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To: <b>Mail Stop 8</b> <b>Director of Patents and Trademarks</b> <b>PO BOX 1450</b> <b>Alexandria VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In compliance with 35 U.S.C. § 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 for the District of Utah on the following  Patents  Trademarks:

DOCKET NO. <b>2:08cv977-PMW</b>	DATE FILED <b>12/22/08</b>	U.S. DISTRICT COURT <b>Central District of Utah</b> <b>350 South Main Street, Room 150, Salt Lake City, UT 84101</b>
PLAINTIFF <b>Nature's Way Products, INC</b>		DEFENDANT <b>Vitacost.com, INC</b>
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 See complaint	See complaint	See complaint
2 <b>3,004,278</b>		
3 <b>3,187,032</b>		
4		
5		

In the above-entitled case, the following patents(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
1	
2	
3	
4	
5	

In the above-entitled case, a final decision had been rendered or judgment issued:

DECISION / JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

- DISTRIBUTION :
- 1) Upon initiation of action mail copy to Commissioner & lodge a copy in the file
  - 2) Upon filing of document adding copyright(s), mail copy to Commissioner & lodge a copy in the file
  - 3) Upon termination of action, mail copy to Registrar of Copyrights & lodge a copy in the file.

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NATURE'S WAY PRODUCTS, INC.

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

NATURE'S WAY PRODUCTS, INC.,	)	Civil Action No. 2:08-cv-00977-PMW
	)	
Plaintiff,	)	
	)	
v.	)	<b>DECLARATORY JUDGMENT</b>
	)	<b>COMPLAINT WITH DEMAND FOR</b>
VITACOST.COM, INC. d/b/a	)	<b>JURY TRIAL</b>
NUTRACEUTICAL SCIENCES, INC.,	)	
	)	<b>Magistrate Judge Paul Warner</b>
Defendant.	)	
	)	
	)	

Plaintiff Nature's Way Products, Inc. ("Nature's Way") hereby complains and alleges against Defendant Vitacost.com, Inc. d/b/a/ Nutraceutical Sciences, Inc. ("Vitacost.com" or "Defendant") as follows:

**THE PARTIES**

1. Plaintiff Nature's Way is a corporation organized and existing under the laws of the State of Utah with its principal place of business at 1375 North Mountain Springs Parkway, Springville, Utah, 84663.

2. Upon information and belief, Vitacost.com is a Delaware corporation having a place of business at 5400 Broken Sound Blvd, NW, Suite 500, Boca Raton, Florida, 33487.

**JURISDICTION AND VENUE**

3. This is a Declaratory Judgment action brought by Nature's Way pursuant to 28 U.S.C. §§ 2201 and 2202 seeking a declaration that the packaging and advertising materials for a product line sold by Nature's Way under the "EFAGOLD<sup>®</sup>" mark which utilizes the term "MEGA" does not constitute trademark infringement or unfair competition. Defendant has raised a reasonable apprehension of the filing of a lawsuit against Nature's Way, resulting in the establishment of a case or controversy between the parties relating to "MEGA" packaging and advertising as set forth below. Accordingly, this action arises under the Lanham Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.* This Court has jurisdiction pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338(b) and (c), 2201, and 2202.

4. Upon information and belief, Defendants have at least contracted to and/or has actually advertised and supplied goods and/or services within the State of Utah, including their "MEGA EFA<sup>®</sup>" products. Defendants are, therefore, subject to the jurisdiction of this Court pursuant to Utah Code Ann. § 78-27-24.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

**BACKGROUND**

6. Nature's Way manufactures and distributes various types of vitamin, mineral and nutritional supplement products including a line of essential fatty acid products, which are sold using the mark "EFAGOLD<sup>®</sup>" to customers in the United States. Nature's Way is the owner of

United States Trademark Registration No. 3,004,278 for the mark "EFAGOLD<sup>®</sup>" for use on goods identified as "Vitamins, minerals and dietary supplements."

7. Out of the "EFAGOLD<sup>®</sup>" products offered by Nature's Way, which also include the distinctive Nature's Way brand trademarks, some are sold also using the term "MEGA".

8. Upon information and belief, Defendant manufactures and sells various types of vitamins, nutritional supplements, and personal care products on the internet. One of the nutritional supplement products offered by Defendant is a product sold under the mark "MEGA EFA<sup>®</sup>".

9. Upon information and belief, Defendant is the owner of United States Trademark Registration No. 3,187,032 for the mark "MEGA EFA<sup>®</sup>" for use on goods identified as "nutritional supplements."

10. Defendant's "MEGA EFA<sup>®</sup>" products compete with "EFAGOLD<sup>®</sup>" products sold by Nature's Way.

11. On November 26, 2008, counsel for Defendant sent a letter to Nature's Way alleging that Nature's Way's packaging, advertising and labeling for its "EFAGOLD<sup>®</sup>" product that also includes the term "MEGA" constitutes trademark infringement, dilution, false designation of origin, and unfair competition. Defendant threatened to immediately proceed with legal action if its demands were not met by Nature's Way.

12. On December 3 and December 4, 2008, counsel for Defendant sent emails to Nature's Way in which Defendant reasserted the demands made in the November 26, 2008 letter and again threatened to immediately proceed with legal action if its demands were not met by Nature's Way.

**FIRST CLAIM FOR RELIEF**

**Declaratory Judgment of No Trademark Infringement  
by Nature's Way of Defendant's "MEGA EFA<sup>®</sup>" Mark**

13. Nature's Way restates, realleges and incorporates by reference the allegations contained in paragraphs 1 through 12 of this Complaint as if fully set forth herein.

14. The "EFAGOLD<sup>®</sup>" essential fatty acid products sold by Nature's Way that also use the term "MEGA" do not infringe any valid trademark rights owned by Defendant in the mark "MEGA EFA<sup>®</sup>" under 15 U.S.C. § 1114.

**SECOND CLAIM FOR RELIEF**

**Declaratory Judgment of No Unfair Competition by Nature's Way's Advertising and  
Promotion of Any of Its "EFAGOLD<sup>®</sup>" Products**

15. Nature's Way restates, realleges and incorporates by reference the allegations contained in paragraphs 1 through 14 of this Complaint as if fully set forth herein.

16. The advertising and packaging for Nature's Way's "EFAGOLD<sup>®</sup>" essential fatty acid products that also use the term "MEGA" are not false, misleading or likely to cause confusion or mistake as to source, origin, affiliation, or association and do not constitute unfair competition under 15 U.S.C. § 1125(a) or under the common law.

WHEREFORE, Nature's Way prays for judgment as set forth hereinafter.

**PRAYER FOR RELIEF**

WHEREFORE, Nature's Way prays for the following relief:

a. For a finding that Nature's Way's advertising and labeling of its "EFAGOLD<sup>®</sup>" essential fatty acid products that also use the term "MEGA" does not infringe any valid trademark rights owned by Defendant in the "MEGA EFA<sup>®</sup>" mark under 15 U.S.C. § 1114;

b. For a finding that Nature's Way's advertising and labeling for its "EFAGOLD<sup>®</sup>" essential fatty acid products that also use the term "MEGA" does not constitute unfair competition under 15 U.S.C. § 1125(a) or under common law;

c. For a preliminary and permanent injunction, under 15 U.S.C. § 1116, restraining and enjoining Defendant, its agents, servants, employees, officers and those persons acting in concert or participation with Defendant, from asserting that any action by or advertising of Nature's Way with respect to its "EFAGOLD<sup>®</sup>" essential fatty acid products that also use the term "MEGA" constitutes trademark infringement or unfair competition; and

d. For such other and further relief as the Court in its discretion deems appropriate.

**JURY DEMAND**

Nature's Way hereby demands a trial by jury on all issues triable to a jury as a matter of right.

DATED this 22nd day of December, 2008.

WORKMAN | NYDEGGER

By: /s/ Robyn L. Phillips

Larry R. Laycock

Robyn L. Phillips

Cara J. Baldwin

Attorneys for Plaintiff

NATURE'S WAY PRODUCTS, INC.