

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

|                                     |   |   |
|-------------------------------------|---|---|
|                                     | ) |   |
| CHERYL & CO.,                       | ) |   |
|                                     | ) |   |
| Plaintiffs,                         | ) |   |
|                                     | ) |   |
| v.                                  | ) | Civil Action No. _____                    |
|                                     | ) |   |
| CHERYL L. KRUEGER, CKE              | ) |   |
| MANAGEMENT, LLC d/b/a C. KRUEGER’S, | ) |   |
| T. DAVID ADELL, AMY COLEY, CINDY    | ) | <b><u>JURY DEMAND ENDORSED HEREON</u></b> |
| DALTON, ELISABETH ALLWEIN, and      | ) |   |
| JOHN and JANE DOES.                 | ) |   |
|                                     | ) |   |
| Defendants.                         | ) |   |
|                                     | ) |   |
|                                     |   |   |

**COMPLAINT**

Plaintiff Cheryl & Co. (“Cheryl’s”), through its undersigned counsel and for its Complaint against Defendants Cheryl Krueger, CKE Management, LLC d/b/a C. Krueger’s (“CKE”), T. David Adell, Amy Coley, Cindy Dalton, and Elizabeth Allwein (collectively, “Defendants”), allege, upon information and belief, as follows:

**THE PARTIES**

1. Plaintiff Cheryl’s is an Ohio corporation with its principal place of business located at 646 McCorkle Blvd., Westerville, Ohio 43082. It is a wholly owned subsidiary of 1-800-FLOWERS.COM, Inc. (“Flowers”).

2. Defendant Krueger is a citizen of Ohio, and upon information and belief, has a residential address at 7130 Greensward Road, New Albany, Ohio 43054.

3. Defendant CKE Management, LLC is an Ohio limited liability company doing business as C. Krueger's, with its principal place of business located at 17 E. Brickel Street, Suite A, Columbus, Ohio 43215. CKE may be served through its registered agent in the State of Ohio, who is Taft Service Solutions Corp., located at 425 Walnut Street, Suite 1800, Cincinnati, Ohio 45202.

4. Defendant Adell is a citizen of Ohio, and upon information and belief, has a residential address at 4606 Wendler Road, Gahanna, Ohio 43230.

5. Defendant Coley is a citizen of Ohio, and upon information and belief, has a residential address at 60 Brevoort Road, Columbus, Ohio 43214.

6. Defendant Dalton is a citizen of Ohio, and upon information and belief, has a residential address at 7704 Blue Juniper Drive, Westerville, Ohio 43082.

7. Defendant Allwein is a citizen of Ohio, and upon information and belief, has a residential address at 141 Wetmore Road, Columbus, Ohio 43214.

8. Defendants John and Jane Does 6 – 25 are persons or entities whose identities or roles in the transactions at issue herein are currently unknown, but who have participated, aided, abetted, or conspired to cause Plaintiff Cheryl's injuries, including encouraging the breach of Defendants' restrictive covenants, engaging in unfair competition against Cheryl's, misappropriating Cheryl's confidential or trade secret information, or otherwise engaging in tortious conduct that is causing harm to Cheryl's.

#### **JURISDICTION AND VENUE**

9. This Court may exercise federal jurisdiction over this action pursuant to 28 U.S.C. § 1331 based on the Defend Trade Secrets Act, 18 U.S.C. § 1832 *et seq.* and the Lanham Act, 15 U.S.C. § 1125(a). This Court may exercise supplemental jurisdiction over the non-federal claims

herein because the non-federal claims arise out of the same facts and circumstances as the federal claims.

10. This Court may exercise personal jurisdiction over Defendants Krueger, CKE, Adell, Allwein, Coley and Dalton because they are residents of Ohio.

11. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because at least one Defendant resides within this District and the events giving rise to this action occurred, in part, in this District.

## **BACKGROUND FACTS**

### **Statement of the Case**

12. This case is brought to protect Cheryl's business, purchased from Defendant Krueger in 2005 for \$40 million through a comprehensive transaction that included all of the assets, customers, vendor accounts, leases, trademarks, domain names, recipes, business processes, know-how, goodwill, trade secrets, and other intellectual property utilized to conduct the complete business operations of Cheryl's. Plaintiff seeks to protect its confidential and trade secret information including, but not limited to, its customer lists, its recipes, and its plans for new products and recipes. Defendants are engaged in a calculated attempt to unfairly compete against Cheryl's, even though Defendant Krueger sold her business and all of its assets and intellectual property years ago.

13. Formed in 1981 by Defendant Krueger and her roommate, Cheryl's began as a modest storefront business. Following the purchase of Cheryl's in 2005, Cheryl's was able to dramatically grow its business using the enhanced platform and level of support that Cheryl's gained through that transaction. Today, Cheryl's is a multi-faceted business comprised of 7 retail stores in Ohio, catalog sales, a high-traffic Internet business and a successful business gift

division, all headquartered in the Columbus suburb of Westerville, Ohio. On an annual basis, Cheryl's sells approximately 36 million buttercream frosted cookies and approximately 15 million unfrosted cookies throughout the entire United States. Approximately 17% of Cheryl's sales are generated from Ohio.

14. Cheryl's employs hundreds of Ohio residents and is a vital part of the local community, supporting multiple charitable organizations, including Make A Wish Foundation, The James Cancer Hospital and Solove Research Institute, Nationwide Children's Hospital, Meals on Wheels, and Lifeline of Ohio, and has received substantial recognition and awards in the business community.

15. Since the 2005 acquisition from Defendant Krueger, Cheryl's has invested millions of dollars and substantial time and effort to enhance and grow Cheryl's business and goodwill. As a result, in fiscal year 2019, Cheryl's will spend \$9 million on marketing, will mail out over 9 million catalogs and will send out over 215 million emails to its customers.

16. Cheryl's and its popular desserts—including its famous buttercream frosted cookies—are instantly recognizable to consumers across the country, and Cheryl's has spent millions of dollars and countless hours since 2005 to continue to develop this market recognition. The cornerstone of Cheryl's success is its intellectual property and significant customer and vendor relationships. Examples of Cheryl's distinct branding and instantly recognizable desserts are below. More examples of Cheryl's branding and its distinctive products can be found at its website, [www.Cheryls.com](http://www.Cheryls.com).





17. Defendant Krueger recently formed a competing cookie company, CKE, that sells lookalike cookies using the same secret recipes, branding, and techniques she created and sold, pirated at least four senior executives from Cheryl's to help her unfairly compete against their former employer, Cheryl's, in violation of their obligations of non-competition, non-solicitation and confidentiality, and is now soliciting Cheryl's business accounts to purchase the exact same products sold by Cheryl's and is soliciting Cheryl's vendors to source the exact same ingredients used by Cheryl's in its recipes. Examples of CKE's knock-off branding and desserts are below.





18. Through this lawsuit, Cheryl's is seeking to protect its important intellectual property and business relationships so that Cheryl's can compete fairly in the marketplace, instead of having to compete against former employees who are plotting to steal Cheryl's customers, vendors, intellectual property, confidential and trade secret information, and key employees.

**Cheryl's Confidential, Proprietary, Trade Secret Information  
and Signature Branding Are Vital to Cheryl's Success**

19. Cheryl's was founded by Defendant Krueger in the 1980's.

20. Cheryl's offers fresh-baked gourmet cookies, brownies, cakes and desserts made from secret recipes, including many varieties that are topped with its famous buttercream frosting also made from a secret recipe.

21. Certain of Cheryl's confidential and proprietary information constitute valuable trade secrets. These trade secrets include, among other things, the recipes for its cookies and desserts, the recipes for its famous buttercream frosting, new recipes for products in development, its business plans and strategies, its customer and vendor lists, and its financial information and profit margins.

22. Cheryl's confidential, proprietary and trade secret information gives Cheryl's a competitive advantage over its competitors that have not made substantial economic and other investments in developing similar information, derive significant economic value to Cheryl's from their secrecy, and are not made known to competitors.

23. Cheryl's devotes significant efforts and takes substantial steps that are reasonable under the circumstances to maintain the secrecy of its confidential, proprietary and trade secret information, including but not limited to, requiring its employees to sign confidentiality agreements, maintaining a code of conduct and employee handbook that emphasizes the

importance of maintaining the secrecy of Cheryl's confidential and proprietary information, requiring certain high-level employees to sign non-competition and non-solicitation agreements, and limiting the disclosure of sensitive information on a "need-to-know" basis.

24. As an example of its secrecy measures, Cheryl's limits the number of individuals who have access to its recipes, which are kept in a restricted electronic file. Only individuals with a need to know and who use the recipes have access to the file, and the individuals who mix the recipes are required to return the printed recipe they were mixing at the end of each day.

25. Cheryl's customer lists and sales data, financial information, vendor costs and orders, and profit margins are also shared with only certain high-level employees. Moreover, Cheryl's customer lists are identified as "confidential," password protected, and only accessible by certain employees on a need to know basis who are subject to confidentiality agreements and obligations with Cheryl's.

26. The technique and process for applying the buttercream frosting - complete with the signature "swirl" trade dress - is proprietary to Cheryl's and part of Cheryl's signature branding. In fact, the outer rim of the frosting creates a unique crunch that is distinct to Cheryl's cookies. Until recently, each and every one of Cheryl's buttercream cookies was frosted *by hand* by trained and talented employees using a specialized icing tool and technique. Perfecting the Cheryl's "swirl" is no easy task—only 20% of trainees master the necessary technique, reflecting the level of detail and quality on which Cheryl's insists. As the scope of Cheryl's business grew, individual hand-icing was unfortunately no longer practical, and as of August 17, 2018, in most cases, Cheryl's now applies the Cheryl's swirl through the use of special and carefully customized machinery.

27. Images of some of Cheryl's cookies featuring its buttercream frosting in the instantly recognizable "swirl" pattern are below:



**Flowers Acquires Cheryl's from Defendant Krueger**

28. On March 28, 2005, Flowers purchased Cheryl's from Defendant Krueger for \$40 million and Cheryl's became a wholly-owned subsidiary of Flowers.

29. As part of that purchase, Flowers acquired Cheryl's' intellectual property, including its trade secrets, confidential information, technology, know-how, research and

development, data, drawings, plans, specifications, designs, inventions, processes, formulae, algorithms, models and methodologies.

30. Following the acquisition by Flowers, Cheryl's continued, and continues today, to sell the same fresh-baked gourmet cookies, brownies, cakes and desserts, including many varieties topped with the same secret buttercream frosting recipe. It further continued to develop new recipes, customers, and strategies to expand its market share.

31. Following the acquisition by Flowers, Cheryl's continued, and continues today, to maintain the secrecy of and benefit from the confidential and trade secret information described above.

**Defendant Krueger Becomes a Cheryl's Employee  
Following the Acquisition**

32. Following the acquisition by Flowers, Defendant Krueger's employment with Cheryl's was vital to the continued success of Cheryl's, because of her extensive knowledge of Cheryl's business methods, strategies, and trade secret information, and because of her customer and vendor relationships.

33. Accordingly, as consideration for the acquisition of Cheryl's, Defendant Krueger agreed to become an employee of Cheryl's and executed an Employment Agreement dated March 28, 2005 (the "Krueger Agreement"). A true and correct copy of the Krueger Agreement is attached to the Complaint as Exhibit A.

34. In the Krueger Agreement, Defendant Krueger agreed to forever maintain the confidentiality of Cheryl's trade secrets and confidential information as follows:

Executive shall not during the Term and thereafter, without the prior written consent of the Company, (i) divulge, disclose or make accessible any Confidential Information (as defined below) to any other person, firm, partnership, corporation or other entity or (ii) use any Confidential Information for her own purposes or for the

benefit of any other person, firm, partnership, corporation or other entity (other than the Company) . . . .

Krueger Agreement § 9.1.

35. The Krueger Agreement defines Confidential Information to mean:

all data, analyses, reports, interpretations, forecasts, documents and information concerning the Group's affairs, including without limitation, financial data, strategic business plans, computer programs and documentation, product development data (or other proprietary product data), customer lists and customer information, discoveries, practices, policies, processes, methods, marketing plans, prospects, opportunities and other proprietary information in whatever form, tangible or intangible; provided that Confidential Information shall not include information that has become generally available to the public . . . .

*Id.*

36. Defendant Krueger also acknowledged that her promise of confidentiality is reasonable and necessary, and that her breach of that promise causes irreparable and substantial injury to Cheryl's, as follows:

the restrictions contained in Section 9.1 . . . hereof are a reasonable and necessary protection of the immediate interests on the Group, that any violation of these restrictions would cause substantial and irreparable injury to the Group and that Flowers would not have entered into the Transaction or entered into this Agreement without receiving the additional consideration offered by [Krueger] in binding herself to these restrictions.

*Id.* at § 9.4.

37. Defendant Krueger resigned from Cheryl's on March 28, 2009. However, the confidentiality obligations Defendant Krueger agreed to in the Krueger Agreement remain in effect today even after her departure from Cheryl's.

**Defendant Krueger Forms CKE to Compete Against Cheryl's and Begins Strategically Targeting Cheryl's Key Employees and Using Cheryl's Confidential Information**

38. On August 24, 2017, CKE filed its Articles of Organization with the Ohio Secretary of State, and Defendant Krueger is listed as CKE's authorized representative in the Articles of Organization. A true and accurate copy CKE's Articles of Organization is attached as Exhibit B.

39. Upon information and belief, Defendant Krueger is the President and Owner of CKE.

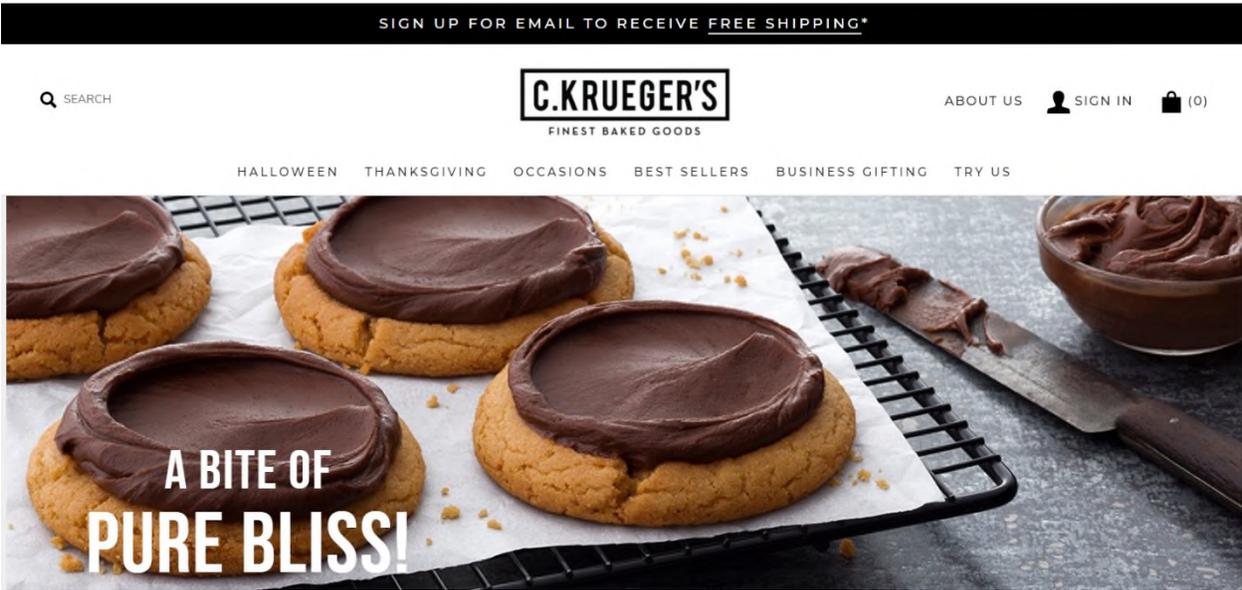
40. In October, 2018, Defendant CKE began directly and unfairly competing against Cheryl's through an online website and one storefront located in Columbus, Ohio.

41. As shown in the pictures above, Defendant CKE's cookies are designed to mimic Cheryl's cookies (in taste, appearance, and marketing) in an effort to unfairly compete against Cheryl's and trade on Cheryl's reputation for delicious cookies. Like Cheryl's, Defendant CKE offers freshly baked cookies - including cookies frosted with Cheryl's own signature buttercream frosting "swirl" that look virtually identical to the cookies that Cheryl's sells. Defendant CKE also offers many of the same unique and classic cookie flavors as Cheryl's.

42. An additional example of CKE's copying of Cheryl's distinct marketing and packaging are below:



43. Defendant CKE even displays the following images of its lookalike, copycat cookies on its website, [www.ckruegers.com](http://www.ckruegers.com):





**A VERY SPECIAL OFFER!**

Buy 1 Dozen of our incomparable  
Finest Sugar Cookies with Buttercream Icing,

**GET 6 COOKIES FREE!**

Reg \$27.00 **NOW \$19.95!**  
Ends 11.21.18

**BUY NOW**

Perfect for  
Thanksgiving  
Dessert!

Our soft butter cookie is made with  
butter, cane sugar and pure vanilla extract.  
Plus, to make them even more delicious,  
we added a thick layer of our incredible  
buttercream icing from edge to edge.

44. CKE has also systematically targeted Cheryl's customers, vendors, and high-level, long-tenured Cheryl's employees, including but not limited to, Defendants Allwein, Adell, Coley and Dalton, in an effort to acquire Cheryl's confidential, proprietary and trade secret information and use that information to unfairly compete against Cheryl's.

45. Indeed, CKE intentionally recruited Defendants Allwein, Adell, Coley and Dalton, because their combined knowledge covers the fundamental business components necessary to develop, bake, and sell competing cookies. Allwein was in charge of product development. Coley oversaw purchasing. Adell was in charge of production. And Dalton worked in business sales.

46. Given the similarities between the two companies and Defendants Adell's, Allwein's, Coley's and Dalton's former responsibilities at Cheryl's and their similar, current responsibilities at CKE, Defendants Adell, Allwein, Coley and Dalton will be unable to perform their current job duties at Defendant CKE without using or relying upon the confidential and proprietary trade secret information of Cheryl's, as described above.

47. Significantly, in connection with the 2005 acquisition and merger, each of Defendants Allwein, Adell, Coley and Dalton were shareholders of Cheryl's and each received cash consideration for their shares.

48. The CKE business recently launched by Defendant Krueger resembles and copies Cheryl's in many ways – from the shape, use of the frosting swirl and overall look of its products, to the individually wrapped cookies and packaging in which the products are sold and delivered, to the advertising and marketing collateral utilized to sell the products. All of the foregoing creates and contributes to a likelihood of confusion in the marketplace as to the source

of the products – with consumers mistaking the CKE products for those of Cheryl’s products. An example of the similarity in packaging used by Cheryl’s and CKE is below:



49. Significantly, CKE and/or Defendant Kruger, provided customer purchase confirmation emails using a spoofed “From:” designation (“From: ‘C. KRUEGER’ <[cookies@cheryls.com](mailto:cookies@cheryls.com)>”), thereby using Plaintiff Cheryl’s name to appear as if the email was sent from Cheryl’s and creating further confusion in the marketplace. A true and accurate copy of the confirmation email is attached as Exhibit C.

50. CKE’s cookies are so similar to Cheryl’s that evidence of marketplace confusion caused by CKE’s copycat cookies already exists demonstrated by the attached Facebook post, which reads: “Just got my cookies as I live in Arizona. They are amazing. Cheryl’s cookies was my first job at the FrenchMarket in 1986. Her sugar cookie now tastes like it did back then. Amazing!” A true and accurate copy of that post is attached as Exhibit D.

**Defendant Adell's Employment with Cheryl's and Resignation to Join CKE**

51. Defendant Adell began working at Cheryl's on or around February 24, 1987 while he was still in high school.

52. After many years of service, Defendant Adell was promoted to Cheryl's Director of Food Production, and obtained an ownership interest in Cheryl's.

53. As the Director of Production, Defendant Adell oversaw all of Cheryl's baking operations and food production, coordinated management of daily inventory, managed budgeted expenses, and managed the annual budget planning process. He also worked closely with Cheryl's Product Development Team to develop strategies for expanding production, and he oversaw weekly production meetings.

54. As a result of his positions with Cheryl's, Defendant Adell had access to Cheryl's trade secret recipes, business development strategies, and other trade secret and confidential information. He also worked closely with Cheryl's vendors and was trained to operate all of Cheryl's high-tech baking equipment.

55. To protect Cheryl's confidential information and legitimate business interests described above, Defendant Adell executed a Confidentiality and Non-Compete Agreement (the "Adell Agreement") with Cheryl's approximately in April 2011 in which he agreed to express restrictive covenants on his use of Cheryl's confidential information as well as restrictions on his ability to compete against Cheryl's following termination of his employment. A true and correct copy of the Adell Agreement is attached hereto as Exhibit E.

56. In the Adell Agreement, Defendant Adell acknowledged that Cheryl's had a proprietary interest in certain information to which he had access. Specifically, the Agreement provided:

As a result of the position which EMPLOYEE will occupy, EMPLOYEE will be entrusted with and have access to Confidential Information. EMPLOYEE recognizes the proprietary interest of Company in any Confidential Information of Company and its Parent Company, 1-800-Flowers.Com, Inc. and the other direct and indirect subsidiaries of the Parent Company (collectively the ‘Group’). As used herein, the term ‘Confidential Information’ means all information relating to the Group and any of the Group’s customers, operations, products, sales, finances, trade secrets, and business, including without limitation any information encompassed in any reports, investigations, customer and recipient lists (whether or not written) and customer and recipient information, business plans and business relationships, information on suppliers, vendors and fulfilling florists, experiments, research or developmental work, experimental work, work in progress, drawings, designs, plans, proposals, codes, marketing and sales programs, financial projections, financial data including sales and pricing information and all other financial data, cost summaries, pricing formula and trademarks, service marks, and all concepts or ideas, materials or information, owned possessed or controlled or related to the business of the Group, regardless of whether same may be possessed or developed by EMPLOYEE in the course of his employment or otherwise. ... EMPLOYEE acknowledges and agrees that any and all Confidential Information of the Group learned by EMPLOYEE during the course of employment by Company or otherwise, whether developed by EMPLOYEE alone or in conjunction with others or otherwise, shall be and is the sole property of Company.

Adell Agreement § 1.1.

57. Defendant Adell also agreed “that Company is entitled to prevent the disclosure of Confidential Information of Company and the Group.” *Id.* at § 1.2.

58. Moreover, he “agree[d] at all times during the term of EMPLOYEE’S employment by Company and thereafter to hold in strictest confidence, and not to disclose or allow to be disclosed to any person, firm or corporation, ... and not to use or allow to be used, except in the pursuit of the business of the Company or the Group, the Confidential Information of the Group . . . .” *Id.*

59. Defendant Adell further agreed that he would not compete against Cheryl’s pursuant to the following:

for a period of one (1) year following the cessation of [] employment with the Company, ... do any of the following, directly or indirectly, within the United States (which EMPLOYEE expressly acknowledges is the most narrowly defined geographic territory within which EMPLOYEE performed services for the Company), without the prior written consent of the Company:

(a) Develop, market, sell or solicit to sell goods, or provide or perform services, similar to those goods and services that EMPLOYEE developed, marketed, sold, solicited to sell, provided or performed while employed with the Company.

(b) Engage or participate in any manner in a Competitive Business. As used herein, the term 'Competitive Business' means (i) any person or entity in the business of manufacturing, marketing, distributing and/or selling cookies and baked goods through retail stores ... [and] internet ... channels which are the same as or substantially similar to the products or services offered for sale by the Company or any such products or services which the Company had developed or is actively developing at the time of cessation of EMPLOYEE's employment with the Company ...

(c) Become associated with (as . . . employee, agent, consultant or otherwise) any person, firm, corporation, association or other entity engaged in any Competitive Business . . . .

*Id.* at § 2.1.

60. Defendant Adell also agreed that “for a period of two (2) years following cessation of [his] employment,” he would not “[i]nfluence or attempt to influence any person to either (i) terminate or modify his/her employment with the Company or Group, (ii) solicit for employment any person employed by the Company or Group, or (iii) employ, or otherwise retain the services of any person employed by the Company or Group” and would not “[i]nfluence or attempt to influence a supplier or customer, including, without limitation, any individual or corporate customer of the Company or Group, any recipient of Company’s or Group’s products, or any other person or entity with whom the Company or Group shall have dealt, for the purpose of offering or selling any products or services which are identical, substantially similar or comparable to the services or products offered by the Company or Group.” *Id.* at §§ 2.2(a), (c).

61. Defendant Adell also agreed to a tolling provision stating that “[i]n the event that EMPLOYEE violates any of the provisions of this Agreement, the obligations contained in those provisions shall run from the date on which EMPLOYEE ceases to be in violation of any such provision.” *Id.* at § 10.

62. In connection with his employment, Defendant Adell was also provided a copy of and was required to review the Associate Handbook, outlining the policies requiring Defendant Adell to protect Cheryl’s confidential and trade secret information.

63. On May 31, 2018, Defendant Adell resigned from Cheryl’s allegedly to care for a family member. His last day of employment at Cheryl’s was June 14, 2018.

64. Upon information and belief, shortly after resigning from Cheryl’s, Defendant Adell accepted a substantially similar position with CKE, a direct competitor of Cheryl’s, in violation of his non-competition obligations.

65. Upon information and belief, Defendants CKE and Krueger encouraged and induced Defendant Adell to resign from Cheryl’s and breach the Adell Agreement.

66. In his current position at CKE, Defendant Adell has used and relied upon the confidential, proprietary and trade secret information of Cheryl’s on behalf of a direct competitor of Cheryl’s or inevitably will do so.

**Defendant Coley’s Employment with Cheryl’s and Resignation to Join CKE**

67. Defendant Coley began working at Cheryl’s on or around October 8, 2001, and had an ownership interest in Cheryl’s.

68. Defendant Coley was Cheryl’s Director of Purchasing, sourcing expert, and inventory manager. Accordingly, Defendant Coley knew every ingredient in Cheryl’s products,

its production schedule and strategies, had access and used Cheryl's confidential and trade secret information, and built close relationships with Cheryl's vendors.

69. To protect Cheryl's confidential information and legitimate business interests described above, Defendant Coley executed a Confidentiality and Non-Compete Agreement on April 7, 2011 (the "Coley Agreement") with Cheryl's, in which she agreed to express restrictions on her use of Cheryl's confidential information as well as restrictions on her ability to compete against Cheryl's following termination of her employment. A true and correct copy of the signature page of the Coley Agreement is attached hereto as Exhibit F. A true and correct copy of the form of the agreement Defendant Coley signed is attached hereto as Exhibit G.

70. In the Coley Agreement, Coley acknowledged that Cheryl's had a proprietary interest in certain information to which she had access. Specifically, the Agreement provided:

As a result of the position which EMPLOYEE will occupy, EMPLOYEE will be entrusted with and have access to Confidential Information. EMPLOYEE recognizes the proprietary interest of Company in any Confidential Information of Company and its Parent Company, 1-800-Flowers.Com, Inc. and the other direct and indirect subsidiaries of the Parent Company (collectively the 'Group'). As used herein, the term 'Confidential Information' means all information relating to the Group and any of the Group's customers, operations, products, sales, finances, trade secrets, and business, including without limitation any information encompassed in any reports, investigations, customer and recipient lists (whether or not written) and customer and recipient information, business plans and business relationships, information on suppliers, vendors and fulfilling florists, experiments, research or developmental work, experimental work, work in progress, drawings, designs, plans, proposals, codes, marketing and sales programs, financial projections, financial data including sales and pricing information and all other financial data, cost summaries, pricing formula and trademarks, service marks, and all concepts or ideas, materials or information, owned possessed or controlled or related to the business of the Group, regardless of whether same may be possessed or developed by EMPLOYEE in the course of his employment or otherwise. ... EMPLOYEE acknowledges and agrees that any and all Confidential Information of the Group learned by EMPLOYEE during the course of employment by Company or otherwise, whether developed by

EMPLOYEE alone or in conjunction with others or otherwise, shall be and is the sole property of Company.

Coley Agreement § 1.1.

71. Defendant Coley also agreed “that Company is entitled to prevent the disclosure of Confidential Information of Company and the Group.” *Id.* at § 1.2.

72. Moreover, she “agree[d] at all times during the term of EMPLOYEE’S employment by Company and thereafter to hold in strictest confidence, and not to disclose or allow to be disclosed to any person, firm or corporation, ... and not to use or allow to be used, except in the pursuit of the business of the Company or the Group, the Confidential Information of the Group . . . .” *Id.*

73. Defendant Coley further agreed that she would not compete against Cheryl’s pursuant to the following:

for a period of one (1) year following the cessation of [] employment with the Company, . . . do any of the following, directly or indirectly, within the United States (which EMPLOYEE expressly acknowledges is the most narrowly defined geographic territory within which EMPLOYEE performed services for the Company), without the prior written consent of the Company:

(a) Develop, market, sell or solicit to sell goods, or provide or perform services, similar to those goods and services that EMPLOYEE developed, marketed, sold, solicited to sell, provided or performed while employed with the Company.

(b) Engage or participate in any manner in a Competitive Business. As used herein, the term ‘Competitive Business’ means (i) any person or entity in the business of manufacturing, marketing, distributing and/or selling cookies and baked goods through retail stores ... [and] internet ... channels which are the same as or substantially similar to the products or services offered for sale by the Company or any such products or services which the Company had developed or is actively developing at the time of cessation of EMPLOYEE’S employment with the Company . . . Become associated with (as . . . employee, agent, consultant or otherwise) any person, firm, corporation, association or other entity engaged in any Competitive Business . . . .

*Id.* at § 2.1.

74. Defendant Coley also agreed that “for a period of two (2) years following cessation of [her] employment,” she would not “[i]nfluence or attempt to influence any person to either (i) terminate or modify his/her employment with the Company or Group, (ii) solicit for employment any person employed by the Company or Group, or (iii) employ, or otherwise retain the services of any person employed by the Company or Group” and would not “[i]nfluence or attempt to influence a supplier or customer, including, without limitation, any individual or corporate customer of the Company or Group, any recipient of Company’s or Group’s products, or any other person or entity with whom the Company or Group shall have dealt, for the purpose of offering or selling any products or services which are identical, substantially similar or comparable to the services or products offered by the Company or Group.” *Id.* at §§ 2.2(a), (c).

75. Defendant Coley also agreed to a tolling provision stating that “in the event that EMPLOYEE violates any of the provisions of this Agreement, the obligations contained in those provisions shall run from the date on which EMPLOYEE ceases to be in violation of any such provision.” *Id.* at § 10.

76. In connection with her employment, Defendant Coley was also provided a copy of and was required to review the Associate Handbook, outlining the policies requiring Defendant Coley to protect Cheryl’s confidential and trade secret information.

77. On January 16, 2018, Defendant Coley resigned from Cheryl’s. Her last day of employment at Cheryl’s was January 30, 2018.

78. Upon information and belief, shortly after resigning from Cheryl’s, Defendant Coley accepted a substantially similar position with CKE, a direct competitor of Cheryl’s, in violation of the non-competition provisions in the Coley Agreement.

79. In a news story with WBNS-10TV in Columbus, Ohio regarding the opening of CKE, Amy Coley is shown working for CKE<sup>1</sup>. A true and accurate image from that news story video is below:



80. Upon information and belief, Defendants CKE and Krueger encouraged and induced Defendant Coley to resign from Cheryl's and breach the Coley Agreement.

81. In her current position at CKE, Defendant Coley has used and relied upon the confidential, proprietary and trade secret information of Cheryl's on behalf of a direct competitor of Cheryl's or inevitably will do so.

### **Defendant Dalton's Employment with Cheryl's and Resignation to Join CKE**

82. Defendant Dalton began working at Cheryl's on or around May 1, 1989, and served as the Business Gift Services Account Manager for Cheryl's until August 31, 2018.

<sup>1</sup> See [www.10tv.com/article/former-2Dcheryls-2Dcookies-2Ddowner-2Dco-2Dfounder-2Dstarts-2Dnew-2Dventure-2Dvideo&d=DwIFaQ&c=Ov1c5MGVZbOSWJAImmFjEvuW\\_yBXhCrhNLkzdxMuQ3U&r=\\_6blyM376gwQruGHJkAZfKoBW6PsV9kNctmK27T0iE&m=-DW51jkHJ2qsfIr5-DYgYUET0uAHgjBAelEc5ovQYk&s=JHJb6tZvIO0GWXc1FntU7Ogh52lrHAK911JjvOwSMxY&e=](http://www.10tv.com/article/former-2Dcheryls-2Dcookies-2Ddowner-2Dco-2Dfounder-2Dstarts-2Dnew-2Dventure-2Dvideo&d=DwIFaQ&c=Ov1c5MGVZbOSWJAImmFjEvuW_yBXhCrhNLkzdxMuQ3U&r=_6blyM376gwQruGHJkAZfKoBW6PsV9kNctmK27T0iE&m=-DW51jkHJ2qsfIr5-DYgYUET0uAHgjBAelEc5ovQYk&s=JHJb6tZvIO0GWXc1FntU7Ogh52lrHAK911JjvOwSMxY&e=)

83. As such, Defendant Dalton was tasked with managing and soliciting Cheryl's business customers that purchase Cheryl's products in large quantities to be used as gifts. These business relationships accounted for approximately \$2.5 million in annual sales for Cheryl's. Accordingly, Defendant Dalton had access to and used Cheryl's trade secret customer lists, pricing and profit margin information.

84. In connection with her employment, Defendant Dalton was given a copy of and was required to review the Associate Handbook, outlining the policies requiring Defendant Dalton to protect Cheryl's confidential and trade secret information.

85. On August 10, 2018, Defendant Dalton resigned from Cheryl's because it was "time for a change." During her exit interview, Defendant Dalton inquired about her "Non-Compete" agreement and was advised by the HR representative who conducted the interview that it was still in place and she was expected to honor it.<sup>2</sup> Her last day of employment at Cheryl's was August 31, 2018.

86. Upon information and belief, shortly after resigning from Cheryl's, Defendant Dalton accepted a substantially similar position with CKE, a direct competitor of Cheryl's, as the Customer Engagement Executive.

87. Defendant Dalton's LinkedIn page discloses that she has been employed as the "Customer Engagement Executive at C. Kreuger's Finest Baked Goods" since September 2018:

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<sup>2</sup> Cheryl's has been unable to locate a signed copy of Dalton's Confidentiality, Non-solicitation and Non-competition agreement that, given her position with Cheryl's, relationships with its customers, and access to its confidential and trade secret information, she would have been required to sign.



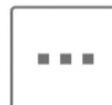
Cindy Dalton

Customer Engagement Executive at C.  
Krueger's Finest Baked Goods

C. Krueger's Finest Baked Goods

Columbus, Ohio Area • 9

Connect



I recently began working for C. Krueger's Finest Baked Goods in Columbus. We are a brand new startup company specializing in baked goods and B...

## Experience



### Customer Engagement Executive

C. Krueger's Finest Baked Goods

Sep 2018 - Present • 3 mos

88. Upon information and belief, Defendant Dalton is soliciting customers of Cheryl's on behalf of CKE and using the confidential information of Cheryl's to do so, including the use of Cheryl's trade secret customer list. PPA Graphics, Inc. ("PPA") and its president, Perry Passen, are customers of Cheryl's. PPA is a small advertising agency

located in Canal Winchester, Ohio and employs 13 individuals. Although Cheryl's customer list is confidential and a trade secret, for purposes of providing the Court with a single example, and without waiver of confidentiality to its entire customer list, below is an example of CKE's improper solicitation of Cheryl's customer, PPA. A true and accurate copy of Defendant Dalton's letter to PPA is attached as Exhibit H.





89. Defendant Dalton is soliciting Cheryl's corporate customers on behalf of CKE during peak holiday sale season – a time in which Cheryl's sells a significant portion of its products to its corporate customers.

90. Upon information and belief, Defendants CKE and Krueger encouraged and induced Defendant Dalton to resign from Cheryl's and to disclose Cheryl's confidential and trade secret information.

91. In her current position at CKE, Defendant Dalton has used and relied upon the confidential, proprietary and trade secret information of Cheryl's on behalf of a direct competitor of Cheryl's or inevitably will do so.

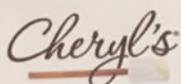
**Defendant Allwein's Employment with Cheryl's and Resignation to Join CKE**

92. Defendant Allwein began working at Cheryl's on or around April 4, 1993, and served as its Director of Product Development.

93. In this role, Defendant Allwein developed, tested, and managed every recipe and new product for Cheryl's over the last twenty-seven years. She was one of only a few employees that had complete access to all of Cheryl's top-secret baking recipes, and no new flavors or products could be marketed or sold without her approval. She also worked closely with Defendant Adell to ensure that new products could be efficiently produced. Accordingly, Defendant Allwein is intimately familiar with Cheryl's trade secret cookie recipes, frosting recipes, and new product development strategies and business plans.

94. Defendant Allwein was also the face of Cheryl's in promotional and marketing campaigns. In fact, she was repeatedly featured in Cheryl's catalogs promoting Cheryl's products as "Chef Elisabeth" and was Cheryl's QVC spokesperson. Examples of Defendant Allwein's prominence in Cheryl's promotional materials are below.

BAKERY GIFTS



## CREATE YOUR OWN ASSORTMENTS

**GREAT VALUE! STARTING AT \$28.99**

Create your favorite assortment from our popular individually wrapped cookies and brownies! Mix and match up to 6 flavors or if you choose, fill our Signature Bow Gift Boxes with 1 flavor. There are even more tempting flavors to choose from online at [www.Cheryls.com](http://www.Cheryls.com). Our cookies and brownies freeze great and are guaranteed to be irresistible so stock up! ☺



### WHAT MOM REALLY WANTS

She might tell you she doesn't want anything other than you being happy and healthy (because that's what moms do), but I bet she'd secretly be thrilled to get a box or bouquet of cookies in her very favorite flavors. Whether she loves our ooey-gooey brownies, our classic buttercream-frosted cut-outs, or any of our other spring specialties, why not treat her to a gift that she absolutely, under no circumstances, doesn't have to share? We not only guarantee the quality of each and every cookie, we guarantee you she'll love it!

Our Best to Mom!  
Chef Elisabeth

### CREATE YOUR OWN COOKIE GIFT BOX

|             |         |                 |
|-------------|---------|-----------------|
| 12 cookies  | #63621  | <b>\$28.99</b>  |
| 24 cookies  | #63631  | <b>\$41.99</b>  |
| 36 cookies  | #63641  | <b>\$54.99</b>  |
| 48 cookies  | #102931 | <b>\$69.99</b>  |
| 72 cookies  | #63651  | <b>\$95.99</b>  |
| 100 cookies | #63661  | <b>\$122.99</b> |

### CREATE YOUR OWN BROWNIE GIFT BOX

Rich cocoa and chocolate chips, flavorful butterscotch and toffee, layers of raspberry preserves and our FAMOUS buttercream frosting make our individually wrapped brownies a customer favorite for over 30 years! ☺

|             |        |                |
|-------------|--------|----------------|
| 10 brownies | #63671 | <b>\$32.99</b> |
| 18 brownies | #63681 | <b>\$44.99</b> |
| 30 brownies | #63691 | <b>\$68.99</b> |

### CREATE YOUR OWN COOKIE & BROWNIE GIFT BOX

|                        |         |                 |
|------------------------|---------|-----------------|
| 2 brownies 10 cookies  | #64151  | <b>\$29.99</b>  |
| 6 brownies 16 cookies  | #64161  | <b>\$42.99</b>  |
| 8 brownies 24 cookies  | #74451  | <b>\$56.99</b>  |
| 12 brownies 32 cookies | #102921 | <b>\$73.99</b>  |
| 16 brownies 48 cookies | #74461  | <b>\$99.99</b>  |
| 24 brownies 64 cookies | #64171  | <b>\$135.99</b> |



Chocolate Chocolate Chip



Toffee Almond Crunch



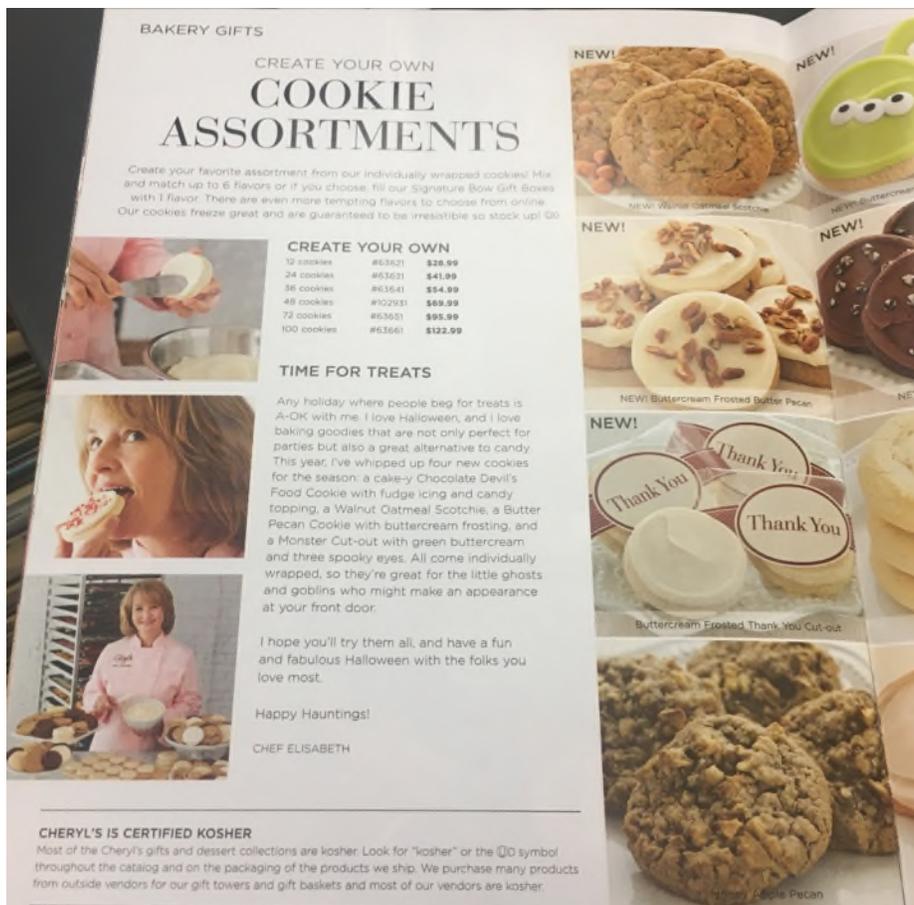
Fudge (available Sug



Buttercream Frost

### CHERYL'S IS CERTIFIED KOSHER

Most of the Cheryl's gifts and dessert collections are kosher. Look for "kosher" or the ☺ symbol throughout the catalog and on the packaging of the products we ship. We purchase many products from outside vendors for our gift towers and gift baskets and most of our vendors are kosher.



95. Defendant Allwein also recognized the importance of protecting the secret ingredients found in Cheryl’s cookies. In an interview with Good Day Columbus, Defendant Allwein promoted Cheryl’s cookies by baking cookies with the host on live television, but would not share the measurements of the ingredients for the cookies because, according to Defendant Allwein, “we have to have our secrets.”

96. Defendant Allwein also had an ownership interest in Cheryl’s, and, because of her position with Cheryl’s and accessibility to confidential financial information, she was considered an “insider” and therefore agreed to Cheryl’s Company Insider Trading Policy on April 15, 2016.

97. Upon information and belief, following the acquisition of Cheryl’s by Flowers, Defendant Allwein was required to execute an agreement with Cheryl’s that contained non-disclosure, non-competition, and non-solicitation restrictive covenants. However, in the days

leading up to her resignation, Defendant Allwein requested to review, and in fact twice reviewed, her personnel file. Cheryl's is now unable to locate a copy of any such agreement that should be located in Defendant Allwein's personnel file. A true and accurate copy of an exemplar of the agreement containing restrictive covenants that was signed by Defendant Allwein is attached as Exhibit I.

98. In connection with her employment, Defendant Allwein was given a copy of and was required to review the Associate Handbook, outlining the policies requiring Defendant Allwein to protect Cheryl's confidential and trade secret information.

99. On February 16, 2018, Defendant Allwein resigned from Cheryl's because, according to Defendant Allwein, "it's time." Her last day of employment at Cheryl's was March 2, 2018.

100. Upon information and belief, shortly after resigning from Cheryl's, Defendant Allwein accepted a substantially similar position with CKE, a direct competitor of Cheryl's.

101. Upon information and belief, Defendants CKE and Krueger encouraged and induced Defendant Allwein to resign from Cheryl's and to disclose Cheryl's confidential and trade secret information.

102. In her current position at CKE, Defendant Allwein has used and relied upon the confidential, proprietary and trade secret information of Cheryl's on behalf of a direct competitor of Cheryl's or inevitably will do so.

103. For example, Defendants Allwein and Coley solicited Cheryl's exclusive vanilla vendor (which Cheryl's has used since the early-2000's) on behalf of CKE. This vendor is one of only a few vanilla vendors that offers a certain particular, rare vanilla bean, which is one of the ingredients in Cheryl's distinctive and secret flavor profiles. During that conversation,

Defendants Allwein and Coley told the vendor that Cheryl's would be upset if it knew that they were speaking.

**Defendant CKE is Unfairly Competing Against Cheryl's and Copying Cheryl's Famous Buttercream Frosting Swirl**

104. For more than 30 years, Cheryl's gourmet cookies and desserts have been extraordinarily successful throughout the United States. As a market leader in cookie gifts and other online cookie sales, Cheryl's and its popular desserts—including its famous buttercream frosted cookies—are instantly recognizable to consumers across the country. Cheryl's developed an extensive and detailed proprietary marketing guide for its employees.

105. Throughout its history, Cheryl's has used a consistent trade dress for its buttercream frosted cookies that consumers have come to associate uniquely with Cheryl's. This distinctive trade dress ("Cheryl's Trade Dress") is characterized by (1) a circular application of buttercream frosting; (2) with a raised outer edge or lip; (3) culminating in a single centered raised "crest"; (4) resulting in a unique "swirl" design.

106. The extraordinary success of Cheryl's famous buttercream frosted cookies is due not only to the incredible quality and taste of the cookies themselves, but also to the distinctive Cheryl's Trade Dress.

107. To ensure the consistency of its Trade Dress, Cheryl's developed an extensive and detailed proprietary marketing guide for its employees. This marketing guide is used by Cheryl's employees to ensure that its products and promotional efforts are instantly recognizable by Cheryl's customers.

108. Cheryl's Trade Dress allows consumers to instantly identify a buttercream frosted cookie as originating with Cheryl's, even when the cookies have been separated from any other branded packaging, and is therefore among Cheryl's most valuable intellectual property.

109. Cheryl's Trade Dress is not functional. There are many alternative ways in which frosting can be applied to a cookie, most of which do not require the care and technique used to create Cheryl's Trade Dress. As discussed above, each and every one of Cheryl's buttercream cookies was frosted *by hand* by trained and talented employees using a specialized icing tool. Perfecting the Cheryl's Trade Dress "swirl" is no easy task—only 20% of trainees master the necessary technique, reflecting the level of detail and quality on which Cheryl's insists. As the scope of Cheryl's business grew, individual hand-icing was unfortunately no longer practical, and as of August 17, 2018, in most cases, Cheryl's now applies the Cheryl's Trade Dress through the use of special carefully customized machinery to apply its frosting and the Cheryl's Trade Dress.

110. Cheryl's Trade Dress has acquired secondary meaning due to Cheryl's consistent use of the dress to identify its buttercream cookies in its extensive marketing and sale of those cookies. Cheryl's has expended considerable resources advertising and promoting its buttercream cookies, and Cheryl's Trade Dress features prominently in advertisements, in catalogs, on Cheryl's website, on social media, and in point-of-sale promotional materials. For example, Cheryl's plans to spend approximately \$9 million for its 2019 marketing budget, including catalogs, banner advertisements, and digital marketing. Cheryl's signature frosted cookies are front and center in virtually all of its marketing efforts. Cheryl's catalog circulation alone was sent out to 9 million addresses and Cheryl's will send over 215 million email advertisements.

111. Cheryl's buttercream cookies have received extensive unsolicited media coverage, and have won many industry/consumer awards, including, among others: (1) winner of the 2011 American Packaging and Retail Design Awards; (2) BizRate Platinum Circle of

Excellence Award - 2009, 2008, 2007; (3) 2009 American Package Design Award in the ultra-competitive design category of Food and Beverage; (4) Ohio's BEST – 1999; (5) Socially Responsible and General Excellence Award; (6) Excellence in Enterprise Award; (7) Business Integrity Award of the Year; (8) Greater Columbus Better Business Bureau 1995, Best Store Design; (9) The Institute of Business Design, Mead Top 60 Awards of Excellence in Graphic Arts Awards; (10) Best Cookie of Columbus, 3 Years; (11) Best Gourmet Dessert Indianapolis; and (12) Best Cookie, Brownie and New Flavor of Indianapolis, 6 Years.

112. By virtue of this coverage and attention, much of which features images of cookies bearing Cheryl's Trade Dress, Cheryl's Trade Dress is exposed to millions of consumers throughout the country.

113. Cheryl's extensive marketing and media exposure—combined with the undeniable appeal of its buttercream cookies—have made these some of the most successful cookies in the United States.

114. Upon information and belief, Defendant CKE is selling cookies using the same recipes, appearance, and techniques, or only slight “improvements” thereto, that Defendant Krueger sold in 2005.

115. The products offered by Defendant CKE are distinct replicas of the products offered by Cheryl's—with strikingly similar designs (including the same signature buttercream frosting swirl), descriptions, packaging, and ingredients. A review of Defendant CKE's website demonstrates that the photos of its cookies are strikingly similar to the images of Cheryl's cookies available on the Cheryl's website. Defendant CKE markets its cookies to web customers, just as Cheryl's does.

116. In a deliberate effort to trade on Cheryl's goodwill and the overwhelming success

of Cheryl's buttercream cookies, Defendant CKE is selling its own buttercream frosted cookies with a trade dress identical to Cheryl's. Indeed, Defendant CKE's cookies have copied each and every one of the elements of Cheryl's Trade Dress: (1) a circular application of buttercream frosting; (2) with a raised outer edge or lip; (3) culminating in a single centered raised "crest"; (4) resulting in a unique "swirl" design. A side-by-side comparison of one of Cheryl's cookies and one of CKE's cookies shows that Defendant CKE has copied Cheryl's Trade Dress:

**Cheryl's Cookie Example:**



**CKE's Cookie Example:**



117. Indeed, the CKE business recently launched by Defendant Krueger resembles and copies Cheryl's in many ways – from the shape, use of the frosting swirl and overall look of its products, to the individually wrapped cookies and packaging in which the products are sold and delivered, to the advertising and marketing collateral utilized to sell the products. All of the foregoing creates and contributes to a likelihood of confusion in the marketplace as to the source of the products – with consumers mistaking the CKE products for those of Cheryl's products. An example of the similarity in packaging used by Cheryl's and CKE is below:

**Cheryl's Packaging Example:**



**CKE's Packaging Example:**



118. Defendant CKE is attempting to obtain an unfair advantage in the marketplace by using Defendants Krueger's, Adell's, Allwein's, Coley's and Dalton's knowledge of Cheryl's trade secret recipes and techniques and allegedly "improving" them. Defendant CKE could not offer any such "improvements" without using Cheryl's intellectual property as the basis for creating them.

119. CKE has even used the email domain "cookies@cheryls.com" when communicating with customers of CKE that is causing further confusion in the marketplace. *See Exhibit C.*

120. Here, where Defendant CKE's infringing trade dress is entirely identical to Cheryl's Trade Dress and CKE has used an email domain designed to mimic that of Cheryl's, there is a very high likelihood that consumers will buy Defendant CKE's buttercream cookies under the mistaken belief that they come from, are manufactured by, or are otherwise licensed, authorized, or approved by, Cheryl's.

121. This likelihood of confusion is only exacerbated by the facts that Defendant

CKE's cookies are directly competitive with Cheryl's and are sold through identical channels of commerce in the same market. Confusion is also more likely, of course, because Defendant CKE is owned and operated by the very same individual that started Cheryl's more than 30 years ago and CKE was founded and has a single store front in the same city in which Cheryl's was founded and currently operates several store fronts.

122. By adopting a trade dress identical to Cheryl's Trade Dress and creating an associated likelihood of consumer confusion, Defendant CKE is causing and will continue to cause irreparable harm to Cheryl's. Consumers will mistakenly believe they are purchasing a Cheryl's cookie when they are actually purchasing a CKE cookie, denying Flowers the benefit of the bargain it spent \$40 million to obtain and eroding the goodwill Cheryl's has cultivated at great expense and over thirty years. Consumers disappointed with the taste or quality of a CKE cookies may erroneously attribute this to Cheryl's cookies and avoid purchasing from Cheryl's in the future.

**Cheryl's Reminds Defendants to Protect its Confidential Information, But Defendants Continue to Unfairly Compete Against Cheryl's**

123. On October 1 and 8, 2018, Cheryl's sent demand letters to Defendants reminding them that they are not permitted to disclose Cheryl's confidential and trade secret information for the benefit of their new employer, CKE. True and accurate copies of the letters are collectively attached as Exhibit J.

124. On October 18, 2018, counsel for CKE responded on behalf of CKE and Defendant Krueger and denied any breach of Defendant Krueger's confidentiality obligations. Counsel for CKE further stated that he would be speaking with Defendant Adell. A true and accurate copy of the October 18 letter is attached as Exhibit K.

125. However, to date, no response has been received from Defendants Adell, Coley,

Allwein, or Dalton, and Defendants are continuing to breach their restrictive covenants and unfairly compete against Cheryl's by using Cheryl's confidential and trade secret information.

**COUNT I**  
**MISAPPROPRIATION OF TRADE SECRETS**  
**DEFEND TRADE SECRETS ACT 18 U.S.C. § 1832, *et seq.***  
**(All Defendants)**

126. Cheryl's hereby repeats and incorporates all of the paragraphs of this Complaint as though specifically alleged herein.

127. In connection with the operation of its business, Cheryl's has expended substantial time, labor, money and resources developing its trade secret information including, but not limited to, customer and vendor lists containing information relating to preferences, contact information, purchasing history, and preferential pricing; technologies and online sales platforms; marketing plans and procedures; pricing methods; the recipes for Cheryl's famous cookies and buttercream frosting; the quality and type of ingredients used in its recipes; profit margin information; and marketing strategies and business plans, including the plans for new products and recipes. These trade secrets are used in products that are sold and intended to be sold in interstate commerce.

128. This information constitutes trade secrets under the Defend Trade Secrets Act, 18 U.S.C. § 1832 *et seq.*, because it derives economic value from not being generally known or readily ascertainable by independent means and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

129. Through their employment with Cheryl's, Defendants Krueger, Adell, Allwein, Coley and Dalton had access to and used Cheryl's trade secrets.

130. Defendants Krueger, Adell, Allwein, Coley and Dalton had access to the trade secrets while serving as employees of Cheryl's and under circumstances giving rise to a duty to maintain the confidentiality of the trade secrets and not to use them except for the benefit of Cheryl's.

131. Defendants Krueger, Adell, Allwein, Coley and Dalton had knowledge of this confidential information, which constituted trade secrets of Cheryl's, as a result of their former employment with Cheryl's.

132. Defendants Krueger, Adell, Allwein, Coley and Dalton, in doing the acts complained of herein, have disclosed and misused Cheryl's trade secrets without privilege to do so or are threatening to do so, pursuant to 18 U.S.C. § 1832 in the United States after May 16, 2016.

133. Defendant CKE, the new employer of Defendants Krueger, Adell, Allwein, Coley and Dalton, is a direct competitor of Cheryl's—providing competing cookies with buttercream frosting to a similar base of customers—and Defendants' job responsibilities are substantially similar to the responsibilities each had as an employee of Cheryl's.

134. Upon information and belief, Defendant CKE is using or benefiting from the misuse of the trade secrets known to Defendants Krueger, Adell, Allwein, Coley and Dalton to compete against Cheryl's, in violation of the Defend Trade Secrets Act 18 U.S.C. § 1832 in the United States after May 16, 2016.

135. Given the similarities between the two companies and the responsibilities of Defendants Krueger, Adell, Allwein, Coley and Dalton when employed at Cheryl's and now as employees of Defendant CKE, Defendants Krueger, Adell, Allwein, Coley and Dalton will be

unable to perform their current job duties at Defendant CKE without using or relying upon the confidential and proprietary trade secret information of Cheryl's.

136. Therefore, Defendants Krueger, Adell, Allwein, Coley and Dalton are in violation of the Defend Trade Secrets Act by misusing and/or disclosing trade secret information gained as a result of their employment relationships with Cheryl's.

137. Defendant CKE is in violation of the Defend Trade Secrets Act by using and/or benefiting from the misuse of trade secret information gained through improper means, by virtue of its current employees' misuse of their former employer Cheryl's trade secrets, which trade secret information the former employees obtained under confidentiality obligations owed to Cheryl's.

138. Defendants' use of Cheryl's trade secrets has caused and will continue to cause irreparable harm to Cheryl's for which Cheryl's has no adequate remedy at law. Therefore, Cheryl's is entitled to a permanent injunction to prevent the continued misuse and misappropriation of its trade secrets and to prevent further irreparable harm to Cheryl's.

139. In addition, as a direct and proximate result of the aforementioned misappropriation of trade secrets, Cheryl's has incurred damages in an amount to be determined at trial.

140. Defendants also misappropriated Cheryl's trade secrets knowingly, willfully, maliciously, intentionally, recklessly, and in bad faith to warrant the imposition of punitive damages, statutory damages, and attorneys' fees.

**COUNT II**  
**MISAPPROPRIATION OF TRADE SECRETS**  
**OHIO REV. CODE § 1333.61, *et seq.***  
**(All Defendants)**

141. Cheryl's hereby repeats and incorporates all of the paragraphs of this Complaint as though specifically alleged herein.

142. In connection with the operation of its business, Cheryl's has expended substantial time, labor, money and resources developing its trade secret information including, but not limited to, customer and vendor lists containing information relating to preferences, contact information, purchasing history, and preferential pricing; technologies and online sales platforms; marketing plans and procedures; pricing methods; the recipes for Cheryl's famous cookies and buttercream frosting; the quality and type of ingredients used in its recipes; profit margin information; and marketing strategies and business plans, including the plans for new products and recipes.

143. This information constitutes trade secrets under R.C. § 1333.61, *et seq.* because it derives economic value from not being generally known or readily ascertainable by independent means and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

144. Through their employment with Cheryl's, Defendants Krueger, Adell, Allwein, Coley and Dalton had access to and used Cheryl's trade secrets.

145. Defendants Krueger, Adell, Allwein, Coley and Dalton had access to the trade secrets while serving as employees of Cheryl's and under circumstances giving rise to a duty to maintain the confidentiality of the trade secrets and not to use them except for the benefit of Cheryl's.

146. Defendants Krueger, Adell, Allwein, Coley and Dalton had knowledge of this confidential information, which constituted trade secrets of Cheryl's, as a result of their former employment with Cheryl's.

147. Defendants Krueger, Adell, Allwein, Coley and Dalton, in doing the acts complained of herein, have disclosed and misused Cheryl's trade secrets without privilege to do so or are threatening to do so, pursuant to R.C. § 1333.61, *et seq.*

148. Defendant CKE, the new employer of Defendants Krueger, Adell, Allwein, Coley and Dalton, is a direct competitor of Cheryl's—providing competing cookies with buttercream frosting to a similar base of customers—and Defendants' job responsibilities are substantially similar to the responsibilities each had as an employee of Cheryl's.

149. Upon information and belief, Defendant CKE is using or benefiting from the misuse of the trade secrets known to Defendants Krueger, Adell, Allwein, Coley and Dalton to compete against Cheryl's, in violation of R.C. § 1333.61, *et seq.* and Ohio common law.

150. Given the similarities between the two companies and the responsibilities of Defendants Krueger, Adell, Allwein, Coley and Dalton when employed at Cheryl's and now as employees of Defendant CKE, Defendants Krueger, Adell, Allwein, Coley and Dalton will be unable to perform their current job duties at Defendant CKE without using or relying upon the confidential and proprietary trade secret information of Cheryl's, and it is inevitable that Cheryl's trade secrets will be used for the benefit of Defendant CKE.

151. Therefore, Defendants Krueger, Adell, Allwein, Coley and Dalton are in violation of R.C. § 1333.61, *et seq.* and Ohio common law by misusing and/or disclosing, or inevitably misusing and/or disclosing, trade secret information gained as a result of their employment relationships with Cheryl's.

152. Defendant CKE is in violation of R.C. § 1333.61, *et seq.* by using and/or benefiting from the misuse of trade secret information gained through improper means, by virtue of its current employees' misuse of their former employer Cheryl's trade secrets, which trade secret information the former employees obtained under confidentiality obligations owed to Cheryl's.

153. Defendants' use of Cheryl's trade secrets has caused and will continue to cause irreparable harm to Cheryl's for which Cheryl's has no adequate remedy at law. Therefore, Cheryl's is entitled to a permanent injunction to prevent the continued misuse and misappropriation of its trade secrets and to prevent further irreparable harm to Cheryl's.

154. In addition, as a direct and proximate result of the aforementioned misappropriation of trade secrets, Cheryl's has incurred damages in an amount to be determined at trial.

155. Defendants also misappropriated Cheryl's trade secrets knowingly, willfully, maliciously, intentionally, recklessly, and in bad faith to warrant the imposition of punitive damages, statutory damages, and attorneys' fees.

**COUNT III**  
**BREACH OF CONTRACT**  
**(Defendant Krueger)**

156. Cheryl's hereby repeats and incorporates all of the paragraphs of this Complaint as though specifically alleged herein.

157. The Krueger Agreement is a valid and binding contract between Cheryl's and Krueger.

158. By executing the Krueger Agreement, Defendant Krueger agreed to not "divulge, disclose or make accessible any Confidential Information" or to "use any Confidential

Information for her own purposes or for the benefit of any other person, firm, partnership.”  
Krueger Agreement § 9.1.

159. Through the wrongful conduct set forth above, including the misuse of Cheryl’s confidential and trade secret information, Defendant Krueger has breached the Krueger Agreement.

160. Cheryl’s is entitled to a permanent injunction preventing Defendant Krueger from continuing to breach the Krueger Agreement and to prevent further irreparable harm to Cheryl’s.

161. In addition, as a direct and proximate result of the aforementioned breach of contract, Cheryl’s has incurred damages in an amount to be determined at trial.

**COUNT IV**  
**TORTIOUS INTERFERENCE WITH CONTRACTUAL AND BUSINESS RELATIONS**  
**(All Defendants)**

162. Cheryl’s hereby repeats and incorporates all of the paragraphs of this Complaint as though specifically alleged herein.

163. Defendants Adell, Allwein, Coley and Dalton had enforceable duties of confidentiality to Cheryl’s.

164. Defendants Adell, Coley, and Allwein also had valid and enforceable obligations not to compete against Cheryl’s for a one-year period following the termination of their employment with Cheryl’s.

165. Defendants Krueger and CKE were aware of these obligations of confidentiality and non-competition.

166. Without justification, Defendants Krueger and CKE intentionally interfered with Cheryl’s contractual and business relationships with Defendants Adell, Allwein, Coley and Dalton. Defendants Krueger and CKE intentionally encouraged Defendants Adell, Allwein,

Coley and Dalton to breach their confidentiality obligations to Cheryl's in order to obtain access to Cheryl's confidential, proprietary and trade secret information.

167. Without justification, Defendants Krueger and CKE intentionally interfered with Cheryl's contractual and employment relationships with Defendants Adell, Coley, and Allwein. Defendants Krueger and CKE intentionally encouraged Defendants Adell and Coley to breach their non-competition obligations to Cheryl's by hiring Defendants Adell and Coley to directly compete against their former employer, Cheryl's.

168. Cheryl's also has contractual and business relationships with its vendors and customers.

169. Defendants CKE, Krueger, Adell, Allwein, Coley and Dalton were aware of Cheryl's vendor and customer relationships.

170. Without justification, Defendants CKE, Krueger, Adell, Allwein, Coley and Dalton have intentionally interfered with Cheryl's vendor and customer relationships.

171. Cheryl's is entitled to a permanent injunction to prevent further tortious interference with contractual and business relationships and to prevent further irreparable harm to Cheryl's.

172. In addition, as a direct and proximate result of Defendants' interference with Cheryl's contractual and business relationships, Cheryl's has suffered damages in amount to be determined at trial.

173. Defendants also acted knowingly, willfully, maliciously, intentionally, recklessly, and in bad faith to warrant the imposition of punitive damages and attorneys' fees.

**COUNT V**  
**BREACH OF CONTRACT**  
**(Defendant Adell)**

174. Cheryl's hereby repeats and incorporates all of the paragraphs of this Complaint as though specifically alleged herein.

175. Defendant Adell signed the Adell Agreement with Cheryl's whereby he agreed to undertake certain obligations with respect to Cheryl's confidential and proprietary information and not to compete against Cheryl's for a period of one year following his departure from Cheryl's and not to solicit Cheryl's customers, suppliers or employees for a period of two years following his departure from Cheryl's.

176. Defendant Adell breached the Adell Agreement by the wrongful conduct set forth above by (1) accepting employment with a competitor of Cheryl's; (2) using and/or disclosing confidential information and trade secrets of Cheryl's on behalf of a competitor; (3) soliciting Cheryl's customers and vendors on behalf of CKE; and (4) encouraging one or more employees of Cheryl's to work with him at CKE.

177. Cheryl's is entitled to a permanent injunction to enforce the terms of Defendant Adell's non-competition and non-solicitation agreements contained in the Adell Agreement and to prevent further irreparable harm to Cheryl's.

178. In addition, as a direct and proximate result of Defendant Adell's breach of contract, Cheryl's has suffered damages in amount to be determined at trial.

**COUNT VI**  
**BREACH OF CONTRACT**  
**(Defendant Coley)**

179. Cheryl's hereby repeats and incorporates all of the paragraphs of this Complaint as though specifically alleged herein.

180. Defendant Coley signed the Coley Agreement with Cheryl's whereby she agreed to undertake certain obligations with respect to Cheryl's confidential and proprietary information and not to compete against Cheryl's for a period of one year following her departure from Cheryl's and not to solicit Cheryl's customers, suppliers or employees for a period of two years following her departure from Cheryl's.

181. Defendant Coley breached the Coley Agreement by the wrongful conduct set forth above by (1) accepting employment with a competitor of Cheryl's; (2) using and/or disclosing confidential information and trade secrets of Cheryl's on behalf of a competitor; (3) soliciting Cheryl's customers and vendors on behalf of CKE; and (4) encouraging one or more employees of Cheryl's to work with her at CKE.

182. Cheryl's is entitled to a permanent injunction to enforce the terms of Defendant Coley's non-competition and non-solicitation agreements contained in the Coley Agreement and to prevent irreparable harm to Cheryl's.

183. In addition, as a direct and proximate result of Defendant Coley's breach of contract, Cheryl's has suffered damages in amount to be determined at trial.

**COUNT VII**  
**CIVIL CONSPIRACY**  
**(All Defendants)**

184. Cheryl's hereby repeats and incorporates all of the paragraphs of this Complaint as though specifically alleged herein.

185. Defendants have formed a malicious combination to commit unlawful acts causing injury to Cheryl's.

186. Defendants conspired and agreed to misappropriate Cheryl's confidential and trade secret information, to tortiously interfere with Cheryl's contractual and business

relationships, to solicit Cheryl's customers, vendors, and other business contacts, and to divert business away from Cheryl's for their own economic benefit.

187. In furtherance of Defendants' civil conspiracy, Defendants have misappropriated Cheryl's trade secret information, copied Defendants' products, and contacted Cheryl's customers and vendors for the benefit of Defendant CKE.

188. As a direct and proximate result of Defendants' civil conspiracy, Cheryl's has incurred damages in an amount to be determined at trial.

189. In addition, Defendants conspired knowingly, willfully, maliciously, intentionally, and in bad faith to warrant the imposition of punitive damages and attorneys' fees.

**COUNT VIII**  
**COMMON LAW UNFAIR COMPETITION**  
**(Defendant CKE)**

190. Cheryl's hereby repeats and incorporates all of the paragraphs of this Complaint as though specifically alleged herein.

191. Defendant CKE systematically targeted high-level, long-tenured Cheryl's employees for hire in an effort to unlawfully acquire Cheryl's confidential, proprietary and trade secret information and use that information to unfairly compete with Cheryl's, including its Director of Production, Director of Purchasing, Director of Product Development, and Business Gift Services Accounts Manager.

192. Moreover, Defendant CKE has raided and pirated Cheryl's key employees with confidential and trade secret information belonging to Cheryl's.

193. Defendant CKE's unauthorized advertising, distribution and sale of products bearing Cheryl's Trade Dress, and raiding of Cheryl's employees constitutes common law unfair competition.

194. Defendant CKE's conduct is causing irreparable injury to Cheryl's and to its goodwill and reputation, and will continue both to damage Cheryl's organizational structure and deceive the public unless enjoined by this Court.

195. Therefore, Cheryl's is entitled to a permanent injunction to prevent further unfair competition and irreparable harm to Cheryl's.

196. In addition, as a direct and proximate result of Defendant CKE's unfair competition, Cheryl's has suffered damages in amount to be determined at trial.

197. Defendant CKE also acted knowingly, willfully, maliciously, intentionally, recklessly, and in bad faith to warrant the imposition of punitive damages and attorneys' fees.

**COUNT IX**  
**DECEPTIVE TRADE PRACTICES ACT, OHIO REV. CODE § 4165.02 *et seq.***  
**(Defendant CKE)**

198. Cheryl's hereby repeats and incorporates all of the paragraphs of this Complaint as though specifically alleged herein.

199. Defendant CKE engaged in deceptive trade practices by, *inter alia*, in the course of CKE's business, causing a likelihood of confusion or misunderstanding as to the source of its products that are designed to copycat Cheryl's products.

200. Defendant CKE's deceptive trade practices have caused and will continue to cause irreparable harm to Cheryl's for which Cheryl's has no adequate remedy at law.

201. Therefore, Cheryl's is entitled to a permanent injunction to prevent the continued deceptive trade practices and to prevent further irreparable harm to Cheryl's.

202. In addition, as a direct and proximate result of the aforementioned deceptive practices, Cheryl's has incurred damages in an amount to be determined at trial.

203. Defendant CKE also engaged in deceptive trade practices knowingly, willfully,

maliciously, intentionally, recklessly, and in bad faith to warrant the imposition of punitive damages, statutory damages, and attorneys' fees.

**COUNT X**  
**TRADE DRESS INFRINGEMENT AND FALSE DESIGNATION OF ORIGIN UNDER**  
**THE LANHAM ACT, 15 U.S.C. § 1125(a)**  
**(Defendant CKE)**

204. Cheryl's hereby repeats and incorporates all of the paragraphs of this Complaint as though specifically alleged herein.

205. Cheryl's Trade Dress is non-functional and has acquired secondary meaning, and Cheryl's has made substantially exclusive use of Cheryl's Trade Dress for more than 30 years.

206. Defendant CKE's unauthorized advertising, distribution and sale of cookies featuring Cheryl's Trade Dress is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant CKE with Cheryl's, or as to the origin, sponsorship, or approval of Defendant CKE's products by Cheryl's.

207. Defendant CKE is using Cheryl's Trade Dress with full knowledge that it is associated with and exclusively designates Cheryl's buttercream frosted cookies. Defendant CKE's acts of trade dress infringement, unfair competition, and false designation of origin are willful and deliberate and with an intent to reap the benefit of the goodwill and reputation associated with Cheryl's Trade Dress.

208. Defendant CKE's unauthorized advertising, distribution and sale of cookies bearing Cheryl's Trade Dress violates Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

209. Defendant CKE's violation of the Lanham Act has caused and will continue to cause irreparable harm to Cheryl's for which Cheryl's has no adequate remedy at law.

Therefore, Cheryl's is entitled to a permanent injunction to prevent the continued violations of the Lanham Act and to prevent further irreparable harm to Cheryl's.

210. In addition, as a direct and proximate result of the aforementioned violations of the Lanham Act, Cheryl's has incurred damages in an amount to be determined at trial.

211. Defendant CKE also violated the Lanham Act knowingly, willfully, maliciously, intentionally, recklessly, and in bad faith to warrant the imposition of punitive damages, statutory damages, and attorneys' fees.

### **PRAYER FOR RELIEF**

WHEREFORE, Cheryl's prays for and respectfully requests the following relief:

1. That a permanent injunction be issued enjoining Defendants Krueger, CKE, Adell, Allwein, Coley and Dalton from disclosing and using Cheryl's confidential, proprietary and trade secret information, requiring Defendants to return to Cheryl's all copies of confidential, proprietary and trade secret information obtained by Defendants from Cheryl's and requiring Defendants to permanently destroy all electronic versions of such confidential, proprietary and trade secret information;

2. That the Court enter judgment on Counts I, II, III, IV, V, VI, VII, VIII, IX and X against Defendants and award compensatory and statutory damages resulting from Defendants' conduct in an amount to be proven at trial;

3. That a permanent injunction be issued enjoining Defendants Adell and Coley from competing against Cheryl's for a period of one year from the date of the entry of the permanent injunction;

4. That a permanent injunction be issued enjoining Defendants Adell, Dalton, and Coley from influencing or attempting to influence a supplier or customer of Cheryl's for the

purpose of selling or offering to sell any products that are identical, substantially similar or comparable to the products offered by Cheryl's, and from influencing or attempting to influence any person to (i) terminate or modify his/her employment with Cheryl's, (ii) solicit for employment any person employed by Cheryl's, or (iii) employ, or otherwise retain the services of any person employed by Cheryl's for a period of two years from the date of the entry of the permanent injunction;

5. That a permanent injunction be issued enjoining Defendants Krueger and CKE from engaging in unfair and deceptive trade practices or unfair competition;

6. That a permanent injunction be issued enjoining Defendants Krueger and CKE, and any employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, and entities owned or controlled by Defendant CKE, and all those in active concert and participation with any of them, and each of them who receives notice directly or otherwise of such injunction from:

a) manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any products bearing Cheryl's Trade Dress, or any simulation, reproduction, counterfeit, copy or colorable imitation thereof;

b) imitating, copying, or making unauthorized use of Cheryl's Trade Dress;

c) using Cheryl's Trade Dress, or any simulation, reproduction, counterfeit, copy or colorable imitation thereof, in connection with the manufacture, production, distribution, circulation, sale, offer for sale, advertisement, promotion and/or display of any product in such fashion as to relate or connect, or tend to relate or connect, such product in any way to Cheryl's or to any goods sold, manufactured, sponsored, approved by or connected with Cheryl's;

d) using any false designation of origin or false description, or performing any act that is likely to lead members of the trade or public to believe that any product manufactured, distributed or sold by Defendant CKE is in any manner associated or connected with Cheryl's, or is sold, manufactured, licensed, sponsored, approved or authorized by Cheryl's;

e) engaging in any other activity constituting unfair competition with Cheryl's, or constituting infringement of Cheryl's Trade Dress; or

f) instructing, assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (e) above;

7. That an Order is entered directing that Defendants Krueger and CKE deliver to Cheryl's counsel for destruction at Defendant CKE's cost all signs, products, packaging, promotional material, advertising material, catalogs and any other item that depicts or incorporates Cheryl's Trade Dress, or any simulation, reproduction, counterfeit, copy or colorable imitation thereof;

8. That an Order is entered requiring Defendants Krueger and CKE to account for and pay over to Cheryl's three times the profits realized from its infringement of Cheryl's Trade Dress, misappropriation of trade secrets, deceptive trade practices, and its unfair competition with Cheryl's;

9. That an Order is entered awarding Cheryl's its actual damages, trebled pursuant to 15 U.S.C. § 1117(a), arising out of Defendant CKE's acts of willful trade dress infringement and unfair competition;

10. That an Order is entered awarding Cheryl's its actual and statutory damages arising out of Defendants Krueger, CKE, Adell, Allwein, Dalton and Coley's misappropriation of trade secrets pursuant to 18 U.S.C. § 1832 and R.C. § 1333.61;

11. That an Order is entered awarding Cheryl's its actual and statutory damages arising out of Defendant CKE's deceptive trade practices pursuant to R.C. § 4165.02;

12. That an Order is entered awarding Cheryl's interest, including pre-judgment interest, on the foregoing sums;

13. That an Order is entered awarding Cheryl's its costs in this civil action, including reasonable attorneys' fees and expenses;

14. That an Order is entered awarding Cheryl's exemplary and punitive damages to deter any future willful infringement as the Court finds appropriate;

15. That an Order is entered awarding Cheryl's directing such other action as the Court may deem appropriate to prevent the trade and public from deriving the erroneous impression that any goods or services modified, offered, advertised or promoted by or on behalf of Defendants Krueger and CKE are authorized by Cheryl's or related in any way to products bearing Cheryl's Trade Dress; and

16. That an Order is entered awarding Cheryl's such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), Cheryl's hereby demands a trial by jury of all issues so triable.

/s/ Thomas Wyatt Palmer

Respectfully submitted,

/s/ Thomas Wyatt Palmer

Thomas Wyatt Palmer (0072816)

THOMPSON HINE LLP

41 South High Street, Suite 1700

Columbus, Ohio 43215-6101

T: (614) 469-4781 | F: (614) 469-3361

[Thomas.Palmer@ThompsonHine.com](mailto:Thomas.Palmer@ThompsonHine.com)

George B. Musekamp (0087060)

THOMPSON HINE LLP

312 Walnut Street, Suite 1400

Cincinnati, Ohio 45202

T: (513) 352-6624 | F: (513) 241-4771

[George.Musekamp@ThompsonHine.com](mailto:George.Musekamp@ThompsonHine.com)

Audra A. Dial

Ava Conger

KILPATRICK TOWNSEND & STOCKTON LLP

1100 Peachtree Street, Suite 2800

Atlanta, Georgia 30309

Telephone: (404) 815-6500

Facsimile: (404) 815-6333

[adial@kilpatricktownsend.com](mailto:adial@kilpatricktownsend.com)

[aconger@kilpatricktownsend.com](mailto:aconger@kilpatricktownsend.com)

Robert N. Potter

KILPATRICK TOWNSEND & STOCKTON LLP

The Grace Building

1114 Avenue of the Americas

New York, NY 10036

Telephone: (212) 775-8733

Facsimile: (212) 775-8816

[rpotter@kilpatricktownsend.com](mailto:rpotter@kilpatricktownsend.com)

Thomas E. Plastaras

GALLAGHER, WALKER, BIANCO &

PLASTARAS, LLP

98 Willis Avenue

Mineola, New York 11501

Telephone: (516) 248-2002

Facsimile: (516) 248-2394

[tplastaras@gwbplaw.com](mailto:tplastaras@gwbplaw.com)

*Attorneys for Plaintiff Cheryl & Co.*