

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MANNATECH, INC.,

Plaintiff,

V.

**BOSTON MOUNTAIN LABORATORIES,
INC., GREEN LIFE, LLC. AND
XIONG LO**

Defendants.

[illegible]

CIVIL ACTION NO. _____

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Mannatech, Inc. files this Complaint for Patent Infringement against Defendants Boston Mountain Laboratories, Inc. d/b/a Natural Health Warehouse, Green Life, LLC, and Xiong Lo and shows.

I. PARTIES

1. Plaintiff Mannatech, Inc. (“*Mannatech*”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business at 600 S. Royal Lane, Suite 200, Coppell, Texas 75019.

2. Defendant Boston Mountain Laboratories, Inc. d/b/a Natural Health Warehouse (“*Boston Mountain*”) is a corporation organized and existing under the laws of the State of Arkansas, with its principal place of business at 2445 N. Gregg Ave., Fayetteville, Arkansas 72703. Boston Mountain may be served through its registered agent, Donald Brown, 3060 Whippoorwill Lane, Fayetteville, Arkansas, 72701.

3. Defendant Green Life, LLC (“*Green Life*”) is a limited liability company organized and existing under the laws of the State of Wisconsin, with its principal place of business at 1819 Rosecrans Street, Suite A, Wausau, Wisconsin 54401. Green Life may be served through its registered agent, Sun Financial Services, Inc., 1819 Rosecrans Street, Suite A, Wausau, Wisconsin 54401.

4. Defendant Xiong Lo a/k/a Andrew Lo, (“*Andrew Lo*”) is an individual who resides at 601 Chellis Street, Wausau, Wisconsin 54401.

II. JURISDICTION AND VENUE

5. The Court has original jurisdiction over Plaintiff’s claims arising under the Patent Act. *See* 28 U.S.C. § 1338(a) (original jurisdiction of any civil action arising under an Act of Congress relating to patents and trademarks); *see also* 28 U.S.C. § 1331 (original jurisdiction over civil actions arising under the Constitution, laws or treaties of the United States).

6. The Court has supplemental jurisdiction over the state law claims asserted in this action pursuant to 28 U.S.C. § 1367. The federal and state law claims asserted in this action arise from a common nucleus of operative facts and form part of the same case or controversy under Article III of the United States Constitution.

7. This Court has specific personal jurisdiction over the non-resident defendants, Boston Mountain, Green Life and Andrew Lo, because they have purposefully availed themselves of the privilege of conducting activities in the State of Texas by selling products in the State of Texas and/or by placing products into the stream of commerce with the expectation that they will be purchased by consumers in the State of Texas. In the alternative, upon information and belief, the Court has general personal jurisdiction over the non-resident defendants, Boston Mountain, Green Life and Andrew Lo because the defendants’ contacts with

the State of Texas are sufficiently substantial and of such a nature as to make the state's assertion of jurisdiction reasonable.

8. For purposes of jurisdiction, the contacts between Green Life and the State of Texas should be imputed to Defendant Andrew Lo, individually. As described below, the corporate form of Green Life should be disregarded and Andrew Lo held vicariously liable for the acts of infringement of Green Life.

9. Venue is proper in this District under 28 U.S.C. §§ 1391(b) because a substantial part of the acts giving rise to Mannatech's claim for patent infringement occurred in this district. In particular, upon information and belief, products manufactured by Defendants Boston Mountain, Green Life and Andrew Lo were offered for sale, sold and delivered to residents of this District.

III. BACKGROUND FACTS

A. Mannatech's Patents

10. Mannatech is the owner of all right, title, and interest in and to United States Patent Numbers 6,929,807 (hereinafter the " '807 Patent"), 7,157,431 (hereinafter the " '431 Patent"), 7,196,064 (hereinafter the " '064 Patent"), 7,199,104 (hereinafter the " '104 Patent"), and 7,202,220 (hereinafter the " '220 Patent"), each of which is entitled "Compositions of Plant Carbohydrates as Dietary Supplements." For ease of reference, the '807, '431, '064, '104 and '220 Patents are referred to herein collectively as "Mannatech's Patents."

11. Mannatech's Patents generally describe dietary supplement compositions that provide certain "essential saccharides" or "glyconutritents" that are believed to be important in maintaining good health. Mannatech lists the patent numbers of all of Mannatech Patents on its website and marks its Ambrotose[®] and Advanced Ambrotose[®] products with the patent numbers for the '431, '104 and '220 patents.

B. Defendant's Infringing Products

(1) Boston Mountain Laboratories d/b/a Natural Health Warehouse

12. Defendant Boston Mountain manufactures and sells dietary supplements and nutraceuticals throughout the United States. Boston Mountain sells these products as a private label manufacturer and as a retailer using the assumed name Natural Health Warehouse. *See* Exhibit A (Boston Mountain's website).

13. Upon information and belief, Boston Mountain makes, uses, offers to sell, and/or sells dietary supplements that embody the inventions disclosed and claimed in Mannatech's Patents (hereinafter "*Infringing Products*"). Boston Mountain markets these productions using the brand names Glycoessentials, Glyco-Essence, Glyconutrients, MG-3 and MG-3c. *Id.*

14. Upon information and belief, Boston Mountain sold Infringing Products to Ionx Holdings, Inc. ("Ionx") for resale under Ionx's private label with the expectation that such products would be sold to consumers throughout the United States. *See* Exhibit B (Invoice for Ionx Holdings). Mannatech brought a patent infringement lawsuit against Ionx in the Northern District of Texas to enjoin such sales. *See Mannatech, Inc. v. Techmedica Health, Inc. et al.*, No. 3:06-CV-00813-P (N.D. Tex.)

15. Upon information and belief, Boston Mountain has offered for sale and sold Infringing Products directly to customers in the Northern District of Texas using the assumed name Natural Health Warehouse. *See* Exhibit C (Natural Health Warehouse's website).

(2) Green Life and Andrew Lo

16. Upon information and belief, Defendant Green Life manufactures and/or sells dietary supplements compositions that provide "essential saccharides" or "glyconutritents" in the United States.

17. Upon information and belief, Green Life makes, uses, offers to sell, and/or sells products that embody the inventions disclosed and claimed in Mannatech's Patents, i.e. Infringing Products.

18. Upon information and belief, Green Life sold Infringing Products to third party distributor(s) with the expectation that such products would be sold to consumers throughout the United States.

19. Upon information and belief, Andrew Lo is the sole member of Green Life, LLC.

20. Upon information and belief, Green Life was organized and operated as the alter ego, i.e., a mere tool or business conduit, of Andrew Lo.

21. Upon information and belief, Green Life was used to protect against the discovery of willful patent infringement by Andrew Lo.

22. Upon information and belief, Green Life was inadequately capitalized for the business in which it is engaged.

IV. CONDITIONS PRECEDENT

23. All conditions precedent have been performed or have occurred.

V. COUNT ONE: INFRINGEMENT OF THE '807 PATENT

24. Plaintiff incorporates by reference paragraphs 1 – 23 as if fully set forth herein.

25. On August 16, 2005, U.S. Patent 6,929,807 entitled "Compositions of Plant Carbohydrates as Dietary Supplements" was issued to Mannatech. Since its issuance, Mannatech has been, and continues to be, the owner of all right, title and interest in and to the '807 patent.

26. Upon information and belief, Defendants have infringed and are infringing the '807 Patent by making, using, offering for sale and/or selling dietary supplement products which embody the invention disclosed and claimed in the '807 patent. *See* 35 U.S.C. § 271(a).

27. Upon information and belief, Defendants have induced and are inducing infringement of the '807 Patent by encouraging others to make, use, offer for sale and/or sell dietary supplement products which embody the invention disclosed and claimed in the '807 patent. *See* 35 U.S.C. § 271(b).

28. Upon information and belief, Defendants have contributed and are contributing to infringement of the '807 Patent by making, using, offering for sale and/or selling components of dietary supplement products which embody the invention disclosed and claimed in the '807 patent. *See* 35 U.S.C. § 271(c).

29. As a direct and proximate result of Defendants' conduct, Mannatech has suffered and will continue to suffer irreparable injury, for which it has no adequate remedy at law. Mannatech has also been damaged, and, until an injunction issues, will continue to be damaged in an amount yet to be determined.

30. The willful and deliberate nature of Defendants' infringement renders this an exceptional case, and thus Mannatech is further entitled to treble damages, as well as its actual attorneys' fees and litigation costs.

VI. COUNT TWO: INFRINGEMENT OF THE '431 PATENT

31. Plaintiff incorporates by reference paragraphs 1 – 30 as if fully set forth herein.

32. On January 2, 2007, U.S. Patent 7,157,431 entitled "Compositions of Plant Carbohydrates as Dietary Supplements" was issued to Mannatech. Since its issuance, Mannatech has been, and continues to be, the owner of all right, title and interest in and to the '431 patent.

33. Upon information and belief, Defendants have infringed and are infringing the '431 Patent by making, using, offering for sale and/or selling dietary supplement products which embody the invention disclosed and claimed in the '431 patent. *See* 35 U.S.C. § 271(a).

34. Upon information and belief, Defendants have induced and are inducing infringement of the '431 Patent by encouraging others to make, use, offer for sale and/or sell dietary supplement products which embody the invention disclosed and claimed in the '431 patent. *See* 35 U.S.C. § 271(b).

35. Upon information and belief, Defendants have contributed and are contributing to infringement of the '431 Patent by making, using, offering for sale and/or selling components of dietary supplement products which embody the invention disclosed and claimed in the '431 patent. *See* 35 U.S.C. § 271(c).

36. As a direct and proximate result of Defendants' conduct, Mannatech has suffered and will continue to suffer irreparable injury, for which it has no adequate remedy at law. Mannatech has also been damaged, and, until an injunction issues, will continue to be damaged in an amount yet to be determined.

37. The willful and deliberate nature of Defendants' infringement renders this an exceptional case, and thus Mannatech is further entitled to treble damages, as well as its actual attorneys' fees and litigation costs.

VII. COUNT THREE: INFRINGEMENT OF THE '064 PATENT

38. Plaintiff incorporates by reference paragraphs 1 – 37 as if fully set forth herein.

39. On March 27, 2007, U.S. Patent 7,196,064 entitled "Compositions of Plant Carbohydrates as Dietary Supplements" was issued to Mannatech. Since its issuance, Mannatech has been, and continues to be, the owner of all right, title and interest in and to the '064 patent.

40. Upon information and belief, Defendants have infringed and are infringing the '064 Patent by making, using, offering for sale and/or selling dietary supplement products which embody the invention disclosed and claimed in the '064 patent. *See* 35 U.S.C. § 271(a).

41. Upon information and belief, Defendants have induced and are inducing infringement of the '064 Patent by encouraging others to make, use, offer for sale and/or sell dietary supplement products which embody the invention disclosed and claimed in the '064 patent. *See* 35 U.S.C. § 271(b).

42. Upon information and belief, Defendants have contributed and are contributing to infringement of the '064 Patent by making, using, offering for sale and/or selling components of dietary supplement products which embody the invention disclosed and claimed in the '064 patent. *See* 35 U.S.C. § 271(c).

43. As a direct and proximate result of Defendants' conduct, Mannatech has suffered and will continue to suffer irreparable injury, for which it has no adequate remedy at law. Mannatech has also been damaged, and, until an injunction issues, will continue to be damaged in an amount yet to be determined.

44. The willful and deliberate nature of Defendants' infringement renders this an exceptional case, and thus Mannatech is further entitled to treble damages, as well as its actual attorneys' fees and litigation costs.

VIII. COUNT FOUR: INFRINGEMENT OF THE '104 PATENT

45. Plaintiff incorporates by reference paragraphs 1 – 44 as if fully set forth herein.

46. On April 3, 2007, U.S. Patent 7,199,104 entitled "Compositions of Plant Carbohydrates as Dietary Supplements" was issued to Mannatech. Since its issuance, Mannatech has been, and continues to be, the owner of all right, title and interest in and to the '104 patent.

47. Upon information and belief, Defendants have infringed and are infringing the '104 Patent by making, using, offering for sale and/or selling dietary supplement products which embody the invention disclosed and claimed in the '104 patent. *See* 35 U.S.C. § 271(a).

48. Upon information and belief, Defendants have induced and are inducing infringement of the '104 Patent by encouraging others to make, use, offer for sale and/or sell dietary supplement products which embody the invention disclosed and claimed in the '104 patent. *See* 35 U.S.C. § 271(b).

49. Upon information and belief, Defendants have contributed and are contributing to infringement of the '104 Patent by making, using, offering for sale and/or selling components of dietary supplement products which embody the invention disclosed and claimed in the '104 patent. *See* 35 U.S.C. § 271(c).

50. As a direct and proximate result of Defendants' conduct, Mannatech has suffered and will continue to suffer irreparable injury, for which it has no adequate remedy at law. Mannatech has also been damaged, and, until an injunction issues, will continue to be damaged in an amount yet to be determined.

51. The willful and deliberate nature of Defendants' infringement renders this an exceptional case, and thus Mannatech is further entitled to treble damages, as well as its actual attorneys' fees and litigation costs.

IX. COUNT FIVE: INFRINGEMENT OF THE '220 PATENT

52. Plaintiff incorporates by reference paragraphs 1 – 51 as if fully set forth herein.

53. On April 10, 2007, U.S. Patent 7,202,220 entitled "Compositions of Plant Carbohydrates as a Dietary Supplement" was issued to Mannatech. Since its issuance, Mannatech has been, and continues to be, the owner of all right, title and interest in and to the '220 patent.

54. Upon information and belief, Defendants have infringed and are infringing the '220 Patent by making, using, offering for sale and/or selling dietary supplement products which embody the invention disclosed and claimed in the '220 patent. *See* 35 U.S.C. § 271(a).

55. Upon information and belief, Defendants have induced and are inducing infringement of the '220 Patent by encouraging others to make, use, offer for sale and/or sell dietary supplement products which embody the invention disclosed and claimed in the '220 patent. *See* 35 U.S.C. § 271(b).

56. Upon information and belief, Defendants have contributed and are contributing to infringement of the '220 Patent by making, using, offering for sale and/or selling components of dietary supplement products which embody the invention disclosed and claimed in the '220 patent. *See* 35 U.S.C. § 271(c).

57. As a direct and proximate result of Defendants' conduct, Mannatech has suffered and will continue to suffer irreparable injury, for which it has no adequate remedy at law. Mannatech has also been damaged, and, until an injunction issues, will continue to be damaged in an amount yet to be determined.

58. The willful and deliberate nature of Defendants' infringement renders this an exceptional case, and thus Mannatech is further entitled to treble damages, as well as its actual attorneys' fees and litigation costs.

X. COUNT SIX: VICARIOUS LIABILITY - CORPORATE VEIL

59. Plaintiff incorporates by reference paragraphs 1 – 58 as if fully set forth herein.

60. Upon information and belief, Defendant Green Life was organized and operated as a mere tool or business conduit of Andrew Lo.

61. In the alternative, upon information and belief, Defendant Andrew Lo formed Green Life to conceal or justify a civil wrong.

62. In the alternative, upon information and belief, Defendant Andrew Lo allowed Green Life to operate with inadequate capital for the type of business it was conducting.

63. As a result, Defendant Andrew Lo is vicariously liable for the acts of infringement by Green Life.

XI. DEMAND FOR JURY TRIAL

64. Plaintiff hereby demands a trial by jury. *See* Fed. R. Civ. P. 38.

XII. PRAYER

WHEREFORE, Plaintiff demands:

(1) That Defendants, their agents, affiliates, subsidiaries, successors and assigns, and any and all persons or entities acting in concert or participation with any or all of them, be enjoined during the pendency of this action, and thereafter for the life of the patents, from infringing, directly or indirectly, Mannatech's Patents in any manner.

(2) That Defendants be required to deliver up all Infringing Products in their possession or under their control to be impounded during the pendency of this action, and to be destroyed once all appeals have been exhausted.

(3) That Defendants be required to pay Mannatech such damages as Mannatech has sustained as a result of such patent infringement, and that such patent infringement damages be trebled pursuant to 35 U.S.C. § 284.

(4) That this case be adjudged and decreed exceptional under 35 U.S.C. § 285 entitling Mannatech to an award of reasonable attorney fees, and that such attorney fees be awarded.

(5) That Mannatech be awarded its costs, prejudgment interest, and post-judgment interest on all damages.

(6) That Defendants be required to file with the Court within 30 days after entry of final judgment of this cause a written statement under oath setting forth the manner in which it has complied with the final judgment.

(7) That Mannatech be awarded such other and further relief as the Court deems just and equitable, both at law and in equity.

Dated: July 13, 2008

Respectfully submitted,

s/ Eric W. Pinker, P.C.

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