

EXHIBIT 1

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Bodybuilding.Com, LLC

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

BODYBUILDING.COM, LLC, a Delaware  
Limited Liability Company,

Plaintiff,

vs.

PhD FITNESS, LLC, a California Limited  
Liability Company; JIM STOPPANI, an  
Individual; GNC HOLDINGS, INC., a  
Delaware Corporation, a/k/a GENERAL  
NUTRITION CENTER; DOES 1-100,

CASE NO. 1:16-CV-00271-EJL

FIRST AMENDED COMPLAINT AND  
DEMAND FOR JURY TRIAL

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Defendants.
PhD FITNESS, LLC, a California Limited Liability Company; JIM STOPPANI, an Individual,
Counterclaimants,
vs.
BODYBUILDING.COM, LLC, a Delaware Limited Liability Company,
Counterclaim Defendant.

Plaintiff Bodybuilding.com, LLC, a Delaware limited liability company, by and through its attorneys of record, Hawley Troxell Ennis & Hawley LLP, complains and alleges as follows:

**I. PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Bodybuilding.com, LLC (“Bodybuilding.com”) is a Delaware limited liability company, with its principal place of business in Boise, Idaho.
2. Defendant PhD Fitness, LLC (“PhD Fitness”) is a California limited liability company, with its principal place of business in Thousand Oaks, Ventura County, California.
3. Defendant Jim Stoppani (“Stoppani”) is a citizen and resident of Los Angeles County, California. PhD Fitness and Stoppani are referred to collectively herein as “Defendants.”
4. GNC Holdings, Inc., a/k/a General Nutrition Center (“GNC”), is a Delaware Corporation with its principal place of business in Pittsburgh, Pennsylvania.
5. Does 1-100 are unidentified individuals or entities that have participated in, encouraged or induced the infringing conduct alleged in this Complaint.

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6. Jurisdiction is proper in this Court pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a), because this litigation arises under federal law, namely 15 U.S.C. §§ 1051, et seq. (the Lanham Act); jurisdiction is also proper pursuant to 28 U.S.C. § 1332 (diversity of citizenship) and 28 U.S.C. § 1367 (supplemental jurisdiction). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 2201 (Declaratory Judgment Act).

7. This Court has personal jurisdiction over Defendants because Defendants, on information and belief, conduct business in the state of Idaho, including advertising and offering products and services to residents of the state of Idaho and purposefully availing themselves of the laws and protections of the state of Idaho. The Court also has personal jurisdiction over Defendants PhD Fitness and Stoppani because they expressly agreed to venue in this judicial district for any action involving the parties to this proceeding. Venue is proper pursuant to 28 U.S.C. § 1391.

**II. GENERAL ALLEGATIONS**

8. Bodybuilding.com operates an online retail store and mobile apps through which consumers in over 120 countries purchase dietary supplements, clothing, food, exercise equipment and related goods. Bodybuilding.com also operates a digital media publishing business and produces digital articles, photos, videos, advertising and other fitness-related content.

9. Stoppani is a celebrity product endorser and a personal fitness, health, and nutrition enthusiast. He also is a principal of PhD Fitness.

10. PhD Fitness is a company used by Stoppani in the course of his celebrity endorsement, personal fitness, health, and nutrition work.

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11. In or around March 2013, Bodybuilding.com set about to identify and develop a new trademark for use in connection with a new line of dietary supplements. Working independently, Bodybuilding.com created the mark JYM for use in connection with such products.

12. Bodybuilding.com's plan and intention was that its JYM-branded products would be endorsed and promoted by Stoppani, but manufactured and sold exclusively by Bodybuilding.com through its online retail store located at [www.bodybuilding.com](http://www.bodybuilding.com) and mobile apps.

13. To that end, Bodybuilding.com entered into negotiations with Defendants PhD Fitness and Stoppani. On May 17, 2013, the parties entered into a Development Agreement respecting the development, marketing, and sale of products bearing the JYM mark that Bodybuilding.com created and which Stoppani would endorse with his name and likeness. Per the Development Agreement, Bodybuilding.com agreed to pay PhD Fitness a flat-fee royalty for each sale of a JYM-branded product.

14. Pursuant to the Development Agreement, Bodybuilding.com developed a line of dietary supplements bearing the JYM mark.

15. On or about July 19, 2013, Bodybuilding.com commenced use of the JYM mark in interstate commerce, by affixing the JYM mark to dietary supplements and offering those products manufactured by Bodybuilding.com for sale on the Bodybuilding.com website to customers worldwide. Bodybuilding.com's online retail store was the sole and exclusive place of purchase for JYM-branded products, a fact made clear on the website. By its actions, Bodybuilding.com successfully taught consumers that it was the sole source of the JYM-branded products.

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16. Bodybuilding.com acquired substantial goodwill through the sale of JYM-branded products through its exclusive point of sale. Bodybuilding.com spent significant sums of money developing and advertising JYM-branded products as available exclusively through the Bodybuilding.com website, and generated substantial sales of JYM-branded products.

17. At no time prior to July 19, 2013, did PhD Fitness or Stoppani utilize or affix the JYM mark to any product or packaging, offer for sale, sell, or perform any service utilizing the JYM mark in interstate commerce, or otherwise use the JYM mark in commerce.

18. Neither PhD Fitness nor Stoppani originated, created, or developed the JYM mark. To the contrary, Bodybuilding.com alone originated, created, and developed the JYM mark. PhD Fitness and Stoppani acknowledged that fact throughout their relationship with Bodybuilding.com. For example, in July 2013, a PhD Fitness representative referred to “the moment JYM came to life” as the occasion when a Bodybuilding.com employee “turned his computer around” and showed PhD Fitness the JYM mark and logo. Stoppani further commented that, up until that point, “I had not even seen the JYM logo or even the concept that [Bodybuilding.com] had sketched out, but all I heard all day from [a fellow PhD Fitness representative] was how brilliant the concept was that [Bodybuilding.com] had come up with.”

19. Based on the above facts, on or before July 19, 2013, Bodybuilding.com acquired trademark rights in the JYM mark. Bodybuilding.com has not assigned its rights to the JYM mark, nor has it assigned any goodwill associated with the JYM mark. As a result, Bodybuilding.com continues to own the JYM trademark.

20. At all times, Bodybuilding.com has owned the JYM mark and possessed the exclusive right to use the JYM mark in commerce.

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21. In addition to its creation and development of the JYM mark, in early 2013, Bodybuilding.com created and designed a distinctive and non-functional trade dress used in connection with the packaging and labeling of its JYM-branded products (the “JYM Trade Dress”). The JYM Trade Dress includes a unique and distinctive font used for the word JYM. That font is neither common nor borrowed from some other source. Instead, it is a distinctive font created and designed by Bodybuilding solely for use with JYM-branded products. The JYM Trade Dress also includes a distinctive diamond pattern that surrounds the JYM mark on the packaging and labeling for genuine JYM-branded products. The following is an image of the distinctive font and diamond pattern as they appear on one of Bodybuilding.com’s JYM-branded products:



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22. Since first developing and introducing the JYM Trade Dress, Bodybuilding.com consistently used and still uses the JYM Trade Dress on packaging and labeling of genuine JYM-branded products available only through Bodybuilding.com.

23. Bodybuilding.com has consistently used the JYM Trade Dress on JYM products to give them a consistent overall look.

24. Since July 2013, Bodybuilding.com has invested immense time, effort, money and other resources developing and promoting its line of JYM products using the JYM Trade Dress. As a result, the JYM Trade Dress enjoys wide public acceptance and association with Bodybuilding.com and has come to be recognized by the public as an indicator that Bodybuilding.com is the single source of JYM products.

25. Defendants Stoppani and PhD Fitness expressly acknowledged Bodybuilding.com's ownership of the JYM Trade Dress incorporated into the labels of the genuine JYM-branded products. Section 8.1 of the Development Agreement provides, in relevant part: "Bodybuilding.com shall own and have *all rights of ownership* to labels and advertising materials for Products [defined as including items 'bearing the JYM trade name']."

26. The Development Agreement expired on May 17, 2016, subject to certain provisions that survive expiration of the Development Agreement (including the above-quoted Section 8).

27. On April 19, 2016, counsel for PhD Fitness sent Bodybuilding.com a letter disputing Bodybuilding.com's ownership of the JYM mark, and asserting that PhD Fitness owns the JYM mark. In this letter, counsel for PhD Fitness asserted that Bodybuilding.com's right to use the JYM mark would terminate on May 17, 2016, and that PhD Fitness "will hold

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Bodybuilding.com liable for all damages” in connection with Bodybuilding.com’s use of the JYM mark after that date.

28. On May 17, 2016, PhD Fitness sent Bodybuilding.com another letter, expressing PhD Fitness’ belief that it retained all JYM trademarks and demanded that Bodybuilding.com no longer manufacture or cause to be manufactured any product bearing the JYM trademark.

29. Bodybuilding.com disputed PhD Fitness’ claim of ownership, and informed PhD Fitness and Stoppani that any unauthorized use of the JYM mark in connection with the sale of products would infringe Bodybuilding.com’s rights as the owner of the JYM mark.

30. Bodybuilding.com recently learned that PhD Fitness and Stoppani were planning to sell to the public nutritional supplements (the “Infringing Products”) under the JYM mark. Specifically, Bodybuilding.com learned that PhD Fitness and Stoppani were in discussions with competing supplement retailer GNC to sell Infringing Products through GNC retail and franchise stores.

31. Upon learning this information, and prior to GNC’s introduction of the Infringing Products into commerce, Bodybuilding.com notified GNC that Bodybuilding.com owns the JYM mark and that offering for sale products bearing the JYM mark sourced from anyone except Bodybuilding.com would violate Bodybuilding.com’s intellectual property rights.

32. Despite these warnings, PhD Fitness, Stoppani and GNC began offering Infringing Products for sale to the public through GNC’s website and at brick and mortar GNC corporate and franchise stores throughout the United States. They do so willfully and intentionally with prior knowledge that the sale of Infringing Products infringes Bodybuilding.com’ intellectual property rights. Screen captures from GNC’s website depicting the Infringing Products are attached hereto as Exhibit A.



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33. The Infringing Products offered for sale by PhD Fitness, Stoppani and GNC bear a confusingly similar imitation of Bodybuilding.com's JYM mark and JYM Trade Dress, including use of the distinctive font created and designed by Bodybuilding.com for the JYM mark, surrounded by a diamond pattern. An example of Bodybuilding.com's label for an authentic JYM-branded product (left side) alongside a competing Infringing Product offered for sale on GNC's website (right side) appears below:



34. Additional side-by-side comparisons of Bodybuilding.com's JYM products and Infringing Products sold by Defendants are attached hereto as Exhibit B.

35. Defendants intentionally copied Bodybuilding.com's JYM mark and JYM Trade Dress so that the Infringing Products would have a confusingly similar appearance as compared to Bodybuilding.com's JYM-branded products, to capitalize on the goodwill and brand

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recognition developed by Bodybuilding.com and to deceive consumers into believing the Infringing Products are associated with Bodybuilding.com.

36. Defendants' use of confusingly similar imitations of Bodybuilding.com's JYM mark and JYM Trade Dress is likely to deceive, confuse and mislead purchasers and prospective purchasers into believing that the Infringing Products are affiliated or associated with, or sponsored by, Bodybuilding.com.

37. Nor is Defendants' violation of Bodybuilding.com's rights limited to their infringement of the JYM mark and JYM Trade Dress as described above. Defendants have also copied Bodybuilding.com's product description as it appears on the labels for JYM-branded products. As seen in the side-by-side comparisons attached hereto as Exhibit B, the Infringing Products contain product descriptions that are word-for-word identical to the product descriptions on labels designed, created, and owned by Bodybuilding.com and used on JYM-branded products. Defendants are also selling the Infringing Products through packaging that copies the size, shape and color of the packaging used by Bodybuilding.com, which further contributes to consumer confusion.

38. Defendants PhD Fitness and Stoppani use the website [www.jimstoppani.com](http://www.jimstoppani.com) to advertise and promote their Infringing Products. Through that website, in addition to their infringement of Bodybuilding.com's JYM mark and JYM Trade Dress, PhD Fitness and Stoppani have made false or misleading representations of fact in connection with their promotion and advertising of the Infringing Products. For example, the following image found on [www.jimstoppani.com](http://www.jimstoppani.com) falsely represents that Defendants' new line of Infringing Products was awarded a 2016 Bodybuilding.com Award of Excellence -- an award given by Bodybuilding.com to the top selling products on its website:

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39. Bodybuilding.com gave an Award of Excellence to the authentic JYM pre-workout product (*i.e.*, one JYM product sold by Bodybuilding.com under the JYM mark and using Bodybuilding.com's JYM Trade Dress). However, the Infringing Products depicted on [www.jimstoppani.com](http://www.jimstoppani.com) (which unlawfully infringe Bodybuilding.com's JYM mark and JYM Trade Dress) did not receive a bodybuilding.com Award of Excellence, as the Infringing Products did not even exist at the time consumers voted. By falsely including this Award of Excellence in their commercial advertising and/or promotion for the Infringing Products, Defendants have misrepresented the nature, characteristics, and/or qualities of the Infringing Products, and the misrepresentation is likely to cause confusion, or to cause mistake, or to deceive, including without limitation as to the origin, sponsorship, or approval of Defendants' Infringing Products.

40. Customers have contacted Bodybuilding.com asking why JYM is for sale at GNC, asking whether the Infringing Products sold by GNC are the same as JYM products sold

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by Bodybuilding.com and otherwise expressing confusion as to the source of the Infringing Products offered for sale by GNC.

**III. CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**(Declaratory Judgment – Against All Defendants)**

41. Bodybuilding.com realleges the preceding paragraphs as if set forth fully herein.

42. As a result of Bodybuilding.com's origination and development of the JYM mark and Bodybuilding.com's use of the same in interstate commerce as prescribed by 15 U.S.C. § 1127, Bodybuilding.com is the exclusive owner of the JYM mark.

43. Defendants PhD Fitness and Stoppani dispute Bodybuilding.com's claim of ownership of the JYM mark, and instead claim that they own the JYM mark, in direct contravention of Bodybuilding.com's established ownership right. Based upon their erroneous claim of ownership of the JYM mark, Defendants PhD Fitness and Stoppani have also threatened to "hold Bodybuilding.com liable for all damages" arising out of Bodybuilding.com's continued use of the JYM mark.

44. Thus, an immediate, real, and justiciable controversy exists between Bodybuilding.com, on the one hand, and Defendants, on the other hand, with respect to the ownership of and right to use the JYM mark.

45. Bodybuilding.com seeks a declaratory judgment that it is the sole owner of the JYM mark and that, as between Bodybuilding.com and Defendants, Bodybuilding.com possesses the exclusive right to use the JYM mark in connection with health and fitness products.

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**SECOND CLAIM FOR RELIEF**

**(Cancellation of U.S. Trademark Registration No. 4,561,658 (15 U.S.C. §§ 1092 & 1119) --  
Against PhD Fitness)**

46. Bodybuilding.com realleges the preceding paragraphs as if set forth fully herein.

47. Pursuant to 15 U.S.C. § 1051(a)(1), only the owner of a trademark used in commerce may request registration of its trademark with the United States Patent and Trademark Office.

48. Defendants do not own the JYM mark. To the contrary, the JYM mark is owned by Bodybuilding.com.

49. Despite the fact that it does not own the JYM trademark, PhD Fitness filed an application, on or around December 20, 2013, that resulted in U.S. Trademark Registration No. 4,561,658 for the claimed mark JYM SUPPLEMENT SCIENCE in connection with nutritional supplements.

50. The phrase JYM SUPPLEMENT SCIENCE incorporates the JYM mark that is owned by Bodybuilding.com.

51. PhD Fitness has no protectable trademark rights in JYM SUPPLEMENT SCIENCE when used in connection with nutritional supplements. On information and belief, PhD Fitness has never used the claimed mark JYM SUPPLEMENT SCIENCE in connection with dietary supplements; on the contrary, as between Bodybuilding.com and Defendants, the only party that has used (and the only party that has the right to use) any JYM mark in connection with dietary supplements is Bodybuilding.com.

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52. Bodybuilding.com believes that it will be damaged by the above-identified registration. Accordingly, Bodybuilding.com requests that the Court order cancellation of U.S. Trademark Registration No. 4,561,658 pursuant to 15 U.S.C. §§ 1092 and 1119.

53. In addition to cancellation, PhD Fitness' false and/or fraudulent representations made to procure U.S. Trademark Registration No. 4,561,658 entitle Bodybuilding.com to damages under 15 U.S.C. § 1120 in an amount to be proven at trial.

**THIRD CLAIM FOR RELIEF**

**(False Designation of Origin -- 15 U.S.C. § 1125(a) -- Against All Defendants)**

54. Bodybuilding.com realleges the preceding paragraphs as if set forth fully herein.

55. As a result of Bodybuilding.com's creation and development of the JYM mark and Bodybuilding.com's use of the same in interstate commerce, Bodybuilding.com is the exclusive owner of the JYM mark.

56. Defendants, without the permission or consent of Bodybuilding.com, have advertised and sold to the public products and services under the JYM mark or under a mark that is confusingly similar to the JYM mark. These include the Infringing Products offered for sale by GNC described above. In addition, Defendants offer for sale on [www.jimstoppani.com](http://www.jimstoppani.com) other products and services under the JYM mark or under a mark that is confusingly similar to the JYM mark.

57. Defendants' unauthorized use of the JYM mark as described above is likely to cause confusion, or to cause mistake, or to deceive, including without limitation as to the origin, sponsorship, or approval of Defendants' products and services, in violation of 15 U.S.C. § 1125(a).

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58. The foregoing acts by Defendants have been willful, intentional, and in disregard of Bodybuilding.com's rights.

59. Bodybuilding.com has been damaged and is currently being damaged by Defendants' actions, in an amount to be proven at trial.

60. Bodybuilding.com's injuries, including damage to its goodwill, will continue unless injunctive relief is granted. Bodybuilding.com is entitled to temporary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

**FOURTH CLAIM FOR RELIEF**

**(Trade Dress Infringement -- 15 U.S.C. § 1125(a) -- Against All Defendants)**

61. Bodybuilding.com realleges the preceding paragraphs as if set forth fully herein.

62. Bodybuilding.com owns a protectable trade dress through its creation, design and use of the JYM Trade Dress.

63. The JYM Trade Dress is non-functional.

64. The JYM Trade Dress is inherently distinctive or has acquired distinctiveness through secondary meaning.

65. Because of the continuous and exclusive use by Bodybuilding.com since July, 2013, consumers associate the JYM Trade Dress with Bodybuilding.com.

66. The Infringing Products offered for sale by Defendants bear a confusingly similar imitation of Bodybuilding.com's JYM Trade Dress, including use of the distinctive font for the JYM mark surrounded by a diamond pattern.

67. Defendants' use of confusingly similar imitations of Bodybuilding.com's JYM Trade Dress is likely to cause confusion, or to cause mistake, or to deceive, including without limitation as to the origin, sponsorship, or approval of Defendants' products and services

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68. The foregoing acts by Defendants have been willful, intentional, and in disregard of Bodybuilding.com's rights.

69. Bodybuilding.com has been damaged and is currently being damaged by Defendants' actions, in an amount to be proven at trial.

70. Bodybuilding.com's injuries, including damage to its goodwill, will continue unless injunctive relief is granted.

**FIFTH CLAIM FOR RELIEF**

**(False Advertising / Unfair Competition -- 15 U.S.C. § 1125(a) -- Against PhD Fitness and Stoppani)**

71. Bodybuilding.com realleges the preceding paragraphs as if set forth fully herein.

72. Defendants PhD Fitness and Stoppani have made false or misleading representations of fact in connection with their promotion and advertising of the Infringing Products by, *inter alia*, falsely representing that the Infringing Products were the recipient of a Bodybuilding.com Award of Excellence.

73. These false representations of fact misrepresent the nature, characteristics, and/or qualities of the Infringing Products, and are likely to cause confusion, or to cause mistake, or to deceive, including without limitation as to the origin, sponsorship, or approval of Defendants' products and services.

74. The foregoing acts have been willful, intentional, and in disregard of Bodybuilding.com's rights.

75. Bodybuilding.com has been damaged and is currently being damaged by Defendants' actions, in an amount to be proven at trial.



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76. Bodybuilding.com's injuries, including damage to its goodwill, will continue unless injunctive relief is granted.

**SIXTH CLAIM FOR RELIEF**

**(Common Law Trademark Infringement -- Against All Defendants)**

77. Bodybuilding.com realleges the preceding paragraphs as if set forth fully herein.

78. As a result of Bodybuilding.com's origination and development of the JYM mark and Bodybuilding.com's use of the same in interstate commerce, Bodybuilding.com is the exclusive owner of the JYM mark.

79. Defendants, without the permission or consent of Bodybuilding.com, have advertised and sold to the public products and services under the JYM mark or under a mark that is confusingly similar to the JYM mark.

80. Defendants' unauthorized use of the JYM mark is likely to cause confusion, or to cause mistake, or to deceive, including without limitation as to the origin, sponsorship, or approval of Defendants' products and services.

81. The foregoing acts by Defendants have been willful, intentional, and in disregard of Bodybuilding.com's rights.

82. Bodybuilding.com has been damaged and is currently being damaged by Defendants' actions, in an amount to be proven at trial.

83. Bodybuilding.com's injuries, including damage to its goodwill, will continue unless injunctive relief is granted.

**SEVENTH CLAIM FOR RELIEF**

**(Trademark Infringement Under Idaho Code § 48-501, et seq. -- Against All Defendants)**

84. Bodybuilding.com realleges the preceding paragraphs as if set forth fully herein.

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85. Bodybuilding.com has registered the JYM mark with the Idaho Secretary of State Office of Trademarks and Service Marks.

86. Defendants, without the permission or consent of Bodybuilding.com, have advertised and sold to the public products and services under the JYM mark or under a mark that is confusingly similar to the JYM mark.

87. Defendants' unauthorized use of the JYM mark is likely to cause confusion, or to cause mistake, or to deceive, including without limitation as to the origin, sponsorship, or approval of Defendants' products and services.

88. Defendants' unauthorized use of the JYM mark is likely to cause and has caused dilution of the distinctive quality of the JYM mark.

89. The foregoing acts by Defendants have been willful, intentional, and in disregard of Bodybuilding.com's rights.

90. Bodybuilding.com has been damaged and is currently being damaged by Defendants' actions, in an amount to be proven at trial.

91. Bodybuilding.com's injuries, including damage to its goodwill, will continue unless injunctive relief is granted.

**IV. JURY TRIAL DEMANDED**

92. Bodybuilding.com demands a jury trial on all triable issues.

**V. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Bodybuilding.com prays for entry of judgment against Defendants as follows:

1. A declaratory judgment that Bodybuilding.com is the sole owner of all right, title and interest in the JYM mark;

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2. Cancellation of U.S. Trademark Registration No. 4,561,658;

3. Defendants' profits attributable to the unlawful conduct described above;

4. Bodybuilding.com's damages, trebled, in an amount to be proven at trial, but which is estimated to be in excess of \$100,000,000 after trebling.

5. For a temporary and preliminary injunction enjoining Defendants and those acting in privity or concert with Defendants from the unauthorized marketing, advertising, and selling of Infringing Products and services using the JYM mark, a mark that is substantially or confusingly similar to the JYM mark or the JYM Trade Dress, until the Court has decided the merits of this action;

6. For a permanent injunction enjoining Defendants and those acting in privity or concert with Defendants from the unauthorized marketing, advertising, and selling of Infringing Products and services using the JYM mark, a mark that is substantially or confusingly similar to the JYM mark or the JYM Trade Dress;

7. For costs and, in light of the exceptional nature of the case, attorney fees incurred by Bodybuilding.com in prosecuting this action; and

8. For such other and further relief as the Court deems just and proper.

DATED THIS 20th day of September, 2016.

Respectfully Submitted,

HAWLEY TROXELL ENNIS & HAWLEY, LLP

By /s/ D. John Ashby  
D. John Ashby

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of September, 2016, I electronically filed the foregoing FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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