

1 KILPATRICK TOWNSEND & STOCKTON LLP  
2 KOLLIN J. ZIMMERMANN (Bar No. 273092)  
3 Kzimmermann@kilpatricktownsend.com  
4 1801 Century Park East, Suite 2300  
5 Los Angeles, CA 90067  
6 Telephone: 310-248-3830  
7 Facsimile: 310-860-0363

8 SARAH EDWARDS HOLLAND (pending *pro hac vice* application)  
9 seholland@kilpatricktownsend.com  
10 1100 Peachtree Street N.E., Suite 2800  
11 Atlanta, GA 30345  
12 Telephone: 404-815-6500  
13 Facsimile: 404-815-6555

14 Attorneys for Plaintiff  
15 DOLE PACKAGED FOODS, LLC

16 **UNITED STATES DISTRICT COURT**  
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 DOLE PACKAGED FOODS, LLC,  
19 Plaintiff,

20 v.

21 KELLY CARTTER D/B/A HULA  
22 GIRLS SHAVE ICE and JASON  
23 LAUDERDALE,  
24 Defendants.

Case No. 2:21-CV-009195

**COMPLAINT FOR:**

**(1) TRADEMARK INFRINGEMENT  
UNDER 15 U.S.C. § 1114(1);**

**(2) UNFAIR COMPETITION AND  
FALSE DESIGNATION OF ORIGIN  
UNDER 15 U.S.C. § 1125(a);**

**(3) TRADEMARK DILUTION  
UNDER 15 U.S.C. § 1125(C);**

**(4) COMMON LAW  
TRADEMARK INFRINGEMENT  
AND UNFAIR COMPETITION;**

**(5) STATUTORY UNFAIR  
COMPETITION UNDER CAL. BUS.  
& PROF. CODE § 17200;**

**(6) STATUTORY DILUTION  
UNDER CAL. BUS. & PROF. CODE  
§ 14247**

**[DEMAND FOR JURY TRIAL]**

1 Plaintiff Dole Packaged Foods, LLC (“Dole”) states the following for its  
2 Complaint against Defendant Kelly Cartter d/b/a Hula Girls Shave Ice and Defendant  
3 Jason Lauderdale (collectively, “Hula Girls”):

4 **NATURE OF THE ACTION**

5 1. This is an action at law and in equity for trademark infringement,  
6 dilution, and unfair competition in violation of the Trademark Act of 1946, 15 U.S.C.  
7 §§ 1051 *et seq.* (“Lanham Act”) and the common law of the State of California, as  
8 well as violations of the California statutory unfair competition law, Cal. Bus. & Prof.  
9 Code § 17200, and California statutory dilution law, Cal. Bus. & Prof. Code. §  
10 14247.

11 **THE PARTIES**

12 2. Plaintiff Dole Packaged Foods, LLC is a California limited liability  
13 company with a place of business at 3059 Townsgate Road, Suite 400, Westlake  
14 Village, California 91361. Dole is the record owner, in its own right or by assignment  
15 from its predecessors-in-interest, of the United States registered trademarks at issue in  
16 this dispute, which are identified below.

17 3. Upon information and belief, Defendant Kelly Cartter d/b/a Hula Girls  
18 Shave Ice is an individual with a principal place of business at 16556 Bolsa Chica  
19 Street, Huntington Beach, California 92649, and resides in this District.

20 4. Upon information and belief, Defendant Jason Lauderdale is the co-  
21 founder of Hula Girls Shave Ice and is an individual who resides in this District. On  
22 further information and belief, Mr. Lauderdale knowingly authorized, directed, and/or  
23 substantially participated in the infringing activity described in this Complaint.

24 **JURISDICTION AND VENUE**

25 5. This Court has subject matter jurisdiction over the federal claims alleged  
26 herein pursuant to § 39 of the Lanham Act, 15 U.S.C. § 1121, and pursuant to 28  
27 U.S.C. §§ 1331 and 1338(a). As to the claims under state law, this Court has subject  
28

1 matter jurisdiction pursuant to 28 U.S.C. § 1338(b), and supplemental jurisdiction  
2 pursuant to 28 U.S.C. § 1367.

3 6. This Court has personal jurisdiction over Hula Girls because, on  
4 information and belief, Hula Girls (a) resides and is located in the State of California;  
5 (b) distributes, offers for sale, and sells goods in connection with a trademark that  
6 infringes Dole’s intellectual property within the State of California; (c) regularly  
7 transacts and conducts business within the State of California; and (d) has otherwise  
8 made or established contacts with the State of California sufficient to permit the  
9 exercise of personal jurisdiction.

10 7. Venue is proper under 28 U.S.C. § 1391(a) and (b) because the acts  
11 giving rise to the claims in this case occurred in this District, and upon information  
12 and belief, Hula Girls has a principal place of business and resides in this District.

### 13 FACTS COMMON TO ALL CLAIMS FOR RELIEF

#### 14 DOLE’S TRADEMARKS

15 8. Dole is a world leader in growing, sourcing, distributing, and marketing  
16 fruit and better-for-you snacks, offering a full line of canned, jarred, pouch, dried,  
17 frozen, and aseptic fruit products. For more than 170 years, Dole’s mission has been  
18 to deliver high-quality packaged fruit with a positive impact on people, planet, and  
19 prosperity. Dole also has an unwavering commitment to customers’ needs in the  
20 critical areas of quality assurance, food safety, traceability, environment  
21 responsibility, and social accountability.

22 9. Dole is the owner of a federal registration for the mark DOLE (Reg. No.  
23 4,587,365) (the “DOLE Mark”), which issued in 2014 for “Frozen confections;  
24 Grain-based snack foods.” Since at least as early as 1985, Dole, through its own use  
25 and/or its predecessor’s use, has continuously used, and presently uses, the DOLE  
26 Mark in interstate commerce throughout the United States in connection with its  
27 high-quality dessert-related goods and frozen confections. A copy of the Certificate  
28 of Registration for the DOLE Mark is attached as **Exhibit 1**.

1           10. Dole is also the owner of a federal registration for the mark DOLE  
 2 WHIP (Reg. No. 5,169,269) (the “DOLE WHIP Mark”), which issued in 2017 for  
 3 “Frozen confections; Non-dairy frozen confections; Pre-processed mixes for making  
 4 non-dairy frozen confections.” Since at least as early as 1984, Dole has continuously  
 5 used, and presently uses, the DOLE WHIP Mark in interstate commerce throughout  
 6 the United States in connection with its high-quality dessert-related goods and frozen  
 7 confections. A copy of the Certificate of Registration for the DOLE WHIP Mark is  
 8 attached as **Exhibit 2**.

9           11. As a result of Dole’s widespread and extensive advertising and use of  
 10 the DOLE Mark and DOLE WHIP Mark (collectively, the “DOLE and DOLE WHIP  
 11 Marks”), consumers throughout the United States, and indeed the world, have come  
 12 to recognize and associate the DOLE and DOLE WHIP Marks as indicators of source  
 13 or affiliation with Dole’s high-quality food and beverage products. Due to the high  
 14 degree of inherent distinctiveness of the DOLE and DOLE WHIP Marks, the length  
 15 of time and extent to which Dole has used the DOLE and DOLE WHIP Marks, the  
 16 vast advertising and publicity of which the DOLE and DOLE WHIP Marks have  
 17 been subject, and the high degree of consumer recognition of the DOLE and DOLE  
 18 WHIP Marks, the DOLE and DOLE WHIP Marks are well-known and famous  
 19 trademarks widely recognized by the general consuming public of the United States  
 20 as a designation of source of Dole’s goods and deserving of a broad scope of legal  
 21 protection prior to Hula Girls’ unlawful use.

22           12. Dole is also the owner of numerous other federal trademark registrations  
 23 for marks sharing a common characteristic, namely, the DOLE formative. Copies of  
 24 the Certificates of Registration for the below marks are attached as **Exhibit 3**.

<u>Mark</u>	<u>Reg. No.</u>	<u>Dates</u>	<u>Goods and Services</u>
DOLE	4,587,364	Filing date: Aug. 13, 2013	<b>Class 29:</b> Canned or bottled fruits; Dried fruits; Frozen fruits; Fruit

<u>Mark</u>	<u>Reg. No.</u>	<u>Dates</u>	<u>Goods and Services</u>
		First use date: Dec. 31, 1927  Registration date: Aug. 19, 2014	purees; Nut and seed-based snack bars; Processed edible seeds
	4,587,385	Filing date: Aug. 18, 2013  First use date: Apr. 30, 2011  Registration date: Aug. 19, 2014	<b>Class 30:</b> Frozen confections; Grain-based snack foods
DOLE SOFT SERVE	5,832,264	Filing date: Nov. 30, 2018  First use date: Jan. 1, 2002  Registration date: Aug. 13, 2019	<b>Class 30:</b> Frozen confections; non-dairy frozen confections; pre-processed mixes for making non-dairy frozen confections
DOLE BANANA DIPPERS	4,032,617	Filing date: Aug. 12, 2010  First use date: Mar. 31, 2011  Registration date: Sept. 27, 2011	<b>Class 30:</b> Frozen confections

13. Dole publishes and distributes brand guidelines, which are available online at <https://www.appslibrary.com/assets/MFR457/DOC/Dole-Brand-202061052520.pdf> (the “Brand Guidelines”). Dole’s Brand Guidelines outline the proper use of Dole’s trademarks by retailers who distribute and sell dessert-related goods and frozen confections that are prepared using Dole’s soft serve mix. Per the

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.