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 12 and INTERNATIONAL IP HOLDINGS, LLC

13
 14 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

15 _____ X
 16 INNOVATION VENTURES, LLC,
 17 LIVING ESSENTIALS, LLC, and
 18 INTERNATIONAL IP HOLDINGS,
 LLC,

Plaintiffs,

19 - against -

20 PITTSBURG WHOLESALE GROCER,
 21 INC. d/b/a PITCO FOODS, ET AL.,
 Defendants.
 22 _____

Case No. 12-5523 (WHA)

**~~PROPOSED~~ CONSENT
 JUDGMENT AND PERMANENT
 INJUNCTION**

23 RELATED CROSS-ACTIONS.
 _____ X

24
 25
 26 On consent of Plaintiffs Innovation Ventures, LLC, Living Essentials, LLC, and International IP
 27 Holdings, LLC (together, “Living Essentials”) and Defendants Elite Wholesale, Inc. (“Elite”),

28 **~~PROPOSED~~ CONSENT JUDGMENT and
 PERMANENT INJUNCTION**

CASE NO. C-12-5523-WHA

1 Tonic Wholesale, Inc. (“Ace”), Dapan USA Corp. (“Frontier”), and Sung Keun Lee (collectively,
2 the “Elite Defendants”), it is hereby ORDERED, ADJUDGED and DECREED:

3 1. For purposes of this injunction, the “5-hour ENERGY® Marks” are:

- 4 • “5 HOUR ENERGY” (Registration No. 3,003,077);
- 5 • “5-HOUR ENERGY” (Registration No. 4,004,225);

6  7
8

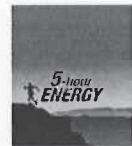
- 8 • (Registration No. 4,104,670);



- 10 • which includes the wording “5-hour ENERGY” in black outlined in
11 yellow, below which are the words “EXTRA STRENGTH” in yellow, along
12 with a person in black silhouette, outlined in yellow, shown in an athletic pose
13 adjacent to an uneven landscape, with the sky depicted in transitioning colors
14 from black to red as the sky meets the landscape (Registration No. 4,116,951);

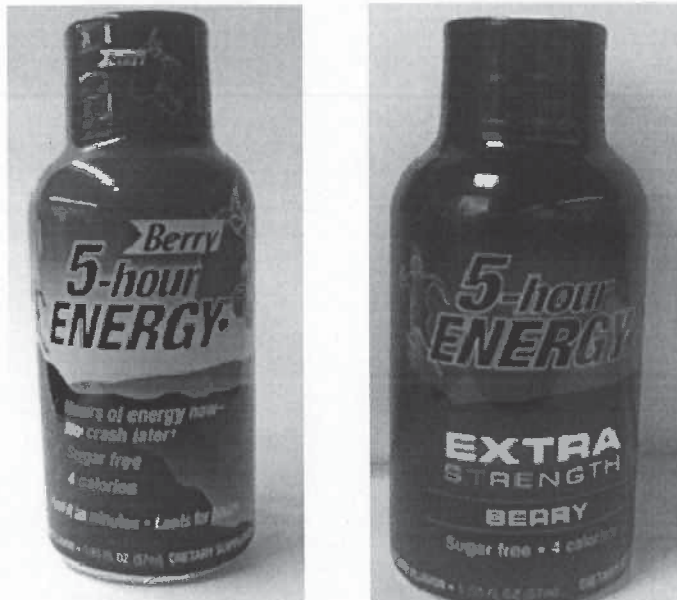


- 16 • , commonly referred to as “Running Man,” (Registration No. 3,698,044);
17
18 and



- 20 • which includes the wording “5-hour ENERGY” in black outlined in
21 yellow, along with a person in black silhouette, outlined in yellow, shown in
22 an athletic pose adjacent to an uneven landscape, with the sky depicted in
23 transitioning colors from red to yellow as the sky meets the landscape
24 (Registration No. 4,120,360).

1 2. For purposes of this injunction, the “5-hour ENERGY® Trade Dress” is the
2 distinctive packaging used to distinguish 5-hour ENERGY® products in the marketplace and
3 which consumers associate strongly with the products. The packaging is shown as follows:



14 3. For purposes of this injunction, the “5-hour ENERGY® Copyright” is United
15 States Copyright Registration Number TX 6-833-514 for the “Caution” label used on the 5-hour
16 ENERGY® bottle. The copyrighted work reads as follows:

17
18 CAUTION: Contains about as much caffeine as a cup of coffee.
19 Limit caffeine products to avoid nervousness, sleeplessness, and
20 occasionally rapid heartbeat. You may experience a Niacin Flush
21 (hot feeling, skin redness) that lasts a few minutes. This is caused
22 by Niacin (Vitamin B3) increasing blood flow near the skin.

23 4. The Elite Defendants and their agents, servants, employees, and all other persons
24 in active concert and participation with them, are permanently enjoined from:

- 25 a. using any of the 5-hour ENERGY® Marks (or any marks confusingly similar
26 thereto) on any counterfeit product in connection with the manufacture, sale,
27 offer for sale, distribution, advertisement, or any other use of dietary
28 supplements;
- b. using any logo, trade name, or trademark confusingly similar to any of the 5-

1 hour ENERGY® Marks which may be calculated to falsely represent or which
2 has the effect of falsely representing that the services or products of the Elite
3 Defendants or of others are sponsored by, authorized by, or in any way
4 associated with Living Essentials;

5 c. infringing any of the 5-hour ENERGY® Marks, the 5-hour ENERGY® Trade
6 Dress, or the 5-hour ENERGY® Copyright;

7
8 d. falsely representing itself as being connected with Living Essentials or
9 sponsored by or associated with Living Essentials, or engaging in any act
10 which is likely to cause the trade, retailers, or members of the purchasing
11 public to believe that it or the other defendants are associated with Living
12 Essentials, provided, however, that the purchase and sale of 5-hour
13 ENERGY® products shall not in and of itself fall within this sub-paragraph;

14 e. using any reproduction, counterfeit, copy, or colorable imitation of any of the
15 5-hour ENERGY® Marks in connection with the publicity, promotion, sale, or
16 advertising of dietary supplements;

17
18 f. affixing, applying, annexing, or using in connection with the sale of any goods,
19 a false description or representation, including words or other symbols tending
20 to falsely describe or represent those goods as being 5-hour ENERGY® and
21 from offering such goods in commerce;

22
23 g. buying, selling, transferring (other than to Living Essentials or law
24 enforcement officials), altering, or destroying any counterfeit products with the
25 5-hour ENERGY® Marks;

26 h. diluting any of the 5-hour ENERGY® Marks; and

27 i. assisting, aiding, or abetting any other person or entity in engaging in or
28 performing any of the activities referred to in subparagraphs (a) through (g)

above.

1
2 5. Nothing contained in this Judgment and Permanent Injunction is or shall be
3 construed as an admission, express or implied, of any improper or illegal conduct, or of any
4 culpability or liability by the Elite Defendants.

5 6. Any claims that the Elite Defendants may have against any other individual or
6 entity, except for any claims that the Elite Defendants may have against the Dan-Dee Company,
7 Inc., Fadi Attiq and Kevin Attiq, arising out of the Elite Defendants' purchase, distribution,
8 advertising, offering for sale, and sale in commerce of the products containing the 5-hour
9 ENERGY® Marks or the 5-hour ENERGY® Trade Dress are hereby assigned to Living
10 Essentials.
11

12 7. In addition to other remedies, including damages, for contempt of this Permanent
13 Injunction, in the event of breach or violation of the terms of this Permanent Injunction by the
14 Elite Defendants, their agents, servants, employees, affiliates, subsidiaries, or any other person in
15 active concert and participation with them, Living Essentials is entitled to a preliminary and
16 permanent injunction against the breaching conduct solely upon a showing of a likelihood of
17 success of establishing that such a breach occurred. A prevailing party, in addition to any award
18 of damages or injunctive relief, shall be entitled to an award of actual attorneys' fees in any such
19 dispute. Living Essentials and the Elite Defendants each agree that jurisdiction and venue for
20 such an action exist in this District Court and the Elite Defendants waive any and all defenses
21 based on personal jurisdiction and venue.
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1 8. This Consent Judgment is entered pursuant to Rule 58 of the Federal Rules of
2 Civil Procedure, and this action is hereby dismissed with prejudice against the Elite Defendants
3 only, without costs or attorneys' fees.

4 Dated: November 11 2013

5 INNOVATION VENTURES, LLC,
6 LIVING ESSENTIALS, LLC, and
INTERNATIONAL IP HOLDINGS, LLC

ELITE WHOLESale, INC.; TONIC
WHOLESale, INC.; DAPAN USA CORP.;
and SUNG KEUN LEE

7
8 By: 

By: 

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Attorney for the Elite Defendants

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16 **IT IS SO ORDERED.**

17 DATED: November 13, 2013.

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19 
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HONORABLE WILLIAM H. ALSUP
UNITED STATES DISTRICT JUDGE