

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

THE HERSHEY COMPANY and

HERSHEY CHOCOLATE & CONFECTIONERY CORPORATION,

Plaintiffs,

v.

TINCTUREBELLE, LLC and

TINCTUREBELLE MARIJUANKA LLC,

Defendants.

COMPLAINT FOR MONEY DAMAGES AND EQUITABLE RELIEF

**ACTION FOR TRADEMARK INFRINGEMENT, TRADEMARK DILUTION, FALSE
DESIGNATION OF ORIGIN, UNFAIR COMPETITION AND PASSING OFF**

Plaintiffs The Hershey Company and its subsidiary, Hershey Chocolate & Confectionery Corporation (together referred to as “Hershey”), for their complaint against defendants TinctureBelle, LLC and TinctureBelle Marijuanka LLC (together, “TinctureBelle” or “defendants”) for trademark infringement, trademark dilution, false designation of origin, unfair competition and passing off, state as follows:

INTRODUCTION

1. This action is brought by Hershey to stop the unauthorized use of a number of famous and well-known Hershey trademarks to sell chocolate candy that contains cannabis and/or tetrahydrocannabinol. Hershey’s REESE’S®, HEATH®, ALMOND JOY® and YORK®

products are among the top-selling candy brands in the United States, and both the brand names and the trade dresses used in connection with these brands are extremely famous and well-known among United States consumers. Defendants, who are well aware of the fame and popularity of these Hershey products and marks, are manufacturing and selling cannabis- and/or tetrahydrocannabinol-laced chocolate and candy products using names, marks and designs that are knock-offs of Hershey's famous REESE'S, HEATH, ALMOND JOY and YORK trademarks and trade dresses, in order to increase sales of defendants' cannabis and tetrahydrocannabinol candy products, draw additional attention to their products, confuse consumers as to the source of their products, call to consumers' minds Hershey's famous and beloved brands, and otherwise to trade on the goodwill of Hershey and its brands.

2. In doing so, defendants are not merely causing a likelihood of consumer confusion with Hershey's marks and products, and diluting and tarnishing Hershey's marks by creating an association in consumers' minds with products containing cannabis and/or tetrahydrocannabinol. Defendants' unauthorized conduct also creates a genuine safety risk with regard to consumers, including children, who may not distinguish between Hershey's candy products and defendants' cannabis- and/or tetrahydrocannabinol-based products, and may inadvertently ingest defendants' products thinking that they are ordinary chocolate candy.

NATURE AND BASIS OF THE ACTION

3. This is an action for trademark infringement, trademark dilution, false designation of origin, unfair competition and other unlawful conduct under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, and state law, seeking preliminary and permanent injunctive relief, disgorgement of profits, compensatory damages, punitive damages and other relief relating to defendants'

manufacture, distribution and sale of products that infringe and dilute certain well-known trademarks owned or licensed by Hershey.

4. Hershey is a leading manufacturer of chocolate and confectionery products in the United States and worldwide. For many years, Hershey has manufactured and sold REESE'S, HEATH, ALMOND JOY and YORK candy and confections using the trademarks and trade dresses alleged herein.

5. As set forth more fully below, Hershey owns or licenses the exclusive rights to use the various REESE'S, HEATH, ALMOND JOY and YORK trademarks and trade dresses alleged herein. Notwithstanding Hershey's exclusive rights, defendants manufacture, distribute and sell cannabis and cannabis-related products using packaging, trademarks, and terminology that infringe those trademarks and trade dresses. Defendants are intentionally trading on the established goodwill of Hershey and its various products and brands in order to enhance the sales and profits associated with their Infringing Products.

6. Defendants' actions have caused, and will continue to cause, consumer confusion as to the source, sponsorship, and/or affiliation of their goods and services as being connected with Hershey. Moreover, defendants' actions have caused, and will continue to cause, the dilution of Hershey's trademarks and trade dresses, including, but not limited to, the Hershey Trademarks.

7. Unless such acts of trademark infringement, trademark dilution, false designation of origin, unfair competition and passing off are enjoined, plaintiffs will suffer irreparable injury for which there is no adequate remedy at law.

PARTIES

8. Plaintiff The Hershey Company is a Delaware corporation with an address at 100 Crystal A Drive, Hershey, PA 17033. The Hershey Company is a major manufacturer and seller of chocolate, confectionery and snack products, which are sold throughout the United States and this judicial district. The Hershey Company is the exclusive United States licensee or sublicensee of the trademarks and trade dresses asserted by plaintiffs in this lawsuit.

9. Plaintiff Hershey Chocolate & Confectionery Corporation (“HCCC”) is a Delaware corporation with an address at 4860 Robb Street, Suite 204, Wheat Ridge, CO 80033. HCCC is a wholly-owned subsidiary of The Hershey Company, the owner of the REESE’S-related trademarks and trade dresses asserted by plaintiffs in this lawsuit and the exclusive United States licensee of the HEATH-related trademarks and trade dresses asserted by plaintiffs in this lawsuit.

10. Hershey is informed and believes that defendant TinctureBelle, LLC is a Colorado limited liability corporation, doing business in Colorado, with a registered address at 62 Mount View Lane, Unit B, Colorado Springs, CO 80907.

11. Hershey is informed and believes that defendant TinctureBelle Marijuanka LLC is a Colorado limited liability corporation, doing business in Colorado, with a registered address at 36 North Fabrication #C, Pueblo West, CO 81007.

12. On information and belief, TinctureBelle Marijuanka LLC and TinctureBelle, LLC are affiliated companies and/or are under common ownership and control, and are acting in concert with one another in connection with the conduct described herein.

JURISDICTION AND VENUE

13. The Court has subject matter jurisdiction over Hershey's federal law claims for trademark and trade dress infringement, trademark and trade dress dilution, false designation of origin, and unfair competition under Section 39 of the Lanham Act, 15 U.S.C. § 1121, and under 28 U.S.C. §§ 1331 and 1338(a) & (b). The Court has subject matter jurisdiction over Hershey's state law claims under 28 U.S.C. § 1367.

14. The Court has personal jurisdiction over defendants because, upon information and belief, defendants are present and doing business in the State of Colorado and this judicial district either directly or through their agents, and have distributed their infringing products to, and offered their infringing products for sale in, the State of Colorado and this judicial district.

15. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391 because defendants are subject to personal jurisdiction in this judicial district and because a substantial part of the events giving rise to plaintiffs' claims occurred in this judicial district.

ALLEGATIONS COMMON TO ALL CLAIMS

HERSHEY AND ITS FAMOUS AND VALUABLE BRANDS AND TRADEMARKS

16. The Hershey Company is a world famous producer of, among other things, chocolate, candy, and snack products.

17. Founded in 1894, Hershey is one of the oldest and largest chocolate manufacturers in the United States and the largest chocolate manufacturer in North America.

18. Since its founding, Hershey has had a commitment to quality and safety. As a result of this commitment, individuals and families the world over trust Hershey and its various brands as signifying safe and delicious treats for people of all ages. No product manufactured,

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