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

11 THERMOLIFE INTERNATIONAL, LLC, Case No. **CV13 - 01286 DSF (JPRx)**

12 Plaintiff,

13 vs.

14 LONE STAR DISTRIBUTION,

15 Defendants

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

FILED
2013 FEB 21 PM 3:05
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

COPY

BY FAX

1 Plaintiff Thermolife International, LLC ("Plaintiff") hereby alleges for its
2 Complaint against Lone Star Distribution ("Defendant"), on personal knowledge as to
3 its own activities and on information and belief as to the activities of others, as follows:

4 **I. THE PARTIES**

5 1. Plaintiff is a limited liability company organized and existing under the
6 laws of Arizona, with a place of business at 1811 Ocean Front Walk in Venice,
7 California, 90291.

8 2. Plaintiff is the owner and assignee of United States Patent No. 8,202,908
9 ("the '908 patent") titled "D-Aspartic Acid Supplement," and Plaintiff licenses the '908
10 patent to several third-parties and is in negotiations to license the patents to numerous
11 other parties.

12 3. Defendant is a company organized and existing under the laws of Texas
13 with a principal place of business at 11370 Pagemill Road in Dallas, Texas, 75243.

14 **II. JURISDICTION AND VENUE**

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

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

19 6. This Court has personal jurisdiction over Defendant. By way of example
20 and without limitation, Defendant, directly or through intermediaries, ships, distributes,
21 offers for sale, sells, and advertises the following dietary supplement products in the
22 United States, the State of California, and the Central District of California, collectively
23 referred to as the "accused products":

24 a. "Hyper FX" and "Evotest" (powdered and tablet forms), manufactured
25 by or for and marketed by Bio-Engineered Supplements and Nutrition,
26 Inc.;

27 b. "Bulasterone", manufactured by or for and marketed by Hi-Tech
28 Pharmaceuticals, Inc.;

- c. "Intratest Xtreme", "Speed X3", and "Testodrol X9", manufactured by or for and marketed by Lecheek, LLC;
- d. "X-Fit Power", manufactured by or for and marketed by Maximum Human Performance, LLC;
- e. "T-Up", manufactured by or for and marketed by Nutrex Research, Inc.;
- f. "D-pol", manufactured by or for and marketed by Purus Labs, Inc.; and
- g. "Pure Test", "Revolution PCT", and "Ignite 2" manufactured by or for and marketed by Redefine Nutrition LLC d/b/a Finaflex.

7. Defendant has purposefully and voluntarily placed these accused products into the stream of commerce with the expectation that they will be purchased in the Central District of California, and the products are actually purchased in the Central District of California.

III. THE ACCUSED PRODUCTS

8. The accused products purport to and do increase the levels of testosterone in adult male humans.

9. The accused products are administered by oral ingestion.

10. The accused products contain a D-aspartic acid compound comprised from D-aspartic acid, D-Aspartate salts, or D-aspartate esters.

11. The accused products branded are intended to be taken by adult male humans and are taken primarily by adult male humans.

12. The accused products purport to contain and actually contain a D-aspartic acid compound which is, according to the products' instructions for use, to be administered and is administered in an amount and for a time sufficient to increase the levels of testosterone in end-users.

13. Defendant markets, advertises, offers for sale, and sells the accused products.

1 14. As part of its transaction of business in this jurisdiction, Defendant sells its
2 accused products to end-users of the accused products as well as other distributors and
3 retailers with places of business within the Central District of California.

4 15. Defendant has committed the tort of patent infringement within the State
5 of California, and more particularly, within the Central District of California, by virtue
6 of the fact that Defendant has shipped, distributed, offered for sale, sold, and advertised,
7 and continues to ship, distribute, offer for sale, sell, and advertise the accused products
8 in this District.

9 16. The labels and advertisements for the Hyper FX-branded products state, as
10 relevant to this matter and without limitation, as follows:

- 11 a. The product contains "D-Aspartic Acid."
- 12 b. It is to be taken by oral ingestion.
- 13 c. "ingredients are designed to support...Testosterone"
- 14 d. "mix 1 level scoop with 3-6 oz of water and drink immediately on an
15 empty stomach"
- 16 e. "For best results, use a second level scoop at least 4 hours after using
17 the first level scoop"

18 17. The labels and advertisements for the Evotest-branded products sold in
19 powdered form state, as relevant to this matter and without limitation, as follows:

- 20 a. The product contains "D-Aspartic Acid."
- 21 b. It is to be taken by oral ingestion.
- 22 c. "BSN's first concentrated powdered testosterone support supplement"
- 23 d. "BSN is hoping to get consumers to expect more performance out of
24 their testosterone support supplement and see the difference this novel
25 formula can make"
- 26 e. "not intended for use by women"
- 27 f. "mix 1 scoop with 6 oz. of water twice daily"
- 28 g. "cutting-edge ingredients like....d-aspartic acid"

1 h. "EVOTEST ingredients when used as directed, at maximum dosage,
2 over time, combined with a healthy diet and regular exercise are
3 designed for testosterone support"

4 18. The labels and advertisements for the Evotest-branded products sold in
5 tablet form state, as relevant to this matter and without limitation, as follows:

6 a. The product contains "D-Aspartic Acid."

7 b. It is to be taken by oral ingestion.

8 c. "Supports Production of Testosterone Already Within the Normal
9 Range"

10 d. "BSN is hoping to get consumers to expect more performance out of
11 their testosterone support supplement and see the difference this novel
12 formula can make"

13 e. "9-Component TEST Matrix"

14 f. "Testosterone support has evolved - time to gear up with EVOTEST"

15 g. "Not for use by women"

16 h. "Full 3-Week Cycle in Each Bottle"

17 i. "take 2 tablets 2 times daily"

18 j. "efficacious ingredients like....d-aspartic acid"

19 19. The labels and advertisements for the Bulasterone products state, as
20 relevant to this matter and without limitation, as follows:

21 a. The products contain "Sodium D-Aspartic Acid."

22 b. They are to be taken by oral ingestion.

23 c. That the products are "The Most Scientifically Advanced Nutraceutical
24 Formulation for Testosterone Enhancement"

25 d. That "Bulasterone also contains sodium D-aspartic acid, which studies
26 suggest supports enhanced levels of LH and testosterone using a daily
27 serving amount of 3 grams, which is the exact dosage use in
28 Bulasterone"

- e. That Bulasterone is the “World’s Strongest Testosterone Booster”
- f. “Take 1-3 tablets in the morning and 1-3 tablets after lunch or prior to training”
- g. Bulasterone provides 3 grams of Sodium D-Aspartic Acid per day.

20. The labels and advertisements for the Intratest Xtreme-branded products state, as relevant to this matter and without limitation, as follows:

- a. The product contains “D-Aspartic Acid (as D-Aspartate Calcium Chelate)”
- b. It is to be taken by oral ingestion.
- c. “Testosterone Fueled Recovery Matrix”
- d. “powdered testosterone booster”
- e. “You can take Intratest one of two ways. Take one serving during your workout for an effective intra workout recovery product or take another dose before bed to get your clinical dose of D-Aspartic Acid to naturally increase your testosterone levels by up to 42%.”
- f. “As a dietary supplement, Adults Under 200lbs.: Take one (1) scoop with 8-10 oz. of water during/after workouts. Adults Over 200lbs.: Take two (2) scoops with 8-10 oz. of water during/after workouts.”
- g. “After 12 weeks of use, discontinue for a minimum of 2 weeks.”

21. The labels and advertisements for the Speed X3-branded products state, as relevant to this matter and without limitation, as follows:

- a. The product contains “D-Aspartic Acid”
- b. It is to be taken by oral ingestion.
- c. “Fuels test production”
- d. “Begin by taking 1 Scoop of Speed X3 30 minutes before any sort of athletic activity. After tolerance has been assessed, take 2 scoops 30 minutes before [athletic activity]....Never take more than 3 scoops within a 24-hour period.”

1 22. The labels and advertisements for the Testodrol X9-branded products state,
2 as relevant to this matter and without limitation, as follows:

- 3 a. The product contains "D-Aspartic Acid"
- 4 b. It is to be taken by oral ingestion
- 5 c. "Boost Free Testosterone"
- 6 d. "Testodrol X9 is loaded with 9 of the most effective testosterone
7 boosting ingredients on the market today"
- 8 e. "It will increase your test levels very quickly...."
- 9 f. "Take 1 serving daily with a full glass of water. Do not exceed two
10 servings in a 24 hour period. If consuming two servings daily, spread
11 dosages as evenly as possible."

12 23. The labels and advertisements for the product X-Fit Power state, as
13 relevant to this matter and without limitation, as follows:

- 14 a. The product contains "D-Aspartic Acid (DAA)"
- 15 b. It is to be taken by oral ingestion.
- 16 c. "In a clinical study, a remarkable 87% of subjects taking the same dose
17 of D-aspartic acid (DAA) provided by POWER increased their
18 testosterone level by an average of 42% after only 12 days of
19 supplementation. POWER uses free DAA, the same form used in
20 clinical research. DAA is a naturally occurring amino acid."
- 21 d. "powerful testosterone booster called DAA"
- 22 e. "To support 24 hour muscle building and repair, take 2 tablets of
23 POWER 3 times daily with meals (6 tablets daily)"
- 24 f. The product includes 1 gram of DAA per serving of 2 tablets; its
25 instructions instruct users to take 6 tablets daily, meaning 3 grams per
26 day.

27 24. The labels and advertisements for the T-Up-branded products state, as
28 relevant to this matter and without limitation, as follows:

- a. The product contains "Sodium D-Aspartic Acid"
- b. It is to be taken by oral ingestion.
- c. "Nutrex raises the bar on testosterone boosting by bringing you T-UP Black"
- d. "In one study, the Sodium D-Aspartic Acid used in T-Up led to an average 42% increase in testosterone after only 12 days of use"
- e. "Days 1-10: Take 5 Black Liqui-Caps twice per day between meals"
- f. "Day 11 and on: Take 5 Black Liqui-Caps once per day between meals"
- g. "Scientific research has shown that the Sodium D-Aspartic Acid in T-UP can be stored in the body and continues to keep testosterone levels elevated for several days even after study participants stopped taking it, supporting the conclusion that the testosterone boosting effects of this product will build up over time"

25. The labels and advertisements for the product D-pol state, as relevant to this matter and without limitation, as follows:

- a. The product contains "D-Aspartic Acid"
- b. It is to be taken by oral ingestion.
- c. "42% increase in free testosterone"
- d. "expect intense strength and lean muscle accrual through increased circulating free testosterone levels"
- e. "d-aspartic acid (a chief ingredient in d-pol) has been reported to increase circulating testosterone, d-pol should not be used by women"
- f. "Take 1 serving with a mixed food meal"
- g. "full dosage of 3 tablets per day"
- h. There are 3,120 mg of D-Aspartic Acid per serving (3 tablets), and the product instructs users to take one serving per day.

1 26. The labels and advertisements for the product Pure Test state, as relevant
2 to this matter and without limitation, as follows:

- 3 a. The product contains "Aspartic Acid (DAA)"
- 4 b. It is to be taken by oral ingestion.
- 5 c. "PURE TEST is PURE TESTOSTERONE, free from anything inferior,
6 totally refined, clean, true TESTOSTERONE. PURE TEST is made
7 from 100% HPLC verified D-Aspartic Acid (DAA). D-Aspartic Acid is
8 a NATURAL TESTOSTERONE boosting POWERHOUSE that has
9 been shown to SIGNIFICANTLY increase TESTOSTERONE levels
10 after prolonged use. D-Aspartic Acid has been shown to BOOST
11 TESTOSTERONE in actual HUMAN studies, not in plant, animal, or
12 some bull*%#* laboratory study other supplement companies use to
13 "validate" their latest ingredients. Taken regularly PURE TEST results
14 in increased strength, energy levels, and sex drive. Boost your test with
15 the best, FINAFLEX PURE TEST!"
- 16 d. "Serving Size: 1 Capsule"
- 17 e. "As a dietary supplement take 4-6 capsules daily for 30 days
18 consecutively. Take FINAFLEX PURE TEST every night at bedtime
19 to maximize effectiveness as a testosterone elevator. For optimal
20 results use PURE TEST for 6-12 weeks. For extreme results take two
21 servings of PURE TEST, spaced 12 hours apart, for 4-8 weeks."
- 22 f. The product provides 500 mg of DAA per serving.
- 23 g. Instructions are to take at least 2 capsules, but up to 6, per day, which
24 equals or well exceeds 1 gram per day.

25 27. The labels and advertisements for the product Revolution PCT state, as
26 relevant to this matter and without limitation, as follows:

- 27 a. The product contains "D-Aspartic Acid (DAA) (as part of a
28 "Testosterone Amplification Blend")"

- b. It is to be taken by oral ingestion.
- c. "PCT Revolution will revitalize testosterone levels leading to increased energy, strength, and sex drive"
- d. "Amplify Testosterone"
- e. "As a dietary supplement take 2-4 capsules at night before bed. For best results continue use of PCT Revolution for 4-8 weeks. DO NOT exceed 8 weeks of continued use."

28. The labels and advertisements for the product Ignite 2 state, as relevant to this matter and without limitation, as follows:

- a. The product contains "AMINOSTERONE (d-Aspartic Acid Diethyl Ester HCL), d-Aspartic Salt"
- b. It is to be taken by oral ingestion.
- c. "Built with AMINOSTERONE a revolutionary new amino acid derivative that skyrockets total testosterone in under 30 days"
- d. "Built with AMINOSTERONE a revolutionary new d-Aspartic Acid derivative that skyrockets total testosterone in under 30 days...AMINOSTERONE has been shown to be 400 times more soluble than regular d-Aspartic Acid when mixed into solution, leading to higher absorption and bioavailability in the body."
- e. "As a dietary supplement, mix 1 scoop with 6-12 ounces of cold water and consume 5-15 minutes prior to workout....For best results consume IGNITE 2 on training and non-training days to maximize effectiveness of ingredients AMINOSTERONE & Crea-Trona"

IV. DEFENDANT'S INFRINGEMENTS

A. DIRECT INFRINGEMENTS

29. Defendant's employees, agents, representatives and other persons sponsored by or who endorse Defendant and the products Defendant advertises and markets, have taken, used, and orally administered the accused products, which

1 Defendant has advertised, distributed and sold to include a D-aspartic acid compound
2 as defined in the '908 patent for the specific reason of increasing the levels of
3 testosterone in adult male humans taking the products, by having them orally ingest the
4 D-aspartic acid compound present in the products in an amount and for a time sufficient
5 to increase the levels of testosterone.

6 30. Defendant has encouraged and/or is aware of these persons' oral
7 administration of the accused products for these purposes, and these employees, agents,
8 representatives and other persons sponsored by or who endorse Defendant and the
9 Defendant advertises and markets are acting under Defendant's direction and control
10 when practicing the method disclosed in the '908 patent.

11 31. Therefore, Defendant directly practices the method as set forth in the '908
12 patent and it is a direct infringer of the patent.

13 **B. INDIRECT INFRINGEMENTS**

14 32. End-users of the accused products are also direct infringers of the '908
15 patent, because they have taken, used, and orally ingested the accused products which
16 have been formulated to include a D-aspartic acid compound as defined in the '908
17 patent for the specific reason of increasing the levels of testosterone in adult male
18 humans taking the products, by having them orally ingest the a D-aspartic acid
19 compound as defined in the '908 patent present in the products in an amount and for a
20 time sufficient to increase their levels of testosterone.

21 33. These end-users practice the method as set forth in the '908 patent and are
22 direct infringers of the patent.

23 34. The labels and advertising for the accused products explain the elements
24 and essential elements of the method disclosed in the '908 patent to end-users and
25 encourage, urge, and induce the accused products' end-users to purchase and orally
26 ingest the products to practice that method, and end-users do practice that method.

1 35. By offering to sell and selling the accused products, Defendant has
2 specifically intended to cause these end-users to directly infringe the claimed methods
3 of the patent, and has in fact urged them to do so.

4 36. The accused products are not suitable for non-infringing uses, and none of
5 Defendant's marketing statements for the accused products disclose any uses for the
6 products nor for the D-aspartic acid compound as defined in the '908 patent in those
7 products that do not infringe upon the method disclosed in the '908 patent.

8 37. The inclusion of the D-aspartic acid compound in the products is material
9 to practicing the method disclosed in the '908 patent.

10 38. Defendant has knowledge that the accused products are especially adapted
11 by end-users of the products for the practicing of the method disclosed in the '908
12 patent, and, indeed, Defendant encourages, urges, and induces the products' end-users
13 to purchase and orally administer the accused products to practice that method, and has
14 done so in the past.

15 39. Defendant has intentionally and knowingly induced, encouraged, and
16 urged end-users of the accused products to purchase and orally administer the accused
17 products for the purpose, without limitation, of increasing the levels of testosterone in
18 adult male humans taking the products, by having them orally ingest the D-aspartic acid
19 compound as defined in the '908 patent present in the products in an amount and for a
20 time sufficient to increase the levels of testosterone.

21 40. Defendant had actual, first-hand knowledge of the '908 patent after the
22 June 19, 2012 issuance of the patent, the day of which a very publicly available and
23 widely known press release was issued by Plaintiff announcing the issuance of the
24 patent. The press release stated as follows:

25 "ThermoLife International, LLC (ThermoLife) announced today
26 that the United States Patent and Trademark Office (USPTO)
27 issued U.S. Patent No. 8,202,908 (the '908 patent) for
28 ThermoLife's novel use of D-Aspartic acid (DAA). The patented

1 method uses a DAA compound to increase the levels of
2 testosterone, growth hormone, and/or insulin-like growth factor 1
3 in adult males. The potential benefits of DAA are astounding and
4 the patented method will transform testosterone boosting dietary
5 supplements and methods.

6 ThermoLife has a long history of developing innovative and
7 proven products and processes. With the addition of the '908
8 patent, ThermoLife has been awarded seven patents covering
9 more than 20 various compounds and methods of use, and still
10 has many pending applications in the pipeline and new
11 technologies at various stages of development.

12 These patents protect ThermoLife's innovative and proven
13 products and methods, as well as validate ThermoLife's market
14 leadership in new dietary ingredient research. These patents also
15 allow ThermoLife to continue building confidence with its
16 licensing partners and give consumers and companies that work
17 with ThermoLife assurance that they are buying one-of-a-kind
18 products that they cannot get elsewhere.

19 **About Thermolife**

20 Founded in 1998, ThermoLife is dedicated to developing real
21 products and methods that work. ThermoLife is a leading
22 manufacturer in the sports nutrition and supplement industry.
23 ThermoLife is committed to developing only the purest, most
24 effective, and innovative products. For more information about
25 ThermoLife and its patents, or to license any of ThermoLife's
26 patented ingredients contact Ron Kramer at
27 Ron(at)ThermoLife(dot)com."
28

1 41. Thereafter, Plaintiff sent detailed communications to Defendant to notify
2 Defendant of the patent and its infringement prior to the filing of this suit, and, upon
3 information and belief, notified or should have notified the manufacturer and marketer
4 of the accused products of such communications.

5 42. Defendant has brazenly and willfully decided to infringe the '908 patent
6 despite knowledge of the patent's existence and each of its infringements of the patent.

7 43. At a minimum, and in the alternative, Plaintiff pleads that Defendant
8 willfully blinded itself to the infringing nature of the accused products' sales.

9 44. Defendant has not ceased its own direct infringements, contributory
10 infringements, or inducements of infringements by end-users despite its clear
11 knowledge of the '908 patent.

12 45. In sum, Defendant specifically induces end-users to use the accused
13 products, and particularly the d-aspartic acid compound in these products, for
14 increasing the levels of testosterone in adult male humans taking the products, by
15 having them orally ingest the d-aspartic acid compound present in the products in an
16 amount and for a time sufficient to increase the levels of testosterone, which is the very
17 method described in the '908 patent.

18 46. This method is the sole reason Defendant offers to sell and sells the d-
19 aspartic acid compound in the accused products, and end-users' experiences are
20 consistent with the fact that they have practiced the method, in that end-users have
21 increased their levels of testosterone by ingesting the d-aspartic acid compound present
22 in the accused products.

23 47. Defendant's infringing activities have not stopped despite its knowledge of
24 the patent's existence.

25 **V. FIRST CAUSE OF ACTION**

26 **Infringement of U.S. Patent No. 8,202,908**

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

1 49. The Defendant has in the past and still is literally infringing or infringing
2 under the doctrine of equivalents, directly and indirectly through contributory and/or
3 induced infringement, claims 1 and 2 of the '908 patent by making, using, selling, and
4 offering for sale dietary supplements embodying claims 1 and 2 of the patented
5 invention, and will continue to do so unless enjoined by this Court.

6 50. Examples of Defendant's direct infringement include, without limitation,
7 the fact that Defendant's employees, agents, representatives and other persons
8 sponsored by or who endorse Defendant and the products Defendant advertises and
9 markets, have taken, used, and orally administered the accused products, which
10 Defendant has advertised, distributed and sold to include a D-aspartic acid compound
11 as defined in the '908 patent for the specific reason of increasing the levels of
12 testosterone in adult male humans taking the products, by having them orally ingest the
13 D-aspartic acid compound present in the products in an amount and for a time sufficient
14 to increase the levels of testosterone, and when administered pursuant to the accused
15 products' instructions for use, leading to an ingestion of about 1 to 20 grams of the D-
16 aspartic acid compound daily.

17 51. Defendant has encouraged and is aware of these persons' oral
18 administration of the accused for these purposes, these persons are acting under
19 Defendant's direction and control, and therefore Defendant is directly practicing the
20 method set forth in the '908 patent.

21 52. End-users of the accused products are also direct infringers of the '908
22 patent, because they have taken, used, and orally ingested the accused products which
23 have been formulated to include a D-aspartic acid compound as defined in the '908
24 patent for the specific reason of increasing the levels of testosterone in adult male
25 humans taking the products, by having them orally ingest the a D-aspartic acid
26 compound as defined in the '908 patent present in the products in an amount and for a
27 time sufficient to increase their levels of testosterone, and when administered pursuant
28

1 to the accused products' instructions for use, leading to an ingestion of between about 1
2 to 20 grams of the D-aspartic acid compound daily.

3 53. Therefore, these end-users practice the method as set forth in the '908
4 patent and directly infringe the patent.

5 54. Defendant's advertising explain the elements or essential elements of the
6 method disclosed in the '908 patent to end-users and encourage, urge, and induce the
7 products' end-users to purchase and orally administer the accused products to practice
8 that method.

9 55. The accused products are not suitable for non-infringing uses, and none of
10 the labels or advertisements for the products disclose any uses for the D-aspartic acid
11 compound in the products that do not infringe upon the method disclosed in the '908
12 patent.

13 56. Defendant has knowledge that the accused products are especially adapted
14 by end-users of the products for increasing the levels of testosterone in adult male
15 humans taking the accused products, by having them orally ingest the D-aspartic acid
16 compound present in the products in an amount and for a time sufficient to increase the
17 levels of testosterone.

18 57. Defendant encourages, urges, and induces the accused products' end-users
19 to purchase and orally administer the products to increase the levels of testosterone in
20 adult male humans taking the products, by having them orally ingest the D-aspartic acid
21 compound present in the products in an amount and for a time sufficient to increase the
22 levels of testosterone – and Defendant has done so in the past.

23 58. Defendant therefore is liable for contributory infringement of claims 1 and
24 2 of the '908 patent.

25 59. Defendant has intentionally and knowingly induced, encouraged, and
26 urged end-users of the accused products to purchase and orally administer the products
27 for the purpose, without limitation, of increasing the levels of testosterone in adult male
28 humans taking the products, by having them orally ingest the D-aspartic acid compound

1 present in the products in an amount and for a time sufficient to increase the levels of
2 testosterone, and instructing them to do so in a daily amount of between about 1 and 20
3 grams of the compound daily.

4 60. Defendant has actual, first-hand knowledge of the '908 patent, but has not
5 ceased their contributory infringement or inducement of infringements by end-users
6 despite their knowledge of the '908 patent.

7 61. Defendant is therefore liable for induced infringement of claims 1 and 2 of
8 the '908 patent.

9 62. Defendant's activities have been without express or implied license by
10 Plaintiff.

11 63. The infringements by Defendant have been and continue to be willful,
12 since the infringements have not ceased.

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

15 65. As a result of Defendant's acts of infringement, Plaintiff has been and will
16 continue to be irreparably harmed by Defendant's infringements and inducements,
17 which will continue unless Defendant is enjoined by this Court.

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

22 VI. PRAYER FOR RELIEF

23 WHEREFORE, Plaintiff prays for entry of judgment against Defendant as
24 follows:

25 1. A declaration that Defendant has infringed the '908 patent under 35 U.S.C.
26 §§ 271 *et seq.*;

27 3. That injunctions, preliminary and permanent, be issued by this Court
28 restraining Defendant, its respective officers, agents, servants, directors, and employees,

1 and all persons in active concert or participation with each, from directly or indirectly
2 infringing, or inducing or contributing to the infringement by others of, the '908 patent;

3 4. That Defendant be required to provide to Plaintiff an accounting of all
4 gains, profits, and advantages derived by Defendant's infringement of the '908 patent,
5 and that Plaintiff be awarded damages adequate to compensate Plaintiff for the
6 wrongful infringing acts by Defendant, in accordance with 35 U.S.C. § 284;

7 5. That the damages awarded to Plaintiff with regard to the '908 patent be
8 increased up to three times, in view of Defendant's willful infringement, in accordance
9 with 35 U.S.C. § 284;

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

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

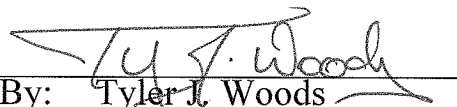
15 8. Compensatory damages;

16 9. Punitive damages; and

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

19 Respectfully submitted,
20 NEWPORT TRIAL GROUP
21 A Professional Corporation

22 Dated: February 20, 2013

23 By: 
24 Tyler J. Woods
25 Attorneys for Plaintiff
26
27
28


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: February 20, 2013


By: Tyler J. Woods
Attorneys for Plaintiff

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

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dale S. Fischer and the assigned discovery Magistrate Judge is Jean P. Rosenbluth.

The case number on all documents filed with the Court should read as follows:

CV13 - 1286 DSF (JPRx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address: NEWPORT TRIAL GROUP
 Tyler J. Woods (State Bar No. 232464)
 Richard H. Hikida (State Bar No. 196149)
 Scott J. Ferrell (State Bar No. 202091)
 895 Dove Street, Ste 425, Newport Beach, CA 92660

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

THERMOLIFE INTERNATIONAL LLC

CASE NUMBER

PLAINTIFF(S)

CV13 - 01286 DSF (JPRx)

v.

LONE STAR DISTRIBUTION

SUMMONS

DEFENDANT(S).

TO: DEFENDANT(S):

A lawsuit has been filed against you.

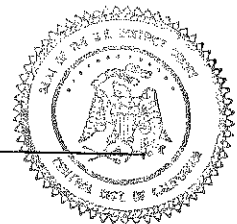
Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Newport Trial Group, whose address is 895 Dove Street, Suite 425, Newport Beach, CA 92660. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 2-21-13

By: Lori Wagers
 Deputy Clerk

(Seal of the Court)



1146

LORI WAGERS

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

Name & Address: NEWPORT TRIAL GROUP
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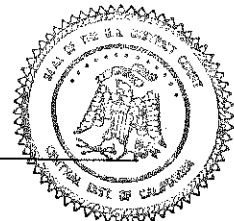
Clerk, U.S. District Court

Dated: 2-21-13

LORI WAGERS

By: _____
 Deputy Clerk

(Seal of the Court)



1146

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) THERMOLIFE INTERNATIONAL, LLC	DEFENDANTS LONE STAR DISTRIBUTION
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) NEWPORT TRIAL GROUP, 895 Dove Street, Suite 425, Newport Beach, CA 92660 Tel; (949) 706-6464 Fax (949)706-6469	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%; border: none;">Citizen of This State</td> <td style="width:10%; border: none; text-align: center;">PTF</td> <td style="width:10%; border: none; text-align: center;">DEF</td> <td style="width:30%; border: none;"></td> <td style="width:10%; border: none; text-align: center;">PTF</td> <td style="width:10%; border: none; text-align: center;">DEF</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 1</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 1</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 1</td> <td style="border: none;">Incorporated or Principal Place of Business in this State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 4</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input checked="" type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF		PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input checked="" type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF	DEF		PTF	DEF																				
<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
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<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ TBD

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. §§ 1331, 1338, and 1367

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 530 Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 535 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Mandamus/Other	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 620 Other Food & Drug	<input checked="" type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 465 Other Immigration Actions			FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: CV13 - 01286 DSF (JPRx)

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	THERMOLIFE INTERNATIONAL, LLC - Maricopa County, Arizona

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	LONE STAR DISTRIBUTION -Dallas County, Texas

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Plaintiff's Claim - Los Angeles, CA	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date February 20 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))