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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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<b>JEC NUTRITION</b> , A Delaware Limited liability Corporation and <b>KELLY C. LOCKWOOD</b> , an Individual,	:	<b>Civil Action No.</b> _____
Plaintiffs,	:	<b>COMPLAINT FOR UNFAIR</b>
v.	:	<b>COMPETITION AND COM-</b>
	:	<b>MERCIAL MISREPRESENTAT-</b>
	:	<b>ION OF CONTENT AND</b>
	:	<b>GEOGRAPHIC ORIGIN BY AD-</b>
	:	<b>VERTISING IN COMMERCE</b>
	:	<b>(Lanham Act § 43(a) &amp; (b), 15</b>
	:	<b>U.S.C. § 1125(a) &amp; (b)),</b>
	:	<b>TRADEMARK INFRINGEMENT,</b>
<b>CPMC, LLC</b> an Arizona Limited Liability Company, <b>VOLUPTAS</b> , also known as <b>VOLUPTAS INTERNATIONAL, LLC</b> , an Arizona Limited Liability Company, and <b>JOHN DOES 1-10</b> ,	:	<b>UNFAIR COMPETITION AND</b>
Defendants.	:	<b>MIS-APPROPRIATION UNDER</b>
	:	<b>NEW JERSEY STATE LAW, AND</b>
	:	<b>DEMAND FOR JURY TRIAL ON</b>
	:	<b>ALL ISSUES</b>
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Plaintiffs Jec Nutrition LLC and its principal, individual Kelly C. Lockwood, complain as follows against defendants:

**JURISDICTION, VENUE AND NATURE OF THE ACTION**


1. This is an action for unfair competition in violation of the Law of the United States, arising under the Lanham Act, 15 U.S.C. § 1051 et seq., in particular the Lanham Act Section 43(a) & (b), 15 U.S.C. § 1125(a) & (b), and New Jersey law. The Court has ORIGINAL FEDERAL QUESTION SUBJECT MATTER JURISDICTION of the claims in this Complaint and Demand for Trial By Jury under and pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a), and 1367. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) in that the

defendants can be found in the State of New Jersey as they are intentionally offering for sale and/or are selling, through one or more third-party retailers located within New Jersey and directly by internet sales, infringing goods falsely designating their origin, content and geographic origin, in violation of the Lanham Act, Sections 43(a) & (b) as part of a substantial stream of commerce, and are currently disseminating and/or or during 2005 and 2006, have disseminated false advertising about such infringing goods in the State of New Jersey by radio broadcast. The Defendants have intentionally and substantially availed themselves of the State of New Jersey, its commerce and economy, its retail trade and its consumers so as to subject themselves to personal jurisdiction in this District for relief based upon the commercial conduct of Defendants and each of them or the effect of the commercial conduct of each of them within the State of New Jersey.

2. This action arises from defendants' wrongful scheme, which violates the Lanham Act Section 43(a) & (b), 15 U.S.C. § 1125(a) & (b), to misappropriate Plaintiffs' trademarks, brands, goodwill and substantial and successful commercial efforts in the weight-loss nutritional supplement field, and to "coattail" upon Plaintiffs' earlier successes in the marketplace, passing off goods to the public as if they were the goods of Plaintiffs through false designation of origin, false content claims and false claims of country of origin, using confusingly similar branding and false and fraudulent advertising which misrepresents the contents of goods and misstates the geographic origin of its principal ingredient.


3. Plaintiffs had, previous to Defendants' entry into the market and of their commencement of sales of infringing goods in Commerce by causing them to be distributed to, offered for sale and sold in the State of New Jersey, adopted and were actively advertising and



using in Commerce, the mark **h57**  for their weight loss nutritional supplement goods which contain, as the active ingredient, Genuine South African Hoodia. As shown in this representation of a label for the goods bearing the mark, the mark **h57** modifies the immediately-following active-ingredient-descriptive word “hoodia”, which is not part of the mark, and was also associated with the descriptive words “Original South African”. The commercial impression of the label content is the following string of words: “Original South African **h57** hoodia”.

4. In furtherance of their wrongful scheme of unfair competition, Defendants are advertising and selling weight loss nutritional supplement products, which are directly competitive with Plaintiffs’ products, under the confusingly similar unregistered descriptive



mark , which Defendants adopted and used in Commerce.

HoodiaX57 is sometimes shown by Defendants as



“Hoodia” describes, by generic name, a cactus plant extract, one variety of which is reputedly efficacious in weight-loss programs based on hunger management. The extract has different varieties sourced from several geographic areas, including South Africa, the only source from which the aforesaid efficacious hoodia variety is derived. At least one variety of Hoodia not from South Africa is the principal ingredient in the product for which the unregistered mark of Defendants stands. Prior to Defendants entering the market in Commerce and adopting the aforesaid HoodiaX57 descriptive mark, Plaintiffs had already filed in the United States Patent

and Trademark Office two separate applications to register both the marks **h57** and **x57** for weight-loss nutritional supplements. Each of these applications was actually filed in the United States Patent and Trademark Office prior to the date and time the defendants adopted and began to use in Commerce HoodiaX57 as their mark for competitive goods containing hoodia. Making their unfair competition and passing off conduct in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a) even more egregious, defendants are falsely and fraudulently misrepresenting in advertising in Commerce, including over the internet at the website page <http://www.hoodiax57.com/order.html?u=&s=hoodia&b=Hoodia&ref=2>, the principal active ingredient of their products bearing their HoodiaX57 mark to unfairly compete with Plaintiffs' and their products. The false and fraudulent advertising promoted by Defendants claims that their HoodiaX57 goods contain the same active ingredient as Plaintiffs' **h57** goods, that is, "100% Pure South African Hoodia", although the statement by Defendants is not true. The hoodia ingredient in defendants' goods, to whatever extent it is present at all, is a different variety not derived from hoodia plants grown in South Africa. Thus, it is not Genuine South African Hoodia Gordonii. Therefore, the Defendants' claims also misrepresent the geographic origin of the principal ingredient of their goods. These false claims violate the Lanham Act § 43(b), 15 U.S.C. § 1125(b).

**THE PARTIES, FACTUAL BASIS OF THE COMPLAINT AND ALLEGATIONS**

**COMMON TO ALL COUNTS**

5. Plaintiffs are both residents of the State of New Jersey. Plaintiff JEC Nutrition is a limited liability company of the State of Delaware, having its principal place of business at 41 Watchung Plaza, Montclair, New Jersey ("JEC").

6. Plaintiff Kelly C. Lockwood, the owner and operator of JEC, is an individual citizen residing at 165 Hillside Avenue, Nutley, New Jersey.

7. Upon information and belief, defendant CPMC, LLC is an Arizona limited liability company which also does business under the name Voluptas, with its principal place of business at 2920 East Camelback Road, Phoenix, Arizona (“CPMC”).

8. Upon information and belief, CPMC is related to or closely affiliated with defendant Voluptas International LLC, an Arizona limited liability company with its principal place of business at 3333 East Camelback Road, Suite 253, Phoenix, Arizona (“Voluptas”).

9. John Does 1 to 10 are all of the directors, officers, principals, managers, managing directors, and employees of defendants CPMC and Voluptas (collectively, “Defendants”), either or both of them, who knowingly and intentionally authorized, approved, committed, or otherwise participated in any way in whole or in part in the wrongful acts against the Plaintiffs or either of them as set forth below, which would subject them to individual and personal liability for violations of the Lanham Act and the laws of the State of New Jersey.

10. JEC and Mr. Lockwood (collectively, “Plaintiffs”) each own at least one pending United States trademark application, and the rights to such trademarks, which are relevant to and are in part the subject of this proceeding.

11. As to any trademark and/or trademark application referenced herein which is owned personally by Mr. Lockwood, JEC is a “related company” as that term is used and defined in the Lanham Act, §§ 5 and 45.

12. JEC is the owner and user in Commerce of the International Class 005 trademark **h57** for use in association with weight loss supplements, which mark is the subject of a United States Trademark application filed publicly as notice to the world in the United States Patent and Trademark Office on January 9, 2005 and which was assigned Serial No. 78/544,446 (the "**h57** Application"). The **h57** Application is an intent-to-use application filed under Section 1(b) of the Lanham Act.

13. On or about January 24, 2005, subsequent to the filing of the **h57** Application, Plaintiffs commenced using the **h57** mark in Commerce in connection with weight loss supplements, and have continuously since that date used this mark in Commerce to distinguish the weight-loss supplement sold by them. See United States Patent and Trademark Office TESS Database record, Exhibit A attached hereto and made a part hereof. Plaintiffs have advertised their products under the **h57** mark in Commerce throughout the United States and beyond the borders of the United States, and have made sales of their products bearing the **h57** mark in all 50 of the Several States of the United States and have shipped the goods across International borders of the United States to deliver **h57** products in Canada, the United Kingdom, Germany, Australia, Guam, Poland, China, the Philippines and Puerto Rico. To date Plaintiffs' **h57** ongoing brand sales total approximately \$5 million, and Plaintiffs have developed a very substantial and very valuable Good Will and Secondary Meaning for their **h57** brand and the mark which represent it.<sup>14</sup> Plaintiff Mr. Lockwood is the owner of the mark **x57**, which, by appearance, content and goods intended to be represented, is obviously closely related to the aforesaid **h57** mark. The mark **x57** is intended to be used for on or in association with weight loss nutritional supplements in International Class 005. The **x57** mark is the subject of a United States Trademark application filed publicly as notice to the world in the United States Patent and

Trademark Office on April 5, 2005 and which was assigned Serial No. 78/602,395 (the “**x57** Application”). The **x57** Application is an intent-to-use application filed under Section 1(b) of the Lanham Act. See United States Patent and Trademark Office TESS Database record, Exhibit B attached hereto and made a part hereof.

15. The **h57** mark which is the subject of the **h57** Application is used by Plaintiffs to distinguish a weight-loss nutritional supplement product that is successfully marketed in Commerce nationally by plaintiff JEC. Plaintiffs’ **h57** products contain, and are known for containing, the principal active ingredient, Genuine South African Hoodia Gordinii.

16. Since on or about January 24, 2005, Plaintiffs have nationally advertised their **h57** Genuine South African Hoodia Gordinii goods in Commerce via the purchase at substantial cost and placement of radio advertisements (the “**h57** Advertisements”). The ads associate the **h57** mark and the reputedly efficacious “South African Hoodia” ingredient, and rely upon its presence in the product sold under the mark **h57** as an important and customer-desirable feature of the goods, and to separate and distinguish the **h57** goods of plaintiffs from other similar and competitive goods which do not contain “South African Hoodia” but, rather, a hoodia ingredient sourced from some other place. The presence of the reputedly efficacious and customer-desirable feature of Genuine South African Hoodia Gordinii in the **h57** goods contributes substantially to the aforesaid valuable good will and Secondary Meaning which Plaintiffs have developed for goods bearing the **h57** mark and brand.

17. Upon information and belief, Defendants, prior to their use of the mark HoodiaX57 in connection with weight loss supplements, heard or had access to the content of Plaintiffs’ radio advertisements for Plaintiffs’ **h57**<sup>tm</sup> Genuine South African Hoodia Gordinii

products and/or read transcripts thereof, all of which are original copyrighted works authored, created, published and owned for all purposes by Plaintiff JEC pursuant to the Copyright Act of 1976, under which all of the exclusive rights of copyright under 17 U.S.C. § 106 and the rest of the Copyright Act of 1976 belong to Plaintiff JEC.

18. After JEC (1) filed its aforesaid January 9, 2005 intent-to-use **h57** trademark Application with the United States Patent and Trademark Office and the **h57** mark was thus publicly disclosed, and (2) after Plaintiffs commenced using the **h57** mark in commerce in connection with weight loss nutritional supplements on or about January 24, 2005, and (3) after Plaintiffs commenced the national radio advertising campaign in Commerce for their **h57** Genuine South African Hoodia Gordinii products on or about January 24, 2005, Defendants, willfully, intentionally and with a specific intent to misappropriate the valuable Good Will and Secondary Meaning developed by Plaintiffs, combined the ingredient-descriptive word “Hoodia” (which plaintiffs’ mark **h57** modifies but does not include) with the term X57, duplicating the content of Plaintiff Lockwood’s **x57** Application, Serial Number 78/602,395 filed April 5, 2005, to create the common law descriptive mark HoodiaX57, and commenced use thereof in Commerce on weight loss nutritional supplements falsely purporting to contain “100% Pure South African Hoodia” (the “Infringing Products”) and in advertising, including by radio and internet, therefor. These goods of the defendants were intended to and did compete directly with the goods plaintiffs had previously brought to market and developed substantial Good Will and Secondary Meaning for under the **h57** mark. 19. Defendants, intentionally and willfully, have advertised and continue to advertise, offer to sell and sell nationally in Commerce their weight loss products bearing the descriptive common law HoodiaX57 mark and the untrue claim and geographic origin misrepresentation of “100% pure South African Hoodia”. Such

advertisements have appeared on the radio (for instance, on the nationally syndicated daily radio program DR. LAURA) and on the Internet on a website with a domain address of [www.HoodiaX57.com](http://www.HoodiaX57.com) (the "Infringing Website"). Within that infringing website of Defendants, at the page having the internet address <http://hoodiax57.com/pure.html?u=&s=hoodia&b=Hoodia&ref=2> there appears the following text:

"Remember, all Hoodia Gordonii is not alike. Hoodia is being grown on plantations around the world, but the only true 100% Pure Hoodia Gordonii comes from South Africa, in the Kalahari Desert region.

To be sure you are taking 100% Pure Hoodia Gordonii you want to take HoodiaX57 which is made with the finest ingredients available."

The language is very cleverly arranged, saying "To be sure you are taking 100% Pure Hoodia Gordonii you want to take HoodiaX57 . . . ." However, the text continues by stating only that HoodiaX57 "is made with the finest ingredients available." Although the entire context loudly implies, and a reasonable consumer would conclude that HoodiaX57 contains the "100% Pure Hoodia Gordonii" ingredient, the specific words are a mere (and deniable) euphemistic suggestion of what is not the truth, a substantial violation of the Plaintiffs' rights under Section 43 of the Lanham Act.

20. The domain name used by defendants, HoodiaX57.com, was registered by a representative of defendant CPMC, one C.R. Brewer, on or about June 5, 2005, and the domain name exactly mimicking plaintiffs' **h57** mark, hoodiah57.com, was registered also by C.R. Brewer on or about June 14, 2005. These Domain registration dates are subsequent to: (1) the filing dates of both of Plaintiffs' **h57** and **x57** US trademark Applications, (2) the

commencement of Plaintiffs' use of **h57** mark in Commerce, and (3) the commencement of the Plaintiffs' radio advertisements for their **h57** products.

21. On the Infringing Website, Defendants make the false claim and geographic origin misrepresentation that the Infringing Products contain "100% Pure South African Hoodia Gordinii". The Infringing Products do not contain "100% Pure South African Hoodia Gordinii" nor any hoodia plant extract sourced from South Africa.

22. The Infringing Products are offered to the public by Defendants to compete directly with Plaintiffs' **h57** Genuine South African Hoodia Gordinii product.

23. Defendants, on the Infringing Website, which is freely available to internet users throughout New Jersey, make the following ownership admission about "HoodiaX57": "HoodiaX57 is a trademark of CPMC, LLC (Copyright 2005 CPMC, LLC)". The defendant CPMC, LLC by those words, has accepted full responsibility and ownership of the HoodiaX57 mark and brand, and thus the responsibility which accompanies promoting that mark and brand in violation of the substantial and valuable Lanham Act Section 43(a) and (b) rights of Plaintiffs. CPMC, LLC has also, by those quoted words, accepted full responsibility for creating the false and infringing advertising materials which CPMC, LLC publishes in New Jersey over the internet and by which the Lanham Act rights of the plaintiff and its rights under the Copyright Act of 1976 have been substantially violated.

24. Defendants willful and intentional selection, adoption and use of the mark HoodiaX57, apart from and together with their misrepresentation of their products' active ingredient and its geographic origin, is a transparent and unlawful come-from-behind catch-up strategy by a market newcomer to gain sales and marketing position through unfair competition with an earlier successful market entrant in the form of "coat-tailing", passing off the

newcomer's products as the goods of their successful predecessor through false designation of origin to create confusion among consumers and thereby cause consumers to purchase the goods of defendants rather than those of plaintiffs. That is, Defendants willfully and intentionally adopted and used, as if the owner, the selling method embodiment and the strength of the valuable and substantial Secondary Meaning and Good Will established by the Plaintiffs' well-accepted national marketing in Commerce of the very similar and earlier-in-use **h57** brand of Genuine South African Hoodia Gordinii Nutritional Supplement.

24. Evidence of illegal "coat-tailing" and passing off is shown by Defendants' nearly total copying of the substance, organization, structure and tone of Plaintiff JEC's original, copyrighted **h57** radio advertisements work which advertisements have been broadcast nationally. [For a comparative full-text, separated-sentence exposition of the Plaintiffs' original advertisement shown next to the Defendants' infringement of it, see Exhibit C.] What was not copied word-for-word from Plaintiff JEC's original radio ad for **h57** goods, to which Defendants had access by virtue of its national radio broadcasts, was slavishly paraphrased in both content and order by Defendants. The only substantive differences between Plaintiffs' **h57** advertisements original and first-published work and Defendants' infringing nationally broadcast radio advertisements is the substitution of "HoodiaX57" for **h57**, and changing the identifying information of the sponsor from Plaintiff JEC to the Defendants so that sales stimulated by the plagiarized HoodiaX57 radio advertisements are made by defendants.

25. Defendants began to publish their infringing, deceptive and otherwise false and fraudulent radio advertising on or about April 15, 2005. That date was subsequent to the following: (1) Plaintiffs' United States Patent and Trademark Office filings of their trademark applications for both the **h57** and **x57** on January 9, 2005 and April 5, 2005

respectively, (2) the first use in commerce of the plaintiffs' **h57**<sup>tm</sup> mark in January 2005, and (3) the initial publication of Plaintiffs' radio advertisements for their **h57** Products on or about January 24, 2005.

26. Defendants' plagiarized version of the Plaintiff JEC's original, proprietary advertising for its **h57** Genuine South African Hoodia Gordinii goods includes the ingredient claim and geographic origin claim made truthfully by JEC (that its **h57** product contains "Genuine South African Hoodia Gordinii"). The language used by defendants is: "HoodiaX57, with one hundred percent pure South African Hoodia extract is available . . . ." However, despite and in contravention of the quoted statement, the Defendants' competing Infringing Products do not contain Genuine South African Hoodia Gordinii. Similarly, Defendants falsely claim, on the Infringing Website, that the Infringing HoodiaX57 Products contain "100% Pure South African Hoodia Gordinii". Thus, the ingredient claims promoted by Defendants are false and fraudulent, and likely to cause consumers to incorrectly believe that Defendants' HoodiaX57 product, like plaintiffs' **h57**<sup>tm</sup> product, actually contains Genuine South African Hoodia Gordinii. These false and fraudulent ingredient claims which misrepresent geographic origin, and the use of the HoodiaX57 mark part of which duplicates the Plaintiffs' **x57** Application and which is suggestive of Plaintiffs' **h57** mark falsely designate the origin of Defendants' goods and have caused and are likely to continue to cause initial interest confusion and confusion among consumers as between the **h57** products of Plaintiffs and the products of Defendants sold under the confusingly similar mark HoodiaX57. In fact, actual confusion as between plaintiffs' **h57** goods and the infringing HoodiaX57 goods have occurred and have damaged the good will of the plaintiffs, causing Plaintiffs irreparable and financial injury.

27. Defendants have sold and distributed their weight-loss goods, identified as HoodiaX57, nationally and intentionally by Internet and otherwise, and have intentionally caused them to be shipped into and offered for sale and sold at retail stores in the State of New Jersey as well as by the Internet to, upon information and belief, customers located in the State of New Jersey as part of a continuous and substantial stream of Commerce. As such, Defendants, through their products, have sought to create and have accomplished the creation of an actual commercial physical presence in the State of New Jersey.

28. Defendants have intentionally included the State of New Jersey as a place to which their HoodiaX57 goods are directed, offered for sale, sold and physically distributed in large numbers and commercial quantities and on a regular and continuous basis by offering for sale and selling and distributing to New Jersey consumers the Infringing Product through major retailers known by Defendants to be located, *inter alia*, in New Jersey, including but not limited to, at least some of the 21 Sam's Club warehouse stores (part of the Wal-Mart international retail chain) located in the State of New Jersey.

29. Upon information and belief, Defendants' false and infringing radio advertisements containing geographic origin misrepresentations regarding their HoodiaX57 product have been broadcast by radio stations whose signals can be and are received in New Jersey by New Jersey consumers. Defendants by their radio commercials broadcast to New Jersey consumers are attempting to influence the commercial behavior of New Jersey consumers by directing them to the infringing goods of Defendants in the place and stead of the genuine goods of Plaintiffs. The actual presence of the infringing goods of Defendants in the State of New Jersey offered for sale and sold to New Jersey consumers, has caused and will in the future cause actual and irreparable injury to the plaintiffs in the State of New Jersey.

30. The intentional physical presence, offering for sale of the Infringing Products in retail locations throughout the State of New Jersey and actual sale of the infringing goods in the State of New Jersey demonstrates that Defendants have intentionally availed themselves of the State of New Jersey for a substantial business and commercial purpose. Sales of the Infringing Products, an over-the-counter nutritional supplement, not a prescription drug product, create sales tax revenue in the State of New Jersey. The Infringing Products, as sold physically in New Jersey retail trade, are directly subject to any and all New Jersey laws and regulations governing consumer goods sold to New Jersey consumers in New Jersey in general, and to laws and regulations directed at such products in particular, and to all products sold within New Jersey. The manufacturer and/or distributor of such goods is liable to all persons within the state of New Jersey who are injured commercially or physically by the sale of them or by use of those products within the State of New Jersey. Plaintiffs, who are operating within and who reside within the State of New Jersey and who offer the genuine goods in New Jersey under the mark **h57**, are commercially injured financially and irreparably by the offering for sale and sale of the infringing products within the State of New Jersey.

31. Both of the Plaintiffs' **h57** and **x57** trademark applications have been approved by the United States Patent and Trademark Office to register, and have been published for opposition in 2006. Both applications have since been opposed by a company which does not compete in the nutritional supplement or related goods market. The oppositions are currently pending actively before the United States Trademark Trial and Appeal Board.

**COUNT ONE**

**(Violation of Lanham Act Section 43(a) & (b))**

32. Plaintiffs incorporate all of the foregoing allegations of the Complaint by reference.<sup>33</sup> Defendants' use in commerce of the mark HoodiaX57 on weight-loss supplements and on the Infringing Website has caused actual and damaging confusion as between the genuine **h57** goods of plaintiffs and those infringing goods of defendants, and is likely to cause confusion, mistake and/or deception as to their affiliation, connection, or association with Plaintiffs and their products in the future. Further, Defendants' false and fraudulent ingredient and geographic origin claims to the effect that the Infringing Products contain 100% Pure South African Hoodia Gordinii, which Plaintiffs' **h57** competitive goods actually contain, will cause, and upon information and belief have caused, consumers to incorrectly believe that the active ingredient in the Infringing Products is the same active ingredient as is in Plaintiffs' competitive products bearing the **h57** mark, and this initial interest confusion has resulted in consumers in New Jersey and elsewhere purchasing the products of Defendants instead of the genuine products of the Plaintiffs, to the substantial damage and detriment of Plaintiffs both financially and as irreparable injury.

34. Defendants' conduct in using HoodiaX57 as its mark and in falsely advertising the active ingredient in its goods constitutes creation of a false designation of the origin of Defendants' goods in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and a false content claim with accompanying false claim of country of origin in violation of Section 43(b) of the Lanham Act, 15 U.S.C. § 1125(b) and has caused and will cause plaintiffs substantial financial and irreparable damage and detriment. Plaintiffs have no adequate remedy at law and require injunctive relief to cause the defendants to cease and desist from their illegal and unlawful conduct in violation of Plaintiffs' rights under the Lanham Act.

**COUNT TWO**

**(Common Law and Statutory New Jersey Unfair Competition)**

35. Plaintiffs incorporate all of the foregoing allegations of the Complaint by reference.

36. Defendants' conduct constitutes trademark infringement, N.J.S. 56:3-13.13, and unfair competition under N.J.S. 56:4-1 *et seq.* and under the common law of the State of New Jersey, which has caused and will cause in the future to Plaintiffs' substantial financial damage and detriment, and irreparable injury for which there is no adequate remedy at law, and constitutes willful and intentional conduct which allows for the imposition of treble damages under New Jersey Statutory law.

**COUNT THREE**

**(Misappropriation)**

37. Plaintiff incorporates all of the foregoing allegations of the Complaint by reference.38. Defendants' aforesaid conduct was willful and intentional, and constitutes misappropriation of the brand, advertising and good will of plaintiffs under New Jersey state statutory and common law, N.J.S. 56:4-1 *et seq.* and N.J.S. 56:3-13.16, to the substantial financial and irreparable damage and detriment of the Plaintiffs, for which there is no adequate remedy at law. Plaintiffs have no adequate remedy at law and require injunctive relief to cause the defendants to cease and desist from their illegal and unlawful conduct in violation of Plaintiffs' rights under the statutory, regulatory and common law of the State of New Jersey. Plaintiffs have by letter requested that the defendants cease and desist from their unfair competition, but Defendants, after receipt of the demand, have specifically refused to do so.

**DEMANDS FOR RELIEF FOR ALL COUNTS OF COMPLAINT**

**WHEREFORE**, Plaintiffs demand judgment against all defendants jointly and severally:

(1) enjoining defendants, pursuant to the Lanham Act Section 34, 15 U.S.C. § 1116 and all other applicable law including the Law of the State of New Jersey, from engaging in conduct in violation of Plaintiffs' rights under the Lanham Act and under New Jersey Law; and ordering delivery up for destruction pursuant to the Lanham Act Section 36, 15 U.S.C. § 1118 all labels, signs, prints, packages, wrappers, receptacles, and advertisement in the possession of the Defendants bearing the word, term, name, symbol, device, combination thereof, designation, description or representation that is the subject of the violation of the Lanham Act Section 43(a) and 43(b) rights of the Plaintiffs, or any reproduction, counterfeit, copy or colorable imitation thereof, and all plates, molds, matrices and other means of making same;

(2) awarding plaintiffs all damages allowed pursuant to the Lanham Act Section 35, 15 U.S.C. § 1117 and all other applicable law including the Law of the State of New Jersey, including but not limited to compensatory and punitive damages, and including but not limited to the greater of three times the profits of Defendants or Plaintiffs' damages pursuant to 15 U.S.C. § 1117(b);

(3) Allowing to Plaintiffs as actual damages and not as a penalty, according to the circumstances of the case, a sum above the actual damages found not exceeding three times the actual damages found as allowed pursuant to the Lanham Act section 35, 15 U.S.C. § 1117(a);

(4) requiring defendants to account to Plaintiffs for all profits and proceeds realized as a result of defendants' unlawful acts; and

(5) awarding Plaintiffs and costs of litigation pursuant to the Lanham Act, section 35, 15 U.S.C. § 1117(a), and declaring the case exceptional so as to allow an award to Plaintiffs of their reasonable attorneys fees; and

(6) all such other and further relief as the Court may deem just and equitable as provided for in the Lanham Act and the Law of the State of New Jersey.

Dated: June 2, 2006

**SILLS CUMMIS EPSTEIN & GROSS, P.C. .**

/s/Jeffrey Barton Cahn

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Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury of all issues so triable.

Dated: June 2, 2006

**SILLS CUMMIS EPSTEIN & GROSS, P.C.**

/s/Jeffrey Barton Cahn

By: \_\_\_\_\_  
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(973) 643-7000  
Attorneys for Plaintiff

**CERTIFICATION OF NONARBITRABILITY  
PURSUANT TO LOCAL RULE 201.1(d)**


Jeffrey Barton Cahn, counsel of record for plaintiff in the above-referenced matter, hereby certifies that the relief requested in this matter includes non-monetary relief, and the damages potentially recoverable in this matter exceed the sum of \$150,000, exclusive of interest and costs and of any claim for punitive damages. Accordingly, Local Rule 201.1(d) does not apply to this matter.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: June 2, 2006

/s/Jeffrey Barton Cahn  
By: \_\_\_\_\_  
Jeffrey Barton Cahn (JC4346)

# EXHIBIT A:



**United States Patent and Trademark Office**

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**Record 1 out of 1**

TARR Status ASSIGN Status TDR TTAB Status ( Use the "Back" button of the Internet Browser to return to TESS)


h57

**Word Mark** H57  
**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: weight loss supplement  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Design Search Code**  
**Serial Number** 78544446  
**Filing Date** January 9, 2005  
**Current Filing Basis** 1B  
**Original Filing Basis** 1B  
**Published for Opposition** October 25, 2005  
**Owner** (APPLICANT) Jec Nutrition LIMITED LIABILITY CORPORATION DELAWARE The UPS Store 41 Watchung Plaza Montclair NEW JERSEY 07042  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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# EXHIBIT B:



**United States Patent and Trademark Office**

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TARR Status ASSIGN Status TDR TTAB Status ( Use the "Back" button of the Internet Browser to return to TESS)

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x57

<b>Word Mark</b>	<b>X57</b>
<b>Goods and Services</b>	IC 005. US 006 018 044 046 051 052. G & S: Dietary weight loss supplement containing hoodia
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Design Search Code</b>	
<b>Serial Number</b>	78602395
<b>Filing Date</b>	April 5, 2005
<b>Current Filing Basis</b>	1B
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	February 28, 2006
<b>Owner</b>	(APPLICANT) Lockwood, Kelly C INDIVIDUAL UNITED STATES 165 Hillside Avenue Nutley NEW JERSEY 07110
<b>Type of Mark Register</b>	TRADEMARK PRINCIPAL

Live/Dead Indicator      LIVE

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# EXHIBIT C:

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**EXHIBIT C**

<b>JEC NUTRITION AD for h57 Hoodia</b>	<b>DEFENDANTS' AD for Hoodia x57</b>
<p>Imagine a Natural Diet ingredient that kills your appetite and helps attack obesity.</p> <p>Imagine a rare herb that simply tells your brain you're full.</p> <p>Imagine you can try it risk free with a 100% money back guarantee.</p> <p>No need to imagine it's true – H57 Hoodia is finally available in America in it's purest form.</p> <p>The bushmen of Africa have been harvesting Hoodia for thousands of Years to curb hunger and all you have to do is take two pills before each meal to help reduce your hunger.</p> <p>H57 South African Hoodia will make you less hungry to help you lose more weight than you ever imagined. Don't be fooled by overpriced imitations only h57 Hoodia has the pure Hoodia from South Africa that's been proven to work.</p> <p>The amazing results have been featured on 60 minutes, CBS news, the BBC and newspapers around the world. Don't miss out. Call now for your risk free supply of H57 South African Hoodia. Call toll free 1-877-h57-diet that's 877-h57-diet. Unconditional Money Back Guarantee.</p> <p>Call 877-h57-diet or visit myh57.com</p>	<p>Imagine, an all-natural diet ingredient that suppresses your appetite and helps you to lose weight.</p> <p>Imagine a diet product that fools your brain into believing you're full.</p> <p>What if you could try it risk-free, with a one-hundred percent money back guarantee?</p> <p>Introducing Hoodia, the latest breakthrough in weight loss science. Hoodia is a rare cactus from South Africa that takes your appetite away.</p> <p>The Bushman of South Africa have been taking Hoodia for thousands of years to curb hunger.</p> <p><i>60 Minutes</i> reports that Hoodia fools the brain by making you think you're full, even if you've barely eaten. These amazing results have been featured on CBS and ABC news and newspapers around the world.</p> <p>Hoodia X57, with one hundred percent pure South African Hoodia extract is available for the first time in this risk-free offer. To get Hoodia X57, call 1.800.STAY.SLIM. That's 800.STAY.SLIM. Don't be fooled by imitators!</p> <p>Call 800.STAY.SLIM to find out how to get your free bottle of Hoodia X57. That's 800.STAY.SLIM or visit us online at HoodiaX57.com</p>