

TO: Commissioner of Patents and Trademarks Washington, DC 20231	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Middle Florida on the following Patents or Trademarks:

DOCKET NO. 5:08-cv-357-Oc-10GRJ	DATE FILED 08/29/08	U.S. DISTRICT COURT Middle District of Florida
PLAINTIFF BASF AGRO B.V., MERIAL LIMITED and MERIAL SAS		DEFENDANT HUMANE SOCIETY OF INVERNESS, INC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1	5,232,940	9/3/93
2		See attached complaint
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK SHERYL L. LOESCH	(BY) DEPUTY CLERK <i>[Signature]</i>	DATE 9/3/08
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FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

2008 AUG 29 PM 2:43

CLERK, U.S. DISTRICT COURT
OCALA, FLORIDA

BASF AGRO B.V., MERIAL
LIMITED, and MERIAL SAS

Plaintiffs.

Civil Case No. 5:08-CV-357-OC-106RJ

v.

HUMANE SOCIETY OF
INVERNESS, INC.,

Defendant.

**COMPLAINT FOR PATENT AND TRADEMARK INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Plaintiffs BASF AGRO B.V. ("BASF"), Merial LIMITED ("LIMITED"), and Merial SAS ("SAS") (with LIMITED and SAS collectively referred to as "MERIAL" and with BASF, LIMITED and SAS collectively referred to as "Plaintiffs"), for their Complaint for Patent and Trademark Infringement against Defendant HUMANE SOCIETY OF INVERNESS, INC. ("Defendant") allege as follows:

NATURE OF ACTION

1. This is an action in which Plaintiffs seek damages and injunctive relief under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, from Defendant's infringement of BASF's United States Patent No. 5,232,940 entitled "Derivatives of N-Phenylpyrazoles" ("the '940 patent"). A true and correct copy of the '940 patent is attached as Exhibit A.

2. This is also an action in which Plaintiffs seek damages and injunctive relief for acts of trademark infringement, unfair competition, injury to business reputation, and dilution pursuant to the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and Florida law from Defendant's wrongful adoption and use of SAS' Federally Registered, incontestable, and famous FRONTLINE® mark on a flea control product for cats and dogs; an insecticide and anti-parasitic agent for veterinary use.

3. A true and correct copy of US Registration No. 2049456 ("the '456 registration") is attached as Exhibit B.

4. A true and correct copy of Defendant's advertisements of its flea control product, which on information and belief contains fipronil and is hence infringing the '940 patent and is sold under the name FRONTLINE and hence constitutes trademark infringement, unfair competition, injury to business reputation, and dilution, is attached as Exhibits C and D.

5. On information and belief, the Defendant sells its infringing product by and through one or more of the following methods:

- a. orders taken through the email address bouvier-rescue04@aol.com with product then shipped in commerce; a mobile unit that travels in Citrus County, FL and that may be located on Saturdays and Mondays at the intersection of Inverness and Smith Roads, in Inverness, Citrus County, FL; and
- b. a booth at the Howards Flea Market, in Homosassa, FL.

6. Moreover, the sale of MERIAL's patented FRONTLINE® products is regulated by the US Environmental Protection Agency and are sold *only* under US EPA Registrations Nos. 65331-1, 65331-2, 65331-3, 65331-4, and 65331-5, with approved very particular instructions for use in approved child safety packaging.

7. In contrast, Defendant's infringing product is *not* registered with the US Environmental Protection Agency, and is *not* sold with government-approved instructions for use, and is *not* sold in government-approved child safety packaging. Therefore, on information and belief, Defendant's infringing product presents health and safety hazards to humans and animals.

8. Because of the Defendant's use of MERIAL's trademark FRONTLINE® in connection with Defendant's counterfeit product, the consuming public – such as those who may be injured by Defendant's counterfeit, non-EPA registered product – may be confused and associate Defendant's counterfeit product with MERIAL. Thus, Defendant's infringing product causes great injury to Plaintiffs, and especially to MERIAL.

THE PARTIES

9. BASF is organized under the laws of the Netherlands, with its registered office and principal place of business in (6835 EA) Arnhem, at the Groningensingel 1, the Netherlands.

10. LIMITED is a company limited by shares registered in England and Wales with a registered office in England. LIMITED is domesticated in the State of Delaware, as Merial LLC. LIMITED's United States operational headquarters is located in Duluth, Georgia. Plaintiff LIMITED also has a wholly-owned subsidiary headquartered in Gainesville, Georgia.

11. SAS is a wholly-owned subsidiary of LIMITED. SAS is organized under the laws of France and is a societe par actions simpliffee of France. SAS is headquartered in Lyon, France.

12. On information and belief, the Defendant is incorporated under the laws of Florida, with an address of 2109 South Mohican Trail, Inverness FL 34450.

JURISDICTION AND VENUE

13. This Court has subject-matter jurisdiction under Title 28, United States Code, §§ 1331, 1338(a), 1338(b), and 1367.

14. On information and belief, Defendant offers for sale, causes to be offered for sale, sells, causes to be sold through its agents, uses and causes to be used veterinary pharmaceuticals – including infringing products – and veterinary services in this judicial district and is thereby doing business in this judicial district. This Court has personal jurisdiction over the Defendant by virtue of its actions and those of its agents which

directly infringe or which induce or contribute to the infringement of the '940 patent and/or the FRONTLINE® mark and rights in, to and under the '456 registration and the goodwill associated with the FRONTLINE® mark within this State and judicial district, or its systematic and continuous contact with this State and judicial district.

15. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c), and 1400 (a) and (b).

BACKGROUND FACTS COMMON TO ALL COUNTS

16. Until introduction of MERIAL's FRONTLINE® products flea control on household pets—cats or dogs—was a problem. Fipronil is the active ingredient in MERIAL's FRONTLINE® products. MERIAL's FRONTLINE® products are recommended for eliminating existing flea infestations as they provide gentle, long-lasting, fast-acting, waterproof flea control. They are among the world's most successful animal health products, and they are the world's best selling flea treatment for dogs and cats.

17. MERIAL's FRONTLINE® products are covered by, *inter alia*, the '940 patent. The '940 patent generally concerns chemical compounds known as derivatives of n-phenylpyrazoles, including the compound fipronil. The United States Patent and Trademark Office duly and legally issued the '940 patent on August 3, 1993. The '940 patent is assigned to BASF. LIMITED is the exclusive licensee under the '940 patent in the veterinary field.

18. SAS owns the entire right, title and interest in, to and under the famous mark FRONTLINE® for insecticides and anti-parasitic agents for veterinary use, and the goodwill of the business associated therewith, and the Federal #456 registration thereof. The Federal #456 registration has become incontestable. LIMITED is the exclusive licensee of SAS of the mark FRONTLINE® for insecticides and anti-parasitic agents for veterinary use in the United States and under the #456 registration. Merial has developed a significant reputation and goodwill in the veterinary flea control market in general and as to its mark FRONTLINE® Merial's trademark has acquired strong secondary meaning with the consuming public. FRONTLINE® is recognized by members of the consuming public as an indicator of a high quality and effective veterinary flea control product; indeed, it is an indicator of the world's most successful animal health product, and the world's best selling flea treatment for dogs and cats. As a result of Merial's immense advertising expenditures, longstanding and widespread use by Merial, and public recognition, Merial's FRONTLINE® mark is famous, as contemplated by 15 U.S.C. § 1125(c)(1).

19. On information and belief, the Defendant makes, uses, offers to sell, sells, causes to be sold, or causes the use of veterinary products containing fipronil, as well as veterinary flea control products that are called "FRONTLINE", including in this State and judicial district.

20. On information and belief, at least one product in Defendant's line of "FRONTLINE" veterinary products is covered by at least one claim in BASF's #940 patent.

21. The Defendant's use of "FRONTLINE" and/or any similar variant thereof, is in commerce within this State, this judicial district and the United States and is likely to cause confusion with MERIAL's veterinary flea control FRONTLINE® products, as well as dilute MERIAL's famous FRONTLINE® mark.

22. Further, Defendant's use of the term FRONTLINE with respect to veterinary flea control products unfairly competes with MERIAL. is a passing off of Defendant's goods for those of MERIAL, and tarnishes MERIAL's goodwill and valuable brand image with respect to its Federally registered, incontestable and famous mark FRONTLINE®.

23. On information and belief, the Defendant has adopted the term FRONTLINE for its veterinary flea control products in bad faith. On information and belief, the Defendant has adopted the term FRONTLINE for its veterinary flea control products willfully.

24. In Summer 2008, a representative of LIMITED respectfully informed Defendant that Defendant's actions infringed, induced, and/or contributed to the infringement of the '940 patent, and that the Defendant's use of the term FRONTLINE for a veterinary flea control product was trademark infringement, unfair competition, injury to business reputation, and dilution, and requested that the Defendant cease and desist its infringing activities, but the Defendant continues to sell.

25. The '940 patent provides BASF and LIMITED with the right to exclude others from making, using, selling, and offering for sale fipronil-veterinary products. The fipronil-veterinary products of Defendant, including those under the FRONTLINE name, are within one or more claims of the '940 patent. The Defendant is not licensed by BASF or LIMITED under the '940 patent.

26. The Defendant is not authorized by MERIAL to reproduce, distribute, manufacture, or in any way utilize MERIAL's trademarks in conjunction with any goods, services, or corporate name.

27. The Defendant has constructive and actual notice of MERIAL's trademarks through MERIAL's registrations. The Defendant has constructive and actual notice of MERIAL's FRONTLINE® trademark through MERIAL's '456 registration.

28. MERIAL's FRONTLINE® products also have patent and/or trademark marking.

COUNT ONE

**BASF'S AND LIMITED'S CLAIM FOR INFRINGEMENT OF
UNITED STATES PATENT NO. 5,232,940 BY DEFENDANT**

29. The allegations in paragraphs 1 through 28 of this Complaint are incorporated herein by reference as if set forth in their entirety.

30. On information and belief, the Defendant infringes, contributes to the infringement of, and/or induces infringement of one or more claims of the '940 patent.

31. On information and belief, the Defendant has had notice of the '940 patent, and its infringement of the '940 patent has been deliberate and willful.

32. As a direct result of the Defendant's '940 patent infringing acts, BASF and LIMITED have suffered and continue to suffer damage and irreparable harm.

33. BASF and LIMITED have no adequate remedy at law for the Defendant's infringing acts. Unless and until these infringing acts are enjoined by this Court, BASF and LIMITED will continue to be damaged and irreparably harmed.

COUNT TWO

**MERIAL'S CLAIM FOR TRADEMARK INFRINGEMENT
UNDER 15 U.S.C. § 1114 AND FLORIDA LAW**

34. The allegations in paragraphs 1 through 28 of this Complaint are incorporated herein by reference as if set forth in their entirety.

35. The FRONTLINE mark adopted and being used by Defendant is such a close variation of MERIAL's federally registered FRONTLINE® mark as to be considered substantially and confusingly similar.

36. MERIAL did not consent to Defendant's use of the mark FRONTLINE on veterinary flea control products.

37. The unauthorized goods sold by Defendant under the FRONTLINE mark are substantially related to goods sold by MERIAL under its FRONTLINE® mark and are sold to customers who purchase or are familiar with veterinary flea control products sold under MERIAL's FRONTLINE® mark.

38. Defendant's unauthorized use of the FRONTLINE trademark on veterinary flea control products is likely to cause confusion, mistake and/or the deception of consumers as to the source or approval of Defendant's goods and, specifically, to cause consumers to believe that Defendant's goods are sponsored by, affiliated with, approved by or otherwise connected with MERIAL.

39. Upon information and belief, Defendant was on actual or constructive notice of MERIAL's exclusive rights in the registered FRONTLINE® mark before commencing use of the FRONTLINE mark on veterinary flea control products.

40. Upon information and belief, Defendant's use of the FRONTLINE mark for goods similar to those offered by MERIAL under the FRONTLINE® mark is willful and in bad faith and was undertaken with full knowledge that Defendant has no right, license or authority to use a mark that is confusingly similar to MERIAL's FRONTLINE® mark on veterinary flea control products.

41. Defendant's acts in using the FRONTLINE trademark constitute trademark infringement arising under the trademark infringement and unfair competition laws of the United States and Florida, including 15 U.S.C. § 1114(1)(a), and Fla. Stat. §495.161

42. Defendant's wrongful use of the FRONTLINE trademark has permitted or will permit the Defendant to make substantial sales and profits by trading upon the strength and distinctiveness of MERIAL's FRONTLINE® trademark.

43. As a direct and proximate result of Defendant's wrongful, tortious and infringing conduct, MERIAL has been damaged by, including but not limited to, a decline in the value of its distinctive trademarks and business reputation as well as lost sales and profits.

44. As a direct and proximate result of Defendant's conduct, MERIAL has been irreparably harmed, and such harm shall continue unless Defendant's acts are enjoined by the Court.

45. MERIAL has no adequate remedy at law.

COUNT THREE

**MERIAL'S CLAIM FOR FALSE DESIGNATION OF ORIGIN,
UNFAIR COMPETITION AND INJURY TO BUSINESS REPUTATION
UNDER 15 U.S.C. § 1125(a) AND FLA. STAT. §495.151**

46. The allegations in paragraphs 1 through 28, 34 through 40, 42 and 43 of this Complaint are incorporated herein by reference as if set forth in their entirety.

47. Defendant's use of the FRONTLINE trademark for goods that are substantially similar to MERIAL'S products sold under the FRONTLINE® trademark constitute false designation of origin, unfair competition and injury to business reputation arising under the trademark infringement, unfair competition, and injury to business reputation laws of the United States and Florida, including 15 U.S.C. § 1125(a) and Fla. Stat. 495.151.

48. Defendant's wrongful use of the FRONTLINE trademark for goods similar to MERAL's genuine FRONTLINE® products is likely to cause confusion, mistake or the deception as to the source of Defendant's goods and is likely to create the false impression that the goods are sponsored by, affiliated with, approved by or otherwise connected with MERAL.

49. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff has been irreparably harmed, and such irreparable harm shall continue unless Defendant's acts are enjoined by the Court.

50. MERAL has no adequate remedy at law.

COUNT FOUR

MERAL'S CLAIM FOR FEDERAL AND STATE TRADEMARK DILUTION UNDER 15 U.S.C. § 1125(e) AND FLA. STAT. §495.151

51. The allegations in paragraphs 1 through 28, 34 through 40, 42, 43, 47 and 48 of this Complaint are incorporated herein by reference as if set forth in their entirety.

52. Plaintiff's distinctive FRONTLINE® trademark for veterinary flea control products is famous and is entitled to protection from dilution of its distinctiveness and from tarnishment and blurring.

53. Defendant has willfully intended to trade upon the goodwill in MERAL's distinctive FRONTLINE® trademark causing dilution, tarnishment and blurring of this valuable, distinctive trademark.

54. Defendant's wrongful acts have tarnished, blurred and diluted the distinctive quality of MERIAL's FRONTLINE® trademark in violation of Federal and State law, including 15 U.S.C. §1125(c) and Fla. Stat. §495.151.

55. As a direct and proximate result of Defendant's wrongful conduct, MERIAL has been and will continue to be deprived of the value of its distinctive FRONTLINE® trademark for veterinary flea control products.

56. As a direct and proximate result of Defendant's wrongful conduct, MERIAL has been damaged, and such damage will continue unless Defendant's acts are enjoined by the Court.

57. MERIAL has no adequate remedy at law.

Ad Damnum Clause

WHEREFORE BASF, LIMITED and SAS, individually and collectively, respectfully request the Court to:

- (a) Enter a final judgment declaring that the Defendant has infringed, either directly, or indirectly by contribution or inducement, one or more claims of the '940 patent;
- (b) Preliminarily and permanently enjoin the Defendant, its officers, agents, servants, employees, attorneys, those in privity with them, and all those in active concert or participation with them, or those upon those who receive actual notice of the injunction, from further acts of direct infringement, contributory infringement and inducement of infringement of the '940 patent;

- (c) Award BASF and LIMITED damages adequate to compensate each of them for the Defendant's infringement of the '940 patent;
- (d) Declare that the Defendant's infringement of the '940 patent has been willful;
- (e) Treble the award of damages pursuant to 35 U.S.C. § 284 in view of the willful nature of the Defendant's infringement;
- (f) Declare this to be an exceptional case pursuant to 35 U.S.C. § 285;
- (g) Declare that Defendant has infringed MERIAL's trademark as set forth herein under 15 U.S.C. § 1051 et seq. and Florida law; declare that Defendant has diluted the distinctive nature of MERIAL's famous mark under federal law; and declare that Defendant has further engaged in unfair competition, injury to business reputation, and deceptive trade practices under federal and state law;
- (h) Preliminarily and permanently enjoin the Defendant, its officers, agents, servants, employees, attorneys, those in privity with them, and all those in active concert or participation with them, or those upon those who receive actual notice of the injunction, from:
 - (1) further violating MERIAL's trademark through the sale, offer for sale, manufacture, and distribution of goods or services;
 - (2) utilizing in any advertising, marketing materials, promotions, or displays the term FRONTLINE;

(3) making any statements or representation whatsoever, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade or public, or individual members thereof, to believe that any service or product manufactured, distributed or sold by Defendant are in any way or manner, associated or connected with Merial, or are sold, manufactured, licensed, sponsored, approved, or authorized by Merial;

(4) diluting Merial's trademark;

(5) engaging in any acts or activities directly or indirectly calculated to trade upon or injure the reputation or the goodwill of Merial or its licensees or franchisees or in any manner to compete unfairly with Merial or their respective licensees or franchisees by appropriation of the distinctive features of Merial's trademark or other distinctive elements:

- (i) Order and direct the Defendant to provide a report under oath within one month of entry of a Permanent Injunction that all of the Defendant's packaging, marketing material, promotional material, advertising, electronic and paper documents, websites, e-mail, and correspondence bearing marks or names that infringe Merial's trademark, which are in the possession or control of the Defendant, its agents, and its distributors be turned over to Merial's counsel for destruction;

- (j) Order and direct the Defendant to provide a written report that all other paper and electronic documents and things bearing marks that infringe MERIAL's trademarks have been destroyed and deleted from all computers, laptops, palm pilots, electronic devices, and computer data storage devices in the Defendant's control and possession;
- (k) Order and direct the Defendant to destroy any and all merchandizing materials and web pages, which include any names or marks that infringe MERIAL's trademarks. Furthermore, that the Defendant issue a recall for all goods, which the Defendant ever sold or distributed, that infringe Plaintiff's Trademarks;
- (l) Order and direct the Defendant to provide to MERIAL a complete listing, including name, address, telephone number, and e-mail address of any person or entity to whom the Defendant ever sold, distributed, or transferred any goods, advertising materials or promotional items or provided services bearing a name or mark that infringe MERIAL's trademark;
- (m) Order and direct such relief as the Court may deem appropriate to prevent the trade and public from deriving any erroneous impression that Defendant or any products or services advertised, marketed, sold, or distributed by the Defendant are authorized, related, connected, associated, sponsored, or affiliated in any manner with MERIAL, MERIAL's services or products, or MERIAL's trademark;

- (n) Order and direct that an accounting and judgment be rendered against the Defendant for Defendant's profits gained as a result of the Defendant's infringing activities;
- (o) Award Plaintiffs their attorneys' fees, costs and expenses in this action;
- (p) Retain jurisdiction over of this action for the purpose of enabling the Plaintiff to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the interpretation or execution of any order and final judgment entered in this action, for the modification of any such order, for the enforcement or compliance therewith and for the punishment of any violations thereof;
- (q) Award Plaintiffs prejudgment interest, and such further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury of all issues so triable in this action.

Respectfully submitted, this 29th day of August 2008.



RICHARD E. MITCHELL, ESQ.

(rmitchell@gray-robinson.com)

Florida Bar No.: 0168092

MICHAEL D. PORTER, ESQ.

(mporter@gray-robinson.com)

Florida Bar No.: 0031149

GRAYROBINSON, P.A.

Post Office Box 3068

Orlando, Florida 32802

301 East Pine Street, Suite 1400

Orlando, Florida 32801

Tel.: (407) 843-8880

Fax: (407) 244-5690

Lead Trial Counsel for Plaintiffs BASF Agro
B.V., Merial Limited, and Merial SAS

Of Counsel for Plaintiffs BASF Agro B.V.,
Merial Limited, and Merial SAS:

Judy Jarecki-Black, Ph.D., Esq.

(judy.jarecki@merial.com)

Georgia Bar No. 801698

MERIAL LIMITED

3239 Satellite Blvd.

Duluth, GA 30096-4640

Tel.: (678) 638-3805

Fax: (678) 638-3350

Thomas J. Kowalski, Esq.

(Tkowalski@FLHLaw.com)

FROMMER LAWRENCE & HAUG LLP

745 Fifth Avenue

New York, New York 10151

Tel.: (212) 588-0800

Fax: (212) 588-0500