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 BY

Attorneys for Plaintiff

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

12 THE TAWNSAURA GROUP, LLC,  
 13 Plaintiff,  
 14 vs.  
 15 HAMMER NUTRITION LTD.,  
 16 Defendant

Case No. SACV12-1656 GHK (VBKx)  
**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 Hammer Nutrition Ltd. (“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 Hammer Nutrition Ltd. is a  
17 company organized and existing under the laws of Montana with a principal place of  
18 business at 4952 Whitefish Stage Rd. in Whitefish, Montana, 59937.

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 nutritional supplement products in  
27 the United States, the State of California, and the Central District of California,  
28 including the product “Anti-Fatigue Caps.” Defendant has purposefully and voluntarily

1 placed Anti-Fatigue Caps into the stream of commerce with the expectation that it will  
2 be purchased in the Central District of California.

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

4 7. The label and/or advertisements for Defendant's product Anti-Fatigue Caps  
5 state that the product contains, *inter alia*, the ingredient "L-Citrulline," which  
6 "promotes energy and stimulates the immune system."

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

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

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

16 10. Defendant's employees, agents, representatives and other persons  
17 sponsored by or who endorse Defendant and Defendant's products in advertising and  
18 marketing activities, have taken, used, and orally administered the product that  
19 infringes the claimed methods which has the effect, without limitation, of increasing the  
20 plasma level of arginine in the persons taking the product from a low or normal fasting  
21 level to a level which is up to three times an average overnight fasting level and  
22 increasing the plasma concentration of arginine in the persons taking the product from a  
23 low or normal fasting concentration to a level which is up to three times an average  
24 overnight fasting arginine level of about 90 mu.mole per liter of plasma. These persons  
25 included persons who, without limitation, were in good health, were in a condition of  
26 increased or continuing brain or neural activities, or were in a condition of increased or  
27 continuing muscular activities. Defendant has encouraged and/or is aware of these  
28 persons' oral administration of the product that infringes the claimed methods for these

1 purposes, and these persons are acting under Defendant's direction and control.  
2 Therefore, Defendant practices the methods as set forth in the '471 patent and the '107  
3 patent and is a direct infringer of the patents.

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

16 12. For example and without limitation, a customer identified as "jdzundel" on  
17 the website at [www.bodybuilding.com](http://www.bodybuilding.com) posted a review regarding her use of the product  
18 in which she indicates that she felt "less fatigued" and "less 'wasted'" after her  
19 workouts when she took Anti-Fatigue Caps before the workouts. She is one of many  
20 end-users of the product who practice the methods as set forth in the '471 patent and the  
21 '107 patent and are direct infringers of the patents.

22 13. Defendant's labels and advertising for the product that infringes the  
23 claimed methods explain the elements and essential elements of the methods disclosed  
24 in the '471 patent and the '107 patent to end-users and encourage, urge, and induce the  
25 product's end-users to purchase and orally administer the product to practice those  
26 methods, and end-users do practice those methods. Defendant has therefore  
27 specifically intended to cause these end-users to directly infringe the claimed methods  
28 of the patents, and has urged them to do so.

1 14. Defendant's product that infringes the claimed methods is not suitable for  
2 non-infringing uses, and none of Defendant's labels or advertisements for the product  
3 disclose any uses for the product nor for the citrulline in the product that do not infringe  
4 upon the methods disclosed in the '471 patent and the '107 patent. The inclusion of the  
5 citrulline content in the product is, in fact, material to practicing the methods disclosed  
6 in the '471 patent and the '107 patent.

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

12 16. Defendant has intentionally and knowingly induced, encouraged, and  
13 urged end-users of the product that infringes the claimed methods to purchase and  
14 orally administer the product for the purpose, without limitation, of increasing the  
15 plasma level of arginine in the persons taking the product from a low or normal fasting  
16 level to a level which is up to three times an average overnight fasting level and  
17 increasing the plasma concentration of arginine in the persons taking the product from a  
18 low or normal fasting concentration to a level which is up to three times an average  
19 overnight fasting arginine level of about 90  $\mu$ mole per liter of plasma, including by  
20 end-users who, without limitation, were in good health, were in a condition of increased  
21 or continuing brain or neural activities, or were in a condition of increased or  
22 continuing muscular activities.

23 17. On information and belief, Defendant had actual, first-hand knowledge of  
24 the '471 patent and the '107 patent as early as the time Defendant launched the product  
25 that infringes the claimed methods in the marketplace. Defendant employs and engages  
26 sophisticated, experienced legal counsel with expertise in patent law. Defendant,  
27 through its counsel, conducts or should conduct due diligence on the potential for  
28 Defendant's products to infringe on patents and knew or should have known that the

1 product that infringes the claimed methods actually infringes or could infringe on the  
2 '471 patent and '107 patent, but Defendant decided to infringe the patents anyway or  
3 ignored the risk of infringement.

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

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

16 **V. FIRST CAUSE OF ACTION**

17 **Infringement of U.S. Patent No. 5,874,471**

18 20. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs  
19 of this First Amended Complaint as if fully set forth herein.

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

25 22. The claims of the '471 patent infringed by Defendant include claims 1, 2,  
26 20, 21, and 28.

27 23. Examples of Defendant's direct infringement includes, without limitation,  
28 the fact that Defendant's employees, agents, representatives and other persons



1 sponsored by or who endorse Defendant and Defendant's products in advertising and  
2 marketing activities, have taken, used, and orally administered the product that  
3 infringes the claimed methods which has the effect, without limitation, of increasing the  
4 plasma level of arginine in the persons taking the product from a low or normal fasting  
5 level to a level which is up to three times an average overnight fasting level. These  
6 persons included persons who, without limitation, were in good health, were in a  
7 condition of increased or continuing brain or neural activities, or were in a condition of  
8 increased or continuing muscular activities. Defendant has encouraged and/or is aware  
9 of these persons' oral administration of the product that infringes the claimed methods  
10 for these purposes, these persons are acting under Defendant's direction and control,  
11 and therefore Defendant is directly practicing the methods set forth in the '471 patent.

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

21 25. Defendant's labels and advertising for the product that infringes the  
22 claimed methods explain the elements or essential elements of the methods disclosed in  
23 the '471 patent to end-users and encourage, urge, and induce the products' end-users to  
24 purchase and orally administer the products to practice those methods. Defendant's  
25 product that infringes the claimed methods is not suitable for non-infringing uses, and  
26 none of Defendant's labels or advertisements for the product disclose any uses for the  
27 relevant ingredients in the product that have a use that does not infringe upon the  
28 methods disclosed in the '471 patent. Defendant has knowledge that its product that

1 infringes the claimed methods is especially adapted by end-users of the product for the  
2 practicing of the method disclosed in the '471 patent, as Defendant encourages, urges,  
3 and induces the product's end-users to purchase and orally administer the product to  
4 practice those methods, and has done so in the past. Defendant therefore is liable for  
5 contributory infringement of one or more claims of the '471 patent.

6 26. Defendant has intentionally and knowingly induced, encouraged, and  
7 urged end-users of the product that infringes the claimed methods to purchase and  
8 orally administer the product for the purpose, without limitation, of increasing the  
9 plasma level of arginine in the persons taking the product from a low or normal fasting  
10 level to a level which is up to three times an average overnight fasting level, including  
11 by end-users who, without limitation, were in good health, were in a condition of  
12 increased or continuing brain or neural activities, or were in a condition of increased or  
13 continuing muscular activities. On information and belief, Defendant had actual, first-  
14 hand knowledge of the '471 patent as early as the time Defendant launched the product  
15 that infringes the claimed methods in the marketplace. In the alternative, and on  
16 information and belief, Plaintiff pleads that Defendant subjectively believed at the time  
17 Defendant launched the product that infringes the claimed methods in the marketplace  
18 that there is or was a high probability of the fact that patents existed that covered the  
19 use of citrulline as in the product that infringes the claimed methods, and that  
20 Defendant took deliberate actions to avoid confirming that fact. Defendant therefore  
21 willfully blinded itself to the infringing nature of its sales of the product that infringes  
22 the claimed methods. At a minimum, Plaintiff pleads that Defendant became aware of  
23 the '471 patent at the time of the filing of the initial Complaint in this matter and the  
24 issuance of a correspondence from Plaintiff's counsel regarding the suit. Defendant has  
25 not ceased its own contributory infringement or inducement of infringements by end-  
26 users despite such knowledge. Defendant is therefore liable for induced infringement  
27 of one or more of claims of the '471 patent.

28



1 27. Defendant's activities have been without express or implied license by  
2 Plaintiff.

3 28. The infringement by Defendant has been and continues to be willful, since  
4 the infringement has not ceased, particularly after the filing of the initial suit in this  
5 matter.

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

8 30. As a result of Defendant's acts of infringement, Plaintiff has been and will  
9 continue to be irreparably harmed by Defendant's infringement and inducement, which  
10 will continue unless Defendant is enjoined by this Court.

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

15 **VI. SECOND CAUSE OF ACTION**

16 **Infringement of U.S. Patent No. 6,028,107**

17 32. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs  
18 of this First Amended Complaint as if fully set forth herein.

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

24 34. The claims of the '107 patent infringed by Defendant include claims 1, 2,  
25 15, and 16.

26 35. Examples of Defendant's direct infringement includes, without limitation,  
27 the fact that Defendant's employees, agents, representatives and other persons  
28 sponsored by or who endorse Defendant and Defendant's products in advertising and

1 marketing activities, have taken, used, and orally administered the product that  
2 infringes the claimed methods which has the effect, without limitation, of increasing the  
3 plasma concentration of arginine in the persons taking the product from a low or normal  
4 fasting concentration to a level which is up to three times an average overnight fasting  
5 arginine level of about 90 mu.mole per liter of plasma. These persons included persons  
6 who, without limitation, were in good health, were in a condition of increased or  
7 continuing brain or neural activities, or were in a condition of increased or continuing  
8 muscular activities. Defendant has encouraged and/or is aware of these persons' oral  
9 administration of the product that infringes the claimed methods for these purposes,  
10 these persons are acting under Defendant's direction and control, and therefore  
11 Defendant is directly practicing the methods set forth in the '107 patent.

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

22 37. Defendant's labels and advertising for the product that infringes the  
23 claimed methods explain the elements or essential elements of the methods disclosed in  
24 the '107 patent to end-users and encourage, urge, and induce the products' end-users to  
25 purchase and orally administer the products to practice those methods. Defendant's  
26 product that infringes the claimed methods is not suitable for non-infringing uses, and  
27 none of Defendant's labels or advertisements for the product disclose any uses for the  
28 relevant ingredients in the product that have a use that does not infringe upon the

1 methods disclosed in the '107 patent. Defendant has knowledge that its product that  
2 infringes the claimed methods is especially adapted by end-users of the product for the  
3 practicing of the method disclosed in the '107 patent, as Defendant encourages, urges,  
4 and induces the product's end-users to purchase and orally administer the product to  
5 practice those methods, and has done so in the past. Defendant therefore is liable for  
6 contributory infringement of one or more claims of the '107 patent.

7 38. Defendant has intentionally and knowingly induced, encouraged, and  
8 urged end-users of the product that infringes the claimed methods to purchase and  
9 orally administer the product for the purpose, without limitation, of increasing the  
10 plasma concentration of arginine in the persons taking the product from a low or normal  
11 fasting concentration to a level which is up to three times an average overnight fasting  
12 arginine level of about 90  $\mu$ mole per liter of plasma, including by end-users who,  
13 without limitation, were in good health, were in a condition of increased or continuing  
14 brain or neural activities, or were in a condition of increased or continuing muscular  
15 activities. On information and belief, Defendant had actual, first-hand knowledge of  
16 the '107 patent as early as the time Defendant launched the product that infringes the  
17 claimed methods in the marketplace. In the alternative, and on information and belief,  
18 Plaintiff pleads that Defendant subjectively believed at the time Defendant launched the  
19 product that infringes the claimed methods in the marketplace that there is or was a  
20 high probability of the fact that patents existed that covered the use of citrulline as in  
21 the product that infringes the claimed methods, and that Defendant took deliberate  
22 actions to avoid confirming that fact. Defendant therefore willfully blinded itself to the  
23 infringing nature of its sales of the product that infringes the claimed methods. At a  
24 minimum, Plaintiff pleads that Defendant became aware of the '107 patent at the time  
25 of the filing of the initial Complaint in this matter and the issuance of a correspondence  
26 from Plaintiff's counsel regarding the suit. Defendant has not ceased its contributory  
27 infringement or inducement of infringements by end-users despite such knowledge.

28

1 Defendant is therefore liable for induced infringement of one or more of claims of the  
2 '107 patent.

3 39. Defendant's activities have been without express or implied license by  
4 Plaintiff.

5 40. The infringement by Defendant has been and continues to be willful, since  
6 the infringement has not ceased, particularly after the filing of the initial suit in this  
7 matter.

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

10 42. As a result of Defendant's acts of infringement, Plaintiff has been and will  
11 continue to be irreparably harmed by Defendant's infringement and inducement, which  
12 will continue unless Defendant is enjoined by this Court.

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

17 **VII. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for entry of judgment against Defendant as  
19 follows:

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

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

27 4. That Defendant be required to provide to Plaintiff an accounting of all  
28 gains, profits, and advantages derived by Defendant's infringement of the '471 patent

1 and the '107 patent, and that Plaintiff be awarded damages adequate to compensate  
2 Plaintiff for the wrongful infringing acts by Defendant, in accordance with 35 U.S.C. §  
3 284;

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

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

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

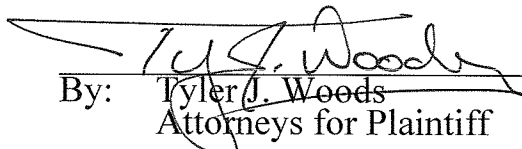
12 8. Compensatory damages;

13 9. Punitive damages; and

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

16  
17  
18 Respectfully submitted,  
NEWPORT TRIAL GROUP  
A Professional Corporation

19  
20 Dated: October 5, 2012

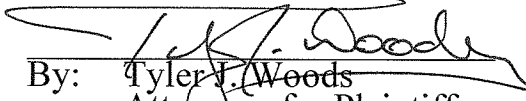
21   
By: Tyler J. Woods  
Attorneys for Plaintiff

**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

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