



Monster Energy Co. v. Vital Pharmaceuticals, Inc. d/b/a Bang Energy et al.

In 2019, top-selling energy drink manufacturer Monster Energy Co. brought an action against Vital Pharmaceuticals, Inc. (VPX) and its founder, sole owner, and CEO Jack Owoc for false advertising related to VPX's energy drink Bang.

Bang's label showed that the product was sold as a "potent brain and body fuel" containing what Owoc declared was a newly discovered additive called "super creatine." Monster said that VPX deceived customers by claiming that Bang, with its proprietary additive, not only offered performance-enhancing benefits but could even cure neurological disorders like Alzheimer's and Parkinson's disease.

In its complaint, Monster stated that Bang drinks do not contain any actual creatine, let alone the mysterious "super creatine" and that their "marketing scheme tricks consumers into believing they are getting something they are not."

The Case Challenge

Monster asserted that the misleading marketing by VPX touting the benefits of drinking Bang cost the company prospective customers and enabled VPX to steal Monster's commanding share of the US energy drink market. Monster was in the position of having to prove that it lost market share and that it was due to false advertising.

The Expert Solution

Monster's legal team at Hueston Hennigan LLP consulted with Dr. Charles D. Cowan, Senior Advisor at IMS Legal Strategies and [former CEO of Analytic Focus](#), to execute a consumer survey that would provide insight into their claims.

With a PhD in mathematical statistics and five decades of experience, Dr. Cowan led the design of a custom survey that was conducted using a random sample of the population of the United States. The sampling was then filtered down to those people who were purchasers or potential purchasers of energy drinks. They were asked what motivated their choice to purchase a particular energy drink and asked their opinions on Bang’s “super creatine.”

Analysis of survey results showed that 11% of energy drink consumers said super creatine was a motivating factor in what drink to buy, and 18% said creatine was a motivator. However, Bang drinkers were three times more likely to list creatine and five times more likely to list super creatine as a motivating factor for the purchase. Among non-Bang consumers, the interest in super creatine and creatine presented was exceptionally low.



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Approximately 75% of energy drinkers in the survey believed there were health benefits to super creatine. The survey revealed that Bang drinkers were twice as likely to believe there were health benefits to super creatine when compared to non-drinkers.

When respondents viewed Bang’s labeling, which mentioned super creatine in multiple locations, 22.3% reported creatine as a motivating factor in the purchase, and 29.5% said they were motivated by super creatine.

Among Bang drinkers, 45.6% said super creatine is a motivating factor in the purchase after seeing the can. Among non-Bang drinkers, super creatine jumped from 4.3% to 22.2% as a motivating factor in the purchase.

The Outcome

In September 2022, after a five-week trial, the nine-member jury agreed with Monster’s claims that VPX acted willfully and deliberately by falsely advertising the ingredients and health benefits of drinking its product. The jury awarded Monster a record-breaking verdict totaling \$293 million in damages from rival Bang, which turned out to be the largest false advertising claim ever made in the US under the federal Lanham Act. A subsequent award of legal fees and costs in October 2023 increased the total award to \$336 million.

Consumer Surveys for Complex Litigation

IMS | Analytic Focus specializes in developing and fielding surveys that elicit reliable, unbiased feedback from consumers and companies. Our survey experts apply precise data collection methods and provide scientifically sound analyses that meet all court presentation requirements. Email us at contactus@imslegal.com to get started.

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