

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

KARMAGREEN, LLC,)
)
Plaintiff,)
)
v.)
)
UNITED WHOLESALE &)
DISTRIBUTOR INC.,)
Defendant.)
)
)

Case No.: _____

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Karmagreen, LLC (“Plaintiff” or “Karmagreen”) by and through its attorneys, for its Complaint against Defendant United Wholesale & Distributor Inc. (“United Wholesale” or “Defendant”), alleges as follows:

NATURE OF ACTION

1. This is a civil action against Defendant for patent infringement under the Patent Act, 35 U.S.C. § 271 *et seq.* for the infringement of United States Patent Nos. 10,624,902 (“the ’902 patent”), 11,324,754 (“the ’754 Patent”), 11,324,755 (“the ’755 Patent), and 11,318,146 (“the ’146 Patent”) (collectively, the “Patents-in-Suit”) based on Defendant’s unauthorized manufacture, use, offer for sale, and/or sale in the United States, and/or importation into the United States of Pegasus, TD

Mega, TD Plus, and TD Red (collectively, “the Accused Products”). True and correct copies of the Patents-in-Suit are attached as Exhibits 1-4 to this Complaint.

PARTIES

2. Karmagreen is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 912 SE 46th Lane, Cape Coral, Florida 33904.

3. United Wholesale & Distributor Inc. is a Georgia corporation with its principal place of business at 4679 Hugh Howell Road, Suite B, Tucker, Georgia 30084.

JURISDICTION

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

5. Personal jurisdiction over Defendant is proper in this District because, on information and belief, Defendant is incorporated under the laws of Georgia, maintains its principal place of business in this District, and has committed acts of patent infringement in this District.

VENUE

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b) because, on information and belief, Defendant is incorporated under the laws of the State of Georgia and resides in this District.

FACTS

The Patents-in-Suit

7. The '902 Patent (Exhibit 1), entitled "Dietary Supplement," was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on April 21, 2020. The '902 Patent is generally directed towards a dietary supplement consisting of tianeptine-based combinations.

8. All rights, title, choses in action, and interest in the '902 Patent are assigned to Karmagreen, which is the sole owner of the '902 Patent. The listed inventor of the '902 Patent assigned his rights, title, and interest in the '902 Patent to Karmagreen.

9. The '754 Patent (Exhibit 2), entitled "Dietary Supplement," was duly and legally issued by the USPTO on May 10, 2022. The '754 Patent is generally directed towards supplements including the ingredients tianeptine and sakae naa.

10. All rights, title, choses in action, and interest in the '754 Patent are assigned to Karmagreen, which is the sole owner of the '754 Patent. The listed

inventor of the '754 Patent assigned his rights, title, and interest in the '754 Patent to Karmagreen.

11. The '755 Patent (Exhibit 3), entitled "Dietary Supplement," was duly and legally issued by the USPTO on May 10, 2022. The '755 Patent is generally directed towards a dietary supplement including the ingredients tianeptine and kava.

12. All rights, title, choses in action, and interest in the '755 Patent are assigned to Karmagreen, which is the sole owner of the '755 Patent. The listed inventor of the '755 Patent assigned his rights, title, and interest in the '755 Patent to Karmagreen.

13. The '146 Patent (Exhibit 4), entitled "Dietary Supplement," was duly and legally issued by the USPTO on May 3, 2022. The '146 Patent is generally directed towards a dietary supplement including the ingredients sakae naa and kava.

14. All rights, title, choses in action, and interest in the '146 Patent are assigned to Karmagreen, which is the sole owner of the '146 Patent. The listed inventor of the '146 Patent assigned his rights, title, and interest in the '146 Patent to Karmagreen.

Plaintiff's Business

15. Plaintiff sells dietary products.

16. Amongst its products is a product line called TIANAA[®].

17. TIANAA products are manufactured in a manner covered by the claims of the Patents-in-Suit.

18. In addition to the Patents-in-Suit, Karmagreen owns various other intellectual property rights concerning its TIANAA product line, including pending patent applications and multiple trademark registrations, such as TIANAA, TIANAA EX, TIANAA GREEN, TIANAA RED, and TIANAA WHITE.

Defendant's Infringing Acts Related To The Accused Products

19. On information and belief, Defendant has known of, should have known of, or has been willfully blind to, the Patents-in-Suit. To the extent applicable, Plaintiff has complied with the patent marking and notice provisions of 35 U.S.C. § 287 by providing constructive and actual notice to Defendant of its infringement.

20. Defendant has possessed actual knowledge of the '902 Patent from at least as early as November 2021 following receipt of a subpoena from Plaintiff in separate litigation involving the '902 Patent.

21. Upon information and belief, Defendant and/or parties under its supervision or control have been tracking Plaintiff's business, products, and intellectual property rights and have been modeling products after those of Plaintiff.

22. Upon information and belief, Defendant and/or parties under its supervision or control have manufactured and/or sold a number of products intended to replicate Plaintiff's TIANAA brand products, including the Accused Products.

23. Upon information and belief and as described below, the Accused Products infringe the claims of the Patents-in-Suit.

24. Upon information and belief, Defendant makes, and then sells and offers for sale the Accused Products through various channels, including but not limited to wholesalers, physical retail stores and online marketplaces. Upon information and belief, Defendant also distributes the Accused Products through third parties.

25. Upon information and belief, Defendant thus engages in the unauthorized manufacture, use, offer for sale, and/or sale in the United States, and/or importation into the United States, of the Accused Products. Based on these acts, Defendant has directly infringed, and/or will directly infringe, the claims of the Patents-in-Suit that cover the method of manufacturing the Accused Products.

26. A true and correct image of the Pegasus product is reproduced below:



27. The Pegasus product label indicates that the product contains combretum quadrangulare leaf, tianeptine, and piper methysticum.

28. A true and correct image of the TD Mega product is reproduced below:



29. The TD MEGA product label indicates that the product contains combretum quadrangulare leaf, tianeptine, and piper methysticum.

30. A true and correct image of the TD Plus product is reproduced below:



31. The TD PLUS product label indicates that the product contains combretum quadrangulare leaf, tianeptine, and piper methysticum.

32. A true and correct image of the TD Red product is reproduced below:



33. The TD RED product label indicates that the product contains combretum quadrangulare leaf, tianeptine, and piper methysticum.

Infringement of the Patents-in-Suit

34. On information and belief, based on Plaintiff's current investigation, Defendant, either directly or through an agent under its control, manufactures the Accused Products within the United States which are made by a process recited in claims 1, 4, and 7 of the '902 Patent and therefore infringes, and continues to infringe, those claims as follows below.

Table 1 – '902 Patent		
<i>Claim</i>	<i>Claim Element</i>	<i>Claimed Element Present in Accused Products</i>
1	A method of forming a dietary supplement, comprising steps of:	To the extent the preamble of claim 1 is found limiting, the labels of the Accused Products indicate that they are dietary supplements.
	creating a composition of matter comprising a first ingredient of tianeptine sodium,;	The labels of the Accused Products indicate that they contain tianeptine (tianepten).
	a second ingredient of sakae naa;	The labels of the Accused Products indicate that they contain combretum quadrangulare leaf, which is sakae naa.
	a third ingredient of stearate,	On information and belief, the Accused Products contain stearate.
	and a fourth ingredient of silicate	On information and belief, the Accused Products contain silicate.
	and filling a capsule with the composition of matter to form the dietary supplement.	The labels of the Accused Products indicate that the composition is contained within capsules.
4	The method of claim 1, wherein the composition of matter further comprises a fifth ingredient of tianeptine free acid.	The labels of the Accused Products indicate that they contain tianeptine (tianepten). On information and belief, the Accused Products contain tianeptine free acid.
7	The method of claim 4, wherein the composition of matter further comprises a sixth ingredient of kava.	The labels of the Accused Products indicate that they contain piper methysticum, which is kava.

35. On information and belief, based on Plaintiff's current investigation, Defendant, either directly or through an agent under its control, manufactures the Accused Products within the United States which are made by a process recited in claims 1, 2, 27, and 28 of the '754 Patent and therefore infringes, and continues to infringe, those claims as follows below.

Table 2 – '754 Patent		
<i>Claim</i>	<i>Claim Element</i>	<i>Claimed Element Present in Accused Products</i>
1	A method of forming a dietary supplement, comprising steps of:	To the extent the preamble of claim 1 is found limiting, the labels of the Accused Products indicate that they are dietary supplements.
	creating a composition of matter comprising a first ingredient of tianeptine and	The labels of the Accused Products indicate that they contain tianeptine (tianepten).
	a second ingredient of sakae naa;	The labels of the Accused Products indicate that they contain combretum quadrangulare leaf, which is sakae naa.
	and providing the composition of matter in one of a liquid and a solid form as the dietary supplement.	The labels of the Accused Products indicate that the composition is contained within capsules, which is a solid form.
2	The method of claim 1, wherein providing the composition of matter includes filling a container with the composition of matter.	The labels of the Accused Products indicate that the composition is contained within capsules.

Table 2 – '754 Patent		
<i>Claim</i>	<i>Claim Element</i>	<i>Claimed Element Present in Accused Products</i>
27	The method of claim 1, wherein the composition of matter further comprises a third ingredient of one of kava, CDP choline, and alpha GPC.	The labels of the Accused Products indicate that they contain piper methysticum, which is kava.
28	The method of claim 27, wherein providing the composition of matter includes filling a container with the composition of matter.	The labels of the Accused Products indicate that the composition is contained within capsules.

36. On information and belief, based on Plaintiff's current investigation, Defendant, either directly or through an agent under its control, manufactures the Accused Products within the United States which are made by a process recited in claims 1 and 2 of the '755 Patent and therefore infringes, and continues to infringe, those claims as follows below.

Table 3 – '755 Patent		
<i>Claim</i>	<i>Claim Element</i>	<i>Claimed Element Present in Accused Products</i>
1	A method of forming a dietary supplement, comprising steps of:	To the extent the preamble of claim 1 is found limiting, the labels of the Accused Products indicate that they are dietary supplements.

Table 3 – '755 Patent		
<i>Claim</i>	<i>Claim Element</i>	<i>Claimed Element Present in Accused Products</i>
	creating a composition of matter comprising a first ingredient of tianeptine and	The labels of the Accused Products indicate that they contain tianeptine (tianepten).
	a second ingredient of kava;	The labels of the Accused Products indicate that they contain piper methysticum, which is kava.
	and providing the composition of matter in one of a liquid and a solid form as the dietary supplement.	The labels of the Accused Products indicate that the composition is contained within capsules, which is a solid form.
2	The method of claim 1, wherein providing the composition of matter includes filling a container with the composition of matter.	The labels of the Accused Products indicate that the composition is contained within capsules.

37. On information and belief, based on Plaintiff's current investigation, Defendant, either directly or through an agent under its control, manufactures the Accused Products within the United States which are made by a process recited in claims 1 and 2 of the '146 Patent and therefore infringes, and continues to infringe, those claims as follows below.

Table 4 – '146 Patent		
<i>Claim</i>	<i>Claim Element</i>	<i>Claimed Element Present in Accused Products</i>
1	A method of forming a dietary supplement, comprising steps of:	To the extent the preamble of claim 1 is found limiting, the labels of the Accused Products indicate that they are dietary supplements.
	creating a composition of matter comprising a first ingredient of sakae naa and	The labels of the Accused Products indicate that they contain combretum quadrangulare leaf, which is sakae naa.
	a second ingredient of kava;	The labels of the Accused Products indicate that they contain piper methysticum, which is kava.
	and providing the composition of matter in one of a liquid and a solid form as the dietary supplement.	The labels of the Accused Products indicate that the composition is contained within capsules, which is a solid form.
2	The method of claim 1, wherein providing the composition of matter includes filling a container with the composition of matter.	The labels of the Accused Products indicate that the composition is contained within capsules.

WILLFUL INFRINGEMENT

38. On information and belief, Defendant has known of, should have known of, or has been willfully blind to, the Patents-in-Suit.

39. On information and belief, Defendant has known of, should have known of, or has been willfully blind to, the fact that the behavior complained of herein infringes the Patents-in-Suit.

40. Defendant's foregoing actions constitute willful infringement of the Patents-in-Suit.

COUNT I
Direct Infringement of the '902 Patent

41. Karmagreen repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of paragraphs 1-8, 15-34, and 38-40 as set forth above.

42. Defendant has directly infringed, and continues to infringe, in violation of 35 U.S.C. § 271(a), at least Claims 1, 4, and 7 of the '902 Patent, either literally or under the doctrine of equivalents, during the period prior to the expiration of the '902 Patent by making, using, selling, offering for sale in the United States, and/or importing into the United States, the Accused Products without the permission, consent, authorization, or license of Karmagreen in this judicial district and elsewhere throughout the United States.

43. Defendant's acts of infringement, including willful infringement, of the '902 Patent have caused, and will continue to cause, harm and injury to Karmagreen for which Karmagreen is entitled to compensation (no less than a reasonable royalty) pursuant to 35 U.S.C. § 284.

44. Defendant's acts of infringement of the '902 Patent have caused, and will continue to cause, Karmagreen immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. Karmagreen has no adequate remedy at law.

45. This case is exceptional and, therefore, Karmagreen is entitled to an award of attorney fees pursuant to 35 U.S.C. § 285.

COUNT II
Direct Infringement of the '754 Patent

46. Karmagreen repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of paragraphs 1-6, 9-10, 15-33, 35, and 38-40 as set forth above.

47. Defendant has directly infringed, and continues to infringe, in violation of 35 U.S.C. § 271(a), at least Claims 1, 2, 27, and 28 of the '754 Patent, either literally or under the doctrine of equivalents, during the period prior to the expiration of the '754 Patent by making, using, selling, offering for sale in the United States, and/or importing into the United States, the Accused Products without the

permission, consent, authorization, or license of Karmagreen in this judicial district and elsewhere throughout the United States.

48. Defendant's acts of infringement, including willful infringement, of the '754 Patent have caused, and will continue to cause, harm and injury to Karmagreen for which Karmagreen is entitled to compensation (no less than a reasonable royalty) pursuant to 35 U.S.C. § 284.

49. Defendant's acts of infringement of the '754 Patent have caused, and will continue to cause, Karmagreen immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. Karmagreen has no adequate remedy at law.

50. This case is exceptional and, therefore, Karmagreen is entitled to an award of attorney fees pursuant to 35 U.S.C. § 285.

COUNT III
Direct Infringement of the '755 Patent

51. Karmagreen repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of paragraphs 1-6, 11-12, 15-33, 36, and 38-40 as set forth above.

52. Defendant has directly infringed, and continues to infringe, in violation of 35 U.S.C. § 271(a), at least Claims 1 and 2 of the '755 Patent, either literally or under the doctrine of equivalents, during the period prior to the expiration of the

'755 Patent by making, using, selling, offering for sale in the United States, and/or importing into the United States, the Accused Products without the permission, consent, authorization, or license of Karmagreen in this judicial district and elsewhere throughout the United States.

53. Defendant's acts of infringement, including willful infringement, of the '755 Patent have caused, and will continue to cause, harm and injury to Karmagreen for which Karmagreen is entitled to compensation (no less than a reasonable royalty) pursuant to 35 U.S.C. § 284.

54. Defendant's acts of infringement of the '755 Patent have caused, and will continue to cause, Karmagreen immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. Karmagreen has no adequate remedy at law.

55. This case is exceptional and, therefore, Karmagreen is entitled to an award of attorney fees pursuant to 35 U.S.C. § 285.

COUNT IV
Direct Infringement of the '146 Patent

56. Karmagreen repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of paragraphs 1-6, 13-33, and 37-40 as set forth above.

57. Defendant has directly infringed, and continues to infringe, in violation of 35 U.S.C. § 271(a), at least Claims 1 and 2 of the '146 Patent, either literally or under the doctrine of equivalents, during the period prior to the expiration of the '146 Patent by making, using, selling, offering for sale in the United States, and/or importing into the United States, the Accused Products without the permission, consent, authorization, or license of Karmagreen in this judicial district and elsewhere throughout the United States.

58. Defendant's acts of infringement, including willful infringement, of the '146 Patent have caused, and will continue to cause, harm and injury to Karmagreen for which Karmagreen is entitled to compensation (no less than a reasonable royalty) pursuant to 35 U.S.C. § 284.

59. Defendant's acts of infringement of the '146 Patent have caused, and will continue to cause, Karmagreen immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. Karmagreen has no adequate remedy at law.

60. This case is exceptional and, therefore, Karmagreen is entitled to an award of attorney fees pursuant to 35 U.S.C. § 285.

JURY DEMAND

61. Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

A. Adjudging that Defendant directly infringed the Patents-in-Suit in violation of 35 U.S.C. § 271(a);

B. Granting an injunction permanently enjoining Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries, and assigns, and all of those in active concert and participation with any of the foregoing persons or entities, from infringing the Patents-in-Suit;

C. Ordering Defendant to account and pay damages adequate to compensate Plaintiff for Defendant's infringement of the Patents-in-Suit, including pre-judgment and post-judgment interest and costs pursuant to 35 U.S.C. § 284;

D. Ordering an accounting for any infringing sales not presented at trial and an award by the court of additional damages for any such infringing sales.

E. Ordering that the damages award be increased up to three times the actual amount assessed pursuant to 35 U.S.C. § 284;

F. Declaring this case exceptional and awarding Plaintiff its reasonable attorney fees pursuant to 35 U.S.C. § 285; and

G. Awarding such other and further relief as this Court deems just and proper.

Dated: October 6, 2022

Respectfully submitted,

BLOOM PARHAM, LLP

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Local Rule 7.1(D) Certification of Compliance

I hereby certify that the foregoing pleading has been prepared with Times New Roman font, 14 point, one of the font and point selections approved by the Court in L.R. 5.1B, N.D. Ga.

This 6th day of October, 2022.

/s/ Troy R. Covington
Troy R. Covington
Georgia Bar No. 190949