

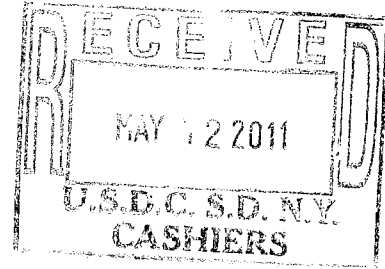
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UNILEVER SUPPLY CHAIN, INC.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

UNILEVER SUPPLY CHAIN, INC.

Plaintiff,

v.

KOOLPETS PRODUCTS, INC., a/k/a

PRODUITS KOOLPETS, INC.,

FRANCOIS MAROIS and

DANY K. KOURI,

Defendants

COMPLAINT AND JURY  
DEMAND

Case No.:

Plaintiff Unilever Supply Chain, Inc. (“Unilever”) allege as follows:

1. This action is brought against defendant Koolpets Products, Inc. a/k/a Produits Koolpets, Inc. (“Koolpets”), Francois Marois (“Marois”) and Dany K. Kouri (“Kouri”) (Defendant Koolpets, Defendant Marois and Defendant Kouri are sometimes referred to collectively herein as “Defendants”) for trademark infringement, trademark dilution, false

designation of origin and unfair competition, in violation of the Lanham Act, 15 U.S.C. §§ 1141(1), 1125(a)(1), and 1125(c), dilution and injury to business reputation in violation of New York General Obligations Law § 360-1, deceptive trade practices in violation of New York General Obligations Law § 349 and common law trademark infringement and unfair competition, arising from Defendants' use of a designation that is likely to cause confusion with, dilute, and/or is likely to dilute, Unilever's federally registered and famous family of SICLE trademarks, including the POPSICLE<sup>®</sup>, FUDGSICLE<sup>®</sup> and CREAMSICLE<sup>®</sup> marks (collectively, the "SICLE Family of Marks").

2. Unilever seeks injunctive relief and monetary damages.

### **PARTIES**

3. Unilever Supply Chain, Inc. ("Unilever") is a Delaware corporation, with a place of business at 1 John Street, Clinton, Connecticut 06413. Unilever and its affiliated companies are leading manufacturers of food and personal care products. Among their products and widely recognizable brands, Unilever and/or its affiliates and their licensees manufacture, market and sell frozen confections, ice cream, and a variety of other products under the federally registered and famous SICLE Marks.

4. Upon information and belief, Defendant Koolpets is a company organized and existing under the laws of Canada, with a place of business at 1100 Rene-Levesque Boulevard West, Montreal, Quebec H3B 5C9 Canada.

5. Upon information and belief, Defendant Marois is an individual residing at 8930 Croissant de Louve, #4, Brossard, Quebec J4Y 0B2, Canada.

6. Upon information and belief, Defendant Kouri is an individual residing at 38 De Sorel Rue, Blaineville, Quebec J7B 2A2 Canada.

7. Upon information and belief, Defendant Marois is the President and Chief Executive Officer of Defendant Koolpets and has at all times personally participated in and/or directed the infringing activities complained of herein.

8. Upon information and belief, Defendant Kouri is the Executive Vice President and founder of Defendant Koolpets and has at all times personally participated in and/or directed the infringing activities complained of herein.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction under Section 39 of the Lanham Act, 15 U.S.C. § 1121, Sections 1332(a), 1338(a), 1338(b) and 1367(a) of the Judicial Code, 28 U.S.C. 1332(a), § 1338(a), § 1338(b) and § 1367(a), and under principles of supplemental and supplementary jurisdiction. The amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

10. This Court has personal jurisdiction over Defendant Koolpets and venue is proper in this district pursuant to 28 U.S.C. §1391(b)-(c), because, upon information and belief, Defendant Koolpets does and/or will be doing and/or soliciting business in and/or has and/or will have substantial contacts with and/or is and/or may be found in the State of New York, and/or a substantial portion of the events at issue have arisen and/or will arise within this judicial district.

11. This Court has personal jurisdiction over Defendant Marois, and venue is proper in this District pursuant to 28 U.S.C. §1391(b)-(c), because Defendant Marois is doing and/or soliciting business in this District and/or the events giving rise to the claims alleged in this Complaint have a substantial effect in this District.

12. This Court has personal jurisdiction over Defendant Kouri, and venue is proper in this District pursuant to 28 U.S.C. §1391(b)-(c), because Defendant Kouri is doing and/or

soliciting business in this District and/or the events giving rise to the claims alleged in this Complaint have a substantial effect in this District.

**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

**A. Unilever's Federally Registered Marks Famous SICLE Family of Marks.**

13. Unilever's rights in its SICLE Marks date back more than eighty years. Over this more than eight decades, Unilever and/or its affiliates, and their predecessors and/or their licensees (Unilever's affiliates, predecessors and their licensees hereinafter collectively referred to as the "Related Entities"), have successfully grown and expanded the famous and well-known SICLE Family of Marks. Unilever currently owns or has in the past owned numerous federal registrations for trademarks incorporating "SICLE", including, but not limited to, POPSICLE<sup>®</sup>, POPSICLE THE ORIGINAL BRAND (and Design)<sup>®</sup>, CREAMSICLE<sup>®</sup>, CREAMSICLE THE ORIGINAL BRAND (and Design)<sup>®</sup>, FUDGSICLE<sup>®</sup>, FUDGSICLE THE ORIGINAL BRAND (and Design)<sup>®</sup>, CHOCSICLE<sup>®</sup>, SUPERSICLE<sup>™</sup>, SICLE<sup>™</sup>, FRUIT-SICLE, SUNDAE-SICLE, BI-SICLE, SPACE-SICLE, JET-SICLE, FUN 'N SUN-SICLE, TRI-SICLE, SNO-SICLE, CONE-SICLE, JUICE-SICLE, NUTRI-SICLE, LOW-SICLE, MOM SICLE, SWEET SICLE, STAR-SICLE, PUDDING SICLE, CITRUS SICLE, BUBBLE-SICLE, GEL-SICLE, JELLY-SICLE and BUBBA-SICLE for frozen confections and other products.

14. For decades, Unilever and/or the Related Entities have extensively marketed, advertised, promoted and sold frozen confections under the famous SICLE Family of Marks throughout the United States. Unilever and/or the Related Entities have sold, and continue to sell, frozen confections under a number of the famous SICLE Family of Marks individually and in multi-packs through retail stores, including grocery and convenience stores, and mobile vending carts, trucks and stands across the country. Products sold under the SICLE Family of

Marks have been promoted for many years through a wide variety of national media, including television, radio, print and a website located at the domain name “www.popsicle.com”.

15. As a result of the longstanding, extensive, and widespread use, marketing and promotion of the SICLE Family of Marks and products by Unilever and/or the Related Entities, Unilever’s SICLE Family of Marks are widely recognized by the general consuming public as a designation of source for Unilever’s frozen confections and other products. Indeed, POPSICLE® brand frozen confections are the number one kids frozen novelty brand in the United States.

16. Unilever’s SICLE Family of Marks are famous and were famous long prior to the filing date of the BONESICLE Application (as hereinafter defined) and date of first use of the Infringing Mark (as hereinafter defined) and any use of the Infringing Promotional Elements (as hereinafter defined).

17. Unilever is currently the exclusive owner of numerous federal registrations and pending applications for its SICLE Family of Marks, including, but not limited to, the following:

- (a) POPSICLE® (Reg. No. 2,421,400), dated January 16, 2001, for “frozen confections” in International Class 30;
- (b) POPSICLE THE ORIGINAL BRAND® (and Design) (Reg. No. 1,840,718), dated June 21, 1994, for “frozen confections” in International Class 30;
- (c) POPSICLE (Reg. No. 2,668,524), dated December 31, 2002, for “ice cream”;
- (d) POPSICLE THE ORIGINAL BRAND (and Design) (Reg. No. 2,651,685), dated November 19, 2002, covering “ice cream”;
- (e) FUDGSICLE® (Reg. No. 434,594), dated November 25, 1947, for “frozen confections” in International Class 30;

- (f) FUDGSICLE THE ORIGINAL BRAND (and Design)<sup>®</sup> (Reg. No. 1,840,717), dated June 21, 1994, for “frozen confections” in International Class 30;
- (g) CREAMSICLE<sup>®</sup> (Reg. No. 1,839,541), dated June 14, 1994, for “frozen confections” in International Class 30;
- (h) CREAMSICLE THE ORIGINAL BRAND (and Design)<sup>®</sup>, (Reg. No. 1,840,719), dated June 21, 1994, for “frozen confections” in International Class 30;
- (i) CHOCSICLE<sup>®</sup> (Reg. No. 3,178,063), dated November 28, 2006, for “frozen confections” in International Class 30;
- (j) YOSICLE (Application Serial No. 85/136228), filed September 23, 2010, for “ice cream, frozen confections, frozen yogurt” in International Class 30;
- (k) SUPERSICLE (Application Serial No. 85/261745), filed March 9, 2011, for “ice creams, water ices, frozen confections” in International Class 30;
- (l) SICLE (Application Serial No. 85/299678), filed April 20, 2011, for “ice creams and frozen confections in International Class 30;
- (m) POPSICLE<sup>®</sup> (Reg. No. 2,884,485), dated September 14, 2004, for “lipgloss, lip stick and lip balm” in International Class 3;
- (n) POPSICLE THE ORIGINAL BRAND (and Design)<sup>®</sup> (Reg. No. 2,811,550), dated February 3, 2004, for “lip gloss” in International Class 3;
- (o) SMUDGESICLE<sup>®</sup> (Reg. No. 3,337,723), dated November 20, 2007, for “cosmetics, namely eye shadow” in International Class 3;
- (p) POPSICLE<sup>®</sup> (Reg. No. 2,968,587), dated July 12, 2005, for “bracelets” in International Class 14;

(q) CREAMSICLE<sup>®</sup> (Reg. No. 2,968,588), dated July 12, 2005, for “bracelets” in International Class 14;

(r) CREAMSICLE<sup>®</sup> (Reg. No. 3,059,445), dated February 14, 2006, for “lip gloss” in International Class 3;

(s) POPSICLE<sup>®</sup> (Reg. No. 2,973,936), dated July 19, 2005, for “toothbrushes” in International Class 21; and

(t) POPSICLE<sup>®</sup> (Reg. No. 3,009,533), dated October 25, 2005, for “footwear” in International Class 25; and

(u) P.O.P.S.I.C.L.E. CENTER<sup>®</sup> (Reg. No. 3,832,349), dated August 10, 2010, for numerous goods and services in the field of instruction and education regarding feeding issues, in International Classes 16, 35, 38, 41 and 45.

Copies of the Certificates of Registration and of the applications for the foregoing marks are attached hereto as Exhibit A.

18. In addition to the foregoing federal registrations and pending applications, Unilever and the Related Entities have over the years owned the following federal registrations for the SICLE Family of Marks:

(a) POPSICLE (Reg. No. 2,387,841), dated September 19, 2000, for “home sewing patterns” in International Class 16;

(b) POPSICLE (Reg. No. 2,410,795), dated December 5, 2000, for “non-prescription pre-teen sunglasses” in International Class 9;

(c) POPSICLE (Reg. No. 2,395,882), dated October 17, 2000, for “decorative miniature porcelain hinged boxes” in International Class 21 and “Christmas tree ornaments” in International Class 28;

- (d) POPSICLE (Reg. No. 2,373,456), dated August 1, 2000, for “children’s toys, namely, dolls, die cast replica cars, model train cars” in International Class 28;
- (e) POPSICLE (Reg. No. 2,327,220), dated March 7, 2000, for “jigsaw puzzles and board games” in International Class 28;
- (f) POPSICLE THE ORIGINAL BRAND (and Design) (Reg. No. 1,618,723), dated October 23, 1990, for “party paper goods, namely, napkins, tablecloths and invitations” in International Class 16;
- (g) POPSICLE (Reg. No. 1,267,596), dated February 21, 1984, for “toilet soap” in International Class 3;
- (h) POPSICLE (Reg. No. 661,461), dated May 6, 1958, for “body powder, toilet water and lipstick” in International Class 3;
- (i) POPSICLE PETE (Reg. No. 369,974), dated August 8, 1939, for “marbles, combination checkers and chinese checkers game, semi-gyro metal top, indoor balls, baseball gloves, boxing gloves, skates, target set, and sleeping doll” in International Class 28;
- (j) POPSICLE (Reg. No. 177,230), dated December 11, 1923, for “lollypops” in International Class 30;
- (k) CREAMSICLE (Reg. No. 2,635,620), dated October 15, 2002, for “children’s toys, namely, die cast replica cars, model train cars” in International Class 28;
- (l) THE ORIGINAL BRAND CREAMSICLE CANDY TWISTS (and Design) (Reg. No. 2,402,878), dated November 7, 2000, for “candy” in International Class 30;
- (m) FUDGSICLE (Reg. No. 2,355,887), dated June 6, 2000, for “children’s toys, namely, dolls, die cast replica cars, model train cars” in International Class 28; and



(n) THE ORIGINAL BRAND FUDGSICLE CANDY TWISTS (and Design) (Reg. NO. 2,402,877), dated November 7, 2000, for “candy” in International Class 30.

Copies of the Certificates of Registration for the foregoing marks are attached hereto as Exhibit B.

19. Unilever’s above-noted registrations for the SICLE Family of Marks provide constructive notice of Unilever’s claim of ownership thereof under 15 U.S.C. § 1072 and constitute prima facie evidence of the validity of the registered marks and of the registration of such marks, of Unilever’s ownership of the marks and of Unilever’s exclusive right to use the registered marks in commerce on or in connection with the goods specified in the registrations.

Unilever’s federal registrations for POPSICLE<sup>®</sup> for “frozen confections” (Reg. No. 2,421,400), POPSICLE<sup>®</sup> for “ice cream (Reg. No. 2,668,524), POPSICLE THE ORIGINAL BRAND (and Design)<sup>®</sup> for “frozen confections” (Reg. No. 1,840,718), POPSICLE THE ORIGINAL BRAND (and Design)<sup>®</sup> for “ice cream” (Reg. No. 2,651,685), CREAMSICLE<sup>®</sup> for “frozen confections” (Reg. No. 1,839,541), CREAMSICLE THE ORIGINAL BRAND (and Design)<sup>®</sup> for “frozen confections” (Reg. No. 1,840,719) and FUDGSICLE THE ORIGINAL BRAND (and Design)<sup>®</sup> for “frozen confections” (Reg. No. 1,840,717), are incontestable pursuant to 15 U.S.C. § 1065, and, under 15 U.S.C. § 1115(b), thus provide conclusive evidence of the validity of the registered marks and the registrations therefor, of Unilever’s ownership of the registered marks, and of Unilever’s exclusive right to use the marks covered by the registrations in commerce in connection with the goods specified in the registrations.

**B. Defendants’ Unlawful Activities.**

20. Upon information and belief, Defendants are and/or will be promoting, marketing and selling under the confusingly similar BONESICLE designation (“Infringing Mark”), treats for dogs that are made essentially of flavored ice.

21. Upon information and belief, on or about February 24, 2011, Defendant Koolpets, at the specific direction of and with the active participation of Defendant Marois and Defendant Kouri, filed an intent-to-use application to federally register the Infringing Mark (Serial Number 85250796) for “food products for animals, dietary and nutritional supplements for animals, food supplements for medical use for animals, veterinary products and veterinary pharmaceutical preparations”, in International Class 5 (BONESICLE Application”). A copy of the BONESICLE Application is attached hereto as Exhibit C.

22. Upon information and belief, Defendant Kouri is the current owner of the domain name [www.bonesicle.com](http://www.bonesicle.com) (“BONESICLE Domain Name”) and Defendants own and operate the website corresponding thereto (“BONESICLE Website”). A screen shot of the home page from the BONESICLE Website is attached hereto as Exhibit D.

23. Upon information and belief, Defendants own a BONESICLE page on the Facebook.com website (“BONESICLE Facebook Page”). A copy of the Facebook Page as it appeared in March 2011 is attached hereto as Exhibit E. The BONESICLE Domain Name, BONESICLE Website and BONESICLE Facebook Page are hereafter collectively referred to as the “Infringing Promotional Elements”.

24. For many decades before Defendant Koolpets filed the BONESICLE Application or Defendants commenced use of the Infringing Mark and/or the Infringing Promotional Elements, Unilever and/or the Related Entities had been extensively using, promoting and

marketing Unilever's famous and federally registered SICLE Family of Marks for frozen confection, ice cream and other products.

25. Unilever's SICLE Family of Marks were and/or had been federally registered since long before Defendant Koolpets filed the BONESICLE Application to register the Infringing Mark and long before Defendants commenced use of the Infringing Mark and/or the Infringing Promotional Elements.

26. On March 11, 2011, Unilever, through its counsel, wrote to Defendants Marois and Koolpets advising them of Unilever's prior rights in the SICLE Family of Marks and requesting that Defendant Koolpets abandon the BONESICLE Application and otherwise cease its use or plans to use the Infringing Mark.

27. Upon information and belief, because Defendant Kouri at all times actively participated in and directed the activities of Defendant Koolpets complained of herein, Defendant Kouri was aware of Unilever's March 11, 2011 letter to Defendants Marois and Koolpets.

28. Neither Unilever nor its counsel has to date received any response to Unilever's counsel's March 11, 2011 letter to Defendants Marois and Koolpets.

29. Unilever has not consented to or authorized Defendants' use of the Infringing Mark and/or the Infringing Promotional Elements or Defendant Koolpets' registration of the Infringing Mark.

30. Defendants' use of the Infringing Mark and the Infringing Promotional Elements has caused, and is likely to continue to cause confusion, mistake or deception, now and in the future, as to the origin, source, and sponsorship of Defendants' products.

31. Defendants' actions dilute and/or are likely to dilute the distinctive qualities of Unilever's famous SICLE Family of Marks.

**C. Defendants' Unlawful Conduct is Willful and Intentional.**

32. Defendants knew, or should have known, of Unilever's well-established and prior rights and/or federal registrations for Unilever's SICLE Family of Marks for frozen confections and other products before Defendant Koolpets filed the BONESICLE Application and/or before Defendants adopted and began using the Infringing Mark and the Infringing Promotional Elements.

33. Defendants have continued to maintain the BONESICLE Application and have continued to use the Infringing Mark and the Infringing Promotional Elements notwithstanding Defendants' actual knowledge of Unilever's prior and exclusive rights to its SICLE Family of Marks, and despite Unilever providing Defendants with written notice of its objections to the unlawful use of and attempt to register the Infringing Mark and the unlawful use of the Infringing Promotional Elements and Unilever's demands that Defendants cease the illegal conduct alleged in this Complaint.

34. Defendants' unlawful conduct is and continues to be knowing, deliberate and willful.

35. As a direct and proximate result of Defendants' unlawful conduct, Unilever has suffered, and will continue to suffer, irreparable injury to its federally registered and famous SICLE Family of Marks and to the goodwill and business reputation associated with its SICLE Family of Marks. Defendants' unlawful conduct will continue unless enjoined and restrained by this Court. Unilever has no adequate remedy at law for Defendants' continuing violations of its rights as set forth herein.

**FIRST CLAIM FOR RELIEF**

**FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. § 1114(1))**

36. Unilever repeats and realleges paragraphs 1 through 35 above and incorporates them by reference as if fully set forth herein.

37. Defendants' use of a copy, variation, simulation or colorable imitation of Unilever's registered SICLE Marks infringes Unilever's exclusive rights in the federally registered SICLE Family of Marks, is likely to cause confusion, mistake, or deception, and constitutes trademark infringement, in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

38. Defendants have used and/or intend to use a copy, variation, simulation or colorable imitation of the SICLE Family of Marks with full knowledge of the long and extensive prior use of those marks by Unilever and/or the Related Entities. Defendants' unlawful conduct is and has been knowing, deliberate and willful.

39. Defendants' conduct has caused and is causing immediate and irreparable injury to Unilever, and to its goodwill and reputation, and will continue both to damage Unilever and to confuse the public unless enjoined by this Court. Unilever has no adequate remedy at law.

**SECOND CLAIM FOR RELIEF**

**FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF**

**ORIGIN (15 U.S.C. § 1125(A)(1))**

40. Unilever repeats and realleges paragraphs 1 through 39 above and incorporates them by reference as if fully set forth herein.

41. Defendants' use of the Infringing Mark and/or the Infringing Promotional Elements is likely to cause confusion, mistake, or deception, and constitutes a false designation of origin, false description and false representation of Defendants' goods and/or services, and a

false representation that Defendants' goods and/or services originate with or are sponsored, endorsed, licensed, authorized and/or affiliated or connected with Unilever in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a)(1). Defendants' unlawful conduct is and has been knowing, deliberate and willful.

42. Defendants' conduct has caused and is causing immediate and irreparable injury to Unilever, and to its goodwill and reputation, and will continue both to damage Unilever and to confuse the public unless enjoined by this Court. Unilever has no adequate remedy at law.

### **THIRD CLAIM FOR RELIEF**

#### **FEDERAL TRADEMARK DILUTION (15 U.S.C. § 1125(C)(1))**

43. Unilever repeats and realleges paragraphs 1 through 42 above and incorporates them by reference as if fully set forth herein.

44. The SICLE Family of Marks are highly distinctive and have become famous and are uniquely associated with Unilever and its products.

45. Defendants' above-described actions occurred long after the SICLE Family of Marks acquired fame, and have diluted, will continue to dilute, and/or are likely to dilute, unless restrained, the distinctive quality of the famous SICLE Family of Marks by destroying the exclusive association between those marks and Unilever's goods, and/or otherwise lessening the capacity of those marks to identify Unilever and its goods exclusively.

46. Upon information and belief, Defendants' activities, which have been neither sponsored, licensed, nor approved by Unilever, have tarnished, will continue to tarnish, and/or are likely to tarnish, unless restrained, the SICLE Marks by undermining and damaging the goodwill and reputation associated therewith.

47. Defendants' aforesaid actions are intentional and in violation of Section 43(c)(1) of the Lanham Act, 15 U.S.C. § 1125(c)(1), and have already caused Unilever irreparable

damage and will, unless restrained, continue to so damage Unilever. Unilever has no adequate remedy at law.

**FOURTH CLAIM FOR RELIEF**

**DILUTION AND INJURY TO BUSINESS REPUTATION**

**(N.Y. GENERAL BUSINESS LAW § 360-1)**

48. Unilever repeats and realleges paragraphs 1 through 47 above and incorporates them by reference as if fully set forth herein.

49. Defendants' unauthorized and intentional, willful and bad faith use of the Infringing Mark in connection with their pet treat products, which began long after Unilever's SICLE Family of Marks had become famous, is likely to cause, is causing and will continue to cause the dilution of the distinctive quality of Unilever's famous SICLE Family of Marks, resulting in injury to Unilever's business reputation in violation of New York General Business Law § 360-1.

50. Defendants' unauthorized and intentional, willful and bad faith use of the Infringing Mark in connection with goods not controlled by Unilever or otherwise subject to Unilever's control is likely to cause, is causing and will continue to cause dilution and/or injury to the reputation of Unilever and Unilever's goods, in violation of New York General Business Law § 360-1.

51. Defendants' conduct has caused and will continue to cause irreparable injury to Unilever and its goodwill and reputation unless enjoined by this Court. Unilever has no adequate remedy at law.

52. By reason of the foregoing, Unilever is entitled to injunctive relief under New York General Business Law § 360-1.

**FIFTH CLAIM FOR RELIEF**

**DECEPTIVE TRADE PRACTICES**

**(N.Y. GENERAL BUSINESS LAW § 349)**

53. Unilever repeats and realleges paragraphs 1 through 52 above and incorporates them by reference as if fully set forth herein.

54. By reason of the acts and practices set forth above, Defendants have and are engaged in deceptive trade practices or acts in the conduct of a business, trade or commerce, or furnishing of goods and/or services, in violation of New York General Business Law § 349.

55. The public is likely to be damaged as a result of the deceptive trade practices or acts engaged in by Defendants.

56. Unless enjoined by the Court, Defendants will continue such deceptive trade practices or acts, thereby deceiving the public and causing immediate and irreparable damage to Unilever. Unilever has no adequate remedy at law.

**SIXTH CLAIM FOR RELIEF**

**COMMON LAW TRADEMARK INFRINGEMENT**

57. Unilever repeats and realleges paragraphs 1 through 56 above and incorporates them by reference as if fully set forth herein.

58. The unauthorized, intentional, willful and bad faith acts and practices of Defendants set forth above constitute trademark infringement in violation of common law.

59. Unilever has been and is likely to be damaged by Defendants' infringing and unlawful acts.

60. The acts and practices of Defendants complained of herein have caused and, unless enjoined by the Court, are likely to continue to cause Unilever to suffer irreparable harm.



61. Unilever has no adequate remedy at law and is entitled to and seeks injunctive relief as a result thereof.

**SEVENTH CLAIM FOR RELIEF**

**COMMON LAW UNFAIR COMPETITION**

62. Unilever repeats and realleges paragraphs 1-61 above and incorporates them by reference as if fully set forth herein.

63. Upon information and belief, Defendants were aware of Unilever's prior use and registration of the SICLE Family of Marks and adopted and used the Infringing Mark in disregard of Unilever's prior use and rights in the SICLE Family of Marks.

64. Upon information and belief, Defendants' use of the Infringing Mark has resulted and will continue to result in the misappropriation of and trading upon Unilever's goodwill and business reputation at Unilever's expense and without any expense to Defendants. The effect of Defendants' misappropriation of the goodwill symbolized by Unilever's SICLE Family of Marks is to unjustly enrich Defendants, damage Unilever and confuse and/or deceive the public.

65. Defendants' conduct constitutes unfair competition with Unilever, all of which has caused and will continue to cause irreparable injury to Unilever and to Unilever's goodwill and reputation unless enjoined by this Court. Unilever has no adequate remedy at law.

WHEREFORE, Unilever demands judgment as follows:

1. Preliminarily and permanently enjoining Defendants, their officers, directors, employees, agents, attorneys, successors, and assigns, and all those in active concert and participation with Defendants from:

(a) using and/or authorizing any third party to use as a trademark, service mark, domain name, business name, trade name and/or symbol of origin: BONESICLE, any name or

mark incorporating SICLE, and/or any other counterfeit, copy, simulation, confusingly similar variation, and/or colorable imitation of Unilever's SICLE Family of Marks, either individually or collectively, in any form, format or manner, on or in connection with any business, products and/or services, and/or in the marketing, advertising and/or promotion of same;

(b) imitating, copying or making any unauthorized use of Unilever's SICLE Family of Marks, either individually or collectively, and/or any copy, simulation, variation and/or imitation thereof;

(c) making and/or displaying any statement and/or representation that is likely to lead the public and/or the trade to believe that Defendants and/or the Defendants' products and/or services are in any manner associated and/or affiliated with and/or approved, endorsed, licensed, sponsored, authorized and/or franchised by or are otherwise connected with Unilever;

(d) Using and/or authorizing any third party to use in connection with the rendering, offering, advertising, and/or promotion of any goods, products, and/or services any false description, false representation, and/or false designation of origin, and/or any marks, names, words, symbols, devices, and/or trade dress which falsely associate such goods, products and/or services with Unilever and/or tend to do so;

(e) diluting the distinctive quality of Unilever's SICLE Family of Marks, either individually or collectively;

(f) registering and/or applying to register as a trademark, service mark, domain name, trade name and/or other source identifier or symbol of origin BONESICLE and/or any other name or mark incorporating SICLE, in any form, format or manner, whether alone or in combination with any other word(s) or design(s), and/or any other mark, trade dress and/or name

that infringes on and/or is likely to be confused with Unilever's SICLE Family of Marks, either individually or collectively;

(g) engaging in any other activity constituting unfair competition with Unilever, and/or constituting an infringement of Unilever's SICLE Family of Marks, either individually or collectively, and/or of Unilever's rights therein; and

(h) aiding, assisting and/or abetting any other party in doing any act prohibited by sub-paragraphs (a) through (g).

2. Requiring Defendant Koolpets to formally abandon with prejudice pending Application Serial No. 85250796 for the mark BONESICLE and/or any other applications to register any trademark, service mark, and/or trade dress consisting of, containing, and/or confusingly similar to any of Unilever's SICLE Family of Marks, either alone or in combination with other words and/or designs, and/or to voluntarily cancel with prejudice any registration that may issue from such applications during the pendency of this action.

3. Directing the Commissioner of Patents and Trademarks to enter an abandonment with prejudice of Defendant Koolpets' U.S. Trademark Application Serial No. 85250796.

4. Requiring Defendants to formally cancel the BONESICLE Domain Name, and to formally discontinue and shut down the BONESICLE Website and the BONESICLE Facebook Page.

5. Requiring Defendants to identify all distributors, retail establishments and/or wholesale establishments to whom Defendants distributed and/or sold, or have attempted to distribute and/or sell, any products bearing the Infringing Mark.

6. Directing that Defendants deliver for destruction any products, advertisements, and/or other materials in their possession, and/or under their control, incorporating the Infringing

Mark, and/or bearing simulations, variations and/or colorable imitations of any of Unilever's SICLE Family of Marks, used alone and/or in combination with other words and/or designs.

7. Directing such other relief as the Court may deem appropriate to prevent the trade and/or public from deriving the erroneous impression that any product and/or service manufactured, sold, distributed, licensed and/or otherwise offered, circulated and/or promoted by Defendants is authorized by Unilever and/or related in any way to Unilever's products sold under any of the SICLE Family of Marks.

8. Directing that Defendants file with the Court and serve upon Unilever's counsel within thirty (30) days after entry of such judgment, a report in writing under oath, setting forth in detail the manner and form in which Defendants have complied therewith.

9. Awarding Unilever such damages as they have sustained and/or will sustain by reason of Defendants' trademark infringement, trademark dilution, and/or unfair competition.

10. Awarding Unilever all gains, profits, property and/or advantages derived by Defendants from such conduct; and pursuant to 15 U.S.C. § 1107, awarding Unilever an amount up to three times the amount of the actual damages sustained as a result of Defendants' violation of the Lanham Act.

11. Awarding Unilever exemplary and punitive damages to deter any future willful infringement as the Court finds appropriate.

12. Awarding Unilever its costs and disbursements incurred in this action, including its reasonable attorneys' fees.

13. Awarding Unilever interest, including pre-judgment interest, on the foregoing sums.

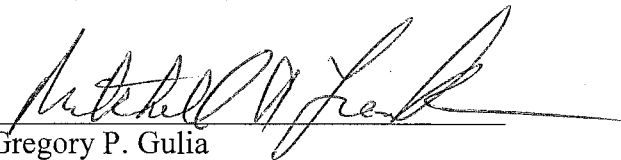
**JURY DEMAND**

Unilever hereby demands a trial by jury pursuant to Rule 38, Federal Rules of Civil Procedure.

Dated: May 12, 2011

**DUANE MORRIS LLP**

By: \_\_\_\_\_

  
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