

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**IOVATE HEALTH SCIENCES, INC.,
IOVATE T & P, INC., and MULTI
FORMULATIONS, LTD.,**

Plaintiffs,

v.

**iFORCE NUTRITION, TRIBRAVUS
ENTERPRISES, LLC, BRIAN FITCH,
DAVE NELSON, BRUCE JEDZINIAK,
and JOHN DOES 1-5,**

Defendants.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Iovate Health Sciences, Inc. (“Iovate Health Sciences”), Iovate T & P, Inc. (“Iovate T & P”), and Multi Formulations, Ltd. (“Multi Formulations”) (collectively, “Plaintiffs”), on personal knowledge as to their own activities and on information and belief as to all other matters, for their complaint against Defendants iFORCE Nutrition (“iFORCE”), Tribavus Enterprises, LLC (“Tribavus”), Brian Fitch (“Fitch”), Dave Nelson (“Nelson”), Bruce Jedziniak (“Jedziniak”), and John Does 1-5 (all defendant parties, “Defendants”), allege as follows:

PARTIES

1. Plaintiff Iovate Health Sciences is a corporation organized and existing under the laws of Canada and has a principal place of business at 381 North Service Road West in Oakville, Ontario, Canada.

2. Plaintiff Iovate T &P is a corporation organized and existing under the laws of Canada and has a principal place of business at 381 North Service Road West in Oakville, Ontario, Canada.

3. Plaintiff Multi Formulations is a corporation organized and existing under the laws of Canada and has a principal place of business at 381 North Service Road West in Oakville, Ontario, Canada.

4. Upon information and belief, Defendant iFORCE is a company organized and existing under the laws of the State of California and has a principal place of business at 101 State Place, Suite A, Escondido, CA 92029.

5. Upon information and belief, Defendant Tribavus is a limited liability company organized and existing under the laws of the State of Arizona and has a principal place of business at 808 N. 86th Way, Scottsdale, AZ 85257.

6. Upon information and belief, Defendant Fitch is a founder of iFORCE and/or Tribavus and/or is an officer, shareholder, and/or director of iFORCE and/or Tribavus, and personally directs and controls the activities herein complained.

7. Upon information and belief, Defendant Fitch is an individual residing at or having a principal place of business at 808 N. 86th Way, Scottsdale, AZ 85257.

8. Upon information and belief, Defendant Nelson is a founder of iFORCE and/or Tribavus and/or is an officer, shareholder, and/or director of iFORCE and/or Tribavus, and personally directs and controls the activities herein complained.

9. Upon information and belief, Defendant Nelson is an individual residing at or having a principal place of business at 808 N. 86th Way, Scottsdale, AZ 85257.

10. Upon information and belief, Defendant Jedziniak is a founder of iFORCE and/or Tribravus and/or is an officer, shareholder, and/or director of iFORCE and/or Tribravus, and personally directs and controls the activities herein complained.

11. Upon information and belief, Defendant Jedziniak is an individual residing at or having a principal place of business at 808 N. 86th Way, Scottsdale, AZ 85257.

12. In addition, or in the alternative, fictitious individuals or entities John Does 1-5 are entities conducting the activities herein complained, or are founders of iFORCE and/or Tribravus and/or are officers, shareholders, directors, agents, partners, or representatives of those entities, and personally direct and control the activities herein complained. Plaintiffs are using fictitious names for these John Doe defendants because Plaintiffs have been unable to ascertain their true identity. Plaintiffs will amend the Complaint to add these John Does' true names once their identity is discovered.

13. For example, and upon information and belief, certain individuals using numerous aliases, including, without limitation, "iFORCE Dave", "peteypab", and "VaughnTrue", who promote the Defendants' infringing products by posting messages on industry internet message boards, are officers, shareholders, directors, agents, partners, or representatives of iFORCE and/or Tribravus. When Plaintiffs learn these John Does' true identity, Plaintiffs will amend the Complaint accordingly.

14. Upon information and belief, Defendants Fitch, Nelson, Jedziniak, and John Does 1-5 trade as, or do business as, iFORCE and/or Tribravus and/or are founders of iFORCE and/or Tribravus, and/or are officers, shareholders, directors, agents, partners, or representatives of those entities, and personally direct and control the activities herein complained.

JURISDICTION AND VENUE

15. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

16. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a) for claims arising from the patent laws of the United States.

17. The Court has personal jurisdiction over the Defendants because: (i) the Defendants knowingly transact business in this state and district; (ii) they advertise and market their infringing goods within this jurisdiction; and (iii) the Defendants' conduct outside this jurisdiction is causing injury in this forum.

18. Venue is proper in this Court, pursuant to 28 U.S.C. §§ 1331, 1391(b), 1391(d) and 1400, in that a substantial part of the events giving rise to the claims occurred in this district and the Defendants transact business in this district.

GENERAL ALLEGATIONS

19. On October 26, 1999, United States Patent No. 5,973,199 ("the '199 Patent"), titled "Hydrosoluble Organic Salts of Creatine," was duly issued by the United States Patent and Trademark Office. A true and correct copy of the '199 Patent is attached as Exhibit A of this Complaint.

20. Iovate Health Sciences is the owner of all rights, title, and interest in and to the '199 Patent.

21. On February 17, 1998, United States Patent No. 5,719,119 ("the '119 Patent"), titled "Parenteral Nutrition Therapy with Amino Acids," was duly issued by the United States

Patent and Trademark Office. A true and correct copy of the '119 Patent is attached as Exhibit B of this Complaint.

22. Multi Formulations is the owner of all rights, title, and interest in and to the '119 Patent.

23. On October 19, 1999, United States Patent No. 5,968,900 (“the '900 Patent”), titled “Increasing Creatine and Glycogen Concentration in Muscle,” was duly issued by the United States Patent and Trademark Office. A true and correct copy of the '900 Patent is attached as Exhibit C of this Complaint.

24. Iovate T & P is the owner of all rights, title, and interest in and to the '900 Patent.

25. On November 5, 2002, United States Patent No. 6,475,530 (“the '530 Patent”), titled “Methods and Compositions for Producing Weight Loss,” was duly issued by the United States Patent and Trademark Office. A true and correct copy of the '530 Patent is attached as Exhibit D of this Complaint.

26. Iovate T & P is the owner of all rights, title, and interest in and to the '530 Patent.

27. Upon information and belief, Defendants have made, used, offered for sale, sold, and/or imported certain nutritional supplements and/or weight loss products, including, without limitation, the products distributed by Defendants under the trade names “iPOWER”, “iPRIMER”, “Thermoxyn”, “Adipoxil”, and “iCOOLANT”, throughout the United States and in this judicial district.

FIRST CAUSE OF ACTION
(Infringement of the '199 Patent)

28. Plaintiffs reallege and incorporate the foregoing allegations of this Complaint as if set forth at length and in full herein.

29. Upon information and belief, certain products made, used, sold, and offered for sale by Defendants, including, without limitation, the products distributed by the Defendants under the trade name “iPOWER”, incorporate or embody the inventions claimed in the '199 Patent.

30. By their actions, Defendants have infringed, and are infringing, one or more of the claims of the '199 Patent.

31. Upon information and belief, Defendants have actively induced others to infringe the claims of the '199 Patent.

32. Defendants’ infringing conduct has been and continues to be unlawful and willful.

33. As a result of Defendants’ acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

SECOND CAUSE OF ACTION
(Infringement of the '119 Patent)

34. Plaintiffs reallege and incorporate the foregoing allegations of this Complaint as if set forth at length and in full herein.

35. Upon information and belief, certain products made, used, sold, and offered for sale by Defendants, including, without limitation, the products distributed by the Defendants under the trade name “iPOWER”, incorporate or embody the inventions claimed in the '119 Patent.

36. By their actions, Defendants have infringed, and are infringing, one or more of the claims of the '119 Patent.

37. Upon information and belief, Defendants have actively induced others to infringe the claims of the '119 Patent.

38. Defendants’ infringing conduct has been and continues to be unlawful and willful.

39. As a result of Defendants' acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

THIRD CAUSE OF ACTION
(Infringement of the '900 Patent)

40. Plaintiffs reallege and incorporate the foregoing allegations of this Complaint as if set forth at length and in full herein.

41. Upon information and belief, certain products made, used, sold, and offered for sale by Defendants, including, without limitation, the products distributed by the Defendants under the trade names "iPOWER", "iPRIMER", and "iCOOLANT", incorporate or embody the inventions claimed in the '900 Patent.

42. By their actions, Defendants have infringed, and are infringing, one or more of the claims of the '900 Patent.

43. Upon information and belief, Defendants have actively induced others to infringe the claims of the '900 Patent.

44. Defendants' infringing conduct has been and continues to be unlawful and willful.

45. As a result of Defendants' acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

FOURTH CAUSE OF ACTION
(Infringement of the '530 Patent)

46. Plaintiffs reallege and incorporate the foregoing allegations of this Complaint as if set forth at length and in full herein.

47. Upon information and belief, certain products made, used, sold, and offered for sale by Defendants, including, without limitation, the products distributed by the Defendants

under the trade names “Thermoxyn” and “Adipoxil”, incorporate or embody the inventions claimed in the '530 Patent.

48. By their actions, Defendants have infringed, and are infringing, one or more of the claims of the '530 Patent.

49. Upon information and belief, Defendants have actively induced others to infringe the claims of the '530 Patent.

50. Defendants’ infringing conduct has been and continues to be unlawful and willful.

51. As a result of Defendants’ acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for entry of judgment against Defendants as follows:

- A. that Defendants infringe the '199, '119, '900, and '530 Patents;
- B. that Defendants have actively induced others to infringe the '199, '119, '900, and '530 Patents;
- C. that Defendants’ infringement of the '199, '119, '900, and '530 Patents is willful;
- D. that Defendants, their officers, directors, affiliates, agents, servants, employees, and attorneys, and all those persons in privity or in concert with any of them, be preliminarily and permanently enjoined from infringement of the '199, '119, '900, and '530 Patents;
- E. that Plaintiffs be awarded their damages for infringement of the '199, '119, '900, and '530 Patents, and that the damages be trebled;
- F. that this case be declared to be exceptional in favor of Plaintiffs under 35 U.S.C. § 285, and that Plaintiffs be awarded their costs, attorneys’ fees, and other expenses incurred in connection with this action; and

G. that Plaintiffs be awarded such other and further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury.

Dated: December 8, 2008

Respectfully submitted,

PHILLIPS LYTLE LLP

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