

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

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| PELLET TECHNOLOGIES, LLC, and | : | |
| LANCE L. GOOBERMAN | : | |
| | : | |
| Plaintiffs, | : | CIVIL ACTION NO. _____ |
| | : | |
| MARTIN AVENUE PHARMACY, INC. | : | |
| and THOMAS MARKS | : | JURY TRIAL DEMANDED |
| | : | |
| Defendants. | : | |

COMPLAINT

Plaintiff Pellet Technologies, LLC and Lance L. Goberman (“Plaintiffs”), by and through their attorneys, hereby demand a jury trial and file the following Complaint against Defendants Martin Avenue Pharmacy, Inc. and Thomas Marks (“Defendants”) and, in support thereof, alleges as follows:

1. Plaintiff Pellet Technologies, LLC (“Pellet Technologies”) is a New Jersey limited liability corporation with a principal place of business at One South Centre Street, Merchantville, New Jersey 08709.
2. Plaintiff, Lance L. Goberman, is an adult individual who resides in Haddonfield, New Jersey.
3. Defendant Thomas Marks (“Marks”) is an adult individual who, upon information and belief, is a resident of the State of Illinois, and who is the President of Martin Avenue Pharmacy, Inc. at 1247 Rickert Drive, Naperville, IL 60540.

4. Defendant Martin Avenue Pharmacy, Inc. (“Martin Avenue Pharmacy”) is an Illinois corporation with a principal place of business at 1247 Rickert Drive, Naperville, IL 60540.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338 and 1367.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b).

FACTS

7. On March 20, 2001, United States Patent No. 6,203,813 B1 (“ ‘813 Patent”), issued to Lance L. Gooberman, M.D. for his invention entitled “Pharmaceutical Delivery Device and Method of Preparation Therefor” (attached as Exhibit A).

8. Lance L. Gooberman, M.D. is a licensed physician who has extensive experience in treating individuals with addiction disorders.

9. The claims of the ‘813 Patent are directed, in general, towards the subcutaneous implantation of a drug in the form of a pellet which maintains, over a period of time, an effective level of the dissolving drug, which is naltrexzone, in the bloodstream of the patient.

10. Among other items, the invention disclosed in the ‘813 Patent is useful in treating patients who are addicted to substances such as heroin and aiding in the rehabilitation of those patients.

11. On December 18, 2002, Lance L. Gooberman, M.D. assigned all of his right, title and interest in the ‘813 Patent to Pellet Technologies, LLC.

12. On January 13, 2003, Pellet Technologies and Martin Avenue Pharmacy entered into a non-exclusive license agreement (“License Agreement”) wherein Martin Avenue Pharmacy would compound pellets containing naltrexone and other chemicals pursuant to the ‘813 Patent.

13. The License Agreement specifically stated that Martin Avenue Pharmacy shall not have and shall not claim to have any right, title or interest of any kind or nature whatsoever in or to any Confidential and proprietary Trade Secret Information, which was defined in the License Agreement to include, without limitation, the ‘813 Patent.

14. The License Agreement specified that Martin Avenue Pharmacy would pay royalties for each pellet compounded by Martin Avenue Pharmacy for the first year of the Agreement, with increases thereafter based on the Consumer Price Index, which payments were due no later than seven (7) days after the end of each week during which the Pellets were compounded.

15. On June 4, 2007, Marks, writing on behalf of Martin Avenue Pharmacy, sent an email to Plaintiff in which Marks terminated the License Agreement effective July 1, 2007.

16. Martin Avenue Pharmacy made royalty payments through November 14, 2007, and then failed to make any further payments.

17. Although Martin Avenue Pharmacy ceased making royalty payments on November 14, 2007, Martin Avenue Pharmacy continued to sell pellets which fell within the scope of the claims of the ‘813 Patent.

18. On or about September 10, 2008, Martin Avenue Pharmacy mailed Plaintiff 269.4 grams of naltrexone base. In a note that accompanied the shipment, Martin Avenue Pharmacy

indicated that the value of this amount of naltrexone base for \$4,850.00, and stated that this was the “royalty payment: May 08 to September 1, 2008.”

19. The shipment of naltrexone base was rejected by Plaintiff and returned to Martin Avenue Pharmacy.

20. Plaintiff continued to demand royalties and an accounting of the pellets sold since November, 2007.

21. Since September, 2008, Martin Avenue Pharmacy continued to sell pellets which fall within the scope of the ‘813 Patent.

22. Despite repeated requests for an accounting and royalty payments from Martin Avenue Pharmacy, Martin Avenue Pharmacy has refused to provide an accounting and has refused to make any royalty payments since November 14, 2007.

COUNT I
BREACH OF CONTRACT

23. Plaintiff, Pellet Technologies, repeats and incorporates by reference the allegations made in the foregoing paragraphs of this Complaint as if fully set forth herein.

24. The License Agreement between Pellet Technologies and Martin Avenue Pharmacy required Martin Avenue Pharmacy to pay royalties for each pellet compounded by Martin Avenue Pharmacy for the first year of the Agreement, with increases thereafter based on the Consumer Price Index, which payments were due no later than seven (7) days after the end of each week during which the pellets were compounded.

25. The License Agreement was dated January 13, 2003. It was for one year and automatically renewed for successive one year terms unless either party provided the other thirty days prior written notice.

26. Martin Avenue Pharmacy's termination of the License Agreement on June 4, 2007, with an effective date of July 1, 2007, was improper as Martin Avenue Pharmacy should have finished the then-current term of the License Agreement which would have ended on January 13, 2008.

27. By, among other items, improperly terminating the License Agreement before the end of the term, and by failing to pay royalties pursuant to the License Agreement, Martin Avenue Pharmacy breached the Licensing Agreement.

28. Martin Avenue Pharmacy's aforementioned conduct constituted a substantial and material breach of the License Agreement.

29. Pellet Technologies has sustained damages as a result of Defendant Marks' breach of the License Agreement.

30. Pellet Technologies' damages, including loss of revenue and profits, are a direct and proximate result of Martin Avenue Pharmacy's breach of the License Agreement.

WHEREFORE, Pellet Technologies demands that judgment be entered in its favor and against Martin Avenue Pharmacy and that it be awarded such actual damages and incidental and consequential damages as permitted by law, interest, attorneys' fees, costs of suit, and all such other relief as permitted by law and that this Court deems appropriate.

COUNT II
BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING

31. Pellet Technologies repeats and incorporates by reference the allegations made in the foregoing paragraphs of this Complaint as if fully set forth herein.

32. Martin Avenue Pharmacy breached the implied covenant of good faith and fair dealing in the License Agreement by, among other actions, continuing to compound and/or distribute the naltrexone pellets without compensation to the Plaintiff as required by the License Agreement.

33. Martin Avenue Pharmacy's termination of the License Agreement on June 4, 2007, with an effective date of July 1, 2007, was improper as Martin Avenue Pharmacy should have finished the then-current term of the License Agreement which would have ended on January 13, 2008.

34. Pellet Technologies has sustained damages as a result of Martin Avenue Pharmacy's breach of the implied covenant of good faith and fair dealing in the License Agreement.

35. Pellet Technologies' damages, including loss of revenue and profits, are a direct and proximate result of Martin Avenue Pharmacy's breach of the implied covenant of good faith and fair dealing in the License Agreement.

WHEREFORE, Pellet Technologies demands that judgment be entered in its favor and against Defendant Marks and that it be awarded such actual damages and incidental and

consequential damages as permitted by law, interest, attorneys' fees, costs of suit, and all such other relief as permitted by law and that this Court deems appropriate.

COUNT III
UNJUST ENRICHMENT

36. Pellet Technologies repeats and incorporates by reference the allegations made in the foregoing paragraphs of this Complaint as if fully set forth herein.

37. The License Agreement between Pellet Technologies and Martin Avenue Pharmacy specifically stated that Martin Avenue Pharmacy shall not have and shall not claim to have any right, title or interest of any kind or nature whatsoever in or to any Confidential and proprietary Trade Secret Information, which was defined in the Agreement to include, without limitation, the '813 Patent.

38. Although Martin Avenue Pharmacy was aware that Pellet Technologies was the owner of the '813 Patent and that Martin Avenue Pharmacy was to pay royalties for any pellets compounded, Martin Avenue Pharmacy continued to compound and/or distribute the pellets and refused to provide any compensation to Pellet Technologies, despite Pellet Technologies' request for such compensation.

39. Pellet Technologies conferred substantial benefits on Martin Avenue, including confidential and valuable information, which Martin Avenue Pharmacy accepted and retained under such circumstances that it would be unjust for Martin Avenue Pharmacy to retain without payment of value to Pellet Technologies.

40. As a result of the foregoing facts, Martin Avenue Pharmacy have been unjustly enriched and has profited at the expense of Pellet Technologies.

WHEREFORE, Pellet Technologies demands that judgment be entered in its favor and against Martin Avenue Pharmacy and that it be awarded such actual damages and incidental and consequential damages as permitted by law, including disgorgement of Martin Avenue Pharmacy's profits from its compounding/manufacturing and/or distribution of the pellets, interest, attorneys' fees, costs of suit, and all such other relief as permitted by law and that this Court deems appropriate.

COUNT IV
PATENT INFRINGEMENT

41. Pellet Technologies repeats and incorporates by reference the allegations made in the foregoing paragraphs of this Complaint as if fully set forth herein.

42. On October 30, 2009, Pellet Technologies, LLC assigned the '813 Patent to Lance L. Goberman. Specifically included in the assignment from Pellet Technologies to Lance Goberman was the right to pursue all past infringements of the '813 Patent. This assignment was recorded with the United States Patent and Trademark Office on March 23, 2010.

43. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 271, *et seq.*, to enjoin and obtain damages resulting from Defendants' unauthorized manufacture, use, sale of and/or offer to sell products that infringe one or more claims of the United States Patent No. 6,203,813 B1 (" '813 Patent"), attached as Exhibit A.

44. In contravention of 35 U.S.C. § 271, and with knowledge of the '813 Patent, Defendants Martin Avenue Pharmacy and Marks have willfully and deliberately infringed the patent by making, using, selling and/or offering to sell, and inducing others to make, use, sell and/or offer to sell products which infringe one or more claims of the '813 Patent.

46. Marks, with knowledge of the '813 Patent, has directed Martin Avenue Pharmacy to make, use, sell and/or offer to sell products which infringe the claims of the '813 Patent.

47. Marks knew that the manufacture, use, sale or offer for sale of these products by Martin Avenue Pharmacy would infringe the claims of the '813 Patent.

48. Defendants' acts of infringement have occurred without the authority or license of Plaintiff.

49. Defendants' unlawful infringement has caused damage to Plaintiff.

WHEREFORE, Goberman prays for judgment against Martin Avenue Pharmacy and Thomas Marks and requests that this Court:

1. Enter a finding and a judgment in favor of Pellet Technologies, LLC and against Martin Avenue Pharmacy. and Thomas Marks for patent infringement and award compensatory damages to Plaintiff, together with pre-judgment and post-judgment interest and costs as provided by 35 U.S.C. § 284;
2. Enter an award of treble damages to Goberman for Defendants' willful infringement of the '813 Patent pursuant to 35 U.S.C. § 284;
3. Enter a preliminary and permanent injunction enjoining and restraining Defendants and their affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors and assigns, and all those acting for and on their behalf, or acting in concert with them, for making, using, offering to sell and/or selling any product and/or service that falls within the scope of any claim of the '813 Patent pursuant to 35 U.S.C. § 283, and for all further and proper injunctive relief;

4. Enter a finding that this case is exceptional and an award of Gooberman's costs and reasonable attorneys' fees under 35 U.S.C. §§ 285 or other applicable law; and
5. Such other relief, at law or in equity, as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury.

Dated: July 25, 2011

/s Anthony J. DiMarino, III
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