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DISTRICT OF UTAH
BY: _____

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Attorneys for Plaintiffs
XanGo LLC and DBC LLC

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

XANGO LLC, a Utah limited liability)
company, and DBC LLC, a Utah limited)
liability company,)
)
Plaintiffs,)
)
v.)
)
NEW VISION USA, INC., an Arizona)
corporation, d/b/a NEW VISION)
INTERNATIONAL, INC.,)
NVI MANUFACTURING, INC., an)
Arizona corporation, and BENSON K.)
BOREYKO, individually and as an officer)
of the corporations,)
)
Defendants.)

COMPLAINT FOR
PATENT INFRINGEMENT

JURY DEMANDED

Judge Tena Campbell
DECK TYPE: Civil
DATE STAMP: 05/04/2004 @ 16:09:41
CASE NUMBER: 2:04CV00405 TC



Plaintiffs, XanGo LLC and DBC LLC (collectively, "XanGo"), for its Complaint against Defendants, New Vision USA, Inc., d/b/a New Vision International, Inc., NVI Manufacturing, Inc., and Benson K. Boreyko, allege as follows:

1. This is a civil action arising under the Patent Laws of the United States (35 U.S.C. Section 1 *et seq.*), for damages and injunctive relief as provided in Title 35 U.S.C. Section 281 and Sections 283-285.

THE PARTIES

2. Plaintiff, XanGo LLC, is a limited liability company organized and existing under the laws of the State of Utah with a principal place of business at 11781 Lone Peak Parkway, Suite 100, Draper, Utah 84020. XanGo LLC is engaged in developing, manufacturing, promoting, and selling nutraceutical compositions, including nutraceutical compositions comprising a mixture of pericarp of the mangosteen fruit and other juices.

3. Plaintiff, DBC LLC, is a limited liability company organized and existing under the laws of the State of Utah with a principal place of business at 11781 Lone Peak Parkway, Suite 100, Draper, Utah 84020.

4. On information and belief, Defendant, New Vision USA, Inc., d/b/a New Vision International, Inc., is a corporation organized and existing under the laws of the State of Arizona with a principal place of business at 8322 E. Hartford Dr., Scottsdale, Arizona 85255.

5. On information and belief, Defendant, NVI Manufacturing, Inc., is a corporation organized and existing under the laws of the State of Arizona with a principal place of business at 8322 E. Hartford Dr., Scottsdale, Arizona 85255.

6. On information and belief, Defendant Benson K. Boreyko, is an officer of New Vision USA, Inc. and NVI Manufacturing, Inc., resides at 8322 E. Hartford Dr., Scottsdale, Arizona 85255, and individually or in concert with others, controls and is the alter ego for New Vision USA, Inc. and NVI Manufacturing, Inc.

7. On information and belief, New Vision USA, Inc., NVI Manufacturing, Inc., and Benson K. Boreyko, (collectively, "New Vision") are engaged in developing, manufacturing, promoting, and selling nutraceutical compositions, including nutraceutical compositions comprising a mixture of pericarp of the mangosteen fruit and other juices.

8. On information and belief, New Vision does substantial business in this District.

JURISDICTION

9. This Court has jurisdiction of this action under 28 U.S.C. Sections 1331 and 1338(a).

VENUE

10. Venue is proper within this District pursuant to 28 U.S.C. Sections 1391(b), 1391(c), and 1400(b).

BACKGROUND

11. On May 4, 2004, United States Patent No. 6,730,333 entitled "Nutraceutical Mangosteen Composition" (hereinafter referred to as "the '333 Patent") was duly and legally issued to DBC LLC, as the assignee of inventors Aaron R. Garrity, Gordon A. Morton, and

Joseph C. Morton. DBC LLC has title to the '333 Patent. A copy of the '333 Patent is attached to this Complaint as Exhibit A.

12. The '333 Patent relates generally to nutraceutical compositions comprising a mixture of pericarp of the mangosteen fruit and other juices.

13. DBC LLC has licensed the '333 Patent to XanGo LLC.

14. DBC LLC and XanGo LLC collectively have the right to make, use, sell, and offer to sell the inventions of the '333 Patent and have the right to sue and recover for past, present, and future infringement of the '333 Patent.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 6,730,333

15. The allegations of paragraphs 1-14 above are incorporated for this Count I as though fully set forth herein.

16. On information and belief, New Vision has manufactured, used, sold, offered for sale, distributed, and/or imported into the United States nutraceutical compositions comprising a mixture of pericarp of the mangosteen fruit and other juices, including but not limited to at least the "Essential Vitamins™ Plus Mangosteen" nutraceutical composition, which infringe one or more claims of the '333 Patent either directly, contributorily, by inducement, or otherwise in violation of 35 U.S.C. Section 271.

17. On information and belief, New Vision has offered for sale and has sold Essential Vitamins™ Plus Mangosteen in this District.

18. On information and belief, New Vision's infringement activities are ongoing and will continue unless enjoined by this Court.

19. As a result of the aforementioned actions of New Vision, XanGo has suffered and continues to suffer damages and irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

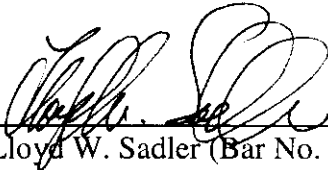
- A. For judgment that New Vision has infringed U.S. Patent No. 6,730,333;
- B. For a preliminary and permanent injunction prohibiting New Vision, its subsidiaries, divisions, officers, agents, servants, employees, attorneys, those persons in active concert or participation with them who receive actual notice of the injunction order by personal service or otherwise, and those in privity with New Vision from infringing, contributing to the infringement of, and inducing infringement of U.S. Patent No. 6,730,333 and for all further and proper injunctive relief;
- C. For an award to XanGo of damages for New Vision's infringement with interest, as well as costs and reasonable attorneys' fees pursuant to 35 U.S.C. Section 285 or other applicable law; and
- D. For an award of such other and further relief as this Court may deem just and proper, including other relief permitted under the Patent Statute.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable in this Complaint.

Dated: May 4, 2004

By:



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Exhibits/
Attachments
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Please see the
case file.