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8  
 9 **UNITED STATES DISTRICT COURT**  
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 THERMOLIFE INTERNATIONAL, LLC,  
 12 and THE BOARD OF TRUSTEES OF  
 13 THE LELAND STANFORD JUNIOR  
 UNIVERSITY

Case No. 13-CV-00908 JLS (MDD)

**AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT**

14 Plaintiffs,

**JURY TRIAL DEMANDED**

15 vs.

16 BIO-ENGINEERED SUPPLEMENTS  
 AND NUTRITION, INC.; ABB  
 17 PERFORMANCE, LLC; and OPTIMUM  
 NUTRITION, INC.,

18 Defendants

1 Plaintiffs ThermoLife International, LLC and The Board of Trustees of the  
2 Leland Stanford Junior University (“Plaintiffs”) hereby allege for their Complaint  
3 against Bio-Engineered Supplements and Nutrition, Inc.; ABB Performance, LLC; and  
4 Optimum Nutrition, Inc. (“Defendants”), on personal knowledge as to their own  
5 activities and on information and belief as to the activities of others, as follows:

6 **I. THE PARTIES**

7 1. Plaintiff ThermoLife International, LLC (“ThermoLife”) is a limited  
8 liability company organized and existing under the laws of Arizona, with a place of  
9 business at 1811 Ocean Front Walk in Venice, California, 90291.

10 2. Plaintiff The Board of Trustees of the Leland Stanford Junior University  
11 (“Stanford University”) is an institution of higher education having powers under the  
12 laws of the State of California, with a place of business at 1705 El Camino Real in Palo  
13 Alto, California, 94306-1106.

14 3. ThermoLife is the exclusive licensee of the following United States  
15 Patents:

- 16 a. Patent No. 6,646,006, titled “Enhancement of Vascular Function By  
17 Modulation of Endogenous Nitric Oxide Production or Activity”;  
18 b. Patent No. 6,117,872, titled “Enhancement of Exercise Performance by  
19 Augmenting Endogenous Nitric Oxide Production or Activity”;  
20 c. Patent No. 5,891,459, titled “Enhancement of Vascular Function By  
21 Modulation of Endogenous Nitric Oxide Production or Activity”; and  
22 d. Patent No. 7,452,916, titled “Enhancement of Vascular Function By  
23 Modulation of Endogenous Nitric Oxide Production or Activity.”

24 4. The above patents are owned by Stanford University and ThermoLife  
25 exclusively licenses the patents from Stanford University. ThermoLife is pursuing this  
26 action and ThermoLife has the right to join Stanford as a necessary party.

27 5. The above patents are referred to herein as the “patents in suit.”

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1           6.     ThermoLife has been given the right by Stanford University to institute  
2 suit with respect to infringement of the patents in suit, including this suit against  
3 Defendants.

4           7.     Bio-Engineered Supplements and Nutrition, Inc. is a corporation organized  
5 and existing under the laws of Florida with a principal place of business at 5901 Broken  
6 Sound Parkway in Boca Raton, Florida, 33478-2773.

7           8.     ABB Performance, LLC is a company organized and existing under the  
8 laws of Illinois with a principal place of business at 700 N. Commerce St. in Aurora,  
9 Illinois, 60504.

10          9.     Optimum Nutrition, Inc. is a corporation organized and existing under the  
11 laws of Illinois with a principal place of business at 700 N. Commerce St. in Aurora,  
12 Illinois, 60504.

13          10.    Defendants Bio-Engineered Supplements and Nutrition, Inc., ABB  
14 Performance, LLC, and Optimum Nutrition, Inc. are subsidiaries of Glanbia plc, which  
15 has an office in Kilkenny, Ireland, and the three Defendants are controlled by Glanbia,  
16 and they are under common control and ownership.

## 17                                       **II. JURISDICTION AND VENUE**

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

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

22          13.    This Court has personal jurisdiction over Defendants. By way of example  
23 and without limitation, Defendants, directly or through intermediaries (including  
24 distributors, retailers, and others), make, manufacture, ship, distribute, advertise,  
25 market, offer for sale, and/or sell dietary supplement products that infringe on one or  
26 more claims of the patents in suit (hereinafter the “accused products”), which include  
27 without limitation products sold under the “Speed Stack Pumped NO,” “N.O. Xplode,”  
28

1 “Nitrix,” “Nitric Boost,” and “Essential Amino Energy Chewables” brand names, in the  
2 United States, the State of California, and the Southern District of California.

3 14. By way of further example and without limitation, Defendants have  
4 purposefully and voluntarily placed the accused products into the stream of commerce  
5 with the expectation that they will be purchased in the Southern District of California,  
6 and the products are actually purchased in the Southern District of California.

7 **III. THE DEFENDANT’S INFRINGEMENTS**

8 15. Defendants have committed the tort of patent infringement within the State  
9 of California, and more particularly, within the Southern District of California, by  
10 virtue of the fact that Defendants have formulated, made, manufactured, shipped,  
11 distributed, advertised, offered for sale, and/or sold the accused products in this District,  
12 and continue to do so.

13 **A. DIRECT INFRINGEMENTS**

14 16. Defendants’ employees, agents, representatives and other persons  
15 sponsored by or who endorse Defendants and Defendants’ products in advertising and  
16 marketing activities, have taken, used, and orally administered the accused products.

17 17. The accused products are formulated, made, manufactured, shipped,  
18 distributed, advertised, offered for sale, and sold by Defendants to include certain  
19 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
20 of one or more of the patents in suit.

21 18. The accused products are formulated, made, manufactured, shipped,  
22 distributed, advertised, offered for sale, and sold by Defendants to include specific  
23 ingredients for certain purposes that, by virtue of their inclusion in the products for such  
24 purposes, infringe one or more claims of one or more of the patents in suit, and as a  
25 result, when Defendants’ employees, agents, representatives and other persons  
26 sponsored by or who endorse Defendants and Defendants’ products in advertising and  
27 marketing activities orally administer the accused products, they are practicing the  
28 methods disclosed in those claims.

1 19. These infringing ingredients, and/or combinations thereof, include, without  
2 limitation, L-Arginine, Arginine, L-Arginine Alpha-Ketoglutarate, L-Arginine Ethyl  
3 Ester, L-Citrulline-Malic Acid Matrix, and Gymnostema, as set forth on Defendants'  
4 labels.

5 20. The purposes for which these ingredients are included in the accused  
6 products are, without limitation, to enhance nitric oxide production, to improve nitric  
7 oxide activity, to produce nitric oxide, to boost nitric oxide levels in the body, and to  
8 enhance physical performance.

9 21. Defendants have encouraged and/or are aware of the fact that their  
10 employees, agents, representatives and other persons sponsored by Defendants or who  
11 endorse Defendants and Defendants' products in advertising and marketing activities  
12 orally administer the accused products and practice the methods disclosed in one or  
13 more claim of one or more of the patents in suit, and these employees, agents,  
14 representatives and other persons sponsored by Defendants or who endorse Defendants  
15 and Defendants' products in advertising and marketing activities are acting under  
16 Defendants' direction and control when practicing those methods.

17 22. Therefore, Defendants are direct infringer of one or more claims of one or  
18 more of the patents in suit, and Defendants practice the methods as set forth in one or  
19 more claims of one or more of the patents in suit.

20 **B. INDIRECT INFRINGEMENTS**

21 23. End-users of Defendants' accused products are also direct infringers of one  
22 or more claims of one or more of the patents in suit.

23 24. End-users of Defendants' accused products have taken, used, and orally  
24 administered the accused products.

25 25. The accused products are formulated, made, manufactured, shipped,  
26 distributed, advertised, offered for sale, and/or sold by Defendants to include certain  
27 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
28 of one or more of the patents in suit.

1           26. The accused products are formulated, made, manufactured, shipped,  
2 distributed, advertised, offered for sale, and/or sold by Defendants to include specific  
3 ingredients for certain purposes that, because of their inclusion in the products for such  
4 purposes, infringe one or more claims of one or more of the patents in suit, and as a  
5 result, when end-users of Defendants' accused products orally administer the accused  
6 products, they are practicing the methods disclosed in those claims.

7           27. Defendants' labels and advertising for the accused products explain the  
8 elements and essential elements of one or more of the methods disclosed in the patents  
9 in suit, and those labels and advertising statements encourage, urge, and induce the  
10 accused products' end-users to purchase and orally ingest the products to practice those  
11 methods, and end-users do practice those methods.

12           28. Defendants have therefore specifically intended to cause these end-users to  
13 directly infringe the claimed methods of these patents, and have in fact urged them to  
14 do so.

15           29. The accused products are not suitable for non-infringing uses, and none of  
16 Defendants' labels or advertisements for the accused products disclose any uses for the  
17 products, nor for the compounds disclosed in the claimed methods of the patents in suit,  
18 that do not infringe upon such methods.

19           30. The inclusion of the specific infringing compounds in the products is  
20 material to practicing such methods.

21           31. Defendants have knowledge that the accused products are especially  
22 adapted by end-users of the products for the practicing of such methods, and, indeed,  
23 Defendants encourage, urge, and induce the accused products' end-users to purchase  
24 and orally administer the accused products to practice such methods, and have done so  
25 in the past.

26           32. Defendants have intentionally and knowingly induced, encouraged, and  
27 urged end-users of the accused products to purchase and orally administer the accused  
28

1 products for the purposes of practicing the claimed methods, by having them orally  
2 ingest the compounds disclosed in such claims.

3 33. Defendants have knowledge of the fact that the accused products,  
4 particularly as administered, infringe on one or more claims of the patents in suit.

5 34. Defendants have direct, firsthand knowledge of the patents in suit.

6 35. For example and without limitation, Defendants have had knowledge of  
7 the patents in suit since November 2006, when an ongoing settlement of a patent  
8 infringement case relating to at least some of the patents in suit against Herbalife, a  
9 well-known company in Defendants' industry, was announced in press releases issued  
10 in a highly publicized manner. Defendants' employees, agents, and representatives saw  
11 the press releases and were aware of the settlement and thus the patents in suit.

12 36. By way of further example and without limitation, Defendants have sold  
13 their products through retailers, including online retailers, and those retailers have sold  
14 other companies' products whose labels and/or advertisements have been prominently  
15 marked with one or more of the patents in suit, by patent number, including without  
16 limitation the products manufactured and sold by Herbalife, Daily Wellness, and  
17 Vitality Research Labs. Defendants' employees, agents, and representatives have seen  
18 these labels and advertisements and, thus, Defendants have knowledge of the patents in  
19 suit.

20 37. Defendants have brazenly and willfully decided to infringe the patents in  
21 suit despite knowledge of the patents' existence and their knowledge of the accused  
22 products' infringements of the patents.

23 38. At a minimum, and in the alternative, Plaintiffs plead that Defendants  
24 willfully blinded themselves to the infringing nature of the accused products' sales.

25 39. Defendants have not ceased their own direct infringements, nor their  
26 contributory infringements or inducements of infringements by end-users, despite their  
27 knowledge of the patents in suit and their infringing activities with respect to the  
28 patents in suit.

1 40. Plaintiffs also believe Defendants, or one of them, are infringing on one or  
2 more claims of United States Patent No. 5,428,070 and Patent No. 5,945,452, patents  
3 which Defendants have had prior knowledge of and are also licensed exclusively to  
4 ThermoLife by Stanford University, to include the right to sue for infringement, and  
5 Plaintiffs will seek to amend this Complaint once facts confirming that belief are  
6 ascertained.

#### 7 **IV. FIRST CAUSE OF ACTION**

##### 8 **Infringement of U.S. Patent No. 6,646,006**

9 41. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs  
10 of this Complaint as if fully set forth herein.

11 42. Defendants have in the past and still are literally and directly infringing or  
12 directly infringing under the doctrine of equivalents one or more claims of United  
13 States Patent No. 6,646,006 by making, using, selling, and offering for sale the accused  
14 products, and will continue to do so unless enjoined by this Court.

15 43. In addition to the fact that Defendants make, use, sell, and offer for sale the  
16 accused products, further examples of Defendants' direct infringement include, without  
17 limitation, the fact that Defendants have encouraged and/or are aware of the fact that  
18 their employees, agents, representatives and other persons sponsored by or who endorse  
19 Defendants and Defendants' products in advertising and marketing activities orally  
20 administer the accused products and practice the methods disclosed in one or more  
21 claims of United States Patent No. 6,646,006, and these employees, agents,  
22 representatives and other persons sponsored by or who endorse Defendants and  
23 Defendants' products in advertising and marketing activities are acting under  
24 Defendants' direction and control when practicing those methods.

25 44. Defendants have encouraged and are aware of these persons' oral  
26 administration of the accused products for these purposes, these persons are acting  
27 under Defendants' direction and control, and therefore Defendants are directly  
28 practicing the methods disclosed in United States Patent No. 6,646,006.



1 45. End-users of Defendants' accused products are also direct infringers of one  
2 or more claims of United States Patent No. 6,646,006.

3 46. End-users of Defendants' accused products have taken, used, and orally  
4 administered the accused products.

5 47. The accused products are formulated, made, manufactured, shipped,  
6 distributed, advertised, offered for sale, and sold by Defendants to include certain  
7 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
8 of United States Patent No. 6,646,006.

9 48. The accused products are formulated, made, manufactured, shipped,  
10 distributed, advertised, offered for sale, and sold by Defendants to include specific  
11 ingredients for purposes that, by their inclusion in the products for such purposes,  
12 infringe one or more claims of United States Patent No. 6,646,006, and as a result,  
13 when end-users of Defendants' accused products orally administer the accused  
14 products, they are practicing the methods disclosed in one or more claims of that patent.

15 49. Defendants' labels and advertising for the accused products explain the  
16 elements and essential elements of the methods disclosed in United States Patent No.  
17 6,646,006, and those labels and advertising statements encourage, urge, and induce the  
18 accused products' end-users to purchase and orally ingest the products to practice those  
19 methods, and end-users do practice those methods.

20 50. Defendants have therefore specifically intended to cause these end-users to  
21 directly infringe the claimed methods of United States Patent No. 6,646,006, and have  
22 in fact urged them to do so.

23 51. The accused products are not suitable for non-infringing uses, and none of  
24 Defendants' labels or advertisements for the accused products disclose any uses for the  
25 products, nor for the compounds disclosed in the claimed methods, that do not infringe  
26 upon such methods.

27 52. The inclusion of these specific infringing compounds in the products is  
28 material to practicing such methods.

1 53. Defendants have knowledge that the accused products are especially  
2 adapted by end-users of the products for the practicing of such methods, and, indeed,  
3 Defendants encourage, urge, and induce the accused products' end-users to purchase  
4 and orally administer the accused products to practice such methods, and have done so  
5 in the past.

6 54. Defendants have intentionally and knowingly induced, encouraged, and  
7 urged end-users of the accused products to purchase and orally administer the accused  
8 products for the purposes disclosed in one or more claims of United States Patent No.  
9 6,646,006, by having them orally ingest the compounds disclosed in such claims.

10 55. Defendants have knowledge of the fact that the accused products,  
11 particularly as administered, infringe on one or more claims of United States Patent No.  
12 6,646,006.

13 56. Defendants also have direct, firsthand knowledge of United States Patent  
14 No. 6,646,006.

15 57. Defendants' activities have been without express or implied license by  
16 Plaintiffs.

17 58. As a result of Defendants' acts of infringement, Plaintiffs have suffered  
18 and will continue to suffer damages in an amount to be proved at trial.

19 59. As a result of Defendants' acts of infringement, Plaintiffs have been and  
20 will continue to be irreparably harmed by Defendants' infringements, which will  
21 continue unless Defendants are enjoined by this Court.

22 60. Defendants' past infringements and/or continuing infringements have been  
23 deliberate and willful, and this case is therefore an exceptional case, which warrants an  
24 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

25 **V. SECOND CAUSE OF ACTION**

26 **Infringement of U.S. Patent No. 5,891,459**

27 61. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs  
28 of this Complaint as if fully set forth herein.

1           62. Defendants have in the past and still are literally and directly infringing or  
2 directly infringing under the doctrine of equivalents one or more claims of United  
3 States Patent No. 5,891,459 by making, using, selling, and offering for sale the accused  
4 products, and will continue to do so unless enjoined by this Court.

5           63. In addition to the fact that Defendants make, use, sell, and offer for sale the  
6 accused products, further examples of Defendants' direct infringement include, without  
7 limitation, the fact that Defendants have encouraged and/or are aware of the fact that  
8 their employees, agents, representatives and other persons sponsored by or who endorse  
9 Defendants and Defendants' products in advertising and marketing activities orally  
10 administer the accused products and practice the methods disclosed in one or more  
11 claims of United States Patent No. 5,891,459, and these employees, agents,  
12 representatives and other persons sponsored by or who endorse Defendants and  
13 Defendants' products in advertising and marketing activities are acting under  
14 Defendants' direction and control when practicing those methods.

15           64. Defendants have encouraged and are aware of these persons' oral  
16 administration of the accused products for these purposes, these persons are acting  
17 under Defendants' direction and control, and therefore Defendants are directly  
18 practicing the methods disclosed in United States Patent No. 5,891,459.

19           65. End-users of Defendants' accused products are also direct infringers of one  
20 or more claims of United States Patent No. 5,891,459.

21           66. End-users of Defendants' accused products have taken, used, and orally  
22 administered the accused products.

23           67. The accused products are formulated, made, manufactured, shipped,  
24 distributed, advertised, offered for sale, and sold by Defendants to include certain  
25 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
26 of United States Patent No. 5,891,459.

27           68. The accused products are formulated, made, manufactured, shipped,  
28 distributed, advertised, offered for sale, and sold by Defendants to include specific

1 ingredients for purposes that, by their inclusion in the products for such purposes,  
2 infringe one or more claims of United States Patent No. 5,891,459, and as a result,  
3 when end-users of Defendants' accused products orally administer the accused  
4 products, they are practicing the methods disclosed in one or more claims of that patent.

5 69. Defendants' labels and advertising for the accused products explain the  
6 elements and essential elements of the methods disclosed in United States Patent No.  
7 5,891,459, and those labels and advertising statements encourage, urge, and induce the  
8 accused products' end-users to purchase and orally ingest the products to practice those  
9 methods, and end-users do practice those methods.

10 70. Defendants have therefore specifically intended to cause these end-users to  
11 directly infringe the claimed methods of United States Patent No. 5,891,459, and have  
12 in fact urged them to do so.

13 71. The accused products are not suitable for non-infringing uses, and none of  
14 Defendants' labels or advertisements for the accused products disclose any uses for the  
15 products, nor for the compounds disclosed in the claimed methods, that do not infringe  
16 upon such methods.

17 72. The inclusion of these specific infringing compounds in the products is  
18 material to practicing such methods.

19 73. Defendants have knowledge that the accused products are especially  
20 adapted by end-users of the products for the practicing of such methods, and, indeed,  
21 Defendants encourage, urge, and induce the accused products' end-users to purchase  
22 and orally administer the accused products to practice such methods, and have done so  
23 in the past.

24 74. Defendants have intentionally and knowingly induced, encouraged, and  
25 urged end-users of the accused products to purchase and orally administer the accused  
26 products for the purposes disclosed in one or more claims of United States Patent No.  
27 5,891,459, by having them orally ingest the compounds disclosed in such claims.

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1 75. Defendants have knowledge of the fact that the accused products,  
2 particularly as administered, infringe on one or more claims of United States Patent No.  
3 5,891,459.

4 76. Defendants also have direct, firsthand knowledge of United States Patent  
5 No. 5,891,459.

6 77. Defendants' activities have been without express or implied license by  
7 Plaintiffs.

8 78. As a result of Defendants' acts of infringement, Plaintiffs have suffered  
9 and will continue to suffer damages in an amount to be proved at trial.

10 79. As a result of Defendants' acts of infringement, Plaintiffs have been and  
11 will continue to be irreparably harmed by Defendants' infringements, which will  
12 continue unless Defendants are enjoined by this Court.

13 80. Defendants' past infringements and/or continuing infringements have been  
14 deliberate and willful, and this case is therefore an exceptional case, which warrants an  
15 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

16 **VI. THIRD CAUSE OF ACTION**

17 **Infringement of U.S. Patent No. 7,452,916**

18 81. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs  
19 of this Complaint as if fully set forth herein.

20 82. Defendants have in the past and still are literally and directly infringing or  
21 directly infringing under the doctrine of equivalents one or more claims of United  
22 States Patent No. 7,452,916 by making, using, selling, and offering for sale the accused  
23 products, and will continue to do so unless enjoined by this Court.

24 83. In addition to the fact that Defendants make, use, sell, and offer for sale the  
25 accused products, further examples of Defendants' direct infringement include, without  
26 limitation, the fact that Defendants have encouraged and/or are aware of the fact that  
27 their employees, agents, representatives and other persons sponsored by or who endorse  
28 Defendants and Defendants' products in advertising and marketing activities orally

1 administer the accused products and practice the methods disclosed in one or more  
2 claims of United States Patent No. 7,452,916, and these employees, agents,  
3 representatives and other persons sponsored by or who endorse Defendants and  
4 Defendants' products in advertising and marketing activities are acting under  
5 Defendants' direction and control when practicing those methods.

6 84. Defendants have encouraged and are aware of these persons' oral  
7 administration of the accused products for these purposes, these persons are acting  
8 under Defendants' direction and control, and therefore Defendants are directly  
9 practicing the methods disclosed in United States Patent No. 7,452,916.

10 85. End-users of Defendants' accused products are also direct infringers of one  
11 or more claims of United States Patent No. 7,452,916.

12 86. End-users of Defendants' accused products have taken, used, and orally  
13 administered the accused products.

14 87. The accused products are formulated, made, manufactured, shipped,  
15 distributed, advertised, offered for sale, and sold by Defendants to include certain  
16 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
17 of United States Patent No. 7,452,916.

18 88. The accused products are formulated, made, manufactured, shipped,  
19 distributed, advertised, offered for sale, and sold by Defendants to include specific  
20 ingredients for purposes that, by their inclusion in the products for such purposes,  
21 infringe one or more claims of United States Patent No. 7,452,916, and as a result,  
22 when end-users of Defendants' accused products orally administer the accused  
23 products, they are practicing the methods disclosed in one or more claims of that patent.

24 89. Defendants' labels and advertising for the accused products explain the  
25 elements and essential elements of the methods disclosed in United States Patent No.  
26 7,452,916, and those labels and advertising statements encourage, urge, and induce the  
27 accused products' end-users to purchase and orally ingest the products to practice those  
28 methods, and end-users do practice those methods.

1           90. Defendants have therefore specifically intended to cause these end-users to  
2 directly infringe the claimed methods of United States Patent No. 7,452,916, and have  
3 in fact urged them to do so.

4           91. The accused products are not suitable for non-infringing uses, and none of  
5 Defendants' labels or advertisements for the accused products disclose any uses for the  
6 products, nor for the compounds disclosed in the claimed methods, that do not infringe  
7 upon such methods.

8           92. The inclusion of these specific infringing compounds in the products is  
9 material to practicing such methods.

10           93. Defendants have knowledge that the accused products are especially  
11 adapted by end-users of the products for the practicing of such methods, and, indeed,  
12 Defendants encourage, urge, and induce the accused products' end-users to purchase  
13 and orally administer the accused products to practice such methods, and have done so  
14 in the past.

15           94. Defendants have intentionally and knowingly induced, encouraged, and  
16 urged end-users of the accused products to purchase and orally administer the accused  
17 products for the purposes disclosed in one or more claims of United States Patent No.  
18 7,452,916, by having them orally ingest the compounds disclosed in such claims.

19           95. Defendants have knowledge of the fact that the accused products,  
20 particularly as administered, infringe on one or more claims of United States Patent No.  
21 7,452,916.

22           96. Defendants also have direct, firsthand knowledge of United States Patent  
23 No. 7,452,916.

24           97. Defendants' activities have been without express or implied license by  
25 Plaintiffs.

26           98. As a result of Defendants' acts of infringement, Plaintiffs have suffered  
27 and will continue to suffer damages in an amount to be proved at trial.

28 ///

1           99. As a result of Defendants' acts of infringement, Plaintiffs have been and  
2 will continue to be irreparably harmed by Defendants' infringements, which will  
3 continue unless Defendants are enjoined by this Court.

4           100. Defendants' past infringements and/or continuing infringements have been  
5 deliberate and willful, and this case is therefore an exceptional case, which warrants an  
6 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

7   **VII. FOURTH CAUSE OF ACTION**

8   **Infringement of U.S. Patent No. 6,117,872**

9           101. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs  
10 of this Complaint as if fully set forth herein.

11           102. Defendants have in the past and still are literally and directly infringing or  
12 directly infringing under the doctrine of equivalents one or more claims of United  
13 States Patent No. 6,117,872 by making, using, selling, and offering for sale the accused  
14 products, and will continue to do so unless enjoined by this Court.

15           103. In addition to the fact that Defendants make, use, sell, and offer for sale the  
16 accused products, further examples of Defendants' direct infringement include, without  
17 limitation, the fact that Defendants have encouraged and/or are aware of the fact that  
18 their employees, agents, representatives and other persons sponsored by or who endorse  
19 Defendants and Defendants' products in advertising and marketing activities orally  
20 administer the accused products and practice the methods disclosed in one or more  
21 claims of United States Patent No. 6,117,872, and these employees, agents,  
22 representatives and other persons sponsored by or who endorse Defendants and  
23 Defendants' products in advertising and marketing activities are acting under  
24 Defendants' direction and control when practicing those methods.

25           104. Defendants have encouraged and are aware of these persons' oral  
26 administration of the accused products for these purposes, these persons are acting  
27 under Defendants' direction and control, and therefore Defendants are directly  
28 practicing the methods disclosed in United States Patent No. 6,117,872.



1 105. End-users of Defendants' accused products are also direct infringers of one  
2 or more claims of United States Patent No. 6,117,872.

3 106. End-users of Defendants' accused products have taken, used, and orally  
4 administered the accused products.

5 107. The accused products are formulated, made, manufactured, shipped,  
6 distributed, advertised, offered for sale, and sold by Defendants to include certain  
7 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
8 of United States Patent No. 6,117,872.

9 108. The accused products are formulated, made, manufactured, shipped,  
10 distributed, advertised, offered for sale, and sold by Defendants to include specific  
11 ingredients for purposes that, by their inclusion in the products for such purposes,  
12 infringe one or more claims of United States Patent No. 6,117,872, and as a result,  
13 when end-users of Defendants' accused products orally administer the accused  
14 products, they are practicing the methods disclosed in one or more claims of that patent.

15 109. Defendants' labels and advertising for the accused products explain the  
16 elements and essential elements of the methods disclosed in United States Patent No.  
17 6,117,872, and those labels and advertising statements encourage, urge, and induce the  
18 accused products' end-users to purchase and orally ingest the products to practice those  
19 methods, and end-users do practice those methods.

20 110. Defendants have therefore specifically intended to cause these end-users to  
21 directly infringe the claimed methods of United States Patent No. 6,117,872, and have  
22 in fact urged them to do so.

23 111. The accused products are not suitable for non-infringing uses, and none of  
24 Defendants' labels or advertisements for the accused products disclose any uses for the  
25 products, nor for the compounds disclosed in the claimed methods, that do not infringe  
26 upon such methods.

27 112. The inclusion of these specific infringing compounds in the products is  
28 material to practicing such methods.

1 113. Defendants have knowledge that the accused products are especially  
2 adapted by end-users of the products for the practicing of such methods, and, indeed,  
3 Defendants encourage, urge, and induce the accused products' end-users to purchase  
4 and orally administer the accused products to practice such methods, and have done so  
5 in the past.

6 114. Defendants have intentionally and knowingly induced, encouraged, and  
7 urged end-users of the accused products to purchase and orally administer the accused  
8 products for the purposes disclosed in one or more claims of United States Patent No.  
9 6,117,872, by having them orally ingest the compounds disclosed in such claims.

10 115. Defendants have knowledge of the fact that the accused products,  
11 particularly as administered, infringe on one or more claims of United States Patent No.  
12 6,117,872.

13 116. Defendants also have direct, firsthand knowledge of United States Patent  
14 No. 6,117,872.

15 117. Defendants' activities have been without express or implied license by  
16 Plaintiffs.

17 118. As a result of Defendants' acts of infringement, Plaintiffs have suffered  
18 and will continue to suffer damages in an amount to be proved at trial.

19 119. As a result of Defendants' acts of infringement, Plaintiffs have been and  
20 will continue to be irreparably harmed by Defendants' infringements, which will  
21 continue unless Defendants are enjoined by this Court.

22 120. Defendants' past infringements and/or continuing infringements have been  
23 deliberate and willful, and this case is therefore an exceptional case, which warrants an  
24 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

25 **VIII. PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs pray for entry of judgment against Defendants as  
27 follows:

28 ///



**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs hereby demand a jury trial for all issues in this case that properly are subject to a jury trial.

Respectfully submitted,

NEWPORT TRIAL GROUP  
A Professional Corporation

Dated: February 13, 2014

/s/Tyler J Woods  
By: Tyler J. Woods  
Attorneys for Plaintiffs

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 13, 2014, I electronically filed the foregoing **THERMOLIFE INTERNATIONAL, LLC GROUP, LLC'S AMENDED COMPLAINT FOR PATENT INFRINGEMENT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record.

/s/Tyler J Woods  
Tyler J Woods

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