

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action Number 13-cv-1404

MYELOTEC, INC.
a Georgia Corporation,

Plaintiff

v

BIOVISION TECHNOLOGIES, LLC
a Colorado Corporation,

Defendant

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

COMES NOW the Plaintiff Myelotec, Inc., a Georgia Corporation, by and through his attorneys; and complains against the Defendant, BioVision Technologies, LLC, a Colorado corporation, alleging as follows:

INTRODUCTION – NATURE OF THE ACTION

1. This is an action for patent infringement, trademark infringement, unfair competition, and tortious interference in business and contractual relations brought by Plaintiff Myelotec, Inc., a Georgia corporation (“Myelotec”) against Defendant BioVision Technologies, LLC, a Colorado Corporation (“BioVision”).

2. This action is brought pursuant to the trademark and patent laws of the United States, Title 15 and 35, United States Code, respectively, as well as pursuant to the unfair competition law of the State of Colorado C.R.S. §6-1-101 et. seq.

3. Specifically, this is an action for Federal Trademark Infringement under §32(1) of the Lanham Act, *15 U.S.C. §1114(1)*; Federal Unfair Competition and False Designation of Origin under §43(a) of the Lanham Act; and Trademark Dilution under *15 U.S.C. §1125(c)*; the Georgia Trade Secrets Act of 1990 and corresponding trade secret protection acts and common law of the State of Colorado.

4. In this action, Plaintiff seeks preliminary and permanent equitable injunctive relief, compensatory or general damages, punitive or exemplary damages, attorneys' fees, expenses and costs.

5. As alleged and shown herein, this is an urgent situation that requires the prompt attention of this Court to prevent further injury to Myelotec and the general public. Myelotec has a likelihood of success on the merits for its patent infringement, Lanham Act claims, and tortious interference claims.

6. The public interest strongly favors the injunctive relief sought herein due to the harm being caused to Plaintiff and the patients that ultimately may undergo surgery under the Defendant's products through his unauthorized use of Myelotec's trade dress, patents, and palming off of Myelotec's products.

THE PARTIES, JURISDICTION, AND VENUE

7. On information and belief Defendant BioVision Technologies, LLC is a privately owned Colorado corporation, has its principal place of business at 221 Corporate Circle,

Unit H, Golden, Colorado 80401; and advertises that it “is dedicated to delivering the very best single use Micro-Endoscopic Imaging technology to the medical market, with an emphasis on innovative office procedures [sic]”. See

<http://www.biovisiontech.com/About/CompanyInformation>.

8. Plaintiff Myelotec, Inc. (“Myelotec”), a corporation organized and maintained under the laws of Georgia, maintains its principal place of business at 4000 Northfield Way, Ste. 900; Roswell, GA 30076.

9. This Court has subject matter jurisdiction over all causes of actions set forth herein based upon 15 U.S.C. §1121, 28 U.S.C. §§1331, 1338(a) and 1338(b), pursuant to Title 15 and 35, United States Code, and pursuant to the supplemental, pendant, jurisdiction of this Court under 28 U.S.C. §1367; and 28 U.S.C. §1332(a), diversity of citizenship.

10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d), and 1400(b).

11. This Court has jurisdiction over the subject matter of this action pursuant to the Trademark Act of 1946, as amended (The Lanham Act, 15 U.S.C. §1051 et seq.) and because this complaint concerns act of patent infringement, under of 35 U.S.C. § 271 (a), (b), (c), and/or (f).

12. Furthermore, this Court has subject matter federal question jurisdiction over this action pursuant to the Lanham Act, as amended and codified in 15 U.S.C. §1051.

13. This Court has personal jurisdiction over the Defendant because Defendant has purposefully directed its activities at residents of Colorado and this District, has had continuous and systematic contacts with the residents of Colorado and this District, the

claims asserted arise out of or are related to Defendant's activities within Colorado and this District and, under the circumstances, the assertion of personal jurisdiction over Defendant is both reasonable and fair. Defendant regularly conducts substantial business in Colorado and this District and has voluntarily availed itself of the laws and regulations of Colorado and this District.

14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a) (1), (2) because there is complete diversity of citizenship between the Plaintiff and the Defendant and the amount in controversy, excluding interest and costs, exceeds \$75,000 for each Plaintiff.

15. Venue is proper in this district pursuant to 28 U.S.C. §1961 et seq. because a substantial part of the events giving rise to each Plaintiff's claims occurred in this district as the Plaintiff suffered injury and harm in this district.

16. This Court may issue a preliminary injunction under the provisions of Federal Rule of Civil Procedure 65 ("Rule 65").

FACTUAL BACKGROUND

17. On or about 1992 a company by the name of *Myelotec, Inc.* (hereinafter "*First Myelotec*") was incorporated in Georgia to develop, patent, and commercialize certain technology for steerable catheters and endoscopic medical devices.

18. First Myelotec filed its first patent applications for a "Catheter with integral pressure sensor" in September 1994, which patent issued within two years.

19. On or about September 2000, First Myelotec was acquired by and became Visionary Biomedical, Inc. ("VBI").

20. On November 23, 2004, a new Myelotec (“*New Myelotec*” or simply “*Myelotec*”) was incorporated with Georgia’s Secretary of State, to purchase certain assets from VBI, namely those of First Myelotec. On December 15, 2004, the Investors closed on said transaction.

21. Myelotec manufactures video-guided catheters that provide an easy-to-use technique for visually diagnosing the cause of pain within a patient’s lower spine and treating that problem with pain relief medication. Myelotec’s catheters embody a number of inventions claimed in valid and enforceable patents issued to Myelotec which are the subject of this complaint; which patent numbers are branded and packaged using Myelotec’s valuable and famous trademark and trade dress.

22. Myelotec distributes and sells its medical devices under its USPTO registered tradenames; e.g., *Myelotec*, *Myeloscope*, and *NaviCath*; (collectively (the “Marks”).

23. Myelotec’s Marks are valid, subsisting, and have not been cancelled, or revoked.

24. Myelotec is the owner of the entire rights, title, and interest to several patents for for Plaintiff’s products; including but not limited to the following utility patents:

<u>U.S. Patent No.</u>	<u>Title</u>	<u>Issue Date</u>
6,030,360 (Exhibit B)	Steerable catheter	February 29, 2000
6,146,355 (Exhibit C)	Steerable catheter	November 14, 2000
6,213,974 (Exhibit D)	Steerable catheter having segmented tip and one-piece inlet housing, and method of fabricating same	April 10, 2001
6,599,265 (Exhibit E)	Brake assembly for a steerable catheter	July 29, 2003

25. Myelotec marks the patent numbers on the product labels, packaging and in the corresponding manual for its products.

26. At all relevant times of the instant lawsuit, Plaintiff properly designed, manufactured, labeled; and marked its products.

27. Myelotec's patented catheters have received 510(k) clearance letters from the U.S. Food and Drug Administration ("FDA").

28. On information and belief, BioVision's infringing catheters have *not* received 510(k) clearance letters from the U.S. Food and Drug Administration.

29. On or about April 12, 2010, Myelotec entered into an exclusive International Distributor Agreement with Incubeline, a company in South Korea; wherein Incubeline agreed to distribute Myelotec's products in South Korea, and Incubeline agreed not to distribute or promote products that competed with Myelotec's products. The Myelotec-Incubeline International Distributor Agreement, includes competitor sensitive confidential business information, and will be referred to hereinafter as the "*Myelotec/Incubeline IDA*".

30. Among other things, §3.1 of the *Myelotec/Incubeline IDA* provides non-compete and non-solicitation; as follows:

Distributor [Incubeline] shall not directly or indirectly, alone or as a partner, officer, director, member, employee, independent contractor or shareholder of any company or business organization, solicit any customers of Company within the Territory for the purpose of selling or distributing any competitive products, other than Company [Myelotec's] Products.

Furthermore, §3.2 of the *Myelotec/Incubeline IDA* provides for the protection of Myelotec's confidential information, as follows:

Distributor shall not disclose, use or divulge any proprietary information of Company, including but not limited to customer records, customer names, and product information. Distributor recognizes that the items listed above are trade secrets and proprietary information and are valuable assets of Company. Distributor further agrees not to copy or reproduce any of the items listed above, whether prepared by Distributor or otherwise coming into Distributor's possession, for its benefit or that of a competitor, and that upon termination of this Agreement all of the above items will be immediately returned to Company.

31. On information and belief, Defendant BioVision has been working with Incubeline for BioVision to supply products that use Myelotec's patented technology and compete with Myelotec and its products.

32. On information and belief, BioVision knows and has known about the exclusive nature of the representation agreement between Myelotec and Incubeline.

33. On information and belief, BioVision received confidential Myelotec documents and drawings from Incubeline, and used said confidential documents to reverse engineer, manufacture, and provide products to Incubeline.

34. On or about October 7, 2011, unbeknownst to Myelotec, Defendant BioVision appears to have entered into a Representative Agreement with Incubeline wherein Incubeline agreed to distribute BioVision's products in South Korea. The BioVision-Incubeline Representative Agreement includes competitor sensitive confidential business information, and will be referred to hereinafter as the "*BioVision/Incubeline Rep. Agr.*"

35. On information and belief, Incubeline provided BioVision numerous confidential documents and drawings for BioVision to copy Myelotec's products; with both parties knowing that such documents were Myelotec confidential, were marked confidential, and

knowing that copying the design would infringe Myelotec's patents, trademarks and trade dress.

36. On information and belief, BioVision's products are not registered or approved by the United States FDA.

37. On information and belief BioVision has registered its products with the South Korean governmental agencies. See **Exhibit A**, attached hereto.

38. On information and belief, BioVision has been supplying and continues to supply its infringing products to Incubeline.

39. On information and belief, BioVision's products, despite having been manufactured by infringing Myelotec's patents, and reverse engineered using Myelotec's products and Myelotec confidential information, do not work well or fail to work at all, creating a risk of harm to potential patients.

40. BioVision's infringement of Myelotec's patents, trademarks, trade dress, and interference with Myelotec's exclusive contractual relationship with Incubeline have caused, and if not abated, will continue to cause irreparable injury to Myelotec's reputation and irreparable economic injury to Myelotec.

41. The officers and principals of BioVision have caused BioVision to undertake all the alleged wrongful actions complained of herein, intentionally and knowingly, and despite having been notified by Myelotec, have intentionally ignored Myelotec's pleas and calls to abate the wrongful conduct.

42. Among other things, §4(f) of the BioVision/Incubeline Rep. Agr. provided for a large amount of annual revenues for BioVision; as follows:

For the field of epiduroscopy, the company grants Incubeline exclusive distribution rights for its products (appendix A) in the territory. Exclusivity is contingent on a onetime \$50K fee and minimum purchases totaling \$2,200,000 per 12 month period. If the 12 months sales are less than \$2,200,000 the distribution of the BioVision products will become nonexclusive.

43. Incubeline, the Korean company, however, was concerned that the Myelotec confidential documents provided to BioVision, and encouragement for BioVision's illicit use of Myelotec's patents, for the products that BioVision makes or has made in the United States, may result in lawsuits against Incubeline. Therefore, §7 of the BioVision/Incubeline Rep. Agr. provided for indemnification, as follows:

Indemnity. Company will defend Representative against a claim that any Products furnished and used within the scope of this Agreement infringe a patent or copyright, and Company [BioVision] will indemnify Representative [Incubeline] against any damages finally awarded or paid in settlement based upon any such claim.

44. Accordingly, BioVision's infringement of Myelotec's patents and trade dress, and interference with Myelotec's pre-existing and exclusive contractual relationship with its South Korean distributor, has been intentional and malicious, and has caused and continues to cause Myelotec irreparable harm.

45. BioVision's infringement of Myelotec's patents and trade dress enables BioVision to trade on, and receive the benefit of the immense goodwill associated with Myelotec's famous trademarks and products, and receive the benefit of the patented technology which has been developed through great labor and continuing substantial expense over the course of many years.

46. BioVision's illicit palming off and patent infringement also enables BioVision to gain acceptance for its own products and procedures; but not on its own merits; and thus gaining unlawful and unfair profits, to the monetary and other material damages and detriment to Myelotec.

47. BioVision's passing off of Myelotec's Products as Defendant's own and use of Myelotec's patented technology dilutes, tarnishes and whittles away the distinctive quality of Myelotec's famous trademarks, trade dress and patents for its Products, and thus lessens Myelotec trademark's ability to function as a source indicator.

48. BioVision's passing off of Myelotec's Products as Defendant's own deprives Plaintiff of the ability to control the nature and quality of products promoted under the offending Defendant's mark, and thus places the valuable reputation and goodwill of Myelotec's mark in the hands of the Defendant, over whom Plaintiff Myelotec has no control.

49. The Defendant's palming off and infringement of Myelotec's patents (1) is likely to cause mistake, confusion or deception as to (a) the affiliation, connection, or association of the Defendant, and its offending products, with the Plaintiff Myelotec's product line, or (b) the origin, sponsorship, or approval of the Defendant's products and commercial activities by Myelotec; and (2) misrepresents the nature, characteristics, and qualities of the Defendant's products.

50. Plaintiff Myelotec is without an adequate remedy at law because Defendant's acts as set forth herein have caused great and irreparable damage to Plaintiff Myelotec, presently continue to cause great and irreparable damage to Plaintiff, and will continue to damage Plaintiff Myelotec unless restrained by this Court.

51. The Defendant's acts of federal unfair competition, palming off, and reverse palming off, have further caused Plaintiff to sustain monetary damages, loss, and injury in an amount to be determined at the trial of this action.

52. The Defendant has engaged and continues to engage in this activity knowingly and willfully, so as to justify the assessment of increased and punitive damages against the Defendant, in an amount to be determined at the time of trial.

53. The Defendant's acts of unfair competition, unless enjoined by this Court, will continue to injure Plaintiff, its products, and its reputation.

54. As a result of the many years of continuous, widespread and extensive use, and millions of dollars spent in product development, promotion and advertising efforts, and the resultant millions of dollars in product sales, both nationally and internationally, Myelotec's trademarks and trade dress are exceedingly strong marks, and has thus engendered significant goodwill and a favorable reputation among the relevant Public. Accordingly, Myelotec's trademarks and trade dress are the subject of significant common law trademark rights.

55. Defendant has committed the aforementioned acts intentionally and willfully, with knowledge that such imitations are causing confusion, or likely to cause confusion, mistake, or deceit.

Count I - Federal Unfair Competition Under §43(a) of the Lanham Act 15 U.S.C. §1125(a)

56. Plaintiff hereby realleges and incorporates by reference the allegations of ¶¶ 1 to 55 of this Complaint as if fully set forth herein.

57. This cause of action arises under §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

58. Through its palming off of Plaintiff's Products, the Defendant has sought to willfully misappropriate and trade off the immense strength and goodwill associated with Myelotec's trademarks.

59. Accordingly, the Defendant's illicit and offending palming off constitutes unfair competition, false designation of origin, and palming off, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

60. The Defendant's unlawful activities justify the award to Plaintiff of Plaintiff's reasonable attorneys' fees and disbursements incurred herein, pursuant to 15 U.S.C. §1117 and the equity powers of this Court.

61. The Defendant's unlawful activities further justify the trebling of any and all damages awarded to Plaintiff Myelotec hereunder, pursuant to 15 U.S.C. §1117.

62. Myelotec is entitled to a preliminary, and thereafter permanent injunction prohibiting BioVision from continuing its unlawful acts alleged above.

Count II – Colorado State Tortious Interference with Contractual and Business Relationship

63. Plaintiff hereby realleges and incorporates by reference the allegations of ¶¶ 1 to 62 of this Complaint as if fully set forth herein.

64. Defendant's acts constitute intentional and malicious tortious interference with Plaintiff's contractual and business relationship; which activities are proscribed under Colorado's laws. See e.g., *Slater Numismatics v. Driving Force, LLC*; 2012 COA 103.

65. Defendant's activity, if not preliminary and permanently enjoined by the Court, will continue to cause Myelotec immediate and irreparable harm, damage, detriment, and injury; and potentially injuring countless patients. Myelotec is entitled to an Order of this Court enjoining the Defendant and its unlawful activities; since Plaintiff Myelotec has no adequate remedy at law.

Count III - Georgia State Tortious Interference with Contractual and Business Relationship

66. Plaintiff hereby realleges and incorporates by reference the allegations of ¶¶ 1 to 65 of this Complaint as if fully set forth herein.

67. Defendant's acts constitute intentional and malicious tortious interference with Plaintiff's contractual and business relationship; which activities are proscribed under Georgia' laws. See e.g., *Willis v. United Family Life Ins.*, 226 Ga. App. 661 (1997); *Parks v. Multimedia Technologies, Inc.*, 239 Ga. App. 282, 291 (1999).

68. Defendant's activity, if not preliminary and permanently enjoined by the Court, will continue to cause Myelotec immediate and irreparable harm, damage, detriment, and injury; and potentially injuring countless patients. Myelotec is entitled to an Order of this Court enjoining the Defendant and its unlawful activities; since Plaintiff Myelotec has no adequate remedy at law.

Patent Infringement Counts

69. Myelotec is the owner of all right, title, and interest in numerous U.S. patents, including but not limited to U.S. Patent No. 6,030,360, Steerable catheter (the " '360 patent"); U.S. Patent No. 6,146,355, Steerable catheter (the " '355 patent"); U.S. Patent

No. 6,213,974, Steerable catheter having segmented tip and one-piece inlet housing, and method of fabricating same (the “ ‘974 patent”); and U.S. Patent No. 6,599,265, Brake assembly for a steerable catheter (the “‘265 patent”) (among other patents; collectively, the “Myelotec Patents”), which on information and belief Defendant is infringing, inducing others to infringe by making, using, offering to sell, or selling in the United States, or importing into or exporting from the United States, products or processes that practice one or more inventions claimed in the Myelotec Patents.

70. Defendant has profited through infringement of the Myelotec Patents. As a result of Defendant’s unlawful infringement of the Myelotec Patents, Myelotec has suffered and will continue to suffer damage. Myelotec is entitled to recover from Defendant the damages suffered by Myelotec as a result of Defendant’s unlawful acts.

71. On information and belief, Defendant’s infringement of one or more of the above mentioned Myelotec Patents is willful and deliberate, entitling Myelotec to enhanced damages and reasonable attorney fees and costs.

72. On information and belief, Defendant intend to continue its unlawful infringing activity, and Myelotec continues to and will continue to suffer irreparable harm— for which there is no adequate remedy at law—from such unlawful infringing activity unless Defendant are enjoined by this Court.

Count IV – Patent Infringement - U.S. Patent 6,030,360

73. Myelotec realleges and incorporates by reference the allegations set forth in paragraphs 1-72.

74. Myelotec is the owner of all right, title, and interest in the 6,030,360 patent (the '360 patent), duly and properly issued by the U.S. Patent and Trademark Office. A copy of the '360 patent is attached as **Exhibit B**.

75. On information and belief, Defendant has been, or are directly infringing, inducing infringement of, or contributorily infringing the '360 patent by, among other things, making, using, offering to sell, or selling in the United States, or importing into or exporting from the United States, products or services that are covered by at least one or more claims of the '360 patent.

Count V - Patent Infringement - U.S. Patent 6,146,355

76. Myelotec realleges and incorporates by reference the allegations set forth in paragraphs 1- 75.

77. Myelotec is the owner of all right, title, and interest in the 6,146,355 patent (the '355 patent), duly and properly issued by the U.S. Patent and Trademark Office. A copy of the '355 patent is attached as **Exhibit C**.

78. On information and belief, Defendant has been, or are directly infringing, inducing infringement of, or contributorily infringing the '355 patent by, among other things, making, using, offering to sell, or selling in the United States, or importing into or exporting from the United States, products or services that are covered by at least one or more claims of the '355 patent.

Count VI - Patent Infringement - U.S. Patent 6,213,974

79. Myelotec realleges and incorporates by reference the allegations set forth in paragraphs 1- 78.

80. Myelotec is the owner of all right, title, and interest in the 6,213,974 patent (the '974 patent), duly and properly issued by the U.S. Patent and Trademark Office. A copy of the '974 patent is attached as **Exhibit D**.

81. On information and belief, Defendant has been, or are directly infringing, inducing infringement of, or contributorily infringing the '974 patent by, among other things, making, using, offering to sell, or selling in the United States, or importing into or exporting from the United States, products or services that are covered by at least one or more claims of the '974 patent.

Count VII - Patent Infringement - U.S. Patent 6,599,265

82. Myelotec realleges and incorporates by reference the allegations set forth in paragraphs 1-81.

83. Myelotec is the owner of all right, title, and interest of the 6,599,265 patent (the '265 patent), duly and properly issued by the U.S. Patent and Trademark Office. A copy of the '265 patent is attached as **Exhibit E**.

84. On information and belief, Defendant has been, or are directly infringing, inducing infringement of, or contributorily infringing the '265 patent by, among other things, making, using, offering to sell, or selling in the United States, or importing into or exporting from the United States, products or services that are covered by at least one or more claims of the '265 patent.

**Count VIII – Trade Secret Violation under Georgia
Trade Secrets Act of 1990**

85. Myelotec realleges and incorporates by reference the allegations set forth in paragraphs 1-84.

86. BioVision’s misappropriation of Plaintiff’s confidential documents and trade secrets violated Plaintiff’s rights under the Georgia Trade Secrets Act of 1990.

**Count IX – Trade Secret Violation under Common Law and Trade Secret
Protection Act of Colorado**

87. Myelotec realleges and incorporates by reference the allegations set forth in paragraphs 1-86.

88. BioVision’s misappropriation of Plaintiff’s confidential documents and trade secrets violated Plaintiff’s rights under the trade secret protection acts and common law of the State of Colorado.

Count X – Injunctive Relief

89. Myelotec realleges and incorporates by reference the allegations set forth in paragraphs 1 to 88 of this Complaint as if fully set forth herein.

90. Defendant has profited through infringement of the Myelotec Patents and trade dress, and through its intentional interference with Plaintiff’s contractual and business relationships.

91. On information and belief, Defendant intend to continue its unlawful infringing activity, and Myelotec continues to and will continue to suffer irreparable harm— for

which there is no adequate remedy at law—from such unlawful infringing activity unless Defendant are enjoined by this Court.

92. As a result of Defendant’s unlawful infringement of the Myelotec Patents, Myelotec has suffered and, unless enjoined via a preliminary and subsequent permanent injunction, will continue to suffer irreparable damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the Court grant Plaintiffs the following relief on an expedited basis:

- A. That the Defendant be held liable under each count set forth in this Complaint, and that Plaintiff receives all such relief; including injunctive, monetary, or other relief sought hereunder.
- B. That it be granted a preliminary injunction, and thereafter permanent injunction, prohibiting the Defendant from continuing its unlawful acts, as pled above; including preliminary injunctive relief immediately enjoining Defendant from the palming off, production, sale, and marketing of the palmed-off Products pursuant to 17 U.S.C. §502 and; 15 U.S.C. §1116.
- C. That Judgment be entered holding Defendant liable for trade dress infringement under 15 U.S.C. §1125;
- D. That the Defendant’s infringement of Plaintiff’s trade dress be deemed exceptional and Plaintiffs be awarded its reasonable attorneys’ fees under 15 U.S.C. §1117(a)(3);
- E. That pursuant to 17 U.S.C. §505, Defendant shall recompense Plaintiffs for all costs and attorneys’ fees incurred in this action.

- F. That the Defendant, the Defendant's agents, servants, employees, affiliates, partners, and attorneys, and all other persons in active concert or participation with the Defendant, be enjoined from palming off, manufacturing, or using the infringing products or trade dress, or any other reproduction, counterfeit, copy, colorable imitation or confusingly similar variation thereof and of Plaintiff marks, patents, products, trade dress, as a trade name, as a trademark or service mark, as a domain name, or in the offering, advertising, distribution, sale, or offering for sale of the Defendant's products.
- G. That the Defendant be required to pay to Plaintiff Myelotec all damages and costs Plaintiff Myelotec has suffered by reason of the Defendant's unlawful acts set forth herein, together with legal interest from the date of accrual thereof;
- H. That the Defendant be required to account for and pay to Plaintiff Myelotec all monies wrongfully derived by the Defendant through its unlawful acts set forth herein, together with legal interest from the date of accrual thereof;
- I. That the Defendant be required to pay to Plaintiff Myelotec its reasonable attorneys' fees and disbursements incurred herein, pursuant to 15 U.S.C. §1117 and the equity powers of this Court;
- J. That the Defendant be required to pay to Plaintiff Myelotec treble damages pursuant to 15 U.S.C. §1117 and the equity powers of this Court;
- K. That the Defendant be required to pay to Plaintiff Myelotec punitive damages in an amount to be determined by this Court for the Defendant's deliberate and willful acts, as pled above;

- L. That the Defendant be required to pay to Plaintiff Myelotec actual and compensatory damages in an amount not presently known, but to be calculated during the pendency of this action;
- M. That the Defendant be ordered to deliver up for destruction its infringing products, product labels, product packaging, product inserts, printed materials, signs, forms, advertisements, promotional literature, and other representations, and to further obliterate, destroy or remove all other uses of the infringing or adulterated product, mark, including, without limitation, all website materials;
- N. That the Defendant be ordered to remove all infringing, false, disparaging, misleading, unqualified, or unsubstantiated, statements or representations of purported fact from any and all media in which such statements or representations may appear, including, without limitation, all websites, Internet forums, flyers, brochures, and discussions boards;
- O. That the Defendant be directed to file with this Court, and serve on Plaintiff Myelotec's counsel no later than thirty (30) days after the issuance of an injunction, a report in writing under oath setting forth in detail the manner and form in which the Defendant has complied with the injunction;
- P. That the Defendant be required to pay all of Plaintiff Myelotec's monetary damages to be used for corrective advertising to be conducted by Plaintiff Myelotec;
- Q. That Plaintiff Myelotec have and recover its costs in this suit, including reasonable attorneys' fees and expenses;

- R. That this Court find the actions of the Defendant, under any or all applicable Counts pled herein, to have been conducted in bad faith, to constitute stubborn litigiousness or to have put Plaintiff Myelotec to unnecessary trouble and expense, such that Plaintiff Myelotec is entitled to recover from the Defendant for Plaintiff Myelotec's cost of litigation, including reasonable attorney's fees, various Colorado and Georgia Statutes; including but not limited to the Business & Commerce Code, the Business Organizations Act, the Business Corporation Act, and the Civil Practice & Remedies Code.
- S. That it be awarded such other and further relief as this Court deems just and equitable.

REQUEST FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Myelotec hereby demands a trial by jury as to all issues so triable.

Submitted on this 31st day of May, 2013,

/s/ Ramon Pizarro
Ramon Pizarro
3515 South Tamarac Drive, Suite 200
Denver, CO 80237 Tel: (Direct)
(303) 785-2819
Tel: (Main) (303) 779-9551
e-mail: ramon@ramonpizarro.com

ATTORNEY FOR PLAINTIFF

Address of Plaintiff:

4000 Northfield Way
Suite 900
Roswell, GA 30076