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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

International Flora Technologies, Ltd., an
Arizona corporation,

Plaintiff,

v.

Desert Whale Jojoba Company, Inc. an
Arizona corporation, and Desert Whale
Jojoba Company No. II, Inc., an Arizona
Corporation

Defendant.

No.

COMPLAINT

(Jury Trial Requested)

Plaintiff International Flora Technologies, Ltd. (“Floritech”), for its complaint against defendants Desert Whale Jojoba Company, Inc. (“Desert Whale I”) and Desert Whale Jojoba Company No. II, Inc. (“Desert Whale II”) (together “Desert Whale”), alleges as follows:

PARTIES

1. Floritech is an Arizona corporation with its principle place of business located at 291 E. El Prado Court, Chandler, Arizona 85251.

2. Desert Whale I and Desert Whale II are both Arizona corporations with a principle place of business of 2101 E. Beverly Drive, Tucson, Arizona 85719.

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JURISDICTION AND VENUE

3. This is a claim for patent infringement under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and specifically 35 U.S.C. § 6271.

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1338(a).

5. As Arizona corporations, Desert Whale I and Desert Whale II are subject to personal jurisdiction in Arizona.

6. Venue is proper in this Court.

FACTUAL BACKGROUND

7. Since 1975, Floratech has been a leader in providing cosmetic formulation specifications, ingredients, and product development.

8. Floratech offers an extensive and innovative selection of superior botanical emollients and specialty particles to the cosmetics and personal care industry.

9. Floratech’s botanical ingredients include: gentle exfoliatives, oil-free jojoba esters, Macadamia oil and esters, stabilized high-oleic acid sunflower oil and derivatives, water-soluble emollients and soft spheres delivering customizable additives to match your needs.

10. Floratech was the first ISO 9001:2000 certified jojoba oil manufacturer and has adopted the Cosmetic, Toiletries and Fragrance Association’s Consumer Commitment Code (CCC) to ensure its customers receive the safest possible ingredients.

11. Floratech’s customers expect and receive the highest quality ingredients for use in their cosmetic formulations.

12. Floratech’s innovations have been widely recognized in the cosmetics industry.

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1 13. As a leader in the cosmetics industry, Floratech has developed an
2 intellectual property portfolio to protect its innovations in the developments of jojoba-
3 derived materials, as well as other natural products.

4 14. On October 14, 2008, U.S. Patent No. 7,435,424 B1 entitled High
5 Unsaponifiables and Methods of Using Same (the “ ‘424 Patent”) was duly and legally
6 issued in the name of inventors Lee Roy Copeland, Robert Kleiman, Sambasivarao
7 Koritala, James Brown, and Melanie Cummings. At issuance, the ‘424 Patent was
8 assigned to Floratech.

9 15. Desert Whale has been making, using, selling or offering for sale, without a
10 license or authority from Floratech, in this district and elsewhere in the United States,
11 products that embody the inventions claimed in the ‘424 Patent under 35 U.S.C. § 271(a).

12 16. The products Desert Whale sells under the names Jojoba Hydrate and Jojoba
13 Illuminate infringe the ‘424 Patent. Upon information and belief, other Desert Whale
14 products may also infringe the ‘424 Patent.

15 17. Desert Whale has and will continue to induce others (including Desert
16 Whale’s customers) to infringe the ‘424 Patent.

17 18. Floratech has provided notice to Desert Whale of Desert Whale’s
18 infringement. Nonetheless, Desert Whale continues to infringe and induce infringement
19 of the ‘424 Patent.

20 19. Floratech has been damaged by Desert Whale’s acts of infringement of the
21 ‘424 Patent and will continue to be damaged by Desert Whale’s infringement and
22 inducement of infringement, unless the infringement by Desert Whale is enjoined by this
23 Court.

24 20. Desert Whale has had actual knowledge of the specifications and issued
25 claims of the ‘424 Patent and its continuing infringement of the ‘424 Patent is willful and
26 deliberate.

1 21. Floratech provided notice of its patent rights as set forth in the '424 Patent
2 in full compliance with 35 U.S.C. § 287(a).

3 **CAUSE OF ACTION**

4 (INFRINGEMENT OF U.S. PATENT NO. 7,435,424 B1)

5 22. Floratech repeats and incorporates by reference its allegations set forth
6 above.

7 23. Desert Whale's acts in making, using, selling or offering for sale, without a
8 license or authority from Floratech, in this district and elsewhere in the United States,
9 products that embody the inventions claimed in the '424 Patent constitute infringement of
10 '424 Patent.

11 24. As a direct and proximate cause of Desert Whale's infringement Floratech
12 has suffered damages in excess of the jurisdictional minimums of this Court.

13 25. Desert Whale's infringement of the '424 Patent is willful. This is an
14 exceptional case under 35 U.S.C. §§ 284, 285 and the Court should award Floratech its
15 attorneys' fees incurred bringing this action, treble damages and up to three times Desert
16 Whale's profits derived from infringement.

17 **JURY DEMAND**

18 26. Floratech requests trial by jury.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Floratech prays that this Court enter judgment against Desert
21 Whale as follows:

22 A. That Desert Whale, its officers, agents, servants, employees and attorneys and
23 all persons in active concert or participation with Desert Whale, be found to
24 have infringed the valid U.S. Patent No. 7,435,424 B1.
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- B. That Desert Whale, its officers, agents, servants, employees and attorneys and all persons in active concert or participation with Desert Whale, be permanently enjoined from making, using, selling or offering for sale, without a license or authority from Floratech, products that embody the inventions claimed in the '424 Patent.
- C. That Floratech be compensated for the damages caused by Desert Whale's infringement in an amount determined by an accounting, but not less than a reasonable royalty plus interest.
- D. That the award of damages be trebled as provided in 35 U.S.C. § 284.
- E. That Floratech be awarded its costs and attorneys' fees under 35 U.S.C. § 284.
- F. That Floratech be awarded such other and further relief as the Court deems just and equitable.

DATED this 8th day of April, 2009.

KERCSMAR & FELTUS PLLC

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