

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ATHENS DIVISION**

MERIAL, INC. and MERIAL S.A.S.,

Plaintiffs,

v.

CEVA SANTÉ ANIMALE S.A. and  
HORIZON VALLEY GENERICS, INC., and  
TRURX LLC,

Defendants.

CIVIL ACTION NO. 3:15-CV-39

**JURY TRIAL DEMANDED**

**INTRODUCTION**

Plaintiffs Merial, Inc. and Merial S.A.S. (collectively, “Merial”) file this complaint against Ceva Santé Animale S.A. (“Ceva”), Horizon Valley Generics, Inc. (“HVG”), and TruRX LLC (“TruRX”) (collectively, “Defendants”) and allege as follows:

**NATURE OF ACTION**

1. This is an action against Defendants for false or misleading advertising, including unlawful comparative advertising, under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and unfair competition and deceptive trade practices, including unlawful comparative advertising, in violation of Georgia statutory and common law.

2. In addition, this is an action for patent infringement against Defendant TruRX under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, for TruRx’s infringement of Merial’s U.S. Patent No. 6,096,329 (“the ’329 Patent”). A true and correct copy of the ’329 Patent is attached as Exhibit A.

### **THE PARTIES**

3. Plaintiff Merial, Inc. is a Georgia corporation with its principal place of business located at 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096.

4. Plaintiff Merial S.A.S. is a Société Par Actions Simplifiée of France with its principal offices located at 29 Avenue Tony Garnier 69007 Lyon, France.

5. On information and belief, Defendant Ceva is a French corporation with its principal place of business in Libourne, France.

6. On information and belief, Defendant HVG is Delaware corporation with its principal place of business located at 1209 Orange Street, Wilmington, DE 19801. On information and belief, HVG is a wholly owned subsidiary of Ceva.

7. On information and belief, Defendant TruRX is a limited liability company organized and existing under the laws of the State of Idaho, with its principal place of business located at 500 E. Shore Dr., Suite 120, Eagle, ID 83616.

### **JURISDICTION AND VENUE**

8. This action arises under the Lanham Act, 15 U.S.C. § 1051, *et seq.* Therefore, this Court has subject matter jurisdiction under at least 28 U.S.C. §§ 1331 and 1338.

9. This action is also a patent infringement lawsuit against TruRX under the patent laws of the United States, 35 U.S.C. § 1, *et seq.* Therefore, this Court has subject matter jurisdiction under at least 28 U.S.C. §§ 1331 and 1338.

10. This Court also has diversity jurisdiction under 28 U.S.C. § 1332, because the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

11. This Court has supplemental jurisdiction over Merial's state law and common law claims pursuant to 28 U.S.C. § 1367.

12. This Court has specific personal jurisdiction over Ceva, HVG, and TruRX by virtue of their commission of tortious acts within the State of Georgia and their transaction of business within the State of Georgia including, but not limited to, conduct that constitutes false or misleading advertising under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, as well as unfair competition and deceptive trade practices under O.C.G.A. §§ 23-2-55 and 10-1-372.

13. The Court also has specific personal jurisdiction over TruRX because TruRX has offered and is offering for sale within the State of Georgia and directly to Georgia residents the products that are the subject of Merial's patent infringement claim described herein.

14. The PetAction Plus and PetLock Plus products, which are at issue in this Complaint, are being sold and offered for sale through nationwide retail channels. For example, the <http://www.petactionplus.com/where-to-buy/> website identifies that PetAction Plus may be purchased at Walmart, Sam's Club, Anda, BJ's, HEB, and Kinney Drugs. In particular, the Bogart, Georgia Sam's Club website<sup>1</sup> identifies that it has PetAction Plus for dogs and cats in stock. PetLock Plus is available at Petco stores, nationwide. Merial also has been able to purchase the PetAction Plus products in this Judicial District.

15. Venue is proper in the Middle District of Georgia pursuant to Local Rule 3.4 and 28 U.S.C. §§ 1391(b)–(c), because, *inter alia*, Defendants are corporations that are deemed to reside in any judicial district in which they are subject to personal jurisdiction at the time the action is

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<sup>1</sup> The Bogart, Georgia Sam's Club page for the PetAction Plus products is [http://www.samsclub.com/sams/search/searchResults.jsp?searchCategoryId=all&searchTerm=petaction&fromHome=no&\\_requestid=272812](http://www.samsclub.com/sams/search/searchResults.jsp?searchCategoryId=all&searchTerm=petaction&fromHome=no&_requestid=272812)

commenced. Furthermore, venue is proper because a substantial number of the acts giving rise to the claims in this case occurred in this District.

16. Pursuant to Local Rule 3.4, venue is also proper in the division where the plaintiffs reside. Merial resides in the Athens Division of this District by virtue of its substantial presence in Athens, Georgia. For example, Merial has a substantial Research and Development facility located in Athens, Georgia, which employs approximately 400 people, conducts testing, research and development, and regulatory licensing-related activities with regard to, among other projects, companion animal flea and tick control products, including those at issue in this case.

### **UNDERLYING FACTS**

#### **Merial's Frontline Plus Products**

17. Merial, together with its affiliates, is a world-leading animal health company. Among Merial's most successful animal health products are its FRONTLINE PLUS products. Merial's FRONTLINE PLUS products are the world's best-selling flea and tick treatment for dogs and cats.

18. Merial's FRONTLINE PLUS products are synergistic spot-on compositions for long lasting protection against fleas and ticks on mammals, which comprise synergistically effective amounts of the insecticide fipronil and synergistically effective amounts of methoprene, a compound which mimics juvenile hormones, as well as certain customary spot-on formulation adjuvants.

19. In particular, Merial's FRONTLINE PLUS products for dogs contain 9.8% fipronil and 8.8% (s)-methoprene, while, Merial's FRONTLINE PLUS product for cats contains 9.8% fipronil and 11.8% (s)-methoprene. Merial's FRONTLINE PLUS products are approved by the EPA for eliminating flea and tick infestations.

20. Merial has spent substantial sums of money researching and developing and bringing to market, as well as advertising and promoting, its FRONTLINE PLUS products.

**Merial's Advertising and Promotion of Frontline Plus**

21. Merial and its affiliates have used trademarks related to the FRONTLINE brand products in commerce in the United States since at least 1996. Merial and its affiliates are also the owners of a number of federal trademark registrations in the United States Patent and Trademark Office ("USPTO"), as well as a number of unregistered marks with respect to the FRONTLINE brand products (collectively, the "FRONTLINE Marks"). Merial and its affiliates' federal trademark registrations include, but are not limited to, Registration Nos. 2,763,796 (FRONTLINE PLUS) and 2,049,456 (FRONTLINE). True and correct copies of Merial's trademark registrations in the USPTO are attached as Exhibit B.

22. Merial and its affiliates have spent millions of dollars to promote and advertise products under the FRONTLINE Marks. The FRONTLINE Marks have become, through widespread and favorable public acceptance and recognition, assets of substantial value as symbols of Merial, its quality products, and its goodwill.

**Merial's '329 Patent**

23. The USPTO duly and legally issued the '329 Patent on August 1, 2000. On October 4, 2011, the USPTO issued an *Ex Parte* Reexamination Certificate for the '329 Patent. A true and correct copy of the *Ex Parte* Reexamination Certificate for the '329 Patent is attached as Exhibit C.

24. Merial and its affiliates have spent approximately one billion dollars to bring the FRONTLINE Products to market. To help protect their substantial investments, Merial has obtained patents, including the '329 Patent, that grant Merial the legal right to exclude others from using its inventions.

25. Merial's FRONTLINE PLUS products are covered by claims of the '329 Patent including, but not limited to, claims 1, 4, 26, 77, 85, 101, and 106–108.

26. The '329 Patent is assigned to Merial S.A.S., which has granted Merial, Inc. an exclusive license. Merial, therefore, has all substantial rights to enforce the '329 Patent, including all rights to recover for any and all past, present, and future infringement thereof.

### **Defendants' Unlawful Advertising**

27. On information and belief, Defendants are marketing, offering for sale, and selling flea and tick products in the United States, including the State of Georgia and the Athens Division of this Judicial District, under the names PetAction Plus and PetLock Plus.

28. The PetLock Plus product packaging contains a large graphic badge with the words "NEW!," "THE SAME," "FIPRONIL," "S-METHOPRENE," and "FRONTLINE PLUS" in large lettering. A true and correct copy of an image of the PetLock Plus product from an internet retailer website ([www.petco.com](http://www.petco.com)) is attached as Exhibit D.

29. The words "active ingredients" on the PetLock Plus graphic badge are in much smaller font than the other words used thereon, and thus are likely to be missed, misread, or disregarded by consumers.

30. Likewise, the PetAction Plus product packaging contains the same, or a similar, large graphic badge with the words "NEW!," "THE SAME," "FIPRONIL," "S-METHOPRENE," and "FRONTLINE PLUS" in large lettering. A true and correct copy of an image of the PetAction Plus product from an Internet retailer website ([www.amazon.com](http://www.amazon.com)) is attached as Exhibit E.

31. As with the graphic badge on the PetLock Plus product, the graphic badge on PetAction Plus includes the words "active ingredients" in much smaller font than the other words used thereon, and thus are likely to be missed, misread, or disregarded by consumers.

32. The likelihood that customers will miss, misread, or disregard the words “active ingredients” is made more likely by the fact that the website [www.petactionplus.com](http://www.petactionplus.com) displays an exact image of Merial’s FRONTLINE PLUS product, bearing Merial’s stylized trade name, trademarks, and trade dress related to FRONTLINE PLUS, next to an image of a PetAction Plus product with a similar color scheme:



33. The website image also includes a graphic badge touching both the FRONTLINE Plus product and the PetAction Plus product with the words “NEW!,” “THE SAME,” “FIPRONIL,” “S-METHOPRENE,” and “FRONTLINE PLUS” in large lettering, but the words “active ingredients” are in much smaller lettering.

34. On information and belief, some, or all, of the PetAction Plus products are sold in packaging designed to imitate the trade dress and overall commercial impression of Merial’s FRONTLINE PLUS packaging.

35. On information and belief, the PetLock Plus and PetAction Plus products and advertisements, including the large graphic badge with the words “NEW!,” “THE SAME,” “FIPRONIL,” “S-METHOPRENE,” “FRONTLINE PLUS,” and “active ingredients” (in much smaller lettering) contained on the PetLock Plus and PetAction Plus product packaging and on

the www.petactionplus.com website, are designed to deceive or mislead consumers into believing that those products are identical to the FRONTLINE PLUS products.

36. On information and belief, the display of Merial's FRONTLINE PLUS product, bearing Merial's stylized trade name, trademarks, and trade dress related to FRONTLINE PLUS, next to the aforementioned badge and a PetAction Plus product on the www.petactionplus.com website is designed to mislead or deceive consumers into believing that the product is identical to the FRONTLINE PLUS products.

37. Accordingly, the PetLock Plus and/or PetAction Plus products and/or advertisements constitute false or misleading advertising, including unlawful comparative advertising, unfair competition, and deceptive trade practices, in violation of state and federal law.

38. Thus, on information and belief, TruRX, either alone or in conjunction with Ceva and/or HVG, has engaged in false or misleading advertising, including unlawful comparative advertising, under the Lanham Act, 15 U.S.C. § 1051, et seq., and unfair competition and deceptive trade practices, including unlawful comparative advertising, in violation of Georgia statutory and common law.

#### **The Relationship Between Ceva, HVG, and TruRX**

39. As set forth above, HVG is a wholly owned subsidiary of Ceva.

40. Merial is uncertain of the exact nature of the relationship, if any, between TruRX and Ceva/HVG. However, on information and belief, TruRX has registered with the United States Environmental Protection Agency ("EPA") to distribute the PetAction Plus and PetLock Plus products described above.

41. Under EPA regulations, a company that manufactures a flea and tick product must be identified on the product packaging using what is known as an "Establishment Number."



40 C.F.R. §§ 152.132, 156.10. The Establishment Number is a unique number assigned by the EPA to each pesticide product manufacturer. *Id.* On information and belief, the PetAction Plus and PetLock Plus products are being manufactured by HVG under HVG's Establishment Number.

42. Pursuant to 40 CFR 152.132, companies that are registered with the EPA (such as HVG) to sell pesticidal products may seek approval to distribute those products under another company's name and address instead of, or in addition to, their own. Such distribution and sale is termed "supplemental distribution." 40 CFR 152.132. Supplemental distribution is permitted if certain conditions are met and if the EPA is notified by all parties. Upon approval, "[t]he [supplemental] distributor is considered an agent of the registrant for all intents and purposes under the Act." *Id.*

43. On information and belief, TruRX is registered with the EPA as a supplemental distributor for HVG and is selling HVG's pesticidal products as HVG's supplemental distributor under the names "PETACTION PLUS FOR DOGS," "PETLOCK PLUS FOR DOGS," "PETACTION PLUS FOR CATS," and "PETLOCK PLUS FOR CATS."

#### **Patent Infringement by TruRX**

44. On information and belief, the PetAction Plus and PetLock Plus products come within the scope of one or more claims of the '329 Patent including, but not limited to, Claims 1, 4, 26, 77, 85, 101, and 106-108.

45. In particular, on information and belief, the PetAction Plus and PetLock Plus products contain about 9.8% fipronil and either about 8.8% (in the products for dogs) or about 11.8% (in the products for cats) (s)-methoprene, as well as at least one customary spot-on formulation adjuvant.

46. Merial has attempted to confirm with Ceva and HVG whether TruRX is an authorized distributor of the PetAction Plus or PetLock Plus. However, Ceva and HVG have refused to disclose that information to Merial. To the extent the PetAction Plus or PetLock Plus products are not developed, manufactured, packaged, marketed, or sold by Ceva or HVG, then TruRX is infringing the '329 Patent by its sale and distribution of those products.

### **COUNT I**

#### **(False or Misleading Advertising Against All Defendants Under 15 U.S.C. § 1125(a))**

47. The allegations in paragraphs 1 through 46 of this Complaint are incorporated by reference as if set forth in their entirety.

48. Defendants have misrepresented the nature, characteristics, and qualities of the PetLock Plus and PetAction Plus products through actions including, but not limited to, placing large graphic badges on the PetLock Plus product, PetAction Plus product, and on the [www.petactionplus.com](http://www.petactionplus.com) website, that suggest that those products are identical to the FRONTLINE PLUS products.

49. Defendants' advertisements and promotions for the PetLock Plus and PetAction Plus products have deceived or misled, or have the capacity to deceive or mislead, consumers.

50. The mistaken belief that PetLock Plus and PetAction Plus products are identical in formulation to the FRONTLINE PLUS products has materially affected, or is likely to materially affect, consumers' purchasing decisions regarding PetLock Plus, PetAction Plus, and FRONTLINE PLUS.

51. Defendants' misrepresentations, and their misrepresented products, have an effect on interstate commerce.

52. Defendants' acts therefore constitute false or misleading advertising, including unlawful comparative advertising, in violation of the Lanham Act, 15 U. S.C. § 1125(a).

53. Defendants' acts have caused, and will continue to cause, great and irreparable damage to Merial's business and goodwill for which Merial has no adequate remedy at law. As a result of Defendants' willful and intentional misconduct, Merial is entitled to appropriate relief, including preliminary and permanent injunctive relief, monetary damages, the amount of which are difficult to precisely ascertain, but, in any event, exceed \$75,000.00 exclusive of interest and costs, Defendants' profits, and Merial's attorneys' fees as permitted by statute, in amounts to be determined at trial.

**COUNT II**  
**(Unfair Competition Against All Defendants Under O.C.G.A. § 23-2-55)**

54. The allegations in paragraphs 1 through 53 of this Complaint are incorporated by reference as if set forth in their entirety.

55. By virtue of Defendants' acts as described herein, Defendants have encroached, and continue to encroach, on the business of Merial through misleading advertising, including unlawful comparative advertising, through actions including, but not limited to, placing a large graphic badge on the PetLock Plus product, PetAction Plus product, and on the [www.petactionplus.com](http://www.petactionplus.com) website, that suggest that those products are identical to FRONTLINE PLUS with the intention of misleading the public, which is a fraud for which equity will grant relief pursuant to O.C.G.A. § 23-2-55.

56. Defendants' acts were with knowledge, and in willful disregard, of Merial's rights.

57. Defendants' acts have caused and will continue to cause great and irreparable damage to Merial's business and goodwill for which Merial has no adequate remedy at law. As a result of Defendants' willful and intentional misconduct, Merial is entitled to appropriate relief, including preliminary and permanent injunctive relief, monetary damages, the amount of which are difficult to precisely ascertain, but, in any event, exceed \$75,000.00 exclusive of interest and

costs, Defendants' profits, and Merial's attorneys' fees as permitted by statute, in amounts to be determined at trial.

**COUNT III**  
**(Deceptive Trade Practices Against All Defendants Under O.C.G.A. § 10-1-372)**

58. The allegations in paragraphs 1 through 57 of this Complaint are incorporated by reference as if set forth in their entirety.

59. By virtue of Defendants' acts as described herein, Defendants have represented that their goods characteristics, ingredients, uses, benefits, or quantities that they do not have in violation of Georgia's Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-372.

60. Defendants' acts were with knowledge, and in willful disregard, of Merial's rights.

61. Defendants' acts have caused and will continue to cause great and irreparable damage to Merial's business and goodwill for which Merial has no adequate remedy at law. As a result of Defendants' willful and intentional misconduct, Merial is entitled to appropriate relief, including preliminary and permanent injunctive relief, monetary damages, the amount of which are difficult to precisely ascertain, but, in any event, exceed \$75,000.00, exclusive of interest and costs, Defendants' profits, and Merial's attorneys' fees as permitted by statute, in amounts to be determined at trial.

62. Merial is entitled to an award of attorneys' fees under O.C.G.A. § 10-1-373, since Defendants has willfully engaged in the foregoing deceptive trade practices, knowing them to be deceptive.

**COUNT IV**  
**(Patent Infringement Against TruRX)**

63. The allegations in paragraphs 1 through 46 of this Complaint are incorporated by reference as if set forth in their entirety.

64. On information and belief, TruRX, either alone or in concert with others, has made, offered for sale, and/or sold within, or imported into, the United States flea and tick products under the PetLock Plus and PetAction Plus brand names that come within the scope of one or more claims of the '329 Patent including, but not limited to, Claims 1, 4, 26, 77, 85, 101, and 106-108. Thus, unless TruRX's actions are immune from infringement because, for example, they are licensed, such actions infringe, contribute to the infringement of, and/or actively induce the infringement of one or more claims of the '329 Patent, including, but not limited to, Claims 1, 4, 26, 77, 85, 101, and 106-108.

65. TruRX has not been directly licensed by Merial and, despite Merial's good faith inquiries, no licensee of Merial's is willing to confirm that TruRX's activities are subject to any license of the '329 Patent.

66. Merial has no adequate remedy at law for TruRX's infringing acts, and unless such infringing acts are enjoined by this Court, Merial has suffered and will continue to suffer damages and irreparable harm.

#### **DEMAND FOR JURY TRIAL**

67. Pursuant to Fed. R. Civ. P. 38(b), Merial demands a trial by jury of all issues triable of right by jury.

#### **PRAYER FOR RELIEF**

WHEREFORE, Merial prays for relief as follows:

A. That this Court enter Judgment in favor of Merial and against Defendants on Counts I, II, and III;

B. That Defendants and their affiliates, agents, partners, servants and employees, or anyone acting with their authority or on their behalf, or in active concert with them, be

preliminarily and permanently enjoined from engaging in any manner of unfair competition, including unlawful comparative advertising, and from engaging in any manner of deceptive trade practices;

C. That this Court award Merial the costs of this action and its reasonable attorneys' fees pursuant to 15 U.S.C. § 1117 and O.C.G.A. § 10-1-373;

D. That this Court issue an Order holding that TruRX has committed acts of patent infringement in violation of the Patent Act, 35 U.S.C. 1, *et seq.*;

E. That TruRX and its affiliates, agents, partners, servants and employees, or anyone acting with its authority or on its behalf, or in active concert with it, be preliminarily and permanently enjoined from infringing, contributing to the infringement of, or inducing the infringement of the '329 Patent;

F. That TruRX be ordered to account for and pay to Merial all damages caused to Merial by reason of TruRX's infringement of the '329 Patent pursuant to 35 U.S.C. § 284, and that TruRX be ordered to pay treble damages to Merial for willful infringement of the '329 Patent pursuant to 35 U.S.C. § 284;

G. That this case be declared exceptional under 35 U.S.C. § 285 and that Merial be awarded its attorneys' fees, expenses, and costs as a result of TruRX's acts of patent infringement;

H. That Merial be granted pre-judgment and post-judgment interest on all damages caused to it by reason of Defendants' acts as described herein; and

I. That this Court grant such other and further relief as it shall deem just and proper.

Respectfully submitted this 6th day of April, 2015.

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