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Attorneys for Plaintiff

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

THE TAWNSAURA GROUP, LLC,

Plaintiff,

vs.

MAGNUM NUTRACEUTICALS, INC.,

Defendant

Case No. SACV12-1636 SJO(AGRx)

**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 Magnum Nutraceuticals, Inc. (“Defendant”), on personal
3 knowledge as to its own activities and on information and belief as to the activities of
4 others, as 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 Magnum Nutraceuticals, Inc. is a
17 corporation organized and existing under the laws of British Columbia, Canada with a
18 principal place of business at 101-19097 26th Avenue in Surrey, British Columbia, V39
19 3V7, Canada.

20 **II. JURISDICTION AND VENUE**

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

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

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

1 including the products "Serum" and "Opus." Defendant has purposefully and
2 voluntarily placed these products into the stream of commerce with the expectation that
3 they will be purchased in the Central District of California.

4 **III. THE DEFENDANT'S INFRINGING PRODUCTS**

5 7. The label and/or advertisements for Defendant's product Serum state that
6 the product contains, inter alia, the ingredient "L-Citrulline" and "L-Citrulline AKG
7 2:1" to "recycle the Arginine in your system to support harder pumps, increased
8 endurance, shorter recovery." The label and/or advertisements for Defendant's product
9 Opus state that the product contains, inter alia, the ingredient "Instantized L-Citrulline
10 Malate," and "helps send strength levels off the charts by supporting blood flow and
11 hydration of your muscles." The products contain the ingredient l-citrulline.

12 8. As set forth herein, the above products infringe the claimed methods of the
13 '471 patent and the '107 patent, and are therefore referred to herein as "the products
14 that infringe the claimed methods."

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

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

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

1 overnight fasting arginine level of about 90 mu.mole per liter of plasma. These persons
2 included persons who, without limitation, were in good health, were in a condition of
3 increased or continuing brain or neural activities, or were in a condition of increased or
4 continuing muscular activities. Defendant has encouraged and/or is aware of these
5 persons' oral administration of the products that infringe the claimed methods for these
6 purposes, and these persons are acting under Defendant's direction and control.
7 Therefore, Defendant practices the methods as set forth in the '471 patent and the '107
8 patent and is a direct infringer of the patents.

9 11. For instance and without limitation, Mike O'Hearn is an athlete who
10 endorses and acts as a spokesperson for Defendant and Defendant's products and
11 regularly takes Defendant's products, including, on information and belief, the
12 infringing products Opus and Serum. In fact, at the website at
13 www.hardmagnum.com/profile/mike-ohearn, Mr. O'Hearn lists Opus as one of his
14 "favorite supplements." Mr. O'Hearn is just one example of a person who acts under
15 Defendant's direction and control, practices the methods as set forth in the '471 patent
16 and the '107 paten, is a direct infringer of the patents, and, as a result, Defendant, too, is
17 a direct infringer of the patents.

18 12. End-users of Defendant's products that infringe the claimed methods are
19 also direct infringers of the '471 patent and the '107 patent, because they have taken,
20 used, and orally administered the products that infringe the claimed methods which
21 have the effect, without limitation, of increasing the plasma level of arginine in the
22 persons taking the products from a low or normal fasting level to a level which is up to
23 three times an average overnight fasting level and/or increasing the plasma
24 concentration of arginine in the persons taking the products from a low or normal
25 fasting concentration to a level which is up to three times an average overnight fasting
26 arginine level of about 90 mu.mole per liter of plasma. These persons included persons
27 who, without limitation, were in good health, were in a condition of increased or
28 continuing brain or neural activities, or were in a condition of increased or continuing

1 muscular activities. Therefore, they practice the methods as set forth in the '471 patent
2 and the '107 patent.

3 13. For example and without limitation, an end-user of Serum called
4 "Bryan_0025" posted a review on the website at [http://forum.bodybuilding.com/
5 showthread.php?t=124322841&page=1](http://forum.bodybuilding.com/showthread.php?t=124322841&page=1) regarding his use of the product in which he
6 stated, "I have noticed that the vascularity in my arms and shoulders during my
7 workout is becoming very visible." Another end-user of Opus called "Fee Weight
8 Friedel" posted a review on the website at
9 <http://forum.bodybuilding.com/showthread.php?t=145541021&page=1> regarding his
10 use of the product in which he stated, "pumps and energy from it were nothing short of
11 fantastic." These are just two examples of end-users who have practiced the methods
12 as set forth in the '471 patent and the '107 patent and are direct infringers of the
13 patents.

14 14. Defendant's labels and advertising for the products that infringe the
15 claimed methods explain the elements and essential elements of the methods disclosed
16 in the '471 patent and the '107 patent to end-users and encourage, urge, and induce the
17 products' end-users to purchase and orally administer the products to practice those
18 methods, and end-users do practice those methods. Defendant has therefore
19 specifically intended to cause these end-users to directly infringe the claimed methods
20 of the patents, and has urged them to do so.

21 15. Defendant's products that infringe the claimed methods are not suitable for
22 non-infringing uses, and none of Defendant's labels or advertisements for the products
23 disclose any uses for the products nor for the citrulline in those products that do not
24 infringe upon the methods disclosed in the '471 patent and the '107 patent. The
25 inclusion of the citrulline content in the products are, in fact, material to practicing the
26 methods disclosed in the '471 patent and the '107 patent.

27 16. Defendant has knowledge that its products that infringe the claimed
28 methods are especially adapted by end-users of the products for the practicing of the

1 methods disclosed in the '471 patent and '107 patent, and, indeed, Defendant
2 encourages, urges, and induces the products' end-users to purchase and orally
3 administer the products to practice those methods, and has done so in the past.

4 17. Defendant has intentionally and knowingly induced, encouraged, and
5 urged end-users of the products that infringe the claimed methods to purchase and
6 orally administer the products for the purpose, without limitation, of increasing the
7 plasma level of arginine in the persons taking the products from a low or normal fasting
8 level to a level which is up to three times an average overnight fasting level and
9 increasing the plasma concentration of arginine in the persons taking the products from
10 a low or normal fasting concentration to a level which is up to three times an average
11 overnight fasting arginine level of about 90 μ mole per liter of plasma, including by
12 end-users who, without limitation, were in good health, were in a condition of increased
13 or continuing brain or neural activities, or were in a condition of increased or
14 continuing muscular activities.

15 18. On information and belief, Defendant had actual, first-hand knowledge of
16 the '471 patent and the '107 patent as early as the time Defendant launched each of the
17 products that infringe the claimed methods in the marketplace. Defendant employs and
18 engages sophisticated, experienced legal counsel with expertise in patent law.
19 Defendant, through its counsel, conducts or should conduct due diligence on the
20 potential for Defendant's products to infringe on patents and knew or should have
21 known that the products that infringe the claimed methods actually infringe or could
22 infringe on the '471 patent and '107 patent, but Defendant decided to infringe the
23 patents anyway or ignored the risk of infringement.

24 19. In the alternative, Plaintiff pleads that Defendant subjectively believed at
25 the time Defendant launched each of the products that infringe the claimed methods in
26 the marketplace that there is or was a high probability of the fact that patents existed
27 that covered the use of citrulline as in the products and that Defendant took deliberate
28 actions to avoid confirming that fact, including not conducting due diligence as to

1 potential patent infringements. Defendant therefore willfully blinded itself to the
2 infringing nature of its sales of the products that infringe the claimed methods.

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

8 21. The earliest exact date Defendant obtained knowledge of the '471 patent
9 and the '107 patent is within the exclusive possession and control of Defendant.
10 However, Defendant specifically induces end-users to use its products, and particularly
11 the citrulline component in the products, for enhancing arginine, "pump," and blood
12 flow in the end-users' bodies and Defendant knows and intends that end-users achieve
13 those objectives by practicing the methods as set forth in the '471 and '107 patents.
14 This is why Defendant includes citrulline in its products – for the purposes of
15 improving of the health of end-users to increase the plasma level of arginine in end-
16 users to a level from a low or normal fasting level to a level which is up to three times
17 an average overnight fasting level, and improving the health of end-users to increase the
18 plasma concentration of arginine in the subject to a level from a low or normal fasting
19 concentration to a level which is up to three times an average overnight fasting arginine
20 level of about 90 mu.mole per liter of plasma – and Defendant knows that end-users
21 purchase and ingest the products, and particularly the citrulline content of the products,
22 for those purposes. Defendant's infringing activities have not stopped despite its
23 knowledge of the patents' existence.

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 products that
12 infringe the claimed methods which have the effect, without limitation, of increasing
13 the plasma level of arginine in the persons taking the products from a low or normal
14 fasting level to a level which is up to three times an average overnight fasting level.
15 These 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 products that infringe 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 products that infringe the claimed methods are
22 also direct infringers of the '471 patent, because they have taken, used, and orally
23 administered the products that infringe the claimed methods which have the effect,
24 without limitation, of increasing the plasma level of arginine in the persons taking the
25 products 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 products that infringe 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 products that infringe the claimed methods are not suitable for non-infringing uses, and
8 none of Defendant's labels or advertisements for the products disclose any uses for the
9 relevant ingredients in the products that have a use that does not infringe upon the
10 methods disclosed in the '471 patent. Defendant has knowledge that its products that
11 infringe the claimed methods are especially adapted by end-users of the products for the
12 practicing of the method disclosed in the '471 patent, as Defendant encourages, urges,
13 and induces the products' end-users to purchase and orally administer the products 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 products that infringe the claimed methods to purchase and
18 orally administer the products for the purpose, without limitation, of increasing the
19 plasma level of arginine in the persons taking the products 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 each of the
25 products that infringe the claimed methods in the marketplace. In the alternative, and
26 on information and belief, Plaintiff pleads that Defendant subjectively believed at the
27 time Defendant launched each of the products that infringe the claimed methods in the
28 marketplace that there is or was a high probability of the fact that patents existed that

1 covered the use of citrulline as in the products that infringe the claimed methods, and
2 that Defendant took deliberate actions to avoid confirming that fact. Defendant
3 therefore willfully blinded itself to the infringing nature of its sales of the products that
4 infringe the claimed methods. At a minimum, Plaintiff pleads that Defendant became
5 aware of the '471 patent at the time of the filing of the initial Complaint in this matter,
6 and the issuance of a correspondence from Plaintiff's counsel regarding the suit.
7 Defendant has not ceased its contributory infringement or inducement of infringements
8 by end-users despite such knowledge. Defendant is therefore liable for induced
9 infringement 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 products that
12 infringe the claimed methods which have the effect, without limitation, of increasing
13 the plasma concentration of arginine in the persons taking the products from a low or
14 normal fasting concentration to a level which is up to three times an average overnight
15 fasting arginine level of about 90 mu.mole per liter of plasma. These persons included
16 persons who, without limitation, were in good health, were in a condition of increased
17 or continuing brain or neural activities, or were in a condition of increased or
18 continuing muscular activities. Defendant has encouraged and/or is aware of these
19 persons' oral administration of the products that infringe the claimed methods for these
20 purposes, these persons are acting under Defendant's direction and control, and
21 therefore Defendant is directly practicing the methods set forth in the '107 patent.

22 38. End-users of Defendant's products that infringe the claimed methods are
23 also direct infringers of the '107 patent, because they have taken, used, and orally
24 administered the products that infringe the claimed methods which have the effect,
25 without limitation, of increasing the plasma concentration of arginine in the persons
26 taking the products 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 products that infringe the
5 claimed methods explain the elements or essential elements of the methods disclosed in
6 the '471 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 products that infringe the claimed methods are not suitable for non-infringing uses, and
9 none of Defendant's labels or advertisements for the products disclose any uses for the
10 relevant ingredients in the products that have a use that does not infringe upon the
11 methods disclosed in the '107 patent. Defendant has knowledge that its products that
12 infringe the claimed methods are especially adapted by end-users of the products for the
13 practicing of the method disclosed in the '107 patent, as Defendant encourages, urges,
14 and induces the products' end-users to purchase and orally administer the products 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 products that infringe the claimed methods to purchase and
19 orally administer the products for the purpose, without limitation, of increasing the
20 plasma concentration of arginine in the persons taking the products from a low or
21 normal fasting concentration to a level which is up to three times an average overnight
22 fasting arginine level of about 90 mu.mole per liter of plasma, including by end-users
23 who, without limitation, were in good health, were in a condition of increased or
24 continuing brain or neural activities, or were in a condition of increased or continuing
25 muscular activities. On information and belief, Defendant had actual, first-hand
26 knowledge of the '107 patent as early as the time Defendant launched each of the
27 products that infringe the claimed methods in the marketplace. In the alternative, and
28 on information and belief, Plaintiff pleads that Defendant subjectively believed at the

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

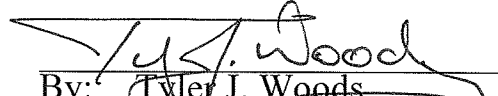
DEMAND FOR JURY TRIAL

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 15, 2012


By: Tyler J. Woods
Attorneys for Plaintiff

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