

Federal Court



Cour fédérale

**Date: 20200923**

**Docket: T-535-20**

**Citation: 2020 FC 926**

**Toronto, Ontario, September 23, 2020**

**PRESENT: Mr. Justice A.D. Little**

**BETWEEN:**

**THE D DROPS COMPANY INC.,  
REINHOLD VIETH, ELAINE VIETH,  
AND D DROPS COMPANY**

**Plaintiffs**

**and**

**NAKA SALES LIMITED AND  
NAKA HERBS & VITAMINS LTD.  
carrying on business as  
BIOABSORB NEUTRACEUTICALS**

**Defendants**

**CONSENT JUDGMENT**





**UPON MOTION** for judgment made in writing under Rule 369 of the *Federal Courts*

*Rules;*

**AND CONSIDERING** the consent of the parties, through their solicitors, to Judgment in the terms set out below;

**THIS COURT ORDERS that:**

1. Canadian Patent No. 2,578,881 (881 Patent) is valid and subsisting, and claims 1, 2, 3, 11, 13 and 14 were infringed by the Defendants, by their manufacturing, sale, and distribution of Vitamin D liquid supplement under the names “Baby D Drops”, and “BioAbsorb Nutraceuticals Baby D Drops”.
2. The Plaintiff, The D Drops Company Inc. (DDC) is the owner of the DDROPS Trademarks, as set out below:

<u>Trademark</u>	<u>Registration No.</u>
	TMA 801,888
	TMA 801,498
	TMA 801,513
	TMA 801,528
	TMA 801,497

DDROPS TO GO	TMA 801,501
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(together the “DDROPS Trademarks”).

3. The Defendants manufactured in Canada and sold certain “Baby D Drops”, and “BioAbsorb Nutraceuticals Baby D Drops” vitamin products bearing trademarks which were confusingly similar to the DDROPS Trademarks.
4. The Defendants, as well as their subsidiary and affiliated companies, officers, directors, employees, agents, licensees, successors, assigns and any others over whom the Defendants exercise lawful authority or with whom the Defendants act in concert, shall be permanently restrained from:
  - (a) Manufacturing, importing, exporting, selling or offering for sale any product which infringes the 881 Patent;
  - (b) Otherwise infringing the 881 Patent;
  - (c) Manufacturing, selling, distributing, advertising or exporting a liquid Vitamin D3 product in association with the trademarks “Baby D Drops”, and “BioAbsorb Nutraceuticals Baby D Drops”, or any trademark confusingly similar to the DDROPS Trademarks, or which otherwise infringes the DDROPS Trademarks;
  - (d) Selling, advertising or otherwise using in Canada in association with a liquid Vitamin D3 product any packaging which is confusing with DDC’s DDROPS Trade Dress, as defined in the Statement of Claim;

- (e) Directing public attention to the Defendants' liquid Vitamin D3 product in such a way as to cause or be likely to cause confusion in Canada between the Defendants' liquid Vitamin D3 product and DDC's DDROPS brand Vitamin D3 products; and
  - (f) Passing off their liquid Vitamin D3 product as and for those of DDC.
5. The Defendants shall destroy under oath, within 30 days of the issuance of the judgment, all products in its possession which fall within the claims of the 881 Patent.
  6. The Defendants shall destroy under oath, within 30 days of the issuance of the judgment, all labels, cartons, artwork, advertising and promotional materials, website and digital media content, signs, sales literature, printed matter, letterhead, advertising copy, signage, computer files, social media files, or other documents or material in the possession of the Defendants or within the power, custody or control of the Defendants, the use of which would offend any injunction granted hereunder.
  7. This matter shall be otherwise dismissed.

“Andrew D, Little”

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Judge