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through partnership

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October 25, 2024

VIA CERTIFIED MAIL AND ELECTRONIC MAIL

Mike Burns

Chief Executive Officer of Ima Pizza, LLC (“&Pizza”)

229 1/2 Pennsylvania Avenue Suite 206, SE

Washington, D.C. 20005

mb@andpizza.com

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Re: Cease and Desist from Unlawful Conduct Concerning Marion Barry

Dear Mike Burns,

Please be advised, that I have been retained by Cora Masters Barry (“Ms. Barry”), the widow and executor of the estate of The Honorable Marion Shepilov Barry, Jr. (“Mr. Barry”), the late iconic, four term former D.C. mayor, to represent her and the estate in regard to the recent created advertisements &Pizza has made, which misappropriate Mr. Barry’s name, image, and/or likeness without authorization from his estate for the benefit of &Pizza. Specifically, advertisements regarding the new menu item, “Marion Berry Knots”, contain statements that reflect negatively and cast Mr. Barry in a bad light. In addition, &Pizza’s actions have created reputational and economical harm, emotional distress, and personal humiliation to Ms. Barry. Please direct all further communications regarding this matter to the undersigned.

We acknowledge &Pizza’s decision to remove the “Marion Berry Knots” and your apology on October 23, 2024. *See* Exhibit 1. However, the disappointment, pain, and despair caused by this advertisement from &Pizza requires more than a “public apology”. The exploitation of Mr. Barry’s legacy for profit, paired with tasteless references to substance abuse and criminality—particularly in a city where Black communities have borne the brunt of racially biased drug criminalization—is not just offensive, it is harmful. In addition, the apology from you failed to personally acknowledge the estate and the executor of the estate, Cora Masters Barry, Marion Barry’s widow. An apology and removal of the menu item is a step, but it does not undo the harm done.

As such, to make the estate, and the executor, Ms. Barry, and the DC community whole again, we request a meeting with you and your &Pizza to discuss a path forward toward meaningful accountability and making the estate whole. Our possible claims include, but are not limited to the following:

1. The misappropriation of Mr. Barry's name, image, and/or likeness without authorization from his estate for the benefit of &Pizza;
2. The reputational and economical harm to the Marion Barry Jr. Legacy Foundation ("Foundation");
3. The emotional distress and personal humiliation to Ms. Barry.

To be sure, &Pizza created advertisements, which misappropriate Mr. Barry's name, image, and/or likeness without authorization from his estate for the benefit of &Pizza. Specifically, the content of the advertisement includes, but is not limited to: (1) "Our new Marion Berry Knots will blow you away! Get them before they're gone". *See* Exhibit 2. Another advertisement includes, but is not limited to: (1) "For a good time, it's the powder that's the ultimate headline grabber"; (2) "The Marion Berry Knots have enough powdered sugar that will have customers bumping elbows to order and even force the DEA to look twice". *See* Exhibit 3. Another advertisement includes, but is not limited to: (1) "Bump up the party with our all-new Marion Berry Knots"; (2) "These delicious, doughy knots are stuffed with Marion berries, drizzled with creamy vanilla icing and topped with powdered sugar. And then a little more empowered sugar. (Enough powder for you and a few friends!)". *See* Exhibit 4.

There have also been statements from you, which include, but are not limited to: (1): "One thing's for sure – like many of D.C.'s elected officials, &Pizza is not afraid to have a little fun"; (2) "Whether or not our new Marion Berry Knots cross the lines of having too much fun, is something we'll leave to the customers to decide, but we feel we've got a winning ticket with this new dessert". *See* Exhibit 3. Other statements from you include, but are not limited to: (1) "If anyone is upset, offer them a free order of Marion Berry knots". *See* Exhibit 5.

Ms. Barry nor the estate of Mr. Barry has not authorized the use, in whole or in part, the name, image, and/or likeness of the late Mr. Barry to &Pizza. The created advertisements from &Pizza are egregious and injurious to Mr. Barry and are considered misappropriation/right of publicity under D.C. law.

Under D.C. law, misappropriation/right of publicity is where one who appropriates to his own use or benefit the name or likeness of another is subject to liability to the other for invasion of his privacy. Restatement (Second) of Torts § 652C. The common form of invasion of privacy is the appropriation and use of a plaintiff's name or likeness to advertise the defendant's business or product, or for some similar commercial purpose. A misappropriation claim may succeed even if the plaintiff's name or likeness does not have specific commercial value, if it nevertheless has some other kind of "value" that the defendant has turned to his own benefits and purposes. *Tripp v. United States*, 257 F. Supp. 2d 37, 43 (D.D.C. 2003) (finding that plaintiff's notoriety might have "value" for certain purposes).

Evidence that the defendant profited from the unauthorized use of the plaintiff's name or likeness is insufficient to prove liability in a misappropriation action. Instead, the plaintiff must prove not only that the defendant derived a benefit from the plaintiff's identify but also that there is a public interest or other value in that name or likeness. Therefore, to prove misappropriation/right of publicity, D.C. law requires: (1) an unauthorized use of the plaintiff's identity or persona; (2) that is for the use or benefit of the defendant for some similar commercial purpose.

Here, &Pizza's actions fall under D.C. law for creating advertisements, which misappropriate Mr. Barry's name, image, and/or likeness without authorization from his estate nor Ms. Barry, for the benefit of &Pizza.

Regarding the first element, an unauthorized use of the plaintiff's identity, has been determined since Mr. Barry's estate has never given permission, consent, and/or authorization to &Pizza to use the name, image, and/or likeness of Marion Barry in any way including commercial, promotional, and/or for any other purpose. Therefore, &Pizza created advertisements, which misappropriate Mr. Barry's name, image, and/or likeness without authorization, from his estate nor Ms. Barry.

Regarding the second element, &Pizza advertised "Marion Berry Knots" as a menu item for the benefit of &Pizza because &Pizza knew the terminology. "Marion Berry Knots", would increase visibility, sales, and traffic within their stores. The advertisement includes inflammatory language referencing powdered sugar and criminal usage of the late Mr. Barry. Additionally, &Pizza is a 55-store chain spanning across the East Coast and based in of the D.C. area. As a result, the original owner and you, understand the D.C. history and the problematic implications of the advertisements. As such, the marketing and advertisement were intentional, overly disparaging to Mr. Barry, and were only launched for the benefit of &Pizza. Therefore, &Pizza created advertisements, which misappropriate Mr. Barry's name, image, and/or likeness, without authorization from his estate nor Ms. Barry for the benefit of &Pizza.

Additionally, &Pizza's actions have caused emotional distress and personal humiliation to Ms. Barry, Marion Barry's widow and the executor of Mr. Barry's estate. Ms. Barry created the Marion Barry Jr. Legacy Foundation to protect and advance the legacy and policies of her late husband, Marion Barry Jr., and to educate the public about the contributions and history of Marion Barry. As a result, &Pizza's advertisements negatively affected the reputation of Ms. Barry and the Foundation by including statements that are inflammatory, culturally insensitive and relate to drug-use that are insulting to the legacy of Mr. Barry. &Pizza's actions have resulted in an increase of negative implications with Mr. Barry and the city of D. C. Ms. Barry has been harassed by the press and D.C. community regarding this incident, which is affecting her emotional wellbeing--thinking about her late husband.

Other possible claims include Intentional Infliction of Emotional Distress, Defamation and Business Disparagement.

Accordingly, to avoid judicial intervention and make the D.C. community, the estate, and the executor whole again, we request a meeting with you and &Pizza to discuss a path forward toward meaningful accountability and repair.

In addition, &Pizza must continue to immediately cease and desist from any further use of Mr. Barry's name, image, and/or likeness in any advertising or media through any outlet including mail, press, social media, and internet, as well as issue a personal apology to the estate and its executor, Ms. Barry.

We must receive a response to this letter by **October 29th, 2024** confirming you agree to a meeting to discuss next steps and resolution. My client has given us the authority to take every legal action available. We reserve all equitable and legal remedies.

Please know that we will not hesitate to act accordingly.

Sincerely, I am,

A. Scott Bolden

Exhibit 1

October 23, 2024

FOR IMMEDIATE RELEASE

Dear, D.C.

Candidly, we made a mistake. And for that, we sincerely apologize. We hear the D.C. community and have removed the Marion Berry Knots from our menu effective immediately. Those who know the &pizza brand know we stand for philanthropy, activism and societal betterment in the communities we serve.

While humor was our intent, it was regrettably off the mark. We're an edgy brand known for being risk takers. The parody of the former Mayor and portrayal of substance abuse was wrong. We have read the countless messages and social media posts and understand the frustration this has brought forth – especially to the Barry family. We recognize his impact on the District and greater Capital area and understand why his legacy remains as strong as it is today.

We are actively reaching out to the community leaders who have voiced concern. Our goal is to connect with them to identify how we can work together to make a positive impact.

Again, we apologize. We have nothing but love for D.C., which we consider the greatest city in the world. Trust that &pizza hears you and we will do better.

Sincerely,

Mike Burns
CEO, &pizza

Exhibit 2

The screenshot shows a web browser displaying an article on the QSR magazine website. The browser's address bar shows the URL: qsr.com/news/pizza-introduces-new-marion-berry-knots/. The website's navigation bar includes 'FOOD', 'GROWTH', 'OPERATIONS', 'QSR', 'EVENTS', 'MEDIA', and 'RESOURCES'. The article's headline reads: "The new Marion Berry Knots join a range of other popular knots on the mission-driven and culture focused pizza concept's menu." The main text describes the new dessert, its ingredients (marionberries, cream cheese, vanilla icing drizzle), and its availability for \$5. A quote from Mike Burns, CEO of &pizza, is included. A sidebar on the right features a promotional graphic for "WOMEN IN RESTAURANT LEADERSHIP" with the text "REGISTRATION NOW OPEN" and "RESERVE YOUR SPOT". At the bottom of the sidebar, there is a link for "QSR Uncut Episodes".

Exhibit 3

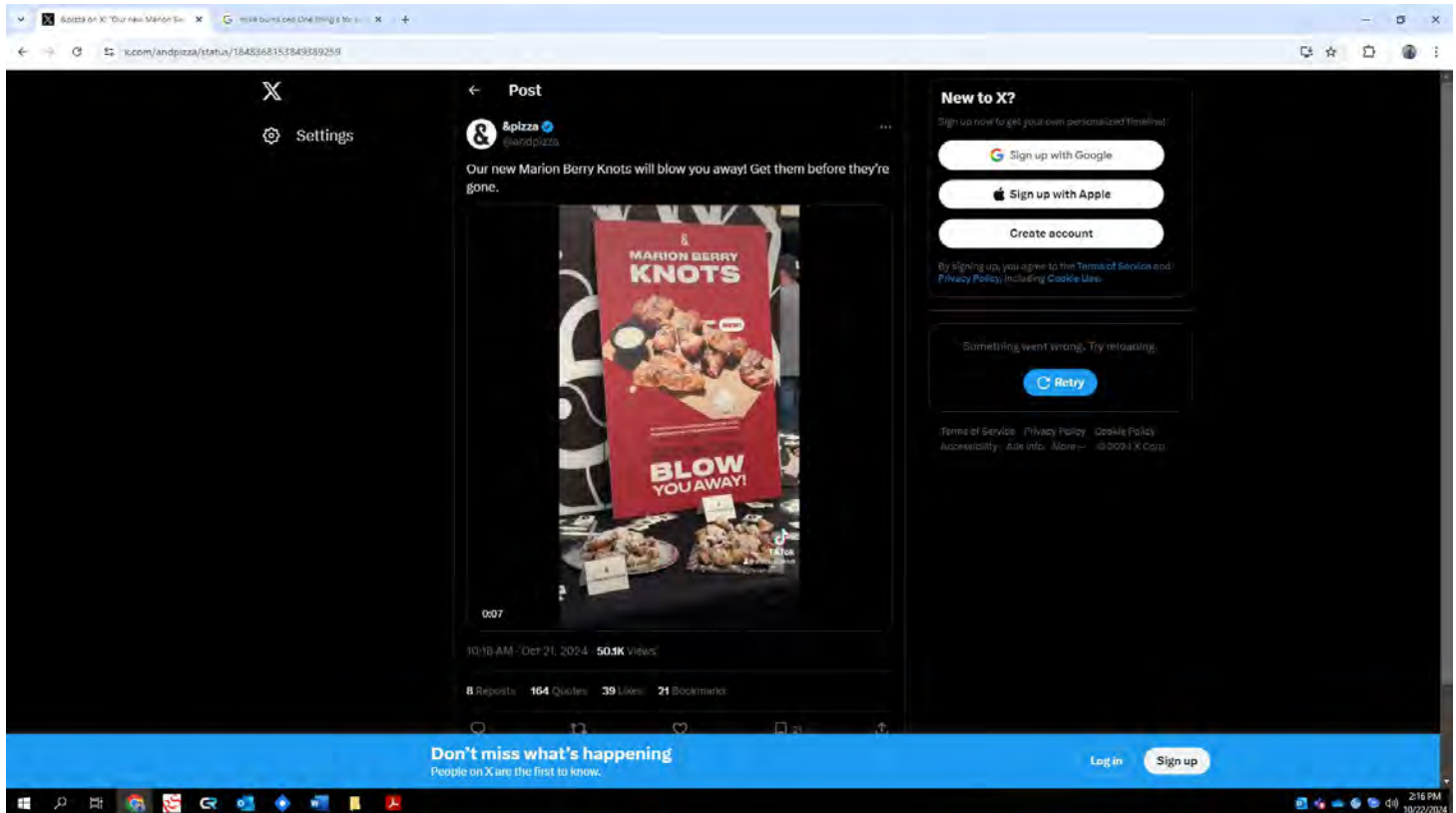


Exhibit 4

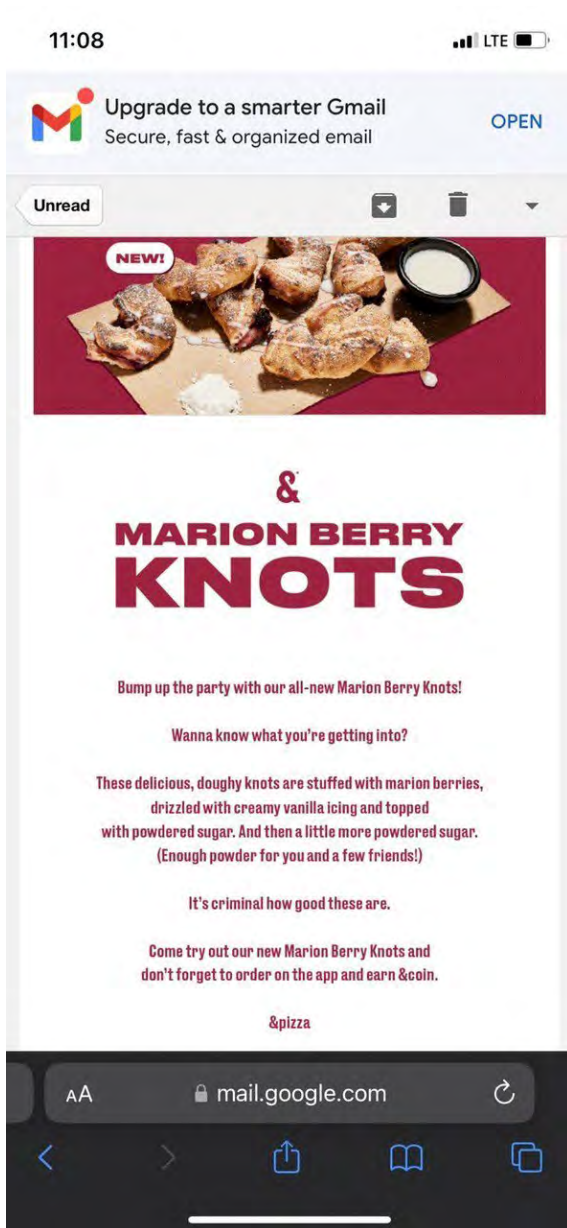


Exhibit 5

