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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EDEN FOODS, INC.

 Plaintiff.

 vs.

EDEN’S ETHNOS LLC

 Defendant,

Case No. 3:17-CV-2275-ALB-NLS

**CONSENT JUDGMENT AND
PERMANENT INJUNCTION**

(Doc. No. 15)

On November 7, 2017, Plaintiff Eden Foods, Inc. (“Eden”) filed its Complaint against Defendant Eden’s Ethnos LLC (“Eden’s Ethnos”). The Complaint asserts that Eden’s Ethnos has engaged in infringing use of Eden’s superior and exclusive rights to use Eden’s EDEN formative marks through Eden’s Ethnos’s adoption and/or use of an “EDEN’S ETHNOS” designation and that such acts constitute trademark infringement, unfair competition, and dilution by tarnishment under federal law.

Eden and Eden’s Ethnos have agreed to the entry of this final judgment and permanent injunction (“Consent Judgment and Permanent Injunction”) upon the following stipulated facts. Each party has waived the right to appeal from this Consent Judgment and Permanent Injunction. Should judicial enforcement of any of

1 the terms of this Consent Judgment and Permanent Injunction become necessary in
2 the future, the prevailing party will be entitled to its attorneys' fees and costs.

3 STIPULATED FACTS AND CONCLUSIONS

4 1. This Court has subject matter jurisdiction over this lawsuit and personal
5 jurisdiction over Eden's Ethnos. Venue is proper in this Court.

6 2. Eden is a leading producer of natural and organic food and beverage
7 products sold under a variety of trademarks consisting in whole or part of the brand
8 name EDEN.

9 3. Eden adopted and commenced use of the EDEN name as a trademark in
10 the 1960s and has used the EDEN name as a trademark continuously and without
11 interruption since at least as early as November 1969 and continuing to the present
12 day.

13 4. Eden's EDEN brand products are sold throughout the United States
14 through virtually all types of merchandising outlets, including, without limitation,
15 national and regional supermarket chains, local grocery stores, food cooperatives,
16 health food stores, convenience stores, and department stores. Eden's products also
17 are available through mail order outlets and via the Internet at Eden's website found
18 at <edenfoods.com> as well as leading on-line retailers.

19 5. Over the years, Eden has developed and adopted many EDEN formative
20 marks, including, EDEN, EDEN ORGANIC, EDEN FOODS, EDENEWS and
21 EDENBALANCE (collectively the "EDEN Marks").

22 6. Eden is the owner of all right, title and interest in the following federal
23 registrations, which presently are valid and subsisting in law:

24 (a) Reg. No. 2,360,206 – **EDEN** for food supplements,
25 namely, orally ingested enzymes beneficial to human intestinal bacteria,
26 registered on the Principal Register June 20, 2000.

27 (b) Reg. No. 2,326,024 – **EDENBALANCE** for a food
28 supplement, namely, an orally ingested enzyme beneficial to human intestinal
bacteria, registered on the Principal Register March 7, 2000.

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(c) Reg. No. 4,431,041 – **EDEN** for tooth powder; dietary food supplements and nutritional supplement concentrates; sushi mats; processed vegetables; chili; processed mushrooms; raisins; tofu; vegetable based food beverages; prepared entrees consisting primarily of beans with rice and other side dishes; Umeboshi plum paste; grain based food beverages; natural food sweeteners; arrowroot for use as a food thickener; rice; Ponzu sauce; prepared entrees consisting primarily of rice with beans and other side dishes; edible spices; concentrates for making non-alcoholic beverages; and cooking wine, registered on the Principal Register November 12, 2013.

(d) Reg. No. 1,440,754 -- **EDENSOY** for soybean based food beverages, registered on the Principal Register May 26, 1987.

(e) Reg. No. 1,918,958 – **EDENBLEND** for soybean and rice based food beverages, registered on the Principal Register September 12, 1995.

(f) Reg. No. 2,272,652 – **EDEN ORGANIC & Design** for vegetable oils; processed vegetables; soybean based food beverages; soybean based misos; nut and fruit butters; processed nuts; processed edible seeds; processed mixture consisting of any combination of fruits, nuts and seeds; vegetable chips; and dried fruits; tea; sugar; rice; pasta and noodles; flour; breakfast cereals; honey; syrup for table use; candy; salt; mustard; vinegar; sauces, namely, pizza and spaghetti sauces, soy sauce; processed grains; rice and grain based food beverages; herbal food beverages; seasonings, namely, processed sesame seeds, garlic pastes, furikake, pickled beefsteak leaf powder, bonito flakes, pickled ginger, tekka, wasabi powder; crackers; brown rice



chips; granola; unprocessed vegetables, unprocessed grains, unprocessed nuts and unprocessed edible seeds; fruit juices; beverage concentrates for use in making non alcoholic soft drinks, registered on the Principal Register August 24, 1999.

(g) Reg. No. 1,452,337-- **EDEN** for pickled plums; processed and unprocessed dried fruits; processed nuts; processed seeds; vegetable oils; namely, corn oil, olive oil, safflower oil, sesame oil; snack foods consisting of processed nuts, processed seeds and dried fruits; processed grains, namely,

1 corn meal, soy flour, chickpea flour, barley flour, wheat flour, buckwheat
2 flour, millet flour, rice flour, rye flour; pasta, namely, wheat noodles, wheat
3 and egg noodles, wheat and soy noodles, wheat and spinach noodles, wheat
4 and buckwheat noodles; soy sauce; barley malt syrup for table use; vinegar;
5 mustard; tomato based spaghetti sauce; sea salt for table use; beverage
6 consisting of tea and herbs; unprocessed beans, namely, aduki, black turtle
7 beans, kidney beans, great northern beans, green lentils, mung beans, navy
8 beans, pinto beans, soy beans; unprocessed peas, namely, chickpeas, split peas;
9 unprocessed nuts; unprocessed edible seeds; unprocessed grains, namely
10 barley, rice, wheat, buckwheat and millet; unprocessed corn and unpopped
11 popcorn; unprocessed sea vegetables, namely sea weed, registered on the
12 Principal Register August 11, 1987.

13
14 (h) Reg. No. 1,862,634 -- **EDEN** for vegetable oils, crushed
15 tomatoes, sauerkraut, and processed canned beans; pasta; pizza sauce; teas;
16 crackers; chips; misos; and condiments; namely, mustard, sea salt, processed
17 sesame seeds, garlic pastes, furikake, pickled beefsteak leaf powder, bonito
18 flakes, pickled ginger, tekka, wasabi powder, tamari, and shoyu; unprocessed
19 grains; namely, barley, wheat and quinoa, registered on the Principal Register
20 November 15, 1994.

21 (i) Reg. No. 2,229,053 – **EDEN** for fruit butter, fruit sauce and
22 fruit juices, registered on the Principal Register March 2, 1999.

23 (j) Reg. No. 2,475,031 – **EDEN BIFA 15** for food
24 supplements, namely, orally ingested enzymes beneficial to human intestinal
25 bacteria, registered on the Principal Register August 7, 2001.

26 (k) Reg. No. 2,503,977 – **EDEN** for dietary food supplements,
27 namely, edible kombu root seaweed, garlic balls and ume plum concentrate,
28 registered on the Principal Register November 6, 2001.

(l) Reg. No. 4,264,570 – **EDEN** for retail and on-line store
featuring food and beverage products, registered on the Principal Register
December 25, 2012.

(m) Reg. No. 2,905,671 – **EDENEWS** for newsletters in the
field of food and food related topics, nutrition, health and diet, farming and
agricultural and environmental issues, registered on the Principal Register
November 30, 2004.

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(n) Reg. No. 2,977,773 – **EDEN** for processed popcorn for popping, registered on the Principal Register July 26, 2005.

(o) Reg. No. 3,071,337 – **EDEN FOODS** for vegetable oils; processed vegetables; soybean based food beverages; soybean based misos; nut and fruit butters; processed nuts; processed edible seeds; processed mixture consisting of any combination of fruits, nuts and seeds; vegetable chips and dried fruits; tea; sugar; rice; pasta and noodles; flour; breakfast cereals; honey; syrup for table use; candy; salt; mustard; vinegar; sauces, namely, pizza and spaghetti sauces, soy sauce; processed grains; rice and grain based food beverages; herbal food beverages; seasonings, namely, processed sesame seeds, garlic pastes, furikake, pickled beefsteak leaf powder, bonito flakes, pickled ginger, tekka, wasabi powder; crackers; brown rice chips; and granola; unprocessed fruits, unprocessed vegetables, unprocessed grains, unprocessed nuts and unprocessed edible seeds, registered on the Principal Register March 21, 2006.

(p) Reg. No. 3,102,575 – **EDEN** for dried cherries, registered on the Principal Register June 13, 2006.

(q) Reg. No. 4,065,063 – **EDEN** for providing recipes and information in the field of cooking and food preparation; providing information in the field of health, nutrition, diet, beauty and organic farming techniques, registered on the Principal Register December 6, 2011.

(r) Reg. No. 4,171,490 – **EDENEWS** for downloadable electronic newsletters in the field of food and food-related topics, nutrition, health and diet, farming and agricultural and environmental issues, registered on the Principal Register July 10, 2012.

(s) Reg. No. 4,264,567 – **EDEN STORE** for retail and on-line store featuring food and beverage products, registered on the Principal Register December 25, 2012.

(t) Reg. No. 4,272,393 – **EDEN FOODS** for processed beans; processed fruits; processed tomatoes” and crackers; entrees and side dishes consisting primarily of rice and beans, registered on the Principal Register January 8, 2013.

(u) Reg. No. 4,336,312 – **EDEN RECIPES** for downloadable software in the nature of an application for obtaining news and information in the field of food and food related topics, nutrition, health and diet and related textual, audio and video content on mobile and stationary electronic devices, registered on the Principal Register May 14, 2013.

1 7. The EDEN Marks are valid, subsisting, unrevoked and uncanceled. Of
2 the 21 registrations listed above, at least 16 of them have become incontestable as
3 to all goods listed therein and are conclusive evidence of the validity of the
4 registered mark, Eden’s ownership thereof, and of Eden’s exclusive right to use the
5 mark in commerce on or in connection with the goods identified in the registration,
6 as provided by Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b).

7 8. Eden spends millions of dollars every year promoting its EDEN brand
8 products and its EDEN Marks.

9 9. As a result of Eden’s longstanding use of the EDEN Marks, Eden has
10 built up substantial good will in such marks.

11 10. Based on Eden’s extensive, exclusive, and continuous use of the EDEN
12 Marks in connection with the goods and/or services of the respective registrations,
13 and the maintenance of premium quality standards relating thereto, the EDEN
14 Marks have come to be widely and favorably known among the consuming public
15 as designators of origin with respect to Eden’s goods and services.

16 11. Eden is also the owner of a family of marks, the dominant component of
17 which is the term “EDEN.” The family of EDEN marks includes EDENSOY,
18 EDEN BLEND, EDEN ORGANICS, EDEN TRADITIONAL, EDEN BALANCE,
19 and EDEN SELECT.

20 12. Eden’s Ethnos is not authorized to use the EDEN Marks.

21 13. Eden’s Ethnos has used “Eden” in connection with “Eden’s Ethnos” in
22 furtherance of the sale of products derived from the plant *Mitragyna speciosa*,
23 commonly known as kratom.

24 14. Eden’s Ethnos has used the “EDEN’S ETHNOS” designation in a
25 manner that has created or is likely to create actual confusion in the marketplace.

26 15. Eden’s Ethnos’s use of the “EDEN’S ETHNOS” designation infringes
27 upon Eden’s prior and exclusive rights in its EDEN marks.

28 16. Eden’s Ethnos’s unauthorized activities constitute trademark

1 infringement under federal law.

2 **ORDER**

3 **ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED** by consent
4 of Eden and Eden's Ethnos that Eden's Ethnos and any persons or entities acting on
5 its behalf, including any parents, subsidiaries, affiliates, commonly-owned parties,
6 commonly-controlled parties, predecessors, and successors, together with its
7 principals, officers, directors, employees, agents, attorneys, servants, employees,
8 distributors, suppliers and all other persons in active concert or participation with
9 them who receive notice of this Consent Judgment and Permanent Injunction, shall,
10 as of March 31, 2018, be permanently enjoined and restrained from:

11 A. Imitating, copying or making unauthorized use of the EDEN Marks in
12 any form, including without limitation, using any trademark, trade name,
13 establishment name or other identifier containing "EDEN", "EDEN'S" or
14 "EDENS" or any uniform record locator ("URL") containing the letters
15 "EDEN", "EDEN'S" or "EDENS" (including, specifically cease using the
16 "EDEN'S ETHNOS" designation) or any other designation incorporating the
17 term EDEN for any purpose;

18 B. Using any copy or colorable imitation of the EDEN Marks in connection
19 with the promotion, advertisement, display, sale, offering for sale,
20 manufacture, printing, importation, production, circulation or distribution of
21 any product or service, in such fashion as to relate or connect such product in
22 any way to Eden, or to any product or service provided by or connected with
23 Eden; or

24 C. Engaging in any other activity constituting unfair competition with
25 Eden, or constituting an infringement of the Eden Marks or constituting any
26 damage to Eden's name; marks, reputation or goodwill.

27
28 For the avoidance of doubt, Eden has no objection to Eden's Ethnos continuing to

1 use trademarks, service marks, names or designations that use the term ETHNOS as
2 long as such trademarks, service marks, names or designations do not include the
3 term EDEN or any other words or logos confusingly similar to any of the EDEN
4 Marks.


5 **IT IS FURTHER ORDERED AND ADJUDGED** by consent of Eden and Eden's
6 Ethnos that Eden's Ethnos shall take all actions reasonably necessary to transfer the
7 domain name <edensethnos.com> to Eden no later than March 31, 2018.

8 **IT IS FURTHER ORDERED AND ADJUDGED pursuant to Rule 54, Federal**
9 **Rules of Civil Procedure**, that judgment is hereby entered in favor of Eden and
10 against Eden's Ethnos.

11 **IT IS FURTHER ORDERED AND ADJUDGED** that this Court shall retain
12 jurisdiction for the purpose of making any further orders necessary or proper for the
13 construction or modification of this Consent Judgment and Permanent Injunction,
14 the enforcement thereof, or the punishment of any violations thereof.

15 **IT IS FURTHER ORDERED AND ADJUDGED** that the prevailing party in any
16 proceeding to enforce the terms of this Consent Judgment and Permanent Injunction
17 shall be entitled to an award of its attorneys' fees and costs.

18
19 IT IS SO ORDERED
20 Dated: January 29, 2018



Hon. Anthony J. Battaglia
United States District Judge

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