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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

CIRCLE CITY MARKETING & DISTRIBUTING, INC. D/B/A CANDY DYNAMICS)	Civil Action No. 1:20-CV-325
)	
Plaintiff,)	
)	JURY TRIAL DEMANDED
v.)	
)	
JELLY BELLY CANDY COMPANY)	
)	
Defendant.)	

**CIRCLE CITY MARKETING & DISTRIBUTING, INC.’s
COMPLAINT AND JURY DEMAND**

Plaintiff, Circle City Marketing & Distributing, Inc., doing business as Candy Dynamics (“Candy Dynamics”) for its Complaint against the Defendant, Jelly Belly Candy Company (“Jelly Belly”), alleges as follows:

Parties

1. Candy Dynamics is an Indiana corporation having its principal place of business at 9700 North Michigan Road, Carmel, Indiana 46032.
2. Upon information and belief, Defendant Jelly Belly is a California company having its principal place of business at One Jelly Belly Lane, Fairfield, California 94533.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction under Section 39 of the Trademark Act of 1946, 15 U.S.C. §§ 1121 (the “Lanham Act”), and 28 U.S.C. §§ 1331 and 1338.
4. This Court has personal jurisdiction over Jelly Belly because *inter alia* Jelly Belly conducts regular, continuous and systematic business in this Judicial District by selling, shipping

and otherwise distributing its Bean Boozled branded candy products to retailers located in this Judicial District. For example, Jelly Belly's website (<https://www.jellybelly.com/store-locator>) lists 32 separate retail locations within 10 miles of Indianapolis, Indiana where consumers can purchase Jelly Belly's products, including the infringing Bean Boozled products which are the subject of this Complaint. Exhibit A.

5. Venue in this Judicial District with respect to the claims set forth herein against Jelly Belly is proper pursuant to 28 U.S.C. § 1391(b).

6. Jelly Belly may be served via its registered agent CT Corporation System, whose address is 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

STATEMENT OF FACTS

A. Candy Dynamics and Its Mark

7. Candy Dynamics has been in the business of selling candy for over 20 years.

8. Candy Dynamics offers a number of different product lines, including its highly successful TOXIC WASTE® line of sour candy.

9. At least as early as 2001, Candy Dynamics began using a mark consisting of a two-tone pattern of alternating angled stripes (often appearing in yellow and black) on its advertising and packaging (the "Hazard Stripe Mark").



10. Since at least 2001, Candy Dynamics has used the Hazard Stripe Mark in conjunction with the marketing and sale of its various candy products, including its Toxic Waste® line of products.

11. Candy Dynamics markets and sells its candy products, including those with the Hazard Stripe Mark, for sale in specialty stores, retail locations, grocery stores, online and in numerous other locations where candy is typically sold.

12. Stores which sell Candy Dynamic's products, including those products having the Hazard Stripe Mark, are located throughout the United States.

13. Candy Dynamics has used the Hazard Stripe Mark continuously, notoriously and extensively with respect to and in association with its line of candy products since at least 2001.

14. Candy Dynamics has expended a substantial amount of money and effort in advertising and promoting the Hazard Stripe Mark.

15. Candy Dynamics's Hazard Stripe Mark is well known and consumers have come to know, rely upon, and recognize the Hazard Stripe Mark as identifying Candy Dynamics's line of candy products.

16. As a result of Candy Dynamics's substantial promotional, advertising, publicity, and public relations activities, the Hazard Stripe Mark has acquired substantial goodwill and is a valuable commercial asset.

17. Candy Dynamics's Hazard Stripe Mark is distinctive and inherently distinctive, serving to identify and indicate the source of Candy Dynamics's products to the consuming public, and to distinguish Candy Dynamics's candy products from those of others.

18. In recognition of the Hazard Stripe Mark, Candy Dynamics was awarded United States Registration No. 4,780,103 by the United States Patent and Trademark Office for "candy"

in international class 30 (the “103 Registration”). A copy of registration 4,780,103 is attached as Exhibit B.

B. Jelly Belly’s Unlawful Conduct

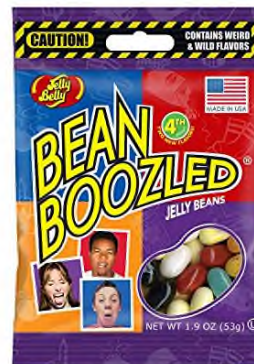
19. Jelly Belly is also in the business of selling candy.

20. Jelly Belly directly competes with Candy Dynamics in selling candy.

21. Jelly Belly’s candy products are sold in specialty stores, retail locations, grocery stores, online and in numerous other locations where candy is typically sold.

22. On information and belief, stores which sell Jelly Belly’s candy products are located throughout the United States.

23. On information and belief, Jelly Belly, with constructive knowledge of Candy Dynamics and Candy Dynamics’s Hazard Stripe Mark, began advertising, promoting, selling, and offering candy products, including at least the Bean Boozled product line, using a prominently placed hazard stripe design, such as the ones shown below (hereinafter the “Infringing Mark”).



24. On information and belief, the Infringing Mark was and continues to be prominently used on various packaging types by Jelly Belly.

25. Jelly Belly uses the Infringing Mark in association with its Bean Boozled line of products.

26. On information and belief, Jelly Belly is aware of the valuable goodwill and reputation represented and symbolized by Candy Dynamics's Hazard Stripe Mark.

27. On information and belief, Jelly Belly is aware that Candy Dynamics's consumers and potential consumers rely upon Candy Dynamics's Hazard Stripe Mark to distinguish Candy Dynamics's candy products from those of others.

28. Jelly Belly's use of the Infringing Mark is without the permission, consent, or authority of Candy Dynamics.

29. On March 28, 2017 counsel for Candy Dynamics sent a letter to Jelly Belly notifying Jelly Belly of the '103 Registration and the infringement of Candy Dynamics' Hazard Stripe Mark through the use of the Infringing Mark.

30. In subsequent exchanges, Jelly Belly agreed to "phase out use of the solid stripe design" over the next several months as packaging inventories were exhausted.

31. Rather than live up to its commitment, Jelly Belly elected to slightly modify its product to continue use of the Infringing Mark as shown below.



32. The only modifications Jelly Belly made to its revised packaging was to add several “CAUTION” statements in front of the Infringing Mark and also to modify the width of the stripes within the Infringing Mark so that they are of slightly different sizes when compared to one another.

33. Jelly Belly’s modifications to the Infringing Mark are trivial and insignificant.

34. Subsequently, and after receiving notice of infringement from counsel for Candy Dynamics, Jelly Belly began advertising, promoting, selling, and offering additional candy products as part of the Bean Boozled product line, such as that shown below, thereby further expanding its usage of the Infringing Mark in violation of Candy Dynamics’ rights.



35. On information and belief, Jelly Belly’s continued use of the Infringing Mark has been and continues to be intentional and willful.

C. Effect of Jelly Belly's Conduct on Candy Dynamics and the Consuming Public

36. Jelly Belly's Infringing Mark is nearly identical to Candy Dynamics's Hazard Stripe Mark.

37. Jelly Belly's candy products are the same and/or highly related products to Jelly Belly's candy products.

38. Jelly Belly's candy products advertised, promoted, offered for sale, or sold under the Infringing Mark are offered for sale and/or promoted in the same channels of trade as Candy Dynamics' candy products bearing the Hazard Stripe Mark.

39. Jelly Belly's candy products are sold in specialty stores, retail locations, grocery stores, online and in numerous other locations where candy is typically sold.

40. Candy Dynamics's candy products are sold in specialty stores, retail locations, grocery stores, online and in numerous other locations where candy is typically sold.

41. On information and belief, Jelly Belly's candy products offered in conjunction with the Infringing Mark are being sold and/or promoted, and are likely to continue being sold and/or promoted, throughout the same geographic markets as Candy Dynamic's candy products bearing the Hazard Stripe Mark.

42. Jelly Belly derives and will continue to derive substantial revenue from its candy products provided under the Infringing Mark.

43. Jelly Belly's continued use of the Infringing Mark on its websites, in its advertising and promotional materials, on its signage, and on its products is likely to diminish the goodwill associated with Candy Dynamics's Hazard Stripe Mark.

44. Jelly Belly's unauthorized use of the Infringing Mark is likely to cause confusion or mistake or to deceive consumers into believing that Jelly Belly's unauthorized products

advertised, promoted, and offered under the Infringing Mark are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with Candy Dynamics or that Candy Dynamics's products and services offered under the Hazard Stripe Mark mark are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with Jelly Belly.

45. On information and belief, Jelly Belly's continued use of the Infringing Mark is with full knowledge of the prior ownership by Candy Dynamics of the Hazard Stripe Mark and Candy Dynamics's rights to use and control the use of such mark.

46. As a result of Jelly Belly's unauthorized use of the Infringing Mark, Jelly Belly is being unjustly enriched at Candy Dynamics's expense, and Candy Dynamics is being damaged.

47. Jelly Belly's unauthorized use of the Infringing Mark in association with its products has significantly injured Candy Dynamics's interests. Specifically, Jelly Belly (a) has traded upon and threatens to further trade upon the significant and valuable goodwill in Candy Dynamics's Hazard Stripe Mark; (b) is likely to cause public confusion as to the source, sponsorship or affiliation of Jelly Belly's products; (c) has damaged and threatens to further damage Candy Dynamics's significant and valuable goodwill in the Hazard Stripe Mark; (d) has injured and threatens to further injure Candy Dynamics's right to use the Hazard Stripe Mark as the exclusive indicia of origin of Candy Dynamics's candy products in Indiana and throughout the United States; and (e) has lessened the capacity of Candy Dynamics's Hazard Stripe Mark to indicate that its products are sponsored by Candy Dynamics.

48. Unless these infringing acts by Jelly Belly are restrained by this Court, they will cause irreparable injury to Candy Dynamics and to the public, for which there is no adequate remedy at law.

D. Willful Nature of Defendant's Infringement and Unfair Competition

49. On information and belief, Jelly Belly's acts of infringement complained of herein have been malicious, fraudulent, deliberate, willful, intentional, and in bad faith, with full knowledge and conscious disregard of Candy Dynamics's rights. In view of the egregious nature of Jelly Belly's actions, this is an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

COUNT I: FEDERAL AND COMMON LAW TRADEMARK INFRINGEMENT

50. Candy Dynamics incorporates by reference the averments contained in paragraphs 1 through 49.

51. Jelly Belly's unauthorized use of the Infringing Mark in its advertising and in conjunction with its candy products is confusingly similar to Candy Dynamics's use of the Hazard Stripe Mark in conjunction with its sale of candy products.

52. Jelly Belly's use of the Infringing Mark is likely to cause confusion or mistake or to deceive consumers into believing that Jelly Belly's unauthorized products and services advertised, promoted, and offered under the Infringing Mark are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with Candy Dynamics.

53. The acts of Jelly Belly complained of herein are likely to cause confusion, mistake, or deception as to origin, sponsorship or approval and therefore constitute Federal and common law trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114 *et seq.* and the common law.

COUNT II: UNFAIR COMPETITION

54. Candy Dynamics incorporates by reference the averments contained in paragraphs 1 through 53.

55. Jelly Belly's unauthorized use of the Infringing Mark is likely to cause confusion or mistake or to deceive consumers into believing that Jelly Belly's unauthorized products advertised, promoted, and offered under the Infringing Mark are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with Candy Dynamics.

56. The acts of Jelly Belly complained of herein are likely to cause confusion, mistake, or deception as to origin, sponsorship or approval and therefore constitute trademark infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125.

Prayer for Relief

In light of the foregoing, Candy Dynamics prays that this Court:

A. Enter judgment that the unauthorized use of the Infringing Mark in Jelly Belly's commercial advertising, marketing and/or promotion and sales in the United States constitutes and creates a likelihood of confusion, mistake or deception among relevant consumers and therefore infringes Candy Dynamics's Hazard Stripe Mark.

B. Permanently enjoin Jelly Belly, its officers, agents, employees and attorneys, and those in active concert or participation therewith, from advertising and offering for sale or selling any products including the Infringing Mark and/or which have caused actual confusion or are likely to cause confusion with Candy Dynamics's Hazard Stripe Mark.

C. Award Candy Dynamics damages, costs, attorney's fees and/or expenses associated with this action and also including Jelly Belly's wrongful profits from or associated with its infringements of Candy Dynamics's rights.

D. Increase the amounts awarded to Candy Dynamics as damages and/or profits from Jelly Belly to the maximum amounts allowed or permitted under 15 U.S.C. § 1117.

E. Grant all such other relief that the Court deems just.

Jury Demand

Candy Dynamics respectfully demands a jury trial on all issues so triable.

Respectfully submitted,

DATED: January 29, 2020

s/ Spiro Bereveskos
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