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8 Monster Energy Company

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 MONSTER ENERGY COMPANY,
13 a Delaware corporation,

14 Plaintiff,

15 v.

16 VITAL PHARMACEUTICALS, INC.,
17 d/b/a VPX Sports, a Florida corporation;
18 and JOHN H. OWOC a.k.a. JACK
OWOC, an individual,

19 Defendants.
20
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Case No. 5:18-cv-1882

COMPLAINT FOR:

- 1. VIOLATION OF LANHAM ACT
- 2. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW
- 3. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW
- 4. TRADE LIBEL

DEMAND FOR JURY TRIAL

1 Plaintiff Monster Energy Company (“Monster”) brings this action against
2 Defendants Vital Pharmaceuticals, Inc., d/b/a VPX Sports (“VPX”), and John H.
3 Owoc a.k.a. Jack Owoc (“Owoc”) (collectively “Defendants”), and alleges as follows:
4

5 **GENERAL ALLEGATIONS**

6 1. Defendants VPX and Owoc sell BANG by misleading and deceiving the
7 public about the product’s ingredients and the benefits of consumption. Simply put,
8 Defendants’ advertising and marketing scheme tricks consumers into believing they
9 are getting something they are not. BANG is marketed as a modern-day snake oil. In
10 addition to serving as VPX’s founder, CEO, and owner, Owoc is BANG’s leading
11 pitchman.

12 2. According to Defendants, BANG is nothing short of a miracle drink that
13 delivers benefits and cures that have evaded scientists for decades. For example,
14 Defendants claim that:

- 15 • BANG contains significant amounts of “Super Creatine” – a purportedly
16 “new” compound “invented” by VPX—and branched chain amino acids
17 (“BCAAs”). This is false. Super Creatine is nothing more than water-
18 soluble creatine—a popular supplement.
- 19 • Super Creatine is 20 times more effective at reaching the brain than other
20 forms of creatine. This is false.
- 21 • Consuming BANG can “reverse mental retardation.” It cannot.
- 22 • Consuming BANG can also help cure Alzheimer’s Disease, Parkinson’s
23 Disease, Huntington’s Disease, and other forms of dementia. It cannot.
- 24 • BANG is the “healthiest energy drink” on the market. It is not.

25 3. Even if BANG could deliver Defendants’ promised benefits, which again
26 it does not, the ingredients at the heart of Defendants’ claims—Super Creatine and
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1 BCAAs—are sprinkled into BANG in such low amounts that none of the purported
2 benefits could ever be delivered through safe consumption of BANG.

3 4. To further deceive consumers and give the false impression of medical
4 and scientific support for its snake oil products, VPX holds itself out as a
5 pharmaceutical company. First, the company’s formal name is Vital
6 **Pharmaceuticals**, Inc. (Emphasis added.) Second, Owoc admittedly designed the
7 company logo to resemble the “Rx” symbol associated with pharmaceutical drugs:



12 He stated, “This is precisely why the acronym VP(X) actually stands for Vital
13 Pharmaceuticals with the X appearing lower than VP similar to how it appears in
14 RX.” (<https://vpxsports.com/about-us/>, last visited on August 31, 2018).

15 5. In what looks like projection, Owoc claims the company was founded
16 based on his “disgust for unscrupulous supplement manufacturers who were
17 intentionally mislabeling their supplements and ripping the public off . . . This is why
18 VPX/Bang . . . does things differently!” As part of the marketing, he goes on to
19 affirmatively say that his company does not “engage in unethical and deceptive
20 advertising practices,” (<https://vpxsports.com/about-us/>), which is an odd thing to say
21 unsolicited unless he has a guilty conscience.

22 6. While Owoc also touts himself as VPX’s “Chief Scientific Officer,” his
23 science background is not as robust as one would expect. His qualifications seem to
24 be based exclusively on his previous stint as a high school science teacher.

25 7. The misinformation does not stop there. Although VPX claims to “have
26 more university proven double-blind placebo-controlled sports and performance
27 nutrition studies on [its] finished products than all the supplement companies in [its]
28

1 industry combined,” not a single published peer-reviewed study is identified on the
2 VPX website to support Defendants’ claims about BANG.

3 (<https://vpxsports.com/about-us/>.)

4 8. VPX has a long history of unlawful practices, which have resulted in
5 investigations and actions by the National Advertising Division (NAD) and the U.S.
6 Food and Drug Administration (FDA).

7 9. For example, the NAD has repeatedly taken issue with VPX’s use of
8 ingredient studies, which are misconstrued to make performance claims about VPX’s
9 products. Despite multiple actions targeting VPX’s violations, the company continues
10 to defy the NAD’s orders:

- 11 • In 2008, the NAD found there was no evidence to support VPX’s advertising
12 claims that its “Redline Princess” dietary supplements could “enhance
13 mood, energy, and fat loss.” NAD demanded VPX correct its labeling.
14 (Vital Pharmaceuticals, Inc. (Redline Princess), Report #4868, NAD/CARU
15 Case Reports (July 2008).) Upon information and belief, VPX continues to
16 make unsubstantiated claims about Redline Princess and its purported effects
17 on mental clarity, mood, energy, fat loss, and appetite suppression.
- 18 • In 2010, the NAD found that VPX was making unsubstantiated performance
19 claims for its “Meltdown Fat Assault” dietary supplements. NAD demanded
20 VPX correct its print, labeling, and Internet advertising. (Vital
21 Pharmaceuticals, Inc. (Meltdown Fat Assault RTD beverage and Fat
22 Incinerator Capsules/NARB Panel #171), Report #5227, NAD/CARU Case
23 Reports (September 2010).) Upon information and belief, VPX continues to
24 make similar unsubstantiated claims on product packaging and on the
25 Internet about Meltdown Fat Assault and its purported ability to burn fat.
- 26 • In 2012, the NAD found that VPX was making unsubstantiated claims for
27 its “Medivin” multivitamins and implying that Medivin was “more
28

1 bioavailable” than a competing product. NAD demanded VPX correct its
2 labeling and advertising. (Vital Pharmaceuticals, Inc. (Medivin 100%
3 Natural Liquid Vitamin & Mineral Delivery System), Report #5475,
4 NAD/CARU Case Reports (June 2012).) Upon information and belief, VPX
5 continues to make similar unsubstantiated claims on product packaging and
6 on the Internet about the purported bioavailability of Medivin relative to
7 other products in general.

8 10. And in 2015, the FDA sent VPX a warning letter for selling dietary
9 supplements that were considered “adulterated” because they contained a potentially
10 unsafe ingredient, DMBA, which had not been approved for use as a dietary
11 ingredient.
12 (<https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm444377.htm>,
13 last visited on August 31, 2018.)

14 11. Here, VPX is yet again engaging in a deliberate and deceptive advertising
15 campaign, which involves making repeated false and/or misleading statements to
16 boost the position, appeal and sales of its BANG energy drinks.

17 12. Defendants’ false and deceptive advertising campaign is being carried
18 out to the detriment of the consuming public and the energy drink industry, including
19 Monster.

20 13. The competitive harm of Defendants’ illegal behavior is substantial.
21 Defendants unfairly and unlawfully boost BANG’s goodwill and affect consumer
22 preferences in the energy drink market where both VPX and Monster compete.
23 Unless curtailed, Defendants’ unlawful conduct will cause irreparable injury to
24 Monster by reducing the value of Monster’s products. Among other things, Monster
25 seeks equitable relief including injunctive relief and corrective advertising. Monster
26 also seeks VPX’s ill-gotten profits and damages caused by Defendants’ conduct.

27
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1 **THE PARTIES**

2 14. Monster is a Delaware corporation with its principal place of business at
3 1 Monster Way, Corona, California 92879.

4 15. Upon information and belief, Defendant VPX is a Florida corporation
5 with its principal place of business at 1600 North Park Drive, Weston, FL 33326.

6 16. Upon information and belief, Defendant John H. Owoc a.k.a. Jack Owoc
7 is the founder, CEO, Chief Scientific Officer, and owner of Vital Pharmaceuticals,
8 Inc., and he is a citizen of Florida.

9
10 **JURISDICTION AND VENUE**

11 17. This action for false advertising is brought under the Lanham Act, 15
12 U.S.C. § 1051 *et seq.*, California's Unfair Competition Law, Cal. Bus. & Prof. Code
13 §§ 17200, *et seq.*, and California's False Advertising Law, Cal. Bus. & Prof. Code
14 § 17500, *et seq.*

15 18. This Court has original subject matter jurisdiction over this action under
16 28 U.S.C. §§ 1331 and 1338. The Court has supplemental jurisdiction over the related
17 state law claims under 28 U.S.C. §§ 1338 and 1367. The Court also has original
18 jurisdiction under 28 U.S.C. § 1332(a) because VPX is not a citizen of the same states
19 as Monster, and the amount in controversy exceeds \$75,000 exclusive of interest and
20 costs.

21 19. This Court has specific personal jurisdiction over Defendants because
22 they have purposefully availed themselves of California's laws through their
23 activities. *CollegeSource, Inc. v. Academy One, Inc.*, 653 F.3d 1066 (9th Cir. 2011).
24 Upon information and belief, Defendants and their agents knew or should have known
25 that their unlawful conduct, as set forth in this Complaint, would harm Monster, a
26 competitor located in Corona, California. According to the VPX website, the
27 company has a vast network in California of fifteen direct store distributors.

1 (https://vpxsports.com/about-us/.) By committing acts of false advertising and unfair
2 competition and targeting consumers in California and in this Judicial District,
3 including but not limited to, making false statements in connection with the
4 advertising and marketing of BANG to California customers, Defendants' acts form a
5 substantial part of the misrepresentations giving rise to Monster's claims.

6 20. Venue is proper under 28 U.S.C. § 1391(b) and (c) because a substantial
7 portion of the events or omissions giving rise to this action occurred and are occurring
8 in this Judicial district.

9
10 **FACTS COMMON TO ALL CAUSES OF ACTION**

11 21. Monster is a nationwide leader in the business of developing, marketing,
12 selling, and distributing energy drinks. Monster's energy drinks have achieved
13 substantial commercial success, with estimated retail sales in excess of \$7 billion per
14 year worldwide. Monster has established itself as the best-selling energy drink brand
15 in the United States by unit volume and dollar value.

16 22. In 2002, long before VPX's acts described herein, Monster launched its
17 Monster Energy® brand of energy drinks. Monster's successful line of energy drinks
18 has grown to include other well-known products including but not limited to original
19 "green" Monster Energy and Lo-Carb Monster Energy; Monster Energy Absolutely
20 Zero; Monster Energy Assault; Monster Energy Zero Ultra and line extensions; Juice
21 Monster and line extensions; Monster Hydro and line extensions; Monster Rehab and
22 line extensions; Java Monster and line extensions; and Muscle Monster and line
23 extensions, Café Monster and line extensions; Espresso Monster and line extensions,
24 among others.

25 23. Since 2002, Monster has spent over \$5 billion in advertising, promoting,
26 and marketing its brand and products. In 2017 alone, Monster spent \$537 million on
27 such endeavors.

28

1 24. VPX is a company engaged in the manufacture, distribution, advertising,
2 and sale of, among other things, energy drinks and dietary supplements. VPX's
3 website identifies BANG energy drinks as one of the company's "best sellers."

4 25. BANG energy drinks are sold at retail stores such as 7-Eleven, gas
5 stations including Chevron, and other specialty stores domestically (including
6 throughout California) and internationally. The products are further sold online via
7 VPX's website, www.vpxsports.com, and are also available from other online
8 retailers, including but not limited to, www.bodybuilding.com; www.GNC.com; and
9 www.vitaminshoppe.com.

10 26. Unable to keep pace with Monster in the marketplace and compete on a
11 level playing field, Defendants have waged a nationwide advertising and marketing
12 campaign that falsely promotes the health benefits and quality of BANG. As
13 demonstrated herein, there are no limits to what Defendants will say to unlawfully
14 increase sales and promote BANG.

15 27. At all relevant times, flavors of BANG include or have included: Cotton
16 Candy, Lemon Drop, Root Beer, Blue Razz, Sour Heads, Peach Mango, Star Blast,
17 Power Punch, Champagne, Black Cherry Vanilla, Pina Colada, Purple Guava Pear,
18 Citrus Twist, Purple Haze, Cherry Blade Lemonade, Lemon Drop Sweet Tea, Sweet
19 Ice Tea, Rainbow Unicorn, and Georgia Peach Sweet Tea.

20 28. VPX also sells caffeine-free versions of BANG, which are offered in
21 three flavors: Sour Heads, Cotton Candy, Black Cherry Vanilla, Purple Guava Pear,
22 and Cherry Blade Lemonade.

23 29. At all relevant times, Defendants have made, and continue to make,
24 misrepresentations and/or omissions regarding BANG on both product labels and in
25 other forms of advertising. Examples of BANG labels include:

26 **"By the makers of the legendary REDLINE® ENERGY**
27 **PRODUCTS."**

28


1 “Make no Mistake -- BANG® is not your stereotypical high
2 sugar, life-sucking soda masquerading as an energy drink! High
3 sugar drinks spike blood sugar producing metabolic mayhem
4 causing you to crash harder than a test dummy into a brick wall.”

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6 “Power up with BANG’s potent brain & body-rocking fuel: Creatine,
7 Caffeine, CoQ10 & BCAAs (Branched Chain Amino Acids).”



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BCAA AMINOS




POTENT BRAIN AND BODY FUEL

BY THE MAKERS OF THE LEGENDARY
REDLINE® ENERGY PRODUCTS

Make no Mistake - BANG® is not your stereotypical high sugar, life-sucking soda masquerading as an energy drink! High sugar drinks spike blood sugar producing metabolic mayhem causing you to crash harder than a test dummy into a brick wall. Power up with BANG's potent brain & body-rocking fuel: Creatine, Caffeine, CoQ10 & BCAAs (Branched Chain Amino Acids). Life is an Xtreme Sport and BANG® is the Xtreme Energy source to Live Life Xtreme!


Not Intended for
Individuals under the
AGE OF

18



Made in USA from Domestic
and Imported Ingredients

PATENT
8,448,488



0g

TOTAL CARBS
PER CAN

0

SUGARS
PER CAN

0

CALORIES
PER CAN


0

ARTIFICIAL
COLORS

CAUTION: Do not use this product if you are pregnant or nursing. Do not consume this product if you are taking any prescription drug and/or have any medical condition. The user of this product assumes all liability if this product is used in a manner not consistent with label guidelines.

This product contains caffeine and should not be used with any other caffeine containing products. This product is intended for use by healthy individuals only.

*At the time of manufacturing, some vitamins are likely to degrade.



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To report a serious adverse event or obtain product information, contact
1600 North Park Drive, Weston, FL 33326 USA • (954) 641-0570

VPXSPORTS.COM

ULTRA COQ10

CONTAINS NO FRUIT JUICE

Stable Aqueous Amide-Protected Bioactive Creatine Species - U.S. Patent No. 8,445,466

Nutrition Facts

Serving Size 1 Can (16 fl oz [473 mL])

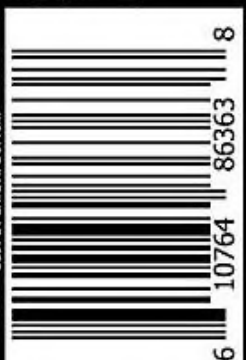
Amount Per Serving		
Calories 0	Calories from Fat 0	
		% Daily Value*
Total Fat 0 g		0%
Saturated Fat 0 g		0%
Trans Fat 0 g		
Cholesterol 0 mg		0%
Sodium 40 mg		2%
Potassium 85 mg		2%
Total Carbohydrate 0 g		0%
Dietary Fiber 0 g		0%
Sugars 0 g		
Protein 0 g		
Vitamin C 50%†	• Niacin 25%†	
Vitamin B6 25%†	• Vitamin B12 25%†	
Magnesium 2%†		

*Percent Daily Values are based on a 2,000 calorie diet.
Not a significant source of vitamin A, calcium and iron.

INGREDIENTS: Carbonated water, citric acid anhydrous, natural and artificial flavors, caffeine anhydrous, sodium benzoate (preserves freshness), potassium citrate monohydrate, sucralose, L-Leucine, potassium phosphate dibasic, vitamin C (ascorbic acid), calcium chloride, acesulfame potassium, potassium sorbate (preserves freshness), calcium disodium EDTA, magnesium chloride, SUPER CREATINE® (Creatyl-L-Leucine [Creatine bonded to L-Leucine]), L-isoleucine, L-valine, vitamin B3 (niacinamide), CoQ10 (coenzyme Q10), vitamin B6 (pyridoxine hydrochloride), and vitamin B12 (methylcobalamin).

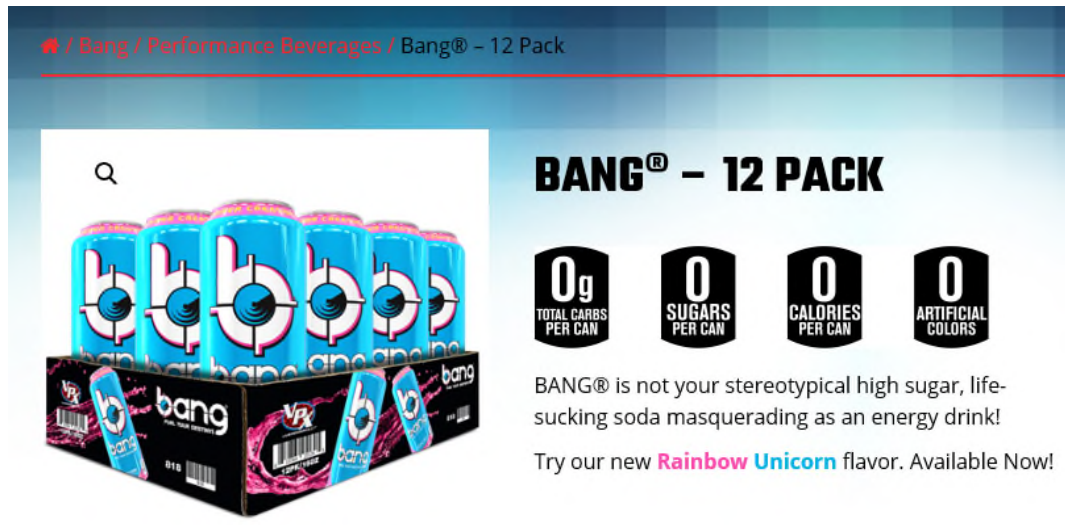
Warning: Too much caffeine may cause nervousness, irritability, sleeplessness, and occasionally, rapid heartbeat. Not recommended for use by individuals under 18 years of age. One serving of BANG® provides 300 mg of caffeine which is more than two cups of coffee.

BEST BY DATE AT BOTTOM



1 30. Defendants’ labeling, advertising, and marketing also suggests that
2 BANG contains significant amounts of its “Super Creatine.” For example, the words
3 “SUPER CREATINE” are prominently displayed at the top of every can of BANG in
4 capital letters. The front labels of the cans for both the caffeine and caffeine-free
5 versions also describe BANG as “brain and body fuel,” while the back labels similarly
6 describe BANG as “brain and body-rocking fuel.”

7 31. VPX’s website similarly describes BANG as “potent brain & body-
8 rocking fuel.”



19 **DESCRIPTION**

20
21 Make no Mistake – BANG® is not your stereotypical high sugar, life-sucking soda masquerading as
22 an energy drink! High sugar drinks spike blood sugar producing metabolic mayhem causing you to
23 crash harder than a test dummy into a brick wall. Power up with BANG’s potent brain & body-
24 rocking fuel: Creatine, Caffeine, & BCAAs (Branched Chain Amino Acids).

25 (https://vpxsports.com/product/bang-12-pack/, last visited on August 31, 2018.)

26 Further, as shown above, VPX falsely suggests that all industry leading energy
27 drinks—which necessarily includes each of Monster’s many products—are unsafe and
28

1 inferior relative to BANG because all other energy drinks are “high sugar, life-sucking
 2 soda[s] masquerading as [] energy drink[s].”

3 32. But VPX’s claims ignore the fact that many energy drinks, including
 4 many of Monster’s products, do not contain high amounts of sugar. Indeed, more than
 5 one third of Monster’s energy drink offerings are either low-sugar or sugar-free. For
 6 example, in addition to the original Monster Energy, the Lo-Carb Monster Energy
 7 (with just 3 milligrams of sugar per serving) and the Monster Zero Ultra (with zero
 8 milligrams of sugar per serving) are Monster’s best-selling products. Monster also
 9 sells several other low- or no-sugar energy drinks including:

11 ULTRA SUNRISE	REHAB - TEA+LEMONADE+ENERGY
12 ULTRA BLUE	REHAB - RASPBERRY TEA+ENERGY
13 ULTRA RED	REHAB - PEACH TEA + ENERGY
14 ULTRA VIOLET	REHAB - TEA+ORANGEADE+ENERGY
15 ULTRA BLACK	REHAB - TEA+DRAGON FRUIT+ ENERGY
16 ABSOLUTELY ZERO	

17
 18 33. VPX’s claims that other energy drinks, including Monster’s products,
 19 cause consumers to experience a “crash” is false. First, there is no credible scientific
 20 evidence that energy drinks containing sugar—in many cases different sugars and
 21 different combinations of sugars which are specially formulated—cause consumers to
 22 experience a crash. Second, there is no credible scientific evidence that energy drinks
 23 that do not contain sugar (of which there are many) cause consumers to experience a
 24 crash. VPX’s claims that other low or no sugar energy drinks, including Monster’s
 25 products, cause consumers to experience a crash (whereas BANG does not) falsely
 26 implies that there are other ingredients in BANG that prevent consumers from
 27 experiencing a crash.

1 34. In the billboard below, VPX again falsely touts BANG as “potent brain
2 and body fuel” capable of providing “Clean Energy,” “Laser Focus,” and “No Crash.”
3



12 35. However, as alleged herein, because Super Creatine and BCAAs are
13 sprinkled into BANG in such small amounts as to make them virtually useless—i.e.,
14 below any potential effective dose levels—Defendants’ descriptions of BANG are
15 false.

16 36. Based on scientific testing of BANG, BANG contains less than 40
17 milligrams of Super Creatine—which as discussed herein is more than *100 times*
18 lower than the minimum amount of creatine shown to be an effective dose.¹

19 37. In addition to the product labels, VPX’s advertising falsely highlights the
20 purported “health” benefits of consuming BANG. Defendant Owoc has been and is
21 directly involved with and responsible for directing and/or authorizing the advertising
22 and marketing of BANG. On May 10, 2017, VPX issued a press release written by
23 Owoc, titled, “The Bang Revolution,” in which he falsely describes BANG as a
24 “health promoting beverage” that is superior to other “health robbing energy drinks.”
25

26
27 ¹ VPX conceals, and does not disclose, the amount of Super Creatine in its energy
28 drinks.

1 Owoc further highlights the inclusion of, among other things, water-soluble Super
2 Creatine and BCAAs:

3 Most energy drinks on the market are health robbing energy drink [sic]
4 which leaves you with a “crash.” BANG[®] optimizes synergistic
5 ingredients for energy, not just an immediate effect. BANG[®] [is] unlike
6 any carbonated beverage on the market because it’s sugar-free, calorie-
7 free, and contains *no artificial ingredients*. Additionally, BANG[®]
8 contains my patented creatine-amino acid peptide which is the world’s
9 only water-stable creatine. BANG[®] also contains BCAAs and a water
10 soluble CoQ10 developed by my colleague, Philip Bromley over at
11 VIRUN.

12 ...

13 Fast forward to 2017 and the growth of BANG[®] has been phenomenal.
14 BANG is ideal for gamers, *health enthusiasts*, athletes, extreme sports
15 lovers, or anyone that wants a great tasting carbonated beverage that
16 doesn’t contain high sugar and other unproven ingredients. I call the
17 explosion of this new *health promoting beverage* the “BANG[®]
18 Revolution.”

19 (<https://www.bevnet.com/news/2017/the-bang-revolution> (emphasis added), last
20 visited on August 31, 2018.)

21 38. The VPX press release falsely claims that BANG contain “no artificial
22 ingredients.” Of the ingredients listed on each BANG can, almost every ingredient is
23 artificial. For example, each BANG can states that it contains “artificial flavors.”
24 BANG also contains artificial preservatives, artificial sweeteners, and artificial
25 vitamins and supplements (including Owoc’s “patented creatine-amino acid peptide”
26 and “water-soluble CoQ10” “developed” by his colleague). VPX claims that BANG
27 is a “health promoting beverage” for “health enthusiasts,” but instead it contains
28

1 almost all artificial ingredients. ([https://www.bevnet.com/news/2017/the-bang-](https://www.bevnet.com/news/2017/the-bang-revolution)
2 revolution.) This is misleading and creates a false image of the product.

3 39. On its website, VPX falsely claims that Owoc’s patented Super Creatine,
4 which is nothing more than water-stable creatine,² is somehow more effective than
5 creatine monohydrate (commonly known as “creatine”)—a popular supplement for
6 those seeking to gain muscle mass and increase strength. VPX further represents that
7 Super Creatine is “much more bioavailable than regular creatine” and therefore more
8 effective in crossing the blood-brain barrier. ([https://vpxsports.com/creatine-super-](https://vpxsports.com/creatine-super-creatine)
9 creatine, last visited on August 31, 2018.) Based on these misrepresentations, VPX
10 falsely claims BANG is the “perfect mental enhancement drink” and that Super
11 Creatine can “beef up your muscles and your brain.” *Id.*

12 40. In an effort to mislead students into buying its energy drinks, VPX claims
13 that BANG can help them “ace” their exams. In a May 2, 2017 post on its website,
14 VPX claims that BANG “provides *healthy and potent fuel* to keep your mind sharp
15 during long hours of studying . . . Boost your brain power with a clean dose of energy.
16 Bang Energy is the best energy drink for focus because it contains ingredients such as,
17 *Super Creatine*, that not only energize *but have been proven to improve brain*
18 *function.*” (<https://vpxsports.com/ace-exams-bang/> (emphasis added), last visited on
19 August 31, 2018.) The representation here—that scientific studies have confirmed
20 that the Super Creatine in BANG improves brain function—is false.

21 41. On June 28, 2017, in a post on the “VPX Bang Energy” YouTube
22 Channel, titled “How Does Creatine Work? – Supplement Showdown,” Owoc
23 explains why BANG energy drinks are purportedly “potent brain and body fuel”:
24
25

26 ² A video on Owoc’s Instagram account demonstrates the “solubility” of Super
27 Creatine relative to creatine monohydrate.
28 (https://www.instagram.com/p/BiiHkQfFW_a/?utm_source=ig_twitter_share, last
visited on June 5, 2018.)

1 The future of creatine . . . is going to be more about the brain than the
2 body. As you age, you have creatine transport deficiency syndrome
3 where creatine does not cross the blood-brain barrier as well as it does
4 when you are younger. Because of this, as you age, you become
5 mentally retarded . . . every day that goes by, you are becoming more and
6 more mentally retarded . . . now we have great news though, we can
7 possibly reverse that with these new creatine peptides that I've patented.
8 They're miraculous because peptides can cross the blood-brain barrier
9 better than creatine alone. In fact, creatine alone is very poor at crossing
10 the blood-brain barrier . . . If you have a creatine peptide . . . you can
11 solve creatine transport deficiency syndrome, you can solve mental
12 retardation as we age . . . Bang Energy drinks, yes, it says Super Creatine
13 across the top. Super Creatine does refer to the patent [sic] creatine
14 amino acid peptide and it is in Super Creatine. That's why we call Bang,
15 'Potent Brain and Body Fuel.' So it's in the drink, the Bang drink, the
16 Bang beverage, which is coming out in a caffeine-free version very soon.

17 (https://www.youtube.com/watch?v=_hYcTX9jYr0, last visited on August 31,
18 2018.)

19 42. Owoc goes on to claim that research shows that creatine-peptides like
20 Super Creatine can cross the blood brain barrier "twenty times more efficiently than
21 regular creatine," and also helps with "all forms of dementia, including Alzheimer's,
22 Parkinson's, Huntington's, and other forms of dementia." As a result, he encourages
23 viewers to consume BANG energy drinks to get Super Creatine.

24 (https://www.youtube.com/watch?v=_hYcTX9jYr0, last visited on August 31, 2018.)

25 43. On May 1, 2018, VPX issued another press release, titled, "Bang® Shocks
26 Beverage World With TRIPLE THREAT 'Tea' SE™ Launch!," to promote the
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1 introduction of three new flavors. Doubling-down on Defendants' prior false
2 statements, VPX states:

3 The NEW Bang Energy Teas are non-carbonated and contain 300
4 mgs of caffeine, BCAA's, COQ10, and Bang's Energy's patented
5 Super Creatine®. Regular creatine is not stable in water. However,
6 Owoc's patented and GRAS-compliant Super Creatine® is chemically
7 bonded to the amino acid Leucine. These are currently the two most
8 potent natural performance-enhancing amino acids known to man.

9 **“Creatine is the ultimate brain and brawn booster. While
10 many are only aware of creatine's positive effect on muscle and
11 performance, creatine is also super important for brain health. In
12 fact, when creatine doesn't cross the Blood Brain Barrier (BBB)
13 dementia takes place and we become mentally retarded due to CRT
14 or creatine transport deficiency states Jack Owoc, Bang inventor and
15 author of the soon-to-be-released Meltdown Anti-Diet book. It is
16 believed that creatine-amino acid peptides have a far greater
17 capacity to cross the BBB than ordinary creatine.”**

18 The reason is that creatine is not stable in a water-based drink
19 because it converts to a useless substance known as creatinine. Super
20 Creatine® is the only water-stable Super Creatine peptide contained
21 exclusively in Bang® Energy Products.

22 ([https://www.prnewswire.com/news-releases/bang-shocks-beverage-world-with-
23 triple-threat-tease-launch-300639620.html](https://www.prnewswire.com/news-releases/bang-shocks-beverage-world-with-triple-threat-tease-launch-300639620.html), last visited on August 31, 2018.)

24 44. On June 2, 2018, Owoc uploaded a video to his Instagram account
25 (@bangenergy.ceo) with an explanation of how his “PATENTED SUPER
26 CREATINE WORKS!”:

1 Super Creatine is special in many ways . . . it's the world's only stable
2 creatine-amino acid peptide contained in @BangEnergy . . . Super
3 Creatine is the most soluble creatine peptide known to man. Furthermore,
4 scientifically speaking, increased solubility means increased bio-
5 availability . . . from an efficacy standpoint, combining the world's most
6 studied and most potent performance-enhancing and muscle building
7 amino acids into one peptide that are also able to initiate protein synthesis
8 by way of mTOR activation is arguable the greatest innovation in the
9 history of sports nutrition and beverages.

10 ([https://www.instagram.com/p/BjiVCkeFv-](https://www.instagram.com/p/BjiVCkeFv-6/?utm_source=ig_twitter_share&igshid=p9olrabg5b2m)
11 [6/?utm_source=ig_twitter_share&igshid=p9olrabg5b2m](https://www.instagram.com/p/BjiVCkeFv-6/?utm_source=ig_twitter_share&igshid=p9olrabg5b2m), last visited on August
12 31, 2018.) That same day, a link to the Instagram post was also uploaded to
13 Owoc's Twitter account (@BangEnergyCEO).

14 (<https://twitter.com/BangEnergyCEO>, last visited on August 31, 2018.)

15 45. To support claims regarding Super Creatine and its purported benefits in
16 comparison to creatine monohydrate, VPX cites two studies on its website.³

17 (<https://vpxsports.com/creatine-super-creatine/> (emphasis added), last visited on
18 August 31, 2018.) Yet, even VPX's reference to scientific studies is misleading.
19 Both studies involve creatine monohydrate, not "Super Creatine," and neither study
20 supports VPX's claims. Instead, one even suggests that brain creatine levels are not
21 affected by oral creatine supplementation of up to 20 grams per day.⁴

22 46. Tellingly, the patent for Super Creatine (Patent No. 8,350,077 B2) also
23 says nothing about its bioavailability relative to creatine monohydrate and is silent on

24 _____
25 ³ Rae et al., *Oral creatine monohydrate supplementation improves brain performance: a double-blind, placebo-controlled, cross-over trial*, Royal College of London B.,
26 2003, Vol. 270(1529), 2147-2150; Solis et al., *Effect of age, diet, and tissue type on PCr response to creatine supplementation*, Journal of Applied Physiology, 2017, Vol.
27 123, 407-414.

28 ⁴ Solis, *supra* note 3.

1 any purported ability to effectively cross the blood brain barrier. Instead, the sole
2 claim in the patent is that Super Creatine does not readily degrade in solution.

3 47. But *even if* Defendants’ claims regarding the alleged benefits and curing
4 effects of taking Super Creatine were true, which they are not, the amount of Super
5 Creatine in BANG is so miniscule—again, more than **100 times** lower than the
6 minimum amount of creatine shown to be an effective dose—such that none of
7 Defendants’ claimed benefits could ever be delivered to consumers.

8 48. For example, in one article cited in the Super Creatine patent, the authors
9 reviewed over twenty studies analyzing the effect of creatine supplementation:
10 “[s]upplementation protocols ranged from 20 to 25 g [**20,000-25,000 milligrams**] of
11 creatine per day for the entire supplementation period, loading doses of creatine were
12 for 3-7 days, followed by a maintenance dose for the remainder of the
13 supplementation period and lower doses [**5,000 milligrams per day**] of creatine for
14 the entire supplementation period.”⁵

15 49. And in another study cited in the Super Creatine patent, the authors state:

16 The quickest method of increasing muscle creatine stores appears to
17 be to consume ~0.3 grams/kg/day of creatine monohydrate for at
18 least 3 days followed by 3-5 g/d [**3,000-5,000 milligrams per day**]
19 thereafter to maintain elevated stores. Ingesting smaller amounts of
20 creatine monohydrate (e.g., 2-3 g/d) [**2,000-3,000 milligrams per**
21 **day**] will increase muscle creatine stores over a 3-4 week period,
22 however, the performance effects of this method of supplementation
23 are less supported.⁶

24 _____
25 ⁵ Rawson et al., *Effects of Creatine Supplementation and Resistance Training on*
26 *Muscle Strength and Weightlifting Performance*, J. of Strength & Conditioning
27 Research, 2003, Vol. 17(4), 822-831.

28 ⁶ Buford et al., *International Society of Sports Nutrition position stand: creatine*
supplementation and exercise, J. of the Int’l Society of Sports Nutrition, Aug. 2007,
Vol. 4(6).

1 50. In sum, the scientific literature relied on by Defendants to obtain a patent
2 for Super Creatine indicates that a person should start by taking **20,000-25,000**
3 **milligrams** of creatine per day for three to seven days (loading period) and then **5,000**
4 **milligrams** per day thereafter (maintenance period). Despite all of Defendants’
5 misleading claims of benefits and cures, a can of BANG contains less than 40
6 *milligrams* (0.040 grams) of Super Creatine, which again is more than **100 times**
7 lower than the minimum amount of creatine shown to be an effective dose.

8 51. The notion that the amount of Super Creatine in BANG—less than 40
9 milligrams—is an effective dose is further contradicted by VPX’s own website, which
10 identifies several studies involving creatine supplementation, all of which involved
11 dosing in the range of **5,000-20,000 milligrams** per day. Indeed, in promoting its
12 Bang Master Blaster products (which contain both creatine monohydrate and Super
13 Creatine), VPX notes:

14 For optimal gains in strength and size, take ***Bang Master Blaster***
15 ***before*** exercise and ***Stim-Free Bang Master Blaster Post Exercise***.

16 Bang Master Blaster is the only product on the market to contain both
17 creatine monohydrate and Super Creatine (Creatine bound to
18 Leucine). The total dose of creatine in each product is 5 grams [5,000
19 milligrams], so taking both products would equal a combined dose of
20 10 grams [10,000 milligrams].

21 (<https://vpxsports.com/super-creatine-pre-post-workout/>, last visited on August 31,
22 2018.)

23 52. The National Institute of Health’s Office of Dietary Supplements has also
24 analyzed the “evidence of efficacy” of creatine supplementation.

25 ([https://ods.od.nih.gov/factsheets/ExerciseAndAthleticPerformance-](https://ods.od.nih.gov/factsheets/ExerciseAndAthleticPerformance-HealthProfessional/)

26 [HealthProfessional/](https://ods.od.nih.gov/factsheets/ExerciseAndAthleticPerformance-HealthProfessional/), last visited on August 31, 2018.) According to the NIH, the
27 typical effective doses of creatine for exercise and athletic performance are **20,000**
28

1 **milligrams** per day (loading dose) for up to seven days, and then **3,000 to 5,000**
2 **milligrams** per day for up to twelve weeks. (*Id.*) Yet, BANG contains less than 40
3 milligrams of Super Creatine.

4 53. Not only does Super Creatine not deliver the benefits claimed by VPX,
5 nor is there enough in the BANG energy drink to have any performance effects
6 whatsoever, VPX has violated the federal *Food, Drug and Cosmetics Act* (FDCA) by
7 including an ingredient in its drink which is not an FDA-approved food additive or a
8 substance Generally Recognized as Safe (“GRAS”). Even if BANG was marketed as
9 a dietary supplement, it would be adulterated and violate the Dietary Supplement
10 Health and Education Act of 1994 (DSHEA) because Super Creatine is not a lawful
11 dietary ingredient under DSHEA.

12 54. Under sections 201(s) and 409 of the FDCA, any substance that is
13 intentionally added to food is a food additive that is subject to premarket review and
14 approval by FDA, unless the substance is generally recognized, among qualified
15 experts, as having been adequately shown to be safe under the conditions of its
16 intended use. General recognition of safety through scientific procedures is based
17 upon the application of generally available and accepted scientific data, information,
18 or methods, which ordinarily are published, as well as the application of scientific
19 principles, and may be corroborated by the application of unpublished scientific data,
20 information, or methods.

21 55. Upon information and belief, here, outside of one self-serving study
22 funded by VPX, the Super Creatine patented by Owoc has not received a general
23 recognition among qualified experts that it is safe for its intended use.

24 56. Defendants also falsely represent that BANG contains significant
25 amounts of “BCAA AMINOS” (branched-chain amino acids), when they do not.

26 57. Along with “SUPER CREATINE,” the words “BCAA AMINOS” are
27 also prominently displayed at the top of every can of BANG in capital letters.

28

1 58. Based on scientific testing of BANG, however, BANG contains
2 approximately 150 milligrams of BCAAs.⁷

3 59. In 2010, the European Food Safety Authority (EFSA), which is similar to
4 a European counterpart to the FDA, conducted scientific research into a number of
5 health claims being made about BCAAs. EFSA found there was a lack of scientific
6 data to support certain health claims being made about BCAAs. For example:

- 7 • On the basis of the data presented, the Panel concludes that a cause and
8 effect relationship has not been established between the consumption of
9 BCAA and growth or maintenance of muscle mass over and above the well
10 established role of protein on the claimed effect.
- 11 • On the basis of the data presented, the Panel concludes that a cause and
12 effect relationship has not been established between the consumption of
13 BCAA and faster recovery from muscle fatigue after exercise.
- 14 • On the basis of the data presented, the Panel concludes that a cause and
15 effect relationship has not been established between the consumption of
16 BCAA and improvement of cognitive function after exercise.
- 17 • On the basis of the data presented, the Panel concludes that a cause and
18 effect relationship has not been established between the consumption of
19 BCAA and a beneficial effect related to a healthy immune system.⁸

20
21 _____
22 ⁷ VPX similarly conceals, and does not disclose, the amount of BCAAs in its energy
drinks.

23 ⁸ EFSA Panel on Dietetic Products, Nutrition and Allergies (NDA), *Scientific Opinion*
24 *on the substantiation of health claims related to branched-chain amino acids (BCAA)*
25 *and growth or maintenance of muscle mass (ID 442, 444, 445, 447, 448, 451, 1478),*
26 *attenuation of the decline in muscle power following exercise at high altitude (ID*
27 *443), faster recovery from muscle fatigue after exercise (ID 447, 448, 684, 1478),*
28 *improvement of cognitive function after exercise (ID 446), reduction in perceived*
exertion during exercise (ID 450) and “healthy immune system” (ID 449) pursuant to
Article 13(1) of Regulation (EC) No 1924/2006, EFSA Journal, 2010, Vol. 8(10):
1790.

1 60. Like creatine, the NIH’s Office of Dietary Supplements also analyzed the
2 “evidence of efficacy” of BCAA supplementation, and found, “There’s not much
3 scientific evidence to support taking BCAA supplements to improve performance,
4 build muscle, or help tired and sore muscles to recover after exercise.”
5 (<https://ods.od.nih.gov/factsheets/ExerciseAndAthleticPerformance-Consumer/>, last
6 visited on August 31, 2018.)

7 61. *Even if* BCAAs could provide some benefit, the notion that the amount of
8 BCAAs in BANG—approximately 150 *milligrams* (0.15 grams)—has any meaningful
9 impact on the body is again contradicted by VPX’s own website, which identifies one
10 study in which subjects “were dieting and consuming seven grams of BCAA before
11 and after each workout for a total of **14g** BCAA.”
12 (<https://vpxsports.com/bcaas-maintain-muscle-while-dieting/> (emphasis added), last
13 visited on August 31, 2018.)

14 62. In short, the amount of BCAAs in BANG—approximately 150
15 milligrams—is almost **100 times lower** than the amounts tested in VPX’s own cited
16 research.

17 63. Upon information and belief, Defendants also engage in other forms of
18 deceptive advertising and marketing of BANG energy drinks, including but not
19 limited to print advertisements, point-of-purchase displays, and other forms of social
20 media.

21 64. In short, by falsely highlighting the presence of certain ingredients,
22 underscoring their positive qualities, providing detailed descriptions of the health
23 benefits and cures of the ingredients, but at the same time, failing to disclose that these
24 ingredients are sprinkled into BANG at such low levels as to make them useless,
25 Defendants have misled, and continue to mislead, consumers who reasonably expect
26 that BANG energy drinks contain certain ingredients and can deliver the benefits
27 promised by Defendants.

28

1 65. By spreading false claims about BANG and its purported benefits,
2 Defendants seek to divert consumers from purchasing products manufactured by other
3 energy drink companies, including Monster, to purchasing BANG energy drinks.

4 66. Monster has invested substantial resources to launch and grow the
5 Monster Energy® brand. If Defendants' false advertising campaign is allowed to
6 continue unchecked, Monster will continue to lose sales and profits and will suffer
7 loss of reputation that will impact the company's brand equity, all of which will not be
8 fully compensable through monetary damages.

9 67. Further, unless prohibited by the Court, Defendants' false advertising
10 campaign will continue to induce consumers to make purchasing decisions and
11 potentially incur costs based on false advertising and misleading representations about
12 the purported benefits and quality of BANG.

13
14 **FIRST CAUSE OF ACTION**

15 **Violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)**

16 68. Monster incorporates by reference the allegations contained in all
17 preceding paragraphs of this complaint.

18 69. Through the actions described above, Defendants have made false and
19 misleading descriptions and representations of fact about BANG energy drinks, which
20 are offered in interstate commerce. These statements misrepresent the nature,
21 characteristics, or qualities of BANG. Defendants' statements are expressly false,
22 impliedly false, or both. As just one of many examples, Defendants claim BANG is a
23 health promoting drink with no artificial ingredients—yet nearly every ingredient in
24 BANG is artificial.

25 70. At all relevant times, Defendants knew or should have known that their
26 advertising and promotional activities described herein were false, misleading, and
27 deceptive.

28

1 71. Defendants' false and misleading statements have deceived, or have the
2 tendency to deceive, a substantial segment of their intended audience about matters
3 that are material to purchasing decisions.

4 72. At all relevant times, Defendants' false and misleading statements were
5 and are made in commercial advertising and promotion in interstate commerce and
6 violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

7 73. Monster is likely to suffer, has suffered, and will continue to suffer
8 damages to its business and goodwill, the loss of sales and profits it would have made
9 but for Defendants' wrongful acts, and increased advertising and marketing costs, all
10 in an amount to be proven at trial.

11 74. Defendants' conduct has injured Monster and the general public, and
12 unless enjoined, will continue to cause irreparable harm to Monster and the general
13 public. The balance of equities and the public interest favor enjoining Defendants'
14 unlawful conduct. Monster is therefore entitled to equitable relief including injunctive
15 relief as set forth in its Prayer for Relief.

16
17 **SECOND CAUSE OF ACTION**

18 **Violation of California's Unfair Competition Law ("UCL")**

19 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

20 75. Monster incorporates by reference the allegations contained in all
21 preceding paragraphs of this complaint.

22 76. Defendants are subject to California's Unfair Competition Law, Cal. Bus.
23 & Prof. Code §§ 17200, *et seq.* Under the UCL: "Unfair competition shall mean and
24 include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue
25 or misleading advertising"

1 77. Defendants violated the “unlawful” prong of the UCL by violating the
2 Lanham Act and California’s False Advertising Law (Cal. Bus. & Prof. Code §§
3 17500, *et seq.*), as alleged above and below.

4 78. Defendants violated the “unfair” prong of the UCL because its conduct is
5 substantially injurious to consumers and Monster, offends public policy, and is
6 immoral, unethical, oppressive, and unscrupulous.

7 79. Defendants violated the “fraudulent” prong of the UCL by falsely
8 highlighting the presence or absence of certain ingredients, underscoring their positive
9 qualities, providing detailed descriptions of the purported health benefits of
10 consuming BANG, but at the same time, failing to disclose that certain ingredients are
11 sprinkled into BANG at such low levels as to make them virtually useless. Defendants
12 have misled, and continue to mislead, consumers who reasonably expect that BANG
13 energy drinks contain certain ingredients and can deliver Defendants’ promised
14 benefits. As another example of many, Defendants claim BANG is a health
15 promoting drink with no artificial ingredients, yet nearly every ingredient in BANG is
16 artificial.

17 80. Defendants further violated the “fraudulent” prong by falsely claiming
18 that BANG is the “healthiest” energy drink and that all other energy drinks, including
19 Monster’s products, are unsafe and inferior because they are “high sugar, life-sucking
20 soda[s] masquerading as [] energy drink[s].”

21 81. Defendants’ conduct has injured Monster and the general public, and
22 unless enjoined, will continue to cause irreparable harm to Monster and the general
23 public. The balance of equities and the public interest favor enjoining Defendants’
24 unlawful, unfair, and fraudulent conduct. Monster is therefore entitled to equitable
25 relief including injunctive relief as set forth in its Prayer for Relief.

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THIRD CAUSE OF ACTION

Violation of California’s False Advertising Law (“FAL”)

Cal. Bus. & Prof. Code §§ 17500, *et seq.*

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4 82. Monster incorporates by reference the allegations contained in all
5 preceding paragraphs of this complaint.

6 83. Defendants are subject to California’s False Advertising Law, Cal. Bus.
7 & Prof. Code §§ 17500, *et seq.* Under the FAL, it is “unlawful, for any person . . . to
8 make or disseminate or cause to be made or disseminated before the public in this
9 states, . . . [in] any advertising device . . . or in any other manner or means whatever,
10 including over the Internet, any statement concerning . . . personal property or those
11 services, professional or otherwise, or concerning any circumstance or matter of fact
12 connected with the proposed performance or disposition thereof, which is untrue or
13 misleading, and which is known, or which by the existence of reasonable care should
14 be known, to be untrue or misleading.”

15 84. Defendants committed acts of false advertising, as defined in sections
16 17500, *et seq.*, by highlighting the presence or absence of certain ingredients,
17 underscoring their positive qualities, providing detailed descriptions of the purported
18 health benefits of consuming BANG, but at the same time, failing to disclose that
19 certain ingredients are sprinkled into BANG at such low levels as to make them
20 virtually useless. As just one of many examples, Defendants advertise BANG as a
21 health promoting drink with no artificial ingredients—yet nearly every ingredient in
22 BANG is artificial. Defendants have misled, and continue to mislead, consumers who
23 reasonably expect that BANG energy drinks contain certain ingredients and can
24 deliver Defendants’ promised benefits.

25 85. Defendants knew or should have known through the exercise of
26 reasonable care that their representations about BANG were untrue and misleading.

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1 86. Defendants' actions in violation of the FAL were false and misleading
2 such that the general public is and was likely to be deceived.

3 87. Monster is likely to suffer, has suffered, and will continue to suffer
4 irreparable injuries as a result of Defendants' wrongful acts. Monster has lost and will
5 continue to lose money or property due to Defendants' false advertising campaign,
6 which has induced and continues to induce consumers to make purchasing decisions
7 based on misleading representations about the ingredients in BANG and its purported
8 benefits.

9 88. Consumers would not have purchased BANG on the same terms if they
10 knew the truth about the ingredients in BANG and its purported benefits. BANG
11 energy drinks do not have the characteristics, uses, or benefits as promised.

12 89. Defendants' conduct has injured Monster and the general public, and
13 unless enjoined, will continue to cause irreparable harm to Monster and the general
14 public. The balance of equities and the public interest favor enjoining Defendants'
15 unlawful conduct. Monster is therefore entitled to equitable relief including injunctive
16 relief as set forth in its Prayer for Relief.

17
18 **FOURTH CAUSE OF ACTION**

19 **Trade Libel**

20 90. Monster incorporates by reference the allegations contained in all
21 preceding paragraphs of this complaint.

22 91. Launched in 2002, Monster has established itself as the best-selling
23 energy drink brand in the United States by unit volume and dollar value. Monster has
24 spent over \$5 billion in advertising, promoting, and marketing its brand and products.
25 In 2017 alone, Monster spent \$537 million on such endeavors.

26 92. Defendants have made false statements disparaging the quality and
27 performance of Monster Energy drinks to achieve economic advantage. These false
28

1 statements include but are not limited to those shown on the labels (paragraph 29), the
2 VPX website (e.g., paragraphs 31, 39, 40), and in press releases (e.g., paragraphs 37,
3 38), and are not matters of opinion or mere puffery, but rather are objectively false
4 statements of fact.

5 93. For example, the labels for every can of BANG, along with the VPX
6 website, falsely claim:

7 Make No Mistake – Bang® is not your stereotypical high sugar,
8 life-sucking soda masquerading as an energy drink! High sugar
9 drinks spike blood sugar producing metabolic mayhem causing
10 you to crash harder than a test dummy into a brick wall.

11 94. These false statements are clearly understood by reasonable consumers to
12 refer to and include Monster’s energy drinks—the established leader in the energy
13 drink market.

14 95. Defendants’ false and disparaging statements’ about Monster Energy
15 drinks have damaged, and will continue to damage, Monster’s hard-earned reputation
16 as a provider of superior, quality products because the statements falsely cast Monster
17 as a provider of unsafe, inferior products.

18 96. Defendants knew these statements were false, or made these false and
19 disparaging statements of fact with reckless disregard for the truth. Further,
20 Defendants knew or should have recognized that consumers might act in reliance on
21 Defendants’ false and disparaging claims, thereby causing harm to Monster.

22 97. Defendants have published the false statements identified above by
23 distributing them to consumers on a national basis, including within this judicial
24 district.

25 98. Defendants’ false and disparaging statements were and are a substantial
26 factor in causing direct financial harm to Monster by deterring customers from
27 purchasing Monster Energy drinks. Monster has lost and will continue to lose money
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1 or property due to Defendants' false advertising campaign, which has induced and
2 continues to induce consumers to make purchasing decisions based on false and
3 disparaging claims about Monster Energy drinks.

4 99. Defendants' conduct has injured Monster and the general public, and
5 unless enjoined, will continue to cause irreparable harm to Monster and the general
6 public. The balance of equities and the public interest favor enjoining Defendants'
7 unlawful conduct. Monster is therefore entitled to equitable relief including injunctive
8 relief as set forth in its Prayer for Relief.

9 100. Defendants' acts as alleged herein were willful, oppressive, malicious
10 and/or fraudulent. Accordingly, Plaintiff seeks both actual damages in tort and
11 punitive or exemplary damages in an amount appropriate to punish and make an
12 example of Defendants, and to deter such wrongful conduct in the future.

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Monster respectfully requests the following relief:

16 A. Judgment be entered in Monster's favor on each cause of action in the
17 complaint;

18 B. An order permanently enjoining Defendants, and their agents, servants,
19 employees, and all others in active concert or participation with Defendants, from (a)
20 falsely claiming, whether directly or by implication, in any advertising or promotional
21 communications, that BANG has certain qualities when it does not; and (b) otherwise
22 unfairly competing against Monster or falsely advertising or promoting VPX's
23 products;

24 C. An order directing an accounting of all gains, profits, savings and
25 advantages realized by Defendants from their false advertising, unfair competition,
26 and other violations of law as identified above;

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1 D. An order directing VPX to disseminate, in a form to be approved by the
2 Court, advertising designed to correct the false and misleading claims made by
3 Defendants through advertising or promotional communications;

4 E. An award to Monster of damages attributable to Defendants' false and
5 deceptive advertising, in excess of \$75,000 but in an amount to be determined at trial;

6 F. An award to Monster of profits earned by Defendants attributable to their
7 false advertising, in excess of \$75,000 but in an amount to be determined at trial;

8 G. A declaration that this is an "exceptional case" due to the willful nature
9 of Defendants' false advertising, and awarding damages and attorneys' fees and costs
10 to Monster pursuant to 15 U.S.C. § 1117, and any other damages including treble
11 damages and attorneys' fees to the full extent allowable under the law;

12 H. An order pursuant to Section 34(a) of the Lanham Act, 15 U.S.C. §
13 1116(a) requiring Defendants to serve on Monster, within 30 days after service on
14 Defendants of an injunction or such extended period as the Court may direct, a report
15 in writing under oath setting forth in detail the manner in which Defendants have
16 complied with the injunction;

17 I. An award to Monster of pre-judgment interest on any monetary award in
18 this action;

19 J. An award of the costs and disbursements of this action;

20 K. Punitive and exemplary damages as permitted by law and in an amount to
21 be proven at trial; and

22 L. Such other and further relief as the Court may deem just and proper.
23

24 Dated: September 4, 2018

SHOOK, HARDY & BACON L.L.P.

25
26 By: /s/ Marc P. Miles
27 Marc P. Miles
28 Attorneys for Plaintiff
Monster Energy Company

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Demand for Jury Trial

Plaintiff hereby demands trial by jury.

Dated: September 4, 2018

SHOOK, HARDY & BACON L.L.P.

By: /s/ Marc P. Miles
Marc P. Miles
Attorneys for Plaintiff
Monster Energy Company