

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA.

CASE NO.

DIANA VIGO,

Plaintiff,

v.

VITAL PHARMACEUTICALS, INC., d/b/a
VPX Sports, a Florida corporation,

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff Diana Vigo (“Vigo” or “Plaintiff”), files this complaint for injunctive and other related relief against Vital Pharmaceuticals, Inc., d/b/a VPX Sports, a Florida corporation (“VPX” or “Defendant”), and as grounds state:

INTRODUCTION

1. Plaintiff brings this action as a result of Defendant’s purported sports and energy drink product “BANG” that does not contain the ingredients advertised or listed on its label or provide the effects that it advertises. Defendant has committed unfair and deceptive practices and has been unjustly enriched by marketing and selling BANG in a way that misleads consumers into believing that BANG contains ingredients that will provide the effects of these ingredients for those who purchased and consumed it, including Plaintiff.

JURISDICTION, VENUE, AND PARTIES

2. This is an action for injunctive and declaratory relief and thus this Court has jurisdiction pursuant to Fla. Stat. § 26.012(2). The amount in controversy exceeds this Court's minimum jurisdiction amount (\$15,000 exclusive of interest, costs, and attorney fees).

3. Plaintiff Diana Vigo is a citizen of the State of Florida, a resident of Broward County, and an individual and natural person who is otherwise *sui juris*.

4. Defendant markets, advertises, and sells its purported sports and energy drink product "BANG" to tens of thousands of consumers nationwide, including Florida.

5. Defendant VPX is a Florida corporation and its principal place of business is in Weston, Florida.

6. This Court has jurisdiction over Defendant because it is authorized to do business in the State of Florida and regularly and systematically engages in business in Broward County. By conducting business in Broward County, Defendant has sufficient minimum contacts with the State of Florida, and Broward County in particular, and/or otherwise intentionally availed themselves of the Broward County consumer market through the systematic sale of their products to Florida citizens in satisfaction of Fla. Stat. § 48.193 *et seq.* This purposeful availment renders the exercise of jurisdiction by the Court over Defendant permissible under traditional notions of fair play and substantial justice. Moreover, Defendant is engaged in substantial and not isolated activity within this state.

7. All conditions precedent to this action have occurred, been performed, or have been waived.

FACTUAL ALLEGATIONS

8. On its website and product labels, VPX represents that BANG consists of the highest quality “potent brain & body-rocking fuel: Creatine, Caffeine, CoQ10 & BCAAs (Branched Chain Amino Acids).” The labels on the cans purport to list Creatine, CoQ10, and Branched Chain Amino Acids as contained therein.

9. Defendant further represents that the Creatine is “SUPER” and the CoQ10 “ULTRA.” There are insufficient or nugatory amounts of these ingredients in BANG, and BANG is incapable of delivering the promised benefits of these ingredients in the amounts contained therein.

10. VPX markets and sells BANG through a variety of flavors that each make and repeat in identical fashion the same above claims.

11. Contrary to these clear and identical product representations, BANG does not contain “SUPER” Creatine or “ULTRA” Coenzyme Q10, or the amounts contained therein are minimal. Nor does it contain the spectrum of Branched Chain Amino Acids in any “potent” amount sufficient to deliver any benefits to consumers.

12. Defendant’s misrepresentations cause confusion among consumers. Consumers believe they are purchasing a sports and energy drink that will have desired ingredients yet do not contain the ingredients as marketed and labeled by Defendant.

13. Defendant knows that consumers are willing to pay more for sports and energy products that contain “SUPER” Creatine, “ULTRA” CoQ10, and Branched Chain Amino Acids, as opposed to those that do not, in part because the listed ingredients are valuable and desired for these consumers, the quality is higher, and consumers believe they are paying costs associated with higher quality “potent,” “SUPER,” and “ULTRA” ingredients.

14. As a result of Defendant's false, deceptive, and misleading packaging, labeling and representations, consumers such as Plaintiff are deceived when they purchase BANG in violation of state laws governing unfair and deceptive trade practices. Defendant has also been unjustly enriched as a result of its conduct.

15. As a result of these unfair and deceptive practices, Defendant has collected millions of dollars from the sale of BANG that it would not have otherwise earned. Plaintiff paid money for a product that is not what it claims to be or what she bargained for. She paid a premium for BANG when she could have instead bought other, less expensive, sports and energy drinks, and consumers have lost the opportunity to purchase and consume other sports and energy drinks that do in fact contain these desired ingredients.

Plaintiff

16. At all relevant times, Plaintiff Diana Vigo resided in, and continues to reside in Broward County, Florida. During the relevant time period, Plaintiff purchased VPX's BANG in reliance of the representations contained on its labels and for the ingredients claimed to be therein.

17. Plaintiff has since learned that BANG does not contain the marketed and labeled ingredients, or that the amounts are de minimus. Plaintiff took into account VPX's misrepresentations in making her purchases and would not have purchased BANG had she known that VPX's representations were false.

18. Based on Defendant's misrepresentations and deceptive conduct, Plaintiff purchased a sports and energy drink that had less value than what she paid, and he has accordingly suffered legally cognizable damages proximately caused by Defendant's misconduct.

19. Plaintiff purchased BANG in reliance of Defendant's representations regarding its "potent" ingredients as set forth above and was willing to pay a premium for BANG because of

these representations, and would not have purchased, would not have paid as much for the products, or would have purchased alternative products in the absence of these representations.

20. VPX's wrongful conduct and practices, if not enjoined, will subject Plaintiff and other members of the public to substantial continuing harm and will cause irreparable injuries to Plaintiff and members of the public who are damaged by VPX's conduct.

COUNT I:

**Injunction For Violations of the Florida
Deceptive and Unfair Trade Practices Act**

21. Plaintiff realleges and incorporates paragraphs 1 through 20 herein and further alleges as follows:

22. This is a claim for violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201-501.2101. FDUTPA, § 501.201, *et seq.*, Florida Statutes, prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.204.

23. Plaintiff is a "consumer" as defined and construed under FDUTPA, Fla. Stat. § 501.203(7).

24. The sale of Defendant's purported sports and energy drink product is a "consumer transaction" under FDUTPA.

25. Plaintiff has purchased purported sports and energy drink product from Defendant and is thus "aggrieved" by Defendant's practice of misrepresenting and reselling used beauty products as new and unused.

26. VPX engaged in, and continues to engage in, unconscionable acts or practices in the conduct of its trade and/or commerce in the State of Florida.

27. VPX's business practices, as alleged herein, are "unfair" because they offend established public policy and are immoral, unethical, unscrupulous, and substantially injurious to consumers in Florida.

28. Furthermore, Defendant's business practices, as alleged herein, are "deceptive" because they are likely to deceive consumers, including Plaintiff.

29. Specifically, VPX has misled, and continues to mislead consumers by marketing and selling BANG as containing ingredients that will provide the positive health effects of the ingredients for those who purchased and consumed it. VPX took advantage of Plaintiff's trust and confidence in the VPX brand.

30. VPX's actions violate FDUTPA, and were conceived, devised, planned, implemented, approved, and/or executed within the State of Florida, which has an interest in prohibiting violations of FDUTPA. VPX's deceptive and unfair conduct is continuing and continues to harm consumers in Florida.

31. If Defendant's unlawful practices stop, Plaintiff would resume buying Defendant's BANG products in the future. Without an injunction and/or declaration, however, it is all but impossible for Plaintiff to know or be assured that Defendant's violations have stopped and will not occur in the future.

32. Fla. Stat. § 501.211(1), states:

Without regard to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this part may bring an action to obtain a declaratory judgment that an act or practice violates this part and to enjoin a person who has violated, is violating, or is otherwise likely to violate this part.

33. Plaintiff is entitled to declaratory and injunctive relief pursuant to Fla. Stat. § 501.211, Florida Statutes, declaring that Defendant's deceptive and unfair conduct violates

FDUPTA and harms the consuming public of Florida, and enjoining Defendant from further such violations.

34. Plaintiff is entitled to attorney's fees and costs pursuant to Section 501.2105, Florida Statutes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff:

- a. Declaring that Defendant has violated FDUTPA, as alleged herein;
- b. Permanently enjoining Defendant from further violating FDUTPA;
- c. Awarding attorneys' fees and costs under FDUTPA; and
- d. Awarding such other relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial for all issues for which a trial by jury is permitted by law.

Dated: December 13, 2018

Respectfully submitted,

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