

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MARS, INC.,

Plaintiff,

v.

TRURX LLC, TRUE SCIENCE
HOLDINGS, LLC, AND HBH
ENTERPRISES D/B/A BALLARD
MANUFACTURING,

Defendants.

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Civil Action No. 3:14-cv-00611

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff Mars, Inc. (“Mars”), for its Complaint against Defendants TruRX LLC (“TruRX”), True Science Holdings, LLC (“True Science”), and HBH Enterprises Company, d/b/a Ballard Manufacturing, (“HBH”) (collectively “Defendants”), hereby alleges as follows:

PARTIES

1. Plaintiff Mars, Inc. is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 6885 Elm Street, McLean, Virginia 22101.

2. Defendant TruRX is an Idaho limited liability company having a principal place of business at 500 E. Shore Drive, Eagle, Idaho 83616. TruRX is also known as, and does business as, VetIQ.

3. Defendant True Science is an Idaho limited liability company having a principal place of business at 500 E. Shore Drive, Eagle, Idaho 83616.

4. Upon information and believe, Defendant HBH is a Utah corporation having a principal place of business at 1060 Spring Creek Pl., Springville, Utah 84663-3037.

NATURE OF THE ACTION

5. This is a civil action for infringement of United States Patent Nos. 6,596,303 (“the ‘303 Patent”) and 6,977,084 (“the ‘084 Patent”). The ‘303 Patent and the ‘084 Patent are attached to this Complaint as Exhibits A and B, respectively. This action is based upon the Patent Laws of the United States, 35 U.S.C. § 100 et seq.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a).

7. Venue is proper in this District under Title 28 U.S.C. §§ 1391 and 1400(b), because Defendants are subject to personal jurisdiction in this judicial district and have committed acts of infringement in this judicial district.

8. Personal jurisdiction exists over the Defendants because, upon information and belief, they have sufficient minimum contacts with the forum as a result of business conducted within Tennessee and within this judicial district. Personal jurisdiction also exists over the Defendants because, upon information and belief, they have sold and offered to sell infringing products in this district or, upon information and belief, have placed those infringing products into the stream of commerce by either shipping those products into this judicial district or knowing that the products would be shipped into this judicial district, and such products therefore have been offered, purchased, and sold in this judicial district.

BACKGROUND

9. On July 22, 2003, the ‘303 Patent, entitled “Pet Food for Maintenance of Joint Health and Alleviation of Arthritic Symptoms in Companion Animals,” was duly and legally issued to Mars, Inc. as assignee. Mars, Inc. is the current assignee of the ‘303 Patent.

10. On December 20, 2005, the '084 Patent, entitled "Pet Food Containing *Perna Canaliculus* for Maintenance of Joint Health and Alleviation of Arthritic Symptoms," was duly and legally issued to Mars, Inc. as assignee. The '084 Patent is a continuation of the '303 Patent. Mars, Inc. is the current assignee of the '084 Patent.

11. Defendants currently make, use, offer to sell, sell, and/or import the HIP & JOINT pet food products that infringe at least one claim of the '303 Patent and at least one claim of the '084 Patent.

COUNT I: INFRINGEMENT OF THE '303 PATENT

12. Plaintiff restates all of the preceding paragraphs as if fully set forth herein.

13. Defendants have directly infringed, and are currently directly infringing, at least one claim of the '303 Patent in violation of 35 U.S.C. § 271 *et seq.* by using and testing in the United States the HIP & JOINT line of pet food products for the treatment of animals.

14. Upon information and belief, Defendants are infringing at least one claim of the '303 Patent in violation of 35 U.S.C. § 271 *et seq.* by inducing their customers to test and/or use the HIP & JOINT line of pet food products by providing the HIP & JOINT line of pet food products to an animal in an infringing manner and contributing to the customers' infringement of the '303 Patent, and Defendants are doing so with the knowledge that their actions are infringing acts.

15. Plaintiff has been injured and damaged monetarily and otherwise by Defendants' infringement of the '303 Patent. Defendants are therefore liable to Plaintiff for actual damages suffered by Plaintiff, and in no event less than a reasonable royalty.

16. Defendants' continuing acts of infringement are willful, entitling Plaintiff to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285. Defendants acquired knowledge of the existence

of the '303 Patent and Plaintiff's infringement allegations against Defendants at least through the filing and service of Plaintiff's Complaint and continue their willful infringing activities.

17. Plaintiff has been and will continue to be irreparably harmed by Defendants' patent infringement necessitating the entry of a preliminary and permanent injunction to prevent Defendants' further and future infringement of the '303 Patent. Plaintiff does not have an adequate remedy at law.

COUNT II: INFRINGEMENT OF THE '084 PATENT

18. Plaintiff restates all of the preceding paragraphs as if fully set forth herein.

19. Defendants have directly infringed, and are currently directly infringing, at least one claim of the '084 Patent in violation of 35 U.S.C. § 271 *et seq.* by using, selling, making, offering to sell, and/or importing in the United States the HIP & JOINT line of pet food products.

20. Defendants are infringing at least one claim of the '084 Patent in violation of 35 U.S.C. § 271 *et seq.* by inducing others to make or manufacture the HIP & JOINT line of pet food products, by inducing others to test and/or use the HIP & JOINT line of pet food products, and/or by inducing others to sell or offer to sell the HIP & JOINT line of pet food products, and Defendants are doing so with the knowledge that their actions are infringing acts.

21. Plaintiff has been injured and damaged monetarily and otherwise by Defendants' infringement of the '084 Patent. Defendants are therefore liable to Plaintiff for actual damages suffered by Plaintiff, and in no event less than a reasonable royalty.

22. Defendants' continuing acts of infringement are willful, entitling Plaintiff to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285. Defendants acquired knowledge of the existence of the '084 Patent and Plaintiff's infringement allegations against Defendants at least through the filing and service of Plaintiff's Complaint and continue their willful infringing activities.

23. Plaintiff has been and will continue to be irreparably harmed by Defendants' patent infringement necessitating the entry of a preliminary and permanent injunction to prevent Defendants' further and future infringement of the '084 Patent. Plaintiff does not have an adequate remedy at law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests as follows:

A. That this Court enter a judgment that Defendants have infringed and are infringing one or more claims of the '303 Patent and one or more claims of the '084 Patent and that such infringement by Defendants has been willful;

B. That this Court enter a judgment and order preliminarily and permanently enjoining Defendants, their employees and agents, and any person in active concert or participation with Defendants from infringing the '303 Patent and the '084 Patent;

C. That this Court enter a judgment against Defendants awarding damages adequate to compensate Plaintiff for the infringement by Defendants of the '303 Patent and the '084 Patent, including enhanced damages up to three times the amount of compensatory damages for Defendants' willful infringement and any supplemental damages for any continuing post-verdict infringement until entry of a final judgment and cessation of such infringement;

D. That this Court assess pre-judgment and post judgment interest and costs against Defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;

E. That this Court render a finding that this case is "exceptional" and award to Plaintiff its costs and reasonable attorneys' fees, as provided by 35 U.S.C. § 285; and

F. That this Court grant Plaintiff such other and further relief as the Court deems just, proper, and equitable.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial as to all matters so triable.

July 1, 2014

Respectfully submitted,

/s/ Marc. L. Delflache

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COUNSEL FOR MARS, INC.

CERTIFICATE OF SERVICE

I certify that on July 1, 2014, a copy of the foregoing *First Amended Complaint* was served via email and U.S. Mail, first-class, postage pre-paid on all counsel of record for Defendants as follows:

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