

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

GEORGE D. PETITO, ANITA M. PETITO AND
CONNECTIVE LICENSING, LLC,

Plaintiffs,

Case No.

v.

SMARTPAK EQUINE, LLC.,

Defendant.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which George D. Petito, Anita M. Petito and Connective Licensing, LLC (collectively “Plaintiffs”) make the following allegations against SmartPak Equine, LLC (“SmartPak” or “Defendant”).

PARTIES

1. Plaintiff George D. Petito is an individual residing at 1890 Bucknell Drive, Bethlehem, PA 18015.
2. Plaintiff Anita M. Petito is an individual residing at 2840 West Livingston Street, Allentown, PA 18104.
3. Plaintiff Connective Licensing, LLC (“Connective”) is a California limited liability corporation with its principal place of business at 547 South Marengo Avenue, Pasadena, CA 91101.
4. On information and belief, Defendant SmartPak is a Delaware corporation, with its principal place of business at 40 Grissom Road, Suite 500, Plymouth, Massachusetts 02360. On information and belief, SmartPak may be served through its registered agent Gisholt C. Paal at 40 Grissom Road, Suite 500, Plymouth, Massachusetts 02360.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant resides and has transacted business in this district, and has committed and/or induced acts of patent infringement in this district.

COUNT I INFRINGEMENT OF U.S. PATENT NO. 6,645,948

7. Plaintiffs George D. Petito and Anita M. Petito (“the Petitos”) are the listed inventors and owners of United States Patent No. 6,645,948 (“the ‘948 Patent”) entitled “Nutritional Composition for the Treatment of Connective Tissue.” Plaintiff Connective has an exclusive license from the Petitos, which includes all rights to recover for past and future acts of infringement. The ‘948 Patent issued on November 11, 2003. A true and correct copy of the ‘948 Patent is attached as Exhibit A.

8. The Petitos own and operate The Hymed Group Corporation (See <http://hymed.com/>), which is a manufacturer and marketer of natural, innovative products that utilize collagen and glycosaminoglycan chemistry for the human and veterinary markets with applications in wound care, arthritis/tissue support, eye care, dental and cosmetics.

9. On information and belief, SmartPak has been and now is infringing the ‘948 Patent in this judicial district, and elsewhere in the United States. Acts of infringement by SmartPak include, without limitation, making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, at least its supplement products

containing a glucosamine salt, chondroitin sulfate, collagen and sodium hyaluronate. SmartPak is thus liable for infringement of the '948 Patent under 35 U.S.C. § 271.

10. SmartPak's infringing products include, but are not limited to, the following products: Exceed 6-way (See <http://www.medvetpharm.com/images/Exceed-label3.pdf>, a true and correct screenshot of which is attached as Exhibit B); FLEX-n-MOTION (See http://www.valleyvet.com/ct_library_info.html?product=63955b1d-b59a-42f9-a779-5c4411cf46dd&showText=1, a true and correct screenshot of which is attached as Exhibit C); Grand Complete Ultra™ (See <http://www.smartpakequine.com/grand-complete-ultra-4661p>, a true and correct screenshot of which is attached as Exhibit D); Grand Flex Senior (See <http://www.smartpakequine.com/grand-flex-senior-9357p>, a true and correct screenshot of which is attached as Exhibit E); Nimble Supreme (See <http://www.smartpakequine.com/nimble-supreme-2460p>, a true and correct screenshot of which is attached as Exhibit F); SmartCombo™ Senior Pellets (See <http://www.smartpakequine.com/smartcombo-senior-pellets-11381p>, a true and correct screenshot of which is attached as Exhibit G); SmartCombo Ultra Pellets (See <http://www.smartpakequine.com/smartcombo-ultra-pellets-9474p>, a true and correct screenshot of which is attached as Exhibit H); SmartFlex® III Resilience (See <http://www.smartpakequine.com/smartflex-iii-resilience-4662p>, a true and correct screenshot of which is attached as Exhibit I); SmartFlex® III Resilience Pellets (See <http://www.smartpakequine.com/smartflex-iii-resilience-pellets-7186p>, a true and correct screenshot of which is attached as Exhibit J); SmartFlex® IV Ultimate Pellets (See <http://www.smartpakequine.com/smartflex-iv-ultimate-pellets-8293p>, a true and correct screenshot of which is attached as Exhibit K); SmartFlex® Rehab Pellets (See

<http://www.smartpakequine.com/smartflex-rehab-pellets-9820p>, a true and correct screenshot of which is attached as Exhibit L) (collectively “Accused Products”).

11. SmartPak infringes at least Claim 1 of the ‘948 Patent, by way of example only, and without limitation on Plaintiffs’ assertion of infringement by SmartPak of other claims of the ‘948 Patent. Claim 1 of the ‘948 Patent reads as follows:

1. A nutritional composition for the treatment of connective tissue in mammals comprising: a therapeutically effective amount of a glucosamine salt, chondroitin sulfate, collagen and sodium hyaluronate.

On information and belief, SmartPak’s Accused Products contain each and every component of at least Claim 1 of the ‘948 Patent.

12. The Accused Products contain the first recited component, a glucosamine salt, as indicated on the respective product labels. The exemplary product labels attached hereto as Exhibits B-L lists the following amounts of Glucosamine Sulfate among the ingredients:

Accused Product	Amount Glucosamine Salt
Exceed 6-way	12,000 mg
FLEX-n-MOTION	5,000 mg
Grand Complete Ultra™	5,000 mg
Grand Flex Senior	7,500 mg
Nimble Supreme	7,500 mg
SmartCombo™ Senior Pellets	7,000 mg
SmartCombo Ultra Pellets	10,000 mg
SmartFlex® III Resilience	10,000 mg
SmartFlex® III Resilience Pellets	10,000 mg
SmartFlex®IV Ultimate Pellets	10,000 mg
SmartFlex® Rehab Pellets	5,000 mg

See also SmartPak's Joint Supplement Comparison Chart, a true and correct copy of which is attached as Exhibit M, which can be found at <http://www.smartpakequine.com/charts/JointCompare.aspx?t=1385242496239>.

13. The Accused Products also contain the next recited component chondroitin sulfate. The exemplary product labels attached hereto as Exhibits B-L list the following amounts of chondroitin sulfate among the ingredients:

Accused Product	Amount Chondroitin Sulfate
Exceed 6-way	500 mg
FLEX-n-MOTION	4,000 mg
Grand Complete Ultra™	200 mg
Grand Flex Senior	50 mg
Nimble Supreme	200 mg
SmartCombo™ Senior Pellets	500 mg
SmartCombo Ultra Pellets	1,000 mg
SmartFlex® III Resilience	1,000 mg
SmartFlex® III Resilience Pellets	1,000 mg
SmartFlex®IV Ultimate Pellets	1,000 mg
SmartFlex® Rehab Pellets	400 mg

See also SmartPak's Joint Supplement Comparison Chart, a true and correct copy of which is attached as Exhibit M, which can be found at <http://www.smartpakequine.com/charts/JointCompare.aspx?t=1385242496239>.

14. The Accused Products also contain the next recited component collagen. The exemplary product labels attached hereto as Exhibits B-L list the following amounts of collagen among the ingredients:

Accused Product	Amount Collagen
Exceed 6-way	5,000 mg
FLEX-n-MOTION	500 mg.
Grand Complete Ultra™	600 mg
Grand Flex Senior	167 mg
Nimble Supreme	600 mg
SmartCombo™ Senior Pellets	300 mg
SmartCombo Ultra Pellets	1,000 mg
SmartFlex® III Resilience	1,000 mg
SmartFlex® III Resilience Pellets	1,000 mg
SmartFlex®IV Ultimate Pellets	1,000 mg
SmartFlex® Rehab Pellets	1,500 mg

See also SmartPak's Joint Supplement Comparison Chart, a true and correct copy of which is attached as Exhibit M, which can be found at <http://www.smartpakequine.com/charts/JointCompare.aspx?t=1385242496239>.

15. The Accused Products also contain the next recited component sodium hyaluronate. On information and belief, the hyaluronic acid listed among the ingredients of the product labels of the Accused Products is added as sodium hyaluronate. The exemplary product labels attached hereto as Exhibits B-L list the following amounts of hyaluronic acid among the ingredients:

Accused Product	Amount Hyaluronic Acid
Exceed 6-way	125 mg
FLEX-n-MOTION	40 mg
Grand Complete Ultra™	100 mg
Grand Flex Senior	50 mg
Nimble Supreme	100 mg
SmartCombo™ Senior Pellets	50 mg
SmartCombo Ultra Pellets	100 mg
SmartFlex® III Resilience	100 mg
SmartFlex® III Resilience Pellets	100 mg
SmartFlex®IV Ultimate Pellets	150 mg
SmartFlex® Rehab Pellets	100 mg

See also SmartPak's Joint Supplement Comparison Chart, a true and correct copy of which is attached as Exhibit M, which can be found at <http://www.smartpakequine.com/charts/JointCompare.aspx?t=1385242496239>.

16. As a result of Defendant's infringement of the '948 Patent, Plaintiff has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the court, and Plaintiffs will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

17. On information and belief, Defendant knew that Plaintiffs' technology was proprietary, and subject to the '948 Patent at latest in December of 2012, when it received a letter

from counsel informing Defendant that its products infringed the '948 Patent, a true and correct copy of which is attached as Exhibit N. Yet Defendant continued to make, use, offer for sale and sell its product without regard to Plaintiffs' rights and without offering to compensate Plaintiffs for the use of its proprietary technology.

18. There is an objectively high likelihood that Defendant's actions constituted infringement of a valid patent, and the likelihood was either known or so obvious that it should have been known by Defendant. Thus, given Defendant's knowledge of the '948 Patent, stemming at least from its knowledge, at least its receipt of the letter at Exhibit N, Defendant is engaging in willful infringement of the '948 Patent, and is also liable for enhanced damages under 35 U.S.C. § 284.

19. In addition, Plaintiffs are entitled to the issuance of a permanent injunction enjoining Defendant from continuing its infringement. Plaintiffs have suffered irreparable harm as Defendant's infringement has diluted the value of Plaintiffs' patent rights, and has taken business away from Plaintiffs, resulting in lost profits, and a loss of market share and good will, in amounts that cannot be compensated by payment of money. Moreover, allowing Defendant to continue in its infringement would encourage other would-be infringers to attempt to gain access, resulting in significant litigation expenses and uncertainty about the value of Plaintiffs' patent, which is the foundation of their business. In addition, a remedy in equity is warranted because, considering the balance of hardship as between Defendant and Plaintiffs, Defendant would suffer far less hardship from the issuance of an injunction than Plaintiffs would suffer if an injunction is not issued. Finally, the public interest would not be disserved by the issuance of a permanent injunction, as the public does not have any substantial interest in the Defendant's continued unauthorized infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment:

1. In favor of Plaintiffs that Defendant has infringed the '948 Patent;
2. Requiring Defendant to pay Plaintiffs their damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '948 Patent as provided under 35 U.S.C. § 284;
3. Enjoining Defendant from further infringement;
4. Finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
5. Granting Plaintiffs any and all other relief to which Plaintiffs may show themselves to be entitled.

DEMAND FOR JURY TRIAL

Plaintiffs, under Rule 38 of the Federal Rules of Civil Procedure, request a trial by jury of any issues so triable by right.

November 26, 2013

Respectfully submitted,

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