

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

FERRARA CANDY COMPANY,

Plaintiff,

vs.

AKIMOV, LLC d/b/a TOP FIVE
WHOLESALE,

Defendant.

) Case No: _____
)
)

) **COMPLAINT FOR:**
)

-) **1. FEDERAL COUNTERFEITING (15**
) **U.S.C. § 1114);**
) **2. FEDERAL TRADEMARK**
) **INFRINGEMENT (15 U.S.C. § 1114);**
) **3. FEDERAL UNFAIR COMPETITION (15**
) **U.S.C. § 1125);**
) **4. FEDERAL TRADEMARK DILUTION (15**
) **U.S.C. § 1125);**
) **5. FEDERAL TRADE DRESS**
) **INFRINGEMENT (15 U.S.C. § 1125);**
) **6. FEDERAL TRADE DRESS**
) **INFRINGEMENT (15 U.S.C. § 1114);**
) **7. FLORIDA TRADEMARK DILUTION**
) **(Fla. Sta. § 495.151);**
) **8. FLORIDA DECEPTIVE AND UNFAIR**
) **TRADE PRACTICES ACT (§ 501.201 et**
) **seq.); and**
) **9. FLORIDA UNFAIR COMPETITION.**
)

COMPLAINT

This is an action for counterfeiting, trademark infringement, unfair competition, dilution, and trade dress infringement in violation of federal and Florida state law.

PARTIES

1. Plaintiff Ferrara Candy Company is an Illinois corporation, having offices at 404 West Harrison Street, Chicago, Illinois 60607 (“Ferrara”).

2. Defendant Akimov, LLC is a Florida limited liability company, doing business as Top Five Wholesale, having offices at 6760 Congress Ave., Apt. 410, Boca Raton, Florida 33487 (“Akimov”).

JURISDICTION AND VENUE

3. This Court has jurisdiction because (1) this is an action arising under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051, *et seq.* (the Lanham Act), jurisdiction being conferred in accordance with 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, and 1367; and (2) this is a civil action between a citizen of Florida on one side and a citizen of Illinois on the other side, in which the value of the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, jurisdiction being conferred in accordance with 28 U.S.C. § 1332. Jurisdiction for the claims made under Florida state law is conferred in accordance with the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

4. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims alleged herein occurred in this district, and under 28 U.S.C. § 1391(c) because Akimov is subject to this Court's personal jurisdiction for purposes of this case.

FACTS **FERRARA'S PRODUCTS AND FAMOUS TRADEMARKS**

5. Ferrara is a recognized global leader in confections, and, together with its affiliates, makes, distributes, markets, and sells throughout the United States numerous well-known, distinctive, and famous candy products, including under the NERDS and TROLLI brands.

6. The NERDS and TROLLI candy brands have achieved enormous commercial success as reflected by their extensive sales, which have been supported by significant marketing and promotional campaigns throughout the United States, including in Florida.

Ferrara's Famous NERDS Marks and Trade Dress

7. Since the 1980s, Ferrara has manufactured, marketed, and sold NERDS candy products, in different flavors and style variations, under the famous NERDS mark and NERDS





trade dress. The trade dress differs slightly across the different products, but consistently features, among other things, (a) the word mark NERDS in block, slanted lettering, with a capital “R” that appears to be falling, (b) in front of a predominantly blue cloud, (c) with character versions of the NERDS candies playing on the package, and (d) images of the candy itself on the bottom right-hand corner of the package (the “NERDS Trade Dress”).




8. Currently, Ferrara manufactures, markets and sells four lines of NERDS products: NERDS candy; BIG CHEWY NERDS candy; NERDS ROPE candy; and its latest, NERDS GUMMY CLUSTERS candy, which all incorporate the NERDS Trade Dress. Representative images of these products appear below:






9. Ferrara owns, among many others, the following federal trademark registrations issued by the United States Patent and Trademark Office for the NERDS Marks used on NERDS candy packaging:

MARK	REG. NO.	REG. DATE	RELEVANT GOODS
NERDS	2,209,131	December 8, 1998	Candy
	4,400,174	September 10, 2013	Candy
	4,400,153	September 10, 2013	Candy
	4,414,355	October 8, 2013	Candy
	6,570,731	November 23, 2021	Candy

	6,556,724	November 9, 2021	Candy
	6,556,722	November 9, 2021	Candy
	6,603,978	December 28, 2021	Candy

10. These registrations are valid and subsisting. All of these registrations (with the exception of Reg. Nos. 6,570,731; 6,556,724; 6,556,722; and 6,603,978) are incontestable and constitute conclusive evidence of Ferrara's exclusive right to use the NERDS Marks for the goods specified in the registrations. 15 U.S.C. §§ 1065, 1115(b). The marks shown in these federal registrations, combined with the common-law trademark rights in NERDS, are hereinafter collectively referred to as the "NERDS Marks."

11. Ferrara has manufactured, advertised, and sold an elongated rope-like form attached to which are numerous multi-colored small nuggets of candy since at least as early as January 2001. Ferrara also owns a registration on the Supplemental Register for its rope-like cluster of sugared candy (the "NERDS ROPE Trade Dress"), as shown below:

MARK	REG. NO.	REG. DATE	RELEVANT GOODS
	2,920,232	January 18, 2005	Candy

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