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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION**

11 Case No. 2:20-cv-8544

12 Complaint for:

13 Outer Aisle Gourmet, LLC, a
14 Delaware Limited Liability
15 Company

16 Plaintiff,

17 v.

18 Cali'Flour Foods, LLC, a
19 California Limited Liability
20 Company

21 Defendant.

(1) LANHAM ACT TRADE DRESS IN-
FRINGEMENT [15 U.S.C. § 1125(a)(3)];
(2) COPYRIGHT INFRINGEMENT [17 U.S.C.
§ 501];
(3) LANHAM ACT UNFAIR COMPETITION
[15 U.S.C. § 1125(a)];
(4) UNFAIR BUSINESS PRACTICES [Cal.
Bus. & Prof. Code § 17200];
(5) FEDERAL TRADEMARK INFRINGE-
MENT [15 U.S.C. § 1114/ Lanham Act § 43(a)].

22 Demand for Jury Trial

23 **NATURE OF THE ACTION**

24 1. Plaintiff Outer Aisle Gourmet, LLC (“Outer Aisle” or “Plaintiff”) brings
25 this action for federal trade dress infringement, federal copyright infringement, federal
26 unfair competition, California unfair business practices, and federal trademark in-
27 fringement, against Cali'Flour Foods, LLC (“CF Foods” or “Defendant”). Collec-
28 tively, Plaintiff and Defendant are called “the Parties.” Plaintiff alleges upon
knowledge regarding its own acts and those it has witnessed, and upon information and
belief, as follows:

1 **A. PARTIES, JURISDICTION AND VENUE**

2 2. Plaintiff Outer Aisle is a Delaware Limited Liability Company, registered to
3 do business in California, having a business address of 2879 Seaborg Avenue, Ventura,
4 CA 93003.

5 3. Defendant CF Foods is a California Limited Liability Company having its
6 principal place of business at 1057 Village Lane, Chico, CA, 95926.

7 4. This Court has subject matter jurisdiction over this action under 15 U.S.C.
8 § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and (b) because Plaintiff's federal claim
9 arises under the Lanham Act, 15 U.S.C. § 1051 *et seq.* and the Copyright Act 17 U.S.
10 Code § 501 *et seq.* This Court has subject matter jurisdiction over Plaintiff's related
11 common law of California claims under 28 U.S.C. § § 1338(b) and 1367 because the
12 state law claims relate to claims for unfair competition.

13 5. This court has personal jurisdiction over the Defendant because the Defend-
14 ant does business in California and in this district by advertising and selling goods in
15 this district or by putting goods into the stream of commerce so the goods will be sold
16 in this district and because at least some of the infringing acts that are the subject of
17 this complaint occurred in this state. Defendant conducts business in the jurisdiction of
18 the United States District Court for the Central District of California by offering goods
19 for sale in Los Angeles, Ventura and Santa Barbara counties, California that infringe
20 Plaintiff's trade dress and copyright.

21 6. Venue is proper in this district under 28 U.S.C. § § 1391(b), (c) and (e) be-
22 cause Defendant is a corporation and is subject to personal jurisdiction in California
23 and, on information and belief, a substantial part of the events or omissions causing the
24 claim occurred in this judicial district, and has caused damages to Plaintiff in this dis-
25 trict. Defendant purposefully advertises, sells, and distributes infringing products in
26 this district and in California. Defendant's actions within this district directly interfere
27 with and damage Plaintiff's commercial efforts and endeavors and harms Plaintiff's
28

1 goodwill within this venue. Plaintiff also conducts substantial business within this
2 venue.

3 **B. BACKGROUND**

4 7. Santa Barbara, California based Outer Aisle has been innovating health-con-
5 scious foods for retail and wholesale distribution throughout the United States since
6 2013. They launched the nation's first cauliflower-based "sandwich thins" and cauli-
7 flower-based "pizza crust," which firmly planted their brand in global news and their
8 products on the shelves of prominent national, natural foods and gourmet grocery store
9 chains, such as Whole Foods, Meijer and Albertsons/Safeway. Outer Aisle creates rev-
10 olutionary food products that are well known for being plant-based, gluten-free, keto-
11 friendly, grain-free, flourless, nut free, soy free, low in calories, carbs, and fat, and
12 loaded with nutrients but containing no artificial ingredients. Outer Aisle has earned
13 nationwide and global recognition for re-creating America's favorite, every-day foods,
14 from fresh vegetables and other natural simple ingredients.

15 8. Outer Aisle's revolutionary cauliflower-based food products have distinc-
16 tive packaging protected under federal and state trade dress and copyright law. Outer
17 Aisle's acclaimed products are packaged in originally configured, creatively designed,
18 visually distinctive "pouches" that feature custom color-schemes, color-blocking, de-
19 signs, stylization, layout, fonts, shapes, banners, and a uniquely shaped transparent
20 window that allow consumers to see the product in the package, for example:



26 9. Because of Outer Aisle's extensive use of this distinctive trade dress on its
27 products, and on its website and in advertising, Outer Aisle enjoys national recognition
28 and goodwill in this trade dress. Outer Aisle's product packaging is protected under

1 trade dress laws with its original configuration, articulated design and inherently dis-
 2 tinctive combination of color, shapes, stylized wording, material, texture, and illustra-
 3 tive elements that are inherently distinctive. Outer Aisle invested substantial resources
 4 to innovate a visually distinct, stand-out, uniquely configured, unusual, commercially
 5 impressive, product packaging, which is also registered with the United States Copy-
 6 right Office. Outer Aisle’s unique designs, widespread sales, and national advertising
 7 lead the public to understand that the plaintiff’s trade dress signifies Outer Aisle as the
 8 source of its products. In the food industry, visual aesthetics and appearance are essen-
 9 tial for making products distinctive and for building brand recall. The innovative trade
 10 dress of Outer Aisle’s products serves to distinguish their goods from competing prod-
 11 ucts of other manufacturers in the online marketplace and on the shelves of food stores.

12 10. Defendant CF Foods is a relative newcomer to the “cauliflower foods” mar-
 13 ket. Around mid-2016, they began their business by selling and promoting a “cauli-
 14 flower pizza crust” product, which could be ordered online or found at a few pizza
 15 restaurants local to their place of business in the Chico, California area. Their product
 16 was the size of a traditional pizza crust, and it was packaged in a simple white pizza
 17 box promoted for sale alongside a pizza pan, as shown below:



22 11. In or around 2019, defendant CF Foods announced the upcoming launch of
 23 a second product, which it called “Cauliflower Flatbreads”. They announced and dis-
 24 played their product packaging for this upcoming product on their site as follows:

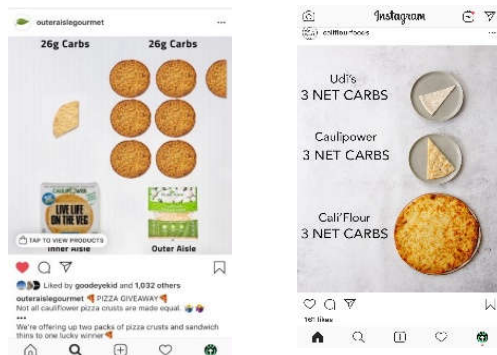
25
26

PACKAGING UPDATE

27 Online orders may receive this packaging as we work through remaining materials.
 28 We expect to be fully transitioned to our new packaging by early fall.



12. The defendant's announcement of this new product label caught the attention of Outer Aisle, because it used a trademark similar to Outer Aisle's "FRESH AND SIMPLE" trademark, erroneously stated that it was the "Original", and prominently displayed a stylized "3g" in a font, size and layout similar to Outer Aisle's label. Outer Aisle also discovered around this time that CF Foods was engaging in advertising campaigns modeled after Outer Aisle's advertising campaigns. For example:



13. Through its counsel, Outer Aisle has sent letters to Defendant CF Foods demanding they cease developing and promoting similar product labels and advertising campaigns.

14. Irrespective of the plaintiff's requests, Defendant continued and continues developing and promoting similar product labels and advertising campaigns for the purpose of benefiting from and trading off Outer Aisle's pre-established consumer recognition, fame, goodwill, and reputation.

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