

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>BRANDEIS UNIVERSITY and GFA BRANDS, INC.,</b>	§	
	§	
	§	
Plaintiffs,	§	Civil Action No.: 12-cv-1511
	§	(consolidated in No. 12-cv-1508)
v.	§	
	§	
<b>BREMNER FOOD GROUP, INC.; and TOPCO ASSOCIATES LLC,</b>	§	<b>TRIAL BY JURY DEMANDED</b>
	§	
Defendants.	§	
	§	
	§	
	§	
	§	

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Brandeis University and GFA Brands, Inc. (“Plaintiffs”), by their attorneys, Quarles & Brady LLP, for their complaint against Bremner Food Group, Inc., and Topco Associates LLC (collectively “Defendants”), hereby allege as follows. Plaintiffs reserve the right to present additional or alternative claims for infringement or bases for infringement and to identify other asserted claims or accused products as appropriate in light of Defendants’ deficient discovery responses.

**THE PARTIES**

1. Plaintiff Brandeis University (“Brandeis”) is a University established in the Commonwealth of Massachusetts with its principal place of business at 415 South Street, Waltham, MA 02453.
2. Plaintiff GFA Brands, Inc. (“GFA Brands”) is a Delaware corporation with its principal place of business at 115 West Century Road, Suite 260, Paramus, NJ 07652.

3. On information and belief, Defendant Bremner Food Group, Inc. (“Bremner”) is a Nevada corporation with its principal place of business at 800 Market Street, St. Louis, MO 63101.

4. On information and belief, Defendant Topco Associates, LLC (“Topco”) is a Delaware limited liability company with its principal place of business at 7711 Gross Point Road, Skokie, IL 60077.

### **JURISDICTION**

5. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendants because Defendants conduct substantial business in the State of Illinois and within the Northern District of Illinois. Defendants make, import, sell, offer to sell, and/or induce the sale of various infringing products, directly or through intermediaries, in or into Illinois and this judicial District, thereby causing injury and damages in Illinois and this judicial District which may result from acts committed outside Illinois or the District, including but not limited to utilizing their own established distribution channels or distribution channels of an intermediary to market and sell infringing products in Illinois and this District. In conducting their business in Illinois and this judicial District, Defendants derive substantial revenue from infringing products being sold, used or consumed in Illinois and this District, and will continue to do so unless enjoined by this Court.

7. Venue in this District is proper under 28 U.S.C. §§ 1391 and 1400(b) because the accused acts of direct infringement occur in this District, as Defendants make or import

infringing products in or into this District, and/or sell, offer to sell and/or induce the sale of infringing products to customers in this District.

8. This case was transferred to the Northern District of Illinois, and Defendants consented to such transfer and to this Court's jurisdiction.

### **FACTS GIVING RISE TO THIS ACTION**

9. Paragraphs 1 - 8 are incorporated by reference as if set forth here in full.

10. United States Patent No. 5,843,497 ("the '497 Patent"), entitled "Increasing the HDL Level in the HDL/LDL Ratio in Human Serum by Balancing Saturated and Polyunsaturated Dietary Fatty Acids," properly issued on December 1, 1998. A true and correct copy of the '497 Patent is attached as Exhibit A hereto.

11. Legal title to the '497 Patent is held by Brandeis. Brandeis has made significant investment in researching and developing the '497 Patent.

12. Brandeis granted a worldwide, sole and exclusive license under the '497 Patent, with the right to sublicense, to GFA Brands. This license grants GFA Brands the right to sue for infringement of the '497 Patent.

13. United States Patent No. 6,630,192 ("the '192 Patent"), entitled "Increasing the HDL Level in the HDL/LDL Ratio in Human Serum by Balancing Saturated and Polyunsaturated Dietary Fatty Acids," properly issued on October 7, 2003, with an *Ex Parte* Reexamination Certificate issued September 19, 2006. A true and correct copy of the '192 Patent is attached as Exhibit B hereto. The '192 Patent is in the same patent family as the '497 Patent.

14. Legal title to the '192 Patent is held by Brandeis. Brandeis has made significant investment in researching and developing the '192 Patent.

15. Brandeis granted a worldwide, sole and exclusive license of the '192 Patent, with the right to sublicense, to GFA Brands. This license grants GFA Brands the right to sue for infringement of the '192 Patent.

16. The claimed inventions in the '497 and '192 Patents (collectively, the "Patents-in-Suit") are directed to fat compositions and food products and margarines containing such fat compositions that decrease low-density lipoprotein cholesterol (LDL) and increase high-density lipoprotein cholesterol (HDL) in the human serum. This adjustment of the HDL/LDL ratio by the claimed inventions in the Patents-in-Suit results in significant health benefits.

17. Since GFA Brands acquired sole exclusive licenses under the '497 and '192 Patents, GFA Brands has made significant investment in researching, developing, and marketing products that embody the inventions of the '497 and '192 Patents.

18. Defendants have made, used, sold, offered to sell and/or imported products that infringe the '497 and '192 Patents, and that contain ingredients infringing the Patents, and continue to do so.

19. For example, Bremner manufactures (by itself) or contributes to or induces the manufacture of (through a related affiliate) products for sale under the "Rippin Good" brand name as well as other brand names that infringe the Patents-in-Suit. Topco causes the manufacture, or contributes to or induces the manufacture of (including through a relationship with Bremner) products for sale under the "Shurfine" brand name as well as other brand names that infringe the Patents-in-Suit.

20. Defendants have induced and are continuing to induce others (including their customers) to directly infringe the Patents-in-Suit by advertising, promoting, and selling their

products for use by consumption, despite knowledge of the Patents-in-Suit and Plaintiffs' infringement claims.

21. Defendants buy ingredients (including particular oil blends, shortenings, and margarines) that infringe the Patents-in-Suit and/or which substantially contribute to the Defendants' infringement of the Patents-in-Suit when combined with other ingredients during manufacturing. All of these infringing acts severely undermine Plaintiffs' significant investment in the inventions of the Patents-in-Suit, all to Plaintiffs' detriment.

22. As a result, Plaintiffs bring this action to seek damages and injunctive relief arising out of Defendants' infringing acts.

### **COUNT I**

#### **Infringement of U.S. Patent No. 5,843,497**

23. Paragraphs 1 - 22 are incorporated by reference as if set forth here in full.

24. Bremner's manufacture, use, sale, offer for sale and/or importation into the United States of certain cookies and products used in making such cookies constitutes infringement of at least Claims 7, 8, 29, 30, 33, 34, 39, 41, and 42 of the '497 Patent, either directly or indirectly, literally or under the doctrine of equivalents.

25. In particular, Bremner's manufacture, use, sale, offer for sale and/or importation into the United States of cookies sold as Rippin' Good<sup>®</sup> Animal Cookies, and cookies having the same formula as Rippin' Good<sup>®</sup> Animal Cookies but packaged with a different label, infringes at least Claims 7, 8, 29, 30, 33, 34, 39, and 41 of the '497 Patent, directly and indirectly, literally and under the doctrine of equivalents.

26. In addition, Bremner's manufacture, use, sale, offer for sale and/or importation into the United States of cookies sold as Rippin' Good<sup>®</sup> Vanilla Wafers, and cookies having the

same formula as Rippin' Good<sup>®</sup> Vanilla Wafers but packaged with a different label, infringes at least Claims 7, 8, 29, 30, 33, 34, 36, 39, 41, and 42 of the '497 Patent, directly and indirectly, literally and under the doctrine of equivalents.

27. Topco's manufacture, use, sale, offer for sale and/or importation into the United States of certain cookies and products used in making such cookies constitutes infringement of at least Claims 7, 8, 29, 30, 33, 34, 39, 41, and 42 of the '497 Patent, either directly or indirectly, literally or under the doctrine of equivalents.

28. In particular, Topco's manufacture, use, sale, offer for sale and/or importation into the United States of cookies sold as ShurFine<sup>®</sup> Vanilla Wafers infringes at least Claims 7, 8, 29, 30, 33, 34, 36, 39, 41, and 42 of the '497 Patent, directly and indirectly, literally and under the doctrine of equivalents.

29. In addition, Topco's manufacture, use, sale, offer for sale and/or importation into the United States of cookies sold as ShurFine<sup>®</sup> Animal Crackers infringes at least Claims 7, 8, 29, 30, 33, 34, 39, and 41 of the '497 Patent, directly and indirectly, literally and under the doctrine of equivalents.

30. Plaintiffs complied with 35 U.S.C. § 287 by providing the defendants identified above with actual and/or constructive notice of their infringement.

31. The infringing activities described above violate one or more subsections of 35 U.S.C. § 271.

32. If the activities by the defendants identified above are not enjoined, Plaintiffs will suffer irreparable harm that cannot be adequately compensated by a monetary award.

33. Plaintiffs have suffered economic harm as a result of the infringing activities described above in an amount to be proven at trial.

**COUNT II**

**Infringement of U.S. Patent No. 6,630,192**

34. Paragraphs 1 - 33 are incorporated by reference as if set forth here in full.

35. Bremner's manufacture, use, sale, offer for sale and/or importation into the United States of certain cookies and products used in making such cookies constitutes infringement of at least Claims 1, 3, 10, 12, and 46 of the '192 Patent, either directly or indirectly, literally or under the doctrine of equivalents.

36. In particular, Bremner's manufacture, use, sale, offer for sale and/or importation into the United States of cookies sold as Rippin' Good® Vanilla Wafers, and cookies having the same formula as Rippin' Good® Vanilla Wafers but packaged with a different label, infringes at least Claims 1, 3, 10, 12, and 46 of the '192 Patent, directly and indirectly, literally and under the doctrine of equivalents.

37. Plaintiffs complied with 35 U.S.C. § 287 by providing Bremner with actual and/or constructive notice of its infringement.

38. Bremner's activities violate one or more subsections of 35 U.S.C. § 271.

39. If Bremner's infringing activities are not enjoined, Plaintiffs will suffer irreparable harm that cannot be adequately compensated by a monetary award.

40. Plaintiffs have suffered economic harm as a result of Bremner's infringing activities in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiffs seek the following relief from this Court:

1. A judgment that Bremner and Topco have infringed and are infringing the '497 Patent;

2. A judgment that Bremner has infringed and is infringing the '192 Patent;
3. A judgment that Bremner's and Topco's infringement of the '497 Patent has been willful;
4. A judgment that Bremner's infringement of the '192 Patent has been willful;
5. A preliminary and permanent injunction issued pursuant to 35 U.S.C. § 283, restraining and enjoining Bremner and Topco and their officers, agents, attorneys and employees, and those acting in privity or concert with them, from infringement of the '497 Patent for the full term thereof and from inducing infringement of the '497 Patent;
6. A preliminary and permanent injunction issued pursuant to 35 U.S.C. § 283, restraining and enjoining Bremner and its officers, agents, attorneys and employees, and those acting in privity or concert with them, from infringement of the '192 Patent for the full term thereof and from inducing infringement of the '192 Patent;
7. An award of damages to Plaintiffs including pre-judgment and post-judgment interest, in an amount adequate to compensate for Bremner's and Topco's infringement of the '497 Patent, and that the damages be trebled pursuant to 35 U.S.C. § 284;
8. An award of damages to Plaintiffs including pre-judgment and post-judgment interest, in an amount adequate to compensate for Bremner's infringement of the '192 Patent, and that the damages be trebled pursuant to 35 U.S.C. § 284;
9. Costs and expenses in this action;
10. A declaration that this is an exceptional case and an award of attorneys' fees, disbursements, and costs of this action pursuant to 35 U.S.C. § 285; and
11. Such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues properly tried to a jury.

Dated this 14th day of October, 2012.

/s/ Stephen J. Gardner

Anthony A. Tomaselli

[aat@quarles.com](mailto:aat@quarles.com)

Kristin Graham Noel

[kgn@quarles.com](mailto:kgn@quarles.com)

Martha Jahn Snyder

[martha.snyder@quarles.com](mailto:martha.snyder@quarles.com)

Stephen J. Gardner

[stephen.gardner@quarles.com](mailto:stephen.gardner@quarles.com)

QUARLES & BRADY LLP

33 East Main Street, Suite 900

Madison, Wisconsin 53703-3095

Tel.: 608.251.5000

Fax: 608.251.9166

*Attorneys for Plaintiffs*

*Brandeis University and GFA Brands, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 2012, I electronically filed the foregoing document with the Clerk of Court using the ECF system, which will send notification of such filing to all counsel of record.

Dated: October 14, 2012

/s/ Stephen J. Gardner  
Stephen J. Gardner