

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of

CERTAIN ENERGY DRINK PRODUCTS

Investigation No. 337-TA-_____

**VERIFIED COMPLAINT OF RED BULL GMBH AND RED BULL NORTH
AMERICA, INC. UNDER SECTION 337
OF THE TARIFF ACT OF 1930, AMENDED**

Complainants:

**Red Bull GmbH
Am Brunnen 1
Fuschl am See
5330 Austria
Phone Number: +43-6-626-5820**

**Red Bull North America, Inc.
1740 Stewart Street
Santa Monica, California 90404
Phone Number: (310) 393-4647**

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Proposed Respondents:

**Chicago Import Inc.
3801-11 West Laurence Avenue
Chicago, IL 60625**

**Lamont Dist., Inc. a/k/a
Lamont Distributors Inc.
5 Lamont Court Suite 3A
Brooklyn, NY 11225**

**India Imports, Inc., a/k/a
International Wholesale Club
2901 Richland Avenue
Metairie, LA 70002**

**Washington Food and Supply of D.C., Inc.
a/k/a Washington Cash & Carry
1270 4th Street NE
Washington, DC 20002**

**Vending Plus, Inc.
2409 Peppermill Dr., Unit J
Glen Burnie, MD 21061**

**Baltimore Beverage Co.
2409 Peppermill Dr., Unit J
Glen Burnie, MD 21061**

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- Exhibit HH. Filed Complaint in *Red Bull GmbH and Red Bull North America, Inc. v. Kassir Import-Export Company, d/b/a Kassir Co., Jihad Kassir, and Ziad Kassir*, in the United States District Court for the Northern District of Georgia, Civil Action No. 1:06-CV-2301
- Exhibit II. Final Consent Judgment in *Red Bull GmbH and Red Bull North America, Inc. v. Kassir Import-Export Company, d/b/a Kassir Co., Jihad Kassir, and Ziad Kassir*, dated February 11, 2009.

I. INTRODUCTION

1. Complainants Red Bull GmbH (“Red Bull AU”) and Red Bull North America, Inc. (“RBNA”) (Red Bull AU and/or RBNA are collectively referred to herein as “Red Bull”) request that the United States International Trade Commission (“Commission”) institute an investigation into violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”) set out in detail in this Complaint. Red Bull is the source of the Red Bull Energy Drink and Red Bull Sugarfree authorized for sale in the United States (“U.S. Red Bull Energy Drink”).

2. This Complaint is based upon the unlawful importation into the United States, the sale for importation, and the sale and distribution within the United States after importation of gray market Red Bull energy drink products which are materially different from U.S. Red Bull Energy Drink. Specifically, Red Bull alleges that the proposed respondents named in this Complaint – i.e., Chicago Imports, Inc.; Lamont Dist., Inc. a/k/a Lamont Distributors, Inc.; India Imports, Inc. a.k.a. International Wholesale Club, Washington Food and Supply of D.C., Inc. a/k/a Washington Cash & Carry, Vending Plus, Inc., and Baltimore Beverage Co. (collectively, “Proposed Respondents”) – and other unidentified importers and distributors are each engaged in these unlawful activities.

3. More specifically, upon information and belief, the Proposed Respondents and other unidentified importers and distributors opportunistically import into the United States certain Red Bull Energy Drink products based upon the availability of such products outside the United States that are intended to be sold in various countries of the world other than the United States (e.g., Turkey, Mexico, Ireland, the U.K., Singapore, and Pakistan) and are materially different than the U.S. Red Bull Energy Drink products

(collectively Red Bull's energy drink products intended for sale overseas and sold in the U.S. without authorization, including the Red Bull Energy Drink and Red Bull Sugarfree products, are called herein "Gray Market Red Bull Energy Drink").

4. These Gray Market Red Bull Energy Drink products differ from U.S. Red Bull Energy Drink in numerous respects. For example, the Gray Market Red Bull Energy Drink products may have, among other things, different languages on the cans, omitted or different nutritional information and other unfamiliar wording on the cans, shoddy and inferior overlabeling on the cans, different local distributor contact information (e.g., a Dubai address rather than the U.S. California address), and a different overall image than U.S. Red Bull Energy Drink products. Further those handling the Gray Market Red Bull Energy Drink outside of the authorized distribution channels are not subject to the rigorous quality control standards required for U.S. Red Bull Energy Drink products.

5. The Proposed Respondents' and other unidentified importers' and distributors' unauthorized gray market importation and subsequent distribution is actionable because, *inter alia*, such distribution causes or is likely to cause purchaser or consumer confusion, mistake, and/or deception to the detriment of Red Bull, as well as to the detriment of consumers and purchasers in the United States. Purchasers and consumers in the United States have come to expect a certain quality, packaging, appearance, and overall image for the U.S. Red Bull Energy Drink products as a result of Red Bull's extensive branding, marketing, sales, and quality control efforts in the United States. When such purchasers and consumers encounter the Gray Market Red Bull Energy Drink products, which bear certain of Red Bull's trademarks and copyrighted subject matter but which are otherwise materially different from what U.S. purchasers

and consumers expect, they are likely to be confused and indeed disappointed. Further, such sales of Gray Market Red Bull Energy Drinks cause great damage to Red Bull and to its American subsidiary RBNA, and greatly damage the goodwill in Red Bull's valuable trademarks.

6. Specifically, the Proposed Respondents and other unidentified importers and distributors have violated Section 337 by the unlawful and unauthorized importation into the United States, the sale for importation, and/or sale within the United States after importation of Gray Market Red Bull Energy Drink products which: (1) infringe one or more of the Red Bull Registered Marks (as defined below), specifically U.S. Trademark Reg. Nos. 3,092,197; 2,946,045; 2,994,429; and 3,479,607; and (2) infringe the Red Bull Copyright which is the subject of U.S. Copyright Reg. No. VA0001410959.

7. Red Bull seeks relief from the Commission in the form of a permanent general exclusion order against the importation into the United States of all Gray Market Red Bull Energy Drink products. Complainants further seek cease and desist orders halting the Proposed Respondents' sale, offer for sale, and/or distribution after importation within the United States of Gray Market Red Bull Energy Drink products.

II. THE COMPLAINANTS

8. Red Bull AU is a company organized and existing under the laws of Austria with an address of Am Brunnen 1, Fuschl am See, 5330 Austria. Red Bull AU offers various goods and services to the consuming public at large, including most notably the Red Bull Energy Drink, in many countries throughout the world, including the United States.

9. Red Bull AU exclusively offers its goods and services in the United States, including the U.S. Red Bull Energy Drink products, through its wholly-owned subsidiary RBNA, a corporation organized under the laws of California, with an address of 1740 Stewart Street, Santa Monica, California 90404.

10. Red Bull Energy Drink has achieved unparalleled success since its introduction in Austria in 1987, and has gained wide-spread recognition throughout the United States among purchasers and consumers, as well as the beverage industry, since its introduction into the U.S. market in 1996. Following the success of the Red Bull Energy Drink, Red Bull introduced the Red Bull Sugarfree product in 2003. Photographs of the U.S. Red Bull Energy Drink products currently offered for sale in the United States are provided at Exhibit A.

11. The Red Bull Energy Drink, Red Bull's preeminent and immensely popular product, is currently the leader in the energy drink category and is sold in approximately 151 countries. The Red Bull Energy Drink is widely distributed through numerous outlets in the United States, is found in many beverage coolers and store aisles where beverages are sold, including, among other places, convenience stores, grocery stores, supermarkets, restaurants, gas stations, sports clubs, and entertainment venues.

12. Red Bull and the Red Bull Energy Drink are credited with fueling the energy drink craze that has attracted all types of consumers and purchasers, from athletes and students to office workers and truck drivers. In fact, the Red Bull Energy Drink's consumer appeal has resulted in an explosive growth in the energy drink category in the United States as beverage manufacturers and distributors have been anxious to attempt to

duplicate the success of the Red Bull Energy Drink. As such, energy drinks constitute a growing and valuable product category in the beverage industry in the United States.

13. Indeed, the sales volume of the Red Bull Energy Drink has exploded in recent years, making the brand the unchallenged market leader for energy drinks. In 2008, over 1.3 billion units of the Red Bull Energy Drink were sold in the United States (representing a three-fold increase in sales volume since 2003, when Red Bull sold 449.6 million units in the United States). See attached Confidential Exhibit B for unit sales of Red Bull Energy Drinks in the United States between 1996 and 2008.

14. Even with the constant entry of numerous competitive products into the energy drink field, Red Bull continues to be recognized as a leader in the energy drink category due to the remarkable success of the Red Bull Energy Drink. This success has been attained, in significant part, as a result of Red Bull's innovative U.S. marketing strategy and creation of a unique brand image associated with the Red Bull Energy Drink.

15. In particular, Red Bull has combined such innovative marketing strategies and brand image with an attention to local consumer demands and customer preferences in markets throughout the world. Integral to the brand image of the Red Bull Energy Drink is Red Bull's ability to ensure that it offers a tailored product, in terms of product ingredients, quality control, packaging, image, marketing, promotion, and advertising, for each specific country and/or region in which the Red Bull Energy Drink is offered.

16. Specifically, Red Bull individually assesses the consumers and purchasers, customs, preferences, trends, and regulations of specific countries and regions, and tailors the version of the Red Bull Energy Drink sold in each country or region to reflect those needs and preferences on a country-by-country basis. For example, depending upon the

country in which the product is sold, the Red Bull Energy Drink may feature, among other things, different ingredients, different languages, volumetric information, marketing phrases, and nutritional data.

17. By the time the Red Bull Energy Drink was first introduced into the United States in 1996, the Red Bull Energy Drink had already become a success throughout Europe. Nevertheless, prior to the launch of the Red Bull Energy Drink in the United States, Red Bull invested significant resources into assessing the U.S. market, including researching potential purchaser and consumer perceptions, regulatory issues, and advertising and marketing concerns, all in an effort to ensure the Red Bull Energy Drink's success in the United States. As a result of such efforts, and as set forth below, various modifications were made to the Red Bull Energy Drink sold in the United States ("U.S. Red Bull Energy Drink"). Thus, the U.S. Red Bull Energy Drink is unique to the U.S. market and, consequently, as discussed in further detail below, is materially different from Gray Market Red Bull Energy Drink products sold outside the U.S. See attached Exhibit A.

III. PROPOSED RESPONDENTS

18. On information and belief, Proposed Respondent Chicago Import, Inc. ("Chicago Import") is an Illinois corporation with its principal place of business located at 3801-11 West Laurence Avenue, Chicago IL 60625.

19. On information and belief, Proposed Respondent India Imports, Inc., a.k.a. International Wholesale Club ("International Wholesale"), is a Louisiana corporation with its principal place of business located at 2901 Richland Avenue, Metairie, LA 70002.

20. On information and belief, Proposed Respondent Lamont Dist. Inc. a/k/a Lamont Distributors, Inc. ("Lamont Distributors") is a New York corporation with its principal place of business located at 5 Lamont Court, Suite 3A, Brooklyn, NY 11225.

21. On information and belief, Proposed Respondent Washington Food and Supply of D.C., Inc. a/k/a. Washington Cash & Carry ("Washington Cash & Carry") is a District of Columbia corporation with its principal place of business located at 1270 4th Street NE, Washington, DC 20002.

22. On information and belief, Proposed Respondent Vending Plus, Inc. ("Vending Plus") is a Maryland corporation with its principal place of business located at 2409 Peppermill Dr., Unit J, Glen Burnie, MD 21061. On information and belief, Proposed Respondent Baltimore Beverage Co. ("Baltimore Beverage Co.") is a unit of Vending Plus with a principal place of business at the same address as Vending Plus, namely 2409 Peppermill Dr., Unit J, Glen Burnie, MD 21061 (collectively Vending Plus and Baltimore Beverage Co. are referred to as "Baltimore Beverage").

IV. THE TRADEMARKS AT ISSUE

23. Central to Red Bull's success in the United States has been a unique brand image, accomplished through the adoption of distinctive and eye-catching trademarks and trade dress for the U.S. Red Bull Energy Drink products, which are prominently featured in Red Bull's marketing, advertising, and promotional activities.

24. The U.S. Red Bull Energy Drink cans sold in the United States, like versions of the Red Bull Energy Drink and Red Bull Sugarfree packaging intended for sale in many other countries, feature a number of Red Bull's valuable trademarks. Specifically, the U.S. Red Bull Energy Drink products features the RED BULL word

mark ("RED BULL Word Mark") along with a distinctive design comprised of a pair of horned, red-colored bulls charging one another set against a gold sun ("Double Bull Design") and a distinctive design that is comprised of alternating sections of blue and silver colors ("Red Bull Background Design"). See Exhibit A.

25. Red Bull has sought to protect its valuable trademark rights through various means, including the filing of federal trademark applications to register such trademarks. Such registrations include, U.S. Registration Number 3,092,197 for the RED BULL word mark, U.S. Reg. No. 2,946,045 for the Double Bull Design, U.S. Reg. No. 2,994,429 for the Red Bull Sugarfree Background Design and U.S. Reg. No. 3,479,607 for the composite front panel design, all used in connection with energy drinks, among other things (the registered marks listed above are collectively referred to as the "Red Bull Registered Marks"). Attached as Exhibits C-F are copies of the federal registrations for each of the respective Red Bull Registered Marks, and attached as Exhibits G-J are certified copies of the file histories for each of the respective Red Bull Registered Marks.

26. In addition to prominently displaying the Red Bull Registered Marks on the U.S. Red Bull Energy Drink cans, Red Bull has made the Red Bull Registered Marks central to its marketing strategy, displaying the Red Bull Registered Marks on promotional materials, in advertisements, and at sporting, cultural and other events hosted or sponsored by Red Bull to promote the Red Bull Energy Drink and Red Bull Sugarfree in the United States.

27. Since 1996, Red Bull has expended over two billion dollars on advertising, marketing, and promoting the U.S. Red Bull Energy Drink products and the Red Bull Registered Marks in the United States. Between 2003 and 2008, Red Bull spent an

annual average of approximately \$300 million on marketing, advertising and promotional expenses in the United States, and in 2008 alone, Red Bull spent an estimated \$400 million on marketing, advertising, and promotional expenses in the United States. See attached Confidential Exhibit K for charts detailing Red Bull's marketing, advertising and promotional expenses in recent years.

28. Red Bull advertises the U.S. Red Bull Energy Drinks featuring the Red Bull Registered Marks in the United States through various means, including electronic media (namely television, movies, radio, and the Internet), print media (including newspapers, periodicals, and flyers), and other promotional materials (including in-store displays such as specially-manufactured Red Bull Energy Drink coolers).

29. Additionally, Red Bull promotes the U.S. Red Bull Energy Drinks featuring the Red Bull Registered Marks in connection with numerous athletic events, sponsorships, music festivals and sports competitions in the United States. For instance, Red Bull has sponsored motocross events such as the Red Bull X-Fighters (most recently in Texas, 2008); cultural sports events such as the Red Bull Flugtag (Chicago, 2008) and the Red Bull Air Race (San Diego, 2008 and 2009); motorcycle road racing such as the Red Bull Indianapolis Grand Prix (Indiana, 2008) and extreme sports events such as the Red Bull New Year No Limits (Las Vegas, 2009). Hundreds of thousands of spectators have witnessed these events in the United States, further strengthening Red Bull's brand recognition and building up the goodwill in the Red Bull Registered Marks. Red Bull has additionally sponsored or supported numerous other sporting events in the United States since 2003 (see attached Exhibit L for list of Red Bull's events).

30. Likewise, Red Bull promotes the U.S. Red Bull Energy Drink featuring the Red Bull Registered Marks by sponsoring teams and athletes competing in national and international competitive sports. Red Bull is heavily involved in NASCAR, as the owner and sponsor of the Red Bull Racing Team which competes in various races throughout the United States. Red Bull has also sponsored and co-owned Formula One racing cars and a Formula One team that has competed in events in the United States, and has sponsored and/or sponsors the motorcycle race teams Red Bull Yamaha WCM and Honda Red Bull Racing that compete in the United States. Red Bull additionally owns a Major League Soccer franchise, Red Bull New York. In addition to teams, Red Bull has sponsored numerous individual American athletes in extreme and other sports such as wakeboarding, skateboarding, snowboarding, B.A.S.E. jumping, BMX Street and professional baseball, basketball and football, as well as athletes that compete in various other sports. See attached Exhibit M for a list of certain Red Bull-sponsored U.S. athletes.

31. Red Bull also uses the Red Bull Registered Marks in connection with various cultural and community-based activities and events including music and deejay events such as the Red Bull Music Academy, as well as artistic shows such as the Red Bull Art of the Can.

32. In addition, Red Bull uses the Red Bull Registered Marks (and extensively licenses their use to third parties) in connection with numerous promotional and other items related to the U.S. Red Bull Energy Drinks, such as on-premises signs, mirrors, aprons, notepads, and coolers; tents, umbrellas, and other outdoor promotional items; cars used for distributing samples of the U.S. Red Bull Energy Drinks; clothing, including T-shirts and hats; and sports gear and decorations, including helmets, trophy stands, ramps,

wind-surfing equipment, course flags, and finish lines, used in connection with the various athletic competitions sponsored by Red Bull. Representative examples of such uses of the Red Bull Registered Marks are provided at Exhibit N.

33. Purchasers and consumers in the United States have come to recognize the Red Bull Registered Marks and to associate such proprietary indicia exclusively with Red Bull and the U.S. Red Bull Energy Drinks with which they are familiar. Red Bull has acquired a valuable reputation and goodwill among the U.S. public as a result of such consumer association. In fact, such advertising, marketing, and promotional efforts, as well as the significant sales of the Red Bull Energy Drink, have made Red Bull famous, and indeed a household name, in the United States.

34. Red Bull has not licensed, or otherwise consented to, use of the Red Bull Registered Marks or any confusingly similar trademarks by any of the Proposed Respondents or other unidentified importers and distributors.

V. THE COPYRIGHT AT ISSUE

35. In addition to the trademark rights associated with the Red Bull Energy Drink and Red Bull Sugarfree, as outlined above, Red Bull also controls the copyright associated with the front label of the Red Bull Energy Drink ("Red Bull Front Label Work"). Additionally, the front label of the Red Bull Sugarfree is a derivative work based on the Red Bull Front Label Work.

36. As seen in Confidential Exhibit O, Red Bull is the exclusive licensee of the U.S. copyright in the Red Bull Front Label Work (excepting the Double Bull Design), including Copyright Reg. No. VA0001410959 (see copy of registration attached as

Exhibit P) (“Red Bull Copyright”), which is comprised of the arrangement of elements in a 2-dimensional artwork.

37. Red Bull has never authorized anyone, including the Proposed Respondents and other unidentified importers and distributors, to import or sell Gray Market Red Bull Energy Drink bearing the Red Bull Copyright in the United States.

VI. THE PRODUCTS AT ISSUE

38. The products at issue are Gray Market Red Bull Energy Drink products intended for sale outside the United States in countries such as Turkey, Mexico, Ireland, the U.K., Singapore, and Pakistan, and which feature the Red Bull Registered Marks and Red Bull Copyright, but which are materially different from the U.S. Red Bull Energy Drink products. Examples of such Gray Market Red Bull Energy Drink products that have been imported at various times by the Proposed Respondents and other unidentified importers and distributors are depicted in Exhibit Q hereto.

39. The importation, distribution, and sale of Gray Market Red Bull Energy Drink products by the Proposed Respondents and other unidentified importers and distributors is likely to cause confusion among consumers and purchasers as to the source, nature, and/or approval for sale of these products, because the Gray Market Red Bull Energy Drink products offered by the Proposed Respondents and other unidentified importers and distributors in the United States are materially different from the authorized U.S. Red Bull Energy Drink, and yet bear many of the same trademarks as the U.S. Red Bull Energy Drinks. Further, the Gray Market Red Bull Energy Drink products are manufactured outside of the United States for sale in different countries and/or

markets, bear the Red Bull Copyright, and are being imported, sold, and distributed in the United States without Red Bull's authorization.

A. U.S. Red Bull Energy Drink

40. As is the case with each country in which the Red Bull Energy Drink and Red Bull Sugarfree is distributed, the U.S. Red Bull Energy Drinks have been formulated, packaged, distributed, and promoted to meet the consumer demands, customer preferences, and regulations of the United States.

41. First and most obviously, the wording on the U.S. Red Bull Energy Drink cans is written in American English, with a notation that the product is distributed by Red Bull's American affiliate RBNA (with its California address, "877" toll free number and U.S. website address listed), thus clearly indicating to American consumers and purchasers that the product is intended to be sold in the United States. (The toll-free number is an important means through which American consumers can direct questions, inquiries, and requests to RBNA). The U.S. Red Bull Energy Drink furthermore contains the well-known and familiar "Nutrition Facts" box required by the U.S. Food & Drug Administration ("FDA") which includes American-type nutritional information and units of measurement in the American "standard" system (e.g., ounces) which American consumers and purchasers have come to associate with products sold in the United States.

42. Red Bull also makes extensive quality control efforts in the United States with respect to the U.S. Red Bull Energy Drink. Indeed, while Red Bull has stringent quality control standards for all of its products sold around the world and distributed through Red Bull's authorized channels, Red Bull has designed certain quality control measures specific to the U.S. Red Bull Energy Drink to which importers and distributors

of Gray Market Red Bull Energy Drink products do not adhere. Such efforts demonstrate Red Bull's commitment to ensuring that its American consumers and purchasers receive the highest-quality U.S. Red Bull Energy Drink products. Such quality control measures are discussed in further detail below and include 1) batch coding and tracking; 2) rigorous importation standards; 3) quality control at U.S. distribution stage; and 4) quality control at retail level.

43. Batch Coding and Tracking. Each can of U.S. Red Bull Energy Drink has a batch code and expiration date that are displayed on the bottom of the U.S. Red Bull Energy Drink can. If it were necessary to locate or recall product in the United States (e.g., if a particular batch were damaged or adulterated), Red Bull and RBNA would rely upon these batch codes and their own internal sales and distribution information to pinpoint where the affected products were distributed, thus making a more targeted, efficient, and effective pulling, rotating or recall of product possible.

44. Rigorous Importation Standards. U.S. Red Bull Energy Drink is shipped into the United States in containers which are packed and filled to ensure the stringent quality control standards of Red Bull and to avoid damage to the U.S. Red Bull Energy Drink. Further, depending upon the port of entry and weather conditions at the time of importation, Red Bull will, as appropriate, ship the U.S. Red Bull Energy Drink in climate-controlled containers to maintain the integrity of the product.

45. Quality Control at U.S. Distribution Stage. Red Bull AU only ships U.S. Red Bull Energy Drink to its U.S.-authorized distributor, RBNA. Indeed, RBNA maintains the U.S. Red Bull Energy Drink in controlled warehouses maintaining a first-in, first out policy, and inspects those warehouses for quality control. Such controls include,

but are not limited to, restrictions regarding stacking, hourly monitoring of temperature and humidity in all facilities, adherence to acceptable facility temperature ranges, cleanliness, and awareness of shelf-life for the products. Additionally, should any product be damaged, compromised, or expired, that product is destroyed. RBNA also maintains a network of approved local distributors in the United States.

46. By having an exclusive American affiliate and distributor, namely RBNA, Red Bull is able to better control how its products are marketed and sold to its American customers. RBNA then selects its authorized U.S. sub-distributors who agree to comply with Red Bull's rigorous quality control standards.

47. **Quality Control at Retail Level.** RBNA's field personnel and authorized distributors frequently check U.S. retail locations where they know the U.S. Red Bull Energy product is sold and examine the product, including the expiration date, to ensure proper quality control and rotation of products. Similarly, distributors will return expired U.S. Red Bull Energy Drink product to RBNA for destruction or destroy the product themselves if they provide RBNA with a certificate of destruction from a reputable disposal company.

48. Given the tremendous goodwill associated with the Red Bull Registered Marks (as described above), the unparalleled success of the U.S. Red Bull Energy Drink, and the accompanying popularity and public attention directed to the product, any instances where the product may fail to meet the stringent quality standards and product image that the consuming public has come to expect could significantly harm Red Bull, including the reputation and goodwill it has nurtured and grown in the United States.

B. Gray Market Red Bull Energy Drink

49. There are numerous material differences between the various Gray Market Red Bull Energy Drink products imported by Proposed Respondents and other unidentified importers and distributors, and the authorized U.S. Red Bull Energy Drink intended for sale exclusively in the United States. Representative material differences are outlined below.

50. **Different Nutritional, Volumetric and Product Information.** Gray Market Red Bull Energy Drink lacks important nutritional, ingredient and volumetric information required by the Federal Food, Drug and Cosmetic Act and FDA regulations. For instance, the U.S. Red Bull Energy Drink contains the familiar "Nutrition Facts" box which American consumers have come to associate with products sold in the United States, and which includes certain American-type nutritional and volumetric information such as "serving size," "calories" and "% Daily Value."

51. In contrast, Gray Market Red Bull Energy Drink lists alternative nutritional information specific to other countries that is not listed on the U.S. can and is likely to confuse U.S. consumers. For example, most Gray Market Red Bull Energy Drink features nutritional and volumetric information in solely non-familiar formats to U.S. consumers such as the metric system (e.g., "kcal" or "milliliter"). Additionally, the British and Irish gray market cans list "Carbon Dioxide" as an ingredient.

52. The front panel of all U.S. Red Bull Energy Drink features volumetric information (e.g., "8.4 FL OZ (250mL)") as required by the FDA while this information is missing from the front panel of most Gray Market Red Bull Energy Drink.

Additionally, the U.S. Red Bull Energy Drink contains certain volumetric and nutritional information in the American “Standard” measurement system (e.g., ounces).

53. Moreover, Gray Market Red Bull Energy Drink gives different product information. For instance, Pakistan and Mexico gray market cans contain the following notice: “*Not recommended for children and persons sensitive to caffeine*”; while the British and Irish gray market cans contain a notice that the product has “*High Caffeine Content*”.

54. As a consequence of these differences in nutritional, volumetric and product information, certain Gray Market Red Bull Energy Drink products will feature an overlabel intended to address these inadequacies but which instead merely create additional material differences as discussed in further detail below.

55. **Absence of U.S. Quality Control Standards.** Gray Market Red Bull Energy Drink products typically lack several key pieces of information that are used by Red Bull in connection with its U.S. quality control efforts. For example, as mentioned above, Gray Market Red Bull Energy Drink cans are typically missing the U.S. toll-free “877” number and feature the website address information of the foreign countries for which the Gray Market Red Bull was intended rather than the address required by the US consumers.. Such toll-free number is provided on the U.S. Red Bull Energy Drink in order to allow consumers to contact RBNA with any inquiries or concerns regarding the Red Bull Energy Drink, and serves as an important means for RBNA to gather information about potential problems or issues relating to the U.S. Red Bull Energy Drink.

56. In addition, the batch codes on the Gray Market Red Bull Energy Drink cans are unaccounted for in RBNA's internal sales and distribution information, making it impossible to successfully recall such product in the event that Red Bull needs to do so. Furthermore, the U.S. Red Bull Energy Drink products contain a RBNA-affiliated UPC code which is standard to the U.S. and which enables Red Bull to track its products for its quality control purposes, while many of the Gray Market Red Bull Energy Drink cans appear to use an EAN code (used in countries outside the U.S.) which contain a different format than a UPC code.

57. Additionally, Red Bull reviews and rotates U.S. Red Bull Energy Drink products in retail locations and removes expired product for quality control purposes (expired products are returned to RBNA for destruction or destroyed by RBNA's distributors as discussed in paragraph 47). Gray Market Red Bull Energy Drink products distributed outside authorized channels of distribution are not subject to these measures by Red Bull. Further, because Gray Market Red Bull Energy Drinks are not subject to the same importation and distribution quality control standards as the U.S. products and may pass through various hands before arriving in retail locations, they are more likely to be physically damaged (e.g., bent or dented cans) by the time they reach the consumer than the U.S. Red Bull Energy Drink. For these same reasons, certain Gray Market Red Bull Energy Drinks have exceeded their product expiration date by the time they are sold to consumers. Additionally, because in many countries the expiration date is depicted in a format not commonly used in the U.S., namely with the day preceding the month and the year (in the U.S., the date is depicted with the day following the month), U.S.

consumers may be confused as to the actual expiration date for Gray Market Red Bull Energy Drink.

58. **Ingredient Differences.** Furthermore, there are certain variations in ingredients between U.S. and certain non-U.S. Red Bull Energy Drink products, given that the regulatory frameworks for individual countries may differ. Attached as Confidential Exhibit R is a summary of such differences.

59. **Differences in Language, Indicia or Phrases on Can.** U.S. Red Bull Energy Drink products feature American English (e.g., with ingredients containing American spellings such as “flavors”) and are clearly intended for American consumers. In contrast, because they are intended for foreign consumers, certain Gray Market Red Bull Energy Drink contains content in languages that are unfamiliar to the general U.S. population, such as Turkish and Spanish. (See Exhibit Q for example of Turkish and Spanish foreign-language gray market products). Furthermore, even Gray Market Red Bull Energy Drink cans written in English are confusing to American audiences because they are intended for non-American consumers (e.g., consumers in Ireland), and feature phraseology/terms and spellings (e.g., “flavourings” and “colours”) that differ from standard American English. Also, while the U.S. Red Bull Energy Drink contains the well-known American recycling symbol, certain Gray Market Red Bull Energy Drink cans (such as the Red Bull product intended to be sold in Ireland) contain different versions of the recycling symbol that are not generally known to American consumers.

60. Further, there are additional material differences in the content appearing on the cans of Gray Market Red Bull Energy Drink and the U.S. Red Bull Energy Drink, including the following: (1) certain Gray Market Red Bull Energy Drink products do not

feature Red Bull's registered trademark VITALIZES BODY AND MIND, which is present on the front panel of the U.S. Red Bull Energy Drink and which is central to the brand image of the U.S. product (or, instead, the phrase "VITALIZES BODY AND MIND" may appear in another language); (2) certain Gray Market Energy Drink cans feature the phrase, "*A varied and balanced diet and a healthy lifestyle are recommended*", which is not featured on the U.S. Red Bull Energy Drink; and (3) while the U.S. Red Bull Energy Drink features the language "*Lightly Carbonated. Serve Chilled*" on its front label, various Gray Market Red Bull Energy Drink products cans feature different language such as "*Serve Chilled. Carbonated.*" or "*Carbonated.*"

61. Different Distributor Contact Information. Rather than referencing RBNA's contact address in Santa Monica, California and an accompanying "877" toll-free number to call for inquiries as the U.S. product does, Gray Market Red Bull Energy Drink lacks this important information. In contrast, Gray Market Red Bull Energy Drink also features the distributor name and contact information for the foreign country in which the product was intended to be sold (e.g., Turkey or Mexico). Further, Gray Market Red Bull Energy Drink identifies websites targeted to consumers in other countries (e.g., <www.redbull.com.mx>, rather than the Red Bull U.S.A. website at <www.redbullusa.com> as the U.S. product does. Consumers encountering such foreign names, addresses and website addresses on Gray Market Red Bull Energy Drink products intended for sale in different countries and/or markets are likely to be confused as to the source of the U.S. Red Bull Energy Drink.

62. Absence of U.S. State Deposit Information. While U.S. Red Bull Energy Drinks are required by certain states to contain deposit information (e.g., California,

Connecticut, Massachusetts, New York, and Oregon), Gray Market Red Bull Energy Drink cans frequently lack such information. In some instances, Gray Market Red Bull Energy Drink products will have the requisite state deposit information applied near the opening of the can with an inkjet stamp whereas U.S. Red Bull Energy Drinks have this information etched into the top of the can (and do not feature an inkjet stamp). See Exhibit Q depicting top of the Turkish can stamped with California Refund Value information. Consumers purchasing Gray Market Red Bull Energy Drinks may, among other things, be concerned because of the proximity of the inkjet stamp to the location where one opens and drinks the product. Further, at times, the inkjet stamp may rub off and a consumer would be deprived of such requisite state deposit information. Furthermore, U.S. law requires that such deposit information cannot be rubbed off.

63. **Overlabeled Cans.** Certain Gray Market Red Bull Energy Drinks contain shoddily-applied inferior overlabel stickers (which can easily be removed). These overlabeled are applied by gray market exporters and/or importers to certain Gray Market Red Bull Energy Drink products in an apparent attempt to mask the material differences between the U.S. Red Bull Energy Drink and Gray Market Red Bull Energy Drink and replicate certain information required on the U.S. can (e.g., the Nutrition Facts box). However, such overlabeled are even more confusing to U.S. consumers and, rather, create even greater material differences between the products.

64. Further, the appearance of a shoddily-applied label itself on a Gray Market Red Bull Energy Drink can constitutes another material difference, given that U.S. Red Bull Energy Drinks do not contain any such overlabel. For instance, as seen in Exhibit Q, the Turkish gray market can features a shoddily-applied gray overlabel written in English

over the bottom of the can, while the top of the can does not contain a label and is written in Turkish. Consumers seeing such an overlabeled can, containing both U.S. information on the label and foreign information below or above the label, are likely to be confused as to the source of the U.S. Red Bull can.

65. In view of the foregoing 1) different nutritional, volumetric and product information; 2) absence of U.S. quality control standards; 3) ingredient differences; 4) differences in language, indicia or phrases on cans; 5) different distributor contact information; 6) absence of U.S. state deposit information; and 7) overlabeled cans, the Gray Market Red Bull Energy Drinks are materially different from U.S. Red Bull Energy Drinks.

VII. HARMONIZED TARIFF SCHEDULE

66. Complainants seek a general exclusion order to prohibit the importation of all Gray Market Red Bull Energy Drinks intended to be sold in countries other than the United States. These products are typically classified under Harmonized Tariff Schedules of the United States ("HTSUS") Subheading 2202.10.0040 (for the Red Bull Energy Drink) and 2202.10.0020 (for the Red Bull Sugarfree). These are exemplary classification numbers for illustration only and are not intended to restrict the accused product.

VIII. SPECIFIC INSTANCES OF UNLAWFUL IMPORTATION, SALE FOR IMPORTATION, AND/OR SALES WITHIN THE UNITED STATES AFTER IMPORTATION

67. The specific instances of importation of Gray Market Red Bull Energy Drink set forth below are only a representative sample of unlawful imports of infringing products. On information and belief, a number of entities, including Proposed

Respondents, import, sell and distribute infringing Gray Market Red Bull Energy Drink products.

A. Chicago Import

68. Proposed Respondent Chicago Import is not licensed or otherwise authorized by Red Bull to import, manufacture, sell, advertise, and/or distribute Gray Market Red Bull Energy Drink in the United States which bear one or more of the Red Bull Registered Marks (or confusingly similar variations thereof) and the Red Bull Copyright.

69. On information and belief, Chicago Import engages in the importation, sale for importation, and/or sale within the United States after importation of Gray Market Red Bull Energy Drink. Attached as Exhibit S is a picture of a Gray Market Red Bull Energy Drink purchased from Chicago Import and a copy of a receipt evidencing the purchase of the product from Chicago Import.

70. On information and belief, Chicago Import is a wholesale distributor of Gray Market Red Bull Energy Drink, based from its warehouse located at 3801-11 West Laurence Avenue, Chicago IL, 60625.

71. Additionally, Chicago Import advertises its Gray Market Red Bull Energy Drink through its website located at <www.chicagoimportinc.net>. As seen in Exhibit T (website located at www.chicagoimportinc.net/medicines3.html), Chicago Import advertises a Gray Market Energy Drink product containing the words "RED BULL STIMULATION" on the front panel instead of "RED BULL ENERGY DRINK".

B. International Wholesale

72. Proposed Respondent International Wholesale is not licensed or otherwise authorized by Red Bull to import, manufacture, sell, advertise, and/or distribute Gray Market Red Bull Energy Drink in the United States which bear one or more of the Red Bull Registered Marks (or confusingly similar variations thereof) and the Red Bull Copyright.

73. On information and belief, International Wholesale engages in the importation, sale for importation, and/or sale within the United States after importation of Gray Market Red Bull Energy Drink.

74. On information and belief, International Wholesale is a wholesale distributor of Gray Market Red Bull Energy Drink, based from its warehouse located at 2901 Richland Avenue, Metairie, LA 70002.

75. On March 19, 2009, an investigator visited International Wholesale's warehouse located in Metairie, LA and observed Gray Market Red Bull Energy Drink being sold in International Wholesale's warehouse. See Declaration of John Schoenfelt attached as Exhibit U. Although the investigator observed Gray Market Red Bull Energy Drink being sold by International Wholesale, the investigator was unable to purchase the product because International Wholesale would only sell the product to individuals with a particular business license.

C. Washington Cash & Carry

76. Proposed Respondent Washington Cash & Carry is not licensed or otherwise authorized by Red Bull to import, manufacture, sell, advertise, and/or distribute Gray Market Red Bull Energy Drink in the United States which bear one or more of the

Red Bull Registered Marks (or confusingly similar variations thereof) and the Red Bull Copyright.

77. On information and belief, Washington Cash & Carry engages in the importation, sale for importation, and/or sale within the United States after importation of Gray Market Red Bull Energy Drink. Attached as Exhibit V are pictures of two Gray Market Red Bull Energy Drink products purchased from Washington Cash & Carry and copies of receipts evidencing the purchase of such products from Washington Cash & Carry.

78. On information and belief, Washington Cash & Carry is a wholesale distributor of Gray Market Red Bull Energy Drink, based from its store located at 1270 4th Street NE, Washington, DC 20002.

D. Lamont Distributors

79. Proposed Respondent Lamont Distributors is not licensed or otherwise authorized by Red Bull to import, manufacture, sell, advertise, and/or distribute Gray Market Energy Drink in the United States which bear one or more of the Red Bull Registered Marks (or confusingly similar variations thereof) and the Red Bull Copyright.

80. On information and belief, Lamont Distributors engages in the importation, sale for importation, and/or sale within the United States after importation of Gray Market Red Bull Energy Drink.

81. On information and belief, Lamont Distributors has imported, and/or authorized the importation of shipping "containers" (consisting of well over 2,000 cases each) of Gray Market Red Bull Energy Drink product into the United States and then distributed and/or sold such products inside the United States. Further, on information

and belief, Lamont Distributors has directly solicited RBNA's own customers to purchase Gray Market Red Bull Energy Drink products. Attached as Confidential Exhibit W is an email from Lamont Distributors soliciting RBNA's own customer to purchase Gray Market Red Bull Energy Drink.

E. Baltimore Beverage

82. Proposed Respondent Baltimore Beverage is not licensed or otherwise authorized by Red Bull to import, manufacture, sell, advertise, and/or distribute Gray Market Energy Drink in the United States which bear one or more of the Red Bull Registered Marks (or confusingly similar variations thereof) and the Red Bull Copyright.

83. On information and belief, Baltimore Beverage engages in the importation, sale for importation, and/or sale within the United States after importation of Gray Market Red Bull Energy Drink. Attached as Exhibit X is a picture of Gray Market Red Bull Energy Drink purchased from Baltimore Beverage and a copy of a receipt evidencing the purchase of the product from Baltimore Beverage.

84. Furthermore, Baltimore Beverage uses one or more of the Red Bull Registered Marks without authorization on its business cards thereby suggesting to the public that it is authorized by Red Bull to engage in its unauthorized activities as described herein. See Exhibit Y for a Baltimore Beverage business card featuring one or more of the Red Bull Registered Marks.

IX. DOMESTIC INDUSTRY

85. A domestic industry exists within the meaning of 19 U.S.C. § 1337 (a)(3) with respect to the U.S. Red Bull Energy Drink and the Red Bull Registered Marks and Red Bull Copyright used in connection therewith.

86. Significant Investment In Plant And Equipment. Red Bull has made a significant investment in plant and equipment in connection with the U.S. Red Bull Energy Drink and Red Bull Registered Marks and Red Bull Copyright as described below.

87. In 2009, Red Bull began having the Red Bull Energy Shot and Red Bull Sugarfree Shot manufactured in the United States. These products feature several of the Red Bull Registered Marks and derivative works of the Red Bull Copyright. Attached as Exhibit Z are pictures of the Red Bull Energy Shot and Red Bull Sugarfree Shot featuring various Red Bull Registered Marks and derivative works of the Red Bull Copyright (the Red Bull Energy Shot features U.S. Reg. Nos. 3,092,197 and 2,946,045 and the Red Bull Sugarfree Shot features U.S. Reg. Nos. 2,994,429, 3,092,197 and 2,946,04; both products feature derivative works of the Red Bull Copyright). Additionally, Red Bull has begun production of various other Red Bull products, including the Red Bull Energy Drink and Red Bull Sugarfree in the United States in May 2009. These manufacturing activities have resulted in significant capital expenditures in the United States as described in further detail in Confidential Exhibit AA.

88. Additionally, RBNA leases a warehouse at its headquarters in Santa Monica, California, which it uses to store event logistics infrastructure, and occasionally uses to store Red Bull Energy Drink products. Currently, this warehouse holds nearly \$2.1 million in event logistics inventory (e.g., bars, tables, etc.). This event logistics infrastructure features several of the Red Bull Registered Marks and/or derivative works of the Red Bull Copyright and is used to promote and market the U.S. Red Bull Energy

Drink. Attached as Confidential Exhibit BB is a chart detailing this inventory held at Red Bull's headquarters.

89. Red Bull leases numerous other warehouse and storage space locations throughout the United States at which it stores, among other things, U.S. Red Bull Energy Drink product inventory, marketing and point-of-sale materials, and event logistics infrastructure inventory (all of which feature several of the Red Bull Registered Marks and/or derivative works of the Red Bull Copyright). Attached as Confidential Exhibit CC are detailed charts detailing RBNA's lease locations throughout the United States and their monthly rent amounts.

90. RBNA's logistics partner has leased warehouse space, or "plants," on RBNA's behalf at eight facilities in the United States, where RBNA stores various products and materials used to promote the Red Bull Registered Marks and/or the Red Bull Copyright. These plants currently hold over \$21 million in inventory. Attached as Confidential Exhibit DD are charts listing the approximate value of the inventory stored at eight U.S. plants, as well as the specific inventory of various point-of-sale items stored at these plants.

91. **Significant Employment Of Labor Or Capital.** Red Bull has also made a significant employment of labor in connection with the sales, distribution, promotion, marketing, advertising, licensing, intellectual property enforcement and quality control efforts relating to the U.S. Red Bull Energy Drink featuring the Red Bull Registered Marks and Red Bull Copyright.

92. For example, RBNA currently employs 1,681 total employees in various positions and in various locations throughout the United States in order to assist with the

exploitation, including licensing and enforcement, of the Red Bull Registered Marks and Red Bull Copyright and the sale, distribution, quality assurance, promotion, marketing and advertising of the Red Bull Energy Drink. Attached as Confidential Exhibit EE is a chart detailing RBNA's employment of labor in the United States. 100% of these employees' times is devoted to efforts relating to Red Bull products featuring one or more of the Red Bull Registered Marks and/or Red Bull Copyright and derivative works thereof. These employees perform various administrative, finance, human resource, information technology, marketing, operations & quality assurance, sales and legal functions in the United States.

93. Red Bull also owns a significant amount of "event logistics infrastructure" inventory (e.g., tents, bars, podiums, etc.) – valued at over \$8.4 million for the United States – which it uses to host events and otherwise promote the Red Bull Energy Drink featuring the Red Bull Registered Marks and Red Bull Copyright, and which it stores at various U.S. locations. Attached as Confidential Exhibit FF is a chart detailing Red Bull's event infrastructure inventory in the U.S.

94. Additionally, in connection with its business operations with respect to the Red Bull Energy Drink featuring the Red Bull Registered Marks and Red Bull Copyright, Red Bull expends significant amounts, nearly \$10 million in 2008, on corporate and promotional vehicles. Attached as Confidential Exhibit GG are charts detailing RBNA's 2008 expenditures towards such corporate and promotional vehicles in the United States. The promotional vehicles feature several of the Red Bull Registered Marks and/or Red Bull Copyright and derivative works thereof and are used to promote and market the U.S. Red Bull Energy Drink.

95. Substantial Investment In The Exploitation of the Red Bull Registered Marks and Red Bull Copyright. Red Bull has made significant investments in the research and exploitation of the Red Bull Registered Marks and Red Bull Copyright in the United States through various research, quality assurance, licensing and enforcement activities relating to the Red Bull Registered Marks and Red Bull Copyright.

96. From its first entry into the U.S. market, Red Bull has expended significant resources in conducting market research relating to the U.S. Red Bull Energy Drink featuring the Red Bull Registered Marks and Red Bull Copyright. For example, Red Bull has collected Nielsen market tracking information, conducted Trial & Awareness studies and conducted other qualitative research in the United States all relating to the Red Bull products featuring one or more of the Red Bull Registered Marks and/or Red Bull Copyright and derivative works thereof. From 2000 – 2008, Red Bull spent over 21.5 million dollars on such research, and, in 2009, alone, Red Bull will spend over 4 million dollars on such research.

97. Additionally, Red Bull has entered into various licenses with U.S. companies concerning the Red Bull brand. These relationships include licenses with American companies such as Jakks Pacific, Inc., Pabst Brewing Company, Motorsport Authentics, LLC, Associated Electrics, Inc., Microsoft Corporation and THQ, Inc. These licenses cover goods such as action figure toys, beer, race cars and video games.

98. In addition, Red Bull has developed numerous distributorship relationships with third parties. As part of these relationships, these distributors are authorized to use the Red Bull Registered Marks and Red Bull Copyrights in connection with their marketing, distribution and sale of the U.S. Red Bull Energy Drink. Furthermore, these

distributors are actively involved in preserving the quality and integrity of the U.S. Red Bull Energy Drink by engaging in various quality assurance measures as described in further detail in paragraph 47. For example, Red Bull uses various distributors throughout the United States, including among various others, The Beverage Works, Inc. located in New York, Power Distributing, LLC located in Illinois; Lift Off Distributing, LLC located in Maryland; Energized Distribution LLC located in California; Buckeye Distributing, Inc. located in Ohio; Matador Distributing LLC located in Georgia; Republic National Distribution Co. headquartered in Georgia with offices throughout the country; Western Distributing Company located in Colorado; BDT Beverage LLC located in Tennessee; Crescent Crown Distributing, LLC located in Arizona; 3-D Distribution, LLC located in Washington State; and Premium Brands of Michigan, Ltd. located in Michigan; Prestige Sales, L.L.C. located in Arizona.

99. Further, as outlined more fully in Section IV above, Red Bull has expended substantial amounts of time, effort, and money in the United States promoting the U.S. Red Bull Energy Drink featuring the Red Bull Registered Marks and Red Bull Copyright and as part of that effort has authorized third parties to use the Red Bull brand in promoting sports, cultural and other programs in the United States which promote the U.S. Red Bull Energy Drink. For example, Red Bull has licensed Red Bull New York, an MLS franchise; NASCAR; Indianapolis Motor Speedway, LLC; and American Honda Motor Corp. to use the Red Bull brand in connection with various sporting and related events as well as collateral merchandising.

100. Red Bull carefully inspects and controls the quality of the goods and services offered by these various entities that are authorized to use the Red Bull brand, Red Bull Registered Marks and/or Red Bull Copyright and derivative works thereof.

101. Red Bull has also used the Red Bull Registered Marks and/or Red Bull Copyright in connection with various other sports and cultural events such as Red Bull Flugtag, Red Bull Soap Box Race, Red Bull Music Academy and Red Bull Art of the Can. These events have been held throughout the United States in cities like Chicago, Houston, Denver, Philadelphia, Cincinnati and San Francisco, among elsewhere. All of these uses promote the U.S. Red Bull Energy Drink and exploit the Red Bull Registered Marks and Red Bull Copyright featured on the U.S. Red Bull Energy Drink. In 2008, Red Bull sponsored over 70 such events in the United States with each event costing from \$5,000 - \$3 million USD per event.

102. Hundreds of thousands of spectators in the United States have viewed these sports, cultural and other events which prominently feature and promote the Red Bull Registered Marks and Red Bull Copyright. Thus, these events enhance consumer recognition and the renown of the Red Bull Registered Marks and Red Bull Copyright, making them ubiquitous in American culture.

103. Since 1996, Red Bull has expended over two billion dollars on advertising, marketing, and promoting the U.S. Red Bull Energy Drink in the United States. Indeed, the value of such expenditures has increased dramatically in recent years, totaling over \$400 million in 2008 for combined marketing, advertising and promotion expenses in the U.S. (See Section IV above for further examples of Red Bull's advertising and marketing efforts in connection with the Red Bull Energy Drink; see Confidential Exhibit K for

charts detailing such expenditures). These substantial expenditures have contributed to building the goodwill associated with the U.S. Red Bull Energy Drink and thereby exploiting the Red Bull Registered Marks. Furthermore, these advertising, marketing and promotional efforts include the creation of various derivative works of the Red Bull Copyright which results in the exploitation of the Red Bull Copyright.

104. Additionally, of the 10 employees in Red Bull's legal department in the U.S., 2 of those employees devote 100% of their time to protecting and exploiting Red Bull's rights in the Red Bull Registered Marks and Red Bull Copyright. The remaining 8 employees in the legal department spend approximately 5% of their time in the aggregate on such issues. As part of its licensing and enforcement efforts, Red Bull has vigorously defended its rights in the Red Bull Registered Marks and Red Bull Copyright including by instituting various federal district court actions and other proceedings before the Trademark Trial and Appeal Board as discussed in further detail in paragraphs 123-136.

105. In view of the foregoing, it is apparent that Red Bull has made a significant investment in domestic facilities, a significant employment of labor or capital and a substantial investment in the exploitation, including, research, quality assurance, licensing, advertising, marketing and enforcement of its U.S. Red Bull Energy Drink and Red Bull Registered Marks and Red Bull Copyright in the United States, thereby establishing a domestic industry within the meaning of 19 U.S.C. § 1337 (a)(3).

X. UNLAWFUL ACTS COMMITTED BY RESPONDENTS

A. Trademark Infringement Violations – Section 337(a)(1)(C)

1. Infringement of Registered Trademarks, 15 U.S.C. § 1114

106. Red Bull AU, as the owner of all right, title, and interest in and to the Red Bull Registered Marks, and RBNA, as the exclusive U.S. licensee of the Red Bull Registered Marks, have standing to maintain an action for trademark infringement under the Federal Trademark Statute, Lanham Act § 32(1) (15 U.S.C. § 1114(1)). All of the Red Bull Registered Marks are valid and subsisting, and they establish Red Bull's exclusive right to use the marks in interstate commerce in connection with the goods identified in such registrations.

107. Red Bull is informed and believes, and on that basis alleges, that Proposed Respondents and other unidentified importers and distributors have, without authorization, imported into the United States and distributed the Gray Market Red Bull Energy Drink products featuring the Red Bull Registered Marks, which products are materially different from the U.S. Red Bull Energy Drink authorized by Red Bull for sale in the United States and that such is likely to cause confusion, or to cause mistake or to deceive.

108. Red Bull is informed and believes, and on that basis alleges, that the Proposed Respondents' acts have been committed deliberately and willfully, with knowledge of Red Bull's exclusive rights and goodwill in the Red Bull Registered Marks, and of the infringing nature of the marks when used in connection with the Gray Market Red Bull Energy Drink, as well as with bad faith and the intent to cause confusion, or to cause mistake and/or to deceive.

109. As a result of the Proposed Respondents and other unidentified importers and distributors' trademark infringement, Red Bull has suffered and will continue to suffer substantial and irreparable injury, loss, and damage to its rights in and to the Red Bull Registered Marks, as well as the goodwill associated therewith.

110. The Proposed Respondents and other unidentified importers and distributors' use of the Red Bull Registered Marks, has caused and continues to cause confusion, mistake and/or deception to the public and constitutes willful and deliberate trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114(1). Red Bull thus seeks the relief requested in this action.

111. In addition, as set forth above in Section IX, a "domestic industry" exists with respect to the U.S. Red Bull Energy Drink and Red Bull Registered Marks within the meaning of Section 337(a)(2), 19 U.S.C. § 1337(a)(2).

B. Copyright Infringement Violations – Section 337(a)(1)(B)(i)

1. Copyright Infringement Under 17 U.S.C. §§ 501 et. seq.

112. Red Bull AU is the exclusive licensee of the Red Bull Front Label Work in the United States which is the subject of U.S. Copyright Reg. No. VA0001410959.

113. The Proposed Respondents and other unidentified importers and distributors' unauthorized importation into the United States and distribution in the United States of the Gray Market Red Bull Energy Drink which has been manufactured outside of the United States constitutes the first distribution in the United States of copies which are substantially similar to the Red Bull Copyright and therefore constitutes infringement of the exclusive right to import and distribute copies under 17 U.S.C. §§ 106 and 602.

114. As the acts alleged herein constitute copyright infringement of the Red Bull Copyright under 17 U.S.C. §§ 501 and 602, and because Red Bull has suffered and will continue to suffer substantial and irreparable injury, loss, and damage to its rights in the

Red Bull Copyright due to these acts, Red Bull therefore seeks the relief outlined in this action.

115. In addition, as set forth above in Section IX, a “domestic industry” exists with respect to the U.S. Red Bull Energy Drink and Red Bull Copyright within the meaning of Section 337(a)(2), 19 U.S.C. § 1337(a)(2).

XI. GENERAL EXCLUSION ORDER

116. There is a pattern of violation of 19 U.S.C. § 1337 with respect to the importation of Gray Market Red Bull Energy Drinks, and it is difficult to identify all the sources of infringing products. Because of the widespread, opportunistic and sporadic nature of the importation of Gray Market Red Bull products, the identity of all entities importing, selling and distributing infringing Gray Market Red Bull Energy Drink is difficult to ascertain and is frequently changing.

117. Infringing Gray Market Red Bull Energy Drinks are currently being imported in mass quantities by Proposed Respondents and other unidentified importers and distributors on a regular and systematic basis.

118. On information and belief, the number of infringing Gray Market Red Bull Energy Drinks being imported and sold in the United States has increased dramatically in recent years, and that unlawful conduct will continue unabated absent effective relief against infringing imports.

119. Entry into the market for importation and distribution of Gray Market Red Bull Energy Drinks is relatively easy, because these products are readily available for purchase overseas, and because once they are purchased, it is relatively easy and

inexpensive to import them to the United States (with an opportunity for a ready profit once they have reached the United States).

120. The importation activity of the known Proposed Respondents and other unidentified importers and distributors is constantly changing – as is their identity – and therefore it is extremely difficult (if not impossible) for Complainants to monitor gray market importations and enforce their copyright and trademark rights. Further, the countries from which these Gray Market Red Bull Energy Drinks originate is also continuously changing. Thus, a general exclusion order against *all* importers of these Gray Market Red Bull products originating from various countries outside of the United States is necessary to fully protect Complainants' copyright and trademark rights.

121. On information and belief, the startup costs for establishing such a business for importing and distributing Gray Market Red Bull products is relatively small. Furthermore, there is an incentive for entities to engage in the unauthorized importation and distribution of Gray Market Red Bull Energy Drinks, because these unauthorized entities undercut RBNA's own authorized distributors and charge their customers lower per-volume costs (and thus make a profit at Red Bull's expense).

122. Due to these low barriers for entry, an increasing number of Gray Market Red Bull Energy Drink importers and distributors are entering the marketplace and causing great damage to Red Bull. Thus, unless a general exclusion order is issued, relief to Complainants will be wholly inadequate, because any relief granted that is less comprehensive than a general exclusion order would permit entities unaffected by such relief to continue to import and distribute these gray market products unfettered. Rather, only a general exclusion order – applicable to any and all importers of Gray Market Red

Bull Energy Drink products – will provide Complainants with adequate protection for their rights.

XII. OTHER LITIGATION

123. On September 22, 2006, Red Bull brought suit against Kassir Import-Export Company, d/b/a Kassir Co., Jihad Kassir, and Ziad Kassir (“Kassir”), in the United States District Court for the Northern District of Georgia, Civil Action No. 1:06-CV-2301 seeking damages and injunctive relief for, *inter alia*, infringement of various of the Red Bull Registered Marks and infringement of the Red Bull Copyright. On February 11, 2009, a consent judgment was entered by the Court enjoining Kassir’s infringing activities, including, importing, selling, or distributing any Gray Market Red Bull Energy Drink products in the United States. Attached as Exhibit HH is a copy of the Complaint and attached as Exhibit II is a copy of the fully executed Consent Judgment and the court’s dismissal of the case.

124. On October 2, 2007, Red Bull brought suit against Leisure Investments, Inc.; Jim L. Shetakis Distributing Co.; Arctico, Inc.; and Arctico Beverage Co. in the United States District Court for the Central District of California, Civil Action No. 2:07-cv-06414-PA-MAN, seeking damages and injunctive relief for, *inter alia*, infringement of various of the Red Bull Registered Marks. On May 29, 2008, a consent judgment was entered by the court enjoining the defendants’ infringing activities with respect to Red Bull’s trademarks (including the Red Bull Registered Marks).

125. On February 23, 2007, Red Bull brought suit against Soho East Avenue Inc.; 289 Alexander Street Inc.; Davis S. Cowden Inc.; 336 Dukes Inc.; RDCuse Inc.; and Ronald A. Davis, in the United States District Court for the Western District of New

York, Civil Action No. 6:07-cv-06112-MAT, seeking damages and injunctive relief for, *inter alia*, infringement of various of the Red Bull Registered Marks. On May 28, 2008, a consent judgment was entered by the court enjoining the defendants' infringing activities with respect to Red Bull's trademarks (including the Red Bull Registered Marks).

126. On February 26, 2007, Red Bull brought suit against Orlando Nightclub Enterprises, Inc. and Ted A. Pizio in the United States District Court for the Middle District of Florida, Civil Action No. 6:07-cv-00176-JA-DAB, seeking damages and injunctive relief for, *inter alia*, infringement of various of the Red Bull Registered Marks. On January 23, 2008, a consent judgment was entered by the court enjoining the defendants' infringing activities with respect to Red Bull's trademarks (including the Red Bull Registered Marks).

127. On July 18, 2007, Red Bull brought suit against Dicey's 2nd Street, Inc., d//b/a Dicey Riley's; Michael Brennan; and Aileen Comer, in the United States District Court for the Southern District of Florida, Civil Action No. 07-cv-61008-MGC, seeking damages and injunctive relief for, *inter alia*, infringement of various of the Red Bull Registered Marks. On March 14, 2008, a consent judgment was entered by the court enjoining the defendants' infringing activities with respect to Red Bull's trademarks (including the Red Bull Registered Marks).

128. On March 29, 2007, Red Bull brought suit against Selective Publishing, Inc., and Simon Gordon, in the United States District Court for the Northern District of Illinois, Civil Action No. 1:07-cv-01762, seeking damages and injunctive relief for, *inter alia*, infringement of various of the Red Bull Registered Marks. On January 18, 2008, the court entered a judgment against the defendants granting Red Bull monetary damages and

enjoining the defendants' infringing activities with respect to Red Bull's trademarks (including the Red Bull Registered Marks).

129. On July 29, 2008, Red Bull brought suit against Vroom Foods, Inc. and Mad Dog Energy Products in the United States District Court for the Central District of California, Civil Action No. 2:08-cv-04960-GAF-JC, seeking damages and injunctive relief for, *inter alia*, infringement of various of the Red Bull Registered Marks. The case is still pending.

130. On October 28, 2008, Red Bull brought suit against T.J. Clark & Co. in the United States District Court for the Central District of California, Civil Action No. 2:08-cv-07109-PA-MAN, seeking damages and injunctive relief for, *inter alia*, infringement of various of the Red Bull Registered Marks. The case is still pending.

131. In 2006, Red Bull and defendant North American Beverages, Inc. were involved in several related cases that were eventually consolidated into Civil Action No. W-06-CV-249 in the United States District Court for the Western District of Texas. Red Bull sought damages and injunctive relief for, *inter alia*, infringement of various of the Red Bull Registered Marks. The case was eventually resolved and terminated.

132. On August 19, 2005, Red Bull brought suit against Joseph Wold Beverage Company, d/b/a Joseph Wold Beverage Co., Inc. , and Joseph Wold, an individual, in United States District Court for the Central District of California, seeking damages and injunctive relief for, *inter alia*, infringement of various of the Red Bull Registered Marks. On February 6, 2006, a consent judgment was entered by the court enjoining the defendants' infringing activities with respect to Red Bull's trademarks (including the Red Bull Registered Marks).

133. In 2007, Red Bull filed an opposition at the Trademark Trial and Appeal Board ("TTAB") against GST Sports (Opposition Serial No. 91175782), alleging that Application Serial Nos. 78/736,421 and 78/347,152 were likely to be confused with various of the Red Bull Registered Marks. The opposition was terminated without prejudice.

134. In 2008, Red Bull filed an opposition at the TTAB against D&J Importers, LLC (Opposition No. 91188021), alleging that Application Serial No. 78/942,868 was likely to be confused with various of the Red Bull Registered Marks. The opposition is still pending.

135. In 2009, Red Bull filed an opposition at the TTAB against Frank Mechaly (Opposition No. 91189336), alleging that Application Serial No. 77/509,281 was likely to be confused with various of the Red Bull Registered Marks. The opposition is still pending.

136. In 2008, Red Bull filed an opposition at the TTAB against Bison Capital, LLC (Opposition No. 91184262), alleging that Application Serial No. 77/280,131 was likely to be confused with various of the Red Bull Registered Marks. Bison Capital, LLC abandoned its application with prejudice and the opposition was terminated.

137. There are no other court or agency litigations concerning the Red Bull Registered Marks and/or Red Bull Copyright and/or the unfair methods of competition and unfair acts as alleged herein

XIII. REQUEST FOR RELIEF

Wherefore, by reason of the foregoing, Complainants request that the United States International Trade Commission:

A. Institute an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to the violations of that section based upon the unlawful importation into the United States, sale for importation, or sale within the United States after importation of Gray Market Red Bull Energy Drinks bearing the Red Bull Registered Marks or confusingly similar marks and Red Bull Copyright;

B. Schedule and conduct a hearing on permanent relief pursuant to 19 U.S.C. §§ 1337 (d) and (f) of the Tariff Act of 1930, as amended, and following that hearing;

C. Issue a general exclusion order pursuant to 19 U.S.C. § 1337 (d) excluding from entry into the United States any Gray Market Red Bull Energy Drinks bearing the Red Bull Registered Marks and Red Bull Copyright that are intended for sale in countries outside the United States. A general exclusion order constitutes the appropriate relief in this case given the numerous importers of Gray Market Red Bull products into the United States and the ease of entering the market,

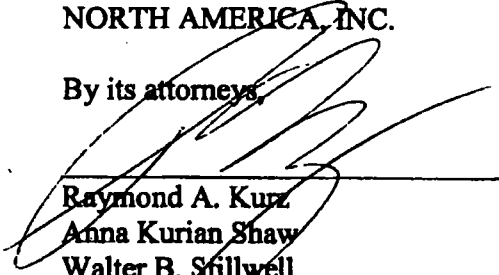
D. Issue permanent cease and desist orders pursuant to 19 U.S.C. § 1337(f) prohibiting Proposed Respondents from importing, selling, marketing, advertising, distributing, offering for sale or otherwise transferring within the United States any Gray Market Red Bull Energy Drinks bearing the Red Bull Registered Marks (or confusingly similar marks) and/or the Red Bull Copyright (or substantially similar variations thereof) or from engaging in the unauthorized use of the Red Bull Registered Marks (or confusingly similar marks) and the Red Bull Copyright (or substantially similar variations thereof); and

E. Issue such other and further relief as the Commission deems just and proper based on the facts determined by the investigation and the authority of the Commission.

DATED: May 15, 2009

RED BULL GMBH AND RED BULL
NORTH AMERICA, INC.

By its attorneys,



Raymond A. Kurz
Anna Kurian Shaw
Walter B. Stillwell
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VERIFICATION OF COMPLAINT

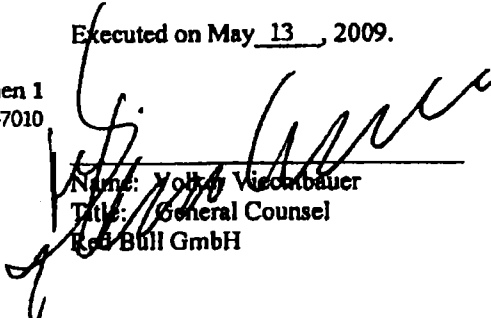
I, Volker Viechtbauer, declare, in accordance with 19 CFR §§ 210.4 and 210.12(a), under penalty of perjury that the following statement are true:

1. I am General Counsel of Red Bull GmbH and am duly authorized to sign this complaint on behalf of Complainant;
2. I have read the complaint and am aware of its contents;
3. The complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
4. To the best of my knowledge, information and belief founded upon reasonable inquiry, the claims and legal contentions of this complaint are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
5. The allegations and other factual contentions in the complaint have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Red Bull GmbH
A-5330 Fuschl am See · Am Brunnen 1
Tel.: 0662-6582-0 · Fax: 0662-6582-7010

Executed on May 13, 2009.


Name: Volker Viechtbauer
Title: General Counsel
Red Bull GmbH

VERIFICATION OF COMPLAINT

I, Sélim Chidiac, declare, in accordance with 19 CFR §§ 210.4 and 210.12(a), under penalty of perjury that the following statement are true:

1. I am Chief Executive Officer of Red Bull North America, Inc. and am duly authorized to sign this complaint on behalf of Complainant;
2. I have read the complaint and am aware of its contents;
3. The complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
4. To the best of my knowledge, information and belief founded upon reasonable inquiry, the claims and legal contentions of this complaint are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
5. The allegations and other factual contentions in the complaint have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 14, 2009.



Name: Sélim Chidiac
Title: Chief Executive Officer
Red Bull North America, Inc.