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VITAL PHARMACEUTICALS, INC and JHO
INTELLECTUAL PROPERTY HOLDINGS,
LLC

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

VITAL PHARMACEUTICALS, INC.,
and JHO INTELLECTUAL
PROPERTY HOLDINGS, LLC,

Plaintiffs,

v.

ORANGE BANG, INC., and
MONSTER ENERGY COMPANY,

Defendants.

Case No. 5:20-cv-1464

**COMPLAINT FOR
DECLARATORY RELIEF AND
DAMAGES**

DEMAND FOR JURY TRIAL

Plaintiffs Vital Pharmaceuticals, Inc. d/b/a VPX Sports (“VPX”) and JHO Intellectual Property Holdings, LLC (“JHO”) state as follows for their Complaint against Defendants Orange Bang, Inc. (“OBI”) and Monster Energy Company (“Monster”):

Jurisdiction and Venue

1. This action includes claims for declaratory judgment pursuant to the Federal Declaratory Judgment Act, codified at 28 U.S.C. § 2201, and arises under the Lanham Act, codified at 15 U.S.C. § 1051 et seq. This action also includes claims for damages.

1 2. This Court has subject matter jurisdiction over this matter pursuant to
2 28 U.S.C. § 1331, and under the supplemental jurisdiction of this Court, as
3 embodied in 28 U.S.C. § 1367(a). There are claims arising under the Constitution,
4 laws, or treaties of the United States in that VPX requests a declaration of non-
5 infringement arising under the Lanham Act, codified at 15 U.S.C. § 1051 et seq.,
6 over which there is original federal question jurisdiction.

7 3. An immediate and justiciable controversy exists between the parties
8 based, in part, on OBI's and Monster's allegations stated in their joint Demand for
9 Arbitration (defined below) against VPX, which allegations constitute a threat to
10 file a lawsuit against VPX for allegedly infringing OBI's trademarks. Specifically,
11 OBI's and Monster's Demand for Arbitration includes allegations of trademark
12 infringement, including that (1) "VPX has infringed OBI's BANG marks and
13 created a false designation of origin, by using in commerce, without OBI's
14 permission, the BANG mark in connection with the advertisement, offering for
15 sale, sale, and/or distribution of VPX's Bang beverages that are not creatine-based
16 and that are not marketed and sold exclusively through vitamin and nutritional
17 supplement stores, gyms and health clubs, or to the nutritional and dietary
18 supplement sections only of convenience or other stores as described in the
19 contract"; (2) "VPX's actions are likely to cause confusion and mistake, or to
20 deceive as to the affiliation, connection, or association of OBI with VPX, and/or as
21 to the origin, sponsorship, or approval of VPX's products or commercial activities,
22 in violation of 15 U.S.C. § 1125(a)"; and (3) "VPX, by its actions, has damaged
23 Orange Bang." Moreover, OBI's and Monster's allegations that VPX's
24 trademarks—which are federally registered and owned by JHO—infringe OBI's
25 trademarks, necessarily create an immediate and justiciable controversy between,
26 on the one hand, OBI and Monster, and, on the other hand, VPX and JHO.

27 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
28 both Monster and OBI maintain their corporate headquarters in this district.

Parties

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

6. JHO is a Florida limited liability company with its principal place of business in Weston, Florida.

7. OBI is a California corporation with its principal place of business in Sylmar, California.

8. Monster is a Delaware corporation with its principal place of business in Corona, California.

Nature of Action

9. VPX, established in 1993 and incorporated in 1996, manufactures and has historically sold fitness-focused nutritional supplement products and sugarless energy drink products. VPX's contemporary energy drink product line features highly successful sugarless energy drink products named "BANG." OBI, on the other hand, manufactures concentrated whipped fruit beverages that (if and to the extent still in commerce at all) are or previously were primarily offered for sale and sold by OBI in concentrate form to be ultimately purchased by consumers from fountain drink machines. VPX's and OBI's respective products are not similar or targeted to the same customers, and they are not competitors.

10. Nearly a decade ago, on August 11, 2010, VPX and OBI entered into a confidential Settlement Agreement (the "Settlement Agreement") that resolved certain disputes regarding a long ago-discontinued VPX bodybuilding supplement product then-called "Bang!" and trademark registrations pre-dating the Settlement Agreement. The Settlement Agreement includes a confidentiality clause and an arbitration provision.

11. Until recently, VPX and OBI have had no conflict with each other. Indeed, prior to 2019, OBI had never taken issue with VPX's current BANG energy drink products, despite the fact that VPX had introduced them into commerce in

1 2012. Those seven years of peaceful coexistence are not unsurprising because
2 VPX's sugar-free energy drink products are nothing like OBI's sugar-loaded
3 whipped fruit juice products, and are wholly unrelated to the products addressed in
4 the Settlement Agreement.

5 12. VPX and Monster, on the other hand, are presently fierce competitors
6 within the energy drink product space. Although Monster boasts that it is among the
7 global market leaders within that product space, it has consistently been losing
8 market share to VPX since VPX entered the marketplace. As a result, Monster—a
9 notorious corporate bully and vexatious litigant—has resorted to anti-competitive
10 measures in an effort to quash VPX's success.

11 13. Although VPX does not yet know the details (which will be the subject
12 of discovery), Monster induced OBI to purportedly assign its rights in the
13 Settlement Agreement and to join OBI in an arbitration proceeding against VPX
14 (which Monster is very likely funding), wherein Monster, as purported assignee,
15 now seeks to weaponize the Settlement Agreement to collaterally assault VPX's
16 right to compete within the energy drink space and OBI (likely at the behest of
17 Monster) purports to assert trademark infringement claims against VPX.

18 14. VPX brings this action to obtain judicial declarations that the claims
19 brought by OBI and Monster are not subject to arbitration, and to obtain damages
20 from Monster and OBI for their unfair and unlawful conspiracy to harm the public
21 by curtailing fair competition.

22 **Background Facts**

23 **A. OBI and VPX**

24 15. According to its website (orangebang.com), OBI was incorporated in
25 1971 and “has become one the largest major company's [sic] to manufacture
26 premium concentrates for hispanic & whipped fruit juice beverages, packaged in
27 Bag-in-Box & Bottles.”
28

1 16. The only products for which OBI uses the word “Bang!” are its
2 whipped fruit juice drinks, called Orange Bang!, Pina Colada Bang!, and
3 Strawberry Bang!. OBI’s other products are marketed under its Ole! brand.

4 17. OBI does not produce energy drink products (sugarless, carbonated,
5 non-carbonated or otherwise), nor does it produce any nutritional supplement
6 products. Quite to the contrary, OBI’s whipped fruit juice beverages are loaded
7 with sugar.

8 18. Conversely, VPX does not produce whipped fruit juice beverages
9 (sugar-loaded, in concentrate form, or otherwise).

10 19. VPX was established as a business in 1993 and incorporated in 1996.
11 At that time, it focused primarily on producing nutritional supplements such as
12 protein shakes and bodybuilding supplements.

13 20. In 2009, OBI filed a lawsuit against VPX in this Court alleging, in
14 summary, that VPX’s use of the word “Bang!” on a bodybuilding product (which
15 VPX has not produced for years) infringed upon three trademark registrations held
16 by OBI, being U.S. TM Reg. No. 1,223,619 (the “619 Registration”), TM Reg. No.
17 1,220,228 (the “228 Registration”), and TM Reg. No. 1,224,457 (the “457
18 Registration”).

19 21. On or about August 11, 2010, VPX and OBI resolved the lawsuit by
20 entering into the Settlement Agreement.

21 22. In general, the Settlement Agreement set forth certain permissible
22 channels (for both VPX and OBI) of their then-existing products. The Settlement
23 Agreement did not and does not, however, impose any restrictions or prohibitions
24 on VPX with respect to development or branding of new products.

25 23. The Settlement Agreement contains a confidentiality provision and,
26 therefore, is not attached to this Complaint but could be filed at the appropriate time
27 under seal.

28

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