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BY \_\_\_\_\_ *SM*

7 Attorneys for Trivitas, Inc.

ORIGINAL

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
11 (SAN DIEGO)

13 TRIVITIS, INC.,

15 Plaintiff,

16 v.

17 OCEAN SPRAY CRANBERRIES, INC., a  
18 Delaware Corporation

19 Defendant.

13 '10 CV 0316 JM POR  
14 CASE NO. \_\_\_\_\_

COMPLAINT FOR PATENT  
INFRINGEMENT

JURY DEMAND

FILED

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1800 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

21 Plaintiff Trivitis, Inc. for its Complaint for Patent Infringement against Defendant  
22 Ocean Spray Cranberries, Inc. ("*Ocean Spray*") alleges as follows:  
23

24 PARTIES

25 1. Trivitis is a Nevada corporation having its principal place of business at  
26 Thermal, California 92274.

27 2. Upon information and belief, Ocean Spray is a Delaware corporation having a  
28 principal place of business at One Ocean Spray Drive, Lakeville-Middleboro, Massachusetts

CP

1 02349.

2 3. Upon information and belief, Ocean Spray is in the business of developing,  
3 canning, and bottling juice drinks throughout the United States.

4 JURISDICTION AND VENUE

5 4. This is an action for patent infringement arising under the laws of the United  
6 States, Title 35, United States Code.

7 5. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and  
8 1338(a).

9 6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and  
10 1400(b). On information and belief, Ocean Spray is subject to this Court's personal  
11 jurisdiction, consistent with the principals of due process and California's long arm statute,  
12 because Ocean Spray offers for sale and sells juice drinks in the Southern District of  
13 California, has transacted business in this District, and/or has committed and/or induced acts  
14 of patent infringement in this District.

15 CAUSES OF ACTION

16 **Count I**

17 **Infringement of U.S. Patent Number 6,562,864**

18 7. Trivitis realleges and incorporates by reference the allegations stated in  
19 paragraphs 1 through 6.

20 8. Trivitis is the owner of all right, title, and interest in United States Patent  
21 Number 6,562,864 (the "**'864 Patent**"), entitled catechin multimers as therapeutic drug  
22 delivery agents duly and properly issued by the U.S. Patent and Trademark Office on May 13,  
23 2003. A copy of the '864 Patent is attached to this Complaint as Exhibit A.

24 9. The '864 Patent was originally issued to Drake Larson as the inventor and  
25 subsequently all right, title and interest of Larson in the '864 Patent was irrevocably assigned  
26 to Trivitis.

27 10. Ocean Spray is directly infringing and/or inducing others to infringe the '864  
28 Patent by making, using, offering to sell or selling in the United States, or importing into the

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1 United States, products that practice inventions claimed in the '864 Patent, including, but not  
2 limited to, its CRANERGY Energy Juice Drink.

3 **DEMAND FOR JURY TRIAL**

4 11. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Trivitis  
5 respectfully requests a jury trial on all issues properly triable by a jury.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Trivitis prays for relief as follows:

8 A. For a judgment declaring that Ocean Spray has infringed at least one claim of  
9 Trivitis' '864 Patent;

10 B. For a judgment awarding Trivitis compensatory damages as a result of Ocean  
11 Spray's infringement of the '864 Patent, together with interest and costs, and in no event less  
12 than a reasonable royalty;

13 C. For a judgment declaring that Ocean Spray's infringement of Trivitis' '864  
14 Patent has been willful and deliberate;

15 D. For a judgment awarding Trivitis damages three times the award of  
16 compensatory damages and pre-judgment interest under 35 U.S.C. § 284 as a result of Ocean  
17 Spray's willful and deliberate infringement of the '864 Patent;

18 E. For a grant of a permanent injunction pursuant to 35 U.S.C. § 283, enjoining  
19 Ocean Spray from further acts of infringement; and

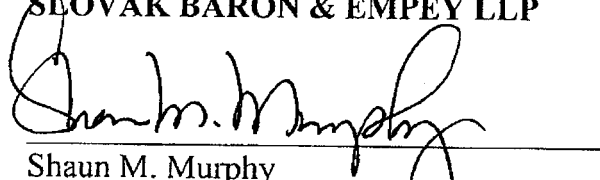
20 F. For such other and further relief as the Court deems proper and just.

21 Respectfully submitted,

22 DATE: February 8, 2010

**SLOVAK BARON & EMPEY LLP**

23  
24 By:



25 Shaun M. Murphy  
26 Attorneys for Plaintiff Trivitis, Inc.

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