

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

AXCESS GLOBAL SCIENCES LLC,	)	
	)	
Plaintiff,	)	C.A. No.
	)	
v.	)	<b>JURY TRIAL DEMANDED</b>
	)	
VITANAV INC. <i>d/b/a</i> KENETIK,	)	
	)	
Defendant.	)	

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Axcess Global Sciences LLC (“AGS” or “Plaintiff”) for its complaint against Defendant VitaNav Inc. *dba* Kenetik (“Kenetik” or “Defendant”) alleges as follows:

**THE PARTIES**

1. AGS is a Utah limited liability company with a principal place of business at 7810 S Prospector Dr., Salt Lake City, UT 84106.
2. Defendant Kenetik is a Delaware corporation with a registered address at 16192 Coastal Highway, Lewes, DE 19958.

**JURISDICTION AND VENUE**

3. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. § 271(a).
4. This Court has personal jurisdiction over Defendant, and venue is proper in this District pursuant to 28 U.S.C. § 1400(b) because, on information and belief, Defendant resides in Delaware, has a registered agent in Delaware, and has committed a substantial portion of the infringements giving rise to this action from Delaware.

## **BACKGROUND**

5. 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 beta-hydroxybutyrate ("BHB"), including U.S. Pat. Nos. 12,128,020 (the "'020 Patent"), 12,109,182 (the "'182 Patent"), 12,090,129 (the "'129 Patent"), 11,020,362 (the "'362 Patent), and 11,241,403 (the "'403 Patent) (collectively, the "Asserted Patents"). *See* Exhibits A, B, C, D, E.

6. The invention of the '020 Patent relates to BHB compositions comprising a liquid carrier, D-BHB acid, optionally a D-BHB salt or ester, and R-1,3-butanediol, a precursor to D-BHB acid. The inventions of the '182 Patent and the '129 Patent relate to BHB compositions comprising non-racemic mixtures of BHB enriched with the R-enantiomer which may be used to elevate blood ketone levels in a subject. The inventions of the '403 Patent and the '362 Patent relate to BHB compounds in supplement products, including sports drink products.

7. Defendant has made, used, offered for sale, and sold through their own websites, Amazon.com, eBay.com, and other third-party retailers, various concentrate products and drinks that practice the inventions of the Asserted Patent including its Kenetik: Ketone Concentrate and Kenetik: Ketone Drink products (also the "Accused Products.") Exemplary Accused Products are depicted below:



**KENETIK: KETONE CONCENTRATE**

From \$49.99



**KENETIK: KETONE DRINK**

\$53.99

<https://drinkkenetik.com/collections/kenetik-ketone-products>



<https://drinkkenetik.com/products/liquid-ketones-energy-sports-drink>



<https://drinkkenetik.com/products/kenetik-ketones-drink>



<https://www.amazon.com/stores/page/6CC39AFD-7A95-469B-893E-9E242480FB19>

8. The Defendant provides the following supplement facts in connection with the Kenetik: Ketone Concentrate product shown above:

<b>Nutrition Facts</b>	
4 servings per container	
<b>Serving size</b>	<b>2 oz (59mL)</b>
<b>Amount Per Serving</b>	
<b>Calories</b>	<b>60</b>
	<b>% Daily Value*</b>
<b>Total Fat</b> 0g	<b>0%</b>
Saturated Fat 0g	<b>0%</b>
Trans Fat 0g	
<b>Cholesterol</b> 0mg	<b>0%</b>
<b>Sodium</b> 100mg	<b>4%</b>
<b>Total Carbohydrate</b> 0g	<b>0%</b>
Dietary Fiber 0g	<b>0%</b>
Total Sugars 0g	
Includes 0g Added Sugars	<b>0%</b>
<b>Protein</b> 0g	<b>0%</b>
Vitamin D 0mg	0% • Calcium 0mg 0%
Iron 0mg	0% • Potassium 200mg 4%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Ingredients: water, Biocycle™ (D)-β-hydroxybutyric acid, Avela™ (R)-1,3 butanediol, potassium bicarbonate, sodium bicarbonate, allulose, stevia, natural flavors, potassium sorbate (for freshness).

Made with: **BIOCYCLE**  
Avela' **D-BHB**

<https://drinkkenetik.com/collections/kenetik-ketone-products/products/liquid-ketones-energy-sports-drink>

**Ingredients** ▼

Kenetik is made with clean, naturally sourced ingredients to deliver a caffeine-free, sugar-free boost of mental energy and sharper focus without jitters or a crash.

We use a new class of exogenous ketone, a patented formulation of pure D-beta hydroxybutyric acid and R-1,3 butanediol that provides a powerful boost of ketones while maintaining a refreshing flavor.

The calories in Kenetik come from ketones which means they are pure fuel and can't be turned into fat.

**Ingredients:** Water, Biocycle D-beta-hydroxybutyric acid, Avela R-1, 3 butanediol, allulose, stevia, potassium bicarbonate, sodium bicarbonate, natural flavors, potassium sorbate and sodium benzoate (for freshness).

<https://drinkkenetik.com/collections/kenetik-ketone-products/products/liquid-ketones-energy-sports-drink>


9. The Defendant provides and/or has provided the following supplement facts in connection with the Kenetik: Ketone drink products shown above:

<b>Nutrition Facts</b>	
1 serving per container	
<b>Serving size</b> 1 Bottle (237mL)	
<b>Amount Per Serving</b>	
<b>Calories</b>	<b>60</b>
	<b>% Daily Value*</b>
<b>Total Fat</b> 0g	<b>0%</b>
<b>Saturated Fat</b> 0g	<b>0%</b>
<b>Trans Fat</b> 0g	
<b>Cholesterol</b> 0mg	<b>0%</b>
<b>Sodium</b> 100mg	<b>4%</b>
<b>Total Carbohydrate</b> 0g	<b>0%</b>
Dietary Fiber 0g	<b>0%</b>
Total Sugars 0g	
Includes 0g Added Sugars	<b>0%</b>
<b>Protein</b> 0g	<b>0%</b>
Vitamin D 0mg	0% • Calcium 0mg 0%
Iron 0mg	0% • Potassium 200mg 4%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Ingredients: water, Biocycle™ (D)-β-hydroxybutyric acid, Avela™ (R)-1,3 butanediol, potassium bicarbonate, sodium bicarbonate, allulose, stevia, natural flavors, potassium sorbate (for freshness).

Made with:



<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

**Ingredients** ▼

Kenetik is made with clean, naturally sourced ingredients to deliver a caffeine-free, sugar-free boost of mental energy and sharper focus without jitters or a crash.

We use a new class of exogenous ketone, a patented formulation of pure D-beta hydroxybutyric acid and R-1,3 butanediol that provides a powerful boost of ketones while maintaining a refreshing flavor.

The calories in Kenetik come from ketones which means they are pure fuel and can't be turned into fat.

**Ingredients:** Carbonated Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butnediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Pineapple Extract, Passion Fruit Extract, Reb M

<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

10. Testing of exemplary Kenetik: Ketone Drink products resulted in the following Certificate of Analysis, which is attached to the Complaint as Exhibit F.

<b>Certificate of Analysis</b>		
Product: KENETIKDRK Lot No: 031122		Certificate No.: P7139793 Version 1 Issued for: Axxess Global Sciences, LLC
Test / Date / Method	Specification	Results
<b>BHB</b> 2022-12-13 HPLC	QQuantity of BHB and Salts	8287.54 mg/serving
<b>Chiral Testing</b> 2022-11-30 HPLC	Amount of 1,3 Butanediol Report	R-1,3- BUTANEDIOL=2.7%
<b>Chiral Testing of BHB</b> 2022-12-22 HPLC	Amount of D-BHB and L-BHB Report	844.24 mg L-BHB / serv; 7430.21 mg D-BHB / serv
<b>Potassium</b> 2022-11-28 MET-CH-030	Report	6.12 mg
<b>Sodium</b> 2022-11-28 MET-CH-030	Report	6.47 mg

11. On information and belief, the Accused Products contain approximately the same concentrations of infringing ingredients and infringe the Asserted Patents in the same manner as described in this Complaint.

12. Plaintiff has suffered harm from Defendant’s misconduct in the form of lost profits and diverted sales and market share. 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, as well as costs and reasonable attorney fees.

13. On information and belief, Defendant sells and/or has sold the Accused Products through its own website (<https://drinkkenetik.com/>) and through third-party retailers such as Amazon, eBay, Walmart, and others.

14. Plaintiff and its BHB products are well-known in the health and wellness industry, and particularly among BHB-supplement retailers, and set the standard for quality and effectiveness in the industry. Plaintiff's products are found through online marketplaces and brick-and-mortar stores around the country, including Amazon, Walmart, Target, Walgreens, and more. Plaintiff has sought to protect its rights in the Asserted Patents, including by engaging in enforcement actions against other retailers, including on Amazon.com, eBay.com, and others.

15. Plaintiff directly competes with Defendant in the market for BHB supplements. Plaintiff has suffered harm from Defendant's infringements in the form of lost profits and diverted sales and market share.

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. 12,128,020**

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

17. On October 29, 2024, the '020 Patent, titled "Administration of R-beta-hydroxybutyrate and related compounds in humans" was duly and legally issued. A true and correct copy of the '020 Patent is attached as Exhibit A.

18. AGS owns the '020 Patent.

19. Defendant makes, uses, offers for sale, sells, and distributes ketone energy drink products that practice the invention of the '020 Patent including the Kenetik: Ketone Drink and the Kenetik: Ketone Concentrate products.

20. Exemplary claim 1 of the '020 Patent is reproduced below:

1. A beta-hydroxybutyrate composition formulated for ingestion by oral delivery as a beverage, dietary supplement, or food product, or as a dietary supplement for addition to water, beverage, or food product, to increase blood ketone level in a subject, comprising:

a liquid carrier comprising at least one of water, milk, drinkable liquid, coconut water, watermelon water, or electrolyte water;

D-beta-hydroxybutyrate, wherein the D-beta-hydroxybutyrate comprises D-beta-hydroxybutyric acid and optionally one or more D-beta-hydroxybutyrate salts or esters; and

R-1,3-butanediol.

'020 Patent, claim 1.

21. The Accused Products infringe at least claim 1 of the '020 Patent in the exemplary manner shown below.

- 1. A beta-hydroxybutyrate composition formulated for ingestion by oral delivery as a beverage, dietary supplement, or food product, or as a dietary supplement for addition to water, beverage, or food product, to increase blood ketone level in a subject, comprising:**

a liquid carrier comprising at least one of water, milk, drinkable liquid, coconut water, watermelon water, or electrolyte water;

D-beta-hydroxybutyrate, wherein the D-beta-hydroxybutyrate comprises D-beta-hydroxybutyric acid and optionally one or more D-beta-hydroxybutyrate salts or esters; and

R-1,3-butanediol.

'020 Patent, claim 1.





<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

DESCRIPTION

Kenetik is a delicious ketone energy drink for high performers looking for a healthy mental edge. Every bottle contains 10g of a premium blend of pure, plant-based ketones - the same ketone molecule our bodies naturally produce. Boost mental energy, sharpen focus and support brain health. Kenetik is the only ketone product approved by the American Brain Council.

<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

22. The Accused Products further infringe at least claim 1 of the '020 Patent in the exemplary manner shown below.

1. A beta-hydroxybutyrate composition formulated for ingestion by oral delivery as a beverage, dietary supplement, or food product, or as a dietary supplement for addition to water, beverage, or food product, to increase blood ketone level in a subject, comprising:

a liquid carrier comprising at least one of water, milk, drinkable liquid, coconut water, watermelon water, or electrolyte water;

**D-beta-hydroxybutyrate, wherein the D-beta-hydroxybutyrate comprises D-beta-hydroxybutyric acid and optionally one or more D-beta-hydroxybutyrate salts or esters; and**

R-1,3-butanediol.

'020 Patent, claim 1.

<b>Certificate of Analysis</b>		
Product: KENETIKDRK	Certificate No.: P7139793 Version 1	
Lot No: 031122	Issued for: Access Global Sciences, LLC	
Test / Date / Method	Specification	Results
<b>BHB</b> 2022-12-13 HPLC	QUantity of BHB and Salts	8287.54 mg/serving
<b>Chiral Testing</b> 2022-11-30 HPLC	Amount of 1,3 Butanediol Report	R-1,3- BUTANEDIOL=2.7%
<b>Chiral Testing of BHB</b> 2022-12-22 HPLC	Amount of D-BHB and L-BHB Report	844.24 mg L-BHB / serv; 7430.21 mg D-BHB / serv
<b>Potassium</b> 2022-11-28 MET-CH-030	Report	6.12 mg
<b>Sodium</b> 2022-11-28 MET-CH-030	Report	6.47 mg

Kenetik: Ketone Drink Certificate of Analysis – Exhibit F.



Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 235mg	4%
Magnesium 69mg	15%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**Ingredients:** Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butanediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Fruit Extracts, Reb M, Potassium Sorbate & Sodium Benzoate (for freshness).

<https://www.amazon.com/KENETIK-Caffeine-Drinkable-Performance-Strawberry/dp/B0C4G5B4YG?>

**Ingredients**

Kenetik is made with clean, naturally sourced ingredients to deliver a caffeine-free, sugar-free boost of mental energy and sharper focus without jitters or a crash.

We use a new class of exogenous ketone, a patented formulation of pure D-beta hydroxybutyric acid and R-1,3 butanediol that provides a powerful boost of ketones while maintaining a refreshing flavor.

The calories in Kenetik come from ketones which means they are pure fuel and can't be turned into fat.

**Ingredients:** Carbonated Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butnediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Pineapple Extract, Passion Fruit Extract, Reb M

<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

23. The Accused Products further infringe at least claim 1 of the '020 Patent in the exemplary manner shown below.

1. A beta-hydroxybutyrate composition formulated for ingestion by oral delivery as a beverage, dietary supplement, or food product, or as a dietary supplement for addition to water, beverage, or food product, to increase blood ketone level in a subject, comprising:

a liquid carrier comprising at least one of water, milk, drinkable liquid, coconut water, watermelon water, or electrolyte water;

D-beta-hydroxybutyrate, wherein the D-beta-hydroxybutyrate comprises D-beta-hydroxybutyric acid and optionally one or more D-beta-hydroxybutyrate salts or esters; and

**R-1,3-butanediol.**

'020 Patent, claim 1.

<b>Certificate of Analysis</b>		
Product: KENETIKDRK Lot No: 031122		Certificate No.: P7139793 Version 1 Issued for: Access Global Sciences, LLC
Test / Date / Method	Specification	Results
<b>BHB</b> 2022-12-13 HPLC	QUANTITY OF BHB AND SALTS	8287.54 mg/serving
<b>Chiral Testing</b> 2022-11-30 HPLC	Amount of 1,3 Butanediol Report	R-1,3-BUTANEDIOL=2.7%
<b>Chiral Testing of BHB</b> 2022-12-22 HPLC	Amount of D-BHB and L-BHB Report	844.24 mg L-BHB / serv; 7430.21 mg D-BHB / serv
<b>Potassium</b> 2022-11-28 MET-CH-030	Report	6.12 mg
<b>Sodium</b> 2022-11-28 MET-CH-030	Report	6.47 mg

Kenetik: Ketone Drink Certificate of Analysis – Exhibit F.

Ingredients: water, Biocycle™ (D)-β-hydroxybutyric acid, Avela™ (R)-1,3 butanediol, potassium bicarbonate, sodium bicarbonate, allulose, stevia, natural flavors, potassium sorbate (*for freshness*).



<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

**Ingredients** ▼


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<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>



Vitamin D	0mcg	0%
Calcium	0mg	0%
Iron	0mg	0%
Potassium	235mg	4%
Magnesium	69mg	15%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**Ingredients:** Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butanediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Fruit Extracts, Reb M, Potassium Sorbate & Sodium Benzoate (for freshness).

<https://www.amazon.com/KENETIK-Caffeine-Drinkable-Performance-Strawberry/dp/B0C4G5B4YG?>

24. Defendant has directly infringed at least claim 1 of the '020 Patent by making, using, offering for sale, selling, and/or importing the Accused Products in violation of 35 U.S.C.

§ 271(a) in the United States. As such, Defendant is liable for infringement of the '020 Patent under 35 U.S.C. § 271(a).

25. Defendant is on notice of its infringement of the '020 Patent having received actual notice of its infringement from the Plaintiff on December 25, 2024.

26. Defendant has willfully infringed the '020 Patent with knowledge of the '020 Patent or was willfully blind to the '020 Patent and the risk of its infringement.

27. 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.

## **COUNT II – INFRINGEMENT OF U.S. PATENT NO. 12,109,182**

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

29. On October 8, 2024, the '182 Patent, titled "Administration of r-beta-hydroxybutyrate and related compounds in humans" was duly and legally issued. A true and correct copy of the '182 Patent is attached as Exhibit B.

30. AGS owns the '182 Patent.

31. Defendant makes, uses, offers for sale, sells, and distributes ketone energy drink products that practice the invention of the '182 Patent including the Kenetik: Ketone Drink and the Kenetik: Ketone Concentrate products.

32. Exemplary claim 1 of the '182 Patent is reproduced below:

1. A composition for administering ketone bodies to a subject, comprising:  
a non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate,

wherein the non-racemic mixture contains from approximately 90% to less than 100% of R-beta-hydroxybutyrate and from greater than 0% to approximately 10% of S-beta-hydroxybutyrate,

wherein the composition is provided as or in a pill, tablet, capsule, powder, food product, food additive, milk, water, drinkable liquid, gel, or beverage.

'182 Patent, claim 1.

33. The Accused Products infringe at least claim 1 of the '182 Patent in the exemplary manner shown below.

**1. A composition for administering ketone bodies to a subject, comprising:**

a non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate,

wherein the non-racemic mixture contains from approximately 90% to less than 100% of R-beta-hydroxybutyrate and from greater than 0% to approximately 10% of S-beta-hydroxybutyrate,

wherein the composition is provided as or in a pill, tablet, capsule, powder, food product, food additive, milk, water, drinkable liquid, gel, or beverage.

'182 Patent, claim 1.



<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

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<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

34. The Accused Products further infringe at least claim 1 of the '182 Patent in the exemplary manner shown below.

1. A composition for administering ketone bodies to a subject, comprising:  
**a non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate,**



wherein the non-racemic mixture contains from approximately 90% to less than 100% of R-beta-hydroxybutyrate and from greater than 0% to approximately 10% of S-beta-hydroxybutyrate,

wherein the composition is provided as or in a pill, tablet, capsule, powder, food product, food additive, milk, water, drinkable liquid, gel, or beverage.

'182 Patent, claim 1.

<b>Certificate of Analysis</b>		
Product: KENETIKDRK Lot No: 031122		Certificate No.: P7139793 Version 1 Issued for: Access Global Sciences, LLC
Test / Date / Method	Specification	Results
<b>BHB</b> 2022-12-13 HPLC	QUantity of BHB and Salts	8287.54 mg/serving
<b>Chiral Testing</b> 2022-11-30 HPLC	Amount of 1,3 Butanediol Report	R-1,3- BUTANEDIOL=2.7%
<b>Chiral Testing of BHB</b> 2022-12-22 HPLC	Amount of D-BHB and L-BHB Report	844.24 mg L-BHB / serv; 7430.21 mg D-BHB / serv
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Vitamin D 0mcg	0%
Calcium 0mg	0%
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<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

35. The Accused Products further infringe at least claim 1 of the '182 Patent in the exemplary manner shown below.

1. A composition for administering ketone bodies to a subject, comprising:

a non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate,

**wherein the non-racemic mixture contains from approximately 90% to less than 100% of R-beta-hydroxybutyrate and from greater than 0% to approximately 10% of S-beta-hydroxybutyrate,**

wherein the composition is provided as or in a pill, tablet, capsule, powder, food product, food additive, milk, water, drinkable liquid, gel, or beverage.

'182 Patent, claim 1.

<b>Certificate of Analysis</b>		
Product: KENETIKDRK Lot No: 031122		Certificate No.: P7139793 Version 1 Issued for: Access Global Sciences, LLC
Test / Date / Method	Specification	Results
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<b>Potassium</b> 2022-11-28 MET-CH-030	Report	6.12 mg
<b>Sodium</b> 2022-11-28 MET-CH-030	Report	6.47 mg

Kenetik: Ketone Drink Certificate of Analysis – Exhibit F.

36. The Accused Products further infringe at least claim 1 of the '182 Patent in the exemplary manner shown below.

1. A composition for administering ketone bodies to a subject, comprising:

a non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate,

wherein the non-racemic mixture contains from approximately 90% to less than 100% of R-beta-hydroxybutyrate and from greater than 0% to approximately 10% of S-beta-hydroxybutyrate,

**wherein the composition is provided as or in a pill, tablet, capsule, powder, food product, food additive, milk, water, drinkable liquid, gel, or beverage.**

'182 Patent, claim 1.



<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

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DESCRIPTION ▼

Kenetik is a delicious ketone energy drink for high performers looking for a healthy mental edge. Every bottle contains 10g of a premium blend of pure, plant-based ketones - the same ketone molecule our bodies naturally produce. Boost mental energy, sharpen focus and support brain health. Kenetik is the only ketone product approved by the American Brain Council.

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<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

37. Defendant has directly infringed at least claim 1 of the '182 Patent by making, using, offering for sale, selling, and/or importing the Accused Products in violation of 35 U.S.C. § 271(a) in the United States. As such, Defendant is liable for infringement of the '182 Patent under 35 U.S.C. § 271(a).

38. Defendant is on notice of its infringement of the '182 Patent having received actual notice of its infringement from the Plaintiff on December 25, 2024.

39. Defendant has willfully infringed the '182 Patent with knowledge of the '182 Patent or was willfully blind to the '182 Patent and the risk of its infringement.

40. 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.

**COUNT III – INFRINGEMENT OF U.S. PATENT NO. 12,901,129**

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

42. On September 17, 2024, the '129 Patent, titled "Non-racemic beta-hydroxybutyrate compounds and compositions enriched with the R-enantiomer and methods of use" was duly and legally issued. A true and correct copy of the '129 Patent is attached as Exhibit C.

43. AGS owns the '129 Patent.

44. Defendant makes, uses, offers for sale, sells, and distributes ketone energy drink products that practice the invention of the '129 Patent including the Kenetik: Ketone Drink and the Kenetik: Ketone Concentrate products.

45. Exemplary claim 1 of the '129 Patent is reproduced below:

1. A composition for administering ketone bodies to a subject, comprising:

a non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate containing more than 50% and less than 100% by enantiomeric equivalents of R-beta-hydroxybutyrate and less than 50% and more than 0% by enantiomeric equivalents of S-beta-hydroxybutyrate, wherein the non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate includes:

at least one R-beta-hydroxybutyrate salt;

at least one S-beta-hydroxybutyrate salt; and

at least one of R- or S-beta-hydroxybutyric acid.

'129 Patent, claim 1.

46. To the extent the preamble of claim one of the '129 Patent is limiting, the Accused Products infringe at least claim 1 of the '129 Patent in the exemplary manner shown below.

**1. A composition for administering ketone bodies to a subject, comprising:**

a non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate containing more than 50% and less than 100% by enantiomeric equivalents of R-beta-hydroxybutyrate and less than 50% and more than 0% by enantiomeric equivalents of S-beta-

hydroxybutyrate, wherein the non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate includes:  
at least one R-beta-hydroxybutyrate salt;

at least one S-beta-hydroxybutyrate salt; and

at least one of R- or S-beta-hydroxybutyric acid.

'129 Patent, claim 1.



<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

DESCRIPTION

Kenetik is a delicious ketone energy drink for high performers looking for a healthy mental edge. Every bottle contains 10g of a premium blend of pure, plant-based ketones - the same ketone molecule our bodies naturally produce. Boost mental energy, sharpen focus and support brain health. Kenetik is the only ketone product approved by the American Brain Council.

<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

47. The Accused Products further infringe at least claim 1 of the '129 Patent in the exemplary manner shown below.

1. A composition for administering ketone bodies to a subject, comprising:

**a non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate containing more than 50% and less than 100% by enantiomeric equivalents of R-beta-hydroxybutyrate and less than 50% and more than 0% by enantiomeric equivalents of S-beta-hydroxybutyrate, wherein the non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate includes:**

at least one R-beta-hydroxybutyrate salt;

at least one S-beta-hydroxybutyrate salt; and

at least one of R- or S-beta-hydroxybutyric acid.

'129 Patent, claim 1.

<b>Certificate of Analysis</b>		
<b>Product:</b> KENETIKDRK	<b>Certificate No.:</b> P7139793 Version 1	
<b>Lot No:</b> 031122	<b>Issued for:</b> Access Global Sciences, LLC	
Test / Date / Method	Specification	Results
<b>BHB</b> 2022-12-13 HPLC	QUantity of BHB and Salts	8287.54 mg/serving
<b>Chiral Testing</b> 2022-11-30 HPLC	Amount of 1,3 Butanediol Report	R-1,3- BUTANEDIOL=2.7%
<b>Chiral Testing of BHB</b> 2022-12-22 HPLC	Amount of D-BHB and L-BHB Report	844.24 mg L-BHB / serv; 7430.21 mg D-BHB / serv
<b>Potassium</b> 2022-11-28 MET-CH-030	Report	6.12 mg
<b>Sodium</b> 2022-11-28 MET-CH-030	Report	6.47 mg



Kenetik: Ketone Drink Certificate of Analysis – Exhibit F.



Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 235mg	4%
Magnesium 69mg	15%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**Ingredients:** Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butanediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Fruit Extracts, Reb M, Potassium Sorbate & Sodium Benzoate (for freshness).

<https://www.amazon.com/KENETIK-Caffeine-Drinkable-Performance-Strawberry/dp/B0C4G5B4YG?>

**Ingredients** ▼

Kenetik is made with clean, naturally sourced ingredients to deliver a caffeine-free, sugar-free boost of mental energy and sharper focus without jitters or a crash.

We use a new class of exogenous ketone, a patented formulation of pure D-beta hydroxybutyric acid and R-1,3 butanediol that provides a powerful boost of ketones while maintaining a refreshing flavor.

The calories in Kenetik come from ketones which means they are pure fuel and can't be turned into fat.

**Ingredients:** Carbonated Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butnediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Pineapple Extract, Passion Fruit Extract, Reb M

<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

48. The Accused Products further infringe at least claim 1 of the '129 Patent in the exemplary manner shown below.

1. A composition for administering ketone bodies to a subject, comprising:

a non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate containing more than 50% and less than 100% by enantiomeric equivalents of R-beta-hydroxybutyrate and less than 50% and more than 0% by enantiomeric equivalents of S-beta-hydroxybutyrate, wherein the non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate includes:

**at least one R-beta-hydroxybutyrate salt;**

**at least one S-beta-hydroxybutyrate salt; and**

at least one of R- or S-beta-hydroxybutyric acid.

'129 Patent, claim 1.

<b>Certificate of Analysis</b>		
Product: KENETIKDRK Lot No: 031122		Certificate No.: P7139793 Version 1 Issued for: Axxess Global Sciences, LLC
Test / Date / Method	Specification	Results
<b>BHB</b> 2022-12-13 HPLC	QUantity of BHB and Salts	8287.54 mg/serving
<b>Chiral Testing</b> 2022-11-30 HPLC	Amount of 1,3 Butanediol Report	R-1,3-BUTANEDIOL=2.7%
<b>Chiral Testing of BHB</b> 2022-12-22 HPLC	Amount of D-BHB and L-BHB Report	844.24 mg L-BHB / serv: 7430.21 mg D-BHB / serv
<b>Potassium</b> 2022-11-28 MET-CH-030	Report	6.12 mg
<b>Sodium</b> 2022-11-28 MET-CH-030	Report	6.47 mg

Kenetik: Ketone Drink Certificate of Analysis – Exhibit F.



Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 235mg	4%
Magnesium 69mg	15%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**Ingredients:** Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butanediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Fruit Extracts, Reb M, Potassium Sorbate & Sodium Benzoate (for freshness).

<https://www.amazon.com/KENETIK-Caffeine-Drinkable-Performance-Strawberry/dp/B0C4G5B4YG?>

49. The ingredients in the Accused Products including, *inter alia*, sodium carbonate, potassium carbonate, and/or magnesium carbonate will, when in contact with D-β-Hydroxybutyric (BHB) Acid, form R-beta-hydroxybutyrate salt and S-beta-hydroxybutyrate salt (e.g., sodium BHB, potassium BHB, and/or magnesium BHB) as required by claim 1 of the '129 Patent.

50. The Accused Products further infringe at least claim 1 of the '129 Patent in the exemplary manner shown below.

1. A composition for administering ketone bodies to a subject, comprising:

a non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate containing more than 50% and less than 100% by enantiomeric equivalents of R-beta-hydroxybutyrate and less than 50% and more than 0% by enantiomeric equivalents of S-beta-hydroxybutyrate, wherein the non-racemic mixture of R-beta-hydroxybutyrate and S-beta-hydroxybutyrate includes:

at least one R-beta-hydroxybutyrate salt;

at least one S-beta-hydroxybutyrate salt; and

**at least one of R- or S-beta-hydroxybutyric acid.**

'129 Patent, claim 1.



Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 235mg	4%
Magnesium 69mg	15%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**Ingredients:** Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butanediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Fruit Extracts, Reb M, Potassium Sorbate & Sodium Benzoate (for freshness).

<https://www.amazon.com/KENETIK-Caffeine-Drinkable-Performance-Strawberry/dp/B0C4G5B4YG?>

**Ingredients**

Kenetik is made with clean, naturally sourced ingredients to deliver a caffeine-free, sugar-free boost of mental energy and sharper focus without jitters or a crash.

We use a new class of exogenous ketone, a patented formulation of pure D-beta hydroxybutyric acid and R-1,3 butanediol that provides a powerful boost of ketones while maintaining a refreshing flavor.

The calories in Kenetik come from ketones which means they are pure fuel and can't be turned into fat.

**Ingredients:** Carbonated Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butanediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Pineapple Extract, Passion Fruit Extract, Reb M

<https://drinkkenetik.com/collections/kenetik-ketone-products/products/kenetik-ketones-drink>

51. Defendant has directly infringed at least claim 1 of the '129 Patent by making, using, offering for sale, selling, and/or importing the Accused Products in violation of 35 U.S.C.

§ 271(a) in the United States. As such, Defendant is liable for infringement of the '129 Patent under 35 U.S.C. § 271(a).

52. Defendant is on notice of its infringement of the '129 Patent having received actual notice of its infringement from the Plaintiff on December 25, 2024.

53. Defendant has willfully infringed the '129 Patent with knowledge of the '129 Patent or was willfully blind to the '129 Patent and the risk of its infringement.

54. 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.

#### **COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 11,020,362**

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

56. 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 D.

57. Plaintiff owns the '362 Patent.

58. Defendant makes, uses, offers for sale, sells, and distributes ketone energy drink products that practice the invention of the '362 Patent including the Kenetik: Ketone Drink and the Kenetik: Ketone Concentrate products.

59. As a non-limiting example, set forth below is an exemplary infringement claim analysis for claim 12 of the '362 Patent in connection with the Accused Products. This claim analysis is based on publicly available information, and Plaintiff reserves the right to modify this

analysis, including, for example, on the basis of information about the Accused Products that Plaintiff obtains in discovery.

60. Representative claim 12 of the '362 Patent is reproduced below:

12. 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 provided as or in a tablet, capsule, powder, food product, food additive, drink product, drink additive, vitamin fortified food or drink, or mouth spray,

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

61. As Advertised in Defendant's product labels and listings, the Accused Products infringe at least representative claim 12 of the '362 Patent in the manner described below.

62. To the extent the preamble of claim 12 of the '362 Patent is limiting, Accused Products meet the preamble of claim 12 as set forth below:

12. **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 provided as or in a tablet, capsule, powder, food product, food additive, drink product, drink additive, vitamin fortified food or drink, or mouth spray,

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

We use a new class of exogenous ketone, a patented formulation of pure D-beta hydroxybutyric acid and R-1,3 butanediol that provides a powerful boost of ketones while maintaining a refreshing flavor.

<https://drinkkenetik.com/products/kenetik-ketones-drink>

63. The Accused Products further meet the limitations of claim 12 of the '362 Patent as set forth below:

12. 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 provided as or in a tablet, capsule, powder, food product, food additive, drink product, drink additive, vitamin fortified food or drink, or mouth spray,

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

Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 235mg	4%
Magnesium 69mg	15%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**Ingredients:** Filtered Water, Biocycle<sup>®</sup> D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butanediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Fruit Extracts, Reb M, Potassium Sorbate & Sodium Benzoate (for freshness).

64. The ingredients in the Accused Products including, *inter alia*, sodium carbonate, potassium carbonate, and/or magnesium carbonate will, when in contact with D-β-Hydroxybutyric

(BHB) Acid, form sodium beta-hydroxybutyrate, potassium beta-hydroxybutyrate, and magnesium beta-hydroxybutyrate as required by claim 12 of the '362 Patent.

65. The Accused Products further meet the limitations of claim 12 of the '362 Patent as set forth below:

12. 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 provided as or in a** tablet, capsule, powder, food product, food additive, **drink product**, drink additive, vitamin fortified food or drink, or mouth spray,

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



<https://drinkkenetik.com/products/kenetik-ketones-drink>

66. The Accused Products further meet the limitations of claim 12 of the '362 Patent as set forth below:

12. 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 provided as or in a tablet, capsule, powder, food product, food additive, drink product, drink additive, vitamin fortified food or drink, or mouth spray,

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

Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 235mg	4%
Magnesium 69mg	15%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**Ingredients:** Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butanediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Fruit Extracts, Reb M, Potassium Sorbate & Sodium Benzoate (for freshness).

67. Defendant has directly infringed claim 12 of the '362 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 direct infringement of the '362 Patent.

68. Additionally, Defendant has and continues to indirectly infringe the '362 Patent in this District and elsewhere in the United States in violation of 35 U.S.C. § 271(b) by actively inducing others—including its own customers—to directly infringe the asserted claims of the '362 Patent.

69. Defendant's infringement of the '362 Patent is willful, and this case is exceptional.

70. Plaintiff has suffered harm as a result of Defendant's 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 Defendant's wrongful acts in an amount that is to be proven at trial.

71. Plaintiff is in compliance with all applicable marking and/or notice provisions of 35 U.S.C. § 287 with respect to the '362 Patent.

72. Defendant is on notice of its infringement of the '362 Patent having received actual notice of its infringement from the Plaintiff on July 25, 2024.

73. Plaintiff is entitled to recover from Defendant all damages that Plaintiff has sustained as a result of Defendant's infringement of the '362 Patent, including, without limitation, lost profits but in no event less than a reasonable royalty.

74. Defendant's infringement of the '362 Patent was and continues to be willful and deliberate, entitling Plaintiff to enhanced damages.

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

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

76. 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 E.

77. Plaintiff owns the '403 Patent.

78. Defendant makes, uses, offers for sale, sells, and distributes ketone energy drink products that practice the invention of the '403 Patent including the Kenetik: Ketone Drink and the Kenetik: Ketone Concentrate products.

79. As a non-limiting example, set forth below is an exemplary infringement claim analysis for claim 16 of the '403 Patent in connection with the Accused Products. This claim analysis is based on publicly available information, and Plaintiff reserves the right to modify this analysis, including, for example, on the basis of information about the Accused Products that Plaintiff obtains in discovery.

80. Representative claim 16 of the '403 Patent is reproduced below:

16. 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 15% and less than 50% by total weight of calcium and magnesium beta-hydroxybutyrate salts,

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

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

81. As Advertised in Defendant's product labels and listings, the Accused Products infringe at least representative claim 16 of the '403 Patent in the manner described below.

82. To the extent the preamble of claim 16 of the '403 Patent is limiting, Accused Products meet the preamble of claim 16 as set forth below:

16. **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 15% and less than 50% by total weight of calcium and magnesium beta-hydroxybutyrate salts,

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

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

We use a new class of exogenous ketone, a patented formulation of pure D-beta hydroxybutyric acid and R-1,3 butanediol that provides a powerful boost of ketones while maintaining a refreshing flavor.

<https://drinkkenetik.com/products/kenetik-ketones-drink>

83. The Accused Products further meet the limitations of claim 16 of the '403 Patent as set forth below:

16. 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 15% and less than 50% by total weight of calcium and magnesium beta-hydroxybutyrate salts,

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

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

Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 235mg	4%
Magnesium 69mg	15%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**Ingredients:** Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butanediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Fruit Extracts, Reb M, Potassium Sorbate & Sodium Benzoate (for freshness).

84. The ingredients in the Accused Products including, *inter alia*, sodium carbonate, potassium carbonate, and/or magnesium carbonate will, when in contact with D-β-Hydroxybutyric (BHB) Acid, form sodium beta-hydroxybutyrate, potassium beta-hydroxybutyrate, and magnesium beta-hydroxybutyrate as required by claim 16 of the '403 Patent.

85. The Accused Products further meet the limitations of claim 16 of the '403 Patent as set forth below:

16. 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 15% and less than 50% by total weight of calcium and magnesium beta-hydroxybutyrate salts,**

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

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

Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 235mg	4%
Magnesium 69mg	15%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**Ingredients:** Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butanediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Fruit Extracts, Reb M, Potassium Sorbate & Sodium Benzoate (for freshness).

86. The Accused Products further meet the limitations of claim 16 of the '403 Patent as set forth below:

16. 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 15% and less than 50% by total weight of calcium and magnesium beta-hydroxybutyrate salts,

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

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

Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 235mg	4%
Magnesium 69mg	15%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**Ingredients:** Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butanediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Fruit Extracts, Reb M, Potassium Sorbate & Sodium Benzoate (for freshness).

87. The Accused Products further meet the limitations of claim 16 of the '403 Patent as set forth below:

16. 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 15% and less than 50% by total weight of calcium and magnesium beta-hydroxybutyrate salts,

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

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

Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 235mg	4%
Magnesium 69mg	15%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**Ingredients:** Filtered Water, Biocycle™ D-β-Hydroxybutyric (BHB) Acid, Avela™ R-1,3 Butanediol, Allulose, Sodium Bicarbonate, Potassium Bicarbonate, Magnesium Carbonate, Natural Flavors, Fruit Extracts, Reb M, Potassium Sorbate & Sodium Benzoate (for freshness).



88. Defendant has directly infringed claim 16 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 direct infringement of the '403 Patent.

89. Additionally, Defendant has and continues to indirectly infringe the '403 Patent in this District and elsewhere in the United States in violation of 35 U.S.C. § 271(b) by actively inducing others—including its own customers—to directly infringe the asserted claims of the '403 Patent.

90. Defendant's infringement of the '403 Patent is willful, and this case is exceptional.

91. Plaintiff has suffered harm as a result of Defendant's 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 Defendant's wrongful acts in an amount that is to be proven at trial.

92. Plaintiff is in compliance with all applicable marking and/or notice provisions of 35 U.S.C. § 287 with respect to the '403 Patent.

93. Defendant is on notice of its infringement of the '403 Patent having received actual notice of its infringement from the Plaintiff on July 25, 2024.

94. Plaintiff is entitled to recover from Defendant all damages that Plaintiff has sustained as a result of Defendant's infringement of the '403 Patent, including, without limitation, lost profits but in no event less than a reasonable royalty.

95. Defendant's infringement of the '403 Patent was and continues to be willful and deliberate, entitling Plaintiff to enhanced damages.

**PRAYER FOR RELIEF**

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

- A. A judgment that Defendant has infringed the Asserted Patents literally and/or under the doctrine of equivalents;
- B. An award of damages pursuant to 35 U.S.C. § 284 in an amount to be proven at trial, including increased damages up to three times the amount found or assessed;
- C. A judgment that this case is exceptional pursuant to 35 U.S.C. § 285 and an award of Plaintiff's reasonable attorneys' fees in this litigation;
- D. An award of costs;
- E. An award of pre-judgment and post-judgment interest on Plaintiff's damages;
- F. Entry of an injunction against further infringement of the Asserted Patents; 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, Plaintiff demands a jury trial on all matters triable to a jury.

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Dated: February 12, 2025  
12042047 / 22680.00005

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

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