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10 *Attorneys for ThermoLife International, LLC*

11  
12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF ARIZONA

14 THERMOLIFE INTERNATIONAL, LLC,  
15 an Arizona limited liability company,

Case No.

16 Plaintiff,

**COMPLAINT**

17 vs.

(Jury Trial Demanded)

18 BPI SPORTS, LLC, a Florida limited  
19 liability company,

20 Defendant.

21 For its Complaint, Plaintiff ThermoLife International, LLC (“ThermoLife”) alleges the following:

22 **NATURE OF THE CASE**

23 1. Defendant BPI Sports, LLC (“BPI”) is a market leader in Branch Chain  
24 Amino Acid (“BCAA”) supplement sales. BCAAs are the three essential amino acids  
25 used to build lean muscle and recover from exercise: leucine, isoleucine and valine. They  
26 are “essential” because your body does not make them on its own—you have to get them  
27 from food and/or dietary supplements. BPI’s top-selling BCAA products include: Best  
28

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1 BCAA, BCAA w/Energy, BCAA Shredded, Keto Aminos, Best Aminos, and Essential 9  
2 (together these products are referred to herein as “the BCAA Products”).

3 2. BPI’s market dominance in BCAA supplementation results from the fact  
4 that BPI advertises what it claims are “peptide linked” “bonded amino acid” BCAAs that  
5 form the basis of what BPI calls “Oligopeptide-Enzymatic Technology.” BPI even claims  
6 it has created tetrapeptide bonded BCAAs.<sup>1</sup> However, as explained in detail below, BPI’s  
7 claims are all lies.

8 3. Testing on BPI’s products, conducted by an independent third-party lab,  
9 has revealed that BPI’s BCAA Products do not contain “peptide linked” BCAAs, much  
10 less tetrapeptides. The BCAAs in BPI’s products are “free form” BCAAs. BPI’s products  
11 are not unique or special; in fact, BPI’s products provide less actual BCAAs than most  
12 other BCAA products on the market and in addition to falsely advertising the type of  
13 BCAAs in their products—in many cases—BPI’s BCAA Products contain less BCAAs than  
14 BPI advertises on its product labels.

15 4. Intentionally deceiving consumers in an attempt to create a monopoly on  
16 the BCAA market, BPI has sold millions of dollars in product to consumers that believe  
17 that the BCAA Products rely on unique and superior “peptide linked” and/or “bonded  
18 amino acid” “Oligopeptide” BCAA technology.

19 5. BPI became a market leader by advertising something to consumers that  
20 none of its competitors could provide, forcing its competitors out of the BCAA market.  
21 As ThermoLife’s independent laboratory testing shows, BPI wasn’t providing “peptide  
22 linked” or “Oligopeptide bonded BCAAs” at all; it was, and it still is selling “free form”  
23 BCAAs. BPI’s willfully false advertising has afforded it a competitive advantage in the

24 <sup>1</sup> A tetrapeptide is a long chain of four amino acids bonded with a peptide bond.  
25 Similarly a dipeptide is a peptide of two amino acids bonded by an amide bond, a  
26 tripeptide is three amino acids bonded by an amide bond, and so on and so on.  
27 Synthesizing peptide bonded amino acids is prohibitively expensive. Dipeptides sell for  
28 hundreds of dollars per kilo and the price rises exponentially with longer peptide chains  
that contain more amino acids. For this reason, any dietary supplement that includes a  
peptide bonded amino acid will always cost significantly more to manufacture than a  
dietary supplement that includes free form amino acids.

1 dietary supplement marketplace for years, causing irreparable harm to its competitors,  
2 like ThermoLife and companies that source or would source BCAAs from ThermoLife.

3 6. BPI's market dominance is directly the result of its false advertising. In  
4 most industries, BPI's deception would have been detected before now, but under federal  
5 law dietary supplements are marketed and sold without a pre-approval application to the  
6 Federal Drug Administration ("FDA") to validate that the ingredient content and label  
7 claims are accurate and truthful. While the FDA oversees the dietary supplement  
8 industry, it lacks the resources to review every single product on the market; for this  
9 reason, the FDA generally only acts to remove the most egregious and most dangerous  
10 products from the market. Knowing that its BCAA Products would never fall under FDA  
11 scrutiny since the products are likely not harmful to consumers (other than the fact that  
12 consumers are harmed economically because of BPI's lies), BPI intentionally falsely  
13 advertised its products as including technology that none of its competitors could offer. In  
14 fact, the advertised Oligopeptide bonded BCAAs that BPI claims to have in its products  
15 don't exist anywhere.

16 7. Under federal law, dietary supplements and food products are considered  
17 "misbranded" if "the[ir] labeling is false and misleading in any particular." 21 U.S.C. §  
18 343(a)(1). Misbranded products, like BPI's intentionally mislabeled BCAA Products, are  
19 prohibited from being sold in interstate commerce under 21 U.S.C. § 331(a). In sum, in  
20 competition with ThermoLife, BPI is willfully and intentionally tricking consumers into  
21 purchasing BPI's falsely advertised and misbranded BCAA Products. Accordingly, all of  
22 BPI's profits earned on sales of its BCAA products are ill-gotten gains and must be  
23 disgorged.

24 **PARTIES**

25 8. Plaintiff ThermoLife is an Arizona limited liability company organized and  
26 existing under the laws of Arizona.

27 9. Defendant BPI Sports is a Florida limited liability company having its place  
28 of business at 3149 SW 42nd Street, Suite 200, in Hollywood, Florida.

**JURISDICTION AND VENUE**

1  
2 10. This Court has jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. §§  
3 1331, 1338, and 1367.

4 11. This Court has personal jurisdiction over Defendant because, *inter alia*,  
5 Defendant has falsely advertised and sold products in the District of Arizona. Upon  
6 information and belief, such sales by Defendant are substantial, continuous and  
7 systematic.

8 12. Defendant has persistent and continuous contacts with the District of  
9 Arizona, including active and regular business during the relevant time period through  
10 the sales of its products in Arizona.

11 13. Defendant has purposefully and voluntarily placed its products into the  
12 stream of commerce with the expectation that they will be purchased in the District of  
13 Arizona and the products are actually purchased in the District of Arizona.

14 14. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1395(a).

**FACTS**

**THERMOLIFE**

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16  
17 15. Ron Kramer (“Kramer”) founded ThermoLife in 1998. Prior to founding  
18 ThermoLife, Kramer opened and operated a Gold’s Gym in Santa Cruz, California.

19 16. In 1998, Kramer founded ThermoLife in order to provide the public with  
20 quality proven supplements.

21 17. ThermoLife currently holds 23 separate and distinct patents that protect its  
22 innovative development and use of ingredients in Dietary Supplements and food  
23 products.

24 18. ThermoLife holds several patents related to the use of amino acids  
25 combined with nitrates to increase athletic performance. For example, ThermoLife’s U.S.  
26 Patent No. 8,178,572 protects and covers “a method for increasing the vasodilative  
27 characteristics of amino acids in a human, the method comprising administering orally to  
28 the human a pharmaceutically effective amount of an amino acid compound consisting

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1 essentially of a nitrate of an amino acid selected from the group consisting of Arginine,  
2 Agmatine, Beta Alanine, Citrulline, Creatine, Glutamine, L-Histidine, Isoleucine,  
3 Leucine, Norvaline, Ornithine, and Valine.”

4 19. ThermoLife holds at least 15 of its patents with more than 450 claims  
5 related to novel uses of these Amino Acid/nitrate compounds and compositions in  
6 Dietary Supplements and food products.

7 20. With few exceptions, anytime an amino acid is combined with nitrate(s)  
8 and sold and marketed to consumers the product relies on ThermoLife’s patented  
9 technology.

10 21. ThermoLife holds several patents related to BCAA nitrates. These are  
11 ionically bonded compounds, in which leucine, isoleucine, or valine are bonded to a  
12 nitrate ion.

13 22. Among its other benefits, the ionic bonding of the BCAAs with the nitrate  
14 ion drastically increases the solubility of the compound, which is extremely beneficial for  
15 use in dietary supplements.

16 23. ThermoLife licenses and sells its patented BCAA nitrates for use in dietary  
17 supplement products.

18 **BPI**

19 24. BPI develops, manufactures, and markets dietary supplements focused on  
20 Sports Nutrition.

21 25. BPI was co-founded by Derek Ettinger.

22 26. Mr. Ettinger is a notorious character in the dietary supplement industry.  
23 Before founding BPI, Ettinger was sentenced to 30 months in a Federal Correctional  
24 Institution followed by 3 years of supervised release for his role in counterfeiting human  
25 growth hormone and possession with intent to distribute controlled substances.

26 27. Founded by a convicted counterfeiter, BPI has built its entire “Best BCAA”  
27 brand on a fraud. BPI is known for selling and marketing products that include four chain  
28 peptide bonded BCAAs (tetrapeptides) that BPI calls “Oligopeptide-Enzymatic

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1 Technology.” BPI’s alleged “Oligopeptide” tetrapeptide BCAAs have become incredibly  
2 popular because no other company sells these products. As explained below, the reason  
3 no company sells tetrapeptide bonded BCAAs is because the costs to manufacture such a  
4 product would be prohibitively expensive. Tetrapeptide bonded “Oligopeptide-Enzymatic  
5 Technology” BCAAs are a figment of BPI’s imagination. BPI’s BCAA Products do not  
6 include any peptide bonded BCAAs and, contrary to BPI’s advertising, they certainly do  
7 not include tetrapeptides.

8 28. BPI markets dietary supplements containing peptide bonded BCAAs as  
9 more advantageous to consumers than products containing “free form” BCAAs.

10 29. While amino acid supplementation with BCAAs has been popular for a  
11 little over a decade, BPI claims that “BCAA peptide bonded supplementation” is a new  
12 and superior development in dietary supplements.

13 30. BPI advertises that “BCAA Peptide supplementation” is advantageous  
14 because it claims that its “BCAA Oligopeptides” “act as a better transport vehicle for  
15 faster absorption.”

16 31. BPI also claims that its “Oligopeptides” “maximize muscle recovery, lean  
17 muscle building, and enhance[] onset time (which means they kick in faster).”

18 32. A peptide bond is synthesized when the carboxyl group of one amino acid  
19 molecule reacts with the amino group of the other amino acid molecule, causing the  
20 release of a molecule of water, hence the process is a dehydration synthesis reaction (also  
21 known as a condensation reaction).

22 33. Long chains of peptide bonded amino acids (between 2 and 20) are called  
23 Oligopeptides.

24 34. A tetrapeptide is a peptide, classified as an Oligopeptide, since it consists of  
25 four amino acids joined by peptide bonds.

26 35. Synthesizing peptide bonded amino acids is prohibitively expensive. For  
27 this reason, any dietary supplement that includes a peptide bonded amino acids will cost  
28 significantly more to manufacture than a dietary supplement that includes “free form”

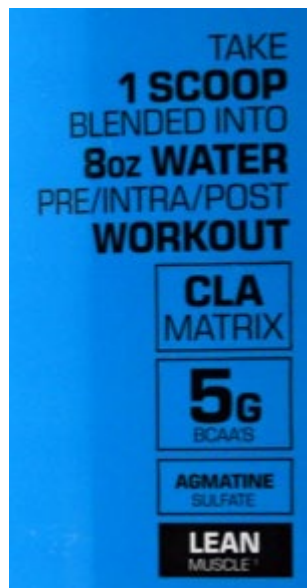
1 amino acids. BPI claims its products contain “Oligopeptide-Enzymatic Technology”  
2 which it labels as tetrapeptide BCAAs (four chain peptide bonded amino acids). Each one  
3 of these four peptide bonds would need to be individually synthesized again and again  
4 and again and again every time BPI manufactured the product. Yet, BPI sells its BCAA  
5 Products for less than other competitive BCAA products.

6 **BPI’S WILLFUL FALSE ADVERTISING**

7 **A. BPI WILLFULLY FALSELY ADVERTISES THAT ITS PRODUCTS**  
8 **INCLUDE 5 GRAMS OF BCAA.**

9 36. Five grams of BCAAs is considered an effective dose.

10 37. BPI’s top-selling “Best BCAA” product<sup>2</sup> is advertised on the product’s  
11 label to include five grams of BCAAs per scoop (1 serving).



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<sup>2</sup> BPI’s Best Aminos product is also advertised as including “5g BCAA’s” [sic].

38. A simple review of BPI's Best BCAA Supplement Facts Panel, which BPI includes on its product label, establishes that the product includes far less than the "5g BCAAs" per scoop that BPI advertises.

Amount Per Serving	% Daily Value
Glycyl-Alanyl-Lysine-L-Leucine (as Oligopeptide-Enzymatic Technology™ Glycyl-Alanyl-Lysine-L-Leucine)	2.5 g 100%
Glycyl-Alanyl-Lysine-L-Isoleucine (as Oligopeptide-Enzymatic Technology™ Glycyl-Alanyl-Lysine-L-Isoleucine)	1.25 g 100%
Glycyl-Alanyl-Lysine-L-Valine (as Oligopeptide-Enzymatic Technology™ Glycyl-Alanyl-Lysine-L-Valine)	1.25 g 100%

39. The product label lists the Oligopeptides that BPI claims are included in the product as being included in an amount between 1.25 grams and 2.5 grams. The BCAAs (Leucine, Isoleucine, and Valine) in the product are labeled as Oligopeptides. By definition, the Oligopeptides allegedly in BPI's product are not pure BCAAs; the BCAAs Oligopeptides are allegedly bonded with Glycyl-Alanyl-Lysine. Accordingly, even assuming the Oligopeptides were included in the dosages listed on the Supplement Facts panel, there would be far less than "5g BCAAs" per scoop (serving) in BPI's BCAA Products. Instead, the total BCAA content would be less than 2 grams, not the 5 grams advertised. For this reason alone, BPI's advertising is false. In fact, as explained further below, independent laboratory testing shows that a 10 gram serving of BPI's Best BCAA product only included 1.25 grams of "free form" BCAAs, far less than the 5 grams of BCAAs that BPI claims.

40. BPI has dominated the BCAA market for years by implementing a wide scale fraud on to consumers by lying about the quantity of BCAA's included in its products and by lying to consumers about the peptide bonded nature of its BCAAs. Furthermore, in a brazen attempt to further their fraud, BPI has bolstered its lies by claiming that all of its advertising and label claims were verified by an independent lab, ChromaDex. In sum, BPI has intentionally and willfully mislead consumers, resulting in consumers purchasing BPI's under-dosed products that do not include peptide bonded

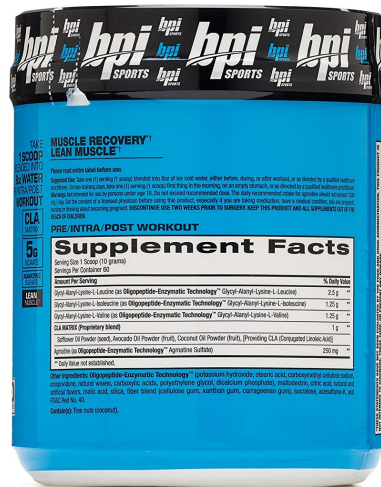


1 BCAAs or “Oligopeptide Enzymatic Technology.” BPI’s deception has also harmed its  
 2 competitors in the marketplace, like ThermoLife, who have been unable to compete with  
 3 BPI in the BCAA market as a direct result of BPI’s false marketing claims. Accordingly,  
 4 all BPI’s profits from its falsely advertised and misbranded BCAA Products are ill-gotten  
 5 gains, which much be disgorged.

6 **B. BPI WILLFULLY FALSELY ADVERTISES THAT ITS PRODUCTS**  
 7 **INCLUDE PEPTIDE BONDED BCAAS**

8 41. BPI states that the ingredients in the Best BCAA product include: Glycyl-  
 9 Alanyl-Lysine-L-Leucine (as Oligopeptide-Enzymatic Technology™ Glycyl-Alanyl-  
 10 Lysine-L-Leucine); Glycyl-Alanyl-Lysine-L-Isoleucine (as Oligopeptide-Enzymatic  
 11 Technology™ Glycyl-Alanyl-Lysine-L-Isoleucine); Glycyl-Alanyl-Lysine-L-Valine (as  
 12 Oligopeptide-Enzymatic Technology™ Glycyl-Alanyl-Lysine-L-Valine); and Agmatine  
 13 (as Oligopeptide-Enzymatic Technology™ Agmatine Sulfate). Indeed, all of these  
 14 bonded BCAAs are listed in the Supplement Facts Panel on BPI’s products’ labels.

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25 42. Accordingly, all of BPI’s BCAAs Products are marketed as including  
 26 Tetrapeptides.  
 27  
 28

1 43. BPI’s website also advertises the BCAAs in its BCAA Products as “peptide  
2 linked” and/or “peptide bonded.” For example, BPI claims that its “Best BCAA” product  
3 consists of “PEPTIDE LINKED BRANCHED CHAIN AMINOS.”

4 44. Additionally, BPI specifically advertises that the “Oligopeptide-Enzymatic  
5 Technology” BCAAs in the BCAA Products are four chain peptide-bonded  
6 (tetrapeptides) and that the bonded nature of the BCAAs provides benefits to the end  
7 consumer that are not available from “free form” amino acids.

8 45. Marketing its products as superior to its competitors, BPI has sold many  
9 millions of dollars in product to consumers by deceptively advertising that their BCAA  
10 Products rely on a unique and superior bonded form of BCAAs, which BPI terms  
11 “Oligopeptide Enzymatic Technology.”

12 46. BPI specifically advertises on its website that the peptide-bonded nature of  
13 the BCAAs in its BCAA Products improves the efficacy of its product(s). BPI describes  
14 its Best BCAA product as including a “bonded chain of amino acids to help you recover  
15 faster, preserve lean muscle mass, and improve exercise performance.”

16 47. BPI further advertises on its website that its BCAA products include  
17 “Oligopeptide Enzymatic Technology (bonded chain of leucine, isoleucine, and valine)  
18 acts as a better transport vehicle for faster absorption and recovery.”

19 48. Furthermore, BPI has lauded the bonded nature of its BCAAs many times  
20 on industry message boards.

21 49. One of the most popular and most relied upon message boards for dietary  
22 supplement information is the Bodybuilding.com message board.

23 50. For example, in a post on bodybuilding.com, dated December 4, 2014,  
24 BPI’s Vice President of Sales boasts about the superiority of the Oligopeptide bonded  
25 BCAAs BPI claims to have in its products:

26 Comparing BPI Sports’ Best BCAA™ to standard or typical  
27 free form branched-chain amino acids is like comparing  
28 apples and oranges – literally. Standard or typical branched-  
chain amino acids are no more than free form amino acids in

1 some weight-to-weight ratio. Not even in molecular-weight-  
2 to-weight ratio, by the way, which would make better  
3 scientific sense than straight weight-to-weight.

4 In reality it has little to do with how much volume or weight  
5 you ingest of something – it has everything to do with how  
6 much of what you ingest gets taken up and utilized in the  
7 body. This is “pharmacokinetics”, and it’s the only thing that  
8 matters in this discussion.

9 Let’s start with the knowledge that despite their central role in  
10 cellular metabolism, amino acids can be inefficiently  
11 absorbed by the digestive tract, for a multitude of factors,  
12 chiefly including poor solubility in the acidic environment of  
13 the stomach. Simply – it’s about how aminos are absorbed  
14 and taken up that determine whether or not than can have an  
15 impact on endurance, muscle performance, and muscle mass.  
16 This is what pharmacokinetics is all about ... about whether  
17 or not the amino acid(s) can get absorbed and taken up and  
18 effectively utilized. Which is why every compound ever  
19 looked at for pharmaceutical development is examined for its  
20 pharmacokinetics. Meaning what happens to the compound  
21 from the time it is ingested to the time it is eliminated.

22 When Best BCAA™ was being developed, the R&D team  
23 focused its energies on pharmacokinetics of BCAAs, and how  
24 best to take advantage of emerging science – the newest and  
25 the best for creating a product that would produce a positive  
26 impact on endurance, muscle performance, and muscle mass.

27 Best BCAA™ is based on the science of oligopeptides as a  
28 superior mechanism for improving the absorption and uptake  
of BCAAs. Oligopeptides, by way of background, are  
molecules that are linked in a polypeptide chain. In this linked  
polypeptide chain cutting edge research shows that there is  
higher plasma amino acid concentrations and greater  
homogeneity of amino acid absorption. A typical, and  
excellent example of this, is the study, “Pharmacokinetic  
assessment of an oligopeptide-based enteral formula in  
abdominal surgery patients” published in the American  
Journal of Clinical Nutrition. This is further supported by  
another oligopeptide research paper from Germany, and  
published in the German medical journal, Leber, Magen,  
Darm, “Comparison of enteral resorption rates of free amino  
acids and oligopeptides”, which documents that while there is  
an amino acid transport system, there is also a transport

1 system for peptides, which shows marked advantages as  
2 compared to amino acids in free form, which use the standard  
3 amino acid transport system. Researchers theorize that this is  
4 because the peptide carrier system has a ‘bigger transport  
5 capacity than the amino acid transport system.’ Another  
6 study, “Characterization and nutritional significance of  
7 peptide transport in man”, published in the Annals of  
8 Nutrition and Metabolism, consistently found that ‘amino  
9 acid residues were absorbed more rapidly from di- and  
10 tripeptides than from free amino acids’, and that  
11 ‘oligopeptide-based nitrogen sources’ are rapidly assimilated.

12 .....So there ya have it!

13 51. As the December 4, 2014 post shows, BPI has consistently and repeatedly  
14 defended the dosage of BCAA in its product by touting the benefits of peptide bonded  
15 BCAAs: “based on the science of oligopeptides as a superior mechanism for improving  
16 the absorption and uptake of BCAAs. Oligopeptides, by way of background, are  
17 molecules that are linked in a polypeptide chain. In this linked polypeptide chain cutting  
18 edge research shows that there is higher plasma amino acid concentrations and greater  
19 homogeneity of amino acid absorption.” BPI has also repeatedly emphasized the  
20 superiority of peptide-bonded amino acids: “Comparing BPI Sports’ Best BCAA to  
21 standard or typical free form branched-chain amino acids is like comparing apples and  
22 oranges – literally. Standard or typical branched-chain amino acids are no more than free  
23 form amino acids in some weight-to-weight ratio.”

24 52. Additionally, in an April 2015 post, a user named “TheFugitive” who  
25 identified himself as a “BPI Sports – Forum Director” posted some of the same content to  
26 a different Bodybuilding.com thread. In that post, the BPI Sports representative stated  
27 that the “science on the way in which compounds such as these are absorbed and  
28 transported in humans would certainly suggest” that “oligopeptide BCAAs [are] superior  
to free form BCAAs.”

53. In sum, BPI’s advertising repeatedly touts that Best BCAA, and all BPI  
BCAA Products, contain peptide-bonded BCAAs and that peptide-bonded BCAAs are

1 superior to “free form” BCAA. BPI further claims that its “Oligopeptide-Enzymatic  
2 Technology” BCAA products include tetrapeptides.

3 54. In September 2018, ThermoLife purchased the BCAA Products from BPI’s  
4 website and Amazon.com had the products shipped directly to Covance, Inc. (“Covance”)  
5 for laboratory testing.

6 55. Contrary to BPI’s advertising, Covance’s independent laboratory results  
7 prove that BPI’s BCAA Products do not contain any peptide-bonded BCAAs, much less  
8 the tetrapeptide bonded BCAAs that BPI fraudulently claims are in its products.

9 56. In fact, none of the BCAA Products contain Oligopeptides, tetrapeptides, or  
10 any bonded BCAAs, as stated on BPI’s product labels and advertisements. ThermoLife  
11 has attached the Certificates of Analysis for the testing conducted on the BCAA Products  
12 hereto as Exhibits 1-6. The test results for each of the products show that each of the  
13 BCAAs (leucine, isoleucine and valine) are present in their unbonded form. These  
14 products all contain only “free from” BCAA.

15 57. In sum, BPI has dominated the BCAA market for years by lying to  
16 consumers about the bonded nature of its BCAAs as well as the quantity of BCAA’s  
17 included in its products. And BPI’s lies have been propped up by its claim that all of its  
18 advertising and label claims were verified by an independent lab, ChromaDex. BPI has  
19 intentionally and willfully mislead consumers, resulting in consumers purchasing BPI’s  
20 under-dosed products that do not include peptide bonded BCAAs or  
21 “Oligopeptide Enzymatic Technology.” BPI’s deception has also harmed its competitors  
22 in the marketplace, like ThermoLife, who are unable to compete with BPI in the BCAA  
23 market as a direct result of BPI’s false marketing claims. Accordingly, all BPI’s profits  
24 from its falsely advertised and misbranded BCAA Products are ill-gotten gains, which  
25 much be disgorged.

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**C. BPI WILLFULLY FALSELY ADVERTISES THAT ITS PRODUCTS ARE INDEPENDENTLY VERIFIED BY CHROMADEx.**

1  
2 58. After falsely touting the benefits, the “bonded” nature, and the 5-gram  
3 dosage of BCAAs in its Products, BPI also claims that the “Oligopeptide-Enzymatic  
4 Technology” tetrapeptide BCAA ingredients in its Products have been independently  
5 verified by an independent lab.

6 59. Most of BPI’s products, including its top-selling Best BCAAs, are labeled  
7 with a “ChromaDex Quality Verified Seal.”

8 60. ChromaDex is an independent third-party laboratory that frequently  
9 conducts laboratory testing of dietary supplements.

10 61. According to BPI, the ChromaDex seal reflects an “unbiased third-party  
11 verification” of the ingredients in its products. BPI’s website advertises that  
12 “ChromaDex’s stringent testing procedures will ensure that BPI products meet full  
13 specification for ingredient identity, contaminants, heavy metals and microbials.”

14 62. BPI further advertises on the “ingredients” page for the Best BCAA  
15 product that “BEST BCAA has gone through the rigorous ChromaDex quality  
16 verification program, which ensures that it is of the highest quality possible.”

17 63. As described by BPI co-founder, James Grage, on the BPI website, the  
18 ChromaDex seal is a “total game changer” because “[y]ou as a consumer will no longer  
19 have to guess.”

20 64. BPI even advertises on its website that, “You can be confident that if it has  
21 a BPI label on it, what’s on the label – matches what’s in the bottle.”

22 65. BPI’s website also includes a promotional video embedded on its product  
23 sales pages that touts the ChromaDex Quality Verified Seal. In that video, BPI’s co-  
24 founder James Grage, explains:

25 Every supplement company out there is going to  
26 promise the best results and the highest quality, but  
27 saying it just isn’t enough. Companies need to put their  
28 money where their mouth is. You have every right to  
know exactly what you are putting in your body. And  
that is why we went to LabCor, a division of

1 ChromaDex, one of the most respected names in  
2 analytical third-party product testing. Now you don't  
3 have to take our word for it. When you see that gold  
4 ChromaDex seal you know you're getting the quality  
5 you deserve; it isn't just a guarantee, it's a symbol of  
6 our commitment to you and our goals.

7 66. BPI is the only dietary supplement company that has the ChromaDex  
8 Quality Verified Seal on their products. BPI uses this designation to distinguish itself  
9 from its competitors, like ThermoLife. Indeed, the ChromaDex Quality Verified Seal  
10 dissuades competitors or consumers from actually testing BPI's products to verify BPI's  
11 advertising claims; after all, BPI's advertising is supposed to be independently verified  
12 by ChromaDex.

13 67. Far from being "verified by ChromaDex", as BPI's advertising and product  
14 labels claim, BPI's advertising and product labels have now been proven false.

15 68. Ironically, BPI's lies were proven by the same laboratory that BPI claims  
16 verified BPI's label claims. ChromaDex was purchased by Covance in August 2017. It  
17 was Covance (who now owns ChromaDex) that independently tested BPI's products for  
18 ThermoLife and proved BPI's lies.

19 69. As the manufacturer and seller of these products, BPI is aware of the  
20 BCAA content in each of its products; in fact, BPI determines the type and the amount of  
21 BCAAs used in these products. As such, BPI is fully aware that its products do not  
22 contain any peptide-bonded BCAAs. BPI's advertising is knowingly and willfully false.

23 70. In sum, BPI has dominated the BCAA market for years by lying to  
24 consumers about the bonded nature of its BCAAs as well as the quantity of BCAA's  
25 included in its products. And BPI's lies have been propped up by its claim that all of its  
26 advertising and label claims were verified by an independent lab, ChromaDex. That same  
27 lab has now determined that BPI's products are falsely advertised. BPI's BCAA Products  
28 do not include peptide-bonded BCAAs, much less four peptide bonds (tetrapeptides). BPI  
has intentionally and willfully mislead consumers, resulting in consumers purchasing  
BPI's under-dosed products that do not include peptide bonded BCAAs or

1 “Oligopeptide Enzymatic Technology.” BPI’s deception has also harmed its competitors  
2 in the marketplace, like ThermoLife, who are have been unable to compete with BPI in  
3 the BCAA market as a direct result of BPI’s false marketing claims. Accordingly, all  
4 BPI’s profits from its falsely advertised and misbranded BCAA Products are ill-gotten  
5 gains, which much be disgorged.

6 **D. BPI’S INTENTIONAL FALSE ADVERTISING ON ITS PRODUCT**  
7 **LABELS RENDERS ALL OF ITS BCAA PRODUCTS “MISBRANDED”**

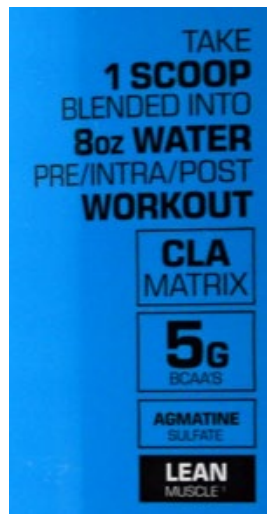
8 71. BPI markets all of its BCAA Products as Dietary Supplements.

9 72. The Federal Government regulates the sale of Dietary Supplements.

10 73. 21 U.S.C. § 343(a) states that a Food or Dietary Supplement<sup>3</sup> shall be  
11 deemed “misbranded” “if ... it’s labeling is false or misleading in any particular ... .”

12 74. Motivated by greed, in an effort to defraud consumers, BPI intentionally  
13 put false and misleading information about the ingredients in its products in the  
14 Supplement Facts Panel on the labels of its BCAA Products. Accordingly, as proven by  
15 independent laboratory analysis, all of these products undeniably include labels that are  
16 “false or misleading in any particular.”

17 75. In fact, BPI’s false and misleading label could not be more apparent. BPI’s  
18 product labels falsely claim in multiple locations that its Best BCAA includes BCAA  
19 Oligopetides.



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<sup>3</sup> Dietary Supplements are considered a “Food” under 21 U.S.C. § 321(ff).



Supplement Facts		
Serving Size 1 Scoop (10 grams)		
Servings Per Container 30		
Amount Per Serving	% Daily Value	
Calories	10	
Total Carbohydrate	2g	1% <sup>†</sup>
Vitamin C (as calcium ascorbate)	60 mg	100%
HIGH-PERFORMANCE ELECTROLYTE AND HYDRATION MATRIX		
Calcium (as calcium phosphate)	100 mg	10%
Phosphorus (as calcium phosphate tribasic)	80 mg	8%
Magnesium (as magnesium sulfate)	100 mg	25%
Chloride (as sodium chloride)	154 mg	4%
Sodium (as sodium chloride)	100 mg	4%
Potassium (as potassium citrate)	400 mg	10%
<b>Oligopeptide-Enzymatic Technology™ Glycyl-Alanyl-Lysine-L-Leucine</b>	2.5 g	**
<b>Oligopeptide-Enzymatic Technology™ Glycyl-Alanyl-Lysine-L-Isoleucine</b>	1.25 g	**
<b>Oligopeptide-Enzymatic Technology™ Glycyl-Alanyl-Lysine-L-Valine</b>	1.25 g	**
<b>LIPOSOMAL ENERGY &amp; FOCUS MATRIX (Proprietary blend)</b>	500 mg	**
Green Tea extract ( <i>Camellia sinensis</i> ) (98% Polyphenols) (leaf, 45% EGCG), White Tea extract (leaf, 50% EGCG), Black Tea extract (leaf, 50% EGCG), L-Carnitine (as L-carnitine tartrate), Theobromine, Phosphatidylcholine		
<b>Oligopeptide-Enzymatic Technology™ Glycyl-Alanyl-Lysine-L-Glutamine</b>	1 g	**
<sup>†</sup> Percent Daily Value based on a 2,000 calorie diet.		
** Daily Value not established.		



76. BPI’s labels also falsely claim that Best BCAA include 5 grams of BCAAs per serving, which (as explained above) is false.

77. BPI’s products include less than the 5 grams of BCAAs per scoop (serving) that BPI advertises.

78. Accordingly, under Federal Law, the BPI BCAA Products in this lawsuit are all “misbranded.”

79. 21 U.S.C. § 331(a) prohibits “The introduction or delivery for introduction into interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded.”

80. Because all of BPI’s BCAA Products are clearly misbranded, BPI is prohibited from selling these products as Dietary Supplements in interstate commerce.

81. Accordingly, BPI’s intentionally mislabeled and misbranded products should never have been in the marketplace, nor entitled to any sales.

82. BPI has willfully and intentionally deceived consumers by selling falsely labeled, falsely advertised, misbranded and prohibited products in interstate commerce and any revenue earned from the sale of these misbranded products is ill-gotten gains and must be disgorged.

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**FIRST CAUSE OF ACTION**

**False Advertising – 15 U.S.C. § 1125(a)(1)(B)**

1  
2  
3 83. Plaintiff realleges and incorporates by reference each and every allegation  
4 of this Complaint as if fully set forth herein.

5 84. As alleged above, Defendant has purposefully made false and misleading  
6 statements of fact concerning its BCAA Products in commercial advertisements,  
7 including the false statements identified above.

8 85. Defendant’s deception is material, in that it is likely to influence the  
9 purchasing decision of the public for whom it was intended.

10 86. Defendant has introduced its false and misleading statements into interstate  
11 commerce via marketing and advertising on its own website and shipment of its products  
12 and advertising brochures to customers nationwide.

13 87. ThermoLife has been injured as a result of Defendant’s false statements.

14 88. ThermoLife has suffered a commercial injury based upon Defendant’s  
15 misrepresentations.

16 89. ThermoLife’s injury is competitive, i.e., harmful to the ThermoLife’s  
17 ability to compete in the dietary supplement market.

18 90. Defendant’s conduct as alleged is willful and exceptional, such that  
19 ThermoLife is entitled to an award of treble damages and its attorneys’ fees.

**SECOND CAUSE OF ACTION**

**Common Law Unfair Competition**

20  
21  
22 91. Plaintiff realleges and incorporates by reference each and every allegation  
23 of this Complaint as if fully set forth herein.

24 92. Defendant’s conduct constitutes unfair competition under the common law  
25 of the state of Arizona.

26 93. Defendant has unfairly competed with ThermoLife by using false and  
27 misleading advertising statements to market and sell products that compete with  
28

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1 ThermoLife, ThermoLife’s potential customers, and the companies that purchase licenses  
2 from ThermoLife for its BCAA nitrate technology.

3 94. Defendant has also unfairly competed with ThermoLife by employing a  
4 marketing strategy that falsely suggests that: (1) Defendant’s products utilize a unique  
5 BCAA bonding technology, which suggests that no other BCAA products are comparable  
6 or can achieve the same or similar results; and (2) Defendant’s products are the only  
7 product bearing the “ChromaDex® Quality Verified Seal,” which encourages customers  
8 to rely on Defendant’s statements about the content of the products.

9 95. Upon information and belief, Defendant’s statements allow Defendant to  
10 compete with ThermoLife, when its products otherwise would not.

11 96. Defendant’s unfair competition with ThermoLife has caused harm directly  
12 to ThermoLife.

13 **THIRD CLAIM FOR RELIEF**

14 **(Civil Conspiracy)**

15 97. Plaintiff realleges and incorporates herein by reference each and every  
16 allegation of this Complaint as is fully set forth herein.

17 98. At all relevant times, BPI has acted in concert, agreed, combined and  
18 conspired for an unlawful purpose or for a lawful purpose by unlawful means, i.e., to  
19 engage in false advertising and deceptive practices, with ChromaDex.

20 99. An overt act by one member of the conspiracy is chargeable to all  
21 members.

22 100. The agreement and overt acts were done intentionally and with malice.

23 101. As a direct and proximate result of the civil conspiracy, ThermoLife has  
24 been injured in an amount to be proven at trial in excess of \$75,000, exclusive of interest  
25 and costs.

26 **JURY DEMAND**

27 Plaintiff requests a jury trial for all issues triable by a jury.  
28

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for entry of judgment against Defendant as follows:

1. Finding that Defendant falsely advertised the BCAA Products in violation of 15 U.S.C. § 1125;
2. Requiring an accounting for the past five years of all gains, profits, and advantages derived by Defendant’s false advertising of its BCAA Products;
3. Awarding damages adequate to compensate Plaintiff for the competitive injury suffered by Plaintiff;
4. Disgorging any and all monies earned by Defendant in connection with the sale of its falsely advertised BCAA Products;
5. Awarding treble damages under 15 U.S.C. §§ 1117 and 1125(a);
4. Awarding Plaintiff its reasonable attorneys’ fees and other expenses incurred in connection with this action under 35 U.S.C. § 285, 15 U.S.C. § 1117 and any other applicable law;
6. Awarding Plaintiff pre- and post-judgment interest and its costs of suit incurred in this action; and
7. Awarding Plaintiff such other and further relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of December, 2018.

KERCSMAR & FELTUS PLLC

By: s/Gregory B. Collins

Gregory B. Collins

Molly Rogers

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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

## Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**THERMOLIFE INTERNATIONAL,  
Plaintiff(s): LLC, an Arizona limited liability  
company**

**Defendant(s): BPI SPORTS, LLC, a Florida  
limited liability company**

County of Residence: Maricopa

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Gregory B. Collins  
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Scottsdale, Arizona 85251  
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**Molly Rogers  
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Scottsdale, Arizona 85251  
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II. Basis of Jurisdiction:                    **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal  
Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- **5 Non AZ corp and Principal place of Business outside AZ**

IV. Origin :                                    **1. Original Proceeding**

V. Nature of Suit:                         **890 Other Statutory Actions**

VI. Cause of Action:                    **Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§  
1331, 1338, and 1367 because, inter alia, Defendant has falsely advertised  
and sold products in the District of Arizona**

**VII. Requested in Complaint**Class Action: **No**

Dollar Demand:

Jury Demand: **Yes****VIII. This case is not related** to another case.**Signature: Gregory B. Collins****Date: 12/12/2018**

**If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.**

Revised: 01/2014