



Provided by:
Overhauser Law Offices
LLC
www.iniplaw.org
www.overhauser.com

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ELI LILLY AND COMPANY and)
NOVARTIS TIERGESUNDHEIT AG,)
)
Plaintiffs,)
v.)
)
SCOTT MARTIN d/b/a BEST VALUE)
PET SUPPLIES and DOES 1-10,)
)
Defendants.)

Cause No. 1:16-cv-1787

COMPLAINT

Eli Lilly and Company (“Lilly”) and Novartis Tiergesundheit AG (“Novartis Tiergesundheit”) (Lilly and Novartis Tiergesundheit referred to collectively as “Plaintiffs”) bring this action for trademark infringement and unfair competition over the unauthorized sale of foreign pet medications into the United States. The defendants operate an online store at the web site located at <bestvaluepetsupplies.com>. The Honorable Jane Magnus Stinson entered a default judgment and injunction against the prior owners of this site and store on June 13, 2014, in Case No. 1:13-cv-01800-JMS-DML, barring the sale of foreign pet medicines that infringed upon Lilly’s trademark rights. The Defendants now own this site and store and have resumed and expanded the infringing sales through <bestvaluepetsupplies.com> of unauthorized foreign pet medicines to customers in the United States, all in violation of Plaintiffs’ trademark rights.

PARTIES

1. Plaintiff Eli Lilly and Company is an Indiana corporation with its principal place of business in Indianapolis, Indiana.
2. Plaintiff Novartis Tiergesundheit AG is a Switzerland corporation with its principal place of business in Basel, Switzerland. Novartis Tiergesundheit is a subsidiary of Eli Lilly and Company.

3. Defendant Scott Martin d/b/a/ Best Value Pet Supplies (“Martin”) is an individual who, on information and belief, resides in Geebung, Queensland, Australia, and is the owner and operator of Best Value Pet Supplies, which does business through the website located at <bestvaluepetsupplies.com>.

4. On information and belief, Does 1–10 (collectively, the “Doe Defendants”) are individuals and business entities who have participated or assisted in the conduct alleged herein or are otherwise responsible therefor. The identities of these Doe Defendants presently are not and cannot be known to Plaintiffs, but these persons and/or entities will be added as named defendants as and when they are identified (collectively, Martin and the Doe Defendants are referred to as “Defendants”).

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a) and (b) because Plaintiffs’ claims arise under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051 *et seq.* (the Lanham Act). Supplemental jurisdiction over the Indiana state common-law claim is conferred by 28 U.S.C. § 1367(a).

6. This Court has personal jurisdiction over Defendants under the Indiana long-arm statute, Ind. Trial Rule 4.4(A), because they are knowingly and willfully infringing Plaintiffs’ trademarks, which causes harm to Plaintiffs in this state.

7. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this district.

FACTS

8. Long before Defendants’ acts complained of herein, Lilly, through its Elanco Animal Health Division, has been engaged in the manufacture, marketing and sale of, among other

things, pet medicines, including flea-control and heartworm treatments, and has made use of the name and house mark ELANCO (the “ELANCO name and mark”) for veterinary preparations and pet medicines.

9. Lilly owns incontestable federal trademark registration number 710,473 for the ELANCO mark, which was issued on January 31, 1961, by the United States Patent and Trademark Office (“USPTO”) for use in connection with “medicinal and pharmaceutical products.” Registration No. 710,473 conclusively establishes Lilly’s ownership of, and exclusive right to use, the ELANCO mark for goods covered by the registration, pursuant to 15 U.S.C. §§ 1065 and 1115(b).

10. Lilly has sold tens of millions of dollars of veterinary preparations, pet medicines and related goods and services under the ELANCO name and mark throughout the United States, and has expended significant amounts of money to advertise and promote these products and services under the ELANCO name and mark.

11. As a result of Lilly’s extensive sales, promotion and advertising, the ELANCO name and mark is well-known among U.S. consumers and represents extraordinarily valuable goodwill owned by Lilly.

Lilly’s ELANCO and COMFORTIS Branded Pet Medicines

12. Long before Defendants’ acts complained of herein, Lilly also has manufactured, marketed and sold pet medicines, namely, flea control preparations, and related products in connection with the mark COMFORTIS (the “COMFORTIS mark”) and the ELANCO name and mark.

13. Lilly owns incontestable federal trademark registration number 3,370,168, issued on January 15, 2008, by the USPTO for the COMFORTIS mark used in connection with “veterinary preparations for use in the treatment of fleas on pets; veterinary preparations for use in

the prevention of fleas on pets; [and] insecticides to prevent fleas on pets.” Registration No. 3,370,168 conclusively establishes Lilly’s ownership of, and exclusive right to use, the COMFORTIS mark for goods covered by the registration, pursuant to 15 U.S.C. §§ 1065 and 1115(b).

14. Lilly has sold tens of millions of dollars of veterinary preparations, pet medicines and related goods under the COMFORTIS mark throughout the United States, and has expended significant amounts of money to advertise and promote these products under the COMFORTIS mark.

15. As a result of Lilly’s extensive sales, promotion and advertising, the COMFORTIS mark is well-known among U.S. consumers and represents extraordinarily valuable goodwill owned by Lilly.

16. In the United States, ELANCO and COMFORTIS branded pet medicines are available to pet owners only by prescription through licensed veterinarians.

17. Lilly offers these veterinarians information and training on the safe and appropriate use of these pet medicines.

18. Lilly advertises ELANCO and COMFORTIS branded pet medicines on the website located at <www.comfortis.com>, but it does not sell these pet medicines to U.S. consumers through the Internet.

19. An example of Lilly’s ELANCO and COMFORTIS branded pet medicines offered and sold in the United States is depicted below:



20. Lilly also is engaged in the manufacture, marketing and sale of flea-control preparations in foreign jurisdictions, including Australia, the European Union and South Africa.

21. Lilly tailors its ELANCO and COMFORTIS branded pet medicines to suit the requirements of specific geographic regions or countries to reflect the differences among these areas in language, climate, government regulations, units of measure and local addresses and telephone numbers, among other things.

22. Lilly appoints distributors or agents for specific geographic regions or for specific countries, such as Australia, Europe, South Africa and the United States, to maintain the quality associated with the ELANCO and COMFORTIS branded pet medicines within each particular region or country.

23. To the extent allowed under applicable laws, Lilly prohibits the sale of ELANCO and COMFORTIS branded pet medicines by such distributors or agents outside of their designated region or country.

24. ELANCO and COMFORTIS branded pet medicines sold in Australia, the European Union and South Africa are not authorized or intended for exportation out of those jurisdictions or for importation into, or sale or distribution in, the United States.

Defendants' Unauthorized Marketing and Sale of Non-U.S. Versions of ELANCO and COMFORTIS Branded Pet Medicines to U.S. Customers

25. Defendants market and offer foreign versions of pet medicines branded with ELANCO and COMFORTIS to consumers within the United States, including through their website located at <bestvaluepetsupplies.com>.

26. Products ordered through Defendants' website were shipped to Indiana; the shipment included South African ELANCO and COMFORTIS branded pet medicine.

27. An example of the South African ELANCO and COMFORTIS branded pet medicines sold by Defendants is depicted below:



28. The South African ELANCO and COMFORTIS branded pet medicines sold by Defendants to consumers within the United States are materially different from authorized U.S. ELANCO and COMFORTIS branded pet medicines distributed and sold in the United States by Lilly. For example, Defendants do not require a prescription from a licensed veterinarian for the South African ELANCO and COMFORTIS branded pet medicines they sell to U.S. customers. In addition, unlike the U.S. version, the South African version:

- (a) violates United States Food and Drug Administration (“FDA”) mandates because it is sold in packaging that has not been approved by the FDA;
- (b) violates FDA mandates because it does not include an FDA New Animal Drug Application (“NADA”) number;

- (c) does not list an FDA New Drug Code (“NDC”) number on the blister packets;
- (d) does not state, “**APPROVED BY FDA**”;
- (e) does not require a prescription from a veterinarian and is sold to consumers without veterinary consultation;
- (f) does not display the following warning: “**HUMAN WARNING: NOT FOR HUMAN USE**”;
- (g) does not contain the following cautionary statement: “**CAUTION:** Federal (USA) law restricts this drug to use by or on the order of a licensed veterinarian”;
- (h) does not state: “For use in dogs and puppies 14 weeks of age and older” on the carton or individual blister packets;
- (i) does not contain a complete list of potential adverse reactions and side effects on the product insert of the packaging;
- (j) does not bear a phone number “to report an adverse drug experience”;
- (k) is not subject to Lilly’s quality control procedures for shipment and storage;
- (l) does not bear a Data Matrix barcode, which gives Lilly the ability to track U.S. COMFORTIS products through supply chains and identify the products by lot in the event of a recall or tampering incident;
- (m) provides a different temperature storage range;
- (n) comes in various dosages that are based on the pet’s weight in metric units (kg), rather than standard measurements (pounds);
- (o) provides a different address and contact information for Lilly, including not providing information concerning certain clinical signs involving “concomitant extra-label use of ivermectin”;
- (p) does not include details of various research studies in the product insert; and
- (q) does not reference a domain name address for a complete list of adverse reactions for spinosad (the generic name for the active ingredient in the COMFORTIS branded product) reported to the Center for Veterinary Medicine.

Lilly's ELANCO and TRIFEXIS Branded Pet Medicines

29. Long before Defendants' acts complained of herein, Lilly has made continuous use of the trademark TRIFEXIS (the "TRIFEXIS mark") in connection with the manufacture, marketing and sale of flea and parasite-control preparations.

30. Lilly owns federal trademark registration number 3,944,743 for the TRIFEXIS mark, which was issued on April 12, 2011, by the USPTO for use in connection with "Veterinary preparations for companion animals in the treatment of parasitic infestations and fleas." This registration serves as *prima facie* evidence of Lilly's ownership of, and exclusive right to use, the TRIFEXIS mark for goods covered by the registration, pursuant to 15 U.S.C. §§ 1057(b) and 1115(a).

31. Lilly has sold tens of millions of dollars' worth of pet medicines under the TRIFEXIS mark throughout the United States and has expended significant amounts of money to advertise and promote these products under the TRIFEXIS mark.

32. As a result of Lilly's extensive sales, promotion and advertising, the TRIFEXIS mark is well-known among U.S. consumers and represents extraordinarily valuable goodwill owned by Lilly.

33. In the United States, ELANCO and TRIFEXIS branded pet medicines are available to pet owners only by prescription through licensed veterinarians.

34. Lilly offers these veterinarians information and training on the safe and appropriate use of these pet medicines.

35. Lilly advertises ELANCO and TRIFEXIS branded pet medicines on the Internet, including on the website located at <trifexis.com>, but it does not sell these pet medicines to U.S. consumers through the Internet.

36. An example of Lilly's ELANCO and TRIFEXIS branded pet medicines offered and sold in the United States is depicted below:



37. Lilly also is engaged in the manufacture, marketing and sale of flea and parasite-control preparations in foreign regions, including Europe.

38. Lilly tailors its ELANCO and TRIFEXIS branded pet medicines and packaging to suit the requirements of specific geographic regions or countries to reflect the differences among these areas in language, climate, government regulations, units of measure and local addresses and telephone numbers, among other things.

39. Lilly appoints distributors or agents for specific geographic regions or for specific countries to maintain the quality associated with the ELANCO and TRIFEXIS branded pet medicines within each particular region or country.

40. To the extent allowed under applicable laws, Lilly prohibits the marketing or sale of ELANCO and TRIFEXIS branded pet medicines by such distributors or agents outside of their designated region or country.

41. ELANCO and TRIFEXIS branded pet medicines sold in Europe, for example, are not authorized or intended for exportation out of Europe, or for importation into, or sale or distribution in, the United States.

Defendants' Unauthorized Marketing and Sale of Non-U.S. Versions of ELANCO and TRIFEXIS Branded Pet Medicines to U.S. Customers

42. Defendants market and offer foreign versions of ELANCO and TRIFEXIS pet medicines to consumers in the United States through their website located at the domain name <bestvaluepetsupplies.com>.

43. Products ordered through Defendants' site were shipped to Indiana; the shipment included European TRIFEXIS branded pet medicine.

44. An example of the European ELANCO and TRIFEXIS branded pet medicines marketed by Defendants is depicted below:



45. The European ELANCO and TRIFEXIS pet medicines marketed by Defendants to consumers in the United States are materially different from authorized U.S. TRIFEXIS pet medicines distributed and sold in the United States by Lilly. For example, Defendants do not require a prescription from a licensed veterinarian for the European ELANCO and TRIFEXIS branded pet medicines they sell to U.S. customers. In addition, unlike the U.S. version, the European version:

- (a) violates FDA mandates because it is sold in packaging that has not been approved by the FDA;
- (b) violates FDA mandates because it does not include an FDA NADA number;

- (c) does not list an FDA NDC number on the blister packets;
- (d) does not state, “**APPROVED BY FDA**”;
- (e) does not display the following warning: "HUMAN WARNING: NOT FOR HUMAN USE";
- (f) does not contain the following cautionary statement: “**CAUTION:** Federal (USA) law restricts this drug to use by or on the order of a licensed veterinarian”;
- (g) does not state: “For use in dogs and puppies 14 weeks of age and older” on the individual blister packets;
- (h) does not bear a phone number “to report an adverse drug experience”;
- (i) does not list contact information for poison control centers;
- (j) is not subject to Lilly’s quality control procedures for shipment and storage in the U.S.;
- (k) comes in various dosages that are based on the pet’s weight in metric units (kg), rather than standard measurements (pounds); and
- (l) provides a different address and contact information for Lilly.

Plaintiffs’ INTERCEPTOR Branded Pet Medicines

46. Long before Defendants’ acts complained of herein, Plaintiffs and their predecessors-in-interest have made continuous use of the trademark INTERCEPTOR (the “INTERCEPTOR mark”) in connection with the manufacture, marketing and sale of heartworm medicine.

47. Lilly, through Novartis Tiergesundheit, owns incontestable federal trademark registration number 2,015,850 for the INTERCEPTOR mark, which was issued on November 12, 1996, by the USPTO for use in connection with “veterinary medication in tablet form for the prevention of heartworm disease in dogs.” Registration No. 2,015,850 conclusively establishes Plaintiffs’ ownership of, and exclusive right to use, the INTERCEPTOR mark for goods covered by the registration, pursuant to 15 U.S.C. §§ 1065 and 1115(b).

48. Plaintiffs and their predecessors-in-interest have sold millions of dollars' worth of heartworm medication under the INTERCEPTOR mark in the United States and have expended significant amounts of money to advertise and promote these products under the INTERCEPTOR mark.

49. As a result of Plaintiffs' and their predecessors-in-interest's extensive sales, promotion and advertising, the INTERCEPTOR mark is well-known among U.S. consumers and represents extraordinarily valuable goodwill owned by Plaintiffs.

50. An example of Plaintiffs' INTERCEPTOR branded pet medicines offered and sold in the United States is depicted below:



51. Plaintiffs are also engaged in the manufacture, marketing and sale of INTERCEPTOR heartworm medications in foreign jurisdictions, including Australia, South Africa and the European Union.

52. Plaintiffs tailor their INTERCEPTOR branded pet medicines to suit the requirements of specific geographic regions or countries to reflect the differences among these

areas in language, climate, government regulations, units of measure and local addresses and telephone numbers, among other things.

53. In the United States, INTERCEPTOR branded pet medicines are available to pet owners only by prescription through licensed veterinarians.

54. Plaintiffs appoint distributors or agents for specific geographic regions or for specific countries to maintain the quality associated with the INTERCEPTOR branded pet medicines within each particular region or country.

55. To the extent allowed under applicable laws, Plaintiffs prohibit the sale of INTERCEPTOR branded pet medicines by such distributors or agents outside of their designated region or country.

56. INTERCEPTOR branded pet medicines sold in Australia, South Africa and the European Union are not authorized or intended for exportation out of those jurisdictions or for importation into, or sale or distribution in, the United States.

Defendants' Unauthorized Marketing and Sale of Non-U.S. Versions of INTERCEPTOR Branded Pet Medicines to U.S. Customers

57. Defendants market and offer foreign versions of INTERCEPTOR branded pet medicines to consumers within the United States, including through their website located at <bestvaluepetsupplies.com>.

58. Non-U.S. INTERCEPTOR branded pet medicine was ordered through Defendants' website for shipment to Indiana.

59. An example of the type of non-U.S. INTERCEPTOR branded pet medicines reportedly sold by Defendants is depicted below:



60. The non-U.S. INTERCEPTOR branded pet medicines offered for sale by Defendants to consumers within the United States are materially different from authorized U.S. INTERCEPTOR branded pet medicines distributed and sold in the United States by Plaintiffs. For example, Defendants do not require a prescription from a licensed veterinarian for the European ELANCO and TRIFEXIS branded pet medicines they offer for sale to U.S. customers. In addition, unlike the U.S. INTERCEPTOR product, the non-U.S. version:

- (a) violates the FDA mandates because it is sold in packaging that has not been approved by the FDA;
- (b) violates FDA mandates because it does not include an FDA NADA number;
- (c) contains an additional active ingredient, praziquantel;
- (d) lacks information about safety studies that were conducted on heartworm-infected dogs, pregnant dogs, nursing puppies, and rough-coated collies;
- (e) includes a guarantee if the treated animal suffers a worm-related disease after four months of treatment;
- (f) Includes the word “Spectrum” next to INTERCEPTOR;
- (g) provides dog weights in kilograms instead of pounds;
- (h) provides recommended storage temperature in Celsius instead of Fahrenheit; and

- (i) is not subject to Plaintiffs' quality control standards when distributed to U.S. consumers.

Plaintiffs' CAPSTAR Branded Pet Medicines

61. Long before Defendants' acts complained of herein, Plaintiffs and their predecessors-in-interest have made continuous use of the trademark CAPSTAR (the "CAPSTAR mark") in connection with the manufacture, marketing, and sale of flea-control tablets.

62. Lilly, through Novartis Tiergesundheit, owns incontestable federal trademark registration number 2,510,863 for the CAPSTAR mark, which was issued on November 20, 2001, by the USPTO for use in connection with "veterinary pharmaceutical preparations for controlling fleas." Registration No. 2,510,863 conclusively establishes Plaintiffs' ownership of, and exclusive right to use, the CAPSTAR mark for goods covered by the registration, pursuant to 15 U.S.C. §§ 1065 and 1115(b).

63. Plaintiffs and their predecessors-in-interest have sold millions of dollars' worth of flea-control tablets under the CAPSTAR mark in the United States and have expended significant amounts of money to advertise and promote the CAPSTAR mark.

64. As a result of Plaintiffs' and their predecessors-in-interest's extensive sales, promotion and advertising, the CAPSTAR mark is well-known among U.S. consumers and represents extraordinarily valuable goodwill owned by Plaintiffs.

65. An example of Plaintiffs' CAPSTAR branded flea-control tablets offered and sold in the United States is depicted below:



66. Plaintiffs are also engaged in the manufacture, marketing, and sale of CAPSTAR flea-control tablets in foreign regions and countries, including South Africa.

67. Plaintiffs tailor their CAPSTAR branded flea treatment preparations and their packaging to suit the requirements of specific geographic regions or countries to reflect the differences among these areas in language, climate, government regulations, units of measure and local addresses and telephone numbers, among other things.

68. Plaintiffs appoint distributors or agents for specific geographic regions or for specific countries, such as South Africa and the United States, to maintain the quality associated with the CAPSTAR branded flea-control tablets within each particular region or country.

69. To the extent allowed under applicable laws, Plaintiffs prohibit the sale of CAPSTAR branded flea-control tablets by such distributors or agents outside of their designated region or country.

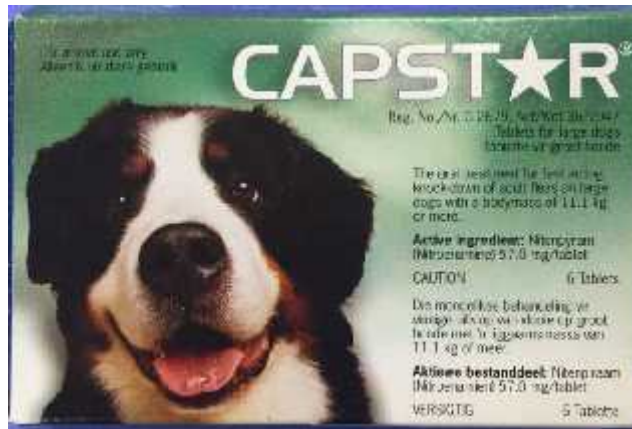
70. Plaintiffs do not authorize the marketing or sale of foreign CAPSTAR branded products to customers in the United States. For example, CAPSTAR branded flea-control tablets sold in South Africa are not authorized or intended for exportation out of South Africa, or for importation into, or sale or distribution in, the United States.

**Defendants' Unauthorized Marketing and Sale of
Non-U.S. CAPSTAR Pet Medicines to U.S. Customers**

71. Defendants market and offer foreign versions of CAPSTAR pet medicines to consumers in the United States through their website located at the domain name <bestvaluepetsupplies.com>.

72. Products ordered through Defendants' website were shipped to Indiana; the shipment included South African CAPSTAR branded pet medicine.

73. An example of the South African CAPSTAR branded pet medicine sold by Defendants is depicted below:



74. The South African CAPSTAR branded pet medicines marketed by Defendants to consumers in the United States are materially different from authorized U.S. CAPSTAR branded flea-control tablets distributed and sold in the United States by Plaintiffs. For example, unlike the U.S. version, the South African version marketed by Defendants:

- (a) violates the FDA mandates because it is sold in packaging that has not been approved by the FDA;
- (b) violates FDA mandates because it does not include an FDA NADA number;
- (c) includes different dosing instructions;
- (d) lacks instructions regarding the proper temperature range in which to store CAPSTAR;

- (e) lacks a warning that CAPSTAR should not be administered to animals weighing less than two pounds;
- (f) lacks a list of symptoms of an adverse reaction to CAPSTAR;
- (g) lacks a telephone number to call to report an adverse drug reaction;
- (h) includes an insert that omits certain drug safety information; and
- (i) is not subject to Plaintiffs' quality control standards when distributed to U.S. consumers.

Defendants' Willful Infringement

75. On June 13, 2014, Judge Stinson, in Case No. 1:13-cv-01800-JMS-DML, enjoined Defendants' predecessors-in-interest to the <bestvaluepetsupplies.com> domain name, website and online store from selling foreign COMFORTIS or any other foreign Lilly products through the website to U.S. customers.

76. Lilly informed defendant Martin of this judgment and injunction issued by Judge Stinson, and Lilly has attempted to resolve this dispute without litigation by corresponding with Martin explaining Lilly's trademark rights and asking that he stop marketing and selling non-U.S. Lilly products to U.S. consumers. To date, Martin has refused to comply.

77. Defendants' acts of infringement are in willful disregard of Plaintiffs' prior trademark rights.

COUNT I TRADEMARK INFRINGEMENT IN VIOLATION OF SECTION 32 OF THE LANHAM ACT

78. Plaintiffs reallege paragraphs 1-77, as if fully set forth herein.

79. Defendants' acts have caused and are likely to cause confusion, mistake or deception as to the source of origin, sponsorship or approval of the pet medicines Defendants are marketing, selling and promoting under the ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR marks, in that consumers and others in the United States are

likely to believe that Plaintiffs authorize Defendants' marketing, sale and promotion of these pet medications in the United States, or that Defendants are otherwise associated with or related to Plaintiffs.

80. Defendants' acts have injured or are likely to injure Plaintiffs' image and reputation with consumers in the United States by creating confusion about, and dissatisfaction with, Plaintiffs' ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR branded products.

81. Defendants' acts have injured or are likely to injure Plaintiffs' reputation, business, and relations with veterinarians and their clients in the United States by causing customer dissatisfaction, a diminution of the value of the goodwill associated with the ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR marks, and a loss of sales.

82. Defendants' marketing in the United States of unauthorized, foreign pet medications under the ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR marks is a deliberate, intentional and willful attempt to injure Plaintiffs' business, to trade on Plaintiffs' business reputation, and to improperly benefit from Plaintiffs' advertising expenditures in the United States.

83. Defendants' acts constitute an infringement of Plaintiffs' federally registered ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR marks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

84. Defendants' acts greatly and irreparably damage Plaintiffs and will continue to so damage Plaintiffs unless restrained by this Court; wherefore, Plaintiffs are without an adequate remedy at law.

COUNT II
UNFAIR COMPETITION IN VIOLATION OF SECTION 43(a) OF THE LANHAM ACT

85. Plaintiffs re-allege paragraphs 1–8, 10–12, 14–29, 31–46, 48–61 and 63–77 as if fully set forth herein.

86. Defendants' acts have caused and are likely to cause confusion, mistake or deception as to the source of origin, sponsorship, or approval of any of the aforesaid pet medicines. Defendants are marketing, selling and promoting under the ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR marks, in that consumers and others in the United States are likely to believe that Plaintiffs authorize Defendants' marketing of these pet medications in the United States or that Defendants are otherwise associated with or related to Plaintiffs.

87. Defendants' acts have injured or are likely to injure Plaintiffs' image and reputation with consumers in the United States by creating confusion about, and dissatisfaction with, Plaintiffs' ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR branded pet medicines.

88. Defendants' acts have injured or are likely to injure Plaintiffs' reputation, business, and relations with veterinarians and their clients in the United States by causing customer dissatisfaction, a diminution of the value of the goodwill associated with the ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR marks, and a loss of sales.

89. Defendant's marketing to consumers in the United States of non-U.S. pet medications under the ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR marks is a deliberate, intentional and willful attempt to injure Plaintiffs' business, to trade on Plaintiffs' business reputation, and to improperly benefit from Plaintiffs' advertising expenditures in the United States.

90. Defendants' aforesaid advertising and promotion of foreign pet medications to U.S. consumers under the ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR marks to consumers in the United States constitutes unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

91. Defendants' acts greatly and irreparably damage Plaintiffs and will continue to so damage Plaintiffs unless restrained by this Court; wherefore, Plaintiffs are without an adequate remedy at law.

COUNT III
UNFAIR COMPETITION IN VIOLATION OF INDIANA COMMON LAW

92. Plaintiffs re-allege paragraphs 1–8, 10–12, 14–29, 31–46, 48–61 and 63–77 as if fully set forth herein.

93. Defendants' continued marketing of unauthorized, foreign ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR branded pet medications to consumers in Indiana is a willful, deliberate attempt to trade on Plaintiffs' goodwill in the ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR marks. These marketing efforts are made with full knowledge of Plaintiffs' prior rights in the ELANCO and COMFORTIS marks, and with conscious disregard that Defendants' actions are likely to cause confusion, mistake or deception, and injure Plaintiffs' reputation, business and relations with its customers in Indiana by causing customer dissatisfaction, a diminution of the value of the goodwill associated with the ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR marks, and a loss of sales.

94. Defendants' acts constitute unfair competition in violation of the common law of the State of Indiana.

95. Defendants' acts constitute an infringement of Plaintiffs' rights in the ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR and CAPSTAR marks in violation of the common law of Indiana.

96. Defendants' acts greatly and irreparably injure Plaintiffs and will continue to so injure Plaintiffs unless restrained by this Court; wherefore, Plaintiffs are without an adequate remedy at law.

WHEREFORE, Plaintiffs pray that:

1. Defendants, their officers, agents, servants, employees, and attorneys, their successors and assigns, including but not limited to any subsequent owner of the <bestvaluepetsupplies.com> domain name or website, and all others in active concert or participation with Defendants, be enjoined and restrained during the pendency of this action, and permanently thereafter, from importing into the United States, exporting to the United States, and dealing, marketing, selling, or distributing in the United States pet medications bearing, or promoted in connection with, Plaintiffs' ELANCO, COMFORTIS, TRIFEXIS, PANORAMIS (an Australian version of TRIFEXIS pet medicine), INTERCEPTOR or CAPSTAR marks;

2. Defendants, and all others holding by, through, or under them, be required, jointly and severally, to:

- (a) account for and pay over to Plaintiffs all profits derived by it from their acts of trademark infringement and unfair competition in accordance with 15 U.S.C. § 1117(a), and Plaintiffs ask that these profits awarded be trebled in accordance with 15 U.S.C. § 1117(a);
- (b) pay Plaintiffs treble the amount of all damages incurred by Plaintiffs by reason of Defendants' acts of trademark infringement and unfair competition in accordance with 15 U.S.C. § 1117(a);

- (c) pay Plaintiffs punitive damages in accordance with Indiana law in the amount of \$100,000;
- (d) pay Plaintiffs the costs of this action, together with reasonable attorneys' fees and disbursements, in accordance with 15 U.S.C. § 1117(a);
- (e) send a letter by FedEx, the contents of which shall be approved by Plaintiffs, to all of its customers in the United States who have purchased ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR or CAPSTAR branded products through their <bestvaluepetsupplies.com> website or any other website owned, operated or assisted by Defendants, stating that the ELANCO, COMFORTIS, TRIFEXIS, INTERCEPTOR or CAPSTAR branded products must not be used and should be returned to Defendants, at Defendants' expense, for a full refund; and
- (f) file with the Court and serve on Plaintiffs an affidavit setting forth in detail the manner and form in which it has complied with the terms of the injunction, in accordance with 15 U.S.C. § 1116; and

3. Plaintiffs have such other damages, judgment, pre- and post-judgment interest, costs of suit, and such other and further relief as this Court deems just and equitable in the circumstances.

Respectfully submitted,

Dated: July 5, 2016

/s/ Jan M. Carroll

Jan M. Carroll, No. 4187-49
Anne N. DePrez, No. 4728-49
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204-3535
(317) 236-1313
jan.carroll@btlaw.com
anne.deprez@btlaw.com

Jonathan S. Jennings (*pro hac vice motion forthcoming*)
Phillip Barengolts (*pro hac vice motion forthcoming*)
PATTISHALL, MCAULIFFE, NEWBURY, HILLIARD &
GERALDSON LLP
200 South Wacker Drive, Suite 2900
Chicago, IL 60606-5896
(312) 554-8000
jsj@pattishall.com
PB@pattishall.com

Attorney for Plaintiffs,
Eli Lilly and Company and
Novartis Tiergesundheit AG

DMS 4084929v1