

A “Monster” Award: “Super Creatine” Not So Super

Monster Energy Co. v. Vital Pharmaceuticals Inc., No. 5:18-cv-01882 (C.D. Cal. 2022)

By: Edward Runyan & Victoria Hanson | October 24, 2022

On September 29, 2022, a jury in the Central District of California found that that Vital Pharmaceuticals Inc. willfully and deliberately violated the Lanham Act by falsely advertising a “Super Creatine” ingredient of a Bang energy drink and awarded Monster Energy Co. about \$292 million in Lanham Act damages, possibly the largest Lanham Act jury trial award in U.S. history. Although Vital and its CEO touted the many health benefits of “Super Creatine,” Vital could not provide any evidence to support its claims.

In 2015, Vital, a performance beverage company, released and introduced its Bang energy drink with “Super Creatine,” which Vital and its CEO claimed could improve brain function and performance, and could also help with all forms of dementia, including Alzheimer’s, Parkinson’s and Huntington’s disease. Vital advertised “Super Creatine” and its benefits through social media as well as to retailers and distributors. With the success of Bang, Vital rose in popularity and became the No. 3 energy drink company in the United States, with \$4 billion in sales, displacing some of Monster’s products and customers.

On September 5, 2018, Monster filed a lawsuit against Vital for falsely advertising Bang and “Super Creatine,” and for deceiving the public about Bang’s ingredients and benefits. Further, Monster alleged that Vital had interfered with the distribution of Monster’s energy drinks by gaining in-store shelf space at Monster’s expense and taking market share from Monster. While Vital and its CEO (who held no scientific degree) touted the many purported benefits of “Super Creatine” without studies or scientific evidence to support its claims, Vital also claimed that “Super Creatine” was unimportant to the success of the Bang beverages.

At trial, Monster presented evidence and testimony that creatine was not water-soluble and could not be put into a drink. Additionally, Monster conducted tests revealing that Bang did not even contain creatine. Monster also presented survey evidence that consumers were motivated to purchase Bang because of its “Super Creatine” ingredient. Vital, however, could not establish that the survey it relied on was conducted in accordance with generally accepted survey principles, so the court found that its survey evidence was inadmissible. As such, the jury reviewed only Monster’s survey evidence. The jury found the entire lost profits damages sought by Monster were appropriate and awarded them in full, along with an award based on state law claims, for total damages of \$297 million.

This case demonstrates the seriousness and very expensive consequences of falsely advertising a product or ingredient such that it deceives consumers. Further, this case emphasizes the importance and power of surveys. Monster’s favorable survey and Vital’s inability to present its survey evidence resulted in the jury finding that Monster was entitled to the full amount of its lost profits.