



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ANASTASIA WOLST,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	
)	
MONSTER BEVERAGE CORPORATION)	C.A. No. 9154-VCN
F/K/A HANSEN NATURAL)	
CORPORATION, a Delaware Corporation,)	
)	
<i>Defendant.</i>)	

DEFENDANT’S ANSWER

Defendant Monster Beverage Corporation, f/k/a Hansen Natural Corporation (“Monster”), answers Plaintiff Anastasia Wolst’s (“Plaintiff”) Verified Complaint Under 8 Del. C. § 220 (the “Complaint”) as follows. Each numbered paragraph below corresponds with the same numbered paragraph in the Complaint. Although no responses to the non-numbered headings set forth in the Complaint are required, Monster denies the allegations in said headings.

RESPONSES TO NUMBERED PARAGRAPHS IN PLAINTIFF’S COMPLAINT

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”).

ANSWER: The allegations in paragraph 1 of the Complaint contain Plaintiff’s characterization of this action, to which no response is required.

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”). 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.

ANSWER: Monster denies the allegations in paragraph 2, except admits that Plaintiff's counsel sent a letter to Monster's Board of Directors (the "Board") dated March 29, 2013 and refers to that letter for the contents thereof, and further admits that the Litigation Demand refers to a letter from Plaintiff's counsel to the Board dated February 23, 2012 and refers to that letter for the contents thereof.

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.

ANSWER: Monster denies the allegations in paragraph 3, except admits that on May 14, 2013 and July 16, 2013, Monster's counsel sent letters to Plaintiff's counsel and provided copies of minutes of meetings of the Board and of the special committee of the Board (the "Special Committee"), which fully satisfied Monster's obligations to Plaintiff pursuant to Section 220 of the Delaware General Corporation Law, and refers to those letters and their attachments for the contents thereof.

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

ANSWER: The allegations in paragraph 4 of the Complaint contain Plaintiff's characterization of this action, to which no response is required.

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

ANSWER: Monster denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5.

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.

ANSWER: Monster admits the allegations in paragraph 6.

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.

ANSWER: Monster denies the allegations in paragraph 7, except admits that Monster develops, markets, sells, and distributes Hansen's Natural soda, that Monster launched the Monster Energy brand in 2002, that Monster's sales increased after it developed the Monster Energy brand, that Monster Energy became a competitor to Red Bull energy drink, and that Monster's stock price has increased since 2002.

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.

ANSWER: Monster denies the allegations in paragraph 8.

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."

ANSWER: Monster denies the allegations in paragraph 9, except admits that Monster issued press releases dated November 9, 2006 and February 9, 2007, and refers to those press releases for the contents thereof.

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.

ANSWER: Monster denies the allegations in paragraph 10.

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.

ANSWER: Monster denies the allegations in paragraph 11, except denies knowledge or information sufficient to form a belief as to the truth of unspecified estimates of Monster’s financial performance referenced in the second sentence of paragraph 11. To the extent that Plaintiff purports to summarize Monster’s financial statements as filed with the SEC, Monster refers to those SEC filings for the contents thereof.

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.

ANSWER: Monster denies the allegations in paragraph 12, and to the extent that the allegations purport to summarize information received from confidential witnesses, Monster denies knowledge or information sufficient to form a belief as to the truth of Plaintiff’s summary of that information.

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.

ANSWER: Monster denies the allegations in paragraph 13, except admits that in June, August and September 2007, as had also been the case at other times, certain directors and officers of Monster sold stock.

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%.

ANSWER: Monster denies the allegations in paragraph 14, except admits that on November 8, 2007, Monster held an investor conference call during which Monster's Chief Executive Officer, Rodney Sacks, made certain statements, and refers to any accurate audio recording of that conference call for the contents thereof. Monster further denies knowledge or information sufficient to form a belief about the truth of unspecified estimates referenced in the first sentence of paragraph 14. To the extent that Plaintiff purports to describe the price of Monster stock in the third sentence of paragraph 14, which is a matter of public record, Monster refers to such records for the contents thereof.

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 Merckel 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.

ANSWER: Monster admits the allegations in paragraph 15, but denies that they present a complete and accurate depiction of the procedural history of the derivative action described therein during the period from October 15, 2008 through October 1, 2010, and refers to

the docket for that action and its entries for the contents thereof, which reflect, among other things, that the shareholder derivative action filed on October 15, 2008 was brought by a predecessor law firm of Johnson & Weaver, LLP, Plaintiff's current counsel, that a consolidated complaint was filed by such firm on October 16, 2009, that such firm sought leave to substitute Plaintiff into the case in March 2010 after claiming to have lost contact with the original plaintiff, Raymond Merckel, and that the district court granted Monster's motion to dismiss the operative complaint for failure to adequately plead demand futility, with leave to amend, for the reasons set forth in an opinion dated July 12, 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.

ANSWER: Monster admits the allegations in paragraph 16.

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").

ANSWER: Monster admits the allegations in paragraph 17.

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

ANSWER: Monster denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18, and further states that Plaintiff sought and received a 90 day extension of time to file her opening brief on appeal and then voluntarily dismissed her appeal 7 days before her opening brief was due.

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.

ANSWER: Monster admits the allegations in paragraph 19 and further states that the joint stipulated motion was filed on behalf of the individual defendants in the derivative action as well as Plaintiff and Monster.

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.

ANSWER: Monster denies the allegations in paragraph 20, except admits that Plaintiff's counsel sent a letter to the Board dated February 23, 2012, and refers to that letter for the contents thereof.

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

ANSWER: Monster admits that on March 2, 2012, Monster sent a letter to Plaintiff's counsel that, among other things, acknowledged receipt of the Litigation Demand, and refers to that letter for the contents thereof.

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.

ANSWER: Monster admits that on October 19, 2012, Monster sent a letter to Plaintiff's counsel that, among other things, notified Plaintiff that the Litigation Demand had been refused by the Special Committee and the Board, and refers to that letter for the contents thereof, and further states that on March 26, 2012, April 25, 2012, May 31, 2012, and September 24, 2012, counsel for Monster or counsel for the Special Committee sent letters to Plaintiff's counsel in connection with Plaintiff's Litigation Demand, and refers to those letters for the contents thereof.

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").
- 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.

ANSWER: Monster admits that Plaintiff's counsel sent a letter to the Board dated March 29, 2013 that, among other things, demanded inspection of certain of Monster's books and records pursuant to Section 220, and refers to that letter for the contents thereof.

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.

ANSWER: Monster admits that on April 8, 2013, Monster's counsel sent a letter to Plaintiff's counsel in which, among other things, Monster agreed to provide certain documents to Plaintiff provided that: (i) Plaintiff and Plaintiff's counsel entered into a confidentiality agreement with Monster; and (ii) Plaintiff confirmed her ownership of stock by executing a declaration under oath and providing documentary evidence, and refers to that letter for the contents thereof.

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.

ANSWER: Monster admits the allegations in paragraph 25 and further states that on May 14, 2013, Monster's counsel sent a letter to Plaintiff's counsel and provided copies of minutes of meetings of the Board and of the Special Committee, and refers to that letter and its attachments for the contents thereof.

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

ANSWER: Monster admits that by letter dated June 26, 2013, Plaintiff's counsel, among other things, requested the unredacted Special Committee report and associated minutes, and refers to that letter for the contents thereof.

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. The Company refused to provide any additional documents to Plaintiff.

ANSWER: Monster denies the allegations in paragraph 27, except admits that on July 16, 2013, Monster's counsel sent a letter to Plaintiff's counsel and refers to that letter for the contents thereof, and further admits that the July 16, 2013 letter noted that the Special Committee's report was delivered orally to the Board and was memorialized in the minutes of the Board's October 9, 2012 meeting.

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.

ANSWER: Monster denies the allegations in paragraph 28.

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.*

ANSWER: Monster admits that Plaintiff's counsel sent a letter to the Board dated March 29, 2013 that stated, among other things, 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,” and refers to that letter for the contents thereof.

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

ANSWER: The allegations in paragraph 30 constitute legal conclusions as to which no response is required. To the extent a response is deemed required, Monster denies the allegations in paragraph 30.

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.

ANSWER: The allegations in paragraph 31 constitute legal conclusions as to which no response is required. To the extent a response is deemed required, Monster denies the allegations in paragraph 31.

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.

ANSWER: Monster denies the allegations in paragraph 32.

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

ANSWER: Monster repeats and incorporates by reference its answers to paragraphs 1 through 32.

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.

ANSWER: Monster admits that Plaintiff’s counsel sent a letter to the Board dated March 29, 2013 and refers to that letter for the contents thereof.

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.

ANSWER: The allegations in paragraph 35 constitute legal conclusions as to which no response is required. To the extent a response is deemed required, Monster denies the allegations in paragraph 35.

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.

ANSWER: The allegations in paragraph 36 constitute legal conclusions as to which no response is required. To the extent a response is deemed required, Monster denies the allegations in paragraph 36.

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

ANSWER: Monster denies the allegations in paragraph 37.

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

ANSWER: The allegations in paragraph 38 constitute legal conclusions as to which no response is required. To the extent a response is deemed required, Monster denies the allegations in paragraph 38.

39. Plaintiff has no adequate remedy at law.

ANSWER: The allegations in paragraph 39 constitute legal conclusions as to which no response is required. To the extent a response is deemed required, Monster denies the allegations in paragraph 39.

RESPONSE TO PLAINTIFF'S PRAYER FOR RELIEF

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;

ANSWER: Monster denies that Plaintiff is entitled to the relief in Paragraph A of her Prayer for Relief.

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;

ANSWER: Monster denies that Plaintiff is entitled to the relief in Paragraph B of her Prayer for Relief.

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

ANSWER: Monster denies that Plaintiff is entitled to any relief in this action.

AFFIRMATIVE DEFENSES

The statement of any defense hereinafter does not assume the burden of proof for any issue as to which applicable law places the burden upon Plaintiff. Monster has not knowingly or intentionally waived any applicable defenses. Monster presently lacks sufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses or affirmative defenses, and expressly reserves the right to assert such additional defenses or affirmative defenses and/or to amend its affirmative and other defenses.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff does not have a proper purpose for demanding to inspect Monster's books and records.

THIRD DEFENSE

Plaintiff's request for inspection of books and records is overbroad and is not limited to documents that are necessary, essential and sufficient to Plaintiff's stated purposes, even assuming such purposes are her actual purposes and otherwise proper.

FOURTH DEFENSE

The documents previously provided by Monster in response to Plaintiff's demand are sufficient to enable Plaintiff to satisfy her stated purposes, even assuming such purposes are its actual purposes and otherwise proper.

FIFTH DEFENSE

The underlying derivative claims for which Plaintiff purports to seek relief relate to conduct that allegedly occurred in and prior to 2007. Plaintiff did not make a demand upon the Board to assert such claims until February 2012, more than four years later, and more than six years have now elapsed since the alleged wrongdoing. As such, any claim brought against any of Monster's officers or directors based on such alleged wrongdoing is barred by operation of the applicable statutes of limitations and the doctrine of laches, and Plaintiff therefore lacks a proper purpose to demand inspection of Monster's books and records.

SIXTH DEFENSE

Plaintiff seeks information that is confidential and proprietary. To the extent any inspection may be granted by the Court, it should be subject to an appropriate confidentiality agreement and protective order.

SEVENTH DEFENSE

Plaintiff seeks information protected by the attorney-client privilege, attorney work product doctrine or both.

EIGHT DEFENSE

Plaintiff has not satisfied the requirements set forth in 8 Del. C. § 220 for the making of a demand to inspect and make copies of certain books and records of Monster.

NINTH DEFENSE

Plaintiff has failed to provide sufficient documentation of beneficial ownership of Monster's stock at all relevant times.

TENTH DEFENSE

Plaintiff's action herein is barred, in whole or in part, by reason of waiver, estoppel, laches, ratification, and/or unclean hands.

ELEVENTH DEFENSE

Plaintiff's action herein is barred, in whole or in part, on the grounds of mootness.

PRAYER FOR RELIEF

WHEREFORE, Monster prays for judgment as follows:

1. Denying the application of Plaintiff pursuant to 8 *Del. C.* § 220;
2. Entering judgment in favor of Monster and against Plaintiff in this action;
3. Dismissing the Complaint in its entirety with prejudice;
4. Awarding Monster its reasonable costs and expenses, including reasonable attorneys' fees, incurred in connection with this matter; and
5. Granting such other and further relief as this Court deems just and proper.

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Dated: January 27, 2014