



media can backfire on businesses.

In December (<http://www.arkansasbusiness.com/article/114506/family-owners-wrangle-over-homers-restaurant>) and again in March (<http://www.arkansasbusiness.com/article/116123/homers-restaurant-family-feud-heats-up>), Arkansas Business reported on the lawsuit involving the family that operates Little Rock's Homer's Restaurant, a bitter dispute pitting sibling against sibling. Court filings don't indicate that any resolution has been reached in that case.

Now comes Brad Nutt of Benton and Pasta Jack's Inc., who in a lawsuit filed in Pulaski County Circuit Court in May alleges that the operators of three restaurants once linked to Pasta Jack's Inc. — in Bryant, Benton and Little Rock — misappropriated Nutt's and Pasta Jack's trade secrets — including recipes, policies and procedures — and have infringed on the Pasta Jack's and Pasta Jack's Italian trade name and service mark.

It's a complicated lawsuit and describes a winding trail of restaurants operated under a variety of names and under a number of different restaurant owners. And it lays bare a business dispute that has become decidedly personal.

The suit names as defendants Tracye Smith Thomason Whitt and her husband, David Whitt, of Little Rock; TST Good Eats LLC of Little Rock, owned by the Whitts; Grandon "Grant" Kidd of Sherwood; and Cole Elrod of Benton.

Nutt, whose suit describes him as the majority shareholder in Pasta Jack's, further alleges that the defendants used the "confusingly similar" mark Pasta J's Italian Neighborhood Bistro after Pasta Jack's trade name and service mark "Pasta Jack's Italian" both "became famous." They did this, the suit says, "with the knowing, willful, and wanton intent to trade on Plaintiff Pasta Jack's Inc.'s reputation."

B.W. Nutt Inc., whose only shareholder is Brad Nutt, bought Pasta Plus in June 1995, the suit says. In 1998, the restaurant was moved to Bryant and renamed Pasta Jack's Italian. B.W. Nutt sold the restaurant to JAB Properties 2 Inc. on Sept. 9, 2002, and in 2015, JAB sold the Bryant restaurant to Grandon Kidd, the suit says. In October or November 2016, the Bryant location began operating as Pasta J's Italian Neighborhood Bistro, using many of the recipes bought and developed by Nutt and Pasta Jack's Inc., according to the lawsuit.

In October 2000, Pasta Jack's Inc. began operating a Pasta Jack's Italian restaurant in Benton, selling it to G&G Foods Inc. in 2004. G&G Foods was supposed to pay franchise fees to Pasta Jack's, the suit says, but fell behind in its payments. The dispute was settled, however, on May 15, 2014 — the same day that Pasta Jack's and G&G entered into a trademark license agreement requiring G&G to pay royalties to Pasta Jack's of 2 percent of total gross sales.

In late 2016, Scotty Glaze, on behalf of G&G, notified Nutt that G&G would no longer make royalty payments and in fact stopped making royalty payments, according to the lawsuit. Glaze doesn't appear to be mentioned elsewhere in Nutt's lawsuit, but a Scott Glaze is listed by the Arkansas Secretary of State's Office as an incorporator of G&G Foods of Benton. And a copy of a trademark license agreement attached to the lawsuit indicates it was signed by J. Scott Glaze on May 19, 2014.

In December 2016 or January 2017, G&G sold the Benton location, the suit says, though it doesn't name the buyer. "The new buyer operates the business under the name 'Pasta J's Italian Neighborhood Bistro,'" the suit says, alleging that many of

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the recipes used at the Benton restaurant are the same as those bought and developed by Nutt and Pasta Jack's.

### **'Lawyer Up!!!'**

In 2013, Nutt's suit claims, he began discussing with the Whitts plans to start a Pasta Jack's Italian restaurant in Little Rock, entering into a "verbal partnership agreement" with the couple. The Whitts were to provide all the funding and Nutt was to provide his "knowledge and expertise," in exchange for a 20 percent ownership in the partnership and a salary of \$48,000 to serve as manager of the Little Rock location, the suit says.

Nutt says he worked at the Little Rock Pasta Jack's Italian restaurant from January 2016 through April 25, 2016, to get the restaurant started, though, as a partner, he wasn't paid a salary for most of that time. However, on April 25, 2016, David Whitt told Nutt "his services were no longer needed" and about the same time offered to buy Nutt's interest in the partnership, the suit says.

And things deteriorated from there.

Nutt's filing includes an exhibit purporting to be screenshots of text messages between Nutt and David Whitt. (David Whitt may be familiar to longtime readers of Arkansas Business. Whitt was a Little Rock stockbroker who received a 15-month federal prison sentence in 2004 for his role in a kickback scheme in Michigan in which his father, Dan Whitt of Maumelle, and his father's Little Rock lawyer, [Keith Moser \(http://www.arkansasbusiness.com/article/50960/the-two-keith-mosers-virtue-corruption-co-existed-in-convicted-lawyers-life\)](http://www.arkansasbusiness.com/article/50960/the-two-keith-mosers-virtue-corruption-co-existed-in-convicted-lawyers-life), also pleaded guilty.) The following exchange is from the exhibit.

In the first, Nutt writes: "Dave, we cannot open a pasta jack's without me down in it. ... We don't even have a writing a buy-out agreement ... . ya'll just gave me an offer to leave basically, trying to open a pasta jack's with no pj's experience..... That is suicide..... Maybe we should get the key people, all together, and have a discussion."

"We're done," Whitt replies, according to the exhibit. "Take it or leave it."

"DavidWhitt you do not have permission to use Pasta Jacks® trademarks, it's system or recipes."

"F\*\*\* you" is the response and then "Lawyer up!!!"

Nutt's suit says that on or around Aug. 5, 2016, the Little Rock location began operating under the name Pasta J's Italian Neighborhood Bistro. "The Little Rock location was the first of the three locations to operate under the name 'Pasta J's Italian Neighborhood Bistro,'" the suit says. An exhibit includes what appears to be a screenshot of a Facebook post in which, on Aug. 5, Tracye Whitt said the restaurant had "Changed partners, changed name but like a nickname so everyone will know we're still the same — (kinda like saying Kentucky Fried Chix to KFC) Same scrumptious sauces and food!"

Nutt's lawsuit seeks a declaratory judgment that he is a 20 percent partner in the west Little Rock Pasta J's partnership; damages, including punitive damages, to be determined by a jury; a halt to the defendants' use of "Pasta J's Italian Neighborhood Bistro," "Pasta Jack's Italian" or similar marks; profits the defendants realized through their use of the disputed marks; and attorney's fees.

## Recipes Called ‘Inedible’

In their responses filed last month, Kidd acknowledges owning a corporation that runs Pasta J’s in Bryant but denies Nutt’s allegations, and Elrod, whom Nutt’s lawsuit never identifies, says he has no ownership in Pasta J’s Italian Bistro and asks to be dismissed as a defendant.

In their response, also filed in June, the Whitts deny they ever entered into a partnership with Nutt. The Whitts describe the plaintiffs’ policies and procedures as common and “non-unique if not non-existent, and the secret recipes demonstrated by plaintiffs to WLR defendants were inedible.”

The Whitts acknowledge having a “preliminary association” with him, but say it was ended “due to the disconcerting conduct, behavior, and impairment of the plaintiff Nutt, in addition to his unwillingness to consummate a proposal of the WLR defendants related to the opening of a restaurant.”

“Defendant Nutt’s failure to disclose his condition to WLR defendants was a fraudulently [sic] inducement which led WLR defendants to make a significant investment and enter into contracts which otherwise would not have been done.”

“His condition” is not otherwise described, though the Whitts’ response says that Nutt’s state of mind “was impaired to a degree that he was incapable of performing any meaningful functions of this or any other business.”

The Whitts also acknowledge the accuracy of the “F\*\*\* you” and “Lawyer up!!!” texts, but say the “language reflects the angst created by the plaintiff, though the aggravation is better left said in private ... just as plaintiff’s complaint should have only alluded to coarse language without making it a part of the clerk’s filed records where people [sic] sensitivity might come across such.”

The couple also say that the copies Nutt made of the Facebook postings are accurate, though they call the postings immaterial and say they were taken out of context.

The Whitts deny that Nutt sustained any damages, that they misappropriated trade secrets and that they infringed on any registered marks.

For those keeping score at home, the west Little Rock restaurant, at 14810 Cantrell Road, goes by Pasta J’s West Italian Bistro, according to its Facebook page. The Bryant restaurant, at 2900 Horizon Drive, goes by Pasta J’s Italian Restaurant, though its website is PastaJacks.net. And the Benton restaurant, at 1315 Green, styles itself as Pasta J Italian.

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