

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

ILLEGAL PETE’S, INCORPORATED.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. _____
	)	
KRISTOPHER KNIGHT, in his official	)	
capacity as the Deputy Secretary of State of	)	
Delaware, and MARGARET MAGNUSEN,	)	
in her official capacity as the Corporations	)	
Section Manager of the Delaware Secretary of	)	
State Division of Corporations,	)	
	)	
Defendants.		

**COMPLAINT FOR INJUNCTIVE RELIEF AND ATTORNEYS’ FEES (42 U.S.C. § 1983)**

Plaintiff Illegal Pete’s, Incorporated, by and through its attorneys, David L. Finger and Duane A. Bosworth, does hereby state and allege as follows:

**NATURE OF THE ACTION**

1. This is a civil action alleging violation of plaintiff’s rights under the Free Speech Clause of the First Amendment and plaintiff’s Fourteenth Amendment rights to due process. Plaintiff has submitted a Certificate of Conversion and a Certificate of Formation (“certificates”) to the Secretary of State of Delaware, in order to become a Delaware limited liability company. Defendants refuse to accept plaintiff’s certificates, stating that plaintiff’s “name has a negative connotation” and “might cause harm to the interests of the public or the State.” That refusal is in violation of plaintiff’s constitutional rights.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983.

3. This Court has subject matter jurisdiction over plaintiff's claim for relief pursuant to 28 U.S.C § 1343, because plaintiff seeks redress for the deprivation of rights, privileges, and immunities secured by the Constitution and laws of the United States, and this action seeks equitable relief, pursuant to 42 U.S.C. § 1983.

4. This Court has personal jurisdiction over defendants because the acts and omissions of the defendants from which this action arises occurred within the State of Delaware.

5. Venue in this district is proper under 28 U.S.C. 1391(b)(1) and (2) because defendants are located within this district, and the events or omissions giving rise to the claim occurred within this district.

### **PARTIES**

6. Plaintiff Illegal Pete's, Incorporated is a restaurant group, operating in Colorado and Arizona under that name for over 23 years.

7. Plaintiff's name was chosen to honor its founder's father, Pete, who is described on plaintiff's website as "a bit of a good-natured hell-raiser in his day" and who provided the founder, also named Pete, with moral support for the creation of the business.

8. Defendant Margaret Magnusen is the Corporations Section Manager of the Delaware Secretary of State Division of Corporations.

9. Defendant Kristopher Knight is the Delaware Deputy Secretary of State and Director of the state's Division of Corporations.

**ALLEGATIONS**

10. On or about October 30, 2018, Plaintiff submitted to the State of Delaware, Division of Corporations, the certificates necessary to become a Delaware limited liability company.

11. On November 5, 2018, defendant Magnusen told plaintiff's representative by telephone that defendants would refuse to accept plaintiff's certificates because plaintiff's name "has a negative connotation."

12. On November 5, 2018, defendant Magnusen emailed plaintiff's representative that:

Title 8 permits this office to reject a filing if the use of a corporate name by a corporation "might cause harm to the interests of the public or the State as determined by the Division of Corporations in the Department of State". As it stands, the document will be rejected unless a modification is made to the name of the corporation in the certificate of conversation [sic] and in its certificate of incorporation.

13. The statute referred to by defendant Magnusen, above, Delaware Code Title 8. Corporations §102, states in pertinent part:

(a) The certificate of incorporation shall set forth:

(1) The name of the corporation, which (i) shall contain 1 of the words "association," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate," or "limited," (or abbreviations thereof, with or without punctuation)...

(ii) shall be such as to distinguish it upon the records in the office of the Division of Corporations in the Department of State from the names that are reserved on such records...

(iv) shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State ... provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the corporation or to lead

to a pattern and practice of abuse that *might cause harm to the interests of the public or the State as determined by the Division of Corporations in the Department of State;*”

(Emphasis added).

14. The statutory language, “might cause harm to the interests of the public or the State,” does not stand alone but is, as above, within the statute’s prohibitions and allowances of use of the word “bank.” Plaintiff is not a bank, nor does it use the word “bank” or any variation thereof in its name. The statute cited by defendants, the language of which is, as stated by defendants, the sole reason for defendants’ refusal, is inapplicable to plaintiff.

15. As described by defendants, the decision to refuse to accept plaintiff’s name was made not because the name is likely to mislead the public about the nature of plaintiff’s business or because the name would lead to a pattern and practice of abuse, but instead, as expressly stated by defendants, the refusal is made because the name “has a negative connotation” and because it “might cause harm to the interests of the public or the State.”

16. On November 8, 2018 defendant Magnusen reiterated to plaintiff’s representative by telephone that plaintiff’s certificates were rejected because “plaintiff’s name is not in the best interests of the people of Delaware” and stated that the decision to reject plaintiff’s filings was now confirmed by defendant Knight, the Deputy Secretary of State and Director of Delaware’s Division of Corporations.

17. In a telephone voicemail message left for plaintiff’s representative on November 9, 2018, defendant Knight stated that “we will not be changing an opinion that the name filing requested has not been accepted” and “I think the team provided you with the information on our stance on why this determination was reached.”

**CLAIM FOR RELIEF**

**(42 U.S.C. § 1983 Claim for Violation of Plaintiff's Constitutional Rights)**

18. Plaintiff incorporates and re-alleges Paragraphs 1-17 above.

19. 42 U.S.C. § 1983 creates a private right of action to vindicate violations of “rights, privileges, or immunities secured by the Constitution and laws” of the United States. Under the terms of the statute:

Every person who, under color of [law] ...causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

20. 42 U.S.C. § 1983 provides civil remedies including injunctive relief.

21. At all times relevant to the allegations in this complaint, defendant Magnusen was the Corporations Section Manager for the State of Delaware, acting under color of law.

22. With respect to plaintiff's claim under 42 U.S.C. § 1983, defendant Magnusen is a “person.”

23. At all times relevant to the allegations in this complaint, defendant Knight was the Delaware Deputy Secretary of State and Director of the state's Division of Corporations, acting under color of law.

24. With respect to plaintiff's claim under 42 U.S.C. § 1983, defendant Knight is a “person.”

**COUNT ONE**

25. Plaintiff incorporates and re-alleges Paragraphs 1-24 above.

26. Defendants' refusal to allow plaintiff to register as a Delaware limited liability company relies solely on a statutory provision inapplicable to plaintiff. In using this basis,

defendants' decision to deprive plaintiff of its liberty interest in expression and free speech is arbitrary and capricious, in violation of plaintiff's right to due process under the Fourteenth Amendment.

27. Defendants' sole basis for refusal, that plaintiff's name "has a negative connotation" that "might cause harm to the interests of the public or the State" is unconstitutionally vague and standardless. Defendants' decision to deprive plaintiff of its liberty interest of expression and free speech is arbitrary and capricious, in violation of plaintiff's right to due process under the Fourteenth Amendment.

28. Plaintiff's business is harmed by defendants' refusal to allow plaintiff to register as a Delaware limited liability company, using its long established, expressive name.

29. Plaintiff is entitled to an award of attorney fees and costs, pursuant to 42 U.S.C. § 1988.

### **COUNT TWO**

30. Plaintiff incorporates and re-alleges Paragraphs 1-29 above.

31. Defendants' refusal to file plaintiff's certificates is unlawful viewpoint and content discrimination, in violation of plaintiff's First Amendment rights.

32. Plaintiff is entitled to injunctive relief requiring defendants to file plaintiff's certificates.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment as follows:

1. Injunctive relief requiring defendants to file plaintiff's certificates;
2. An award of attorney fees and costs pursuant to 42 U.S.C. § 1988, and
3. Any other relief the Court deems just and proper.

Respectfully submitted,

Of Counsel:

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Dated: April 22, 2019

*Of Attorneys for Plaintiff*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE