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16 MONDELÉZ CANADA INC.

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

19 MONDELÉZ CANADA INC.,

20 Plaintiff,

21 v.

22 STONEY PATCH and DOES 1-10,

23 Defendants.

CASE NO.: 2:19-cv-6245

COMPLAINT FOR:

- (1) Trademark Infringement, 15 U.S.C. § 1114(1);
- (2) Trademark Dilution, 15 U.S.C. § 1125(c);
- (3) Trade Dress Infringement and Unfair Competition, 15 U.S.C. § 1125(a);
- (4) Unfair Competition, 15 U.S.C. § 1125(a);
- (5) Trademark Dilution, Cal. Bus. & Prof. Code §§ 14247
- (6) Unfair Competition, Cal. Bus. & Prof. Code §§ 17200 *et seq.*

1 Plaintiff Mondelēz Canada Inc. (“MCI” or “Plaintiff”), for its complaint
2 against Defendants Stoney Patch and Does 1-10 (“Defendants”), by its counsel,
3 alleges as follows.

4 **Nature of the Action**

5 1. There has been a growing trend among makers of cannabis products,
6 including edible products infused with tetrahydrocannabinol (“THC”), to market
7 their products by copying and misappropriating the colors, flavors, names and
8 packaging of popular snacks and candies.

9 2. States across the nation have recognized the danger posed by cannabis
10 products that are designed to appeal to children or that are packaged to look like
11 popular candy or grocery items, and have enacted statutes restricting how such
12 products may be labeled and packaged. In California, the Medicinal and Adult-Use
13 Cannabis Regulation and Safety Act (“MAUCRSA”) expressly prohibits the use of
14 packaging and labeling designed to be appealing to children or to be easily confused
15 with commercially sold candy or foods that do not contain cannabis (*i.e.* MCI’s
16 SOUR PATCH candies).

17 3. In complete disregard of California’s law, of concerns for public safety,
18 and of MCI’s rights, Defendants intentionally have designed their THC gummy
19 products to copy MCI’s long-established SOUR PATCH brand of gummy candies.
20 Defendants have adopted the confusingly similar brand name STONEY PATCH,
21 have copied the look of MCI’s actual product, and have copied the look of the
22 packaging that has long been associated with MCI’s SOUR PATCH candies. Such
23 actions have the effect of making the THC gummy products sold by Defendants
24 more appealing to children and likely to be mistakenly consumed by children.
25 Further, such actions are antithetical to the business and reputation of Plaintiff.

26 4. Defendants, likely recognizing that they are not only violating MCI’s
27 rights, but also California law, have taken a series of deliberate measures to shield
28 themselves from detection by authorities. The packaging of Defendants’ STONEY

1 PATCH gummies does not identify the maker of the gummies. Defendants do not
2 have a website or provide any contact information online. Defendants only maintain
3 an Instagram page where they post pictures of their products, and, upon information
4 and belief, the only way to purchase their products is to agree to purchase them in
5 bulk.

6 5. MCI brings these claims to stop Defendants from using Plaintiff's
7 immediately recognizable SOUR PATCH trademark and trade dress to market and
8 promote THC gummies and from otherwise using MCI's trademarks and trade dress
9 to make the STONEY PATCH gummies more appealing to minors and other
10 consumers. By bringing this suit, MCI seeks to prevent consumers who know and
11 trust MCI's famous brands of candies from being deceived into purchasing
12 Defendants' products and to prevent Defendants from unfairly trading on and
13 tarnishing MCI's rights.

14 6. To stop Defendants' willful infringement of MCI's rights, to prevent
15 the likelihood of consumer confusion caused by Defendants' activities, to prevent
16 harm to the public, and to prevent further dilution and damage to MCI's valuable
17 rights, MCI brings this civil action seeking damages and injunctive relief for willful
18 trademark infringement, dilution, and unfair competition under the laws of the
19 United States, 15 U.S.C. §§ 1051 et seq. (the "Lanham Act"), dilution under Cal.
20 Bus. & Prof. Code § 14247, and unfair competition under Cal. Bus. & Prof. Code §§
21 17200 et seq. MCI seeks injunctive relief; destruction of infringing goods;
22 monetary relief including recovery of Defendants' profits and up to three times the
23 damages sustained by MCI; and an award of attorney's fees as authorized by
24 Sections 34, 35 and 36 of the Lanham Act, 15 U.S.C. §§ 1116-1118 and/or state
25 law, together with such other relief as the Court deems just and proper.

26 **The Parties**

27 7. Plaintiff Mondelēz Canada Inc. is a Canadian corporation with a
28 principal place of business in Ontario, Canada. MCI is the owner of intellectual

1 property rights, including trademarks and trade dress, in and to several of the
2 world's most famous snack and candy brands, including SOUR PATCH gummies,
3 as well as their associated trade dress and packaging.

4 8. Upon information and belief, Defendant Stoney Patch is an entity or
5 individual of unknown origin or location who is systematically conducting and
6 transacting business in this district and is engaged in the activities complained of
7 herein. Specifically, upon information and belief, Stoney Patch is trading off of
8 MCI's SOUR PATCH brand of gummy candies by using the confusingly similar
9 brand name STONEY PATCH and copying the look of the packaging that has long
10 been associated with MCI's SOUR PATCH candies to advertise and sell products in
11 this District. Upon learning of the specific identity of Stoney Patch, Plaintiff will
12 move to substitute the named party or to otherwise amend this Complaint.

13 9. Upon information and belief, Defendants Does 1-10 are the owners,
14 operators, managers and officers of the business entity identified as Stoney Patch,
15 each of whom is systematically conducting and transacting business in this District
16 and is engaged in the activities complained of herein. More specifically, Does 1-10
17 are responsible for using the Stoney Patch name and for appropriating and trading
18 off of MCI's SOUR PATCH trademark and trade dress for their commercial benefit.
19 Defendants are engaged in the misappropriation of MCI's intellectual property
20 rights through advertising and sale of products in and through this District. Upon
21 learning of the specific identify of the individuals, Plaintiff will move to substitute
22 the named parties to or otherwise amend this Complaint.

23 **Jurisdiction and Venue**

24 10. This Court has jurisdiction under Section 39 of the Lanham Act, 15
25 U.S.C. § 1121, and under Sections 1331 and 1338(a) and (b) of the Judicial Code,
26 28 U.S.C. §§ 1331, 1338(a) & (b). Supplemental jurisdiction exists over Plaintiff's
27 state law claims under Section 1367(a) of the Judicial Code, 28 U.S.C. § 1367(a).

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1 11. This Court has personal jurisdiction over Defendants because, upon
2 information and belief, Defendants promote, advertise, ship and sell the infringing
3 products complained of herein to entities and/or individuals located in California,
4 including Kush Spot, located at 1514 North Long Beach Boulevard, Unit B,
5 Compton, California 90221.

6 12. Venue is proper under Section 1391(b) of the Judicial Code, 28 U.S.C.
7 § 1391(b), because a substantial part of the events giving rise to the claims occurred
8 in and are directed to this District. Specifically, upon information and belief,
9 Defendants' marketing and advertising through Instagram reach into California and
10 into this District; their confusion of consumers and dilution of MCI's trademark
11 rights occur in California and in this District; the harm to MCI's trademark rights
12 and goodwill takes place in this District; Defendants sell goods through their
13 Instagram page by way of knowing and repeated communications over the internet,
14 including to customers in California and in this District; and MCI's trademark rights
15 arise from, among other things, its business in this District.

16 **Facts Common to All Claims**

17 **A. Plaintiff and its Iconic SOUR PATCH Brand**

18 13. MCI is a part of the Mondelēz International group of companies, which
19 manufactures and sells some of the most iconic snacks and candies in the U.S.,
20 including SOUR PATCH gummies.

21 14. MCI, through its predecessors, affiliates, and licensees, has been selling
22 SOUR PATCH brand gummies throughout the United States since at least as early
23 as 1985. MCI's SOUR PATCH gummies are one of the bestselling brands of non-
24 chocolate soft and chewy candy in the United States. To illustrate the popularity of
25 SOUR PATCH gummies, Plaintiff sells tens of millions of packages of SOUR
26 PATCH branded gummies in the United States each year. The SOUR PATCH
27 brand is a famous brand and associated exclusively with MCI.

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1 15. Just as famous and well-known as the SOUR PATCH trademark is
2 MCI's packaging for its SOUR PATCH gummies. For decades MCI has packaged
3 its SOUR PATCH KIDS candies in a distinct bag that has a yellow center with
4 green dabs at the edges that allow the yellow to peak through. In the center, are the
5 words SOUR, PATCH, and KIDS stacked one atop the other in the colors green,
6 orange, and red, respectively. In the top left is the slogan "Sour then Sweet." The
7 packaging further shows the appearance of the actual gummy kids around the
8 outside of the packaging (the "Sour Patch Kid Design"). Examples of the SOUR
9 PATCH KIDS trade dress are shown below.



17 16. As evidenced by the above, MCI's trade dress for its packaging
18 maintains a consistent yellow and green color palette; a consistent presentation of
19 the SOUR PATCH mark with SOUR in green lettering stacked atop PATCH in
20 yellow lettering and the entire word mark outlined in black, all placed in the center
21 of the package; representations of the Sour Patch Kid Design placed around the
22 center word mark; and the phrase "Sour Then Sweet" with the words appearing in
23 the different colors.

24 17. Since at least as early as 2012, MCI has used the package design for its
25 SOUR PATCH gummies, shown below. The package retains each of the
26 aforementioned elements of the famous SOUR PATCH KIDS trade dress and
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1 includes the additional element of black silhouettes of the Sour Patch Kid Design in
2 the center of the packaging (collectively the “SOUR PATCH Trade Dress”).



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11 18. Over the period from 2015 to 2018 alone, MCI has sold over 630
12 million packets of SOUR PATCH brand gummies in the SOUR PATCH Trade
13 Dress and bearing the specific Sour Patch Kid Design (collectively the “SOUR
14 PATCH Marks”).

15 19. MCI’s SOUR PATCH products featuring or sold under the SOUR
16 PATCH Marks are available in more than 10,000 stores in the United States ranging
17 from mom-and-pop stores to convenience stores, candy stores, grocery chains
18 including Kroger, Ralphs, and Vons, and mass-market chains, including Walmart,
19 Target, and Costco. As a result, each of the SOUR PATCH Mark, the Sour Patch
20 Kid Design, and the SOUR PATCH Trade Dress have extremely broad brand
21 exposure and a very broad purchaser base.

22 20. MCI or its related and affiliated entities extensively advertise SOUR
23 PATCH products. The advertising consistently uses all of the the SOUR PATCH
24 Marks. Advertising appears in a variety of channels, including television (during
25 such popular programs as “The View,” “The Bachelorette,” and “American Idol”),
26 online (including at <https://www.sourpatch.com/>), social media sites, and couponing
27 and freestanding inserts in print publications. It is estimated that by the end of 2019,
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1 there will have been in excess of three billion media, commercial and online
 2 impressions featuring the SOUR PATCH Marks. MCI and its related and affiliated
 3 entities have spent in excess of \$70 million in advertising and promoting SOUR
 4 PATCH branded product using the SOUR PATCH name, kid design and trade dress
 5 shown above. Advertising by MCI and advertising by MCI’s retail partners
 6 featuring the SOUR PATCH Marks have reached hundreds of millions of
 7 consumers.

8 21. The SOUR PATCH Trade Dress is inherently distinctive. Further, due
 9 to the extensive promotion of MCI’s products and the broad distribution, enormous
 10 volume of sales and advertising of the product, SOUR PATCH Marks have become
 11 well known among consumers and are associated uniquely and exclusively with
 12 MCI.

13 22. The combination of elements that make up the SOUR PATCH Trade
 14 Dress is not functional for purposes of Section 43(a)(3) of the Lanham Act, 15
 15 U.S.C. § 1125(a)(3), as none of the elements making up the SOUR PATCH Trade
 16 Dress are essential to the use or purpose of the underlying products or packaging,
 17 none affect the cost or quality of the product or packaging and, when used
 18 exclusively by MCI, do not put any third parties at a significant non-reputation-
 19 related disadvantage.

20 23. In addition to Plaintiff’s strong common law rights in the SOUR
 21 PATCH mark, Sour Patch Kid Design, and SOUR PATCH Trade Dress, Plaintiff
 22 also owns numerous federal trademark registrations for these designations, including
 23 the following:

| Mark | Goods/Services | Registration Date |
|--------------------------------|-----------------------------------|------------------------------|
| SOUR PATCH Reg. No. 2304261 | “Candy” in International Class 30 | 12/28/1999 |

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|----|---|-----------------------------------|------------|
| 1 | SOUR PATCH KIDS | “Frozen confections” in | 9/11/2012 |
| 2 | Reg. No. 4207065 | International Class 30 | |
| 3 | SOUR PATCH KIDS | “Chewing gum” in International | 9/9/2014 |
| 4 | Reg. No. 4600837 | Class 30 | |
| 5 | SOUR PATCH EXTREME | “Confectionary, namely candy” | 10/17/2006 |
| 6 | Reg. No. 3160364 | in International Class 30 | |
| 7 | SOUR PATCH XPLODERZ | “Confectionary, namely candy” | 10/16/2007 |
| 8 | Reg. No. 3314527 | in International Class 30 | |
| 9 | | “Candy” in International Class 30 | 2/10/2004 |
| 10 |  | | |
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| 12 | | | |
| 13 | Reg. No. 2812019 | | |
| 14 | | | |
| 15 |  | “Candy” in International Class 30 | 7/10/2018 |
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| 20 | Reg. No. 5514097 | | |
| 21 | | “Candy; frozen confections” in | 3/19/2013 |
| 22 |  | International Class 30 | |
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| 26 | Reg. No. 4305345 | | |

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28 (the “SOUR PATCH Registrations”).

1 24. Printouts from the official database of the United States Patent and
2 Trademark Office showing status and title of the SOUR PATCH Registrations are
3 attached as **Exhibit A**.

4 25. The existence of these valid and subsisting federal trademark
5 registrations constitutes prima facie evidence of the ownership and validity of
6 MCI's registered SOUR PATCH marks.

7 26. Moreover, Registration Nos. 2304261, 4207065, 3160364, 3314527,
8 2812019, and 4305345 are incontestable pursuant to 15 U.S.C. § 1065, which
9 constitutes conclusive evidence of MCI's exclusive right to use those marks for the
10 products specified in the registrations pursuant to 15 U.S.C. §§ 1065 and 1115(b).

11 27. The SOUR PATCH Marks are vital assets of MCI, representing not
12 only MCI's goods, but also MCI's worldwide reputation as a purveyor of high
13 quality, family friendly snacks and candies. These marks are the embodiment of
14 MCI's iconic brands, known throughout the United States and beloved by
15 consumers.

16 **B. Defendants' Infringing Activity**

17 28. Upon information and belief, Defendants market and sell THC-infused
18 gummy candies. Upon information and belief, Defendants sell their gummies to
19 physical marijuana dispensaries and individuals throughout California.

20 29. Rather than develop their own brand names and trade dress for their
21 products, Defendants chose to appropriate MCI's trademarks and trade dress to
22 market their THC gummies and to make their product appealing to children.

23 30. Defendants are offering THC gummies under the mark STONEY
24 PATCH in the packaging below (the "Infringing Trade Dress"), which appropriates
25 MCI's registered SOUR PATCH trademark and Sour Patch Kid Design, and is a
26 virtual knockoff of MCI's original SOUR PATCH packaging.

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Defendants:



MCI:



31. Among the dispensaries in this District that have carried, sold, or advertised Defendants' STONEY PATCH THC gummies are Kush Spot, located at 1514 North Long Beach Boulevard, Unit B, Compton, California 90221, and CannaSense Total Wellness Collective, located at 8605 Santa Monica Blvd #48976, West Hollywood, CA 90069.

32. As shown above, the Infringing Trade Dress copies the distinctive elements of the SOOR PATCH Trade Dress, including: a yellow center with green dabs at the edges that allow the yellow to peak through; the placement of a nearly identical brand name in the center of the packaging with each word stacked one atop the other and with the first word in the color green and the bottom word in orange; a slogan located at the top left corner that describes the candy as sour and sweet with the words in the identical colors white, yellow, and red and used in the same order as MCI's slogan on its packaging; images of a gummy that is virtually identical to MCI's Sour Patch Kid Design (the "Stoney Kid Design") that are placed around the center word mark; and black silhouetted designs in the center of the packaging surrounding the word mark.

1 33. Defendants' STONEY PATCH mark is virtually identical in sight,
2 sound and commercial impression to MCI's long-used and federally-registered
3 SOUR PATCH trademark.

4 34. Defendants' Stoney Kid Design is virtually identical in sight and
5 commercial impression to MCI's long-used and federally-registered Sour Patch Kid
6 Design mark.

7 35. Given the fame and recognition of the SOUR PATCH Marks, it is
8 inconceivable that Defendants adopted their STONEY PATCH mark, Stoney Kid
9 Design mark, and packaging without notice of MCI's rights, and the marks and
10 packaging developed by Defendants make it evident that Defendants were fully
11 aware of MCI's rights.

12 36. Even if Defendants could establish a lack of actual notice, a fact belied
13 by the overwhelming similarities in the marks and packaging, by virtue of MCI's
14 registrations for the SOUR PATCH mark, including in the design form used on
15 packaging, and its registrations for the Sour Patch Kid Design, as a matter of law
16 prior to the adoption of the STONEY PATCH name, Stoney Kid Design, and
17 packaging, Defendants were presumed to have been on actual notice of MCI's rights
18 pursuant to 15 U.S.C. § 1072.

19 37. Defendants continue to use the STONEY PATCH mark, Stoney Kid
20 Design, and Infringing Trade Dress in connection with their THC gummies
21 demonstrating their ongoing intent to maintain an association with MCI's SOUR
22 PATCH brand. An example of such use on Defendants' Instagram page is shown
23 below.

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Additional screenshots of Defendants’ use of the STONEY PATCH mark, Stoney Kid Design, and Infringing Trade Dress are attached as **Exhibit B**.

38. Upon information and belief, the only way to purchase Defendants’ STONEY PATCH gummies directly from Defendants is to agree to purchase 1,000 units of the product or more.

39. In designing their original packaging, Defendants intentionally chose to copy MCI’s SOUR PATCH mark, Sour Patch Kid Design, and SOUR PATCH Trade Dress and are intentionally seeking to call to mind MCI’s SOUR PATCH brand of gummies and to trade on the recognition and good will of MCI’s mark and brand.

40. Defendants have never been associated with MCI and have never been authorized to use or to trade on MCI’s marks or trade dress.

41. Defendants’ actions are inconsistent with MCI’s rights and put at risk the goodwill that MCI has built up in its SOUR PATCH Marks.

42. MCI has sent multiple letters to the Manufactured Cannabis Safety Branch of the California Department of Health regarding the sale of Defendants’ STONEY PATCH product, but to date, no action has been taken against Defendants.

1 43. Defendants' continued appropriation of the SOUR PATCH Marks has
2 compelled Plaintiff to initiate this action in order to protect MCI's valuable rights.

3 44. Defendants' conduct is likely to cause consumers to falsely associate
4 Defendants' products with MCI, which products not only have not been approved
5 by MCI but also are not the type of products that MCI would sell, would market or
6 would condone.

7 45. The threat of consumer confusion and irreparable harm to MCI will
8 continue as long as Defendants persist in using an imitation of the SOUR PATCH
9 Marks in connection with their THC gummies.

10 46. Defendants' unauthorized acts as described herein put MCI's reputation
11 at risk, are inconsistent with MCI's federal trademark registrations and common law
12 rights in the SOUR PATCH Marks, will cause and will continue to cause irreparable
13 damage to MCI's business and goodwill, and will harm and deceive the public
14 unless permanently enjoined by this Court. MCI has no adequate remedy at law.

15 **FIRST CLAIM FOR RELIEF:**

16 **Federal Trademark Infringement of the SOUR PATCH Mark**

17 **(15 U.S.C. § 1114(1))**

18 47. Plaintiff repeats and realleges paragraphs 1 through 46 as if fully set
19 forth herein.

20 48. Defendants' STONEY PATCH mark is virtually identical in sight,
21 sound and commercial impression to MCI's long-used and federally-registered
22 SOUR PATCH trademark.

23 49. Defendants' use of STONEY PATCH as a trademark for their THC
24 gummies in light of MCI's prior rights in and to the federally registered mark SOUR
25 PATCH, is likely to deceive consumers and the public as to the source or
26 sponsorship of Defendants' products and is likely to mislead consumers into
27 believing that Defendants' products are manufactured, licensed, sponsored or
28 otherwise approved by Plaintiff or that they feature flavors licensed from Plaintiff.

1 50. Defendants' continued use of the STONEY PATCH mark is in bad
2 faith, and with full knowledge of Plaintiff's prior use of, exclusive rights in and
3 ownership of the registered SOUR PATCH mark, and with full knowledge of the
4 goodwill and reputation associated with the SOUR PATCH mark.

5 51. Defendants' ongoing conduct is intended to reap the benefit of the
6 goodwill that Plaintiff has created in its SOUR PATCH mark and constitutes
7 trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C.
8 § 1114(1).

9 52. Defendants' conduct has caused and is causing immediate and
10 irreparable injury to Plaintiff and will continue to damage Plaintiff unless enjoined
11 by this Court. Plaintiff has no adequate remedy at law.

12 **SECOND CLAIM FOR RELIEF:**

13 **Federal Trademark Infringement of the Sour Patch Kid Design Mark**

14 **(15 U.S.C. § 1114(1))**

15 53. Plaintiff repeats and realleges paragraphs 1 through 52 as if fully set
16 forth herein.

17 54. Defendants' Stoney Kid Design mark is virtually identical in sight and
18 commercial impression to MCI's long-used and federally-registered Sour Patch Kid
19 Design trademark.

20 55. Defendants' use of the Stoney Kid Design as a trademark for their THC
21 gummies in light of MCI's prior rights in and to the federally registered Sour Patch
22 Kid Design mark, is likely to deceive consumers and the public as to the source or
23 sponsorship of Defendants' products and is likely to mislead consumers into
24 believing that Defendants' products are manufactured, licensed, sponsored or
25 otherwise approved by Plaintiff or that they feature flavors licensed from Plaintiff.

26 56. Defendants' continued use of the Stoney Kid Design mark is in bad
27 faith, and with full knowledge of Plaintiff's prior use of, exclusive rights in and
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1 ownership of the registered Sour Patch Kid Design mark, and with full knowledge
2 of the goodwill and reputation associated with the Sour Patch Kid Design mark.

3 57. Defendants' ongoing conduct is intended to reap the benefit of the
4 goodwill that Plaintiff has created in its Sour Patch Kid Design mark and constitutes
5 trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C.
6 § 1114(1).

7 58. Defendants' conduct has caused and is causing immediate and
8 irreparable injury to Plaintiff and will continue to damage Plaintiff unless enjoined
9 by this Court. Plaintiff has no adequate remedy at law.

10 **THIRD CLAIM FOR RELIEF**

11 **Federal Trademark Dilution of Plaintiff's SOUR PATCH Mark**

12 **(15 U.S.C. § 1125(c))**

13 59. Plaintiff repeats and realleges paragraphs 1 through 58 as if fully set
14 forth herein.

15 60. As a result of MCI's extensive use and promotion of the SOUR
16 PATCH mark, the offering of goods under that mark nationwide, the sale of millions
17 of packets of SOUR PATCH branded goods, and the uninterrupted use of the SOUR
18 PATCH mark for decades, the SOUR PATCH mark is famous throughout the
19 United States, highly distinctive of Plaintiff's goods, and widely recognized among
20 the consuming public as a designation of source of Plaintiff's goods.

21 61. The SOUR PATCH Mark became famous long before Defendants
22 commenced their unauthorized use of the STONEY PATCH mark as described
23 herein.

24 62. Defendants' STONEY PATCH mark is substantially similar to MCI's
25 federally-registered SOUR PATCH trademark and otherwise calls to mind MCI's
26 SOUR PATCH trademark.

27 63. Defendants' commercial use of the STONEY PATCH mark to sell
28 THC gummies is likely to dilute Plaintiff's famous SOUR PATCH mark by

1 impairing its distinctiveness, thereby lessening the capacity of the SOUR PATCH
2 mark to identify and distinguish Plaintiff exclusively in violation of Section 43(c) of
3 the Lanham Act, 15 U.S.C. § 1125(c).

4 64. Moreover, Defendants' use of STONEY PATCH, which immediately
5 calls to mind Plaintiff's SOUR PATCH mark, also tarnishes Plaintiff's SOUR
6 PATCH mark by associating Plaintiff's SOUR PATCH brand with a federally
7 controlled substance.

8 65. Upon information and belief, Defendants do not own any federal or
9 state trademark registrations for any mark that includes, in whole or in part, SOUR
10 PATCH or STONEY PATCH and cannot assert any rights in the SOUR PATCH or
11 STONEY PATCH mark that is prior to Plaintiff's.

12 66. Defendants' conduct has caused and is causing immediate and
13 irreparable injury to Plaintiff and will continue to damage Plaintiff unless enjoined
14 by this Court. Plaintiff has no adequate remedy at law.

15 **FOURTH CLAIM FOR RELIEF**

16 **Federal Trade Dress Infringement and Unfair Competition**

17 **(15 U.S.C. § 1125(a))**

18 67. Plaintiff repeats and realleges paragraphs 1 through 66 as if fully set
19 forth herein.

20 68. The SOUR PATCH Trade Dress is used in commerce, is not
21 functional, is inherently distinctive and has acquired secondary meaning in the
22 marketplace.

23 69. The Infringing Trade Dress used by Defendants for their THC gummies
24 is highly similar to the SOUR PATCH Trade Dress in appearance and commercial
25 impression.

26 70. Upon information and belief, Defendants chose the Infringing Trade
27 Dress for their THC gummies with actual knowledge of MCI's prior use of and
28 rights in the well-known and distinctive SOUR PATCH Trade Dress. Upon

1 information and belief, Defendants have used their Infringing Trade Dress in
2 commerce with the intent to cause confusion, to cause mistake or to deceive.

3 71. Defendants' use of the Infringing Trade Dress in connection with their
4 THC gummies is likely to cause confusion, to cause mistake or deception as to the
5 source of their products and is likely to create the false impression that Defendants'
6 products are authorized, sponsored, endorsed, licensed by or affiliated with MCI or
7 otherwise feature flavorings licensed from MCI.

8 72. Defendants' ongoing conduct is intended to reap the benefit of the
9 goodwill that Plaintiff has created in the SOUR PATCH Trade Dress and constitutes
10 willful trade dress infringement and use of a false designation of origin in violation
11 of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

12 73. Defendants' conduct has caused and is causing immediate and
13 irreparable injury to Plaintiff and will continue to damage Plaintiff unless enjoined
14 by this Court. Plaintiff has no adequate remedy at law.

15 **FIFTH CLAIM FOR RELIEF:**

16 **Unfair Competition in Violation of 15 U.S.C. § 1125(a)**

17 74. Plaintiff repeats and realleges paragraphs 1 through 73 as if fully set
18 forth herein.

19 75. Defendants' packaging and promotion of its THC gummies trades on
20 the SOUR PATCH Marks which uniquely and unmistakably point to Plaintiff.

21 76. As a result of Defendants' use of the STONEY PATCH mark and the
22 Infringing Trade Dress, consumers are likely to falsely believe that Defendants'
23 THC gummies are sponsored by, associated with, authorized by, endorsed by, or
24 otherwise connected with Plaintiff, when they are not.

25 77. Defendants' conduct usurps MCI's rights and reputation and places
26 Plaintiff's reputation in Defendants' hands. The harm to Plaintiff's reputation is
27 exceptionally serious because the Defendants are using the STONEY PATCH mark
28 to sell a federally controlled substance. As such, Defendants' conduct constitutes

1 unfair competition under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §
2 1125(a)(1)(A).

3 78. Upon information and belief, Defendants' acts of unfair competition
4 are willful and deliberate with the intent to misappropriate the goodwill and
5 reputation associated with MCI's SOUR PATCH Marks. Defendants' activities in
6 connection with the advertising and promotion of their THC gummies threatens to
7 destroy the value, exclusivity and reputation of MCI's brands and marks.

8 79. Defendants' conduct has caused and is causing immediate and
9 irreparable injury to Plaintiff and will continue to damage Plaintiff unless enjoined
10 by this Court. Plaintiff has no adequate remedy at law.

11 **SIXTH CLAIM FOR RELIEF**

12 **Dilution of Plaintiff's SOUR PATCH Mark under California Law**

13 **(Cal. Bus. & Prof. Code § 14247)**

14 80. Plaintiff repeats and realleges paragraphs 1 through 79 as if fully set
15 forth herein.

16 81. As a result of Plaintiff's extensive use and promotion of the SOUR
17 PATCH mark for decades, the SOUR PATCH mark has become famous in the State
18 of California, is distinctive of Plaintiff, and is widely recognized among consumers
19 as designations of source of Plaintiff's candies.

20 82. Defendants' STONEY PATCH mark is substantially similar to MCI's
21 SOUR PATCH mark and otherwise calls to mind MCI's SOUR PATCH mark.

22 83. Defendants' commercial use of the STONEY PATCH mark in
23 connection with its THC gummies is diluting and is likely to continue to dilute
24 Plaintiff's famous SOUR PATCH mark by impairing its distinctiveness, thereby
25 lessening the capacity of the mark to identify and distinguish Plaintiff exclusively in
26 violation of Cal. Bus. & Prof. Code § 14247.

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1 84. Moreover, Defendants' conduct dilutes Plaintiff's SOUR PATCH mark
2 by tarnishment because it associates Plaintiff's SOUR PATCH brand with a
3 federally controlled substance.

4 85. Defendants' conduct has caused and is causing immediate and
5 irreparable injury to Plaintiff and will continue to damage Plaintiff unless enjoined
6 by this Court. Plaintiff has no adequate remedy at law.

7 **SEVENTH CLAIM FOR RELIEF:**

8 **Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200 et seq.**

9 86. Plaintiff repeats and realleges paragraphs 1 through 85 as if fully set
10 forth herein.

11 87. The aforesaid conduct of Defendants—trademark infringement,
12 trademark dilution, and unfair competition—constitutes unfair competition in
13 violation of Cal. Bus. & Prof. Code §§ 17200 et seq.

14 88. Defendants' aforesaid conduct has caused, and unless enjoined by this
15 Court, will continue to cause, Plaintiff to sustain irreparable damage, loss and injury,
16 for which Plaintiff has no adequate remedy at law.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff respectfully demands judgment as follows:

19 1) That judgment be entered for Plaintiff on each of its claims.

20 2) That a permanent injunction be issued enjoining Defendants and their
21 officers, agents, privies, principals, directors, shareholders, managing agents,
22 owners, licensees, distributors, servants, attorneys, employees, and any companies
23 owned or controlled by any of the Defendants now or in the future, and each of their
24 affiliates, successors and assigns, and all of those in active concert or participation
25 with Defendants who receive notice directly or otherwise, be permanently enjoined
26 and restrained from:

27 a. using MCI's SOUR PATCH mark, Sour Patch Kid Design, the
28 SOUR PATCH Trade Dress, any marks or any trade dress confusingly similar

1 thereto, the STONEY PATCH mark, Stoney Kid Design, the Infringing Trade
2 Dress, or any other trade dress confusingly similar thereto (collectively, the
3 “Prohibited Marks”) in connection with importing, manufacturing, producing,
4 circulating, advertising, distributing, licensing, offering for sale, selling,
5 promoting, or displaying any goods or in connection with the packaging for
6 any goods, including but not limited to THC gummies;

7 b. conducting any activities in the United States that constitute,
8 relate to, refer to or concern the advertising, promotion, manufacture,
9 production, importation, distribution, display, sale or offering for sale of any
10 product or product packaging in any media or format using any Prohibited
11 Marks;

12 c. imitating, copying or making unauthorized use of the SOUR
13 PATCH Marks, including without limitation on any website, social media
14 pages, catalogs or invoices;

15 d. using in any manner in their business or in connection with any
16 products, directly or indirectly, any Prohibited Marks;

17 e. transferring, consigning, selling, shipping or otherwise moving
18 any goods, packaging or other materials in Defendants’ possession, custody
19 or control bearing any of the Prohibited Marks;

20 f. owning, renting, purchasing or otherwise obtaining rights to any
21 internet search term, keyword or social media handle that includes in whole or
22 in part any Prohibited Marks for purposes of promoting Defendants’ products;

23 g. using or registering any of the Prohibited Marks as part of any
24 domain name, uniform resource locator, internet address, or social media
25 account name or handle;

26 h. applying to register, filing, maintaining or retaining any
27 registration or application to register in the United States Patent and
28 Trademark Office or the trademark office of any State any Prohibited Marks;

1 i. using any false designation of origin or false description or
2 representation or any other thing calculated or likely to cause confusion or
3 mistake in the mind of the trade or public or to deceive the trade or public into
4 believing that Defendants' goods are in any way sponsored, licensed,
5 endorsed, or authorized by, or affiliated, associated or connected with,
6 Plaintiff, or originate from Plaintiff;

7 j. doing any other acts or things calculated or likely to cause
8 confusion or mistake in the mind of the public or to lead consumers or others
9 in the ingestible products industry into the belief that the goods provided by
10 Defendants emanate from or originate with Plaintiff, or are somehow
11 sponsored, licensed, endorsed, or authorized by, or affiliated, associated or
12 connected with Plaintiff;

13 k. disposing, destroying, altering, moving, removing, concealing,
14 tampering with or in any manner secreting any business records (including
15 computer records) of any kind, including invoices, correspondence,
16 automotive products of account, receipts or other documentation relating or
17 referring in any manner to the manufacture, advertising, receiving,
18 acquisition, importation, purchase, sale or offer for sale, or distribution of any
19 merchandise offered, distributed or sold under any of the Prohibited Marks;

20 l. engaging in any other activity constituting unfair competition
21 with Plaintiff or constituting an infringement of Plaintiff's SOUR PATCH
22 Marks or packaging or otherwise damaging Plaintiff's goodwill in the SOUR
23 PATCH Marks; and

24 m. assisting, aiding, or abetting any other person or business entity
25 in engaging in or performing any of the activities referred to in the above
26 subparagraphs (a) through (l), or effecting any assignments or transfers,
27 forming new entities or associations or utilizing any other device for the
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1 purpose of circumventing or otherwise avoiding the prohibitions set forth in
2 subparagraphs (a) through (l).

3 3) Directing that Defendants deliver up to Plaintiff for destruction or other
4 disposition, without any compensation to Defendants, all goods, labels, tags, signs,
5 stationery, prints, packages, promotional and marketing materials, advertisements
6 and other materials currently in its possession or under its control incorporating,
7 featuring or bearing any Prohibited Marks.

8 4) Directing such other relief as the Court may deem appropriate to
9 prevent the relevant public and the industry from deriving the erroneous impression
10 that any goods offered for sale or sold by Defendants are authorized by Plaintiff or
11 related in any way to Plaintiff and/or Plaintiff's goods, or that Defendants are
12 otherwise affiliated with Plaintiff.

13 5) Directing Defendants to each file with the Court and serve on counsel
14 for Plaintiff within thirty (30) days after entry of judgment, a sworn written
15 statement setting forth in detail the manner and form in which each Defendant has
16 complied with paragraphs 2 through 4 above.

17 6) Pursuant to 15 U.S.C. § 1117(a), awarding Plaintiff all of Defendants'
18 profits from their acts of infringement and unfair competition and their willful acts
19 of dilution, which amounts shall be trebled based on the infringement of the SOUR
20 PATCH mark in accordance with 15 U.S.C. § 1117(b).

21 7) Pursuant to 15 U.S.C. § 1117(a), awarding Plaintiff its actual damages
22 sustained as a result of Defendants' violations of the Lanham Act, which amount
23 shall be trebled based on the infringement of the SOUR PATCH mark in accordance
24 with 15 U.S.C. § 1117(b).

25 8) Awarding Plaintiff the costs of this action including reasonable
26 attorneys' fees pursuant 15 U.S.C. § 1117(a) and/or applicable state law.

27 9) Awarding Plaintiff interest, including pre-judgment interest, on the
28 foregoing sums.

1 10) Awarding Plaintiff such other and further relief as the Court deems just
2 and proper.

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Respectfully submitted,

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-and-

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