

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT – CHANCERY DIVISION

GEORGE CADY, MARIETTA CARLSON, and MARK WILKE, individually, and on behalf of all others similarly situated,	Case No. _____
Plaintiff,	(Jury Trial Demanded)
vs.	2015 CHOCOLATE CALENDAR ROOM 04 TIME 00:00 CLERK OF THE CIRCUIT COURT DOMESTIC RELATIONS DOROTHY BROWN CLERK 15119-3 PM 4:15
DOUBLE DIAMOND DISTILLERY, LLC d/b/a BRECKENRIDGE DISTILLERY	
Defendant.	

**CLASS ACTION COMPLAINT**

Plaintiffs George Cady, Marietta Carlson, and Mark Wilke (collectively, the “Plaintiffs”), on behalf of themselves and all others similarly situated, by and through their counsel at Peddicord, Wharton, Spencer, Hook, Barron & Wegman, LLP, and Taft Stettinius & Hollister, LLP, brings this action against Defendant DOUBLE DIAMOND DISTILLERY, LLC (“Defendant”) as follows:

**BACKGROUND**

1. The craft spirit industry has undertaken substantial growth in the past decade. This growth is in part attributable to consumers’ appetite and appreciation of artisanal and local products.
2. Defendant owns and operates the Breckenridge Distillery in Breckenridge, Colorado and sells whiskey under the Breckenridge label. Defendant’s marketing of Breckenridge Bourbon whiskey (“Breckenridge”) is designed to lead consumers to believe that Breckenridge is made in Colorado.

3. On Breckenridge's label and bottle, Defendant markets Breckenridge as a product made in Colorado.

4. The Breckenridge label states that Breckenridge is "A HANDCRAFTED BOURBON WHISKEY MADE AT 9600 FEET WITH SNOWMELT FROM THE ROCKY MOUNTAINS." (Capitalized letters appear in the original bottle labeling.)

5. Defendant's website markets Breckenridge as being comprised of a "unique high-rye mash bill" and cut with "Breckenridge snowmelt water for proofing" to separate its whiskey from competing brands. *See* <https://www.breckenridgedistillery.com/hooch/products>.

6. Defendant markets Breckenridge in this fashion to lead consumers to believe they are purchasing a unique, premium whiskey distilled in the mountains of Colorado, as opposed to a sourced, bulk whiskey product from a volume manufacturer located outside of Colorado.

7. Defendant's marketing allows it to sell hundreds of thousands of bottles of Breckenridge at a premium price compared to other lower cost bulk whiskey.

8. Defendant's marketing tactics and representations are materially false and misleading. While Breckenridge is bottled in Colorado, at least some of the whiskey comprising Breckenridge is not produced or distilled in Colorado. Rather, some of the whiskey in bottles of Breckenridge is sourced by Defendant from bulk whiskey producers located outside of Colorado.

9. Thousands of consumers across the United States have been injured by Defendant's materially false representations and marketing practices. Each has purchased Breckenridge and paid a premium for the product in reliance on Defendant's representations that Breckenridge is "produced and bottled" in Colorado "AT 9600 FEET WITH SNOWMELT FROM THE ROCKY MOUNTAINS," while being completely unaware of the origins of the whiskey. (Capitalized letters appear in the original bottle labeling.)

10. Plaintiffs, on their own behalf and on behalf of a class of similarly situated individuals, bring this lawsuit seeking damages, injunctive remedies, and restitution, along with reasonable attorneys' fees and costs.

#### **PARTIES IN INTEREST**

11. Plaintiff George Cady is a natural person and resident of the State of Illinois.

12. Plaintiff Marietta Carlson is a natural person and resident of the State of Illinois.

13. Plaintiff Mark Wilke is a natural person and resident of the State of Illinois.

14. Defendant, Double Diamond Distillery, LLC, is a Colorado corporation, organized under the laws of the State of Colorado, with its principal place of business located in Breckenridge, Colorado. Defendant conducts business in the State of Illinois, inclusive of Cook County, and nationally.

#### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this Defendant pursuant to 735 ILCS 5/2-209(a)(1), 735 ILCS 5/2-209(a)(7), 735 ILCS 5/2-209(b)(4) and 735 ILCS 5/2-209(c).

16. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101 and 735 ILCS 5/2-102(a).

17. Venue is proper in this Court because the amount of damages sought exceeds \$50,000.

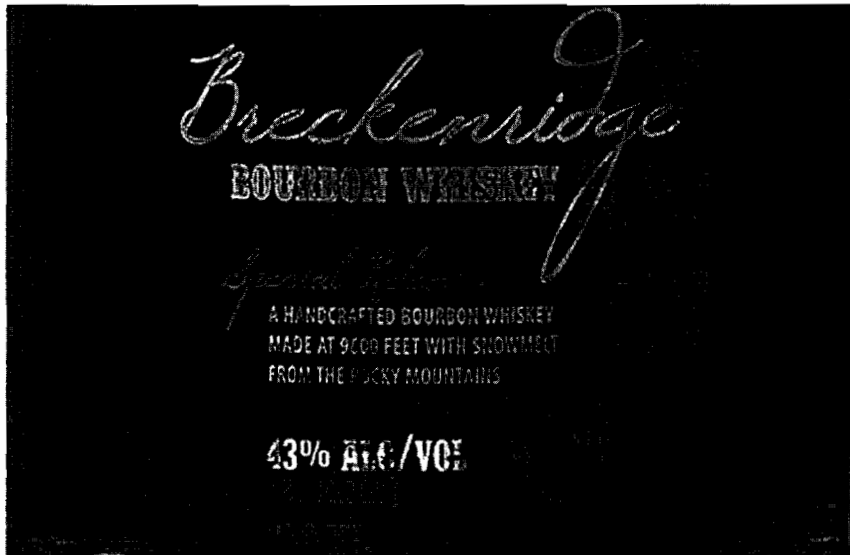
#### **FACTUAL ALLEGATIONS**

18. Defendant began selling Breckenridge in or around 2007.

19. In an effort to distinguish itself from competitors, Defendant markets Breckenridge as a unique Colorado product.

20. Defendant states on the label for Breckenridge that Breckenridge is “PRODUCED AND BOTTLED BY BRECKENRIDGE DISTILLERY, BRECKENRIDGE, COLORADO.” (Capitalized letters appear in the original bottle labeling.)

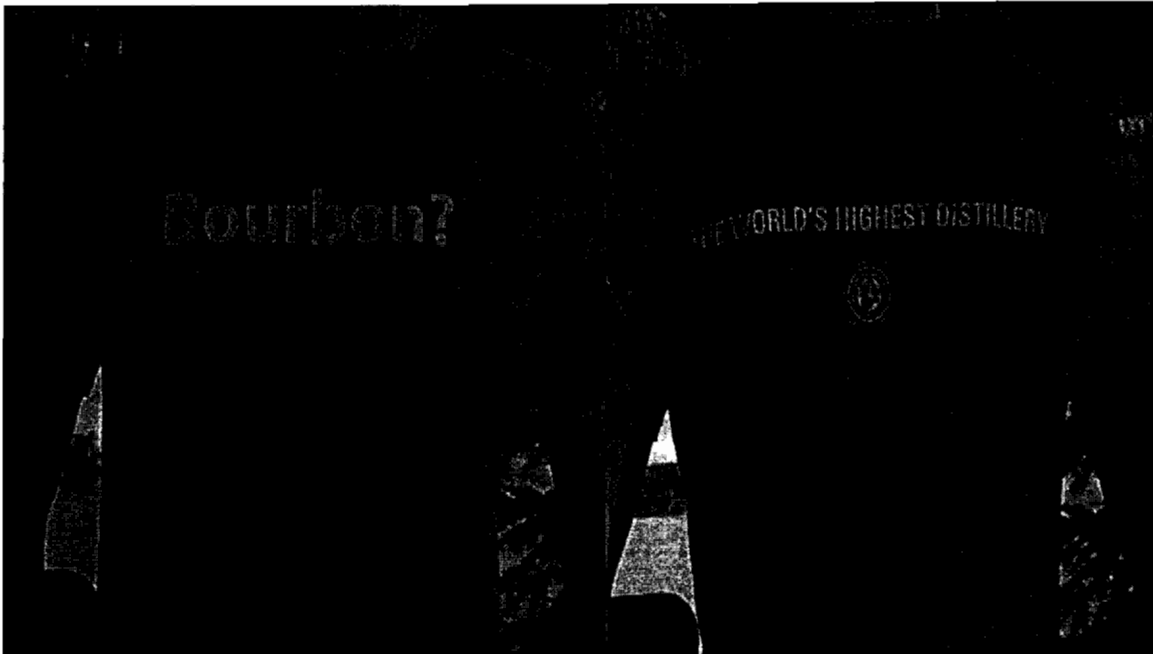
21. The Breckenridge label also states that Breckenridge is “A HANDCRAFTED BOURBON WHISKEY MADE AT 9600 FEET WITH SNOWMELT FROM THE ROCKY MOUNTAINS.” (Capitalized letters appear in the original bottle labeling.) A picture of the bottle label is set forth below:



22. On Breckenridge’s website, Defendant repeatedly references the Colorado origin of the product. Specifically, the Breckenridge website contains the following representations:

- A. a license plate with the phrase “Hooch Colorado;”
- B. A description of Breckenridge that states “[b]esides our unique high-rye mash bill we owe our success to careful mingling of casks at each bottling and the perfect Breckenridge snowmelt water used for proofing. The natural minerality of our water source ensures the luscious mouth-feel, depth of flavor, and long finish making Breck Bourbon one of the very best Whiskeys in the World;”

C. Apparel with specific references to bourbon distilled at 9600 feet. The below photographs depict retail shirts available for purchase:



D. Representations pertaining to "The World's Highest Distillery."

23. Defendant's marketing tactics are designed to deceive consumers into believing that Breckenridge is an authentic and unique product made in Colorado.

24. Defendant's marketing tactics allow it to charge consumers a premium, as consumers are willing to pay more for "A HANDCRAFTED BOURBON WHISKY MADE AT 9600 FEET WITH SNOWMELT FROM THE ROCKY MOUNTAINS" than they would pay for whiskey made by bulk producers outside of Colorado. (Capitalized letters appear in the original bottle labeling.)

25. Despite being advertised as a unique product of Colorado, Breckenridge is made, in whole or in part, by bulk whiskey producers at facilities outside of Colorado.

26. Defendant purchases whiskey made by bulk producers located outside of Colorado, then transports the whiskey to Colorado to be bottled with the Breckenridge label.

27. Defendant's owner, Bryan Nolt, admitted to Breckenridge's whiskey sourcing in a statement rendered in November 2013. Mr. Nolt stated: "Due to demand we function at max capacity but over deplete our Bourbon inventory at times. When that happens we contract time at other distilleries to produce the identical mash bill, fermentation, and distillation process. And while I'd say there's a lot of KY tradition in our Bourbon, we've never made, bought, or contracted any Bourbon or from KY." Upon information and belief, Mr. Nolt made this statement via email in response to an inquiry regarding the origins of Breckenridge from a consumer who had visited Breckenridge's distillery. This exchange was reported on a whiskey blog operated by Chuck Cowdery: <http://chuckcowdery.blogspot.com/2014/09/a-mystery-at-9600-feet.html>.

28. Similarly, at some point on or around August 2014, a presently unidentified Breckenridge representative responded to an email inquiry about the origins of Breckenridge by emailing: "Yes, we are outsourcing a portion of the bourbon that ends up in the bottle. The other portion is mashed, fermented, distilled, aged, and proofed in house. Once we get our new still in (prob in September) we'll be able to catch up with demand and transition to everything in the bottle being made in house. As for who we are partnering with for distillation, that is proprietary, sorry!" This exchange was reported on the whiskey blog Breaking Bourbon: <http://www.breakingbourbon.com/breckenridge.html>.

29. Upon information and belief, the distilleries with whom Defendant "contract[s] time" and "oursourc[es]" production to referenced in Defendant's statements set forth in Paragraphs 27 and 28 are located outside of Colorado. Functioning Colorado distilleries do not have the production capacity to sell whiskey in bulk to Defendant.

30. Plaintiffs were not aware of the statements set forth in Paragraphs 27 and 28, which were reported in niche whiskey blogs, at the time they purchased Breckenridge. Had they known of these statements, Plaintiffs would not have purchased Breckenridge or would not have paid a premium for Breckenridge.

31. Whiskeys made using bulk whiskey made outside of Colorado and sold without representations that they are “A HANDCRAFTED BOURBON WHISKEY MADE AT 9600 FEET WITH SNOWMELT FORM THE ROCKY MOUNTAINS” sell for prices far lower than Breckenridge. (Capitalized letters appear in the original bottle labeling.)

32. Defendant knows that consumers are willing to pay a premium price for craft Colorado whiskey, and that consumers purchase Breckenridge because they believe that they are buying a high quality craft Colorado whiskey.

33. The premium paid by Breckenridge consumers over and above the price of bulk whiskey is thus directly attributable to Defendant’s false and deceptive marketing practices.

34. Breckenridge’s labels do not identify the whiskey as distilled outside of Colorado.

35. At all times material to this suit, Defendant was required, pursuant to federal regulation (27 C.F.R §5.36(d) (effective March 31, 2006)), to identify the state in which its whiskey was distilled on Breckenridge’s label. Defendant violated this regulation by not listing the state of distillation of the whiskey in Breckenridge on the Breckenridge label.

36. At all times material to this suit, pursuant to federal regulation (27 C.F.R §5.42(a)(1) (effective March 31, 2006)), it was a prohibited practice for Defendant to place a statement on a label of Breckenridge that was “false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.”

Breckenridge's labels violate this regulation for the reasons and in the ways cited in the paragraphs above.

37. Defendant's violation of the above described federal regulations demonstrates the lengths to which it is willing to go in order to perpetuate the fraudulent marketing assertions cited above. Defendant's intentional concealment of the true producer of all whiskey sold as Breckenridge is demonstrative of its deliberate fraud and shows its disregard for the rights of Plaintiffs and all members of the Class.

#### **FACTS PERTAINING TO THE CLASS REPRESENTATIVES**

38. Plaintiff Cady is a natural citizen of Cook County, Illinois.

39. Plaintiff Cady purchased a bottle of Breckenridge on February 17, 2015 at a Binny's Beverage Depot in Chicago, Illinois for \$55.65 as a result of false and misleading representations made by Defendant as detailed above. An invoice reflecting this purchase is attached as Exhibit A.

40. Specifically, Plaintiff Cady relied on the Breckenridge label's statement that Breckenridge is "A HANDCRAFTED BOURBON WHISKEY MADE AT 9600 FEET WITH SNOWMELT FROM THE ROCKY MOUNTAINS." (The capitalized letters appear in the original bottle labeling.)

41. The label and marketing materials reviewed by Plaintiff Cady prior to his purchase of Breckenridge did not reveal that Breckenridge contains whiskey mass produced by bulk whiskey distilleries located outside of Colorado.

42. Had Plaintiff Cady known the truth of Breckenridge's origin, he would not have purchased the product for personal consumption and use or would have paid less for the bottle.

43. Plaintiff Carlson is a natural citizen of Cook County, Illinois.



44. Plaintiff Carlson purchase a bottle of Breckenridge on February 21, 2015 at a Binny's Beverage Depot in Chicago, Illinois for \$47.46 as a result of false and misleading misrepresentations made by Defendant as detailed above. A receipt reflecting this purchase is attached as Exhibit B.

45. Specifically, Plaintiff Carlson relied on the Breckenridge label's statement that Breckenridge is "A HANDCRAFTED BOURBON WHISKEY MADE AT 9600 FEET WITH SNOWMELT FROM THE ROCKY MOUNTAINS." (The capitalized letters appear in the original bottle labeling.)

46. The label and marketing materials reviewed by Plaintiff Carlson prior to her purchase of Breckenridge did not reveal that Breckenridge contains whiskey mass produced by bulk whiskey distilleries located outside of Colorado.

47. Had Plaintiff Carlson known the truth of Breckenridge's origin, she would not have purchased the product for personal consumption and use or would have paid less for the bottle.

48. Plaintiff Wilke is a natural citizen of Cook County, Illinois.

49. Plaintiff Wilke purchase a bottle of Breckenridge on or around September 2013 at a Binny's Beverage Depot in Chicago, Illinois for approximately \$50 as a result of false and misleading misrepresentations made by Defendant as detailed above.

50. Specifically, Plaintiff Wilke relied on the Breckenridge label's statement that Breckenridge is "A HANDCRAFTED BOURBON WHISKEY MADE AT 9600 FEET WITH SNOWMELT FROM THE ROCKY MOUNTAINS." (The capitalized letters appear in the original bottle labeling.)

51. The label and marketing materials reviewed by Plaintiff Wilke prior to his purchase of Breckenridge did not reveal that Breckenridge contains whiskey mass produced by bulk whiskey distilleries located outside of Colorado.

52. Had Plaintiff Wilke known the truth of Breckenridge's origin, he would not have purchased the product for personal consumption and use or would have paid less for the bottle.

### CLASS ALLEGATIONS

53. **Definition:** Plaintiff brings this action pursuant to 735 ILCS 5/2-801 on behalf of himself and a nationwide class of similarly situated individuals, as defined below:

All natural persons who have purchased a bottle or multiple bottles of Breckenridge together with all natural persons who have purchased a drink or drinks of Breckenridge through a retail establishment since 2010.

Nationwide Class: All natural persons who have purchased Breckenridge whiskey throughout the United States.

Illinois Subclass: All natural persons residing in the State of Illinois who have purchased Breckenridge whiskey.

Excluded from the Class and Illinois Subclass are (1) Defendant, Defendant's agents, subsidiaries, predecessors and successors; (2) any entity in which Defendant or its affiliates have a controlling interest, and any employee, officers, or director of said entities, (3) the presiding Judge of this matter, and any member of the Judge's immediate family; (4) any such person who timely excludes him/herself from the Class or Illinois Subclass; (5) any person or persons who have filed independent claims against Defendant concerning the allegations set forth herein, and for whom such claims have reached final adjudication or have been otherwise released; and (6) the legal representatives, assigns or successors of any excluded person.

54. **Numerosity:** The precise number of Class members and Illinois Subclass members is currently unknown and otherwise unavailable to Plaintiff at the present time. However, individual joinder in this case is impracticable. Upon information and belief, Defendant has sold hundreds of thousands of bottles of Breckenridge to consumers nationwide, and thousands of bottles of Breckenridge to consumers located in Illinois. The Class and Illinois Subclass thus likely consist of thousands of individuals, and Class and Illinois Subclass members may be identified through Defendant's records of other means.

55. **Commonality and Predominance:** Common questions of law and fact pertain to Plaintiffs and the Class and Illinois Subclass members. The common questions predominate over individual questions which may affect individual Class and Illinois Subclass members. Such common questions include, but are not limited to:

- a. Whether Defendant misrepresents that Breckenridge is a handcrafted bourbon whiskey made in Colorado at 9600 feet using snowmelt from the Rocky Mountains;
- b. Whether Defendant misrepresents that Breckenridge is produced from a unique recipe;
- c. Whether Defendant includes whiskey distilled outside of Colorado by bulk whiskey producers in bottles of Breckenridge;
- d. Whether Defendant has, and continues, to fail to disclose that whiskey which becomes Breckenridge is the product of bulk sale producers;
- e. Whether Defendant's misrepresentations regarding the origin of whiskey in bottles of Breckenridge allow it to charge consumers a premium for Breckenridge;
- f. Whether Defendant's misrepresentations regarding the origin of whisky in bottles of Breckenridge are intentional;

- g. Whether Defendant's actions violate the Illinois Consumer Fraud and Deceptive Business Practices Act;
- h. Whether Defendant's actions violate the Colorado Consumer Protection Act;
- i. Whether Defendant's actions led to unjust enrichment;
- j. Whether Defendant's actions were, and remain, fraudulent and misleading to consumers; and
- k. Whether Defendant's fraudulent and deceptive marketing practices should be enjoined.

56. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent the interests of the Class and Illinois Subclass, and have retained counsel competent in class action representation. Defendant has no defenses unique to Plaintiffs, and Plaintiffs have no antagonistic interests toward the Class or Illinois Subclass.

57. **Appropriateness:** Class proceedings are superior to all other available methods for adjudication of this controversy as individual joinder of claims is impracticable. In addition, it would be impractical for individual Class or Illinois Subclass members to obtain effective relief as individual damages suffered by Class or Illinois Subclass members are likely to be small relative to the resources needed to pursue litigation. Even assuming individual class members are able and willing to pursue individual litigation, a class action remains preferable given the multiplicity of individual actions would increase the time and expense of litigating identical complex issues and run the risk of inconsistent judgments. A class action thus provides the benefit of fewer administration and management difficulties, single adjudication, economy of

scale and supervision and oversight by a singular court. Such oversight will result in a reduction of expense and effort for all affected parties and the Court, together with uniformity of decisions.

**COUNT I**  
**VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND**  
**DECEPTIVE BUSINESS PRACTICES ACT**  
**(815 ILCS § 505/1)**

58. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-57 as though fully set forth herein.

59. The Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA) prohibits deceptive, unlawful and fraudulent business acts or practices, including false advertising, misrepresentation, or omission of material facts in the sale of goods or services. 815 ILCS § 505/2.

60. ICFA applies to Defendant's actions because ICFA applies to transactions involving the sale of goods.

61. Defendant is considered a "person" pursuant to the ICFA. *See* § 505/1(c).

62. The Plaintiffs and all class members are defined as "consumers" pursuant to the ICFA. *See id.* at § 505/1(e).

63. Breckenridge is considered "merchandise" pursuant to § 505/1(b). The sale of Breckenridge falls within the definitions of "commerce" and/or "trade" under the ICFA.

64. Defendant's primary selling point is that Breckenridge is a true, craft and artisanal product made in Colorado "AT 9600 FEET WITH SNOWMELT FROM THE ROCKY MOUNTAINS." (Capitalized letters appear in the original bottle labeling.)

65. This representation is false. At least some of the whiskey in bottles of Breckenridge is distilled outside of Colorado by bulk whiskey producers.

66. Defendant's misrepresentations regarding the correct and true origin of Breckenridge are deceptive practices prohibited by the ICFA.

67. Plaintiff and members of the Class relied upon Defendant's deceptive practices when they purchased Breckenridge.

68. Plaintiff and members of the Class would not have purchased Breckenridge for a premium price – if at all – had they known the true origins of Breckenridge.

69. In addition to violating ICFA, Defendant similarly violated the Illinois Uniform Deceptive Trade Practices Act in the following accord:

- a. By violating § 510/2(a)(2);
- b. By violating § 510/2(a)(4); and
- c. By violating § 510/2(a)(5)

70. Plaintiffs' and the Class members' reliance and expectations that Breckenridge is a true and authentic product of Colorado were reasonable given Defendant's misrepresentations.

71. Plaintiffs and the Class members viewed Breckenridge's labeling prior to purchasing Breckenridge, and reasonably relied on Defendant's representations when they elected to purchase to Breckenridge.

72. Defendant's misrepresentations misled Plaintiffs and members of the Class, who were acting in reasonable fashion under the circumstances presented by Defendant, and thereby constitute deceptive practices which violate the ICFA.

73. As a proximate cause of Defendant's violations of the ICFA, Plaintiffs and the Class members have suffered damages, including the price paid to purchase Breckenridge at a premium amount over what they would have otherwise paid for bulk, sourced whiskey.

**COUNT II**  
**VIOLATION OF THE COLORADO CONSUMER PROTECTION ACT**  
**(Colo. Rev. Stat. § 6-1-101, *et seq.*)**

74. Plaintiff incorporates by reference the allegations contained in paragraphs 1-57 as though fully set forth herein.

75. The Colorado Consumer Protection Action (CCPA), Colo. Rev. Stat. § 6-1-101 *et seq.*, serves to protect the public from unfair or deceptive trade practices that by their nature are injurious, offensive, or dangerous to the public.

76. The CCPA prohibits a broad range of deceptive trade practices, including knowingly making various false representations concerning goods, services or property; and/or advertising goods under secretive or ulterior motives. §§ 6-1-105(1)(i)–(k).

77. Defendant's omissions and misrepresentations relative to the true and correct origins of Breckenridge are unfair and/or deceptive practices prohibited by the CCPA. § 6-1-105(1). Defendant's marketing message is based on representations that Breckenridge is a true and authentic product made in Colorado.

78. Defendant's omissions and misrepresentations concerning the origins of Breckenridge have been made in the course Defendant's marketing and sales of Breckenridge. Plaintiffs and the members of the Class relied upon Defendant's representations when they purchased bottles of Breckenridge.

79. Defendant's omissions and misrepresentations have led, and continue to lead, the public to purchase Breckenridge under the false impression they are purchasing an artisanal, regionally produced whiskey – when in reality the public is purchasing large scale, sourced whiskey from bulk producers.

80. As a direct cause of Defendant's deceptive practices, Plaintiffs and the Class have suffered actual damages amounting to the full or partial retail price of Breckenridge. Had Plaintiff and the Class been knowledgeable of the true origin of Breckenridge, they would

not have purchased Breckenridge or would not have purchased Breckenridge at a premium price.

81. The injuries to Plaintiffs and the Class were caused by Defendant's false and misleading advertising, which originate from Colorado. Further, Defendant's website – a key source of Defendant's deceptive tactics - is maintained in Colorado.

### **COUNT III UNJUST ENRICHMENT**

82. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-57 as though fully set forth herein.

83. Defendant was enriched by revenue achieved from the sale Breckenridge pursuant to the false and deceptive advertising as described above.

84. Defendant's enrichment was at the expense of the Plaintiffs and other Class members.

85. Defendant would be unjustly enriched by being allowed to retain funds achieved from the sale of Breckenridge due to the circumstances stated above.

86. Plaintiffs and the Class are entitled to injunctive relief because Defendant's conduct has caused and threatens an invasion of the rights of the Plaintiffs and Class members, and substantial injury and damages will continue to result unless an injunction is granted, for which no adequate legal remedy is available.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, individually and on behalf of the Class, pray the Court enter an Order as follows:

A. Finding that this action meets the prerequisites for the filing of a class action, and certification as herein described;

B. Designation of Plaintiffs as representatives of the Class and their counsel as Class Counsel;



C. Judgment inclusive of compensatory damages, attorneys' fees, costs, and interest as allowed by law;

D. Injunctive and equitable relief enjoining Defendant's false and deceptive marketing practices;

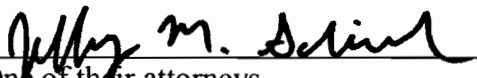
E. All further relief as the Court deems just and proper.

### **JURY DEMAND**

Plaintiffs, on behalf of themselves and all persons similarly situated, hereby demands a trial by jury on all issues of the within cause of action.

Dated: March 3, 2015

By: Plaintiffs George Cady, Marietta Carlson, and Mark Wilke, individually, and on behalf of all others similarly situated,

  
\_\_\_\_\_  
One of their attorneys

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**ATTORNEYS FOR PLAINTIFFS and THE  
CLASS**