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 USE TECHNO CORPORATION
 and FUTOSHI MATSUYAMA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

USE TECHNO CORPORATION and
 FUTOSHI MATSUYAMA,

Plaintiffs,

v.

KENKO USA, INC.; SOFT-GEL
 TECHNOLOGIES, INC.; CHEMCO
 INDUSTRIES, INC.; IOVATE HEALTH
 SCIENCES U.S.A., INC.; JARROW
 INDUSTRIES, INC.; JARROW
 FORMULAS, INC.; RONALD G.
 UDELL; and SIVA P. HARI,

Defendants.

CASE NO. C06-02754 EDL

**AMENDED COMPLAINT FOR PATENT
 INFRINGEMENT; DECLARATORY
 RELIEF; AND FALSE ADVERTISING**

DEMAND FOR JURY

Plaintiffs Use Techno Corporation (“UTC”) and Futoshi Matsuyama (“Matsuyama”), by
 and through their attorneys, allege as follows:

THE PARTIES

1. Plaintiff UTC is a company with its principal place of business at 4-27 Sasaoshin-
 machi, Fukuchiyama-shi, Kyoto, Japan 620-0055. UTC’s business is related to studying natural
 active chemical compounds and developing, patenting and licensing the application developed.
 On such compound UTC has identified for its medicinal benefits are the chemical compounds
 found in the Banaba tree (*Lagerstroemia speciosa* (Lin)) leaves. UTC has identified corosolic

1 acid as a specific extract of the Banaba leaves that has been found to maintain healthy blood sugar
2 levels in humans which is directly related to maintaining a healthy weight. UTC is engaged in the
3 business of planting, harvesting, extracting, marketing, and selling corosolic acid extracts for the
4 prevention and treatment of diabetes, obesity, constipation and skin diseases.

5 2. Plaintiff Matsuyama is an individual, residing in Kyoto, Japan.

6 3. Matsuyama is the inventor of U.S. Patent 6,485,760 (the '760 Patent, a copy of
7 which is attached as Exhibit A) and U.S. Patent 6,716,459 (the '459 Patent, a copy of which is
8 attached as Exhibit B).

9 4. Plaintiff Matsuyama is the President of UTC and is a shareholder of UTC.

10 5. Plaintiff Matsuyama has granted UTC the exclusive right to practice the '760 and
11 '459 Patents in the United States.

12 6. Upon information and belief, plaintiffs allege that defendant Kenko USA, Inc.
13 ("Kenko USA"), is a subsidiary of Kenko Corporation ("Kenko Corp.") located in Japan, with its
14 headquarters located at 13545 Barrett Parkway Drive, Suite 330, St. Louis, MO 63021. Kenko
15 USA has a California office located at 5425 East Home Avenue, Fresno, California 93727.

16 7. Upon information and belief, plaintiffs allege that defendant Soft-Gel
17 Technologies, Inc. ("Soft-Gel") is a subsidiary of Kenko Corp. with its headquarters located at
18 6982 Bandini Blvd., Los Angeles, California 90040. Upon information and belief, plaintiffs
19 allege that Soft-Gel is doing business in numerous districts throughout the United States
20 including, but not limited to, the Northern District of California.

21 8. Upon information and belief, plaintiffs allege that defendant Chemco Industries
22 ("Chemco") is a subsidiary of Kenko Corp. with its headquarters located at 6982 Bandini Blvd.,
23 Los Angeles, California 90040. Upon information and belief, plaintiffs allege that Chemco is
24 doing business in numerous districts throughout the United States including, but not limited to,
25 the Northern District of California. Both Soft-Gel and Chemco share the same business address
26 according to their California Corporation filings.

27 9. Upon information and belief, plaintiffs allege that defendant Iovate Health
28 Sciences U.S.A. Inc. ("Iovate USA") is a subsidiary of Iovate Health Sciences Group Inc.

1 (“Iovate”) of Canada, is a corporation organized and existing under the laws of the State of
2 Delaware, having its principal place of business located at 25 Dewberry Lane, Cheektowaga,
3 New York, 14227. Upon information and belief, plaintiffs allege that Iovate USA is doing
4 business in numerous districts throughout the United States including, but not limited to, the
5 Northern District of California.

6 10. Upon information and belief, plaintiffs allege that defendant Jarrow Industries, Inc.
7 (“Jarrow Industries”) is a corporation organized and existing under the laws of the State of
8 California, having its principal place of business located at 12246 Hawkins Street, Santa Fe
9 Springs, California 90670-3365. Jarrow Industries is engaged in the nutritional supplement
10 business from formulation to encapsulation, tablet manufacturing, tablet coating and bottle and
11 blister packaging of vitamins and nutritional supplement and is conducting said business in
12 numerous judicial districts across the United States including, but not limited to, the Northern
13 District of California.

14 11. Upon information and belief, plaintiffs allege that defendant Jarrow Formulas, Inc.
15 (“Jarrow Formulas”) is a corporation organized and existing under the laws of the State of
16 California, having its principal place of business located at 1824 S. Robertson Blvd, Los Angeles,
17 California 90035. Jarrow Formulas is engaged in the business of formulating and supplying
18 nutritional supplements and is doing business in the Northern District of California.

19 12. Upon information and belief, plaintiffs allege that defendant Ronald G. Udell
20 (“Udell”) is an individual residing in Beverly Hills, California.

21 13. Upon information and belief, plaintiffs allege that Udell is the President and CEO
22 of defendant Soft-Gel.

23 14. Upon information and belief, plaintiffs allege that defendant Silva P. Hari (“Hari”)
24 is an individual residing in Riverside, California.

25 15. Upon information and belief, plaintiffs allege that defendants Udell and Hari are
26 the inventors and owners of U.S. Patent 6,784,206 (the ‘206 Patent, a copy of which is attached as
27 Exhibit C).

28 16. Upon information and belief, plaintiffs allege that Hari is the President and CEO

1 of Jarrow Industries.

2 17. Plaintiffs are informed and believe and thereon allege that at all times herein
3 mentioned, each of the defendants was the agent of the remaining defendants, and in doing the
4 things hereinafter alleged, was acting within the course and scope of such agency and with the
5 permission and consent of remaining co-defendants.

6 JURISDICTION

7 18. Plaintiffs file this action for patent infringement arising under the Patent Laws of
8 the United States, 35 U.S.C. § 1, et seq.

9 19. The court has jurisdiction over this action under Title 35, United States Code,
10 including 35 U.S.C. §§ 271 and 281-85, as well as under 28 U.S.C. §§ 1331 and 1338(a), as it
11 involves substantial claims arising under the Patent Laws of the United States, 35 U.S.C.
12 § 1 et seq., together with related claims under state law pursuant to 28 U.S.C. § 1367.

13 20. This court has subject matter jurisdiction over the claims herein under 35 U.S.C.
14 § 1, 28 U.S.C. §§ 1331, 1332 and 1338(a).

15 21. Upon information and belief, plaintiffs allege that defendants Kenko USA, Soft-
16 Gel and Chemco have transacted business, availed themselves of the benefits of the laws and
17 regulations of the state of California, and have committed acts of patent infringement in
18 California, and within this judicial district, by making, using, selling, or offering to sell in this
19 district products or methods which practice the subject claimed in the UTC patents involved in
20 this action, or by transacting other business in this district. Therefore, this court has personal
21 jurisdiction over defendants Kenko USA, Soft-Gel and Chemco.

22 22. Upon information and belief, plaintiffs allege that defendant Iovate USA has
23 transacted business, availed itself of the benefits of the laws and regulations of the state of
24 California, and has committed acts of patent infringement in California, and within this judicial
25 district, by making, using, selling, or offering to sell in this district products that practice the
26 subject matter claimed in the patent involved in this action, or by transacting other business in this
27 district. Therefore, this court has personal jurisdiction over defendant Iovate USA.

28 23. Upon information and belief, plaintiffs allege that defendant Jarrow Industries has

1 transacted business, availed itself of the benefits of the laws and regulations of the state of
2 California, and has committed acts of patent infringement in California, and within this judicial
3 district, by making, using, selling, or offering to sell in this district products that practice the
4 subject matter claimed in the UTC patents involved in this action, or by transacting other business
5 in this district. Therefore, this court has personal jurisdiction over defendant Jarrow Industries.

6 24. Upon information and belief, plaintiffs allege that defendant Jarrow Formulas has
7 transacted business, availed itself of the benefits of the laws and regulations of the state of
8 California, and has committed acts of patent infringement in California, and within this judicial
9 district, by making, using, selling, or offering to sell in this district products that practice the
10 subject matter claimed in the UTC patents involved in this action, or by transacting other business
11 in this district. Therefore, this court has personal jurisdiction over defendant Jarrow Formulas.

12 25. Upon information and belief, plaintiffs allege that defendant Udell has transacted
13 business, availed himself of the benefits of the laws and regulations of the state of California, and
14 has committed acts of patent abuse or patent infringement in California, and within this judicial
15 district.

16 26. Upon information and belief, plaintiffs allege that defendant Hari has transacted
17 business, availed himself of the benefits of the laws and regulations of the state of California, and
18 has committed acts of patent abuse or infringement in California, and within this judicial district.

19 VENUE

20 27. Plaintiffs are informed and believe that this court is the proper venue under
21 28 U.S.C. §§ 1391(b), (c) and 1400 because defendants Kenko USA, Inc., Soft-Gel and Chemco
22 are subject to personal jurisdiction in this judicial district, the products of the infringing activities,
23 as alleged herein below, are advertised and sold within this judicial district and said defendants
24 are doing business in this judicial district.

25 28. Plaintiffs are informed and believe that this court is the proper venue under
26 28 U.S.C. §§ 1391(b), (c) and 1400 because defendant Iovate USA is subject to personal
27 jurisdiction in this judicial district, the products of the infringing activities, as alleged herein
28 below, are advertised and sold within this judicial district and defendant is doing business in this

1 judicial district.

2 29. Plaintiffs are informed and believe that this court is the proper venue under
3 28 U.S.C. §§ 1391(b), (c) and 1400 because defendant Jarrow Industries is subject to personal
4 jurisdiction in this judicial district, the products of the infringing activities, as alleged herein
5 below, are advertised and sold within this judicial district and defendant is doing business in this
6 judicial district.

7 30. Plaintiffs are informed and believe that this court is the proper venue under
8 28 U.S.C. §§ 1391(b), (c) and 1400 because defendant Jarrow Formulas is subject to personal
9 jurisdiction in this judicial district, the products of the infringing activities, as alleged herein
10 below, are advertised and sold within this judicial district and defendant is doing business in this
11 judicial district.

12 31. Plaintiffs are informed and believe that this court is the proper venue under
13 28 U.S.C. §§ 1391(b), (c) and 1400 because defendants Udell and Hari performed acts in
14 furtherance of their wrongful conduct alleged in this complaint which have had substantial effects
15 in this district, and a substantial part of the events giving rise to the claims in this action occurred
16 here.

17 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

18 32. On November 10, 1999, Matsuyama filed U.S. Patent Application Number
19 09/437,342 entitled: "METHOD FOR INHIBITING INCREASE OF BLOOD SUGAR LEVEL
20 OR LOWERING BLOOD SUGAR LEVEL WITH A LAGERSTROEMIA EXTRACT" (the
21 '342 Application). The '342 Application claimed foreign priority based on Japanese Application
22 No. 349,966,798, which was filed on December 9, 1998. In the '342 Application, Matsuyama
23 explained that he had discovered that human blood sugar levels and weight gain could be
24 controlled by the administration of corosolic acid, a compound which he extracted from the
25 leaves of the Banaba tree (*Lagerstroemia speciosa* (Lin)).

26 33. On or about August 20, 2002, Matsuyama filed U.S. Patent Application No.
27 10/223,489, entitled: "COMPOSITION FOR INHIBITING INCREASE OF BLOOD SUGAR
28 LEVEL OR LOWERING BLOOD SUGAR LEVEL" as a divisional application from the '342

1 Application (the '489 Application).

2 34. The '342 Application issued into U.S. Patent No. 6,485,760 (the '760 Patent) on or
3 about November 26, 2002. Matsuyama's divisional application (the '489 Application) issued into
4 U.S. Patent No. 6,716,459 (the '459 Patent) on or about April 6, 2004. (Exhibits A and B,
5 respectively.)

6 35. Upon information and belief, plaintiffs allege that Kenko Corp. is a Japanese
7 corporation with its headquarters located at Mizushima Bldg. 3f., 3-2-11, Uchikanda, Chiyoda-
8 Ku, Tokyo, Japan 101-0047.

9 36. Upon information and belief, plaintiffs allege that Kenko Corp. is the parent
10 corporation of defendants Kenko USA, Soft-Gel and Chemco and that it provided these
11 companies with corosolic acid that had been extracted from Banaba leaves in Japan continuously
12 from 1998 to present.

13 37. Upon information and belief, plaintiffs allege that Satomi Tsuchibe is the president
14 of Kenko Corp. and Chemco Industries Inc.

15 38. Shortly after Matsuyama filed his Japanese Patent Application in December of
16 1998, Matsuyama and UTC began manufacturing Banaba extracts containing corosolic acid. UC
17 sold the extracts to Kenko Corp. in Japan through early 2003. UTC did not sell them to Kenko
18 Corp. for nearly two years until it resumed business with Kenko Corp. in January 2005. During
19 1998 through early 2003, Kenko Corp. instructed UTC to contract the extraction work with
20 Tokiwa Phytochemical Co. Ltd. ("Tokiwa") in Japan. UTC delivered the leaves containing 2.5%
21 or better corosolic acid to Tokiwa. UTC invoiced Kenko Corp., but did not examine the physical
22 amounts of extracts manufactured by Tokiwa. UTC began business transactions directly with
23 Tokiwa after January 2005.

24 39. On or about January 27, 1999, Soft-Gel filed an application for the word mark
25 "Glucosol" with the USPTO. With full knowledge that Matsuyama had filed a patent application
26 for the use of corosolic acid in the maintenance of healthy blood sugar levels, Soft-Gel and
27 Chemco proceeded to manufacture and sell "Lagerstroemia speciosa leaf extract" which had been
28 "standardized to 1% corosolic acid" which it branded "Glucosol". As a result of a trademark

1 dispute with Pfizer Corporation, on August 20, 2001, Soft-Gel applied for the trademark
2 “GlucoTrim” which it used to later rebrand its corosolic acid extract. Soft-Gel and Chemco sold
3 Glucosol and GlucoTrim to numerous dietary supplement companies, including Longevity
4 Science (New York, New York), NOW Foods (Bloomington, Illinois), Nutritional Specialties
5 (Anaheim, California), Dee Cee Laboratories (White House, Tennessee), Life’s Services
6 Supplements (New Jersey), Pharmanex (Provo, Utah), Natural Organics (Melville, New York)
7 and Jarrow Formulas (Los Angeles, California).

8 40. On or about April 5, 2000, the President of Soft-Gel, Ronald Udell, and the
9 Technical Services Manager of Soft-Gel, Siva P. Hari, Ph.D., filed a provisional patent
10 application with the USPTO which they later converted into Divisional Application No.
11 90/825,920 (the ‘920 Application) on April 3, 2001.

12 41. On April 14, 2003, Udell and Hari filed two Divisional Applications from the ‘920
13 Application; i.e., Application Nos. 10/640,886 and 10/640,885 (the ‘886 and ‘885 Applications,
14 respectively). On or about August 31, 2004, the ‘886 Application issued into U.S. Patent No.
15 6,748,206 (the ‘206 Patent). (Exhibit C.)

16 42. The ‘885 Application was rejected by its primary examiner and is still pending in
17 the USPTO. Further, on or about August 19, 2004, Udell and Hari filed another provisional
18 patent application with the USPTO (Application No. 60/602,921). On or about August 17, 2005,
19 Udell and Hari converted said provisional application into Non-Provisional Application No.
20 11/205,789.

21 43. All of the aforementioned applications filed by Udell and Hari involve the use of
22 corosolic acid for the regulation of blood sugar and/or weight management.

23 44. Eight months after Udell and Hari filed their original provisional patent
24 application, on or about December 11, 2000, Jarrow Industries filed papers to become a
25 California corporation. Siva Hari was and is the President of Jarrow Industries.

26 45. On or about February 23, 2001, Jarrow Industries wrote a letter to the United
27 States Food and Drug Administration which informed the FDA that it was planning on selling a
28 product known as “Glucose Optimizer”, which contained, among other things, Glucosol. On or

1 about August 6, 2003, Jarrow Formulas filed an application with the USPTO to register the word
2 mark "Glucose Optimizer."

3 46. As set forth above, in late 1998 or early 1999, UTC was providing extracted
4 corosolic acid to Kenko Corp. which, in turn, provided the same to Kenko USA, Chemco and
5 Soft-Gel. Relations between UTC and Kenko Corp. broke down in early 2003. On information
6 and belief, Kenko Corp., Kenko USA, Chemco and Soft-Gel obtained corosolic acid from the
7 leaves provided by UTC in excess of that reported by Tokiwa.

8 47. As set forth above, on November 26, 2002, the USPTO issued UTC its '760 Patent
9 entitled "METHOD FOR INHIBITING INCREASE OF BLOOD SUGAR LEVEL OR
10 LOWERING BLOOD SUGAR LEVEL WITH A LAGERSTROEMIA EXTRACT". Shortly
11 thereafter, Kenko USA, Soft-Gel, Udell, Chemco, Tokiwa, Jarrow Industries, Jarrow Formulas
12 and Hari each became aware of the '760 Patent yet they continued to manufacture, import and sell
13 corosolic acid under the brand names GlucoTrim and Glucose Optimizer in direct violation of the
14 '760 Patent.

15 48. Furthermore, on or about April 6, 2004, the USPTO issued UTC its '459 Patent
16 entitled "COMPOSITION FOR INHIBITING INCREASE OF BLOOD SUGAR LEVEL OR
17 LOWERING BLOOD SUGAR LEVEL". Shortly thereafter, Kenko USA, Soft-Gel, Chemco,
18 Udell, Jarrow Industries, Jarrow Formulas and Hari became aware that the '459 Patent had been
19 issued to UTC and that their corosolic acid products infringed the claims of the same.
20 Nevertheless, said defendants continue to manufacture, import and sell their GlucoTrim and
21 Glucose Optimizer products in violation of the '459 Patent.

22 49. On or about January 26, 2005, UTC entered into a contract with Kenko Corp. (the
23 "Contract") to purchase and distribute Banaba extract with corosolic acid in the United State.
24 (Attached as Exhibit D is a Japanese version of the contract, and attached as Exhibit E is an
25 English translation thereof.) As requested by Kenko Corp., UTC sent raw materials for corosolic
26 acid extraction to Tokiwa. Tokiwa performed the extraction process and later shipped the extract
27 directly to Kenko Corp. which, in turn, provided the extract to Soft-Gel, Kenko USA, and
28 Chemco.

1 50. The Contract sets forth numerous obligations owed by Kenko Corp. including, but
2 not limited to, minimum purchasing guidelines, sales reporting requirements, covenants to
3 cooperate against competition and a reservation of UTC's right to pursue all new product
4 development in the United States. Shortly thereafter, Soft-Gel, Chemco and Jarrow Formulas
5 began stating on their labels that their Glucose Optimizer and GlucoTrim products were protected
6 by the '459 and '670 Patents with no attribution to UTC or Matsuyama. The Contract terminated
7 no later than March 24, 2006.

8 51. Upon information and belief, plaintiffs allege that Iovate Health Sciences Group
9 Inc. ("Iovate"), a Canadian company with its headquarters located at 5100 Spectrum Way,
10 Mississauga, ON, Canada L4W 5S2, is a holding company. Upon information and belief,
11 plaintiffs allege that Iovate is doing business throughout the United States as both MuscleTech
12 Research and Development Inc. and Iovate USA.

13 52. Upon information and belief, plaintiffs allege that Paul Gardiner owns 100% of the
14 preferred shares of Iovate USA and Iovate owns 100% of the common shares of the Iovate USA.
15 Upon information and belief, plaintiffs allege that, with the exception of Iovate USA, all of the
16 Iovate companies were incorporated pursuant to the laws of the Province of Ontario, Canada.

17 53. Upon information and belief, plaintiffs allege after the Contract was entered into
18 between UTC and Kenko Corp., Kenko USA, Soft-Gel and Chemco entered into a contractual
19 arrangement with Iovate or Iovate USA to provide Lagerstroemia speciosa leaf extract
20 standardized for 3% corosolic acid as the key ingredient for Iovate's new product "Accelis".
21 (Exhibit F)

22 54. According to Iovate USA, "... the key ingredient in Accelis is effective at
23 supporting normal blood sugar levels, which results in noticeable weight loss." On November 21,
24 2005, Iovate applied for Trademark registration of the word marks "Accelis", "Accelis.com" and
25 "AccelisTV."

26 55. Upon information and belief, plaintiffs allege that Kenko USA, Soft-Gel, Chemco
27 and Iovate USA are aware that the Accelis product infringes the '760 and '459 Patents.
28 Nevertheless, Iovate and Iovate USA are selling the Accelis product throughout the United States

and in California through retailers such as GNC, Live-Well, Eckerd, Brooks Pharmacy, Meijer, Fred Meyer, Harmon, USA Drug.com, Hi-Health, The Vitamin Shoppe, Albertsons, Longs, Snyders, Kerr Drug, Vitamin World and Wal-Mart.

56. Upon information and belief, plaintiffs allege that Iovate's subsidiary New Nitro US Trademark Ltd. holds the trademark on "Accelis."

57. Upon information and belief, plaintiffs allege that Kenko USA, Soft-Gel, Udell and Chemco are still providing corosolic acid extract to Jarrow Industries, Jarrow Formulas, Iovate USA and others for importation into the United States for use as an ingredient for dietary supplements.

58. Upon information and belief, plaintiffs allege that Jarrow Industries, Jarrow Formulas and Hari are aware that the Glucose Optimizer product infringes the '760 and '459 Patents. Nevertheless, Jarrow Industries, Jarrow Formulas and Hari are selling the Glucose Optimizer product throughout the United States and in California. (Exhibit G)

FIRST CLAIM FOR RELIEF

Patent Infringement (35 U.S.C. § 1, et seq) Against Defendants Kenko USA, Soft-Gel, Chemco, Udell, Jarrow Formulas, Jarrow Industries, Hari and Iovate USA

59. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 58 as though fully set forth herein.

60. Plaintiffs UTC and Matsuyama are the owners in fact of all rights to the '760 and '459 Patents.

61. Defendants Iovate USA, Jarrow Formulas, Jarrow Industries, Hari, Kenko USA, Soft-Gel, Udell and Chemco are engaged in the importation, making, using, offering for sale, and selling of products containing corosolic acid in the United States.

62. Upon information and belief, plaintiffs allege that Iovate USA, Jarrow Formulas, Jarrow Industries, Hari, Kenko USA, Soft-Gel, Udell and Chemco's importation, making, using, offering for sale, and selling of products containing corosolic acid in the United States infringes upon the claims of the '760 and '459 Patents.

63. Defendant Iovate USA is designing, making, using, offering for sale, and selling a

1 line of products under the name Accelis with corosolic acid.

2 64. Defendant Jarrow Industries, Jarrow Formulas and Hari are designing, making,
3 using, offering for sale, and selling a line of products under the name Glucose Optimizer with
4 corosolic acid.

5 65. Defendant Chemco is designing, making, using, offering for sale, and selling a line
6 of products under the name GlucoTrim with corosolic acid.

7 66. By committing the acts alleged herein including, but not limited to, the
8 importation, designing, making, using, offering for sale, and selling products containing corosolic
9 acid and the Accelis and Glucose Optimizer products, defendants Iovate USA, Jarrow Formulas,
10 Jarrow Industries, Kenko USA, Soft-Gel, Udell, Hari and Chemco have infringed, induced and/or
11 contributed to the infringement of the '760 and '459 Patents.

12 67. Upon information and belief, plaintiffs allege that defendants' infringement,
13 inducement of infringement, and/or contributory infringement of the '760 and '459 Patents has
14 been willful, deliberate, knowing and with wanton disregard of the patent rights of plaintiff.

15 68. Upon information and belief, plaintiffs allege that defendants will continue to
16 infringe, continue to induce others to infringe, and/or continue to contributorily infringe the '760
17 and '459 Patents to plaintiffs' irreparable damage unless enjoined by this court.

18 69. Plaintiffs have been damaged by the foregoing infringing acts of defendants Iovate
19 USA, Jarrow Formulas, Jarrow Industries, Hari, Kenko USA, Soft-Gel, Udell and Chemco. The
20 exact amount of such damages can be determined upon an accounting.

21 **SECOND CLAIM FOR RELIEF**

22 Declaratory Relief (35 U.S.C. § 1 et seq. and 28 U.S.C. §2201)
23 Against Defendants Udell and Hari

24 70. Plaintiffs incorporate by reference and reallege paragraphs 1 through 69 as though
25 fully set forth herein.

26 71. Upon information and belief, plaintiffs allege that in or about 2005, Defendants
27 asserted through letters, facsimile transmissions, telephone communications and otherwise, that
28 defendant Soft-Gel had ownership or rights in the '206 Patent, and the exclusive licensee of the

1 '760 and '459 patents. These communications demanded the recipient immediately cease its
2 allegedly infringing use of corosolic acid in its products under the threat of legal recourse.

3 72. There is an actual controversy over whether the '206 Patent is valid. Plaintiffs
4 allege the '206 Patent is invalid, inter alia, for one or more of the following reasons:

- 5 a. failure to comply with 35 U.S.C. §101 in that Udell and Hari did not invent or
6 discover any new and useful process, machine or manufacture, or any new and
7 useful improvement thereof;
- 8 b. failure to comply with 35 U.S.C. §102 in that the subject matter claimed in the
9 '206 Patent is not novel and was not invented by Udell and Hari; or
- 10 c. failure to comply with 35 U.S.C. §103 in that the subject matter claimed in the
11 '206 Patent is obvious to one of ordinary skill in the art. Defendants deny
12 these allegations.

13 73. The '206 Patent is unenforceable because it was obtained through fraud and/or
14 inequitable conduct on the U.S. Patent and Trademark Office, as described above.

15 74. Such fraud and/or inequitable conduct renders all claims of the '206 Patent
16 unenforceable.

17 75. The '206 Patent is unenforceable by reason of the doctrines of "patent misuse" and
18 "unclean hands" arising from defendants' pattern of abuse and misuse of the United States Patent
19 system, by obtaining and attempting to enforce patent claims patterned on presently existing
20 technology in the public domain belonging to or developed by others, and using and employing
21 abusive and coercive strategies to intimidate parties to pay royalties to defendants, all as alleged
22 above.

23 76. As a consequence of defendants' repeated and continuing assertions that the '206
24 Patent does not infringe on plaintiffs' '760 and '459 Patents, in addition to defendants' demands,
25 threats, and intimidation, there is an actual and present controversy between plaintiffs and
26 defendants as to the validity and enforceability of the '206 Patent. Plaintiffs have attempted to
27 license their '760 and '459 patents to manufacturers in the soft gelatin capsule marketplace.
28 Defendants' threats, demands and intimidation surrounding its enforcement of the '206 patent,

1 however, were directed to plaintiffs' potential licensees. The threats have caused plaintiffs'
2 negotiations with potential licensees to break down because of the licensees' fear they would be
3 accused of infringing the '206 patent. Likewise, the threats have created a fear that Plaintiffs will
4 be subject to suit for inducing the alleged infringement of the '206 patent.

5 77. Defendants' assertions, demands, threats and intimidation against plaintiffs, UTC's
6 existing shareholders, prospective investors, its sales representatives and their customers have
7 caused and are causing substantial and irreparable harm to plaintiffs. Unless restrained by this
8 court, defendant's assertions, demands, threats and intimidation will continue to cause substantial
9 and irreparable harm to plaintiffs and intimidate their customers from doing business with them
10 or in the dietary supplement market in general.

11 78. Accordingly, plaintiffs seek a declaration from this court that the '206 Patent be
12 declared invalid, unenforceable and noninfringed, and that this case be declared exceptional under
13 35 U.S.C. § 285.

14 **THIRD CLAIM FOR RELIEF**

15 False Advertising under § 43(a) of the Lanham Act, 15 U.S.C.S. § 1125(a)
16 Against Defendants Soft-Gel, Chemco, Jarrow Industries, and Jarrow Formulas

17 79. Plaintiffs incorporate by reference and reallege paragraphs 1 through 78 as though
18 fully set forth herein.

19 80. Defendants Soft-Gel, Chemco, Jarrow Industries and Jarrow Formulas made false
20 statements that all their products were protected by the '760 or '459 Patents for the purpose of
21 deceiving the public. (Exhibits G and H.)

22 81. Upon information and belief, plaintiffs allege that defendants Soft-Gel, Chemco,
23 Jarrow Industries and Jarrow Formulas have committed thousands of separate offenses through
24 their web pages advertising, catalog advertising, product advertising, and statements made by
25 their representatives to the public.

26 82. Defendants' false advertising is displacing sales that would have gone to plaintiffs
27 but for the false statements. Unless restrained by this court, defendants' false assertions will
28 continue to cause substantial and irreparable harm to plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray this court enter judgment against all defendants as follows:

A. On the First Claim for Relief for Patent Infringement:

1. That a judgment be entered that defendants have infringed, actively induced others to infringe and contributorily infringed the '760 and '459 Patents.

2. That defendants, their agents, sales representatives, distributors, servants and employees, attorneys, affiliates, subsidiaries, successors and assigns, and any and all persons or entities acting at, through, under or in active concert or in participation with any or all of them, be enjoined and restrained preliminarily during the pendency of this action, and thereafter permanently, from infringing, actively inducing others to infringe, and contributorily infringing the '760 and '459 Patents.

3. That a judgment be entered that defendants be required to pay over to plaintiffs all damages sustained by plaintiffs due to such patent infringement and that such damages be trebled pursuant to 35 U.S.C. § 284 for the willful acts of infringement complained of herein;

4. That this case be adjudged and decreed exceptional under the 35 U.S.C. § 285 entitling plaintiffs to an award of its reasonable attorney fees and that such reasonable attorney fees be awarded;

5. That plaintiffs be awarded its costs and prejudgment interest on all damages;

6. That defendants be required to file with the court within thirty (30) days after entry of final judgment of this cause a written statement under oath setting forth the manner in which defendants have complied with the final judgment; and

7. That plaintiffs be awarded such other and further relief as the court deems meet and proper in the premises.

B. On the Second Claim for Relief for Declaratory Relief:

1. For a declaratory judgment that each of the claims of the '206 Patent and any other patents asserted against plaintiff by defendants are invalid, unenforceable;

2. For their costs of suit; including reasonable attorneys fees; and

3. For such other relief as the court may deem equitable and just;

C. On the Third Claim for Relief for False Advertising:

1. For general and compensatory damages;

2. For special damages according to proof;

3. For exemplary or punitive damages;

4. For costs of suit herein incurred; and

5. For such other and further relief as the court may deem meet and proper in
the premises.

Dated: February 27, 2007

ROPERS, MAJESKI, KOHN & BENTLEY

By: /s/ Amy K. Gruber

ROBERT P. ANDRIS

LAEL D. ANDARA

AMY K. GRUBER

Attorneys for Plaintiffs

USE TECHNO CORPORATION and
FUTOSHI MATSUYAMA

DEMAND FOR JURY

Plaintiffs hereby demand a trial by jury.

Dated: February 27, 2007

ROPERS, MAJESKI, KOHN & BENTLEY

By: /s/ Amy K. Gruber

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