ORIGINAL

No. 25-1264

In The

Supreme Court of the United States

JOHN H. OWOC a.k.a JACK OWOC, AN INDIVIDUAL,

Petitioner,

v.

MONSTER ENERGY COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a civil jury may determine the scientific validity, biochemical identity, or physiological efficacy of a patented compound—and impose nationwide prohibitions on its labeling and promotion—in the absence of any regulatory action by the Food and Drug Administration, thereby substituting judicial verdicts for Federal scientific oversight in violation of due process and the separation of powers?
2. Whether a court violates due process by excluding critical, reliable defense evidence that goes to falsity, materiality, and affirmative defenses in a Lanham Act action—thereby preventing a defendant from presenting a complete defense?
3. Whether a court violates federal antitrust law and due process by permitting litigation to proceed where the suit is objectively baseless and brought as a competitive weapon to destroy a rival, thereby stripping it of Noerr-Pennington immunity under the sham-litigation doctrine?
4. May a lay jury impose the largest civil penalty in the history of the Lanham act based on admitted guesswork and standardless damages determinations, in Violation of a Court Order prohibiting speculation, without violating due process, where the verdict operates as punishment and de facto regulatory action rather than compensation for proven harm?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner John H. Owoc certifies that he is an individual with no parent corporation. No publicly held corporation owns any interest in Petitioner or has a financial interest in the outcome of this litigation.

PARTIES TO THE PROCEEDING

Petitioner is John H. Owoc, the Defendant in this case and was appellants in the court of appeals.

Respondent is Monster Energy Company, the Plaintiff and is the appellee in the court of appeals.

RELATED PROCEEDING

- *Hansen Beverage Company (now known as Monster Beverage Corporation) v. Vital Pharmaceuticals, Inc.* Case No. 08-cv-01545-IEG-POR, U.S. District Court for the Southern District of California. Dismissed on November 14, 2011.

- *Monster Energy Company v. Vital Pharmaceuticals, Inc and John H. Owoc,* No.5:18-cv-1882-JGB-SHK, U.S. District Court, Central District of California. Judgement entered September 30th, 2022.

- *Vital Pharmaceuticals, Inc., v. Orange Bang, Inc. and Monster Energy Company,* No. 5:20-cv-1464-DSF-SHK, U.S. District Court Central District of California Eastern Division. Judgement entered April 4th, 2022.

- *Vital Pharmaceuticals, Inc. v. Monster Energy Co.*, No. 19-cv-60809, No. 19-60809-CIV-ALTMAN/HUNT, U.S. District Court Southern District of Florida, Judgement entered August 23rd, 2021.

- *Vital Pharmaceuticals, Inc. v. Monster Energy Co.*, No. 19-cv-61974-CMA, U.S. District Court Southern District of Florida, Dismissed on August 1st, 2023.

Related Proceeding

- *Vital Pharmaceuticals, Inc., v. Orange Bang, Inc. and Monster Energy Company,* No. 22-55722, U.S. Court of Appeals for the Ninth Circuit, Dismissed on October 15th, 2023.

- *Monster Energy Company v. John H. Owoc and Vital Pharmaceuticals, Inc.,* Nos. 23-55451, 24-244. U.S. Court of Appeals for the Ninth Circuit. Denied on August 11, 2025

- *3052 N Atlantic Blvd LLC v. John H. Owoc, Megan Owoc, and Monster Energy Company.* No. CACE24008153. Circuit Court of the Seventeenth Judicial Circuit for Broward County, Florida. Judgement entered on May 22nd, 2025.

- In re: VITAL PHARMACEUTICALS, INC., et al. No. 22-17842-PDR. U.S. Bankruptcy Court Southern District of Florida Fort Lauderdale Division. Ongoing.

- *John H. Owoc and Megan E. Owoc v. Blast Asset Acquisition, LLC.* No. 24-12784. U.S. Court of Appeals for the Eleventh Circuit. Ongoing

- *Monster Energy Company v. John H Owoc.* No. 0:24-cv-60357-KMW. U.S. District Court Southern District of Florida. Ongoing.

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PETITION FOR WRIT OF CERTIORARI

JOHN H. OWOC, respectfully petitions the Supreme Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The decision by the United States Court of Appeals for the Ninth Circuit denying John H. Owoc's direct appeal was entered on 08/11/2025. (App E)

JURISDICTION

The decision by the United States Court of Appeals for the Ninth Circuit denying John H. Owoc's direct appeal was entered on 09/10/2025 and the Petition for rehearing on August 11, 2025. Mr. John H. Owoc invokes this Court's jurisdiction under 28 U.S.C. § 1254(1), having timely filed this petition for a writ of certiorari within ninety days of the United States Court of Appeals for the Ninth Circuit Order denying the rehearing.

This court had jurisdiction over Plaintiff-Appellant's statutory claim against Defendant-Appellee United States of America under the Lanham Act.[1]

[1] 28 U.S.C. §§ 1331

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution Amendment I, V and XIV:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No law shall abridge the freedom of speech, nor shall any State make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its judication the equal protection of the laws.

STATEMENT OF THE CASE FACTS

This Petition for a Writ of Certiorari arises from a jury verdict and ensuing judgment resulting from a prolonged campaign of litigation by Monster Energy Company ("Monster"), a manufacturer of "energy" beverages, against its competitor, Vital Pharmaceuticals, Inc., doing business as VPX Sports ("VPX"), also a manufacturer of "energy" beverages, and its founder and Chief Executive Officer, John H. Owoc (also known as "Jack Owoc"), in what became

an effort to suppress competition rather than resolve a legitimate commercial dispute.

In the proceedings, Monster Energy Company alleged that VPX and Owoc engaged in false and misleading advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a), and related state law, by marketing Bang Energy Drink as containing a novel compound referred to as "Super Creatine." (4-ER-611–615.) Monster contended that this representation deceived consumers into believing that Bang contained a physiologically effective form of creatine capable of enhancing muscular performance and mental focus—claims Monster asserted were scientifically unsubstantiated.

Owoc and VPX, by contrast, maintained that "Super Creatine" was a legally protected proprietary compound, distinct from creatine monohydrate, and that Monster's lawsuit was not grounded in scientific concern but was rather part of a pattern of anticompetitive litigation designed to suppress Bang's rapid growth and market success. Owoc further argued that Monster's claims lacked proof of actual consumer deception or materiality, both essential elements of a Lanham Act false-advertising claim.

Following a three-week jury trial, the district court permitted Monster to introduce limited survey evidence through its expert, Dr. Cowan, while excluding rebuttal evidence and consumer survey materials proffered by Owoc that tended to negate Monster's claims and support his affirmative defenses. After deliberation, the jury returned a

verdict in Monster's favor, finding—among other things—that Owoc and VPX had willfully engaged in false advertising and were jointly and severally liable under the Lanham Act. (2-ER-91–111.)

Relying on that verdict, the district court entered a final judgment ordering VPX and Owoc to pay **$271,924,174** in damages on Monster's Lanham Act claims. (2-ER-100–105.) The court also issued a permanent injunction prohibiting Owoc—and "all persons or entities acting in concert with him"—from "falsely advertising Bang or any other product containing the term 'creatine,'" and mandating the removal of the word "creatine" and "Super Creatine" from all Bang Energy product labels, packaging, marketing, and digital platforms. (Id.)

Owoc timely appealed, arguing that the verdict and injunction rest on legally insufficient evidence and were tainted by multiple evidentiary errors that substantially prejudiced the defense. Despite those errors and the absence of proof of deception, causation, or damages, the Court of Appeals affirmed. The present Petition therefore seeks this Court's review to address a recurring and nationally significant question under the Lanham Act and the Due Process Clause—whether a federal court may uphold a permanent injunction and multi-100-million-dollar damages award in the absence of competent evidence of deception or injury, and where cumulative evidentiary errors deprived the defendants of a fair trial.

Petitioner Owoc asks this Court to review the Ninth Circuit's decision affirming the district court's

rulings granting Monster's motions in limine, which excluded evidence central to the elements of Monster's Lanham Act claims and to Owoc's affirmative defenses. (4-ER-600–08.) Because those rulings, together with the court's failure to apply governing constitutional and antitrust standards, produced a judgment and injunction that violate due process and federal law, Petitioner seeks a writ of certiorari to review the judgment, vacate the injunctive relief and damages award, and grant such further relief as justice requires.

The Petitioner Owoc's Petition for panel rehearing and the petition for rehearing en banc are DENIED on 08/11/2025.

REASON FOR GRANTING WRIT OF CERTIORARI

I. Weather A Civil Jury May Determine The Scientific Validity, Biochemical Identity, Or Physiological Efficacy Of A Patented Compound, And Impose Nationwide Prohibitions On Its Labeling And Promotion, In The Absence Of Any Regulatory Action By The Food And Drug Administration, Thereby Substituting Judicial Verdicts For Federal Scientific Oversight In Violation Of Due Process And The Separation Of Powers.

A. *A Civil Jury May Not Substitute Itself for Federal Scientific Regulators by Determining the Biochemical Identity and Physiological Properties of a Patented Compound*

This case presents a constitutional question: whether a lay jury may determine the scientific validity, biochemical identity, and physiological efficacy of a patented chemical compound—thereby imposing nationwide prohibitions on scientific claims—without any finding or regulatory action by the Food and Drug Administration ("FDA").

The jury was asked not merely whether advertising was misleading, but whether "Super Creatine," creatyl-L-leucine, and related compounds were "creatine," "derivatives," "precursors," or compounds that "provide the physical, mental, [or] health... benefits of creatine." Based on those determinations, the district court permanently barred Petitioners from making such claims and required corrective statements to the public and to retailers nationwide.

In doing so, the court and jury assumed the role of a federal scientific regulator. Congress assigned to the FDA the authority to determine chemical identity, safety, labeling standards, and permissible claims for food, dietary supplement, and beverage ingredients because such determinations require scientific expertise, uniform national standards, and administrative process—not ad hoc verdicts by lay juries. This Court has repeatedly held that scientific determinations regarding chemical identity, safety, and permissible labeling are committed by Congress to expert federal agencies, not lay juries. See *Weinberger v. Bentex Pharms., Inc.*, 412 U.S. 645, 652–53 (1973); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133–35 (2000).

This is not ordinary false-advertising adjudication. It is judicial substitution for federal scientific oversight.

Scientific determinations of chemical identity, safety, and permissible claims implicate complex biochemical and regulatory judgments entrusted by Congress to expert agencies, not to courts or juries. *Weinberger v. Bentex Pharms., Inc.*, 412 U.S. 645, 652–53 (1973); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133–35 (2000). As this Court has explained, when cases raise issues "not within the conventional experience of judges" or require the exercise of administrative discretion, they must be routed to the appropriate agency, while "the court stays its hand." *Far Eastern Conference v. United States*, 342 U.S. 570, 574–75 (1952).

B. Allowing Juries to Resolve Scientific Identity and Regulatory Classification Violates Due Process

Due process requires judgments based on standards capable of principled application. Scientific determinations of molecular identity, biochemical function, and physiological efficacy are not governed by common-law reasonableness or consumer-perception tests; they depend on specialized methodology and agency expertise. *Ricci v. Chicago Mercantile Exchange,* 409 U. S. 289, 409 U. S. 304-306. Evaluation of conflicting reports as to the reputation of drugs among experts in the field is not a matter well left to a court without chemical or medical background." *Weinberger* 412 U. S. 654

Here, the jury was asked to determine whether a patented compound metabolizes into creatine, is chemically equivalent to creatine, and provides creatine-related benefits—questions of pharmacokinetics, biochemistry, and regulatory classification. Yet the verdict form supplied no scientific standard, no regulatory benchmark, and no deference to any FDA determination. The jury simply found liability and imposed damages and injunctive relief.

This Court has recognized that when civil liability becomes regulatory in function—imposing industry-wide rules, restricting categories of speech, and compelling corrective statements—constitutional scrutiny is required. A verdict that adjudicates scientific status and enforces that determination nationwide functions not as compensation, but as regulation. Courts may not "create" regulatory enforcement mechanisms Congress did not authorize. *Alexander v. Sandoval,* 532 U.S. 275, 291 (2001).

Such adjudication violates due process because it deprives regulated parties of the uniform standards, notice, and expert review federal law requires. Petitioners were subjected to a nationwide scientific ruling by a body neither trained nor authorized to make regulatory science determinations. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574 (1996)

C. The Verdict and Injunction Usurp Federal Regulatory Authority and Disrupt the Separation of Powers

The injunction permanently prohibits Petitioners from stating that their product contains creatine, contains "Super Creatine," or provides creatine-related benefits, and requires removal of labeling and marketing nationwide. This is the type of regulatory mandate Congress assigned to the FDA.

> [I]n cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts, after they have been appraised by specialized competence, serve as a premise for legal consequences to be judicially defined. Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure.

Port of Boston Marine Terminal Assn. v. Rederiaktiebolaget Transatlantic, 400 U. S. 62, 400 U. S. 68; *Ricci v. Chicago Mercantile Exchange,* supra, at 409 U. S. 304-306.

By permitting a jury to define what constitutes creatine, what qualifies as a derivative or precursor, and what benefits may be claimed, the court displaced federal administrative authority with a one-off judicial verdict. This undermines national uniformity and replaces expert oversight with jury-driven classification.

If allowed to stand, the decision authorizes competitors to bypass the FDA and obtain nationwide prohibitions on scientific claims through civil litigation, converting private lawsuits into de facto regulatory enforcement.

D. This Question Is of Exceptional National Importance

Scientific innovation in food, supplements, pharmaceuticals, and biotechnology depends on predictable, expert-driven oversight. If juries may determine biochemical identity and physiological efficacy without FDA action, innovators face conflicting standards and punitive injunctions that substitute litigation for regulation. 21 U.S.C. § 321(s) (GRAS framework)

Congressional structure: GRAS determinations are scientific judgments governed by FDA standards, not jury findings.

This case squarely presents whether the Constitution permits that result. Super Creatine was lawfully marketed under a self-affirmed GRAS 21 U.S.C. § 321(s) determination reflecting a documented scientific conclusion of safety. The FDA

never challenged its regulatory status or labeling. Yet the verdict reclassified a federally lawful ingredient and imposed nationwide restrictions on Petitioners' labeling and speech absent any FDA determination. Allowing a jury to invalidate a lawful ingredient without regulatory action substitutes judicial verdicts for federal scientific oversight and violates due process and the separation of powers.

II. Whether The Court Violates Due Process By Excluding Critical, Reliable Defense Evidence That Goes To Falsity, Materiality, and Affirmative Defenses in a Lanham Act Action—Thereby Preventing a Defendant From Presenting a Complete Defense.

A. The Exclusion of Consumer Survey Evidence Violated Established Precedent and Denied Owoc a Fair Trial

i. The Ninth Circuit's Affirmance Conflicts with Established Precedent on the Admissibility of Consumer Surveys

The district court—and by extension the Ninth Circuit—misapplied the law by demanding that Petitioner Jack Owoc demonstrate "sufficient guarantees of trustworthiness" through proof of survey methodology and design before admitting the InfoScout consumer surveys. This standard mirrors

the *Third Circuit's* restrictive "circumstantial guarantees of trustworthiness" rule, articulated in *Pittsburgh Press Club v. United States*, 579 F.2d 751 (3d Cir. 1978), and expressly rejected by the Ninth Circuit.

In *Fortune Dynamic*, the Ninth Circuit made clear that criticisms about survey methodology, question phrasing, or sample population go to weight, not admissibility. The Court held that even flawed surveys must be admitted if they are relevant and conducted according to generally accepted principles. Here, the district court did not dispute relevance—it explicitly found that the InfoScout Surveys "tend to show what aspects of Bang are material to its purchasers." Yet, it excluded the same surveys on methodological grounds, applying a heightened "trustworthiness" test foreign to Ninth Circuit precedent.

1. The InfoScout Surveys Met the Ninth Circuit's Established Criteria for Admissibility

Under *K&N Engineering, Inc. v. Spectre Performance*, No. 5:09-cv-1900, 2011 WL 13131157 (C.D. Cal. May 12, 2011), and *Stonefire Grill, Inc. v. FGF Brands, Inc.*, 987 F. Supp. 2d 1023 (C.D. Cal. 2013), consumer surveys are admissible when they are (1) relevant, and (2) conducted according to accepted principles—including pre-litigation research conducted in the ordinary course of business.

The InfoScout Surveys satisfy **both** elements:

1. They were commissioned by Monster Energy Company, not in anticipation of litigation, but to understand *Bang* consumers' motivations and perceptions.
2. They were subsequently relied upon by both parties' experts, including Monster's own marketing experts.
3. They were conducted using accepted commercial survey methodologies, posing neutral questions such as "What is most important to you about VPX Bang?"

Thus, the surveys were not created for litigation, and their pre-litigation origin provided "the most persuasive basis" for reliability, consistent with *Daubert II*, 43 F.3d 1311, 1317 (9th Cir. 1995).

2. The District Court's Exclusion of the Surveys Was an Abuse of Discretion and Violated Rule 703

Federal Rule of Evidence 703 expressly allows experts to rely on materials—even those not independently admissible—if they are the kind of data experts in the field reasonably rely upon. The district court initially recognized this principle, holding the surveys "generally admissible" to test the bases of expert opinions. But it then expanded its exclusionary ruling, preventing the surveys from being used for any purpose, including cross-examination.

This categorical exclusion deprived Owoc of critical evidence corroborating consumer motivation and materiality—core issues in a Lanham Act false

advertising dispute. By excluding reliable pre-litigation consumer research relied upon by both parties' experts, the court denied Owoc a fair opportunity to present his case.

3. The Court's Trial Rulings Contradicted Its Own MIL Order and Prevented Cross-Examination of Experts

The district court's error was compounded when it reversed course on its prior ruling on Monster's Motion in Limine No. 1. In that earlier order, the court held that the InfoScout survey could be used to question expert witnesses about the basis of their opinions. (1-ER-22.) Yet at trial, the court refused to permit Owoc's counsel even to display survey slides while examining Dr. Chiagouris—the expert retained "to address the impact, if any, of the words *Super Creatine* or *Creatine* on cans of *Bang*." (1-ER-70 at 167:15–17, 22–23.) Monster objected, arguing that Owoc "can't establish that it's a reliable survey that meets the requirements of Rule 703," and that its probative value was outweighed by prejudice. (1-ER-75–76 at 235:24–236:11.)

Owoc's counsel reasonably relied on the court's earlier ruling allowing experts "to explain why and how they're relying upon [the survey]," which could not be done "without describing what the underlying evidence shows." (1-ER-77 at 237:1–7.) Counsel further explained that Monster's own commissioned research "was paid for, designed, overseen by Monster itself, and circulated internally in business decisions"—thus highly probative of consumer

perception and Monster's state of mind. (1-ER-77 at 237:11–16.) Nonetheless, the court categorically barred any reference to the survey: "He cannot ask about the InfoScout survey. So that's my ruling." (2-ER-163 at 5:12–13; see also 2-ER-163–166 at 5–8.)

4. The Court's Ruling Prejudiced Owoc's Entire Trial Presentation

On the final day of evidence, Owoc's counsel sought clarification, emphasizing that the ruling had fundamentally altered the defense's trial strategy:

> "As we were working the case and going through the lay witnesses, we understood Your Honor's ruling to mean that when we got to our experts, they would be allowed to explain to the jury the slide showing that Monster had a survey indicating only 3 percent of participants cared about Super Creatine. Your Honor's rulings did not allow us to do that." —(1-ER-56 at 99:11–17)

Counsel further explained that this misunderstanding was genuine and material: "We always believed sincerely that we would get that information in through those experts. We were surprised when we weren't allowed to do it." (1-ER-56–57 at 99:9–100:4.) Without the survey evidence, the jury never saw that "Monster's own non-litigation survey showed no materiality of Super Creatine"—evidence that would have undercut Monster's entire false advertising theory. (1-ER-59 at 102:18–21.)

5. The Exclusion Also Prevented Owoc From Supporting His Affirmative Defense of Unclean Hands

The same survey evidence would have allowed jurors to infer that Monster acted with unclean hands by developing its competing "Reign" energy drink to imitate *Bang*—while later suing Owoc on the claim that *Bang*'s labeling and ingredients were misleading. The InfoScout data, showing Monster's own internal understanding of what motivated *Bang* consumers, would have established that Monster knowingly copied the very attributes it now derides as false. By barring this evidence, the district court prevented Owoc from substantiating his unclean-hands defense to the false advertising claim.

6. The Ninth Circuit's Affirmance Creates an Inter-Circuit Conflict Warranting Certiorari

By affirming this exclusion, the Ninth Circuit failed to apply its own precedents holding that consumer survey criticisms go to weight, not admissibility. See *Fortune Dynamic, Inc. v. Victoria's Secret Stores Brand Mgmt.*, 618 F.3d 1025, 1037 (9th Cir. 2010) *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1292–93 (9th Cir. 1992); *Stonefire Grill, Inc. v. FGF Brands, Inc.*, 987 F. Supp. 2d 1023, 1038 (C.D. Cal. 2013). Other Ninth Circuit cases confirm that pre-litigation research satisfies the reliability threshold. *K&N Eng'g, Inc. v. Spectre Performance*, No. 5:09-cv-1900, 2011 WL 13131157, at *14 (C.D. Cal. May 12, 2011).

The Ninth Circuit's affirmance effectively applied the *Third Circuit's* far stricter "circumstantial guarantees of trustworthiness" standard from *Pittsburgh Press Club v. United States*, 579 F.2d 751, 757–58 (3d Cir. 1978)—in direct conflict with Ninth Circuit law. This inter-circuit conflict on the admissibility standard for consumer surveys alone warrants *certiorari* review to ensure uniform application of Federal Rule 703 and *Daubert* framework.

B. The Exclusion of Evidence Regarding Monster's Comparable Misconduct Violated Due Process and Undermined Equitable Defenses

8. The District Court Excluded Critical Evidence of Monster's Own Misleading Advertising

This case presents a recurring and nationally significant question: whether a court may exclude evidence of a plaintiff's own misleading advertising and unfair competition in a Lanham Act action when that evidence directly supports the defendant's affirmative defenses and negates elements of the plaintiff's claim.

The Ninth Circuit's approach in this case conflicts with its own precedent (*Certified Nutraceuticals*, *Pom Wonderful*, *Republic Molding*) and with this Court's equitable principles articulated in *Precision Instrument* and *Bose Corp.* The ruling permits a litigant engaged in the same misconduct it condemns to invoke federal equitable remedies—contrary to the

foundational rule that equity "will not aid a wrongdoer." *See Republic Molding Corp. v. B.W. Photo Utilities*, 319 F.2d 347, 349–50 (9th Cir. 1963).

Here, the district court excluded critical evidence relating to Monster's own advertising claims regarding the purported health and performance benefits of its "Rehab" and "Reign" beverages—claims such as that its "Rehab drink can bring consumers 'back from the dead' after drinking it," and that its "Reign total body fuel" provided energy benefits despite containing "virtually no calories." (5-ER-911–13). These statements were directly relevant to rebutting Monster's allegations that Owoc's representations regarding Bang energy drinks were false or misleading. Yet, the district court held that "evidence about existing products is irrelevant to Monster's claims or Defendants' affirmative defenses" (1-ER-25–27).

Because the district court's evidentiary rulings distorted application of the Lanham Act, undermined the unclean hands doctrine, and improperly narrowed relevance in violation of Federal Rules of Evidence 401, the exclusive "substantially affected the rights of the parties" and constitutes reversible error. *See Old Chief v. United States*, 519 U.S. 172, 182–83 (1997); *United States v. Abel*, 469 U.S. 45, 51 (1984).

This Court's review is warranted to restore doctrinal uniformity, protect the right to present a complete defense, and reaffirm the principle that "one who seeks equity must do equity." *Precision Instrument*, 324 U.S. at 814.

9. The District Court's Exclusion of Evidence from the Florida Lawsuits Was Reversible Error

The district court committed reversible error by granting Monster Energy Company's Motion in Limine No. 5 ("MIL 5") to exclude evidence arising from two prior lawsuits between the same parties in the Southern District of Florida—*Vital Pharmaceuticals, Inc. v. Monster Energy Co.*, No. 19-cv-60809, and *Vital Pharmaceuticals, Inc. v. Monster Energy Co.*, No. 19-cv-61974* (collectively, the "Florida Lawsuits"). See 1-ER-28–30; 4-ER-580–88; 3-ER-319–24.

Those cases involved overlapping factual and legal issues, including allegations that Monster: (1) developed its "Reign" beverage as a "copycat" of Bang Energy; (2) knew its own energy drinks caused adverse health effects; (3) had a longstanding pattern of filing predatory lawsuits to suppress market competition; (4) conducted coordinated "smear campaigns" against VPX (Bang's manufacturer) and Jack Owoc personally. 4-ER-582; 5-ER-827–905.

Evidence from these proceedings—including deposition transcripts, exhibits (e.g., P-0181, P-0185, P-0241), internal Monster documents (MONSTVPX0513584; MONSTVPX0513604; MONSTVPX0012405; MONSTVPX0108997), and VPX's verified complaints—directly contradicted Monster's allegations in this case that Owoc's statements about Bang were false or misleading. See 5-ER-814–21 (VPX Suppl. Resp. 20).

10. The Excluded Florida Evidence Was Highly Probative on Elements of Monster's Lanham Act Claim

Monster's Lanham Act claim required proof that Owoc made false or misleading statements of fact about Bang's ingredients and health benefits, that such statements deceived consumers, were material, and caused damage. *See Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th Cir. 1997).

The excluded Florida Lawsuit evidence was highly probative on these elements. Monster's own internal communications admitted that Reign was "intended to compete with Bang" as a "healthier high-performance energy drink" with "0 sugar, 0 calories, 0 carbs, natural caffeine," and identified Bang's "Creatine, Glutamine, BCAAs, [and] CoQ10" as its distinguishing ingredients. 3-ER-490, 501–02, 519. (Monster also copied Bang's label featuring BCAAs and CoQ10 callouts on the rime of the can.) These admissions show Monster knew Bang's representations were substantially true and that creatine content was immaterial to consumer purchasing decisions—undermining the falsity and materiality elements of Monster's claim.

Moreover, VPX's Florida unfair-competition complaint alleged that Monster's own products were linked to "grievous, adverse health effects," citing FDA data and GAO data reporting 102 adverse health events—including 18 deaths and 15 heart attacks—related to Monster's deadly energy drinks. 5-ER-843–44 ¶¶ 50–51 (citing FDA CFSAN Reports; *see also* Konstantinos et al., *Sugar Rush or Sugar Crash?* 101

Neuroscience & Biobehavioral Reviews 45 (2019); Nelson et al., *J. Int'l Soc'y Sports Nutrition* (2014); Fletcher et al., *J. Am. Heart Ass'n* (2017)). This evidence directly contradicted Monster's assertion that Owoc's representations about the comparative safety of Bang having no reported deaths or heart attacks, were deceptive.

The Florida record also demonstrated that Monster habitually engaged in anti-competitive litigation and public "smear campaigns," including the "Truth About Bang" website, influencer promotions, and coordinated distributor threats—all designed to damage VPX's reputation and market share. 5-ER-836 ¶ 22; 5-ER-847 ¶ 63; 5-ER-849–50 ¶¶ 70–74 (citing *Law360* (Sept. 15, 2014); *Energy Drinks Lawsuit* (Mar. 23, 2016); *Law-Inspiring* (Aug. 6, 2018); *TechDirt* (Sept. 25, 2018)).

Owoc sought to admit these public filings, exhibits, and discovery responses (3-ER-321, 415, 518–23; 5-ER-827–905) to demonstrate (a) Monster's knowledge of Bang's composition; (b) that Monster suffered no cognizable injury; and (c) that Monster filed this case in bad faith as part of a pattern of competitor suppression. *See Pom Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 114 (2014)

11. The Ruling Undermines the Equitable Defense of Unclean Hands in Contradiction of Supreme Court and Ninth Circuit Precedent

The unclean hands doctrine, grounded in the equitable maxim that "he who comes into equity must

come with clean hands," bars relief to a party engaged in inequitable conduct relating to the subject matter of its claim. *See Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814 (1945); *Chicago Title Ins. Co. v. Ferraro*, 876 F.2d 896, 900 (9th Cir. 1989).

A valid unclean hands defense exists when: (1) the plaintiff's conduct is inequitable, and (2) the conduct relates directly to the subject matter of the claim. *Pom Wonderful LLC v. Organic Juice USA, Inc.*, 166 F. Supp. 3d 1085, 1092 (C.D. Cal. 2016). Proof of "wrongfulness, willfulness, bad faith, or gross negligence" satisfies the inequity element when shown by clear and convincing evidence. *Pfizer, Inc. v. Int'l Rectifier Corp.*, 685 F.2d 357, 359 (9th Cir. 1982).

The district court acknowledged that "Defendants allege that Monster's hands are dirty because it has engaged in the same kind of activity of which Defendants have been accused" (1-ER-26). Yet, it erroneously deemed such conduct irrelevant. This conclusion conflicts with *Certified Nutraceuticals, Inc. v. Avicenna Nutraceutical, LLC*, 821 F. App'x 701, 703 (9th Cir. 2020), where the Ninth Circuit upheld summary judgment on an unclean hands defense when the plaintiff had "engaged in the same improper conduct for which it faults the defendant—namely, publishing false statements about a product being patented before the patent had issued."

Like the plaintiff in *Certified Nutraceuticals*, Monster's alleged misrepresentations about its products' ingredients and benefits mirror the very claims it leveled against Owoc. Thus, excluding

evidence of Monster's own misleading advertising prevented Owoc from establishing that Monster "dirtied its hands in acquiring the right it now asserts" or that "the manner of dirtying renders inequitable the assertion of such rights." *Ellenburg v. Brockway, Inc.*, 763 F.2d 1091, 1097 (9th Cir. 1985).

12. The Excluded Evidence Was Also Central to Owoc's Affirmative Defenses

The district court also erred in holding that evidence of Monster's other lawsuits was "irrelevant" to Owoc's defenses of unclean hands, waiver, and estoppel. 1-ER-30. The court itself acknowledged that "Monster's motive for filing lawsuits may be relevant to Defendants' affirmative defenses if the litigation history showed that Monster knew of Defendants' alleged misconduct earlier or unreasonably delayed." *Id.* (emphasis added). Yet, without citing any record evidence or making factual findings, the court concluded "this is not the case here." *Id.* That conclusion was both unsupported and erroneous.

The record shows that Monster had long known of Bang's marketing claims yet delayed filing suit until its own copycat "Reign" energy drink could enter the market. *See* 2-ER-229–30 at 123:12–124:7. This supports the knowledge and delay elements of waiver and estoppel, and the inequitable-conduct nexus necessary for unclean hands. *See Certified Nutraceuticals, Inc. v. Avicenna Nutraceutical, LLC*, No. 17-cv-1354, 2018 WL 3618243, at *5 (S.D. Cal. July 27, 2018)*

Similarly, Monster's pattern of anti-competitive suits demonstrated it was "less than equitable in asserting its rights" under the Lanham Act, satisfying the close nexus test articulated in *Republic Molding Corp. v. B.W. Photo Utilities*, 319 F.2d 347, 349–50 (9th Cir. 1963). The district court's refusal to consider this pattern deprived Owoc of the opportunity to prove these defenses fully.

13. The District Court's Ruling Conflicts with Federal Precedent Governing Relevance and Equitable Defenses

The district court held that all categories of prior-lawsuit evidence were "irrelevant" to both Monster's claims and Owoc's defenses. 1-ER-28–30. That ruling misapplied Federal Rules of Evidence 401 and 402, which permit evidence having *any tendency* to make a fact "more or less probable."

This Court has long held that exclusion of relevant context that bears on falsity, intent, or damages is reversible error. *See Old Chief v. United States*, 519 U.S. 172, 182–83 (1997); *United States v. Abel*, 469 U.S. 45, 51 (1984). By stripping the jury of context regarding Monster's own advertising, product development, and litigation practices, the district court deprived Owoc of the ability to present a complete defense under *Pom Wonderful* and the equitable doctrine of unclean hands.

Under *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814 (1945), a litigant who engaged in similar

misconduct may not obtain equitable relief. Likewise, the Ninth Circuit in *Certified Nutraceuticals, Inc. v. Avicenna Nutraceutical, LLC*, 821 F. App'x 701, 703 (9th Cir. 2020), upheld dismissal where the plaintiff "engaged in the same improper conduct for which it faults the defendant." The district court's contrary exclusion of Monster's comparable misconduct directly conflicts with *Certified Nutraceuticals* and *Republic Molding Corp. v. B.W. Photo Utilities*, 319 F.2d 347, 349–50 (9th Cir. 1963), which forbid a "wrongdoer" from invoking equity.

14. The District Court Misapplied Rule 403 and Failed to Conduct the Required Balancing Analysis

The district court further erred by declaring the litigation-pattern evidence "unfairly prejudicial" without any supporting authority, analysis, or factual findings. 1-ER-30. Under *Fed. R. Evid.* 403, relevant evidence may be excluded only if its probative value is *substantially outweighed* by the danger of unfair prejudice. The court's conclusory ruling lacked the mandatory balancing and contravened the Supreme Court's instruction that exclusion under Rule 403 must be narrowly applied. *See Old Chief v. United States*, 519 U.S. 172, 182–83 (1997).

C. The Exclusion of Peer-Reviewed Scientific Evidence Denied Owoc Due Process and the Right to Present a Complete Defense

15. The District Court's Exclusion of Scientific Evidence Presents a Recurring Question of National Importance

This case presents an issue of exceptional importance warranting this Court's review: whether a federal court may exclude peer-reviewed scientific evidence that directly rebuts a plaintiff's false-advertising claim—thereby permitting a jury to be misled into believing that no scientific support exists for a challenged product claim. The District Court's exclusion of the Rodent Study and restriction on the testimony of Megan Owoc deprived Defendants of a fair trial under the Lanham Act and violated foundational principles of evidentiary fairness.

16. The Scientific Record Confirms That Super Creatine Is Real and Functionally Distinct from Ordinary Creatine

Super Creatine, chemically known as creatyl-L-leucine, is a patented covalently bonded amino acid di-peptide synthesized to enhance the solubility and stability of creatine in aqueous solutions. Peer-reviewed biochemical studies—including the Parang Plasma Study and The Peking Biotech Medical School Rodent Study—confirm that ingestion of Super Creatine leads to detectable increases in serum creatine levels, demonstrating its capacity to function as a creatine donor. The study's methodology, conducted in accordance with accepted pharmacokinetic protocols, revealed measurable creatine conversion in vivo, thereby confirming that

the compound's metabolic mechanism is real and scientifically valid.

This evidence undermines Monster's core contention that "Super Creatine does not exist" or that "no studies demonstrate its function." Those assertions are demonstrably false and formed the foundation of Monster's false-advertising claim under the Lanham Act. The trial court's exclusion of the very scientific data proving the falsity of Monster's position deprived the jury of essential information required for a just verdict.

17. The Exclusion of the Rodent Study Violated the Principles of Fair Trial and Due Process

By excluding peer-reviewed scientific evidence while permitting Monster to assert that "no studies exist," the District Court violated the Due Process Clause and the fundamental right to present a complete defense. The Supreme Court has long recognized that "the right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense." *Washington v. Texas,* 388 U.S. 14, 19 (1967). This principle extends equally to the introduction of competent scientific evidence when such evidence is central to a party's case.

Here, the excluded study was not speculative, unverified, or unreliable. It was a peer-reviewed scientific publication authored by a qualified research team, consistent with Federal Rule of Evidence 702

and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).

18. The District Court Excluded the Rodent Study Despite Monster's "Opening the Door" to Its Admission

The record shows the trial was fatally compromised. The core false advertising claim—whether "Super Creatine" was real or biologically active—was adjudicated without the jury ever seeing the scientific evidence that disproved Monster's theory. The most exculpatory study, conducted by Peking University's Biotech Medical School, demonstrated a sustained rise in creatine levels in rodent plasma over 24 hours. Tested 12 times with undeniable biological results.

Injustice deepened with the exclusion or discounting of two additional studies:

1. Dr. Shahab Parang's pharmacokinetic analysis showing measurable 7-day half-life of creatine in human plasma after Super Creatine ingestion;
2. Monster's own rigged study which—despite using 67% more molar creatine monohydrate compared to Super Creatine—still found increased creatine levels in human test subjects who consumed Super Creatine. **All three studies demonstrated increased creatine levels with Super Creatine.**

Despite this undisputed scientific record, the District Court excluded the study and restricted defense witnesses from explaining its findings—even

after Monster's counsel "opened the door" to the issue during cross-examination.

During trial, the court ruled that if testimony opened the door to such studies, they would be admitted. That moment came during the cross-examination of Megan Owoc, when Monster's counsel asked:

> To this day, Mrs. Owoc you don't know whether any studies have been done on Super Creatine, correct?
>
> Ms. Owoc answered: Yes, there are studies. (Id. At 160:19.)
>
> During the ensuing sidebar, Vital's counsel argued—correctly—that Monster's question had "opened the door" to evidence of the Rodent Study.
>
> MR. JANSSEN: So if she knows about the Peking rat study, then the door has been opened, correct?
>
> THE COURT: I guess, depending on the answer.(Id. At 161:15-17.)

Despite the Court's comment, and despite Ms. Owoc fully answering the question, the Court refused Vital's request to allow her to explain the Rodent Study after Monster's counsel abruptly withdrew the question. (Id. at 162:4–11.) This left the jury with the misimpression that no Super Creatine studies existed, when in fact Ms. Owoc truthfully testified

that there are. Jurors never heard the critical details of the Rodent Study, which were stricken without justification. Monster's door-opening questions created a false narrative that the defense could not correct.

The District Court had already ruled that evidence of the Rodent Study would be admissible if the topic was raised. Once counsel asked and Ms. Owoc answered, the door was open under established Ninth Circuit precedent. Her answer was factually correct, legally relevant, and directly responsive. By nullifying that sworn testimony and suppressing exculpatory evidence, the Court committed not merely an abuse of discretion but an act of judicial fabrication that gutted the foundation of the defense.

19. The Exclusion Violated the "Opening the Door" Doctrine and Principles of Fair Trial

The Ninth Circuit's refusal to correct the trial court's error conflicts with longstanding precedent governing the doctrine of curative admissibility (or "opening the door" doctrine). Under that rule, when one party introduces misleading evidence or testimony, the opposing party must be allowed to rebut the false impression—even with evidence that might otherwise be inadmissible. *Microsoft Corp. v. Motorola, Inc.*, 795 F.3d 1024, n.23 (9th Cir. 2015); *United States v. Croft*, 124 F.3d 1109, 1120 (9th Cir. 1997).

Here, Monster's counsel affirmatively created a misleading record by eliciting testimony that "no

studies exist," thereby opening the door to rebuttal evidence. Once opened, the trial court had no discretion to prevent Defendants from correcting that false impression through introduction of the Rodent Study or through Ms. Owoc's clarification of her testimony. The refusal to permit this rebuttal denied Defendants the opportunity to confront and correct a key misrepresentation before the jury, undermining the fairness of the proceeding and distorting the fact-finding process.

D. The Cumulative Effect of These Evidentiary Errors Were Harmful and Requires Vacatur of the Judgment and Injunction

Under *Fed. R. Evid.* 103(a) and well-established appellate precedent, evidentiary errors require reversal if they "more probably than not affected the verdict." *Obrey v. Johnson*, 400 F.3d 691, 701 (9th Cir. 2005) (quoting *Haddad v. Lockheed Cal. Corp.*, 720 F.2d 1454, 1459 (9th Cir. 1983)). When excluded evidence goes to the "heart of a party's case," prejudice is presumed. *United States v. Jimenez*, 525 F.3d 1248, 1251 (11th Cir. 2008).

That standard is met here. The court excluded five categories of central defense evidence: Monster's pre-litigation surveys, its anti-competitive litigation and "Smear Campaign," comparable misconduct supporting unclean hands, Florida Lawsuit evidence of knowledge and motive, and peer-reviewed scientific proof refuting Monster's theory of falsity. These rulings removed the defense's core proof of falsity, materiality, intent, and affirmative defenses, leaving

the jury with a distorted record. *Washington v. Texas,* 388 U.S. 14, 19 (1967).

By removing this evidence from the jury's consideration, the court prevented Owoc from establishing that Monster's claims were pretextual, motivated by anti-competitive purpose, and unsupported by material deception or damages—elements essential to Lanham Act liability. *See Pom Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 109–10 (2014) (requiring proof that challenged representations are both false and materially misleading to consumers).

Because the judgment and permanent injunction rest on a verdict tainted by these errors, it cannot stand. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006); *Harper v. City of Los Angeles*, 533 F.3d 1010, 1022 (9th Cir. 2008). This Court has long held that a judgement founded on a record infected by legal error cannot stand and must be vacated. *See SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) ("A judgment founded on a record infected by legal error cannot stand."); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (equitable remedies must rest on a sound factual basis and proper application of law).

The errors were not harmless. The excluded evidence went to the heart of the case – truthfulness, materiality, damages, and motive – therefore "raises a presumption of prejudice." United States v. *Jimenez*, 525 F.3d at 1251; *Obrey v. Johnson*, 400 F.3d 691, 701 (9th Cir. 2005); *United States v. Pang*, 362 F.3d 1187, 1192 (9th Cir. 2004). This denial of a full

and fair trial contravenes fundamental principles of due process and evidentiary fairness recognized by this Court in *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 511–12 (1984), which holds that truth-related evidence in commercial-speech cases must be fully evaluated by the trier of fact.

III. Whether The Court Violates Federal Antitrust Law and Due Process By Permitting Litigation to Proceed Where the Suit is Objectively Baseless and Brought as a Competitive Weapon to Destroy a Rival, Thereby Stripping it of Noerr-Pennington Immunity Under The Sham-Litigation Doctrine.

The trial court committed reversible error by allowing sham litigation to proceed to judgment. The record demonstrates that Monster's lawsuit was not a good-faith effort to seek redress under the Lanham Act, but a strategic legal weapon intended to destroy and eliminate competition in violation of federal antitrust law.

A. Nature of the Error

Owoc started by sleeping on an air mattress in his store while teaching science in the public school system. He built Bang into the world's third most successful selling energy drink - a multi-billion-dollar enterprise employing over 2,000, providing above-average salaries, and supporting over 1,000 social media influencer contracts, and delivering innovative, health-promoting products to millions of

consumers. Monster Energy—the second-largest energy drink—initiated litigation against Owoc and Bang not because it sought a legitimate judicial determination under the Lanham Act, but because it "could not compete fairly in the marketplace by creating a better product."

The lawsuit weaponized the legal system to crush a competitor and absorb its market share through predatory litigation and market exclusion, not to obtain a verdict based on truthful advertising concerns. The trial court's failure to apply the "sham litigation" doctrine established by the United States Supreme Court in Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc., 508 U.S. 49 (1993), constitutes a fundamental misapplication of law and reversible error.

B. The Controlling Legal Standard: Sham Litigation Doctrine

In *Professional Real Estate Investors vs Columbia Pictures*, 508 U.S. 49 (1993), the Supreme Court held that litigation used for competitive sabotage is not protected under the First Amendment and constitutes an antitrust violation. The Court established a two-part test for "sham" litigation:

1. The lawsuit must be objectively baseless—no reasonable litigant could realistically expect success on the merits;
2. It must conceal an attempt to interfere directly with a competitor's business

relationships through the process itself, rather than its outcome.

When both prongs are met, the suit is deemed a **sham**, losing *Noerr-Pennington* immunity and exposing the filer to liability under the Sherman and Clayton Acts. Here, both prongs are satisfied.

C. Application of the Doctrine to This Case

i. *Objective Baselessness*

Monster's claims lacked merit from inception. It alleged Bang's "Super Creatine" advertising was false or misleading. However, scientific studies demonstrated that Super Creatine metabolizes into creatine derivatives, rendering the claim plausibly true and supported by credible evidence. No reasonable litigant could have expected to prevail when the contested scientific claims were substantiated by scientific studies.

ii. Subjective Intent to Interfere with Competition

Monster's intent was not to obtain a judicial remedy, but to cripple a rival. Record evidence—including statements admitting Monster "could not compete fairly in the marketplace by creating a better product"—shows its real objective was to destroy Bang through costly and protracted litigation.

Such conduct satisfies *Professional Real Estate Investors vs Columbia Pictures*, 508 U.S: litigation

designed to hinder a competitor's ability to compete, rather than to vindicate a legal right, is a sham.

D. The Trial Court's Failure to Apply the Proper Legal Framework Constitutes Reversible Error

A reversible error occurs when a trial court applies the wrong legal standard which affects the outcome of the case. See *King v. Rubenstein,* 825 F.3d 206, 214 (4th Cir. 2016); Ashcroft v. Iqbal, 556 U.S. 662 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007).

Here, the trial court:

Mischaracterized the case as Lanham Act false advertising, rather than recognizing it as predatory conduct with antitrust implications;

Ignored controlling Supreme Court precedent—*Professional Real Estate Investors,* supra—mandating analysis under the sham litigation doctrine; and

Failed to evaluate Monster's anti-competitive intent, allowing an unlawful monopolization under the guise of civil litigation.

Because this error directly produced the judgment against Bang and Owoc, reversal is required.

E. The Litigation Violated Federal Antitrust Statutes

1. *The Sherman Antitrust Act (15 U.S.C. §§ 1–2)*

Section 1 prohibits conspiracies that restrain trade. Monster's coordination with distributors, co-packers, and retailers to suppress Bang's market access constitutes an unreasonable restraint of trade.

Section 2 prohibits monopolization or attempted monopolization through anti-competitive conduct. Monster's conduct—using litigation to "destroy" Bang instead of competing on innovation—meets that definition. *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985) – exclusionary refusals to deal violate § 2.

2. The Clayton Act (15 U.S.C. §§ 14, 18)

Section 3 forbids exclusive-dealing arrangements that substantially lessen competition. Monster's contracts and distributor incentives effectively foreclosed Bang's market opportunities.

Section 7 prohibits acquisitions tending to create a monopoly. Monster's eventual acquisition of Bang —after driving it into bankruptcy through sham litigation—constitutes an anticompetitive acquisition.

3. The Lanham Act (15 U.S.C. § 1125(a))

Even under the Lanham Act, Monster's false-advertising allegations were a pretext for anti-

competitive suppression and constitutes bad-faith litigation, unprotected by federal law.

IV. May A Lay Jury Impose the Largest Civil Penalty in the History of The Lanham Act Based on Admitted Guesswork and Standardless Damages Determinations, In Violation of a Court Order Prohibiting Speculation, Without Violating Due Process, Where the Verdict Operates as Punishment and De Facto Regulatory Action Rather Than Compensation For Proven Harm.

A. Due Process Forbids Arbitrary and Standardless Deprivations of Property

The Due Process Clause "bars arbitrary deprivations of property." *BMW of N. Am., Inc. v. Gore,* 517 U.S. 559, 574 (1996), especially where a civil judgment operates not as compensation for proven harm, but as punishment or economic annihilation. Id. at 568; *Honda Motor Co. v. Oberg,* 512 U.S. 415, .420–21 (1994).

The judgment imposed the largest monetary award in the history of the Lanham Act—**$271,924,174**—without any administrable standards guiding the jury's damages determination. The jurors themselves admitted that they did not apply any legal, economic, or evidentiary framework, but instead selected Monster Energy's damages number because it was "not zero" and "felt right." Such an unguided and intuitive approach to damages is constitutionally intolerable.

The Supreme Court has repeatedly held that "the absence of standards guiding the jury's discretion" in imposing severe civil sanctions violates due process. Honda, 512 U.S. at 432; *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003).

B. The Jury Openly Disregarded the Court's Express Orders, Rendering the Verdict Arbitrary

The constitutional defect is even more stark here because the jury did not merely lack standards—it defied them. The court expressly instructed: **"Your award must be based upon evidence and not upon speculation, guesswork, or conjecture."** (Jury Instruction No. 35.) (App. B, p. 117a)

Yet jurors later admitted that they did exactly what the court forbade. As reported by Law360, Monster's trial counsel Moez M. Kaba stated that jurors told him they were "given a number from [Monster] and basically given a zero from the other side," and that "zero was not a fair place for the jury to go." One juror explained: *"I got a zero on one hand, and your number, and it obviously isn't zero, so we went with your number."*

That is not an evidentiary determination. It is numerical instinct—rejecting zero because it "felt wrong" and adopting the opposing figure because it was non-zero. In other words, the jury **openly disregarded a direct court order** and imposed damages based on the very "speculation, guesswork, or conjecture" the Court prohibited.

C. *A Civil Verdict That Functions as Punishment and De Facto Regulation Triggers Heightened Due Process Scrutiny*

Many verdicts cause harm. This one caused extinction. Although denominated "damages," the verdict here functioned as punishment and regulatory action, not compensation. The consequences were immediate and catastrophic.

Vital Pharmaceuticals was forced into bankruptcy; Founder and CEO Jack Owoc was removed from control; Company assets were sold at pennies on the dollar to the very competitor that obtained the verdict. Mr. Owoc received no proceeds, despite an independent valuation conducted in bankruptcy by Kroll, independently valued the company's worth between $3.2 and $3.7 billion. Mr. Owoc lost his company, his livelihood, emerged burdened with more than $270 million in personal liability, and even lost his family home displacing his 6 young children and wife. This was not compensation for proven harm, but economic annihilation and market reallocation through civil judgment.

Monster itself publicly acknowledged that the verdict was "a devastating blow" that precipitated VPX's bankruptcy and acquisition. The judgment thus reallocated market power and extinguished a competitor, outcomes traditionally reserved for regulatory or antitrust enforcement, not jury speculation in a civil trademark case.

The Supreme Court has emphasized that when civil sanctions serve punitive or deterrent purposes,

they must satisfy substantive due process constraints. Gore, 517 U.S. at 568; *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 433–34 (2001). A verdict that destroys a business and confiscates all property interests is "quasi-criminal" in effect and must be supported by clear standards and meaningful judicial review. Honda, 512 U.S. at 432.

D. *Admitted Jury Guesswork Is Incompatible with Due Process*

The arbitrariness of the award is confirmed by the jurors' own admissions. Reported by Law360, jurors stated that they were "given a number from [Monster] and ... basically given a zero from the other side," and that once liability was found, "zero was not a fair place for the jury to go." One juror explained: "I got a zero on one hand, and your number, and it obviously isn't zero, so we went with your number." Thus, the jury did not apply any legal standard, economic method, or evidentiary framework; it rejected zero because it "felt wrong" and adopted the opposing party's figure because it was non-zero. Such admitted guesswork is incompatible with due process.

The Supreme Court has squarely rejected such reasoning. Due process requires that damages—particularly massive awards—be grounded in "reasonable standards" and "fair notice" of the severity of the penalty. *State Farm*, 538 U.S. at 416–17; *Gore*, 517 U.S. at 574.

A verdict based on the rejection of zero because it "felt wrong" and the adoption of a plaintiff's number

because it was non-zero fails every constitutional safeguard: no proportionality, no evidentiary anchor, no guiding principle, and no meaningful constraint on juror discretion.

E. The Lanham Act Does Not Authorize Confiscatory, Speculative Awards Untethered to Proven Harm

The Lanham Act authorizes recovery of damages "subject to the principles of equity." 15 U.S.C. § 1117(a). Courts have consistently held that Lanham Act damages must bear a rational relationship to actual confusion, unjust enrichment, or proven loss, and may not be speculative or punitive in disguise. See Synergistic Int'l, LLC v. Korman, 470 F.3d 162, 175 (4th Cir. 2006); *Lindy Pen Co. v. Bic Pen Corp.*, 982 F.2d 1400, 1407–08 (9th Cir. 1993).

Where damages lack evidentiary grounding, courts are constitutionally obligated to order remittitur or vacatur. *Hetzel v. Prince William Cnty.*, 523 U.S. 208, 211 (1998). Allowing a jury to impose a record-breaking award based on admitted conjecture converts the Lanham Act from a remedial statute into a weapon of market destruction, a result Congress did not authorize and the Constitution forbids.

F. Evidentiary Exclusions Compounded the Arbitrary Process

The arbitrary process was compounded by excluding Monster's own InfoScout consumer research showing only 3% of participants cared about Super Creatine—evidence that would have

undercut Monster's entire false advertising theory and contrained the jury's damages determination. (1-ER-56 at 99:11–17; 1-ER-59 at 102:18–21.)

G. Monster Failed to Prove the Required Elements of False Advertising Under the Lanham Act

To prevail under 15 U.S.C. § 1125(a), a plaintiff must prove:

(1) a false or misleading statement of fact in commercial advertising;

(2) that actually deceived or had the tendency to deceive a substantial segment of consumers; (3) that the deception was material;

(4) that the statement entered interstate commerce; and;

(5) that the plaintiff suffered injury as a result.

Southland Sod Farms v. Stover Seed Co., 108 F.3d 1134, 1139 (9th Cir. 1997).

a. Monster's proof failed on nearly every element.

No Evidence of Actual Deception or Materiality. Monster presented no consumer testimony and no direct evidence of deception. Its expert, Dr. Cowan, conducted only a perception survey regarding Bang's *can label*, which made no claims of efficacy or performance. (9/13 Trial Tr.

(Cowan) 184:7–25.) The survey failed to address the challenged advertising materials and was thus irrelevant to materiality or consumer reliance.

No Proof of Causation. Monster offered no evidence that any consumer who purchased Bang Energy would have otherwise purchased Monster's products but for the "Super Creatine" label or advertising.

Flawed Damages Model. Monster's damages expert, Mr. Tregillis, admitted that his apportionment model relied entirely on Dr. Cowan's flawed survey results. (9/15 Trial Tr. (Tregillis) 195:15–25, 210:16–23.) This single, unreliable survey formed the entire basis of the $272 million Lanham Act award.

Under controlling precedent, this evidence is legally insufficient. *See Verisign, Inc. v. XYZ.com LLC*, 848 F.3d 292, 300–01 (4th Cir. 2017) (requiring proof that challenged advertisements deceived consumers); *Southland Sod Farms*, 108 F.3d at 1146 (damages must be shown with "reasonable certainty").

b. The Tortious Interference Verdict Was Unsupported by Any Competent Evidence

Monster's tortious-interference claim failed for lack of proof. It offered no witness testimony, sales data, retailer communications, or records showing any actual breach or disruption of contract, relying instead on speculation that products were occasionally misplaced. California law requires

evidence of an "actual breach or disruption," *Pacific Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1131 (1990), and damages may not rest on "speculation or guesswork," *Fenner v. Dependable Trucking Co.*, 716 F.2d 598, 603 (9th Cir. 1983).

c. Monster's Trade Secret Claim Failed as a Matter of Law

Monster likewise failed to identify any trade secret with reasonable particularity or to show misappropriation, use, or resulting harm. Possession of thumb drives containing file names is not evidence of trade secrets or misuse. Because plaintiffs must "identify the trade secrets and carry the burden of showing that they exist," *Imax Corp. v. Cinema Techs., Inc.*, 152 F.3d 1161, 1164 (9th Cir. 1998), the $3 million award on this claim cannot stand.

H. This Case Presents an Important and Recurring Constitutional Question

The question presented is exceptional in both magnitude and principle:

May a lay jury, without administrable standards, impose the largest civil penalty in the history of the Lanham Act based on admitted guesswork, in direct violation of the Court's Order prohibiting speculation, where the verdict operates as punishment and de facto regulation rather than compensation for proven harm?

The constitutional danger is heightened by extreme financial asymmetry; Monster Energy—market

capitalization exceeding $75.5 billion—reportedly spent approximately $43 million in fees in this single action.

This Court has repeatedly intervened where civil verdicts exceed constitutional limits, even when nominally authorized by statute. Gore; State Farm; Honda; Cooper Industries. The verdict here represents a paradigmatic due process violation: arbitrary, confiscatory, and destructive of property without lawful standards. *Honda Motor Co. v. Oberg,* 512 U.S. 415, 432 (1994); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.,* 532 U.S. 424, 433–34 (2001) "Punitive damages pose an acute danger of arbitrary deprivation of property."

CONCLUSION

For the foregoing reasons, Petitioner John Owoc respectfully requests that this Court grant certiorari, reverse the Ninth Circuit's judgment, vacate the injunction and damages award, and provide such further relief as justice requires.

Respectfully submitted, this 14th day of January 2026.

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