

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

INTELLECTUAL WELLNESS, LLC,
a Michigan Limited Liability Company,

Plaintiff

Case No.:

v.

POWERLAB NUTRITION, LLC,
a Colorado Limited Liability Company,

JURY TRIAL DEMANDED

Defendant.

COMPLAINT AND JURY DEMAND

NOW COMES Intellectual Wellness, LLC (“Plaintiff”), by and through its attorneys, Carlson, Gaskey & Olds, P.C. and Bator Legal, P.C., and for its Complaint against Defendant Powerlab Nutrition, LLC (“Defendant”) states as follows. Plaintiff also states that there exists a previously dismissed companion case in this court bearing Case No. 5:14-cv-13717-JEL-RSW.

I. THE PARTIES

1. Plaintiff is a Michigan Limited Liability Company with its principal place of business located in Brighton, Michigan.
2. Plaintiff is the Assignee of the following United States Patents:
 - A. US Patent No. 8,084,446, entitled "Use of DHEA Derivatives for Enhancing Physical Performance" ("the '446 patent");

B. US Patent No. 8,338,399 entitled “Use of DHEA Derivatives for Enhancing Physical Performance” (“the ‘399 patent”); and

C. US Patent No. 8,778,918 entitled “Use of 19 nor DHEA derivatives for Enhancing Physical Performance” (“the ‘918 patent”)

3. The above patents are herein referred to as the “Patents in Suit”

4. Plaintiff owns the Patents in Suit, including the right to sue and recover damages for the infringement thereof.

5. Defendant is a Colorado Limited Liability Company with its principal place of business located in Littleton Colorado.

II. JURISDICTION AND VENUE

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

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

8. This Court has personal jurisdiction over Defendant. By way of example and without limitation, on information and belief, Defendant, directly or through intermediaries (including distributors, retailers, and others), formulates, makes, manufactures, ships, distributes, advertises, markets, offers for sale, and/or sells dietary supplement products that infringe on one or more claims of the Patents in Suit (hereinafter the “Infringing Products”), which include without limitation

products sold under the “Androdrool Platinum”, Halotest Platinum”, and “Halotren Platinum” brand names, in the United States, the State of Michigan, and the Eastern District of Michigan.

9. By way of further example and without limitation, Defendant has purposefully and voluntarily placed the Infringing Products into the stream of commerce with the knowledge, understanding, and expectation that such Infringing Products would and will be purchased in the Eastern District of Michigan, and, on information and belief, the products were and are actually purchased in the Eastern district of Michigan.

III. FACTUAL BACKGROUND

10. Defendant operates a dietary supplement company that provides sports nutrition, muscle enhancement, weight loss, pre- and post-workout, and other various supplements.

11. Defendant maintains a website at www.Powerlabnutrition.com to facilitate the sale and distribution of its products.

12. Defendant offers its dietary supplements, including the Infringing Products, nationwide, including, on information and belief, within the Eastern District of Michigan.

13. At least as early as October 12 of 2012 Defendant was on notice of the Patents in Suit.

14. Specifically, on October 12, 2012, Plaintiff sent to Defendant by United States mail a cease and desist letter alerting Defendant as to the existence of the Patents in Suit and asking that Defendant cease its infringement of the claims in the Patents in Suit.

IV. THE DEFENDANT'S INFRINGEMENT

15. Plaintiff incorporates and re-alleges Paragraphs 1 through 14 as each were fully set forth herein.

16. Defendant has infringed the claims of the patents assigned to the Plaintiff within the State of Michigan, and more particularly, the Eastern District of Michigan, in that Defendant, on information and belief, has caused the Infringing Products to be formulated made, manufactured, shipped, distributed, advertised, offered for sale and/or sold in this District, and continues to do so.

17. The Infringing Products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale and sold by Defendant to include certain ingredients that, by virtue of their inclusion in the Infringing Products, infringe Claims 1-2 of the '399, '918, and '446 patents.

A. DIRECT INFRINGEMENT

18. Plaintiff incorporates and re-alleges Paragraphs 1 through 17 as each were fully set forth herein.

19. On information and belief, Defendant's employees, agents, representatives, and/or other persons sponsored by or who endorse Defendant and/or Defendant's Infringing Products in advertising and marketing activities, have taken, used, and orally administered the Infringing Products.

20. The Infringing Products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale and sold by Defendant to include certain ingredients that, by virtue of their inclusion in the Infringing Products, infringe one or more of the claims of the Patents in Suit.

21. The Infringing Products are and were formulated, made, manufactured, shipped, distributed, advertised, offered for sale and sold by Defendant and as a result, when Defendant's employees, agents, representatives, and/or other persons sponsored by or who endorse Defendant and/or Defendant's Infringing Products in advertising and marketing activities orally administer and administered the Infringing Products, they are and were practicing and practiced the methods disclosed in those claims.

22. The purposes for which these ingredients are included in the Infringing Products are and were, without limitation, to enhance physical performance.

23. On information and belief, Defendant encouraged and/or is aware of the fact that its employees, agents, representatives, and/or other persons sponsored

by or who endorse Defendant and/or Defendant's Infringing Products in advertising and marketing activities orally administered and administer the Infringing products and practice and practiced the methods disclosed in one or more claim of the Patents in Suit, and these employees, agents, representatives, and/or other persons sponsored by or who endorse Defendant and/or Defendant's Infringing Products in advertising and marketing activities are and were acting under Defendant's direction and control when practicing these methods.

24. Therefore, Defendant is and was a direct infringer of one or more claims of the Patents in Suit.

B. INDIRECT INFRINGEMENT

25. Plaintiff incorporates and re-alleges Paragraphs 1 through 24 as each were fully set forth herein.

26. End-users of Defendant's Infringing Products were and still are direct infringers of one or more claims of the Patents in Suit.

27. End-users of Defendant's Infringing Products have taken, used, and orally administered the Infringing Products.

28. The Infringing Products are and were formulated, made, manufactured, shipped, distributed, advertised, offered for sale and/or sold by Defendant and, as a result, when end-users of Defendant's Infringing Products

orally administer and administered the Infringing Products, they are and were practicing and practiced the methods disclosed in those claims.

29. Defendant's labels and advertising for the Infringing Products explain and explained the elements of one or more of the methods disclosed in the Patents in Suit, and those labels and advertising statements encourage, urge, and induce the Infringing Products' end-users and Defendant has therefore specifically intended to cause these end-users to directly infringe the claimed methods of the Patents in Suit, and did so in the past, and to purchase and orally ingest the products to practice those methods, and end-users do and did practice those methods.

30. Defendant has therefore specifically intended to cause these end-users to directly infringe the claimed methods of the Patents in Suit, and in fact urged them to do so.

31. The Infringing Products are and were not suitable for non-infringing uses, and none of Defendant's labels or advertisements for their Infringing Products disclose or disclosed any uses for the products, nor for the compounds disclosed in the claimed methods of the Patents in Suit, that do not infringe these claimed methods.

32. The inclusion of the specific infringing compounds in the Infringing Products is and was material to practicing such methods.

33. Defendant had knowledge that the Infringing Products are and were especially adapted by end-users of the products for the practicing of such methods, and indeed, Defendant encouraged, urged, and induced, and still encourages, urges and induces the Infringing Products' end-users to purchase and orally administer the Infringing Products to practice such methods.

34. Defendant intentionally and knowingly induced encouraged, urged, and induced, and still encourages, urges and induces the Infringing Products' end-users to purchase and orally administer the Infringing Products for the purpose of practicing the claimed methods of the Patents in Suit, by having them orally ingest the compounds disclosed in such claims.

35. Defendant has and had knowledge of the fact that the accused products, particularly as administered, infringe on one or more of the claims of the Patents in Suit.

36. Defendant has and had direct firsthand knowledge of the Patents in Suit since at least October of 2012.

37. Defendant willfully and knowingly decided to infringe the Patents in Suit despite knowledge of these patents' existence and its knowledge of the Infringing Products infringement of the claims of the Patents in Suit.

38. At a minimum, and in the alternative, Plaintiff pleads that the Defendant willfully blinded itself to the infringing nature of the Infringing Products' sales.

39. Defendant did not cease its own direct infringement, nor its contributory infringement or inducement of infringement by end-users, despite its knowledge of the Patents in Suit and the end-users' infringing activities with respect to the Patents in Suit.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,084,446

40. Plaintiff incorporates and re-alleges Paragraphs 1 through 39 as each were fully set forth herein.

41. Defendant has literally and directly infringed or directly infringed under the doctrine of equivalents at least Claim 1 of the '446 Patent by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States the Infringing Products, or any one of those products.

42. In addition to the fact that Defendant makes, uses, sells, and/or offers for sale the Infringing Products, and did so in the past, further examples of Defendant's direct infringement include, without limitation, the fact that Defendant, on information and belief, encouraged and/or was aware that its employees, agents, representatives, and/or other persons sponsored by or who endorse Defendant and/or Defendant's Infringing Products in advertising and

marketing activities, orally administered the Infringing Products, on information and belief, and practiced and continue to practice the methods disclosed in one or more claim of the '446 Patent, and these employees, agents, representatives, and/or other persons sponsored by or who endorse Defendant and/or Defendant's Infringing Products in advertising and marketing activities were acting under Defendant's direction and control when practicing these methods.

43. On information and belief, Defendant encouraged and was aware of these persons' oral administration of the Infringing Products for these purposes, these persons were acting under Defendant direction and control, and therefore Defendant directly practiced the methods and/or claims of the '446 Patent.

44. End-users of Defendant's Infringing Products were also direct infringers of one or more claims of the '446 Patent.

45. End-users of Defendant's Infringing Products have taken, used, and orally administered the Infringing Products.

46. The Infringing Products were formulated, made, manufactured, shipped, distributed, advertised, marketed, offered for sale, and sold by Defendant to include certain ingredients that, by virtue of their inclusion in the Infringing products, infringed one or more of the claims of the '446 Patent.

47. The Infringing Products were formulated, made, manufactured, shipped, distributed, advertised, marketed, offered for sale, and sold by Defendant

to include certain ingredients that, by virtue of their inclusion in the Infringing products, infringed at least Claim 1 of the '446 Patent, and as a result when end-users of Defendant's Infringing Products orally administered the Infringing Products they were practicing the method disclosed in at least Claim 1 of that patent.

48. Defendant's labels and advertising for the Infringing Products explain and explained the elements and essential elements of one or more of the methods disclosed in the '446 Patent, and those labels and advertising statements encouraged, urged, and induced, and continue to do so, the Infringing Products' end-users to purchase and orally ingest the products to practice those methods, and end-users did and continue to practice that method.

49. Defendant therefore specifically intended to cause these end-users to directly infringe the claimed method of the '446 Patent, and has and continues to urge them to do so.

50. The Infringing Products are, and were not at any time, suitable for non-infringing uses, and none of Defendant's labels or advertisements for the Infringing Products disclosed any uses for the products, nor for the compounds disclosed in the claimed methods, that did not infringe upon such method.

51. Defendant has and had knowledge that the Infringing Products were especially adapted by end-users of the products for the practicing of such method,

and indeed, Defendant encouraged, urged, and induced, and still encourage, urge and induce the Infringing Products' end-users to purchase and orally administer the Infringing Products to practice such method.

52. Defendant intentionally and knowingly encouraged, urged, and induced, and still encourages, urges and induces the Infringing Products' end-users to purchase and orally administer the Infringing Products for the purpose of practicing the claimed method of the '446 Patent, by having them orally ingest the compounds disclosed in such claim.

53. Defendant had knowledge of the fact that the Infringing Products, particularly as administered, infringed at least Claim 1 of the '446 Patent.

54. Defendant had direct, firsthand knowledge of the '446 Patent itself.

55. Defendant's activities were without express or implied license by Plaintiff.

56. Defendant has profited though its infringement of the '446 patent, and continues to do so.

57. As a result of Defendant's acts of infringement, Plaintiff suffered, and will continue to suffer damages in an amount to be proved at trial.

58. Defendant intends to continue its acts of infringements, and Plaintiff has, and will continue to, suffer irreparable harm, for which there is no adequate

remedy at law unless Defendant is enjoined by this Court from continuing such acts of infringement.

59. Defendant's past infringements and/or continuing infringements have been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. §§ 284 and 285.

COUNT II- INFRINGEMENT OF U.S. PATENT NO. 8,338,399

60. Plaintiff incorporates and re-alleges Paragraphs 1 through 59 as each were fully set forth herein.

61. Defendant has literally and directly infringed or directly infringed under the doctrine of equivalents at least Claims 1 and 2 of the '399 Patent by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States the Infringing Products, or any one of those products.

62. In addition to the fact that Defendant makes, uses, sells, and/or offers for sale the Infringing Products, and did so in the past, further examples of Defendant's direct infringement include, without limitation, the fact that Defendant, on information and belief, encouraged and/or was aware that its employees, agents, representatives, and/or other persons sponsored by or who endorse Defendant and/or Defendant's Infringing Products in advertising and marketing activities, orally administered the Infringing Products, on information

and belief, and practiced and continue to practice the methods disclosed in one or more claim of the '399 Patent, and these employees, agents, representatives, and/or other persons sponsored by or who endorse Defendant and/or Defendant's Infringing Products in advertising and marketing activities were acting under Defendant's direction and control when practicing these methods.

63. On information and belief, Defendant encouraged and was aware of these persons' oral administration of the Infringing Products for these purposes, these persons were acting under Defendant direction and control, and therefore Defendant directly practiced the methods and/or claims of the '399 Patent.

64. End-users of Defendant's Infringing Products were also direct infringers of one or more claims of the '399 Patent.

65. End-users of Defendant's Infringing Products have taken, used, and orally administered the Infringing Products.

66. The Infringing Products were formulated, made, manufactured, shipped, distributed, advertised, marketed, offered for sale, and sold by Defendant to include certain ingredients that, by virtue of their inclusion in the Infringing products, infringed at least Claims 1 and 2 of the '399 Patent.

67. The Infringing Products were formulated, made, manufactured, shipped, distributed, advertised, marketed, offered for sale, and sold by Defendant to include certain ingredients that, by virtue of their inclusion in the Infringing

products, infringed one or more of the claims of the '399 Patent, and as a result when end-users of Defendant's Infringing Products orally administered the Infringing Products they were practicing the methods disclosed in at least Claims 1 and 2 of that patent.

68. Defendant's labels and advertising for the Infringing Products explain and explained the elements and essential elements of one or more of the methods disclosed in the '399 Patent, and those labels and advertising statements encouraged, urged, and induced, and continue to do so, the Infringing Products' end-users to purchase and orally ingest the products to practice those methods, and end-users did and continue to practice those methods.

69. Defendant therefore specifically intended to cause these end-users to directly infringe the claimed methods of the '399 Patent, and had and continue to urge them to do so.

70. The Infringing Products are, and were not at any time, suitable for non-infringing uses, and none of Defendant's labels or advertisements for the Infringing Products disclosed any uses for the products, nor for the compounds disclosed in the claimed methods, that did not infringe upon such methods.

71. Defendant has and had knowledge that the Infringing Products were especially adapted by end-users of the products for the practicing of such methods, and indeed, Defendant encouraged, urged, and induced, and still encourage, urge

and induce the Infringing Products' end-users to purchase and orally administer the Infringing Products to practice such methods.

72. Defendant intentionally and knowingly encouraged, urged, and induced, and still encourages, urges and induces the Infringing Products' end-users to purchase and orally administer the Infringing Products for the purpose of practicing the claimed methods of the '399 Patent, by having them orally ingest the compounds disclosed in such claims.

73. Defendant had knowledge of the fact that the Infringing Products, particularly as administered, infringed at least Claims 1 and 2 of the '399 Patent.

74. Defendant had direct, firsthand knowledge of the '399 Patent itself.

75. Defendant's activities were without express or implied license by Plaintiff.

76. Defendant has profited though its infringement of the '399 patent, and continues to do so.

77. As a result of Defendant's acts of infringement, Plaintiff suffered, and will continue to suffer damages in an amount to be proved at trial.

78. Defendant intends to continue its acts of infringements, and Plaintiff has, and will continue to, suffer irreparable harm, for which there is no adequate remedy at law unless Defendant is enjoined by this Court from continuing such acts of infringement.

79. Defendant's past infringements and/or continuing infringements have been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. §§ 284 and 285.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,778,918

80. Plaintiff incorporates and re-alleges Paragraphs 1 through 59 as each were fully set forth herein.

81. Defendant has, and continues to do so, literally and directly infringed, or directly infringed under the doctrine of equivalents, at least Claims 1 and 2 of the '918 Patent by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States the Infringing Products, or any one of those products.

82. In addition to the fact that Defendant makes, uses, sells, and/or offers for sale the Infringing Products, and did so in the past, further examples of Defendant's direct infringement include, without limitation, the fact that Defendant encouraged and/or was aware that its employees, agents, representatives, and/or other persons sponsored by or who endorse Defendant and/or Defendant's Infringing Products in advertising and marketing activities, orally administered the Infringing Products, on information and belief, and practiced and continue to practice the methods disclosed in one or more claim of the '918 Patent, and these

employees, agents, representatives, and/or other persons sponsored by or who endorse Defendant and/or Defendant's Infringing Products in advertising and marketing activities were acting under Defendant's direction and control when practicing these methods.

83. Defendant encouraged and was aware of these persons' oral administration of the Infringing Products for these purposes, these persons were acting under Defendant direction and control, and therefore Defendant directly practiced the methods and/or claims of the '918 Patent.

84. End-users of Defendant's Infringing Products were also direct infringers of one or more claims of the '918 Patent.

85. End-users of Defendant's Infringing Products have taken, used, and orally administered the Infringing Products.

86. The Infringing Products were formulated, made, manufactured, shipped, distributed, advertised, marketed, offered for sale, and sold by Defendant to include certain ingredients that, by virtue of their inclusion in the Infringing products, infringed Claims 1 and 2 of the '918 Patent.

87. The Infringing Products were formulated, made, manufactured, shipped, distributed, advertised, marketed, offered for sale, and sold by Defendant to include certain ingredients that, by virtue of their inclusion in the Infringing products, infringed one or more of the claims of the '918 Patent, and as a result

when end-users of Defendant's Infringing Products orally administered the Infringing Products they were practicing the methods disclosed in one or more claims of that patent.

88. Defendant's labels and advertising for the Infringing Products explain and explained the elements and essential elements of one or more of the methods disclosed in the '918 Patent, and those labels and advertising statements encouraged, urged, and induced, and continue to do so, the Infringing Products' end-users to purchase and orally ingest the products to practice those methods, and end-users did and continue to practice those methods.

89. Defendant therefore specifically intended to cause these end-users to directly infringe the claimed methods of the '918 Patent, and had and continue to urge them to do so.

90. The Infringing Products are not, and were not at any time, suitable for non-infringing uses, and none of Defendant's labels or advertisements for the Infringing Products disclosed any uses for the products, nor for the compounds disclosed in the claimed methods, that did not infringe upon such methods.

91. Defendant has and had knowledge that the Infringing Products were especially adapted by end-users of the products for the practicing of such methods, and indeed, Defendant encouraged, urged, and induced, and still encourage, urge

and induce the Infringing Products' end-users to purchase and orally administer the Infringing Products to practice such methods.

92. Defendant intentionally and knowingly encouraged, urged, and induced, and still encourages, urges and induces the Infringing Products' end-users to purchase and orally administer the Infringing Products for the purpose of practicing the claimed methods of the '918 Patent, by having them orally ingest the compounds disclosed in such claims.

93. Defendant had knowledge of the fact that the Infringing Products, particularly as administered, infringed at least Claims 1 and 2 of the '918 Patent.

94. Defendant had direct, firsthand knowledge of the '918 Patent itself.

95. Defendant's activities were without express or implied license by Plaintiff.

96. Defendant has profited though its infringement of the '918 patent, and continues to do so.

97. As a result of Defendant's acts of infringement, Plaintiff suffered, and will continue to suffer damages in an amount to be proved at trial.

98. Defendant intends to continue its acts of infringements, and Plaintiff has, and will continue to, suffer irreparable harm, for which there is no adequate remedy at law unless Defendant is enjoined by this Court from continuing such acts of infringement.

99. Defendant's past infringements and/or continuing infringements have been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. §§ 284 and 285.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court enter judgment in its favor and against Defendant on all counts of this Complaint. Plaintiff specifically prays for relief from this Court as follows:

A. For a declaration that Defendant has infringed the Patents in Suit and /or induced others to infringe one or more claims of the Patent in Suit, under of 35 U.S.C. §§ 271 et seq.;

B. For a declaration that Defendant's infringement and/or inducement to infringe the Patents in Suit has been willful and deliberate;

C. That Defendant be required to provide to Plaintiff an accounting of all sales, gains, profits, and advantages derived by Defendant's infringements of the Patents in Suit.

D. That Plaintiff be awarded compensatory damages, together with interest and costs, adequate to compensate Plaintiff for the wrongful infringing acts by Defendant in accordance with 35 U.S.C. § 284;

E. That Plaintiff be awarded treble damages and pre-judgment interest

under 35 U.S.C. § 284 with regard to the Patent in Suit in light of Defendant's willful and deliberate infringement, in accordance with 35 U.S.C. § 284;

F. That this case be declared exceptional in favor of Plaintiff under 35 U.S.C. § 285 and that Plaintiff be awarded its reasonable attorneys' fees and other expenses incurred in connection with this action pursuant to 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure.

G. For an order granting both preliminary and permanent injunctions pursuant to 35 U.S.C. § 283, enjoining the Defendant from further acts of infringement; and

H. That Plaintiff be awarded such other relief as this Court may deem just and proper.

JURY DEMAND

Pursuant to Fed R. Civ. P. 38(b) and 5(d), Plaintiff demands a trial by jury for all issues so triable.

Dated: March 13, 2015

CARLSON, GASKEY & OLDS

/s/ Steven Susser

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