

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

VITAL PHARMACEUTICALS, INC., d/b/a
VPX/Redline,
Plaintiff,

v.

USA SPORTS, LLC, JOSEPH MIES, and
ROBERT O'LEARY,
Defendants.

CIVIL ACTION NO. 3:11-CV-975

(JUDGE CAPUTO)

ORDER

NOW, this 7th day of March, 2012, **IT IS HEREBY ORDERED** that:

1. Defendants' Motion to Dismiss the First Amended Complaint (Doc. 4) is **GRANTED in part and DENIED in part**.
2. Defendants' motion to dismiss Count V of Plaintiff's First Amended Complaint, breach of Section 9-504 of the Uniform Commercial Code, and Count VI of Plaintiff's First Amended Complaint, action to set aside fraudulent transfer pursuant to the Pennsylvania Uniform Fraudulent Transfer Act, is **GRANTED**. Plaintiff will have **twenty-one (21) days** to amend its complaint to properly plead these claims; otherwise, the claims will be dismissed with prejudice.
3. Defendants' motion to dismiss Plaintiff's successor liability claims, Counts I-IV, and breach of fiduciary duty claim, Count VII, is **DENIED**.
4. Defendant Robert O'Leary is **DISMISSED** from this action.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge