

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION**



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<b>ENERGY BEVERAGES LLC, a Delaware limited liability company</b>	)	<b>Civil Action No. 3:21-cv-81</b>
	)	
<b>Plaintiff,</b>	)	<b>JURY TRIAL DEMANDED</b>
	)	
v.	)	
	)	
<b>FULL THROTTLE AUTOMOTIVE LLC, an Indiana limited liability company</b>	)	
	)	
<b>Defendant.</b>	)	

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**COMPLAINT FOR TRADEMARK INFRINGEMENT, TRADE DRESS  
INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, AND UNFAIR  
COMPETITION**

Plaintiff Energy Beverages LLC (“Plaintiff” or “Energy Beverages”) hereby files this complaint against Defendant Full Throttle Automotive LLC (“Defendant” or “FTA”) and alleges as follows:

**I PARTIES**

1. Energy Beverages is a limited liability company organized under the laws of the State of Delaware. Energy Beverages has its principal place of business at 2390 Anselmo Drive, Corona, California 92879.

2. FTA is a domestic limited liability company organized under the laws of the State of Indiana. Upon information and belief, FTA maintains its principal place of business at 9515 Seib Rd., Evansville, Indiana 47725.

## II JURISDICTION AND VENUE

3. This is an action for (1) trademark infringement, trade dress infringement, and false designation of origin under 15 U.S.C. § 1125(a), (2) trademark infringement under 15 U.S.C. § 1114, (3) common law trademark infringement, and (4) unfair competition.

4. The Court has original subject matter jurisdiction over the claims that relate to trademark infringement, trade dress infringement, and false designation of origin pursuant to 28 U.S.C. §§ 1331 and 1338, as these claims arise under the laws of the United States. The Court has supplemental jurisdiction over the claims in this Complaint which arise under state common law pursuant to 28 U.S.C. §§ 1338(b) and 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

5. This Court has general personal jurisdiction over FTA because it is “essentially at home” within Indiana and within this Judicial District. Upon information and belief, FTA is a domestic limited liability company, organized under the laws of Indiana. Upon information and belief, FTA also maintains its principal place of business in Indiana and has a continuous, systematic, and substantial presence within this Judicial District.

6. Alternatively, this Court has specific personal jurisdiction over FTA. FTA markets and renders goods and services in connection with its infringing marks and trade dress to consumers in Indiana, including within this Judicial District. In addition, by committing acts of trademark and trade dress infringement, false designation of origin, and unfair competition in this Judicial District, including, but not limited to, by using infringing marks and trade dress in connection with the advertisement, marketing, promotion, and/or rendering of goods and services to customers in this Judicial District, FTA’s acts form a substantial part of the events or

omissions giving rise to Energy Beverages' claims.

7. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and (c) because, *inter alia*, FTA resides in this Judicial District and a substantial portion of the events complained of herein took place in this Judicial District.

### **III COMMON ALLEGATIONS FOR ALL CLAIMS FOR RELIEF**

#### **A. Energy Beverages' Trademarks and Trade Dress**

8. Energy Beverages is a nationwide leader in the business of developing, marketing, selling, and distributing beverages.


9. In 2004, long before FTA's acts described herein, the Coca-Cola Company launched its Full Throttle<sup>®</sup> energy drink brand, bearing its well-known Full Throttle<sup>®</sup> mark. In 2015, Monster Beverage Company, the parent company of Energy Beverages, acquired all rights and title to the Coca-Cola Company's energy drink product lines, including the Full Throttle<sup>®</sup> energy drink line. Energy Beverages, in turn, acquired all rights and title to the Full Throttle<sup>®</sup> energy drink line from its parent company. For simplicity, Energy Beverages' relevant predecessors-in-interest will be referred to as "Energy Beverages" throughout this Complaint.



10. Energy Beverages' successful line of Full Throttle<sup>®</sup> energy drinks has grown to include several well-known products, the containers and packaging of which are prominently marked with Energy Beverages' well-known Full Throttle<sup>®</sup> mark and trade dress. The Full Throttle<sup>®</sup> line of energy drinks includes or has included, but is not limited to, Full Throttle<sup>®</sup> Original, Full Throttle<sup>®</sup> Citrus, Full Throttle<sup>®</sup> Blue Agave, Full Throttle<sup>®</sup> Orange, Full Throttle<sup>®</sup> Fury, Full Throttle<sup>®</sup> Unleaded, Full Throttle<sup>®</sup> Bad Mother, and Full Throttle<sup>®</sup> Blue Demon (referred to collectively as the "Full Throttle<sup>®</sup> line of drinks"). Representative images of these products are included below:



11. Energy Beverages is the owner of several trademark registrations for marks that incorporate its well-known Full Throttle<sup>®</sup> Mark, for use in connection with beverages. These

include U.S. Registration Nos. 2,957,843 (FULL THROTTLE<sup>®</sup>); 5,562,250 (<sup>®</sup>); and

5,722,956 (  ), details for which are listed below:

MARK	REG. NO.	GOODS/SERVICES	DATE FILED	REG. DATE
FULL THROTTLE	2,957,843	Beverages, namely energy drinks.	Nov. 14, 2003	May 31, 2005
	5,562,250	Non-alcoholic beverages, namely, carbonated drinks and energy drinks; syrups, concentrates and powders for making beverages, namely, carbonated soft drinks and energy drinks.	July 5, 2017	Sept. 11, 2018
	5,722,956	Non-alcoholic beverages, namely, carbonated drinks and energy drinks; syrups, concentrates and powders for making beverages, namely, carbonated soft drinks and energy drinks.	July 5, 2017	Apr. 9, 2019

12. Attached hereto as Exhibits 1-3 are true and correct copies of Energy Beverages' trademark registrations identified in Paragraph 11 of this Complaint, which are hereby incorporated by reference. Collectively, those registrations and trademarks, including all common law rights therein, are referred to as the "Full Throttle<sup>®</sup> Marks."

13. Pursuant to 15 U.S.C. § 1065, Energy Beverages' U.S. Trademark Registration No. 2,957,843 is incontestable, and as such, constitutes conclusive evidence of the validity of the registered mark, Energy Beverages' ownership of the mark, and of Energy Beverages' exclusive and nationwide right to use the mark in commerce.

14. In addition, since 2004, Energy Beverages has consistently used a distinctive trade dress in the way it presents its products in both its packaging and promotional materials, using the words “Full Throttle” in a downwardly arching configuration. The word “Full” is presented above the word “Throttle,” with the letter “U” from “Full” situated above the “O” from “Throttle.” In addition, the letter “O” from “Throttle” is disproportionately large in relative size and is a focal point of the design. At least as early as January 2010, Energy Beverages superimposed the words “Full Throttle” over a shield or crest (examples of which are shown below in the second and third images from the left). Collectively, these features are part of the “Full Throttle<sup>®</sup> Trade Dress”. Representative examples of Energy Beverages’ use of the Full Throttle<sup>®</sup> Trade Dress are shown below:



15. Long before FTA’s acts described herein, Energy Beverages used or licensed the use of its Full Throttle<sup>®</sup> Marks and/or Full Throttle<sup>®</sup> Trade Dress in connection with a variety of goods and services, including in connection with motorized vehicles and motorsports. For example, around 2005, Full Throttle<sup>®</sup> became the official energy drink sponsor of the National

Hot Rod Association (“NHRA”). In 2009, Full Throttle<sup>®</sup> became the title sponsor of the NHRA’s marquee drag racing event, the NHRA Full Throttle Series. The sponsorship agreement included a two-year partnership extension through 2013, making it one of the longest motorsports sponsorships in history. The NHRA Full Throttle Series took place at racing venues throughout the country, including in Indiana and neighboring states.

16. The NHRA Full Throttle Series was also televised through an exclusive broadcasting partnership with ESPN2. At the time, ESPN2 was available in more than 96 million households. ESPN2 dedicated over 120 hours of original programming to the NHRA Full Throttle Series, with significant prime-time coverage of the races. For example, the 4-Wide NHRA Drag Race event at Charlotte Motor Speedway in 2012 drew television viewership of nearly 900,000. This was almost double that of the IndyCar Long Beach Grand Prix, televised at the same time on NBC, a network with a much larger audience reach.

17. Below are screenshots from one of several commercials Full Throttle<sup>®</sup> ran as part of its partnership with NHRA during these televised races. An archived copy of this commercial can be seen at: <https://vimeo.com/32739624>. These commercials were seen repeatedly by the millions of viewers who watched the 24 races the NHRA Full Throttle Series. The commercials prominently feature the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress.







18. Pictured below is the NHRA Full Throttle Series Championship Trophy for 2009. The trophy prominently features the Full Throttle® Marks and Full Throttle® Trade Dress.



19. Promotional items such as the banner and patch below were produced and sold to consumers as part of the marketing of the NHRA Full Throttle Series. Both prominently feature the Full Throttle® Marks and Full Throttle® Trade Dress.



20. In connection with the NHRA Full Throttle Series, Energy Beverages also licensed its Full Throttle® Marks and Full Throttle® Trade Dress for use on consumer apparel. Examples of these licensed uses are shown below.





21. Energy Beverages' use of its Full Throttle<sup>®</sup> Marks and/or Full Throttle<sup>®</sup> Trade

Dress also extends to clothing and accessories, including, for example, t-shirts, jackets, clothing patches, hats, and bags. This includes licensing the use of the Full Throttle® Marks and/or Full Throttle® Trade Dress, for example in connection with the NHRA sponsorship.

22. True and correct examples of apparel and accessories Energy Beverages produces or licenses bearing Energy Beverages' Full Throttle® Marks and/or Full Throttle® Trade Dress are shown below:



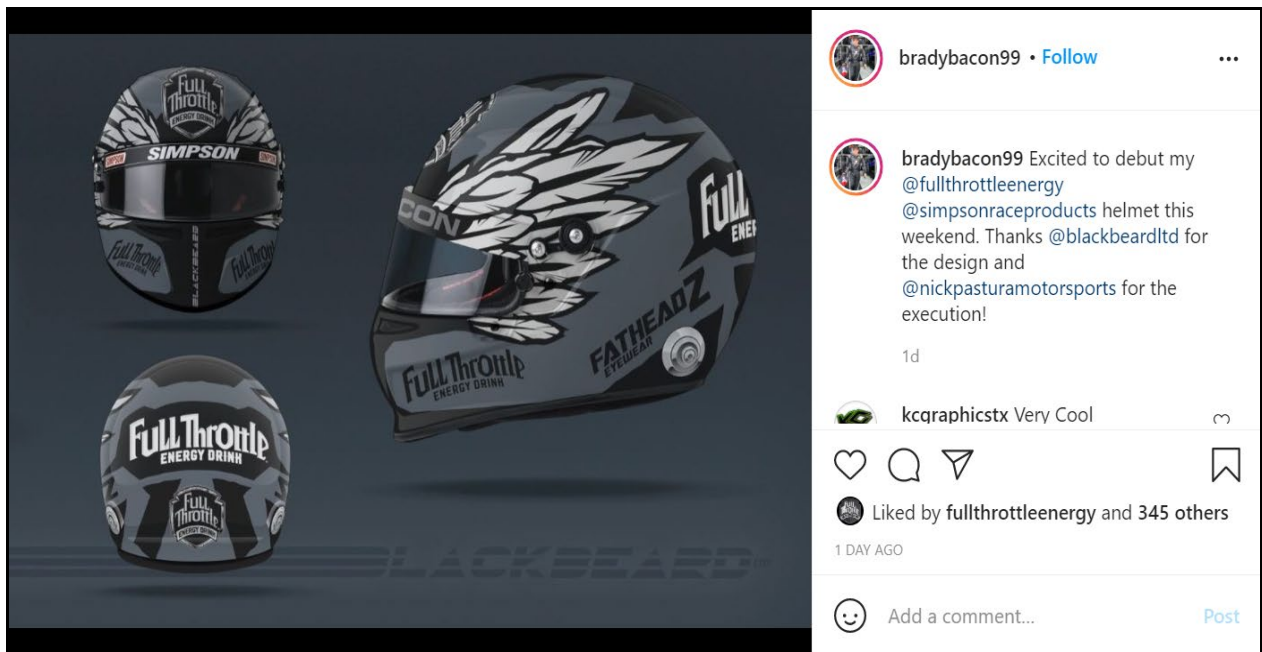


23. Energy Beverages' Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress are the subject of substantial and continuous marketing and promotion by Energy Beverages. Since 2015, Energy Beverages has spent over \$22.6 million dollars advertising, promoting, and marketing the Full Throttle<sup>®</sup> brand and Full Throttle<sup>®</sup> Trade Dress. In 2020 alone, Energy Beverages spent over \$3.6 million dollars advertising, promoting, and marketing its Full Throttle<sup>®</sup> brand and Full Throttle<sup>®</sup> Trade Dress.

24. Energy Beverages has and continues to widely market and promote its Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress by displaying the marks and trade dress on millions of cans of its Full Throttle<sup>®</sup> drinks sold in the United States. Energy Beverages' promotional efforts have included—by way of example but not limitation—sponsorship of motorsports competitions, sponsorship of motorsports athletes, and sponsorship of widespread distribution of promotional and point of sale materials, product samplings, apparel and

merchandise bearing the Full Throttle® Marks and Full Throttle® Trade Dress, promotion in magazines and other industry publications, promotion on the Full Throttle® website and other websites, promotion through social media, and attendance at trade shows.

25. Energy Beverages continues to sponsor motorsports athletes and creative manufacturers in the automotive space under the Full Throttle® brand. For example, Energy Beverages sponsors Brady Bacon, the 2014, 2016, and 2020 national champion in the USAC National Sprint Car Series. Mr. Bacon maintains websites and social media pages where he promotes the Full Throttle® brand. Images from these sites are shown below:





26. Energy Beverages also sponsors the well-known custom motorcycle builder Al Raposo, owner of Big Als Cycles. Mr. Raposo maintains websites and social media pages where he promotes the Full Throttle® brand. An image from these sites is shown below:



27. Energy Beverages also sponsors Taylor Schultz, owner of Shultz Designz, and a leading name in custom automotive and motorcycle paint and pin striping. Mr. Schultz maintains websites and social media pages where he promotes the Full Throttle® brand. Images from these sites are shown below:



SCHULTZ DESIGNZ IS PROUDLY POWERED BY FULL THROTTLE ENERGY DRINK





28. Energy Beverages' Full Throttle<sup>®</sup> line of drinks has achieved substantial commercial success. Since 2015, Energy Beverages has sold approximately 350 million cans of Full Throttle<sup>®</sup> energy drinks generating an estimated \$840 million in total retail sales. Today, Full Throttle<sup>®</sup> retail sales exceed 47 million cans per year, with estimated revenues of approximately \$113 million per year. While Energy Beverages continues to expand its successful Full Throttle<sup>®</sup> line of drinks, all versions of Full Throttle<sup>®</sup> drink prominently display the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress.

29. As a result of Energy Beverages' substantial use and promotion of its Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress, the marks and trade dress have acquired great value as specific identifiers of Energy Beverages' products and services and serve to identify and distinguish Energy Beverages' Full Throttle<sup>®</sup> products and services from those of others, including association with the automotive industry. Customers in this Judicial District and elsewhere readily recognize Energy Beverages' Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress as distinctive designations of the origin of Energy Beverages' Full Throttle<sup>®</sup> brand of

products, services, and promotional items. The Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress are intellectual property assets of enormous value as symbols of Full Throttle<sup>®</sup> and its quality products, services, reputation, and goodwill.

**B. FTA's Infringing Activities**

30. FTA is engaged in the business of automotive repair services. FTA maintains a website for promoting its goods and services at <<https://www.thefullthrottleautomotive.com>>. FTA also maintains the Facebook account <<https://www.facebook.com/fullthrottleautomotive>> for promoting its goods and services.

31. Without permission or consent from Energy Beverages, FTA has provided and is offering to provide services using trademarks and trade dress that are confusingly similar to Energy Beverages' Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress. Some examples of FTA's advertisements and in-commerce uses displaying its infringing marks and trade dress are shown below:







32. As shown above, FTA is using the mark FULL THROTTLE, which is confusingly similar to Energy Beverages' Full Throttle<sup>®</sup> Marks and in a manner that is confusingly similar to Energy Beverages' Full Throttle<sup>®</sup> Trade Dress on and in connection with

automotive repair services, sponsored racecars, and products related thereto, including t-shirts, button-up shirts, sweatshirts, hooded sweatshirts, jackets, and hats.

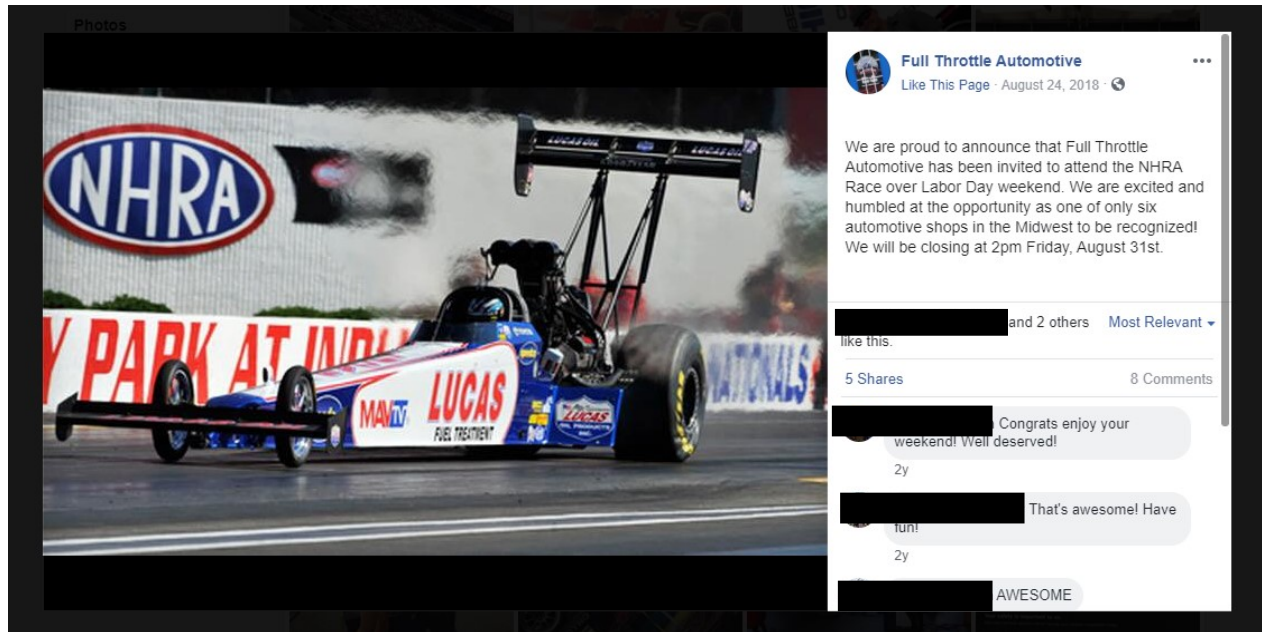
33. FTA has attempted to falsely associate itself with Energy Beverages' Full Throttle<sup>®</sup> brand and create a likelihood of confusion by using Energy Beverages' Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress in a manner that is likely to cause confusion. Upon information and belief, consumers in Indiana and throughout the United States have confused Energy Beverages and FTA at public events where FTA has promoted its services, and through FTA's advertisements, marketing, and communications to prospective customers over the phone to offer goods and services.

34. Upon information and belief, FTA was aware of Energy Beverages, the Full Throttle<sup>®</sup> Marks, and Full Throttle<sup>®</sup> Trade Dress when FTA commenced its infringing activities. Despite having actual knowledge of Energy Beverages' Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress, FTA adopted and has refused to cease its infringing conduct and has continued its infringing conduct. Accordingly, FTA's infringement has been willful. Indeed, given the striking similarity between the parties' marks and trade dress, it is clear that FTA copied Energy Beverages' Full Throttle<sup>®</sup> Marks and Trade Dress.

35. Moreover, FTA's knowledge of Energy Beverages' marks and trade dress is further evidenced by the facts surrounding FTA's adoption of its infringing mark and trade dress. First, the Full Throttle<sup>®</sup> Marks and Trade Dress were well known at the time of FTA's adoption of its identical mark and nearly identical trade dress. Second, in 2009, the NHRA Full Throttle Series had a race in Indianapolis, Indiana. This occurred again in 2010, 2011, and 2012.

36. Upon information and belief, FTA has a history of viewing, attending, participating in, or otherwise being aware of NHRA events. For example, in 2018, FTA was

invited to attend the NHRA event at Lucas Oil Raceway, near Indianapolis, Indiana. FTA appears to have had prior communication with NHRA as they were “invited to attend” as “one of only six automotive shops in the Midwest to be recognized.”



37. During the 2018 event, FTA employees wore apparel featuring FTA’s confusingly similar FULL THROTTLE marks at an event with a storied history and association

with Energy Beverages' Full Throttle<sup>®</sup> brand, having been the title sponsor of the event.

38. Thus, FTA advertises and promotes the confusingly similar FULL THROTTLE mark at venues and events identical to those attended and used by Energy Beverages to promote the Full Throttle<sup>®</sup> brand, goods, and services. In this case, FTA advertised and promoted the confusingly similar FULL THROTTLE mark at an event for which Energy Beverages' Full Throttle<sup>®</sup> brand was previously the title sponsor.

39. Without permission or consent from Energy Beverages, FTA has infringed Energy Beverages' Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress in interstate commerce by making, using, promoting, advertising, selling, and/or offering to sell products and/or services using the FULL THROTTLE mark, that is confusingly similar to Energy Beverages' Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress.

40. Upon information and belief, FTA's actions alleged herein are intended to cause confusion, mistake, or deception as to the source of FTA's goods and services and are intended to cause consumers and potential consumers to believe that FTA's business is associated with Energy Beverages or Energy Beverages' Full Throttle<sup>®</sup> family of goods and services, when it is not.

41. By virtue of the acts complained of herein, FTA has created a likelihood of injury to Energy Beverages' business reputation and goodwill, caused a likelihood of consumer confusion, mistake, and deception as to the source of origin or relationship of Energy Beverages' goods and services and FTA's goods and services and has otherwise competed unfairly with Energy Beverages by unlawfully trading on and using Energy Beverages' Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress without Energy Beverages' permission or consent.

42. Upon information and belief, FTA's acts complained of herein are willful and



deliberate.

43. FTA's acts complained of herein have caused damage to Energy Beverages in an amount to be determined at trial, and such damages will continue to increase unless FTA is enjoined from its wrongful acts and infringement. Direct economic injuries to Energy Beverages include lost licensing opportunities for Energy Beverages and loss of control of its trademarks and trade dress.

44. FTA's acts complained of herein have resulted in unlawfully gained profits to FTA which, in fairness and equity, should be disgorged.

45. FTA's acts complained of herein have caused Energy Beverages to suffer irreparable injury to its business. Energy Beverages will suffer substantial loss of goodwill and reputation unless and until FTA is preliminarily and permanently enjoined from the wrongful acts complained of herein.

46. On October 20, 2020, Energy Beverages sent FTA a cease and desist letter, detailing Energy Beverages' rights in the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress. Ex. 4. FTA has refused to discontinue use of its infringing marks.

#### **IV FIRST CLAIM FOR RELIEF**

**(Trademark Infringement, Trade Dress Infringement, and False Designation of**

**Origin Under 15 U.S.C. § 1125(a))**

47. Energy Beverages hereby repeats, realleges, and incorporates by reference paragraphs 1-45 of this Complaint as though fully set forth herein.

48. This is an action for trademark infringement, trade dress infringement, and false designation of origin arising under 15 U.S.C. §1125(a).

49. As a result of the widespread use and promotion of Energy Beverages' Full

Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress, the marks and trade dress have acquired strong fame and secondary meaning to consumers and potential customers, in that consumers and potential customers have come to associate the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress with Energy Beverages.

50. FTA has infringed Energy Beverages' Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress, and created a false designation of origin, by using in commerce, without Energy Beverages' permission, the confusingly similar FULL THROTTLE mark in combination with the elements of Energy Beverages' Full Throttle<sup>®</sup> Trade Dress, described above in Paragraphs 11-14, in connection with the advertisement, offering for sale, and/or sale of FTA's goods and services.

51. FTA's actions have caused and are likely to cause confusion and mistake, or to deceive as to the affiliation, connection, or association of Energy Beverages with FTA, and/or as to the origin, sponsorship, or approval of FTA's goods and services or FTA's commercial activities, in violation of 15 U.S.C. §1125(a).

52. Upon information and belief, FTA did so with the intent to trade upon Energy Beverages' reputation and goodwill by causing confusion and mistake among customers and the public and to deceive the public into believing that FTA's goods and services are associated with, sponsored by or approved by Energy Beverages, when they are not.

53. FTA had actual knowledge of Energy Beverages' ownership and prior use of the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress, and without the consent of Energy Beverages, willfully violated 15 U.S.C. §1125(a).

54. FTA, by its actions, has damaged Energy Beverages in an amount to be determined at trial.

55. FTA, by its actions, has irreparably injured Energy Beverages. Such irreparable injury will continue unless FTA is preliminarily and permanently enjoined by this Court from further violation of Energy Beverages' rights, for which Energy Beverages has no adequate remedy at law.

## **V SECOND CLAIM FOR RELIEF**

### **(Trademark Infringement Under 15 U.S.C. § 1114)**

56. Energy Beverages hereby repeats, realleges, and incorporates by reference paragraphs 1-55 of this Complaint as though fully set forth herein.

57. This is a claim for trademark infringement arising under 15 U.S.C. §1114.

58. Energy Beverages owns valid and enforceable federally registered trademarks for the Full Throttle<sup>®</sup> Marks, including at least the registrations listed in paragraph 11 above.

59. FTA has used in commerce, without permission from Energy Beverages, colorable imitations, and/or confusingly similar marks to Energy Beverages' Full Throttle<sup>®</sup> Marks that are the subject of at least Energy Beverages' U.S. Trademark Registration Nos. 2,957,843, 5,562,250, and 5,722,956 in connection with the advertising, marketing, and/or promoting of FTA's goods and services. Such use is likely to cause confusion or mistake, or to deceive.

60. Upon information and belief, the activities of FTA complained of herein constitute willful and intentional infringements of Energy Beverages' registered marks, and FTA did so with the intent to trade upon Energy Beverages' reputation and goodwill by causing confusion and mistake among customers and the public and to deceive the public into believing that FTA's goods and/or services are associated with, sponsored by, originated from, or are approved by, Energy Beverages, when they are not.

61. FTA had actual knowledge of Energy Beverages' ownership and prior use of the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress and have willfully violated 15 U.S.C. § 1114.

62. FTA, by its actions, has damaged Energy Beverages in an amount to be determined at trial.

63. FTA, by its actions, has irreparably injured Energy Beverages. Such irreparable injury will continue unless FTA is preliminarily and permanently enjoined by this Court from further violation of Energy Beverages' rights, for which Energy Beverages has no adequate remedy at law.

## **VI THIRD CLAIM FOR RELIEF**

### **(Common Law Trademark Infringement)**

64. Energy Beverages hereby repeats, realleges, and incorporates by reference paragraphs 1-63 of this Complaint as though fully set forth herein.

65. This is a claim for common law trademark and trade dress infringement.

66. Energy Beverages owns the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress. Energy Beverages has registered the Full Throttle<sup>®</sup> Marks with the United State Patent and Trademark Office.

67. Energy Beverages has used and continues to use the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress in commerce in connection with the sale of goods and services in the State of Indiana.

68. Energy Beverages has acquired trademark and trade dress rights at common law in the State of Indiana and elsewhere for the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress.

69. FTA has used in commerce, without permission from Energy Beverages, colorable imitations, confusingly similar, and strikingly similar marks to Energy Beverages' Full Throttle<sup>®</sup> Marks that are the subject of at least Energy Beverages' U.S. Trademark Registration Nos. 2,957,843; 5,562,250; and 5,722,956, and Full Throttle<sup>®</sup> Trade Dress, in connection with the advertising, marketing, and/or promoting of FTA's goods and services. Such use is likely to cause confusion or mistake, or to deceive.

70. FTA has, without permission from Energy Beverages, reproduced or copied marks and/or colorable imitations of Energy Beverages' Full Throttle<sup>®</sup> Marks and applied these reproductions or copies to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be sold in connection with the sale or other distribution of goods and/or services in Indiana.

71. Upon information and belief, the activities of FTA complained of herein constitute willful and intentional infringements of Energy Beverages' registered marks and Energy Beverages' trade dress, and FTA did so with the intent to trade upon Energy Beverages' reputation and goodwill by causing confusion and mistake among customers and the public and to deceive the public into believing that FTA's goods and/or services are associated with, sponsored by, originated from, or are approved by, Energy Beverages, when they are not. FTA's mark is strikingly similar to Energy Beverages' Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress, further supporting knowing, willful, and intentional infringement. FTA's intentional adoption of a strikingly similar mark for use in commerce constitutes malice and/or oppressive conduct.

72. FTA had actual knowledge of Energy Beverages' ownership and prior use of the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress and have willfully infringed Energy

Beverages' trademark rights. The strikingly similar use of similar font, similar stylization, similar emphasis of the "O" in "throttle," and similar downward arching arrangement of "Full Throttle" preclude an inference of independent creation. Energy Beverages also sent a cease and desist letter to FTA on October 20, 2020, explaining FTA's infringement. FTA has refused to discontinue use of the infringing marks.

73. FTA, by its actions, has damaged Energy Beverages in an amount to be determined at trial.

74. FTA, by its actions, has irreparably injured Energy Beverages. Such irreparable injury will continue unless FTA is preliminarily and permanently enjoined by this Court from further violation of Energy Beverages' rights, for which Energy Beverages has no adequate remedy at law.

## VII FOURTH CLAIM FOR RELIEF

### (Unfair Competition)

75. Energy Beverages hereby repeats, realleges, and incorporates by reference paragraphs 1-74 of this Complaint as though fully set forth herein.

76. This is a claim for unfair competition.

77. Energy Beverages owns the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress. Energy Beverages has registered the Full Throttle<sup>®</sup> Marks with the United State Patent and Trademark Office.

78. Energy Beverages has used and continues to use the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress in commerce in connection with the sale of goods and services in the State of Indiana.

79. Energy Beverages has acquired trademark and trade dress rights at common law

in the State of Indiana for the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress. The Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress have come to indicate and designate Energy Beverages' goods and services.

80. FTA has used in commerce, without permission from Energy Beverages, colorable imitations, confusingly similar, and strikingly similar marks to Energy Beverages' Full Throttle<sup>®</sup> Marks that are the subject of at least Energy Beverages' U.S. Trademark Registration Nos. 2,957,843; 5,562,250; and 5,722,956, and the Full Throttle<sup>®</sup> Trade Dress, in connection with the advertising, marketing, and/or promoting of FTA's goods and services. Such use is likely to cause confusion or mistake, or to deceive, and constitutes unfair competition in Indiana commerce.

81. Upon information and belief, the activities of FTA complained of herein constitute willful and intentional unfair competition, and FTA did so with the intent to trade upon Energy Beverages' reputation and goodwill by causing confusion and mistake among customers and the public and to deceive the public into believing that FTA's goods and/or services are associated with, sponsored by, originated from, or are approved by, Energy Beverages, when they are not. FTA's mark is strikingly similar to Energy Beverages' Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress, further supporting knowing, willful, and intentional unfair competition. FTA's intentional adoption of a strikingly similar mark for use in commerce constitutes malice and/or oppressive conduct.

82. FTA had actual knowledge of Energy Beverages' ownership and prior use of the Full Throttle<sup>®</sup> Marks and Full Throttle<sup>®</sup> Trade Dress and have willfully engaged in unfair competition in Indiana commerce. The strikingly similar use of similar font, similar stylization, similar emphasis of the "O" in "throttle," and similar downward arching arrangement of "Full

Throttle” preclude an inference of independent creation. Energy Beverages also sent a cease and desist letter to FTA on October 20, 2020, explaining FTA’s infringement. FTA has refused to discontinue use of the infringing marks.

83. FTA, by its actions, has damaged Energy Beverages in an amount to be determined at trial.

84. FTA, by its actions, has irreparably injured Energy Beverages. Such irreparable injury will continue unless FTA is preliminarily and permanently enjoined by this Court from further violation of Energy Beverages’ rights, for which Energy Beverages has no adequate remedy at law.

#### **VIII PRAYER FOR RELIEF**

85. WHEREFORE, Energy Beverages demands judgment against FTA as follows:

- a. That the Court render a final judgment in favor of Energy Beverages and against FTA on all claims for relief alleged herein;
- b. That the Court render a final judgment that FTA has violated the provisions of 15 U.S.C. § 1125(a) by willfully infringing Energy Beverages’ Full Throttle® Marks and Full Throttle® Trade Dress by using a false designation of origin, through the marketing, sale and promotion of FTA’s goods and/or services, including but not limited to, automotive repair services and clothing.
- c. That the Court render a final judgment that FTA has willfully violated the provisions of 15 U.S.C. § 1114 by infringing Energy Beverages’ trademark rights in at least the marks that are subject of U.S. Trademark Registration Nos. 2,957,843; 5,562,250; and 5,722,956.
- d. That FTA, its agents, servants, employees, attorneys, successors, and assigns, and



all other persons in active concert or participation with any of them who receive actual notice of the injunction by personal service or otherwise, be forthwith preliminarily and permanently enjoined from:

- i. using the FULL THROTTLE mark in connection with the advertising, promotion, or sale of FTA's goods and services, using any of the Energy Beverages' Full Throttle<sup>®</sup> Marks or Full Throttle<sup>®</sup> Trade Dress or a confusingly similar mark or trade dress, in connection with FTA's goods and/or services, using any of the Full Throttle<sup>®</sup> Marks or Full Throttle<sup>®</sup> Trade Dress or a confusingly similar mark or trade dress in advertising or promoting FTA's products and/or services, and/or using confusingly similar variations of any of the Full Throttle<sup>®</sup> Marks or Full Throttle<sup>®</sup> Trade Dress in any manner that is likely to create the impression that FTA's goods and/or services originate from Energy Beverages, are endorsed by Energy Beverages, or are connected in any way with Energy Beverages;
- ii. manufacturing, distributing, shipping, importing, reproducing, displaying, advertising, marketing, promoting, transferring, selling, and/or offering to sell any unauthorized goods or services under any of Energy Beverages' Full Throttle<sup>®</sup> Marks or Full Throttle<sup>®</sup> Trade Dress, and/or any confusingly similar marks or trade dress;
- iii. filing any applications or continuing to pursue any applications for registration of any trademarks, trade dress, or designs confusingly similar to Energy Beverages' Full Throttle<sup>®</sup> Marks or Full Throttle<sup>®</sup> Trade Dress;

- iv. otherwise infringing any of Energy Beverages' Full Throttle<sup>®</sup> Marks, Full Throttle<sup>®</sup> Trade Dress, or any of Energy Beverages' other trademarks;
  - v. falsely designating the origin of FTA's goods and/or services;
  - vi. unfairly competing with Energy Beverages in any manner whatsoever; and
  - vii. causing a likelihood of confusion or injury to Energy Beverages' business reputation.
- e. That FTA be directed to file with this Court and serve on Energy Beverages within thirty (30) days after the service of the injunction, a report, in writing, under oath, setting forth in detail the manner and form in which they have complied with the injunction pursuant to 15 U.S.C. § 1116;
  - f. That FTA be required to account to Energy Beverages for any and all profits derived by FTA and all damages sustained by Energy Beverages by virtue of FTA's acts complained of herein;
  - g. That FTA be ordered to pay over to Energy Beverages all damages which Energy Beverages has sustained as a consequence of the acts complained of herein, subject to proof at trial, together with prejudgment and post-judgment interest;
  - h. That this case be deemed exceptional and the amount of the damages be trebled and that the amount of profits be increased by as many times as this Court deems appropriate, pursuant to 15 U.S.C. § 1117;
  - i. That FTA's actions be deemed willful;
  - j. That FTA be required to pay to Energy Beverages punitive damages in the maximum amount allowable by law for FTA's willful, malicious, and oppressive common law trademark infringement and unfair competition;

- k. That an award of reasonable costs, expenses, and attorneys' fees be awarded to Energy Beverages pursuant to at least 15 U.S.C. § 1117;
- l. That FTA be required to deliver and destroy all devices, literature, advertising, goods and other unauthorized materials bearing the FULL THROTTLE mark, any of Energy Beverages' Full Throttle® Marks, or any confusingly similar marks, pursuant to 15 U.S.C. § 1118;
- m. That Energy Beverages be awarded restitution and disgorgement; and
- n. That Energy Beverages be awarded such other and further relief as this Court may deem just.

**IX JURY DEMAND**

86. Energy Beverages hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

Dated: May 19, 2021

/s/James W. Riley, Jr.

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