

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

TOM DANIELSON,)	
)	
Plaintiff,)	
)	
v.)	
)	
EVOLVE BEVERAGES, INC., a)	
Hawaii corporation; and)	
STEPHEN BROWN,)	Jury Trial Demanded
)	
Defendants.)	
)	

COMPLAINT

Now comes Tom Danielson, by and through his attorneys, and for his complaint against Evolve Beverages, Inc. and Stephen Brown, states as follows:

Introduction and Nature of Case

1. The Defendants in this case brazenly defrauded Mr. Danielson and breached their contract with Mr. Danielson.
2. Mr. Danielson is a professional cyclist. In the months leading up to the 2012 USA Pro Cycling Challenge in Colorado, the Defendants persuaded Mr. Danielson to sign a contract to serve as a spokesperson for a sports drink. Mr. Danielson lived up to his end of the bargain, promoting the drink before and during the USA Pro Cycling Challenge.
3. The Defendants were supposed to pay Mr. Danielson \$600,000

plus royalties over the three-year term of the contract, including \$75,000 within 10 days of the contract being effective. Defendants have failed to pay Mr. Danielson a single penny.

4. Through this action, Mr. Danielson seeks to recover the damages owed to him through the breach of his spokesperson contract and the frauds that Defendants committed in persuading Mr. Danielson to endorse their product.

Parties

5. Tom Danielson is a citizen of Colorado. He is one of the world's best professional cyclists.

6. Evolve Beverages, Inc. ("Evolve") is a Hawaii corporation with its principal place of business in Nevada.

7. Stephen Brown was the founder and CEO of Evolve. Defendant Brown is a citizen of Nevada.

Jurisdiction and Venue

8. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because the dispute arises between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

9. Pursuant to 28 U.S.C. § 1391, venue is proper in this District because a substantial portion of the events giving rise to this action occurred in this judicial district. For example, Defendant Brown initiated the relationship with Mr. Danielson by contacting Mr. Danielson's personal

representative in this District to discuss sponsorship opportunities. The primary vehicle for Mr. Danielson to promote the Evolve product – the USA Pro Cycling Challenge – occurred in this District in August 2012. Evolve’s president traveled to this District for the 2012 USA Pro Cycling Challenge and met with Mr. Danielson and his personal representative regarding the spokesperson contract. Further, Defendant Brown directed materially false and fraudulent telephonic and email communications to Mr. Danielson and his personal representative in this District. Finally, the damages caused by Defendants’ conduct were suffered in this District.

Additional Facts

I. Mr. Danielson’s Background

10. Mr. Danielson is one of the world’s best professional cyclists. He won the 2001 NCAA mountain bike championship while a student at Fort Lewis College. He has been a professional cyclist since 2001, and has been part of the Garmin-Sharp team since 2008. His career highlights include three Top 10 finishes in the Vuelta a Espana, one of the three “Grand Tours” of professional cycling (along with the Tour de France and Giro d’Italia). Mr. Danielson finished eighth in the 2011 Tour de France, where he helped Garmin-Sharp win the overall team classification. Mr. Danielson finished third in the 2011 and 2012 Tour of California. He finished fourth in the 2011 USA Pro Cycling Challenge, and seventh in that race in 2012.

11. In 2012, when the Defendants solicited Mr. Danielson to serve

as a spokesperson for their sports drink product, Mr. Danielson was a widely-known and highly-visible athlete. In light of being a long-time Colorado resident and member of the Colorado-based Garmin-Sharp team, Mr. Danielson was especially known and visible in Colorado. This made Mr. Danielson a particularly attractive candidate as a spokesperson in the time leading up to, and during, the 2012 USA Pro Cycling Challenge.

12. Started in 2011, the USA Pro Cycling Challenge is one of America's premier cycling events. It is a week-long stage race through several Colorado cities. For the past two years, the event has finished in downtown Denver, with hundreds of thousands people in attendance and a live television audience from more than 150 countries watching on NBC.

13. During his time as a professional cyclist, and especially in the last several years, Mr. Danielson has been a spokesperson for several products and brands. For example, at the time that Defendants solicited Mr. Danielson's involvement as a spokesperson, Mr. Danielson was a spokesperson for Core Power beverages, among other products and brands.

II. Defendants' Background

14. Defendant Evolve Beverages is the current incarnation of what started as "All Sports Beverages, Inc." Defendant Brown incorporated All Sports Beverages, Inc. on March 3, 2012. Less than a month later, on April 2, 2012, Mr. Brown filed an amendment changing the corporate name to "Code Beverages, Inc."

15. On information and belief, Code Blue beverages – which has marketed Code Blue-branded sports drinks for several years – threatened legal action against Code Beverages, Inc. for trademark infringement. In response to this threat, Mr. Brown filed another name change amendment on July 25, 2012, this time settling on “Evolve Beverages, Inc.”

16. Mr. Brown is a serial “entrepreneur.” He has started dozens of companies in the past several years. On information and belief, none of those companies continues to operate today.

17. For example, immediately before starting the entity now known as Evolve Beverages, Inc., Mr. Brown founded and operated Umii Products, which, according a Umii Products press release, was a “range of daily supplements all in liquid form that will provide all ages, especially our children, with the much needed nutrients required to lead healthy lives.” According to Umii Products’ Twitter feed, Umii “launch[ed]” around June 17, 2011. In the next several months, Umii “partnered” with several other companies and “open[ed] office[s]” in Atlanta, Moscow, Sydney, Sao Paulo, London, Vancouver, and Dubai. According to a Umii press release, Umii signed an agreement on February 14, 2012 to become the title sponsor for the 2012 Maui Marathon. On information and belief, Umii ceased operating as a company sometime in the spring of 2012, long before the Maui Marathon was run in September 2012.

III. The Contract Negotiations

18. In March 2012, Mr. Brown contacted Mr. Danielson's personal representative to discuss Mr. Brown's desire to find a spokesperson for Evolve's sports drink product.

19. In April 2012, Mr. Brown and Mr. Danielson's representative negotiated a spokesperson agreement. Among other terms, Mr. Brown requested that Mr. Danielson's endorsement of the Evolve sports drink be "exclusive," meaning that Mr. Danielson would have to give up his role as a spokesperson for Core Power sports drinks.

20. By May 2012, the parties had settled on terms for Mr. Danielson to serve as a spokesperson for Evolve for three years. In exchange for the right to use Mr. Danielson's name and image in its marketing, and for Mr. Danielson agreeing to make certain personal and media appearances, Evolve agreed to pay Mr. Danielson \$600,000 over three years. Mr. Danielson was also to receive certain royalties. Finally, Evolve agreed to pay Mr. Danielson \$75,000 within 10 days.

21. At that time, Mr. Danielson ended his relationship with Core Power beverages.

IV. Defendants' Use of Mr. Danielson's Name and Image

22. By July 2012, Evolve had developed the products it intended to launch in conjunction with the 2012 USA Pro Cycling Challenge in August 2012. Those products prominently featured Mr. Danielson on the label.

23. In August 2012, Evolve heavily promoted its sports drink products. Among other things, Evolve operated a website and a Facebook page that showed images of the Evolve bottles, again prominently displaying Mr. Danielson's name and image.

24. As of April 26, 2013, Evolve continues to operate a Facebook page promoting its sports drink. Mr. Danielson's name and image are the very first things displayed on the page.

V. Defendants' Misrepresentations

25. From the first time that Defendant Brown contacted Mr. Danielson's personal representative, Defendants engaged in a fraudulent scheme to use Mr. Danielson as a spokesperson but always intending to not pay Mr. Danielson for using him as a spokesperson.

26. Defendants regularly made material misrepresentations to and omitted material facts from Mr. Danielson and his personal representative. For example, in early August 2012, Mr. Danielson's representative asked Defendant Brown for assurance that Evolve was on solid footing. On August 11, 2012, Defendant Brown provided Mr. Danielson's representative an email that purportedly showed the transfer of millions of dollars to an account controlled by Defendant Brown. Defendant Brown also made oral representations to Mr. Danielson's representative at this time to the effect that Evolve was flush with cash and would pay Mr. Danielson soon.

27. On August 23, 2012, Joe Warne, an Evolve executive, personally

attended the USA Pro Cycling Challenge stage that finished in Aspen.

28. On August 27, 2012, Mr. Warne personally met with Mr. Danielson's representative. Mr. Warne said that there were major problems with Defendant Brown. Mr. Warne further said "we're good for our word," despite the problems with Defendant Brown.

29. On September 8, 2012, Mr. Warne told Mr. Danielson's representative that Defendant Brown "is just a scam." Mr. Warne also told Mr. Danielson's representative that the August 11, 2012 email from Defendant Brown purporting to show funds available to Evolve was fake.

Count I: Breach of Contract (against Defendant Evolve Beverages, Inc.)

30. Mr. Danielson incorporates into Count I all other paragraphs of this Complaint.

31. Mr. Danielson and Evolve Beverages, Inc. contracted for Mr. Danielson to serve as spokesperson for Evolve's sports drink. That contract was mutual and supported by full consideration.

32. Mr. Danielson performed all of his obligations under the contract and has never been in breach of the contract.

33. In exchange for using his name and image on the Evolve product, the contract requires Evolve to pay Mr. Danielson \$600,000 plus royalties on sales of the Evolve sports drinks.

34. Evolve has breached the contract by failing to pay Mr. Danielson a single penny.

35. Mr. Danielson has been damaged by Evolve's breach of contract.

Count II: Breach of Contract (against Defendant Brown)

36. Mr. Danielson incorporates into Count II all other paragraphs of this Complaint.

37. Through his actions, Defendant Brown forfeited the veil of limited liability normally afforded to corporate entities and their individual owners and officers.

38. Defendant Brown abused the corporate form in order to carry out a fraudulent scheme.

39. On information and belief, Defendant Brown controlled and owned Evolve in its entirety at least through August 2012.

40. Defendant Brown used Evolve to perpetrate a scheme. In particular, Defendant Brown used Evolve to enter into promotional and spokesperson agreements with athletes and athletic events and teams. All of these agreements were forward-looking in that Evolve promised to pay money in the future. Evolve entered into more than \$7 million of endorsement contracts with individuals and entities, including Mr. Danielson, the USA Pro Cycling Challenge, Lifetime Fitness, Futures Collegiate Baseball League, the Northwoods League, and others. On information and belief, Evolve failed to pay single penny to any of these entities or individuals. In short, Defendant Brown used the corporate form of Evolve to extract services and value from a series of people and businesses,

all without ever paying for those services or value.

41. Further, Defendant Brown then used the brand value created by these fraudulently-obtained agreements in order to enhance the value of Defendant Evolve.

42. Defendant Brown then abandoned Evolve once he had received the value of the promotional contracts that Evolve entered into, leaving Evolve as a shell of a company that effectively ceased operating in August 2012.

43. Mr. Danielson was harmed by the breach of contract for which Mr. Brown is personally responsible.

Count III: Promissory Estoppel (against all Defendants)

44. Mr. Danielson incorporates into Count III all other paragraphs of this Complaint.

45. Defendants promised to Mr. Danielson that they would compensate him as a spokesperson for Evolve's sports drink.

46. Defendants further represented to Mr. Danielson that Evolve was a financially sound entity that had the wherewithal to continue its operations and compensate Mr. Danielson.

47. Defendants reasonably should have expected that these promises would induce action and/or forbearance by Mr. Danielson.

48. Mr. Danielson reasonably relied on these representations to his detriment. In reliance on these representations, Mr. Danielson ended other

sponsorship relationships he had, acted as spokesperson for Evolve, and allowed his name and image to be used by Evolve on its products.

49. Mr. Danielson was damaged by his reasonable reliance on these representations.

50. The promises that Defendants made to Mr. Danielson must be enforced to prevent injustice.

Count IV: Fraud (against all Defendants)

51. Mr. Danielson incorporates into Count IV all other paragraphs of this Complaint.

52. Defendants made false and fraudulent representations to Mr. Danielson.

53. Indeed, the entire purpose and plan of Defendant Evolve was to extract the value of Mr. Danielson's name, likeness, and promotional efforts without ever paying him anything.

54. Additionally, Defendants hid and otherwise omitted material facts from Mr. Danielson.

55. By way of example, Defendant Brown repeatedly represented that Defendant Evolve was a legitimate and well-funded entity that intended to pay Mr. Danielson (and other spokespeople) to promote a sports drink. In reality, and unbeknownst to Mr. Danielson at the time, Defendant Evolve never intended to pay him for the work he performed as a spokesperson and/or for the use of his name and image.

56. For further example, on August 11, 2012, Defendant Brown sent an email to Mr. Danielson's representative. That email purported to show a transfer of millions of dollars to an account controlled by Defendant Brown. Defendant Brown sent that email in response to concerns expressed by Mr. Danielson's representative about the financial wherewithal of Evolve.

57. By way of another specific example, on August 27, 2012, Mr. Warne told Mr. Danielson's representative that "we are good for our word." Again, this was in the context of a discussion about the financial wherewithal of Evolve and Evolve's failure to pay Mr. Danielson.

58. Defendants were aware at the time of these misrepresentations that they were false, and they made those misrepresentations with the intent that Mr. Danielson rely upon them.

59. These misrepresentations were material to Mr. Danielson. Mr. Danielson acted in reliance on them in agreeing to forego other sponsorship opportunities and serve as a spokesperson for Defendant Evolve.

60. Mr. Danielson was unaware at the time of these misrepresentations that they were false.

61. These false and fraudulent statements and omissions harmed Mr. Danielson.

Jury Trial Demanded

62. Mr. Danielson hereby demands trial by jury on all issues so triable.

WHEREFORE, Tom Danielson respectfully requests that the Court enter judgment in his favor and against Defendants, awarding Mr. Danielson his damages, costs, and attorney fees, as well as any other appropriate and available relief.

Respectfully submitted,

/s/Daniel M. Twetten

By One of Mr. Danielson's
Attorneys

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