

1/27/2009 11:48:451572

2009 JAN - 5 A 11: 37  
2<sup>ND</sup> DISTRICT COURT

Blynn A. Simmons (10288)  
Paul H. Johnson (4856)  
1990 West 3300 South  
Ogden, Utah 84401  
Telephone: (801) 731-7040  
Telefax: (801) 732-1715

*Attorneys for Plaintiff Mineral Resources International, Inc.*

**FILED**  
JAN 23 2009  
SECOND  
DISTRICT COURT

IN THE SECOND JUDICIAL DISTRICT COURT  
WEBER COUNTY, STATE OF UTAH

MINERAL RESOURCES  
INTERNATIONAL, INC.,

Plaintiff,

vs.

TRACE MINERALS RESEARCH, L.C., a  
Utah limited liability company; JAMES M.  
CRAWFORD, an individual; S & G  
PROPERTIES, LLC, a Pennsylvania limited  
liability company, d/b/a LuckyVitamin.com;  
HERBAL REMEDIES USA, LLC, a  
Wyoming limited liability company;  
AMAZON.COM INC., a Delaware  
corporation; VITACOST.COM, INC., a  
Delaware corporation; Jimmy C. Barker  
and/or Christopher J. Oleary and/or an  
unknown entity d/b/a MineralOasis.com; an  
unknown entity d/b/a NOKOMIS  
NUTRITION; TOTAL HEALTH  
DISCOUNT, INC., a New York corporation;  
J & M NATURALS, INC. d/b/a Tao of  
Herbs, Inc.; and JOHN DOES I through X,

Defendants.

**ORDER OF DISMISSAL**

Civil No. 080905123

Judge: Ernie W. Jones

JAN 23 2009

Order of Dismissal



VD27921992

pages: 5

080905123 TRACE MINERALS RESEARCH I

1/27/2009 11:48:451573

This matter came on for hearing before the Honorable Ernie W. Jones on December 4, 2008, at 9:00 a.m., on the Motion for Dismissal filed by Defendant Trace Minerals Research, L.C. ("TMR") and James M. Crawford ("Crawford") (collectively referred to as "Defendants"). Defendants were present and were represented by their attorney Mark L. Callister. Plaintiff, Mineral Resources International, Inc. ("MRI"), was present and was represented by Paul H. Johnson and Blynn A. Simmons.

The Court, having reviewed the court file and heard oral argument of the parties, makes the following findings:

FINDINGS

1. A federal lawsuit was filed in 2006, which involved many of the same parties, many of the same issues and many of the same claims as the pending case in the above-entitled Court [Case No. 1:06-CV-00068, filed in the U.S. District Court for the District of Utah on June 15, 2006] (hereafter "Federal Lawsuit").
2. In the Federal Lawsuit, on June 4, 2007, Judge Tina Campbell ruled that MRI committed trademark infringement and unfair competition and granted partial summary judgment for TMR.
3. On June 17, 2008, MRI and TMR entered into a settlement agreement in which the parties agreed to release all damage claims that were asserted in the Federal Lawsuit, which included claims for intentional interference and unfair competition.

1/27/2009 11:44:451574

4. The above-entitled lawsuit was filed on August 11, 2008, in the Utah Second District Court. MRI has not formally served civil process on any of the defendants named in the above-entitled lawsuit.
5. Many of the same facts, issues, parties and claims are involved both in the above-entitled lawsuit and in the Federal Lawsuit.
6. The Stipulation and Order of Dismissal entered in the Federal Lawsuit [dated June 4, 2008] stated that (1) TMR's Complaint in the Federal Lawsuit alleged claims for trademark infringement, breach of contract, intentional interference, conspiracy, breach of fiduciary duty, misrepresentation and unfair competition, and (2) MRI's Counterclaim in the Federal Lawsuit alleged claims for trademark infringement, breach of contract, intentional interference, misappropriation of trade secrets, unjust enrichment, unfair competition, conversion and conspiracy. Those claims are delineated in the Stipulation as claims that are included in the Order of Dismissal entered in the Federal Lawsuit.
7. All damage claims asserted in the above-entitled lawsuit are barred by the Settlement Agreement, which was entered between the parties in the Federal Lawsuit, on June 17, 2008, and Defendants' Motion to Dismiss should be granted as to all damage claims asserted in the above-entitled lawsuit.
8. All claims for injunctive relief asserted in the above-entitled case are barred by MRI's agreement that the Federal Court should retain jurisdiction for purposes of injunctive relief, because the claims for injunctive relief set forth in the above-entitled lawsuit were either

1/27/2009 11:46:451575

the same claims as those asserted in the Federal Lawsuit or are claims that should have been asserted in the Federal Lawsuit.


**ORDER**

Based on the Court's Findings set forth above, and good cause appearing therefore;

IT IS HEREBY ORDERED as follows:

1. Defendants' Motion to Dismiss is granted concerning all damage claims asserted in the above-entitled lawsuit, and all damage claims are dismissed with prejudice.
2. The Federal Court retains jurisdiction over the non-damage claims asserted in the above-entitled lawsuit, and therefore, all non-damage claims asserted in the above-entitled lawsuit are dismissed without prejudice.

DATED this 23 day of January, 2009.



Honorable Ernie W. Jones  
Utah Second District Court Judge



1 court. It just, to me, it all makes sense that this case  
2 really belongs in federal court rather than up here in state  
3 court. The federal court still has jurisdiction over your  
4 non-damage claims. I just think it's crazy that we're trying  
5 to split this case and run back and forth between federal and  
6 state court when we're dealing with essentially the same  
7 parties, same issues. I just think it needs to be in federal  
8 court rather than here.

9 And I guess the thing that's troubling to me is it  
10 almost appears to me, at least on the surface, that this is  
11 an end run. You didn't like what happened in federal court,  
12 you didn't agree with some of the rulings from Judge  
13 Campbell, you didn't like the settlement agreement or  
14 release, and so you turn around and file up here. And I just  
15 don't think that that was ever intended that if we don't like  
16 the ruling, we don't like the outcome, we then turn around  
17 and file essentially the same lawsuit in a different  
18 courtroom. And at least that's the way I look at it and  
19 that's why I'm going to deny the motion.

20 Just a couple of other things that I wanted to at  
21 least put on the record. You know, I agree with Mr.  
22 Callister. As I look at the release, it really involved, it  
23 says TMR, which is Trace Minerals, and its affiliates,  
24 subsidiaries or agents. So it just seems to me that the  
25 release does include all of the affiliates. Those