

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JARED R. WHEAT, an Individual,
and BLACKSTONE LABS, LLC,
a Florida Limited Liability Company,

Plaintiffs,

Case No. 1:20-cv-04875-LMM

v.

SUPPLEMENT SCIENCE CORP.,
a New York Corporation d/b/a
CONDEMNED LABORATORIEZ,

Defendant.

FIRST AMENDED COMPLAINT

Plaintiffs Jared R. Wheat and Blackstone Labs, LLC (“Blackstone”) file this Complaint against Defendant Supplement Science Corp. d/b/a Condemned Labz (“Condemned Labz”) and allege as follows:

THE PARTIES

1. Plaintiff Jared R. Wheat is an individual residing in Johns Creek, Georgia. Mr. Wheat owns the registered ARSON[®] trademark for dietary and nutritional supplements.

2. Plaintiff Blackstone is a Florida limited liability company having its principal address at 1120 Holland Drive, Suite 14, Boca Raton, Florida 33487. Blackstone markets and sells a dietary supplement called ARSON in the Northern District of Georgia and throughout the United States.

3. Defendant Condemned Labz is a New York corporation having its registered office at 2139 East 3rd Street, Brooklyn, New York, 11223 and its registered agent at such address is Vincent Milette. Condemned Labz markets and sells a dietary supplement called ARSYN in the Northern District of Georgia and throughout the United States.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 (federal question), 1332 (diversity), 1338 (trademarks and unfair competition), and 15 U.S.C. § 1121 (Lanham Act claims), as this case is between citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

5. Pursuant to 28 U.S.C. § 1367, this Court also has supplemental jurisdiction over Plaintiffs' claims arising from the laws of the State of Georgia as those claims are substantially related to the causes of action over which the Court has original jurisdiction.

6. This Court has personal jurisdiction over Condemned Labz pursuant to O.C.G.A. § 9-10-91 because Condemned Labz regularly transacts and solicits business in the Northern District of Georgia and has committed tortious acts (trademark infringement and unlawful trade practices) within this District. Condemned Labz has also caused tortious injury in this District by tortious actions committed outside of this District. By way of example and without limitation, Condemned Labz has purposefully placed goods bearing an infringing trademark into the stream of commerce with the knowledge and expectation that such products would be purchased throughout the United States, including in the Northern District of Georgia, and said goods have been and continue to be purchased in this District.

7. Venue is proper under 28 U.S.C. § 1391(b),(c) because Condemned Labz transacts business and has committed tortious acts within the Northern District of Georgia, and the owner of the subject trademark resides in the Northern District of Georgia.

BACKGROUND FACTS

8. Mr. Wheat owns the registered ARSON[®] trademark for dietary and nutritional supplements. A copy of the registration is attached as Exhibit A.

9. Mr. Wheat's constructive use of the ARSON[®] trademark began upon his filing of an "intent-to-use" application on March 22, 2016. 15 U.S.C. §§ 1051(b), 1057(c).

10. Mr. Wheat's actual use of the ARSON[®] trademark began no later than September 15, 2017 and he has since continuously used the trademark in commerce.

11. The ARSON[®] trademark registered on November 14, 2017.

12. Mr. Wheat has granted Blackstone a license to use the registered ARSON[®] trademark.

13. Blackstone expends considerable resources developing, promoting, branding, marketing, selling, and maintaining the quality of its products, including its ARSON[®] dietary supplement.

14. Blackstone markets, sells, and distributes its ARSON[®] dietary supplement via an extensive network of wholesale, Internet, and retail outlets such as health food stores, gyms and fitness centers throughout the United States.

15. Through long-term use and extensive promotion, the registered ARSON[®] trademark has established significant goodwill among consumers of dietary supplements and has become an extremely valuable asset.

CONDEMNED LABZ'S INFRINGEMENT

16. Mr. Wheat and Blackstone recently became aware that Condemned Labz was and is selling dietary supplements in the United States bearing an infringing "ARSYN" product name.

17. The infringing ARSYN product name and the registered ARSON[®] trademark are used on the same goods (dietary supplements), which travel in the same trade channels.

18. The infringing ARSYN product name is confusingly similar in appearance, sound, and meaning to the registered ARSON[®] trademark and conveys a similar commercial impression to consumers of dietary supplements.

19. Consumers encountering the infringing ARSYN product name and the registered ARSON[®] trademark in the marketplace are, and are likely to be, confused as to the source of the goods.

20. Condemned Labz had constructive notice of the registered ARSON[®] trademark as of November 14, 2017, the date of its registration. 15 U.S.C. § 1072.

21. Condemned Labs had actual notice of the registered ARSON trademark no later than February 22, 2019.

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