UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BREEZE SMOKE LLC, Plaintiff/Counter-Defendant, vs. TRUCENTA HOLDINGS LLC, Defendant/Counter-Plaintiff.	Civil Action No. 3:21-cv-11835-RHC-CI Hon. Robert H. Cleland Magistrate Judge Curtis Ivy, Jr **JURY TRIAL DEMANDED**

DEFENDANT/COUNTER-PLAINTIFF TRUCENTA HOLDINGS LLC'S FIRST AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

Pursuant to Fed. R. Civ. P. 15, Defendant/Counter-Plaintiff Trucenta Holdings LLC ("Trucenta"), by and through the undersigned counsel, files this First Amended Answer, Affirmative Defenses and Counterclaims in this Action.

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NATURE OF THE CASE

1. This is an action for trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. §1051, *et seq.*, as well as related state and common law claims, in which Breeze Smoke is seeking immediate injunctive relief and monetary damages for Defendant's unlawful infringement of Breeze Smoke's valuable trademarks. Specifically, Defendant is a Michigan-based cannabis company that is in the business of offering and selling cannabis-related goods and services and smokers' articles—including vaping devices, e-cigarette liquids, ashtrays, lighters, tobacco grinders, cigarette rolling papers, and the like to consumers in Michigan and elsewhere. Defendant is infringing Breeze Smoke's rights in its well-known BREEZE trademarks by using them to mislead consumers into believing there exists some affiliation, sponsorship, or connection between Breeze Smoke and Defendant when there is none, and by deliberately trading off of the extensive goodwill that Breeze Smoke has developed and is continuing to develop in its BREEZE trademarks.

ANSWER:

Defendant admits that the Complaint purports to be an action for trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. §1051, *et seq.*; otherwise, Defendant denies the allegations of Paragraph 1.

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PARTIES, JURISDICTION AND VENUE

2. Breeze Smoke is a limited liability company organized and existing under the laws of the State of Michigan, with its principal place of business at 4654 Lilly Ct., West Bloomfield, Michigan 48323.

ANSWER:

Defendant lacks knowledge of information sufficient to admit or deny the allegations of Paragraph 2 and therefore denies the same.

3. Upon information and belief, Defendant is a Michigan limited liability company with its principal place of business at 1675 E. Maple, Troy, Michigan 48083.

ANSWER:

Defendant admits the allegation of Paragraph 3.

4. Upon information and belief, Defendant is in the business of marketing, offering, and selling various cannabis-related goods and services and smokers' articles, including vaping devices, e-cigarette liquids, ashtrays, lighters, tobacco grinders, cigarette rolling papers, and the like.

ANSWER:

Defendant admits that it sells cannabis-related goods and that it sells smokers articles, but Defendant denies the characterization by Plaintiff of Defendant's business and any implication that the listing is a complete listing of goods and

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services offered by Defendant.

5. Personal jurisdiction over Defendant is appropriate because Defendant is located within this state and is subject to the general personal jurisdiction of this Court. Personal jurisdiction over Defendant is also appropriate because Defendant owns and operates its BREEZE cannabis store that is at issue in this litigation within this District and because it offers and sells infringing BREEZE products and services within this District to customers within this District.

ANSWER:

Paragraph 5 states legal conclusions to which no response is required. To the extent a response is required, Defendant does not contest personal jurisdiction. Defendant denies the characterization by Plaintiff of Defendant's business and stores.

6. The Court has subject matter jurisdiction over this civil action pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338 in that this case arises under the Lanham Act (15 U.S.C. § 1051, *et seq*.), as well as 28 U.S.C. § 1367, and pursuant to the statutes and common law of the State of Michigan.

ANSWER:

Paragraph 6 states legal conclusions to which no response is required. To the extent a response is required, Defendant reserves its right to later challenge or assert subject matter jurisdiction with respect to any of Plaintiff's claims.

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7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)–(d).

ANSWER:

Paragraph 7 states legal conclusions to which no response is required. To the extent a response is required, Defendant does not contest venue.

BACKGROUND

Breeze Smoke's BREEZE Marks

8. Breeze Smoke is engaged in the business of manufacturing and selling a variety of tobacco and vaping products and smokers' articles, including disposable electronic vaping devices, under its BREEZE trademarks.

ANSWER:

Defendant lacks knowledge of information sufficient to admit or deny the allegations of Paragraph 5 and therefore denies the same.

9. Since at least as early as May 2019, Breeze Smoke has continuously used its BREEZE trademarks in connection with vaping products and related products in Michigan and throughout the United States. A representative image of products Breeze Smoke began selling under its BREEZE trademarks in or before May 2019 follows:

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