

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA **05-61704**

VITAL PHARMACEUTICALS, INC.
a Florida corporation,

Plaintiff,

vs.

RED BULL GMBH, an Austrian Limited
Liability Company

Defendant.

**MAGISTRATE JUDGE
TURNOFF**

RECEIVED BY
CLARENCE HADDON
CLERK OF DISTRICT
COURT
S.D. OF FLA. - HIA
OCT 20 PM 4:15

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, Vital Pharmaceuticals, Inc., a Florida Corporation d/b/a VPX Sports (“VPX”) files this Complaint for Declaratory Relief against Defendant, Red Bull GmbH (“RB”), an Austrian Limited Liability Company, and alleges:

Nature of Case, Subject Matter Jurisdiction and Venue

1. This is an action for declaratory relief stemming from RB’s October 14, 2005 “cease and desist” letter, a true and correct copy of which letter is attached hereto as Exhibit “A.” The “cease and desist” letter relates to VPX’s registration and use of its REDLINE® trademark s as well as the trade dress used by VPX for its REDLINE® nutritional supplement and beverage products. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1332(1) and 1332 (2); 28 U.S.C. §1338; 28 U.S.C §§2201 and 2202; as well as 15 U.S.C. §1121 relating to trademark, trade dress, unfair competition, and dilution claims arising under the Lanham Act, 15 U.S.C. §1051, et seq. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

2. Venue is proper in this district pursuant to 28 U.S.C. §1391 on either of the following alternative grounds: (a) A substantial part of the events giving rise to the instant claim for declaratory relief and the subject matter thereof occurred in this district, including, without limitation, that VPX received the “cease and desist” letter from RB in this district, that VPX’s principal place of business is located in this district, and that VPX adopted and commenced use of the trademark and trade dress that is the subject of the “cease and desist” letter in this district; and (b) RB is subject to personal jurisdiction in this district offers.

The Parties

3. VPX is a corporation organized and existing under the laws of the State of Florida with its principal place of business in this district, wherein VPX operates as a developer, manufacturer and seller of dietary supplements with an emphasis upon sports and fitness supplements.

4. RB is an Austrian Limited Liability Company that manufactures or sells a substantial amount of product that is purchased and consumed in this district.

5. In addition to all other legal bases for this Court to exercise personal jurisdiction over RB in this action, courts within the state in which this district is located have personal jurisdiction over RB pursuant to §§48.193 (1)(a) and 48.193(2), Fla. Stat.

The REDLINE[®] trademark and the REDLINE[®] Products

6. For several years, VPX has been a leader in the dietary supplement industry that offers a wide variety of dietary supplement products with an emphasis on sports and fitness supplements.

7. On August 4, 2003, VPX filed a federal trademark application Serial No. 78/282908 for REDLINE[®] with the United States Patent and Trademark Office (“PTO”) in International Classes 005 for nutritional supplements.

8. None of RB’s RED BULL[®] trademark applications or registrations—including RB’s Registration No. 2,494,093 in International Class 005 “for pharmaceutical products for the purposes of strengthening and body restoration, specifically, vitamin and mineral supplements; nutritional supplement tonics, nutritionally fortified beverages for use supplements”—were cited by the PTO as a potential bar against VPX’s application for REDLINE[®].

9. VPX has used the REDLINE[®] trademark in interstate commerce at least as early as September 30, 2003.

10. On December 2, 2004, VPX’s application for REDLINE[®] was published for opposition.

11. RB did not oppose said application.

12. On June 22, 2005, the PTO issued a registration to VPX for REDLINE[®], which was assigned Registration No. 2,857,015. A copy of the certificate of registration is attached as Exhibit “B.”

13. On March 30, 2005, VPX filed another federal trademark application for the trademark REDLINE[®] with the PTO in International Class 005 for beverages, which was assigned Serial No. 78/598015.

14. On July 14, 2005, VPX filed another federal trademark application for the trademark REDLINE[®] with the PTO in International Class 005 for nutritional supplements, ready to drink nutritional beverages, and nutritional bars, which was assigned Serial No. 78/670909.

15. VPX uses the REDLINE[®] trademark in connection with certain of its nutritional supplement and beverage products.

16. VPX uses the following distinctive trade dress in connection with its REDLINE[®] beverage product (“REDLINE[®] Beverage Trade Dress”):



17. VPX uses the following distinctive trade dress in connection with its REDLINE[®] nutritional supplement product sold in gel-cap form (“REDLINE[®] Gel-Cap Trade Dress”):



18. VPX has used a red, white and blue color scheme in the packaging of its numerous dietary supplement products for several years, and did so prior to the inception of its REDLINE[®] nutritional supplement and beverage products.

19. Since submitting its initial federal trademark application for REDLINE[®], VPX has expended considerable sums of money and effort to advertise and promote its REDLINE[®] nutritional supplement and beverage products, and as a result, the REDLINE[®] products have become extremely popular.

20. VPX advertises its REDLINE[®] products, *inter alia*, on its website at www.vpxsports.com, at various fitness shows, in its magazine Human Muscle & Performance, and in third-party fitness-oriented magazines, including, but not limited to Flex and Muscular Development.

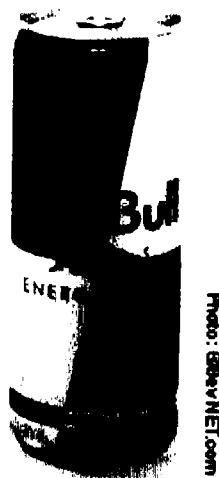
21. VPX sells its REDLINE[®] products, *inter alia*, on its website at www.vpxsports.com, in health clubs throughout the world, in General Nutrition Center, and in Vitamin Shoppe.

22. The products sold under the REDLINE[®] trademark have come to be known by the consuming public as uniquely effective nutritional supplement and beverage products.

The RED BULL[®] trademark and the RED BULL[®] Product

23. RB has a myriad of trademark registrations and pending applications for the RED BULL[®] trademark.

24. RB uses the following trade dress in connection with its RED BULL[®] beverage product (the “RED BULL[®] Trade Dress”):



RB’s “Cease and Desist” Letter

25. More than two years after VPX submitted its application for REDLINE[®] and started investing in the advertising and promotion of its REDLINE[®] products, RB, on October 14, 2005, forwarded to VPX its “cease and desist” letter, wherein RB charges that VPX’s REDLINE[®] trademark infringes upon RB’s RED BULL[®] trademark and that VPX’s REDLINE[®] Beverage Trade Dress infringes upon RB’s RED BULL[®] Trade Dress. In that connection, RB also charges VPX with unfair competition and dilution.

26. In its “cease and desist” letter, RB demands that VPX “(1) cease and desist use of the REDLINE mark and/or a blue, red and silver/gray color scheme in connection with energy drinks or other beverages in the United States; (2) immediately withdraw U.S. Application Serial Nos. 78/598,015 and 78/670,909 with prejudice; and (3) cease and desist from any further use of any of the Red Bull Word Marks, Red Bull Trade Dress, or any other confusingly similar marks and/or trade dress in the United States.”

27. RB further states in its “cease and desist” letter that failure to meet those demands “will damage [RB] and subject [RB] to irreparable harm, entitling [RB] to injunctive and monetary relief.”

No Trademark Infringement

28. There is no likelihood of confusion between the REDLINE[®] trademark and the RED BULL[®] trademark.

29. No other element essential to an actionable infringement upon the RED BULL[®] trademark arises from VPX’s use of the REDLINE[®] trademark.

No Trade Dress Infringement

30. There is no likelihood of confusion between the REDLINE[®] Beverage Trade Dress and the RED BULL[®] Trade Dress, which respectively appear as follows:



31. No other element essential to an actionable infringement upon the RED BULL[®] Trade Dress arises from VPX’s use of the REDLINE[®] Beverage Trade Dress.

No Unfair Competition

32. No claim for unfair competition as to the RED BULL[®] trademark or the RED BULL[®] Trade Dress arises from VPX's use of the REDLINE[®] trademark or the REDLINE[®] Beverage Trade Dress.

No Dilution

33. No claim for dilution as to the RED BULL[®] trademark or the RED BULL[®] Trade Dress arises from VPX's use of the REDLINE[®] trademark or the REDLINE[®] Beverage Trade Dress.

34. VPX has engaged undersigned counsel to represent it in this matter for which VPX obligated to pay reasonable attorneys' fee.

COUNT I-DECLARATORY RELIEF

VPX restates and realleges paragraphs 1 through 34 above, and further alleges:

35. As a result of RB's "cease and desist" letter, an actual case or controversy exists between the parties.

36. As VPX is being threatened with an action for damages and other relief based upon its past and continued use of the REDLINE[®] trademark and its past and continued use of the REDLINE[®] Beverage Trade Dress, VPX is in need of, and entitled to, a judicial declaration of each party's respective rights and liabilities as they pertain to VPX's registration and use of the REDLINE[®] trademark and VPX's use of the REDLINE[®] Beverage Trade Dress.

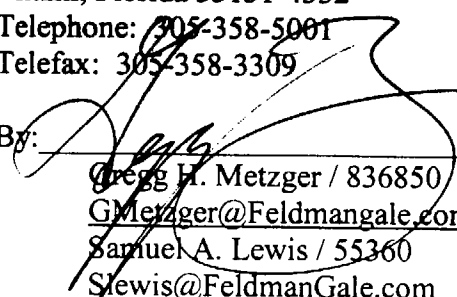
WHEREFORE, VPX respectfully requests: (1) judgment in favor of VPX and against RB declaring that: (a) The REDLINE[®] trademark does not infringe upon the RED BULL[®] trademark; (b) The REDLINE[®] Beverage Trade Dress does not infringe upon the RED BULL[®] Trade Dress; (c) No claim for unfair competition as to the RED BULL[®] trademark or the RED

BULL[®] Trade Dress arises from VPX's use of the REDLINE[®] trademark or the REDLINE[®] Beverage Trade Dress, (d) No claim for dilution as to the RED BULL[®] trademark or the RED BULL[®] Trade Dress arises from VPX's use of the REDLINE[®] trademark or the REDLINE[®] Beverage Trade Dress, (e) VPX is otherwise without liability to RB, or any of its licensees or assigns, stemming from VPX's use of the REDLINE[®] trademark or the REDLINE[®] Beverage Trade Dress, and (f) any other declaration the Court may deem appropriate; (2) an award of costs against RB; (3) an award of reasonable attorneys' fees against RB; and (4) any other relief the Court may deem just and appropriate.

Dated October 21, 2005

Respectfully submitted,
Feldman Gale, P.A.
Attorneys for Vital Pharmaceuticals, Inc.
Miami Center, 19th Floor
201 South Biscayne Boulevard
Miami, Florida 33131-4332
Telephone: 305-358-5001
Telefax: 305-358-3309

By: _____


Greg H. Metzger / 836850
GMetzger@Feldmangale.com
Samuel A. Lewis / 55360
SLewis@FeldmanGale.com
Erica W. Stump / 427632
ESTump@FeldmanGale.com

HOGAN & HARTSON

L.L.P.

RAYMOND A. KURZ
PARTNER
(202) 637-5683
RAKURZ@HHLAW.COM

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910
WWW.HHLAW.COM

October 14, 2005

VIA OVERNIGHT MAIL

Vital Pharmaceuticals, Inc.
4141 SW 47th Ave.
Davie, Florida 33314-4006

Vital Pharmaceuticals, Inc.
6573 Stirling Road
Ft. Lauderdale, FL 33314

Re: **REDLINE Energy Drink**
Our Reference: 87021-0154

To Whom It May Concern:

We represent Red Bull GmbH ("Red Bull"), the source of the Red Bull energy drink ("Red Bull Energy Drink"), in connection with intellectual property matters. As you are no doubt aware, the Red Bull Energy Drink bears the distinctive trademark RED BULL and the composite trademark RED BULL ENERGY DRINK (collectively the "Red Bull Word Marks"), as well as a distinct and proprietary trade dress, including a blue, red and silver color scheme (collectively, "Red Bull Trade Dress"). For your convenience, enclosed as Exhibit A is a photograph of the Red Bull Energy Drink, which bears the Red Bull Word Marks and Red Bull Trade Dress. The Red Bull Energy Drink has been offered in connection with the Red Bull Word Marks and the Red Bull Trade Dress since at least as early as 1996 in the United States. Since that time, Red Bull has invested substantial resources in promoting the Red Bull Energy Drink, as well as the Red Bull Word Marks and Red Bull Trade Dress. Through these and related efforts, consumers readily recognize the Red Bull Word Marks and the Red Bull Trade Dress, and associate such proprietary indicia with the Red Bull Energy Drink and Red Bull. Indeed, the Red Bull Energy Drink has become the category leader in the energy drink market, and the Red Bull Energy Drink, Red Bull Word Marks and Red Bull Trade Dress have gained wide-spread fame and consumer recognition.

BERLIN MUNICH BRUSSELS LONDON PARIS BUDAPEST PRAGUE WARSAW MOSCOW BEIJING SHANGHAI TOKYO
NEW YORK BALTIMORE McLEAN MIAMI DENVER BOULDER COLORADO SPRINGS LOS ANGELES

EXHIBIT A

HOGAN & HARTSON L.L.P.
Vital Pharmaceuticals, Inc.
October 14, 2005
Page 2

Red Bull has recently become aware of an energy drink, manufactured by Vital Pharmaceuticals, Inc. d/b/a VPX Sports ("VPX"), being sold in the United States under the trademark REDLINE ("Redline Energy Drink"). Further, Red Bull has become aware that VPX has filed with the United States Patent and Trademark Office applications to register the mark REDLINE, including U.S. Application Serial Nos. 78/598,015 for "beverages" and 78/670,909 for "nutritional supplements, ready to drink nutritional beverages, and nutritional bars."

The Redline Energy Drink is packaged in a slim can prominently displaying the REDLINE trademark and featuring a blue and red color scheme, combined with a gray or silver twist-off cap. Such prominent use of a trademark including the term "Red," combined with a blue, red and silver/gray color scheme, results in the Redline Energy Drink evoking a confusingly similar commercial impression with the Red Bull Energy Drink. Such confusing similarity is furthered by the use of the tagline "Get Ripped; Get Jacked...Reach For 'Red!,'" and references to the Redline Energy Drink as "The Red." It thus appears that the similarities between the Redline Energy Drink trademark and packaging and the Red Bull Word Marks and Red Bull Trade Dress were no accident, but instead an intentional effort to mimic the well-known Red Bull Energy Drink and to unlawfully trade on the strong goodwill associated with the Red Bull Energy Drink.

As the REDLINE trademark and Redline Energy Drink trade dress are confusingly similar to the Red Bull Word Marks and Red Bull Trade Dress, such trademark and trade dress are likely to confuse consumers into erroneously believing that VPX or the Redline Energy Drink is affiliated or associated with or sponsored or endorsed by Red Bull. It is readily apparent that Red Bull has prior and superior rights to the Red Bull Word Marks and Red Bull Trade Dress for energy drinks. Accordingly, the continued sale of the Redline Energy Drink are clear violations of Red Bull's valuable intellectual property rights, and further constitute trademark infringement, dilution and unfair competition.

In addition to VPX's use of the confusingly similar REDLINE trademark and Redline Energy Drink trade dress, Red Bull has become aware of certain other violations by VPX of the Lanham Act, as well as FDA and FTC regulations, in connection with the sale and promotion of the Redline Energy Drink. Merely by way of example, the packaging of the Redline Energy Drink and the VPX web site located at <vpxsports.com> appear to make unsubstantiated, misleading and/or false claims regarding the weight-loss promoting properties of the Redline Energy Drink (which VPX ineffectually attempts to disclaim in the fine-print located on the Redline Energy Drink can), and further it appears that the packaging of the Redline Energy Drink product fails to meet FDA labeling guidelines. Such misleading or false claims and deficiencies in the labeling and packaging of the Redline Energy Drink are likely to further increase the harm to Red Bull resulting from continued sale of the Redline Energy Drink, as consumers may attribute any such misleading or false claims and deficiencies to Red Bull.

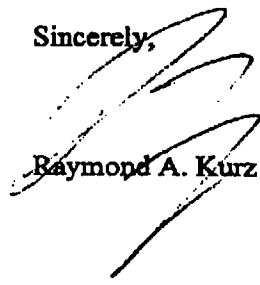
In view of the foregoing, we must insist that you provide written assurances within ten (10) days of the date of this letter that you will: (1) cease and desist use of the REDLINE mark

HOGAN & HARTSON L.L.P.
Vital Pharmaceuticals, Inc.
October 14, 2005
Page 3

and/or a blue, red and silver/gray color scheme in connection with energy drinks or other beverages in the United States; (2) immediately withdraw U.S. Application Serial Nos. 78/598,015 and 78/670,909 with prejudice; and (3) cease and desist from any further use of any of the Red Bull Word Marks, Red Bull Trade Dress, or any other confusingly similar marks and/or trade dress in the United States. Failure to do so will damage Red Bull and subject Red Bull to irreparable harm, entitling Red Bull to injunctive and monetary relief.

Feel free to contact me via telephone or in writing to discuss this matter. In the meantime, our client reserves all of its rights and remedies.

Sincerely,

A handwritten signature in black ink, appearing to read 'Raymond A. Kurz', written over the typed name.

Raymond A. Kurz

RAK/KAI
Enclosure



lightly carbonated.
100% natural.

Bull

With Taurine. Vitalizes body and mind.

8.3 FL OZ (250 ML)

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

United States Patent and Trademark Office

Reg. No. 2,857,015

Registered June 22, 2004

**TRADEMARK
PRINCIPAL REGISTER**

REDLINE

VITAL PHARMACEUTICALS, INC. (FLORIDA
CORPORATION)
4141 S.W. 47TH AVENUE
DAVIE, FL 33314

FIRST USE 8-0-2003; IN COMMERCE 9-0-2003.

SN 78-282,908, FILED 8-4-2003.

FOR: NUTRITIONAL SUPPLEMENTS, IN CLASS
5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

RICHARD WHITE, EXAMINING ATTORNEY

EXHIBIT B

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

VITAL PHARMACEUTICALS, INC., a Florida corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Gregg H. Metzger, Esq., Feldman Gale, P.A.,
201 S. Biscayne Blvd., Suite 1920, Miami, FL

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, **BROWARD**, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

DEFENDANTS

RED BULL CORP., an Austrian Limited Liability Corporation

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

05-61704

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State 1 4
- Citizen of Another State 2 2 Incorporated and Principal Place of Business in Another State 5 5
- Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 302 Personal Injury - Med. Malpractice <input type="checkbox"/> 305 Personal Injury - Product Liability <input type="checkbox"/> 308 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 420 Banks and Banking <input type="checkbox"/> 430 Commerce/CC Rates/etc <input type="checkbox"/> 440 Deposition <input type="checkbox"/> 470 Foreign Influenced and Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 882 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions A OR B
A REAL PROPERTY	A CIVIL RIGHTS	PRISONER PETITIONS	B SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 861 HIA (1995ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Declaratory relief of non-infringement.

LENGTH OF TRIAL via ___ days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

10/21/05

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

\$250.00 929732

10/21/05