

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.:

THE KITCHEN CAFÉ, LLC,

Plaintiff,

v.

NEXT DOOR TAPAS, INC.,

Defendant.

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**COMPLAINT AND JURY DEMAND**

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Plaintiff The Kitchen Café, LLC (“The Kitchen”), through counsel, submits this Complaint against Defendant Next Door Tapas, Inc. and alleges as follows:

**INTRODUCTION**

1. This is an action for trademark infringement, unfair competition, false designation of origin, and deceptive trade practices resulting from Defendant’s unauthorized use of the mark “Next Door,” which is identical and substantially similar to The Kitchen’s senior and prior established use of the trademarks NEXT DOOR and THE KITCHEN NEXT DOOR to identify its restaurant services. Despite being notified by The Kitchen that Defendant’s use of “Next Door” to identify its restaurant was causing confusion, Defendant refused to change its name and has continued its infringing use of the name “Next Door” to identify its competing restaurant. Consequently, The Kitchen seeks injunctive relief, monetary damages, and all other appropriate relief, including an order enjoining Defendant from further use of “Next Door” or any other confusingly similar business name, pursuant to Sections 32 and 43(a) of the Lanham Act, 15

U.S.C. §§ 1114 and 1125(a), the Colorado Consumer Protection Act, C.R.S. § 6-1-101 *et seq.*, and the common law of Colorado.

### **Parties**

2. Plaintiff The Kitchen Café, LLC is a Colorado limited liability company with its principal place of business at 1039 Pearl Street, Boulder, Colorado 80302.

3. Upon information and belief, Defendant Next Door Tapas, Inc. is a Colorado corporation with its principal place of business at 222 East 4th Street, Loveland, Colorado 80537.

### **Jurisdiction and Venue**

4. This Court has jurisdiction over the subject matter of this action under 15 U.S.C. §§ 1121 and 1125(a), and under 28 U.S.C. §§ 1331, 1337(a), and 1338. This Court has jurisdiction over The Kitchen's state law claims under 28 U.S.C. §§ 1338(b) and 1367(a), as well as general principles of supplemental and pendent jurisdiction.

5. Defendant's activities affect the commerce of the United States.

6. This Court has personal jurisdiction over Defendant because it resides and does business in this District, and because a substantial part of the events giving rise to The Kitchen's claims either occurred in this District or were directed towards this District.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant resides in this District and a substantial part of the events giving rise to the claims occurred in this District.

### **THE KITCHEN AND ITS TRADEMARK RIGHTS**

8. The Kitchen opened its first restaurant in Boulder, Colorado under the name THE KITCHEN in 2004. The Kitchen's THE KITCHEN restaurant is a community bistro—a restaurant built by the community, serving food and drink from a community of like-minded farmers, ranchers, and purveyors for the sustainable enjoyment of the whole community and a farm-to-table dining experience. Underlying this concept is a dedication to environmentally-friendly practices, including composting, wind power, eco-friendly packaging, and recycling used cooking oil.

9. Consistent with The Kitchen's mission of drawing the community together through food, The Kitchen has created The Kitchen Community, a 501(c)(3) non-profit organization (<https://thekitchencommunity.org/>). Through the dedication of its members and supporters, The Kitchen Community has built over 190 Learning Gardens in schools and communities across America, impacting tens, if not hundreds, of thousands of students and their families. The Kitchen Community, through its commitment to Learning Gardens, has helped to reeducate communities about gardening, fresh produce, and healthy eating. The Kitchen Community is also in the process of rolling out its Home Cooking Campaign (<https://thekitchencommunity.org/cooking-at-home/>), which is focused on teaching families how to cook simple, real food meals for a family of four for under \$10.

10. After opening its first THE KITCHEN restaurant, The Kitchen recognized additional opportunity in the food and drink market and began opening additional restaurants dedicated to the mission of bringing the community together. In 2005, The Kitchen opened UPSTAIRS in Boulder, Colorado, a cocktail lounge and bar designed for sharing fresh food and

good drinks with neighbors. On June 13, 2011, The Kitchen opened its first NEXT DOOR restaurant in Boulder, which has also been referred to as THE KITCHEN NEXT DOOR.

11. NEXT DOOR sought to create a community pub experience. Although still dedicated to providing fresh food and quality drinks, NEXT DOOR offers a more casual atmosphere, with regular community happy hours and a more inviting experience for families with children. Indeed, for every children's meal sold in NEXT DOOR Restaurants, The Kitchen donates \$2 of the proceeds to the Learning Gardens program.

12. The first generation NEXT DOOR design mark associated with the founding NEXT DOOR restaurant was:

[ NEXT DOOR ]

13. The above mark was prominently displayed in signage located on the brick and windows of the restaurant, as well as on the restaurant menus, at or around the June 13, 2011 opening:



*Displaying the [NEXT DOOR] Mark on the window of the Boulder restaurant.*



*Displaying the [NEXT DOOR] Mark on the Menu Board at the Boulder restaurant.*



*Displaying the [NEXT DOOR] Mark on the building façade at the Boulder restaurant.*



*[NEXT DOOR] Mark displayed on packaging for a fresh cookie ice cream sandwich dessert.*



*Displaying [NEXT DOOR] mark on menu.*



*Displaying [NEXT DOOR] mark on menu.*

14. The opening of the first NEXT DOOR restaurant in Boulder generated significant press coverage, including the following observations:

- “In a prime location downtown on Pearl Street and 11th, [NEXT DOOR] offers a more casual and quick food experience, while making farm-to-table accessible in their French Industrial interior, gastro-pub.” June 14, 2011: <http://gracefullplate.com/restaurant-opening-the-kitchen-next-door/>.

- “The mission of Next Door, business-wise, is to help fund school gardens for a young nation in a technology-overload, health and obesity crisis.” June 14, 2011: <http://www.elephantjournal.com/2011/06/elephant-journal-reviews-the-kitchen-next-door/>

- “The third child in an ever-growing family, [Next Door] is a more day-to-day casual concept, with a simple menu of salads, soups, sandwiches, and small plates. With a goal to make The Kitchen’s fresh, organic, locally-sourced cuisine more accessible to average Joe, I would say “mission accomplished.” June 25, 2011: [http://www.thedenverdish.com/2011/06/kitchen-next-door\\_25.html](http://www.thedenverdish.com/2011/06/kitchen-next-door_25.html)

- “The Kitchen recently opened their new restaurant The Kitchen Next Door. It has the same delicious flavors that The Kitchen has, but everything on the menu is under \$9.00.” September 1, 2011: <http://burrrnttoast.blogspot.com/2011/09/kitchen-next-door.html>

15. In recent years, The Kitchen’s Boulder location has also utilized the following NEXT DOOR design trademark, denoting the NEXT DOOR restaurant’s relationship with its creator and proprietor, The Kitchen and its community pub approach:



16. Since opening the original NEXT DOOR restaurant in Boulder, The Kitchen has opened two additional NEXT DOOR restaurants in Denver and Glendale, Colorado. Photos of both locations follow:



*NEXT DOOR  
Union Station  
Denver, Colorado*



*NEXT DOOR  
658 South Colorado Boulevard  
Glendale, Colorado*

17. The Kitchen is actively exploring new locations for additional NEXT DOOR restaurants in Colorado, as well as in other states.

18. The Kitchen has invested significant resources to develop and foster the reputation, recognition, and goodwill associated with its NEXT DOOR and THE KITCHEN NEXT DOOR marks (collectively, the “NEXT DOOR Marks”), including through extensive advertising and promotional efforts and enforcement of its valuable trademark rights.

19. As a result of the success of The Kitchen's NEXT DOOR restaurants and extensive advertising and promotion, the NEXT DOOR Marks have become widely and favorably known as identifying The Kitchen's restaurants. The public has come to associate the distinctive NEXT DOOR Marks exclusively with The Kitchen's restaurants.

20. In recognition of The Kitchen's rights, the United States Patent and Trademark Office ("PTO") has issued it a federal trademark registration for THE KITCHEN NEXT DOOR (Reg. No. 4165447) and on November 11, 2014, approved for publication The Kitchen's application to register the mark NEXT DOOR (Ser. No. 86312879) for both restaurant and café services. True and correct copies of the registration certificate and notice of publication for the foregoing marks are attached as **Exhibit A**.

21. The Kitchen has been using its NEXT DOOR Marks continuously in commerce since at least as early as June 13, 2011.

**DEFENDANT'S INFRINGING USE OF THE NEXT DOOR TRADEMARK**

22. On information and belief, Defendant opened its "Next Door" restaurant in Loveland, Colorado in March 2012, after The Kitchen first used its NEXT DOOR Marks in connection with its first NEXT DOOR restaurant in Boulder. Defendant's infringing "Next Door" mark will be referred to herein as the "Infringing Mark."

23. Defendant's use and presentation of NEXT DOOR in its signage, on its website (<http://www.nextdoorloveland.com/>), and in its menus is substantially similar to The Kitchen's use for its NEXT DOOR branded restaurants:





*Photo of Exterior of Defendant's Restaurant  
(available at <http://www.nextdoorloveland.com/>)*



*Screen shots from Defendant's website at  
<http://www.nextdoorloveland.com/>*

24. In or around the summer of 2014, The Kitchen learned that Defendant was using the Infringing Mark in conjunction with restaurant services that are substantially similar to those provided by The Kitchen.

25. In an effort to eliminate confusion, The Kitchen contacted Defendant and requested that Defendant transition away from the Infringing Mark—noting that The Kitchen strongly preferred an amicable resolution that would minimize any disruption to Defendant's business. Although Defendant initially indicated its willingness to transition to another name, Defendant ultimately refused The Kitchen's request.

26. Upon information and belief, prior to its first use of the Infringing Mark, Defendant had either actual knowledge or reason to know of The Kitchen's use of its NEXT DOOR mark.

27. Indeed, Defendant, through one of its founders, acknowledged that it was aware of The Kitchen's NEXT DOOR restaurant as early as June 2011 due to press coverage associated with its opening. Defendant acknowledged that it hesitated about whether to open a restaurant under the identical "Next Door" mark given its similarities to The Kitchen's NEXT DOOR

restaurant regarding both its menu and farm-fresh approach. Despite its knowledge of The Kitchen's prior use of NEXT DOOR for restaurant services, Defendant went forward and opened its restaurant under the identical name.

28. Notwithstanding Defendant's actual and constructive notice of The Kitchen's trademark rights in the NEXT DOOR Marks, Defendant has used and continues to use the Infringing Mark in connection with its restaurant.

29. Defendant has expressly acknowledged that it is aware of actual consumer confusion resulting from Defendant's and The Kitchen's use of identical NEXT DOOR trademarks for their respective restaurants.

30. Upon information and belief, Defendant's use of the Infringing Mark in connection with its business will continue to cause confusion, including by misleading consumers to believe, erroneously, that the services offered by Defendant are approved, provided, endorsed, and/or sponsored by The Kitchen or that Defendant's restaurant is one of The Kitchen's restaurants.

31. Upon information and belief, Defendant knowingly has used the Infringing Mark to attract consumers, knowing that consumers will wrongly believe that such use is sponsored or endorsed by, or associated or affiliated with, The Kitchen.

32. Defendant's unlawful conduct has damaged, and will continue to damage, the reputation, recognition, and goodwill associated with The Kitchen's NEXT DOOR Marks.

33. Defendant's unlawful conduct as set forth above was and continues to be willful, deliberate, and in bad faith, with the intent to trade on the goodwill associated with The Kitchen's NEXT DOOR Marks.

34. For the foregoing reasons, unless enjoined, Defendant will continue to cause injury to The Kitchen and to the goodwill and value of its NEXT DOOR Marks.

**FIRST CAUSE OF ACTION**  
**(Trademark Infringement and Unfair Competition under the Common Law of Colorado)**

35. The Kitchen incorporates by reference the allegations contained in each of the paragraphs above.

36. Defendant's use of the Infringing Mark in connection with its services constitutes trademark infringement and unfair competition under the common law of Colorado because Defendant has used in commerce a mark confusingly similar to The Kitchen's NEXT DOOR and THE KITCHEN NEXT DOOR marks in connection with the sale, offering for sale, distribution, and advertising of products and/or services in a manner likely to cause confusion, mistake, and deception as to the source or origin of Defendant's services, or the affiliation, sponsorship, or other relationship between the parties.

37. On information and belief, Defendant's conduct has been and continues to be willful, deliberate, and in bad faith, with malicious intent to trade on the goodwill associated with The Kitchen's NEXT DOOR and THE KITCHEN NEXT DOOR marks.

38. Defendant's deceptive trade practices have had and will continue to have a significant negative impact on the public as actual and potential consumers of The Kitchen's products and services.

39. By its conduct, Defendant has harmed and deceived the public and has inflicted damage and irreparable injury upon The Kitchen for which it has no adequate remedy at law, and Defendant will continue to do so unless restrained and enjoined by this Court from further

infringing the Kitchen's NEXT DOOR and THE KITCHEN NEXT DOOR marks and confusing the public.

**SECOND CAUSE OF ACTION**

**(Federal Trademark Infringement of THE KITCHEN NEXT DOOR - 15 U.S.C. § 1114)**

40. The Kitchen incorporates by reference the allegations contained in each of the paragraphs above.

41. Defendant's unlawful use of the Infringing Mark also violates Section 32 of the Lanham Act, 15 U.S.C. § 1114, because it constitutes willful and deliberate use in commerce of reproductions, copies, and/or colorable imitations of The Kitchen's federally registered THE KITCHEN NEXT DOOR mark in connection with providing, offering, and advertising Defendant's services in a manner likely to cause confusion, mistake, or deception.

42. Defendant's conduct also constitutes an attempt to trade on the goodwill that The Kitchen has developed in the federally registered THE KITCHEN NEXT DOOR mark, to the damage of The Kitchen.

43. On information and belief, Defendant's conduct has been and continues to be willful, deliberate, and in bad faith, with malicious intent to trade on the goodwill associated with The Kitchen's THE KITCHEN NEXT DOOR mark.

44. By its conduct, Defendant has caused The Kitchen damage and irreparable injury for which it has no adequate remedy at law, and Defendant will continue to do so unless restrained and enjoined by this Court from further infringing The Kitchen's THE KITCHEN NEXT DOOR mark and confusing the public.

45. On information and belief, Defendant has received revenues and profits as a result of its infringing use, to which Defendant is not entitled, and The Kitchen has also suffered damages as a result of Defendant's unlawful conduct, for which Defendant is responsible.

**THIRD CAUSE OF ACTION**  
**(Trademark Infringement, Unfair Competition, and False Designation of Origin - 15 U.S.C. § 1125(a))**

46. The Kitchen incorporates by reference the allegations contained in each of the paragraphs above.

47. Defendant's use of the Infringing Mark violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), because Defendant has willfully and deliberately used in commerce words, terms, names, and/or false designations of origin that has caused, and is causing, confusion and mistake as to the origin, sponsorship, or approval by The Kitchen of services promoted by Defendant. This conduct constitutes infringement of The Kitchen's common law rights in its NEXT DOOR and THE KITCHEN NEXT DOOR trademarks, as well as unfair competition and false designation of origin.

48. On information and belief, Defendant's conduct has been and continues to be willful, deliberate, and in bad faith, with malicious intent to trade on the goodwill associated with The Kitchen's NEXT DOOR and THE KITCHEN NEXT DOOR marks.

49. By its conduct, Defendant has inflicted damage and irreparable injury upon The Kitchen for which it has no adequate remedy at law, and Defendant will continue to do so unless restrained and enjoined by this Court from further infringing the NEXT DOOR and THE KITCHEN NEXT DOOR marks and confusing the public.

50. On information and belief, Defendant has received revenues and profits as a result of its infringing use, to which Defendant is not entitled, and The Kitchen has also suffered damages as a result of Defendant's unlawful conduct, for which Defendant is responsible.

**FOURTH CAUSE OF ACTION**  
**(Deceptive Trade Practices - Colorado Consumer Protection Act, C.R.S. § 6-1-105)**

51. The Kitchen incorporates by reference the allegations contained in each of the paragraphs above.

52. Defendant's use of the Infringing Mark constitutes deceptive trade practices in violation of the Colorado Consumer Protection Act, C.R.S. § 6-1-105, because by such use Defendant knowingly (1) passes off its goods and services as those of another, (2) makes a false representation as to the source, sponsorship, approval, and/or certification of its goods and services, and (3) makes a false representation as to affiliation, connection, and/or association with or certification by The Kitchen.

53. On information and belief, Defendant's conduct has been and continues to be knowing, willful, deliberate, and in bad faith, with malicious intent to deceive and to trade on the goodwill associated with The Kitchen's NEXT DOOR and THE KITCHEN NEXT DOOR marks.

54. Defendant's deceptive trade practices have had and will continue to have a significant negative impact on the public as actual and potential consumers of The Kitchen's products and services.

55. By its conduct, Defendant has harmed and deceived the public and inflicted damage and irreparable injury upon The Kitchen for which it has no adequate remedy at law, and Defendant will continue to do so unless restrained and enjoined by this Court from further

infringing the NEXT DOOR and THE KITCHEN NEXT DOOR marks and confusing the public.

56. On information and belief, Defendant has received revenues and profits as a result of its unfair and deceptive conduct, to which Defendant is not entitled, and The Kitchen has also suffered damages as a result of Defendant's unlawful conduct, for which Defendant is responsible.

**PRAYER FOR RELIEF**

FOR THESE REASONS, The Kitchen respectfully prays for a judgment:

A. Enjoining and restraining Defendant and its principals, agents, servants, employees, successors, and assigns and all those in privity, concert, or participation with it, from engaging in the following acts:

i. using without authorization from The Kitchen any of the NEXT DOOR Marks, logos, and trade names, including, but not limited to, the designation "Next Door," or any other name, logo, or mark that includes the designation "Next Door" or that is confusingly or deceptively similar to any of The Kitchen's NEXT DOOR Marks, logos, trade names, either alone or in conjunction with other words or symbols, as part of any trademark, service mark, logo, trade name, corporate name, assumed name, Internet domain name, on or in relation to any goods or services sold or distributed by Defendant, or in any other manner; and

ii. engaging in any other activity constituting unfair competition or infringement of the NEXT DOOR Marks or The Kitchen's rights in, or to use, or to exploit the same; and

iii. assisting, aiding, or abetting another person or business entity in engaging or performing any of the activities enumerated in paragraphs (i) and (ii) above;

B. Requiring Defendant, pursuant to 15 U.S.C. § 1118, to destroy all literature, signs, labels, prints, packages, wrappers, containers, advertising materials, Internet content, stationery, software, and any other items in its possession or control which contain the Infringing Mark or the designation “Next Door” or any term confusingly similar thereto, either alone or in combination with other words or symbols, and to destroy all plates, molds, matrices, masters, and other means of making any of those infringing items;

C. Requiring Defendant to file with the Court and to serve on The Kitchen, within thirty (30) days after entry of an injunction, a report in writing, under oath, setting forth in detail the manner and form in which Defendant has complied with the injunction;

D. Requiring Defendant to pay The Kitchen monetary damages in an amount to be fixed by the Court or jury in its discretion as just, including all of Defendant’s profits or gains of any kind resulting from Defendant’s unlawful conduct as described above, plus interest thereon, and require, with respect to damages resulting from infringement of the NEXT DOOR marks, from unfair competition or false designation of origin under the Lanham Act, and/or deceptive trade practices under the Colorado Consumer Protection Act, that such damages be trebled, including pursuant to 15 U.S.C. § 1117 and C.R.S. § 6-1-113;

E. Require Defendant to account for and pay to The Kitchen all profits derived by Defendant resulting from its use of the NEXT DOOR Marks, including pursuant to 15 U.S.C. § 1117;



- F. Award The Kitchen the costs of this suit and its reasonable attorneys' fees in accordance with 15 U.S.C. § 1117, C.R.S. § 6-1-113, and other applicable Colorado law;
- G. Award The Kitchen punitive damages under applicable Colorado law;
- H. Award The Kitchen prejudgment and post-judgment interest as recoverable under statute and common law on all sums; and
- I. Award such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

**JURY DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, The Kitchen demands a trial by jury on all issues so triable.

Respectfully submitted this 3rd day of February, 2015.

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