

Alaina M. Stedillie (Wyoming Bar No. 6-4327)

astedillie@crowleyfleck.com

CROWLEY | FLECK

111 W 2nd St. #220

Casper, WY 82601

Telephone: (307) 265-2279

Facsimile: (307) 265-2307

Brian N. Platt (*pro hac vice* forthcoming)

bplatt@wnlaw.com

Timothy D. Nichols (*pro hac vice* forthcoming)

tnichols@wnlaw.com

WORKMAN NYDEGGER

60 East South Temple Suite 1000

Salt Lake City, UT 84111

Telephone: (801) 533-9800

Facsimile: (801) 328-1707

Counsel for Plaintiff Axxess Global Sciences, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

AXCESS GLOBAL SCIENCES, LLC,)

Plaintiff,)

vs.)

TOP NOTCH NUTRITION LLC)

Defendant.)

Civil No: _____

COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND

Plaintiff Axxess Global Sciences, LLC hereby complains and alleges as follows against Defendant Top Notch Nutrition LLC:

THE PARTIES

1. Plaintiff Axxess Global, LLC is a Utah limited liability company with a principal place of business at 2157 Lincoln Street, Salt Lake City, UT 84106 (hereinafter “AGS” or “Plaintiff”).

2. Defendant Top Notch Nutrition LLC is a Wyoming limited liability company with a principal place of business at 1910 Thomas Avenue, Cheyenne, WY 82001 (hereinafter “Top Notch” or “Defendant”).

3. Defendant Top Notch, upon information and belief, does business within the State of Wyoming, is engaged in continuous and systematic business within the District of Wyoming, conducts and solicits business within this judicial district, and derives substantial revenue from the sales of its products and/or services within this judicial district. Upon information and belief, Top Notch has sold and has made offers for sale of products that infringe, contributorily infringe, and/or induce infringement by others as hereinafter stated in Wyoming and within this judicial district.

JURISDICTION

4. This matter arises under the patent laws of the United States, Title 35 United States Code, §§1 et seq.

5. This Court has personal jurisdiction over Defendant as Defendant maintains a principal place of business in this judicial district, has committed and continues to commit acts of infringement in violation of 35 U.S.C. § 271 in this judicial district, and because Defendant places infringing products into the stream of commerce with the knowledge or understanding that such

products are sold in the State of Wyoming and in this judicial district. In addition, the acts by Defendant cause substantial injury to Plaintiff in this judicial district. On information and belief, Defendant derives substantial revenue from its sale of infringing products within this judicial district, expects its actions to have consequences within this judicial district, and derives substantial revenue from interstate and international commerce directed to and from this judicial district. In addition, Defendant has taken advantage of the privilege of doing business in this judicial district.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (any Act of Congress relating to patents or trademarks).

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400. Defendant is a registered limited liability company in this judicial district and Defendant is subject to personal jurisdiction in this State. On information and belief, a substantial part of the events giving rise to the claims occurred in this judicial district, including Defendant's sale of its infringing products in this judicial district and/or shipping of products into this judicial district.

BACKGROUND

8. Plaintiff AGS is an innovator in the field of exogenous ketones and ketogenic precursor supplement products. These products aid the body in producing and sustaining elevated levels of ketone bodies in the blood and assist in the body's transition into nutritional ketosis. Among the Plaintiff's innovations are the inventions claimed in U.S. Patent No. 11,020,362 (the "'362 Patent") and U.S. Patent No. 11,241,403 (the "'403 Patent) which are attached as Exhibit A (collectively the "Asserted Patents"). The Asserted Patents describe and claim compositions for increasing blood ketone levels using various compositions of beta-hydroxybutyrate salts. The

claimed compositions are useful in inducing and sustaining a state of nutritional ketosis. Ketosis is defined in the Asserted Patents as follows:

“Ketosis” as used herein refers to a subject having blood ketone levels within the range of about 0.5 mmol/L and about 16 mmol/L in a subject. Ketosis may improve mitochondrial function, decrease reactive oxygen species production, reduce inflammation and increase the activity of neurotrophic factors.

’362 Patent, at 6:13-21, ’403 Patent, at 6:13-18. Products that practice the inventions claimed in the Asserted Patents are sometimes referred to as “keto supplements.”

9. Defendant sells its own keto supplement product on its website <https://topnotchnutrition.com/>, the Keto Magic exogenous ketone supplement shown below:



<https://topnotchnutrition.com/products/keto-magic>

10. Defendant has also sold its Keto Magic supplement on other third-party websites, including <https://www.walmart.com/>, as exemplified below:



<https://www.walmart.com/ip/Keto-Magic-Activated-Exogenous-Ketone-Supplement-Powered-Patent-Pending-Blend-KETOBA-BHBs-BA-Achieve-Stay-Ketosis-Ketogenesis-Feel-Energized-Empower/961084876>

11. Defendant describes the benefits of its keto supplement product, and specifically, how its product “supports ketosis” and will help a consumer “reach ketosis in 15 minutes!”:

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