

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

KARMAGREEN, LLC,

Plaintiff,

v.

MRSS INC.,

Defendant.

Case No. _____

Demand for Jury Trial

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Karmagreen, LLC (“Plaintiff” or “Karmagreen”) by and through its attorneys, for its Complaint against Defendant MRSS Inc. (“Defendant” or “MRSS”), alleges as follows:

NATURE OF ACTION

1. This is a civil action against MRSS for patent infringement under the Patent Act, 35 U.S.C. § 271 *et seq.* for the infringement of United States Patent No. 10,624,902 (“the ’902 patent” or the “Patent-in-Suit”) based on MRSS’s unauthorized manufacture, use, offer for sale, and/or sale in the United States, and/or importation into the United States, of the Za Za Red, Za Za White, and Noga 530¹

¹ On information and belief, Noga 530 is also known as Za Za 530.

dietary supplements (“Za Za Products” or “Accused Products”). A true and correct copy of the ’902 patent is attached as Exhibit 1 to this Complaint.

PARTIES

2. Karmagreen is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 912 SE 46th Lane, Cape Coral, FL 33904.

3. On information and belief, MRSS is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business at 3916 Shirley Drive, Atlanta, Georgia 30336.

JURISDICTION

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

5. Personal jurisdiction over Defendant is proper in this District because, on information and belief, Defendant is incorporated under the laws of Georgia, maintains its principal place of business in this District, and has committed acts of patent infringement in this District.

VENUE

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b) because, on information and belief, Defendant is incorporated under the laws of the State of Georgia and resides in this District.

FACTS

The Patent-in-Suit

7. The '902 Patent, entitled "Dietary Supplement," was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on April 21, 2020.

8. The '902 Patent is generally directed towards a dietary supplement consisting of tianeptine-based combinations.

9. All rights, title, choses in action, and interest in the '902 Patent are assigned to Karmagreen, which is the sole owner of the '902 Patent. The listed inventor of the '902 Patent assigned his rights, title, and interest in the '902 Patent to Karmagreen.

Plaintiff's Business

10. Plaintiff sells dietary products.

11. Amongst its products is a product line called Tianaa.

12. The Tianaa products are manufactured in a manner covered by the claims of the '902 patent.

13. In addition to the '902 Patent, Karmagreen owns various other intellectual property rights concerning its Tianaa product line, including pending patent applications and multiple trademark registrations, such as TIANAA, TIANAA EX, TIANAA GREEN, TIANAA RED, and TIANAA WHITE.

Defendant's Infringing Acts Related To The Accused Products

14. On information and belief, Defendant has known of, should have known of, or has been willfully blind to, the '902 patent. To the extent applicable, Plaintiff has complied with the patent marking and notice provisions of 35 U.S.C. § 287 by providing constructive and actual notice to Defendant of its infringement.

15. Upon information and belief, Defendant and/or parties under its supervision or control have been tracking Plaintiff's business, products, and intellectual property rights and have been modeling products after those of Plaintiff.

16. Upon information and belief, Defendant and/or parties under its supervision or control have manufactured and/or sold a number of products intended to replicate Plaintiff's TIANAA brand products including, in addition to the accused "Za Za Products" products and other similar Accused Products. Upon information

and belief and as described below, the Za Za Products and Accused Products infringe the claims of the '902 patent.

17. Upon information and belief, Defendant instructs others to track and/or replicate Plaintiff's products and/or Defendant instructs others to make the Accused Products in an infringing manner. It is further believed that Defendant advertises the Accused Products, including the ingredients contained therein, and displays them at trade shows, thereby promoting uses that infringe and encouraging others to infringe the '902 Patent.

18. Upon information and belief, Defendant makes, and then sells and offers for sale the Accused Products through various channels, including but not limited to wholesalers, physical retail stores and online marketplaces such as eBay. Upon information and belief, Defendant also distributes the Accused Products through third parties, including Mossad & J Distribution, Inc. a/k/a M&J Distribution.

19. Upon information and belief, Defendant thus engages in the unauthorized manufacture, use, offer for sale, and/or sale in the United States, and/or importation into the United States, of the Accused Products. Based on these acts, Defendant has directly infringed, and/or will directly infringe, the claims of the '902 Patent that cover the method of manufacturing the Accused Products.

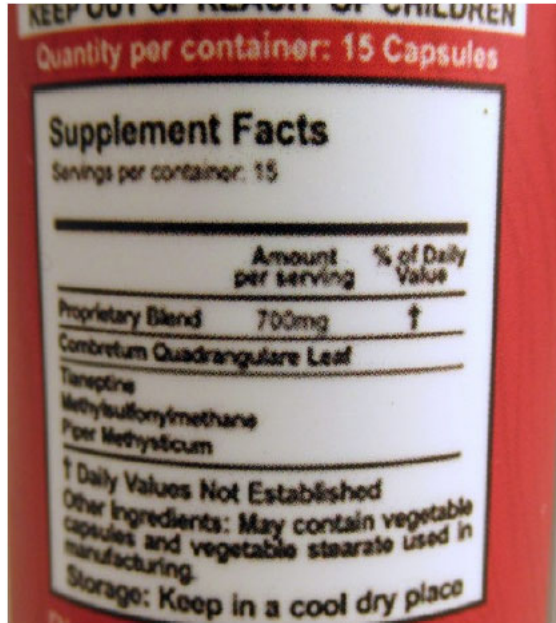
20. Upon information and belief, Defendant also has and continues to indirectly infringe the claims of the '902 Patent by, among other things, actively inducing others to make, use, offer for sale, and sell Accused Products and/or contributing to the infringement of others in violation of 35 U.S.C. §§ 271 (b) and (c).

21. Upon information and belief, Defendant has had knowledge of the '902 Patent since no later than September 25, 2020, and, despite such knowledge, Defendant has directly infringed and/or specifically intended that other parties and/or parties under the direction or control of Defendant make the Accused Products in such a way that infringes the '902 patent by, at minimum, providing instructions on how to make the Accused Products in an infringing manner. For example, Defendant's label lists the ingredients claimed in the '902 Patent and instructs others that they are formed into a dietary supplement. On information and belief, Defendant also provides other instructions to third parties to make the Accused Products for Defendant. Based on these instructions, others have directly infringed and/or will directly infringe the claims of the '902 Patent that cover the Accused Products and/or methods of making the Accused Products. Further, Defendant has known or should have known, or has been willfully blind to the fact, that its actions would induce others to directly infringe the '902 Patent. On

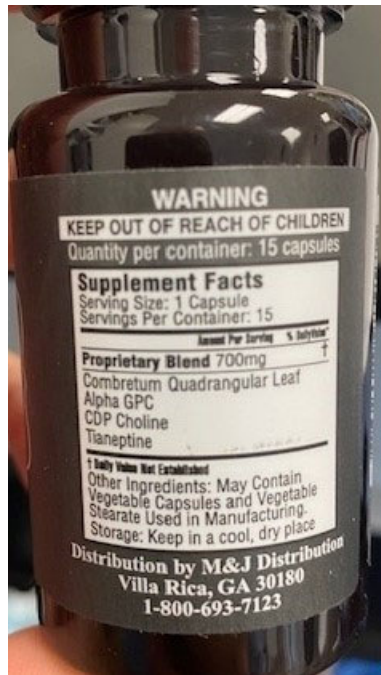
information and belief, Defendant has been aware that the methods of making the Accused Products infringe the '902 Patent, have no substantial non-infringing uses, and are a material part of the claimed inventions. Accordingly, Defendant induces and/or contributes to such infringement.

22. Upon information and belief, and despite its knowledge of the '902 Patent, Defendant also has supplied and continues to supply others with the ingredients used to make the Accused Products. On information and belief, at least some of the ingredients are especially made or adapted for this use, and there is no substantial non-infringing use for the ingredients. On information and belief, Defendant has been aware that they are not staple articles or commodities of commerce suitable for substantial noninfringing use and are especially made and/or adapted for use in infringing the '902 Patent. Defendant has contributed, and continues to contribute, to the infringement of the claims of the '902 Patent by selling or offering to sell the Accused Products, knowing them to be especially made or especially adapted for practicing the invention of the '902 Patent, not a staple article or commodity of commerce suitable for substantial non-infringing use, and a material part of the claimed invention.

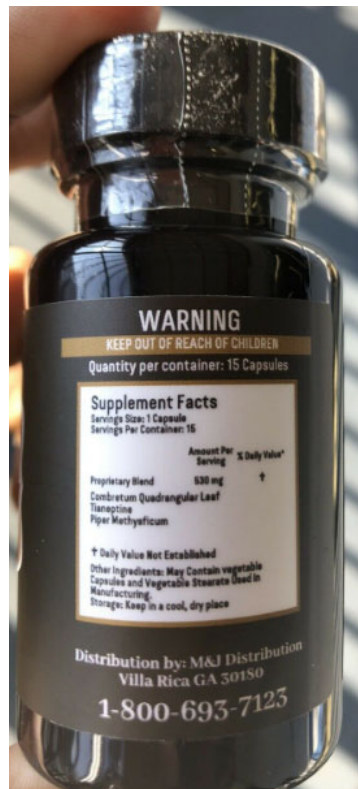
23. A true and correct image of the label of the Za Za Red product is reproduced below:



24. A true and correct image of the label of the Za Za White product is reproduced below:



25. A true and correct image of the label of the Noga 530 (also known as the Za Za 530) product is reproduced below:



Infringement of the '902 Patent

26. On information and belief, based on Plaintiff's current investigation, Defendant, either directly or through an agent under its control, manufactures the Accused Products within the United States which are made by a process recited in claims 1 and 4 of the '902 Patent and therefore infringes, and continues to infringe those claims as follows below.

27. On information and belief, based on Plaintiff's current investigation, Defendant, either directly or through an agent under its control, further manufactures the Za Za Red and Noga 530 products within the United States which are made by a process recited in claim 7 of the '902 Patent and therefore infringes, and continues to infringe this claim as follows below.

28. On information and belief, based on Plaintiff's current investigation, Defendant, either directly or through an agent under its control, further manufactures the Za Za White product within the United States which are made by a process recited in claim 10 of the '902 Patent and therefore infringes, and continues to infringe this claim as follows. On information and belief, based on Plaintiff's current investigation, Defendant induces others, namely the manufacturer of the Accused Products, to perform, either literally or under the doctrine of equivalents, each and every step of at least claims 1 and 4 of the '902 Patent and has contributed, and continues to contribute, to the infringement of those claims as follows below.

29. On information and belief, based on Plaintiff's current investigation, Defendant further induces others, namely the manufacturer of the Za Za Red and/or Noga 530 products, to perform, either literally or under the doctrine of equivalents, each and every step of at least claim 7 of the '902 Patent and/or has contributed, and continues to contribute, to the infringement of this claim as follows below.

30. On information and belief, based on Plaintiff's current investigation, Defendant further induces others, namely the manufacturer of the Za Za White product, to perform, either literally or under the doctrine of equivalents, each and every step of at least claim 10 of the '902 Patent and/or has contributed, and continues to contribute, to the infringement of this claim as follows below.

| Table 1 – '902 Patent | | |
|------------------------------|--|--|
| <i>Claim</i> | <i>Claim Element</i> | <i>Claimed Element Present in Accused Products</i> |
| 1 | A method of forming a dietary supplement, comprising steps of: | To the extent the preamble of claim 1 is found limiting, the Accused Products are dietary supplements. |
| | creating a composition of matter comprising a first ingredient of tianeptine sodium, | The labels of the Accused Products indicate that they contain tianeptine. On information and belief, the Accused Products contain tianeptine sodium. |
| | a second ingredient of sakae naa, | The labels of the Accused Products indicate that they contain combretum quadrangulare leaf, which is sakae naa. |
| | a third ingredient of stearate, | On information and belief, the Accused Products contain stearate. |
| | a fourth ingredient of silicate; and | On information and belief, the Accused Products contain silicate. |

| Table 1 – '902 Patent | | |
|------------------------------|--|---|
| <i>Claim</i> | <i>Claim Element</i> | <i>Claimed Element Present in Accused Products</i> |
| | filling a capsule with the composition of matter to form the dietary supplement. | The labels of the Accused Products confirm that the composition is contained within capsules. |
| 4 | The method of claim 1, wherein the composition of matter further comprises a fifth ingredient of tianeptine free acid. | The labels of the Accused Products indicate that they contain tianeptine. On information and belief, the Accused Products contain tianeptine free acid. |
| 7 | The method of claim 4, wherein the composition of matter further comprises a sixth ingredient of kava. | The labels of the Za Za Red and Noga 530 products indicates that they contain piper methylsticum leaf, which is kava. |
| 10 | A method of forming a dietary supplement, comprising steps of: | To the extent the preamble of claim 10 is found limiting, the Za Za White product is a dietary supplement. |
| | creating a composition of matter comprising a first ingredient of tianeptine sodium, | The label of the Za Za White product indicates that it contains tianeptine. On information and belief, the Za Za White product contains tianeptine sodium. |
| | a second ingredient of tianeptine free acid, | The label of the Za Za White product indicates that it contains tianeptine. On information and belief, the Za Za White product contains tianeptine free acid. |
| | a third ingredient of cytidine diphosphate-choline (CDP Choline), | The label of the Za Za White product indicates that it contains cytidine diphosphate-choline (CDP Choline). |

| Table 1 – '902 Patent | | |
|------------------------------|--|--|
| <i>Claim</i> | <i>Claim Element</i> | <i>Claimed Element Present in Accused Products</i> |
| | a fourth ingredient of alpha glycerylphosphorylcholine (Alpha GPC), | The label of the Za Za White product indicates that it contains Alpha GPC. |
| | a fifth ingredient of stearate, | On information and belief, the Za Za White product contains stearate. |
| | and a sixth ingredient of silicate; | On information and belief, the Za Za White product contains a silicate. |
| | and filling a capsule with the composition of matter to form the dietary supplement. | The label of the Za Za White product confirms that the composition is contained within capsules. |

WILLFUL INFRINGEMENT

31. On information and belief, Defendant has known of, should have known of, or has been willfully blind to, the '902 patent.

32. On information and belief, Defendant has known of, should have known of, or has been willfully blind to, the fact that the behavior complained of herein infringed the '902 Patent.

33. Defendant's foregoing actions constitute willful infringement of the '902 Patent.

COUNT I

(Direct Infringement of the '902 Patent Pursuant to 35 U.S.C. § 271(a))

34. Karmagreen repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

35. Defendant has directly infringed, and continues to infringe, in violation of 35 U.S.C. § 271(a), at least Claims 1, 4, 7, and 10 of the '902 Patent, either literally or under the doctrine of equivalents, during the period prior to the expiration of the Patent by making, using, selling, offering for sale in the United States, and/or importing into the United States, the Accused Products without the permission, consent, authorization, or license of Karmagreen in this judicial district and elsewhere throughout the United States.

36. Defendant's acts of infringement, including willful infringement, of the '902 Patent have caused, and will continue to cause, harm and injury to Karmagreen for which Karmagreen is entitled to compensation (no less than a reasonable royalty) pursuant to 35 U.S.C. § 284.

37. Defendant's acts of infringement of the '902 Patent have caused, and will continue to cause, Karmagreen immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. Karmagreen has no adequate remedy at law.

38. This case is exceptional and, therefore, Karmagreen is entitled to an award of attorney fees pursuant to 35 U.S.C. § 285.

COUNT II
(Indirect Infringement of the '902 Patent Pursuant to 35 U.S.C. § 271(b))

39. Karmagreen repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of paragraphs 1-33, as set forth above.

40. Defendant has indirectly infringed, and is indirectly infringing, the '902 Patent by instructing, directing, and/or requiring others, including the manufacturer of the Accused Products, to perform, either literally or under the doctrine of equivalents, each and every step of the method claims of the '902 Patent, in violation of 35 U.S.C. § 271(b). It is believed that, since being on notice of the '902 Patent, Defendant has knowingly induced others to make, use, offer for sale, and/or sell the Accused Products and possessed specific intent to encourage others' infringement. In accordance with Fed. R. Civ. P. 11(b)(3), Karmagreen will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

41. Defendant's infringement has been, and continues to be, knowing, intentional, and willful. Defendant knew, should have known, or was willfully blind to the fact, that its actions were inducing others, including the manufacturer of the Accused Products, to infringe by practicing one or more method claims of the '902

Patent, including at least Claims 1, 4, 7, and 10 without the permission, consent, authorization, or license of Karmagreen in this judicial District and elsewhere throughout the United States.

42. Defendant's acts of infringement, including willful infringement, of the '902 Patent have caused, and will continue to cause, harm and injury to Karmagreen for which Karmagreen is entitled to compensation (no less than a reasonable royalty) pursuant to 35 U.S.C. § 284.

43. Defendant's acts of infringement of the '902 Patent have caused, and will continue to cause, Karmagreen immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. Karmagreen has no adequate remedy at law.

44. This case is exceptional and, therefore, Karmagreen is entitled to an award of attorney fees pursuant to 35 U.S.C. § 285.

COUNT III
(Indirect Infringement of the '902 Patent Pursuant to 35 U.S.C. § 271(c))

45. Karmagreen repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of paragraphs 1-33, as set forth above.

46. Defendant has contributed, and continues to contribute, to the infringement of at least Claims 1, 4, 7, and 10 of the '902 Patent by selling or offering to sell the components or ingredients of the Accused Products, without the

permission, consent, authorization, or license of Plaintiff in this judicial District and elsewhere throughout the United States, knowing them to be especially made or especially adapted for practicing the invention of the '902 Patent, not a staple article or commodity of commerce suitable for substantial non-infringing use, and a material part of the claimed invention, in violation of 35 U.S.C. § 271(c).

47. The label of the Accused Products requires that the Accused Products contain both tianeptine (on information and belief, the Accused Products contain tianeptine sodium, the sodium variant of tianeptine) and combretum quadrangulare leaf (also known as sakae naa), two key ingredients in the Accused Products that are not staple articles or commodities of commerce suitable for substantial noninfringing use and are especially made and/or adapted for use in infringing the '902 Patent. It is believed that, since being on notice of the '902 Patent and despite knowing that tianeptine sodium and combretum quadrangulare leaf are not staple articles or commodities of commerce suitable for substantial noninfringing use, Defendant has sold these ingredients for use in practicing the methods of the '902 Patent. In accordance with Fed. R. Civ. P. 11(b)(3), Karmagreen will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

48. Defendant's infringement has been, and continues to be, knowing, intentional, and willful. Defendant knew, should have known, or was willfully blind to the fact, that its actions contributed to the infringement by others, including the manufacturer of the Accused Products, of one or more claims of the '902 Patent, including at least Claims 1, 4, 7, and 10, without the permission, consent, authorization, or license of Karmagreen in this judicial District and elsewhere throughout the United States.

49. Defendant's acts of infringement, including willful infringement, of the '902 Patent have caused, and will continue to cause, harm and injury to Karmagreen for which Karmagreen is entitled to compensation (no less than a reasonable royalty) pursuant to 35 U.S.C. § 284.

50. Defendant's acts of infringement of the '902 Patent have caused, and will continue to cause, Karmagreen immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. Karmagreen has no adequate remedy at law.

51. This case is exceptional and, therefore, Karmagreen is entitled to an award of attorney fees pursuant to 35 U.S.C. § 285.

JURY DEMAND

52. Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

A. Adjudging that Defendant has directly infringed, actively induced infringement, and contributed to the infringement of the '902 Patent in violation of 35 U.S.C. §§ 271 (a), (b), and (c);

B. Granting an injunction permanently enjoining Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries, and assigns, and all of those in active concert and participation with any of the foregoing persons or entities, from infringing, contributing to the infringement of, or inducing infringement of the Patent-in-Suit;

C. Ordering Defendant to account and pay damages adequate to compensate Plaintiff for Defendant's infringement of the Patent-in-Suit, including pre-judgment and post-judgment interest and costs pursuant to 35 U.S.C. § 284;

D. Ordering an accounting for any infringing sales not presented at trial and an award by the court of additional damages for any such infringing sales.

E. Ordering that the damages award be increased up to three times the actual amount assessed pursuant to 35 U.S.C. § 284;

F. Declaring this case exceptional and awarding Plaintiff its reasonable attorney fees pursuant to 35 U.S.C. § 285; and

G. Awarding such other and further relief as this Court deems just and proper.

Dated: February 16, 2021

Respectfully submitted,

BLOOM PARHAM, LLP

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Karmagreen, LLC

Local Rule 7.1(D) Certification of Compliance

I hereby certify that the foregoing pleading has been prepared with Times New Roman font, 14 point, one of the font and point selections approved by the Court in L.R. 5.1B, N.D. Ga.

This 16th day of February, 2021.

/s/ Troy R. Covington
Troy R. Covington
Georgia Bar No. 190949