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Counsel for Plaintiff Axxess Global Sciences, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

AXCESS GLOBAL SCIENCES, LLC,	)	
	)	
Plaintiff,	)	Civil No: _____
	)	
vs.	)	
	)	
RISE TO NUTRITION, LLC <i>dba</i> RIZE	)	
LABS,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

**COMPLAINT FOR FALSE ADVERTISING AND UNFAIR COMPETITION
AND JURY DEMAND**

Plaintiff Axxcess Global Sciences, LLC (“AGS” or “Plaintiff”) complains and alleges the following against Defendant Rise to Nutrition, LLC *dba* Rize Labs (“Rize Labs” or “Defendant”).

THE PARTIES

1. Plaintiff AGS is a Utah limited liability company with a principal place of business at 2157 Lincoln Street, Salt Lake City, UT 84106.

2. Defendant Rize Labs is a Wyoming limited liability company with a registered mailing address and principal office at 30 N Gould Street, Ste 28212, Sheridan, WY 82801, and a registered agent (Northwest Registered Agents, Inc.) at 30 N Gould Street, Ste N, Sheridan, WY 82801.

JURISDICTION

3. This Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331 because all claims arise under the laws of the United States: 15 U.S.C. § 1125.

4. This Court has personal jurisdiction over Defendant, and venue is proper in this District pursuant to 28 U.S.C. § 1391, at least because Defendant resides in this District, is registered to do business in this District, has a registered agent in this district, has a principal office in this District, and has committed a substantial portion of the infringements and other misdeeds giving rise to this action from within this District.

BACKGROUND

5. Plaintiff AGS is an innovator in the field of exogenous ketones and ketogenic precursor supplement products. In particular, AGS has developed a line of products containing novel formulations of the health supplement Beta-Hydroxybutyrate (“BHB”). These products aid

the body in producing and sustaining elevated levels of ketone bodies in the blood and assist in the body's transition into nutritional ketosis.

6. Plaintiff is the premier provider of BHB supplements in the United States and around the world. Plaintiff's quality products can be found online via its own website, through third-party retailers, and in brick-and-mortar stores across the country like Walmart, Target, Walgreens, CVS, and more.

7. Defendant falsely advertises that hundreds of its products contain BHB ingredients, when in fact, they contain no BHB, as exemplified below for Defendant's "Premier Keto" product:

Supplement Facts		
Serving Size: 2 Gummies		
Servings Per Container: 30		
	Amount Per Serving	%DV*
Calories	10	
Total Carbohydrate	3g	1%
Total Sugars	2g	**
Includes 2g Added Sugars		
		4%
Vitamin B6 (as Pyridoxine HCl)	1.28mg	29.5%
Folate (as 240mcg Folic Acid)	403.5mcg DFE	50%
Vitamin B12 (as Cyanocobalamin)	4.1mcg	50%
Iodine (as Potassium Iodide)	100mcg	33.5%
Apple Cider Vinegar (Fruit) (5% Total Acids)	1000mg	**
Beet Juice Powder (Fruit)	80mcg	**
Pomegranate Juice (Root)	80mcg	**
* Percent Daily Values are based on a 2,000 calorie diet.		
** Daily Value (DV) not established.		
Other Ingredients: Glucose Syrup, Sucrose, Water, Glucose, Pectin, Natural Flavoring (Apple), Sodium Citrate, Citric Acid, Glazing Agent (Carnauba Wax and Vegetable Oil), Unfiltered Liquid Apple Cider Vinegar, Purple Carrot Juice Concentrate, B-Carotene 1%		

- All Natural Ingredients: For weight loss and belly fat, Premier Keto bhb Gummies for weight loss has all natural organic ingredients to help achieve your weight loss and increased energy goals more quickly. The added benefits of apple cider vinegar can effectively improve weight loss.

<https://www.amazon.com/dp/B0CHN77MGK/>

8. Actual consumers have been deceived by Defendant's false advertising of BHB ingredients:



"The gummies were suppose to be with bhb and it's not. Why? This is the second time this has happened. If I order it with bhb it should have bhb "

By Sam on December 24, 2023.



"The item received is not at all what was advertised. Completely different ingredients. Totally unacceptable and disappointing "

By Tony Edwards on March 22, 2024.



"This is not the real product I wanted. Same label and name, but it has different ingredients. How dishonest! Do NOT buy!!"

By Cathie C on October 10, 2023.



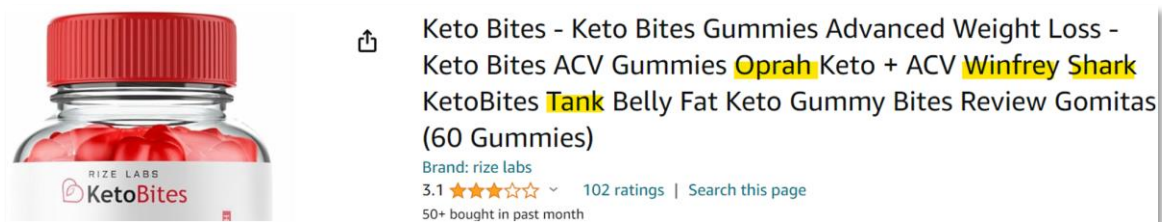
"Fake..not same ingredients"

By kathy schaefer on February 11, 2024.

<https://www.amazon.com/s?me=A1P5ROWBBK1MZB&marketplaceID=ATVPDKIKX0DER>

9. Plaintiff conducted third-party testing of a representative sample of three of Defendant's products that purportedly contain BHB (identified by their Amazon ASINs: B0C42W6X57, B0CK9C4CBF, and B0CHN77MGK) and confirmed that they do not, in fact, contain any BHB. *See* Exhibit A.

10. Defendant also falsely advertises that its products are endorsed by various musicians, actors, television personalities, and popular television programs, including singer and television host Kelly Clarkson, actor John Goodman, television host Oprah Winfrey, and the television program, *Shark Tank*:



<https://www.amazon.com/dp/B0CB4QCKV2/>



<https://www.amazon.com/dp/B0C42W6X57/>

11. On information and belief, Defendant is attempting to profit from a trend of marketplace bad actors falsely associating keto products with *Shark Tank* and other celebrities—a false advertising scandal recognized by the FTC. See FTC Consumer Alert, *Did your favorite Shark Tank celebrity really endorse THAT? Probably not* (2023) (accessible at: <https://consumer.ftc.gov/consumer-alerts/2023/02/did-your-favorite-shark-tank-celebrity-really-endorse-probably-not>) (“Before you spend money on that ‘Shark-approved’ . . . keto diet pill, are you sure it’s really been through the *Tank*? Really sure? Scammers are using fake *Shark Tank* celebrity testimonials and endorsements—complete with doctored photos and videos—to generate buzz and profits.”).

12. Actual consumers have been deceived by Defendant’s false advertising of celebrity and television endorsements:



L. Entz



Doesn't work for weight loss

Reviewed in the United States on December 13, 2023

Size: 60 Count (Pack of 2) | **Verified Purchase**

This product was featured on Facebook in relationship to the weight loss of Kelly Clarkson.

I took this product as directed & had zero results. Might as well be candy. Don't waste your money. Total scam.



"I believe that this product was falsely advertised and that Kelly Clarkson did not represent their product as advertised. Therefor I am requesting a refund."

By SFD on November 18, 2023.



"Products use false advertising and information. They are claiming John Goodman lost his weight on this FAKE JUNK BIG SCAM. I WANT MY MONEY BACK. SUSAN T"

By Susan T. on October 5, 2023.

<https://www.amazon.com/gp/customer-reviews/R3Q8PSOSTP05KR?ASIN=B0CBNBRTGB>

13. Plaintiff is a direct competitor of Defendant in the dietary supplements market and specifically for ketone and BHB supplements, including in pill and gummy form.

14. Defendant's Falsely Advertised Products include at least those products currently listed at the 136 Amazon ASINs identified below:

<u>B0C42W6X57</u>	<u>B0CKD51TMS</u>	<u>B0CH98NS3J</u>	<u>B0C99KV7QC</u>
<u>B0CK9C4CBF</u>	<u>B0C6X12MLQ</u>	<u>B0C99PZBXQ</u>	<u>B0C42WGW3G</u>
<u>B0CHN77MGK</u>	<u>B0C6X8Z24T</u>	<u>B0CBNBRTGB</u>	<u>B0CB952LCF</u>
<u>B0CCZVVQT1</u>	<u>B0CK8MJKX5</u>	<u>B0CBNCD659</u>	<u>B0CBNDSM9B</u>
<u>B0CD1DL61G</u>	<u>B0CK8PD8CX</u>	<u>B0CBNF3JCB</u>	<u>B0C55TR9VX</u>
<u>B0CCZQTCGR</u>	<u>B0CK8PF2MC</u>	<u>B0C55T9MYV</u>	<u>B0C8QXC4JF</u>
<u>B0CMTYMXKB</u>	<u>B0C5S11K2G</u>	<u>B0C55QNHFN</u>	<u>B0CBNBCR91</u>
<u>B0CMV133KT</u>	<u>B0C5S1BQZH</u>	<u>B0C925HGX5</u>	<u>B0CB4S5GJ4</u>
<u>B0CMTWRFPN</u>	<u>B0CHCDC486</u>	<u>B0C927ZNRW</u>	<u>B0C5NRW42S</u>
<u>B0CBCW73GC</u>	<u>B0CHCHL2M5</u>	<u>B0C92Q914F</u>	<u>B0C9285QTM</u>
<u>B0CBCXMWVC</u>	<u>B0CHC48Q6W</u>	<u>B0C8S3KSNR</u>	<u>B0CBNB4QH6</u>
<u>B0CLGSSTJX</u>	<u>B0CHBTY871</u>	<u>B0C8RKBFDK</u>	<u>B0CDDRJQS4</u>
<u>B0CLGTVKYH</u>	<u>B0C67B9WX8</u>	<u>B0CGL7CXPX</u>	<u>B0CDCQJM4N</u>
<u>B0CLGX79JK</u>	<u>B0CDDL598L</u>	<u>B0CGKF3131</u>	<u>B0C6X33VB1</u>
<u>B0CGKX4G6H</u>	<u>B0CDDFVJ1C</u>	<u>B0CGKSCGZ9</u>	<u>B0C5YP3ZQ3</u>
<u>B0CGKMPWZM</u>	<u>B0CDD5PYTP</u>	<u>B0CGL275WP</u>	<u>B0C6RBT3FT</u>
<u>B0CGKQ3CB5</u>	<u>B0CJTBDTFG</u>	<u>B0CBNC55NJ</u>	<u>B0CDCRM9W1</u>
<u>B0C3WQVZWD</u>	<u>B0CJT8X512</u>	<u>B0CCWWGB9Z</u>	<u>B0CCX3YWCT</u>
<u>B0C3WQTNFH</u>	<u>B0CJT5QYWD</u>	<u>B0CCX62SXS</u>	<u>B0CBNC5VT8</u>
<u>B0CHGX6NW7</u>	<u>B0CJT7DWHT</u>	<u>B0CB94Q51X</u>	<u>B0C45JGGTL</u>
<u>B0CHGSKFSN</u>	<u>B0C5S3KT62</u>	<u>B0CB952136</u>	<u>B0CCWQT3N1</u>
<u>B0CHGBCK42</u>	<u>B0C5S3TLBK</u>	<u>B0CB94RL7K</u>	<u>B0CBNC88P3</u>
<u>B0CH96V2TS</u>	<u>B0C8VDX1KS</u>	<u>B0CD2RCZZP</u>	<u>B0C6RCMFKN</u>
<u>B0CH9797DC</u>	<u>B0C8VG94PP</u>	<u>B0CD2S2ZHQ</u>	<u>B0C5S52ZHC</u>
<u>B0CH98WRJC</u>	<u>B0C9KCT5L2</u>	<u>B0CD2TXWW1</u>	<u>B0C8VDXBBK</u>
<u>B0C42XMBSL</u>	<u>B0C9KKSJSR</u>	<u>B0CD2TFYQC</u>	<u>B0C5S4996R</u>
<u>B0CGH5WSG3</u>	<u>B0CJMKXNZX</u>	<u>B0CHN6RD1W</u>	<u>B0C8VDBFSC</u>
<u>B0CGKWPGY6</u>	<u>B0CDDCGL38</u>	<u>B0CHN9KQ6H</u>	<u>B0CDDBLT9N</u>
<u>B0CGKKRM3L</u>	<u>B0C5NTRSDZ</u>	<u>B0CHN85H81</u>	<u>B0C46DTJ8X</u>
<u>B0CGK7K2HW</u>	<u>B0C5P3N1JY</u>	<u>B0C3WS9SLK</u>	<u>B0C5S1FG88</u>
<u>B0CGKPJ1D7</u>	<u>B0C5NT67RS</u>	<u>B0C3WV4JWP</u>	<u>B0C42WXX69</u>
<u>B0C1M7HBG4</u>	<u>B0CH99V8GP</u>	<u>B0C79K1SPW</u>	<u>B0C4Z548FB</u>
<u>B0C1MMDWG7</u>	<u>B0CH97X7H3</u>	<u>B0C79LLKF3</u>	<u>B0C45GKYZY</u>
<u>B0C1M9RXMQ</u>	<u>B0CH99GK6C</u>	<u>B0C79PHDZ4</u>	<u>B0CB4QCKV2</u>

15. Plaintiff further notes that Defendant is engaged in a widespread scheme of intellectual property theft of third parties. Indeed, on information and belief, most—if not all—of Defendant's products, including the Falsely Advertised Products, are rip-offs of the products of

various third parties. On information and belief, Defendant steals the trademark-protected product names, trade dress, and copyright-protected labelling and product descriptions of third parties and applies them to its own products. Reviews for Defendant's products are replete with consumers who have been confused by Defendant's infringements:



"let me state This Item is FAKE, I order this everything about it is FAKE!!! The label, Ingredients also USING The NAME! Company dose not make this! BUYER BEWARE... Ask me how I know this I have the Real Bottle Form the Real Company... This so Call Company Rize Labs would not give my a FULL REFUND BUYER BEWARE. FAKE! "

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By Sandy Goodman on August 31, 2023.



"we think this is not an original Quiteum plus but a knock off.. even the ingredients are incorrect. tried returning it but it says this item doesnt qualify for a return. "

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By asad ali on September 3, 2023.



"The product was called Sight Care, but did not have the ingredients listed on Amazon. I had a bottle of Sight care that I was trying to order that I had got at another site. When I received the product it had none of the ingredients I was trying to match. I could not return the bottle. So I am out my money. I am totally NOT HAPPY with this product. "

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By Kindle Customer on July 26, 2023.



"This is NOT the original Puravive that you read about in the news, this product is totally FAKE. The quality of ingredients is horrible along with the amount of ingredients. There's ABSOLUTELY no weight loss and this product increase your blood pressure to very high levels. The product made me feel sick every time I tried it, in addition to raised BP, there's vomiting and migraines. DO NOT BUY THIS JUNK!! "

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By SickMetal on March 29, 2024.



"I have read that this is a knock off of the real Glucotrust product. Amazon should pay closer attention to their sellers. "

By Tls on March 5, 2024.



"Terrible product. I can not be returned. Does not work at all. It is a fake for the real product. The real product has completely different ingredients and only a 30 day supply. "

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By Marta Blodgett on February 20, 2024.



"Very disappointed ...This product is a fake! I guess that is also why this is not eligible for refund/ "

By Amazon Customer on February 14, 2024.



"The ingredients of this product are completely different from the actual Neotonics, and there are no returns. The real Neotonics back their product. Very disappointed. Don't buy this fake product! "

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By Colleen Mahoney on February 10, 2024.



"This is not the real Puravive advertised on the puravive.com website, it is a counterfeit product. The real product will say "weight loss support" on the bottle, look online before buying."

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By David Shinn on January 29, 2024.



"Beware...This is not the Blissful Aura product. Look close. No returns and refunds. Gummies are brown in color, not bright and vibrant hues like Blissful Aura gummies. Tastes like dead fish. Would not trust ingesting these."

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By SYP on January 12, 2024.



"Beware, these are NOT authentic Puravive capsules. The label says Puravive but the ingredients are not the same as the original Puravive capsules sold on their website. The labels are the same but the capsules are not. Sorry to have to tell you this."

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By M. R. on January 17, 2024.



"The ingredients are NOT the same as in the real Puravive product. And you cannot return this item either. It's too late for me now because I didn't read the label before buying like I should have. \$30 down the drain."

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By Patty N on December 27, 2023.

<https://www.amazon.com/s?me=A1P5ROWBBK1MZB&marketplaceID=ATVPDKIKX0DER>

16. On information and belief, all of the at least 136 Falsely Advertised Products are, in reality, one of just two products: keto pills or keto gummies, with identical ingredients, but with different labelling.

17. Defendant's false advertising is made in interstate commerce, at least because it is advertised to consumers across the United States on Amazon.com.

18. Defendant's False Advertising is material because it misrepresents the ingredients found in its products, the benefits of its products, and the quality, reputation, and approval of its products by others.

19. Defendant's False Advertising has the tendency to deceive consumers into believing that Defendant's products have certain ingredients, benefits, quality, and/or approval, which in fact they do not have. Indeed, actual deception has already occurred, as evidenced by the customer reviews of Defendant's products.

20. Defendant's False Advertising is likely to influence purchasing decisions because consumers look for products with particular ingredients, benefits, and quality, and for products and retailers with good reputations and that have received the approval of other consumers.

21. Plaintiff has suffered harm from Defendant's False Advertising in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill and its legitimate BHB products.

22. As a result of Defendant's misconduct as alleged herein, Plaintiff's immediate, irreparable injuries have no adequate remedy at law, and Plaintiff is entitled to injunctive relief, Plaintiff's actual damages, Defendant's profits, as well as costs and reasonable attorney fees.

FIRST CLAIM FOR RELIEF
False Advertising and Unfair Competition
False BHB Ingredient Advertising
15 U.S.C. § 1125(a)

23. Plaintiff incorporates and realleges the allegations of all prior paragraphs as if fully set forth herein.

24. Defendant falsely advertises on Amazon.com that all of the Falsely Advertised Products contain BHB ingredients, when in fact, they do not contain BHB.

25. Plaintiff is a direct competitor of Defendant in the dietary supplements market and specifically for BHB and ketone supplements.

26. Defendant's advertisements were made across the United States to consumers via Amazon.com. Defendant's misrepresentations are detrimental and dangerous to consumers who purchase these products expecting different ingredients than what they purchased. These false advertisements have the potential to deceive a substantial portion of the Defendant's audience

because they are prominently displayed in Defendant's advertising and because the evidence on record indicates that consumers are susceptible to this specific false advertising claim.

27. Plaintiff has suffered harm from Defendant's false advertising and unfair competition in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

SECOND CLAIM FOR RELIEF
False Advertising and Unfair Competition
False Celebrity and Television Endorsements
15 U.S.C. § 1125(a)

28. Plaintiff incorporates and realleges the allegations of all prior paragraphs as if fully set forth herein.

29. Defendant falsely advertises that many of its most popular Falsely Advertised Products are endorsed by various celebrities and television programs, including at least the Falsely Advertised Products identified by Amazon ASINs B0CBNBRTGB, B0CBNCD659, B0CBNDSM9B, B0CBNDSM9B, B0CD2S2ZHQ, B0CB4QCKV2, B0C6X8Z24T, B0C55T9MYV, B0C55T9MYV, and B0C55TR9VX (collectively, the "Falsely Endorsed Products").

30. Plaintiff is a direct competitor of Defendant in the dietary supplements market and specifically for BHB and ketone supplements.

31. Defendant's false advertisements for the Falsely Endorsed Products were made across the United States to consumers via Amazon.com. Defendant's misrepresentations are detrimental and dangerous to consumers who purchase these products believing that they have endorsements and affiliations which, in reality, they do not have. These false advertisements have the potential to deceive a substantial portion of the Defendant's audience because they are

prominently displayed in Defendant's advertising and because the evidence on record indicates that consumers are susceptible to this specific false advertising claim.

32. Plaintiff has suffered harm from Defendant's false advertising and unfair competition associated with the Falsely Endorsed Products in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays that the Court enter judgment in its favor and award the following relief against Defendant:

A. A judgment that Defendant falsely advertises that at least the Falsely Advertised Products contain BHB;

B. A judgment that Defendant falsely advertises celebrity and television endorsements for at least the Falsely Endorsed Products;

C. A judgment that Defendant unfairly competed with Plaintiff;

D. A finding that the Defendant's conduct alleged herein was willful and that this case is exceptional;

E. An order and judgment enjoining Defendant and its officers, directors, employees, agents, licensees, representatives, affiliates, related companies, servants, successors and assigns, and any and all persons acting in privity or in concert with any of them, from unfairly competing with Plaintiff or from falsely advertising any products;

F. An award of actual damages in an amount to be determined at trial for false advertising and unfair competition.

- G. Disgorgement of Defendant's profits associated with Defendant's false advertising and unfair competition;
- H. Plaintiff's costs and attorneys' fees;
- I. An order and judgment for Defendant to promulgate corrective advertising by the same media and with the same distribution and frequency as the false advertising alleged herein;
- J. Any such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial on all matters triable to a jury.

DATED April 23, 2024.

Respectfully submitted,

CROWLEY | FLECK

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