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7
 8 **UNITED STATES DISTRICT COURT**
 9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 SILLAGE, LLC, a California
 12 Limited Liability Company,

13 Plaintiff,

14 vs.

15 URBAN OUTFITTERS.COM LP, a
 Pennsylvania Limited Partnership;
 16 URBAN OUTFITTERS
 HOLDINGS, LLC, a Pennsylvania
 Limited Liability Company; and,
 17 HENRI BENDEL, INC., a Delaware
 Corporation.

18 Defendants.
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 20
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CASE NO.: 8:14-cv-00686

COMPLAINT FOR:

1. **PATENT INFRINGEMENT UNDER 35 U.S.C. § 271;**
2. **TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114;**
3. **TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125(a); and,**
4. **UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200.**

JURY TRIAL DEMANDED

1 Plaintiff Sillage, LLC (“Sillage”) by and through its attorneys, hereby
2 alleges as follows:

3
4 **PARTIES**

5 1. Sillage is engaged in the business of creating and providing luxury
6 artisanal fragrances to its consumers. In addition to the scents themselves, Sillage
7 is known for presenting its perfumes in embellished bottles and flacons. Sillage is
8 now and was at all times herein mentioned, a California limited liability company
9 duly organized and existing under the laws of the State of California with its
10 principal place of business at 660 Newport Center Drive, Suite 660,
11 Newport Beach, California 92660.

12 2. On information and belief, Defendant UrbanOutfitters.com LP
13 (“UrbanOutfitters.com”) is a limited partnership duly organized and existing under
14 the laws of the State of Pennsylvania, with its principal place of business at 5000
15 S. Broad Street, Philadelphia, Pennsylvania 19112.

16 3. On information and belief, Defendant Urban Outfitters Holdings, LLC
17 (“Urban Outfitters Holdings”; collectively, UrbanOutfitters.com and Urban
18 Outfitters Holdings shall be referred to as “Urban Outfitters”) is a limited liability
19 company duly organized and existing under the laws of the State of Pennsylvania,
20 with its principal place of business at 5000 S. Broad Street, Philadelphia,
21 Pennsylvania 19112.

22 4. On information and belief, Defendant Henri Bendel, Inc. (“Henri
23 Bendel”; collectively, Urban Outfitters and Henri Bendel are the “Defendants”) is
24 a corporation duly organized and existing under the laws of the State of Delaware,
25 with its principal place of business at 666 Fifth Avenue, 4th Floor, New York,
26 New York 10103, and with its registered agent for service of process at The
27 Corporation Trust Company, Corporation Trust Center, 1209 Orange Street,
28 Wilmington, Delaware 19801.

1 **JURISDICTION AND VENUE**

2 5. This is a civil action arising under the patent laws of the United States,
3 Title 35 of the United States Code. This Court has subject matter jurisdiction over
4 Counts I-III pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has
5 supplemental jurisdiction over Count IV pursuant to 28 U.S.C. § 1367.

6 6. This Court has personal jurisdiction over UrbanOutfitters.com
7 because UrbanOutfitters.com is doing and has done substantial business in this
8 judicial district and has committed acts of patent and trademark infringement, and
9 other acts complained of herein, in this judicial district.

10 7. This Court has personal jurisdiction over Urban Outfitters Holdings
11 because Urban Outfitters Holdings is doing and has done substantial business in
12 this judicial district and has committed acts of patent and trademark infringement,
13 and other acts complained of herein, in this judicial district.

14 8. This Court has personal jurisdiction over Henri Bendel because Henri
15 Bendel is doing and has done substantial business in this judicial district —
16 including owning and operating a retail store located at 6600 Topanga Canyon
17 Blvd., Canoga Park, California 91303 — and further has committed acts of patent
18 and trademark infringement, and other acts complained of herein, in this judicial
19 district.

20 9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391
21 (b)-(c) and 1400(b). The acts and transactions complained of herein were
22 conceived, carried out, made effective, and had an effect within the State of
23 California and within this Judicial District.

24 **FACTUAL ALLEGATIONS**

25 **Patent Ownership**

26 10. On November 12, 2013, U.S. Patent D693,224 (the “‘224 patent”)
27 entitled “Display Bottle” was duly and legally issued to Nicole Mather as inventor.
28 A true and correct copy of the ‘224 patent is attached to this Complaint as **Ex. A**

1 and incorporated herein by reference. Sillage is the exclusive licensee of the entire
2 right, title and interest in and to the '224 patent, including all rights to enforce the
3 '224 patent and recover for infringement. The '224 patent is valid and in force.

4 11. On May 1, 2012, U.S. Patent D658,503 (the "'503 patent") entitled
5 "Bottle" was duly and legally issued to Nicole Mather as inventor. A true and
6 correct copy of the '503 patent is attached to this Complaint as **Ex. B** and
7 incorporated herein by reference. Sillage is the exclusive licensee of the entire
8 right, title and interest in and to the '503 patent, including all rights to enforce the
9 '503 patent and recover for infringement. The '503 patent is valid and in force.

10 12. As more fully laid out below, Defendants have been and are now
11 infringing the '224 patent and '503 patent in this judicial district and elsewhere, by
12 selling and distributing products which infringe Sillage's patents.

13 **Trademark Ownership**

14 13. On May 10, 2012, Sillage filed a trademark application for its
15 CHERRY GARDEN mark. CHERRY GARDEN is the name of one of Sillage's
16 perfumes from the House of Sillage line.

17 14. On April 2, 2013, the CHERRY GARDEN mark published for
18 opposition in the USPTO's *Official Gazette*. No oppositions were filed.

19 15. On November 5, 2013, Sillage's CHERRY GARDEN mark was
20 issued as U.S. Trademark Registration No. 4,429,539. Sillage began using the
21 CHERRY GARDEN mark in United States commerce in March 2013. A copy of
22 the registration for the CHERRY GARDEN mark is attached as **Ex. C** and
23 incorporated herein by reference.

24 16. Sillage has expended significant time, energy and expense to promote
25 CHERRY GARDEN, including but not limited to tradeshow attendance,
26 interviews, print ads, online marketing campaigns, couture events, advertising, and
27 marketing.

1 17. Based on Sillage's extensive use and promotion of CHERRY
2 GARDEN, the mark has become distinctive and known in the United States and
3 global marketplace as identifying Sillage as the source of origin for the products
4 marketed and provided in connection therewith.

5 **Trade Dress Ownership**

6 18. In or about November 2011, Sillage introduced TIARA, its first
7 fragrance from its House of Sillage line of perfumes. TIARA was presented in a
8 transparent cupcake-shaped bottle and included a bottle cap adorned with jewelry,
9 crystals and other décor.

10 19. Each subsequent fragrance in the House of Sillage line was presented
11 in a transparent cupcake-shaped bottle and included its own uniquely decorated
12 cap.

13 20. Sillage's bottles and caps attracted the attention of critics and
14 consumers alike and quickly became a hallmark of the Sillage brand. Sillage has
15 used and promoted its trade dress sufficiently to form an association in the mind of
16 consumers to denote Sillage as the source of the product.

17 **Sillage Markets and Distributes Unique Perfume Products**

18 21. On April 28, 2010, Sillage was formed. On or about
19 November 3, 2011, Sillage began to market its TIARA perfume in United States
20 commerce. TIARA was marketed and sold in a cupcake-inspired perfume bottle.
21 Since this time, Sillage has expanded and continues to expand its perfume product
22 line in the U.S. to include the marketing and sale of seven (7) Sillage perfumes.
23 Each perfume is marketed in a Signature Line bottle, and a separate Limited
24 Edition bottle, for a total of fourteen (14) separate bottles that are available for
25 purchase, including TIARA, CHERRY GARDEN, and other perfumes.

26 22. Each scent in the House of Sillage line is presented in a signature
27 cupcake inspired bottle which embodies the design claimed in the '224 patent. For
28

1 reference, Sillage's cupcake-inspired bottle and the limited edition
2 CHERRY GARDEN bottle and cap are shown below.



13 23. With sales internationally, including in the United States, the United
14 Arab Emirates and within the European Union, Sillage has established a significant
15 reputation in its TIARA, CHERRY GARDEN and other brands in the field of
16 perfume.

17 24. Sillage uses only high quality ingredients in its perfume products.
18 Similarly, Sillage uses only high quality materials in its decorative bottles and
19 flacons.

20 25. Sillage has established a reputation and goodwill in its business of
21 producing luxury crafted fragrances developed in collaboration with the finest
22 perfumers in the business, including the legendary Francis Camail. Sillage also
23 works with premium jeweler Swarovski to design finely-crafted and ornate flacons
24 and bottles.

25 26. Sillage sells its products through specialty online retailers and
26 boutiques, or by special order at select retailers.

1 27. Sillage's reputation and goodwill have been recognized and enhanced
2 through its products being featured in internationally-circulated publications such
3 as *GQ*, *Harper's Bazaar*, *Perfumerias Regia*, the *Robb Report*, and *Vogue* as
4 depicted below.



18
19 **Sillage Perfume Products Have Become Well-Known**

20 28. Sillage's customers expect outstanding quality and presentation from
21 Sillage's perfumes and Sillage works diligently to maintain its reputation and
22 goodwill by delivering quality and luxury to its customers.

23 29. The high-end luxury perfume market is a small market. The cupcake-
24 inspired perfume bottle is Sillage's market differentiation, and makes Sillage
25 uniquely different from any other perfume company in the United States. It is
26 therefore necessary for Sillage to protect its products and its reputation against
27 would-be knock-offs or competitors which may infringe upon Sillage's intellectual
28 property rights.

1 34. The Infringing Parfum’s caps are generally dome-shaped and include
2 an A&P charm, rhinestone jewelry and/or other décor. For example, Defendants’
3 “Cheery Cherry” parfum is depicted on the previous page.

4 35. The Infringing Parfum and the perfumes marketed and sold by Sillage
5 are the only two (2) brands in the world that market and sell perfume in a cupcake-
6 inspired bottle.

7 36. Upon information and belief, an article entitled “Cupcake Delight”
8 appearing in *Global Cosmetic Industry* and dated January 1, 2013, states that,


9 “Alice & Peter is a new collection of scents developed by perfumer
10 Gerald Ghislain and partner Magali Senequier. Created as a playful
11 concept inspired by *Alice in Wonderland* and *Peter Pan*, the collection
12 features five fragrances – *Fancy Choco*, *Showy Toffee*, *Cheery Cherry*,
13 *Wicked Berry* and *Bloody Orange* – in 1 oz. cupcake bottles, and the
14 colorful scents were developed to be young at heart, light and sweet.
15 Available at Urban Outfitters and Henri Bendel. . . .” (Emphasis added.)

16 37. Upon information and belief, several Pinterest references, including
17 one accessible at <http://www.pinterest.com/pin/41939840253204709/>, mention
18 A&P in connection with Urban Outfitters:

19 Found on urbanoutfitters.com

20 **Alice & Peter Cupcake Perfume**

21 In Stock • \$50

22  Urban Outfitters

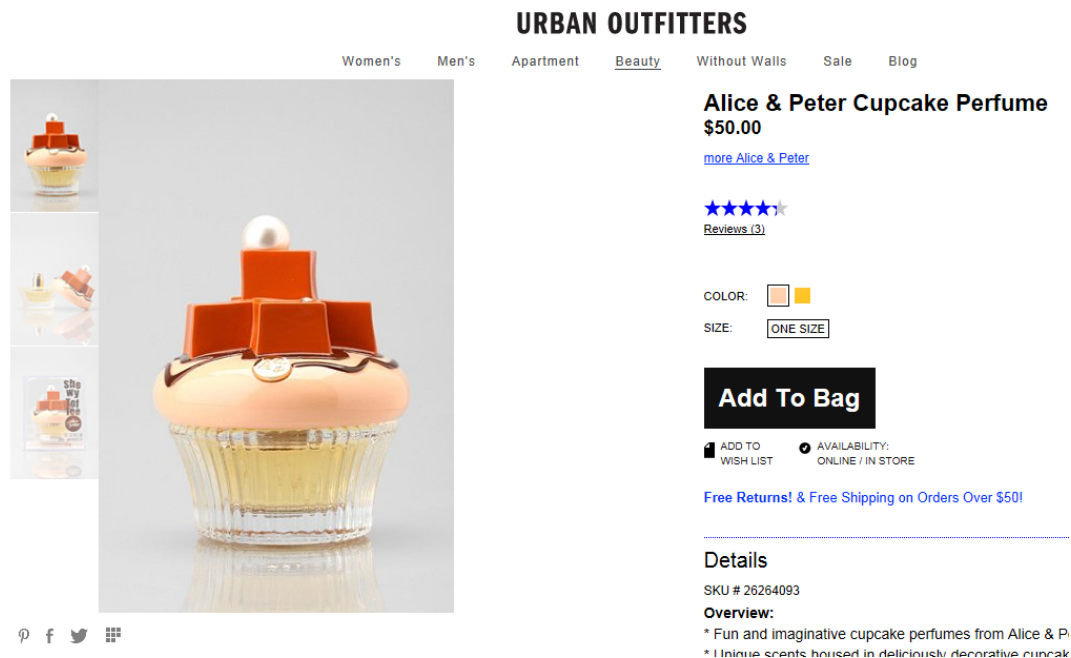
23 See this on Urban Outfitters



26 **Emily Cheng** • 34 weeks ago

Alice & Peter Cupcake Perfume [#urbanoutfitters](#)

1 38. Upon information and belief, the Infringing Parfums are available for
 2 purchase via the Urban Outfitters website at www.urbanoutfitters.com. A sample
 3 of the Infringing Parfum, as seen on the Urban Outfitters website, is depicted
 4 below.

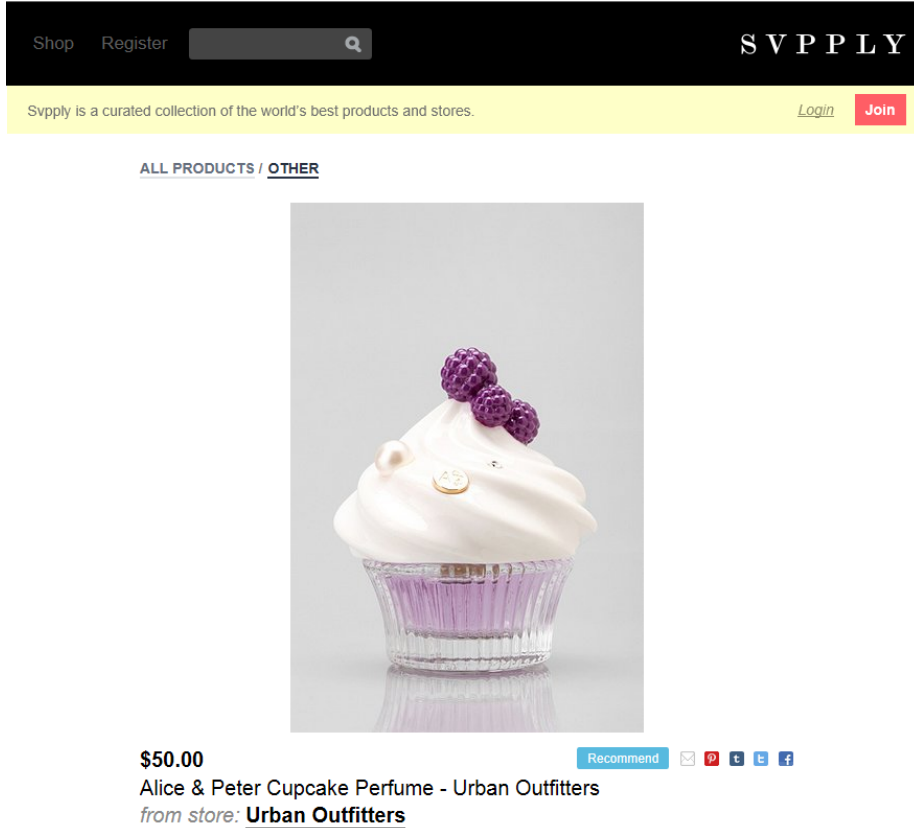


17 39. Upon information and belief, a reference accessible at
 18 <http://www.beautygurulasvegas.com/tag/alice-peter-cupcake-perfume/> states, in
 19 part,

20 “This perfume is just too cute. It is one of five Alice & Peter scents
 21 that come in a cupcake shaped bottle. This one is Cherry Cherry, a
 22 sweet mix of cherry, orange and blackcurrant fruit and floral aromas;
 23 topped with hints of strawberry, raspberry, vanilla, and caramel. Also
 24 available in Wicked Berry, Fancy Choco, Showy Toffee and Bloody
 25 Orange, \$49 at Urban Outfitters.” (Emphasis added.)

26 40. Upon information and belief, a reference accessible at
 27 https://svpply.com/item/2471541/Alice_Peter_Cupcake_Perfume_Urban
 28 directs visitors of this page to the Urban Outfitters website to purchase the
 Infringing Parfum, as depicted on the next page.

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41. Upon information and belief, on or about April 11, 2014, Urban Outfitters sold and shipped the Infringing Parfum within this judicial district.

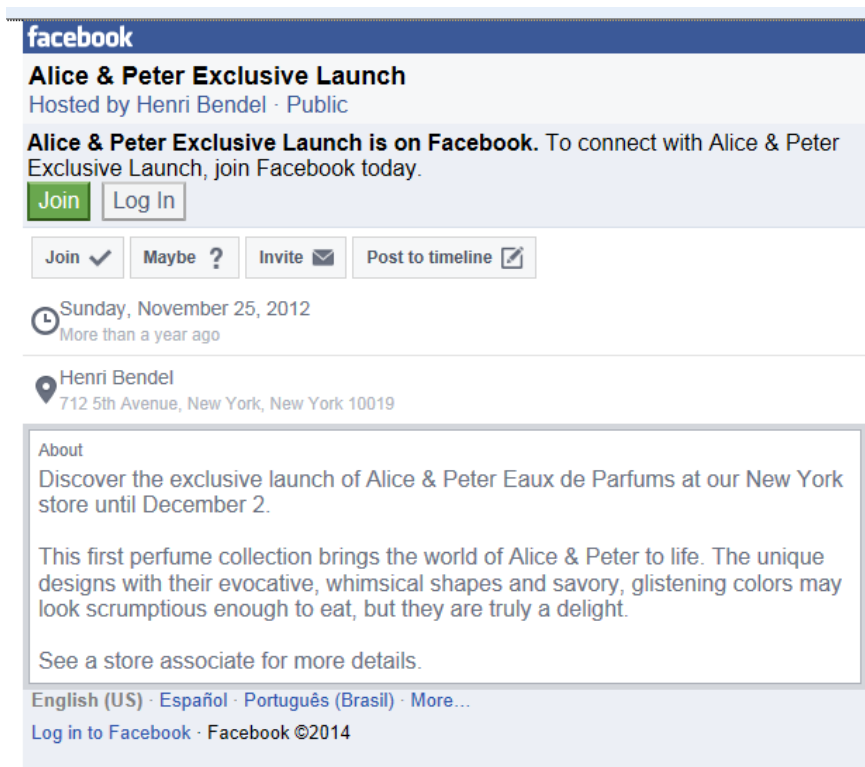
42. Upon information and belief, Henri Bendel markets and sells five (5) variations of the Infringing Parfum: Blood Orange, Cherry Cherry, Fancy Choco, Showy Toffee, and Wicked Berry. Upon information and belief, these products are marketed and sold at the Henri Bendel flagship store, and through www.henribendel.com.

43. Upon information and belief, an article that appeared on Examiner.com dated February 4, 2013, see <http://www.examiner.com/review/a-collection-of-cupcakes-that-won-t-pack-on-the-pounds-because-they-re-perfume>, states, in relevant part,

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///

1 “Alice & Peter make fragrances that are both unusual, and astoundingly
 2 packaged. A Whimsical Collection of Scents tempts all of your senses,
 3 and will most likely arouse your inner child. . . . Alice & Peter unveiled
 4 these treats at Elements Showcase in New York. Now that Valentine’s
 5 Day is on the horizon, these fragrances are a perfect gift. If there is no
 6 one to offer up a Whimsical collection cupcake for the day, get one for
 7 yourself, and you might find yourself attracting plenty of attention! The
 8 Alice & Peter collectible fragrances are available at Urban Outfitters
 9 and Henri Bendel and www.alicepeter.com.” (Emphasis added.)

10 44. Upon information and belief, a Facebook reference accessible at
 11 <https://mbasic.facebook.com/events/265840473538419?accontext=%7B%22ref%22%3A22%7D&aref=22&refid=17>, offers:



12 45. Upon information and belief, Defendants began marketing and selling
 13 “Cherry Cherry” parfum in U.S. commerce at least as early as January 2013.

14 **FIRST CLAIM FOR RELIEF**

15 *(Infringement of U.S. Patent No. D693,224)*

16 46. Sillage hereby re-alleges and incorporates by reference each of the
 17 allegations from paragraphs 1 through 45 hereof as if fully stated herein.
 18

1 47. Sillage is the sole owner of the entire right, title and interest in the
2 '224 patent.

3 48. Defendants have infringed the '224 patent under Section 271 of
4 Title 35 of the U.S. Code by making, selling and/or offering for sale in the U.S.
5 and/or importing into the U.S. the Infringing Parfum products which embody the
6 claimed design recited in the '224 patent.

7 49. On information and belief, Defendants will continue to infringe the
8 '224 patent unless enjoined by this Court.

9 50. Sillage has been, and will continue to be, damaged and irreparably
10 harmed by the actions of Defendants, which will continue unless Defendants are
11 enjoined by this Court.

12 51. On information and belief, the infringement of the '224 patent by
13 Defendants has been willful.

14 **SECOND CLAIM FOR RELIEF**

15 *(Infringement of U.S. Patent No. D658,503)*

16 52. Sillage hereby re-alleges and incorporates by reference each of the
17 allegations from paragraphs 1 through 51 hereof as if fully stated herein.

18 53. Sillage is the sole owner of the entire right, title and interest in the
19 '503 patent.

20 54. Defendants have infringed the '503 patent under Section 271 of
21 Title 35 of the U.S. Code by making, selling and/or offering for sale in the U.S.
22 and/or importing into the U.S. the Infringing Parfum products which embody the
23 claimed design recited in the '503 patent.

24 55. On information and belief, Defendants will continue to infringe the
25 '503 patent unless enjoined by this Court.

26 56. Sillage has been, and will continue to be, damaged and irreparably
27 harmed by the actions of Defendants, which will continue unless Defendants are
28 enjoined by this Court.

1 57. On information and belief, the infringement of the '503 patent by
2 Defendants has been willful.

3 **THIRD CLAIM FOR RELIEF**

4 *(Infringement of Federally Registered Trademark (Lanham Act §32))*

5 58. Sillage hereby re-alleges and incorporates by reference each of the
6 allegations from paragraphs 1 through 57 hereof as if fully stated herein.

7 59. By virtue of Defendants' conduct, Defendants have used and are using
8 a spurious term in connection with the advertising, marketing and offering of
9 perfume products in interstate commerce, which mark is identified with "Cherry
10 Cherry," and which imitates Sillage's CHERRY GARDEN mark.

11 60. Sillage and A&P make perfume products and, accordingly, both
12 Sillage and A&P market their products to the same or similar classes or purchasers.

13 61. As a result of Defendants' conduct, there is a strong likelihood of
14 confusion, mistake, or deception, and many persons familiar with Sillage's
15 CHERRY GARDEN mark, its reputations, dress and favorable goodwill, are likely
16 to purchase Defendants' Infringing Parfum goods in the mistaken belief that such
17 goods are offered or authorized by Sillage.

18 62. Defendants' actions have been and are willful, unfair, false and
19 deceptive, in that they tend to mislead, deceive and confuse, and have had and will
20 have the result of misleading, deceiving and confusing the public to believe that
21 Defendants and/or their goods are affiliated with, sponsored or controlled by
22 Sillage.

23 63. The foregoing actions of Defendants constitute trademark
24 infringement by inducing the erroneous belief that Defendants' and/or their goods
25 are in some manner affiliated with, originate from, or are sponsored by Sillage in
26 violation of Lanham Act § 32, 15 U.S.C. § 1114.

27 64. Sillage is informed and believes, and on that ground alleges, that
28 Defendants have made and/or will make unlawful gains and profits from their

1 unlawful actions as alleged herein, and by reason thereof, Sillage has been
2 deprived of gains and profits which otherwise would have inured to Sillage but for
3 such unlawful actions.

4 65. Sillage has no adequate remedy at law for the injuries alleged in this
5 Count. The injuries are, in part, intangible in nature and not capable of being fully
6 measured or valued in terms of money damages. Further, the injuries are of
7 continuing nature and will continue to be suffered so long as Defendants continue
8 their wrongful conduct.

9 66. Notwithstanding the difficulty of fully ascertaining the value of the
10 damage to Sillage caused by Defendants' wrongful conduct, Defendants' conduct
11 has resulted in irreparable, direct and proximate damages to Sillage and Sillage is
12 entitled to injunctive relief under 15 U.S.C. §1116(a).

13 **FOURTH CLAIM FOR RELIEF**

14 *(Trade Dress Infringement (Lanham Act §43))*

15 67. Sillage hereby re-alleges and incorporates by reference each of the
16 allegations from paragraphs 1 through 66 hereof as if fully stated herein.

17 68. This claim arises under Section 43(a) of the Lanham Act of 1946, as
18 amended, 15 U.S.C. § 1125(a). Defendants' unauthorized use and threatened
19 continued use in interstate commerce of Sillage's trade dress constitutes use of a
20 word, term, name, symbol, or device, or any combination thereof, or any false
21 designation of origin, false or misleading description of fact, or false or misleading
22 representation of fact, that has caused and is likely to cause confusion, mistake or
23 deception (a) as to the characteristics, qualities or origin of the Infringing Parfum,
24 (b) as to an affiliation, connection or association between Sillage and Defendants,
25 and (c) as to the sponsorship or approval of the Infringing Parfum by Sillage.

26 69. Such actions, as used in commercial advertising, have misrepresented
27 and do misrepresent the nature, characteristics or qualities of Defendants' goods,
28 services and/or commercial activities.

1 C. That the Court enter judgment that Defendants' unauthorized use of
2 Sillage's trade dress, in association with the Infringing Parfum products, is in
3 violation of the Lanham Act, 15 U.S.C. § 1125(a);

4 D. That the Court enter judgment that Defendants' unauthorized use of
5 the mark CHEERY CHERRY, in association with the Infringing Parfum products,
6 is in violation of the Lanham Act, 15 U.S.C. § 1115(a);

7 E. That Defendants be required to immediately change their "Cherry
8 Cherry" mark;

9 F. That Defendants' conduct serves to unfairly compete with Sillage
10 under the common law of the State of California;


11 G. That the Court award judgment in favor of Sillage in an amount to be
12 determined at trial, but in no event less than \$2,500,000.00 and/or Defendants'
13 profits on the Infringing Products;

14 H. An award of Sillage's costs and attorneys' fees as allowed by law;
15 and,

16 I. For such other and further relief as the Court may deem just and
17 proper.

18 DATED: May 1, 2014

STRADLING YOCCA CARLSON
& RAUTH, P.C.

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21 By: 
22 Thomas J. Speiss, III
23 Attorneys for Plaintiff Sillage, LLC
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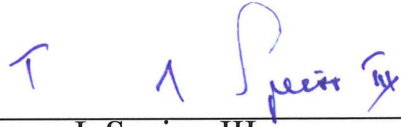
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JURY DEMAND

Sillage hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on each cause of action asserted in its Complaint that is triable by jury.

DATED: May 1, 2014

STRADLING YOCCA CARLSON
& RAUTH, P.C.

By: 
Thomas J. Speiss, III
Attorneys for Plaintiff Sillage, LLC