

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

SI03, INC.,)	
)	
Plaintiff,)	
)	Case No. 1:10-cv-136
v.)	
)	JURY TRIAL DEMANDED
BODYBUILDING.COM, LLC,)	
)	
Defendant.)	

COMPLAINT

COMES NOW plaintiff SI03, Inc. by and through counsel, and for its cause of action against defendant Bodybuilding.com, LLC, states to the court as follows:

THE PARTIES

1. Plaintiff SI03, Inc. (“SI03”) is, and at all times relevant herein was, a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the County of Cape Girardeau, State of Missouri.

2. Defendant Bodybuilding.com, LLC (“Bodybuilding.com”) is, and at all times relevant herein was, a limited liability company organized and existing under the laws of the State of Idaho with its principal place of business in Boise, Idaho.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (diversity jurisdiction), in that pursuant to 28 U.S.C. § 1332(c)(1), SI03, the lone plaintiff is a citizen of Missouri and Delaware, and Bodybuilding.com, the lone defendant is a citizen of Idaho. Thus, there is complete diversity among the parties. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

4. This Court has personal jurisdiction over Bodybuilding.com in that it solicited business from and transacted business within the State of Missouri, both of which gave rise to this cause of action.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2) in that a substantial part of the events giving rise to the claims occurred in this District.

JURY TRIAL DEMANDED

6. Plaintiff hereby demands trial by jury on all counts and all issues triable by jury.

FACTS COMMON TO ALL COUNTS

7. SI03 is in the business of manufacturing and selling sports nutrition foods and dietary supplements under the house trademark SYNTRAX.

8. SI03 purchased the SYNTRAX trademark from Syntrax Innovations, Inc. in or around January 2, 2004.

9. Bodybuilding.com is a large internet-based sports nutrition retailer, based in Boise, Idaho, with no fewer than three warehouses located throughout the country.

10. Bodybuilding.com has purchased SYNTRAX products for resale from SI03 since the latter's inception in December 2003.

11. For over six years, Bodybuilding.com paid its invoices in a very timely manner and demonstrated to be financially creditworthy with SI03.

12. On October 2008, SI03 filed suit against Bodybuilding.com and others, alleging that the defendants were engaged in an online campaign to defame SI03 and the SYNTRAX name.¹

13. The business relationship between SI03 and Bodybuilding.com became strained, but the parties continued to do business with one another for their mutual benefit.

¹ The suit was mistakenly brought in the name of Syntrax Innovations, Inc., but SI03 was later substituted as the real party in interest.

14. Bodybuilding.com twice attempted and failed to have the lawsuit dismissed, the latter ruling being issued by the court in that case on April 26, 2010.

15. Shortly after the second failed attempt to dismiss the case, Bodybuilding.com threatened SI03 that it would stop doing business with it if SI03 refused to voluntarily dismiss its lawsuit.

16. On May 24, 2010 Bodybuilding.com, through its counsel, issued an ultimatum to SI03 to dismiss the suit, and simultaneously proceeded with the discovery phase of the suit.

17. Bodybuilding.com's last payment for goods received was made to SI03 on or around May 26, 2010.

18. Since May 26, 2010 Bodybuilding.com has continued to purchase goods from SI03, but has not made any further payments to SI03 for said goods.

19. Payment for all goods sold by SI03 to Bodybuilding.com has been due within 30 days after shipment.

20. Repeated demands have been made by SI03 to Bodybuilding.com for outstanding payments, to which Bodybuilding.com has responded that payments are forthcoming.

21. On or about August 5, 2010, SI03 placed Bodybuilding.com on a credit hold, refusing to ship more goods until all outstanding balances have been paid.

22. Upon information and belief, Bodybuilding.com continued to order goods from SI03 after May 26, 2010, knowing that it was planning to cease ordering from SI03 and with the intention of not paying for said goods.

23. Bodybuilding.com's current outstanding balance owed to SI03 is \$112,797.52 in principal, and an additional \$1,948.27 in statutory interest.

COUNT I – BREACH OF CONTRACT

24. SI03 incorporates by reference the allegations of paragraphs of 1 through 23 of the Complaint, as if fully set forth herein.

25. SI03 and Bodybuilding.com entered into a series of agreements between October 1, 2009 and July 6, 2010, whereby SI03 agreed to sell sports nutrition foods and supplements to Bodybuilding.com at a set price, and whereby Bodybuilding.com agreed to pay for said goods within 30 days after shipment.

26. SI03 performed its agreement by shipping said goods to Bodybuilding.com.

27. Bodybuilding.com accepted said goods, and after a reasonable opportunity to inspect and reject the goods, did not reject the goods.

28. Bodybuilding.com failed to perform its agreement by failing to send payment to SI03.

29. SI03 has been damaged thereby.

WHEREFORE, SI03 prays that this Court enter judgment in favor of SI03 and against Bodybuilding.com in the amount of \$112,797.52 plus pre- and post-judgment interest and its costs, and for such other and further relief as this Court deems just and proper.

COUNT II – UNJUST ENRICHMENT

30. SI03 incorporates by reference the allegations of paragraphs of 1 through 29 of the Complaint, as if fully set forth herein.

31. SI03 conferred a benefit on Bodybuilding.com in the form of the sports nutrition foods and supplements for Bodybuilding.com to resell.

32. Bodybuilding.com acknowledged that a benefit was conferred.

33. Bodybuilding.com accepted and retained the benefit.

34. It would be unjust for Bodybuilding.com to retain the benefit received.

WHEREFORE, SI03 prays that this Court enter judgment in favor of SI03 and against Bodybuilding.com in the amount of \$112,797.52 plus pre- and post-judgment interest and its costs, and for such other and further relief as this Court deems just and proper.

COUNT III – FRAUD

35. SI03 incorporates by reference the allegations of paragraphs of 1 through 34 of the Complaint, as if fully set forth herein.

36. Bodybuilding.com made material representations to SI03 that it would pay for the goods it ordered within 30 days after shipment.

37. The representations were false in that Bodybuilding had no intention after May 26, 2010 of paying for any more goods, but continued to order the same from SI03.

38. Bodybuilding.com made these representations to SI03 with knowledge of their falsity or with reckless disregard for the truth of the representations.

39. Bodybuilding.com intended that SI03 rely on these representations in shipping the goods to Bodybuilding.com.

40. The representations were material to SI03's decision to ship the goods to Bodybuilding.com before full payment was received.

41. SI03 relied on the representations when it shipped the goods to Bodybuilding.com before full payment was received.

42. SI03 was not aware that the representations were false, and based upon Bodybuilding.com's payment history over six years, had a right to rely on Bodybuilding.com's representations.

43. As a direct and proximate result of the false representations, SI03 has been damaged.

WHEREFORE, SI03 prays that this Court enter judgment in favor of SI03 and against Bodybuilding.com in the amount of \$112,797.52 plus pre- and post-judgment interest; punitive damages; and its reasonable attorneys' fees and costs, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

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