

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Starbucks Corporation,

Plaintiff,

vs.

Mountains and Mermaids, LLC.

Defendants.

CASE NO.: _____

COMPLAINT

Plaintiff Starbucks Corporation (“Starbucks”), by and through its undersigned attorneys Santomassimo Davis LLP and Honigman LLP (to be admitted pro hac vice), for its Complaint against Defendant Mountains and Mermaids, LLC (“M&M”) alleges as follows:

NATURE OF THE CASE

1. This is a straightforward case involving Starbucks, one of the most well-known and recognizable brands in the United States (and world), and M&M, a company which insists on willfully infringing the Starbucks federally registered and incontestable trademarks.

2. In December of 2018, M&M filed an application for registration with the United States Patent and Trademark Office (“USPTO”) in International Class 30 for the mark “Siren’s Brew” in conjunction with, among other things, coffee beans and ground coffee beans (referred to below as “Siren’s Brew Mark”).

3. Starbucks opposed registration at the Trademark Trial and Appeal Board (“TTAB”) on the basis that the Siren’s Brew Mark was likely to cause confusion with the Starbucks rights in “SIREN,” including through the registrations for its famous “SIREN” design marks, examples of which are shown below.



4. After lengthy evidentiary proceedings, briefing and argument, on May 8, 2023, the TTAB made a number of findings:

- a. The Starbucks Siren Design Logo Marks, as shown above, were registered in 2014.
- b. Consumers refer to the Starbucks Siren Design Logo Marks as a “Siren.”
- c. M&M first started using its Siren’s Brew Mark in 2018.
- d. The Starbucks Siren Design Logo Marks, as shown above, have priority over M&M’s Siren’s Brew Mark.
- e. M&M’s use of the Siren’s Brew Mark (in conjunction with coffee beans and ground coffee beans) is likely to cause confusion with the federally registered (and incontestable) Starbucks Siren Design Logo marks.

5. The TTAB therefore sustained the opposition of Starbucks and denied registration of M&M’s Siren’s Brew Mark in International Class 30. M&M did not appeal this decision.

6. Given the TTAB’s refusal to register M&M’s Siren’s Brew Mark for coffee beans and ground coffee beans and the finding of likelihood of confusion and the resulting issuance of a registration to Starbucks for the mark “SIREN’S BLEND,” Starbucks requested that M&M cease all use of the Siren’s Brew Mark in connection with its sales of coffee beans and ground coffee beans.

7. M&M ignored the requests of Starbucks and continues to use the Siren's Brew Mark to promote, advertise and sell its coffee beans and ground coffee beans.

8. Because the TTAB has already found that use of the Siren's Brew Mark in conjunction with coffee beans and ground coffee beans is likely to cause confusion with the Starbucks Siren Design Logo Marks, and because M&M continues to use the Siren's Brew Mark on its coffee beans and ground coffee beans, M&M is on notice that its continued use is likely to cause confusion.

9. Starbucks files this lawsuit for trademark infringement under 15 U.S.C. § 1114 asking this Court to apply the TTAB's finding of a likelihood of confusion and grant permanent injunctive relief to Starbucks precluding M&M from utilizing the Siren's Brew Mark to promote, advertise and sell its coffee beans and ground coffee beans.

10. In the alternative, Starbucks asks this Court to determine independently of the TTAB's findings that M&M's use of the Siren's Brew Mark creates a likelihood of confusion with the Starbucks Siren Design Logo Marks and grant permanent injunctive relief to preclude M&M from utilizing the Siren's Brew Marks to promote, advertise, and sell its coffee beans and ground coffee beans.

PARTIES

11. Plaintiff Starbucks Corporation is a corporation organized and existing under the laws of the State of Washington with its principal place of business at 2401 Utah Avenue South, Seattle, WA 98134.

12. Upon information and belief, Defendant Mountains and Mermaids, LLC is a limited liability company organized and existing under the laws of Alaska with an address of P.O. Box

871882, Wasilla, AK 99687. On information and belief, M&M now operates its business located at 9887 Arnold Road, Denham Springs, Louisiana 70726.

JURISDICTION AND VENUE

13. There is personal jurisdiction over Defendant in this judicial district pursuant to at least N.Y. C.P.L.R. § 302(a) because, on information and belief, Defendant regularly conducts, transacts, and/or solicits business in New York and in this judicial district, Defendant has sold coffee under the infringing Siren's Brew Mark in New York and in this judicial district, and/or otherwise availed itself of the privileges and protections of the laws of the State of New York such that this Court's assertion of jurisdiction over Defendant does not offend traditional notions of fair play and due process, and/or Defendant's infringing actions caused injury to Starbucks in this judicial district such that Defendant should reasonably expect such actions to have consequences in New York and this judicial district, for example:

- a. Upon information and belief, Defendant was and/or is systematically directing and/or targeting its business activities at consumers in New York through Defendant's interactive website, where consumers in the U.S., including in New York, can view and purchase products using the Siren's Brew Mark, including coffee, for delivery to New York;
- b. Upon information and belief, Defendant accepts payment in U.S. Dollars and offers shipping to the U.S., including to New York and specifically to addresses in this judicial district, for sales of products using the Siren's Brew Mark, including coffee;

- c. Upon information and belief, Defendant has sold coffee and other products using the Siren's Brew Mark to several customers in New York through its website, and has shipped those goods to those customers in New York;
- d. Upon information and belief, by no later than May 2021, Defendant had sold coffee using the Siren's Brew Mark to at least two customers in this judicial district through its website, and had shipped coffee to those customers in this judicial district; and
- e. Upon information and belief, since May 2021, Defendant has continued to sell coffee under the Siren's Brew Mark via its website, and it thus appears likely that Defendant has sold additional coffee to customers in this judicial district since May 2021.

14. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338 because this case arises under the Lanham Act (15 U.S.C. § 1051, et seq.).

15. Venue is proper in this District pursuant to, at least, 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims of Starbucks has occurred in this District and Defendant conducts, transacts, and/or solicits business in this judicial district.

16. Venue is additionally proper in this District pursuant to, at least, 28 U.S.C. §§ 1391(b)(1) and 1391(c)(2) because M&M is an entity with the capacity to sue and be sued in its common name and is subject to personal jurisdiction in this District for purposes of this suit.

BACKGROUND

Starbucks And Its World Renowned Brand

20. For over fifty (50) years, Starbucks has been the leading seller of fine *Arabica* coffee in the United States and globally. Starting in 1971, as a single Seattle-based dry goods store, Starbucks has grown to nearly 17,000 locations in the United States, consisting of nearly 10,000 company stores and nearly 7,000 locations operated by licensees in locations such as grocery stores, retail stores, hotels, airports, and hospitals.

21. Starbucks has developed and enjoys an unparalleled reputation for excellence, is world renowned as a top brand, and this is reflected in the significant U.S. market share of Starbucks.

22. Starbucks and its well-known Starbucks Siren Design Logo Marks have received significant media attention, including via news articles, televisions, and movies. Some of these examples include:

a. News articles:

- i. Huffington Post Article, Dated December 6, 2017: *The Legend of the Starbucks Siren*;
- ii. Slate Magazine Article, Dated February 1, 2011: *Starbucks Siren's Origins Exposed!*; and
- iii. Logo Works Article, Dated April, 2017: *Why a Siren, Starbucks? – Behind the Starbucks Logo Design*.

b. Television programs:

- i. Parks & Rec; and
- ii. The Voice.

c. Movies:

- i. The Devil Wears Prada;
- ii. Zoolander;
- iii. License to Wed;
- iv. The Proposal;
- v. Clueless;
- vi. 127 Hours;
- vii. Jurassic World;
- viii. You've Got Mail;
- ix. Fight Club;
- x. The Terminal;
- xi. Miss Congeniality;
- xii. 13 Going on 30; and
- xiii. I Am Sam.

23. As a result of the foregoing sales and marketing activities, and as reflected in extensive third-party recognition, Starbucks and its Starbucks Siren Design Logo Marks have become a well-known, widely recognized and highly distinctive brand which customers associate with Starbucks and its products and services. The Starbucks Siren Design Logo Marks were a well-known source indicator before M&M used the Siren's Brew Mark.

The Starbucks Intellectual Property

24. To ensure that consumers associate its products with the Starbucks brand, Starbucks utilizes consistent branding on its products.

25. As shown below, while the Starbucks logo has evolved over the years, it has always featured its mythological “siren” figure, often times referred to in Greek mythology as a two-tailed mermaid-like figure.



26. The “siren” is the “brainchild of Terry Hecker, a corporate artist and the one-time creative partner of Gordon Bowker, one of the founders of Starbucks.” (<https://archive.starbucks.com/record/the-story-of-the-siren>).

27. To protect its intellectual property including consumer association of the “siren” with Starbucks, Starbucks has filed and received numerous federal registrations for its marks. While Starbucks trademark portfolio is robust, two of the most recognizable marks are:

 U.S. Registration: 4,538,053 Priority Date: March 8, 2011	 U.S. Registration: 4,572,688 Priority Date: March 8, 2011
IC 30: Ground and whole bean coffee, cocoa, herbal and non-herbal tea, coffee, tea, cocoa and espresso beverages, and beverages made with a base of	IC 30: Ground and whole bean coffee, cocoa, herbal and non-herbal tea, coffee, tea, cocoa and espresso beverages, and beverages

coffee and/or espresso, beverages made with a base of tea, powdered chocolate; sauces to add to beverages; chocolate syrup, flavoring syrups to add to beverages, baked goods, namely, muffins, scones, biscuits, cookies, pastries and breads, sandwiches, granola, ready-to-drink coffee, [ready-to-drink tea,] frozen confections; chocolate, candy and chocolate confections; and sauces	made with a base of coffee and/or espresso, beverages made with a base of tea, powdered chocolate; sauces to add to beverages; chocolate syrup, flavoring syrups to add to beverages, baked goods, namely, muffins, scones, biscuits, cookies, pastries and breads, sandwiches, granola, ready-to-drink coffee, [ready-to-drink tea,] and frozen confections; chocolate, candy and chocolate confections; and sauces
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(Registrations attached as Exhibit A). (collectively referred to above and below as “Starbucks Siren Design Logo Marks”¹)

28. The Starbucks Siren Design Logo Marks have become incontestable under 15 U.S.C. § 1065.

29. As shown in the respective trademark applications, the date of first use in commerce for the Starbucks Siren Design Logo Marks in connection with ground and whole bean coffee was March 8, 2011.

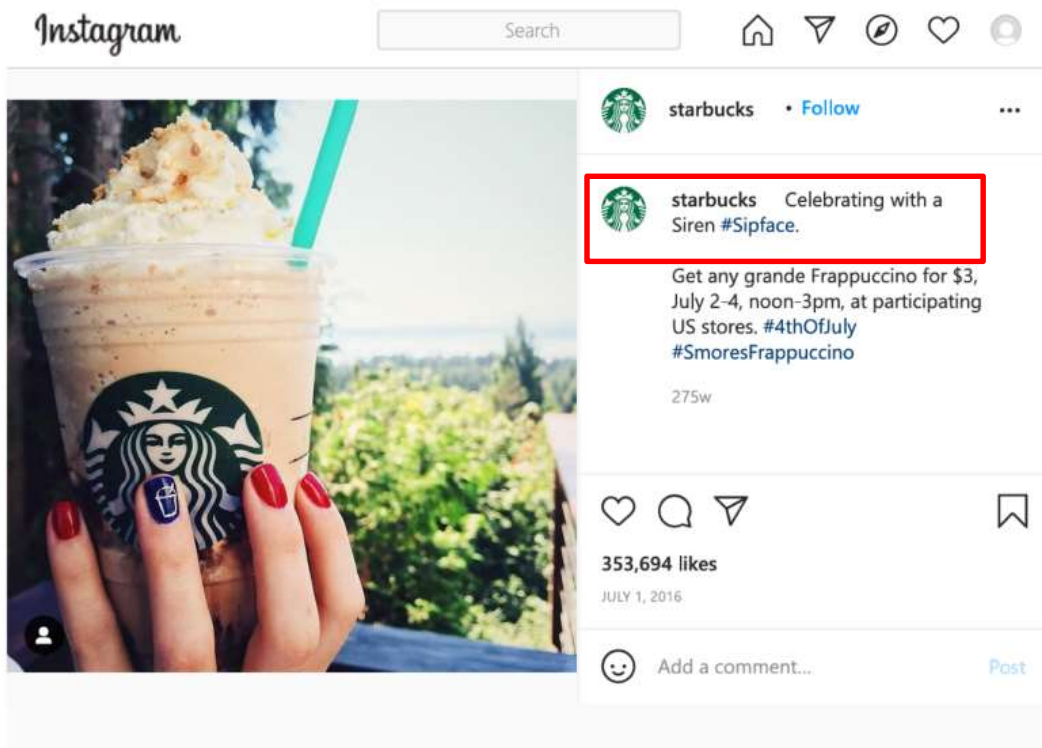
30. As a result of the long-standing and widespread promotion of the Starbucks Siren Design Logo Marks, the consuming public has come to recognize the Starbucks logo as a “siren,” and to associate that symbol with Starbucks, its products, and goodwill. For example, a December 23, 2016 article from the “Starbucks Stories & News” webpage entitled “Who is the Starbucks

¹ For clarity, the defined term in this Complaint, “Starbucks Siren Design Logo Marks” has the exact same meaning as the term “Starbucks Design Logo Marks,” as set forth in the TTAB decision.

Siren,” explains that the logo is a siren, which “is like a super mermaid. . . [and] often depicted with two tails.” The article further states that the siren is “the *biggest symbol* of [the Starbucks] brand. . . .” (emphasis added).

31. Based in part on the evidence reproduced below, the TTAB found substantial evidence of public exposure to Starbucks Siren Design Logo Marks “associated with and characterized as a siren, and that the Design Logo is often referred to by consumers as the Siren or the Starbucks Siren.”

32. Numerous social media posts in evidence before the TTAB confirm that Starbucks and its consumers refer to its logo as a “siren.”







33. As a result of the consistent promotion and use by Starbucks of its Starbucks Siren Design Logo Marks in its coffee sales, services and licensing, consumers also recognize the Starbucks Siren Design Logo Marks as depicting a siren.

34. Starbucks prominently uses the Starbucks Siren Design Logo Marks on each bag of coffee beans and ground coffee beans that it sells under the Starbucks brand, for example:



35. Not only does Starbucks utilize the Starbucks Siren Design Logo Marks on its coffee beans and ground coffee beans, but Starbucks has also introduced its “Siren’s Blend” coffee beans for sale to consumers, as shown below. This bag features the term “siren,” in conjunction with the Starbucks Siren Design Logo Marks.



36. Starbucks also uses the Starbucks Siren Design Logo Marks on its nearly 17,000 locations in the United States, consisting of nearly 10,000 company stores and nearly 7,000 locations operated by licensees in locations such as grocery stores, retail stores, hotels, airports, and hospitals:





M&M's Infringing Conduct Before The TTAB Decision

37. M&M is a company engaged in the sale of, among other things, coffee beans and ground coffee beans.

38. M&M began using the Siren's Brew Mark to sell its coffee beans and ground coffee beans in 2018. From this time forward, M&M's packaging has featured and continues to feature a mermaid or siren drinking coffee:



39. As the above packaging demonstrates, M&M uses the Siren's Brew Mark to sell the same goods Starbucks sells (coffee), while also utilizing a similar mythological mermaid siren figure as the Starbucks Siren Design Logo Marks.

40. In 2018, M&M filed U.S. Trademark Application No. 88202494 for the mark "Siren's Brew" in connection with coffee beans and ground coffee beans (hereinafter referred to as "Siren's Brew Application"). (Siren's Brew Application attached as Exhibit B).

41. Because its various siren trademarks including the Starbucks Siren Design Logo Marks were already renowned as signifying coffee originating from Starbucks, Starbucks filed a Notice of Opposition at the TTAB in August 2019 requesting the refusal of registration of M&M's Siren's Brew Application based on a likelihood of confusion between the Starbucks Siren Design Logo Marks and M&M's Siren's Brew Mark. *See* Opposition No. 91250027 (Notice of Opposition attached as Exhibit C).

42. After a lengthy and thorough evidentiary proceeding at the TTAB consisting of numerous depositions, written discovery, document production, and briefing, and after oral

argument, the TTAB issued a sixty-nine (69) page decision on May 8, 2023. (TTAB Decision attached as Exhibit D).

43. The TTAB held that M&M's Siren's Brew Application for coffee beans and ground coffee beans in International Class 30 created a likelihood of confusion with the Starbucks Siren Design Logo Marks.

44. The TTAB sustained the Starbucks opposition and refused registration of the Siren's Brew Mark for coffee beans and ground coffee beans.

45. M&M never appealed the TTAB decision and its Siren's Brew Application is abandoned with prejudice with respect to coffee beans and ground coffee beans.

46. M&M has posted at length on its website about the TTAB proceedings, and includes in the header of its product pages an internal link to "Our Battle With Starbucks" dated August 11, 2023. (M&M Website attached as Exhibit E).



47. In its description of the TTAB proceeding, M&M admits that the TTAB found that “our SIREN’S BREW name was too similar to the Starbucks logo in the category of coffee to become a registered trademark.” (M&M Website attached as Exhibit E).

Many of you have asked us for an update on the trademark dispute with Starbucks. Out of respect for the legal process and against our better judgment, we have waited and not said much during the four year long dispute. A few months ago, judges at the US Patent and Trademark Office ruled that our SIREN'S BREW name could not be registered for coffee, but could be registered for clothing. Even though in our experience not a single customer has ever been confused, the USPTO's Trademark Trial and Appeal Board found that our SIREN'S BREW name was too similar to the Starbucks logo in the category of coffee to become a registered trademark. Regardless of the fact that we applied for our trademark well before Starbucks applied for the Siren's Blend trademark and were denied due to similarity with our Siren's Brew name. This was because the Board found that the consumers recognize the Starbucks' logo as a siren by judging the Starbucks logo as if it said the word "siren" when it never has in any logo they have ever produced.

48. M&M also clearly understood the basis for the TTAB decision, stating that: “the Board found that the [sic] consumers recognize the Starbucks’ [sic] logo as a siren by judging the Starbucks logo as if it said the word ‘siren’ when it never has in any logo they have ever produced.” (M&M Website attached as Exhibit E).

Many of you have asked us for an update on the trademark dispute with Starbucks. Out of respect for the legal process and against our better judgment, we have waited and not said much during the four year long dispute. A few months ago, judges at the US Patent and Trademark Office ruled that our SIREN'S BREW name could not be registered for coffee, but could be registered for clothing. Even though in our experience not a single customer has ever been confused, the USPTO's Trademark Trial and Appeal Board found that our SIREN'S BREW name was too similar to the Starbucks logo in the category of coffee to become a registered trademark. Regardless of the fact that we applied for our trademark well before Starbucks applied for the Siren's Blend trademark and were denied due to similarity with our Siren's Brew name. This was because the Board found that the consumers recognize the Starbucks' logo as a siren by judging the Starbucks logo as if it said the word "siren" when it never has in any logo they have ever produced.

49. M&M further admits that it did not appeal the TTAB decision but intends to continue selling its coffee products: “Rather than appeal this ruling, we have decided to focus our efforts on continuing to provide the best coffee and products that we can to our customers.” (M&M Website attached as Exhibit E).

The legal process is long, complicated, and expensive – especially for small businesses. Rather than appeal this ruling, we have decided to focus our efforts on continuing to provide the best coffee and products that we can to our customers. We also plan to look for ways to improve the legal system to make it more accessible for small businesses like ours considering the USPTO just increased the price for businesses to file a trademark application which is a detriment to small businesses trying to protect their brand. When resolving a dispute before a court or agency costs many thousands of dollars and takes several years, big businesses have a built in advantage, and that is truly a shame.

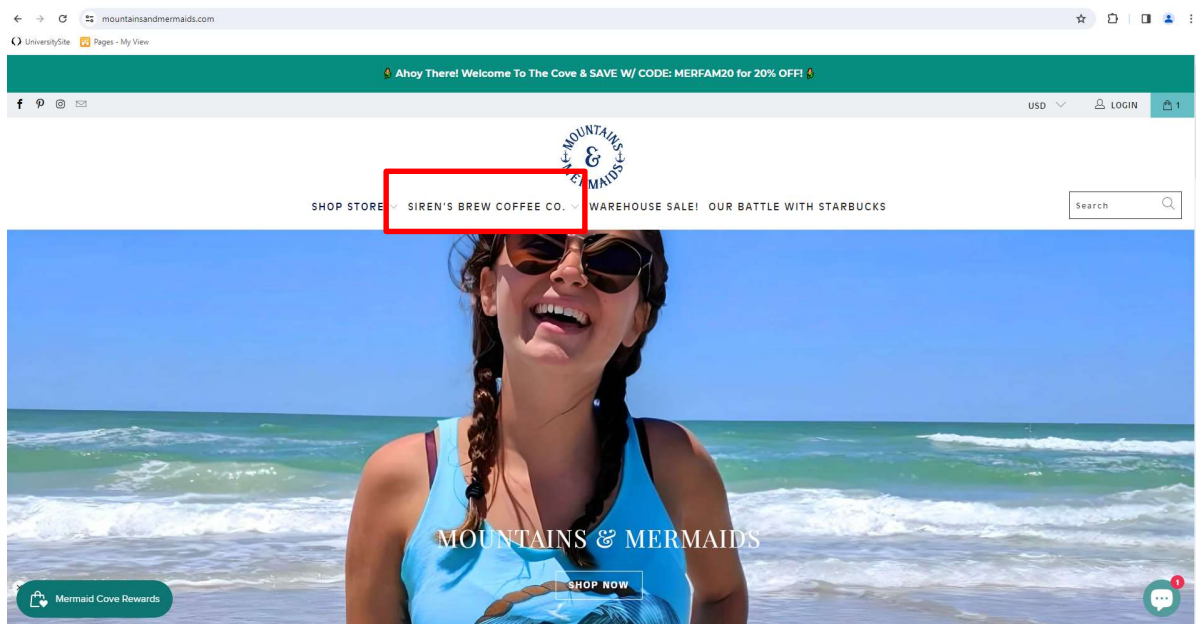
M&M's Continued Infringement After The TTAB Decision

50. After the TTAB found that M&M's Siren's Brew Mark was confusingly similar to the Starbucks Siren Design Logo Marks and the time for appeal had passed, Starbucks followed up with M&M to ensure that M&M would cease using the term in connection with its coffee beans and ground coffee beans.

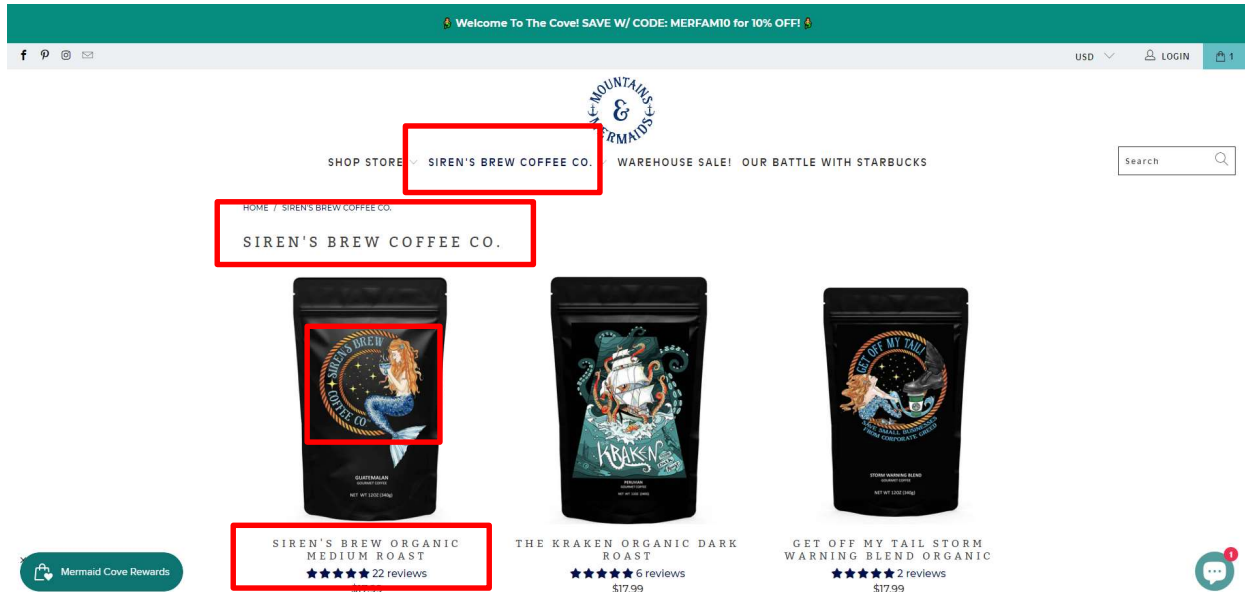
51. M&M ignored these requests from Starbucks.

52. Instead, consistent with its website statements about the TTAB decision, M&M continues to utilize the Siren's Brew Mark to sell its coffee beans and ground coffee beans – the very same products it identified when it attempted to register the Siren's Brew Mark, which the TTAB refused.

53. For example, M&M's website home page directs users to a link entitled "Siren's Brew Coffee Co."



54. Upon clicking that link, users are directed to the infringing Siren's Brew Organic Roast. Noticeably, M&M continues to use the mark "Siren's Brew" for the sale of M&M's coffee beans.



55. M&M's sale of coffee beans and ground coffee beans, as shown above on M&M's website, are the exact same goods contemplated by the TTAB as causing a likelihood of confusion with the Starbucks Design Logo Marks:

The [Starbucks] Design Logo is well known enough as a siren in connection with [Starbucks] coffee-related goods and services that consumers encountering [M&M's] word mark SIREN'S BREW on coffee are likely to associate it with the so-called Starbucks Siren and believe the coffee comes from [Starbucks].

(Exhibit D, TTAB Opposition, p. 61).

56. At least since the May 8, 2023 TTAB decision, M&M has been on notice that its Siren's Brew Mark creates a likelihood of confusion with the Starbucks Siren Design Logo Marks and M&M did not appeal the TTAB decision, thus M&M's continued infringement is willful.

57. The TTAB also found that the goods sold under both the Siren's Brew Mark and the Starbucks Siren Design Logo Marks are sold in similar channels of trade and to the same customers.

58. M&M's use of the Siren's Brew Mark to sell coffee products is likely to confuse consumers into believing that those products are affiliated with, associated with, connected to, or sponsored by Starbucks.

59. This is further exacerbated as Starbucks, in January of 2024, received a federal registration (U.S. Reg. No. 7,282,674) from the USPTO for the mark "Siren's Blend" in connection with ground and whole bean coffee and coffee-based beverages. As set forth in Paragraph 35 above, Starbucks has already begun offering coffee beans and ground coffee beans under the mark "Siren's Blend." That M&M has willfully disregarded the TTAB decision and continued to sell coffee beans and ground coffee beans under the mark "Siren's Brew" (which is nearly identical to "Siren's Blend" used by Starbucks) heightens the need for this Court to adopt the TTAB decision and stop M&M's continued infringement.

60. Because Starbucks does not control the product quality or conditions of sale of the M&M products, continued sales of M&M's "Siren's Brew" diminish the ability of Starbucks Siren Design Logo Marks to serve as a distinctive source identifier uniquely associated with Starbucks and its goods.

61. Upon information and belief, M&M has sold at least hundreds of bags of its coffee beans and ground coffee beans under the Siren's Brew Mark.

62. Each and every sale of a bag of M&M's coffee beans and ground coffee beans under the Siren's Brew Mark represents a sale in violation of the trademark rights owned by Starbucks and in which Starbucks cannot control the product quality or conditions of sale of infringing products.

63. Each time M&M sells coffee beans and ground coffee beans under the Siren's Brew Mark, Starbucks experiences and risks further harm to its rights as a trademark owner to the

exclusive control of the quality of goods and services provided under the Starbucks Siren Design Logo Marks.

64. Starbucks has not consented to M&M's use of the Siren's Brew Mark, nor has Starbucks sponsored, endorsed, or approved the goods offered and promoted by M&M.

65. M&M's conduct has caused and continues to cause damage and irreparable injury to Starbucks.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT OF A REGISTERED MARK
(15 U.S.C. § 1114)

66. Starbucks realleges and incorporates by reference the allegations contained in the preceding paragraphs as is fully set forth herein.

67. Starbucks owns valid and enforceable rights in the Starbucks Siren Design Logo Marks in connection with the goods and services it offers and sells in connection therewith by virtue of its extensive use, promotion, and advertisement of the marks, and has possessed such rights at all times material to this complaint.

68. Starbucks owns several valid and incontestable registrations for its Starbucks Siren Design Logo Marks. Specifically, Starbucks owns federally registered trademark numbers: 4,538,053 and 4,572,688, among others. (Exhibit A)

69. The foregoing registrations are prima facie evidence of the validity of Starbucks Siren Design Logo Marks and of Starbucks ownership of the Starbucks Siren Design Logo Marks.

70. Starbucks use of the Starbucks Siren Design Logo Marks in connection with coffee related goods predates any use by M&M and Starbucks has priority as the senior user of the marks.

71. Due to the extensive sales, advertising, and goodwill associated with Starbucks and its Starbucks Siren Design Logo Marks over a period of many years, the Starbucks Siren Design

Logo Marks are commercially strong and have achieved significant fame. The Starbucks Siren Design Logo Marks were well-known and recognized by the consuming public as a source indicator long before M&M began utilizing the Siren's Brew Mark in connection with its coffee beans and ground coffee beans.

72. M&M knowingly and intentionally markets, promotes, advertises, distributes, offers to sell, and sells coffee products under its infringing Siren's Brew Mark.

73. M&M sells coffee products under its infringing Siren's Brew Mark with full knowledge that consumers are likely to confuse the Siren's Brew Mark with the Starbucks Siren Design Logo Marks.

74. M&M is aware of the extensive prior use of the Starbucks Siren Design Logo Marks, at least as set forth in the TTAB ruling.

75. Starbucks has not authorized, licensed, or otherwise condoned or consented to M&M's use of the Siren's Brew Mark.

76. M&M's marketing, promotion, advertising, offering for sale, and selling of coffee products under its infringing Siren's Brew Mark are likely to confuse, mislead, and/or deceive customers, purchasers, and members of the general public as to the origin, source, sponsorship, or affiliation of M&M and Starbucks, and/or M&M's goods and services on the one hand and the Starbucks goods and services on the other, and are likely to cause such people to believe in error that M&M's goods and services have been authorized, sponsored, approved, endorsed, or licensed by Starbucks or that M&M is in some way affiliated with Starbucks.

77. M&M is on notice that there is a likelihood of confusion given the TTAB's finding that M&M's use of the Siren's Brew Mark in conjunction with coffee related goods is likely to cause confusion with Starbucks Siren Design Logo Marks.

78. Such confusion, deception, or mistake is likely to occur as a direct result of M&M's displaying, advertising, promoting, offering for sale and selling of coffee related goods under its infringing Siren's Brew Mark.

79. M&M's actions constitute trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

80. Though M&M had prior knowledge of Starbucks and the Starbucks Siren Design Logo Marks and received additional notice from Starbucks after the decision from the TTAB that by continuing to sell products under the Siren's Brew Mark that they were infringing Starbucks Siren Design Logo Marks, M&M continues to intentionally infringe.

81. M&M's actions described herein were knowing and intentional and thus render this case exceptional within the meaning of 15 U.S.C. § 1117(a).

82. M&M sells and offers for sale its coffee products under the infringing Siren's Brew mark throughout the United States, including but not limited to sales via its website.

83. M&M's conduct has occurred in interstate commerce and substantially impacts interstate commerce.

84. As a direct and proximate result of M&M's conduct, Starbucks has suffered damage, as well as harm to its valuable goodwill and reputation.

85. It is clear that M&M will not stop its infringing conduct without being specifically ordered to do so by this Court.

86. M&M's conduct described herein will continue to cause irreparable damage to Starbucks and confuse the public unless enjoined by this Court.

87. An award of money damages alone cannot fully compensate Starbucks for its injuries, and Starbucks has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Starbucks respectfully requests and prays that the Court:

- A. Enter judgment in favor of Starbucks and against M&M on all counts of the Complaint;
- B. Determine that M&M willfully violated the Lanham Act, that Starbucks has been damaged by such violations, and that M&M is liable to Starbucks for such violations;
- C. Determine that this case is “exceptional” within the meaning of 15 U.S.C. § 1117(a);
- D. Order that M&M be required to pay the reasonable attorneys’ fees and costs pursuant to 15 U.S.C. § 1117(a) incurred by Starbucks;
- E. Under all claims for relief, issue a permanent injunction enjoining M&M and any of their officers, employees, agents, successors and assigns, and all those in active concert and participation with M&M, and each of them who receives notice directly or otherwise of such injunction:
 - 1. from using in any manner the Siren’s Brew Mark and any variations thereof, or any other name, term, phrase, mark, design, device or symbol which so resembles or is similar to the Starbucks Siren Design Logo Marks as to be likely to cause confusion, mistake or deception as to source, origin, sponsorship, approval, affiliation or the like;
 - 2. from further unlawfully trading upon and misappropriating the goodwill and reputation of Starbucks and competing unfairly with Starbucks;
 - 3. from inducing, encouraging, aiding, abetting, or contributing to any of the aforesaid acts; and
 - 4. from making any false or misleading descriptions of fact or false or misleading representations of fact in their commercial advertising or promotion about the nature, characteristics, or qualities of their products or related commercial activities.
- F. Order M&M to deliver up for destruction all products, labels, signs, prints, packages, wrappers, receptacles, advertisements, or other materials in their possession, custody or control, and in the possession, custody or control of those in active concert or participation or otherwise in privity with them, which display or contain the Siren’s Brew Mark, or any variations thereof, or which constitute and/or bear any other device, representation or statement in violation of the injunction herein requested by Starbucks, and that M&M be ordered to deliver up for destruction all means of making the same;

- G. Order M&M to file with the Court and serve on Starbucks, within thirty (30) days after service on it of such injunction (or such extended period as the Court may direct), a report in writing and under oath, setting forth in detail the manner and form in which M&M has complied with the injunction; and
- H. Grant Starbucks any other relief as the Court deems necessary and proper.

Respectfully submitted,

By: /s/ Anthony J. Davis

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