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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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MINI'S CUPCAKES, INC.,

Plaintiff,

vs.

LUANN'S CUPCAKES, INC., and  
ASSOCIATED FOOD STORES, INC.,

Defendants.

**COMPLAINT**

Civil No. 2:10-cv-457  
Magistrate Judge Samuel Alba

**Jury Demanded**

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Plaintiff Mini's Cupcakes, Inc. ("Mini's"), by and through its counsel hereby complains against Defendants LuAnn's Cupcakes, Inc. ("LuAnn's") and Associated Food Stores, Inc. ("AFS") as follows:

**THE PARTIES**

1. Mini's is a Utah limited liability company with its principal place of business in Salt Lake City, Utah.
2. LuAnn's is a Utah limited liability company with its principal place of business in Park City, Utah.

3. AFS is a Utah limited liability company with its principal place of business in Salt Lake City, Utah.

### **JURISDICTION AND VENUE**

4. This action arises under the Lanham Act. Therefore, this Court has subject matter jurisdiction under § 39 of the Lanham Act (15 U.S.C. § 1121), and 28 U.S.C. § 1338.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

### **GENERAL ALLEGATIONS**

6. Mini's is an award-winning bakery that specializes in gourmet cupcakes. Mini's operates three stores in Utah and plans to expand into neighboring states in the near future. Mini's also distributes and sells gourmet cupcakes to local retailers.

7. Mini's has invested substantial time and resources in developing its gourmet cupcakes including the Breakfast at Tiffany's cupcake.

8. Mini's Breakfast at Tiffany's cupcake incorporates a distinctive design that features vanilla cake, blue cream cheese frosting, and silver and white gems. In combination, these features create a distinctive and unique appearance. Consumers and retailers recognize the inherently distinctive trade dress of the Breakfast at Tiffany's cupcake and associate it exclusively with Mini's. *See* illustration of the Breakfast at Tiffany's cupcake attached as Exhibit A; *see also* <http://www.mini-cupcakes.com/photogallery.html> (featuring same).

9. LuAnn's, well aware of the goodwill Mini's has established through its distinctive trade dress in the Breakfast at Tiffany's cupcake, has adopted a strategy and philosophy to intentionally and unlawfully trade off the goodwill that Mini's has built by infringing Mini's trade dress rights in the Breakfast at Tiffany's cupcake.

10. LuAnn's Tiffany Jewels cupcake incorporates a distinctive design that features vanilla cake, blue cream cheese frosting, and silver and white gems, the same distinctive design as the Breakfast at Tiffany's cupcake. See picture of LuAnn's Tiffany Jewels cupcake attached as Exhibit B; see also <http://www.luannscupcakes.com/traditional.html> (featuring same).

11. LuAnn's has approached at least one of Mini's retailers in Park City in an attempt to sell LuAnn's infringing cupcakes and has specifically stated that LuAnn's Tiffany Jewels cupcake looks just like the Breakfast at Tiffany's cupcake.

12. Consumers have confused LuAnn's Tiffany Jewels cupcake with the Breakfast at Tiffany's cupcake. See, e.g., <http://utahlovescupcakes.com/2010/04/12/cupcakes-in-park-city/> attached as Exhibit C (wherein the author of a popular Utah cupcake website blogs "*anyone notice how freakishly alike [LuAnn's Tiffany Jewels cupcakes] look to our beloved Mini's Cupcakes flavor, Breakfast at Tiffany's?*" (emphasis in original)).

13. On April 20, 2010, Mini's wrote to LuAnn's demanding that it provide a written statement that it will cease and desist infringing Mini's trade dress through its sale of LuAnn's Tiffany Jewels cupcakes by April 28, 2010. A copy of the demand letter is attached as Exhibit D.

14. Mini's also asked LuAnn's to provide it with certain written information for Mini's to determine the extent of the damage to Mini's goodwill caused by LuAnn's infringing of Mini's trade dress through its sale of LuAnn's Tiffany Jewels cupcakes. See Ex. D.

15. LuAnn's has failed and refused to cease and desist infringing Mini's trade dress through its sale of LuAnn's Tiffany Jewels cupcakes and has failed to provide Mini's with

certain written information for Mini's to determine the extent of the damage caused to Mini's goodwill by LuAnn's infringing Mini's trade dress rights.

16. Accordingly, Mini's has no other alternative but to seek the Court's assistance in resolving this matter.

17. On information and belief, LuAnn's was and is distributing and selling the infringing cupcakes to consumers and retailers including, but not limited to, the Fresh Market store in Park City, a supermarket owned by AFS.

**FIRST CLAIM FOR RELIEF**

(Trade Dress Infringement - the Lanham Act § 43(a) -- Against LuAnn's)

18. Mini's incorporates by reference the allegations in the prior paragraphs as if set forth here.

19. Mini's is entitled to legal protection of its Breakfast at Tiffany's trade dress under § 43(a) of the Lanham Act, which trade dress includes without limitation a distinctive design that features vanilla cake, blue cream cheese frosting, and silver and white gems.

20. Mini's Breakfast at Tiffany's trade dress has acquired secondary meaning - consumers have come to recognize the Breakfast at Tiffany's cupcakes as identifying Mini's as the source of the high quality Breakfast at Tiffany's cupcakes.

21. LuAnn's Tiffany Jewels cupcakes have so closely imitated and/or copied Mini's Breakfast at Tiffany's cupcakes that the consuming public have been confused and will continue to be confused as to the source or origin of LuAnn's Tiffany Jewels cupcakes and will erroneously believe that LuAnn's Tiffany Jewels cupcakes come from Mini's. In the eye of an ordinary observer, giving such attention as a purchaser usually gives, Mini's Breakfast at Tiffany's cupcakes and LuAnn's Tiffany Jewels cupcakes are substantially the same and the

resemblance is such to deceive an observer, inducing an observer to purchase LuAnn's Tiffany Jewels cupcakes supposing them to be Mini's Breakfast at Tiffany's cupcakes.

22. On information and belief, LuAnn's copying of Mini's Breakfast at Tiffany's trade dress was intentional; LuAnn's intended to create a cupcake confusingly similar in appearance to Mini's Breakfast at Tiffany's cupcakes; and LuAnn's has succeeded in producing a cupcake which is confusingly similar in appearance to Mini's Breakfast at Tiffany's cupcakes.

23. LuAnn's Tiffany Jewels cupcakes and Mini's Breakfast at Tiffany's cupcakes are strikingly similar, substantially duplicated, virtually identical, substantially identical, remarkably similar, essentially duplicated, and/or closely imitated.

24. LuAnn's acts of trade dress infringement have caused and continue to cause damages and injury to Mini's.

25. Mini's may recover for its damages an award to compensate Mini's for injuries and damages it has sustained as a result of LuAnn's conduct which violates § 43(a) of the Lanham Act.

26. Because LuAnn's acts were intentional, willful, and/or deliberate, Mini's is entitled to an award of treble damages under § 43(a) of the Lanham Act.

27. Mini's is entitled to an award of pre-judgment interest for the damages sustained as a result of Shaker's wrongful conduct.

28. Mini's wrongful, malicious, fraudulent, deliberate, willful, and/or intentional conduct makes this an exceptional case entitling Mini's to an award of attorney's fees and costs under the Lanham Act.

29. Mini's has no adequate remedy at law; Mini's has suffered and continues to suffer irreparable harm as a result of LuAnn's acts, and is therefore entitled to preliminary and permanent injunctive relief to enjoin LuAnn's wrongful conduct.

**SECOND CLAIM FOR RELIEF**

(Federal Unfair Competition, False Designation of Origin, Passing Off,  
and False Advertising - the Lanham Act § 43(a) -- Against LuAnn's)

30. Mini's incorporates by reference the allegations in the prior paragraphs as if set forth here.

31. The unauthorized use by LuAnn's of the Breakfast at Tiffany's trade dress through the sale of a knockoff product, LuAnn's Tiffany Jewels cupcakes, is likely to cause the public to mistakenly believe that LuAnn's products originate from, are endorsed by, or are in some way affiliated with Mini's and thus constitute unfair competition, false designation of origin, and passing off. In addition, Mini's Breakfast at Tiffany's trade dress is likely to lose its significance as an indicator of origin.

32. LuAnn's has used Mini's Breakfast at Tiffany's trade dress in connection with false and misleading descriptions or representations of fact in promoting LuAnn's Tiffany Jewels cupcakes, thereby misrepresenting the nature, characteristics, source, and qualities of its goods, services or commercial activities. LuAnn's actions are thus in violation of § 43(a) of the Lanham Act.

33. As set forth above, on information and belief, LuAnn's misconduct is part of a deliberate plan to trade off the valuable goodwill established by Mini's and has been carried out in willful disregard of Mini's rights and constitute a violation of § 43(a) of the Lanham Act.

**THIRD CLAIM FOR RELIEF**

(Common Law Unfair Competition, Misappropriation, and Trade Dress Infringement  
- Unfair Practices Act, Utah Code Ann. § 13-5-1 *et seq.* -- Against LuAnn's)

34. Mini's incorporates by reference the allegations in the prior paragraphs as if set forth here.

35. By its aforesaid conduct, calculated to increase business and profits by deceiving and confusing members of the public, LuAnn's continues to misappropriate the valuable goodwill of Mini's Breakfast at Tiffany's trade dress, to infringe Mini's rights therein and unfairly compete with Mini's under the common laws of Utah.

36. LuAnn's use of Mini's Breakfast at Tiffany's trade dress to promote, mark or sell products constitutes an unfair practice under Utah Code Ann. § 13-5-1 *et seq.* LuAnn's use of Mini's Breakfast at Tiffany's trade dress is an unfair or deceptive method of competition occurring in trade or commerce that impacts the public interest and has caused and is causing injury to Mini's retailers and consumers.

**FOURTH CLAIM FOR RELIEF**

(Vicarious Trade Dress Infringement - Against AFS)

37. Mini's incorporates by reference the allegations in the prior paragraphs as if set forth here.

38. On information and belief, AFS has knowledge, or reasonably should have knowledge, when its distributors are committing trade dress infringement and/or engaging in unfair competition.

39. On information and belief, AFS profits, and has profited, from LuAnn's trade dress infringement and/or its engaging in unfair competition through the distribution of LuAnn's Tiffany Jewels cupcakes to the Fresh Market store in Park City, a supermarket owned by AFS.

40. On information and belief, the actions of AFS, and specifically, without limitation, its knowledge of, participation, and inducement of the unauthorized use of Mini's Breakfast at Tiffany's trade dress, constitutes vicarious infringement in violation of federal law and the common law of the State of Utah.

41. On information and belief, AFS had the right and ability to control the conduct of LuAnn's by simply refusing to sell LuAnn's Tiffany Jewels cupcakes.

42. The sale of LuAnn's Tiffany Jewels cupcakes to the Fresh Market store in Park City, a supermarket owned by AFS, is and was likely to cause confusion among consumers and retailers and constitutes infringement of Mini's Breakfast at Tiffany's trade dress.

43. As a proximate result of AFS' conduct, Mini's has been damaged in an amount to be proven at trial, including, but not limited to diminution to Mini's goodwill and other consequential damages. Accordingly, Mini's is entitled to recover all of AFS' profits from its actions detailed herein.

### **REQUEST FOR RELIEF**

Based on the foregoing, Mini's respectfully requests that the Court:

A. Preliminarily and permanently enjoin LuAnn's and AFS, its officers, directors, principals, agents, servants, employees, successors and assigns, and all others aiding, abetting, or acting in concert or active participation therewith, from making, using, importing, selling or offering for sale or otherwise distributing any product that infringes the Mini's Breakfast at Tiffany's trade dress, including, without limitation, LuAnn's Tiffany Jewels cupcakes;

B. Enter a judgment against LuAnn's for direct infringement of Mini's Breakfast at Tiffany's trade dress and a judgment against AFS for vicarious infringement of Mini's Breakfast at Tiffany's trade dress;

C. Order that LuAnn's and AFS account to Mini's for all sales, revenues, and profits derived from the sale or other distribution of LuAnn's Tiffany Jewels cupcakes, and that LuAnn's and AFS pay to Mini's all consequential and compensatory damages to which Mini's is entitled by law, including without limitation, lost profits, reasonable royalties, and price erosion damages;

D. Award Mini's, against LuAnn's and AFS, its costs and reasonable attorney's fees and expenses incurred in this action pursuant to the Lanham Act and Utah Code Ann. § 13-11(a)-3 and the equitable powers of this Court; and

E. Order such relief as the Court deems just and proper.

**JURY DEMAND**

Mini's demands that all claims raised in this Complaint be tried to a jury to the fullest extent possible under the Utah and United States Constitutions.

Dated May 14, 2010.

HOLLAND & HART LLP

/s/Romaine C. Marshall

Brett L. Foster

Romaine C. Marshall

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