

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) TULSA’S GATHERING PLACE, LLC,)
an Oklahoma limited liability company, )

Plaintiff, )

v. )

Case No. CIV-21-940-JD \_\_\_\_\_

(2) BAYLY COFFEE, LLC, )
an Oklahoma limited liability company, )

Defendant. )

**PLAINTIFF’S ORIGINAL COMPLAINT**

Plaintiff Tulsa’s Gathering Place, LLC (“**TGP**”), for its claims for relief against the Defendant Bayly Coffee, LLC (“**Defendant**”), states:

**JURISDICTIONAL AND PROCEDURAL MATTERS**

1. TGP is an Oklahoma limited liability company, with its principal place of business at 2650 S. John Williams Way E, Tulsa, OK 74114. TGP is a wholly-owned subsidiary of the River Parks Authority. The River Parks Authority is a Title 60 Municipal Trust, the sole beneficiaries of which are the County of Tulsa and the City of Tulsa. TGP owns and operates the Gathering Place, a world renowned 66-acre riverfront park located in the City of Tulsa, Tulsa County, Oklahoma.

2. Defendant Bayly Coffee, LLC is an Oklahoma limited liability company with its principal place of business at 415 E. Main, Shawnee, OK 74801. Jesse Ingram, 415 E. Main St., Shawnee, OK 74801 is the registered agent for service of process of the Defendant.

3. This Court has jurisdiction over the subject matter of this action under 15 U.S.C. §§ 1116(a) and 1121 and 28 U.S.C. §§ 1331 and 1338(a). This Court has jurisdiction over the state law claims under 28 U.S.C. §§ 1338(b) and 1367(a) and principles of supplemental and pendent jurisdiction.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c). Defendant is doing business in this District and has substantial contacts with this District, and a substantial portion of the events giving rise to the claims asserted herein occurred in this District.

5. All conditions precedent to bringing this action have been satisfied.

### **COMMON FACTUAL ALLEGATIONS**

#### **A. TGP's Ownership of the Gathering Place Marks.**

6. TGP owns and operates the Gathering Place park. The Gathering Place park is a free to the public municipal and county owned world-class park providing three levels of dining facilities including a coffee shop, recreational facilities, play areas for children, gardens, sports facilities, a water park, and conference, exhibition and meeting facilities. The development of the Gathering Place park cost \$400 million and is the largest private contribution to a public park in the nation's history. A photo of one of the meeting spaces is shown below:



7. The GATHERING PLACE is recognized worldwide as one of the best parks in the world. Its honors include among many others:

- USA Today - Best City Park 2021
- ENR - Best Project of 2019
- TIME Magazine - 100 Best Places to Visit 2019
- USA Today - Best New Attraction 2019
- UNI Global - 2019 Winner of the Award of Excellence
- APA - Great Place in America
- National Geographic - "12 Mind-bending Playgrounds Around the World"
- TIME Magazine - Kids Magazine's Worlds Coolest Places
- Oklahoma Magazine - Best of the Best 2020

8. The GATHERING PLACE park was first announced in 2014, and has been widely publicized and promoted under the GATHERING PLACE mark, continuously and extensively, since that time. The extensive and significant promotion of the park in connection with the GATHERING PLACE mark, created a universal association of the GATHERING PLACE mark with TGP in the minds of the consuming public. After five years of construction, and a limited opening on August 10, 2018, the Gathering Place

brand park officially opened to the general public on September 8, 2018 and has attracted 2 Million visitors per year, excepting only the Covid 19 pandemic period.


9. At least as early as 2014, TGP began promoting and using the GATHERING PLACE mark, and later adopted a distinctive design mark as follows:



(the Gathering Place mark and the distinctive design, collectively the “**GATHERING PLACE Marks**”) in the United States for recreational park services, meeting facilities, gardens, restaurant services, facilities for recreational activities, and many other similar services. Since that time, TGP’s GATHERING PLACE park has become famous worldwide.

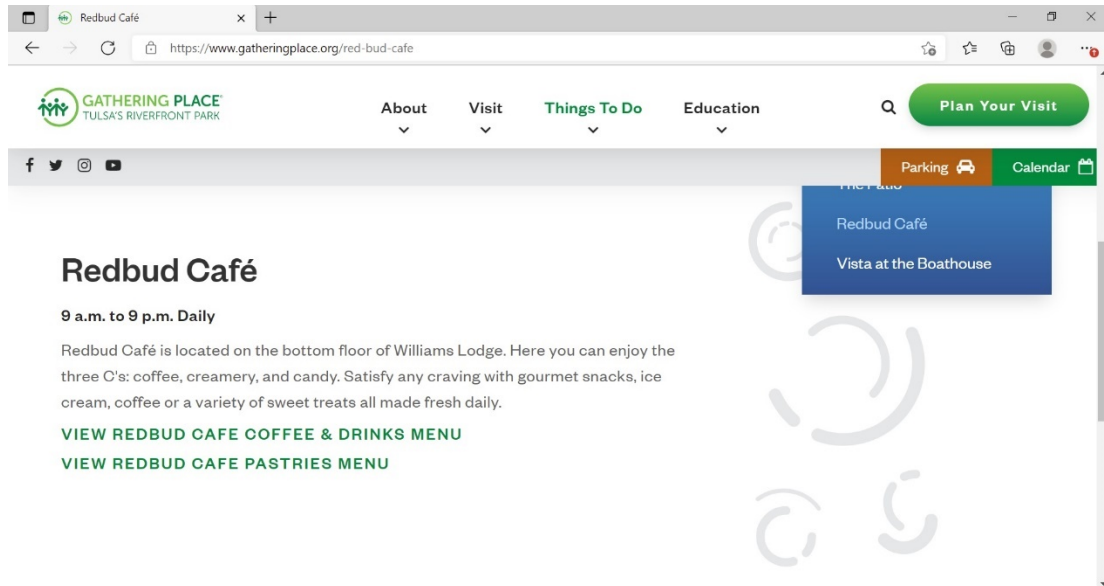
10. TGP has used and continues to use the GATHERING PLACE Marks to provide recreational areas and other related services. In addition, the GATHERING PLACE Marks are displayed prominently on shuttle buses, the official park App, educational programs, and other merchandise and offerings found throughout the United States and abroad.

11. TGP owns two registrations on the U.S. Principal Register for the GATHERING PLACE Marks, as follows.

#	Reg. No.	Reg. Date	Mark	Goods & Services
1	5,612,344	Nov. 20, 2018	GATHERING PLACE	Gardens for public admission; Providing facilities for recreational activities, namely, boating, fishing, biking and skating; Providing facilities for educational training; Providing recreation facilities; Providing recreational areas in the nature of play areas for children; Providing sports facilities; Recreational park services; Entertainment in the nature of a water park and amusement center in Class 41.
2	5,788,797	June 25, 2019	 GATHERING PLACE	Boathouse services in Class 39.  Gardens for public admission; Providing facilities for recreational activities, namely, boating, fishing, biking and skating; Providing facilities for educational training; Providing recreation facilities; Providing recreational areas in the nature of play areas for children; Providing sports facilities; Recreational park services; Entertainment in the nature of a water park and amusement center in Class 41.  Provision of conference, exhibition and meeting facilities; Restaurant services in Class 43.

12. Each of the registrations listed in the chart above is valid and subsisting.

13. TGP operates a website at [www.gatheringplace.org](http://www.gatheringplace.org), which was registered in May 2011, as well Twitter and Instagram handles, which include variants of the GATHERING PLACE Marks, such as @gathertulsa. A screenshot of TGP's website, which describes TGP's GATHERING PLACE café, is as follows:



14. TGP is the exclusive owner of the GATHERING PLACE Marks, and has acquired substantial brand name recognition, goodwill and nationwide priority through its extensive and continuous use of the GATHERING PLACE Marks. TGP has widely and publicly promoted and used the GATHERING PLACE Marks, including through use analogous to trademark use, extensively in the United States and abroad since at least 2014.

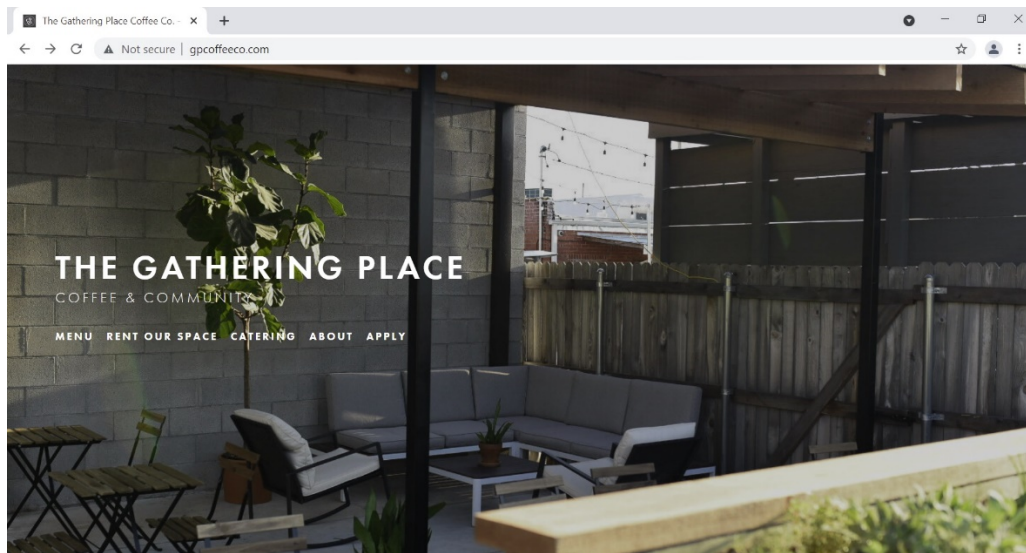
15. TGP has acquired substantial and exclusive rights nationwide in the GATHERING PLACE Marks and has developed a reputation for excellence in providing facilities for recreational activities, as well as other goods and services, in connection with the GATHERING PLACE Marks. The GATHERING PLACE Marks are distinctive.

16. The GATHERING PLACE Marks are famous.

17. The GATHERING PLACE Marks are the valuable proprietary property of TGP.

### **B. Defendant's Infringing Activities**

18. The Defendant is operating a coffee shop and meeting and event space under the designation THE GATHERING PLACE. A screenshot of the Defendant's website is as follows:



19. Defendant advertises event spaces, coffee shop services and other services that are clearly intended to evoke the services offered by TGP.

20. TGP recently became aware of Defendant's activities due to customers complaining to TGP about Defendant's signage.

21. Defendant is wrongfully using and promoting the GATHERING PLACE Marks and/or marks confusingly similar to the GATHERING PLACE Marks to market its own services.

22. Defendant knowingly adopted and knowingly uses the name THE GATHERING PLACE in bad faith, intending to play on and capture the good will of TGP and attempting to use TGP's fame to gain recognition.

23. Defendant's use of the "THE GATHERING PLACE" started after TGP's extensive promotion and priority date of the GATHERING PLACE Marks. Defendant was given notice of its misuse of the GATHERING PLACE Marks and an opportunity to cure its infringement prior to the commencement of this action and refused to take advantage of the opportunity extended to it.

24. Defendant's use of the GATHERING PLACE Marks, or marks confusingly similar thereto, in connection with coffee shop and event space services, detracts from the goodwill associated with the GATHERING PLACE Marks.

25. Defendant attempts to attract, for commercial gain, customers to its coffee shop, by misappropriating and unjustly taking advantage of the longtime marketing efforts and fame of the GATHERING PLACE Marks.

26. Defendant's false and misleading advertising under the GATHERING PLACE Marks, or marks confusingly similar thereto, disrupts TGP's business.

**COUNT ONE**  
**(Federal Trademark Infringement under 15 U.S.C. §§ 1114 and 1125(a))**

27. TGP adopts the allegations contained in paragraphs 1-26, and pleads the following claim in the alternative, if necessary.

28. The actions of Defendant described above and specifically, without limitation, their unauthorized use of the GATHERING PLACE Marks, including the registered marks GATHERING PLACE®, and confusingly similar variations thereof in commerce to advertise, promote, market and sell coffee shop services throughout the



United States, including in the state of Oklahoma, constitute trademark infringement in violation of 15 U.S.C. §§ 1114 and 1125(a).

29. The actions of Defendant, if not enjoined, will continue. TGP has suffered and continues to suffer damages in an amount to be proven at trial consisting of, among other things, diminution in the value of goodwill associated with the GATHERING PLACE Marks, and injury to TGP's business. TGP is therefore entitled to injunctive relief pursuant to 15 U.S.C § 1116.

30. Pursuant to 15 U.S.C. § 1117, TGP is entitled to recover damages in an amount to be determined at trial, profits made by the Defendants on sales of coffee shop and event space services, and the costs of this action. Furthermore, TGP alleges that the actions of the Defendants were undertaken willfully and with the intention of causing confusion, mistake, or deception, making this an exceptional case entitling TGP to recover additional treble damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

**COUNT TWO**  
**(Federal False Designation of Origin and Unfair Competition  
under 15 U.S.C. § 1125(a))**

31. TGP adopts the allegations contained in paragraphs 1-30, and pleads the following claim in the alternative, if necessary.

32. Through extensive promotion, giveaways, media coverage, sales, etc. since at least about 2014, the GATHERING PLACE Marks are distinctive and strong marks.

33. Continuously since at least 2014, TGP has used the GATHERING PLACE Marks in interstate commerce in connection with and to identify recreational parks services and related goods and services, in addition to restaurant and café services and

merchandise, and to distinguish these services from similar services offered by other companies, by and without limitation, prominently using the GATHERING PLACE Marks on advertising distributed throughout the United States, including particularly in the State of Oklahoma.

34. TGP has priority to the GATHERING PLACE Marks over Defendant.

35. Defendant has infringed TGP's marks in interstate commerce by advertising, promoting, marketing and selling coffee shop services under marks confusingly similar to the GATHERING PLACE Marks.

36. Defendant's use and promotion of the designations THE GATHERING PLACE in connection with a coffee shop is without permission or authority of TGP and this use and promotion is likely to cause confusion, to cause mistake and/or to deceive the consuming public, including without limitation, present and prospective park and coffee shop customers.

37. Defendant's use of the GATHERING PLACE Marks and/or marks very similar to the GATHERING PLACE Marks in connection with coffee shop services has been made notwithstanding TGP's well-known and prior established rights in the GATHERING PLACE Marks. Defendant has actual or constructive knowledge of TGP's marks.

38. TGP has never authorized or acquiesced in Defendant's use of the GATHERING PLACE Marks, or any similar mark.

39. As a result of the strong similarity of the GATHERING PLACE Marks on the one hand, and THE GATHERING PLACE on the other hand, prospective customers, including without limitation prospective coffee shop customers, will be confused as to the

source and sponsorship of Defendant, including by mistakenly believing that TGP has endorsed the services of Defendant.

40. Defendant's unauthorized use of the GATHERING PLACE Marks in advertising, confuses customers due to its similarity with the GATHERING PLACE Marks, thereby creating a likelihood that customers will purchase goods and services offered or to be offered by the Defendant because of the close association with TGP implied through usage of the Marks.

41. Unless the Defendants are stopped from infringing the GATHERING PLACE Marks, the public is likely to be confused as to whether there is an affiliation between TGP and Defendant, and the Defendant's actions will continue to cause economic injury to TGP and the goodwill associated with the GATHERING PLACE Marks.

42. By Defendant's imitating and infringing the GATHERING PLACE Marks by the interstate use of the GATHERING PLACE Marks and very similar marks, the Defendant has created a false designation of origin, a false or misleading description and misrepresentation of fact which is likely to cause confusion and to cause mistake and to deceive as to the affiliation, connection or association of Defendant with TGP as to the origin, sponsorship or approval of the Defendant's advertised services and the commercial activities of TGP, all in violation of 15 U.S.C. § 1125(a).

43. The Defendants' advertisement is false or misleading and has the tendency to deceive customers or a substantial part of the targeted audience. The advertising is likely to influence purchasing decisions and therefore has caused injury to TGP.

44. The Defendants' foregoing acts have been, and continue to be, willful and deliberate.

45. TGP has been and is being irreparably damaged by Defendant's violation of §1125(a) and has no adequate remedy at law. Unless restrained by this Court, the Defendants' violation will continue to cause irreparable injury to TGP and to the public.

46. TGP prays that it be awarded monetary recovery to the fullest extent permitted by law, including in accordance with 15 U.S.C. § 1117.

**COUNT THREE**  
**(Federal Trademark Dilution, 15 U.S.C. § 1125(c))**

47. TGP adopts the allegations contained in paragraphs 1-46, and pleads the following claim.

48. The GATHERING PLACE Marks are famous and distinctive marks.

49. Defendants use the GATHERING PLACE Marks or marks confusingly similar thereto, including THE GATHERING PLACE, as a designation of source for Defendant's own goods.

50. Defendant's use of the marks THE GATHERING PLACE, and similar marks, throughout the United States, including in the state of Oklahoma, harms TGP's reputation, dilutes the distinctiveness of TGP's famous Marks, and is likely to cause dilution by blurring and dilution by tarnishment of TGP's famous GATHERING PLACE Marks.

51. The Defendants' violation is willful. Defendant has intentionally mimicked TGP's Marks to unjustly benefit from TGP's fame.

52. TGP has been and is being irreparably damaged by the Defendants' violation of §1125(c) and has no adequate remedy at law. Unless restrained by this Court, the Defendants' violation will continue to cause irreparable injury to TGP and to the public.

53. TGP prays that it be awarded monetary recovery to the fullest extent permitted by law, including in accordance with 15 U.S.C. § 1117.

**COUNT FOUR**  
**(Common Law Trademark Infringement and Unfair Competition)**

54. TGP adopts the allegations contained in paragraphs 1-53, and pleads the following claim in the alternative, if necessary.

55. Defendant's use of the GATHERING PLACE Marks and/or marks similar to the GATHERING PLACE Marks in connection with coffee shop services is in violation of the common law, including the common law of the State of Oklahoma, because it is likely to confuse customers as to the source of the goods and services, and therefore constitutes common law trademark infringement and unfair competition.

56. Defendant's foregoing acts have been, and continue to be, willful and deliberate.

57. TGP has been and is being irreparably damaged by Defendant's willful violation, and it has no adequate remedy at law. Unless restrained by this Court, Defendant's violation will continue to cause injury to TGP.

58. TGP prays that Defendant be required to account to TGP for Defendant's profits, the actual damages suffered by TGP as a result of Defendant's acts of infringement, false designation of origin, unfair competition and unfair and deceptive trade practices together with interest and costs.

**COUNT FIVE**  
**(Unjust Enrichment)**

59. TGP adopts the allegations contained in paragraphs 1-58, and pleads the following claim in the alternative, if necessary.

60. TGP, through extensive marketing and use, acquired goodwill and value in the GATHERING PLACE Marks, which goodwill has been used by Defendant without authorization.

61. Defendant misappropriated and used TGP's GATHERING PLACE Marks, and has benefited from TGP's fame and the goodwill associated with the Marks by drawing attention and business to Defendant that Defendant would not otherwise enjoy.

62. Defendant has been unjustly enriched by use of said Marks; the unjust enrichment of Defendant occurring at the expense of TGP.

**REQUEST FOR RELIEF**

WHEREFORE, TGP prays that this Court:

(i) Preliminarily and permanently enjoin Defendant from using the GATHERING PLACE Marks and marks confusingly similar to them (including "THE GATHERING PLACE"), and from unfairly competing with TGP, from engaging in unfair and deceptive trade practices, from engaging in acts of false advertising, from tarnishing TGP's brand and from otherwise injuring TGP's business reputation;

(ii) Require the Defendants to account for and pay to TGP the profits derived by Defendant from operating advertising and offering any goods or services bearing the GATHERING PLACE Marks and marks similar to them and such additional relief as the Court finds just;

(iii) Require Defendant to pay to TGP an amount determined by the Court or trier of fact to compensate TGP for all damages sustained as a result of Defendant's unlawful conduct described above, and require that such damages be trebled;

(iv) Require Defendant to pay to TGP an amount determined by the Court or trier of fact sufficient to secure corrective advertising to remedy the harm caused by Defendant;

(v) Require Defendant to pay TGP punitive damages in an amount determined by the Court or trier of fact;

(vi) Order the Defendants to forfeit or cancel confusingly similar social media accounts;

(vii) Award TGP its costs and reasonable attorney fees;

(viii) Require the payment of prejudgment interest; and

(ix) Grant TGP such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

Dated: September 24, 2021

By: /s/ Jared Burden  
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