

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NEPTUNE TECHNOLOGIES &)
BIORESSOURCES, INC.)
)
PLAINTIFF,)
)
v.)
)
ENZYMOTEK LIMITED,)
ENZYMOTEK USA, INC.,)
and MERCOLA.COM HEALTH)
RESOURCES, LLC,)
)
DEFENDANTS.)

Civil Action No.: _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Neptune Technologies & Bioresources, Inc. (“Neptune”) alleges as follows:

THE PARTIES

1. Neptune is a corporation organized and existing under the laws of Québec, with its principal place of business at Suite 200, 225 Promenade du Centropolis, Laval, Québec, H7T 0B3 Canada. Neptune is an industry-recognized leader in the innovation, production and formulation of science-based and clinically-proven novel omega-3 phospholipid products for the nutraceutical and pharmaceutical markets. Among Neptune’s products is NKO[®], the first clinically proven omega-3 phospholipid product that has demonstrated clinical activity in managing hyperlipidemia, chronic inflammation, premenstrual syndrome, and cognitive health.

2. On information and belief, Enzymotec Limited (“Enzymotec”) is a corporation organized under the laws of the State of Israel, with its principal place of business at Sagi 2000 Industrial Zone, K’far Baruch, Israel.

3. On information and belief, Defendant Enzymotec USA, Inc. (“Enzymotec USA”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 55 Madison Avenue, Suite 400, Morristown, NJ 07960.

4. On information and belief, Defendant Mercola.com Health Resources, LLC (“Mercola”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 3200 West Higgins Road, Hoffman Estates, IL 60169.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, 35 U.S.C. §§ 100, *et seq.*, and this Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

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

7. This Court has personal jurisdiction over Enzymotec because, on information and belief, Enzymotec knowingly and deliberately places its infringing krill oil containing omega-3 phospholipids into the stream of commerce with the intention that it will be imported into the United States where it will be offered for sale, sold, and distributed within the United States, including in this District.

8. In the alternative, to the extent that Enzymotec is otherwise not subject to the jurisdiction of this Court or of any other U.S. federal district court, this Court has personal jurisdiction over Defendant Enzymotec pursuant to Federal Rule of Civil Procedure 4(k)(2). This complaint arises under federal law and Defendant Enzymotec has sufficient contacts with the U.S. as a whole to satisfy due process standards and justify application of federal law.

9. On information and belief, Defendant Enzymotec systematically and continuously targets the United States by causing its infringing krill oil containing omega-3 phospholipids to be imported into the United States where it is then offered for sale, sold, and distributed. For example, Enzymotec previously entered into a distribution agreement with Azantis LLC to distribute its infringing krill oil containing omega-3 phospholipids under the trade names Azantis Pure Krill Oil and Azantis Premium Krill Oil Blend in the U.S. Also, upon information and belief and as described at Enzymotec's website www.activatedomega3.com, in or about September 2011, Enzymotec, in coordination with its wholly owned subsidiary, Defendant Enzymotec USA, launched the commercial product "K-Real Krill Oil" in the United States. K-Real Krill Oil is marketed as a product extracted from Antarctic krill that contains omega-3 phospholipids. Upon information and belief, K-Real Krill Oil is manufactured by Defendant Enzymotec and is currently being offered for sale and sold within the United States.

10. This Court has personal jurisdiction over Enzymotec USA because, *inter alia*, it is incorporated in Delaware and because, on information and belief, it sells or offers to sell krill oil containing omega-3 phospholipids in the District, including the product K-Real Krill Oil. Defendant Enzymotec has previously admitted that it is subject to the personal jurisdiction of this Court. (See Exh. A to the Complaint).

11. This Court has personal jurisdiction over Mercola because, *inter alia*, it is incorporated in Delaware. In addition, on information and belief, Defendant Mercola offers for sale and sells products containing omega-3 phospholipids to residents in Delaware at least via the website www.mercola.com. Upon information and belief, Mercola sells products under the trade names Krill-IQ and Krill Oil. Defendant Mercola has previously admitted that it is subject to the personal jurisdiction of this Court. (See Exh. B to the Complaint).

BACKGROUND

12. On October 2, 2012, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,278,351 (“the ‘351 Patent”) entitled “NATURAL MARINE SOURCE PHOSPHOLIPIDS COMPRISING POLYUNSATURATED FATTY ACIDS AND THEIR APPLICATIONS.” A true and correct text copy of the ‘351 Patent is attached hereto as Exhibit C.

13. Neptune is the lawful and sole owner of the ‘351 Patent by assignment and owns all rights, title and interest in the ‘351 Patent, including all rights needed to bring this action for patent infringement.

14. Neptune’s krill oil, marketed as NKO[®], is the oil harvested from Antarctic krill, a shrimp like crustacean that lives deep in the ocean. Krill oil is commonly sold in soft gels or in capsules. NKO[®] is comprised of three major components: omega-3 fatty acids, including eicosapentaenoic acid (“EPA”) and docosahexaenoic acid (“DHA”), attached to phospholipids; omega-3 fatty acids attached to triglycerides; and astaxanthin and other antioxidants. The phospholipids carry the EPA and DHA directly into cells, allowing the human body to absorb them very easily.

15. NKO[®] has been shown to benefit: a) cardiovascular health by lowering bad cholesterol and maintaining good cholesterol; b) chronic inflammation by reducing c-reactive protein (CRP) and relieving joint pain; c) premenstrual syndrome and dysmenorrhea by relieving associated symptoms; and d) cognitive function.

16. Neptune, a recognized market leader, is dedicated to investing in medical research to improve human health.

COUNT I
(Infringement of U.S. Patent No. 8,278,351 by Defendant Enzymotec)

17. The allegations of paragraphs 1-16 are incorporated as though fully set forth herein.

18. Upon information and belief, Defendant Enzymotec is infringing the '351 Patent by making, using, selling, offering to sell, and/or importing into the United States krill oil and/or products containing omega-3 phospholipids, including the products sold under the trade names K-Real Krill Oil, Azantis Premium Krill Oil Blend and Azantis Pure Krill Oil, covered by one or more claims of the '351 Patent.

19. Defendant Enzymotec's acts of infringement have injured and damaged Neptune.

20. Defendant Enzymotec's acts have caused irreparable injury to Neptune and will continue to cause irreparable injury until Defendant Enzymotec is enjoined from further infringement by this Court.

COUNT II
(Infringement of U.S. Patent No. 8,278,351 by Defendant Enzymotec USA)

21. The allegations of paragraphs 1-16 are incorporated as though fully set forth herein.

22. Upon information and belief, Defendant Enzymotec USA is infringing the '351 Patent by making, using, selling, offering to sell, and/or importing into the United States krill oil and/or products containing omega-3 phospholipids, including the products sold under the trade

names K-Real Krill Oil, Azantis Premium Krill Oil Blend and Azantis Pure Krill Oil, covered by one or more claims of the '351 Patent.

23. Defendant Enzymotec USA's acts of infringement have injured and damaged Neptune.

24. Defendant Enzymotec USA's acts have caused irreparable injury to Neptune and will continue to cause irreparable injury until Defendant Enzymotec USA is enjoined from further infringement by this Court.

COUNT III
(Infringement of U.S. Patent No. 8,278,351 by Defendant Mercola)

25. The allegations of paragraphs 1-16 are incorporated as though fully set forth herein.

26. Upon information and belief, Defendant Mercola is infringing the '351 Patent by using, selling, offering to sell, and/or importing into the United States products containing omega-3 phospholipids, including products sold under the trade names Krill-IQ and Krill Oil, covered by one or more claims of the '351 Patent.

27. Defendant Mercola's acts of infringement have injured and damaged Neptune.

28. Defendant Mercola's acts have caused irreparable injury to Neptune and will continue to cause irreparable injury until Defendant Mercola is enjoined from further infringement by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Neptune requests the following relief:

a. judgment that Defendant Enzymotec has infringed and is infringing the ‘351 Patent;

b. judgment that Defendant Enzymotec USA has infringed and is infringing the ‘351 Patent;

c. judgment that Defendant Mercola has infringed and is infringing the ‘351 Patent;

d. a permanent injunction preventing Defendant Enzymotec and its officers, directors, agents, servants, employees, attorneys, licensees, successors, assigns, and customers, and those in active concert or participation with any of them, from making, using, importing, offering to sell or selling any krill oil and/or products containing krill oil and/or products containing omega-3 phospholipids that infringe any claim of the ‘351 Patent, including but not limited to K-Real Krill Oil, Azantis Premium Krill Oil Blend, and Azantis Pure Krill Oil;

e. a permanent injunction preventing Defendant Enzymotec USA and its officers, directors, agents, servants, employees, attorneys, licensees, successors, assigns, and customers, and those in active concert or participation with any of them, from making, using, importing, offering to sell or selling any krill oil and/or products containing krill oil and/or products containing omega-3 phospholipids that infringe any claim of the ‘351 Patent, including but not limited to K-Real Krill Oil, Azantis Premium Krill Oil Blend, and Azantis Pure Krill Oil;

f. a permanent injunction preventing Defendant Mercola and its officers, directors, agents, servants, employees, attorneys, licensees, successors, assigns, and customers, and those in active concert or participation with any of them, from making, using, importing, offering to sell or selling any krill oil and/or products containing krill oil and/or products containing omega-

3 phospholipids that infringe any claim of the '351 Patent, including but not limited to Krill-IQ and Krill Oil;

g. judgment against Defendant Enzymotec for money damages sustained as a result of its infringement of the '351 Patent in an amount to be determined at trial;

h. judgment against Defendant Enzymotec USA for money damages sustained as a result of its infringement of the '351 Patent in an amount to be determined at trial;

i. judgment against Defendant Mercola for money damages sustained as a result of its infringement of the '351 Patent in an amount to be determined at trial;

j. an award of pre-judgment interest;

k. costs and reasonable attorneys' fees incurred in connection with this action pursuant to 35 U.S.C § 285; and

l. such other and further relief as this Court finds just and proper.

JURY DEMAND

Plaintiff Neptune requests trial by jury.

ASHBY & GEDDES

/s/ John G. Day

Of Counsel:

Jonathan G. Graves
Tryn T. Stimart
COOLEY LLP
One Freedom Square
Reston Town Center
11951 Freedom Drive
Reston, VA 20190
(703) 456-8000
jgraves@cooley.com
tstimart@cooley.com

John G. Day (I.D. #2403)
Lauren E. Maguire (I.D. #4261)
Andrew C. Mayo (I.D. #5207)
500 Delaware Avenue, 8th Floor
P. O. Box 1150
Wilmington, Delaware 19899
(302) 654-1888
jday@ashby-geddes.com
lmaguire@ashby-geddes.com
amayo@ashby-geddes.com

*Attorneys for Plaintiff
Neptune Technologies & Bioresources, Inc.*

Dated: October 2, 2012