

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**HI-TECH PHARMACEUTICALS, INC.,)
and INTELLECTUAL WELLNESS,)
LLC,)**

Plaintiffs,)

vs.)

CIVIL ACTION NO:

**IRONMAGLABS, LLC, A Nevada)
Limited Liability Company)
and ROBERT DIMAGGIO,)
an Individual,)**

Defendants.)

_____ /

COMPLAINT

Plaintiffs Hi-Tech Pharmaceuticals, Inc. (“Hi-Tech”) and Intellectual Wellness, LLC (“Intellectual Wellness”) (collectively “Plaintiffs”), bring this action against Defendants IronMag Labs, LLC (“IronMag”) and Robert Dimaggio (“Dimaggio,”) (collectively, “Defendants”), and allege as follows.

THE PARTIES

1. Hi-Tech is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 6015-B Unity Drive, Norcross, Georgia 30071.

2. Intellectual Wellness is a Michigan Limited Liability Company with its principal place of business in Brighton, Michigan.

3. Defendant IronMag is a Nevada Limited Liability Company with its principal place of business located in Las Vegas, Nevada.

4. Defendant Dimaggio is an individual and citizen of Michigan. Upon information and belief, Dimaggio is the owner, Chief Executive Officer and President of IronMag.

5. Upon information and belief, Mr. Dimaggio authorizes, participates in, directs, controls, causes, ratifies, and/or is the moving force behind the activities of IronMag, including the selection, sale and distribution of the products cited herein.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

7. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338. This action also involves breach of contract. The Court has subject matter jurisdiction over this claim pursuant to 28 U.S.C. § 1367.

8. This Court also has jurisdiction pursuant to 28 U.S.C § 1332 because this action is between citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds seventy-five thousand dollars (\$75,000.00).

9. This Court has personal jurisdiction over both Defendants.

10. This Court may exercise personal jurisdiction over the Defendants pursuant to O.C.G.A. §9-10-91 because the Defendants are doing business in this judicial district and/or have committed tortious acts within this judicial district including patent infringement and other wrongful and unlawful acts. One or more of the Defendants have entered into contracts that form part of the subject matter of this action with Plaintiff Hi-Tech, a Georgia corporation.

11. This Court therefore has jurisdiction over the Defendants pursuant to the provisions of the Georgia long-arm statute.

12. Venue is proper under 28 U.S.C. §§ 1391 and 1400 in that one or more of the Defendants have committed the tortious acts complained of herein in this judicial district and are doing and transacting business within this judicial district.

13. Defendants directly and/or through intermediaries, including distributors, retailers, and others, formulate, manufacture, market, offer for sale, sell, distribute, ship and/or import into the United States dietary supplement products that infringe on one or more claims of the patents identified herein.

14. Defendants have purposefully and voluntarily placed infringing products into the stream of commerce with the knowledge, understanding and expectation that such products would be purchased in the Northern District of

Georgia, and the products were and are currently available for purchase in the Northern District of Georgia.

15. Defendants have not previously contested jurisdiction or venue related to the subject matter of this action in Georgia, including patent infringement.

FACTUAL BACKGROUND

HI-TECH

16. Hi-Tech is a cutting-edge sports supplement company.

17. Hi-Tech manufactures, markets and provides high-quality dietary supplement products in the State of Georgia and throughout the United States.

18. Since its inception, Hi-Tech has had a particular focus on the categories of bodybuilding and fitness.

19. Hi-Tech manufactures and sells various products in these categories, including products intended to harden muscles, increase muscle mass, increase strength, increase power, increase recovery time and improve athletic performance.

20. Some of Hi-Tech's products in the bodybuilding and fitness categories contain derivatives of dehydroepiandrosterone ("DHEA"), including 1-DHEA, 4-DHEA, 19-nor-DHEA, or other related derivatives.

INTELLECTUAL WELLNESS

21. Intellectual Wellness is the owner by assignment of several United States Patents, including U.S. Patent No. 8,084,446 (“the ‘446 Patent”); U.S. Patent No. 8,338,399 (“the ‘339 Patent”); U.S. Patent No. 8,580,774 (“the ‘774 Patent”); and U.S. Patent No. 8,778,918 (“the ‘918 Patent”) all of which claim priority to Application Serial No. 11/411,530, filed April 26, 2006 (“the ‘530 Application”).

22. The ‘339 Patent, the ‘774 Patent, the ‘918 Patent are referred to herein collectively as the “Patents-In-Suit.”

23. Intellectual Wellness granted a license to Hi-Tech to the ‘530 Application and any provisionals, divisionals, continuations and continuations-in-part claiming the priority date of the ‘530 Application, which includes the Patents-In-Suit.

24. Hi-Tech’s license to the Intellectual Wellness patent portfolio includes the right to institute patent infringement lawsuits against third parties.

The ‘339 Patent

25. On December 25, 2012, the United States Patent and Trademark Office duly and legally issued the ‘399 Patent, entitled “Use of DHEA Derivatives For Enhancing Physical Performance.”

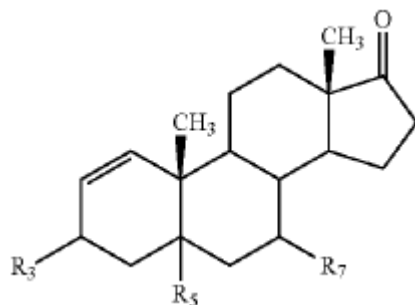
26. A true and correct copy of the ‘399 Patent is attached as Exhibit A.

27. The '399 Patent is subsisting and presumed valid under 35 U.S.C. § 282.

28. The '399 Patent is directed, in part, to a method of administering derivatives of DHEA, including 1-DHEA derivatives.

29. In response to the administration of a 1-DHEA derivative, the user may experience, *inter alia*, enhanced physical performance and anti-aging benefits through decreased body weight, reduction of adipose tissue, increased endurance and/or increased production of red blood cells, while reducing negative side effects.

30. Claim 1 of the '399 Patent is directed to a method of administering a DHEA derivative or a physiologically acceptable salt, ester or ether thereof as a compound that provides at least one of (a) anti-aging adrenal hormone balance, (b) decreased body weight, (c) reduction of adipose tissue, (d) increased endurance, (e) skeletal muscle growth and (f) increased production of red blood cells, of the general formula:



wherein R₃ is one of α -OH and β -OH, R₅ is one of α -H and β -H, and R₇ is one of α -H and β -H.

The '774 Patent

31. On November 12, 2013, the United States Patent and Trademark Office duly and legally issued the '774 Patent, entitled "Use of DHEA Derivatives For Enhancing Physical Performance."

32. A true and correct copy of the '774 Patent is attached as Exhibit B.

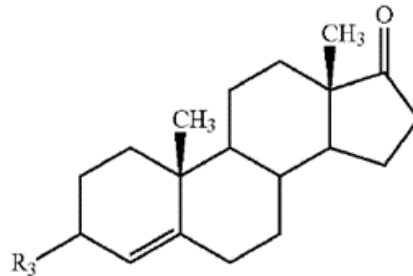
33. The '774 Patent is subsisting and presumed valid under 35 U.S.C. § 282.

34. The '774 Patent is directed, in part, to a method of administering derivatives of DHEA, including 4-DHEA derivatives.

35. In response to the administration of a 4-DHEA derivative, the user may experience, *inter alia*, enhanced physical performance and anti-aging benefits through decreased body weight, reduction of adipose tissue, increased endurance and/or increased production of red blood cells, while reducing negative side effects.

36. Claim 1 of the '774 Patent is directed to a method of administering a DHEA derivative or a physiologically acceptable salt, ester or ether thereof as a compound that provides at least one of (a) anti-aging adrenal hormone balance, (b) decreased body weight, (c) reduction of adipose tissue, (d) increased endurance, (e)

skeletal muscle growth and (f) increased production of red blood cells, of the general formula:



wherein R_3 is one of α -OH and β -OH, wherein the DHEA derivative is administered transdermally.

The '918 Patent

37. On July 15, 2014, the United States Patent and Trademark Office duly and legally issued the '918 Patent, entitled "Use of DHEA Derivatives For Enhancing Physical Performance."

38. A true and correct copy of the '918 Patent is attached as Exhibit C.

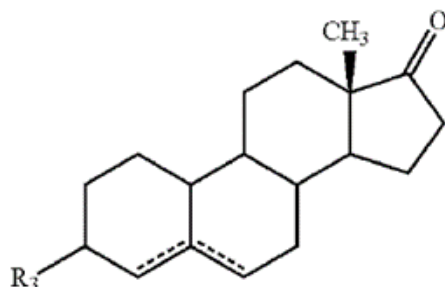
39. The '918 Patent is subsisting and presumed valid under 35 U.S.C. § 282.

40. The '918 Patent is directed, in part, to a method of administering derivatives of DHEA, including 19-nor-DHEA derivatives.

41. In response to the administration of a 19-nor-DHEA derivative, the user may experience, *inter alia*, enhanced physical performance and anti-aging benefits

through decreased body weight, reduction of adipose tissue, increased endurance and/or increased production of red blood cells, while reducing negative side effects.

42. Claim 1 of the '918 Patent is directed to a method of administering a DHEA derivative or a physiologically acceptable salt, ester or ether thereof as a compound that provides at least one of (a) anti-aging adrenal hormone balance, (b) decreased body weight, (c) reduction of adipose tissue, (d) increased endurance, (e) skeletal muscle growth and (f) increased production of red blood cells, of the general formula:



wherein R_3 is one of α -OH and β -OH.

DEFENDANTS' HISTORY OF WILLFUL INFRINGEMENT

43. Defendants market products under the brand name IronMag Labs (a/k/a IML) which provides sports nutrition, muscle enhancement, weight loss, pre-and post-workout, and various other supplements.

44. The Defendants have engaged in repeated, widespread and willful infringement of Plaintiffs' patent rights and breached one or more agreements in which Defendants were obligated to honor and abide by these rights.

The First Action

45. As early as May 1, 2012, Defendants were put on notice of Intellectual Wellness' patent rights and asked to cease and desist the sale of infringing products.

46. On September 25, 2014, Intellectual Wellness sued IronMag in a first action captioned *Intellectual Wellness, LLC v. IronMag Labs, LLC*, Civil Action No. 5:14-cv-13717-JEL-RSW (E.D. Mich) ("the First Action").

47. The First Action alleged infringement of the '466 Patent and the '399 Patent by the products "4 Andro Rx" and "1 Andro Rx."

48. On or about December 12, 2014, Defendants resolved the First Action through a settlement agreement that required the payment of back royalties; an acknowledgement of Intellectual Wellness' ownership rights in patents that claim the priority date of the '530 Application, including but not limited to, the '446 Patent, the '339 Patent and the '918 Patent ("Patent Claims"); an acknowledgement of the presumption of validity of the '446 Patent and the '399 Patent ("Settlement Agreement").

49. The Settlement Agreement also required the execution of an attached license agreement (“License Agreement”).

50. Pursuant to the License Agreement, IronMag received proprietary license rights under the Patent Claims in the dietary supplement field.

51. In exchange, IronMag was obligated to pay Intellectual Wellness earned royalties on the sale of licensed products (or use of licensed methods) that fall within the scope of the Patent Claims.

52. IronMag’s royalty obligations exist as long as the License Agreement remains in effect or until the date of expiration of the last-to-expire patent licensed under the License Agreement. None of the Patent Claims have yet expired.

53. The License Agreement included an attorneys’ fees provision providing that if any party commences legal action against another on account of failure of performance, then the prevailing party shall be entitled to reimbursement for its reasonable attorneys’ fees and expenses in addition to any other relief or remedies to which such party is entitled.

54. Both the Settlement Agreement and the License Agreement are in the possession of the Defendants.

The Second Action

55. Notwithstanding Defendants' obligations under the terms of the License Agreement, Defendants continued to sell infringing products while failing to pay the applicable royalties.

56. As a result, on November 6, 2015, Plaintiffs sued Defendants in a second action captioned *Intellectual Wellness, LLC, et al. v. IronMag Labs, LLC, et al.*, Civil Action No. 1:15-cv-03887-RWS (N.D. Ga.) ("the Second Action").

57. The Second Action alleged, *inter alia*, infringement of the '466 Patent and the '399 Patent by the products "4 Andro Rx" and "1 Andro Rx."

58. Defendants settled the Second Action by agreeing to purchase product from Hi-Tech in lieu of the royalty payment under the License Agreement.

59. For a period of time, Defendants proceeded to purchase products from Hi-Tech that fell within the scope of the Patent Claims under the License Agreement.

60. Mr. Dimaggio authorized, participated in, directed, controlled, caused, ratified, and/or was the moving force behind IronMag's purchases of products from Hi-Tech under the License Agreement.

DEFENDANTS' MOST RECENT PATENT INFRINGEMENT

61. Defendants have provided and are providing the products "Super 1-Andro Cream," "Super 4-Andro Cream," "Gear Cream" and "Lean AF Cream" (collectively, "Infringing Products").

62. The Infringing Products fall within the scope of the Patent Claims but Defendants have not provided any royalty payments to Plaintiffs, or purchased any of these products from Hi-Tech.

63. The Infringing Products are unauthorized, unlicensed, infringing and being made, used, offered for sale and sold in violation of the License Agreement.

64. Defendants maintain the website <https://www.ironmaglabs.com/> to market, offer for sale, sell and distribute dietary supplement products.

65. On information and belief, Defendant Dimaggio controls, contributes to and/or is the decision maker regarding the content on this website.

66. The products offered include Super 1-Andro Cream (available at <https://www.ironmaglabs.com/product/super-1-andro-cream/>); Super 4-Andro Cream (available at <https://www.ironmaglabs.com/product/super-4-andro-cream/>); Gear Cream (available at <https://www.ironmaglabs.com/product/gear-cream/>) and Lean AF Cream (available at <https://www.ironmaglabs.com/product/lean-af/>).

67. Screenshots of the Infringing Products available on the Defendants' website are attached as Exhibit D, E, F and G, respectively.

68. On information and belief, Defendant Dimaggio is responsible, in whole or in part, for the development, formulation, intended uses, manufacture, offers to sell, sale, importation and/or distribution of the Infringing Products.

69. Defendants advertise, offer for sale and sell the Infringing Products nationwide, including within the Northern District of Georgia.

70. The Infringing Products compete directly with Hi-Tech's products in the bodybuilding and fitness categories nationwide, including within the Northern District of Georgia.

INFRINGEMENT OF THE '399 PATENT

Super 1-Andro Cream

71. IronMag Labs makes, uses, offers to sell and/or sells the product known as Super 1-Andro Cream ("Super 1-Andro").

72. Super 1-Andro was designed and is promoted to be applied to the skin of the user to increase lean muscle mass, strength and power.

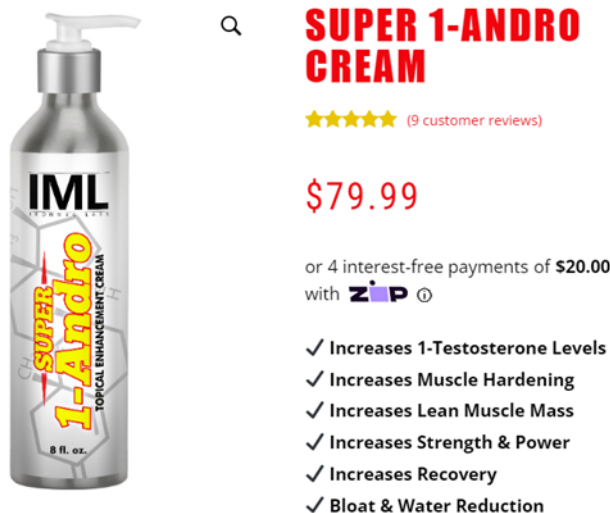
73. Super 1-Andro is promoted through www.ironmaglabs.com as well as various social media platforms, including Facebook, Twitter, YouTube and Instagram.

74. Super 1-Andro can be purchased through IronMag Labs' website, various online retailers and elsewhere.

75. When used as directed, Super 1-Andro meets all of the elements of at least claim 1 of the '399 Patent.

76. Claim 1 of the '399 Patent recites a method of administering a DHEA derivative or a physiologically acceptable salt, ester or ether there of as a compound that provides at least one of (a) anti-aging adrenal hormone balance, (b) decreased body weight, (c) reduction of adipose tissue, (d) increased endurance, (e) skeletal muscle growth and (f) increased production of red blood cells.

77. Super 1-Andro is a cream promoted as increasing lean muscle mass, strength and power.



SUPER 1-ANDRO CREAM

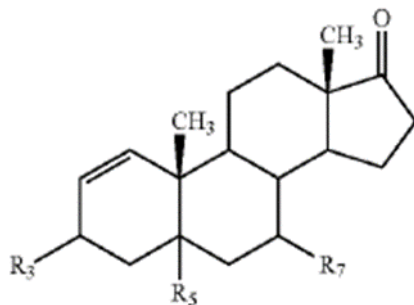
★★★★★ (9 customer reviews)

\$79.99

or 4 interest-free payments of \$20.00 with ZIP

- ✓ Increases 1-Testosterone Levels
- ✓ Increases Muscle Hardening
- ✓ Increases Lean Muscle Mass
- ✓ Increases Strength & Power
- ✓ Increases Recovery
- ✓ Bloat & Water Reduction

78. Claim 1 of the '399 Patent recites the general formula:

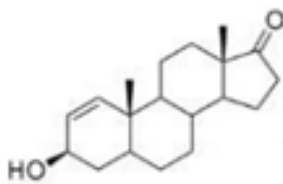


wherein R₃ is one of α -OH and β -OH, R₅ is one of α -H and β -H, and R₇ is one of α -H and β -H.

79. Super 1-Andro lists the active ingredient 1-DHEA and provides the structure below.

ACTIVE INGREDIENT

100mg 1-DHEA (Per 2 Pumps)



1-DHEA

80. Accordingly, when used as directed, Super 1-Andro literally infringes claim 1 of the '399 Patent.

Gear Cream

81. IronMag Labs makes, uses, offers to sell and/or sells the product known as Gear Cream.

82. Gear Cream was designed and is promoted to be applied to the skin of the user to increase lean muscle mass, strength and power.

83. Gear Cream is promoted through www.ironmaglabs.com as well as various social media platforms, including Facebook, Twitter, YouTube and Instagram.

84. Gear Cream can be purchased through IronMag Labs' website, various online retailers and elsewhere.

85. When used as directed, Gear Cream meets all of the elements of at least claim 1 of the '339 Patent.

86. Gear Cream is a cream promoted as increasing lean muscle mass, strength and power.



GEAR CREAM

★★★★★ (18 customer reviews)

\$169.99

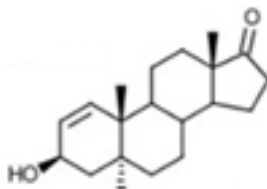
or 4 interest-free payments of \$42.50
with ZIP

Extreme Muscle Mass Gainer

- ✓ Increases Testosterone Levels
- ✓ Decreases Estrogen Levels
- ✓ Increases Lean Muscle Mass
- ✓ Increases Strength & Power
- ✓ Increases Aggression
- ✓ Increases Recovery

87. Gear Cream lists the active ingredient 1-DHEA and provides the structure below.

1-DHEA



88. Accordingly, when used as directed, Gear Cream literally infringes claim 1 of the ‘399 Patent.

INFRINGEMENT OF THE ‘774 PATENT

89. IronMag Labs makes, uses, offers to sell and/or sells the product known as Super 4-Andro Cream (“Super 4-Andro”).

90. Super 4-Andro was designed and is promoted to be applied to the skin of the user to increase lean muscle mass, strength, power and blood volume.

91. Super 4-Andro is promoted through www.ironmaglabs.com as well as various social media platforms, including Facebook, Twitter, YouTube and Instagram.

92. Super 4-Andro can be purchased through IronMag Labs’ website, various online retailers and elsewhere.

93. When used as directed, Super 1-Andro meets all of the elements of at least claim 1 of the ‘774 Patent.

94. Claim 1 of the '774 Patent recites a method of administering a DHEA derivative or a physiologically acceptable salt, ester or ether thereof as a compound that provides at least one of (a) anti-aging adrenal hormone balance, (b) decreased body weight, (c) reduction of adipose tissue, (d) increased endurance, (e) skeletal muscle growth and (f) increased production of red blood cells.

95. Super 4-Andro is a cream promoted as increasing muscle mass, strength, power and blood volume.



SUPER 4-ANDRO CREAM

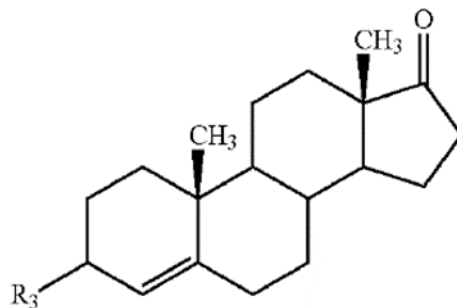
★★★★★ (22 customer reviews)

\$69.99

or 4 interest-free payments of **\$17.50**
with **ZIP** ⓘ

- ✓ Increases Testosterone Levels
- ✓ Increases Muscle Mass
- ✓ Increases Strength & Power
- ✓ Increases Blood Volume
- ✓ Increases IGF-1 & Growth Hormone
- ✓ Increases Libido & Sexual Desire

96. Claim 1 of the '774 Patent recites the general formula:

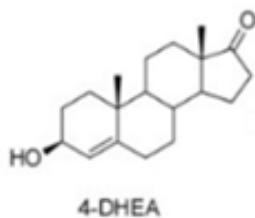


wherein R₃ is one of α -OH and β -OH.

97. Super 4-Andro lists the active ingredient 4-DHEA and provides the structure below.

ACTIVE INGREDIENT

100mg 4-DHEA (Per 2 Pumps)



98. Claim 1 of the '774 Patent recites that the DHEA derivative is administered transdermally.

99. Super 4-Andro is a transdermal topical cream with a suggested use of applying the cream to arms, shoulders/traps, thighs or abdominal areas.

Suggested Use

For best results apply 1 pump of 4-ANDRO Cream twice daily (1 pump in AM & 1 pump in PM) to the upper arms, shoulders/traps, thighs or abdominal areas. Ensure the areas are clean and free from excessive hair, avoid showering or swimming for at least 8 hours after application.



100. Accordingly, when used as directed, Super 4-Andro literally infringes claim 1 of the '774 Patent.

Gear Cream

101. When used as directed, Gear Cream meets all of the elements of at least claim 1 of the '774 Patent.

102. Gear Cream is a cream promoted as increasing lean muscle mass, strength and power.

103. Gear Cream lists the active ingredient 4-DHEA using the acronym.

ACTIVE INGREDIENTS

- 75mg 4-DHEA

104. Gear Cream is a transdermal topical cream with a suggested use of applying it to arms, shoulders/traps, thighs or abdominal areas.

INFRINGEMENT OF THE '918 PATENT

Lean AF Cream

105. IronMag Labs makes, uses, offers to sell and/or sells the product known as Lean AF Cream (“Lean Cream”).

106. Lean Cream was designed and is promoted to be applied to the skin of the user to increase lean muscle mass, promote fat loss, and decrease fat storage.

107. Lean Cream is promoted through www.ironmaglabs.com as well as various social media platforms, including Facebook, Twitter, YouTube and Instagram.

108. Lean Cream can be purchased through IronMag Labs’ website, various online retailers and elsewhere.

109. When used as directed, Lean Cream meets all of the elements of at least claim 1 of the ‘918 Patent.

110. Claim 1 of the ‘918 Patent recites a method of administering a DHEA derivative or a physiologically acceptable salt, ester or ether thereof as a compound that provides at least one of (a) anti-aging adrenal hormone balance, (b) decreased

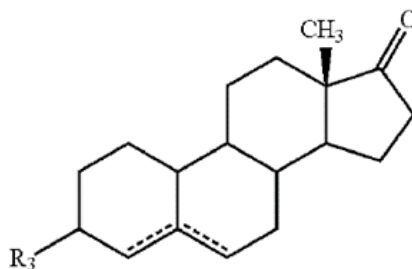
body weight, (c) reduction of adipose tissue, (d) increased endurance, (e) skeletal muscle growth and (f) increased production of red blood cells.

111. Lean Cream is a transdermal topical cream promoted as increasing lean muscle mass, promote fat loss, and decrease fat storage.



Q **LEAN AF CREAM**
★★★★★ (11 customer reviews)
\$74.99
or 4 interest-free payments of \$18.75 with Z^{IP} ⓘ
Male & Female Friendly
✓ Increases Lean Muscle Mass
✓ Increases Muscle Hardening
✓ Increases Metabolism
✓ Promotes Fat Loss
✓ Decreases Fat Storage
✓ Decreases Cortisol
✓ Increases T3/T4 Levels

112. Claim 1 of the '918 Patent recites the general formula:

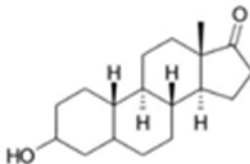


wherein R3 is one of α -OH and β -OH.

113. Lean Cream lists the active ingredients Nor-DHEA and provides the structure below.

ACTIVE INGREDIENTS

19 Nor-DHEA



114. Accordingly, when used as directed, Lean Cream literally infringes claim 1 of the '918 Patent.

115. Defendants have committed patent infringement at least within the State of Georgia, and more particularly, within the Northern District of Georgia, in that Defendants have caused the products that infringe the Patents-In-Suit to be formulated, manufactured, shipped, distributed, advertised, offered for sale, or sold in this District, or introduced into the general stream of commerce with knowledge that these products would cause injury or damage to Hi-Tech in the State of Georgia.

DIRECT INFRINGEMENT

116. By virtue of their activities, Defendants are direct infringers of one or more claims of the Patents-In-Suit.

117. The Infringing Products were specifically formulated, manufactured, shipped, distributed, advertised, offered for sale, or sold by Defendants to contain certain ingredients that, by virtue of their inclusion in the Infringing Products, were known to effectuate the conditions recited in the claims of the Patents-In-Suit.

118. On information and belief, Defendants' officers, directors, employees, agents, representatives, affiliates, individuals sponsored by Defendants, and/or persons who endorse Defendants and/or their Infringing Products, have used or administered the Infringing Products in the manner claimed in one or more of the Patents-In-Suit, or otherwise directly practiced the methods recited in the claims of the Patents-In-Suit.

119. Defendants encouraged and/or are aware that their officers, directors, employees, agents, representatives, affiliates, individuals sponsored by Defendants, or persons who endorse Defendants and/or their Infringing Products, have used or administered the Infringing Products and practiced the claims of one or more of the Patents in Suit, and these individuals or entities are and were acting under one or more of the Defendants' direction and control when practicing the methods in these claims.

INDIRECT INFRINGEMENT

120. By virtue of their activities, Defendants are and were indirect infringers of one or more claims of the Patents in Suit, including committing inducement to infringe and/or contributory infringement.

Inducement To Infringe

121. Defendants induced direct infringement by one or more consumers, end users, or other individuals who have purchased or otherwise acquired the Infringing Products (“End Users”).

122. End Users have used or administered the Infringing Products and/or practiced the methods of the claims of the Patents-In-Suit and are therefore direct infringers.

123. Defendants knew about the Patents-In-Suit as early as May, 2012 and no later than December, 2014 when the License Agreement was executed.

124. Defendants acted with the specific intention to induce End Users to infringe one or more of the Patents-In-Suit.

125. Defendants knew that the acts of the End Users would constitute infringement of one or more of the Patents-In-Suit, or despite knowing there was a high probability that the acts of the End Users would commit direct infringement, turned a blind eye towards that high probability.

126. The Infringing Products contain ingredients that are formulated for practicing the methods of the claims in the Patents-In-Suit.

127. Defendants’ labels, instructions, and advertising for the Infringing Products provide the elements of one or more of the methods claimed in the Patents-In-Suit in a manner that encourages, urges, or induces End Users to infringe them.

128. Defendants specifically instruct End Users to administer the Infringing Products transdermally to cause one or more of the effects recited in the method claims in the Patents-In-Suit.

129. As a direct result of Defendants' activities, End Users administered the Infringing Products and practiced the methods disclosed one or more of the claims in the Patents-In-Suit.

130. Defendants have therefore specifically intended to cause and therefore induced End Users to directly infringe the claims of the Patents-In-Suit.

Contributory Infringement

131. Defendants have contributed to the direct infringement by End Users.

132. End Users have used or administered the Infringing Products and/or practiced the methods of the claims of the Patents-In-Suit and are therefore direct infringers.

133. Defendants have known about the Patents-In-Suit as early as May, 2012 and no later than December, 2014 when the License Agreement was executed.

134. The Infringing Products are special purpose products formulated and intended to be used to practice the methods of the claims of the Patents-In-Suit.

135. The Infringing Products contain ingredients formulated to infringe the methods of the claims in the Patents-In-Suit when used as directed.

136. The Infringing Products are not staple articles of commerce.

137. The Infringing Products are not suitable for any non-infringing uses.

138. Neither the Defendants' labels, instructions, nor advertisements for the Infringing Products disclose any uses that do not infringe at least one claim of the Patents-In-Suit.

139. The inclusion of ingredients in the Infringing Products that are recited in the claims of the Patents-In-Suit was material to practicing the claimed methods.

140. Defendants had knowledge that the Infringing Products were especially designed for and adapted by End-Users for the practicing of the methods claimed in the Patents-In-Suit.

141. Defendants had knowledge that the Infringing Products, when administered, infringe one or more of the claims of the Patents-In-Suit.

142. Defendants knowingly and willfully elected to indirectly infringe the Patents-In-Suit despite knowledge of the existence of the Patents-In-Suit and the infringing nature of the Infringing Products, or turned a blind eye to such infringement.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 8,338,339

143. Plaintiffs repeat, reallege and incorporate paragraphs 142 as if fully restated herein.

144. Defendants have directly infringed, are directly infringing and will continue to directly infringe, literally or under the doctrine of equivalents, one or more claims of the '339 Patent under 35 U.S.C § 271(a) by making, using, selling, and/or offering for sale the Infringing Products.

145. Defendants have infringed, are infringing, and will continue to infringe, literally and under the doctrine of equivalents, by inducing the infringement of others, of one or more claims of the '339 Patent under 35 U.S.C § 271(b) by making, using, selling, and/or offering for sale the Infringing Products.

146. Defendants have infringed, are infringing, and will continue to infringe, literally or under the doctrine of equivalents, by contributing to the infringement of others, of one or more claims of the '339 Patent under 35 U.S.C § 271(c) by making, using, selling, and/or offering for sale the Infringing Products.

147. Defendants' acts of patent infringement are willful.

148. Plaintiffs have no adequate remedy at law.

149. Defendants' patent infringement is causing irreparable injury to Plaintiffs and, unless enjoined, will continue to cause irreparable injury.

150. As a result of Defendants' intentional and willful infringement, Plaintiffs are entitled to an injunction and damages in a sum to be determined.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 8,580,774

151. Plaintiffs repeat, reallege and incorporate paragraphs 142 as if fully restated herein.

152. Defendants have directly infringed, are directly infringing and will continue to directly infringe, literally or under the doctrine of equivalents, one or more claims of the '774 Patent under 35 U.S.C § 271(a) by making, using, selling, and/or offering for sale the Infringing Products.

153. Defendants have infringed, are infringing, and will continue to infringe, literally and under the doctrine of equivalents, by inducing the infringement of others, of one or more claims of the '774 Patent under 35 U.S.C § 271(b) by making, using, selling, and/or offering for sale the Infringing Products.

154. Defendants have infringed, are infringing, and will continue to infringe, literally or under the doctrine of equivalents, by contributing to the infringement of others, of one or more claims of the '774 Patent under 35 U.S.C § 271(c) by making, using, selling, and/or offering for sale the Infringing Products.

155. Defendants' acts of patent infringement are willful.

156. Plaintiffs have no adequate remedy at law.

157. Defendants' patent infringement is causing irreparable injury to Plaintiffs and, unless enjoined, will continue to cause irreparable injury.

158. As a result of Defendants' intentional and willful infringement, Plaintiffs are entitled to an injunction and damages in a sum to be determined.

COUNT III
INFRINGEMENT OF U.S. PATENT NO. 8,778,918

159. Plaintiffs repeat, reallege and incorporate paragraphs 142 as if fully restated herein.

160. Defendants have directly infringed, are directly infringing and will continue to directly infringe, literally or under the doctrine of equivalents, one or more claims of the '918 Patent under 35 U.S.C § 271(a) by making, using, selling, and/or offering for sale the Infringing Products.

161. Defendants have infringed, are infringing, and will continue to infringe, literally and under the doctrine of equivalents, by inducing the infringement of others, of one or more claims of the '918 Patent under 35 U.S.C § 271(b) by making, using, selling, and/or offering for sale the Infringing Products.

162. Defendants have infringed, are infringing, and will continue to infringe, literally or under the doctrine of equivalents, by contributing to the infringement of others, of one or more claims of the '918 Patent under 35 U.S.C § 271(c) by making, using, selling, and/or offering for sale the Infringing Products.

163. Defendants' acts of patent infringement are willful.

164. Plaintiffs have no adequate remedy at law.

165. Defendants' patent infringement is causing irreparable injury to Plaintiffs and, unless enjoined, will continue to cause irreparable injury.

166. As a result of Defendants' intentional and willful infringement, Plaintiffs are entitled to an injunction and damages in a sum to be determined.

**COUNT IV
BREACH OF CONTRACT**

167. Plaintiffs repeat, reallege and incorporate paragraphs 142 as if fully restated herein.

168. Plaintiffs and Defendants entered into and therefore had several contracts, including the Settlement Agreement and the License Agreement.

169. Defendants breached the License Agreement at least by making, using, offering for sale, or selling the Infringing Products without making royalty payments under the License Agreement and/or using Hi-Tech as a manufacturer for same.

170. As a result of Defendants' breach of the License Agreement, Plaintiffs suffered damages at least in the form of lost royalties and/or manufacturing profits.

171. As a result of Defendants' intentional and unexcused breach of contract, Plaintiffs are entitled to an injunction and damages in a sum to be determined.

172. Pursuant to the License Agreement, Plaintiffs are entitled to recover their attorneys' fees for the enforcement of the License Agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment in their favor on all Counts in their Complaint and request the following relief:

1. Enter a judgment that Defendants have infringed and are infringing one or more claims of the Patent-In-Suit under 35 U.S.C. § 271;
2. Permanently enjoin Defendants, their respective officers, directors, agents, servants, and employees, and all individuals in active concert or participation with each, from directly infringing the Patents-In-Suit; or inducing or contributing to the infringement by others in accordance with 35 U.S.C. § 283;
3. Award Plaintiffs damages adequate to compensate for Defendants' infringing acts, at a minimum at reasonable royalty, in accordance with 35 U.S.C. § 284;
4. Increase Plaintiffs' damages up to three times in view of Defendants' deliberate and willful infringement, in accordance with 35 U.S.C. § 284;
5. Award Defendants interest and costs pursuant to 35 U.S.C. § 284 and Rule 54(d) of the Federal Rules of Civil Procedure.

6. Declare that this case is exceptional under 35 U.S.C. § 285 and award Plaintiffs' their attorneys' fees, expenses and costs;
7. Require specific performance by Defendants under the License Agreement;
8. Award compensatory damages under the License Agreement, including without limitation, past royalties;
9. Award Plaintiffs their attorneys' fees under the License Agreement for the enforcement in this action; and
10. Award such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable as a matter of right.

June 20, 2022

Respectfully submitted,

/s/ Arthur W. Leach

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