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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

COUNTRYMARK REFINING )  
AND LOGISTICS, LLC, )  
an Indiana limited liability company )

Plaintiff, )

v. )

Case No. 1:16-cv-972

COOP FUELS INC., )  
a Colorado corporation )

Defendant. )

**COMPLAINT AND JURY DEMAND**

For its Complaint against Defendant COOP Fuels Inc. (“Defendant”), Plaintiff Countrymark Refining and Logistics, LLC (“Countrymark”), through the undersigned, states and alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for direct and contributory trademark infringement, false designation of origin, and unfair competition arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and the statutes and common law of the State of Indiana.

**THE PARTIES**

2. Countrymark is an Indiana limited liability company with its principal place of business in Indianapolis, Indiana.

3. Defendant is a Colorado corporation with its principal place of business in Morrisville, North Carolina.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121(a) because Countrymark's claims arise under the Lanham Act.

5. This Court has supplemental jurisdiction over Countrymark's Indiana state law and common law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367(a) because those claims are joined with substantial and related claims under the Lanham Act, and are so related to the claims under the Lanham Act that they form part of the same case or controversy under Article III of the United States Constitution.

6. The exercise of *in personam* jurisdiction over Defendant comports with the laws of the State of Indiana and the constitutional requirements of due process because Defendant and/or its agents transact business, and/or offer to transact business within Indiana. For example, Defendant offers for sale, sells, and distributes E85 fuel and flex fuel blender pumps capable of dispensing high ethanol blends of gasoline. In addition Defendant applied for and received a \$120,000+ grant to install its pumps in various Indiana locations via an application it submitted to the Hoosier Homegrown Fuels Program, an initiative launched by the Indiana Office of Energy Development and the Indiana Corn Marketing Council. An article from the Spring 2016 edition of the *Indiana Corn & Soybean Review* describing the foregoing is attached as **Exhibit A**.

7. This Court also has personal jurisdiction over Defendant because Defendant has committed tortious acts in Indiana causing injury to Countrymark in Indiana. For example, as alleged below, Defendant has, without authorization, advertised, offered for sale, sold, and distributed flex fuel blender pumps and fuel using a designation likely to be confused with

Countrymark's iconic CO-OP Mark (defined below) which has caused injury to Countrymark in Indiana.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1) and 1391(c)(2) because Defendant is subject to personal jurisdiction in this District.

**ALLEGATIONS RELEVANT TO ALL COUNTS**

**A. Countrymark and its CO-OP Mark.**

9. Countrymark is a farmer owned cooperative, which operates an American-owned oil exploration, production, refining, and marketing company. It sources crude oil from the Illinois basin, which covers parts of three different states in the Midwest. Countrymark's refinery, located in southwestern Indiana, sends finished fuels through a 238-mile privately-owned pipeline to fuel terminals along the route.

10. Through its cooperative member distribution channels, Countrymark sells fuel (including high ethanol blends) to a variety of industries, including agriculture, public entities (such as municipalities, school corporations, and county highway departments), and locally-based commercial fleets.

11. Countrymark's members operate 110 retail locations and 200 delivery routes to provide fuel to consumers (including businesses and the public) throughout several states.

12. Countrymark and its member-licensees began providing these services under Countrymark's iconic CO-OP Mark at least as early as 1991, pictured below:



The CO-OP Mark is still in use today by a number of Countrymark's licensees.

13. Countrymark owns two federal trademark registrations for the CO-OP Mark. Specifically, Countrymark owns U.S. Registration No. 2,657,529 for the CO-OP Mark (the “‘529 Registration”) in connection with “petroleum products, namely gasoline, diesel fuel oil, and light distillate heating oil” in International Class 4 and “[t]ransportation and delivery of gasoline, diesel fuel, light distillate heating oil and other petroleum products” in International Class 39. Additionally, Countrymark owns U.S. Registration 2,679,308 for the CO-OP Mark (the “‘308 Registration”, and together with the ‘529 Registration, the “CO-OP Registrations”) in connection with (among other things) “business consulting services in the field of agriculture; and distributorship services in the field of agricultural commodities; retail store services featuring petroleum products” in International Class 35. The foregoing goods and services associated with the CO-OP Registrations are referred to as the “Countrymark Goods and Services”. Copies of the relevant Certificates of Registration are attached as **Exhibit B**. Copies of the relevant ownership records reflecting the chain of title of the CO-OP Registrations are attached as **Exhibit C**.

14. The CO-OP Registrations are incontestable and constitute conclusive evidence of validity of the CO-OP Mark and Countrymark’s (and its licensees’) exclusive right to use the CO-OP Mark in commerce.

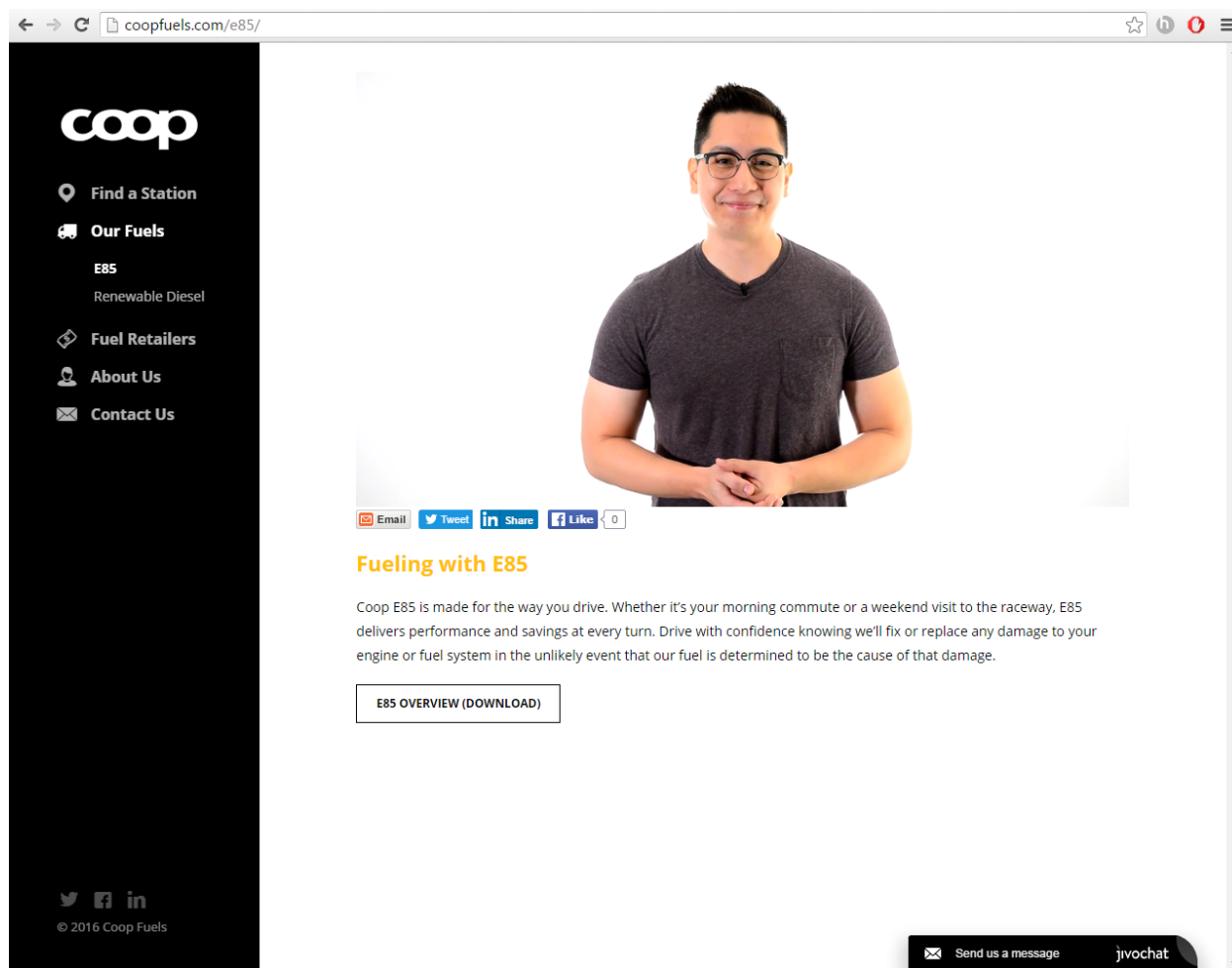
15. Countrymark has expended great sums of money and substantial effort establishing, promoting and protecting the CO-OP Mark over the years. Through continuous and extensive use and promotion of the CO-OP Mark, and through the exercise of control over the quality of goods and services offered thereunder, the CO-OP Mark has amassed substantial and valuable goodwill and consumer recognition. Consumers closely associate the distinctive and valuable CO-OP Mark with Countrymark and the Countrymark Goods and Services.

16. Under federal law, Countrymark’s nationwide priority in the CO-OP Mark dates back to at least as early as October 31, 1991.

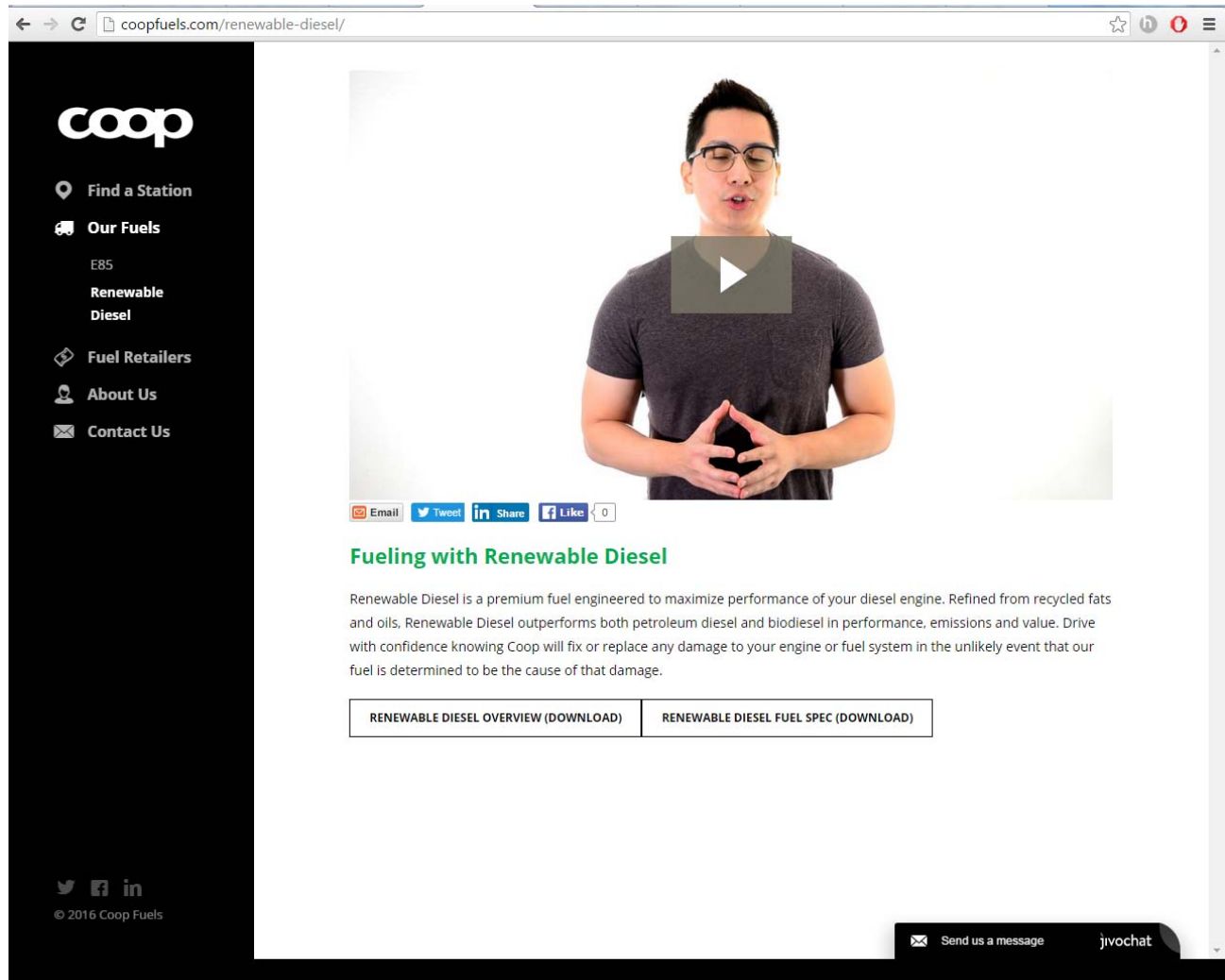
17. Countrymark has not authorized Defendant to use the CO-OP Mark in any manner whatsoever.

**B. Defendant and Its Wrongful Conduct.**

18. Defendant is unlawfully using the designation COOP (the “Infringing Mark”) in connection with its sale of an E85 ethanol fuel blend, as depicted below:



19. Defendant is unlawfully using the Infringing Mark in connection with its sale of renewable diesel, as depicted below:



20. Defendant is unlawfully using the Infringing Mark in connection with its (i) distribution of COOP-branded flex fuel dispensers to its retail partners' locations and (ii) its rebranding of existing tanks and dispensers for its retail partners, as depicted below:

**Pump Switch**

**Do you have a diesel, kerosene, or other underperforming underground tank?**

Renewable fuels can turn your underutilize tank into a new profit center. Coop is interested in partnering and repurposing your underground tank to renewable fuels. Coop will handle all related costs for the process in-exchange for a profit share arrangement.

Coop carries general liability insurance, will provide the fuel on consignment, while using its proven marketing program to grow volume at your location(s).

**1 Fuel Tank.** If you're considering, your existing underground tank will have to be drained, cleaned, and put back into use based on the current product in the tank.

**2 Fuel Dispenser.** Depending on your existing dispenser, it might require our company to replace it with a more biofuel compatible dispenser, which we will purchase.

**3 Rebranding.** Once we complete the repurpose of the tank and or dispenser, we will look to rebrand them so customer know this is a Coop partnered location.

**Kerosene Conversion to Biofuels**

21. Defendant's use of the Infringing Mark in connection with the above goods and services is likely to cause confusion, mistake, or deception in the market as to the source or origin of Defendant's goods, and to falsely suggest that Defendant and its goods are sponsored by, connected to, or associated with Countrymark.

22. In addition to directly infringing Countrymark's rights in the CO-OP Mark, Defendant has also knowingly induced and materially contributed to its retail partners' unauthorized adoption and use of the Infringing Mark in connection with the above goods and services.

23. Defendant continues to supply its fuel and dispensers to its retail partners despite the fact that Defendant knows that its retailer partners are engaging in trademark infringement by offering fuel under the Infringing Mark and via dispensers displaying the Infringing Mark.

24. Defendant and Defendant's retail partners commenced use of the Infringing Mark in connection with fuel long after Countrymark's priority date of October 31, 1991.

25. The Infringing Mark is phonetically identical to the CO-OP Mark.

26. Countrymark first informed Defendant of Countrymark's superior rights in the CO-OP Mark by letter dated April 15, 2016. In that letter Countrymark requested that Defendant cease using the Infringing Mark in connection with the provision of its goods and services and expressed a willingness to allow Defendant a reasonable amount of time to make the change. At the time, Countrymark did not seek damages. A copy of the letter is attached as **Exhibit D**.

27. Notwithstanding the April 15, 2016 letter, Defendant continues its unlawful use of the Infringing Mark and continues to encourage, induce, and materially contribute to its retail partners' unlawful use of the same.

28. Countrymark has no control over the quality or value of the goods and services Defendant and its retail partners market, promote, distribute, offer for sale, and sell under the Infringing Mark. The invaluable goodwill represented in the CO-OP Mark is thereby wrongfully at the mercy of Defendant and its retail partners.

29. By using the Infringing Mark without authorization, and by knowingly inducing and materially contributing to its retail partners' unauthorized use of the same, Defendant is and has been willfully and intentionally trading upon the goodwill in the CO-OP Mark that Countrymark developed at its considerable expense and effort. Defendant thereby has caused and is causing Countrymark substantial and irreparable harm and injury.

**COUNT I**  
**(Infringement of Federally Registered Marks – 15 U.S.C. § 1114)**

30. Countrymark repeats and realleges the preceding paragraphs as if fully set forth herein.



31. Defendant is not authorized to use Countrymark's registered CO-OP Mark or any mark confusingly similar to or that in any way represents or implies that Defendant's goods and services are in any way associated with Countrymark

32. Nevertheless, Defendant has used and continues to use in commerce the Infringing Mark in connection with its goods and services.

33. Defendant's unauthorized use of the Infringing Mark as alleged herein constitutes trademark infringement in violation of 15 U.S.C. § 1114. Defendant's use of the Infringing Mark is likely to cause confusion, mistake and/or deception as to the source or origin of Defendant's goods and services, and has falsely suggested that Defendant and its goods and services are sponsored by, connected to, or associated with Countrymark.

34. Defendant's wrongful use of the Infringing Mark is knowing, deliberate, and willful.

35. As a direct and proximate result of Defendant's actions described herein, Countrymark has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until the Court preliminary and permanently enjoins Defendant's actions. Countrymark has no adequate remedy at law.

36. As a direct and proximate result of Defendant's actions described herein, Countrymark is entitled to a monetary recovery under 15 U.S.C. § 1117 in an amount to be proven at trial.

37. This is an exceptional case, making Countrymark eligible for an award of attorneys' fees under 15 U.S.C. § 1117.

**COUNT II**

**(False Designation of Origin and Unfair Competition – 15 U.S.C. § 1125(a))**

38. Countrymark repeats and realleges the preceding paragraphs as if fully set forth herein.

39. Defendant's unauthorized use of the Infringing Mark as alleged herein constitutes false designation of origin in violation of 15 U.S.C. § 1125(a). Defendant's use of the Infringing Mark is likely to cause confusion, mistake and/or deception as to the source or origin of Defendant's goods and services, and to falsely suggest that Defendant and its goods and services are sponsored by, connected to, or associated with Countrymark.

40. Defendant's wrongful use of the Infringing Mark is knowing, deliberate, and willful.

41. As a direct and proximate result of Defendant's actions described herein, Countrymark has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until the Court preliminarily and permanently enjoins Defendant's actions. Countrymark has no adequate remedy at law.

42. As a direct and proximate result of Defendant's actions described herein, Countrymark is entitled to a monetary recovery under 15 U.S.C. § 1117 in an amount to be proven at trial.

43. This is an exceptional case, making Countrymark eligible for an award of attorneys' fees under 15 U.S.C. § 1117.

**COUNT III**

**(Contributory Trademark Infringement)**

44. Countrymark repeats and realleges the preceding paragraphs as if fully set forth herein.

45. Defendant's retail partners advertise, promote, offer to sell, and sell fuel provided by Defendant under the Infringing Mark via fuel dispensers branded with the Infringing Mark without authorization from Countrymark.

46. This unauthorized use of the Infringing Mark by Defendant's retail partners constitutes trademark infringement in violation of 15 U.S.C. § 1114 and false designation of origin in violation of 15 U.S.C. § 1125(a). Defendant's retailer partners' use of the Infringing Mark is likely to cause confusion, mistake and/or deception as to the source or origin of Defendant's retail partners' goods, and to falsely suggest that Defendant's retail partners and their goods are sponsored by, connected to, or associated with Countrymark.

47. Defendant has knowingly induced and materially contributed to its retail partners' unauthorized adoption and use of the Infringing Mark in connection with fuel and the dispensers for fuel.

48. At the time that Defendant first induced, encouraged and facilitated its retailer partners' adoption of the Infringing Mark in connection with fuel and the dispensers for fuel, Defendant knew or should have known that the retail partners' adoption and use of the Infringing Mark was unauthorized and without Countrymark's consent.

49. Defendant continues to supply its fuel to its retail partners and continues to rebrand fuel dispensers despite the fact that Defendant knows that its retailer partners are engaging in trademark infringement by offering fuel under the Infringing Mark without Countrymark's consent.

50. Defendant's conduct thus constitutes contributory infringement and contributory false designation of origin under the Lanham Act.

51. Defendant's conduct is and has been willful, intentional and purposeful, in disregard of Countrymark's rights.

52. As a direct and proximate result of Defendant's actions described herein, Countrymark has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until the Court preliminarily and permanently enjoins Defendant's actions. Countrymark has no adequate remedy at law.

53. As a direct and proximate result of Defendant's actions described herein, Countrymark is entitled to a monetary recovery under 15 U.S.C. § 1117 in an amount to be proven at trial.

**COUNT IV**  
**(Common Law Unfair Competition)**

54. Countrymark repeats and realleges the preceding paragraphs as if fully set forth herein.

55. Defendant's unauthorized use of the Infringing Mark as alleged herein constitutes common law unfair competition. Defendant's use of the Infringing Mark is likely to cause confusion, mistake and/or deception as to the source or origin of Defendant's goods and services, and to falsely suggest that Defendant and its goods and services are sponsored by, connected to, or associated with Countrymark.

56. Defendant's wrongful use of the Infringing Mark is knowing, deliberate, and willful.

57. As a direct and proximate result of Defendant's actions described herein, Countrymark has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until the Court preliminarily and permanently enjoins Defendant's actions. Countrymark has no adequate remedy at law.

58. As a direct and proximate result of Defendant's actions described herein, Countrymark has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial.

**COUNT V**  
**(Deception – Indiana Code § 35-43-5-3(a)(6))**

59. Countrymark repeats and realleges the preceding paragraphs as if fully set forth herein.

60. By engaging in the knowing, intentional, deliberate, willful, and malicious actions described above, Defendant has disseminated to the public information that Defendant knows is false, misleading, or deceptive, with the intent to promote Defendant's business and/or commercial interests.

61. Defendant has therefore committed deception under Indiana Code Section 35-43-5-3(a)(6).

62. As a direct and proximate result of Defendant's actions described herein, Countrymark has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until the Court preliminarily and permanently enjoins Defendant's actions. Countrymark has no adequate remedy at law.

63. As a direct and proximate result of Defendant's actions described herein, Countrymark has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial.

**COUNT VI**  
**(Conversion – Indiana Code § 35-43-4-3)**

58. Countrymark repeats and realleges the preceding paragraphs as if fully set forth herein.

59. By engaging in the knowing, intentional, deliberate, willful, and malicious actions described above, Defendant has exerted unauthorized control over the CO-OP Mark with the intent to deprive Countrymark of its benefit.

60. Defendant has therefore committed conversion as defined under Indiana Code § 35-43-4-3.

61. As a direct and proximate result of Defendant's actions described herein, Countrymark has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until the Court preliminarily and permanently enjoins Defendant's actions. Countrymark has no adequate remedy at law.

62. As a direct and proximate result of Defendant's actions described herein, Countrymark has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial.

**COUNT VII**  
**(Indiana Crime Victim's Relief Act– Indiana Code § 35-24-3-1)**

63. Countrymark repeats and realleges the preceding paragraphs as if fully set forth herein.

64. Under the Indiana Crime Victims' Act, Indiana Code Section 35-24-3-1, a person that suffers pecuniary loss as a result of the violation of Indiana Code Sections 35-43 *et seq.*, may bring a civil action against the person who caused the loss for treble damages, costs of the action, and reasonable attorneys' fees.

65. As set forth herein, Defendant has violated Indiana Code Section 35-43-5-3 through Defendant's knowing, intentional, deliberate, willful, and malicious commission of deception.

66. Countrymark is the victim of Defendant's deception, conversion, and other knowing, intentional, deliberate, willful, and malicious actions set forth herein, and, as a result, has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial.

67. Countrymark is accordingly entitled to an award of those actual damages as well as statutory treble damages, corrective advertising damages, costs, and reasonable attorneys' fees.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Countrymark Refining and Logistics, LLC respectfully requests that judgment be entered in its favor and prays:

A. That this Court preliminarily and permanently enjoin Defendant and each of its retail partners, affiliates, associates, agents, servants and employees, and all others acting in concert with Defendant, from directly, indirectly, contributorily, or vicariously infringing the CO-OP Mark, from any and all use of COOP or any mark confusingly similar to the CO-OP Mark or that in any way represents or implies that Defendant's goods and services are in any way associated with Countrymark, and from otherwise engaging in unfair competition or deception;

B. That this Court order Defendant to pay to Countrymark such damages as Countrymark has sustained by reason of Defendant's willful trademark infringement, false designation of origin, unfair competition, deception, conversion, and other wrongful conduct;

C. That this Court order Defendant to account for and to pay Countrymark all profits derived by Defendant by reason of the acts complained of herein;

D. That this Court treble all profits and damages owing to Countrymark due to (i) Defendant's willful trademark infringement and false designation of origin pursuant to 15 U.S.C. § 1117(a), and (ii) Defendant's deception pursuant to Indiana Code § 35-24-3-1;

E. That this Court order Defendant to pay Countrymark its reasonable attorneys' fees and costs pursuant to 15 U.S.C. §§ 1117(a) and Indiana Code § 35-24-3-1; and

F. That this Court award Countrymark such other further relief as this Court deems just.

**DEMAND FOR JURY TRIAL**

Countrymark respectfully requests a trial by jury on all issues raised by this Complaint.

Dated: April 29, 2016

Respectfully submitted,

*s/ Louis T. Perry*

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