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Attorneys for Plaintiff, GFA Brands, Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

_____)	
GFA BRANDS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-3562 (WHW)
)	
THE C.F. SAUER CO., DEAN FOODS CO.)	
AND CFS FOODS, INC.,)	
)	
Defendants.)	

AMENDED COMPLAINT FOR INFRINGEMENT OF U.S. PATENTS

Plaintiff, GFA Brands, Inc. (hereinafter “GFA”), with its principal office located at 211 Knickerbocker Road, Cresskill, New Jersey 07626, by and through its attorneys, for its amended complaint herein, alleges as follows:

THE PARTIES

1. Plaintiff GFA is a corporation existing under and by virtue of the laws of Delaware, with its principal place of business located 211 Knickerbocker Road, Cresskill, New Jersey 07626.

2. Upon information and belief, defendant The C.F. Sauer Company (hereinafter “Sauer”), is a corporation existing under and by virtue of the laws of Virginia.

3. Upon information and belief, defendant Sauer has its principal place of business at 2000 West Broad Street, Richmond, Virginia 23220.

4. Upon information and belief, defendant Dean Foods Company (hereinafter “Dean Foods”), is a corporation existing under and by virtue of the laws of Virginia.

5. Upon information and belief, defendant Dean Foods has its principal place of business at 2000 West Broad Street, Richmond, Virginia 23220.

6. Upon information and belief, defendant CFS Foods, Inc. (hereinafter “CFS Foods”), is a corporation existing under and by virtue of the laws of New York.

7. Upon information and belief, defendant CFS Foods has its principal place of business at 5 Farmers Road, Great Neck, New York 11024.

JURISDICTION

8. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.* This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has jurisdiction over the breach of contract claim of this action under 28 U.S.C. § 1367(a).

10. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b).

11. Upon information and belief, defendants have committed acts of patent infringement in this judicial district and throughout the United States.

FACTUAL BACKGROUND

12. GFA Brands, Inc. is the exclusive licensee of United States Patent No. 5,578,334 (hereinafter “the ‘334 patent”) entitled “Increasing the HDL Level and the HDL/LDL Ratio in Human Serum with Fat Blends,” and United States Patent No. 5,843,497 (hererinafter “the ‘497 patent”) entitled “Increasing the HDL Level and the HDL/LDL Ratio in Human Serum by Balancing Saturated and Polyunsaturated Dietary Fatty Acids,” and United States Patent No. 6,630,192 (hereinafter “the ‘192 patent”) entitled “Increasing the HDL Level and the HDL/LDL Ratio in Human Serum by Balancing Saturated and Polyunsaturated Dietary Fatty Acids.” A copy of each of these United States Patents is attached hereto as Exhibit 1.

13. As the exclusive licensee of the three U. S. patents listed above, GFA has the legal right to bring legal action against any third party that infringes any of these listed patents. GFA has complied with all the relevant provisions of the licensing agreement, through which GFA has the right to sue for patent infringement in its own name and recover for infringement thereof.

14. Upon information and belief, defendant Sauer is making, using, selling and/or offering for sale one or more margarine products, (hereinafter “the accused products,” which include “NATURAL MARGARINE,” see Exhibit 2), throughout the United States, including within the District of New Jersey, the manufacture, use, sale and/or offer for sale of which infringes one or more claims of the ‘334 patent, the ‘497 patent and the ‘192 patent.

15. Upon information and belief, Sauer had notice and actual knowledge of the '334 patent, the '497 patent and the '192 patent prior to the filing of this lawsuit, and the infringement of these patents has been willful and deliberate.

16. Upon information and belief, defendant Dean Foods is making, using, selling and/or offering for sale one or more accused products throughout the United States, including within the District of New Jersey, the manufacture, use, sale and/or offer for sale of which infringes one or more claims of the '334 patent, the '497 patent and the '192 patent.

17. Upon information and belief, Dean Foods had notice and actual knowledge of the '334 patent, the '497 patent and the '192 patent prior to the filing of this lawsuit, and the infringement of these patents has been willful and deliberate.

18. Upon information and belief, defendant CFS Foods is making, using, selling and/or offering for sale one or more accused products throughout the United States, including within the District of New Jersey, the manufacture, use, sale and/or offer for sale of which infringes one or more claims of the '334 patent, the '497 patent and the '192 patent.

19. Upon information and belief, CFS Foods had notice and actual knowledge of the '334 patent, the '497 patent and the '192 patent prior to the filing of this lawsuit, and the infringement of these patents has been willful and deliberate.

20. During discussion of a possible business transaction with GFA, Dean Foods signed a Mutual Non-Disclosure & Non-Compete Agreement (hereinafter "the Agreement," see Exhibit 3) wherein Dean Foods agreed to maintain GFA's formulations as confidential and would not market or offer a similar product to another brand or private label – namely, non-hydrogenated trans fat free spreads with or without cholesterol lowering additives.

21. Upon information and belief, Dean Foods willfully and deliberately breached the terms of the Agreement by making, using, selling and/or offering for sale one or more accused products.

COUNT I PATENT INFRINGEMENT OF THE '334 PATENT

22. GFA realleges and incorporates by reference Paragraphs 1 through 20 of the Amended Complaint.

23. Upon information and belief, the accused products infringe claims 14-19, 21-23, and 25-26 of the '334 patent.

24. Upon information and belief, Sauer, Dean Foods and CFS Foods have willfully infringed, induced others and/or contributed to the infringement of claims 14-19, 21-23, and 25-26 of the '334 patent in violation of 35 U.S.C. § 271.

25. GFA has been damaged by defendants' infringement in an amount to be determined at trial. Furthermore, by these acts, defendants have irreparably injured GFA and such injury will continue unless defendants are enjoined by this Court.

COUNT II PATENT INFRINGEMENT OF THE '497 PATENT

26. GFA realleges and incorporates by reference Paragraphs 1 through 24 of the Amended Complaint.

27. Upon information and belief, the accused products infringe claims 1 and 3-11 of the '497 patent.

28. Upon information and belief, defendants Sauer, Dean Foods and CFS Foods have willfully infringed, induced others and/or contributed to the infringement of claims 1 and 3-11 of the '497 patent in violation of 35 U.S.C. § 271.

29. GFA has been damaged by defendants' infringement in an amount to be determined at trial. Furthermore, by these acts, defendants have irreparably injured GFA and such injury will continue unless defendants are enjoined by this Court.

COUNT III PATENT INFRINGEMENT OF THE '192 PATENT

30. GFA realleges and incorporates by reference Paragraphs 1 through 28 of the Amended Complaint.

31. Upon information and belief, the accused products infringe claims 1-14, 17-22, 24-27, 30-36, 38, and 40-43 of the '192 patent.

32. Upon information and belief, defendants Sauer, Dean Foods and CFS Foods have willfully infringed, induced others and/or contributed to the infringement of claims 1-14, 17-22, 24-27, 30-36, 38, and 40-43 of the '192 patent in violation of 35 U.S.C. § 271.

33. GFA has been damaged by defendants' infringement in an amount to be determined at trial. Furthermore, by these acts, defendants have irreparably injured GFA and such injury will continue unless defendants are enjoined by this Court.

COUNT IV BREACH OF CONTRACT

34. GFA realleges and incorporates by reference Paragraphs 1 through 32 of the Amended Complaint.

35. Upon information and belief, the accused products are non hydrogenated trans fat free spreads.

36. Upon information and belief, Dean Foods willfully breached the terms of the Agreement by marketing and/or offering the accused products.

37. GFA has been damaged by Dean Foods' breach in an amount to be determined at trial. Furthermore, pursuant to the terms of the Agreement, GFA is entitled to injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, GFA prays for judgment against defendants Sauer, Dean Foods and CFS Foods as follows:

A. That Sauer, Dean Foods and CFS Foods be adjudged to have infringed claims 14-19, 21-23, and 25-26 of the '334 patent, claims 1 and 3-11 of the '497 patent and claims 1-14, 17-22, 24-27, 30-36, 38 and 40-43 of the '192 patent.

B. That Sauer, Dean Foods and CFS Foods be adjudged to have willfully infringed claims 14-19, 21-23, and 25-26 of the '334 patent, claims 1 and 3-11 of the '497 patent and claims 1-14, 17-22, 24-27, 30-36, 38, and 40-43 of the '192 patent.

C. That Sauer, Dean Foods and CFS Foods be adjudged to have induced the infringement of claims 14-19, 21-23, and 25-26 of the '334 patent, claims 1 and 3-11 of the '497 patent and claims 1-14, 17-22, 24-27, 30-36, 38 and 40-43 of the '192 patent.

D. That Sauer, Dean Foods and CFS Foods be adjudged to have contributed to the infringement of claims 14-19, 21-23, and 25-26 of the '334 patent, claims 1 and 3-11 of the '497 patent and claims 1-14, 17-22, 24-27, 30-36, 38, and 40-43 of the '192 patent.

E. That Sauer, Dean Foods and CFS Foods, their subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with defendants be permanently enjoined from infringing, contributing to the infringement of, and inducing infringement of the '334 patent, the '497 patent and the '192 patent, and specifically from directly or indirectly making, using, selling, or

offering for sale, any products embodying the inventions of the '334 patent, the '497 patent and the '192 patent during the life of the patent, without the express written authority of GFA;

F. That Sauer, Dean Foods and CFS Foods be directed to fully compensate GFA for all damages attributable to its infringement of the '334 patent, the '497 patent and the '192 patent in the amount according to proof at trial;

G. That Sauer, Dean Foods and CFS Foods be ordered to deliver to GFA for destruction at its option, all products that infringe the '334 patent, the '497 patent and the '192 patent;

H. That Dean Foods be adjudged to have breached the terms of the Agreement;

I. That Dean Foods be directed to fully compensate GFA for all damages attributable to its breach of the Agreement.

J. That Dean Foods, its subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with Dean Foods be permanently enjoined from violating the terms of the Agreement.

K. That this case be deemed exceptional;

L. That all damages awarded be trebled;

M. That GFA be awarded its reasonable attorneys' fees;

N. That GFA be awarded its costs of suit and an assessment of interest, including prejudgment interest; and

O. That GFA have such other, further, and different relief as this Court deems proper under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff GFA hereby demands a trial by jury of all issues in this action.

LOCAL RULE 11.2 CERTIFICATION

Pursuant to Local Rule 11.2, the undersigned hereby certifies that at the time of filing this Amended Complaint, the undersigned is not aware that the matter in controversy is the subject of actions pending in any other court, or of any pending arbitration or administrative proceeding, except for the following:

Defendant[s] have sought reexamination of the validity of the three patents at issue from the United States Patent & Trademark Office. On March 1, 2005 defendant[s] requested reexamination of certain claims of the '192 patent, and on May 2, 2005, the USPTO granted the request for reexamination. On September 14, 2005 (according to defendant Sauer's motion to dismiss), defendant[s] requested reexamination of the '334 and '497 patents.

McCARTER & ENGLISH, LLP

Counsel for Plaintiff

GFA Brands, Inc.

By: s/William J. O'Shaughnessy

WILLIAM J. O'SHAUGHNESSY

A Member of the Firm

Dated: October 11, 2005