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10 *Attorneys for Plaintiff ThermoLife International, LLC*

11 UNITED STATES DISTRICT COURT  
12 FOR THE DISTRICT OF ARIZONA

13 ThermoLife International, LLC, an  
14 Arizona limited liability company,

15 Plaintiff,

16 v.

17 Vital Pharmaceuticals, Inc.,

18 Defendant.

Case No.

**COMPLAINT**

(Jury Trial Demanded)

19 For its Complaint against defendant Vital Pharmaceuticals, Inc. d/b/a VPX  
20 (hereinafter “VPX”), ThermoLife alleges as follows:

21 **PARTIES, JURISDICTION AND VENUE**

22 1. Plaintiff ThermoLife is an Arizona limited liability company with its  
23 principal place of business in Phoenix, Arizona.

24 2. Defendant VPX is Florida limited liability company with that distributes  
25 dietary supplements to customers across the United States, including in Arizona. VPX  
26 falsely advertises to Arizona customers and unfairly competes with ThermoLife in the  
27 state. Personal jurisdiction exists under Arizona’s long-arm statute.  
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1           3.       The Court has jurisdiction over Plaintiff’s federal claims under 15 U.S.C.  
2 § 1121 and 28 U.S.C. §§ 1331 and 1338(a). This Court has jurisdiction over Plaintiff’s  
3 state law claims based on 28 U.S.C. §§ 1338(b) and 1367.

4           4.       Venue is proper in this district under 28 U.S.C. § 1391(b)-(c), because a  
5 substantial part of the events or omissions giving rise to ThermoLife’s claims occurred  
6 in this district. Venue with respect to VPX is also proper in this district because VPX is  
7 subject to personal jurisdiction in this district.

8   **FACTUAL ALLEGATIONS<sup>1</sup>**

9   **THERMOLIFE**

10          5.       Ron Kramer (“Kramer”) founded ThermoLife in 1998. Prior to founding  
11 ThermoLife, Kramer opened and operated a Gold’s Gym in Santa Cruz, California.

12          6.       In 1998, Kramer founded ThermoLife in order to provide the public with  
13 quality proven supplements.

14          7.       ThermoLife currently holds 23 separate and distinct patents that protect its  
15 innovative development and use of ingredients in Dietary Supplements and food  
16 products.

17          8.       ThermoLife holds several patents related to the use of amino acids  
18 combined with nitrates to increase athletic performance. For example, ThermoLife’s  
19 U.S. Patent No. 8,178,572 protects and covers “a method for increasing the vasodilative  
20 characteristics of amino acids in a human, the method comprising administering orally to  
21 the human a pharmaceutically effective amount of an amino acid compound consisting  
22 essentially of a nitrate of an amino acid selected from the group consisting of Arginine,  
23 Agmatine, Beta Alanine, Citrulline, Creatine, Glutamine, L-Histidine, Isoleucine,  
24 Leucine, Norvaline, Ornithine, and Valine.”

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27          <sup>1</sup>       The factual allegations set forth in this section support ThermoLife’s Count I & II  
28 for false advertising and common law unfair competition. ThermoLife’s Count III, for  
declaratory judgment, relies on the many of the facts set forth in this section, but  
additional facts are also set forth in Count III.

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1           9.     ThermoLife holds at least 14 patents with more than 450 claims related to  
2 novel uses of these Amino Acid/nitrate compounds and compositions in Dietary  
3 Supplements and food products.

4           10.    In addition to its own patents, ThermoLife also licenses patents related to  
5 compounds used in dietary supplements. Relevant here, ThermoLife holds an exclusive  
6 license to practice U.S. Patent 8,350,077 (“the ‘077 Patent”). The ‘077 Patent discloses  
7 and protects certain creatine amides such as the alleged “Super Creatine dipeptides” that  
8 are a subject of this complaint, and it is discussed in greater detail below.

9           11.    ThermoLife’s patented creatine nitrate has proven exceedingly popular in  
10 the Dietary Supplement market.

11           12.    Creatine is sold in many forms and has been used to promote muscle mass  
12 in individuals for decades. Creatine nitrate is a new form of creatine where the creatine  
13 molecule is ionically bounded to a nitrate ion. Among its other benefits, the bonding of  
14 the creatine with the nitrate increases the solubility of the compound, which is beneficial  
15 for use in Dietary Supplements.

16           13.    ThermoLife licenses and sells its patented creatine nitrate for use in  
17 Dietary Supplement products.

18           14.    Sourced and licensed from ThermoLife, creatine nitrate and other Amino  
19 Acid Nitrates supplied by ThermoLife are included in many of the top-selling Dietary  
20 Supplements in the world.

21           15.    As just one example, ThermoLife’s creatine nitrate is the marquee  
22 ingredient in the world’s top-selling pre-workout product: Cellucor’s C4.

23           16.    Defendant VPX has attacked ThermoLife’s creatine nitrate in its  
24 advertising. This is because products that include creatine nitrate directly compete with  
25 VPX’s products described below. As just one example, in a VPX video advertisement  
26 that is currently available on YouTube, titled “Super Creatine”, VPX’s President Jack  
27 Owoc directly compares creatine nitrate to VPX’s self-proclaimed Super Creatine. He  
28 falsely states that creatine nitrate “is a simple salt attached to creatine” and that creatine

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1 nitrate is “minimally effective.” After bashing ThermoLife’s creatine nitrate, VPX’s  
2 President touts Super Creatine as superior to all other creatines, including creatine  
3 nitrate.

4 17. In another advertisement VPX’s President Jack Owoc falsely claims that  
5 ThermoLife’s Creatine nitrate is “useless” “that there is ZERO scientific evidence it can  
6 increase performance” and that it “can be dangerous” when compared to the “proven  
7 ingredients in BANG.” The truth is that creatine nitrate is safe, it’s not useless, and there  
8 is plenty of scientific evidence to prove it increases performance; on the other hand,  
9 contrary to VPX’s and Owoc’s lies, there is ZERO scientific evidence establishing the  
10 effectiveness of VPX’s Super Creatine in humans, and nothing in the limited studies on  
11 rodents shows that Super Creatine is proven to do anything to increase performance in  
12 humans, or even mice.

13 18. In addition to attacking the effectiveness of ThermoLife’s patented  
14 Creatine Nitrate, VPX has falsely and misleadingly compared the solubility of Super  
15 Creatine to the solubility of ThermoLife’s Creatine Nitrate. Solubility is important for  
16 ingredients used in Dietary Supplements because Dietary Supplements are frequently  
17 sold in a liquid drink form (like VPX’s BANG energy drink) and/or mixed in water by  
18 Dietary Supplement consumers prior to consumption. VPX falsely claims that its Super  
19 Creatine is the most soluble form of creatine and, therefore, the most bioavailable  
20 creatine available. This statement is false. First, Super Creatine is less soluble than  
21 creatine nitrate and even other creatine forms such as creatine HCl. Second, even if a  
22 compound is more soluble it is not necessarily more bioavailable, especially if the  
23 compound is already 100% dissolved in water. At the 40mg amounts of Super Creatine  
24 VPX uses in BANG, creatine nitrate or even plain creatine monohydrate would be 100%  
25 dissolved both in water and in the stomach, and contrary to VPX’s lies no differences in  
26 bioavailability due to their solubility should be expected. Third, as will be explained  
27 below, Super Creatine is not even creatine, much less the "most bioavailable" form of  
28 creatine. Moreover, as highlighted in detail in paragraph 97 below, the chart published in

1 VPX’s advertising is purposefully misleading as it represents dissolution rate (in a  
2 highly acidic non-existent in the human body media), not solubility rate. Creatine Nitrate  
3 is a creatine with proven superior solubility and dissolution—Super Creatine is none of  
4 these things.

5 19. In VPX’s advertisements, VPX has also repeatedly touted Super Creatine  
6 as “world’s most bioavailable creatine.” As explained below, Super Creatine is not  
7 creatine; accordingly, this is a false comparison between ThermoLife’s creatine nitrate  
8 and Super Creatine.

9 20. ThermoLife is harmed when consumers are misled into purchasing any  
10 falsely advertised product that competes with any product that contains ingredients that  
11 are sourced from ThermoLife and/or products that are licensed by ThermoLife or  
12 contain ingredients covered by patents licensed by ThermoLife.

### 13 **VPX AND ITS BANG PRODUCTS**

14 21. VPX sells Dietary Supplements to consumers over the internet, including  
15 consumers in Arizona.

16 22. VPX’s products are also sold at brick-and-mortar stores across the United  
17 States, including in Arizona.

18 23. VPX’s website identifies BANG energy drinks as one of the company’s  
19 “best sellers.” BANG energy drinks are sold at retail stores such as 7-Eleven, gas  
20 stations, and other specialty stores throughout the United States (including Arizona).

21 24. While BANG energy drinks are sold in aluminum cans, like soft drinks,  
22 VPX also sells BANG MASTER BLASTER, a powered dietary supplement.

23 25. VPX has waged a nationwide advertising and marketing campaign that  
24 falsely promotes the health benefits of BANG.

25 26. The nationwide advertising and marketing of BANG is fantastical. As just  
26 one example, VPX claims that BANG can increase testosterone and that BANG helps  
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1 with “all forms of dementia, including Alzheimer’s, Parkinson’s, Huntington’s, and  
2 other forms of dementia.”<sup>2</sup>

### 3 **VPX’S SUPER CREATINE (FOUND IN BANG)**

4 27. If BANG were just an energy drink, despite VPX’s many false and  
5 grandiose claims, VPX’s willful and intentional false advertising would be unlikely to  
6 cause harm to ThermoLife. There are hundreds of energy drinks on the market. But, as  
7 VPX’s advertising and marketing makes clear, BANG separates itself from this cast of  
8 hundreds by touting the benefits of what it calls “Super Creatine.”

9 28. VPX has obtained a patent on the compound that it claims is in the  
10 products it sells and markets as Super Creatine, creatinyl-l-leucine and/or creatinyl-l-  
11 glutamine<sup>3</sup>: U.S. Patent 8,445,466 (“the ‘466 Patent” or “VPX’s Patent”).

12 29. On April 7, 2017, ThermoLife filed a request with the United States Patent  
13 Office to have the ‘466 Patent re-examined. Among other things, the re-examination  
14 request asserted that the ‘466 Patent was anticipated by Russian Patent: RU 2354645 C1  
15 (“the RU ‘645 Patent”). The invention disclosed in the RU ‘645 Patent enjoys patent  
16 protection in the United States as U.S. Patent 8,350,077 (“the ‘077 Patent”).  
17 ThermoLife holds an exclusive license to practice the ‘077 Patent. The ‘077 Patent  
18 discloses and protects certain creatine amides.

19 30. The United States Patent Office has found that VPX’s Super Creatine is  
20 one of the creatine derivatives protected by the ‘077 Patent. On February 1, 2018, the  
21 United States Patent Office issued an office action in the re-exam of the ‘466 Patent  
22 canceling claims 1, 5-8, and 10-12 as anticipated or obvious “over RU2354645.”  
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25 <sup>2</sup> [https://www.youtube.com/watch?v=\\_hYcTX9jYr0](https://www.youtube.com/watch?v=_hYcTX9jYr0), last visited on August 31,  
26 2018.

27 <sup>3</sup> It should be noted that technically the term “creatyl” is incorrect, the correct  
28 terminology is “creatinyl” *i.e.* “creatinyl-l-leucine” and “creatinyl-l-glutamine.” For  
simplicity the terms will be used interchangeably here.

1           31. In canceling these claims of the '466 Patent, the Patent Office noted, "RU  
2 '645 prepares creatine amide by reacting the amino acid amide of sarcosine with  
3 guanidylic agent. The '466 patent appears to do the same."

4           32. Holding the exclusive rights to practice the RU '645 Patent as U.S. Patent  
5 '077, ThermoLife has extensive knowledge regarding the invention set forth in that  
6 patent, including the compound that VPX terms Super Creatine: Creatinyl-L-leucine.

7                   **VPX'S WILLFUL FALSE ADVERTISING OF SUPER CREATINE**

8                   **A. Contrary to VPX's False Claims, Super Creatine Is Not Creatine And It**  
9                   **Does Not Become Creatine When Consumed.**

10           33. Creatine is the most popular performance enhancing dietary supplement  
11 ingredient. It has been proven to increase lean muscle mass, help muscles recover more  
12 quickly during and after exercise, and reduce protein breakdown.

13           34. Since the early 1990s creatine has been used a supplement to enhance  
14 athletic performance. As a result of its extensive use over the last several decades,  
15 creatine has become the world's leading ergogenic dietary supplement ingredient.

16           35. There are several popular forms of creatine for use in dietary supplements,  
17 some of the most popular are: (1) creatine monohydrate, (2) creatine hydrochloride, and  
18 (3) creatine nitrate.

19           36. As explained above, ThermoLife holds multiple patents for the  
20 manufacture and use of creatine nitrate.

21           37. While each of the commonly sold forms of creatine are unique, they are all  
22 sources of creatine which can be utilized by the body to produce creatine phosphate  
23 when consumed. Creatine phosphate plays a critical role in cellular energy production  
24 and it is involved in the formation of adenosine triphosphate, which is a source of  
25 cellular energy.

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1           38. Super Creatine is advertised as the marquee ingredient in BANG. The  
2 phrase Super Creatine is included at the top of every single BANG energy drink VPX  
3 sells:



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13           39. VPX falsely claims on its website and in its advertising that Super Creatine  
14 “is the world’s only water-stable creatine.” This is false.

15           40. On its website, VPX also falsely claims that Super Creatine is somehow  
16 more effective than creatine monohydrate. VPX further represents that Super Creatine is  
17 “much more bioavailable than regular creatine”. VPX also claims that Super Creatine  
18 can “beef up your muscles and your brain.” All of these statements are false.

19           41. Touting the benefits of its Super Creatine, VPX’s website includes a video  
20 titled, “How Does Creatine Work?” In that video, VPX’s owner, Jack Owoc states:

21           The future of creatine . . . is going to be more about the brain  
22 than the body. As you age, you have creatine transport  
23 deficiency syndrome where creatine does not cross the blood-  
24 brain barrier as well as it does when you are younger.  
25 Because of this, as you age, you become mentally retarded . .  
26 . every day that goes by, you are becoming more and more  
27 mentally retarded . . . now we have great news though, we  
28 can possibly reverse that with these new creatine peptides that  
I’ve patented. They’re miraculous because peptides can cross  
the blood-brain barrier better than creatine alone. In fact,  
creatine alone is very poor at crossing the blood-brain barrier  
. . . If you have a creatine peptide . . . you can solve creatine



1 transport deficiency syndrome, you can solve mental  
2 retardation as we age . . . Bang Energy drinks, yes, it says  
3 Super Creatine across the top. Super Creatine does refer to  
4 the patent creatine amino acid peptide and it is in Super  
5 Creatine. That’s why we call Bang, ‘Potent Brain and Body  
6 Fuel.’ So it’s in the drink, the Bang drink, the. Bang  
7 beverage, which is coming out in a caffeine-free version very  
8 soon.<sup>4</sup>

9  
10 42. VPX, through Owoc, goes on to claim that research shows that creatine-  
11 peptides like Super Creatine can cross the blood brain barrier “twenty times more  
12 efficiently than regular creatine,” and also helps with “all forms of dementia, including  
13 Alzheimer’s, Parkinson’s, Huntington’s, and other forms of dementia.” As a result,  
14 Owoc encourages viewers to consume BANG energy drinks to get Super Creatine.<sup>5</sup>

15 43. By labeling Creatinyl-l-leucine (which is not creatine) as Super Creatine,  
16 and advertising the benefits of creatine, VPX fraudulently seeks to capitalize on the  
17 well-established market for creatine and the public’s knowledge regarding the ergogenic  
18 benefits of creatine.

19 44. As explained below, Super Creatine is NOT creatine and, contrary to  
20 VPX’s false statements, Super Creatine does not form creatine when ingested.

21 45. VPX’s advertising is knowingly and willfully false because VPX knows  
22 that Super Creatine is NOT creatine. As described in detail below, VPX is fully aware of  
23 its lies.

24 46. The compound that VPX advertises as Super Creatine is actually a  
25 covalently bonded creatine dipeptide, not a bioavailable form of creatine. VPX  
26 deceptively takes advantage of the fact that consumers hearing the name Super Creatine

27 <sup>4</sup> [https://www.youtube.com/watch?v=\\_hYcTX9jYr0](https://www.youtube.com/watch?v=_hYcTX9jYr0), last visited on August 31,  
28 2018.

<sup>5</sup> [https://www.youtube.com/watch?v=\\_hYcTX9jYr0](https://www.youtube.com/watch?v=_hYcTX9jYr0), last visited on August 31,  
2018. These disease cure claims are outrageous, shameful, and blatantly false.

1 are led to believe that Super Creatine has the same function and benefit of creatine in the  
2 body; *i.e.*, Super Creatine is a source of creatine.

3 47. The truth is, however, the Super Creatine dipeptide (creatinyl-L-leucine or  
4 creatinyl-L-glutamine) is NOT creatine. In its advertising regarding Super Creatine, VPX  
5 describes the creatinyl-L-leucine dipeptide as “di-peptides [that] can be hydrolyzed to  
6 release creatine and amino acids in the body once they have been consumed.” VPX  
7 further explains, “Chemically, these creatine di-peptides have an amide bond, which is  
8 very stable in normal conditions. However, when these di-peptides are ingested, the  
9 gastric fluids in the stomach (which are highly acidic with pH levels between 1.5 to 3.5)  
10 can break down the amide bond, and then the free creatine and amino acid are released.”  
11 (Emphasis added.)

12 48. In laymen’s terms, VPX claims that when Creatinyl-L-leucine dipeptide is  
13 consumed, stomach acid will break the bond between the creatine and L-leucine, thereby  
14 releasing creatine (and leucine) into the stomach which is then absorbed by the body just  
15 like regular creatine (and amino acid) would be. But this is not what happens when  
16 consumers ingest Creatinyl-L-leucine dipeptide. The data included in VPX’s own patent  
17 and the results of a study that VPX recently commissioned on creatinyl-L-leucine in  
18 rodents proves that VPX knows this, and that VPX is blatantly and intentionally lying to  
19 consumers.<sup>6</sup>

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28 <sup>6</sup> <https://web.archive.org/web/20140625084330/http://vpxsports.com/muscle-building-supplements/cremtor>, available at wayback.com, last accessed October 9, 2018.

49. Paragraph 25 of VPX’s own patent includes testing data which shows that the Super Creatine dipeptides such as creatinyl-l-glutamine and creatinyl-l-leucine are stable and do not breakdown in pH of 3.3.

The above described formulations were stored in glass vials at room temperature (25° C., 77° F.), at refrigerator temperature (4° C., 39° F.) and at elevated temperature (40° C., 104° F.) in vials. These samples were assayed by HPLC at periodic intervals for minimum of 60 days for creatyl-L-glutamine (C-L-G) and creatinine (degradation product of creatine) content. The % recovery results are presented below.

Ready To Drink Formulation (pH = 3.3)						
	Room Temperature		4° C. (39° F.)		40° C. (104° F.)	
	C-L-G	Creatinine	C-L-G	Creatinine	C-L-G	Creatinine
Initial	98.81	1.19	N/A	N/A	N/A	N/A
1 Day	99.16	0.84	99.23	0.77	98.92	1.08
3 Days	98.76	1.24	98.96	1.04	97.96	2.04
1 Week	98.91	1.09	99.28	0.72	97.05	2.95
2 Weeks	98.59	1.41	99.27	0.73	95.45	4.55
3 Weeks	98.33	1.67	99.16	0.84	94.49	5.51
4 Weeks	97.95	2.05	98.98	1.02	93.25	6.75

50. And, as can be seen by chart below from paragraph 26 of VPX’s own patent, under “neutral formulation” which covers a pH range of 7.0-8.0, creatinyl-l-glutamine also breaks down into creatinine (not creatine) at this pH range (this range covers the pH found in plasma, brain, and cerebrospinal fluid).

Ready To Drink Formulation (pH = 3.3)						
	Room Temperature		4° C. (39° F.)		40° C. (104° F.)	
	C-L-G	Creatinine	C-L-G	Creatinine	C-L-G	Creatinine
6 Weeks	97.41	2.59	98.22	1.78	89.12	10.88
2 Months	97.45	2.55	98.88	1.12	87.46	11.50
3 Months	94.32	5.68	94.67	5.33	89.83	10.17

Neutral Formulation (pH = 7.0-8.0)						
	Room Temperature		4° C. (39° F.)		40° C. (104° F.)	
	C-L-G	Creatinine	C-L-G	Creatinine	C-L-G	Creatinine
Initial	99.15	0.85	N/A	N/A	N/A	N/A
1 Day	99.15	0.85	99.20	0.80	98.77	1.23
3 Days	98.41	1.59	99.11	0.89	89.95	10.05
1 Week	93.53	6.47	99.09	0.91	91.03	8.97
2 Weeks	74.62	25.38	99.03	0.97	27.12	72.88
3 Weeks	52.89	47.11	98.95	1.05	36.96	63.04
4 Weeks	39.47	60.53	99.00	1.00	16.15	83.85
6 Weeks	5.47	94.53	97.29	2.71	0.00	100.00
2 Months	0.00	100.00	97.90	2.10	0.00	100.00
3 Months	0.00	100.00	97.77	2.23	0.00	100.0

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1 Accordingly, it is reasonable to conclude that even if after the dipeptides are absorbed  
2 (mostly intact) by the G.I. tract, whatever small portion of them breaks down will be  
3 broken into the parent amino-acid and creatinine, NOT creatine. Such conversion of  
4 course would be minimal at best as both VPX's testing and that performed by Dr. Burov  
5 have shown that the compounds would be more than 99% stable in the few hours they  
6 would spend in the body after ingestion.

7 51. Furthermore, simple testing data has shown that pH 3.3 is within the pH  
8 range of the BANG energy drink. In other words, Super Creatine (creatinyl-l-glutamine  
9 and/or creatinyl-l-leucine) will remain stable, and not break down inside a can of BANG  
10 because the pH of 3.3 inside the can maintains a stable environment for the so-called  
11 Super Creatine compound.

12 52. Also, a pH of 3.3 (the same pH that VPX says Super Creatine is stable at)  
13 is consistent with the typical pH of the human stomach, which averages about 1.5 to 3.5  
14 pH, (a fact admitted by VPX in VPX's advertising).

15 53. Therefore, the Super Creatine dipeptides such as creatinyl-l-leucine and  
16 creatinyl-l-glutamine are stable and will not break down in the stomach (or in response  
17 to stomach acids).

18 54. Because Super Creatine is stable and will not break down in stomach acid,  
19 Super Creatine will not break down into its parent compounds (creatine and leucine)  
20 when ingested. Simply put, Super Creatine does NOT break down to creatine when  
21 ingested.

22 55. Yet contrary to these facts, which are well known to VPX, VPX has  
23 repeatedly and intentionally lied to consumers claiming that the Super Creatine  
24 dipeptides, such as creatinyl-l-leucine and creatinyl-l-glutamine break down into their  
25 parent compounds (creatine and leucine, or creatine and glutamine) and provide the  
26 benefits of creatine and the parent amino acid (leucine or glutamine) to consumers who  
27 are tricked into purchasing BANG drinks.

28

1 56. To sum up, VPX has knowingly falsely advertised its BANG products by  
 2 claiming that creatinyl-L-leucine and creatinyl-L-glutamine are highly bioavailable  
 3 sources of creatine that will provide the benefits of creatine. This is untrue. As all data  
 4 suggests, the compounds either remain un-metabolized as a dipeptide that cannot be  
 5 utilized as (or perform the function of) creatine in the body, or, as VPX's own testing  
 6 shows, Super Creatine will break down into creatinine NOT creatine.

7 57. Simply because a molecule contains a nutrient such as an amino acid in its  
 8 chemical formula does not mean that the molecule is a source of said nutrient—unless  
 9 the molecule can be metabolized to the nutrient. The following analogy is helpful, using  
 10 VPX's logic one would assume that N-(phosphonomethyl)glycine, commonly known as  
 11 glyphosate (which is the active compound in the herbicide Roundup) is a source of  
 12 glycine. This is of course untrue,<sup>7</sup> just like saying creatinyl-L-leucine (Super Creatine) is  
 13 a source of creatine is also untrue.

14 58. As just one example of VPX's willfully false advertising, in the Natural  
 15 Muscle Magazine, dated May 2013, VPX advertised its Super Creatine as follows:

**SUPPLEMENTS**

# THE NEW SUPER CREATINE ERA!

**Backed by over 1,300 studies, Creatine is one of the most studied nutrients in the world. But, stick with the – this is not another pathetically boring article on old-school creatine monohydrate. We are going to discuss some of the exciting NEW creatine compounds and creatine peptides that I invented and patented. More importantly, I am going to tell YOU how you can kick a\* on a whole new level using these new creatine innovations! Creatine is the micronutrient king of muscle building and performance-enhancement with both male and female fitness enthusiasts, bodybuilders, athletes etc. Not only that, but creatine is now considered one of the most important of all body parts – our brain. Therefore, I have been intensely researching methods to modify creatine to better increase its effect on both brain and brain!**

**"Listen soon – in this world you are measured from the shoulders up!"**

While athletes and bodybuilders seek to set records and achieve victory on the field, stage, court, gym, and Cross Fit arena, I also seek to set scientific records in the lab that put these and all fitness enthusiasts around the globe!

Consequently, I created a series of new compounds to conquer all creatine challenges. Just last month the United States Patent Office (USPTO) granted United States Patent number 8,372,821 for Bio-Active Aquatics Stable Creatine Species to... Jack Owen.

While most scientists would celebrate this achievement, likewise, I also celebrated and relished in the minutes of self-proclaimed short-lived fame and even posted a photo of the patent on Instagram, Twitter and FB. However, this creative discovery was just the tip of a massive iceberg. The revolutionary research put into the amazing "8,372,821" patent just fueled my fire for new and even more mind-blowing creatine compounds. As a result, I also have another patent pending invention that utilizes highly stable aqueous compositions of amide-protected, biologically active creatine molecules in fact, it gives you a special sneak preview of one of the exact stability charts featured in the patent pending. This newer invention builds off of everything we learned during the research and development of the "8,372,821" patent. In this invention, creatine is linked to an amino acid or peptide forming a powerful covalent bond. These creatine di-peptides can be hydrolyzed to release creatine and amino acids in the body once they have been consumed. Chemically, these creatine di-peptides have an amide bond, which is very stable in normal conditions. However, when these di-peptides are ingested, the gastric fluids in the stomach (which are highly acidic with pH levels between 1.5 to 3.5) can break down the amide bond, and then the free creatine and amino acid are released.

Creatinyl™ Creatine Peptides are not only more soluble, but also stable in water at room temperature, and they're even fairly stable for many months at over 103°

Remarkable – but in Creatinyl™ Creatine Salts? Funny you should ask. Though MTSI (human lab-tested dose studies) in Sprague-Dawley rats, VPX tested dosages as high as 2000 mg per kilogram / per day. Even with this super high dosage, there were no clinical signs of toxicity or adverse clinical pathology changes. In humans, that dose would be equal to 14 grams per 2.2 pounds of body weight. This means a 100 pound female could tolerate 45 grams (10,000 mg) per day while a 200 pound male could tolerate 90 grams.

Greater solubility equals no bloating or water retention. However, solubility spells creatinine disaster (as we've seen with CEE and C-HCI) unless accompanied by stability!

After many years of studying creatine compounds, I learned that the secret was to increase BOTH solubility and stability to create a super creatine.

Further research shows that these Creatinyl™ Creatine Peptides possess neuro-protective action in the body and can represent promising candidates for the development of new drugs. From any aspect, these bio-active creatine species are superior and far more versatile to creatine by a wide margin. The important take-home message is that Creatinyl™ increases both solubility and stability for unparalleled potency. In most drugs and nutrients, increasing stability is usually desired because it means the compound will be more effective. However, as we have witnessed in VPX laboratories with CEE (Creatine Ethyl Ester) and C-HCI (Creatine Hydrochloride), improving creatine's solubility meant that these forms of creatine rapidly convert to a useless substance called creatinine, which loses the benefits. In a study, even though CM (Creatine Monohydrate) is far less soluble than CEE, CM proved to be far more effective than CEE.

One of our patented Creatinyl™ Creatine compounds, Creatinyl-L-Glutamine, is stable in an aqueous (water-based) solution for more than 90 days at room temperature (77°F) and refrigerator temperature (39°F), which is suitable for normal warehouse storage conditions and refrigeration conditions. While you don't want to leave any product in the heat, it is also stable for more than 30 days at scorching temperatures of 104°F, which is suitable for shipping in hot weather trucks and/or overseas containers.

Increasing solubility only becomes beneficial if you can keep the creatine molecule stable and resistant to creatinine conversion. The new, highly soluble and highly stable Creatinyl™ amide-protected creatine species will open an entirely new explosive opportunity that will revolutionize the medical, scientific, and sports nutrition industries.

Vital Pharmaceuticals is now the owner of intellectual property that covers the synthesis of these compounds and the medical and nutritional applications of these compounds. Such applications cover the following human conditions: increase muscle fiber size/size – neuronal and lean body mass, activation of satellite cells, enhance memory and cognitive functions, enhancing the functional capacity in cases of neuromuscular diseases, enhance cognitive function in individuals with chronic stress of creatine metabolism and/or advancing deleterious effects of sleep deprivation.

By Jack Owen, CEO, CSD VP/Redline. Author of the new book, *Multitask Life: Conquering the Science of Using Creatine, Nutrition and Supplements to Radically Alter Gene Expression*.

Please visit [gsparts.com](http://gsparts.com). You can follow Jack Owen on Instagram and Twitter @JPOwensCEO

Room Temperature	4°C (39°F)		47°C (104°F)	
	2-G-G Creatinine	2-G-G Creatinine	2-G-G Creatinine	2-G-G Creatinine
1 Day	98.91	1.19	NA	NA
1 Day	99.16	0.84	99.23	0.77
1 Day	98.76	1.24	98.96	1.04
1 Day	98.91	1.09	99.28	0.72
1 Week	98.59	1.41	99.27	0.73
1 Week	98.33	1.67	99.16	0.84
1 Week	97.95	2.05	98.98	1.02
1 Week	97.41	2.59	98.22	1.76
1 Month	97.45	2.55	98.88	1.12
1 Month	94.32	5.68	94.87	5.53

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30 Natural Muscle May 2013

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59. The advertorial falsely reads, “However when these di-peptides are ingested the gastric fluids in the stomach (which are highly acidic with ph levels between 1.5 and 3.5) can break down the amide bonds and then the free creatine and amino acid are released.” As described above, VPX knows stomach acids will not break down Super Creatine dipeptides in the same pH as found in the stomach, yet they continue to blatantly lie to consumers and say the opposite of what they know to be true.

60. The same lies about the purported breakdown of the Super Creatine dipeptides into their parent compounds (which falsely indicates that Super Creatine is actually a source of creatine) can be seen in many other marketing materials, including VPX’s own website<sup>8</sup>:

Recently, The United States Patent and Trademark Office (USPTO) granted VPX United States Patent number 8,445,466 for Bio-Active Aqueous Stable Creatine Species, more commonly known as mTORC1™. In this invention, creatine is linked to an amino acid or peptide forming a powerful covalent bond. These creatine di-peptides can be hydrolyzed to release creatine and amino acids in the body once they have been consumed. Chemically, these creatine di-peptides have an amide bond, which is very stable in normal conditions. However, when these di-peptides are ingested, the gastric fluids in the stomach (which are highly acidic with pH levels between 1.5 to 3.5) can break down the amide bond, and then the free creatine and amino acid are released.

61. In addition to the stability evidence presented above which was performed on the Super Creatine dipeptide, Creatinyl-l-glutamine (the original compound in the BANG drinks), VPX has recently admitted that they have known the same to be true for the Super Creatine dipeptide, Creatinyl-l-leucine (the compound currently in BANG drinks).

62. In a desperate attempt to overcome the Patent Office’s rejection and cancelation of all Jack Owoc’s patent claims to Super Creatine dipeptides, Owoc and VPX have publicly disclosed stability testing that they did on Creatinyl-l-leucine.

Assay Stability Data for Creatyl-L-Leucine (C-L-L)																									
Sample Description		Stability																							
		0 Day		1 Day		2 Day		3 Day		1 Week		2 Week		3 Week		1 Month		2 Month		3 Month		4 Month		6 Month	
		C-L-L	Creatinine	C-L-L	Creatinine	C-L-L	Creatinine	C-L-L	Creatinine	C-L-L	Creatinine	C-L-L	Creatinine	C-L-L	Creatinine	C-L-L	Creatinine	C-L-L	Creatinine	C-L-L	Creatinine	C-L-L	Creatinine	C-L-L	Creatinine
Neutral C-L-L pH=6.0	25°C R1	99.81	1.19	99.63	0.31	99.59	0.41	99.42	0.56	99.32	0.68	98.84	1.16	98.40	1.60	97.70	2.30	96.86	4.14	93.68	6.32	91.40	8.60	84.34	15.64
Neutral C-L-L pH=6.0	4°C R1	N/A	N/A	99.83	0.17	99.71	0.29	99.63	0.37	99.56	0.45	99.61	0.37	99.64	0.36	99.59	0.41	99.65	0.35	99.71	0.27	99.71	0.29	99.48	0.52
Neutral C-L-L pH=6.0	40°C R1	N/A	N/A	99.31	0.69	98.48	1.51	98.18	1.82	96.10	4.90	90.41	8.99	84.20	15.80	79.84	20.16	61.34	30.66	42.63	37.37	31.55	48.45	11.88	88.12
Acidic C-L-L pH=3.1	25°C R1	99.15	0.85	99.89	0.11	99.90	0.10	99.88	0.12	99.79	0.21	99.61	0.36	99.48	0.51	99.34	0.66	98.79	1.21	98.14	1.85	97.65	2.35	96.14	1.86
Acidic C-L-L pH=3.1	4°C R1	N/A	N/A	100.00	0.00	100.00	0.00	99.94	0.06	99.93	0.07	99.92	0.06	99.92	0.06	99.91	0.09	99.88	0.11	99.90	0.10	99.87	0.13	99.40	0.17
Acidic C-L-L pH=3.1	40°C R1	N/A	N/A	99.77	0.23	99.60	0.40	99.40	0.60	98.69	1.31	97.43	1.97	96.73	4.17	94.56	5.44	89.38	10.62	82.79	17.11	77.71	22.29	66.07	33.93
Bang C-L-L pH=3.1	25°C R1	99.23	0.77	99.90	0.10	99.90	0.10	99.85	0.15	99.80	0.20	99.60	0.40	99.47	0.53	99.30	0.70	98.71	1.29	97.94	2.06	97.81	2.19	97.04	2.96
Bang C-L-L pH=3.1	4°C R1	N/A	N/A	99.93	0.07	100.00	0.00	99.92	0.08	99.94	0.06	99.91	0.09	99.90	0.10	99.88	0.12	99.84	0.16	99.93	0.07	99.88	0.12	99.92	0.08
Bang C-L-L pH=3.1	40°C R1	N/A	N/A	99.75	0.25	99.59	0.41	99.39	0.61	98.64	1.32	97.35	2.05	96.89	4.11	94.50	5.70	88.15	10.82	82.48	17.32	77.50	22.50	65.46	34.54

Temperature	
Celsius	Fahrenheit
15 °C	57.0°F
4.0 °C	39.2°F
40.0 °C	104.0°F

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1 The chart produced by VPX clearly shows that the Super Creatine dipeptide, creatinyl-l-  
2 leucine is stable at a pH of 3.1 (a pH environment well within the range of an average  
3 human stomach), thus contrary to VPX's lies, Super Creatine dipeptides will remain  
4 stable in the stomach and not break down to a source of creatine.

5 64. Adding to the proof that VPX knows its advertising statements are false  
6 and that VPX is intentionally lying to consumers, VPX has repeatedly claimed during  
7 the reexamination proceedings at the USPTO that the Super Creatine dipeptides in  
8 question (creatinyl-leucine and creatinyl-l-glutamine) become more stable at a lower pH,  
9 as would typically be found in the stomachs of consumers who purchase and consume  
10 BANG expecting to get the benefits of creatine.

11 65. Furthermore, in addition to the stability testing discussed above, which  
12 was done *in vitro* (*i.e.* in a test tube), VPX also recently made public toxicology testing  
13 done on Super Creatine in rodents.

14 66. Because Super Creatine is a synthetic compound that has not been  
15 consumed by humans previously, in order to use Super Creatine in a Dietary Supplement  
16 or in food VPX needed to establish that this ingredient was safe for human consumption.

17 67. To do this VPX paid for a toxicological assessment in mice to try and  
18 establish safety data for Super Creatine: "A toxicological assessment of creatyl-l-  
19 leucine" Reddeman et al. 2018 ("Reddeman Study").

20 68. The Reddeman Study notes that the authors of the toxicology assessment  
21 obtained data directly from VPX's President Owoc. The authors refer to this data as:  
22 "An unpublished simulated gastric digestion study on creatyl-L-glutamine [which]  
23 indicated that only 27% of the compound was hydrolyzed;" The "unpublished data" is  
24 cited as: "Owoc J, Li L. Effect of pepsin on creatyl L-glutamine (CLG). 2014. 4.  
25 Unpublished data."

26 69. Accordingly, by VPX's own admission, it has possessed simulated gastric  
27 digestion data for Super Creatine since 2014. Directly contrary to VPX's advertising  
28 claims about Super Creatine breaking down to its parent compounds in the stomach,

1 VPX's own data shows that the Super Creatine dipeptide, creatinyl-L-glutamine, breaks  
 2 down very poorly during digestion. The information disclosed by the authors of the  
 3 study is directly the opposite of what Jack Owoc and VPX advertise to consumers. No  
 4 wonder VPX kept this data secret.

5 70. Shockingly, the results of the Reddman Study are even more damning to  
 6 VPX than VPX's own previously undisclosed stability testing and its unpublished  
 7 digestion data. The Reddman Study confirms that when Super Creatine does break  
 8 down, it breaks down into creatinine NOT creatine.

9 71. As the Reddeman Study notes, in rodents fed creatinyl-L-leucine:  
 10 "Creatinine was statistically significantly increased compared to controls in the mid- and  
 11 high-dose groups, and in the female high-dose group, the related parameter, urea, was  
 12 statistically significantly increased without a clear dose relationship." The Reddeman  
 13 Study also explains, "[i]t is unknown whether CLL [creatinyl-L-leucine] is digested to  
 14 creatine in the digestive tract or absorbed and metabolized to creatine in vivo, and if so,  
 15 to what extent."

16 72. Accordingly, scientists commissioned by VPX found that administering  
 17 creatinine-L-leucine in mice increases creatinine, NOT creatine. The scientists  
 18 specifically noted that it is currently unknown whether creatinyl-L-leucine converts to  
 19 creatine in mice, and there is zero data on the effect in the human body, despite VPX's  
 20 many false marketing claims that assure consumers the opposite.

21 73. This is not surprising since all of the stability data produced by VPX so far  
 22 shows that when Super Creatine does break down the result is creatinine, NOT creatine.  
 23 As shown in the data below, taken directly from VPX's patent, VPX knows that when  
 24 Super Creatine does break down it breaks down to creatinine, NOT creatine:

25

26

27

28

	Room Temperature		4°C (39°F)		40°C (104°F)	
	C-L-G	Creatinine	C-L-G	Creatinine	C-L-G	Creatinine
Initial	98.81	1.19	N/A	N/A	N/A	N/A
1 Day	99.16	0.84	99.23	0.77	98.92	1.08
3 Days	98.78	1.24	98.96	1.04	97.96	2.04
1 Week	98.91	1.09	99.28	0.72	97.05	2.95
2 Weeks	98.59	1.41	99.27	0.73	95.45	4.55
3 Weeks	98.33	1.67	99.16	0.84	94.49	5.51
4 Weeks	97.95	2.05	98.96	1.02	93.25	6.75
5 Weeks	97.41	2.59	98.22	1.78	89.12	10.58
2 Months	97.45	2.55	98.88	1.12	87.46	11.50
3 Months	94.32	5.68	94.67	5.33	89.83	10.17



74. Unlike creatine, creatinine does not increase athletic performance. In fact, VPX's own website describes creatinine as "a useless substance ... which taxes the kidneys and has none of the benefits of creatine."<sup>9</sup>

**THE TAKE HOME MESSAGE:**

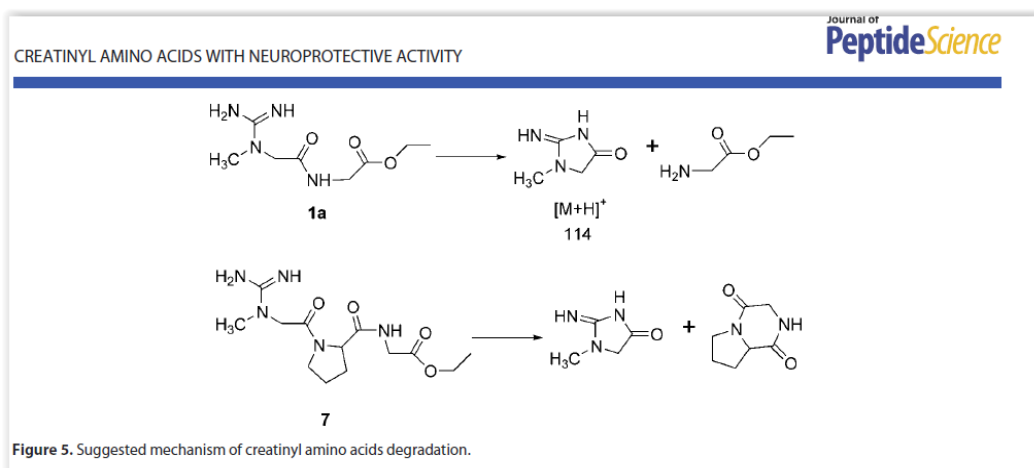
In most drugs and nutrients, increasing solubility is usually desired because it means the compound will be more effective. However, as we have witnessed in VPX laboratories with CEE (Creatine Ethyl Ester) and Cr-HCl (Creatine Hydrochloride), improving creatine's solubility meant that these forms of creatine rapidly convert to a useless substance called creatinine, which taxes the kidneys and has none of the benefits of creatine. Till exempel: Even though CM (Creatine Monohydrate) is far

75. Other published studies also establish that the Super Creatine dipeptide creatinyl-l-leucine does not break down into creatine when ingested and that the only byproduct of Super Creatine when it does break down is creatinine, NOT creatine.

76. As explained above, creatinyl-l-leucine is actually disclosed and patented in the RU '645 Patent.

77. The named inventor on the RU '645 Patent is Sergey Burov. Dr. Burov discussed creatinyl-l-leucine at length in his paper, titled: "Creatinyl amino acids—new hybrid compounds with neuroprotective activity." Dr. Burov's paper states that when the dipeptide bond is severed, the resulting compound is creatinine, NOT creatine.

78. In fact, Dr. Burov's paper even includes a diagram showing the suggested mechanism how the compound degrades to creatinine, NOT creatine:



<sup>9</sup> <https://sv.luckyvitamin.com/p-649683-vpx-cremtor-creatyl-l-leucine-peptide-watermelon-8-04-oz>, last accessed October 9, 2018.

1 79. VPX is very well familiar Dr. Burov's work and this article. In fact, in a  
2 prior advertisement Owoc and VPX plagiarized Dr. Burov's work, lifting wholesale  
3 sections of this work without attribution.

4 80. In sum, VPX's Super Creatine is NOT creatine. It is creatinyl-L-leucine or  
5 creatinyl-L-glutamine that when ingested does not break down into creatine as the  
6 resulting compound when it breaks down is creatinine, NOT creatine. As VPX's own  
7 advertising admits, creatinine is "a useless substance" that is potentially harmful. By  
8 labeling Super Creatine as a creatine and touting the benefits of creatine when  
9 advertising its BANG products, VPX has willfully and intentionally misled consumers  
10 into believing that BANG provides the health and ergogenic benefits of creatine, when it  
11 does not.

12 81. At the same that VPX touts its so-called Super Creatine, as explained  
13 above, VPX has falsely compared this ingredient to ThermoLife's patented creatine  
14 nitrate causing harm to ThermoLife and ThermoLife's customers that rely on  
15 ThermoLife's patented Dietary Supplement ingredients. As just one example, Super  
16 Creatine is not a more "water-stable" version of creatine than ThermoLife's creatine  
17 nitrate; Super Creatine is not even a creatine at all. VPX's intentionally false  
18 comparative advertising unquestionably misleads consumers and harms ThermoLife in  
19 the marketplace; for this reason, VPX's ill-gotten gains, earned on lies, must be  
20 disgorged.

21 **B. Contrary to VPX's Claims, There Is Not Scientific Evidence To Support**  
22 **VPX's Grandiose Claims Regarding The Benefits Of BANG.**

23 82. As discussed above, VPX has advertised that creatine-peptides like Super  
24 Creatine can cross the blood brain barrier "twenty times more efficiently than regular  
25 creatine," and this helps with "all forms of dementia, including Alzheimer's,  
26 Parkinson's, Huntington's, and other forms of dementia."

27 83. VPX has also claimed that its Super Creatine can stop "mental  
28 retardation."

1 84. Moreover, VPX advertises that “BANG only contains ingredients that  
2 have been backed by science to work!”

3 85. Upon information and belief, BANG contains less than 40 milligrams of  
4 Super Creatine.

5 86. 40 milligrams is approximately 100 times less than the minimum effective  
6 dose of creatine necessary to have any potential effect. For this reason alone, even if  
7 Super Creatine was a source of creatine (which it isn’t), VPX’s marketing on the  
8 benefits of Super Creatine would all be completely false and misleading. It is not  
9 scientifically possible that the 40 milligram dose of Super Creatine included in the  
10 BANG energy drinks will aid in athletic performance in the way properly dosed creatine  
11 does, much less that the Super Creatine will have the fantastical medicinal effects touted  
12 by VPX in its advertising.

13 87. Moreover, there is simply no testing on the effects of VPX’s Super  
14 Creatine dipeptides in humans. The clinical testing that VPX relies on to support its  
15 fantastical claims are all clinical tests conducted on the world’s most popular ergogenic  
16 Dietary Supplement Ingredient: creatine. As explained above, Super Creatine is not  
17 actually creatine and it does not break down into creatine when consumed. For this  
18 reason, none of VPX’s advertising claims are supportable.

19 88. The effects of Super Creatine in humans are currently unknown. The only  
20 existing study regarding the neuroprotective efficiency of Super Creatine (which was on  
21 mice and rats) is discussed above. This study was conducted by the inventor of Super  
22 Creatine, Dr. Burov. Dr. Burov found Super Creatine dipeptides to be effective at 100-  
23 500mg/kg dose in rodents (mice and rats). In humans, to create the same dose that  
24 produced this effect, VPX would need to include tens to hundreds of times more than the  
25 40mg of Super Creatine allegedly included in BANG energy drink.

26 89. Plus, as the Court is aware, many compounds that are effective in animal  
27 testing do not have the same effect in humans. To date there is no clinical data to prove  
28 any effect of Super Creatine in humans; accordingly, any claims by Jack Owoc and/or

1 VPX as to the effect of Super Creatine in humans are lies made up by Owoc and/or VPX  
2 to trick consumers who seek to obtain the benefits of creatine and amino acids

3 90. In sum, VPX's Super Creatine is NOT creatine. Accordingly, none of the  
4 clinical testing on creatine that VPX relies on to support is fantastical advertising claims  
5 is actually relevant. There is simply no study showing that Super Creatine administered  
6 alone has any effect on humans, much less that it has the potential to cure some of the  
7 world's most serious diseases. Moreover, even if Super Creatine has some medicinal  
8 effects, BANG is severely under-dosed. For this reason, as well, VPX's intentionally  
9 false comparative advertising unquestionably misleads consumers and harms  
10 ThermoLife in the marketplace; for this reason, VPX's ill-gotten gains, earned on lies,  
11 must be disgorged.

12  
13 **C. Contrary to VPX's Claims, Super Creatine Is Not A More Soluble Form Of**  
14 **Creatine Than Creatine Nitrate.**

15 91. VPX's has also falsely claimed that Super Creatine is more soluble than  
16 other forms of creatine, including creatine nitrate.

17 92. In an advertorial that appears on [muscleandfitness.com](http://muscleandfitness.com), VPX stated the  
18 following: "Special Note: Creatine and leucine have horrible solubility. What's super  
19 cool is that the patented Creatyl-L-Leucine Super Creatine peptide is one of the  
20 most soluble of all creatines and it dissolves in just seconds when you stir it  
21 into water and even faster in stomach acid!"

22 93. This statement is blatantly and willfully false.

23 94. As explained above the Super Creatine dipeptide Creatinyl-l-leucine does  
24 not break down in stomach acid and it also is not soluble.

25 95. In a video posted by on Instagram by VPX's owner, Jack Owac, Mr. Owoc  
26 attempts to demonstrate the supposed superior stability of creatinyl-l-leucine. But the  
27 video actually shows the opposite. Despite many "just seconds" having passed, it is  
28

1 painfully obvious that, at the end of the video, creatinyl-l-leucine remains insoluble in  
2 water.

3 96. It is telling that VPX has never provided any specific solubility data for  
4 either creatinyl-l-leucine or creatinyl-l-glutamine.

5 97. In yet another example of VPX's false advertng, VPX tries to confuse the  
6 public by claiming dissolution rate (which is the time solid a compound takes to be  
7 completely dissolved in a solution and is measured in time units such as seconds) is the  
8 same as solubility (which is the maximum amount of a compound that can be dissolved  
9 in a solution and is typically measured in mg/l). Again, VPX makes false marketing  
10 claims trying to mislead its customers and to harm ThermoLife. VPX's "dissolves  
11 faster" claim does not equate to the fact that the compounds are more water soluble,  
12 merely that they dissolve faster in an acidic medium of pH 1.2. It is well known that  
13 acidic salts, like creatine nitrate, dissolve slower in acidic mediums. VPX falsely  
14 misrepresents the dissolution data to mean that its "new Super Creatines" will be more  
15 soluble and therefore more bioavailable with no data to support it.

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Dissolution Media (pH = 1.2)		0.1N HCl in Water
Media Amount		900ml
Dissolution Temperature		37°C
RPM		75
Sample Weight		1.000 Gram

Sample Description	Time (Minute)
N-Acetyl Creatine - VPX's New Super Creatine™	2.17
Creatine HCl	3.02
Creatyl-L-Leucine - VPX Patented Water Stable Super Creatine™ Peptide	3.06
Creatine Gluconate	4.13
Creatine Citrate	5.32
Di Creatine Malate	5.35
Creatine Nitrate	5.77
Creatyl-L-Glutamine - VPX Patented Water Stable Super Creatine™ Peptide	6.33
Creatine Monohydrate	9.83
Creatine Taurinate	10.30

Figure 1, above, shows the solubility of various creatine species compared to N-Acetyl Super Creatine in Hydrochloride (HCl) at 37 °C. The information shows that one gram of N-Acetyl Super Creatine dissolves faster and is currently more bioavailable than any other creatine species. Also take special note of the extreme solubility Creatyl-L-Leucine and keep in mind that this Super Creatine Peptide has the potential to simultaneously increase mTOR while suppressing myostatin to efficiently pack on lean muscle fast.

To stay abreast of the most cutting edge muscle science please follow me on Instagram @VPXRedlineCEO and @BangEnergy. Now please excuse

1 98. To sum up VPX’s willful false advertising: in direct competition with  
2 ThermoLife and the products sold by companies that purchase and/or license  
3 ThermoLife’s patented compounds—VPX has knowingly misbranded BANG products  
4 by claiming that creatinyl-l-leucine and creatinyl-l-glutamine are highly bioavailable  
5 sources of creatine that will provide the benefits of creatine. This is untrue. As all data  
6 suggests, the Super Creatine compounds either remain un-metabolized as a dipeptide  
7 that cannot be utilized as or perform the function of creatine in the body, or as VPX’s  
8 own testing shows, Super Creatine will break down into creatinine NOT creatine.

9 99. VPX has intentionally and willfully misled consumers to purchase BANG.  
10 For this reason, as well, VPX’s intentionally false comparative advertising  
11 unquestionably misleads consumers and harms ThermoLife in the marketplace; for this  
12 reason, VPX’s ill-gotten gains must be disgorged.

13 **D. Contrary to VPX’s Claims, Super Creatine Is Not A Natural Ingredient.**

14 100. In addition to the false advertising statements identified above, VPX also  
15 falsely claims that BANG “contains no artificial ingredients.”

16 101. Consumers of Dietary Supplements value natural ingredients. There is a  
17 widely held belief that natural ingredients are better for you than artificial ingredients  
18 and that natural ingredients are safer.

19 102. Directly contrary to VPX’s claim, its Super Creatine, creatinyl-l-leucine, is  
20 not natural: this is a synthetic ingredient made in a lab.

21 103. To be clear, creatinyl-l-leucine is not found anywhere in nature. The  
22 compound did not exist until it was invented by Dr. Burov.

23 104. In addition to synthetic Super Creatine, BANG also contains sucralose (an  
24 artificial sweetener) and several artificial flavors.

25 105. Nonetheless, VPX willfully and intentionally falsely advertises that its  
26 BANG product “contains no artificial ingredients.”

27 106. In direct competition with ThermoLife and the products sold by companies  
28 that purchase and/or license ThermoLife’s patented compounds, VPX has knowingly

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1 falsely advertised creatinyl-l-leucine and creatinyl-l-glutamine as natural (not containing  
2 artificial ingredients). This is not true. VPX has intentionally and willfully misled  
3 consumers to purchase BANG. For this reason, as well, VPX's intentionally false  
4 comparative advertising unquestionably misleads consumers and harms ThermoLife in  
5 the market place; for this reason, VPX's ill-gotten gains, earned on lies, must be  
6 disgorged.

7 **E. VPX'S Bang Product Is Falsely Advertised As A Food Because It Is**  
8 **Misbranded under 21 U.S.C. 343(A).**

9 107. VPX markets BANG as a Food or Dietary Supplement.

10 108. 21 U.S.C. 343(a) states that a Food shall be deemed "misbranded" "if the  
11 labeling is false or misleading in any particular ... ."

12 109. A Food or Dietary Supplement that includes a false statement on its  
13 product label is "misbranded" under 21 U.S.C. 343(a).

14 110. Motivated solely by greed, in an effort to defraud consumers, VPX  
15 intentionally put false and misleading information on BANG product labels. The false  
16 and material information includes, but is not limited to, the words Super Creatine that  
17 appear on the top of each can of BANG energy drink. Accordingly, BANG products  
18 labels are all "false or misleading in any particular."

19 111. Accordingly, under Federal Law, BANG is "misbranded."

20 112. 21 U.S.C. 331(a) prohibits introduction in interstate commerce of any  
21 food, or drug, that is misbranded.

22 113. Because BANG is misbranded, VPX is prohibited from selling BANG in  
23 interstate commerce.

24 114. VPX falsely advertises BANG as a "Food" and/or "Dietary Supplement",  
25 misleading consumers to believe the labels are true accurate, and compliant with Federal  
26 Law.

27 115. Accordingly, VPX's intentionally mislabeled and misbranded products  
28 should never have been in the marketplace, nor entitled to any sales.

1 116. VPX has willfully and intentionally deceived consumers by selling falsely  
2 labeled, falsely advertised, misbranded and prohibited products in interstate commerce  
3 and any revenue earned from the sale of these misbranded products is ill-gotten gains  
4 and must be disgorged.

5 **FIRST CLAIM FOR RELIEF**

6 **(Lanham Act § 43(a))**

7 117. Plaintiff realleges and incorporates herein by reference each and every  
8 allegation of this Complaint as is fully set forth herein.

9 118. VPX uses, offers for sale, and sells the products at issue in interstate and  
10 foreign commerce and has caused the false statements alleged herein to enter interstate  
11 and foreign commerce.

12 119. In connection with any goods or services, VPX has used one or more  
13 words, terms, names, symbols, or devices, alone or in combination thereof, as well as  
14 any false designations of origin, false or misleading descriptions of fact, or false or  
15 misleading representations of fact in commercial advertising or promotion, and it  
16 misrepresents the nature, characteristics, qualities, or geographic origin of its or  
17 another person's goods, services, or commercial activities.

18 120. As alleged above, VPX has made false statements of fact in commercial  
19 advertisements about the products sold on its website, including the false statements  
20 identified above.

21 121. VPX's deception is material and made in bad faith for the purpose of  
22 influencing and deceiving the market, the public, consumers, potential customers and  
23 competitors. The deception is likely to influence the purchasing decisions of the public  
24 for whom it was intended and others.

25 122. ThermoLife has suffered a commercial injury to its reputation or sales,  
26 which was directly and proximately caused by VPX's false statements and other acts as  
27 alleged above.

28



1 123. ThermoLife's injury is competitive, i.e., harmful to the ThermoLife's  
2 ability to compete in the Dietary Supplement market.

3 124. By reason of VPX's statements and conduct, it has willfully violated §  
4 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and ThermoLife has suffered, and will  
5 continue to suffer damage to its business, reputation and good will and have lost sales  
6 and profits that ThermoLife would otherwise have made.

7 125. ThermoLife has been irreparably harmed by VPX's acts in violation of the  
8 Lanham Act and it has suffered damages in an amount to be determined at trial. Further,  
9 VPX's conduct as alleged is in bad faith, willful and exceptional, such that ThermoLife  
10 is entitled to an award of treble damages and its attorneys' fees.

11 **SECOND CLAIM FOR RELIEF**

12 **(Common Law Unfair Competition)**

13 126. Plaintiff realleges and incorporates herein by reference each and every  
14 allegation of this Complaint as is fully set forth herein.

15 127. As alleged above, VPX has made false statements of material fact in  
16 commercial advertisements about the products sold on its website, including but not  
17 limited to the false statements identified above.

18 128. Common law unfair competition prevents business conduct that is contrary  
19 to honest practice in commercial matters, including deception.

20 129. ThermoLife has been injured as a result of VPX's false statements.

21 130. ThermoLife has suffered a commercial injury based upon a  
22 misrepresentation by VPX.

23 131. ThermoLife's injury is competitive, i.e., harmful to the ThermoLife's  
24 ability to compete in the Dietary Supplement market.

25 132. ThermoLife has been irreparably harmed by VPX's acts of unfair  
26 competition and it has suffered damages in an amount to be determined at trial.  
27  
28

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**THIRD CLAIM FOR RELIEF**

**(Declaratory Judgment)**

1  
2  
3 133. Plaintiff realleges and incorporates herein by reference each and every  
4 allegation of this Complaint as is fully set forth herein.

5 134. A real and justiciable controversy has arisen between ThermoLife and  
6 VPX, which is ripe for adjudication here.

7 135. On October 3, 2018, ThermoLife distributed a press release titled,  
8 “Granting ThermoLife’s Re-Exam Request, The US Patent Office Rejects and Cancels  
9 All VPX and Jack Owac, BANG and ‘Super Creatine’ Patent Claims.”

10 136. That press release documented the United States Patent Office’s decision  
11 to reject all claims in the VPX Patents. The Patent Office has rejected these claims, in  
12 part, because it found the patented invention was anticipated and made obvious by the  
13 RU ‘645 Patent. The press release notes that VPX is currently appealing the Patent  
14 Office’s rejection and cancelation of its patent.

15 137. On October 5, 2018, VPX’s in-house counsel, Marc Kesten, contacted  
16 ThermoLife’s directly through email and registered mail.

17 138. Mr. Kesten’s October 5, 2018 letter demanded that ThermoLife  
18 “immediately retract” four statements that were included in the October 3, 2018 press  
19 release. A copy of Mr. Kersten’s letter is attached hereto.

20 139. Mr. Kesten’s October 5, 2018 letter states that ThermoLife’s actions “give  
21 rise to a cause of action for defamation, among other things.” Mr. Kersten’s letter  
22 threatens that if ThermoLife refuses to retract its statements, VPX will pursue the matter  
23 “more aggressively” and it notes that VPX may seek a “restraining order.”

24 140. Directly contrary to the accusations made in Mr. Kesten’s letter,  
25 ThermoLife’s press release is not wrongful. The statements included the press release  
26 are all true. Furthermore, the press release includes numerous statements that are  
27 forward looking statements of opinion; these statements could not possibly give rise a  
28 claim for defamation.

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1 141. Accordingly, ThermoLife requests that the Court declare that  
2 ThermoLife's press release is not defamatory and/or VPX is unable to demonstrate the  
3 press release is defamatory.

4 **JURY TRIAL DEMAND**

5 142. Plaintiff requests a trial by jury on all aspects of the Complaint.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, ThermoLife demands judgment against defendants VPX as  
8 follows:

- 9 A. For an award disgorging any and all monies earned by VPX in connection  
10 with the sale of the products identified above;
- 11 B. For an award of compensatory and/or restitutionary damages in favor of  
12 ThermoLife in an amount to be proven at trial;
- 13 C. For an award of treble damages under 15 U.S.C. §§ 1117, 1125(a);
- 14 D. For an award of ThermoLife's attorneys' fees and costs under 15 U.S.C. §  
15 1117, A.R.S. § 13-2314.04, and any applicable law;
- 16 E. For an award of ThermoLife's damages, treble damages, and attorneys'  
17 fees under 18 U.S.C. § 1961 *et seq.*
- 18 F. For prejudgment interest on any liquidated sum determined to be due  
19 Plaintiff;
- 20 G. For post-judgment interest on any judgment;
- 21 H. For punitive damages in an amount sufficient to deter A1 from future  
22 wrongful and outrageous conduct;
- 23 I. An Order permanently enjoining, VPX and all those persons in active  
24 concert or participation with them, from making false statements on the  
25 internet about their products and an order requiring VPX and those acting  
26 in concert or participation with them to remove the false statements from  
27 the internet regarding VPX's products;
- 28

- 1 J. For an order declaring that the October 3, 2018 press release does not give  
2 rise to a claim by VPX against ThermoLife;  
3 K. For such other and further relief as the Court deems just and proper.

4 DATED this 9th day of October, 2018.

5 KERCSMAR & FELTUS PLLC

6  
7 *By: s/Greg Collins*

8 Gregory B. Collins  
9 Zach R. Fort  
10 7150 E. Camelback Road, Suite 285  
11 Scottsdale, Arizona 85251

12 *Attorneys for Plaintiff ThermoLife International, LLC*

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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

## Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff(s): ThermoLife International, LLC, an  
Arizona limited liability company**

**Defendant(s): Vital Pharmaceuticals, Inc.**

County of Residence: Maricopa

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

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II. Basis of Jurisdiction:                    **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal  
Parties (Diversity Cases Only)

Plaintiff: - N/A  
Defendant: - N/A

IV. Origin :                                    **1. Original Proceeding**

V. Nature of Suit:                         **840 Trademark**

VI. Cause of Action:                    **Lanham Act 43(a), 15 U.S.C. § 1125(a); Common Law Unfair  
Competition; and Declaratory Judgment**

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

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**Signature: Gregory B. Collins**

**Date: 10/09/2018**

**If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.**

Revised: 01/2014