

41. Defendants' deception is intentional, a fact which is confirmed by public statements made by Defendants about their new advertising campaign. For example, after interviewing Defendants' marketing executives about the new campaign, *Advertising Age* reported in its March 23rd issue that "Powerade's plan is to blitz the market with messaging that GATORADE is an inferior method of hydration."

42. SVC has demanded that Defendants cease their unlawful conduct, but Defendants have continued their blatant violation of SVC's valuable rights. Copies of correspondence between the parties, including a conditional offer by Defendants to cease comparative advertising explicitly using the GATORADE trademarks and trade dress and to delete the word "critical" from the Powerade ION⁴ label, are attached hereto as Exhibit J. Nonetheless, Defendants are continuing the conduct described in this Complaint.

43. Upon information and belief, unless enjoined, Defendants will only continue to escalate this false advertising campaign for Powerade ION⁴.

FIRST CLAIM
(Violation of Section 43(a) of the Lanham Act – 15 U.S.C. § 1125(a))

44. Plaintiff SVC repeats and realleges each and every allegation contained in Paragraphs 1 through 43 of the Complaint as if set forth in full herein.

45. The conduct of Defendants, as described above and otherwise, constitutes false advertising because of the aforementioned and other false and misleading representations and descriptions in Defendants' advertisements. The advertisements, labels, and other representations are likely to mislead, or have misled, consumers about the nature, characteristics, and quality of SVC's GATORADE product and/or Defendants' Powerade ION⁴ product, and are likely to cause, or have caused, consumers to falsely believe, among other things, that Defendants' Powerade ION⁴ product is superior to SVC's GATORADE in that GATORADE is

unable to serve its intended purpose and that use of Defendants' Powerade ION⁴ product will enhance the performance of athletes, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

46. Defendants are willfully, knowingly and intentionally making false representations and descriptions of their Powerade ION⁴ product and SVC's GATORADE product, and intend to continue making such false representations and descriptions in advertising unless enjoined by this Court, so as to deceive, mislead and confuse consumers and the purchasing public into believing that, among other things, GATORADE is ineffective for its intended purpose and that Defendants' Powerade ION⁴ will improve performance as compared to SVC's GATORADE product.

47. By reasons of and as a direct and proximate result of Defendants' unlawful acts and practices, including those set forth above, Defendants have caused, are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause, immediate and irreparable harm to SVC, for which there is no adequate remedy at law, and for which SVC is entitled to injunctive relief.

48. By reason of Defendants' unlawful acts and practices, SVC has suffered, is suffering and will continue to suffer damage to its business, reputation and goodwill, and the loss of sales and profits SVC would have made but for Defendants' acts, in an amount to be determined at trial.

49. The aforesaid acts and conduct of Defendants are, and unless enjoined will continue to be, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

SECOND CLAIM

(Violation of Federal Trademark Dilution Act – 15 U.S.C. § 1125(c))

50. Plaintiff SVC repeats and realleges each and every allegation contained in Paragraphs 1 through 49 of the Complaint as if set forth in full herein.

51. SVC is the owner of extensive trademark rights in the name GATORADE, the trade dress associated with various GATORADE products and in other names and logos including without limitation the GATORADE lightning bolt logo (collectively, the “GATORADE Marks”), many of which are registered with the United States Patent and Trademark Office. Through years of extensive use, advertising and promotion, the GATORADE Marks including the lightning bolt logo have become widely recognized by the consuming public as a designation of source for SVC’s goods and are famous throughout the United States.

52. The conduct of Defendants, as described above and otherwise, constitutes unlawful use of GATORADE’s famous and distinctive marks and trade dress in a manner that is likely to cause dilution through tarnishment of the GATORADE marks and trade dress, in that Defendants’ advertising campaign, as described above, presents false and misleading statements about GATORADE products and depicts GATORADE products, marks, and trade dress under circumstances that tarnish, disparage, and denigrate the famous GATORADE brand, product, and trade dress, all in violation of 15 U.S.C. § 1125(c).

53. Defendants are willfully, knowingly and intentionally structuring advertisements in an attempt to dilute SVC’S GATORADE’s marks and trade dress, and Defendant intend to continue distributing and publishing such misleading advertisements unless enjoined by this Court, so as to deceive, mislead and confuse consumers and the purchasing public as to the quality and characteristics of GATORADE while making claims of Powerade ION⁴’s purported superiority.

54. By reasons of and as a direct and proximate result of Defendants' unlawful acts and practices, including those set forth above, Defendants have caused, are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause, immediate and irreparable harm to SVC, for which there is no adequate remedy at law, and for which SVC is entitled to injunctive relief.

55. By reason of Defendants' unlawful acts and practices, SVC has suffered, is suffering and will continue to suffer damage to its business, reputation and goodwill, and the loss of sales and profits SVC would have made but for Defendants' acts, in an amount to be determined at trial.

56. The aforesaid acts and conduct of Defendants are, and unless enjoined will continue to be, in violation of 15 U.S.C. § 1125(c).

THIRD CLAIM
(Unfair Competition Under New York State Law)

57. Plaintiff SVC repeats and realleges each and every allegation contained in Paragraphs 1 through 56 of the Complaint as if set forth in full herein.

58. The aforesaid acts and conduct of Defendants are, and unless enjoined, will continue to constitute, unfair competition in violation of the law of the State of New York.

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

60. Plaintiff SVC has been, and continues to be, injured by Defendants' unfair conduct, and has no adequate remedy at law.

61. As a result of Defendants' unfair competition, SVC has suffered damages in an amount to be determined at trial.