

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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ATTORNEYS FOR MARS, INC.

_____)	
MARS, INC.,)	
)	
Plaintiff,)	Civil Action No.
)	
vs.)	COMPLAINT AND JURY DEMAND
)	
NATRACEUTICAL, S.A., NATRA U.S.,)	
INC.)	
)	
Defendants.)	
_____)	

Plaintiff, Mars, Inc., ("Mars") complains of the Defendants, Natraceutical, S.A. and Natra U.S., Inc., ("Defendants") as follows:

PARTIES

1. Mars is a Delaware corporation, having a place of business located at 800 High Street, Hackettstown, New Jersey 07840.

2. Mars is one of the world's top producers of chocolate and is a leading global manufacturer of various name brand food products. Mars has a strong commitment to research including decades invested in studying different aspects of cocoa. As a result, Mars is recognized as a global leader in cocoa science.

3. One aspect of Mars research has focused on polyphenol substances that naturally occur in the cocoa bean. Cocoa polyphenols include flavanols, and thus, cocoa polyphenols are sometimes referred to as cocoa flavanols. For 15 years or more, Mars has led the exploration of the medical benefits of polyphenols, as evidenced by the more than 100 peer-reviewed research publications by Mars scientists and their university partners. This work has received special recognition in the medical-science community, with recent work being identified as one of the major advancements in cardiovascular research in 2005 by the Journal of the American College of Cardiology. Mars has worked assiduously to cultivate the reputation that its cocoa polyphenol brands and products are backed by solid science. Much of the excitement and energy in this field today stems from the findings of Mars' scientists and their university partners that certain cocoa polyphenol-rich preparations have the potential to prevent and/or treat health conditions that are leading causes of death and disability around much of the world, such as cardiovascular disease, diabetes, dementia, and many other issues of health that are dependent on vascular health and blood flow.

4. Mars' scientists have developed novel ways to measure and characterize polyphenol content in foods, as well as novel cocoa post-harvesting and processing procedures and technologies which help maximize the amount of polyphenols available in a variety of formats. These include cocoa powders and extracts used as food product ingredients. The patented processes and products are commercialized by Mars under the **Cocoapro®** trademark,

and Cocoapro® powder is the most studied cocoa in the world in terms of health impact. Mars vast investment of time and resources has also enabled it to manufacture products such as Dove® chocolate and CocoaVia® products that retain exceptional sensory characteristics while delivering measurable effects on vascular health because of their enriched polyphenol content.

5. Upon information and belief, Defendant, Natraceutical, S.A., (“Natraceutical”) is a company existing under the laws of Spain, with its principal place of business located at Autovía A3, Exit 343, Camí de Torrent, s/n. 46930 Quart de Poblet, Valencia, Spain. Natraceutical is a subsidiary of a Spanish company called Grupo Natra, and claims to be actively selling its products in the United States. Upon information and belief, Natraceutical is engaged in extracting active compounds from natural products. Natraceutical has commenced offering to sell, selling and importing in the United States cocoa powder and cocoa extracts under the name CocoanOX with various concentrations of polyphenols.

6. Upon information and belief, Defendant, Natra U.S., Inc. (“Natra U.S.”) is a Delaware corporation, with offices in California and New Jersey. According to the New Jersey Department of State, Natra U.S. is located at 120 Circle Drive North, Piscataway, New Jersey 08854. Upon information and belief, Natra U.S. is a wholly-owned subsidiary of Natraceutical and is the alter ego and agent of Natraceutical in the United States. Natraceutical represents in brochures and on the internet that Natra U.S. develops a market for and sells or assists Natraceutical in the sale of all of Natraceutical’s products in the United States, including CocoanOX. Natra U.S. advertises in the Food Technology Buyer’s Guide that it sells in the United States CocoanOX, which it refers to as “the latest in innovation.”

7. Trade shows are a major way in which many companies launch new products and entice buyers to purchase products. Such trade shows are a primary forum in which buyers

obtain essential information about product performance, availability and price. Orders for products may be made at trade shows.

8. Upon information and belief, Natraceutical and Natra U.S. in the past routinely offered to sell products at various trade shows in the United States. Upon information and belief, Natraceutical and Natra U.S. now are scheduled to sell and exhibit their CocoanOX products at the Food Smarts IFT Trade Show in Chicago, Illinois commencing on July 28, 2007. The IFT represents that 70% of the attendees at this trade show go there to find new products. Defendants exhibition and sale of CocoanOX at the IFT Trade Show exacerbates the imminent irreparable harm that threatens Mars.

NATURE OF THE CASE

9. Mars has obtained more than 30 patents resulting from its work on cocoa polyphenols, with many related to cocoa powder and extract products. Mars has been the leader in developing a market for cocoa polyphenol products and in educating the public of the benefits of cocoa polyphenols. In disregard of Mars rights, in an attempt to free ride in the market created by Mars and safeguarded by its patents, and following a course of action that threatens to destroy the strong science-backed reputation enjoyed by Mars' cocoa polyphenol brands and products, Defendants now have introduced and sold in the United States products that are covered by claims of various Mars' patents. This lawsuit is brought to redress Defendants willful infringement of the Mars patents and the undermining of Mars' plans and efforts to benefit from the fruits of its labor through its vast research investment.

JURISDICTION AND VENUE

10. This civil action for patent infringement arises under the patent laws of the United States, 35 U.S.C. § 100 *et. seq.* This Court has jurisdiction under Title 28 U.S.C. §§ 1331, 1332 and 1338(a).

11. Venue is proper in this District under Title 28 U.S.C. §§ 1391 and 1400(b), because, among other reasons, Defendants are subject to personal jurisdiction in this judicial district and have committed acts of willful infringement in this judicial district.

12. Defendants have placed infringing products into the stream of commerce by shipping products into this judicial district or knowing that the products would be shipped into this judicial district, and such products have been offered, used and sold in this judicial district.

PATENT INFRINGEMENT OF U.S. PATENT NOS. 6,790,966 AND 6,312,753

13. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1-12 as though fully set forth herein as paragraph 13.

14. Mars is the owner by assignment from certain of its employees of U.S. Patent No. 6,790,966 which was duly and lawfully issued by the United States Patent and Trademark Office on September 14, 2004, entitled "Cocoa Extracts Containing Solvent Derived Cocoa Polyphenols From Defatted Cocoa Beans" ("the '966 patent"). A true and correct copy of the '966 patent is attached as Exhibit A and made a part hereof.

15. Mars is the owner by assignment from certain of its employees of U.S. Patent No. 6,312,753 which was duly and lawfully issued by the United States Patent and Trademark Office on November 6, 2001, entitled "Cocoa Components, Edible Products Having Enriched Polyphenol Content, Methods of Making Same And Medical Uses" ("the '753 patent"). A true and correct copy of the '753 patent is attached as Exhibit B and made a part hereof.

16. Defendants have infringed, and are currently infringing, the '966 patent and '753 patent in violation of 35 U.S.C. § 271 *et seq.*, directly, indirectly, contributorily, and/or by inducement of and in concert with others, by making, using, selling, offering to sell in the United States, and/or importing into the United States, its CocoanOX products that embody the patented inventions. The CocoanOX extracts infringe the '966 patent and the CocoanOX powder infringes the '753 patent.

17. Infringing CocoanOx products are readily available for purchase in the United States and have been sold in the United States by Natraceutical as confirmed by Mars' purchase of commercial quantities of CocoanOX in the United States in the ordinary course of business which was delivered to Mars at its New Jersey offices.

18. Upon information and belief, Defendants have had actual notice and knowledge of the '966 patent and the '753 patent.

19. Defendants' infringement of the '966 patent and '753 patent has been willful and intentional. This is an exceptional case pursuant to 35 U.S.C. § 285.

20. Mars has been injured and damaged monetarily and otherwise by Defendants' infringement of the '966 patent and the '753 patent. Defendants' infringement has caused, and will continue to cause, imminent irreparable harm to Mars, for which Mars has no adequate remedies at law, unless and until enjoined by this Court.

21. Mars should be awarded all damages it has suffered and incurred as a result of Defendants' acts of infringement. The Court also (a) should enter a preliminary injunction enjoining Defendant's infringement during the pendency of this case, including exhibition and sale of its CocoanOX products at the IFT Trade Show; and (b) enter a permanent injunction thereafter.

PRAYER FOR RELIEF

WHEREFORE, Mars prays for a judgment as follows:

- A. That Defendants have infringed the '966 patent and '753 patent;
- B. That Defendants' infringement of the '966 patent and '753 patent is willful;
- C. That Defendants and their officers, directors, employees, agents, subsidiaries, licensees, servants, successors and assigns, and any and all persons acting in privity or in concert or participation with Defendants be preliminarily and permanently enjoined from infringement of the '966 patent and '753 patent under 35 U.S.C. § 283;
- D. That Mars be awarded all damages adequate to compensate Mars for Defendants' infringement of the '966 patent and '753 patent, and such damages be trebled under 35 U.S.C. § 284 and awarded to Mars with prejudgment interest;
- E. That this case be adjudged an exceptional case under 35 U.S.C. § 285, and that Mars be awarded attorneys' fees, costs, and expenses incurred in this action; and,
- F. That Mars be awarded such other and further relief as the Court deems just and proper.

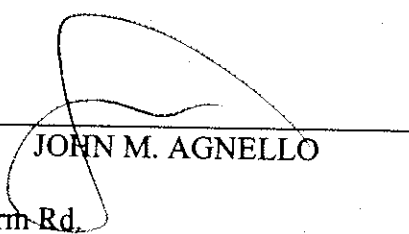
JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable by jury.

Dated: April 3, 2007

CARELLA, BYRNE, BAIN, GILFILLAN,
CECCHI, STEWART & OLSTEIN

By: _____


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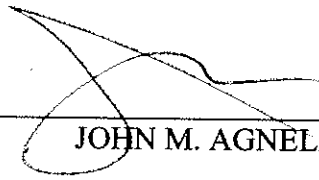
CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I hereby certify that the matter in controversy is not the subject matter of any other action pending in any court, or of any pending arbitration or administrative proceeding.

Dated: April 3, 2007

CARELLA, BYRNE, BAIN, GILFILLAN,
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