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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92072717
Party	Defendant USPlabs, LLC
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Date	03/02/2020
Attachments	2019-11-05 Trial Court Complaint with Jury Demand.PDF(2800998 bytes)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

HI-TECH PHARMACEUTICALS, INC.,)
)
Plaintiff,)
)
v.) Case No.
)
USPLABS, LLC, JACOBO GEISSLER,)
JONATHAN DOYLE, MODERN SPORTS)
NUTRITION, LLC AND DOES 1-100,)
)
Defendants.)

COMPLAINT WITH JURY DEMAND

Plaintiff Hi-Tech Pharmaceuticals, Inc. (“Hi-Tech”), for its Complaint with Jury Demand against the above-named Defendants USPLabs, LLC, Jacobo Geissler, Jonathan Doyle and Modern Sports Nutrition, LLC (collectively “Defendants”), alleges the following:

NATURE OF THE ACTION

1. This action is for federal unfair competition under 15 U.S.C. § 1125, unfair competition under Texas common law, tortious interference with prospective business relationships, injury to business reputation arising under Texas Business & Commerce Code, Tex. Bus. & Com. Code Ann. § 16.29, as well as relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

THE PARTIES

2. USPlabs, LLC (“USP Labs”) is a corporation organized under the laws of the State of Texas with a principal place of business at 10761 King William Drive, Dallas, Texas 75220, and may be served with process at that address.

3. Jacobo Geissler (a.k.a. Jaco Geissler) was the co-founder and CEO of USP Labs. On information and belief, Geissler resides at 8001 Tulane Street, Dallas, Texas 75225 and may be served with process at that address.

4. Jonathan Doyle was the co-founder, co-owner and president of USP Labs. On information and belief, Doyle resides at 4723 Royal Lane, Dallas, Texas 75229 and may be served with process at that address.

5. Modern Sport Nutrition, LLC (“Modern Sport Nutrition”) is a corporation organized under the laws of Delaware with a principal place of business in 515 Braddock Ave, Turtle Creek, PA 15145, and may be served with process at that address.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338, and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction over the subject matter of the common law trademark infringement, common law unfair competition, tortious interference with prospective business relationships and injury to business reputation claims pursuant to 28 U.S.C. § 1338(b) and supplemental jurisdiction under 28 U.S.C. § 1367.

7. USP Labs is subject to personal jurisdiction in because: (1) it is a Texas corporation; (2) regularly conducts business within and has had systematic and continuous contacts with Texas; (3) the activities giving rise to Hi-Tech’s claims occurred, at least in part, within Texas; and (4) Hi-Tech has been damaged in Texas by USP Labs’ tortious conduct.

8. The court has jurisdiction over the remaining Defendants in that each either resides in Texas, has committed acts within Texas and this judicial district giving rise to this action, and has established minimum contacts with the forum through USP Labs and otherwise such that the

exercise of jurisdiction over these Defendants would not offend traditional notions of fair play and substantial justice.

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b), for at least the reasons that the Defendants reside in this judicial district, have committed acts within this district giving rise to this action, do business in this district through USP Labs and otherwise and are providing services in this district.

GENERAL ALLEGATIONS

USP Labs and its Principals Were Criminally Indicted for Their Dietary Supplements

10. In November 4, 2015, the United States Attorney's Office for the Northern District of Texas filed Criminal Indictment 3-15-CR-494 against USP Labs and its principals Jacobo Geissler, Jonathan Doyle, Matthew Hebert, Kenneth Miles and Cyril Willson. **Exhibit A.** The entities responsible for the manufacturer of USP Labs' products, S.K. Laboratories, Inc. ("S.K. Laboratories") and Sitesh Patel, were also named as defendants in the indictment.

11. The case against USP Labs and the other indicted defendants involved the workout and weight loss supplements "Jack3d" and "OxyElite Pro."

12. According to the indictment, USP Labs and its principals engaged in a conspiracy to import ingredients from China using false certificates of analysis and false labeling and then lied about the source and nature of those ingredients after putting them in the products.

13. USPLabs and its principals told its retailers and wholesalers that it used natural plant extracts in Jack3d and OxyElite Pro, when in fact, they were using a synthetic stimulant manufactured in a Chinese chemical factory.

14. The indictment also alleged that USP Labs and the other indicted defendants sold some of their products without determining whether they would be safe to use when they knew of studies that linked the products to liver toxicity.

15. According to the indictment, USP Labs put out several versions of the product OxyElite Pro, including a misbranded version called “Advanced Formula,” which was recalled in 2013 in the wake of an investigation by the Food and Drug Administration (“FDA”) into whether the supplement caused liver injuries in consumers.

16. USP Labs and its principals informed FDA in October 2013 that it would stop distribution of OxyElite Pro after the product had been implicated in the outbreak of liver injuries.

17. Despite this promise, USP Labs engaged in a surreptitious, all-hands-on-deck effort to sell as much of the product as it could as quickly as possible.

18. The counts against USP Labs and its principals included Wire Fraud, Conspiracy to Commit Wire Fraud, Obstruction of an Agency Proceeding, Conspiracy to Introduce Misbranded Food, Instruction of Adulterated Dietary Supplement Dietary Supplements and Conspiracy to Commit Money Laundering.

19. A Superseding Indictment was filed on January 5, 2016 with allegations substantially similar to those in the original indictment in all relevant respects. **Exhibit B.**

20. Over various periods of time, USP Labs purported to hold federal trademark registrations for “USPlabs,” U.S. Registration No. 3,954,592; “Jack3d,” Registration No. 4,372,454; “USPlabs Jack3d,” Registration No. 3,955,069; “Jack3d Micro,” Registration No. 4,372,432, “OxyElite Pro,” Registration No. 3,902,660; and “Modern BCAA,” Registration No. 4,324,549.

21. On August 18, 2017, the registration for the trademark “OxyElite Pro” was cancelled because USP Labs failed to file a Declaration of Use and/or Excusable Nonuse under § 8 of the Trademark Act.

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