

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF MICHIGAN

PROPRIETARY WELLNESS, LLC,)	
a Michigan Limited Liability Company)	
)	
Plaintiff)	
)	
v.)	Civil Action No.
)	
PRIMORDIAL PERFORMANCE, LLC,)	JURY TRIAL DEMANDED
An Oregon Limited Liability Company, and)	
ERIC POTRATZ, an Individual)	
)	
Defendants		

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff PROPRIETARY WELLNESS, LLC for its Complaint against Defendants
PRIMORDIAL PERFORMANCE, LLC, and ERIC POTRATZ alleges as follows:

PARTIES

1. Plaintiff Proprietary Wellness ("Plaintiff") is a Michigan limited liability company with its principal place of business located in Brighton, Michigan.
2. On information and belief, Defendant Primordial Performance, LLC ("Defendant Primordial") is an Oregon limited liability company with its principal place of business in Portland, Oregon.
3. On information and belief, Defendant Eric Potratz, ("Defendant Potratz") is an individual who resides in Eugene, Oregon.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this of this action pursuant to 28

U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

5. On information and belief, Defendant Primordial is subject to personal jurisdiction in the Eastern District of Michigan (the "District") consistent with principals of due process and Mich. Comp. Laws §§ 600.711 and 600.715.
6. On information and belief, Defendant Primordial places infringing products, processes and/or services into the stream of commerce with the knowledge or understanding that such products, processes, and/or services are sold or employed in the State of Michigan, including in this District.
7. On information and belief, the infringing acts of Defendant Primordial cause injury to Plaintiff within this District.
8. On information and belief, Defendant Primordial derives substantial revenue from the sale and/or employment of infringing products, processes, and/or services within this District
9. On information and belief, Defendant Primordial expects its actions to have consequences within this District.
10. On information and belief, Defendant Primordial derives substantial revenue from commerce related to this District.
11. Defendant Potratz is subject to personal jurisdiction in the District consistent with principals of due process and Mich. Comp. Laws §600.705.
12. On information and belief, Defendant Potratz transacts business within the State of Michigan.
13. Defendant Potratz has entered into a contract for services to be rendered or for materials

to be furnished within the State of Michigan.

14. Under 28 U.S.C. § 1367 this Court has supplemental jurisdiction to hear claims arising under the laws of the State of Michigan that stem from a common nucleus of operative facts and which the Plaintiff would ordinarily be expected to litigate in a single proceeding.
15. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

THE PATENT AT ISSUE

16. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
17. On April 26, 2006, Plaintiff submitted United States Patent Application No. 11/411,530, entitled "Use of DHEA derivatives for enhancing physical performance" ("the '530 patent application") to the United States Patent and Trademark Office ("the PTO"). Exhibit 1, the '530 patent application.
18. The '530 patent application included claim 16 for 3 β -hydroxy-1-en-17-one commonly referred to as 1-DHEA.
19. The '530 patent application included claims 17-20 for 3 β -hydroxy-4-en-17-one commonly referred to as 4-DHEA.
20. On October 26, 2006, the '530 patent application was published and given publication number US 2006/0241093 ("the '530 patent application publication").
21. On December 27, 2011, the PTO issued United States Patent No. 8,084,446, entitled "Use of DHEA derivatives for enhancing physical performance" ("the '446 patent"). Exhibit 2, the '446 patent.
22. The '446 patent covers claims 17 – 20, for the oral use of 4-DHEA.
23. Since its issuance, the '446 patent has been in full force and effect.

24. Plaintiff owns the '446 patent, including the right to sue and recover damages for the infringement thereof.

FACTUAL BACKGROUND

25. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
26. In or about the fall of 2008, Defendant Primordial approached Plaintiff about obtaining a license for the use of a proprietary intellectual property, specifically, a proprietary compound commonly known as 1-DHEA and its esters, which is a derivative of DHEA.
27. In or about October of 2008, Plaintiff notified both Defendants that it owned all rights, title, and interest to the '530 patent application.
28. After good faith negotiations between the parties, Defendant Primordial entered into a Licensing Agreement dated October 8, 2008 (the "2008 License Agreement") with Plaintiff. Exhibit 3, October 8, 2008 1-DHEA License Agreement.
29. The material terms of the 2008 License Agreement are:
- a. Defendant Primordial would be allowed to manufacture, distribute, and retail dietary supplements containing the 1-DHEA compound.
 - b. Defendant Primordial would pay to Plaintiff a royalty fee of 4% of revenue from sales of the licensed products and methods.
 - c. The agreement would remain in effect until terminated for default or with six months notice by either party.
 - d. The contract contained a choice of law provision, which stated that Michigan law shall govern the licensing agreement.
30. On information and belief, Defendant Primordial then began the manufacturing,

distribution, and sales of products which contained the licensed compound 1-DHEA.

31. In or about January of 2010, Defendant Primordial again approached Plaintiff about distributing and utilizing Plaintiff's proprietary property involving a compound commonly known as Androsterone and its esters.
32. On February 2, 2010, Defendant Primordial and Plaintiff entered into a second Licensing Agreement (the "2010 License Agreement") which contained the same material terms as the October 8, 2008 agreement. Exhibit 4, February 2, 2010 Androsterone License Agreement.
33. On information and belief, Defendant Primordial then began the manufacturing, distribution, and retail sales of products which contained the licensed compound Androsterone.
34. Defendant Primordial made appropriate royalty payments through in or about October of 2010. Exhibit 5, List of Royalty Payments by Primordial to Proprietary Wellness.
35. In or about October of 2010, Defendant ceased its royalty payments to Plaintiff.
36. Defendant Primordial has continuously manufactured, distributed, and sold the licensed compounds in its products to the present day.
37. Plaintiff has made repeated demands for payment of royalties owed and for an accounting.
38. Defendant Primordial has failed and/or refused to pay or provide the accounting.
39. On information or belief, in or about May of 2011 Defendant Primordial began the manufacturing, marketing and sales of dietary supplements containing 4-DHEA without license or permission of Plaintiff.
40. On February 24, 2011 Plaintiff, by and through counsel, sent Defendant Primordial and

Defendant Potratz a letter notifying Defendants that its use of 4-DHEA was an infringement on the '530 patent application and to cease and desist its use. Exhibit 6, February 24, 2011 letter.

41. Defendant Primordial refused to cease and desist and continues to manufacture, market, and sell dietary supplements containing 4-DHEA in direct infringement of the '446 patent.
42. On information and belief, in or about the year of 2011, Plaintiff had entered into preliminary negotiations for licensing with third-party business customers.
43. On information and belief, Defendant Potratz communicated to Plaintiff's third-party business customers that Plaintiff was making misrepresentations with regards to its intellectual property rights in order to take advantage of individuals and business within the nutritional supplement industry.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 8,084,446

44. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
45. Defendants are infringing and/or inducing others to infringe on the '446 patent by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States products or processes that practice the 4-DHEA invention claimed in the '446 patent.
46. Defendant Primordial has profited though its infringement of the '446 patent.
47. As a result of Defendant Primordial's infringement of the '446 patent, Plaintiff has suffered and will continue to suffer damage.
48. Plaintiff is entitled to recover from Defendants damages suffered by Plaintiff as a result of Defendants' unlawful acts.

49. Plaintiff has provided written notice to Defendant Primordial of its infringement in a letter dated February 24, 2011. Exhibit 6, February 24, 2011 letter.

50. Defendant Primordial has written notice of its infringement by virtue of the filing and service of this Complaint.

51. On information and belief, Defendant Primordial's infringement and Defendant Potratz' inducement of others to infringe the '446 patent are willful and deliberate, entitling Plaintiff to enhanced damages and reasonable attorney fees and costs.

52. On information and belief, Defendants intend to continue their unlawful infringing activity, and Plaintiff continues to and will continue to suffer irreparable harm – for which there is no adequate remedy at law –unless Defendants are enjoined by this Court from continuing such unlawful infringing activity.

COUNT II

INFRINGEMENT OF PLAINTIFF'S PROVISIONAL PATENT RIGHTS PUSUANT TO

35 U.S.C. §154(d)

53. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

54. On information and belief, Defendant Primordial has directly and/or inadvertently infringed, either literally or under the doctrine of equivalents, Plaintiff's provisional patent rights in one or more claims of the '446 patent by manufacturing, marketing, and selling and/or directing others to manufacture, market, and/or sell the protected compound 4-DHEA of Plaintiff's '446 patent without Plaintiff's permission or authorization.

55. In or about October of 2008, Plaintiff gave Defendant Primordial actual notice of the '530 patent application publication.

56. The invention claimed in the '446 patent is substantially identical to the invention as claimed in the '530 patent application.
57. Defendant Primordial's infringement of Plaintiff's provisional patent rights in the issued claims of the '446 patent has damaged Plaintiff.
58. As a result of Defendant Primordial's infringement of Plaintiff's provisional patent rights in the issued claims of the '446 patent, Plaintiff is entitled to recover a reasonable royalty pursuant to 35 U.S.C §154(d)(1).

COUNT III

BREACH OF THE 2008 LICENSING AGREEMENT

59. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
60. Plaintiff has duly performed its obligations under the 2008 License Agreement and delivered the intellectual property and services to Defendant Primordial.
61. Defendant Primordial breached its agreements with Plaintiff by failing and refusing to pay the Plaintiff royalties due and owing for the intellectual property and services Plaintiff provided.
62. Despite repeated demands, Defendant Primordial has failed and refused to pay the Plaintiff.
63. As a direct and proximate result of Defendant Primordial's breach of said agreements the Plaintiff has sustained damages.

COUNT IV

BREACH OF THE 2010 LICENSE AGREEMENT

64. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

65. Plaintiff has duly performed their obligations under the 2010 License Agreement and delivered the intellectual property and services to Defendant Primordial.
66. Defendant Primordial has breached its agreements with Plaintiff by failing and refusing to pay the Plaintiff royalties due and owing for the intellectual property and services Plaintiff provided.
67. Despite repeated demands, Defendant Primordial has failed and refused to pay the Plaintiff.
68. As a direct and proximate result of Defendant Primordial's breach of said agreements the Plaintiff has sustained damages.

COUNT V

UNJUST ENRICHMENT

69. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
70. Plaintiff provided proprietary intellectual property in the 2008 and 2010 licensing agreements to Defendant Primordial in good faith based on its representation that it would pay a fair royalty for the use of the proprietary intellectual property in the sale of Defendant Primordial's products.
71. Defendant Primordial continues to receive the monetary benefit of utilizing the proprietary intellectual property in the 2008 and 2010 licensing agreements in the sale of Defendant Primordial's products.
72. As a result of Defendant Primordial's conduct, Defendant Primordial is being unjustly enriched at the expense of Plaintiff.

73. It would be inequitable to allow Defendant Primordial to retain this monetary benefit without compensating the Plaintiff for the use of Plaintiff's proprietary intellectual property which was given to Defendant Primordial in good faith.

74. Defendant Primordial should be required to disgorge this unjust enrichment.

COUNT VI

QUANTUM MERIT

75. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

76. Plaintiff provided proprietary intellectual property to Defendants in good faith based on their representation that they would pay a fair royalty for the use of the proprietary intellectual property in the sale of Defendant Primordial's products.

77. Defendants continue to receive the monetary benefit of utilizing the proprietary intellectual property in the sale of Defendant Primordial's products.

78. As a result of Defendant actions, Defendants are being unjustly enriched without paying a reasonable and fair compensation for the use of Plaintiff's proprietary intellectual property at the expense of Plaintiff.

79. As a result of Defendants' actions, Plaintiff is alternatively entitled to be compensated for the fair value of the services and proprietary intellectual property that was provided to and accepted by Defendants.

COUNT VII

TORTIOUS INTERFERENCE

WITH BUSINESS RELATIONSHIP

80. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

- 81. On information and belief, the preliminary negotiations between Plaintiff and its third-party business customers created valid business expectancies.
- 82. On information and belief, Defendant Potratz had knowledge of these discussions.
- 83. On information and belief, in or about the year of 2011, Defendant Potratz interfered with the valid business expectancies between Plaintiff and its third-party business customers.
- 84. As a result of Defendant Potratz' actions, Plaintiff has suffered loss of business and other damages including its good will and reputation.

DEMAND FOR JURY TRIAL

- 85. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff respectfully requests a trial by jury of all claims and issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- A. For a judgment declaring that Defendants have infringed and /or induced others to infringe one or more claims of the '446 patent, and Plaintiff's provisional rights in those claims, by manufacturing, marketing, and/or selling the protected compound 4-DHEA and/or encouraging others to do so;
- B. For a judgment awarding Plaintiff compensatory damages as a result of Defendants' infringement and/or inducement to infringe the '446 patent, together with interest and costs, and in no event less than a reasonable royalty;
- C. For a judgment declaring that Defendants' infringement and/or inducement to infringe the '446 patent has been willful and deliberate;
- D. For a judgment awarding Plaintiff treble damages and pre-judgment interest under 35

U.S.C. § 284 as a result of Defendants' willful and deliberate post-patent issuance infringement and/or inducement to infringe the '446 patent;

- E. For a judgment declaring that this case is exceptional and awarding Plaintiff its expenses, costs, and attorney's fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure;
- F. For an order granting both preliminary and permanent injunctions pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of infringement;
- G. For a judgment declaring that Defendant Primordial in breach of the 2008 License Agreement;
- H. For a judgment awarding Plaintiff compensatory damages in excess of \$75,000, costs, interests, and reasonable attorney fees for breaching the 2008 License Agreement
- I. For a judgment declaring Defendant Primordial in breach of the 2010 License Agreement;
- J. For a judgment awarding Plaintiff compensatory damages in excess of \$75,000, costs, interests, and reasonable attorney fees for breaching the 2010 License Agreement;
- K. For a judgment declaring that Defendants have been unjustly enriched at the expense of the Plaintiff;
- L. For a judgment awarding Plaintiff compensatory damages in excess of \$75,000, costs, interests, and reasonable attorney fees for having suffered from Defendant's unjust enrichment;
- M. For a judgment holding the Defendants liable for the fair value of the services and proprietary intellectual property that was provided to and accepted by Defendants;
- N. For a judgment awarding Plaintiff compensatory damages in excess of \$75,000, costs,

interests, and reasonable attorney fees for having suffered from Defendants' use of the of the services and proprietary intellectual property that was provided to and accepted by Defendants ;

- O. For a judgment declaring that Defendant Potratz has tortiously and intentionally interfered with Plaintiff's business relationships at the expense of the Plaintiff;
- P. For a judgment against Defendant Potratz awarding Plaintiff compensatory damages in excess of \$75,000, costs, interests, and reasonable attorney fees for having suffered from Defendant's tortious interference with Plaintiff's business relationships; and
- Q. For such other relief as this Court deems just and proper.

Date: 3/9/2012

/s/ Christina K. Lichty
Christina K. Lichty (P69907)
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VERIFIED STATEMENT

STATE OF MICHIGAN)
)SS
COUNTY OF LIVINGSTON)

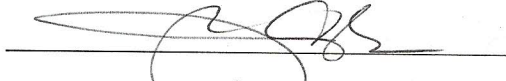
On this 8 day of MARCH 2012, ~~2011~~, before me a Notary Public in and

for said County, appeared the aforesaid, Eric Marchewitz, who being first duly sworn and
deposed, said that he is the sole member, and Chief Executive Officer, of Proprietary Wellness, LLC, and
he has read the foregoing Verified Complaint and that the statements contained therein are true, except as
to those matters which are stated upon information and belief to be true, and as to them, he believes the
same to be true, and he declares under the penalty of perjury that the above statements are true.



Eric Marchewitz, Chief Executive Officer
Proprietary Wellness, LLC.

Subscribed and sworn to before me
this 8 day of MARCH, 20 12.



Notary Public, LIVINGSTON County Michigan
My Commission expires: 9-12-2017

