

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**MANNATECH, INC.,**

**Plaintiff,**

**v.**

**TECHMEDICA HEALTH, INC.,  
TRITON NUTRA, INC.,  
IONX HOLDINGS, INC., and  
JOHN DOES 1-30**

**Defendants.**

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**CIVIL ACTION NO. 3:06-CV-00813-P**

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**SECOND AMENDED COMPLAINT**

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TO THE HONORABLE COURT:

Plaintiff Mannatech, Inc. files this Second Amended Complaint against Defendants Techmedica Health, Inc., Triton Nutra, Inc., Ionx Holdings, Inc. and presently unknown parties whose identities will be revealed during discovery who are denominated in this Complaint as “John Does 1-30,” and shows:

**I. PARTIES**

1. Plaintiff Mannatech, Inc. (“Mannatech”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business at 600 S. Royal Lane, Suite 200, Coppel, Texas 75019.

2. Defendant Techmedica Health, Inc. (“Techmedica”) (Mich. Corp. ID No. 46112H) is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business at 3903 Roger B. Chafee Drive, SE, Grand Rapids, Michigan 495548. Techmedica has already appeared in this action.

3. Defendant Triton Nutra, Inc. (“Triton Nutra”) is a corporation organized and existing under the laws of the State of Indiana, with its principal place of business at 450 St. John Road, Suite 302-28, Michigan City, Indiana 46360. Default judgment was entered against Triton Nutra after it failed to appear in this action.

4. Defendant Ionx Holdings, Inc. (“Ionx”) (Mich. Corp. ID No. 01301Q) is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business at 4460 – 44<sup>th</sup> Street SE, Grand Rapids Michigan, 49512. Ionx may be served through its registered agent, Albert Duoibes, 2201 Heather Street, East Grand Rapids, MI, 49506.

5. Defendants John Does 1-30 are persons or entities unknown, including without limitation, undisclosed persons or entities associated with Techmedica and/or Ionx in the manufacture, marketing and sale of dietary supplement products providing “essential saccharides” or “glyconutrients.”

## II. JURISDICTION AND VENUE

6. The Court has original jurisdiction over Plaintiff’s claims arising under the Patent and Trademark Laws of the United States. *See* 28 U.S.C. § 1338(a) (original jurisdiction of any civil action arising under an Act of Congress relating to patents and trademarks); *see also* 28 U.S.C. § 1331 (original jurisdiction over civil actions arising under the Constitution, laws or treaties of the United States).

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

8. Defendants are subject to personal jurisdiction in this District.

### **III. BACKGROUND FACTS**

#### **A. Mannatech's Patents**

9. Mannatech is the owner of all right, title, and interest in and to United States Patent Numbers 6,929,807 (hereinafter the “‘807 Patent”), 7,157,431 (hereinafter the “‘431 Patent”), 7,196,064 (hereinafter the “‘064 Patent”), 7,199,104 (hereinafter the “‘104 Patent”), and 7,202,220 (hereinafter the “‘220 Patent”), each of which is entitled “Compositions of Plant Carbohydrates as Dietary Supplements.” For ease of reference, the ‘807, ‘431, ‘064, ‘104 and ‘220 Patents are referred to herein collectively as “Mannatech’s Patents.”

10. Mannatech’s Patents generally describe inventive compositions that supplement the diet with “essential saccharides” or “glyconutritents” that are believed to be important in maintaining good health.

11. Mannatech sells certain dietary supplement products that provide “essential saccharides” or “glyconutritents” under the trademarks Ambrotose<sup>®</sup> and Advanced Ambrotose<sup>®</sup> in the United States and in several foreign countries.

#### **B. Defendants’ Infringing Products**

12. Defendants make, use, offer to sell, and/or sell dietary supplement compositions that provide “essential saccharides” or “glyconutritents,” including but not limited to the products marketed under the trademarks Nutratose<sup>®</sup> and Active<sup>®</sup> (hereinafter the “Infringing Products”).

13. Defendants also actively encourage others to make, use, offer to sell, and/or sell Infringing Products.

14. On information and belief, Defendants had actual knowledge of one or more of Mannatech’s Patents at the time they began making, using, offering to sell and/or selling the Infringing Products.

15. In commercial advertising for Nutratose<sup>®</sup> and Activive,<sup>®</sup> Defendants Techmedica and Ionx have made statements that misrepresent the nature, characteristics, and/or qualities of Mannatech's Ambrotose<sup>®</sup> and Advanced Ambrotose<sup>®</sup> products.

#### **IV. CONDITIONS PRECEDENT**

16. All conditions precedent have been performed or have occurred.

#### **V. COUNT ONE: INFRINGEMENT OF THE '807 PATENT**

17. Plaintiff incorporates by reference paragraphs 1 – 16 as if fully set forth herein.

18. Defendants have infringed the '807 Patent by making, using, offering for sale and/or selling the Infringing Products.

19. Defendants have induced others to infringe the '807 Patent by making, using, offering for sale and/or selling the Infringing Products.

20. On information and belief, Defendants' infringement has been willful and deliberate.

21. As a result of Defendants' infringement, Mannatech has suffered substantial injury, resulting in damages, and will suffer irreparable injury unless Defendants are enjoined by this Court.

#### **VI. COUNT TWO: INFRINGEMENT OF THE '431 PATENT**

22. Plaintiff incorporates by reference paragraphs 1 – 21 as if fully set forth herein.

23. Defendants have infringed the '431 Patent by making, using, offering for sale and/or selling the Infringing Products.

24. Defendants have induced others to infringe the '431 Patent by making, using, offering for sale and/or selling the Infringing Products.

25. On information and belief, Defendants' infringement has been willful and deliberate.

26. As a result of Defendants' infringement, Mannatech has suffered substantial injury, resulting in damages, and will suffer irreparable injury unless Defendants are enjoined by this Court.

**VII. COUNT THREE: INFRINGEMENT OF THE '064 PATENT**

27. Plaintiff incorporates by reference paragraphs 1 – 26 as if fully set forth herein.

28. Defendants have infringed the '064 Patent by making, using, offering for sale and/or selling the Infringing Products.

29. Defendants have induced others to infringe the '064 Patent by making, using, offering for sale and/or selling the Infringing Products.

30. On information and belief, Defendants' infringement has been willful and deliberate.

31. As a result of Defendants' infringement, Mannatech has suffered substantial injury, resulting in damages, and will suffer irreparable injury unless Defendants are enjoined by this Court.

**VIII. COUNT FOUR: INFRINGEMENT OF THE '104 PATENT**

32. Plaintiff incorporates by reference paragraphs 1 – 31 as if fully set forth herein.

33. Defendants have infringed the '104 Patent by making, using, offering for sale and/or selling the Infringing Products.

34. Defendants have induced others to infringe the '104 Patent by making, using, offering for sale and/or selling the Infringing Products.

35. On information and belief, Defendants' infringement has been willful and deliberate.

36. As a result of Defendants' infringement, Mannatech has suffered substantial injury, resulting in damages, and will suffer irreparable injury unless Defendants are enjoined by this Court.

**IX. COUNT FIVE: INFRINGEMENT OF THE '220 PATENT**

37. Plaintiff incorporates by reference paragraphs 1 – 36 as if fully set forth herein.

38. Defendants have infringed the '220 Patent by making, using, offering for sale and/or selling the Infringing Products.

39. Defendants have induced others to infringe the '220 Patent by making, using, offering for sale and/or selling the Infringing Products.

40. On information and belief, Defendants' infringement has been willful and deliberate.

41. As a result of Defendants' infringement, Mannatech has suffered substantial injury, resulting in damages, and will continue to suffer irreparable injury unless Defendants are enjoined by this Court.

**X. COUNT SIX: FALSE ADVERTISING**

42. Plaintiff incorporates by reference paragraphs 1 – 41 as if fully set forth herein.

43. Defendants Techmedica and Ionx made false and misleading statements of fact about Mannatech's products in commercial advertising in violation of 15 U.S.C. § 1125(a).

44. Such statements either deceived or had the capacity to deceive a substantial segment of potential consumers.

45. The deception was material, in that it is likely to influence the consumer's purchasing decision.

46. Mannatech's products are in interstate commerce.

47. Mannatech has suffered substantial injury as a result of such statements and will suffer irreparable injury unless Defendants Techmedica and Ionx are enjoined by this Court.

#### **XI. ATTORNEY FEES**

48. Plaintiff incorporates by reference paragraphs 1 – 47 as if fully set forth herein.

49. This is an exceptional case, and as such, Mannatech is entitled to an award of reasonable attorney fees and costs under 35 U.S.C. § 285 and 15 U.S.C. § 1117.

#### **XII. PRAYER**

WHEREFORE, Plaintiff demands:

(1) That defendants, their agents, affiliates, subsidiaries, successors and assigns, and any and all persons or entities acting in concert or participation with any or all of them, be enjoined during the pendency of this action, and thereafter for the life of the patents, from infringing and/or actively inducing others to infringe Mannatech's Patents in any manner.

(2) That defendants be required to deliver up all Infringing Products in their possession or under their control to be impounded during the pendency of this action, and to be destroyed once all appeals have been exhausted.

(3) That defendants be required to pay plaintiff such damages as plaintiff has sustained as a result of such patent infringement, and that such patent infringement damages be trebled pursuant to 35 U.S.C. § 284.

(4) That this case be adjudged and decreed exceptional under 35 U.S.C. § 285 entitling Mannatech to an award of reasonable attorney fees, and that such attorney fees be awarded.

(5) That defendants Techmedica Health, Inc. and Ionx Holdings, Inc., and their agents, affiliates, subsidiaries, successors and assigns, and any and all persons or entities acting in concert or participation with any or all of them, be enjoined during the pendency of this

action, and thereafter permanently, from misrepresenting the nature, characteristics, and/or qualities of Mannatech's products in commercial advertising or promotion.

(6) That defendants Techmedica Health, Inc. and Ionx Holdings, Inc. be required to pay plaintiff:

(a) such actual damages as plaintiff has sustained as a result of such false advertising, and that such damages be trebled pursuant to 15 U.S.C. § 1117(a), and

(b) all profits derived by the defendants from such false advertising and such additional sums as the Court finds to be just according to the circumstances of the case.

(7) That this case be adjudged and decreed exceptional under 15 U.S.C. § 1117(a) entitling Mannatech to an award of reasonable attorney fees, and that such attorney fees be awarded.

(8) That Mannatech be awarded its costs, prejudgment interest, and post-judgment interest on all damages.

(9) That defendants be required to file with the Court within 30 days after entry of final judgment of this cause a written statement under oath setting forth the manner in which Defendants have complied with the final judgment.

(10) That Mannatech be awarded such other and further relief as the Court deems just and equitable, both at law and in equity.

### **XIII. DEMAND FOR JURY TRIAL**

50. Plaintiff hereby demands a trial by jury. *See* Fed. R. Civ. P. 38.



Dated: September 18, 2008

Respectfully submitted,

**LYNN TILLOTSON PINKER & COX, LLP**

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I certify that on September 18, 2008, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record, who have consented in writing to accept this Notice as service of this document by electronic means:

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