

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

GOOD HEALTH NATURAL )  
PRODUCTS, INC., )  
 )  
Plaintiff, )  
 )  
 )  
vs. )  
 )  
 )  
THE MEDITERRANEAN SNACK )  
FOOD COMPANY, LLC, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. 11-CV-1032

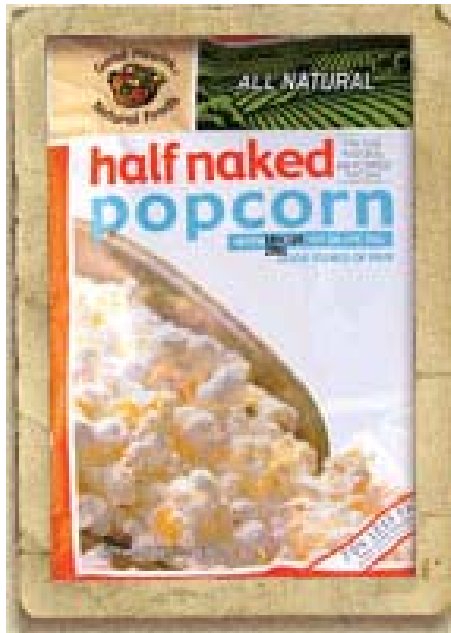
**COMPLAINT**

Plaintiff Good Health Natural Products, Inc. (“Good Health”) states the following for its Complaint against Defendant The Mediterranean Snack Food Company, LLC (“Mediterranean”):

**NATURE OF THE ACTION**

1. This is an action at law and in equity for unfair competition and false designation of origin arising under Section 43 of the Federal Trademark Act of 1946 (the “Lanham Act”), 15 U.S.C. § 1125; unfair or deceptive trade practices arising under N.C. Gen. Stat. §§ 75-1 *et seq.*; and trademark infringement and unfair competition arising under the common law of the State of North Carolina.

2. Good Health and Mediterranean are both engaged in the business of manufacturing and selling healthy snack foods. On information and belief, by virtue of his prior business relationship with Good Health, Vincent James, one of Mediterranean's members, became familiar with Good Health's product line, including its HALF NAKED POPCORN brand of popcorn. Mediterranean recently launched a product that is directly competitive to Good Health's HALF NAKED POPCORN brand of popcorn under a mark – NAKED POPCORN– that is a colorable imitation of, and is confusingly similar to, Good Health's well-known HALF NAKED POPCORN trademark, as shown below.



3. Unless enjoined by this Court, Mediterranean's conduct will continue to result in a likelihood of consumer confusion and result in irreparable injury to Good Health.

## **PARTIES, JURISDICTION AND VENUE**

4. Good Health is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 3400 West Wendover Avenue, Greensboro, North Carolina. Good Health is the owner of the HALF NAKED POPCORN mark at issue in this dispute.

5. On information and belief, Mediterranean is a New Jersey limited liability company with a place of business at 708 Main Street, Boonton, New Jersey.

6. This Court has subject matter jurisdiction over the federal claims alleged herein pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332, and 1338. As to the state law claims, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1338(b), and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

7. This Court has personal jurisdiction over Mediterranean because Mediterranean's products are routinely shipped to and sold in various retail outlets in North Carolina and within this judicial district.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), in that, on information and belief, a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

9. This Court has jurisdiction to enter preliminary and permanent injunctive relief, pursuant to Fed. R. Civ. P. 65.

## **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

10. The allegations of the foregoing Paragraphs are repleaded and incorporated by reference as if fully set forth herein.

11. At all times material hereto, Good Health has been, and currently is, engaged in the business of manufacturing, distributing, marketing, advertising, offering for sale, and selling various types of natural and organic products, including healthy snacks, throughout the United States under multiple trademarks owned by Good Health.

12. Beginning at least as early as 2004, Good Health adopted and began using the designation HALF NAKED POPCORN in interstate commerce for the purpose of identifying and distinguishing its popcorn products from the products of others. Good Health has advertised, marketed, distributed, offered for sale, and sold its products under the HALF NAKED POPCORN mark throughout the United States continuously since its adoption of the HALF NAKED POPCORN mark.

13. The HALF NAKED POPCORN mark serves to distinguish Good Health's popcorn products from those of others. The HALF NAKED POPCORN mark is recognized by the general consuming public as a designation of the source of Good Health's popcorn products and, as a result of Good Health's use and promotion of the HALF NAKED POPCORN mark throughout the United States, consumers of healthy snacks recognize the HALF NAKED POPCORN mark as a symbol of the highest quality of popcorn products, and associate and identify the HALF NAKED POPCORN mark

with Good Health or with a single source. Good Health derives substantial goodwill and value from this identification by the consuming public and the trade.

14. On information and belief, Mediterranean is also in the business of manufacturing, distributing, marketing, advertising, offering for sale, and selling various types of healthy snacks.

15. On information and belief, Vincent James is a one of Mediterranean's members. Prior to the acts complained of herein, Mr. James had a business relationship with Good Health. Mr. James became very familiar with Good Health's products and sales, including the strength and renown of Good Health's HALF NAKED POPCORN brand.

16. On information and belief, in the late summer of 2011 – long after Good Health began using the HALF NAKED POPCORN mark to distinguish its popcorn products in the United States – Mediterranean began to market its own popcorn products under the mark NAKED POPCORN.

17. On information and belief, Mr. James deliberately chose to call Mediterranean's own competitive popcorn product NAKED POPCORN in a deliberate attempt to evoke Good Health's HALF NAKED POPCORN brand.

18. As shown below, Mediterranean has claimed trademark rights in the NAKED POPCORN mark as evidenced by its use of the <sup>TM</sup> symbol in conjunction with the mark, as shown below.



**FIRST CLAIM FOR RELIEF**  
**(Federal Unfair Competition, False Representation, and  
False Designation of Origin under 15 U.S.C. § 1125(a))**

19. The allegations of the foregoing Paragraphs are repleaded and incorporated by reference as if fully set forth herein.

20. Mediterranean's unauthorized use of the HALF NAKED POPCORN mark, or a colorable imitation thereof, in connection with the sale of its directly competitive popcorn products constitutes unfair competition, false representation, and false designation of origin in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and is causing and, unless enjoined by this Court, will continue to cause confusion, to cause

mistake, or to deceive purchasers and consumers as to the source, origin, or sponsorship of Mediterranean's products.

21. As a direct and proximate result of Mediterranean's unfair competition, false representation, and false designation of origin as herein alleged, Good Health has suffered, and will continue to suffer, irreparable damage and inherently unquantifiable injury and harm to its business, reputation, and customer goodwill. Mediterranean's unfair competition, false representation, and false designation of origin has caused and will continue to cause Good Health to lose sales to which it would otherwise be entitled, unless such unlawful conduct is enjoined by this Court.

22. Good Health is entitled to recover all damages sustained by Mediterranean's actions, all profits realized by Mediterranean through its unauthorized use of the HALF NAKED POPCORN mark, or a colorable imitation thereof, in connection with the offering for sale and sale of popcorn products or related products, and the costs of this action.

23. On information and belief, Mediterranean's actions have been willful and deliberate, entitling Good Health to recover treble damages and/or profits and an award of reasonable attorneys' fees against Mediterranean.

**SECOND CLAIM FOR RELIEF**

**(Unfair and Deceptive Trade Practices under N.C. Gen. Stat. § 75-1 *et seq.*)**

24. The allegations of the foregoing Paragraphs are repleaded and incorporated by reference as if fully set forth herein.

25. Mediterranean's conduct as alleged above is in commerce and affects commerce in the State of North Carolina.

26. Mediterranean's conduct as alleged above constitutes unfair methods of competition and unfair and deceptive acts and practices in violation of N.C. Gen. Stat. § 75-1 *et seq.*

27. Mediterranean's unfair methods of competition and its unfair and deceptive trade practices as alleged herein have injured Good Health in that Good Health has suffered and will continue to suffer damage to its reputation and customer goodwill as a direct and proximate result of Mediterranean's illegal conduct. In addition, Mediterranean has been unjustly enriched by reason of its unfair methods of competition and unfair and deceptive trade practices in that it has achieved sales and profits, and the opportunity to earn future sales and profits, as a direct and proximate result of its illegal conduct.

28. On information and belief, Mediterranean has willfully engaged in the acts and practices alleged above, justifying an award of attorneys' fees to Good Health pursuant to N.C. Gen. Stat. § 75-16.1.



**THIRD CLAIM FOR RELIEF**  
**(Common Law Trademark Infringement and Unfair Competition)**

29. The allegations of the foregoing Paragraphs are pleaded and incorporated by reference as if fully set forth herein.

30. Mediterranean's conduct as alleged above constitutes trademark infringement and unfair competition in violation of the common law of the State of North Carolina.

31. Mediterranean's trademark infringement and unfair competition as alleged above has injured Good Health in that Good Health has suffered damage to its reputation and customer goodwill as a direct and proximate result of Mediterranean's illegal conduct. In addition, Mediterranean has been unjustly enriched by reason of its trademark infringement and unfair competition in that Mediterranean has achieved sales and profits, and the opportunity to earn future sales and profits, as a direct and proximate result of its illegal conduct.

32. Unless enjoined by this Court, Mediterranean's trademark infringement and unfair competition as herein alleged will continue to cause irreparable and inherently unquantifiable injury and harm to Good Health's business, reputation, and goodwill.

33. On information and belief, Mediterranean's wrongful conduct as above alleged was accompanied by circumstances of willfulness and deliberate indifference to the rights of Good Health warranting the assessment of punitive damages.

**WHEREFORE**, Good Health prays the Court as follows:

1. That Defendant, its affiliates, officers, agents, servants, employees, attorneys, and those persons in active concert or participation with it, be preliminarily and permanently enjoined from any and all further unauthorized promotion, marketing, advertising, sale, offering for sale, or distribution of products bearing the HALF NAKED POPCORN mark, or colorable imitations thereof, including without limitation Defendant's NAKED POPCORN products;
2. That Good Health have and recover of Defendant such actual damages as Good Health may prove at trial;
3. That Defendants account to Good Health for all of Defendant's profits derived as a direct and proximate result of Defendant's unlawful conduct;
4. That such damages and/or profits to which Good Health is entitled be trebled pursuant to 15 U.S.C. § 1117 and N.C. Gen. Stat. § 75-16;
5. That, in the alternative to treble damages and/or profits, Good Health have and recover punitive damages of Defendant;
6. That the costs of this action, including a reasonable attorneys' fee, be taxed against Defendant; and
7. That the Court grant Good Health such other and further relief as the Court may deem just and proper.

This the 23<sup>rd</sup> day of November, 2011.

*/s/ Laura Miller*

William M. Bryner, N.C. State Bar No. 23022

Laura C. Miller, N.C. State Bar No. 34103

KILPATRICK TOWNSEND & STOCKTON LLP

1001 West Fourth Street

Winston-Salem, NC 27101

Telephone: 336-607-7300

Facsimile: 336-607-7500

wbryner@kilpatricktownsend.com

lamiller@kilpatricktownsend.com

*Attorneys for Plaintiff*

Good Health Natural Products, Inc.