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

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

13 Plaintiffs,

14 vs.

15 UNITED STATES NUTRITION, INC.,

16 Defendant  
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Case No. 13-cv-906 JLS (MDD)

**AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT**

**JURY TRIAL DEMANDED**

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 United States Nutrition, Inc. (“Defendant”), on personal knowledge as to their  
4 own 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  
14 Patents:

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

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

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

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

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**A. DIRECT INFRINGEMENTS**

1  
2 14. 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 15. 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 16. 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 17. These infringing ingredients, and/or combinations thereof, include, without  
18 limitation, L-Arginine, Beta-Alanine, Folic Acid, White Willow, Stevia Extract,  
19 Taurine, and L-Arginine Alpha Keto-Glutarate.

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

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

1 and other persons sponsored by Defendant or who endorse Defendant and Defendant's  
2 products in advertising and marketing activities are acting under Defendant's direction  
3 and control when practicing those methods.

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

7 **B. INDIRECT INFRINGEMENTS**

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

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

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

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

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

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1           26. 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           27. 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           28. The inclusion of the specific infringing compounds in the products is  
9 material to practicing such methods.

10           29. 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           30. 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           31. 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           32. Defendant has direct, firsthand knowledge of the patents in suit.

21           33. 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           34. 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 35. 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 36. 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 37. 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 38. 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. 5,891,459**

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

24 40. 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. 5,891,459 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           41. 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. 5,891,459, 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           42. 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. 5,891,459.

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

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

19           45. 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. 5,891,459.

23           46. 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. 5,891,459, 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           47. 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 5,891,459, 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           48. Defendant has therefore specifically intended to cause these end-users to  
7 directly infringe the claimed methods of United States Patent No. 5,891,459, and has in  
8 fact urged them to do so.

9           49. 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           50. The inclusion of these specific infringing compounds in the products is  
14 material to practicing such methods.

15           51. 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           52. 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 5,891,459, by having them orally ingest the compounds disclosed in such claims.

23           53. 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. 5,891,459.

25           54. Defendant also has direct, firsthand knowledge of United States Patent No.  
26 5,891,459.

27           55. 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. 7,452,916.

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

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

7 65. 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. 7,452,916.

11 66. 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. 7,452,916, 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 67. 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 7,452,916, 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 68. Defendant has therefore specifically intended to cause these end-users to  
23 directly infringe the claimed methods of United States Patent No. 7,452,916, and has in  
24 fact urged them to do so.

25 69. 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 70. The inclusion of these specific infringing compounds in the products is  
2 material to practicing such methods.

3 71. 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 72. 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 7,452,916, by having them orally ingest the compounds disclosed in such claims.

11 73. 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. 7,452,916.

13 74. Defendant also has direct, firsthand knowledge of United States Patent No.  
14 7,452,916.

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

17 76. 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 77. 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 78. 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. 6,117,872**

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

1           80. 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. 6,117,872 by making, using, selling, and offering for sale the accused  
4 products, and will continue to do so unless enjoined by this Court.

5           81. 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. 6,117,872, 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           82. 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. 6,117,872.

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

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

23           85. 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. 6,117,872.

27           86. 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. 6,117,872, 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 87. 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 6,117,872, 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 88. Defendant has therefore specifically intended to cause these end-users to  
11 directly infringe the claimed methods of United States Patent No. 6,117,872, and has in  
12 fact urged them to do so.

13 89. 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 90. The inclusion of these specific infringing compounds in the products is  
18 material to practicing such methods.

19 91. 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 92. 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 6,117,872, by having them orally ingest the compounds disclosed in such claims.

27 93. 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. 6,117,872.

1 94. Defendant also has direct, firsthand knowledge of United States Patent No.  
2 6,117,872.

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

5 96. 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 97. 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 98. 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 **VIII. PRAYER FOR RELIEF**

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

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

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

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

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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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