

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

THE WILLIAM M. YARBROUGH
FOUNDATION and ZANFEL LABORATORIES,
INC.,

Plaintiffs,

v.

JANET ZIFF and
WHOLESALE 2U LLC,

Defendants.

Case No:

Judge:

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL LABORATORIES, INC., ("PLAINTIFFS" or "ZANFEL") by and through their undersigned counsel, for their Complaint against Defendants, JANET ZIFF and WHOLESALE 2U LLC, ("DEFENDANTS" or "ZIFF") state the following. Allegations made on information and belief are premised on the belief that the same are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

NATURE OF THE CASE

1. This is an action for patent infringement under the Patent Laws of the United States, 35 U.S.C. §1, *et seq.* ("Federal Patent Act").

2. DEFENDANTS, in an attempt to unlawfully and willfully profit from the success of ZANFEL's market leading poison ivy wash, sell, without authorization, express or implied, from ZANFEL or THE WILLIAM M. YARBROUGH FOUNDATION, a product for the treatment of poison ivy in direct violation of The Federal Patent Act.

3. Upon information and belief, DEFENDANTS offer for sale and sell stolen, counterfeit, misappropriated and/or otherwise wrongfully acquired ZANFEL brand poison ivy wash on Amazon.com.

4. ZANFEL seeks injunctive and monetary relief to the fullest extent possible under The Federal Patent Act, as well as any such other relief as the equities of the case may require and as this Court may deem just and proper.

PARTIES

5. THE WILLIAM M. YARBROUGH FOUNDATION is an Illinois not-for-profit corporation having a place of business at c/o: Micheal J. Legamaro, 203 North LaSalle Street, Suite 1900, Chicago, Illinois 60601.

6. ZANFEL LABORATORIES, INC. is an Illinois corporation having a place of business at 6901 North Knoxville Avenue, Suite 200, Peoria, Illinois 61614.

7. Upon information and belief JANET ZIFF is an individual with an address at 2050 Camerton Court, Thousand Oaks, California 91361.

8. Upon information and belief WHOLESale 2U LLC is a corporation organized under the laws of California, having a principal place of business at 2050 Camerton Court, Thousand Oaks, California 91361.

JURISDICTION AND VENUE

9. This Court has original jurisdiction over the subject matter by virtue of at least one of 28 U.S.C. §§1331, 1338(a), and 1338(b).

10. This Court has personal jurisdiction over JANET ZIFF and venue is proper in this judicial district pursuant to at least one of 28 U.S.C. §§1391(b)(2), 1391(c), 1400(a), and 1400(b). Upon information and belief JANET ZIFF is actively doing business in this judicial district, and/or has committed certain acts of patent infringement in this judicial district. JANET ZIFF has, *inter alia*, aided and abetted WHOLESale 2U

LLC's sale of a product for the treatment of poison ivy in the State of Michigan. JANET ZIFF is subject to the personal jurisdiction of this Court and is amenable to service of process pursuant to the Michigan long-arm statute, MI ST 600.705 (2003), and Fed. R. Civ. P. 4(e). Requiring JANET ZIFF to respond to this action will not violate due process.

11. This Court has personal jurisdiction over WHOLESale 2U LLC, and venue is proper in this judicial district pursuant to at least one of 28 U.S.C. §§1391(b)(2), 1391(c), 1400(a), and 1400(b). Upon information and belief WHOLESale 2U LLC is actively doing business in this judicial district, and/or has committed certain acts of patent infringement in this judicial district. WHOLESale 2U LLC makes, distributes, offers for sale, and/or sells a product for the treatment of poison ivy in the State of Michigan. WHOLESale 2U LLC is subject to the personal jurisdiction of this Court and is amenable to service of process pursuant to the Michigan long-arm statute, MI ST 600.705 (2003), and Fed. R. Civ. P. 4(e). Requiring WHOLESale 2U LLC to respond to this action will not violate due process.

12. Upon information and belief JANET ZIFF makes certain and/or critical business decisions on behalf of WHOLESale 2U LLC.

13. Upon information and belief JANET ZIFF is the alter ego or partial alter ego of WHOLESale 2U LLC.

BACKGROUND

14. Prior to July 22, 2002, William M. Yarbrough conceived of a method for treating poison ivy with an aqueous topical composition (the "Composition").

15. Mr. Yarbrough formed a business around the manufacture and sale of the Composition. That business, operating under the name ZANFEL, sells the Composition as a wash for treating poison ivy, oak, and sumac.

16. Mr. Yarbrough established THE WILLIAM M. YARBROUGH

FOUNDATION, a charitable, not-for-profit foundation directed toward, among other missions, caring for and feeding the homeless in a plurality of locations.

17. THE WILLIAM M. YARBROUGH FOUNDATION owns essentially all of the intellectual property associated with ZANFEL brand poison ivy wash.

18. In an improper attempt to unlawfully profit from the goodwill of ZANFEL, as well as impede the benevolent missions of THE WILLIAM M. YARBROUGH FOUNDATION, DEFENDANTS have begun selling a product for the treatment of poison ivy that infringes PLAINTIFFS' intellectual property associated with its market leading poison ivy wash in direct violation of The Federal Patent Act.

19. Upon information and belief, DEFENDANTS offer for sale and sell stolen, counterfeit, misappropriated and/or otherwise wrongfully acquired ZANFEL brand poison ivy wash on Amazon.com.

COUNT I – PATENT INFRINGEMENT OF
U.S. PATENT NO. 7,008,963 BY JANET ZIFF

20. PLAINTIFFS repeat and reallege the allegations contained in Paragraphs 1-19 of this Complaint as if fully set forth herein.

21. On July 22, 2002, Mr. Yarbrough filed a patent application directed to methods for using the Composition in the treatment of urushiol induced contact dermatitis (*e.g.*, poison ivy, oak, and sumac).

22. On March 7, 2006, the United States Patent and Trademark Office issued U.S. Patent No. 7,008,963 ("the '963 patent"), entitled "Urushiol Induced Contact Dermatitis Solution." (Exhibit A).

23. All rights in the '963 patent have been assigned to THE WILLIAM M. YARBROUGH FOUNDATION. THE WILLIAM M. YARBROUGH FOUNDATION is the sole owner of the '963 patent and has the right to enforce and recover damages for

infringement of the '963 patent.

24. ZANFEL is an exclusive licensee of the '963 patent and, as such, also has the right to enforce and recover damages for infringement of the '963 patent.

25. JANET ZIFF makes or has made, uses, offers to sell and/or sells a product indicated for the treatment of poison ivy, without authorization, express or implied, from ZANFEL or THE WILLIAM M. YARBROUGH FOUNDATION, which product infringes upon one or more claims of the '963 patent in this judicial district and elsewhere in the United States in violation of 35 U.S.C. §271.

26. JANET ZIFF has actively induced and currently actively induces infringement of one or more claims of the '963 patent in this judicial district and elsewhere in the United States in violation of 35 U.S.C. §271.

27. JANET ZIFF has knowledge of ZANFEL's wash for treating poison ivy, oak, and sumac, as well as the '963 patent pertaining to the same.

28. Upon information and belief JANET ZIFF through her unauthorized manufacture, use and/or sale of ZANFEL brand poison ivy wash instructs and continues to instruct customers to directly infringe one or more claims of the '963 patent. Upon information and belief, JANET ZIFF instructs customers to use stolen, counterfeit, misappropriated and/or otherwise wrongfully acquired ZANFEL brand poison ivy wash to treat poison ivy, oak, and sumac. Such customers thereby directly infringe one or more claims of the '963 patent.

29. Upon information and belief JANET ZIFF specifically intends for customers to infringe the '963 patent for her economic benefit. Upon information and belief, JANET ZIFF's unauthorized manufacture, use and/or sale of stolen, counterfeit, misappropriated and/or otherwise wrongfully acquired ZANFEL brand poison ivy wash demonstrates her specific intent.

30. Infringement of the '963 patent by JANET ZIFF has caused, and will continue to cause THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL to suffer damages, including, but not limited to, lost sales, lost profits, lost royalties and price erosion in an amount to be determined by the trier of fact.

31. Unless restrained and enjoined by this Court, JANET ZIFF will continue to infringe the '963 patent, resulting in substantial, continuing and irreparable damages to THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL.

32. The actions of JANET ZIFF are willful and "exceptional" within the meaning of 35 U.S.C. §285.

COUNT II – PATENT INFRINGEMENT OF

U.S. PATENT NO. 7,008,963 BY WHOLESALE 2U LLC

33. PLAINTIFFS repeat and reallege the allegations contained in Paragraphs 1-32 of this Complaint as if fully set forth herein.

34. On July 22, 2002, Mr. Yarbrough filed a patent application directed to methods for using the Composition in the treatment of urushiol induced contact dermatitis (*e.g.*, poison ivy, oak, and sumac).

35. On March 7, 2006, the United States Patent and Trademark Office issued U.S. Patent No. 7,008,963 ("the '963 patent"), entitled "Urushiol Induced Contact Dermatitis Solution."

36. All rights in the '963 patent have been assigned to THE WILLIAM M. YARBROUGH FOUNDATION. THE WILLIAM M. YARBROUGH FOUNDATION is the sole owner of the '963 patent and has the right to enforce and recover damages for infringement of the '963 patent.

37. ZANFEL is an exclusive licensee of the '963 patent and, as such, also has the right to enforce and recover damages for infringement of the '963 patent.

38. WHOLESale 2U LLC makes or has made, uses, offers to sell and/or sells a product indicated for the treatment of poison ivy, without authorization, express or implied, from ZANFEL or THE WILLIAM M. YARBROUGH FOUNDATION, which product infringes upon one or more claims of the '963 patent in this judicial district and elsewhere in the United States in violation of 35 U.S.C. §271.

39. WHOLESale 2U LLC has actively induced and currently actively induces infringement of one or more claims of the '963 patent in this judicial district and elsewhere in the United States in violation of 35 U.S.C. §271.

40. WHOLESale 2U LLC has knowledge of ZANFEL's wash for treating poison ivy, oak, and sumac, as well as the '963 patent pertaining to the same.

41. Upon information and belief, WHOLESale 2U LLC, through its unauthorized manufacture, use and/or sale of ZANFEL brand poison ivy wash instructs and continues to instruct customers to directly infringe one or more claims of the '963 patent. Upon information and belief, WHOLESale 2U LLC instructs customers to use stolen, counterfeit, misappropriated and/or otherwise wrongfully acquired ZANFEL brand poison ivy wash to treat poison ivy, oak, and sumac. Such customers thereby directly infringe one or more claims of the '963 patent.

42. Upon information and belief WHOLESale 2U LLC specifically intends for customers to infringe the '963 patent for their economic benefit. Upon information and belief, WHOLESale 2U LLC's unauthorized manufacture, use and/or sale of stolen, counterfeit, misappropriated and/or otherwise wrongfully acquired ZANFEL brand poison ivy wash demonstrates its specific intent.

43. Infringement of the '963 patent by WHOLESale 2U LLC has caused, and will continue to cause THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL to suffer damages, including, but not limited to, lost sales, lost profits, lost royalties and

price erosion in an amount to be determined by the trier of fact.

44. Unless restrained and enjoined by this Court, WHOLESale 2U LLC will continue to infringe the '963 patent, resulting in substantial, continuing and irreparable damages to THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL.

45. The actions of WHOLESale 2U LLC are willful and "exceptional" within the meaning of 35 U.S.C. §285.

COUNT III – PATENT INFRINGEMENT OF
U.S. PATENT NO. 6,423,746 BY JANET ZIFF

46. PLAINTIFFS repeat and reallege the allegations contained in Paragraphs 1-45 of this Complaint as if fully set forth herein.

47. On July 3, 1999, Mr. Yarbrough filed a patent application directed to methods for using the Composition in the treatment of urushiol induced contact dermatitis (*e.g.*, poison ivy, oak, and sumac).

48. On July 23, 2002, the United States Patent and Trademark Office issued U.S. Patent No. 6,423,746 ("the '746 patent"), entitled "Urushiol Induced Contact Dermatitis and Method of Use." (Exhibit B).

49. All rights in the '746 patent have been assigned to THE WILLIAM M. YARBROUGH FOUNDATION. THE WILLIAM M. YARBROUGH FOUNDATION is the sole owner of the '746 patent and has the right to enforce and recover damages for infringement of the '746 patent.

50. ZANFEL is an exclusive licensee of the '746 patent and, as such, also has the right to enforce and recover damages for infringement of the '746 patent.

51. JANET ZIFF makes or has made, uses, offers to sell and/or sells a product indicated for the treatment of poison ivy, without authorization, express or implied, from ZANFEL or THE WILLIAM M. YARBROUGH FOUNDATION, which product infringes upon one or more claims of the '746 patent in this judicial district and elsewhere in the United States in violation of 35 U.S.C. §271.

52. JANET ZIFF has actively induced and currently actively induces infringement of one or more claims of the '746 patent in this judicial district and elsewhere in the United States in violation of 35 U.S.C. §271.

53. JANET ZIFF has knowledge of ZANFEL's wash for treating poison ivy,

oak, and sumac, as well as the '746 patent pertaining to the same.

54. Upon information and belief, JANET ZIFF, through her unauthorized manufacture, use and/or sale of ZANFEL brand poison ivy wash instructs and continues to instruct customers to directly infringe one or more claims of the '746 patent. Upon information and belief, JANET ZIFF instructs customers to use stolen, counterfeit, misappropriated and/or otherwise wrongfully acquired ZANFEL brand poison ivy wash to treat poison ivy, oak, and sumac. Such customers thereby directly infringe one or more claims of the '746 patent.

55. Upon information and belief JANET ZIFF specifically intends for customers to infringe the '746 patent for her economic benefit. Upon information and belief, JANET ZIFF's unauthorized manufacture, use and/or sale of stolen, counterfeit, misappropriated and/or otherwise wrongfully acquired ZANFEL brand poison ivy wash demonstrates her specific intent.

56. Infringement of the '746 patent by JANET ZIFF has caused, and will continue to cause THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL to suffer damages, including, but not limited to, lost sales, lost profits, lost royalties and price erosion in an amount to be determined by the trier of fact.

57. Unless restrained and enjoined by this Court, JANET ZIFF will continue to infringe the '746 patent, resulting in substantial, continuing and irreparable damages to THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL.

58. The actions of JANET ZIFF are willful and "exceptional" within the meaning of 35 U.S.C. §285.

COUNT IV – PATENT INFRINGEMENT OF

U.S. PATENT NO. 6,423,746 BY WHOLESALE 2U LLC

59. PLAINTIFFS repeat and reallege the allegations contained in Paragraphs 1-58 of this Complaint as if fully set forth herein.

60. On July 3, 1999, Mr. Yarbrough filed a patent application directed to methods for using the Composition in the treatment of urushiol induced contact dermatitis (*e.g.*, poison ivy, oak, and sumac).

61. On July 23, 2002, the United States Patent and Trademark Office issued U.S. Patent No. 6,423,746 ("the '746 patent"), entitled "Urushiol Induced Contact Dermatitis and Method of Use."

62. All rights in the '746 patent have been assigned to THE WILLIAM M. YARBROUGH FOUNDATION. THE WILLIAM M. YARBROUGH FOUNDATION is the sole owner of the '746 patent and has the right to enforce and recover damages for infringement of the '746 patent.

63. ZANFEL is an exclusive licensee of the '746 patent and, as such, also has the right to enforce and recover damages for infringement of the '746 patent.

64. WHOLESALE 2U LLC makes or has made, uses, offers to sell and/or sells a product indicated for the treatment of poison ivy, without authorization, express or implied, from ZANFEL or THE WILLIAM M. YARBROUGH FOUNDATION, which product infringes upon one or more claims of the '746 patent in this judicial district and elsewhere in the United States in violation of 35 U.S.C. §271.

65. WHOLESALE 2U LLC has actively induced and currently actively induces infringement of one or more claims of the '746 patent in this judicial district and elsewhere in the United States in violation of 35 U.S.C. §271.

66. WHOLESALE 2U LLC has knowledge of ZANFEL's wash for treating

poison ivy, oak, and sumac, as well as the '746 patent pertaining to the same.

67. Upon information and belief, WHOLESale 2U LLC, through its unauthorized manufacture, use and/or sale of ZANFEL brand poison ivy wash instructs and continues to instruct customers to directly infringe one or more claims of the '746 patent. Upon information and belief, WHOLESale 2U LLC instructs customers to use stolen, counterfeit, misappropriated and/or otherwise wrongfully acquired ZANFEL brand poison ivy wash to treat poison ivy, oak, and sumac. Such customers thereby directly infringe one or more claims of the '746 patent.

68. Upon information and belief WHOLESale 2U LLC specifically intends for customers to infringe the '746 patent for their economic benefit. Upon information and belief, WHOLESale 2U LLC's unauthorized manufacture, use and/or sale of stolen, counterfeit, misappropriated and/or otherwise wrongfully acquired ZANFEL brand poison ivy wash demonstrates its specific intent.

69. Infringement of the '746 patent by WHOLESale 2U LLC has caused, and will continue to cause THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL to suffer damages, including, but not limited to, lost sales, lost profits, lost royalties and price erosion in an amount to be determined by the trier of fact.

70. Unless restrained and enjoined by this Court, WHOLESale 2U LLC will continue to infringe the '746 patent, resulting in substantial, continuing and irreparable damages to THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL.

71. The actions of WHOLESale 2U LLC are willful and "exceptional" within the meaning of 35 U.S.C. §285.

PRAYER FOR RELIEF

WHEREFORE, THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL LABORATORIES, INC., respectfully demand judgment against DEFENDANTS as follows:

- A. Declaring that DEFENDANTS have infringed the '963 and '746 patents;
- B. Pursuant to 35 U.S.C. §283, permanently enjoining and restraining DEFENDANTS and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from further acts of infringement of the '963 and '746 patents;
- C. Pursuant to 35 U.S.C. §284, awarding to THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL damages, including lost profits, together with prejudgment interest, post judgment interest, and costs, adequate to compensate THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL for DEFENDANTS' acts of infringement of the '963 and '746 patents;
- D. Declaring that DEFENDANTS' infringement has been willful and that this is an exceptional case pursuant to 35 U.S.C. §285 and awarding THE WILLIAM M. YARBROUGH FOUNDATION and ZANFEL treble damages and reasonable attorneys' fees against DEFENDANTS for infringement of the '963 and '746 patents;
- E. Order the DEFENDANTS to pay damages adequate to compensate PLAINTIFFS for the acts of patent infringement by DEFENDANTS and DEFENDANTS' profits from its sales of goods in violation of the law as described in this Complaint;
- F. Order DEFENDANTS to pay all applicable statutory damages including exceptional and/or treble damages;
- G. Order DEFENDANTS to pay PLAINTIFFS expenses, interest, and costs including reasonable attorney's fees;

H. Order DEFENDANTS to pay PLAINTIFFS for rehabilitative advertising and price point restoration; and

I. Awarding PLAINTIFFS such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

PLAINTIFFS respectfully demand a trial by jury on all issues so triable.

Respectfully submitted,

THE WILLIAM M. YARBROUGH
FOUNDATION & ZANFEL
LABORATORIES, INC.

Dated: December 7, 2012

By: /s/ William L. King III
One of the Attorneys for Plaintiffs

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