

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CURTIS JAMES JACKSON III,
P/K/A "50 CENT,"

:

: 08 Civ. 6545 (NRB) (RLE)

Plaintiff,

:

ANSWER
AND AFFIRMATIVE DEFENSES

- against -

:

TACO BELL CORP.

:

Defendant.

:

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Defendant Taco Bell Corp. ("Taco Bell") by its undersigned attorneys, Patterson Belknap Webb & Tyler LLP, answers the Complaint of Plaintiff Curtis James Jackson III, p/k/a "50 Cent" ("Jackson") as follows:

INTRODUCTION

1. Plaintiff Jackson is a self-described former drug dealer and hustler. He is now a rap music performer who uses the term "50 Cent" to identify himself. His work falls in the subgenre of hip hop music known as "gangsta rap", a style associated with urban street gangs and characterized by violent, tough-talking braggadocio.

2. Jackson has used his colorful past to cultivate a public image of belligerence and arrogance and has a well-publicized track record of making threats, starting feuds and filing lawsuits. At the same time, Jackson holds himself out as a giver to charity and one who wants to give back to his community.

3. This lawsuit is another of Jackson's attempts to burnish his gangsta rapper persona by distorting beyond all recognition a bona fide, good faith offer that Taco Bell made to Jackson.

4. Specifically, Taco Bell offered to make a \$10,000 donation to the charity of Jackson's choice and provide the restaurant's patrons with free Taco Bell food if Jackson showed up at any Taco Bell restaurant and rapped an order in the drive thru using the name 79 Cent, 89 Cent, or 99 Cent. Taco Bell was fully prepared to honor the offer, and would do so today if Jackson accepted it.

5. Taco Bell extended its offer to Jackson in a humorous but sincere letter from its President Greg Creed, attached hereto as Exhibit A (the "Offer Letter"). The jovial spirit and sincerity of the offer are self-evident. In a spirited play on words, the first paragraph noted that, like Jackson, "who adopted the name 50 Cent years ago as a metaphor for change," Taco Bell "also advocates for change" with a value menu that allows customers to enjoy menu items "for just a few spare coins." Continuing with this theme, the Offer Letter proposed the charitable challenge as "[an] offer of change" to Jackson. The letter concluded with Taco Bell's tongue-in-cheek motto "think outside the bun" to urge Jackson to accept the offer.

6. The challenge – asking Jackson to temporarily change his name to 79 Cent, 89 Cent, or 99 Cent for charity – was a soft ridicule and good-natured lampoon of the rapper's moniker, 50 Cent, and his public image as a tough gangsta rapper. Asking 50 Cent to temporarily change 50 Cent to the price of one of Taco Bell's value menu items was a good-natured parody of the rapper's name. And by extending the offer, Taco Bell was giving Jackson an opportunity to give back to his community and a public forum to showcase a softer, playful side for his fans.

7. Taco Bell did not disseminate the Offer Letter in advertising or otherwise use Jackson's name in an advertising campaign. Rather, Taco Bell sent the Offer Letter to Jackson through his agent. And because of the legitimate public interest in a charitable offer to a celebrity of Jackson's stature, the Offer Letter was discussed with or provided to celebrity press outlets.

8. The newsworthiness and public interest inherent in Taco Bell's offer to Jackson are clear on their face but also demonstrated by the coverage the offer received in the press. The public had a right to know about the offer and whether Jackson would accept it, and Taco Bell had a Constitutionally protected right to make it. Celebrity challenges are notable and newsworthy and reported in the media. This was no exception.

9. Jackson could have responded to Taco Bell's offer with a simple yes or no. Had he accepted the offer, Jackson, Taco Bell and the public all would have gained. Jackson would have had substantial publicity for a good deed, the public would have benefited from Taco Bell's charitable donation, and Taco Bell presumably would have generated positive recognition for its charitable donation. If Jackson simply had rejected the offer, that would have been the end of the matter.

10. But instead of responding to Taco Bell's sincere offer in the friendly and humorous spirit in which it was issued, Jackson launched an aggressive, offensive attack on Taco Bell in the press. In a heavily publicized sound bite, Jackson threatened legal action against Taco Bell stating, "When my legal team is finished with them, Taco Bell is going to have a new corporate slogan: 'We messed with the bull and got the horns.'" Jackson then brought this lawsuit.

11. Jackson's actions are a transparent attempt at self-promotion. As a bid for publicity, Jackson's actions have been successful: his lawsuit has garnered significant media coverage – considerably more, in fact, than Taco Bell's offer. But since Taco Bell did nothing more than make a legitimate, newsworthy offer to him and provide the public with information about that offer, his claims fail as a matter of law and are barred by several affirmative defenses set forth below.

RESPONSE TO SPECIFIC ALLEGATIONS

12. Taco Bell admits that Jackson has brought this action against Taco Bell, lacks knowledge and information sufficient to admit or deny the allegations concerning Plaintiff Jackson's relative popularity and success and ownership of trademarks, and otherwise denies the allegations contained in Paragraph 1 of the Complaint.

13. Taco Bell denies the allegations contained in Paragraph 2 of the Complaint.

14. Taco Bell denies the allegations contained in Paragraph 3 of the Complaint.

15. Taco Bell denies the allegations contained in Paragraph 4 of the Complaint.

16. Taco Bell admits that its web site offered a "Rap Name Creator" and a "Why Pay Mo' Rhyme Generator", and otherwise denies the allegations contained in Paragraph 5 of the Complaint.

17. Taco Bell denies the allegations contained in Paragraph 6 of the Complaint.

18. Taco Bell denies the allegations contained in Paragraph 7 of the Complaint.

19. Taco Bell denies the allegations contained in Paragraph 8 of the Complaint.

20. Taco Bell observes that the allegations contained in Paragraph 9 of the Complaint are conclusory statements of law for which no response is required.

21. Taco Bell admits that it has an interactive web site, and observes that the remainder of the allegations Paragraph 10 of the Complaint are conclusory statements of law for which no response is required.

22. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 11 of the Complaint.

23. Taco Bell admits that it does business in this District and otherwise denies the allegations contained in Paragraph 12 of the Complaint.

24. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 13 of the Complaint.

25. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 14 of the Complaint.

26. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 15 of the Complaint.

27. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 16 of the Complaint.

28. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 17 of the Complaint.

29. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 18 of the Complaint.

30. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 19 of the Complaint.

31. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 20 of the Complaint.

32. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 21 of the Complaint.

33. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 22 of the Complaint.

34. Taco Bell denies the allegations contained in Paragraph 23 of the Complaint.

35. Taco Bell denies the allegations contained in Paragraph 24 of the Complaint.

36. Taco Bell denies the allegations contained in Paragraph 25 of the Complaint, and refers to the letter from Greg Creed to Jackson dated June 18, 2008 (the "Creed letter") for a full and accurate recitation of the contents thereof.

37. Taco Bell denies the allegations contained in Paragraph 26 of the Complaint, and refers to the Creed letter for a full and accurate recitation of the contents thereof.

38. Taco Bell denies the allegations contained in Paragraph 27 of the Complaint.

39. Taco Bell denies the allegations contained in Paragraph 28 of the Complaint.

40. Taco Bell admits that the Creed letter was dispatched to Jackson on or about June 18, 2008, and otherwise denies the allegations contained in Paragraph 29 of the Complaint.

41. Taco Bell denies the allegations contained in Paragraph 30 of the Complaint.

42. Taco Bell denies the allegations contained in Paragraph 31 of the Complaint.

43. Taco Bell denies the allegations contained in Paragraph 32 of the Complaint.

44. Taco Bell denies the allegations contained in Paragraph 33 of the Complaint.

45. Taco Bell denies the allegations contained in Paragraph 34 of the Complaint.

46. Taco Bell repeats and reasserts each of the answers contained in Paragraphs 1 through 34 as if fully set forth herein.

47. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 36 of the Complaint.

48. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 37 of the Complaint.

49. Taco Bell denies the allegations contained in Paragraph 38 of the Complaint.

50. Taco Bell denies the allegations contained in Paragraph 39 of the Complaint.

51. Taco Bell denies the allegations contained in Paragraph 40 of the Complaint.

52. Taco Bell denies the allegations contained in Paragraph 41 of the Complaint.

53. Taco Bell denies the allegations contained in Paragraph 42 of the Complaint.

54. Taco Bell denies the allegations contained in Paragraph 43 of the Complaint.

55. Taco Bell denies the allegations contained in Paragraph 44 of the Complaint.

56. Taco Bell repeats and reasserts each of the answers contained in Paragraphs 1 through 55 as if fully set forth herein.

57. Taco Bell denies the allegations contained in Paragraph 46 of the Complaint.

58. Taco Bell denies the allegations contained in Paragraph 47 of the Complaint.

59. Taco Bell denies the allegations contained in Paragraph 48 of the Complaint.

60. Taco Bell denies the allegations contained in Paragraph 49 of the Complaint.

61. Taco Bell denies the allegations contained in Paragraph 50 of the Complaint.

62. Taco Bell denies the allegations contained in Paragraph 51 of the Complaint.

63. Taco Bell denies the allegations contained in Paragraph 52 of the Complaint.

64. Taco Bell denies the allegations contained in Paragraph 53 of the Complaint.

65. Taco Bell repeats and reasserts each of the answers contained in Paragraphs 1 through 64 as if fully set forth herein.

66. Taco Bell lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 55 of the Complaint.

67. Taco Bell denies the allegations contained in Paragraph 56 of the Complaint.

68. Taco Bell denies the allegations contained in Paragraph 57 of the Complaint.

69. Taco Bell denies the allegations contained in Paragraph 58 of the Complaint.

70. Taco Bell denies the allegations contained in Paragraph 59 of the Complaint.

71. Taco Bell denies the allegations contained in Paragraph 60 of the Complaint.

72. Taco Bell denies the allegations contained in Paragraph 61 of the Complaint.

73. Taco Bell denies the allegations contained in Paragraph 62 of the Complaint.

74. Taco Bell repeats and reasserts each of the answers contained in Paragraphs 1 through 73 as if fully set forth herein.

75. Taco Bell denies the allegations contained in Paragraph 64 of the Complaint.

76. Taco Bell denies the allegations contained in Paragraph 65 of the Complaint.

77. Taco Bell denies the allegations contained in Paragraph 66 of the Complaint.

78. Taco Bell denies the allegations contained in Paragraph 67 of the Complaint.

79. Taco Bell denies the allegations contained in Paragraph 68 of the Complaint.

80. Taco Bell denies the allegations contained in Paragraph 69 of the Complaint.

81. Taco Bell denies that Jackson is entitled to exemplary damages under Section 51 of the New York Civil Rights Law.

82. Taco Bell observes that the allegations contained in Paragraph 71 of the Complaint are conclusory statements of law for which no response is required.

83. Taco Bell denies the allegations contained in Paragraph 72 of the Complaint.

84. Taco Bell denies the allegations contained in Paragraph 73 of the Complaint.

85. Taco Bell denies the allegations contained in Paragraph 74 of the Complaint.

86. Taco Bell repeats and reasserts each of the answers contained in Paragraphs 1 through 85 as if fully set forth herein.

87. Taco Bell lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 76 of the Complaint.

88. Taco Bell denies the allegations contained in Paragraph 77 of the Complaint.

89. Taco Bell denies the allegations contained in Paragraph 78 of the Complaint.

90. Taco Bell denies the allegations contained in Paragraph 79 of the Complaint.

91. Taco Bell denies the allegations contained in Paragraph 80 of the Complaint.

92. Taco Bell denies the allegations contained in Paragraph 81 of the Complaint.

93. Taco Bell repeats and reasserts each of the answers contained in Paragraphs 1 through 92 as if fully set forth herein.

94. Taco Bell denies the allegations contained in Paragraph 83 of the Complaint.

95. Taco Bell denies the allegations contained in Paragraph 84 of the Complaint.

96. Taco Bell denies the allegations contained in Paragraph 85 of the Complaint.

97. Taco Bell denies the allegations contained in Paragraph 86 of the Complaint.

98. A response is not required from Taco Bell as to the statement contained in Paragraph 87 of the Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

99. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

100. Any use of Plaintiff's name or marks was a fair use.

Third Affirmative Defense

101. Any use of Plaintiff's name or marks was protected by the First Amendment.

Fourth Affirmative Defense

102. Any use of Plaintiff's name or marks was newsworthy and/or a matter of public interest.

Fifth Affirmative Defense

103. Plaintiff's claims are barred by the doctrine of waiver and or estoppel.

Sixth Affirmative Defense

104. Plaintiff's claim for Unjust Enrichment is preempted or otherwise subsumed by New York Civil Rights Law §§ 50-51.

WHEREFORE, Taco Bell demands judgment against Jackson as follows:

- A. Dismissing the Complaint with prejudice;
- B. Awarding Taco Bell its costs and attorney's fees pursuant to 17 U.S.C. § 505 and any other applicable provision; and
- C. For such other and further relief as the Court deems just and proper.

Dated: September 19, 2008

/s/ Robert W. Lehrburger

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