

4. Defendant maintains a corporate presence in the United States via at least its U.S.-based sales subsidiary THGPP LLC, which is organized under the laws of Delaware and maintains a registered office at 1209 Orange Street, Wilmington, County of New Castle, Delaware, 19801.

5. Upon information and belief, Defendant and its U.S.-based subsidiaries (which act as part of a global network of overseas sales and manufacturing subsidiaries on behalf of Defendant) have operated as agents of one another and vicariously as parts of the same business group to work in concert together and enter into agreements that are nearer than arm's length. For example, Defendant, alone and via at least THGPP LLC's activities, conducts business in the United States, including importing, distributing, and selling skin care products under the "ESPA" brand name that infringe the Asserted Patents in Texas and this judicial district. *See Trois v. Apple Tree Auction Center, Inc.*, 882 F.3d 485, 490 (5th Cir. 2018) ("A defendant may be subject to personal jurisdiction because of the activities of its agent within the forum state...."); *see also Cephalon, Inc. v. Watson Pharmaceuticals, Inc.*, 629 F. Supp. 2d 338, 348 (D. Del. 2009) ("The agency theory may be applied not only to parents and subsidiaries, but also to companies that are 'two arms of the same business group,' operate in concert with each other, and enter into agreements with each other that are nearer than arm's length.").

6. Through offers to sell, sales, imports, distributions, and other related agreements to transfer ownership of Defendant's skin care products with distributors and customers operating in and maintaining a significant business presence in the U.S. and/or its U.S. subsidiary THGPP LLC, Defendant does business in the U.S., the state of Texas, and in the Eastern District of Texas.

JURISDICTION AND VENUE

7. This action arises under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others.

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c). Defendant is a foreign entity and may be sued in any judicial district under 28 U.S.C. § 1391(c)(3).

10. On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this State and judicial district, including: (A) at least part of its infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from infringing services provided to Texas residents and infringing goods offered for sale, sold, and imported to Texas residents. Such regular activity includes Defendant's vicarious activity through and/or in concert with alter egos, intermediaries, agents, distributors, importers, customers, subsidiaries, and/or consumers. For example, Defendant operates as a specialist online retailer and brand owner, selling goods direct to consumers across the health and beauty sectors; specifically, it sells products bearing the "ESPA" brand name at us.eskincare.com and then oversees their importation to the United States, Texas, and this District. Defendant further distributes products bearing the "ESPA" brand name throughout the United States via its partner spas with locations in Texas including within this District.

11. This Court has personal jurisdiction over Defendant, directly or through intermediaries, including its subsidiaries, such as THGPP LLC, because it has committed acts within Texas giving rise to this action and/or has established minimum contacts with Texas such that personal jurisdiction over Defendant would not offend traditional notions of fair play and substantial justice.

12. Upon information and belief, Defendant controls its subsidiaries, such as THGPP LLC. Defendant's relationship with the its subsidiaries, such as THGPP LLC, affords it substantial business advantages that it would have enjoyed if it conducted its business through establishing its own offices or directly paid agents in the state.

13. Upon information and belief, Defendant has placed and continues to place infringing skin care products into the stream of commerce via an established distribution channel with the knowledge and/or intent that those products were sold and continue to be sold in the United States and Texas, including in this District.

14. On information and belief, Defendant has significant ties to, and presence in, the State of Texas and the Eastern District of Texas, making venue in this judicial district both proper and convenient for this action.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 7,025,966)

15. Plaintiff incorporates paragraphs 1 through 14 herein by reference.

16. Plaintiff is the assignee of the '966 patent, entitled "Compositions of marine botanicals to provide nutrition to aging and environmentally damaged skin," with ownership of all substantial rights in the '966 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements.

17. The '966 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code. The '966 patent issued from U.S. Patent Application No. 10/751,684.

18. Defendant has and continues to directly and/or indirectly infringe (by inducing infringement) one or more claims of the '966 patent in this judicial district and elsewhere in Texas and the United States.

19. Defendant directly infringes the '966 patent by making, having made, using, offering for sale, selling, and/or importing those skin care products practicing the technologies covered by the '966 patent, or by having THGPP LLC or other agents do the same. Such agents include Defendant's partner spas. Defendant is liable for the acts of its agents. As such, Defendant is liable for the direct infringement of its agents. Furthermore, upon information and belief, Defendant sells and makes or has made, the infringing skin care products outside of the United States, intending and/or knowing that those products are destined for the United States and/or designing those products for sale in the United States, thereby directly infringing the '966 patent.

20. For example, Defendant's infringement of claim 1 of the '966 patent via its skincare products: Lifestage NET8 Serum, Age-Rebel Moisturiser (moisturizer), Repair & Restore Moisturiser (moisturizer), Tri-Active™ Lift & Firm Intensive Serum, is set forth in the claim charts attached as Exhibits A, B, C, and D.

21. At a minimum, Defendant has known of the '966 patent at least as early as the filing date of the Complaint and/or the date on which Defendant was served with the Complaint. In addition, Defendant has known about the '966 patent since at least December 10, 2020, when it received a letter providing notice of its infringement.

22. Upon information and belief, since at least the above-mentioned date(s) when Defendant was on notice of its infringement, Defendant has actively induced, under U.S.C. § 271(b), distributors, importers and/or consumers that purchase or sell its skin care products that include all of the limitations of one or more claims of the '966 patent (e.g.,: Lifestage NET8 Serum, Age-Rebel Moisturiser (moisturizer), Repair & Restore Moisturiser (moisturizer), Tri-Active™ Lift & Firm Intensive Serum) to directly infringe one or more claims of the '966 patent by using, offering for sale, selling, and/or importing Defendant's skin care products that practice the '966

patent. Defendant manufactures or has manufactured the infringing skin care products outside of the United States, intending and/or knowing that those products are destined for use in the United States. Since at least the notice provided on the above-mentioned date(s), Defendant does so with knowledge, or with willful blindness of the fact, that the induced acts constitute infringement of the '966 patent. Upon information and belief, Defendant intends to cause, and has taken affirmative steps to induce, infringement by the distributors, importers, and/or consumers by, *inter alia*, creating or directing the creation of advertisements that promote the infringing use of skin care products that practice the '966 patent, creating established distribution channels for these skin care products within the United States, manufacturing or having manufactured these skin care products in conformity with U.S. laws and regulations, and distributing or making available instructions for use. For example, Defendant encourages its customers to use the accused products in an infringing manner via the "Directions," "Application," and "For Best Use" instructions on its website. *See, e.g.,* <https://us.espaskincare.com/lifestage-net8-serum/11553587.html>; <https://us.espaskincare.com/age-rebel-moisturizer/11553546.html>; <https://us.espaskincare.com/repair-and-restore-moisturiser/12226537.html>; <https://us.espaskincare.com/tri-active-lift-and-firm-intensive-serum/12226501.html>.

23. On information and belief, despite having knowledge of the '966 patent and knowledge that it is directly and/or indirectly infringing one or more claims of the '966 patent, Defendant has nevertheless continued its infringing conduct and disregarded an objectively high likelihood of infringement. Defendant's infringing activities relative to the '966 patent have been, and continue to be, *inter alia*, willful, wanton, malicious, in bad-faith, deliberate, consciously wrongful, flagrant, and constitute an egregious case of misconduct beyond typical infringement

such that Plaintiff is entitled under 35 U.S.C. § 284 to enhanced damages up to three times the amount found or assessed.

24. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 7,303,753)

25. Plaintiff incorporates paragraphs 1 through 24 herein by reference.

26. Plaintiff is the assignee of the '753 patent, entitled "Compositions of marine botanicals to provide nutrition to aging and environmentally damaged skin," with ownership of all substantial rights in the '753 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements.

27. The '753 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code. The '753 patent issued from U.S. Patent Application No. 11/300,641.

28. Defendant has and continues to directly and/or indirectly infringe (by inducing infringement) one or more claims of the '753 patent in this judicial district and elsewhere in Texas and the United States.

29. Defendant directly infringes the '753 patent by at least using, in the United States, skin care products that are covered by the '753 patent, or by having THGPP LLC or other agents do the same. Such agents include Defendant's partner spas. Defendant is liable for the acts of its agents. As such, Defendant is liable for the direct infringement of its agents.

30. For example, Defendant's infringement of claim 1 of the '753 patent via its skincare products: Lifestage NET8 Serum, Age-Rebel Moisturiser (moisturizer), Repair & Restore Moisturiser (moisturizer), Tri-Active™ Lift & Firm Intensive Serum, is set forth in the claim charts attached as Exhibits E, F, G and H.

31. At a minimum, Defendant has known of the '753 patent at least as early as the filing date of the Complaint and/or the date on which Defendant was served with the Complaint. In addition, Defendant has known about the '753 patent since at least December 10, 2020, when it received a letter providing notice of its infringement.

32. Upon information and belief, since at least the above-mentioned date(s) when Defendant was on notice of its infringement, Defendant has actively induced, under U.S.C. § 271(b), distributors, importers and/or consumers that purchase or sell its skin care products to use such products (e.g., Lifestage NET8 Serum, Age-Rebel Moisturiser (moisturizer), Repair & Restore Moisturiser (moisturizer), Tri-Active™ Lift & Firm Intensive Serum) in a manner that satisfies all of the limitations of one or more claims of the '753 patent. Defendant manufactures or has manufactured the infringing skin care products outside of the United States, intending and/or knowing that those products are destined for use in the United States. Since at least the notice provided on the above-mentioned date(s), Defendant does so with knowledge, or with willful blindness of the fact, that the induced acts constitute infringement of the '753 patent. Upon information and belief, Defendant intends to cause, and has taken affirmative steps to induce, infringement by the distributors, importers, and/or consumers by, inter alia, creating or directing the creation of advertisements that promote the infringing use of skin care products that practice the '753 patent, creating established distribution channels for these skin care products within the United States, manufacturing or having manufactured these skin care products in conformity with

U.S. laws and regulations, and distributing or making available instructions for use. For example, Defendant encourages its customers to use the accused products in an infringing manner via the “Directions,” “Application,” and “For Best Use” instructions on its website. *See, e.g.*, <https://us.espaskincare.com/lifestage-net8-serum/11553587.html>;
<https://us.espaskincare.com/age-rebel-moisturizer/11553546.html>;
<https://us.espaskincare.com/repair-and-restore-moisturiser/12226537.html>;
<https://us.espaskincare.com/tri-active-lift-and-firm-intensive-serum/12226501.html>.

33. On information and belief, despite having knowledge of the '753 patent and knowledge that it is directly and/or indirectly infringing one or more claims of the '753 patent, Defendant has nevertheless continued its infringing conduct and disregarded an objectively high likelihood of infringement. Defendant's infringing activities relative to the '753 patent have been, and continue to be, *inter alia*, willful, wanton, malicious, in bad-faith, deliberate, consciously wrongful, flagrant, and constitute an egregious case of misconduct beyond typical infringement such that Plaintiff is entitled under 35 U.S.C. § 284 to enhanced damages up to three times the amount found or assessed.

34. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT III

(INFRINGEMENT OF U.S. PATENT NO. 8,318,178)

35. Plaintiff incorporates paragraphs 1 through 34 herein by reference.

36. Plaintiff is the assignee of the '178 patent, entitled “Compositions of marine botanicals to provide nutrition to aging and environmentally damaged skin,” with ownership of all

substantial rights in the '178 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements.

37. The '178 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code. The '178 patent issued from U.S. Patent Application No. 13/331,783.

38. Defendant has and continues to directly and/or indirectly infringe (by inducing infringement) one or more claims of the '178 patent in this judicial district and elsewhere in Texas and the United States.

39. Defendant directly infringes the '178 patent by making, having made, using, offering for sale, selling, and/or importing those skin care products practicing the technologies covered by the '178 patent, or by having THGPP LLC or other agents do the same. Such agents include Defendant's partner spas. Defendant is liable for the acts of its agents. As such, Defendant is liable for the direct infringement of its agents. Furthermore, upon information and belief, Defendant sells and makes or has made, the infringing skin care products outside of the United States, intending and/or knowing that those products are destined for the United States and/or designing those products for sale in the United States, thereby directly infringing the '178 patent.

40. For example, Defendant's infringement of claim 1 of the '178 patent via its skincare products: Lifestage NET8 Serum, Age-Rebel Moisturiser (moisturizer), Repair & Restore Moisturiser (moisturizer), Tri-Active™ Lift & Firm Intensive Serum, is set forth in the claim charts attached as Exhibits I, J, K and L.

41. At a minimum, Defendant has known of the '178 patent at least as early as the filing date of the Complaint and/or the date on which Defendant was served with the Complaint. In

addition, Defendant has known about the '178 patent since at least December 10, 2020, when it received a letter providing notice of its infringement.

42. Upon information and belief, since at least the above-mentioned date(s) when Defendant was on notice of its infringement, Defendant has actively induced, under U.S.C. § 271(b), distributors, importers and/or consumers that purchase or sell its skin care products that include all of the limitations of one or more claims of the '178 patent (e.g., : Lifestage NET8 Serum, Age-Rebel Moisturiser (moisturizer), Repair & Restore Moisturiser (moisturizer), Tri-Active™ Lift & Firm Intensive Serum) to directly infringe one or more claims of the '178 patent by using, offering for sale, selling, and/or importing Defendant's skin care products that practice the '178 patent. Defendant manufactures or has manufactured the infringing skin care products outside of the United States, intending and/or knowing that those products are destined for use in the United States. Since at least the notice provided on the above-mentioned date(s), Defendant does so with knowledge, or with willful blindness of the fact, that the induced acts constitute infringement of the '178 patent. Upon information and belief, Defendant intends to cause, and has taken affirmative steps to induce, infringement by the distributors, importers, and/or consumers by, inter alia, creating or directing the creation of advertisements that promote the infringing use of skin care products that practice the '178 patent, creating established distribution channels for these skin care products within the United States, manufacturing or having manufactured these skin care products in conformity with U.S. laws and regulations, and distributing or making available instructions for use. For example, Defendant encourages its customers to use the accused products in an infringing manner via the "Directions," "Application," and "For Best Use" instructions on its website. *See, e.g.,* <https://us.eskincare.com/lifestage-net8-serum/11553587.html>; <https://us.eskincare.com/age-rebel-moisturizer/11553546.html>;

<https://us.espaskincare.com/repair-and-restore-moisturiser/12226537.html>;

<https://us.espaskincare.com/tri-active-lift-and-firm-intensive-serum/12226501.html>.

43. On information and belief, despite having knowledge of the '178 patent and knowledge that it is directly and/or indirectly infringing one or more claims of the '178 patent, Defendant has nevertheless continued its infringing conduct and disregarded an objectively high likelihood of infringement. Defendant's infringing activities relative to the '178 patent have been, and continue to be, *inter alia*, willful, wanton, malicious, in bad-faith, deliberate, consciously wrongful, flagrant, and constitute an egregious case of misconduct beyond typical infringement such that Plaintiff is entitled under 35 U.S.C. § 284 to enhanced damages up to three times the amount found or assessed.

44. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

INJUNCTIVE RELIEF

45. Plaintiff seeks a permanent injunction as a result of Defendant's infringement of the Asserted Patents. Plaintiff is likely to succeed in showing that Defendant infringes the Asserted Patents. Because of that infringement, Plaintiff has suffered an irreparable injury, and the remedies available at law, such as monetary damages, are inadequate to compensate for that injury. For example, if Plaintiff must enforce a judgment against Defendant in the United Kingdom, Plaintiff will face a challenging burden in persuading a foreign court to enforce a judgment from a U.S. court, likely preventing Plaintiff from obtaining any monetary damages from Defendant. Considering the balance of hardships between the Plaintiff and Defendant, a remedy in equity is warranted; and the public interest would not be disserved by a permanent injunction.

CONCLUSION

46. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court.

47. Plaintiff has incurred and will incur attorneys' fees, costs, and expenses in the prosecution of this action. The circumstances of this dispute may give rise to an exceptional case within the meaning of 35 U.S.C. § 285, and Plaintiff is entitled to recover its reasonable and necessary attorneys' fees, costs, and expenses.

48. Plaintiff has satisfied the requirements of 35 U.S.C. § 287 and is entitled to recover damages for infringement of the patents-in-suit occurring prior to the filing of this lawsuit.

JURY DEMAND

49. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

50. Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

1. A judgment that Defendant has infringed the Asserted Patents as alleged herein, directly and/or indirectly by way of inducing infringement of such patents;
2. A judgment for an accounting of all damages sustained by Plaintiff as a result of the acts of infringement by Defendant;
3. A permanent injunction against Defendant, its agents, or anyone acting on its behalf from making, using, selling, offering to sell, or importing any products that infringe the Asserted Patents, and any other injunctive relief the Court deems just and equitable;

4. A judgment and order requiring Defendant to pay Plaintiff damages under 35 U.S.C. § 284, including up to treble damages as provided by 35 U.S.C. § 284, and any royalties determined to be appropriate;
5. A judgment and order requiring Defendant to pay Plaintiff pre-judgment and post-judgment interest on the damages awarded;
6. A judgment and order finding this to be an exceptional case and requiring Defendant to pay the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285; and
7. Such other and further relief as the Court deems just and equitable.

Dated: December 11, 2020

Respectfully submitted,

/s/ Jonathan H. Rastegar

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