

1 JENNIFER LEE TAYLOR (SBN 161368)
 2 jtaylor@mofo.com
 3 SABRINA LARSON (SBN 291661)
 4 slarson@mofo.com
 5 MORRISON & FOERSTER LLP
 6 425 Market Street
 7 San Francisco, CA 94105
 8 Telephone: (415) 268-7000
 9 Facsimile: (415) 268-7522

NOTE: CHANGES MADE BY THE COURT

6 KATHIANA AURELIEN (SBN 299902)
 7 kaurelien@mofo.com
 8 MORRISON & FOERSTER LLP
 9 707 Wilshire Boulevard
 10 Los Angeles, CA 90017
 11 Telephone: (213) 892-5200
 12 Facsimile: (213) 892-5454

10 Attorneys for Plaintiff and Counterdefendant
 11 UPTIME ENERGY INC.

12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA
 14 WESTERN DIVISION

16 UPTIME ENERGY INC.,
 17 Plaintiff,

18 v.

19 UP ENERGY DRINKS LLC, CHRISTIAN
 20 GUZMAN, MAX V. CLEMONS, and TREY
 21 J. STEIGER,

21 Defendants.

Case No. 2:17-cv-04396-JFW-JC

**PLAINTIFF UPTIME ENERGY INC.'S
 PRELIMINARY INJUNCTION ORDER**

The Hon. John F. Walter

22 UP ENERGY DRINKS, LLC, CHRISTIAN
 23 GUZMAN, MAX V. CLEMONS, and TREY
 24 STEIGER,

24 Counterclaimants,

25 v.

26 UPTIME ENERGY INC.,
 27 Counterdefendant.

1 Pursuant to the Court's November 16, 2017 Order, Plaintiff Uptime Energy Inc. hereby
2 submits this [Proposed] Preliminary Injunction Order.

3 IT IS HEREBY ORDERED THAT:

4 (1) Plaintiff's Motion for Preliminary Injunction is denied in part and granted in part.
5 The Court denies Plaintiff's motion to enjoin Defendants from using UP as a trademark for an
6 energy drink for the reasons set forth in the Court's Order of November 16, 2017 and grants the
7 motion with respect to the UPTIME Trade Dress and any trade dress that is confusingly similar to
8 the UPTIME Trade Dress. The Court orders Plaintiff to submit a bond of \$50,000 within two
9 days of entry of this Order

10 IT IS FURTHER ORDERED THAT:

11 (2) Until the conclusion of a trial in this litigation or further order of the Court,
12 Defendants, their partners, officers, directors, employees, agents, and representatives, and all
13 persons, firms and corporations in active concert or participation with any of them, are
14 immediately enjoined from using in any manner the UPTIME Trade Dress, defined as (1) a black
15 or white background with minimal text; (2) a centered logo with an upward pointing arrow; (3) a
16 screw top; and (4) a round bottle with a "shoulder" that is relatively high with a very slight curve
17 to meet the neck, or any trade dress that is confusingly similar to the UPTIME Trade Dress,
18 including, but not limited to:

- 19 (a) The white bottle that Defendants used for their UP energy drinks starting in or
20 about May 2017;
- 21 (b) The UP trademark with any predominantly white or black bottle;
- 22 (c) Any advertisements or other promotional materials featuring any trade dress that is
23 confusingly similar to the UPTIME Trade Dress, such as the bottles specifically
24 identified in points (2)(a) and (b) above, including but not limited to displays on
25 websites and posts on mobile applications or social media; and
- 26 (d) Any YouTube or other online videos featuring any trade dress that is confusingly
27 similar to the UPTIME Trade Dress, such as the bottles specifically identified in
28 points (2)(a) and (b) above.

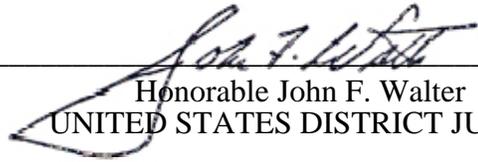
1 (3) Until the conclusion of a trial in this litigation or further order of the Court,
2 Defendants, their partners, officers, directors, employees, agents, and representatives, and all
3 persons, firms and corporations in active concert or participation with any of them are further
4 ordered to immediately remove or delete from any website or social media account that any of
5 them control, including postings on third-party mobile applications such as Instagram, all
6 postings that include a photograph, drawing, or other depiction of the white bottle that Defendants
7 used for their UP energy drinks starting in or about May 2017 or bottle that is confusingly similar
8 to the UPTIME Trade Dress, such as the bottles specifically identified in points (2)(a) and (b)
9 above.

10 (4) Until the conclusion of a trial in this litigation or further order of the Court,
11 Defendants, their partners, officers, directors, employees, agents, and representatives, and all
12 persons, firms and corporations in active concert or participation with any of them are further
13 ordered to immediately remove any YouTube or other online videos that any of them posted that
14 include a photograph, drawing, or other depiction of the white bottle that Defendants used for
15 their UP energy drinks starting in or about May 2017 or bottle that is confusingly similar to the
16 UPTIME Trade Dress, such as the bottles specifically identified in points (2)(a) and (b) above.

17 (5) Defendants are directed to file with this Court and serve upon Plaintiff within
18 thirty (30) days after entry of this Order a single report in writing under oath setting forth in detail
19 the manner and form in which Defendants have complied with the injunction, as set forth above.
20

21 **IT IS SO ORDERED.**

22
23 Dated: December 5, 2017

24 
25 _____
26 Honorable John F. Walter
27 UNITED STATES DISTRICT JUDGE
28