

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RISEANDSHINE CORPORATION d/b/a
RISE BREWING

Plaintiff,

vs.

PEPSICO, INC.

Defendant.

CASE NO.: 1:21-cv-3198

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff RiseandShine Corp. d/b/a Rise Brewing (“Rise Brewing”), by and through its undersigned counsel, brings this action against Defendant PepsiCo, Inc. (“PepsiCo”), and in support thereof alleges as follows:

NATURE AND BASIS OF THE ACTION

1. Rise Brewing is a small but rapidly growing coffee company that, through hard work and innovation, developed, and now markets and sells throughout the United States, a full line of canned, shelf-stable nitro cold brew coffee drinks.

2. Sold alongside other shelf-stable caffeinated drinks, Rise Brewing’s RISE-branded products have gained a strong following among caffeine drinkers, and are particularly successful with millennial and Gen-Z consumers, as well as others who prefer the mellow taste of nitro cold brewed coffee over the more acidic, standard drip coffee.

3. Unfortunately, Rise Brewing’s hard-earned success is now being threatened by

PepsiCo, a marketplace giant with a well-documented history of misappropriating the rights of smaller, innovative brands.

4. In this instance, three months ago PepsiCo launched its own RISE-branded caffeine drink to specifically target the morning coffee drinker, and positioned it to be sold alongside – and compete directly with – Rise Brewing’s RISE-branded caffeine drinks.

5. Rise Brewing contacted PepsiCo in an effort to resolve this dispute outside of the courts. PepsiCo was dismissive of Rise Brewing’s concerns, and refused to abandon any of its plans with respect to its infringing mark.

6. Rise Brewing is an American success story, a business built on hard work, innovation, and a great tasting product that consumers have grown to love. While Rise Brewing does not welcome this dispute, it cannot allow PepsiCo to destroy Rise Brewing’s brand and the associated consumer goodwill through willful and reckless infringement of Rise Brewing’s RISE marks. Therefore, through this lawsuit, Rise Brewing chooses to rise and take a stand against PepsiCo’s unlawful actions.

A. Plaintiff Rise Brewing and Its Success

7. Rise Brewing was founded in an East Village, New York apartment in 2014 by three childhood friends, Jarett McGovern, Grant Gyesky, and Justin Weinstein, along with their co-founder Hudson Gaines-Ross. Having had enough of the chemical-laden, sugary, ready-to-drink coffee products on the store shelves, they sought to create something better, a new product that was responsibly sourced, environmentally friendly, and made from all organic ingredients.

8. Rise Brewing’s founders began experimenting with different beans and roasts. Rather than using traditional brewing techniques, they adopted a “nitro cold brew” process, which infuses nitrogen into the brewing process to give coffee a foamy, creamy texture, without the bitterness of typical drip coffees. Rise Brewing’s first commercial product, available in large format

kegs similar to those used for beer, was sold at a popular Brooklyn restaurant. Patrons of that restaurant enjoyed the product immensely, and contacted Rise Brewing to ask it to make its product available at office buildings in New York.

9. Almost immediately, Rise Brewing's founders saw the potential for a *canned* nitro cold brewed product. Given that the available canned energy products were limited to either traditional energy drinks such as Monster Energy® and Red Bull®, or highly-sweetened ready-to-drink coffee drinks such as Starbucks Frappuccino®, Rise Brewing saw the need for a canned caffeine drink that did not have the chemicals, dairy, fat, and sugar associated with these available products.

10. Rise Brewing began experimenting with nitrogen widgets, which are small plastic devices inside a can that store nitrogen. As soon as you open the can, the widget releases bubbles, which rise to the top of the can or glass. The widget creates the same cascade and smooth, creamy head that consumers enjoy from nitro cold brew coffee served on tap from a keg.

11. Rise Brewing became the first brand in the United States to have a shelf-stable canned coffee product with a nitrogen widget that would require no refrigeration and thus enable easier transportation and storage of the product.

12. Rise Brewing's founders did indeed fill a marketplace void, and its canned caffeine drinks were an instant success. Today, Rise Brewing sells tens of millions of dollars of its products, which can be found in grocery stores, convenience stores, and other big box and online retailers across the country.

13. Because Rise Brewing's RISE canned caffeine drinks are shelf-stable, they are sold on shelves alongside other shelf-stable canned energy drinks.

14. Rise Brewing's products have expanded from the original nitro cold brew, and today

include several other canned caffeinated drinks, including an Earl Grey tea latte. Rise Brewing's products have also included citrus coffee products, *i.e.*, a blood orange coffee and a lemonade coffee. A sampling of Rise Brewing's product offerings sold under its RISE family of Marks (discussed below) are depicted in the image below.



15. Rise Brewing's marketing targets all consumers, but the company runs specific marketing campaigns focusing on the athletic and wellness community, advertising its drinks as a source of energy to drive athletic performance. Given its specific focus on the athletic community, Rise Brewing has partnerships to promote its RISE-branded drinks with multiple Olympic sports teams, such as the USA Surf Team, USA Climb Team, and the US Ski & Snowboard Team. RISE-branded drinks are also stocked in the locker rooms of several major New York-area professional sports teams, including the New York Yankees, the New York Mets, and the New York Giants, as well as in MMA (mixed martial arts) facilities. Additionally, Rise Brewing was a sponsor of FOX Sports' 2020 college football season.

16. In the years since its founding, Rise Brewing has been recognized with multiple

awards for its drinks. Rise Brewing's nitro cold brew received the 2017 Best New Product award from *BevNET* and a 2018 Beverage Innovation of the Year award from *Beverage Industry*, two leading trade magazines. Rise Brewing also won a 2018 NEXTY Best New Organic Beverage award, administered by *New Hope Network*, a natural foods association. And in 2019, Rise Brewing was awarded *People Magazine's* Best Canned Coffee award for its canned nitro cold brew.

17. As demonstrated in part by these awards, Rise Brewing has invested considerable time and expense in marketing and ensuring that its branding is recognizable to consumers. It set out and achieved its mission to create a delicious, healthy caffeine drink, using all organic ingredients, and its brand has risen in popularity and renown since its humble beginnings.

18. Rise Brewing's brand and hard-earned success is under an imminent threat by PepsiCo which, shortly before this complaint was filed, released its own RISE-branded caffeine drink that was designed to specifically target the morning coffee drinker, and is marketed as a morning caffeinated drink to replace ready-to-drink coffee drinks such as RISE.

B. PepsiCo's Long History of Being a Repeat Trademark Offender

19. On information and belief, PepsiCo was formed in 1965 with the merger of Pepsi-Cola Company and Frito-Lay, Inc. PepsiCo has since acquired numerous other companies, including Quaker Oats and Tropicana, and is now one of the largest food and beverage producers in the world. Upon information and belief, as of 2021, PepsiCo owns hundreds of brands, 23 of which are "billion dollar" brands, *i.e.*, brands with over a billion dollars of annual sales.

20. When PepsiCo purchased the Gatorade line of products in the 2000s for billions of dollars, even then federal regulators recognized the monopoly that PepsiCo was solidifying in the beverage industry and the harm that could result. After squeaking by on a 2-2 vote after the Federal Trade Commission's antitrust investigation of PepsiCo's purchase of Gatorade's previous owner, Quaker Oats, commissioners Sheila F. Anthony and Mozelle W. Thompson warned that "PepsiCo's

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