

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

|  |   |                                    |
|--|---|------------------------------------|
| THERMOLIFE INTERNATIONAL, LLC,         | ) |                                    |
|  | ) |                                    |
| Plaintiff,                             | ) | Civil Action No. 2:15-cv-00273-AJS |
|  | ) |                                    |
| vs.                                    | ) | JURY TRIAL DEMANDED                |
|  | ) |                                    |
| D.P.S. NUTRITION, INC.; TRIBRAVUS      | ) |                                    |
| ENTERPRISES, LLC d/b/a IFORCE          | ) |                                    |
| NUTRITION; A1 SUPPLEMENTS, INC.;       | ) |                                    |
| MUSCLE AND STRENGTH, LLC; SUPPZ        | ) |                                    |
| INC.; SUPPLEMENT DIRECT VENTURES,      | ) |                                    |
| INC. d/b/a SUPPLEMENT DIRECT; and MASS | ) |                                    |
| NUTRITION, INC.,                       | ) |                                    |
|  | ) |                                    |
| Defendants.                            | ) |                                    |

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Thermolife International, LLC (“Plaintiff”) hereby alleges for its First Amended Complaint against D.P.S. Nutrition, Inc. (“DPS Nutrition”); Tribravus Enterprises, LLC d/b/a iForce Nutrition (“iForce”); A1 Supplements, Inc. (“A1 Supplements”); Muscle and Strength, LLC (“Muscle & Strength”); Suppz Inc. (“Suppz”); Supplement Direct Ventures, Inc. d/b/a Supplement Direct (“Supplement Direct”); and Mass Nutrition, Inc. (“Mass Nutrition”), (collectively referred to as “Defendants”) on personal knowledge as to its own activities and on information and belief as to the activities of others, as follows:

**I. THE PARTIES**

1. Plaintiff is a limited liability company organized and existing under the laws of Arizona, with a place of business at 1811 Ocean Front Walk in Venice, California, 90291.
2. Plaintiff is the assignee and owner of right, title, and interest in and to the following United States Patents:

- a. Patent No. 8,455,531, titled “Amino Acid Compositions” (Exhibit A);
- b. Patent No. 8,466,187, titled “Amino Acid Compositions” (Exhibit B);
- c. Patent No. 8,183,288, titled “Amino Acid Compositions” (Exhibit C);
- d. Patent No. 8,178,572, titled “Amino Acid Compositions” (Exhibit D); and
- e. Patent No. 8,952,047, titled “Betaine Compounds” (Exhibit E).

3. The above patents are referred to herein as the “patents in suit.” Each of the patents-in-suit was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of each of the patents-in-suit are attached as Exhibits A-E to the First Amended Complaint as specifically set forth above in Paragraph 2.

4. Patent Nos. 8,455,531 and 8,466,187 are, as of the time of the filing of this First Amended Complaint, undergoing re-examination or inter partes review proceedings before the United States Patent and Trademark Office, but not with respect to claims that are asserted in this matter against Defendants.

5. DPS Nutrition is an entity organized and existing under the laws of Pennsylvania with a principal place of business at 29 Stauffer Industrial Park in Taylor, Pennsylvania, 18517. DPS Nutrition appears to derive its revenue principally from product sales on the internet, such as through [www.dpsnutrition.net](http://www.dpsnutrition.net).

6. iForce is a corporation organized and existing under the laws of California with a principal place of business at 1330 Specialty Drive, Suite A in Vista, California, 92081. Notwithstanding the foregoing, iForce appears to derive its revenue principally from product sales on the internet, such as through its own website store at [www.iforcenutrition.com](http://www.iforcenutrition.com), and through website stores of its resellers, distributors and or retailers, transacting business throughout the United States, including this District.

7. A1 Supplements is a corporation organized and existing under the laws of Tennessee, with a principal place of business 860 Lakemont Drive, Louisville Tennessee 37777. Notwithstanding the foregoing, A1 Supplements appears to derive its revenue principally from

product sales on the internet, such as through its online store at [www.a1supplements.com](http://www.a1supplements.com), transacting business throughout the United States, including in this District.

8. Muscle & Strength is an entity organized and existing under the laws of South Carolina with a principal place of business at 118 First Street South in Columbia, South Carolina, 29209. Notwithstanding the foregoing, Muscle & Strength appears to derive its revenue principally from product sales on the internet, such as through its online store at [www.muscleandstrength.com](http://www.muscleandstrength.com), transacting business throughout the United States, including in this District.

9. Suppz is a corporation organized and existing under the laws of Wisconsin with a principal place of business at 1535 LaFollette Street in Fennimore, Wisconsin, 53809. Notwithstanding the foregoing, Suppz appears to derive its revenue principally from product sales on the internet, such as through its online store at [www.suppz.com](http://www.suppz.com), transacting business throughout the United States, including in this District.

10. Supplement Direct is a corporation organized and existing under the laws of California with a principal place of business at 399 East Foothill Boulevard in San Luis Obispo California 93405. Notwithstanding the foregoing, Supplement Direct appears to derive its revenue principally from product sales on the internet, such as through its online store at [www.supplementdirect.com](http://www.supplementdirect.com), transacting business throughout the United States, including in this District.

11. Mass Nutrition is a corporation organized and existing under the laws of Florida with a principal place of business at 8680 Sunset Drive in Miami, Florida, 33143. Notwithstanding the foregoing, Mass Nutrition appears to derive its revenue principally from product sales on the internet, such as through its online store at [www.massnutrition.com](http://www.massnutrition.com), transacting business throughout the United States, including in this District.

## **II. JURISDICTION, VENUE AND JOINDER**

12. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

13. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

14. This Court has personal jurisdiction over Defendants. On information and belief, by way of example and without limitation, each Defendant, directly or through its respective agents or intermediaries (including distributors, retailers, resellers and others), makes, manufactures, ships, distributes, advertises, markets, offers for sale, and/or sells dietary supplement products that infringe on one or more claims of the patents in suit (hereinafter the “accused products”), which include without limitation products sold under the “Hemavo2 Max” brand name, in the United States, the Commonwealth of Pennsylvania, and the Western District of Pennsylvania (“this District”).

15. By way of further example and without limitation, Defendants have purposefully and voluntarily placed the accused products into the stream of commerce with the expectation that they will be purchased in the Commonwealth of Pennsylvania and this District, and on information and belief, the accused products are actually purchased in this District.

16. By way of further example and without limitation, Defendant iForce has purposely and voluntarily sold, and/or offered to sell and provide, the accused products to retailers, resellers and distributors in this District, including but not limited to Supplement Central having a principal place of business at 406 Parkway View Drive in Pittsburgh, PA 15205.

17. Joinder is proper under 35 U.S. C. § 299. Joinder is appropriate here because there is a logical relationship between the claims and a substantial evidentiary overlap in the facts giving rise to the cause of action against each Defendant. The infringement claims against all Defendants relate to the same accused products manufactured, supplied and/or provided by iForce.

### **III. THE DEFENDANTS' INFRINGEMENTS**

18. Defendants have committed the tort of patent infringement within the Commonwealth of Pennsylvania, and on information and belief, more particularly, within the Western District of Pennsylvania, by virtue of the fact that Defendants have formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and/or sold the accused products in this Commonwealth and District, and continue to do so.

#### **A. DIRECT INFRINGEMENTS**

19. Defendants' employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities, have taken, used, and orally administered the accused products.

20. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include certain ingredients that, by virtue of their inclusion in the products, infringe one or more claims of one or more of the patents in suit.

21. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include specific ingredients for certain purposes that, by virtue of their inclusion in the products for such purposes, infringe one or more claims of one or more of the patents in suit, and as a result, when Defendants' employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities orally administer the accused products, they are practicing the methods disclosed in those claims.

22. These infringing ingredients, and/or combinations thereof, include, without limitation, Creatine Nitrate, L-Citrulline, Agmatine, Creatine HCL, and Betaine, as set forth on Defendants' labels for Hemavo2 Max.

23. The purposes for which these ingredients are included in the accused products are, without limitation, to increase vasodilative characteristics, increase athletic performance,

bioabsorption of amino acids, increase distribution of amino acids to muscles, and/or increase solubility of amino acids of the end-users of the products.

24. For instance, as just as an example, the labels and/or advertisements for the accused products state that they provide a “nitric boost”; “increased delivery of blood, nutrients, and oxygen to hungry muscles”; “incredible endurance”; and “amplified strength & power.”

25. Defendants have encouraged and/or are aware of the fact that their employees, agents, representatives and other persons sponsored by Defendants or who endorse Defendants and Defendants’ products in advertising and marketing activities orally administer the accused products and practice the methods disclosed in one or more claim of one or more of the patents in suit, and these employees, agents, representatives and other persons sponsored by Defendants or who endorse Defendants and Defendants’ products in advertising and marketing activities are acting under Defendants’ direction and control when practicing those methods.

26. Therefore, Defendants are direct infringers of one or more claims of one or more of the patents in suit, and Defendants practice the methods as set forth in one or more claims of one or more of the patents in suit.

### **B. INDIRECT INFRINGEMENTS**

27. End-users of Defendants’ accused products are also direct infringers of one or more claims of one or more of the patents in suit.

28. End-users of Defendants’ accused products have taken, used, and orally administered the accused products.

29. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and/or sold by Defendants to include certain ingredients that, by virtue of their inclusion in the products, infringe one or more claims of one or more of the patents in suit.

30. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and/or sold by Defendants to include specific ingredients for certain purposes that, because of their inclusion in the products for such purposes, infringe one or more

claims of one or more of the patents in suit, and as a result, when end-users of Defendants' accused products orally administer the accused products, they are practicing the methods disclosed in those claims.

31. Defendants' labels and advertising for the accused products explain the elements and essential elements of one or more of the methods disclosed in the patents in suit, and those labels and advertising statements encourage, urge, and induce the accused products' end-users to purchase and orally ingest the products to practice those methods, and end-users do practice those methods.

32. Defendants have therefore specifically intended to cause these end-users to directly infringe the claimed methods of these patents, and have in fact urged them to do so.

33. The accused products are not suitable for non-infringing uses, and none of Defendants' labels or advertisements for the accused products disclose any uses for the products, nor for the compounds disclosed in the claimed methods of the patents in suit, that do not infringe upon such methods.

34. The inclusion of the specific infringing compounds in the products is material to practicing such methods.

35. Defendants have knowledge that the accused products are especially adapted by end-users of the products for the practicing of such methods, and, indeed, Defendants encourage, urge, and induce the accused products' end-users to purchase and orally administer the accused products to practice such methods, and have done so in the past.

36. Defendants have intentionally and knowingly induced, encouraged, and urged end-users of the accused products to purchase and orally administer the accused products for the purposes of practicing the claimed methods, by having them orally ingest the compounds disclosed in such claims.

37. Defendants have knowledge of the fact that the accused products, particularly as administered, infringe on one or more claims of the patents in suit.

38. Defendants have direct, firsthand knowledge of the patents in suit.

39. For example and without limitation, Defendant iForce has had knowledge of the patents in suit since at least February 10, 2015, when a letter was sent to iForce from ThermoLife informing it of its infringement, to which an infringement analysis was attached. A true and accurate copy of that letter is attached hereto as Exhibit F. On information and belief, Defendant iForce forwarded that letter to at least some of the other Defendants.

40. By way of further example and without limitation, DPS Nutrition and Muscle & Strength received letters dated February 19, 2015, informing them of the patents and their infringements by virtue of their distribution and selling of the accused products. These letters also requested that they cease selling the accused products.

41. By way of further example and without limitation, A1 Supplements, Suppz, Supplement Direct, and Mass Nutrition received letters dated March 16, 2015, informing them of the patents and their infringements by virtue of their distribution and selling of the accused products, and also requesting that they cease selling the accused products.

42. By way of further example and without limitation, DPS Nutrition and iForce were sued by way of the initial Complaint, and had notice of that initial Complaint.

43. Defendants have willfully decided to infringe the patents in suit despite knowledge of the patents' existence and their knowledge of the accused products' infringements of the patents. Many retailers and distributors of the accused products who received similar notification letters opted to discontinue selling the accused products, but the Defendants herein, as of the time of the filing of this First Amended Complaint, have disregarded Plaintiff's rights and continue to sell the accused products.

44. At a minimum, and in the alternative, Plaintiff pleads that Defendants willfully blinded themselves to the infringing nature of the accused products' sales.

45. Defendants have not ceased their own direct infringements nor their inducements of infringements by end-users, despite their knowledge of the patents in suit and their infringing activities with respect to the patents-in-suit.



46. Plaintiff also believes Defendants, by virtue of their sale of the accused products, are also infringing on United States Patent No. 7,777,074, which is currently undergoing re-examination. Plaintiff may seek to amend this First Amended Complaint based on the outcome of the re-examination proceedings.

#### **IV. FIRST CAUSE OF ACTION**

##### **Infringements of U.S. Patent No. 8,455,531**

47. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs of this First Amended Complaint as if fully set forth herein.

48. Defendants have in the past and still are literally and directly infringing or directly infringing under the doctrine of equivalents one or more claims of United States Patent No. 8,455,531 by making, using, selling, and offering for sale the accused products, and will continue to do so unless enjoined by this Court.

49. In addition to the fact that Defendants make, use, sell, and offer for sale the accused products, further examples of Defendants' direct infringements include, without limitation, the fact that Defendants have encouraged and/or are aware of the fact that their employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities orally administer the accused products and practice the methods disclosed in one or more claims of United States Patent No. 8,455,531, and these employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities are acting under Defendants' direction and control when practicing those methods.

50. Defendants have encouraged and are aware of these persons' oral administration of the accused products for these purposes, these persons are acting under Defendants' direction and control, and therefore Defendants are directly practicing the methods disclosed in United States Patent No. 8,455,531.

51. End-users of Defendants' accused products are also direct infringers of one or more claims of United States Patent No. 8,455,531.

52. End-users of Defendants' accused products have taken, used, and orally administered the accused products.

53. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include certain ingredients that, by virtue of their inclusion in the products, infringe one or more claims of United States Patent No. 8,455,531.

54. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include specific ingredients for purposes that, by their inclusion in the products for such purposes, infringe one or more claims of United States Patent No. 8,455,531, and as a result, when end-users of Defendants' accused products orally administer the accused products, they are practicing the methods disclosed in one or more claims of that patent.

55. Defendants' labels and advertising for the accused products explain the elements and essential elements of the methods disclosed in United States Patent No. 8,455,531, and those labels and advertising statements encourage, urge, and induce the accused products' end-users to purchase and orally ingest the products to practice those methods, and end-users do practice those methods.

56. Defendants have therefore specifically intended to cause these end-users to directly infringe the claimed methods of United States Patent No. 8,455,531, and have in fact urged them to do so.

57. The accused products are not suitable for non-infringing uses, and none of Defendants' labels or advertisements for the accused products disclose any uses for the products, nor for the compounds disclosed in the claimed methods, that do not infringe upon such methods.

58. The inclusion of these specific infringing compounds in the products is material to practicing such methods.

59. Defendants have knowledge that the accused products are especially adapted by end-users of the products for the practicing of such methods, and, indeed, Defendants encourage, urge, and induce the accused products' end-users to purchase and orally administer the accused products to practice such methods, and have done so in the past.

60. Defendants have intentionally and knowingly induced, encouraged, and urged end-users of the accused products to purchase and orally administer the accused products for the purposes disclosed in one or more claims of United States Patent No. 8,455,531, by having them orally ingest the compounds disclosed in such claims.

61. Defendants have knowledge of the fact that the accused products, particularly as administered, infringe on one or more claims of United States Patent No. 8,455,531.

62. Defendants also have direct, firsthand knowledge of United States Patent No. 8,455,531.

63. Defendants' activities have been without express or implied license by Plaintiff.

64. As a result of Defendants' acts of infringement, Plaintiff has suffered and will continue to suffer damages in an amount to be proved at trial.

65. The claims of United States Patent No. 8,455,531 infringed by Defendants include, without limitation, claims 4, 6, 24, 26, 43, and 45.

66. As a result of Defendants' acts of infringement, Plaintiff has been and will continue to be irreparably harmed by Defendants' infringements, which will continue unless Defendants are enjoined by this Court.

67. Defendants' past infringements and/or continuing infringements have been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

**V. SECOND CAUSE OF ACTION**

**Infringement of U.S. Patent No. 8,466,187**

68. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs of this First Amended Complaint as if fully set forth herein.

69. Defendants have in the past and still are literally and directly infringing or directly infringing under the doctrine of equivalents one or more claims of United States Patent No. 8,466,187 by making, using, selling, and offering for sale the accused products, and will continue to do so unless enjoined by this Court.

70. In addition to the fact that Defendants make, use, sell, and offer for sale the accused products, further examples of Defendants' direct infringements include, without limitation, the fact that Defendants have encouraged and/or are aware of the fact that their employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities orally administer the accused products and practice the methods disclosed in one or more claims of United States Patent No. 8,466,187, and these employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities are acting under Defendants' direction and control when practicing those methods.

71. Defendants have encouraged and are aware of these persons' oral administration of the accused products for these purposes, these persons are acting under Defendants' direction and control, and therefore Defendants are directly practicing the methods disclosed in United States Patent No. 8,466,187.

72. End-users of Defendants' accused products are also direct infringers of one or more claims of United States Patent No. 8,466,187.

73. End-users of Defendants' accused products have taken, used, and orally administered the accused products.

74. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include certain ingredients that, by virtue

of their inclusion in the products, infringe one or more claims of United States Patent No. 8,466,187.

75. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include specific ingredients for purposes that, by their inclusion in the products for such purposes, infringe one or more claims of United States Patent No. 8,466,187, and as a result, when end-users of Defendants' accused products orally administer the accused products, they are practicing the methods disclosed in one or more claims of that patent.

76. Defendants' labels and advertising for the accused products explain the elements and essential elements of the methods disclosed in United States Patent No. 8,466,187, and those labels and advertising statements encourage, urge, and induce the accused products' end-users to purchase and orally ingest the products to practice those methods, and end-users do practice those methods.

77. Defendants have therefore specifically intended to cause these end-users to directly infringe the claimed methods of United States Patent No. 8,466,187, and have in fact urged them to do so.

78. The accused products are not suitable for non-infringing uses, and none of Defendants' labels or advertisements for the accused products disclose any uses for the products, nor for the compounds disclosed in the claimed methods, that do not infringe upon such methods.

79. The inclusion of these specific infringing compounds in the products is material to practicing such methods.

80. Defendants have knowledge that the accused products are especially adapted by end-users of the products for the practicing of such methods, and, indeed, Defendants encourage, urge, and induce the accused products' end-users to purchase and orally administer the accused products to practice such methods, and have done so in the past.

81. Defendants have intentionally and knowingly induced, encouraged, and urged end-users of the accused products to purchase and orally administer the accused products for the purposes disclosed in one or more claims of United States Patent No. 8,466,187, by having them orally ingest the compounds disclosed in such claims.

82. Defendants have knowledge of the fact that the accused products, particularly as administered, infringe on one or more claims of United States Patent No. 8,466,187.

83. Defendants also have direct, firsthand knowledge of United States Patent No. 8,466,187.

84. Defendants' activities have been without express or implied license by Plaintiff.

85. As a result of Defendants' acts of infringement, Plaintiff has suffered and will continue to suffer damages in an amount to be proved at trial.

86. The claims of United States Patent No. 8,466,187 infringed by Defendants include, without limitation, claims 4, 6, 7, 17, 23, 25, 26, 36, 42, 44, 45, and 55.

87. As a result of Defendants' acts of infringement, Plaintiff has been and will continue to be irreparably harmed by Defendants' infringements, which will continue unless Defendants are enjoined by this Court.

88. Defendants' past infringements and/or continuing infringements have been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

## **VI. THIRD CAUSE OF ACTION**

### **Infringement of U.S. Patent No. 8,183,288**

89. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs of this First Amended Complaint as if fully set forth herein.

90. Defendants have in the past and still are literally and directly infringing or directly infringing under the doctrine of equivalents one or more claims of United States Patent No. 8,183,288 by making, using, selling, and offering for sale the accused products, and will continue to do so unless enjoined by this Court.

91. In addition to the fact that Defendants make, use, sell, and offer for sale the accused products, further examples of Defendants' direct infringements include, without limitation, the fact that Defendants have encouraged and/or are aware of the fact that their employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities orally administer the accused products and practice the methods disclosed in one or more claims of United States Patent No. 8,183,288, and these employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities are acting under Defendants' direction and control when practicing those methods.

92. Defendants have encouraged and are aware of these persons' oral administration of the accused products for these purposes, these persons are acting under Defendants' direction and control, and therefore Defendants are directly practicing the methods disclosed in United States Patent No. 8,183,288.

93. End-users of Defendants' accused products are also direct infringers of one or more claims of United States Patent No. 8,183,288.

94. End-users of Defendants' accused products have taken, used, and orally administered the accused products.

95. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include certain ingredients that, by virtue of their inclusion in the products, infringe one or more claims of United States Patent No. 8,183,288.

96. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include specific ingredients for purposes that, by their inclusion in the products for such purposes, infringe one or more claims of United States Patent No. 8,183,288, and as a result, when end-users of Defendants' accused products orally administer the accused products, they are practicing the methods disclosed in one or more claims of that patent.

97. Defendants' labels and advertising for the accused products explain the elements and essential elements of the methods disclosed in United States Patent No. 8,183,288, and those labels and advertising statements encourage, urge, and induce the accused products' end-users to purchase and orally ingest the products to practice those methods, and end-users do practice those methods.

98. Defendants have therefore specifically intended to cause these end-users to directly infringe the claimed methods of United States Patent No. 8,183,288, and have in fact urged them to do so.

99. The accused products are not suitable for non-infringing uses, and none of Defendants' labels or advertisements for the accused products disclose any uses for the products, nor for the compounds disclosed in the claimed methods, that do not infringe upon such methods.

100. The inclusion of these specific infringing compounds in the products is material to practicing such methods.

101. Defendants have knowledge that the accused products are especially adapted by end-users of the products for the practicing of such methods, and, indeed, Defendants encourage, urge, and induce the accused products' end-users to purchase and orally administer the accused products to practice such methods, and have done so in the past.

102. Defendants have intentionally and knowingly induced, encouraged, and urged end-users of the accused products to purchase and orally administer the accused products for the purposes disclosed in one or more claims of United States Patent No. 8,183,288, by having them orally ingest the compounds disclosed in such claims.

103. Defendants have knowledge of the fact that the accused products, particularly as administered, infringe on one or more claims of United States Patent No. 8,183,288.

104. Defendants also have direct, firsthand knowledge of United States Patent No. 8,183,288.

105. Defendants' activities have been without express or implied license by Plaintiff.



106. As a result of Defendants' acts of infringement, Plaintiff has suffered and will continue to suffer damages in an amount to be proved at trial.

107. The claims of United States Patent No. 8,183,288 infringed by Defendants include, without limitation, claim 1.

108. As a result of Defendants' acts of infringement, Plaintiff has been and will continue to be irreparably harmed by Defendants' infringements, which will continue unless Defendants are enjoined by this Court.

109. Defendants' past infringements and/or continuing infringements have been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

## **VII. FOURTH CAUSE OF ACTION**

### **Infringement of U.S. Patent No. 8,178,572**

110. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs of this First Amended Complaint as if fully set forth herein.

111. Defendants have in the past and still are literally and directly infringing or directly infringing under the doctrine of equivalents one or more claims of United States Patent No. 8,187,572 by making, using, selling, and offering for sale the accused products, and will continue to do so unless enjoined by this Court.

112. In addition to the fact that Defendants make, use, sell, and offer for sale the accused products, further examples of Defendants' direct infringements include, without limitation, the fact that Defendants have encouraged and/or are aware of the fact that their employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities orally administer the accused products and practice the methods disclosed in one or more claims of United States Patent No. 8,187,572, and these employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities are acting under Defendants' direction and control when practicing those methods.

113. Defendants have encouraged and are aware of these persons' oral administration of the accused products for these purposes, these persons are acting under Defendants' direction and control, and therefore Defendants are directly practicing the methods disclosed in United States Patent No. 8,187,572.

114. End-users of Defendants' accused products are also direct infringers of one or more claims of United States Patent No. 8,187,572.

115. End-users of Defendants' accused products have taken, used, and orally administered the accused products.

116. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include certain ingredients that, by virtue of their inclusion in the products, infringe one or more claims of United States Patent No. 8,187,572.

117. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include specific ingredients for purposes that, by their inclusion in the products for such purposes, infringe one or more claims of United States Patent No. 8,187,572, and as a result, when end-users of Defendants' accused products orally administer the accused products, they are practicing the methods disclosed in one or more claims of that patent.

118. Defendants' labels and advertising for the accused products explain the elements and essential elements of the methods disclosed in United States Patent No. 8,187,572, and those labels and advertising statements encourage, urge, and induce the accused products' end-users to purchase and orally ingest the products to practice those methods, and end-users do practice those methods.

119. Defendants have therefore specifically intended to cause these end-users to directly infringe the claimed methods of United States Patent No. 8,187,572, and have in fact urged them to do so.

120. The accused products are not suitable for non-infringing uses, and none of Defendants' labels or advertisements for the accused products disclose any uses for the products, nor for the compounds disclosed in the claimed methods, that do not infringe upon such methods.

121. The inclusion of these specific infringing compounds in the products is material to practicing such methods.

122. Defendants have knowledge that the accused products are especially adapted by end-users of the products for the practicing of such methods, and, indeed, Defendants encourage, urge, and induce the accused products' end-users to purchase and orally administer the accused products to practice such methods, and have done so in the past.

123. Defendants have intentionally and knowingly induced, encouraged, and urged end-users of the accused products to purchase and orally administer the accused products for the purposes disclosed in one or more claims of United States Patent No. 8,187,572, by having them orally ingest the compounds disclosed in such claims.

124. Defendants have knowledge of the fact that the accused products, particularly as administered, infringe on one or more claims of United States Patent No. 8,187,572.

125. Defendants also have direct, firsthand knowledge of United States Patent No. 8,187,572.

126. Defendants' activities have been without express or implied license by Plaintiff.

127. As a result of Defendants' acts of infringement, Plaintiff has suffered and will continue to suffer damages in an amount to be proved at trial.

128. The claims of United States Patent No. 8,187,572 infringed by Defendants include, without limitation, claim 1.

129. As a result of Defendants' acts of infringement, Plaintiff has been and will continue to be irreparably harmed by Defendants' infringements, which will continue unless Defendants are enjoined by this Court.

130. Defendants' past infringements and/or continuing infringements have been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

**VIII. FIFTH CAUSE OF ACTION**

**Infringement of U.S. Patent No. 8,952,047**

131. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs of this First Amended Complaint as if fully set forth herein.

132. Defendants have in the past and still are literally and directly infringing or directly infringing under the doctrine of equivalents one or more claims of United States Patent No. 8,952,047 by making, using, selling, and offering for sale the accused products, and will continue to do so unless enjoined by this Court.

133. In addition to the fact that Defendants make, use, sell, and offer for sale the accused products, further examples of Defendants' direct infringements include, without limitation, the fact that Defendants have encouraged and/or are aware of the fact that their employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities orally administer the accused products and practice the methods disclosed in one or more claims of United States Patent No. 8,952,047, and these employees, agents, representatives and other persons sponsored by or who endorse Defendants and Defendants' products in advertising and marketing activities are acting under Defendants' direction and control when practicing those methods.

134. Defendants have encouraged and are aware of these persons' oral administration of the accused products for these purposes, these persons are acting under Defendants' direction and control, and therefore Defendants are directly practicing the methods disclosed in United States Patent No. 8,952,047.

135. End-users of Defendants' accused products are also direct infringers of one or more claims of United States Patent No. 8,952,047.

136. End-users of Defendants' accused products have taken, used, and orally administered the accused products.

137. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include certain ingredients that, by virtue of their inclusion in the products, infringe one or more claims of United States Patent No. 8,952,047.

138. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendants to include specific ingredients for purposes that, by their inclusion in the products for such purposes, infringe one or more claims of United States Patent No. 8,952,047, and as a result, when end-users of Defendants' accused products orally administer the accused products, they are practicing the methods disclosed in one or more claims of that patent.

139. Defendants' labels and advertising for the accused products explain the elements and essential elements of the methods disclosed in United States Patent No. 8,952,047, and those labels and advertising statements encourage, urge, and induce the accused products' end-users to purchase and orally ingest the products to practice those methods, and end-users do practice those methods.

140. Defendants have therefore specifically intended to cause these end-users to directly infringe the claimed methods of United States Patent No. 8,952,047, and have in fact urged them to do so.

141. The accused products are not suitable for non-infringing uses, and none of Defendants' labels or advertisements for the accused products disclose any uses for the products, nor for the compounds disclosed in the claimed methods, that do not infringe upon such methods.

142. The inclusion of these specific infringing compounds in the products is material to practicing such methods.

143. Defendants have knowledge that the accused products are especially adapted by end-users of the products for the practicing of such methods, and, indeed, Defendants encourage, urge, and induce the accused products' end-users to purchase and orally administer the accused products to practice such methods, and have done so in the past.

144. Defendants have intentionally and knowingly induced, encouraged, and urged end-users of the accused products to purchase and orally administer the accused products for the purposes disclosed in one or more claims of United States Patent No. 8,952,047, by having them orally ingest the compounds disclosed in such claims.

145. Defendants have knowledge of the fact that the accused products, particularly as administered, infringe on one or more claims of United States Patent No. 8,952,047.

146. Defendants also have direct, firsthand knowledge of United States Patent No. 8,952,047.

147. Defendants' activities have been without express or implied license by Plaintiff.

148. As a result of Defendants' acts of infringement, Plaintiff has suffered and will continue to suffer damages in an amount to be proved at trial.

149. The claims of United States Patent No. 8,952,047 infringed by Defendants include, without limitation, claims 7, 8, 9, 10, and 11.

150. As a result of Defendants' acts of infringement, Plaintiff has been and will continue to be irreparably harmed by Defendants' infringements, which will continue unless Defendants are enjoined by this Court.

151. Defendants' past infringements and/or continuing infringements have been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

#### **IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for entry of judgment against Defendants as follows:

1. A declaration that Defendants have infringed the patents in suit, under 35 U.S.C. §§ 271 *et seq.*;

3. That injunctions, preliminary and permanent, be issued by this Court restraining Defendants, their respective officers, agents, servants, directors, and employees, and all persons in active concert or participation with each, from directly or indirectly infringing, or inducing or contributing to the infringement by others of, the patents in suit;

4. That Defendants be required to provide to Plaintiff an accounting of all gains, profits, and advantages derived by Defendants' infringement of the patents in suit, and that Plaintiff be awarded damages adequate to compensate Plaintiff for the wrongful infringing acts by Defendants, in accordance with 35 U.S.C. § 284;

5. That the damages awarded to Plaintiff with regard to the patents in suit be increased up to three times, in view of Defendants' willful infringement, in accordance with 35 U.S.C. § 284;

6. That this case be declared to be exceptional in favor of Plaintiff under 35 U.S.C. § 285, and that Plaintiff be awarded its reasonable attorneys' fees and other expenses incurred in connection with this action;

7. That Plaintiff be awarded its interest and costs of suit incurred in this action;

8. Compensatory damages;

9. Punitive damages; and

10. That Plaintiff be awarded such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a jury trial for all issues in this case that properly are subject to a jury trial.

Respectfully submitted,

/s/ Mike H. Sampson

Mike H. Sampson  
Pa. I.D. No. 92574  
Email: msampson@reedsmith.com  
Kirsten R. Rydstrom  
Pa. I.D. No. 76549  
Email: krydstrom@reedsmith.com

REED SMITH LLP  
Reed Smith Centre, 225 Fifth Avenue  
Pittsburgh, PA 15222-2716  
Telephone: (412) 288-3618  
Facsimile: (412) 288-3063

COUNSEL FOR PLAINTIFF  
THERMOLIFE INTERNATIONAL, LLC

Dated: March 20, 2015