

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

JACK DANIEL’S PROPERTIES, INC., a
Delaware corporation,

Plaintiff,

ATOMIC DOG, LLC, a Delaware limited
liability company doing business as Atomic
Dog Cidery LLC; and ATOMIC DOG LLC, a
Pennsylvania limited liability company,

Defendants.

Case No.

**COMPLAINT FOR FEDERAL
TRADEMARK INFRINGEMENT,
FEDERAL UNFAIR COMPETITION AND
FALSE DESIGNATION OF ORIGIN,
FEDERAL TRADEMARK DILUTION,
BREACH OF CONTRACT, TENNESSEE
UNFAIR COMPETITION, TENNESSEE
TRADEMARK DILUTION, COMMON
LAW TRADEMARK INFRINGEMENT,
AND COMMON LAW UNJUST
ENRICHMENT**

DEMAND FOR JURY TRIAL

Plaintiff Jack Daniel’s Properties, Inc. (“JDPI” or “Plaintiff”), for its complaint against Atomic Dog, LLC, a Delaware limited liability company doing business as Atomic Dog Cidery LLC, and Atomic Dog LLC, a Pennsylvania limited liability company (collectively, “Atomic Dog” or “Defendant”), alleges, upon personal knowledge with respect to itself and its acts and on information and belief as to all others, as follows.

Nature of Action

1. Jack Daniel’s Tennessee Whiskey is one of the oldest, longest-selling, and most iconic consumer products in American history. The JACK DANIEL’S trademark is famous, and Jack Daniel’s Tennessee Whiskey has been named the most valuable spirits brand in the world. From the original JACK DANIEL’S trademark to JACK-formative marks such as JACK, GENTLEMAN JACK, WINTER JACK, BLACK JACK, JACK FIRE, and JACK HONEY,

among others, JDPI has built up widespread goodwill and consumer recognition across a range of beverage alcohol products.

2. This action arises from a dispute between JDPI and Atomic Dog concerning Atomic Dog's ongoing and repeated acts of trademark infringement and efforts to cause consumer confusion with Jack Daniel's Tennessee Whiskey and family of related beverage alcohol products. Many years ago, JDPI informed Atomic Dog's predecessor-in-interest, a producer of hard alcoholic cider, that its JACK'S HARD CIDER product was likely to cause consumer confusion with the famous JACK DANIEL'S trademark for whiskey and related beverage alcohol products. To resolve the matter, the parties entered into a settlement agreement executed in 2013 which allowed for Atomic Dog's predecessor to continue to produce and sell JACK'S HARD CIDER with critical guardrails designed to avoid consumer confusion—including but not limited to prominent use of a depiction of an individual named Jack Hauser, the claimed inspiration behind the JACK'S HARD CIDER name, as well as prominent and consistent use of the HAUSER ESTATE trademark, the house mark of Atomic Dog's predecessor-in-interest—all in close proximity to uses of JACK'S HARD CIDER.

3. Atomic Dog, aware of its inherited contractual obligations with JDPI to avoid consumer confusion, nevertheless designed, produced, and sold JACK'S HARD CIDER in cans that followed virtually none of the clear contractual obligations present in the settlement agreement. Rather, Atomic Dog stripped away the prominent connection to its predecessor-in-interest Hauser Estate and the individual named Jack Hauser, and produced a beverage alcohol product that placed great emphasis on the "JACK'S" portion of its trademark. Atomic Dog's JACK'S HARD CIDER branded products, when encountered by consumers on store shelves, are highly likely to lead to confusion with JDPI's well-known products sold under the JACK

DANIEL'S brand, including ready-to-drink whiskey beverages sold in cans. To protect its valuable trademark rights, JDPI brought its concerns to Atomic Dog's attention. Thereafter the parties attempted to resolve the present dispute, but ultimately a mutually satisfactory agreement could not be reached.

4. Atomic Dog's conduct constitutes both breach of contract and trademark infringement and dilution under federal and state law. JDPI is left with no choice but to bring this action to protect its invaluable trademark rights and consumer goodwill that have developed for over a century.

Parties

5. Plaintiff JDPI is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in San Rafael, California. Jack Daniel's Tennessee Whiskey has been produced in this District since at least 1875, except during Prohibition.

6. Defendant Atomic Dog, LLC is a limited liability company organized and existing under the laws of the State of Delaware, doing business as Atomic Dog Cidery LLC, and with its principal place of business in Gettysburg, Pennsylvania. On information and belief, the members of Atomic Dog, LLC are citizens of Pennsylvania.

7. Defendant Atomic Dog LLC is a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business in Gettysburg, Pennsylvania. On information and belief, the members of Atomic Dog, LLC are citizens of Pennsylvania.

8. On information and belief, Atomic Dog, LLC and Atomic Dog LLC are the agent or alter ego of each other, operate as a common enterprise, or share a unity of interest and ownership.

Jurisdiction and Venue

9. This is an action for infringement of federally-registered trademarks in violation of 15 U.S.C. § 1114(1); for infringement of trademarks in violation of 15 U.S.C. § 1125(a)(1); for dilution of trademarks in violation of 15 U.S.C. § 1125(c); for trademark infringement under Tennessee law and common law; for trademark dilution under Tennessee law; for unfair competition under Tennessee law; for unjust enrichment under Tennessee common law; and for breach of contract. The Court has subject-matter jurisdiction over Plaintiff's claims for relief arising under the United States Trademark Act pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a). The Court has original or supplemental jurisdiction over the subject matter of Plaintiff's claims for relief under state law pursuant to 28 U.S.C. §§ 1338(b) and 1367. Additionally, the Court has subject-matter jurisdiction over Plaintiff's claims for the additional reason that this is an action between citizens of different states in which the value of the amount in controversy exceeds \$75,000, exclusive of interest and costs, pursuant to 28 U.S.C. § 1332.

10. The Court has personal jurisdiction over Atomic Dog because it does business in Tennessee by, among other things, selling products in this District, including the unlawful products at issue in this action. On information and belief, Atomic Dog purposefully caused the unlawful products to be sold to distributors in Tennessee and elsewhere for resale by retailers in Tennessee, including within this District.

11. Further, on information and belief, Atomic Dog committed tortious acts within the State of Tennessee, or has committed tortious acts without the State of Tennessee and regularly does or solicits business, engages in other persistent courses of conduct, or derives substantial revenue from products sold or offered in the State of Tennessee and derives substantial revenue from interstate commerce. In addition, JDPI has been injured in this District.

12. Further, this Court has personal jurisdiction under Tennessee's long-arm statute, Tenn. Code Ann. § 20-2-201 *et seq.*, because, on information and belief, 1) Atomic Dog has transacted business in Tennessee; 2) the tortious acts or omissions occurred in Tennessee; and 3) jurisdiction based on Atomic Dog's contacts with Tennessee (including, but not limited to, sales of products) is not inconsistent with the Constitution of the State of Tennessee or the Constitution of the United States.

13. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1), (b)(2), and (c)(2) because Atomic Dog is considered to reside in this District, or because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District, or a substantial part of the property that is the subject of the action is situated in this District.

Allegations Common to All Claims for Relief

Jack Daniel's JACK Trademarks

14. Plaintiff JDPI owns and licenses the use of trademarks used in connection with Jack Daniel's Tennessee Whiskey and other Jack Daniel's beverage alcohol products. Tennessee whiskey has been produced in this District and sold in the United States under the JACK DANIEL'S mark continuously since at least 1875, except during Prohibition, making Jack Daniel's Tennessee Whiskey one of the oldest, longest-selling, and reportedly most iconic consumer products in American history.

15. Since long prior to the commencement of Atomic Dog's acts of infringement, dilution, unfair competition, and breach of contract complained of herein, and continuously to the present, Jack Daniel's Tennessee Whiskey has been sold under the JACK DANIEL'S mark and promoted and marketed under the trademark JACK, including but not limited to with the following trade dress:

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