

FOURTH CLAIM
(Trademark Dilution Under New York State Law)

62. Plaintiff SVC repeats and realleges each and every allegation contained in Paragraphs 1 through 61 of the Complaint as if set forth in full herein.

63. The aforesaid acts and conduct of Defendants are likely to dilute and detract from the distinctiveness of the GATORADE trademark and trade dress and have tarnished and are likely to tarnish the GATORADE trademark and trade dress, with consequent damage to the goodwill symbolized by said trademarks, in violation of New York's Anti-Dilution Statute, N.Y. Gen. Bus. Law § 360-l.

64. Upon information and belief, the aforesaid acts and conduct of Defendants have been willful and knowing.

65. SVC has been, and continues to be, injured by Defendants' acts of trademark dilution, and has no adequate remedy at law.

66. As a result of Defendants' acts of trademark dilution, SVC has suffered damages in an amount to be determined at trial.

FIFTH CLAIM
(Deceptive Acts and Practices Under New York State Law)

67. Plaintiff SVC repeats and realleges each and every allegation contained in Paragraphs 1 through 66 of the Complaint as if set forth in full herein.

68. The aforesaid acts and conduct of Defendants are, and unless enjoined, will continue to constitute deceptive acts and practices in violation of N.Y. Gen. Bus. Law §§ 349 and 350-a.

69. Upon information and belief, the aforesaid acts and conduct of Defendants have been willful and knowing.

70. As a result of Defendants' deceptive acts and practices, SVC has suffered damages in an amount to be determined at trial.

SIXTH CLAIM
(Common Law Unfair Competition)

71. Plaintiff SVC repeats and realleges each and every allegation contained in paragraphs 1 through 70 of the Complaint as if set in full herein.

72. Upon information and belief, the aforesaid acts and conduct of Defendants have been willful and knowing.

73. The aforesaid acts and conduct of Defendants constitute unfair competition under the common law.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff SVC requests the following relief:

- A) That this Court enter an order preliminarily and permanently enjoining and restraining Defendants, their respective officers, directors, employees, agents, licensees, servants, representatives, successors and assigns, and any and all persons in active concert or participation with any of them, from any further use, distribution or exhibition of any advertising, packaging and/or promotional materials, including without limitation the Label, Billboard Advertising, ESPN Cover Take-Over, Stack Cover Take-Over, the Alternative Print Ad, point-of-sale and in-store display materials, and Website Ad, which: (1) falsely state, imply or otherwise communicate that: (a) Powerade ION⁴ will improve performance as compared to SVC's GATORADE product; (b) GATORADE is missing components or is incomplete; (c) Powerade ION⁴ will improve performance as compared to GATORADE; or (d) Powerade ION⁴ is complete; (2) misrepresent

the nature, characteristics, and qualities of GATORADE or Powerade ION⁴; (3) contain other false and deceptive information or statements, including, without limitation, false and deceptive comparisons between GATORADE and Powerade ION⁴; or (4) dilute or disparage the famous GATORADE trade marks and/or trade dress.

- B) That this Court direct Defendants to recall from any and all channels of distribution any and all Powerade ION⁴ products bearing the Label or any other label or packaging material which include false and deceptive statements about Powerade ION⁴ and/or GATORADE;
- C) That this Court direct Defendants to take down any and all billboards improperly depicting GATORADE or which include false and deceptive statements about Powerade ION⁴ or GATORADE;
- D) That this Court require Defendants to account for and pay SVC any and all profits derived by Defendants from the manufacture, production, distribution, sale or other exploitation of Powerade ION⁴ using advertising or promotional materials, and/or other materials in violation of SVC's rights;
- E) That this Court require Defendants to engage in advertising to correct the false and deceptive statements about GATORADE, Powerade ION⁴ and the disparagement of the GATORADE trademarks and trade dress;
- F) That this Court award SVC damages against Defendants in an amount to be determined at trial;
- G) That, given the willful nature of Defendants' acts, this Court enter judgment pursuant to 15 U.S.C. § 1117(a) in an amount to include Defendants' profits

derived from its infringement of SVC's rights, three times the damages sustained by SVC, as well as the costs of the action;

- H) That given the willful nature of Defendants' acts, this Court award plaintiff punitive damages in an amount to be determined at trial;
- I) That this Court award SVC its reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a) and N.Y. Gen. Bus. Law §§ 349 and 350-a; and
- J) That this Court grant such other and further relief as it shall deem just and proper under applicable law, including interest and disbursements of this action.

Dated: April 13, 2009

PROSKAUER ROSE

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