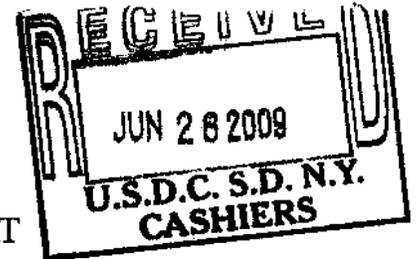


Daniel B. Ravicher, Esq. (DR1498)
David Garrod, Ph.D., Esq. (DG6759)
PUBLIC PATENT FOUNDATION, INC.
Benjamin N. Cardozo School of Law
55 Fifth Avenue
New York, New York 10003
Tel.: 212-545-5337
Fax.: 212-591-6038
Email: info@pubpat.org



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Public Patent Foundation, Inc.,
a New York not-for-profit corporation,

Plaintiff,

v.

**GlaxoSmithKline Consumer
Healthcare, L.P.,**
a Delaware limited partnership,

Defendant.

Civil Action No. CV _____

**COMPLAINT FOR
FALSE PATENT MARKING**

(Jury Trial Demanded)

Nature of the Action

1. This is an action for false patent marking under Title 35, Section 292, of the United States Code.
2. As set forth in detail below, Defendant has violated 35 U.S.C. §292(a)

by marking certain products with patent numbers of expired patents for the purpose of deceiving the public.

3. Plaintiff seeks the imposition of a fine against Defendant, one-half of which shall be paid to the United States, and the other half of which shall be paid to Plaintiff pursuant to 35 U.S.C. §292(b).

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over Plaintiff's present action for false patent marking pursuant to 28 U.S.C. §1338(a).

5. This Court has personal jurisdiction over Defendant pursuant to Rule 4(K)(1)(a) of the Federal Rules of Civil Procedure and §§ 301 and 302 of the New York Civil Practice Law and Rules because, upon information and belief, Defendant conducts substantial business in the State of New York, including in this Judicial District.

6. Venue in this Judicial District is proper pursuant to 28 U.S.C. §§ 1391 and 1400 because a substantial part of the events giving rise to the claims asserted herein arose/arise in this Judicial District and Defendant, upon information and belief, is and at all times was doing business in this Judicial District.

The Parties

7. The Public Patent Foundation, Inc. ("PUBPAT") is a New York, not-

for-profit corporation, with a principal place of business at Benjamin N. Cardozo School of Law, 55 Fifth Avenue, New York, New York 10003.

8. PUBPAT represents the interests of otherwise unrepresented parties (e.g., consumers) against various misuses of patents and the patent system by commercial entities.

9. Upon information and belief, GlaxoSmithKline Consumer Healthcare, L.P. (“Defendant”) is a limited partnership formed under the laws of Delaware, with its principal place of business at 1000 GSK Drive, Moon Township, Pennsylvania 15108.

10. Upon information and belief, Defendant distributes and/or sells CITRUCEL[®] brand fiber therapy products to multiple food, drug and discount retail stores, including Walgreens, CVS and many other retailers. (See <http://www.citrucel.com/BuyNow.aspx>.) At least some of such activities occur in this Judicial District.

11. Upon information and belief, Defendant also distributes and/or sells and/or uses third parties to distribute and/or sell its CITRUCEL[®] brand fiber therapy products on-line. (See <http://www.citrucel.com/BuyNow.aspx>.) At least some of such activities target and/or involve customers in this Judicial District.

12. Upon information and belief, Defendant promotes its CITRUCEL[®]

brand fiber therapy products through Internet and print advertising. At least some of such activities target customers in this Judicial District.

Defendant's Widespread False Patent Marking of CITRUCEL® Products

13. Upon information and belief, at least two CITRUCEL® brand fiber therapy products distributed and/or sold in retail stores and on-line (in this Judicial District and nationally) by Defendant include products identified as (i) “ORANGE FLAVOR” and (ii) “SUGAR FREE ORANGE FLAVOR.” Defendant distributes and/or sells these products in various quantities.

14. Upon information and belief, Defendant's ORANGE FLAVOR products include labeling on the container that states, inter alia,

Patent No. 4,626,287 4,671,823 4,732,917
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(See attached Exhibit A.) The labeling also states “©2007” indicating that it was written in 2007.

15. Upon information and belief, Defendant's SUGAR FREE ORANGE FLAVOR products include labeling on the container that states, inter alia,

Patent No. 4,626,287 4,671,823

(See attached Exhibit B.) The labeling also states “©2007” indicating that it was

written in 2007.

16. U.S. Patent No. 4,626,287 (“the '287 patent”), entitled “PROCESS FOR PREPARING SUCROSE ENCRUSTED METHYLCELLULOSE PARTICLES FOR USE IN BULK LAXATIVE COMPOSITIONS,” was issued by the United States Patent and Trademark Office (“PTO”) on December 2, 1986, and expired no later than January 29, 2005. (See <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnethtml%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=4,626,287.PN.&OS=PN/4,626,287&RS=PN/4,626,287>.) Because the '287 patent has expired, it no longer can protect or cover anything. Any statement or implication to the contrary is false.

17. U.S. Patent No. 4,671,823 (“the '823 patent”), entitled “SUCROSE ENCRUSTED METHYL CELLULOSE PARTICLES FOR USE IN BULK LAXATIVE COMPOSITIONS,” was issued by the PTO on June 9, 1987, and expired no later than January 29, 2005. (See <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnethtml%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=4,671,823.PN.&OS=PN/4,671,823&RS=PN/4,671,823>.) Because the '823 patent has expired, it no longer can protect or cover anything. Any statement or implication to the contrary is false.

18. U.S. Patent No. 4,732,917 (“the '917 patent”), entitled “PROCESS

FOR PREPARING SUCROSE ENCRUSTED METHYLCELLULOSE PARTICLES FOR USE IN BULK LAXATIVE COMPOSITIONS,” was issued by the PTO on March 22, 1988, and expired no later than December 2, 2003. (See <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnethtml%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=4,732,917.PN.&OS=PN/4,732,917&RS=PN/4,732,917>.) Because the '917 patent has expired, it no longer can protect or cover anything. Any statement or implication to the contrary is false.

19. Upon information and belief, Defendant and its parent corporation, GlaxoSmithKline PLC, are extremely sophisticated companies that employ multiple in-house patent attorneys and regularly litigate patent-infringement and/or false advertising cases. As such, Defendant knows, or reasonably should know, of the requirements of 35 U.S.C. §292.

20. Upon information and belief, Defendant marks its CITRUCEL[®] ORANGE FLAVOR products with “Patent No. 4,626,287, 4,671,823, 4,732,917” for the purpose of deceiving the public into believing that its CITRUCEL[®] ORANGE FLAVOR products are covered by each of the listed patents.

21. Similarly, upon information and belief, Defendant marks its CITRUCEL[®] SUGAR FREE ORANGE FLAVOR products with “Patent No.

4,626,287, 4,671,823” for the purpose of deceiving the public into believing that its CITRUCEL® SUGAR FREE ORANGE FLAVOR products are covered by each of the listed patents.

22. Upon information and belief, Defendant knows, or reasonably should know, that marking the above-described CITRUCEL® products with false patent statements was and is illegal under Title 35 of the United States Code. At a minimum, Defendant had and has no reasonable basis to believe that its use of the false markings was or is proper or otherwise permitted under federal law. Specifically, the labeling discussed above was written in 2007, well after each of the patents included in that labeling had expired.

23. Each time Defendant makes, has made, uses, offers to sell, or sells within the United States, or imports into the United States, CITRUCEL® products containing false patent markings, such as described above, Defendant commits at least one "offense," as defined in 35 U.S.C. §292(a).

PRAYER FOR RELIEF

WHEREFORE, plaintiff PUBPAT respectfully requests that this Court:

(1) Find that Defendant's manufacture, promotion, advertising, marketing, sale and/or distribution of products with false patent markings or false patent assertions violate 35 U.S.C. §292(a);

(2) Determine an appropriate "fine," not more than \$500 per offense, but sufficient to appropriately penalize Defendant's violations of §292(a), and to deter Defendant and others similarly situated from violating §292(a) in the future;

(3) Direct that half of the fine be paid to the United States government pursuant to §292(b); and,

(4) Direct that the other half of the fine be paid to PUBPAT pursuant to §292(b).

Request for Jury Trial

Pursuant to Fed. R. Civ. P. 38(b)(1), PUBPAT hereby demands a jury trial on all issues so triable.

Respectfully submitted,

PUBLIC PATENT FOUNDATION, INC.



By: _____

Dated: New York, New York
June 26, 2009

Daniel B. Ravicher, Esq. (DR1498)
David Garrod, Ph.D., Esq. (DG6759)
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Benjamin N. Cardozo School of Law
55 Fifth Avenue
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Email: info@pubpat.org