

1 Novaira T. Paul (SBN#316508)
2 PATTISHALL, MCAULIFFE, NEWBURY,
3 HILLIARD & GERALDSON LLP
4 200 South Wacker Drive, Suite 2900
5 Chicago, IL 60606
6 (312) 554-8000
7 ntp@pattishall.com

8 Eugene L. Hahm (SBN#167596)
9 PRANGER LAW PC
10 88 Guy Place, Suite 405
11 San Francisco, CA 94105
12 (415) 885-9800
13 ehahm@prangerlaw.com

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 FERRARA CANDY COMPANY,
17 Plaintiff,

18 vs.

19 YAUHENIYA LIS, d/b/a
20 GASBUDS and DOES 1-10 d/b/a
21 GASBUDS,
22 Defendants.

23 Civil Action No.: 2:21-cv-08511

24 **COMPLAINT FOR:**

- 25 **1. FEDERAL COUNTERFEITING;**
- 26 **2. FEDERAL TRADEMARK**
- 27 **INFRINGEMENT;**
- 28 **3. FEDERAL UNFAIR**
- COMPETITION;**
- 4. FEDERAL TRADEMARK**
- DILUTION;**
- 5. FEDERAL TRADE DRESS**
- INFRINGEMENT;**
- 6. CALIFORNIA UNFAIR**
- COMPETITION;**
- 7. CALIFORNIA TRADEMARK**
- DILUTION;**
- 8. CALIFORNIA COMMON LAW**
- UNFAIR COMPETITION**

1 **COMPLAINT**

2 This is an action for counterfeiting, trademark infringement, unfair competition,
3 dilution, and trade dress infringement in violation of federal and California state law.

4 **PARTIES**

5 1. Plaintiff Ferrara Candy Company is an Illinois corporation, having offices
6 at 404 West Harrison Street, Chicago, Illinois 60607 (“Ferrara”).

7 2. On information and belief, defendant Yauheniya Lis is a resident of Los
8 Angeles, California, who is doing business as GasBuds, which is an incorporated
9 California business with offices in San Fernando, California, with a website located at
10 gasbuds.com.

11 3. On information and belief, Does 1-10 are persons and/or entities who also
12 do business as GasBuds at gasbuds.com (hereinafter, Yauheniya Lis and Does 1-10 are
13 referred to collectively as “GasBuds”).

14 **JURISDICTION AND VENUE**

15 4. This Court has jurisdiction because (1) this is an action arising under the
16 Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051, *et seq.* (the Lanham Act),
17 jurisdiction being conferred in accordance with 15 U.S.C. § 1121 and 28 U.S.C. §§
18 1331, 1338, and 1367; and (2) this is a civil action between a citizen of California on
19 one side and a citizen of Illinois on the other side, in which the value of the amount in
20 controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest
21 and costs, jurisdiction being conferred in accordance with 28 U.S.C. § 1332.

22 Jurisdiction for the claims made under California state law is conferred in accordance
23 with the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

24 5. Venue is proper in this district under 28 U.S.C. § 1391(b) because a
25 substantial part of the events giving rise to the claims alleged herein occurred in this
26 district, and under 28 U.S.C. § 1391(c) because GasBuds is subject to this Court’s
27 personal jurisdiction for purposes of this case.

FACTS

FERRARA’S PRODUCTS AND FAMOUS TRADEMARKS

6. Ferrara is a recognized global leader in confections, and, together with its affiliates, makes, distributes, markets, and sells throughout the United States numerous well-known, distinctive, and famous candy products, including under the NERDS, TROLLI, and SWEETARTS brands.

7. The NERDS, TROLLI, and SWEETARTS candy brands have achieved enormous commercial success as reflected by their extensive sales, which have been supported by significant marketing and promotional campaigns throughout the United States, including in California.

Ferrara’s Famous NERDS Marks and Trade Dress

8. Since the 1980s, Ferrara has manufactured, marketed, and sold NERDS candy products, in different flavors and style variations, under the famous NERDS mark and NERDS trade dress. The trade dress differs slightly across the different products, but consistently features, among other things, (a) the word mark NERDS in block, slanted lettering, with a capital “R” that appears to be falling, (b) in front of a predominantly blue cloud, (c) with character versions of the NERDS candies playing on the package, and (d) images of the candy itself on the bottom right-hand corner of the package (the “NERDS Trade Dress”).




9. Currently, Ferrara manufactures, markets and sells four lines of NERDS products: NERDS candy; BIG CHEWY NERDS candy; NERDS ROPE candy; and its latest, NERDS GUMMY CLUSTERS candy, which all incorporate the NERDS Trade Dress. Representative images of these products appear below:





10. Since long prior to GasBuds' acts complained of herein, Ferrara has made continuous use of the trademarks NERDS, **Nerds**, and NERDS ROPE (collectively, "NERDS Marks"), and the NERDS Trade Dress, in connection with candy products.

11. Ferrara owns, among many others, the following federal trademark registrations issued by the United States Patent and Trademark Office for the NERDS Marks and NERDS character used on NERDS candy packaging:

MARK	REG. NO.	REG. DATE	RELEVANT GOODS
NERDS	2,209,131	December 8, 1998	Candy
	4,400,174	September 10, 2013	Candy
	4,400,153	September 10, 2013	Candy
	4,414,355	October 8, 2013	Candy

12. These registrations are valid, subsisting, and incontestable, and constitute conclusive evidence of Ferrara’s exclusive right to use the NERDS Marks for the goods specified in the registrations. 15 U.S.C. §§ 1065, 1115(b). The marks shown in these federal registrations, combined with the common-law trademark rights in NERDS, are hereinafter collectively referred to as the “NERDS Marks.”

Ferrara’s Famous TROLLI Marks and Trade Dress

13. Ferrara and its predecessors have long marketed, distributed, and sold candy and related products under the famous TROLLI mark and trade dress. The trade dress features, among other things, (a) the word mark TROLLI in stylized, slanted white bubble lettering with a pink inner outline and a black outer outline, (b) the flavor of the TROLLI candies written in bubble letters underneath the “TROLLI” name, (c) over a window-like image that shows the candies’ shapes and colors, and (d) with black on the top and the bottom of the packaging (hereinafter, the “TROLLI Trade Dress”).

14. Ferrara currently markets and sells several lines of TROLLI products: TROLLI CRAWLERS candy; TROLLI unique shape candy (such as Watermelon Sharks, Strawberry Puffs, and Octopus); and TROLLI classic shape candy (such as

1 PeachieO’s and AppleO’s). Representative images of some of these products appear
 2 below.



11 15. Since long prior to GasBuds’ acts complained of herein, Ferrara has made
 12 continuous use of the TROLLI trademark and TROLLI Trade Dress in connection
 13 with candy products.

14 16. Ferrara owns, among many others, the following federal trademark
 15 registrations issued by the United States Patent and Trademark Office for TROLLI
 16 marks:

MARK	REG. NO.	REG. DATE	RELEVANT GOODS
TROLLI	1,285,440	July 10, 1984	Candy
TROLLI SQUIGGLES	2,146,247	March 24, 1998	Candy
TROLLI OCTOPUS	2,140,787	March 3, 1998	Candy
TROLLI CATERPILLARS	2,140,788	March 3, 1998	Candy
TROLLI SODA POPPERS	3,976,070	June 7, 2011	Candy
TROLLI MAKES YOUR DAY	4,027,028	September 13, 2011	Candy
TROLLI EXTREME SOUR BRITES	4,709,231	March 24, 2015	Candy
TROLLI SOUR BRITE	4,941,337	April 9, 2016	Candy
TROLLI	5,004,764	July 19, 2016	Lip balm

TROLLI	5,445,125	April 10, 2018	Backpacks; Apparel; Ornamental patches
TROLLI	5,618,982	November 27, 2018	Key chains; Clothing; Ornamental novelty pins

17. These registrations are valid and subsisting. All of these registrations (with the exception of Reg. Nos. 4941337, 5004764, 5445125, and 5618982) are incontestable, and constitute conclusive evidence of Ferrara’s exclusive right to use the TROLLI Marks for the goods specified in the registrations. 15 U.S.C. §§ 1065, 1115(b). The marks shown in these federal registrations, combined with the common-law trademark rights in TROLLI are hereinafter collectively referred to as the “TROLLI Marks.”

Ferrara’s Famous SWEETARTS Marks and Trade Dress

18. Ferrara and its predecessors have long marketed, distributed, and sold candy and related products under the famous SWEETARTS mark and trade dress. The SWEETARTS trade dress features, among other things, (a) the word SWEETARTS in stylized lettering, (b) where the letters in “SWEE” are bright pink with a capital S at the beginning of the word, and cursive W and Es, all outlined in white, (c) the letters “ARTS” are in blue block, capital letters outlined in white, (d) the “T” in the middle is capitalized, half pink and half blue, on (e) packaging which, depending on the specific product, is primarily blue, or pink, or half blue and half pink, and (f) showing the candy (for example, rope-looking pieces), and, on some, the fruit that represents the candy flavor (hereinafter the “SWEETARTS Trade Dress”).


19. Ferrara currently makes, distributes, and markets four lines of SWEETARTS products: SWEETARTS candy; SWEETARTS ROPES candy; SWEETARTS ROPES BITES candy; and SWEETARTS MINI CHEWY candy. Representative images of these products appear below.



20. Since long prior to GasBuds' acts complained of herein, Ferrara has made continuous use of the SWEETARTS trademarks and SWEETARTS Trade Dress in connection with candy products.

21. Ferrara owns, among many others, the following federal trademark registrations issued by the United States Patent and Trademark Office for SWEETARTS marks:

MARK	REG. NO.	REG. DATE	RELEVANT GOODS
<i>SweetTARTS</i>	947,983	November 28, 1972	Candy
GIANT CHEWY <i>SweetTARTS</i>	1,120,654	June 19, 1979	Candy
CHWY <i>SweetTARTS</i>	1,274,474	April 17, 1984	Candy
SWEETARTS	2,336,949	April 4, 2000	Candy

1	SWEETARTS	5,095,989	December 6, 2016	Frozen confections
2		5,162,582	March 14, 2017	Candy

3
4 22. These registrations are valid and subsisting. All of these registrations (with
5 the exception of Reg. Nos. 5,162,582 and 5,095,989) are incontestable, and constitute
6 conclusive evidence of Ferrara's exclusive right to use the SWEETARTS trademarks
7 for the goods specified in the registrations. 15 U.S.C. §§ 1065, 1115(b). The marks
8 shown in these federal registrations, combined with the common-law trademark rights
9 in SWEETARTS, are hereinafter collectively referred to as the "SWEETARTS Marks."

10 23. Ferrara is the exclusive owner of the NERDS Marks, TROLLI Marks, and
11 SWEETARTS Marks (collectively, the "Ferrara Trademarks") and the NERDS Trade
12 Dress, TROLLI Trade Dress, and SWEETARTS Trade Dress (collectively, the "Ferrara
13 Trade Dress") and all of their related goodwill throughout the United States.

14 24. Ferrara has marketed candy products bearing the Ferrara Trademarks and
15 Ferrara Trade Dress to parents as a fun and enjoyable treat for children of all ages.
16 Therefore, Ferrara would never condone or authorize the use of the Ferrara Trademarks
17 and Ferrara Trade Dress in connection with products that could be harmful to children.

18 25. The Ferrara Trademarks and Ferrara Trade Dress are strong and distinctive
19 marks that are immediately recognized by the public as brand indicators of, and
20 associated with, Ferrara's products.

21 26. As a result of Ferrara's extensive sales, promotion, and advertising of
22 candy products under the NERDS, TROLLI, and SWEETARTS brands, the Ferrara
23 Trademarks and Ferrara Trade Dress have become famous among the general
24 consuming public of the United States, and represent an extraordinarily valuable
25 goodwill owned by Ferrara.
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THE UNAUTHORIZED DISTRIBUTION OF THC-INFUSED PRODUCTS
UNDER THE FERRARA MARKS AND FERRARA TRADE DRESS

27. Recently, many bad actors, including the Defendant, have sought to benefit from the goodwill embodied by the Ferrara Trademarks and Ferrara Trade Dress, and in doing so are endangering consumers’ well-being.

28. The bad actors have infused NERDS ROPE candy with THC, often more than 400 milligrams— *more than 40 adult servings of THC*; TROLLI APPLE O’S candy with 600 milligrams of THC – *more than 60 adult servings of THC*; and SWEETARTS candy with 500 milligrams of THC – *more than 50 adult servings of THC*. Under California law, edible cannabis products (such as cookies and gummies) have a THC limit of 10 milligrams per serving. California Bus. & Prof. Code, Ch. 13 § 26130. Ferrara has not consented, and never would consent, to such uses of its NERDS, TROLLI, or SWEETARTS Marks, or the trade dress associated with the products sold under these marks, and, in fact, is actively enforcing its marks against such uses to protect its consumers from inadvertent consumption of THC.

29. These bad actors label the THC-infused NERDS ROPE candy as “Medicated Nerds Rope,” as shown in the example below:



1 30. The Medicated Nerds Rope packaging is highly similar to the packaging
2 used by Ferrara for its NERDS ROPE candies, as shown below:

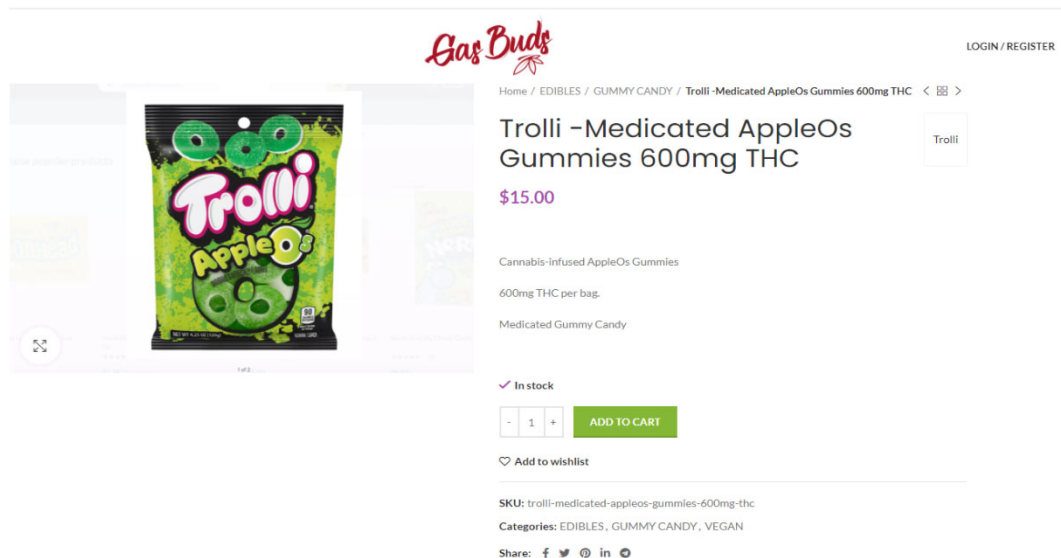
3 **Ferrara's Product**





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9
10 **Defendants' Product**



16 31. These same bad actors are using packaging nearly identical to genuine
17 packaging for TROLLI candy for their THC-infused TROLLI APPLE-OS, such as
18 "Trolli – Medicated Apple O's," as shown in the example below from Defendant's
19 website:
20



32. The Trolli Medicated Apple O’s packaging is virtually identical to the packaging used by Ferrara for its TROLLI candies, except for the addition of “THC 600 mg” in the right corner and a California cannabis sign in the lower left corner:

Ferrara’s Product	Defendants’ Product
	

33. These bad actors have also labeled THC-infused SWEETARTS candy as “WeedTarts Rope Bites,” as shown below:



34. As shown in the comparison below, the WeedTarts Rope Bites packaging is highly similar to the packaging used by Ferrara for its SWEETARTS candies:



35. Unsurprisingly, consumers are likely to be and actually have been confused by the similar product packaging of the THC-infused candy and have been led to believe, mistakenly, that these THC-infused candy products are authorized, endorsed by, or affiliated with Ferrara.

36. As a result of the confusion between Ferrara's NERDS ROPE candy and the unauthorized THC-infused Medicated Nerds Rope, for example, children have become sick from ingesting the unauthorized THC-infused Medicated Nerds Rope. Even more alarming, there have been multiple reports of children being rushed to emergency rooms after unknowingly consuming THC when they mistakenly ate THC-infused Medicated Nerds Rope.

37. The unauthorized sale of THC-infused candy products is a health hazard to the consuming public, especially children.

38. Indeed, states across the United States have recognized the hazard posed by cannabis products that are designed to appeal to children or that are packaged to look like popular candy or grocery items, and have enacted statutes restricting how such products may be labeled and packaged.

1 39. In California, for example, the Medicinal and Adult-Use Cannabis
2 Regulation and Safety Act expressly prohibits the use of packaging and labeling
3 designed to be appealing to children or to be easily confused with commercially sold
4 candy or foods that do not contain cannabis, and so would prohibit the sale of
5 Medicated Nerds Rope, Trolli Medicated Apple-Os and WeedTarts Ropes Bites.

6 **GASBUDS’ SALE OF UNAUTHORIZED THC-INFUSED FERRARA**
7 **PRODUCTS**

8 40. Ferrara recently learned that GasBuds is engaged in the marketing,
9 offering for sale, sale, and distribution of THC-infused candy products that counterfeit
10 the NERDS and TROLLI marks and infringe the Ferrara Trademarks and the Ferrara
11 Trade Dress, thereby causing damage to Ferrara and harm to the public due to the
12 illegal and unauthorized imitation of the packaging of Ferrara’s famous candy products.

13 41. GasBuds sells, promotes, distributes, or otherwise contributes to the sale,
14 promotion, and distribution of cannabis products online via its website located at
15 <https://www.gasbuds.com/>. GasBuds offers its products to consumers located in the
16 State of California, including this District.

17 42. As of the date of this filing, GasBuds is offering at least five THC-infused
18 products that violate Ferrara’s rights in the Ferrara Trademarks and Ferrara Trade
19 Dress: (1) “Medicated Nerds Rope 400mg THC” (sold in four flavors: Blueberry,
20 Grape, Strawberry, and “What-a-Melon”); (2) “Medicated Trolli Cherry Bombers
21 600mg THC”; (3) “Trolli – Medicated AppleOs Gummies 600mg THC”; (4)
22 “Medicated Trolli Sour Crawlers Very Berry 600mg”; and (5) “Medicated WeedTarts
23 Ropes Bites 500mg THC” (collectively, the “Infringing Products”), which are shown in
24 the below images from GasBuds’ website:
25
26
27
28

gasbuds.com/product/medicated-nerds-rope-grape-400mg-thc/

MENU



Home / EDIBLES / GUMMY CANDY

< >



Medicated Nerds Rope – Grape 400MG THC

★★★★★ (2 customer reviews)

\$15.00

A sweet medicated candy and gummy edible so tasty, words can't even describe. Made in a variety of flavors from Strawberry, Blueberry, Cherry, and Grape, Medicated Nerds Rope infused with 400mg THC in each rope. Altogether, these medicated gummy ropes covered in Wonka's delicious, crunchy nerds satisfy both your sweet tooth and body. After all, the perfect treat after a long day of work.

Effects

- Pain Relief
- Reduces Inflammation
- Promotes Sleep

Wonka's Nerd Ropes Flavors

- Strawberry
- Blueberry
- Cherry
- Grape



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← → ↻ gasbuds.com/product/trolli-medicated-appleos-gummies-600mg-thc/ ☆

☰ MENU



Home / EDIBLES / GUMMY CANDY

< ☰ >

Trolli

Trolli - Medicated AppleOs Gummies 600mg THC

\$15.00

Cannabis-infused AppleOs Gummies

600mg THC per bag.

Medicated Gummy Candy

✓ In stock

- 1 +

ADD TO CART

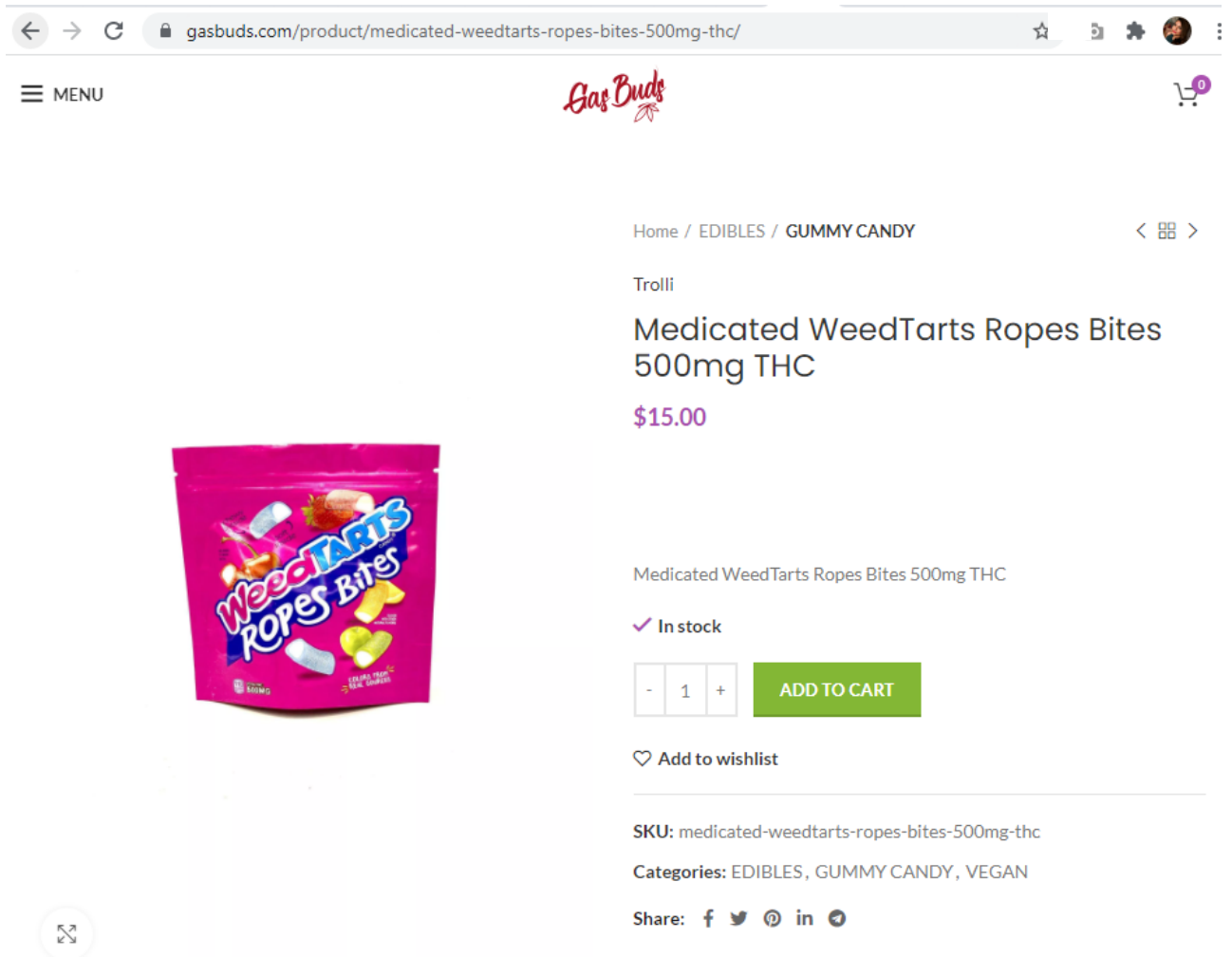
♥ Add to wishlist

SKU: trolli-medicated-appleos-gummies-600mg-thc

Categories: EDIBLES, GUMMY CANDY, VEGAN

Share: [f](#) [t](#) [p](#) [in](#) [e](#)

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43. GasBuds knowingly and willfully uses variations on the names and packaging of Ferrara’s famous candy products, including as shown above, to trade upon the goodwill in the Ferrara Marks and Ferrara Trade Dress to give GasBuds’ cannabis-infused products a salability they would not otherwise have.

44. Ferrara does not produce, distribute, or sell any candy products containing THC/cannabis, nor has it authorized any other entity, including GasBuds, to do so.

**FIRST CLAIM FOR RELIEF
(COUNTERFEITING OF THE NERDS AND TROLLI MARKS IN VIOLATION
OF SECTION 32 OF THE LANHAM ACT)**

45. Ferrara re-alleges paragraphs 1 through 17, 23 through 32, and 35 through 44, as if fully set forth herein.

1 46. Ferrara owns exclusive, registered rights in and to the NERDS and
2 TROLLI Marks for candy.

3 47. GasBuds uses in commerce, markets, and offers for sale edible THC-
4 infused candy bearing the identical NERDS and TROLLI Marks, and GasBuds' use of
5 those marks in association with candies constitutes trademark counterfeiting in
6 violation of 15 U.S.C. § 1114.

7 48. GasBuds' use of the counterfeit marks in advertising, offering for sale,
8 selling, and distributing its cannabis-infused candy products is likely to cause
9 confusion, mistake, or deception as to source, affiliation, or sponsorship of the goods.

10 49. The imitation, copying, and unauthorized use of the registered NERDS and
11 TROLLI Marks causes irreparable injury to Ferrara, including injury to its business
12 reputation and the goodwill associated with these marks.

13 50. GasBuds has used the NERDS and TROLLI Marks for its counterfeit
14 products with full knowledge of, and in willful disregard of Ferrara's rights in these
15 trademarks, and with the intent to obtain a commercial advantage that GasBuds would
16 otherwise not have. GasBuds' acts greatly and irreparably damage Ferrara and will
17 continue to so damage Ferrara unless restrained by this Court; wherefore, Ferrara is
18 without an adequate remedy at law. Accordingly, Ferrara is entitled to, among other
19 things, an order enjoining and restraining GasBuds from selling any products bearing
20 the NERDS and TROLLI Marks, as well as to GasBuds' profits, Ferrara's reasonable
21 attorneys' fees, and any other remedies provided by 15 U.S.C. §§ 1116 and 1117.

22
23 **SECOND CLAIM FOR RELIEF**
24 **(TRADEMARK INFRINGEMENT IN VIOLATION OF**
SECTION 32 OF THE LANHAM ACT)

25 51. Ferrara re-alleges paragraphs 1 through 44 as if fully set forth herein.

26 52. Without Ferrara's consent, GasBuds has used the NERDS and TROLLI
27 Marks, and an imitation of the SWEETARTS Marks, in commerce in connection with
28 the sale, offering for sale, distribution, and/or advertising of candy infused with THC.

1 These acts have caused or are likely to cause confusion, mistake, or deception as to the
2 source of origin, sponsorship, or approval of the Infringing Products that GasBuds sells,
3 in that purchasers and others are likely to believe Ferrara authorizes and controls
4 GasBuds' sale of cannabis infused candy products in the United States or that GasBuds
5 is associated with or related to Ferrara.

6 53. GasBuds' acts are likely to injure and, on information and belief, have
7 injured Ferrara's image and reputation with consumers in the United States by creating
8 confusion about the source of the Infringing Products, and dissatisfaction with Ferrara.

9 54. GasBuds' acts are likely to injure and, on information and belief, have
10 injured Ferrara's business reputation and relations with retail accounts in the United
11 States by causing customer dissatisfaction, a diminution in value of the goodwill
12 associated with the Ferrara Trademarks, and a loss of Ferrara's sales and market share
13 to its competition.

14 55. GasBuds' acts constitute an infringement of Ferrara's trademark rights in
15 violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

16 56. GasBuds' acts greatly and irreparably damage Ferrara and will continue to
17 so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an
18 adequate remedy at law. Accordingly, Ferrara is entitled to, among other things, an
19 order enjoining and restraining GasBuds from selling any products bearing the Ferrara
20 Trademarks, or any imitation thereof, as well as to GasBuds' profits, Ferrara's
21 reasonable attorneys' fees, and any other remedies provided by 15 U.S.C. §§ 1116 and
22 1117.

23
24 **THIRD CLAIM FOR RELIEF**
25 **(UNFAIR COMPETITION IN VIOLATION OF**
SECTION 43(a) OF THE LANHAM ACT

26 57. Ferrara re-alleges paragraphs 1 through 44 as if fully set forth herein.

27 58. Without Ferrara's consent, GasBuds has used the NERDS and TROLLI
28 Marks, and an imitation of the SWEETARTS Mark, as well as the Ferrara Trade Dress

1 associated with these products, in commerce in connection with the sale, offering for
2 sale, distribution, and/or advertising of candy infused with THC. These acts have
3 caused or are likely to cause confusion, mistake, or deception as to the source of origin,
4 sponsorship, or approval of the Infringing Products that GasBuds sells, in that
5 purchasers and others are likely to believe Ferrara authorizes and controls GasBuds'
6 sale of THC-infused candy products in the United States or that GasBuds is associated
7 with or related to Ferrara.

8 59. On information and belief, GasBuds' sale, offering for sale, distribution,
9 and/or advertising of the Infringing Products bearing the Ferrara Trademarks and
10 Ferrara Trade Dress in the United States have been committed deliberately and
11 willfully, with knowledge of Ferrara's exclusive rights and goodwill in the Ferrara
12 Trademarks and with a bad faith intent to cause confusion and trade on Ferrara's
13 goodwill.

14 60. GasBuds' acts constitute unfair competition in violation of Section 43(a)
15 of the Lanham Act, 15 U.S.C. § 1125(a).

16 61. GasBuds' acts greatly and irreparably damage Ferrara and will continue to
17 so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an
18 adequate remedy at law. Accordingly, Ferrara is entitled to, among other things, an
19 order enjoining and restraining GasBuds from selling any products bearing the Ferrara
20 Trademarks and Ferrara Trade Dress, or any imitation thereof, as well as to GasBuds'
21 profits, Ferrara's reasonable attorneys' fees and any other remedies provided by 15
22 U.S.C. §§ 1116 and 1117.

23 **FOURTH CLAIM FOR RELIEF**
24 **(DILUTION IN VIOLATION OF SECTION 43(c) OF THE LANHAM ACT)**

25 62. Ferrara re-alleges paragraphs 1 through 44 as if fully set forth herein.

26 63. The Ferrara Trademarks are inherently distinctive, famous, and are widely
27 recognized by the general consuming public of the United States as a designation of
28 source of Ferrara's confectionary products.

1 the candies sold under the NERDS, TROLLI, and SWEETARTS Marks in connection
2 with the Ferrara Trade Dress.

3 71. Without Ferrara's consent or authorization, GasBuds promotes, sells,
4 offers to sell, and distributes the Infringing Products bearing Ferrara Trade Dress in the
5 United States, including through its website.

6 72. The colors, stylized wording, and elements of the packaging used with
7 GasBuds' THC-infused products and bearing the NERDS and TROLLI marks, and an
8 imitation of the SWEETARTS mark, were intentionally designed to simulate Ferrara's
9 packaging for its NERDS, TROLLI, and SWEETARTS candies in that the colors and
10 words are displayed in the substantially identical layout and position, providing the
11 immediate commercial impression that the Infringing Products emanate from or would
12 be associated with Ferrara and its genuine candy products.

13 73. In fact, Trolli Medicated AppleO's Gummies are virtually identical to
14 Ferrara's TROLLI APPLE O's. The only difference between Ferrara's authentic
15 TROLLI APPLE O's and GasBuds' cannabis-infused Trolli Medicated AppleO's
16 Gummies is the small THC logo in the bottom corner of the packaging.

17 74. GasBuds' use of the Ferrara Trademarks and Ferrara Trade Dress as part
18 of its packaging constitutes trade dress infringement under 15 U.S.C. § 1125,
19 intentionally designed to deceive consumers into believing that these candies are
20 manufactured or authorized by Ferrara, thereby causing confusion as to the source and
21 origin of the Infringing Products.

22 75. GasBuds' acts greatly and irreparably damage Ferrara and will continue to
23 so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an
24 adequate remedy at law. If not restrained, GasBuds will have unfairly derived and will
25 continue to unfairly derive income, profits, and business opportunities as a result of
26 their acts of dilution. Accordingly, Ferrara is entitled to, among other things, an order
27 enjoining and restraining GasBuds from selling any products bearing the Ferrara
28 Trademarks and Ferrara Trade Dress, or any imitation thereof, as well as to GasBuds'

1 profits, Ferrara's reasonable attorneys' fees, and any other remedies provided by 15
2 U.S.C. §§ 1116 and 1117.

3 **SIXTH CLAIM FOR RELIEF**
4 **(UNFAIR COMPETITION IN VIOLATION OF**
5 **CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 et seq.)**

6 76. Ferrara re-alleges paragraphs 1 through 44 as if fully set forth herein.

7 77. Without Ferrara's consent, GasBuds has appropriated for its own use the
8 Ferrara Trademarks and Ferrara Trade Dress.

9 78. GasBuds has used the Ferrara Trademarks and Ferrara Trade Dress in
10 commerce in connection with the sale, offering for sale, distribution, and/or advertising
11 of its cannabis-infused candy products. These acts have caused or are likely to cause
12 confusion, mistake, or deception as to the source of origin, sponsorship, or approval of
13 the Infringing Products that GasBuds sells, in that purchasers and others are likely to
14 believe Ferrara authorizes and controls GasBuds' sale of certain THC-infused candy
15 products in California or that GasBuds is associated with or related to Ferrara.

16 79. GasBuds' acts are likely to injure and, on information and belief, have
17 injured Ferrara's image and reputation with consumers in California by creating
18 confusion about the source of the Infringing Products.

19 80. GasBuds' acts are likely to injure and, on information and belief, have
20 injured Ferrara's business reputation and relations with retail accounts in California by
21 causing customer dissatisfaction, a diminution in value of the goodwill associated with
22 the Ferrara Trademarks, and a loss of Ferrara's sales and market share to its
23 competition.

24 81. On information and belief, GasBuds' sale, offering for sale, distribution,
25 and advertising of the Infringing Products in the California have been committed
26 deliberately and willfully, with knowledge of Ferrara's exclusive rights and goodwill in
27 the Ferrara Trademarks and Ferrara Trade Dress and with a bad faith intent to cause
28 confusion and trade on Ferrara's goodwill.

1 82. GasBuds' acts constitute unfair competition in violation of California
2 Business and Professions Code §§ 17200 *et seq.*

3 83. GasBuds' acts greatly and irreparably damage Ferrara and will continue to
4 so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an
5 adequate remedy at law. Accordingly, Ferrara is entitled to, among other things, an
6 order enjoining and restraining GasBuds from selling any products bearing the Ferrara
7 Trademarks and Ferrara Trade Dress, or any imitation thereof, as well as to GasBuds'
8 profits and other remedies provided by California Business and Professions Code §§
9 17200 *et seq.*

10 **SEVENTH CLAIM FOR RELIEF**
11 **(DILUTION IN VIOLATION OF CALIFORNIA BUSINESS**
12 **AND PROFESSIONS CODE §§ 14330-14335)**

13 84. Ferrara re-alleges paragraphs 1 through 44 as if fully set forth herein.

14 85. The Ferrara Trademarks are inherently distinctive, famous, and are widely
15 recognized by the general consuming public of the United States and California as a
16 designation of source of Ferrara's confectionary products.

17 86. GasBuds' acts as described herein began after the Ferrara Trademarks
18 became famous and have diluted the distinctive quality of the famous Ferrara
19 Trademarks in violation of California Business and Professions Code §§ 14330-14335.

20 87. On information and belief, GasBuds' sale, offering for sale, distribution,
21 and/or advertising of the Infringing Products bearing the Ferrara Trademarks in
22 California have been committed deliberately and willfully, with knowledge of Ferrara's
23 exclusive rights and goodwill in the famous Ferrara Trademarks and with a bad faith
24 intent to cause dilution of the Ferrara Trademarks.

25 88. GasBuds' acts greatly and irreparably damage Ferrara and will continue to
26 so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an
27 adequate remedy at law. If not restrained, GasBuds will have unfairly derived and will
28 continue to unfairly derive income, profits, and business opportunities as a result of

1 GasBuds' acts of dilution. Accordingly, Ferrara is entitled to, among other things, an
2 order enjoining and restraining GasBuds from selling any products bearing the Ferrara
3 Trademarks, or any imitation thereof, as well as to GasBuds' profits and other remedies
4 provided by California Business and Professions Code §§ 14330-14335.

5
6 **EIGHTH CLAIM FOR RELIEF**
7 **(UNFAIR COMPETITION IN VIOLATION**
8 **OF CALIFORNIA COMMON LAW)**

9 89. Ferrara re-alleges paragraphs 1 through 44 as if fully set forth herein.

10 90. Without Ferrara's consent, GasBuds has appropriated for its own use the
11 Ferrara Trademarks and Ferrara Trade Dress.

12 91. GasBuds has used the Ferrara Trademarks in commerce in connection with
13 the sale, offering for sale, distribution, and/or advertising of several cannabis-infused
14 candy products. These acts have caused or are likely to cause confusion, mistake, or
15 deception as to the source of origin, sponsorship, or approval of GasBuds' products that
16 GasBuds sell in that purchasers and others are likely to believe Ferrara authorizes and
17 controls GasBuds' sale of the Infringing Products in California or that GasBuds is
18 associated with or related to Ferrara.

19 92. GasBuds' acts are likely to injure and, on information and belief, have
20 injured Ferrara's image and reputation with consumers in the United States by creating
21 confusion about the Infringing Products.

22 93. GasBuds' acts are likely to injure and, on information and belief, have
23 injured Ferrara's business reputation and relations with retail accounts in California by
24 causing customer dissatisfaction, a diminution in value of the goodwill associated with
25 the Ferrara Trademarks and Ferrara Trade Dress, and a loss of Ferrara's sales and
26 market share to its competition.

27 94. On information and belief, GasBuds sale, offering for sale, distribution,
28 and/or advertising of the Infringing Products bearing the Ferrara Trademarks and
Ferrara Trade Dress in California have been committed deliberately and willfully, with

1 knowledge of Ferrara's exclusive rights and goodwill in the Ferrara Trademarks and
2 Ferrara Trade Dress and with a bad faith intent to cause confusion and trade on
3 Ferrara's goodwill.

4 95. GasBuds' acts constitute unfair competition in violation of California
5 common law.

6 96. GasBuds' acts greatly and irreparably damage Ferrara and will continue to
7 so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an
8 adequate remedy at law. Accordingly, Ferrara is entitled to, among other things, an
9 order enjoining and restraining GasBuds from selling any products bearing the Ferrara
10 Trademarks and Ferrara Trade Dress, or any imitation thereof, as well as to GasBuds'
11 profits and other remedies provided by California law.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Ferrara prays that this Court:

14 1. Enter judgment that GasBuds has violated the Lanham Act, 15 U.S.C.
15 §§ 1114, 1125; California Business and Professions Code 17200, *et seq*, and 14247;
16 and California common law, and that such violations were willful and intentional,
17 making this an exceptional case;

18 2. Issue a preliminary and permanent injunction enjoining and restraining
19 GasBuds, its successors, assigns, affiliates, subsidiaries, officers, employees, agents,
20 representatives, and all others in active concert or participation with it, from directly or
21 indirectly engaging in (a) any further counterfeiting of the Ferrara Trademarks; (b) any
22 further trademark infringement, trademark dilution, trade dress infringement, unfair
23 competition, or deceptive business practices, including making, offering for sale,
24 distributing, or selling any products that feature the Ferrara Trademarks and/or Trade
25 Dress or colorable imitations thereof; and (c) doing any other act calculated or likely to
26 induce or cause confusion or the mistaken belief that GasBuds or its products are in
27 any way affiliated, connected, or otherwise associated with Ferrara and its products;
28

1 3. Require GasBuds, and all others holding by, through or under
2 GasBuds, be required, jointly and severally, to:

- 3 a. account for and pay over to Ferrara all profits derived by Defendant
4 from its acts of trademark counterfeiting, trademark infringement,
5 trade dress infringement, and unfair competition in accordance with
6 15 U.S.C. § 1117(a) and California common law, and Ferrara asks
7 that this award be trebled in accordance with 15 U.S.C. § 1117(a);
- 8 b. pay statutory damages in the amount of \$2,000,000 per counterfeit
9 mark per type of good sold, offered for sale, or distributed for
10 GasBuds' willful counterfeiting of the Ferrara Trademarks pursuant
11 to 15 U.S.C. § 1117(c)(2);
- 12 c. pay to Ferrara the costs of this action, together with reasonable
13 attorneys' fees and disbursements, in accordance with 15 U.S.C.
14 § 1117(a);
- 15 d. pay to Ferrara any pre-judgment interest on all damages;
- 16 e. destroy all of the THC-infused candy products bearing the Ferrara
17 Trademarks and Ferrara Trade Dress in their possession, including
18 packaging, and any advertising, marketing, or promotional
19 materials that include references to the NERDS Marks and Trade
20 Dress, TROLLI Marks and Trade Dress, and SWEETARTS Marks
21 and Trade Dress, including for the "WeedTarts" products;
- 22 f. send a notice to any existing customers that the importation,
23 dealing in, sale, marketing, or distribution of THC-infused candy
24 products bearing the Ferrara Trademarks or Ferrara Trade Dress, or
25 any facsimile thereof, is unlawful and that Defendant has been
26 enjoined by a United States District Court from doing so; and
- 27 g. file with the Court and serve on Ferrara an affidavit setting forth in
28 detail the manner and form in which Defendants have complied

1 with the terms of the injunction, in accordance with 15 U.S.C.
2 § 1116.

3 3. Ferrara have such other and further relief as the Court deems just and
4 equitable.

5 Dated: October 27, 2021

Respectfully submitted,

6
7 By: s/Eugene Hahm

8 **PRANGER LAW PC**
9 Eugene L. Hahm
10 88 Guy Place, Suite 405
11 San Francisco, CA 94105
12 (415) 885-9800
13 ehahm@prangerlaw.com

14 **PATTISHALL, MCAULIFFE,**
15 **NEWBURY, HILLIARD & GERALDSON**
16 **LLP**
17 Phillip Barendolts
18 Jessica B. Ekhoff
19 Novaira T. Paul
20 200 S. Wacker Dr., Ste. 2900
21 Chicago, IL 60606
22 (312) 554-8000
23 pb@pattishall.com
24 jbe@pattishall.com
25 ntp@pattishall.com
26
27
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