

COCOAVIA trademark. Defendants' use and registration of the COCOVAA name and mark for goods highly related to goods offered by Plaintiff under the COCOAVIA trademark will inevitably confuse, mislead and deceive the general public into believing that Plaintiff manufactures, sells, sponsors, approves or licenses Defendants' cocoa-based chocolate products.

THE PARTIES

2. Plaintiff Mars, Incorporated is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 6885 Elm Street, McLean, Virginia 22101.

3. Upon information and belief, Defendant CocoVaa LLC is a limited liability company organized and existing under the laws of the State of Wisconsin with a principal place of business at 1 Sherman Terrace, 102b, Madison, Wisconsin 53704.

4. Upon information and belief, Defendant Syovata K. Edari is an individual and citizen of the State of Wisconsin, who owns Defendant CocoVaa LLC and is a registered agent thereof, with a residence at 1 Sherman Terrace, 102b, Madison, Wisconsin 53704.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action under Section 39 of the Lanham Act, 15 U.S.C. § 1121, as well as 28 U.S.C. §§ 1331, 1332, and 1338, and the doctrine of supplemental jurisdiction, 28 U.S.C. § 1367. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and the parties are of diverse citizenship.

6. Personal jurisdiction over Defendants is proper because Defendants solicit, transact, and do business within the Commonwealth of Virginia and within this District, and the claims in this action arise out of such business in this District.

7. Defendants have caused and are causing injury within this District by advertising, distributing, and selling products bearing the infringing COCOVAA trademark in this District.

8. Venue is proper in this District under 28 U.S.C § 1391(b) because Plaintiff resides within this District and a substantial part of the events giving rise to the claims alleged herein occurred in this District.

PLAINTIFF'S TRADEMARK RIGHTS IN ITS COCOAVIA® TRADEMARK

9. Plaintiff Mars, Incorporated is a global manufacturer of numerous brands of petcare, chocolate, food and drink products, which operates in six (6) business segments: Petcare, Chocolate, Wrigley, Food, Drinks, and Symbioscience.

10. Through its Symbioscience business segment, Mars has been pursuing extensive research in the area of cocoa flavanols, the beneficial phytonutrients found naturally in cocoa, for more than 20 years.

11. As a result of its extensive research into the area of cocoa flavanols, Mars has developed, marketed, and sold the industry's leading line of cocoa extract supplements, delivering the highest concentration of cocoa flavanols available, under the CocoaVia® trademark.

12. The real health benefits of chocolate come from cocoa flavanols and Mars' CocoaVia® daily supplement delivers the highest concentration of cocoa flavanols in a cocoa extract supplement. Numerous scientific studies have demonstrated that these flavanols promote healthy blood flow from head to toe.

13. Mars introduced the CocoaVia® brand in 2003, which at the time was the first functional food product launched by the company. CocoaVia® featured a line of dark chocolate bars and chews that contained cocoa flavanols and plant sterols.

14. Since the initial launch in 2003, the CocoaVia® brand grew its portfolio of products to include milk chocolate, granola bars, chocolate covered almonds, and ready-to-drink beverages. Sample images of the CocoaVia® chocolate and chocolate-based products are shown below:





15. Through substantial financial investment and effort, Mars built considerable goodwill and a reputation for the highest quality chocolate products containing cocoa flavanols. Building such goodwill and reputation of the CocoaVia® name and mark, Mars launched the CocoaVia® cocoa extract supplements and related products in 2010.

16. Mars' CocoaVia® supplements are sold as capsules or in a powdered stick-pack form, which is available in several flavors, including the “unsweetened dark chocolate” and “sweetened dark chocolate” flavors. Sample images of Mars' CocoaVia® products are shown below:



17. Mars owns and operates its CocoaVia® brand web site at www.cocoaVia.com, where CocoaVia® cocoa extract supplement products are sold. In addition to the CocoaVia® products, Mars has been selling for many years, and currently offers for sale, its dark chocolate-based snack squares called goodnessknows® on the same CocoaVia® web site, as shown below. The goodnessknows® chocolate-based snacks, which consist of dark chocolate made from specially processed cocoa beans to preserve naturally occurring cocoa flavanols, are closely associated with the CocoaVia® brand for the health benefits provided by cocoa flavanols.

Store Locator Contact CocoaVia® My Account View Cart

CocoaVia
BRAND

Enter search keyword Search Q

SHOP WHY IT WORKS RECIPES HOW WE MAKE IT ABOUT US

SHOP

CocoaVia®
Capsules
Unsweetened Dark Chocolate
Original
Sweetened Dark Chocolate
Cran-Raspberry
Variety Packs

goodnessknows®
Cranberry & Almond
Apple, Almond & Peanut
Peach, Cherry & Almond
Blueberry & Almond
Strawberry & Peanut
Mixed Berries & Almond
Variety Packs

Questions About Ordering
Our Guarantee

goodnessknows
snack squares

try a little goodness

CocoaVia.com is proud to offer **goodnessknows**® — luscious snack squares made with slow-roasted whole almonds, tangy fruits, toasted whole grains and extraordinary deep chocolate.

Available in three delicious flavors — Apple, Almond & Peanut, Dark Chocolate; Cranberry, Almond, Dark Chocolate; and Peach & Cherry, Almond, Dark Chocolate — all **goodnessknows**® snacks deliver 100 mg of cocoa flavanols per tasty serving.

goodnessknows® snacks are made by Mars, Incorporated — the same company that makes **CocoaVia**® supplement.

Items 1-12 of 29 Page: 1 2 3 Show 12 Sort By Position

goodnessknows
Cranberry, Almond, Dark Chocolate, 5 Count Box
Luscious snack squares made with tangy-sweet cranberries, roasted almonds and toasted rolled oats. Sample 5 single servings in this snack pack.
Regular Price: \$9.99
Auto-Delivery: \$8.49

goodnessknows
Mixed Berries, Almond and Dark Chocolate, 5 Count Box
Mixed berries, roasted almonds and dark chocolate help make these squares a wholesome snack for when you're out being a go-getter. Sample 5 single servings in this snack pack.
Regular Price: \$9.99
Auto-Delivery: \$8.49

18. Mars has protected its valuable rights in and to the CocoaVia® trademark by filing for and obtaining U.S. Trademark Registration No. 4,179,465 for the mark COCOAVIA, covering “dietary and nutritional supplements, powdered nutritional supplement drink mix, powdered dietary supplement drink mix, and nutritionally fortified beverage mix, all made in

significant part of cocoa” in Class 5 (the “COCOAVIA® Goods”), which was registered on July 24, 2012 (the “COCOAVIA® Mark”).

19. Mars’ registration provides *prima facie* evidence of the validity of the COCOAVIA® Mark and of Mars’ exclusive right to use its COCOAVIA® Mark in commerce pursuant to 15 U.S.C. § 1115(b), and the registration provides nationwide constructive notice of Mars’ exclusive rights pursuant to 15 U.S.C. § 1072. A copy of the registration certificate is attached as Exhibit A.

20. The COCOAVIA® Mark is immediately recognizable to the ordinary consumer and distinguishes the COCOAVIA® cocoa extract supplements from other cocoa-based supplements.

21. The COCOAVIA® Mark is a strong mark and is entitled to the highest degree of protection under the law.

22. The COCOAVIA® Mark was first used in U.S. commerce on or about October 2010 in connection with the COCOAVIA Goods, and since the date of first use, Mars has continuously used the COCOAVIA® Mark in connection with the COCOAVIA Goods.

23. Mars prominently and consistently displays its distinctive COCOAVIA® Mark on the packaging for the COCOAVIA® Goods, as shown in Paragraph 16 above.

24. Cocoa extract supplement products bearing the COCOAVIA® Mark have been sold throughout the United States in various locations and trade channels, including health food specialty retailers, natural and grocery retailers, drug store retailers, Internet websites and online stores.

25. Mars has advertised and promoted, and continues to advertise and promote, its COCOAVIA® Goods bearing the COCOAVIA® Mark in a variety of media throughout the

United States, including but not limited to national print advertisements, e-mails, e-newsletters, digital, search, social, and through paid spokespersons and key opinion leaders.

26. Mars has also advertised and promoted, and continues to advertise, market and promote the COCOAVIA® Goods bearing the COCOAVIA® Mark via its web site at <www.cocoavia.com>, which averaged approximately 120,000 page views a month in 2016, of which approximately more than 56,000 were unique visitors per month in 2016.

27. Since the introduction of the COCOAVIA® cocoa extract supplements in 2010, Plaintiff has expended substantially large sums of money to advertise and promote the COCOAVIA® Goods in a variety of media throughout the United States by continuously using and displaying the COCOAVIA® Mark to distinguish the COCOAVIA® Goods from those offered by others.

28. Mars spends millions of dollars annually in developing and promoting its line of COCOAVIA® cocoa extract supplements. COCOAVIA® supplements have been widely advertised and sold online, through general retail stores and specialty health foods stores, throughout the United States with millions of dollars in sales per year.

29. The COCOAVIA® Mark and the COCOAVIA® Goods have received global press and media coverage. News stories, features and posts have appeared in print, online, and in broadcast television, including but not limited to the TODAY Show, CBS New York, The Huffington Post, Men's Health, Boston Globe, Houston Chronicle, The Seattle Times, Chicago Business Journal, NBC Right Now, Drug Store News, Market Watch, Washington Business Journal, The Street, Yahoo! Finance, Reuters, iHeart Radio, and WTOP radio in the United States. Internationally, the CocoaVia® brand has received coverage in media outlets in Europe

such as the Daily Express, Food Business Review, Just-Food.com, NutraIngredients.com, Confectionery News, FoodBev, Royal Candy Company, and Lebensmittel Zeitung.

30. As a result of such advertising and promotion, as well as the uniquely high concentration of cocoa flavanols in Mars' cocoa supplements, Mars' cocoa extract supplements bearing the COCOAVIA® Mark are the market leaders in their category and enjoy a favorable reputation among consumers throughout the United States. In particular, the Unsweetened Dark Chocolate flavor is the best-selling of the COCOAVIA® powder stick supplements. As a result of its widespread recognition and reputation for excellence, consumers have come to associate the COCOAVIA® Mark exclusively with Mars. Together with its reputation for excellence, Mars enjoys valuable goodwill in the COCOAVIA® Mark.

DEFENDANTS' WRONGFUL AND INFRINGING CONDUCT

31. Without authorization from Plaintiff, and despite Plaintiff's prior use of and rights in the COCOAVIA® Mark, Defendants are manufacturing, and recently began offering nationwide for sale, selling, advertising, promoting, and distributing, within this judicial district and in interstate commerce, cocoa-based chocolate products under the name and mark COCOVAA, thereby infringing Plaintiff's COCOAVIA® Mark and creating a likelihood of confusion, mistake, and deception among consumers as to source, sponsorship, or affiliation.

32. On information and belief, Defendant Syovata K. Edari ("Defendant Edari") formed a limited liability company called "CocoVaa LLC" in July 2016 and launched a line of chocolate products under the "CocoVaa" name and trademark (the "Infringing COCOVAA Mark"), which is virtually identical to the COCOAVIA® Mark.

33. Upon information and belief, in or about April 2015, Defendant Edari launched and began selling a line of cocoa-based chocolate products under the name “Gilded Artisan Chocolates.”

34. Upon information and belief, in or about June 2016, for some reason, Defendant Edari ceased using the “Gilded Artisan Chocolates” name and adopted the “CocoVaa” name and mark, thereby commencing sale of cocoa-based chocolate products under the Infringing COCOVAA Mark.

35. On August 5, 2016, Defendants filed an application to register with the United States Patent and Trademark Office (“USPTO”) the mark COCOVAA, Serial No. 87/129,092 for “Candy; Caramels; Chocolate candies; Chocolate fondue; Chocolate mousse; Toffee; Brittle; Chocolate confections, namely, bonbons, bars, barks, chocolate covered nuts, chocolate covered coffee beans, drinking chocolate; Confectioneries, namely, snack foods, namely, chocolate; Filled chocolate,” (“Defendants’ Goods”) with an alleged first use in commerce date of June 1, 2016, which is prior to the date on which Defendant CocoVaa, LLC was legally formed. Said application matured to registration on March 14, 2017 and has been assigned U.S. Trademark Registration No. 5,160,782.

36. All products sold by Defendants are marketed, promoted and sold under the Infringing COCOVAA Mark.

37. The Infringing COCOVAA Mark is confusingly similar to Plaintiff’s COCOAVIA® Mark in appearance, sound, meaning, and commercial impression. Defendants prominently display the Infringing COCOVAA Mark on their website and on their packaging as shown below:



38. Plaintiff first became aware of the Infringing COCOVAA Mark in late August, 2016 while reviewing trademark watch notices for Plaintiff's COCOAVIA® Mark.

39. After careful consideration, on September 9, 2016, Mars sent a letter to Defendants notifying them of Mars' ownership of the COCOAVIA® Mark, coupled with Mars' extensive advertising and marketing. Plaintiff requested that Defendants immediately and

voluntarily cease and desist from all current use and intended future use and sale of products bearing the Infringing COCOVAA Mark and voluntarily withdraw their trademark application for the Infringing COCOVAA Mark. A copy of this letter is attached hereto as Exhibit B and incorporated herein by reference.

40. Mars received a response from Defendants' counsel via email on September 13, 2016, declining Plaintiff's requests. A copy of this email is attached hereto as Exhibit C and incorporated herein by reference.

41. Upon information and belief, at the time Plaintiff and Defendants exchanged the above referenced correspondence, Defendants were selling their COCOVAA Goods exclusively in the State of Wisconsin.

42. Despite having received notification from Plaintiff that their use of the Infringing COCOVAA Mark constitutes an infringement of Plaintiff's valuable rights in the COCOAVIA® Mark, Defendants have nevertheless expanded, and continue to expand, sales of their products bearing the Infringing COCOVAA Mark throughout the United States.

43. Upon information and belief, at least as early as January 2017, Defendants' COCOVAA website located at www.cocovaa.com, was updated to indicate that online ordering of products bearing the Infringing COCOVAA Mark would be available starting Valentine's Day 2017.

44. Upon information and belief, as of the date of this filing, while Defendants did not launch their online ordering site by Valentine's Day 2017, Defendants are now accepting phone orders for shipment of COCOVAA Goods nationwide.

45. Defendants are using the Infringing COCOVAA Mark in connection with cocoa-based chocolate products for human consumption, and thus the goods offered under the

Infringing COCOVAA mark are highly similar and/or related to Plaintiff's products bearing the COCOAVIA® Mark.

46. Defendants' production, marketing, distribution and sale of Defendants' Goods bearing the Infringing COCOVAA Mark is likely to confuse and deceive consumers, and harm Plaintiff's substantial reputation and goodwill as symbolized by the COCOAVIA® Mark.

47. Defendants' infringement of Mars' COCOAVIA® Mark is willful, deliberate and intentional.

48. Defendants are not affiliated with or sponsored by Plaintiff, and have not been authorized by Plaintiff to use its distinctive COCOAVIA® Mark or any mark confusingly similar thereto, including the Infringing COCOVAA Mark, to identify their products.

49. Defendants' adoption and use of the Infringing COCOVAA Mark for its line of Defendants' Goods is likely to cause confusion, mistake or deception among purchasers and the consuming public as to the source, origin or sponsorship of Defendants' Goods. A substantial number of actual and potential purchasers and consumers, upon encountering Defendants' Goods or advertising bearing Defendants' Infringing COCOVAA Mark, are likely to mistakenly believe that Defendants' Goods originate with, or are licensed, approved, sponsored by, or otherwise affiliated with or related to, Plaintiff's COCOAVIA® Goods.

50. Upon information and belief, Defendant Edari directed, authorized and approved the actions of Defendants as alleged herein.

51. Upon information and belief, Defendants plan to continue use of the Infringing COCOVAA Mark in connection with the COCOVAA Goods, all to the damage and detriment of Plaintiff's reputation, goodwill and sales.

FIRST CAUSE OF ACTION

(Trademark Infringement in Violation of 15 U.S.C. § 1114(1) / Lanham Act § 32(1))

52. Plaintiff repeats and realleges each and every allegation of fact above as if set forth herein.

53. U.S. Trademark Registration No. 4,179,465 for the COCOAVIA® Mark is a valid and subsisting federally registered trademark. By virtue of this registration, the COCOAVIA® Mark is entitled to protection under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*

54. Defendants' use of the Infringing COCOVAA Mark is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendants' cocoa-based chocolate products in that the public is likely to believe that those products are provided by, sponsored by, licensed by, affiliated, or associated with, or in some other way legitimately connected to Plaintiff or its products offered under the COCOAVIA® Mark, in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

55. Defendants have continued their unlawful use of their Infringing COCOVAA Mark despite receiving cease-and-desist demands from Mars and are willfully infringing Mars' COCOVIA® Mark.

56. Plaintiff has been damaged by the aforementioned acts in an amount to be determined at trial.

57. Defendants' conduct, if it continues, will result in irreparable harm to Plaintiff and, specifically, to the goodwill and reputation associated with the COCOAVIA® Mark, unless such conduct is enjoined.

SECOND CAUSE OF ACTION

**(False Designation of Origin, Passing Off and Unfair Competition
Under 15 U.S.C. § 1125(a) / Lanham Act §43(a))**

58. Plaintiff repeats and realleges each and every allegation of fact above as if set forth herein.

59. Without authorization from Plaintiff, Defendants have adopted and continue to use the Infringing COCOVAA Mark in connection with the advertising and sale of goods in commerce in such a manner to falsely designate the origin of Defendants' products and confuse the public by suggesting that those products are sponsored by or affiliated with Plaintiff, in violation of 15 U.S.C. § 1125(a).

60. Defendants' acts have a substantial economic effect on interstate commerce because goods bearing the Infringing COCOVAA Mark are advertised and sold in interstate commerce, and because Plaintiff's goods bearing the COCOAVIA® Mark are also advertised and sold in interstate commerce.

61. Defendants' aforesaid acts are in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a) and Defendants' use of a trademark identical or confusingly similar to Plaintiff's COCOAVIA® Marks for highly similar goods constitutes a false designation of origin and unfair competition.

62. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damages in an amount to be proved at trial.

63. Plaintiff has no adequate remedy at law. If Defendants' activities are not enjoined, Plaintiff will continue to suffer irreparable harm and injury to its goodwill and reputation.

THIRD CAUSE OF ACTION

(Common Law Trademark Infringement and Unfair Competition)

64. Plaintiff repeats and realleges each and every allegation of fact above as if set forth herein.

65. As a result of Plaintiff's substantial advertising and promotional efforts for the COCOAVIA® Mark, as well as its dedication to providing quality products under the COCOAVIA® brand, Plaintiff has built up valuable goodwill in the COCOAVIA® Mark. As such, the COCOAVIA® Mark has become associated with Plaintiff's products, and has come to symbolize the reputation for quality and excellence of Plaintiff's COCOAVIA® products.

66. Without Plaintiff's consent, Defendants have used and are using the Infringing COCOVAA Mark, which is confusingly similar to the COCOAVIA® Mark, in connection with the advertising and sale of goods in commerce in such a manner as to create a likelihood of confusion among prospective purchasers, and to compete unfairly with Plaintiff.

67. Defendants' use of the Infringing COCOVAA Mark induces prospective purchasers and others to believe, contrary to the fact, that the goods sold by Defendants are rendered, sponsored, or otherwise approved by, or connected with, Plaintiff.

68. Defendants have continued their unlawful conduct despite receiving cease-and-desist demands from Mars.

69. Defendants' use of the Infringing COCOVAA Mark is confusingly similar to Plaintiff's COCOAVIA® Mark and is likely to deceive the public into believing, falsely, that Defendants' cocoa-based chocolate products are associated therewith, originate from or are offered, sponsored or approved by Plaintiff, or that there is otherwise a connection between the companies' products and businesses. Defendants have unfairly competed with Plaintiff in violation of Virginia common law and laws of States in which Defendants have sold their products.

70. Defendants' unauthorized use of the Infringing COCOVAA Mark constitutes trademark infringement of the COCOAVIA® Mark under the common law.

71. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damage to its goodwill and reputation as symbolized by its valuable COCOAVIA® Mark, and other damages in an amount to be proved at trial.

72. Plaintiff does not have an adequate remedy at law, and will continue to be damaged by Defendants' sale of products bearing the Infringing COCOVAA Mark. Unless enjoined by this Court, Defendants will continue these acts of trademark infringement and unfair competition, thereby deceiving the public and causing Plaintiff immediate and irreparable damage entitling Plaintiff to remedies available under the common law.

FOURTH CAUSE OF ACTION

(Cancellation of U.S. Trademark Registration No. 5,160,782 under 15 U.S.C. § 1119)

73. Plaintiff repeats and realleges each and every allegation of fact above as if set forth herein.

74. Plaintiff's use of the COCOAVIA® Mark predates Defendants' U.S. Trademark Application (and resulting Registration No. 5,160,782) for and use of the Infringing COCOVAA Mark.

75. By virtue of such earlier use, Plaintiff's rights in the COCOAVIA® Mark have priority over the mark in Registration No. 5,160,782.

76. Defendants' registration and use of the Infringing COCOVAA Mark is likely to cause confusion, mistake, or to deceive as to an affiliation, connection, or association between Defendants and/or Defendants' Goods, on the one hand, and Mars and the COCOAVIA® Goods, on the other hand, or as to the origin, sponsorship, or approval of Defendants' Goods by Mars.

77. Mars is being and will continue to be damaged by the registration of the Infringing COCOVAA Mark unless this Court acts to cancel Registration No. 5,160,782 pursuant to Section 37 of the Lanham Act, as amended (15 U.S.C. § 1119).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. Pursuant to 15 U.S.C. §1116 and the common law, that Defendants and each of their agents, servants, employees, attorneys, officers, and all others in privity and acting in concert with them be preliminarily and permanently enjoined and restrained from:

- a. using, registering, or applying to register the Infringing COCOVAA Mark or any other trademark or trade name confusingly similar to Plaintiff's COCOAVIA® Mark, in connection with the sale, advertising, promotion, or distribution of any cocoa-based food or drink products, or related goods;
- b. using or authorizing to use in any manner any design, trademark, trade name, or combination thereof which imitates, resembles, or suggests the COCOAVIA® Mark;
- c. otherwise infringing the COCOAVIA® Mark;
- d. unfairly competing with Plaintiff, diluting the distinctiveness of Plaintiff's COCOAVIA® Mark, and otherwise injuring Plaintiff's business reputation in any manner;
- e. publishing any telephone, directory or Internet listing using the Infringing COCOVAA Mark and any other mark containing the term COCOVAA, and any other mark confusingly similar to the COCOAVIA® Mark, in the

advertising, offering for sale and/or sale of any cocoa-based food or drink products or related goods that may reasonably be encompassed by the COCOAVIA® Mark, or which may constitute a natural zone of expansion for Plaintiff;

- f. engaging in the unlawful, unfair, or fraudulent business acts or practices, including, without limitation, the actions described herein;
- g. engaging in any other actions that constitute unfair competition with Plaintiff; and
- h. destroying, altering, and/or removing any books or records that contain any information relating to the use of the Infringing COCOVAA Mark.

2. An order, pursuant to 15 U.S.C. § 1119, to rectify the Principal Register of the USPTO canceling Registration No. 5,160,782 for the Infringing COCOVAA Mark and such order certified to the Director of the USPTO, who shall make the appropriate entry upon the records of the USPTO;

3. An order imposing a constructive trust on all proceeds and/or fruits of the sales of any goods that bear a mark that infringes Plaintiff's COCOAVIA® Mark;

4. Pursuant to 15 U.S.C. § 1118, that Defendants be directed to deliver up for destruction all packages, labels, advertisements, promotions, point of sale materials, signs, prints, and all other materials in their possession or under their control bearing the Infringing COCOVAA Mark;

5. Pursuant to 15 U.S.C. §§ 1117 and 1125, and the common law, that Defendants account and pay Plaintiff damages in an amount sufficient to fairly compensate it for the injury it

has sustained, plus all the profits that are attributable to Defendants' use of the Infringing COCOVAA Mark, and such other sums as the Court finds to be just;

6. All such other and further relief, in law or in equity, to which Plaintiff may be entitled, or which the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

Dated: March 24, 2017

Respectfully submitted,

/s/ David G. Barger

David G. Barger (VSB # 21652)
GREENBERG TRAUIG, LLP
1750 Tysons Blvd., Suite 1000
McLean, VA 22102
Telephone: (703) 749-1307
Facsimile: (703) 714-8307
bargerd@gtlaw.com

Steven J. Wadyka, Jr.
(Pro hac vice application forthcoming)
GREENBERG TRAUIG, LLP
2101 L Street, N.W., Suite 1000
Washington, D.C. 20037
Telephone: (202) 331-3105
Facsimile: (202) 331-3101
wadykas@gtlaw.com

Masahiro Noda
(Pro hac vice application forthcoming)
GREENBERG TRAUIG, LLP
MetLife Building
200 Park Avenue, 38th Floor
New York, New York 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
nodam@gtlaw.com

EXHIBIT A

United States of America
United States Patent and Trademark Office

COCOAVIA

Reg. No. 4,179,465

MARS, INCORPORATED (DELAWARE CORPORATION)
6885 ELM STREET
MCLEAN, VA 221013883

Registered July 24, 2012

Int. Cl.: 5

FOR: DIETARY AND NUTRITIONAL SUPPLEMENTS, POWDERED NUTRITIONAL SUPPLEMENT DRINK MIX, POWDERED DIETARY SUPPLEMENT DRINK MIX, AND NUTRITIONALLY FORTIFIED BEVERAGE MIX, ALL MADE IN SIGNIFICANT PART OF COCOA, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

TRADEMARK

PRINCIPAL REGISTER

FIRST USE 10-31-2010; IN COMMERCE 10-31-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,029,963, 3,431,648 AND OTHERS.

SER. NO. 85-509,293, FILED 1-5-2012.

KEVIN DINALLO, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office

EXHIBIT B



September 9, 2016

VIA ELECTRONIC MAIL AND FEDEX

Ms. Syovata Edari
CocoVaa, LLC
1 Sherman Terrace, 102B
Madison, Wisconsin 53704

Email: syovata.e@gmail.com
info@cocovaa.com

Re: CocoVaa, LLC's Use of the Name and Mark COCOVAA

Dear Ms. Edari:

By way of introduction, I am Associate General Counsel - Marketing Properties for Mars, Incorporated ("Mars" or "we"). My responsibilities include overseeing my company's trademarks and other intellectual property assets in the United States and other countries.

As you are most likely already aware, Mars is a leading manufacturer of numerous brands of candy, food, and drink products. Mars is engaged in six distinct and different businesses, namely, Petcare, Chocolate, Wrigley, Food, Drinks and Symbioscience, whereby Symbioscience is Mars' global health and life sciences business. Mars Symbioscience has been pursuing extensive research in the area of cocoa flavanols for more than 20 years, and as a result, we have developed the industry's leading cocoa extract supplement, COCOAVIA®.

Mars is the owner of all right, title, and interest in and to the trademark COCOAVIA® and owns a U.S. federal trademark registration for COCOAVIA® covering "dietary and nutritional supplements, powdered nutritional supplement drink mix, powdered dietary supplement drink mix, and nutritionally fortified beverage mix, all made in significant part of cocoa" (Reg. No. 4,179,465) (the "COCOAVIA® Trademark"). We have been using the COCOAVIA® Trademark in connection with dietary and nutritional supplements containing cocoa extract, in beverage mix and other forms, since at least as early as 2012.

As a result of Mars' extensive and substantially exclusive use of the COCOAVIA® Trademark, coupled with its extensive advertising and marketing, the COCOAVIA® Trademark exclusively identifies Mars as the source of the cocoa extract supplements. The COCOAVIA® Trademark enjoys tremendous goodwill and represents a valuable asset of Mars' business.

CocoVaa, LLC
September 9, 2016
Page 2

It recently came to our attention that CocoVaa, LLC (“you” or “your company”) has filed a U.S. federal trademark application to register the mark COCOVAA for “candy; caramels; chocolate candies; chocolate fondue; chocolate mousse; toffee; brittle; chocolate confections, namely, bonbons, bars, barks, chocolate covered nuts, chocolate covered coffee beans, drinking chocolate; confectioneries, namely, snack foods, namely, chocolate; filled chocolate” (Serial No. 87/129,092) (the “COCOVAA Application”). It also appears that you are already using the COCOVAA mark on <http://www.cocovaa.com/>. We are concerned that the use and registration of the mark COCOVAA for goods which are closely related to the goods under the COCOAVIA® Trademark is likely to cause confusion, mistake and deception as to the source or origin of your company’s goods.

We understand and respect the value of intellectual property rights and trust that you do as well. Our hope is that we can resolve this matter amicably. To that end, we kindly request that you promptly:

- (1) File a Request for the Express Abandonment (Withdrawal) of the COCOVAA Application;
- (2) Discontinue any and all current and planned use, sale, or distribution of products bearing the COCOVAA mark; and
- (3) Cease and desist from any and all future use of COCOVAA or any marks that incorporate and/or are confusingly similar to our COCOAVIA® Trademark in connection with goods identified in the COCOVAA Application as well as goods related to cocoa and chocolate.

We look forward to hearing from you prior to the close of business on Friday, September 16, 2016. If you would like to discuss this matter further, please feel free to contact me at your earliest convenience.

The above does not constitute an offer of settlement and is sent without prejudice to any rights or claims of Mars, all of which are expressly reserved.

Best regards,



Andrew Tsai
Associate General Counsel - Marketing Properties
Mars, Incorporated

EXHIBIT C

From: Craig Fieschko [<mailto:cf@dewittross.net>]
Sent: Tuesday, September 13, 2016 8:43 PM
To: Tsai, Andrew <andrew.tsai@effem.com>
Subject: Mars, Inc. 9 Sept. 2016 Letter to Syovata Edari / CocoVaa, LLC

Hello Andrew:

I write on behalf of CocoVaa, LLC regarding your September 9, 2016 letter (copy attached). While your letter expresses concern “that the use and registration of the mark COCOVAA for goods which are closely related to the goods under the COCOAVIA® Trademark is likely to cause confusion, mistake and deception,” the COCOVAA goods are not in fact related to the COCOAVIA goods; the COCOVAA and COCOAVIA goods would not be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source. Your COCOAVIA website, and your US Reg. 4,179,465 for COCOAVIA, clearly show that your COCOAVIA goods are dietary and nutritional supplements marketed to consumers seeking health benefits. CocoVaa’s COCOVAA goods, on the other hand, are premium artisan truffles, bonbons, and other candies marketed to consumers of fine chocolates. When consumers seek dietary, nutritional, and/or health-enhancing supplements, they do not encounter fine chocolates; conversely, when consumers seek indulgences such as fine chocolates, they do not encounter dietary and nutritional supplements. The manner in which the COCOAVIA and COCOVAA goods are sold is also entirely different, as the COCOAVIA goods are pre-packaged in secure, hygienic packaging, whereas the COCOVAA goods (which are often user-selected, i.e., the user chooses his/her desired flavors) and their packaging have an appearance which clearly reflects and emphasizes their handmade / artisan nature. The COCOAVIA and COCOVAA goods are sold in different outlets, or at the very least in different locations within the same outlets, as health and nutritional supplements are located well away from gourmet foods, confections, and fine chocolates in retail outlets. Both the COCOAVIA nor the COCOVAA goods are priced such that they would face consumer scrutiny before purchase, particularly insofar as both could likely face consumer comparisons with competing products. Even if encountering the goods of one mark called to mind the other mark, the nature of the goods and their manner of sale is such that no ordinarily prudent consumers would assume a connection between them.

As a result, CocoVaa respectfully declines your request that it cease usage of the COCOVAA mark, and that it abandon its registration application. Don’t hesitate to call or otherwise contact me if this matter would benefit from discussion. Regards,

Craig Fieschko -- Trademarks
[DeWitt Ross & Stevens](http://www.dewittross.com)
2 E. Mifflin St., 6th Floor
Madison, WI 53703
Telephone: (608) 395-6722
Facsimile: (608) 252-9243
www.dewittross.com

* ***** *
THIS EMAIL IS INTENDED ONLY FOR THE REVIEW OF THE ADDRESSEE(S), AND MAY CONTAIN CONFIDENTIAL AND LEGALLY PRIVILEGED INFORMATION. INTERCEPTION, COPYING, DISSEMINATION, OR OTHER USE BY OTHER THAN THE ADDRESSEE(S) IS PROHIBITED AND MAY BE PENALIZED UNDER APPLICABLE PRIVACY LAWS.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Mars, Incorporated

(b) County of Residence of First Listed Plaintiff Fairfax County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) David G. Barger, Greenberg Traurig, LLP, 1750 Tysons Blvd., Suite 1000, McLean, VA 22102, Tel: (703) 749-1307

DEFENDANTS

COCOAAA, LLC; and SYOVATA K. EDARI

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 1114, 1116, 1118, 1117 and 1125 et seq., 1051 et seq.

Brief description of cause: trademark infringement, false designation of origin, false description and unfair competition

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/24/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ David G. Barger

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.