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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JULIUS SÄMANN LTD., and
CAR-FRESHNER CORPORATION,

Plaintiffs,

Civil Action No. 1:21-cv-4711

v.

CHEWY, INC.,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiffs Julius Sämann Ltd. (“JSL”) and CAR-FRESHNER Corporation (“CFC”) (collectively, “Plaintiffs”), by their undersigned attorneys, for their Complaint against Defendant Chewy, Inc., (“Chewy”), Inc., allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action for trademark infringement, false designations of origin, trademark dilution, and unfair competition under the Lanham Act, 15 U.S.C. § 1051 et seq., and corresponding state law.

PARTIES

2. Plaintiff CFC is a Delaware corporation with its principal place of business at 21205 Little Tree Drive, Watertown, New York 13601.

3. Plaintiff JSL is a Bermuda corporation with its principal place of business at Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda.

4. Upon information and belief, Defendant Chewy is a Delaware corporation with a principle place of business at 1855 Griffin Rd Ste B-428, Dania Beach, Florida 33004.

5. Upon information and belief, Chewy markets its goods online to consumers throughout the United States, including New York State, and has advertised and/or sold the Infringing Products, as defined below, within New York State.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over the claims arising under the Lanham Act pursuant to 15 U.S.C. § 1121 and 28 U.S.C §§ 1331 and 1338. This court has supplemental jurisdiction over the claims arising under the laws of New York pursuant to 28 U.S.C. § 1367.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), (c) and (d).

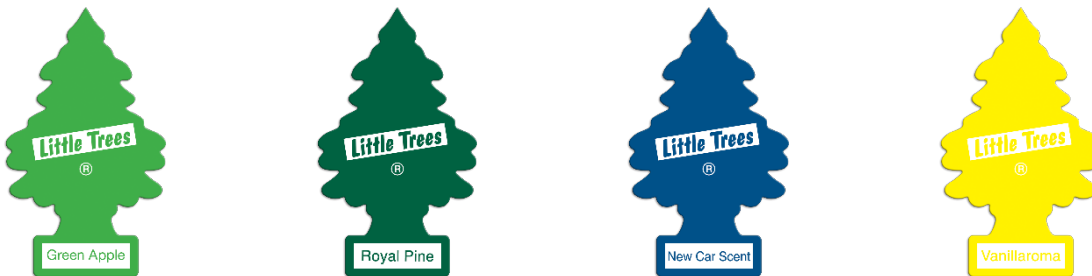
8. This Court has personal jurisdiction over Chewy because, upon information and belief, Chewy, in person or through an agent: (a) has transacted business within New York or has contracted to supply goods in New York pursuant to NY CPLR 302(a)(1); (b) has committed tortious acts within New York pursuant to NY CPLR 302(a)(2); and/or (c) has committed tortious acts without New York causing injury to Plaintiffs in New York, and (i) regularly does or solicits business, or engages in other persistent courses of conduct, or derives substantial revenue from goods used or consumed or services rendered, in New York, or (ii) expects or should reasonably expect its acts described herein to have consequences in New York and derives substantial revenue from interstate or international commerce, pursuant to NY CPLR 302(a)(3).

PLAINTIFFS' BUSINESS AND TREE DESIGN AND CAR-FRESHNER MARKS

9. For over 60 years, under license from JSL and its predecessors, CFC and its predecessors have used trademarks and corporate identifiers comprising or containing a distinctive abstract Tree design (the “Tree Design Marks”), as well as trademarks and corporate identifiers comprising or containing the term CAR-FRESHNER (the “CAR-FRESHNER Marks”) (collectively, “Plaintiffs’ Marks”) in connection with the manufacture, marketing and sale of various products, as shown below



10. Plaintiffs’ Marks are most widely associated with the world-famous LITTLE TREES air fresheners (“LITTLE TREES Air Fresheners”), examples of which are depicted below:



11. Plaintiffs’ and their respective predecessors’ rights in Plaintiffs’ Marks date back to at least 1952.

12. JSL is the owner of Plaintiffs’ Marks, and CFC is the exclusive licensee of Plaintiffs’ Marks for air fresheners in the United States. CFC, under license from JSL, is also a

licensee of the Tree Design Marks for other products in the United States, including without limitation those described in paragraph 13 below.

13. In addition to the ubiquitous LITTLE TREES Air Fresheners, over the years, Plaintiffs have used Plaintiffs' Marks in connection with many additional goods that promote and benefit from association with Plaintiffs' Marks, including without limitation t-shirts, hats, iron-on patches, stickers, socks, fleece blankets, pens, notebooks, playing cards, umbrellas, water bottles, keychains, and luggage tags. Examples of some of these items appear below:



14. Plaintiffs use Plaintiffs' Marks in many different fashions to identify Plaintiffs as the source of high-quality goods. Among many other uses, Plaintiffs' Marks appear on the packaging for Plaintiffs' products, on the products themselves, in various forms of advertising and promotions for Plaintiffs and their products, throughout websites operated by Plaintiffs, on signage. The Tree Design Marks also appear as the familiar shape of the LITTLE TREES Air Fresheners. The CAR-FRESHNER Marks also comprise CFC's company name

15. Plaintiffs' products bearing Plaintiffs' Marks are sold throughout the United States and in most countries around the world, through a wide variety of different trade channels, and they appear frequently on television, in movies, and in popular culture as a symbol of high-quality goods originating with Plaintiffs.

16. Plaintiffs' products bearing Plaintiffs' Marks are also widely promoted in a variety of media, including on numerous websites, magazines and printed promotional materials.

17. Because of the fame and public recognition of the Plaintiffs' Marks, third parties have regularly requested that Plaintiffs license Plaintiffs' Marks to them for various goods and services and for use in print, television, and online advertising. Such third-party licensed users have included Buffalo Wild Wings, Inc., Pactiv Corporation, Nestle Purina PetCare Company, Utah First Credit Union, Discover Financial Services, Brooks Sports, Kia Motors America, Inc., A&E Networks, LLC, and Capitol One.

18. As a result of this widespread and longstanding use, promotion and licensing of Plaintiffs' Marks and the products they designate, Plaintiffs' products sold in connection with those marks have been a tremendous commercial success, with hundreds of millions circulating annually in United States commerce. Indeed, products bearing Plaintiffs' Marks have become staples of American culture, familiar to millions of consumers who encounter these products and marks in a wide variety of commercial contexts and recognize the Plaintiffs' Marks as designating products and services of the highest and most reliable quality and originating with Plaintiffs.




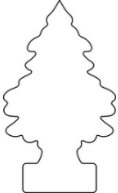
19. As a result of this long and extensive use and promotion, Plaintiffs' Marks enjoy widespread public recognition. They have acquired tremendous goodwill and secondary



meaning among the consuming public, which recognizes Plaintiffs' Marks as exclusively associated with Plaintiffs.

20. Plaintiffs' Marks are famous among the general consuming public and have enjoyed such fame since long prior to Chewy's unlawful acts complained of herein.

21. Plaintiffs' Marks are non-functional and serve as arbitrary source identifiers for Plaintiffs and their highly regarded products.

22. JSL owns the following incontestable federal trademark registrations for the Tree Design Marks and the CAR-FRESHNER Marks, covering the goods indicated below:

| Mark | Registration No. | Registration Date | Goods |
|---|------------------|-------------------|---|
|  | 719,498 | August 8, 1961 | Absorbent body impregnated with a perfumed air deodorant, in Class 5 |
|  | 1,781,016 | July 13, 1993 | Air freshener, in Class 5 |
|  | 1,791,233 | September 7, 1993 | Air freshener, in Class 5 |
|  | 3,766,310 | March 30, 2010 | Air fresheners, in Class 5; pens and stickers, in Class 16; luggage tags, in Class 18; shirts and hats, in Class 25 |

| Mark | Registration No. | Registration Date | Goods |
|---|------------------|-------------------|---|
|  | 2,741,364 | July 29, 2003 | Travel bags, in Class 18; shirts, sweatshirts, t-shirts and caps, in Class 25 |
| CAR-FRESHNER | 675,796 | March 24, 1959 | Absorbent bodies impregnated with a perfumed air deodorant, in Class 5 |
|  | 1,942,464 | December 19, 1994 | Air fresheners, in Class 5 |

23. Pursuant to 15 U.S.C. § 1115(a), JSL's incontestable registrations of Plaintiffs' Marks constitute *prima facie* evidence of the validity of such marks, of JSL's ownership of such marks, and of JSL's exclusive right to use and license such marks in connection with the goods identified in such registrations.

24. Plaintiffs' also have potent common law trademark rights in Plaintiffs' Marks by virtue of their longstanding and well-recognized use in commerce.

CHEWY'S UNLAWFUL CONDUCT

25. Upon information and belief, Chewy designs, manufactures and markets products for pet owners, including dog and cat toys, treats, food, healthcare products, grooming products, and other pet care products.

26. Upon information and belief, Chewy markets its pet products primarily online through the www.chewy.com website.

27. Plaintiffs recently discovered that Chewy, without authorization from Plaintiffs, was offering for sale and had sold dog toys (the “Infringing Products”) under the name “Frisco Retro Tree Freshener Plush Squeaky Dog Toy” and bearing a shape, colors and overall appearance confusingly similar to Plaintiffs’ Tree Design Marks, as show below:



28. There can be no doubt that Chewy based the design of the Infringing Products on the Tree Design Marks. Not only do the Infringing Products copy the shape and dimensions of the LITTLE TREES air fresheners, they are sold in colors associated with some of the most popular fragrances of LITTLE TREES air fresheners. Additionally, the Infringing Products replicate the white diagonal and horizontal banners emblazoned across the middle and bottom of the LITTLE TREES Air Fresheners. The Infringing Products are called a “Tree Freshener” and the phrase “AIR FRESHENER” is included in the base, making it obvious that they are intended to replicate not just any tree, but specifically the LITTLE TREES air fresheners. These similarities are illustrated in the comparison below.:





29. Upon information and belief, Defendants have advertised, offered for sale, sold, and/or distributed Infringing Products throughout the United States, including in the Southern District of New York.

30. In further violation of Plaintiff's rights, Chewy has also used "Car Freshener" to designate a category of air fresheners on its website. Chewy has used a mark confusingly similar to the CAR-FRESHNER Marks to sell competitive air fresheners, thereby leading consumers to believe the products originated from or were endorsed by Plaintiffs.

31. Chewy's use of a design copied from Plaintiffs' famous Tree Design Marks and a designation nearly identical to Plaintiffs' CAR-FRESHNER Marks are likely to cause confusion, mistake, or deception as to the source or sponsorship of Chewy's products and to mislead the public into believing that Chewy's products emanate from, are approved or sponsored by, are licensed by, or are in some way associated or connected with Plaintiffs.

32. Upon information and belief, Chewy was not only aware of Plaintiffs' Tree Design and CAR-FRESHNER Marks prior to its manufacture and distribution of the Infringing

Products and use of the term “Car Freshener,” but willfully and intentionally disregarded Plaintiffs’ valuable rights in those marks.

33. Chewy, by its acts complained of herein, has infringed and diluted the Tree Design Marks, infringed the CAR-FRESHNER Marks, unfairly competed with Plaintiffs in the marketplace, and improperly used Plaintiffs’ reputation and goodwill to promote and sell Chewy’s goods, which are not connected with, or authorized, approved, licensed, produced, or sponsored by, Plaintiffs.

34. Chewy’s aforesaid acts have caused irreparable damage and injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

CLAIM I **INFRINGEMENT OF A REGISTERED TRADEMARK (FEDERAL)**

35. Plaintiffs repeat and reallege the foregoing allegations as if set forth herein.

36. Chewy’s conduct as set forth above is likely to cause confusion, mistake, or deception as to the source, origin, affiliation, association, or sponsorship of Chewy’s goods , including without limitation the Infringing Products, and falsely mislead consumers into believing that Chewy’s goods originate from, are affiliated or connected with, or approved by, Plaintiffs.

37. Chewy’s activities constitute an infringement of the registered Tree Design Marks and registered CAR-FRESHNER Marks in violation of the Lanham Act, 15 U.S.C. § 1114.

38. Chewy’s acts of infringement have caused injury to Plaintiffs.

39. Upon information and belief, Chewy has engaged in these activities willfully, so as to justify the assessment of treble damages and attorneys’ fees under 15 U.S.C. § 1117.

40. Chewy's acts of infringement have caused Plaintiffs to sustain irreparable damage and injury, for which they have no adequate remedy at law.

CLAIM II
TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION (FEDERAL)

41. Plaintiffs repeat and reallege the foregoing allegations of paragraphs as if set forth herein.

42. Chewy's unlawful and improper conduct as set forth above is likely to cause confusion, mistake or deception as to the source, origin or sponsorship of Chewy's goods, or to falsely mislead consumers into believing that Chewy's goods originate from, are affiliated or connected with, or are approved by, Plaintiffs.

43. Chewy's activities constitute infringement of Plaintiffs' Tree Design Marks and CAR-FRESHNER Marks, false designations of origin, and unfair competition in violation of 15 U.S.C. § 1125(a).

44. Chewy's acts of infringement, false designations of origin, and unfair competition have caused injury to Plaintiffs.

45. Upon information and belief, Chewy has engaged in these activities willfully, so as to justify the assessment of treble damages and attorneys' fees under 15 U.S.C. § 1117.

46. Chewy's acts of infringement, false designations of origin, and unfair competition have caused Plaintiffs to sustain irreparable damage and injury, for which they have no adequate remedy at law.

CLAIM III
TRADEMARK DILUTION (FEDERAL)

47. Plaintiffs repeat and reallege the foregoing allegations as if set forth herein.

48. Plaintiffs are the owners and licensee of Plaintiffs' Tree Design Marks, which are distinctive and famous among the general consuming public in the United States, and have been famous since long before Chewy engaged in the activities complained of herein.

49. Chewy has created a deliberate and explicit association between the Infringing Products and Plaintiffs' Tree Design Marks in a fashion that impairs the distinctiveness of the Tree Design Marks.

50. Chewy's activities as set forth above are likely to dilute, impair, and blur the distinctive quality of Plaintiffs' famous Tree Design Marks in violation of 15 U.S.C. § 1125(c).

51. Chewy's acts of dilution have caused injury to Plaintiffs.

52. Upon information and belief, Chewy has engaged in these activities willfully, so as to justify the assessment of treble damages and attorneys' fees under 15 U.S.C. § 1117.

53. Chewy's acts of dilution have caused Plaintiffs to sustain irreparable damage and injury for which they have no adequate remedy at law.

CLAIM IV
VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 360-1

54. Plaintiffs repeat and reallege the foregoing allegations as if set forth herein.

55. Chewy's activities have been and, if continued, are likely to dilute the distinctive quality of the Tree Design Marks, in violation of Plaintiffs' rights under New York General Business Law § 360-1.

56. Chewy's violations of New York General Business Law § 360-1 have caused injury to Plaintiffs.

57. Chewy's violations of New York General Business Law § 360-1 have caused Plaintiffs to sustain irreparable harm, for which Plaintiffs have no adequate remedy at law.

CLAIM V
TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION (COMMON LAW)

58. Plaintiffs repeat and reallege the foregoing allegations as if set forth herein.

59. Chewy's activities complained of herein constitute unfair competition under New York State common law.

60. Chewy's aforesaid violations of New York State common law have caused injury to Plaintiffs.

61. Chewy's aforesaid violations of New York State common law have caused Plaintiffs to sustain irreparable damage and injury, for which they have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Chewy as follows:

A. That Chewy and its affiliates, officers, agents, servants, employees, successors, and assigns, and all persons in active concert or participation with them who receive actual notice of the injunction order, by personal service or otherwise, be enjoined, preliminarily and permanently, from:

1. Any manufacture, production, sale, import, export, distribution, advertisement, promotion, display, or other exploitation of the Infringing Products;

2. Any use of Plaintiffs' Tree Design Marks, or any other marks, designs, products, designations, or displays confusingly similar thereto, in connection with any goods or services;

3. Any use of Plaintiffs CAR-FRESHNER Marks, or any other marks or designations confusingly similar thereto, in connection with any goods or services;

4. Committing any other acts that infringe or dilute Plaintiffs' Tree Design Marks, that infringe Plaintiffs CAR-FRESHNER Marks, or that unfairly compete with Plaintiffs; and

5. Committing any other acts calculated or likely to cause consumers to believe that Chewy or its goods or services are in any manner connected, affiliated, or associated with or sponsored or approved by Plaintiffs.

B. Pursuant to 15 U.S.C. § 1118, that Chewy deliver to Plaintiffs for destruction all units of the Infringing Products and all materials (including without limitation all advertisements, promotional materials, brochures, signs, displays, packaging, labels, and/or website materials) within its possession, custody or control, either directly or indirectly, that display or incorporate images of the Infringing Product, the Tree Design Marks, the CAR-FRESHNER Marks, or any other marks, designs, products, designations, or displays confusingly similar thereto;

C. Pursuant to 15 U.S.C. § 1116, that Chewy file with the Court and serve on counsel for Plaintiffs within thirty (30) days after the entry of final judgment, a report in writing and under oath setting forth in detail the manner and form in which they have complied with paragraphs A and B above;

D. Pursuant to 15 U.S.C. § 1117(a), that Chewy be directed to account to Plaintiffs for all gains, profits and advantages derived from Chewy's wrongful acts;

E. Pursuant to 15 U.S.C. § 1117(a), that Plaintiffs recover from Chewy three times the amount of its profits flowing from the infringement and dilution of the Tree Design Marks and infringement of the CAR-FRESHNER Marks;

F. Pursuant to 15 U.S.C. § 1117(a), that Plaintiffs recover from Chewy their attorneys' fees and costs in this action;

G. That Plaintiffs recover prejudgment interest; and

H. That Plaintiffs be awarded such other and further relief as the Court may deem equitable and proper.

JURY DEMAND

Plaintiffs demand trial by jury.

Dated: May 26, 2021

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.

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