

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

LABORATORIOS PISA S.A. de C.V; AND
CAB ENTERPRISES, INC.,

Plaintiffs,

vs.

PEPSICO, INC.; AND STOKELY-VAN
CAMP, INC.,

Defendants.

Civ. Action No.: 7:21-CV-0062

(JURY DEMAND)

COMPLAINT

Plaintiffs Laboratorios Pisa S.A. de C.V (“Pisa”) and CAB Enterprises, Inc. (“CAB”) (collectively “Plaintiffs”), by their attorneys and for their Complaint against PepsiCo, Inc. and Stokely-Van Camp Inc. (collectively, “PepsiCo”), allege and state as follows:

NATURE OF THE ACTION

1. This is an action to prevent PepsiCo from unlawfully copying plaintiffs’ products and to stop PepsiCo’s unethical, monopolistic and otherwise unlawful attempts to replace plaintiffs’ products on U.S. store shelves.¹
2. First developed in Mexico over seventy years ago, Plaintiffs’ Electrolit® brand of premium hydration beverages earned its place as a staple in many households over the past decades in this judicial district and beyond.

¹ Plaintiffs learned less than a week ago that PepsiCo plan to launch an infringing “Gatorlyte” rehydration beverage product this Sunday, February 21, 2021. Pepsico’s infringing product launch, if not enjoined by the Court, will irreparably harm Plaintiffs. Accordingly, Plaintiffs are concurrently filing an Emergency Motion seeking a Temporary Restraining Order enjoining PepsiCo from proceeding with their product launch to avoid irreparable harm to Plaintiffs.

3. As a result, the ELECTROLIT brand, trademarks and trade dress are instantly recognizable to a large portion of both the U.S. and Mexican population and are associated with Plaintiffs' products and their considerable goodwill.

4. Unable to compete with ELECTROLIT beverages, PepsiCo has resorted to an unethical and illegal campaign of copying and intimidation, including using its monopoly to prevent ELECTROLIT beverages from being sold in U.S. stores altogether.

5. PepsiCo, a repeat marketplace bully, must be enjoined from succeeding in its scheme to unlawfully intimidate, slavishly copy, and ultimately muscle out a much smaller, family-owned competitor from the U.S. market.

6. Envious of the ELECTROLIT brand's wild success since its formal introduction to the U.S. market several years ago, PepsiCo's actions have demonstrated not just a belated recognition of the market proven by ELECTROLIT's success or even a good-faith effort to compete on a level playing field, but a desire to copy and replace ELECTROLIT beverages with PepsiCo's version of the ELECTROLIT brand, no matter what it takes.

7. 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 of 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 acquisition of Quaker Oats is unlawful and contrary to the public interest. ... As a result of the Commission's failure to act today, we believe that consumers of sports drinks and, indeed, all soft drinks will suffer the consequences." Those well-founded fears have come to pass in the ensuing

decades, now most recently in PepsiCo's unlawful attempt to copy and replace ELECTROLIT beverages on store shelves.

8. For years, PepsiCo recognized and touted the scientific benefits of electrolytes in sports and rehydration beverages. Indeed, the Gatorade brand is built around this fundamental science. But despite all the successes of Gatorade, PepsiCo still struggled with fully converting electrolyte science into commercial success. PepsiCo's best efforts resulted in the powdered drink additive that they called "Gatorlytes," sold as individual pouches for consumers to mix into other beverages like Gatorade. The original version of Gatorlytes never took off and was a failure.

9. Then, in 2014, confident from its decades-long success in Mexico, plaintiff CAB first formally introduced ELECTROLIT beverages into the U.S. market as a ready to drink premium hydration beverage. Sales have doubled year-over-year since, and PepsiCo noticed.

10. Having failed with their powder pouches, and despite the billions of dollars that PepsiCo spends every year on advertising and marketing, PepsiCo realized that the quickest (albeit illegal and unethical) way to compete with Plaintiffs' ELECTROLIT beverages was to try and push it around, copy it, then use its monopoly power to kick ELECTROLIT beverages from store shelves altogether.

11. Late last year, when the ELECTROLIT brand's success and popularity became too much competition to tolerate, PepsiCo began their intimidation tactics, having their lawyers complain about one ELECTROLIT brand advertising claim or another, meanwhile taking notes on how ELECTROLIT brand beverages had been able to enjoy the success that had proved so elusive for PepsiCo.

12. Indeed, the very same ELECTROLIT brand marketing that PepsiCo's lawyers claimed was illegal was now being prominently featured by PepsiCo in their pre-launch marketing for their new

ELECTROLIT clone, “Gatorlyte,” which, on information and belief, is scheduled to launch on February 21, 2021.



13. PepsiCo’s copying of the ELECTROLIT brand is not subtle or nuanced, as shown by pictures of the respective products. PepsiCo copied nearly every distinctive feature of ELECTROLIT’s trademarks and trade dress into their Gatorlyte product. From the prominent white diagonal banner down to the positioning of the similar name, inclusion of a circular badge and solid color “Premium Hydration” / “Rapid Hydration” subtitle background, tapered lower profile and even the flavor offerings, PepsiCo’s clone is nearly complete.



14. Still not satisfied or confident in its ability to compete for success on store shelves, even with its ELECTROLIT clone, PepsiCo turned to its stranglehold of the store shelves themselves. In pre-launch marketing efforts directed to retailers, PepsiCo directed retailers to place Gatorlyte “next to or in place of ELECTROLIT” with a large red X-out of ELECTROLIT beverages:



(PepsiCo instructions to distributor representatives to intermix or replace ELECTROLIT products with Gatorlyte)

15. PepsiCo's message was clear: it's us or them. For retailers, this is not a choice at all. PepsiCo's monopolization of the sports drink market and the larger beverage market, in combination with their substantial stake in the market for foodstuffs makes it impossible for retailers to say no to PepsiCo.

16. As a result of PepsiCo's unlawful actions, Plaintiffs have suffered and continue to suffer irreparable harm.

17. To stop this unlawful conduct, and to recover the damages caused by it, Plaintiffs bring this action for injunctive and monetary relief for false designations of origin and trade dress infringement in commerce in violation of Section 43 of the Lanham Act (15 U.S.C. § 1125);

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