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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

AKER BIOMARINE ANTARCTIC, AS,

Case No.: 2:16-cv-02314-MMD-PAL

Plaintiff,

v.

**AMENDED ORDER GRANTING  
PLAINTIFF'S EMERGENCY  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

LUHUA BIOMARINE (SHANDONG) CO.,  
LTD., and INFINITI MARKETING  
GROUP, INC. d/b/a INFINITI  
NUTRACEUTICALS,

Defendants.

10 Plaintiff Aker BioMarine ("Aker") has moved the Court ex parte for an Emergency  
11 Temporary Restraining Order, Seizure Order, and Preliminary Injunction, pursuant to Rule 65 of  
12 the Federal Rules of Civil Procedure, the Patent Act (35 U.S.C. § 283), and Local Rule 7-5.

13 Aker alleges that Defendants Luhua Biomarine (Shandong) Co., Ltd. ("Luhua") and  
14 Infiniti Marketing Group, Inc. d/b/a Infiniti Nutraceuticals ("Infiniti") (collectively,  
15 "Defendants") have manufactured abroad, imported into this District, and distributed krill oil  
16 products sold under the name "ICERUBY™ Krill Oil" that infringe Aker's asserted patent, and  
17 have offered and/or will offer or distribute such products for sale in this District during the  
18 SupplySide West trade show (the "Trade Show") in Las Vegas, Nevada during the period  
19 October 4 through 8, 2016.

20 Aker seeks a temporary restraining order to enjoin the sale of those products, as well as  
21 an order permitting Aker to seize infringing products as well as related evidence of such  
22 infringing activity, including records of infringing product sales.

23 **FINDINGS AND CONCLUSIONS**

24 The Court, having duly considered Aker's Complaint, emergency motion, and the  
25 declarations and exhibits submitted therewith, hereby makes the following findings and  
26 conclusions:

27 1. An order other than an ex parte seizure order would not be adequate to achieve  
28 the purposes of 35 U.S.C. § 271 because: (a) Luhua is a China-based manufacturer of krill oil;

1 (b) with the exception of its temporary presence in Las Vegas, Nevada, during the SupplySide  
2 West trade show from October 4 through 8, 2016, Luhua does not have any known regular  
3 place of business or assets in the United States; and (c) there is a significant risk that  
4 Defendants will remove from the jurisdiction any evidence of its infringement (including  
5 documents in paper and electronic form) if an ex parte seizure order is not granted.

6 2. Aker has not publicized its application for an ex parte temporary restraining and  
7 seizure order.

8 3. Aker is likely to succeed on the merits of its patent infringement claim under 35  
9 U.S.C. § 271. The United States Patent and Trademark Office duly and legally issued U.S.  
10 Patent No. 9,320,765 (“the ’765 patent”) for krill oil compositions with particular quantities of  
11 phospholipids, astaxanthin esters and/or omega-3 fatty acids. Aker is the lawful and sole owner  
12 of the ’765 patent by assignment and owns all rights, title and interest in that patent, including  
13 all rights needed to bring this action for patent infringement.

14 4. Luhua has manufactured, imported into the United States, and is currently  
15 offering for sale, krill oil products that infringe the ’765 patent at the SupplySide West trade  
16 show in Las Vegas, Nevada, which runs from October 4 through 8, 2016.

17 5. Infiniti has imported into the United States, sold, and distributed krill oil  
18 products that infringe the ’765 patent, and is currently offering these products for sale at the  
19 SupplySide West trade show in Las Vegas, Nevada, which runs from October 4 through 8,  
20 2016.

21 6. Absent an ex parte temporary restraining order and a seizure order, Defendants’  
22 manufacture, use, sales, offers to sell, and/or importation into the United States of its infringing  
23 krill oil products will result in immediate and irreparable injury to Aker in the form of: (a) lost  
24 krill oil revenue; (b) lost market share; (c) price erosion, and (d) harm to Aker’s reputation and  
25 goodwill. Further, because Luhua has no presence in the United States, it may be difficult or  
26 impossible for Aker to enforce a money judgment against Luhua.

27 7. The evidence of Luhua’s unlawful conduct are or may be in Luhua’s possession  
28 at the SupplySide West trade show and would likely be destroyed, moved, hidden, taken

1 outside of the United States, or otherwise made inaccessible to Aker if Luhua was to receive  
2 notice of Aker's application for a seizure order or temporary restraining order in advance of  
3 service of this Order.

4 8. The harm to Aker in denying the requested temporary restraining order and  
5 seizure order outweighs the harm to the legitimate interests of Defendants from granting Aker  
6 such relief.

7 9. The public interest weighs in favor of granting Aker the requested temporary  
8 restraining order and seizure order.

9 10. Aker is prepared to deposit \$50,000 with the Clerk of the Court as security for  
10 payment of any damages Defendants may be entitled to recover as a result of a wrongful  
11 seizure or a wrongful attempted seizure.

#### 12 **TEMPORARY RESTRAINING ORDER**

13 **IT IS HEREBY ORDERED** that, pending a decision by the Court on Aker's  
14 application for a preliminary injunction, Defendants, as well as their officers, agents, servants,  
15 employees, confederates, distributors, and attorneys, (the "Restrained Parties") are hereby  
16 temporarily enjoined and restrained from:

17 a. Manufacturing, using, selling, offering to sell, or importing into the United  
18 States, krill oil products that infringe the '765 patent, including, without limitation, by  
19 distributing to, offering to sell or by selling such products at the SupplySide West trade show in  
20 Las Vegas, Nevada during the period of October 4 through 8, 2016; and

21 b. Transferring, moving, destroying, or otherwise disposing of: (i) any of Luhua's  
22 accused krill oil products; or (ii) any evidence of Defendants' unlawful activities, including,  
23 without limitation, any documents in any form or format and any portable media or device  
24 (such as CDs, DVDs, flash drives, cell phones, PDAs, hard disk drives, laptop computers,  
25 memory cards, etc.), relating to the infringement of the '765 patent, except in accordance with  
26 the below Seizure Order (collectively, "Evidence").

27 **IT IS HEREBY FURTHER ORDERED**, that upon two (2) business days' written  
28 notice to the Court and Aker's counsel, or as otherwise permitted by leave of Court, Defendants

1 may, upon proper showing, appear and move for the dissolution or modification of the  
2 provisions of this Order.

3 **SEIZURE ORDER**

4 **IT IS HEREBY ORDERED** that Evidence (as defined above but for clarity including  
5 laptops and media that electronically stores documents or any information concerning  
6 Defendants' accused krill oil products) may be seized from only Defendant Luhua by a Federal  
7 law enforcement officer (such as a United States marshal or an officer or agent of the United  
8 States Customs Service, Secret Service, Federal Bureau of Investigation, or Post Office) or may  
9 be seized by a State or local law enforcement officer ("Law Enforcement") assisted by one or  
10 more attorneys or representatives of Aker, at the respective booths rented or occupied by  
11 Defendants at the SupplySide West trade show in Las Vegas, Nevada during the period of  
12 October 4 through 8, 2016.

13 Law Enforcement may use all reasonable force in conducting the seizure and may open  
14 doors, locks, boxes, brief cases, and containers of any type or nature to locate and identify  
15 Evidence to be seized. Attorneys and other representatives of Aker shall accompany Law  
16 Enforcement during the seizure to identify the Evidence to be seized. Aker's counsel shall  
17 itemize and take possession of the seized Evidence, provide a copy of the inventory to the Law  
18 Enforcement agency assisting with the seizure, and file the inventory with the Court. In addition,  
19 Aker's counsel may record the contents of Defendant Luhua's booths and Evidence by  
20 photographic, audio, and/or videographic means during the seizure action. Law Enforcement  
21 shall not retain custody of seized Evidence but shall ensure that they are placed in the custody of  
22 Aker's counsel. Aker agrees to indemnify Law Enforcement agency (including all of its  
23 employees, contractors, or agents) who may assist with the seizure and shall hold them harmless  
24 from any suit, claim, cause of action, damage, loss, or injury arising from the execution of the  
25 seizure described in this Order.

26 **IT IS HEREBY FURTHER ORDERED** that Defendant Luhua shall provide any  
27 passwords necessary to access any electronically stored documents or electronic devices.

28 **IT IS HEREBY FURTHER ORDERED**, that the Summons, Complaint, Plaintiff's

1 Emergency Ex Parte Motion for Temporary Restraining and Seizure Order and for Preliminary  
2 Injunction, and all accompanying exhibits, declarations, and papers must be served upon  
3 Defendants, if found, at the time of the seizure, and by other means reasonably calculated to give  
4 Defendants reasonable notice of this action, which shall include personal delivery of the  
5 aforementioned papers by Plaintiff's counsel to the Defendants at the Trade Show, email, and  
6 Federal Express. If Plaintiff's counsel learns that the email notice or Federal Express package  
7 has not been delivered due to technical or other reasons, Plaintiff's counsel shall promptly notify  
8 the court.

9 **IT IS HEREBY FURTHER ORDERED**, that Aker shall deposit with the Clerk of the  
10 Court the amount of FIFTY THOUSAND UNITED STATES DOLLARS (\$50,000) to serve as  
11 sufficient security for the payment of any damages Defendants may be entitled to recover as a  
12 result of a wrongful seizure or a wrongful attempted seizure. To the extent Defendants believe  
13 that additional security is necessary pursuant to Rule 65(c) of the Federal Rules of Civil  
14 Procedure, Defendants shall so move the Court and shall provide notice to Aker's counsel of  
15 such motion.

16 **IT IS HEREBY FURTHER ORDERED**, that a preliminary injunction hearing is set  
17 for October 18, 2016 at 10:00 a.m.

18 Defendants shall file and serve any opposition to Aker's motion for a preliminary  
19 injunction on or before October 13, 2016; and

20 Aker shall file and serve any reply in support of its motion for a preliminary injunction  
21 on or before October 17, 2016 by 12:00 p.m.

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25 **UNITED STATES DISTRICT JUDGE**

26 Entered \_ October 6, 2016 \_ , at \_ 2:30 pm  
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