

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DENNIS WINDSOR	:	
Plaintiff,	:	
	:	
v.	:	
	:	Civil Action No. 3:16-cv-00934
	:	
JEFF OLSON AND NERIUM INTENATIONAL, INC.	:	
Defendants.	:	
	:	

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Dennis Windsor (“Plaintiff”), and files Plaintiff’s Original Petition, pursuant to the Federal Rules of Civil Procedure complaining of Jeff Olson and Nerium International, LLC (sometimes hereinafter collectively referred to as "Defendants"), and would respectfully show unto the Court as follows:

I.

NATURE OF ACTION, JURISDICTION AND VENUE

1. This is a civil action seeking damages for breach of contract and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).

2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright infringement).

3. This Court has personal jurisdiction over Defendants because, among other things, Defendants are doing business in the State of Texas and in this judicial district, the acts of infringement complained of herein occurred in the State of Texas and in this judicial district, and Defendants have caused injury to Plaintiffs and Plaintiff's intellectual property within the State of Texas and in this judicial district.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and/or § 1400(a).

II.

PARTIES

5. Plaintiff Dennis Windsor is an individual who resides in Collin County, Texas.

6. Defendant Jeff Olson, can be served with Citation, Plaintiff's Original Complaint by and through the Texas Long Arm Statute via the Texas Secretary of State or at his place of business at 4006 Beltline Rd., Ste. 100, Addison, Texas 75001. Defendant Olson's last known address is 100 S. Birch Road, 28th Floor, Fort Lauderdale, Florida 33316.

7. Defendant Nerium International, LLC (hereinafter referred to as "Defendant Nerium") is a Limited Liability Company formed under the laws of the State of Texas

and can be served with Citation and Plaintiffs' Original Complaint through its registered agent, Jeff Branch at 4006 Beltline Rd., Ste. 100, Addison, Texas 75001.

III.

FACTUAL BACKGROUND

8. In the early spring of 2009, Defendant Olson discussed launching two new Network Marketing companies with Plaintiff. Defendant Olson convinced Plaintiff to resign from his employment at VideoPlus in Lake Dallas, TX to complete the final stages of the official launch of the PTN Network Marketing model (Company #1)(hereinafter "PTN") and for Plaintiff to begin brainstorming leveraging his 36 years of expertise on building "the Best Company Ever" (Company #2) in the Network Marketing Industry. Defendant Olson has often referred to Plaintiff as the "Wikipedia" of the Network Marketing Industry.

9. Defendant Olson teamed with Plaintiff because Plaintiff is an internationally known and respected Network Marketing Founder, Co-founder, Senior Executive, Author, Consultant, Trainer and Speaker. Plaintiff has been a Network Marketing Professional for over 36 years, spending over 17 years in the field as a top distributor building large global sales organizations and over 19 years in Founder / Co-founder, Senior Executive and Senior Consultant roles helping to design, develop, launch, and manage Network Marketing Companies. As Defendant Olson stated publicly many times, Plaintiff was Defendant Olson's only consideration to lead the development

and launch of Company #2 which became Nerium International. Defendant Olson and Plaintiff have worked together for over 25 years in over 7 different Network Marketing Companies.

10. Approximately a year after starting PTN, Defendant Olson and Plaintiff switched their efforts to focusing on the development and launch of Defendant Nerium. During this timeframe, specifically the timeframe before the official launch of Defendant Nerium, Plaintiff was an Independent Contractor providing services to the various ventures, and was never an employee of Defendant Olson, PTN or Defendant Nerium¹. Plaintiff spent the next six years developing, co-founding, and co-leading Defendant Nerium's record breaking global sales which has topped four hundred million dollars (\$400,000,000.00) annually, as of the time Plaintiff was terminated from Plaintiff's "employee responsibilities" with the Company, on March 31, 2016.

11. Plaintiff was the chief architect, creator and developer of Defendant Nerium's start-up as a company and business model launch in August of 2011, which produced over one billion dollars (\$1,000,000,000.00) in aggregated sales in its first four years of business. Plaintiff spent approximately two years developing Defendant Nerium, in a private "war room" located at 4004 Belt Line Road, 2nd Floor, Addison, Texas 75001. Plaintiff and Defendant Olson launched the company for commercial business

¹ At no time did Plaintiff ever sign a "work-for-hire" agreement with Defendant Olson, PTN, Defendant Nerium or any related entity.

on August 29th, 2011 with its headquarters being located at 4004 Belt Line Road, Suite 112, Addison, Texas 75001.

12. During the time Plaintiff worked essentially by himself in the “war room” located on the 1st & 2nd floors of 4004 Belt Line Addison, Texas 75001, Plaintiff’s developments, included, but are not limited to: (1) the Compensation Plan ultimately used by Defendant Nerium; (2) MLM 3X3X10 Structured Distribution Model ultimately used by Defendant Nerium; (3) MLM Placement Suite ultimately used by Defendant Nerium; (4) MLM RoadMap to Lexus ultimately used by Defendant Nerium; (5) MLM 3URFREE Customer Acquisition Model ultimately used by Defendant Nerium; (6) MLM Business Launch Kit ultimately used by Defendant Nerium; (7) MLM Success Planner ultimately used by Defendant Nerium; (8) MLM BackOffice Contents & Navigation ultimately used by Defendant Nerium; (9) MLM BackOffice Premium Services ultimately used by Defendant Nerium; and (10) the MLM Coaching Commissions ultimately used by Defendant Nerium (hereinafter collectively referred to a “Plaintiff’s Copyrighted Work Product”).

13. Plaintiff never signed a written license agreement with Defendant Olson or Defendant Nerium for the Defendants use of Plaintiff’s Copyrighted Work Product. At best, the Defendants have a nonexclusive implied license to use Plaintiff’s Copyrighted Work Product, so long as the implied license, which is nothing more than a contract, is supported by consideration. The Defendants promised Plaintiff that Plaintiff would be paid: (1) commission at the Group Marketing Three Star Nation

Marketing Director – ID 10006 (effective 8/23/2011), which the Defendants have failed to do; (2) pay Plaintiff a 15% royalty from the Nerium Edge Monthly fees, which the Defendants have failed to do; and (3) give Plaintiff a 5% equity share of Defendant Nerium, which again the Defendants have never recognized or paid to Plaintiff. The consideration promised by the Defendants for Defendants' use of Plaintiff's Copyrighted Work Product has failed, and with this failure, the Defendants no longer have the rights to continue to use Plaintiff's Copyrighted Work Product.

14. As the President and Co-Founder, Plaintiff led all aspects of recruiting, developing and training of the initial sales force of distributors (hereinafter referred to as "Brand Partners"), and traveled to assist the Brand Partners open over one hundred markets in the United States from September 2011 to May 2013, breaking all direct selling industry records, generating over one hundred million dollars (\$100,000,000.00) in sales in 2012, and over one hundred and sixty million (\$160,000,000.00) in sales in the first 21 months.

15. Plaintiff co-lead the global business model and Brand Partner field expansion for Defendant Nerium into Canada, Mexico, and Korea by traveling, speaking, recruiting, and training leaders during the multi-city, multi-country recruiting tours. Plaintiff's efforts were to ensure Defendant Nerium continued on its path of record growth.

16. Plaintiff now sues for a declaratory judgment declaring Plaintiff's ownership of, and rights in and to Plaintiff's Copyrighted Work Product; to enforce the agreement for additional compensation promised by the Defendants detailed above; for rescission of Defendant Nerium's nonexclusive implied license for use of Plaintiff's Copyrighted work product (based on failure of consideration), and for damages which have accrued from the Defendants' continued infringement of Plaintiff's Copyrighted Work Product.

IV.

PLAINTIFF'S CLAIMS AGAINST DEFENDANTS

A. DECLARATORY JUDGMENT

17. Plaintiffs incorporate by reference, the same as if set forth at length, paragraphs 7 through 16 above.

18. Plaintiffs seek a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, Texas Civil Practice and Remedies Code 37.001 et seq., of Plaintiff's rights, status and/or legal relationship with and to the Defendants, and the party's relative rights in and to Plaintiff's Copyrighted Work Product.

19. Plaintiff seeks declaratory judgment that:

- (a) Plaintiff is, and has been at all relevant times hereto, the Copyright owner of Plaintiff's Copyrighted Work Product described in Paragraph

10 above, under the applicable copyright laws of the United States. *See 17 U.S.C. § 101, et seq;*

- (b) That the Defendants have no ownership interest in or current right to use Plaintiff's Copyrighted Work Product. *See 17 U.S.C. § 101, et seq;*
- (c) That Plaintiff never granted Defendant Olson or Defendant Nerium any written license (exclusive or otherwise) in and to, and for the use of, Plaintiff's Copyrighted Work Product;
- (d) That Defendant Olson and/or Defendant Nerium's only right to use Plaintiff's Copyrighted Work Product was pursuant to a nonexclusive implied license, which had to be supported by consideration;
- (e) That the consideration Defendant Olson and/or Defendant Nerium promised Plaintiff for the use of Plaintiff's Copyrighted Work Product was, in part, (1) commission at the Group Marketing Three Star Nation Marketing Director - ID 10006 (effective 8/23/2011); (2) 15% royalty from the Nerium Edge Monthly fees; and (3) 5% equity share of Defendant Nerium;
- (f) That Defendant Olson and/or Defendant Nerium failed to pay Plaintiff what the Defendants had promised to pay Plaintiff which is outlined in subsection (d) above;

- (g) That there has been a failure of the consideration promised by the Defendants to Plaintiff for the Defendants use of Plaintiff's Copyrighted Work Product;
- (h) That Plaintiff is entitled to rescind the Defendants nonexclusive implied license to use Plaintiff's Copyrighted Work Product;
- (i) That Plaintiff is entitled to license the use of Plaintiff's Copyrighted Work Product to any individual and/or company;
- (j) That Plaintiff is entitled to past Commissions at the Group Marketing Three Star Nation Marketing Director - ID 10006, of more than two million two hundred twenty-five thousand dollars (\$2,225,000.00);
- (k) That Plaintiff is entitled to a 15% royalty from the Nerium Edge Monthly fees, and past accrued royalty of more than \$9,900,000.00;
- (l) Plaintiff is entitled 5% equity ownership of Defendant Nerium, with past due earnings of more than \$9,000,000.00.

B. BREACH OF CONTRACT

20. Plaintiff incorporates by reference, the same as if set forth at length, Paragraphs 7 through 19 above.

21. The parties entered into a valid, enforceable contract in the form of an Oral Agreement. Plaintiff has tendered full performance under the Oral Agreement thereby removing it from the Statute of Frauds.

22. Despite Plaintiff 's full performance, by working diligently to create and develop Defendant Nerium's company and business model, to grow Defendant Nerium's global business and distribution network, and the creation of Nerium Edge Monthly Subscription program/system, which has played a key role in the Defendants record setting growth, the Defendants have failed to provide Plaintiff the promised additional compensation pursuant to the parties Oral Agreement. The Defendants have breached the parties Oral Agreement by failing to pay Plaintiff the additional compensation Plaintiff is due.

23. As a direct result of Defendants' breach of the parties Oral Agreement (relating to Plaintiff's co-founder position and for Defendant Nerium's use of Plaintiff's Copyrighted Work Product), Plaintiff has sustained economic damaged in an amount of not less than twenty-one million one hundred twenty-five million dollars (\$21,125,000.00), for which Plaintiff now sues.

C. COPYRIGHT INFRINGEMENT

24. Plaintiff incorporates by reference, the same as if set forth at length, Paragraphs 7 through 22 above.

25. As a result of Defendants failure to pay Plaintiff for the use of Plaintiff's Copyrighted Work Product, Defendants nonexclusive implied license is void, and Defendants; continued use of Plaintiff's Copyrighted Work Product, without Plaintiffs consent constitutes a direct infringement of Plaintiff's Copyrighted Work Product. pursuant to 17 U.S.C. § 501.

26. Plaintiff is entitled to recover from the Defendants the amount of Plaintiffs actual damages incurred as a result of the infringement, in such amount as is shown by appropriate evidence upon the trial of this case. 17 U.S.C. § 504.

27. Plaintiff is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Plaintiff has no adequate remedy at law for Defendant's wrongful conduct because, among other things, (a) Plaintiff's Copyrighted Work Products are unique and valuable assets whose market value is impossible to assess, (b) Defendants' infringement harms Plaintiff such that Plaintiff could not be made whole by any monetary award, and (c) Defendants' wrongful conduct, and the resulting damage to Plaintiff, is continuing.

28. Plaintiff is also entitled to recover its attorneys' fees and costs of suit. 17 U.S.C. § 505.

D. PERMANENT INJUNCTION

29. Plaintiff incorporates by reference, the same as if set forth at length, Paragraphs 7 through 28 above.

30. Plaintiff respectfully seeks an order permanently enjoining the Defendants, from using Plaintiff's Copyrighted Work Product in any way and/or taking any action that might in any way interfere with Plaintiff's exclusive ownership, use, and control of Plaintiff's Copyrighted Work Product as adjudicated by this Court.

VI.

DAMAGES, PRE-JUDGMENT AND POST-JUDGMENT

INTEREST AND ATTORNEYS FEES

31. Plaintiff incorporates by reference, the same as if set forth at length, paragraphs 7 through 30 above.

32. Plaintiffs seek actual damages (as well as pre-judgment and post-judgment interest at the highest rate allowed by law) for the damage caused by the Defendants described hereinabove. Further, pursuant to 17 U.S.C. § 505, Plaintiffs seek his reasonable and necessary attorneys' fees and cost incurred in bringing the current action.

33. Plaintiffs have suffered losses and damages in an amount in excess of \$1,000,000.00, as described in detail above, for which Plaintiff sues.

VII.

JURY DEMAND

34. Plaintiff demands a trial by jury on all issues so triable.

VIII.

PRAYER

35. WHEREFORE, PREMISES CONSIDERED Plaintiff prays that Defendants be cited to appear and answer and that on final hearing hereof, Plaintiff have judgment against the Defendants as follows:

(1) Declaratory Judgment that:

(a) Plaintiff is, and has been at all relevant times hereto, the Copyright owner of Plaintiff's Copyrighted Work Product described in Paragraph 10 above, under the applicable copyright laws of the United States. *See 17 U.S.C. § 101, et seq;*

(b) That the Defendants have no ownership interest in or current right to use Plaintiff's Copyrighted Work Product. *See 17 U.S.C. § 101, et seq;*

(c) That Plaintiff never granted Defendant Olson or Defendant Nerium any written license (exclusive or otherwise) in and to, and for the use of, Plaintiff's Copyrighted Work Product;

(d) That Defendant Olson and/or Defendant Nerium's only right to use Plaintiff's Copyrighted Work Product was pursuant to a nonexclusive implied license, which had to be supported by consideration;

(e) That the consideration Defendant Olson and/or Defendant Nerium promised Plaintiff for the use of Plaintiff's Copyrighted Work Product was, in part, (1) commission at the Group Marketing Three Star Nation Marketing Director – ID 10006 (effective 8/23/2011); (2) 15% royalty from the Nerium Edge Monthly fees; and (3) 5% equity share of Defendant Nerium;

(f) That Defendant Olson and/or Defendant Nerium failed to pay Plaintiff what the Defendants had promised to pay Plaintiff which is outlined in subsection (d) above;

- (g) That there has been a failure of the consideration promised by the Defendants to Plaintiff for the Defendants use of Plaintiff's Copyrighted Work Product;
 - (h) That Plaintiff is entitled to rescind the Defendants nonexclusive implied license to use Plaintiff's Copyrighted Work Product;
 - (i) That Plaintiff is entitled to license the use of Plaintiff's Copyrighted Work Product to any individual and/or company;
 - (j) That Plaintiff is entitled to past Commissions at the Group Marketing Three Star Nation Marketing Director – ID 10006, of more than two million two hundred twenty-five thousand dollars (\$2,225,000.00);
 - (k) That Plaintiff is entitled to a 15% royalty from the Nerium Edge Monthly fees, and past accrued royalty of more than \$9,900,000.00;
 - (l) Plaintiff is entitled 5% equity ownership of Defendant Nerium, with past due earnings of more than \$9,000,000.00;
- (2) Judgement against the Defendants for all of Plaintiff accrued actual economic damages as determined by the jury at the time of trial;
 - (3) Judgment against the Defendants for prejudgment and post-judgment interest at the maximum legal amount allowed by law;
 - (4) Judgement against the Defendants for Plaintiff's reasonable and necessary Attorney's fees in bringing this action;
 - (5) Judgement against the Defendants for Plaintiff's taxable Court costs; and
 - (6) For such other and further relief, both general and special, at law or in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

THE ROBINSON LAW GROUP, LLP

/s/ Timothy S. Robinson

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