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CAPSUGEL BELGIUM NV and

CAPSUGEL US, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**CAPSUGEL BELGIUM NV and
CAPSUGEL US, LLC,**

Plaintiffs,

v.

**BRIGHT PHARMA CAPS, INC., JC
BRIGHT M LTD., JC BIO-TECH CO
LTD., and KARL CAO,**

Defendants.

Civil Case No.: 3:15-cv-0321-PK

FIRST AMENDED COMPLAINT FOR:

- 1. FALSE ADVERTISING AND UNFAIR COMPETITION UNDER THE LANHAM ACT**
- 2. COMMON LAW FALSE ADVERTISING AND UNFAIR COMPETITION**
- 3. PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

For this First Amended Complaint, Plaintiffs Capsugel Belgium NV (“Capsugel”) and Capsugel US, LLC (“Capsugel US”), through their attorneys, allege as follows against Defendants Bright Pharma Caps, Inc. (“Bright Pharma”), JC Bright M Ltd. (“JC Bright”), JC Bio-Tech Co Ltd. (“JC Bio”) and Karl Cao (“Cao”):

NATURE OF THE ACTION

1. This is a civil action for false advertising, unfair competition and patent infringement.

2. The false advertising and unfair competition counts relate to intentionally false and misleading descriptions, representations and omissions of fact about the composition of and ingredients used to make Bright-Poly capsules. Without limitation and as detailed herein, Bright-Poly capsules are falsely represented and described as being organic when they include sodium lauryl sulfate (“SLS”), which is a synthetic chemical that is neither natural nor approved for use in organic products. Marketing materials for Bright-Poly capsules also are false and misleading in that the list of disclosed ingredients is incomplete by omitting SLS and other ingredients. Count I arises under the Lanham Act, including 15 U.S.C. § 1125. Count II arises under the common law, including the law of the State of Oregon.

3. The patent counts relate to infringement of two patents owned by Capsugel, United States Patent No. 6,887,307 (“the ’307 patent”) and United States Patent No. 7,267,718 (“the ’718 patent”), by pullulan capsules, including those sold under the name Bright-Poly capsules. Counts III through VI arise under the Patent Laws of the United States, 35 U.S.C. § 100 et seq.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a) and 1367 and 15 U.S.C. § 1121(a).

5. This Court has personal jurisdiction over Bright Pharma because it is organized under the laws of the State of Oregon, has its principal place of business in the State of Oregon, and has engaged in systematic and continuous contacts with the State of Oregon. Moreover, on information and belief, Bright Pharma has committed acts of patent infringement and unfair competition at issue in this action in the State of Oregon. Bright Pharma also has subjected itself to the jurisdiction of this Court for purposes of this case by asserting counterclaims in response

to the original Complaint.

6. This Court has personal jurisdiction over JC Bright because it has registered to do business in Oregon and appointed an agent for service of process in Hood River in the State of Oregon. Moreover, on information and belief, JC Bright has committed, contributed to and/or induced acts of patent infringement and unfair competition at issue in this action in the State of Oregon.

7. This Court has personal jurisdiction over JC Bio because it has represented itself as having a place of business in Hood River in the State of Oregon. Moreover, on information and belief, JC Bio has committed, contributed to and/or induced acts of patent infringement and unfair competition at issue in this action in the State of Oregon.

8. On information and belief, this Court has personal jurisdiction over Cao because he has engaged in systematic and continuous contacts with Bright Pharma in the State of Oregon, including activities giving rise to and relating to the acts of patent infringement and unfair competition at issue in this action. Moreover, on information and belief, Cao has committed, contributed to and/or induced acts of patent infringement and unfair competition at issue in this action in the State of Oregon.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

THE PARTIES

10. Plaintiff Capsugel Belgium NV is a company with its principal place of business in Belgium. Capsugel is the world's leading provider of empty, two-piece hard capsules. Capsugel, then a division of Warner-Lambert, was the first to develop a hard capsule based on pullulan.

11. Plaintiff Capsugel US, LLC is a company with its principal place of business in

Morristown, New Jersey. Capsugel US is a subsidiary of Capsugel.

12. On information and belief, Defendant Bright Pharma is a corporation organized and existing under the laws of the State of Oregon, having its principal place of business at 1908 Orchard Road, Hood River, Oregon 97031.

13. On information and belief, Defendant JC Bright is an existing entity of unknown form with a place of business at 185-12417 No. 2 Road, Richmond, British Columbia, V7E6H7, Canada and at 1908 Orchard Road, Hood River, Oregon 97031.

14. On information and belief, Defendant JC Bio is an existing entity of unknown form with a place of business represented to be in Hood River, Oregon. On information and belief, JC Bio makes capsules at issue in this action in China.

15. With knowledge of this lawsuit and the asserted patents, Cao knows and intends that Bright Pharma will sell infringing Bright-Poly capsules in the United States. On information and belief, Cao actively aids, assists and induces Bright Pharma's infringing activities in the United States to his own direct or indirect financial gain. On information and belief, Cao fully understands the ingredients and processes used to make Bright-Poly capsules. Cao controls the content of the Bright Pharma webpage that promotes and offers the Bright-Poly capsules that infringe the patents asserted in this action. Relating to the false advertising and unfair competition claims asserted herein, that webpage also willfully or intentionally misrepresents that Bright-Poly capsules are organic and meet applicable laws and United States Department of Agriculture ("USDA") requirements for being identified as "organic."

UNFAIR COMPETITION MISLEADING CUSTOMERS

Background and Parties

16. Bright Pharma sells pullulan-based two-piece hard capsules, including those sold

under the name Bright-Poly capsules.

17. Bright-Poly capsules compete with Capsugel's and Capsugel US's pullulan-based capsules sold in the U.S. under the Plantcaps® brand.

18. JC Bright has supplied Bright-Poly capsules to Bright Pharma knowing that Bright Pharma intended to offer those capsules for sale in the United States.

19. JC Bio has supplied Bright-Poly capsules to Bright Pharma knowing Bright Pharma intended to offer those capsules for sale in the United States.

20. Bright Pharma's website promotes and markets Bright-Poly capsules to customers and potential customers in Oregon and throughout the United States.

21. Bright Pharma's website represents that Bright-Poly capsules are organic.

22. Bright Pharma's website is intended to suggest that Bright-Poly capsules comply with applicable U.S. laws and regulations relating to labeling products as "organic."

23. Below is an excerpt of a portion of Bright Pharma's website:



See <http://www.brightpharmacaps.com/products/dl.html> (visited June 17, 2015).

24. Cao controls the content of the webpage:

<http://www.brightpharmacaps.com/products/dl.html>.

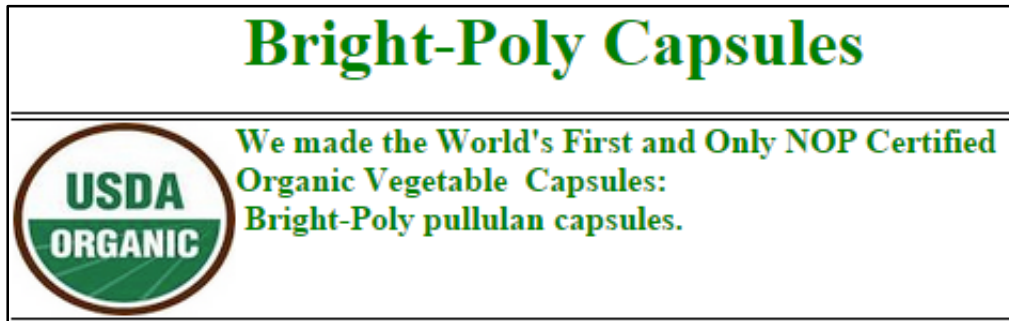
25. Cao is identified as the registrant for the domain name brightpharmacaps.com

26. JC Bright’s website promotes and markets Bright-Poly capsules, and it is accessible to customers and potential customers in Oregon and throughout the United States.

27. JC Bright’s website represents that Bright-Poly capsules are organic.

28. JC Bright’s website is intended to suggest that Bright-Poly capsules comply with applicable U.S. laws and regulations relating to labeling products as “organic.”

29. Below is an excerpt of a portion of JC Bright’s website:



See <http://jcbright.com/products/dl.html> (visited June 17, 2015).

30. Below is another excerpt of a portion of JC Bright’s website:



See <http://jcbright.com/press/default.html> (visited June 17, 2015).

31. On information and belief, JC Bio’s website promotes and markets pullulan capsules, and it is accessible to customers and potential customers in Oregon and throughout the United States.

32. On information and belief, JC Bio’s website implies that pullulan capsules, sold in the U.S. as Bright-Poly capsules, are organic.

33. On information and belief, JC Bio’s website is intended to suggest that pullulan capsules sold under the “JC-CAPS®” trademark comply with applicable U.S. laws and regulations relating to labeling products as “organic.”

34. Below are excerpts of portions of JC Bio’s website as translated by machine to English:



Pullulan transparent capsules

Product

The world’s first certified organic by USDA plant hollow capsules, products from organic cultivation, to manufacture capsule full compliance with USDA requirements for organic products;
Pure natural water-soluble polysaccharide;
Excellent chemical inertness;
Very low oxygen permeability and high stability.

See http://www.jccaps.cn/products_detail/&productId=42.html (visited June 17, 2015).

35. The “JC-CAPS®” trademark is registered to JC Bright.

False and Misleading Description of Bright-Poly Capsules as “Organic”

36. Bright-Poly capsules are falsely described and represented in marketing and advertising to be “organic.”

37. Bright-Poly capsules include the ingredient SLS.

38. Bright Pharma has admitted in this case that “Sodium lauryl sulfate is sprayed on Bright Poly capsules after the capsules are fabricated . . .”

39. Testing of Bright-Poly capsules confirmed the presence of SLS.

40. SLS is not naturally occurring.

41. SLS is a synthetic substance that can be used as a surfactant, emulsifier and wetting agent.

42. A reasonable consumer would believe that a product marketed, advertised or labeled as “organic” does not contain SLS.

43. A reasonable customer would understand that a product sold in a package bearing the USDA Organic label, copied below, does not contain synthetic ingredients that are not permitted by applicable laws, regulations or agency interpretations:



44. A synthetic ingredient not appearing on the National List may not be added during the processing or handling of a product labeled as “organic.”

45. SLS is not on the National List, 7 CFR 205.601-205.606.

46. No applicable law, regulation or agency interpretation allows SLS in a product for consumption that is labeled or marketed as “organic.”

47. In 2006, the Crops Committee of the National Organic Standards Board (“CCNOSB”) unanimously voted to reject a petition to allow SLS for use in organic crop production. See Exhibit A, attached hereto.

48. The CCNOSB found that SLS is “synthetic.”

49. SLS is not permitted in a product labeled or marketed as “organic” in the U.S.

50. Labeling, advertisements and marketing or promotional materials describing Bright-Poly capsules as “organic,” “certified organic” or “USDA organic” are literally false

because SLS is not permitted in products identified as “organic,” “certified organic” or “USDA organic.”

51. No reasonable consumer would expect SLS to be in a product labeled, promoted or advertised as organic or “naturally derived, no chemicals used.”

52. One example of false and misleading marketing of Bright-Poly capsules is reproduced below, as excerpted from a “sell sheet” used in the U.S. by at least Defendant Bright Pharma, see attached Exhibit B:



53. One example of false and misleading labeling on packaging for Bright-Poly Capsules used in the U.S. is reproduced below:



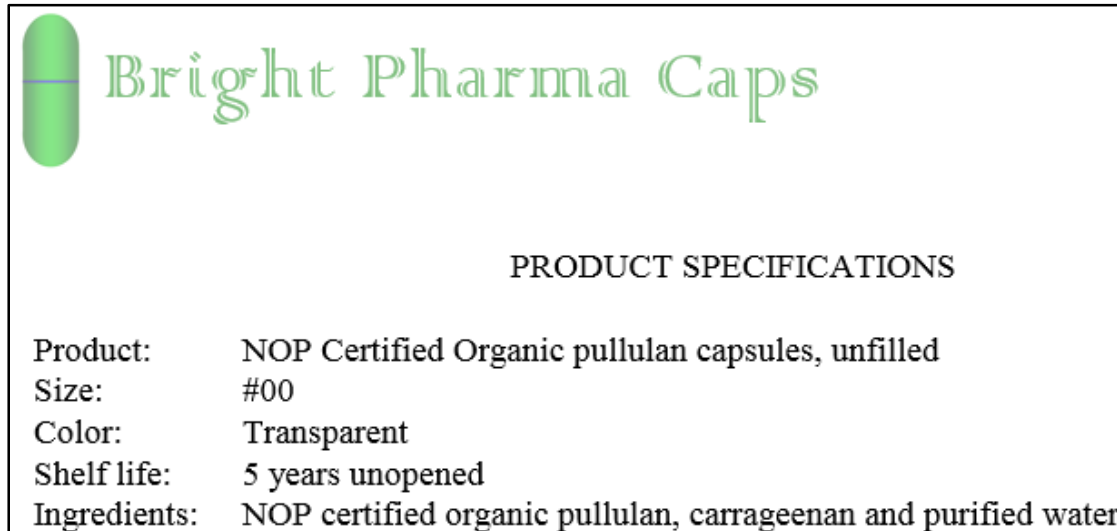
The above packaging bears the name “Bright Pharma Caps” as well as the “JC-CAPS” trademark registered by JC Bright.

54. Capsules in the packaging depicted above, identified as being from Batch No. Z014090515 made in September 2014, were tested. The presence of SLS was confirmed.

55. On information and belief, the sell sheet attached as Exhibit B was used by Bright Pharma around the end of October 2014 to solicit orders from at least one potential customer in the U.S.

56. On information and belief, the “PRODUCT SPECIFICATIONS” sheet attached as Exhibit C also was used by Bright Pharma around the end of October 2014 to solicit orders from at least that same potential customer. Nothing in the list of ingredients or otherwise in the “PRODUCT SPECIFICATIONS” sheet suggests the presence of SLS in Bright Pharma’s

“Organic pullulan capsules:”



57. On information and belief, that potential customer in fact purchased Bright-Poly capsules and then relied upon the intentionally false representations and/or omissions by Bright Pharma (and/or other Defendants) about the nature and characteristics of Bright-Poly capsules to label retail products using those capsules as “organic,” “certified organic” and “USDA organic.”

58. Testing confirmed the presence of SLS in Bright-Poly capsules used for those retail products, as sampled from a bottle purchased in Oregon in June 2015.

59. On information and belief, neither that retail product nor its Bright-Poly capsule would be described as being “organic,” “certified organic” or “USDA organic” on product packaging or in promotional materials directed to retail consumers but for the intentionally false representations and/or omissions of fact made in the marketing and promotion of Bright-Poly capsules.

60. In particular, the product packaging and promotional materials directed to retail consumers likely would not claim that the product or its Bright-Poly capsule is “organic,” “certified organic” or “USDA organic” as set forth above if Defendants had told the truth that SLS is used in manufacturing Bright-Poly capsules.

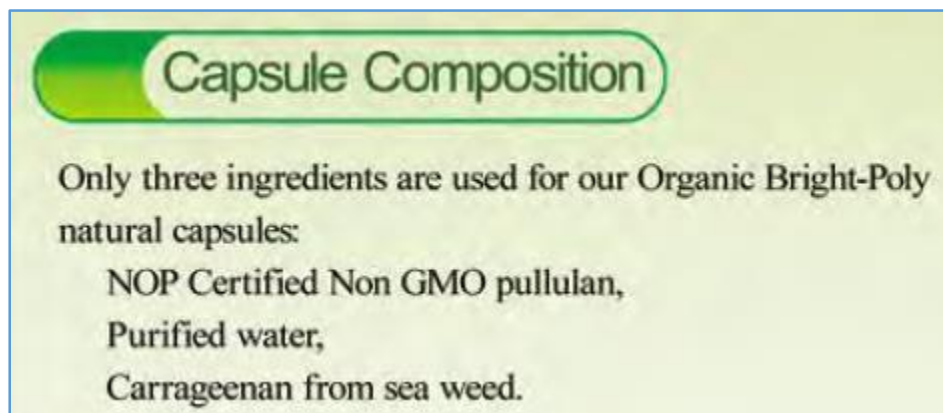
61. On information and belief, each of the Defendants in marketing and promotion intentionally did or conspired to (a) withhold material information about SLS being used to make Bright-Poly capsules and (b) falsely represent Bright-Poly capsules to be organic.

Incomplete Ingredient Listings

62. The list of ingredients in advertising, marketing and promotion used for Bright-Poly capsules is not complete.

63. The ingredients used for Bright-Poly capsules is falsely represented by omission in advertising, marketing and promotion.

64. One example of a false and misleading listing of ingredients for Bright-Poly capsules is copied below from a “sell sheet” attached as Exhibit D:

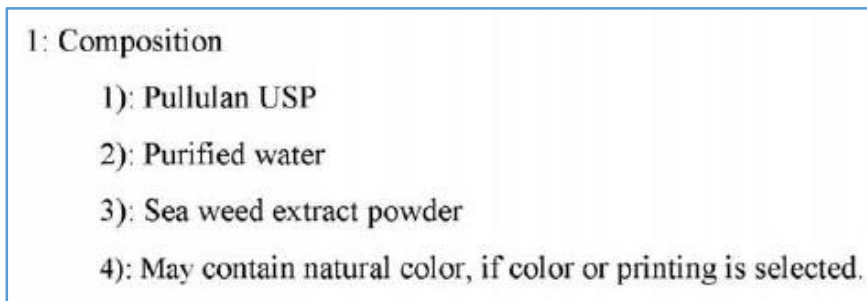


65. On information and belief, Exhibit D is used in marketing and promotion of Bright-Poly capsules in the U.S.

66. A reason why the above representations are literally false and misleading is that Bright-Poly capsules include more than “[o]nly three ingredients,” including SLS as discussed above.

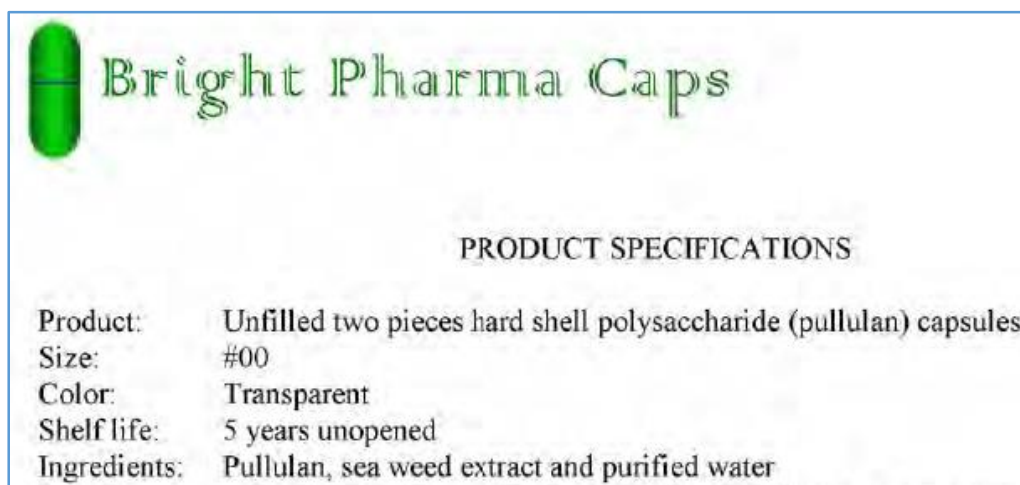
67. On information and belief, SLS is not the only ingredient omitted from the list in Exhibit D.

68. Bright-Poly capsule technical data sheets are similarly misleading by listing only three ingredients, and optionally “natural color.” Below is an excerpt from “Bright Poly Pullulan Capsule Technical Data Sheets” attached as Exhibit E:



69. On information and belief, “Bright Poly Pullulan Capsule Technical Data Sheets” are used in marketing and promotion in the U.S.

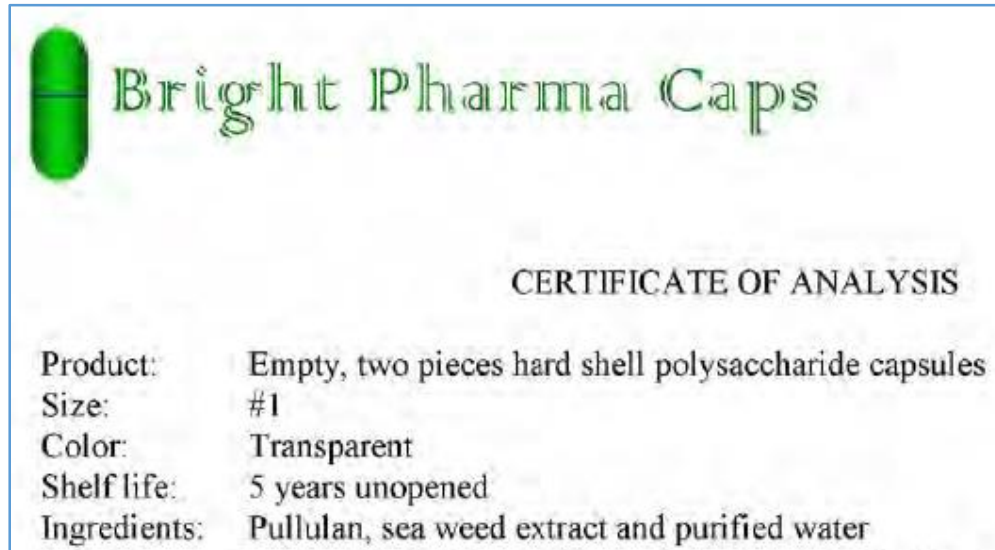
70. Bright-Poly product specification sheets are similarly misleading, listing only three ingredients. Below is an excerpt from “PRODUCT SPECIFICATIONS” attached as Exhibit F:



71. On information and belief, Bright-Poly “PRODUCT SPECIFICATIONS” are used in marketing and promotion in the U.S.

72. Bright-Poly certificates of analysis are similarly misleading by listing only three ingredients. Below is an excerpt from a “CERTIFICATE OF ANALYSIS” attached as Exhibit

G:



73. On information and belief, a Bright-Poly “CERTIFICATE OF ANALYSIS” may be used in marketing and promotion in the U.S.

74. By listing only two ingredients, the Material Safety Data Sheet fails to remedy the foregoing false and/or misleading representations and omissions regarding the ingredients used for Bright-Poly capsules. See Material Safety Data Sheet attached as Exhibit H:

MSDS: BRIGHT POLY-CAPS

Material Safety Data Sheet

1: IDENTIFICATION OF THE SUBSTANCE/PREPARATION AND THE COMPANY/UNDERTAKING

1.1: Product Name /COMMERCIAL PRODUCT NAME

BRIGHT POLY CAPSULES /TWO PIECES HARD SHELL PULLULAN CAPSULES

1.2: Supplier:

BRIGHT PHARMA CAPS INC., /JC BIO-TECH CO LTD.
 1908 ORCHARD STREET, HOOD RIVER, OR 97031 USA

1.3: Information: Phone: 541-386-8814

Fax: 541-386-8815

2: COMPOSITION / INFORMATION ON INGREDIENTS

2.1: Major Component and Assay: NOP certified organic pullulan 99 % (on dried bases)

2.2: Minor Component and Assay: Seaweed extracts:

75. On information and belief, the ingredients used for Bright-Poly capsules consistently and intentionally are falsely represented by omitting ingredients in advertising, marketing and promotion used and/or approved by each of the Defendants.

THE ASSERTED PATENTS

76. On May 3, 2005, the '307 patent, titled "Pullulan Film Compositions," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '307 patent is attached hereto as Exhibit I.

77. Capsugel is the owner by assignment of the '307 patent and, without limitation, has the rights to sue and collect damages for all past, present or future infringement.

78. On September 11, 2007, the '718 patent, titled "Pullulan Film Compositions," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '718 patent is attached hereto as Exhibit J.

79. Capsugel is the owner by assignment of the '718 patent and, without limitation, has the rights to sue and collect damages for all past, present or future infringement.

COUNT I **FEDERAL UNFAIR COMPETITION**

80. Plaintiffs re-allege the foregoing paragraphs as if fully set forth here.

False and Misleading

81. It is literally false to describe or represent Bright-Poly capsules as being "organic" when they contain SLS.

82. The necessary implication of asserting that a product is "organic" in the U.S. is that the product meets the statutory and regulatory requirements for being marketed or labeled as "organic."

83. Applicable U.S. statutes and regulations prohibit marketing or labeling a product as “organic” if it contains any synthetic substance like SLS that is not expressly permitted by the National List.

84. It is literally false for any Defendant to represent that “Only three ingredients are used for our Organic Bright-Poly natural capsules,” and omit SLS and other ingredients from that list.

85. If not found to be literally false, each Defendant’s misrepresentations and omissions detailed herein are at least misleading such that a substantial segment of relevant purchasers were actually mistaken, deceived or confused, and likely to be mistaken, deceived or confused, about the ingredients in Bright-Poly capsules.

Materiality

86. Products labeled and promoted as being “organic” often command premium pricing in the marketplace.

87. Defendants’ Bright-Poly capsules that are labeled and promoted as being “organic” are sold at a premium price relative to pullulan-based capsules that are not labeled or promoted as being “organic.”

88. On information and belief, the presence of SLS as an ingredient would be material to the purchasing decision of a substantial segment of consumers and other potential customers seeking to buy an “organic” product.

89. On information and belief, the omission of one or more ingredients, including SLS, from the list of ingredients for Bright-Poly capsules would be material to the purchasing decision of a substantial segment of consumers and other potential customers.

90. On information and belief, a segment of consumers is sensitive to the presence of

SLS in products and would decline to purchase a product knowing it contained SLS.

91. On information and belief, the presence of SLS in capsules would be material to the purchasing decision of nutraceutical and other companies seeking to make a supplement or other product for retail sale that could be labeled or promoted as being “organic.”

92. On information and belief, Defendants’ affirmative representation that Bright-Poly capsules are “organic” and the omission of SLS and/or other ingredients from the list of ingredients for Bright-Poly capsules influenced the purchasing decision of a substantial number of relevant customers.

93. On information and belief, a substantial number of relevant purchasers of capsules acted in reliance on Defendants’ affirmative representation that Bright-Poly capsules are “organic” and the omission of SLS and/or other ingredients from the list of ingredients for Bright-Poly capsules.

Intent

94. On information and belief, Defendants’ affirmative representation that Bright-Poly capsules are “organic” and the omission of SLS and/or other ingredients from the list of ingredients for Bright-Poly capsules were intentionally and/or willfully designed to unfairly compete and make sales that otherwise would not have been made.

In Commercial Advertising or Promotion

95. Defendants’ misrepresentations and omissions detailed above were made in commercial advertising or promotion because, among other things, they:

- a. Constitute commercial speech,
- b. Were made or authorized by each Defendant in an attempt to unfairly compete with Plaintiffs and capture sales in the U.S. market for pullulan-

based capsules, and

- c. Were made for the purpose of influencing customers and potential customers to purchase Bright-Poly capsules and retail products made with Bright-Poly capsules.

96. Defendants' misrepresentations and omissions detailed above were made in classic advertising or promotion and also were sufficiently disseminated directly to relevant purchasers of empty capsules to constitute "advertising" or "promotion" within the industry in which Capsugel and Capsugel US compete with Bright Pharma, JC Bright and/or JC Bio.

Examples of dissemination of the misrepresentations and omissions detailed above include:

- a. Classic advertising and promotional media like portions of websites for each of Bright Pharma, JC Bright and JC Bio intended to promote Bright-Poly capsules;
- b. Direct email and other communications with relevant purchasers and potential purchasers of pullulan-based capsules;
- c. Distribution of the attached "sell sheets" and "product specifications" to relevant purchasers and potential purchasers of pullulan-based capsules;
- d. Statements on Bright-Poly capsule product packaging;
- e. Foreseeable re-publication by others made in reliance on Defendants' misrepresentations and omissions, i.e., labeling, promotional and advertising statements made by makers of nutraceuticals and other products sold to consumers at the retail level; and
- f. Other statements, representations and omissions as detailed above.

In Interstate Commerce

97. Defendants' affirmative representation that Bright-Poly capsules are "organic" and the omission of SLS and/or other ingredients from the list of ingredients for Bright-Poly capsules were in and affecting interstate commerce. Among other examples, affirmative misrepresentations and omissions detailed above were communicated across state lines and in interstate commerce by email, by interstate wires via the web, by the mail, by interstate courier and/or by phone.

98. Bright-Poly capsules were and are offered for sale and sold in interstate commerce.

Competitive Injury

99. Bright Pharma, JC Bright and JC Bio compete with Capsugel and Capsugel US in the business of producing, distributing and selling empty capsules.

100. Bright-Poly capsules directly compete with Capsugel's and Capsugel US's pullulan-based capsule sold under the brand Plantcaps®.

101. Plaintiffs have been and are likely to be injured as a result of the misrepresentations and omissions detailed above relating to Bright-Poly capsules by diversion of sales, lost profits, price erosion and/or a lessening of goodwill associated with pullulan-based capsules.

102. Capsugel US has lost sales to Bright Pharma as a direct and proximate result of Defendants' scheme to intentionally misrepresent ingredients in Bright-Poly capsules and omit SLS from the list of ingredients, and then wrongfully describe those capsules as being "organic."

103. The natural, probable and foreseeable result of Defendants' wrongful conduct has been to cause confusion, deception and mistake as to consumers at the retail level as well as

purchasers of empty pullulan-based capsules, depriving Capsugel US of sales and causing foreseeable damage to Plaintiffs.

104. Plaintiffs will continue to be injured as a result of the misrepresentations and omissions detailed above unless Defendants are enjoined by this Court from further acts of false advertising and unfair competition.

105. Purchasers and potential purchasers of pullulan-based capsules, and Bright-Poly capsules in particular, have been injured by Defendants' false and misleading representations and omissions detailed herein, and will continue to be injured unless Defendants are enjoined by this Court from further acts of false advertising and unfair competition.

106. Consumers of products made using Bright-Poly capsules have been injured by Defendants' false and misleading representations and omissions detailed herein, and will continue to be injured unless Defendants are enjoined by this Court from further acts of false advertising and unfair competition.

COUNT II
COMMON LAW UNFAIR COMPETITION

107. Plaintiffs re-allege the foregoing paragraphs as if fully set forth here.

108. Defendants' false and misleading representations and omissions detailed herein, and the resulting damage to Plaintiffs, are actionable under the applicable common law tort of unfair competition based on Defendants' conduct of falsely advertising and promoting the composition of their capsules, by passing off capsules as being "organic" when they are not, and falsely or misleadingly representing the list of ingredients in their capsules.

COUNT III
DIRECT INFRINGEMENT OF U.S. PATENT NO.
6,887,307 BY BRIGHT PHARMA AND CUSTOMERS

109. Capsugel re-alleges the foregoing paragraphs as if fully set forth here.

110. On information and belief, Bright Pharma has infringed and is knowingly still infringing the '307 patent by making, using, selling, and/or offering to sell in the United States, and/or importing into the United States, a film forming composition that infringes at least Claim 1.

111. On information and belief, Bright Pharma's customers and end users have infringed and are still infringing the '307 patent by using, selling, and/or offering to sell in the United States a film forming composition that infringes at least Claim 1.

112. The infringing film forming composition includes at least Bright Pharma's Bright-Poly capsules.

113. Ingredients used to make Bright-Poly capsules include SLS, pullulan, cations, and kappa-carrageenan.

114. The composition of finished Bright-Poly capsules sold by Bright Pharma includes SLS, pullulan, cations, and kappa-carrageenan.

115. SLS is used to make Bright-Poly capsules.

116. Bright Pharma has admitted in this case that SLS is applied to Bright-Poly capsules.

117. Testing confirmed the presence of pullulan, cations, kappa-carrageenan and SLS in Bright-Poly capsules.

118. Capsugel is entitled to recover damages adequate to compensate it for such infringement, in no event less than a reasonable royalty for the use made of the inventions claimed in the '307 patent, together with interest and costs as fixed by the Court.

119. Bright Pharma's acts of infringement of the '307 patent have injured and will continue to injure Capsugel unless and until this Court enters an injunction prohibiting further

infringement.

COUNT IV
INDIRECT INFRINGEMENT OF U.S. PATENT
NO. 6,887,307 BY JC BRIGHT, JC BIO AND CAO

120. Capsugel re-alleges the foregoing paragraphs as if fully set forth here.

121. Knowing of this lawsuit and the asserted patents, JC Bright has continued to supply infringing Bright-Poly capsules to Bright Pharma for sale in the United States.

122. JC Bright intends for Bright-Poly capsules supplied to Bright Pharma to be offered for sale, sold, and used in the United States.

123. Knowing of this lawsuit and the asserted patents, JC Bio has continued to provide infringing Bright-Poly capsules for Bright Pharma to sell in the United States.

124. JC Bio intends for Bright-Poly capsules supplied to Bright Pharma to be offered for sale, sold, and used in the United States.

125. Knowing of this lawsuit and the asserted patents, Cao intends for Bright-Poly capsules supplied to Bright Pharma to be offered for sale, sold, and used in the United States.

126. On information and belief, JC Bright, JC Bio and Cao induce Bright Pharma and others to infringe the '307 patent in the United States, knowing that the induced acts constitute infringement of the '307 patent.

127. On information and belief, JC Bright knows that acts it induces in the United States relating to Bright-Poly capsules infringe the '307 patent.

128. On information and belief, JC Bio knows that acts it induces in the United States relating to Bright-Poly capsules infringe the '307 patent.

129. On information and belief, Cao knows that acts he induces in the United States relating to Bright-Poly capsules infringe the '307 patent.

130. On information and belief, JC Bright, JC Bio and Cao know that the '307 patent is infringed by Bright-Poly capsules and they cannot reasonably read the '307 patent as not being infringed by Bright-Poly capsules.

131. JC Bright, JC Bio and Cao are liable for infringement of the '307 patent pursuant to 35 U.S.C. § 271(b) based upon induced acts of Bright Pharma and its customers and end users.

COUNT V
DIRECT INFRINGEMENT OF U.S. PATENT
NO. 7,267,718 BY BRIGHT PHARMA AND CUSTOMERS

132. Capsugel re-alleges the foregoing paragraphs as if fully set forth here.

133. On information and belief, Bright Pharma has infringed and is knowingly still infringing the '718 patent by making, using, selling, and/or offering to sell in the United States, and/or importing into the United States, a film forming composition that infringes at least Claim 1.

134. On information and belief, Bright Pharma's customers and end users have infringed and are still infringing the '718 patent by using, selling, and/or offering to sell in the United States a film forming composition that infringes at least Claim 1.

135. The infringing film forming composition includes at least Bright Pharma's Bright-Poly capsules.

136. Capsugel is entitled to recover damages adequate to compensate it for such infringement, in no event less than a reasonable royalty for the use made of the inventions claimed in the '718 patent, together with interest and costs as fixed by the Court.

137. Bright Pharma's acts of infringement of the '718 patent have injured and will continue to injure Capsugel unless and until this Court enters an injunction prohibiting further infringement.

COUNT VI
INDIRECT INFRINGEMENT OF U.S. PATENT
NO. 7,267,718 BY JC BRIGHT, JC BIO AND CAO

138. Capsugel re-alleges the foregoing paragraphs as if fully set forth here.

139. On information and belief, JC Bright, JC Bio and Cao induce Bright Pharma and others to infringe the '718 patent in the United States, knowing that the induced acts constitute infringement of the '718 patent.

140. On information and belief, JC Bright knows that acts it induces in the United States relating to Bright-Poly capsules infringe the '718 patent.

141. On information and belief, JC Bio knows that acts it induces in the United States relating to Bright-Poly capsules infringe the '718 patent.

142. On information and belief, Cao knows that acts he induces in the United States relating to Bright-Poly capsules infringe the '718 patent.

143. On information and belief, JC Bright, JC Bio and Cao know that the '718 patent is infringed by Bright-Poly capsules and they cannot reasonably read the '718 patent as not being infringed by Bright-Poly capsules.

144. JC Bright, JC Bio and Cao are liable for infringement of the '718 patent pursuant to 35 U.S.C. § 271(b) based upon induced acts of Bright Pharma and its customers and end users.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court to enter judgment against Defendants, granting the following relief:

- A. The entry of judgment in favor of Plaintiffs and against Defendants;
- B. An award of damages against Defendants adequate to compensate Capsugel for the patent infringement, but in no event less than a reasonable royalty as permitted under 35

U.S.C. § 284, together with pre-judgment and post-judgment interest;

C. To the extent any Defendant's patent infringement is found to be willful, a judgment that Capsugel shall recover treble damages or such other discretionary enhancement of its damages and other relief as the Court deems appropriate pursuant to 35 U.S.C. § 284;

D. To the extent that this case is found to be exceptional, an award to Capsugel of its reasonable attorneys' fees, costs and expenses as permitted pursuant to 35 U.S.C. § 285 and to both Plaintiffs as permitted pursuant to 15 U.S.C. § 1117;

E. That Defendants be adjudged to have violated 15 U.S.C. § 1125(a) by false advertising and unfairly competing against Plaintiffs by using false, deceptive or misleading statements and/or omissions of fact that misrepresent the nature, quality and characteristics of their capsules;

F. That Plaintiffs be awarded damages sustained in consequence of Defendants' false advertising and unfair competition;

G. That Plaintiffs be awarded each Defendant's profits obtained as a consequence of false statements, omissions and deceptive conduct;

H. That such damages and profits for false advertising and unfair competition be trebled and awarded to Plaintiffs as a result of each Defendant's willful, intentional, and deliberate acts in violation of Lanham Act Section 43(a);

I. That for their intentional and willful conduct, Defendants be immediately, and for a period of 5 years, enjoined from selling any product as "organic" and thereafter be enjoined from mislabeling, advertising, or misrepresenting any product or ingredient as being "organic" if it does not meet then-applicable USDA standards;

J. That Defendants be ordered to initiate corrective advertising (1) on each website

that has been used to promote or advertise pullulan-based capsules as supposedly being “organic” and (2) by sending a notice including a copy of this Court’s injunction to each purchaser in the U.S. of pullulan-based capsules labeled, identified or promoted as being “organic,” and that within 30 days of issuance each Defendant be ordered to file and serve a report under oath setting forth in detail the manner and form in which such Defendant has complied with the Court’s injunction as per 15 U.S.C. § 1116(a);

K. That Defendants be adjudged to have violated the applicable common law standards relating to unfair competition, fair trade, passing off and truthful advertising by selling capsules as “organic” when they are not and by omitting ingredients from marketing materials, harming Plaintiffs and deceiving purchasers;

L. That Plaintiffs recover punitive damages for Defendants’ violation of applicable common law standards relating to unfair competition, fair trade, passing off and truthful advertising;

M. That Plaintiffs be granted prejudgment and post judgment interest;

N. A permanent injunction prohibiting further patent infringement, false advertising and unfair competition by Defendants and each of their subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees and all persons in active concert or participation with any of them; and

O. That Plaintiffs have such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs hereby demand a jury trial on all issues so triable in this action.

DATED July 6, 2015

Respectfully submitted,

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