

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MISSION PHARMACAL COMPANY,

Plaintiff,

V.

METHOD PHARMACEUTICALS LLC,

Defendant.

Civil Action No. 5:17-cv-235

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

Plaintiff Mission Pharmacal Company (“Mission Pharmacal”), for its original complaint for patent infringement against defendant Method Pharmaceuticals, LLC (“Method”), alleges as follows:

PARTIES

1. Mission Pharmacal is a Texas corporation with its principal place of business in San Antonio, Texas.

2. Upon information and belief, Method is a limited liability company organized under the laws of Texas and having its principal place of business at 2000 East Lamar Blvd. Suite 600, Arlington, TX 76006.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. Jurisdiction is based on 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Method by virtue of the fact that Method conducts business in the State of Texas, and has availed itself of the rights and benefits of Texas

law, has engaged in substantial and continuing contacts with the State, and has infringed Mission Pharmacal's patent rights through sales in Texas.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391 (b) and (c) and 1400(b).

FACTS

6. Mission Pharmacal is the owner as assignee of United States Patent No. 6,521,247 ("the '247 Patent"). The '247 Patent lawfully issued on February 18, 2003. A copy of the '247 patent, along with its reexamination certificate, is attached as Exhibit A.

7. The '247 Patent claims, among other things, a nutritional supplement containing both a slowly dissolving and a rapidly dissolving iron compound, a method of alleviating iron deficiency with the dual iron nutritional supplement, and a method of making the dual iron nutritional supplement.

8. Mission Pharmacal sells CitraNatal® prescription prenatal supplements covered by the '247 Patent and used for combating iron deficiency anemia before, during, and after pregnancy. Mission Pharmacal also sells Ferralet® prescription iron supplements covered by the '247 Patent and used for combating iron deficiency anemia.

9. Upon information and belief, Method manufactures, imports, sells, and offers to sell, and induces others to sell, offer to sell, and use, certain prenatal supplements including Focalgin 90 DHA, Focalgin CA, and Folcalgin DSS in this jurisdiction and elsewhere in the United States in competition with, and without permission from, Mission Pharmacal.

10. On information and belief, the formulations, uses, and methods of making Focalgin 90 DHA, Focalgin CA, and Focalgin DSS are covered by claims of the '247 Patent.

11. Mission Pharmacal marks its products with the '247 patent. On information and belief, Method knew about the patent when it copied the ingredients of CitraNatal 90 DHA for its

Focalgin 90 DHA product, CitraNatal Assure for its Focalgin CA product, and Ferralet 90 for its Focalgin DSS product.

COUNT I

PATENT INFRINGEMENT 35 USC § 271

12. Upon information and belief, Method has and will continue to directly infringe, and induce others to infringe, the ‘247 Patent through Method’s manufacture, sale, and distribution of certain nutritional supplements, including Focalgin 90 DHA, Focalgin CA, and Focalgin DSS.

13. Upon information and belief, Focalgin 90 DHA meets each and every limitation of at least claims 1-7, 13-15, 17, 25, and 26 of the ‘247 Patent. *See* Exhibit B (claim chart for Focalgin 90 DHA). Exhibit B is based in part on publicly-available information about Focalgin 90 DHA, including drug label information submitted by Method to the U.S. Food and Drug Administration (FDA). *See* Focalgin 90 DHA Drug Label, Exhibit C (available at <https://dailymed.nlm.nih.gov/dailymed/fda/fdaDrugXsl.cfm?setid=46a653cb-36af-40db-ae63-c23204ed3183&type=display>) (last visited 3/20/17).

14. Upon information and belief, Focalgin CA meets each and every limitation of at least claims 1-7, 13-15, 17, 25, and 26 of the ‘247 Patent. *See* Exhibit D (claim chart for Focalgin CA). Exhibit D is based in part on publicly-available information about Focalgin CA, including drug label information submitted by Method to the FDA. *See* Focalgin CA Drug Label, Exhibit E (available at <https://dailymed.nlm.nih.gov/dailymed/fda/fdaDrugXsl.cfm?setid=3b569bda-6358-4fe0-b8e2-fadd21d02047&type=display>) (last visited 3/20/17).

15. Upon information and belief, Focalgin DSS meets each and every limitation of at least claims 1-7, 13-15, 17, 25, and 26 of the ‘247 Patent. *See* Exhibit F (claim chart for Focalgin DSS). Exhibit F is based in part on publicly-available information about Focalgin DSS, including drug label information submitted by Method to the FDA. *See* Focalgin DSS Drug Label, Exhibit

G (available at <https://dailymed.nlm.nih.gov/dailymed/fda/fdaDrugXsl.cfm?setid=4458d4c0-04b4-4a9d-be5e-582bc811bcfa&type=display>) (last visited 3/20/17).

16. Mission Pharmacal has been damaged by Method's infringement of the '247 Patent, and its continued sales of Focalgin 90 DHA, Focalgin CA, and Focalgin DSS has caused monetary damages, including but not limited to lost profits. The injury to Mission Pharmacal is continuing and irreparable unless enjoined by this Court.

17. Upon information and belief, Method was aware of the '247 patent and has infringed despite an objectively high likelihood that its actions constitute infringement of a valid patent, thereby infringing willfully.

PRAYER FOR RELIEF

Plaintiff Mission Pharmacal respectfully requests the Court enter a judgment awarding Plaintiff the following:

A. A permanent injunction against Method and others acting in concert with it from engaging in directly, or inducing others to engage in, the commercial manufacture, distribution, use, offer to sell, or sale of supplements as claimed by the '247 patent, including, Focalgin 90 DHA, Focalgin CA, and Focalgin DSS, and all other acts of infringement of the '247 patent, prior to the expiration of that patent;

B. Actual damages, but not less than a reasonable royalty;

C. Treble damages based on a finding of willful infringement against Method under 35 U.S.C. § 284.

D. Prejudgment and post-judgment interest;

E. Mission Pharmacal's attorneys' fees under 35 U.S.C. § 285; and

F. All other relief as the Court may deem appropriate.

JURY DEMAND

Plaintiff Mission Pharmacal demands a trial by jury on all issues.

Dated: March 22, 2017

By /s/ Charles B. Walker, Jr.

Charles B. Walker, Jr.

Texas Bar No. 00794808

charles.walker@nortonrosefulbright.com

Daniel A. Prati

Texas Bar No. 24070446

dan.prati@nortonrosefulbright.com

NORTON ROSE FULBRIGHT US LLC

1301 McKinney, Suite 5100

Houston, Texas 77010

Telephone: 713.651.5151

Fax: 713.651.5246

**ATTORNEYS FOR PLAINTIFF MISSION
PHARMACAL CO.**