	Case 2:05-cv-03458-SMM Document 1	Filed 10/27/05 Page 1 of 6	
1 2 3 4 5 6 7 8 9 10 11 12 13 14	Case 2:05-cv-03458-SMM Document 1 Brian J. Foster (012143) SNELL & WILMER LLP. One Arizona Center 400 E. Van Buren Phoenix, AZ 85004-2202 Telephone: (602) 382-6242 bfoster@swlaw.com William J. McNichol, Jr. Morgan W. Tovey John P. Bovich Maryellen Feehery REED SMITH LLP Two Embarcadero Center, Suite 2000 San Francisco, CA 94111-3922 Telephone: (415) 543-8700 wmcnichol@reedsmith.com mtovey@reedsmith.com mtovey@reedsmith.com Meehery@reedsmith.com Meehery@reedsmith.com	al Corporation	
 15 16 17 18 19 20 21 22 23 24 25 	JURISDICTIO	No. COMPLAINT FOR PATENT INFRINGEMENT AND JURY TRIAL al Corporation ("Medicis") alleges: <u>N AND VENUE</u> ent infringement arising under the patent laws	
26 27 28	of the United States, 35 U.S.C. Sections 1 a	1. This is an action for patent infringement arising under the patent laws e United States, 35 U.S.C. Sections 1 <i>et seq</i> . This Court has jurisdiction over this n under 28 U.S.C. Sections 1331 and 1338(a).	

Snell & Wilmer LAW OFFICES One Arizona Center, 400 E. Van Buren Phoenix, Arizona 800 4-2202 (602) 382,6000

2. Venue in this judicial district is proper under the provisions of 28 U.S.C. Sections 1391(b) and 1400(b) because, on information and belief, Defendants' unlawful acts of infringement have occurred, and continue to occur, in this District.

PARTIES

3. Medicis is a Delaware corporation with its principal place of business located in Scottsdale, Arizona. Medicis is the leading independent specialty pharmaceutical company in the United States focusing primarily on the treatment of dermatological and podiatric conditions and aesthetics medicine. Medicis has leading branded prescription products in a number of therapeutic categories, including acne, eczema, fungal infections, psoriasis, rosacea, seborrheic dermatitis and skin and skinstructure infections. Medicis' products have earned wide acceptance by both physicians and patients due to their clinical effectiveness, high quality and cosmetic elegance.

4. Medicis is informed and believes and thereon alleges that Defendant Upsher-Smith Laboratories Corporation ("Upsher-Smith") is a Minnesota corporation with a principal place of business located in Minneapolis, Minnesota.

5. Medicis is informed and believes and thereon alleges that Defendant Prasco LLC (d/b/a/ Prasco Laboratories) ("Prasco") is an Ohio limited liability company 18 with its principal place of business located in Cincinnati, Ohio. Upsher-Smith and Prasco 19 are collectively referred to as "Defendants" herein.

THE '675 PATENT

21 6. On June 14, 2005, United States Patent No. 6,905,675 B2 ("the '675 22 Patent"), entitled Sulfur Containing Dermatological Compositions and Methods for 23 Reducing Malodors in Dermatological Compositions, was duly and legally issued to 24 Medicis as the assignee of Jonah Shacknai, Eugene H. Gans and Ray Figureoa. A true 25 and correct copy of the '675 Patent is attached hereto as Exhibit A and incorporated 26 herein by reference.

- 27
- 28

Snell & Wilmer 14 15 One Arizona Phoenix 16 17

1

2

3

4

5

6

7

8

9

10

11

12

13

7. Medicis owns all legal rights, title, and interests in, to, and under the '675 Patent, including the right to bring this suit for damages and injunctive relief for infringement thereof.

8. The '675 Patent claims novel methods and compositions relating to the use of sulfur in dermatological compositions as well as the surprising reduction of the unpleasant odor which often accompanies sulfur. Medicis incorporates the invention of the '675 Patent into its highly-effective and popular "PLEXION® Cleanser" ("PLEXION®"), the first prescription cleanser with sulfur and sodium sulfacetamide indicated for the treatment of rosacea, acne and seborrheic dermatitis.

As a result of its innovation and market position, PLEXION® has 9. earned the respect of the industry and Medicis has achieved a significant market share due to its sales of this innovative product. However, as described more fully below, the sales of the Defendants' infringing products constitute substantial (albeit unlawful) competition to Medicis' market share, reputation, and industry position, which will cause Medicis irreparable harm unless enjoined.

FIRST CLAIM FOR RELIEF

(Patent Infringement – Against Both Defendants)

Medicis repeats and realleges each and every allegation in the 18 10. 19 foregoing paragraphs as though fully set forth herein.

20 11. Medicis is informed and believes and thereon alleges that Upsher-21 Smith has and continues to infringe directly, and/or by inducement, on one or more claims 22 of the '675 Patent by making, using, offering for sale, selling, and/or importing infringing 23 products, including, but not limited to, the Clenia^{TMTM} Foaming Wash ("Clenia^{TMTM}") 24 product, in this District and elsewhere.

25 12. Medicis is informed and believes and thereon alleges that Prasco has 26 and continues to infringe directly, and/or by inducement, on one or more claims of the 27 '675 Patent by making, using, offering for sale, selling, and/or importing infringing

- 3 -

Snell & Wilmer 14 15 One Arizona ¹ Phoenix, 16 17

1

2

3

4

5

6

7

8

9

10

11

12

13

Case 2:05-cv-03458-SMM Document 1 Filed 10/27/05 Page 4 of 6

products, including, but not limited to, the PrascionTM Cleanser ("PrascionTM") product, in
 this District and elsewhere.

3 13. The Defendants' acts of infringement will continue unless enjoined4 by this Court.

5 14. The Defendants' acts of infringement have caused, and will continue
6 to cause Medicis substantial and irreparable injury for which Medicis is entitled to
7 injunctive relief and damages to compensate Medicis for such infringement.

8 15. The Defendants' acts of infringement have been willful and
9 deliberate rendering this case "exceptional" under 35 U.S.C. Section 285.

WHEREFORE, Medicis prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Medicis prays the Court for the following relief:

1. A Judgment that Upsher-Smith has infringed the '675 Patent.

2. A Judgment that Prasco has infringed the '675 Patent.

15 3. A Judgment that infringement of the '675 Patent by Upsher-Smith16 has been willful.

4. A Judgment that infringement of the '675 Patent by Prasco has beenwillful.

19 5. An award of damages, including treble damages pursuant to 35
20 U.S.C. Section 284, arising out of Upsher-Smith's acts of willful infringement and active
21 inducement of infringement of the '675 Patent.

6. An award of damages, including treble damages pursuant to 35
U.S.C. Section 284, arising out of Prasco's acts of willful infringement and active
inducement of infringement of the '675 Patent.

7. That the Court preliminarily and permanently enjoin the Defendants,
their officers, directors, principals, agents, servants, employees, successors and assigns,
and all those in active concert or participation with them, or under their authority, jointly

28

Snell & Wilmer LLP. Dae Arizona Cenet. 400 E. Van E Phoenix, Arizona 8004-2202 (602) 382-6000 10

11

12

13

Case 2:05-cv-03458-SMM Document 1 Filed 10/27/05 Page 5 of 6

and severally, from making, using, offering for sale, and/or selling infringing products,
 including but not limited to Clenia^{TMTM} and PrascionTM, and from otherwise infringing,
 contributing to the infringement of, or actively inducing infringement of, the '675 Patent.

8. That the Court order and decree, pursuant to 35 U.S.C. Section 285,
that this is an exceptional case entitling Medicis to an award of its reasonable attorneys'
fees and costs.

7 9. That the Court order an award of pre-judgment and post-judgment
8 interest on the above damage awards.

9 10. That Medicis be awarded such other and further relief as the Court
10 may deem just and proper.

Dated: October 27, 2005

SNELL & WILMER L.L.P.

By	s/ Brian Foster
	Brian J. Foster
	One Arizona Center
	400 E. Van Buren
	Phoenix, AZ 85004-2202
1	100111X, AL 05004-2202
	-and-
N N N N N N N N N N N N N N N N N N N	William J. McNichol, Jr.
Ν	Morgan W. Tovey
J	Morgan W. Tovey John P. Bovich
Ν	Maryellen Feehery
	pro hac vice applications pending)
Ĥ	REED SMITH LLP
7	Two Embarcadero Center, Suite 2000
S	San Francisco, CA 94111-3922
T	Mailing Address:
	P.O. Box 7936
	San Francisco, CA 94120-7936
	Telephone: 415.543.8700
I	Facsimile: 415.391.8269
1	aesimine. 415.571.6267
	prneys for Plaintiff Medicis Pharmaceutical poration

Snell & Wilmer LLW OFFICES One Arizona Center, 400 E. Van Bure Phoenia, Arizona 8004-2202 11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

	Case 2:05-cv-03458-SMM Document 1 Filed 10/27/05 Page 6 of 6	
1	JURY DEMAND	
2	Plaintiff Medicis Pharmaceutical Corporation hereby demands a jury trial on all	
3	issues so triable.	
4		
5	Dated: October 27, 2005 Respectfully submitted, SNELL & WILMER LLP.	
6	SINELL & WILWIER L.L.P.	
7	By <u>s/ Brian Foster</u> Brian J. Foster	
8	One Arizona Center 400 E. Van Buren	
9	Phoenix, AZ 85004-2202	
10	-and-	
11	William J. McNichol, Jr. Morgan W. Toyey	
12	Morgan W. Tovey John P. Bovich Maryellen Feehery	
13	(pro hac vice applications pending) REED SMITH LLP	
14	Two Embarcadero Center, Suite 2000 San Francisco, CA 94111-3922	
15	Mailing Address: P.O. Box 7936	
16 17	P.O. Box 7936 San Francisco, CA 94120-7936	
17 18	Telephone: 415.543.8700 Facsimile: 415.391.8269	
19	Attorneys for Plaintiff Medicis Pharmaceutical	
20	Corporation	
21	1744846.1	
22		
23		
24		
25		
26		
27		
28		

Snell & Wilmer LLP_LLP_LLP_ LAW OFFICES One Arizona Center, 406 E. Van Buren Phoenix, Arizona 806 4-2202 (602) 382.6000