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12 Attorneys for Plaintiff
 JaM CELLARS, INC.

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

17 JaM CELLARS, INC.,
 18 Plaintiff,
 19 v.
 20 THE WINE GROUP LLC,
 21 Defendant.

Case No. 20-cv-2229

COMPLAINT FOR:

- 1. Federal Trademark Infringement**
- 2. Federal Unfair Competition**
- 3. California Unfair Competition**
- 4. California False or Misleading Statements**
- 5. Common Law Trademark Infringement**
- 6. Common Law Unfair Competition**

DEMAND FOR JURY TRIAL

1 Plaintiff JaM Cellars, Inc. (hereinafter “JaM” or “Plaintiff”), for its complaint against
2 Defendant The Wine Group LLC (hereinafter “TWG” or “Defendant”), alleges as follows:

3 **NATURE OF ACTION**

4 1. This is an action to redress violations of the federal Lanham Act for infringement
5 of a federally registered trademark (15 U.S.C. §1114), federal unfair competition (15 U.S.C.
6 §1125(a)), California unfair competition (Cal. Bus. & Prof. Code §17200), the dissemination of
7 false and misleading statements (Cal. Bus. & Prof. Code §17500), and common law trademark
8 infringement and unfair competition, as the result of willful and unauthorized use by Defendant of
9 colorable imitations of Plaintiff’s trademark, as more fully set forth hereinafter. Plaintiff seeks
10 preliminary and permanent injunctive relief restraining Defendant’s infringement of Plaintiff’s
11 trademark, monetary damages, attorneys’ fees, and related relief.

12 **PARTIES**

13 2. Plaintiff JaM Cellars, Inc. is a California corporation with its corporate offices
14 located at 1460 First Street, Napa, California 94559.

15 3. Upon information and belief, Defendant The Wine Group LLC is a Delaware
16 limited liability company with its corporate offices located at 4590 Tesla Road, Livermore,
17 California 94550.

18 **JURISDICTION AND VENUE**

19 4. This Court has subject matter jurisdiction over Plaintiff’s claim under and pursuant
20 to 15 U.S.C. §1121 and 28 U.S.C. §1338(a), as the claims arise under the Federal Lanham Act, 15
21 U.S.C. §§1116-1127. This Court also has pendent jurisdiction over all related claims herein in
22 accordance with 28 U.S.C. §1338(b).

23 5. Upon information and belief, Defendant, either directly or through its agents,
24 transacted business in the State of California and within this judicial district, as more specifically
25 set forth below, and expected or should reasonably have expected its acts to have consequence in
26 the State of California and within this judicial district.

27 6. Venue is proper in this district pursuant to 28 U.S.C. §1391(b), as Defendant is
28 doing business in this judicial district and therefore may be found in this district, and/or as a

1 substantial part of the events giving rise to the claims alleged herein occurred in this judicial
2 district, and/or the infringement occurred in this judicial district.

3 **INTRADISTRICT ASSIGNMENT**

4 7. Pursuant to Civil Local Rule 3-2(c) this is an intellectual property matter, which is
5 to be assigned on a district-wide basis.

6 **ALLEGATIONS COMMON TO ALL CLAIMS**

7 8. Plaintiff is the owner of the trademarks JAM and JAM CELLARS for wine as well
8 as the owner of incontestable U.S. Trademark Registration No. 3,787,229 for the mark JAM
9 covering wine in International Class 33 and issued on May 11, 2010, and incontestable U.S.
10 Trademark Registration No. 3,855,785 for the mark JAM CELLARS covering wine in
11 International Class 33 and issued on October 5, 2010 (the “JAM Marks”). Plaintiff has used the
12 JAM Marks on and in association with wine since as early as 2009, long prior to the acts of
13 Defendant complained of herein.

14 9. Plaintiff’s JAM Marks for wine are not descriptive when used in association with
15 wine and therefore are inherently distinctive. The inherent distinctiveness of Plaintiff’s JAM Mark
16 is presumed and incontestable given its ownership of the incontestable federal trademark
17 registrations.

18 10. Plaintiff produces a Cabernet Sauvignon wine under the JAM Mark. JAM wine is
19 offered for sale in all fifty states, including the state of California. Since it began making JAM
20 wine in 2009, Plaintiff has sold over 1.599 million bottles of JAM wine nationwide.

21 11. Since 2009, Plaintiff’s dollar sales of its JAM wine have been in excess of \$15.9
22 Million, and sales of all JAM Cellars’ wines have been in excess of \$233.2 Million.

23 12. Since 2010, Plaintiff has expended well over thirty-five million dollars
24 (\$35,000,000) in advertising and marketing its wines, including radio advertising, social media
25 advertising, billboard advertising, concert and event sponsorships, direct marketing, promotions,
26 wine tastings, catalog and print advertisements, website production, and point of sale materials.
27 Plaintiff’s advertising and marketing efforts in 2018 generated over one billion impressions in
28 radio, digital, social media, out-of-home advertising and public relations.

1 13. Plaintiff has been a sponsor of the BottleRock Napa Valley music festival every
2 year since 2015, and has been the Presenting Sponsor from 2016 to present, resulting in Plaintiff's
3 JAM Marks being prominently featured and seen, collectively, by over four hundred thousand
4 BottleRock festival goers. Plaintiff has also been the official wine sponsor of the Ohana Festival, a
5 three-day music festival in Dana Point, California, and the Voodoo Music + Arts Experience, a
6 multi-day music and arts festival in New Orleans, Louisiana, since 2017.

7 14. Over the years, Plaintiff's wines have received many awards and accolades
8 including earning a silver medal at the San Francisco Chronicle International Wine Competition, a
9 #1 ranking from wine professionals in the Judgment of Oakland at the Oakland Wine Festival, and
10 Gold medals at the 2018 San Diego International Wine & Spirits Challenge and the 2018
11 Cincinnati International Wine Competition. Specifically, in 2017, the JAM 2014 cabernet
12 sauvignon received a Gold Medal in the TEXSOM International Wine Awards; in 2018, the JAM
13 2015 cabernet sauvignon received a Bronze Medal in the TEXSOM International Wine Awards;
14 and in 2019, the JAM 2017 cabernet sauvignon received a Bronze Medal in the TEXSOM
15 International Wine Awards. The 2015 varietal of JAM cabernet sauvignon also received 90 points
16 out of 100 from Wine Enthusiast.

17 15. As evidenced by Plaintiff's sales, advertising and accolades for the JAM wine, the
18 JAM Marks are well-known within the state of California. Accordingly, Plaintiff owns extremely
19 valuable goodwill in its JAM Marks and the marks have extraordinary financial value.

20 16. As a result of the wide, continuous advertising and distribution of Plaintiff's JAM
21 wine since as early as 2009, the JAM Marks have also acquired distinctiveness among wine
22 consumers.

23 17. Defendant is well aware of Plaintiff and its JAM Marks. In 2017, Plaintiff filed a
24 federal trademark infringement action against Defendant based on its use of the mark
25 BUTTERKISSED in connection with Defendant's CUPCAKE VINEYARDS brand for a
26 Chardonnay wine and Plaintiff's rights in its well-known BUTTER Chardonnay. During the
27 course of such litigation, documents produced by Defendant demonstrated that Defendant was
28 targeting the success of Plaintiff's wine. Such lawsuit was resolved to the mutual satisfaction of

1 the parties and Defendant is currently using its BUTTERKISSED mark as a sub-brand, smaller
2 and subordinate to its CUPCAKE VINEYARDS brand.

3 18. On April 1, 2019, an article appeared in the wine industry publication Shanken
4 News Daily entitled “The Wine Group Relaunches Franzia With Multi-Million Dollar Campaign.”
5 The article featured an interview with The Wine Group’s Chief Marketing Officer, Jeff Dubiel.
6 Dubiel stated that Defendant has launched its first major marketing campaign in thirty-five years
7 for its Franzia brand, which includes a full packaging revamp, as well as new products and line
8 extensions. After discussing the new packaging formats for the brand, Dubiel stated “[s]econdly,
9 we’re coming out with a new Chardonnay called Rich & Buttery.” This was the first time that
10 Plaintiff learned of Defendant’s RICH & BUTTERY brand.

11 19. On April 8, 2019, Plaintiff filed suit against Defendant in this Court alleging,
12 among other things, that Defendant’s use of the RICH & BUTTERY brand violated Plaintiff’s
13 rights in its well-known BUTTER trademark. During the course of that lawsuit, Plaintiff learned
14 that, in addition to trying to capitalize on the success of Defendant’s BUTTER Chardonnay,
15 Defendant also planned to make a Cabernet under the brand BOLD & JAMMY.

16 20. Defendant’s BOLD & JAMMY brand of wine is now available on Defendant’s
17 website at *franzia.com*, and is offered in the below packaging:



1 21. Defendant’s BOLD & JAMMY mark is prominently displayed across the middle of
 2 its new Cabernet Sauvignon SKU in white lettering in a font larger and distinct from its
 3 FRANZIA mark, in the manner of a trademark intended to attract public attention. Additionally,
 4 the term “JAMMY” is the most prominent term on the package and falls in the exact center of the
 5 packaging where a consumer’s line of vision will be drawn.

6 22. Defendant features many wines under its Franzia line which reference a particular
 7 wine style such as “Crisp White,” “Sunset Blush” and “Dark Red Blend.” The packaging for all of
 8 these wines feature the wine style name in a small rectangular box in the lower half of the
 9 packaging in a plain font much smaller and subordinate to the Franzia name. Only the RICH &
 10 BUTTERY and BOLD & JAMMY brands feature the words as a brand name in the middle of the
 11 package, larger and more prominent than the Franzia name. Below are images for the packaging
 12 for these various wine types, which demonstrate these differences:



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26 23. Additionally, Defendant sells numerous different types of red wine under the
 27 Franzia line. Apart from the BOLD & JAMMY brand, all of these other wines in the Franzia line
 28 feature consistent packaging design with the image of a tilted wine glass with wine being poured

1 in at an angle set with the name Franzia appearing at the top and the type of wine appearing in a
 2 small rectangular box in the lower half of the packaging. Only the BOLD & JAMMY brand
 3 features the large lettering prominently displaying the BOLD & JAMMY brand. Below are images
 4 for the packaging for several Franzia red wines, which demonstrate these differences:



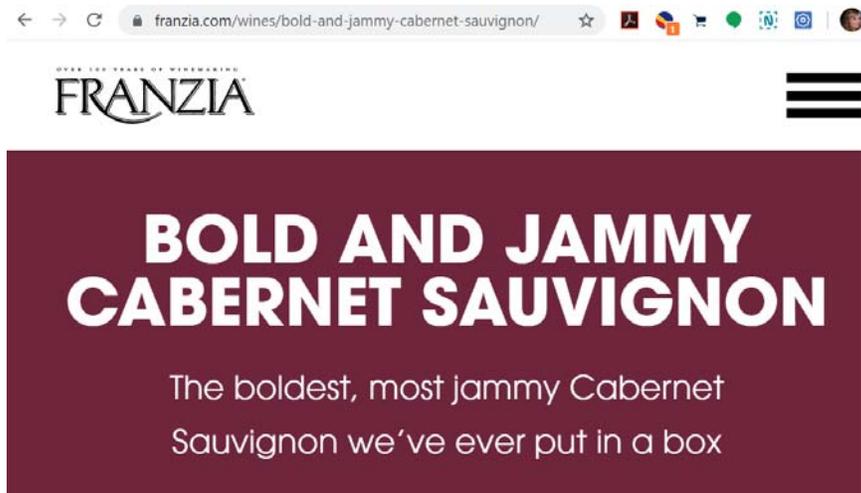
18 24. Defendant’s reasoning for using a different color scheme for the BOLD & JAMMY
 19 brand is transparent. Defendant is seeking to imitate Plaintiff’s JAM packaging as closely as
 20 possible to copy the same look and feel with which consumers are accustomed. This is particularly
 21 obvious when looking at Defendant’s blatant copying of JaM’s BUTTER and JAM wines. As
 22 shown below, the RICH & BUTTERY packaging is similar in color scheme to that of Plaintiff’s
 23 BUTTER packaging, and the BOLD & JAMMY packaging is similar in color scheme to that of
 24 Plaintiff’s JAM packaging:

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25. Defendant’s intent to mimic and copy Plaintiff’s wine is further evidenced by the manner in which Defendant advertises the wine. In addition to featuring the brand name BOLD & JAMMY on the packaging, Defendant prominently features BOLD & JAMMY as the brand name on the website. Below is an image from Defendant’s website showing the listing for the BOLD & JAMMY wine:



26. Upon information and belief, Defendant adopted the BOLD & JAMMY mark to capitalize upon the great success of the JAM Marks and to unfairly compete with the JAM brand by misleading consumers as to the origin of BOLD & JAMMY wine.

1 27. Defendant's adoption and/or use of the BOLD & JAMMY mark in commerce is
2 subsequent to Plaintiff's adoption, use and registration of its JAM Marks.

3 28. Defendant's BOLD & JAMMY mark is confusingly similar to Plaintiff's JAM
4 Marks, given that the marks are similar in sight and sound and are used on the identical goods,
5 namely, Cabernet Sauvignon.

6 29. Use of the BOLD & JAMMY mark by Defendant is likely to confuse consumers
7 into believing that Defendant's BOLD & JAMMY wine is affiliated with, associated with,
8 connected to, or sponsored by Plaintiff and its popular JAM wine, and Defendant will unjustly
9 benefit from such association.

10 30. Defendant's infringing use of the mark BOLD & JAMMY will unjustly increase
11 the profitability of Defendant's BOLD & JAMMY brand to the detriment of Plaintiff and at no
12 cost to Defendant.

13 31. Plaintiff will be further harmed as consumers will purchase the BOLD & JAMMY
14 wine believing it to be JAM wine or to be affiliated with, associated with, connected to, or
15 sponsored by Plaintiff, and thereby forego purchase of JAM wine, resulting in loss of sales to
16 Plaintiff from Defendant's unfair competition.

17 32. Defendant's infringing use of the confusingly similar BOLD & JAMMY mark will
18 financially harm Plaintiff by diminishing the value of Plaintiff's JAM Marks.

19 33. Defendant's use of the BOLD & JAMMY mark will also diminish the value of
20 Plaintiff's JAM Marks and endanger the ability of Plaintiff's JAM Marks to serve as a unique and
21 distinctive source indicator for Plaintiff and/or Plaintiff's goods.

22 34. Upon information or belief, Defendant's Cabernet Sauvignon wine under the
23 BOLD & JAMMY mark is lower in quality than that of Plaintiff's JAM Cabernet Sauvignon wine.

24 35. Unless restrained by this Court, Defendant will unfairly compete with Plaintiff by
25 using the BOLD & JAMMY mark, wherefore Plaintiff is without adequate remedy at law.

26 36. This case is an exceptional case entitling Plaintiff to treble damages and attorneys'
27 fees, and Defendant's conduct further entitles Plaintiff to punitive damages.

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1 **FIRST CLAIM FOR RELIEF**

2 (Federal Trademark Infringement under 15 U.S.C. §1114)

3 37. Defendant’s above-averred actions constitute use in commerce of a reproduction,
4 counterfeit, copy or colorable imitation of Plaintiff’s registered mark in connection with the sale,
5 offering for sale, distribution or advertising of goods or services on or in connection with which
6 such use is likely to cause consumer confusion, deception or mistake as to source, sponsorship or
7 approval of the Defendant’s aforesaid goods or services in violation of 15 U.S.C. §1114.

8 **SECOND CLAIM FOR RELIEF**

9 (Federal Unfair Competition under 15 U.S.C. §1125(a))

10 38. The Defendant’s above-averred actions constitute use in commerce of a word,
11 name or device and false designation of origin which is likely to cause confusion, or to cause
12 mistake, or to deceive as to affiliation, connection or association of Defendant with Plaintiff or as
13 to the origin, sponsorship or approval of the goods offered in connection therewith in violation of
14 15 U.S.C. §1125(a).

15 **THIRD CLAIM FOR RELIEF**

16 (State Unfair Competition under Cal. Bus & Prof. Code §17200)

17 39. The Defendant’s above-averred actions related to use of the BOLD & JAMMY
18 mark in commerce constitute unlawful, unfair or fraudulent business acts or practices in violation
19 of Cal. Bus. & Prof. Code §17200.

20 **FOURTH CLAIM FOR RELIEF**

21 (False or Misleading Statements under Cal. Bus & Prof. Code §17500)

22 40. The Defendant’s above-averred actions related to use of the BOLD & JAMMY
23 mark in commerce constitute the dissemination and making of untrue or misleading statements,
24 which by the exercise of reasonable care should have been known to be false or misleading, in
25 violation of Cal. Bus. & Prof. Code §17500.

26 **FIFTH CLAIM FOR RELIEF**

27 (Common Law Trademark Infringement)

28 41. The Defendant’s above-averred actions related to use of the BOLD & JAMMY

1 mark in commerce constitute trademark infringement and passing off in violation of the common
2 law of California.

3 **SIXTH CLAIM FOR RELIEF**

4 (Common Law Unfair Competition)

5 42. The Defendant's above-averred actions related to use of the BOLD & JAMMY
6 mark in commerce constitute a false designation of origin in violation of the common law of
7 California.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff requests that judgment be entered as follows:

10 1. That Defendant, its principals, partners, franchisees, agents, employees, licensees,
11 affiliates, distributors, producers, any parent and subsidiary companies, attorneys and
12 representatives and all of those in privity with or acting under its direction and/or pursuant to its
13 control, be preliminarily and permanently enjoined and restrained, from directly or indirectly:

- 14 a. Prominently displaying the phrase BOLD & JAMMY or otherwise using
15 BOLD & JAMMY as a trademark in connection with alcoholic beverage;
16 b. Performing any acts or using any trademarks, names, words, images or
17 phrases that are likely to cause confusion, to cause mistake, to deceive or
18 otherwise mislead the trade or public into believing that Plaintiff and
19 Defendant are one and the same or are in some way connected or that
20 Plaintiff is a sponsor of Defendant or that the goods of Defendant originate
21 with Plaintiff or are likely to lead the trade or public to associate Defendant
22 with Plaintiff;

23 2. That Defendant be required to file with the Court, and serve on Plaintiff, a
24 statement under oath evidencing compliance with any preliminary or permanent injunctive relief
25 ordered by the Court within fourteen (14) days after the entry of such order of injunctive relief;

26 3. That Defendant, its principals, partners, franchisees, agents, employees, licensees,
27 affiliates, distributors, producers, any parent and subsidiary companies, attorneys and
28 representatives and all of those in privity with or acting under its direction and/or pursuant to its

1 control, be required to deliver up for destruction all advertising, promotional materials, point of
2 sale materials, labels, caps, corks, neckers, packaging, and any other materials bearing the
3 infringing mark together with all artwork, plates, molds, matrices and other means and materials
4 for making and reproducing the same;

5 4. That Defendant be ordered to recall infringing BOLD & JAMMY wine in the
6 marketplace from retailers, to the extent that any has been distributed;

7 5. That Defendant be ordered to pay Plaintiff monetary damages for the harm
8 resulting from infringement of Plaintiff’s mark, in an amount to be determined at trial;

9 6. That Plaintiff’s damages be trebled and that Defendant be order to pay Plaintiff’s
10 attorneys’ fees on the basis that this is an exceptional case;

11 7. That Plaintiff be awarded punitive damages as a result of Defendant’s conduct; and

12 8. That Plaintiff have such other and further relief as this Court shall deem just and
13 proper on the merits.

14 DATED: April 1, 2020

HANSON BRIDGETT LLP

16 By: /s/ Noel M. Cook

17 NOEL M. COOK
18 GARNER K. WENG
19 JANIE L. THOMPSON
Attorneys for Plaintiff
JaM CELLARS, INC.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby requests a trial by jury in this matter.

22 DATED: April 1, 2020

HANSON BRIDGETT LLP

24 By: /s/ Noel M. Cook

25 NOEL M. COOK
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27 JANIE L. THOMPSON
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