

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**THERMOLIFE INTERNATIONAL,
LLC, an Arizona Limited Liability
Company**

Plaintiff,
v.

**HI-TECH PHARMACEUTICALS,
INC.;
JARED WHEAT;
ADVANCED PERFORMANCE
SUPPLEMENTS NUTRITION;
INNOVATIVE LABORATORIES;
PRIME NUTRITION;
A1 SUPPLEMENTS, INC.;
DPS NUTRITION, INC.;
SUPPLEMENT CENTRAL, INC.;
I-SUPPLEMENTS.COM;
EVITAMINS STORE 1;
SUPPZ, INC.;
WORLD CLASS NUTRITION;
ALL STAR HEALTH;
LOCKOUT INDUSTRIES, LLC;
NETRITION, INC.;
SUPPLEMENTWAREHOUSE.COM,
INC.;
ISLAND SUPPLEMENTS;
NETNUTRI LLC;
MUSCLE FOODS USA LLC;
BLACK DIAMOND SUPPLEMENTS;
and Does 1-10.**

Defendants.

Case Nos.:

1:15-CV-00892-ELR
LEAD CASE

1:15-CV-00893-ELR

1:15-CV-00894-ELR

JURY TRIAL DEMANDED

**SECOND AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT**

SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT

Plaintiff ThermoLife International, LLC (“ThermoLife”) hereby complains and alleges against Defendants Hi-Tech Pharmaceuticals, Inc. (“Hi-Tech”); Jared Wheat (“Wheat”); Advanced Performance Supplements Nutrition (“APS”); Innovative Laboratories (“Innovative”), Prime Nutrition (“Prime”), (collectively, “Manufacturer Defendants”); and A1 Supplements, Inc.; DPS Nutrition, Inc.; Supplement Central, Inc.; I-Supplements.com; EVitamins Store 1; Suppz, Inc.; World Class Nutrition; All Star Health; Lockout Industries, LLC; Netriton, Inc.; Supplementwarehouse.com, Inc.; Island Supplements; Netnutri LLC; Muscle Foods USA LLC; Black Diamond Supplements; and Does 1-10 (Collectively, “Retailer Defendants”) as follows:

PARTIES

1. Plaintiff ThermoLife is a limited liability company organized and existing under the laws of Arizona, with its principal place of business located at 1334 East Chandler Boulevard, Phoenix, Arizona 85048. ThermoLife is a leading manufacturer in the sports nutrition and supplement industry.

2. On information and belief, Defendant Hi-Tech is a corporation organized and existing under the laws of Georgia and with a principal place of

business at 6015-B Unity Drive in Norcross, Georgia. Hi-Tech advertises, offers to sell, and sells products, including Jack'd Up and Phosphagen, through the website <https://hitechpharma.com/index.htm>, and encourages prospective purchasers to contact High-Tech at 6015-B Unity Drive in Norcross, Georgia.

3. Defendant Hi-Tech may be served in this District through its registered agent, Jared Wheat, at 6015-B Unity Dr., Norcross, Georgia, 30071.

4. On information and belief, Defendant APS is a wholly-owned subsidiary of Defendant Hi-Tech, which acquired APS in approximately 2011. While APS shares the same corporate address as Defendant Hi-Tech (see <https://www.apsnutrition.com/pages/contact-us>), APS does not appear to be registered to do business in the State of Georgia, and neither Defendant Hi-Tech nor Defendant Jared Wheat appear to have registered APS as a trade name in Georgia as required by O.C.G.A. § 10-1-490(a).

5. On information and belief, Defendant Innovative is a wholly-owned subsidiary of Defendant Hi-Tech, which acquired Innovative Laboratories in approximately 2015. While Innovative appears to share the same corporate address as Defendant Hi-Tech (*see* <https://innovativelaboratories.net/pages/contact-us>), Innovative does not appear to be registered to do business in the State of Georgia, and neither Defendant Hi-Tech

nor Defendant Wheat appear to have registered Innovative as a trade name in Georgia as required by O.C.G.A. § 10-1-490(a).

6. On information and belief, Defendant Prime is owned by at least Defendant Wheat, who acquired Prime in approximately 2016.

<http://www.prnewswire.com/news-releases/mr-jared-wheat-principal-owner-of-hi-tech-pharmaceuticals-acquires-co-ownership-of-prime-nutrition-300339863.html>.

Prime does not appear to currently be registered to do business in the State of Georgia.

7. On information and belief, Defendant Wheat is the sole owner, president, chief executive officer, secretary, and treasurer of Hi-Tech and in that capacity, he is personally responsible for the promotion and advertising of the accused products described below. Facts regarding Defendant Wheat's control and domination of Defendant Hi-Tech can be found in *Fed. Trade Comm'n v. Nat'l Urological Group, Inc.*, No. 1:04-cv-3294-CAP, Dkt. No. 650 at 7 (N.D. Ga. May 14, 2014), a true and correct copy of which is attached as Exhibit A.

8. Moreover, Defendant Wheat, in his individual capacity, has filed trademark applications with the United States Patent and Trademark Office relating to the accused products described below, in which he listed Hi-Tech's business address as his own, individual address. *See, e.g.*, U.S. Trademark

Application Serial No. 86328258 for JACK'D UP, a true and correct copy of which is attached as Exhibit B.

9. As set forth further below, Defendant Wheat may be held personally liable for the wrongful acts of Defendant Hi-Tech, Defendant APS, Defendant Innovative, and Defendant Prime through “piercing of the corporate veil.”

10. For example, piercing of the corporate veil is appropriate here because Defendant Wheat and Defendant Hi-Tech have failed to comply with corporate formalities required by Georgia law. By way of example, Defendants Wheat and/or Hi-Tech have failed to maintain proper registrations within Georgia for their subsidiary companies, including APS, Innovative, and Prime as a trade name in Georgia as required by O.C.G.A. § 10-1-490(a).

11. By way of further example, Defendant Wheat has: (1) instructed and authorized the diversion of Hi-Tech's funds in an attempt to evade a judgment entered against Defendant Hi-Tech by the United States District Court for the Northern District of Georgia; (2) intermingled Defendant Hi-Tech's funds with his personal funds; (3) failed to follow proper corporate formalities, and (4) failed to maintain an arm's length relationship between himself, Defendant Hi-Tech, and its related entities. *See* Ex. A at 19–20.

12. Because Defendant Wheat has overextended and abused the corporate

privileges for his own personal gain, the Court may properly pierce the corporate veil here to assign personal liability on Defendant Wheat for the wrongful acts of Defendants Hi-Tech, APS, Innovative, and Prime.

13. Defendant A1 is a limited liability company organized and existing under the laws of Tennessee with a principal place of business at 860 Lakemont Drive in Louisville, Tennessee, 37777. On information and belief, A1 offers to sell and sells the Accused Products, including but not limited to Jack'd Up, Phosphagen, Creatine Nitrate, and Mesomorph, through the website www.a1supplements.com.

14. Defendant DPS is a corporation organized and existing under the laws of Pennsylvania with a principal place of business at 1510 N Main Avenue, Scranton, PA 18508-0 Lackawanna. On information and belief, DPS offers to sell and sells the Accused Products, including but not limited to Jack'd Up and Anavar, through the website www.dpsnutrition.net.

15. Defendant Supplement Central is a corporation organized and existing under the laws of Pennsylvania with a principal place of business at 2720 Shady Avenue, Apt. 1, Pittsburgh, PA 15217-0 Allegheny. On information and belief, Supplement Central offers to sell and sells the Accused Products, including but not limited to Jack'd Up, Phosphagen, Mesomorph, and Anavar, through the website

www.supplementcentral.com.

16. Defendant I-Supplements.com is an entity organized and existing under the laws of Ohio with a principal place of business at 7227 Montgomery Road, Cincinnati, Ohio, 45236. I-Supplements.com offers to sell and sells products, including but not limited to Jack'd Up, Creatine Nitrate, Anavar, Mesomorph, and Mesomorph v. 2.0, through the website www.i-supplements.com.

17. Defendant eVitamins is a limited liability company organized and existing under the laws of Michigan with a principal place of business at 51260 Danview Technology, Shelby Township, Michigan, 48315. eVitamins offers to sell and sells products, including but not limited to Jack'd Up, through the website www.evitamins.com.

18. Defendant Suppz is a corporation organized and existing under the laws of Wisconsin with a principal place of business at 1535 LaFollette Street, Fennimore, Wisconsin, 53809. On information and belief, Suppz offers to sell and sells the Accused Products, including but not limited to Mesomorph, Creatine Nitrate, Anavar, and Jack'd Up, through the website www.suppz.com.

19. Defendant World Class Nutrition is an unregistered Georgia business entity having a business address of 355 Brogdon Road, Suite 205 in Suwanee, Georgia, 30024. On information and belief, World Class Nutrition offers to sell

and sells the Accused Products, including Mesomorph, through the website www.worldclassnutrition.com, and encourages prospective purchasers to contact World Class Nutrition at 355 Brogdon Road, Suite 205 in Suwannee [sic], Georgia, 30024. Defendant World Class Nutrition may be served in this District at 355 Brogdon Road, Suite 205 in Suwanee, Georgia, 30024.

20. Defendant All Star Health is an entity organized and existing under the laws of California with a principal place of business at 5951 Skylab Road in Huntington Beach, California, 92647. On information and belief, All Star Health offers to sell and sells the Accused Products, including but not limited to Creatine Nitrate, Anavar, and Mesomorph, through the website www.allstarhealth.com.

21. Defendant Lockout is a limited liability company organized and existing under the laws of Texas with a principal place of business at 344 E. Louisiana Drive, McKinney, Texas, 75069. On information and belief, Lockout offers to sell and sells the Accused Products, including but not limited to Mesomorph, through <http://store.lockoutforums.com>.

22. Defendant Netriton is a corporation organized and existing under the laws of New York with a principal place of business at 250 Corporate Circle, Suite 118, Albany, New York, 12203. On information and belief, Netriton, Inc. offers to sell and sells the Accused Products, including but not limited to Anavar, Jack'd Up,

and Mesomorph, through the website www.netrition.com.

23. Defendant SupplementWarehouse.com is a corporation organized and existing under the laws of Wisconsin with a principal place of business at 2440 Corporate Preserve Drive, Oak Creek, Wisconsin 53154. On information and belief, SupplementWarehouse.com, Inc. offers to sell and sells the Accused Products, including but not limited to Jack'd Up, Creatine Nitrate, Phosphagen, Anavar, and Mesomorph, through the website www.supplementwarehouse.com.

24. Defendant Island Supplements is an entity organized and existing under the laws of Minnesota with a principal place of business at 1311 Industrial Drive #B, New Braunfels, Texas, 78130. On information and belief, Island Supplements offers to sell and sells the Accused Products, including but not limited to Jack'd Up and Mesomorph, through the website www.islandsupplements.com.

25. Defendant Netnutri is a limited liability company organized and existing under the laws of New Jersey with a principal place of business at 505 54th Street, West New York, New Jersey 07093. On information and belief, Netnutri offers to sell and sells the Accused Products, including but not limited to Jack'd Up, Phosphagen, and Mesomorph, through the website www.netnutri.com.

26. Defendant Muscle Foods USA is a limited liability company

organized and existing under the laws of Pennsylvania with a principal place of business at 701 Hudson Avenue, Scranton, Pennsylvania, 18504. On information and belief, Muscle Foods USA offers to sell and sells the Accused Products, including Jack'd Up, Phosphagen, and Mesomorph, through the website www.musclefoodsusa.com.

27. Defendant Black Diamond is an entity organized and existing under the laws of Arizona with a principal place of business at PO Box 73185 in Phoenix, Arizona, 85050. Black Diamond offers to sell and sells products, including but not limited to Jack'd Up, Creatine Nitrate, Anavar, Phosphagen, and Mesomorph, through the website www.blackdiamondsupplements.com.

28. The identifies of Does 1-10 are currently unknown to ThermoLife, but upon information and belief, they are associated with the named Defendants and the infringing activities of the named Defendants. ThermoLife will identify these unnamed defendants upon further knowledge and investigation and will amend its pleadings accordingly.

29. Defendants A1, DPS, Supplement Central; I-Supplements.com; eVitamins; Suppz; World Class; All Star; Lockout; Netriton; SupplementWarehouse.com,; Island; Netnutri; Muscle Foods; Black Diamond; and Does 1-10 (collectively the "Retailer Defendants") conduct business activities,

including those complained of herein, within this District, which business includes but is not limited to the offer to sell the Accused Products within this District.

30. By way of example, Retailer Defendants directly or through intermediaries (including distributors, retailers, and others) advertise, market, and/or offer to sell the Accused Products through their online stores and websites in cooperation with and pursuant to agreements with the Manufacturer Defendants, which are themselves located in this District.

31. By way of further example Retailer Defendants derive their revenue, at least in part, from product sales on the Internet through their online stores and websites, and they transact business throughout the United States, including in this District.

NATURE OF THE ACTION

32. This is an action for patent infringement arising under the Patent Laws of the United States 35 U.S.C. §§ 1 et seq., including 35 U.S.C. § 271.

33. On information and belief, the Manufacturer Defendants and the Retailer Defendants (collectively, “Defendants”) have infringed and continue to infringe, contribute to the infringement of, and/or actively induce others to infringe ThermoLife’s U.S. Patent Nos. 8,178,572 (“the ‘572 Patent”), 8,455,531 (“the ‘531 Patent”), 8,466,187 (“the ‘187 Patent”), 8,183,288 (“the ‘288 Patent”), and

8,952,046 (“the ‘046 Patent”).

JURISDICTION, VENUE, AND JOINDER

34. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

35. This Court has personal jurisdiction over the Defendants because, on information and belief, Defendants do and have done substantial business in this Judicial District, including: (i) committing acts of patent infringement and/or contributing to or inducing acts of patent infringement by others in this Judicial District and elsewhere in this State; (ii) regularly conducting business in this State and Judicial District; (iii) directing advertising to or soliciting business from persons residing in this State and Judicial District through at least in-person sales efforts; and (iv) engaging in other persistent courses of conduct, and/or deriving substantial revenue from products and/or services provided to persons in this District and State. In addition, this Court has personal jurisdiction over Defendants because each are a citizen of the State of Georgia.

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

37. Joinder of all Defendants is proper under Rule 20 of the Federal Rules of Civil Procedure and 35 U.S.C. § 299.

THE PATENTS-IN-SUIT

38. Ron Kramer (“Kramer”) founded ThermoLife in 1998. ThermoLife is a supplement company and the assignee of the following United States Patents (“collectively the “Patents-in-Suit”):

a) The ‘572 Patent, titled “Amino Acid Compositions” (Exhibit C), which was duly and legally issued by the United States Patent and Trademark Office on May 15, 2012;

b) The ‘531 Patent, titled “Amino Acid Compositions” (Exhibit D), which was duly and legally issued by the United States Patent and Trademark Office on June 4, 2013;

c) The ‘187 Patent, titled “Amino Acid Compositions” (Exhibit E), which was duly and legally issued by the United States Patent and Trademark Office on June 18, 2013;

d) The ‘288 Patent, titled “Amino Acid Compositions” (Exhibit EE), which was duly and legally issued by the United States Patent and Trademark Office on May 22, 2012; and

e) The ‘046 Patent, titled “Amino Acid Compositions” (Exhibit F), which was duly and legally issued by the United States Patent and Trademark Office on February 10, 2015.

THE REEXAMINATION OF THE PATENTS-IN-SUIT

39. Following the filing of the initial Complaint in this action, the Patents-in-Suit underwent reexamination.

40. The '572 Patent's reexamination request was filed on June 26, 2015. The reexamined '572 Patent was issued on December 8, 2016 (Exhibit G). During the lengthy reexamination proceedings, the USPTO considered extensive additional art, but determined that (1) Claims 1 and 2 were patentable as amended and (2) new claims 3-13 were likewise patentable over the considered art.

41. The '531 Patent's reexamination request was filed on September 2, 2014. The reexamined '531 Patent was issued on Jan 23, 2017 (Exhibit H). During the lengthy reexamination proceedings, the USPTO considered extensive additional art, but determined that (1) Claims 1-61 were patentable as amended and (2) new claims 62-122 were likewise patentable over the considered art.

42. The '187 Patent's reexamination requests were filed on July 9, 2013 and June 26, 2015. The reexamined '187 Patent was issued on January 18, 2017 (Exhibit I). During the lengthy reexamination proceedings, the USPTO considered extensive additional art, but determined that (1) Claims 1-60 were patentable as amended and (2) new claims 61-69 were likewise patentable over the considered art.

43. The '288 Patent's reexamination request was filed on June 26, 2015.

The reexamined '288 Patent was issued on December 22, 2016 (Exhibit II) During the lengthy reexamination proceedings, the USPTO considered extensive additional art, but determined that (1) Claim 1 was patentable as amended and (2) new claims 2-13 were likewise patentable over the considered art.

44. The '046 Patent's reexamination request was filed on June 16, 2015. The reexamined '046 Patent was issued on January 23, 2017 (Exhibit J). During the lengthy reexamination proceedings, the USPTO considered extensive additional art, but determined that (1) Claims 1-4, 6-11 and 13-14 were patentable as amended and (2) new claims 15-54 were likewise patentable over the considered art.

DIRECT INFRINGEMENT OF THE PATENTS-IN-SUIT

45. ThermoLife realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

46. On information and belief, Defendants directly or through intermediaries (including subsidiaries, distributors, retailers, and others) make, use, sell, offer for sale, and/or import one or more of the following accused products: Jack'd Up, Mesomorph, Mesomorph v. 2.0, Anavar, Phosphagen, Creatine Nitrate, Wicked, PWO-MAX, and TruPump (collectively "Accused Products") within this District.

47. On information and belief, Defendant Hi-Tech itself makes, uses, sells, offers for sale, and/or imports at least Jack'd, Anavar, TruPump, and Phosphagen.

48. On information and belief, Defendant Hi-Tech either itself and/or through its wholly-owned subsidiary Innovative makes, uses, sells, offers for sale, and/or imports at least Wicked.

49. On information and belief, Defendant Hi-Tech (either itself or through its wholly-owned subsidiary APS) and Defendant APS make, use, sell, offer for sale, and/or import at least Mesomorph, Mesomorph v. 2.0, and Creatine Nitrate.

50. On information and belief, Defendant Wheat (through Defendant Prime) and Defendant Prime make, use, sell, offer for sale, and/or import at least PWO-MAX.

51. With respect the alleged infringing acts of Defendants Innovative, APS, and Prime, Defendant Hi-Tech and Defendant Wheat direct and control those acts such that they may properly be attributed as acts of Defendant Hi-Tech and Defendant Wheat.

52. Each of the Accused Products is manufactured, distributed, advertised, offered for sale, and/or sold by Defendants to include certain ingredients that either in isolation, in combinations with other ingredients, and/or

when administered in a certain manner—as explained further below—infringe at least one claim of each of the Patents-in-Suit.

a) Jack'd Up's label (reproduced below), for example, lists the following ingredients: L-Arginine Alpha-Ketoglutarate, Creatine Nitrate, Creatine HCL, Disodium Creatine Phosphate, Creatine Monohydrate, Beta Alanine, and Agmatine Sulfate.

Supplement Facts		
Serving Size: 1 Scoop (5.55grams)		Servings Per Container: 45
Amount Per Servings	% Daily Value	
Proprietary Blend	4145mg	*
L-Arginine Alpha-Ketoglutarate 2:1, Creatine Monohydrate, Beta Alanine, Creatine HCl, Creatine Nitrate, Disodium Creatine Phosphate, Caffeine, 1,3-Dimethylamylamine HCl, Agmatine Sulphate (AgmaPure®), Schisandra Chinensis (Berry) Extract,		
* Daily value not established		
Other Ingredients: Citric Acid, Natural Flavors, Acesulfame-K, Sucralose, Silicon Dioxide, Beet Juice Powder.		
Directions For JACK'D UP: Stir 3 Ultra-Concentrated scoops with 4-8 ounces of cold water and consume 30-45 minutes before beginning activity. Due to extreme potency, it's highly recommended to assess tolerance by using a 1.5 scoop serving before consuming full dose, especially if you are sensitive to stimulants. Some individuals may find 1, 1.5 or 2 scoops per serving is the ideal dose for extremely intense workouts. DO NOT EXCEED 3 SCOOPS IN ANY 24 HOUR PERIOD		
JACK'D UP is a product specifically formulated to help fuel your body through your workout. Maximize the benefits of your workout with higher energy levels, performance, and stamina.		

b) Phosphen's label (reproduced below), for example, lists the following ingredients: Creatine HCL, Creatine Nitrate, Disodium Creatine Phosphate Tetrahydrate, Beta Alanine, and Creatine Phosphate.

Supplement Facts		
Serving Size: 1 heaping scoop (15 grams)		Servings Per Container: 33
	Amount Per Serving	% Daily Value
Proprietary Blend with Micro-Rx™ and Extend-Rx™ Technologies:		
	12.5 grams	*
Creatine HCl, Creatine Nitrate, Disodium Creatine Phosphate Tetrahydrate, Beta-alanine, CreaPhos™ Creatine Phosphate, Guanidinopropionic acid		

c) Creatine Nitrate's label (reproduced below), for example, lists the following ingredients: Creatine Nitrate and Dicreatine Malate.

Supplement Facts		
Serving Size: 4 Capsules		Servings Per Container: 50
	Amount Per Serving	% Daily Value
Proprietary Blend: 3000mg		
		*
Creatine Nitrate, Dicreatine Malate, Vitamin C		
* Daily Value not established.		
Other Ingredients: Gelatin, Titanium Dioxide, FD&C Red #40, FD&C Blue #1		

d) Mesomorph's label (reproduced below), for example, lists the following ingredients: Beta Alanine, L-Citrulline DL-Malate 2:1, Arginine Alpha-Ketoglutarate, Di-Creatine Malate, Creatine Nitrate, Creatinol-O-Phosphate, and Agmatine Sulfate.

Supplement Facts		
Serving Size: 15.5 grams (one rounded scoop)		
Servings Per Container: 25		
	Amount Per Serving	% Daily Value
SYNTHENOX-CARNOSINE/NITRIC OXIDE COMPLEX:		
	6,500mg	*
Beta Alanine, L-Citrulline DL-Malate 2:1, Arginine Alpha Ketoglutarate		
MESOSWELL-CELL VOLUMIZING ATP MATRIX:		
	4,500mg	*
Di-Creatine Malate, L-Taurine, Creatine Nitrate, Ascorbic Acid, Creatinol-O-Phosphate, Agmatine Sulfate.		
NEUROMORPH-NEURO ENERGIZED STIMULANT MATRIX:		
	1,870mg	*
Glucoronolactone, Methylxanthine Anhydrous, 3,7-Dihydro-3,7-Dimethyl-1H-Purine-2,6-Dione, Naringin, Geranaburn™ (1,3-Dimethylamylamine HCL)		
* Daily value not established.		

e) Mesomorph v. 2.0's label (reproduced below), for example, lists the following ingredients: Beta Alanine, L-Citrulline DL-Malate 2:1, Arginine Alpha-Ketoglutarate, Di-Creatine Malate, Creatine Nitrate, Creatinol-O-Phosphate, and Agmatine Sulfate.

Supplement Facts		
Serving Size: 15.5 grams (one rounded scoop)		
Servings Per Container: 25		
	Amount Per Serving	% Daily Value
SYNTHENOX-CARNOSINE/NITRIC OXIDE COMPLEX:		
	6,500mg	*
Beta Alanine, L-Citrulline DL-Malate 2:1, Arginine Alpha Ketoglutarate		
MESOSWELL-CELL VOLUMIZING ATP MATRIX:		
	4,500mg	*
Di-Creatine Malate, L-Taurine, Creatine Nitrate, Ascorbic Acid, Creatinol-O-Phosphate, Agmatine Sulfate.		
NEUROMORPH-NEURO ENERGIZED STIMULANT MATRIX:		
	1,860mg	*
Glucoronolactone, Methylxanthine Anhydrous, Acacia Rigidula Extract (leaves), Theobromine, Naringin, Isopropylnor-synephrine HCl		
* Daily value not established.		
Other Ingredients: Malic Acid, Natural & Artificial Flavors, Acesulfame-K, Sucralose, Silicon Dioxide, FD&C Red #40.		

f) Anavar's label (reproduced below), for example, lists the

following ingredients: S-(2 Boronoethyl) L-Cysteine HCL [BEC], Creatine Nitrate, Creatine HCL, L-Arginine HCL.

Supplement Facts	
Serving Size: 3 Tablets	Serving Per Container: 60
Amount Per Serving	% Daily Value
Proprietary Blend with Extend-Rx™ Technology: 1,900mg * S-(2 Boronoethyl) L-Cysteine HCl [BEC], 2-(S)-Amino-6-Boronoheptanoic Acid [ABH], Creatine Nitrate, Creatine HCl, L-Arginine HCl, Inosine Ethyl Ester, Adenosine Triphosphate, 25-R-Spirostan-5A-Diol-6-One-3-One, Dehydroepiandrosterone Acetate, Dehydroepiandrosterone Cypionate, Dehydroepiandrosterone Propionate, Dehydroepiandrosterone Enanthate, 5a Hydroxy Laxogenin Acetate, 6-Keto Diosgenin Acetate, 20-Hydroxyecdysone Decanoate, 1-Androstenedione, 4-Androstenedione, Epiandrostenolone, Naringenin, 6,7 Dihydroxybergamottin, Quebracho Blanco HCl	

g) Wicked's label (reproduced below), for example, lists the following ingredients: Beta Alanine, L-Citrulline Silicate, Creatine Nitrate, Agmatine Silicate, (N-(aminoiminomethyl)-beta-alanine), Creatinol-O-Phosphate.

SUPPLEMENT FACTS		
Serving Size: 2 scoops (11g)		
Serving Per Container: 30		
	Amount per Serving	%DV
Vitamin C	250mg	416% [†]
Niacin (as Inositol Nicotinate)	400mg	2,000% [†]
Vitamin B6	20mg	1,000% [†]
Inositol (as Inositol Nicotinate)	100mg	**
N.O. AMPLIFICATION MATRIX	5,000mg	**
Beta Alanine, L-Citrulline silicate, Red Wine Extract (standardized to 30% Glycerol)		
ANABOLIC CELL VOLUMIZER	4,010mg	**
Creatine Nitrate, 2-Aminoethanesulfonic acid Silicate, Agmatine Silicate, (N-(aminoiminomethyl)-beta-alanine), D-Ribose, Creatinol-O- Phosphate		
NEUROGENIC ENERGIZERS	390mg	**
Caffeine Anhydrous, Methylhexamine Hcl, Histidine, Rauwolfia serpentina extract		
** (DV) Daily Value Not Established		
† Percent DV Based on 2,000 Calorie Diet		
Other Ingredients: Maltodextrin, Natural and Artificial flavors, Citric Acid, Malic Acid, Sucralose, FD&C Red #40		

53. PWO-MAX's label (reproduced below), for example, lists the following ingredients: Beta Alanine, Sodium Nitrate, Agmatine Sulphate, N-Acetyl L-Tyrosine.

HOME / SUPPLEMENT / PWO-MAX BY PRIME NUTRITION

Supplement Facts		
Serving Size: 1 Rounded Scoop (12 Grams)		
Servings Per Container: 30		
	Amount Per Serving	% DV
Sodium (as Sodium Nitrate)	270mg	11%*
Beta Alanine	3.2g	**
Agmatine Sulfate	2g	**
Sodium Nitrate	1g	**
N-Acetyl L-Tyrosine	750mg	**
Choline Bitartrate	500mg	**
DMAE (Dimethylaminoethanol)	500mg	**
Caffeine Citrate	200mg	**
Caffeine Anhydrous	100mg	**
1,3-Dimethylamylamine	75mg	**

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.
 ** Daily Value (DV) Not Established

54. TruPump's label (reproduced below), for example, lists the following ingredients: L-Citrulline, L-Valine, L-Leucine, L-Isoleucine, Sodium Nitrate,

Agmatine Sulphate.

SUPPLEMENT FACTS		
Serving Size: 1 scoop (9.5g)		
Servings Per Container: 30		
	Amount Per Serving	%DV
L-Citrulline	3000mg	†
HydroMax™ Glycerol	1000mg	†
Agmatine Sulfate	500mg	†
Rhodiola Rosea	300mg	†
Alpha-GPC	300mg	†
L-Norvaline	250mg	†
Sodium Nitrate	250mg	†
L-Leucine	375mg	†
L-Isoleucine	187mg	†
L-Valine	187mg	†
† Daily Value (DV) Not Established		

55. The purposes for which these ingredients are included in the Accused Products are, without limitation, to increase vasodilative characteristics of end-users, to increase athletic performance of end-users, to increase distribution of amino acids to muscles, and/or to increase solubility of amino acids.

56. For example, the labels and/or advertisements for certain Accused Products make at least the following claims: “increase the levels of phosphocreatine in muscle”; “enhancing creatine uptake”; “make[s] the ingredient

they are bonded to more effective”; “much better water solubility than any creatine so far”; “vascularity”; “intensity of muscular contraction”; “more vasodilation and vascularity than ANY current N.O./pump product”; “ultimate pre-workout complex”; and “skin-splitting vascularity and insane pumps,” “monster vasodilation,” and “increase blood flow to working muscles.” Defendants’ website makes similar statements regarding the characteristics, uses, and purpose for the Accused Products.

57. A true and correct copy of the Accused Products’ labels and/or screenshots of exemplary advertisements are attached as Exhibit K.

58. As explained further below, Defendants and/or their employees, agents, representatives, and other individuals sponsored or endorsed by Defendants (1) have made, used, sold, offered for sale or imported the Accused Products, which include each and every limitation of at least one claim of the Patents-in-Suit, and (2) have administered or used the Accused Products in the specific manner claimed in at least one claim of the Patents-in-Suit, including administering those products orally to a human in a pharmaceutically effective amount.

59. Defendants have encouraged and/or specifically intended that their employees, agents, representatives, and other individuals sponsored by or who endorse Defendants and Defendants’ products in advertising and marketing

activities administer the Accused Products so as to practice the methods recited in one or more claims of the Patents-in-Suit. These employees, agents, representatives, and other individuals sponsored by or who endorse Defendants and/or its products in advertising and marketing activities are acting under Defendants' direction and control and/or form a joint enterprise with Defendants when practicing those methods such that their actions are attributable to Defendants.

60. Defendants and/or their employees, agents, representatives, and other individuals sponsored by Defendants or who endorse Defendants or its products have thus directly infringed one or more of the Patents-in-Suit under 35 U.S.C § 271(a).

Direct Infringement of the '531 Patent

61. By way of example and not limitation, the Manufacturer Defendants and the Retailer Defendants (including their agents, employees, and others working at their direction or control) by making, using, selling, and/or offering for sale Accused Products that include each and every limitation of at least Claim 1 of the '531 Patent, infringe that patent under at least 35 U.S.C § 271(a). See Exhibit L, Claim Charts.

Direct Infringement of the '187 Patent

62. By way of example and not limitation, the Manufacturer Defendants (including agents, employees, and others working at their direction or control) have themselves administered the Accused Products orally to a human in a pharmaceutically effective amount. By thereby using the Accused Products in the manner claimed in at least Claims 4, 5, 7, and /or 61 of the '187 Patent, the Manufacturer Defendants infringe that patent under at least 35 U.S.C § 271(a). See Exhibit L, Claim Charts.

Direct Infringement of the '288 Patent

63. By way of example and not limitation, the Manufacturer Defendants (including agents, employees, and others working at their direction or control) have themselves administered the Accused Products orally to a human in a

pharmaceutically effective amount. By thereby using the Accused Products in the manner claimed in at least Claim 1 of the '288 Patent, the Manufacturer Defendants infringe that patent under at least 35 U.S.C § 271(a). See Exhibit L, Claim Charts.

Direct Infringement of the '046 Patent

64. By way of example and not limitation, the Manufacturer Defendants and the Retailer Defendants (including their agents, employees, and others working at their direction or control) by making, using, selling, and/or offering for sale Accused Products that include each and every limitation of at least Claim 1 of the '046 Patent, infringe that patent under at least 35 U.S.C § 271(a). See Exhibit L, Claim Charts.

Direct Infringement of the '572 Patent

65. By way of example and not limitation, the Manufacturer Defendants (including their agents, employees, and others working at their direction or control) have themselves administered the Accused Products orally to a human in a pharmaceutically effective amount. By thereby using the Accused Products in the manner claimed in at least Claim 1 of the '572 Patent, the Manufacturer Defendants infringe that patent under at least 35 U.S.C § 271(a). See Exhibit L, Claim Charts.

INDUCEMENT OF INFRINGEMENT
OF THE PATENTS-IN-SUIT

66. ThermoLife realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

67. Many claims of the ‘572, ‘187, ‘288 and ‘531 Patents are directed to methods of administering the Accused Products, such as orally to a human, for certain purposes.

68. When end users of the Accused Products administer those products in accordance with the claimed methods found in ‘572, ‘187, ‘288 and ‘531 Patents, this comprises direct infringement of these method claims under 35 U.S.C § 271(a).

69. Because the Manufacturer Defendants have actively induced this direct infringement by the end users, they are also liable for inducement of infringement under 35 U.S.C § 271(b).

70. As explained further below and in the included claim charts, the Manufacturer Defendants have induced infringement of the ‘572, ‘187, ‘288 and ‘531 Patents by instructing end users of the Accused Products to use those products in the manner claimed in one of more claims of these patents. The Manufacturer Defendants did this having specific knowledge of these patents and either (1) knowing that the acts of the end users would constitute infringement of

one or more claims of these patents, or (2) despite knowing there was a high probability that the acts of the end users would comprise direct infringement of these patents, but turning a blind eye towards that high probability.

71. The Manufacturer Defendants and the Retailer Defendants knew of the Patents-in-Suit for at least the reason that ThermoLife and its licensees have continuously marked substantially all products embodying the Patents-in-Suit in accordance with 35 U.S.C. § 287 so as to provide constructive notice of these patents.

72. The Manufacturer Defendants knew of one or more of the ‘187, ‘531, ‘288 and ‘572 Patents since as early as at least March 17, 2015 for the additional reason that a letter was sent to Hi-Tech and APS informing them of their infringement and providing an analysis of that infringement. A true and accurate copy of that letter is attached hereto as Exhibit M.

73. The Manufacturer Defendants knew of one or more of the ‘187, ‘531, ‘288, and ‘572 Patents for the additional reason that they have received additional correspondence regarding one or more of the Patents-in-Suit and have been involved in prior litigation concerning those patents for several years predating this Complaint.

74. The Manufacturer Defendants knew of one or more of the ‘187, ‘531,

‘288 and ‘572 Patents for the additional reason that each are continuation patents from U.S. Patent No. 7,777,074 (“the ‘074 Patent”), and the ‘187, ‘531, ‘288 and ‘572 Patents all issued between May 2012 and June 2013. ThermoLife filed a complaint asserting the infringement of the ‘074 and the ‘572 Patents against Defendants Hi-Tech and Wheat in the U.S. District Court for the District of Arizona on July 6, 2012. A true and correct copy of the complaint filed in the Arizona District Court against Hi-Tech and Jared Wheat is attached as Exhibit N. In fact, the ‘531 and ‘288 Patents issued shortly thereafter during the pendency of the Arizona District Court lawsuit. Therefore, when the complaint was filed in Arizona District Court, the Defendants certainly knew of at least ‘531 and ‘288 Patents as well as the rest of the patents in that family.

75. The Manufacturer Defendants and the Retailer Defendants knew of the ‘187, ‘531, ‘288 and ‘572 Patents for the additional reason that – on information and belief – they at least had knowledge of the requests filed with the USPTO requesting reexamination of each of the Patents-in-Suit (discussed supra) and at least had substantial knowledge of the subsequent reexamination proceedings following those requests.

76. The Manufacturer Defendants knowingly and with the specific intent to infringe induced end-users of the Accused Products to directly infringe one or

more claims of each of the ‘572, ‘187, ‘288 and ‘531 Patents. On information and belief, the Manufacturer Defendants crafted the labels and/or advertising of the Accused Products to specifically instruct end users of those products to use the products in the manner claimed in each of the ‘572, ‘187, ‘288 and ‘531 Patents.

77. Those labels and advertising statements also encourage, urge, and induce the Accused Products’ end-users to administer the Accused Products in a manner, such as orally to a human, so as to practice the claimed methods of the ‘572, ‘187, ‘288 and ‘531 Patents. And the end users of the Accused Products indeed practice those methods in the manner directed by the Defendants in that advertising and/or labels.

78. The Manufacturer Defendants, knowing of the ‘572, ‘187, ‘288 and ‘531 Patents and urging the end-users to practice the methods claims in those patents – despite knowing that these acts would constitute infringement of those patented – have knowingly and with specific intent caused end-users to directly infringe the ‘572, ‘187, ‘288 and ‘531 Patents. In the alternative, the Manufacturer Defendants willfully blinded themselves to the infringing nature of this conduct.

79. The Manufacturer Defendants are thus liable for inducing infringement of at least the ‘187, ‘531, ‘288, and ‘572 Patents under 35 U.S.C. S 271(b).

CONTRIBUTORY INFRINGEMENT
OF THE PATENTS-IN-SUIT

80. ThermoLife realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

81. As explained above, end-users of the Accused Products directly infringe at least one claim of each of the ‘572, ‘187, ‘288 and ‘531 Patents when they administer the Accused Products using the methods claimed in those patents.

82. The Accused Products are special-purpose products that Defendants formulated to and specifically intended be used to practice the methods claimed in the ‘572, ‘187, ‘288 and ‘531 Patents. Indeed, they contain ingredients that are specifically formulated for practicing the methods claimed in the ‘572, ‘187, ‘288 and ‘531 Patents to accomplish the specific purposes set forth in those claims.

83. The Accused Products are not a staple article or commodity of commerce suitable for substantial non-infringing use. They indeed have no non-infringing use and - as illustrated by the advertisements and other materials regarding those products - are indicated solely for infringing uses.

84. Therefore, by making, using, selling, and/or importing the Accused Products – despite having specific knowledge of the Patents-in-Suit – the Retailer Defendants and the Manufacturer Defendants contributorily infringe the above Patents-in-Suit under 35 U.S.C. § 271(c).

COUNT ONE
(INFRINGEMENT OF THE '531 PATENT)

85. ThermoLife realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

86. As set forth more fully above, Defendants have in the past and continue to directly infringe—literally and under the doctrine of equivalents—one or more claims of the '531 Patent by making, using, selling, and/or offering for sale the Accused Products.

87. Further, Defendants have in the past and continue to indirectly infringe—either by inducing the infringement of others or by contributing to that infringement—one or more claims of the '531 Patent by making, using, selling, and/or offering for sale the Accused Products.

88. Thus, by making, using, selling, and/or offering for sale the Accused Products, Defendants infringe one or more claims of the '531 Patent under 35 U.S.C § 271(a), (b), and/or (c).

COUNT TWO
(INFRINGEMENT OF THE '187 PATENT)

89. ThermoLife realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

90. As set forth more fully above, Defendants have in the past and

continue to directly infringe—literally and under the doctrine of equivalents—one or more claims of the ‘187 Patent by making, using, selling, and/or offering for sale the Accused Products.

91. Further, Defendants have in the past and continue to indirectly infringe—either by inducing the infringement of others or by contributing to that infringement—one or more claims of the ‘187 Patent by making, using, selling, and/or offering for sale the Accused Products.

92. Thus, by making, using, selling, and/or offering for sale the Accused Products, Defendants infringe one or more claims of the ‘187 Patent under 35 U.S.C § 271(a), (b), and/or (c).

COUNT THREE
(INFRINGEMENT OF THE ‘046 PATENT)

93. ThermoLife realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

94. As set forth more fully above, Defendants have in the past and continue to directly infringe—literally and under the doctrine of equivalents—one or more claims of the ‘046 Patent by making, using, selling, and/or offering for sale the Accused Products.

95. Further, Defendants have in the past and continue to indirectly infringe—either by inducing the infringement of others or by contributing to that

infringement—one or more claims of the ‘046 Patent by making, using, selling, and/or offering for sale the Accused Products.

96. Thus, by making, using, selling, and/or offering for sale the Accused Products, Defendants infringe one or more claims of the ‘046 Patent under 35 U.S.C § 271(a), (b), and/or (c).

COUNT FOUR
(INFRINGEMENT OF THE ‘572 PATENT)

97. ThermoLife realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

98. As set forth more fully above, Defendants have in the past and continue to directly infringe—literally and under the doctrine of equivalents—one or more claims of the ‘572 Patent by making, using, selling, and/or offering for sale the Accused Products

99. Further, Defendants have in the past and continue to indirectly infringe—either by inducing the infringement of others or by contributing to that infringement—one or more claims of the ‘572 Patent by making, using, selling, and/or offering for sale the Accused Products.

100. Thus, by making, using, selling, and/or offering for sale the Accused Products, Defendants infringe one or more claims of the ‘572 Patent under 35 U.S.C § 271(a), (b), and/or (c).

COUNT FIVE
(INFRINGEMENT OF THE '288 PATENT)

101. ThermoLife realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

102. As set forth more fully above, Defendants have in the past and continue to directly infringe—literally and under the doctrine of equivalents—one or more claims of the '288 Patent by making, using, selling, and/or offering for sale the Accused Products.

103. Further, Defendants have in the past and continue to indirectly infringe—either by inducing the infringement of others or by contributing to that infringement—one or more claims of the '288 Patent by making, using, selling, and/or offering for sale the Accused Products.

104. Thus, by making, using, selling, and/or offering for sale the Accused Products, Defendants infringe one or more claims of the '288 Patent under 35 U.S.C § 271(a), (b), and/or (c).

PRAYER FOR RELIEF

WHEREFORE, ThermoLife prays that this Court:

a. Enter a judgment that Defendants have infringed the Patents-in-Suit under 35 U.S.C. §§ 271 *et seq.*;

b. Permanently enjoin Defendants, their respective officers, agents, servants, directors, and employees, and all individuals in active concert or participation with each, from directly or indirectly infringing, or inducing or contributing to the infringement by others of the Patents-in-Suit;

c. Require Defendants to provide to ThermoLife an accounting of all gains, profits, and advantages derived by Defendants' infringement, and award ThermoLife damages adequate to compensate ThermoLife for Defendants' infringing acts, in accordance with 35 U.S.C. § 284;

d. Increase ThermoLife's damages award up to three times, in view of Defendants' willful infringement, in accordance with 35 U.S.C. § 284;

e. Award ThermoLife interest and costs pursuant to 35 U.S.C. § 284;

f. Declare this case exceptional under 35 U.S.C. § 285, and award ThermoLife its reasonable attorneys' fees, expenses, and costs incurred in connection with this action; and

g. Grant ThermoLife such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands
a jury trial on all issues so triable.

Dated: September 25, 2017

Respectfully submitted,

/S/ Nathaniel L. Dilger

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*Attorneys for Plaintiff, ThermoLife
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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to L.R. 5.1C and 7.1D of the Northern District of Georgia, that the foregoing SECOND AMENDED COMPLAINT complies with the font and point selections approved by the Court in L.R. 5.1C. The foregoing pleading was prepared on a computer using 14-point Times New Roman font.

/S/ Nathaniel L. Dilger

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