

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

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

**Plaintiffs,**

**v.**

**ULTRALAB NUTRITION, INC. d/b/a  
THE BEAST SPORTS NUTRITION,  
ANTHONY ALTIERI, and JOHN DOES  
1-5,**

**Defendants.**

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiffs Iovate Health Sciences International, Inc. (“Iovate International”), Iovate T & P, Inc. (“Iovate T & P”), Multi Formulations, Ltd. (“Multi Formulations”), and Gateway Health Alliances, Inc. (“Gateway”) (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 UltraLab Nutrition, Inc. d/b/a The Beast Sports Nutrition (“UltraLab”), Anthony Altieri (“Altieri”), and John Does 1-5 (all defendant parties, “Defendants”), allege as follows:

**PARTIES**

1. Plaintiff Iovate International 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. Plaintiff Gateway is a corporation organized and existing under the laws of the State of California and has a principal place of business at 4769 Mangels Boulevard, Fairfield, CA 94534.

5. Upon information and belief, Defendant UltraLab is a corporation organized and existing under the laws of the State of Florida and has a principal place of business at 3100 NW 2nd Ave., Suite 213, Boca Raton, FL 33431 and/or 7491 N. Federal Highway, C5-148, Boca Raton, FL 33487.

6. Upon information and belief, Defendant Anthony Altieri is an individual residing at or having a place of business at 7491 N. Federal Highway, C5-148, Boca Raton, FL 33487.

7. 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 UltraLab Nutrition, Inc. and/or The Beast Sports Nutrition 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.

8. For example, and upon information and belief, certain individuals using numerous aliases, including, without limitation, “BigNick85” and “RobAwesome”, who promote the Defendants’ infringing products by posting messages on industry internet message boards, are officers, shareholders, directors, agents, partners, or representatives of UltraLab Nutrition, Inc. and/or The Beast Sports Nutrition. When Plaintiffs learn these John Does’ true identity, Plaintiffs will amend the Complaint accordingly.

9. Upon information and belief, Defendants Altieri and John Does 1-5 trade as, or do business as, UltraLab Nutrition, Inc. and/or The Beast Sports Nutrition and/or are founders of UltraLab Nutrition, Inc. and/or The Beast Sports Nutrition, 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**

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

11. 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.

12. 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.

13. 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**

14. 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 A of this Complaint.

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

16. On November 9, 2004, United States Patent No. 6,814,986 (“the '986 Patent”), titled “Composition for Treating Obesity and Esthetic Treatment Process,” was duly issued by the United States Patent and Trademark Office. A true and correct copy of the '986 Patent is attached as Exhibit B of this Complaint.

17. Multi Formulations is the owner of all right, title, and interest in and to the '986 Patent.

18. On December 14, 2004, United States Patent No. 6,830,765 (“the '765 Patent”), titled “Green Tea Extract for Treating Obesity,” was duly issued by the United States Patent and Trademark Office. A true and correct copy of the '765 Patent is attached as Exhibit C of this Complaint.

19. Multi Formulations is the owner of all rights, title, and interest in and to the '765 Patent.

20. On August 21, 2001, United States Patent No. 6,277,396 (“the '396 Patent”), titled “Dietary Supplement Containing a Thermogenic Substance and an Adrenal Support Substance,” was duly issued by the United States Patent and Trademark Office. A true and correct copy of the '396 Patent is attached as Exhibit D of this Complaint.

21. Iovate T & P is the owner of all rights, title and interest in and to the '396 Patent.

22. On July 6, 2004, United States Patent No. 6,759,063 (“the '063 Patent”), titled “Methods and Compositions for Reducing Sympathomimetic-Induced Side Effects,” was duly issued by the United States Patent and Trademark Office. A true and correct copy of the '063 Patent is attached as Exhibit E of this Complaint.

23. Iovate T & P is the owner of all rights, title and interest in and to the '063 Patent.

24. On February 13, 2007, United States Patent No. 7,175,859 (“the '859 Patent”), titled “Plant Extract Mixtures and Their Uses” was duly issued by the United States Patent and Trademark Office. A true and correct copy of the '859 Patent is attached as Exhibit F of this Complaint.

25. Gateway is the owner and assignee of the '859 Patent.

26. Iovate International is the exclusive licensee of the '859 Patent, and has the right to institute litigation for infringement.

27. 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 G of this Complaint.

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

29. 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 “2Shredded”, “Anabolic Activator”, “Super Test”, and “Human Growth Complex”, throughout the United States and in this judicial district.

**FIRST CAUSE OF ACTION**  
**(Infringement of the '530 Patent)**

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

31. 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 “2Shredded”, incorporate or embody the inventions claimed in the '530 Patent.

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

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

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

35. 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 '986 Patent)**

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

37. 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 “2Shredded”, incorporate or embody the inventions claimed in the '986 Patent.

38. By their actions, Defendants have infringed, and are infringing, one or more of the claims of the '986 Patent.

39. Upon information and belief, Defendants have actively induced others to infringe the claims of the '986 Patent.

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

41. 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 '765 Patent)**

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

43. 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 "2Shredded", incorporate or embody the inventions claimed in the '765 Patent.

44. By their actions, Defendants have infringed, and are infringing, one or more of the claims of the '765 Patent.

45. Upon information and belief, Defendants have actively induced others to infringe the claims of the '765 Patent.

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

47. 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 '396 Patent)**

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

49. 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 “2Shredded”, incorporate or embody the inventions claimed in the '396 Patent.

50. By their actions, Defendants have infringed, and are infringing, one or more of the claims of the '396 Patent.

51. Upon information and belief, Defendants have actively induced others to infringe the claims of the '396 Patent.

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

53. 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.

**FIFTH CAUSE OF ACTION**  
**(Infringement of the '063 Patent)**

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

55. 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 “Anabolic Activator” and “Human Growth Complex”, incorporate or embody the inventions claimed in the '063 Patent.

56. By their actions, Defendants have infringed, and are infringing, one or more of the claims of the '063 Patent.

57. Upon information and belief, Defendants have actively induced others to infringe the claims of the '063 Patent.

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



59. 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.

**SIXTH CAUSE OF ACTION**  
**(Infringement of the '859 Patent)**

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

61. 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 "Super Test", incorporate or embody the inventions claimed in the '859 Patent.

62. By their actions, Defendants have infringed, and are infringing, one or more of the claims of the '859 Patent.

63. Upon information and belief, Defendants have actively induced others to infringe the claims of the '859 Patent.

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

65. 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.

**SEVENTH CAUSE OF ACTION**  
**(Infringement of the '119 Patent)**

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

67. 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 "Super Test", incorporate or embody the inventions claimed in the '119 Patent.

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

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

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

71. 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 '530, '986, '765, '396, '063, '859, and '119 Patents;
- B. that Defendants have actively induced others to infringe the '530, '986, '765, '396, '063, '859, and '119 Patents;
- C. that Defendants' infringement of the '530, '986, '765, '396, '063, '859, and '119 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 '530, '986, '765, '396, '063, '859, and '119 Patents;
- E. that Plaintiffs be awarded their damages for infringement of the '530, '986, '765, '396, '063, '859, and '119 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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