

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

WILDSEED FARMS, INC.,

Plaintiff,

V.

WILDSEED HEMP, LLC,

and

TEXAS CANNAFARMS, LLC,

Defendants.

CIVIL ACTION NO. 1:21-cv-354

Demand for Jury Trial

COMPLAINT

Plaintiff Wildseed Farms, Inc. brings this Complaint for trademark infringement, unfair competition, false designation of origin, and dilution, including blurring and tarnishment, arising under the Lanham Act, 15 U.S.C. § 1051, et seq., the common law and the laws of the state of Texas. Wildseed Farms, Inc., by and through its attorneys, avers as follows:

INTRODUCTION

1. Plaintiff Wildseed Farms, Inc. (“Wildseed Farms” or “Plaintiff”) brings this action against Defendants Wildseed Hemp, LLC (“Wildseed Hemp”) and Texas Cannafarms, LLC (“Texas Cannafarms”) (collectively, the “Defendants”) for trademark infringement, unfair competition, false designation of origin, and dilution, including blurring and tarnishment, arising under Title 15 of the United States Code (the “Lanham Act”), for trademark infringement and unfair competition arising under Texas common law, and for dilution in violation of the Texas Business and Commerce Code.

2. Wildseed Farms is the owner of the federal trademark registration for WILDSEED (Reg. No. 2,906,021). *See* WILDSEED registration, attached hereto as Exhibit 1. Wildseed Farms' registration for WILDSEED is incontestable pursuant to 15 U.S.C. § 1065 (Section 15 of the Lanham Act). *See* U.S. Trademark Office acceptance of Wildseed Farms' declaration of incontestability, attached hereto as Exhibit 2. Wildseed Farms has been using the WILDSEED mark in connection with its high quality plants, plant seeds, plant derivatives, plant consumables and other plant-related products for more than twenty years, including through the use of the trademark and trade name Wildseed Farms as well as the domain name Wildseedfarms.com.

3. On information and belief, in 2019, Defendant Wildseed Hemp began selling products derived from the hemp plant, including cannabidiol (CBD) oil products, under the brand "Wildseed Hemp." Wildseed Hemp's product line includes concentrated herbal extracts (tinctures), CBD oil infused lotions and salves, and CBD oil infused products for pets. Such products are available directly from Wildseed Hemp's website, <https://wildseedhemp.com>, or through reseller/distributor Defendant Texas Cannafarms' website <https://texascannafarms.com/>.

4. Defendants' marketing and sale of such plant extract products using the WILDSEED mark infringes Wildseed Farms' trademark rights and constitutes false designation of origin and unfair competition. Such infringing activities dilute Wildseed Farms' rights in its famous and well-known WILDSEED mark by lessening the WILDSEED mark's uniqueness with relevant consumers and weakening the connection in consumers' minds between Wildseed Farms' WILDSEED mark and Wildseed Farms' goods. Further, such activities tarnish Wildseed Farms' famous and well-known WILDSEED mark by harming the reputation of Wildseed Farms and its WILDSEED mark because consumers will associate the WILDSEED mark with controversial

products containing tetrahydrocannabinol (THC), a psychoactive compound that is highly regulated in Texas and is a Federal controlled substance.

5. Defendants' infringing activities are willful, since they: (i) have been on constructive notice of Wildseed Farms' superior rights to the WILDSEED mark starting with WILDSEED's federal registration on November 30, 2004; and (ii) have had actual notice of Wildseed Farms' rights and their infringing activities since at least February 7, 2020.

6. Wildseed Farms seeks actual damages, Defendants' profits, reasonably costs and attorneys' fees and injunctive relief against Defendants and further relief as described below.

THE PARTIES

7. Plaintiff Wildseed Farms, Inc. is, and at all relevant times was, a corporation duly organized and existing under the laws of Texas, with its principal place of business located at 100 Legacy Drive, Fredericksburg, Texas 78624.

8. Upon information and belief, Defendant Wildseed Hemp, LLC is a limited liability company formed on January 7, 2019 and duly organized and existing under the laws of the Texas with its principal place of business at 18010 Bulverde Rd., #108, San Antonio, Texas 78259. Upon information and belief, Mr. Hunter Schiro is the registered agent and a member of Wildseed Hemp, LLC and has an address of 11610 Vance Jackson Road, #1084, San Antonio, TX 78230. Upon information and belief, Wildseed Hemp, LLC is the sole shareholder of Wildseed Hemp Ltd., a Northern Ireland company.

9. Upon information and belief, Defendant Texas Cannafarms, LLC is a limited liability company formed on February 20, 2020 and duly organized and existing under the laws of Texas with its principal place of business at 18010 Bulverde Rd., #108, San Antonio, TX 78259. Upon information and belief, Mr. Hunter Schiro is the registered agent and managing member of

Texas Cannafarms, LLC and has an address of 11610 Vance Jackson Road, #1084, San Antonio, TX 78230.

JURISDICTION AND VENUE

10. Wildseed Farms' Lanham Act claims for trademark infringement, false designation of origin, unfair competition, trademark dilution, arise under federal law, specifically, 15 U.S.C. §§ 1114 and 1125, and this Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

11. This Court has pendant jurisdiction over the state law claims asserted herein under 28 U.S.C. § 1367(a) because those claims arise in the same common nucleus of operative facts as the federal Lanham Act claims.

12. Venue is proper in this district, pursuant to 28 U.S.C. § 1391(b) and (c), in that this is a judicial district in which a substantial portion of the Defendants' willful and unlawful acts giving rise to Wildseed Farms' claims arose.

FACTS

13. Wildseed Farms is the U.S.'s largest working wildflower farm with over 200 acres located in Fredericksburg, Texas, and has been providing high quality plants, plant seeds, plant derivatives, plant consumables and other plant-related products for over thirty-five years. In addition to operating the wildflower farm, Wildseed Farms also sells WILDSEED branded products, including plants, seeds, plant derivatives, consumables and other related items to consumers all over the United States. At its Fredericksburg location, Wildseed Farms offers free walking trails and gardens, operates a gift shop and garden supply market, and has recently started a vineyard and winery under the WILDSEED brand. Wildseed Farms has controlled and utilized the wildseedfarms.com web domain name for over twenty years to advertise its wildflower garden

and trails, solicit consumers to visit the Fredericksburg location, sell WILDSEED branded products directly to consumers, and to organize and advertise Wildseed Farms' events.



Images from Wildseed Farms' website <https://www.wildseedfarms.com>

14. In November 2003, Wildseed Farms filed a trademark application with the U.S. Trademark Office, seeking registration of the WILDSEED mark for “Live plants; cut flowers; dried flowers; seeds, namely flower seeds, including wildflower seeds, and herb seeds, all for garden, landscaping, crop and domestic use; and seedlings and grass seed, bulbs, namely flower bulbs, including wildflower bulbs, all for garden, landscaping, crop and domestic use.” *See* Exhibit 1. On November 30, 2004, the U.S. Trademark Office registered the WILDSEED mark with registration number 2,906,021 and the WILDSEED registration remains live and subsisting to this day. *See* Exhibit 1. For over twenty years, Wildseed Farms has utilized the WILDSEED mark in conjunction with its business, marketing, Internet presence (including Facebook at <https://www.facebook.com/wildseedfarms/> and Instagram at @wildseedfarms) and on its branded goods. The following are images of WILDSEED branded goods.



Images of Wildseed Farms' flower seeds branded with the WILDSEED mark



Images from Wildseed Farms' Instagram page (@wildseedfarms) (left) and Facebook page (right)

15. The WILDSEED mark has also earned common law rights based on continued use in commerce and public recognition for over twenty years.

16. Wildseed Farms has expended great effort and significant amounts of money in protecting, advertising, promoting and developing the recognition of its WILDSEED mark in the United States. Such advertising and promotions have taken place in print, electronic media, through the Internet, newsprint and magazines and in a variety of other manners.

17. Wildseed Farms' WILDSEED mark is inherently distinctive, or has achieved acquired distinctiveness long prior to the commencement of Defendants' acts of infringement, unfair competition, false designation of origin, and dilution complained of herein, by virtue of extensive sales and advertising of Wildseed Farms' products using the WILDSEED mark, decades of purchase by the public of Wildseed Farms' goods and association of the WILDSEED mark with Wildseed Farms and Wildseed Farms' goods.

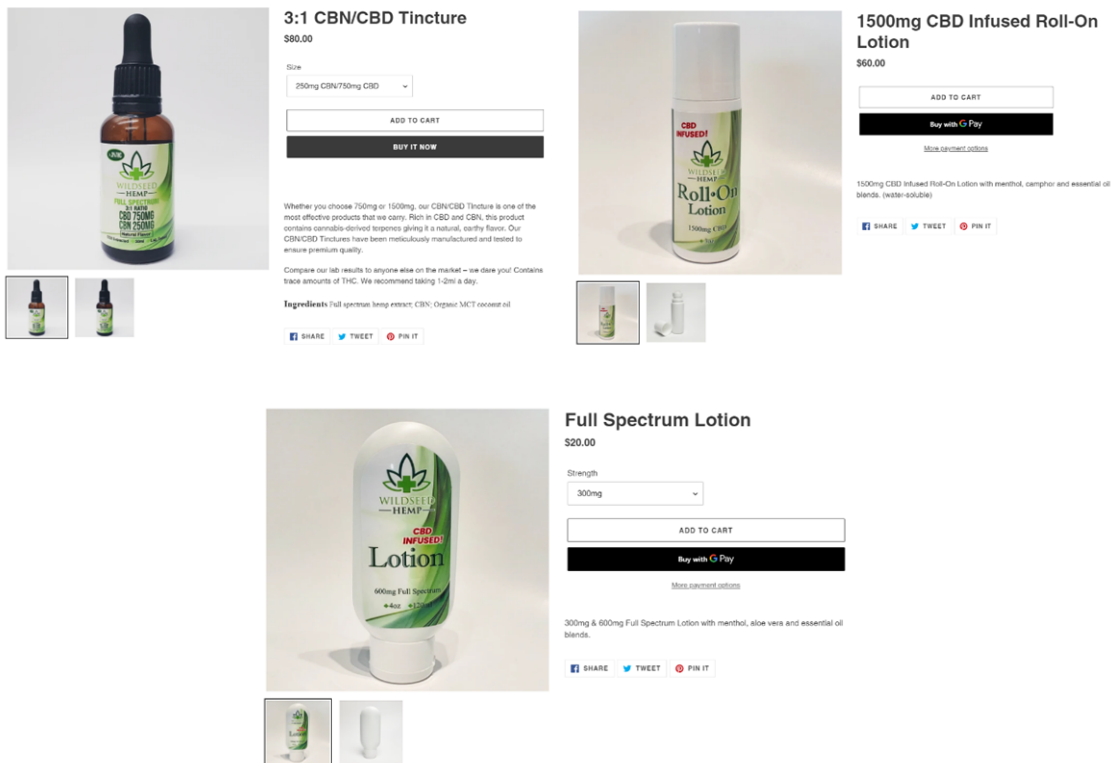
18. Defendant Wildseed Hemp is producing, marketing and selling plant extract products using the WILDSEED mark as the dominate portion of its “Wildseed Hemp” mark and logo. *See* images below. This use of the WILDSEED mark is not authorized by Wildseed Farms.



Wildseed Hemp



Image from Wildseed Hemp's website <https://wildseedhemp.com/>



Images from Wildseed Hemp's website <https://wildseedhemp.com/>

19. As shown below, Defendants also use the WILDSEED mark to promote a hemp variety they produce having the name “Wildseed Haze.” In drug culture, “Haze” is a slang term used to identify certain controlled substances. *See Drug Slang Code Words*, DEA Intelligence Report, DEA-HOU-DIR-020-17 (May 2017), available at: <https://www.dea.gov/sites/default/files/2018-07/DIR-020-17%20Drug%20Slang%20Code%20Words.pdf>.



Wildseed Hemp



Wildseed Haze

Image from Wildseed Hemp's website <https://wildseedhemp.com/>

20. Wildseed Hemp is also advertising its “Wildseed Hemp” products using the WILDSEED mark on social media, including on Facebook and Instagram. This includes the marketing of Wildseed Hemp products using the WILDSEED mark. This use of the WILDSEED mark is not authorized by Wildseed Farms.



114
Posts

210
Followers

116
Following

Wildseed Hemp
Texas compliant hemp/CBD
Texas hemp farming
18010 Bulverde Rd #108
San Antonio TX 78259... more

Follow

Message



141
Posts

177
Followers

59
Following

Wildseed Hemp - Marble Falls
Alternative & Holistic Health Service
Must be 21 to view!
www.wildseedhemp.com/
1506 Ranch Rd 1431, Marble Falls, Texas 78654

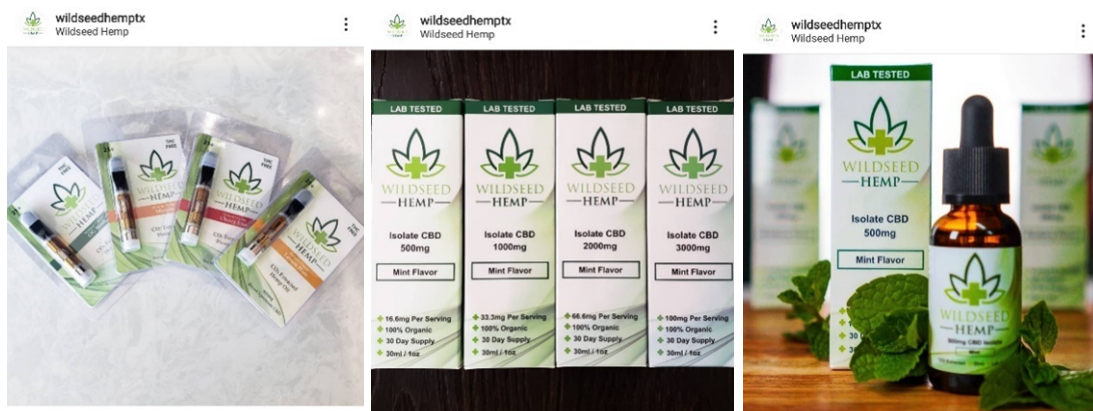
Follow

Message

Contact



Images from Wildseed Hems' Instagram pages @wildseedhemptx (left) and @wildseedhempmf (right)



Images from Wildseed Hems' Instagram page (@wildseedhemptx)


21. Upon information and belief, Defendant Texas Cannafarms is marketing and selling “Wildseed Hemp” plant extract products that use the WILDSEED mark as the predominate portion of the “Wildseed Hemp” mark and logo. This use of the WILDSEED mark is not authorized by Wildseed Farms. Images reflecting Defendant’s use of the WILDSEED mark to market and sell products are below.




Image from Texas Cannafarms' website <https://texascannafarms.com/>

Products


FILTER BY All products ▾ SORT BY Alphabetically, A-Z ▾ 8 products




1500mg CBD Infused Roll-On Lotion
\$60.00




3:1 CBN/CBD Tincture
from \$80.00




600mg Full Spectrum Salve
\$40.00




Broad Spectrum Pet Tincture
from \$20.00




Broad Spectrum Tincture
from \$30.00



Full Spectrum Lotion
from \$20.00



Full Spectrum Tincture
from \$55.00



Isolate Tincture
from \$25.00

Images from Texas Cannafarms' website <https://texascannafarms.com/>

22. Texas Cannafarms is advertising Wildseed Hemp products using the WILDSEED mark on social media, including on Facebook and Instagram. This includes the marketing of Wildseed Hemp products bearing the WILDSEED mark. This use of the WILDSEED mark is not authorized by Wildseed Farms.



37
Posts

336
Followers

263
Following

Texas Cannafarms
Cannabis Compliance Attorney w/ firsthand experience. 📄
📁 Consulting for farmers, retailers & distributors. 🍷... more
texascannafarms.com/

Follow

Message

▾



Creations



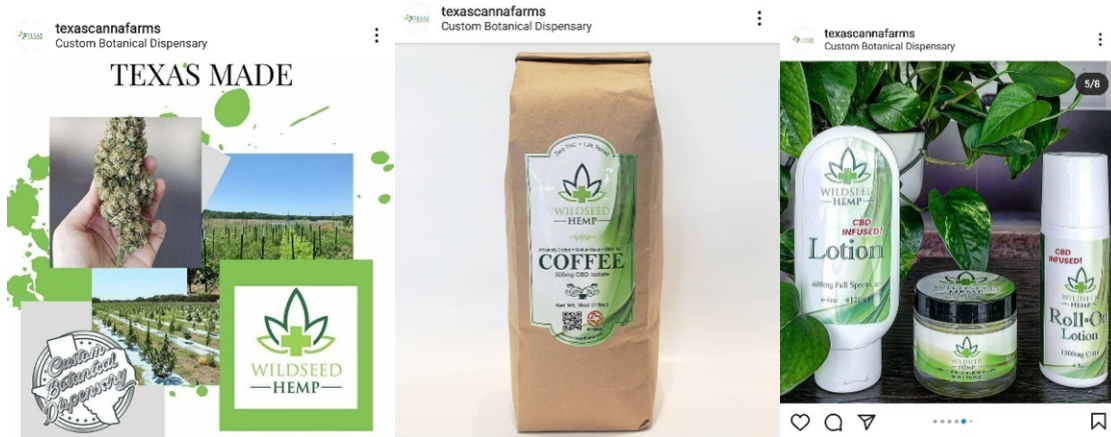
Strains



Private Label



Wildseed Hemp



Images from Texas Cannafarms' Instagram page (@texascannafarms)

23. Upon information and belief, Texas Cannafarms was formed in February 2020 by the owner(s) of Wildseed Hemp to exclusively distribute Wildseed Hemp products.¹ On Wildseed Hemp's Facebook page, Wildseed Hemp describes Texas Cannafarms as also "providing private labeling for CBD stores, medical offices, pet stores, chiropractors, massage therapists, spas, gyms and anywhere your clientele will benefit from hemp products."²

24. The Wildseed Hemp brand, the "Wildseed Hemp" products, and Wildseed Hemp's advertising and marketing campaigns all utilize the WILDSEED mark for related plant extract goods without the consent of Wildseed Farms. Similarly, Texas Cannafarms is exclusively marketing the Wildseed Hemp brand and exclusively marketing and selling unauthorized related products bearing the WILDSEED mark without the consent of Wildseed Farms. Upon information and belief, Wildseed Hemp and Texas Cannafarms are owned-in-part by the same principal, Mr. Hunter Schiro.

¹ See <https://texascannafarms.com/collections/featured-products>.

² See <https://www.facebook.com/384515899036829/posts/texas-cannafarms-providing-private-labeling-for-cbd-stores-medical-offices-pet-s/807929363362145/>.

25. Due to Defendants' use of the WILDSEED mark in their trade name and domain name, modified only by the descriptive noun "hemp" added to the end, for similar plant-based products, consumers are likely to be confused as to the source of "Wildseed Hemp" products, and mistakenly believe that such products originate from, or are endorsed by Wildseed Farms.

26. Defendants' use of the WILDSEED mark with their websites, advertising, social media and product labels has caused and will likely continue to cause confusion among the consuming public.

27. Furthermore, the "Wildseed Hemp" mark, trade name and domain name entirely co-opts the WILDSEED mark as its predominate term and merely adds the descriptive noun "hemp" at the end. Consumers are likely to be confused regarding whether the products manufactured, advertised, sold, and distributed by Defendants are endorsed, sponsored, or approved by Wildseed Farms or affiliated with Wildseed Farms or its other product offerings.

28. The WILDSEED mark became famous well before Defendants' formation or improper use of the WILDSEED mark. Defendants' commercial use of the trade name "Wildseed Hemp" is diluting the WILDSEED mark in the minds of consumers.

29. Defendants' use of the "Wildseed Hemp" mark, trade name, and domain name results in dilution by blurring because it reduces consumer perception of the famous WILDSEED mark as a unique mark and therefore impairs its distinctiveness.

30. Upon information and belief, Defendants have deliberately selected the WILDSEED mark for inclusion in the "Wildseed Hemp" mark, trade name, and domain name because the WILDSEED mark is already famous among relevant consumers and has been associated with high quality plants, plant seeds, plant derivatives, plant consumables and other plant-related products for decades in the minds of consumers.

31. Further, Defendants' use of the "Wildseed Hemp" mark, trade name, and domain name tarnishes the WILDSEED mark. Defendants' production, marketing and sale of CBD oil and other products containing THC under the "Wildseed Hemp" trade name harms the reputation of Wildseed Farms' famous WILDSEED mark.

32. Cannabis as a medicinal and recreational drug, hemp and CBD all derive from the species *Cannabis sativa* and contain the regulated psychoactive component tetrahydrocannabinol (THC). Although industrial hemp is legal in Texas and is no longer a federally controlled substance, consumers still associate hemp with illegal drug production and use. Further, as of the filing of this Complaint, the particulars of Texas' regulation of industrial hemp are still in flux.

33. Some of Defendants' "Wildseed Hemp" CBD oil products are full-spectrum, meaning that the CBD has been extracted from the hemp plant along with any THC the plant has produced. CBD products are not Schedule 1 substances under the federal Controlled Substances Act as long as they contains less than .3% THC (or .5% THC for patients with a medical card).³ Possession of CBD with THC over these limits is a felony with a conviction carrying a sentence of 180 days to two years and a \$10,000 fine. Since Wildseed Farms has no oversight on Defendants' production and compliance controls, Wildseed Farms has no ability to prevent the sale of products bearing the WILDSEED mark from landing consumers in prison. Intentional or mere negligent conduct on part of Defendants with regards to how much THC is in their "Wildseed Hemp" products could have a disastrous effect on the reputation of the WILDSEED mark. This is a real concern for Wildseed Farms as the labelling on Defendants' full-spectrum tincture products states that they contain *greater than* .3% THC, which would make these products Schedule 1 controlled

³ See Agriculture Improvement Act of 2018 (H.R.2 - Agriculture Improvement Act of 2018).

substances in violation of state and federal criminal law. *See* above image from Wildseed Hemp's website <https://wildseedhemp.com>.

34. Wildseed Farms and the WILDSEED mark have been associated with a family-friendly environment, family-friendly events and non-controversial plant-based products in the minds of consumers. Association of the WILDSEED mark in the minds of consumers with cannabis, THC and illegal drug use, as well as highly regulated and controversial hemp and CBD products, greatly harms the reputation of the WILDSEED mark.

35. Defendants' acts of trademark infringement, unfair competition, false designation of origin, and dilution, including blurring and tarnishment are willful and intentional. Wildseed Farms, through its counsel, sent correspondence to Mr. Hunter Schiro and Mr. Holden Hylander, Defendants' principals/managers, on February 7, 2020, expressing its concerns and demanding that Wildseed Hemp cease and desist use of the WILDSEED mark by changing its website URL, business name, product names and associated online and print advertisements. *See* Letter from Mr. Adams to Messrs Schiro and Hylander dated Feb. 7, 2020, attached hereto as Exhibit 3. Wildseed Hemp failed to make any changes regarding its use of the WILDSEED mark, and instead has only increased its infringing use. In fact, upon information and belief, Defendant Texas Cannafarms was formed by Mr. Hunter Schiro, managing partner of Wildseed Hemp, to distribute the Wildseed Hemp products, less than two weeks (on February 20, 2020) after the date of Wildseed Farms' cease and desist letter. *See* Texas Comptroller Report regarding Texas Cannafarms, attached hereto as Exhibit 4.

36. Alone, Wildseed Farms' widespread and public use of the WILDSEED mark in commerce beginning more than twenty years ago provided notice to Defendants of Wildseed Farms' ownership and exclusive rights in the WILDSEED mark. Further, Wildseed Farms' federal

registration of the WILDSEED mark on November 30, 2004 put Defendants on constructive notice of Wildseed Farms' claim of ownership of and exclusive rights in the WILDSEED mark under 15 U.S.C. § 1072.

37. Further, the cease and desist letter mailed and emailed to Mr. Hunter Schiro and Mr. Holden Hylander on February 7, 2020 also provides actual notice to Defendants of Wildseed Farms' ownership and exclusive rights in the WILDSEED mark as well as Defendants' infringing use of the WILDSEED mark.

38. Therefore, the Defendants have willfully and intentionally violated the Lanham Act as well as Texas common and statutory law through their adoption and continued use of the WILDSEED mark despite constructive and actual notice of Wildseed Farms' exclusive right to the WILDSEED mark for related goods. Defendants' willful and intentional conduct is accented by the formation of Texas Cannafarms, as a front to continue the distribution of Wildseed Hemp products bearing the WILDSEED mark, soon after being put on actual notice of the infringing activity.

39. As a result of Defendants' unauthorized use of the WILDSEED trademark and similar trade name and domain name, Wildseed Farms has suffered great and irreparable injury.

40. Defendants will continue to use Wildseed Farms' WILDSEED mark with similar products, and, as a result, Wildseed Farms will continue to suffer great and irreparable injury, unless Defendants are enjoined from doing so.

COUNT ONE
TRADEMARK INFRINGEMENT IN VIOLATION OF THE LANHAM ACT
(Section 32 of the Lanham Act, 15 U.S.C. § 1114)

42. Wildseed Farms repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

43. Wildseed Farms is the owner of the federal trademark registration for WILDSEED (Reg. No. 2,906,021). Wildseed Farms' registration for WILDSEED is incontestable pursuant to 15 U.S.C. § 1065. As such, Wildseed Farms' registration is conclusive evidence of: the validity of the registered mark; the registration of the mark; Wildseed Farms' ownership of the mark; and Wildseed Farms' exclusive right to use the registered mark in commerce.

44. Defendants have willfully infringed, and/or contributed thereto, Wildseed Farms' federally registered WILDSEED mark through their use of the trade name, trademark, and domain name "Wildseed Hemp" in interstate commerce.

45. Such use was done without consent of Wildseed Farms and is likely to cause confusion in, and to deceive, the consuming public as to the affiliation, connection or association of Defendants and Defendants' products and commercial activities with Wildseed Farms, and its products commercial activities.

46. Moreover, Wildseed Farms has expended great effort and significant amounts of money in protecting, advertising, promoting and developing the recognition of its WILDSEED mark with the result being that, long before the acts of the Defendants complained of herein, the public had come to recognize the WILDSEED mark as a reference to the superior products offered by Wildseed Farms. Such public recognition constitutes goodwill of immense value which belongs exclusively to Wildseed Farms.

47. Defendants' use of WILDSEED and Wildseed Hemp was done with actual knowledge of Wildseed Farms' prior, extensive and continuous use of its WILDSEED mark and

its Wildseed Farms trade name, and domain name. Therefore, Defendants have willfully and intentionally infringed and/or contributed to infringement of Wildseed Farms' trademark rights in violation of Section 43 of the Lanham Act (15 U.S.C. § 1125) by various unauthorized acts, including advertising and displaying the WILDSEED mark in connection with the sales of its products.

48. Defendants will continue to engage in the willful acts of trademark infringement, and as a result, Wildseed Farms will continue to suffer great and irreparable harm, unless Defendants are enjoined from committing such acts.

49. Wildseed Farms has no adequate remedy at law.

50. Wildseed Farms requests that it be awarded actual damages, up to three times actual damages, as well as an award of the Defendants' profits attributable to the infringing conduct under Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

51. Wildseed Farms requests costs of bringing this action under Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

52. Wildseed Farms requests that the Court deem this an exceptional case and award reasonable attorneys' fees to Wildseed Farms under Sections 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

COUNT TWO
UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN
IN VIOLATION OF THE LANHAM ACT
(Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a))

53. Wildseed Farms repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

54. Defendants have willfully and intentionally violated the Lanham Act, 15 U.S.C. § 1125 by its unauthorized use of the WILDSEED mark in their commercial activities, including in

connection with the sale of their products and in advertising and promotions of the “Wildseed Hemp” trademark, trade name and domain name, which include the WILDSEED mark.

55. Defendants’ actions are without the permission or authority of Wildseed Farms and are likely to continue to cause confusion, cause mistake, and to deceive as to an affiliation, connection or association between Wildseed Farms on the one hand and Defendants on the other, and as to the origin, sponsorship, or approval of Defendants’ goods and commercial activities by Wildseed Farms.

56. Defendants have been causing the relevant consumer public, including Wildseed Farms’ customers and potential customers, to be confused, mistaken, and deceived, by way of advertising, online marketing and otherwise, that the Defendants’ commercial activities and products are associated with Wildseed Farms, its commercial activities, and its products using the WILDSEED mark when, in fact, they are not.

57. Defendants will continue to willfully engage in the acts of unfair competition and false designation of origin, and as a result, Wildseed Farms will continue to suffer great and irreparable harm, unless Defendants are enjoined from committing such acts.

58. Wildseed Farms has no adequate remedy at law.

59. Wildseed Farms requests that it be awarded actual damages, up to three times actual damages, as well as an award of the Defendants’ profits attributable to the infringing conduct under Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

60. Wildseed Farms requests costs of bringing this action under Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

61. Wildseed Farms requests that the Court deem this an exceptional case and award reasonable attorneys' fees to Wildseed Farms under Sections 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

COUNT THREE
TRADEMARK DILUTION BY BLURRING IN VIOLATION OF THE LANHAM ACT
(Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c))

62. Wildseed Farms repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

63. The WILDSEED mark is distinctive and widely recognized nationally and in the state of Texas by the general consuming public in connection with Wildseed Farms' sale of its high quality plants, plant seeds, plant derivatives, plant consumables and other plant-related products, and its other commercial activities.

64. Because of its continuous and extensive use by Wildseed Farms, the WILDSEED mark in connection with high quality plants, plant seeds, plant derivatives, plant consumables and other plant-related products has become famous.

65. Defendants' use in commerce of the famous WILDSEED mark in their websites, social media accounts, advertising, and product labels for their plant derivative products, is likely to cause dilution nationally and in the state of Texas of the distinctive quality of the WILDSEED mark.

66. Defendants' use of the WILDSEED mark results in dilution by blurring because it reduces consumer perception of the famous WILDSEED mark as a unique mark and therefore impairs its distinctiveness.

67. Defendants will continue to willfully conduct the acts of trademark dilution by blurring, and as a result, Wildseed Farms will continue to suffer great and irreparable harm, unless Defendants are enjoined from committing such acts.

68. Wildseed Farms has no adequate remedy at law.

69. Wildseed Farms requests that it be awarded actual damages, up to three times actual damages, as well as an award of the Defendants' profits attributable to the infringing conduct under Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)), to extent deemed appropriate.

70. Wildseed Farms requests costs of bringing this action under Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

71. Wildseed Farms requests that the Court deem this an exceptional case and award reasonable attorneys' fees to Wildseed Farms under Sections 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

COUNT FOUR
TRADEMARK DILUTION BY TARNISHMENT
IN VIOLATION OF THE LANHAM ACT
(Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c))

72. Wildseed Farms repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

73. The WILDSEED mark is distinctive and widely recognized nationally and in the state of Texas by the general consuming public in connection with Wildseed Farms' sale of high quality plants, plant seeds, plant derivatives, plant consumables and other plant-related products, and its other commercial activities.

74. Because of its continuous and extensive use by Wildseed Farms, the WILDSEED mark in connection with high quality plants, plant seeds, plant derivatives, plant consumables and other plant-related products has become famous.

75. Defendants' use in commerce of the famous WILDSEED mark in their websites, social media accounts, advertising, and product labels for their plant-derivative products, is likely to cause dilution nationally and in the state of Texas of the distinctive quality of the WILDSEED mark.

76. Defendants' use of the WILDSEED mark results in dilution by tarnishment because of Defendants' unfavorable use of the WILDSEED mark, in connection with controversial and highly regulated CBD and hemp products containing THC, harms the reputation of the famous WILDSEED mark.

77. Defendants will continue to willfully conduct the acts of trademark dilution by tarnishment, and as a result, Wildseed Farms will continue to suffer great and irreparable harm, unless Defendants are enjoined from committing such acts.

78. Wildseed Farms has no adequate remedy at law.

79. Wildseed Farms requests that it be awarded actual damages, up to three times actual damages, as well as an award of the Defendants' profits attributable to the infringing conduct under Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)), to extent deemed appropriate.

80. Wildseed Farms requests costs of bringing this action under Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

81. Wildseed Farms requests that the Court deem this an exceptional case and award reasonable attorneys' fees to Wildseed Farms under Sections 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

COUNT FIVE
TRADEMARK INFRINGEMENT IN VIOLATION OF TEXAS COMMON LAW

82. Wildseed Farms repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

83. Wildseed Farms' WILDSEED mark has acquired recognition and common law rights in Texas as signifying high quality plants, plant seeds, plant derivatives, plant consumables and other plant-related products, such recognition having been acquired long prior to the conduct of the Defendants complained of herein.

84. Defendants have willfully infringed Wildseed Farms' WILDSEED mark, trade name, and domain name by using in commerce in Texas the confusingly and deceptively similar trademark, trade name, and domain name "Wildseed Hemp," which utilize the WILDSEED mark as the predominate part of the mark and names, for similar plant-derivative products.

85. Defendants' use of the WILDSEED mark and name in connection with the sale or provision of the Defendants' similar products was done without the consent of Wildseed Farms and is likely to cause confusion, mistake, or deception in the consuming public.

86. Moreover, Wildseed Farms has expended great effort and significant amounts of money in protection, advertising, promoting, and developing recognition of the WILDSEED mark in Texas, which the result being that, long before the acts of the Defendants complained of herein, the public had come to recognize such mark as a reference to the specialized and high-quality products offered by Wildseed Farms. Such public recognition constitutes goodwill of immense value which belongs to Wildseed Farms.

87. The WILDSEED mark is not only inherently distinctive, but it has also acquired recognition within Texas as signifying high quality plants, plant seeds, plant derivatives, plant consumables and other plant-related products, such recognition having been acquired long prior to the conduct of Defendants complained of herein.

88. Defendants' use of the mark and name infringes on Wildseed Farms' common law rights in its trademark, trade name, and domain name. This use is likely to cause confusion,

mistake, or deception among consumers who believe that Defendants' goods, commercial activities and businesses are affiliated with or endorsed by Wildseed Farms, when they are not, causing damages to Wildseed Farms, including monetary loss to its business, reputation, and goodwill, which shall continue unless such infringement is enjoined.

89. Wildseed Farms has no adequate remedy at law.

90. Wildseed Farms requests that it be awarded actual damages as well as an award of the Defendants' profits attributable to the infringing conduct under Texas common law along with exemplary damages.

**COUNT SIX
UNFAIR COMPETITION IN VIOLATION OF TEXAS COMMON LAW**

91. Wildseed Farms repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

92. Defendants have engaged in commerce in the State of Texas and this judicial district by marketing, offering to sell, and selling their similar goods at least through Defendants' places of business in Texas.

93. Through their unauthorized use of the WILDSEED mark, Defendants have competed unfairly in violation of Texas law by misrepresenting or leading the public to believe that its "Wildseed Hemp" goods, commercial activities and business are sponsored by, approved by, affiliated with, or associated with Wildseed Farms, causing damages to Wildseed Farms including monetary loss to its business, reputation, and goodwill, which shall continue unless such unfair competition is enjoined.

94. Wildseed Farms has no adequate remedy at law.

95. Wildseed Farms requests that it be awarded actual damages as well as an award of the Defendants' profits attributable to the infringing conduct under Texas common law along with exemplary damages.

COUNT SEVEN
DILUTION IN VIOLATION OF TEXAS BUSINESS AND COMMERCE CODE
(Section 16.103 of the Texas Business and Commerce Code)

96. Wildseed Farms repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

97. The WILDSEED mark is famous and distinctive, and widely recognized by the public, throughout Texas. Wildseed Farms has advertised and sold goods, including at its popular working wildflower farm and gift shop and garden supply market in Fredericksburg, Texas, under the WILDSEED mark throughout Texas for over twenty years.

98. Defendants' use of the WILDSEED mark in their commercial activities, and in the marketing and sale of goods is likely to cause dilution of the mark.

99. Such dilution was and is willfully intended.

100. Wildseed Farms is entitled to, among other relief, injunctive relief and money damages in the amount of three times the amount of Defendants' profits and Wildseed Farms' damages, as well as reasonable attorneys' fees and costs of the action under Section 16.103 of the Texas Business and Commercial Code.

JURY DEMAND

101. Plaintiff Wildseed Farms hereby demands a jury trial.

PRAYER

WHEREFORE, Wildseed Farms respectfully requests the following:

102. That this Court, pursuant to its authority under 15 U.S.C. § 1116 and/or § 16.103 of the Texas Business and Commerce Code, issue a permanent injunction enjoining Defendants and their affiliates, officers, agents, servants, employees, and attorneys and all those persons in active concert or participation with Defendants from the acts described in this Complaint, namely Defendants' use of the WILDSEED mark as a trademark or as part of Defendants' trade names and domain names, or to market, label, and sell Defendants' goods;

103. That this Court order Defendants to transfer any and all rights in the WILDSEEDHEMP.COM domain name registration to Wildseed Farms.

104. That this Court order Defendants to provide an accounting of all sales, revenues, and profits related to Defendants' products that infringe the WILDSEED mark or that were falsely designated as being sponsored by, approved by, affiliated with, or associated with Wildseed Farms;

105. That this Court, in accordance with 15 U.S.C. § 1118, order that all labels, signs, prints, packages, wrappers, receptacles, advertisements, and all other materials (a) in the Defendants' possession or control and (b) bearing the WILDSEED mark, or any confusingly similar mark, be delivered up and destroyed;

106. That this Court, in accordance with the Lanham Act, award Wildseed Farms all of Defendants' profits from the aforesaid acts of unjust enrichment, trademark infringement, dilution and unfair competition;

107. That this Court award to Wildseed Farms the maximum damages allowable under the Lanham Act, 15 U.S.C. §1051 et seq., including but not limited to treble damages;

108. That this Court, in accordance with the Lanham Act, find this case to be exceptional in Wildseed Farms' favor and award Wildseed Farms its reasonable attorney's fees, costs, and expenses of this action;

109. That this Court award to Wildseed Farms the maximum actual damages and unjust enrichment under Texas common law along with all exemplary damages to which it is entitled;

110. That this Court, award Wildseed Farms pre-judgment and post-judgment interest at the maximum allowable interest rate;

111. That this Court award Wildseed Farms, as an equitable remedy, the costs and expenses reasonably necessary for Wildseed Farms to undertake a corrective advertising campaign to market and promote its products, commercial activities, and business and to re-establish to the public, particularly consumers of plant-based and plant derivative products, that the WILDSEED mark is exclusively associated with Wildseed Farms and not the Defendants; and

112. That this Court award Wildseed Farms such other and further relief, both general and special, at law or in equity, to which Wildseed Farms shows itself to be justly entitled and which this Court deems just, equitable and proper.

DATED: April 22, 2021

Respectfully submitted,

DYKEMA GOSSETT PLLC

/s/ Michael P. Adams

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