

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**PROMOTION IN MOTION, INC., and PIM
BRANDS, LLC,**

Plaintiffs,

v.

**BEECH-NUT NUTRITION
CORPORATION, a HERO GROUP
COMPANY,**

Defendant.

09-CV-1228 (WJM)

ORDER

THIS MATTER comes before the Court on the motion for summary judgment filed by Defendant Beech-Nut Nutrition Corporation; and for the reasons stated in the accompanying Letter Opinion; and for good cause appearing,

IT IS on this 20th day of December, 2011, hereby,

ORDERED that Defendant's motion to dismiss Counts One through Six of Plaintiffs' Complaint is **GRANTED**;

FURTHER ORDERED that Plaintiffs' Complaint is **DISMISSED**;

FURTHER ORDERED that Defendant's motion for an award of \$3,454,140.45 for breach of warranty damages is **DENIED** pending the factual determination whether PIM's breaches constituted "substantial impairment";

FURTHER ORDERED that Defendant's motion for an award of \$1,659,601.00 for lost profits on future sales caused by PIM's negligence is **DENIED**;

FURTHER ORDERED that Defendant's Fourth Counterclaim is **DISMISSED** .

FURTHER ORDERED that Defendant's First, Second, and Third Counterclaims remain open.

/s/ William J. Martini

WILLIAM J. MARTINI, U.S.D.J.