

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

HI-TECH PHARMACEUTICALS, INC.,	:	
	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION FILE NO.:
	:	
ALLMAX NUTRITION, INC., and	:	
HBS INTERNATIONAL CORP.,	:	
Canadian Corporations; and MICHAEL	:	Jury Trial Demanded
KICHUK, an individual,	:	
	:	
Defendants.	:	
	:	

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**COMPLAINT**

COMES NOW, Plaintiff Hi-Tech Pharmaceuticals, Inc., (hereinafter: “Hi-Tech” or “Plaintiff”) through its undersigned attorneys, and states its Complaint against Defendants Allmax Nutrition, Inc. (“Allmax”), HBS International Corp (“HBS”), and Michael Kichuk (“Kichuk”) as follows:

**THE PARTIES**

1. Plaintiff Hi-Tech is corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 6015-B Unity Drive, Norcross, Georgia 30071.
2. Hi-Tech manufactures dietary supplement products, including bodybuilding and sports nutrition supplements, and sells, distributes, and markets its products throughout the United States.
3. Defendant Allmax Nutrition, Inc., is a Canadian corporation with its principal place of business in Toronto, Ontario.

4. Allmax is a supplier of bodybuilding and sports nutrition supplements in the United States and Canada.

5. Defendant HBS International Corp. is a Canadian corporation with its principal place of business in Toronto, Ontario.

6. HBS also maintains an office in Carson City, Nevada.

7. Upon information and belief, HBS is a wholly-owned subsidiary of Allmax and distributes Allmax's line of products in the United States and Canada for purchase at a variety of retailers.

8. Defendant Michael Kichuk is the President of Allmax.

9. Defendants designed and manufactured a dietary supplement Allmax Nutrition Ultra-Premium 6-Protein Blend Hexapro (the "Product") throughout the United States, and continue to do so.

10. The Product was marketed for bodybuilding and sports nutrition as a source of protein.

11. However, Defendants have falsely marketed their product to the detriment of the public and Plaintiff.

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C § 1331 (federal question), 15 U.S.C § 1121 (Lanham Act claims), 28 U.S.C § 1367 (supplemental jurisdiction), and 28 U.S.C. § 1332 (diversity), as this action is between citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds seventy-five thousand dollars (\$75,000.00).

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Plaintiff Hi-Tech resides in this District, and a substantial part of the events or omissions giving rise to the claims occurred in this District.

### **FACTUAL ALLEGATIONS**

14. Whey is a complete protein source, meaning it contains all the essential amino acids one needs to build protein-based compounds such as muscle tissue, skin, fingernails, hair and enzymes. It is especially rich in branched-chain amino acids – leucine, isoleucine, and valine – which are metabolized directly within one’s muscles as opposed to being processed in the liver first.

15. Although amino acids are the “building blocks” of protein, free-form amino acids and non-protein amino acids do not provide the same health benefits of a complete or whole protein such as whey protein.<sup>1</sup>

16. The whey protein industry is a growing and extremely competitive business environment: “During the forecast period [of 2013-2018], [the market for] protein products is expected to grow by 62% to reach US\$7.8 billion in 2018.” *See* <http://www.euromonitor.com/sports-nutrition-in-the-us/report>.

17. The wholesale price of whey protein is significantly higher than the wholesale price of free-form amino acids and non-protein amino acids.

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<sup>1</sup> There have been several studies that have shown that protein is absorbed more rapidly than amino acids. See e.g., Di Pasquale MG. *Amino Acids and Proteins for the Athlete: The Anabolic Edge*, Second Edition. Boca Raton, FL: CRC Press; 2008: p.190.

18. Due to the high level of competition in the market and the escalating price of wholesale whey protein, sellers' profit margins are slim when their products are based upon whey as the source of protein.

19. Hi-Tech is a producer of high quality dietary supplements, including NitroPro<sup>®</sup>, a whey protein-containing dietary supplement for consumers seeking to develop and/or preserve muscle mass and strength.

20. Hi-Tech's NitroPro<sup>®</sup> product is similar in purpose to Defendants' Product. NitroPro<sup>®</sup> directly competes against Defendants' Product in that both products are marketed as dietary supplement protein powders.

21. Hi-Tech distributes, markets and sells NitroPro<sup>®</sup> via an extensive network of wholesale, Internet, and retail outlets such as health food stores, gyms and fitness centers across the country.

22. Hi-Tech has expended substantial resources to develop, promote, brand, market, sell, and maintain the quality of its NitroPro<sup>®</sup> product.

23. Hi-Tech markets and promotes NitroPro<sup>®</sup>, through many types of advertising media including printed brochures and flyers, magazine advertisements, and distributors' catalogs.

24. In addition, Hi-Tech's NitroPro<sup>®</sup> has been featured prominently in the trade publication entitled "Hi-Tech Health and Fitness," which was published quarterly for individuals and companies interested in the dietary supplement industry.

25. As a result, Hi-Tech's NitroPro<sup>®</sup> product and brand has established substantial and valuable goodwill among consumers of dietary supplements.

26. A key element to Hi-Tech's advertising campaigns is the fact its NitroPro<sup>®</sup> product contains high quality whey proteins.

27. A reasonable consumer, looking at the false and misleading claims on Defendants' product label, and reading the "Supplement Facts," would be misled into thinking that the protein content claimed by Defendants for their Product are derived exclusively from Whey Protein Concentrate, Milk Protein Isolate, Micellar Casein, Egg Albumin and Hydrolyzed Whey.

28. Nowhere on Defendants' label does it state, or even imply, that the protein content contains any, let alone substantial amounts of protein-spiking agents such as free-form amino acids and non-protein compounds. In fact, by stating on the label that the product contains a total of 40g in protein, Defendant specifically represents a content of actual protein, as opposed to protein spiking agents.

29. Defendants designed and manufactured a dietary supplement Allmax Nutrition Ultra-Premium 6-Protein Blend Hexapro (the "Product") throughout the United States, and continue to do so.

30. The Product was and is marketed for bodybuilding and sports nutrition as a source of protein.

31. To reduce its protein manufacturing costs and enhance the nitrogen content of the Product, Defendants engages in what is commonly referred to as "protein-spiking," "nitrogen-spiking," or "amino-spiking": Defendants adds nitrogen-containing, cheap, and less beneficial free form amino acids and non-protein ingredients to the Product.

32. Because nitrogen is the “tag” used in protein content calculation, the addition of such ingredients is not revealed by typical protein content testing. In fact, the testing method is neither a direct measure of the actual protein content in the Product, nor a measure of the type of nitrogen-containing compounds in the Product.

33. Once the spiking agents are removed from the formula of analysis and the “bound” amino acid count is determined, a Product’s true protein content can be determined. When Defendants’ Product’s protein content is calculated based on the total bonded amino acids in the Product, the Product’s actual protein content is revealed to be 17.914 grams per serving. Exhibit A.<sup>2</sup>

34. Protein-spiking has been condemned by the American Herbal Products Association, which recently issued a standard for manufacturers for measuring the true protein content of their products.<sup>3</sup>

35. In addition, General Nutrition Centers, Inc., one of the largest distributors of whey protein products in the United States, has publicly criticized

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<sup>2</sup> Defendants’ Product is sold in different flavors and quantities. Defendants’ smaller Product package contains label statements which are identical in style and size proportion. Defendants also sell gluten free and vegetarian versions of the Product.

<sup>3</sup> The standard defines protein as a “chain of amino acids connected by peptide bonds,” and provides for the exclusion of non-protein nitrogen-containing substances for protein-content calculation and labeling purposes. [www.apha.org/default.aspx?tabid=441](http://www.apha.org/default.aspx?tabid=441) (Last visited November 11, 2014). The National Academy of Sciences similarly defines protein as macromolecules with links of amino acids; excluded from the definition are free form amino acids and creatine.

protein-spiking as having the effect of misleading consumers, who are unaware of the actual protein content of the spiked products they purchase.<sup>4</sup>

36. Several studies show that because free-form amino acids are not absorbed as effectively as whole protein, and they do not provide the same beneficial effects as whole protein.<sup>5</sup>

37. Exhibit B is the front of Defendants' Product label.

38. The Product's identity, "Ultra-Premium 6-Protein Blend," is prominently stated on the principal display panel of the label.

39. The Product's statement of identity is intended to lead consumers to believe that the Product contains protein derived exclusively from the "Ultra-Premium 6-Protein Blend."<sup>6</sup> This is misleading, and draws reasonable consumers' attention away from the significant amount of free form amino acids and non-protein ingredients in the protein powder.

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<sup>4</sup> [www.gnclivewell.com/realprotein](http://www.gnclivewell.com/realprotein) (Last visited November 11, 2014).

<sup>5</sup> See Di Pasquale MG, Amino Acids and Proteins for the Athlete: The Anabolic Edge, Second Edition (CRC Press; 2008:190); Katsanos C, et al., Whey protein ingestion in elderly results in greater muscle protein accrual than ingestion of its constituent essential amino acid content (Nutr. Res. Oct. 2008; 28(10):651-658); Magne H, et al., Contrarily to whey and high protein diets, dietary free leucine supplementation cannot reverse the lack of recovery of muscle mass after prolonged immobilization during ageing (J. Physiol. Apr 15, 2012; 590(Pt 8): 2035-2049); Terada T, Inui K., Peptide transporters: structure, function, regulation and application for drug delivery (Curr Drug Metab. 2004;5:85-94).

<sup>6</sup> The Product's "Ultra-Premium 6-Protein Blend" is comprised of the following complete proteins: Whey Protein Concentrate, Milk Protein Isolate, Whey Protein Isolate, Micellar Casein, Egg Albumin and Hydrolyzed Whey.

40. Reasonable consumers should not be forced to look beyond the misleading representations on the front of Defendants' Product label to discover the truth about the Product: that it does not provide the protein it purports to deliver. Instead, reasonable consumers should be able to trust that the representations on the front of Defendants' label are consistent with the ingredient list, and not the opposite as in the case of Defendants' Product.

41. Also on the principal display panel, adjacent to the statement of identity, the label states the Product contains "25 G[rams] Protein Per Serving."

42. This label claim, positioned adjacent to the Product's statement of identity, is intended to lead reasonable consumers to believe that the Product contains 25 grams of the "Ultra-Premium 6-Protein Blend"-type protein per serving.

43. The truth is, however, that the Product does not contain 25 grams of the "Ultra-Premium 6-Protein Blend"-type protein per serving. Rather, because Defendants spike the Product with free form amino acids and non-protein ingredients, the Product contains only 17.914 grams of the "Blend"-type protein per serving. Exhibit A.

44. Exhibit C is the Product's information panel, showing the ingredients list and supplement facts.

45. On the ingredients list label, Defendants list several free form amino acids as sub-ingredients of its "AminoPlex," including L-Glycine, L-Taurine, L-Leucine, L-Valine, and L-Isoleucine.



46. These same free form amino acids were included in the calculation of the Product's protein content. Yet, Defendants list these free form amino acids as sub-ingredients of "AminoPlex" and not as sub-ingredients of its "6-Protein Blend" or Whey Protein Isolate, thereby admitting that these free form amino acids are in fact not protein.

47. The ingredients list label again refers to the Product's "6-Protein Blend," here as the Product's primary ingredient.

48. A reasonable consumer, having read the statement of identity "Ultra-Premium 6-Protein Blend" and the adjacent claim of "25 G[rams] Protein Per Serving," is further misled about the Product's actual protein content.

49. Defendants' use of the term "6-Protein Blend" in a way that is interchangeable with the term "protein" is intended to mislead a reasonable consumer that the protein in the product is comprised solely of the "6-Protein Blend"-type protein.

50. Defendants used the above-referenced statements when they marketed, advertised and promoted the Product on their website and in other materials, and continue to do so.

51. Defendants' protein-spiking and labeling, marketing and advertising of the Product causes real harm to consumers who require certain levels of protein supplementation in their diets. A reasonable consumer who purchases the Product, and who requires a certain amount of protein supplementation as part of a fitness regimen or for real health needs, is left to ingest less protein than the amount Defendants expressly and/or implicitly represent will be provided.

52. The difference between the product Defendants expressly and/or implicitly purport to deliver, and the Product actually delivered, is significant. The amount of actual protein provided by the Product directly affects its value to reasonable consumers. Because of Defendants' practices, such consumers are misled and deceived about the protein content in Defendants' Product.

53. Pursuant to 21 U.S.C. § 321(ff), the Product is a "food" regulated by the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq. ("FDCA"), and the FDCA regulations.

54. FDCA regulations specifically prohibit as misleading Defendants' use of the Product name "Ultra-Premium 6-Protein Blend" to describe a product that has been spiked with substantial amounts of free form amino acids and non-protein ingredients. 21 C.F.R. § 101.18(b).

55. The introduction of misbranded food into interstate commerce is prohibited under the FDCA.

56. Defendants' misleading and deceptive practices proximately caused harm to the Plaintiff in that potential sales of Hi-Tech's NitroPro<sup>®</sup> were diverted to Defendant Allmax.

### ***COUNT I***

#### ***False Advertising Under Lanham Act § 43(a), 15 U.S.C. § 1125(a)***

57. Plaintiff incorporates by reference all previous paragraphs as though fully set forth herein.

58. Defendants have knowingly made and in interstate commerce and in this District, advertisements and labels that contain false or misleading statements

of fact regarding the Product. These advertisements contain actual and/or misleading statements including, but not limited to, the claims regarding the Product's protein content. Upon information and belief, Defendant Michael Kichuk personally authorized or directed these false and misleading statements,

59. These false or misleading statements actually deceive, or have a tendency to deceive, a substantial segment of Plaintiff's customers, and this deception is material in that it is likely to influence the purchasing decisions of Plaintiff's customers.

60. Defendants' false and misleading advertising statements violate the Lanham Act § 43(a), 15 U.S.C. § 1125(a).

61. Defendants' actions have caused, and will continue to cause, harm to Plaintiff in the form of lost or diverted sales.

62. Defendants have caused, and will continue to cause, immediate and irreparable injury to Plaintiff, including injury to its business, ability to compete, and goodwill in its NitroPro<sup>®</sup> trademark and brand for which there is no adequate remedy at law. Plaintiff, therefore, is entitled to an injunction under 15 U.S.C. § 1116 restraining Defendants, their agents, employees, representatives, and all persons acting in concert with them from engaging in further actions of false advertising, and ordering removal of all Defendants' false advertisements and labels.

63. Pursuant to 15 U.S.C. § 1117, Plaintiff is entitled to recover from Defendants the damages sustained by Plaintiff as a result of Defendants' acts in

violation of Lanham Act § 43(a). Plaintiff is at present unable to ascertain the full extent of the monetary damages it has suffered by reason of Defendants' acts.

64. Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover from Defendants the gains, profits, and advantages that they have obtained as a result of their acts. Plaintiff is at present unable to ascertain the full extent of the monetary damages it has suffered by reason of Defendants' acts.

65. Pursuant to 15 U.S.C. § 1117, Plaintiff is entitled to recover the costs of this action. Additionally, upon information and belief, Plaintiff believes that Defendants' conduct was undertaken willfully and with the intention of causing confusion, mistake, or deception, entitling Plaintiff to recover additional damages and reasonable attorney fees.

***COUNT II***  
***FALSE ADVERTISING IN VIOLATION OF***  
***SECTION 43(A)(1)(B) OF THE LANHAM ACT***

66. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

67. Defendants, who purport to sell "dietary supplements," have purposely made false and misleading descriptions of fact concerning the nature, characteristics and qualities of their Product by failing to disclose, or adequately disclose, to the consumers the accurate amount of protein that is actually in the product.

68. Defendants' marketing of such misbranded and falsely-labeled substances has the tendency to deceive a substantial segment of the public into

believing that they are purchasing a product with different characteristics. By failing to accurately label the amount of protein on their label, Defendants have misled consumers into believing that they are purchasing a dietary supplement with more protein than they are actually getting.

69. The deception is material because it is likely to influence a consumer's purchasing decision, especially if the consumer has concerns about the quality of the protein and do not want non-protein compounds such as amino acids in their product.

70. Defendants have introduced their false statements into interstate commerce via marketing and advertising on various websites and shipment of its product into interstate commerce containing false labeling.

71. Defendants' actions, as described above, constitute false and misleading descriptions and misrepresentations of fact in commerce which, in commercial advertising and promotion, misrepresent the nature, characteristics, and qualities of the products in violation of Section 43(a)(1)(B) of the Lanham Act.

72. Hi-Tech's NitroPro<sup>®</sup> product competes directly with Defendants' protein Product.

73. As a result of Defendants' misrepresentations, Hi-Tech has suffered both an ascertainable economic loss of money and reputational injury by the diversion of business from Hi-Tech to Defendants and the loss of goodwill in Hi-Tech's product. Indeed, Defendants' conduct is a black eye on the industry as a whole, and has the tendency to disparage and diminish Hi-Tech's NitroPro<sup>®</sup> product and goodwill.

**COUNT III**  
***VIOLATION OF THE GEORGIA DECEPTIVE TRADE  
PRACTICES ACT,  
O.C.G.A. §10-1-372 (a)***

74. Plaintiff incorporates all previous as if fully set forth herein.

75. Hi-Tech and Defendants are commercial competitors. Defendants' actions as described above constitute deceptive and unfair trade practices in violation of O.C.G.A. §10-1-372 (a).

76. The Georgia Deceptive and Unfair Trade Practices Act was enacted to protect the public and legitimate business enterprises from those who engage in unfair methods of competition and unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

77. Defendants' actions, as alleged herein, constitute unconscionable commercial practices, deception, fraud, false pretense, false promise, and/or misrepresentation in violation of O.C.G.A. §10-1-372 (a).

78. Defendants' engage in deceptive, unfair, and fraudulent misrepresentations as alleged herein. Consumers were certain to be deceived because Defendants' knowingly failed to disclose the source, characteristics, ingredients, standards and/or quality of their protein Product.

79. As a direct and proximate result of Defendants' unlawful acts and omissions, Hi-Tech has suffered an ascertainable loss of money or property in the form of diverted or lost sales.

80. Hi-Tech is without remedy at law and Defendants' deceptive trade practices as set forth herein continue, and will continue, unless enjoined by this Court.

81. Hi-Tech is therefore entitled to compensatory and punitive damages, equitable and injunctive relief, costs, and reasonable attorney fees.

**COUNT IV**  
***COMMON LAW UNFAIR COMPETITION***

82. Hi-Tech incorporates all previous paragraphs as if fully set forth herein.

83. Defendants' actions, as set forth above, constitute unfair competition in violation of the common law of the State of Georgia.

84. Defendants' actions as described herein have caused and will continue to cause irreparable injury to Hi-Tech and, unless restrained, will continue to do so.

85. As a direct and proximate result of Defendants' conduct, Hi-Tech has suffered damages in an amount to be determined at trial.

86. Defendants' actions entitle Hi-Tech to compensatory and punitive damages in an amount to be determined at trial.

87. Defendants' actions are such as to constitute that level of wantonness and lack of care to justify punitive damages under Georgia law.

88. Hi-Tech is without remedy at law and Defendants' deceptive trade practices as set forth herein continue, and will continue, unless enjoined by this Court.

89. Hi-Tech is therefore entitled to compensatory damages, punitive damages, equitable and injunctive relief, costs, and reasonable attorney fees.

***COUNT V***  
***GEORGIA RICO CLAIM***  
***VIOLATION OF O.C.G.A. § 16-14-4(a)***

90. Hi-Tech incorporates by reference all previous paragraphs as though fully set forth herein.

91. Allmax and HBS are “persons” within the meaning of the Georgia RICO Law. O.C.G.A. § 16-14-1, *et seq.*

92. Michael Kichuk is a “person” within the meaning of the Georgia RICO law. O.C.G.A. § 16-14-1, *et seq.*

93. Defendant Kichuk is employed by or associated with Allmax and HBS within the meaning of the Georgia RICO Law. O.C.G.A. §16-14-4(b).

94. In committing the acts described above, the Defendants, and their officers, agents, and employees repeatedly acted in furtherance of an unlawful scheme and endeavor that was continuously executed by them throughout, at least, the past two years.

95. From on or about a date unknown but at least for at least the two years, the Defendants herein did knowingly and willfully devise and intend to devise a scheme to intentionally defraud Hi-Tech out of sales and profits through their protein Product to consumers across the United States, and to enable consumers to purchase their Product online.



96. From on or about a date unknown but at least for at least the two years, the Defendants herein did knowingly and willfully devise and intend to devise a scheme to intentionally defraud Hi-Tech out of sales and profits through their false and/or misleading product claims regarding the content, quality, characteristics, and/or ingredients of their protein Product.

97. In committing the acts described above, Defendants, their co-conspirators currently unknown to Hi-Tech, and their officers, agents, and employees, repeatedly acted in furtherance of the unlawful scheme through a pattern of racketeering activity.

98. Defendants, their co-conspirators currently unknown to Hi-Tech, and their officers, agents, and employees, repeatedly caused letters, and other matters and things to be deposited with and delivered by the United States Postal Service and/or interstate couriers to each other and others in repeated violation, or attempted violation, of 18 U.S.C. § 1341 (mail fraud). Defendants specifically used the United States Postal Service and/or interstate couriers to ship the protein Product to purchasing consumers throughout the United States.

99. To the extent that either of the Defendants did not participate directly in these acts of mail fraud, they knowingly and willfully caused, aided, abetted, advised, encouraged, hired, counseled, commanded, induced or procured another to commit these violations of 18 U.S.C. § 1341 and in violation of O.C.G.A. § 16-220.

100. Defendants, and their officers, agents, and employees, could reasonably foresee the uses of the United States Postal Service and interstate

couriers in connection with the execution of these unlawful schemes. All of these acts constitute “intangible contacts” with the State of Georgia designed to further all of the violations alleged in this Complaint. In this regard, the Defendants, to include individual defendants and corporations have purposely directed tortious and fraudulent conduct toward the State of Georgia and Hi-Tech.

101. Each of these “mailings” constitutes a separate racketeering act in furtherance of the fraudulent schemes which constitute a pattern of “racketeering activity” under Georgia RICO as specified in O.C.G.A. §§ 16-14-3(4)(A) and (5)(C).

102. In furtherance of these unlawful schemes, and for the purpose of executing, and attempting to execute these schemes, Defendants and their officers, agents, and employees, repeatedly utilized the internet and email communications, in repeated violation, or attempted violation, of 18 U.S.C. § 1343 (wire fraud). Defendants specifically used the internet and email communication to electronically disseminate their protein Product to enable the online purchase of said products by consumers throughout the United States.

103. To the extent that any of the Defendants did not participate directly in these acts of wire fraud, they knowingly and willfully caused, aided, abetted, advised, encouraged, hired, counseled, commanded, induced or procured another to commit these violations of 18 U.S.C. § 1343 in violation of O.C.G.A. § 16-2-20.

104. Each of the Defendants and their officers, agents, and employees, could reasonably foresee the uses of the interstate wire communications in connection with the execution of these unlawful schemes. All of these acts

constitute “intangible contacts” with the State of Georgia designed to further all of the violations alleged in this Complaint. In this regard, the Defendants, to include the individual defendant and corporation, have purposely directed tortuous and fraudulent conduct toward the State of Georgia and Hi-Tech.

105. Each of these “interstate wirings” constitutes a separate racketeering act in furtherance of the fraudulent schemes which constitute a pattern of “racketeering activity” under Georgia RICO as specified in O.C.G.A. § 16-14-3(4)(A) and 5(C).

106. Each of these acts of racketeering activity was authorized, requested, commanded, performed, or recklessly tolerated by Defendant Kichuk, and was done in furtherance of the execution of the unlawful schemes designed to defraud Hi-Tech out of sales and profits.

107. The multiple acts of racketeering activity by the Defendants and their officers, agents, and employees were interrelated, were and are part of a common and continuous pattern of racketeering activity to include fraudulent acts and schemes, which were and are acts perpetrated for the same or similar purposes, and were and are not a series of disconnected, isolated or sporadic acts. These acts were and are part of the regular and routine way the Defendants conduct their business. The multiple racketeering acts by the Defendants and their officers, agents, and employees constitute a “pattern of racketeering activity” as defined in O.C.G.A. § 16-14-3(4)(A) and (5).

108. By reason of the foregoing, the Defendants, and their officers, agents, and employees, directly and indirectly, acquired or maintained control of property,

i.e. profits diverted from Hi-Tech, through a pattern of racketeering activity in violation of the Georgia RICO Act (O.C.G.A. § 16-14-4(a)).

109. As a direct and proximate result of these violations of O.C.G.A. §16-14-4(a) by Defendants, and their managerial officials, agents, and employees, Hi-Tech been injured and damaged as set forth herein.

**COUNT VI**  
**GEORGIA RICO CLAIM**  
**VIOLATION OF O.C.G.A. § 16-14-4(b)**

110. Hi-Tech incorporates by reference all previous paragraphs as though fully set forth herein.

111. By reason of the foregoing, the Defendants and their managerial officials, agents, and employees, have unlawfully, knowingly and willfully conducted and participated in, directly or indirectly, the affairs of Allmax and HBS through a pattern of racketeering activity in violation or attempted violation of O.C.G.A. § 16-14-4(b).

112. As a direct and proximate result of these violations of O.C.G.A. §16-14-4(b) by Defendants, and their managerial officials, agents, and employees, Hi-Tech has been injured and damaged as set forth herein.

**COUNT VII**  
**GEORGIA RICO CLAIM**  
**VIOLATION OF O.C.G.A. § 16-14-4(c)**

113. Hi-Tech incorporates by reference all previous paragraphs as though fully set forth herein.

114. By reason of the foregoing circumstances and events, Defendants individually and collectively knowingly and willfully, combined, colluded, conspired, attempted, endeavored, and continue to combine, collude, conspire, and endeavor, to violate the provisions of O.C.G.A. §16-14-4(a) and (b), in violation of O.C.G.A. §16-14-4(c).

115. Defendants committed overt acts and preparatory acts to effect the objects of the conspiracy or endeavor as specified in all of the paragraphs preceding this Count. Each of these overt or preparatory acts is a racketeering act. O.C.G.A. § 16-14-3(5).

116. As a direct and proximate result of these violations of O.C.G.A. § 16-14-4(c) by Defendants, and their managerial officials, agents, and employees, Hi-Tech has been injured and damaged as set forth herein.

***PRAYER FOR RELIEF***

WHEREFORE, Plaintiff Hi-Tech prays for relief as follows:

1. That Defendants be adjudged to have violated 15 U.S.C. § 1125(a) by unfairly competing against Hi-Tech by using false, deceptive or misleading statements of fact that misrepresent the nature, quality, and characteristics of their protein Product;
2. That Plaintiff Hi-Tech be awarded damages it has sustained as a consequence of Defendants' conduct;
3. That Plaintiff Hi-Tech be awarded Defendants' profits obtained by as a consequence of Defendants' unlawful conduct;

4. That such damages and profits be trebled and awarded to Hi-Tech as a result of Defendants' willful, intentional and deliberate acts in violation of the Lanham Act § 43(a);
5. That all of Defendants' misleading and deceptive materials and products be destroyed as allowed under 15 U.S.C. § 1118;
6. That this case be declared exceptional in favor of Plaintiffs under 35 U.S.C. § 285 and that Plaintiffs be awarded their reasonable attorneys' fees and other expenses incurred in connection with this action pursuant to 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure;
7. That Defendant Kichuk be adjudged to have violated 15 U.S.C. §1125(a) by unfairly competing against Hi-Tech by using false, deceptive or misleading statements of fact that misrepresent the nature, quality, and characteristics of Defendants' protein Product;
8. That such damages and profits be trebled and awarded to Hi-Tech as a result of Defendants' willful, intentional and deliberate acts in violation of the Lanham Act;
9. That Plaintiffs recover actual damages, treble damages, costs, and attorneys' fees for Defendants' violation of Georgia RICO statute;
10. That Defendants be adjudged to have unlawfully and unfairly competed against Hi-Tech under the laws of the State of Georgia, O.C.G.A. §10-1-372(a);

11. That Plaintiff Hi-Tech be awarded Punitive Damages pursuant to both Georgia and federal law; and
12. That Plaintiff Hi-Tech be awarded such other relief as this Court may deem just and proper.

### **JURY TRIAL DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and all applicable law, Plaintiff Hi-Tech requests a trial by jury on all issues so triable.

Respectfully submitted,

S/ Edmund J. Novotny  
Edmund J. Novotny, Jr.  
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