

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

**AUSTIN CAVE**, *individually and on behalf of all others similarly situated*,

*Plaintiff*,

v.

**ROWDY BEVERAGE, INC.**,

*Defendant*.

Case Number: 8:24-cv-58

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

COMES NOW the Plaintiff, **Austin Cave** (“Plaintiff” or “Mr. Cave”), on behalf of himself and all similarly situated individuals, by and through his attorneys, and complains of the Defendant, **Rowdy Beverage, Inc.** (“Defendant” or “Rowdy”), stating as follows:

**DESCRIPTION OF THE CASE**

1. This is a proposed class action on behalf of a nationwide class, and a Florida Subclass (collectively, the “Classes”) of consumers seeking redress for Defendant’s deceptive practices associated with the advertising, labeling, and sale of Rowdy Power Burn Energy Drinks (each a “Product,” jointly “Products”).

2. The global energy drink market was valued at nearly \$85 billion in 2021 and is predicted to more than double by 2030.<sup>1</sup>

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<sup>1</sup> Straits Research, Energy Drinks Market Size is projected to reach USD 176.15 Billion by 2030, growing at a CAGR of 8.47%: Straits Research, September 7, 2023

3. While the broader energy drink market dominated by well-known brands such as Red Bull, Monster, and Rockstar, the growth in the segment is being driven by a shift towards healthier options as consumers become more conscious of the negative health effects associated with sugary, caffeinated beverages.<sup>2</sup>

4. “Consumers looking for an energy boost are becoming more discerning, with those drinkers seeking out ‘cleaner’ options and simpler recipes containing fewer and more natural ingredients. The so-called ‘clean label’ trend that’s had an impact on other food and beverage categories has started to shape product development and branding strategies in energy drinks, too.”<sup>3</sup>

5. In its 2022 Global Soft Drinks Performance and Outlook report, Global Data identified a “strong positive impact” on future value sales of energy drinks from consumers switching to clean-label and natural products.<sup>4</sup> “Clean label is meant to cut through the obfuscation and provide truth and transparency. That’s what clean energy provides.” Featured heavily in the demand for clean labels are the “lack of use of preservatives...” “Surveys continue to show the rising popularity of clean label claims. Mr. Food and beverage companies may take several avenues to achieve such claims:

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<https://www.globenewswire.com/en/news-release/2023/09/07/2739472/0/en/Energy-Drinks-Market-Size-is-projected-to-reach-USD-176-15-Billion-by-2030-growing-at-a-CAGR-of-8-47-Straits-Research.html#:~:text=The%20Global%20Energy%20Drinks%20Market,8.47%25%20from%202022%20to%202030.>

<sup>2</sup> ZOA Energy: Dwayne Johnson’s All-Natural Boost for Body and Mind, Xtalks, May 3, 2023 <https://xtalks.com/zoa-energy-dwayne-johnsons-all-natural-boost-for-body-and-mind-3353/#:~:text=Unlike%20many%20other%20energy%20drinks,looking%20to%20avoid%20these%20ingredients.>

<sup>3</sup> Health and wellness to give jolt to energy drinks, Just Drinks, August 31, 2023. Available at <https://www.just-drinks.com/features/health-and-wellness-to-give-jolt-to-energy-drinks/?cf-view>

<sup>4</sup> Health and wellness to give jolt to energy drinks, Just Drinks, August 31, 2023. Available at <https://www.just-drinks.com/features/health-and-wellness-to-give-jolt-to-energy-drinks/?cf-view>

no artificial preservatives, flavors or colors; organic; and non-G.M.O. “No preservatives” were the top clean label claim in two surveys.”<sup>5</sup>

6. Recognizing the fact that it was marketing and selling energy drinks to a growing cohort of health-conscious consumers, Rowdy marketed and sold the Products using a front label which prominently displayed “Zero Sugar,” a “Metabolic Boost,” “Hydration” and “No Preservatives.” See attached **Exhibit A**.

7. However, Rowdy’s claim that the Products contain “No Preservatives” is false, as the Products contain a significant amount of citric acid and ascorbic acid.

8. Both citric acid and ascorbic acid are classified as preservatives by the Federal Food and Drug Administration. *See* 21 CFR § 582.6033 (citric acid) and 21 CFR § 182.3013 (ascorbic acid).

9. Despite unequivocally and boldly claiming that their Products contain “Zero Preservatives,” the inclusion of citric acid belies this affirmation, rendering it false, misleading, and in violation of the law.

10. As a result of Rowdy’s false and misleading labeling, Rowdy was able to sell these Products to hundreds of thousands of unsuspecting consumers throughout Florida and the United States, and to charge a price-premium.

11. Rowdy’s false representations amount to a breach of warranty, violate Florida’s Uniform Commercial Code, Florida Statutes § 672.313, Florida’s Deceptive and Unfair Trade Practices Act, Florida Statutes § 501.201, *et. seq.* (“FDUTPA”),

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<sup>5</sup> No preservatives’ stands out among clean label claims, Food Business News, July 30, 2019. Available at <https://www.foodbusinessnews.net/articles/14178-no-preservatives-stands-out-among-clean-label-claims>

Florida's prohibition against false, misleading, and deceptive advertising and sales, Florida Statutes § 817.41, and are otherwise grounds for restitution based on quasi-contract/unjust enrichment.

### **JURISDICTION AND VENUE**

12. This Court has diversity jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332(d)(2). Diversity jurisdiction exists as Defendant is a Delaware corporation with its principal place of business in San Diego, California, and Plaintiff is domiciled in the State of Florida. The amount in controversy exceeds \$5,000,000 for Plaintiff and the putative Class, exclusive of interest and costs, reaped by Defendant from their transactions with Plaintiff and the putative Class, as a direct and proximate result of the wrongful conduct alleged herein and by the injunctive and equitable relief sought.

13. Jurisdiction is proper according to the Class Action Fairness Act of 2005 (hereafter also referred to as "CAFA"). 28 U.S.C. § 1332(d)(2).

14. Venue is proper in the Middle District of Florida, pursuant to 28 U.S.C. § 1391(b), because the events giving rise to this cause of action occurred within Pinellas County, Florida, which is in this District and Division.

### **THE PARTIES**

#### **Plaintiff**

15. Mr. Cave is a natural person residing in Tampa, Hillsborough County, Florida.

16. Mr. Cave owns real property in Tampa, Florida, at which he permanently resides.

17. The property in Tampa, Florida is Mr. Cave's true, fixed, and permanent home.

18. Mr. Cave is thus domiciled in Florida.

19. Mr. Cave is a *Consumer* as defined by FDUTPA, Florida Statutes § 501.203(7).

### **Rowdy**

20. Rowdy is a Delaware corporation with a primary business address of 10531 4S Commons Drive, Ste. 166-559, San Diego, CA 92127.

### **FACTUAL ALLEGATIONS**

21. On or about May 24, 2023, Mr. Cave purchased the Rowdy Watermelon Powerburn Energy Drink from Speedway, located on 49<sup>th</sup> St. N. in Clearwater, Florida.

22. Mr. Cave believed the representations on the Product's front label were accurate, particularly that the Product did not contain preservatives.

23. Mr. Cave believed that Defendant lawfully marketed and sold the Product.

24. Mr. Cave relied on Defendant's labeling and was misled thereby.

25. Mr. Cave would not have purchased the Product, or would have purchased the Products on different terms, had he known the truth about its contents.

26. Mr. Cave was injured in fact and lost money as a result of Defendant's improper conduct.

27. If Mr. Cave had reason to believe that Defendant's marketing and labeling is truthful, non-misleading, and lawful, he would purchase Defendant's Products in the future.

**Citric Acid is a Preservative**

28. The federal Food Drug & Cosmetic Act ("FDCA") defines a chemical preservative as "any chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties." 21 C.F.R. § 101.22(a)(5).

29. "A food to which a chemical preservative(s) is added shall... bear a label declaration stating both the common or usual name of the ingredient(s) and a separate description of its function, e.g., "preservative", "to retard spoilage", "a mold inhibitor", "to help protect flavor" or "to promote color retention." 21 C.F.R. § 101.22(j).

30. Chemical preservation is the process of adding ingredients to a food for the purpose of preventing potential damage from oxidation, rancidity, microbial growth, or other undesirable changes. Chemical preservatives may be both natural or synthetic and function one of several ways — (a) as an antimicrobial agent to destroy bacteria or inhibit the growth of mold on foods; (b) as an antioxidant to inhibit oxidation and resulting rancidity; and (3) as a chelating agent which binds metal ions in certain foods to prevent oxidation.

31. Among other uses, citric acid's acidity makes it difficult for mold, bacteria, or any negatively impacting substance to survive and grow on foods.

32. Citric acid is thus a preservative within the meaning of 21 C.F.R. § 101.22.

33. Indeed, in a consumer facing publication, *Food Ingredients and Colors*, the Food and Drug Administration ("FDA") unequivocally identifies "citric acid" as a preservative.<sup>6</sup>

34. The sentiment is echoed in the Substances Added to Food database maintained by the FDA, in which the principal technical effects of citric acid are identified as preservative functions.<sup>7</sup>

35. Finally, in a Warning Letter issued to Chiquita Brands International, Inc. and Fresh Express, Incorporated, October 6, 2010, the FDA made clear that citric acid was a preservative and needed to be identified as such.<sup>8</sup>

### **Ascorbic Acid is likewise a Preservative**

36. Ascorbic acid is a strong antioxidant which is commonly added to foods for this purpose, among others.

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<sup>6</sup> *Food Ingredients and Colors*, International Food Information Council Foundation and U.S. Food and Drug Administration, specifically identifies the following as preservatives: **ascorbic acid**, **citric acid**, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, potassium sorbate, BHA, BHT, EDTA, tocopherols (Vitamin E). Available at <https://www.fda.gov/files/food/published/Food-Ingredients-and-Colors-%28PDF%29.pdf> (last visited October 2, 2023)

<sup>7</sup> The Substances Added to Food Database formerly Everything Added to Foods in the United States, available at [https://www.cfsanappsexternal.fda.gov/scripts/fdcc/?set=FoodSubstances&sort=Sortterm\\_ID&order=ASC&startrow=1&type=basic&search=citric%20acid](https://www.cfsanappsexternal.fda.gov/scripts/fdcc/?set=FoodSubstances&sort=Sortterm_ID&order=ASC&startrow=1&type=basic&search=citric%20acid) (last visited October 2, 2023)

<sup>8</sup> <http://fda-warning-letters.blogspot.com/2010/10/fresh-express-incorporated-10610.html> (last visited October 6, 2023).

37. The FDA identifies Ascorbic acid as an antimicrobial agent and antioxidant.<sup>9</sup>

38. Ascorbic acid is thus a preservative within the meaning of 21 C.F.R. § 101.22.

39. The FDA likewise identifies ascorbic acid as a preservative.<sup>10</sup>

### **Consumer Demand For Preservative Free Products**

40. The clean label movement has been called “the largest shift in American food habits since World War II.”<sup>11</sup>

41. The term encompasses many things, but is most often associated with foods that are natural, healthy, and devoid of additives and preservatives.<sup>12</sup>

42. By representing the Products have “No Preservatives,” Defendant seeks to capitalize on consumer preferences for clean label products.

43. Indeed, “[foods bearing ‘free-from’ claims are increasingly relevant to Americans, as they perceive the products as closely tied to health.” “84 percent of Americans buy “free-from” foods because they believe them to be more natural or less

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<sup>9</sup>[https://www.cfsanappsexternal.fda.gov/scripts/fdcc/?set=FoodSubstances&id=ASCORBICACID&sort=Sortterm\\_ID&order=ASC&startrow=1&type=basic&search=ascorbic%20acid](https://www.cfsanappsexternal.fda.gov/scripts/fdcc/?set=FoodSubstances&id=ASCORBICACID&sort=Sortterm_ID&order=ASC&startrow=1&type=basic&search=ascorbic%20acid)

<sup>10</sup> See *Food Ingredients and Colors*, F.N. 6, *supra*.

<sup>11</sup> Clean Labels, Public Relations or Public Health, Center For Science in the Public Interest (2017), available <https://www.cspinet.org/sites/default/files/2022-03/Clean%20Label%20report.pdf> (last visited October 6, 2023).

<sup>12</sup> Clean label trend is evolving - consumers still willing to pay a price premium, Valio, May 29, 2023. Available at <https://www.valio.com/food-solutions-for-companies/articles/clean-label-trend-is-evolving-and-consumers-willing-to-pay-a-price-premium/> (last visited October 6, 2023).



processed.” Among such consumers, preservative free ranks “[a]mong the top claims... deem[ed] most important.”<sup>13</sup>

44. In a survey undertaken by L.E.K, around 1600 consumers were asked which claims were the most important to them when buying food and drink products. Results indicated the most popular claim to be 'no artificial ingredients.' This was followed closely by 'no preservatives'....”<sup>14</sup>



Note: Question: How frequently has your household purchased food with the following attributes or claims over the past 12 months when they were available?  
Source: L.E.K. Consumer Survey and analysis

45. By failing to properly label its Products, Rowdy has misled and deceived consumers in violation of the law.

### **Economic Injury**

46. As a result of Defendant’s unlawful and deceptive conduct, Plaintiff and members of the Class have been harmed.

<sup>13</sup> See, *Free-from Food Trends US 2015 Report*, MINTEL, Available at <https://www.mintel.com/press-%20centre/food-and-drink/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed> (last accessed November 30, 2022).

<sup>14</sup> <https://www.lek.com/insights/ei/clean-label-food-ingredients>

47. In reliance on the claims made by Defendant regarding the qualities of its Products, Plaintiff paid a price premium.

48. As a result of his reliance on Defendant's misrepresentations, Plaintiff received a Product which lacked the promised ingredients which he reasonably believed it contained.

49. Plaintiff received a Product which was unlawfully marketed and sold.

50. Plaintiff lost money and thereby suffered injury, as he would not have purchased the Product and/or paid as much for the Product absent the misrepresentation.

51. Defendant knows that its claim the Products are free of preservatives is material to a consumer's purchasing decision.

52. Plaintiff altered his position to his detriment and suffered damages in an amount equal to the amounts he paid for the Product he purchased, and/or in additional amounts attributable to the deception.

53. By engaging in the false and deceptive conduct alleged herein, Defendant reaped financial benefits in the form of sales and profits from its Products.

### **CLASS ACTION ALLEGATIONS**

54. Plaintiff brings this action on behalf of himself and on behalf of classes of all others similarly situated consumers defined as follows:

- a. **National:** All persons in the United States who purchased any of the Products in the United States during the Class Period.

- b. **Florida:** All persons who purchased any of the Products in Florida during the Class Period.
- c. **Class Period:** the maximum time allowable as determined by the statute of limitation periods accompanying each cause of action.

55. Plaintiff brings this Class pursuant to Federal Rule of Civil Procedure 23(a), and 23(b)(1), 23(b)(2), 23(b)(3) and 23(c)(4).

56. Excluded from the Classes are: (i) Defendant and its employees, principals, affiliated entities, legal representatives, successors and assigns; and (ii) the judges to whom this action is assigned.

57. Upon information and belief, there are tens of thousands of Class members in each Class. Therefore, individual joinder of all members of the Classes would be impracticable.

58. Common questions of law or fact exist for all Class members. These questions predominate over the questions affecting only individual Class members. These common legal or factual questions include:

- a. Whether Defendant marketed, packaged, or sold the Products to Plaintiff and those similarly situated using false, misleading, or deceptive statements or representations;
- b. Whether Defendant omitted or misrepresented material facts in connection with the sale of its Products;
- c. Whether Defendant has been unjustly enriched as a result of its unlawful business practices;

- d. Whether Defendant's actions violate Florida's Uniform Commercial Code;
- e. Whether Defendant's actions violate Florida's prohibition against false advertising, Florida Statutes § 817.41;
- f. Whether Defendant's actions violate FDUPTA;
- g. Whether Defendant should be enjoined from continuing the above-described practices;
- h. Whether Plaintiff and members of the putative Classes are entitled to declaratory relief; and
- i. Whether Defendant should be required to make restitution, disgorge profits, reimburse losses, and pay damages as a result of the above-described practices.

59. Plaintiff's claims are typical of each Class's claims. Plaintiff was a consumer who purchased Defendant's Product, which Product falsely represented that it contained "No Preservatives." Plaintiff is no different in any relevant respect from any other Class member, and the relief sought is common to the Classes.

60. Plaintiff is an adequate representative of the Classes because his interests do not conflict with the Class members' interests he seeks to represent. Plaintiff has retained counsel competent and experienced in conducting complex class action litigation. Plaintiff and his counsel will adequately protect the interests of the Classes.

61. A class action is superior to other available means for this dispute's fair and efficient adjudication. The damages suffered by each Class member likely will be

relatively small, especially given the relatively small cost of the food products at issue and the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's conduct. Thus, it would be virtually impossible for Class members individually to effectively redress the wrongs done to them.

62. Moreover, even if Class members could afford individual actions, it would still not be preferable to class-wide litigation. Individualized actions present the potential for inconsistent or contradictory judgments. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

63. In the alternative, the Class may be certified because Defendant has acted or refused to act on grounds generally applicable to the Class, making appropriate preliminary and final equitable relief for the Class.

64. The requirements for maintaining a class action pursuant to Rule 23(b)(2) are also met, as Defendant has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Classes as a whole.

### **COUNT I**

#### **Breach of Express Warranty – National Class & Florida Subclass**

65. Plaintiff adopts and incorporates Paragraphs 1 – 64 as if fully stated herein.

66. Plaintiff incorporates each and every allegation contained in the paragraphs above as if re-stated herein.

67. Defendant made express warranties to Plaintiff and members of the putative Class that the Products they purchased contained no preservatives.

68. The express warranties made to Plaintiff and members of the putative Class appear on every Product label.

69. This warranty regarding the nature of the Products marketed by Defendant specifically relates to the goods being purchased and became the basis of the bargain.

70. Plaintiff and the putative Class purchased the Products in the belief that they conformed to the express warranties that were made on the Products' labels.

71. Defendant breached the express warranties made to Plaintiff and members of the putative Class by failing to supply goods that conformed to the warranties it made, specifically by providing Products which contained ascorbic and citric acid.

72. Defendant's conduct directed at Plaintiff and the Florida Subclass violated Florida Statutes § 672.313.

73. Plaintiff and the members of the putative Class paid money for the Products. However, Plaintiff and the members of the Class did not obtain the full value of the advertised Products. If Plaintiff and other members of the Class had known of the true nature of the Products, they would not have purchased them or paid less for them. Accordingly, Plaintiff and members of the Class have suffered injury in fact and lost money or property as a result of Defendant's wrongful conduct.

74. Plaintiff and the putative Class members are therefore entitled to recover damages, punitive damages, equitable relief such as restitution and disgorgement of profits, and declaratory and injunctive relief.

75. All conditions precedent to this action have been met. Prior to filing this action, Defendant was served via certified mail with a pre-suit notice letter on behalf of Plaintiff that complied in all respects with U.C.C. §§ 2-313 and 2-607. Defendant failed to make full restitution by refunding the monies received therefrom. A true and correct copy of Plaintiff's counsel's letter is attached hereto as **Exhibit B**.

**COUNT II**  
**Breach of Express Warranty – Florida Subclass**

76. Plaintiff adopts and incorporates Paragraphs 1 – 64 as if fully stated herein.

77. Plaintiff incorporates each and every allegation contained in the paragraphs above as if re-stated herein.

78. Defendant made express warranties to Plaintiff and members of the putative Class that the Products they purchased contained no preservatives.

79. The express warranties made to Plaintiff and members of the putative Class appear on every Product label.

80. This warranty regarding the nature of the Products marketed by Defendant specifically relates to the goods being purchased and became the basis of the bargain.

81. Plaintiff and the putative Class purchased the Products in the belief that they conformed to the express warranties that were made on the Products' labels.

82. Defendant breached the express warranties made to Plaintiff and members of the putative Class by failing to supply goods that conformed to the warranties it made, specifically by providing Products which contained ascorbic and citric acid.

83. Defendant's conduct directed at Plaintiff and the Class violates Florida Statutes § 672.313.

84. Plaintiff and the members of the putative Class paid money for the Products. However, Plaintiff and the members of the Class did not obtain the full value of the advertised Products. If Plaintiff and other members of the Class had known of the true nature of the Products, they would not have purchased them or paid less for them. Accordingly, Plaintiff and members of the Class have suffered injury in fact and lost money or property as a result of Defendant's wrongful conduct.

85. Plaintiff and the putative Class members are therefore entitled to recover damages, punitive damages, equitable relief such as restitution and disgorgement of profits, and declaratory and injunctive relief.

**COUNT III**  
**VIOLATION OF FLA. STAT. § 817.41**

**On behalf of the Florida Subclass**

86. Plaintiff adopts and incorporates Paragraphs 1 – 64 as if fully stated herein.



87. Defendant engaged in false advertising when it represented that the Products contained no preservatives.

88. Defendant intended for consumers like Mr. Cave and the Class to rely on this false advertising when looking at beverages to purchase.

89. Mr. Cave and the Class did rely on Defendant's representations when purchasing the Products.

90. As a direct and proximate result of Defendant's false advertising, Plaintiff and the Class were injured and suffered damages and are entitled to actual damages, attorneys' fees, and costs.

91. Mr. Cave and the Class relied on Defendant's false advertising to their detriment, purchasing the Products and paying a price premium due to Defendant's misrepresentations.

92. The injuries suffered by Plaintiff and the Class include, but are not limited to, paying for Defendant's Products, paying a premium price for Defendant's falsely advertised Products, and the unlawful profits Defendant earned from the sales of these falsely advertised Products.

**COUNT IV**  
**VIOLATION OF § 501.204, FLA. STAT.**

**On behalf of the Florida Subclass**

93. Plaintiff adopts and incorporates Paragraphs 1 – 64 as if fully stated herein.

94. The Products are tangible goods with value.

95. The Defendant advertised, solicited, provided, offered, and/or distributed the Products in Florida.

96. The Defendant thus engaged in “trade or commerce” within the state of Florida, as defined in Fla. Stat. § 501.203(8).

97. Fla. Stat. § 501.204(1) prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.

98. The Defendant has mislabeled and misbranded the Products by falsely warranting that the Products do not contain preservatives.

99. Such mislabeling and misbranding constitute unfair and deceptive conduct in violation of Fla. Stat. § 501.204(1).

100. The Defendant’s violations of Fla. Stat. § 501.204(1) were willful and knowing.

101. As a direct and proximate result of Defendant’s unfair and deceptive acts, Plaintiff and the Class were injured and suffered damages and are entitled to actual damages, attorneys’ fees, and costs.

102. The injuries suffered by Plaintiff and the Class include, but are not limited to, paying for Defendant’s Products, paying a premium price for Defendant’s falsely advertised Products, and the unlawful profits Defendant earned from the sales of these falsely advertised Products.

103. Accordingly, on behalf of herself and all others similarly situated, Plaintiff seeks restitution from the Defendant and an Order of this Court

proportionally disgorging all profits, benefits, compensation, consideration, and other monies obtained by Defendant from its wrongful conduct.

104. Plaintiff and the Class Members are also entitled to injunctive relief in the form of an order directing Defendant to cease their false and misleading labeling and advertising, retrieve existing false and misleading advertising and promotional materials, and publish corrective advertising.

**COUNT V**  
**UNJUST ENRICHMENT**

**All Classes**

105. Plaintiff adopts and incorporates Paragraphs 1 – 64 as if fully stated herein.

106. Plaintiff asserts this claim on behalf of Plaintiff and the Classes, to the extent that any contracts do not govern the entirety of the subject matter of the disputes with Defendant.

107. Plaintiff and the Classes conferred a benefit to the Defendant in the form of monies paid to the Defendant when purchasing the Products, which Defendant had mislabeled and misbranded.

108. The Defendant knew or should have known of the benefit.

109. It would be inequitable and unjust for the Defendant to retain the profits, benefits, compensation, consideration, and other monies obtained by and from its wrongful conduct in promoting, marketing, distributing, and selling the mislabeled and misbranded Products.

110. Accordingly, on behalf of himself and all others similarly situated, Plaintiff seeks restitution from the Defendant and an Order of this Court proportionally disgorging all profits, benefits, compensation, consideration, and other monies obtained by Defendant from its wrongful conduct.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a jury trial on all issues so triable.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests that the Court enter judgment on behalf of himself and the Classes for:

- a. Certification for this matter to proceed as a class action;
- b. An award of actual damages as pled herein;
- c. Injunctive relief as pled herein;
- d. An award of pre-judgment and post-judgment interest as provided by law;
- e. An award of attorneys' fees, litigation expenses, and costs of suit;
- f. Such other relief as the Court deems just and proper.

Respectfully submitted on **January 4, 2024**, by:

**SERAPH LEGAL, P. A.**

*/s/ Bryan J. Geiger* \_\_\_\_\_

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Peter N. Wasylyk (pro hac vice to be  
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Attorneys for Plaintiff

**ATTACHED EXHIBIT LIST**

A Image of the Products' Front Label

**EXHIBIT A**  
**Image of Products' Front Label**



**CIVIL COVER SHEET**

JS 44 (Rev. 06/17)

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 NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Austin Cave

(b) County of Residence of First Listed Plaintiff Hillsborough County, FL  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Seraph Legal, P.A.  
2124 W. Kennedy Blvd., Ste. A, Tampa, FL 33606

**DEFENDANTS**

Rowdy Beverage, Inc.

County of Residence of First Listed Defendant San Diego County, CA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**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)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | <b>PTF</b>                            | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                            |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input 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            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

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 (Excludes 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	<b>PERSONAL INJURY</b> <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 checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (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"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	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"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	
		<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

**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 - Transfer
- 8 Multidistrict Litigation - Direct File

**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. § 1332

Brief description of cause:

Defendant mislabels its Rowdy Power Burn Energy Drinks

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 1,000,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE 01/04/2024 SIGNATURE OF ATTORNEY OF RECORD

/s/ Bryan Geiger

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

Austin Cave

Plaintiff(s)

v.

Rowdy Beverage, Inc.

Defendant(s)

Civil Action No. 8:24-cv-00058

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Rowdy Beverage, Inc.
c/o Al Tumini
10531 4S COMMONS DRIVE STE 166-559
SAN DIEGO, CA 92127

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Bryan J. Geiger, Esq.
Seraph Legal, P.A.
2124 W. Kennedy Blvd., Suite A
Tampa, FL 33605
BGeiger@Seraphlegal.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk