

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CASE NO. 5:18-cv-545-D

EDIBLE ARRANGEMENTS, LLC; and
EDIBLE IP, LLC,

Plaintiffs,

v.

KENRICK SMITH d/b/a EDIBLE FRUIT
ARRANGEMENTS,

Defendant.

FINAL JUDGMENT ON CONSENT AND PERMANENT INJUNCTION

WHEREAS, Plaintiffs Edible Arrangements, LLC and Edible IP, LLC (collectively “Plaintiffs”) and Defendant Kenrick Smith d/b/a Edible Fruit Arrangements (“Defendant”) have reached the following agreement in settlement of this action, and consent to the entry of this Final Judgment on Consent and Permanent Injunction, based upon the following stipulated findings of fact and conclusions of law, which this Court hereby adopts for the purposes of the entry of this Final Judgment on Consent and Permanent Injunction.

1. Plaintiffs own and use various marks comprising or containing the terms EDIBLE or EDIBLE ARRANGEMENTS, either alone and/or with other words or designs, in connection with a variety of goods and services, including without limitation various fresh and processed fruit products and related retail services (collectively, the “EDIBLE Marks”).

2. Plaintiffs own and use marks comprising a daisy design, featuring six petals and a spherical center, in connection with a variety of goods and services, including without limitation various fresh and processed fruit products and related retail services (the “Daisy Design Marks”).

3. Plaintiff Edible IP, LLC owns numerous U.S. trademark registrations and applications for the EDIBLE Marks and for the Daisy Design Marks, including without limitation those shown on Exhibit A attached hereto.

4. Defendant has operated an online floral and gift business under the name “Edible Fruit Arrangements,” or variations thereof including “Eatable Fruit Arrangements,” and has advertised that business at a website (“Smith’s Website”) located at www.edible-fruit-arrangements.com and www.ediblearrangementsandfruitbouquets.com (“Smith’s Domain Names”).

5. On November 12, 2018, Plaintiffs filed the initial complaint in this action asserting claims against Defendant for trademark infringement, trade dress infringement, false designations of origin, unfair competition, and cyberpiracy under the Lanham Act, 15 U.S.C. §1051 *et seq.*; unfair competition under the common law of the State of North Carolina; and unfair or deceptive trade practices under N.C. Gen. Stat. § 75-1.1 *et seq.*

6. In response to the filing of this action, Smith does not contest liability for Plaintiffs’ claims and has disabled Smith’s Website.

7. The parties have agreed to resolve this litigation upon the terms set forth in this Final Judgment on Consent and Permanent Injunction.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the parties and over the subject matter in issue, and venue is proper in this District.

2. Defendant acknowledges and agrees not to challenge the validity of the EDIBLE Marks and the Daisy Design Marks.

3. Defendant, any persons or entities he controls, and any other persons or entities in

active concert or participation with any of them, are hereby permanently enjoined and restrained from:

A. Using, displaying, advertising, promoting, registering or seeking to register, or incorporating into any domain name, social media user name or title or post, hashtag, HTML code, search engine result listings, search engine optimization, website title, website metadata, website meta names, website metatags, or website meta descriptions, any term or terms comprising or containing the terms EDIBLE, EDIBLE ARRANGEMENTS, or any other designations confusingly similar thereto; and/or

B. Using, displaying, advertising, promoting, registering or seeking to register, or exploiting in any other way the Daisy Design Marks or any other designs or marks confusingly similar to the Daisy Design Marks.

4. By no later than 10 days after entry of this Final Judgment on Consent and Permanent Injunction, Defendant will transfer Smith's Domain Names to Plaintiffs or Plaintiffs' designee.

5. Each party shall bear its own costs and attorney's fees in connection with this litigation.

6. This Court shall retain continuing jurisdiction over the parties to this Final Judgment on Consent and Permanent Injunction and over the subject matter of the action for the purposes of interpreting and enforcing the terms of this Final Judgment on Consent and Permanent Injunction.

7. All of the parties hereto consent to the issuance and entry of this Final Judgment on Consent Permanent Injunction and waive the right to appeal from or otherwise contest this

Final Judgment on Consent and Permanent Injunction, which may be entered in the form and content set forth above without further notice to any party.

AGREED AS TO FORM AND SUBSTANCE:

EDIBLE ARRANGEMENTS, LLC.

By:

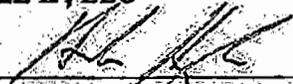

Name: MIKE ROTONDO
Title: CEO

Dated:

3-12-2019

EDIBLE IP, LLC

By:


Name: ADAM HASKILL
Title: General Counsel

Dated:

3/12/2019

KENRICK SMITH d/b/a EDIBLE FRUIT ARRANGEMENTS

By:



Dated:

03/11/2019

APPROVED AND ORDERED this 15 day of April, 2019.


JAMES C. DEVER III
United States District Judge

Exhibit A

Exhibit A to Final Judgment on Consent and
Permanent Injunction

Mark	Serial No. / Registration No.
EDIBLE	Reg. No. 4319940
EDIBLE	Reg. No. 5614310
EDIBLE	Ser. No. 87698471
EDIBLE	Ser. No. 87166534
EDIBLES	Ser. No. 88227154
EDIBLE & Fruit Basket Design 	Ser. No. 87726646
EDIBLE & Fruit Basket Design 	Reg. No. 5,513,739
EDIBLE ARRANGEMENTS	Reg. No. 2356362
EDIBLE ARRANGEMENTS	Reg. No. 3844160
EDIBLE ARRANGEMENTS	Reg. No. 2934715
EDIBLE ARRANGEMENTS	Reg. No. 4328107
EDIBLE ARRANGEMENTS & Fruit Basket Design 	Reg. No. 3141566
EDIBLE ARRANGEMENTS & Fruit Basket Design 	Reg. No. 3844161

Mark	Serial No. / Registration No.
EDIBLE ARRANGEMENTS & Fruit Basket Design (On Left) 	Reg. No. 5286720
EDIBLE ARRANGEMENTS ARRANGEMENT FOAM	Reg. No. 3545601
EDIBLE ARRANGEMENTS GROUP ADVANCEMENT ASSOCIATION	Ser. No. 87308665
EDIBLE BRANDS	Reg. No. 3654276
EDIBLE CAKES	Reg. No. 5018244
EDIBLE CARES	Reg. No. 4471794
EDIBLE COMMERCE	Reg. No. 5220704
EDIBLE FOR BUSINESS	Reg. No. 5,596,071
EDIBLE GOURMET	Ser. No. 87188299
EDIBLE GROWTH ASSOCIATION	Ser. No. 86792483
EDIBLE GROWTH COUNCIL	Ser. No. 86738157
EDIBLE IS IBLE & Design 	Ser. No. 87882329
EDIBLE NUMBERS	Reg. No. 3545605
EDIBLE NUMBERS	Reg. No. 4592970
EDIBLE POPS	Reg. No. 4648061
EDIBLE POPS BOUQUET	Reg. No. 5216025
EDIBLE REVEAL	Ser. No. 87123889

Mark	Serial No. / Registration No.
EDIBLE REWARDS	Reg. No. 4668312
EDIBLE SIGNATURE CHOCOLATE	Ser. No. 87113430
EDIBLE SURPRISE	Ser. No. 87123880
EDIBLE TO GO	Reg. No. 4068508
EDIBLE TO GO (Stylized) 	Reg. No. 4300422
EDIBLE TREATS	Ser. No. 87833917
EDIBLE TREATS & Fruit Basket Design 	Ser. No. 87834230
EDIBLE TURKEY	Ser. No. 88/044289
FRUITFLOWERS INCREDIBLY EDIBLE DELITES & Design 	Reg. No. 3387369
WE ARE EDIBLE BRANDS	Reg. No. 4846371
WELCOME TO THE WORLD OF EDIBLE ARRANGEMENTS	Reg. No. 4273377
DESIGN	Reg. No. 5,052,200