

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SEPPIC, INC.,

Plaintiff,

v.

PHARMACTIVE BIOTECH PRODUCTS, S.L.U.,

Defendant.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

JURY TRIAL DEMANDED

(Filed Electronically)

**COMPLAINT AND DEMAND FOR JURY TRIAL FOR DECLARATORY JUDGMENT
OF NON-INFRINGEMENT, INVALIDITY, AND NO VIOLATION OF § 1125(a) OF
THE LANHAM ACT**

Plaintiff Seppic, Inc. (“Seppic”) hereby pleads the following claims for Declaratory Judgment against Defendant Pharmactive Biotech Products, S.L.U. (“Pharmactive”). In support of its Complaint, Seppic alleges as follows:

NATURE OF THE ACTION

1. Seppic brings this suit to prevent Defendant Pharmactive from continuing to make objectively baseless, bad faith, false and misleading allegations that Seppic has infringed or is infringing United States Patent No. 10,933,110 (the “’110 Patent”) or has engaged or is engaging in false advertising and unfair competition under the Lanham Act. In making such allegations, Pharmactive has repeatedly threatened Seppic with litigation, despite Seppic clearly not having infringed the ’110 Patent or violated the Lanham Act. Seppic seeks a declaration under 28 U.S.C. §§ 2201 and 2202 that (1) its products do not infringe the ’110 Patent; (2) the ’110 Patent is invalid; and (3) it has not engaged in unfair competition or false advertising under the Lanham Act.

PARTIES

2. Plaintiff Seppic, Inc. is a New Jersey corporation, with its principal place of business at 30 Two Bridges Road, Suite 210, Fairfield, NJ 07004.

3. Seppic is an innovator and global leader in the business of developing, manufacturing, and distributing high quality, unique ingredients for use in a wide range of cosmetic, nutraceutical, pharmaceutical, veterinary, and industrial products. As relevant to this action, Seppic is the exclusive distributor in the United States of a saffron-based ingredient trade named “Safr’Inside™.”

4. On information and belief, Defendant Pharmactive is a company organized and existing under the laws of Spain, with its principal place of business at Avenue del Dr. Severo Ochoa, 37 Local 4J, Madrid, Spain 28108.

5. On information and belief, Pharmactive is the owner by assignment of the ’110 Patent.

6. On information and belief, Pharmactive makes and sells a saffron based ingredient product trade named “Affron®,” which, when administered for the treatment of low mood, is an embodiment of the claims of the ’110 Patent.

7. On information and belief, Pharmactive has entered into a distribution partnership with Gencor Pacific, Ltd. and/or its affiliates (collectively, “Gencor”), pursuant to which Gencor has exclusive rights to market and distribute Pharmactive’s Affron® ingredients in the United States. *See* Ex. A.

SUBJECT MATTER JURISDICTION

8. Counts I and II of this action seek declaratory judgment and arise under the United States patent laws, Title 35, U.S. Code, including but not limited to 35 U.S.C. § 271. Therefore, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and

15 U.S.C. § 1121. This Court has subject matter jurisdiction over Count III under 28 U.S.C. § 1331 and 1338(b). These claims are also brought pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202 with respect to an actual controversy within this Court’s jurisdiction.

9. In a letter dated May 12, 2022 (the “Cease and Desist Letter”), Pharmactive, through its US outside counsel, demanded that Seppic’s “unlawful conduct immediately cease in order to avoid further action by this office.” *See* Ex. B, at 2.

10. Pharmactive’s Cease and Desist Letter accuses Seppic of false advertising in violation of the Lanham Act and asserts that Seppic’s distribution of Safr’Inside™ throughout the United States “continues to infringe upon the [’110 Patent].” *See* Ex. B, at 1–2. In its concluding paragraph, the Cease and Desist Letter threatens that Pharmactive “is prepared to proceed to seek court intervention, if necessary, to stop Seppic from causing further harm to Pharmactive and the consuming marketplace” and that “Pharmactive has authorized [its counsel] to take all appropriate and necessary action, including the filing of litigation seeking both monetary and injunctive relief.” *See id.* at 6.

11. In its Cease and Desist Letter, Pharmactive identifies, *inter alia*, the ’110 Patent as one of the bases for its demands and makes clear its intent to enforce the ’110 Patent related to Seppic’s distribution of Safr’Inside™.

12. In the follow up meetings, on June 10th, July 14th, July 28th, and September 1st, Seppic attempted to settle the matter in order to avoid the costs, financial and otherwise, associated with litigation.

13. As a result of Pharmactive’s threats, this is a “case of actual controversy” between the parties under the Declaratory Judgment Act, 28 U.S.C. § 2201, and jurisdiction is proper in this Court.

PERSONAL JURISDICTION AND VENUE

14. This Court may exercise jurisdiction over Pharmactive pursuant to Federal Rule of Civil Procedure 4(k)(2) because (a) Seppic's claims arise under federal law; (b) Pharmactive is a foreign defendant not subject to general personal jurisdiction in the courts of any state; and (c) Pharmactive has formed sufficient contacts with the United States as a whole such that the Court's exercise of jurisdiction over Pharmactive satisfies due process.

15. Pharmactive has purposefully directed its activities at the United States including, but not limited to, by pursuing and obtaining the '110 Patent and sending the related Cease and Desist letter to Seppic (a resident of the United States) at its Fairfield, New Jersey office and explicitly threatening Seppic's U.S. business; entering into an exclusive partnership with Gencor to market and sell its Affron® Product throughout the United States; and threatening to file a lawsuit accusing Seppic of patent infringement and various violations of the Lanham Act and other competition laws. As Pharmactive's Cease and Desist letter admits, "Pharmactive has expended substantial sums of money both in the United States and abroad in the development, production and marketing of the *affron* Product." *See* Ex. B, at 1.

16. As Pharmactive has purposefully availed itself of the benefits and protections of U.S. laws through its commercial activities and its enforcement of the '110 Patent, this Court's exercise of jurisdiction over Pharmactive comports with due process.

17. For these reasons, and for other reasons that will be presented to the Court if jurisdiction is challenged, the Court has personal jurisdiction over Pharmactive.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and/or Fed. R. Civ. P. 4(k)(2).

FACTUAL BACKGROUND

19. The '110 Patent was issued to named inventors Antonio Manuel Inarejos García, Marin Prodanov Prodanov, Amanda Rao, and Jean-Marie Raymond on March 2, 2021. The '110 Patent is titled "Saffron Extract and Its Use for the Prevention of Mood Disorders Related to Depression." A copy of the '110 Patent is attached as Exhibit C.

20. Upon information and belief, the '110 Patent is assigned to Pharmactive.

21. The '110 Patent contains the following claims set forth in their entirety:

The invention claimed is:

1. A method for treatment of low mood, comprising administering to a subject in need thereof a therapeutically effective amount of a composition comprising an extract of saffron stigmas analyzed by HPLC, the composition comprising:

a) between 0.03% and 1% dry weight of safranal, and

b) at least 3.48% dry weight of crocins, wherein said crocins comprise trans-crocic-acid-4, trans-crocic-acid-3, trans-crocic-acid-2', cis-crocic-acid-4, trans-crocic-acid-2, and/or trans-crocic-acid-1.

2. The method according to claim 1, wherein the composition is administered orally.

3. The method according to claim 1, wherein the composition is administered in a dosage greater than 15 mg/day.

4. The method according to claim 1, wherein the composition is administered in a daily dosage of 28 mg/day.

COUNT I

(Non-infringement of the '110 Patent)

22. Seppic restates, realleges, and incorporates by reference all foregoing paragraphs of this Complaint as if set forth here in their entirety.

23. The '110 Patent claims a method for using certain saffron-based ingredients for the treatment of low mood. Seppic does not make, use, offer for sale or sell Safr'Inside™ for the treatment of low mood and therefore does not infringe the claims of the '110 Patent.

24. The '110 Patent claims the treatment of low mood using a specific formulation. Safr'Inside™ does not meet the specific limitations in the claimed formulation and therefore does not infringe the claims of the '110 Patent.

25. Seppic seeks a declaration that its distribution of Safr'Inside™ does not meet all the limitations of any valid claim of the '110 Patent and that the use, offer to sell, and sale of Safr'Inside™, and the importation of Safr'Inside™ into the United States, does not infringe any valid claim of the '110 Patent.

COUNT II

(Invalidity of the '110 Patent)

26. Seppic restates, realleges, and incorporates by reference all foregoing paragraphs of this Complaint as if set forth here in their entirety.

27. The claims of the '110 Patent are invalid for failing to comply with one or more of the statutory requirements and/or conditions for patentability under the patent laws of the United States, including but not limited to 35 U.S.C. §§ 102, 103, 112, and/or 135.

28. By way of example only, the claims of the '110 Patent are invalid as being anticipated under 35 U.S.C. § 102 by at least French Pat. No. FR3004110 B1, which teaches using a composition of extract of Croccus sativus to prevent or treat behavioural disorders such as anxiety, anger, social hostility, obsessive-compulsive disorders, paranoid ideas and/or mild (non-clinical) depression. *See* Ex. D, at 1.

29. The claims of the '110 Patent are also invalid as being anticipated under 35 U.S.C. § 102 by at least Pharmactive's own clinical trial, which, upon information and belief, was freely accessible online as early as October 2, 2014 and teaches using "a tablet-form herbal formulation containing Affron, a standardised extract of Saffron (*Crocus sativus*) extract," to treat "[a]dult males and females reporting having a low mood but . . . not diagnosed with a mood disorder such as depression." *See* Ex. E, at 2.

30. The claims of the '110 Patent are also invalid as being anticipated under 35 U.S.C. § 102 by at least Safr'InsideTM, which was itself on sale at least as early as May 27, 2011.

31. Seppic seeks a declaration that the '110 Patent is invalid.

COUNT III

(No False Advertising or Unfair Competition Under the Lanham Act)

32. Seppic restates, realleges, and incorporates by reference all foregoing paragraphs of this Complaint as if set forth here in their entirety.

33. In its Cease and Desist Letter, Pharmactive accuses Seppic of false and misleading advertising under the Lanham Act, 15 U.S.C. § 1125(a), asserting that Seppic's use of "emotional stress" in connection with its advertising of Safr'InsideTM is an "unlawful attempt to side-step the Pharmactive Patent," which "mislead[s] the consuming marketplace to the detriment of Pharmactive." *See* Ex. B, at 3–4; *see, e.g.*, Ex. F, at 2 (showing Seppic's use of "emotional stress" in connection with Safr'InsideTM).

34. Such a claim is entirely without merit. Nothing in Seppic's advertising of Safr'InsideTM constitutes false or misleading advertising or in any other way violates the Lanham Act or any other statute.

35. Seppic seeks a declaratory judgment that its advertising and marketing of Safr'InsideTM does not constitute false advertising or unfair competition under the Lanham Act, 15 U.S.C. § 1125(a) or any other statute.

REQUEST FOR RELIEF

WHEREFORE, Seppic respectfully requests judgment be entered in its favor and against Pharmactive, such judgment providing:

- A. That Seppic has not infringed the '110 Patent;
- B. That the '110 Patent is invalid;
- C. That Seppic's past, present, and continued advertising and marketing of Safr'InsideTM is not false or misleading under the Lanham Act, nor does it compete unfairly with Pharmactive;
- D. That the allegations of infringement made by Pharmactive are baseless and have been made in bad faith;
- E. That Seppic be awarded costs pursuant to Federal Rule of Civil Procedure 54(d)(1);
- F. That this case is exceptional and awarding Seppic its attorneys' fees and costs under 35 U.S.C. § 285;
- G. That Pharmactive and its agents, officers, employees, representatives, successors, assigns, and all other persons acting for, with, by, through, or under authority from Pharmactive be preliminarily and permanently enjoined from making any further allegations that Seppic's marketing, commercialization, or distribution of Safr'InsideTM infringes the '110 Patent or violates the Lanham Act or any other law; and
- H. Such further and other relief as this Court may deem just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38 and Local Rule 38.1, Seppic demands a jury trial on all issues and claims so triable.

Dated: September 26, 2022

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