

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF PENNSYLVANIA**

**THE HERSHEY COMPANY**, a  
Delaware Corporation, and  
**HERSHEY CHOCOLATE &  
CONFECTIONERY LLC**, a  
Delaware Limited Liability Company,

Plaintiffs,

vs.

**THE COOKIE DEPARTMENT,  
INC.**, a California Corporation,

Defendant.

**Case No.:**

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF**

**Jury Trial Demanded**

Plaintiffs, The Hershey Company and Hershey Chocolate & Confectionery LLC (collectively, “Hershey”), by and through its undersigned counsel, as and for its Complaint against Defendant, The Cookie Department, Inc. (“Defendant”), hereby alleges as follows:

**Introduction**

1. Hershey is a leading manufacturer of chocolate, confectionery, and other snack food products in the United States and worldwide. Founded in 1894 by Milton S. Hershey in Pennsylvania, Hershey has a longstanding presence in its market. Since its founding over 125 years ago, Hershey and its subsidiaries have grown to be the largest producer of quality chocolate in North America and a global leader in chocolate and confectionery.

2. Hershey's product portfolio includes some of the most renowned chocolate brands such as HERSHEY'S and KISSES chocolates.

3. In 1907, Hershey adopted the KISSES design marks for use in connection with chocolate candy. Hershey has established rights in the KISSES conical configuration (collectively, "Kisses Marks") through long term, continuous and exclusive use of those marks in commerce in the United States and worldwide, both in the shape of the actual chocolate candy and in design images depicting that shape.

4. As discussed further below, the iconic KISSESs Marks feature an upwardly pointing tip (with and without a "plume"), a notable distinction between the KISSES Marks and chocolate chip designs (featuring drooping tips).

5. Defendant, The Cookie Department, has used the KISSES conical configuration in its logo, packaging, and marketing of its cookie products, and has acted in bad faith in appropriating Hershey's goodwill and/or in diluting the value of the KISSES Marks.

### **The Parties**

6. Plaintiff, The Hershey Company, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 19 East Chocolate Avenue, Hershey, Pennsylvania 17033; Plaintiff, Hershey Chocolate & Confectionery LLC, is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of

business at 8001 Arista Place, Suite 430, Broomfield, CO 80021 (collectively, “Hershey”).

7. On information and belief, Defendant, The Cookie Department, Inc., is a California Corporation and is authorized to do business and is doing business in the State of California, County of Alameda, with its principal place of business at Berkeley, California.

8. On information and belief, Defendant conducts business through interstate commerce throughout the United States, including within Middle District of Pennsylvania district where this Court is situated.

### **Jurisdiction and Venue**

9. This is an action for trademark infringement, dilution, and violation of the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051 et seq. (“Lanham Act”), and unfair competition under the statutory and common law of Pennsylvania.

10. This Court has subject matter jurisdiction of this action under 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338 (a) and (b), as this suit is based on a Federal question and statute, namely 15 U.S.C. § 1051 et seq.; and has supplemental jurisdiction under 28 U.S.C. § 1367(a) over Plaintiff’s state law claims.

11. This Court has personal jurisdiction over Defendant, The Cookie Department, Inc., because it conducts business in the State of Pennsylvania and

within this district, including contracting to sell its goods to consumers in Pennsylvania and the advertising and sale of its products through the Internet to Pennsylvania residents.<sup>1</sup>

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because The Cookie Department resides in this district, as it is subject to personal jurisdiction in this district, and because a substantial part of the events giving rise to these claims occurred in this district. The Cookie Department conducts business throughout Pennsylvania, including marketing and selling its products to consumers in this district through retail stores and online, and has committed the infringement as alleged below in this judicial district, such that the acts and/or omissions complained of took place, in whole or in part, within Lackawanna County, Pennsylvania.

### **The Famous KISSES Marks**





13. Hershey's KISSES chocolate candy and confectionery products, with their well-known conical shape with an upwardly pointing tip, have been offered for sale in the United States since 1907, and are one of Hershey's most beloved and successful product lines. For more than a hundred years, Hershey's KISSES chocolate and confectionery products have been sold continuously throughout the United States.

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<sup>1</sup> See, e.g., <https://thecookiedepartment.com/pages/store-locator> (last visited Aug. 17, 2021) (identifying where Defendant sells its products).

14. Hershey's KISSES chocolate and confectionery products sold in the United States include, without limitation, a variety of flavors of individually wrapped chocolates in Hershey's distinct foil and plume, as well as unwrapped chocolates for use in baking, including for use as ingredients in other companies' products, such as cookies, as well as in other product categories.

15. The conical configuration of Hershey's KISSES chocolate and confectionery products (a candy with an upwardly pointing tip, with and without the "plume") is the subject of numerous trademark registrations<sup>2</sup> with the United States Patent and Trademark office, including, but not limited to:

Mark	U.S. Reg. No.	Reg. Date	Goods
	1031836	January 27, 1976	Solid chocolate
	1038025	April 13, 1976	Solid chocolate
	1986822	July 16, 1996	Candy
	2138566	February 24, 1998	Candy

<sup>2</sup> Plaintiffs note that these registrations cover wrapped and unwrapped designs.

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