

FILED

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

2006 JAN -9 PM 2: 25

CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
YOUNGSTOWN

JAIME BRENKUS  
35560 RIDGEWAY LANE  
WILLOUGHBY, OHIO 44094

Plaintiff,

CIVIL ACTION NO.

v.

4:04CV11763

ERNIE ZAVORAL  
5375 Mission Hills Drive  
Canfield, OH 44406

JUDGE:  
MAG. JUDGE LIMBERT

HEALTHY LIFE MARKETING  
5255 Revere Run  
Canfield, OH 44406

AMENDED COMPLAINT  
WITH JURY DEMAND

RONALD FRICKE  
5255 Revere Run  
Canfield, OH 44406

RICHARD HERKO  
210 Bonnieview Drive  
Wexford, PA 15090; and

ROBERT TILTON  
500 West Park Avenue  
Hamilton, NJ 08610

Defendants.

For its Complaint against ERNIE ZAVORAL, HEALTHY LIFE MARKETING, INC. ("HLM"), RONALD FRICKE, RICHARD HERKO and ROBERT TILTON, Plaintiff JAIME BRENKUS states as follows:

1. Plaintiff Brenkus is an individual residing at 35560 Ridgeway Lane, Willoughby, Ohio.
2. Upon information and belief, defendant ERNIE ZAVORAL is an individual residing at 5375 Mission Hills Drive, Canfield, Ohio.
3. Upon information and belief, defendant HLM is a corporation organized and existing under the laws of the State of Delaware, having its headquarters and principal place of business at 5255 Revere Run, Canfield, Ohio.
4. Upon information and belief, defendant Fricke is an individual residing and having a place of business at 5255 Revere Run, Canfield, Ohio.
5. Upon information and belief, defendant Herko is an individual residing at 210 Bonnieview Drive, Wexford, Pennsylvania.
6. Upon information and belief, defendant Tilton is an individual residing at 500 West Park Avenue, Hamilton, New Jersey.
7. This action arises under the Patent Law of the United States, Title 35, United States Code. This Court has jurisdiction under 28 U.S.C. 1331 and 1338. Defendants are subject to personal jurisdiction, because on information and belief, both defendants HLM and Zavoral reside in Ohio, all defendants have committed acts or caused consequences in Ohio out of which plaintiff's claims arise and all defendants have purposely availed themselves of the privilege of doing business in Ohio, such that the exercise of jurisdiction by this Court is reasonable and proper.
8. Plaintiff Brenkus is the inventor and owner of United States patent No. 6,296,488 ("the '488 Patent") entitled "Diet Method and Apparatus." The '488 Patent was duly and legally issued by the United States Patent and Trademark Office (PTO) on October 2, 2001.
9. Plaintiff Brenkus is also owner of United States Design Patent No. D444,058 ("the '058 patent") entitled "Partitioned Food Service Assembly." The '058 Patent was duly and legally issued by the United States Patent and Trademark Office on June 26, 2001.

**COUNT 1: DEFENDANTS' INFRINGEMENT OF THE '488 PATENT**

10. Brenkus incorporates by reference herein the allegations of Paragraph 1-9 of this complaint.
11. As of May 29, 2003, Defendants HLM no longer were authorized to practice the inventions of the '488 Patent. Defendants, Zavoral, Fricke, Herko and Tilton were **NEVER** authorized to practice the inventions of the '488 Patent.
12. On information and belief, under 35 U.S.C. 271, defendants have directly infringed, contributed to and induced others to infringe and continue to infringe the '488 Patent through its unauthorized manufacture, sale, offer for sale and/or use of infringing diet plate devices that infringe the '488 patent, in this judicial district and elsewhere.
13. On information and belief, Defendants have knowingly and willfully infringed the '488 Patent.
14. Defendants infringement of the '488 Patent has and will continue to cause Plaintiff damage and irreparable harm unless enjoined by this Court.

**COUNT II: DEFENDANTS' INFRINGEMENT OF THE '058 PATENT**

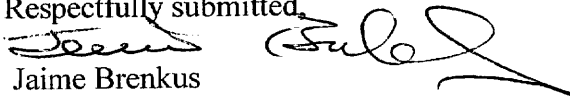
15. Brenkus incorporates by reference herein the allegations of Paragraphs 1-15 of this Complaint.
16. As of May 29, 2003, Defendants HLM no longer were authorized to practice the inventions of the '058 Patent. Defendants, Zavoral, Fricke, Herko and Tilton were **NEVER** authorized to practice the inventions of the '058 Patent.
17. On information and belief, under 35 U.S.C. 271, defendants have directly infringed, contributed to and induced others to infringe and continue to infringe the '058 Patent through its unauthorized manufacture, sale, offer for sale and/or use of infringing diet plate devices that infringe or are used to infringe the '058 Patent, in this judicial district and elsewhere.
18. On information and belief, Defendants have knowingly and willfully infringed the '058 Patent.
19. Defendants infringement of the '058 Patent has and will continue to cause Plaintiff damage and irreparable harm unless enjoined by this Court.

### **PRAYER FOR RELIEF**

Plaintiff prays for the following relief:

- A. A judgment that Defendant ERNIE ZAVORAL, infringed the '488 Patent and should be joined in CASE: 4:04CV1763.
- B. A judgment that Defendants' infringement has been willful.
- C. A judgment against Defendants awarding Plaintiff damages suffered by Plaintiff on account of defendants' infringement of the '488 Patent.
- D. A judgment that Plaintiff's damages be trebled and that punitive damages be assessed against Defendants.
- E. A permanent injunction against Defendants and any entity acting in concert with it, pursuant to 35 U.S.C. 283, preventing Defendants and any such entity, from infringing the '488 Patent.
- F. A judgment that Defendant ERNIE ZAVORAL infringed the '058 Patent and should be joined in CASE: 4:04CV1763.
- G. A judgment that Defendants' infringement of the '058 Patent has been willful.
- H. A judgment against Defendants awarding Plaintiff damages suffered by Plaintiff on account of defendants' infringement of the '058 Patent.
- I. A judgment that Plaintiff's damages be trebled and that punitive damages be assessed against Defendants.
- J. A permanent injunction against Defendants and any such entity, from infringing the '058 Patent.
- K. A judgment that this is an exceptional case and that plaintiff be awarded all attorney fees.
- L. A judgment that Defendants be directed to pay plaintiff its cost incurred herein and such other and further relief as the Court deems just and equitable.

Respectfully submitted,

  
Jaime Brenkus  
35560 Ridgeway Lane  
Willoughby, Ohio 44024

The following are documents that provide the **proof of evidence** that Defendant ERNIE ZAVORAL was infringing on Patents '044 and '058 well **AFTER** the designated license to practice the Patents. ERNIE ZAVORAL was not authorized to market these patents and clearly violates the Plaintiff's Patents '044 and '058.