

ESTTA Tracking number: **ESTTA1323961**
Filing date: **11/22/2023**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding No.	91288374
Filing Party	Defendant Toddy, LLC
Other Party	Plaintiff Brumate, Inc.
Pending Motion	There is no motion currently pending and no other motion is being filed concurrent with this consent motion.
Attachments	Dkt. 001 - Complaint.pdf(4706980 bytes) Dkt. 012 - Answer and Counterclaims.PDF(288545 bytes)

Consent Motion for Suspension in View of Civil Proceeding

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Toddy, LLC hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Toddy, LLC has secured the express consent of all other parties to this proceeding for the suspension requested herein.

Certificate of Service

The undersigned hereby certifies that a copy of this submission has been served upon all parties, at their address of record by Email on this date.

Respectfully submitted,

/Saul Cohen/

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11/22/2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

TODDY, LLC,

Plaintiff,

v.

BRUMATE, INC.,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff Toddy, LLC (Plaintiff and their predecessors-in-interest are collectively referred to as “Toddy” or “Plaintiff”), by their undersigned attorneys, files this Complaint against Defendant BruMate, Inc. (“Brumate” or “Defendant”) for trademark infringement, false designation of origin, unfair competition, and deceptive trade practices under the Lanham Act, the Colorado Consumer Protection Act, and common law. Plaintiff alleges as follows, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other matters:

I. THE PARTIES

1. Plaintiff is a limited liability company organized and existing under the laws of the State of Colorado with its principal place of business located at 3706 Aldrin Drive, Loveland, Colorado 80538.

2. Upon information and belief, Defendant BruMate, Inc. is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 3601 Walnut St., Fifth Floor, Denver, Colorado 80205. Defendant also has listed its address as 2061 York Street, Denver, Colorado 80205 in documents filed with the Colorado Secretary of State's office.

II. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. § 1121 (the Lanham Act) and 28 U.S.C. §§ 1331 and 1338(a) and (b) (federal question). This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 because those claims are so related to its federal claims that they form part of the same case or controversy and derive from a common nucleus of operative fact.

4. This Court has personal jurisdiction over Defendant, and venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2), because Defendant has its principal place of business in Denver, Colorado. Furthermore, Defendant's unfair competition and deceptive practices are directed at consumers in this District and cause harm to Plaintiff in this District. In addition, on information and belief, Defendant's activities about which Plaintiff complains, including its development and use of an infringing mark and its promotion and sale of products bearing that infringing mark, occurred in substantial part in this District.

III. BACKGROUND

Plaintiff's Business and the TODDY Mark

5. Plaintiff is the industry leader in the manufacture and distribution of equipment for the cold brewing of coffee and tea. During the cold brewing process, time replaces heat, as

coffee grounds or tea are steeped in cold water and then filtered through a special filtering system. The bitter compounds that other brewing methods release are not released in the cold brewing process. The result is a smooth, low-acid concentrate ideal for iced or hot coffee or tea. Over the last several years, the popularity of cold brewed coffee has skyrocketed; it is now sold and promoted by popular coffeehouses and restaurants such as Starbucks, Blue Bottle Coffee, Coffee Bean & Tea Leaf, La Colombe, Dunkin' Donuts, and many more.

6. Plaintiff's cold brew process was developed in the early 1960s by Todd Simpson, a chemical engineering graduate of Cornell University, and marketed under the trademark TODDY (the "TODDY Mark"). As early as 1980, Simpson used the TODDY Mark in connection with the marketing and sale of coffee and tea, as well as equipment used to brew coffee and tea. Plaintiff Toddy, LLC purchased the TODDY brand and assets in 2010.

7. Today, Plaintiff sells home and commercial brewers, filters, accessories, premium coffee and tea, and merchandise, including drinking vessels, under the TODDY Mark throughout the country. Plaintiff's products are sold through brick-and-mortar retailers, online retailers, and coffeehouses. In addition, Plaintiff's commercial cold brew systems ("TODDY Cold Brew Systems") and filters are the choice of well-known international, national, and regional coffeehouse chains and thousands of specialty coffeehouses around the country. Plaintiff has sold more than one million TODDY Cold Brew Systems at retail. Plaintiff's products have been featured in numerous publications, including the New York Times, U.S. News and World Report, and Time Magazine.

8. Since at least as early as 1980, Plaintiff has used the TODDY Mark continuously in commerce in connection with coffee and tea products and related equipment, accessories, and

merchandise. Representative examples of Plaintiff’s products, including coffee and tea brewers, specialty coffee, and drinking vessels, are shown below:



9. In addition to its decades-old and strong common-law rights in its TODDY Mark, Plaintiff owns the following federal trademark registrations, among others:

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