

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

MARS, INC. and  
MARS PETCARE US, INC.,

Plaintiffs,

V.

TRURX LLC; TRUE SCIENCE  
HOLDINGS, LLC; AND NATURAL  
POLYMER INTERNATIONAL  
CORPORATION,

Defendants.

Civil Action No. 6:13-cv-526-RWS-KNM

## JURY TRIAL DEMANDED

## **SECOND AMENDED COMPLAINT**

Plaintiffs Mars, Inc. and Mars Petcare US, Inc. (collectively, “Mars”), for their Second Amended Complaint against Defendants TruRX LLC (“TruRX”), True Science Holdings, LLC (“True Science”), and Natural Polymer International Corporation (“NPIC”) (collectively “Defendants”), hereby allege 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. Plaintiff Mars Petcare US, Inc. is a corporation organized and existing under the law of the State of Delaware, having a principal place of business at 315 Cool Springs Blvd., Franklin, Tennessee 37067.

3. Upon information and belief, 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.

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

5. Upon information and belief, Defendant NPIC is a Delaware corporation having a principal place of business at 1909 10th Street, Suite 100, Plano, Texas 75204.

### **NATURE OF THE ACTION**

6. This is a civil action for infringement of United States Patent Nos. 6,495,176 (“the ’176 Patent”) and 6,652,892 (“the ’892 Patent”). (Exhibits A-B). This action is based upon the Patent Laws of the United States, 35 U.S.C. § 100 et seq.

### **JURISDICTION AND VENUE**

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

8. 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.

9. Personal jurisdiction exists over Defendant NPIC because its principal place of business is located in the Eastern District of Texas at 1909 10th Street, Plano, Texas 75204. Upon information and belief, NPIC also manufactures at least some of the infringing products within this district.

10. Personal jurisdiction exists over the remaining Defendants because, upon information and belief, they have sufficient minimum contacts with the forum as a result of business conducted within Texas and within this judicial district. Upon information and belief,

TruRX entered into a Trademark Purchase and Assignment Agreement and Manufacturing Agreement with NPIC for the sale, marketing, and manufacture of infringing products, including the manufacture of the MINTIES® line of pet food products within this district.

11. 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**

12. On December 17, 2002, the '176 Patent, entitled "Animal Food Composition," was duly and legally issued to Mars UK, Limited as assignee.

13. Mars, Inc. is the current assignee of the '176 Patent.

14. On November 25, 2003, the '892 Patent, entitled "Animal Food Composition," was duly and legally issued to Mars UK, Limited as assignee. The '892 Patent is a continuation of the '176 Patent.

15. Mars, Inc. is the current assignee of the '892 Patent.

16. Upon information and belief, NPIC first manufactured and sold the MINTIES® line of pet food products at least as early as 2007.

17. In September of 2012, NPIC transferred the trademark rights and goodwill related to the MINTIES® brand to TruRX for consideration and a binding manufacturing agreement for the manufacture of the MINTIES® line of pet food products. *See Exhibit C.*

18. Shortly after that transfer, TruRX had the MINTIES® line of pet food products

manufactured by, on information and belief, NPIC.

19. Upon information and belief, NPIC currently manufactures the MINTIES® line of pet food products (as well as the same product sold under other names, including but not limited to 4Health Dental Treats) under the direction and control of TruRX and True Science. Upon information and belief, TruRX and True Science cause the MINTIES® FRESH products to be manufactured by another manufacturer.

20. Mars Petcare US, Inc., which is a subsidiary of Mars, Inc., sells and distributes the BREATHBUSTER® and DENTASTIX® lines of pet food products that directly compete with the MINTIES® line of pet food products. These products are covered by the '176 and '892 Patents.

21. Mars Petcare US, Inc. holds an exclusive license to the '176 and '892 Patents to make, have made, use, sell, have sold, and import into the United States breath-freshening pet products containing certain plant extracts, including essential oils, which include products currently marketed under the DENTASTIX® FRESH AND BREATHBUSTER® lines of products in the Food (grocery), Drug (e.g., CVS and Walgreens), and Mass (e.g., Walmart and Target) market and distribution channels.

22. The Nutro Company, which is a subsidiary of Mars, Inc., sells and distributes the GREENIES® lines of pet food products that directly compete with the MINTIES® line of pet food products.

#### **COUNT I: INFRINGEMENT OF THE '176 PATENT**

23. Mars restates all of the preceding paragraphs as if fully set forth herein.

24. Defendants have directly infringed, and are currently directly infringing, at least one claim of the '176 Patent in violation of 35 U.S.C. § 271 *et seq.* by using, selling, making,

and/or offering to sell in the United States the MINTIES® line of pet food products.

25. Upon information and belief, TruRX and True Science are infringing at least one claim of the '176 Patent in violation of 35 U.S.C. § 271 *et seq.* by inducing at least NPIC to produce and manufacture the MINTIES® line of pet food products in an infringing manner, and TruRX and True Science are doing so with the knowledge that their actions are infringing acts.

26. Upon information and belief, TruRX and True Science are infringing at least one claim of the '176 Patent in violation of 35 U.S.C. § 271 *et seq.* by inducing their customers to provide the MINTIES® line of pet food products to a domestic animal in an infringing manner and contributing to the customers' infringement of the '176 Patent, and TruRX and True Science are doing so with the knowledge that their actions are infringing acts.

27. Mars has been injured and damaged monetarily and otherwise by Defendants' infringement of the '176 Patent. Defendants are therefore liable to Mars for actual damages suffered by Mars, and in no event less than a reasonable royalty.

28. Defendants' continuing acts of infringement are willful, entitling Mars 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 '176 Patent and Mars's infringement allegations against Defendants at least through the filing and service of Mars's Original Complaint and continue their willful infringing activities.

29. Mars 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 '176 Patent. Mars does not have an adequate remedy at law.

**COUNT II: INFRINGEMENT OF THE '892 PATENT**

30. Mars restates all of the preceding paragraphs as if fully set forth herein.

31. Defendants have directly infringed, and are currently directly infringing, at least one claim of the '892 Patent in violation of 35 U.S.C. § 271 *et seq.* by using, selling, making, and/or offering to sell in the United States the MINTIES® line of pet food products.

32. Upon information and belief, TruRX and True Science are infringing at least one claim of the '892 Patent in violation of 35 U.S.C. § 271 *et seq.* by inducing at least NPIC to produce and manufacture the MINTIES® line of pet food products in an infringing manner, and TruRX and True Science are doing so with the knowledge that their actions are infringing acts.

33. Upon information and belief, TruRX and True Science are inducing and contributing to the infringement of at least one claim of the '892 Patent in violation of 35 U.S.C. § 271 *et seq.* by inducing their customers to provide the MINTIES® line of pet food products to a domestic animal in an infringing manner and contributing to the customers' infringement of the '892 Patent, and TruRX and True Science are doing so with the knowledge that their actions are inducing and contributing to infringing acts.

34. Mars has been injured and damaged monetarily and otherwise by Defendants' infringement of the '892 Patent. Defendants are therefore liable to Mars for actual damages suffered by Mars, and in no event less than a reasonable royalty.

35. Defendants' continuing acts of infringement are willful, entitling Mars 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 '892 Patent and Mars's infringement allegations against Defendants at least through the filing and service of Mars's Original Complaint and continue their willful infringing activities.

36. Mars 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 '892 Patent. Mars does not have an adequate remedy at law.

**REQUEST FOR RELIEF**

WHEREFORE, Mars requests as follows:

A. That this Court enter a judgment that Defendants have infringed and are infringing one or more claims of the '176 Patent and the '892 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 '176 Patent and the '892 Patent;

C. That this Court enter a judgment against Defendants awarding damages adequate to compensate Mars for the infringement by Defendants of the '176 Patent and the '892 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 Mars its costs and reasonable attorneys' fees, as provided by 35 U.S.C. § 285; and

F. That this Court grant Mars 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, Mars demands a jury trial as to all matters so triable.

June 17, 2015

Respectfully submitted,

/s/ Dominick A. Conde by permission Claire

Abernathy Henry

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**CERTIFICATE OF SERVICE**

I certify that this document was filed electronically pursuant to Local Rule CV-5(a) on **June 17, 2015**. Pursuant to Local Rule CV-5(a)(3)(A), this electronic filing acts to electronically serve all counsel who have consented to electronic service via the Court's CM/ECF system.

/s/ Claire Abernathy Henry