



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

ANASTASIA WOLST,	)	
	)	
Plaintiff,	)	C.A. No.
	)	
v.	)	
	)	
MONSTER BEVERAGE CORPORATION	)	
F/K/A HANSEN NATURAL CORPORATION,	)	
a Delaware Corporation,	)	
	)	
Defendant.	)	

**VERIFIED COMPLAINT UNDER 8 DEL. C. § 220**

Plaintiff Anastasia Wolst (“Plaintiff”), by and through her undersigned attorneys, hereby submits this verified complaint and alleges, upon personal knowledge with respect to herself and her actions, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

**NATURE OF THE ACTION**

1. This action is brought under Section 220 of the Delaware General Corporation Law, 8 Del. C. § 220 (“Section 220”), to enforce Plaintiff’s statutory right to inspect and make copies of certain books and records of Defendant Monster Beverage Corporation f/k/a Hansen Natural Corporation (“Monster” or the “Company”).

2. Plaintiff sent an inspection demand on March 29, 2013 (the “Inspection Demand”) to Monster’s Board of Directors (the “Board”) to inspect certain books and records of the Company relating to the decision of the Board to reject Plaintiff’s litigation demand (the “Litigation Demand”).<sup>1</sup> The Litigation Demand demanded that the Board: (i) investigate possible violations of law described in the Litigation Demand; and (ii) commence a civil action against the officers of the Company for the misconduct identified.

<sup>1</sup> The Inspection Demand and the Litigation Demand are attached hereto as Exhibits A and B, respectively.

3. The Company responded to the Inspection Demand by providing only copies of minutes of meetings of the Board and of the special committee (the “Special Committee”) that considered the Litigation Demand, and stated that Plaintiff was not entitled to inspect any other documents.

4. Plaintiff now brings this action to enforce her rights under Section 220.

### **THE PARTIES**

5. Plaintiff is a shareholder of the Company, and has held her shares continuously since 1999.

6. Monster is a Delaware corporation with its principal executive offices located at 1 Monster Way, Corona, California 92879. Monster develops, markets, sells, and distributes “alternative” beverages, including Hansen’s Natural sodas and Monster Energy drinks. Until 2012, Monster was known as Hansen Natural Corporation.

### **FACTUAL BACKGROUND**

7. Until 2002, Monster was a modest drink company that had achieved limited notoriety for their unusual flavors of Hansen’s Natural soda, and the Company’s stock consistently traded below \$1 per share. Once the energy drink market took off, the Company developed the Monster Energy brand, and sales increased rapidly. Monster Energy became a viable competitor to Red Bull energy drink in 2002, and the Company’s shares began a meteoric rise.

8. After several years of explosive growth, however, there was a slowdown. In August 2006, the Company disclosed that it had missed analyst estimates by a penny. On this news, the Company’s stock dropped 35% in two days. Based on the market’s reaction, the directors and officers of Monster (collectively, “Management”) now understood the importance of meeting analyst estimates. Management vowed to prevent another stock collapse and began a scheme of misleading shareholders about the Company’s financial results and business outlook.

9. Toward that end, Management repeatedly touted the Company’s distribution agreement with Anheuser-Busch (“A-B”), by, among other things: (i) issuing a press release on

November 9, 2006 announcing that “the implementation of the distribution arrangements with selected [A-B] wholesalers is progressing well”; (ii) announcing in a press release issued on February 9, 2007 that a new agreement with A-B “opens a significant new and incremental sales channel for Monster Energy”; and (iii) claiming in the same press release that “[A-B] has been an outstanding business partner for the last eight months.”

10. These statements were materially false and misleading because Management failed to disclose that the Company was experiencing difficulties in its relationship with A-B. To conceal the truth, Management downplayed the Company’s problems with A-B, and described them as “initial hiccups” and problems with “initial execution,” which had been resolved. However, these distribution problems included: (i) A-B’s lack of effort to distribute the Company’s products beyond Monster Energy drinks; (ii) A-B’s legal issues with distributing in dry counties; and (iii) A-B’s inability to distribute the Company’s products to segmented purchasers. These problems prevented the partnership from becoming successful for the Company, and significantly impacted sales and earnings.

11. To prevent another stock collapse, Management caused the Company to announce extraordinary financial results for the second quarter of 2007 (“2Q07”). The Company stunned the market by reporting sales of \$280 million and \$0.47 earnings per share, beating estimates by as much as \$33 million and \$0.10 earnings per share. But the reported financials were false and misleading. Management failed to disclose or reference in the Company’s financial statements that the supposed “record sales” resulted from channel stuffing. Specifically, the Company was set to increase the price of their Monster Energy drinks, and many retailers stockpiled inventory to offset some of the increased cost. The stockpiling caused an abnormal boost in sales that Management caused the Company to downplay and instead tout as sustainable increased sales. By mid-2007 distributors were saturated with Monster products and A-B wholesalers were calling one another to see if they could transfer their inventory to other distributors.

12. The Company’s extraordinary 2Q07 results were also the product of violations of Generally Accepted Accounting Principles (“GAAP”). A national account manager reported that

the Company's Vice President of National Accounts, Richard Hastings, instructed him to withhold reporting promotional costs associated with the lucrative Wal-Mart account in 2Q07 to improve the Company's results. The withholdings were significant because, by the end of fiscal year 2007, Wal-Mart accounted for approximately 12% of the Company's net sales of \$904.5 million.

13. Further, certain members of Management (the "Insider Sellers"), knowing that the A-B relationship was problematic and that the Company's 2Q07 financial results were false, began unloading their stock. In a short three-month period, the Insider Sellers dumped \$94 million of their shares in the Company.

14. After the Insider Sellers got out with millions of dollars, on November 8, 2007 (only eight weeks after the stock dumps), the Company shocked the market by announcing that it would miss estimates by as much as \$0.03 per share. On the earnings call with investors the same day, the Company's Chief Executive Officer, Rodney Sacks, revealed that, contrary to its prior representations, A-B had not embraced the Company's brands and "there is a greatly challenging part of matching our distribution needs with the traditional [A-B] system." The market realized that the 2Q07 financial results were a mirage. On this news, Monster's stock collapsed 32.5%.

15. On October 15, 2008, a shareholder derivative action was filed in the United States District Court for the Central District of California titled: *Raymond Merkel v. Rodney C. Sacks et al.*, Case No. 08-06788-JFW-MANx, which was later consolidated under the caption: *In re Hansen Derivative Shareholder Litigation*, Lead Case No. 08-06788-SGL-JCx. On August 9, 2010, the district court granted Plaintiff's motion to intervene, and Plaintiff's verified amended consolidated shareholder derivative complaint (the "Complaint") was filed on October 1, 2010.

16. The Company filed a motion to dismiss the Complaint, which was granted by the district court's order dated May 12, 2011 (the "Order"), based on the court's finding that Plaintiff had failed to: (i) allege demand futility; or (ii) make a pre-litigation demand.

17. On June 10, 2011, Plaintiff filed a timely notice that she was appealing the Order (the “Appeal”) to the United States Court of Appeals for the Ninth Circuit (the “Ninth Circuit”).

18. In order to initiate the Litigation Demand, Plaintiff decided to voluntarily dismiss the Appeal.

19. On February 14, 2012, Plaintiff and the Company filed a joint stipulated motion for dismissal of the Appeal, which was granted by the Ninth Circuit on February 15, 2012.

## **DEMANDS AND REJECTIONS**

### **Litigation Demand**

20. On February 23, 2012, Plaintiff sent the Litigation Demand to the Board. The Litigation Demand described the wrongdoing set forth above and demanded that the Board: (i) investigate possible violations of law; and (ii) commence a civil action against the officers of the Company for the misconduct identified.

21. On March 2, 2012, Monster acknowledged receipt of the Litigation Demand.

22. By letter dated October 19, 2012, the Company’s legal counsel notified Plaintiff that the Litigation Demand had been refused by the Special Committee and the Board.<sup>2</sup>

### **Inspection Demand**

23. On March 29, 2013, Plaintiff sent the Inspection Demand to the Board. The Inspection Demand demanded to inspect certain of the Company’s books and records under Section 220, specifically:

- a. The agenda and minutes for all meetings in which the [Board] or any of its members discussed Ms. Wolst’s February 23, 2012 litigation demand letter or the claims described in that letter (the “Claims”).

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<sup>2</sup> The Company’s October 19, 2012 letter is attached hereto as Exhibit C.

- b. The agenda and minutes for all meetings in which any Board Committee, including the Special Committee, or any of those Committees' members discussed those Claims.
- c. Any written materials provided to any Board Committee regarding the Claims or the investigation into the Claims.
- d. Any materials distributed to, and presentations made to or by the Board or any Board Committee, between February 23, 2012, and the present, regarding the Claims.
- e. The report describing the findings of the Special Committee.
- f. Any other materials considered by any member of any Board Committee or the Board regarding the Claims.
- g. The identity of each witness interviewed by the independent counsel.
- h. Transcriptions of the interviews with such witnesses if these exist and any notes of such witness interviews.
- i. The records reviewed by the independent counsel or by the Special Committee in the course of this investigation.

24. Counsel for the Company responded to the Inspection Demand on April 8, 2013, and agreed to provide certain documents provided that: (i) Plaintiff and Plaintiff's counsel entered into a confidentiality agreement with the Company; and (ii) Plaintiff confirmed her ownership of stock by executing a declaration under oath and providing documentary evidence.

25. After Plaintiff fulfilled these conditions by letter dated April 17, 2013, the Company's counsel responded on May 14, 2013, and provided Plaintiff with redacted copies of minutes of meetings of the Board and of the Special Committee that had considered the

Litigation Demand. The Company stated that Plaintiff was not entitled to inspect any other documents.<sup>3</sup>

26. On June 26, 2013, Plaintiff responded to the Company and reiterated a demand for the unredacted Special Committee report and associated minutes.

27. On July 16, 2013, the Company's counsel replied to Plaintiff's letter and noted that the Special Committee's report was only delivered orally to the Board.<sup>4</sup> The Company refused to provide any additional documents to Plaintiff.

28. Monster's failure to provide the documents requested in the Inspection Demand is in violation of Section 220 and is a decision not made in good faith.

29. The Inspection Demand states that Plaintiff demands to inspect and make copies of the books and records of Monster "to enable Ms. Wolst and her legal counsel to evaluate the Board's refusal to pursue Ms. Wolst's litigation demand and determine whether that refusal constituted a reasonable and good-faith exercise of the Board's business judgment." *See* Exhibit A, p. 2.

30. Under Section 220, the stated purposes are proper purposes for inspecting and making copies of the books and records of Monster.

31. The documents Plaintiff seeks to inspect and make copies of are reasonably related to the foregoing proper purposes of the Inspection Demand. The categories of books and records demanded in the Inspection Demand are narrowly tailored to include books and records concerning these proper purposes.

32. The Company's refusal to provide these documents after repeated requests is an improper denial of Plaintiff's rights as a shareholder. Accordingly, Plaintiff has no other option than to file this action to compel Monster to provide these documents for Plaintiff's inspection.

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<sup>3</sup> The May 14, 2013 letter is attached hereto as Exhibit D.

<sup>4</sup> The July 16, 2013 letter is attached hereto as Exhibit E.

## **CAUSE OF ACTION**

### **(Demand for Inspection Under 8 Delaware Code Section 220)**

33. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

34. On March 29, 2013, Plaintiff sent the Inspection Demand to the Board, demanding to inspect certain of the Company's books and records under Section 220.

35. Plaintiff has complied fully with all requirements under Section 220 of the Delaware General Corporation Law respecting the form and manner of making the Inspection Demand.

36. Plaintiff's demands for inspection are for proper purposes, and the specific books and records Plaintiff seeks to inspect are necessary, essential, and directly related to the satisfaction of these proper purposes.

37. Monster has not provided Plaintiff with access, or agreed to provide her with reasonable access, to these books and records.

38. Under Section 220, Plaintiff is entitled to an order permitting her to inspect and make copies of the books and records.

39. Plaintiff has no adequate remedy at law.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment and relief as follows:

A. An Order compelling the Company, its officers, directors, employees, and/or agents to immediately permit Plaintiff, her attorneys, and/or agents to inspect and make copies of the books and records of the Company as identified in the Inspection Demand;

B. An Order requiring the Company to pay Plaintiff's costs and expenses, including reasonable attorneys' fees, in connection with the prosecution of this Section 220 action; and

C. Granting such other and further relief as this Court may deem just and proper.

Dated: December 12, 2013

**COOCH AND TAYLOR, P.A.**

*/s/ Blake A. Bennett*

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