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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 **THE TAWNSAURA GROUP, LLC,**

13 Plaintiff,

14 vs.

15 **BEAUTYFIT, INC.,**

16 Defendant

Case No. SACV12-1354 JCO (AGR~~x~~)

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiff The Tawnsaura Group, LLC (“Plaintiff”) hereby alleges for its First
2 Amended Complaint against BeautyFit, Inc. (“Defendant”), on personal knowledge as
3 to its own activities and on information and belief as to the activities of others, as
4 follows:

5 **I. THE PARTIES**

6 1. Plaintiff is a limited liability company organized and existing under the
7 laws of Nevada, with a registered office at 50 West Liberty Street, Suite 1100, Reno,
8 Nevada 89501.

9 2. Plaintiff is the owner and assignee of United States Patent No. 5,874,471
10 (“the ‘471 patent”) titled “Orthomolecular Medical Use of L-Citrulline for
11 Vasoprotection, Relaxative Smooth Muscle Tone and Cell Protection,” and United
12 States Patent No. 6,028,107 (“the ‘107 patent”) titled “Orthomolecular Medical Use of
13 L-Citrulline for Vasoprotection, Relaxative Smooth Muscle Tone and Cell Protection,”
14 and Plaintiff licenses the ‘471 patent and the ‘107 patent to at least one third-party and
15 is in negotiations to license the patents to numerous other parties.

16 3. Upon information and belief, Defendant BeautyFit, Inc. is a corporation
17 organized and existing under the laws of New Jersey with a principal place of business
18 at 1000 NW 105th Ave., Plantation, Florida, 33322.

19 **II. JURISDICTION AND VENUE**

20 4. This is an action for patent infringement arising under the patent laws of
21 the United States, Title 35 of the United States Code. Accordingly, this Court has
22 subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

23 5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

24 6. This Court has personal jurisdiction over Defendant. Defendant, directly
25 or through intermediaries (including distributors, retailers, and others), ships,
26 distributes, offers for sale, sells, and advertises its products in the United States, the
27 State of California, and the Central District of California, including the product
28 BeautyBurn PM. Defendant has purposefully and voluntarily placed BeautyBurn PM

1 into the stream of commerce with the expectation that it will be purchased in the
2 Central District of California.

3 **III. THE DEFENDANT'S INFRINGING PRODUCT**

4 7. The label and/or advertisements for Defendant's product BeautyBurn PM
5 state that the product contains, inter alia, the ingredient "L-Citruline" or L-Citrulline,
6 which is "designed with 18 unique ingredients to ensure a good night's sleep for
7 optimal hormone regulation, improved metabolic function, and improved body
8 rejuvenation and recovery."

9 8. As set forth herein, this product infringes the claimed methods of the '471
10 patent and the '107 patent, and is therefore referred to herein as "the product that
11 infringes the claimed methods."

12 9. BeautyBurn PM is sold in combination and as a "weight loss kit" with
13 BeautyBurn AM, another of Defendant's products.

14 10. Defendant has committed the tort of patent infringement within the State
15 of California, and more particularly, within the Central District of California, by virtue
16 of the fact that Defendant has shipped, distributed, offered for sale, sold, and advertised,
17 and continues to ship, distribute, offer for sale, sell, and advertise the product that
18 infringes the claimed methods in this District.

19 **IV. THE DEFENDANT'S INFRINGEMENTS**

20 11. Defendant's employees, agents, representatives and other persons
21 sponsored by or who endorse Defendant and Defendant's products in advertising and
22 marketing activities, have taken, used, and orally administered the product that
23 infringes the claimed methods which has the effect, without limitation, of increasing the
24 plasma level of arginine in the persons taking the product from a low or normal fasting
25 level to a level which is up to three times an average overnight fasting level and
26 increasing the plasma concentration of arginine in the persons taking the product from a
27 low or normal fasting concentration to a level which is up to three times an average
28 overnight fasting arginine level of about 90 mu.mole per liter of plasma. These persons

1 included persons who, without limitation, were in good health, were in a condition of
2 increased or continuing brain or neural activities, or were in a condition of increased or
3 continuing muscular activities. Defendant has encouraged and/or is aware of these
4 persons' oral administration of the product that infringes the claimed methods for these
5 purposes, and these persons are acting under Defendant's direction and control.
6 Therefore, Defendant practices the methods as set forth in the '471 patent and the '107
7 patent and is a direct infringer of the patents.

8 12. By way of example and without limitation, athletes who are spokespersons
9 for Defendant's products and are acting under Defendant's direction and control have
10 taken BeautyBurn PM and practiced the methods as set forth in the '471 patent and the
11 '107 patent, including without limitation Stephanie Billings and Brittney Young.

12 13. End-users of Defendant's product that infringes the claimed methods are
13 also direct infringers of the '471 patent and the '107 patent, because they have taken,
14 used, and orally administered the product that infringes the claimed methods which has
15 the effect, without limitation, of increasing the plasma level of arginine in the persons
16 taking the product from a low or normal fasting level to a level which is up to three
17 times an average overnight fasting level and/or increasing the plasma concentration of
18 arginine in the persons taking the product from a low or normal fasting concentration to
19 a level which is up to three times an average overnight fasting arginine level of about
20 90 mu.mole per liter of plasma. These persons included persons who, without
21 limitation, were in good health, were in a condition of increased or continuing brain or
22 neural activities, or were in a condition of increased or continuing muscular activities.
23 Therefore, they practice the methods as set forth in the '471 patent and the '107 patent.

24 14. For instance and without limitation, under the Testimonials section of
25 Defendant's website at www.beautyfit.com, a consumer identified as "Brittney Young"
26 discusses her use of BeautyBurn PM, and she is just one of many end-users of the
27 product who have practiced the methods as set forth in the '471 patent and the '017
28 patent.

1 15. Defendant's labels and advertising for the product that infringes the
2 claimed methods explain the elements and essential elements of the methods disclosed
3 in the '471 patent and the '107 patent to end-users and encourage, urge, and induce the
4 product's end-users to purchase and orally administer the product to practice those
5 methods, and end-users do practice those methods. Defendant has therefore
6 specifically intended to cause these end-users to directly infringe the claimed methods
7 of the patents, and has urged them to do so.

8 16. Defendant's product that infringes the claimed methods is not suitable for
9 non-infringing uses, and none of Defendant's labels or advertisements for the product
10 disclose any uses for the product nor for the citrulline in the product that do not infringe
11 upon the methods disclosed in the '471 patent and the '107 patent. The inclusion of the
12 citrulline content in the product is, in fact, material to practicing the methods disclosed
13 in the '471 patent and the '107 patent.

14 17. Defendant has knowledge that its product that infringes the claimed
15 methods is especially adapted by end-users of the product for the practicing of the
16 methods disclosed in the '471 patent and '107 patent, and, indeed, Defendant
17 encourages, urges, and induces the product's end-users to purchase and orally
18 administer the product to practice those methods, and has done so in the past.

19 18. Defendant has intentionally and knowingly induced, encouraged, and
20 urged end-users of the product that infringes the claimed methods to purchase and
21 orally administer the product for the purpose, without limitation, of increasing the
22 plasma level of arginine in the persons taking the product from a low or normal fasting
23 level to a level which is up to three times an average overnight fasting level and
24 increasing the plasma concentration of arginine in the persons taking the product from a
25 low or normal fasting concentration to a level which is up to three times an average
26 overnight fasting arginine level of about 90 μ mole per liter of plasma, including by
27 end-users who, without limitation, were in good health, were in a condition of increased
28

1 or continuing brain or neural activities, or were in a condition of increased or
2 continuing muscular activities.

3 19. On information and belief, Defendant had actual, first-hand knowledge of
4 the '471 patent and the '107 patent as early as the time Defendant launched the product
5 that infringes the claimed methods in the marketplace. Defendant employs and engages
6 sophisticated, experienced legal counsel with expertise in patent law. Defendant,
7 through its counsel, conducts or should conduct due diligence on the potential for
8 Defendant's products to infringe on patents and knew or should have known that the
9 product that infringes the claimed methods actually infringes or could infringe on the
10 '471 patent and '107 patent, but Defendant decided to infringe the patents anyway or
11 ignored the risk of infringement.

12 20. In the alternative, Plaintiff pleads that Defendant subjectively believed at
13 the time Defendant launched the product that infringes the claimed methods in the
14 marketplace that there is or was a high probability of the fact that patents existed that
15 covered the use of citrulline as in the products, and that Defendant took deliberate
16 actions to avoid confirming that fact, including not conducting due diligence as to
17 potential patent infringements. Defendant therefore willfully blinded itself to the
18 infringing nature of its sales of the product that infringes the claimed methods.

19 21. At a minimum, Defendant became aware of the '471 patent and the '107
20 patent at the time of the filing of the initial Complaint in this matter and the receipt of
21 Plaintiff's counsel's letter regarding the suit. Defendant has not ceased its own direct
22 infringement, contributory infringement, or inducement of infringements by end-users
23 despite such knowledge.

24 V. FIRST CAUSE OF ACTION

25 Infringement of U.S. Patent No. 5,874,471

26 22. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs
27 of this First Amended Complaint as if fully set forth herein.
28

1 23. Defendant has in the past and still is literally infringing or infringing under
2 the doctrine of equivalents, directly and indirectly through contributory and/or induced
3 infringement, one or more claims of the '471 patent by making, using, selling, and
4 offering for sale nutritional supplements embodying the patented invention, and will
5 continue to do so unless enjoined by this Court.

6 24. The claims of the '471 patent infringed by Defendant include claims 1, 2,
7 20, 21, and 28.

8 25. Examples of Defendant's direct infringement includes, without limitation,
9 the fact that Defendant's employees, agents, representatives and other persons
10 sponsored by or who endorse Defendant and Defendant's products in advertising and
11 marketing activities, have taken, used, and orally administered the product that
12 infringes the claimed methods which has the effect, without limitation, of increasing the
13 plasma level of arginine in the persons taking the product from a low or normal fasting
14 level to a level which is up to three times an average overnight fasting level. These
15 persons included persons who, without limitation, were in good health, were in a
16 condition of increased or continuing brain or neural activities, or were in a condition of
17 increased or continuing muscular activities. Defendant has encouraged and/or is aware
18 of these persons' oral administration of the product that infringes the claimed methods
19 for these purposes, these persons are acting under Defendant's direction and control,
20 and therefore Defendant is directly practicing the methods set forth in the '471 patent.

21 26. End-users of Defendant's product that infringes the claimed methods are
22 also direct infringers of the '471 patent, because they have taken, used, and orally
23 administered the product that infringes the claimed methods which has the effect,
24 without limitation, of increasing the plasma level of arginine in the persons taking the
25 product from a low or normal fasting level to a level which is up to three times an
26 average overnight fasting level. These persons included persons who, without
27 limitation, were in good health, were in a condition of increased or continuing brain or
28

1 neural activities, or were in a condition of increased or continuing muscular activities.
2 Therefore, they practice the methods as set forth in the '471 patent.

3 27. Defendant's labels and advertising for the product that infringes the
4 claimed methods explain the elements or essential elements of the methods disclosed in
5 the '471 patent to end-users and encourage, urge, and induce the products' end-users to
6 purchase and orally administer the products to practice those methods. Defendant's
7 product that infringes the claimed methods is not suitable for non-infringing uses, and
8 none of Defendant's labels or advertisements for the product disclose any uses for the
9 relevant ingredients in the product that have a use that does not infringe upon the
10 methods disclosed in the '471 patent. Defendant has knowledge that its product that
11 infringes the claimed methods is especially adapted by end-users of the product for the
12 practicing of the method disclosed in the '471 patent, as Defendant encourages, urges,
13 and induces the product's end-users to purchase and orally administer the product to
14 practice those methods, and has done so in the past. Defendant therefore is liable for
15 contributory infringement of one or more claims of the '471 patent.

16 28. Defendant has intentionally and knowingly induced, encouraged, and
17 urged end-users of the product that infringes the claimed methods to purchase and
18 orally administer the product for the purpose, without limitation, of increasing the
19 plasma level of arginine in the persons taking the product from a low or normal fasting
20 level to a level which is up to three times an average overnight fasting level, including
21 by end-users who, without limitation, were in good health, were in a condition of
22 increased or continuing brain or neural activities, or were in a condition of increased or
23 continuing muscular activities. On information and belief, Defendant had actual, first-
24 hand knowledge of the '471 patent as early as the time Defendant launched the product
25 that infringes the claimed methods in the marketplace. In the alternative, and on
26 information and belief, Plaintiff pleads that Defendant subjectively believed at the time
27 Defendant launched the product that infringes the claimed methods in the marketplace
28 that there is or was a high probability of the fact that patents existed that covered the

1 use of citrulline as in the product that infringes the claimed methods, and that
2 Defendant took deliberate actions to avoid confirming that fact. Defendant therefore
3 willfully blinded itself to the infringing nature of its sales of the product that infringes
4 the claimed methods. At a minimum, Plaintiff pleads that Defendant became aware of
5 the '471 patent at the time of the filing of the initial Complaint in this matter and the
6 issuance of a correspondence from Plaintiff's counsel regarding the suit. Defendant has
7 not ceased its own contributory infringement or inducement of infringements by end-
8 users despite such knowledge. Defendant is therefore liable for induced infringement
9 of one or more of claims of the '471 patent.

10 29. Defendant's activities have been without express or implied license by
11 Plaintiff.

12 30. The infringement by Defendant has been and continues to be willful, since
13 the infringement has not ceased, particularly after the filing of the initial suit in this
14 matter.

15 31. As a result of Defendant's acts of infringement, Plaintiff has suffered and
16 will continue to suffer damages in an amount to be proved at trial.

17 32. As a result of Defendant's acts of infringement, Plaintiff has been and will
18 continue to be irreparably harmed by Defendant's infringement and inducement, which
19 will continue unless Defendant is enjoined by this Court.

20 33. Plaintiff believes that Defendant's past infringement and/or continuing
21 infringement has been deliberate and willful, and that this case is therefore an
22 exceptional case, which warrants an award of treble damages and attorneys' fees in
23 accordance with 35 U.S.C. § 285.

24 VI. SECOND CAUSE OF ACTION

25 Infringement of U.S. Patent No. 6,028,107

26 34. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs
27 of this First Amended Complaint as if fully set forth herein.
28

1 35. Defendant has in the past and still is literally infringing or infringing under
2 the doctrine of equivalents, directly and indirectly through contributory and/or induced
3 infringement, one or more claims of the '107 patent by making, using, selling, and
4 offering for sale nutritional supplements embodying the patented invention, and will
5 continue to do so unless enjoined by this Court.

6 36. The claims of the '107 patent infringed by Defendant include claims 1, 2,
7 15, and 16.

8 37. Examples of Defendant's direct infringement includes, without limitation,
9 the fact that Defendant's employees, agents, representatives and other persons
10 sponsored by or who endorse Defendant and Defendant's products in advertising and
11 marketing activities, have taken, used, and orally administered the product that
12 infringes the claimed methods which has the effect, without limitation, of increasing the
13 plasma concentration of arginine in the persons taking the product from a low or normal
14 fasting concentration to a level which is up to three times an average overnight fasting
15 arginine level of about 90 mu.mole per liter of plasma. These persons included persons
16 who, without limitation, were in good health, were in a condition of increased or
17 continuing brain or neural activities, or were in a condition of increased or continuing
18 muscular activities. Defendant has encouraged and/or is aware of these persons' oral
19 administration of the product that infringes the claimed methods for these purposes,
20 these persons are acting under Defendant's direction and control, and therefore
21 Defendant is directly practicing the methods set forth in the '107 patent.

22 38. End-users of Defendant's product that infringes the claimed methods are
23 also direct infringers of the '107 patent, because they have taken, used, and orally
24 administered the product that infringes the claimed methods which has the effect,
25 without limitation, of increasing the plasma concentration of arginine in the persons
26 taking the product from a low or normal fasting concentration to a level which is up to
27 three times an average overnight fasting arginine level of about 90 mu.mole per liter of
28 plasma. These persons included persons who, without limitation, were in good health,

1 were in a condition of increased or continuing brain or neural activities, or were in a
2 condition of increased or continuing muscular activities. Therefore, they practice the
3 methods as set forth in the '107 patent.

4 39. Defendant's labels and advertising for the product that infringes the
5 claimed methods explain the elements or essential elements of the methods disclosed in
6 the '107 patent to end-users and encourage, urge, and induce the products' end-users to
7 purchase and orally administer the products to practice those methods. Defendant's
8 product that infringes the claimed methods is not suitable for non-infringing uses, and
9 none of Defendant's labels or advertisements for the product disclose any uses for the
10 relevant ingredients in the product that have a use that does not infringe upon the
11 methods disclosed in the '107 patent. Defendant has knowledge that its product that
12 infringes the claimed methods is especially adapted by end-users of the product for the
13 practicing of the method disclosed in the '107 patent, as Defendant encourages, urges,
14 and induces the product's end-users to purchase and orally administer the product to
15 practice those methods, and has done so in the past. Defendant therefore is liable for
16 contributory infringement of one or more claims of the '107 patent.

17 40. Defendant has intentionally and knowingly induced, encouraged, and
18 urged end-users of the product that infringes the claimed methods to purchase and
19 orally administer the product for the purpose, without limitation, of increasing the
20 plasma concentration of arginine in the persons taking the product from a low or normal
21 fasting concentration to a level which is up to three times an average overnight fasting
22 arginine level of about 90 μmole per liter of plasma, including by end-users who,
23 without limitation, were in good health, were in a condition of increased or continuing
24 brain or neural activities, or were in a condition of increased or continuing muscular
25 activities. On information and belief, Defendant had actual, first-hand knowledge of
26 the '107 patent as early as the time Defendant launched the product that infringes the
27 claimed methods in the marketplace. In the alternative, and on information and belief,
28 Plaintiff pleads that Defendant subjectively believed at the time Defendant launched the

1 product that infringes the claimed methods in the marketplace that there is or was a
2 high probability of the fact that patents existed that covered the use of citrulline as in
3 the product that infringes the claimed methods, and that Defendant took deliberate
4 actions to avoid confirming that fact. Defendant therefore willfully blinded itself to the
5 infringing nature of its sales of the product that infringes the claimed methods. At a
6 minimum, Plaintiff pleads that Defendant became aware of the '107 patent at the time
7 of the filing of the initial Complaint in this matter and the issuance of a correspondence
8 from Plaintiff's counsel regarding the suit. Defendant has not ceased its contributory
9 infringement or inducement of infringements by end-users despite such knowledge.
10 Defendant is therefore liable for induced infringement of one or more of claims of the
11 '107 patent.

12 41. Defendant's activities have been without express or implied license by
13 Plaintiff.

14 42. The infringement by Defendant has been and continues to be willful, since
15 the infringement has not ceased, particularly after the filing of the initial suit in this
16 matter.

17 43. As a result of Defendant's acts of infringement, Plaintiff has suffered and
18 will continue to suffer damages in an amount to be proved at trial.

19 44. As a result of Defendant's acts of infringement, Plaintiff has been and will
20 continue to be irreparably harmed by Defendant's infringement and inducement, which
21 will continue unless Defendant is enjoined by this Court.

22 45. Plaintiff believes that Defendant's past infringement and/or continuing
23 infringement has been deliberate and willful, and that this case is therefore an
24 exceptional case, which warrants an award of treble damages and attorneys' fees in
25 accordance with 35 U.S.C. § 285.

26 VII. PRAYER FOR RELIEF

27 WHEREFORE, Plaintiff prays for entry of judgment against Defendant as
28 follows:

1. A declaration that Defendant has infringed the ‘471 patent and the ‘107 patent under 35 U.S.C. §§ 271 *et seq.*;

3. That injunctions, preliminary and permanent, be issued by this Court restraining Defendant, its respective officers, agents, servants, directors, and employees, and all persons in active concert or participation with each, from directly or indirectly infringing, or inducing or contributing to the infringement by others of, the '471 patent and the '107 patent;

4. That Defendant be required to provide to Plaintiff an accounting of all gains, profits, and advantages derived by Defendant's infringement of the '471 patent and the '107 patent, and that Plaintiff be awarded damages adequate to compensate Plaintiff for the wrongful infringing acts by Defendant, in accordance with 35 U.S.C. § 284;

5. That the damages awarded to Plaintiff with regard to the '471 patent and the '107 patent be increased up to three times, in view of Defendant's willful infringement, in accordance with 35 U.S.C. § 284;

6. That this case be declared to be exceptional in favor of Plaintiff under 35 U.S.C. § 285, and that Plaintiff be awarded its reasonable attorneys' fees and other expenses incurred in connection with this action;

7. That Plaintiff be awarded its interest and costs of suit incurred in this action;

8. Compensatory damages;

9. Punitive damages; and

10. That Plaintiff be awarded such other and further relief as this Court may deem just and proper.

Respectfully submitted,
NEWPORT TRIAL GROUP
A Professional Corporation

Dated: October 5, 2012

By: Tyler J. Woods
Attorneys for Plaintiff

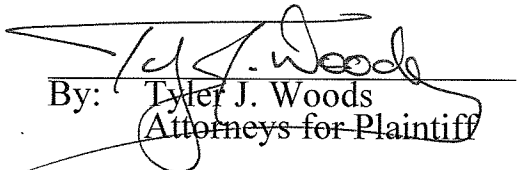
DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a jury trial for all issues in this case that properly are subject to a jury trial.

Respectfully submitted,

NEWPORT TRIAL GROUP
A Professional Corporation

Dated: October 5, 2012


By: Tyler J. Woods
Attorneys for Plaintiff