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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

TRUE SCIENCE HOLDINGS, LLC, an Idaho limited liability company; TRURX, LLC, an Idaho limited liability company; M&C USA, LLC, a Delaware limited liability company; MARK AND CHAPPELL LIMITED, a United Kingdom limited company,

Plaintiffs,

v.

MARS, INCORPORATED, a Delaware corporation; and KAL KAN FOODS, INC., a Delaware corporation,

Defendants.

**FIRST AMENDED COMPLAINT
FOR DECLARATORY RELIEF**

JURY DEMANDED

Civil No. 2:14-CV-00193-DBP

Magistrate Judge: Dustin B. Pead

Plaintiffs True Science Holdings, LLC, TruRX, LLC, M&C USA, LLC and Mark and Chappell Limited, hereby complain against Defendants Mars, Incorporated and Kal Kan Foods, Inc., as follows:

SUMMARY OF ACTION

1. This is a declaratory judgment action seeking a declaration of non-infringement, invalidity, and unenforceability of United States Patent Nos. 6,117,477 (“the ’477 patent”), 6,254,910 (“the ’910 patent”), 6,312,746 (“the ’746 patent”), and 6,827,957 (“the ’957 patent”).

I. PARTIES

2. Plaintiff True Science Holdings, LLC (“True Science”) is a limited liability company organized and existing under the laws of the State of Idaho, with its principal place of business in Eagle, Idaho.

3. Plaintiff TruRX, LLC (“TruRX”) is a limited liability company organized and existing under the laws of the State of Idaho, with its principal place of business in Eagle, Idaho and with manufacturing facilities in Utah County, Utah. TruRX is a wholly owned subsidiary of True Science.

4. Plaintiff M&C USA, LLC (“M&C USA”) is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Eagle, Idaho. M&C USA is a wholly owned subsidiary of True Science.

5. Plaintiff Mark and Chappell Limited (“M&C”) is a limited company organized and existing under the laws of the United Kingdom, with its principal place of business in Ireland. M&C is a wholly owned subsidiary of M&C USA.

6. Upon information and belief, Defendant Mars, Incorporated (“Mars”) is a corporation organized and existing under the laws of Delaware, with its principal place of business in McLean, Virginia.

7. Upon information and belief, Defendant Kal Kan Foods, Inc. (“Kal Kan”) is a corporation organized and existing under the laws of Delaware, with its principal place of

business in McLean, Virginia. Upon information and belief, Kal Kan is a wholly-owned subsidiary of Mars, and Mars directs and controls all aspects of Kal Kan, including all decisions relating to whom and when to sue as Kal Kan or as Mars.

II. JURISDICTION AND VENUE

8. This action is brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the Patent Laws of the United States, 35 U.S.C. § 100, *et seq.*, based upon an actual controversy between the parties to declare that certain of Plaintiffs' products do not infringe certain patents held by Defendants, that said patents are invalid, and that said patents are unenforceable as against Plaintiffs.

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as this matter arises under the Patent Laws of the United States, and 28 U.S.C. § 1338, as this action arises under an Act of Congress relating to patents.

10. This Court has general personal jurisdiction over Defendants. Specifically, Defendants regularly sell their goods and products in Utah and maintain systematic contacts with this jurisdiction. Indeed, Mars is registered to do business in Utah with the Utah Department of Commerce.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events or omissions giving rise to this action occurred and are occurring in this judicial district.

III. PATENTS IN SUIT

12. According to the records at the United States Patent and Trademark Office ("USPTO"), Kal Kan is the owner by assignment of the '477 patent, which is entitled "Multicomponent Food Product and Methods of Making and Using the Same" and issued on

September 12, 2000. The '477 patent was filed on March 18, 1998 and does not claim an earlier priority date. A true and correct copy of the '477 patent is attached as Exhibit A.

13. According to the records at the USPTO, Kal Kan is the owner by assignment of United States Patent No. 6,254,910 (“the '910 patent”), which is entitled “Multicomponent Food Product and Methods of Making and Using the Same” and issued on July 3, 2001. The '910 patent is a continuation-in-part of, and claims priority to, the '477 patent. A true and correct copy of the '910 patent is attached as Exhibit B.

14. According to the records at the USPTO, Kal Kan is the owner by assignment of United States Patent No. 6,312,746 (“the '746 patent”), which is entitled “Multicomponent Pet Food Product and Methods of Making and Using the Same” and issued on November 6, 2001. The '746 patent is a continuation of the '910 patent. Both Kal Kan and Mars have been named plaintiffs in a prior lawsuit to enforce the '746 patent against other persons. A true and correct copy of the '746 patent is attached as Exhibit C.

15. According to the records at the USPTO, Kal Kan Foods, Inc. is the owner by assignment of United States Patent No. 6,827,957 (“the '957 patent”), which is entitled “Multicomponent Pet Food or Animal Food” and issued on December 7, 2004. The '957 patent is a continuation of the '746 patent. A true and correct copy of the '957 patent is attached as Exhibit D.

16. The '477 patent, the '910 patent, the '746 patent and the '957 patents are collectively referred to herein as the “Mars Patents.”

IV. PRESENT DISPUTE

17. Plaintiffs and Defendants are direct competitors in the pet food and treat industry. Mars, with its wholly owned subsidiaries, is one of the largest pet food and treat manufacturers

in the world. True Science, on the other hand, is a relatively young company that has nevertheless become one of the most significant competitors in the United States to Mars and its subsidiaries. This dispute relates to Plaintiffs and Defendants competing co-extruded pet treats.

18. Plaintiffs manufacture and sell co-extruded pet treats in the United States under a variety of brands, including the DELIGHTIBLES™ brand. Plaintiffs sell their co-extruded pet treats to most major U.S. retailers. Plaintiffs recently launched the DELIGHTIBLES™ brand, which has been picked up by one of the largest U.S. retailers. Defendants have expressed their extreme dissatisfaction that the DELIGHTIBLES™ brand has been picked up by this retailer.

19. Defendants manufacture and sell co-extruded pet treats in the United States under a variety of brands, including the TEMPTATIONS® brand. Defendants sell their co-extruded pet treats to most major U.S. retailers, including those to whom Plaintiffs sell their co-extruded pet treats, including in Utah.

20. Defendants have alleged that Plaintiffs' co-extruded products infringe one or more of the Mars Patents. Defendants have threatened litigation if Plaintiffs refuse to stop selling its co-extruded products.

21. Recently, Mars has launched an unwarranted litigation campaign against True Science and TruRX with the hope of litigating True Science and TruRX out of the market. To date, Mars' campaign has included patent lawsuits in multiple forums throughout the country.

22. Plaintiffs have invested millions of dollars in their manufacturing and supply facilities in Utah in order to meet the demand for Plaintiffs' co-extruded pet treats and, based on Mars threats regarding Plaintiffs' co-extruded products and recent wide-spread meritless filings against Plaintiffs, Plaintiffs have a reasonable apprehension of imminent suit by Mars.

FIRST CLAIM FOR RELIEF

Declaratory Judgment of Non-Infringement of the '477 Patent

23. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

24. Plaintiffs' products and processes do not infringe the '477 patent.

25. There is a substantial and continuing controversy between Plaintiffs and Defendants and a declaration of rights is both necessary and appropriate to establish that Plaintiffs' co-extruded pet products do not infringe any claim of the '477 patent.

SECOND CLAIM FOR RELIEF

Declaratory Judgment of Non-Infringement of the '910 Patent

26. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

27. Plaintiffs' products and processes do not infringe the '910 patent.

28. There is a substantial and continuing controversy between Plaintiffs and Defendants and a declaration of rights is both necessary and appropriate to establish that Plaintiffs' co-extruded pet products do not infringe any claim of the '910 patent.

THIRD CLAIM FOR RELIEF

Declaratory Judgment of Non-Infringement of the '746 Patent

29. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

30. Plaintiffs' products and processes do not infringe the '746 patent.

31. There is a substantial and continuing controversy between Plaintiffs and Defendants and a declaration of rights is both necessary and appropriate to establish that Plaintiffs' co-extruded pet products do not infringe any claim of the '746 patent.

FOURTH CLAIM FOR RELIEF

Declaratory Judgment of Non-Infringement of the '957 Patent

32. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

33. Plaintiffs' products and processes do not infringe the '957 patent.

34. There is a substantial and continuing controversy between Plaintiffs and Defendants and a declaration of rights is both necessary and appropriate to establish that Plaintiffs' co-extruded pet products do not infringe any claim of the '957 patent.

FIFTH CLAIM FOR RELIEF

Declaratory Judgment of Invalidity of the '477 Patent

35. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

36. There is a substantial and continuing controversy between Plaintiffs and Defendants as to the validity of the '477 patent.

37. The '477 patent is invalid under 35 U.S.C. §§ 100 *et seq.*, including at least §§ 101, 102, 103 and/or 112.

SIXTH CLAIM FOR RELIEF

Declaratory Judgment of Invalidity of the '910 Patent

38. Plaintiffs hereby incorporate the preceding paragraphs by reference as though fully set forth herein.

39. There is a substantial and continuing controversy between Plaintiffs and Defendants as to the validity of the '910 patent.

40. The '910 patent is invalid under 35 U.S.C. §§ 100 *et seq.*, including at least §§ 101, 102, 103 and/or 112.

SEVENTH CLAIM FOR RELIEF
Declaratory Judgment of Invalidity of the '746 Patent

41. Plaintiffs hereby incorporate by reference the preceding paragraphs by reference as though fully set forth herein.

42. There is a substantial and continuing controversy between Plaintiffs and Defendants as to the validity of the '746 patent.

43. The '746 patent is invalid under 35 U.S.C. §§ 101 *et seq.*, including §§ 101, 102, 103 and/or 112.

EIGHTH CLAIM FOR RELIEF
Declaratory Judgment of Invalidity of the '957 Patent

44. Plaintiffs hereby incorporate by reference the preceding paragraphs by reference as though fully set forth herein.

45. There is a substantial and continuing controversy between Plaintiffs and Defendants as to the validity of the '746 patent.

46. The '746 patent is invalid under 35 U.S.C. §§ 100 *et seq.*, including at least §§ 101, 102, 103 and/or 112.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. On the First Claim for Relief, for a declaration that Plaintiffs are not liable for directly infringing, or contributing to, or inducing the infringement of, any claim of the '477 patent, either literally or under the doctrine of equivalents;

2. On the Second Claim for Relief, for a declaration that Plaintiffs are not liable for directly infringing, or contributing to, or inducing the infringement of, any claim of the '910 patent, either literally or under the doctrine of equivalents

