

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

00 AUG 24 PM 4:19

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

FOLIAR NUTRIENTS, INC.,

Plaintiff,

v.

Case No. 8:00 CV-1474-T-26F

BEN HILL GRIFFIN, INC.,
700 S. Scenic Highway
Frostproof, FL 33843-2443,

Defendant.

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW plaintiff Foliar Nutrients, Inc. and, for its complaint against defendant Ben Hill Griffin, states as follows:

THE PARTIES

1. Plaintiff Foliar Nutrients, Inc. ("Plaintiff") is a Georgia corporation in good standing with its corporate headquarters and principal place of business at 320 First Avenue, N.E., Cairo, Grady County, Georgia 30062.

2. Defendant Ben Hill Griffin, Inc. ("Defendant") is a Florida corporation in good standing with its corporate headquarters and principal place of business at P.O. Box 127, Frostproof, Polk County, Florida 33843.

JURISDICTION AND VENUE

3. The Court may exercise subject matter jurisdiction over the claims set forth in this complaint pursuant to 28 U.S.C. §1338.

4. The Court may exercise personal jurisdiction over Defendant in this action, as Defendant is a domestic Florida corporation with corporate headquarters and principal place of business in Florida, Defendant has committed

acts of patent infringement in Florida as set forth below, and service of process in this action on Defendant will be effected pursuant to Fed. R. Civ. P. 4(e)(1),(h)(1).

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

6. CLAIMS FOR PATENT INFRINGEMENT

COUNT 1

6. On September 1, 1998 United States Letters Patent No. 5,800,837 were duly and legally issued to John B. Taylor for an invention denominated "Plant Fertilizer Compositions Containing Phosphonate and Phosphate Salts and Constituents Thereof (the "'837 Patent"). Earlier, on July 4, 1997, John B. Taylor had assigned all right, title and interest in his '837 Patent to Plaintiff. At all times material to this action, then, Plaintiff has been, and still is, the owner of the '837 Patent and all rights of recovery for damages thereunder.

7. Since at least on or about March 6, 2000, Defendant has been infringing the '837 Patent by making, using and/or selling products embodying the patented invention and will continue to do so unless restrained by the Court.

8. Upon information and belief, Defendant has known of the '837 Patent since approximately its date of issue on September 1, 1998. Notwithstanding this prior knowledge, Defendant has still pursued its knowing and willful infringement thereof, in disregard of Plaintiffs rights thereunder.

COUNT 11

9. On April 7, 1998, United States Letters Patent No. 5,736,164 were duly and legally issued to John B. Taylor for an invention denominated "Fungicidal Compositions for Plants Containing Phosphonate and Phosphate Salts, and Derivatives Thereof" (the "'164 Patent"). Earlier, on April 20, 2000, John B. Taylor had assigned all right, title and interest in his '164 Patent to

Plaintiff. At all times material to this action, then, Plaintiff has been, and still is, the owner of the '164 Patent and all rights of recovery for damages thereunder.

10. Since at least on or about March 6, 2000, Defendant has been infringing the '164 Patent by making, using and/or selling products embodying the patented invention and will continue to do so unless restrained by the Court.

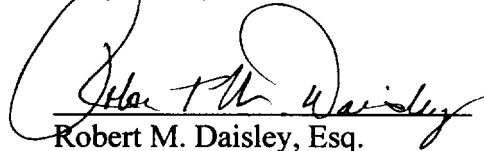
11. Upon information and belief, Defendant has known of the '164 Patent since approximately its date of issue on April 7, 1998. Notwithstanding this prior knowledge, Defendant has still pursued its knowing and willful infringement thereof, in disregard of Plaintiff's rights thereunder.

WHEREFORE, Plaintiff Foliar Nutrients, Inc., prays for (1) entry of judgment in its favor and against Defendant Ben Hill Griffin, Inc. on the Claims for Patent Infringement, (2) an accounting for damages, including lost profits, resulting from Defendant's infringement, and/or a reasonable royalty for such infringement pursuant to 35 U.S.C. §284, (3) a trebling of Plaintiffs damages because of the knowing, willful and wanton nature of Defendant's conduct, (4) an assessment of interest, both prejudgment and post judgment, on the damages so computed, (5) a finding of this case to be exceptional and an award of attorney's fees and costs incurred by Plaintiff in this action pursuant to 35 U.S.C. §285, (6) a permanent injunction against Defendant's continued infringement of the '837 and '164 Patents or an award of a reasonable royalty for any future use by Defendant of the '837 and '164 Patents, and such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a jury trial on all issues triable by jury.

Respectfully submitted,



Robert M. Daisley, Esq.

Florida Bar #377880

JOHNSON, BLAKELY, POPE,

BOKOR, RUPPEL & BURNS

Post Office Box 1100

Tampa, Florida 33601-1100

Tel: (813) 225-2500

Fax: (813) 223-7118

and

SULLIVAN LAW GROUP

Stephen T. Sullivan

TRIAL COUNSEL

5060 North 40th Street, Ste. 120

Phoenix, AZ 85018-2140

Tel: (602) 956-6161

Fax: (602) 956-6262

and

LATHROP & GAGE L.C.

William A. Rudy

David V. Clark

John M. McFarland

2345 Grand Blvd., Suite 2800

Kansas City, MO 64108-2612

Tel: (816) 292-2000

Fax: (816) 292-2001

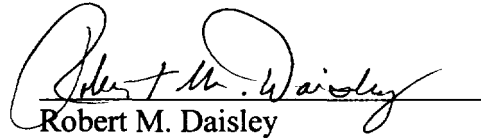
Attorneys for Plaintiff

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been served by facsimile and by U.S. Mail, postage prepaid, this 24th day of August, 2000 to the following:

Herbert L. Allen, Esq.
Stephen D. Milbrath, Esq.
Brian R. Gilchrist, Esq.
ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A.
255 So. Orange Ave., Suite 1401
P. O. Box 3791
Orlando, Florida 32802
Fax: (407) 841-2343

Attorneys for Defendant


Robert M. Daisley