



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

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The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 27, 2026

United States Bankruptcy Judge

United States Bankruptcy Court  
Northern District of Texas  
Dallas Division

In re:	§	
	§	
Stoli Group (USA) LLC,	§	Case No. 24-80146-swe-11
	§	
Debtor.	§	
	§	
	§	
McIlhenny Company,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 26-8001-swe
	§	
Louisiana Spirits LLC and	§	
Stoli Group (USA) LLC,	§	
	§	
Defendants.	§	

***Order Granting Preliminary Injunction***

**I. Introduction**

The Court conducted a hearing on the Plaintiff's Motion for preliminary injunction, Docket No. 10, on February 23, 2026. The Court also heard a portion of Defendant Louisiana Spirits' motion to dismiss, Docket No. 32, dealing with personal jurisdiction.

These are the Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a)(2) and Bankruptcy Rule 7052.

These factual findings are for this preliminary and expedited hearing only based on the available evidence presented, and they don't bind any factfinder (judge or jury) at trial or at the summary-judgment phase.

For the reasons explained below, the Court has subject-matter jurisdiction over this adversary proceeding and personal jurisdiction over both Defendants, and the Court will grant the Plaintiff's motion for a preliminary injunction pending a trial on the merits.

## II. Background

Stoli Group (USA), LLC ("**Stoli USA**" or the "**Debtor**") and Kentucky Owl, LLC are affiliates and subsidiary companies within the "**Stoli Group**"—a vertically integrated global network and enterprise headquartered in Luxemburg that manufactures, produces, markets, sells, and distributes vodka, bourbon, and other alcoholic and nonalcoholic beverages throughout the world (collectively, "**Stoli Products**"). *See* Case No. 24-80146, Caldwell Decl. ¶ 8, Docket No. 11.

Stoli USA and Kentucky Owl filed bankruptcy on November 27, 2024. After the Court denied confirmation of the Debtors' proposed plan in October 2025, these cases transitioned to a new phase with heavily negotiated but largely consensual agreed orders regarding cash collateral and the appointment of Chapter 11 trustees for both Stoli USA and Kentucky Owl. The U.S. Trustee has appealed those orders.

Notwithstanding those appeals, the U.S. Trustee appointed William Patterson as Chapter 11 trustee for Stoli USA on February 18, 2026. The Court will refer to Mr. Patterson throughout this ruling as the Chapter 11 Trustee or the Trustee. (Not to be confused with the Chapter 11 trustee appointed for Kentucky Owl on February 19, 2026, Claudia Z. Springer.)

The Chapter 11 Trustee now finds himself in litigation that grew out of the creation of a pepper-infused Stoli vodka product manufactured by Louisiana Spirits, LLC, a member of the Stoli Group.

The problem, according to at least some eyes, is that the pepper-infused vodka comes in a package that looks suspiciously like the trade dress for a bottle of the iconic TABASCO brand pepper sauce developed by the Plaintiff—McIlhenny Company—in Avery Island, Louisiana.

TABASCO pepper sauce has (i) a clear cylindrical bottle with a narrow neck; (ii) a red cap; (iii) a green label covering the circumference of the narrow neck; and (iv) a diamond-shaped label with broken concentric circles in the middle of the thicker portion of the bottle with the words TABASCO BRAND PEPPER SAUCE and McILHENNY CO. AVERY ISLAND LA in green and red sans-serif font (sometimes referred to as the “**TABASCO Trade Dress**”):



Similarly, the proposed Stoli product has (i) a clear cylindrical bottle with a narrow neck; (ii) a red cap; (iii) a green label covering the circumference of the narrow neck; and (iv) a round label (not diamond) with broken concentric circles in the middle of the thicker portion of the bottle with the words “Halapeño Pepper” in green and red sans-serif font (sometimes referred to as the “**Infringing Trade Dress,**” or the “**accused product**”):



The Defendants previously pitched to the Plaintiff the concept of a pepper-infused Stoli vodka product with the official TABASCO label on the bottle:



The Plaintiff rejected that proposal and elected instead to develop a pepper-flavored vodka product with Absolut Company International AB (a competitor of the Defendants) that utilizes elements of the TABASCO Trade Dress:



That product launched just recently.

Undeterred by the Plaintiff's rebuff, Louisiana Spirits began to manufacture and—with Stoli USA—advertise the competing Stoli pepper vodka, all to the Plaintiff's dismay.

The Plaintiff's out-of-court efforts to deter the Defendants from continuing with the product failed, so on January 16, 2026, the Plaintiff filed the complaint that initiated this adversary proceeding, asserting claims for federal trademark infringement, unfair competition, dilution, related state-law claims, and an administrative-expense claim.

The Plaintiff shortly thereafter filed a Motion for a preliminary injunction requesting, among other things, that the Court enjoin the Defendants from manufacturing, selling, marketing, or otherwise using for their commercial benefit the accused product as it is currently branded and advertised. Louisiana Spirits and the Debtor—by and through the Chapter 11 Trustee—both filed responsive papers opposing the injunction.

At the preliminary-injunction hearing, Kate Neuhaus, the Plaintiff's Director of Global Marketing Communications, testified live and by declaration. *See* Neuhaus Decl., Docket No. 11-1. She is responsible for establishing, stewarding, and protecting the brand identity for TABASCO brand products globally.

Ms. Neuhaus's testimony overall was very credible. Her live testimony was consistent with that in her declaration. In the interest of time, the Court will flag the facts alleged in the Neuhaus Declaration that, based on the current record—including competing evidence from Louisiana Spirits and the Trustee—the Plaintiff is likely to prove at trial.

- ¶¶ 4-35: The Plaintiff is likely to prove these facts at trial.
- ¶ 36: The Plaintiff is likely to prove these facts at trial, with the caveat that the Court will separately address below whether there is evidence that the Stoli representatives with whom she was dealing were representing Stoli USA. In short, the current record indicates that they were representing Stoli USA and other members of the Stoli Group. Although Ms. Neuhaus had limited knowledge of the internal workings of the various SPI Group members, other evidence filled in those gaps.
- ¶ 37-42: The Plaintiff is likely to prove these facts at trial.
- ¶¶ 43-44: The Plaintiff is likely to prove these facts at trial, except for the sentence at the end of ¶ 44 that begins “As can be seen . . .” through the end of the paragraph.
- ¶¶ 45-54: The Plaintiff is likely to prove these facts at trial. The Court separately addresses Stoli USA's arguments that it was not involved in the questionable conduct, but the evidence so far indicates it was, at least until the appointment of the Chapter 11 Trustee.
- ¶ 55: The Plaintiff is likely to prove these facts at trial except for the sentence about consumers' views of Stoli being in bankruptcy.

Three other witnesses testified at the preliminary-injunction hearing. First, the Chapter 11 Trustee testified live and by declaration. His testimony was generally credible but abbreviated.

Michael Howard, President of Stoli USA, testified, as did Angelo Torre, President of Louisiana Spirits. Some of their testimony was credible, but other, critical portions were not as credible as the testimony of Ms. Neuhaus.

Their less credible testimony had to do with Stoli USA's involvement in the matter. Stoli USA and Louisiana Spirits generally argue that they are separate entities and separately managed, and that the Debtor had nothing to do with developing the accused product. The record indicates otherwise.

To start, the record throughout this bankruptcy case establishes that both the Debtor and Louisiana Spirits have been controlled by common management higher up the corporate chain.

For example, the Debtor's disclosure statement, found in Case Number 24-80146, Docket Number 581 at pages 2 and 11, states (as it does other places):

Overall, the vertically integrated structure of the Stoli Group's business enterprise and the intricate relationships between the entities within the Stoli Group provide the Debtors with critical support for their operations in the United States. The Debtors rely on extensive intercompany agreements with their affiliates in the Stoli Group, including agreements related to intellectual property sub-licenses, exclusive distribution rights, inventory purchase agreements, and shared services arrangements, which in turn, allow the Debtors to import, market, and distribute the Stoli Group's branded products in compliance with applicable federal and state regulations. . . . These intercompany agreements are periodically updated, renewed and/or renegotiated by the entities' respective officers and directors, which in some cases are shared between entities. Ultimate decision-making authority resides in the Stoli Group's Global CEO, with certain authority delegated to restructuring professionals of and specifically pertaining to the Debtors in these Cases.

For another example, in support of the Debtor's first-day motions, the Debtor's previous president, Chris Caldwell, testified that the Debtor is

“also managed and overseen by the executive leadership of the Stoli Group (defined below), which is based and headquartered in Luxembourg.” Case No. 24-80146, Caldwell Decl., Docket No. 11 ¶ 7.

It’s no surprise, then, that the titular heads of both the Debtor and Louisiana Spirits have been subject to the influence and control of the Stoli Group’s Global CEO and other executive management team throughout this bankruptcy case.

One instance of this involved a springing lien. Mr. Torre testified at the preliminary-injunction hearing that he didn’t consider the Debtor to be part of his organization. But Mr. Torre had very limited knowledge of why his company was willing to provide a springing lien on its real estate in favor of the Debtor’s lender Fifth Third Bank under the Debtors’ previously proposed plan of reorganization.

Another instance was an event addressed at the preliminary-injunction hearing. The Plaintiff sent a demand letter to the Defendants, requesting that they stop developing and advertising the accused product. Pl. Ex. L. Together with an SPI affiliate, the Debtor and Louisiana Spirits jointly responded to that letter, describing their previous efforts to pitch a TABASCO-branded Stoli product to the Plaintiff, and indicating their intent to keep marching forward with the product. Pl. Ex. M.

Mr. Howard testified at the preliminary-injunction hearing that he was shown a draft of the response letter and that he expressed his disapproval of it. He further testified that he stated the letter should not be sent on behalf of the Debtor. As Mr. Howard knew, the letter was sent anyway, reflecting Mr. Howard’s incomplete control over the Debtor, who never retracted the letter or indicated to the Plaintiff that the events described in the response letter were otherwise inaccurate.

There are other examples of the Debtor’s involvement with the accused product. Here are a few:

- The Instagram account for Stoli Vodka includes the name of Stoli Group USA, LLC, in the account description. There are posts on the Instagram account advertising the accused product. Mr. Howard testified that the Debtor had no control over that account and had requested the owner of the account to remove the Debtor’s name from the Instagram page. But the Debtor’s name was never

removed, and the Debtor never reached out to Instagram to have the name removed.

- Ms. Neuhaus testified that she spoke with Luxembourg-based representatives of the Stoli Group. As noted above, Mr. Caldwell testified by declaration that the Debtor is managed and overseen by the executive leadership of the Stoli Group, which is based and headquartered in Luxembourg. These Luxembourg officials sent the mock-ups to Ms. Neuhaus after she declined to move forward with the cobranded product.
- Finally, in compliance with the requirements of the Alcohol and Tobacco Tax and Trade Bureau, one of the Debtor's own employees, Sheena Parker, sent in the Certificate of Label Approval for the accused product. Pl. Ex. Q. Approval of the label is required for authorization to bottle and sell distilled spirits.

In short, there is more than sufficient evidence that the Debtor was involved in developing and advertising the Infringing Trade Dress.

The Chapter 11 Trustee testified by declaration that while he is Trustee, the Debtor will refuse acceptance of any shipments or delivery of the accused product to the Debtor and will not knowingly distribute the accused product to the extent any such product comes into the Debtor's possession. *See* Docket 38-2.

But in his live testimony, the Trustee clarified that his refusals will apply only during the pendency of this lawsuit. In other words, absent this lawsuit and request for an injunction, the Trustee has not committed to shutting down the pepper-infused-vodka project.

The Trustee has only recently stepped into the Debtor's shoes. Perhaps after walking in them for a while, there might be a reason to reconsider the Court's ruling. But for now, the Debtor and Louisiana Spirits are both proper subjects of the Plaintiff's requested relief.

### **III. Subject-Matter Jurisdiction and Personal Jurisdiction**

Because Louisiana Spirits argues the Court lacks personal jurisdiction over it, the Court must decide this issue before ruling on the preliminary injunction. *See Enterprise International, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 471 (5th Cir. 1985).

Citing Federal Rule of Civil Procedure 4(k)(1) and asserting a lack of contacts with the state of Texas, Louisiana Spirits argues that the Court lacks personal jurisdiction over it.

But this Court is not a court of general jurisdiction, and Federal Civil Rule 4(k)(1) does not apply if this Court has at least “related to” bankruptcy jurisdiction over this dispute.

Instead, if this Court has at least related-to bankruptcy jurisdiction, then Bankruptcy Rule 7004(d) and (f) allow nation-wide service of process so long as Louisiana Spirits has minimum contacts with the United States, which it obviously does.

This Court has related-to jurisdiction over this matter because—in at least two ways—the outcome of the proceeding could conceivably have an effect on the bankruptcy estate. *Double Eagle Energy Servs., L.L.C. v. Markwest Utica Emg, L.L.C.*, 936 F.3d 260, 264 (5th Cir. 2019).

First, the Plaintiff’s Sixth Claim for Relief requests an administrative-expense claim under Bankruptcy Code section 503(b) for the Debtors’ alleged postpetition trade-dress violations. *See* Complaint, Docket No. 1 at page 21. *See also Reading Co. v. Brown*, 391 U.S. 471, 485 (1968).<sup>1</sup> Thus if the Plaintiff prevails on the Complaint, including its administrative-expense request, the administrative obligations of the Debtor’s estate will increase.

Second, the Plaintiff’s complaint, if successful, will hinder the Debtor’s ability to act as the exclusive United States importation, marketing, and distribution arm of the Stoli Group, as described various times throughout this case, including in the Debtors’ approved disclosure statement for its previously proposed plan. *See* Case No. 24-80146, Docket No. 581 at 10-15. The testimony of Mr. Howard and Mr. Patterson on this issue does not move the needle on this point.

Mr. Howard testified that the Debtor can’t currently afford to act as distributor for the accused product, but this bankruptcy case is in a state of flux, and the situation might change.

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<sup>1</sup> The Court is not deciding that *Reading* applies, but the arguments for and against it are fairly predictable.

For his part, as noted already, the Chapter 11 Trustee testified by declaration that while he is Trustee, the Debtor will refuse acceptance of any shipments or delivery of the accused product to the Debtor and will not knowingly distribute the accused product to the extent any such product comes into the Debtor's possession. *See* Docket No. 38-2. But in his live testimony, Mr. Patterson clarified that his refusals will apply only during the pendency of this lawsuit. In other words, but for this lawsuit, the Debtor could and might accept and distribute the accused product. The lawsuit thus currently is having an effect on the Trustee's ability to manage the estate as he sees fit. And if the Plaintiff prevails, that effect will continue indefinitely.

For these reasons, there is at least related-to jurisdiction over this adversary proceeding under 28 U.S.C. § 1334. And because Louisiana Spirits was served with the summons in the United States on January 20, 2026, Docket No. 2, the Court has personal jurisdiction over it, to the extent it didn't already consent to this Court's jurisdiction through its agreement to provide a springing-lien in favor of Fifth Third Bank in connection with the denied plan.

With the issue of jurisdiction addressed, the Court now proceeds to the merits of the request for injunctive relief.

#### **IV. Analysis**

To obtain a preliminary injunction, a plaintiff "must show (1) a substantial likelihood of success on the merits, (2) irreparable injury if the injunction is not granted, (3) that the injury outweighs any harm to the other party, and (4) that granting the injunction will not disserve the public interest." *Realogy Holdings Corp. v. Jongbloed*, 957 F.3d 523, 529-30 (5th Cir. 2020).

##### **A. The Plaintiff has a substantial likelihood of success on the merits**

The Plaintiff seeks a preliminary injunction based on trade-dress infringement claims, unfair-competition claims, and dilution claims.

###### *1. Trade-dress-infringement and unfair-competition claims*

To establish trade-dress infringement under the Lanham Act, a plaintiff must prove that: (1) its trade dress qualifies for protection; and (2) the trade dress has been infringed by demonstrating a likelihood of

confusion in the minds of potential consumers. *Beatriz Ball, L.L.C. v. Barbagallo Co.*, 40 F.4th 308, 317 (5th Cir. 2022). “Unfair competition claims under the Lanham Act are governed by the same standard as those for trademark infringement.” *S & H Indus., Inc. v. Selander*, 932 F. Supp. 2d 754, 762 (N.D. Tex. 2013) (citing *Scott Fetzer Co. v. House of Vacuums Inc.*, 381 F.3d 477, 483 (5th Cir. 2004)). The same test applies to unfair-competition claims under the Louisiana Unfair Trade Practices Act, La. Rev. Stat. Ann. § 51:1401 et seq. See *Bd. of Supervisors for La. State Univ. Agric. & Mech. Coll. v. Smack Apparel Co.*, 550 F.3d 465, 490 n.130 (5th Cir. 2008).

The Fifth Circuit recognizes a conclusive presumption that a trade dress qualifies for protection if the trade dress, or elements thereof, is registered according to federal regulations. See *Beatriz Ball, L.L.C.*, 40 F.4th at 317; *Perry v. H. J. Heinz Co. Brands, L.L.C.*, 994 F.3d 466, 471 (5th Cir. 2021). There are many elements that combine to make up the trade dress of the TABASCO bottle. These elements specifically include the red cap, green neck-band, diamond label, concentric broken circles in the middle of the label, and the green and red sans-serif typeface font of the word-mark in the diamond label. Some of these elements are included in the Plaintiff’s 1966 registered trademarks, but not all. See Complaint, Docket No. 1 at 9; Pl. Ex. K. Therefore, the Court is unwilling to make a conclusive presumption that the TABASCO Trade Dress extends to protect against Defendants’ use, sale, manufacturing and marketing of the accused product.

Because the TABASCO Trade Dress does not presumptively qualify for protection, the Court must apply the more traditional test for whether trade dress qualifies for protection: whether the trade dress is distinctive and nonfunctional. The distinctiveness analysis asks whether the trade dress (1) is inherently distinctive or (2) has acquired distinctiveness through secondary meaning. *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 769 (1992).

For inherent distinctiveness, the Fifth Circuit has adopted the four *Seabrook* factors: whether the trade dress is (1) common or basic; (2) unique or unusual in a particular field; (3) a mere refinement of a commonly adopted and well-known form of ornamentation for a particular class of goods; or (4) capable of creating a commercial impression distinct from any accompanying words. *Nola Spice Designs, L.L.C. v. Haydel Enterprises*, 783 F.3d 527, 540-541 (5th Cir. 2015).

- The first factor weighs in the Plaintiff's favor. Although red and green are common colors for pepper-sauce bottles, the color combination of the TABASCO bottle—the green neck-sleeve and red cap—and the iconic TABASCO logo collectively make unique eye candy for a pepper-sauce bottle. It is not common and basic.
- The second factor weighs in the Plaintiff's favor. The lineup of pepper-sauce bottles shown on page 3 of Louisiana Spirits' Exhibit 1 makes it especially obvious that the TABASCO bottle is unique from other pepper-sauce bottles.
- The third factor weighs in the Plaintiff's favor. The current trade dress of the TABASCO bottle has been in use for 99 years. The Plaintiff has not merely refined a well-known ornamentation. The TABASCO Trade Dress is unique and clearly identifiable among its competitors.
- Finally, the fourth factor weighs in the Plaintiff's favor. The Plaintiff's Director of Marketing—Kate Neuhaus—testified that the TABASCO pepper-sauce product has achieved 90% brand awareness among consumers. In considering the *Seabrook* factors, the Court finds the TABASCO Trade Dress is inherently distinctive.

To alleviate any doubt regarding distinctiveness, the Court will also address acquired distinctiveness. The Fifth Circuit weighs seven factors to determine whether trade dress has acquired distinctiveness through secondary meaning: (1) length and manner of use of the mark or trade dress, (2) volume of sales, (3) amount and manner of advertising, (4) nature of use of the mark or trade dress in newspapers and magazines, (5) consumer-survey evidence, (6) direct consumer testimony, and (7) the defendant's intent in copying the trade dress. *Pebble Beach Co. v. Tour 18 I Ltd.*, 155 F.3d 526, 541 (5th Cir. 1998).

- The first factor weighs in the Plaintiff's favor. The current trade dress of the TABASCO bottle has been in use for 99 years, and the Plaintiff has had a registered trademark on many elements of the TABASCO Trade Dress since 1966.
- The second factor weighs in the Plaintiff's favor. The Plaintiff's Director of Marketing—Kate Neuhaus—testified that the

Plaintiff has sold over 1.5 billion bottles of TABASCO pepper sauce in its current trade dress.

- The third factor weighs in the Plaintiff's favor. The Plaintiff has aired Superbowl ads for TABASCO pepper sauce, the Plaintiff consistently markets its product on TV and social media, and the Plaintiff regularly collaborates with brands in many different industries.
- The fourth factor weighs in the Plaintiff's favor. TABASCO has been covered by internet newspapers and magazines, including New York Times, Bon Appétit, and more.
- The fifth factor weighs in the Defendants' favor. The Plaintiff has presented no consumer-survey evidence.
- The sixth factor weighs in the Defendants' favor. Outside of a few stray social-media comments, the Plaintiff has presented no direct consumer testimony.
- The seventh factor weighs in the Plaintiff's favor. The Defendants e-mailed mock-ups of a TOBASCO-Stoli collaboration to the Plaintiff the day after the Plaintiff informed them that the Plaintiff would be pursuing a collaboration with a different spirits brand. Louisiana Spirits also submitted a Certificate of Label Application the same day that the Plaintiff informed them that the Plaintiff would be pursuing a collaboration with a different spirits brand. Louisiana Spirits also began producing the product after it was aware that the Plaintiff was not interested in collaborating with them.

In weighing these seven factors holistically, the Court finds the TABASCO Trade Dress has acquired distinctiveness through secondary meaning.

Now the Court will address whether the TABASCO Trade Dress is functional. A trade dress is functional if (1) it is essential to the use or purpose of the article or if it affects the cost or quality of the article; or (2) if exclusive use of the trade dress would put competitors at a significant nonreputation-related disadvantage. *Whirlpool Corp. v. Shenzhen Sanlida Elec. Tech. Co.*, 80 F.4th 536, 544 (5th Cir. 2023). The TABASCO Trade Dress serves no purpose apart from distinguishing the Plaintiff's

products from those of its competitors, *see* Neuhaus Decl. ¶ 8 at Docket No. 11, and its features are clearly more aesthetic in nature than functional. Many other designs exist for competitors to use, and hundreds of products compete with the Plaintiff's product without infringing on the TABASCO Trade Dress.

To recap, the TABASCO Trade Dress is both inherently distinctive, and in the alternative, it has acquired distinctiveness by secondary meaning. It is also nonfunctional.

Now to the second element of the trade-dress infringement claim: the likelihood of confusion in the minds of potential consumers.

As an initial matter, Louisiana Spirits cites *Nola Spice* for the proposition that the Court must first consider the relevant market. Response, Docket No. 36 at ¶ 8; *Nola Spice Designs, LLC v. Haydel Enterprises, Inc.*, 783 F.3d 527 (5th Cir. 2015). The Court has a different take on *Nola Spice*. First, *Nola Spice* specifically states that “uses beyond that market are also relevant.” *Id.* at 541. Second, the Fifth Circuit has on multiple occasions held that a mark was distinctive and would cause confusion when used in other markets. In *Beef/Eater Restaurants, Inc. v. James Burrough, Ltd.*, 398 F.2d 637 (5th Cir.1968), the court affirmed the district court's finding of likelihood of confusion on summary judgment between Beefeater Restaurants and Beefeater Gin (a very analogous case to this one in terms of which markets the Plaintiff and the Defendants operate in).

Similarly, in *Gruma Corp. v. Mexican Restaurants, Inc.*, 497 F. App'x 392, 400 (5th Cir. 2012), the court held that a Mexican-food manufacturer's mark (prepackaged food) was sufficiently distinctive to cause confusion when a Mexican restaurant chain used a similar mark. The key analysis does not rely on whether the products compete in the same market, but instead on whether the plaintiff's mark is distinctive such that there would be confusion of sponsorship, affiliation, or connection. *Gruma Corp.*, 497 F. App'x 392 at 398 (citing *Westchester Media v. PRL USA Holdings, Inc.*, 214 F.3d 658, 666 (5th Cir. 2000)).

Moving on to the full analysis, in the Fifth Circuit, likelihood of confusion is assessed by considering several nonexhaustive elements, known

as the “digits of confusion.”<sup>2</sup> The digits include: (1) the type of mark infringed, (2) the similarity between the marks, (3) the similarity of the products, (4) the identity of the retail outlets and purchasers, (5) the identity of the advertising media used, (6) the defendant’s intent, (7) evidence of actual confusion, and (8) the degree of care exercised by potential purchasers. *Future Proof Brands, L.L.C. v. Molson Coors Beverage Co.*, 982 F.3d 280, 289 (5th Cir. 2020).

“No single factor is dispositive, and a finding of a likelihood of confusion need not be supported by a majority of the factors.” *Streamline Prod. Sys., Inc. v. Streamline Mfg., Inc.*, 851 F.3d 440, 453 (5th Cir. 2017). Here, the Court finds that the digits of confusion clearly weigh in the Plaintiff’s favor.

**First digit:** For the type of mark infringed, the Fifth Circuit has instructed that this first digit refers to the strength of a mark. Strong marks receive “the widest ambit of protection,” and weak marks receive narrower protection. *Future Proof*, 982 F.3d at 289. To determine the strength of a mark, the Court must examine “(1) where the mark falls on a spectrum. . . of categories and (2) the standing of the mark in the marketplace.” *Id.* at 290.

The spectrum of categories includes: “(1) generic, (2) descriptive, (3) suggestive, (4) arbitrary, and (5) fanciful. . . . [T]he strength of a mark, and of its protection, increases as one moves away from generic and descriptive marks toward arbitrary marks.” *Future Proof*, 982 F.3d at 289. “Courts define descriptive, suggestive, and arbitrary marks by their relationship to the products they represent.” *Future Proof*, 982 F.3d at 289.

The Plaintiff argues the mark is arbitrary and unique, the mark standing out in a crowded field of competitors. Louisiana Spirits argues the mark is generic.

The Court finds that the mark is closer to the arbitrary and fanciful side of the spectrum. The red cap coupled with the green neck-band certainly evokes a pepper-type product, or even the tabasco pepper itself, which would tip an analysis toward descriptive. But the Court is considering the trade dress as a whole, which includes not only the colored neck-

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<sup>2</sup> Why a “digit” rather than a “factor”? The Court has no idea.

band and cap, but also the diamond label, the concentric broken circles in the middle of the label, and the green and red sans-serif typeface font of the word-mark in the diamond label. All of these elements together push the trade dress toward an arbitrary or fanciful category on the spectrum.

The Court next decides where the trade dress stands in the marketplace. Kate Neuhaus—Director of Marketing for the Plaintiff—testified that over 1.5 billion bottles of TABASCO have been sold in the U.S. over the last 30 years. Second, she testified that TABASCO sauce has been the second or third best-selling pepper sauce brand in the United States in the last seven years. Finally, she testified that TABASCO pepper-sauce product has achieved 90% brand awareness among consumers. There is ample evidence showing that TABASCO Trade Dress has extremely high standing in the marketplace.

The trade dress being more than suggestive and having extremely high marketplace standing supports a finding that this is a strong mark. The first digit weighs in the Plaintiff's favor.

**Second digit:** The similarity between the marks also weighs in the Plaintiff's favor. The Fifth Circuit has described this digit as “really nothing more than a subjective eyeball test.” *Exxon Corp. v. Texas Moto Exchange of Houston, Inc.*, 628 F.2d 500, 504 (5th Cir. 1980) (internal quotations omitted). “The similarity of design is determined by considering the overall impression created by the mark as a whole rather than simply comparing individual features of the marks.” *Id.* at 504-05.

The two products look an awful lot alike. The Stoli product contains a red cap with a green neck-band. It has broken concentric circles in the logo on the thicker part of the bottle. The broken concentric circles encompass sans-serif red and green typeface font. The distinctive elements of the TABASCO Trade Dress generally appear prominently on the Stoli product. Thus, the second digit favors the Plaintiff.

**Third digit:** The similarity-of-the-products factor weighs in the Defendants' favor. Pepper sauce is a condiment, and vodka is alcohol. Do you consume both of them? Yes. Can you put one in the other? Yes. Can you buy both at a grocery store? Yes. Is pepper sauce more like vodka than a chainsaw? Yes. But pepper sauce and vodka aren't really alike.

**Fourth digit:** The identity of the retail outlets and purchasers weighs in the Plaintiff's favor. Many of the supermarkets, convenience stores, and liquor stores selling Stoli vodka would also sell TABASCO pepper sauce. It is conceivable consumers would purchase both products in a single trip to the store, even if purchasing the products for different purposes.

**Fifth digit:** The identity of the advertising media used further weighs in the Plaintiff's favor. Both the Plaintiff and the Defendants use the same social-media platforms, such as Instagram, to advertise. *Waterloo Sparkling Water Corp. v. Treaty Oak Brewing and Distilling Co., LLC*, Case No. 1:21-CV-161-RP, 2021 WL 5568159 at \*8 (W.D. Tex. Nov. 28, 2021).

**Sixth digit:** The Defendants' intent also weighs in the Plaintiff's favor. "Bad faith in the adoption and use of a trademark normally involves the imitation of packaging material, use of identical code numbers, adopting of similar distribution methods or other efforts by a party to 'pass off' its product as that of another." *Amstar Corp. v. Domino's Pizza, Inc.*, 615 F.2d 252, 263 (5th Cir. 1980) (citation omitted). The Defendants' initial mock-ups are very similar to the current Stoli product. Both the mock-ups and the accused product contain the red cap and green neck-band on the bottle, broken concentric circles featured on the larger part of the bottle, and red and green sans-serif typeface font in the broken concentric circles. Louisiana Spirits appears to have intentionally imitated the Plaintiff's trade dress in the mock-ups. In addition, before trying to amplify his answer, Mr. Torre initially admitted that he tweaked the original TABASCO logo. The attempted launch of the Stoli product into the marketplace appears to be an attempt to pass off its product as a TABASCO-branded product.

**Seventh digit:** Evidence of actual confusion weighs in the Defendants' favor. The only purported evidence of actual confusion are sparse comments on an Instagram ad suggesting potential similarities between the Stoli product and TOBASCO sauce. The Court doesn't even know if these comments are from real human beings or instead web bots.

**Eighth digit:** Finally, the degree of care exercised by potential purchasers weighs in the Plaintiff's favor. "Where items are relatively inexpensive, a buyer may take less care in selecting the item, thereby increasing the risk of confusion." *Streamline*, 851 F.3d at 458. Both products are

relatively inexpensive. A TABASCO pepper-sauce bottle sells for under 10 dollars while Stolli vodka bottles generally are priced at around 27 dollars. Consumers need not exercise a high degree of care because of the price points for these products. This digit weighs in the Plaintiff's favor.

After weighing the digits of confusion, most of which favor the Plaintiff, the Court finds that the accused product causes a likelihood of confusion in the minds of potential consumers.

Overall, there is a substantial likelihood of success on the merits of the Plaintiff's trademark-infringement and unfair-competition claims. The Plaintiff has established that it has a protectable trade-dress and the accused Stolli product will likely cause confusion in the consumer mind.

## *2. Dilution claims*

In the Fifth Circuit, to prevail on a dilution claim under the Lanham Act and Trademark Dilution Revision Act, a plaintiff must establish that (1) it owns a famous and distinctive mark; (2) the defendant has used the plaintiff's mark in a way that dilutes its mark through blurring or tarnishing; (3) similarity between the parties' marks gives rise to an association between the marks; and (4) the association is likely to impair the distinctiveness of the plaintiff's mark or harm the reputation of the plaintiff's mark. *Nola Spice*, 783 F.3d at 548.

The Louisiana Anti-Dilution Statute mirrors these elements of the Lanham Act except that the Louisiana statute requires only distinctiveness (as opposed to distinctiveness and fame). *Advantage Rent-A-Car, Inc. v. Enter. Rent-A-Car, Co.*, 238 F.3d 378, 381 (5th Cir. 2001).

The Court addresses each of the four elements in turn.

First, a mark is deemed famous for purposes of dilution "if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner." 15 U.S.C. § 1125(c)(2)(A). Based on the evidence, and for the same reasons discussed earlier in the ruling, the Court concludes that the TABASCO Trade Dress is widely recognized by the general consuming public of the U.S.

Second, the Defendants must have used the TABASCO Trade Dress in a way that dilutes the mark through blurring or tarnishing. The

Plaintiff alleges dilution by blurring. The Court finds that circulation of the accused Stoli product and further advertisement campaigns will lead to sufficient blurring. Blurring is a diminution in the uniqueness or individuality of a mark because of its use on unrelated goods. *Scott Fetzer Co. v. House of Vacuums Inc.*, 381 F.3d 477, 489 (5th Cir. 2004). When a defendant circulates unlicensed products bearing a plaintiff's marks, "it will likely blur the uniqueness of officially licensed products." *Texas Tech Univ. v. Spiegelberg*, 461 F.Supp.2d 510, 524 (N.D. Tex. 2006).

Courts may consider several factors to determine whether dilution by blurring is likely to occur, including:

1. The degree of similarity between the mark or trade name and the famous mark.
2. The degree of inherent or acquired distinctiveness of the famous mark.
3. The extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark.
4. The degree of recognition of the famous mark.
5. Whether the user of the mark or trade name intended to create an association with the famous mark.
6. Any actual association between the mark or trade name and the famous mark.

15 U.S.C. § 1125(c)(2)(B); *Dallas Cowboys Football Club, Ltd. v. Am.'s Team Props., Inc.*, 616 F.Supp.2d 622, 642–43 (N.D. Tex. 2009).

Comparing the pictures of the accused Stoli product and the TABASCO bottle and considering the extensive brand-recognition of the TABASCO Trade Dress, there are sufficient similarities where distribution of the accused product will blur the uniqueness and likeness of the TABASCO Trade Dress. These similarities include: the similar bottle shape; the color scheme, which includes the red cap and the green neck-label; the white logo in the middle of the thicker portion of the bottle with broken concentric circles; and similar looking green and red sans-serif typeface font. The Court finds that there would be a substantial likelihood of blurring if the product were released.

Third, the similarity between the parties' marks must give rise to an association between the marks. For the reasons outlined under the blurring analysis—the similar shape, color scheme, logo—the accused Stoli product gives rise to an association with the TABASCO Trade Dress.

Fourth, the association must be likely to impair the distinctiveness of the plaintiff's mark or harm the reputation of the plaintiff's mark. For most of the same reasons that the Court found that there would be blurring of the accused Stoli product and the TABASCO Trade Dress, the Court finds that the accused product would impair the distinctiveness of the TABASCO Trade Dress.

Overall, there is a substantial likelihood of success on the merits because the Plaintiff has established all elements necessary for a dilution claim.

**B. The Plaintiff will be irreparably injured without an injunction**

A plaintiff seeking a preliminary injunction is entitled to a rebuttable presumption of irreparable harm if the Court finds there is a substantial likelihood of success on the merits. 15 U.S.C. § 1116. The Defendants argue that there will be no irreparable harm because there will be no likelihood of confusion among consumers. As discussed earlier, the Court disagrees.

The Trustee raises a tougher issue. The Trustee testified that, while this lawsuit is pending, the Debtor will refuse acceptance of any shipments or delivery of the accused product to the Debtor and will not knowingly distribute the accused product to the extent any such product comes into the Debtor's possession. Does that commitment eliminate the need for a preliminary injunction pending a trial on the merits? No, for two reasons.

First, if the Debtor won't distribute the pepper-infused Stoli vodka during the lawsuit, it's very plausible—even likely—Louisiana Spirits and the Stoli Group management will find other ways to distribute the product. At the very least, Louisiana Spirits needs to be enjoined.

Second, although the Court does not doubt the Trustee will do his best to cause the Debtor to comply with his we-won't-accept-or-ship-it commitment, the Debtor's employees have been susceptible to control by

non-Debtor management during this case. Perhaps after the Trustee walks in the Debtor's shoes for a time, the Court can get comfortable that all the Debtor's employees will take direction only from the Trustee. If that occurs, the Court could always reconsider this part of the ruling. But for now, the Debtor is the proper subject of the preliminary injunction.

**C. The threatened injury to the Plaintiff outweighs any harm to the Defendants**

The Court finds that the Plaintiff will be harmed if the accused product is allowed to hit store shelves. The accused product will be in direct competition with the Plaintiff's collaboration with Absolut vodka. The Plaintiff has no control over the ingredients, marketing, quality control, and other aspects integral to ensuring that the accused product does not harm the Plaintiff's brand.

As discussed previously, the Defendants were aware that the Plaintiff did not want to collaborate when Louisiana Spirits—with the Debtor's help—filed a Certificate of Label Application and when Louisiana Spirits e-mailed mock-ups of a collaboration to the Plaintiff. The Defendants were certainly aware that the Plaintiff was not seeking to collaborate when Louisiana Spirits began manufacturing a bottle in packaging that is suspiciously similar to the iconic packaging of the Plaintiff. Any harm caused to the Defendants is the result of their own actions. The balance of hardships weighs in the Plaintiff's favor.

**D. Granting the injunction will not disserve the public interest**

The public interest will be served by requiring compliance with the Lanham Act and enjoining the use of an infringing product. The public interest will also be served by preventing confusion among consumers. Although valid competition should be encouraged, the accused Stoli product is too much like the Plaintiff's product.

**E. Amount of the Bond**

Next, the Court must consider the amount of the bond the Plaintiff is required to post. "The court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to

have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c); Fed. R. Bankr. P. 7065. In its brief, Louisiana Spirits requests that the Court set the bond at \$100,000. The Plaintiff requests that the bond be set at \$10,000.

The President of Louisiana Spirits, Mr. Torre, testified in his declaration that Louisiana Spirits will suffer around \$112,000 in damages if the requested injunction is entered. These damages include sunken-costs related to preparing the accused product and lost profits for agreed purchase-orders. The Fifth Circuit and district courts in Texas have recently granted bonds in the range of \$10,000 to \$150,000 for similar alleged trademark-infringement actions. *See Whirlpool Corp*, 80 F.4th at 542 (plaintiff ordered to post \$10,000 bond and to hold in safe keeping the defendant’s alleged infringing kitchen appliance product where plaintiff was granted a preliminary injunction enjoining defendant from selling the alleged infringing product); *Laboratorios Pisa S.A. de C.V. v. PepsiCo, Inc.*, 2021 WL 783754 at \*23 (S.D. Tex. Feb. 27, 2021) (plaintiff ordered to post \$150,000 bond where plaintiff was granted a temporary restraining order restraining defendant from manufacturing, distributing, marketing, or selling the product GATORLYTE which infringed on plaintiff’s product ELECTROLIT).

Considering the amount of bonds required by other courts, the alleged damage to Louisiana Spirits, the likelihood (or not) of any claimed damage to Louisiana Spirits, and the amount of the bond requested by the Plaintiff and Louisiana Spirits, the Court finds that a bond of \$50,000 is appropriate. The Plaintiff shall be required to post a bond of \$50,000 with the registry of the Court as security for costs and damages sustained by any party found to have been wrongfully enjoined.

## V. Conclusion

The Court has at least related-to jurisdiction over this lawsuit, the Court has personal jurisdiction over the Defendants, and the Plaintiff has shown all elements necessary for the issuance of a preliminary injunction. Therefore, the Court **ORDERS** as follows:

1. The motion at Docket No. 10 is **GRANTED** as stated herein.
2. The portion of Defendant Louisiana Spirits’ motion to dismiss, Docket No. 32, dealing with personal jurisdiction is **DENIED**.

3. The Defendants and their officers, directors, agents, representatives, successors or assigns, and all persons acting in concert or in participation with them, having notice of this Order, are enjoined during the pendency of the above-captioned action from:

- i. infringing or diluting the TABASCO Trade Dress;
- ii. falsely designating the origin, sponsorship, or affiliation of their business, goods, or services;
- iii. using the TABASCO Trade Dress, the Infringing Trade Dress, or any derivation or colorable imitation thereof, or trade dress that is identical and/or confusingly similar thereto, or dilutive thereof (collectively, the “Prohibited Trade Dress”) in connection with the promotion, marketing, and offering of any goods or services;
- iv. making or employing any other commercial use of the Prohibited Trade Dress;
- v. making or displaying any statement, picture, or representation that is likely to lead the public or the trade to believe that Defendants’ goods or services are in any manner associated or affiliated with or approved, endorsed, licensed, sponsored, or authorized by, or otherwise connected with, the Plaintiff;
- vi. using any other false designation of origin or any other thing calculated or likely to cause confusion or mistake in the mind of the trade or public or to deceive the trade or public into believing that Defendants’ activities are in any way sponsored, licensed, endorsed, or authorized by, or affiliated or connected with, the Plaintiff, or originate from the Plaintiff;
- vii. doing any other acts or things calculated or likely to cause confusion or mistake in the mind of the public or to lead purchasers, consumers, or investors into the belief that the goods or services promoted or offered by the Defendants emanate from or originate with the Plaintiff, or are somehow sponsored, licensed, endorsed, or authorized by, or affiliated or connected with, the Plaintiff;
- viii. engaging in any other activity constituting unfair competition with Plaintiff; and

- ix. aiding, assisting, or abetting any other party in doing any act prohibited by the bulleted paragraphs above.
- 4. The Plaintiff shall post a bond of \$50,000 with the registry of the Court as security for costs and damages sustained by any party found to have been wrongfully enjoined.
- 5. The foregoing injunction shall remain in effect until a decision on the merits of the above-captioned action.

### End of Order ###