, the total image of Love Panzerotti is substantially similar to the total image of Panzerotti Bites, as they have the same shape and general appearance of the exterior of the restaurant, the identifying sign, the interior floor plan, the decor, the menu, the equipment used to serve food and other features reflecting the total image of the restaurants (collectively, the “Trade Dress”).

104. The Trade Dress in Panzerotti Bites and in Love Panzerotti is non-functional within the meaning of the Lanham Act, as the aspects of the Trade Dress are not essential to the use or purpose of the food products sold and do not affect the food’s quality or cost.

105. Plaintiff began using is Trade Dress in commerce on or about January 7, 2018.

106. Since at least April 2018, Defendant Panzerotti has been infringing Plaintiff’s Trade Dress in bad faith, *i.e.*, with actual knowledge that its use was unauthorized by Plaintiff and with actual knowledge of Plaintiff’s Trade Dress rights, and with an intent to unlawfully profit from its continued infringement of Plaintiff’s Trade Dress.

107. Defendant Panzerotti’s Trade Dress is confusingly similar to the Plaintiff’s

Trade Dress.

108. The use by Defendant Panzerotti of its infringing Trade Dress constitutes deliberate and willful copying of Plaintiff's Trade Dress.

109. Defendant Panzerotti's intention in adopting and using the Trade Dress which is substantially similar to Plaintiff's Trade Dress was to deceive, mislead and confuse consumers to enable Defendant Panzerotti to trade-off of the reputation and goodwill associated with Plaintiff and Panzerotti Bites.

110. Defendant Panzerotti's use of the infringing Trade Dress is likely to cause and has caused, and unless enjoined by the Court will continue to cause, confusion, mistake and/or deception among the general public and in the mind of consumers as to the origin Love Panzerotti and is likely to deceive the public into believing that Love Panzerotti originates from, continues to be associated with or was otherwise authorized and approved by Plaintiff, all to the damage and detriment of Plaintiff, its Trade Dress, reputation, goodwill and sales.

111. Defendant Magni and Defendant Cea, as officers of Defendant Panzerotti, directly participated in the creation and use of the infringing Trade Dress. Defendant Cea improperly used information he had obtained from Plaintiff while he was their counsel, such as Plaintiff's architect and the types of equipment it used, and Defendant Magni visited Panzerotti Bites to obtain similar information. Defendant Magni and Defendant Cea, as officers of Defendant Panzerotti, among other things, caused and approved Defendant Panzerotti's use of the infringing Trade Dress.

112. Defendant Panzerotti's improper conduct constitutes unfair competition in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

113. As a proximate result of Defendants' use of the infringing Trade Dress in

violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)), Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial, but in no event less than \$1,000,000.00, for which Defendants liable, plus costs, interest and attorney's fees.

114. Unless Defendant Panzerotti's conduct is enjoined, Plaintiff's acquired rights to enjoy and profit by the reputation and goodwill associated with its Trade Dress will continue to suffer irreparable injury that cannot adequately be calculated or compensated by money damages alone. Accordingly, Plaintiff seeks injunctive relief and monetary damages to compensate it for its actual harm.

COUNT V

(Common Law - Unfair Competition Against Defendant Panzerotti Bites)

115. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1-114 above, as if fully set forth herein.

116. With full knowledge of Plaintiff's Marks, Defendant Panzerotti Bites has been selling and offering for sale food in interstate commerce, through the restaurants Love Panzerotti, which bear the Infringing Marks and/or Revised Infringing Mark.

117. The Infringing Marks and/or Revised Infringing Mark been used in connection with restaurants geographically near Plaintiff's use of the Marks.

118. Defendant Panzerotti's conduct constitutes unfair competition and infringement of Plaintiff's common law rights in its Marks.

119. As a result of the considerable investment of time and money, the Marks have developed secondary and distinctive meaning to consumers. The Marks have come to indicate to consumers high quality retail stores originating with the owners of the Marks.

120. Defendant Panzerotti's actions in adopting the Marks through use of the Infringing Marks and/or Revised Infringing Mark have been willful and have been undertaken

with the purpose of deceiving consumers.

121. Defendant Panzerotti is palming off the restaurant Love Panzerotti, and its goods and services, as those of Plaintiff and/or as associated with the Marks or, at a minimum, falsely suggesting that its restaurant is associated with the Marks and/or Plaintiff, or endorsed or sponsored by Plaintiff.

122. As a proximate result of Defendant Panzerotti's unlawful conduct, Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial, but in no event less than \$1,000,000.00, for which Defendant Panzerotti is liable, plus costs and interest.

COUNT VI

(Violation of Section 360-1 of the
New York General Business Law Against Defendant Panzerotti)

123. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1-122 above, as if fully set forth herein.

124. Plaintiffs' Marks are distinctive.

125. The Marks and the Infringing Marks and/or Revised Infringing Mark are confusingly and substantially similar.

126. The Marks and the Infringing Marks and/or Revised Infringing Mark have all been used in association with restaurants.

127. Defendant Panzerotti's willful unlawful use of the Marks through the Infringing Marks and/or Revised Infringing Mark dilutes, or has the likelihood of diluting, the quality of Plaintiff's Marks by diminishing the capacity of Plaintiff's Marks to identify and distinguish its restaurant.

128. Pursuant to Section 360-1 of the New York General Business Law,

Plaintiff is entitled to injunctive relief, enjoining Defendant Panzerotti from further use of the Infringing Marks and/or Revised Infringing Mark.

COUNT VII

(Violation of Sections 349 and 350 of the
New York General Business Law Against Defendant Panzerotti)

129. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1-128 above, as if fully set forth herein.

130. Defendant Panzerotti's use of the Infringing Marks and/or Revised Infringing Mark in connection with selling food and related products and services to the general public in New York are deceptive and likely to create, and have created, consumer confusion as to the origin and/or sponsorship of the Infringing Marks and/or Revised Infringing Mark in violation of Sections 349 and 350 of the New York General Business Law.

131. The Marks and the Infringing Marks and/or Revised Infringing Mark are confusingly and substantially similar.

132. Defendant Panzerotti's actions in adopting the Marks through use of the Infringing Marks and/or Revised Infringing Mark has been willful and has been undertaken with the purpose and effect of deceiving consumers as to the origin and/or sponsorship of its restaurant.

133. Such deception constitutes an injury to the public interest.

134. As a proximate result of Defendant Panzerotti's unlawful conduct, Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial, but in no event less than \$1,000,000.00 plus treble damages, for which Defendant Panzerotti is liable, plus costs and interest.

135. Plaintiff has been, and will continue to be, damaged by Defendant

Panzerotti's activities and conduct. Unless Defendant Panzerotti's conduct is enjoined, Plaintiff's acquired rights to enjoy and profit by the reputation and goodwill associated with the Marks will continue to suffer irreparable injury that cannot adequately be calculated or compensated by money damages alone. Accordingly, Plaintiff seeks injunctive relief and monetary damages to compensate it for its actual harm.

COUNT VIII

(Breach of Fiduciary Duty Against Defendant Cea)

136. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1-135 above, as if fully set forth herein.

137. In or about the fall of 2017, Defendant Cea was retained by ExportUSA to act as Plaintiff's counsel in connection with obtaining E-2 visas for Vittoria Lattanzio and Pasquale De Ruvo, Plaintiff's principals. ExportUSA provided Defendant Cea with Plaintiff's business plan, which Cea was required to submit to the Department of Homeland Security as part of the E-2 visa applications.

138. Defendant Cea submitted Plaintiff's application for the E-2 visas to the Department of Homeland Security on or about September 15, 2017

139. In or about April of 2017, Defendant Cea also was retained by Plaintiff as Plaintiff's counsel to negotiate Plaintiff's lease and liquor license for Panzerotti Bites.

140. In the course of Defendant Cea's representation of Plaintiff, in order to perform the legal services Defendant Cea was retained to perform for Plaintiff, Defendant Cea received Plaintiff's confidential information and trade secrets, including Plaintiff's business plan, the identity of its logo designer, architect and public relations agency and information concerning the type of equipment used by Plaintiff.

141. As Plaintiff's attorney, Cea owed Plaintiff a fiduciary duty, including a

duty of loyalty, fidelity, trust and fair dealing.

142. In material breach of the fiduciary duty he owed to Plaintiff, Defendant Cea, as discussed above, provided Plaintiff's confidential information, proprietary information and trade secrets to Defendant Panzerotti and Defendant Panzerotti used Plaintiff's confidential information, proprietary information and trade secrets to unfairly compete with Plaintiff in the marketplace.

143. Defendant Cea is the Treasurer of Defendant Panzerotti and, upon information and belief, an investor in Defendant Panzerotti.

144. As a direct and proximate cause of Defendant Cea's material breaches of the fiduciary duty he owed Plaintiff, Plaintiff has suffered damages in an amount to be proven at trial, but in no event less than \$1,000,000.00, plus costs and interests, for which Defendant Cea is liable.

DEMAND FOR A JURY TRIAL

145. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby asserts its rights and demands a trial by jury of all issues so triable.

WHEREFORE, Plaintiff Lattanzio & De Ruvo Corp. d/b/a Panzerotti Bites of Brooklyn demands Judgment as follows:

A. On Count I against all Defendants, a preliminary and permanent injunction enjoining and restraining Defendant Panzerotti and its agents, servants, nominees, assignees, representatives, employees, officers, directors, members, managers, and attorneys, and all persons in active concert or participation with it, from directly or indirectly using, displaying, referring to, or mentioning the Marks, the Infringing Marks and/or the Revised Infringing Mark, and/or any derivation thereof or similar name or terms as the Marks, the Infringing Marks and/or

the Revised Infringing Mark, in any manner in direct or indirect connection with the sale, marketing, advertising and/or promotion of any restaurant or the sale of food and/or food related services and damages in an amount to be determined at trial, but in no event less than \$1,000,000.00, plus costs, interest and attorney's fees,

B. On Count II against all Defendants, a preliminary and permanent injunction enjoining and restraining Defendant Panzerotti and its agents, servants, nominees, assignees, representatives, employees, officers, directors, members, managers, and attorneys, and all persons in active concert or participation with it, from directly or indirectly using, displaying, referring to, or mentioning the Marks, the Infringing Marks and/or the Revised Infringing Mark, and/or any derivation thereof or similar name or terms as the Mark, the Infringing Marks and/or the Revised Infringing Marks, in any manner in direct or indirect connection with the sale, marketing, advertising and/or promotion of any restaurant or the sale of food and/or food related services and damages in an amount to be determined at trial, but in no event less than \$1,000,000.00, plus costs, interest and attorney's fees,

C. On Count III against all Defendants, a preliminary and permanent injunction enjoining and restraining Defendant Panzerotti and its agents, servants, nominees, assignees, representatives, employees, officers, directors, members, managers, and attorneys, and all persons in active concert or participation with it, from directly or indirectly using, displaying, referring to, or mentioning the Marks, the Infringing Marks and/or the Revised Infringing Mark, and/or any derivation thereof or similar name or terms as the Marks, the Infringing Marks and/or the Revised Infringing Mark, in any manner in direct or indirect connection with the sale, marketing, advertising and/or promotion of any restaurant or the sale of food and/or food related

services and damages in an amount to be determined at trial, but in no event less than \$1,000,000.00, plus costs, interest and attorney's fees,

D. On Count IV against all Defendants, a preliminary and permanent injunction enjoining and restraining Defendant Panzerotti and its agents, servants, nominees, assignees, representatives, employees, officers, directors, members, managers, and attorneys, and all persons in active concert or participation with it, from directly or indirectly using, displaying, referring to, or mentioning the Plaintiff's Trade Dress, and/or any derivation thereof or similar Trade Dress Plaintiff's Trade Dress, in any manner in direct or indirect connection with the sale, marketing, advertising and/or promotion of any restaurant or the sale of food and/or food related services and damages in an amount to be determined at trial, but in no event less than \$1,000,000.00, plus costs, interest and attorney's fees,

E. On Count V against Defendant Panzerotti, damages in an amount to be determined at trial, but in no event less than \$1,000,000.00, plus costs and interest;

F. On Count VI against Defendant Panzerotti, a preliminary and permanent injunction enjoining and restraining Defendant Panzerotti and its agents, servants, nominees, assignees, representatives, employees, officers, directors, members, managers, and attorneys, and all persons in active concert or participation with it, from directly or indirectly using, displaying, referring to, or mentioning the Marks, the Infringing Marks and/or the Revised Infringing Mark, and/or any derivation thereof or similar name or terms as the Marks, the Infringing Marks and/or the Revised Infringing Mark, in any manner in direct or indirect connection with the sale, marketing, advertising and/or promotion of any restaurant or the sale of food and/or food related services and damages in an amount to be determined at trial, but in no event less than \$1,000,000.00, plus costs, interest and attorney's fees;

G. On Count VII against Defendant Panzerotti, a preliminary and permanent injunction enjoining and restraining Defendant Panzerotti and its agents, servants, nominees, assignees, representatives, employees, officers, directors, members, managers, and attorneys, and all persons in active concert or participation with it, from directly or indirectly using, displaying, referring to, or mentioning the Marks, the Infringing Marks and/or the Revised Infringing Mark, and/or any derivation thereof or similar name or terms as the Marks, the Infringing Marks and/or the Revised Infringing Mark, in any manner in direct or indirect connection with the sale, marketing, advertising and/or promotion of any restaurant or the sale of food and/or food related services and damages in an amount to be determined at trial, but in no event less than \$1,000,000.00 plus treble damages, plus costs, interest and attorney's fees

H. On Count VIII against Defendant Cea, damages in an amount to be determined at trial, but in no event less than \$1,000,000.00, plus costs and interest; and

I. Such other and further relief as the Court or Jury deems just and proper.

Dated: New York, New York
April 13, 2020

Law Offices of Steven D. Isser

By:  _____

Steven D. Isser (SI-9772)
1359 Broadway, Suite 2001
New York, New York 10018
(212) 812-5096
sisser@isserlaw.com
*Attorneys for Plaintiff Lattanzio & De Ruvo
Corp. d/b/a Panzerotti Bites of Brooklyn*