

The Honorable Robert S. Lasnik

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRUCE CORKER d/b/a RANCHO ALOHA;
COLEHOUR BONDERA and MELANIE
BONDERA, husband and wife d/b/a
KANALANI OHANA FARM; ROBERT
SMITH and CECELIA SMITH, husband and
wife d/b/a SMITHFARMS; and
SMITHFARMS, LLC, a Hawaii limited liability
company; on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION, a
Washington corporation; AMAZON.COM,
INC., a Delaware corporation; HAWAIIAN
ISLES KONA COFFEE, LTD., LLC, a
Hawaiian limited liability company; COST
PLUS/WORLD MARKET, a subsidiary of
BED BATH & BEYOND, a New York
corporation; BCC ASSETS, LLC d/b/a
BOYER'S COFFEE COMPANY, INC., a
Colorado corporation; L&K COFFEE CO.
LLC, a Michigan limited liability company;
MULVADI CORPORATION, a Hawaii
corporation; COPPER MOON COFFEE, LLC,
an Indiana limited liability company; GOLD

CIVIL ACTION NO. 2:19-cv-00290-RSL

THIRD AMENDED
COMPLAINT - CLASS ACTION
FALSE DESIGNATION OF ORIGIN
LANHAM ACT (15 U.S.C. § 1125)

JURY DEMANDED

THIRD AMENDED COMPLAINT
(Civil Action No. 2:19-cv-00290-RSL)

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1 COFFEE ROASTERS, INC., a Delaware
2 corporation; CAMERON'S COFFEE AND
3 DISTRIBUTION COMPANY, a Minnesota
4 corporation; PACIFIC COFFEE, INC., a
5 Hawaii corporation; THE KROGER CO., an
6 Ohio corporation; WALMART, INC., a
7 Delaware corporation; BED BATH &
8 BEYOND, INC., a New York corporation;
9 ALBERTSONS COMPANIES INC., a
10 Delaware Corporation; SAFEWAY, INC., a
11 Delaware Corporation; MNS LTD., a Hawaii
12 Corporation; THE TJX COMPANIES d/b/a T.J.
13 MAXX, a Delaware Corporation;
14 MARSHALLS OF MA, INC. d/b/a
15 MARSHALLS, a Massachusetts corporation;
16 SPROUTS FARMERS MARKET, INC. a
17 Delaware corporation; COSTA RICAN GOLD
18 COFFEE CO., INC., a Florida corporation;
19 KEVIN KIHNKE, an individual

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Defendants.

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1 Plaintiffs, growers of Kona coffee, through their counsel of record, on their own behalf and on
2 behalf of all others similarly situated, aver, allege and state as follows their Third Amended Complaint
3 against the Defendants, based on information and belief and the investigation of their counsel.
4

5 **I. INTRODUCTION**

6 1. This class action is filed on behalf of the Kona coffee farmers who grow the entire
7 worldwide supply of authentic Kona coffee. Kona coffee, renowned for its distinctive flavor and
8 aroma, is one of the most famous and revered specialty coffees in the world. But only coffee grown
9 on farms located within the Kona District of the Big Island of Hawaii (“Kona District” defined in
10 paragraph 39 below) can be truthfully marketed, labeled, and sold as Kona coffee. The volcanic soil,
11 the elevation, and the humidity of this region combine to give Kona coffee its distinctive
12 characteristics. The term “Kona” tells consumers their coffee comes from this distinctive geographic
13 region.
14

15 2. Plaintiffs bring this action against coffee distributors, wholesalers, and retailers who
16 for years have wrongfully profited from the goodwill and reputation associated with the geographic
17 region of Kona by passing off ordinary commodity coffee as “Kona” coffee. Defendants’ deceptive
18 practices have flooded the market with counterfeit “Kona” coffee products, injuring honest Kona
19 farmers in two distinct ways. First, the marketplace is overwhelmed with counterfeit “Kona” products,
20 and that excessive supply drives the price down sharply. Second, because the counterfeit products are
21 basically comprised of generic commodity coffee, consumers are misled into concluding that Kona
22 coffee is nothing special. These deceived consumers become less likely to pay a premium for authentic
23 Kona coffee in the future.
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1 coffee under the “Kanalani Ohana Farm” label to consumers around the world through their website,
2 www.kanalaniohana.farm.

3
4 7. Plaintiffs Robert and Cecelia Smith are a married couple who conducted business under
5 the name of “Smithfarms,” growing, harvesting, and roasting Kona coffee for decades within the Kona
6 District until approximately June 17, 2015 when they formed Smithfarms, LLC. Plaintiff Smithfarms,
7 LLC (“Smithfarms”) is a Hawaii limited liability company registered on or about June 17, 2015 with
8 its principal place of business in Honaunau, Hawaii. Since registration, Smithfarms has grown,
9 harvested, and roasted Kona coffee within the Kona District. Smithfarms’ sole member is “The Robert
10 H. Smith Revocable Trust” for which Plaintiff Robert Smith is the grantor and sole trustee.
11 Smithfarms is governed by its two managers, Robert and Cecelia Smith (the “Smiths”), a married
12 couple. Smithfarms and the Smiths sell or sold their Kona coffee under the “Smithfarms” label to
13 consumers around the world through the website, www.smithfarms.com, throughout the class period
14 described in the Complaint.
15

16
17 8. On information and belief, defendant HAWAIIAN ISLES KONA COFFEE LTD.,
18 LLC (“Hawaiian Isles”), is a Hawaii limited liability company with its principal place of business in
19 Honolulu, Hawaii. Hawaiian Isles sells a variety of coffee products throughout the United States,
20 including this Judicial District, through various retail outlets, including but not limited to Cost Plus
21 World Market, Kroger, Safeway, Albertsons, ABC Stores, Amazon, and Walmart. Hawaiian Isles
22 falsely designates the geographic origin of its “Kona” coffee products with the prominent placement
23 of KONA on the front of the packaging. Hawaiian Isles advertises its coffee products nationally on
24 the Internet and with digital marketing campaigns through social media sites such as Facebook.
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1 9. On information and belief, defendant COST PLUS/WORLD MARKET (“World
2 Market”) is a retail chain with 276 stores across the United States including 11 stores located in this
3 Judicial District. World Market, with its headquarters in Alameda, California, is a wholly owned
4 subsidiary of BED, BATH & BEYOND INC., a New York corporation. Through its retail locations
5 and its own online store, www.worldmarket.com, World Market sells in this Judicial District and
6 throughout the United States both its own private-label Kona coffee products as well as Kona coffee
7 products offered by third parties. World Market falsely designates the geographic origin of its “Kona”
8 coffee products with the prominent placement of KONA on the front of the packaging. Certain third-
9 party coffee products that World Market sells, such as those from Hawaiian Isles, similarly feature on
10 the label the false designation of KONA as the geographic origin of the coffee.
11

12
13 10. On information and belief, BCC ASSETS, LLC d/b/a BOYER’S COFFEE
14 COMPANY, INC. (“Boyer’s”) is a Colorado corporation with its principal place of business in
15 Denver, Colorado. Boyer’s is a wholly owned subsidiary of Luna Gourmet Coffee and Tea Company,
16 LLC, which is a Colorado limited liability company also based in Denver, Colorado. Boyer’s sells its
17 coffee products in this Judicial District and throughout the United States through its online store at
18 www.boyerscoffee.com as well as through national retailers including but not limited to Amazon,
19 Walmart, and Safeway. Boyer’s falsely designates the geographic origin of its “Kona” coffee products
20 with the prominent placement of KONA on the packaging.
21

22
23 11. On information and belief, defendant L&K COFFEE CO. LLC (“L&K”) is a Michigan
24 limited liability company with its principal place of business at Nunica, Michigan. L&K primarily
25 does business under the name Magnum Coffee Roastery, under which it sells a variety of coffee
26 products under its Magnum Exotics label. L&K sells its coffee products throughout the United States,
27

1 including this Judicial District, through both its own online store, www.javaboutlevard.com, and
2 various retail outlets, including but not limited to Costco, Amazon, Walmart, T.J. Maxx and Marshalls.
3 L&K falsely designates the geographic origin of its “Kona” coffee products with the prominent
4 placement of KONA on the front of the packaging.
5

6 12. On information and belief, KEVIN KIHNIKE (“Kihnke”) is an individual that resides
7 in Grand Rapids, Michigan. Kihnke is owner and president of L&K and is the primary decision-maker
8 for the package design of L&K’s coffee products, including coffee products that have been falsely
9 designated as originating from “Kona.” Kihnke is also solely responsible for determining the
10 percentage of Kona coffee included in L&K’s “Kona” coffee products.
11

12 13. On information and belief, defendant MULVADI CORPORATION is a Hawaii
13 corporation with its principal place of business in Honolulu, Hawaii. Mulvadi sells a variety of coffee
14 products throughout the United States, including this Judicial District, through various retail outlets,
15 including but not limited to ABC Stores, Amazon, and Walmart. Mulvadi falsely designates the
16 geographic origin of its “Kona” coffee products with the prominent placement of KONA on the front
17 of the packaging.
18

19 14. On information and belief, defendant COPPER MOON COFFEE, LLC (“Copper
20 Moon”) is an Indiana limited liability company with its principal place of business in East Lafayette,
21 Indiana. Copper Moon sells a variety of coffee products in this Judicial District and throughout the
22 United States, including this Judicial District, both through its webpage,
23 www.coppermooncoffee.com, and through various retail outlets, including but not limited to Copper
24 Moon Coffee Cafes, Amazon, Walmart, Sam’s Club, Bed Bath & Beyond (the parent company of
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1 World Market), Office Depot, and Staples. Copper Moon falsely designates the geographic origin of
2 its “Kona” coffee products with the prominent placement of KONA on the front of the packaging.

3
4 15. On information and belief, defendant GOLD COFFEE ROASTERS, INC., dba Gold
5 Coffee Co. (or Gold Coffee Company), (“Gold”), is a Delaware corporation with its principal place of
6 business in Jupiter, Florida. Gold roasts, manufactures and packages a variety of coffee products for
7 defendant COSTA RICAN GOLD COFFEE COMPANY, INC. (“Costa Rican Gold”), which also
8 does business as Gold Coffee Co. (or Gold Coffee Company). In addition, Costa Rican Gold sells
9 coffee products Hawaiian Gold and Parry Estates Coffee marks on the packaging. Costa Rican Gold
10 is a Florida corporation with its principal place of business in Jupiter, Florida. Collectively, all accused
11 coffee products sold under the Gold Coffee Co. (or Gold Coffee Company) trade name and the
12 Hawaiian Gold and Parry Estates Coffee trademarks are hereinafter referred to as “Gold Coffee
13 Products.” Gold and Costa Rican Gold share a facility at 1425 Park Lane South, Jupiter, Florida. This
14 is the same address printed on the Gold Coffee Products roasted, manufactured, sold, distributed and/or
15 marketed by Gold and Costa Rican Gold. On information and belief, Gold and Costa Rican Gold
16 share the same officers and directors and comingle their records. Both entities also have the same
17 owner and president, John Parry. Defendants Gold and Costa Rican Gold shall hereinafter be referred
18 to as the “Gold Defendants.” The Gold Defendants advertise and offer the Gold Coffee Products for
19 sale through www.goldcoffee.com, which on information and belief is a domain owned by Gold. The
20 Gold Defendants roast, manufacture, market, distribute and sell a variety of coffee products throughout
21 the United States, including this Judicial District, through various retail outlets, including but not
22 limited to Costco, Kroger, Amazon, Walmart, T.J. Maxx and Marshalls. Gold Defendants falsely
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1 designate the geographic origin of their “Kona” coffee products with the prominent placement of
2 KONA on the front of the packaging.

3
4 16. On information and belief, CAMERON’S COFFEE AND DISTRIBUTION
5 COMPANY (“Cameron’s”) is a Minnesota corporation with its principal place of business in
6 Shakopee, Minnesota. Cameron’s sells its coffee products in this Judicial District and throughout the
7 United States through its online store at www.cameronscoffee.com as well as through national retailers
8 including but not limited to Amazon, Walmart, Target, Sprouts, and Safeway. Cameron’s falsely
9 designates the geographic origin of its “Kona” coffee products with the prominent placement of
10 KONA on the packaging.

11
12 17. On information and belief, defendant PACIFIC COFFEE, INC., which does business
13 as Maui Coffee Company (“MCC”), is a Hawaii corporation with its principal place of business in
14 Lahaina, Hawaii. MCC sells a variety of coffee products throughout the United States, including this
15 Judicial District, both through its webpage, www.mauicoffeeco.com, and through various retail
16 outlets, including but not limited to ABC Stores, Amazon, Walmart, and Target. MCC falsely
17 designates the geographic origin of its “Kona” coffee products with the prominent placement of 100%
18 KONA on the front of the packaging.

19
20 18. On information and belief, defendant THE KROGER CO. (“Kroger”) is an Ohio
21 Corporation, with its principal place of business in Cincinnati, Ohio. Kroger is a retail chain with over
22 2,700 stores across the United States, including approximately 119 stores located in this Judicial
23 District. Kroger also does business as Fred Meyer and QFC. With its private label “Kivu,” Kroger
24 falsely designates the geographic origin of its “Kona” coffee products with the prominent placement
25 of KONA on the label of both its pre-packaged products and its self-serve coffee dispensers. In
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1 addition, Kroger sells coffee products from Gold Defendants, and others, which also falsely designates
2 Kona as the geographic origin of its coffee.

3
4 19. On information and belief, defendant AMAZON.COM, INC. (“Amazon”) is a
5 Delaware corporation with its principal place of business located in Seattle, Washington. Amazon is
6 the largest online retailer in the world. Through its online store at www.amazon.com, Amazon sells
7 in this Judicial District and throughout the United States a variety of deceptive coffee products,
8 including, but not limited to, the following: Hawaiian Isles, Gold Coffee Products, Mulvadi,
9 Cameron’s, Copper Moon, Boyer’s, Hazz and Magnum Exotics. Each of these brands sells products
10 that falsely designate KONA as the origin of the coffee beans.

11
12 20. On information and belief, defendant WALMART INC. (“Walmart”) is a corporation
13 organized and existing under the laws of the State of Delaware with its principal place of business in
14 Bentonville, Arkansas. Walmart has a total of 5,358 stores nationwide, and approximately 67 stores
15 in Washington. Walmart sells in this Judicial District and throughout the United States a variety of
16 deceptive coffee products, including but not limited to the following: MCC, Mulvadi, Copper Moon,
17 Cameron’s, Gold Coffee Products, Boyer’s, and Hawaiian Isles. Each of these brands sells products
18 that falsely designate KONA as the origin of the coffee beans.

19
20 21. On information and belief, defendant COSTCO WHOLESALE CORPORATION
21 (“Costco”) is a corporation organized and existing under the laws of the State of Washington with its
22 principal place of business in Issaquah, Washington. Costco is the second largest retailer in the world,
23 and it owns and operates numerous retail locations within this Judicial District. Through its retail and
24 online stores, Costco sells in this Judicial District and throughout the United States deceptive coffee
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1 products such as Magnum Exotics and Gold Coffee Products, which falsely designates KONA as the
2 origin of the coffee beans.

3 22. On information and belief, defendant BED BATH & BEYOND INC. (“Bed Bath”), is
4 a New York corporation with its headquarters in Union, NJ. Bed Bath operates over 1000 retail
5 locations across the country, including numerous retail locations within this Judicial District.
6 Bed Bath is the parent company of defendant World Market. Through its retail locations and its own
7 online store, Bed Bath sells in this Judicial District and throughout the United States various coffee
8 products labeled “Kona” from brands including, but not limited to, Copper Moon. The Copper Moon
9 coffee products sold by Bed Bath feature on the label the false designation of KONA as the geographic
10 origin of the coffee.
11

12 23. On information and belief, defendant ALBERTSONS COMPANIES INC.
13 (“Albertsons”) is a Delaware corporation with its principal place of business in Boise, Idaho.
14 Albertsons is a national grocery store chain with over 2,300 locations across the United States,
15 including approximately 20 stores in this Judicial District. Albertsons is the parent company of
16 Safeway, Inc. Through its grocery stores in this Judicial District and throughout the United States,
17 Albertsons sells a variety of deceptive coffee products, including but not limited to Hawaiian Isles,
18 which falsely designates KONA as the origin of the coffee beans.
19

20 24. On information and belief, defendant SAFEWAY INC. (“Safeway”) is a Delaware
21 corporation with its principal place of business in Pleasanton, CA. Safeway is a national grocery store
22 chain with over 900 locations across the United States, including dozens of stores in this Judicial
23 District. Safeway is a subsidiary of Albertsons. Through its grocery stores in this Judicial District
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1 and throughout the United States, Safeway sells a variety of deceptive coffee products, including but
2 not limited to Hawaiian Isles, which falsely designates KONA as the origin of the coffee beans.

3
4 25. On information and belief, defendant MNS LTD. is a Hawaii corporation with its
5 principal place of business located at Honolulu, Hawaii. Under the tradename ABC Stores, MNS Ltd.
6 (hereinafter “ABC”) owns and operates a chain of retail stores through which it sells a variety of coffee
7 products labeled as “Kona.” ABC also sells in this Judicial District and throughout the United States
8 coffee products labeled as “Kona” through its online store at www.abcstores.com. Some of the coffee
9 products sold by ABC falsely designate KONA as the origin of the coffee beans. Those offending
10 brands include but are not limited to Mulvadi, MCC, and Hawaiian Isles.
11

12 26. On information and belief, defendant THE TJX COMPANIES (“TJX”) is a Delaware
13 corporation with its principal place of business in Framingham, Massachusetts. TJX Companies, Inc.
14 does business in Washington and elsewhere as T.J. Maxx. TJX operates a chain of T.J. Maxx retail
15 stores in the United States, with numerous locations in this Judicial District, through which it sells a
16 variety of coffee products labeled as “Kona.” TJX touts itself as one of the largest off-price retailers
17 in the country. Some of the coffee products sold by TJX falsely designate KONA as the origin of the
18 coffee beans. Those offending brands include, but are not limited to, Gold Coffee Products, Magnum
19 Exotics, and Kona Roasting Co.
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22 27. On information and belief, defendant MARSHALLS OF MA, INC. (“Marshalls of
23 MA”) is a Massachusetts corporation with its principal place of business in Framingham,
24 Massachusetts. Marshalls of MA does business in Washington and elsewhere as Marshalls. Marshalls
25 of MA operates a chain of Marshalls retail stores in the United States, with numerous locations in this
26 Judicial District, through which it sells a variety of coffee products labeled as “Kona.” Marshalls of
27

1 MA touts itself as one of the largest off-price retailers in the country. Some of the coffee products
2 sold by Marshalls falsely designate KONA as the origin of the coffee beans. Those offending brands
3 include, but are not limited to, Gold Coffee Products, Magnum Exotics, and Kona Roasting Co.
4

5 28. On information and belief, defendant SPROUTS FARMERS MARKET, INC.
6 (“Sprouts”) is a Delaware corporation with its principal place of business in Phoenix, Arizona. Sprouts
7 operates over 200 grocery stores across the United States, including multiple locations within this
8 Judicial District. Some of the coffee products sold by Sprouts falsely designate KONA as the origin
9 of the coffee beans. Those offending brands include, but are not limited to, Cameron’s.
10

11 **III. JURISDICTION AND VENUE**

12 29. This action arises under 15 U.S.C. §1125(a). This Court has original subject matter
13 jurisdiction over Plaintiffs’ claims for Lanham Act violations under 15 U.S.C. §1121(a) and federal
14 question jurisdiction under 28 U.S.C. §§1331.
15

16 30. The Defendants conduct business in this Judicial District, have sold products in this
17 Judicial District falsely designating “Kona” as the origin of the coffee, and have injured the reputation
18 of Kona and the farmers of authentic Kona coffee in this Judicial District. Defendant Amazon, which
19 sells many of the other defendants’ deceptive “Kona” products, has its principal place of business in
20 this Judicial District. Defendant Costco also has its principal place of business, and numerous retail
21 locations, in this Judicial District. Amazon and Costco are two of the highest-volume retailers in the
22 world. All of the defendants who produce the deceptive “Kona” products identified in this complaint
23 sell such products in this Judicial District, either through numerous physical retail locations (including
24 but not limited to retailers who are also defendants in this litigation) or through online stores (again
25 including but not limited to retailers who are also defendants in this litigation). Many of the defendants
26
27

1 who manufacture the deceptive “Kona” products named in this complaint also sell, through their own
 2 online stores, such product directly to consumers in this Judicial District. All of the retail defendants
 3 who sell the deceptive “Kona” products identified in this complaint either operate multiple retail
 4 locations in this Judicial District, or they sell the accused products through an online store and then
 5 ship the accused products to consumers in this Judicial District. The prevalence of the sale and
 6 distribution of the deceptive “Kona” products in this Judicial District has harmed the reputation and
 7 goodwill associated with the Kona origin for coffee and has impaired the Plaintiffs’ ability to obtain a
 8 fair price for their authentic Kona coffee, or otherwise compete, in this Judicial District. Each of the
 9 defendants has committed acts of unfair competition and false advertising in this Judicial District in
 10 violation of the Lanham Act.
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13 31. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because a substantial part of
 14 the events or omissions giving rise to the claims occurred in this Judicial District.
 15

16 **IV. CLASS ACTION ALLEGATIONS**

17 32. Plaintiffs bring this action on behalf of themselves and all other persons similarly
 18 situated under Federal Rule of Civil Procedure 23. In particular, they seek to represent a Class of:
 19

20 All persons and entities who commercially farmed Kona coffee in
 21 the Kona District and then sold their Kona coffee, provided that they
 22 farmed and sold their Kona coffee during the time that any
 Defendant sold coffee product with the false designation of Kona as
 the origin of the coffee product.

23 Plaintiffs also seek to represent 19 Defendant-Specific Subclasses:

24 All persons and entities who commercially farmed Kona coffee in
 25 the Kona District and then sold their Kona coffee, provided that they
 26 farmed and sold their Kona coffee during the time [Defendant] sold
 27 coffee product with the false designation of Kona as the origin of
 the coffee product.

1 Excluded from both the Class and the Subclasses are any entities named as Defendants in this action.

2
3 33. Plaintiffs meet the prerequisites of Rule 23(a):

4 a. **Numerosity**. On information and belief, between 600 and 1,000 sole entities
5 grow Kona coffee. The members of the Class and each Subclass are thus so numerous that joinder of
6 all Class members in this action is not practical.

7
8 b. **Commonality**. The answers to questions common to the Class and Subclasses
9 will drive the resolution of this litigation. The common questions of law and fact include:

10 i. whether Defendants manufactured or sold coffee labeled as “Kona” that
11 was not grown in the Kona District of Hawaii;

12 ii. whether Defendants’ distribution and sale of products falsely labeled as
13 “Kona” has created or is likely to create confusion among consumers;

14 iii. whether labeling coffee not grown in the Kona District of Hawaii as
15 “Kona” constitutes a violation of the Lanham Act;

16 iv. whether the Defendants’ Lanham Act violations have negatively
17 affected the market price of authentic Kona coffee;

18 v. whether the Defendants’ Lanham Act violations have injured the
19 goodwill and reputation of the Kona name;

20 vi. the extent of damages to authentic Kona growers;

21 vii. the extent of Defendants’ profits earned as a result of falsely or
22 misleadingly designating “Kona” as the origin of their coffee products;
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1 viii. the corrective advertising required to remedy the damage Defendants
2 have caused to the goodwill and reputation of the Kona name; and

3 ix. the form of injunction necessary to prevent Defendants from causing
4 further harm in violation of the Lanham Act.
5

6 c. **Typicality**. Plaintiffs have the same interests as all members of the Class and
7 Subclasses they seek to represent, and Plaintiffs' claims arise out of the same set of facts and conduct
8 as all other members of the Class and Subclasses. Plaintiffs and all proposed Class members grew
9 and sold authentic Kona coffee and competed against the growers and sellers of coffee falsely labeled
10 as "Kona." All of the claims of Plaintiffs and proposed Class members arise out of Defendants'
11 conduct in manufacturing, marketing, and selling coffee falsely labeled as "Kona."
12

13 d. **Adequacy**. Plaintiffs will fairly and adequately represent and protect the
14 interests of the proposed Class members. Plaintiffs' interests align with those of the class members,
15 and Plaintiffs have no fundamental conflicts with the Class. Plaintiffs have retained counsel competent
16 and experienced in Lanham Act, complex commercial, and class action litigation who will fairly and
17 adequately represent the Class.
18

19 34. Plaintiffs meet the prerequisites of Rule 23(b)(2) because Defendants have acted and
20 refused to act on grounds that apply generally to the Class, such that final injunctive relief or
21 corresponding declaratory relief is appropriate respecting the Class as a whole. Defendants' sale of
22 coffee mislabeled as "Kona" coffee affected each Plaintiff and Class member in the same way. And
23 the Lanham Act provides for injunctive relief to prevent the Defendants from continuing to sell coffee
24 mislabeled as "Kona" coffee to prevent further harm to each Plaintiff and Class member.
25

26 35. Plaintiffs meet the prerequisites of Rule 23(b)(3):
27

1 a. The common questions of law and fact enumerated above predominate over any
2 questions affecting only individual members of the Class, and a class action is superior to other
3 methods for the fair and efficient adjudication of this controversy, as joinder of all members is
4 impracticable.
5

6 b. Defendants are sophisticated parties with substantial resources, while proposed
7 Class members generally are not, and prosecution of this litigation is likely to be expensive, as proved
8 by the extensive scientific analysis that preceded the filing of this complaint. Because the economic
9 damages suffered by any individual Class member from any individual defendant may be relatively
10 modest compared to the expense and burden of individual litigation, it would be impracticable for
11 proposed Class members to seek redress individually for Defendants' wrongful conduct.
12

13 V. STATUTES OF LIMITATIONS TOLLING

14 36. **Discovery Rule.** Plaintiffs and Class members did not know and could not have known
15 about their Lanham Act causes of action because, even assuming general awareness of the sales of
16 fake Kona coffee, it is impossible to know that a particular defendant has sold such coffee without
17 either (1) extensive and expensive chemical analysis of the coffee itself that very few laboratories can
18 perform and which Plaintiffs and the Class members likely cannot afford to pay for on their own, or
19 (2) documents and information in the exclusive possession of the defendant. Reasonable and diligent
20 investigation did not and could not reveal a factual basis for the Lanham Act claims alleged in this
21 complaint prior to the investigation and extensive scientific testing that led to the Complaint itself.
22

23 37. **Fraudulent Concealment.** Any applicable statutes of limitations have been tolled by
24 Defendants' knowing, active, and ongoing concealment of the facts as alleged in this Complaint.
25 Defendants falsely labeled their coffee as "Kona" with the intent that other participants in the market,
26
27

1 including Plaintiffs, Class members, and consumers, would be unable to determine whether or not the
2 coffee was authentic Kona coffee. The truth about the origin of the coffee contained in Defendants’
3 products was information within Defendants’ exclusive control. The Defendants’ had actual
4 knowledge of their acts of concealment. Under the Lanham Act, Defendants owed and owe to
5 Plaintiffs and Class members the duty to refrain from making false designations of the origin of their
6 products.

8 38. **Estoppel**. Under the Lanham Act, Defendants owed and owe to Plaintiffs and Class
9 members the duty to refrain from making false designations of the origin of the coffee in their their
10 coffee products. Defendants knowingly, affirmatively, and actively concealed the true character of
11 their coffee, and that concealment continues. Defendants know and take unfair advantage of the
12 market for authentic Kona coffee. Defendants are estopped from relying on any statute of limitations
13 or advancing any laches argument in defense of this action.

16 VI. **FACTUAL BACKGROUND**

17 39. Kona coffee is one of the rarest and most prized coffees in the world. Kona coffee is
18 grown in the Kona District on the Big Island of Hawaii (the “Kona District”). *See* map below. *See also*
19 Hawaii Administrative Rules (“HAR”) §4-143-3 (defining the geographic region of Kona as the
20 “North Kona and South Kona districts on the island of Hawaii, as designated by the State of Hawaii
21 Tax Map”). The Kona District contains only 3,800 acres of land cultivated for Kona coffee production,
22 which sharply limits the amount of Kona coffee that can be grown.
23



40. Only coffee grown in the Kona District can be sold as Kona coffee. Coffee grown outside of the Kona District, even if grown within the state of Hawaii, cannot be sold as Kona coffee.

41. Kona coffee has been grown in the Kona District since 1828. The Kona District’s volcanic soil, elevation, rainfall, proximity to the Pacific Ocean, moderate temperatures, and sunshine all interact to create Kona coffee’s distinctive characteristics. Kona coffee’s unique flavor, aroma, and mouth feel are a direct result of this growing environment.

42. The Kona name tells consumers that they are buying coffee grown in the Kona District. The name also tells consumers that the coffee has a distinctive flavor profile, and that the beans are of the highest quality. Consequently, consumers have been willing to pay a premium for Kona coffee.

43. Within the Kona District, between 600 and 1,000 farmers grow Kona coffee beans. The typical Kona farmer cultivates no more than five acres, which is a very small farming operation. These farms typically operate as family businesses.

1 44. Kona farmers produce approximately 2.7 million pounds of green Kona coffee each
2 year. That compares to 20 billion pounds of green coffee produced worldwide. In other words,
3 authentic Kona represents approximately 0.01% of worldwide coffee production. It is truly a
4 premium product.
5

6 45. But even though only 2.7 million pounds of authentic green Kona coffee is grown
7 annually, over 20 million pounds of coffee labeled as “Kona” is sold at retail. That is physically
8 impossible; someone is lying about the contents of their “Kona” products.
9

10 46. Defendants sell packaged coffee products that are presented to consumers as Kona
11 coffee, but that actually contain cheap commodity coffee beans. Some packages contain trace amount
12 of Kona coffee, while other packages contain no Kona coffee at all.

13 47. The malicious actions taken by these Defendants, both individually and collectively,
14 cause significant harm to legitimate Kona farmers. First, the Defendants flood the market with what
15 appears to be Kona coffee. This tremendous supply of counterfeit Kona coffee pushes prices down
16 sharply. And that low pricing artificially restrains the profitability of legitimate Kona coffee
17 farms. Second, the Defendants are selling run-of-the-mill commodity coffee and labeling it as Kona
18 coffee. A consumer who tries that inferior product, thinking it is Kona coffee, will conclude that Kona
19 coffee is not worth a premium price. That consumer will be unwilling to pay a premium price for
20 Kona in the future.
21

22 48. This pricing damage is not just theoretical; it is visible in the marketplace. Kona coffee
23 performs differently in the marketplace than similarly-situated specialty coffees. For example, the
24 specialty coffee called Jamaica Blue Mountain Coffee (“Blue Mountain”) is another premium coffee
25 with a specific geographic designation of origin. Blue Mountain is grown in an annual volume that is
26
27

1 comparable to Kona. And Blue Mountain is pushed into the same distribution channels. Yet
2 Blue Mountain sells for between two and five times the price per pound of Kona.

3 49. The impact of lower Kona pricing on the Plaintiffs and the Class is significant.
4 Growing Kona coffee is a very expensive proposition, largely because the topography of the Kona
5 District makes it nearly impossible to use modern farming machinery. Kona farms are therefore
6 manual farming operations, with significant labor required to plant and harvest the coffee.
7

8 50. Despite the fact that they sell a premium product, the typical Kona coffee farmer, who
9 is forced to sell their Kona coffee at a depressed price due to the actions of the Defendants, struggle
10 to turn a significant profit from their Kona coffee farming operation. Sellers of premium products
11 with worldwide reputations typically enjoy above-market profit margins, reflecting the desirability of
12 the product. The fact that so many Kona farmers struggle is shocking.
13

14 51. Kona farmers have suspected bad actors in the Kona marketplace for years. The
15 problem has always been determining what was actually in a particular bag as that information has
16 been concealed from the Kona farmers. Modern chemistry can now provide answers to that question.
17

18 **VII. ELEMENTAL TESTING OF COFFEE**

19 52. Kona coffee is grown in a very specific geographic area on the Big Island of
20 Hawaii. That geographic area has a distinctive soil composition, due largely to its proximity to
21 volcanoes. And that geographic area has distinctive humidity and rainfall, due largely to its proximity
22 to the Pacific Ocean.
23

24 53. As a result of the local soil and rainfall, certain elements are present in high
25 concentrations in Kona coffee beans. If a particular package of coffee truly contains Kona coffee
26
27

1 beans, these elements tend to be present in high concentrations. If these elements are not present in
2 high concentrations, then the package is unlikely to contain Kona coffee.

3
4 54. Moreover, as a direct result of the local soil and rainfall, certain elements
5 are **not** present in high concentrations in Kona coffee beans. If a particular package of coffee truly
6 contains only Kona coffee beans, then these elements tend **not** to be present in high concentrations. If
7 they are present in high concentrations, then the package is unlikely to contain Kona coffee.

8
9 55. Scientists can examine the concentration of each of the elements that are found in Kona
10 coffee beans, as well as the concentration of each of the elements that are **not** found in Kona coffee
11 beans. By combining this information, scientists can determine with high confidence whether a
12 particular package is authentic Kona coffee.

13
14 56. In practice, instead of looking at the concentration of an isolated element like
15 barium (Ba) or nickel (Ni), scientists examine the *ratio* of the concentrations of *pairs* of elements. The
16 reason for this approach is simple. If you were to roast coffee beans for ten minutes longer, you would
17 not impact the amount of barium or nickel in the sample, but you would burn away more of the overall
18 coffee bean. The concentration of barium would therefore increase, since it is defined as the mass of
19 barium divided by the mass of the total bean. And the concentration of nickel would therefore
20 increase, since it is defined as the mass of nickel divided by the mass of the total bean. But the ratio
21 of the concentration of barium to the concentration of nickel would be unchanged. And since the lab
22 does not know how long particular coffee samples were roasted by the Defendants, the scientists focus
23 on measures that do not change with roasting.

24
25 57. Having tested barium and nickel, scientists have determined that authentic Kona coffee
26 has a *ratio* of the concentration of barium to the concentration of nickel, also called the
27

1 *relative concentration*, that falls within a certain range. If an unknown sample has a relative
2 concentration within that range, it may or may not be Kona. But if an unknown sample has a relative
3 concentration clearly outside that range, it is highly unlikely to be Kona. (This analysis makes intuitive
4 sense. A veterinarian knows that dogs weigh between 1 and 325 pounds. If that veterinarian sees an
5 animal that weighs 100 pounds, which is clearly in the range of observed dog weights, the veterinarian
6 would say that the animal may or may not be a dog. But if that veterinarian sees an animal that weighs
7 500 pounds, which is well outside the range of previously-observed dog weights, the veterinarian
8 would immediately note that the animal is highly unlikely to be a dog.)
9

10
11 58. Determining the concentrations of particular elements and *isotopes* (which are simply
12 variations of a particular element) is a process that requires significant scientific expertise and
13 expensive instrumentation. The scientific techniques of *elemental analysis* and *isotopic analysis*¹ are
14 widely accepted in the scientific community, and have been used in studies of various food products
15 (including coffee). Unfortunately, these tests are very expensive. For that reason, the growers have
16 never before had access to this kind of evidence.
17

18 59. It is important to recognize that Defendants (who are likely to protest any and all
19 aspects of scientific testing) could prove their innocence without retaining a single scientist, and
20 without conducting a single lab test. They could simply provide evidence of where they bought
21 legitimate Kona coffee that they have been selling at retail. Any legitimate Kona coffee products must
22 ultimately have been grown on a farm owned by a Plaintiff or prospective Class member.
23
24

25
26 ¹ Two different types of isotopic testing have been performed to confirm whether a defendant has falsely
27 designated Kona as the origin of its coffee products. The first test examined strontium isotopes, and the second
test examined hydrogen and oxygen isotopes.

1 60. It is also important to recognize that Defendants are sophisticated participants in the
2 premium coffee marketplace. On information and belief, certain named defendants employ
3 professional coffee buyers whose job function is to source coffees for their products. In other words,
4 much like a professional jeweler could never plausibly claim to be confused about the difference
5 between a Rolex and a Timex, these sophisticated defendants cannot plausibly claim to be confused
6 about the coffee they are procuring. The Defendants and their buyers know exactly what they are
7 buying, and what they are selling.
8

9
10 **VIII. THE DEFENDANTS' PRODUCTS AND WRONGFUL ACTS**

11 61. Defendants use marketing and packaging that tell consumers that they are buying
12 packages of Kona coffee, but those packages do not contain Kona coffee.

13 62. For each Defendant, this complaint includes one or more examples of particular
14 products in their product line. The examples provided in this complaint are intended to be
15 representative, and not necessarily exhaustive, of the deceptive products manufactured and/or sold by
16 each defendant. Sampling has shown that nearly every product labeled "Kona" in their product lines
17 misrepresents the origin of the coffee beans contained in the package. Given the scarcity of authentic
18 Kona coffee (remember that Kona coffee represents only 0.01% of the worldwide supply of coffee)
19 and the high profitability of marketing commodity coffee as if it were Kona coffee, it is no surprise
20 that any defendant that is willing to engage in such deceptive practices would consistently practice
21 their deception across all product lines. An unscrupulous merchant selling counterfeit Rolex watches
22 on a street corner tends not to mix a real Rolex into inventory every once in a while.
23
24

25 63. For each example product, this complaint includes two graphs that shed light on the
26 true contents of the package. The graphs are based on the ratios of elemental concentrations discussed
27

1 above. The graphs included in this complaint are only a subset of the data collected on each deceptive
2 product. For each product, additional data reinforces the results shown below.

3
4 64. For any particular coffee sample, a scientist can calculate the ratio between the
5 concentration of strontium (Sr), and the concentration of zinc (Zn). For authentic Kona coffee, that
6 ratio falls within a narrow range. A scientist can similarly calculate the ratio between the concentration
7 of barium (Ba), and the concentration of nickel (Ni). For authentic Kona coffee, that ratio also falls
8 within a narrow range. Those two ratios can be plotted on a scatter plot, creating a visual that indicates
9 whether a particular sample has concentration ratios that are consistent with Kona coffee. The blue
10 dots in each scatter plot below show the observed ratios from over one hundred samples of authentic
11 Kona coffee. The red diamonds show the observed ratios from the coffee products sold by Defendants.
12 Those red diamonds are far outside the observed ranges for Kona, indicating that the Defendants'
13 designation of the origin of its coffee products as Kona is false.

14
15
16 65. For any coffee sample, a scientist can also calculate the ratio between the concentration
17 of cobalt (Co), and the concentration of zinc (Zn). For authentic Kona, that ratio falls within a narrow
18 range. And a scientist can calculate the ratio between the concentration of manganese (Mn), and the
19 concentration of nickel (Ni). For authentic Kona, that ratio also falls within a narrow range. As with
20 the earlier ratios, those two ratios can be plotted on a scatter plot, creating another visual that indicates
21 whether a particular sample has concentration ratios that are consistent with Kona coffee. The blue
22 dots in each scatter plot below show the observed ratios from over one hundred samples of authentic
23 Kona coffee. The red diamonds show the observed ratios from the coffee products sold by Defendants.
24 Those red diamonds are far outside the observed ranges for Kona, indicating that the Defendants'
25 designation of Kona as the origin of its coffee products is false.
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1 66. *PACIFIC COFFEE* (“*MAUI COFFEE COMPANY*” OR “*MCC*”). The Maui Coffee
2 Company packages are unequivocal. The packages prominently say either “100% Kona Coffee” or
3 “100% Kona Macadamia Nut” in large block print on the front panel. Seeing that packaging on a shelf
4 or online, a consumer would conclude that the package contains no coffee beans other than Kona
5 coffee beans.
6

7 67. MCC falsely designates the geographic origin of its “Kona” coffee products with the
8 prominent placement of 100% KONA on the front of the packaging. MCC furthers this deception
9 through its product descriptions published on its online store. MCC deceptively describes its “100%
10 Kona Coffee” product as follows:
11

12 Without a doubt, one of the world’s most sought-after beans by coffee
13 connoisseurs! Taste the full rich flavor of 100% Kona Coffee and experience the
14 magic of the Kona Coast for yourself. Our 100% Pure Kona Coffee has a
15 medium to full body with mild acidity and will be delivered fresh to your
doorstep. Take a trip to the Kona Coast when you experience the full rich flavor
of our 100% Pure Kona Coffee.

16 MCC describes its “100% Kona Macadamia Nut” product as “Kona goodness with a touch of
17 island-grown macadamia nuts. It doesn’t get any more Hawaiian than that.” MCC also deceptively
18 advertises its coffee products as “100% Kona” on its Internet advertising. The deceptive product
19 descriptions are designed to mislead consumers into believing that MCC’s products contain coffee
20 from Hawaii, and more specifically the Kona region of Hawaii. The deceptive marketing, product
21 names, and package designs are all intended to trade off the reputation and goodwill of the Kona name.
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1 They deliberately mislead the consumer into believing that MCC coffee products contain nothing but
 2 premium Kona coffee beans in order to justify the high price MCC charges for what are actually
 3 ordinary commodity coffee beans. Below are representative images of MCC’s deceptive “Kona”
 4 coffee products.
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18 **Figure MCC-1**



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68. But while consumers would reasonably believe that the packages in Figures MCC-1
 and MCC-2 are pure Kona coffee, the lab tests tell a different story. On the below scatter plot showing
 the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red
 diamonds) are well outside the range of authentic Kona. In other words, MCC’s designation of Kona
 as the origin of the coffee in these products is false.

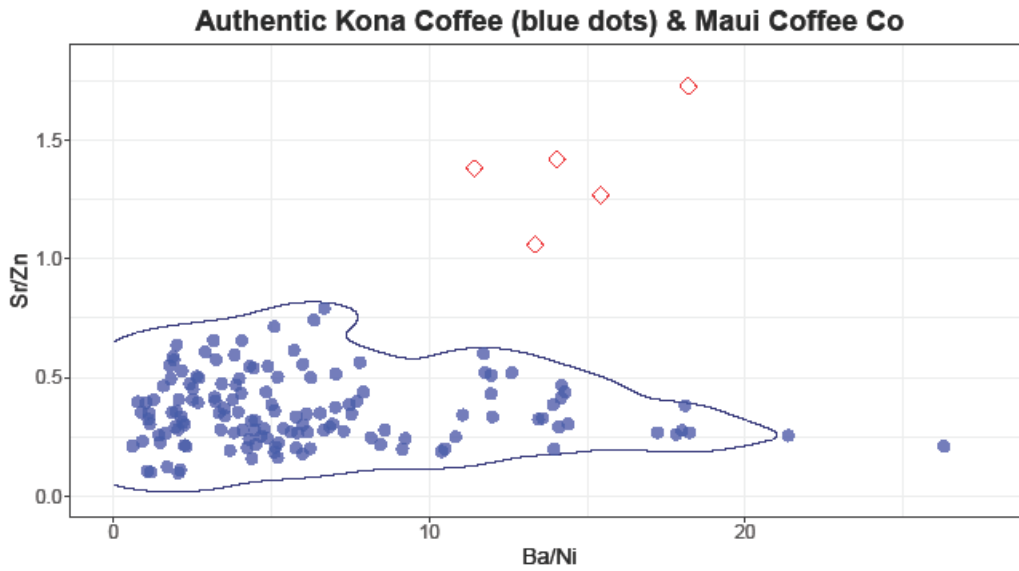


Figure MCC-A.

69. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion for the MCC products that were tested. These accused MCC products (marked by red diamonds) are well outside the range of authentic Kona. In other words, MCC's designation of Kona as the origin of the coffee in these products is false.

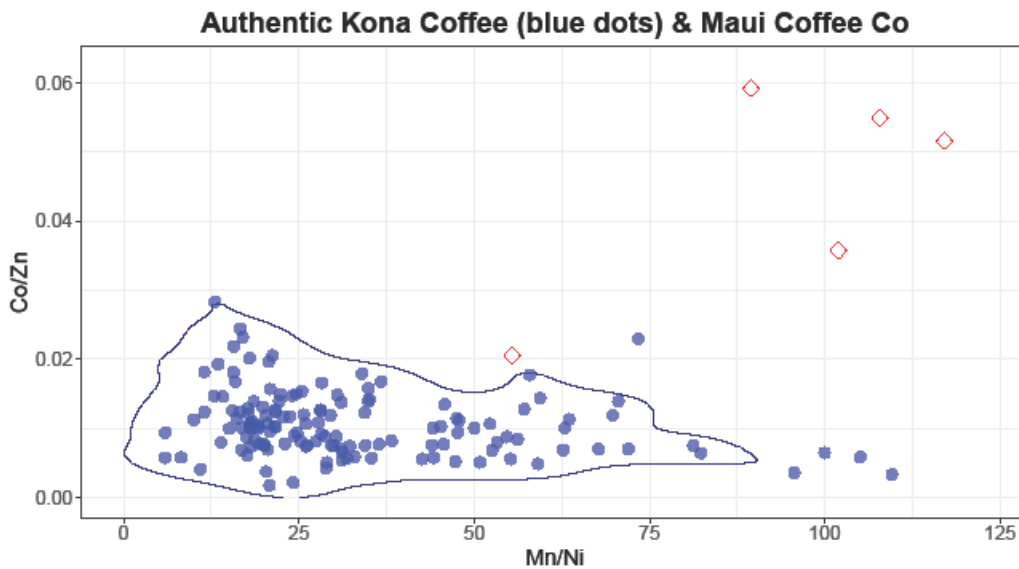


Figure MCC-B

1 70. *MULVADI CORPORATION*. The front of the Mulvadi package says “100% Kona
2 Coffee” in two distinct places. The main product banner is “Pure 100% Kona Coffee.” And there is
3 a misleading “Official Seal” that says “100% Kona Coffee.” The purpose of the language that Mulvadi
4 features on the face of its packaging is to mislead consumers into believing that Mulvadi coffee
5 products come from the Kona District.
6

7 71. Mulvadi deceptively places a gold sticker on its packaging, which it presents as the
8 “Official Seal” of the “Independent Kona Coffee Growers Association,” proclaiming that the product
9 is “100% Kona Coffee” from the “Big Island of Hawaii.” On information and belief, there is no such
10 association that is recognized for certifying Kona coffee products as 100% authentic. Instead, the
11 “seal” is a marketing ploy intended to deceive consumers as to the source of origin of the coffee sold
12 by Mulvadi. The deceptive marketing, product names, and package designs are all intended to trade
13 off the reputation and goodwill of the Kona name. They deliberately mislead the consumer into
14 believing that Mulvadi coffee products contain premium Kona coffee beans, justifying the high price
15 Mulvadi charges for what is actually ordinary commodity coffee. Below are representative images of
16 Mulvadi’s deceptive “Kona” coffee products, including an image of the “seal.”
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Figure MUL-1



Figure MUL-2

72. The Mulvadi package is unequivocal as to its contents; it says “100% Kona Coffee” twice on its front face. Seeing that packaging on a shelf or online, any consumer would conclude that the package contains only Kona coffee beans. But the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red diamonds) are well outside the range of authentic Kona. These packages are clearly not Kona. In other words, Mulvadi’s designation of Kona as the origin of the coffee is false.

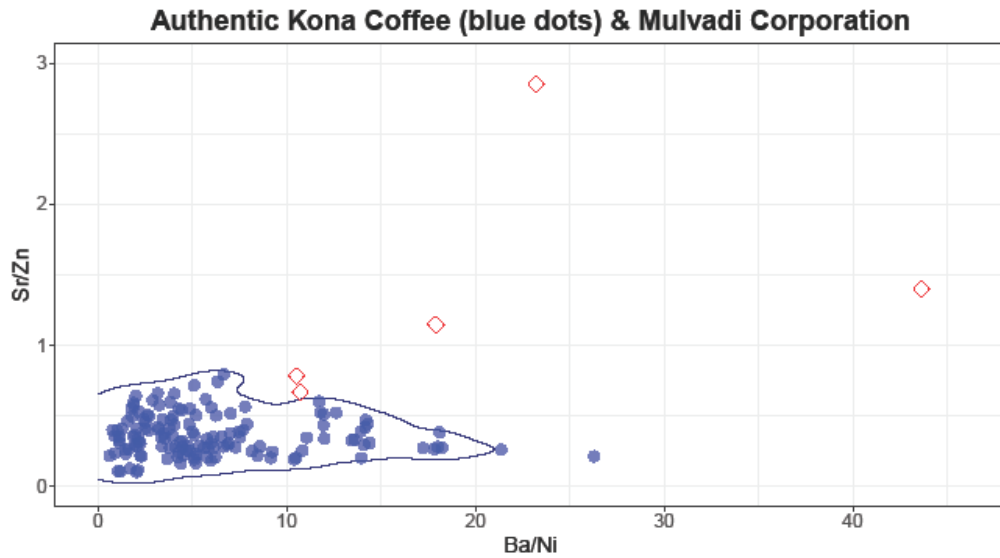


Figure MUL-A

The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Mulvadi’s designation of Kona as the origin of the coffee in these products is false.

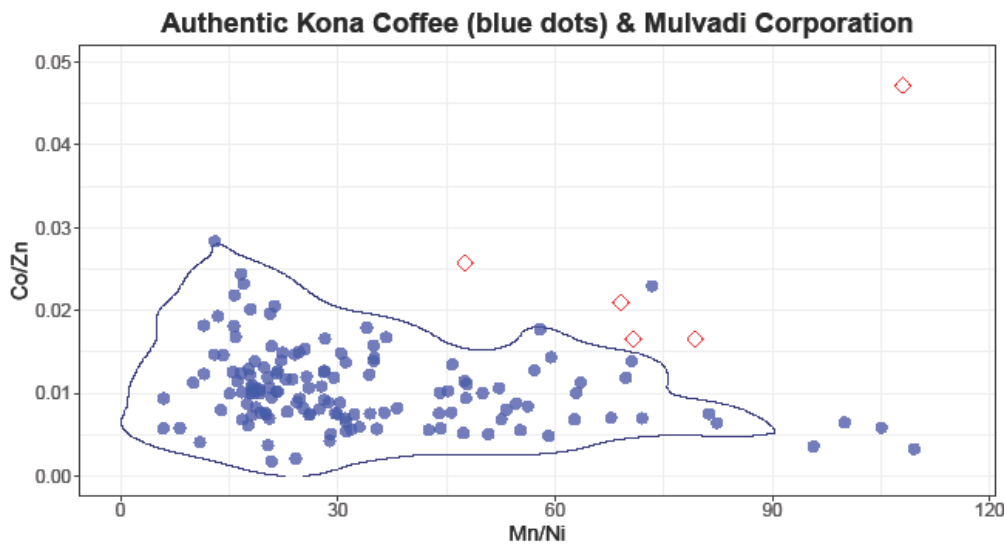


Figure MUL-B

1
2 73. *HAWAIIAN ISLES KONA COFFEE LTD., LLC.* Hawaiian Isles falsely designates the
3 geographic origin of its “Kona” coffee products with the prominent placement of KONA on the front
4 of the packaging. Hawaiian Isles advertises its coffee products nationally on the Internet and with
5 digital marketing campaigns through social media sites such as Facebook. With its marketing
6 campaigns, Hawaiian Isles uses deceptive taglines and slogans such as “Taste the Kona Difference,”
7 “Bring Hawaii Home,” “Give the Gift of Aloha,” “Drink Kona Coffee and Relax,” and “I Want My
8 Toes in the Sand and Kona Coffee in My Hand,” among others. The deceptive slogans are designed
9 to mislead consumers into believing that Hawaiian Isles coffee products primarily contain coffee from
10 Hawaii, and more specifically the Kona District of Hawaii. In addition, Hawaiian Isles uses deceptive
11 names for its products intended to mislead consumers into believing that the coffee products contain
12 a significant amount of Kona coffee. The deceptive product names include “Kona Classic,”
13 “Kona Sunrise,” “Kona Hazelnut,” and “Kona Vanilla Macadamia Nut.” Hawaiian Isles also designs
14 its product packaging with imagery, text, and advertising slogans intended to mislead the consumer
15 into believing that the coffee product contains coffee beans predominantly, if not exclusively, grown
16 in Hawaii, and specifically in the Kona District. The deceptive marketing slogans, product names,
17 and package designs are all intended to trade off the reputation and goodwill of the Kona name. They
18 deliberately mislead the consumer into believing that Hawaiian Isles coffee products contain
19 significant amounts of premium Kona coffee beans in order to justify the high price Hawaiian Isles
20 charges for ordinary commodity coffee.
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74. Below are several examples of the deceptive “Kona” products sold by Hawaiian Isles.

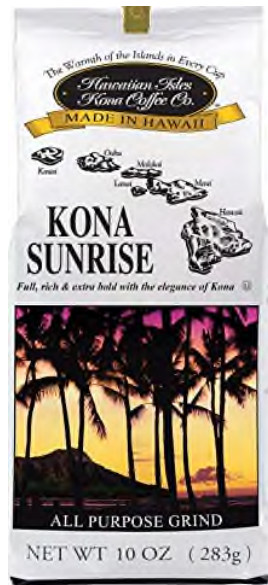


Figure HI-1

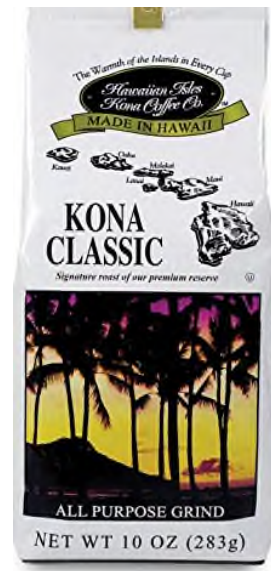
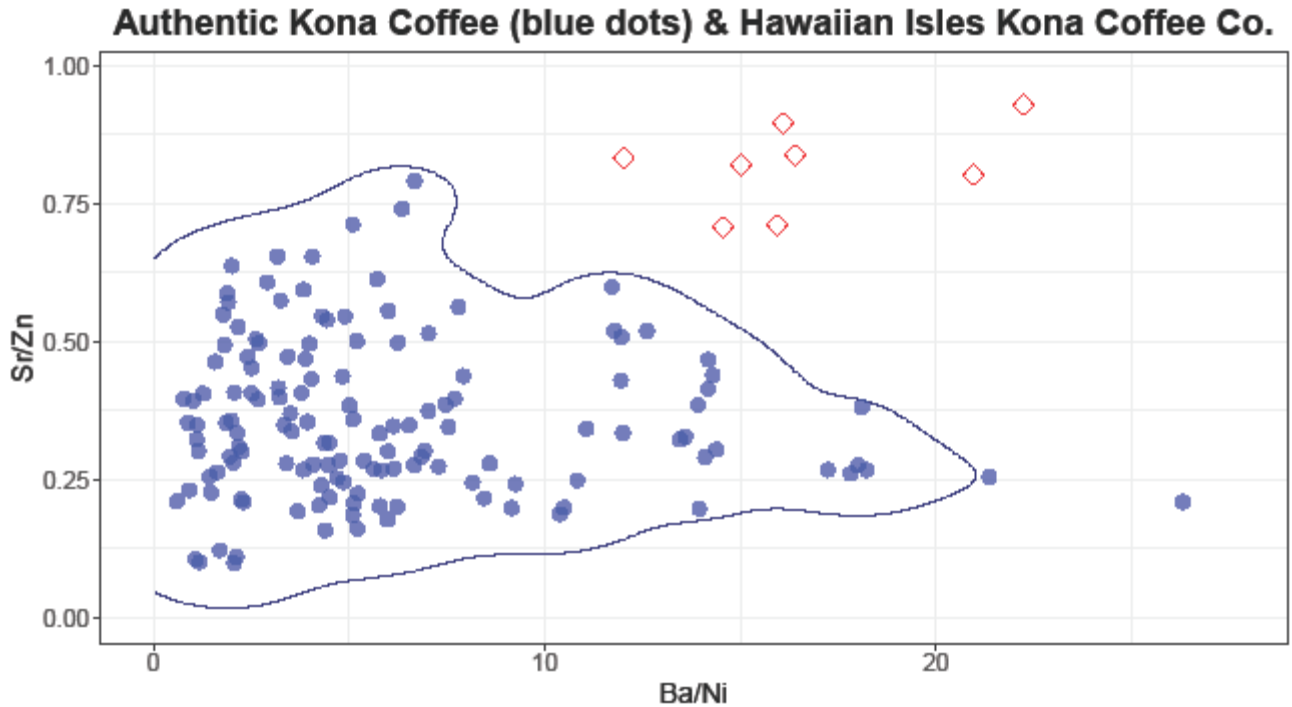


Figure HI-2

The packages themselves state “Made in Hawaii” on a banner on the front, above a map of Hawaii and a photograph of palm trees at sunset. The marketing copy on the side of the package states that the contents were “freshly roasted and packaged in Hawaii.” The package also states that “Kona Coffee is grown on the Big Island’s Kona Coast.” Given Hawaiian Isles’ unequivocal designation of “Kona” as the origin of the coffee in its products, consumers buying these products would reasonably believe that Kona, and only Kona, was the origin of the coffee contained therein.

75. But while consumers would reasonably believe that the packages in Figures HI-1 and HI-2 contain coffee that originates exclusively from Kona, the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused

1 products (marked by red diamonds) are well outside the range of authentic Kona. In other words, the
 2 science indicates that the coffee contained in the Hawaiian Isles packages is highly unlikely to
 3 originate from Kona.
 4



18 **Figure HI-A**

19 The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces
 20 the same conclusion. These accused products (marked by red diamonds) are well outside the range of
 21 authentic Kona. Again, the science indicates that the coffee contained in the Hawaiian Isles packages
 22 is highly unlikely to originate from Kona. In other words, Hawaiian Isles' designation of Kona as the
 23 origin of the coffee in these products is false.
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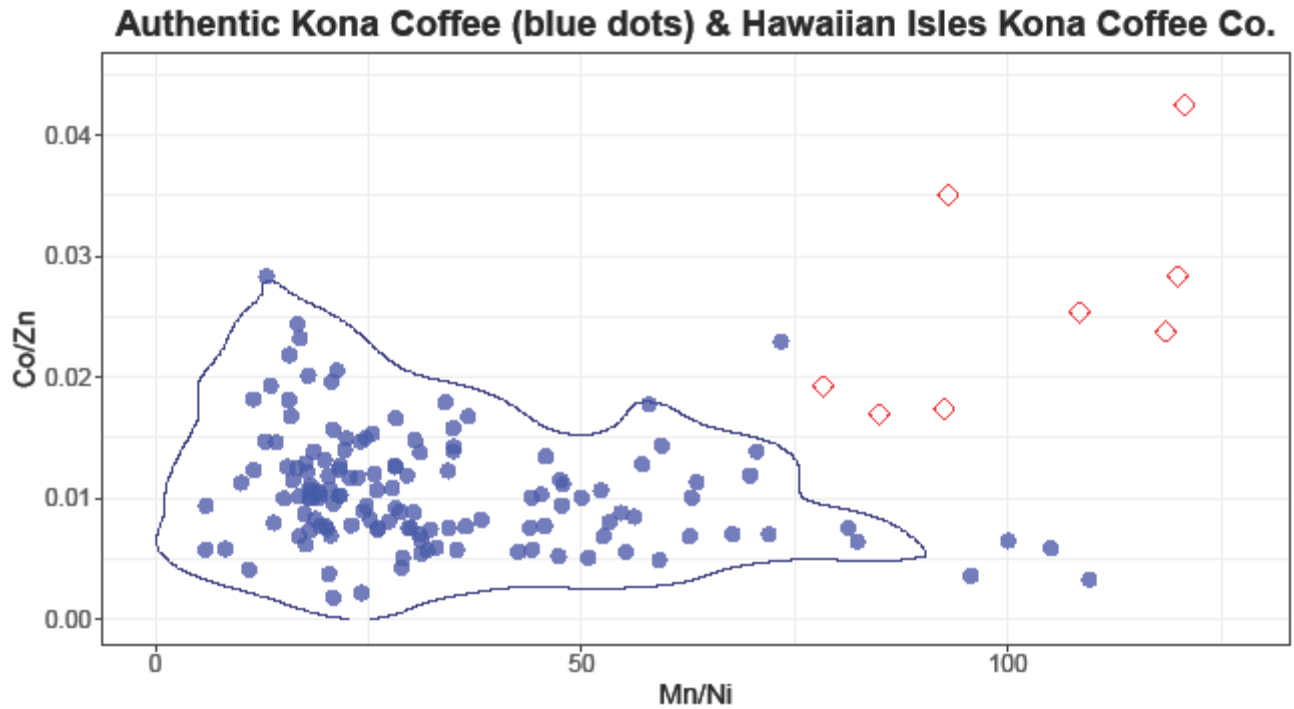


Figure HI-B

76. In fact, these bags appear to contain very little Kona coffee, if any. As a simple indicator, note that authentic Kona has an average of less than forty times (40x) as much manganese as nickel. In contrast, some Hawaiian Isles samples have one hundred twenty times (120x) as much manganese as nickel. This evidence, and similar evidence from many other ratios, leads to the conclusion that there must be very little Kona in this package. In other words, Hawaiian Isles' designation of Kona as the origin of the coffee in these products is false.

77. Even a consumer understanding this package to be a blend of Kona and other coffees (which is a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans. Given the deviation in the concentration ratios, though, it is implausible that this package meets those consumer expectations.

1 78. *GOLD DEFENDANTS*. Gold Defendants falsely designate the geographic origin of
2 their “Kona” coffee products with the prominent placement of KONA on the front of the packaging.
3 Gold Defendants boast on the packaging of the Gold Coffee Products, and on at www.goldcoffee.com,
4 that the “Kona” coffee contained in their coffee products is cultivated on a 900-acre plantation in the
5 Kona District, which Gold Defendants commonly refer to as the Parry Estates or Kona Gold
6 Plantation. With their marketing, Gold Defendants use deceptive taglines and slogans such as “Grown
7 in paradise. Enjoyed worldwide,” “The Hawaiian Difference,” “From our land to your hand”
8 (superimposed over a photograph of a tropical island), and “Striking flavor. Exotic character”
9 (superimposed over an image of lava flow). The deceptive slogans and imagery are designed to
10 mislead consumers into believing that Gold Coffee Products contain coffee from Hawaii, and more
11 specifically the Kona District of Hawaii. The deceptive product packaging prominently features the
12 word “Kona” in large font and includes pictures of volcanic mountains, Bird of Paradise flowers, and
13 other imagery indicative of Hawaii. The deceptive marketing, product names, and package designs are
14 all intended to trade off the reputation and goodwill of the Kona name. They deliberately mislead the
15 consumer into believing that Gold Coffee Products contain significant amounts of premium Kona
16 coffee beans in order to justify the high price Gold Defendants charge for what is actually ordinary
17 commodity coffee.
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2 79. Below are representative images of the Gold Defendants’ deceptive “Kona” coffee
3 products.
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18 **Figure HG-1**



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27 **Figure HG-2**

80. But while consumers would reasonably believe that the coffee in package HG-1 predominantly consisted of Kona beans, and the coffee in HG-2 contained nothing but 100% Kona, the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, the Gold Defendants’ designation of Kona as the origin of the coffee in these products is false.

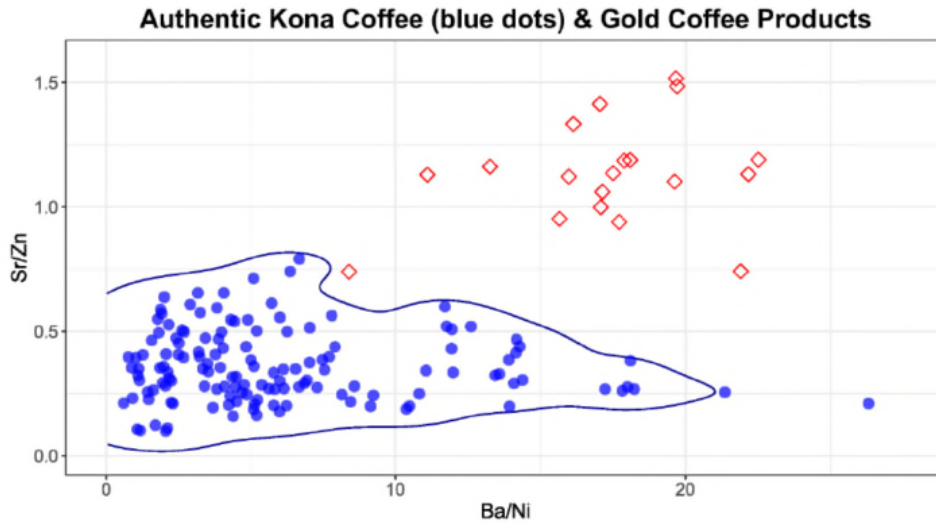


Figure HG-A

81. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, the Gold Defendants' designation of Kona as the origin of the coffee in these products is false.

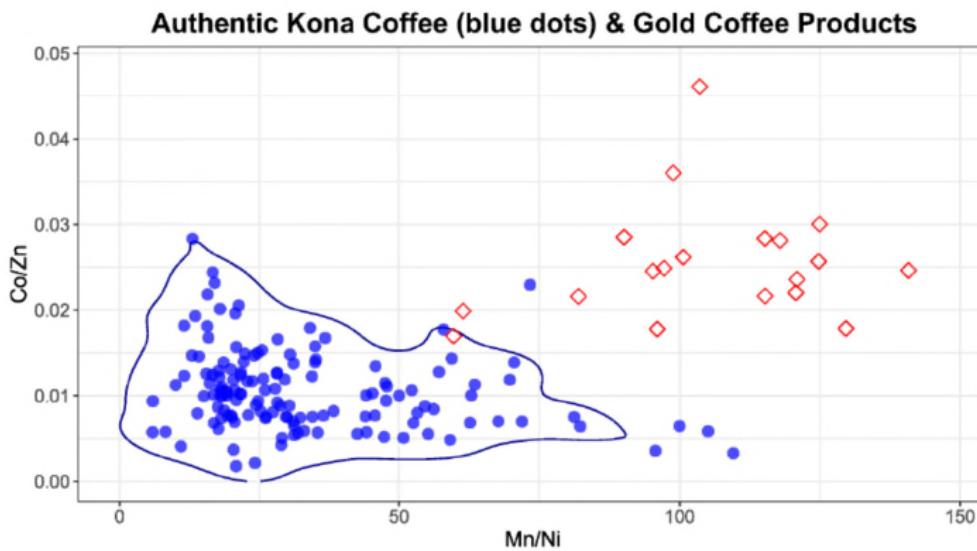


Figure HG-B

1
2 82. In fact, the tested Gold Coffee Products contain very little Kona coffee, if any. As an
3 indicator, note that authentic Kona has an average of less than forty times (40x) as much manganese
4 as nickel. In contrast, tests show that one of the Gold Coffee Product samples has roughly one hundred
5 forty times (140x) as much manganese as nickel. This evidence, and similar evidence from many
6 other ratios, leads to the conclusion that there is very little Kona in this bag.
7

8 83. Even a consumer understanding the coffee in the package shown in HG-1 to be a blend
9 of Kona and other coffees (a conclusion that very few consumers would draw based on this particular
10 packaging) would expect the package to contain a meaningful percentage of Kona beans. Given the
11 deviation in the concentration ratios, though, it is implausible that this package meets those consumer
12 expectations.
13

14 84. *COST PLUS/WORLD MARKET*. World Market sells both its own private-label coffee
15 products and coffee products offered by third parties, including coffee products falsely identified as
16 Kona coffee. World Market falsely designates the geographic origin of its “Kona” coffee products
17 with the prominent placement of KONA on the front of the packaging. For example, World Market
18 sells its own private-label coffee product labeled “Hawaiian Kona Blend” in packaging intended to
19 mislead the consumer into believing the that the product contains a significant amount of Kona coffee
20 beans, when the product actually contains little to no Kona coffee. The deceptive packaging features
21 hibiscus flowers and the prominent placement of geographic terms “Hawaiian” and “Kona” in the
22 center of the package label. The deceptive product names and package designs are all intended to trade
23 off the reputation and goodwill of the Kona name. They deliberately mislead the consumer into
24 believing that World Market coffee products contain significant amounts of premium Kona coffee
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1 beans in order to justify the high price World Market charges for what is actually ordinary commodity
2 coffee.

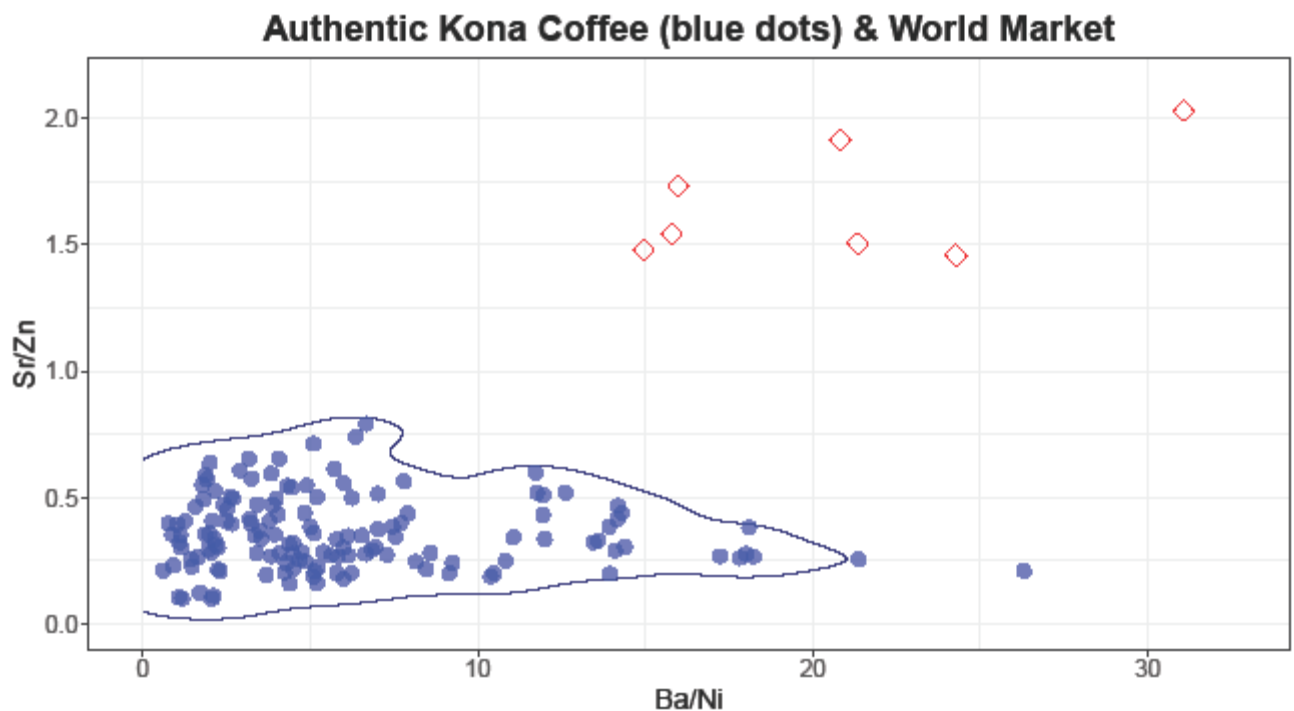
3
4 85. Below is a sample image of the deceptive packaging used by World Market for its
5 private-label “Kona” coffee product.



21 **Figure WM-1**

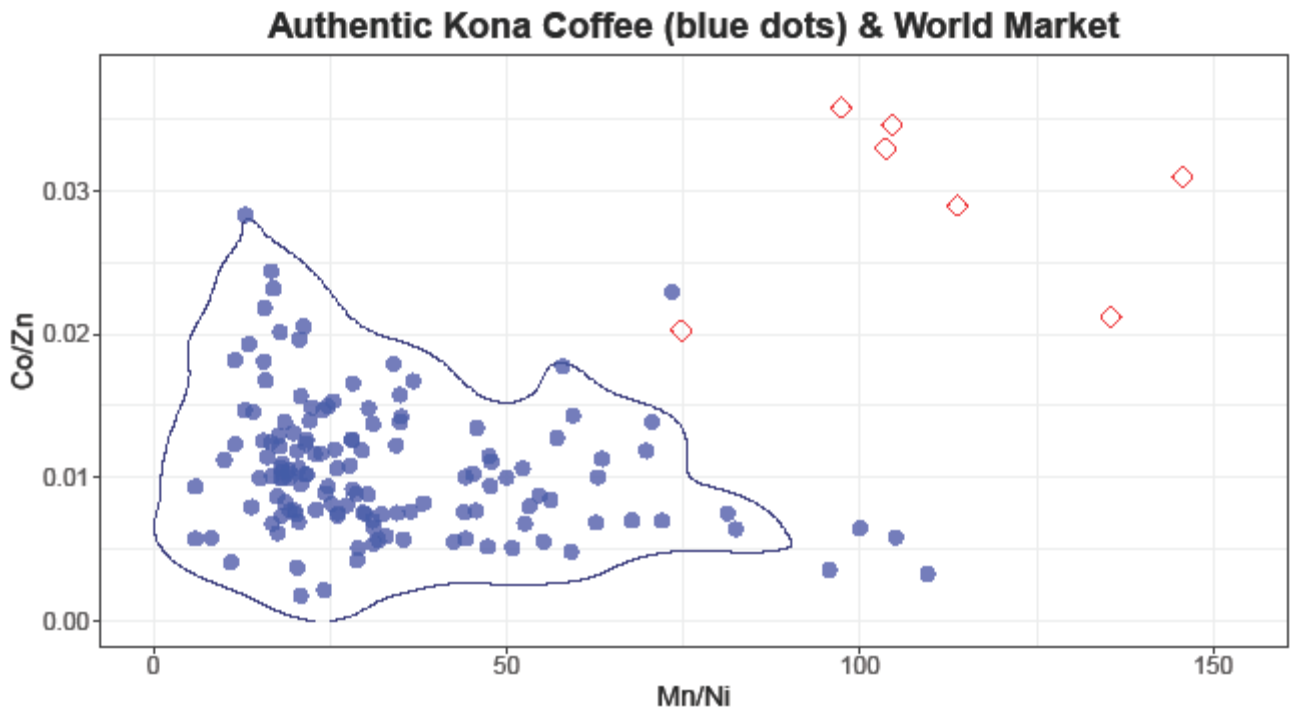
22 86. In addition, World Market sells a variety of deceptive coffee products from Hawaiian
23 Isles, such as those shown above in paragraph 74, all of which mislead the consumer into believing
24 that the products contain a significant amount of Kona coffee beans when they actually contain little
25 or no Kona.
26
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1 87. While consumers would reasonably believe that the coffee in package WM-1
 2 predominantly consisted of Kona beans, the lab tests tell a different story. On the below scatter plot
 3 showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by
 4 red diamonds) are well outside the range of authentic Kona. In other words, World Market's
 5 designation of Kona as the origin of the coffee in these products is false.
 6



21 **Figure WM-A**

22 88. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel
 23 ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well
 24 outside the range of authentic Kona. In other words, World Market's designation of Kona as the origin
 25 of the coffee in these products is false.
 26



13 **Figure WM-B**

14
15 91. In fact, these bags contain very little Kona coffee, if any. As an indicator of how little
16 Kona coffee is actually in the package, note that authentic Kona has an average of no more than forty
17 times (40x) as much manganese as nickel. In contrast, World Market samples range as high as one
18 hundred forty times (140x) as much manganese as nickel. This evidence, and similar evidence from
19 many other ratios, leads to the conclusion that there is very little Kona in this bag.

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21 92. Even a consumer understanding the coffee in the package shown in WM-1 to be a blend
22 of Kona and other coffees (a conclusion that very few consumers would draw based on this particular
23 packaging) would expect the package to contain a meaningful percentage of Kona beans. Given the
24 deviation in the concentration ratios, though, it is implausible that this package meets those consumer
25 expectations.
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1 93. *BOYER'S*. Boyer's falsely designates the geographic origin of its "Kona" coffee
2 products with the prominent placement of KONA on the front of the packaging. For example, Boyer's
3 sells at least two different "Kona" coffee products. One is labeled "Café Kona" and the other is labeled
4 "Kona Blend." The Boyer's packaging is intended to mislead the consumer into believing the that the
5 product contains a significant amount of Kona coffee beans, when the product actually contains little
6 to no Kona coffee. The deceptive product names are intended to trade off the reputation and goodwill
7 of the Kona name. They deliberately mislead the consumer into believing that Boyer's coffee products
8 contain significant amounts of premium Kona coffee beans in order to justify the high price Boyer's
9 charges for what is actually ordinary commodity coffee. By using the term "Kona" to describe its
10 products, Boyer's is falsely designating the geographic origin of the product, creating confusion
11 around the geographic origin, and damaging the geographic designation itself. Boyer's use of the term
12 "Kona" in the context of extolling the virtues of Colorado roasting undermines the meaning of the
13 term, damaging its value to the farmers of authentic Kona in the Kona District.
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1 94. Below are representative images of Boyer's deceptive "Kona" coffee products.
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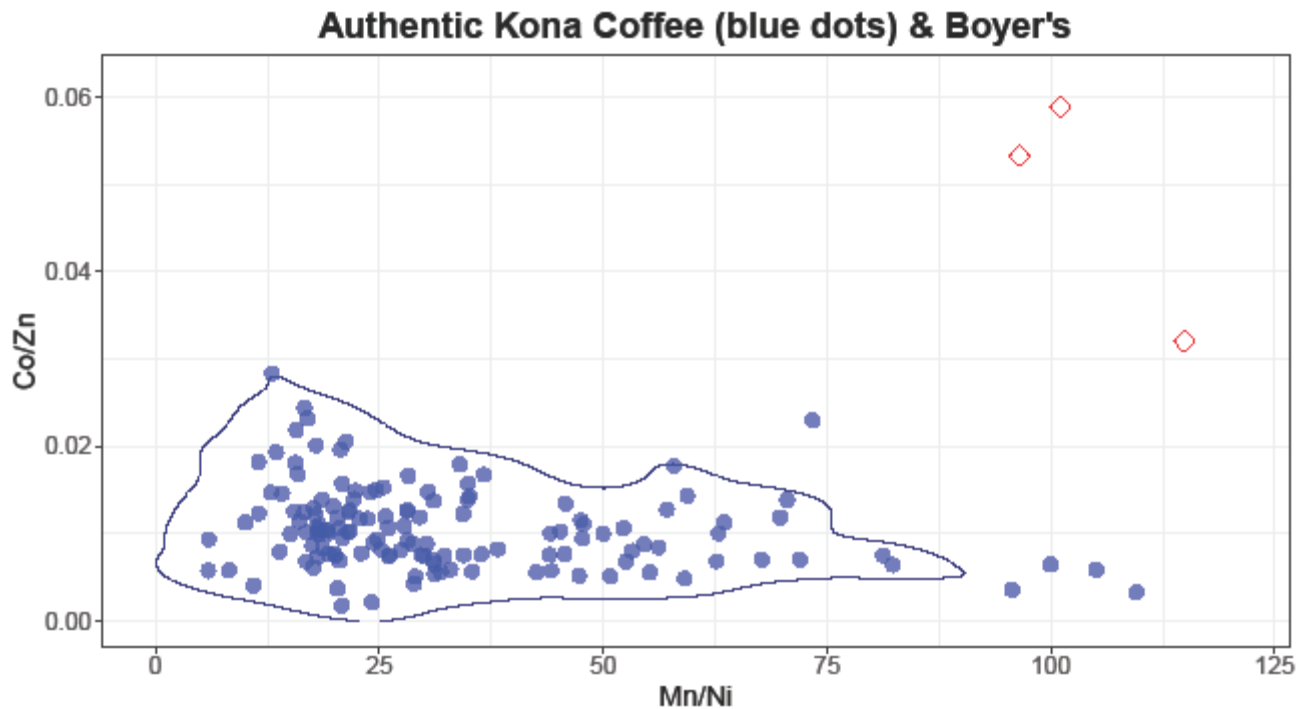


19 **Figure BC-1**



20 **Figure BC-2²**

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26 ² Boyer's uses several variations of its packaging, but the differences are immaterial. Plaintiffs have archive
27 photographs of each package actually tested.



13 **Figure BC-B**

14

15 97. In fact, these bags contain very little Kona coffee, if any. As an indicator of how little

16 Kona coffee is actually in the package, note that authentic Kona has an average of no more than forty

17 times (40x) as much manganese as nickel. In contrast, Boyer's samples range as high as one hundred

18 ten times (110x) as much manganese as nickel. This evidence, and similar evidence from many other

19 ratios, leads to the conclusion that there is very little Kona in this bag.

20

21 98. Even a consumer understanding the coffee in the packages shown in BC-1 and BC-2

22 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on

23 this particular packaging) would expect the package to contain a meaningful percentage of Kona

24 beans. Given the deviation in the concentration ratios, though, it is implausible that this package meets

25 those consumer expectations.

26

1 99. *L&K COFFEE CO. LLC (MAGNUM EXOTICS)*. L&K falsely designates the
2 geographic origin of its “Kona” coffee products with the prominent placement of KONA on the front
3 of the packaging. With its marketing and packaging, L&K uses deceptive taglines and slogans such
4 as “Certified,” “Kona High Mountain Coffee” and “100% High MT. Arabica Coffee.” On its online
5 store, L&K describes its “Kona” coffee product as “Grown high in the mountains of Hawaii, this
6 blended coffee has the perfect balance of light taste, full body and moderate acidity.” The deceptive
7 marketing is designed to mislead consumers into believing that L&K’s Magnum Exotics “Kona”
8 products contain coffee from the Kona District, when the coffee products actually do not contain a
9 significant amount of Kona coffee, if any. L&K also designs its Magnum Exotics product packaging
10 with imagery and text intended to mislead the consumer into believing that the coffee product contains
11 coffee beans predominantly, if not exclusively, grown in Hawaii, and specifically in the Kona region.
12 The deceptive imagery utilized by L&K includes illustrations of beaches, hummingbirds, hibiscus
13 flowers, toucan birds, and tropical islands. The deceptive marketing, product names, and package
14 designs are all intended to trade off the reputation and goodwill of the Kona name. They deliberately
15 mislead the consumer into believing that L&K’s Magnum Exotics coffee products contain significant
16 amounts of premium Kona coffee beans in order to justify the high price L&K charges for what is
17 actually ordinary commodity coffee.
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100. Below is a representative image of L&K's deceptive "Kona" coffee products.

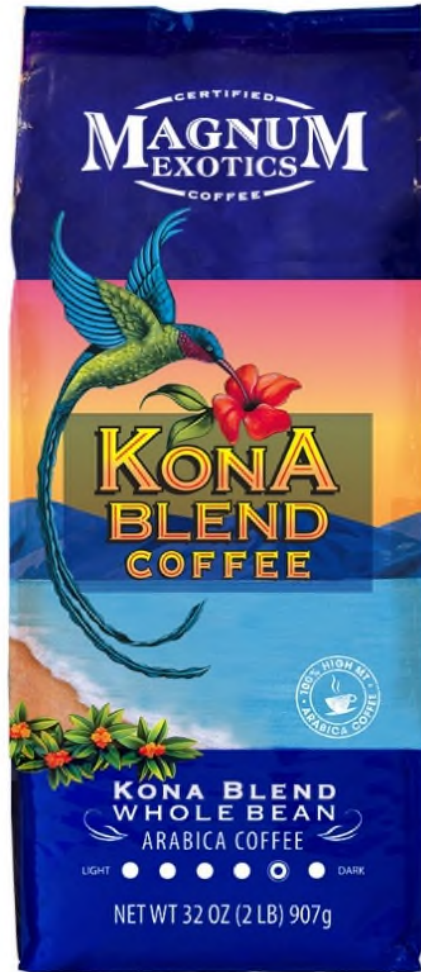


Figure ME-1

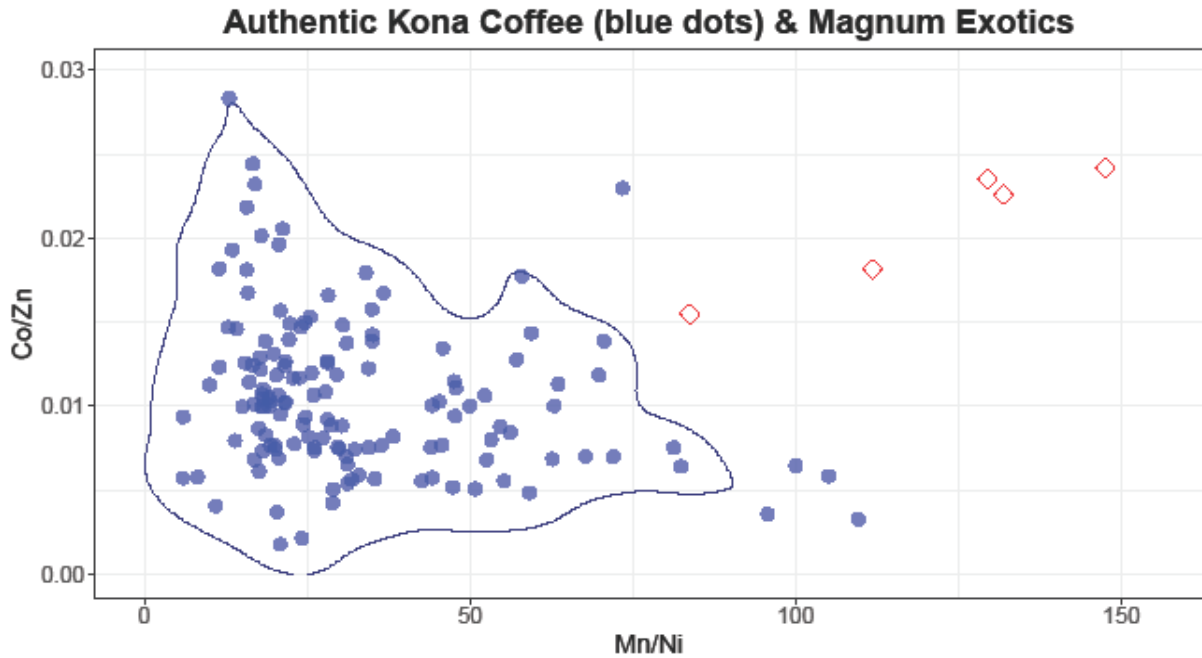


Figure ME-B

103. In fact, these bags contain very little Kona coffee, if any. As an indicator, note that authentic Kona has an average of less than forty times (40x) as much manganese as nickel. In contrast, Magnum Exotics samples range as high as one hundred forty-five times (145x) as much manganese as nickel. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in L&K's Magnum Exotics coffee products.

104. Even a consumer understanding the coffee in the package shown in ME-1 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans. Given the deviation in the concentration ratios, though, it is implausible that this package meets those consumer expectations.

1 105. *COPPER MOON COFFEE*. Copper Moon falsely designates the geographic origin of
2 its “Kona” coffee products with the prominent placement of KONA on the front of the packaging. In
3 addition, Copper Moon uses deceptive names for its products intended to mislead consumers into
4 believing that the coffee products contain a significant amount of Kona coffee. The deceptive product
5 names include “Kona 100% Arabica Premium Blend,” and “Kona Premium Blend.” On its website,
6 Copper Moon identifies the sources of the beans used in their coffee products, which include
7 Nicaragua, Rwanda, Peru, and Ethiopia. Noticeably absent is any description for the source of the
8 Kona coffee that they purportedly use in their Kona coffee products. Copper Moon also designs its
9 product packaging with imagery and text intended to mislead the consumer into believing that the
10 product labeled “Kona” contains coffee beans predominantly, if not exclusively, grown in the Kona
11 District. For example, Copper Moon’s “Kona” products prominently feature a postage stamp of the
12 iconic plumeria flower, used in Hawaiian lei, to mislead consumers into believing that the origin of
13 the coffee product is Kona, Hawaii. The deceptive marketing, product names, and package designs
14 are all intended to trade off the reputation and goodwill of the Kona name. They deliberately mislead
15 the consumer into believing that Copper Moon coffee products contain significant amounts of
16 premium Kona coffee beans in order to justify the high price Copper Moon charges for ordinary
17 commodity coffee beans.
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1 106. Below is a representative image of Copper Moon’s deceptive “Kona” coffee products.



14 **Figure CM-1**

15 107. Copper Moon follows the term “Kona” with the percentage “100%,” which alone
16 reinforces the impression that the coffee is unadulterated Kona. The misleading placement of “100%”
17 near the term “Kona” is a deceptive practice employed by Copper Moon and other defendants to
18 mislead consumers into believing that the product contains 100% Kona coffee.

19
20 108. Copper Moon also labels its product as “100% Arabica,” which is a deception that is
21 common across many defendants. Like over 75% of the world’s coffee production, Kona is a kind of
22 Arabica coffee bean. The term “Kona” followed by the phrase “100% Arabica” is therefore consistent
23 with the bag containing pure Kona coffee. And it is not consistent with the bag containing non-Kona
24 Arabica coffees. Imagine, for example, that the package had said “Kona — 100% Coffee.” That
25 marketing line would be just as true for real Kona, and just as meaningless, as the “100% Arabica”
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1 line. And that language would never be interpreted as allowing the substitution of commodity coffee,
 2 since it “discloses” that it contains 100% coffee. Similarly, labeling a product with the phrase
 3 “100% Arabica” does not allow a defendant to substitute cheaper Arabica beans for Kona beans, while
 4 misleading consumers to believe that the product contains 100% Kona coffee.
 5

6 109. But while consumers would reasonably believe that the package in Figure CM-1
 7 contains 100% Kona coffee, the lab tests tell a different story. On the below scatter plot showing the
 8 strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red
 9 diamonds) are well outside the range of authentic Kona. In other words, Copper Moon’s designation
 10 of Kona as the origin of the coffee in its products is false.
 11

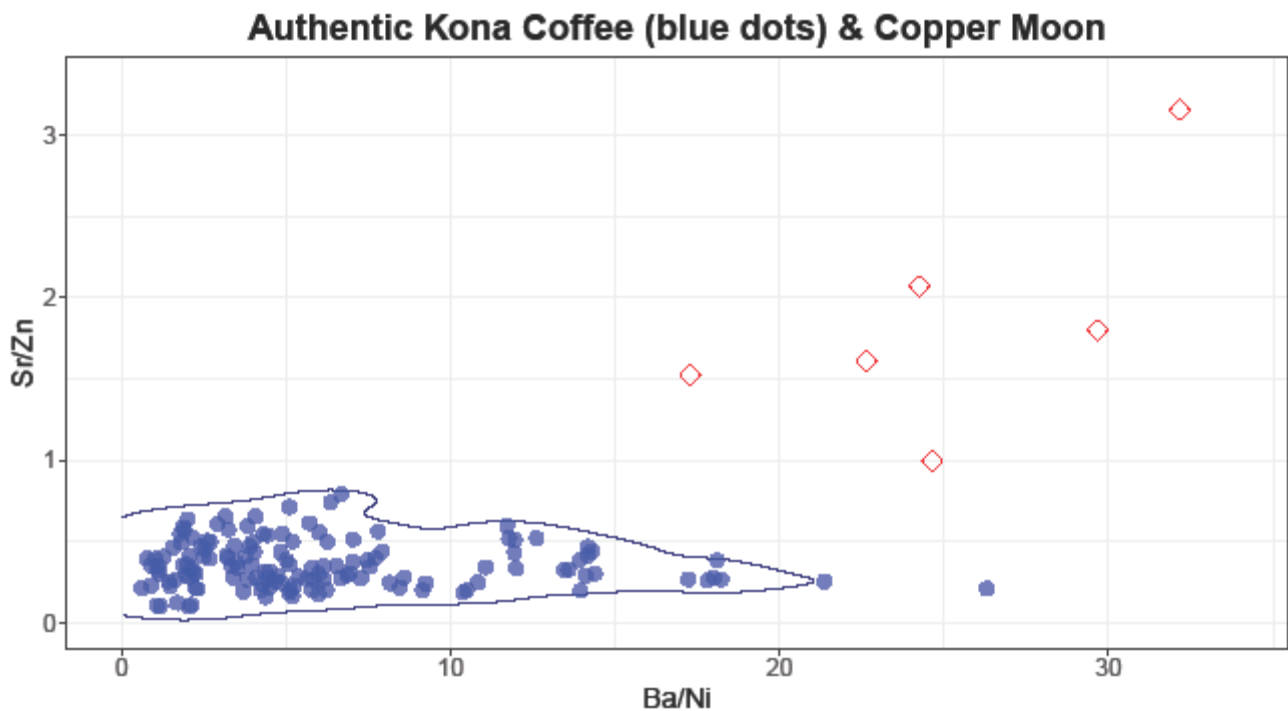
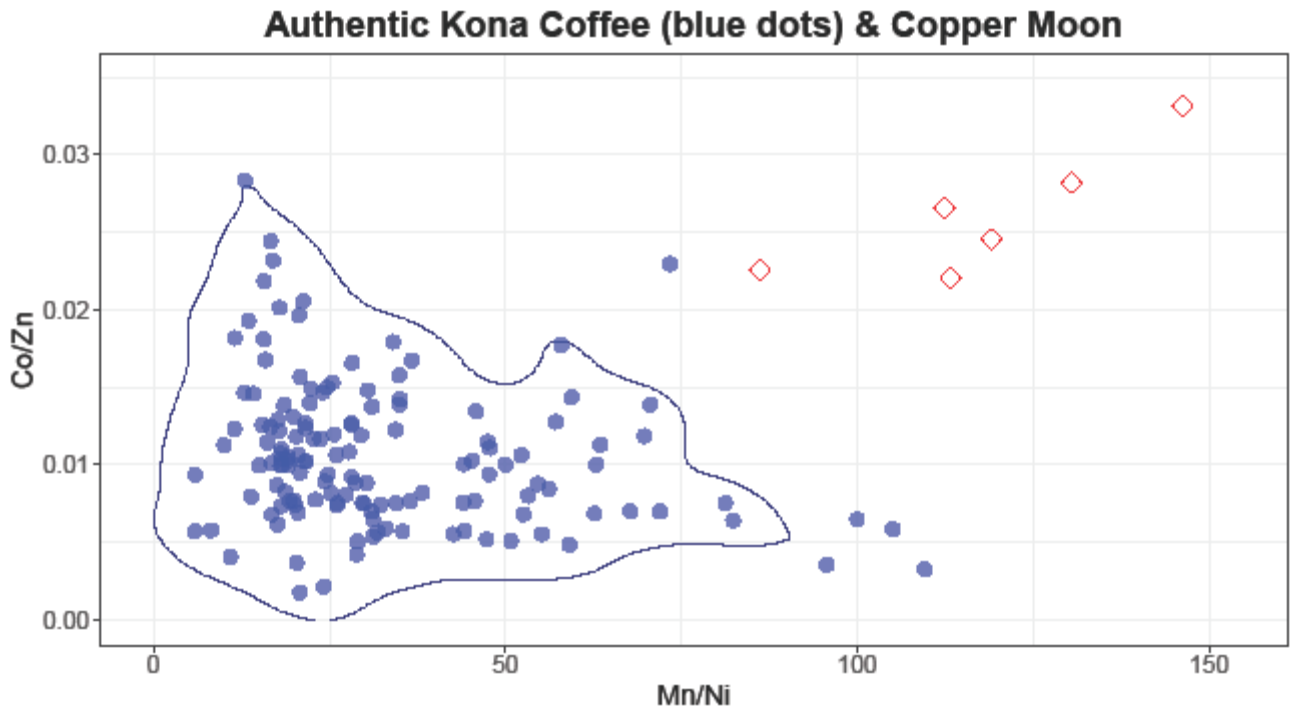


Figure CM-A

1 110. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel
 2 ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well
 3 outside the range of authentic Kona. In other words, Copper Moon's designation of Kona as the origin
 4 of the coffee in its products is false.
 5



18 **Figure CM-B**

19
20 111. In fact, these bags contain very little Kona coffee, if any. As an indicator, note that
 21 authentic Kona has an average of less than eight times (8x) as much barium as nickel. In contrast, a
 22 Cooper Moon sample has over thirty times (30x) as much barium as nickel. This evidence, and similar
 23 evidence from many other ratios, leads to the conclusion that there is very little Kona in this bag.
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2 112. Even a consumer understanding the coffee in the package shown in CM-1 to be a blend
3 of Kona and other coffees (a conclusion that very few consumers would draw based on this particular
4 packaging) would expect the package to contain a meaningful percentage of Kona beans. Given the
5 deviation in the concentration ratios, though, it is implausible that this package meets those consumer
6 expectations.
7

8 113. *CAMERON'S*. Cameron's falsely designates the geographic origin of its "Kona" coffee
9 products with the prominent placement of KONA on its packaging. Cameron's also describes its
10 "Kona" coffee products as "premium," when the coffee beans in the product are not "premium" beans
11 from Kona but are instead merely commodity coffee beans from other regions of the world. To further
12 deceive consumers as to the origin of the coffee beans in their "Kona" coffee products, Cameron's
13 packaging features a tropical flower to further the association between Hawaii and the Cameron's
14 product in the mind of the consumer. Cameron's false designation of Kona as the origin of the coffee
15 is intended to trade off the reputation and goodwill of the Kona name. They deliberately mislead the
16 consumer into believing that Cameron's coffee products contain premium Kona coffee beans in order
17 to justify the high price Cameron's charges for ordinary commodity coffee beans.
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1 114. Below are representative images of the deceptive packaging used by Cameron's for its
2 "Kona" coffee products.
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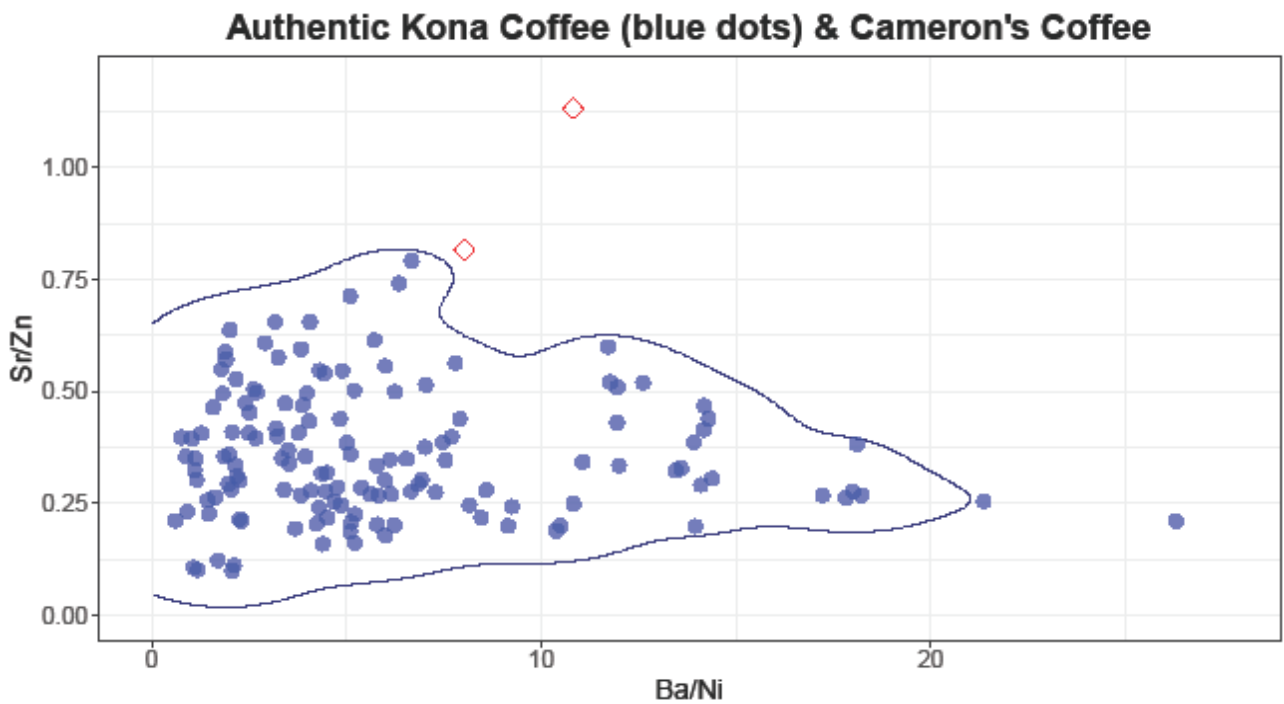


18 **Figure CC-1**



18 **Figure CC-2**

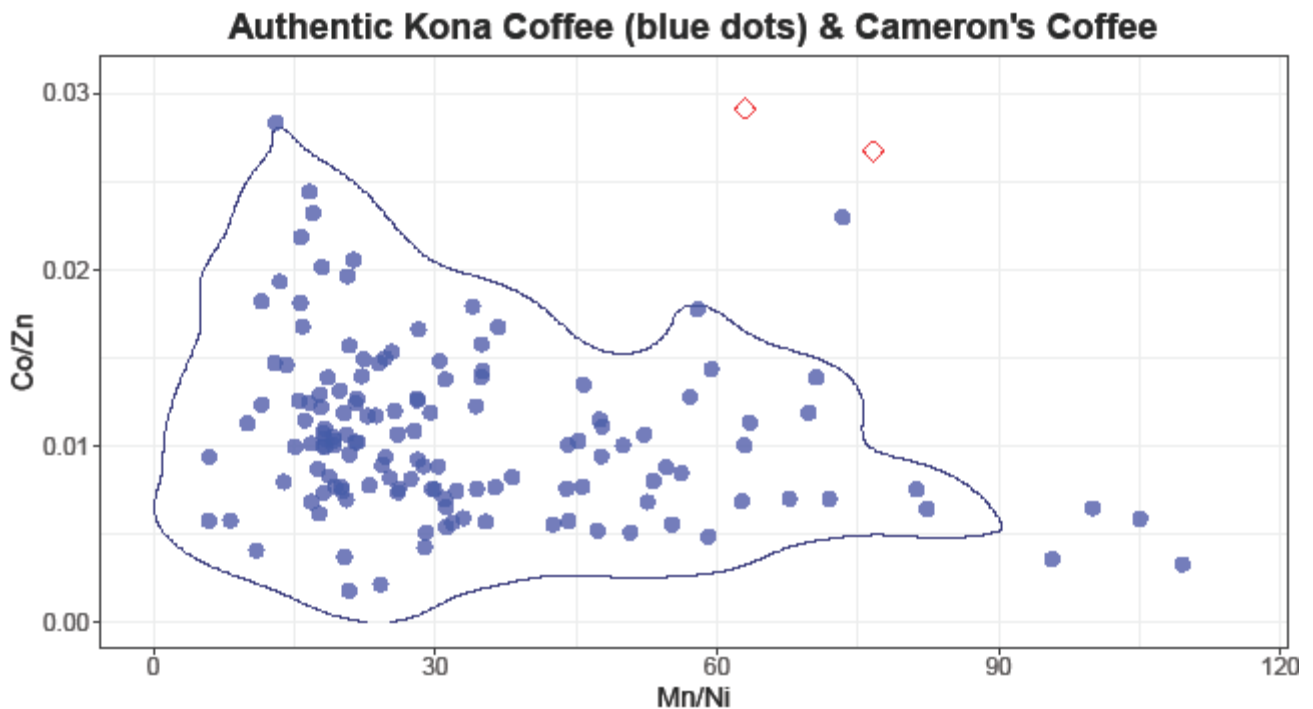
1 115. But while consumers could reasonably believe that the packages in Figures CC-1 and
 2 CC-2 contain nothing but Kona coffee, the lab tests tell a different story. On the below scatter plot
 3 showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by
 4 red diamonds) are well outside the range of authentic Kona. In other words, Cameron's designation
 5 of Kona as the origin of the coffee in its products is false.
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Figure CC-A

1 116. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel
 2 ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well
 3 outside the range of authentic Kona. In other words, Cameron's designation of Kona as the origin of
 4 the coffee in its products is false.
 5



19 **Figure CC-B**

20

21 117. Even a consumer understanding the coffee in the package shown in CC-1 to be a blend
 22 of Kona and other coffees (a conclusion that very few consumers would draw based on this particular
 23 packaging) would expect the package to contain a meaningful percentage of Kona beans. Given the
 24 deviation in the concentration ratios, though, it is implausible that this package meets those consumer
 25 expectations.
 26

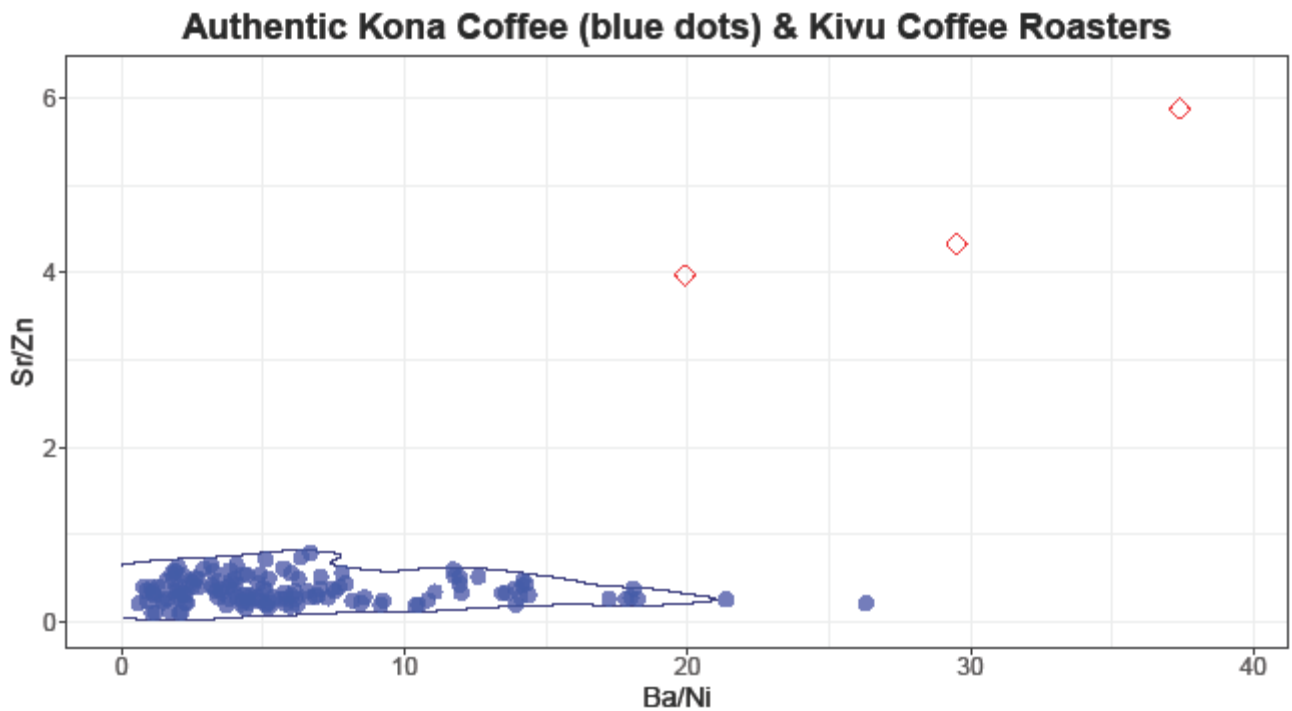
1 118. *THE KROGER CO.* With its private-label “Kivu,” Kroger falsely designates the
2 geographic origin of its “Kona” coffee products with the prominent placement of KONA on the label
3 of both its pre-packaged products and its self-serve dispensers. In addition, Kroger sells coffee
4 products from Gold Defendants, which also falsely designates Kona as the geographic origin. Kroger
5 designs its product packaging with imagery intended to mislead the consumer into believing that the
6 coffee product contains coffee beans grown in the Kona District. The deceptive packaging
7 prominently features the word KONA with images of hibiscus flowers and tropical islands. The self-
8 serve dispensary for the Kivu coffee describes the product as “premium coffee ... grown on the steep
9 slopes of the Kona region of Hawaii.” These statements are intended to mislead consumers into
10 believing that the Kona coffee sold under the Kivu label is cultivated in the Kona region, when in fact
11 the product is mostly commodity coffee beans grown in other parts of the world. The deceptive
12 package design featuring the false designation of Kona as the origin of the coffee is intended to trade
13 off the reputation and goodwill of the Kona name. They deliberately mislead the consumer into
14 believing that Kroger’s coffee products contain nothing but premium Kona coffee beans in order to
15 justify the high price Kroger charges for ordinary commodity coffee beans.
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1 119. Below is a sample image of the deceptive packaging used by Kroger for its private-label
2 “Kona” coffee product at its self-serve dispensers found in its retail stores.
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20 **Figure Kroger-1**

1 120. But while consumers could reasonably believe that the package in Figure Kroger-1
 2 contains nothing but Kona coffee, the lab tests tell a different story. On the below scatter plot showing
 3 the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red
 4 diamonds) are well outside the range of authentic Kona. In other words, Kroger's designation of Kona
 5 as the origin of the coffee in its Kivu products is false.
 6



20 **Figure Kroger-A**

21 21. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel
 22 ratio reinforces the same conclusion. These accused Kroger Kivu products (marked by red diamonds)
 23 are well outside the range of authentic Kona. In other words, Kroger's designation of Kona as the
 24 origin of the coffee in its Kivu products is false.
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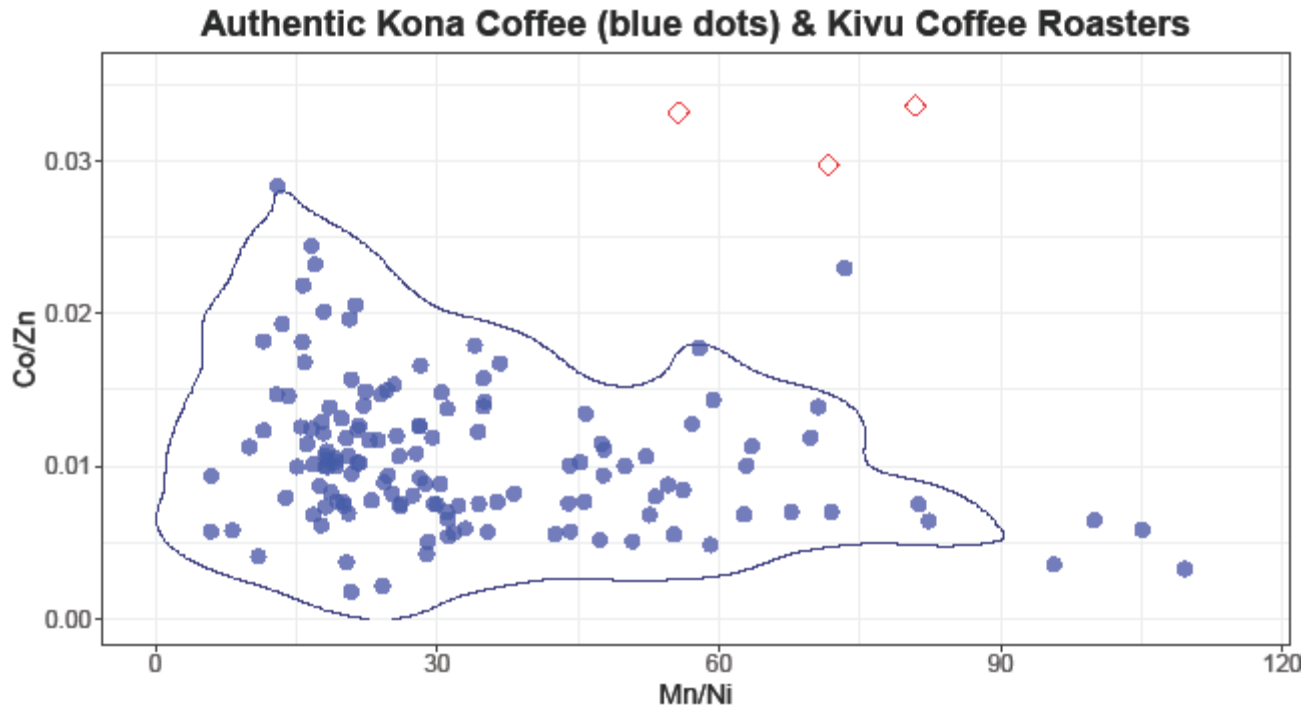


Figure Kroger-B

122. In fact, these bags contain very little Kona coffee, if any. As an indicator, note that authentic Kona has less strontium than zinc. (See Figure Kroger-A.) In contrast, Kivu samples have between four times (4x) and six times (6x) as much strontium as zinc. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in this bag.

123. Even a consumer understanding the coffee in the package shown in Kroger-1 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans. Given the deviation in the concentration ratios, though, it is implausible that this package meets those consumer expectations.

1 124. *AMAZON.COM*. Through its online store at www.amazon.com, Amazon sells a variety
2 of deceptive coffee products, including but not limited to the following: MCC, Hawaiian Isles, Gold
3 Coffee Products, Mulvadi, Cameron's, Copper Moon, Hazz, and Magnum Exotics. Each of these
4 brands offers products through Amazon that falsely designate KONA as the origin of the coffee beans.
5 And Amazon wrongfully profits on each sale.
6

7 125. *WALMART*. Walmart sells a variety of deceptive coffee products, including but not
8 limited to the following: MCC, Copper Moon, Cameron's, Gold Coffee Products, Boyer's, Hawaiian
9 Isles, and Mulvadi. Walmart wrongfully profits on each sale.
10

11 126. *COSTCO*. Costco sells a variety of deceptive coffee products, including but not limited
12 to Magnum Exotics and Gold Coffee Products. Costco wrongfully profits on each sale.

13 127. *BED BATH & BEYOND*. Bed Bath sells a variety of deceptive coffee products,
14 including but not limited to Copper Moon. Bed Bath wrongfully profits on each sale.
15

16 128. *ALBERTSONS & SAFEWAY*. Albertsons and Safeway generally offer for sale the same
17 coffee products featuring Kona on the label. They both sell a variety of deceptive coffee products,
18 including but not limited to Hawaiian Isles. Safeway also sells deceptive coffee products from
19 Cameron's. Albertsons and Safeway wrongfully profit on each sale.
20

21 129. *MNS LTD.* ("ABC"). ABC sells a variety of deceptive coffee products, including but
22 not limited to the following: Mulvadi, MCC and Hawaiian Isles. ABC wrongfully profits on each
23 sale.
24

25 130. *TJX*. Through its retail stores branded T.J. Maxx, TJX sells a variety of deceptive
26 coffee products, including but not limited to the following: Gold Coffee Products, Magnum Exotics,
27 and Kona Roasting Co. TJX wrongfully profits on each sale.

1 135. Plaintiffs and the Class, comprised entirely of farmers of authentic Kona coffee, have
2 a reasonable and genuine interest to be protected against the Defendants' false designation of origin
3 and sale of coffee products fraudulently labeled as Kona.
4

5 136. In violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1), Defendants
6 have used, continue to use and/or profit from the use of the Kona name as a false designation of origin.
7

8 137. In violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A),
9 Defendants' false designation of origin for the coffee products they manufacture, distribute and/or sell
10 in commerce is likely to cause consumer confusion and mistaken purchases, and is likely to deceive
11 consumers as to the origin of the coffee products manufactured, distributed and/or sold by Defendants.

12 138. In violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(B), Defendants
13 have used in commerce descriptions that falsely and/or misleadingly designate Kona as the origin of
14 the coffee products, when most of the coffee beans contained in the coffee products were sourced from
15 other regions of the world.
16

17 139. By marketing and selling coffee products that falsely designate Kona as the origin of
18 coffee beans that are of inferior quality, Defendants are damaging the reputation and goodwill of the
19 Kona name, as well as the market value of authentic Kona coffee, to the detriment of Plaintiffs and
20 the Class.
21

22 140. Plaintiffs and the Class are comprised of farmers of authentic Kona coffee who have
23 been and continue to be damaged by Defendants' violations of the Lanham Act, and are therefore
24 entitled to equitable relief, including a permanent injunction, and damages in an amount to be proven
25 at trial. As a component of damages to be awarded, Plaintiffs and the Class request a substantial award
26
27

1 to finance a national corrective advertising campaign to help remedy the harm that Defendants have
2 caused to the goodwill and reputation of the Kona name.

3 141. Because Defendants are sophisticated participants in the coffee industry, with
4 designated coffee buyers and designated coffee product managers, they have full knowledge of exactly
5 what they are buying and what they are selling. Given the egregious nature of the Defendants' false
6 designation of Kona as the source of their commodity coffee beans, Plaintiffs and the Class seek an
7 award of three times actual damages.
8

9 142. Pursuant to 15 U.S.C. §1117(a), Plaintiffs and the Class are entitled to recover
10 Defendants' profits earned through the sale of various coffee products that falsely designate Kona as
11 the origin of the coffee beans.
12

13 143. As a direct and proximate result of their wrongful conduct as alleged above, Defendants
14 have caused, and will continue to cause, immediate and irreparable injury to Plaintiffs and the Class,
15 and to their business, reputation, and goodwill, for which there is no adequate remedy at law. As such,
16 Plaintiffs and the Class are entitled to an injunction under 15 U.S.C. §1116 permanently restraining
17 Defendants, both individually and collectively, from using the name "Kona" in their labels, packaging,
18 promotions, marketing, or advertising of any Kona product that they roast, manufacture, package, or
19 label.
20

21 144. Pursuant to 15 U.S.C. § 1117, Plaintiffs and the Class seek to recover the cost of this
22 action, and, because this case qualifies as exceptional, their reasonable attorneys' fees.
23

24 145. Plaintiffs and the Class seek to hold Defendants jointly and severally liable for the lost
25 profits of Plaintiffs and the Class and for corrective advertising necessary to restore the reputation and
26 goodwill of the Kona name.
27

1 **IX. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs request entry of judgment in their favor and against Defendants and
3 other relief as follows:

4 146. Defendants and its agents, officers, employees, representatives, successors, assigns,
5 attorneys and all other persons acting for, with, by and through, or under authority from the
6 Defendants, and each of them, be permanently enjoined from using the term “Kona” in describing,
7 labeling, or packaging Defendants’ own coffee products, or advertising, promoting, marketing or
8 selling the same.
9

10 147. Defendants be adjudged to have violated 15 U.S.C. § 1125(a) by falsely designating
11 their coffee products as originating from Kona, when in fact such goods contain no significant amount
12 of Kona coffee beans, if any.
13

14 148. Pursuant to 15 U.S.C. §1117, that Defendants be held jointly and severally liable for
15 all damages suffered by Plaintiffs and the Class resulting from the acts alleged herein.
16

17 149. That as a result of Defendants’ deliberate, willful, and intentional conduct in violation
18 of 15 U.S.C. § 1125(a), such damages be trebled.

19 150. Pursuant to 15 U.S.C. §1117, that Defendants be compelled to account for, and to
20 disgorge, any and all of the profits derived by Defendants through illegal acts complained of herein.
21

22 151. For an award of funds sufficient to carry out a national corrective advertising campaign
23 to mitigate the reputational harm Defendants’ wrongful conduct has caused, for which the Defendants
24 shall be held jointly and severally liable.

25 152. That Defendants be ordered, pursuant to 15 U.S.C. §1118, to deliver up for destruction
26 all containers, labels, signs, prints, packages, wrappers, receptacles, advertising, promotional material,
27

1 and products, or the like in possession, custody or under the control of Defendants that are determined
2 to violate Section 43 of the Lanham Act.

3 153. That the Court declare this to be an exceptional case and award full costs and reasonable
4 attorneys' fees pursuant to 15 U.S.C. §1117.
5

6 154. That the Court grant prejudgment and post-judgment interest.

7 155. That the Court grant any other remedy to which Plaintiffs and the Class may be entitled
8 as provided by law or equity.

9 156. For such other and further relief, including costs and attorneys' fees, as allowed by law
10 and as the Court deems just and equitable.
11

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs respectfully demand a trial by jury on all claims and issues so triable.

14 //

15 //

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1 DATED this 8th day of January, 2020.

2
3 KARR TUTTLE CAMPBELL, P.S.

4 /s/ Nathan T. Paine

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CERTIFICATE OF SERVICE

I, Jan Likit, affirm and state that I am employed by Karr Tuttle Campbell in King County, in the State of Washington. I am over the age of 18 and not a party to the within action. My business address is: 701 Fifth Avenue, Suite 3300, Seattle, WA 98104. On this day, I caused to be filed with the Court a true and correct copy of the foregoing via the Court's electronic filing system, which caused service of the document to all parties registered to receive notifications through CM/ECF.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, to the best of my knowledge.

Dated this 8th day of January 2020, at Seattle, Washington.

/s/Jan Likit
Jan Likit
Legal Assistant