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 10 UNITED BRANDS COMPANY, INC.

11 UNITED STATES DISTRICT COURT  
 12 SOUTHERN DISTRICT OF CALIFORNIA

14 UNITED BRANDS COMPANY, INC.,  
 15 Plaintiff,  
 16 v.  
 17 ANHEUSER-BUSCH, INC.  
 18 Defendant.

CASE NO. 10-cv-02281-BEN-WMC

**FIRST AMENDED COMPLAINT FOR:**

**FEDERAL DILUTION; FEDERAL TRADE  
 DRESS AND TRADEMARK  
 INFRINGEMENT AND FALSE  
 DESIGNATION OF ORIGIN IN VIOLATION  
 OF THE LANHAM ACT SECTION 43(A);  
 FEDERAL COPYRIGHT INFRINGEMENT;  
 CALIFORNIA TRADEMARK  
 INFRINGEMENT AND DILUTION; UNFAIR  
 COMPETITION UNDER CALIFORNIA  
 BUSINESS AND PROFESSIONS CODE  
 SECTION 17200 ET SEQ.; CALIFORNIA  
 COMMON LAW TRADEMARK  
 INFRINGEMENT; CALIFORNIA COMMON  
 LAW UNFAIR COMPETITION**

**DEMAND FOR TRIAL BY JURY**

1 **INTRODUCTION**

2 1. This is an action for trademark infringement, copyright infringement, unfair  
3 competition, and related claims. Plaintiff United Brands Company, Inc. (“United Brands”) is the  
4 maker of the popular drink JOOSE, a flavored malt beverage which it has sold since 2006. The  
5 most popular version of JOOSE is Plaintiff’s DRAGON JOOSE (see below).



16 2. Defendant Anheuser-Busch makes a competing flavored malt beverage called  
17 TILT. For several years, Defendant sold the TILT product in silver cans that did not resemble  
18 Plaintiff’s JOOSE or DRAGON JOOSE cans. In fact, until recently, Defendant’s product was  
19 sold in a can featuring the design of a large streamlined letter “T” tilted at an angle emphasizing  
20 the “TILT” name for its product.



1           3.       Recently, however, Defendant completely changed the design and began selling  
2 TILT in cans featuring a dragon design that closely resembles the design of Plaintiff’s DRAGON  
3 JOOSE cans (see below for new design). Defendant’s use of these intentionally similar and  
4 infringing design elements is likely to or has caused confusion as to source, affiliation, or  
5 connection with Plaintiff, and also constitutes copyright infringement. Plaintiff brings this action  
6 to prevent Defendant from infringing Plaintiff’s marks and copyrights, and prevent confusion in  
7 the marketplace, and to address related state and common law claims.



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**JURISDICTION AND VENUE**

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18           4.       This is an action for: (a) federal trade dress and trademark infringement, and false  
19 designation of origin arising under 15 U.S.C. § 1125(a); (b) federal dilution arising under 15  
20 U.S.C. § 1125(c); (c) copyright infringement arising under 17 U.S.C. §§ 101 and 501; (d) dilution  
21 arising under California Business & Professions Code § 14330 *et seq.*; (e) trademark infringement  
22 arising under California Business & Professions Code § 14245 *et seq.*; (f) unfair competition  
23 arising under California Business & Professions Code § 17200 *et seq.*, (g) trademark infringement  
24 arising under the common law of the State of California; and (h) unfair competition arising under  
25 the common law of the State of California.

26           5.       This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28  
27 U.S.C. §§ 1331, 1338(a) and (b), and 1367(a).

28           6.       Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c).

1 **THE PARTIES**

2 7. Plaintiff UNITED BRANDS COMPANY, INC. (“United Brands”) is a California  
3 corporation having its principal place of business at 5355 Mira Sorrento Place Ste. 270 San Diego  
4 CA 92121. JOOSE BEVERAGE COMPANY is a division of United Brands.

5 8. United Brands is informed and believes, and on that basis alleges, that Defendant  
6 Anheuser-Busch, Inc. is a Delaware corporation with a place of business at Executive Office, One  
7 Busch Place, St. Louis, Missouri 63118-1852. Defendant is subject to the jurisdiction of this  
8 Court by virtue of its substantial contacts with California, including its participation in the acts  
9 and events occurring in this Judicial District as described herein.

10 **ALLEGATIONS FOR ALL CLAIMS FOR RELIEF**

11 **A. United Brands’ JOOSE Marks and Copyrights**

12 9. United Brands is a leader in the business of designing, producing and selling  
13 alcoholic beverages, including flavored malt beverages.

14 10. In 2006, United Brands launched its JOOSE flavored malt beverage. United  
15 Brands’ successful line of JOOSE flavored malt beverages has grown to include a variety of  
16 products that prominently use United Brands’ JOOSE, and JOOSE and design trademarks. In  
17 2007, United Brands launched its DRAGON JOOSE product, in the can shown above, and  
18 continues to market and distribute this product today. The can features United Brands’ JOOSE,  
19 JOOSE and design, and Dragon Design trademarks and Trade Dress elements which have remain  
20 substantially unchanged since launch.

21 11. United Brands has devoted a great deal of time, money and resources to create and  
22 market its JOOSE products, including DRAGON JOOSE, including its inherently distinctive  
23 packaging design which sets the JOOSE brand products apart from its competition.

24 12. United Brands’ use on its DRAGON JOOSE product of the distinct color scheme,  
25 stylized, archaic-style font, and dragon motif, makes the trade dress created by United Brands  
26 inherently distinctive (“DRAGON JOOSE Trade Dress”). Some of the elements in the DRAGON  
27 JOOSE Trade Dress that make it inherently distinctive include without limitation the following:

28 a. Prominent stylized graphic of a dragon surrounding the word mark JOOSE;

- b. The mark JOOSE in large white letters in a stylized, archaic font;
- c. The prominent use of a one-syllable word mark;
- d. The mark JOOSE is surrounded by a “shield” design as shown in the JOOSE and Design mark;
- e. The mark DRAGON JOOSE is also in a stylized font below the JOOSE and Design mark and is centered on the face of the can toward the bottom;
- f. A zig-zag line surrounds the alcohol volume content displayed at the top of the face of the can (e.g., “9.9% ALC/VOL”) above the logo;
- g. Use of a 24-ounce can;
- h. The alcohol volume content is also displayed within a small badge or banner just below the mark JOOSE; and
- i. A distinctive purple and black color scheme.

13. The DRAGON JOOSE Trade Dress, including the copyrighted Dragon Design, is prominently featured in virtually all advertisements and promotions for the DRAGON JOOSE flavored malt beverage. The DRAGON JOOSE Trade Dress is used uniformly and consistently in every product and promotion in commerce in connection with United Brands’ DRAGON JOOSE flavored malt beverage product.

14. In addition to the trademark rights in the JOOSE Marks (defined below), United Brands also owns copyrights in the images and appearance of its Dragon Design. United Brands currently owns federal copyright registration numbers VA 1-737-466 and VA 1-736-747 for its Dragon Design, attached as Exhibits A and B.

15. Since the launch of the original JOOSE flavored malt beverage in 2006 and the DRAGON JOOSE product in 2007, and prior to the acts of Defendant described herein, United Brands has continuously used the marks JOOSE, JOOSE and Design, the DRAGON JOOSE Trade Dress, the Dragon Design and DRAGON JOOSE and Design in interstate commerce in connection with its marketing, distribution and sales of flavored malt beverage products.

16. United Brands is the owner of federal trademark registrations for its JOOSE Marks, including the following:

1 Registration No. 3,263,454 for the mark JOOSE

2 Registration No. 3,465,813 for the mark JOOSE and Design

3 The marks JOOSE and JOOSE and Design are collectively referred to as the “JOOSE Marks”.

4 17. United Brands is also the owner of pending California state trademark registrations  
5 for its DRAGON JOOSE Marks, including: (1) JOOSE; (2) JOOSE and Design; (3) DRAGON  
6 JOOSE; and (4) Dragon Design (“State DRAGON JOOSE Marks”).

7 18. The DRAGON JOOSE Trade Dress, the Dragon Design mark, the State DRAGON  
8 JOOSE Marks, and the JOOSE Marks together comprise the DRAGON JOOSE Marks.

9 19. The DRAGON JOOSE Marks are inherently distinctive. In the alternative,  
10 because of United Brands’ exclusive and extensive use of the DRAGON JOOSE Marks, they  
11 have acquired considerable value and have become well known to the consuming public as  
12 identifying United Brands exclusively, and uniquely, as the source of products to which the  
13 DRAGON JOOSE Marks are applied. In this way, the DRAGON JOOSE Marks have acquired  
14 secondary meaning and distinctiveness.

15 20. United Brands has spent substantial dollars in promoting its JOOSE flavored malt  
16 beverages, including the DRAGON JOOSE Marks, both in California and nationwide. United  
17 Brands’ promotional efforts include, for example, sales promotions, print media, on-line articles,  
18 internet advertising, point-of-sale materials, contests, specialty items and attendance at trade  
19 shows. The DRAGON JOOSE Marks are prominently featured in advertisements and promotions  
20 for the DRAGON JOOSE flavored malt beverages and are prominently displayed on United  
21 Brands’ specialty items. United Brands’ line of JOOSE flavored malt beverages has been  
22 tremendously successful, with sales of flavored malt beverages totaling over \$160,000,000  
23 dollars.

24 21. United Brands’ line of JOOSE flavored malt beverages is sold in 47 states,  
25 including California.

26 22. United Brands, its distributors and retailers have continuously and exclusively  
27 used the DRAGON JOOSE Marks to distinguish themselves as the source of goods and services  
28 in connection with the DRAGON JOOSE Marks.

1           23.     As a result of United Brands’ substantial use and promotion of the flavored malt  
2 beverages bearing the DRAGON JOOSE Marks, the DRAGON JOOSE Marks have become  
3 famous. The JOOSE Marks have acquired great value as identifiers of United Brands’ products  
4 and serve to distinguish United Brands’ JOOSE flavored malt beverages from those of others.  
5 Customers in this Judicial District and elsewhere readily recognize United Brands’ JOOSE Marks  
6 as distinctive designations of the origin of United Brands’ JOOSE flavored malt beverage. The  
7 JOOSE Marks are assets of enormous value as symbols of United Brands and its quality products  
8 and goodwill. The success of the JOOSE flavored malt beverages has made United Brands the  
9 second largest seller of flavored malt beverages in the United States.

10           24.     United Brands has never authorized or consented to any use by Defendant of the  
11 DRAGON JOOSE Marks.

12           **B.     Defendant’s Infringement of United Brands’ DRAGON JOOSE Marks**

13           25.     United Brands is informed and believes, and on that basis alleges, that Defendant  
14 is engaged in the business of producing, selling and/or distributing malt beverages, including  
15 flavored malt beverages (hereinafter “Defendant’s Products”), in this Judicial District and  
16 elsewhere.

17           26.     United Brands is informed and believes, and on that basis alleges, that in or about  
18 August 2005 Defendant began marketing an alcoholic, malt-based flavored beverage, under the  
19 mark TILT. The TILT product came in two flavors and was sold in 16 ounce silver cans which  
20 featured a stylized letter “T” which was tilted to the left, as shown below.



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1           27.     United Brands is informed and believes, and on that basis alleges, that for  
2 approximately five years since launch, Defendant sold the TILT product using such silver cans  
3 with the tilted “T”. Defendant then changed its packaging and design for the TILT product.

4           This new can featured a radically different look and design, as shown below. The new  
5 can was also sold in a 16 ounce size, only.



15           28.     United Brands is informed and believes, and on that basis alleges, that on or about  
16 July 2010, Defendant began selling Defendant’s Products in the new, radically different looking  
17 can, and also for the first time, in a 24 ounce size. United Brands is further informed and  
18 believes, and on that basis alleges, that Defendant has introduced several new TILT colors and  
19 cans using the same look and design as shown below.





1           29.     In particular, the new TILT designs and colors are substantially similar to United  
2 Brands' JOOSE products – which have always been sold only in a 24 ounce can – including  
3 DRAGON JOOSE, as shown below.



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12           30.     In this way, Defendant's product packaging has become increasingly similar to  
13 that of United Brands. United Brands is further informed and believes, and on that basis alleges,  
14 that Defendant willfully and intentionally infringed its DRAGON JOOSE Marks by directly  
15 copying elements of the DRAGON JOOSE Marks and cans, in order to cause confusion among  
16 distributors, retailers and consumers and trade upon the goodwill created by United Brands in its  
17 DRAGON JOOSE Marks and products.

18           31.     Notably, the New TILT Design shares many similarities with the DRAGON  
19 JOOSE Marks, both in overall appearance and in individual features. Among other similar  
20 features:

21                   (i) the TILT cans feature a stylized depiction of two dragons that surround the  
22 trademark, just as the DRAGON JOOSE and Design mark and can prominently feature a dragon  
23 surrounding the JOOSE and Design mark;

24                   (ii) the word mark TILT utilizes a stylized archaic font similar to the one used for  
25 the DRAGON JOOSE Marks, and that is different from the streamlined font previously used;

26                   (iii) the word mark TILT is in white as is the mark JOOSE in white, and it is in a  
27 stylized font similar to the font used on the JOOSE cans for the mark JOOSE and for the

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1 particular product name (e.g., DRAGON JOOSE) and centered on the face of the can toward the  
2 bottom;

3 (iv) Defendant's cans have a large letter "T" in a stylized font that resembles the  
4 "J" in "JOOSE";

5 (v) there is a crown-like graphic above the "T" that is similar to the crown-like  
6 shield design in the center of the JOOSE can, in which the mark JOOSE is displayed;

7 (vi) the new TILT cans use a similar color scheme consisting of a black  
8 background with colored elements in the design features of the can, which the DRAGON JOOSE  
9 products also employ; and

10 (vii) the new TILT cans are 24 ounce cans (together, "New TILT Design").

11 32. In addition, the cans share other similarities such as on the TILT cans there is a  
12 description of the product in plain font on the bottom of the face of the can, just as there is on the  
13 DRAGON JOOSE cans, and the alcohol volume content of the TILT cans is displayed at the top  
14 of the face of the can in the same manner as the DRAGON JOOSE cans (e.g., "12% ALC/VOL")  
15 within a badge or banner that has a zig-zag line, similar to how the alcohol content appears on the  
16 DRAGON JOOSE cans.

17 33. These similarities are further exacerbated when Defendant's TILT cans are  
18 situated adjacent to United Brands' JOOSE cans, which often happens at the retail stores. These  
19 similarities are even more noticeable when Defendant's TILT cans are situated in refrigerators  
20 and coolers that are decorated with JOOSE labels, display ads and other marketing and  
21 promotional materials, and when Defendant's TILT cans are placed in facings in those  
22 refrigerators that are labeled for JOOSE.

23 34. Notably, these new cans bearing the New TILT Design do not feature any tilting  
24 "T" like the original TILT cans, nor any tilting object or design.

25 35. United Brands is informed and believes, and on that basis alleges, that Defendant  
26 markets, distributes and sells its TILT beverage products to the same  
27 consumers and distributors, and in the same sales channels and retail stores, as United Brands.  
28 The parties' products described herein are directly competitive products.

1           **C. Defendant’s Unlawful Moving and Removal of JOOSE Products**

2           36. In addition to the foregoing conduct by Defendant, United Brands is further  
3 informed and believes, and on that basis alleges, that Defendant, either directly or through its  
4 agent distributors or both, has moved or removed, and continues to move or remove, United  
5 Brands’ JOOSE products where they are set for display and sale in various retail establishments  
6 located in California.

7           37. United Brands is further informed and believes, and on that basis alleges, that  
8 Defendant, directly or through its agent distributors, either moves JOOSE products to a less  
9 prominent position at these retailers, or removes the products completely from the shelves.

10          38. In either moving or removing JOOSE products, Defendant’s conduct violates the  
11 California Alcoholic Beverage Control Act, Federal Alcohol Administration Act, and related state  
12 and federal regulations.

13           **D. Effect of Defendant’s Activities on United Brands and the Consuming Public**

14          39. Defendant’s unauthorized use of the New TILT Design falsely indicates to the  
15 purchasing public that Defendant, its business, and/or its products, originate with United Brands,  
16 or are affiliated, connected or associated with United Brands, or are sponsored, endorsed or  
17 approved by United Brands, or are in some manner related to United Brands and its products.

18          40. Defendant’s unauthorized use of the New TILT Design is likely to cause  
19 confusion, to cause mistake, or to deceive customers and potential customers of the parties, at  
20 least as to the affiliation, connection or association of Defendant with United Brands, or as to the  
21 origin, sponsorship, or approval of Defendant’s products and commercial activities by United  
22 Brands.

23          41. Defendant’s unauthorized use of the New TILT Design falsely designates the  
24 origin of Defendant’s products. Defendant’s unauthorized use of the New TILT Design enables it  
25 to trade on and receive the benefit of goodwill built up at a great effort and expense over many  
26 years by United Brands, and to gain acceptance for its business and products not solely on their  
27 own merits, but on the reputation and goodwill of United Brands and its products.

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1           42. Defendant has been and will continue to be unjustly enriched at United Brands’  
2 expense by its unauthorized use of the New TILT Design.

3           43. Defendant’s unauthorized use of the New TILT Design in the manner described  
4 deprives United Brands of the ability to control the nature and quality of products provided under  
5 the JOOSE Marks, and places the valuable reputation and goodwill of United Brands in the hands  
6 of Defendant, over which United Brands has no control.

7           44. Unless restrained by this Court, these acts of Defendant will continue, and will  
8 continue to cause irreparable injury to United Brands and to the public, for which there is no  
9 adequate remedy at law.

10          45. United Brands is informed and believes, and on that basis alleges, that without  
11 permission or authority from United Brands, Defendant has infringed United Brands’ DRAGON  
12 JOOSE Marks in interstate commerce by producing and marketing Defendant’s Products bearing  
13 the New TILT Design.

14          46. United Brands is informed and believes, and on that basis alleges, that Defendant’s  
15 unauthorized use of the New TILT Design is intended to trade upon the goodwill and substantial  
16 recognition associated with United Brands’ DRAGON JOOSE and JOOSE flavored malt  
17 beverages.

18          47. United Brands is informed and believes, and on that basis alleges, that Defendant  
19 is using the New TILT Design in an attempt to associate its products with United Brands or  
20 otherwise trade upon United Brands’ reputation.

21          48. United Brands is informed and believes, and on that basis alleges, that Defendant’s  
22 use of the New TILT Design is designed to cause confusion, mistake or deception.

23          49. By virtue of the acts complained of herein, Defendant has created a likelihood of  
24 injury to United Brands’ business reputation, caused a strong likelihood of consumer confusion as  
25 to the source of origin or relationship of United Brands’ and Defendant’s goods, diluted United  
26 Brands’ famous DRAGON JOOSE Marks, and has otherwise competed unfairly with United  
27 Brands.

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1 50. United Brands is informed and believes, and on that basis alleges, that Defendant's  
2 acts complained of herein are willful and deliberate.

3 51. Defendant's acts complained of herein have caused damage to United Brands in an  
4 amount to be determined at trial, and such damages will continue to increase unless Defendant is  
5 enjoined from its wrongful actions.

6 52. Defendant's acts complained of herein have caused United Brands to suffer  
7 irreparable injury to its business. United Brands will suffer substantial loss of goodwill and  
8 reputation unless and until Defendant is preliminarily and permanently enjoined from the  
9 wrongful actions complained of herein.

### 10 **FIRST CLAIM FOR RELIEF**

#### 11 **(Trade Dress Infringement and False Designation of Origin**

#### 12 **Under 15 U.S.C. § 1125(a))**

13 53. United Brands repeats, realleges, and incorporates by reference the allegations set  
14 forth in Paragraphs 1 through 52 as though fully set forth herein.

15 54. United Brands' use on its DRAGON JOOSE product of the distinct color schemes,  
16 stylized, archaic-style font, and dragon motif, makes the DRAGON JOOSE trade dress created by  
17 United Brands inherently distinctive. Some of the non-functional elements in the DRAGON  
18 JOOSE Trade Dress that make it inherently distinctive include without limitation the following:

- 19 a. Prominent stylized graphic of a dragon surrounding the word mark JOOSE;
- 20 b. The mark JOOSE in large white letters in a stylized, archaic font;
- 21 c. The prominent use of a one-syllable word mark;
- 22 d. The mark JOOSE is surrounded by a "shield" design as shown in the  
23 JOOSE and Design mark;
- 24 e. The mark DRAGON JOOSE is also in a stylized font below the JOOSE  
25 and Design mark and is centered on the face of the can toward the bottom;
- 26 f. Use of a 24-ounce can;
- 27 g. A zig-zag line surrounds the alcohol volume content displayed at the top of  
28 the face of the can (e.g., "9.9% ALC/VOL") above the logo;

1           h.     The alcohol volume content is also displayed within a small badge or  
2 banner just below the mark JOOSE; and

3           i.     A distinctive purple and black color scheme.

4           55.    United Brands has used in interstate commerce an inherently distinctive product  
5 packaging in connection with the sale and marketing of DRAGON JOOSE brand flavored malt  
6 beverage.

7           56.    Consumers recognize United Brands' DRAGON JOOSE product by its  
8 packaging, which has remained substantially the same since the product was launched.

9           57.    Defendant's use of trade dress that infringes specifically on the DRAGON JOOSE  
10 Trade Dress has confused and is likely to continue to cause confusion or to cause mistake, or to  
11 deceive the consuming public into believing that Defendant's goods are authorized, sponsored,  
12 affiliated with or approved by United  
13 Brands. These acts constitute trade dress infringement of the DRAGON JOOSE Trade Dress in  
14 violation of 15 U.S.C. § 1125(a).

15           58.    Defendant created a false designation of origin by using in commerce, without  
16 United Brands' permission, the New TILT Design in connection with the advertisement, offering  
17 for sale and/or sale of Defendant's Products. United Brands is informed and believes, and on that  
18 basis alleges that Defendant did so with the intent to trade upon United Brands' reputation and  
19 goodwill by causing confusion and mistake among customers and the public, and to deceive the  
20 public into believing that Defendant's products are associated with, sponsored by or approved by  
21 United Brands, when they are not. These acts constitute false designation of origin in violation of  
22 15 U.S.C. § 1125(a).

23           59.    United Brands is informed and believes, and on that basis alleges, that Defendant  
24 had actual knowledge of United Brands' ownership and prior use of its DRAGON JOOSE Marks,  
25 and without the consent of United Brands, has willfully violated 15 U.S.C. § 1125(a).

26           60.    Defendant's aforementioned acts have injured United Brands and damaged United  
27 Brands in an amount to be determined at trial.

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1           68.     Defendant's aforementioned acts have injured United Brands and damaged United  
2 Brands in an amount to be determined at trial. By its actions, Defendant has irreparably injured  
3 United Brands. Such irreparable injury will continue unless Defendant is preliminarily and  
4 permanently enjoined by this Court from further violation of United Brands' rights, for which  
5 United Brands has no adequate remedy at law.

6   **THIRD CLAIM FOR RELIEF**

7   **(Federal Dilution Under 15 U.S.C. § 1125(c))**

8           69.     United Brands repeats, realleges, and incorporates by reference the allegations set  
9 forth in Paragraphs 1 through 68 as though fully set forth herein.

10          70.     DRAGON JOOSE is the most popular and recognized of United Brands' JOOSE  
11 line of products. Since its launch in 2007, DRAGON JOOSE has comprised a significant  
12 percentage of sales of all of the JOOSE line of products.

13          71.     United Brands' DRAGON JOOSE Marks are famous, and became famous prior to  
14 the acts of Defendant complained of herein.

15          72.     United Brands JOOSE products and DRAGON JOOSE Marks have appeared in  
16 several on-line and print magazines and newspapers.

17          73.     United Brands products are sold under its DRAGON JOOSE Marks in 47 states.  
18 United Brands advertises its products as explained above in each of those states.

19          74.     Products sold under its DRAGON JOOSE Marks are recognized by the consuming  
20 public on a nation-wide basis as originating from one source.

21          75.     United Brands owns registrations for both its JOOSE and JOOSE and Design  
22 marks.

23          76.     Defendant's unauthorized commercial use of the DRAGON JOOSE Marks in  
24 connection with the advertisement, offering for sale and/or sale of Defendant's Products has  
25 caused and is likely to continue to cause dilution of the distinctive quality of the famous  
26 DRAGON JOOSE Marks.

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1           77. Defendant’s aforementioned acts are likely to tarnish, injure, or trade upon United  
2 Brands’ business, reputation or goodwill, and to deprive United Brands of the ability to control its  
3 DRAGON JOOSE Marks.

4           78. Defendant’s aforementioned acts have injured United Brands and damaged United  
5 Brands in an amount to be determined at trial.

6           79. By its actions, Defendant has irreparably injured United Brands. Such irreparable  
7 injury will continue unless Defendant is preliminarily and permanently enjoined by this Court  
8 from further violation of United Brands’ rights, for which United Brands has no adequate remedy  
9 at law.

10                                   **FOURTH CLAIM FOR RELIEF**

11                                   **(Copyright Infringement Under 17 U.S.C. § 101 and 501)**

12           80. United Brands repeats, realleges, and incorporates by reference the allegations set  
13 forth in Paragraphs 1 through 79 as though fully set forth herein.

14           81. The New TILT Design prominently displays a dragon design that surrounds the  
15 name of the beverage and comprises the vast majority of the front side of the product can. In this  
16 way, the New TILT Design is substantially similar to the Dragon Design and Dragon Design with  
17 Logo Copyrights (collectively, “Dragon Design Copyrights”) used on United Brands’ DRAGON  
18 JOOSE product cans which also prominently feature a dragon design that surrounds the name of  
19 the beverage, comprising the vast majority of the front side of the product can.

20           82. The specific designs that are the subject of the Dragon Design Copyrights are  
21 artistically unique, with the head of the dragon at the top of the name of the beverage. The  
22 dragon design is the entirety of the Dragon Design copyright, and is the principle part of the  
23 Dragon Design with Logo copyright.

24           83. As the DRAGON JOOSE product has been available to consumers since 2007,  
25 Defendant has had access to the Dragon Design Copyrights.

26           84. The New TILT Design looks substantially similar to United Brands’ Dragon  
27 Design Copyrights.

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1           85.     The New TILT Design is a substantial copy of the whole of the Dragon Design  
2 copyright, and a material part of the Dragon Design and Logo copyright.

3           86.     By its actions alleged above, Defendant has infringed and/or will continue to  
4 infringe the Dragon Design Copyrights within the meaning of 17 U.S.C. § 501 by its copying,  
5 distribution, creation of derivative works from, and/or publicly display of the new TILT product  
6 cans featuring the New TILT Design on the product packaging and advertising.

7           87.     Such infringement is willful in that Defendant knew or should have known that  
8 their actions alleged above would infringe the Dragon Design.

9           88.     United Brands will continue to sustain damage as a result of Defendant's  
10 infringing acts. Defendant's wrongful conduct has also deprived and will continue to deprive  
11 United Brands of opportunities for expanding its sales and goodwill.

12          89.     Pursuant to 17 U.S.C. § 502, United Brands is entitled to an injunction restraining  
13 Defendant, its officers, agents, employees, and all persons acting in concert with Defendant, and  
14 each of them, from copying, distributing, creating derivative works  
15 from, and/or publicly displaying TILT product cans featuring the New TILT Design on the  
16 product, packaging and advertising, in violation of the copyright laws.

17          90.     Furthermore, pursuant to 17 U.S.C. § 504, United Brands is entitled to recover  
18 from Defendant the damages United Brands has sustained and will sustain, and all profits, gains  
19 and advantages derived by Defendant as a result of Defendant's infringement of the Dragon  
20 Design Copyrights, in amount to be proven at trial.

21          91.     By its actions, Defendant has irreparably injured United Brands. Such irreparable  
22 injury will continue unless Defendant is preliminarily and permanently enjoined by this Court  
23 from further violation of United Brands' rights, for which United Brands has no adequate remedy  
24 at law.

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1 **FIFTH CLAIM FOR RELIEF**

2 **(California Statutory Dilution Under**

3 **Business & Professions Code § 14245, et seq.)**

4 92. United Brands repeats, realleges, and incorporates by reference the allegations set  
5 forth in Paragraphs 1 through 91 as though fully set forth herein.

6 93. This is an action for trademark dilution arising under California Business &  
7 Professions Code § 14247.

8 94. United Brands' DRAGON JOOSE Marks are distinctive. The JOOSE and Design  
9 mark and the Dragon Design mark are inherently distinctive. The JOOSE mark has acquired  
10 distinctiveness through United Brands' marketing and promotion efforts in California.

11 95. United Brands' line of JOOSE flavored malt beverages has been tremendously  
12 successful both nationally and in California.

13 96. DRAGON JOOSE is the most popular and recognized of United Brands' JOOSE  
14 line of products. Since its launch in 2007, DRAGON JOOSE has comprised a significant  
15 percentage of sales of all of the JOOSE line of products.

16 97. United Brands JOOSE products and DRAGON JOOSE Marks have appeared in  
17 several on-line and print magazines and newspapers.

18 98. United Brands products are sold under its DRAGON JOOSE Marks in 47 states.  
19 United Brands advertises its products as explained above in each of those states.

20 99. As a result of United Brands' substantial use and promotion of the flavored malt  
21 beverages bearing the DRAGON JOOSE Marks, the DRAGON JOOSE Marks have become  
22 famous, and became famous prior to the acts of Defendant complained of herein. The JOOSE  
23 Marks have acquired great value as identifiers of United Brands' products and serve to  
24 distinguish United Brands' JOOSE flavored malt beverages from those of others. Customers in  
25 this Judicial District and elsewhere in California readily recognize United Brands' JOOSE Marks  
26 as distinctive designations of the origin of United Brands' JOOSE flavored malt beverage.

27 100. Defendant's unauthorized commercial use of the New TILT Design in connection  
28 with the advertisement, offering for sale and/or sale of Defendant's Products, has caused and is

1 likely to continue to cause dilution of the distinctive quality of the famous DRAGON JOOSE  
2 Marks.

3 101. Defendant's aforementioned acts are likely to tarnish, injure or trade upon United  
4 Brands' business, reputation or goodwill, and to deprive United Brands of the ability to control its  
5 DRAGON JOOSE Marks.

6 102. United Brands is informed and believes, and on that basis alleges, that Defendant  
7 had actual knowledge of United Brands' ownership and prior use of United Brands' federally  
8 registered JOOSE Marks, and without the consent of United Brands, has willfully violated  
9 California Business and Professions Code § 14247.

10 103. Defendant's aforementioned acts have injured United Brands and damaged United  
11 Brands in an amount to be determined at trial.

12 104. By its actions, Defendant has irreparably injured United Brands. Such irreparable  
13 injury will continue unless Defendant is preliminarily and permanently enjoined by this Court  
14 from further violation of United Brands' rights, for which United Brands has no adequate remedy  
15 at law.

16 105. Pursuant to California Business & Professions Code § 14247 et seq., United  
17 Brands is entitled to injunctive relief throughout the State of California.

18 106. Pursuant to California Business & Professions Code § 14247 et seq., Defendant  
19 may be required to pay to United Brands up to three times its profits from, and up to three times  
20 all damages suffered by reason of, the wrongful manufacture, use, display or sale of its New TILT  
21 Design.

22 **SIXTH CLAIM FOR RELIEF**

23 **(California Statutory Trademark Infringement Under**

24 **Business & Professions Code § 14245)**

25 107. United Brands hereby repeats, realleges, and incorporates by reference Paragraphs  
26 1 through 106 as though fully set forth herein.

27 108. United Brands is the owner of the pending California state trademark registrations  
28 for the State DRAGON JOOSE Marks listed above.

1           109. This is an action for trademark infringement arising under California Business &  
2 Professions Code § 14245.

3           110. Defendant has used in commerce, without permission of United Brands,  
4 trademarks, including product packaging, that is identical to and/or confusingly similar to United  
5 Brands' California State DRAGON JOOSE Marks. Defendant has infringed United Brands'  
6 California State DRAGON JOOSE Marks and created a false designation of origin by using  
7 United Brands' DRAGON JOOSE Marks and/or confusingly similar marks in connection with  
8 the manufacturing, distributing, selling and/or promoting of Defendant's Products without the  
9 permission of United Brands. United Brands is informed and believes, and on that basis alleges,  
10 that Defendant's acts are designed to trade upon United Brands' reputation and goodwill by  
11 causing confusion and mistake among customers and the public, and to deceive the public into  
12 believing that Defendant's Products are associated with, sponsored by or approved by United  
13 Brands, when they are not.

14           111. United Brands is informed and believes, and on that basis alleges, that Defendant  
15 had actual knowledge of United Brands' ownership and prior use of United Brands' federally  
16 registered JOOSE Marks, and without the consent of United Brands, has willfully violated  
17 California Business and Professions Code § 14245.

18           112. Defendant's aforementioned acts have injured United Brands and damaged United  
19 Brands in an amount to be determined at trial.

20           113. By its actions, Defendant has irreparably injured United Brands. Such irreparable  
21 injury will continue unless Defendant is preliminarily and permanently enjoined by this Court  
22 from further violation of United Brands' rights, for which United Brands has no adequate remedy  
23 at law.

24           114. Pursuant to California Business & Professions Code § 14247 et seq., United  
25 Brands is entitled to injunctive relief throughout the State of California.

26           115. Pursuant to California Business & Professions Code § 14247 et seq., Defendant  
27 may be required to pay to United Brands up to three times its profits from, and up to three times

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1 all damages suffered by reason of, the wrongful manufacture, use, display or sale of its TILT  
2 products.

3 **SEVENTH CLAIM FOR RELIEF**

4 **(California Statutory Unfair Competition Under**  
5 **Business & Professions Code § 17200)**

6 116. United Brands repeats, realleges, and incorporates by reference the allegations set  
7 forth in Paragraphs 1 through 115 as though fully set forth herein.

8 117. This is an action for unfair competition arising under California Business &  
9 Professions Code § 17200 *et seq.*

10 118. United Brands is informed and believes, and on that basis alleges, that by adopting  
11 product packaging that resembles and infringes the DRAGON JOOSE Marks, Defendant's  
12 unlawful conduct has deceived or is likely to deceive purchasers into believing that Defendant's  
13 TILT product and United Brands' JOOSE product are related, and/or that Defendant's TILT  
14 product is affiliated with, associated with, and/or sold by United Brands. United Brands is  
15 informed and believes, and on that basis alleges, that Defendant has intentionally caused a  
16 likelihood of confusion among the purchasing public in this Judicial District and elsewhere,  
17 thereby unfairly competing with United Brands in violation of California Business & Professions  
18 Code § 17200 *et seq.*

19 119. Further, and as a separate basis for liability, United Brands is informed and  
20 believes, and on that basis alleges, that Defendant has unlawfully and unfairly moved or removed  
21 JOOSE products to the detriment of United Brands and to the benefit of Defendant, in violation of  
22 the California Alcoholic Beverage Control Act, Federal Alcohol Administration Act, and related  
23 state and federal regulations. Defendant has thus engaged in unfair competition and an unlawful  
24 and/or unfair business practice in violation of Sections 17200 *et seq.* of the California Business  
25 and Professions Code.

26 120. Defendant's aforesaid actions constitute unlawful, unfair, malicious or fraudulent  
27 practices. As a result of Defendant's acts of unfair competition, United Brands has been injured  
28 and lost money or property in an amount to be determined at trial.

1 121. Further, by these actions, Defendant has irreparably injured United Brands. Such  
2 irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by  
3 this Court from further violation of United Brands’ rights, for which United Brands has no  
4 adequate remedy at law.

5 **EIGHTH CLAIM FOR RELIEF**

6 **(California Common Law Trademark Infringement)**

7 122. United Brands hereby repeats, realleges, and incorporates by reference Paragraphs  
8 1 through 121 as though fully set forth herein.

9 123. Defendant has used in commerce, without permission of United Brands,  
10 trademarks, including product packaging, that is identical to and/or confusingly similar to United  
11 Brands’ DRAGON JOOSE Marks.

12 124. United Brands is informed and believes, and on that basis alleges, that Defendant’s  
13 acts are designed to trade upon United Brands’ reputation and goodwill by causing confusion and  
14 mistake among customers and the public, and to deceive the public into believing that  
15 Defendant’s Products are associated with, sponsored by or approved by United Brands, when they  
16 are not.

17 125. United Brands is informed and believes, and on that basis alleges, that Defendant  
18 had actual knowledge of United Brands’ ownership and prior use of United Brands’ DRAGON  
19 JOOSE Marks.

20 126. By virtue of the acts complained of herein, Defendant has intentionally infringed  
21 United Brands’ DRAGON JOOSE Marks and caused a likelihood of confusion among the  
22 consuming public, thereby committing California state common law trademark infringement.

23 127. Defendant’s aforementioned acts have been fraudulent, oppressive and malicious,  
24 and have injured United Brands and damaged United Brands in an amount to be determined at  
25 trial.

26 128. By its actions, Defendant has irreparably injured United Brands. Such irreparable  
27 injury will continue unless Defendant is preliminarily and permanently enjoined by this Court

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1 from further violation of United Brands' rights, for which United Brands has no adequate remedy  
2 at law.

3 **NINTH CLAIM FOR RELIEF**

4 **(California Common Law Unfair Competition)**

5 129. United Brands repeats, realleges, and incorporates by reference the allegations set  
6 forth in Paragraphs 1 through 128 as though fully set forth herein.

7 130. United Brands is informed and believes, and on that basis alleges, that by adopting  
8 product packaging that resembles and infringes the trademark, trade dress, and copyrights of  
9 United Brands, Defendant's unlawful conduct has deceived or is likely to deceive purchasers into  
10 believing that Defendant's TILT product and United Brands' JOOSE product are related, and/or  
11 that Defendant's TILT product is affiliated with, associated with, and/or sold by United Brands.  
12 By deceiving the purchasing public as to the source of origin of its TILT product, Defendant  
13 unfairly competes against United Brands in violation of California common law.

14 131. By its actions, Defendant has irreparably injured United Brands. Such irreparable  
15 injury will continue unless Defendant is preliminarily and permanently enjoined by this Court  
16 from further violation of United Brands' rights, for which United Brands has no adequate remedy  
17 at law.

18 132. Defendant's willful acts of unfair competition under the common law of the State  
19 of California constitute fraud, oppression and malice. Accordingly, United Brands is entitled to  
20 exemplary damages pursuant to California Civil Code § 3294(a).

21 **PRAYER FOR RELIEF**

22 WHEREFORE, United Brands prays for relief as follows:

23 1. That Defendant be adjudged to have infringed United Brands' DRAGON JOOSE  
24 and DRAGON JOOSE and Design Marks, in violation of federal and California state law;

25 2. That Defendant be adjudged to have willfully and deliberately infringed United  
26 Brands' DRAGON JOOSE and DRAGON JOOSE and Design Marks in violation of federal and  
27 California state law;

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1           3.       That Defendant be adjudged to have competed unfairly with United Brands and  
2 used a false designation of origin, false or misleading description of fact, and/or false or  
3 misleading representation of fact in violation of federal and California state law;

4           4.       That Defendant be adjudged to have willfully and deliberately competed unfairly  
5 with, and used a false designation of origin, false or misleading description of fact, and/or false or  
6 misleading representation of fact, in violation of federal and California state law;

7           5.       That Defendant be adjudged to have diluted United Brands' DRAGON JOOSE  
8 Marks, in violation of federal and California state law;

9           6.       That Defendant be adjudged to have willfully and deliberately diluted United  
10 Brands' DRAGON JOOSE Marks in violation of federal and California state law;

11          7.       That Defendant, its officers, agents, employees and all persons acting or claiming  
12 to act on its behalf under its direction or authority, and all persons acting or claiming to act in  
13 concert or in participation with it or any of them, be preliminarily and permanently enjoined and  
14 restrained from infringing United Brands' DRAGON JOOSE Marks in any manner in the sale,  
15 promotion, distribution, purchase, or advertising of Defendant's products, and specifically,  
16 enjoined from using the New TILT Design;

17          8.       That Defendant, its officers, agents, employees and all persons acting or claiming  
18 to act on its behalf under its direction or authority, and all persons acting or claiming to act in  
19 concert or in participation with it or any of them, be permanently enjoined and restrained from or  
20 engaging in acts of unfair competition with United Brands relating to use of the New TILT  
21 Design by Defendant in any manner, in the sale, promotion, distribution, purchase or advertising  
22 of Defendant's goods;

23          9.       That Defendant be required to turn over and deliver up to the Court or to a Court-  
24 designated party during the pendency of this action all infringing materials in its custody and  
25 control (including records documenting the manufacture, sale or receipt of infringing items) and  
26 to turn over for destruction all infringing matters and all matters used to make infringing materials  
27 as well as turn over and deliver any and all materials in its possession, custody or control, or that  
28 of its owners, officers, agents, brokers, or employees, that would, if used, or marketed or

1 otherwise distributed, violate the injunctive relief granted herein, for ultimate destruction of such  
2 items;

3 10. That Defendant be required to publish notice to all distributors, brokers, retailers,  
4 tradeshows, sellers, and other customers or others in the trade who may have seen, or heard of  
5 Defendant's use of the New TILT Design, or registered for or purchased any of Defendant's  
6 products which were marketed using the New TILT Design, which notice shall disclaim any  
7 connection with United Brands and shall advise them of the Court's injunction order and of  
8 Defendant's discontinuance from all use of the New TILT Design;

9 11. That Defendants be ordered to pay the costs of corrective advertising;

10 12. That Defendant be ordered to pay damages in the amount of their infringing profits  
11 and/or reasonable royalties, increased by the Court by such amount as the Court deems to be just,  
12 together with United Brands' actual damages, which, according to the circumstances of this case,  
13 should be increased or trebled, including trebling of damages pursuant to 15 U.S.C. § 1117(b);

14 13. That Defendant be ordered to pay damages in the amount of their infringing profits  
15 and/or reasonable royalties, increased by the Court by such amount as the Court deems to be just,  
16 together with its profits from, the wrongful manufacture, use, display or sale of its TILT products,  
17 and that Defendant be ordered to pay United Brands' actual damages, which, according to the  
18 circumstances of this case, should be increased or trebled, including trebling of damages pursuant  
19 to California Business & Professions Code § 14250;

20 14. For an award of costs and reasonable attorneys' fees; and

21 15. For all other relief the Court deems just and proper.

22 Dated: January 6, 2011

23 **DLA PIPER LLP (US)**

24  
25 By: s/Nancy O. Dix

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Attorneys for Plaintiff

UNITED BRANDS COMPANY, INC.

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**JURY TRIAL DEMAND**

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury of all issues triable of right by a jury.

Dated: January 6, 2011

**DLA PIPER LLP (US)**

By: s/Nancy O. Dix  
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Attorneys for Plaintiff  
UNITED BRANDS COMPANY, INC.

1 **CERTIFICATE OF SERVICE**

2 This is to certify that on this day, Plaintiff UNITED BRANDS COMPANY, INC., filed its  
3 First Amended Complaint For: Federal Dilution; Federal Trade Dress Infringement; False  
4 Designation Of Origin In Violation Of The Lanham Act Section 43(A); Federal Copyright  
5 Infringement; California Trademark Infringement And Dilution; Unfair Competition Under  
6 California Business And Professions Code Section 17200 Et Seq.; Common Law Trademark  
7 Infringement; Common Law Unfair Competition, with the Clerk of Court using the Court's  
8 CM/ECF system which will automatically send email notification of such filing to the following  
9 attorneys of record:

10  
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25 Respectfully submitted this 6th day of January, 2010.

26 Dated: January 6, 2011

27 **DLA PIPER LLP (US)**

28 By: s/Nancy O. Dix

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