

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

BPI SPORTS, LLC, a Florida limited liability
company,

Plaintiffs,

v.

N A T U R A L A L T E R N A T I V E S
INTERNATIONAL, INC., a Delaware
corporation,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff BPI SPORTS, LLC, for its claims for relief herein against defendant NATURAL ALTERNATIVES INTERNATIONAL, INC., avers as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory judgment of non-infringement, invalidity, and unenforceability of five United States patents, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the patent laws of the United States, 35 U.S.C. § 100 et seq.

2. In its Claim for Relief, Plaintiff seeks a judicial declaration that Plaintiff's nutritional supplement products do not infringe United States Patent Nos. 5,965,596; 6,172,098; 6,426,361; 6,680,294; and 8,067,381 (the "PATENTS-IN-SUIT") and/or that the PATENTS-IN-SUIT are invalid or unenforceable.

3. This Court has original jurisdiction over the Claim for Relief under 28 U.S.C. §§ 1331 and 1338(a).

CASE NO.:

4. Venue is proper in this district under 28 U.S.C. § 1391(b) and (d). Plaintiff BPI SPORTS, LLC is a Florida limited liability company. Plaintiff BPI SPORTS, LLC has its headquarters in Broward County, Florida. This action includes patent-based declaratory judgment claims arising from conduct occurring in or directed to Broward County, including Plaintiff BPI SPORTS, LLC's marketing and sales of nutritional supplements in Broward County, and Defendant NATURAL ALTERNATIVES INTERNATIONAL, INC.'s efforts to enforce its purported patent rights in Broward County.

PARTIES

5. Plaintiff BPI SPORTS, LLC ("BPI") is, and at all times material hereto was, a limited liability company organized and existing under the laws of the State of Florida, with its principal place of business in Hollywood, Broward County, Florida.

6. On information and belief, defendant NATURAL ALTERNATIVES INTERNATIONAL, INC. ("NAI") is, and all time material hereto was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in San Marcos, California.

CLAIM FOR RELIEF

7. Plaintiff repeats and incorporates here the allegations of paragraphs 1 through 6 of this complaint.

8. On information and belief, NAI claims to be the owner or exclusive licensee of the five PATENTS-IN-SUIT:

(a) United States Patent No. 5,965,596 ("the '596 Patent"), issued Oct. 12, 1999, and titled

CASE NO.:

"Methods And Compositions For Increasing The Anaerobic Working Capacity In Tissue," a true and correct copy of which is attached hereto as **Exhibit A**;

(b) United States Patent No. 6,172,098 ("the '098 Patent"), issued Jan. 9, 2001, and titled "Methods And Compositions For Increasing The Anaerobic Working In Tissues," a true and correct copy of which is attached hereto as **Exhibit B**;

(c) United States Patent No. 6,426,361 ("the '361 Patent"), issued July 30, 2002, and titled "Method And Compositions For Increasing The Anaerobic Working Capacity In Tissues," a true and correct copy of which is attached hereto as **Exhibit C**;

(d) United States Patent No. 6,680,294 ("the '294 Patent"), issued Jan. 20, 2004, and titled "Method And Compositions For Increasing The Anaerobic Working Capacity In Tissues," a true and correct copy of which is attached hereto as **Exhibit D**;

(e) United States Patent No. 8,067,381, ("the '381 Patent") issued Nov. 29, 2011, and titled "Method And Compositions For Increasing The Anaerobic Working Capacity In Tissues," a true and correct copy of which is attached hereto as **Exhibit E**;

9. The PATENTS-IN-SUIT are related, in that they have the same inventor, share a common specification, and claim similar subject matter.

10. Defendant NAI has filed several patent infringement lawsuits against nutritional supplement manufacturers other than BPI, asserting its purported rights in one or more of the PATENTS-IN-SUIT, based on the allegation that those manufacturers' products included beta-alanine not purchased from NAI's licensee, Compound Solutions, Inc. ("CSI").

11. On January 12, 2012, NAI filed suit against BPI SPORTS HOLDINGS, LLC, in the

CASE NO.:

United States District Court for the Southern District of Texas, in an action styled Natural Alternatives International, Inc. v. BPI Sports Holdings, LLC, No. 4:12-cv-00198 (S.D. Tex.) ("the Texas Action"). A true and correct copy of the complaint from the Texas Action is attached hereto as **Exhibit F**.

12. In the Texas Action, NAI erroneously asserts that BPI SPORTS HOLDINGS, LLC is "doing business as Plaintiff BPI SPORTS, LLC, and that BPI SPORTS HOLDINGS, LLC manufactures the nutritional supplement product, 1.M.R. Finally, NAI asserts that the 1.M.R. product infringes claims of the '381 Patent.

13. BPI SPORTS, LLC, the Plaintiff in this action, markets and sells the 1 M.R. product that NAI has accused of infringing the '381 Patent in the Texas Action.

14. In correspondence unrelated to the Texas Action, NAI has also accused Plaintiff BPI's products of infringing the '596, '098, '361, and '294 Patents, based on the inclusion in those products of beta-alanine that BPI did not purchase from NAI's licensee, CSI. NAI asserted that, unless BPI purchased the beta-alanine used in its products from CSI and marked the labels of those products with NAI's patent information, BPI would infringe.

15. Plaintiff denies that it has infringed, or contributed to or actively induced infringement of any valid and enforceable claim of any of the PATENTS-IN-SUIT through its manufacture and sale of nutritional supplement products.

16. In view of NAI's history of asserting its purported rights in the PATENTS-IN-SUIT in litigation, NAI's misdirected Texas Action accusing BPI's product of infringing the '381 Patent, and NAI's accusations that BPI's products infringe the remaining PATENTS-IN-SUIT, an actual and

CASE NO.:

justiciable controversy exists between Plaintiff and Defendant regarding infringement, validity, and enforceability of the PATENTS-IN-SUIT. This actual and justiciable controversy arises under federal patent law.

17. Plaintiff seeks a declaratory judgment that it has not infringed, contributed to, or actively induced such infringement of any valid claim of the PATENTS-IN-SUIT by any of its actions and/or a declaratory judgment that the PATENTS-IN-SUIT are invalid and/or unenforceable.

18. A judicial declaration is necessary and appropriate at this time pursuant to 28 U.S.C. § 2201, so that Plaintiff may ascertain its rights and duties with respect to the PATENTS-IN-SUIT.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in its favor as follows:

1. For a judicial declaration that the PATENTS-IN-SUIT, and each of them, are not and have not been infringed by Plaintiff, and that the same are invalid and/or unenforceable;

2. That the Court determine that this is an extraordinary case and award Plaintiff its attorney's fees and litigation expenses under 35 U.S.C. § 285, Federal Rule of Civil Procedure 54(d), and any other applicable statute or rule; and

3. That the Court award Plaintiff such other and further relief as the Court deems just and proper.

CASE NO.:

Respectfully submitted:

Dated: January 30, 2012

/s/ Cary A. Lubetsky

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