

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

**CASE NO.: 9:21-cv-80740**

CELSIUS HOLDINGS, INC.,

Plaintiff,

v.

A SHOC BEVERAGE, LLC and KEURIG  
DR PEPPER INC.,

Defendants.

**COMPLAINT**

Plaintiff CELSIUS HOLDINGS, INC. by and through its undersigned counsel, brings this Complaint against Defendants A SHOC BEVERAGE, LLC and KEURIG DR PEPPER INC.. for damages and injunctive relief, and in support thereof states as follows:

**JURISDICTION AND VENUE**

1. This is an action arising under the Lanham Act for false advertising, false designations of origin, trade dress infringement, and false descriptions of A SHOC's conventional beverage products, distributed by KEURIG DR PEPPER INC., known as A SHOC ACCELERATOR using false and fraudulent unproven dietary supplement claims; for violations of the laws of California and Florida for false advertising and unfair and deceptive trade practices in connection with the sale and distribution by A SHOC and KEURIG DR PEPPER INC. of A SHOC's conventional beverage products known as A SHOC ACCELERATOR using false advertising and trade dress infringing labels meant to look like the labels of Celsius; and for common law unfair competition.

**SRIPLAW**

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2. This Court has subject matter jurisdiction over the Lanham Act claims asserted pursuant to 28 U.S.C. §§ 1331, 1338; and subject matter jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367.

3. Defendants are subject to personal jurisdiction in this state and federal district.

4. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because defendants reside in this district, a substantial part of the events or omissions giving rise to the claims occurred, or a substantial part of property that is the subject of the action is situated, in this district.

### **PARTIES**

5. Plaintiff CELSIUS HOLDINGS, INC. (“Celsius”) is a Nevada corporation with its principal place of business in Florida.

6. Defendant A SHOC BEVERAGE, LLC (“A SHOC”) is a California limited liability company with its principal place of business at 844 Production PL, Newport Beach, CA 92663.

7. Defendant KEURIG DR PEPPER INC. (“KDP”) is a Delaware corporation with its principal place of business at 53 South Avenue, Burlington, Massachusetts 01803.

### **FACTS COMMON TO ALL COUNTS**

8. Celsius is a publicly traded company that markets and sells proprietary, clinically proven ready-to-drink liquid dietary supplement products in a variety of different flavors in 12-ounce cans under the registered trademark CELSIUS® Reg. Nos. 3,154,473, 5,692,274, 5,692,275, 5,692,276, 3,154,473, 3,667,840 and others.

9. Celsius is a pioneer in the rapidly growing performance energy sector. Celsius has four beverage lines that each offer proprietary, functional formulas clinically proven to offer significant health benefits to its users. CELSIUS® has zero sugar, no preservatives, no

aspartame, no high fructose corn syrup, and is non-GMO, with no artificial flavors or colors. The CELSIUS® line of products is Certified Kosher and Vegan. CELSIUS® is also soy and gluten-free and contains very little sodium. Some of the flavors of the main Celsius line of products are shown below.



10. CELSIUS® is sold nationally at Target, CVS, GNC, Vitamin Shoppe, 7-Eleven, Dick's Sporting Goods, The Fresh Market, Sprouts, and other key regional retailers such as HEB, Publix, Winn-Dixie, Harris Teeter, Shaw's, and Food Lion. It is also available on Amazon, at fitness clubs and in select micro-markets across the country.

### **THE SCIENCE BEHIND CELSIUS®**

11. CELSIUS®, and its unique proprietary blend of ingredients called MetaPlus®, is backed by six university studies that were published in peer-reviewed journals validating the unique benefits CELSIUS® provides. All the studies on Celsius are available to consumers at <http://www.celsius.com/science> and have been available on the internet at that location since the first Celsius website was launched. The studies of Celsius show that the product has thermogenic properties that cause your body to burn more calories and body fat than you normally would with exercise alone. The MetaPlus® blend is specially formulated to turn on thermogenesis so consumers of Celsius can get the most out of their workout.

12. Beginning in June of 2005, Celsius set out to study metabolic responses to the unique thermogenic beverage formula it had developed. Since then, all the clinical trials of the Celsius formula have been conducted by respected university research groups in the United States including the Ohio Research Group of Exercise and Sports Nutrition at Mount Union College, and the Applied Biochemistry and Molecular Physiology Laboratory of the Department of Health and Exercise Science at the University of Oklahoma. Celsius boasts years of scientific research into the actual Celsius formulation used in the Celsius product on sale throughout the U.S.

13. The clinical trials of Celsius were exactly that, studies of the actual Celsius formulation and not simply studies of ingredients. The clinical trial results of Celsius have been presented at conferences and published in peer reviewed scientific journals under the auspices of several well-respected organizations including the American College of Nutrition, the International Society of Sports Nutrition, and the Journal of Strength Conditioning and Research.

14. The university scientists performing the research on Celsius include Jeffrey R. Stout, Ph.D., Associate Professor at the University of Oklahoma and Director of the Metabolic and Body Composition Laboratories in the Department of Health and Exercise Science; Chad Kerkick, Ph.D., Assistant Professor and Director of the Applied Biochemistry and Molecular Physiology Lab at the University of Oklahoma; and Ron Mendel, Ph.D., Assistant Professor of Human Performance and Sports Management at Mount Union College.

15. The results of the studies performed on Celsius substantiate that drinking Celsius will increase a person's metabolic rate and cause the average person to burn more than 100 calories per serving ingested. An increase in metabolic rate was confirmed in study after study

on Celsius both when tested alone as well as when tested in comparison to other commercially available carbonated beverages. Study after study has confirmed that a single serving of Celsius:

- Raises metabolism over a three-hour period;
- Burns over 100 calories per can;
- Burns calories when ingested daily for twenty-eight days;
- Enhances the benefits of exercise when consumed prior to exercise; and
- Enhances the benefits of exercise in previously sedentary men and obese women when consumed prior to exercise.

16. The claims made for Celsius are all substantiated based upon the results of the human clinical research into the effects of the unique Celsius formulation. The claims made for Celsius are substantiated by clinical investigation and observation of actual human subjects in response to ingesting the precise Celsius formulation sold on store shelves nationwide. Celsius never relied on studies of individual ingredients contained in the Celsius formula and extrapolated results therefrom like other products. Celsius does not rely on animal studies and extrapolate results to humans like other products. Celsius does not rely on studies investigating different amounts of ingredients than those used in the actual Celsius formulation sold to consumers like other products.

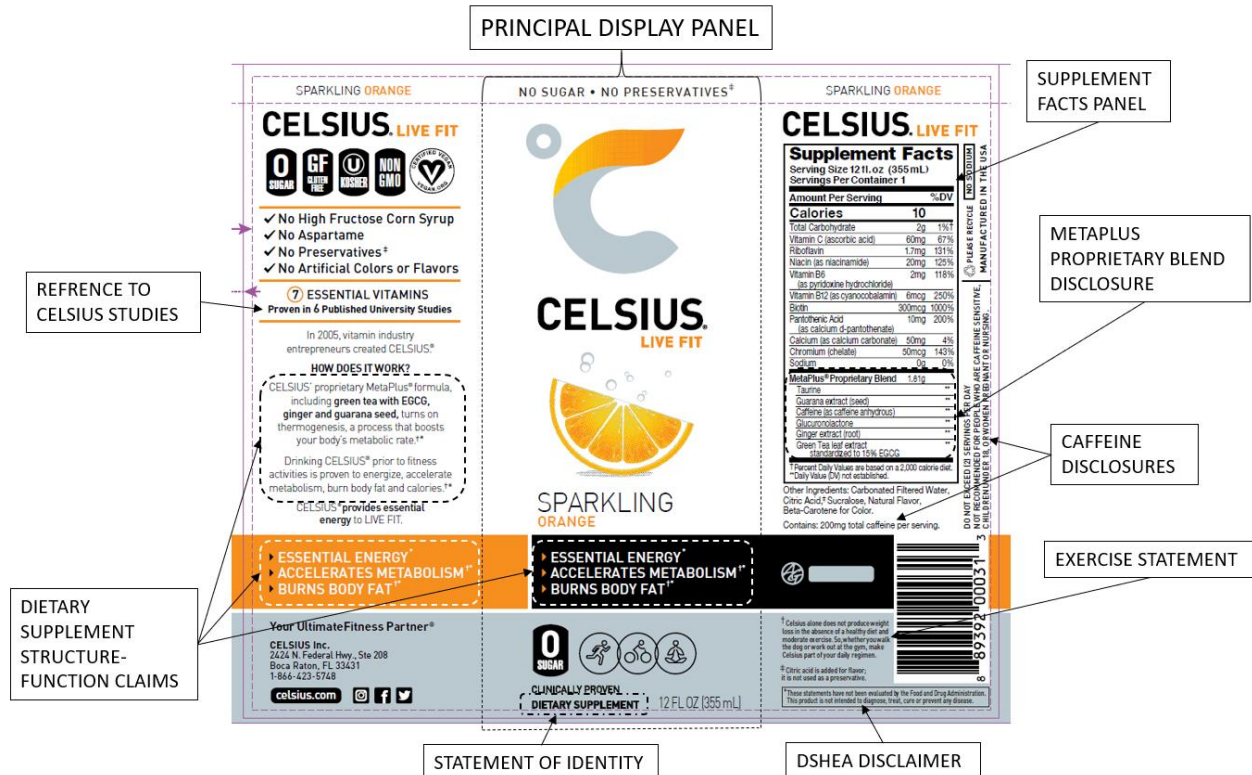
17. The clinical studies for Celsius examined both the short term and long-term effects of consumption of Celsius with Metaplus, both when combined with exercise, and without exercise, in both men and women. The conclusion drawn from these studies is that consumption of Celsius with Metaplus, prior to exercise, increases metabolism, and that this metabolism boost translates into physiological benefits including fat loss, body fat percentage decrease, greater endurance, and resistance to fatigue. The studies for Celsius document this

effect on the structure and function of the body and substantiate the Celsius claim that consumption of Celsius is a structure function claim permitted under DSHEA and substantiated by the clinical studies for Celsius.

18. Celsius' formulation with Metapplus makes it a "thermogenic" product: consumption of Celsius causes an increase of heat in the body through metabolic stimulation which increases metabolism. All Celsius products with Metapplus claim that when used in connection with diet and exercise, Celsius helps burn calories; in fact, when Celsius with Metapplus was consumed before exercise, participants in clinical studies of Celsius burned more calories than a control group that consumed water.

19. Celsius is specifically marketed to the fitness enthusiast market. The Celsius product is advertised, marketed, labeled, and sold as a dietary supplement consumed as a pre-workout drink geared towards people that exercise. Celsius is regulated by the FDA as a dietary supplement under the Dietary Supplement Health and Education Act (DSHEA) amendments to the Food, Drug & Cosmetics Act (FDCA). Celsius complies with all the applicable requirements of the FDCA and DSHEA. The Nutrition Labeling and Education Act (NLEA) applies to Celsius, and Celsius complies with all the applicable requirements of the NLEA.

20. Regulatory compliance for Celsius is complex and requires a detailed label such as the one shown below.



21. The principal display panel of all Celsius products contains the statement of identity “dietary supplement”. Every can of Celsius contains Celsius’ proprietary blend “Metaplus” formula that includes Green Tea with EGCG, Ginger, Caffeine, Calcium, Chromium, B Vitamins and Vitamin C. All ingredients in the Celsius “Metaplus” formula are declared on the label of each Celsius product, but not the amounts. In accordance with DSHEA and the regulations adopted pursuant to DSHEA, the amounts of each ingredient contained in the proprietary Metaplus blend are not disclosed and are a trade secret of Celsius.

22. Celsius can make the claims it makes because of the extensive scientific research Celsius funded that backs its claims. This research has come at a great cost. Since it was founded, Celsius has spent millions of dollars to fund the necessary scientific studies to support and promote its product claims in the marketplace backed by science. No other company has shown the same commitment as Celsius, though many have tried to imitate Celsius’ success.



23. The research performed on the Celsius Metaplus formula provides Celsius with a reasonable basis to make its claims. The reasonable basis standard holds that claims about a product's attributes, performance, or efficacy carry with them the express or implied representation that the advertiser had a reasonable basis substantiating the claims at the time the claims were made. For health-related efficacy claims, such as those made about dietary supplements like Celsius, those claims are required to be substantiated by competent and reliable scientific evidence. The regulations for dietary supplement marketing Celsius adheres to are far more stringent and demanding than those that apply to the sale of conventional beverages.

**THE UNPROVEN CLAIMS OF A SHOC ACCELERATOR DISTRIBUTED BY KDP**

24. Celsius has enjoyed substantial success in the marketplace among fitness conscious consumers who understand the benefits of drinking Celsius with exercise. Celsius' success, however, has attracted imitators who have tried to capitalize on the success of Celsius without and the substantial fitness following the company's products has attracted.<sup>1</sup> The most recent imitator is A SHOC's ACCELERATOR product distributed by KDP.

25. A SHOC ACCELERATOR is manufactured by A SHOC and distributed by KDP.

26. The A SHOC ACCELERATOR product is misbranded under the FDCA.

27. A SHOC ACCELERATOR is marketed, labeled, and sold as a conventional beverage, but makes unsupported dietary supplement structure-function claims on the label and in advertising.

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<sup>1</sup> One earlier imitator was Enviga, a conventional beverage marketed by a joint venture of the Coca-Cola Company and Nestle. Enviga was promoted during the mid-2000s as a "thermogenic" beverage. In February 2007, the watchdog group Center for Science in the Public Interest (CSPI) filed a lawsuit over company claims that Enviga asserted were backed by a very limited study into the product's efficacy. Eventually, after being investigated by several state attorneys' general and settling litigation, sales of Enviga collapsed and the product was discontinued.



28. The A SHOC ACCELERATOR label and advertising claims are deceptive, misleading, false, and unfair.

29. To make a dietary supplement structure/function claim, manufacturers must meet three requirements: 1. The manufacturer must have substantiation that the statement is truthful and not misleading; 2. The statement must contain a prominent disclaimer that the FDA has not evaluated the statement and that the product “is not intended to diagnose, treat, cure, or prevent any disease”; and 3. The statement itself may not “claim to diagnose, mitigate, treat, cure, or prevent” disease. 21 U.S.C. § 343(r)(6)(B)–(C). Celsius complies with these regulations. A SHOC ACCELERATOR does not.

30. As the images of A SHOC ACCELERATOR shown below demonstrate, the product label makes claims that it “ACCELERATES METABOLISM” (which appears in two places on the can in large letters), and provides “PLANT BASED THERMOGENICS” (which appears in two places on the can). The product also states on the side panel “Natural caffeine meets plant based thermogenics for a powerful yet balanced way to crush your goals. Designed to accelerate your metabolism without the jitters and keep your mind and body so you can get after it. ... This is your energy.”



to accelerate your metabolism without the heat and fuel your mind and body so you can go after it ... This is your energy.”

31. A SHOC makes the same false claims in advertising including at the A SHOC website at [www.ashoc.com](http://www.ashoc.com).

32. A SHOC and KDP lack any reasonable basis to make the claims for A SHOC ACCELERATOR that the product “ACCELERATES METABOLISM” or is “THERMOGENIC”.

33. A SHOC and KDP lack competent and reliable scientific evidence to support the claims for A SHOC ACCELERATOR that the product “ACCELERATES METABOLISM” or is “THERMOGENIC”.

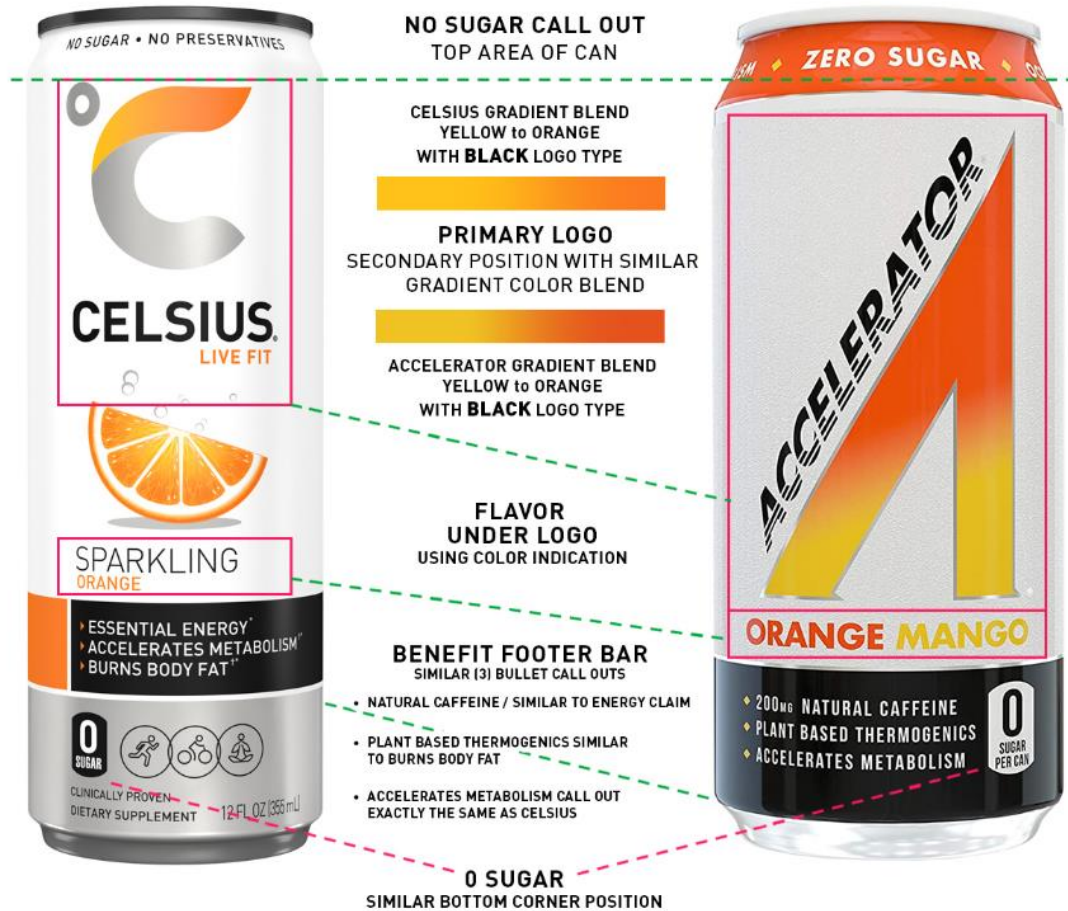
34. The claims made for A SHOC ACCELERATOR by A SHOC and KDP that the product “ACCELERATES METABOLISM” or is “THERMOGENIC” are false, misleading, unfair, and unsupported.

35. The claims made for A SHOC ACCELERATOR by A SHOC and KDP that the product “ACCELERATES METABOLISM” or is “THERMOGENIC” violate the FDCA and render the product misbranded under the FDCA.

36. The claims made for A SHOC ACCELERATOR by A SHOC and KDP violate the Lanham Act, give rise to the associated state law claims herein, deceive the general public, and provide A SHOC and KDP with an unlawful advantage over its competitor Celsius.

**THE INFRINGING TRADE DRESS OF A SHOC ACCELERATOR DISTRIBUTED BY KDP**

37. Celsius front and side product labels feature Celsius’ distinctive trade dress shown below as compared to A SHOC ACCELERATOR.



38. From top of the front label to the bottom, the A SHOC ACCELERATOR product distributed by KDP copy the following distinctive features of the Celsius can label:

- a. A “NO SUGAR” callout below the rim of the top of the can;
- b. Top placement of the letter “C” logo in uppercase font, with a sloping line crossing through the outline of the letter and separating the top third of the character from the bottom two-thirds, where the top third shows a gradient blend of color shaded to match the color of the Celsius flavor in the can and to match the colors on the front of the can illustrating the flavor. The typographical symbol for degree of temperature is present to the upper left corner of the uppercase “C”, creating a Celsius temperature indicator. The

wording "CELSIUS" in black in stylized form is below the design element of the "C" logo.

- c. The flavor is indicated on the label below the "C" logo design element;
- d. A racetrack shaped benefit icon at the bottom of the can that reads "0 SUGAR";
- e. A benefit footer bar banded in black containing three call-outs concerning the product.



39. From top of the side label to the bottom, the A SHOC ACCELERATOR product distributed by KDP copy the following distinctive features of the Celsius can label:

- a. Top placement of the CELSIUS logo in the top area of the can;
- b. Racetrack shaped benefit icons positioned below the logo;



- c. Horizontal lines separating each section of the side label colored to match the flavor color;
- d. Main copy text in the center of the side label positioned below the benefit icons;
- e. Colored and dark banding wrapped around the bottom of the can.



40. KDP, the distributor of A SHOC ACCELERATOR, places A SHOC ACCLERATOR in stores at point of sale and pays slotting fees for placement at stores. The image above shows a point of sale display in a store located in Boca Raton, Florida where KDP merchandised A SHOC ACCELERATOR immediately next to Celsius.

41. A SHOC and KDP pay consideration for product placements of A SHOC ACCELERATOR next to Celsius in the same merchandising sections at point-of-sale locations like the one shown above.

42. In fact, in this specific display case, A SHOC and KDP caused A SHOC ACCELERATOR to be placed in display case slots reserved for Celsius HEAT products as indicated in the point-of-sale shelf strips immediately below the cans of A SHOC ACCELERATOR shown below.



Celsius HEAT product point-of-sale shelf strip

43. The trade dress infringement committed by A SHOC and KDP is shown vividly at point of sale where consumers view both products side by side.



**SIMILAR CAN LINE-UP APPEARANCE ON SHELF**



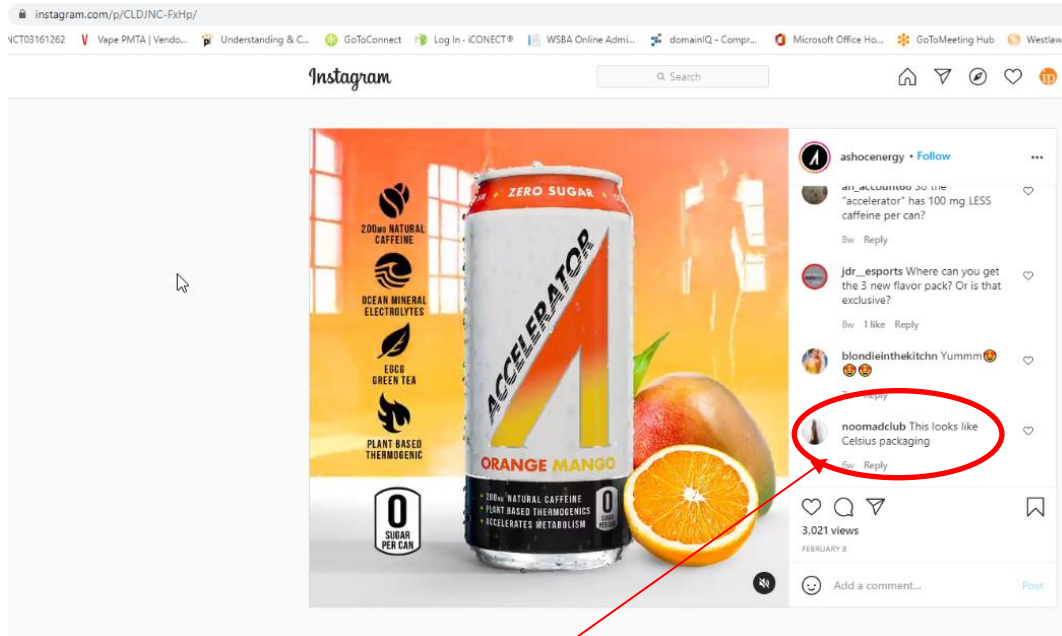


44. The overall impression created by the A SHOC can labels distributed by KDP is the same as the overall impression created by the Celsius trade dress as shown below.



45. A SHOC's ACCELERATOR distributed by KDP is likely to cause confusion, mistake or deception with Celsius as to the source or sponsorship of A SHOC's products.

46. In fact, A SHOC ACCELERATOR product distributed by KDP has already caused confusion, mistake and deception on social media as shown below.



Instagram user notes “This looks like Celsius packaging”

47. The copying of Celsius’ trade dress by A SHOC distributed by KDP creates a likelihood of confusion and has caused actual consumer confusion.

48. The Celsius trade dress is non-functional and distinctive, and that the relevant public associates the features of Celsius’ trade dress with Celsius and its high-quality products.

49. Since at least 2017, Celsius has used the can designs shown above in connection with its sale of Celsius products.

50. Celsius has extensively advertised and promoted its products with the can design shown above to the consuming public including to those within the jurisdiction of this Court.

51. Celsius’ can design is inherently distinctive and Celsius’ extensive sales and marketing have created an association and secondary meaning in the minds of the relevant public associating the can design with Celsius as a source of high-quality dietary supplement products for the active consumer.

52. As a result of Celsius' extensive sales, advertising and promotional efforts, Celsius' can design has acquired further distinctiveness and has come to be associated with the high-quality products originating from Celsius.

53. Celsius' trade dress is non-functional as none of the design elements provide a utilitarian function to the beverage itself.

54. Celsius has acquired common law rights through the use of its trade dress in connection with its products.

55. Celsius has established a valuable reputation and good-will in Celsius' trade dress by reason of its long use, extensive promotion, and marketing of products in association with its can design, and the public has come to associate this can design with Celsius.

56. Celsius' use of its can design predates any use by A SHOC or KDP.

57. A SHOC and KDP are distributing and selling its competing products to the same members of the consuming public to whom Celsius has sold its products.

**COUNT I**  
**VIOLATION OF SECTION 43(a) OF THE LANHAM ACT**  
**17 U.S.C. § 1125(a)**  
**BASED ON A SHOC ACCELERATOR'S**  
**FALSE AND MISLEADING LABEL STATEMENTS**

58. Celsius incorporates the allegations of paragraphs 1 through 57 of this Complaint as if fully set forth herein.

59. Through the actions described above, A SHOC and KDP made false and misleading descriptions and representations of fact about its products offered for sale in interstate commerce.

60. These false and misleading statements purposefully misrepresent the nature, characteristics, or qualities of A SHOC's products, including but not limited to A SHOC's claims

that its A SHOC Accelerator products are “thermogenic” and “accelerates metabolism,” when in fact they do not.

61. A SHOC and KDP lack competent and reliable scientific evidence to support the claims for A SHOC ACCELERATOR.

62. A SHOC’s and KDP’s acts, omissions, misrepresentations, practices, and/or non-disclosures concerning A SHOC ACCELERATOR violate the Federal Food, Drug and Cosmetics Act, 21 U.S.C. §§ 301, *et seq.* and its implementing regulations, including, at least, the following sections:

- a. 21 U.S.C. § 343(a), which deems food misbranded when its labeling contains statements that is false or misleading in any particular;
- b. 21 U.S.C. § 343(r)(1)(B), which characterizes the relationship of any nutrient to a disease or health-related condition;
- c. 21 U.S.C. §§ 331 and 333, which prohibits the introduction of misbranded foods into interstate commerce.

63. At all relevant times, A SHOC and KDP knew or should have known that the labeling, advertising and promotional activities for A SHOC ACCELERATOR false, and/or misleading, and/or deceptive.

64. A SHOC’s and KDP’s false and misleading statements for A SHOC ACCELERATOR have deceived, or have the tendency to deceive, a substantial segment of their intended audience about matters that are material to purchasing decisions.

65. At all relevant times, A SHOC’s and KDP’s false and/or misleading statements for A SHOC ACCELERATOR were and are made in commercial advertising and promotion in interstate commerce and violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

66. Celsius has suffered, and is likely to continue suffering, damages to its business and goodwill, the loss of sales, and profits it would have made but for A SHOC's and KDP's wrongful acts, and increased advertising and marketing costs, all in an amount to be proven at trial.

67. A SHOC's and KDP's conduct has injured Celsius and the general public, and unless enjoined, will continue to cause irreparable harm to Celsius and the general public.

68. The balance of equities and the public interest favor enjoining A SHOC's and KDP's unlawful conduct. Celsius is therefore entitled to equitable relief including injunctive relief as set forth in its Prayer for Relief.

**COUNT II**  
**VIOLATION OF SECTION 43(a) OF THE LANHAM ACT**  
**17 U.S.C. § 1125(a)**  
**BASED ON A SHOC ACCELERATOR'S**  
**INFRINGEMENT OF CELSIUS' TRADE DRESS**

69. Celsius incorporates the allegations of paragraphs 1 through 57 of this Complaint as if fully set forth herein.

70. A SHOC's sales and marketing of its competing A SHOC ACCELERATOR products using the infringing trade dress of Celsius is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of A SHOC ACCELERATOR and thus constitutes trade dress infringement of Celsius' federally protected trade dress described and shown above.

71. KDP's distribution of A SHOC's competing A SHOC ACCELERATOR product using the infringing trade dress of Celsius in commerce is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of A SHOC ACCELERATOR and thus

constitutes trade dress infringement of Celsius' federally protected trade dress described and shown above.

72. A SHOC and KDP disseminated its infringing trade dress in commercial advertising and promotion in interstate commerce in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

73. Celsius has suffered, and is likely to continue suffering, damages to its business and goodwill, the loss of sales, and profits it would have made but for A SHOC's and KDP's wrongful acts, and increased advertising and marketing costs, all in an amount to be proven at trial.

74. A SHOC's and KDP's conduct has injured Celsius and the general public, and unless enjoined, will continue to cause irreparable harm to Celsius and the general public.

75. The balance of equities and the public interest favor enjoining A SHOC and KDP's unlawful conduct. Celsius is therefore entitled to equitable relief including injunctive relief as set forth in its Prayer for Relief.

**COUNT III**  
**VIOLATION OF CAL. BUS. PROF. CODE § 17200**  
**CALIFORNIA UNFAIR COMPETITION LAW**  
**UNLAWFUL BUSINESS PRACTICES**  
**BASED ON A SHOC ACCELERATOR'S**  
**FALSE AND MISLEADING LABEL STATEMENTS**

76. Celsius incorporates the allegations of paragraphs 1 through 57 of this Complaint as if fully set forth herein.

77. The California Unfair Competition Law ("UCL") defines unfair business competition to include any "unlawful, unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal. Bus. Prof. Code § 17200.

78. KDP and A SHOC sell and distribute A SHOC ACCELERATOR in California where Celsius is also sold.

79. A SHOC's and KDP's acts, omissions, misrepresentations, practices, and/or non-disclosures concerning A SHOC ACCELERATOR committed in California constitute "unlawful" business practices and acts in that they violate the Federal Food, Drug and Cosmetics Act, 21 U.S.C. §§ 301, *et seq.* and its implementing regulations, including, at least, the following sections:

- a. 21 U.S.C. § 343(a), which deems food misbranded when its labeling contains statements that is false or misleading in any particular;
- b. 21 U.S.C. § 343(r)(1)(B), which characterizes the relationship of any nutrient to a disease or health-related condition;
- c. 21 U.S.C. §§ 331 and 333, which prohibits the introduction of misbranded foods into interstate commerce.

80. California's Sherman Food, Drug, and Cosmetic Law ("Sherman Law") prohibits the misbranding of food. Cal. Health & Safety Code § 109875 *et seq.* The Sherman Law incorporates all food labeling regulations and any amendments to those regulations adopted pursuant to the Food, Drug, and Cosmetic Act of 1938 as the food labeling regulations of California. Cal. Health & Safety Code §§ 110100(a), 110665, and 110670.

81. A SHOC and KDP violated both 21 U.S.C. § 343(a)(1) and Cal. Health & Safety Code § 110660 because "any food is misbranded if its labeling is false or misleading in any particular."



82. A SHOC and KDP violated, and continue to violate Sherman Law, thus violating and continuing to violate the “unlawful” prong of the UCL through the false labeling of its product.

83. By committing the unlawful acts and practices alleged above, A SHOC and KDP have engaged, and continue to be engaged, in unlawful business practices within the meaning of California Business and Professions Code § 17200.

84. A SHOC’s and KDP’s conduct injured Celsius and the general public, and unless enjoined, will continue to cause irreparable harm to Celsius and the general public.

85. The balance of equities and the public interest favor enjoining A SHOC’s and KDP’s unlawful conduct. Celsius is therefore entitled to equitable relief including injunctive relief as set forth in its Prayer for Relief.

**COUNT IV**  
**VIOLATION OF CAL. BUS. PROF. CODE § 17200**  
**CALIFORNIA UNFAIR COMPETITION LAW**  
**BASED ON A SHOC ACCELERATOR’S**  
**INFRINGEMENT OF CELSIUS’ TRADE DRESS**

86. Celsius incorporates the allegations of paragraphs 1 through 57 of this Complaint as if fully set forth herein.

87. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. Prof. Code § 17200.

88. KDP and A SHOC sell and distribute A SHOC ACCELERATOR in California where Celsius is also sold.

89. A SHOC's sales and marketing of its competing A SHOC ACCELERATOR products in California using the infringing trade dress of Celsius in commercial advertising and promotion in interstate commerce violates California Business & Professions Code § 17200.

90. KDP's distribution of A SHOC's competing A SHOC ACCELERATOR product using the infringing trade dress of Celsius in commercial advertising and promotion in interstate commerce violates California Business & Professions Code § 17200.

91. A SHOC and KDP violate, and continue to violate, the Lanham Act and the UCL, thus violating and continuing to violate the "unlawful" prong of the UCL using infringing trade dress to market and distribute A SHOC's competing A SHOC ACCELERATOR product.

92. A SHOC and KDP have violated, and continue to violate, the "unfair" prong of the UCL using infringing trade dress to market and distribute A SHOC's competing A SHOC ACCELERATOR product.

93. The gravity of the harm to Celsius resulting from such unfair acts and practices outweighs any conceivable reasons, justifications, or motives of A SHOC and KDP for engaging in such deceptive acts and practices.

94. By committing the acts and practices alleged above, A SHOC and KDP have engaged, and continued to engage, in unfair business practices within the meaning of California Business and Professions Code §§ 17200, *et seq.*

95. Celsius has suffered, and is likely to continue suffering, damages to its business and goodwill, the loss of sales, and profits it would have made but for A SHOC's and KDP's wrongful acts, and increased advertising and marketing costs, all in an amount to be proven at trial.

96. A SHOC's and KDP's conduct has injured Celsius and the general public, and unless enjoined, will continue to cause irreparable harm to Celsius and the general public.

97. The balance of equities and the public interest favor enjoining A SHOC's and KDP's unlawful conduct. Celsius is therefore entitled to equitable relief including injunctive relief as set forth in its Prayer for Relief.

**COUNT VII**  
**VIOLATION OF CAL. BUS. PROF. CODE § 17500**  
**CALIFORNIA UNFAIR COMPETITION LAW**  
**FRAUDULENT BUSINESS PRACTICES**  
**BASED ON A SHOC ACCELERATOR'S**  
**DECEPTIVE, FALSE AND UNTRUE ADVERTISING**

98. Celsius incorporates the allegations of paragraphs 1 through 57 of this Complaint as if fully set forth herein.

99. The UCL prohibits the dissemination of deceptive, untrue, or misleading advertising statements that actually deceive or are likely to deceive members of the consuming public. California Business & Professions Code § 17500.

100. KDP and A SHOC sell, distribute and advertise A SHOC ACCELERATOR in California where Celsius is also sold.

101. A SHOC and KDP disseminated deceptive, untrue, or misleading statements about A SHOC ACCELERATOR by making false and misleading statements in advertising and on the labels for A SHOC ACCELERATOR that violate the Federal Food, Drug and Cosmetics Act, 21 U.S.C. §§ 301, *et seq.* and its implementing regulations, including, at least, the following sections:

- a. 21 U.S.C. § 343(a), which deems food misbranded when its labeling contains statements that is false or misleading in any particular;

- b. 21 U.S.C. § 343(r)(1)(B), which characterizes the relationship of any nutrient to a disease or health-related condition;
- c. 21 U.S.C. §§ 331 and 333, which prohibits the introduction of misbranded foods into interstate commerce.

102. California’s Sherman Food, Drug, and Cosmetic Law (“Sherman Law”) prohibits the misbranding of food. Cal. Health & Safety Code § 109875 *et seq.* The Sherman Law incorporates all food labeling regulations and any amendments to those regulations adopted pursuant to the Food, Drug, and Cosmetic Act of 1938 as the food labeling regulations of California. Cal. Health & Safety Code §§ 110100(a), 110665, and 110670.

103. A SHOC and KDP violated both 21 U.S.C. § 343(a)(1) and Cal. Health & Safety Code § 110660 because “any food is misbranded if its labeling is false or misleading in any particular.”

104. A SHOC and KDP violated, and continue to violate Sherman Law, thus violating and continuing to violate California Business & Professions Code § 17500 by disseminating the deceptive, untrue, or misleading advertising statements for A SHOC ACCELERATOR.

105. A SHOC’s conduct has injured Celsius and the general public, and unless enjoined, will continue to cause irreparable harm to Celsius and the general public.

106. The balance of equities and the public interest favor enjoining A SHOC’s unlawful conduct. Celsius is therefore entitled to equitable relief including injunctive relief as set forth in its Prayer for Relief.

**COUNT XI**  
**VIOLATION OF THE FLORIDA UNFAIR AND DECEPTIVE**  
**TRADE PRACTICES ACT**  
**BASED ON A SHOC ACCELERATOR’S**  
**FALSE AND MISLEADING LABEL STATEMENTS**

107. Celsius incorporates the allegations of paragraphs 1 through 57 of this Complaint as if fully set forth herein.

108. The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) broadly declares that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce” are unlawful. Fla. Stat., § 501.204(1).

109. KDP and A SHOC sell, distribute and advertise A SHOC ACCELERATOR in Florida where Celsius is also sold.

110. Through the actions described above, A SHOC and KDP made false and misleading descriptions and representations of fact about A SHOC ACCELERATOR offered for sale in Florida in violation of FDUTPA.

111. These false and misleading statements purposefully misrepresent the nature, characteristics, or qualities of A SHOC’s products, including but not limited to A SHOC’s claims that its A SHOC ACCELERATOR products are “thermogenic” and “accelerates metabolism,” when in fact they do not.

112. A SHOC and KDP lack competent and reliable scientific evidence to support the claims for A SHOC ACCELERATOR.

113. At all relevant times, A SHOC and KDP knew or should have known that the labeling, advertising and promotional activities for A SHOC ACCELERATOR false, and/or misleading, and/or deceptive.

114. A SHOC’s and KDP’s false and misleading statements for A SHOC ACCELERATOR have deceived, or have the tendency to deceive, a substantial segment of their intended audience about matters that are material to purchasing decisions.

115. At all relevant times, A SHOC's and KDP's false and/or misleading statements for A SHOC ACCELERATOR were and are made in commercial advertising and promotion in Florida and violate FDUTPA.

116. Celsius has suffered, and is likely to continue suffering, damages to its business and goodwill, the loss of sales, and profits it would have made but for A SHOC's and KDP's wrongful acts, and increased advertising and marketing costs, all in an amount to be proven at trial.

117. A SHOC's and KDP's conduct has injured Celsius and the general public, and unless enjoined, will continue to cause irreparable harm to Celsius and the general public.

118. The balance of equities and the public interest favor enjoining A SHOC and KDP's unlawful conduct. Celsius is therefore entitled to equitable relief including injunctive relief as set forth in its Prayer for Relief.

**COUNT XII**  
**VIOLATION OF THE FLORIDA UNFAIR AND DECEPTIVE**  
**TRADE PRACTICES ACT**  
**BASED ON A SHOC ACCELERATOR'S**  
**INFRINGEMENT OF CELSIUS' TRADE DRESS**

119. Celsius incorporates the allegations of paragraphs 1 through 57 of this Complaint as if fully set forth herein.

120. FDUTPA broadly declares that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce" are unlawful. Fla. Stat., § 501.204(1).

121. KDP and A SHOC sell and distribute A SHOC ACCELERATOR in Florida where Celsius is also sold.

122. A SHOC's sales and marketing of its competing A SHOC ACCELERATOR products in Florida using the infringing trade dress of Celsius in commercial advertising and promotion in interstate commerce violates FDUTPA.

123. KDP's distribution of A SHOC's competing A SHOC ACCELERATOR product using the infringing trade dress of Celsius in commercial advertising and promotion in interstate commerce violates FDUTPA.

124. The gravity of the harm to Celsius resulting from such unfair acts and practices outweighs any conceivable reasons, justifications, or motives of A SHOC and KDP for engaging in such deceptive acts and practices.

125. Unless enjoined, A SHOC and KDP's unfair and deceptive practices will continue to deceive the public and injure competition.

126. A SHOC's and KDP's conduct has injured Celsius and the general public, and unless enjoined, will continue to cause irreparable harm to Celsius and the general public.

127. The balance of equities and the public interest favor enjoining A SHOC's and KDP's unlawful conduct. Celsius is therefore entitled to equitable relief including injunctive relief as set forth in its Prayer for Relief.

**COUNT VIII**  
**COMMON LAW UNFAIR COMPETITION**  
**IN VIOLATION OF CALIFORNIA COMMON LAW**

128. Celsius incorporates the allegations of paragraphs 1 through 57 of this Complaint as if fully set forth herein.

129. A SHOC's and KDP's activities complained of herein constitute unfair methods of competition in violation of the common law of the state of California.



130. A SHOC's and KDP's conduct has injured Celsius and the general public, and unless enjoined, will continue to cause irreparable harm to Celsius and the general public.

131. The balance of equities and the public interest favor enjoining A SHOC's and KDP's unlawful conduct. Celsius is therefore entitled to equitable relief including injunctive relief as set forth in its Prayer for Relief.

**COUNT X**  
**COMMON LAW UNFAIR COMPETITION**  
**IN VIOLATION OF FLORIDA COMMON LAW**

132. Celsius incorporates the allegations of paragraphs 1 through 57 of this Complaint as if fully set forth herein.

133. A SHOC's and KDP's activities complained of herein constitute unfair methods of competition in violation of the common law of the state of Florida.

134. A SHOC's and KDP's conduct has injured Celsius and the general public, and unless enjoined, will continue to cause irreparable harm to Celsius and the general public.

135. The balance of equities and the public interest favor enjoining A SHOC's and KDP's unlawful conduct. Celsius is therefore entitled to equitable relief including injunctive relief as set forth in its Prayer for Relief.

**PRAYER FOR RELIEF**

WHEREFORE, THE Plaintiff prays for judgment against the defendants A SHOC Beverage, LLC and Keurig Dr Pepper Inc. that:

- a. Find that defendants have violated the Lanham Act, 15 U.S.C. § 1125(a), Cal. Bus. Prof. Code §§ 17200 and 17500, and FDUTPA, and the common law of the states of Florida and California;
- b. Enter judgment for Celsius on all counts of the complaint;

- c. Temporarily, preliminarily, and permanently enjoin, restrain, and forbid defendants, and all of defendants' principals, servants, officers, directors, partners, agents, representatives, shareholders, employees, affiliates, successors, assignees, and all others acting in privity, concert, or participation with defendants, from further violations of 15 U.S.C. § 1125(a), Cal. Bus. Prof. Code §§ 17200 and 17500, and FDUTPA, and the common law of the states of Florida and California;
- d. Award plaintiff actual damages in an amount to be proved at trial and/or as otherwise provided by law;
- e. Award plaintiff prejudgment interest;
- f. Award plaintiff its reasonable attorneys' fees and costs of suit incurred herein based upon the statutes sued upon; and
- g. Award such other and further relief as is just and proper.

**JURY DEMAND**

Plaintiff Celsius Holdings, Inc. hereby demands a trial by jury of all issues so triable.

Dated: April 20, 2021

Respectfully submitted,

/s/ Joel B. Rothman

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