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*Attorneys For Plaintiff/Counterclaim Defendant*  
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,

Defendants.

Case No. 1:16-cv-00271-EJL-CWD

DECLARATION OF JOHN HARDESTY IN  
SUPPORT OF PLAINTIFF/COUNTERCLAIM  
DEFENDANT'S OPPOSITION TO  
DEFENDANTS/COUNTERCLAIMANTS'  
MOTION FOR PRELIMINARY INJUNCTION

PhD FITNESS, LLC, a California Limited Liability Company; JIM STOPPANI, an Individual,

Counterclaimants,

vs.

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

Counterclaim Defendant.

**DECLARATION OF JOHN HARDESTY**

I, John Hardesty, declare as follows:

1. I submit this declaration in support of Plaintiff/Counterclaim Defendant Bodybuilding.com, LLC's ("Bodybuilding.com") Opposition to Defendants/Counterclaimants PhD Fitness, LLC's ("PhD Fitness") and Jim Stoppani's ("Stoppani") Motion for Preliminary Injunction. I have personal knowledge of the facts set forth below, and can and will testify thereto if called as a witness in this action.

2. I was employed by Bodybuilding.com as Vice President of Digital Publishing from 2012 until May 2016. In my position at Bodybuilding.com, I was responsible for managing all of the content on Bodybuilding.com's website, including the editorial content, videos, and articles, and performed design work for the website. I also managed a team that assisted with content contributions on the website, and performed final reviews of all content before it was implemented.

3. Bodybuilding.com operates an online retail store and various mobile applications through which consumers can purchase dietary supplements, apparel, food, exercise equipment, and other fitness-related goods. It also operates a digital media publishing business and produces digital articles, photos, videos, advertising, and other health and fitness content. In addition, Bodybuilding.com sells (through its online retail website) its own private-label brands of fitness supplements, which are physically produced by Bodybuilding.com's contract manufacturers.

4. In or around late 2012, Stoppani advised me that he was considering developing a line of supplements that he hoped to be able to sell to retail stores. In January 2013, I introduced Stoppani to Brian Rand, Bodybuilding.com's then-Director of Private Label, because Rand was Bodybuilding.com's expert on formulations and manufacturing. At the time, I believed that

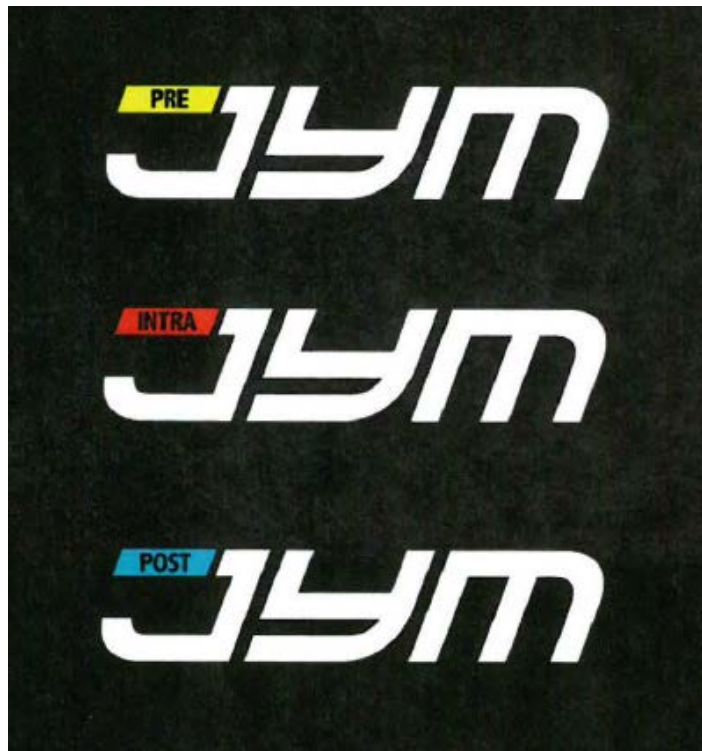
Rand and I could provide Stoppani with input and feedback on his proposed supplement, as he had never created or sold one before.

5. In early February of 2013, Stoppani and his business partner, Mike McErlane, among others, came to Bodybuilding.com headquarters in Boise, Idaho to present Stoppani's proposed pre-workout formulation to Bodybuilding.com representatives for feedback. Stoppani advised that he planned to contract with a third-party manufacturer, Adam Nutrition, to manufacture his pre-workout formulation, which he would then sell as a vendor to Bodybuilding.com for resale on Bodybuilding.com's website. Martin Rosales, Bodybuilding.com's then-Vice President of Sports Nutrition, and I met with Stoppani and McErlane in person.

6. The results of this meeting were not promising. His proposed product formulation was disappointing and, in my view, unsaleable; it had a poor taste and smell and did not dissolve thoroughly, the texture was granulated, and the ingredients that Stoppani had identified were too expensive from a price-point perspective. As a result of this presentation, I informed Stoppani and McErlane that Bodybuilding.com was not interested in their product.

7. However, I was interested in finding a way to work with Stoppani, if possible. It was clear to me that the manufacturer that Stoppani was using was ill-suited for the role, and that the costs he was receiving from the manufacturer appeared inflated. Accordingly, Morales, Rand, and I discussed an alternative approach, whereby Bodybuilding.com would develop a supplement with formulation input from Stoppani, and then Bodybuilding.com would be exclusively responsible for manufacturing, labeling, and selling the product, with Stoppani providing his endorsement and supplying Bodybuilding.com with marketing and promotional collateral (albeit all at Bodybuilding.com's expense).

8. On the evening of February 12, 2013, and working completely on my own, I created a name and logo for a new supplement that Bodybuilding.com could develop, manufacture, and sell, with formulation input and endorsement from Stoppani. The name and trademark I created that night was “JYM.” Having come up with the trademark, I began to experiment with fonts, coloring, and the shape of the letters on my computer. The final font and typesetting that I used for the JYM mark was my own unique creation, working from existing fonts in Adobe Illustrator. After I created the stylized JYM mark, I began to put it onto mockups for the potential new supplement product. The following image is a true and correct copy of the stylized JYM mark that I created on February 12, 2013:



9. The following morning, on February 13, 2013, I advised Stoppani and McErlane that I had created a concept for a new brand. I met with McErlane that same day, and showed him the JYM name and logo that I had created. Specifically, I turned around my computer, which displayed on its screen the stylized JYM mark that I had created the prior evening, to

show McErlane. McErlane indicated that he was very impressed with and enthusiastic about my design.

10. I also informed Stoppani and McErlane that it was Bodybuilding.com's opinion that Stoppani's then-manufacturer was supplying him with subpar ingredients at an expensive mark-up. I also informed them that their then-manufacturer was not likely to create a successful supplement due to these ingredients and pricing problems. I proposed to Stoppani and McErlane that instead of such an arrangement with Stoppani as a vendor, Bodybuilding.com could develop, manufacture, package, label, and sell a supplement, with formulation input, endorsement, and promotional support from Stoppani, using Bodybuilding.com's manufacturers and expertise in the fitness supplement industry. On February 18, 2013, Stoppani sent an e-mail to Rand and me stating that he agreed that, instead of his and McErlane's original business model, they would move forward with Bodybuilding.com on a new supplement line together. Attached hereto as **Exhibit A** is a true and correct copy of the above-referenced e-mail exchange.

11. In March 2013, I provided my stylized JYM mark to Rand and his team for purposes of creating labels for the new JYM supplements. Rand's team created the actual label for the products, which incorporated my design for the JYM mark. The label that Bodybuilding.com developed did not materially change the unique font or style of the original JYM mark that I created.

12. Stoppani and McErlane have acknowledged that I alone created the JYM mark. For example, attached hereto as **Exhibit B** is a true and correct copy of an e-mail that McErlane sent to Stoppani, Rand, and me on July 9, 2013, stating: "I remember when John turned his computer around when we were in his office and said, 'I worked on a little something last night and wanted to get your thoughts.' [T]hat was the moment JYM came to life." In response,

Stoppani stated: “I had not even seen the JYM logo or even the concept that John had sketched out, but all I heard all day from Mike was how brilliant the concept was that John had come up with.”

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

Executed on this 22nd day of September, 2016 in Bryan, Texas.

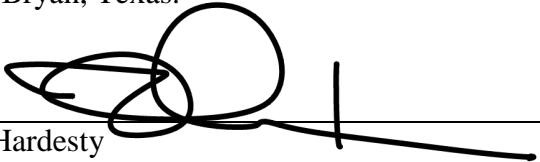
  
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John Hardesty

EXHIBIT A



**From:** Jimstoppani@gmail.com  
**Sent:** Monday, February 18, 2013 3:32 PM  
**To:** John Hardesty  
**Cc:** Brian Rand; Mike McErlane; Laya@iknowadude.com  
**Subject:** Re: Follow-Up

Good timing! I was just putting an email together to you guys that basically said this:

John and Brian - let us know when you guys are free to hop on a call with Mike McErlane, Laya Clark and myself. We're all in agreement that this is a more exciting and better opportunity than our original business model and are really looking forward to moving in this new direction with [bb.com](http://bb.com) on the supplement line. The three of us will be available whenever you guys have the time. Let us know.

Thanks again!  
Jim

On Mon, Feb 18, 2013 at 2:23 PM, John Hardesty <[John.Hardesty@bodybuilding.com](mailto:John.Hardesty@bodybuilding.com)> wrote:

Just wanted to get an email chain started to figure out next steps. I believe you can start working with Brian directly once you 3 decide that this is the only way to go. You know our thoughts and we're ready to execute on our side.

Thanks!

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**John Hardesty**  
Vice President of Digital Publishing  
[Bodybuilding.com](http://Bodybuilding.com)

phone [208.489.6027](tel:208.489.6027)  
twitter @johnhardesty  
bodyspace johnhardesty

Helping our visitors reach their health, fitness, and appearance goals through information, motivation, and supplementation.

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## EXHIBIT B

**From:** Jimstoppani@gmail.com  
**Sent:** Tuesday, July 09, 2013 9:34 PM  
**To:** Mike Mcerlane  
**Cc:** John Hardesty; Brian Rand  
**Subject:** Re: It's Official - PRE JYM shipped Today!

Yeah, I was shooting Shortcut To Shred, so I had not even seen the JYM logo or even the concept that John had sketched out, but all I heard all day from Mike was how brilliant the concept was that John had come up with.

The rest is history.

On Tue, Jul 9, 2013 at 8:30 PM, Mike McErlane <[mike\\_mcerlane@hotmail.com](mailto:mike_mcerlane@hotmail.com)> wrote:  
I remember when John turned his computer around when we were in his office and said, "I worked on a little something last night and wanted to get your thoughts." that was the moment JYM came to life.

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Date: Tue, 9 Jul 2013 20:21:02 -0700  
Subject: Re: It's Official - PRE JYM shipped Today!  
From: [jimstoppani@gmail.com](mailto:jimstoppani@gmail.com)  
To: [John.Hardesty@bodybuilding.com](mailto:John.Hardesty@bodybuilding.com)  
CC: [mike\\_mcerlane@hotmail.com](mailto:mike_mcerlane@hotmail.com); [Brian.Rand@bodybuilding.com](mailto:Brian.Rand@bodybuilding.com)

Thanks, John! As Mike said, you and Brian really get the credit for spearheading this and being involved on so many levels to not only make this happen, but make it a success. That's something that Mike and I don't take lightly and won't forget.

It's about to get real!

On Tue, Jul 9, 2013 at 7:42 PM, John Hardesty <[John.Hardesty@bodybuilding.com](mailto:John.Hardesty@bodybuilding.com)> wrote:

This is going to be epic.

John Hardesty  
VP of Digital Publishing  
[Bodybuilding.com](http://Bodybuilding.com)<<http://Bodybuilding.com/>>

phone 208.489.6027  
twitter @johnhardesty  
bodyspace johnhardesty

Helping our visitors reach their health, fitness, and

appearance goals through information, motivation, and supplementation.

On Jul 9, 2013, at 7:14 PM, "Mike McErlane" <[mike\\_mcerlane@hotmail.com](mailto:mike_mcerlane@hotmail.com)> wrote:

Both of you (Brian and John ) Jim and I have so much to thank you for. Super excited guys. You have no idea and coming at the right time.

> From: [Brian.Rand@bodybuilding.com](mailto:Brian.Rand@bodybuilding.com)  
> To: [jimstoppani@gmail.com](mailto:jimstoppani@gmail.com)  
> CC: [mike\\_mcerlane@hotmail.com](mailto:mike_mcerlane@hotmail.com); [John.Hardesty@bodybuilding.com](mailto:John.Hardesty@bodybuilding.com)  
> Subject: It's Official - PRE JYM shipped Today!  
> Date: Wed, 10 Jul 2013 00:06:27 +0000  
>  
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