

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

USPLABS JACK3D, LLC,  
Plaintiff,

V.

MMRNV, LLC d/b/a MAX MUSCLE  
SPORTS NUTRITION, RENO, NEVADA  
and PHILIP J. TRACY,  
Defendants.

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C.A. NO. \_\_\_\_\_

**ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, USPlabs Jack3d, LLC, (“USPlabs”) files this its original complaint against Defendants, MMRNV, LLC d/b/a Max Muscle Sports Nutrition, Reno, Nevada (“Max Muscle Reno”), and Philip J. Tracy (“Tracy”) (collectively “Defendants”), and for cause of action would show the Court as follows:

**I. PARTIES**

1. USPlabs Jack3d, LLC, is a limited liability company organized under the laws of the State of Wyoming. Its principal place of business is 10761 King William Drive, Dallas, Dallas County, Texas 75220.

2. MMRNV, LLC d/b/a Max Muscle Sports Nutrition, Reno, Nevada, is a limited liability company organized under the laws of the State of Nevada, and is a non-resident of Texas. Its principal place of business is 1296 East Plumb Lane, Reno, Nevada 89502. MMRNV, LLC, may be served with process by serving the Citations Unit, Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079, which the Secretary of State may serve through serving its registered agent for service, Laughlin Associates, Inc., 9120 Double Diamond

Parkway, Reno, Nevada 89521, as defendant has not designated or maintained a resident agent for service of process in Texas.

3. Philip J. Tracy is an individual who resides at 1296 East Plumb Lane, Reno, Nevada 89502, and is a nonresident of Texas. Philip J. Tracy may be served with process through the Texas Secretary of State, Citations Unit, P.O. Box 12079, Austin, Texas 78711-2079 at his resident address.

## II. JURISDICTION AND VENUE

4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiff USPlabs and Defendants, and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claims occurred in the Northern District of Texas, Dallas Division, and pursuant to 28 U.S.C. § 1391(a)(3) because Defendants are subject to personal jurisdiction in this district.

## III. FACTS

6. Plaintiff USPlabs owns and licenses a dietary supplement named Jack3d (pronounced “Jacked”). One of the ingredients comprising Jack3d is 1,3-Dimethylamylamine, or DMAA.

7. Jack3d is widely marketed, distributed, and sold through dietary supplement stores and through internet web sales, including through [www.usplabsdirect.com](http://www.usplabsdirect.com). Plaintiff USPlabs has a significant economic interest in the product Jack3d.

8. Defendant Tracy is the owner of Defendant Max Muscle Reno, which is a dietary supplement retail outlet that no longer sells Jack3d, but sells competing dietary supplement products.

9. On or about May 8, 2012, Defendant Tracy gave an interview to a Reno, Nevada, local television station, KRNV, through its news broadcast, News4. This news outlet also publishes its news reporting online via the worldwide web at [www.Mynews4.com](http://www.Mynews4.com).

10. During the interview, Defendant Tracy, individually and as owner of Defendant Max Muscle Reno, made the following false and disparaging statements about the dietary supplement, Jack3d:

- a. Jack3d is an amphetamine-like compound.
- b. "It [Jack3d] speeds up your heart rate."
- c. Some of the short term effects of DMAA include insomnia and heart palpitations where your heart actually stops beating.
- d. If you take a product like Jack3d, you are causing damage to your body, and possibly death.
- e. "It's [Jack3d] a derivative of rat poisoning and has a lot of side effects."

The statements quoted above are direct quotations from the article, and the other statements were not direct quotations but are directly attributed to Defendants in the article.

11. The above statements by Defendant Tracy, individually and on behalf of Defendant Max Muscle Reno, were broadcast by KRNV, through its news broadcast, News4, and published on its online news reporting via the worldwide web at [www.Mynews4.com](http://www.Mynews4.com), where the article continues to be published online. In addition, the article has been republished on the web, including but not limited to websites such as [www.vitaminpoints.com](http://www.vitaminpoints.com), and

[www.aolnews.com](http://www.aolnews.com). Furthermore, Defendants Max Muscle Reno and Tracy have republished the broadcast, as well as caused additional inflammatory and derogatory statements to be published, on Defendant Max Muscle Reno's website and Facebook page, which is open to the public at <https://www.facebook.com/MaxMuscleFranchise>. These and other republications have disseminated the statements at issue in the State of Texas and nationally.

12. The statements were made in the context of direct references to the "manufacturer" of Jack3d, and Plaintiff USPlabs is the only manufacturer of this product.

13. Plaintiff USPlabs has suffered economic loss attributable to Defendant's disparaging statements.

#### **IV. BUSINESS DISPARAGEMENT**

14. Incorporating all of the facts above, on or about May 8, 2012, Defendants knowingly made the false and disparaging statements listed above about Jack3d, a dietary supplement owned by and licensed through Plaintiff USPlabs.

15. Defendants published the false and disparaging statements listed above with malice, and caused these false statements to be republished by themselves, as well as by third parties with malice. Defendants acted with malice in that Defendant knew the statements in question were false when the statements were made, and/or acted with reckless disregard for whether the statements were true or not. Furthermore, Defendants acted with malice and with the intent to cause harm to Plaintiff's pecuniary interests and to advance Defendants' own pecuniary interests and individual interests.

16. Defendants had no justification or excuse for publishing or causing to be published the false and disparaging statements listed above.

17. Defendants' publishing and causing others to publish the false and disparaging statements listed above proximately caused economic loss and special damages to Plaintiff.

**V. DEFAMATION, DEFAMATION PER SE,  
DEFAMATION BY IMPLICATION, AND/OR DEFAMATION BY INNUENDO**

18. Incorporating all of the facts above, on or about May 8, 2012, Defendants knowingly made the false and disparaging statements listed above about Jack3d, a dietary supplement owned by and licensed through Plaintiff USPlabs.

19. Defendants published the false and disparaging statements listed above with malice, and caused these false statements to be republished by themselves, as well as by third parties, with malice. Defendants acted with malice in that Defendant knew the statements in question were false when the statements were made, and/or acted with reckless disregard for whether the statements were true or not. Furthermore, Defendants acted with malice and with the intent to cause harm to Plaintiff's pecuniary interests and to advance Defendants' own pecuniary interests and individual interests.

20. Defendants also negligently published the false and disparaging statements listed above, and negligently caused these false statements to be published by themselves, as well as by third parties, while knowing that the statements were not true and knowing that harm would befall Plaintiff by Defendants making such statements and having such false statements negligently distributed to the public.

21. Defendants' statements are defamation per se in that they impugn Plaintiff's honesty, integrity, and business reputation, and expose Plaintiff to public hatred and financial injury. Further, one of the statements falsely charge Plaintiff with selling the equivalent of rat poison for human consumption, which would be a crime.

22. In the alternative, Defendants' statements are defamation by implication because the statements convey a false and defamatory impression in the context of the article as a whole and by omitting material facts. In the further alternative, Defendants' statements are defamation by innuendo in that a reasonable person would consider the statements defamatory in light of extrinsic facts and circumstances.

23. Defendants had no justification or excuse for publishing or causing to be published the false and disparaging statements listed above.

24. Defendants' publishing and causing others to publish the false and disparaging statements listed above proximately caused economic loss to Plaintiff and injury to Plaintiff's business reputation.

#### **VI. TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS**

25. Incorporating all of the facts above, Defendants are business competitors of Plaintiff USPlabs. As stated in the published articles at issue, Defendant Max Muscle Reno no longer sells the dietary supplement Jack3d. Defendant Max Muscle Reno does, however, sell other dietary supplements that directly compete with Jack3d.

26. USPlabs has business relationships with current purchasers of the dietary supplement Jack3d. Jack3d continues to be marketed and sold through retail stores and online retailers, which are competitors of Defendants. As a franchise of a national chain of Max Muscle retail stores, Defendants are well aware of these business relationships.

27. Defendants made the false and disparaging statements listed above about Jack3d with the intent to harm Plaintiff USPlabs by interfering with Plaintiff's business relationships with current purchasers of Jack3d.

28. Defendants had no justification or excuse for publishing or causing to be published the false and disparaging statements listed above. Defendants' publishing and causing others to publish the false and disparaging statements listed above proximately caused economic loss to Plaintiff.

### **VII. TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS**

29. Incorporating all of the facts above, Defendants are business competitors of Plaintiff USPlabs. As stated in the published articles at issue, Defendant Max Muscle Reno no longer sells the dietary supplement Jack3d. Defendant Max Muscle Reno does, however, sell other dietary supplements that directly compete with Jack3d.

30. USPlabs has prospective business relationships with potential purchasers of the dietary supplement Jack3d. Jack3d continues to be marketed and sold through retail stores and online retailers, which are competitors of Defendants. As a franchise of a national chain of Max Muscle retail stores, Defendants are well aware of these prospective business relationships.

31. Defendants made the false and disparaging statements listed above about Jack3d with the intent to harm Plaintiff USPlabs by interfering with Plaintiff's prospective business relationships with potential purchasers of Jack3d.

32. Defendants had no justification or excuse for publishing or causing to be published the false and disparaging statements listed above.

33. Defendants' publishing and causing others to publish the false and disparaging statements listed above proximately caused economic loss to Plaintiff.

### **VIII. JURY DEMAND**

34. Plaintiff demands a jury trial and tenders the appropriate fee with this Complaint.

### **IX. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff USPlabs Jack3d, LLC, prays that Defendants, MMRNV, LLC d/b/a Max Muscle Sports Nutrition, Reno, Nevada, and Philip J. Tracy, be cited to appear and answer, and that upon trial, USPlabs be granted the following relief:

- a. The principal amount of \$3,000,000.00;
- b. Prejudgment and post-judgment interest at the highest rate allowed by law;
- c. Reasonable and necessary attorneys' fees for prosecution and trial of this matter, and for any appeals; and
- d. All other relief to which USPlabs is entitled, at law or in equity, both general and special.

Respectfully submitted,

**The Brewer Law Group, L.L.C.**

/s/ Ruth Brewer  
Ruth Brewer  
Texas Bar No. 24047346  
8117 Preston Rd., Suite 300  
Dallas, TX 75225  
[rbrewer@thebrewerlawgroup.com](mailto:rbrewer@thebrewerlawgroup.com)  
Phone: (972) 904-1756  
Fax: (972) 692-7737

**Counsel for Plaintiff,  
USPlabs Jack3d, LLC**



JS 44 (TXND Rev. 2/10)

**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.)

<p><b>I. (a) PLAINTIFFS</b></p> <p>USPLABS JACK3D, LLC</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>DALLAS CO., TEXAS</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Ruth Brewer, The Brewer Law Group, LLC 8117 Preston Rd., Suite 300, Dallas, TX 75226 (972) 904-1766</p>	<p><b>DEFENDANT'S</b> MMRNV, LLC d/b/a MAX MUSCLE SPORTS NUTRION, RENO, NEVADA, and PHILIP J. TRACY</p> <p><b>County of Residence of First Listed Defendant</b> <u>WASHOE CO., NEVADA</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:47%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	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 Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input checked="" 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	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <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"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
<p><b>REAL PROPERTY</b></p> <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	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<p><b>PRISONER PETITIONS</b></p> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: 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	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Algmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Algmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 IIIA (1395ff) <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"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3110 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 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
		<p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

**V. 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

**VI. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. sect. 1332  
 Brief description of cause:  
DEFAMATION AND BUSINESS DISPARAGEMENT CAUSED BY FALSE AND DISPARAGING STATEMENTS

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    DEMANDS    CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) (See Instructions)**  
 PENDING OR CLOSED:    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE May 23, 2012    SIGNATURE OF ATTORNEY OF RECORD Ruth Brewer/And

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPEARING OFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_