

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

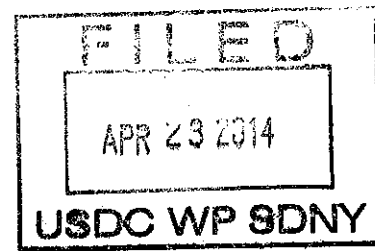
JDS THERAPEUTICS, LLC and
NUTRITION 21, LLC,

Plaintiffs,

-v-

SUPERNUTRITION LIFE-EXTENSION
RESEARCH, INC.,

Defendant.



Civil Action No.:

14 CV

2884

Jury Trial Demanded

JUDGE SEIBEL

COMPLAINT

Plaintiffs, JDS Therapeutics, LLC and Nutrition 21, LLC, (collectively "Plaintiffs"), by and through their undersigned counsel, as and for their Complaint against Defendant, SuperNutrition Life-Extension Research, Inc. (hereinafter "Defendant" or "SuperNutrition"), hereby allege as follow:

NATURE OF THE CASE

1. This is an action for patent and trademark infringement, unfair competition, false endorsement, false advertising, and deceptive acts and practices.
2. This action is based on Defendant's willful, knowing, and persistent infringement of (i) Plaintiffs' patents-in-suit that cover products comprising, and involving the use of, Chromium Polynicotinate in conjunction with Niacin alone or in combination with Niacin and other bioavailable ingredients in nutritional and dietary supplements and (ii) Nutrition 21's federally-registered CHROMAX trademark (the "CHROMAX Mark"), in connection with nutritional and dietary supplements that directly compete with Plaintiffs.

3. In this action, Plaintiffs seek injunctive relief, reasonable royalty and/or lost profit damages, enhanced damages, an accounting, disgorgement of profits, statutory and punitive damages, attorneys' fees, prejudgment interest, costs, and any other relief the Court deems just and equitable.

THE PARTIES

4. Plaintiff, JDS Therapeutics, LLC ("JDS"), is a limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business in Purchase, New York.

5. Plaintiff, Nutrition 21, LLC ("N21"), is a limited liability company organized and existing under the laws of the State of New York, having a principal place of business in Purchase, New York.

6. Upon information and belief, Defendant is a corporation organized and existing under the laws of the State of California, with its corporate headquarters located at 1925 Brush Street, Oakland, California 94612.

JURISDICTION AND VENUE

7. The claims for patent infringement asserted in Counts I-V *infra*, arise under the Patent Laws of the United States, namely, 35 U.S.C. §§ 101 *et seq.* Therefore, this Court has subject matter and original jurisdiction over Counts I-V pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. The claims for federal trademark infringement, unfair competition, false endorsement, and false advertising asserted in Counts VI-IX *infra*, arise under the Trademark Act of 1946 (as amended), namely, 15 U.S.C. §§ 1051 *et seq.* Therefore, this Court has subject

matter and original jurisdiction over Counts VI-IX pursuant to 15 U.S.C. § 1121 and 28 U.S.C §§ 1331 and 1338(a).

9. The claims for trademark infringement and unfair competition asserted in Counts X and XI *infra*, arise under the common law of the State of New York, and are so related to the federal claims asserted in Counts I-IX *infra*, that they form part of the same case or controversy. Therefore, this Court has subject matter jurisdiction over Counts X and XI pursuant to 28 U.S.C §§ 1338(b) and 1367(a).

10. The claim for deceptive acts and practices asserted in Count XII *infra*, arises under the GENERAL BUSINESS LAWS OF THE STATE OF NEW YORK, namely, NY GBL § 349, and is so related to the federal claims asserted in Counts I-IX *infra*, that it forms part of the same case or controversy. Therefore, this Court has subject matter jurisdiction over Count XII pursuant to 28 U.S.C. 1367(a).

11. In the alternative, this Court has subject matter and original jurisdiction over all Counts asserted herein, pursuant to 28 U.S.C. § 1332(a), because complete diversity of citizenship exists between Plaintiffs and Defendant and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

12. This Court has personal jurisdiction over Defendant, pursuant to § 302(a)(1) of the NEW YORK CIVIL PRACTICE LAW AND RULES, because SuperNutrition transacts and solicits business within the State of New York, including this judicial district, including, but not limited to, the manufacturing, use, offering for sale and/or sale of products that infringe Plaintiffs' patents-in-suit and N21's federally-registered CHROMAX Mark.

13. Venue is proper in this judicial district, pursuant to 28 U.S.C. § 1391(b)(2), because Defendant's wrongful acts and conduct, as discussed *infra*, occurred in substantial part in this judicial district.

14. In the alternative, venue is proper in this judicial district, pursuant to 28 U.S.C. § 1391(b)(3), because, as discussed *supra*, Defendant is subject to personal jurisdiction in this judicial district.

15. The assignment of this action to the White Plains Courthouse is proper, pursuant to Rule 18(a)(i) and (iv) of the Rules for the Division of Business Among District Judges in the United the States District Court for the Southern District of New York, because (i) the causes of action asserted herein arose in whole or in major part in the County of Westchester, State of New York (*i.e.*, a "Northern County") and Plaintiffs reside in Westchester County, as their principal places of business are located in Purchase, New York and (ii) at least half of the parties (*i.e.*, Plaintiffs) reside in Westchester County.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

I. Plaintiffs' Business and Their Intellectual Property Portfolio

A. Plaintiffs' Business

16. Plaintiffs provide scientifically-proven ingredients and products to members of the nutritional, dietary supplement, and food and beverage industries throughout the United States.

17. Plaintiffs' ingredients and products are used by their customers to manufacture consumer packaged goods for, *inter alia*, glucose, metabolism and insulin resistance; appetite-control and weight-management; energy-boosting; and the promotion of heart, brain, digestive, and immune system health.

18. Plaintiffs and their predecessors have expended substantial time, money, labor, skill, and research and development to conceive and create innovative products and ingredients in the fields of nutritional and dietary supplements.

19. Plaintiffs have created an extensive intellectual property portfolio to protect their aforementioned products and ingredients which includes, but is not limited to, Plaintiffs' patents-in-suit and N21's federally-registered CHROMAX Mark.

B. Plaintiffs' Patent Portfolio

A. Plaintiffs' patents-in-suit cover products comprising, and involving the use of, Chromium Polynicotinate in combination with Niacin alone or in further combination with Niacin and other bioavailable compounds in nutritional and dietary supplements. Specifically, Plaintiffs' patents-in-suit are:

i. The '075 Patent

20. On May 18, 1999, the United States Patent and Trademark Office ("PTO") duly-issued U.S. Patent No. 5,905,075 (the '075 Patent"), entitled "Chromium nicotinate compositions and uses thereof." A true and correct copy of the '075 Patent is attached as **Exhibit A**. JDS owns by assignment all rights, title, and interest in and to the '075 Patent, including the right to enforce and collect damages for all past, present, and future infringements. By further agreement, N21 jointly owns the '075 Patent with JDS, whereby N21 and JDS each possess an equal and undivided one-half interest in and to the '075 Patent, including the right to enforce and collect damages for infringement.

ii. The '905 Patent

21. On November 9, 1999, the PTO duly-issued U.S. Patent No. 5,980,905 (the '905 Patent"), entitled "Chromium polynicotinate compositions and uses thereof." A true and correct

copy of the '905 Patent is attached as **Exhibit B**. JDS owns by assignment all rights, title, and interest in and to the '905 Patent, including the right to enforce and collect damages for all past, present, and future infringements. By further agreement, N21 jointly owns the '905 Patent with JDS, whereby N21 and JDS each possess an equal and undivided one-half interest in and to the '905 Patent, including the right to enforce and collect damages for infringement.

iii. The '250 Patent

22. On August 8, 2000, the PTO duly-issued U.S. Patent No. 6,100,250 (the '250 Patent"), entitled "Enteric-coated chromium polynicotinate compositions and uses thereof." A true and correct copy of the '250 Patent is attached as **Exhibit C**. JDS owns by assignment all rights, title, and interest in and to the '250 Patent, including the right to enforce and collect damages for all past, present, and future infringements. By further agreement, N21 jointly owns the '250 Patent with JDS, whereby N21 and JDS each possess an equal and undivided one-half interest in and to the '250 Patent, including the right to enforce and collect damages for infringement.

iv. The '251 Patent

23. On August 8, 2000, the PTO duly-issued U.S. Patent No. 6,100,251 (the '251 Patent"), entitled "Chromium polynicotinate compositions." A true and correct copy of the '251 Patent is attached as **Exhibit D**. JDS owns by assignment all rights, title, and interest in and to the '251 Patent, including the right to enforce and collect damages for all past, present, and future infringements. By further agreement, N21 jointly owns the '251 Patent with JDS, whereby N21 and JDS each possess an equal and undivided one-half interest in and to the '251 Patent, including the right to enforce and collect damages for infringement.

v. The '192 Patent

24. On November 27, 2001, the PTO duly-issued U.S. Patent No. 6,323,192 (the '192 Patent"), entitled "Chromium polynicotinate compositions and uses thereof for absorption of essential metals." A true and correct copy of the '192 Patent is attached as **Exhibit E**. JDS owns by assignment all rights, title, and interest in and to the '192 Patent, including the right to enforce and collect damages for all past, present, and future infringements. By further agreement, N21 jointly owns the '192 Patent with JDS, whereby N21 and JDS each possess an equal and undivided one-half interest in and to the '192 Patent, including the right to enforce and collect damages for infringement.

C. N21's Federally-Registered CHROMAX Mark

25. N21 has expended significant time, labor, expense, skill, and research and development over the course of approximately 25 years to develop, advertise, market, and promote its industry-leading products and ingredients under the CHROMAX Mark.

26. In the course of using and protecting the CHROMAX Mark, N21 has obtained the following U.S. Trademark Registration:

U.S. Registration Number 1,937,056, namely, the CHROMAX® Mark, in Class 005 for "nutritional supplements, namely, compounds containing chromium and chromium picolinate." A true and correct copy of the Registration Certificate for the CHROMAX® Mark, dated November 21, 1995, is attached hereto as **Exhibit F**.

27. The CHROMAX Mark is in effect, valid, and subsisting.

28. N21's extensive advertising, marketing, and promotion of its products and ingredients offered under the CHROMAX Mark have been extremely successful.

29. The CHROMAX Mark functions as a strong source identifier in the health and wellness marketplace for consumer packaged goods that include Plaintiffs' products and

ingredients. As such, consumers have come to associate N21 as the source of goods provided under the CHROMAX Mark.

30. The CHROMAX Mark represents a valuable asset for N21.

31. As stated *supra*, the registration for the CHROMAX Mark was issued approximately 20 years ago.

32. The term CHROMAX is an arbitrary term when used in connection with the marking of dietary and nutritional supplements.

33. The CHROMAX Mark is an inherently distinctive mark when used in connection with dietary and nutritional supplements.

34. Since its issuance, N21 has continuously offered goods under the CHROMAX Mark for the classes of goods identified in the aforementioned registration.

35. N21 has complied with all federal trademark registration requirements including, but not limited to, filing an Affidavit of Use in compliance with § 1605 of the Trademark Manual of Examining Procedure.

36. The CHROMAX Mark is incontestable pursuant to 15 U.S.C. § 1065.

II. Defendant and Its Infringement of Plaintiffs' Intellectual Property Portfolio

A. Defendant's Business

37. Defendant sells products in the nutrition and dietary supplement marketplace, some of which include ingredients from direct competitors of Plaintiffs.

38. According to the "About Us" section on its website, Defendant purports to be a provider of "multi-vitamin formulations in full scientifically proven potencies based on orthomolecular nutrition science." A true and correct copy of Defendant's website, as accessed on March 13, 2014, is attached hereto as **Exhibit G**.

39. Defendant's products include a combination of Chromium Polynicotinate and Niacin used in conjunction with nutritional and dietary supplements. Furthermore, Defendant's products include Chromium Polynicotinate in combination with Niacin and other bioavailable compounds used in conjunction with nutritional and dietary supplements.

40. The chart below identifies some, but not all, of Defendant's products relevant to the patent infringement claims in the instant action:

SimplyOne Men	Women's Blend
SimplyOne Women	PreNatal Blend
SimplyOne Prenatal	Prenatal
Simply One 50+ Men	Perfect Blend
Simply One 50+ Women	Perfect Family
Menopause Multiple	Perfect Kids
Super Immune Multivitamin	Opti-Energy Pack
Men's Blend	Think Clearly

41. The chart below identifies some, but not all, of Defendant's products relevant to the infringement of Plaintiffs' federally registered CHROMAX mark in the instant action:

Super Immune Multivitamin	Menopause Multiple Before, During and After
Women's Blend	Opti-Energy Pack
PreNatal Blend	SimplyOne Women
SimplyOne PreNatal	Perfect Family
Perfect Kids	

42. Defendant's products referenced in ¶¶ 39-41 *supra*, and the charts included therein, will hereinafter be referred to as "Defendant's Products."

B. Defendant's Notice of Infringement of Plaintiffs' Intellectual Property Portfolio

43. Plaintiffs informed Defendants more than ten (10) months ago that Defendant's Products infringe Plaintiffs' intellectual property portfolio, including Plaintiffs' patents-in-suit and federally-registered CHROMAX Mark.

44. On or about June 5, 2013, Plaintiffs sent Defendant a letter (the "June 5 Letter"). A true and correct copy of Plaintiffs' June 5, 2013 letter is attached hereto as **Exhibit H**.

45. In the June 5 Letter, Plaintiffs notified Defendant that its Products infringed Plaintiffs' intellectual property portfolio, including Plaintiffs' patents-in-suit.

46. In a good faith effort to resolve the instant dispute, Plaintiffs ended the June 5 Letter by informing Defendant they "would like to work with [Defendant] to provide a seamless transition so that [Defendant could] continue to conduct [its] business with full confidence and minimize any potential disruption to [its] operations and customers." (emphasis in original).

47. On or about June 28, 2013, one of Defendant's principals emailed Plaintiffs requesting additional information regarding the June 5 Letter ("Defendant's June 28 Email"). A true and correct copy of Defendant's June 28, 2013 email is attached hereto as **Exhibit I**.

48. Specifically, in Defendant's June 28 Email, its principal requested, *inter alia*, (i) identification of the infringed patents and (ii) identification of the infringing products.

49. Plaintiffs emailed Defendant's principal later that day with the requested information.

50. On or about July 5, 2013, Defendant's principal emailed Plaintiffs and stated they were:

"[S]till working on this [matter] but so far at this time we have been unable to determine how [Plaintiffs'] patent(s)[-in-suit] apply to [Defendant's] products. Could you please provide specificity regarding exactly how you believe [Defendant's] products fall into the scope of [Plaintiffs'] patents[-in-suit]?" A true and correct copy of Defendant's July 5, 2013 email is attached hereto as **Exhibit J**.

51. To date, Defendants have not purchased any of Plaintiffs' ingredients or products for use in Defendant's Products.

52. To date, Defendants have not purchased a license to practice any of the patents-in-suit.

C. Defendant's Infringement of N21's Federally-Registered CHROMAX Mark

53. Defendant has never been a customer of Plaintiffs.

54. Plaintiffs have never authorized Defendant to use the CHROMAX Mark, or any variation thereof.

55. The foregoing notwithstanding, Defendant uses the CHROMAX Mark on its Product labels to advertise and suggest that its Products contain the same ingredients and products that Plaintiffs offer under the CHROMAX Mark.

56. Independent lab results confirm that Defendant's Products do not contain any of the ingredients or products that Plaintiffs offer under the CHROMAX Mark.

57. On or about June 28, 2013, Plaintiffs emailed one of Defendant's principals regarding, *inter alia*, Defendant's unauthorized use of the CHROMAX Mark ("Plaintiffs' June 28 Email"). A true and correct copy of Plaintiffs' June 28 email is attached as **Exhibit K**.

58. Specifically, Plaintiffs attached a label from one of Defendant's Products to the June 28 Email. Plaintiffs highlighted Defendant's use of the entire spoken portion of the CHROMAX II Mark in yellow on the attached Product label. A true and correct copy of Plaintiffs' June 28 Email attachment is attached as **Exhibit L**.

59. Plaintiffs then notified Defendant's principal in a June 28 Email that "use of this trademark would require the purchase of our ingredient."

60. Defendant's principal did not respond to the portion of Plaintiffs June 28 Email regarding Defendant's unauthorized use of N21's CHROMAX Mark.

61. Without authorization, Defendants continue to use the CHROMAX Mark on, and in connection with, its Products.

COUNT I

(Infringement of the '075 Patent under 35 U.S.C. § 271(a)-(c))

62. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

63. Count I is for infringement of the '075 Patent under 35 U.S.C. § 271(a)-(c).

64. Defendant, either directly or through its subsidiaries, divisions, and/or predecessors, has infringed, and continues to infringe, one or more claims of the '075 Patent, in direct violation of 35 U.S.C. § 271(a), by manufacturing, distributing, licensing, using, offering for sale and/or selling its Products that are covered by one or more claims of the '075 Patent.

65. Defendant, with knowledge of the '075 Patent, has induced, and continues to induce, infringement of one or more claims of the '075 Patent, in direct violation of 35 U.S.C. § 271(b), by providing its customers with advertisements, instructions, and information regarding the use of Defendant's Products such that its customers infringe one or more claims of the '075 Patent. Defendant's advertisements, instructions, and information regarding the use of Defendant's Products to its customers within this judicial district, as well as others throughout the United States, has been with the specific intent to encourage and induce infringement of the '075 Patent and Plaintiffs' patent rights therein. At a minimum, Defendant specifically intended to supply its customers with its Products knowing that its customers' use of Defendant's Products constituted infringement of the '075 Patent.

66. Defendant, with knowledge of the '075 Patent, has contributed, and continues to contribute, to the infringement of one or more claims of the '075 Patent, in direction violation of 35 U.S.C. § 271(c), by offering for sale and/or selling Defendant's Products. Defendant's Products are covered by at least one claim of the '075 Patent and, thus, are not staple articles of commerce having substantially non-infringing uses. Defendant offers for sale and/or sells its Products in this judicial district, as well as throughout the United States, with the intent that they

be resold or used in such a manner that violates at least one claim of the '075 Patent and knowing that its Products are especially made or especially adapted for use in direct infringement of the '075 Patent by its customers. Further, Defendant was aware at the time of the aforesaid conduct that its Products infringed at least one claim of the '075 Patent.

67. Defendant's infringement of the '075 Patent has been willful, wanton and deliberate, and in knowing and flagrant disregard for the '075 Patent and Plaintiffs' patents rights therein.

68. Plaintiffs have been damaged, and continue to be damaged, by Defendant's infringement of the '075 Patent.

69. Plaintiffs have no adequate remedy at law.

70. Plaintiffs have complied with 35 U.S.C. § 287.

COUNT II

(Infringement of the '905 Patent under 35 U.S.C. § 271(a)-(c))

71. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

72. Count II is for infringement of the '905 Patent under 35 U.S.C. § 271(a)-(c).

73. Defendant, either directly or through its subsidiaries, divisions, and/or predecessors, have infringed, and continue to infringe, one or more claims of the '905 Patent in direct violation of 35 U.S.C. § 271(a) by manufacturing, distributing, licensing, using, offering for sale and/or selling Products that are covered by one or more claims of the '905 Patent.

74. Defendant, with knowledge of the '905 Patent, has induced, and continues to induce, infringement of one or more claims of the '905 Patent, in direct violation of 35 U.S.C. § 271(b), by providing its customers with advertisements, instructions, and information regarding the use of Defendant's Products such that its customers infringe one or more claims of the '905 Patent. Defendant's advertisements, instructions, and information regarding the use of

Defendant's Products to its customers within this judicial district, as well as others throughout the United States, has been with the specific intent to encourage and induce infringement of the '905 Patent and Plaintiffs' patent rights therein. At a minimum, Defendant specifically intended to supply its customers with its Products knowing that its customers' use of Defendant's Products constituted infringement of the '905 Patent.

75. Defendant, with knowledge of the '905 Patent, has contributed, and continues to contribute, to the infringement of one or more claims of the '905 Patent, in direction violation of 35 U.S.C. § 271(c), by offering for sale and/or selling Defendant's Products. Defendant's Products are covered by at least one claim of the '905 Patent and, thus, are not staple articles of commerce having substantially non-infringing uses. Defendant offers for sale and/or sells its Products in this judicial district, as well as throughout the United States, with the intent that they be resold or used in such a manner that violates at least one claim of the '905 Patent and knowing that its Products are especially made or especially adapted for use in direct infringement of the '905 Patent by its customers. Further, Defendant was aware at the time of the aforesaid conduct that its Products infringed at least one claim of the '905 Patent.

76. Defendant's infringement of the '905 Patent has been willful, wanton and deliberate, and in knowing and flagrant disregard for the '905 Patent and Plaintiffs' patents rights therein.

77. Plaintiffs have been damaged, and continue to be damaged, by Defendant's infringement of the '905 Patent.

78. Plaintiffs have no adequate remedy at law.

79. Plaintiffs have complied with 35 U.S.C. § 287.

COUNT III

(Infringement of the '250 Patent 35 U.S.C. § 271(a)-(c))

80. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

81. Count III is for infringement of the '250 Patent under 35 U.S.C. § 271(a)-(c).

82. Defendant, either directly or through its subsidiaries, divisions, and/or predecessors, have infringed, and continue to infringe, one or more claims of the '250 Patent in direct violation of 35 U.S.C. § 271(a) by manufacturing, distributing, licensing, using, offering for sale and/or selling Products that are covered by one or more claims of the '250 Patent.

83. Defendant, with knowledge of the '250 Patent, has induced, and continues to induce, infringement of one or more claims of the '250 Patent, in direct violation of 35 U.S.C. § 271(b), by providing its customers with advertisements, instructions, and information regarding the use of Defendant's Products such that its customers infringe one or more claims of the '250 Patent. Defendant's advertisements, instructions, and information regarding the use of Defendant's Products to its customers within this judicial district, as well as others throughout the United States, has been with the specific intent to encourage and induce infringement of the '250 Patent and Plaintiffs' patent rights therein. At a minimum, Defendant specifically intended to supply its customers with its Products knowing that its customers' use of Defendant's Products constituted infringement of the '250 Patent.

84. Defendant, with knowledge of the '250 Patent, has contributed, and continues to contribute, to the infringement of one or more claims of the '250 Patent, in direction violation of 35 U.S.C. § 271(c), by offering for sale and/or selling Defendant's Products. Defendant's Products are covered by at least one claim of the '250 Patent and, thus, are not staple articles of commerce having substantially non-infringing uses. Defendant offers for sale and/or sells its Products in this judicial district, as well as throughout the United States, with the intent that they

be resold or used in such a manner that violates at least one claim of the '250 Patent and knowing that its Products are especially made or especially adapted for use in direct infringement of the '250 Patent by its customers. Further, Defendant was aware at the time of the aforesaid conduct that its Products infringed at least one claim of the '250 Patent.

85. Defendant's infringement of the '250 Patent has been willful, wanton and deliberate, and in knowing and flagrant disregard for the '250 Patent and Plaintiffs' patents rights therein.

86. Plaintiffs have been damaged, and continue to be damaged, by Defendant's infringement of the '250 Patent.

87. Plaintiffs have no adequate remedy at law.

88. Plaintiffs have complied with 35 U.S.C. § 287.

COUNT IV

(Infringement of the '251 Patent 35 U.S.C. § 271(a)-(c))

89. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

90. Count IV is for infringement of the '251 Patent under 35 U.S.C. § 271(a)-(c).

91. Defendant, either directly or through its subsidiaries, divisions, and/or predecessors, have infringed, and continue to infringe, one or more claims of the '251 Patent in direct violation of 35 U.S.C. § 271(a) by manufacturing, distributing, licensing, using, offering for sale and/or selling Products that are covered by one or more claims of the '251 Patent.

92. Defendant, with knowledge of the '251 Patent, has induced, and continues to induce, infringement of one or more claims of the '251 Patent, in direct violation of 35 U.S.C. § 271(b), by providing its customers with advertisements, instructions, and information regarding the use of Defendant's Products such that its customers infringe one or more claims of the '251 Patent. Defendant's advertisements, instructions, and information regarding the use of

Defendant's Products to its customers within this judicial district, as well as others throughout the United States, has been with the specific intent to encourage and induce infringement of the '251 Patent and Plaintiffs' patent rights therein. At a minimum, Defendant specifically intended to supply its customers with its Products knowing that its customers' use of Defendant's Products constituted infringement of the '251 Patent.

93. Defendant, with knowledge of the '251 Patent, has contributed, and continues to contribute, to the infringement of one or more claims of the '251 Patent, in direction violation of 35 U.S.C. § 271(c), by offering for sale and/or selling Defendant's Products. Defendant's Products are covered by at least one claim of the '251 Patent and, thus, are not staple articles of commerce having substantially non-infringing uses. Defendant offers for sale and/or sells its Products in this judicial district, as well as throughout the United States, with the intent that they be resold or used in such a manner that violates at least one claim of the '251 Patent and knowing that its Products are especially made or especially adapted for use in direct infringement of the '251 Patent by its customers. Further, Defendant was aware at the time of the aforesaid conduct that its Products infringed at least one claim of the '251 Patent.

94. Upon information and belief, Defendant's infringement of the '251 Patent has been willful, wanton and deliberate, and in knowing and flagrant disregard for the '251 Patent and Plaintiffs' patents rights therein.

95. Plaintiffs have been damaged, and continue to be damaged, by Defendant's infringement of the '251 Patent.

96. Plaintiffs have no adequate remedy at law.

97. Plaintiffs have complied with 35 U.S.C. § 287.

COUNT V

(Infringement of the '192 Patent 35 U.S.C. § 271(a)-(c))

98. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

99. Count V is for infringement of the '192 Patent under 35 U.S.C. § 271(a)-(c).

100. Defendant, either directly or through its subsidiaries, divisions, and/or predecessors, have infringed, and continue to infringe, one or more claims of the '192 Patent in direct violation of 35 U.S.C. § 271(a) by manufacturing, distributing, licensing, using, offering for sale and/or selling Products that are covered by one or more claims of the '192 Patent.

101. Defendant, with knowledge of the '192 Patent, has induced, and continues to induce, infringement of one or more claims of the '192 Patent, in direct violation of 35 U.S.C. § 271(b), by providing its customers with advertisements, instructions, and information regarding the use of Defendant's Products such that its customers infringe one or more claims of the '192 Patent. Defendant's advertisements, instructions, and information regarding the use of Defendant's Products to its customers within this judicial district, as well as others throughout the United States, has been with the specific intent to encourage and induce infringement of the '192 Patent and Plaintiffs' patent rights therein. At a minimum, Defendant specifically intended to supply its customers with its Products knowing that its customers' use of Defendant's Products constituted infringement of the '192 Patent.

102. Defendant, with knowledge of the '192 Patent, has contributed, and continues to contribute, to the infringement of one or more claims of the '192 Patent, in direct violation of 35 U.S.C. § 271(c), by offering for sale and/or selling Defendant's Products. Defendant's Products are covered by at least one claim of the '192 Patent and, thus, are not staple articles of commerce having substantially non-infringing uses. Defendant offers for sale and/or sells its Products in this judicial district, as well as throughout the United States, with the intent that they

be resold or used in such a manner that violates at least one claim of the '192 Patent and knowing that its Products are especially made or especially adapted for use in direct infringement of the '192 Patent by its customers. Further, Defendant was aware at the time of the aforesaid conduct that its Products infringed at least one claim of the '192 Patent.

103. Defendant's infringement of the '192 Patent has been willful, wanton and deliberate, and in knowing and flagrant disregard for the '192 Patent and Plaintiffs' patents rights therein.

104. Plaintiffs have been damaged, and continue to be damaged, by Defendant's infringement of the '192 Patent.

105. Plaintiffs have no adequate remedy at law.

106. Plaintiffs have complied with 35 U.S.C. § 287.

COUNT VI

(Federal Trademark Infringement under 15 U.S.C. § 1114)

107. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

108. Count VI is for federal trademark infringement under 15 U.S.C. § 1114.

109. Defendant's acts and conduct, as described *supra*, are likely to cause confusion, cause mistake, and/or deceive the public into mistakenly believing that Defendant is Plaintiffs, or is a licensee, authorized distributor, or affiliate of Plaintiffs, or that Defendant, its activities, and/or its Products are authorized, endorsed, sponsored or approved by Plaintiffs, or that Defendant, its activities, and/or its Products originate with, are connected with, or are associated with Plaintiffs, or vice versa.

110. Defendant continues to use the CHROMAX Mark without authorization in furtherance of its willful and deliberate scheme to trade upon the extensive consumer goodwill and recognition N21 has established in the CHROMAX Mark.

111. Defendant has made, and will continue to make, substantial profits and gain from its unauthorized use of the CHROMAX Mark to which it is not entitled in law or equity.

112. Plaintiffs have suffered, and will continue to suffer, irreparable harm from Defendant's unauthorized use of the CHROMAX Mark on competing goods unless restrained by law.

113. Plaintiffs have no adequate remedy at law.

114. Accordingly, Plaintiffs pray that Defendant be permanently enjoined from using the CHROMAX Mark, and for damages in an amount to be determined at trial.

COUNT VII

(Federal False Designation of Origin under 15 U.S.C. § 1125(a))

115. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

116. Count VII is for federal false designation of origin under 15 U.S.C. § 1125(a).

117. Defendant's acts and conduct, as described *supra*, are likely to cause confusion, cause mistake, and/or deceive the public into mistakenly believing that Defendant is Plaintiffs, or is a licensee, authorized distributor, or affiliate of Plaintiffs, or that Defendant, its activities, and/or its Products are authorized, endorsed, sponsored or approved by Plaintiffs, or that Defendant, its activities, and/or its Products originate with, are connected with, or are associated with Plaintiffs, or vice versa.

118. Defendant continues to use the CHROMAX Mark without authorization in furtherance of its willful and deliberate scheme to trade upon the extensive consumer goodwill and recognition N21 has established in the CHROMAX Mark.

119. Defendant has made, and will continue to make, substantial profits and gain from its unauthorized use of the CHROMAX Mark to which it is not entitled in law or equity.

120. Plaintiffs have suffered, and will continue to suffer, irreparable harm from Defendant's unauthorized use of the CHROMAX Mark on competing goods unless restrained by law.

121. Plaintiffs have no adequate remedy at law.

122. Accordingly, Plaintiffs pray that Defendant be permanently enjoined from using the CHROMAX Mark, and for damages in an amount to be determined at trial.

COUNT VIII

(Federal Unfair Competition under 15 U.S.C. § 1125(a))

123. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

124. Count VIII is for federal unfair competition under 15 U.S.C. § 1125(a).

125. Defendant's acts and conduct, as described *supra*, are likely to cause confusion, cause mistake, and/or deceive the public into mistakenly believing that Defendant is Plaintiffs, or is a licensee, authorized distributor, or affiliate of Plaintiffs, or that Defendant, its activities, and/or its Products are authorized, endorsed, sponsored or approved by Plaintiffs, or that Defendant, its activities, and/or its Products originate with, are connected with, or are associated with Plaintiffs, or vice versa.

126. Defendant continues to use the CHROMAX Mark without authorization in furtherance of its willful and deliberate scheme to trade upon the extensive consumer goodwill and recognition N21 has established in the CHROMAX Mark.

127. Defendant has made, and will continue to make, substantial profits and gain from its unauthorized use of the CHROMAX Mark to which it is not entitled in law or equity.

128. Plaintiffs have suffered, and will continue to suffer, irreparable harm from Defendant's unauthorized use of the CHROMAX Mark on competing goods unless restrained by law.

129. Plaintiffs have no adequate remedy at law.

130. Accordingly, Plaintiffs pray that Defendant be permanently enjoined from using the CHROMAX Mark, and for damages in an amount to be determined at trial.

COUNT IX

(Federal False Advertising under 15 U.S.C. § 1125(b))

131. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

132. Count IX is for federal false advertising under 15 U.S.C. § 1125(b).

133. Defendant's use of N21's federally-registered CHROMAX Mark in connection with commercial advertising and promotion for its Products misrepresents the true nature, characteristics, and qualities of Defendant's Products such that consumers are led to mistakenly believe that Defendant's Products contain ingredients provided under N21's CHROMAX Mark when, in fact, they do not.

134. Defendant continues to use the CHROMAX Mark without authorization in furtherance of its willful and deliberate scheme to trade upon the extensive consumer goodwill and recognition N21 has established in the CHROMAX Mark.

135. Defendant has made, and will continue to make, substantial profits and gain from its unauthorized use of the CHROMAX Mark to which it is not entitled in law or equity.

136. Plaintiffs have suffered, and will continue to suffer, irreparable harm from Defendant's unauthorized use of the CHROMAX Mark on competing goods unless restrained by law.

137. Plaintiffs have no adequate remedy at law.

138. Accordingly, Plaintiffs pray that Defendant be permanently enjoined from using the CHROMAX Mark, and for damages in an amount to be determined at trial.

COUNT X

(Trademark Infringement under New York common law)

139. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

140. Count X is for trademark infringement under New York State common law.

141. Defendant's acts and conduct, as described *supra*, are likely to cause confusion, cause mistake, and/or deceive the public into mistakenly believing that Defendant is Plaintiffs, or is a licensee, authorized distributor, or affiliate of Plaintiffs, or that Defendant, its activities, and/or its Products are authorized, endorsed, sponsored or approved by Plaintiffs, or that Defendant, its activities, and/or its Products originate with, are connected with, or are associated with Plaintiffs, or vice versa.

142. Defendant continues to use the CHROMAX Mark without authorization in furtherance of its bad faith, willful, and deliberate scheme to trade upon the extensive consumer goodwill and recognition N21 has established in the CHROMAX Mark.

143. Defendant has made, and will continue to make, substantial profits and gain from its unauthorized use of the CHROMAX Mark to which it is not entitled in law or equity.

144. Plaintiffs have suffered, and will continue to suffer, irreparable harm from Defendant's unauthorized use of the CHROMAX Mark on competing goods unless restrained by law.

145. Plaintiffs have no adequate remedy at law.

146. Accordingly, Plaintiffs pray that Defendant be permanently enjoined from using the CHROMAX Mark, and for damages in an amount to be determined at trial.

COUNT XI

(Unfair Competition under New York common law)

147. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

148. Count XI is for unfair competition under the common law of the State of New York.

149. Defendant's acts and conduct, as described *supra*, are likely to cause confusion, cause mistake, and/or deceive the public into mistakenly believing that Defendant is Plaintiffs, or is a licensee, authorized distributor, or affiliate of Plaintiffs, or that Defendant, its activities, and/or its Products are authorized, endorsed, sponsored or approved by Plaintiffs, or that Defendant, its activities, and/or its Products originate with, are connected with, or are associated with Plaintiffs, or vice versa.

150. Upon information and belief, Defendant continues to use the CHROMAX Mark without authorization in furtherance of its bad faith, willful, and deliberate scheme to trade upon the extensive consumer goodwill and recognition N21 has established in the CHROMAX Mark.

151. Upon information and belief, Defendant has made, and will continue to make, substantial profits and gain from its unauthorized use of the CHROMAX Mark to which it is not entitled in law or equity.

152. Plaintiffs have suffered, and will continue to suffer, irreparable harm from Defendant's unauthorized use of the CHROMAX Mark on competing goods unless restrained by law.

153. Plaintiffs have no adequate remedy at law.

154. Accordingly, Plaintiffs pray that Defendant be permanently enjoined from using the CHROMAX Mark, and for damages in an amount to be determined at trial.

COUNT XII

(False Advertising under NY GBL § 349)

155. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

156. Count XII is for false advertising under NY GBL § 349.

157. Defendant's use of N21's CHROMAX Mark in connection with commercial advertising and promotion for its products misrepresents the true nature, characteristics, and qualities of Defendant's products such that consumers are lead to mistakenly believe that Defendant's Products contain ingredients provided under N21's CHROMAX Mark when, in fact, they do not.

158. Defendant's false advertisement is consumer-oriented because it is designed, in whole or in part, to attract consumers to its Products.

159. Defendant's false advertisement is misleading in a material respect because it deceives consumers into mistakenly believing that they are purchasing a Product that contains Plaintiffs' ingredients and products offered under the CHROMAX Mark.

160. Defendant's false advertisement presents an ongoing, specific, and substantial injury to the public interest at large because it deceives consumers into mistakenly believing that they are purchasing a Product that contains Plaintiffs' ingredients and products offered under the CHROMAX Mark.

161. Upon information and belief, Defendant continues to use the CHROMAX Mark without authorization in furtherance of its bad faith, willful, and deliberate scheme to trade upon the extensive consumer goodwill and recognition N21 has established in the CHROMAX Mark.

162. Upon information and belief, Defendant has made, and will continue to make, substantial profits and gain from its unauthorized use of the CHROMAX Mark to which it is not entitled in law or equity.

163. Plaintiffs have suffered, and will continue to suffer, irreparable harm from Defendant's unauthorized use of the CHROMAX Mark on competing goods unless restrained by law.

164. Plaintiffs have no adequate remedy at law.

165. Accordingly, Plaintiffs pray that Defendant be permanently enjoined from using the CHROMAX Mark, and for damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiffs pray for judgment against Defendant as follows:

A. A Declaration that Defendant has infringed, induced and/or contributed to the infringement of Plaintiffs' patents-in-suit;

B. An Order permanently enjoining and restraining Defendant, its subsidiaries, divisions, branches, affiliates, predecessors or successors in business, parents and wholly owned or partially owned entities of the party, and any entities acting or purporting to act for or on behalf of the foregoing, including any agents, employees, representatives, officers, directors, servants, partners, and those persons in active concert or participation with them, from manufacturing, distributing, licensing, using, offering for sale and/or selling Products that infringe Plaintiffs' patents-in-suit;

C. An Order requiring Defendant to account for and pay over to Plaintiffs all damages sustained by Plaintiffs as a result of Defendant's infringement of Plaintiffs' patents-in-suit, including, but not limited to, a reasonable royalty and/or lost profits due by reason of Defendant's infringement, such reasonable royalty and/or lost profits to be based on sales of Defendant's competing Products;

D. An Order awarding Plaintiffs treble damages under 35 U.S.C. § 284 as a result of Defendant's willful infringement of Plaintiffs' patents-in-suit;

E. A Declaration that this case is "exceptional" within the meaning of 35 U.S.C. § 285 and awarding Plaintiffs their reasonable attorneys' fees and costs based thereon;

F. An Order permanently enjoining and restraining Defendant, its subsidiaries, divisions, branches, affiliates, predecessors or successors in business, parents and wholly owned

or partially owned entities of the party, and any entities acting or purporting to act for or on behalf of the foregoing, including any agents, employees, representatives, officers, directors, servants, partners, and those persons in active concert or participation with them, from engaging in, offering, or providing goods or services in connection with any mark that is identical to, or confusingly similar with, N21's CHROMAX Mark;

G. An Order permanently enjoining and restraining Defendant, its subsidiaries, divisions, branches, affiliates, predecessors or successors in business, parents and wholly owned or partially owned entities of the party, and any entities acting or purporting to act for or on behalf of the foregoing, including any agents, employees, representatives, officers, directors, servants, partners, and those persons in active concert or participation with them, from engaging in any acts of unfair competition, false advertising, and/or deceptive acts and practices utilizing any mark that is identical to, or confusingly similar with, N21's CHROMAX Mark;

H. An Order (i) requiring an accounting of Defendant's ill-gotten profits pursuant to Defendant's unlawful use of N21's CHROMAX Mark and (ii) awarding all of said profits to Plaintiffs as damages sustained by Plaintiffs due to Defendant's acts complained of herein;

I. A Declaration that this case is "exceptional" within the meaning of 15 U.S.C. § 1117 and awarding Plaintiffs their reasonable attorneys' fees and costs based thereon;

J. An Order awarding Plaintiffs statutory and punitive damages;

K. An Order awarding Plaintiffs pre-judgment interest; and

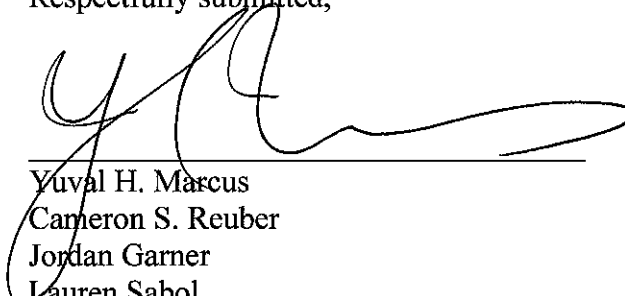
L. An Order awarding Plaintiffs any further relief this Court shall deem just and equitable including, but not limited to, Plaintiffs' reasonable attorneys' fees and costs incurred in connection with the instant action.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for all claims so triable.

Dated: April 23, 2014
White Plains, New York

Respectfully submitted,



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