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16 *Attorneys for Plaintiff*

17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 BARRY N. KAY, individually and on behalf of  
20 all others similarly situated,

21 Plaintiff,

22 v.

23 COPPER CANE, LLC d/b/a COPPER CANE  
WINES & PROVISIONS, a California  
24 corporation,

25 Defendant.

Case No.:

**CLASS ACTION**

**COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Barry N. Kay (“Plaintiff”), individually and on behalf of all others similarly situated,  
2 brings this class action complaint against Copper Cane, LLC d/b/a Copper Cane Wines & Provisions  
3 (“Defendant”), and alleges upon personal knowledge as to Plaintiff’s acts and experiences, and, as to all  
4 other matters, upon information and belief, including investigation conducted by Plaintiff’s attorneys.

5 **INTRODUCTION**

6 1. Defendant distributes wines under various brand names, including pinot noir varieties  
7 labeled as “Elouan” (“Elouan” or the “Product”).

8 2. The labels on the Product indicates that this wine originates from and is produced in various  
9 wine growing American Viticultural Areas<sup>1</sup> (“AVAs”) within the State of Oregon, as well as indicating  
10 in a more general way that the wine is produced within the wine growing regions of the State of Oregon  
11 (the “Oregon Appellation<sup>2</sup>

12 3. Specifically, Elouan wine bottles have a label referencing the Oregon Appellation, and the  
13 boxes in which Elouan bottles are shipped mention the Willamette, Umpqua, and Rogue valleys, all of  
14 which are AVAs within the State of Oregon.

15 4. However, contrary to the representations made on the labels, boxes, and marketing  
16 materials for Elouan, the wine is not actually made in the state of Oregon, much less in the specific AVAs  
17 listed on the Product’s packaging. Instead, the wine is vinified<sup>3</sup> and bottled at Defendant’s facilities in  
18 the Napa Valley in the State of California.

19 5. Rules promulgated by the Oregon Winegrowers Association (“OWA”) require that for a  
20 wine to be labeled with one of the Oregon AVAs, at least 95 percent of the grapes used in making that  
21 wine must come from that specific AVA, and the wine must be fully finished within the state.

22 6. In this way, wines from specific Oregon AVAs are similar to Kobe beef, which can only  
23 be produced according to specifications within a certain region (Kobe) in Japan, or champagne, which can  
24 only be produced in a specific region of France and by using certain techniques.

25  
26 <sup>1</sup> An “AVA” is a designated wine grape-growing region in the United States, providing an official  
27 appellation for the mutual benefit of wineries and consumers.

28 <sup>2</sup> An “appellation” is a legally defined and protected geographical indication used to identify where the  
grapes for a wine were grown.

<sup>3</sup> “Vinification” is the process of converting grapes into wine.

1 7. Reasonable consumers purchase wines from the Oregon AVAs believing they possess the  
2 attributes of authentic wines from those specific regions.

3 8. Because the wines are sold in sealed bottles made of heavily tinted glass (as is customary  
4 with wine) and cannot be seen, smelled, or touched prior to purchase, consumers must rely on the  
5 truthfulness of the labels.

6 9. There is large consumer demand for wines from the Oregon AVAs, and consumers are  
7 willing to pay premium prices for these wines, or purchase them instead of other wines, because, rightly  
8 or wrongly, consumers believe that wines from the Oregon AVAs have superior flavors and other  
9 characteristics to wines produced in different regions, elsewhere within and outside of Oregon.

10 10. To the detriment of consumers, the Product is not authentic wine from the Oregon AVAs.

11 11. Defendant seeks to take advantage of the premium placed on wines from the Oregon AVAs  
12 by specifically labeling, packaging, and marketing its Product as if it was produced in the Oregon AVAs.

13 12. Reasonable consumers could have been, and in fact were, misled by the references to the  
14 Oregon AVAs on the Product's labels, packaging, and marketing materials.

15 13. As a result of Defendant's false and deceptive labeling, Plaintiff and the members of the  
16 proposed Classes (defined below) have purchased products they otherwise would not have purchased and  
17 have paid more for products than they otherwise would have paid.

18 14. Plaintiff brings this action on behalf of himself and all others similarly situated to halt the  
19 dissemination of Defendant's false, misleading and deceptive advertising, correct the inaccurate  
20 perception it has created in the minds of consumers, and obtain redress for those who have purchased  
21 Defendant's Product.

22 **JURISDICTION AND VENUE**

23 15. The Court has original jurisdiction under 28 U.S.C. § 1332(d)(2) because the matter in  
24 controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action  
25 in which there are in excess of 100 Class members, and some of the members of the Classes are citizens  
26 of states different from Defendant.

1 16. This Court has personal jurisdiction over Defendant because Defendant conducts business  
2 in this District. Defendant has marketed, promoted, distributed, and sold the Products in California,  
3 rendering exercise of jurisdiction by this Court permissible.

4 17. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial  
5 part of the events and omissions giving rise to Plaintiffs' claims occurred in this district.

6 **INTRADISTRICT ASSIGNMENT**

7 18. Pursuant to Local Civil Rule 3-2(e), this action shall be assigned to the San Francisco or  
8 the Oakland Division.

9 **PARTIES**

10 19. Plaintiff Barry N. Kay is a citizen of the State of California, and, at all times relevant to  
11 this action, resided in Los Angeles County.

12 20. Defendant Copper Cane, LLC, is a California corporation, and it is headquartered in  
13 St. Helena, Napa County, California.

14 **FACTUAL ALLEGATIONS**

15 **I. Wines from specific Oregon AVAs are subject to objective criteria concerning the location**  
16 **of growing, harvesting, vinifying, and finishing the wines**

17 21. Wines, especially pinot noir varieties, produced in the Oregon AVAs are believed by many  
18 wine consumers to possess superior flavors and other characteristics not possessed by those wines  
19 produced in other regions.

20 22. The terms "Willamette Valley," "Umpqua Valley," and "Rogue Valley" refer to wine  
21 growing AVAs located in and unique to the State of Oregon.

22 23. Though grapes grown in one or more of the Oregon AVAs may be used in wines made in  
23 a multitude of locations, a winemaker may not use the name of an Oregon AVA unless at least 95% of the  
24 grapes used in making the particular wine were grown in the AVAs identified on the wine's labeling,  
25 packaging, or marketing materials and the wine was fully vinified and finished within the State of Oregon.

26 24. These objective criteria have been developed by the OWA, an organization charged with  
27 protecting the investments of its members – Oregon wine growers – through legislative and regulatory  
28

1 advocacy, legal compliance, and standardization. By extension, these activities protect the valuable  
2 branding of Oregon wines.

3 25. The standards set by the OWA provide enhanced protection for the branding of wines with  
4 Oregon AVAs than what is provided by the Federal rules, which require that 85% of the grapes used in  
5 making a wine to be from a specific AVA in order for that AVA to be listed on the wine's labels and  
6 packaging. Thus, consumers who seek out wines from Oregon AVAs know that more stringent standards  
7 have been met in order for the Oregon AVAs to be listed on a wine's labeling, packaging, or marketing  
8 materials.

9 26. Defendant's Product, though marked with the names of one or more of the Oregon AVAs,  
10 does not meet these standards.

11 27. Oregon pinot noir varieties are considered to have different characteristics of flavor, body,  
12 nose, etc., which many buyers regard as more desirable than wines from other regions.

13 28. Rightly or wrongly, consumers believe that these superior characteristics stem from  
14 performing every step of the winemaking process in the cool, coastal climate of the Oregon AVAs.

15 29. No portion of any of the Oregon AVAs, including the Willamette Valley, Umpqua Valley,  
16 or Rogue Valley, is located in the State of California.

17 30. Because Defendant vinifies, finishes, and bottles all of its wines in the State of California,  
18 these wines can never be marketed using the name of one or more of the Oregon AVAs, as these processes  
19 must be completed within the State of Oregon in order to label the wines with an Oregon AVA.

20 31. Defendant attempts to confuse buyers by stating that its grapes come from one or more of  
21 the Oregon AVAs.

22 32. However, it is not simply where the grapes are grown, but rather, where the entire  
23 winemaking process is conducted that determines whether a winemaker may claim that a wine is produced  
24 in an Oregon AVA. Defendant's Product does not meet the requirements to make such a claim.

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