

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(NORTHERN DIVISION)**

NUTRAMAX LABORATORIES, INC.)
2208 Lakeside Boulevard)
Edgewood, Maryland 21040)

Plaintiff,)

v.)

Case No. 1:12-cv-300

VETS PLUS, INC.)
D/B/A PROBIOTICSMART.COM)
102 Third Avenue, E.)
Knapp, WI 54749)

REDACTED VERSION

Serve On:)
Rajiv Lall)
102 Third Ave., East)
Knapp, WI 54749)

Defendant.)

_____)

COMPLAINT

[Partially Redacted – Subject to Motion to File Under Seal]

Plaintiff, Nutramax Laboratories, Inc. (“Nutramax”), by and through its undersigned attorneys, files this Complaint for breach of contract and patent infringement against the above-named Defendant, Vets Plus, Inc. d/a/b Probioticsmart.com (“Vets Plus”), and in support alleges the following:

THE PARTIES

1. Nutramax is a Maryland corporation with its principal place of business in Edgewood, Maryland. Nutramax researches, develops, markets, distributes, sells, and has sold, nutritional supplement products across the United States, including Maryland, and internationally.

2. On information and belief, Defendant Vets Plus is a limited liability company organized in Wisconsin with its principal place of business in Knapp, California. On information and belief, Vets Plus was named BOMAC Vets Plus, Inc., until May of 2011, when it changed its name to eliminate “BOMAC.”

3. On information and belief, Vets Plus manufactures markets, offers to sell and/or does sell nutritional products throughout the United States in the contiguous 48 States, including Maryland, via the website domain www.probioticsmart.com and/or (the “Website”). On further information and belief Vets Plus also sells product over the internet using the domains www.pscpets.com and www.psequine.com, but both of those domains resolve immediately to the Website.

JURISDICTION AND VENUE

4. This is an action for Defendant’s breach of a March 8, 2011, contract between the parties and infringement of United States Patent No. 6,797,289 B2, a copy of which is attached hereto at **Exhibit 1**, which latter claim is brought under the provisions of the United States Patent Laws, Title 35 of the United States Code. Jurisdiction in this Court is therefore based upon 28 U.S.C. § 1338(a).

5. Venue lies in this jurisdiction under 28 U.S.C. §§ 1391 and 1400(b), and pursuant to the parties’ contract, which contains a forum selection clause that names Maryland as the sole venue for resolving disputes pursuant to that contract, and pursuant to which Vets Plus consents to personal jurisdiction in this State.

ALLEGATIONS OF FACT

I. Breach of Contract Allegations.

6. On March 8, 2011, Nutramax and Vets Plus entered into a contract,

[REDACTED] (hereinafter, the “Contract”).

7. The Contract remains in effect [REDACTED].

8. Pursuant the Contract, Vets Plus is prohibited from [REDACTED] (the “First Restriction”).

9. Also pursuant to the Contract, Vets Plus is prohibited from [REDACTED] (the “Second Restriction”).

10. Notwithstanding the First Restriction, Vets Plus has [REDACTED]. This breach of the Contract is material.

11. Notwithstanding the Second Restriction, Vets Plus has and continues [REDACTED]. This breach of the Contract also is material.

12. Nutramax has been performing and continues to perform its obligations under the Contract and is not in breach thereof.

13. The Contract further provides that, “Any dispute, controversy or claim arising out of or relating to this Letter Agreement shall be governed in all respects by the United States law, and the law of the State of Maryland (exclusive of its conflicts of laws provisions). A claim shall be determined solely and exclusively in a State Court in Baltimore County or a Federal Court in the State of Maryland, and all Parties consent to the jurisdiction and venue of a State or Federal Court in the State of Maryland for the purposes of resolving such disputes.”

14. The Contract further provides that, “[t]he prevailing party in any dispute arising out of or concerning this [Contract] shall be entitled to recover from the other Party, and the court shall award, its actual costs incurred in connection with such dispute, including, but not limited to, attorneys’ fees, expert fees, travel costs and court costs.”

II. Patent Infringement Allegations.

15. Nutramax is the assignee of United States Letters Patent 6,797,289 B2 issued on September 28, 2004, entitled “Use of anabolic agents, anti-catabolic agents, antioxidant agents, and analgesics for protection, treatment and repair of connective tissues in humans and animals” (hereinafter, the “‘289 Patent”). A copy of the ‘289 Patent is attached to this Complaint at **Exhibit 1.**

16. Nutramax is the sole assignee of the entire right, title and interest in and to the ‘289 Patent with all rights pertaining thereto, including the right to bring this Civil Action and collect damages for infringement of the ‘289 Patent.

17. The ‘289 Patent contains the following one independent claim and three dependent claims:

Claim 1: A composition for the treatment, repair or prevention of damage to connective tissue comprising: a synergistic combination of an aminosugar and avocado/soybean unsaponifiables.

Claim 2: The composition of claim 1, wherein the aminosugar is selected from the group consisting of glucosamine, glucosamine salts, and mixtures thereof.

Claim 3: The composition of claim 2, wherein the glucosamine salt is selected from the group consisting of glucosamine hydrochloride, glucosamine sulfate, N-acetylglucosamine and salts thereof.

Claim 4: The composition of claim 1, wherein the synergistic combination is administered orally, sublingually, nasally, gutturally, rectally, transdermally, or parenterally.

18. Hereinafter for all purposes in this Complaint, avocado/soybean unsaponifiables

as that term is used in Claim 1 of the '289 Patent is referred to as "ASU".

19. Defendant Vets Plus makes or has made, uses, offers to sell and sells a product on its Website called "PSCEquine.com Joint Flex Ultra Powder" (the "Accused Product").

20. Advertising for and the label on the Accused Product indicate that the product contains, among other ingredients, 14,400 mg of glucosamine and 2,400 of ASU.

21. The Accused Product also is advertised for the treatment, repair and prevention of damage to connective tissue in horses.

22. Nutramax offers to sell and sells two products for the treatment, repair and prevention of damage to connective tissue in horses. Those products, sold under the trademarks Cosequin®ASU and Cosequin®ASU+, contain combinations of glucosamine and ASU that fall within the claims of the '289 Patent.

23. Accordingly, the Accused Product competes directly with Nutramax's own products.

COUNT I
BREACH OF CONTRACT

24. Nutramax incorporates by reference the allegations in Paragraphs 1 through 14 as if stated fully herein.

25. Nutramax and Vets Plus are Parties to a valid and enforceable Contract, which is supported by sufficient consideration.

26. Vets Plus has breached the contract through the actions described herein, and those breaches are material.

27. Nutramax has suffered damage as a direct and proximate result of such breaches by Vets Plus.

WHEREFORE, Nutramax respectfully prays that the Court enter a judgment in its favor

and against Vets Plus that awards Nutramax actual damages, all costs that Nutramax incurred in bringing this action, including but not limited to, attorneys' fees, expert fees, travel costs and court costs, and any other relief that the Court deems just.

COUNT II
DIRECT PATENT INFRINGEMENT

28. Nutramax incorporates by reference the allegations in Paragraphs 14 through 23 as if stated fully herein.

29. Defendant Vets Plus has and continues to infringe the '289 Patent by making, selling, offering to sell and distributing the Accused Product, which contains a combination of ingredients that fall within the claims of the '289 Patent, without any license, agreement or other consent from Nutramax.

30. Defendant's infringement has damaged Nutramax and, unless its infringing activities are enjoined by this Court, will continue to damage and irreparably harm Nutramax.

WHEREFORE, Plaintiff Nutramax prays the Court award it the following relief:

A. A final and permanent injunction under 35 U.S.C. § 283 restraining the Infringing Defendant Vets Plus and those in privity with it, from making, using selling, distributing, importing, having made, having sold, having distributed or having imported, any product or composition that infringes the '289 Patent, including the Accused Product;

B. Damages against Vets Plus pursuant 35 U.S.C. § 284 that are adequate to compensate Nutramax for the infringement, but in no event less than a reasonable royalty for the use made of the invention by each infringer, together with interest and costs;

C. Enhanced damages to Nutramax as the court deems just; and

D. Reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

PRAYER FOR JURY TRIAL

Plaintiff respectfully prays for a trial by jury on all issues so triable.

Respectfully submitted,

/s/

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/s/

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