

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2010 MAR 10 P 3:54

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

INTERNATIONAL BOTTLED WATER
ASSOCIATION
1700 Diagonal Road, Suite 650
Alexandria, VA 22314,

Plaintiff,

v.

ZERO TECHNOLOGIES, LLC
4510 Adams Circle, Unit G
Bensalem, PA 19020,

Defendant.

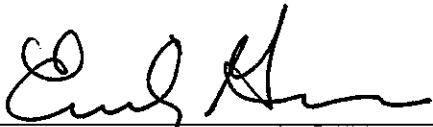
Civil Action No. 1010 CV 231

JURY TRIAL DEMANDED

**INTERNATIONAL BOTTLED WATER ASSOCIATION'S
FINANCIAL INTEREST DISCLOSURE STATEMENT**

Pursuant to the Corporate Disclosure Statement Provisions of Federal Rule of Civil Procedure 7.1 and Local Rule 7.1(A) of the Eastern District of Virginia and to enable Judges and Magistrate Judges to evaluate possible disqualifications or recusals, the undersigned counsel for the International Bottled Water Association in the above captioned action certifies that there are no parents, trusts, subsidiaries or affiliates of this party that have issued shares or debt securities to the public.

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Dated: March 10, 2010

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cmH/TCB

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COMPLAINT

Plaintiff International Bottled Water Association (“IBWA”), an association of bottled water producers, distributors and suppliers both in the United States and around the world, brings this Complaint against defendant Zero Technologies, LLC, operating under the trade name ZeroWater (“ZW”), the seller of at-home water filtration devices, for repeatedly engaging in misleading, false, and unsubstantiated advertising designed to confuse consumers about the quality, safety, and cost effectiveness of its water filter products standing alone and as compared to bottled water products. ZW repeatedly has manipulated and deceived consumers through its television advertisements and website by making grandiose and false claims about its own

products. At the same time, ZW improperly attacks what it knows to be the gold standard against which its products will be measured, purified bottled water, wrongfully disparaging the quality, safety, and cost effectiveness of bottled water in comparison with its own products.

After receiving a series of demands from IBWA to cease and desist this campaign of confusion, ZW has remained intractable and has refused to halt its false and misleading advertisements. Plaintiff IBWA therefore brings this action seeking permanent injunctive relief and damages for misrepresentation and disparagement in commercial advertising or promotion under federal law, 15 U.S.C. § 1125.

For its claims against ZW, plaintiff IBWA states and alleges the following:

Parties

1. Plaintiff IBWA is a not-for-profit corporation organized and existing under the laws of the District of Columbia, with its principal offices located at 1700 Diagonal Road, Suite 650, Alexandria, Virginia. IBWA was founded in 1958. Its mission is to serve as the authoritative source of information about bottled water, which is accomplished through consumer awareness, government relations, technical expertise, and other appropriate services. As part of this mission, IBWA promulgates water quality standards, which include all applicable regulations issued by the United States Food and Drug Administration (“FDA”). In some instances, the IBWA Code of Practice standards are more stringent than FDA regulations. Membership in IBWA is voluntary, and all members must agree to abide by the Code of Practice standards.

2. Plaintiff IBWA has standing to bring this suit to vindicate its rights in regard to the quality, safety, and cost effectiveness of bottled water products that are enjoyed by millions of consumers. In particular, IBWA members would have standing to sue as individuals because they are in competition with ZW over consumers' choice of high quality water products; the interests at stake in this litigation are germane to IBWA's purpose and mission of promoting quality bottled water products; and neither the claims IBWA makes nor the relief it requests requires the participation of individual members in the suit because the action and remedy involve the false and misleading claims made by ZW.

3. Upon information and belief, defendant ZW is a corporation organized and existing under the laws of Delaware with its principal place of business at 4510 Adams Circle, Unit G, Bensalem, Pennsylvania. ZW sells at-home water filtration devices and accessories nationally, including within Virginia, in Target, Home Depot, and Fry's Electronics stores and online through Amazon.com. Upon information and belief, ZW advertises and sells its product to customers throughout the United States including within Virginia. ZW specifically has directed its advertisements at consumers within Virginia by purchasing television time from stations located within the Commonwealth.

Jurisdiction and Venue

4. Jurisdiction is vested in this Court pursuant to 28 U.S.C. § 1332(a)(1) in that the parties are citizens of different states and the amount in controversy exceeds the sum of \$75,000.

Jurisdiction also is vested in this Court pursuant to 28 U.S.C. § 1331 in that the Complaint alleges violations of the Lanham Act, 15 U.S.C. §§ 1121 and 1125(a).

5. Personal jurisdiction is proper in this Court because the activities complained of herein occurred in the Commonwealth of Virginia; namely, in addition to selling its products within the Commonwealth, ZW on numerous occasions within the last year specifically purchased television advertising in the Commonwealth – directed to Virginia consumers – which contained the false and misleading statements that form the basis of this Complaint.

6. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to the claim occurred in this district.

Background Facts

A. ZW Engages in a Pattern of False and Misleading Advertising to Deceive Consumers Into Believing That Its Water Filtration Devices Provide High Quality Water at a Lower Cost Than Bottled Water.

7. Since at least October 2007, ZW has been advertising its at-home water filtration devices. The devices come in two basic forms: a pitcher (“Z-Pitcher”) and a water cooler-size system (“Bottle System”). Each device uses a gravity fed pour-through multi-stage filtration cartridge (“Filter”) that incorporates a carbon filtration layer for removal of organic materials and a mixed bed ion exchange resin step to remove ions and minerals. The other layers of the Filter are physical filters of various pore sizes designed to remove particulate matter and suspended solids.

8. ZW began making false, misleading, and unsubstantiated claims on television advertising appearing nationally and on ZW's website in 2007. In particular, ZW's 2007 advertising made false and misleading express and implied claims about the superior quality and healthfulness of ZW-filtered water compared to bottled water products. For example, ZW's 2007 advertising contained claims that bottled water products were of poor quality, asserting that "[t]here are minimal regulations in the bottled water industry" and "[s]ome [bottled] water's quality is no different than what comes out of your tap." ZW also implied that its products filtered all classes of contaminants by claiming that use of ZW Filters results in "water that's only water" and "water consisting of only hydrogen and oxygen." Finally, ZW's 2007 advertising claimed that water filtered through its devices was healthier for the consumer, asserting that their products "offer customers healthier, fresher tasting water!" and that water filtered through their devices was "good for heart patients and babies."

9. In response to the false, misleading, unsubstantiated and irresponsible statements made in ZW's advertising campaign, counsel for IBWA sent a letter on October 16, 2007 to Charles Orr, then-Chief Executive Officer of ZW, demanding that the company cease and desist from making further false, misleading, and unsubstantiated claims about the performance of ZW filtration products and about the quality and healthfulness of bottled water products. Specifically, IBWA informed ZW that bottled water is, in fact, comprehensively regulated by the FDA to ensure the products' safety, quality, and proper labeling. In contrast, at-home water filtration systems such as ZW's are for the most part unregulated. IBWA further explained that,

despite ZW's claims that its filters resulted in "water that's only water," ZW's filters did not remove all contaminants. Consequently, ZW's claims that its filters produced water that was "healthier" were false and misleading.

10. In response, ZW made certain revisions to its advertisements, removing the disparaging and false statements about the lack of regulation in the bottled water industry. As a result, IBWA decided to take no further action against ZW at that time.

11. In or around December 2009, however, it came to IBWA's attention that ZW once again was making misleading, false, and unsubstantiated claims regarding the quality, safety, and cost effectiveness of its products standing alone and in comparison to bottled water in its television advertising and on its website, www.zerowater.com. In its advertisements, ZW makes misleading statements about its products' ability to remove all "contaminants" and implies that bottled water is not well-regulated. In addition, ZW advertisements make false and misleading assertions that a consumer using its products can achieve the taste of bottled water "without the cost and waste" and at a "fraction of the cost." All of these advertising claims are false and misleading, having been designed with the intention of confusing consumers into buying ZW's products.

12. Upon information and belief, from March 3, 2008 to present, ZW has purchased television advertising time valued in the millions of dollars to air its advertisements over 3,000 times, in national and local markets. ZW has run at least two different commercials, one 30 seconds in length and the other 120 second in length, and within the last year, ZW repeatedly has

run its advertisements on television stations in and around Virginia. Specifically, ZW purchased advertising on multiple television stations in the Richmond/Petersburg, Roanoke/Lynchburg, and northern Virginia media markets.

13. ZW makes the following misleading, false, and unsubstantiated statements in one of its commercials that is believed to be airing currently on television within this district, and this list is not exhaustive of its false and misleading claims:

- a. “Think about what you spend on bottled water. It could really add up.” While this statement is made, images of hundreds of stacked cases of bottled water appear on the screen.
- b. “But now you can make great tasting purified bottled water at home. It’s called ZeroWater and it’s the only filtered pitcher that meets the FDA’s definition of purified bottled water.” While this statement is made, the screen displays an image of a Z-Pitcher next to large text that reads: “Meets FDA Definition for Purified Water.”
- c. “And we’ll give you the meter to prove it. Test your tap water. Even other filter pitchers. Only ZeroWater reads all zeros like purified bottled water.” While this statement is made, onscreen text appears that reads “Free TDS Meter” and displays an image of a side-by-side TDS test among Brita, Pur, and ZW filter products. The TDS Meter submerged in the water filtered from the Brita product reads “395,” while the TDS Meters submerged in the water

filtered from the Pur product and the ZW product read “175,” and “000,” respectively.

- d. “It’s bottled water taste, without the cost and waste. Get ZeroWater at your favorite Target store and start saving today.”

14. ZW makes the following misleading, false, and unsubstantiated statements in one of its commercials that is believed to have aired on television in this district within the last year, and this list is not exhaustive of its false and misleading claims:

- a. “There’s nothing like a cold glass of water. No calories or chemicals. Well, think again. How good is your water? Study after study questions the purity of bottled water. Some of it’s plain old tap water and we all know what that tastes like.” While this statement is made, the alleged “studies” are shown on the screen.
- b. “It’s the only water pitcher with the patented ZeroWater five-stage filter that removes both solids and chemicals. Leaving water that’s only water.”
- c. “Nothing but clean, great tasting water that costs just pennies a glass. That’s up to \$1,200 in savings.”
- d. “So, help save the environment from all those disposable plastic bottles. And, stop wasting money on bottled water. Get the Z-Pitcher, complete with patented ZeroWater filters.”

- e. “The Z-Pitcher. The only filtered water that’s better than bottled water at a fraction of the cost.”

15. ZW maintains a website on which it offers its products for sale and provides information on the company, its products, and frequently asked questions. As of the filing of this Complaint, ZW has made the following misleading, false, and unsubstantiated statements on its website, and this list is not exhaustive of its false and misleading statements:

- a. Product slogan: “If it’s not all zeros, it’s not ZeroWater.”
- b. “ZeroWater is the ONLY filtered water that meets the FDA definition for purified bottled water.” This statement appears in bright lettering in the middle of the website’s homepage and contains a small asterisk, denoting a disclaimer found at the bottom of the page in a poorly-contrasting font color. The disclaimer reads “Filtered potable tap water tested by an independent lab (not the FDA) to meet specifically the water quality requirements for using the label ‘purified.’”
- c. “ZeroWater is the only filtered water to score a perfect 000 for levels of dissolved solids. Test it yourself.” This statement appears in a repeating graphic at the front of the website’s homepage and contains a small dagger (†) next to the word “water.” The dagger denotes a disclaimer found at the end of the statement in smaller font, reading “from gravity fed systems.”

- d. "In side-by-side tests, only ZeroWater scores a perfect 000 for levels of dissolved solids. Test it yourself." In smaller text next to this statement is a disclaimer that reads "Sample readings may vary."
- e. "Removes 100% of detectable dissolved solids."
- f. "Bottled water is expensive and bad for the environment. And, look, many still have dissolved solids." This statement was found in a video demonstration located on the website.
- g. "You'll see and taste the ZeroWater difference. Free of dissolved solids, the way nature intended."
- h. In a chart found on the website entitled "How Many Gallons of ZeroWater Will You Get," the reading of the TDS Meter corresponds to "Contaminant Level." TDS ranges are associated with corresponding colors, ranging from blue (representing safe water), through yellow and orange, all the way up to bright red (signifying an "extreme" contaminant level). The image follows a similar pattern and is evocative of the color-coded terrorism threat advisory scale announced by the Department of Homeland Security in the wake of the September 11, 2001 terror attacks. The clear implication of this image is to signify that consumers should be afraid of severe or extreme risk to their health by consumption of TDS in excess of 501 ppm.

- i. “ZeroWater filters produce the only filtered water that meets the FDA definition for purified bottled water. So you get purified-quality water without the plastic bottles or the high cost. Bottled water in the supermarket can cost you anywhere from \$2.50 per gallon to over \$8.00 per gallon. Once you start using the ZeroWater unit, it only costs 50 cents per gallon to have purified-quality water.”
- j. “Creates the purest-tasting water.”

C. ZW’s Claims Are Not True and Mislead Consumers.

16. The cumulative effect of ZW’s misleading, false, and unsubstantiated claims in its television advertisements and on its website is that consumers are deceived as to the quality and efficacy of ZW’s products as well as with regard to the claimed superiority of ZW-filtered water over bottled water products. ZW misrepresents its products’ capabilities and makes misleading comparisons to purified bottled water products. As a result, IBWA members have been and will continue to be substantially harmed.

1. Water Filtered by ZW’s Product Still May Contain Contaminants and Impurities.

17. ZW claims that its products “remove 100% of detectable dissolved solids.” It even provides an electronic water tester with every device sold that measures the amount of total dissolved solids (“TDS”) present in the water (“TDS Meter”). ZW’s products, advertising, and branding revolve around the claim that water that has been filtered through its systems produce a reading of “000” on the TDS Meter and that consumers are drinking “water that’s only water.”

By providing these devices and making these claims, ZW intends to convey the message that its devices produce water that is entirely free of all impurities or contaminants.

18. Contrary to ZW's advertising claims, ZW Filters do not remove all impurities or contaminants from water. ZW does not sufficiently explain to consumers what the zero reading measures or means, and the various disclaimers found on its website are not of sufficient legibility or proximity to ZW's blanket assertions to provide adequate notice to consumers. ZW fails to inform consumers of the material fact that its Filters only remove inorganic substances from water. Microbes, such as coliform, *E. coli*, and *cryptosporidium* are not removed in the filtering process. These microbes can cause diseases such as cryptosporidiosis, gastroenteritis, and diarrhea. Entities that manufacture devices designed to address microbiological organisms are subject to regulation by the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"). Because ZW's products do not remove microbiological organisms, they are not regulated under FIFRA.

19. Furthermore, ZW Filters do not remove all chemicals, such as arsenic and carbonic acid, from water. In addition, ZW Filters only remove certain other organic contaminants, such as trihalomethanes, for a short period of time before ZW's low-capacity carbon filter is exhausted. This exhaustion frequently occurs before the water produced by the ZW Filter reaches the 6 parts per million ("ppm") TDS maximum level that is suggested by ZW for Filter replacement. Accordingly, contaminants such as trihalomethanes would pass through the unit

unbeknownst to the consumer and remain in the water consumed by those using the ZW product, despite a low reading on the TDS Meter.

2. TDS Is Not an Indicator of Water Quality or a Contaminant That Causes Harm to Consumers, as ZW's Advertising Claims Suggest.

20. Even when ZW only refers to the removal of TDS from drinking water, such statements misrepresent the nature, safety, and desirability of TDS. ZW's television advertisements and website repeatedly use TDS interchangeably with the term "contaminants," a purposefully vague and pejorative term. This terminology implies that TDS are a form of contamination that makes water unsafe. ZW also claims that water without TDS is "the way nature intended," misleading consumers about the effect TDS have on water quality or contamination.

21. ZW's advertising message is misleading to consumers because the removal of all total dissolved solids does not create healthier, cleaner, or necessarily tastier water. Studies reviewed by the World Health Organization ("WHO") indicate that certain consumers may prefer the taste associated with less TDS in their water, while others may prefer more. Therefore, a reading of "000" on a TDS Meter does not directly correlate with better tasting water.

22. Nor is TDS an indicator of water quality or contamination, as ZW insinuates. Rather, TDS are an innocuous collection of minerals commonly found in water. They are the inorganic salts and small amounts of organic matter present in solution in water. TDS mainly affect the taste of water and have not been shown to produce adverse physical health effects. In fact, the WHO has reported that certain concentrations of TDS may even have beneficial health

effects. ZW's color-coded chart on its website linking TDS Meter reading to "Contaminant Level" clearly implies that consumers are at risk of a severe or "extreme" threat to their physical health by consuming water with a TDS level of 501 ppm or more. According to the WHO, however, no such health risks have been shown, and water containing TDS concentrations of between 300 and 600 mg/liter 1/ have been rated by panels of tasters as "good."

23. TDS are merely an indication of aesthetic characteristics that may affect taste. In fact, water without any TDS may be unsatisfactory to some consumers, and TDS often are added to some bottled waters for the flavor that they contribute. The FDA permits bottled water to contain up to 500 mg/liter of TDS. 2/ Mineral water even is required by the FDA to contain at least 250 mg/liter of TDS and is exempted from the 500 mg/liter restriction on bottled water. Federal regulations emphasize that the exemption is "aesthetically based" and "do[es] not relate to a health concern." 3/ By repeatedly calling TDS "contaminants," ZW is deceiving consumers into thinking that TDS are a safety, health, and quality concern when they clearly are not.

3. Water Filtered With ZW's Product Would Not Necessarily Meet FDA Standards, and It Has Not Been Tested or Approved by the FDA, as ZW's Advertising Claims Imply.

24. ZW misrepresents to the consuming public that water filtered through its products is "like purified bottled water" and "meets the FDA definition for purified bottled water." The FDA's definition for purified water is based on standards set forth in the 23rd Revision of the

1/ One ppm is equal to 0.998859 mg/liter, roughly an equal conversion.

2/ See 21 C.F.R. § 165.110(b)(4)(i)(A).

United States Pharmacopeia (“USP”). The USP standards include specific limits on the amount of total solids, as well as requirements for pH, chloride, sulfate, ammonia, calcium, carbon dioxide, heavy metals, and oxidizable substances.

25. ZW provides no information or substantiation on what “independent lab” tested water filtered through its product. A consumer, therefore, has no way to verify that the claim of “independent lab testing” is true. Second, certain areas of the country have high levels of TDS in their municipal drinking water that may prohibit a ZW product from ever being able to produce water that meets the strict USP standards for purified bottled water. Nevertheless, ZW makes blanket assertions as to its products’ ability to produce purified water, a claim that is, at minimum, misleading. Third, even assuming the ZW Filter could produce water that meets the USP standard for purified bottled water on initial use, it is likely that the Filter could produce these results only for a very short period of time before Filter exhaustion would occur. Consequently, ZW’s advertising statements do not adequately convey this significant limitation on the efficacy of ZW’s Filters.

26. Further, repeated references to the FDA and FDA definitions for purified water mislead the consuming public into thinking that ZW and its products have been tested, regulated, or approved by the FDA. While the statement on the website regarding the FDA contains a small and hardly-legible disclaimer, no such disclaimer appears at all in the advertisement that is currently airing on television. In fact, the television advertisement places large text on the screen

3/ Id. at Note 1.

that reads “Meets FDA Definition for Purified Bottled Water,” reinforcing the false impression that ZW products have been tested or regulated by the FDA.

27. In no way is ZW or any of its products regulated by the FDA and, upon information and belief, none of ZW’s products has been tested by the FDA to determine whether they “meet the FDA definition for purified bottled water.” Rather, water filtration systems such as ZW’s are for the most part unregulated. This leaves consumers particularly vulnerable to claims like the ones made by ZW: unsubstantiated, false, or misleading claims about the safety, health benefits, and taste qualities of water treated by at-home water filtration systems.

4. ZW Falsely Impugns the Quality and Integrity of Bottled Water.

28. ZW’s television advertisements have misrepresented to the consuming public that bottled water products are impure, unsafe, and unregulated, claiming that “study after study questions the purity of bottled water” and that some bottled water is “plain old tap water.” Such statements constitute direct disparagement of bottled water products.

29. In contrast to ZW’s claims, bottled water products sold by IBWA members and other bottled water companies are comprehensively regulated by the FDA to ensure their safety, quality, and proper labeling. Section 410 of the Federal Food, Drug, and Cosmetic Act (“FDCA”) requires that the FDA bottled water regulations be at least as stringent and protective of the public health as the federal requirements for municipal drinking water. In addition, the FDA mandates that bottled water products comply with comprehensive requirements, including Standard of Identity regulations, which provide uniform definitions for various types of bottled

water (such as spring, distilled, mineral, and purified water), and Standards of Quality, which limit the amount of certain substances that can be present in bottled water products. In particular, the FDA Standards of Quality for bottled water set maximum allowable levels for physical, chemical, microbiological, and radiological contaminants.

5. ZW Misleads Consumers Into Thinking That Its Product Is More Cost Effective Than Bottled Water.

30. Finally, ZW makes the product superiority claim that “[i]t’s bottled water taste, without the cost and waste” and that its products produce water that is “better than bottled water at a fraction of the cost.” Such statements mislead consumers into thinking that ZW products will provide water of high quality for an extended period of time so that they will save money by purchasing ZW products rather than bottled water products.

31. To the contrary, even assuming ZW products could produce bottled water quality water in the first place, bottled water products would be cheaper than ZW products for many consumers. TDS levels in the municipal water supply directly affect how many gallons of water ZW Filters can process before reaching the 6 ppm maximum prescribed by ZW. ^{4/} Consumers in areas with higher levels of TDS in their municipal water supply, therefore, will experience significantly shorter Filter life than the Filter life assumed by ZW in calculating the costs associated with its products. Considering the short Filter life in high-TDS areas, consumers will

^{4/} ZW does not inform consumers in its television advertisements about how often Filters need to be changed. Although its website contains a chart showing Filter life, upon information and belief, this chart was moved to a more prominent area of the website only after IBWA contacted ZW about its concerns.

be spending the same amount of money or more on ZW products than they would on bottled water. Or, if consumers use ZW Filters even after the TDS meter reads 6 ppm, then by ZW's own metric consumers no longer will be enjoying bottled water quality or taste, if they ever received it in the first place. Given this reality, ZW's misleading advertisements deceive consumers into believing they will receive bottled water quality at a lower cost.

C. IBWA And Its Members Have a Substantial Goodwill Investment in the Quality, Safety, and Cost Effectiveness of Bottled Water Products.

32. IBWA represents member companies ranging in size from small family-owned water bottlers to large diversified food corporations producing bottled water, both within the United States and around the world. IBWA has established standards of quality and safety for bottled water products and requires that its members act in conformity with these standards. IBWA's goodwill and reputation are based on its credibility and leadership in promoting these high standards for bottled water products, and in promoting the quality of its member companies' products that meet these high standards.

33. IBWA assists the federal government and state governments in the development of stringent safety and quality regulations for bottled water products. IBWA has worked closely with the FDA and with state regulators and legislators to develop these regulations.

34. IBWA also has developed a Code of Practice that establishes high standards and procedures to help ensure the quality and safety of bottled water through all stages of production, from the source water to the packaging and labeling of the finished product. IBWA members must adhere to the Code of Practice. Each IBWA bottler member must undergo a mandatory,

annual plant inspection by an independent, third party organization in order to ensure that it is adhering to the rigorous standards set by IBWA. Members' facilities also must undergo extensive product testing and audits, which encompass every aspect of the operation from water source to the filling room.

35. The actions of IBWA and its members, including those described in paragraphs 32 through 34 above, have helped build positive reputations and goodwill among members of the consuming public towards IBWA, IBWA-member bottled water companies, and their products.

36. ZW's false and deceptive advertising campaign represents a systematic effort to undermine that consumer goodwill and the confidence of consumers in the quality, safety, and cost effectiveness of bottled water products of IBWA and its member companies.

D. ZW Has Refused to Halt Its False and Misleading Advertising Campaign.

37. On December 15, 2009, IBWA, through counsel, demanded that ZW cease and desist from continuing to make the false and deceptive statements featured in its television advertisements and website. After receiving no response from ZW, counsel for IBWA once again sent a letter to ZW, dated January 15, 2010, noting that no changes had been made to either ZW's website or television advertisements.

38. ZW finally responded by letter dated February 2, 2010. In the letter, ZW denied many of IBWA's challenges and stated that references to bottled water "are intended to suggest to the public to choose our product over bottled water for the home because of cost or environmental issues, not because of water quality." ZW made no discernable changes to its

television advertisements or its website as a result of IBWA's concerns. Rather, it continued to make false and misleading statements about TDS, the capabilities of its own products and the supposed cost advantage that its products have compared to purified bottled water.

39. On February 19, 2010, counsel for IBWA replied to ZW's letter, demanding that ZW produce substantiation for certain of its claims, including that its products result in water that is "like purified bottled water" and that consumers will save money purchasing ZW products as compared to bottled water. The letter further demanded ZW cease and desist from making these product comparison and superiority claims or otherwise produce the substantiation requested within 14 days.

40. Fourteen days passed, and ZW did not cease its false and misleading advertising campaign. Instead, ZW responded through counsel on March 9, 2010 denying that its advertising implies that TDS are harmful or negatively affect taste, and reasserting that its products are cheaper than bottled water products. ZW further contended that water filtered through the Z-Pitcher meets the criteria under the FDA's definition of purified bottled water, but the test results ZW provided to support its contention were conducted by an unnamed laboratory, appear to address only two criteria that appear in an incorrect USP standard for purified water (total organic carbon and conductivity), and do not appear to address any of the nine criteria in the correct USP standard (pH, chloride, sulfate, ammonia, calcium, carbon dioxide, heavy metals, oxidizable substances, and total solids). In short, ZW failed to adequately substantiate its false and misleading advertising claims. ZW's response and continuing advertising practices cast

doubt on its willingness to participate meaningfully in a full and fair review of its advertising and indicate that ZW is not seriously interested in reaching a cooperative resolution to this matter. Accordingly, IBWA had no choice but to bring this action to prevent any further irreparable harm to IBWA and its member companies and to seek monetary damages for the injuries sustained to their businesses and goodwill.

COUNT I
(Misrepresentation and Disparagement in
Commercial Advertising or Promotion –
15 U.S.C. § 1125(a))

41. IBWA realleges and incorporates herein by reference the allegations of numbered paragraphs 1 through 40 of the Complaint.

42. Defendant ZW has made misleading, false, and unsubstantiated statements about the quality, safety, and cost effectiveness of its products standing alone and in comparison to bottled water products.

43. These misleading, false, and/or unsubstantiated statements are likely to deceive or mislead purchasing consumers. Because these misleading, false, and/or unsubstantiated statements go to the fundamental qualities of health, safety, and cost of water filtration devices and bottled water products, they are likely to be material to a consumer's decision whether to purchase bottled water products or defendant's water filtration devices.

44. Defendant has placed both its products and its products' advertisements into interstate commerce. Defendant advertises its products on nationwide television networks, and

specifically on local Virginia television stations, and by internet. It additionally makes its products available for purchase by consumers in Virginia and across the United States.

45. The misleading, false, and/or unsubstantiated statements made by defendant are likely to cause injury to the goodwill and reputation of IBWA and IBWA's member companies, unless defendant is restrained by this Court. Furthermore, defendant's misleading, false, and/or unsubstantiated statements are likely to have an adverse effect on IBWA members by diverting sales away from those members and other bottled water producers, unless defendant is restrained by this Court.

46. Despite IBWA's repeated requests, defendant has refused to resolve this matter by eliminating such statements permanently from its advertising and commercial materials. As a consequence, and because ZW's conduct is wanton and deliberate, IBWA is entitled to recover its attorneys' fees pursuant to 15 U.S.C. § 1117(a).

Relief Requested

WHEREFORE, plaintiff IBWA prays:

(1) That this Court find that defendant has made false and/or misleading statements regarding the quality, safety, and cost effectiveness of its water filtration devices standing alone and in comparison to bottled water products, in violation of federal law;

(2) That this Court enter a permanent injunction enjoining and restraining defendant and its agents, servants, employees, representatives, successors and assigns, and all others in active concert or participation with them, from:

(a) Disseminating any commercial advertisements that make any of the false and misleading statements identified above and any similar false and misleading statements about the quality, safety, and cost effectiveness of its water filtration devices standing alone and in comparison to bottled water products, including but not limited to the following assertions, either explicitly or implicitly:

- (i) That ZW products are more cost effective than bottled water for all consumers;
- (ii) That ZW Filters are or will continue to be effective regardless of TDS level in one's municipal drinking water supply;
- (iii) That ZW Filters remove all impurities from water, including certain chemicals and microbiological agents;
- (iv) That TDS are "contaminants" or otherwise unsafe or unhealthy;
- (v) That the presence of TDS in water affects anything other than taste;
- (vi) That removal of all TDS from water results in water that tastes superior to bottled water products, including purified or mineral water;
- (vii) That ZW or its products are regulated, supervised, or approved in any way by the FDA or any other governmental body; and
- (viii) That use of ZW products results in water that is "like purified bottled water," either upon initial use or over an extended period of time.

(3) That this Court order defendant, its agents, servants, employees, representatives, successors and assigns, and all others in active concert or participation with them, immediately to halt all print, internet, television and any other media advertisement campaigns or commercial communications containing any false and/or misleading statements regarding the quality, safety, and cost effectiveness of its water filtration devices standing alone and in comparison to bottled water products;

(4) That this Court order defendant, its agents, servants, employees, representatives, successors and assigns, and all others in active concert or participation with them, to remove all false and/or misleading statements regarding the quality, safety, and cost effectiveness of its water filtration devices standing alone and in comparison to bottled water products contained in any of its print, internet, television and any other media advertisement campaigns or commercial communications;

(5) That this Court order defendant to engage in corrective advertising, both on its website and on television, to run for equivalent time and in equivalent markets and programming as the advertisements containing the false and deceptive statements, designed to correct the consumer confusion that it caused regarding the quality, safety, and cost effectiveness of its water filtration devices standing alone and in comparison to bottled water products;

(6) That this Court order defendant to account for and pay over to IBWA all profits realized by virtue of defendant's false and/or misleading statements;

(7) That this Court order defendant to pay compensatory damages to IBWA for all injuries sustained by IBWA as a result of Defendant's false and/or misleading statements;

(8) That this Court order prejudgment interest, pursuant to 15 U.S.C. § 1117(b);

(9) That this Court decree that this is an exceptional case warranting an award to IBWA of its costs and expenses, including attorneys' fees, under federal law, pursuant to 15 U.S.C. § 1117(a);

(10) That defendant be required to file with the Court and serve on IBWA's counsel within 30 days after service of any injunction issued herein, or within such reasonable time as the Court shall direct, a report in writing and under oath setting forth in detail the manner and form in which defendant has complied with such injunction; and


(11) That this Court grant such other and further relief as it deems just and equitable.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

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