

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

NUTRINOVA NUTRITION	)	
SPECIALTIES & FOOD INGREDIENTS	)	
GMBH,	)	
	)	
Plaintiff,	)	
v.	)	CASE NO. 07 C 4232
	)	<b>JURY TRIAL DEMANDED</b>
VIACHEM LTD.	)	
	)	Magistrate Judge Keys
and	)	
	)	Judge Amy St. Eve
THE INGREDIENTS HOUSE	)	
	)	
and	)	
	)	
DMH INGREDIENTS,	)	
	)	
Defendants.	)	

**AMENDED COMPLAINT**

Comes Now Plaintiff, NutriNova Nutrition Specialties & Food Ingredients GMBH (“NutriNova”), by and through its undersigned attorneys, and for its complaint against Defendants, Viachem LTD. (“Viachem”), The Ingredients House (“TIH”) and DMH Ingredients (“DMH”), herein alleges the following:

**THE PARTIES**

1. NutriNova, a German corporation, has a place of business at Frankfurter Straße 111, 61476 Kornberg im Taunus, Germany.
2. On information and belief, Viachem is a limited partnership registered in Texas with a place of business at 2701 North Dallas Parkway, Suite 250, Plano, Texas 75093.
3. On information and belief, TIH is a corporation organized and existing under the laws of New Jersey with a place of business in Belle Mead, New Jersey 08502.

4. DMH is a Illinois corporation, with a place of business at 1228 American Way, Libertyville, Illinois 60084.

### **JURISDICTION AND VENUE**

5. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281.

6. Federal jurisdiction is proper pursuant to 28 U.S.C. §§ 1331 and 1338(a) as NutriNova alleges substantial claims arising out of the Patent Act of 1952 (Title 35 of the United States Code).

7. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and §1400(b).

### **FACTUAL BACKGROUND**

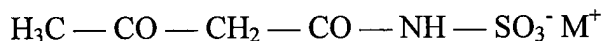
#### **NutriNova's Business**

8. Among many other products, NutriNova sells a high intensity sweetener Acesulfame K (AceK). An important precursor to the sweetener is manufactured by a patented process.

#### **NutriNova's Patent**

9. NutriNova is the assignee of U.S. Patent No. 5,103,046 ("the '046 patent"). A true and correct copy of the '046 patent is attached hereto as Exhibit A.

10. The '046 patent claims ammonium salts of acetoacetamide-N-sulfonic acid of the formula:



in which  $\text{M}^+$  is  $\text{N}^+ \text{R}^1 \text{R}^2 \text{R}^3 \text{R}^4$  and wherein  $\text{R}^1$ ,  $\text{R}^2$ ,  $\text{R}^3$  and  $\text{R}^4$ , independently of one another are H or  $\text{C}_1 - \text{C}_8$ -alkyl,  $\text{C}_8 - \text{C}_{10}$ -cycloalkyl, -aryl or -aralkyl.

**Defendants' Infringing Activities**

11. On information and belief (as that term is defined and used in the Fed. Rules of Civ. P.), TIH imports a sweetener into the United States from China. On information and belief, TIH then distributes that sweetener in the United States. TIH distributes this product under the trademark "RightSweet." RightSweet is manufactured by Vitasweet Co., LTD.

12. On information and belief, Viachem has entered into an exclusive relationship with TIH where it takes the RightSweet from TIH and then distributes it throughout the United States, including this judicial district.

13. On information and belief, DMH imports into this country and distributes a sweetener in the United States, which, on information and belief, it identifies as "Longsweet" or "Acesulfame K," and is manufactured by Sanhe Yuanye Food Chemicals Co., LTD.

14. NutriNova obtained samples of "RightSweet".

15. NutriNova obtained samples of "Longsweet".

16. NutriNova caused RightSweet to be tested. RightSweet tested positive for the one of the claimed salts of the '046 patent.

17. NutriNova caused Longsweet to be tested. Longsweet tested positive for the one of the claimed salts of the '046 patent.

**Count I**

**Viachem's Infringement of the '046 Patent**

18. NutriNova incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

19. On information and belief, Viachem has imported into the United States, and offered for sale and sold RightSweet. By doing so, Viachem has infringed, either literally or under the doctrine of equivalents, at least one claim of the '046 patent under 35 U.S.C. § 271.

20. On information and belief, Viachem has willfully and deliberately infringed the '046 patent with full knowledge of NutriNova's rights in the patent, and Viachem continues to willfully and deliberately infringe the patent, making this an exceptional case under 35 U.S.C. § 285.

21. These acts of infringement are irreparably harming and causing damage to NutriNova and will continue to do so unless and until enjoined by this Court.

22. NutriNova has no adequate remedy of law as money damages are not adequate to compensate NutriNova for the wrongful acts of Viachem. Unless the Court acts to preliminarily and permanently enjoin Viachem, its acts herein complained of will cause great and irreparable damage to NutriNova.

## **COUNT II**

### **TIH's Infringement of the '046 Patent**

23. NutriNova incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

24. On information and belief, TIH has imported into the United States, and offered for sale and sold RightSweet. By doing so, TIH has infringed, either literally or under the doctrine of equivalents, at least one claim of the '046 patent under 35 U.S.C. § 271.

25. On information and belief, before TIH began its importation into the United States, and its offer for sale and sale of the RightSweet, TIH had actual knowledge of the '046 patent.

26. On information and belief, TIH has willfully and deliberately infringed the '046 patent, either literally or under the doctrine of equivalents, all with full knowledge of NutriNova's rights in the patent. TIH continues to willfully and deliberately infringe the patent with full knowledge of NutriNova's rights in the patent, making this an exceptional case under 35 U.S.C. § 285.

27. These acts of infringement are irreparably harming and causing damage to NutriNova and will continue to do so unless and until enjoined by this Court.

28. NutriNova has no adequate remedy of law as money damages are not adequate to compensate NutriNova for the wrongful acts of TIH. Unless the Court acts to permanently enjoin TIH, its acts herein complained of will cause great and irreparable damage to NutriNova.

### **Count III**

#### **DMH's Infringement of the '046 Patent**

29. NutriNova incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Complaint.

30. On information and belief, DMH has imported into the United States, and offered for sale and sold Longsweet. By doing so, DMH has infringed, either literally or under the doctrine of equivalents, at least one claim of the '046 patent under 35 U.S.C. § 271.

31. On information and belief, DMH has willfully and deliberately infringed the '046 patent, all with full knowledge of NutriNova's rights in the patent, and DMH continues to willfully and deliberately infringe the patent with full knowledge of NutriNova's rights in the patent, making this an exceptional case under 35 U.S.C. § 285.

32. These acts of infringement are irreparably harming and causing damage to NutriNova and will continue to do so unless and until enjoined by this Court.

33. NutriNova has no adequate remedy of law as money damages are not adequate to compensate NutriNova for the wrongful acts of DMH. Unless the Court acts to permanently enjoin DMH, its acts herein complained of will cause great and irreparable damage to NutriNova.

**PRAYER FOR RELIEF**

WHEREFORE, NutriNova prays for judgment against Defendants as follows:

- A. Preliminary enjoin Defendants and any person acting in concert with them from further infringement of U.S. Patent No. 5,103,046;
- B. Permanently enjoin Defendants and any person acting in concert with them from further infringement of U.S. Patent No. 5,103,046 and enjoin the importation into the United States, offer for sale, sale, manufacture and/or use of RightSweet and/or LongSweet;
- C. Award NutriNova damages resulting from Defendants' infringements;
- D. Treble the damages in accordance with the provisions of 35 U.S.C. § 284;
- E. Find the case to be exceptional under the provisions of 35 U.S.C. § 285;
- F. Award NutriNova its costs and reasonable attorney fees;
- G. Order the impounding and destruction of all Defendants' infringing products, and report to this Court their compliance with the foregoing within thirty (30) days of judgment;
- H. Order an accounting of Defendants' profits resulting from sales of infringing products;
- I. Award NutriNova interest and costs; and

J. That this Court award such other and further relief as the Court deems proper and appropriate under the circumstances.

**JURY TRIAL DEMANDED**

NutriNova hereby demands a jury on all issues so triable.

Respectfully submitted,

**NUTRINOVA NUTRITION  
SPECIALTIES & FOOD INGREDIENTS  
GMBH**

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