

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AKER BIOMARINE ANTARCTIC AS,

Plaintiff;

v.

OLYMPIC HOLDING AS; RIMFROST AS;
EMERALD FISHERIES AS; RIMFROST
USA, LLC; AVOCA INC.; BIORIGINAL
FOOD & SCIENCE CORP.,

Defendants.

CA. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Aker BioMarine Antarctic AS (“AKBM,” or “Plaintiff”) files this Complaint against Defendants Olympic Holding AS; Rimfrost AS; Emerald Fisheries AS; Rimfrost USA, LLC; Avoca Inc. and Bioriginal Food & Science Corp. (“Defendants”) for patent infringement and alleges, based on information and belief, personal knowledge and publicly available information, with respect to the infringing activity as follows:

THE PARTIES

1. Aker BioMarine Antarctic AS (“AKBM”) is a Norwegian corporation with its principal place of business at Oksenøyveien 10, P.O. Box 496. N-1327 Lysaker, Norway.
2. Upon information and belief, Olympic Holding AS (“Olympic Holding”) is a Norwegian corporation with its principal place of business at Fosnavåg Brygge Holmsildgata 12, P.O. Box 234, N-6099, Fosnavåg, Norway. Olympic Holding is the parent corporation of Rimfrost AS and Emerald Fisheries AS.

3. Upon information and belief, Rimfrost AS is a Norwegian corporation with its principal place of business at Vågsplassen, 6090, Fosnavåg, Norway. Rimfrost AS was formerly known as Olympic Seafood AS and is a wholly owned subsidiary of Olympic Holding.

4. Upon information and belief, Emerald Fisheries AS (“Emerald Fisheries”) is a Norwegian corporation with its principal place of business at Fosnavåg Brygge, 6090 Fosnavåg, Norway. Emerald Fisheries is a wholly owned subsidiary of Olympic Holding.

5. Upon information and belief, Stig Rune Remøy established Olympic Holding. Stig Rune Remøy is a major shareholder and is chairman and only member of the board of Olympic Holding. Stig Rune Remøy is also chairman of the board of all of Olympic Holding’s subsidiaries, including Rimfrost AS and Emerald Fisheries. Upon information and belief, Olympic Holding controls its subsidiaries Rimfrost AS and Emerald Fisheries regarding the infringing acts described in this Complaint.

6. Upon information and belief, Avoca Inc. (“Avoca”) is a Delaware corporation with its principal place of business at 841 Avoca Farm Rd., Merry Hill, North Carolina 27957.

7. Upon information and belief, Rimfrost USA, LLC (“Rimfrost USA”) is a Delaware limited liability company with its principal place of business at 841 Avoca Farm Rd. Merry Hill, North Carolina 27957. Rimfrost USA is a joint venture between Rimfrost AS and Avoca. Upon information and belief, Rimfrost AS controls its joint venture Rimfrost USA regarding the infringing acts described in this Complaint.

8. Upon information and belief, Bioriginal Food & Science Corp. (“Bioriginal”) is a Canadian corporation with its principal place of business at 102 Melville Street, Saskatoon, Saskatchewan, Canada S7J 0R1.

9. Upon Information and belief, under the direction and control of Olympic Holding and Rimfrost AS, Avoca processes denatured krill products prepared and supplied through the operations of Olympic Holding, Rimfrost AS, Emerald Fisheries and Rimfrost USA to create and sell infringing krill oil products in the United States. These products are marketed and sold in various forms, including soft-gel, emulsion and bulk forms by Rimfrost USA and Bioriginal under the name RIMFROST SUBLIME Krill, and under private label names for sale by others, including Jamieson Laboratories Ltd. and Costco Wholesale Corp. (“Costco”). Costco’s private label krill oil obtained from Defendants is called KIRKLAND SIGNATURE™ KRILL OIL, and is sold in this District. These products are collectively referred to in this Complaint as the Accused Products.

JURISDICTION AND VENUE

10. This action arises under the patent laws of the United States, Title 35, United States Code § 1, et seq. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

11. Avoca and Rimfrost USA are both incorporated in Delaware. Personal jurisdiction exists over all the Defendants, because the Defendants have sufficient minimum contacts with the forum as a result of business conducted within the State of Delaware and this District. Personal jurisdiction also exists specifically over the Defendants, because they, directly or through subsidiaries, intermediaries or joint ventures, make, use, offer for sale, sell, import, advertise, make available and/or market krill oil products and services within this District, that infringe AKBM’s U.S. Patent Nos. 9,028,877 and 9,078,905 (collectively the “Patents-in-Suit”), as described more specifically below.

12. Venue is proper in the in this District under 28 U.S.C. §§ 1391(b)–(c) and 1400(b), because the Defendants have individually transacted business in this District, have committed acts of infringement of the Patents-in-Suit in this District, and more than one Defendant is incorporated in this District.

PATENTS-IN-SUIT

13. U.S. Patent No. 9,028,877 (“the ’877 Patent”), entitled “*Bioeffective Krill Oil Compositions*,” is valid and enforceable, and was duly issued in full compliance with Title 35 of the United States Code by the USPTO on May 12, 2015. The ’877 Patent is a continuation of U.S. Patent No. 9,034,388 (“the ’388 Patent”) and claims priority from the following series of provisional applications: U.S. Provisional Application No. 61/024,072 filed January 28, 2008; U.S. Provisional Application No. 60/983,446 filed October 29, 2007; U.S. Provisional Application No. 60/975,058 filed September 25, 2007; U.S. Provisional Application No. 60/920,483 filed March 28, 2007. A true and correct copy of the ’877 Patent is attached hereto as Exhibit A.

14. AKBM is the owner by assignment of the ’877 Patent with sole rights to enforce the ’877 Patent and sue infringers.

15. U.S. Patent No. 9,078,905 (“the ’905 Patent”), entitled “*Bioeffective Krill Oil Compositions*,” is valid and enforceable, and was duly issued in full compliance with Title 35 of the United States Code by the USPTO on July 14, 2015. The ’905 Patent is a continuation of the ’388 Patent and claims priority from the following series of provisional applications: U.S. Provisional Application No. 61/024,072 filed January 28, 2008; U.S. Provisional Application No. 60/983,446 filed October 29, 2007; U.S. Provisional Application No. 60/975,058 filed

September 25, 2007; U.S. Provisional Application No. 60/920,483 filed March 28, 2007. A true and correct copy of the '905 Patent is attached hereto as Exhibit B.

16. AKBM is the owner by assignment of the '905 Patent with sole rights to enforce the '905 Patent and sue infringers.

FACTUAL ALLEGATIONS AND BACKGROUND

Plaintiff AKBM's Patented Technology and Pioneering Krill Oil Business

17. AKBM is a Norwegian fishing and biotech company that has been harvesting and producing krill and krill oil for the animal, fish feed, food, dietary supplement and pharmaceutical industries in its current form and through its predecessor corporation since 2003. AKBM built its supply chain for krill in the Antarctic and is a leading supplier of krill products, such as krill oil, worldwide.

18. AKBM's krill oil product is sold under the name SUPERBA®. AKBM develops, markets and sells its krill oil produced from sustainably harvested and traceable Antarctic krill. The company uses a unique technology called ECO-HARVESTING® that brings live krill on board its two harvesting vessels "Saga Sea" and "Antarctic Sea". Aker's harvesting technology successfully prevents the unnecessary by-catch such as birds and sea mammals and reduces the wastage incurred by traditional methods. As a result of its innovative and environmentally friendly processes, AKBM was the first krill harvester to be awarded the Marine Stewardship Council ("MSC") Certification, exemplifying its commitment to sustainable fishing of krill.

19. AKBM has cooperated with the World Wildlife Fund for Nature ("WWF") for over a decade, and in January 2015 AKBM established the Antarctic Wildlife Research Fund ("AWR") together with WWF Norway and the Antarctic and Southern Ocean Coalition ("ASOC"). AWR will raise donations from commercial and private partners in order to facilitate and promote

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