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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	Class 29: 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	Class 30: 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	Class 30: 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	Class 30: 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

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