

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

GREENOLOGY PRODUCTS, INC., a)
North Carolina corporation)
)
Plaintiff,)
)
v.)
)
HEALTHPRO BRANDS INC., f/k/a)
THE FIT COMPANY, a Ohio corporation)
)
Defendant.)

CIVIL ACTION NO.: 16-CV-800

JURY TRIAL DEMANDED

**COMPLAINT FOR PATENT INFRINGEMENT, FALSE ADVERTISING, AND FALSE
MARKING**

Plaintiff Greenology Products, Inc. ("Greenology"), by counsel, for its Complaint against Defendant, HealthPro Brands Inc., f/k/a The Fit Company ("Defendant") states and alleges as follows:

PARTIES

1. Plaintiff Greenology Products, Inc. is a North Carolina corporation with its principal place of business at 8305 Falls of Neuse Road, Suite 206, Raleigh, North Carolina 27615.

2. Upon information and belief, Defendant HealthPro Brands Inc., f/k/a The Fit Company is an Ohio corporation with its principal place of business at 11400 Grooms Road, Suite A, Cincinnati, Ohio 45242. Defendant can be served with process by serving Acme Agent, Inc., Registered Agent, 41 South High Street, Suite 2800, Columbus, Ohio 43215.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271, 281, 283, 284 and 285. This is also an action for false advertising arising under 15 U.S.C. § 1125 and false marking under 35 U.S.C. § 292.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1367, and 1338(a).

5. This Court has personal jurisdiction over Defendant because Defendant's actions establish such minimum contacts that jurisdiction comports with the North Carolina Long-Arm statute and the United States Constitution. Defendant has conducted and does conduct business within the State of North Carolina. Defendant, directly and through subsidiaries or intermediaries (including distributors, retailers, and others) ships, distributes, offers for sale, sells, and/or advertises (including through its web pages) its products (including infringing products) described herein within this District and/or contributed to or induced (instructing and supplying others with infringing products and instructions for use) patent infringement by others in this District. Defendant has purposefully and voluntarily placed one or more infringing products into the stream of commerce with the expectation that they will be purchased and used by consumers in the Eastern District of North Carolina. Defendant has committed acts of patent infringement and false marking within the State of North Carolina and, more particularly, within the Eastern District of North Carolina.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b) because (a) Defendant does business in this District; (b) Defendant has committed acts of infringement and false marking in this District; and (c) Defendant is subject to personal jurisdiction in this District.

BACKGROUND

The Asserted Patent

7. This lawsuit asserts a cause of action for infringement of United States Patent No. 9,217,127 (the "'127 Patent").

8. On December 22, 2015, the U.S. Patent and Trademark Office duly and legally issued the '127 Patent entitled, "ORGANIC CLEANING COMPOSITION," to Adam McCarthy and David Andrew Gordon. Greenology is the owner by assignment and holds all rights, title and interest to the '127 Patent. A true and correct copy of the '127 Patent is attached as Exhibit A.

9. The '127 Patent is valid and enforceable.

Greenology's Use of the '127 Patent In the Organic Cleaning Product Industry

10. The inventions disclosed and claimed in the '127 Patent were invented and patented by Adam McCarthy, President of Greenology, and David Andrew Gordon.

11. Greenshield Organic® ("Greenshield Organic") is a division of Greenology. Greenology products are sold under the brand name of Greenshield Organic.

12. Greenology was founded in 2008. Adam McCarthy founded Greenology, and contributed to the invention of its foundational technology, with the intent to protect his family and consumers from the harmful chemicals found in most cleaning products.

13. Since its founding, Greenology has been a leader in the environmentally safe cleaning industry. Under its Greenshield Organic brand, Greenology manufactures a leading line of USDA Certified Organic laundry detergents, sprays, and specialty cleaners in the United States.

14. Some of these products include: Organic Free and Clear Laundry Detergent, Free and Clear Organic Laundry Detergent, Organic Lavender Laundry Detergent, and Organic Auto-dish Detergent.

15. Greenology's laundry detergents contain Greenology's patented organic cleaner and detergent compositions, formulations, and solutions.

16. Specifically, Greenology products contain an organic cleaning mixture comprising a combination of soapberry extract, saponified oil, and one or more of sodium carbonate, sodium hydroxide, potassium hydroxide, alkali, and combinations thereof.

Defendant's Wrongful Conduct

17. Upon information and belief, Defendant is a company that, among other things, purports to distribute organic cleaning products, including cleaning products under the brand FIT Organic.

18. Upon information and belief, Defendant did not produce and/or sell an organic laundry detergent until 2014, after Greenology started selling its certified organic laundry detergent. Upon information and belief, prior to selling organic laundry detergent, Defendant only produced and/or sold a veggie wash (a product for cleaning vegetables before eating).

19. Upon information and belief, Defendant distributes FIT Organic cleaning products throughout the United States, including in the Eastern District of North Carolina.

20. Defendant's products are available for sale online through Defendant's website, and through other websites, such as Amazon.com®.

21. Defendant also sells its products through larger retailers, including, but not limited to the grocery store chain, Earth Fare.

22. Upon information and belief, Defendant sells its products at the Earth Fare locations in Wake County, North Carolina, and elsewhere throughout the Eastern District.

23. FIT Organic products compete with Greenology products.

24. Defendant's line of FIT Organic products includes organic laundry detergents, specifically FIT Organic Laundry Detergent Free and Clear, FIT Organic Laundry Detergent – Fresh Citrus, and FIT Organic Baby Laundry Detergent.

25. Defendant marks some of its products, including but not limited to its FIT Organic Dishwasher Gel, with the words "Made in USA under one or more of U.S. Patents 6455086, 6557568, 6773737, 6831050. © 2015".

26. On Defendant's website, Defendant has alleged and continues to allege that at least one of its products, FIT Organic Auto Dishwasher Gel – Free and Clear, was the first in its category to be certified organic by the USDA.

GENERAL ALLEGATIONS

27. Defendant has directly and indirectly infringed and continues to directly and indirectly infringe the '127 Patent by engaging in acts constituting infringement under 35 U.S.C. § 271(a) and (b), including but not necessarily limited to, one or more of making, using, selling, and offering to sell, in this District and elsewhere in the United States, and importing into this District and elsewhere in the United States, certain organic cleaning products, such as FIT Organic Laundry Detergent Free and Clear, which contain Greenology's patented organic cleaner and detergent compositions, formulations, and solutions.

28. On information and belief, Defendant's products, including, but not limited to its FIT Organic Laundry Detergent Free and Clear, contain the specific components in Greenology's organic cleaning mixture (including soapberry extract, saponified oil, and one or more of sodium

carbonate, sodium hydroxide, potassium hydroxide, alkali, and combinations thereof) within the range of compositions, formulations, and solutions recited in the '127 Patent.

29. Defendant is doing business in the United States and, more particularly, in the Eastern District of North Carolina, by making, using, selling, importing, and/or offering for sale Defendant's infringing products.

30. Since the date of service of this Complaint, Defendant has had actual knowledge of the '127 Patent.

31. Greenology has been damaged as a result of Defendant's infringing conduct. Defendant is therefore liable to Greenology in an amount that adequately compensates Greenology for Defendant's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT I – INFRINGEMENT OF U.S. PATENT 9,217,127

32. Greenology restates and incorporates by reference the allegations in the preceding paragraphs 1 through 31 as if fully set forth.

33. Defendant has directly infringed and continues to directly infringe the '127 Patent by making, using, testing, selling, offering for sale, or importing into the United States products and/or methods covered by one or more claims of the '127 Patent. Defendant's products that infringe one or more claims of the '127 Patent include, but are not limited to, FIT Organic Laundry Detergent Free and Clear and other FIT Organic laundry detergents referenced herein.

34. Defendant has induced and continues to induce infringement of the '127 Patent by intending that others use, offer for sale, or sell in the United States, products and/or methods covered by one or more claims of the '127 Patent, including, but not limited to, FIT Organic Laundry Detergent Free and Clear. Defendant provides these products to others, such as

customers, resellers, and end-use consumers who, in turn, use, offer for sale, or sell in the United states Defendant's products that infringe one or more claims of the '127 Patent.

35. Defendant indirectly infringes the '127 Patent by inducing infringement by others, such as resellers, customers and end-use consumers, in accordance with 35 U.S.C. § 271(b) in this District and elsewhere in the United States. Direct infringement is a result of the activities performed by the resellers, customers and end-use consumers of FIT Organic Laundry Detergent Free and Clear.

36. Defendant received notice of the '127 Patent at least as of the date this lawsuit was filed.

37. Defendant's affirmative acts of selling FIT Organic Laundry Detergent Free and Clear, causing FIT Organic Laundry Detergent Free and Clear to be manufactured and distributed, and providing instructions for using FIT Organic Laundry Detergent Free and Clear, induce Defendant's resellers, customers and end-use consumers to use Defendant's FIT Organic Laundry Detergent Free and Clear in their normal and customary way to infringe one or more claims of the '127 Patent. Defendant performs the acts that constitute induced infringement, and induce actual infringement, with the knowledge of the '127 Patent and with the knowledge or willful blindness that the induced acts constitute infringement.

38. Defendant specifically intends for others, such as resellers, customers and end-use consumers, to directly infringe one or more claims of the '127 Patent, or, alternatively, has been willfully blind to the possibility that its inducing acts would cause infringement. By way of example, and not as limitation, Defendant induces such infringement by its affirmative action by, among other things: (a) providing advertising on the benefits of using FIT Organic Laundry

Detergent Free and Clear; and (b) providing instruction on how to use FIT Organic Laundry Detergent Free and Clear.

39. Accordingly, a reasonable inference is that Defendant specifically intends for others, such as resellers, customers and end-use consumers, to directly infringe one or more claims of the '127 Patent in the United States because Defendant has knowledge of the '127 Patent at least as of the date this lawsuit was filed and Defendant actually induces others, such as resellers, customers and end-use consumers, to directly infringe the '127 Patent by using, selling, and/or distributing, within the United States, FIT Organic Laundry Detergent Free and Clear.

40. As a result of Defendant's acts of infringement, Greenology has suffered and will continue to suffer damages in an amount to be proved at trial.

41. As a result of the foregoing acts of infringement by Defendant, Greenology has been irreparably harmed and will continue to suffer irreparable harm if Defendant is not preliminarily and permanently enjoined from further acts of infringement. This irreparable harm includes but is not limited to loss of good will due to the presence of a competitor's infringing products in the marketplace; loss of Greenology's market share; and price erosion.

42. Greenology's patent infringement claim is likely to succeed on the merits.

43. The balance of the hardships between the parties for issuing preliminary and permanent injunctions against Defendant weighs heavily in favor of Greenology. As long as Defendant continues its infringing conduct, Greenology continues to suffer the irreparable harm described above.

44. The issuance of preliminary and permanent injunctions against Defendant serves the public interest, as enjoining Defendant from further infringement preserves the integrity of the patent system.

COUNT II – FALSE ADVERTISING, 15 U.S.C. § 1125(a)

45. Greenology restates and incorporates by reference the allegations contained in the preceding paragraphs 1 through 44 as if fully set forth.

46. Defendant's advertisements and promotions for its products, particularly its FIT Organic Dishwasher Gel Free and Clear, make allegations and representations that are false and that misrepresent the nature, characteristics, and/or qualities of Defendant's and Greenology's products.

47. Among other things, Defendant's current advertisements on its website for its FIT Organic Dishwasher Gel Free and Clear state that the dishwasher gel is or was the "first" company in its category of organic cleaning supplies to obtain a USDA Organic Certification.

48. Defendant's representation that its dishwasher gel was the first dishwasher gel to obtain a USDA Organic Certification is false. Greenology sold an Automatic Dish Detergent that received organic certification from the USDA before Defendant's dishwasher gel was certified organic by the USDA.

49. Upon information and belief, in the past two years, Defendant has made similar representations that it was "first" to obtain organic certification from the USDA as to other cleaning products such as laundry detergent, and such statements were false.

50. The actions complained of herein have caused and are likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant's products are: (1) more established in the organic cleaning marketplace than Greenology's products; (2) that Defendant's products were certified by the USDA as organic before Greenology's products were; and (3) that Defendant's products are certified as organic by the USDA and that Greenology's are not or were not during a time they were offered for sale.

51. By advertising falsely that its products were the "first" to be certified organic by the USDA, Defendant has damaged the goodwill and reputation of Greenology by creating consumer confusion concerning whether Defendant's products have been in the marketplace longer than Greenology.

52. Defendant's actions, as described herein, occurred in commerce.

53. Defendant's actions, as described herein, constitute false and misleading advertising under the Lanham Act, 15 U.S.C. § 1125(a).

54. Upon information and belief, Defendant's actions have continued consciously, knowingly, intentionally, maliciously, in bad faith, and with the intent to deceive the public.

55. Upon information and belief, as a direct and proximate result of Defendant's false and misleading advertising, Defendant has gained, profited, and derived economic advantage, the exact sum of which will be proven at trial after discovery.

56. Greenology has no adequate remedy at law and will be irreparably harmed unless Defendant is enjoined from continuing its false and misleading advertising.

57. Greenology is entitled to an accounting of any profits enjoyed by Defendant as a result of its unlawful conduct.

58. As a result of the foregoing acts by Defendant, Greenology has been irreparably harmed and will continue to suffer irreparable harm if Defendant is not preliminarily and permanently enjoined from further false advertising. This irreparable harm includes but is not limited to loss of good will due to the presence of a competitor's infringing products in the marketplace; loss of Greenology's market share; and price erosion.

59. Greenology's false advertising claim is likely to succeed on the merits.

60. The balance of the hardships between the parties for issuing a preliminary and permanent injunction against Defendant weighs heavily in favor of Greenology. As long as Defendant continues its false and misleading advertising, Greenology continues to suffer the irreparable harm described above. Defendant, on the other hand, suffers no harm from being enjoined from making false and/or misleading claims in its advertising.

61. The issuance of preliminary and permanent injunctions against Defendant serves the public interest, as there is a strong public interest in the prevention of misleading advertisements.

COUNT III – FALSE PATENT MARKING, 35 U.S.C. § 292(b)

62. Greenology restates and incorporates by reference the allegations contained in the preceding paragraphs 1 through 61 as if fully set forth.

63. An actual and justiciable controversy requiring declaratory relief exists between Greenology and Defendant.

64. Defendant, either directly or through a licensee, has marked some of its products, including, but not limited to, its FIT Organic Dishwasher Gel, with the words, "Made in USA under one or more of U.S. Patents 6455086, 6557568, 6773737, 6831050. © 2015", in violation of 35 U.S.C. § 292.

65. U.S. Patents 6,455,086, 6,557,568, 6,773,737, and 6,831,050 do not cover the products that Defendant claims are patented, including the FIT Organic Dishwasher Gel.

66. For example, the patents that Defendant contends cover its products, including FIT Organic Dishwasher Gel, are directed to methods for washing vegetables, while the product itself is directed to washing dishes.

67. Defendant's false marking of its products, including but not limited to the false marking of the FIT Organic Dishwasher Gel, was made for the purposes of deceiving the public.

68. Greenology has suffered a competitive injury and seeks recovery of damages under 35 U.S.C. § 292(b), as well as a declaratory judgment that U.S. Patents 6,455,086, 6,557,568, 6,773,737, and 6,831,050 do not cover Defendant's FIT Organic Dishwasher Gel.

COUNT IV – UNFAIR COMPETITION AND DECEPTIVE TRADE PRACTICES
(N.C. Gen. Stat. § 75-1.1)

69. Greenology restates and incorporates by reference the allegations contained in the preceding paragraphs 1 through 68 as if fully set forth.

70. Defendant's conduct alleged herein, including its false and misleading advertising and false marking of its products, is in and affects commerce in the State of North Carolina.

71. Defendant's conduct alleged herein constitutes unfair methods of competition in or affecting commerce in North Carolina and unfair and deceptive acts and practices in or affecting commerce in North Carolina in violation of N.C. Gen. Stat. § 75-1 *et seq.*

72. Upon information and belief, Defendant has generated revenue and earned profits from its unfair methods of competition and deceptive acts and practices and has the opportunity to continue to earn future profits from future sales.

73. Defendant's unfair methods of competition and unfair and deceptive acts and practices have caused harm and injury to Greenology by harming Greenology's reputation and the goodwill associated with Greenology's organic cleaning products and causing Greenology monetary damage, loss, and injury in an amount to be determined at trial. Such harm and injury are the direct and proximate result of Defendant's unfair methods of competition and deceptive acts and practices.

74. Greenology is entitled to recover treble damages and attorneys' fees under N.C. Gen. Stat. §§ 75-16 and 75-16.1.

DEMAND FOR JURY TRIAL

Greenology hereby demands a jury trial for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Greenology respectfully requests that this Court enter judgment in its favor and grant the following relief:

A. a preliminary injunction against Defendant, and those in active concert with it, from further infringement of the '127 Patent and further false and misleading advertising;

B. a permanent injunction against Defendant, and those in active concert with it, from further infringement of the '127 Patent and further false and misleading advertising;

C. a judgment that Defendant directly and/or indirectly infringes one or more claims of the '127 Patent;

D. award Greenology damages in the amount adequate to compensate Greenology for Defendant's infringing products' infringement of the claims of the '127 Patent, but in no event less than a reasonable royalty, and supplemental damages for any continuing post-verdict infringement until entry of the final judgment with an accounting is needed, under 35 U.S.C. § 284;

E. award Greenology pre-judgment interest and post-judgment interest on the damages awarded, including pre-judgment interest, pursuant to 35 U.S.C. § 284, from the date of each act of infringement of the '127 Patent by Defendant to the day a damages judgment is entered, and an award of post-judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid, at the maximum rate allowed by law;

F. award Greenology damages, including pre- and post-judgment interest, in an amount adequate to compensate Greenology for the competitive injury it has suffered as a result of Defendant's false marking under 35 U.S.C. § 292(b);

G. a declaratory judgment that U.S. Patents 6,455,086, 6,557,568, 6,773,737, and 6,831,050 do not cover Defendant's FIT Organic Dishwasher Gel and other products that Defendant has falsely marked;

H. a judgment and order finding this to be an exceptional case and requiring Defendant to pay the costs of this action (including all disbursements) and attorneys' fees, pursuant to 35 U.S.C. § 285;

I. order an accounting for damages;

J. award a compulsory future royalty for the '127 Patent;

K. an award to Greenology of monetary remedies in an amount to be determined by a trier of fact for all harm caused by Defendant's actions, including Defendant's profits, the damages sustained by Greenology, costs of the action, reasonable attorney's fees, and treble damages and profits as authorized by law;

L. an award of Greenology's interest, including prejudgment interest, on the foregoing amounts;

M. a direction to Defendant to provide for destruction of all advertisements, marketing or promotional materials, labels, signs, prints, or other commercial materials in Defendant's possession bearing any false or misleading misrepresentation concerning Defendant's products, including, but not limited to representations that Defendant's products were first to be certified organic by the USDA; and

N. any such further relief as the Court deems just and proper.

This the 13th day of September, 2016.

/s/ Joseph A. Schouten

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