

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

DDROPS COMPANY, REINHOLD VIETH,
and ELAINE VIETH

Plaintiffs,

v.

iHERB, INC., and MADRE LABS, INC.,
d/b/a CALIFORNIA GOLD NUTRITION,

Defendants.

Civil Action No. _____

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Ddrops Company (“Ddrops”), Reinhold Vieth, and Elaine Vieth (collectively “the Vieths”) (collectively, “the Plaintiffs”), for their Complaint against Defendants iHerb, Inc., (“iHerb”) and Madre Labs, Inc. (“Madre”), d/b/a/ California Gold Nutrition (“CGN”) (collectively, “the Defendants”), allege and state as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and the Lanham Act, 15 U.S.C. § 1125, as hereinafter more fully appears. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over all other claims asserted this action pursuant to 28 U.S.C. § 1367, in that the other claims asserted are so related to claims within this Court’s original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution as hereinafter more fully appears.

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400 in that each defendant has transacted business in this district and/or committed acts of patent infringement in this district, as hereinafter more fully appears.

PARTIES

3. Ddrops is a partnership registered under the laws of Ontario, Canada, with its principal offices located in Woodbridge, Ontario, Canada.

4. The Vieths are individuals who are citizens of Canada and reside in Toronto, Canada.

5. Upon information and belief, iHerb is a corporation registered under the laws of the state of California. Upon information and belief, iHerb's business address is 15535 Sand Canyon Avenue, Irvine, California 92618.

6. Upon information and belief, Madre is a corporation registered under the laws of the state of California. Upon information and belief, Madre's business address is 15535 Sand Canyon Avenue, Irvine, California 92618.

7. Upon information and belief, Madre is either owned by, or affiliated with, iHerb.

8. Upon information and believe, Madre does business as CGN. (Madre will hereafter be referred to as CGN in this Complaint.)

FACTS

9. The Vieths are inventors and owners of certain inventions relating to vitamin D compositions and methods of administering such compositions to human beings (the "Inventions").

10. The Vieths have received numerous patents world-wide on the Inventions, including, but not limited to, Canadian Patent No. 2,578,881 (the “Canadian Patent”), entitled “Vitamin D Compositions and Method of Administration to a Human Being,” which issued on November 4, 2008.

11. On June 30, 2015, the United States Patent and Trademark Office (USPTO) duly and validly issued U.S. Patent No. 9,066,958 (“the ‘958 Patent”), entitled “Vitamin D Compositions and Method of Administration to a Human Being,” to the Vieths. The Vieths are the owners of the ‘958 Patent. A true and correct copy of the ‘958 Patent is attached as Exhibit A.

12. As of January 1, 2007, the Vieths granted an exclusive, world-wide license under all patents or patent applications relating to the Inventions to The Ddrops Company, Inc., a Canadian corporation, including the right to enforce the patent against infringers and to collect damages (“the License”). The ‘958 Patent is within the scope of the License.

13. As of July 24, 2008, The Ddrops Company, Inc., with the consent of the Vieths, transferred and assigned its rights and obligations under the License to Ddrops.

14. Since November 4, 2008, the Plaintiffs have successfully enforced the Canadian Patent against various infringers in Canada. As a result, the various defendants in such actions have stipulated that the Canadian Patent is valid, enforceable, and infringed, and the infringers against whom such actions were commenced have ceased sales of their infringing products in Canada.

15. Ddrops sells vitamin D supplements, including vitamin D supplements for infants, the method of use of which is covered by one or more claims of the '958 Patent in the United States, including in the state of Minnesota (the "Patented Product").

16. Ddrops sells the Patented Product under the registered U.S. trademark "Baby Ddrops®". Ddrops has sold the Patented Product in Minnesota since at least June 2011. A true and correct copy of the Patented Product packaging and bottle are attached as Exhibit B.

17. In 2015-16, the Plaintiffs enforced the '958 Patent against two infringers in this Court. Ddrops vigorously defends its patent rights for the '958 Patent in the United States.

18. Ddrops' trademark and marketing materials for the Patented Product have become well-known in the nutritional supplement industry and the blue "Ddrops" lettering has brand recognition and known association to Ddrops and the Patented Product with distributors and end-user customers.

19. When sales of the Patented Product began in the United States, Ddrops marked the product packaging with the words "patent pending."

20. Since issuance of the '958 Patent, Ddrops has marked the product packaging with the notice, "U.S. Patent 9066958." Ddrops has shipped the Patented Product with the '958 Patent number into the United States.

21. The packaging for the Patented Product features a distinctive blue shading. The Patented Product packaging also includes an image of a smiling infant child in a crawling-sitting pose.

22. The packaging and bottle label for the Patented Product states that its ingredients are cholecalciferol, which is Vitamin D₃, and fractionated coconut oil, which is a medium chain triglyceride.

23. The packaging and bottle label for the Patented Product states: “Babies need vitamin D for healthy growth and development.”

24. The packaging and bottle label for the Patented Product instructs the purchaser/end user: “Directions: Infants less than 1 year old: Place 1 drop daily onto mother’s nipple or on a clean surface, such as a washed finger or a pacifier, and allow baby to suck for at least 30 seconds. Or mix one drop daily with milk, juice or other food.”

25. The packaging and bottle label for the Patented Product states: “Serving Size: 1 drop (0.028mL or 0.001 fl. oz.).”

26. The packaging for the Patented Product states: “Vitamin D is important for healthy growth and development in infancy and childhood especially for normal bone growth and muscle strength.”

27. The packaging for the Patented Product states: “The American Academy of Pediatrics recommends that infants who are breast-fed or partially breast-fed should be supplemented with 400 IU of vitamin D daily.”

28. The Patented Product provides 400 IU of vitamin D₃ per drop.

29. The Patented Product has been the subject of several clinical studies, which confirmed its efficacy in providing vitamin D to infants. The results of these studies have been published in peer-reviewed journals.

30. The Patented Product has received several awards, including a Mom's Choice Gold Award and a Parent tested – Parent approved™ award.

31. Sale of the Patented Products to parents and caregivers of infants provides an important introduction for long-term sales of vitamin supplements for older children and adults. Ddrops also sells vitamin D supplements for children as they grow older.

32. Since 2009, Ddrops' market share for the Patented Product in Canada has increased to approximately 60%, estimated through the end of 2016.

33. From 2013 to 2016, sales of the Patented Product increased 464% in the United States.

34. In 2014, Ddrops invested over US\$675,000 in marketing and advertising the Patented Product in the United States.

35. On October 5, 2015, Ddrops launched a nation-wide advertising and marketing campaign for the Patented Product in the United States. This campaign featured television advertising on "Good Morning America". The cost of this nation-wide advertising and marketing campaign in the United States was in excess of US\$1 million.

36. Year-to-date in 2016, Ddrops has invested over US\$2.25 million in marketing and advertising the Patented Product in the United States.

37. Upon information and belief, since 1996, iHerb has sold nutritional supplements and other health and wellness products in the U.S. as well as internationally. iHerb claims to carry over 35,000 products and boasts of "one of the largest selections of

high-quality nutritional products in the world” according to its website. *See* <http://www.iherb.com/info/about>.

38. Upon information and belief, iHerb sells, *inter alia*, vitamins and vitamin supplements through its online store (“iHerb.com”) nationwide, including sales to customers located in the state of Minnesota.

39. In or about August 2013, iHerb began purchasing the Patented Product from Ddrops and began offering the Patented Product for sale, including to customers located in the state of Minnesota.

40. Ddrops’ sales of the Patented Product to iHerb from August 2013 to September 2016 totaled over US\$8.64 million.

41. In or about January 2016, a Ddrops representative met with iHerb representatives at an Efficient Collaborative Retail Marketing (“ECRM”) event.

42. At the ECRM event, the Ddrops representative discussed the Patented Product with iHerb’s representatives, including advising iHerb that the Patented Product was covered by the ‘958 Patent.

43. On January 18, 2016, the Ddrops representative emailed a copy of Ddrops’ press release notice that the Patented Product was covered by the ‘958 Patent to iHerb’s.

44. Despite successful and growing sales of the Patent Product by iHerb, on or about August 24, 2016, a Ddrops representative contacted iHerb’s representative regarding iHerb’s unusual decrease in purchases of the Patented Product from Ddrops.

45. On or about August 24, 2016, the Ddrops representative also asked about a new product of baby vitamin D drops being manufactured, marketed, and sold by CGN

and also marketed and sold on iHerb's website under the name "California Gold Nutrition Baby D₃ Liquid Vitamin D₃ for Babies 400 IU" (the "Infringing Product").

46. Upon information and belief, iHerb and CGN began manufacturing, marketing, and selling the Infringing Product, which is a copy of the Patented Product, in or about August 2016 in the United States, if not earlier. True and correct copies of the bottle and packaging for the Infringing Product are attached as Exhibit C.

47. On or about September 6, 2016, iHerb ceased purchasing the Patented Product from Ddrops and stopped offering it for sale on its website.

48. Upon information and belief, CGN is manufacturing the Infringing Product for iHerb. Both CGN and iHerb market and sell the Infringing Product.

49. The packaging and bottle label for the Infringing Product states that it is "Manufactured for & Distributed by: California Gold Nutrition®" in California.

50. The packaging of the Infringing Product states, "Baby D₃ Liquid Vitamin D₃" and, "for Babies 400 IU, Alcohol-free dietary supplement" in a blue-shaded font, similar to the blue-shaded font used by Ddrops for the Patented Product.

51. The front packing of the Infringing Product has an image of a smiling infant child in a crawling-sitting pose, similar to the Patented Product's packaging.

52. The Infringing Product packaging and bottle contain other identical or similar statements compared with the Patented Product's packaging, bottle, or Ddrops' website information. Below is a comparison between the Patented Product and the Infringing Product statements, with bolded text showing identical or similar text:

| PATENTED PRODUCT | INFRINGEMENT PRODUCT |
|--|--|
| <p>“Vitamin D3 (cholecalciferol)” and “Fractionated coconut oil.”</p> | <p>“Medium Chain Triglycerides, from Coconut.”</p> |
| <p>“Serving Size: 1 drop.</p> | <p>“Serving Size: 1 Drop.”</p> |
| <p>“400 IU of vitamin D₃ per drop.”</p> | <p>“400 IU of vitamin D₃ per drop.”</p> |
| <p>“Directions: Infants less than 1 year old: Place 1 drop daily onto mother’s nipple or on a clean surface, such as a washed finger or a pacifier, and allow baby to suck for at least 30 seconds. Or mix one drop daily with milk, juice or other food.”</p> | <p>“Suggested Use for Babies Under 3 Yrs: 1 drop daily placed on mother’s nipple, clean finger or pacifier, and allow baby to suckle for at least 30 seconds. May be added to formula, milk, juice or other foods.”</p> |
| <p>“Vitamin D is important for healthy growth and development in infancy and childhood especially for normal bone growth and muscle strength.”</p> <p>“The American Academy of Pediatrics recommends that infants who are breast-fed or partially breast-fed should be supplemented with 400 IU of vitamin D daily.”</p> | <p>“Vitamin D supplementation for infants is recommended because breastfed infants generally do not obtain adequate Vitamin D from other sources.”</p> <p>“Basic guidelines from the American Academy of Pediatrics and the Institute of Medicine for vitamin D supplementation for babies:”</p> |

| | |
|--|---|
| <p>“The Institute of Medicine and the American Academy of Pediatrics recommend that all breastfed, healthy term babies receive a daily vitamin D supplement of 400 IU a day. This dose of the vitamin should begin at birth and continue until one year of age. The American Academy of Pediatrics recommends that partially breastfed infants and infants who receive less than 1L of formula a day should still be taking 400 IU of vitamin D daily.”</p> | <p>“If breast-feeding or partially breast-feeding your baby: Give your baby 400 international units (IU) of liquid vitamin D a day—starting in the first few days after birth. Continue giving your baby 400 IU of vitamin D until you wean your baby and he or she is drinking 32 ounces (approximately 1 liter) a day of vitamin D-fortified formula or, after age 12 months, whole cow’s milk.”</p> |
|--|---|

53. iHerb also makes the statements and information referenced in paragraphs 50 through 52, and the chart above on its website at: <http://www.iherb.com/California-Gold-Nutrition-Baby-Vitamin-D3-400-IU-34-fl-oz-10-ml/65958>, separately and distinct from the packaging or label of the Infringing Product.

54. CGN also makes the statements and information referenced in paragraphs 50 through 52, and the chart above on its website at: <http://www.californiagoldnutrition.com/product/vitamins/baby-d3/>, separately and distinct from the packaging or label of the Infringing Product.

55. Use of iHerb and CGN’s Infringing Product by an end-user infringes, either literally or under the doctrine of equivalents, the ‘958 Patent, including at least claim 1.

56. Claim 1 of the ‘958 Patent states:

A method of delivering a nutritional or therapeutic amount of vitamin D to a human being, said method comprising:

- (i) applying one drop of a composition consisting of a nutritional or therapeutic effective amount of 9 to 9000 mcg/ml vitamin D in a liquid triglyceride of 6 to 12 carbon chain length, to an exterior

surface of an object, wherein said drop adheres to the surface of said object; and (ii) having said human being suck or lick said composition directly from said object.

57. Based upon a chemical analysis of the Infringing Product and a review of the Infringing Product's packaging, bottle, and advertising on iHerb and CGN's websites, use of the Infringing Product by an end-user meets each limitation of at least claim 1 of the '958 Patent, either literally or under the doctrine of equivalents, in that:

- a) A chemical analysis of the Infringing Product shows that one drop (0.033 ml) contains 527 IU of vitamin D3 which provides a therapeutic effective amount of 417 mcg/ml vitamin D in a liquid triglyceride composition of C₈, C₁₀ and C₁₂ fatty acids, which are 8 to 12 carbon chain length.
- b) The Infringing Product's bottle and packaging states, "Vitamin D supplementation for infants is recommended because breast fed infants do not obtain adequate Vitamin D from other sources." The Infringing Product's bottle and packaging identifies the Baby D3 product as a "dietary supplement."
- c) The Infringing Product's bottle and packaging states that the serving size is one drop that provides 400 IU vitamin D3 "(% Daily value 100%)."
- d) The Infringing Product's bottle and packaging instructs end-users: "suggested use for babies under 3 yrs: One (1) drop daily placed on mother's nipple, clean finger or pacifier, and allow baby to suckle for at least 30 seconds."
- e) The Infringing Product's bottle and packaging thus instructs end-users to place one drop of the Infringing Product on an exterior surface, to which it will

adhere, and to have a human being directly suck or lick the Infringing Product from that exterior surface.

58. iHerb and CGN’s instructions for use of the Infringing Product, as contained on the Infringing Product’s bottle and packaging, and as set forth on iHerb and CGN’s websites, intentionally instruct the end-user to place one drop of the Infringing Product, which is a liquid consisting of vitamin D3 in medium chain triglycerides, on a mother’s nipple or other exterior surface, and to allow a baby or an infant to suck the liquid directly from the mother’s nipple or other exterior surface.

59. On or about August 24, 2016, Ddrops’ representative asked iHerb’s representative about a product comparison chart (the “Comparison Chart”) on iHerb’s website that compared the Patented Product with the Infringing Product. A true and correct copy of the Comparison Chart available on iHerb’s website is shown below.

| | BabyD₃ | Ddrops® |
|--|--------------------------|-----------------|
| Vitamin D3 (as Cholecalciferol) | ✓ | ✓ |
| 400 IU D3 Per Drop | ✓ | ✓ |
| Other Ingredient: Fractionated Coconut Oil | ✓ | ✓ |
| Servings Per Container | 300 | 90 |
| Manufactured & Processed in the U.S.A. in a NSF® GMP Registered Facility | ✓ | ? |
| Triple Quality Tested | ✓ | ? |
| 100% Guarantee | ✓ | ? |
| Price | \$17.50* | \$17.50* |

Ddrops® is a registered trademark of Ddrops Company. *Prices may vary.

60. The Comparison Chart falsely, deceptively, and misleadingly compares the Patented Product with the Infringing Product.

61. The Comparison Chart uses Ddrops' registered trademark, blue lettering, and smiling infant child in a crawling-sitting pose associated with Ddrops and the Patented Product.

62. Ddrops has never authorized iHerb or CGN to use its marketing materials, trademarks, or any comparison of any Ddrops' products, pricing, ingredients, or any advertisements regarding its company or the Patented Product.

63. The Comparison Chart falsely, misleadingly, and deceptively advertises the Patented Product, because it selectively omits or provides false information. The Comparison Chart's use of the "?" for the Patented Product falsely, misleadingly, and deceptively advertises that it is unknown whether the Patented Product has manufacturing integrity and quality control.

64. Ddrops' Patented Product is made in a Health Canada licensed facility and which adhere to strict guidelines required by Health Canada for licensure compliance. Ddrops' manufacturer also is compliant with the Food and Drug Administration ("FDA") and is a Public Health and Safety Organization ("NSF") registered facility.

65. iHerb is aware of the high quality, manufacturing standards, and brand recognition of Ddrops' Patented Product, and that the Patented Product is made according to compliance standards and guidelines.

66. iHerb purchased the Patented Product for nearly three years, at least in part, because Ddrops' Patented Product has a worldwide quality reputation as a brand and product in the supplement industry.

67. iHerb knows that the Comparison Chart falsely, misleadingly, and deceptively compares the Patented Product with the Infringing Product.

68. iHerb and CGN are marketing the Infringing Product directly against the Patented Product and targeting Ddrops' actual and potential customers, including through use of the Comparison Chart on iHerb's website.

69. By marketing the Infringing Product directly against the Patented Product and targeting Ddrops' actual and potential customers, iHerb and CGN are capitalizing on the significant marketing and advertising efforts of Ddrops and to take customers and sales from Ddrops, including sales of vitamins to older children and adults.

70. After Ddrops expressed concerns that the Comparison Chart was false and misleading, on or about August 30, 2016, iHerb's representative told Ddrops that iHerb had deleted the Comparison Chart from its website.

71. Contrary to iHerb's representation, iHerb has never removed the Comparison Chart from its website. As of December 12, 2016, the Comparison chart is still available on iHerb's website.

72. In or about October 2016, Ddrops learned that iHerb was falsely telling customers that Ddrops had gone out of business.

73. On or about October 10, 2016, a customer wrote Ddrops via Facebook stating, "I usually purchase ddrops from iherb in the USA. And several days ago I got email from iherb that ddrops shut down the company in the US. May I know what's going on? Anything to do with safety issue?" [*Sic*].

74. Ddrops has not shut down its company or sales of the Patented Product in the United States or elsewhere. iHerb knows that any statement to the contrary is false.

CAUSES OF ACTION

Count I – Infringement of the ‘958 Patent (against iHerb and CGN)

75. The Plaintiffs restate and reallege paragraphs 1 through 74 and incorporate them herein by reference.

76. End-users of the Infringing Product directly infringe, either literally or under the doctrine of equivalents, one or more claims of the ‘958 Patent, including but not limited to claim 1, in violation of 35 U.S.C. § 271(a), by following and performing the steps on the packaging and bottle of the Infringing Product and on the websites of iHerb and CGN.

77. Prior to, and after, commencing sales of the Infringing Product, both iHerb and CGN knew of the ‘958 Patent and its pendency before the USPTO.

78. Prior to, and after, commencing sales of the Infringing Product, both iHerb and CGN had the specific intent to induce and to cause end-users to directly infringe the ‘958 Patent.

79. Prior to, and after, commencing sales of the Infringing Product, both iHerb and CGN, with knowledge of the ‘958 Patent, actively induced and encouraged end-users to directly infringe the ‘958 Patent, including, but not necessarily limited to, through their instructions for use on the Infringing Product’s packaging and bottle and on their websites.

80. iHerb and CGN are each liable for inducing infringement of the ‘958 Patent, including but not limited to claim 1, in violation of 35 U.S.C. § 271(b).

81. iHerb and CGN’s inducing infringement of the ‘958 Patent has been willful, reckless, and in conscious disregard of the Plaintiffs’ lawful patent rights in the ‘958 Patent. iHerb and CGN acted despite an objectively high likelihood that their actions constituted infringement of a valid patent and this objectively defined risk was either known or so obvious that it should have been known to iHerb and CGN.

82. As a result of iHerb and CGN’s inducing infringement of the ‘958 Patent, the Plaintiffs have suffered loss and damage, including lost profits, lost royalties, and other damages, the precise amounts to be determined at trial.

83. As a result of iHerb and CGN’s induced infringement of the ‘958 Patent, the Plaintiffs have suffered, and will continue to suffer, irreparable harm, and additionally as a result of iHerb and CGN’s benefitting from, and “free-riding” on, Ddrops’ nation-wide advertising and marketing campaign in the United States.

84. Because of the irreparable and continuing harm caused by iHerb and CGN’s inducing infringement, the Plaintiffs are entitled to preliminary and permanent injunctive relief enjoining iHerb and CGN, their officers, directors, attorneys, and all other persons acting in concert with them from importing, offering for sale, or selling the Infringing Product or colorable imitations thereof in the United States for the term of the ‘958 Patent.

Count II – Violation of the Lanham Act, 15 U.S.C. § 1125
(against iHerb)

85. Ddrops restates and realleges paragraphs 1 through 84 and incorporates them herein by reference.

86. iHerb's use in interstate commerce of the deceptive Comparison Chart and false statements concerning Ddrops' continuing business operations constitute a violation of 15 U.S.C. § 1125(a)(1).

87. iHerb's use of the Comparison Chart and false statements concerning Ddrops' business operations in commercial advertising or promotion constitute false or misleading descriptions of fact, or false or misleading representations of fact, which are likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of Ddrops' Patented Product and its goods, services, or commercial activities.

88. iHerb's use of the Comparison Chart and false statements concerning Ddrops' business operations in commercial advertising or promotion constitute false or misleading descriptions of fact, or false or misleading representations of fact, which misrepresent the nature, characteristics, or qualities of Drops' Patented Product and Drops' commercial activities.

89. iHerb knew that its use of the Comparison Chart and statements concerning Ddrops' business operations were false, misleading, and deceptive when used and made.

90. iHerb's use of the Comparison Chart and false statements concerning Ddrops' business operations were done and made knowingly, willfully, and intentionally.

91. As a result of iHerb's use of the Comparison Chart and false statements regarding Ddrops, Ddrops has suffered and will continue to suffer loss and damage in an amount to be determined at trial, which may include iHerb's profits, damages sustained by Ddrops, and the costs of this action.

92. As a result of iHerb's use of the Comparison Chart and false statements regarding Ddrops, Ddrops has suffered and will continue to suffer irreparable harm, such that Ddrops is entitled to a preliminary and permanent injunction enjoining iHerb, its officers, directors, attorneys, and all persons in active concert with it from the using, displaying, or advertising the Comparison Chart, or making false statements regarding Ddrops, or engaging in any other false, misleading, or deceptive advertising or marketing.

Count III – Violation of the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43, et seq. (against iHerb)

93. Ddrops restates and realleges paragraphs 1 through 92 and incorporates them herein by reference.

94. iHerb's use of the Comparison Chart and false statements regarding Ddrops in its marketing and advertising constitutes a violation of the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43, et seq.

95. iHerb's use of the Comparison Chart and false statements regarding Ddrops constitutes a deceptive trade practice in violation of, *inter alia*, Minn. Stat. § 325D.44, subd. (3), (5), (7), (8), and (13).

96. iHerb's use of the Comparison Chart and false statements concerning Ddrops' business operations were done and made knowingly, willfully, and intentionally.

97. iHerb's use of the Comparison Chart and false statements regarding Ddrops has caused, and will continue to, cause irreparable harm and injury to Ddrops.

98. Ddrops is entitled to a preliminary and permanent injunction enjoining iHerb, its officers, directors, and all persons in active concert with it from the use, marketing, and advertising of the Comparison Chart or making false or misleading statements regarding Ddrops.

DEMAND FOR JURY TRIAL

The Plaintiffs demand a trial by jury on all issues triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Ddrops Company, Reinhold Vieth, and Elaine Vieth pray for entry of judgment, jointly and severally, against Defendants iHerb, Inc. and Madre Labs, Inc., d/b/a California Gold Nutrition, as follows:

1. On Count I, for an award of damages adequate to compensate for the infringement of the '958 Patent, but in no event less than a reasonable royalty, against iHerb and CGN, and each of them, the precise amount to be determined at trial.
2. On Count I, for preliminary and permanent injunctive relief, enjoining iHerb and CGN, and each of them, and all persons in active concert with them, from infringing and continuing to infringe the '958 Patent for its term by making, using, selling, or offering for sale the Infringing Product or any colorable imitations thereof.
3. On Count II, for an award of damages against iHerb, including, but not limited to, iHerb's profits, damages sustained by Ddrops, and the costs of this action.

4. On Count II, for preliminary and permanent injunctive relief, enjoining iHerb, its officers, directors, attorneys, and all persons in active concert with it from using, displaying, or advertising the Comparison Chart, or making false statements regarding Ddrops, or engaging in any other false, misleading, or deceptive advertising or marketing in violation of the Lanham Act.

5. On Count III, for preliminary and permanent injunctive relief, enjoining iHerb, its officers, directors, attorneys, and all persons in active concert with it from using, displaying, or advertising the Comparison Chart, or making false statements regarding Ddrops, or engaging in any other false, misleading, or deceptive advertising or marketing in violation of the Minnesota Deceptive Trade Practices Act.

6. On Count I, for increased damages pursuant to 35 U.S.C. § 284 on all sums awarded against iHerb and CGN, and each of them.

7. On Count I, for an award of attorneys' fees pursuant to 38 U.S.C. § 285 and all costs incurred in connection with this action against iHerb and CGN, and each of them.

8. On Count II, for an award of increased damages and attorneys' fees against iHerb pursuant to 15 U.S.C. § 1117(a).

9. On Count III, for an award of attorneys' fees against iHerb pursuant to Minn. Stat. § 325D.45.

10. For pre- and post-judgment interest on all sums awarded as allowed by law.

11. For such other and further relief as the Court may deem just and equitable.

Dated: December 19, 2016.

s/Alan M. Anderson

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