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NORTHERN DISTRICT OF CALIFORNIA

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9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

LB

11 **CLOS LACHANCE WINES, LLC,**  
12 a California Limited Liability  
13 Corporation

Case No. **11-1848**

14 Plaintiff,

**COMPLAINT FOR DECLARATORY  
RELIEF**

v.

15 **SELECTIVE WINE ESTATES,**  
16 **INC.,** a New Jersey Corporation,

17 Defendant.

18 Plaintiff Clos LaChance Wines, LLC for its Complaint against Defendant Selective  
19 Wine Estates alleges the following on information and belief:  
20

21 **JURISDICTION AND VENUE**

22 1. This is an action for declaratory relief under the Lanham Act, 15 U.S. C. §1051  
23 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* This Court has subject  
24 matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 (a) and 2201 (a), and 15 U.S.C. §  
1121. Acts giving rise to the claims asserted herein have occurred in this District. Venue

1 properly lies within this District pursuant to 28 U.S.C. §1391. This is an intellectual property  
2 action and therefore should be assigned on a district-wide basis per Local Civil Rule 3-2(c).

3 **THE PARTIES**

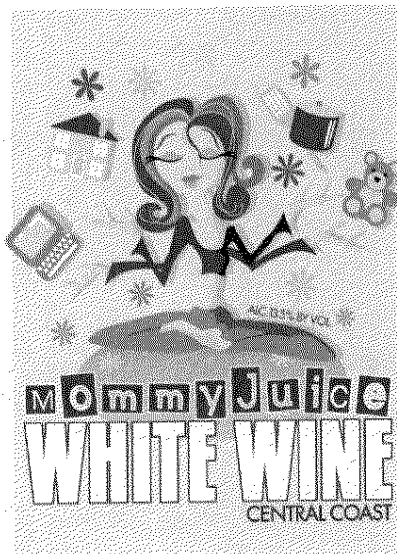
4 3. Plaintiff Clos LaChance Wines, LLC ("LaChance") is a California corporation  
5 with its principal place of business in San Martin, California. LaChance is in the business of  
6 producing and distributing wines internationally, in the United States, California and this  
7 Northern District of California. LaChance's primary place of business is located in this  
8 District as, the acts complained of herein have occurred in this District, and the injury to  
9 LaChance by defendant's conduct will be felt in this District.

10  
11 4. Defendant Selective Wine Estates ("Selective") is a New Jersey corporation  
12 with its principal place of business in East Hanover, New Jersey. Selective is in the business  
13 of importing and distributing wines, brandy, and spirits that are sold in the United States,  
14 California and this District.

15 **FACTUAL BACKGROUND**

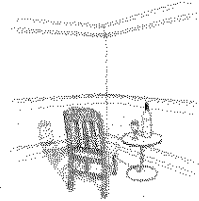
16 5. LaChance produces and sells wine under the brand names MOMMYJUICE  
17 WHITE WINE and MOMMYJUICE RED WINE. MOMMYJUICE WHITE WINE is made  
18 from Chardonnay grapes grown in the Central Coast growing region. MOMMYJUICE RED  
19 WINE is made from Cabernet Sauvignon (77%), Merlot (16%), Malbec (2%), Cabernet Franc  
20 (2%), and Petit Verdot (2%) grapes grown in the Central Coast growing region.  
21 MOMMYJUICE WHITE WINE and MOMMYJUICE RED WINE were first sold in August  
22  
23  
24

1 2010. The MOMMYJUICE WHITE WINE label is shown below:



10 6. By letter dated March 23, 2011 ("Demand Letter"), counsel for Selective  
11 charged that MOMMYJUICE WHITE WINE (and impliedly charged that MOMMYJUICE  
12 RED WINE, although not specifically mentioned in the Demand Letter,) infringed on  
13 Selective's alleged rights in a MOMMY'S TIME OUT trademark for wines. This trademark  
14 is used on an Italian wine imported and distributed by Selective. Selective asserted that the  
15 average wine consumer who sees LaChance's label and trademark will be likely to  
16 mistakenly believe that MOMMYJUICE WHITE WINE (and impliedly MOMMYJUICE  
17 RED WINE, although not specifically mentioned in the Demand Letter) originate from or are  
18 licensed by Selective. The MOMMY'S TIME OUT® label is shown below:  
19  
20  
21  
22  
23  
24

# Mommy's Time Out



7. Based on the assertions in the Demand Letter, counsel for Selective charged that the sales by LaChance of MOMMYJUICE WHITE WINE (and impliedly charged that MOMMYJUICE RED WINE, although not specifically mentioned in the Demand Letter) constituted trademark infringement in violation of federal and state law. Counsel for Selective demanded that LaChance immediately cease and desist from using the name MOMMYJUICE in connection with its business, abandon its Alcohol and Tobacco Tax and Trade Bureau (TTB) Certificate of Label Approval (COLA) applications for the MOMMYJUICE WHITE WINE (and impliedly for MOMMYJUICE RED WINE, although not specifically mentioned in the Demand Letter,) and provide Selective with written assurance that these demands had been met. The Demand Letter threatened to seek permanent injunction against LaChance's use of the name MOMMYJUICE in connection with wine, an order cancelling LaChance's COLA applications for the MOMMYJUICE WHITE WINE label (and impliedly the MOMMYJUICE RED WINE label), and monetary damages and

1 costs from LaChance for intentional and deliberate trademark infringement, unless it  
2 capitulated by the deadline by way of “the filing of litigation in Federal Court.” The Demand  
3 Letter gave LaChance one week to comply. Since then Counsel for the respective parties  
4 have exchanged correspondence. Selective has been unyielding in its demands and continued  
5 in its April 8, 2011 correspondence threatening “to commence litigation in Federal Court,”  
6 Hence there has been a threat, followed by an attempt to negotiate, followed by a refusal to  
7 back down , and therefore a case and/or controversy a controversy has arisen by and between  
8 the parties under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*  
9

10 **FIRST CLAIM FOR RELIEF**

11 **(REQUEST FOR DECLARATORY RELIEF)**

12 8. LaChance incorporates by reference the allegations of paragraphs 1 through 7  
13 as though fully set forth herein.

14 9. An actual controversy exists between LaChance and Selective that is within the  
15 power of this Court to determine pursuant to the Declaratory Judgment Act, 28 U.S.C. §§  
16 2201- 2202.

17 10. Selective asserts as follows:

18 (a) It has protectable and valid rights in the MOMMY’S TIME OUT trademark for  
19 wine; and

20 (b) That LaChance’s MOMMYJUICE WHITE WINE and impliedly  
21 MOMMYJUICE RED WINE create a likelihood of confusion as to source, sponsorship or  
22



1 affiliation with the MOMMY'S TIME OUT trademark for wine among retailers, the wine  
2 trade and relevant consumers thus violating federal and state law.

3 (c) That LaChance's adoption of its trademark was a deliberate, intentional and  
4 willful attempt to infringe on Selective's rights in its MOMMY'S TIME OUT trademark.

5 II. LaChance asserts as follows:

6 (a) Selective has no valid trademark rights in the word "Mommy," standing alone,  
7 and/or in conjunction with other letters, on and in connection with wine; and

8 (b) LaChance's use of its MOMMYJUICE WHITE WINE and MOMMYJUICE  
9 RED WINE trademarks on and in connection with wine does not create a likelihood of  
10 confusion as to source, sponsorship or affiliation with wines bearing a MOMMY'S TIME  
11 OUT trademark.

12  
13 12. This Court's determination of the issues presented by the actual controversy  
14 between LaChance and Selective will afford relief from the uncertainty, insecurity and  
15 controversy with respect to the rights, status and legal relations between the parties. A  
16 declaration of the parties' respective rights will settle the conflicting and disputed claims of  
17 the parties, will afford them the security of knowing precisely what their respective rights are,  
18 and will prevent a multiplicity of actions that will arise if the parties continue on their present  
19 course of action without a judgment from this Court. Declaratory relief is equitable, necessary  
20 and proper under the circumstances presented by this case.

21  
22 **WHEREFORE**, LaChance respectfully requests that the Court enter judgment against

1 Selective as follows:

2 1. Declaring that:

3 (a) Selective has no valid and exclusive trademark rights under federal and state  
4 law in the word "Mommy," standing alone and/or in conjunction with other letters, for wines;  
5 and

6 (b) LaChance's use of its MOMMYJUICE WHITE WINE and MOMMYJUICE  
7 RED WINE trade marks on and in connection with wine does not create a likelihood of  
8 confusion as to source, sponsorship or affiliation with wines bearing a MOMMY'S TIME  
9 OUT trademark and otherwise does not constitute a violation of any federal or state law.  
10

11 2. Granting such other and further relief to LaChance as may be just and proper  
12 under the circumstances, including but not limited to costs of suit.

13 **The KC BRANCH FIRM, A CALIFORNIA**  
14 **LAW FIRM**

15 By: 

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19 Dated: April 18, 2011

20 *Attorney for Plaintiff Clos LaChance Wines, LLC*