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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUN 20 2012

at 3 o'clock and 10 min P.M.
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CYANOTECH CORPORATION,

Plaintiff,

vs.

U.S. NUTRACEUTICALS, LLC, d/b/a
VALENSA INTERNATIONAL, and
the UNIVERSITY of ILLINOIS

Defendants.

CIVIL NO. 12 00352 RLP

COMPLAINT; EXHIBITS "A" AND
"B"; DEMAND FOR JURY TRIAL;
SUMMONS

COMPLAINT

For its Complaint herein against Defendants U.S. Nutraceuticals,
LLC, d/b/a Valensa International and the University of Illinois ("Defendants"),

Plaintiff Cyanotech Corporation (“Cyanotech”) alleges as follows:

PARTIES

1. Cyanotech is a Nevada corporation with its principal place of business in Kailua-Kona, Hawaii. Since 1990, Cyanotech has extracted and sold astaxanthin for use in nutritional supplements, including supplements for eye health, from its facility in Kailua-Kona, Hawaii.

2. Defendant, U.S. Nutraceuticals, LLC d/b/a Valensa International (“Valensa”) is a Florida limited liability company with its principal place of business in Eustis, Florida. Valensa was founded in 1999.

3. Defendant the University of Illinois (“U. Illinois”) is a public entity of the State of Illinois with its principal place of business in Chicago, Illinois.

4. Valensa is or may be a necessary party pursuant to Fed. R. Civ. P. Rule 19, as Valensa claims to have the right to sue under US Patent No. 5,527,533, issued June 18, 1996, on Application No. 08/330,194 (the “Patent-in-Suit”) on information and belief deriving such right by ownership of substantially all rights in the Patent-in-Suit. The Patent-in-Suit is attached as Exhibit A.

5. U. Illinois is joined as a defendant because it may claim an interest relating to the subject of this action and/or a right to relief is asserted against it herein inasmuch as the United States Patent and Trademark Office lists

U. Illinois as the assignee of the Patent-in-Suit thereby making it the last recorded owner of the Patent-in-Suit.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over this action pursuant to 28 United States Code (“U.S.C.”) § 1338(a) because it is an action arising under the patent laws of the United States 35 U.S.C. § 1 et seq.

7. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1338(b) because this action involves a claim for unfair competition joined with a substantially related claim arising under the patent laws of the United States.

8. This Court has jurisdiction arising under the Declaratory Judgment Act 28 U.S.C. §§ 2201-2202 as Cyanotech has been expressly threatened by Valensa with a claim of infringement of the Patent-in-Suit; Cyanotech is unsure of its rights and believes that such claim of infringement is invalid due to the scope of the patent claims being narrower than asserted by Valensa (see Exhibit B, attached), or that the Patent-in-Suit, US Patent No. 5,527,533, is invalid for failure to comply with one or more of the following statutory provisions: 35 U.S.C. §§ 101, 102, 103 and/or 112, to include but not limited to that the claims are not novel, are anticipated by the prior art, and that the specification does not support the claims.

9. In addition to exclusive jurisdiction with regard to patent claims under 28 U.S.C. § 1338(a), this Court has supplemental jurisdiction in a patent case under 28 U.S.C. § 1367(a), over all claims for relief that are so related to the patent claims in the action that they form part of the same case or controversy.

10. This Court has jurisdiction under 28 U.S.C. § 1332 as there is complete diversity between Cyanotech and Defendants, and the amount in controversy exceeds Seventy Five Thousand (\$75,000.00) Dollars.

11. This Court has personal jurisdiction over Valensa under Haw. Rev. Stat. § 634-35 because Valensa has purposefully availed itself of the privilege to do business in the State of Hawaii by regularly transacting business in this forum.

12. This Court has personal jurisdiction over U. Illinois, under Haw. Rev. Stat. § 634-35 because U. Illinois has purposefully availed itself of the privilege to do business in the State of Hawaii by regularly coming to Hawaii to solicit and transact business in this forum.

13. Valensa has committed intentional acts, including but not limited to, engaging in unfair competition, deceptive and unfair trade practices, patent-abuse, and unlawful competition, by issuing unlawful threats of patent infringement to Cyanotech in Hawaii and attempting to prohibit Cyanotech from engaging in lawful competition regarding the sale and promotion of astaxanthin

products for eye health. Astaxanthin is a natural product long known for its ability to neutralize free radicals, thereby promoting eye health, reducing sunburn, and reducing other types of photic damage.

14. At the time that it made such threats, Valensa knew or should have known that its threats were unlawful and that Cyanotech's sale and promotion of astaxanthin products for eye health were lawful and non-infringing competition.

15. Valensa's acts were directed and aimed at persons in Hawaii, including Cyanotech.

16. Valensa's knew or should have known that its acts would likely cause harm in Hawaii.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b) because (a) a substantial part of the events or omissions giving rise to the claims herein occurred in this District, and (b) because Valensa and U. Illinois are subject to personal jurisdiction in this District with respect to the claims asserted and therefore deemed to reside in this judicial District for venue purposes.

FIRST CLAIM FOR RELIEF

18. Paragraphs 1 to 17 are re-averred and re-alleged as if set forth at length herein.

19. This is an action for declaratory judgment of non-infringement of the patent claims in United States Patent No. 5,527,533 and for patent invalidity.

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