

1 THOMAS J. SPEISS, III (SBN 200949)
 2 tspeiss@sycr.com
 3 JUSTIN KLAEB (SBN 254035)
 4 jklaeb@sycr.com
 5 STRADLING YOCCA CARLSON & RAUTH, P.C.
 100 Wilshire Blvd., Suite 400
 4 Santa Monica, California 90401
 Telephone: (424) 214-7042
 5 Facsimile: (424) 214-7010
 6 Attorneys for Plaintiff Sillage, LLC

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 KENROSE PERFUMES, INC.
 16 D/B/A EUROPERFUMES, a New
 17 York Corporation;
 18 FRAGRANCENET.COM, INC., a
 Delaware Corporation; and, LA
 19 PEER BEAUTY, L.P., a California
 Limited Partnership.

20 Defendants.

CASE NO.: 8:14-cv-2043

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 **PARTIES**

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

11 2. On information and belief, Defendant Kenrose Perfumes, Inc. d/b/a
12 Europerfumes (“Europerfumes”) is a corporation duly organized and existing
13 under the laws of the State of New York, with its principal place of business at
14 60 Honeck Street, Englewood, New Jersey 07631.

15 3. On information and belief, Defendant FragranceNet.com, Inc. is a
16 corporation duly organized and existing under the laws of the State of Delaware,
17 with its principal place of business at 104 Parkway South Drive, Hauppauge,
18 New York 11788 (“FragranceNet”).

19 4. On information and belief, Defendant La Peer Beauty, L.P. is a
20 limited partnership duly organized and existing under the laws of the State of
21 California, with its principal place of business at 8950 W. Olympic Blvd.,
22 Suite 113, Beverly Hills, California 90211 (“La Peer Beauty”; and collectively
23 with Europerfumes and FragranceNet, “Defendants”).

24 **JURISDICTION AND VENUE**

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

1 12. At least as early as February 1, 2014, Nicole Mather assigned the ‘224
2 and ‘503 patents to Sillage. Sillage is the exclusive licensee of the entire right,
3 title, and interest in and to the ‘224 and ‘503 patents, including all rights to enforce
4 the ‘224 and ‘503 patents and recover for infringement. True and correct copies of
5 the assignment documents are attached hereto as **Exs. C and D**.

6 13. As more fully laid out below, Defendants have been and are now
7 infringing the ‘224 patent and ‘503 patent in this judicial district and elsewhere, by
8 selling and distributing products which infringe Sillage’s patents.

9 **Trademark Ownership**

10 14. On May 10, 2012, Sillage filed an intent-to-use trademark application
11 for its CHERRY GARDEN mark, which was assigned U.S. Trademark
12 Application No. 85/622,278. CHERRY GARDEN is the name of one of Sillage’s
13 perfumes from the House of Sillage line.

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

16 16. On November 5, 2013, Sillage’s CHERRY GARDEN mark was
17 issued as U.S. Trademark Registration No. 4,429,539. Sillage began using the
18 CHERRY GARDEN mark in United States commerce in March 2013. The
19 constructive date of first use for the CHERRY GARDEN mark in United States
20 commerce is May 10, 2012. A copy of the registration for the CHERRY
21 GARDEN mark is attached as **Ex. E** and incorporated herein by reference.

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

26 18. Based on Sillage’s extensive use and promotion of CHERRY
27 GARDEN, the mark has become distinctive and known in the United States and
28

1 global marketplace as identifying Sillage as the source of origin for the products
2 marketed and provided in connection therewith.

3 **Trade Dress Ownership**

4 19. In or about November 2011, Sillage introduced TIARA, its first
5 fragrance from its House of Sillage line of perfumes. TIARA is presented in a
6 transparent hand-polished, flat-bottom, ridged-edge cupcake-shaped bottle —
7 which is about two (2) inches in diameter — and includes a bottle cap adorned
8 with jewelry, crystals, and other décor. Sillage’s other bottle designs include the
9 same cupcake-shaped bottle as well as other cut stones and décor.

10 20. 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 21. 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 products.

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

18 22. 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 United States to include the marketing and sale of eight (8) Sillage
23 perfumes. The majority of these perfumes are marketed in a Signature Line bottle,
24 and a separate Limited Edition bottle, for a total of fifteen (15) separate bottles that
25 are available for purchase, including TIARA, CHERRY GARDEN, and other
26 perfumes.

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

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



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

17 25. Sillage uses only high quality ingredients in its perfume products.
18 Similarly, Sillage uses only high quality materials in its decorative bottles.

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

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

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



17
18 **Sillage Perfume Products Have Become Well-Known**

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

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

1 31. Sillage has expended significant time, energy, and expense to promote
2 its unique House of Sillage line, and in particular the bottle design and decorative
3 cover, including but not limited to tradeshow attendance, interviews, print ads,
4 online marketing campaigns, couture events, advertising, and marketing.

5 32. Based on Sillage’s extensive use and promotion of its cupcake-shaped
6 bottle and decorative cover, the dress has become distinctive and known in the
7 United States and global marketplace as identifying Sillage as the source of origin
8 for the products marketed and provided in connection therewith.

9 **Defendants Market and Sell Perfume in Cupcake-Shaped Bottles with**
10 **Decorative Caps**

11 33. At least as early as March 25, 2013 — which is about eighteen (18)
12 months after Sillage first introduced its cupcake-inspired perfume bottles into
13 United States commerce — Histoires de Parfums LLC d/b/a Alice & Peter
14 (“A&P”), which is a Defendant in the related case, *Sillage, LLC v. Histoires*
15 *de Parfums, LLC, et al.*, Case No. 14-cv-00172-CAS-RNB (C.D. Cal. 2014) (the
16 “Alice & Peter Action”), and Europerfumes, working together, introduced a line of
17 perfumes which were, and continue to be, presented in a cheap knock-off version
18 of Sillage’s cupcake-inspired perfume bottles. This line of A&P perfume is
19 marketed and sold in a cupcake-shaped bottle and decorative cap (the “Infringing
20 Parfum”). A sample of the Infringing Parfum, e.g., A&P’s “Cherry Cherry”
21 perfume, is depicted below.



1 34. The Infringing Parfum's cupcake-shaped bottles mimic the designs
2 and inventions claimed in Sillage's patents and trade dress.

3 35. The Infringing Parfum's caps are generally dome-shaped and include
4 an A&P charm, rhinestone jewelry, and/or other décor.

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

8 37. Upon information and belief, Europerfumes is the North American
9 distributor for the A&P perfume, and has marketed and/or sold about 25,000 units
10 of the A&P perfume throughout North America.

11 38. Upon information and belief, Europerfumes received notice of its
12 infringing activities at least as early as May 1, 2014. Upon information and belief,
13 Europerfumes acquired such knowledge from Moshe Yhudai, the proprietor of
14 Scent-Sation LA, which is a Defendant in the related Alice & Peter Action, as
15 attested to by both Mr. Yhudai, and Vicken Arslanian, the proprietor of
16 Europerfumes, as part of their deposition testimony taken in the
17 Alice & Peter Action.

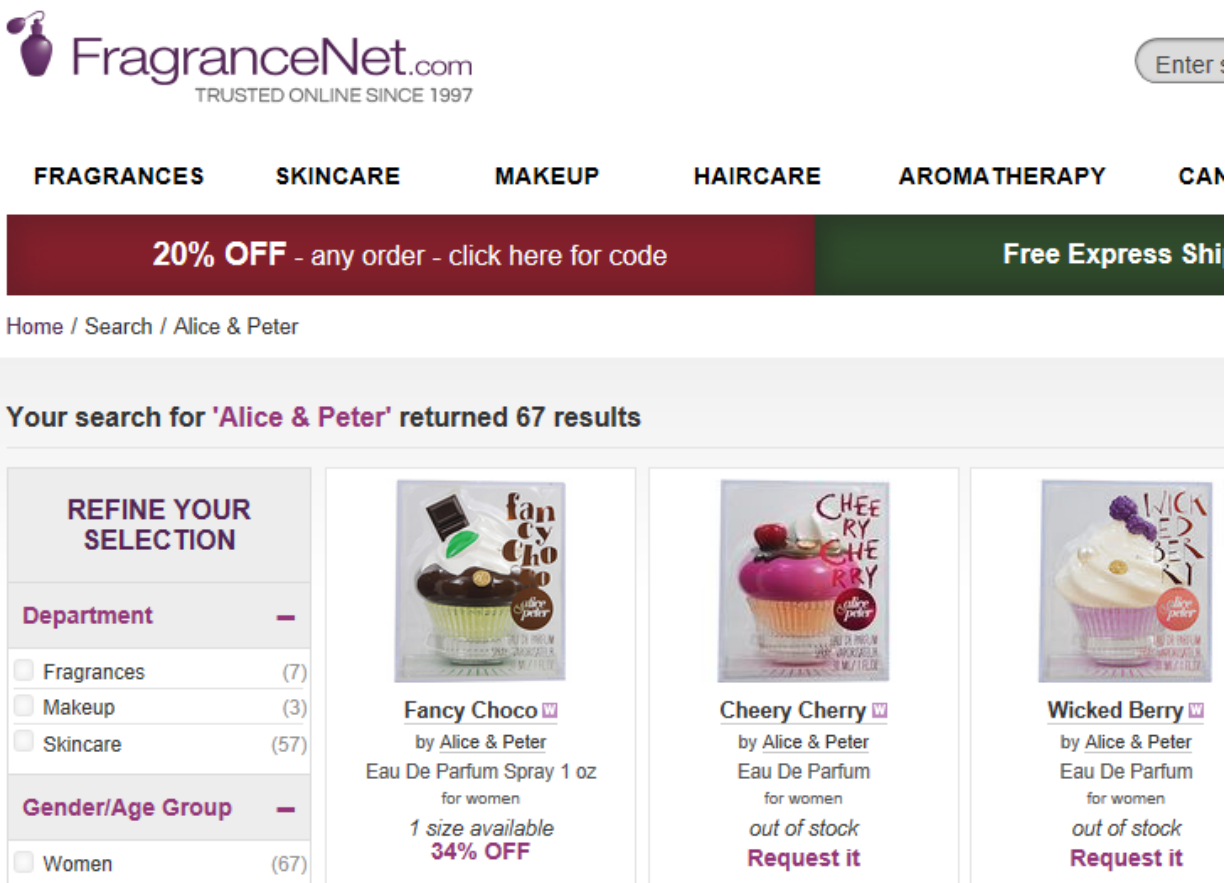
18 39. Upon information and belief, Europerfumes marketed and sold the
19 A&P perfume to FragranceNet on the following dates and in the following
20 amounts,

| MONTH | QUANTITY |
|------------------|-----------|
| April-April 2014 | 243 Units |
| May-June 2014 | 63 Units |
| TOTAL | 306 Units |

1 40. Upon information and belief, Europerfumes marketed and sold at least
 2 750 units of the A&P perfume after it received notice of its infringing activities —
 3 including selling at least sixty-three (63) units to FragranceNet — making it a
 4 willful patent infringer.

5 41. Upon information and belief, FragranceNet purchased at least
 6 ninety-six (96) units of A&P’s “Cheery Cherry” perfume from Europerfumes.

7 42. Upon information and belief, FragranceNet markets and sells five (5)
 8 variations of the Infringing Parfum: Blood Orange, Cherry Cherry, Fancy Choco,
 9 Showy Toffee, and Wicked Berry. Upon information and belief, these products
 10 continue to be marketed and sold through www.FragranceNet.com, as depicted
 11 below,



1 See **Ex. F** for a copy of the webpage print-outs showing FragranceNet's marketing
2 and sale of the Alice & Peter perfume.

3 43. Upon information and belief, Europerfumes marketed and sold the
4 A&P perfume to La Peer Beauty on the following dates, in the following amounts,

| MONTH | QUANTITY |
|---------------|-----------|
| November 2013 | 720 Units |
| December 2013 | 3 Units |
| July 2014 | 6 Units |
| TOTAL | 729 Units |

11
12 44. Upon information and belief, Europerfumes marketed and sold at least
13 six (6) units of the A&P perfume to La Peer Beauty after Europerfumes had notice
14 of its infringing activities.

15 45. Upon information and belief, La Peer Beauty purchased at least
16 fifteen (15) units of A&P's "Cheery Cherry" perfume from Europerfumes.

17 46. Upon information and belief, La Peer Beauty marketed and sold the
18 A&P perfume it purchased from Europerfumes in United States commerce,
19 beginning such marketing and sale at least as early as November 2013.

20 **FIRST CLAIM FOR RELIEF**

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

22 47. Sillage hereby re-alleges and incorporates by reference each of the
23 allegations from paragraphs 1 through 46 hereof as if fully stated herein.

24 48. Sillage is the sole owner of the entire right, title, and interest in the
25 '224 patent.

26 49. Defendants have infringed the '224 patent under Section 271 of
27 Title 35 of the U.S. Code by making, selling, and/or offering for sale in the U.S.

1 and/or importing into the U.S. the Infringing Parfum products which embody the
2 claimed design recited in the '224 patent.

3 50. On information and belief, Defendants will continue to infringe the
4 '224 patent unless enjoined by this Court.

5 51. Sillage has been, and will continue to be, damaged and irreparably
6 harmed by the actions of Defendants, which will continue unless Defendants are
7 enjoined by this Court.

8 52. On information and belief, the infringement of the '224 patent by
9 Defendants has been willful.

10 **SECOND CLAIM FOR RELIEF**

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

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

14 54. Sillage is the sole owner of the entire right, title, and interest in the
15 '503 patent.

16 55. Defendants have infringed the '503 patent under Section 271 of
17 Title 35 of the U.S. Code by making, selling, and/or offering for sale in the U.S.
18 and/or importing into the U.S. the Infringing Parfum products which embody the
19 claimed design recited in the '503 patent.

20 56. On information and belief, Defendants will continue to infringe the
21 '503 patent unless enjoined by this Court.

22 57. Sillage has been, and will continue to be, damaged and irreparably
23 harmed by the actions of Defendants, which will continue unless Defendants are
24 enjoined by this Court.

25 58. On information and belief, the infringement of the '503 patent by
26 Defendants has been willful.

THIRD CLAIM FOR RELIEF

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

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

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

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

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

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

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

65. Sillage is informed and believes and, on that ground, alleges that Defendants have made and/or will make unlawful gains and profits from their unlawful actions as alleged herein, and by reason thereof, Sillage has been

1 deprived of gains and profits which otherwise would have inured to Sillage but for
2 such unlawful actions.

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

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

12 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

1 D. That the Court enter judgment that Defendants’ unauthorized use of
2 the mark “Cherry Cherry,” in association with the Infringing Parfum products, is in
3 violation of the Lanham Act, 15 U.S.C. § 1115(a);

4 E. That Defendants be required to immediately change their
5 “Cherry Cherry” mark;

6 F. That Defendants’ conduct serves to unfairly compete with Sillage
7 under the common law of the State of California;

8 G. That the Court award judgment in favor of Sillage in an amount to be
9 determined at trial, but in no event less than Defendants’ profits on the Infringing
10 Products;

11 H. An award of Sillage’s costs and attorneys’ fees as allowed by law;
12 and,

13 I. For such other and further relief as the Court may deem just and
14 proper.

15 DATED: December 23, 2014

STRADLING YOCCA CARLSON
& RAUTH, P.C.

17
18
19 By:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: December 23, 2014

STRADLING YOCCA CARLSON
& RAUTH, P.C.



By:

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