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Counsel for Plaintiff Access Global Sciences, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

ACCESS GLOBAL SCIENCES, LLC,)

Plaintiff,)

vs.)

IDEAL PERFORMANCE, LLC)

Defendant.)

Civil No: _____

COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND

Plaintiffs Access Global Sciences, LLC hereby complains and alleges as follows against Defendant Ideal Performance, 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 Ideal Performance, LLC is a Wyoming limited liability company with a principal place of business at 1309 Coffeen Avenue, Suite 4070, Sheridan, Wyoming 82801 (hereinafter “Ideal Performance” or “Defendant”).

3. Defendant Ideal Performance, 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, Ideal Performance 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 Defendant as Defendant maintains a principal place of business in this judicial district, has committed and continues 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 its sale of infringing products within this judicial district, expects its actions to have consequences within this judicial district, and derives 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 a registered limited liability company in this judicial district and 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 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. 11,241,403 (the "'403 Patent") which is attached as Exhibit A. The '403 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 '403 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.

'403 Patent, at 6:13-18. Products that practice the invention claimed in the '403 Patent are sometimes referred to as “keto supplements.”

9. Defendant sells a variety of keto supplement products on Amazon, including the exemplary Lifestyle Keto Life Style Max Pills shown below:



<https://www.amazon.com/Lifestyle-Style-Ketogenic-Supplement-Capsules/dp/B09WC6ZRFW>

10. The Defendant describes the benefits of its keto supplement products, and specifically, how such products will help a consumer “achieve ketosis faster:”

ADVANCED KETOSIS FORMULA



<https://www.amazon.com/Lifestyle-Style-Ketogenic-Supplement-Capsules/dp/B09WC6ZRFW>

11. Defendant advertises that its keto supplement products, like the Lifestyle Keto Life Style Max Pills sold above, include the following ingredients:

Supplement Facts		
Serving Size: 2 Capsules		
Servings Per Container: 30		
	Amount Per Serving	% DV
Proprietary Blend	800mg	**
Magnesium Beta-Hydroxybutyrate		
Calcium Beta-Hydroxybutyrate		
Apple Cider Vinegar		
Green Tea Extract		
** Daily Value Not Established.		
Other Ingredients: Gelatin Capsule, Microcrystalline Cellulose, Silicon Dioxide, Magnesium Stearate Vegetable Grade.		

<https://www.amazon.com/Lifestyle-Style-Ketogenic-Supplement-Capsules/dp/B09WC6ZRFW>

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 11,241,403

12. Plaintiff incorporates all of the allegations of the preceding paragraphs as if fully set forth herein.

13. On February 8, 2022, the '403 Patent, titled “Beta-hydroxybutyrate mixed salt compositions and methods of use” was duly and legally issued. A true and correct copy of the '403 Patent is attached as Exhibit A.

14. AGS is the owner of the '403 Patent.

15. Defendant makes, uses, offers for sale, sells, and distributes ketone supplement products that practice the invention of the '403 Patent (the “Accused Products”) including

Defendant's Lifestyle Keto Life Style Max Pills.¹

16. Exemplary claim 13 of the '403 Patent is reproduced below:

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

at least one beta-hydroxybutyrate salts selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,

wherein the composition comprises a greater total weight of calcium and

magnesium beta-hydroxybutyrate salts than a total weight of sodium

and potassium beta-hydroxybutyrate salts,

wherein the composition is free of medium chain fatty acids having 6 to

12 carbons and glycerides or other esters thereof.

'403 Patent, claim 13.

17. The Accused Products infringe at least claim 13 of the '403 Patent in the exemplary

¹ Plaintiff provides an exemplary claim mapping for claim 13 and the Lifestyle Keto Life Style Max Pills. However, the claim mapping for the other Accused Products is identical.

manner described below.

18. To the extent the preamble of claim 13 is limiting, the Accused Products meet the preamble of claim 1 as set forth below:

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

at least one beta-hydroxybutyrate salts selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,

wherein the composition comprises a greater total weight of calcium and

magnesium beta-hydroxybutyrate salts than a total weight of sodium

and potassium beta-hydroxybutyrate salts,

wherein the composition is free of medium chain fatty acids having 6 to

12 carbons and glycerides or other esters thereof.

'403 Patent, claim 13.

ADVANCED KETOSIS FORMULA



<https://www.amazon.com/Lifestyle-Style-Ketogenic-Supplement-Capsules/dp/B09WC6ZRFW>

19. The Accused Products further meet the limitations of claim 13 as set forth below:

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

at least one beta-hydroxybutyrate salts selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,

wherein the composition comprises a greater total weight of calcium and magnesium beta-hydroxybutyrate salts than a total weight of sodium and potassium beta-hydroxybutyrate salts,

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

'403 Patent, claim 13.

Supplement Facts		
Serving Size: 2 Capsules		
Servings Per Container: 30		
	Amount Per Serving	% DV
Proprietary Blend	800mg	**
Magnesium Beta-Hydroxybutyrate		
Calcium Beta-Hydroxybutyrate		
Apple Cider Vinegar		
Green Tea Extract		
** Daily Value Not Established.		
Other Ingredients: Gelatin Capsule, Microcrystalline Cellulose, Silicon Dioxide, Magnesium Stearate Vegetable Grade.		

<https://www.amazon.com/Lifestyle-Style-Ketogenic-Supplement-Capsules/dp/B09WC6ZRFW>

20. The Accused Products further meet the limitations of claim 13 as set forth below:

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

at least one beta-hydroxybutyrate salts selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,

wherein the composition comprises a greater total weight of calcium and magnesium beta-hydroxybutyrate salts than a total weight of sodium and potassium beta-hydroxybutyrate salts,

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

'403 Patent, claim 13.

Supplement Facts		
Serving Size: 2 Capsules		
Servings Per Container: 30		
	Amount Per Serving	% DV
Proprietary Blend	800mg	**
Magnesium Beta-Hydroxybutyrate		
Calcium Beta-Hydroxybutyrate		
Apple Cider Vinegar		
Green Tea Extract		
** Daily Value Not Established.		
Other Ingredients: Gelatin Capsule, Microcrystalline Cellulose, Silicon Dioxide, Magnesium Stearate Vegetable Grade.		

<https://www.amazon.com/Lifestyle-Style-Ketogenic-Supplement-Capsules/dp/B09WC6ZRFW>

21. The Accused Products further meet the limitations of claim 13 as set forth below:

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

at least one beta-hydroxybutyrate salts selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,
 wherein the composition comprises a greater total weight of calcium and
 magnesium beta-hydroxybutyrate salts than a total weight of sodium
 and potassium beta-hydroxybutyrate salts,
**wherein the composition is free of medium chain fatty acids having
 6 to 12 carbons and glycerides or other esters thereof.**

'403 Patent, claim 13.

	Amount Per Serving	%DV
Proprietary Blend	800mg	**
Magnesium Beta-Hydroxybutyrate		
Calcium Beta-Hydroxybutyrate		
Apple Cider Vinegar		
Green Tea Extract		
** Daily Value Not Established.		
Other Ingredients: Gelatin Capsule, Microcrystalline Cellulose, Silicon Dioxide, Magnesium Stearate, Vegetable Grade.		

<https://www.amazon.com/Lifestyle-Style-Ketogenic-Supplement-Capsules/dp/B09WC6ZRFW>

22. Defendant has directly infringed claim 13 of the '403 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 '403 Patent under 35 U.S.C. § 271(a).

23. Defendant is on notice of its direct and indirect infringement of the '403 Patent, having received written notice of their infringement from AGS and Amazon regarding their infringement of the '403 Patent.

24. 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.

25. Defendant has willfully infringed the '403 Patent with knowledge of the '403 Patent or was willfully blind to the '403 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 the '403 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 '403 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 8th day of June 2022.

Respectfully submitted,

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

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