

DISTRICT COURT, COUNTY OF DENVER,
STATE OF COLORADO

Court Address:
1437 Bannock Street
Denver, CO 80202

Plaintiff: A1 WHOLESALERS INC,

v.

Defendant: GOLDEN GLOBAL GOODS, INC. d/b/a
ROCKY MOUNTAIN SODA COMPANY

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A1 WHOLESALERS INC
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Case Number:

Div.:

COMPLAINT AND JURY DEMAND

Plaintiff, by counsel of record, Kresl & Singer, P.C., respectfully presents its Complaint and Jury Demand, and makes the following averments in support of its claims.

PARTIES

1. A1 WHOLESALERS INC, 3830 Loon Lane, Sanford, FL 32773, contracted with defendant to manufacture certain bottled beverages.
2. Defendant, Golden Global Goods, Inc. d/b/a Rocky Mountain Soda Company is a Colorado company located at 4420 Glencoe Street, Denver, Colorado 80216.

JURISDICTION

3. The Court has subject matter jurisdiction over this action under the Constitution of the State of Colorado, Article VI, Section 9.

4. The Court has personal jurisdiction over the defendant by virtue of its residence in Colorado and its commission of tortious actions and business transactions in Colorado that caused injury and damages in Colorado to plaintiff, under C.R.S. § 13-1-124(1)(b).

5. Venue is proper in this Court, under C.R.C.P. 98(c)(1), because defendant resides in Denver County at the commencement of this civil action.

GENERAL ALLEGATIONS

6. On or about December 28, 2018, plaintiff entered into a contact with defendant whereby defendant agreed to manufacture certain beverage units in accordance with a statement of work.

7. Under the statement of work, defendant agreed to manufacture “2700 (+/- 5%) cases of soda pop,” each containing “24 amber glass bottles that are each filled with 12 ounces of product.”

8. Under the statement of work, defendant agreed to “include in each bottle 30mg of SDP 46 water soluble CBD from CBD Pur US, which ingredient and concentration is explicitly approved by Customer.”

9. Common CBD content in the market for such beverages is 25 – 30mg.

10. According to reporting by the Chicago Tribune dated May 21, 2019, the CBD beverage market has “unofficially adopted a 25-30 milligram standard serving size.” *See* <https://www.chicagotribune.com/dining/ct-food-chicago-cbd-infused-drinks-0529-story.html> (last visited May 4, 2020).

11. Defendant sent plaintiff a bottle-label template that stated “30mg CANNABIDIOL.”

12. Defendant put the label stating “30mg CANNABIDIOL” on each bottle it manufactured for plaintiff.

13. During the time period it was creating the beverage units for plaintiff, defendant was communicating with the seller of SDP 46 powder about the formulation of beverages using the powder.

14. Defendant understood the amount of SDP 46 powder required to create a beverage unit containing 30mg cannabidiol.

15. Defendant intentionally added only enough SDP 46 powder to yield less than 4mg cannabidiol per bottle.

16. Each beverage unit manufactured by defendant for plaintiff contained less than 4mg Cannabidiol.

17. No beverage unit manufactured by defendant for plaintiff contained 30mg cannabidiol.

18. Since manufacturing the beverage units for plaintiff, defendant has represented it complied with the terms of the contract.

19. Since manufacturing the beverage units for plaintiff, defendant has repeatedly affirmed it did not act negligently or mistakenly in creating the beverage units for plaintiff.

20. Upon information and belief, in connection with the circumstances stated herein, an owner of defendant asked the owner of CBD PUR US to create a false invoice for SDP 46

powder with an additional charge, over and above the actual purchase price paid by defendant for the ingredient.

21. The owner of CBD PUR US declined to artificially increase the invoice.

22. Defendant was under a duty of good faith and fair dealing in connection with the contract with plaintiff.

23. Defendant understood plaintiff would expect 30mg cannabidiol in each bottle, which is the amount stated on each bottle.

24. Defendant purposefully put less than 30mg cannabidiol in each bottle manufactured for plaintiff, even though each label stated "30mg CANNABIDIOL."

25. Upon information and belief, after the incorrect product was manufactured, an owner of defendant added more CBD to a few bottles labeled for plaintiff, in an attempt to obtain misleading test results showing the proper CBD formulation.

26. Based on the documents available, defendant presented billing from CBD PUR US showing approximately half the required ingredient amount to give the impression the cost of ingredients was a reasonable portion of the contract price.

27. Upon information and belief, part of the ingredients shown on the December 18, 2018 invoice from CBD PUR US to defendant were not actually used in the product manufactured for plaintiff.

28. Upon information and belief, defendant had plaintiff pay CBD PUR US for ingredients that were not actually used in the product manufactured for plaintiff.

29. Defendant was responsible for obtaining the ingredients and putting them in the bottles.

30. Defendant had previous experience using SDP 46 to create CBD soda beverages.
31. Defendant put the SDP 46 in the soda beverage manufactured for plaintiff.
32. Because the soda beverages contained less cannabidiol than stated on the label, none of the 2700 cases could be sold and they were a total loss to plaintiff.
33. Upon information and belief, one or more owners of defendant also owns Colorado's Best Drinks, LLC.
34. Upon information and belief, Colorado's Best Drinks, LLC has never sold a soda beverage on which the label stated less than 4mg cannabidiol.
35. Upon information and belief, no company owned by any owner of defendant has ever sold a soda beverage on which the label stated less than 4mg cannabidiol.
36. According to 9News reporting, Colorado's Best Drinks sold a type of soda beverage marketed as containing 20mg cannabidiol, but the soda actually contained only 10mg cannabidiol.
37. The discrepancy is illustrated by the screenshot below from the 9News website:

Testing CBD product potencies: Are you getting what you pay for?



See <https://www.9news.com/article/news/health/cbd-is-in-just-about-everything-are-you-getting-what-you-pay-for/73-c54a3cdb-141f-4bea-8cd3-985a0f6b0f20> (last visited May 4, 2020).

FIRST CLAIM FOR RELIEF **(BREACH OF CONTRACT)**

38. Plaintiff incorporates the preceding averments by reference.
39. Defendant entered into a contract with plaintiff to manufacture approximately 2700 cases of soda pop, each containing 24 bottles, and each bottle containing 30mg cannabidiol.
40. Defendant failed to provide 30mg cannabidiol per bottle as required by the contract.
41. Plaintiff performed on the contract by making payment in full under the terms of the contract.

42. Plaintiff has suffered damages, including loss of the money it paid under the contract, as well as consequential damages, including but not limited to cost of testing, lost opportunity, and lost profit that would have obtained if the beverage units had been correctly manufactured.

SECOND CLAIM FOR RELIEF
(COLORADO CONSUMER PROTECTION ACT, C.R.S. § 6-1-101 et seq.)

43. The defendant engaged in a deceptive trade practice.

44. The deceptive trade practice occurred in the course of defendant's business.

45. The deceptive trade practice is the type described in C.R.S. § 6-1-105.

46. The deceptive trade practice significantly impacted the public as actual or potential consumers of defendant's goods.

47. The plaintiff was injured in the course of its business as a result of the deceptive trade practice.

48. The deceptive trade practice caused actual damages and losses to plaintiff, and plaintiff is entitled to appropriate damages under C.R.S. § 6-1-113.

PLAINTIFF DEMANDS TRIAL TO A JURY ON ALL CLAIMS.

WHEREFORE, plaintiff requests judgment against defendant for damages, including the following:

- Actual losses including but not limited to compensatory damages for defendant's breach of contract.
- Appropriate damages under the Colorado Consumer Protection Act, C.R.S. § 6-1-113.
- Attorney fees under the contract.

- Prevailing party costs under Colorado statute.
- Any other relief the Court deems just and proper.

Dated: May 4, 2020

/s/ Patrick A. Singer
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Plaintiff's address:
3830 Loon Lane
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2020, a true and correct copy of the foregoing was filed using the Colorado Court filing system.

/s/ Patrick A. Singer
Patrick A. Singer