

Utah's Klein-Beckerfiles another lawsuitover wrinkle cream

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What's in a name? When it comes to the popular, Utah-made anti-wrinkle cream StriVectin-SD, plenty -- and in more ways than you might imagine. The ointment's maker, Klein-Becker USA -- actually one of numerous entities created by Salt Lake City's Basic Research to market various health and cosmetics products (there is no Klein, no Becker) -- has filed a federal trademark infringement lawsuit against Terra Nova Laboratories.

The suit asks U.S. District Judge Bruce Jenkins to order the Randolph, N.J., company to cease production, marketing and sales of its own anti-wrinkle formula, Novectin, to reimburse Klein-Becker for legal costs and to pay damages to be determined at trial.

Specifically, Klein-Becker contends Terra Nova deliberately chose a name confusingly similar to its protected StriVectin-SD brand, and that the New Jersey company also advertises its product with a trademark notice -- when in fact that mark is still pending government approval.

The Terra Nova complaint filed late last week is just the latest of a string seeking to protect the StriVectin-SD name from marketing intrusions. In all, 17 cases have been filed in Salt Lake City's federal court on behalf of Klein-Becker in the past two years. They have a common thread: defendants accused of marketing sound-alike, or look-alike, anti-wrinkle formulas at StriVectin-SD's expense.

Last July, it was a Texas company, Merlot Inc., targeted over its TriExcelin-OTC product. In December, Klein-Becker sued Florida's Firmagen Nutraceuticals, charging that while its "Skin Repair" ointment brand name did not intrude on trademark, the similarity of advertising layouts and wording violated StriVectin-SD's "trade dress."

In February, Rhode Island's CVS Pharmacy came into Klein-Becker's sights for marketing PreVentin-AT, a name the Utah company also deemed too close to its own.

In June 2003, however, it was Klein-Becker being threatened with legal action by Allergan Inc., maker of Botox, the injectable wrinkle eradicator. The Irvine, Calif.-based company's ire had been stirred by StriVectin-SD advertising bearing the question, "Better than Botox?"

Klein-Becker's response was to file its own preemptive suit, accusing Allergan of threatening publishers who ran the ads in a bid to derail StriVectin-SD's sales. As of Monday, attorneys on both sides were still in the process of evidence discovery.

Teresa Nielsen, Klein-Becker's intellectual property manager, says that case could be settled soon. Allergan already has written a letter to publishers removing opposition to running the ads, Nielsen said.

Ads bearing the slogan-in-a-question still run on the Internet, although Klein-Becker long ago acknowledged that StriVectin-SD -- while purportedly effective against fine lines and wrinkles -- had not been shown to eliminate the deep furrows temporarily removed by Botox injections.

Nielsen could not provide specific sales figures for StriVectin-SD, noting that Klein-Becker is a privately held company. However, she did characterize StriVectin-SD as "wildly successful" and sales easily "in the millions of dollars."

She said Klein-Becker will continue to protect that success, and StriVectin-SD's name, in court whenever others try to "piggyback" on the company's product name and reputation.

Attempts to reach Alex Terranova, listed on the Terra Nova Laboratories Web site as president and chief executive, were not successful.

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