

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

MICHAEL CHOW known as "MR. CHOW",
MR CHOW ENTERPRISES, LTD, a California
Limited Partnership, MC MIAMI ENTERPRISES, LLC,
a Florida Limited Liability Company,
MC TRIBECA, LLC, a New York Limited Liability
Company, and TC VENTURES, INC., a
New York Corporation,

Plaintiffs,

v.

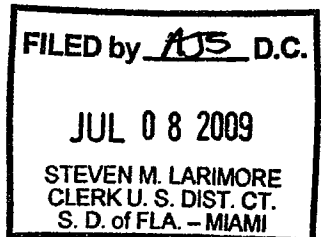
CHAK YAM CHAU, STRATIS MORFOGEN,
PHILIPPE MIAMI LLC, a Florida Limited Liability
Company, PHILIPPE NORTH AMERICA
RESTAURANTS, LLC, a New York Limited Liability
Company, PHILIPPE RESTAURANT CORP.,
a New York Corporation,

Defendants.

09-21893

CIV-HOEVELER

MAGISTRATE JUDGE
GARBER



COMPLAINT

Plaintiff Michael Chow, known as "Mr. Chow," together with the entities that operate the restaurants known as "MR CHOW": MR. CHOW ENTERPRISES, LTD., MC MIAMI ENTERPRISES, LLC, TC VENTURES, INC., and MC TRIBECA, LLC (collectively, the "MR CHOW Restaurants") sue Defendants and allege:

I. NATURE OF ACTION

1. This is an action by Mr. Chow and the MR CHOW Restaurants against Defendants for unfair and deceptive trade practices, misappropriation of trade secrets, unfair competition, conversion, trademark infringement, false advertising, and other violations of the Lanham Act and common law.

2. Defendants Chak Yam Chau and Stratis Morfogen, and the Defendant entities through which they collectively operate restaurants under the name “Philippe by Philippe Chow,” have engaged, and continue to engage, in ongoing and escalating efforts to unlawfully mislead, confuse and deceive the public and the clients of the MR CHOW Restaurants, in order to wrongfully convert to themselves, and profit from, the name, reputation and trademark rights of the MR CHOW Restaurants and the real Mr. Chow. As more fully explained below, Defendant Chau has personally engaged in a concerted course of conduct over an extended period of time to pass himself off as the real Mr. Chow.

3. Defendants’ wrongful conduct includes, among many other things: (a) changing Defendant Chau’s last name from “Chau” to “Chow,” thereby creating a fictitious character, fraudulently and deceptively suggesting that Chau is either the real Mr. Chow, his relative, or the former “executive chef” of one of the MR CHOW Restaurants; (b) fraudulently advertising and promoting Defendant Chau as the inventor of the signature dishes served at the MR CHOW Restaurants (when, in fact, the vast majority of these dishes were created by Mr. Chow himself many years before Defendant Chau became employed at a MR CHOW Restaurant) and the mastermind behind the unique dining experience associated with the MR CHOW Restaurants; (c) engaging in other intentionally misleading, confusing, false and deceptive promotional and advertising activities, including internet advertising and purchasing search engine sponsored links, that divert to Defendants the reputation, business, clients and prospective clients of the real Mr. Chow and the MR CHOW Restaurants, and (d) unlawfully misappropriating other intellectual property and trade secrets of Mr. Chow and the MR CHOW Restaurants. In fact, after Defendant Morfogen’s attempt to lawfully purchase an interest in another famous Chinese

restaurant brand failed, he claims to have “purchased” the MR CHOW Restaurant brand in the form of a \$20.00 tip to a then MR CHOW Restaurant busboy.

4. Defendants’ ongoing wrongful conduct, most recently conducted at their Miami Beach operation, has escalated over time to the point where Plaintiffs find themselves with no other choice but to commence this legal proceeding in order to protect their vital business interests and the name, reputation and identity of the real Mr. Chow. By this action, Mr. Chow and the MR CHOW Restaurants seek to permanently enjoin Defendants from such wrongful and illegal conduct, and to recover damages resulting from their unlawful actions.

II. PARTIES

5. Plaintiff Michael Chow, known as “Mr. Chow,” is a resident of California and the founder and main principal of the MR CHOW Restaurants and the creator of the MR CHOW brand.

6. Plaintiff MR CHOW ENTERPRISES, LTD. is a California limited liability partnership that operates the MR CHOW restaurant located in Beverly Hills, California and which owns the MR CHOW trademarks.

7. Plaintiff T.C. VENTURES, INC. is a New York corporation that operates the MR CHOW restaurant located in mid-town Manhattan, New York.

8. Plaintiff MC TRIBECA, LLC is a New York limited liability company that operates the MR CHOW restaurant located in New York’s Tribeca.

9. Plaintiff MC MIAMI ENTERPRISES, LLC is a Florida limited liability company that will operate the MR CHOW restaurant located in Miami Beach, Florida, which is scheduled to open later this year.

10. Defendant Chak Yam Chau is a citizen and resident of New York who, upon information and belief, regularly conducts business in this federal district directly and through Defendant Philippe Miami LLC and other Defendants, and upon further information and belief has engaged in substantial and not isolated activity and has committed tortious acts within the State of Florida and in this federal district either directly or through his agents and employees.

11. Defendant Stratis Morfogen is a citizen and resident of New York who, upon information and belief, regularly conducts business in this federal district directly and through Defendant Philippe Miami LLC and other Defendants, and upon further information and belief has engaged in substantial and not isolated activity and has committed tortious acts within the State of Florida and in this federal district either directly or through his agents and employees.

12. Defendant Philippe Miami LLC is a Florida limited liability company with its principal place of business located at 2305 Collins Avenue, Miami Beach, Florida and operates a restaurant under the name "Philippe by Philippe Chow."

13. Defendant Philippe North America Restaurants, LLC is a New York limited liability company which, upon information and belief, regularly conducts business in this federal district either directly or through Defendant Philippe Miami LLC and other Defendants, and upon further information and belief has engaged in substantial and not isolated activity and has committed tortious acts within the State of Florida and in this federal district either directly or through its agents and employees.

14. Defendant Philippe Restaurant Corporation is a New York corporation which, upon information and belief, regularly conducts business in this federal district either directly or through Defendant Philippe Miami LLC and other Defendants, and upon further information and

belief has engaged in substantial and not isolated activity and has committed tortious acts within the State of Florida and in this federal district either directly or through its agents and employees.

III. JURISDICTION AND VENUE

15. This Court has jurisdiction over the subject matter of this lawsuit under the Lanham Act, 15 U.S.C. § 1116(a) which gives Plaintiffs Mr. Chow and the MR CHOW Restaurants civil remedies for Defendants' violations. Thus, this Court has original federal question jurisdiction pursuant to 28 U.S.C. § 1331. This Court also has original jurisdiction over Plaintiffs' claims of unfair competition pursuant to 28 U.S.C. § 1338(b), as such claims are joined in this action with substantial and related claims under the trademark laws.

16. This Court may exercise supplemental jurisdiction over all related state law claims under 28 U.S.C. § 1367. Declaratory and other relief is authorized by the Federal Declaratory Judgment Act, as amended, 28 U.S.C. §§ 2201 and 2202.

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims herein occurred in this district and because Defendants are subject to personal jurisdiction in this district.

18. Defendants are subject to personal jurisdiction in this Court under Fla. Stat. §§ 48.193(1)(a), 48.193(1)(b), and 48.193(2) because they (i) operate, conduct, engage in, or carry on businesses or business ventures within the State of Florida; (2) have committed tortious acts within the State of Florida as alleged herein; and (iii) engage in substantial and not isolated activity within the State of Florida.

IV. GENERAL ALLEGATIONS

From Exile comes Reinvention, Revolution and Innovation

19. The real Mr. Chow was born in Shanghai, China. His father was a renowned grand master of the Beijing opera and is regarded as a “national treasure,” a rare and highly respected honor in The Peoples Republic of China. In a bipartisan bill introduced into the United States Senate in 2005 by then-Democratic Senator Joseph Lieberman and Republican Senator Lamar Alexander for the purpose of educating American youth about the rich culture of China, Mr. Chow’s father was recognized as one of the eight most influential people in the history of China.

20. As a result of his father’s influence, young Mr. Chow was immersed in China’s venerable and refined arts. The legacy bestowed by his father’s position and artistic accomplishments ultimately inspired the work of Mr. Chow in the West.

21. Mr. Chow was first introduced to Western culture at the tender age of 13, when he was sent to London to further his education. In London, he studied arts and architecture. As an uprooted young man, he was isolated from his family and from the rich Chinese culture. In fact, from the very day he left Shanghai, Mr. Chow was never able to communicate with nor see his father again.

22. Being separated from his family and his heritage left Mr. Chow longing to bring the great culinary tradition of China to the West. Mr. Chow realized his dream in 1968, when he opened his first visionary and revolutionary designer restaurant, the eponymous MR CHOW. The mission of Mr. Chow – both the man and his restaurant – was then and remains today to

promote an appreciation and understanding of the complex and varied cuisine of China through authentic interpretations, refinements, and reinventions of classic dishes.

23. Successfully accomplishing these goals, Mr. Chow has devoted his entire life to carefully constructing at his restaurant a universe of experiences for his clients, with each detail intended to bridge the gap between East and West through the medium of Chinese cuisine, creating a unique fine dining experience. Over time, and through painstaking effort, Mr. Chow has been able to convert a misunderstood and largely unfamiliar cuisine into an art form with a cult following by providing clients of the MR CHOW Restaurants with a dining experience that both enlightens and entertains.

24. The unique experience of the MR CHOW Restaurants is accomplished through specially developed methods, processes, and techniques, which relate not only to the preparation and presentation of the food, but to the control and function of the kitchen, the cooking, expediting and food delivery processes, and the training of staff. This compilation of processes, methods and techniques was painstakingly developed over a period of forty-one years (essentially, a lifetime body of work), and amounts to a virtual treasure chest of detail, know how, skill and technique, culminating in the MR CHOW experience, all captured in the MR CHOW brand. Collectively, these processes, methods, and techniques constitute trade secrets of Mr. Chow and the MR CHOW Restaurants.

25. Through the interpretation and reinterpretation of ancient dishes from China, or as original recipes, Mr. Chow created twelve classic dishes that have become the signature dishes of the MR CHOW Restaurants. These dishes are known by name and reputation, and many, if not all, have had a cult following for over four decades. These include Ma Mignon, Chicken Joanna, Mr. Chow Noodle, Chicken Satay with its secret sauce, and others. These unique dishes, being

the heart and soul of the MR CHOW Restaurants, have been tested, retested and refined by Mr. Chow and are among the trade secrets and intellectual property of Mr. Chow and the MR CHOW Restaurants.

26. In addition to preparing authentic Chinese cuisine, Mr. Chow has always been keenly interested in educating and entertaining his clients, with a view towards honoring and sharing China's cultural heritage. Among the many things Mr. Chow has done to accomplish this objective was to bring the ancient art of hand-pulled noodle-making to his restaurants, where he created and introduced a daily noodle-making show at his first restaurant some forty-one years ago. This show has been exhibited on national television and has even been demonstrated in the Kung Fu Panda movie DVD.

27. The ancient art of stretching hundreds of fine noodle strands from a mound of dough entirely by hand and without knives or other utensils, remained in the kitchen until Mr. Chow brought it into the dining room in his nightly noodle show. The rapid, skillful transformation of dough into noodle strands from a trolley in the center of the dining room is one of Mr. Chow's many signature innovations, and is inextricably associated with the MR CHOW Restaurants.

28. To change the preconceptions of his clients regarding Chinese cuisine, Mr. Chow also determined that food should be presented in an environment different from that of traditional Chinese restaurants so that his clients could focus on the unique and authentic cuisine. For example, his restaurants feature west European waiters, and meals are served in two courses, both historical firsts, as such things were never before done in a Chinese restaurant. This desire, coupled with his education in the arts and architecture, led Mr. Chow to create one of the first designer restaurants, with an environment designed with the greatest attention to detail, to be

simultaneously sophisticated and comfortable. The clean lines, modern furnishings, lighting, fixtures, and utensils, all carefully selected by Mr. Chow, brought an artistic sensibility that further contributed to the unique identity of the MR CHOW Restaurants.

29. In 1974, following his success in London, Mr. Chow opened a MR CHOW restaurant in Beverly Hills, California, enabling him to expand his pursuit of educating and entertaining the West about the authentic and sophisticated cuisine of China, through the unique experience that has become uniquely associated with all the MR CHOW Restaurants.

30. Since that time, other MR CHOW Restaurants have opened in select locations in the United States, taking care to limit the venues to preserve and sustain the processes, techniques, and methods that contribute to the MR CHOW experience. In 1979, MR CHOW opened in New York City on East 57th Street, and in 2006, he opened a second New York location in Tribeca.

31. In 2005, Mr. Chow announced his plan to expand to Miami Beach and leased space in the soon to be completed W Hotel. The Miami Beach location is scheduled to open in August of 2009.

The One and Only Mr. Chow

32. Mr. Chow's combination of great ancient cuisine, explored through the authentic interpretations and original recipes developed at his restaurants, and the carefully-composed setting, truly revolutionized Chinese fine dining and made the MR CHOW brand a cultural icon. In fact, Mr. Chow himself is known and referred to almost universally as "Mr. Chow" and not as "Michael Chow." The thirtieth anniversary of the MR CHOW Restaurants was commemorated by numerous luminaries in the social, political, art, entertainment, business, professional and sports fields. It is unlikely that such a famous and diverse group of people has ever been brought

together before, or since, to commemorate such an event. No restaurant has ever amassed such a remarkable international clientele.

33. Over the years, Mr. Chow has repeatedly been heralded in the media as a great cultural icon, in the company of Ray Croc, the founder of McDonalds. Mr. Chow's innovations in concept and design extend beyond the restaurant industry and have inspired great artists, designers and producers, placing him among the leading visionaries of the 20th century.

34. The MR CHOW Restaurants became – and remain today – gathering places for intelligentsia, celebrities, artists, world leaders, and the general dining public who are in search of a special experience.

35. As a result of the popularity of the MR CHOW Restaurants, the MR CHOW trademark has become famous. Likewise, the trade secrets of the MR CHOW Restaurants, which Mr. Chow has taken reasonable measures to protect, have great economic value in addition to their personal meaning and value to Mr. Chow. The reputation of Mr. Chow and the MR CHOW Restaurants in the marketplace is a valuable draw to the public and a source of regular repeat business from existing clients.

Defendant Morfogen Attempts to Buy, and Then to Steal, a Great Restaurant

36. Defendant Morfogen engaged in a course of conduct specifically geared towards unfairly capitalizing on the fame of Mr. Chow and the MR CHOW Restaurants and trademark.

37. As reported in the Florida press, Defendant Morfogen has owned a “Kids Kingdom” amusement park, a diner, and a nightclub, but he has no prior experience owning or operating an iconic Chinese fine dining restaurant. But Defendant Morfogen knew what he liked, and according to his own statements in the media, he liked the MR CHOW experience and regularly dined at the MR CHOW Restaurants for over a decade.

38. Defendant Morfogen also acknowledged the economic value of the MR CHOW Restaurants and brand. As a result, in or about 2005, he began to search for a means of acquiring a Chinese restaurant business with the reputation, status and value of MR CHOW to compete with the MR CHOW Restaurants which he obviously coveted.

39. In early 2005, Defendant Morfogen secured a restaurant space on 60th Street in New York that had previously housed several failed restaurants. Defendant Morfogen then attempted to purchase the mark and intellectual property of Davé, a famous Parisian restaurant that had its own treasure chest of detail, know how, skill and technique, and that had itself built a strong reputation in the restaurant industry. In fact, MR CHOW and Davé are among the very few restaurants that have an internationally famous following.

40. Defendant Morfogen's stated intention was to bring the famed Parisian Chinese restaurant Davé to New York. However, this attempt to do things "the right way," by acquiring the rights to the mark, reputation, processes and dishes of Davé, ultimately failed.

41. When Defendant Morfogen's lawful attempt to compete with the MR CHOW Restaurants failed, Defendant Morfogen then apparently decided to compete unlawfully by misappropriating the name, reputation, trade secrets, intellectual property and ultimately the business and identity of Mr. Chow and the MR CHOW Restaurants.

42. Defendant Morfogen hatched his plan through a now infamous twenty-dollar payoff to a busboy at the MR CHOW restaurant in New York. That busboy put Defendant Morfogen in contact with Defendant Chak Yam Chau, known then as "Philippo," who, at the time, was an expeditor in the MR CHOW kitchen. After being given a new car as a "signing bonus," Defendant Chau entered into the conspiracy with Defendant Morfogen, described in this

