

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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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 Of New Haven, CT on the following Patents or Trademarks:

DOCKET NO. 3:08cv1755(PCD)	DATE FILED 11/19/2008	U.S. DISTRICT COURT Of New Haven, CT
PLAINTIFF Ultimate Nutrition Inc, & Prostar Inc		DEFENDANT Blagoy Alexiev a/k/a Brian Alexis d/b/a Pharmabul-Bulgaria & Kaz International Inc
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,343,258		SEE ATTACHED COMPLAINT
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(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
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT	
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CLERK	(BY) DEPUTY CLERK	DATE 11/19/2008
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Copy 1—Upon initiation of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director
 Copy 3—Upon termination of action, mail this copy to Director
 Copy 4—Case file copy

UNITED STATES DISTRICT COURT FOR
DISTRICT OF CONNECTICUT

Ultimate Nutrition, Inc.
and Prostar, Inc.,

Plaintiffs,

v.

Blagoy Alexiev a/k/a Brian Alexis
d/b/a Pharmabul -Bulgaria and
Kaz International, Inc.,

Defendants.

Civil Action No.:

DEMAND FOR JURY TRIAL

COMPLAINT FOR DECLARATORY JUDGMENT

Ultimate Nutrition, Inc. ("Ultimate Nutrition"), a corporation organized and existing under the laws of the State of Connecticut, located and doing business at 21 Hyde Road, Farmington, Connecticut 06034 and Prostar, Inc. a corporation organized and existing under the laws of the State of Connecticut, located and doing business at 7 Corporate Ave., Farmington, Connecticut, 06034 (collectively "Plaintiffs") state the following for their Complaint for Declaratory Judgment against Blagoy Alexiev d/b/a Brian Alexis ("Brian Alexis"), an individual, doing business as Pharmabul -Bulgaria, located at 1250 Chelsea Ave., Unit D, Santa Monica, California 90404 and Kaz International, Inc., a corporation organized and existing under the laws of the State of California, located and doing business at 3848 Carson Street, Suite 106, Torrance California 90503 (collectively "Pharmabul" or "Defendants"):

JURISDICTION AND VENUE

1. This is an action for declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*

2. This Court has subject matter jurisdiction under the Declaratory Judgment Act, 28 USC §§ 2201 *et seq.*; 28 USC §§ 1331, 1332, & 1338. As set forth more fully below, an actual controversy exists between Plaintiffs and Defendants regarding patent infringement, Lanham Act and related unfair competition claims.

3. Venue in this district is proper pursuant to 28 U.S.C. §1391(b)(2), as a substantial part of the events or omissions giving rise to the claim occurred within this district; Defendants purposefully sent correspondence threatening legal action regarding the matters raised in this complaint to Plaintiffs in this judicial district; Defendants have done business in and purposefully availed themselves of the benefits of this judicial district; Plaintiffs reside in this judicial district; and Plaintiffs would suffer harm in this judicial district if a declaratory judgment is denied.

THE PARTIES

4. Ultimate Nutrition has been producing and marketing dietary supplement products worldwide since 1979. Ultimate Nutrition is a well known and reputable company in the sports nutrition industry.

5. Ultimate Nutrition develops formulations for dietary supplement products, contracts with third party companies (such as Defendants) for the supply of its raw product, at times manufactures the finished goods through its related company Prostar, Inc., and sells the finished products primarily to distributors.

6. Upon information and belief, Defendant, Brian Alexis, is an individual U.S. and Bulgarian citizen, with an address of 1250 Chelsea Ave., Unit D, Santa Monica, California 90404.

7. Upon information and belief, Defendant, Brian Alexis, does business as Pharmabul-Bulgaria.

8. Upon information and belief, Pharmabul-Bulgaria is in the business of selling and offering for sale nutritional supplements.

9. Upon information and belief, Defendant, Kaz International, Inc., a California corporation, is located and doing business at 3848 Carson Street, Suite 106, Torrance California 90503.

10. Upon information and belief, Kaz International, Inc. is the exclusive agent of Pharmabul-Bulgaria in the United States.

FACTS COMMON TO ALL COUNTS

11. Tribulus Terrestris ("Tribulus") is a flowering plant in the family Zygophyllaceae, native to warm temperate and tropical regions of the Old World in southern Europe, southern Asia, throughout Africa, and in northern Australia.

12. Tribulus Terrestris is well-known for its role in muscle-building and raising fertility and libido. Its use for these purposes originated in Eastern Europe in the 1970's. Since then, the use of Tribulus Terrestris from Bulgaria has been highly regarded among body builders.

13. Since at least the late 1990s through 2005, Ultimate Nutrition purchased Bulgarian Tribulus Terrestris from a now defunct California entity called Pharmabul, Inc. Upon information and belief, Pharmabul Inc. was run and owned by Brian Alexis and his wife.

14. In the late 1990s, Plaintiff Ultimate Nutrition began marketing and selling an herbal supplement under the brand ULTIMATE NUTRITION BULGARIAN TRIBULUS. This product incorporated the Bulgarian Tribulus Terrestris sourced from Pharmabul, Inc., and until 2005, Plaintiffs' ULTIMATE NUTRITION BULGARIAN TRIBULUS product contained Bulgarian Tribulus Terrestris sourced from Pharmabul, Inc.

15. Ultimate Nutrition geared, and continues to gear, the marketing of its ULTIMATE NUTRITION BULGARIAN TRIBULUS product as a sports nutrition supplement to assist in developing muscle mass and physical stamina.

16. Upon information and belief, there were never any formal agreements between Plaintiffs and Defendants regarding the purchase of Bulgarian Tribulus Terrestris. Ultimate Nutrition purchased its Bulgarian Tribulus Terrestris from Defendants using Purchase Order forms (P.O.s).

17. For an extended period of time, Ultimate Nutrition purchased anywhere from two (2) to six (6) orders per year from Pharmabul, Inc. Usually the orders were 1,000 kg and were around \$28.00 per kg.

18. Throughout the relationship between Plaintiffs and Defendants, Defendants have always represented to Plaintiffs that Mr. Alexis had the exclusive rights to sell Bulgarian Tribulus Terrestris in the United States and that Mr. Alexis is the owner of U.S. Patent No. 6,343,258 ("258 Patent"), which allegedly covered the Bulgarian Tribulus Terrestris being supplied by Defendants.

19. In fact, upon information and belief, Mr. Alexis represented to Plaintiffs that his Bulgarian Tribulus Terrestris met certain Bulgarian standard specifications, ON 0273062-81 and NR-1550-72, in an attempt to further his claim that he, and only he, had the exclusive rights to sell Bulgarian Tribulus Terrestris in the United States. However, Bulgarian counsel has advised that such standards relate not to the exclusive right to export Bulgarian Tribulus Terrestris, but are designed to ensure product safety and specifically relate to the level of steroidal saponins contained in a product.

20. Based on Defendants' representation that Mr. Alexis' '258 Patent covered Bulgarian Tribulus Terrestris, Plaintiff included the patent number on its packaging and in advertising for its goods bearing the trademark ULTIMATE NUTRITION BULGARIAN TRIBULUS. This was done with Defendants' knowledge and consent.

21. The P.O.s issued by Ultimate Nutrition to Defendants describe the Bulgarian Tribulus Terrestris being purchased as follows:

Bulgarian Tribulus Terrestris L 45%
Origin Bulgaria U.S. Patent # 6,343,258.

22. Upon information and belief, on or about 2005, Mr. Alexis and his wife divorced. Mr. Alexis then requested that Ultimate Nutrition purchase Bulgarian Tribulus Terrestris through his new distributor, Kaz International, Inc. ("Kaz")

23. Between 2005 and 2006, Ultimate Nutrition purchased Bulgarian Tribulus Terrestris from Kaz, as instructed by Mr. Alexis. In 2006, the price of the Bulgarian Tribulus Terrestris sold by Kaz rose six (\$6) dollars to approximately \$34 per kg. At this price, it was no longer possible for Plaintiffs to purchase from Kaz and stay competitive with its ULTIMATE NUTRITION BULGARIAN TRIBULUS product.

24. Accordingly, Plaintiffs began to investigate an alternative source for its Bulgarian Tribulus Terrestris. Sometime after September, 2006, Plaintiff began sourcing Bulgarian Tribulus Terrestris from a company called Stauber Performance Ingredients, Inc. ("Stauber")

25. Since on around 2006, Kaz on a number of occasions has contacted Plaintiffs to attempt to persuade Plaintiffs to again purchase Bulgarian Tribulus Terrestris from it. Each time, Plaintiffs advised Kaz that its prices were too high, but if it reduced its prices, Plaintiffs would again reorder Defendants Bulgarian Tribulus Terrestris.

26. On or about October, 2008, Plaintiffs contacted Brian Alexis, along with several other companies, regarding a joint venture to formulate a new testosterone boosting product.

27. Shortly thereafter, Defendants forwarded to Plaintiffs a number of legal letters, alleging that: (1) Plaintiffs infringe Brian Alexis' '258 Patent; and that (2) Plaintiffs violated the Lanham Act and state unfair competition laws. On more than one occasion, Defendants have expressed their intent to sue Plaintiffs for theses alleged violations.

28. Plaintiffs have been advised by patent counsel that the '258 Patent does not protect Defendants products, but instead relates to "a method for testing readiness of harvesting Tribulus Terrestris L." Accordingly, Defendants have made fraudulent misrepresentations to Plaintiffs regarding the scope of coverage of said patent and rights in Bulgarian Tribulus in general, and Plaintiffs, relied on those misrepresentations to their detriment.

29. If Plaintiffs had known the misrepresentations from the beginning, they never would have referenced the '258 Patent in connection with the marketing or sale of its ULTIMATE NUTRITION BULGARIAN TRIBULUS product.

30. Defendants claim additionally that Plaintiffs' current ULTIMATE NUTRITION BULGARIAN TRIBULUS product is being passed off as the "patented Bulgarian Tribulus

made, imported, used, sold, and offered for sale by [] Pharmabul-Bulgaria and KAZ International, Inc.”

31. Plaintiffs’ reference to the ‘258 Patent, including the term “patented”, at no time influenced consumers’ decisions to purchase Plaintiffs’ ULTIMATE NUTRITION BULGARIAN TRIBULUS, nor is there any other reference to Pharmabul-Bulgaria and KAZ International, Inc. on Plaintiffs’ packaging or marketing materials that would lead consumers to be confused as to the source of Plaintiffs’ current ULTIMATE NUTRITION BULGARIAN TRIBULUS product.

32. Due to an internal miscommunication between Plaintiffs’ regulatory arm that oversees labeling and the individual in charge of purchasing, Plaintiffs’ regulatory arm was not informed that Plaintiffs began sourcing Bulgarian Tribulus Terrestris from someone other than Defendants. Having been made aware of the situation, Plaintiffs are in the process of changing their labeling to remove any reference to the ‘258 Patent number, and have informed Defendants of same.

33. Defendants did not suffer an injury or damage as a result of Plaintiffs continued claim that its product contained the ‘258 Patent since, as Plaintiffs have recently determined, ULTIMATE NUTRITION BULGARIAN TRIBULUS never in fact covered the ‘258 Patent claims.

34. Defendants assert that Plaintiffs’ current ULTIMATE NUTRITION BULGARIAN TRIBULUS product wrongly indicates that it contains Bulgarian Tribulus Terrestris. This is simply untrue. Plaintiffs’ current supplier, Stauber, has confirmed to Plaintiff that the goods which it supplies Plaintiff for its current ULTIMATE NUTRITION

BULGARIAN TRIBULUS product do indeed contain Bulgarian Tribulus Terrestris. This too has been communicated to Defendants.

COUNT I – DECLARATION OF NON-INFRINGEMENT OF THE '258 PATENT

35. Plaintiffs re-allege and incorporate herein by reference each and every allegation contained in Paragraphs 1 through 34 inclusive, as set forth above.

36. Plaintiffs have not infringed, are not now infringing and are not contributing to or inducing infringement of any valid and enforceable claims of the '258 Patent, whether directly or under the doctrine of equivalents, and are entitled to a declaration to that effect.

**COUNT II – DECLARATION OF NON-VIOLATION OF LANHAM ACT –Sec. 43(a)
AND OTHER UNFAIR COMPETITON CLAIMS**

37. Plaintiffs re-allege and incorporate herein by reference each and every allegation contained in Paragraphs 1 through 34 inclusive, as set forth above.

38. Plaintiffs seeks a declaration and final judgment in its favor declaring that Plaintiffs have not violated the Lanham Act, namely, Plaintiffs have not made false designations of origin, false or misleading descriptions of fact, or false or misleading representations of fact and related unfair competition claims relating to Defendants, Defendants' patent, or the origin of Plaintiffs' goods or ingredients contained in Plaintiff's goods.

39. Plaintiffs' conduct has not (i) created any likelihood of, or actual, consumer confusion; or (ii) caused Defendants to suffer any damages.

40. Plaintiffs seek a declaration and final judgment in their favor declaring that Defendants are not entitled to an injunction, damages, or other relief.

41. By reason of the foregoing, there is an actual and justifiable controversy among the parties pertaining to their respective rights and legal relations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that:

1. This Court declare that Plaintiffs have not infringed, is not now infringing and is not contributing to or inducing infringement of any valid and enforceable claims of the '258 patent, whether directly or under the doctrine of equivalents;

2. This Court declare that the marketing, offering for sale and sale of Plaintiffs' **ULTIMATE NUTRITION BULGARIAN TRIBULUS** does not violate any Lanham Act or unfair competition laws.

3. This Court declare that Defendants are not entitled to an injunction, damages, or other relief.

4. This Court award Plaintiffs reasonable attorneys' fees and costs for bringing this action.

5. This Court award Plaintiffs such other and further relief as this Court may deem just.

JURY TRIAL DEMAND

Plaintiffs respectfully demand a trial by jury on all issues so triable.

**CHIPMAN MAZZUCCO
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Attorneys for Plaintiffs



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