

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**LE-VEL BRANDS, LLC,**

Plaintiff,

v.

**MARC CHING**, individually and doing business  
as **WHOLE LEAF ORGANICS**,

Defendant.

CIVIL ACTION NO. 4:20-cv-391

COMPLAINT FOR TRADEMARK  
INFRINGEMENT AND UNFAIR  
COMPETITION

**DEMAND FOR JURY TRIAL**

**COMPLAINT**

Plaintiff Le-Vel Brands, LLC (“Le-Vel”) by its undersigned attorneys, alleges as follows, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other matters.

**NATURE OF THE ACTION**

1. This is a civil action for trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. § 1051, *et seq.* and trademark infringement and unfair competition under Texas common law. Le-Vel seeks to enjoin Defendant’s unlawful use of THRIVE and recover actual damages, Defendant’s profits, and other relief, including attorneys’ fees and costs as a result of Defendant’s willful violations of Le-Vel’s trademark rights in its THRIVE and other THRIVE-formative trademarks.

2. Defendant launched and has been unlawfully offering for sale, selling, and promoting supplements under the infringing mark THRIVE, notwithstanding Le-Vel’s THRIVE and THRIVE-formative trademarks rights. Defendant’s use of THRIVE in connection with supplements is likely to confuse, deceive, or mislead consumers into believing Defendant’s

activities and/or products are authorized by or affiliated with Le-Vel, and/or that such products are offered, licensed, or approved by Le-Vel.

3. Making matters worse, on April 24, 2020, Defendant was accused by the Federal Trade Commission (“FTC”) of falsely promoting its THRIVE supplement as “treat[ing], prevent[ing] or reduc[ing] the risks of COVID-19” (see April 24, 2020 FTC Complaint at ¶ 13, attached as Exhibit A), which resulted in a stipulated preliminary injunction and the following tweet from the FTC to its over 73,000 Twitter followers:



4. In the midst of the unprecedented global COVID-19 pandemic, for which there is currently no known cure, Defendant’s disingenuous and misleading claims that its THRIVE supplement can treat, prevent, and/or cure COVID-19 exacerbates the damage to Le-Vel caused by Defendant’s infringing use of THRIVE due to the imputed belief that Le-Vel and its well-known THRIVE products are or are likely connected with the activities that the FTC policed and

enjoined. The FTC's April 28, 2020 tweet, excerpted above, makes no mention of Defendant's name, instead only referring to Defendant as "Thrive"—a name by which Le-Vel is commonly known in the marketplace.

5. Given the above, the harm caused to Le-Vel by Defendant's infringement is acutely irreparable, thus Le-Vel brings this suit not only to prevent likely confusion of Defendant's THRIVE supplement with Le-Vel's THRIVE supplements in the marketplace, but to protect the public from further dissemination of similar dishonest and harmful claims about Defendant's infringing THRIVE product.

#### **THE PARTIES**

6. Plaintiff Le-Vel Brands, LLC is a Texas limited liability company with its principal place of business at 9201 Warren Parkway #200, Frisco, TX 75035.

7. Defendant Marc Ching is an individual doing business as Whole Leaf Organics with an address at 14900 Magnolia Boulevard #57347, Sherman Oaks, California 91413. Defendant can be served at 15075 Valley Vista Boulevard, Sherman Oaks, California 91403.

#### **JURISDICTION AND VENUE**

4. This action arises under the federal Trademark Act, 15 U.S.C. §§ 1051, *et seq.* and the related laws of the state of Texas. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b).

5. This Court has personal jurisdiction over Defendant, and venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), because Le-Vel is being harmed in this District and because Defendant is offering, and has sold, infringing goods into this District.

## LE-VEL AND ITS THRIVE NAME AND TRADEMARK

6. Le-Vel is a lifestyle company that offers dietary and nutritional supplements, related health and wellness goods, and related coaching/lifestyle/wellness programs, conventions, and educational materials. Le-Vel formulates its products with premium ingredients and high levels of nutrition, giving customers the opportunity to live healthy, balanced, and premium lifestyles.

7. Le-Vel's flagship product line is sold under the brand THRIVE and various THRIVE-formative marks, including THRIVE PLUS, THRIVE EXPERIENCE, RELEASE THE THRIVE, THRIVE PRO, THRIVEFIT, and THRIVE BITES, among others (the "THRIVE Marks"). Le-Vel's THRIVE product line consists of a wide range of supplements for physical and mental wellness and healthy living, including supplements formulated specifically for men, women, and children; nutritional shakes, energy shakes, drink mixes, and gels; nootropics; transdermal supplement products; skincare products; and protein snacks:





8. Among Le-Vel's extensive THRIVE product line, Le-Vel offers a supplement formulated for digestive and immune support, as depicted below:



9. Le-Vel first conceived of, adopted, and began using its distinctive THRIVE trademark in 2012 and has continuously used THRIVE in connection with dietary and nutritional supplements in commerce since 2012.

10. Since 2012, Le-Vel has continuously expanded its range of THRIVE Marks used in connection with dietary and nutritional supplements, related health and wellness products, and related coaching/lifestyle/wellness programs.

11. Prior to Defendant’s first use of THRIVE, Le-Vel has used, advertised, and promoted its THRIVE name and THRIVE Marks in such a manner that the common, distinctive THRIVE element in the THRIVE Marks is indelibly tied with Le-Vel’s overall corporate identity, such that Le-Vel is commonly known as “THRIVE” in the marketplace and Le-Vel has developed a family of THRIVE marks.

12. Le-Vel owns numerous valid and subsisting U.S. trademark registrations and applications for its THRIVE Marks, some of which include the following:

<b>Mark</b>	<b>Goods</b>	<b>Reg. No. Reg. Date</b>	<b>First-Use Date</b>
THRIVE (and Design)	Topical patches featuring vitamin, mineral, plant extract, antioxidant, enzyme, probiotic, and amino acid preparations used	5772374 06/11/2019	08/2012

Mark	Goods	Reg. No. Reg. Date	First-Use Date
	for general health and wellness in Class 5.		
THRIVE EXPERIENCE (and Deisgn)	<p>Nutritional supplements, namely, vitamin, mineral, plant extract, antioxidant, enzyme, probiotic, and amino acid preparations and supplements used for general health and wellness in Class 5.</p> <p>Providing online retail store services using account-based user information in the field of nutritional preparations and supplements; providing an incentive award program for consumers that provides for discounted pricing and free product return of nutritional preparations and supplements with purchase in Class 35.</p> <p>A nutritional plan for general health and wellness consisting of consulting advice and recommendations on nutritional supplements and nutritional consulting advice and recommendations on nutritional preparations in Class 44.</p>	5174403 04/04/2017	12/2012 for Classes 5 and 44.  10/2013 for Class 35.
THRIVE BY LE-VEL	Nutritional supplements, namely, vitamin, mineral, plant extract, antioxidant, enzyme, probiotic, and amino acid preparations used for general health and wellness in Class 5.	5169444 03/28/2017	11/2012
RELEASE THE THRIVE	Nutritional supplements, namely, vitamin, mineral, plant extract, antioxidant, enzyme, probiotic, and amino acid preparations used for general health and wellness in Class 5.	5144648 02/21/2017	02/2015

**SALE AND PROMOTION OF LE-VEL'S THRIVE PRODUCTS**

13. Le-Vel's THRIVE products are sold through its online store directly to consumers, who are introduced to the products through a vast network of authorized independent promoters and affiliates.

14. Le-Vel's THRIVE products have enjoyed substantial success and have been widely sold and distributed since their introduction in 2012. Le-Vel now has more than eight million independent Brand Promoters and customers around the world, topped \$1 billion in total sales in May 2017, and surpassed \$2 billion in total sales in November 2019.

15. Since 2012, Le-Vel has offered and continues to offer thousands of THRIVE health and wellness educational conventions, seminars, and events nationwide, e.g.:





**Baltimore, MD**  
**THRIVE AFTER FIVE**  
**JIMMYS FAMOUS SEAFOOD**  
**WEDNESDAY, MAY 22ND**  
**FROM 7:30-9PM**  
**6526 HOLABIRD AVE | BALTIMORE, MD 21224**

**200K VIP** SAMANTHA PASLEY  
 LV MILLIONAIRE

**200K VIP** ERYN YOUNG  
 LV MILLIONAIRE

**200K VIP** DENISE LAWRENCE

**200K VIP** ADDY MOLONY

**200K VIP** ASHLEY WILHELM

**SPECIAL GUEST**  
*Bernard Pierce*  
 Super Bowl Champ

**THRIVE**  
 1 2 3

- \*Weight Management
- \*Digestive & Immune Support
- \*Calms General Discomforts
- \*Antioxidant Support
- \*Mental Clarity and Focus
- \*Lean Muscle Support
- \*Joint Support

**Niota, TN**  
**THRIVE LOCAL**  
**FRIDAY, JUNE 7<sup>TH</sup> at 7:00 pm**

**80K VIP** ASHLEY & JUSTIN SULLIVAN  
 SPECIAL GUESTS

**200K VIP** JEFF & TABITHA SCOTT  
 HOSTS

**12K VIP**

**40K VIP** WESLEY & HOLLY AVERETTE  
 GUEST SPEAKERS

**12K VIP**

**12K VIP** BRANDON & HEATHER FRAZIER  
 GUEST SPEAKERS

**80K VIP**

**4K VIP** TRISH GOEN  
 GUEST SPEAKER

**The Church Of Niota 2068 Hwy 11 Niota, TN. 37826**

**Rise & Thrive! OPEN LOCAL**

BRIAN & STACY RAAP HOSTS  
JENNI LANGE HOST  
NATASHA ROBERSON  
CAROL LAWSON  
KELLY MILLS  
SANDY SMALL  
JOY SWAN  
TARRI SCHOENBERGER  
KATRINA HOUTAKKER

**SAT, FEBRUARY 10TH AT 9:00AM**  
**CHAMPPS**  
**3100 DODGE ST. | DUBUQUE, IA 52001**

**THRIVE AND DRIVE**

CALENDAR LAUNCHING FEBRUARY 2018

**Level OPEN LOCAL!**  
**CHARLOTTE, NORTH CAROLINA**  
FRIDAY, JANUARY 11TH  
DOORS OPEN @ 6:30PM  
EVENT BEGINS @ 7:00PM  
Location: Embassy Suites, 1917 Ayrslay Town Blvd, Charlotte, NC 28273

Elise Lininger Michele Klawitter Kevin Beauchamp Blair Critch Kellie Hoover Andrea Caughman Amber Rice Beth Graves

**Come learn more about the Thrive Experience!**



16. Since 2012, Le-Vel has shared and continues to provide THRIVE health and wellness articles and videos on its website and official blog, e.g.:





## Our Community's Top 8 THRIVE Shake Recipes

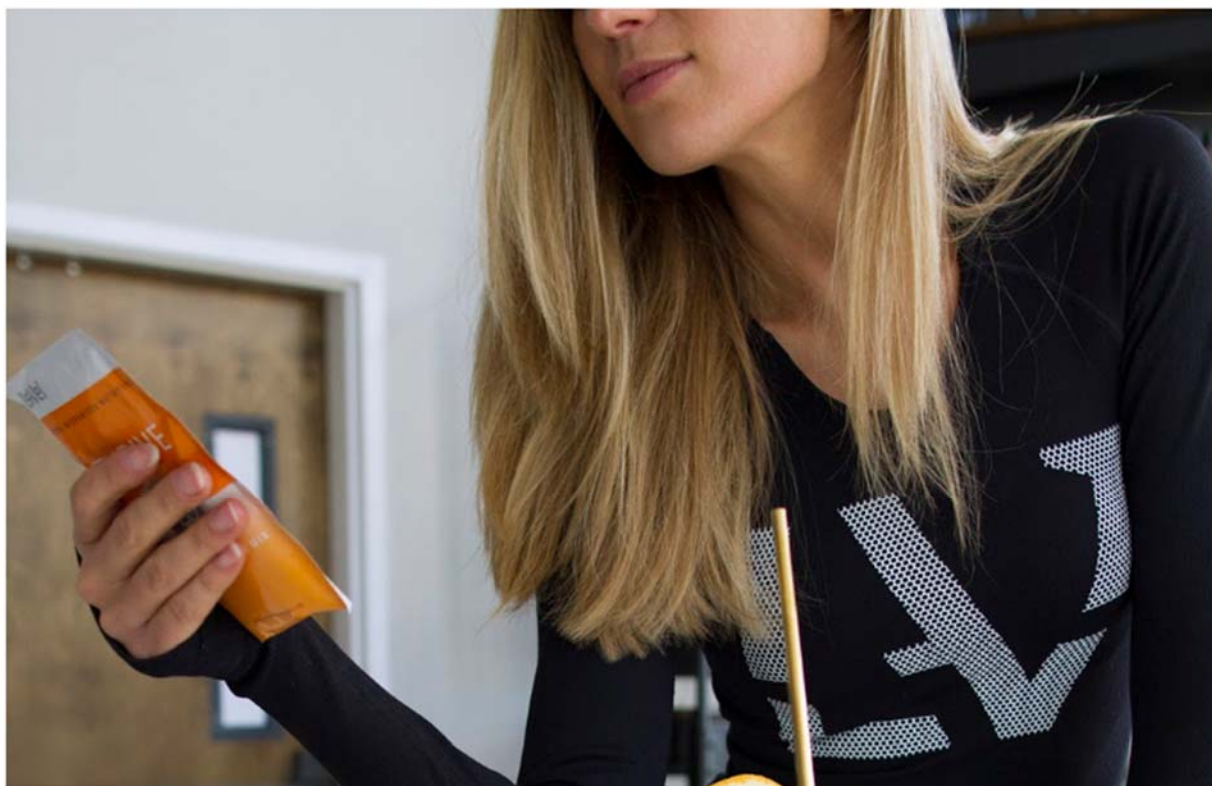
HEALTHY LIVING

PRODUCTS

BY LE-VEL / ON APRIL 23, 2020 / 0 COMMENTS

 Our Community's Top 8 THRIVE Shake Recipes

What's a THRIVE Shake? It's commonly called a [Lifestyle Shake](#) and it's part of the [THRIVE Experience](#) 1-2-3 daily system, a premium lifestyle system designed to help you experience peak physical and mental levels. Taken every morning, it can fill your nutritional gaps and even change your life, the same way it has for millions of others.



17. Le-Vel also maintains an educational/product experience website for its various THRIVE products at <https://www.thrive-reviews.com>.

18. Le-Vel and its founders have a tremendous online following, including over three million Facebook followers. Le-Vel's promotional videos have been viewed on YouTube over nine million times.

19. Le-Vel has long promoted and displayed its THRIVE Marks in a variety of ways, including as a standalone brand, as part of THRIVE-formative terms or phrases, and in connection with other Le-Vel names and marks through Le-Vel's website, social media, and product packaging, e.g.:









20. Le-Vel has spent over \$28 million in advertising, marketing, and promoting the THRIVE Marks in connection with its products through a variety of media, promotional and marketing initiatives, and celebrity endorsements. Some of the celebrity users of Le-Vel's products include: (1) Emmitt Smith, the all-time leading rusher in the history of the National Football League ("NFL"); (2) Andy Roddick, one-time #1 ranked tennis player in the world and a tennis Hall-of-Famer; (3) Dick and Rick Hoyt of Team Hoyt, the father and son team who have participated in over 1,000 races to raise awareness for and instill confidence in the physically



challenged (Rick is a spastic quadriplegic with cerebral palsy, and his father, Dick, pushes, pulls, and carries him through races such as the Ironman triathlon); (4) Kirk Hammett, lead guitarist for the band Metallica; (5) Don Mattingly, Major League Baseball Hall-of-Famer; (6) Amy Purdy, *New York Times* best-selling author, runner-up in *Dancing with the Stars*, and medalist in the 2014 Winter Paralympic Games; (7) Olga Tanon, five-time Grammy-winning artist; (8) Brian Westbrook, former All-Pro NFL player; (9) Drake White, country music performing artist; (10) television and movie actor Kevin Sorbo from shows such as *Hercules*; (11) Missy Robertson from the *Duck Dynasty* series; (12) Bernard Pierce, former All-Pro NFL player; and many others.



21. In addition, Le-Vel and the THRIVE Marks have been featured (1) at Times Square during the New Year's Eve ball drop and throughout the holiday season, including during the Macy's Thanksgiving Day Parade; (2) on billboards throughout the United States during national billboard campaigns; (3) in football stadiums across the United States during college and professional football games; (4) in the "Rise and Thrive" marketing campaign, which has been viewed by millions of individuals around the globe; (5) in a nationally distributed magazine,

*Thrivin'*, found in thousands of bookstores throughout the U.S.; (6) in hundreds of press releases and blogs circulated throughout the world; and (7) in Facebook and YouTube ads receiving millions of views and interactions.

22. Further, the THRIVE Marks have received notable third-party press, attention, and recognition. In 2016, Le-Vel was featured in *USA Today*, along with Uber, Etsy, and two other companies, as the leaders in the “YouEconomy.” In 2019, Le-Vel was again featured in *USA Today* as the nutritional movement taking the country by storm. In 2016, Le-Vel received the *Direct Selling News* Bravo Growth Award, which recognizes the largest year-over-year growth in the world in direct sales. In 2015, Le-Vel was featured in the *Houston Business Journal* for its substantial and meaningful charitable works and efforts. In 2015 and 2016, Le-Vel was named to the *Direct Selling News* Global 100, an exclusive ranking of the top revenue-generating companies worldwide in the direct selling industry. Le-Vel has also been featured in *Direct Selling News* on multiple occasions and has been the cover story twice. In 2013-2017, Le-Vel was featured in *Success from Home* magazine, the first time that a company has been featured as the exclusive company in full-length *Success from Home* issues four years in a row, e.g.:





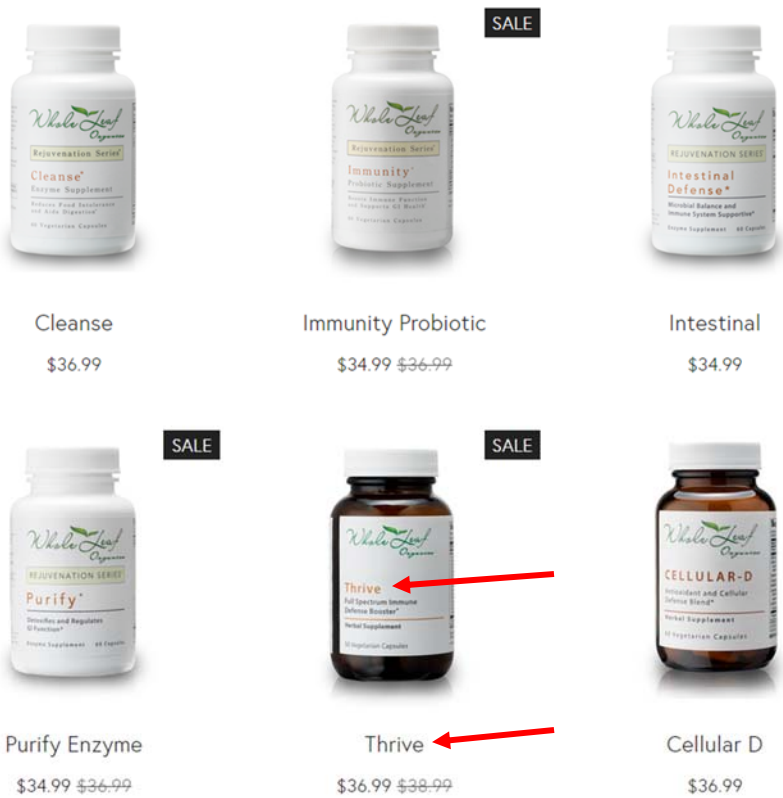
23. As a result of extensive use, sales, advertising, promotion, commercial success, and third-party recognition, the THRIVE Marks are well-known and strong, and consumers associate the common, distinctive characteristic of the THRIVE Marks—THRIVE—with Le-Vel.

### **DEFENDANT AND ITS USE OF 'THRIVE'**

24. Defendant, doing business as Whole Leaf Organics, offers and sells various supplement products, including a dietary supplement branded under the mark THRIVE, as depicted below:



25. Defendant promotes, offers, and sells its THRIVE dietary supplement online through the Whole Leaf Organic website, <https://www.wholeleaforganics.com>, and through the website of Defendant's other company Petstaurant, <https://www.wholeleaforganics.com/>, where Defendant advertises the product by prominently using and promoting the mark THRIVE alone, including in advertising and on the product packaging itself, as depicted below:



<https://www.wholeleaforganics.com/products>

← BACK TO PRODUCTS



## Thrive

SALE

\$36.99 ~~\$38.99~~

- Formulated containing 16 hand selected herbal extract strains, Whole Leaf Organics Thrive is a unique wellness and immune boosting supplement perfect for individuals seeking to be proactive and preventative in their care.
- Cultivated using natural full spectrum components, Thrive offers immune support that may assist the body in promoting increased health.
- For best results, we recommend taking Thrive with both WholeLeaf Organics Cleanse and Immunity. Cleanse can help to break down indigestible reactionary substances in the body, while Immunity may boost the immune system restoring Flora, two important factors in regards to balancing the body and promoting overall health.

<https://www.wholeleaforganics.com/products/thrive>

## Thrive - Anti Allergen

\$36.99



- Formulated containing 16 hand selected herbal extract strains, Whole Leaf Organics Thrive is a unique wellness and immune boosting supplement perfect for individuals seeking to be proactive and preventative in their care.
- Cultivated using natural full spectrum components, Thrive offers immune support while assisting the body in defending itself from immune invaders, viruses, and harmful internal fungi and bacteria, promoting optimal microbial balance and strengthening mucous membranes.
- The ultimate detoxification supplement, Thrive is beneficial for people battling Candida, fungal overgrowth, weakened immune systems, viral infections, systemic bacterial infections, and even beneficial for women struggling with consistent urinary tract infections. Guaranteed pure and high in potency, Thrive delivers results supporting the body's natural defense by boosting the immune system, restoring microbial balance, and killing immune invaders like viral components and Candida.
- For best results, we recommend taking Thrive with both WholeLeaf Organics Cleanse and Immunity. Cleanse works to break down indigestible reactionary substances in the body, while Immunity boosts the immune system restoring Flora, two important factors in regards to balancing the body and promoting overall health.

<https://www.wholeleaforganics.com/products/thrive>

26. Given the strong association of THRIVE with Le-Vel, consumers are likely to confuse Defendant's THRIVE supplements and/or commercial activities with Le-Vel's THRIVE and THRIVE-formative branded supplements, THRIVE Marks (individually and collectively, as a family), and/or commercial activities.

### **DEFENDANT'S FALSE AND MISLEADING ADVERTISING**

27. On April 24, 2020, the FTC filed a complaint against Defendant alleging that Defendant was in violation of the FTC Act due to Defendant's false and misleading statements implying that Defendant's THRIVE supplement could treat, cure, and/or prevent COVID-19—a disease to which there is no known current treatment or vaccine. A copy of the FTC's complaint is attached as Exhibit A.

28. Specifically, beginning in or around March 2020, Defendant disseminated the following advertisement falsely promoting the benefits of its THRIVE supplement as it pertains to the COVID-19 disease:

## Whole Leaf Organics The Best in Preventative Supplemental Care

### **PROTECT YOURSELF - THRIVE: ANTI VIRAL WELLNESS BOOSTER**

CONTAINING CLINICALLY RESEARCHED INGREDIENTS, THRIVE CAN HELP MAKE A DIFFERENCE IN YOUR LIFE.

FORMULATED WITH POTENT ANTIVIRAL HERBAL EXTRACTS, THRIVE BY WHOLE LEAF ORGANICS IS THE PERFECT WAY TO STRENGTHEN YOUR IMMUNITY AGAINST PATHOGENS LIKE "COVID-19," **THE CORONAVIRUS.**

RECOMMENDED DOSE FOR ADULTS - 1 CAPSULE 3 TIMES A DAY. SAFE FOR DAILY SHORT TERM USE, AND TO COMBAT AILMENTS THE FLU, COLDS, BRONCHIAL INFECTIONS, FUNGAL AND YEAST BASED ISSUES, AS WELL AS THE CORONAVIRUS.



29. On April 28, 2020, Defendant and the FTC stipulated to a preliminary injunction prohibiting Defendant from making claims that its THRIVE supplement treats, prevents, or reduces the risk of COVID-19. After securing the preliminary injunction, the FTC sent the following tweet to its over 73,000 Twitter followers, which does not identify Defendant or Whole Leaf Organics and, instead, only refers vaguely to a “‘Thrive’ supplement marketer”:



30. As a result of Defendant’s infringing use of THRIVE for supplements, Defendant not only creates a likelihood of confusion with Le-Vel’s THRIVE Marks, but also irreparably harms the reputation and goodwill associated with Le-Vel’s THRIVE Marks through imputed connection between Le-Vel and Defendant’s reprehensible attempt to profiteer during an unprecedented global pandemic at the expense of the general public’s health and safety.

**INJURY TO THE PUBLIC AND LE-VEL**

31. Defendant's unauthorized use of the product name THRIVE is likely to cause confusion, mistake, and deception as to the source or origin of Defendant's products, and is likely to falsely suggest a sponsorship, connection, or association between Defendant, its products, and/or its reprehensible commercial activities with Le-Vel and its THRIVE Marks (individually and collectively, as a family), and commercial activities.

32. Defendant's unauthorized use of THRIVE, particularly in connection with Defendant's false claims that its THRIVE produce treats, prevents, and/or reduces the risks of COVID-19, has damaged and irreparably injured Le-Vel, and, if permitted to continue, will further damage and irreparably injure Le-Vel, its reputation and goodwill, the THRIVE Marks, and the public's interest in being free from confusion.

33. Given Le-Vel's position in the supplement marketplace and widespread promotion of its THRIVE Marks, Defendant has constructive knowledge, and on information and belief, actual knowledge of Le-Vel's rights and chose to disregard them. As a result, Defendant has acted knowingly, willfully, and in reckless disregard of Le-Vel's prior rights.

**FIRST CLAIM FOR RELIEF**

**Trademark Infringement Under  
Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)**

34. Le-Vel repeats and realleges each and every allegation set forth above.

35. The acts of Defendant constitute infringement of Le-Vel's registered THRIVE Marks in violation of 15 U.S.C. § 1114.

36. Without Le-Vel's consent, Defendant has used and continues to use in commerce reproductions, copies, and colorable imitations of Le-Vel's registered THRIVE Marks in connection with the offering, distribution, and advertising of supplements, which is likely to cause



confusion, cause mistake, or deceive in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

37. Defendant's acts of trademark infringement are knowing, intentional, and willful in violation of 15 U.S.C. § 1114.

38. As a result of Defendant's acts of trademark infringement, including in connection with Defendant's false and misleading claims that its THRIVE supplement can treat, prevent, and/or reduce the risks of COVID-19, Le-Vel is suffering irreparable harm, for which it has no adequate legal remedy.

39. Unless and until Defendant is enjoined by this Court, Defendant will continue to commit acts of trademark infringement and cause likely consumer confusion and irreparable harm to Le-Vel.

40. Le-Vel is entitled to recover Defendant's profits, all damages that Le-Vel has sustained from Defendant's infringement, prejudgment interest, and the costs of the action pursuant to 15 U.S.C. § 1117.

41. Because Defendant's conduct is willful, Plaintiff is also entitled to recover treble damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

## **SECOND CLAIM FOR RELIEF**

### **Trademark Infringement, False Designation of Origin, Passing Off, and Unfair Competition Under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)**

42. Le-Vel repeats and realleges each and every allegation set forth above.

43. Defendant's use of THRIVE, as described above, is likely to cause confusion, cause mistake, or deceive as to the origin, sponsorship, or approval of Defendant, its products, and/or its commercial activities by or with Le-Vel and its THRIVE Marks (individually and collectively, as

a family), and thus constitutes trademark infringement, false designation of origin, passing off, and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

44. Defendant's unauthorized use of THRIVE is knowing, intentional, and willful in violation of 15 U.S.C. § 1125.

45. As a result of Defendant's acts of trademark infringement, including in connection with Defendant's false and misleading claims that its THRIVE supplement can treat, prevent, and/or reduce the risks of COVID-19, Le-Vel is suffering irreparable harm, for which it has no adequate legal remedy.

46. Unless and until Defendant is enjoined by this Court, Defendant will continue to commit infringing acts, and will continue to deceive the public and cause irreparable harm to Le-Vel.

47. Le-Vel is entitled to recover Defendant's profits, all damages that Le-Vel has sustained from Defendant's infringing acts, prejudgment interest, and the costs of the action pursuant to 15 U.S.C. § 1117.

48. Because Defendant's conduct is willful, Plaintiff is also entitled to recover treble damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

### **THIRD CLAIM FOR RELIEF**

#### **Common-Law Trademark Infringement, Passing Off, and Unfair Competition**

49. Le-Vel repeats and realleges each and every allegation set forth above.

50. The activities described above constitute common-law trademark infringement and misappropriation of the goodwill associated with Le-Vel's THRIVE Marks (individually and collectively, as a family) and constitutes passing off, trademark infringement, and unfair competition in violation of Texas common law.

51. By making unauthorized use of THRIVE, Defendant is committing trademark infringement in violation of Texas common law and other applicable common law.

52. Defendant's unauthorized use of THRIVE is knowing, intentional, and willful.

53. As a result of Defendant's acts, including Defendant's false and misleading claims that its THRIVE supplement can treat, prevent, and/or reduce the risks of COVID-19, Le-Vel is suffering irreparable harm, for which it has no adequate legal remedy.

54. Unless and until Defendant is enjoined by this Court, Defendant will continue to commit acts of trademark infringement, and will continue to cause likely consumer confusion and irreparable harm to Le-Vel.

55. Le-Vel is entitled to recover Defendant's profits, all damages that Le-Vel has sustained from Defendant's infringement and unfair competition, and the costs of the action, including attorneys' fees.

#### **DEMAND FOR JURY TRIAL**

56. Pursuant to Fed. R. Civ. P. 38, Le-Vel respectfully demands a trial by jury on all issues properly triable before a jury in this action.

#### **PRAYER FOR RELIEF**

57. WHEREFORE, Le-Vel requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. A finding that Defendant (i) has infringed Le-Vel's registered trademark in violation of 15 U.S.C. § 1114; (ii) has violated Section 43(a) of the Lanham Act (15 U.S.C. § 1125); and (iii) has infringed Le-Vel's trademarks under the common law of the State of Texas;

B. An Order declaring that Defendant's use of THRIVE for supplements infringes Le-Vel's rights in its THRIVE Marks (individually and collectively, as a family) and constitutes trademark infringement, unfair competition, and passing off under federal and/or state law, as detailed above.

C. An Order enjoining Defendant and its employees, agents, partners, officers, directors, owners, shareholders, principals, subsidiaries, related companies, affiliates, distributors, dealers, and all persons in active concert or participation with any of them:

1. From using, registering, or seeking to use or register THRIVE and/or any other marks, logos, or designs that are confusingly or substantially similar to Le-Vel's THRIVE Marks for supplements and related products and services; and
2. From representing by any means whatsoever, directly or indirectly, that any products offered by Defendant, or any activities undertaken by Defendant, are associated or connected in any way with Le-Vel or sponsored or authorized by or affiliated with Le-Vel.

D. An Order directing Defendant to, within thirty (30) days after the entry of the injunction, file with this Court and serve on Le-Vel's attorneys a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with the injunction.

E. An Order directing Defendant to immediately destroy all products, advertisements, promotional materials, stationery, forms, and/or any other materials and things that contain or bear THRIVE and/or any other marks, logos, or designs that are confusingly or substantially similar to Le-Vel's THRIVE Marks for supplements and related products and services.

F. An Order requiring Defendant to account for and pay to Le-Vel any and all profits arising from the foregoing acts in accordance with 15 U.S.C. § 1117 and other applicable laws.

G. An Order requiring Defendant to pay Le-Vel damages in an amount as yet undetermined caused by the foregoing acts and trebling such damages in accordance with 15 U.S.C. § 1117 and other applicable laws.

H. An Order requiring Defendant to pay Le-Vel punitive, exemplary, and/or statutory damages as allowed by law in an amount to be determined due to the foregoing willful acts of Defendant.

I. An Order requiring Defendant to pay Le-Vel its costs and attorneys' fees in this action pursuant to 15 U.S.C. § 1117 and other applicable laws.

J. An Order awarding Le-Vel pre-judgment and post-judgment interest on any monetary award made part of the judgment against Defendant.

K. Other relief as the Court may deem just and appropriate.

Dated: May 12, 2020

Respectfully submitted,

/s/ Clyde Siebman

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