

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

TATE & LYLE SUCRALOSE, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2:06-CV-02102-MPM-DGB
)	
HEBEI SUKERI SCIENCE AND TECHNOLOGY)	JURY TRIAL DEMANDED
CO., LTD, HEBEI CHEMICAL ENGINEERING)	
AND INDUSTRY RESEARCH INSTITUTE,)	
HEBEI RESEARCH INSTITUTE OF CHEMICAL)	
INDUSTRY, PROFOOD INTERNATIONAL,)	
INC., FORBEST INTERNATIONAL USA, LLC,)	
BEIJING FORBEST TRADE CO., LTD., MTC)	
INDUSTRIES, INC., JSZ INTERNATIONAL,)	
INC., AMAX NUTRASOURCE, INC., MAYPRO)	
INDUSTRIES, INC., VIVION, INC., PREMIUM)	
INGREDIENTS INTERNATIONAL, and)	
HEARTLAND PACKAGING CORP.,)	
)	
Defendants.		

SECOND AMENDED COMPLAINT

NOW COMES Tate & Lyle Sucralose, Inc., Plaintiff, by and through its attorneys, Kehart, Peckert & Booth, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., and John Daniel Wood, for its Second Amended Complaint against Defendants, Hebei Sukeri Science and Technology Co., Ltd, Hebei Chemical Engineering and Industry Research Institute, Hebei Research Institute of Chemical Industry (together referred to herein as “the Hebei Defendants”), ProFood International, Inc., Forbest International USA, LLC, Beijing Forbest Trade Co., Ltd., MTC Industries, Inc., JSZ International, Inc., Amax NutraSource, Inc., Maypro Industries, Inc., Vivion, Inc., Premium Ingredients International, and Heartland Packaging Corporation alleges as follows:

NATURE OF THE ACTION

1. This is a civil action against all Defendants for patent infringement of Plaintiff's United States Patent No. 4,889,928 ("the '928 patent"), directed to sucrose alkyl 4,6-orthoacylates and processes for making sucrose 6-acylates or making sucralose. A true and correct copy of the '928 patent is filed herewith, as Exhibit A, and is incorporated herein by reference.

2. This also is an action against Defendant Premium Ingredients International for trademark infringement, unfair competition, false designation of origin, and false description of its goods under 15 U.S.C. § 1125(a); trademark infringement and unfair competition under Illinois state law and common law; for violation of the Illinois Uniform Deceptive Trade Practices Act (815 ILCS 510/2); and for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1).

THE PARTIES

3. Plaintiff is a Delaware corporation with a principal place of business in the City of Decatur, County of Macon, State of Illinois.

4. Plaintiff is engaged in the business of researching, developing, manufacturing and selling the food and beverage sweetener sucralose, in Illinois.

5. Defendant, Hebei Sukeri Science and Technology Co., Ltd., which, on information and belief, is doing business as Hebei Province Chemical Industry Academe, Dongfang Biological Chemical Company, Hebei Province Chemical Industry Academe Experimental Factory, Hebei Sukerui Science and Technology Co., Ltd., Hebei Sukerei Science and Technology Co., Ltd., Hebei Sukerei Science and Technology, Hebei Sukerui Science and Technology Co., Ltd., and Shijiazhuang Hecheng Baite Chemical Technology Co., Ltd., is a

corporation organized and existing under the laws of the People's Republic of China, with a principal place of business at Zhengeun Town Industrial Park, Gaocheng City, Hebei, People's Republic of China.

6. Defendant, Hebei Research Institute of Chemical Industry, which, on information and belief, is doing business as Heibei Research Institute of Chemical Industry, is a corporation organized and existing under the laws of the People's Republic of China, with a principal place of business at No. 18, Jianhua South Street, Shijiazhuang City, Hebei, People's Republic of China.

7. Defendant, Hebei Chemical Engineering and Industry Research Institute, which, on information and belief, is doing business as Heibei Chemical Engineering and Industry Research Institute, is a corporation organized and existing under the laws of the People's Republic of China, with a principal place of business at 18 South Jianhua Street, Shijiazhuang, Hebei, People's Republic of China.

8. Defendant, ProFood International, Inc., is an Illinois corporation, with a principal place of business at 40 Shuman Boulevard, Suite 160, Naperville, Illinois 60563.

9. Defendant, Forbest International USA, LLC, is a New Jersey limited liability company, with a principal place of business at 131 Fieldcrest Avenue, Edison, New Jersey 08873.

10. Defendant, Beijing Forbest Trade Co., Ltd., is a Chinese corporation, with a principal place of business at Room 2 1801, Building 2, Yard 3, District 1, Fangqunyuan, Fangzhuang, Fengtai District, Beijing 100078, People's Republic of China.

11. Defendant, MTC Industries, Inc., is a New York corporation, with a principal place of business at 41 Mercedes Way Unit 21 E, Edgewood, New York 11717.

12. Defendant, JSZ International, Inc., is a California corporation, with a principal place of business at 1665 West Lisbon Street, Upland, California 91786.

13. Defendant, Amax NutraSource, Inc., is a New Jersey corporation, with its principal place of business at 1770 Prairie Road, Eugene, Oregon 97402.

14. Defendant, Maypro Industries, Inc. is a New York corporation, with a principal place of business at 2700 Westchester Avenue, Purchase, New York 10577.

15. Defendant, Vivion, Inc., is a California corporation, with a principal place of business at 929 Bransten Road, San Carlos, California 94070.

16. Defendant, Premium Ingredients International, is an Illinois corporation, with a principal place of business at 285 E. Fullerton Avenue, Carol Stream, Illinois 60188.

17. Defendant, Heartland Packaging Corporation, is an Indiana corporation with a principal place of business at 14300 Clay Terrace Boulevard, Suite 249, Carmel, Indiana 46032.

18. Defendants are engaged in the business of manufacturing and/or selling food and beverage sweeteners, including sucralose that, on information and belief, was made by a process encompassed by the '928 patent, in Illinois and elsewhere throughout the United States.

19. Defendant, Premium Ingredients International, is misleading customers into believing that Premium Ingredients is an authorized agent or distributor of Tate & Lyle sucralose, and is therefore falsely suggesting Premium Ingredients sells genuine Tate & Lyle sucralose that has been approved or sponsored by Plaintiff, in violation of Plaintiff's trademark rights, the Illinois Uniform Deceptive Trade Practices Act (815 ILCS 510/2), and the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1), and Premium Ingredients will continue to do so unless enjoined by this Court.

JURISDICTION AND VENUE

20. This civil action for patent infringement arises under the Patent Laws of the United States, Title 35, United States Code.

21. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

22. Each of the Defendants has conducted business in this judicial district, has caused injury to Plaintiff in this judicial district, and has committed and/or caused acts of infringement of the '928 patent in this judicial district.

23. This Court has personal jurisdiction over Defendants.

24. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

FIRST COUNT FOR PATENT INFRINGEMENT AGAINST ALL DEFENDANTS

25. Plaintiff is the exclusive licensee of the '928 patent, issued December 26, 1989, entitled "Sucrose Alkyl 4,6-Orthoacylates."

26. The '928 patent discloses and claims sucrose alkyl 4,6-orthoacylates, processes for preparing sucrose 6-acylates, and processes for preparing sucralose.

27. Plaintiff is authorized to enforce the '928 patent and has not authorized the Hebei Defendants to practice the '928 patent.

28. Upon information and belief, subsequent to the issuance of the '928 patent, the Hebei Defendants have made sucralose in China by a process patented in the '928 patent and have imported, offered to sell, and/or sold in the United States sucralose made by a process patented in the '928 patent.

29. Upon information and belief, subsequent to the issuance of the '928 patent, Defendants, ProFood International, Inc., Forbest International USA, LLC, Beijing Forbest Trade

Co., Ltd., MTC Industries, Inc., JSZ International, Inc., Amax NutraSource, Inc., Maypro Industries, Inc., Vivion, Inc., Premium Ingredients International, and Heartland Packaging Corporation have imported, offered to sell, sold and/or used within the United States sucralose made by a process patented in the '928 patent.

30. Defendants have been and still are directly infringing at least one claim of the '928 patent under 35 U.S.C. § 271(g) by importing into the United States or offering to sell, selling or using in the United States sucralose made by a patented process in violation of Plaintiff's patent rights and will continue to do so unless enjoined by this Court.

**SECOND COUNT FOR VIOLATION OF 15 U.S.C. § 1125(a) AGAINST DEFENDANT
PREMIUM INGREDIENTS INTERNATIONAL**

1.-30. Plaintiff repeats and realleges the allegations in paragraphs 1 through 29 above, as and for its paragraphs 1 through 29 of this Count II, as though fully set forth in this paragraph.

31. Plaintiff is the exclusive licensee of the "Tate & Lyle" name and mark in the United States. Accordingly, Plaintiff is authorized to enforce its rights in and to the trademark and trade name "Tate & Lyle" in the United States, including the right to bring suit to enforce its rights in the "Tate & Lyle" name and mark.

32. Defendant Premium Ingredients International's wrongful acts of selling sucralose under the Tate & Lyle trademark and falsely suggesting Premium Ingredients is authorized to sell genuine Tate & Lyle sucralose constitute trademark infringement, unfair competition, false designation of origin, and false description or representation of Defendant's goods and services, in violation of 15 U.S.C. § 1125(a).

**THIRD COUNT FOR TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION
AGAINST DEFENDANT PREMIUM INGREDIENTS INTERNATIONAL**

1.-32. Plaintiff repeats and realleges the allegations in paragraphs 1 through 31 of Count II, as and for its paragraphs 1 through 31 of this Count III, as though fully set forth in this paragraph.

33. Defendant Premium Ingredients International's wrongful acts of selling sucralose under the Tate & Lyle trademark and falsely suggesting that Premium Ingredients is authorized to sell genuine Tate & Lyle sucralose constitute trademark infringement and unfair competition in violation of Illinois state law and common law.

**FOURTH COUNT FOR VIOLATION OF THE ILLINOIS UNIFORM DECEPTIVE
TRADE PRACTICES ACT AGAINST DEFENDANT PREMIUM INGREDIENTS
INTERNATIONAL**

1.-33. Plaintiff repeats and realleges the allegations in paragraphs 1 through 32 of Count III, as and for its paragraphs 1 through 31 of this Count IV, as though fully set forth in this paragraph.

34. Defendant Premium Ingredients International's wrongful acts of selling sucralose under the Tate & Lyle trademark and falsely suggesting that Premium Ingredients is authorized to sell genuine Tate & Lyle sucralose constitute a violation of Section 2 of the Illinois Uniform Deceptive Trade Practices Act (815 ILCS 510/2).

**FIFTH COUNT FOR VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE BUSINESS PRACTICES ACT AGAINST DEFENDANT PREMIUM
INGREDIENTS INTERNATIONAL**

1.-34. Plaintiff repeats and realleges the allegations in paragraphs 1 through 33 of Count IV, as and for its paragraphs 1-33 of this Count V, as though fully set forth in this paragraph.

35. Defendant Premium Ingredients International's wrongful acts of selling sucralose under the Tate & Lyle trademark and falsely suggesting Premium Ingredients is authorized to sell genuine Tate & Lyle sucralose constitute a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment:

- A. Finding Defendants liable to Plaintiff for infringement of the '928 patent;
- B. Permanently enjoining Defendants, their officers, agents, servants, employees, and attorneys, and those other persons or entities in active concert or participation with them, from continuing the acts herein complained of, and more particularly, that Defendants and such other persons be permanently enjoined and restrained from further infringing the '928 patent;
- C. Awarding Plaintiff damages adequate to compensate it for Defendants' infringement of the '928 patent, together with both pre-judgment and post-judgment interest;
- D. Awarding Plaintiff its reasonable attorney fees pursuant to 35 U.S.C. § 285, costs of suit, and such further and additional relief as this Court deems just and proper;
- E. Finding Defendant Premium Ingredients International liable to Plaintiff for violation of 15 U.S.C. § 1125(a); for trademark infringement and unfair competition under Illinois State law and common law; for violation of Section 2 of the Illinois Uniform Deceptive Trade Practices Act; and for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act;
- F. Preliminary and permanently enjoining Defendant Premium Ingredients International from selling repackaged Tate & Lyle sucralose, from selling and promoting the sale

of Tate & Lyle sucralose without authorization from Tate & Lyle, and from using the Tate & Lyle name on its website and on promotional materials;

G. Instructing Defendant Premium Ingredients International to deliver up any and all products, packaging, labels, promotional materials, advertisements, or other written or printed materials that bear the “Tate & Lyle” name and mark;

H. Granting Plaintiff its actual economic damages suffered as a result of the offending acts and violations of law by Defendant Premium Ingredients International; and

I. Awarding Plaintiff monetary recovery from Defendant Premium Ingredients International for Plaintiff’s costs and attorneys’ fees pursuant to 15 U.S.C. § 1117.

JURY DEMAND

Plaintiff demands a jury trial on all issues triable to a jury in this matter.

Dated: December 15, 2006

Respectfully submitted,

/s/ JAMES E. PECKERT

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