

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

<b>HATWRKS, LLC,</b>	)	
	)	
<i>Plaintiff,</i>	)	
	)	
-vs-	)	<b>Case No.</b> _____
	)	
	)	<b>JURY DEMAND</b>
<b>RHE HATCO, INC.,</b>	)	
	)	
<i>Defendant.</i>	)	

**COMPLAINT**

COMES NOW THE PLAINTIFF, HATWRKS, LLC, and sues the Defendant, RHE HATCO, INC., and would state as follows:

**I.  
Introduction**

1. HatWrks, LLC brings this action against Rhe Hatco, Inc. for compensatory, statutory and treble damages arising out of its intentional violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. § 11 (“the Act”); engaging in anti-competitive actions as a licensed manufacturer and distributor of Stetson brand hats in restraint of trade in violation of Tennessee Code § 47–25–101 and breach of contract.

**II.  
Jurisdiction and Venue**

2. This Court has jurisdiction over the claims presented in this action pursuant to 28 U.S.C. § 1337 based on federal question jurisdiction under the Sherman Act, as well as and 28 U.S.C. §1332, based on diversity jurisdiction

because the parties reside in different states and the amount in controversy exceeds \$75,000.00.

3. Venue is proper in the Middle District of Tennessee because all of the actions that give rise to these claims occurred within this federal district.

### **III. Parties**

4. HatWrks, LLC (“HatWrks”) is a Limited Liability Company organized and existing under the laws of the State of Tennessee. Its principal place of business is located at 1027 8<sup>th</sup> Avenue South, Nashville, Tennessee 37203.

5. Rhe Hatco, Inc. (“HatCo”) is a Delaware corporation, and its principal headquarters are located at 601 Marion Drive, Garland, Texas 75042. It is a manufacturer and distributor of hats and other apparel. HatCo is also a licensee and distribution partner of John B. Stetson Company. Its registered agent in the State of Tennessee is CT Corporation System, which may be served at 300 Montvue Road, Knoxville, Tennessee 37919.

### **IV. Facts**

6. HatWrks is a retail business specializing in the sale of hats. It has operated in Nashville, Tennessee since 2011, and later formed as a limited liability company in 2015. While its principal operation is located in Tennessee, it markets its products worldwide.

7. For over ten years, HatWrks has regularly purchased hats and other merchandise from HatCo. These orders, which frequently total in the six-figure range, have consisted of a variety of hats. Among the Plaintiff's most frequently purchased items from HatCo are Stetson brand hats which have been a mainstay of the Plaintiff's retail business, accounting for a significant portion of its profits over the years.

8. Plaintiff alleges that the relationship between Stetson and HatCo is that of licensor-licensee, and that HatCo is a distribution partner with Stetson.

9. During much of its history, HatWrks has held itself out to the world as a provider of Stetson hat wear, and this brand is featured prominently in the Plaintiff's advertising in print and outdoor signage.

10. Over the years, since the Plaintiff first began its business relationship with HatCo, various HatCo sales representatives have frequently visited the Plaintiff's retail location in Nashville, Tennessee. Based on these visits, and the volume of its sales to the Plaintiff, the Defendant is keenly aware of the Plaintiff's dependence on Stetson products and the significance of this line of product to the Plaintiff's market base and overall business operation.

11. As of the filing of this Complaint, the Plaintiff has outstanding orders with HatCo for hats and other merchandise, including Stetson brand hats, totaling over \$130,000.00 which were placed with the Defendant prior to May 28, 2021.

### Events of 2020-2021

12. 2020 and 2021 were among the most eventful years in United States history.

13. The year 2020 began with the impeachment trial in the United States Senate of President Donald J. Trump.

14. After the acquittal of President Trump, national attention soon shifted to the global Covid-19 pandemic.

15. During 2020 and 2021, the pandemic prompted the global shutdown of schools, businesses, sporting events, religious gatherings and most forms of entertainment on an unprecedented scale. It has prompted mask and vaccine mandates throughout the country ordered on both state and local levels.

16. In addition to the vaccine and pandemic-related tensions, there is quite evidently a sharp partisan divide in the United States.

17. Many national commentators and observers of American culture have publicly opined that the United States is undergoing changes that are reshaping the country in profound ways.

18. Over the summer of 2021, large scale protests took place in several cities across the United States in opposition to the vaccine mandates. On January 23, 2022, a national protest against vaccine mandates took place in Washington, D.C.

19. The United States Supreme Court, in a Memorandum Opinion issued on January 13, 2022, in the case of *National Federation of Independent Business, et*

*al. v. Department of Labor, et al*, 2022 WL 120952 (January 13, 2022), imposed a emergency stay of the Biden Administration’s OSHA Vaccine mandate finding that it was an overstep of executive power.

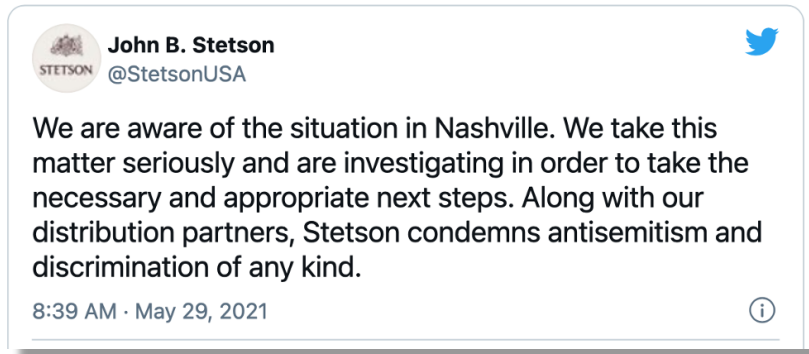
20. As of the date of the federal Complaint, more than a dozen states have sued the Biden Administration to enjoin the enforcement of the vaccine mandate.

**Exercising Political Speech within this Cultural Milieu**

21. It is within this cultural milieu that the owner of HatWrks, Gigi Gaskins chose to exercise one of the most coveted constitutional rights guaranteed by the United States and the Tennessee Constitutions: the right to free speech.

22. On May 28, 2021, Ms. Gaskins posted to the HatWrks Instagram social media site a photograph depicting a yellow Star of David image with the words “Not Vaccinated.”

23. The following day, on May 29, 2021, the John B. Stetson Company (“Stetson”), speaking on its behalf as well as “its distribution partners” (which include HatCo) posted to its Twitter and other social media accounts the following false accusatory statement referring to HatWrks’ social media post as “the situation in Nashville” and publicly condemning it as an act of anti-Semitism.



24. On May 29, 2020, the same day that Stetson published its defamatory statement on its social media about HatWrks, Ms. Gigi Gaskins, the owner of HatWrks, received a telephone call from Sean O’Toole and Ricky Bolin, both of HatCo. Mr. O’Toole and Mr. Bolin advised Ms. Gaskins that in adherence to Stetson’s position, HatCo was terminating all further sales of merchandise to HatWrks. They further advised Ms. Gaskins: “This is coming from corporate. We cannot jeopardize the license. We have no choice but to make this call.”

25. On June 3, 2021, Stetson issued the following statement to one of its supporters advising them that Stetson and its distribution partners [which includes HatCo] will “cease sale of all Stetson products to HatWrks vendor in Nashville, TN.”

PRinquiries [PRinquiries@stetson.com](mailto:PRinquiries@stetson.com)

To Cutler, me

Thu, Jun 3, 4:16 PM

Dear Cutler Lewandowski,

Thank you for contacting Stetson!

Thank you for your continued support. As a result of the offensive content and opinions shared, Stetson and our other distribution partners will cease sale of all Stetson products to Hatwrks vendor in Nashville, TN. We thank you for your support and patience in this matter. Stetson condemns anti-Semitism and discrimination of any kind.

If you need anything further, please feel free to reach out or vist us at <https://stetson.com/>

26. In keeping with the restrictive marketing position taken by Stetson, as a distributor of Stetson brand hat wear, and acting in concert with, in combination with, and in conformity to, Stetson's nationwide moratorium through all of its distribution partners, effective June 3, 2021, HatCo immediately imposed a restraint on all sales of merchandise to the Plaintiff.

27. In addition, HatCo has failed to honor outstanding orders for merchandise that were placed by HatWrks prior to this June 3, 2021 moratorium, despite having issued "Order Confirmations" to the Plaintiff, and it has held up delivery on over \$130,000.00 of Stetson and other brands of products.

28. Plaintiff, through her counsel, sent a letter to the Defendant HatCo's Executive Director Ricky Bolin on June 17, 2021 objecting to Stetson (and by

implication) HatCo's false mischaracterization of the Plaintiff's owner, Gigi Gaskins as an anti-Semite.

29. Since June of 2021, the Plaintiff has made repeated requests upon the Defendant to lift its moratorium on all sales of merchandise to the Plaintiff and to honor the outstanding orders HatCo had approved prior to May 28, 2021.

30. Plaintiff alleges that while the Defendant has cut off all sales of product to HatWrks, it has continued to honor all purchase orders from the Plaintiff's competitors in the Nashville area, and has continued to supply Plaintiff's competitors with Stetson hat wear.

31. As a direct and proximate consequence of the Defendant's unilateral actions in restraint of trade, the Plaintiff has now depleted most of its inventory of Stetson products, and its sales volume has been drastically affected.

32. Since May 29, 2021, when HatCo, in combination with Stetson, imposed its moratorium on all sales of Stetson products to HatWrks, the Plaintiff has exhausted all reasonable efforts to re-establish its business relationship with the Defendant.

33. As a direct and proximate result of the Defendant's unilateral imposition of a moratorium on all sales of product to the Plaintiff, its actions in restraint of trade, its collusion with Stetson to terminate all sales of Stetson products to the Plaintiff, and its breach of contract, the Plaintiff has suffered and continues to suffer economic injury and is entitled to judgment for compensatory and punitive damages.



**V.**  
**Causes of Action**

**COUNT I**  
**Sherman Anti-Trust Act**  
**15 U.S.C. § 11**

34. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs and does further allege as follows.

35. Section 1 of the Sherman Act makes “(e)very contract, combination ... or conspiracy, in restraint of trade ... illegal.” 15 U.S.C. § 1. The statute prohibits only unreasonable contracts, combinations, or conspiracies in restraint of trade. The courts have fashioned rules of per se illegality, however, for certain practices because of their pernicious effect on competition.

36. A refusal to deal has been recognized as a per se illegal violation of Section 1 of the Sherman Act.

37. In addition, territorial and customer restrictions placed on the resale of goods by distributors, like the one practiced by HatCo and Stetson in this case, have been held per se illegal under the Sherman Act. *United States v. Arnold, Schwinn & Co.*, 388 U.S. 365, 87 S.Ct. 1856, 18 L.Ed.2d 1249 (1967).

38. Plaintiff alleges that on or about June 3, 2021, the Defendant HatCo conspired with Stetson and other distributors of Stetson products to impose an unreasonable restraint of trade, i.e. the ban of all sales of Stetson products to the Plaintiff.

39. The immediate result of the Defendant's moratorium on all sales to the Plaintiff had a predictable anti-competitive effect within the relevant market in the Nashville market for hat wear.

40. Trade restraining agreements scrutinized under the Act can be categorized as vertical when they are "combinations of persons at different levels of the market structure, such as manufacturers and distributors." *Bailey's, Inc. v. Windsor Am., Inc.*, 948 F.2d 1018, 1027 (6th Cir.1991) (quoting *Oreck Corp. v. Whirlpool Corp.*, 579 F.2d 126, 131 (2d Cir.), *cert. denied*, 439 U.S. 946, 99 S.Ct. 340, 58 L.Ed.2d 338 (1978), as quoted in *Crane & Shovel Sales Corp. v. Bucyrus-Erie Co.*, 854 F.2d 802, 805-06 (6th Cir.1988)). Vertical restraints primarily affect intrabrand competition, (such as the Stetson brand in the instant case), while horizontal restraints primarily affect interbrand competition.

41. The unilateral actions of Hatco in combination with Stetson to single out HatWrks and prohibit all sales of merchandise to the Plaintiff, while at the same time selectively selling product to the Plaintiff's competitors is inherently anti-competitive and unreasonable and serves to suppress competition and are otherwise in restraint of trade and violates Section 1 of the Sherman Antitrust Act.

42. Plaintiff further alleges that the actions of HatCo and Stetson in their joint decision to refusal to deal with the Plaintiff constitutes a conspiracy in restraint of trade.

43. To quote from Justice Brandeis:

Mr. Justice Brandeis in *Chicago Board of Trade v. United States*, 246 U.S. 231, 38 S.Ct. 242, 62 L.Ed. 683 (1918):

Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences.’

*Id.*, at 238, 38 S.Ct. at 244, 62 L.Ed. at 687.

44. The Defendant’s apparent motivation for this selective and anti-competitive regulation and for its concerted action with Stetson is punitive in nature and demonstrates an intent to retaliate against the Plaintiff for its exercise of protected free speech on a matter of inherent national and public concern.<sup>1</sup>

45. As a direct result of the Defendant’s violation of the Sherman Act and its intentional anti-competitive actions, the Plaintiff has suffered and continues to

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<sup>1</sup> Since May 28, 2021, the date of Ms. Gaskins’ Facebook post, there has been a plethora of others in government leadership and elsewhere who have likewise chosen the Yellow Star of David to symbolize their opposition to government-mandated COVID-19 vaccines. See accord: 1. <https://www.seattletimes.com/seattle-news/politics/washington-lawmaker-wears-gold-star-of-david-evoking-nazi-persecution-to-protest-covid-vaccine-mandates/>; 2. <https://www.timesofisrael.com/montreal-anti-vax-leader-drops-the-yellow-star-stands-by-holocaust-comparison/>; and 3. [https://account.kansascity.com/paywall/subscriber-only?resume=253439269&intcid=ab\\_archive](https://account.kansascity.com/paywall/subscriber-only?resume=253439269&intcid=ab_archive)

suffer economic injury in the form of loss of retail sales, loss of good will among its other suppliers and business associates, injury to its business and loss of economic opportunity for which it is entitled to judgment for compensatory and punitive damages.

## **COUNT II**

### **Restraint of Trade Violation of Tenn. Code Ann. § 47-25-101**

46. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs and does further allege as follows.

47. The intentional refusal of the Defendant to honor purchase orders from the Plaintiff, and its continued refusal to sell merchandise to the Plaintiff, and in particular, Stetson products is an act in restraint of trade and against public policy of the State of Tennessee as codified at Tenn. Code Ann. § 47-25-101, which provides:

#### **Tenn. Code Ann. § 47-25-101. Public Policy**

All arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this state, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed, or which tend, to advance, reduce, or control the price or the cost to the producer or the consumer of any such product or article, are declared to be against public policy, unlawful, and void.

48. As a direct and proximate result of the Defendant's actions in restraint of trade, the Plaintiff has suffered, and continues to suffer, economic injury, injury to its business and loss of market share and is entitled to the statutory remedies codified at Tenn. Code Ann. § 47-25-106, which provides:

**Tenn. Code Ann. § 47-25-106. Remedies**

Any person who is injured or damaged by any such arrangement, contract, agreement, trust, or combination described in this part may sue for and recover, in any court of competent jurisdiction, from any person operating such trust or combination, the full consideration or sum paid by the person for any goods, wares, merchandise, or articles, the sale of which is controlled by such combination or trust.

**COUNT III  
Breach of Implied Contract**

49. Plaintiff alleges that HatWrks and HatCo are both "merchants" as defined by the Uniform Commercial Code ("UCC"), codified at Tenn. Code Ann. § 47-1-101, *et seq.*

50. Pursuant to Tenn. Code Ann. § 47-1-303(b) the term "course of dealing" is defined in the UCC as "a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct."

51. In the usual course of business, HatWrks places an order for merchandise with HatCo either via a telephone call to the Defendant's customer service desk at its facility in Garland, Texas, or directly with one of the Defendant's

sales representatives. These orders are then processed by HatCo and it sends a “Confirmation of Order” to the Plaintiff confirming its receipt of the Plaintiff’s order. This “Order Confirmation”, as shown in the following sample dated May 10, 2021, states the anticipated delivery date of the merchandise and the method of delivery.



52. The Plaintiff has received from HatCo several written “Order Confirmations” of its pending orders of merchandise which have been pending since May of 2021. Despite having confirmed these orders, the Defendant now arbitrarily refuses to fill them.

53. Over the last ten years, the course of dealing between the parties has been that a contract of purchase has been formed once confirmation is sent by HatCo to HatWrks.

54. Tenn. Code Ann. § 47-2-204 specifically states that a contract for the sale of goods may be formed in any manner sufficient to show agreement.

**Tenn. Code Ann. § 47-2-204. Formation in general**

- (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.
- (2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.
- (3) Even though one (1) or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

55. On June 3, 2021, when HatCo, at the behest of Stetson, ceased all sales of Stetson products to HatWks, the Plaintiff had placed orders with the Defendant for the purchase of over \$130,000.00 in Stetson products.

56. Plaintiff alleges further that these orders were placed in the same manner and course of dealing that has existed between these parties for approximately ten years

57. The parties' course of dealing between merchants constitutes an implied and binding contract for the sale of goods.

58. The Plaintiff would further allege that at the present time it has an outstanding balance with HatCo which it has offered to pay if the business relationship is restored and HatCo's unilateral moratorium on all sales is lifted.

59. HatCo is bound by the terms of its implied contract with the Plaintiff and its conduct in failing to now honor these orders constitutes an actionable

breach of contract for which the Plaintiff is entitled to an award of compensatory, incidental and consequential damages.

WHEREFORE, PREMISES CONSIDERED, PLAINTIFF SEEKS THE FOLLOWING RELIEF:

1. That process issue to the Defendant RHE HATCO, INC., requiring it to answer this Complaint within the time required under the Federal Rules of Civil Procedure;
2. That at the trial of this case HatWrks, LLC be awarded compensatory damages against the RHE HATCO, Inc. in the amount of Five Million Dollars (\$5,000,000.00);
3. That at the trial of this case HatWrks, LLC be awarded treble damages;
4. That at the trial of this case, HatWrks, LLC be awarded punitive damages against RHE HATCO, Inc. in the amount of Five Million Dollars (\$5,000,000.00);
5. That the Plaintiff be awarded its costs and reasonable attorney's fees;
6. That the Plaintiff have and recover such further and general relief as to which it may be entitled, including the costs of this cause.
7. That a jury of six be empaneled to hear and try all issues of fact presented;



Respectfully submitted,



By: /s/ Larry L. Crain  
Larry L. Crain (#9040)  
5214 Maryland Way, Suite 402  
Brentwood, TN. 37027  
Tel. 615-376-2600  
Fax. 615-345-6009  
Email: [Larry@crainlaw.legal](mailto:Larry@crainlaw.legal)

*Counsel for HatWrks, LLC*