

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ISSAMADE ASINGA,)
)
Plaintiff,)
v.) Civil Action No.
)
)
THE GATORADE COMPANY,)
A division of PEPSICO, INC.)
)
Defendant.)

INTRODUCTION

1. Plaintiff Issamade “Issam” Asinga is nineteen years old. Until August 9, 2023, it was universally acknowledged that he was one of the world’s most promising young track and field athletes; after all, he beat the 100-meter world champion, Noah Lyles, as a high school senior.

2. Last year, when Issam was eighteen years old and still a senior in high school, Defendant The Gatorade Company, a business division of PepsiCo, Inc. (referred to in this Complaint as “Gatorade”), awarded Issam its National Player of the Year award for boys’ track and field.



Marketing Image Created By Gatorade

3. Gatorade uses the Player of the Year award as a marketing tool, seeking to associate its brand of sports drink with the nation's top athletes.

4. Gatorade widely published its brand and trade dress next to Issam's face and name, such as through the image at Paragraph 2 of this Complaint.

5. By giving Issam the National Player of the Year Award, Gatorade cashed in on Issam's growing fame and reputation as one of the world's fastest sprinters.

6. In July of 2023, Gatorade flew Plaintiff to Los Angeles, California, to attend its National Player of the Year award ceremony.

7. On July 10, 2023, the day before the award ceremony, Gatorade gifted Plaintiff a new dietary supplement product: Gatorade Recovery Gummies.

8. Gatorade's packaging promised that the Recovery Gummies were "NSF Certified for Sport," meaning that each lot bearing this certification was independently tested and confirmed to be free from any of the illegal banned substances and doping agents listed on the World Anti-Doping Agency's ("WADA") Prohibited Substances List. With the NSF Certified for Sport seal, Gatorade assured Issam that he could safely take the Gatorade Recovery Gummies without risking his burgeoning career.

9. In fact, the Gatorade Recovery Gummies Defendant gave to Issam were not actually NSF Certified for Sport.

10. Even worse, the Gatorade Recovery Gummies had been made using shoddy manufacturing processes, and were contaminated with trace amounts of an illegal performance-enhancing drug known as cardarine or GW1516.

11. Gatorade had actually removed the Gatorade Recovery Gummies from the market months before giving them to Issam and the other young Players of the Year.

12. After verifying with his coach that the Gatorade Recovery Gummies were safe to take, Issam took the recommended serving (2 gummies) after workouts throughout the week.

13. On July 18, 2023, Issam was selected for a doping control test conducted by World Athletics, the international federation that governs the sport of track and field worldwide, during which he declared his use of the Gatorade Recovery Gummies in the days leading up to the test.

14. Issam felt proud that he had reached a level in his sport that would require him to submit to anti-doping testing.

15. On August 9, 2023, Plaintiff was informed that he had failed the July 18, 2023 drug test, because his urine had tested positive for trace amounts of cardarine, an illegal doping substance (also called GW1516). He was provisionally banned from competition just weeks before he planned to represent Suriname in the World Athletics Championships in Budapest, Hungary, where he would have been a medal contender.

16. Over the next several weeks, Plaintiff searched for the possible source of the cardarine detected in his urine sample.

17. Disbelieving that he could have been drugged by Gatorade's NSF Certified for Sport Recovery Gummies, Issam first suspected other causes. He first suspected a melatonin supplement he was taking, and submitted this to a WADA-accredited laboratory known as the Sports Medicine Research and Testing Laboratory ("SMRTL") for testing. But the melatonin supplement was found to be free of cardarine.

18. Still doubtful it could be the Gatorade Recovery Gummies, Issam nonetheless submitted them (along with other supplements he had ingested and declared during his doping control test) to SMRTL.

19. The results were shocking: of all the supplements Issam had sent to SMRTL, only one tested positive for the presence of cardarine. It was the Gatorade Recovery Gummies.

20. But this was not the end of Issam's bad dream. According to the Athletics Integrity Unit ("AIU"), the anti-doping enforcement arm of World Athletics, Issam would need to prove contamination in a sealed bottle of the Gatorade Recovery Gummies from the same lot he had ingested in order to clear his name.

21. Because the gummies were no longer available for purchase, only Gatorade could provide the sealed bottle Issam needed to prove his innocence – and Gatorade refused to provide it.

22. Instead, Gatorade provided the AIU with a sealed bottle from a *different* lot of Gatorade Recovery Gummies. Not coincidentally, the bottle it chose to provide was from the only lot which *was* actually NSF Certified for Sport.

23. Without proof of contamination from a sealed bottle with the same lot number that Issam ingested, and in light of the false inference Gatorade created by providing a sealed bottle from a different, NSF-tested lot, the AIU was unwilling to relieve Issam of the strict consequences of his positive doping test.

24. On May 6, 2024, the arbitral tribunal hearing the AIU's prosecution of Issam's anti-doping case handed down a four-year ban from competition.

25. On June 4, 2024, NSF issued a Public Notice citing Gatorade for "unauthorized use of the NSF Certified for Sport Mark" on the Gatorade Recovery Gummies it gave to Issam and others. (*See Exhibit 1* to this Complaint.)

26. Later in June 2024, after receiving "bad press" from Issam's case and the NSF Public Notice, Gatorade suddenly "found" a sealed bottle from the lot that Issam had ingested.

27. In other words: Gatorade had misrepresented over the course of seven months that no sealed version from the same lot existed.

28. The timing of Gatorade's late discovery was not a coincidence. Because of the passage of time, and the fact that cardarine is an unstable drug, it was no longer possible to detect the presence of the compound in the Recovery Gummies by June 2024.

29. Gatorade's misrepresentation that no sealed version existed had cost Issam the opportunity to prove that the gummies in a sealed container from the lot he ingested were contaminated.

30. As a result of Gatorade's actions in providing Issam a contaminated supplement and falsely promoting the Gatorade Recovery Gummies as NSF Certified for Sport, Issam has lost everything he has worked so hard for.

31. Issam can no longer compete for Suriname in this summer's Paris Olympics, he will lose his four-year athletic scholarship to Texas A&M University, he was unable to compete in the 2023 and 2024 World Athletics Championships, he was stripped of his world records, and he lost a Nike endorsement worth millions of dollars.

32. Issam's claims are for strict product liability, negligence, negligent marketing, breach of express and implied warranties, negligent and intentional infliction of emotional distress, and deceptive trade practices. He seeks to recoup the millions of dollars he has lost in economic opportunities, as well as compensation for the devastating emotional harm he has suffered.

33. In this suit, Issam seeks to hold Gatorade to the same standards of fair play, honesty, and good sportsmanship that it required of him as its National Player of the Year.

PARTIES AND JURISDICTION

34. Issam Asinga is a United States citizen and a resident of Texas.

35. Gatorade is a business division of PepsiCo, Inc., a North Carolina corporation with its headquarters in Harrison, New York.

36. This Court has jurisdiction under 28 U.S.C. § 1332, because the Defendant and Plaintiff are citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000 exclusive of interests and costs.

37. Venue is proper in this Court because Defendant PepsiCo, doing business as Gatorade, resides in this Judicial District.

FACTS

38. Issam Asinga is one of the most promising young track and field athletes in the world.

39. Issam began garnering national attention while in high school, when he competed for Montverde Academy in Montverde, Florida.

40. During his senior year in high school, Issam was offered a full four-year athletic scholarship to Texas A&M University.

41. On April 23, 2023, while still a high school senior, Issam stunned the world when he ran a 100-meter dash in 9.83 seconds, beating six-time World Champion and Olympic medalist Noah Lyles.

42. A week later, Issam broke the American High School record for the 200 meters in Lubbock, Texas.

43. Rich Gonzalez, the editor of PrepCalTrack.com, was quoted as saying: “No prep track athlete across America grabbed more attention this spring than Issam Asinga.”

44. Issam's accomplishments soon caught the eye of Gatorade, which wanted to associate its brand of sports drink with Issam's achievements.

45. Gatorade chose to award Issam its 2022-2023 National Player of The Year Award in boys' track and field.

46. Gatorade uses the Player of the Year Award as a marketing tool to tie its sports drink and other products to the nation's top athletes in seven sports. In addition to the national awards (of which only twelve were awarded for 2022-2023), Gatorade also hands out state-based Player of the Year awards to more than 600 players nationwide.

47. Gatorade demands that its Players of The Year exhibit good character and academic achievement. In Gatorade's own words, "We expect more from our athletes, that's why the Gatorade Player of the Year program recognizes the nation's most outstanding high school student-athletes for their athletic excellence, academic achievement, and exemplary character. That's what makes this award the most prestigious in High School sports."

48. Gatorade's National Player of the Year announcement touted Issam's extraordinary character and academic accomplishments in addition to his athletic prowess, describing his volunteer work with Habitat for Humanity and the Youth Impact Project, and his devotion to coaching young children with intellectual and physical disabilities.

49. Gatorade cleverly capitalized on the marketing opportunity provided by the Player of the Year Award, seizing the opportunity to hitch its name to Issam Asinga. For example, it created high-production videos, including one taken on the day it surprised Issam with the award, and published them to its hundreds of thousands of subscribers across YouTube, X (formerly known as Twitter), and Instagram.

50. Gatorade also flew Issam and his family to Los Angeles, California for a national ceremony held on July 11, 2023 to honor Issam and the other 2022-2023 Players of the Year.

51. At the LA ceremony, Gatorade treated Issam and the other young athletes like the superstars they were fast becoming, providing each of them a locker stuffed with Gatorade-branded products (“freebies”) in order to encourage them to be loyal to Gatorade’s brand.

52. Young Issam beamed with pride in front of his stocked locker, as seen below in a photo snapped by his equally proud parents:



Issam poses in front of his Gatorade locker

53. In his locker, along with other “freebies,” Gatorade gave Issam a supplement product, Gatorade Recovery Gummies. The bottle is pictured below:



54. The Recovery Gummies were touted as helping “support exercise recovery.”

55. Cognizant that world-class athletes like Issam are keenly aware of their obligations to refrain from using illegal performance-enhancing substances because of the devastating, career-ending consequences of a positive doping test, Gatorade marketed its gummies with the NSF “Certified for Sport” logo.

56. “Certified for Sport” is a program created by NSF, an independent non-governmental public health and safety organization based in Ann Arbor, Michigan.

57. The “Certified for Sport” mark is a recognition that a particular supplement comes from a product lot which has undergone NSF’s rigorous banned substance testing and product certification process and is an assurance that the product does not contain contaminants or doping agents like cardarine (GW1516).

58. According to NSF, the Certified for Sport designation “helps athletes, dieticians, coaches, and consumers around the world make safer decisions when choosing sport supplements[.]” The designation is a promise to athletes that the supplement does not have “any of 290 substances banned by major athletic organizations,” such as World Athletics, which has adopted the WADA Code and WADA Prohibited List of banned substances and applies it to all international track and field athletes.

59. Issam was delighted to receive the Recovery Gummies along with the other Gatorade freebies, and he completely trusted in their safety. After all, Issam already knew of Gatorade's national brand, and felt especially good about the company after having been treated like a celebrity and flown to California to receive his award. But he was especially reassured by the prominent NSF "Certified for Sport" logo on the bottle.

60. Unbeknownst to Issam, however, Gatorade had given him a gift that could end his career.

61. The Recovery Gummies given to Issam were from a lot which was not, in fact, subject to the rigorous banned substance testing of the NSF Certified for Sport program and which should not have boasted NSF's Certified for Sport seal.

62. In fact, Gatorade had cut corners in the production, sale, and distribution of the gummies.

63. Months before gifting the gummies to Issam, Gatorade had come to recognize that there were problems with their manufacture, distribution, or labeling of the Recovery Gummies – and had made them unavailable for purchase anywhere.

64. Through poor ingredient sourcing or other poor manufacturing processes, the Recovery Gummies given to Issam had become contaminated with cardarine (GW1516), an illegal performance enhancing drug.

65. Cardarine (GW1516) is carcinogenic and is not legal for any purposes in the United States. It has been listed by WADA as a Prohibited Substance since 2009.

66. Since 2009, WADA and World Athletics have been able to successfully detect GW1516, and it is tested on routine anti-doping screenings.

67. If Issam had heard of cardarine (GW1516), and if he had known that the Recovery Gummies were contaminated with it, he would never have eaten them.

68. On June 11, 2023 – a month before he first took the Recovery Gummies – Issam had provided a urine sample to the AIU for routine drug screening. This urine sample was “clean” of all banned substances.

69. Issam cares deeply about complying with anti-doping rules, and knew in July 2023 that athletes sometimes run afoul of them by accident. Thus, before taking the Gatorade Recovery Gummies, Issam and his mother, Ngozi Asinga (who, like his father, is a former Olympic sprinter herself), asked Issam’s coach for advice about whether they were safe.

70. Over text message, Issam’s coach Gerald Phiri assured Issam and his mom that the Gatorade gummies were fine because, “Gatorade doesn’t make products that are against sporting rules.”

71. The below screen shots show Issam’s mother, Ngozi, texting with Coach Phiri to ensure the Gatorade Recovery Gummies were safe for Issam to take:



Ngozi Asinga texts Issam’s coach, “Is this ok to eat[?]”



Issam's coach responds, "May I see the front of the bottle please? Product name[.]"



Issam's coach responds after seeing the label, "Oh yea these are both fine. Gatorade doesn't make products that are against sporting rules."

72. Reassured by Gatorade's reputation and the NSF Certified for Sport logo, Issam started using the Recovery Gummies on or around July 11, 2023, and he took the recommended serving size (two gummies) after workouts throughout the next week.

73. After a week of taking the gummies, on July 18, 2023, Issam again provided a urine sample to the AIU for routine anti-doping testing without hesitation.

74. Issam fully expected his July 18, 2023 urine test to clean like the one he gave prior to ingesting the Recovery Gummies.

75. Little did he know that this urine sample would test positive for a substance he had never heard of: cardarine (GW1516).

76. On or before July 25, 2023, Issam stopped taking the Recovery Gummies.

77. On July 28, 2023, after he had stopped taking the Recovery Gummies, Issam again provided a urine sample. This one again tested clean for all banned substances, including GW1516.

78. Also on July 28, 2023, Issam ran 9.89 seconds for the 100 meters, shattering the under-20 world record for the 100 meters in Sao Paolo, Brazil.

79. Soon, though, it would be Issam himself who was shattered.

The AIU Issues a Provisional Suspension And Issam Learns the Gatorade Recovery Gummies Were Contaminated

80. On August 9, 2023, Issam first received notice from the AIU that the urine sample he provided on July 18, 2023 had tested positive for trillionths of a gram amounts of cardarine (GW1516) metabolites.

81. The AIU immediately issued a Provisional Suspension, preventing Issam from competing in track and field.

82. Issam was devastated and confused. He quickly requested that his “B-Sample” (a second container of the urine he had provided on July 18, 2023) be tested.

83. On August 15, 2023, Issam learned that his B-Sample was also contaminated with trace amounts of cardarine (GW1516) metabolites.

84. Issam reviewed the supplements and medicines he had consumed prior to the July 18 test since the ingestion could only be from unknowing contamination: Robitussin DM,

Airborne, melatonin to help him sleep, a powdered hydration mix called Skratch, Gatorade Recovery Gummies, and Gatorade Immune Support Gummies (this last item was also gifted to him by Gatorade at the awards ceremony).

85. Issam did not conceive at that time that the Gatorade supplements were contaminated with cardarine (GW1516). After all, the gummies had been gifted to him by the reputable Gatorade Company, and were marked as NSF Certified for Sport.

86. Issam initially believed that the contamination must have come from the melatonin supplement, and submitted it to SMRTL, a WADA-accredited laboratory in South Jordan, Utah, for testing.

87. After testing revealed that the melatonin was not contaminated, Issam submitted the other supplements he had taken for testing, including two opened bottles of Gatorade Recovery Gummies, which were marked with lot number 22092117150234 (as pictured below), as well as the open bottles of Gatorade Immune Support Gummies, the Airborne, and Skratch, the powdered hydration mix.



One of the bottles from Lot No. 22092117150234

88. On October 6, 2023, SMRTL notified the AIU that there was a “preliminary finding” of contamination with GW1516 in the Gatorade Recovery Gummies from lot number 22092117150234.

89. The next step, according to the AIU, was to procure a sealed bottle of gummies from lot number 22092117150234. Issam and the AIU agreed to wait to conduct further testing until a sealed bottle could be obtained.

Gatorade Refuses to Produce a Sealed Bottle From The Correct Lot – Claiming None Exists

90. Issam first tried to purchase a sealed bottle of the Recovery Gummies. Suspiciously, they were unavailable, anywhere, for purchase.

91. Issam learned that Gatorade had removed them from the marketplace on or about March 2023 – several months before they had given them to Gatorade.

92. Issam then contacted Gatorade so that he could obtain a sealed bottle from lot number 22092117150234.

93. Obtaining a sealed bottle from lot number 22092117150234 should not have been difficult to do. Federal Regulations (CFR Title 21 §111.83) require that manufacturers of dietary supplements of this nature “collect and hold reserve samples of each lot of packaged and labeled dietary supplements” which they distribute. This requirement exists specifically for testing in situations where contamination is alleged.

94. Yet in late November 2023, Gatorade’s representative, Kara Darling, texted Issam: “Okay so bad news, turns out we discontinued the gummies so we don’t have any more! ... They may come back but sound[s] like we’ve had manufacturing issues!”

95. On information and belief, Gatorade also told the AIU around this time that no sealed bottle from lot number 22092117150234 had been preserved.

96. These were knowing misstatements. In fact, Gatorade did have a sealed bottle from lot number 22092117150234.

Issam Learns That Gatorade Had Falsely Used the NSF Certified for Sport Logo

97. On December 15, 2023, the AIU contacted NSF to confirm whether or not the Gatorade Recovery Gummies from lot number 22092117150234 were, indeed, NSF Certified for Sport.

98. The NSF's Principal Technical Manager of the Certified for Sport program confirmed that neither the Gatorade Recovery Gummies, nor the Gatorade Immune Support Gummies, gifted to Issam were in fact NSF Certified for Sport.

99. In other words, Gatorade had falsely used the NSF Certified for Sport logo to market the Recovery and Immune Support Gummies it gave to Issam.

100. The same day, and in light of the fact that no sealed bottle from lot number 22092117150234 could be obtained, the two opened containers of Gatorade Recovery Gummies Issam had sent to SMRTL were submitted for full confirmation testing.

Cardarine (GW1516) Is Confirmed in the Gatorade Recovery Gummies

101. Results of the independent testing by SMRTL confirmed the presence of cardarine (GW1516) and its sulfoxide metabolite in trace amounts in both the inside and outside of the Gatorade Recovery Gummies.

102. The testing revealed concentrations of cardarine (GW1516) in levels ranging from 200 picograms per gram to 200 nanograms per gram.

103. Both gummies tested from Container 1 were positive for cardarine (GW1516).

104. Additionally, two of the three gummies tested from Container 2 were positive for cardarine (GW1516).

105. Despite his inability to get a sealed bottle of the gummies, Issam hoped that the detection of cardarine (GW1516) at these trace concentrations in both containers of Gatorade Recovery Gummies would confirm his innocence.

106. After all, concentrations measured in the billionth and trillionth of a gram cannot be achieved by non-scientists seeking to adulterate a supplement outside a laboratory setting.

107. To achieve this level and consistency of concentration would require trained specialists working in a sophisticated lab.

108. What is more, the concentrations of cardarine (GW1516) found in the Gatorade Recovery Gummies were pharmacokinetically consistent with the amount of GW1516 found in Issam's urine, given the dose and frequency of the gummies he had ingested. This coincidence could not possibly be achieved by someone untrained in forensic toxicology.

***Gatorade Continues to Assert No Sealed Bottle Exists,
Refusing to Help Issam Clear His Name***

109. Even after the Gatorade Recovery Gummies in both containers from lot number 22092117150234 were conclusively proven by one of the world's leading anti-doping laboratories to contain cardarine (GW1516), Gatorade continued to claim that it was unable to provide a sealed bottle from the same lot for testing.

110. Gatorade refused to do so because it feared harm to its own reputation – even though it knew this choice would devastate Issam's.

111. Instead of providing a sealed bottle from the lot ingested by Issam, Gatorade instead provided the AIU with a sealed bottle from a *different* lot – lot number 22092117150213.

112. The gummies that voluntarily provided by Gatorade to the AIU for testing were from Lot number 22092117150213.

113. In contrast to Issam's lot of gummies, the lot provided by Gatorade for testing was the only lot of Recovery Gummies which was actually cleared by NSF as Certified For Sport.

114. The NSF's Certified for Sport designation is provided on a lot-by-lot basis. Only a lot which has been inspected and cleared by NSF can carry the designation.

115. Gatorade falsely represented to AIU that the NSF Certified for Sport lot was the only lot available for testing.

116. It also falsely represented that the NSF Certified for Sport lot was somehow representative of the lot ingested by Issam Asinga, an assertion which runs contrary to the FDA's regulatory scheme and established industry standards pertaining to Good Manufacturing Practices.

117. Gatorade wrongly represented to the AIU that the bottle it provided from the NSF Certified for Sport lot was "the same" as a bottle from Issam's lot, because they were produced in the same "batch."

118. Not surprisingly, the bottle provided by Gatorade from the NSF Certified for Sport lot tested negative for cardarine (GW1516) in testing done by the AIU on April 5, 2024.

119. On the same date it received the clean results from the NSF Certified lot, in reliance on Gatorade's representation that the results imputed purity to the lot ingested by Issam, the AIU formally charged Issam with an Anti-Doping Rule Violation ("ADRV") in contradiction of his obligations under the World Athletics Anti-Doping Rules ("ADR").

120. Proceedings were held before an arbitral tribunal charged with enforcing the ADR.

Gatorade Does Not Step In With The Truth

121. When Gatorade represented to the AIU that the bottle from the NSF Certified for Sport lot was representative of would be found in a sealed bottle from Issam's lot, Gatorade knew that this was plainly untrue.

122. Gatorade knew that the third-party company it had contracted to manufacture the Gatorade Recovery Gummies, Better Nutritionals, Inc., was fledgling on the brink of bankruptcy when it manufactured the gummies, and that it had been cited in recent years for failing to abide by good manufacturing practices and not accurately identifying all ingredients used in its supplements.

123. Gatorade also knew, even as of the date it gave Issam the Recovery Gummies, that the gummies came from a lot which was *not* tested by NSF for banned substances and was therefore not Certified for Sport.

124. As revealed in emails obtained through Better Nutritionals' bankruptcy proceeding, Gatorade knew that the lot of Recovery Gummies that it had given to Issam had been mislabeled as NSF Certified for Sport *weeks before* NSF even tested the Gatorade Recovery gummies from the other lot.

125. For example, an October 3, 2022 email from Michelle Rodriguez at Better Nutritionals to Keith Thompson at PepsiCo (among others) confirmed that the Recovery Gummies from Lot 22092117150234 were already wrongly labeled as NSF Certified for Sport – even though NSF had not yet even inspected and tested *any* lots of Recovery Gummies for banned substances.

126. Further, Gatorade understood that a sample from Lot number 22092117150234 was never even sent to NSF for testing, so its bottles should not have borne the NSF Certified for Sport logo.

127. With knowledge that there were significant discrepancies in the manufacturing of the Recovery Gummies, and that they were falsely marked with the NSF logo, Gatorade could have stepped in to help Issam. It could have told the truth about the labeling mix-up before the AIU proceedings, and it could have provided a sample from the correct lot for testing – the lot it actually gave to Issam – months earlier when the cardarine (GW1516) in the gummies was still detectable.

128. Instead, Gatorade remained silent, and did nothing other than turn over a bottle from the wrong lot – the NSF Certified for Sport lot – for testing. In so doing, Gatorade created, fed, and fueled the false narrative that Issam was given “clean” gummies and therefore it was Issam himself who had adulterated the gummies he sent to SMRTL.

With Gatorade Quiet, AIU Bolsters Its Case with Better Nutritionals Witness

129. With Gatorade silent, the AIU brought a former employee of Better Nutritionals to the World Athletics Disciplinary Tribunal proceedings in order to explain how a bottle from a different lot could be relevant to Issam’s case.

130. This witness was AIU’s “star,” a lynchpin in its case to establish that Issam’s lot of Gatorade Recovery Gummies must have been pure when he got it.

131. But the credibility of this “star” witness was highly dubious.

132. Better Nutritionals had fired the star witness in December 2022.

133. After the witness was fired, Better Nutritionals uncovered two USB drives in his former office which were filled with highly sensitive proprietary information he had stolen from

his prior employer. Better Nutritionals informed this former employer, which promptly sued the witness.

134. The star witness was also proven to have misstated his academic background, falsely claiming that he had received a Masters' Degree from Ohio State University, when he had not.

135. The star witness testified that the Recovery Gummies given to Issam had come from the "same batch" as those that were NSF Certified for Sport and that the purity of the certified lot therefore had bearing on the purity of the lot given to Issam.

136. Other than the testimony of AIU's "star" witness, there was not a shred of proof that this was so.

137. What is more, the contention is utterly inconsistent and illogical. The very fact that the gummies given to Issam had a different lot number than the gummies from the NSF Certified for Sport lot means that the two lots were functionally and legally distinct.

138. This is evident given the FDA's definition of a dietary supplement "lot" as:

Lot means a batch, or a specific identified portion of a batch, that is uniform and that is intended to meet specifications for identity, purity, strength, and composition; or, in the case of a dietary supplement produced by continuous process, a specific identified amount produced in a specified unit of time or quantity in a manner that is uniform and that is intended to meet specifications for identity, purity, strength, and composition.

21 CFR §111.3.

139. Under these regulations, each distinct lot number carries distinct significance regarding "identity, purity, strength, and composition."

140. The mere fact that Issam's lot of gummies carried a different lot number than the Certified for Sport gummies inherently means that the two cannot be assumed to be "uniform."

141. For this reason, when an athlete claims unintentional ingestion of a banned substance, the AIU holds the athlete to its “gold standard” of proof. Almost always, the athlete must show that a sample from a sealed container from the same lot as the one the athlete ingested also tested positive for the substance.

142. Because Gatorade withheld a sealed lot, falsely representing it no longer existed, Issam could not meet this gold standard.

The Tribunal Rules Against Issam

143. On May 6, 2024, the World Athletics Disciplinary Tribunal ruled against Issam, finding that he was subject to a strict liability standard for his positive test for picogram amounts of cardarine (GW1516).

144. Under the World Athletics Anti-Doping Rules, an athlete is charged with ensuring that no prohibited substances enter his or her body, and it is not necessary for the AIU to demonstrate intent, fault, negligence, or knowing use to establish an ADR violation.

145. Due to these strict liability principles, Issam’s only hope had been to establish an exception to the ADR’s sentencing framework, on the basis that his ingestion of cardarine (GW1516) was unintentional.

146. Unfortunately, because Gatorade refused to provide Issam with a sealed container of the Recovery Gummies from the correct lot, the Tribunal deemed Issam unable to meet his burden.

147. Even so, the Tribunal made several concessions as to the strength of Issam’s case. For example, the Tribunal noted the exceeding coincidence of the pharmacokinetic consistency between the amount of cardarine (GW1516) detected in his July 18, 2023 urine sample and the concentrations detected in the Gatorade Recovery Gummies.

148. Nonetheless, the Tribunal ruled that without the ability to show that a sealed bottle from the same lot as the one he ingested had tested positive for cardarine (GW1516), Issam could not prove his innocence based on the evidence in the record.

149. Issam filed a Notice of Appeal of the Tribunal's decision, and his appeal is now pending before the Court of Arbitration for Sport in Lausanne, Switzerland.

***NSF Issues Public Notice of Gatorade's Unauthorized Use
of the NSF Certified for Sport Mark and Gatorade "Finds" the Missing Lot***

150. On June 4, 2024, NSF issued a Public Notice citing Gatorade for "unauthorized use of the NSF Certified for Sport Mark" on the Gatorade Recovery Gummies it gave to Issam and others. (See Exhibit 1 to this Complaint.)

151. Following NSF's publication of the unauthorized use notice, and following Issam's ban from sport, Gatorade began to receive negative press.

152. Issam then received shocking news: Gatorade had called AIU and informed it that, after more six months of saying no sealed supplement from the same lot was available, it had suddenly located several sealed sample bottles on reserve.

153. Gatorade had received "bad press" from the Issam Asinga case and the NSF citation, and it therefore wanted to voluntarily submit one of the sealed bottles from Issam's lot to save its own reputation.

154. Issam was initially elated: if the bottles he submitted were contaminated, this one would surely be, too.

155. But the testing came back with shocking results. The sealed bottle from Issam's lot was negative for cardarine (GW1516) contamination.

156. Issam could not understand this news. More confused than ever, he began to search for other 2023 Players of the Year to find out whether they still had the Recovery Gummies gifted at the ceremony and could send them for testing.

157. Issam found an athlete who still had a bottle of the gummies. The bottle had been opened, but it was better than nothing.

158. The athlete shipped the gummies directly to SMRTL for testing. Issam was confident that *this* bottle, like the ones he had submitted in 2023, would show contamination with cardarine (GW1516).

159. Once again, the gummies came back negative for cardarine (GW1516).

160. Issam then realized then that something was amiss. Could it be that the cardarine was unstable, and no longer detectable?

161. On June 26, 2024, Issam requested that the original gummies he submitted for testing (those which had tested positive for cardarine (GW1516) and its sulfoxide metabolite in December 2023) be tested again.

162. On July 5, 2024, SMRTL released the results of the re-testing. Cardarine (GW1516) and its sulfide metabolite were no longer detectable in the same gummies which had tested positive the previous December.

163. In other words, over the more than six months Gatorade misrepresented that no sealed bottle from Issam's lot existed, the cardarine (GW1516) had become undetectable.

164. Gatorade's delay had cost Issam the possibility of proving contamination in a sealed container from the same lot he had ingested, robbing him of the possibility of ever meeting the AIU's gold standard test for showing innocent ingestion of a banned substance.

165. The direct result of Gatorade's concealment of the correct bottle was that Issam was presumed to have tampered with the gummies himself.

Issam's Harm

166. Due to Gatorade's distribution of contaminated supplements and its refusal to provide him with the evidence needed to clear his name, Issam was sentenced to a four-year ban from both professional and collegiate sport.

167. Due to Gatorade's distribution of contaminated supplements and its refusal to provide him with the evidence needed to clear his name, Issam lost the ability to compete for his father's country, Suriname, in the 2024 Paris Olympics and the 2023 and 2024 World Athletics Championships.

168. Due to Gatorade's distribution of contaminated supplements and its refusal to provide him with the evidence needed to clear his name, Issam has been stripped of his world and domestic records.

169. Due to Gatorade's distribution of contaminated supplements and its refusal to provide him with the evidence needed to clear his name, Issam will never be able to compete in college athletics and will soon lose his athletic scholarship to Texas A&M University.

170. Due to Gatorade's distribution of contaminated supplements and its refusal to provide him with the evidence needed to clear his name, Issam lost a Nike endorsement opportunity valued at millions of dollars.

171. Due to Gatorade's distribution of contaminated supplements and its refusal to provide him with the evidence needed to clear his name, Issam has lost his reputation as an honest person and hard-working athlete.

172. Due to Gatorade's distribution of contaminated supplements and its refusal to provide him with the evidence needed to clear his name, Issam has lost the ability to do what he loves: run fast on the world stage.

173. Even if Issam succeeds in his CAS appeal, it will come too late in many ways. It will come too late to provide him the opportunity to run for Texas A&M University during the 2023-2024 season and to compete in the NCAA Championships. It will come too late to allow him the once-in-a-lifetime chance to represent his father's country, Suriname, in the 2024 Paris Olympics or the 2023 and 2024 World Athletics championships. And it will come too late to erase the suffering he has endured over the past eleven months, knowing that many people now wrongly believe he is a cheat and a fraud.

CAUSES OF ACTION

COUNT I **STRICT PRODUCTS LIABILITY**

174. Plaintiff Issam Asinga realleges and incorporates by reference the allegations contained in the above paragraphs of this Complaint as though fully set forth herein.

175. Defendant Gatorade designed, manufactured and placed the Gatorade Recovery Gummies into the stream of commerce, and provided them directly to Issam.

176. At the time the Gatorade Recovery Gummies were manufactured and placed into the stream of commerce, they were defective and unfit for the use for which they were intended or marketed, because they contained cardarine (GW1516), an illegal and banned substance.

177. At the time the Gatorade Recovery Gummies were manufactured and given to Issam, they had a manufacturing, design, or warnings defect. Gatorade did not warn Plaintiff that they contained cardarine (GW1516), and instead falsely assured him that they were NSF

Certified for Sport. This defect resulted in Plaintiff ingesting a banned substance which threatened his physical health and his career.

178. At the time the Gatorade Recovery Gummies were manufactured and distributed, they were defective and unreasonably dangerous to those using them, including Issam, in one or more of the following ways:

- a. The gummies contained a banned substance, cardarine (GW1516), which would jeopardize the health and career of foreseeable users including professional athletes subject to anti-doping testing requirements;
- b. Gatorade did not disclose that the gummies contained cardarine (GW1516), a drug not approved for use in the United States which is designated as a Prohibited Substance by WADA;
- c. Gatorade misleadingly and falsely marketed the gummies as being NSF Certified for Sport, and as containing only those ingredients which were contained in the label on the bottle;
- d. The harm to users by ingesting cardarine (GW1516), a banned substance, was foreseeable to Gatorade;
- e. The risk that a user would be physically harmed and could test positive in an anti-doping test after ingesting gummies containing cardarine (GW1516) was known to Gatorade;
- f. The risk of harm to a professional athlete's career opportunities and reputation if he or she were to fail an anti-doping test due to cardarine (GW1516) was known to Gatorade;
- g. The fact that professional athletes would rely on the NSF Certified for Sport designation was known to Gatorade;
- h. It was possible to manufacture Recovery Gummies which did not contain undisclosed banned substances;
- i. Other defects and instances of unreasonably dangerous conditions of the supplement to be determined in discovery and proven at trial.

179. At the time the gummies left the control of Defendant Gatorade, they were defective and unreasonably dangerous, and in a condition that was not understood by foreseeable users of the gummies.

180. The defective and unreasonably dangerous condition of the Gatorade Recovery Gummies was the proximate cause of Plaintiff's injury and harm, including physical injury, emotional injury, lost wages and earning capacity, lost opportunity, attorneys' fees, and special damages.

COUNT II
NEGLIGENCE

181. Plaintiff realleges and incorporates by reference the allegations contained in the above paragraphs of this Complaint as though fully set forth herein.

182. Defendant Gatorade owed a duty to Plaintiff to design, manufacture, and distribute the Gatorade Recovery Gummies in a manner that was safe for their intended or unintended and foreseeable uses, and a duty to warn Plaintiff of the defective and dangerous condition of the Recovery Gummies.

183. Defendant Gatorade breached its duty to Plaintiff and was negligent in one or more of the following ways:

- a. Designing, manufacturing, and distributing the Recovery Gummies with an undisclosed ingredient, a banned substance;
- b. Failing to provide adequate safeguards to ensure the proper and safe manufacture and assembly of the Recovery Gummies;
- c. Failing to ensure that the Recovery Gummies contained only those ingredients which were disclosed on the label;
- d. Failing to control the manufacturing process to prevent the introduction of banned substances in the Recovery Gummies;
- e. Failing to warn that banned substances, such as cardarine (GW1516), could be contained within the Recovery Gummies;
- f. Negligently misrepresenting that the Recovery Gummies were free from contaminants, including banned substances;
- g. Negligently misrepresenting that the Recovery Gummies were NSF Certified for Sport;

- h. Giving the Recovery Gummies to Issam after becoming aware that they were falsely labeled as Certified for Sport;
- i. Giving the Recovery Gummies to Issam after learning that there were problems with the manufacture and labeling of the gummies;
- j. Failing to conduct appropriate testing and or examination to verify the identity of ingredients prior to their use, *see* 21 C.F.R. § 111.75(a)(1)(i);
- k. Failing to establish specifications to ensure that specifications for the identity of dietary supplements manufactured using the components were met, *see* 21 C.F.R. § 111.70(b)(1);
- l. Failing to prepare and preserve batch production records that include complete information relating to the production and control of each batch and accurately adhere to the appropriate master manufacturing record, *see* 21 C.F.R. § 111.255(b) and (c);
- m. Failing to establish and follow written procedures for maintaining, cleaning, and sanitizing equipment, utensils, and any other contact surfaces that are used to manufacture, package, label, or hold components or dietary supplements, *see* 21 C.F.R. § 111.25(c);
- n. Failing to ensure that quality control personnel reject a dietary supplement for which a specification was not met, *see* 21 C.F.R. § 111.77(a);
- o. Such other acts of negligence as may be determined through discovery and/or proven at trial.

184. Defendant knew, or should have known, that any of the foregoing acts or omissions would create a foreseeable, unreasonable risk of harm to consumers of the supplement, including Plaintiff.

185. Defendant's negligence was the proximate cause of Plaintiff's injury and harm, including physical injury, emotional injury, lost wages and earning capacity, lost opportunity, attorneys' fees, and special damages.

COUNT III
NEGLIGENT MISREPRESENTATION

186. Plaintiff realleges and incorporates by reference the allegations contained in the above paragraphs of this Complaint as though fully set forth herein.

187. Defendant Gatorade designed, manufactured and gifted its Recovery Gummies to Plaintiff.

188. Gatorade included the NSF Certified for Sport logo to assure Plaintiff and others that gummies were safe to consume, and thereby induced Plaintiff to do so.

189. Plaintiff consumed the product in reliance on the NSF Certified for Sport logo, which he believed was coming from a trustworthy and reputable company.

190. Gatorade made a false statement of material fact by placing the NSF Certified for Sport logo on its Recovery Gummies.

191. Gatorade was careless, reckless, and negligent by representing that the product it gifted Plaintiff was truly NSF Certified for Sport.

192. As a supplement manufacturer who is aware that drug-tested athletes use its products (and encourages them to do so), Gatorade had a duty to Plaintiff to communicate accurate information about the banned substance testing that was (or was not) done on its products.

193. Due to Plaintiff's reliance on what he believed to be a trustworthy company's material representations about the quality of its product, Plaintiff has suffered enormous emotional, economic, and reputational damages.

194. Defendant's negligent misrepresentation was the proximate cause of Plaintiff's injury and harm, including physical injury, emotional injury, lost wages and earning capacity, lost opportunity, attorneys' fees, and special damages.

COUNT IV
BREACH OF EXPRESS & IMPLIED WARRANTIES

195. Plaintiff realleges and incorporates by reference the allegations contained in the above paragraphs of this Complaint as though fully set forth at length herein.

196. At all times material herein, Defendant Gatorade was in the business of designing, manufacturing, selling, and distributing nutritional supplements including Gatorade Recovery Gummies. In so doing, Defendant expressly and impliedly warranted and represented that the supplements were merchantable, fit and safe for the ordinary and practical purposes for which they were sold, and further that they were to be free from defects.

197. The supplements were not merchantable, fit or safe for the ordinary and practical purposes for which they were sold, nor were they free from defects, because they were contaminated with cardarine (GW1516), an illegal and banned substance.

198. Defendant breached its warranties and representations because the supplements failed to conform to the warranties and representations upon which Plaintiff relied.

199. Defendant's breach of its warranties and representations about the supplements proximately caused the injuries and damages to Plaintiff.

COUNT V
DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

200. Plaintiff realleges and incorporates by reference the allegations contained in the above paragraphs of this Complaint as though fully set forth herein.

201. Defendant engaged in a deceptive trade practice by distributing the Recovery Gummies with NSF Certified for Sport logos, despite knowing this designation was false.

202. Defendant Gatorade was aware that its use of the NSF Certified for Sport logo was deceptive to consumers.

203. Defendant Gatorade's deception was knowing and willful.

204. Defendant's deceptive trade practice was substantially injurious to consumers in general, and specifically to Plaintiff who tested positive due to contamination from the untested product.

205. Plaintiff suffered injury, including physical injury caused by ingestion of the banned and dangerous substance, as a result of Gatorade's misrepresentations.

206. Defendant's deception was the factual cause of Plaintiff's injuries, as but for its dishonest use of the NSF Certified for Sport logo, Plaintiff would not have ingested the product that caused him to test positive.

207. Defendant's deception was the proximate cause of Plaintiff's injuries because its inclusion of the NSF Certified for Sport logo was a substantial factor in Plaintiff's decision to ingest the Gatorade Recovery Gummies which contained cardarine (GW1516), an illegal banned substance.

208. Plaintiff has suffered actual economic, reputational, and emotional damage due to Defendant's deceptive trade practices.

209. Defendant's actions violated New York General Business Law § 349 and Texas Business and Commercial Code §17.46.

210. Plaintiff is entitled to actual damages, treble damages, and attorneys' fees.

COUNT VI
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

211. Plaintiff realleges and incorporates the allegations contained in the above paragraphs as though fully set forth herein.

212. Defendant Gatorade owed a duty to Plaintiff to design, manufacture, distribute and sell the Gatorade Recovery Gummies in a manner safe for their intended or unintended but foreseeable uses, and a duty to warn Plaintiff of the defective and dangerous condition of the Recovery Gummies.

213. Defendant Gatorade breached its duty to Plaintiff and was negligent in one or more of the following ways:

- a. Designing, manufacturing, and distributing the Recovery Gummies with an undisclosed ingredient, and banned substance;
- b. Failing to provide adequate safeguards to ensure the proper and safe manufacture and assembly of the Recovery Gummies;
- c. Failing to ensure that the Recovery Gummies contained only those ingredients which were disclosed on the label;
- d. Failing to control the manufacturing process to prevent the introduction of banned substances into the Recovery Gummies;
- e. Failing to warn that banned substances, such as cardarine (GW1516), could be contained within the Recovery Gummies;
- f. Negligently misrepresenting that the Recovery Gummies were free from contaminants, including banned substances;
- g. Negligently misrepresenting that the Recovery Gummies were NSF Certified for Sport;
- h. Such other acts of negligence as may be determined through discovery and/or proven at trial.

214. Defendant's negligence was both the cause-in-fact, and the proximate cause of Plaintiff's emotional distress.

215. Defendant knew, or should have known, that any of the foregoing acts or omissions would create a foreseeable, unreasonable risk of emotional distress to consumers of the supplement, including Plaintiff.

216. Defendant's negligent misrepresentation of the Gatorade Recovery Gummies as NSF Certified for Sport is the direct, foreseeable, and proximate cause of Plaintiff failing a routine anti-doping test and being banned from his sport for four years.

217. As a result of Gatorade's negligence, Issam has experienced extreme emotional distress. Barred from his sport and at risk of losing his opportunity at a college education, Issam is burdened with stress, anxiety, and depression.

COUNT VII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

218. Plaintiff realleges and incorporates by reference the allegations contained in the above paragraphs as though fully set forth herein.

219. Gatorade provided Issam with a substance which it knew was falsely labeled as NSF Certified for Sport and carried a risk of contamination with illegal doping substances.

220. After causing Issam to unknowingly ingest a banned substance and violate global anti-doping rules, Gatorade knew it possessed what was required to help Issam clear his name: a sealed exemplar of Gatorade Recovery Gummies from Lot number 22092117150234.

221. As early as November 2023, Gatorade refused to provide Issam with a sealed bottle from Lot number 22092117150234, despite having access to such an exemplar and despite knowing that this meant Plaintiff would remain barred from competition and at risk of losing his academic scholarship.

222. Gatorade was aware that its actions would cause Issam to experience shame, depression, anxiety, and severe emotional distress.

223. Gatorade made this decision to protect its own financial interests: it could not afford the reputational harm that would occur should Issam prove that Gatorade had given him a tainted supplement.

224. Instead, Gatorade continued to make Issam's emotional distress worse, by providing AIU with a sealed bottle from a different lot of Recovery Gummies and creating the false impression that testing of this exemplar was relevant to Issam's case.

225. After Issam was banned from sport, and after it was too late to detect cardarine (GW1516) in the gummies, Gatorade suddenly located a sealed version from lot number 22092117150234 in June 2024.

226. Aware that cardarine would not be detectable in the supplement by June 2024, Gatorade knew that turning over a sealed version from the lot number 22092117150234 for testing at that time would further the false impression that that it was Issam, not Gatorade, who was responsible for his failed drug test.

227. By withholding the sealed supplement bottle for over six months, Gatorade knowingly acted to protect its reputation at great cost to Issam's.

228. In so doing, Gatorade knowingly fostered the false impression that Issam himself had tampered with the Recovery Gummies and that Issam had intentionally ingested cardarine (GW1516).

229. As a result of his suspension from competition, and the reputational, bodily, and economic damage he has sustained due to Gatorade's acts or omissions, Issam has suffered severe and foreseeable emotional distress.

230. Gatorade's actions were both the cause-in-fact, and proximate cause of Issam's injuries, and the severe emotional distress that Issam suffered was reasonably foreseeable to Gatorade.

RELIEF SOUGHT

231. As a result of the foregoing, Plaintiff Issam Asinga respectfully requests that this Court grant the following relief:

- Actual economic damages for Issam's lost income, lost scholarship opportunities, and lost future earning capacity;

- Compensatory damages for emotional harm caused to Issam, and for harm to his reputation;
- Punitive damages meant to punish and deter Gatorade's willful and malicious conduct;
- Attorneys' fees incurred by Issam in defending himself in the ADRV proceedings as well as the current lawsuit;
- Treble damages under N.Y.G.B.L § 349 and/or Texas Business and Commercial Code §17.46.
- All other relief that this Court deems to be just, equitable, and proper.

Dated: July 10, 2024.

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