

06 - 21

56717-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CIV - HUCK
MAGISTRATE JUDGE
SIMONTON

PINECREST CONSORTIUM, INC.,

Plaintiff,

CASE NO. _____

vs.

CIRCUIT CASE NO. 05-11772 CA

PHARMAVITE LLC, a foreign limited liability company,

Defendant.

FILED BY _____
2006 MAY 11 AM 2:50
CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI, FLORIDA

NOTICE OF REMOVAL AND MEMORANDUM OF LAW IN SUPPORT

COMES NOW the Defendant, PHARMAVITE LLC, a foreign limited liability company, by and through its undersigned attorneys and pursuant to 28 U.S.C. §§1441, 1446 and hereby files this Notice of Removal and Memorandum of Law in Support of this action to the United States District Court for the Southern District of Florida from the Eleventh Judicial Circuit in and for Miami-Dade County, Florida and as grounds in support thereof states as follows:

1. On June 8, 2005, Plaintiff, PINECREST CONSORTIUM, INC., filed a Complaint in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 05-11772 CA 21.

2. On June 20, 2005, Plaintiff served its Summons and Complaint on the Defendant. In response to the Complaint, Defendant filed a Motion to Dismiss. The hearing on Defendant's Motion to Dismiss was held on April 11, 2006. Plaintiff filed its Amended Complaint on April 11, 2006. Copies of all pleadings filed in the State Court Action are attached hereto as Composite Exhibit "A".

12

3. This case arises out of Plaintiff's purchase of Nature Made® Vitamin E at a B.J.'s Wholesale Club store in Miami, Florida. Plaintiff alleges that the Defendant violated Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201 et seq., for allegedly deceptively misleading Plaintiff and the public to believe its Nature Made® Vitamin E was natural when it was in fact synthetic, and as a result Plaintiff was aggrieved. Plaintiff does not allege that the product was mislabeled, nor does it allege that the product's label is not in compliance with Federal Food and Drug laws.

4. Plaintiff is seeking an injunction to prevent Defendant from distributing Nature Made® Vitamin E within the State of Florida.

5. Pursuant to 28 U.S.C. §1331, the District Court has subject matter jurisdiction over this claim because it presents a federal question and therefore, this action may be removed to federal court pursuant to 28 U.S.C. §1441.

MEMORANDUM OF LAW

6. Nature Made® is a Federally Registered Trademark owned by the Defendant which was registered on August 12, 1975. See Trademark of Nature Made® attached hereto and marked as Exhibit "B".

7. Pursuant to the Trademark Act of 1946 ("Lanham Act"), 15 U.S.C. §1065, Nature Made® is an incontestable federal trademark because more than five years of continuous use has passed since the timely filing of the proper affidavits of use with the Patent and Trademark Office. Incontestable status of the Nature Made® trademark is

conclusive evidence of the registrant's exclusive right to use the registered mark under §33(b) of the Lanham Act, 15 U.S.C. §1115(b).

8. Further, 15 U.S.C §1064 provides for a private cause of action to petition for cancellation a Federally Registered Trademark, including incontestable trademarks.

9. In the case at bar, Plaintiff has sought to enjoin the Defendant from distributing Nature Made® Vitamin E in the State of Florida.

10. Plaintiff does not allege the distribution of a synthetic Vitamin E product is improper; rather, Plaintiff's suit is based upon the distribution of this product under the Federally Trademarked name Nature Made®. Plaintiff is therefore seeking an injunction to prevent distribution of the synthetic Vitamin E under the Federally Registered Trademark Nature Made® without pleading it as such in its Amended Complaint.

11. If Plaintiff were successful in this action it would be tantamount to enjoining the Defendant from using its incontestable Federally Registered Trademark in the State of Florida. However, there is no precedent in Florida for the cancellation of a Federally Registered Trademark by a state court.

12. Although Plaintiff has not pled in the Complaint or Amended Complaint that this action arises under the Constitution, laws, or treaties of the United States as defined under 28 U.S.C. § 1331, the Plaintiff may not defeat removal by omitting to plead necessary federal questions. Rivet v. Regions Bank of Louisiana, 118 S.Ct. 921, 522 U.S. 470 (1998)(citing Franchise Tax Bd. Of Cal. v. Construction Laborers Vacation Trust for Southern Cal., 463 U.S. 1, 103 S. Ct. 2841 (1983)).

13. “Even when a plaintiff has pled only state-law causes of action, he may not avoid federal question jurisdiction if either (1) his state-law claims raise substantial questions of federal law or (2) federal law completely preempts his state-law claims.” Dunlap v. G&I Holding Group, Inc., 381 F.3d 1285 (11th Cir. 2004)(citing Franchise Tax Bd. Of Cal. v. Construction Laborers Vacation Trust for Southern Cal., 463 U.S. 1, 103 S. Ct. 2841 (1983)).

14. Here, Plaintiff’s state law claim under FDUTPA raises a substantial question of federal law, specifically, whether the holder of a Federally Registered Incontestable Trademark may be enjoined from using that trademark in Florida, but continue to use the same trademark in the other 49 states.

15. Based on Plaintiff’s counsel’s representations at the hearing on Defendant’s Motion to Dismiss held on April 11, 2006; Plaintiff’s Amended Complaint, dated April 11, 2006; and Plaintiff’s initial discovery requests to Defendant, including Plaintiff’s Notice of Service of First Set of Interrogatories, dated April 19, 2006 and Plaintiff’s First Request to Produce, dated April 19, 2006; Defendant has recently ascertained that Plaintiff’s claim is centered on the Federally Trademarked name, Nature Made®, rather than deceptive trade practices.

16. Specifically, Plaintiff’s Request to Produce #4 asks for “All documents pertaining to the obtaining of the trademark “Nature Made”, including, but not limited to, drawings, applications, oppositions, assignments, case file of examining attorney, statement of use, etc.” See Plaintiff’s First Request to Produce, dated April 19, 2006, attached hereto as Exhibit “C”.

17. Further, in its Interrogatories to Defendant, Plaintiff's Interrogatory #15 requests facts substantiating a statement made to Plaintiff "that the United States Trademark Office considered the mark "Nature Made" descriptive. Further, state why said mark is not suggestive?"¹ See Plaintiff's First Set of Interrogatories, dated April 19, 2006, attached hereto as Exhibit "D".

18. Plaintiff's actions indicate that it intends to litigate questions of Federal Trademark Law in Florida State Courts, ultimately requesting that the Circuit Court of the Eleventh Judicial Circuit render a judgment on an important and potentially novel question of federal law.

19. In this action Plaintiff is seeking an injunction to enjoin the Defendant from distributing Nature Made® Vitamin E in the State of Florida as labeled. However, this remedy, if successful, would ultimately enjoin the Defendant from using its incontestable Federally Registered Trademark in the State of Florida. Therefore, this case properly should be heard in federal court.

20. Further, by removing this case to District Court pursuant to 28 U.S.C. §1441, Plaintiff will not be prejudiced, as the District Court can exercise supplemental jurisdiction over the accompanying state FDUPTA claim alleged in the Amended Complaint. 28 U.S.C. §1367(a).

21. The injunction Plaintiff is seeking is based on the state FDUPTA claim, Fla. Stat. §501.211. The District Court has supplemental jurisdiction over the state law

¹ Pharmavite stated in correspondence: "In fact, had the United States Trademark Office considered the mark merely descriptive rather than a brand name, it would not have issued the trademark registration for Nature Made®." See Correspondence dated May 18, 2005, attached hereto as Exhibit "E".

claim as it forms part of the “same case or controversy under Article III of the United States Constitution.” 28 U.S.C. §1367(a).

22. A District Court’s original jurisdiction over federal questions carries with it jurisdiction over state law claims that “derive from a common nucleus of operative fact,” such that “the relationship between [the federal] claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional ‘case.’” United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1996).

23. This Notice of Removal is timely filed with this Court pursuant to 28 U.S.C. §1446(b):

...If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

24. Because this action is pending in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, prior to removal, venue is proper in this Court under 28 U.S.C. §1441(a).

25. A Notice of Filing of the Notice of Removal is attached as Exhibit “F.” A copy of this Notice will be served on Plaintiff, and the original will be filed with the Clerk of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, as required by 28 U.S.C. §1446(d).


26. The undersigned is licensed in the State of Florida and authorized to practice in the United States District Court for the Southern District of Florida.

27. The undersigned has been authorized by Defendant to file this Notice of Removal.

WHEREFORE, the Defendant, PHARMAVITE LLC, a foreign limited liability company, respectfully requests that the above-styled action pending in the Eleventh Judicial Circuit in and for Miami-Dade, Florida be removed to the United States District Court for the Southern District of Florida.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 11th day of May, 2006 to all parties on the attached service list.

WICKER, SMITH, O'HARA, MCCOY,
GRAHAM & FORD, P.A.
Attorney for Pharmavite LLC
Grove Plaza, 5th Floor
2900 S.W. 28th Terrace
Miami, FL 33133
Phone: (305) 448-3939
Fax: (305) 441-1745

By: 
Nicholas E. Christin
Florida Bar No. 179561
Leslie A. McCormick
Florida Bar No. 705756

Service List

Paul H. Bass, Esquire
Paul H. Bass, P.A.
9130 S. Dadeland Blvd., Suite 1509
Miami, FL 33156

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

PINECREST CONSORTIUM, INC.

GENERAL JURISDICTION DIVISION

Plaintiff,

CASE NO. 05-11772 CA 21

vs.

PHARMAVITE LLC, a foreign limited
liability corporation,

Defendant.

**ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S AMENDED COMPLAINT**

Defendant, PHARMAVITE L.L.C., a foreign limited liability corporation, by and through its undersigned counsel, hereby answers the Amended Complaint filed by Plaintiff, PINECREST CONSORTIUM, INC., as follows:

1. Defendant denies Plaintiff's entitlement to the cause of action alleged and, therefore, the allegations in paragraph 1 are denied.
2. Defendant admits it is a foreign limited liability corporation. Defendant denies Plaintiff's entitlement to the cause of action alleged and, therefore, the remaining allegations in paragraph 2 are denied.
3. Defendant is without knowledge as to the allegations in paragraph 3 and, therefore, these allegations are denied.
4. Defendant denies the allegations in paragraph 4 of the Amended Complaint.
5. Defendant denies the allegations in paragraph 5 of the Amended Complaint.

6. Defendant denies Plaintiff's entitlement to the cause of action alleged and, therefore, the allegations in paragraph 6 are denied. Defendant denies that Plaintiff is in need of the relief requested in paragraph 6 of the Amended Complaint.

AFFIRMATIVE DEFENSES

7. The Plaintiff's Amended Complaint fails to state a claim upon which injunctive relief can be granted.

8. Plaintiff has failed to allege specific facts of unfairness and deception on the part of Defendant to state a claim under the Florida Deceptive and Unfair Trade Practices Act ("FDUPTA").

9. Plaintiff has failed to allege how it was aggrieved by Defendant's acts to establish the elements of harm and causation essential to a claim under the Florida Deceptive and Unfair Trade Practices Act.

10. The subject Nature Made® label referred to in paragraph 3 of Plaintiff's Amended Complaint complies with all pertinent provisions of the Federal Food, Drug and Cosmetic Act and does not fall under the misbranding provision for dietary supplements in 21 C.F.R. § 101.9(k)(4).

10. Nature Made® is an incontestable federal trademark under §15 of the Trademark Act of 1946 (Lanham Act), 15 U.S.C. §1065 by the passage of over five years of continuous use and the timely filing of the proper affidavits of use with the Patent and Trademark Office. The earliest of the federal registrations for trademarks owned by PHARMAVITE that includes the phrase Nature Made® was issued in 1975. Incontestable status of the Nature Made® trademark is conclusive evidence of the

registrant's exclusive right to use the registered mark under § 33(b) of the Lanhan Act, 15 U.S.C. § 1115(b).

11. Marks that constitute a common descriptive name of the product are referred to as generic and are not registrable. 15 U.S. C. §§ 1052, 1064(3). Trademarks will not be issued where the mark is merely descriptive of the product and therefore trademarks are generally not perceived as specific representations of product qualities. The Nature Made® trademark is not merely descriptive of its product and as such, Plaintiff's argument that it was deceptively mislead fails.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendant, PHARMAVITE, L.L.C., demands attorneys fees as the prevailing party in this action pursuant to Fla. Stat. §501.211 and such other relief as this Court deems just and equitable.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 2nd day of May, 2006 to all parties on the attached service list.

WICKER, SMITH, O'HARA, MCCOY,
GRAHAM & FORD, P.A.
Attorney for Pharmavite LLC
Grove Plaza, 5th Floor
2900 S.W. 28th Terrace
Miami, FL 33133
Phone: (305) 448-3939
Fax: (305) 441-1745

By: Leslie A. McCormick
Leslie A. McCormick
Florida Bar No. 705756

Service List

Paul H. Bass, Esquire
Paul H. Bass, P.A.
9130 S. Dadeland Blvd., Suite 1509
Miami, FL 33156

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 05-11772 CA 21

PINECREST CONSORTIUM, INC.,

Plaintiff,

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

FIRST REQUEST TO PRODUCE

Plaintiff, PINECREST CONSORTIUM, INC., pursuant to Rule 1.350 and 1.410(b) of the Florida Rules of Civil Procedure, requests that Defendant, PHARMAVITE LLC, produce, for inspection and photocopying purposes, at the offices of the undersigned, within the time set forth by said Rules, the following:

1. Copies of all advertising for the last three years for Nature Made Vitamins E, both natural and synthetic.
2. Copies of all articles including, but not limited to, newspaper, periodicals, and journals that mention Nature Made Vitamin E, both natural and synthetic for the last three years.
3. All records which pertain to the sale and delivery of Nature Made Vitamin E, both natural and synthetic to BJ Club, located at 10425 Marlin Road, Miami, Florida, for the last three years. If do not have for that store, all records for sales in Florida.
4. All documents pertaining to the obtaining of the trade mark "Nature Made", including, but not limited to, drawings, applications,

oppositions, assignments, case file of examining attorney, statement of use, etc..

5. All data pertaining to the comparison between natural and synthetic vitamin E, relied upon to substantiate the statement of Christine Burdick-Bell, in her letter dated to Paul H. Bass dated May 18, 2005, which stated:

" Therefore, both your assertion that you suffer from a "lack" of Vitamin E because you have taken the synthetic form of Vitamin E and not the "natural" form and that you would need to take more of the Nature Made@ synthetic Vitamin E capsules to get the same amount of "natural" Vitamin E, is unsupported by the science on this matter."

as well as all scientific data that support all other statements made in said letter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing was mailed to: LESLIE A. McCORMICK, ESQUIRE, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A., Attorneys for Defendant, Grove Plaza, 5th Floor, 2900 S.W. 28 Terrace, Miami, Florida 33133, this 19 day of April, 2006.

PAUL H. BASS, P.A.
Attorney for Plaintiff
Suite 1509, Datran Tower II
9130 South Dadeland Boulevard
Miami, Florida 33134
Telephone: (305) 670-4191
Facsimile: (305) 670-5596

By: Paul H. Bass
PAUL H. BASS, ESQUIRE
Florida Bar No. 110188

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 05-11772 CA 21

PINECREST CONSORTIUM, INC.,

Plaintiff,

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

NOTICE OF SERVICE OF FIRST SET OF INTERROGATORIES

You are notified that Plaintiff, PINECREST CONSORTIUM, INC., has served upon Defendant, PHARMAVITE LLC, its First Set of Interrogatories to be answered under oath within 30 days after service of said interrogatories.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed on the 14 day of April, 2006, to: LESLIE A. McCORMICK, ESQUIRE, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A., Attorneys for Defendant, Grove Plaza, 5th Floor, 2900 S.W. 28 Terrace, Miami, Florida 33133.

PAUL H. BASS, P.A.
Attorney for Plaintiff
Suite 1509, Datran Tower II
9130 South Dadeland Boulevard
Telephone: (305) 670-4191
Fax: (305) 670-5596

By: 

PAUL H. BASS, ESQUIRE
Florida Bar No. 110188

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 05-11772 CA 21

 PINECREST CONSORTIUM, INC.,

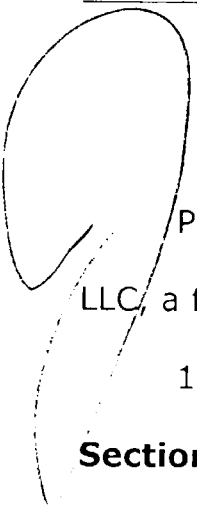
Plaintiff,

vs.

 PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

AMENDED COMPLAINT

 Plaintiff, PINECREST CONSORTIUM, INC., sues Defendant, PHARMAVITE LLC, a foreign limited liability corporation and alleges:

1. This is an action for declaratory relief and an injunction pursuant to **Section 501.211** Florida Statutes.

2. Defendant is a foreign limited liability corporation that is subject to the jurisdiction of this state pursuant to **Section 48.193** Florida Statutes for it operates, conducts, engages and/or carries on a business venture in this state by distributing its products.

3. Plaintiff purchased Defendant's "Nature Made" vitamin E, at BJ's Wholesale Club, Miami, Florida, within the last year believing said product was

a natural vitamin E, not synthetic, a true copy of the label is attached to the Complaint.

4. Defendant violated Florida's Deceptive and Unfair Trade Practices Act for it deceptively mislead Plaintiff and the public to believe its above-mentioned product was "natural" when, in fact, it was "synthetic", and as a result Plaintiff was aggrieved.

5. Plaintiff and the general public have no adequate remedy at law save an injunction, enjoining Defendant from distributing its above-mentioned product in this state as labeled.


6. Plaintiff is entitled to attorney's fees pursuant to **Section 501.2105** Florida Statutes.

WHEREFORE, Plaintiff prays that this Court declare Defendant's distribution of its vitamin E as labeled above an unfair and deceptive trade practice, that it temporarily and permanently enjoin Defendant from distributing and selling said product as labeled and grant such other and further relief as may be mete and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed and faxed to: LESLIE A. McCORMICK, ESQUIRE, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A., Grove Plaza, 5th Floor, 2900 S.W. 28 Terrace, Miami, Florida 33133, this 11 day of April, 2006.

PAUL H. BASS, P.A.
Attorney for Plaintiff
Suite 1509, Datran Tower II
9130 South Dadeland Boulevard
Miami, Florida 33134
Telephone: (305) 670-4191
Facsimile: (305) 670-5596

By: 
PAUL H. BASS, ESQUIRE
Florida Bar No. 110188

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

PINECREST CONSORTIUM, INC,

GENERAL JURISDICTION DIVISION

Plaintiff.

CASE NO. 05-11772 CA 21

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

CM

ORDER ON DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

THIS CAUSE having come before the Court on April 11, 2006 on Pharmavite, LLC's Motion to Dismiss the Complaint and the Court having heard argument of counsel and being otherwise fully advised in the premises it is hereby

ORDERED and ADJUDGED as follows:

- 1. The Defendant's Motion to Dismiss the Complaint is hereby GRANTED. *

DONE AND ORDERED at Miami, Miami Dade County, Florida, this
day of April, 2006


HONORABLE HERBERT STETTIN

Copies furnished :

Paul H. Bass, Esquire
Leslie A. McCormick

Plaintiff shall state that it was "assigned", & delete its claim for "palming off" within 10 days & Defendant hereafter shall file AN ANSWER

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

PINECREST CONSORTIUM, INC.

GENERAL JURISDICTION DIVISION

Plaintiff,

CASE NO. 05-11772 CA 21

vs.

PHARMAVITE LLC, a foreign limited
liability corporation,

Defendant.

FILED
MAR 15 2006
CLERK OF COURT
MIAMI-DADE COUNTY
FLORIDA

RE-NOTICE OF HEARING
(15 MINUTE SPECIAL SET)

YOU WILL PLEASE TAKE NOTICE that the undersigned will call up for hearing, **Defendant, PHARMAVITE LLC'S, Motion to Dismiss**, before Honorable Judge Herbert Stettin on **Tuesday, April 11, 2006 at 9:15 a.m.** at the Dade County Courthouse, 73 West Flagler Street, Room 1201, Miami, Florida 33130.

PLEASE GOVERN YOURSELF ACCORDINGLY.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 15th day of March, 2006 to all parties on the attached service list.

WICKER, SMITH, O'HARA, MCCOY,
GRAHAM & FORD, P.A.
Attorney for Pharmavite LLC
Grove Plaza, 5th Floor
2900 S.W. 28th Terrace
Miami, FL 33133
Phone: (305) 448-3939
Fax: (305) 441-1745

By: Leslie McCormick
Leslie A. McCormick
LMccormick@WickerSmith.com
Florida Bar No. 705756

cc: Judge's Judicial Assistant/Motion Calendar Clerk

The undersigned counsel certifies that a bona fide effort to agree or to narrow the issues on the Motion noticed has been made with the opposing counsel.

Service List

Paul H. Bass, Esquire
Paul H. Bass, P.A.
9130 S. Dadeland Blvd., Suite 1509
Miami, FL 33156

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
PINECREST CONSORTIUM, INC., GENERAL JURISDICTION DIVISION

Plaintiff,

CASE NO. 05-11772 CA 21

vs.

PHARMAVITE LLC, a foreign limited
liability corporation,

Defendant.

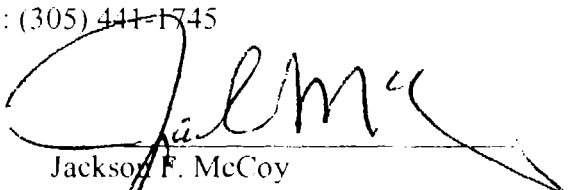
RE-NOTICE OF HEARING
(Cancels hearing scheduled for October 28, 2005)
(15 MINUTE SPECIAL SET)

YOU WILL PLEASE TAKE NOTICE that the undersigned will call up for hearing, **Defendant, PHARMAVITE LLC'S, Motion to Dismiss**, before Honorable Judge Manuel A. Crespo on **Monday, February 20, 2006 at 1:30 p.m.** at the Dade County Courthouse, 73 West Flagler Street, Room 1201, Miami, Florida 33130.

PLEASE GOVERN YOURSELF ACCORDINGLY.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 14 day of October, 2005 to all parties on the attached service list.

WICKER, SMITH, O'HARA, MCCOY,
GRAHAM & FORD, P.A.
Attorney for Pharmavite LLC
Grove Plaza, 5th Floor
2900 S.W. 28th Terrace
Miami, FL 33133
Phone: (305) 448-3939
Fax: (305) 444-1745

By: 
Jackson F. McCoy
JMccoy@WickerSmith.com
Florida Bar No. 163748

cc: Judge's Judicial Assistant/Motion Calendar Clerk

The undersigned counsel certifies that a bona fide effort to agree or to narrow the issues on the Motion noticed has been made with the opposing counsel.

Service List

Paul H. Bass, Esquire
Paul H. Bass, P.A.
Datran Tower II, Suite 1509
9130 South Dadeland Boulevard
Miami, FL 33156

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 05-11772 CA 21

PINECREST CONSORTIUM, INC.,

Plaintiff,

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

FILED
CLERK OF COURT
MAY 13 2005
MAY 13 2005

NOTICE OF UNAVAILABILITY

THE UNDERSIGNED counsel for Plaintiff, PINECREST CONSORTIUM, INC., hereby gives notice to the Court and all parties of his unavailability for the period beginning **October 13, 2005**, through and including **October 24, 2005**, and requests that no depositions, hearings, or any other matters be scheduled between or on those dates.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing was mailed to: JACKSON F. McCOY, ESQUIRE, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A., Attorneys for Defendant, Grove Plaza, 5th Floor, 2900 S.W. 28 Terrace, Miami, Florida 33133, this 11 day of August, 2005.

PAUL H. BASS, P.A.
Attorney for Plaintiff
Suite 1509, Datran Tower II
9130 South Dadeland Boulevard
Miami, Florida 33134
Telephone: (305) 670-4191
Facsimile: (305) 670-5596

By: Paul H. Bass
PAUL H. BASS, ESQUIRE
Florida Bar No. 110188

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 05-11772 CA 21

PINECREST CONSORTIUM, INC.,

Plaintiff,

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

NOTICE OF UNAVAILABILITY

THE UNDERSIGNED counsel for Plaintiff, PINECREST CONSORTIUM, INC., hereby gives notice to the Court and all parties of his unavailability for the period beginning **August 26, 2005**, through and including **September 16, 2005**, and requests that no depositions, hearings, or any other matters be scheduled between or on those dates.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing was mailed to: JACKSON F. McCOY, ESQUIRE, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A., Attorneys for Defendant, Grove Plaza, 5th Floor, 2900 S.W. 28 Terrace, Miami, Florida 33133, this 11 day of August, 2005.

PAUL H. BASS, P.A.
Attorney for Plaintiff
Suite 1509, Datran Tower II
9130 South Dadeland Boulevard
Miami, Florida 33134
Telephone: (305) 670-4191
Facsimile: (305) 670-5596

By: Paul H. Bass
PAUL H. BASS, ESQUIRE
Florida Bar No. 110188

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

PINECREST CONSORTIUM, INC.

GENERAL JURISDICTION DIVISION

Plaintiff,

CASE NO. 05-11772 CA 21

vs.

PHARMAVITE LLC, a foreign limited liability corporation,

**PLEASE PROGRESS
DO NOT RETURN TO
MOTION FOR DISMISSAL**

Defendant.

RE-NOTICE OF HEARING
(Cancels hearing scheduled for September 6, 2005)
(15 MINUTE SPECIAL SET)

YOU WILL PLEASE TAKE NOTICE that the undersigned will call up for hearing, **Defendant, PHARMAVITE LLC'S, Motion to Dismiss**, before Honorable Judge Manuel A. Crespo on **Friday, October 28, 2005 at 10:00 a.m.** at the Dade County Courthouse, 73 West Flagler Street, Room 1201, Miami, Florida 33130.

PLEASE GOVERN YOURSELF ACCORDINGLY.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 11 day of August, 2005 to all parties on the attached service list.

WICKER, SMITH, O'HARA, MCCOY,
GRAHAM & FORD, P.A.
Attorney for Pharmavite LLC
Grove Plaza, 5th Floor
2900 S.W. 28th Terrace
Miami, FL 33133
Phone: (305) 448-3939
Fax: (305) 441-1745

By: JF McCoy
Jackson F. McCoy
JMccoy@WickerSmith.com
Florida Bar No. 163748

cc: **Judge's Judicial Assistant/Motion Calendar Clerk**

The undersigned counsel certifies that a bona fide effort to agree or to narrow the issues on the Motion noticed has been made with the opposing counsel.

Service List

Paul H. Bass, Esquire
Paul H. Bass, P.A.
Datran Tower II, Suite 1509
9130 South Dadeland Boulevard
Miami, FL 33156

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

PINECREST CONSORTIUM, INC.

GENERAL JURISDICTION DIVISION

Plaintiff,

CASE NO. 05-11772 CA 21

vs.

PHARMAVITE LLC, a foreign limited
liability corporation,

Defendant.

NOTICE OF HEARING
(SPECIAL SET – 15 MINUTE HEARING)

YOU WILL PLEASE TAKE NOTICE that the undersigned will call up for hearing, **Defendant, PHARMAVITE LLC'S, Motion to Dismiss**, before Honorable Judge Manuel A. Crespo on **Tuesday, September 6, 2005 at 4:15 p.m.** at the Dade County Courthouse, 73 West Flagler Street, Room 1201, Miami, Florida 33130.

PLEASE GOVERN YOURSELF ACCORDINGLY.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 1st day of August, 20 05 to all parties on the attached service list.

WICKER, SMITH, O'HARA, MCCOY,
GRAHAM & FORD, P.A.
Attorney for Pharmavite LLC
Grove Plaza, 5th Floor
2900 S.W. 28th Terrace
Miami, FL 33133
Phone: (305) 448-3939
Fax: (305) 441-1745

By: Jesse McCormick
for Jackson F. McCoy
JMcCoy@WickerSmith.com
Florida Bar No. 163748

cc: Judge's Judicial Assistant/Motion Calendar Clerk

The undersigned counsel certifies that a bona fide effort to agree or to narrow the issues on the Motion noticed has been made with the opposing counsel.

Service List

Paul H. Bass, Esquire
Paul H. Bass, P.A.
Datran Tower II, Suite 1509
9130 South Dadeland Boulevard
Miami, FL 33156

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

PINECREST CONSORTIUM, INC.

GENERAL JURISDICTION DIVISION

Plaintiff,

CASE NO. 05-11772 CA 21

vs.

PHARMAVITE LLC, a foreign limited
liability corporation,

Defendant.

MOTION TO DISMISS

COMES NOW Defendant PHARMAVITE LLC, by and through the undersigned counsel and pursuant to the Florida Rules of Civil Procedure files this, its Motion to Dismiss the Complaint, and in support thereof states:

1. Plaintiff PINECREST CONSORTIUM, INC., has filed a six (6) paragraph Complaint alleging that the labeling of Defendant's "Nature Made" vitamin E, which was purchased at BJ's Wholesale Club in Miami, Florida, violates the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201 et seq.

2. Specifically, Plaintiff contends that Defendant "unfairly palmed off" and "deceptively mislead" Plaintiff to believe its vitamin E was "natural" when in fact it was "synthetic." Id. ¶ 4.

3. Plaintiff's Complaint suffers from fatal defects and should be dismissed for failure to state a cause of action as the Plaintiff has failed to allege any facts that could support, and there is no basis as a matter of law to support, Plaintiff's contentions. Plaintiff has not made, and cannot make, any allegations to support a claim of "palming off". Plaintiff has not made, and cannot make, any allegations to support a claim that Defendant's vitamin E product

labeling is “misleading” and Plaintiff has not alleged any damages, a necessary element of any claim under FDUTPA.

Plaintiff fails to make, and cannot make, any allegations that support a claim of “palming off”

Plaintiff’s assertion that Defendant “unfairly palmed off” its vitamin E is entirely misguided and has no merit. “Palming off” is defined as “attempting to sell ones’ products as that of another.” *Brooks Shoe Manufacturing Company, inc. v. Suave Shoe Corporation*, 533 F. Supp. 75 (S.D. Fla. 1981); *Contemporary Restaurant Concepts, Ltd. v. Las Tapas-Jacksonville, Inc.*, 753 F. Supp. 1560 (M.D. Fla. 1991). There are absolutely no allegations that the Defendant attempted to sell its vitamin E as if it were the product of another manufacturer or distributor’s vitamin E. Clearly, Plaintiff fails to state a cause of action for “palming off” under FDUTPA.

Plaintiff fails to make, and cannot make, any allegations that support a claim that Defendant’s label is “misleading”

Plaintiff fails to state how it was “mislead” into believing that the Defendant’s vitamin E product that it purchased contained “natural” vitamin E. The subject label complies with all pertinent provisions of the Federal Food, Drug and Cosmetic Act, including but not limited to 21 CFR §§ 101.3, 101.4, 101.5, 101.9, 101.14, 101.18, and 101.36.

As the Complaint fails to contain specific allegations, the Plaintiff is not clear as to the alleged violation of FDUTPA. However, from Plaintiff’s use of Defendant’s trademark in quotes, it appears that Plaintiff’s sole objection with the labeling of the subject vitamin E is the usage of the Defendant’s federally registered, incontestable, trademark, and brand name Nature Made[®]. Plaintiff has apparently tried to shoehorn a claim that the usage of the federally protected trademark Nature Made[®] is somehow, in and of itself, “misleading.” Nature Made[®] is a trademarked brand name, and has been nothing more than a trademark since its first use in

1971 over thirty years ago. In addition, to its registration in the United States, the trademark Nature Made[®] has been effectively registered in over 44 countries worldwide. Therefore, this claim has no merit and fails to state a cause of action as a matter of law.

Plaintiff has failed to allege any damages

Although Plaintiff alleges that it believed it had purchased a natural vitamin as opposed to a synthetic vitamin, the Complaint wholly fails to allege that it “suffered a loss,” *i.e.*, damages. Even though the Complaint seeks only injunctive and declaratory relief, Plaintiff must allege how it was “aggrieved by” Defendant’s acts; the Plaintiff must establish that it has suffered a loss in order to have standing to assert a claim under FDUTPA. *See Haun v. Don Mealy Imports, Inc.*, 285 F. Supp. 2d 1297, 1307 (M.D. Fla. 2003); Fla. Stat. §501.211. Looking at the four corners of the Complaint, it is apparent that Plaintiff has not alleged any damages. More importantly, the actions which Plaintiff complains of cannot form the basis for the assertion of any damages as a matter of law. As such, Plaintiff’s Complaint fails to state a cause of action and should be dismissed.

Vitamin labeling is governed by the Federal Food, Drug, and Cosmetic Act. 21 U.S.C., Title 21, Chapter 9 et seq. As discussed, *supra*, Plaintiff does not assert that Defendant’s label fails to comply with any of the labeling requirements contained within the Code of Federal Regulations. 21 C.F.R. § 101 et seq.

The gravamen of Plaintiff’s Complaint is that it purchased “synthetic” vitamin E whereas it believed it was purchasing “natural” vitamin E. Although not asserted in the Complaint, discussed *supra*, Plaintiff’s “complaint” in the abstract is founded on an assertion that “natural” vitamin E is qualitatively superior to “synthetic” vitamin E, and that it was misled into buying qualitatively inferior “synthetic” vitamin E. However, under the regulations implementing the

Federal Food, Drug & Cosmetic Act, a product is misbranded if its label represents, suggests or implies that a natural vitamin in a food is superior to an added *or synthetic* vitamin, which clearly indicates that the FDA has determined that natural vitamins are not superior to synthetic vitamins. 21 CFR §101.36 (J). As a result, Defendant would be prohibited from making a claim that its natural vitamin E product is superior to its synthetic vitamin E product.

In conclusion, the Plaintiff cannot establish, either factually or legally, that the subject labeling is "misleading" or violative of FDUTPA in any manner. Accordingly, Plaintiff's Complaint should be dismissed with prejudice.

WHEREFORE, Defendant PHARMAVITE LLC respectfully requests this Honorable Court grant its Motion to Dismiss, and award Defendant attorney's fees as the prevailing party under Fla. Stat. §501.2105(1), and for such further and other relief as this Honorable Court deems just.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 1st day of August, 2005 to all parties on the attached service list.

WICKER, SMITH, O'HARA, MCCOY,
GRAHAM & FORD, P.A.
Attorney for Pharmavite LLC
2900 Middle Street (S.W. 28th Terrace)
Grove Plaza Building, 5th Floor
Miami, Florida 33133
Phone: (305) 448-3939
Fax: (305) 441-1745

By: Leslie McCormick
Jackson M. McCoy
Florida Bar No. 163748
Leslie A. McCormick
Florida Bar No. 705756

Service List

Paul H. Bass, Esquire
Paul H. Bass, P.A.
Datran Tower II, Suite 1509
9130 South Dadeland Boulevard
Miami, FL 33156

CT CORPORATION

July 13, 2005

Paul H. Bass, P.A.
Datran Two Center, Suite 1509
9130 South Dadeland Boulevard
Miami, FL 33156

Re: Pinecrest Consortium, Inc., Pltf. vs. Pharmavite LLC, etc., Dft.
Case No. 05-11772-CA-21

Dear Sir/Madam:

After checking our records and the records of the State of Florida, it has been determined that C T Corporation System is not the registered agent for an entity by the name of **Pharmavite LLC**.

Accordingly, we are returning the documents received from you.

Very truly yours,


Lyndell McBride
Process Specialist

Log# 510374182

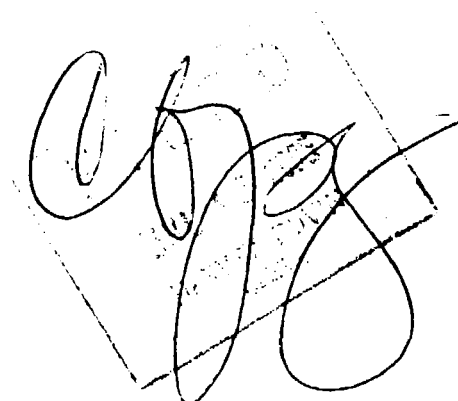
Federal Express #790575710650

cc: Miami-Dade County Circuit Court
Harvey Ruvlin, Clerk
73 W. Flagler Street, Suite 242
Miami, FL 33130

cc: New York SOP Support

1200 South Pine Island Road
Plantation, FL 33324
Tel 954 473 5503

A WoltersKluwer Company



please file

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 05-11772 CA 21

PINECREST CONSORTIUM, INC.,

Plaintiff,

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

FILED
CLERK OF DISTRICT COURT
MIAMI-DADE COUNTY, FLORIDA
JUL 28 2005
7:57 AM
CLERK

2

NOTICE OF HEARING
(Motion Calendar)

PLEASE TAKE NOTICE that the undersigned attorney has scheduled for hearing the following:

- MATTER:** Plaintiff's MOTION FOR JUDICIAL DEFAULT
- DATE:** July 28, 2005
- TIME:** 9:00 a.m.
- JUDGE:** Honorable Manuel A. Crespo
- LOCATION :** Miami-Dade County Courthouse
73 West Flagler Street, Miami, Florida 33130

PLEASE BE GOVERNED ACCORDINGLY.


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed on the 6 day of July, 2005, to: CHRISTINE BURDICK-BELL,

CASE NO. 05-11772 CA 21

Esquire, Pharmavite LLC, P. O. Box 9606, Mission Hills, California 91346 and
DONNA MOCH, Supervisor of Process, CT Corporation, 1200 South Pine Island
Road, Plantation, Florida 33324.

PAUL H. BASS, P.A.
Attorney for **Plaintiff**
Datran Two Center, Suite 1509
9130 South Dadeland Boulevard
Miami, FL 33156
Telephone: 305-670-4191
Fax: 305-670-5596

By: 

PAUL H. BASS, ESQUIRE
Florida Bar No. 110188

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, PERSONS NEEDING A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COURT ADA COORDINATOR OR ATTORNEY ADA COORDINATOR NO LATER THAN SEVEN DAYS PRIOR TO THE PROCEEDING, TELEPHONE NUMBER 375-2006 FOR ASSISTANCE. IF HEARING IMPAIRED, TELEPHONE COURT TDD NO. 375-2007, FLORIDA RELAY SERVICE NO. 1-800-955-8771 FOR ASSISTANCE.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

PINECREST CONSORTIUM, INC.,

Plaintiff,

vs.

CASE NO. 05-11772-CA-21

PHARMAVITE LLC, etc.,

Defendant.

_____ /

A. BARROSO
FILED FOR FILING
2005 JUL 29 PM 4:33
CLERK OF THE COURT
MIAMI COUNTY FLA.
CIVIL #97


NOTICE OF FILING AFFIDAVIT OF SERVICE ON NON-PARTY

Donna Moch, Supervisor of Process of C T Corporation System, a non-party to this action, files the attached Affidavit of Service on a non-party and states as follows:

1. As the attached Affidavit of Service on a Non-Party details, service upon the following named defendant(s) in this action has been attempted by serving C T Corporation System: **PHARMAVITE LLC**. A review of the records of C T Corporation System and of the Secretary of State of Florida indicate that C T Corporation System is not the Registered Agent of any party named in this action. Consequently the attempted service may not comply with requirements of Chapter 48, Florida Statutes and Rule 1.070, Florida Rules of Civil Procedure.

2. Donna Moch is not a party to this and is not representing any party to this action in filing this Notice. This Notice and the accompanying Affidavit are filed to provide notice to the Court and all interested parties or parties of the facts described in the accompanying Affidavit.

NOTICE IS HEREBY GIVEN that on this 28th day of June 2005, the original of the foregoing together with the original pleadings were sent by Federal Express to the Clerk of the Court, Harvey Ruvlin located at 73 West Flagler Street, Suite 242, Miami, FL 33130, Airbill #792960719383, and a copy of the foregoing was furnished by Regular Mail to the attorney for plaintiff, Paul H. Bass, P.A. located at Datan Tower II, Suite 1509, 9130 South Dadeland Boulevard, Miami, FL 33156.



DONNA MOCH
Supervisor of Process
CT Corporation System
1200 South Pine Island Road
Plantation, Florida 33324
(954) 473-5503

WS # 510314455/tb

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

PINECREST CONSORTIUM, INC.,

Plaintiff,

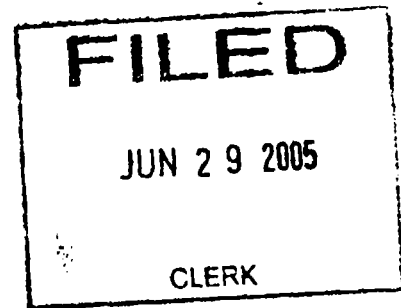
vs.

CASE NO. 05-11772-CA-21

PHARMAVITE LLC, etc.,

Defendant.

_____ /



A. BARROSO

AFFIDAVIT OF SERVICE ON A NON-PARTY

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME, the undersigned authority, authorized to administer oaths in this State, personally appeared DONNA MOCH, who, after being duly sworn, deposes and says:

1. My name is DONNA MOCH, and I am the Supervisor of Process for C T Corporation System, a Delaware corporation, authorized to conduct business in the State of Florida. Our principal Florida office is located at 1200 South Pine Island Road, Plantation, Florida 33324. My duties include keeping the records of C T Corporation System and reviewing them and the records of Florida's Secretary of State each time C T Corporation System receives legal process apparently intended to be served upon C T Corporation System in the capacity of registered agent of party named in the process. My duties also include taking or directing the taking of all steps necessary to advise entities for which C T Corporation System serves as the registered agent of the receipt of legal process and providing the process received to the entity.
2. On the 20th day of June, 2005, a Summons and Complaint in the above-styled action was served on C T Corporation System, at approximately 2:15 p.m.
3. The Summons is directed to Pharmavite LLC.

4. My review of the records of C T Corporation System reveal that its records contain no indication that C T Corporation System is the registered agent for the Defendant, Pharmavite LLC. Accordingly, C T Corporation System cannot forward the process to the Defendant or otherwise take any action as a Registered Agent. Consequently it has not done so.

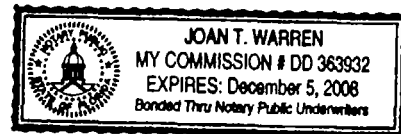
5. For the foregoing reasons, the service of the above-referenced Summons and Complaint upon C T Corporation may fail to comply with the requirements of Chapter 48, Florida Statutes and Rule 1.070, Florida Rules of Civil Procedure.

FURTHER AFFIANT SAYETH NAUGHT.

Donna Moch
DONNA MOCH

The foregoing instrument was acknowledged before me this 28th day of June, 2005, by DONNA MOCH, who is personally known to me and who did not take an oath.

Joan T. Warren
Name: Joan T. Warren
Notary Public
Commission No. DD 363932
My Commission Expires:



IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT OF FLORIDA, IN
AND FOR MIAMI-DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO: 05-11772 CA 21

FILED
JUN 29 2005
A. BARROSO

PINECREST CONSORTIUM, INC.,

Plaintiff,

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

THE STATE OF FLORIDA

TO EACH SHERIFF OF THE STATE:

YOU ARE COMMANDED to serve this summons and copy of the Complaint or petition in this action on the Defendant:

**PHARMAVITE LLC, a foreign
limited liability corporation, by serving:
C T CORPORATION SYSTEM
1200 South Pine Island Road
Plantation, Florida**

A lawsuit has been filed against you. You have twenty (20) calendar days after this Summons is served on you to file a written response, including the case number given above and the names of the parties, must be filed if you want the Court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money and property may thereafter be taken without further warning by the Court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service of the legal aid office (listed in the phone book).

6/20/05
2150 AK260
~~6/14/05~~
H40A
AK260

If you choose to file a written response yourself, at the same time you file your written response with the Clerk of the Court, you must also mail or take a copy of written response the "Plaintiff/Plaintiff's Attorney" named below. The central location of the Clerk's office at the Miami-Dade County Courthouse. The address for the courthouse, and branch court locations are listed below for your convenience.

MIAMI-DADE COUNTY COURTHOUSE Clerk of Courts 73 West Flagler Street, Room 133 Miami, Florida 33130	Joseph Caleb Center (20) Room 205 5400 N.W. 22 nd Avenue Miami, FL 33142	North Dade Justice Center (23) Room 100 15555 Biscayne Boulevard North Miami Beach, FL 33160
Miami Beach District (24) Room 224 1130 Washington Avenue Miami Beach, FL 33139	Coral Gables District (25) Room 100 3100 Ponce de Leon Blvd. Coral Gables, FL 33134	South Dade Justice Center (28) Room 1200 10710 S.W. 211 th Street Miami, FL 33180

You must also mail or take a copy of your written responses to the "Plaintiff/Plaintiff's Attorney" named below.

PAUL H. BASS, P.A.
Datran Tower II, Suite 1509
9130 South Dadeland Boulevard
Miami, FL 33156

TO EACH SHERIFF OF THE STATE OF FLORIDA: You are commanded to serve this Summons and a copy of the Complaint of this lawsuit on the above named Defendant.

DATED this day of , 2005.

JUN 08 2005

HARVEY RUVIN
Clerk of Courts

BY: **DALLAS WALKER**
Deputy Clerk

AMERICANS WITH DISABILITIES ACT OF 1990

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COSTS TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE DADE COUNTY COURT'S ADA COORDINATOR AT 73 WEST FLAGLER STREET, ROOM 1600, MIAMI, FLORIDA 33130. TELEPHONE NUMBERS (305) 375-2006 FOR VOICE, (305) 375-2007 FOR TDD AND (305) 350-6205 FOR FAX, WITHIN TWO (2) WORKINGS DAYS OF YOUR RECEIPT OF THIS DOCUMENT. TDD USERS MAY ALSO CALL 1-800-955-8771, FOR THE FLORIDA RELAY SERVICE.

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. **05-11772CA 21**

PINECREST CONSORTIUM, INC.,

Plaintiff,

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

FILED
JUN 03 2005
IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL.
CIVIL DIVISION

COMPLAINT

Plaintiff, PINECREST CONSORTIUM, INC., sues Defendant, PHARMAVITE LLC, a foreign limited liability corporation and alleges:

1. This is an action for declaratory relief and an injunction pursuant to **Section 501.211** Florida Statutes.

2. Defendant is a foreign limited liability corporation that is subject to the jurisdiction of this state pursuant to **Section 48.193** Florida Statutes for it operates, conducts, engages and/or carries on a business venture in this state by distributing its products.

3. Plaintiff purchased Defendant's "Nature Made" vitamin E, at BJ's Wholesale Club, Miami, Florida, within the last year believing said product was

a natural vitamin E, not synthetic, a true copy of the label is attached.

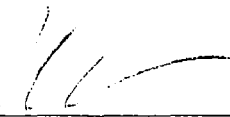
4. Defendant violated Florida's Deceptive and Unfair Trade Practices Act for it unfairly palmed off and deceptively mislead Plaintiff and the public to believe its above-mentioned product was "natural" when, in fact, it was "synthetic".

5. Plaintiff and the general public have no adequate remedy at law save an injunction, enjoining Defendant from distributing its above-mentioned product in this state as labeled.

6. Plaintiff is entitled to attorney's fees pursuant to **Section 501.2105** Florida Statutes.

WHEREFORE, Plaintiff prays that this Court declare Defendant's distribution of its vitamin E as labeled above an unfair and deceptive trade practice, that it temporarily and permanently enjoin Defendant from distributing and selling said product as labeled and grant such other and further relief as may be mete and proper.

PAUL H. BASS, P.A.
Attorney for Plaintiff
Suite 1509, Datran Tower II
9130 South Dadeland Boulevard
Miami, Florida 33134
Telephone: (305) 670-4191
Facsimile: (305) 670-5596

By: 
PAUL H. BASS, ESQUIRE
Florida Bar No. 110188

List No. 1604
L30AA
Cat. 505
5A004



ENTER CODE

Nature Made
Recommended By Pharmacists

E Vitamin
400 I.U.
SUPPLEMENT

USP
VERIFIED

PREMIUM **65** SOFTGELS

WELLNESS REWARDS CODE

VS-8-2012

VISIT OUR WEBSITE & EARN FREE VITAMINS*
www.NatureMade.com • 1-800-276-2878*

ANTIOXIDANT - HELPS MAINTAIN A HEALTHY HEART - Vitamin E also helps boost the immune system. It helps maintain red blood cells and muscle tissues such as cardiac and skeletal muscles.†

No Artificial Colors • No Artificial Flavors • No Preservatives
No Chemical Solvents, Yeast, Starch or Glucose

SUGGESTED USE: Take one or two softgels daily with a meal. Keep bottle tightly closed. Store in a cool, dry place, out of reach of children.

Supplement Facts

Amount Per Softgel	% Daily Value
Vitamin E 400 I.U.	1,333%

Do not use if unprinted seal under cap is broken or missing.

Caution: If you are pregnant or nursing, or taking medication, facing surgery, have bleeding problems, or undergoing any other treatment which may affect the ability of blood to clot, consult your physician before taking this product.

INGREDIENTS: dl-Alpha Tocopheryl Acetate, Gelatin, Glycerin, Water.

Distributed by: **Nature Made Nutritional Products**

Mission Hills, CA 91346-9606, U.S.A.

1-800-276-2878 • www.NatureMade.com

USP has tested and verified ingredients, potency and manufacturing process

USP sets official standards for dietary supplements. See: www.usp-dsnp.org.

*Valid only for U.S. and Puerto Rico residents.

†These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

Lot:
Exp:

ORIGINAL

57 B1

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT OF FLORIDA IN
AND FOR MIAMI-DADE COUNTY

MIAMI-DADE COUNTY COURTS
FILED
MAR 24 11 24

GENERAL JURISDICTION DIVISION

CASE NO: **05511772CA 21**

PINECREST CONSORTIUM, INC.,

Plaintiff,

CIVIL ACTION SUMMONS

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

RECD 6/5/05 TIME 11:00 AM
SERVED UPON Deanna March
TYPE OF SERVICE Corp
DATE 6/5/05 TIME 2:15 PM
P.S. ASK # 26
CERTIFIED IN: 17th Circuit

THE STATE OF FLORIDA

TO EACH SHERIFF OF THE STATE:

YOU ARE COMMANDED to serve this summons and copy of the Complaint or petition in this action on the Defendant:

**PHARMAVITE LLC, a foreign
limited liability corporation, by serving:
C T CORPORATION SYSTEM
1200 South Pine Island Road
Plantation, Florida**

A lawsuit has been filed against you. You have twenty (20) calendar days after this Summons is served on you to file a written response, including the case number given above and the names of the parties, must be filed if you want the Court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money and property may thereafter be taken without further warning by the Court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service of the legal aid office (listed in the phone book).

FIRST PRIORITY PROCESS
2199 PONCE DE LEON BLVD.
SUITE 300
CORAL GABLES, FL 33134
305 - 856 - 9431

If you choose to file a written response yourself, at the same time you file your written response with the Clerk of the Court, you must also mail or take a copy of written response the "Plaintiff/Plaintiff's Attorney" named below. The central location of the Clerk's office at the Miami-Dade County Courthouse. The address for the courthouse, and branch court locations are listed below for your convenience.

MIAMI-DADE COUNTY COURTHOUSE Clerk of Courts 73 West Flagler Street, Room 133 Miami, Florida 33130	Joseph Caleb Center (20) Room 205 5400 N.W. 22 nd Avenue Miami, FL 33142	North Dade Justice Center (23) Room 100 15555 Biscayne Boulevard North Miami Beach, FL 33160
Miami Beach District (24) Room 224 1130 Washington Avenue Miami Beach, FL 33139	Coral Gables District (25) Room 100 3100 Ponce de Leon Blvd. Coral Gables, FL 33134	South Dade Justice Center (28) Room 1200 10710 S.W. 211 th Street Miami, FL 33180

You must also mail or take a copy of your written responses to the "Plaintiff/Plaintiff's Attorney" named below.

PAUL H. BASS, P.A.
Datran Tower II, Suite 1509
9130 South Dadeland Boulevard
Miami, FL 33156

TO EACH SHERIFF OF THE STATE OF FLORIDA: You are commanded to serve this Summons and a copy of the Complaint of this lawsuit on the above named Defendant.

DATED this _____ day of JUN 03 2005, 2005.

HARVEY RUVIN
Clerk of Court

BY:  8966
Deputy Clerk



AMERICANS WITH DISABILITIES ACT OF 1990

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COSTS TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE DADE COUNTY COURT'S ADA COORDINATOR AT 73 WEST FLAGLER STREET, ROOM 1600, MIAMI, FLORIDA 33130. TELEPHONE NUMBERS (305) 375-2006 FOR VOICE, (305) 375-2007 FOR TDD AND (305) 350-6205 FOR FAX, WITHIN TWO (2) WORKING DAYS OF YOUR RECEIPT OF THIS DOCUMENT. TDD USERS MAY ALSO CALL 1-800-955-8771, FOR THE FLORIDA RELAY SERVICE.

AFFIDAVIT OF SERVICE

.da

County of MIAMI-DADE

11th Circuit Court

Number: 05-11772-CA-21

Plaintiff:

PINECREST CONSORTIUM, INC.

vs.

Defendant:

PHARMAVITE LLC

For:

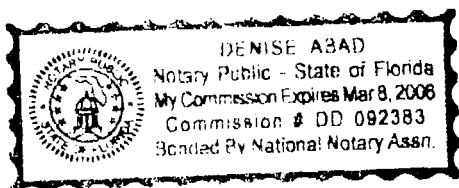
Paul H. Bass, Esq.
PAUL H. BASS, P.A.
9130 S. Dadeland Boulevard
Suite 1509 Tower 2
Miami, FL 33156

Received by FIRST PRIORITY PROCESS SERVICE on the 8th day of June, 2005 at 11:00 am to be served on **PHARMAVITE LLC C/O C T CORPORATION SYSTEM @ 1200 SOUTH PINE ISLAND ROAD, PLANTATION, FL**

I, ANDREW S KARP, PROCESS SERVER, being duly sworn, depose and say that on the **20th day of June, 2005** at **2:15 pm, I:**

Served the within named corporation by delivering a true copy of the **Civil Action Summons - Complaint with Exhibits** with the date and hour of service endorsed thereon by me to Donna Moch, employee of CT Corporation System as **Registered Agent** of the within named corporation, in compliance with Florida Statutes.

I certify that I am over the age of 18, have no interest in the above action, am a Sheriff's Appointed Process Server in the Seventeenth Judicial Circuit in good standing in the county in which the process was served. "Under penalty of perjury, I declare that I have read the foregoing Affidavit of Service and that the facts stated in it are true."



Subscribed and Sworn to before me on the 22nd day of June, 2005 by the affiant who is personally known to me.



NOTARY PUBLIC



ANDREW S. KARP, PROCESS SERVER
S.A.P.S. # 260

FIRST PRIORITY PROCESS SERVICE
2199 Ponce De Leon Blvd.
Suite 300
Coral Gables, FL 33134
(305) 856-9431
Our Job Serial Number: 2005011744
Ref: PINECREST vs. PHARMAVITE

CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075. (See instructions on the reverse of the form.)

I. CASE STYLE

11th Judicial Circuit Court

PINECREST CONSORTIUM, INC.,

Plaintiff,

05-11772CA 21

Case No. _____

Judge: _____

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

05 JUN -8 PM 3:30
CLERK OF COURT
JUDICIAL CIRCUIT COURT
11TH JUDICIAL CIRCUIT
TALLAHASSEE, FLORIDA

II. TYPE OF CASE (Place an "x" in one box only. If the case fits more than one type of case, select the most definitive.)


DOMESTIC RELATIONS	TORTS	OTHER CIVIL
<input type="checkbox"/> Simplified Dissolution	<input type="checkbox"/> Professional	<input type="checkbox"/> Contracts
<input type="checkbox"/> Dissolution	<input type="checkbox"/> Malpractice	<input type="checkbox"/> Condominium
<input type="checkbox"/> Support--IV-D	<input type="checkbox"/> Products	<input type="checkbox"/> Real property/
<input type="checkbox"/> Support--Non IV-D	<input type="checkbox"/> Liability	<input type="checkbox"/> Mortgage
<input type="checkbox"/> URESA--IV-D	<input type="checkbox"/> Auto Negligence	<input type="checkbox"/> Foreclosure
<input type="checkbox"/> URESA--Non-IV-D	<input type="checkbox"/> Other Negligence	<input type="checkbox"/> Eminent Domain
<input type="checkbox"/> Domestic violence	<input checked="" type="checkbox"/> Other	
<input type="checkbox"/> Other domestic relations		

III. Is Jury Trial Demanded In Complaint?

Yes

No

Date: June 7, 2005



PAUL H. BASS, ESQUIRE

Attorney for Plaintiff

Florida Bar No. 110188

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. **05-11772CA 21**

PINECREST CONSORTIUM, INC.,

Plaintiff,

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

05 JUN -8 PM 3:36
256
1-17
E 11/16

COMPLAINT

Plaintiff, PINECREST CONSORTIUM, INC., sues Defendant, PHARMAVITE LLC, a foreign limited liability corporation and alleges:

1. This is an action for declaratory relief and an injunction pursuant to **Section 501.211** Florida Statutes.

2. Defendant is a foreign limited liability corporation that is subject to the jurisdiction of this state pursuant to **Section 48.193** Florida Statutes for it operates, conducts, engages and/or carries on a business venture in this state by distributing its products.

3. Plaintiff purchased Defendant's "Nature Made" vitamin E, at BJ's Wholesale Club, Miami, Florida, within the last year believing said product was



a natural vitamin E, not synthetic, a true copy of the label is attached.


4. Defendant violated Florida's Deceptive and Unfair Trade Practices Act for it unfairly palmed off and deceptively mislead Plaintiff and the public to believe its above-mentioned product was "natural" when, in fact, it was "synthetic".

5. Plaintiff and the general public have no adequate remedy at law save an injunction, enjoining Defendant from distributing its above-mentioned product in this state as labeled.

6. Plaintiff is entitled to attorney's fees pursuant to **Section 501.2105** Florida Statutes.

WHEREFORE, Plaintiff prays that this Court declare Defendant's distribution of its vitamin E as labeled above an unfair and deceptive trade practice, that it temporarily and permanently enjoin Defendant from distributing and selling said product as labeled and grant such other and further relief as may be mete and proper.

PAUL H. BASS, P.A.
Attorney for Plaintiff
Suite 1509, Datran Tower II
9130 South Dadeland Boulevard
Miami, Florida 33134
Telephone: (305) 670-4191
Facsimile: (305) 670-5596

By: 
PAUL H. BASS, ESQUIRE
Florida Bar No. 110188

List No. 1604
L30AA
Cat. 505
5A004



Nature Made
Recommended By Pharmacists

E Vitamin
400 I.U.
SUPPLEMENT

PREMIUM **65** SOFTGELS

ENTER CODE

USP

WELLNESS REWARDS CODE

Y6YA-EKAZ

VISIT OUR WEBSITE & EARN FREE VITAMINS®
www.NatureMade.com • 1-800-276-2878®

ANTIOXIDANT - HELPS MAINTAIN A HEALTHY HEART - Vitamin E also helps boost the immune system. It helps maintain red blood cells and muscle tissues such as cardiac and skeletal muscles.†

No Artificial Colors • No Artificial Flavors • No Preservatives
No Chemical Solvents, Yeast, Starch or Gluten

SUGGESTED USE: Take one or two softgels daily with a meal. Keep bottle tightly closed. Store in a cool, dry place, out of reach of children.

Supplement Facts

Amount Per Softgel	% Daily Value
Vitamin E 400 I.U.	1,333%

Do not use if imprinted seal under cap is broken or missing.

Caution: If you are pregnant or nursing, or taking medication, facing surgery, have bleeding problems, or undergoing any other treatment which may affect the ability of blood to clot, consult your physician before taking this product.

INGREDIENTS: dl-Alpha Tocopheryl Acetate, Gelatin, Glycerin, Water.

Distributed by: **Nature Made Nutritional Products**

Mission Hills, CA 91346-9606, U.S.A.

1-800-276-2878 • www.NatureMade.com

USP has tested and verified ingredients, potency and manufacturing process.

USP sets official standards for dietary supplements. See www.usp-dsnp.org.

*Valid only for U.S. and Puerto Rico residents.

†These statements have not been evaluated by the Food and Drug Administration.
This product is not intended to diagnose, treat, cure or prevent any disease.

Lot:
Exp:

**PAYMENT WORKSHEET
CIRCUIT COURT**

DALLAS WALKER

CLERK ID _____

CASE NO. 05-11772CA 23

PLAINTIFF Pinecrest

FILING FEE	\$	<u>200</u>
MUL. DEFTS.	\$	_____
RECORDING	\$	_____
REG. MAIL	\$	_____
REFUND	\$	_____
OTHER	\$	_____
TOTAL	\$	<u>200</u>

NOTE: THIS IS NOT A RECEIPT

CLERK'S OFFICE: 15159 JENNIFER AVE, SUITE 100, DALLAS, TX 75244
 CLERK'S OFFICE: 15159 JENNIFER AVE, SUITE 100, DALLAS, TX 75244
 Please refer this receipt to the clerk's office.

DATE: 05/11/2005 15:59:00
 CIVIL CIRCUIT FEE: 200.00
 Clerk's Office ID: 1000
 NAME: 050117200CA - WALKER
 STYLE: PINECREST CONSOLIDUM INC
 Name: _____
 Comment: _____
 Circuit Filing Fee: 200.00
 Circuit Filing Fee: _____
 Total: 200.00

Telex: _____
 Amount (\$): 200.00
 Charge: 200.00

EXHIBIT “B”

Int. Cl.: 5

Prior U.S. Cl.: 18

United States Patent Office

Reg. No. 1,018,275

Registered Aug. 12, 1975

TRADEMARK

Principal Register

NATURE-MADE

Pharmavite Pharmaceutical Corporation (California corporation)
13237 Saticoy St.
North Hollywood, Calif. 91605

For: VITAMINS SOLD THROUGH SUPERMARKET GROCERY STORES, DRUG STORES, AND DRUG STORE CHAINS AND NOT OTHERWISE, in CLASS 18 (INT. CL. 5).

First use on or about Jan. 25, 1971; in commerce on or about Jan. 25, 1971.

Ser. No. 389,167, filed Apr. 14, 1971.

R. H. NEILSON, Examiner

EXHIBIT "C"

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 05-11772 CA 21

PINECREST CONSORTIUM, INC.,

Plaintiff,

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

*due
5/19/06*

FIRST REQUEST TO PRODUCE

Plaintiff, PINECREST CONSORTIUM, INC., pursuant to Rule 1.350 and 1.410(b) of the Florida Rules of Civil Procedure, requests that Defendant, PHARMAVITE LLC, produce, for inspection and photocopying purposes, at the offices of the undersigned, within the time set forth by said Rules, the following:

1. Copies of all advertising for the last three years for Nature Made Vitamins E, both natural and synthetic.
2. Copies of all articles including, but not limited to, newspaper, periodicals, and journals that mention Nature Made Vitamin E, both natural and synthetic for the last three years.
3. All records which pertain to the sale and delivery of Nature Made Vitamin E, both natural and synthetic to BJ Club, located at 10425 Marlin Road, Miami, Florida, for the last three years. If do not have for that store, all records for sales in Florida.
4. All documents pertaining to the obtaining of the trade mark "Nature Made", including, but not limited to, drawings, applications,

oppositions, assignments, case file of examining attorney, statement of use, etc..

5. All data pertaining to the comparison between natural and synthetic vitamin E, relied upon to substantiate the statement of Christine Burdick-Bell, in her letter dated to Paul H. Bass dated May 18, 2005, which stated:

" Therefore, both your assertion that you suffer from a "lack" of Vitamin E because you have taken the synthetic form of Vitamin E and not the "natural" form and that you would need to take more of the Nature Made@ synthetic Vitamin E capsules to get the same amount of "natural" Vitamin E, is unsupported by the science on this matter."

as well as all scientific data that support all other statements made in said letter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing was mailed to: LESLIE A. McCORMICK, ESQUIRE, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A., Attorneys for Defendant, Grove Plaza, 5th Floor, 2900 S.W. 28 Terrace, Miami, Florida 33133, this 19 day of April, 2006.

PAUL H. BASS, P.A.
Attorney for Plaintiff
Suite 1509, Datran Tower II
9130 South Dadeland Boulevard
Miami, Florida 33134
Telephone: (305) 670-4191
Facsimile: (305) 670-5596

By: Paul H. Bass
PAUL H. BASS, ESQUIRE
Florida Bar No. 110188

EXHIBIT “D”

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 05-11772 CA 21

PINECREST CONSORTIUM, INC.,

Plaintiff,

vs.

PHARMAVITE LLC, a foreign
limited liability corporation,

Defendant.

NOTICE OF SERVICE OF FIRST SET OF INTERROGATORIES

You are notified that Plaintiff, PINECREST CONSORTIUM, INC., has served upon Defendant, PHARMAVITE LLC, its First Set of Interrogatories to be answered under oath within 30 days after service of said interrogatories.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed on the 19 day of April, 2006, to: LESLIE A. McCORMICK, ESQUIRE, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A., Attorneys for Defendant, Grove Plaza, 5th Floor, 2900 S.W. 28 Terrace, Miami, Florida 33133.

PAUL H. BASS, P.A.
Attorney for Plaintiff
Suite 1509, Datran Tower II
9130 South Dadeland Boulevard
Telephone: (305) 670-4191
Fax: (305) 670-5596

By: Paul H. Bass

PAUL H. BASS, ESQUIRE
Florida Bar No. 110188

8. In Christine Burdick-Bell's letter to Paul H. Bass dated June 1, 2005, she states:

" Consumers are not being exploited, rather they are being given a choice. They can choose to buy the more expensive natural Vitamin E or they can choose to purchase the less expensive synthetic Vitamin E. The choice is theirs to make."

If consumers are not being exploited please explain why on the label of Nature Made's natural Vitamin E the word "NATURAL" appears prominently on the front of the label and why does the word "synthetic" not appear on Nature Made's synthetic Vitamin E label anywhere.

9. What is a "chemical solvent" ?
10. What is the purpose of stating on the label of Nature Made's synthetic Vitamin E that there are no "chemical solvents" in said vitamin, if it is not to mislead the consumer ?
11. A 1981 study in the American Journal of Clinical Nutrition stated that the natural vitamin E was 3.48 times more active in the human body than synthetic vitamin E. State all scientific data that refutes or contradicts the foregoing statement from the American Journal, in answering state the

STATE OF _____

COUNTY OF _____

BEFORE ME, personally appeared, _____, who, is personally known to me or who produced _____ as identification, and deposes and states that the above is true and correct, to the best of _____ knowledge.

DATED this _____ day of _____, 2006.

NOTARY PUBLIC STATE OF FLORIDA

My Commission Expires:

EXHIBIT "E"



PHARMAVITE

May 18, 2005

Mr Paul H. Bass
P.A. Datran Tower Two
Suite 1509
9130 South Dadeland Boulevard
Miami, Florida 33156

Re: Nature Made®

Dear Mr. Bass:

Your letter to Brent Bailey dated April 27, 2005 concerning Nature Made® Vitamin E products has been referred to me for reply.

The product that you indicate you purchased, i.e., the d,l-alpha form of Vitamin E, is indeed a synthetic Vitamin E product. The d-alpha form is commonly referred to as the "natural" form of Vitamin E. Pharmavite sells both forms, d-alpha tocopherol and d,l-alpha tocopheryl acetate, and each is properly labeled.

Although it is generally believed that the "natural" form is more active than the "synthetic" form of the product, your asserted statistic that the "natural" form is 3.48 times more active in the human body than the synthetic form is not supported by literature. The generally accepted standard, and one used by the United States Pharmacopia (USP), is that the d-alpha tocopherol form provides 1.49 IU/mg while the d,l-alpha tocopheryl acetate form provides 1.0 IU/mg. As a result of this standard for biological equivalency, more of the d,l-alpha form of Vitamin E is used in producing a 400 IU capsule of Vitamin E than the d-alpha or "natural" form of Vitamin E; approximately 400 mgs of d,l-alpha tocopheryl acetate can be found in a 400 IU capsule of Vitamin E while only approximately 269 mgs of d-alpha tocopherol can be found in a 400 IU capsule of Vitamin E.

Therefore, both your assertion that you suffer from a "lack" of Vitamin E because you have taken the synthetic form of Vitamin E and not the "natural" form and that you would need to take more of the Nature Made® synthetic Vitamin E capsules to get the same amount of "natural" Vitamin E, is unsupported by the science on this matter.

Your letter implies that the Nature Made® trademark constitutes a representation to the public that Nature Made® Vitamin E sold in the d,l-alpha form is a "natural"

PHARMAVITE

Mr. Paul H. Bass
May 18, 2005
Page 2


product. This assertion is incorrect. Nature Made® is a federally registered incontestable trademark. It is not a representation as to the content of the product, but is only a designation of brand. In fact, had the United States Trademark Office considered the mark merely descriptive rather than a brand name, it would not have issued the trademark registration for Nature Made®. Accordingly, we strongly disagree with your apparent suggestion that the Nature Made® trademark constitutes a misrepresentation of any kind

Also, if you compare the labels of Nature Made® d-alpha tocopherol Vitamin E with Nature Made® d,l-alpha tocopheryl acetate Vitamin E, you will find a clear indication on the d-alpha tocopherol label that it is the "natural" and not the synthetic form. Also, by use of the accepted d,l-alpha designation in the ingredient list on its synthetic Vitamin E product, the Nature Made® label calls out that it is the synthetic form of that product. Further, this labeling is in full compliance with FDA requirements for Vitamin E and is standard in the industry. To avoid your having to travel to the store to make a comparison of these two forms of Vitamin E, I have enclosed, as a courtesy to you, a sample label of each, i.e., Nature Made® d-alpha tocopherol Vitamin E (the "natural" version) and Nature Made® d,l-alpha tocopheryl acetate Vitamin E (the synthetic version). As you can see, the two products are not labeled the same. Accordingly, there is no need to, and we do not intend to, make the label changes requested by you.

As you can see, the labeling of our products is in accord with federal labeling standards and do not misrepresent in any way the content of the product being sold.

If you have any further questions please do not hesitate to contact me.

Very truly yours,



CHRISTINE BURDICK-BELL
Vice President & Counsel, Legal Affairs

cc: Brent Bailey

EXHIBIT “F”

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

PINECREST CONSORTIUM, INC,

GENERAL JURISDICTION DIVISION

Plaintiff,

CASE NO. 05-11772 CA 21

vs.

PHARMAVITE LLC, a foreign limited
liability corporation,

Defendant.

NOTICE OF FILING NOTICE OF REMOVAL

TO: Clerk of the above-entitled Court

PLEASE TAKE NOTICE that a Notice of Removal in the above-styled cause of action was duly filed with the Clerk of the United States District Court for the Southern District of Florida on May 11, 2006. A true and correct copy of the Notice of Removal is attached hereto as an exhibit and is being filed herewith pursuant to 28 U.S.C. 1446(d) which provides that upon removal "the state court shall proceed no further unless and until the case is remanded."

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this
11th day of May, 2006 to all parties on the attached service list.

WICKER, SMITH, O'HARA, MCCOY,
GRAHAM & FORD, P.A.
Attorney for Pharmavite LLC
Grove Plaza, 5th Floor
2900 S.W. 28th Terrace
Miami, FL 33133
Phone: (305) 448-3939
Fax: (305) 441-1745

By: Leslie McCormick
Leslie A. McCormick
Florida Bar No. 705756

Service List

Paul H. Bass, Esquire
Paul H. Bass, P.A.
9130 S. Dadeland Blvd., Suite 1509
Miami, FL 33156

COMMISSIONER OF PATENTS & TRADEMARKS 2121 CRYSTAL DRIVE SUITE 1100 ARLINGTON, VA 22201	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
--	--

In Compliance with 35 § 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 Southern District of Florida on the following Patents or Trademarks:

DOCKET NO. 06-21195-CV-PCH	DATE FILED 05/11/06	U.S. DISTRICT COURT Southern District of Florida
PLAINTIFF Pinecrest Consortium, Inc.		DEFENDANT Pharmavite LLC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 (see attached)		
2		
3		
4		
5		

In the above—entitled case, the following patent(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	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK CLARENCE MADDOX	(BY) DEPUTY CLERK N. Toloza	DATE 5/16/06
--------------------------	--------------------------------	-----------------

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy