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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE HERSHEY COMPANY and
HERSHEY CHOCOLATE &
CONFECTIONERY CORPORATION,

Plaintiffs,

v.

CONSCIOUS CARE COOPERATIVE,
Defendant.

No. _____

COMPLAINT FOR TRADEMARK
INFRINGEMENT, TRADEMARK
DILUTION, FALSE DESIGNATION
OF ORIGIN AND DAMAGES

Plaintiffs The Hershey Company (“Hershey Company”) and Hershey Chocolate & Confectionery Corporation (“Hershey Chocolate”) (together, “Hershey”), for their complaint against defendant Conscious Care Cooperative, plead and allege 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® and MR. GOODBAR® brands are among the best-known 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. Defendant, who is well aware of the fame and popularity of these Hershey products and marks, is selling cannabis- and/or tetrahydrocannabinol-laced chocolate and candy products using names, marks and designs that are clear imitations of Hershey’s

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1 famous REESE'S® and MR. GOODBAR® trademarks and trade dresses, in order to increase
2 sales of defendant's cannabis and tetrahydrocannabinol candy products, draw additional
3 attention to its products, confuse consumers as to the source of its products, call to consumers'
4 minds Hershey's famous and beloved brands, and otherwise to trade on the goodwill of
5 Hershey and its brands.

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

13 **NATURE AND BASIS OF THE ACTION**

14 3. This is an action for trademark infringement, trademark dilution, false
15 designation of origin, unfair competition and unfair and deceptive trade practices, seeking
16 damages and other appropriate relief arising out of defendant's violations of Sections 32, 43(a)
17 and 43(c) of the Lanham Act, 15 U.S.C. §§ 1114(a), 1125(a) and 1125(c), and state law.

18 4. Hershey seeks damages and other relief from defendant's wrongful use in
19 commerce of the REESE'S trademarks and trade dress, the MR. GOODBAR trademarks and
20 trade dress, and/or trademarks or trade dress that are confusingly similar to or dilutive of
21 Hershey's famous trademarks.

22 5. Defendant, which operates a business in the State of Washington, sells cannabis,
23 and cannabis-related products, using packaging, trademarks, and terminology that infringe and
24 dilute trademarks and trade dresses owned by, or exclusively licensed to, Hershey (the
25 "Infringing Products").

26 6. Defendant has intentionally traded on the established goodwill of Hershey and
27 its various products and brands in order to enhance the sales and profits associated with the
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1 Infringing Products.

2 7. Defendant's actions have caused, and will continue to cause, consumer
3 confusion as to the source, sponsorship, and/or affiliation of its goods and/or services as being
4 connected with Hershey. Moreover, defendant's actions have caused, and will continue to
5 cause, the dilution of Hershey's trademarks and trade dress.

6 **PARTIES**

7 8. Hershey Company is a corporation organized and existing under the laws of the
8 State of Delaware, with its principal place of business at 100 Crystal A Drive, Hershey,
9 Pennsylvania 17033. Hershey Company is a major manufacturer and seller of chocolate,
10 confectionery and snack products.

11 9. Hershey Chocolate is a corporation organized and existing under the laws of the
12 State of Delaware, with its principal place of business at 4860 Robb Street, Wheat Ridge,
13 Colorado 80033. Hershey Chocolate is a wholly owned subsidiary of Hershey Company and is
14 the owner of the REESE'S trademark and trade dress and the MR. GOODBAR trademark and
15 trade dress.

16 10. Hershey Company sells REESE'S branded products and MR. GOODBAR
17 branded products throughout the United States, including the State of Washington, under a
18 license from Hershey Chocolate.

19 11. On information and belief, defendant Conscious Care Cooperative is a nonprofit
20 corporation organized and existing under the laws of the State of Washington, with a registered
21 address at 14032 Aurora Avenue North #C, Seattle, Washington 98133.

22 12. On information and belief, defendant is engaged in the business of selling
23 products including or incorporating cannabis and/or tetrahydrocannabinol in the State of
24 Washington and within this judicial district.

25 **JURISDICTION AND VENUE**

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

3 14. The Court has subject matter jurisdiction over Hershey's state-law claims under
4 28 U.S.C. § 1367 and, because the amount in controversy exceeds \$75,000 exclusive of interest
5 and costs and there is complete diversity of citizenship, under 28 U.S.C. § 1332.

6 15. The Court has personal jurisdiction over defendant because, upon information
7 and belief, defendant is present and doing business in the State of Washington and this judicial
8 district, and has distributed its infringing products to, and offered its infringing products for
9 sale in, the State of Washington and this judicial district.

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

13 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

14 **A. Hershey's Famous and Valuable REESE'S Trademarks**

15 17. Founded in 1894, Hershey is one of the oldest manufacturers of chocolate and
16 confectionery products in the United States. Today, Hershey Company is one of the leading
17 manufacturers and sellers of chocolate, confectionery and snack products worldwide.

18 18. Among Hershey's flagship brands is the REESE'S family of chocolate and
19 peanut butter products. The iconic REESE'S Peanut Butter Cup, an example of which is
20 shown below, was first introduced in 1928, and is one of the best selling candy products in the
21 United States today.

22 19. For more than 40 years, REESE'S Peanut Butter Cups have been sold
23 throughout the United States in packaging that features a distinctive orange background color
24 and a distinctive combination of orange, yellow and brown. Some examples of the REESE'S
25 trade dress, including current packaging as well as historical nostalgic designs used by
26 Hershey, are shown below:
27



20. The REESE'S family of products also includes, among other products, REESE'S PUFFS cereal, REESE'S PIECES candies, REESE'S Peanut Butter Cup Miniatures, REESE'S NUTRAGEOUS candy bars, REESE'S CRISPY CRUNCHY candy bars, REESE'S FAST BREAK candy bars, REESE'S STICKS wafer bars, and REESE'S BIG CUP Peanut Butter Cups. Like the REESE'S Peanut Butter Cup, each of these products is sold in packaging that contains the distinctive orange background color, with yellow and brown design elements.

21. The REESE'S mark and trade dress are protected by a number of U.S. federal trademark registrations and common law rights (collectively, the "REESE'S Trademarks"). The following is a non-exhaustive list of valid, subsisting and existing U.S. federal registrations in International Class 30 owned by Hershey Chocolate covering the REESE'S mark and/or trade dress, most of which are incontestable under federal law:

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