

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

) Case No: \_\_\_\_\_  
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FERRARA CANDY COMPANY,

Plaintiff,

vs.

AKIMOV, LLC d/b/a TOP FIVE  
WHOLESALE,

Defendant.

**COMPLAINT FOR:**

- 1. FEDERAL COUNTERFEITING (15 U.S.C. § 1114);**
- 2. FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. § 1114);**
- 3. FEDERAL UNFAIR COMPETITION (15 U.S.C. § 1125);**
- 4. FEDERAL TRADEMARK DILUTION (15 U.S.C. § 1125);**
- 5. FEDERAL TRADE DRESS INFRINGEMENT (15 U.S.C. § 1125);**
- 6. FEDERAL TRADE DRESS INFRINGEMENT (15 U.S.C. § 1114);**
- 7. FLORIDA TRADEMARK DILUTION (Fla. Sta. § 495.151);**
- 8. FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (§ 501.201 et seq.); and**
- 9. FLORIDA UNFAIR COMPETITION.**

**COMPLAINT**

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

**PARTIES**

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

2. Defendant Akimov, LLC is a Florida limited liability company, doing business as Top Five Wholesale, having offices at 6760 Congress Ave., Apt. 410, Boca Raton, Florida 33487 (“Akimov”).

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction because (1) this is an action arising under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051, *et seq.* (the Lanham Act), jurisdiction being conferred in accordance with 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, and 1367; and (2) this is a civil action between a citizen of Florida on one side and a citizen of Illinois on the other side, in which the value of the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, jurisdiction being conferred in accordance with 28 U.S.C. § 1332. Jurisdiction for the claims made under Florida state law is conferred in accordance with the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

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

### **FACTS** **FERRARA'S PRODUCTS AND FAMOUS TRADEMARKS**

5. 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 and TROLLI brands.

6. The NERDS and TROLLI 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 Florida.

#### **Ferrara's Famous NERDS Marks and Trade Dress**

7. 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”).




8. 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:






9. Ferrara owns, among many others, the following federal trademark registrations issued by the United States Patent and Trademark Office for the NERDS Marks 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
	6,570,731	November 23, 2021	Candy

	6,556,724	November 9, 2021	Candy
	6,556,722	November 9, 2021	Candy
	6,603,978	December 28, 2021	Candy

10. These registrations are valid and subsisting. All of these registrations (with the exception of Reg. Nos. 6,570,731; 6,556,724; 6,556,722; and 6,603,978) are 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.”

11. Ferrara has manufactured, advertised, and sold an elongated rope-like form attached to which are numerous multi-colored small nuggets of candy since at least as early as January 2001. Ferrara also owns a registration on the Supplemental Register for its rope-like cluster of sugared candy (the “NERDS ROPE Trade Dress”), as shown below:

MARK	REG. NO.	REG. DATE	RELEVANT GOODS
	2,920,232	January 18, 2005	Candy

### Ferrara's Famous TROLLI Marks and Trade Dress

12. Ferrara and its predecessors have long marketed, distributed, and sold candy and related products under the famous TROLLI marks 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) a window-like shape with pictures of the candies inside, and (d) black on the top and the bottom of the packaging (hereinafter, the "TROLLI Trade Dress").

13. 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 PeachieO's and AppleO's). Representative images of some of these products appear below.



14. Since long prior to Akimov's acts complained of herein, Ferrara has made continuous use of the TROLLI trademarks and TROLLI Trade Dress in connection with candy products.

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

<b>MARK</b>	<b>REG. NO.</b>	<b>REG. DATE</b>	<b>RELEVANT GOODS</b>
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 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

16. These registrations are valid and subsisting. All of these registrations (with the exception of Reg. Nos. 4,941,337; 5,004,764; 5,445,125; and 5,618,982) 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."

### **The Famous Ferrara Trademarks and Ferrara Trade Dress**

17. Ferrara is the exclusive owner of the NERDS Marks and TROLLI Marks (collectively, the “Ferrara Trademarks”) and the NERDS Trade Dress and TROLLI Trade Dress (collectively, the “Ferrara Trade Dress”) and the NERDS ROPE Trade Dress and all of their related goodwill throughout the United States.

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

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

20. As a result of Ferrara’s extensive sales, promotion, and advertising of candy products under the Ferrara Trademarks and Ferrara Trade Dress, they have become famous among the general consuming public of the United States, and represent an extraordinarily valuable goodwill owned by Ferrara.

### **AKIMOV’S UNAUTHORIZED USE OF THE FERRARA TRADEMARKS AND FERRARA TRADE DRESS WITH THC-INFUSED PRODUCTS**

21. Akimov is engaged in the manufacturing, marketing, sale, and distribution of THC-infused candy products in packaging that bears the Ferrara Trademarks, the Ferrara Trade Dress, and the NERDS ROPE Trade Dress, or simulations thereof (“Counterfeit Products”), and in doing so is endangering consumers’ well-being.

22. As of the date of this filing, Akimov is offering at least seven types of Counterfeit Products via its website located at <https://topfivewholesale.com/>, among other means, to



consumers throughout the United States, including Florida: (1) “Delta-8 Nerds Rope” (sold in six flavors: Blueberry, Grape, Strawberry, Watermelon, Lemonade Wild Cherry, and Cherry); (2) “Errlli Sour Terp Crawlers Very Berry 600mg”; (3) “Trrlli Strawberry Puffs 600mg”; (4) “Errlli Sour Brite Twisted Crawlers 600mg”; (5) “Errlli Sour Glow Worms 600mg”; (6) “THC-0 Apple Rings (300mg THC –0; 300mg Delta-8)”; and (7) “THC-0 Peachio’s (300mg THC –0; 300mg Delta-8).” Images of these Counterfeit Products from Akimov’s website are shown below.



- DELTA-8 ▾
- DELTA-9 ▾
- DELTA-10 ▾
- THC-0 ▾
- HHC ▾
- TFN ▾
- KRATOM ▾
- SEXUAL WELLNESS ▾
- MISC

LOG IN / MY ACCOUNT

[Create your account](#)

CATEGORY

Home / Shop / Delta-8 / Edibles / Nerds Ropes

## Nerds Ropes



Showing all 6 results

Default sorting ▾

- Delta-10 (21)
  - Cartridges (9)
    - Hybrid (5)
    - Indica (2)
    - Sativa (2)
  - Disposable Pens (11)
    - Hybrid (4)
    - Indica (3)
    - Sativa (4)
  - Distillate (1)
- Delta-8 (94)
  - Capsules (1)
  - Cartridges (16)
    - Hybrid (8)
    - Indica (3)
    - Sativa (5)
  - Diamond Sauce (3)
  - Disposable Pens (7)
    - Hybrid (3)
    - Indica (2)
    - Sativa (2)
  - Distillate (1)
  - Edibles (37)
    - Chocolate (2)
    - Cookies (1)
    - Gummies (21)
    - Nerds Ropes (6)**
    - Rice Crispy Treats (3)
    - Snacks (4)
  - Flower (20)
    - Bulk (8)



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ADD TO CART

### Delta-8 Nerds Rope – Blueberry 500mg

These Blueberry Nerd Ropes combine a crunchy exterior coating with a soft and delicious chewy interior, bursting with a fresh Blueberry flavor. Kick back and relax – within 60 minutes, the 500mg of Delta-8 will be working its magic.

Categories: [Delta-8](#), [Edibles](#), [Nerds Ropes](#) Tags: [1 pc](#), [500mg](#), [Berry](#), [Blueberry](#), [Delta-8](#), [Edibles](#), [Nerds Rope](#), [Sweet](#)

Retail Price: \$29.00



1

ADD TO CART

### Delta-8 Nerds Rope – Cherry 500mg

This sour cherry flavored edible is a favorite amongst customers. It packs a soft and chewy center with a crunchy coating. The 500mg of Delta-8 in this Nerds Rope edible takes just 60 minutes to kick in.

Categories: [Delta-8](#), [Edibles](#), [Nerds Ropes](#) Tags: [1 pc](#), [500mg](#), [Cherry](#), [Delta-8](#), [Edibles](#), [Nerds Rope](#), [Sour](#)

Retail Price: \$29.00

- Hybrid (3)
- Indica (2)
- Sativa (3)
- Moon Rocks (3)
- Pre-Packaged (4)
- Pre-Rolls (8)
- Shisha (6)
- Tinctures (3)
- Delta-9 (2)
- Edibles (2)
- Gummies (2)
- HHC (7)
  - Cartridges (3)
  - Hybrid (1)
  - Indica (1)
  - Sativa (1)
- Disposables (3)
  - Hybrid (1)
  - Indica (1)
  - Sativa (1)
- Distillate (1)
- Kratom (18)
  - Capsules (9)
  - Powder (9)
- Maha (5)
  - Capsules (1)
  - Gummies (3)
  - Liquid Shots (1)
- Misc (3)
- Sexual Wellness (4)



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CART

### Delta-8 Nerds Rope – Grape 500mg

Grape flavored Nerds Rope edibles are crunchy on the outside, chewy and soft on the inside. Infused with 500mg of Delta-8, these candy edibles pack a punch and take just 60 minutes to kick in.

Categories: Delta-8, Edibles, Nerds Ropes Tags: [1 pc](#), [500mg](#), [Delta-8](#), [Edibles](#), [Grape](#), [Nerds Rope](#)

Retail Price: \$29.00



### Delta-8 Nerds Rope – Lemonade Wild Cherry 500mg

Indulge in your favorite childhood soda flavor with a twist. These Cherry Lemonade Nerd Ropes edibles pack 500mg of Delta-8 inside a crunchy exterior and chewy center. Chow down on these, and within 60 minutes, you'll be feeling that Delta-8 buzz.

Categories: Delta-8, Edibles, Nerds Ropes Tags: [1 pc](#), [500mg](#), [Cherry](#), [Delta-8](#), [Edibles](#), [Lemonade](#), [Nerds Rope](#), [Sour](#)

Retail Price: \$29.00

READ  
MORE

Sexual Wellness (4)

Men (1)

Women (3)

THC-0 (16)

Cartridges (3)

Hybrid (1)

Indica (1)

Sativa (1)

Distillate (1)

Flower (10)

Bulk (10)

Hybrid (2)

Indica (2)

Sativa (6)

Moon Rocks (1)

Gummies (2)

Tobacco-Free Nicotine  
(15)

Tobacco Disposable  
Pens (15)



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ADD TO  
CART

### Delta-8 Nerds Rope – Strawberry 500mg

Incredibly popular, this sweet medicated candy and gummy edible is so tasty, words can't even describe it. Infused with 500mg of Delta-8, this Nerd Rope offers a sensationally sweet strawberry flavor and a Delta-8 high that takes just 60 minutes to kick in.

Categories: Delta-8, Edibles, Nerds Ropes Tags: [1 pc, 500mg, Delta-8, Edibles, Nerds Rope, Strawberry, Sweet](#)

Retail Price: \$29.00



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ADD TO  
CART

### Delta-8 Nerds Rope – Watermelon 500mg

A customer favorite, this Nerd Rope edible is a juicy watermelon-flavored candy that contains 500mg of Delta-8. Quirky packaging, delightful taste, and an exceptional high see these edibles sell out fast.

Categories: Delta-8, Edibles, Nerds Ropes Tags: [1 pc, 500mg, Delta-8, Edibles, Nerds Rope, Watermelon](#)

Retail Price: \$29.00



Home / Shop / THC-0 / Gummies / THC-0 Apple Rings (300mg THC -0 ; 300mg Delta 8)



## THC-0 Apple Rings (300mg THC -0 ; 300mg Delta 8)

Retail Price: **\$35.00**

An apple-flavored Delta 8/THC-0 edible that will blow your mind. A burst of fresh apple accompanied by the familiar effects of THC make these Apple Rings a favorite amongst anyone who has had the pleasure of indulging in them.

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**ADD TO CART**

Categories: Gummies, THC-0

Description

Lab Report

### Description

300mg THC-0 / 300mg Delta-8



Home / Shop / THC-0 / Gummies / THC-0 Peachio's (300mg THC -0 ; 300mg Delta 8)



## THC-0 Peachio's (300mg THC -0 ; 300mg Delta 8)

Retail Price: \$35.00

The refreshing taste of peaches, with the addition of a weed blend, gives you the experience of a potent and enjoyable high. These Delta 8/ THC-0 gummies are flavorsome, more-ish, and your customers will be back for more.

1

ADD TO CART

Categories: Gummies, THC-0

Description

Lab Report

### Description

300mg THCO – 5 Piece Pack



Home / Shop / Delta-8 / Edibles / Gummies / Delta-8 Gummies – Errlli Sour Terp Crawlers Very Berry 600mg



## Delta-8 Gummies – Errlli Sour Terp Crawlers Very Berry 600mg

Retail Price: \$35.00

Customer Favorite! These Delta-8 Errlli Sour Terp Crawlers Very Berry flavored, 600mg Gummies are definitely one of the best sellers. Each of these delicious Gummies have 60mg of Delta-8, making them some of the strongest available.

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ADD TO CART

Categories: Delta-8, Edibles, Gummies Tags: 10 pcs, 600mg, 60mg, Berry, Delta-8, Edibles, Errlli, Gummies, Sour





Home / Shop / Delta-8 / Edibles / Gummies / Delta-8 Gummies – Trlli Strawberry Puffs 600mg



## Delta-8 Gummies – Trlli Strawberry Puffs 600mg

Retail Price: \$35.00

Experience a relaxing sedative high with these 600mg Delta-8 gummies. They look like strawberries, taste like strawberries, but they're definitely not strawberries. Your customers will love these sweet treats and will keep coming back for more!

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ADD TO CART

Categories: Delta-8, Edibles, Gummies Tags: [10 pcs](#), [600mg](#), [60mg](#), [Delta-8](#), [Edibles](#), [Gummies](#), [Strawberry](#), [Sweet](#)







Home / Shop / Delta-8 / Edibles / Gummies / Delta-8 Gummies – Errlli Sour Brite Twisted Crawlers 600mg



## Delta-8 Gummies – Errlli Sour Brite Twisted Crawlers 600mg

Retail Price: \$35.00

The adult version of your favorite childhood treats – these Delta-8 gummies have got to be the coolest gummy ropes in the world. Packing a total of 600mg of THC – you’re in for a sour trip as you chew on these!

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ADD TO CART

Categories: Delta-8, Edibles, Gummies Tags: [10 pcs](#), [600mg](#), [60mg](#), [Berry](#), [Delta-8](#), [Edibles](#), [Errlli](#), [Gummies](#), [Sour](#)



https://topfivewholesale.com/shop/delta-8/edibles/gummies/delta-8-gummies-errlli-sour-...



Home / Shop / Delta-8 / Edibles / Gummies / Delta-8 Gummies – Errlli Sour Glow Worms 600mg



## Delta-8 Gummies – Errlli Sour Glow Worms 600mg

Retail Price: \$35.00

Mouth meddling, terpy, weird wormy goodness! Face smacking, sweetly sour, mind tripping tastiness! Customer Favorite! These Delta-8 Errlli Sour Glow Worms are definitely one of the best sellers. Each of these delicious Gummies have 60mg of Delta-8, making them some of the strongest available.

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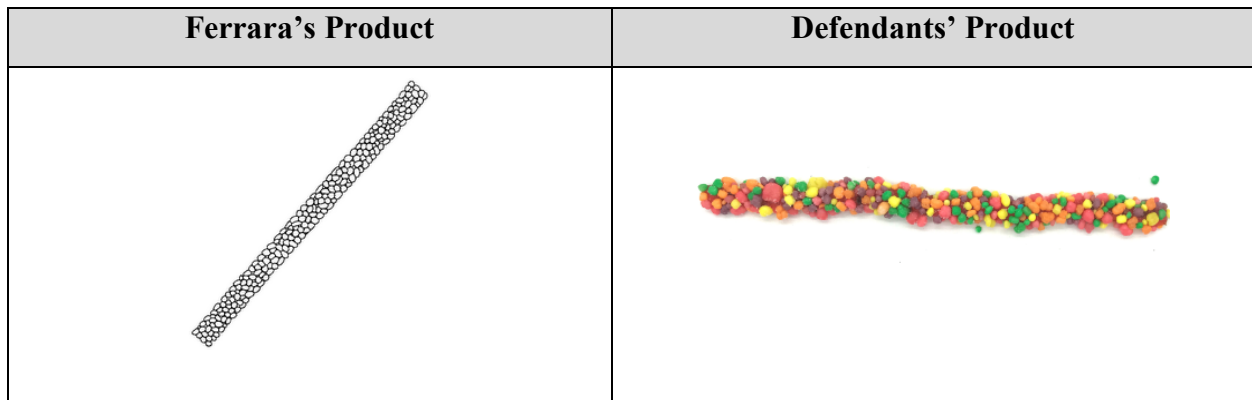
ADD TO CART

Categories: Edibles, Gummies Tags: 10 pcs, 600mg, 60mg, Delta-8, Edibles, Errlli, Gummies, Sour

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



24. As shown in the comparison below, Defendants' "Medicated Nerds Rope" candy is highly similar to Ferrara's registered trade dress for its NERDS ROPE candy:



25. Akimov also is using packaging nearly identical to genuine packaging for TROLLI candy for their “THC-0 Apple Rings” Counterfeit Product:



26. Akimov also has used simulations of the TROLLI mark: “Errlli” and “Trrlli” to market THC-infused TROLLI candy, as shown below:



27. As shown in the comparison below, Akimov’s “Errlli” and “Trlli” packaging is highly similar to the packaging used by Ferrara for its TROLLI candies:

Ferrara’s Product	Akimov’s Product
	

28. Unsurprisingly, consumers are likely to be and, on information and belief, actually have been confused as to the source of Akimov's Counterfeit Products and have been led to believe, mistakenly, that Akimov's Counterfeit Products are authorized, endorsed by, or affiliated with Ferrara.

29. Akimov 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 Trademarks and Ferrara Trade Dress to give the Counterfeit Products a salability they would not otherwise have.

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

31. Ferrara has not consented, and never would consent, to such uses of the Ferrara Trademarks and Ferrara Trade Dress, and, in fact, is actively enforcing its marks against such uses to protect consumers from inadvertent consumption of THC.

32. Furthermore, as shown above, Akimov has infused its Counterfeit Products with large amounts of THC – as much as 600 milligrams – *more than 60 adult servings*. The sale of these Counterfeit Products thus poses a health hazard to the consuming public, especially children.

33. 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. In fact, the sale of marijuana in Florida for recreational purposes, or to someone without a medical marijuana card, is considered "unlicensed activity" and can qualify as a felony. 2021 Fla. Sta. 381.986 (13).

**FIRST CLAIM FOR RELIEF  
COUNTERFEITING OF THE FERRARA TRADEMARKS  
(IN VIOLATION OF SECTION 32 OF THE LANHAM ACT)**

34. Ferrara re-alleges paragraphs 1 through 33 as if fully set forth herein.

35. Ferrara owns exclusive, registered rights in and to the Ferrara Trademarks for candy.

36. Akimov manufactures, markets, sells, and distributes edible THC-infused candy bearing the identical Ferrara Trademarks, and Akimov's use of those marks in association with candies constitutes trademark counterfeiting in violation of 15 U.S.C. § 1114.

37. Akimov's use of the counterfeit marks for its cannabis-infused candy products is likely to cause confusion, mistake, or deception as to source, affiliation, or sponsorship of Akimov's candy.

38. The imitation, copying, and unauthorized use of the Ferrara Trademarks causes irreparable injury to Ferrara, including injury to its business reputation and the goodwill associated with these marks.

39. Akimov has used the Ferrara Trademarks for its counterfeit products with full knowledge of, and in willful disregard of Ferrara's rights in these trademarks, and with the intent to obtain a commercial advantage that Akimov would otherwise not have. Akimov's acts greatly and irreparably damage Ferrara and will continue to so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an adequate remedy at law.

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

40. Ferrara re-alleges paragraphs 1 through 33 as if fully set forth herein.

41. Without Ferrara's consent, Akimov has used the Ferrara Trademarks, including imitations of the TROLLI Marks, in commerce in connection with the manufacturing, marketing, sale, and distribution of candy infused with THC. These acts have caused or are likely to cause confusion, mistake, or deception as to the source of origin, sponsorship, or approval of the Counterfeit Products that Akimov sells, in that purchasers and others are likely to believe Ferrara authorizes and controls Akimov's sale of cannabis-infused candy products in the United States or that Akimov is associated with or related to Ferrara.

42. Akimov's acts are likely to injure and, on information and belief, have injured Ferrara's image and reputation with consumers in the United States by creating confusion about the source of the Counterfeit Products, and dissatisfaction with Ferrara.

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

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

45. Akimov's acts greatly and irreparably damage Ferrara and will continue to so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an adequate remedy at law.

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

46. Ferrara re-alleges paragraphs 1 through 33 as if fully set forth herein.



47. Without Ferrara's consent, Akimov has used the Ferrara Trademarks, including imitations of the TROLLI Marks, as well as the Ferrara Trade Dress associated with these products, in commerce in connection with the manufacturing, marketing, sale, and distribution of candy infused with THC. These acts have caused or are likely to cause confusion, mistake, or deception as to the source of origin, sponsorship, or approval of the Counterfeit Products that Akimov sells, in that purchasers and others are likely to believe Ferrara authorizes and controls Akimov's sale of THC-infused candy products in the United States or that Akimov is associated with or related to Ferrara.

48. On information and belief, Akimov's manufacturing, marketing, sale, and distribution of the Counterfeit Products have been committed deliberately and willfully, with knowledge of Ferrara's exclusive rights and goodwill in the Ferrara Trademarks and with a bad faith intent to cause confusion and trade on Ferrara's goodwill.

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

50. Akimov's acts greatly and irreparably damage Ferrara and will continue to so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an adequate remedy at law.

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

51. Ferrara re-alleges paragraphs 1 through 33 as if fully set forth herein.

52. The Ferrara Trademarks are inherently distinctive, famous, and are widely recognized by the general consuming public of the United States as a designation of source of Ferrara's candy products.

53. Akimov's acts as described herein began after the Ferrara Trademarks became famous.

54. Akimov's acts are likely to cause and have caused dilution by tarnishment and blurring of the famous Ferrara Trademarks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

55. On information and belief, Akimov's manufacturing, marketing, sale, and distribution of the Counterfeit Products bearing the Ferrara Trademarks in the United States have been committed deliberately and willfully, with knowledge of Ferrara's exclusive rights and goodwill in the Ferrara Trademarks and with a bad faith intent to cause dilution of the Ferrara Trademarks.

56. Akimov's acts greatly and irreparably damage Ferrara and will continue to so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an adequate remedy at law.

**FIFTH CLAIM FOR RELIEF  
TRADE DRESS INFRINGEMENT  
(IN VIOLATION OF 15 U.S.C. § 1125)**

57. Ferrara re-alleges paragraphs 1 through 33 as if fully set forth herein.

58. For years, Ferrara has owned protectable rights in the Ferrara Trade Dress, which is inherently distinctive and not functional.

59. Prior to Akimov's conduct that forms the basis for this Complaint, consumers had come to associate the distinctive "look and feel" of the packaging for the candies sold under the Ferrara Trademarks with the Ferrara Trade Dress.

60. Without Ferrara's consent or authorization, Akimov has manufactured, marketed, sold, and distributed the Counterfeit Products in packaging that bears imitations of the Ferrara Trade Dress in the United States, including through its website.

61. The colors, stylized wording, and elements of the packaging used with Counterfeit Products were intentionally designed to simulate Ferrara's packaging for its NERDS and TROLLI candies in that the colors and words are displayed in the substantially identical layout and position, providing the immediate commercial impression that the Counterfeit Products emanate from or are associated with Ferrara and its genuine candy products.

62. Akimov's use of imitations of the Ferrara Trade Dress for the packaging of its Counterfeit Products is intentionally designed to deceive consumers into believing that the Counterfeit Products are manufactured or authorized by Ferrara, thereby causing confusion as to the source and origin of the Counterfeit Products, which constitutes trade dress infringement under 15 U.S.C. § 1125.

63. Akimov's acts greatly and irreparably damage Ferrara and will continue to so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an adequate remedy at law.

**SIXTH CLAIM FOR RELIEF**  
**TRADE DRESS INFRINGEMENT OF NERDS ROPE TRADE DRESS**  
**(IN VIOLATION OF 15 U.S.C. § 1114)**

64. Ferrara re-alleges paragraphs 1 through 11, 17 through 24 and 28 through 33 as if fully set forth herein.

65. For years, Ferrara has owned protectable rights in the NERDS ROPE Trade Dress, which is distinctive and not functional.

66. Prior to Akimov's conduct that forms the basis for this Complaint, consumers had come to associate the distinctive "look and feel" of the rope-like cluster of sugared candies sold under the Ferrara Trademarks with the NERDS ROPE Trade Dress and the Ferrara Trade Dress.

67. Without Ferrara's consent or authorization, Akimov has manufactured, marketed, sold, and distributed the Counterfeit Products, which bear imitations of the NERDS ROPE Trade Dress in the United States, including through its website.

68. The cluster of candies in a rope-like fashion used with Counterfeit Products and the Ferrara Trademarks were intentionally designed to simulate Ferrara's NERDS ROPE candy in that the Counterfeit Products look identical, providing the immediate commercial impression that the Counterfeit Products emanate from or are associated with Ferrara and its genuine candy products.

69. Akimov's use of imitations of the NERDS ROPE Trade Dress for the Counterfeit Products is intentionally designed to deceive consumers into believing that the Counterfeit Products are manufactured or authorized by Ferrara, thereby causing confusion as to the source and origin of the Counterfeit Products, which constitutes trade dress infringement under 15 U.S.C. § 1125.

70. Akimov's acts greatly and irreparably damage Ferrara and will continue to so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an adequate remedy at law.

**SEVENTH CLAIM FOR RELIEF  
UNFAIR COMPETITION  
(IN VIOLATION OF FLORIDA'S  
DECEPTIVE AND UNFAIR TRADE PRACTICES ACT § 501.201 et seq.)**

71. Ferrara re-alleges paragraphs 1 through 33 as if fully set forth herein.

72. Without Ferrara's consent, Akimov has appropriated for its own use the Ferrara Trademarks and Ferrara Trade Dress.

73. On information and belief, Akimov's manufacturing, marketing, sale, and distribution of the Counterfeit Products in the state of Florida have been committed deliberately and willfully, with knowledge of Ferrara's exclusive rights and goodwill in the Ferrara Trademarks and Ferrara Trade Dress and with a bad faith intent to cause confusion and trade on Ferrara's goodwill.

74. Akimov's acts could adversely affect consumers in Florida.

75. Akimov's acts constitute unfair trade practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Section § 501.204 *et seq.*

76. Akimov's acts greatly and irreparably damage Ferrara and will continue to so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an adequate remedy at law.

**EIGHTH CLAIM FOR RELIEF  
DILUTION  
(IN VIOLATION OF FLORIDA STATUTE § 495.151)**

77. Ferrara re-alleges paragraphs 1 through 33 as if fully set forth herein.

78. The Ferrara Trademarks are inherently distinctive, famous, and are widely recognized by the general consuming public of the United States and Florida as a designation of source of Ferrara's confectionery products.

79. Akimov's acts as described herein began after the Ferrara Trademarks became famous.

80. Akimov's acts are likely to cause and have caused dilution by tarnishment and blurring of the famous Ferrara Trademarks in violation of Florida Statute § 495.151.

81. On information and belief, Akimov's manufacturing, marketing, sale, and distribution of the Counterfeit Products bearing the Ferrara Trademarks in Florida have been

committed deliberately and willfully, with knowledge of Ferrara's exclusive rights and goodwill in the famous Ferrara Trademarks and with a bad faith intent to cause dilution of the Ferrara Trademarks.

82. Akimov's acts greatly and irreparably damage Ferrara and will continue to so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an adequate remedy at law.

**NINTH CLAIM FOR RELIEF  
(UNFAIR COMPETITION  
IN VIOLATION OF FLORIDA COMMON LAW)**

83. Ferrara re-alleges paragraphs 1 through 33 as if fully set forth herein.

84. Without Ferrara's consent, Akimov has appropriated for its own use the Ferrara Trademarks and Ferrara Trade Dress.

85. Akimov has used the Ferrara Trademarks and Ferrara Trade Dress in commerce in connection with the sale, offering for sale, distribution, and/or advertising of several cannabis-infused candy products. These acts have caused or are likely to cause confusion, mistake, or deception as to the source of origin, sponsorship, or approval of Akimov's products that Akimov sells in that purchasers and others are likely to believe Ferrara authorizes and controls Akimov's sale of the Infringing Products in Florida or that Akimov is associated with or related to Ferrara.

86. Akimov's acts are likely to injure and, on information and belief, have injured Ferrara's image and reputation with consumers in the United States by creating confusion about the Counterfeit Products.

87. On information and belief, Akimov's manufacturing, marketing, sale, and distribution of the Counterfeit Products bearing the Ferrara Trademarks and Ferrara Trade Dress in Florida have been committed deliberately and willfully, with knowledge of Ferrara's exclusive

rights and goodwill in the Ferrara Trademarks and Ferrara Trade Dress and with a bad faith intent to cause confusion and trade on Ferrara's goodwill.

88. Akimov's acts constitute unfair competition in violation of Florida common law.

89. Akimov's acts greatly and irreparably damage Ferrara and will continue to so damage Ferrara unless restrained by this Court; wherefore, Ferrara is without an adequate remedy at law.

### **PRAYER FOR RELIEF**

WHEREFORE, Ferrara prays that this Court:

1. Enter judgment that Akimov has violated the Lanham Act, 15 U.S.C. §§ 1114, 1125; Florida Statutes §§ 491.151 and 501.201 *et seq.*; and Florida common law, and that such violations were willful and intentional, making this an exceptional case;

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

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

a. account for and pay over to Ferrara all profits derived by Akimov from its

acts of trademark counterfeiting, trademark infringement, trade dress infringement, dilution, and unfair competition in accordance with 15 U.S.C. § 1117(a) and Florida Statute § 495.141, and Ferrara asks that this award be trebled in accordance with 15 U.S.C. § 1117(a);

- b. pay statutory damages in the amount of \$2,000,000 per counterfeit mark per type of good sold, offered for sale, or distributed for Akimov's willful counterfeiting of the Ferrara Trademarks, in accordance with 15 U.S.C. § 1117(c)(2);
- c. pay to Ferrara the costs of this action, together with reasonable attorneys' fees and disbursements, in accordance with 15 U.S.C. § 1117(a) and Florida Statute § 495.141;
- d. pay to Ferrara any pre-judgment interest on all damages;
- e. destroy all of the Counterfeit Products in their possession, including packaging, and any advertising, marketing, or promotional materials for the Infringing Products, in accordance with 15 U.S.C. § 1118 and Florida Statute § 495.141;
- f. send a notice to any existing customers that the importation, dealing in, sale, marketing, or distribution of the Counterfeit Products, is unlawful and that Akimov has been enjoined by a United States District Court from doing so; and
- g. file with the Court and serve on Ferrara an affidavit setting forth in detail the manner and form in which Akimov has complied with the terms of the injunction, in accordance with 15 U.S.C. § 1116.



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

Dated: May 23, 2022

*/s/ Maria H. Ruiz*

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Maria H. Ruiz  
Florida Bar No. 182923  
KASOWITZ BENSON TORRES LLP  
1441 Brickell Avenue, Suite 1420  
Miami, FL 33131  
Telephone: (786) 587-1044  
Facsimile: (305) 675-2601  
MRuiz@Kasowitz.com