

**SPOKESMANREVIEW.COM**

Thursda

## Company sues over lubricant

### INGfertility claims patents were violated

[Bert Caldwell](#)

Staff writer

August 26, 2008

Wisconsin Pharmacal, hired to make non-spermicidal lubricants developed by INGfertility, is instead selling a nearly identical product that violates the Valleyford company's patents and trademarks, according to a lawsuit filed last week in U.S. District Court.

Pharmacal's knockoff is hurting the sales of INGfertility's PRE-Seed and PRE, which are the first vaginal lubricants appropriate for couples trying to conceive a child, the suit filed in Spokane says. Most lubricants kill sperm.

INGfertility Vice President Dennis Clifton said PRE-Seed and PRE were the first lubricants cleared by the U.S. Food and Drug Administration for couples and for in-vitro fertilization procedures as well.

The suit says Pharmacal falsely claims its PRE Conceive plus is patent-protected in the United States. An international patent application filed by Pharmacal is based on trade secrets divulged to the company as part of the agreement with INGfertility that gave the Wisconsin company the right to manufacture the lubricant.

Clifton said negotiations between the companies began in mid-2005, when Pharmacal approached INGfertility about licensing or purchasing rights to the lubricants. When terms could not be reached, a contract manufacturing deal was negotiated, he said.

Pilot mixing started in June 2006 and progressed to testing and filling tubes by the end of that year. But by March 2007, Pharmacal was advising INGfertility it would not proceed further because of difficulties doing the testing required by the Valleyford company, a subsidiary of Bio-Origyn.

In February and May, INGfertility approached Pharmacal about resuming production, but the Wisconsin company was already well on its way to selling its own lubricant. Pharmacal was also sharing with others proprietary information on the Spokane company's lubricant formula, in violation of a non-disclosure agreement, the suit says.

Clifton said INGfertility did not become aware of Pharmacal's activity until wholesalers inquired about the competing product, which is for sale in Wal-Mart and other big-box stores.

INGfertility is seeking an injunction barring Pharmacal for violating its trademarks, making or distributing lubricants based on INGfertility formulas, or confusing the relationship between the two companies before the public.

"They are trading on our name," said Clifton, even to the point information on INGfertility packaging and Web site has been copied.

The suit asks the court to order Pharmocal to deliver stocks of its lubricant to INGfertility for destruction, account for all sales, and pay damages, some tripled, for infringing the Valleyford company's intellectual property.

"We are still assessing the financial impacts," Clifton said.

Unicep Packaging Inc. in Sandpoint now makes the lubricants, he said.

Wisconsin Pharmocal officials did not respond to calls regarding the lawsuit.