

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GAIA HERBS, INC.,)
108 Island Ford Road)
Brevard, North Carolina 28712)
)
Plaintiff,)
)
v.)
)
VITALITY WORKS INC.,)
5821 D Midway Park Boulevard NE)
Albuquerque, New Mexico 87109)
)
Defendant.)

CIVIL ACTION NO. _____

COMPLAINT

Plaintiff, Gaia Herbs, Inc. ("Gaia Herbs"), by and for its complaint against defendant, Vitality Works, Inc. ("Vitality Works"), alleges as follows:

I. THE PARTIES

1. Gaia Herbs, Inc. is a corporation duly organized and existing under the laws of the State of North Carolina, having a principal place of business at Brevard, North Carolina.

2. Upon information and belief, defendant Vitality Works, Inc. ("Vitality Works") is a corporation organized and existing under the laws of the State of New Mexico, having a place of business at Albuquerque, New Mexico.

II. STATEMENT OF JURISDICTION AND VENUE

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

4. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1338.

5. On information and belief, Vitality Works is incorporated under the laws of the State of New Mexico, and has a principal place of business in Albuquerque, New Mexico. Upon information and belief, defendant does business in this district generally and has entered the jurisdiction for the purpose of selling its products therein, offering its products for sale, and has actually sold these products in the District of Columbia. Additionally, defendant advertises the products at issue in this complaint on a web page or web pages, also thereby offering such products for sale in this district.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

III. PATENT INFRINGEMENT

7. Gaia Herbs, Inc. is the owner of the Patents Nos. 6,238,696 B1 (the '696 patent) and 6,482,432 B2 (the '432 patent). *See*, Exs. 1 & 2.

8. Vitality Works has infringed, as well as induced and contributed to the infringement of, claims of some or all of the patents in suit by having manufactured, using, offering for sale, and selling herbal medicants in cellulose derivative capsules made in accordance with the claims of the patents in suit.

9. At all material times, Vitality Works knew of the patents in suit and despite that knowledge continued to willfully and deliberately infringe the patents in suit by having manufactured, using, offering for sale, and selling herbal medicants in cellulose derivative capsules made in accordance with the claims of the patents in suit in this district and elsewhere.

10. On information and belief, Vitality Works will continue to infringe the patents in suit, all to Gaia Herbs' irreparable injury, unless enjoined by this Court.

IV. DEMAND FOR JURY TRIAL

10. Plaintiff Gaia Herbs demand a trial by jury on all disputed issues.

WHEREFORE, Gaia Herbs pray for relief as follows:

V. PRAYER FOR RELIEF

- A. That Vitality Works is adjudged to have infringed the patents in suit;
- B. That Vitality Works, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly or indirectly infringing the patents in suit;
- C. An accounting for damages by virtue of Vitality Work's infringement of the patents in suit;
- D. An award of damages to compensate Gaia Herbs for Vitality Work's infringement, pursuant to 35 U.S.C. § 284, said damages to be trebled because of Vitality Work's willful infringement.
- E. An assessment of pre-judgment and post-judgment interest and costs against defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;
- F. That Vitality Works be directed to pay Gaia Herbs' attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and
- G. That Gaia Herbs have such other and further relief as this Court may deem just and proper.

This _31_ day of October, 2003.

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