

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CARIBBEAN CREME, INC.,

Plaintiff,

vs.

KRISPY KREME DOUGHNUTS, INC.,
a North Carolina Corporation,

Serve:
Krispy Kreme Doughnuts, Inc.
c/o Corporate Service Company
Registered Agent
327 Hillsborough Street
Raleigh NC 27603

KRISPY KREME DOUGHNUT
CORPORATION, a North Carolina
Corporation,

Serve:
Krispy Kreme Doughnuts Corp.
c/o Corporate Service Company
Registered Agent
327 Hillsborough Street
Raleigh NC 27603

and

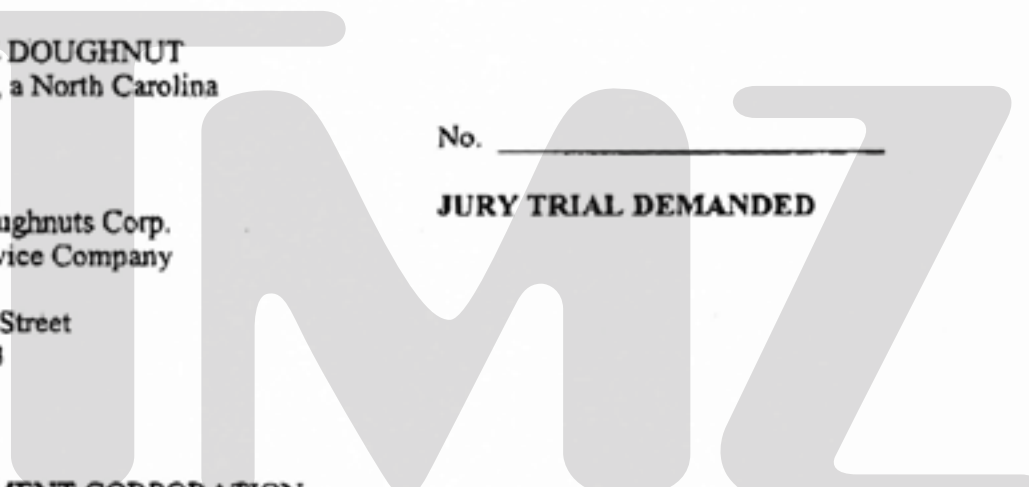
HDN DEVELOPMENT CORPORATION, a
Delaware Corporation,

Serve:
HDN Development Corp.
CSC-Lawyers Incorporating Service Co.
Registered Agent
421 West Main Street
Frankfort, KY

Defendants.

No. _____

JURY TRIAL DEMANDED



COMPLAINT

Plaintiff Caribbean Creme, Inc., hereby submits its Complaint against Defendants Krispy Kreme Doughnuts, Inc., Krispy Kreme Doughnuts Corporation, and HDN Development Corporation.

INTRODUCTION

Plaintiff owns federal and common law trademark rights in the trademark CARIBBEAN CREME for a flavored semi-frozen beverage. Plaintiff seeks injunctive relief, damages, and attorney's fees under the federal Lanham Act, Missouri statutory law, and common law based on Defendants' unauthorized use of "Caribbean Kreme" for a flavored semi-frozen beverage that competes directly with Plaintiff's product.

THE PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Caribbean Creme, Inc. ("Caribbean Creme") is a Missouri Corporation with its principal place of business in St. Louis, Missouri.

2. Defendant Krispy Kreme Doughnuts, Inc., ("KKDI") is a North Carolina Corporation with its principal place of business in Winston Salem, North Carolina.

3. Defendant Krispy Kreme Doughnut Corporation ("KKDC") is a North Carolina Corporation with its principal place of business in Winston Salem, North Carolina. Upon information and belief, KKDC is a wholly-owned subsidiary of KKDI.

4. Defendant HDN Development, Inc. ("HDN") is a Kentucky Corporation with its principal place of business in Wilmington, Delaware. Upon information and belief, HDN is a wholly-owned subsidiary and intellectual property holding company of KKDI.

5. Caribbean Creme asserts claims under sections 32 and 43 of the federal Lanham Act, 15 U.S.C. §§ 1114 and 1125. This Court, therefore, has jurisdiction over this action pursuant to 28 U.S.C. §§ 1338 and 1367, principles of supplemental jurisdiction, and pursuant to

application of Missouri's long-arm statutes, Mo. Rev. Stat. §§ 506.500.

6. Defendants, individually and collectively, conduct business in this District and are thus subject to personal jurisdiction in this Court.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to Caribbean Creme's claims occurred in this District.

ALLEGATIONS COMMON TO ALL COUNTS

8. Since 1994, Caribbean Creme has manufactured and sold a flavored, semi-frozen drink under the trademark CARIBBEAN CREME in Missouri and elsewhere in the United States.

9. Caribbean Creme owns a federal trademark registration for a design mark containing the literal elements CARIBBEAN CRÈME (and Design), U.S. Reg. No. 1,961,679, for "non-dairy, flavored frozen confections and ice cream drinks" (the "'679 Registration"), issued on March 12, 1996. The '679 Registration is valid and incontestable.

10. Caribbean Creme owns valid common law trademark rights in the trademark CARIBBEAN CREME for flavored, semi-frozen beverages in Missouri and throughout the United States based on Caribbean Creme's continuous use and promotion of goods bearing the CARIBBEAN CREME mark since at least 1994.

11. Upon information and belief, Defendant HDN is responsible for selecting, clearing, registering and protecting trademarks to be used by Defendants KKDI and KKDI, and their franchisees, licensees, and other affiliates.

12. Defendants, individually or collectively, own or, through licensing and/or franchise agreements control the use of trademarks by, hundreds of retail stores ("Krispy Kreme Stores") featuring doughnuts and other food items. These stores are located throughout the United States, with five stores located in the St. Louis metropolitan area.

13. Among the products sold in the Krispy Kreme Stores under Defendants' control are flavored frozen or semi-frozen smoothie-type beverages called Chillers.

14. Sometime prior to April 8, 2008, Defendants began advertising a new flavor for the Chillers beverages called "Caribbean Kreme." These advertisements included a prominent placement on Defendant KKDI's home web page, indicating that the "Caribbean Kreme" product would be available for purchase at Krispy Kreme Stores on April 8, 2008 and running through June 2, 2008.

15. On or about April 8, 2008, Krispy Kreme Stores began selling the "Caribbean Kreme" product.

16. Under Defendants' control and authorization, one or more of the Krispy Kreme Stores in St. Louis County is currently selling the "Caribbean Kreme" product and is displaying prominent advertisements for the "Caribbean Kreme" product.

17. Defendants use or authorize and control the use of the "Caribbean Kreme" trademark and control and benefit financially from the sale of the "Caribbean Kreme" product in all of the Krispy Kreme Stores.

18. The "Caribbean Kreme" product competes directly with Caribbean Creme's CARIBBEAN CREME product.

19. Upon information and belief, Defendants were aware of Caribbean Creme's CARIBBEAN CREME trademark, and the rights associated therewith, prior to the use of "Caribbean Kreme" in Defendants advertising and in connection with Defendants' products.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114(1)(a)

20. Caribbean Creme realleges each and every allegation of the preceding paragraphs of this Complaint as if fully set forth herein.

21. Defendants' use of "Caribbean Kreme" has caused and is likely to cause

confusion, cause mistake, or deceive customers and potential customers as to the affiliation, connection or association of the parties and as to the origin, sponsorship, or approval of the parties' products in violation of 15 U.S.C. §§ 1114(1)(a) and thus infringes Caribbean Creme's '679 Registration.

22. Defendants' use of "Caribbean Kreme" was done with a willful disregard of Caribbean Creme's trademark rights.

23. Defendants' wrongful conduct constitutes an "exceptional case" under 15 U.S.C. § 1117(a).

24. Defendants' wrongful conduct has caused and will continue to cause irreparable damages to Caribbean Creme.

WHEREFORE, Caribbean Creme prays for judgment against Defendants on this count and requests the following relief:

- a. A permanent injunction against Defendants and all persons acting in privity or active concert with them, enjoining them from using in any manner "Caribbean Kreme" or any other mark that is confusingly similar to Caribbean Creme's CARIBBEAN CREME trademark;
- b. An order requiring Defendants and all persons acting in privity or active concert with them to deliver to Caribbean Creme for destruction all goods, signs, advertisements, literature, business forms, cards, labels, packages, wrappers, pamphlets, brochures, receptacles, and any other written or printed material in their possession or under their control which bear "Caribbean Kreme";
- c. An order requiring an accounting and award of profits made by Defendants as a result of their use of "Caribbean Kreme";
- d. An order awarding damages sustained by Caribbean Creme as a result of

Defendants' use of "Caribbean Kreme," to be trebled in accordance with 15 U.S.C. § 1117;

- e. An order awarding Caribbean Creme its attorneys' fees pursuant to 15 U.S.C. § 1117;
- f. An order awarding Caribbean Creme interest, costs, and such other relief as the court may deem just and equitable.

COUNT II
FEDERAL UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a)(1)(A)

25. Caribbean Creme realleges each and every allegation of the preceding paragraphs of this Complaint as if fully set forth herein.

26. Defendants' use of "Caribbean Kreme" has caused and is likely to cause confusion, cause mistake, or deceive customers and potential customers as to the affiliation, connection or association of the parties and as to the origin, sponsorship, or approval of the parties' products in violation of 15 U.S.C. §§ 1125(a)(1)(A), and thus infringes Caribbean Creme's rights in its CARIBBEAN CREME mark.

27. Defendants' use of "Caribbean Kreme" was done with a willful disregard of Caribbean Creme's trademark rights.

28. Defendants' wrongful conduct constitutes an "exceptional case" under 15 U.S.C. § 1117(a).

29. Defendants' wrongful conduct has caused and will continue to cause irreparable damages to Caribbean Creme.

WHEREFORE, Caribbean Creme prays for judgment against Defendants on this count and requests the following relief:

- a. A permanent injunction against Defendants and all persons acting in privity or active concert with them, enjoining them from using in any manner "Caribbean

- Kreme" or any other mark that is confusingly similar to Caribbean Creme's CARIBBEAN CREME trademark;
- b. An order requiring Defendants and all persons acting in privity or active concert with them to deliver to Caribbean Creme for destruction all goods, signs, advertisements, literature, business forms, cards, labels, packages, wrappers, pamphlets, brochures, receptacles, and any other written or printed material in their possession or under their control which bear "Caribbean Kreme";
 - c. An order requiring an accounting and award of profits made by Defendants as a result of their use of "Caribbean Kreme";
 - d. An order awarding damages sustained by Caribbean Creme as a result of Defendants' use of "Caribbean Kreme," to be trebled in accordance with 15 U.S.C. § 1117;
 - e. An order awarding Caribbean Creme its attorneys' fees pursuant to 15 U.S.C. § 1117;
 - f. An order awarding Caribbean Creme interest, costs, and such other relief as the court may deem just and equitable.

COUNT III

COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

30. Caribbean Creme realleges each and every allegation of the preceding paragraphs of this Complaint as if fully set forth herein.

31. Defendants' use of "Caribbean Kreme" has caused and is likely to cause confusion, cause mistake, or deceive customers and potential customers as to the affiliation, connection or association of the parties and as to the origin, sponsorship, or approval of the parties' products in violation of the common law of Missouri and other States.

32. Defendants' use of "Caribbean Kreme" was done with a malicious intent to harm

and with a willful disregard of Caribbean Creme and its trademark rights.

33. Defendants' wrongful conduct has caused and will continue to cause irreparable damages to Caribbean Creme.

WHEREFORE, Caribbean Creme prays for judgment against Defendants on this count and requests the following relief:

- a. A permanent injunction against Defendants and all persons acting in privity or active concert with them, enjoining them from using in any manner "Caribbean Kreme" or any other mark that is confusingly similar to Caribbean Creme's CARIBBEAN CREME trademark;
- b. An order requiring Defendants and all persons acting in privity or active concert with them to deliver to Caribbean Creme for destruction all goods, signs, advertisements, literature, business forms, cards, labels, packages, wrappers, pamphlets, brochures, receptacles, and any other written or printed material in their possession or under their control which bear "Caribbean Kreme";
- c. An order awarding damages sustained by Caribbean Creme as a result of Defendants' use of "Caribbean Kreme";
- d. An order awarding Caribbean Creme punitive damages;
- e. An order awarding Caribbean Creme interest, costs, and such other relief as the court may deem just and equitable.

**COUNT IV
TRADEMARK INFRINGEMENT UNDER MO. REV. STAT. § 417.066(1)**

34. Caribbean Creme realleges each and every allegation of the preceding paragraphs of this Complaint as if fully set forth herein.

35. Defendants' use of "Caribbean Kreme" has caused and is likely to cause confusion, cause mistake, or deceive customers and potential customers as to the affiliation,

connection or association of the parties and as to the origin, sponsorship, or approval of the parties' products in violation of Mo. Rev. Stat. § 417.006(1).

36. Defendants' use of "Caribbean Kreme" was done with a malicious intent to harm and with a willful disregard of Caribbean Creme and its trademark rights.

37. Defendants' wrongful conduct has caused and will continue to cause irreparable damages to Caribbean Creme.

WHEREFORE, Caribbean Creme prays for judgment against Defendants on this count and requests the following relief:

- a. A permanent injunction against Defendants and all persons acting in privity or active concert with them, enjoining them from using in any manner "Caribbean Kreme" or any other mark that is confusingly similar to Caribbean Creme's CARIBBEAN CREME trademark;
- b. An order requiring Defendants and all persons acting in privity or active concert with them to deliver to Caribbean Creme for destruction all goods, signs, advertisements, literature, business forms, cards, labels, packages, wrappers, pamphlets, brochures, receptacles, and any other written or printed material in their possession or under their control which bear "Caribbean Kreme";
- c. An order awarding damages sustained by Caribbean Creme as a result of Defendants' use of "Caribbean Kreme";
- d. An order awarding Caribbean Creme punitive damages;
- e. An order awarding Caribbean Creme interest, costs, and such other relief as the court may deem just and equitable.

**COUNT V
TRADEMARK DILUTION UNDER MO. REV. STAT. § 417.061(1)**

38. Caribbean Creme realleges each and every allegation of the preceding paragraphs

of this Complaint as if fully set forth herein.

39. Defendants' use of "Caribbean Kreme" has caused and is likely to cause the dilution of the distinctive quality of Caribbean Creme's CARIBBEAN CREME mark in violation of Mo. Rev. Stat. § 417.061(1).

40. Defendants' wrongful conduct has caused and will continue to cause irreparable damages to Caribbean Creme.

WHEREFORE, Caribbean Creme prays for judgment against Defendants on this count and requests the following relief:

- a. A permanent injunction against Defendants and all persons acting in privity or active concert with them, enjoining them from using in any manner "Caribbean Kreme" or any other mark that is confusingly similar to Caribbean Creme's CARIBBEAN CREME trademark;
- An order awarding Caribbean Creme interest, costs, and such other relief as the court may deem just and equitable.

JURY DEMAND

Plaintiff requests a trial by jury on all issues so triable.

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