

Supreme Court of New York.

Kings County

Patricia Ann TERRY, as Administrator of the Estate of Cory Terry, deceased, and Patricia Ann Terry, Individually, Plaintiffs,

v.

RED BULL NORTH AMERICA, INC., Defendant.

No. 506504/2013.

October 24, 2013.

Summons

Novo Law Firm, P.C., Attorney for Plaintiffs, Patricia Ann Terry, As Administrator of the Estate of Cory Terry, deceased, and Patricia Ann Terry, Individually 299 Broadway -- 17th Floor New York, New York (212) 233-6686, Ilya Novofastovsky, Esq.

Red Bull North America, Inc., c/o Ct Corporation System, 111 Eighth Avenue, New York, New York 10011.

Plaintiffs designate KINGS County as the place of trial. The basis of venue is Plaintiffs' residence located at 370 Decatur Street, Brooklyn, New York 11233.

To the above named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorney within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York

October 24, 2013

NOVO LAW FIRM, P.C.

Attorney for Plaintiffs

PATRICIA ANN TERRY, As Administrator of the ESTATE OF CORY TERRY, deceased, and PATRICIA ANN TERRY, Individually

299 Broadway -- 17th Floor

New York, New York

(212) 233-6686

BY: <<signature>>

ILYA NOVOFASTOVSKY, ESQ.

TO:

RED BULL NORTH AMERICA, INC.

c/o CT CORPORATION SYSTEM

111 Eighth Avenue

New York, New York 10011

Plaintiffs, by their attorneys, NOVO LAW FIRM, P.C., complaining of the defendant, respectfully allege, upon information and belief, as follows:

NATURE OF THE CASE AND PARTIES

1. Plaintiff PATRICIA ANN TERRY (“Plaintiff”) brings the instant survival and wrongful death actions for personal injuries suffered as a result of the November 8, 2011 passing of plaintiff-decedent CORY TERRY (“Plaintiff-Decedent”) following his ingestion of toxic amounts of caffeine and other chemicals through his consumption of RED BULL “energy drink.”

2. Plaintiff is a resident of the State of New York, County of Kings and is the surviving grandparent of Plaintiff-Decedent.

3. Defendant RED BULL NORTH AMERICA, INC. (“Defendant”) is a corporation organized under the laws of the State of New York, with its principal place of business located at 1740 Steward Street, Santa Monica, California, 90404.

4. At all times pertinent hereto, Defendant was engaged in and responsible for the design, manufacture, production, testing, study, inspecting, mixture, labeling, marketing, advertising, sales, promotion, and/or distribution of the energy drink named RED BULL (hereinafter “RED BULL”).

5. On or about April 1, 1987 RED BULL was sold for the very first time in Austria.^[FN1] Today, RED BULL is available in more than 165 countries and more than 35 billion cans of RED BULL have been consumed so far.^[FN2] Defendant’s website proudly claims: “RED BULL has been giving wings for more than 25 years.”^[FN3] In 2012 alone, Defendant sold about 5.2 billion cans of RED BULL.^[FN4] A total of 4.631 billion cans of RED BULL were sold worldwide in 2011 alone, resulting in revenue of \$5.7 billion.^[FN5]

FN1. *http://energydrink.redbull.com/company*

FN2. *Id.*

FN3. *Id.*

FN4. *Id.*

FN5. *ht-
tp://www.redbull.com/cs/Satellite/en_INT/company-figures/001242939605518?pcs_c=PCS_Product&pcs_cid=1242937556133.*

6. On or about the evening of November 8, 2011, Plaintiff-Decedent, then 33 years old, went to Stephen Decatur School, in Brooklyn, New York to play basketball. Before and while playing basketball, Plaintiff-Decedent ingested RED BULL. Thereafter, Plaintiff-Decedent went into cardiac arrest. Cardiopulmonary resuscitation and advance life support were administered to Plaintiff-Decedent on the scene. Plaintiff-Decedent was subsequently taken to Woodhull Medical and Mental Health Center in Brooklyn, New York, where he was pronounced dead.

JURISDICTION AND VENUE

7. Jurisdiction is proper in the New York State Supreme Court because, at all times relevant hereto, Defendant was engaged in the design, manufacture, production, testing, study, inspection, mixture, labeling, marketing, advertising, sales, promotion, and/or distribution of the energy drink named RED BULL within the State of New York and regularly conducted business within the State of New York.

8. Venue is proper in Kings County because, at all pertinent times, Plaintiff resides at 370 Decatur Street, Brooklyn, New York 11233.

FACTUAL ALLEGATIONS

9. In 2000, Ross Rooney, a first year student in Limerick University, died during a basketball match after drinking RED BULL.^[FN6] On or about November 15, 2000, a jury in Dublin questioned the role of RED BULL in the untimely death of this 18-year old athlete.^[FN7]

FN6. *ht-
tp://www.telegraph.co.uk/health/1374291/Student-died-after-sharing-three-cans-of-Red-Bull.html.*

FN7. *Id.*

10. On or about July 12, 2001, BBC News reported that RED BULL was under investigation in Sweden following three deaths.^[FN8] Two of the three victims ingested RED BULL mixed with Vodka.^[FN9] The third victim ingested RED BULL after exercising.^[FN10]

FN8. *http://www.news.bbc.co.uk/2/hi/1435409.stm*

FN9. *Id.*

FN10. *Id.*

11. In or about February 2004, Europe's highest court upheld a French ban on RED BULL,

citing to health concerns over the energy drink.^[FN11] France and Denmark have similarly banned RED BULL.^[FN12]

FN11. <http://www.medicalnewstoday.com/releases/5753.php>.

FN12. *Id.*

12. In or about September 2006, a 40-year old supermarket worker, who regularly ingested RED BULL, died from cardiac arrest.^[FN13] The pathologist found that RED BULL may have contributed to the untimely death of this man from Oxford, England.^[FN14]

FN13. <http://www.foxnews.com/story/2008/04/25/supermarket-worker-who-had-fatal-heart-attack-drank-4-cans-red-bull-nightly/>

FN14. *Id.*

13. On or about August 15, 2008, Scott Willoughby, from the Cardiovascular Research Centre at the Royal Adelaide Hospital, published a study that showed “that normal people develop symptoms normally associated with cardiovascular disease” after drinking RED BULL.^[FN15] Dr. Willoughby concluded that “drinking just one can of RED BULL energy drink may be enough to increase dramatically the risk of developing life-threatening blood clots, even in healthy young people.”^[FN16] Dr. Willoughby also concluded that “[d]espite the drinks' promotional promise to give its costumers ‘wings’, Australian researchers who studied the caffeine-laden beverage say it may increase the risk of symptoms commonly associated with heart disease.”^[FN17] He also concluded that “[i]f you get an increase in stickiness and a decreased ability of the blood vessels to stop its stickiness, that adds up to the bad situation” and that “[i]f you add in other risk factors for cardiovascular disease - stress or high blood pressure - this could potentially be deadly.”^[FN18]

FN15. <http://www.theaustralian.com.au/news/health-science/red-bull-may-boost-heart-disease-risk/story-e6frg8y6-1111117199747>.

FN16. *Id.*

FN17. *Id.*

FN18. *Id.*

14. On or about August 18, 2008, the *Clinical Autonomic Research* published an article entitled “Reversible Postural Tachycardia Syndrome Due to Inadvertent Overuse of Red Bull,” which outlined the following findings: “Postural tachycardia syndrome associated with a vasovagal reaction was recorded in a young volleyball player after an excess intake of Red Bull as a refreshing energy drink. Considering the widespread use of Red Bull among young people who are often unaware of the drink's drug content, this case report suggests Red Bull is considered a possible cause of orthostatic intolerance.”^[FN19]

FN19. Terlizi, R. et. al., Reversible Postural Tachycardia Syndrome Due to Inadvertent Overuse of Red Bull. *Clin. Auton. Res.* 2008 Aug; 18(4): 221-223.

15. In or about September 2008, a British student died in a nightclub after consuming approximately four cans of RED BULL.^[FN20] RED BULL was considered as a partial contributor to the untimely death of this 21-year old.^[FN21]

FN20. <http://www.nydailynews.com/life-style/health/red-bull-energy-drink-eyed-death-british-student-nightclub-article-1.388900>

FN21. *Id.*

16. On or about January 5, 2009, the *MJA* published a medical article related to the death of a young man following consumption of “energy drinks” containing caffeine and taurine, as found in RED BULL.^[FN22] The article's findings can be summed up as follows:

FN22. Berger AJ, et. al. “Cardiac Arrest in a Young Man Following Excess Consumption of Caffeinated ‘Energy Drinks.’” *MJA* 190-1, January 1, 2009.

An otherwise healthy 28-year old man had a cardiac arrest after a day of motorcross racing. He had consumed excessive amounts of a caffeinated “energy drink” throughout the day. We postulate that a combination of excessive ingestion of caffeine- and taurine-containing energy drinks and strenuous physical activity can produce myocardial ischaemia by inducing coronary vasospasm.”^[FN23]

FN23. *Id.* at 41.

The article also stated: “Both taurine and caffeine have been shown in vitro to have physiological effects on intracellular calcium concentration within vascular smooth muscle, and they can conceivably induce coronary vasospasm. In-vivo studies have demonstrated a capacity for caffeine to decrease myocardial blood flow during exercise. We postulate that, in physiologically predisposed individuals, *a combination of excessive ingestion of caffeine- and taurine-containing energy drinks and strenuous activity can induce coronary vasospasm, with potentially fatal results.*”^[FN24] Further the article stated: “In-vitro studies have shown that taurine has inotropic effect on cardiac muscle similar to that of caffeine, and *potentiates caffeine-induced muscle contracture.*”^[FN25]

FN24. *Id.* (emphasis added).

FN25. *Id.*, at 43. (emphasis added).

17. On or about January 19, 2011, the *Journal of Medical Case Reports* published an article called “Atrial Fibrillation in Healthy Adolescents After Highly Caffeinated Beverage Consumption: Two Case Reports.”^[FN26] The article discussed “the cases of two Caucasian adolescent boys of 14 and 16 years of age at the time of presentation, each without a significant cardiac history, who presented with palpitations or vague chest discomfort or both after a recent history of excessive caffeine consumption. Both were found to have atrial fibrillation on

electrocardiogram; one patient required digoxin to restore a normal sinus rhythm, and the other self-converted after intravenous fluid administration.”^[FN27] The article made the following recommendations: “With the increasing popularity of energy drinks in the pediatric and adolescent population, physicians should be aware of the arrhythmogenic potential associated with their consumption. It is important for pediatricians to understand the lack of regulation in the caffeine content and other ingredients of these high-energy beverages and their complications, so that parents and children can be educated at well visits and sports physicians. We must inform the public on the potential health hazards related to the excessive intake of caffeine-containing beverages by children and adolescents; the caffeine content of energy drinks should be better regulated and reported on food labels; and the purchase of energy drinks by the young consumer should be more closely monitored.”^[FN28]

FN26. Di Rocco, JR, et. al. “Atrial Fibrillation in Healthy Adolescents After Highly Caffeinated Beverage Consumption: Two Case Reports.” *Journal of Medical Case Reports*. <http://www.imedicalcasereports.com/content/5/1/18>.

FN27. *Id*

FN28. *Id*.

18. In or about June 2012, *Cardiovascular Toxicology* published an article called “A Case of Caffeine-Induced Coronary Artery Vasospasm of a 17-Year Old Male.”^[FN29] The article described the case of a 17-year old male who was diagnosed with coronary vasospasms as a result of ingesting caffeine.

FN29. Wilson, RE, et. al.. “A Case of Caffeine-Induced Coronary Artery Vasospasm of a 17-Year Old Male.” *Cardiovascular Toxicology*. June 2012; 12(2): 175-9.

19. In or about August 2012, the *Medical Journal of Australia* published an article titled “Energy Drinks: Health and Toxicity.”^[FN30] The objective of the article was to “describe the epidemiology and toxicity of caffeinated energy drink exposures in Australia.”^[FN31] The article shows the result of a study done related to energy drinks and involved 217 subjects who have ingested energy drinks.^[FN32] *Eighty seven percent* of these subjects experienced symptoms, the common of which included palpitations, agitation, tremor, and gastrointestinal symptoms.^[FN33] *Twenty one subjects had signs of serious cardiac or neurological toxicity, including hallucinations, seizures, arrhythmias, or cardiac ischemia.*^[FN34] At least 125 subjects required hospitalizations.^[FN35] The article concluded: “Reports of caffeine toxicity from energy drink consumption are increasing, particularly among adolescents, warranting review and regulation of the labeling and sale of these drinks. Educating adolescents and increasing the community's awareness of the hazards from energy drinks is of paramount importance.”^[FN36]

FN30. Gunja, MA. “Energy Drinks: Health and Toxicity.” *Medical Journal of Australia*. Jan. 2012; 196(1): 46-9.

FN31. *Id*.

FN32. *Id.*

FN33. *Id.* (emphasis added).

FN34. *Id.* (emphasis added).

FN35. *Id.*

FN36. *Id.*

20. On or about October 29, 2012, *BioMed Research Notes* published an article titled “Hypertension in a Young Boy: An Energy Drink Effect.”^[FN37] The article concluded: “Several studies have reported numerous health hazards including cardiac effects associated with energy drinks. Warning labeling should be done of these drinks regulating the content of Caffeine and its harmful effects on health.”^[FN38] The article also concluded: “There are numerous false perceptions in the society about the positive benefits and harmful effects of energy drinks. There is a strong need to create awareness through health education regarding these drinks especially among children as they are exposed to an ever-increasing range and easily accessible energy drinks market. There is also a strong need for legislation regarding mandatory labeling of exact caffeine content of these drinks and with strong health warning regarding potential health risks. These health warnings must also be included in TV commercials and print media advertisements.”^[FN39]

FN37. Usman, Asma, et. al. “Hypertension in a Young Boy: An Energy Drink Effect.” *BioMed Research Notes*. Oct. 29, 2012. <http://www.biomedcentral.com/1756-0500/5/591>.

FN38. *Id.*

FN39. *Id.*

21. On or about November 16, 2012, the Food and Drug Administration (“FDA”) publicly released reports of injuries associated with ingestion of RED BULL.^[FN40] In particular, the FDA “posted 21 reports that had been filed with the agency since 2004 that mentioned RED BULL, including ones that involved hospitalizations for heart problems and vomiting.”^[FN41]

FN40. F.D.A. Posts Injury Data Citing Red Bull. *The New York Times*, November 16, 2012.

FN41. *Id.*

22. On or about November 18, 2012, RED BULL was linked to the death of three Canadians and was linked to serious side effects on 35 other Canadians.^[FN42] The report indicated that “three male teens, two 15-year olds and an 18-year old, died after drinking Red Bull.”^[FN43]

FN42. Red Bull Linked to Three Deaths. *United Press International*. November 18, 2012.

FN43. *Id.*

23. Between 2004 and 2012, The Center for Food and Safety Adverse Event Reporting collected reports of events or problems allegedly related to RED BULL.^[FN44] Those events or problems included, but were not limited to, the following: pancreatitis, fatigue, panic attack, anxiety, blurred vision, dizziness, decreased appetite, adrenal insufficiency, insomnia, confusional state, disturbance in attention, dependence, nausea, hyperhidrosis, increased heart rate, chest pain, dyspnea, increased blood pressure, increased heart rate, acute myocardial infarction, intracardiac thrombus, panic attack, irregular heart rate, depressed level of consciousness, sensory loss, flushing, tremor, tachycardia, livedo reticularis, vertigo, blindness, chest pain, fluctuation in blood pressure, diarrhea, abdominal pain, glossodynia, hypersensitivity, aggression, vomiting, convulsions, and cardiac disorders. Some of these events or problems were life threatening and required hospitalizations.^[FN45]

FN44. *CAERS Adverse Events Reports Allegedly Related to Red Bull, January 1, 2004 through October 23, 2012.*

FN45. *Id.*

24. At all relevant times, Defendant was responsible for the design, manufacture, production, testing, study, inspection, mixture, labeling, marketing, advertising, sales, promotion, and/or distribution of RED BULL that Plaintiff-Decedent consumed and from which he ultimately died.

25. RED BULL is marketed as a product that provides benefits to consumers in that it “gives [them] wings” resulting in increased physical and/or mental performance.

26. Defendant has successfully avoided meaningful regulation of its product by the U.S. Food and Drug Administration. By classifying RED BULL as a “dietary supplement”----in other words, not a “food”---Defendant manufactures its RED BULL drinks without any restrictions on caffeine content.^[FN46]

FN46. MSNBC.msn.com, *Teen Girl Dies of “Caffeine Toxicity” after Downing 2 Energy Drinks*, http://todayhealth.today.msnbc.msn.com/_news/2012/03/21/10780958-teen-girl-dies-of-caffeine-toxicity-after-downing-2-energy-drinks?lite.

27. Despite Defendant's knowledge of the significant risks associated with consumption of RED BULL, particularly with respect to its target audience, Defendant's product masks and otherwise fails to alert consumers like Plaintiff-Decedent of the significant risks associated with the consumption of RED BULL.

28. Though championing the benefits provided by RED BULL, Defendant entirely failed to warn or disclose to consumers like Plaintiff-Decedent the known risks and side effects of consuming RED BULL, including the risk of cardiac arrhythmia and cardiac arrest, from which Plaintiff-Decedent ultimately died.

29. Beyond its failure to warn of or disclose to consumers information related to the significant risks associated with consuming RED BULL, Defendant intentionally withheld, suppressed and concealed from consumers information relating to the risks of adverse health effects upon consumption of this product.

30. Defendant failed to conduct adequate testing, studies or clinical testing and research, and similarly failed to conduct adequate marketing surveillance regarding RED BULL's adverse effects upon consumption of this product.

31. Despite Defendant's representations to the contrary, the RED BULL drinks consumed by Plaintiff-Decedent were not safe or fit for the use for which they were intended.

32. Had Defendant properly disclosed and warned of the significant risk of suffering adverse cardiac episodes, including cardiac arrhythmias, due to the consumption of RED BULL, a product containing exorbitant levels of caffeine, taurine, and other harmful chemicals, Plaintiff-Decedent would not have purchased and consumed RED BULL drinks.

33. Defendant's failures in designing, manufacturing, marketing, distributing, warning and/or selling RED BULL drinks directly and proximately caused Plaintiff-Decedent to suffer cardiac arrhythmia and cardiac arrest and ultimately caused death.

AS AND FOR A FIRST CAUSE OF ACTION FOR STRICT LIABILITY- DESIGN DEFECT

34. Plaintiffs re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

35. Defendant manufactured, sold, and supplied RED BULL and had significant involvement in distribution including the capability of exercising control over quality.

36. Defendant placed RED BULL into the stream of commerce. RED BULL was expected to, and did, reach Plaintiff-Decedent without substantial change in its condition. Plaintiff-Decedent consumed RED BULL and it caused his cardiac arrhythmia and death.

37. Plaintiff-Decedent consumed RED BULL that caused his death in the way that Defendant intended all RED BULL drinks to be used - he ingested them orally.

38. The RED BULL drinks that Plaintiff-Decedent consumed, and that caused his death, did not perform as safely as an ordinary consumer would have expected them to perform when used or misused in an intended or reasonably foreseeable way.

39. At the time the RED BULL drinks consumed by Plaintiff-Decedent left Defendant's control, they were in a condition not contemplated by him and were unreasonably dangerous and defective. RED BULL was at the time of Plaintiff-Decedent's consumption (and remains to this day) dangerous to an extent beyond that which would be contemplated by the ordinary consumer in his/her position.

40. RED BULL failed to perform as intended and the circumstances surrounding Plaintiff-Decedent's injuries and death exclude all causes other than RED BULL's failure.

41. The risks associated with ingesting RED BULL outweigh any claimed or perceived benefits. There are practicable, feasible and safer alternatives to achieve “energy” and increased awareness that do not present the severe health risks that accompany RED BULL.

42. The failure of RED BULL that Plaintiff-Decedent consumed, and that caused his death, to perform safely was a substantial factor in causing his harm.

43. A reasonable person who knew or should have known of RED BULL's potential for causing injury and of the feasible alternative design would have concluded that RED BULL should not have been marketed in that condition.

44. As a direct and proximate result of Defendant's design, manufacture, marketing, and/or sale of RED BULL, Plaintiffs, and particularly Plaintiff-Decedent, suffered the injuries herein described.

45. As a direct and proximate result of Defendant's design, manufacture, marketing, and/or sale of RED BULL, it became necessary for Plaintiffs to incur expenses for doctors, hospitals, nurses, pharmaceuticals, and other reasonably required and medically necessary supplies and services.

46. As a direct and proximate result of Defendant's design, manufacture, marketing, and/or sale of RED BULL, Plaintiffs suffered serious and permanent physical injury, harm, damages and economic loss.

AS AND FOR A SECOND CAUSE OF ACTION FOR STRICT LIABILITY- FAILURE TO WARN

47. Plaintiffs re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

48. Prior to Plaintiff-Decedent's consumption of RED BULL, Defendant designed, manufactured, marketed, distributed and/or sold RED BULL, and at all material times was in the business of doing so. Defendant placed RED BULL into the stream of commerce. RED BULL was expected to, and did, reach Plaintiff-Decedent without substantial change in its condition. Plaintiff-Decedent consumed RED BULL and it caused his cardiac arrhythmia and death.

49. RED BULL had potential risks and side effects that were known or knowable to Defendant by the use of scientific knowledge available at and after the time of design, manufacture, marketing, distribution and/or sale of the RED BULL drinks consumed by Plaintiff-Decedent. Defendant knew or should have known of the defective condition, characteristics, and risks associated with RED BULL, as previously set forth herein.

50. The potential risks and side effects associated with RED BULL presented, and continue to present, a substantial danger when the drinks are used or misused in an intended or reasonably foreseeable way (*i.e.* ingested orally).

51. Ordinary consumers would not have recognized the potential risks and side effects associated with ingesting RED BULL.

52. When placing RED BULL into the stream of commerce, Defendant failed to provide adequate warnings as to the risks associated with the product. Defendant failed to warn consumers of the true risks and dangers - and of the symptoms, scope and severity of the potential side effects of the RED BULL drinks that Plaintiff-Decedent consumed, such as significantly increased risk of strokes, blood clots, heart attacks and cardiac arrhythmias.

53. As detailed herein, Defendant failed to adequately warn and instruct of the potential risks and side effects associated with ingesting RED BULL. Examples of the inadequacies of Defendant's warnings include, but are not limited to, the following: (a) the warnings were insufficient to alert Plaintiff-Decedent of the significant risk, scope, duration and severity of adverse events and/or reactions associated with RED BULL, subjecting him to risks that far exceeded the benefits of RED BULL; (b) Defendant marketed and sold RED BULL using misleading advertisement; and (c) Defendant failed to disclose the increased risks of adverse cardiac episodes associated with the consumption of RED BULL.

54. The lack of sufficient instructions or warnings was a substantial factor in causing Plaintiff-Decedent's death.

55. As a direct and proximate result of Defendant's failure to provide adequate warnings in connection with its design, manufacture, marketing, distribution and/or sale of RED BULL, Plaintiffs suffered the injuries herein described.

56. As a direct and proximate result of Defendant's failure to provide adequate warnings in connection with its design, manufacture, marketing, distribution and/or sale of RED BULL, it became necessary for Plaintiffs to incur expenses for doctors, hospitals, nurses, pharmaceuticals, and other reasonably required and medically necessary supplies and services.

57. As a direct and proximate result of Defendant's failure to provide adequate warnings in connection with its design, manufacture, marketing, distribution and/or sale of RED BULL, Plaintiffs suffered serious and permanent physical injury, harm, damages and economic loss.

AS AND FOR A THIRD CAUSE OF ACTION FOR NEGLIGENCE - DESIGN, MANUFACTURE, AND SALE

58. Plaintiffs re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

59. Defendant owed a duty to Plaintiff-Decedent and all consumers of RED BULL to exercise reasonable care in the design, formulation, testing, manufacture, labeling, marketing, distribution, promotion and/or sale of RED BULL. This duty required Defendant to ensure that its product did not pose an unreasonable risk of bodily harm to Plaintiff-Decedent and all other consumers, and similarly required Defendant to warn of side effects, risks, dangers and potential for adverse cardiac episodes associated with the ingestion of RED BULL.

60. Defendant failed to exercise reasonable care in the design, formulation, testing, manufacturing, labeling, marketing, distribution, promotion and/or sale of RED BULL in that Defendant knew or should have known that RED BULL could cause significant bodily harm, includ-

ing cardiac arrhythmia, and was not safe for use by those who ingest the product.

61. Defendant was negligent in the design, formulation, testing, manufacturing, labeling, marketing, distribution, promotion and/or sale of RED BULL and breached its duties to Plaintiff-Decedent. Specifically, Defendant: (a) failed to use due care in the preparation and design of RED BULL drink to prevent the previously-described risks; (b) failed to conduct adequate testing of RED BULL; (c) failed to cease manufacturing or otherwise alter the composition of RED BULL to produce a safer alternative despite the fact that Defendant knew or should have known that such drinks posed a serious risk of bodily harm to consumers; (d) failed to conduct post-marketing surveillance to determine the safety of RED BULL; (e) failed to exercise reasonable care with respect to post-sale warnings and instructions for safe use by consumers; (f) failed to exercise ordinary care in the labeling of RED BULL; and (g) was otherwise careless and negligent.

62. At all relevant times, it was foreseeable to Defendant that consumers, like Plaintiff-Decedent, would suffer injury as a result of Defendant's failure to exercise ordinary care.

63. As a direct and proximate result of Defendant's negligence, Plaintiff-Decedent suffered the injuries herein described.

64. As a direct and proximate result of Defendant's negligence, it became necessary for Plaintiffs to incur expenses for doctors, hospitals, nurses, pharmaceuticals, and other reasonably required and medically necessary supplies and services.

65. As a direct and proximate result of Defendant's negligence, Plaintiffs suffered serious and permanent physical injury, harm, damages and economic loss.

AS AND FOR A FOURTH CAUSE OF ACTION FOR NEGLIGENCE - FAILURE TO WARN

66. Plaintiffs re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

67. Prior to, on, and after the date of Plaintiff-Decedent's ingestion of RED BULL, and at all relevant times, Defendant was engaged in the design, manufacture, production, testing, study, inspection, mixture, labeling, marketing, advertising, sales, promotion, and/or distribution of RED BULL, which was intended for consumption by consumers like Plaintiff-Decedent.

68. Prior to, on, and after the date of Plaintiff-Decedent's ingestion of RED BULL, Defendant knew or should have known that RED BULL was dangerous or was likely, to be dangerous when used in a reasonably foreseeable manner. Such dangers include, but are not limited to, significantly increased risks of cardiac arrest, cardiac arrhythmias, strokes, blood clots, heart attacks and death.

69. Prior to, on, and after the date of Plaintiff-Decedent's ingestion of RED BULL, Defendant knew or should have known that consumers of RED BULL, including Plaintiff-Decedent, would not realize the dangers presented by the product.

70. Prior to, on, and after the date of Plaintiff-Decedent's ingestion of RED BULL, Defendant

failed to adequately warn of the dangers associated with consumption of RED BULL and/or failed to adequately instruct consumers on the safe use of the product. Such failures to warn and/or instruct included, but were not limited to: (a) failing to issue adequate warnings to consumers concerning the risks of serious bodily harm associated with the ingestion of RED BULL; (b) failing to supply adequate warnings regarding all potential adverse health effects associated with the use of its product and the comparative severity of these side effects; and (c) failing to set forth adequate warnings directed to consumers with common underlying cardiac conditions that are more susceptible to adverse cardiac reactions.

71. It was foreseeable to Defendant that consumers, including Plaintiff-Decedent, would suffer injury as a result of its failure to exercise ordinary care in providing adequate warnings concerning the dangers associated with consumption of RED BULL.

72. As a direct and proximate result of Defendant's negligence, Plaintiff-Decedent suffered the injuries herein described.

73. As a direct and proximate result of Defendant's negligence, it became necessary for Plaintiffs to incur expenses for doctors, hospitals, nurses, pharmaceuticals, and other reasonably required and medically necessary supplies and services.

74. As a direct and proximate result of Defendant's negligence, Plaintiffs suffered serious and permanent physical injury, harm, damages and economic loss.

AS AND FOR A FIFTH CAUSE OF ACTION FOR FRAUD

75. Plaintiffs re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

76. Defendant withheld and suppressed facts in its advertising, labeling, packaging, marketing and promotion of RED BULL that led consumers to falsely believe that the product posed no greater risk to the health of those who consumed it than did natural supplements containing similar ingredients.

77. Due to the potential risks associated with consumption of RED BULL, Defendant owed a duty to disclose the truth about the significant adverse health effects associated with the consumption of these drinks, but failed to do so.

78. Despite Defendant's knowledge of the health risks associated with consumption of energy drinks like RED BULL as a result of the high caffeine content, Defendant concealed these dangers and took steps in the advertising, packaging, marketing, promotion and/or sale of RED BULL to prevent consumers from learning the true facts about the product.

79. The concealment of the true facts about RED BULL was done with the intent to induce Plaintiff-Decedent to purchase and consume RED BULL.

80. Defendant intended for consumers, like Plaintiff-Decedent, to rely on its advertising, labeling, packaging, marketing, promotion and/or sale of RED BULL, as well as its suppression of the true facts about the risks and dangers associated with consuming RED BULL.

81. The reliance by Plaintiff-Decedent in consuming RED BULL was reasonable and justified in that Defendant appeared to be, and represented itself to be, a reputable business that would disclose the truth about any potential harmful health effects of consuming its product.

82. As a direct and proximate result of the fraud and deceit alleged, Plaintiffs suffered the injuries herein described.

83. As a direct and proximate result of the fraud and deceit alleged, it became necessary for Plaintiffs to incur expenses for doctors, hospitals, nurses, pharmaceuticals, and other reasonably required and medically necessary supplies and services.

84. As a direct and proximate result of the fraud and deceit alleged, Plaintiffs suffered serious and permanent physical injury, harm, damages and economic loss.

AS AND FOR A SIXTH CAUSE OF ACTION FOR BREACH OF IMPLIED WARRANTIES

85. Plaintiffs re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

86. Plaintiff-Decedent consumed RED BULL that caused his death.

87. At the time of Plaintiff-Decedent's purchase of RED BULL that caused his death, Defendant was in the business of selling the drink products.

88. The RED BULL drinks that Plaintiff-Decedent consumed, and that caused his death, were harmful when consumed.

89. The harmful condition of the RED BULL drink that Plaintiff-Decedent consumed, and that caused his death, would not reasonably be expected by the average consumer.

90. RED BULL was a substantial factor in causing Plaintiff-Decedent's death.

91. Prior to Plaintiff-Decedent's consumption of RED BULL, Defendant impliedly warranted to Plaintiff-Decedent and other consumers that RED BULL was of merchantable quality and safe and fit for the use for which it was intended.

92. Plaintiff-Decedent reasonably relied entirely on the expertise, knowledge, skill, judgment, and implied warranty of Defendant in choosing to purchase and consume RED BULL.

93. The RED BULL drinks Plaintiff-Decedent consumed were neither safe for their intended use, nor of merchantable quality, in that they possessed a dangerous mixture of ingredients that, when put to their intended use, caused severe, permanent and fatal injuries to Plaintiff-Decedent. As such, RED BULL was not of the same quality as those energy drinks generally acceptable in the trade and it was not fit for the ordinary purposes for which such goods are used.

94. By selling, delivering and/or distributing the defective RED BULL drinks to Plaintiff-Decedent, Defendant breached the implied warranty of merchantability and the implied war-

ranty of fitness.

95. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability and the implied warranty of fitness, Plaintiffs suffered the injuries herein described.

96. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability and the implied warranty of fitness, it became necessary for Plaintiffs to incur expenses for doctors, hospitals, nurses, pharmaceuticals, and other reasonably required and medically necessary supplies and services.

PUNITIVE DAMAGES ALLEGATIONS

97. Plaintiffs re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

98. At all relevant times, Defendant knew that RED BULL contained dangerous levels of caffeine and other stimulants, and knew the serious health risks to consumers associated with the consumption of RED BULL.

99. With such knowledge and in furtherance of its own financial interests, Defendant willfully, wantonly and maliciously engaged in the design, manufacture, production, testing, study, inspection, mixture, labeling, marketing, advertising, sales, promotion, and/or distribution of RED BULL while simultaneously failing to warn potential consumers of its dangerous propensities.

100. With such knowledge and in furtherance of its own financial interests, Defendant willfully, wantonly and maliciously, and with conscious disregard for, and indifference to, the health and safety of consumers, including Plaintiff-Decedent, failed and refused to supply adequate warnings and/or information to protect consumers and/or otherwise reduce or eliminate the health risks to consumers associated with the consumption of RED BULL.

101. In addition to such conduct, Defendant knowingly, intentionally and deliberately marketed its product as an "Energy Supplement" so as to avoid limitations imposed upon soft drink and other beverage manufacturers by the U.S. Food and Drug Administration restricting the caffeine content of such soft drinks or beverage. In classifying its product as an "Energy Supplement," Defendant avoids meaningful regulation by the FDA and uses amounts of caffeine in its RED BULL that far exceed such regulations imposed upon other beverages.

102. As a direct and proximate result of such conduct, and because the acts and omissions of Defendant were willful, wanton, malicious, intended and in conscious disregard for, and indifference to, the health and safety of potential consumers, like Plaintiff-Decedent, an award of exemplary or punitive damages is appropriate and necessary to punish Defendant, and to deter Defendant from engaging in such misconduct in the future and to affect significant change in the way Defendant designs, manufactures, markets, promotes, warns about, distributes and/or sells its product.

AS AND FOR A SEVENTH CAUSE OF ACTION FOR WRONGFUL DEATH

103. Plaintiffs re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

104. Plaintiff and all other surviving distributees of and successors in interest to Plaintiff-Decedent do hereby bring any and all Wrongful Death causes of action.

105. The wrongful actions of Defendant described in the preceding paragraphs, and the defects in the RED BULL product designed, manufactured, marketed, distributed and/or sold by Defendant, caused the death of Plaintiff-Decedent. As a direct and proximate result of the strict liability, negligence, fraud, and breach of warranty described above, Plaintiff-Decedent purchased and consumed RED BULL, which resulted in his death.

106. As a result of the death of Plaintiff-Decedent, Plaintiff and all other distributees were deprived of the love, companionship, comfort, affection, support, and society of Plaintiff-Decedent.

107. Plaintiff and all other distributees are entitled to recover economic and non-economic damages against Defendant for the wrongful death proximately caused by Plaintiff-Decedent's consumption of RED BULL and directly attributable to Defendant's failures as described in the preceding paragraphs.

WHEREFORE, Plaintiffs demand judgment against Defendant for \$5,000,000.00 for each cause of action and \$50,000,000.00 for PUNITIVE DAMAGES, together with the costs and disbursements of this action. As and for the SEVENTH CAUSE OF ACTION, Plaintiffs demand judgment against Defendant in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

Dated: New York, New York

October 24, 2013

NOVO LAW FIRM, P.C.

Attorneys for Plaintiffs

PATRICIA ANN TERRY, as Administrator of the ESTATE OF CORY TERRY, deceased,
and PATRICIA ANN TERRY, Individually

299 Broadway, 17th Floor

New York, New York 10007

212-233-6686

BY: <<signature>>

ILYA NOVOFASOVSKY, ESQ

ATTORNEY'S VERIFICATION

ILYA NOVOFASTOVSKY, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am associated with the NOVO LAW FIRM, P.C., attorneys of record for Plaintiffs. I have read the annexed

SUMMONS & VERIFIED COMPLAINT

and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

The reason I make the foregoing affirmation instead of Plaintiffs is because Plaintiffs reside outside of the county wherein your affirmant maintains offices.

DATED: New York, New York October 24, 2013

<<signature>>

ILYA NOVOFASTOVSKY, ESQ.

ATTORNEY'S CERTIFICATION. Upon reasonable inquiry under the circumstances, I certify that the presentation of these papers or contentions therein is made in good faith and is not frivolous.

Dated: October 24, 2013

Signature: <<signature>>

ILYA NOVOFASTOVSKY, ESQ.

TO:

RED BULL NORTH AMERICA, INC.

c/o CT CORPORATION SYSTEM

111 Eighth Avenue

New York, New York 10011

END OF DOCUMENT