

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARK ANTHONY INTERNATIONAL
SRL, MARK ANTHONY BRANDS
INTERNATIONAL UNLIMITED
COMPANY, and MAS+ NEXT
GENERATION BEVERAGE CO.,

Plaintiffs,

v.

PRIME HYDRATION, LLC,

Defendant.

Case No. _____.

COMPLAINT

Plaintiffs Mark Anthony International SRL, Mark Anthony Brands International Unlimited Company, and Mas+ Next Generation Beverage Co. (collectively “**Mark Anthony**”), by their attorneys Debevoise & Plimpton LLP, for their complaint against Defendant Prime Hydration, LLC (“**Prime Hydration**”), allege as follows:

PRELIMINARY STATEMENT

1. Mark Anthony brings this action for a judgment declaring that its manufacture, distribution, sale, and advertising of its M^AS+ BY MESSI hydration beverage is lawful and non-infringing and to stop Prime Hydration’s anticompetitive efforts to monopolize functional design features that are commonplace in the hydration beverage industry.

2. Mark Anthony is a premier beverage company behind such popular brands as WHITE CLAW hard seltzer, MIKE’S hard lemonade, CAYMAN JACK ready-to-drink margarita, REY AZUL tequila soda, BEARFACE Canadian whisky, DILLONS SMALL BATCH cocktails, and MISSION HILL, CHECKMATE ARTISINAL, MARTIN’S LANE and CEDAR CREEK wines. In June 2024, Mark Anthony launched its newest beverage, MÁ+ BY MESSI hydration beverage (shown at right), created in collaboration with global soccer icon Lionel Messi. MÁ+ BY MESSI is an all-natural hydration drink that boasts great taste, only 10 calories per serving, a high number of electrolytes and vitamins, and minimal sugar content.



3. The package design for MÁ+ BY MESSI includes commonplace, functional design and branding elements—such as brightly colored labels and caps that coordinate with the flavor of the beverage, a large and vertically oriented brand logo, the placement of the flavor name at the top of the label, and the identification of the contents (here, 16.9 fluid ounces, or 500 milliliters)—that help consumers readily recognize the nature of the product. These features and others are used by dozens of other brands in the hydration beverage space, and consumers have come to expect them of hydration beverages. MÁ+ BY MESSI also features numerous unique elements that help the brand stand out from all other hydration products on the market, including the MÁ+ BY MESSI brand name, the repeated references on the packaging to Mr. Messi, and the brand’s “accent” logo, among others.

4. Prime Hydration was founded in 2022 by, among others, social media influencers Logan Paul and JJ Olatunji (“KSI”). Prime Hydration manufactures and distributes hydration drinks, energy drinks, and hydration sticks under the “PRIME” brand. Since its founding, Prime Hydration has been embroiled in numerous controversies, ranging from allegations about the composition of its drinks to its false advertising to its targeting its products to children.

Apparently unhappy that Mark Anthony and Mr. Messi have launched a product that competes with PRIME, Prime Hydration sparked a social media campaign claiming that MÁS+ BY MESSI looks like PRIME, in an effort to seed claims of confusion in social media, and have demanded that Mark Anthony cease sales of MÁS+ BY MESSI in its current packaging.

Through counsel, they also have threatened to sue Mark Anthony for trademark and trade dress infringement if Mark Anthony did not comply. In doing so, Prime Hydration is seeking not only to prevent fair competition, but also is trying to monopolize functional packaging elements that are commonplace in the hydration beverage industry.



5. Prime Hydration lacks any enforceable trade dress rights because it does not consistently use any particular trade dress (as shown in the image above), and because all of the features it claims are unprotectable as common, functional elements. In any event, MÁS+ BY MESSI and PRIME have distinct brand identities—including different brand names, marketing strategies, packaging, celebrity affiliations, brand reputations, and target consumer

demographics—such that no consumer could reasonably be confused as to the affiliation or source of the products. Mark Anthony does not desire—nor has it ever desired—to be associated with Mr. Paul or KSI, nor has Mark Anthony infringed any of Prime Hydration’s other trademark rights, to the extent Prime Hydration has any such rights.

6. Mark Anthony brings this action to put an end to Prime Hydration’s anticompetitive threats and to protect its lawful right to sell its innovative and successful MÁS+ BY MESSI hydration products in the United States.

THE PARTIES

7. Plaintiff Mark Anthony International SRL (“**MAISRL**”) is a society with restricted liability organized under the laws of Barbados, with its principal place of business located in Barbados. MAISRL is the owner and licensor (to Mark Anthony Brands International Unlimited Company) of all United States rights in the MÁS+ BY MESSI trademark and all trade dress in MÁS+ BY MESSI products.

8. Plaintiff Mark Anthony Brands International Unlimited Company (“**MABIUC**”) is an unlimited company organized under the laws of the Republic of Ireland, with its principal place of business located in Ireland. MABIUC is the global licensee (from MAISRL) and sublicensor (including to Mas+ Next Generation Beverage Co.) for the MÁS+ BY MESSI trademark and for all trade dress in MÁS+ BY MESSI products.

9. Plaintiff Mas+ Next Generation Beverage Co. (“**Mas+ Next Generation**”) is a corporation organized under the laws of the state of Delaware, with its principal place of business located at 167 N Green St Ste 600A, Chicago, IL, 60607. Mas+ Next Generation is the U.S. sublicensee (from MABIUC) for the MÁS+ BY MESSI trademark and for all trade dress in MÁS+ BY MESSI products.

10. Upon information and belief, Defendant Prime Hydration, LLC is a limited liability company organized under the laws of Delaware with a principal place of business at 2858 Frankfort Ave, Louisville, KY 40206.

JURISDICTION AND VENUE

11. This Court has original jurisdiction over this action pursuant to 15 U.S.C. §§ 1121 *et seq.* because it includes claims for declaratory relief regarding trademark and trade dress infringement. Jurisdiction is also proper under 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

12. This Court has personal jurisdiction over Prime Hydration pursuant to N.Y. C.P.L.R. § 302. *See* Fed. R. Civ. P. 4(k)(1)(A).

13. Venue is proper under 28 U.S.C. §§ 1391(b) and (c). Both parties do business in this District, and a substantial part of the events giving rise to the claims in this case occurred in this District. Mark Anthony sells its MÁŠ+ BY MESSI beverages directly to consumers in this District, and it recently launched its “The Big MÁŠ+” marketing campaign directed at consumers in New York City. Among other activities in this District, Prime Hydration sells its PRIME hydration beverages through hundreds of retailers in this District, including large retailers like Target, CVS, and Duane Reade. Mark Anthony advertises and sells its MÁŠ+ BY MESSI hydration beverages on the Internet, including to customers in this District. Additionally, in November 2023, Prime Hydration rented a pop-up shop in this District, on 15th Street in Manhattan, and held a highly publicized contest to give away a \$500,000 golden bottle of PRIME. Furthermore, in April 2024, Prime Hydration entered an endorsement contract with New York Yankees star Aaron Judge, who lives and works in this District, and in or around July 2024, Prime Hydration released a special-edition Aaron Judge signature bottle in New York (including in this District), Connecticut, and New Jersey.

14. An actual case or controversy exists between the parties and is currently ripe for adjudication in this District. Prime Hydration has demanded that Mark Anthony cease all manufacturing, distribution, and sale of its MÁS+ BY MESSI hydration beverages. Mark Anthony thus has a reasonable apprehension that it will face suit in the United States regarding its continued sales of MÁS+ BY MESSI hydration beverages.

FACTUAL ALLEGATIONS

Background on Lionel Messi

15. Lionel Messi is a global sports icon. Widely regarded as the greatest soccer player in history, Mr. Messi is the most decorated player in the history of professional football, and was named one of *Time*'s most influential people in 2011, 2012, and 2023.

16. Mr. Messi is the eight-time and reigning "Ballon d'Or" winner, recognizing him as the best soccer player in the world. His eight Ballon d'Or awards are three more than the next most-awarded player in history.

17. Mr. Messi has led his club teams and his Argentine national team to success at the highest levels, including ten La Liga (the Spanish top-flight league) titles, seven Copa del Rey (the Spanish national club tournament) titles, four UEFA Champions League (the European continent club tournament) titles, two Copa América (the South American national team tournament) titles, including the most recent Copa América in July 2024, and a World Cup title in 2022.

18. In 2023, Mr. Messi joined the Inter Miami CF Major League Soccer team, invigorating and changing the face of soccer in the United States. Mr. Messi's role in increasing interest in U.S. soccer has been dubbed the "Messi effect."

19. Outside of soccer, Mr. Messi has a stellar reputation as a hard worker, family man, and a philanthropist. He was raised in Rosario, Argentina, and was the third child of two factory workers. He has been with his wife for 16 years, and they have three sons. He has been a UNICEF Goodwill Ambassador since 2010, pouring time and money into efforts helping vulnerable children, and his Leo Messi Foundation carries out projects globally to help children and teenagers in high-risk situations. During the COVID-19 pandemic, Mr. Messi donated € 1 million to improve health access in Argentina, and in 2019 he worked to secure access to clean water for nearly 4,000 children in Kenya. Simply stated, Mr. Messi is universally respected on and off the soccer pitch.

Mark Anthony and the Origins of MÁS+ BY MESSI

20. Mark Anthony, along with its subsidiaries in the Mark Anthony Group, is an international beverage company behind widely recognized beverage brands such as WHITE CLAW hard seltzer, MIKE'S hard lemonade, and CAYMAN JACK margarita, as well as a variety of innovative cocktails, craft spirits and premium wine brands.

21. In October 2023, Mark Anthony began collaborating with Mr. Messi to create a unique, better-for-you hydration beverage. Hydration beverages are drinks whose primary purpose is hydration, including bottled water (*e.g.*, Aquafina and Dasani), flavored or infused waters (*e.g.*, La Croix and Sparkling Ice), and sports drinks (*e.g.*, Gatorade and BodyArmor). Inspired by Mr. Messi's humble upbringing and rise to global fame, Mark Anthony and Mr. Messi sought to create a new hydration beverage brand that would inspire consumers to live healthier and more positive lives, would appeal to consumers of all ages, and would achieve international reach. To achieve that goal, Mark Anthony sought to create a new beverage brand that was better-tasting and more nutritionally balanced than other sports drinks on the market,

which are saturated with high-electrolyte, high-sugar, and high-calorie beverages. With MÁ+ BY MESSI, Mark Anthony created a better-tasting, lower-calorie (with only 10 calories per serving), all-natural hydration beverage that offers a better balance of electrolytes and vitamins than other sports drinks currently on the market.

22. Mark Anthony announced the launch of MÁ+ BY MESSI on June 4, 2024, and began sales on June 15, 2024, to coordinate with the 2024 Copa América soccer tournament. The launch was covered in industry publications as well as national and international media, including CNN, USA Today, Yahoo Finance, CBS Sports, MSN, AOL, The Economic Times, Mirror UK, and Sports Business Journal. Since its launch, MÁ+ BY MESSI has been met with overwhelmingly positive support from consumers and the media.

Product Design and Development of MÁ+ BY MESSI

23. The naming, branding, product design, and development of MÁ+ BY MESSI was an iterative and collaborative process, primarily led by Mark Anthony in consultation with a third-party branding agency.

24. Recognizing that the hydration beverage market is crowded with many dozens of brands, Mark Anthony sought to create and design a product that was distinct in its marketing, value proposition, and overall look and feel while also incorporating common elements that consumers have come to expect from hydration beverages.

Mark Anthony Adopted Functional Elements That Are Common Among Hydration Brands

25. There are currently hundreds of hydration beverage brands for sale in the United States, including dozens in the sports drink space alone. In 2023, the hydration beverage market was valued at more than \$30 billion and is expected to grow at a rate of 3–5% over the next decade. To meet consumer expectations in this successful and ever-expanding market, hydration

brands have adopted certain visual and other functional elements to serve as visual cues for consumers to understand the nature of the beverage. In designing the packaging for MÁŠ+ BY MESSI, Mark Anthony adopted many of these elements, including the following.

26. *Vividly colored labels coordinating with the flavor of the beverage:* Many hydration products—including Gatorade, Powerade, Vitaminwater, BodyArmor, Launch, Hoist, Recover, BodyArmor, Endure, Powerade, KRA, Roar, PREPD, Propel, GFit, Ghost, BYLT, GoodSport, and Defy—feature vividly colored labels that match the flavor of the beverage (e.g., orange label for an orange flavored drink, blue for berry flavor, yellow/green for lemon/lime flavor, red/pink for fruit punch flavor). A brightly colored label attracts consumer attention, and consumers expect such labels from hydration beverages. Coordinating the color of the label with the flavor of the beverage provides a visual cue to consumers about the flavor of the beverage. As shown in the image below, Mark Anthony adopted these features for MÁŠ+ BY MESSI in order to meet consumer expectations and efficiently communicate its flavor profiles to consumers.



27. *Matching cap and label colors:* Many beverage companies match the bottle's label and cap color to the underlying flavor of the product, including Local Weather, Lucozade, Hello Water, Nth Degree Low Gi, V8, Ribena, Fanta, OKF Smoothie, and Orangina. Coordinating the product's colors in this way provides consumers with an immediate visual cue for the product's flavor, even when the label is not visible.

28. *Vertical orientation of the product's logo:* As shown in the image below, prominent, bold, vertical logo on a vertical bottle is a commonplace element in the beverage industry, used by brands such as BodyArmor, VitaminWater, Launch, A-Game, Hoist, Recover, KRA, Glow, Karma, PREPD, Guardian, Endure, Propel, Buzz Wtr, BYLT, Swey, Mor, Altru, C4, Essentia Hydroboost, Halo, IVusion, Ready, and Defy. A vertical logo on a tall bottle (as opposed to a horizontal orientation) allows brands to use larger font and thus allows consumers to more easily read the brand name of the product. Nearly all of these logos are oriented bottom-to-top. Mark Anthony adopted a vertical logo to maximize the surface area it could cover with the M^ÁS+ BY MESSI logo, and it oriented the logo in a bottom-to-top fashion to conform to industry norms that consumers expect.



29. *Large, bolded lettering of the principal brand logo:* Large block and bolded lettering is another common feature among hydration beverage brands, including BodyArmor, KRA, Roar, PREPD, Launch, A-Game, Hoist, Recover, KRA, Endure, BYLT, C4, Halo, IVusion, Ready, Defy, DRNX, and Glow. Mark Anthony adopted this feature because such logos allow consumers more easily to read and recognize the brand name, thereby maximizing the impact of the M^AS+ BY MESSI logo in the minds of consumers. Below are images of five of the many hydration brands that use similar large, bold logos.



30. *Placement of drink flavor at the top of the label:* It is commonplace for beverage brands to list the flavor of the drink at the top of the label, so that consumers can easily read the text even if the bottle sits on a low shelf or if the lower portion of the label is obscured by racks in convenience store coolers. This feature is used by hydration brands like A-Game, BodyArmor, Recover, Coco5, Guardian, BYLT, C4, Defy, and DRNX, and Mark Anthony followed suit with M^AS+ BY MESSI to maximize the readability of the flavor information for consumers.



31. *Droplet-shaped electrolyte symbol:* In order to communicate the inclusion of a certain element (e.g., a vitamin, a mineral, etc.) in a beverage product, brands often depict the element as an icon on the label in order to facilitate consumer recognition of the element. To communicate the presence of electrolytes in a hydration beverage, brands like Agua Enerviva, Peak Hydration, Nirvana Super Water, O2 Natural Recovery, and Halo use a water droplet shape containing a lightning bolt, or a similar icon. Below are images of two of the many brands who use similar electrolyte icons. Because MÁS+ BY MESSI contains electrolytes, Mark Anthony features a similar icon on the side panel of the label (along with icons indicating the calorie count and the presence of six vitamins, three antioxidants, five minerals, and only 1g of cane sugar), because consumers instantly recognize that droplet icon as being synonymous with electrolytes.



32. *Disclosure of bottle volume at the bottom of the label:* The Food and Drug Administration requires that companies explicitly state the volume of a beverage on a beverage’s label, and regulates the font size, placement (on the principal display panel of the label, separated from other text by a significant margin), and phrasing of that volume disclosure. *See, e.g.,* 21 C.F.R. § 101.7. To abide by these regulations and communicate this useful information to consumers in a clear manner, many beverage brands, including Launch, A-Game, Hoist, Recover, KRA, Roar, VitaminWater, Guardian, Endure, and MÁS+ BY MESSI, list the bottle volume at the bottom of the label, right in the middle.



33. *Ridged stock bottle shape:* Using stock bottles (rather than proprietary bottle shapes, which take significant time and money to mold and manufacture) allow brands to launch quickly and relatively inexpensively. Many stock (and proprietary) bottle shapes have ridged edges because a ridged bottle prevents deformation of the plastic with changes in temperature, and the ridges help drinkers grip the bottle even when the bottle has condensation or the drinker's hands are wet with water or sweat. For those reasons, many hydration beverage brands use the same (or very similar) ridged stock bottle that Mark Anthony uses for MÁS BY MESSI, including Launch, Recover, and Nirvana Super Water, a few examples of which are shown below. Many other brands use other ridged bottles with only slight variation.



34. *Use of short, descriptive phrases related to hydration:* Many beverage brands utilize slogans and descriptive phrases that include synonyms or terms related to hydration in order to communicate the benefits of the products. Some examples include Launch (“Rapid Hydration”), Hoist (“IV-Level Hydration”), Coco5 (“Clean Sports Hydration”), Glow (“Sparkling Hydration”), BodyArmor (“Superior Hydration”), Frenchie (“Premium Hydration”), Guardian (“Athletic Rehydration” and “Protect, Perform, Recover”), Electrolit (“Premium

Hydration”), Electra (“Supernatural Hydration”), Akeso (“Fuel, Protect, Revitalize”), Golden Lion (“Recover, Re-Energize, Roar”), Good Sport (“Naturally Powerful Hydration”), Shine Water (“Powerful Hydration” and “Vitalize, Strengthen, Refresh”), and W2O (“Refresh, Nourish, Energize”). In line with this trend, Mark Anthony added the descriptive phrases “Positive Hydration” and “Replenish, Refresh, Revive” to its MÁŠ+ BY MESSI label in order to communicate the better-for-you hydration benefits of the product.

35. *Use of popular flavors:* Orange, blue, green/yellow, and red/pink are the four most popular and best-selling colors/flavors in the sports drink industry, though brands use different names for the flavors. These were the first four flavors introduced by Gatorade, which set the standard for the sports drink market and the hydration beverage market more generally, and it is why nearly every hydration beverage brand has some version of these four flavors (or at least two or three of them). For example,



Launch’s four flavors are Orange, Tropical, Fruit Punch, and Strawberry Lemon; Recover’s five flavors are Watermelon, Peach Mango, Fruit Punch, Lemon Lime, and Super Berry; and BodyArmor, among other flavors, offers Orange Mango, Tropical Punch, Fruit Punch, and Cherry Lime. Mark Anthony currently offers MÁŠ+ BY MESSI in its own formulations of these four flavor profiles so that its products are consistent with consumer tastes and market trends.

Mark Anthony Created a Unique Brand Identity for MÁŠ+ BY MESSI

36. Although, as explained above, Mark Anthony adopted a variety of common, functional elements for MÁŠ+ BY MESSI, Mark Anthony succeeded in creating a unique, distinctive brand identity for its new hydration product. Among others, the elements that allow MÁŠ+ BY MESSI to stand out from other products in the hydration beverage space include the MÁŠ+ BY MESSI brand name itself, the use of a prominent accent symbol as a standalone brand signifier, and the prominent association with Mr. Messi in the brand name and packaging.

MÁŠ BY MESSI Brand Name and Positive Messaging:

37. In an ode to Mr. Messi’s Argentine culture and ambitious spirit, Mark Anthony named its new product “MÁŠ+ BY MESSI.” This name—including “Más” (which consumers know is Spanish for “more”) and the “+” symbol—captures the positivity and association with Mr. Messi that Mark Anthony hoped to inspire. The word “Más” speaks to Mr. Messi’s Spanish-language upbringing, incredible soccer career, and tenacious attitude to deliver “more” both on and off the soccer pitch.



38. As shown in the images below, these literal messages of positivity are also visually captured throughout the bottle design for MÁŠ+ BY MESSI, including in the upward (rather than downward) direction of the MÁŠ+ BY MESSI logo on the bottle; the bright colors of the bottle; the messaging on the back of the bottles about overcoming obstacles, hard work, and self-care; the silhouette of Mr. Messi pointing toward the sky with both hands (his signature pose to celebrate goals); and the phrase “positive hydration,” which is descriptive of the basic proposition of MÁŠ+ BY MESSI—“more of the good, none of the bad.”



39. One of MÁŠ+ BY MESSI’s slogans is “find your más,” which is intended to inspire consumers to think positively, live authentically, and lead healthier lives through better hydration. This brand messaging is also why Mark Anthony describes MÁŠ+ BY MESSI as “positive hydration,” as MÁŠ+ BY MESSI strives to physically and mentally hydrate and enrich consumers’ bodies and outlook.



40. The presentation of the MÁS+ BY MESSI logo is also distinct from other brands in the hydration space. The “MÁS” wordmark is made of distinct letterforms that are all lowercase (not uppercase), applied without any drop-shadow or further keyline. This design was intended to make MÁS+ BY MESSI stand out on the store shelf as well as to align with contemporary typographic trends.

The Accent Symbol

41. Mark Anthony developed the “Accent”—the stylized shape above the “a” in the “MÁS+” brand name, and shown in the image below—to be a standalone brand icon and distinctive identifier for the MÁS+ BY MESSI brand.



42. In addition to appearing in the MÁS+ logo on the front of MÁS+ BY MESSI cans and bottles, a large version of the Accent appears behind the MÁS+ BY MESSI logo on the bottles, as a shape holding the logo and creating a recognizable two-tone color gradient.

43. The Accent ties the branding for MÁŠ+ BY MESSI together and serves as the profile image for the MÁŠ+ BY MESSI social media accounts. Mark Anthony made its first social media posts for MÁŠ+ BY MESSI (on its @masbymessi accounts) in May 2024.



Those social media posts featured the Accent, as shown at right. This unique shape can be seen throughout the social media accounts for MÁŠ+ BY MESSI. Mark Anthony intends that, over time, the Accent will become synonymous with MÁŠ+ BY MESSI.

Product Design

44. Mark Anthony spent many hours honing the color palettes and the ombre/fade design for the products. For each flavor profile, MÁŠ+ BY MESSI's packaging utilizes distinct color gradients of a non-primary hue that reflect the color of the underlying flavor (for example, orange for orange, blue for berry, and yellow/green for lemon/lime). Mark Anthony also matched the blue hue of the Berry Copa Crush bottle and the pink hue of the Miami Punch bottle to the colors of Mr. Messi's Argentine national team jersey and his Inter Miami club team jersey, respectively. The result is a visual presentation that is unique to MÁŠ+ BY MESSI.

Prominence of Lionel Messi in the MÁŠ+ BY MESSI Branding

45. The product packaging and advertising for MÁŠ+ BY MESSI are unique in that they are centered around Mr. Messi, one of the most recognizable athletes in the world. Virtually every aspect of the product touches on Mr. Messi's life or career.



46. Most obviously, Mr. Messi's name appears in the name of the product itself and in the main logo on every bottle of MÁS+ BY MESSI.

47. Aside from the use of "MESSI" in the product label itself, as shown below, the back of the MÁS+ BY MESSI bottles prominently display Mr. Messi's recognizable silhouette, featuring his #10 jersey number (which mirrors the 10 calories per serving in each bottle of MÁS+ BY MESSI) and his fingers pointed to the sky in his signature celebratory pose, along with his signature. The back also includes text describing Mr. Messi's story and references Mr. Messi as the product's founder.



48. Although MÁS+ BY MESSI currently offers its beverage in the four most-common flavor profiles in the sports drink industry (blue, orange, pink/red, and yellow/green), Mark Anthony playfully named these four flavors in a nod to Mr. Messi's remarkable soccer career: Orange d'Or (referencing his eight Ballon d'Or trophies), Limón Lime League (referencing his success with FC Barcelona in the UEFA Champions League), Berry Copa Crush (referencing his Copa América wins with the Argentina national team, whose jersey color

contains blue like the bottles), and Miami Punch (referencing his current stardom for the MLS's Inter Miami CF, whose jersey color is pink like the bottles).

49. MÁ+ BY MESSI is also marketed with frequent reference to and use of Mr. Messi's name and image. As reproduced below, the product's website (www.masbymessi.com), social media pages (with the @masbymessi handle), and product packaging prominently feature Mr. Messi's name, face, signature, and story. The prominent use of pink in the packaging of MÁ+ BY MESSI (including for the text on the box shown below and the quotation marks in the image at right below from the MÁ+ BY MESSI website) references Mr. Messi's current club team, Inter Miami CF, whose primary jersey color is pink.



Prime Hydration's Threats Against Mark Anthony

50. Following Mark Anthony's announcement of MÁ+ BY MESSI on June 4, 2024, the European soccer-focused Twitter account EuroFoot (@eurofootcom) tweeted that "Leo Messi has launched his own hydration drink called Mas+," along with an image of Mr. Messi and an image of the four flavors of MÁ+ BY MESSI. As shown in the image to the right, in response to the Eurofoot tweet, KSI tweeted "Looks familiar..." suggesting to his nearly-9 million followers on Twitter that MÁ+ BY MESSI is a rip off of PRIME. As of the date of this Complaint, KSI's tweet has been viewed 438,100 times.



51. On June 14, 2024, Mark Anthony received a cease-and-desist letter from Prime Hydration's legal counsel claiming that Mark Anthony's MÁ+ BY MESSI products "obvious[ly] and intentional[ly] infringed on Prime Hydration's trademarks and trade dress, and specifically its trade dress in PRIME hydration beverages and its PRIME HYDRATION and REFRESH, REPLENISH AND REFUEL trademarks. *See* Ex. A, June 14, 2024 Letter from Prime Hydration to Mark Anthony.

52. In its letter, Prime Hydration demanded that Mark Anthony "immediately take any and all steps necessary to discontinue all use of the infringing packaging, including but not limited to, discontinuing the manufacture, distribution, and sale of the infringing MÁ+ products, including any necessary recall." *Id.*

53. Prime Hydration unambiguously threatened litigation against Mark Anthony if Mark Anthony failed to comply with Prime Hydration's demands, writing: "If the parties cannot arrive at a mutually agreeable business solution, Prime Hydration will have ***no alternative but to consider Court involvement***. As such, Prime Hydration reserves its legal rights and remedies relating to your production, offer and sale of your MÁS+ beverages – including seeking a temporary restraining order, preliminary injunction, disgorgement, lost profits, treble damages, and reasonable attorneys' fees due to your willful and intentional infringement. . . . As a final matter, ***given that litigation may be imminent, we remind you of your obligation to preserve without limitation, any and all documents, files, electronic data, and any other materials***. To that end, it is crucial that you take affirmative steps to preserve information relevant to this dispute that is in your custody or control." *Id.* (emphasis added).

54. On June 28, 2024, Mark Anthony through undersigned counsel sent a response letter to Prime Hydration's counsel, denying any infringement and rejecting Prime Hydration's demands. *See* Ex. B, June 28, 2024 Letter from Mark Anthony to Prime Hydration. In its response letter, Mark Anthony explained that Prime Hydration does not have enforceable trade dress rights and, in any event, there is no likelihood of confusion between Mark Anthony's MÁS+ BY MESSI product and Prime Hydration's PRIME product.

55. On July 17, 2024, Prime Hydration sent a second cease-and-desist letter to Mark Anthony through its legal counsel, reiterating its claims of infringement relating to Prime Hydration's purported trade dress and its purported rights in the DRINK PRIME, PRIME

HYDRATION, PRIME HYDRATION+, and REFRESH, REPLENISH AND REFUEL trademarks. *See* Ex. C, July 17, 2024 Letter from Prime Hydration to Mark Anthony.

56. The letter further demanded the following of Mark Anthony:
- a. “the cessation of use of POSITIVE HYDRATION, DRINK POSITIVE, REPLENISH, REFRESH and REVIVE, and the electrolyte droplet symbol on the bottle/can packaging and in advertising;
 - b. the use of a black or white cap on its bottles;
 - c. the use of white or silver tops on its cans;
 - d. a change in size and placement of the MÁS+ brand on the bottles/cans; and
 - e. different pantones, color shading and palette for bottles/cans from that established by Prime Hydration.” *Id.*

57. Prime Hydration’s second letter concluded by again threatening litigation, stating: “While Prime Hydration prefers a business resolution, it will not permit your client’s infringement to continue. If the parties cannot arrive at a mutually agreeable business solution within a reasonable time, Prime Hydration has authorized the filing of litigation.” *Id.*

58. Mark Anthony replied on July 29, 2024, once again explaining why confusion between the products is unlikely. *See* Ex. D.

59. Following Mark Anthony’s July 29 letter, the parties scheduled a call for the principals to talk directly. In that call, which took place on August 12, 2024, Prime Hydration continued to threaten litigation and claimed that the MÁS+ BY MESSI trade dress was causing consumer confusion. Mark Anthony explained why it vehemently disagreed, but it also noted that, if it would appease Prime Hydration, Mark Anthony was willing to consider some revisions to its trade dress. Mark Anthony made clear that it was not offering any

changes because it believed changes were warranted, but only to try to avoid an unnecessary dispute with Prime Hydration.

60. The parties exchanged further emails about settlement throughout September and early October, but the parties were unable to reach agreement. As part of those discussions, Mark Anthony disclosed that it had commissioned an experienced survey expert to conduct a consumer perception survey to assess whether there was any measurable likelihood of confusion between PRIME and MÁŠ+ BY MESSI. Unsurprisingly, the survey demonstrated no likelihood of confusion at all between the two products, which further supported Mark Anthony's position that confusion is not likely. Mark Anthony also disclosed to Prime Hydration that, as part of its normal launch process, and for reasons having nothing to do with Prime Hydration's concerns, it plans to refresh its bottle trade dress to more closely align with the trade dress of its cans, which will make any confusion even more unlikely. Such trade dress modifications are normal during the initial launch of a new product like MÁŠ+ BY MESSI.

61. Prime Hydration did not drop its claims in the face of these developments, nor did it offer any objective evidence in response. Instead, it continued to threaten litigation if its extravagant settlement demands were not met. And yet, nearly four months after its first threats of litigation, Prime Hydration still has not filed suit, leaving a cloud hanging over the MÁŠ+ BY MESSI brand, all while Mark Anthony continues to roll out and launch the brand in additional jurisdictions.

62. Prime Hydration's repeated threats of litigation cause Mark Anthony reasonable fear that Prime Hydration will seek to enjoin Mark Anthony's lawful sales of MÁŠ+ BY MESSI

products in the United States, which is highly disruptive to Mark Anthony during this time when Mark Anthony is continuing to launch its exciting new product.

Prime Hydration Has No Protectable Trade Dress Rights

63. Prime Hydration claimed in its letters to Mark Anthony that the look and feel of the MÁS+ BY MESSI products infringes Prime Hydration’s unregistered trade dress rights in PRIME hydration beverages. Although Prime Hydration’s letters did not clearly enumerate the elements that purportedly constitute this trade dress, Prime Hydration appears to suggest that its trade dress covers the following elements: (i) “black bolded font [of the brand name] centered in a vertical orientation”; (ii) a “large logo-to-logo [*sic*] ratio”; (iii) the “placement of [the bottle volume] below the main logo”; (iv) the “flavor placement at the top of the label”; (v) “bright colors in a full sleeve that are the main packaging of the bottle, without banners, images or fruit, or other unique elements”; (vi) the “incorporation of an electrolyte droplet symbol with a lightning bolt”; (vii) “the use of . . . ‘Prime Hydration’ and ‘Refresh, Replenish, Refuel’; and (viii) a “color coordinated cap, that is the same as the color of the bottle sleeve.” Ex. C, July 17, 2024 Letter from Prime Hydration to Mark Anthony, at 4. This Complaint will refer to these elements collectively as the “**Claimed Trade Dress Elements.**”

64. Prime Hydration cannot claim trade dress rights in the Claimed Trade Dress Elements because Prime Hydration does not consistently use the Claimed Trade Dress Elements on its PRIME products. Since the brand’s launch in 2022, Prime Hydration has released dozens of flavors of its PRIME hydration drinks, each with its own bottle design. Across Prime’s full line of hydration products date (a number of which are shown in the image below (from https://x.com/_FSGTWEETS_/status/1807867270427037931)), the branding for PRIME is

highly varied and inconsistent. *See also* Ex. C, July 17, 2024 Letter from Prime Hydration to Mark Anthony, at 5.



65. Prime Hydration identifies “black bolded font” as an element of its trade dress, but many PRIME bottles feature non-black logos, including some with different typeface, and blue, green, white, pink, purple, or copper fonts for the primary PRIME logo. Even among Prime Hydration’s most-distributed flavors of PRIME (such as X, Lemon Lime, and Ice Pop), there is significant inconsistency in the packaging design, as shown below.



66. Prime Hydration identifies “flavor placement at the top of the bottle” as an element of its trade dress, but the flavor for PRIME is commonly listed elsewhere on the bottle, four examples of which are shown below.



67. Prime Hydration identifies “bright colors in a full sleeve” as an element of its trade dress, but PRIME labels are commonly either neutral colors (e.g., black, white, copper, or gray), including a bottle with black text on a black label and another with black text on a white label. Even among bottles that are brightly colored, there is no consistent presentation of those colors. Some PRIME bottles use a single, highly saturated primary color, while others are tri-color, some have a blended gradient, some are two-tone with a defined line between the colors, while still others incorporate color effects (for example, the use of metallics). Three examples of neutral-colored PRIME bottles are shown below.

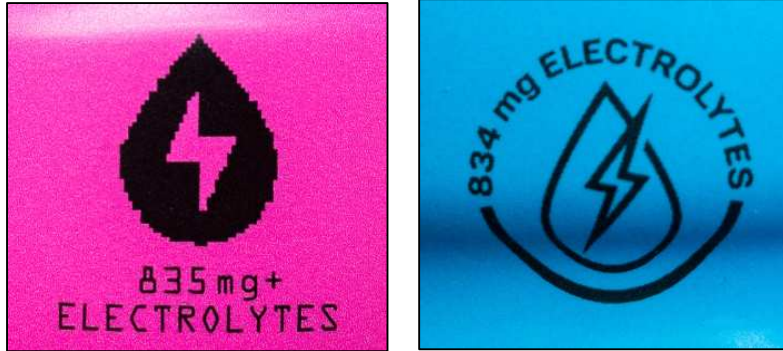


68. Prime Hydration identifies “a color coordinated cap, that is the same as the color of the bottle sleeve” as an element of its trade dress, but the caps of PRIME bottles are commonly different colors than the labels, including a bottle with a blue cap with white sleeve, another with a black cap with a white sleeve, another with a blue cap with a black sleeve, and another with a pink cap with a black sleeve.

69. Prime Hydration identifies a label “without banners, images or fruit, or other unique elements” as an element of its trade dress, but PRIME bottles regularly incorporate unique elements, such as baseball seams, glow-in-the-dark squiggles, professional sports team logos, and other elements, three examples of which are shown below.



70. Prime Hydration identifies “an electrolyte droplet symbol with a lightning bolt” as an element of its trade dress, but this tiny symbol on the bottom of the side panel of PRIME bottles does not contribute to the overall look and feel of PRIME products. In any event, the electrolyte symbol used by PRIME varies from bottle-to-bottle, as shown in the images below, which are captured from two different flavors of PRIME sold at the same retailers.



71. Prime Hydration identifies the inclusion of the phrases “Prime Hydration” and “Refresh, Replenish, Refuel” as an element of its trade dress, but these phrases do not contribute to the overall look and feel of PRIME products. Indeed, “Refresh, Replenish, Refuel” appears only in tiny copy in a paragraph of text on PRIME bottles, so it cannot possibly be an element of Prime Hydration’s trade dress. Notably, Prime Hydration has not applied to register the descriptive words “Refresh, Replenish, Refuel” as trademarks. Similarly, although it has applied to register “Prime Hydration” as a trademark, it has been required to disclaim any exclusive rights in the word “hydration” because, the U.S. Patent and Trademark Office found, that word is descriptive for hydration products.

72. Beyond the varied coloring and gradients, PRIME further varies the shape and texture of its bottles. For example, in response to consumer inquiries about inconsistent packaging between the United States and the U.K., Prime admitted that “PRIME Hydration bottles can be found in a variety of shapes and sizes due to numerous bottle suppliers and recycling regulations.”¹ Even in the United States, Prime sells its beverages in stock bottles with different textures and designs. On the left below is an image of the bottom of a PRIME Ice Pop

¹ <https://www.birminghammail.co.uk/whats-on/shopping/prime-reveals-real-reason-its-26148573>

bottle, and on the right is a PRIME X bottle. These inconsistencies in packaging likely create variance in the feel in the hands of consumers and a variance in overall commercial impression.



73. To the extent Prime Hydration uses consistent trade dress for its PRIME hydration products, it is merely a stock bottle with a colored wrap and a vertical, bolded logo. This trade dress is unprotectable as a matter of law because it is commonplace and functional.

74. In any event, regardless of the scope of Prime Hydration's purported trade dress, each of the Claimed Trade Dress Elements is functional, as explained in Paragraphs 25–35, *supra*.

75. And as explained in Paragraphs 25–35, *supra*, each of the Claimed Trade Dress Elements is commonplace in the hydration beverage industry. Prime Hydration is not permitted to monopolize, individually or collectively, such ubiquitous elements as vividly colored labels, a large and bold logo, vertical logo orientation, coordination of the color of the cap with the color of the label, and placement of the volume information at the bottom of the label. Prime Hydration's suggestion that this design is distinctive is false. Accordingly, because they are

commonplace in the hydration beverage industry, the Claimed Trade Dress Elements are not inherently distinctive.

76. Nor have the Claimed Trade Dress Elements acquired distinctiveness, especially in light of the wide variation in the packaging for PRIME hydration drinks. The vast market of third-party hydration beverage brands who utilize similar combinations of elements demonstrate that such elements are standard elements that consumers would not recognize as distinctive to PRIME.

There is No Likelihood of Confusion Between the Look and Feel of PRIME and MÁ+ BY MESSI

77. Even if Prime Hydration could establish some protectable trade dress—and it cannot—there is simply no likelihood of consumer confusion between the two brands.

78. In contrast to the wide variation in the presentation of PRIME products with literally dozens of unique designs, *see* Paragraphs 63–72, *supra*, the MÁ+ BY MESSI brand is remarkably consistent and uniform. That alone helps distinguish between the two brands, because the stable brand identity of MÁ+ BY MESSI trains consumers to understand that it is distinct from the erratic branding of PRIME.

79. The most prominent and distinctive element of both products is the large, bold brand-name logo on each bottle. Other than being written in large, bold, and vertically oriented fonts (which are commonplace, functional characteristics), the PRIME and MÁ+ BY MESSI logos have no similarities in sight, sound, or meaning. “MÁ+” is written in the Spanish language and lowercase font, is always black (with no outlining), runs upward from the bottom of the bottle (consistent with the positive, upward-looking orientation of the MÁ+ BY MESSI brand and with the typical orientation in the hydration industry), and features a prominent accent above the “A.” In contrast, PRIME is written in uppercase font, orients downward from the top

of the bottle, widely varies in color (from iridescent blue to glow-in-the-dark green to copper to white to pink) and is commonly written with other elements, such as outlining or three-dimensional block lettering. The image below shows the consistent presentation of the MÁS+ BY MESSI logo next to three of the many presentations of the PRIME logo. The use of such radically different brand names and logos helps dispel any potential confusion.



80. The colors on the bottles are different. As demonstrated by the images below, a direct comparison of the four flavors of MÁS+ BY MESSI with the four most-comparable flavors of PRIME (Blue Raspberry, Orange, Strawberry Melon, and Lemonade) shows that the core designs of the products, including their coloring schemes, differ significantly. The PRIME bottles feature completely solid, highly saturated colors. MÁS+ BY MESSI incorporates a distinct color gradient (incorporating a shadow of the Accent behind the MÁS+ BY MESSI logo) with less-saturated colors and in different pantones than the PRIME bottles.



81. The two brands also have radically different celebrity founders with different bases for fame, different reputations, and different fanbases. They could not be reasonably confused for each other. While Mr. Messi gained his global stardom through his long and

remarkable professional soccer career, Logan Paul and KSI are young social media influencers who became popular among young people through their respective YouTube channels. Just as Mr. Messi is featured prominently in the branding and advertising for MÁS+ BY MESSI, the names and faces of both Logan Paul and KSI are featured prominently on the packaging, website, and social media for PRIME. Below is an image from the PRIME website depicting Mr. Paul and KSI holding bottles of PRIME. The close association of Mr. Messi with MÁS+ BY MESSI and the close association of Mr. Paul and KSI with PRIME helps distinguish the two products, because consumers are highly unlikely to associate Mr. Messi with either Mr. Paul or KSI.



82. This is particularly true in light of Mr. Paul’s many highly publicized scandals since his emergence as a YouTube influencer. For example, in 2017, Mr. Paul drew public ire for publishing a vlog making light of Japan’s Aokigahara, a forest infamously referred to as “suicide forest,” including uncensored footage of a man who appeared to have hanged himself. In 2018, Mr. Paul drew significant negative publicity after he posted a video of himself tasering dead rats at his home. In 2023, he announced a launch of a crypto video game and, after failing to release it, was the subject of a class action lawsuit. Because of these controversies and other

public stunts, the public understands who Logan Paul is, and it can easily distinguish him and his business partners from Mr. Messi.

83. In addition, the parties have different target demographics for their products. While Prime Hydration product appeals primarily to children and teenagers (who are the demographic most familiar with the influencer content of Logan Paul and KSI), MÁ+ BY MESSI primarily targets a broader and more mature consumer demographic.

84. The two products are also advertised very differently. PRIME markets primarily through social media buzz, paid YouTube influencers and content creators, and stunt-based marketing. For example, Mr. Paul and KSI launched PRIME through an unorthodox public stunt in which individuals threw empty PRIME bottles at them pretending to be angry to generate social media buzz and interest. Mark Anthony's marketing for MÁ+ BY MESSI is far more traditional by comparison.

85. The reception to MÁ+ BY MESSI has been overwhelmingly positive since it entered the market. In contrast, Prime Hydration has faced significant controversy since its launch of PRIME, making consumer confusion even more unlikely. For example, multiple countries, including New Zealand, Slovenia, and the Netherlands, have recalled or banned PRIME energy drinks from their countries because of their appeal to children and their likelihood to cause a range of side effects. Prime Hydration is also facing multiple lawsuits, including one alleging that the company falsely advertises its products as healthy while they contain perfluoroalkoxy alkanes ("PFAs") (also sometimes known as "forever" chemicals). And some members of Congress, including Senate Majority Leader Chuck Schumer, have called on

the FDA to investigate Prime Hydration for its “absurd caffeine content” and “marketing targeting kids on social media.”² MÁS+ BY MESSI has had no such controversy.

86. For all of these reasons and others, Mark Anthony is well-within its rights to launch MÁS+ BY MESSI and sell it to customers internationally.

Mark Anthony Has Not Infringed Any of Prime Hydration’s Trademark Rights

87. Prime Hydration claimed in its letters to Mark Anthony that Mark Anthony’s use of the descriptive phrase “Replenish, Refresh, Revive” infringes Prime Hydration’s unregistered rights in the “REFRESH, REPLENISH AND REFUEL” trademark. Prime Hydration uses the phrase “refresh, replenish, and refuel” as descriptive language on its bottles to describe the benefits of its PRIME products, as seen below (in blue). Prime Hydration also uses the phrase in the footer of its website to describe the benefits of its PRIME products, as shown below (in black). On information and belief, Prime Hydration does not use REFRESH, REPLENISH AND REFUEL as a trademark for any goods or services, so it has no trademark rights in this mark. In any event, Mark Anthony does not use “replenish, refresh, revive” (which is a common type of descriptive phrase in the hydration beverage industry, *see* Paragraph 34, *supra*) as a trademark or slogan; rather Mark Anthony uses the phrase to accurately describe of the better-for-you hydration benefits offered by MÁS+ BY MESSI. Mark Anthony’s use of these phrases is thus a descriptive fair use that is immune from challenge.

² <https://www.democrats.senate.gov/newsroom/press-releases/majority-leader-schumer-demands-fda-investigate-prime-for-absurd-caffeine-content-and-marketing-targeting-kids-on-social-media-schumer-warns-parents-that-summers-hottest-drink-has-so-much-caffeine-that-it-puts-red-bull-to-shame>.

PRIME WAS DEVELOPED TO FILL THE VOID
WHERE GREAT TASTE MEETS FUNCTION.
WITH BOLD, THIRST QUENCHING FLAVORS
TO HELP YOU REFRESH, REPLENISH, AND
REFUEL, PRIME IS THE PERFECT BOOST FOR
EVERY ENDEAVOR. WE'RE CONFIDENT
YOU'LL LOVE IT AS MUCH AS WE DO.
HUMBLY, THE PRIME TEAM

ABOUT PRIME

PRIME was developed to fill the void where great taste meets function. With bold, thirst-quenching flavors to help you refresh, replenish, and refuel, PRIME is the perfect boost for any endeavor. We're confident you'll love it as much as we do.

88. Prime Hydration also claimed in its letters to Mark Anthony that Mark Anthony's use of the phrase "Think positive. Drink positive. Get more out of life." infringes Prime Hydration's unregistered rights in the "DRINKPRIME" trademark. Prime Hydration uses the phrase "drinkprime" in the domain name for its PRIME product (www.drinkprime.com) and in its social media handles on Instagram and TikTok (@drinkprime), but, on information and belief, Prime Hydration does not use the phrase DRINKPRIME (or DRINK PRIME) as a trademark for any goods or services. In any event, Mark Anthony does not use "Think positive. Drink positive. Get more out of life." as a trademark or slogan; rather Mark Anthony uses the phrase to accurately describe of the positive benefits Mark Anthony aims to promote through MÁS+ BY MESSI. And, even if Mark Anthony were using "Think positive. Drink positive. Get more out of life." as a trademark, no reasonable consumer could confuse the phrase with DRINKPRIME, which is distinct in sight, sound, and meaning, nor could Prime Hydration monopolize the generic word "drink" when used in connection with beverages.

89. Prime Hydration also claimed in its letters to Mark Anthony that Mark Anthony's use of the phrase "Positive Hydration" on its bottles of MÁS+ BY MESSI infringes Prime Hydration's rights in the "PRIME HYDRATION" and "PRIME HYDRATION+" trademarks. Mark Anthony does not use "Positive Hydration" (which is a common type of descriptive phrase in the hydration beverage industry, *see* Paragraph 34, *supra*) as a trademark or slogan; rather

Mark Anthony uses the phrase to accurately describe of the better-for-you hydration benefits offered by MÁS+ BY MESSI. Accordingly, Mark Anthony’s use of these phrases is thus a descriptive fair use that is immune from challenge. In any event, Mark Anthony’s use of “Positive Hydration” does not infringe Prime Hydration’s rights in PRIME HYDRATION or PRIME HYDRATION+. No reasonable consumer could confuse the two products based on Mark Anthony’s use of “Positive Hydration” at the top of its bottles, which clearly references the positive hydration benefits of MÁS+ BY MESSI and correlate with both the Spanish word “más” and the “+” symbol in the brand’s name. Furthermore, as shown in the images below, Prime Hydration uses “Hydration” and “Hydration Drink” on its bottles in a descriptive sense, indicating that PRIME is a hydration beverage. Even if consumers would view POSITIVE HYDRATION (or POSITIVE HYDRATION+) as an indicator of source—and they would not—Prime Hydration has no right to monopolize use of the descriptive word “hydration” used for hydration beverages. For that reason, Prime Hydration was forced to disclaim the word “HYDRATION,” leaving “PRIME” as the only distinctive element of the PRIME HYDRATION mark. *See* Examiner’s Amendments to Reg. Nos. 6,892,538 and 7,197,040, dated May 12, 2022; *see also* June 18, 2024 Office Action in Ser. No. 98/248,287.



COUNT ONE
(Declaratory Judgment of No Trade Dress Infringement)

90. Mark Anthony repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

91. Prime Hydration contends that Mark Anthony's production and sale of the MÁS+ BY MESSI hydration beverages infringes Prime Hydration's trade dress rights, which Mark Anthony reads to include Sections 43(a) and 43(c) of the Lanham Act, 15 U.S.C. § 1125(a), (c), as well as common law trade dress infringement. Prime Hydration has threatened legal action against Mark Anthony and its subsidiaries on this basis.

92. Prime Hydration's claimed trade dress is invalid and unprotectable because it is commonplace, functional, lacks distinctiveness (including, without limitation, acquired distinctiveness), and not used consistently by Prime Hydration for its PRIME beverages.

93. Even if Prime Hydration has enforceable trade dress rights, there is no likelihood of confusion between MÁS+ BY MESSI products and PRIME products given the crowded field of similar trade dress in the hydration market, the prominent display of different brand names on the products, the visual differences between the products, the different celebrity affiliations, the different brand reputations, and other factors.

94. An actual, present, and justiciable controversy has arisen between Mark Anthony and Prime Hydration concerning Mark Anthony's right to produce and sell its MÁS+ BY MESSI hydration products and similar products in light of, *inter alia*, Prime Hydration's purported trade dress claims.

95. Mark Anthony seeks a declaratory judgment from this Court that Prime Hydration's claimed trade dress is invalid and thus that Mark Anthony's MÁS+ BY MESSI hydration products

do not infringe on any trade dress under federal law or otherwise violate any of Prime Hydration's rights.

96. Mark Anthony seeks a declaratory judgment that Prime Hydration has suffered no, and will not suffer any, cognizable damages or loss of goodwill because of Mark Anthony's production and sale of the MÁS+ BY MESSI hydration products.

97. Mark Anthony seeks a declaratory judgment that Prime Hydration is not entitled to injunctive relief or damages under 15 U.S.C. § 1125.

98. Such declarations are necessary and appropriate at this time so that Mark Anthony may ascertain its rights with respect to the production and sale of its MÁS+ BY MESSI hydration products.

COUNT TWO
(Declaratory Judgment of No Trademark Infringement)

99. Mark Anthony repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

100. Prime Hydration contends that Mark Anthony's use of certain descriptive phrases infringes Prime Hydration's registered and unregistered trademark rights, which Mark Anthony reads to include Sections 43(a) and 43(c) of the Lanham Act (15 U.S.C. § 1125(a), (c)), Section 32 of the Lanham Act (15 U.S.C. § 1114), as well as common law trademark infringement. Prime Hydration has threatened legal action against Mark Anthony and its subsidiaries on this basis.

101. Prime Hydration has no trademark rights in the REFRESH, REPLENISH AND REFUEL mark because it is not using that mark as a trademark. Even if Prime Hydration does have such trademark rights, Mark Anthony is immune from liability for its descriptive fair use of the phrase "Replenish, Refresh, Revive" on MÁS+ BY MESSI bottles, including under 15 U.S.C.

§ 1115(b)(4). Mark Anthony has therefore not infringed Prime Hydration’s rights, if any, in the REFRESH, REPLENISH AND REFUEL mark.

102. Prime Hydration has no trademark rights in the “drink” portion of the phrase DRINKPRIME. Even if Prime Hydration does have such trademark rights, Mark Anthony is immune from liability for its descriptive fair use of the phrase “Think positive. Drink positive. Get more out of life.” in advertising for MÁ+ BY MESSI products, including under 15 U.S.C. § 1115(b)(4). Even if Mark Anthony were not immune from liability for such use, there is no likelihood of confusion between Prime Hydration’s use of DRINKPRIME in its domain name and social media handles and Mark Anthony’s use of “Think positive. Drink positive. Get more out of life.” in advertising for MÁ+ BY MESSI products. Mark Anthony has therefore not infringed Prime Hydration’s rights, if any, in the DRINKPRIME mark.

103. Prime Hydration has no trademark rights in the “hydration” portion of the phrase PRIME HYDRATION or the phrase PRIME HYDRATION+. Moreover, Mark Anthony is immune from liability for its descriptive fair use of the phrase “Positive Hydration,” including under 15 U.S.C. § 1115(b)(4). Even if Mark Anthony were not immune from liability for such use, there is no likelihood of confusion between Mark Anthony’s descriptive use of “Positive Hydration” and Prime Hydration’s use of PRIME HYDRATION (or PRIME HYDRATION+), if any. Mark Anthony has therefore not infringed Prime Hydration’s rights, if any, in the POSITIVE HYDRATION or PRIME HYDRATION+ marks.

104. An actual, present, and justiciable controversy has arisen between Mark Anthony and Prime Hydration concerning Mark Anthony’s right to produce and sell its MÁ+ BY MESSI hydration products and similar products in light of, *inter alia*, Prime Hydration’s purported trademark claims.

105. Mark Anthony seeks a declaratory judgment from this Court that certain of Prime Hydration's claimed trademark rights are invalid and that, in any event, the packaging and advertising for Mark Anthony's MÁ+ BY MESSI hydration products do not infringe on any trademark under federal law or otherwise violate any of Prime Hydration's rights.

106. Mark Anthony seeks a declaratory judgment that Prime Hydration has suffered no, and will not suffer any, cognizable damages or loss of goodwill because of Mark Anthony's production and sale of the MÁ+ BY MESSI hydration products.

107. Mark Anthony seeks a declaratory judgment that Prime Hydration is not entitled to injunctive relief or damages under 15 U.S.C. § 1125.

108. Such declarations are necessary and appropriate at this time so that Mark Anthony may ascertain its rights with respect to the production and sale of its MÁ+ BY MESSI hydration products.

PRAYER FOR RELIEF

WHEREFORE, Mark Anthony respectfully demands judgment in its favor and against Defendant Prime Hydration for the following relief:

1. Entry of judgment according to the declaratory relief sought, in favor of Mark Anthony and against Prime Hydration on all counts;
2. Declaratory judgment that Mark Anthony's manufacture, distribution, sale, and advertising of the MÁ+ BY MESSI hydration drinks, and similar products, does not infringe any of Prime Hydration's alleged intellectual property rights, including any trademark or trade dress rights;
3. Declaratory judgment that Prime Hydration has no protectable trade dress rights in the packaging for PRIME hydration beverages;

4. Declaratory judgment that Prime Hydration has no protectable trademark rights in the DRINK PRIME or REFRESH, REPLENISH AND REFUEL marks;

5. Declaratory judgment that Prime Hydration is not entitled to any injunctive relief with respect to Mark Anthony's manufacture, distribution, sale, or advertising of MÁS+ BY MESSI hydration drinks or similar products;

6. Declaratory judgment that Prime Hydration has not suffered any, and will not suffer any, cognizable damages or loss of goodwill because of Mark Anthony's production, distribution, sale, or advertising of its MÁS+ BY MESSI hydration drinks, and thus is not entitled to any relief under the Lanham Act or any similar state law;

7. An award of reasonable attorneys' fees to Mark Anthony, to the extent authorized by law;

8. An award of Mark Anthony's costs in this action, to the extent authorized by law;

9. All such other costs and further relief as to which Mark Anthony may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

Dated: October 8, 2024

/s/ David H. Bernstein

David H. Bernstein (dhbernstein@debevoise.com)
Jyotin Hamid (jhamid@debevoise.com)
Megan K. Bannigan (mkbannigan@debevoise.com)
Timothy Cuffman (tcuffman@debevoise.com)
Jacob Hochberger (jhochberger@debevoise.com)
DEBEVOISE & PLIMPTON LLP
66 Hudson Boulevard
New York, NY 10001
(212) 909-6000

Attorneys for Plaintiffs Mark Anthony International SRL, Mark Anthony Brands International Unlimited Company, and Mas+ Next Generation Beverage Co.