

ESTTA Tracking number: **ESTTA17303**

Filing date: **10/18/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding.	91161972
Applicant	Defendant S.A.N Corporation S.A.N Corporation 716 N. Ventura Road #431 Oxnard, CA93030
Other Party	Plaintiff D & E Pharmaceuticals, Inc. 206 Macopin Corp. 206 Macopin Rd. Bloomingtondale, NJ07403

Motion for Suspension in View of Civil Proceeding With Consent

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, S.A.N Corporation hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

S.A.N Corporation has secured the express consent of all other parties to this proceeding for the suspension requested herein.

S.A.N Corporation has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,
/joseph e chovanes/
Joseph E. Chovanes
jchovanes@chovanes.com
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10/18/2004

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

D & E Pharmaceuticals, Inc.,	:	
	:	
Opposer,	:	Serial No. 78-305,431
	:	
v.	:	
	:	
S.A.N. Corporation	:	MARK: FULL IMPACT BOLT
	:	
Applicant.	:	
	:	

**APPLICANT’S MOTION TO SUSPEND OPPOSITION PROCEEDING
AND BRIEF IN SUPPORT**

Applicant, S.A.N. Corporation, (“SAN”) by its attorneys, comes before the Board pursuant to 37 CFR § 2.117 and TBMP § 510, requesting that action in this matter be suspended, pending final resolution of the matter of D&E Pharmaceuticals, Inc. (“D&E”) et. al. v. SAN, Civil Action No. 04-742 (JAG) before the District Court of New Jersey (the “New Jersey action.”)

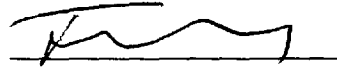
The New Jersey action has the same parties as the present action, and is a suit for trademark infringement by D&E. The same mark, FULL IMPACT BOLT, is at issue in the New Jersey suit as well. Enclosed herewith, at Exhibit A, is the Amended Complaint filed in the New Jersey action.

New counsel for opposer D&E, Lawrence D. Mandel, Esq. was contacted by the undersigned, and has agreed to this motion.

Accordingly, under the authority of 37 CFR § 2.117 and TBMP § 510, Applicant respectfully requests the Board grant the requested suspension.

Date: 10-18-04

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Chovanes', is written over a horizontal line.

Joseph E. Chovanes
Registration No. 33,481
Suite 329
5 Great Valley Parkway
Malvern, PA 19355
(610) 648-3994

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

D & E Pharmaceuticals, Inc.,	:	
	:	
Opposer,	:	Serial No. 78-305,431
	:	
v.	:	
	:	MARK: FULL IMPACT BOLT
S.A.N. Corporation	:	
	:	
Applicant.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the attached

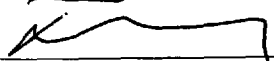
APPLICANT’S MOTION TO SUSPEND OPPOSITION PROCEEDING
AND BRIEF IN SUPPORT

was served on the below named counsel by First Class Mail, postage prepaid:

Lawrence D. Mandel, Esq.
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Richard G. Martin, Esq.
Fraser Martin Buchanan Miller LLC
Patent, Trademark, Copyright, and Intellectual Property Law
132 West Second Street
Perrysburg, Ohio 43551-1401

Respectfully submitted,



Date: 10-18-04

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BELSOLE AND KURNOS, L.L.C.
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

D & E PHARMACEUTICALS, INC. and	:	
206 MACOPIN CORP.,	:	
	:	
Plaintiffs,	:	
	:	Civil Action No.
v.	:	
	:	AMENDED COMPLAINT
S.A.N. CORPORATION,	:	
	:	
Defendant.	:	

Plaintiffs, D & E Pharmaceuticals, Inc. and 206 Macopin Corp. having their principal place of business at 206 Macopin Road, Bloomingdale, New Jersey, by way of Complaint against Defendant, say:

NATURE OF ACTION

1. This is an action in which Plaintiffs seeks injunctive and monetary relief based on (a) the Defendant's infringement against Plaintiff's registered trademarks, 15 U.S.C. § 1114, et

seq.; (b) unfair competition and violation of related state statutes, and (c) consumer fraud.

JURISDICTION AND VENUE

2. This action arises under the trademark laws of the United States, 15 U.S.C. § 1051 *et seq.* and related New Jersey statutes and common law.

3. Subject matter jurisdiction over this action exists under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367. The Court has pendent jurisdiction over the common law and State statutory law claims.

4. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b) in that Defendant has committed a significant number of wrongful acts complained of herein in this Judicial District, including the marketing of its goods to businesses and residents of the State of New Jersey by mail order, telephone and directly over the Internet on an interactive business website to the injury of Plaintiffs, corporations organized and existing under the laws of New Jersey, and to the injury of citizens of the State of New Jersey. Through its actions, Defendant has purposely aimed its business activities at the State of New Jersey.

THE PARTIES

5. Plaintiff, 206 Macopin Corp. ("206 Macopin"), is a New Jersey corporation and the owner of the trademarks at issue in this action which it licenses on an exclusive basis to D&E Pharmaceuticals, Inc. ("D&E"). D&E is a New Jersey corporation which develops and markets under its own name nutritional and dietary supplements, along with other health care products.

6. Upon information and belief, Defendant, S.A.N. Corporation, is a corporation organized and existing under the laws of California with its principal place of business at 716 North Ventura Road, #431, Oxnard, California. Defendant sells nutritional and dietary supplements and is a direct competitor of Plaintiffs.

7. Defendant operates an interactive business website located at "www.sann.net" where its goods are offered for sale to the public and where Defendant has committed and continues to commit acts of trademark infringement, unfair competition and deceptive trade practices as set forth in this Complaint, both within the State of New Jersey and elsewhere.

FACTS COMMON TO ALL COUNTS

8. From 1979 to the present, D&E has been engaged in the development, marketing and sale of sports and nutritional

supplements and dietary weight loss supplements, as well as other family health care products. These products have been marketed under various tradenames and trademarks, including D&E's family of BOLT marks: BOLT MAGNUM, BOLT COLD PLUS, BOLT PSEUDO-EPHEDRINE, BOLT ENERGY, BOLT ENERGY BAR, BOLT EPHEDRINE and BOLT NATURAL.

9. 206 Macopin is the owner of all right, title and interest in and to the following United States trademark registrations and tradenames which cover marks and tradenames used on D&E's nutritional, weight loss and dietary supplements and stimulants and other health care products. These include:

(a) BOLT ENERGY, Registration #1,627,946, registered on December 18, 1990 and first used in commerce on January 25, 1990.

(b) BOLT MAGNUM, Registration #1,665,625, registered on November 26, 1991, and first used in commerce on January 25, 1990.

(c) BOLT NATURAL, Registration #1,781,059, registered on July 13, 1993, and first used in commerce on January 25, 1990.

(d) BOLT EPHEDRINE, Registration #1,884,797, first used in commerce on January 25, 1990.

(e) BOLT ENERGY BAR, Registration #2,242,471, registered on May 4, 1991, and first used in commerce on August 29, 1996.

(f) BOLT COLD PLUS, Registration #2,621,102, registered on September 17, 2002, and first used in commerce on January 1, 1991.

(g) BOLT PSEUDO-EPHEDRINE, Registration #2,666,309, registered on December 24, 2002, and first used in commerce on January 1, 1990.

True copies of these trademark registrations, collectively referred to herein as the "BOLT Marks", are attached as Exhibit "A"

10. The registrations for the BOLT Marks are valid and subsisting, have not been canceled and constitute prima facie evidence as to the validity of the registered marks, of the registration of such marks, of 206 Macopin's ownership of such marks and of Plaintiffs' exclusive right to use the marks in commerce. Plaintiffs also hold common law trademark rights in the BOLT Marks.

11. D&E has used and is using its family of BOLT Marks to identify its nutritional and dietary supplements, and health care products and to distinguish them from other products.

12. The BOLT Marks are inherently distinctive and are well known among the relevant consuming public including those in the dietary and nutritional supplement industry. As a result, the

consuming public and trade have come to know that nutritional and dietary supplements marketed under Plaintiffs' BOLT Marks are associated with D&E.

13. As a result of its long term and continuous use of the family of BOLT Marks, the associated products' commercial success under these marks and the substantial advertising and promotional efforts made in connection therewith, Plaintiffs have developed secondary meaning and good will in the BOLT Marks. The trade purchasing public have come to know, recognize and identify goods bearing the BOLT Marks as the high quality goods of D&E. The BOLT Marks have come to represent the valuable good will and reputation of Plaintiffs as a provider of high quality sports, nutritional, dietary supplements and health care products.

14. Public confidence in the integrity and continuing quality of D&E's products including those marketed under the BOLT Marks is essential to maintaining Plaintiffs' good will and its market share.

15. D&E has continuously exercised great care in the selection of ingredients which go into making the products marketed under the BOLT Marks as well as the manufacturing, production and packaging of those products. Plaintiff exercises care to insure its products are of a uniform, high grade quality.

As a result of this care, D&E's products have acquired and maintained a reputation for excellence.

16. Plaintiffs have been recently informed and believe that Defendant has incorporated part of Plaintiffs' mark, "Bolt" into the meta-tags of Defendant's website located at "www.sann.net\bolt.html" and at other web pages in the "sann.net" domain. A copy of the source code of Defendant's website printed on February 13, 2004 is attached as Exhibit "B".

17. Defendant also advertises and sells nutritional and dietary supplements under the "BOLT" name at its website. For example Defendant sells a product known as Full Impact BOLT. Upon information and belief, Defendant has incorporated Plaintiffs' trademark in its website continuously since as early as December 2003.

18. Defendant has included Plaintiffs' trademark in the meta-tags of its website intentionally and knowingly in order to intercept customers searching for Plaintiffs' website and divert the customers to the website of Defendant. Defendant has also intentionally included a trademark of the Plaintiffs' in Defendant's website in order to create "initial interest confusion" among consumers and to benefit thereby.

19. Defendant has advertised, and continues to advertise, its dietary and nutritional supplements with the "BOLT" name in magazines directed at health and fitness and other media where Plaintiffs have advertised, and continues to advertise the dietary and nutritional supplements associated with the BOLT Marks. Defendant also sells these products with the "BOLT" name in the same retail outlets where D&E has sold and continues to sell its products associated with the BOLT Mark. Defendant's products with the BOLT name, including dietary and nutritional supplements, are marketed and sold by Defendant and third parties resulting in their movement through and affect upon interstate commerce.

20. Plaintiffs have not authorized Defendant to use the trademarks of the Plaintiffs in Defendant's website or elsewhere.

COUNT ONE

FEDERAL TRADEMARK INFRINGEMENT
VIOLATION OF 15 U.S.C. §1114(1)

21. Plaintiffs repeats all of the above allegations as if set forth herein at length.

22. Defendant's unlawful and unauthorized use of the BOLT Marks are likely to cause confusion, mistake or deception as to the origin of Defendant's products and to mislead the trade and

public into believing that Defendant's products originate from or are affiliated or connected with, or licensed, sponsored, authorized, approved or sanctioned by Plaintiffs.

23. Defendant's use of the BOLT Marks is a wilful and deliberate act by the Defendant to derive benefit from the reputation of Plaintiffs.

24. As the result of Defendant's wilful, knowing and express acts and omissions, consumers are likely to mistakenly believe that Defendant's products are authorized, endorsed or manufactured by Plaintiffs.

25. Defendant's unauthorized use of Plaintiffs' BOLT Marks in interstate commerce is a violation and infringement of Plaintiffs' rights in and to the BOLT Marks and constitutes among other things, Federal trademark and tradename infringement of Plaintiff's marks in violation of 15 U.S.C. § 1114(1).

26. Defendant's acts of infringement have caused Plaintiffs to sustain substantial damages, loss and injury, including irreparable injury to Plaintiffs' valuable tradename and trademark and to its reputation in the trade and with consumers.

27. Defendant has engaged and continues to engage in these activities knowingly and wilfully so as to justify the assessment of treble damages under 15 U.S.C. § 1117(b).

28. Plaintiffs have no adequate remedy at law for these continuing violations. Defendant's conduct has caused, and if not enjoined, will continue to cause irreparable damage to Plaintiffs' trademark right, reputation and good will in a manner that cannot be adequately calculated or compensated in monetary damages.

COUNT TWO

**FEDERAL UNFAIR COMPETITION
VIOLATION OF 15 U.S.C. §1125**

29. Plaintiffs repeat and realleges all of the above allegations as if fully set forth herein.

30. Defendant's unauthorized use of Plaintiffs' trademarks is likely to cause confusion or mistake or to deceive as to affiliation, connection or association or as to origin, sponsorship or approval of the goods in violation of 15 U.S.C. § 1125.

31. Defendant's unauthorized use of Plaintiffs' trademarks in Defendant's website, Meta-Tags, misrepresents the nature, characteristic qualities and/or geographic origin of the goods in violation of 15 U.S.C. § 1125.

COUNT THREE

STATE CLAIM - TRAFFICKING IN COUNTERFEIT MARK
(VIOLATION OF N.J.S.A. 56:3-13.16)

32. Plaintiffs repeat and reallege all of the allegations set forth above.

33. The aforesaid acts of Defendant constitute the use, reproduction, counterfeiting or copying of Plaintiffs' marks, without consent, in connection with the sale, distribution, offering for sale or advertizing in New Jersey which is likely to cause confusion or mistake or to deceive as to the source of origin of the mark in violation of N.J.S.A. 56:3-13.16.

34. Defendant's conduct entitles Plaintiffs to recover treble damages under N.J.S.A. 56:3-13-16(d).

35. Plaintiffs have no adequate remedy at law. Defendant's conduct has caused, and if not enjoined, will continue to cause irreparable damage to Plaintiffs' trademark rights, reputation and good will in a manner that cannot be adequately calculated or compensated in money damages only.

COUNT FOUR

STATE CLAIM - DECEPTIVE TRADE PRACTICES AND CONSUMER FRAUD
(VIOLATION OF N.J.S.A. 56:8-2)

36. Plaintiffs repeat and reallege all of the above allegations as if set forth herein at length.

37. Defendant has engaged in deceptive and misleading acts by using Plaintiffs' BOLT Marks for the purpose of commercial advantage or private financial gain which has materially injured Plaintiffs' business reputation and good will as well as the citizens of New Jersey and elsewhere.

38. Defendant's aforesaid acts constitute the employment of an unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation or the knowing concealment, suppression or omission of a material fact with an intent that others will rely upon such concealment, suppression or omission, in connection with the sale of advertisement of merchandise, in violation of *N.J.S.A. 56:8-2*.

39. Defendant's acts of unfair competition have caused Plaintiffs to sustain substantial damage, loss and injury.

40. Defendant's activities constitute deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in the State of New Jersey in violation of *N.J.S.A. 56:8-2*.

41. Defendant has engaged and continues to engage in this activity knowingly and willfully, so as to justify the assessment of treble damages against them pursuant to *N.J.S.A. 56:8-19*.

42. Plaintiffs have no adequate remedy at law. Defendant's

conduct has caused, and if not enjoined, will continue to cause irreparable damage to Plaintiffs' trademark rights, reputation and good will in a manner that cannot be adequately calculated or compensated in money damages only.

COUNT FIVE

STATE CLAIM - TRADEMARK INFRINGEMENT

43. Plaintiffs repeat and reallege the above allegations as if set forth herein at length.

44. Defendant's activities constitute the assumption, adoption or use, with the intent to deceive or mislead the public for advertising purposes or purposes of trade of the BOLT Marks which may deceive or mislead the public as to the identity of Plaintiffs or its products in violation of N.J.S.A. 56:4-1.

45. Defendant's acts of infringement have caused Plaintiffs to sustain monetary damage, loss and injury, in an amount to be determined at the time of trial.

46. Defendant's acts of infringement, unless enjoined by this Court, will continue to cause Plaintiffs to sustain irreparable damage, loss and injury, for which Plaintiffs have no adequate remedy at law.

COUNT SIX

STATE CLAIM - UNFAIR COMPETITION

47. Plaintiffs repeat and reallege all of the above allegations as if set forth at length herein.

48. Defendant's aforesaid activities constitute deceptive acts or practices in the conduct of business, trade or commerce or in furnishing of services in the State of New Jersey in violation of N.J.S.A. 56:4-1.

49. Defendant's acts of unfair competition have caused Plaintiffs to sustain monetary damage, loss and injury, in an amount to be determined at the time of trial and entitle Plaintiffs to an award of treble damages under N.J.S.A. 56:4-2.

50. Defendant's acts of unfair competition, unless enjoined by this Court, will continue to cause Plaintiffs to sustain irreparable damage, loss and injury, for which Plaintiffs have no adequate remedy at law.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, D & E Pharmaceuticals, Inc. and 206 Macopin Corp, request the following relief:

A. The entry of judgment determining that Defendant has infringed upon Plaintiffs' BOLT Marks, including BOLT ENERGY, BOLT MAGNUM, BOLT NATURAL, BOLT EPHEDRINE, BOLT ENERGY BAR, BOLT

COLD PLUS, BOLT PSEUDO-EPHEDRINE.

B. A preliminary and permanent injunction restraining the Defendant, its officers, agents, servant, employees, attorneys, privies, subsidiaries, divisions, successors and assigns, and all persons and organizations in active concert, or participation with any of them from further infringement of Plaintiffs' trademarks.

C. Compensatory damages pursuant to 15 U.S.C. §1117(a) in a sum to be determined at trial.

D. All profits made by Defendant as a result of its infringement of Plaintiffs' trademark rights.

E. Treble damages under 15 U.S.C. §1117 and any applicable State statute.

F. An Order directing that public access to Defendant's website located at www.sann.net, and all other pages within that domain, be terminated until such time as the Plaintiffs' trademarks are removed from the meta-tags of Defendant's website and the website itself.

G. An Order directing Defendant to file with this Court and to serve on Plaintiffs within 30 days after the entry of the injunction a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the

injunction.

H. Costs of suit, together with reasonable attorney's fees pursuant to 15 U.S.C. §1117(a) and any applicable State statute.

I. Interest on the award, costs, fees and other charges to the maximum extent permissible, including pre-judgment interest as allowed.

J. Such other and further relief as the Court may deem just, fair and equitable.

JURY DEMAND

Plaintiffs hereby request trial by jury on all issues so triable.

BELSOLE AND KURNOS, L.L.C.
Attorneys for Plaintiffs

By


Kevin Weinman

Dated: August 4, 2004