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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-907 JLS (MDD)

**AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT**

14 Plaintiffs,

**JURY TRIAL DEMANDED**

15 vs.

16 FORCE FACTOR, LLC,

17 Defendant

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 Force Factor, LLC (“Defendant”), on personal knowledge as to their own  
4 activities and on information and belief as to the activities of others, as follows:

5 **I. THE PARTIES**

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

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

13 3. Thermolife is the exclusive licensee of the following United States Patents:

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

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

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

26 6. Thermolife has been given the right by Stanford University to institute suit  
27 with respect to infringement of the patents in suit, including this suit against Defendant.

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1 7. Defendant is a corporation organized and existing under the laws of  
2 Tennessee with a principal place of business at 4309 Distribution Drive in Chattanooga,  
3 Tennessee, 37416.

4 **II. JURISDICTION AND VENUE**

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

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

9 10. This Court has personal jurisdiction over Defendant. By way of example  
10 and without limitation, Defendant, directly or through intermediaries (including  
11 distributors, retailers, and others), makes, manufactures, ships, distributes, advertises,  
12 markets, offers for sale, and/or sells dietary supplement products that infringe on one or  
13 more claims of the patents in suit (hereinafter the “accused products”), which include  
14 without limitation products sold under the “Body Rush” and “Force Factor” brand  
15 names, in the United States, the State of California, and the Southern District of  
16 California.

17 11. By way of further example and without limitation, Defendant has  
18 purposefully and voluntarily placed the accused products into the stream of commerce  
19 with the expectation that they will be purchased in the Southern District of California,  
20 and the products are actually purchased in the Southern District of California.

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

22 12. Defendant has committed the tort of patent infringement within the State  
23 of California, and more particularly, within the Southern District of California, by  
24 virtue of the fact that Defendant has formulated, made, manufactured, shipped,  
25 distributed, advertised, offered for sale, and/or sold the accused products in this District,  
26 and continues to do so.

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**A. DIRECT INFRINGEMENTS**

1  
2 13. Defendant's employees, agents, representatives and other persons  
3 sponsored by or who endorse Defendant and Defendant's products in advertising and  
4 marketing activities, have taken, used, and orally administered the accused products.

5 14. The accused products are formulated, made, manufactured, shipped,  
6 distributed, advertised, offered for sale, and sold by Defendant to include certain  
7 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
8 of one or more of the patents in suit.

9 15. The accused products are formulated, made, manufactured, shipped,  
10 distributed, advertised, offered for sale, and sold by Defendant to include specific  
11 ingredients for certain purposes that, by virtue of their inclusion in the products for such  
12 purposes, infringe one or more claims of one or more of the patents in suit, and as a  
13 result, when Defendant's employees, agents, representatives and other persons  
14 sponsored by or who endorse Defendant and Defendant's products in advertising and  
15 marketing activities orally administer the accused products, they are practicing the  
16 methods disclosed in those claims.

17 16. These infringing ingredients, and/or combinations thereof, include, without  
18 limitation, L-Arginine Monohydrate, Arginine-AKG, and L-Citrulline Monohydrate,  
19 Guarana Extract, and Vitamins B6 and B12, as set forth on Defendant's labels for the  
20 accused products.

21 17. The purposes for which these ingredients are included in the accused  
22 products are, without limitation, to enhance nitric oxide production, to improve nitric  
23 oxide activity, to produce nitric oxide, to boost nitric oxide levels in the body, and to  
24 enhance physical performance.

25 18. Defendant has encouraged and/or is aware of the fact that its employees,  
26 agents, representatives and other persons sponsored by Defendant or who endorse  
27 Defendant and Defendant's products in advertising and marketing activities orally  
28 administer the accused products and practice the methods disclosed in one or more

1 claim of one or more of the patents in suit, and these employees, agents, representatives  
2 and other persons sponsored by Defendant or who endorse Defendant and Defendant's  
3 products in advertising and marketing activities are acting under Defendant's direction  
4 and control when practicing those methods.

5 19. Therefore, Defendant is a direct infringer of one or more claims of one or  
6 more of the patents in suit, and Defendant practices the methods as set forth in one or  
7 more claims of one or more of the patents in suit.

8 **B. INDIRECT INFRINGEMENTS**

9 20. End-users of Defendant's accused products are also direct infringers of one  
10 or more claims of one or more of the patents in suit.

11 21. End-users of Defendant's accused products have taken, used, and orally  
12 administered the accused products.

13 22. The accused products are formulated, made, manufactured, shipped,  
14 distributed, advertised, offered for sale, and/or sold by Defendant to include certain  
15 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
16 of one or more of the patents in suit.

17 23. The accused products are formulated, made, manufactured, shipped,  
18 distributed, advertised, offered for sale, and/or sold by Defendant to include specific  
19 ingredients for certain purposes that, because of their inclusion in the products for such  
20 purposes, infringe one or more claims of one or more of the patents in suit, and as a  
21 result, when end-users of Defendant's accused products orally administer the accused  
22 products, they are practicing the methods disclosed in those claims.

23 24. Defendant's labels and advertising for the accused products explain the  
24 elements and essential elements of one or more of the methods disclosed in the patents  
25 in suit, and those labels and advertising statements encourage, urge, and induce the  
26 accused products' end-users to purchase and orally ingest the products to practice those  
27 methods, and end-users do practice those methods.

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1           25. Defendant has therefore specifically intended to cause these end-users to  
2 directly infringe the claimed methods of these patents, and has in fact urged them to do  
3 so.

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

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

10           28. Defendant has knowledge that the accused products are especially adapted  
11 by end-users of the products for the practicing of such methods, and, indeed, Defendant  
12 encourages, urges, and induces the accused products' end-users to purchase and orally  
13 administer the accused products to practice such methods, and has done so in the past.

14           29. Defendant has intentionally and knowingly induced, encouraged, and  
15 urged end-users of the accused products to purchase and orally administer the accused  
16 products for the purposes of practicing the claimed methods, by having them orally  
17 ingest the compounds disclosed in such claims.

18           30. Defendant has knowledge of the fact that the accused products, particularly  
19 as administered, infringe on one or more claims of the patents in suit.

20           31. Defendant has direct, firsthand knowledge of the patents in suit.

21           32. For example and without limitation, Defendant has had knowledge of the  
22 patents in suit since November 2006, when an ongoing settlement of a patent  
23 infringement case relating to at least some of the patents in suit against Herbalife, a  
24 well-known company in Defendant's industry, was announced in press releases issued  
25 in a highly publicized manner. Defendant's employees, agents, and representatives saw  
26 the press releases and were aware of the settlement and thus the patents in suit.

27           33. By way of further example and without limitation, Defendant has sold its  
28 products through retailers, including online retailers, and those retailers have sold other

1 companies' products whose labels and/or advertisements have been prominently  
2 marked with one or more of the patents in suit, by patent number, including without  
3 limitation the products manufactured and sold by Herbalife, Daily Wellness, and  
4 Vitality Research Labs. Defendant's employees, agents, and representatives have seen  
5 these labels and advertisements and, thus, Defendant has direct knowledge of the  
6 patents in suit.

7 34. Defendant has brazenly and willfully decided to infringe the patents in suit  
8 despite knowledge of the patents' existence and its knowledge of the accused products'  
9 infringements of the patents.

10 35. At a minimum, and in the alternative, Plaintiffs plead that Defendant  
11 willfully blinded itself to the infringing nature of the accused products' sales.

12 36. Defendant has not ceased its own direct infringement, nor its contributory  
13 infringement or inducement of infringement by end-users, despite its knowledge of the  
14 patents in suit and the end-users' infringing activities with respect to the patents in suit.

15 37. Plaintiffs also believe Defendant is infringing on one or more claims of  
16 United States Patent No. 5,428,070 and Patent No. 5,945,452, patents which Defendant  
17 has had prior knowledge of and are also licensed exclusively to ThermoLife by  
18 Stanford University, to include the right to sue for infringement, and Plaintiffs will seek  
19 to amend this Complaint once facts confirming that belief are ascertained.

20 **IV. FIRST CAUSE OF ACTION**

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

22 38. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs  
23 of this Complaint as if fully set forth herein.

24 39. Defendant has in the past and still is literally and directly infringing or  
25 directly infringing under the doctrine of equivalents one or more claims of United  
26 States Patent No. 6,646,006 by making, using, selling, and offering for sale the accused  
27 products, and will continue to do so unless enjoined by this Court.

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1           40. In addition to the fact that Defendant makes, uses, sells, and offers for sale  
2 the accused products, further examples of Defendant's direct infringements include,  
3 without limitation, the fact that Defendant has encouraged and/or is aware of the fact  
4 that its employees, agents, representatives and other persons sponsored by or who  
5 endorse Defendant and Defendant's products in advertising and marketing activities  
6 orally administer the accused products and practice the methods disclosed in one or  
7 more claims of United States Patent No. 6,646,006, and these employees, agents,  
8 representatives and other persons sponsored by or who endorse Defendant and  
9 Defendant's products in advertising and marketing activities are acting under  
10 Defendant's direction and control when practicing those methods.

11           41. Defendant has encouraged and is aware of these persons' oral  
12 administration of the accused products for these purposes, these persons are acting  
13 under Defendant's direction and control, and therefore Defendant is directly practicing  
14 the methods disclosed in United States Patent No. 6,646,006.

15           42. End-users of Defendant's accused products are also direct infringers of one  
16 or more claims of United States Patent No. 6,646,006.

17           43. End-users of Defendant's accused products have taken, used, and orally  
18 administered the accused products.

19           44. The accused products are formulated, made, manufactured, shipped,  
20 distributed, advertised, offered for sale, and sold by Defendant to include certain  
21 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
22 of United States Patent No. 6,646,006.

23           45. The accused products is formulated, made, manufactured, shipped,  
24 distributed, advertised, offered for sale, and sold by Defendant to include specific  
25 ingredients for purposes that, by their inclusion in the products for such purposes,  
26 infringe one or more claims of United States Patent No. 6,646,006, and as a result,  
27 when end-users of Defendant's accused products orally administer the accused  
28 products, they are practicing the methods disclosed in one or more claims of that patent.

1           46. Defendant's labels and advertising for the accused products explain the  
2 elements and essential elements of the methods disclosed in United States Patent No.  
3 6,646,006, and those labels and advertising statements encourage, urge, and induce the  
4 accused products' end-users to purchase and orally ingest the products to practice those  
5 methods, and end-users do practice those methods.

6           47. Defendant has therefore specifically intended to cause these end-users to  
7 directly infringe the claimed methods of United States Patent No. 6,646,006, and has in  
8 fact urged them to do so.

9           48. The accused products are not suitable for non-infringing uses, and none of  
10 Defendant's labels or advertisements for the accused products disclose any uses for the  
11 products, nor for the compounds disclosed in the claimed methods, that do not infringe  
12 upon such methods.

13           49. The inclusion of these specific infringing compounds in the products is  
14 material to practicing such methods.

15           50. Defendant has knowledge that the accused products are especially adapted  
16 by end-users of the products for the practicing of such methods, and, indeed, Defendant  
17 encourages, urges, and induces the accused products' end-users to purchase and orally  
18 administer the accused products to practice such methods, and have done so in the past.

19           51. Defendant has intentionally and knowingly induced, encouraged, and  
20 urged end-users of the accused products to purchase and orally administer the accused  
21 products for the purposes disclosed in one or more claims of United States Patent No.  
22 6,646,006, by having them orally ingest the compounds disclosed in such claims.

23           52. Defendant has knowledge of the fact that the accused products, particularly  
24 as administered, infringe on one or more claims of United States Patent No. 6,646,006.

25           53. Defendant also has direct, firsthand knowledge of United States Patent No.  
26 6,646,006.

27           54. Defendant's activities have been without express or implied license by  
28 Plaintiffs.



1 under Defendant's direction and control, and therefore Defendant is directly practicing  
2 the methods disclosed in United States Patent No. 5,891,459.

3 62. End-users of Defendant's accused products are also direct infringers of one  
4 or more claims of United States Patent No. 5,891,459.

5 63. End-users of Defendant's accused products have taken, used, and orally  
6 administered the accused products.

7 64. The accused products are formulated, made, manufactured, shipped,  
8 distributed, advertised, offered for sale, and sold by Defendant to include certain  
9 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
10 of United States Patent No. 5,891,459.

11 65. The accused products is formulated, made, manufactured, shipped,  
12 distributed, advertised, offered for sale, and sold by Defendant to include specific  
13 ingredients for purposes that, by their inclusion in the products for such purposes,  
14 infringe one or more claims of United States Patent No. 5,891,459, and as a result,  
15 when end-users of Defendant's accused products orally administer the accused  
16 products, they are practicing the methods disclosed in one or more claims of that patent.

17 66. Defendant's labels and advertising for the accused products explain the  
18 elements and essential elements of the methods disclosed in United States Patent No.  
19 5,891,459, and those labels and advertising statements encourage, urge, and induce the  
20 accused products' end-users to purchase and orally ingest the products to practice those  
21 methods, and end-users do practice those methods.

22 67. Defendant has therefore specifically intended to cause these end-users to  
23 directly infringe the claimed methods of United States Patent No. 5,891,459, and has in  
24 fact urged them to do so.

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

1 69. The inclusion of these specific infringing compounds in the products is  
2 material to practicing such methods.

3 70. Defendant has knowledge that the accused products are especially adapted  
4 by end-users of the products for the practicing of such methods, and, indeed, Defendant  
5 encourages, urges, and induces the accused products' end-users to purchase and orally  
6 administer the accused products to practice such methods, and have done so in the past.

7 71. Defendant has intentionally and knowingly induced, encouraged, and  
8 urged end-users of the accused products to purchase and orally administer the accused  
9 products for the purposes disclosed in one or more claims of United States Patent No.  
10 5,891,459, by having them orally ingest the compounds disclosed in such claims.

11 72. Defendant has knowledge of the fact that the accused products, particularly  
12 as administered, infringe on one or more claims of United States Patent No. 5,891,459.

13 73. Defendant also has direct, firsthand knowledge of United States Patent No.  
14 5,891,459.

15 74. Defendant's activities have been without express or implied license by  
16 Plaintiffs.

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

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

22 77. Defendant's 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 **VI. THIRD CAUSE OF ACTION**

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

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

1           79. Defendant has in the past and still is literally and directly infringing or  
2 directly infringing under the doctrine of equivalents one or more claims of United  
3 States Patent No. 7,452,916 by making, using, selling, and offering for sale the accused  
4 products, and will continue to do so unless enjoined by this Court.

5           80. In addition to the fact that Defendant makes, uses, sells, and offers for sale  
6 the accused products, further examples of Defendant's direct infringements include,  
7 without limitation, the fact that Defendant has encouraged and/or is aware of the fact  
8 that its employees, agents, representatives and other persons sponsored by or who  
9 endorse Defendant and Defendant's products in advertising and marketing activities  
10 orally administer the accused products and practice the methods disclosed in one or  
11 more claims of United States Patent No. 7,452,916, and these employees, agents,  
12 representatives and other persons sponsored by or who endorse Defendant and  
13 Defendant's products in advertising and marketing activities are acting under  
14 Defendant's direction and control when practicing those methods.

15           81. Defendant has encouraged and is aware of these persons' oral  
16 administration of the accused products for these purposes, these persons are acting  
17 under Defendant's direction and control, and therefore Defendant is directly practicing  
18 the methods disclosed in United States Patent No. 7,452,916.

19           82. End-users of Defendant's accused products are also direct infringers of one  
20 or more claims of United States Patent No. 7,452,916.

21           83. End-users of Defendant's accused products have taken, used, and orally  
22 administered the accused products.

23           84. The accused products are formulated, made, manufactured, shipped,  
24 distributed, advertised, offered for sale, and sold by Defendant 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. 7,452,916.

27           85. The accused products is formulated, made, manufactured, shipped,  
28 distributed, advertised, offered for sale, and sold by Defendant 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. 7,452,916, and as a result,  
3 when end-users of Defendant's accused products orally administer the accused  
4 products, they are practicing the methods disclosed in one or more claims of that patent.

5 86. Defendant's labels and advertising for the accused products explain the  
6 elements and essential elements of the methods disclosed in United States Patent No.  
7 7,452,916, 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 87. Defendant has therefore specifically intended to cause these end-users to  
11 directly infringe the claimed methods of United States Patent No. 7,452,916, and has in  
12 fact urged them to do so.

13 88. The accused products are not suitable for non-infringing uses, and none of  
14 Defendant's 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 89. The inclusion of these specific infringing compounds in the products is  
18 material to practicing such methods.

19 90. Defendant has knowledge that the accused products are especially adapted  
20 by end-users of the products for the practicing of such methods, and, indeed, Defendant  
21 encourages, urges, and induces the accused products' end-users to purchase and orally  
22 administer the accused products to practice such methods, and have done so in the past.

23 91. Defendant has intentionally and knowingly induced, encouraged, and  
24 urged end-users of the accused products to purchase and orally administer the accused  
25 products for the purposes disclosed in one or more claims of United States Patent No.  
26 7,452,916, by having them orally ingest the compounds disclosed in such claims.

27 92. Defendant has knowledge of the fact that the accused products, particularly  
28 as administered, infringe on one or more claims of United States Patent No. 7,452,916.

1 93. Defendant also has direct, firsthand knowledge of United States Patent No.  
2 7,452,916.

3 94. Defendant's activities have been without express or implied license by  
4 Plaintiffs.

5 95. As a result of Defendant's acts of infringement, Plaintiffs have suffered  
6 and will continue to suffer damages in an amount to be proved at trial.

7 96. As a result of Defendant's acts of infringement, Plaintiffs have been and  
8 will continue to be irreparably harmed by Defendant's infringements, which will  
9 continue unless Defendant is enjoined by this Court.

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

13 **VII. FOURTH CAUSE OF ACTION**

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

15 98. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs  
16 of this Complaint as if fully set forth herein.

17 99. Defendant has in the past and still is literally and directly infringing or  
18 directly infringing under the doctrine of equivalents one or more claims of United  
19 States Patent No. 6,117,872 by making, using, selling, and offering for sale the accused  
20 products, and will continue to do so unless enjoined by this Court.

21 100. In addition to the fact that Defendant makes, uses, sells, and offers for sale  
22 the accused products, further examples of Defendant's direct infringements include,  
23 without limitation, the fact that Defendant has encouraged and/or is aware of the fact  
24 that its employees, agents, representatives and other persons sponsored by or who  
25 endorse Defendant and Defendant's products in advertising and marketing activities  
26 orally administer the accused products and practice the methods disclosed in one or  
27 more claims of United States Patent No. 6,117,872, and these employees, agents,  
28 representatives and other persons sponsored by or who endorse Defendant and

1 Defendant's products in advertising and marketing activities are acting under  
2 Defendant's direction and control when practicing those methods.

3 101. Defendant has encouraged and is aware of these persons' oral  
4 administration of the accused products for these purposes, these persons are acting  
5 under Defendant's direction and control, and therefore Defendant is directly practicing  
6 the methods disclosed in United States Patent No. 6,117,872.

7 102. End-users of Defendant's accused products are also direct infringers of one  
8 or more claims of United States Patent No. 6,117,872.

9 103. End-users of Defendant's accused products have taken, used, and orally  
10 administered the accused products.

11 104. The accused products are formulated, made, manufactured, shipped,  
12 distributed, advertised, offered for sale, and sold by Defendant to include certain  
13 ingredients that, by virtue of their inclusion in the products, infringe one or more claims  
14 of United States Patent No. 6,117,872.

15 105. The accused products is formulated, made, manufactured, shipped,  
16 distributed, advertised, offered for sale, and sold by Defendant to include specific  
17 ingredients for purposes that, by their inclusion in the products for such purposes,  
18 infringe one or more claims of United States Patent No. 6,117,872, and as a result,  
19 when end-users of Defendant's accused products orally administer the accused  
20 products, they are practicing the methods disclosed in one or more claims of that patent.

21 106. Defendant's labels and advertising for the accused products explain the  
22 elements and essential elements of the methods disclosed in United States Patent No.  
23 6,117,872, and those labels and advertising statements encourage, urge, and induce the  
24 accused products' end-users to purchase and orally ingest the products to practice those  
25 methods, and end-users do practice those methods.

26 107. Defendant has therefore specifically intended to cause these end-users to  
27 directly infringe the claimed methods of United States Patent No. 6,117,872, and has in  
28 fact urged them to do so.

1           108. The accused products are not suitable for non-infringing uses, and none of  
2 Defendant's labels or advertisements for the accused products disclose any uses for the  
3 products, nor for the compounds disclosed in the claimed methods, that do not infringe  
4 upon such methods.

5           109. The inclusion of these specific infringing compounds in the products is  
6 material to practicing such methods.

7           110. Defendant has knowledge that the accused products are especially adapted  
8 by end-users of the products for the practicing of such methods, and, indeed, Defendant  
9 encourages, urges, and induces the accused products' end-users to purchase and orally  
10 administer the accused products to practice such methods, and have done so in the past.

11           111. Defendant has intentionally and knowingly induced, encouraged, and  
12 urged end-users of the accused products to purchase and orally administer the accused  
13 products for the purposes disclosed in one or more claims of United States Patent No.  
14 6,117,872, by having them orally ingest the compounds disclosed in such claims.

15           112. Defendant has knowledge of the fact that the accused products, particularly  
16 as administered, infringe on one or more claims of United States Patent No. 6,117,872.

17           113. Defendant also has direct, firsthand knowledge of United States Patent No.  
18 6,117,872.

19           114. Defendant's activities have been without express or implied license by  
20 Plaintiffs.

21           115. As a result of Defendant's acts of infringement, Plaintiffs have suffered  
22 and will continue to suffer damages in an amount to be proved at trial.

23           116. As a result of Defendant's acts of infringement, Plaintiffs have been and  
24 will continue to be irreparably harmed by Defendant's infringements, which will  
25 continue unless Defendant is enjoined by this Court.

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

**VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for entry of judgment against Defendant as follows:

1. A declaration that Defendant has infringed the patents in suit, under 35 U.S.C. §§ 271 *et seq.*;

2. That injunctions, preliminary and permanent, be issued by this Court restraining Defendant, its officers, agents, servants, directors, and employees, and all persons in active concert or participation with each, from directly or indirectly infringing, or inducing or contributing to the infringement by others of, the patents in suit;

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

4. That the damages awarded to Plaintiffs with regard to the patents in suit 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 Plaintiffs under 35 U.S.C. § 285, and that Plaintiffs be awarded their reasonable attorneys’ fees and other expenses incurred in connection with this action;

6. That Plaintiffs be awarded their interest and costs of suit incurred in this action;

7. Compensatory damages;

8. Punitive damages; and

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**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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