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Attorneys for Plaintiff Axxess Global Sciences, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

AXCESS GLOBAL SCIENCES, LLC,)	
)	
Plaintiff,)	Civil No: _____
)	
vs.)	
)	
BALBOA WHOLESALE, LLC)	
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND

Plaintiffs Access Global Sciences, LLC hereby complains and alleges as follows against Defendants Balboa Wholesale, LLC:

THE PARTIES

1. Plaintiff Access Global, LLC is a Utah limited liability company with a principal place of business at 2157 Lincoln Street, Salt Lake City, UT 84106 (hereinafter “AGS” or “Plaintiff”).

2. Defendant Balboa Wholesale, LLC dba Lunar Canyon Organics dba Rillvo is a Wyoming corporation with a principal place of business at 30 N Gould Street, Suite 21737, Sheridan, Wyoming (hereinafter “Balboa” or “Defendant”).

3. Defendant Balboa, upon information and belief, does business within the State of Wyoming, is engaged in continuous and systematic business within the District of Wyoming, conducts and solicits business within this judicial district, and derives substantial revenue from the sales of its products and/or services within this judicial district. Upon information and belief, Balboa has sold and has made offers for sale of products that infringe, contributorily infringe, and/or induce infringement by others as hereinafter stated in Wyoming and within this judicial district.

JURISDICTION

4. This matter arises under the patent laws of the United States, Title 35 United States Code, §§1 et seq.

5. This Court has personal jurisdiction over Defendants because Defendants maintain a principal place of business in this judicial district, have committed and continue to commit acts of infringement in violation of 35 U.S.C. § 271 in this judicial district, and because Defendant

places infringing products into the stream of commerce with the knowledge or understanding that such products are sold in the State of Wyoming and in this judicial district. In addition, the acts by Defendant cause substantial injury to Plaintiffs in this judicial district. On information and belief, Defendant derives substantial revenue from their sale of infringing products within this judicial district, expect their actions to have consequences within this judicial district, and derive substantial revenue from interstate and international commerce directed to and from this judicial district. In addition, Defendant has taken advantage of the privilege of doing business in this judicial district.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (any Act of Congress relating to patents or trademarks).

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400. Defendant is incorporated in this judicial district and the Defendant is subject to personal jurisdiction in this State. On information and belief, a substantial part of the events giving rise to the claims occurred in this judicial district, including the Defendant's sale of its infringing products in this judicial district and/or shipping of products into this judicial district.

BACKGROUND

8. Plaintiff AGS is an innovator in the field of exogenous ketones and ketogenic precursor supplement products. These products aid the body in producing and sustaining elevated levels of ketone bodies in the blood and assist in the body's transition into nutritional ketosis. Among the Plaintiff's innovations are the inventions claimed in U.S. Patent No. 11,020,362 (the "'362 Patent") which is attached as Exhibit A. The '362 Patent describes and claims compositions for increasing blood ketone levels using various compositions of beta-hydroxybutyrate salts. The

claimed compositions are useful in inducing and sustaining a state of nutritional ketosis. Ketosis is defined in the '362 Patent as follows:

“Ketosis” as used herein refers to a subject having blood ketone levels within the range of about 0.5 mmol/L and about 16 mmol/L in a subject. Ketosis may improve mitochondrial function, decrease reactive oxygen species production, reduce inflammation and increase the activity of neurotrophic factors.

'362 Patent, at 6:13-21. Products that practice the invention claimed in the '362 Patent are sometimes referred to as “keto supplements.”

9. The Defendant sells a variety of keto supplement products on its website www.rillvo.co including the exemplary Trim Life Labs Keto Pills shown below:



<https://rillvo.co/collections/keto-supplements-1/products/trim-life-labs-keto-pills>

10. The Defendant instructs its customers in the use of its keto supplement products through instructions such as the following:

Get to Ketosis Faster and Stay There with Trim Life Labs Keto!

We understand one of the **most difficult parts** of the keto diet is **getting into** a state of **ketosis**. On average it takes anywhere from 3 to even up to 10 days to finally enter ketosis; Not to mention all the **side effects** you might go through including **headaches, fatigue, and insomnia**.

Enter: **Trim Life Labs Keto**. Our unique Keto Supplement was designed to help you **effortlessly** tap into **ketosis faster** and helping you **avoid** those nasty and uncomfortable **side effects**.

Our proprietary formula has a potency of 800mg so you enter the metabolic state of ketosis easier and stay there. The unique Trim Life Keto blend not only helps you get into ketosis faster but is a great fuel source for the body when you might not have time to get your fats in.

<https://rillvo.co/collections/keto-supplements-1/products/trim-life-labs-keto-pills>

11. The Defendant describes the benefits of its keto supplement products, and specifically, how such products “will boost your ketone levels”

BENEFITS

GET INTO KETO FASTER THAN DIET ALONE – Our ketone pills will boost your ketone levels and put you into rapid and long-lasting ketosis! For Men and Women.

TASTE FREE DAY TIME KETO PILLS – No dirty bottles to clean, no bad taste, just grab your keto capsules and stay in ketosis at home or on the road. Daytime AM Caffeine Free Pills.

CLEAN PRODUCTS MADE IN THE USA – All of our products are GMP Certified (Good Manufacturing Practice) and proudly made here in the USA with no sugar, no artificial flavors, no additives, dairy, soy and gluten-free, keto, non-GMO, GRAS, cGMP, certified manufacturing.

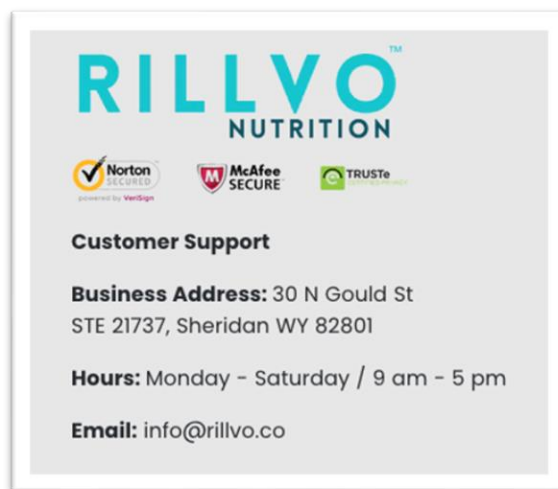
<https://rillvo.co/collections/keto-supplements-1/products/trim-life-labs-keto-pills>

12. The Defendant advertises that its keto supplement products, like the Trim Life Labs Keto product sold above, include the following ingredients:

Ingredients: Sodium (as beta hydroxybutyrate) 35mg Calcium (as beta hydroxybutyrate) 48mg Magnesium (as beta hydroxybutyrate) 10mg Proprietary Ketogenic Blend: Sodium as Beta-Hydroxybutyrate Calcium Beta-Hydroxybutyrate Magnesium Beta-Hydroxybutyrate Green Tea (leaf) Extract Apple Cider Vinegar

<https://rillvo.co/collections/keto-supplements-1/products/trim-life-labs-keto-pills>

13. The Defendant sells products on the internet under the brand name RILLVO™ at the URL www.rillvo.co. The Defendant provides the following contact information:

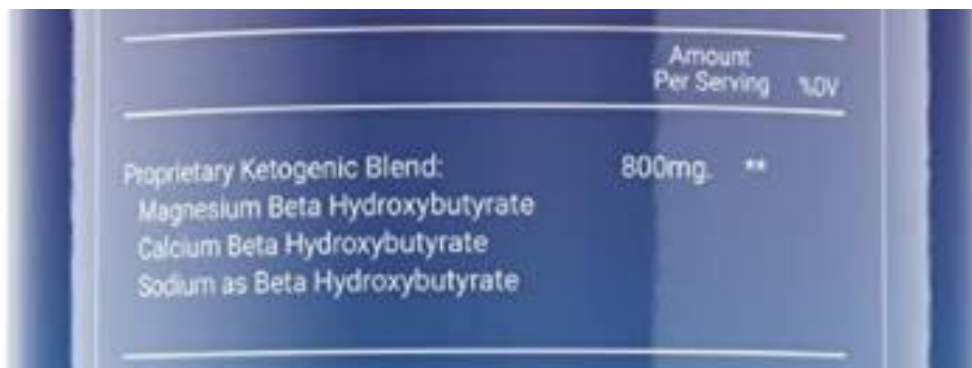


14. The Defendant sells or has sold keto supplement products on Amazon, including the exemplary KETO Prime products shown below:



<https://www.amazon.com/Advanced-Ketogenic-Weight-Support-Capsules/dp/B09MV3M9YP>

15. The Defendant advertises that its keto supplement products, like the KETO Prime product sold above, include the following ingredients:



<https://rillvo.co/collections/keto-supplements-1/products/trim-life-labs-keto-pills>

16. For the Defendant's business on Amazon, under the dba Lunar Canyon Organics, the Defendant provides the following contact information:



COUNT I – INFRINGEMENT OF U.S. PATENT NO. 11,020,362

17. Plaintiffs incorporate all of the allegations of the preceding paragraphs as if fully set forth herein.

18. On June 1, 2021, the '362 Patent, titled “Beta-hydroxybutyrate mixed salt compositions and methods of use” was duly and legally issued. A true and correct copy of the '362 Patent is attached as Exhibit A.

19. AGS is the owner of the '362 Patent.

20. Defendant makes, uses, offers for sale, sells, and distributes ketone supplement products that practice the invention of the '362 Patent (the “Accused Products”) including the products sold by Defendant as Trim Life Labs Keto¹ and Keto Prime.

21. Exemplary claim 1 of the '362 Patent is reproduced below:

1. A composition for increasing blood ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:

¹ Plaintiff provides an exemplary claim mapping for claim 1 and the Trim Life Labs Keto product. However, the claims mapping for the Keto Prime product is identical.

sodium beta-hydroxybutyrate;
potassium beta-hydroxybutyrate;
calcium beta-hydroxybutyrate; and
magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

'362 Patent, claim 1.

22. The Accused Products infringe at least claim 1 of the '362 Patent in the exemplary manner described below.

23. To the extent the preamble of claim 1 is limiting, the Accused Products meet the preamble of claim 1 as set forth below:

1. **A composition for increasing blood ketone level in a subject, comprising:**

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;
potassium beta-hydroxybutyrate;
calcium beta-hydroxybutyrate; and
magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

'362 Patent, claim 1.

BENEFITS

GET INTO KETO FASTER THAN DIET ALONE – Our ketone pills will boost your ketone levels and put you into rapid and long-lasting ketosis! For Men and Women.

TASTE FREE DAY TIME KETO PILLS – No dirty bottles to clean, no bad taste, just grab your keto capsules and stay in ketosis at home or on the road. Daytime AM Caffeine Free Pills.

CLEAN PRODUCTS MADE IN THE USA – All of our products are GMP Certified (Good Manufacturing Practice) and proudly made here in the USA with no sugar, no artificial flavors, no additives, dairy, soy and gluten-free, keto, non-GMO, GRAS, cGMP, certified manufacturing.

<https://rillvo.co/collections/keto-supplements-1/products/trim-life-labs-keto-pills>

24. The Accused Products further meet the limitations of claim 1 as set forth below:

1. A composition for increasing blood ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

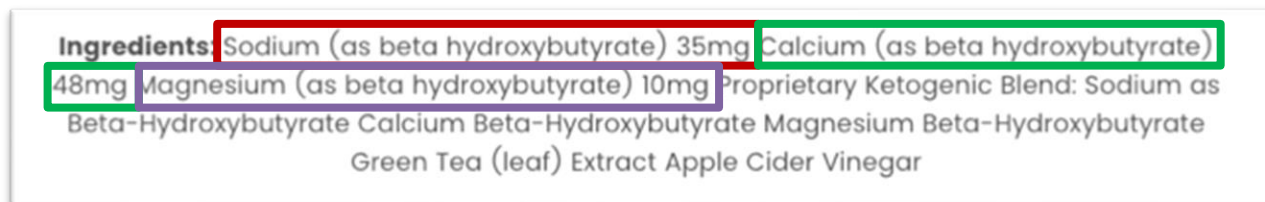
calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

'362 Patent, claim 1.



<https://rillvo.co/collections/keto-supplements-1/products/trim-life-labs-keto-pills>

25. The Accused Products further meet the limitations of claim 1 as set forth below:

1. A composition for increasing blood ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

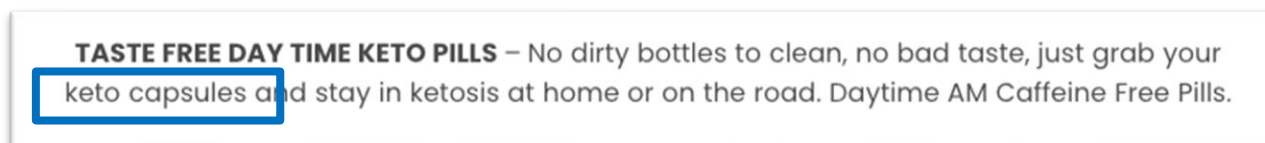
calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

'362 Patent, claim 1.



<https://rillvo.co/collections/keto-supplements-1/products/trim-life-labs-keto-pills>

26. The Accused Products further meet the limitations of claim 1 as set forth below:

1. A composition for increasing blood ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

'362 Patent, claim 1.

Ingredients: Sodium (as beta hydroxybutyrate) 35mg Calcium (as beta hydroxybutyrate) 48mg Magnesium (as beta hydroxybutyrate) 10mg Proprietary Ketogenic Blend: Sodium as Beta-Hydroxybutyrate Calcium Beta-Hydroxybutyrate Magnesium Beta-Hydroxybutyrate Green Tea (leaf) Extract Apple Cider Vinegar

<https://rillvo.co/collections/keto-supplements-1/products/trim-life-labs-keto-pills>

27. Defendant has directly infringed claim 1 of the '362 Patent in the United States by making, using, offering for sale, selling, and/or importing the Accused Products in violation of 35 U.S.C. § 271(a). As such, Defendant is liable for infringement of the '362 Patent under 35 U.S.C. § 271(a).

28. Defendant is on notice of its direct and indirect infringement of the '362 Patent, having received written notice of their infringement from AGS and Amazon regarding their

infringement of the '362 Patent.

29. Defendant's acts of infringement have caused damage to Plaintiff. Plaintiff is therefore entitled to recover damages sustained as a result of Defendant's wrongful acts in an amount that is to be proven at trial.

30. Defendant has willfully infringed the '362 Patent with knowledge of the '362 Patent or was willfully blind to the '362 Patent and the risk of the Defendant's infringement.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays that the Court enter judgment in its favor and award the following relief against Defendant:

- A. A judgment that Defendant has infringed one or more claims of each of the Asserted Patent literally and/or under the doctrine of equivalents;
- B. An award of damages pursuant to 35 U.S.C. § 284;
- C. Entry of an injunction against further infringement of the Asserted Patent;
- D. A judgment that this is an exceptional case pursuant to 35 U.S.C. § 285 and an award of the Plaintiff's reasonable attorneys' fees in this litigation;
- E. An award of prejudgment and post-judgment interest on its damages;
- F. An award of costs; and
- G. Any such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial on all matters triable to a jury.

DATED this ____ day of May 2022.

Respectfully submitted,

CROWLEY | FLECK

By: /s/ Alaina M. Stedillie
Alaina M. Stedillie

WORKMAN NYDEGGER

Brian N. Platt (*pro hac vice forthcoming*)
T. Edward Cundick (*pro hac vice forthcoming*)

Counsel for Plaintiff Axxess Global Sciences, LLC