

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**Kaylor LLC,**  
c/o Morton Jay Kanter, Agent  
103 South Dawson Ave.  
Columbus, Ohio 43209,

Plaintiff,

v.

**Freedom Health, LLC,**  
c/o John Hall, Agent  
7541 Vinemont Court  
Hudson, Ohio 44236,

and,

**Otterbein University,**  
c/o Rebecca D. Vazquez-Skillings, Agent  
1 South Grove Street  
Westerville, Ohio 43081,

Defendants.

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

**COMPLAINT FOR  
PATENT INFRINGEMENT, AND  
DECLARATORY JUDGMENT**

*(Jury Demand Endorsed Hereon)*

NOW COMES the Plaintiff, *Kaylor LLC*, and for its Complaint against the Defendants hereby alleges and avers as follows:

**THE PARTIES**

1. The Plaintiff, Kaylor LLC, is an Ohio limited liability company, and has its principal place of business in Columbus, Ohio.

1 2. The Defendant, Freedom Health, LLC, upon information and belief, is a Delaware limited  
2 liability company, and has its principal place of business in Hudson, Ohio, County of  
3 Summit.

4 3. The Defendant, Otterbein University, upon information and belief, is an Ohio non-profit  
5 corporation, and has its principal place of business located in Westerville, Ohio.  
6

7 **JURISDICTION AND VENUE**

8 4. This is an action for patent infringement. The patent claims arise under the patent laws of the  
9 United States, specifically 35 U.S.C. § 281. This Court has subject matter jurisdiction in this  
10 matter pursuant to 28 U.S.C. §§ 1331, 1338, and 35 U.S.C. § 281 because this action arises  
11 under the patent laws of the United States.

12 5. In addition to the foregoing, with respect to the Plaintiff's Declaratory Judgment claim, there  
13 is an actual justiciable case or controversy, and this Court has subject matter jurisdiction over  
14 the Declaratory Judgment claim under 28 U.S.C. § 2201, 2202, and 1338 as a Declaratory  
15 Judgment action relating to the patent laws, Title 35 of the United States Code.  
16

17 6. This Court has personal jurisdiction over the Defendants by virtue of their sale of products,  
18 transaction of business, and solicitation of business within the State of Ohio, within this  
19 judicial district and elsewhere.

20 7. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(b)(2) and/or  
21 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to the claims  
22 occurred in this judicial district, the Defendants are subject to personal jurisdiction in this  
23 district, and the infringement occurred within this judicial district.  
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**FACTUAL ALLEGATIONS**

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- 2 8. On June 25, 2002, United States Utility Patent No. 6,410,067, entitled “Equine
- 3 Neutraceuticals” (hereinafter referred to as the ‘067 patent) duly and legally issued to Morton
- 4 Jay Kanter, and Lynn E. Taylor, as co-inventors, for the aforementioned invention. (A true
- 5 and accurate copy of the ‘067 patent as issued is attached hereto as “Exhibit 1.”)
- 6
- 7 9. All rights to the ‘067 patent, including but not limited to, the right to recover for
- 8 infringement thereunder, have been legally and validly assigned to the Plaintiff, Kaylor LLC.
- 9 10. The ‘067 patent essentially teaches a chemical invention of a highly stable oat oil-conjugated
- 10 linoleic acid isomeric mixture composition as an ingredient in an oral neutraceutical equine
- 11 supplement. The ‘067 patent discloses and claims subject matter including equine feed pellet
- 12 compositions and equine top dress liquid mixtures.
- 13
- 14 11. The Defendant, Freedom Health, LLC, has been and is currently making, using, offering for
- 15 sale, selling, and/or importing products that infringe the ‘067 patent.
- 16 12. Freedom Health, LLC has infringed the Plaintiff’s patent by, including but not limited to,
- 17 making, using, offering for sale, selling, and importing their Succeed® Digestive
- 18 Conditioning Program® products including at least Succeed® Digestive Conditioning
- 19 Program® Granular Product and Succeed® Digestive Conditioning Program® Oral Paste
- 20 Product.
- 21
- 22 13. (See Infringement Contentions and Claims Chart comparing Freedom Health, LLC’s
- 23 products to the claims in the Plaintiff’s ‘067 patent attached hereto as “Exhibit 2,” and
- 24 “Exhibit 2-A,” respectively.)
- 25
- 26

1 14. Freedom Health, LLC has sold its infringing product in this judicial district in Ohio and  
2 elsewhere.

3 15. Freedom Health, LLC was provided written notice of the '067 patent and rights owned by the  
4 inventors on or about January 12, 2005. Freedom Health, LLC has had actual knowledge of  
5 the '067 patent and rights asserted by the inventors since at least on or about January 12,  
6 2005. Freedom Health, LLC's conduct is tantamount to willful infringement.

7  
8 16. The aforementioned activities of Freedom Health, LLC have also injured and threaten future  
9 injury to the Plaintiff. More specifically, Freedom Health, LLC's activities have diminished  
10 the Plaintiff's goodwill and caused the Plaintiff to lose sales and/or licensing royalties that it  
11 otherwise would have made but for the sales of Freedom Health, LLC.

12 17. Freedom Health, LLC is not authorized in any way to sell their infringing products or to use  
13 the patent owned by the Plaintiff.

14  
15 18. The Plaintiff is entitled to an award of damages against Freedom Health, LLC, and the  
16 Plaintiff is entitled to an award of lost profits (in no event less than a reasonable royalty for  
17 the use of the invention by Freedom Health, LLC), together with interest and costs, trebling  
18 of the damages for willful infringement, and an award of attorney's fees.

19 19. The Defendant, Otterbein University, at one point in the past, maintained to Freedom Health,  
20 LLC that Otterbein was a part owner of the '067 patent.

21  
22 20. Co-inventor Lynn Taylor, at one point in the past, was faculty at Otterbein University. Upon  
23 information and belief, Otterbein University asserted that it had a part ownership interest in  
24 the '067 patent based on Lynn Taylor's prior employ with Otterbein University.

1 21. Contrary to Otterbein University's assertions, Otterbein University has no legal or equitable  
2 ownership interest in the '067 patent.

3 22. Otterbein University has no assignment agreement with Lynn Taylor.

4 23. Plaintiff's counsel attempted to finalize this issue with Otterbein University prior to the filing  
5 of this lawsuit. However, Otterbein University has ignored or otherwise not responded.

6 24. Since Otterbein University has no assignment agreement with Lynn Taylor, Otterbein  
7 University has no rights to the '067 patent under contract law.

8 25. Furthermore, pursuant to recent U.S. Supreme Court precedent, since Otterbein University  
9 has no assignment agreement with Lynn Taylor, Otterbein University also has no rights in  
10 the '067 patent under the Bayh-Dole Act. *Bd. of Trs. v. Roche Molecular Sys.* (2011), 2011  
11 U.S. LEXIS 4183.

12 26. The Plaintiff is entitled to a Declaratory Judgment declaring that Otterbein University has no  
13 ownership interest and/or rights to the '067 patent, and that the '067 patent is legally and  
14 validly owned by the Plaintiff as the assignee of the co-inventors Kanter and Taylor.

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17 **CLAIM NO. 1**

18 (Asserted against Defendant Freedom Health, LLC)  
19 (*Patent Infringement 35 U.S.C. § 271*)

20 27. The Plaintiff hereby incorporates by reference each statement, whether written above or  
21 below, as if each is fully re-written herein.

22 28. Freedom Health, LLC has been and is currently making, using, offering for sale, selling,  
23 and/or importing products that infringe the '067 patent. (Ex. 2; Ex. 2-A.)

24 29. Freedom Health, LLC's conduct is an infringement of the '067 patent, and in violation of 35  
25 U.S.C. § 271 within this judicial district and elsewhere.

1 30. Freedom Health, LLC will continue to make, use, offer for sale, sell, and import their  
2 infringing products unless enjoined by this Court.

3 31. Freedom Health, LLC has been, and is, actively inducing infringement of the '067 patent, by  
4 offering for sale and selling their infringing products.

5 32. Freedom Health, LLC's infringement is, and at all times has been, deliberate, willful, with  
6 full knowledge of the Plaintiff's rights, and wanton, and as a result, the Plaintiff is entitled to  
7 treble damages pursuant to 35 U.S.C. § 284.

8 33. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of  
9 appropriate attorney's fees to the Plaintiff is justified.  
10

11 **CLAIM NO. 2**

12 (Asserted against Defendant Otterbein University)  
13 (*Declaratory Judgment 28 U.S.C. § 2201 et seq.*)

14 34. The Plaintiff hereby incorporates by reference each statement, whether written above or  
15 below, as if each is fully re-written herein.

16 35. This claim arises under the Declaratory Judgment Act, 28 USC § 2201 *et seq.*, and the patent  
17 laws of the United States, 35 USC § 1 *et seq.*, and seeks a Declaratory Judgment that  
18 Otterbein University owns no legal or equitable interest in the '067 patent.

19 36. At a point in the past, Otterbein University took a position with co-Defendant, Freedom  
20 Health, LLC, that Otterbein University owned some interest in the '067 patent.

21 37. The Plaintiff has attempted to resolve this issue with Otterbein University prior to the filing  
22 of this lawsuit.

23 38. Given Otterbein University's failure to respond, there now exists a cloud of title over the  
24 ownership of the '067 patent.  
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1 39. A judicial declaration is necessary under the circumstances to resolve this controversy.

2 40. The Plaintiff requests a Declaratory Judgment that Otterbein University does not own any  
3 legal or equitable interest in the '067 patent, and a declaration that Plaintiff is the sole legal  
4 and equitable owner of the '067 patent.

5 **PRAYER FOR RELIEF / REQUEST FOR REMEDIES**

6  
7 WHEREFORE, the Plaintiff prays that this Court enter an Order against the Defendants as  
8 follows:

- 9 A) A preliminary injunction enjoining Freedom Health, LLC from making, using, selling, or  
10 importing any product that infringes upon the '067 patent;
- 11 B) A permanent injunction enjoining Freedom Health, LLC from making, using, selling, or  
12 importing any product that infringes upon the '067 patent;
- 13 C) An accounting for damages resulting from Freedom Health, LLC's patent infringement and  
14 the trebling of such damages because of the knowing, willful, and wanton nature of their  
15 conduct;
- 16 D) An assessment of interest on the damages so computed;
- 17 E) An award of attorney's fees and costs to the Plaintiff in this action under 35 U.S.C. § 285;
- 18 F) Judgment against Freedom Health, LLC indemnifying the Plaintiff from any claims brought  
19 against the Plaintiff for negligence, debts, malpractice, product liability, or other breaches of  
20 any duty owed by Freedom Health, LLC to any person who was confused as to some  
21 association between the Plaintiff and Freedom Health, LLC as alleged in this Complaint;
- 22 G) Judgment against Freedom Health, LLC for an accounting and monetary award in an amount  
23 to be determined at trial;
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- 1 H) Requiring Freedom Health, LLC to account to the Plaintiff for all sales and purchases that  
2 have occurred to date, and requiring Freedom Health, LLC to disgorge any and all profits  
3 derived by selling their infringing product;  
4  
5 I) Requiring Freedom Health, LLC to provide full disclosure of any and all information relating  
6 to its supplier or suppliers of infringing product;  
7  
8 J) Requiring Freedom Health, LLC to provide the location of any and all manufacturing  
9 equipment used to manufacture infringing product;  
10  
11 K) Requiring Freedom Health, LLC to destroy any and all manufacturing equipment used to  
12 manufacture infringing product or to deliver said equipment to the Plaintiff;  
13  
14 L) Ordering a product recall of infringing product for destruction;  
15  
16 M) Requiring Freedom Health, LLC to file with this Court and serve on the Plaintiff within thirty  
17 (30) days of this Court's Order a report setting forth the manner in which they complied with  
18 the Order;  
19  
20 N) Requiring Freedom Health, LLC to provide to Plaintiff all sales records, including but not  
21 limited to, email, mail, and advertising lists;  
22  
23 O) Damages according to each cause of action herein;  
24  
25 P) Prejudgment interest;  
26  
27 Q) A Declaratory Judgment that Otterbein University does not own any legal or equitable  
28 interest in the '067 patent;  
29  
30 R) A Declaratory Judgment that the Plaintiff is the sole legal and equitable owner of the '067  
31 patent; and  
32  
33 S) Any such other relief in law or equity that this honorable Court deems just and proper.



**JURY DEMAND**

WHEREFORE, the Plaintiff requests a trial by jury on all issues so triable by the maximum number of jurors permitted by law.

Most Respectfully Submitted,

/s/ David A. Welling

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