

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

AXCESS GLOBAL SCIENCES, LLC, a
Utah Limited Liability Company

Plaintiff,

vs.

TETIANA UDOVYTSKA dba
GREATNESSFROMTHEUS dba
VITALENA NATURE, an individual, and
MARYNA STEBLIANKO dba
SMARTORIGINS dba VITALENA
NATURE, an individual,

Defendants.

JURY DEMANDED

**COMPLAINT FOR PATENT INFRINGEMENT OF U.S. PATENT NOS. 11,241,403 AND
11,020,362, FALSE ADVERTISING, UNFAIR COMPETITION, AND DECEPTIVE AND
UNFAIR TRADE PRACTICES**

Plaintiff Access Global Sciences, LLC (“AGS” or “Plaintiff”) complains and alleges the following against Defendants Tetiana Udovytska (“Udovytska”), and Maryna Steblianko (“Steblianko”) (collectively, “Defendants”) doing business as Vitalena Nature.

NATURE OF THE CLAIMS

1. This is an action for federal false advertising and unfair competition under Section 43 of the Lanham Act, 15 U.S.C. § 1125(a), patent infringement under 35 U.S.C. §§ 1, *et seq*, and state deceptive and unfair trade practices under the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.204 (2022).

2. Plaintiff is the owner of U.S. Pat. Nos. 11,241,403 (the “403 Patent”) and

11,020,362 (the “362 Patent”) (collectively, the “Asserted Patents”). See Exs. A and B. The Asserted Patents include claims for unique formulations of the health supplement Beta-Hydroxybutyrate (“BHB”).

3. Defendants make, use, advertise, offer for sale, sell, and/or import a product called Vitalena Nature Keto Burn that contains BHB (“Vitalena BHB”):



www.amazon.com/dp/B0BRY18HDZ

4. Vitalena BHB infringes at least representative claim 1 of the '403 Patent and representative claim 1 of the '362 Patent.

5. Plaintiff has suffered harm from Defendants' infringement of the Asserted Patents in the form of lost profits.

6. Defendants also sell another product called Vitalena Nature Keto Extra Strength Gummies (“Vitalena Gummies”) that purportedly contains a substance called “raspberry ketones” as the only active ingredient:



Supplement Facts	
Serving Size 2 Gummies	
Servings Per Container 30	
Amount Per Serving	% Daily Value
Calories 10	
Total Fat 0g	0%†
Saturated Fat 0mg	0%†
Trans Fat 0g	**
Sodium 2mg	<1%†
Total Carbohydrate 2g	<1%†
Dietary Fiber 0g	0%†
Total Sugars 2g	**
Includes 2g Added Sugars	4%†
Protein 2g	4%†
Raspberry Ketones 166mg	**
†Percent Daily Values are based on a 2,000 calorie diet	
** Daily Value not established	
Other Ingredients: Corn Syrup, Sugar, Water, Pectin, Citric Acid, Natural and Artificial Flavors, Carnauba Leaf Wax, Yellow #5 and #6, Red #40, Blue #1.	

www.amazon.com/dp/B0BMTMSFF8

7. Legitimate ketone supplements are powerful nutritional tools. Consumers use legitimate ketone supplements to achieve nutritional ketosis which reduces appetite and helps achieve weight loss. Professional athletes also use legitimate ketone supplements to enhance their physical performance. As described in one prominent academic journal:

For therapeutic effects, exogenous ketones are ingested in the form of β HB salts or ketone esters to produce acute (~0.5 to 6 h) nutritional ketosis, but a surge in interest in [ketone bodies] as a performance aid for athletes arose when ketone ester supplementation was confirmed in professional cycling. Moreover, a recent report provides the first evidence for acute nutritional ketosis achieved by ketone ester ingestion to alter the metabolic response to exercise and enhance exercise performance.

Evans, M., et al. (2017), *Metabolism of ketone bodies during exercise and training: physiological basis for exogenous supplementation*. J PHYSIOL, 595: 2857-2871. (Exhibit C.)

8. Not all ketones, however, achieve these favorable results. Raspberry ketones in particular are widely known to have no health benefits and can even be harmful:

[T]here is currently no evidence that raspberry ketone supplements can cause weight loss in humans. These are just a few examples in order to emphasize how the huge amount of misleading information [is] distributed and propagated on the Internet. False information about different chemical substances can be very dangerous. Besides assimilation of incorrect information, one can get to much more serious issues, such as treating a disease using ineffective treatments, or even worse, very toxic substances.

Serban, B., et al. (2018), *Chemical Compounds in the Online Environment: Quo Vadis?*, J SCI. AND ARTS, 3:44, 739-752. (Exhibit D.)

9. Nevertheless, some companies, like Defendants, still promote raspberry ketones as having health benefits, especially for weight loss:

Perhaps the greatest threat these deceptive promotions pose is to the consumers' health and property . . . Hence, people may consume falsely endorsed healthcare products and procedures with the same intentions. Nevertheless, these items will likely be of no benefit or even cause harm. For example, thousands of women around the world who are trying to lose weight are claimed to have been misled by an internet celebrity diet scam . . . to promote the 'Raspberry Ketone Diet.' However, there is currently no evidence that raspberry ketone supplements can cause weight loss in humans.

Mookadam, F., et al. (2019), *Impact of unauthorized celebrity endorsements on cardiovascular healthcare*, FUTURE CARDIOLOGY, 15:6, 387-390. (Exhibit E.)

10. Displayed prominently in Defendants' advertising are false claims that raspberry ketones contribute to weight loss:

- “[R]aspberry ketones are known to cause the f[at] within cells to be broken down more effectively, helping your body reduce it faster. They also help to increase adiponectin levels, which helps regulate metabolism.” See www.amazon.com/dp/B0BMTMSFF8.
- “Raspberry ketones are a group of natural compounds that give raspberries their distinctly sweet smell and flavor. They are known for their metabolism-inducing properties, allowing for an effective keto diet when combined with healthy eating habits and physical exercises. Our ketones naturally contain antioxidants that will help to improve your mood, provide pure energy, and have a wide range of positive benefits.” See www.amazon.com/dp/B0BMTMSFF8.

- “[R]aspberry ketones helps to jumpstart your metabolism, supports weight management.” See www.amazon.com/dp/B0BMTMSFF8.

11. Customer reviews for Vitalena Gummies reveal that actual consumers have been misled by Defendants’ false advertising:

★★★★★ Delicious and Convenient
By Dina T. in the United States on April 17, 2023
I recently tried the keto gummies from Vitalena Nature, and I have to say, I'm impressed! Not only do they taste great, but they're also an easy way to support my keto diet and give me an extra boost of energy. I love that they're made with natural ingredients and contain exogenous **ketones** and **raspberry ketones**, which have been shown to support weight management and metabolism. The texture of the gummies is perfect - not too chewy, not too sticky - and I appreciate that they're convenient to take on-the-go. [see less](#)

★★★★★ 100% natural weight loss supplement
By Amina Zafar in the United States on May 30, 2023
I have been using them for more than 2 weeks now and love them
💎 They are 100% natural.
💎 They are a good suppressant of appetite.
💎 It helps regulate metabolism and loose weight faster I have lost few pounds since I started using them. I used to snack a lot though out the day but these gummies have really helped me to curb my appetite which is huge factor in losing some pounds.
💎 I love that they are made with natural ingredients and contains exogenous **ketones** and **raspberry ketones**. Which are soo good for loosing weight [see less](#)

★★★★★ More energy!
By Jasmine C in the United States on June 1, 2023
I been doing KETO for a while now and I recently discovered these gummies which provide me with energy. I am able to get through my routine and workouts much better than when I was doing keto alone. My mood is better and my concentration has increased. Due to the **raspberries ketones** in the product I been loosing body fat faster than normal. These gummies are easy to swallow and contain no heavy flavors. Will definitely continue to use them! [see less](#)

★★★★★ These are a game changer for your keto diet
By Bri in the United States on April 25, 2023
The Keto gummies are a fantastic alternative for those following a keto diet like myself who may struggle with energy. I wasn't sure at first glance if these gummies would be the right fit for my body but once reading the description and finding out these gummies are 97% natural I was already sold on the product. I couldn't click but any faster honestly 🤩.
What sets these gummies apart from other supplements is their delicious **raspberry** flavor, which makes it hard to believe that they keto-friendly. I've read about exogenous **ketones** and **raspberry ketones** and found they have been shown to support weight management and metabolism. The texture of the gummies is perfect not too chewy and definitely not too sticky. The smell of the gummies are amazing which definitely makes it super easy to digest because of course part of our senses is making sure what we're in taking smells appealing to the stomach 🤩
Overall, I would recommend these keto gummies to anyone on a keto diet. These are the best I've purchased so far, The price point is definitely very reasonable compared to other companies I have brought from. ❤️ [see less](#)

www.amazon.com/dp/B0BMTMSFF8

12. Plaintiff is a direct competitor of Defendants in the dietary supplements market and specifically for ketone supplements.

13. Plaintiff has suffered harm from Defendants falsely advertising raspberry ketones and Vitalena Gummies in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

14. Plaintiff's immediate, irreparable injuries have no adequate remedy at law, and Plaintiff is entitled to injunctive relief and up to three times its actual damages and/or an award of Defendants' profits, as well as costs and reasonable attorney fees.

THE PARTIES

15. Plaintiff AGS is a Utah limited liability company with a principal place of business at 2157 Lincoln Street, Salt Lake City, UT 84106.

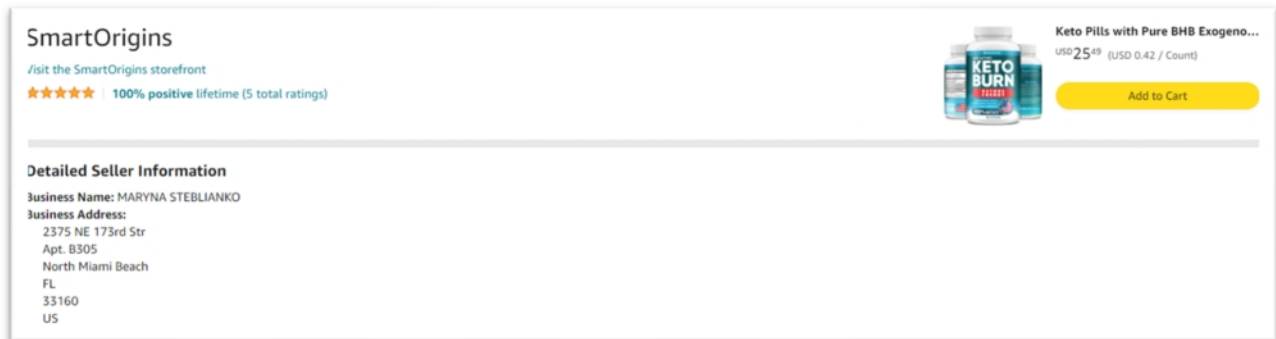
16. Defendant Tetiana Udovytska is an individual residing in Florida with a residential, mailing, and/or business address at 1000 Parkview Dr, Apt 201, Hallandale, FL 33009. Defendant Udovytska *dba* GreatNessFromTheUs is identified on Amazon as the exclusive seller of Vitalena Gummies:



www.amazon.com/sp?ie=UTF8&seller=A4O74BO5V4FA6&asin=B0BMTMSFF8

17. In trademark filings for the mark VITALENA NATURE (Ser. No. 98009065), Defendant Udovytska is also identified as the sole owner and applicant with a listed address at Maryny Raskovoi Lane, Building 15, Kremenchuk, Poltavaska, Ukraine 39600.

18. On information and belief, Defendant Maryna Steblianko is an individual residing in Florida with a residential, mailing, and/or business address at 2375 NE 173rd Str, Apt B305, North Miami Beach, FL 33160. Defendant Steblianko *dba* SmartOrigins is identified on Amazon as the exclusive seller of Vitalena BHB:



www.amazon.com/sp?ie=UTF8&seller=A1JHBLGGVCAXIB&asin=B0BRY18HDZ

19. On information and belief, the Defendants do business as Vitalena Nature and conspire to make, use, offer for sale, sell, and/or import Vitalena BHB knowing that it infringes the Asserted Patents and knowingly and falsely advertise Vitalena Gummies and raspberry ketones. Defendants, therefore, are effectively the same entity for purposes of the misconduct alleged herein.

JURISDICTION

20. This matter arises under the laws of the United States, including under the Lanham Act, 15 U.S.C. § 1125(a), and under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* Thus, the Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331. In addition, the Court has supplemental jurisdiction over Plaintiff's state claims for deceptive and unfair trade practices pursuant to 28 U.S.C. § 1367.

21. The Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b), at least because Defendants reside in this District, have principal places of business in this District, and have committed a substantial portion of the infringements and other misdeeds giving rise to this action from within this District.

BACKGROUND

22. Plaintiff is a leader and 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. Plaintiff has patent rights in many unique formulations of BHB, including those claimed in the Asserted Patents.

23. Defendants make, use, advertise, offer for sale, sell, and/or import Vitalena BHB with a BHB formulation that infringes Plaintiff's exclusive rights in the Asserted Patents.

24. Defendants also falsely advertise that another product, Vitalena Gummies, and its key ingredient, raspberry ketones, contribute to weight loss.

25. On information belief, Defendants have continuously advertised, offered for sale, sold, and/or imported both Vitalena BHB and Vitalena Gummies since at least January 2023.

26. Defendants' infringements and other tortious conduct alleged herein have injured Plaintiff. Plaintiff's immediate, irreparable injuries have no adequate remedy at law, and Plaintiff is entitled to injunctive relief and up to three times its actual damages and/or an award of Defendants' profits, as well as costs and reasonable attorney fees.

FIRST CLAIM FOR RELIEF
False Advertising and Unfair Competition
15 U.S.C. § 1125(a)

27. Plaintiff incorporates and realleges the allegations of paragraphs 1, 6-14, 22, and 24-26 as if fully set forth herein.

28. Defendants falsely advertise that Vitalena Gummies and its key ingredient, raspberry ketones, contribute to weight loss.

29. Displayed prominently in Defendants' advertising are false claims that raspberry ketones contribute to weight loss:

- “[R]aspberry ketones are known to cause the f[at] within cells to be broken down more effectively, helping your body reduce it faster. They also help to increase adiponectin levels, which helps regulate metabolism.” See www.amazon.com/dp/B0BMTMSFF8.
- “Raspberry ketones are a group of natural compounds that give raspberries their distinctly sweet smell and flavor. They are known for their metabolism-inducing properties, allowing for an effective keto diet when combined with healthy eating habits and physical exercises. Our ketones naturally contain antioxidants that will help to improve your mood, provide pure energy, and have a wide range of positive benefits.” See www.amazon.com/dp/B0BMTMSFF8.
- “[R]aspberry ketones helps to jumpstart your metabolism, supports weight management.” See www.amazon.com/dp/B0BMTMSFF8.

30. Customer reviews for Vitalena Gummies reveal that actual consumers have been misled by Defendants' false advertising. See www.amazon.com/dp/B0BMTMSFF8.

31. Plaintiff is a direct competitor of Defendants in the dietary supplements market and specifically for BHB and ketone supplements.

32. At least given the widespread industry knowledge that raspberry ketones do not contribute to weight loss, Defendants made this claim knowing that it is false and with the intent to deceive consumers to purchase Vitalena Gummies. These advertisements were made across the

United States to consumers via Amazon.com. This misrepresentation is detrimental and dangerous to consumers who purchase Vitalena Gummies relying on it for health benefits that it does not have. These misrepresentations also cause harm to Plaintiff by lowering the public perception of the legitimate ketone products sold by Plaintiff, weakening the goodwill associated Plaintiff and its legitimate ketone supplements, diverting sales and market share away from Plaintiff's legitimate ketone products, all resulting in lost profits. These false advertisements have the potential to deceive a substantial portion of the Defendants' audience because they are prominently displayed in Defendants' advertising and because the evidence on record indicates that consumers are susceptible to this specific false advertising claim.

33. Plaintiff has suffered harm from Defendants' false advertising and unfair competition in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

SECOND CLAIM FOR RELIEF
Florida Deceptive and Unfair Trade Practices Act
Fla. Stat. § 501.204 (2022)

34. Plaintiff incorporates and realleges the allegations of paragraphs 1, 6-14, 22, and 24-33 as if fully set forth herein.

35. By falsely advertising that Vitalena Gummies and its key ingredient, raspberry ketones, contribute to weight loss, Defendants have unfairly competed with Plaintiff in the market for ketone supplements.

36. Defendants' misconduct as described herein concerning false advertising and unfair competition constitutes unfair or deceptive practices pursuant to Fla. Stat. § 501.204 (2022),

because it is (1) an unfair method of competition, (2) unconscionable, and/or (3) a deceptive and unfair practice made in commerce.

37. As a result of Defendants' deceptive and unfair trade practices, Plaintiff has suffered harm, including lost profits, diverted sales and market share, and the weakening of the public perception and goodwill of Plaintiff and its products.

THIRD CLAIM FOR RELIEF
Patent Infringement – '403 Patent
35 U.S.C. §§ 1, *et seq.*

38. Plaintiff incorporates and realleges the allegations of paragraphs 1-5, 14, 23, and 26 as if fully set forth herein.

39. Plaintiff owns all rights in the '403 Patent.

40. The '403 is valid, enforceable, and was issued in full compliance of the patent laws of the United States.

41. Plaintiff and its licensees have marked their products in accordance with 35 U.S.C. § 287(a).

42. 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.

43. Defendants make, use, offer for sale, sell, import, and/or distribute Vitalena BHB, which practices the invention of the '403 Patent, without authorization from Plaintiff.

44. Vitalena BHB infringes at least claim 1 of the '403 Patent in the manner described below:

1. A composition for increasing ketone level in a subject, comprising:
a plurality of beta-hydroxybutyrate salts comprised of:

at least one beta-hydroxybutyrate salt 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 beta-hydroxybutyrate salts comprise at least 20% by total weight of calcium beta-hydroxybutyrate and/or 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.

Keto Pills with Pure BHB Exogenous
Ketones - Effective Keto Pills Made in
USA - Advanced Keto Supplement for
Ketosis Support - Keto BHB - 60
Capsules


www.amazon.com/dp/B0BRY18HDZ

Supplement Facts
Serving Size: 2 capsules
Servings per container: 30

Amount Per Serving	% Daily Value
Proprietary Blend:	1000 mg +
Calcium Beta-Hydroxybutyrate (BHB)	
Magnesium Beta-Hydroxybutyrate (BHB)	
Sodium Beta-Hydroxybutyrate (BHB)	

+ Daily Value not established

Other Ingredients:
Gelatin Capsule, Cellulose, Silicon Dioxide,
Vegetable Magnesium Stearate

Made in the USA  **VITALENA NATURE**

www.amazon.com/dp/B0BRY18HDZ

Supplement Facts
Serving Size: 2 capsules
Servings per container: 30

Amount Per Serving	% Daily Value
Proprietary Blend:	1000 mg +
Calcium Beta-Hydroxybutyrate (BHB)	
Magnesium Beta-Hydroxybutyrate (BHB)	
Sodium Beta-Hydroxybutyrate (BHB)	

+ Daily Value not established

Other Ingredients:
Gelatin Capsule, Cellulose, Silicon Dioxide,
Vegetable Magnesium Stearate

Made in the USA  **VITALENA NATURE**

www.amazon.com/dp/B0BRY18HDZ



Based on the full list of ingredients, Vitalena BHB is sold as an encapsulated powder.

www.amazon.com/dp/B0BRY18HDZ

45. Defendants have directly infringed claim 1 of the '403 Patent in the United States by making, using, offering for sale, selling, and/or importing Vitalena BHB in violation of 35 U.S.C. § 271(a). As such, Defendants are liable for infringement of the '403 Patent under 35 U.S.C. § 271(a).

46. Defendants have indirectly infringed the '403 Patent in this District and elsewhere in the United States by inducing others to make, use, offer for sale, and/or sell Vitalena BHB in violation of 35 U.S.C. § 271(b).

47. Defendants' infringement of the '403 Patent is knowing and willful and this case is exceptional, at least because Defendants continued to infringe after being notified of their infringement.

48. Plaintiff has suffered harm as a result of Defendants' infringement of the '403 Patent, including in the form of lost profits and diverted sales and market share. Plaintiff is

therefore entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
Patent Infringement – '362 Patent
35 U.S.C. §§ 1, *et seq.*

49. Plaintiff incorporates and realleges the allegations of paragraphs 1-5, 14, 23, and 26 as if fully set forth herein.

50. Plaintiff owns all rights in the '362 Patent.

51. The '362 Patent is valid, enforceable, and was issued in full compliance of the patent laws of the United States.

52. Plaintiff and its licensees have marked their products in accordance with 35 U.S.C. § 287(a).

53. Without license or authorization, Defendants make, use, offer for sale, sell, and/or import Vitalena BHB containing compounds that infringe the '362 Patent.

54. 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 B.

55. Vitalena BHB infringes at least claim 1 of the '362 Patent in the manner described below:

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

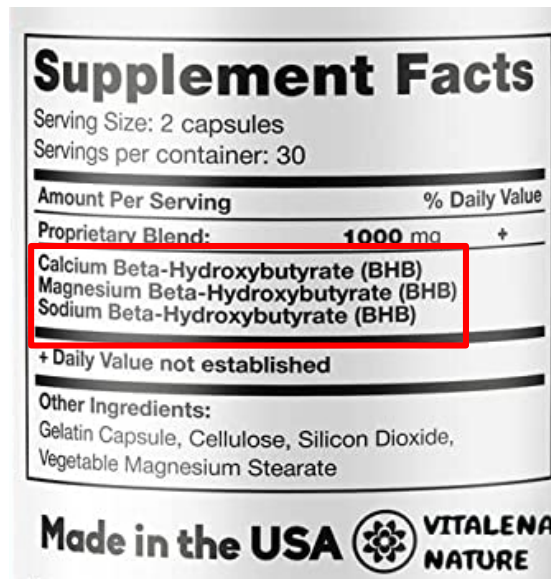
at least three beta-hydroxybutyrate salts selected from:
sodium beta-hydroxybutyrate;
potassium beta-hydroxybutyrate;
calcium beta-hydroxybutyrate; and
magnesium beta-hydroxybutyrate;

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.

Keto Pills with Pure BHB Exogenous Ketones - Effective Keto Pills Made in USA - Advanced Keto Supplement for **Ketosis Support** - Keto BHB - 60 Capsules

www.amazon.com/dp/B0BRY18HDZ



www.amazon.com/dp/B0BRY18HDZ



Based on the full list of ingredients, Vitalena BHB is sold as an encapsulated powder.

www.amazon.com/dp/B0BRY18HDZ

56. Defendants have directly infringed claim 1 of the '362 Patent in the United States by making, using, offering for sale, selling, and/or importing Vitalena BHB in violation of 35 U.S.C. § 271(a). As such, Defendants are liable for infringement of the '362 Patent under 35 U.S.C. § 271(a).

57. Defendants have indirectly infringed the '362 Patent in this District and elsewhere in the United States by inducing others to make, use, offer for sale, and/or sell Vitalena BHB in violation of 35 U.S.C. § 271(b).

58. Defendants' infringement of the '362 Patent is knowing and willful and this case is exceptional, at least because Defendants continued to infringe after being notified of their infringement.

59. Plaintiff has suffered harm as a result of Defendants' infringement of the '362 Patent, including in the form of lost profits and diverted sales and market share. Plaintiff is

therefore entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount to be proven at trial.

PRAYER FOR RELIEF

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

A. A judgment that Defendants infringed the Asserted Patents directly and indirectly by inducement;

B. A judgment that Defendants falsely advertised Vitalena BHB;

C. A judgment that Defendants unfairly competed with Plaintiff

D. A judgment that Defendants committed deceptive and unfair trade practices;

E. A finding that the Defendants' conduct alleged herein was willful and that this case is exceptional;

F. An order and judgment enjoining Defendants and their officers, directors, employees, agents, licensees, representatives, affiliates, related companies, servants, successors and assigns, and any and all persons acting in privity or in concert with any of them, from infringing Plaintiff's patents, from unfairly competing with Plaintiff, or from falsely advertising any products;

G. An award of actual damages in an amount to be determined at trial for patent infringement, false advertising, unfair competition, and deceptive and unfair trade practices.

H. Disgorgement of Defendants' profits associated with Defendants' false advertising;

I. Plaintiff's costs and attorneys' fees;

J. A judgment for treble damages and other punitive damages;

K. An order and judgment for Defendants to promulgate corrective advertising by the same media and with the same distribution and frequency as the false advertising for Vitalena BHB;

L. Any such other and further relief as the Court deems proper.

Demand for Trial by Jury

Plaintiff demands a jury trial on all matters triable to a jury.

DATED July 26, 2023.

Respectfully submitted,

By: /s/ James M. Matulis
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