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PepsiCo, Inc. and Frito-Lay North America, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PEPSICO, INC., a North Carolina corporation, and **FRITO-LAY NORTH AMERICA, INC.**, a Delaware corporation,) **Case No.** _____
Plaintiffs,)
v.)
RAM TRADERS, LTD., a Nevada corporation,)
Defendant.)

COMPLAINT

Plaintiffs, PepsiCo, Inc., and Frito-Lay North America, Inc. (collectively, "Plaintiffs"), by and through their attorneys, alleges as follows:

PARTIES

1. Plaintiff, PepsiCo, Inc., ("PepsiCo") is a North Carolina corporation with its principal place of business at 700 Anderson Hill Road, Purchase, New York 10577.

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2. Plaintiff, Frito-Lay North America, Inc. ("Frito-Lay"), is a Delaware corporation with its principal place of business at 7701 Legacy Drive, Plano, Texas 75024, and is a wholly-owned subsidiary of PepsiCo.

3. Defendant, Ram Traders, Ltd., is a Nevada corporation with a principal place of business located at 5725 Valley View, Unit 4, Las Vegas, Nevada 89118.

JURISDICTION AND VENUE

4. This Court has jurisdiction because: (1) this action arises under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051-1141 (the "Lanham Act"), and jurisdiction is proper in accordance with 15 U.S.C. § 1121 and 28 U.S.C. §§ 1338(a) and (b); and (2) this is a civil action between citizens of different states and the value of the amount in controversy, exclusive of interest and costs, exceeds seventy-five thousand dollars (\$75,000.00), and jurisdiction, therefore, is proper in accordance with 28 U.S.C. § 1332. Jurisdiction for the Nevada state statutory and common law claims is proper in accordance with the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

5. Venue is proper in this Court (i) under 28 U.S.C. § 1391(a) because Defendant resides in this judicial district and (ii) under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

FACTS

6. PepsiCo manufactures, markets and distributes soft drinks throughout the United States.

PEPSICO AND ITS FAMOUS PEPSICO MARKS

7. Since long before the acts of Defendant complained of herein, PepsiCo has used continuously the trademarks PEPSI, PEPSI-COLA, DIET PEPSI, SIERRA MIST, and

1 MOUNTAIN DEW on their own, or with designs or other variations, in connection with the
 2 manufacture, advertising, sale, and distribution of carbonated soft drinks, and has used the
 3 trademark AQUAFINA on its own, or with designs or other variations, in connection with the
 4 manufacture, advertising, sale, and distribution of drinking water (collectively, the "PEPSICO
 5 Products").
 6

7 8. PepsiCo owns, inter alia, the following federal trademark registrations that the
 8 United States Patent and Trademark Office issued for the PEPSI, PEPSI-COLA, DIET PEPSI,
 9 SIERRA MIST, MOUNTAIN DEW, and AQUAFINA (the "PEPSICO Marks"):
 10

11 MARK	REG. NO.	REG. DATE	GOODS
12 PEPSI-COLA and Design	349,886	Sept. 14, 1937	Beverages
13 PEPSI	824,150	Feb. 14, 1967	Soft drinks and syrups and concentrates for the preparation thereof
14 PEPSI-COLA	824,151	Feb. 14, 1967	Soft drinks and syrups and concentrates for the preparation thereof
15 PEPSI Globe Design	824,153	Feb. 14, 1967	Soft drinks
16 PEPSI and Design	957,017	Apr. 10, 1973	Soft drinks
17 PEPSI and Design	2,100,417	Sept. 23, 1997	Soft drinks
18 PEPSI and Design	2,104,304	Oct. 7, 1997	Soft drinks
19 PEPSI and Design	2,817,604	Feb. 24, 2004	Soft drinks
20 PEPSI and Design	2,838,775	May 4, 2004	Soft drinks
21 DIET PEPSI-COLA	824,149	Feb. 14, 1967	Soft drinks and syrups and concentrates for the preparation thereof
22 DIET PEPSI	824,152	Feb. 14, 1967	Soft drinks and syrups for the preparation thereof
23 SIERRA MIST	2,495,127	Oct. 2, 2001	Soft drinks
24 SIERRA MIST	2,580,465	June 11, 2002	Soft drinks
25 SIERRA MIST	3,183,839	Dec. 12, 2006	Syrups, concentrates and salts used in the preparation of Soft drinks
26 MOUNTAIN DEW	820,362	Dec. 13, 1966	Soft drinks, and concentrates used in the preparation thereof
27 MOUNTAIN DEW and Design	1,512,972	Nov. 15, 1988	Soft drinks

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MARK	REG. NO.	REG. DATE	GOODS
MOUNTAIN DEW and Design	2,300,048	Dec. 14, 1999	Soft drinks
MOUNTAIN DEW and Design	2,304,904	Dec. 28, 1999	Soft drinks
MOUNTAIN DEW and Design	2,509,558	Nov. 20, 2001	Soft drinks
MOUNTAIN DEW and Design	2,509,700	Nov. 20, 2001	Soft drinks
MOUNTAIN DEW and Design	3,134,243	Aug. 22, 2006	Soft drinks
AQUAFINA	1,917,411	Sept. 5, 1995	Non-Carbonated water, table water
AQUAFINA	2,506,697	Nov. 13, 2001	Non-Carbonated water, table water
AQUAFINA	2,509,365	Nov. 20, 2001	Drinking water
AQUAFINA	2,509,701	Nov. 20, 2001	Drinking water

These registrations are valid and subsisting. Registration Nos. 349,886; 824,149; 824,150; 824,151; 824,152; 957,017; 2,100,417; 2,104,304; 2,817,604; 2,838,775; 820,362; 1,512,972; 2,300,048; 2,304,904; 2,509,558; 2,509,700; 3,134,243; 1,917,411; 2,506,697; 2,509,365; and 2,509,701 are incontestable and constitute conclusive evidence of the validity of the marks and of PepsiCo's ownership of and exclusive right to use the PEPSICO Marks subject to these registrations for the goods specified therein. 15 U.S.C. §§ 1065, 1115(b). Registration No. 3,183,839 constitutes *prima facie* evidence of the validity of the SIERRA MIST mark shown in this registration, as well as PepsiCo's ownership of and exclusive right to use this mark for the listed goods. 15 U.S.C. § 1057(b).

9. PepsiCo also owns the following federal trademark registrations, among others, issued by the United States Patent and Trademark Office for the PEPSICO Marks used in connection with the merchandise listed below:

MARK	REG. NO.	REG. DATE	GOODS
PEPSI	1,317,551	Feb. 5, 1985	Candles; key chains; can shaped telephones; electric lamps, and charcoal burning barbeque grills; clocks; pencil cases and pens; umbrellas; mirrors and bean bag chairs; drinking glasses, insulated bags for food, beverages and ice; beach towels; t-shirts, sweatshirts, and baseball caps; embroidered patches for clothing; toy can banks, toy trucks, toy railroad cars, and toy soda dispensers
PEPSI	1,488,547	May 17, 1988	Clothing, namely sweatshirts, sweat bottoms, t-shirts, and jerseys
PEPSI	2,845,054	May 25, 2004	Sports duffel bags; clothing, namely, knit shirts
MOUNTAIN DEW	2,986,574	Aug. 16, 2005	Clothing, namely, t-shirts
MOUNTAIN DEW	2,986,575	Aug. 16, 2005	Clothing, namely, t-shirts
MOUNTAIN DEW	3,426,588	May 13, 2008	Drinking glasses
SIERRA MIST	3,143,628	Sep. 12, 2006	Lip balm, lip gloss
AQUAFINA	3,170,128	Nov. 7, 2006	Exfoliants for lips
AQUAFINA	3,214,155	Feb. 27, 2007	Lip gloss, lip balm
AQUAFINA	3,360,445	Dec. 25, 2007	Skin and face moisturizers
AQUAFINA	3,591,147	Mar. 17, 2009	Eye cream; facial cleansers; facial scrubs; skin cleansers; skin toners

These registrations are valid and subsisting. Registration Nos. 1,488,547, 2,845,054; 2,986,574; and 2,986,575 are incontestable and constitute conclusive evidence of the validity of the marks and of PepsiCo's ownership of and exclusive right to use the PEPSICO Marks subject to these registrations for the goods specified therein. 15 U.S.C. §§ 1065, 1115(b). The remaining registrations listed above constitute *prima facie* evidence of the validity of these PEPSICO Marks, as well as PepsiCo's ownership of and exclusive right to use these marks for the listed goods. 15 U.S.C. § 1057(b).

10. PepsiCo, through its authorized bottlers and licensees, has sold many billions of dollars worth of beverages and merchandise under the PEPSICO Marks throughout the United States.

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2 11. PepsiCo has expended many hundreds of millions of dollars to advertise and
3 promote its PEPSICO Marks and the PEPSICO Products.

4 12. As a result of these extensive sales, promotional efforts, and advertising, the
5 PEPSICO Marks have become exceedingly famous among the general consuming public of the
6 United States, represent extraordinarily valuable goodwill owned by PepsiCo, and are among the
7 most well-known and famous marks in the world.

8
9 13. The PEPSICO Products sold under the PEPSICO Marks are subject to a strict
10 quality control program implemented by PepsiCo and its authorized bottlers that protects and
11 preserves all aspects of the PEPSICO Products, including their ingredients, nutritional content,
12 taste, aroma, appearance, and packaging.

13 14. PepsiCo and its authorized bottlers prohibit the sale under the PEPSICO Marks of
14 beverages that do not meet these quality control standards.

15
16 15. PepsiCo employs a strict and rigorous quality control program in determining
17 when and how to license the use of the PEPSICO Marks for novelty and promotional
18 merchandise that only permits the manufacture and sale of merchandise under the PEPSICO
19 Marks that meet the highest standards of safety and good taste and that are consistent with
20 PepsiCo's marketing programs, objectives, and brand image.

21 16. PepsiCo and its licensees prohibit the sale under the PEPSICO Marks of
22 merchandise that does not meet these quality control standards.

23 **FRITO-LAY AND THE FAMOUS FRITO-LAY MARKS**


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25 17. Frito-Lay manufactures, markets, and distributes snack food products throughout
26 the United States.

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2 18. Since long prior to the acts of Defendant complained of herein, Frito-Lay has
3 adopted and made continuous use of the trademarks FRITO-LAY, DORITOS, CHEETOS,
4 FRITOS, and CHESTER CHEETAH, on their own, or with designs or other variations
5 (collectively, the "FRITO-LAY Marks"), in connection with the manufacture, advertising, sale,
6 and distribution of snack foods and other products (the "FRITO-LAY Products").

7
8 19. Frito-Lay owns the following federal trademark registrations, among many others,
9 issued by the United States Patent and Trademark Office for the FRITO-LAY Marks in
10 connection with the FRITO-LAY Products:

MARK	REG. NO.	REG. DATE	GOODS
FRITO-LAY	841,324	Dec. 26, 1967	Corn chips, potato chips, cheese flavored puffed corn snack, pretzels, and fried pork skins; dehydrated dip mixes, specifically, onion, green onion, Caesar, bleu cheese, horseradish, kosher dill, chili con queso, and bacon and cheese; cracker sandwiches, canned and packaged nut meats, popped popcorn, canned bean dip, and bottled chili powder
FRITO LAY	1,195,825	May 18, 1982	Corn chips, potato chips, tortilla chips, and beef jerky; cookies and crackers
DORITOS	792,667	Jul. 13, 1965	Tortilla chips
DORITOS	2,511,850	Nov. 27, 2001	Corn-based snack foods, namely, tortilla chips
DORITOS	2,539,248	Feb. 19, 2002	Corn-based snack foods, namely, tortilla chips
DORITOS	2,719,517	May 27, 2003	Tortilla chips
DORITOS	2,783,007	Nov. 11, 2003	Corn-based snack foods, namely, tortilla chips
DORITOS	2,783,008	Nov. 11, 2003	Corn-based snack foods, namely, tortilla chips


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MARK	REG. NO.	REG. DATE	GOODS
CHEETOS	2,677,619	Jan. 21, 2003	Corn-based snack foods, namely, puffed corn snacks
CHEETOS	2,680,627	Jan. 28, 2003	Corn-based snack foods, namely, puffed corn snacks
CHEETOS	2,683,228	Feb. 4, 2003	Corn-based snack foods, namely, puffed corn snacks
CHEETOS	2,840,688	May 11, 2004	Cheese flavored puffed corn snacks
CHEETOS	2,926,421	Feb. 15, 2005	Crackers
CHEETOS	3,241,177	May 15, 2007	Cheese flavored puffed corn snacks; cheese flavored snacks, namely, cheese curls; cheese flavored snacks, namely, puffed cheese balls; corn-based snack foods; extruded corn snacks; puffed corn snacks
FRITOS	502,325	Sept. 21, 1948	Corn chips
FRITOS	689,601	Dec. 8, 1959	Canned foods-namely, chili containing meat, tamales containing meat, meat, meat sauces and for confections and snack items-namely, wafers, corn chips, cakes, potato chips, candy, and shelled peanuts
FRITOS	2,582,071	June 18, 2002	Snack food dips, bean dip; Corn-based snack foods, namely, corn chips and puffed corn snacks; sauces
CHESTER CHEETAH	1,439,396	May 12, 1987	Cheese-flavored corn-based snack foods
	2,719,801	May 27, 2003	Cheese flavored puffed corn snacks

These registrations are valid and subsisting. Registration Nos. 841,324; 1,195,825; 792,667; 2,511,850; 2,539,248; 2,719,517; 2,783,007; 2,783,008; 2,677,619; 2,680,627; 2,683,228; 2,840,688; 2,926,421; 502,325; 689,601; 2,582,071; 1,439,396; and 2,719,801 are incontestable

1 and constitute conclusive evidence of the validity of the marks and of Frito-Lay's ownership of
 2 and exclusive right to use these marks for the listed goods. 15 U.S.C. §§ 1065, 1115(b). The
 3 remaining registrations listed above constitute prima facie evidence of the validity of these
 4 FRITO-LAY Marks, as well as Frito-Lay's ownership of and exclusive right to use these marks
 5 for the listed goods. 15 U.S.C. § 1057(b).
 6

7 20. Frito-Lay also owns the following federal trademark registrations, among others,
 8 issued by the United States Patent and Trademark Office for the FRITO-LAY Marks used in
 9 connection with the merchandise listed below:
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11 MARK	REG. NO.	REG. DATE	GOODS
12 FRITO LAY	2,766,598	Sept. 23, 2003	All-purpose sport bags, duffle bags, backpacks, umbrellas, briefcases, luggage tags, and leather key chains; clothing, namely, shirts, hats, jackets, fleece pullovers, and sweatshirts; stress toys, namely, squeezable potato-shaped toys used for hand exercise; sporting goods, namely, golf balls and golf bags
14 DORITOS	1,528,348	Mar. 7, 1989	Clothing, namely, shirts
15 DORITOS	3,295,314	Sept. 18, 2007	Entertainment services, namely, conducting contests; entertainment services, namely, providing on-line computer games
16 	1,529,788	Mar. 14, 1989	Clothing, namely, shirts, fleece tops and hats
17 CHESTER CHEETAH	2,485,021	Sept. 4, 2001	Clothing, namely, shirts, fleece tops and bottoms and hats

18 These registrations are valid and subsisting. With the exception of Reg. No. 3,295,314, each
 19 registration is incontestable and constitutes conclusive evidence of the validity of the marks and
 20 of Frito-Lay's ownership of and exclusive right to use the FRITO-LAY Marks subject to this
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1 registration for the goods specified therein. 15 U.S.C. §§ 1065, 1115(b). Reg. No. 3,295,314
2 constitutes prima facie evidence of the validity of the FRITO-LAY Mark depicted therein, as
3 well as Frito-Lay's ownership of and exclusive right to use this mark for the listed goods. 15
4 U.S.C. § 1057(b).
5

6 21. Frito-Lay has sold billions of dollars worth of snack foods under the FRITO-LAY
7 Marks throughout the United States.

8 22. Frito-Lay has expended many millions of dollars to advertise and promote its
9 FRITO-LAY Marks and the FRITO-LAY Products.
10

11 23. As a result of these extensive sales, promotional efforts, and advertising, the
12 FRITO-LAY Marks have become exceedingly famous among the general consuming public of
13 the United States, represent extraordinarily valuable goodwill owned by Frito-Lay, and are
14 among the most well-known and famous marks in the United States.

15 24. The FRITO-LAY Products sold under the FRITO-LAY Marks are subject to a
16 strict quality control program implemented by Frito-Lay that protects and preserves all aspects of
17 the FRITO-LAY Products, including their ingredients, nutritional content, taste, aroma,
18 appearance, and packaging.
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20 25. Frito-Lay prohibits the sale of snack food products under the FRITO-LAY Marks
21 that do not meet these quality control standards.

22 26. Frito-Lay employs a strict and rigorous quality control program in determining
23 when and how to license the use of the FRITO-LAY Marks for novelty and promotional
24 merchandise that only permits the manufacture and sale of merchandise under the FRITO-LAY
25 Marks that meet the highest standards of safety and good taste and that are consistent with Frito-
26 Lay's marketing programs, objectives, and brand image.
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2 27. Frito-Lay and its licensees prohibit the sale under the FRITO-LAY Marks of
3 merchandise that does not meet these quality control standards.

4 **DEFENDANT'S SMOKING ACCESSORIES AND**
5 **DIVERSIONARY CONCEALMENTS DEVICE BUSINESS**

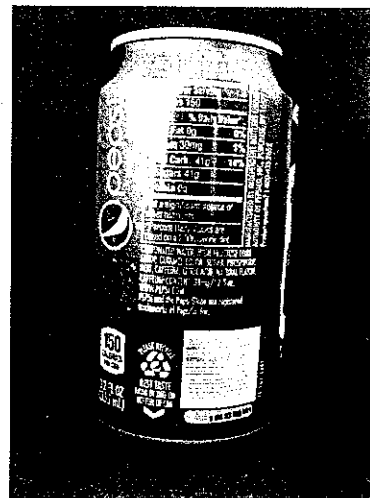
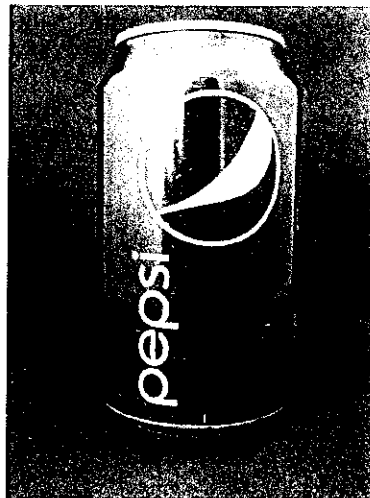
6 28. Defendant is in the business of marketing, selling, and distributing smoking
7 accessories, including hookahs, pipes, and diversionary concealment devices such as can, bottle,
8 and canister safes created from other companies' original packaging and bearing other
9 companies' trademarks.

10 29. Defendant markets its products at its principal business location in Las Vegas,
11 Nevada, at trade shows, and through a mail-order catalog.

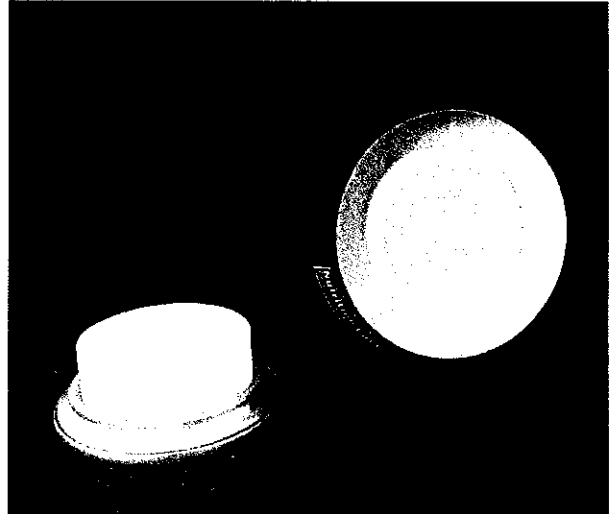
12 **Defendant's Infringing Can Safes**

13 30. Defendant markets can safes bearing the PEPSI, PEPSI-COLA, DIET PEPSI,
14 SIERRA MIST, and MOUNTAIN DEW marks and corresponding trade dress ("Infringing Can
15 Safes").
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17 31. Defendant's Infringing Can Safes are visually identical to PepsiCo's genuine
18 PEPSICO Products. Photographs of one of Defendant's Infringing Can Safes appear below:
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2 32. The Infringing Can Safes incorporate a secret compartment that is accessible by
3 twisting off the top of the Infringing Can Safe, creating sharp interior edges that can cut people
4 who use the products. Photographs of one of Defendant's Infringing Can Safes that demonstrate
5 its conversion from a PEPSICO Product appear below:

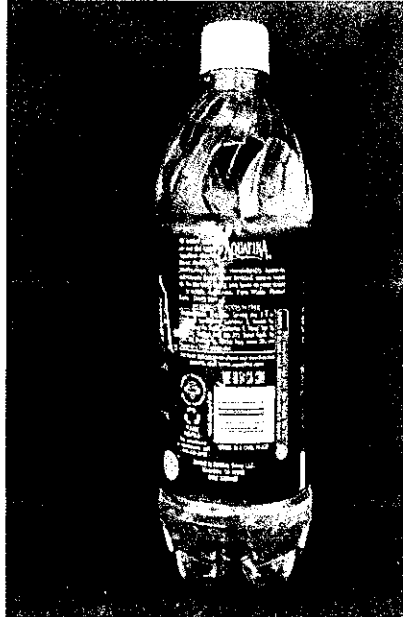
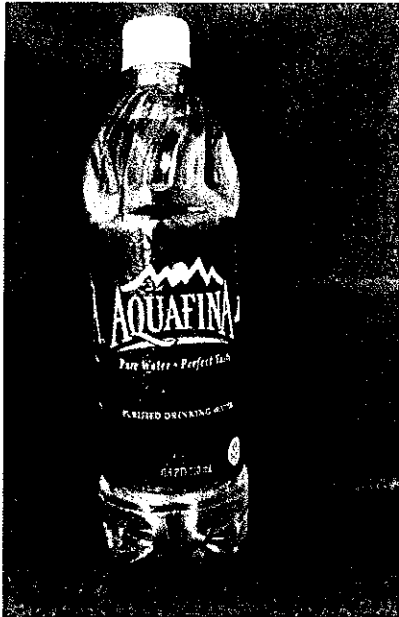


15 **Defendant's Infringing Bottle Safes**

16 33. Defendant also markets bottle safes bearing the PEPSI, DIET PEPSI and
17 MOUNTAIN DEW, and AQUAFINA marks and corresponding trade dress ("Infringing Bottle
18 Safes").

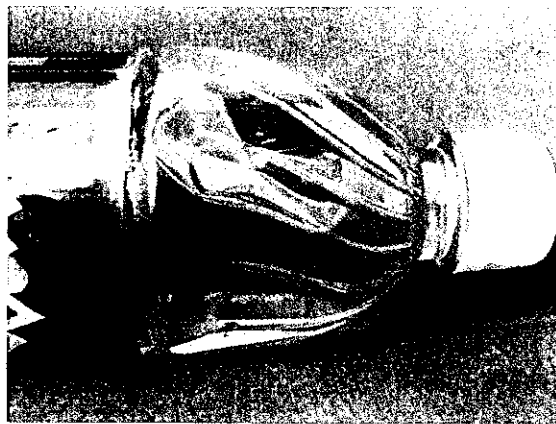
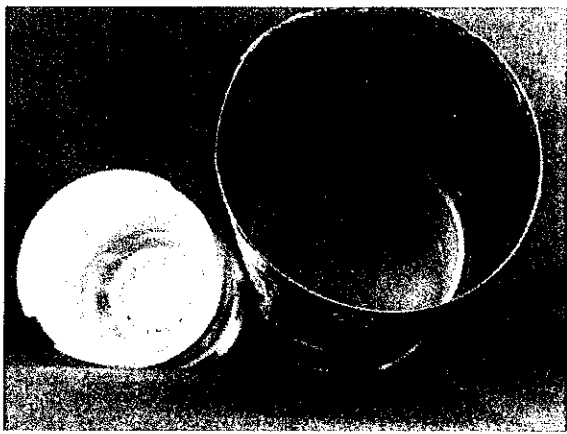
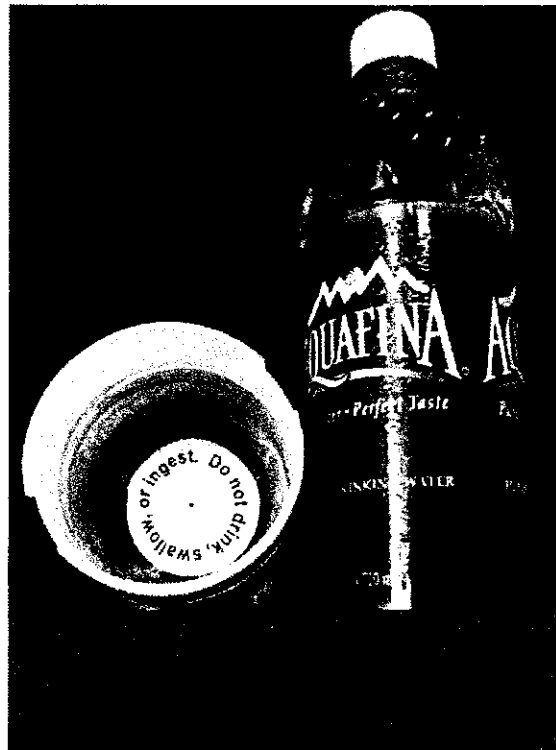
19 34. Defendant's Infringing Bottle Safes are visually identical to PepsiCo's genuine
20 PEPSICO Products. Photographs of one of Defendant's Infringing Bottle Safes appear below:
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35. The Infringing Bottle Safes contain a hidden interior compartment behind the label portions of such Infringing Bottle Safes. This compartment is created by molding or gluing two pieces of plastic inserted at the top and bottom of the label portion of the Infringing Bottle Safe. The hidden interior compartment of the Infringing Bottle Safe is accessed by twisting and pulling the Infringing Bottle Safe apart. Photographs of one of Defendant's Infringing Bottle Safes demonstrating its conversion from a PEPSICO Product appear below:

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36. As shown in the photographs in paragraphs 34 and 35, the areas above and below the compartment are filled with unauthorized and unsanitary liquids to give the appearance of a full, genuine PEPSICO Product. Often, the liquid contained in the Infringing Bottle Safes is cloudy or contains particulate.

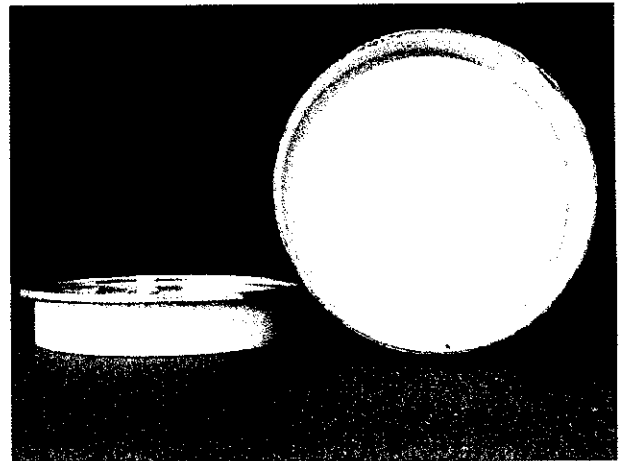
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3 **Defendant's Infringing Canister Safes**

4 37. Defendant also markets canister safes bearing the FRITO-LAY Marks and
5 corresponding trade dress ("Infringing Canister Safes").

6 38. Defendant's Infringing Canister Safes are visually identical to Frito-Lay's genuine
7 FRITO-LAY Products. Photographs of one of Defendant's Infringing Canister Safes appear
8 below:



21 39. Defendant's Infringing Canister Safes contain a hidden interior compartment
22 created by removing a portion of the snack foods inside a genuine FRITO-LAY Product,
23 converting the bottom to a screw-type lid, and fitting or gluing a plastic divider inside to create a
24 hidden compartment in the bottom portion of the canister. Photographs of one of Defendant's
25 Infringing Canister Safes demonstrating its conversion from a FRITO-LAY Product appear
26 below:
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Defendant's Infringing Safes Mask Differences with Plaintiffs' Products

40. On information and belief, consumers who encounter the Infringing Can Safes, Infringing Bottle Safes, and Infringing Canister Safes (collectively, "Infringing Safes") post-sale cannot distinguish them from authentic PEPSICO Products and FRITO-LAY Products, respectively, in appearance.

41. The Infringing Can Safes and Infringing Bottle Safes bear information about PepsiCo, including PepsiCo's website address, street address, and a telephone number at which to contact PepsiCo.

42. The Infringing Canister Safes bear information about Frito-Lay, including Frito-Lay's website address, street address, and a telephone number at which to contact Frito-Lay and, on information and belief, contain product that is no longer fresh or sanitary.

43. The Infringing Safes contain no references to Defendant or to the fact that these products are not legitimate PEPSICO Products or FRITO-LAY Products (collectively, "Plaintiffs' Products").

44. On information and belief, there is a strong likelihood that consumers – either those who buy the Infringing Safes themselves or those who encounter these products post-sale –

1 will mistakenly believe that Plaintiffs manufacture and/or sell the these products or, at the very
2 least, authorize their sale.
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4 45. On information and belief, Defendant markets the Infringing Safes primarily for
5 consumers' use in hiding illicit narcotics.

6 46. On information and belief, can, bottle, and canister safes of the type marketed by
7 Defendant are a concern to law enforcement because they also are used to conceal weapons.

8 47. The association of the PEPSICO Marks and the Frito-Lay Marks (collectively,
9 "Plaintiffs' Marks") with products used in conjunction with illicit narcotics is abhorrent to
10 Plaintiffs and will cause consumers to be upset with Plaintiffs and dissatisfied with the Plaintiffs'
11 Products as well as the merchandise licensed by Plaintiffs, respectively under Plaintiffs' Marks.

12 48. Neither PepsiCo nor Frito-Lay has consented to Defendant's marketing, sale, and
13 distribution of the Infringing Safes.
14

15 49. Defendant's manufacture, distribution, advertising and sale of the Infringing Safes
16 damage Plaintiffs' goodwill in Plaintiffs' Marks, harm Plaintiffs' business reputations and will
17 cause consumers who encounter them to be alarmed and angry with Plaintiffs' Products.
18

19 **COUNT I**
20 **(TRADEMARK INFRINGEMENT**
IN VIOLATION OF SECTION 32 OF THE LANHAM ACT)

21 50. Plaintiffs re-allege paragraphs 1 through 49, as if fully set forth herein.

22 51. Defendant's acts have caused, or are likely to cause confusion, mistake or
23 deception as to the source of origin, sponsorship or approval of the Infringing Safes because
24 purchasers and others in this judicial district and elsewhere in the United States are likely to
25 believe that Plaintiffs manufacture, distribute, or sell the Infringing Safes, or authorize and
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1 control the sale of Infringing Safes, or that Defendant is associated with or related to Plaintiffs or
2 authorized to sell the Infringing Safes.

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4 52. On information and belief, Defendant markets, sells and distributes the Infringing
5 Safes for the purpose of trading upon Plaintiffs' goodwill in the Plaintiffs' Marks and Plaintiffs'
6 business reputations, with the intention of creating consumer confusion over the source and
7 origin of the Infringing Safes and to give them a salability they otherwise would not have.

8
9 53. On information and belief, Defendant's acts have injured or are likely to injure
10 Plaintiffs' image and reputation with consumers in this judicial district, and elsewhere in the
11 United States, by creating confusion about, and dissatisfaction with, Plaintiffs' Products.

12 54. Defendant's marketing, distribution, and sale of the Infringing Safes constitutes
13 trademark infringement of the Plaintiffs' Marks in violation of Section 32 of the Lanham Act, 15
14 U.S.C. § 1114.

15 55. Defendant's acts greatly and irreparably damage Plaintiffs and will continue to so
16 damage Plaintiffs unless restrained by this Court; wherefore, Plaintiffs are without an adequate
17 remedy at law. Accordingly, Plaintiffs are entitled to, among other things, an order temporarily
18 and permanently enjoining and restraining Defendant from marketing, selling and distributing
19 the Infringing Safes.
20

21 **COUNT II**
22 **(UNFAIR COMPETITION**
23 **IN VIOLATION OF SECTION 43(a) OF THE LANHAM ACT)**

24 56. Plaintiffs re-allege paragraphs 1 through 7, 10 through 18, 21 through 49, and 51
25 through 53, as if fully set forth herein.

26 57. Defendant's acts constitute unfair competition with Plaintiffs, in violation of
27 Section 43(a) of the Lanham Act. 15 U.S.C. § 1125(a).

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58. Defendant's acts greatly and irreparably damage Plaintiffs and will continue to so damage Plaintiffs unless restrained by this Court; wherefore, Plaintiffs are without an adequate remedy at law. Accordingly, Plaintiffs are entitled to, among other things, an order temporarily and permanently enjoining and restraining Defendant from marketing, selling, and distributing the Infringing Safes.

**COUNT III
(TRADEMARK INFRINGEMENT
IN VIOLATION OF NEVADA COMMON LAW)**

59. Plaintiffs re-allege paragraphs 1 through 7, 10 through 18, 21 through 49, and 51 through 53, as if fully set forth herein.

60. Defendant's acts constitute trademark infringement in violation of the common law of the State of Nevada.

61. Defendant's acts greatly and irreparably damage Plaintiffs and will continue to so damage Plaintiffs unless restrained by this Court; wherefore, Plaintiffs are without an adequate remedy at law. Accordingly, Plaintiffs are entitled to, among other things, an order temporarily and permanently enjoining and restraining Defendant from marketing, selling, and distributing the Infringing Safes.

**COUNT IV
(UNFAIR COMPETITION
IN VIOLATION OF NEVADA COMMON LAW)**

62. Plaintiffs re-allege paragraphs 1 through 7, 10 through 18, 21 through 49, and through 53, as if fully set forth herein.

63. Defendant's acts constitute unfair competition against Plaintiffs in violation of common law of the State of Nevada.

1 and permanently enjoining and restraining Defendant from marketing, selling, and distributing
2 the Infringing Safes.
3

4 WHEREFORE, Plaintiffs pray that:

5 Defendant Ram Traders, Ltd., as well as its owners, partners, officers, agents,
6 servants, employees, and attorneys, its successors and assigns, and all others in active concert or
7 participation with it, be enjoined and restrained during the pendency of this action, and
8 permanently thereafter, from the manufacture, dealing in, marketing, sale, advertising or
9 distribution in the United States of:

- 10
- 11 a) can safes, bottle safes, canister safes, or any other types of diversionary
12 concealment devices bearing the PEPSI, DIET PEPSI, SIERRA MIST,
13 AQUAFINA, MTN DEW, MOUNTAIN DEW, FRITO-LAY, DORITOS,
14 CHEETOS, FRITOS, or CHESTER CHEETAH trademarks; and
- 15 b) can safes, bottle safes, or canister safes, or any other types of diversionary
16 concealment devices bearing any other trademarks or trade dress owned by
17 Plaintiffs.
18

19 Plaintiffs further pray that the Court require Defendant, and all others holding by, through
20 or under Defendant, jointly and severally, to:

- 21 a) account for and pay over to Plaintiffs all profits that Defendant has derived from
22 its acts of trademark infringement, unfair competition, and dilution in accordance
23 with 15 U.S.C. § 1117(a) and the laws of Nevada;
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g) Plaintiffs further pray that the Court provide to Plaintiffs such other and further relief as the Court deems just and equitable.

Dated: December 6, 2011

Respectfully submitted,

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STANDISH

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