

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

bHIP GLOBAL, INC,

Plaintiff,

vs.

Jeunesse Global Holdings, LLC;  
Jeunesse, LLC  
Vincent Giampapa  
Defendants.

CIVIL ACTION NO.

6:12-CV-00573-LED (ECF)

***DEMAND FOR JURY TRIAL***

**BHIP GLOBAL'S COMPLAINT IN JOINDER FOR LANHAM ACT VIOLATIONS  
AND UNFAIR COMPETITION, AND REQUEST FOR INJUNCTIVE RELIEF**

COMES NOW, bHIP Global, Inc., PLAINTIFF in the above entitled and numbered cause, and file their COMPLAINT IN JOINDER FOR LANHAM ACT VIOLATIONS AND UNFAIR COMPETITION AND REQUEST FOR INJUNCTIVE RELIEF against Jeunesse Global Holdings, LLC and Jeunesse, LLC ("Jeunesse") and Vincent Giampapa ("Giampapa") and collectively ("Defendants") states:

**I. PARTIES**

1. bHIP Global, Inc. is a Texas corporation having its principal place of business located at 901 Sam Rayburn Highway, Melissa, Texas 75454.
2. Jeunesse Global Holdings, LLC and Jeunesse, LLC are believed to be Florida limited liability companies having their principal places of business located at 650 Douglas

Avenue, Altamonte Springs, Florida 32714.

3. Vincent Giampapa is an individual who, is believed to have a place of business at which he can be served at 89 Valley Road, Montclair, New Jersey 07042. Mr. Giampapa is represented by Jeunesse as being their medical advisor and spokesperson.

## **II. JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over the claims made herein based upon 28 U.S.C. §§ 1331 and 1338 because this action arises under the United States trademark laws in general and under Section 43 of the Lanham Act, 15 U.S.C. § 1115 et seq. In addition, this Court has jurisdiction over the state law causes of action pursuant to 28 U.S.C. § 1367.
5. Jeunesse and Giampapa are subject to this Court's personal jurisdiction because they regularly conduct business and/or solicit business, engage in other persistent courses of conduct and/or derive substantial revenue from goods and/or services sold to citizens of the State of Texas.
6. Defendants are subject to this Court's personal jurisdiction pursuant to the Texas Long-Arm Statute. TEX.CIV.PRAC. & REM. CODE 17.044. The Texas Long-Arm statute has been interpreted to coincide with the limits of due process. As such, Plaintiff asserts that Defendants have established minimum contacts with the State of Texas which constitutes conducting business within the State.

## **III. BACKGROUND**

### ***a. Direct Sales Marketing Industry***

7. bHIP Global is a direct selling company that markets energy, nutrition and skin care

products world-wide. bHIP has invested millions in opening markets throughout the world as well as acquiring and developing products that would be attractive to direct sales customers. The competitiveness of a company and the ability to gain market share is dependent up on the quality and uniqueness of products available in the market place. As a result, bHIP has invested significant sums of money in creating strategic alliances with manufacturers and owners of product formulas.

8. bHIP Global launched its direct selling business in late 2007/early 2008 with a unique healthy energy product called bHIP Energy Blend and an antioxidant blend containing the Noni fruit name Noni Gia. With these products bHIP began to expand into countries globally, including Mexico, South East Asia, Asia and the United States.

***b. bHIP's Investment in and Development of Market for Products that include the AC-11/C-MED-100 Ingredient.***

9. In early 2011, bHIP acquired certain assets of a company named Ceregenex. Ceregenex held certain licenses to sell the patent and trademark protected AC-11/C-MED-100 ingredient (also referred to herein as AC-11/C-MED-100), which is owned by Optigenex. The relationship between Optigenex and bHIP culminated in the execution of a licensing agreement which provided bHIP exclusive rights to the marketing and sale of certain products in the direct sales industry, and the right to include the patent and trademark protected AC-11/C-MED-100 ingredient in various other products developed by bHIP with the permission of Optigenex.
10. The license agreement required that bHIP compensate Optigenex in the form of a licensing fee as well as minimum orders so it could maintain the exclusive nature of

the distribution channel in various markets world-wide. bHIP invested the sums to obtain the licensing agreement due to the nature of the patent and trademark protected AC-11/C-MED-100 ingredient and its proven and known scientific background.

11. Based upon the long term nature of the relationship entered into with Optigenex and the uniqueness of the AC-11/C MED-100 ingredient and products containing AC-11/C MED-100, bHIP undertook to develop products utilizing the AC-11/C MED-100 ingredient in effective dosages. In particular, bHIP incurred the costs to develop the a line of bHIP products that focus on products including the AC-11/C-MED-100 ingredient, the brand names of which are known to and recognized by the general public. The line of products developed which include the AC-11/C-MED-100 ingredients include products such as Activar Day, Night and Eye cream, Purple Plus, Purple Strips, Purple Caps, and AIO.
12. To support the development of the market for these products, bHIP developed a product brand, advertising campaign, and development of a world-wide launch plan. As part of bHIP's branding and advertising efforts bHIP hired a well-known branding and marketing firm to create a campaign which included creation and branding of the bHIP website and product pages, product labels and product images associated with the branding efforts. Countless dollars as well as internal and external resources and time were spent on the development of the campaign to sell the products containing the AC-11/C-MED-100 ingredients and educate the public on the benefits of the products.
13. Incurring travel and educational expense, bHIP educated its top leaders in the various markets about the exciting new products only to be met with complaints from

its customers that Jeunesse was selling similarly branded products and touting their products were based upon the same scientific studies and research upon which the products containing AC-11/C-MED-100 were based.

*c. Jeunesse's Competitive Products*

14. Jeunesse is a direct sales company that is believed to be in direct competition with bHIP Global selling nutritional products and skin care lines. Jeunesse, like bHIP markets its products and the products of other through independent sales associates.
15. It is believed that Vitaquest manufacturers for Jeunesse at least two products which compete with bHIP: NutriGen Am Essentials and NutriGen PM essentials. It is further believed that these products contain an ingredient that, through numerous references by Jeunesse to its origins and composition without regard to the Optigenex patents pertaining thereto, and through numerous improper associations made by Jeunesse between its ingredient and Optigenex's proprietary AC-11/C-Med-100 research, purports to be something equivalent to AC-11/C-MED-100 equivalent.
16. In addition to the Nutrigen products, Jeunesse also improperly competes with bHIP concerning is advanced night repair topical skin cream, which is in direct competition to the Activar Night Cream which contains the patented and trademarked ingredient AC-11/C-MED-100.
17. Giampapa, as the spokesman for Jeunesse utilized instructional and marketing materials in direct competition and made misrepresentations asserting that the Jeunesse AM & PM products were equivalent or better than the line of products developed by bHIP that contain the AC-11/C-MED-100 ingredient. In particular, Giampapa with Jeunesse's consent and knowledge created a video that directly

misrepresents the characteristics of the Jeunesse products as possessing the characteristics directly related to bHIP products containing the AC-11/C-MED-100 ingredient. As of the date of the filing hereof, the video remains publicly available at [www.jeunesstraining.com/product-training/nutrigen\\_training.com](http://www.jeunesstraining.com/product-training/nutrigen_training.com). At approximately 27 minutes into the video, Giampapa represents that the products are based upon 15 years of research and improve the body's ability to repair damage to DNA. Giampapa and Jeunesse clearly attempt to trade off of the goodwill of Optigenex and thereby the goodwill of bHIP as created by the license agreement bHIP with Optigenex.

18. Jeunesse is also improperly using webinars to tout the DNA repair nature of its skin care cream. In its presentation "the Science of Youthful Aging" Giampapa states: "when we take this compound and topically put in specific delivery systems, like we have with the Advanced Night Repair, the special ingredient can penetrate the skin...".
19. As set forth in the Complaint filed by Optigenex, Defendants are improperly linking their infringing products to those sold by bHIP and which bHIP undertook at great expense to gain the rights to sell and for which they developed a market.

#### **IV. CAUSES OF ACTION**

##### ***a. Lanham Act***

20. Plaintiffs incorporate fully the allegations in paragraphs 7 through 19 of this Complaint, as well as those factual allegations set forth in the Complaint of Optigenex.
21. Defendants have impermissibly engaged in unfair competition in violation of Section

43(a) of the Lanham Act. 15 U.S.C. § 1125(a).

22. Defendants directly and through their agents, officers, and employees are engaging in unfair competition. Defendants, directly and through their agents and employees are making false and/or misleading representations of fact concerning the nature, characteristics or qualities of their products in their advertising and promotions. In particular, Defendants are improperly attempting to pass off their product as containing the patented extract developed by Optigenex. Further, Defendants are improperly representing their products have a scientific backing they in fact do not.
23. As a result of Defendants improper conduct, Defendants are inducing distributors and customers to buy their products rather than those of bHIP, thus depriving bHIP of the investment it has made in the AC-11/C-MED-100 product line.
24. The statements and misrepresentations about the qualities and characteristics of the products as represented by Defendants have and continued to deceive customers and distributors about the quality of Defendants products and their comparability with those of bHIP.
25. Defendants representations have had and continue to have a negative material impact upon the purchasing decisions of customers and an independent distributor's ability to sell bHIP products.
26. As a result of Defendants actions, bHIP's reputation is being irreparable injured and bHIP does not have an adequate remedy at law to compensate it for Defendants acts. Further, unless enjoined, it is believed that Defendants unlawful activities will continue to cause injury to bHIP.
27. In addition to injunctive relief sought herein, Defendant believes that it has been

monetarily damaged by the loss of product sales to its customers. The full extent of the loss of sales that are a result of Defendants conduct may never be fully known. However, Plaintiffs assert that such damage is in excess of the amount in controversy necessary to invoke this Court's diversity of citizenship jurisdiction.

***b. Common Law Unfair Competition.***

28. bHIP incorporates fully the allegations in paragraphs 7 through 19 of this Complaint, as well as, those factual allegations set forth in the Complaint of Optigenex.

29. Pursuant to the laws of the State of Texas, bHIP asserts that Defendant's actions constitute unfair competition by trading off the goodwill created by bHIP's efforts, consumer recognition, and business reputation. bHIP asserts that such unfair competition will continue unless enjoined by this court.

30. As a direct result of Defendant's unlawful representations, bHIP has been injured by the loss of customers, independent distributors and sales. bHIP alleges that Defendants have improperly persuaded former customers to leave bHIP, and distributors of bHIP to join Jeunesse as a result of the claims made concerning the products.

***c. Tortious Interference with Prospective Business Relationships.***

31. bHIP incorporates fully the allegations in paragraphs 7 through 19 of this Complaint, as well as those factual allegations set forth in the Complaint of Optigenex.

32. Defendant's actions herein making inappropriate representations concerning their products and enticing independent distributors to join their company with them interferes with bHIP prospective business relationships. Upon information and belief,



independent distributors that would otherwise have joined with bHIP to sell its products containing the trademark and patent protected ingredient AC-11/C-MED-100 have been enticed by Defendant's improper actions to join Jeunesse instead. Further, it is believed that Jeunesse has purposefully targeted and attempted to recruit distributors of bHIP within the United States as well as far away as South East Asia and Asia.

33. Defendant's actions as described herein constitute tortious interference with Plaintiff's prospective business relationships. There is a substantial probability that bHIP would have entered into agreements with other customers, independent contractors and vendors but for the intentional wrongful conduct of the Defendants herein. Defendant's actions are independently tortious or unlawful.

34. As a result of the acts of Defendants, bHIP has suffered and likely will continue to suffer damages the true extent to which may not be fully known. Further, bHIP has suffered a loss of goodwill, loss of customers, and loss of buying power as a result of Defendant's actions which has been done with a conscious disregard for the law.

35. Defendants are liable to bHIP for actual damage caused by Defendant's unlawful conduct. Further Plaintiff seeks recovery of exemplary damages in an amount to be determined by the trier of fact.

***d. Conspiracy/Joint Enterprise***

36. bHIP incorporates the allegations in paragraphs 7 through 19 of this Complaint herein, as well as those factual allegations set forth in the Complaint of Optigenex.

37. Defendants were and are members of a combination of two or more persons with the object to accomplish an unlawful purpose by unlawful means. The Defendant's

meeting of the minds included the object of the course of action and the participation in the conspiracy. At least one of the members of the conspiracy committed an unlawful overt act to further the conspiracy.

38. As a direct and proximate result of Defendant's wrongful conduct, bHIP has suffered and will continue to suffer financial loss, loss of goodwill, loss of customers and independent distributors

39. Alternatively pleading, bHIP asserts that Defendants are joined in a joint enterprise wherein they had a mutual understanding and a common pecuniary purpose in which they had an equal right to control and/or direct the enterprise.

***e. Reservation of Rights***

40. The above allegations and claims are based upon information known to bHIP and/or based upon bHIP's information and belief at the time of the filing of this Complaint. Discovery and investigation of the allegations set forth herein and the conduct of Defendant's is continuing and bHIP reserves the right to supplement and/or amend such allegations and claims.

***f. Request for Relief***

41. As a result of the Defendants actions as set forth herein, Plaintiff respectfully requests judgment in this matter which includes the following relief:

- a. Injunctive relief preventing Defendants and their officers, agents, and employees from: (i) further misrepresentations concerning the quality, nature, and background of the products which is sells in violation of Section 43 of the Lanham Act; (ii) falsely associating their products with those with similar characteristics of those sold by bHIP and containing the AC-11/C MED-100

ingredient, which includes, but is not limited to, any public display, sales material, distribution publications, or other marketing efforts.

- b. Requiring Defendants to undertake remedial action designed to correct the confusion caused by Defendants, including, but not limited to: (i) formal retraction of all such false, misleading and confusing statements which shall be publicly disseminated to all currently active distributors via any back office messaging system as well as publicly on Jeunesse's global website and/or social media outlets; (ii) change of all packaging to remove all infringing statements; and (iii) removal of infringing products from the market.
- c. Awarding Plaintiff damages for Defendant's unfair competition under both the Lanham Act and Common Law Unfair Competition laws of the State of Texas. Including the rendering of any profits which were gained as a result of their unlawful acts.
- d. Attorneys' fees for prosecution of their Lanham Act claims to correct Defendant's improper acts.
- e. Pre and Post Judgment interest;
- f. Such other relief as this Court deems just and proper herein.

Respectfully submitted,

/s/ Jenifer L. Grace

**JENIFER L. GRACE**

State Bar No. 24026777

Attorney-in-Charge

bHIP Global, Inc.

901 Sam Rayburn Highway

Melissa, Texas 75434

(972) 439-1750 Telephone

(800) 335-2901 Facsimile

**ATTORNEY FOR PLAINTIFF  
bHIP GLOBAL, INC.**

**CERTIFICATE OF SERVICE**

I, Jenifer L. Grace, hereby certify that on September 26, 2012, I electronically submitted the foregoing document with the Clerk of the Court of the U.S. District Court, Eastern District of Texas, using the electronic case filing system. The electronic case filing system sent a "Notice of Electronic Filing" to individuals listed below who have consented in writing to accept such notice as service of this document by electronic means:

Andrew T. Gorham  
Parker, Bunt & Ainsworth, P.C.  
E. Ferguson, Suite 114  
Tyler, Texas 75702  
Tel: (903) 531-3535  
Fax: (903) 533-9687  
[rmparker@pbatyler.com](mailto:rmparker@pbatyler.com)  
Attorney for Optigenex

David W. Denenberg  
Davidoff Hutcher & Citron, LLC  
200 Garden City Plaza  
Garden City, NY 11530  
Tel: (516) 247-4440  
[dwd@dhclegal.com](mailto:dwd@dhclegal.com)  
Attorney for Optigenex

/s/ Jenifer L. Grace

JENIFER GRACE