

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

|                         |   |                            |
|-------------------------|---|----------------------------|
| PROMOTE INNOVATION LLC, | ) |                            |
|                         | ) | Case No. 2:10-cv-99        |
| Plaintiff               | ) |                            |
|                         | ) | COMPLAINT FOR FALSE        |
| v.                      | ) | PATENT MARKING             |
|                         | ) |                            |
| Sanofi-Aventis U.S. LLC | ) | <u>JURY TRIAL DEMANDED</u> |
|                         | ) |                            |
| Defendant.              | ) |                            |

Plaintiff PROMOTE INNOVATION LLC alleges as follows:

NATURE OF THE CASE

1. This is an action for false patent marking under section 292 of the Patent Act (35 U.S.C. § 292).

PARTIES

2. Plaintiff PROMOTE INNOVATION LLC is a Texas limited liability company with a principal place of business in Houston, Texas.

3. Defendant SANOFI-AVENTIS U.S. LLC is a Delaware limited liability company with a principal place of business in New Jersey.

JURISDICTION AND VENUE

4. The Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over defendant. Defendant conducts business within the state of Texas. Defendant offers for sale, sells, marks, and/or advertises the products that are the subject of this complaint in the United States, the state of Texas, and the Eastern District of Texas.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c), and 1395(a).

FACTS

7. Defendant has marked and continues to mark its DDAVP products (including its DDVAP nasal spray, DDAVP tablets, and DDAVP injections) with U.S. Patent No. 5,047,398.

8. U.S. Patent No. 5,047,398 was declared unenforceable for fraud on the Patent Office by the United States District Court for the Southern District of New York in February 2005. *See Ferring B.V. v. Barr Labs. Inc.*, No. 7:02-CV-9851, 2005 WL 437981 (S.D.N.Y., Feb. 7, 2005), *aff'd*, 437 F.3d 1181 (Fed. Cir. 2006), *cert. denied*, 127 S. Ct. 515 (2006).

9. Defendant has modified the package inserts for its DDAVP products after U.S. Patent No. 5,047,398 was declared unenforceable for fraud on the Patent Office but has nevertheless continued to falsely mark its DDAVP products.

10. Defendant has decades of experience applying for patents, obtaining patents, licensing patents, and/or litigating in patent infringement lawsuits. Defendant knows that a patent that has been declared unenforceable for fraud on the Patent Office does not cover any product.

#### CLAIM

11. For the reasons stated in paragraphs 7 to 10 above, defendant has violated section 292 of the Patent Act by falsely marking their products with an intent to deceive the public.

#### PRAAYER FOR RELIEF

Plaintiff thus requests that the Court, pursuant to 35 U.S.C. § 292 to do the following:

- A. Enter judgment against defendant and in favor of plaintiff for the violations alleged in this complaint;
- B. Order defendant to pay \$500 per false marking offense, or an alternative amount a determined by the Court, one-half of which shall be paid to the United States;
- C. Grant plaintiff such other and further relief as the Court may deem just and equitable.

#### JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: March 22, 2010

Respectfully submitted,

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