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9 Attorneys for Plaintiff,
10 Netbus Inc.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 NETBUS INC.,
14 a Delaware corporation,

15 Plaintiff,

16 vs.

17 PHARMAVITE LLC,
18 a California limited liability company,

19 Defendant.

Civil Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT RE TRADEMARK
INFRINGEMENT AND UNFAIR
COMPETITION**

DEMAND FOR JURY TRIAL

20 For its Complaint, Plaintiff Netbus Inc. (“Netbus”) alleges against Defendant
21 Pharmavite LLC (“Pharmavite”) as follows:

Jurisdiction and Venue

22 1. This civil action is for declaratory judgment that Netbus’ use of the
23 trademark “**NatureM.D.**” (or its earlier version “**NatureMD**”) in marketing and
24 selling its dietary and nutritional supplements is lawful and has not resulted in acts of
25 trademark infringement, false designation of origin, misrepresentation, unfair
26 competition, passing off, or dilution in violation of any rights asserted by Phamavite in
27 its use of the mark NATURE MADE under federal trademark law, the Lanham Act, 15
28 U.S.C. §1051 *et seq.*, or under California statutory or common law.

2. This Court has jurisdiction over the subject matter of this action pursuant to the Declaratory Judgment Act, 28 U.S.C. §§2201-2202; the Lanham Act, 15 U.S.C. § 1121, 15 U.S.C. §1051 et seq.; and 28 U.S.C. §1338 (trademarks). The Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

3. Venue is proper in this district pursuant to 28 U.S.C. §1391, including 28 U.S.C. §§ 1391(b) and (c), in that on information and belief, Plaintiff and Defendant are subject to jurisdiction and are doing business in this district; Pharmavite is a California LLC with its principal place of business in this judicial district; Netbus is a Delaware corporation with its principal place of business in Newark, California, and also having employees in this judicial district; the parties have sold and sell goods under their respective marks to customers in this judicial district; and/or a substantial part of the events giving rise to the claims hereunder occurred in this judicial district; and/or a substantial part of the property that is the subject of the action is situated in this judicial district.

The Parties

4. Plaintiff Netbus Inc. (“Netbus”) is a corporation organized under the laws of the State of Delaware with a principal place of business at 39773 Seal Drive, Newark, California 94560. Netbus also has employees located in this judicial district and conducts business in this judicial district.

5. On information and belief, Defendant Pharmavite LLC (“Pharmavite”) is a limited liability company organized under the laws of the State of California with a principal place of business at 8531 Fallbrook Avenue, West Hills, California 91304.

GENERAL ALLEGATIONS

Plaintiff’s Business and Its “NatureM.D.” Mark

6. Netbus is engaged in the marketing, advertising, and selling of nutritional and dietary supplements in the United States.

7. Netbus is the owner of the “NatureM.D.” trademark which is the subject of Application Serial No. 88/905,682 for registration of the “NatureM.D.” mark which was

1 filed on May 7, 2020 with the United States Patent and Trademark Office (PTO) in
2 connection with “dietary and nutritional supplements” in International Class 5
3 (hereinafter “the ‘682 Application”). A true and correct copy of the PTO’s TESS
4 summary record of the ‘682 Application is attached hereto as **Exhibit 1**.

5 8. The ‘682 Application was originally filed on the basis of intent-to-use of
6 the mark spelled as “NatureMD”. Following an examination by the PTO’s Examining
7 Attorney, which included a trademark search of third-party marks, the PTO did not find
8 a likelihood of confusion between the “NatureMD” mark and any other federally
9 registered mark or any other mark that was the subject of any pending application, and
10 the “NatureMD” mark was approved by the PTO for publication which took place on
11 August 4, 2020. Netbus then filed a voluntary amendment with the PTO on August 5,
12 2020 and revised the mark to “NatureM.D.” and the amendment was approved by the
13 PTO on September 1, 2020 without requiring the application to be republished.

14 9. Since the filing of the ‘682 Application, Netbus has begun marketing and
15 selling in this judicial district dietary and nutritional supplements under the
16 “NatureM.D.” mark (or the earlier variation “NatureMD”).

17 10. The dietary and nutritional supplements being advertised and sold under
18 the “NatureM.D.” mark are offered under the specific product names and brands of
19 “GutConnect 365,” “Synbiotic 365,” “Enzyme 365,” “RevBiotics,” and “NutriProtein.”
20 The packaging and advertising of these products also use and display a design logo of
21 the letter “N” with a distinctive leaf design (hereinafter “the N & Leaf logo”).

22 11. Netbus offers these products through direct online sales to customers via
23 the website www.NatureMD.com. Attached as **Exhibit 2** are true and correct copies of
24 pages from this website and exemplars and photographs of the packaging and labels for
25 these Netbus supplements.

26 12. Netbus advertises its NatureM.D. supplements for the following purposes
27 and benefits: “GutConnect 365” supports digestive health and gut integrity; “Synbiotic
28 365” supports gut health and weight management; “Enzyme 365” supports digestive

1 balance and nutrient absorption; “RevBiotics” supports energy, mood and digestive
2 health; and “NutriProtein” supports muscle, metabolism and weight management.

3 13. Dr. Vincent Pedre, M.D., a prominent and well-known medical doctor,
4 leading gut-health expert, author, and TV personality, is the Chief Wellness Officer for
5 NatureM.D. and is prominently featured as a spokesperson for the NatureM.D.
6 supplements in the marketing and advertising thereof. [See Ex. 2]

7 14. Netbus’ NatureM.D. mark and the associated marketing and information
8 that are provided signify that the supplements include ingredients that are found in
9 nature, are sourced from environmentally-friendly practices, are known to offer health
10 benefits, and there is association and collaboration of a medical doctor with the
11 creation, development, and marketing of such products.

12 **Pharmavite’s NATURE MADE Mark, Opposition Against the ‘682 Application,**
13 **and Its Threats of Legal Action**

14 15. On information and belief, Pharmavite is engaged in manufacturing and
15 selling of vitamins, minerals, and dietary supplements under the NATURE MADE mark
16 in the United States, including in this judicial district.

17 16. Attached hereto as **Exhibit 3** are true and correct copies of photographs of
18 the packaging (front and back) of representative samples of several Pharmavite products
19 sold under the NATURE MADE mark.

20 17. On July 1, 2020, Pharmavite’s attorney sent a cease and desist letter to
21 Netbus’ attorney, claiming that Pharmavite owns U.S. trademark registrations for the
22 mark NATURE MADE in connection with dietary and nutritional supplements. In that
23 cease and desist letter, Pharmavite referred to Netbus’ ‘682 Application and alleged that
24 “Netbus’ use of NATUREMD would infringe the industry-leading NATURE MADE
25 brand, and will otherwise detrimentally affect our client’s long-standing prior rights in
26 NATURE MADE on dietary supplement goods. Pharmavite is therefore compelled to
27 take action against your use or proposed use of this mark.” Pharmavite claimed that
28 NATUREMD would likely be pronounced by consumers as “Nature Med” which

1 purportedly could easily be confused with “Nature Made” when calling for the goods
2 orally.

3 18. The Pharmavite attorney’s letter continued: “Netbus should also understand
4 that any sale of NATUREMD is an infringement of our client’s mark, and supports a
5 claim for damages based on the same. We therefore also require that any use of
6 NATUREMD cease immediately.” Unless Netbus would accede to all of Pharmavite’s
7 demands that Netbus withdraw its application and confirm that it would not use
8 NATUREMD or any other fomatives of NATURE and MD, Pharmavite further
9 threatened to move forward with “oppositions or other proceedings.”

10 19. Netbus’ attorney responded with a letter dated July 13, 2020, disputing and
11 denying Pharmavite’ allegations of trademark infringement. Netbus’ attorney reminded
12 that Pharmavite does not have a monopoly on all marks that include the word
13 NATURE, that the parties’ respective marks have different spellings, appearances,
14 sounds, meanings, and commercial impressions. Netbus’s attorney also explained that it
15 was far-fetched and there was no reasonable basis for Pharmavite to assert that
16 consumers would somehow just throw in a letter “E” between the letters “MD” which is
17 a well-known abbreviation for “Medical Doctor.” Netbus also pointed out that it had
18 filed a voluntary amendment with the PTO in the ‘682 Application to change “MD” to
19 “M.D.” such that the mark would be spelled as “NatureM.D.” which “amendment
20 virtually makes it impossible for any reasonable consumer to pronounce or view
21 Netbus’ mark as ‘NATUREMED’ as you [Pharmavite] have asserted.”

22 20. In a second letter dated July 29, 2020, Pharmavite’s attorney disagreed
23 with Netbus’ contentions and restated Pharmavite’s demands that Netbus “must
24 promptly withdraw the NATUREMD application, and cease any use of that mark,
25 NATUREM.D., or similar marks.”

26 21. True and correct copies of the above-referenced cease and desist letters by
27 Pharmavite and Netbus’ response letter are attached hereto as **Exhibit 4**.

28 22. On September 3, 2020 Pharmavite filed and initiated an opposition

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