

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

REALAGE, INC. )  
 )  
 )  
 Opposer, )  
 )  
 v. )  
 )  
 HEALTH FIRST CORPORATION )  
 )  
 Applicant. )  
 \_\_\_\_\_ )

Opposition No. 91165564  
Serial No. 78/399,381



07-01-2005

U.S. Patent & TMOfr/TM Mail Rcpt Dt. #74

**TRANSMITTAL**

Enclosed for filing please accept the following papers related to this  
proceeding:

**Motion To Suspend Proceedings Pursuant to T.B.M.P. Section  
510.02(a)**

Also enclosed is a stamped self-addressed envelope for your use in returning a receipted copy of this filing. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

HOLLAND & KNIGHT, LLP  
195 Broadway, 24<sup>th</sup> Floor  
New York, New York 10007  
Telephone: (212) 513-3563  
Facsimile: (212) 385-9010  
Attorneys for Applicant, Health First  
Corporation

*Tamara Carmichael*

---

Tamara Carmichael  
Attorney for Applicant

*QC*

**CERTIFICATE OF EXPRESS MAILING**

“Express Mail” Mailing Label No. EV 227020035 US

Date of Deposit: June 30, 2005

I hereby certify that this paper and the papers listed thereon are being deposited with the United States Postal Service “Express Mail Post Office to Addressee” service under 37 CFR 1.10 on the date indicated above, and is addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514.

Signature of Person Mailing:



Name of Person Mailing:

George W. Tuttle

**EV227020035US**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

REALAGE, INC.,

Opposer,

v.

HEALTHFIRST CORPORATION,

Applicant.

Opposition No. 91165564  
Serial No. 78/399,381

Attn: TRADEMARK TRIAL AND APPEAL BOARD  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

**MOTION TO SUSPEND PROCEEDINGS  
PURSUANT TO T.B.M.P. SECTION 510.02(a)**

Applicant, HealthFirst Corporation, hereby moves to suspend the above-captioned opposition proceeding in light of a civil action which may have a bearing in the trademark cancellation proceeding. The civil action between the parties is pending in the Southern District of New York (Civil Action No. 05-CV-4390). A copy of the Complaint (without exhibits) is attached as Exhibit A. The civil action includes requests by RealAge, Inc., the Petitioner in this case, to preclude registration and use by Health First of the mark at issue.

In light of this pending civil action between Opposer and Applicant which may have a bearing on the trademark cancellation procedure, Applicant, HealthFirst Corporation, respectfully requests that the Board suspend the above-

captioned trademark Opposition No. 91165564 pending the outcome of Civil Action  
No. 05-CV-4390 and any appeal therefrom.

Respectfully Submitted,

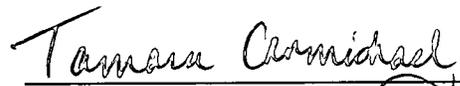
HOLLAND & KNIGHT, LLP  
195 Broadway, 24<sup>th</sup> Floor  
New York, New York 10007  
Telephone: (212) 513-3563  
Facsimile: (212) 385-9010  
Attorneys for Applicant, Health First  
Corporation

  
\_\_\_\_\_  
Tamara Carmichael   
Attorney for Applicant

**CERTIFICATE OF SERVICE**

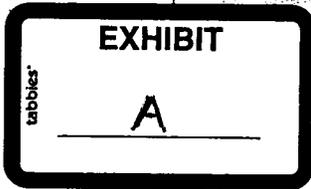
I hereby certify that on this 30th of June 2005, a copy of the foregoing Motion for Suspension of Proceeding Pursuant to TBMP SEC. 510.02(a) was served by First Class Mail, postage prepaid, on counsel for the Applicant, addressed as follows:

Shauna M. Wertheim, Esq.  
Roberts Abokhair & Mardula, LLC  
11800 Sunrise Valley Drive, Suite 1000  
Reston, VA 20191

  
\_\_\_\_\_  
Tamara Carmichael 

TC:vb

# 3021516\_v1



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

REALAGE, INC.,

Plaintiff,

v.

HEALTHFIRST CORPORATION, EQUINOX  
HOLDINGS, INC. AND POLAR ELECTRO INC.,

Defendants.

05 Civil Action No. CV 4390

JUDGE KAPLAN

COMPLAINT

Plaintiff RealAge, Inc. ("RealAge"), by counsel, states its Complaint against Defendants HealthFirst Corporation ("HealthFirst"), Equinox Holdings, Inc. ("Equinox"), and Polar Electro Inc. ("Polar") as follows:

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

1. This is a civil action to remedy acts by Defendants of, *inter alia*: patent infringement, unfair competition, false representation and designation of origin (federal); trademark infringement (federal); trademark dilution (federal); and trademark, trade name infringement, unfair competition and misappropriation (common law).

2. This Court has jurisdiction over all causes of action set forth herein pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§1331, and 1338, the Patent Laws of the United States, Title 35, United States Code, and pursuant to the supplemental jurisdiction of this Court under 28 U.S.C. §1367.

3. Venue in this judicial district is proper pursuant to 28 U.S.C. §§1391 and 1400(b) in that Defendant Polar Electro is a corporation organized under the laws of the State of New York, and all of the Defendants have substantial contacts with this jurisdiction, making them subject to personal jurisdiction.

#### **THE PARTIES**

4. Plaintiff RealAge, Inc. is a Delaware corporation having a principal place of business at 10675 Sorrento Valley Road, San Diego, California 92121.

5. Defendant HealthFirst Corporation is a New Mexico corporation having a principal place of business at 9600 San Mateo Blvd. NE, Albuquerque, New Mexico 87112.

6. Defendant Equinox Holdings, Inc. is a Delaware corporation having a principal place of business at 895 Broadway, New York, New York 10003.

7. Defendant Polar Electro Inc. is a New York corporation having a principal place of business at 1111 Marcus Avenue, Suite M15, Lake Success, New York 11042-1034.

#### **BACKGROUND**

8. RealAge is the owner by assignment of U.S. Patent Number 5,937,387 for a "System and Method for Developing and Selecting a Customized Wellness Plan" which issued on August 10, 1999, and which expires on April 4, 2017 (the "'387 Patent"). A true and correct copy of the '387 Patent is attached as Exhibit 1.

9. RealAge has the sole right to sue and recover for infringement of the '387 Patent.

10. The '387 Patent discloses a system and method for measuring a user's wellness by determining a user's physiological age based upon a variety of wellness and lifestyle factors. The '387 Patent also discloses a system and method for a user to learn about personalized wellness

options, where the wellness options have been chosen for the user based upon wellness factors input by the user, additional constraints input by the user, and the available information relating to the health sciences. The '387 Patent also discloses a method pursuant to which the user can monitor his or her progress toward improving wellness.

11. RealAge is the owner of the REALAGE® and REAL AGE® trademarks. In particular, RealAge owns the following registrations:

<u>Mark</u>	<u>Identification of Goods/Services</u>	<u>Registration No.</u>
REAL AGE	Computer software for determining physiological age based upon a patient's medical history and lifestyle factors.	2,261,318
REALAGE	Vitamin and mineral supplements.	2,239,846
REALAGE	Computer software for determining physiological age based upon a patient's medical history and lifestyle factors.	2,155,113
REALAGE	Counseling in the field of health maintenance, namely, assessing physiological impact of dietary and lifestyle choices.	2,305,201
REALAGE	Publications, namely, a series of books on health, fitness, diet, exercise and lifestyle.	2,916,425

12. RealAge has used its REALAGE® and REAL AGE® marks consistently since at least September 22, 1997. RealAge has used its marks in connection with, among other things, its test for assessing physiological impact of dietary and lifestyle choices on a person's health. RealAge has expended considerable time and resources in its promotion of the products and services it provides under the REALAGE® and REAL AGE® marks. Through these and related efforts, it has built a substantial reputation and level of good will in the relevant communities for

its marks. As a company, RealAge has worked with the top pharmaceutical companies and their providers of health marketing services for the general population.

13. In addition to a number of products and services it distributes under the REALAGE® and REAL AGE® marks on a global basis, both directly and through licensing, RealAge's website at [www.realage.com](http://www.realage.com) is accessible worldwide to consumers. At this website, the consumer takes the RealAge® Test "for personalized health information." The test comprises a series of questions to arrive at the individual's physiological age based upon that individual's diet, lifestyle, and hereditary factors.

14. Pursuant to 35 U.S.C. § 282, the '387 Patent, and each and every claim therein, is presumed valid.

15. Pursuant to 35 U.S.C. § 287, RealAge has given Defendants actual notice of the '387 Patent and the RealAge trademarks in the form of letters and other contacts commencing on or about January 31, 2005.

#### **DEFENDANTS' UNLAWFUL ACTIVITIES**

16. HealthFirst, Equinox, and Polar advertise, promote and use in commerce the "Polar BodyAge™ Quiz" and Polar BodyAge System. Equinox and Polar's promotional materials ask the consumer "What's Your Body Age?" and "Calculate Your Body's True Age." The 6-part test is designed to determine the consumer's "body age" based on a variety of factors – fitness, lifestyle, nutrition and family history. The test and system are promoted in print ads, brochures, and the defendants' respective websites at [www.equinoxfitness.com](http://www.equinoxfitness.com) and [www.polarusa.com](http://www.polarusa.com), and [www.loweryourbodyage.com](http://www.loweryourbodyage.com).

17. The Polar BodyAge test relies upon the same technology described and claimed in the claims of RealAge's '387 Patent, as shown in the chart below. The numbered pages in the chart correspond to the pages from the test located at [www.loweryourbodyage.com](http://www.loweryourbodyage.com), and attached as Exhibit 2.

1. An interactive wellness system comprising:	Polar BodyAge is noted as an online quiz "to determine your body's age..." (p.1)
means for collecting information relating to a user's wellness factors:	The Polar BodyAge quiz allows a user to input a variety of factors relating to exercise, diet, psychological factors, etc. (pp. 3-14)
means responsive to the user's wellness factor information collecting means for determining the user's physiological age:	The Polar BodyAge quiz results in a calculation of "your body's true age" which may be older or younger than the chronological age entered. (p. 15)
means responsive to the user's wellness factor information collecting means for providing the user with wellness program options for improving the user's wellness:	Recommendations are provided for improving the "BodyAge," including "specific exercise tips." (p. 18)
means for allowing the user to select from the wellness program options to form a wellness plan; and	The user can select these various options and re-input the information in the BodyAge calculation.
means for allowing the user to	Based on the options selected, the

determine the effects the selected wellness plan has on the user's physiological age.	user can see that the "BodyAge" will change with the input selected
---	---

22. A computer-implemented method of creating and selecting a wellness program comprising:	Polar BodyAge is noted as an online quiz "to determine your body's age..." (p.1). It is taken by accessing the loweryourbodyage.com web site via a computer. There is not human interaction with the information that is input by the user. Clearly it is computer driven.
inputting data relating to a user's wellness factors:	The Polar BodyAge quiz allows a user to input a variety of factors relating to exercise, diet, psychological factors etc. (pp. 3-14)
storing the user's wellness factor data input data:	After selected sections of the BodyAge quiz such as personal information (pp. 1-2), cardiovascular fitness (pp. 3-4), body composition (p. 5), flexibility (p. 6), strength testing (p. 7), nutrition (pp. 8-10), and stress (pp. 11-4), the information is "submitted" and clearly stored awaiting the results of the next section's input.
manipulating the user's wellness factor data into transformed data;	The data is manipulated by variable weights based on how directly connected with life expectancy the particular factor is (p. 21).
storing the transformed data.	Each time the data is entered and adjusted for the variable weight, it must be stored awaiting final calculation.
manipulating the transformed data	The Polar BodyAge quiz results in a calculation of "your body's true age"

to determine the user's physiological age;	which may be older or younger than the chronological age entered. (p. 15)
presenting physiological age to the user;	The "Body's True Age" is presented to the user on screen (p. 15).
determining wellness program options based upon the user's wellness factor data and the transformed data;	Recommendations are determined for improving the "BodyAge," including "specific exercise tips." (p. 18).
presenting the wellness program options to the user;	Recommendations are displayed to the user for improving the "BodyAge," including "specific exercise tips" provided. (p. 18).
selecting wellness program options by the user to form a wellness plan; and	The user can select these various options and re-input the information in the BodyAge calculation.
calculating the physiological age change that occurs if the user adopts the selected wellness plan.	Based on the options selected, the user can see that the "BodyAge" will change with the input selected.

18. HealthFirst is owner of the mark BODYAGE, which is the subject of the trademark application, U.S. Serial No. 78/399,381 for "computer software in the field of determining a user's level of fitness; and computer software in the field of providing a training program to improve a user's level of fitness." HealthFirst applied to register BODYAGE on April 9, 2004. HealthFirst claimed a first use date of September 1, 2003.

19. Defendants' infringing activities extend nationwide, including into this district. To this day, consumers can research Equinox's and Polar's services from any location through

websites on the Internet, which contain extensive information about Defendants and the various services rendered in connection with the BODYAGE designation.

20. Defendants' BODYAGE designation is confusingly similar to RealAge's REALAGE® and REAL AGE® marks. Defendants' use of the BODYAGE designation is diluting RealAge's well-known and distinctive marks.

21. Defendants had or should have had knowledge of RealAge's rights in REALAGE® and REAL AGE® before they wrongfully acquired, adopted and began their infringing use of BODYAGE designation in connection with their services.

22. All of Defendants' foregoing activities constitute willful infringement, and misappropriation of RealAge's marks, REALAGE® and REAL AGE®.

23. Defendants' confusing use of the BODYAGE term has significantly damaged RealAge's interests. Specifically, Defendants' actions (a) have damaged and threaten to further damage RealAge's valuable and significant goodwill established for REALAGE® and REAL AGE®; (b) have traded upon and threaten to further trade upon RealAge's marks REALAGE® and REAL AGE®; and (c) have injured and threaten to further injure RealAge's right to continue its use of REALAGE® and REAL AGE® as indicia of origin of goods and services.

24. Defendants' aforementioned use of the BODYAGE designation for assessing physiological impact of dietary and lifestyle choices on a person's health closely resembles RealAge's trade name and marks, creates confusion and mistake and has the effect of deceiving persons into the erroneous belief that Defendants' services are authorized, endorsed, and/or sponsored by RealAge, or are connected in some way with RealAge.

25. RealAge is continuously being damaged by actual confusion, and the strong

likelihood that confusion will continue to occur by virtue of Defendants' use of the BODYAGE designation.

26. Defendants use the aforementioned marks in connection with goods and services that are directly competitive with RealAge's services.

27. RealAge is being damaged by Defendants' use of their BODYAGE designations in conjunction with health care goods and services, in that purchasers are likely to be induced into buying Defendants' goods and services in the mistaken belief that Defendants' goods services are sponsored or authorized by or connected in some way with RealAge.

#### COUNT I PATENT INFRINGEMENT

28. RealAge repeats and realleges paragraphs 1 through 27 of the Complaint as though fully set forth herein.

29. Defendants have been and are now infringing the '387 Patent by making, using, selling, offering for sale, use, and/or importation into the United States, methods, systems, and products covered by one or more claims of the '387 Patent, including but not limited to the Polar BodyAge™ Quiz and System.

30. On or about January 25, 2005, Plaintiff sent a letter to Equinox, enclosing the '387 Patent, and requesting its cooperation in honoring the '387 Patent. A true and correct copy of this letter is attached as Exhibit 3.

31. On or about January 31, 2005, Plaintiff sent a letter to counsel for HealthFirst, Charles R. Hoffmann, Esq., enclosing the '387 Patent, and requesting his client's cooperation in honoring the '387 Patent. A true and correct copy of this letter is attached as Exhibit 4.

32. Despite the existence of the '387 Patent, and Defendants' notice thereof, Defendants continue to sell and/or offer for sale goods and/or services which infringe the '387 Patent.

33. Defendants' actions constitute infringement of the '387 Patent.

34. Defendants' infringement of the '387 Patent is without license.

35. Plaintiff gave Defendants formal notice of infringement pursuant to 35 U.S.C. §285.

36. As a result of Defendants' actions infringing Plaintiff's patent, Plaintiff has suffered and will continue to suffer grievous damages, the full extent of which are not yet known.

37. Upon information and belief, unless permanently enjoined by this Court, Defendants will continue their acts of infringement to Plaintiff's substantial and irreparable harm.

38. RealAge is entitled to recover damages adequate to compensate for Defendants' infringement, which in no event can be less than a reasonable royalty.

## COUNT II

### UNFAIR COMPETITION, FALSE REPRESENTATION AND DESIGNATION OF ORIGIN (FEDERAL)

39. RealAge repeats and realleges paragraphs 1 through 27 of the Complaint as though fully set forth herein.

40. This cause of action for unfair competition, false representation and designation of origin arises under 15 U.S.C. §1125 *et seq.*

41. Defendants' use of the BODYAGE designation has caused confusion, mistake and/or deception as to the origin of Defendants' goods and/or services, and is likely to mislead consumers and potential consumers of the parties' goods and/or services to believe that Defendants' goods and/or services originate from, are affiliated with, or are sponsored, authorized, approved or sanctioned by RealAge.

42. Defendants' use of the BODYAGE designation constitutes a false designation of origin, false representation and/or false description, tending falsely to describe or represent the same as made by, sponsored by, approved by or affiliated with RealAge, the rightful owner of the marks, REALAGE<sup>®</sup> and REAL AGE<sup>®</sup>, and has caused, with knowledge of such false designation of origin, representation, or description, such services to be offered for sale or used in interstate commerce in connection with the aforesaid marks.

43. Defendants have promoted in interstate commerce the sale of their services using the aforementioned service marks in such a manner so as to falsely designate an origin or an association with RealAge, and so as to cause confusion or mistake among purchasers as to the true origin, source, sponsorship or affiliation of Defendants' services, all to Defendants' profit and to RealAge's damage. RealAge has been irreparably damaged by the use of such false designation and misrepresentation.

44. Defendants traded upon RealAge's goodwill, established through RealAge's long and continuous advertising and sales of services under the trade name REALAGE<sup>®</sup> and REAL AGE<sup>®</sup>, by providing directly competitive services under the aforementioned service mark.

45. The aforesaid acts of the Defendants constitute infringement of the marks, REALAGE® and REALAGE®, and further constitute use of a false representation and designation of origin, in violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

46. The aforesaid acts of Defendants have caused RealAge to sustain monetary damage, loss and injury, in an amount to be determined at the time of trial.

47. Upon information and belief, Defendants' activities were, and continue to be, willful so as to justify the assessment of treble damages against it, in an amount to be determined at the time of trial.

48. The aforesaid acts of Defendants have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss, and injury to RealAge for which there is no adequate remedy at law.

**COUNT III  
TRADEMARK INFRINGEMENT (FEDERAL)**

49. RealAge repeats and realleges paragraphs 1 through 27 of the Complaint as though fully set forth herein.

50. This cause of action for trademark infringement arises under 15 U.S.C. §1114.

51. Defendants' use of the BODYAGE designation so resembles REALAGE® and REALAGE® as to be likely to cause confusion, mistake, and/or deception as to the origin of Defendants' goods and/or services, and is likely to mislead consumers and potential consumers of the parties' goods and/or services to mistakenly believe that Defendants' goods and/or services originate from, are affiliated with, or are sponsored, authorized, approved or sanctioned by RealAge.

52. The aforesaid acts of the Defendants constitute an infringement of REALAGE® and REAL AGE® marks in violation of §32(1) of the Lanham Act (15 U.S.C. §1114(1)).

53. The aforesaid acts of the Defendants have caused RealAge to sustain damage, loss and injury, in an amount to be determined at the time of trial.

54. Defendants have engaged and continue to engage in infringing activities knowingly and willfully, so as to justify the assessment of treble damages against them, in an amount to be determined at the time of trial.

55. The aforesaid acts of infringement by Defendants have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss, and injury to RealAge for which there is no adequate remedy at law.

**COUNT IV  
TRADEMARK DILUTION (FEDERAL)**

56. RealAge repeats and realleges paragraphs 1 through 27 of the Complaint as though fully set forth herein.

57. This cause of action for trademark dilution arises under 15 U.S.C. §1125(c).

58. Defendants' activities constitute dilution of RealAge's marks, REALAGE® and REAL AGE®, in violation of §43(c) of the Lanham Act, 15 U.S.C. §1125(c).

59. Defendants' acts of dilution have caused RealAge to sustain damage, loss and injury, in an amount to be determined at the time of trial.

60. Defendants have engaged and continue to engage in this activity knowingly and willfully, so as to justify the assessment of treble damages against them, in an amount to be determined at the time of trial.

61. The aforesaid acts of dilution by Defendants have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss, and injury to RealAge for which it has no adequate remedy at law.

#### COUNT V

##### TRADEMARK DILUTION (STATE – N.Y. GEN. BUS. LAW SECTION 360-1)

62. RealAge repeats and realleges paragraphs 1 through 27 of the Complaint as though fully set forth herein.

63. This cause of action for trademark dilution arises under Section 360-1 of the New York General Business Law.

64. Defendants' activities constitute dilution of RealAge's marks, REALAGE® and REAL AGE® in violation of Section 360-1 of the New York General Business Law.

65. Defendants' acts of dilution have caused and/or likely to cause injury to the business reputation or of dilution of the distinctive quality of the marks of RealAge.

66. Defendants' use of confusingly similar marks to the REAL AGE and REALAGE marks to identify their goods and/or services, raises the possibility that RealAge's marks will lose their ability to serve as a unique identifier of RealAge's products and services.

67. Defendants' activities have caused RealAge to sustain damage, loss and injury, in an amount to be determined at the time of trial.

68. Defendants have engaged and continue to engage in this activity knowingly and willfully, so as to justify the assessment of treble damages against them, in an amount to be determined at the time of trial.

69. The aforesaid acts of dilution by Defendants have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss, and injury to RealAge for which it has no adequate remedy at law.

**COUNT VI  
TRADEMARK, TRADE NAME INFRINGEMENT, UNFAIR  
COMPETITION AND MISAPPROPRIATION (COMMON LAW)**

70. RealAge repeats and realleges paragraphs 1 through 27 of the Complaint as though fully set forth herein.

71. This cause of action for trademark infringement, trade name infringement, unfair competition and misappropriation arises under the common law of, *inter alia*, the State of New York.

72. Defendants' unlawful activities are likely to cause confusion between Defendants and/or their goods and/or their services, and RealAge and its goods and/or services and/or to deceive purchasers as to the origin of goods and/or services, and infringe the valuable common law trademark and other rights of RealAge and the RealAge trade name.

73. Defendants' activities also constitute unfair competition with RealAge by creating a likelihood of confusion as to the source or sponsorship of the goods and services. As such, Defendants have traded, and, on information and belief, continue to trade, upon the reputation and goodwill of RealAge and the RealAge trade name and the REALAGE® and REAL AGE® marks, thereby injuring that reputation and goodwill, and unjustly diverting from RealAge to Defendants the benefits arising therefrom.

74. Defendants' unlawful activities constitute trademark infringement, trade name infringement, unfair competition and misappropriation as proscribed by the common law.

75. Defendants' acts of trademark infringement, trade name infringement, and unfair competition and misappropriation have caused RealAge to sustain damage, loss and injury, in an amount to be determined at the time of trial.

76. Defendants have engaged and continue to engage in this activity knowingly and willingly, so as to justify the assessment of punitive damages against them, in an amount to be determined at the time of trial.

77. The aforesaid acts by Defendants have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss, and injury to RealAge for which RealAge has no adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff RealAge prays for judgment declaring:

1. That Defendants have infringed and induced infringement, and continue to infringe and induce infringement of the '387 Patent.
2. That Defendants have infringed and continue to infringe the trademark rights of RealAge by use of the mark BODYAGE.
3. That Defendants, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, who receive actual notice of the Order by personal service or otherwise, be permanently enjoined and restrained:

- a. from using the term or marks BODYAGE (however spelled, whether capitalized, abbreviated, singular or plural, printed or stylized, whether used alone or in combination with any word or words, or design, and whether used in caption, text, orally or otherwise); or any other reproduction, counterfeit, copy, colorable imitation or confusingly similar variation of BODYAGE as a trade name, trademark or service mark, or in any other manner which suggests or tends to suggest in any way that Defendant and/or its activities or services originate from, are affiliated with, or are sponsored, authorized, approved or sanctioned by Plaintiff RealAge, or that Plaintiff RealAge or its activities and services are affiliated in any way with Defendants;
- b. from infringing REALAGE® and REAL AGE® registrations;
- c. from using in connection with Defendants' activities or services any false or deceptive designation, representation or description of Defendants or of any of their activities or services, whether by symbols, words or statements, which would damage or injure RealAge or give Defendants an unfair competitive advantage in the marketplace;
- d. from engaging in acts of state or common law trademark, trade name or trade dress infringement, service mark infringement, unfair competition or misappropriation which would damage or injure RealAge;
- e. from diluting the REALAGE® and REAL AGE® registered marks;
- f. from infringing the '387 Patent;

g. from inducing, encouraging, instigating, aiding, abetting or contributing to any of the aforesaid acts.

4. That in accordance with 15 U.S.C. §1116, Defendants be directed to file with the Court and serve on RealAge, no later than thirty (30) days after service on Defendants of such Order, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the Order:

5. That in accordance with 15 U.S.C. §1118, Defendants be ordered to deliver up for destruction as the Court shall direct, its brochures, stationery, merchandise, labels, signs, prints, packages, package wrappers, photographs and negatives, cards, publications, books, advertisements, and the like, and means for reproducing the same, including any software for Defendant's website or otherwise, which might, if used, violate the Order herein granted:

6. That RealAge recover from Defendants the amount of damages sustained by RealAge as found by the Court, in consequence of Defendant's unlawful acts, together with appropriate interest on such damages:

7. That Defendants be ordered to account for and pay over to RealAge all the gains, profits, savings and advantages realized by Defendants based upon Defendant's unlawful acts;

8. That the damages recovered by RealAge, and the Defendants' gains, profits, savings and advantages awarded to RealAge, be trebled in accordance with 15 U.S.C. §1117;

9. That the Court grant an accounting of Defendants' financial records in accordance with 15 U.S.C. §1117;

10. That RealAge recover from Defendants exemplary damages by reason of their wanton and willful acts of common law unfair competition and trade name infringement;

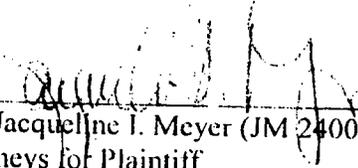
11. That RealAge be awarded punitive damages as allowed under the common law;
12. That this Court enter an Order, pursuant to 35 U.S.C. §271, declaring and adjudging that Defendants have infringed the '387 Patent;
13. That this Court award damages pursuant to 35 U.S.C. §284 adequate to compensate Plaintiff for Defendants' infringement, but in no event less than a reasonable royalty, together with interest and costs;
14. That this Court award Plaintiff its costs, expenses and disbursements in this action, including reasonable attorney's fees pursuant to 35 U.S.C. §285;
15. That this Court order the destruction of all existing products of Defendant that infringe the '387 Patent;
16. That RealAge be awarded such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff RealAge demands a trial by jury of any issue triable of right by jury.

Respectfully submitted,

BONDY & SCHLOSS, LLP

By: 

Jacqueline I. Meyer (JM 2400)

Attorneys for Plaintiff

60 East 42<sup>nd</sup> Street

New York, New York 10165

Tel: (212) 661-3535

Fax: (212) 972-1677

[jmeyer@bschloss.com](mailto:jmeyer@bschloss.com)

-and-

John K. Abokhair, Esq.

John F. Mardula, Esq.

Shauna M. Wertheim, Esq.

ROBERTS ABOKHAIR & MARDULA, LLC

Attorneys for Plaintiff

11800 Sunrise Valley Drive, Suite 1000

Reston, Virginia 20191-5302

swertheim@globe-ip.com