UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VITAL PHARMACEUTICALS, INC., d/b/a
VPX SPORTS,

Plaintiff,

v. Case No.

PEPSICO, Inc.,

Defendant.

COMPLAINT

Plaintiff, Vital Pharmaceuticals, Inc., d/b/a VPX Sports ("VPX" or "Plaintiff"), states as follows for its Complaint for Injunctive Relief in Aid of Arbitration against Defendant PepsiCo, Inc. ("PepsiCo"):

NATURE OF THIS ACTION

1. VPX is one of the leading manufacturers of fitness-focused nutritional supplements and energy drinks in the world. Its BANG® energy drink is among the most popular and rapidly expanding brands in the energy drink segment.

2. Following the introduction of the BANG® brand, VPX built a very high functioning distribution network. In late 2019 and early 2020, due to the meteoric rise in sales and popularity of the BANG® brand, and in recognition of the opportunity to further advance and expand the BANG® brand to the top of the highly competitive energy drink marketplace, VPX wanted to ensure that its distribution network was not just good, but best in class. VPX engaged in discussions with PepsiCo, which represented that it had capabilities to advance the BANG® brand beyond VPX's current high functioning network and encouraged VPX to switch to PepsiCo's distribution network.

3. In March 2020, in reliance on PepsiCo's assertions of its capabilities and projections for advancement of the BANG® brand, VPX and PepsiCo entered into a distribution agreement whereby, among other things, PepsiCo agreed to distribute certain of VPX's BANG® products in certain distribution channels throughout the United States (the "Distribution Agreement").[1] That Distribution Agreement included [redacted]

4. In the contracting process, PepsiCo pushed VPX to transition its network at an accelerated pace and even inserted aggressive transition requirements into the Agreement. VPX not only met those aggressive transition requirements, but again relying on PepsiCo's representations on its capabilities to advance the BANG® brand actually vastly exceeded those requirements, at great expense to VPX.

5. Despite VPX's efforts and good faith approach to the relationship, PepsiCo repeatedly failed to perform, to address VPX management's performance concerns, or to advance the BANG® brand. Instead, PepsiCo was more concerned with pushing VPX to transition still more of its existing network, beyond what was required of VPX in the Distribution Agreement.

6. After months of under-performance and unaddressed or inadequately addressed concerns, it became apparent to VPX that PepsiCo either did not have capabilities that it represented, or that it was less interested in advancing the BANG® brand, and more interested in

[1] The Distribution Agreement contains a confidentiality provision. Accordingly, VPX is filing this redacted version of the Complaint, which cites to certain provisions of the Distribution Agreement, and will be seeking leave to file an unredacted version of the Complaint under seal, along with a copy of the Distribution Agreement.

using the popularity of the BANG® brand to tie in and push other failed PepsiCo energy products, such as Rockstar®.

7. Accordingly, on October 23, 2020, VPX was forced to protect its BANG® brand by terminating its Distribution Agreement with PepsiCo. In that process, VPX continued its good faith dealings by offering "buyout". Following that termination, however, PepsiCo has punitively scaled back its already inadequate efforts related to the BANG® brand. Still worse, as if the damage that PepsiCo had done to the BANG® brand was not enough, and with no regard for VPX's benefit of the bargain or need to protect its brand, PepsiCo has taken the position that VPX is somehow trapped into continuing to distribute the BANG® brand only through PepsiCo for not only the short term, but <u>exclusively</u> for the next three years.

8. To that end, PepsiCo has gone so far as to threaten VPX's current and prior distribution partners into not doing business with or even exploring a relationship with VPX. These actions, coupled with PepsiCo's lack of performance prior to termination, and scaled back efforts following termination, conclusively establish PepsiCo's reckless disregard for the BANG® brand and its true intentions for entering into the Distribution Agreement with VPX in the first place (e.g. to advance its own failed brands, rather than VPX's)

9. PepsiCo's actions have caused incalculable and irreparable harm, and will continue to cause such harm, to VPX, the VPX brand, and the VPX distribution network worth billions of dollars, if PepsiCo's actions are not enjoined.

10. Despite PepsiCo's own failings under the Distribution Agreement, PepsiCo recently filed a Demand for Arbitration with the AAA against VPX.

THE PARTIES

11. VPX is a Florida corporation with its principal office located at 1600 N. Park Drive, Weston, FL 33326, and is therefore a citizen of Florida.

12. PepsiCo is a North Carolina corporation with its principal place of business located at 700 Anderson Hill Road, Purchase, New York 10577.

JURISDICTION AND VENUE

13. This is an action for injunctive relief pursuant to the parties' Distribution Agreement. [redacted]

14. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332. The parties to this action are diverse: VPX is a citizen of Florida and PepsiCo is a citizen of New York and North Carolina. The amount in controversy, including the objects of the litigation, exceeds $75,000.00 exclusive of interest and costs. Specifically, VPX has sustained damage due to PepsiCo's improper interference with VPX's business relationships that are immeasurable, but well in excess of $75,000.

15. Venue is proper in this Court because, pursuant to 28 U.S.C. § 1391, a substantial part of the events or omissions giving rise to VPX's claim occurred in this District.

FACTUAL BACKGROUND

I. The Parties' Distribution Agreement

16. VPX sells its products internationally and nationwide. Prior to March 2020, VPX relied in part on independent wholesale distributors to sell and distribute its products to retail resellers.

17. In March 2020, VPX and PepsiCo entered into the Distribution Agreement [redacted]

18. The Distribution Agreement obligated PepsiCo [redacted]

19. Likewise, the Parties understood and contemplated [redacted]

20. To be equitable, the Distribution Agreement further provided [redacted]

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

WHAT WILL YOU BUILD? | sales@docketalarm.com | 1-866-77-FASTCASE

fastcase®
Smarter legal research.