

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION**

CASE NO.:

BPI SPORTS, LLC, a Florida limited
liability company, d/b/a EXT Sports

Plaintiff,

vs.

APPLIED LIFESCIENCE RESEARCH
INDUSTRIES, INC., a Nevada corporation,

Defendants.

_____ /

COMPLAINT

Plaintiff, BPI Sports LLC, a Florida limited liability company, d/b/a EXT Sports (“BPI”), hereby sues Defendant, Applied Lifescience Research Industries, Inc., a Nevada corporation (“ALR”), and alleges:

Nature of the Action

1. This is an action for Declaratory Relief pursuant to Title 28 U.S.C. §§ 2201(a), 2202, 1331 and 1338(a), and for the cancellation of ALR’s registered trademarks and pending trademarks pursuant to 15 U.S.C. §1119.

Parties, Jurisdiction and Venue

2. BPI is a Florida limited liability company organized and existing under the laws of the State of Florida, with its principal place of business is located in Hollywood, Florida.

3. ALR is a Nevada corporation, organized and existing under the laws of the State of Nevada, with its principal place of business located in Las Vegas, NV

4. ALR conducts business in Broward County, Florida, and this Court has jurisdiction over ALR because of its systematic and continuous business connections and contacts within this district.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 (federal question jurisdiction), 28 U.S.C. §1338 (acts of congress related to trademarks), and 15 U.S.C. §1119 (power of courts to determine the rights and order the cancellation of registered marks).

6. Venue is proper in this jurisdiction because a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of this action is situated in this district and/or ALR is subject to the Court's personal jurisdiction with respect to this action.

Factual Background

7. BPI is a sports nutrition company that is engaged in the business of manufacturing and selling dietary and nutritional supplements.

8. BPI's products are sold online and through various internet websites, as well as through other sports nutrition specialty stores domestically and internationally.

9. On July 18, 2012, BPI submitted its application for a trademark with the United States Patent and Trademark Office ("USPTO"), to register "EXT SPORTS CHAIN"¹ as a trademark ("BPI's Mark" or "EXT CHAIN").

10. On September 11, 2012, the USPTO approved of BPI's Mark for publication.

¹ The word "Sports" is disclaimed.

11. BPI's Mark is presently related to one specific product manufactured and sold by BPI, called "EXT CHAIN". Attached hereto as Composite Exhibit A are photographs of the EXT CHAIN bottle, and labels.

12. EXT CHAIN is a Silk² Amino Acid ("SAA") formula used to enhance anabolic results, or in other words, to increase muscle mass and speed up muscle growth and recovery.

13. SAAs are relatively new products in the dietary nutritional supplement marketplace, and research has revealed that SAAs help create muscle mass faster than a different amino acid supplement known as Branched Chain Amino Acid ("BCAA") supplements.

14. Generally, SAAs are comprised of 18 individual amino acids, but the main amino acids are L-Alanine, L-Glycine, L-Valine, and L-Threonine. The other 13 amino acids are less than 2% of the total SAA sequence. All of the ingredients of EXT CHAIN are clearly listed on the bottles.

15. BCAAs get their name because they are formed or composed of non-linear (branching) carbon chains, hence the name Branched Chain Amino Acid.

16. EXT CHAIN is not a BCAA and is sold in a distinctively packaged product, which specifically defines it as an SAA product. See Exhibit A.

17. BPI has undertaken significant efforts to promote, advertise and market EXT CHAIN, as an SAA, including but not limited to negotiating endorsements from well respected individuals in the health and fitness community.

18. ALR is also a dietary and nutritional supplement manufacturer.

² Silk consists of two types of proteins, silk fibroin and sericin. Silk sericin has proteinous nature and has wide ranging applications in medical, pharmaceutical and cosmetics.

19. ALR owns the federal registrations for the trademarks, “Chain’d Out”, Registration Number 3564030, and Chain’d Reaction, Registration Number 3966357

20. ALR, claims that it has a pending trademark application, which has been granted a Notice of Allowance with the USPTO for “Chain Essentials”, Serial No. 85370387. Chain’d Out, Chain’d Reaction, and Chain Essentials may be collectively referred to as “ALR’s Marks.”

21. Chain’d Out and Chain’d Reaction are BCAAs and are not SAAs.

22. On or about August 29, 2012 and September 10, 2012, ALR, through its counsel, Charles C. Weller, Esq. (“Mr. Weller”), sent Cease and Desist letters to BPI claiming trademark infringement by BPI, for the use of “CHAIN” in its EXT CHAIN product, and that use of “CHAIN” is likely to cause confusion with its products, Chain’d Out, Chain’d Reaction, and Chain Essentials among consumers in the dietary supplement market. ALR demanded that BPI immediately recall all dietary supplements containing the mark “CHAIN,” that BPI abandon “CHAIN,” and threatened to sue if BPI did not comply with its demands.

23. All conditions precedent to this action have occurred, been performed or been waived.

Count I
Declaratory Relief to Determine Non-Infringement of
Applied Lifescience Research Industries Inc.’s Trademark by BPI Sports, LLC

24. BPI realleges paragraphs 1 through 23.

25. This is an action for Declaratory Relief pursuant to Title 28 U.S.C. §§ 2201(a), 2202, 1331 and 1338(a) to determine the infringement, if any, by BPI and its Mark of “EXT CHAIN,” upon ALR’s Marks.

26. BPI’s trademark “EXT CHAIN” has been approved by the USPTO.

27. BPI has undertaken significant advertising and marketing efforts to promote its “EXT CHAIN” product.

28. BPI believes and contends that EXT CHAIN does not infringe upon ALR’s Marks because EXT CHAIN, as an SAA, is a different product than Chain’d Out, Chain’d Reaction, and Chain Essentials, which are BCAAs, and that there is no likelihood of confusion among consumers.

29. ALR believes and contends that BPI’s EXT CHAIN product infringes upon the ALR Marks and there is a likelihood of confusion.

30. BPI is unsure of its rights and status as it relates to the potential infringement on ALR’s Marks, or if it is being demanded to abandon a mark that it has a legal right to use.

31. ALR’s threats of trademark litigation create a real, reasonable, and immediate threat to BPI.

32. Based upon all of the circumstances herein, there is a substantial controversy between the parties who have adverse legal interests of sufficient immediacy, and reality to warrant the issuance of a declaratory judgment.

WHEREFORE, Plaintiff, BPI Sports, LLC., respectfully regrets that this Honorable Court take jurisdiction of this matter and enter a judgment in its favor and against Defendant, Applied Lifescience Research Industries, Inc. , declaring that BPI Sports, LLC’s mark, “EXT CHAIN” does not infringe upon or cause a likelihood of confusion on ALR’s marks of Chain’d Out, Chain’d Reaction, and Chain Essentials, and for such other and further relief as this Court deems just and proper.

Count II
Declaratory Relief For The Cancellation of
ALRs registered trademarks pursuant to 15. U.S.C. §119

33. BPI realleges paragraphs 1 through 23.

34. This is an action for Declaratory relief pursuant to Title 28 U.S.C. , §§ 2201(a), 2202, 1331 and 1338(a), and for the cancellation of ALR's registered trademarks pursuant to 15. U.S.C. §1119.

35. ALR claims that its marks are protected as a result of the Registration for Chain'd Out and Chain'd Reaction.

36. ALR's Marks are not inherently distinctive, arbitrary or fanciful because the combination of the words "Chain'd" and "Out", or "Chain'd Essentials", and "Chained Reaction" require no effort or imagination on the part of the consumer (the average nutritional consumer is a sophisticated purchaser) to understand the product.

37. ALR's Marks are either generic or descriptive, as they are descriptive of the product itself, requires no imagination of the consumer, have no secondary meaning, and the incorporation of a common English word into each of its Marks ("Out," "Essential," "Reaction") weakens ALR's claim of Federal trademark protection.

38. ALR's Marks are not entitled to Federal trademark protection and should be canceled by this Court.

WHEREFORE, Plaintiff, BPI Sports, LLC., respectfully requests this Honorable Court to enter an Order declaring that ALR's Marks Chain'd Out, Chain'd Reaction, and Chain Essentials

are not Federally protected trademarks, and enter an Order directing the United States Patent Office to cancel ALR's Marks, and for such other and further relief as this Court deems just and proper.

Dated this 18th day of September, 2012.

Respectfully submitted,
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