

RECEIVED
2012 NOV 14 P 3:30
CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIF. 111

1 Thomas P. Mazzucco - 139758
Aaron K. McClellan - 197185
2 Bryan L. P. Saalfeld - 243331
Nicholas C. Larson - 275870
3 MURPHY, PEARSON, BRADLEY & FEENEY
88 Kearny Street, 10th Floor
4 San Francisco, CA 94108-5530
Tel: (415) 788-1900
5 Fax: (415) 393-8087
E-Mail tmazzucco@mpbf.com
6 amcclellan@mpbf.com
bsaalfeld@mpbf.com
7 nlarson@mpbf.com

8 Geoffrey Potter (admitted *pro hac vice*)
Christos G. Yatrakis (admitted *pro hac vice*)
9 PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
10 New York, NY 10036
Telephone: (212) 336-2000
11 Fax: (212) 336-2222
E-Mail gpotter@pbwt.com
12 cyatrakis@pbwt.com

13 Attorneys for Plaintiffs
14 INNOVATION VENTURES, LLC and LIVING ESSENTIALS, LLC

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 INNOVATION VENTURES, LLC and LIVING
18 ESSENTIALS, LLC,

12 Civ. 5523 (WHA)

19 Plaintiffs,

STIPULATION AND ORDER

20 -against-

21 PITTSBURG WHOLESALE GROCERS, INC.,
d/b/a PITCO FOODS, et al.,

22 Defendants.

23 UPON THE STIPULATION AND AGREEMENT by and between the undersigned counsel
24 for Plaintiffs Innovation Ventures, LLC, and Living Essentials, LLC, (together, "Plaintiffs"), and
25 counsel for defendants Dan-Dee Company, Inc.; Fadi Attiq; and Kevin Attiq (collectively, the "Dan-
26 Dee Defendants"), it hereby is ORDERED as follows:
27

1 1. The Dan-Dee Defendants acknowledge having been served with the following
2 documents and waive any defenses as to personal or subject matter jurisdiction with respect to these
3 documents: Summons and Complaint; Order to Show Cause for a Temporary Restraining Order and
4 Preliminary Injunction, including the supporting Declarations and Memorandum of Law; and
5 Seizure Order.
6

7 2. For purposes of this stipulation, the "5 HOUR ENERGY Marks" are:

- 8 • "5 HOUR ENERGY" (Registration No. 3,003,0770);
- 9 • "5-HOUR ENERGY" (Registration No. 4,004,225);

- 10 •  (Registration No. 4,104,670);

- 11 •  which includes the wording "5-hour ENERGY" in black outlined in
12 yellow, below which are the words "EXTRA STRENGTH" in yellow, along with
13 a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent
14 to an uneven landscape, with the sky depicted in transitioning colors from black to
15 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 and

- 18 •  which includes the wording "5-hour ENERGY" in black outlined in
19 yellow, along with a person in black silhouette, outlined in yellow, shown in an
20 athletic pose adjacent to an uneven landscape, with the sky depicted in
21
22
23
24
25
26
27
28



1 transitioning colors from red to yellow as the sky meets the landscape
2 (Registration No. 4.120,360).

3 3. The Dan-Dee Defendants and their agents, servants, and employees pending the final
4 hearing and determination of this action are preliminarily enjoined from:

5 (a) using any of the 5 HOUR ENERGY Marks on any product whether genuine,
6 counterfeit or re-packaged, or any marks confusingly similar thereto in connection with the
7 manufacture, sale, offer for sale, distribution, advertisement, or any other use of dietary
8 supplements;

9 (b) using any logo, trade name or trademark confusingly similar to any of the 5 HOUR
10 ENERGY Marks which may be calculated to falsely represent or which has the effect of
11 falsely representing that the services or products of the Dan-Dee Defendants or of others are
12 sponsored by, authorized by or in any way associated with Plaintiffs;

13 (c) infringing any of the 5 HOUR ENERGY Marks;

14 (d) falsely representing themselves as being connected with Plaintiffs or sponsored by or
15 associated with Plaintiffs or engaging in any act which is likely to cause the trade, retailers
16 and/or members of the purchasing public to believe that they or the other defendants are
17 associated with Plaintiffs;

18 (e) using any reproduction, counterfeit, copy, or colorable imitation of any of the 5
19 HOUR ENERGY Marks in connection with the publicity, promotion, sale, or advertising of
20 dietary supplements;

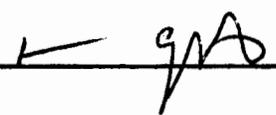
21 (f) affixing, applying, annexing or using in connection with the sale of any goods, a false
22 description or representation including words or other symbols tending to falsely describe or
23 represent such goods as being 5-Hour ENERGY® and from offering such goods in
24 commerce;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (g) diluting any of the 5 HOUR ENERGY Marks;
- (h) buying, selling, transferring (other than to Plaintiffs or law enforcement officials), altering, or destroying any products with the 5 HOUR ENERGY Marks;
- (i) destroying any records documenting the manufacture, sale, offer for sale, distribution, advertisement or receipt of any product purporting to be 5 HOUR ENERGY®; and
- (j) assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (j) above.

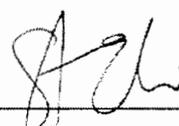
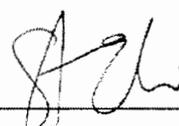
4. The Dan-Dee Defendants and their agents, servants, and employees do not admit any of Plaintiffs' charging allegations against any of them and do not waive any defense, affirmative defense, claim, counter-claim, cross-claim, other interposition of any argument or doctrine or any legal right or prerogative otherwise afforded to them by law or in a proceeding in equity.

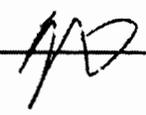
5. Signatures transmitted electronically or by facsimile shall be deemed original.



1 Dated: November 7, 2012

2 **CONSENTED AND AGREED TO BY:**

3	
4	For: Dan-Dee Company, Inc.
5	Kevin Attiq
6	Fadi Attiq
7 8 9 10 11 12 13 14 15 16 17 18	MALDONADO & MARKHAM, LLP 11-7-2012 By:  William Markham WM@maldonadomarkham.com 550 West C Street, Suite 2040 San Diego, CA 92101 (619) 221-4400 Attorneys for Dan-Dee Company, Inc.
19 20 21 22 23 24	LAW OFFICES OF STEVEN A. ELIA  11/14/2012 By:  Steven A. Elia 2221 Camino Del Rio South, Suite 207 San Diego, CA 92108 (619) 444-2244 Attorneys for Kevin Attiq
25 26 27 28	 By:  Attorneys for Fadi Attiq



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SO ORDERED:

UNITED STATES DISTRICT COURT



A handwritten signature or set of initials in black ink, located in the bottom right corner of the page.

CERTIFICATE OF SERVICE

I, Tanya L. Hill, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108-5530.

On November 14, 2012, I served the following document(s) on the parties in the within action:

STIPULATION AND ORDER RE DAN DEE

	BY MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as follows:
	BY HAND: The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by _____, addressed as follows:
	VIA FACSIMILE: The above-described document(s) was transmitted via facsimile from the fax number shown on the attached facsimile report, at the time shown on the attached facsimile report, and the attached facsimile report reported no error in transmission and was properly issued from the transmitting facsimile machine, and a copy of same was mailed, on this same date to the following:
X	VIA E-MAIL: Based on a court order or an agreement of the parties to accept service by e-mail, I attached the above-described document(s) to an e-mail message, and invoked the send command to transmit the e-mail message to the person(s) at the following e-mail address(es). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Jennifer Lee Taylor
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
E-Mail: jtaylor@mofocom
wgarbers@mofocom
mpoe@mofocom

Attorney For Defendants
PITTSBURG WHOLESALE GROCERS, INC.,
D/B/A PITCO FOODS; PACIFIC
GROSERVICE, INC. D/B/A PITCO FOODS;
ARISTOTLE PERICLES NAVAB; DAVID
LUTTWAY

Daniel Yu
Kevin Bringuel
LTL Trial Attorneys
1835 West Oranewood Avenue, Suite 330
Orange, CA 92868
E-Mail: Daniel.yu@lttlattorneys.com

Attorney For Defendants
KOAMEX GENERAL WHOLESALE, INC.,
YOUNG H. KIM A.K.A. YONG HWAM KIM

Randolph Gaw
The Gaw Group
100 Pine Street, Suite 1250
San Francisco, CA 94111
E-Mail: rgaw@thegawgroup.com

Attorney For Defendant
ELITE WHOLESALE INC.

1 Randolph Gaw
The Gaw Group
2 100 Pine Street, Suite 1250
San Francisco, CA 94111
3 E-Mail: rgaw@thegawgroup.com

Attorney For Defendant
TONIC WHOLESALE, INC., D/B/A ACE
WHOLESALE

4 Randolph Gaw
The Gaw Group
5 100 Pine Street, Suite 1250
San Francisco, CA 94111
6 E-Mail: rgaw@thegawgroup.com

Attorney For Defendant
DAPAN USA CORP. D/B/A FRONTIER
WHOLESALE; SUNG KEUN LEE

7 Steven A. Elia
The Law Offices of Steven A. Elia, APC
8 2221 Camino Del Rio South, Suite 207
San Diego, CA 92108
9 Tel: (619) 444-2244
E-Mail: steve@elialaw.com

Attorney For Defendants
DAN-DEE COMPANY, INC.; FADI ATTIQ;
KEVIN ATTIQ

11 Randolph Gaw
The Gaw Group
12 100 Pine Street, Suite 1250
San Francisco, CA 94111
13 Tel: (415) 745-3308
E-Mail: rgaw@thegawgroup.com

Attorney For Defendant
SUNG KEUN LEE

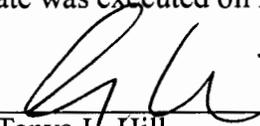
14 William Markham
15 Maldonado & Markham, LLP
550 West C Street, Suite 2040
16 San Diego, CA 92101
wm@maldonadomarkham.com

Attorney For Defendants
DAN-DEE COMPANY, INC.; FADI ATTIQ;
KEVIN ATTIQ

18 Joshua Kaplan
Law Offices of Joshua Kaplan
19 11835 W. Olympic Blvd., Suite 1125E
Los Angeles, CA 90064
20 kaplanjoshua@msn.com

Attorney For Defendants
SANTA MONICA DISTRIBUTING, INC.;
MANOUCHEHR HEIKALA aka DAVID
HEIKALI; and AZIZ HEIKALI aka ED
HEIKALI

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 a true and correct statement and that this Certificate was executed on November 14, 2012.

23
24 By 
Tanya L. Hill