

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: _____

VITAL PHARMACEUTICALS, INC.,
d/b/a BANG ENERGY,
a Florida corporation,

Plaintiff,

v.

COMPLAINT

THE MADE-RITE COMPANY, LTD,
a Texas limited partnership,

Defendant.

_____ /

Plaintiff, Vital Pharmaceuticals, Inc., d/b/a Bang Energy, a Florida corporation (hereinafter “Bang Energy”), brings this action against Defendant, The Made-Rite Company, Ltd. (hereinafter “Made-Rite”), a Texas limited partnership, and in support thereof alleges:

NATURE OF ACTION

1. This is an action for recovery of a money judgment against Made-Rite for Made-Rite’s failure, as buyer, to pay monies owed to Bang Energy, as seller, for goods sold and delivered to Made-Rite.

PARTIES, JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332, as Bang Energy and Made-Rite are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

3. Bang Energy is a Florida Corporation organized and existing under the laws of the State of Florida, with its principal place of business located in Broward County, Florida.

4. Made-Rite is a limited partnership organized and existing under the laws of the State of Texas, with its principal place of business located in Gregg County, Texas.

5. This Court has personal jurisdiction over Made-Rite pursuant to §48.193(1)(a)(7), because this action arises out of Made-Rite's failure to pay monies contractually required to be paid to Bang Energy in Broward County, Florida and thus Made-Rite is subject to personal jurisdiction in this action; and/or (b) pursuant to Fla. Stat. §48.193(2), because Made-Rite engages in substantial and not isolated activity within the State of Florida. Further, Made-Rite has constitutional minimum contacts with the State of Florida.

6. Venue is proper in the United States District Court for the Southern District of Florida alternatively under 28 U.S.C. §1391(b)(2), as a substantial part of the events or omissions giving rise to the claim asserted herein occurred in this district.

GENERAL ALLEGATIONS

7. Bang Energy is engaged in the manufacture, and sale to distributors, retailers and consumers, of a variety of sports nutrition supplements and energy beverages.

8. Made-Rite is a wholesale distributor of soft drink brands within the State of Texas.

9. Bang Energy, pursuant to agreement and purchase orders generated by Made-Rite, sold and delivered energy beverage products, including, but not limited to, its highly successful Bang® energy drink product, to Made-Rite for wholesale distribution and resale.

10.

11. From March 2020 through and including July 2020, Bang Energy issued invoices to Made-Rite requiring payment for the energy drink products that VPX sold and delivered to Made Rite, totaling \$485,106.72. (the "Invoices"). Copies of the Invoices are

attached hereto as “**Composite Exhibit 1**”. To date, Made-Rite has failed to make any payment to Bang Energy on any of the Invoices, which are entirely past due, owing and unpaid.

12. Any and all conditions precedent to Bang Energy bringing this action have occurred, or have been met, excused or waived.

**COUNT I
ACCOUNT STATED**

13. Bang Energy restates and realleges the allegations set forth in paragraphs 1 through 12 hereinabove, as if fully set forth within this Count.

14. Before institution of this action, Bang Energy and Made-Rite had business transactions between them on the dates reflected by the Invoices attached hereto as “**Composite Exhibit 1**”, and they agreed to the resulting balance.

15. Made-Rite did not object to the invoices.

16. Made-Rite has wholly failed to pay Bang Energy the Invoices.

17. As a result, Bang Energy has been damaged, and Made-Rite owes Bang Energy the principal sum of \$485,106.72, plus interest accrued and accruing.

WHEREFORE, Plaintiff, Vital Pharmaceuticals, Inc., demands judgment for damages against Defendant, The Made-Rite Company, Ltd., for all unpaid principal sums owing, interest, court costs, reasonable attorney’s fees and such other and further relief as the Court deems just and proper.

**COUNT II
GOODS SOLD**

18. Bang Energy restates and realleges the allegations set forth in paragraph 1 through 12 hereinabove, as if fully set forth within this Count.

19. Made-Rite owes Bang Energy the principal sum of \$485,106.72, plus interest accrued and accruing, for the goods that Bang Energy sold and delivered to Made-Rite on various dates, as reflected by the Invoices attached hereto as **“Composite Exhibit 1”**.

WHEREFORE, Plaintiff, Vital Pharmaceuticals, Inc., demands judgment for damages against Defendant, The Made-Rite Company, Ltd., for all unpaid principal sums owing, interest, court costs, reasonable attorney’s fees and such other and further relief as the Court deems just and proper.

**COUNT III
OPEN ACCOUNT**

20. Bang Energy restates and realleges the allegations set forth in paragraphs 1 through 12 hereinabove, as if fully set forth within this Count.

21. Made-Rite owes Bang Energy the principal sum of \$485,106.72, plus interest accrued and accruing, in accordance with the Invoices attached hereto as **“Composite Exhibit 1”**.

WHEREFORE, Plaintiff, Vital Pharmaceuticals, Inc., demands judgment for damages against Defendant, The Made-Rite Company, Ltd., for all unpaid principal sums owing, interest, court costs, reasonable attorney’s fees and such other and further relief as the Court deems just and proper.

**COUNT IV
UNJUST ENRICHMENT**

22. Bang Energy restates and realleges the allegations set forth in paragraphs 1 through 12 hereinabove, as if fully set forth within this Count.

23. Around and during the period from March 2020 through and including July 2020, Bang Energy sold and delivered to Made-Rite, and Made-Rite received, accepted and

retained, goods reflected in the Invoices attached hereto as “Composite Exhibit 1”, and at the agreed total price and reasonable value of \$485,106.72.

24. Bang Energy has conferred a benefit upon Made-Rite in the amount of \$485,106.72, plus interest accrued and accruing, and Made-Rite has failed to make any payment on the \$485,106.72 worth of goods provided.

25. Made-Rite has retained said goods, and it is inequitable for Made-Rite to retain such benefit without paying for same.

26. Made-Rite has nonetheless failed and refused to pay for the goods after due demand.

WHEREFORE, Plaintiff, Vital Pharmaceuticals, Inc., demands judgment for damages against Defendant, The Made-Rite Company, Ltd., for all unpaid principal sums owing, interest, court costs, reasonable attorney’s fees and such other and further relief as the Court deems just and proper.

Dated: June 10, 2021

Respectfully submitted,

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