



Health & Fitness Supplement News

Volume 14, Issue 2

A Journal for Industry from CGMB

Fall 2018

THE TOP 5 REASONS WHY YOU MAY HAVE THE WRONG ATTORNEY

This past year over half-a-dozen of our new dietary supplement or sports nutrition clients previously had other attorneys handling their legal and regulatory needs. Why did they make the switch to the Supplement Counsel™ at Collins Gann McCloskey & Barry (“CGMB”)? Below are the top five reasons why clients choose CGMB to handle the legal needs of their dietary supplement and sport nutrition companies.

1. Your Attorney Doesn't Know the Industry

The dietary supplement and sport nutrition industry grows larger every year. New companies are formed on a daily basis and each company is fighting to obtain a greater share of the market. Ensuring that your products are compliant under the FDA and FTC regulations is vital. Making sure that your website, labels, and marketing materials do not invite lawsuits or regulatory scrutiny is critical. Having strong contracts in place to protect your business dealings is fundamental. Conducting proper trademark searches to prevent infringement is paramount. Many attorneys who represent dietary supplement and sport nutrition companies are able to provide these services. However, most of these attorneys do not have a deep understanding or knowledge of the industry. That's where we come in. This year alone, two of our clients left their prior legal counsel because the attorneys “just don't understand the industry.” These attorneys often offer advice that is neither practical nor realistic for companies in our industry to use. At CGMB, we not only know the law, we know this industry.

2. Your Attorney is Not a Good Negotiator

Disputes are inevitable in business – breach of contract, lawsuits, trademark infringement and class action complaints are especially common occurrences in the dietary supplement and sport nutrition industry. The bigger your company grows, the more people want to “dip into your pockets.” Litigation is expensive, time consuming and often unpredictable. That's why most of these matters are settled prior to a lawsuit actually being filed in court. Although we refer to local litigation counsel as needed, we are adept at negotiating favorable settlements on behalf of our clients. Some of our clients

have used “Big Law” firms to handle these matters when they arise. However, these law firms may charge astronomical rates and the results may not be spectacular. While every case is different, and no attorney can guarantee a specific outcome, in the past year we have been able to settle more than 6 of these types of cases on behalf of our clients in extremely favorable ways. If your attorney does not have

strong negotiation skills, maybe it's time to let CGMB handle the next legal matter that needs negotiating. Let our “Legal Muscle™” do the heavy lifting.

3. Your Attorney isn't Responsive

You're scheduled to send your supplement labels to the printer tomorrow, but you forgot to have them reviewed for compliance. You call your attorney and the receptionist answers the phone. The attorney is “in a meeting and will call you back as soon as he is finished.” The clock is ticking; you need to get these labels to the printer. Hours pass and you still have not received a call from your attorney. You decide to send the labels to the printer without having them reviewed

because you need to meet a deadline. The attorney returns your call a few days later, but it is too late. Sound familiar? At CGMB, we understand that deadlines must be met and sometimes things come up at the last minute. We pride ourselves on answering every phone call and getting things done promptly. If you feel like you're getting lost in the shuffle, try switching to a law firm that strives to make every single client the most important client. If something needs to be done quickly and efficiently, we make sure we do our very best to make it happen!

4. Your Attorney is too Expensive

“We can't afford to hire an attorney.” If we had a nickel for every time we heard a client say this, well, we'd probably have 1,000 nickels. Sure, some legal issues are more complex than others and that takes more than a quick e-mail or phone call. However, at CGMB we always keep our clients' budget in mind. As our long-time partner Alan Feldstein says, “We don't want to be your biggest expense.” This couldn't be truer. At CGMB, our goal isn't to “rack up” billable hours; our goal is to build long-term, trusting relationships with all of our clients. Unlike some other law firms, if two of our attorneys are on



the phone with you discussing a project or question, we will never double-bill you. We are also extremely flexible in the type of billing we offer depending on our clients' needs. If you require assurance as to what a certain project will cost, we are always willing to discuss a flat fee option. If you ask us not to exceed a certain amount of time for a particular project, we will be mindful of your request while not sacrificing quality. If your legal costs are crushing your profits, give us a call to see how we can not only provide a superior level of quality, but we can do so in a cost-effective manner.

5. Your Attorney Doesn't Even Lift, Bro

Okay, LOL, we're only half joking here. Your company sells dietary supplements and sports nutrition products to help its consumers

look better, get stronger, gain more muscle and feel healthier. Often times the presidents, CEOs, employees and definitely the sponsored athletes are muscular, athletic and in shape. These are the faces of your brand, and as such they should look the part. With that said, how do you feel about an attorney who gorges on pizza, chips, and cookies all day – "Put da Cookie Down" (Ahnuld S.'s voice). Your attorney doesn't even lift, bro? That's not us. You put in the work every day and then you crush the weights after. Why not have a legal team that walks the walk, too?

The best time to ensure compliance with the law is up-front, before there's a problem! Feel free to call us at (516) 294-0300

WHAT SERVICES DOES CGMB OFFER?

In the ever-changing landscape of the health, fitness and nutrition industries, you need to stay ahead of the curve. Could you survive an investigation of your products, your labels, or your advertising copy? How do you navigate the maze of new regulations ... and run your business at the same time? With FDA policies actively evolving, how can you bring a New Dietary Ingredient to market in compliance with DSHEA? How can you ensure your advertising complies with FTC regulations? What must you do in order to comply with the dietary supplement cGMPs?

Collins Gann McCloskey & Barry PLLC (CGMB), is a law firm dedicated to helping clients in the health, fitness and nutrition communities. With recognized experts in sports performance supplements and regulatory, advertising and marketing law, CGMB offers a powerful bi-coastal team providing a variety of legal services to a whole range of companies from start-ups to established organizations. CGMB offers in-depth experience and personalized attention you can trust to get you the answers you need ... when you need them. The partners of CGMB have been formally rated by the professional legal community as practicing at the highest levels of skill and ethical integrity (AV-rated in Martindale-Hubbell). CGMB can help you stay ahead of the curve.

- Are all your product names and intellectual property protected?
- Have your product labels been reviewed by legal counsel?
- Do you have proper licensing and manufacturing agreements in place?
- Are you covered by adequate indemnification agreements?
- Are all your ingredients DSHEA-compliant?
- How can you bring a New Dietary Ingredient to market or obtain GRAS status?
- Do you have SOPs for recording and reporting Serious Adverse Events?
- How can you substantiate your claims to satisfy FDA, FTC, and other federal and state regulatory agencies?
- Do you have proper insurance coverage and SOPs for customer complaints?
- Have you received a Civil Investigative Demand from the FTC?
- Have you been served with a Class Action suit? How would you handle one?
- Could you survive a 483 inspection?
- Could you survive an investigation of your facility, products, labels or claims?
- Are you fully compliant with cGMPs?

CGMB - SELECTED FIRM PROFILES



Rick Collins, Esq., is based in New York and provides advice to some of the top names in the sports nutrition industry, and is the legal advisor to the International

Society of Sports Nutrition and the International Federation of BodyBuilders. He has defended dietary supplement and sports nutrition companies against claims of distribution of misbranded or adulterated products and against serious criminal investigations by FDA and DEA. He is admitted to practice in the courts of New York, Massachusetts, Pennsylvania, Texas and the District of Columbia, and in numerous federal courts.



Alan Feldstein, Esq., an attorney based in Los Angeles and admitted to practice in California, serves Of Counsel to CGMB. He is responsible for advising some

of the firm's biggest clients in the sports nutrition industry and has extensive experience with contracts, copyright and trademarks, label and advertising review, supplement fact panel review, claims substantiation and assorted regulatory issues. He brings with him more than a dozen years of advertising and marketing law experience and continues to serve on the adjunct faculty of Southwestern University School of Law.



Jonathan Manfre, Esq. (Jay), is an associate attorney at Collins Gann McCloskey & Barry PLLC. He graduated from New York Law School in June 2015.

Jay has been weight training for over twelve years, has competed in two bodybuilding competitions, and has been a consumer of dietary supplements since the age of 18. He is extremely familiar with the regulations of the dietary supplements/sports nutrition industry and very knowledgeable when it comes to effects and function of these supplements.

For more information about CGMB, industry news and updates visit www.supplementcounsel.com.

ATTORNEY ADVERTISING

© CGMB, 2018