

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIMOTHY BROWN, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

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

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Timothy Brown (“Plaintiff”) brings this action on behalf of himself and all others similarly situated against Vital Pharmaceuticals, Inc., d/b/a VPX Sports (“Defendant” or “VPX”), a Florida corporation. Plaintiff makes the following allegations based on information and belief, except as to the allegations specifically pertaining to himself which are based on personal knowledge.

INTRODUCTION

1. Creatine is one of the most popular sports dietary supplements on the market, with more than \$400 million in annual sales.¹ Creatine has been shown to improve exercise performance and play a role in preventing or reducing serious injuries, enhancing rehabilitation from injuries, and aids athletes in tolerating heavy training loads.²

2. Likewise, creatine is increasingly associated with brain health and cognitive

¹ Jessica Butts et al., “Creatine Use in Sports,” 10 *Sports Health* at 31-34 (Jan-Feb 2018) [https://dx.doi.org/10.1177%2F1941738117737248]. (last accessed February 11, 2022).

² Thomas Buford et al., “International Society of Sports Nutrition position stand: creatine supplementation and exercise,” 4 *J. Intl Soc Sports Nutr.* 6 (2007) [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2048496/]. (last accessed February 11, 2022).

performance. There is evidence in scientific literature that if creatine is able to successfully permeate the blood-brain barrier (BBB), it can promote brain health and improve cognitive function. Creatine has also been progressively tested in neurodegenerative diseases, such as Parkinson's and Huntington's disease.

3. It is, therefore, no surprise that products with creatine, which has been shown to boost exercise performance, promote greater fitness gains, positively effect a consumer's physical health, and potentially aid in cognitive performance, are popular and widely available in brick-and-mortar stores and online across the United States.³ These products come in many forms, including beverages, capsules, and powders.

4. Defendant VPX is an American company that hypes its products as the healthiest energy drink on the market. VPX manufactures, markets, distributes, and sells a variety of products, including its BANG® "performance-enhancing beverage" product line (the "BANG® products" or the "Products"). VPX sells BANG® products by deceiving the public about the Products' ingredients.

5. The marquee ingredient in the BANG® products is "SUPER CREATINE," which Defendant touts as a "performance ingredient" that "contributed in part to Bang's rise in prominence" and created a so-called "cult-like craze".

6. Contrary to the labeling of "SUPER CREATINE" on BANG® products, the Products do not contain any creatine at all. Rather, what Defendant calls "SUPER CREATINE" is really Creatyl L-leucine, which is a fundamentally different molecule than creatine, **is not creatine**, and **does not have the benefits of creatine**. Creatyl L-leucine is an entirely new

³ Cindy Crawford et al., "A Public Health Issue: Dietary Supplements Promoted for Brain Health and Cognitive Performance," 26 *J. Altern Complement Med.* at 265-272 (Apr 2020) [<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7153641/>] (last accessed February 11, 2022).

ingredient developed by VPX. It is also incapable of having any of the physiological effects of creatine. Simply put, the term and name “SUPER CREATINE” is false and misleading.

7. Nonetheless, Defendant touts the presence of so-called “SUPER CREATINE” in capital letters and a bold font placed around the top lip of each BANG® can. Further, Defendant labels “SUPER CREATINE” as a “performance ingredient” on the Products’ packaging.

8. Defendant reinforces these false claims by including the phrase “POTENT BRAIN AND BODY FUEL” in all capital letters, on the front and center of the Product, immediately below the product name BANG®, and has defined this phrase as its “trademarked tagline” and part of its “trade dress.” In fact, Defendant has stated that one of the reasons it labels the Product as providing “POTENT BRAIN AND BODY FUEL” is because of “SUPER CREATINE.”

9. Defendant has engaged in false and misleading claims to gain profits at the expense of the consumers, who Defendant knows are regularly seeking to improve their physical and/or neurological health.

10. Defendant is well aware that creatine is a popular dietary supplement believed to have beneficial effects for exercise performance, building muscle mass, brain health, and cognitive functioning. However, the **Products contain no creatine at all.**

11. Nonetheless, Defendant has capitalized on this trend, and has engaged in a uniform nationwide marketing campaign to convince consumers that the Products contain “SUPER CREATINE,” when they in fact have no creatine at all and are entirely incapable of providing the benefits of creatine.

12. To further support the validity of its false and deceptive product claims, the

BANG® website references multiple “university studies.”⁴ All of these studies were funded, at least in part, by VPX. Further, the VPX-sponsored “university studies” do not provide any discernable scientific evidence that Creatyl-l-Leucine can provide any performance benefit in the body or in the brain. In fact, there are no peer-reviewed studies in the scientific literature that support positive effects of Creatyl-l-Leucine in the brain or in skeletal muscle.

13. To accompany this deception and give the false impression of medical and scientific support for the BANG® products’ supposed benefits, VPX holds itself out as a “pharmaceutical” company. Indeed, Jack Owoc, CEO and founder of VPX, who is also VPX’s “Chief Scientific Officer” and primary pitchman, claims that he purposefully designed the company logo to resemble the “Rx” symbol associated with pharmaceutical drugs:



14. As Owoc explained, “This is precisely why the acronym VP(X) actually stands for Vital Pharmaceuticals with the X appearing lower than the VP similar to how it appears in RX.”⁵

15. Despite this marketing and labeling scheme, VPX is not a pharmaceutical company and its founder, Jack Owoc, is merely a former high school science teacher, and not a chemist, pharmacist, scientist or doctor.

16. Defendant’s false and deceptive advertising campaign is being carried out to the

⁴ “VPX UNIVERSITY STUDIES.” Bang Energy. [<https://bangenergy.com/vpx-university-studies/>] (last accessed February 11, 2022.)

⁵ <https://bangenergy.com/about/> (last accessed February 11, 2022).

detriment of the consuming public. As described herein, “SUPER CREATINE” is *not* creatine, and the BANG® products contain no creatine, and do not confer any health benefits. Nonetheless, Defendant intends to deceive, and has deceived, consumers into believing that BANG® products contain creatine.

17. Plaintiff and members of the classes purchased the Products and paid a premium for Defendant’s Products over comparable products that were not promoted with the misrepresentations at issue here.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this matter under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), as the amount in controversy exceeds \$5 million, exclusive of interests and costs; it is a class action of over 100 members; and the Plaintiff is a citizen of a state different from the Defendant.

19. This Court has personal jurisdiction over Defendant. Defendant has sufficient minimum contacts with the state of New York and purposefully availed itself, and continues to avail itself, of the jurisdiction of this New York through the privilege of conducting its business ventures in the state of New York, thus rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice.

20. Venue is proper in this district under 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this district, as Defendant does business throughout this district, and Plaintiff lives and made his purchase of the Product in this district.

PARTIES

21. Plaintiff Timothy Brown (“Plaintiff Brown” or “Mr. Brown”) is a natural person

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