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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERGOGENIX, INC., a Delaware corporation,

Plaintiff,

vs.

BODYBUILDING.COM, LLC an Idaho
limited liability company,

Defendant.

Case No. CV01-17-18298

COMPLAINT

COMES NOW Plaintiff Ergogenix, Inc., a Delaware corporation, by and through its attorney of record, Terri Pickens Manweiler of the firm Pickens Cozacos, P.A., hereby submits this Complaint against the above-captioned Defendant Bodybuilding.com, LLC, an Idaho limited liability company, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over all claims asserted herein pursuant to I.C. § 5-216, I.C. § 5-217, I.C. § 5-514(a) and other provisions of Idaho law.
2. Venue is proper pursuant to I.C. § 5-404.

3. This Court has jurisdiction over the parties pursuant to Idaho Code § 5-514, as all parties have transacted business in the state of Idaho.

4. The amount in controversy exceeds the minimum jurisdictional requirements of this Court.

PARTIES

5. Plaintiff Ergogenix Inc. (“Ergogenix”) is a Delaware corporation in good standing and duly authorized to conduct business in Ada County, State of Idaho, who entered into a contract, governed by the laws of the State of Idaho, as more fully set forth below.

6. Defendant Bodybuilding.com, LLC (“Bodybuilding.com”) is an Idaho limited liability company in good standing and duly authorized to conduct business in Ada County, State of Idaho.

BACKGROUND ALLEGATIONS

7. Ergogenix is in the business of manufacturing and producing nutritional supplements and products.

8. Bodybuilding.com is in the business of purchasing, marketing, and reselling nutritional supplements and products.

9. In or around September 2014, Bodybuilding.com approached Ergogenix with a marketing proposal that would cause Ergogenix’ product sales to grow exponentially.

10. Based on discussions with Bodybuilding.com, Ergogenix provided Bodybuilding.com its projected sales for 2015, which were \$5.0 million.

11. Bodybuilding.com reviewed and accepted Ergogenix’s projections and based its expected growth revenue off the 2015 projected sales and promised Ergogenix a minimum growth of 50% for the next four years.

12. On or about December 23, 2014, Ergogenix and Bodybuilding.com entered into a Marketing Promotion and Sales Agreement (“Agreement”). A true and accurate copy of the Agreement is attached hereto as **Exhibit A**.

13. The Agreement contains an integration clause and incorporates and encompasses all contractual terms between Ergogenix and Bodybuilding.com.

14. The Agreement provided that Bodybuilding.com would purchase Ergogenix’s products at a wholesale rate, then market and resell those products through its online marketing sales system.

15. Upon delivery of the products to Bodybuilding.com, Bodybuilding.com became the owner of those products.

16. Bodybuilding.com would pay Ergogenix for the products within thirty (30) days from the date of invoice or receipt and acceptance of the product from Ergogenix.

17. The Agreement also included an Equity Issuance Agreement, whereby in exchange for twenty percent (20%) ownership interest in Ergogenix, Bodybuilding.com promised and agreed to market and promote Ergogenix products and promised a sales projection of \$5,000,000 and a minimum growth of fifty percent (50%) in revenue for the next four years.

18. Bodybuilding.com did not pay any out of pocket capital contributions for the twenty percent (20%) ownership interest in Ergogenix.

19. After entering into the Agreement, Bodybuilding.com had exclusive control over all marketing and promotion for Ergogenix products.

20. Per the arrangement with Bodybuilding.com, Ergogenix could not use a third party to market or promote its products and relied solely on Bodybuilding.com.

21. Shortly after entering into the Agreement, it became apparent to Ergogenix that Bodybuilding.com's sole marketing strategy was to offer extremely aggressive promotions or deep discounts, which was not disclosed to Ergogenix prior to entering into the Agreement.

22. Bodybuilding.com was aware of Ergogenix concerns regarding the lack of marketing and promised new or different marketing strategies to increase revenue and sales.

23. Bodybuilding.com's new or different marketing strategies never came to fruition and as a result, Ergogenix did not realize a profit within the first year of signing the Agreement as had been promised by Bodybuilding.com.

24. Bodybuilding.com began significantly discounting Ergogenix's products and demanded that Ergogenix repay Bodybuilding.com for the discounts.

25. Bodybuilding.com submitted demands for Ergogenix to pay discounts in excess of \$540,000.

26. Ergogenix did not realize a profit after entering into the Agreement, in fact Ergogenix lost several hundred thousand dollars as a result of entering into the Agreement.

27. The projected revenues under the Agreement were not being met and Ergogenix was losing revenue because of Bodybuilding.com's failed marketing attempts, as such, eighteen (18) months after entering into the Agreement, Bodybuilding.com agreed to waive the exclusivity requirement, allowing Ergogenix to use third parties to market and promote its products.

28. Ergogenix never realized the projected growth and revenue as promised by Bodybuilding.com.

29. Ergogenix has had to expend nearly double its budgeted marketing and promotion expense to its third-party marketers because of Bodybuilding.com's failure to properly market and promote Ergogenix's products.

COUNT 1 – FRAUD IN THE INDUCEMENT

30. All prior allegations are incorporated herein by reference as though restated in their entirety.

31. Bodybuilding.com made a representation to Ergogenix that it had an enormous marketing reach and could use that marketing reach to grow Ergogenix projected sales for 2015 by \$5,000,000 and cause a fifty percent (50%) growth in subsequent years.

32. Bodybuilding.com's representation to Ergogenix was materially false.

33. Bodybuilding.com's representation was important to Ergogenix as it was the reason Ergogenix entered into the Agreement.

34. Ergogenix was reasonable to rely on Bodybuilding.com's representations.

35. Bodybuilding.com acted with reckless disregard in making the representation to Ergogenix because it did not do its due diligence or research on Ergogenix's sales projection of \$5.0 million prior to promising Ergogenix \$5,000,000 in 2015 projected revenue and a fifty percent (50%) growth in subsequent years until after the Agreement was signed by both parties.

36. Ergogenix did not know that Bodybuilding.com could not live up to its representation that it would increase revenue by \$5,000,000 for 2015 and cause a fifty percent (50%) growth in subsequent years.

37. Bodybuilding.com intended Ergogenix to rely on its representation as referenced by both parties entering into the Agreement, Bodybuilding.com becoming a twenty percent

(20%) owner of Ergogenix, and Bodybuilding.com's exclusivity requirement that Ergogenix could not use any other party to market and promote its products.

38. Ergogenix relied on Bodybuilding.com's representation of projected growth revenue and entered into the Agreement because of its reliance on Bodybuilding.com's representation.

39. Ergogenix's reliance on Bodybuilding.com's representation was justified because Ergogenix provided its projected revenue for 2015 to Bodybuilding.com and Bodybuilding.com based its growth projection of \$5,000,000 in 2015 and fifty percent (50%) for subsequent years on this information provided by Ergogenix.

40. As a result of Ergogenix's reliance on Bodybuilding.com's representations, it has lost significant revenue and has had to pay more in marketing and promotion to third parties since it entered into the Agreement.

41. As a result of Bodybuilding.com's fraudulent inducement, Ergogenix has been damaged in an amount in excess of \$10,000, an amount to be proven at trial.

COUNT 2 – CANCELLATION OF SHARES

42. All prior allegations are incorporated herein by reference as though restated in their entirety.

43. As a result of Bodybuilding.com's wrongful conduct, Bodybuilding.com should not be entitled to benefit from an ownership interest in Ergogenix.

44. Bodybuilding.com's twenty-percent (20%) interest in Ergogenix should be cancelled.

45. Ergogenix hereby requests a court ordered cancellation of Bodybuilding's twenty percent (20%) share in Ergogenix.

46. Ergogenix believes good cause exists to seek a court ordered cancellation of Bodybuilding.com's minority shares in Ergogenix.

COUNT 3 – BREACH OF CONTRACT

47. All prior allegations are incorporated herein by reference as though restated in their entirety.

48. Ergogenix and Bodybuilding.com entered into a Marketing, Promotion and Sales Agreement on December 23, 2014.

49. Bodybuilding.com agreed to purchase Ergogenix's products for resale through its online distribution system.

50. Bodybuilding.com further promised to market and promote Ergogenix products and in exchange, Ergogenix provided Bodybuilding.com twenty percent (20%) share in Ergogenix.

51. The Agreement contains an integration clause which provides that the Agreement and its exhibits constitute the entire agreement between the parties and supersedes all prior agreements.

52. Bodybuilding.com failed to properly market Ergogenix's products, and it began selling the products at a large discount.

53. Bodybuilding.com then began charging Ergogenix for the discounts, despite any contractual provision allowing Bodybuilding.com to make such charge backs.

54. Bodybuilding.com breached the Agreement by making a demand on Ergogenix to remit payment in the amount of \$540,161.14.

55. The Agreement does not require Ergogenix to remit payment to Bodybuilding.com and because of the integration clause, Bodybuilding.com cannot now claim Ergogenix owes it money pursuant to the Agreement.

56. Bodybuilding.com has also breached the Agreement because it failed to adequately market and promote Ergogenix products as required by the Agreement.

57. As a result of Bodybuilding.com's breach of the Agreement, Ergogenix has been damaged in an amount in excess of \$10,000, an amount to be proven at trial.

ATTORNEY'S FEES

58. Ergogenix is entitled to an award of reasonable attorney fees against Bodybuilding.com in accordance with I.C. §§ 12-120(3), 12-121, the terms of the Agreement, and other provisions of Idaho law.

WHEREFORE, Plaintiff Ergogenix, Inc. demands judgment as follows:

1. That judgment be entered against Bodybuilding.com and in favor of Ergogenix for the amount of damages sustained by Ergogenix as a result of Bodybuilding.com's breach of contract in an amount in excess of \$10,000.00;
2. That judgment be entered against Bodybuilding.com and in favor of Ergogenix for the amount of damages sustained by Ergogenix as a result of Bodybuilding.com's fraudulent inducement in an amount in excess of \$10,000.00;
3. A Court ordered cancellation of Bodybuilding.com's shares in Ergogenix;
4. That judgment be entered in favor of Ergogenix on all other claims for relief against Bodybuilding.com as stated herein;
5. An award of reasonable attorney's fees and costs for prosecuting this action; and

6. For such other and further relief as the court deems just and proper.

DATED: October 3, 2017.

PICKENS COZAKOS, P.A.

By: /s/ Terri Pickens Manweiler
Terri Pickens Manweiler, Of the Firm
Attorneys for Plaintiff