

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION**

**IOVATE HEALTH SCIENCES, INC. and
IOVATE T & P, INC.,**

Plaintiffs,

v.

FORTRESS SYSTEMS, LLC,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Iovate Health Sciences, Inc. and Iovate T & P, Inc. (jointly “Plaintiffs”), on personal knowledge as to their own activities and on information and belief as to all other matters, hereby complain and allege for their complaint against Defendant Fortress Systems, LLC (“Defendant”):

THE PARTIES

1. Plaintiff Iovate Health Sciences, Inc. is a corporation organized and existing under the laws of Canada and has a principal place of business at 5100 Spectrum Way, Mississauga, Ontario, L4W 5S2.

2. Plaintiff Iovate T & P, Inc. is a corporation organized and existing under the laws of Canada and has a principal place of business at 5100 Spectrum Way, Mississauga, Ontario, L4W 5S2.

3. Upon information and belief, Defendant Fortress Systems, LLC is a Nebraska limited liability corporation or company with its principal place of business at 2132 South 156th Circle, Omaha NE, 68130.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, and the Lanham Act, Title 15 of the United States Code § 1051 *et seq.* Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1391(b), 1391(d) and 1400.

GENERAL ALLEGATIONS

6. On October 26, 1999, United States Patent No. 5,973,199 (“the ‘199 patent”), titled “Hydrosoluble Organic Salts of Creatine,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘199 patent is attached as Exhibit A of this Complaint.

7. Iovate Health Sciences, Inc. is the owner of all rights, title and interest in and to the ‘199 patent.

8. On October 19, 1999, United States Patent No. 5,968,900 (“the ‘900 patent”), titled “Increasing Creatine and Glycogen Concentration in Muscle,” was duly issued by the United States Patent and Trademark Office. A true and correct copy of the ‘900 patent is attached as Exhibit B of this Complaint.

9. Iovate T & P, Inc., is the owner of all rights, title and interest in and to the ‘900 patent.

10. Upon information and belief, Defendant has made, used, offered for sale, sold and/or imported nutritional supplements, including Creatine Clear, Creatine Edge, Herculine CNO-3, Flexion, and Herculine MRF throughout the United States and in this judicial district.

11. The product labels for Creatine Clear and Creatine Edge list “Creatine (di-Creatine Citrate)” as an ingredient.

12. The product labels for Herculin CNO-3 and Flexion list “Creatine (as tri-Creatine Citrate)” as an ingredient; the product label for Herculin MRF-4 lists “Tri-Creatine Citrate” as an ingredient.

13. On information and belief, Creatine Clear, Creatine Edge, Herculin CNO-3, Herculin MRF-4 and Flexion contain creatine citrate.

14. On Defendant’s product labels, advertisements, and/or websites, Defendant states that Herculin MRF purports to “provide an insulin spike” and increase creatine concentrations in humans.

FIRST CAUSE OF ACTION
(Infringement of the ‘199 Patent)

15. Plaintiffs reallege and incorporate the previous paragraphs of this Complaint as if set forth at length and in full herein.

16. By its actions, Defendant has infringed and is infringing the ‘199 patent.

17. Upon information and belief, the infringement by Defendant has been and continues to be willful.

18. As a result of Defendant’s acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

SECOND CAUSE OF ACTION
(Infringement of the ‘900 Patent)

19. Plaintiffs reallege and incorporate the previous paragraphs of this Complaint as if set forth at length and in full herein.

20. By its actions, Defendant has infringed and is infringing the ‘900 patent.

21. Upon information and belief, the infringement by Defendant has been and continues to be willful.

22. As a result of Defendant's acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

THIRD CAUSE OF ACTION
(Violation of 15 U.S.C. § 1125(a))

23. Plaintiffs reallege and incorporate the previous paragraphs of this Complaint as if set forth at length and in full herein.

24. This claim is for unfair competition, false or misleading descriptions of fact, and false or misleading representations of fact, under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

25. Defendant uses false or misleading descriptions of fact, and false or misleading representations of fact in the marketing, advertising and promotion and sale of the aforementioned nutritional supplement products, including Herculine MRF, for example, that Herculine MRF delivers an insulin spike.

26. Defendant's activities complained of herein misrepresent the nature, characteristics and/or qualities of Defendant's products.

27. Defendant's activities complained of herein constitute false description, false representation and false advertising under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

28. Defendant has engaged in this illegal conduct willfully, deliberately and intentionally.

29. Plaintiffs have been and, if continued, will be damaged by Defendant's acts.

WHEREFORE, Plaintiffs pray for entry of judgment against Defendant as follows:

A. That Defendant infringes the '199 and '900 patents by its making, using, offering for sale, selling and/or importing nutritional supplements, including Creatine Clear, Creatine Edge, Herculine CNO-3, Flexion, and Herculine MRF;

B. That Defendant's infringement of the '199 and '900 patents is willful;

C. That Defendant, its officers, directors, affiliates, agents, servants, employees and attorneys, and all those persons in privity or in concert with any of them, be preliminarily and permanently enjoined from infringement of the '199 and '900 patents;

D. That Plaintiffs be awarded their damages for infringement of the '199 and '900 patents, and that the damages be trebled;

E. That this case be declared to be exceptional in favor of Plaintiffs under 35 U.S.C. § 285, and that Plaintiffs be awarded their costs, attorneys' fees, and other expenses incurred in connection with this action;

F. That Defendant has violated 15 U.S.C. § 1125(a);

G. That Defendant's violation of 15 U.S.C. § 1125(a) is willful;

H. That Defendant, its officers, directors, affiliates, agents, servants, employees and attorneys, and all those persons in privity or in concert with any of them, be preliminarily and permanently enjoined from further violation of 15 U.S.C. § 1125(a);

I. That Plaintiffs be awarded their damages for Defendant's violation of 15 U.S.C. § 1125(a) and that the damages be trebled;

J. That Plaintiffs be awarded costs, attorneys' fees and other expenses incurred in connection with such violation of 15 U.S.C. § 1125(a); and

K. That Plaintiffs be awarded such other and further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury.

Dated: August 31, 2007

Respectfully submitted,

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