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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

TALKING RAIN BEVERAGE COMPANY,
INC., a Washington corporation,

Plaintiff,

v.

UNIQUE BEVERAGE COMPANY, LLC, a
Washington limited liability company,

Defendant.

No. _____

COMPLAINT FOR FEDERAL
TRADEMARK INFRINGEMENT,
FALSE DESIGNATION OF
ORIGIN, UNFAIR
COMPETITION, VIOLATION OF
CONSUMER PROTECTION ACT,
AND COMMON LAW CLAIMS

JURY DEMAND

Plaintiff Talking Rain Beverage Company, Inc. ("Plaintiff" or "Talking Rain"), as and for its Complaint against Defendant Unique Beverage Company, LLC ("Defendant" or "Unique Beverage"), alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Talking Rain is a Washington State corporation, having its principal place of business in Preston, Washington.
2. Unique Beverage is a Washington State limited liability company having its principal place of business in Everett, Washington.
3. This action arises, *inter alia*, under the Trademark Laws of the United States 15 U.S.C. § 1051, *et. seq.*, and common law. This Court has jurisdiction under the provisions

1 of 28 U.S.C. §§ 1331, 1338(a) and (b), 15 U.S.C. § 1121, and 28 U.S.C. § 2201(a).
2 Supplemental jurisdiction over causes of action arising under state law is also proper pursuant
3 to 28 U.S.C. § 1367 because these causes of action are substantially related to those over
4 which this Court has original jurisdiction.

5 4. Unique Beverage is subject to personal jurisdiction in this District.

6 5. The Western District of Washington is a proper venue for this action.

7 TALKING RAIN PRODUCTS AND MARKS

8 6. Talking Rain is the leading producer and distributor of mountain spring water
9 and naturally flavored beverage products based in the Pacific Northwest. Over the past
10 twenty years, Talking Rain has successfully grown from Pacific Northwest roots to gain a
11 national market for its beverage products.

12 7. Talking Rain has long sold flavored water drinks under its trademarks ICE and
13 SPARKLING ICE in interstate commerce. These beverages ("ICE Beverages") are offered in
14 a number of different bottle sizes, and include the following flavors: Pink Grapefruit, Black
15 Raspberry, Orange Mango, Harvest Peach and Kiwi Strawberry. Printouts of a Web page
16 from Talking Rain's website at <http://www.talkingrain.com> showing the available sizes and
17 flavors of the ICE Beverages are attached to this Complaint as Exhibit A.

18 8. Talking Rain is the owner of a federal trademark registration for ICE, Reg.
19 No. 2,040,885, for carbonated and non-carbonated flavored and unflavored water (the "'885
20 Mark"). This registration is incontestable. A true and correct copy of the Certificate of
21 Registration for this mark is attached as Exhibit B.

22 9. Talking Rain is the owner of a federal trademark registration for SPARKLING
23 ICE, Reg. No. 1,944,414, for non-alcoholic soft drinks (the "'414 Mark"). This registration is
24 incontestable. A true and correct copy of the Certificate of Registration for this mark is
25 attached as Exhibit C.

26 10. Talking Rain's '885 Mark and '414 Mark ("ICE Marks") are inherently
27 distinctive, non-functional, and have acquired secondary meaning such that the ICE Marks

1 have come to be associated by the consuming public exclusively with Talking Rain as the
2 source of the ICE Beverages bearing the ICE Marks.

3 11. Over the past twenty years, Talking Rain has sold, advertised, marketed and
4 promoted its ICE Beverages so that the public associates the high quality and distinctive taste
5 of these products with Talking Rain.

6 12. Talking Rain advertises, markets, distributes, promotes, sells and offers to sell
7 its ICE Beverages bearing the ICE Marks in the Pacific Northwest and throughout the United
8 States through consumer magazine advertising, sales through stores, and through its website
9 at <http://www.talkingrain.com>, among others.

10 UNIQUE BEVERAGE'S INFRINGING ACTIVITIES

11 13. Upon information and belief, Unique Beverage has advertised, distributed,
12 marketed, sold and/or offered for sale carbonated and non-carbonated flavored water
13 beverages in interstate commerce under the name "Cascade Ice," in connection with the
14 following product lines: 1) Cascade Ice Caffeine Free Sodium Free Sparkling Water; 2)
15 Cascade Ice 2 Calorie Naturally Flavored Sparkling Water With Juice; 3) Cascade Ice 0
16 Calorie Organic Sparkling Water; and 4) Cascade Ice Sparkling Cocktail Mixer ("Cascade Ice
17 Products").

18 14. Unique Beverage appears as the owner of record for a federal trademark
19 registration for CASCADE ICE, Reg. No. 2,507,161, for carbonated and non-carbonated
20 drinking water (the "'161 Mark"), This registration is not incontestable. A copy of the
21 Certificate of Registration for this Mark is attached as Exhibit D.

22 15. Unique Beverage also has applied for a federal trademark registration, Serial
23 No. 85,047,641, for CASCADE ICE SKINNY COCKTAILS on May 25, 2010, for
24 non-alcoholic cocktail mixes (the "'641 Mark"). A copy of the USPTO's Trademark
25 Electronic Search System record for this mark is attached as Exhibit E.

1 16. Talking Rain has been using the ICE Marks exclusively, extensively and
2 continuously since long before Unique Beverage began using the '161 and '641 Marks
3 ("Cascade Ice Marks") on its flavored water beverages and other products.

4 17. The Cascade Ice Marks are confusingly similar to Talking Rain's incontestable
5 ICE Marks, and create a likelihood of confusion as used on the Cascade Ice Products in
6 interstate commerce.

7 18. The Cascade Ice Products compete with Talking Rain's ICE Products.

8 19. Unique Beverage advertises, distributes, markets, promotes, sells and/or offers
9 for sale its Cascade Ice Products in the same regions and many of the same distribution
10 channels as Talking Rain. Unique Beverage has targeted distribution channels in the Pacific
11 Northwest and the West for its Cascade Ice Products, including grocery stores and pharmacies
12 in Washington, Montana, Oregon, Idaho, Nevada, Utah, Colorado, Arizona, New Mexico and
13 Alaska. Copies of pages depicting at least some of the channels of distribution and customers
14 of the Cascade Ice Products may be found at the Unique Beverage website at
15 <http://www.cascadeicewater.com>, and are attached as Exhibit F.

16 20. Unique Beverage advertises, distributes, markets, promotes, sells and offers for
17 sale its Cascade Ice Products in many of the same grocery stores as Talking Rain, including
18 grocery stores located in the Pacific Northwest.

19 21. Unique Beverage has no license, permission or consent from Talking Rain to
20 advertise, distribute, market, promote, offer for sale, and/or sell the Cascade Ice Products
21 bearing the Cascade Ice Marks.

22 22. Unique Beverage's advertising, distribution, marketing, promotion, offer for
23 sale and/or sale of the Cascade Ice Products bearing the Cascade Ice Marks is likely to cause
24 confusion, and upon information and belief, has caused consumer confusion.

25 23. Upon information and belief, prior to adopting the Cascade Ice Marks and
26 prior to employing those marks in commerce, Unique Beverage had knowledge of Talking
27 Rain's ICE Products bearing the ICE Marks and the considerable success Talking Rain has

1 achieved with these products. Talking Rain is informed and believes, and thereon alleges,
2 that Unique Beverage willfully and with conscious disregard for Talking Rain's rights in the
3 ICE Marks, advertised, distributed, marketed, promoted, sold and/or offered for sale, the
4 Cascade Ice Products bearing the Cascade Ice Marks.

5 24. Unique Beverage's use of the Cascade Ice Marks constitutes trademark
6 infringement of Talking Rain's federally registered trademarks in violation of the Lanham
7 Act, 15 U.S.C. § 1051, et seq., and has caused substantial and irreparable injury to the public
8 and to Talking Rain's business reputation and goodwill.

9 25. As a result of its infringing acts, Unique Beverage has been, and will continue
10 to be, unjustly enriched by profits that Unique Beverage has made in connection with the
11 advertising, distribution, marketing, importation, promotion, offer for sale, and/or sale of the
12 Cascade Ice Products bearing the Cascade Ice Marks.

13 26. Unique Beverage's continuing infringement has inflicted and, unless restrained
14 by this Court, will continue to inflict great and irreparable harm upon Talking Rain. Talking
15 Rain has no adequate remedy at law. Talking Rain is entitled to an injunction enjoining
16 Unique Beverage from engaging in further acts of infringement.

17 27. As a direct and proximate result of the foregoing acts of Unique Beverage,
18 Talking Rain has suffered, and is entitled to recover, monetary damages in an amount not yet
19 determined. Talking Rain also is entitled to its attorneys' fees and costs associated with this
20 litigation.

21 28. Upon information and belief, Unique Beverage's acts were in conscious and
22 willful disregard of Talking Rain's rights to the ICE Marks, and the resulting damage to
23 Talking Rain warrants the imposition of treble and/or punitive damages in order to provide
24 just compensation.

COUNT I

(Federal Trademark Infringement)

(15 U.S.C. § 1051, et seq.)

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2
3 29. Talking Rain repeats and incorporates by reference the allegations in
4 paragraphs 1-28.

5 30. Unique Beverage's use of the Cascade Ice Marks constitutes infringement of
6 Talking Rain's rights in the ICE Marks in violation of the Lanham Act, 15 U.S.C. § § 1114-
7 1118.

8 31. Unique Beverage's use of the Cascade Ice Marks is likely to cause confusion,
9 deception, and mistake by, among other things, creating the false and misleading impression
10 that the Cascade Ice Products are distributed, sold and/or offered for sale by Talking Rain, or
11 are associated or connected with Talking Rain, or have the sponsorship, endorsement or
12 approval of Talking Rain.

13 32. Unique Beverage's use of marks confusingly similar to the ICE Marks and
14 Unique Beverage's activities has caused and, unless enjoined by this Court, will continue to
15 cause a likelihood of confusion, deception of the public, and injury to Talking Rain's goodwill
16 and business reputation for which Talking Rain has no adequate remedy at law.

17 33. Unique Beverage's actions demonstrate an intentional, willful, and malicious
18 intent to trade on the goodwill associated with the ICE Marks and have resulted in irreparable
19 injury to Talking Rain.

20 34. Unique Beverage has caused and is likely to continue causing substantial
21 injury to the public and to Talking Rain, and Talking Rain is entitled to injunctive relief and
22 to recover Unique Beverage's profits, actual damages, enhanced profits and damages, costs,
23 reasonable attorneys' fees and other relief.

COUNT II

(Federal False Designation of Origin and Unfair Competition)

(15 U.S.C. § 1125(a))

35. Talking Rain repeats and incorporates by reference the allegations in paragraphs 1-34.

36. Talking Rain's rights in the ICE Marks are superior to any rights Unique Beverage may claim in the Cascade Ice Marks.

37. The ICE Marks are inherently distinctive, non-functional, and have acquired secondary meaning with the consuming public and/or have become distinctive in the minds of purchasers in that the ICE Marks are associated with Talking Rain.

38. Unique Beverage falsely designated the origin of its goods and engaged in unfair competition in violation of 15 U.S.C. § 1125(a).

39. Unique Beverage's use of the Cascade Ice Marks has caused and is likely to continue to cause confusion, deception, and mistake by creating the false and misleading impression that the Cascade Ice Products are distributed, sold and/or offered for sale by Talking Rain, or are affiliated, connected, or associated with Talking Rain, or have the sponsorship, endorsement or approval of Talking Rain.

40. Unique Beverage's activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of the public as well as injury to Talking Rain's goodwill and business reputation for which Talking Rain has no adequate remedy at law.

41. Unique Beverage's actions demonstrate an intentional, willful and malicious intent to trade on the goodwill associated with the ICE Marks resulting in irreparable injury to Talking Rain.

42. Unique Beverage's conduct has caused, and is likely to continue to cause, substantial injury to the public and to Talking Rain, and Talking Rain is entitled to recover

1 Unique Beverage's profits, actual damages, enhanced profits and damages, costs, reasonable
2 attorneys' fees and other relief.

3 COUNT III
4 (Unfair Competition and Consumer Protection Act)
5 (RCW 19.86)

6 43. Talking Rain repeats and incorporates by reference the allegations in
7 paragraphs 1-42.

8 44. Unique Beverage engaged in unfair and deceptive acts or practices by imitating
9 the ICE Marks in Washington and throughout the United States, thereby creating public
10 confusion as to the source of the products.

11 45. Unique Beverage's deceptive acts or practices injured Talking Rain.

12 46. Unique Beverage's actions offend the public, are unethical, oppressive and
13 unscrupulous, affecting trade and commerce now and in the future both within Washington
14 State and elsewhere.

15 47. A causal link existed between the deceptive act and the resulting injury.

16 48. Talking Rain has suffered damages relating to violation of the Consumer
17 Protection Act RCW 19.86 by Unique Beverage. The quantum of these damages will be
18 proven at trial.

19 49. Talking Rain seeks, and is entitled to recover, its actual damages, together with
20 the costs of suit, including reasonable attorneys' fees.

21 50. Talking Rain seeks and is entitled to recover an award of damages of up to
22 three times the amount of the actual damages sustained.

23 COUNT IV
24 (Common Law Trademark Infringement and Common Law Unfair Competition)

25 51. Talking Rain repeats and incorporates by reference the allegations in
26 paragraphs 1-50.

1 52. Unique Beverage's actions described herein constitute common law trademark
2 infringement and unfair competition, and have created and will continue to create a likelihood
3 of confusion.

4 53. Upon information and belief, Unique Beverage acted with full knowledge of
5 Talking Rain's use of, and statutory and common law rights to, the ICE Marks and without
6 regard to the likelihood of confusion of the public created by Unique Beverage's activities.

7 54. Unique Beverage's actions demonstrate an intentional, willful, and malicious
8 intent to trade on the goodwill associated with the ICE Marks. These actions have caused and
9 will continue to cause irreparable injury to Talking Rain.

10 55. As a result of Unique Beverage's acts of trademark infringement and unfair
11 competition, Talking Rain has been damaged in an amount not yet determined or
12 ascertainable. At a minimum, however, Talking Rain is entitled to injunctive relief, to an
13 accounting of Unique Beverage's profits, to damages and to costs. Further, in light of Unique
14 Beverage's activities and the need to deter Unique Beverage from similar conduct in the
15 future, Talking Rain is entitled to punitive damages.

16 PRAYER FOR RELIEF

17 WHEREFORE, Talking Rain respectfully prays for the following relief:

18 A. That Unique Beverage be adjudged to be liable under each Count alleged
19 herein, and to have infringed Talking Rain's trademarks, to have falsely designated its
20 products, to have engaged in unfair competition, and to have engaged in unfair and deceptive
21 acts;

22 B. That Unique Beverage, its officers, agents, servants, employees, attorneys, and
23 all other persons acting in concert or participation with Unique Beverage be preliminarily and
24 permanently enjoined:

- 25 1. From directly or indirectly using the Cascade Ice Marks and the ICE Marks in
26 connection with Unique Beverage's goods or services;
27 2. From otherwise continuing to infringe upon the ICE Marks;

- 1 3. From further using in connection with any goods or services, any false or
- 2 deceptive designation, whether by words or other symbols or representations,
- 3 which suggest or imply any continuing relationship with Talking Rain or
- 4 Talking Rain's ICE Beverages;
- 5 4. From further unlawfully trading upon and appropriating the goodwill and
- 6 business reputation of Talking Rain or Talking Rain's ICE Beverages;
- 7 5. From further engaging in any acts of unfair competition against Talking Rain
- 8 or Talking Rain's ICE Beverages;
- 9 6. From any attempts to register a trademark, trade name, business name, domain
- 10 name, or otherwise, or any variation thereof similar to the Cascade Ice Marks
- 11 and/or the ICE Marks; and,
- 12 7. From in any way inducing, encouraging, aiding, abetting, or contributing to
- 13 any of the aforesaid acts;

14 C. That Unique Beverage be ordered to file with this Court and serve on Talking
15 Rain in accordance with 15 U.S.C. § 1116, within thirty (30) days after service on Unique
16 Beverage (or such extended period as this Court may direct), a report in writing and under
17 oath, setting forth in detail the manner and form in which it had complied with Talking Rain's
18 prayer for injunction;

19 D. That Unique Beverage be ordered to immediately cancel or withdraw, as
20 applicable, all state and federal registrations and applications for the Cascade Ice Marks;

21 E. That in accordance with 15 U.S.C. § 1118, Unique Beverage be ordered to
22 deliver to Talking Rain for destruction or other disposition all goods, labels, signs, prints,
23 packages, wrappers, advertisements, business forms, letterheads, promotional materials, and
24 other things in the possession or control of Unique Beverage that bear or display the Cascade
25 Ice Marks, or any designation similar to the ICE Marks so as to be likely to cause confusion,
26 deception, or mistake;

27

1 F. That Unique Beverage be required to account to Talking Rain for all gains,
2 profits, and advantages derived from its wrongful acts;

3 G. That Talking Rain be awarded damages and other monetary relief arising out
4 of Unique Beverage's infringement and other unlawful acts, in an amount to be determined
5 according to proof;

6 H. That because of the willful nature of Unique Beverage's infringement and other
7 unlawful acts as alleged above, and pursuant to 15 U.S.C. § 1117, the Court enter judgment
8 for Talking Rain for three times the amount of said damages;

9 I. That in view of the knowing, willful, wanton, and deliberate nature of Unique
10 Beverage's infringement and other unlawful acts, Talking Rain be awarded a judgment that
11 this case is an "exceptional case" under 15 U.S.C. § 1117, and that Unique Beverage pay
12 Talking Rain's costs and disbursements in this action, together with reasonable attorneys' fees;

13 J. For attorneys' fees and a trebling of damages under RCW 19.86 *et. seq.*;

14 K. For punitive damages to the extent permitted by law; and

15 L. For such other and further relief as the Court may deem just and proper.

16 DEMAND FOR JURY TRIAL

17 Pursuant to Fed. R. Civ. P. 38 and CR 38(b), Talking Rain demands a trial on all
18 issues triable to a jury.

19 Dated this 2nd day of July, 2010.

20
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