IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

HARCOL RESEARCH, LLC	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 2:13-cv-711
	§	
v.	§	
	§	**JURY TRIAL DEMANDED**
BLACK MARKET DISTRIBUTION, LLC	§	
	§	
Defendant.	§	

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Harcol Research, LLC ("Plaintiff") hereby alleges for its Amended Complaint against Black Market, LLC ("Defendant"), on personal knowledge as to its own activities and on information and belief as to the activities of others, as follows:

I. THE PARTIES

1. Plaintiff is a limited liability company organized and existing under the laws of Nevada, with a principal place of business at 5935 Old Bullard Road, Suite 207 in Tyler, Texas, 75703.

2. Plaintiff is the owner and assignee of United States Patent No. 5,817,364 ("the '364 patent") titled "Beverage Containing Alpha-Ketoglutaric Acid and Method of Making." Plaintiff has owned the '364 patent during at least a portion of the period of the Defendant's infringing acts and still owns the patent.

3. Defendant Black Market, LLC is a company organized and existing under the laws of Utah with a place of business at 250 W 1500 S, Bountiful, Utah, 84010.

II. JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

6. This Court has personal jurisdiction over Defendant. Defendant, as a distributor of nutritional supplement products, directly or through intermediaries (including other distributors, retailers, and others), ships, distributes, offers for sale, sells, and advertises nutritional supplement products in the United States, the State of Texas, and the Eastern District of Texas.

7. Defendant has purposefully and voluntarily placed the nutritional products it distributes into the stream of commerce with the expectation that they will be purchased in the Eastern District of Texas, and they are actually sold and purchased in this District.

III. THE DEFENDANT'S INFRINGEMENTS

8. Defendant makes, manufacturers, ships, distributes, offers for sale, sells, and advertises nutritional supplement products, including without limitation AdreNOlyn, Intra-Workout, and Arginine AKG, sold under Defendant's "Black Market Labs" brand.

9. Defendant has infringed and is still infringing one or more claims of the '364 patent by making, manufacturing using, selling, and offering for sale nutritional supplement products that embody the patented invention, which products are referred to herein as the "accused products."

10. Defendant has knowledge of the '364 patent, though the earliest exact date Defendant obtained knowledge of the '364 patent is within the exclusive possession and control of Defendant.

11. Upon information and belief, Defendant had actual, first-hand knowledge of the '364 patent as early as the time Defendant began selling each of the accused products. For example and upon information and belief, Defendant employs and engages sophisticated,

experienced legal counsel with expertise in patent law, and Defendant, through its counsel, conducts or should conduct due diligence on the potential for the products sold by Defendant to infringe on patents and knew or should have known that the accused products actually infringe or could infringe on the '364 patent, but Defendant decided to infringe the patents anyway or ignored the risk of infringement.

12. In the alternative and upon information and belief, Defendant subjectively believed at the time Defendant began selling the accused products that there is or was a high probability of the fact that a patent covering alpha-ketoglutaric acid as in the '364 patent existed and that Defendant took deliberate actions to avoid confirming that fact, including not conducting due diligence as to potential patent infringements, and that Defendant therefore willfully blinded itself to the infringing nature of its sales of the accused products.

13. At a minimum and in the alternative, Defendant became aware of the '364 patent prior to the filing of this Amended Complaint, when Plaintiff notified Defendant of the patent's existence and the alleged infringing acts.

IV. FIRST CAUSE OF ACTION

Infringement of U.S. Patent No. 5,817,364

14. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs of this Amended Complaint as if fully set forth herein.

15. Defendant has in the past and still is literally and directly infringing or directly infringing under the doctrine of equivalents one or more claims of the '364 patent by making, manufacturing, using, selling, and offering for sale the accused products, all of which embody the patented invention, and will continue to do so unless enjoined by this Court.

16. Defendant's activities have been without express or implied license by Plaintiff.

17. As a result of Defendant's acts of infringement, Plaintiff has suffered and will continue to suffer damages in an amount to be proved at trial.

18. As a result of Defendant's acts of infringement, Plaintiff has been and will continue to be irreparably harmed by Defendant's infringements, which will continue unless Defendant is enjoined by this Court.

19. Defendant's past infringement and/or continuing infringement has been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for entry of judgment against Defendant as follows:

1. A declaration that Defendant has infringed one or more claims of the '364 patent under 35 U.S.C. §§ 271 *et seq.*;

2. That injunctions, preliminary and permanent, be issued by this Court restraining Defendant, its respective officers, agents, servants, directors, and employees, and all persons in active concert or participation with each, from infringing the '364 patent;

3. That Defendant be required to provide to Plaintiff an accounting of all gains, profits, and advantages derived by Defendant's infringement of the '364 patent, and that Plaintiff be awarded damages adequate to compensate Plaintiff for the wrongful infringing acts by Defendant, in accordance with 35 U.S.C. § 284;

4. That: (a) injunctions, preliminary and permanent, be issued by this Court restraining Defendant, its respective officers, agents, servants, directors, and employees, and all persons in active concert or participation with each, from indirectly infringing the '364 patent; (b) Defendant be required to provide to Plaintiff an accounting of all gains, profits, and advantages derived by Defendant's indirect infringement of the '364 patent; (c) Plaintiff be awarded damages adequate to compensate Plaintiff for the wrongful infringing acts by Defendant, in accordance with 35 U.S.C. § 284; and (d) the damages awarded to Plaintiff with regard to the '364 patent be increased up to three times, in view of Defendant's willful infringement, in accordance with 35 U.S.C. § 284;

5. That this case be declared to be exceptional in favor of Plaintiff under 35 U.S.C. § 285, and that Plaintiff be awarded its reasonable attorneys' fees and other expenses incurred in connection with this action;

6. That Plaintiff be awarded its interest and costs of suit incurred in this action;

7. Compensatory damages;

8. Punitive damages; and

9. That Plaintiff be awarded such other and further relief as this Court may deem just and proper.

Dated: November 15, 2013

Respectfully Submitted,

By: /s/ William E. Davis, III
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ATTORNEY FOR PLAINTIFF
HARCOL RESEARCH, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 15th day of November, 2013.

/s/ William E. Davis, III
William E. Davis, III