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7 Attorneys for Plaintiff International Flora Technologies, Ltd.

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA
10

11 International Flora Technologies, Ltd., an
Arizona corporation,

12 Plaintiff,

13 v.

14 Clarins S.A., a foreign corporation;
Laboratoires Clarins, a foreign
15 corporation; Clarins U.S.A., a New
York corporation; Clarins Group North
16 America, a New York corporation;
Clarins Canada, a foreign corporation,

17 Defendants.
18

No. _____

COMPLAINT

(JURY TRIAL DEMANDED)

19 For its Complaint, Plaintiff International Flora Technologies, Ltd. ("International
20 Flora"), alleges:
21

THE PARTIES

22 1. Plaintiff International Flora Technologies, Ltd. ("International Flora") is a
23 corporation organized and existing under the laws of the State of Arizona, with its
24 principal place of business at 291 East El Prado Court, Chandler, Arizona, U.S.A.
25
26

1 2. Defendant Clarins S.A. (collectively with the other defendants, "Defendant")
2 is a foreign corporation with its principal place of business at 4, rue Berteaux-Dumas,
3 Neuilly-sur-Seine 92200 France. Clarins S.A. may be served with this Complaint by
4 service upon its Registered Agent and Board Chairman, Jacques Courtin-Clarins, at its
5 Registered Address: 4, rue Berteaux-Dumas, Neuilly-sur-Seine 92200 France.

6 3. Defendant Laboratoires Clarins (collectively with the other defendants,
7 "Defendant") is a foreign corporation with its principal place of business at 4, rue
8 Berteaux-Dumas, Neuilly-sur-Seine 92200 France. Laboratoires Clarins may be served
9 with this Complaint by service upon its Registered Agent and Chairman, Christian
10 Courtin-Clarins, at its Registered Address: 4, rue Berteaux-Dumas, Neuilly-sur-Seine
11 92200 France.

12 4. Defendant Clarins U.S.A. (collectively with the other defendants,
13 "Defendant") is a New York corporation with its principal place of business at 110 East
14 59th Street, New York, New York, U.S.A. Clarins U.S.A. may be served with this
15 Complaint by service upon its Registered Agent and Board Chairman, Marc S. Rosenblum,
16 at its Registered Address: 15 Olympic Drive, Orangeburg, New York, U.S.A. 10962-
17 2514.

18 5. Defendant Clarins Group North America (collectively with the other
19 defendants, "Defendant") is a New York corporation with its principal place of business at
20 110 East 59th Street, New York, New York, U.S.A. Clarins Group North America may be
21 served with this Complaint by service upon its Registered Agent and Board Chairman,
22 Marc S. Rosenblum, at its Registered Address: 15 Olympic Drive, Orangeburg, New
23 York, U.S.A. 10962-2514.

24 6. Defendant Clarins Canada (collectively with the other defendants,
25 "Defendant") is a foreign corporation with its principal place of business at 4575
26 Boulevard Poirier, Saint-Laurent, Quebec H4R 2A4, Canada. Clarins Canada may be

1 served with this Complaint by service upon its Registered Agent and President, Jonathan
2 Zrihen, at its Registered Address: 4575 Boulevard Poirier, Saint-Laurent, Quebec H4R
3 2A4, Canada.

4 **JURISDICTION AND VENUE**

5 7. This Court has subject matter jurisdiction over this action pursuant to 28
6 U.S.C. §§ 1331 and 1338 because this action, at least in part, is for patent infringement and
7 arises under the patent laws of the United States, Title 35, Section 271 *et seq.* of the United
8 States Code. This Court also has subject matter jurisdiction over this action pursuant to 28
9 U.S.C. § 1332(a) because (1) plaintiff and all of the defendants are citizens of different
10 states, and complete diversity of citizenship therefore exists between the parties; and (2)
11 the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and
12 costs. This Court has jurisdiction over any Arizona state law claims asserted by the parties
13 under principles of pendent, ancillary, and supplemental jurisdiction, 28 U.S.C. §§ 1338(b)
14 and 1367(a).

15 8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (d), and
16 1400(b) since, *inter alia*, one or more of the acts of infringement complained of took place
17 in this District and have had or will have had effect in this judicial district.

18 **INTERNATIONAL FLORA AND THE INFRINGED PATENTS**

19 9. International Flora has been a leader in providing formulation specifications,
20 ingredients and product development for cosmetic products for several years. International
21 Flora has dedicated substantial resources to remain on the cutting edge of an ever-changing
22 and challenging market.

23 10. To protect its investment in its technology, International Flora has procured
24 several patents, some of which relate to pioneering technological developments. Many of
25 International Flora's technological developments have been widely recognized,
26 appreciated and embraced by the cosmetics industry.

1 11. On March 4, 2003, United States Patent No. 6,528,075 B1 (“the ‘075
2 Patent”) was duly and legally issued to James H. Brown *et al.* International Flora is the
3 assignee of all rights in and title to the ‘075 Patent. A true and correct copy of the ‘075
4 Patent is attached as **Exhibit A**, and incorporated herein by this reference.

5 12. The ‘075 Patent applies, at least in part, to compositions of matter
6 comprising long-chain moringa oil with less than 10% methylene interrupted unsaturation
7 in combination with tocopherol (“Moringa Compositions”).

8 13. On December 23, 2003, United States Patent No. 6,667,047 B2 (“the ‘047
9 Patent”) was duly and legally issued to James H. Brown *et al.* International Flora is the
10 assignee of all rights in and title to the ‘047 Patent. A true and correct copy of the ‘047
11 Patent is attached as **Exhibit B**, and incorporated herein by this reference.

12 14. The ‘047 Patent applies, at least in part, to cosmetic product formulations
13 comprising long-chain moringa oil with less than 10% methylene interrupted unsaturation
14 in combination with tocopherol (“Moringa Cosmetics”).

15 **DEFENDANT’S INFRINGEMENT**

16 15. Defendant engages in the manufacture and sale of cosmetic products for a
17 variety of commercial applications. Defendant’s presence in this industry is long-standing
18 and pervasive.

19 16. As a member of the cosmetics industry, Defendant appreciates the value and
20 scope of the ‘075 Patent and the ‘047 Patent, as well as other patents owned by or
21 otherwise assigned to International Flora.

22 17. Notwithstanding Defendant’s appreciation of the value and scope of the ‘075
23 Patent, upon information and belief, Defendant has sold, made, imported, and/or used
24 infringing Moringa Compositions (referred to herein as “Infringing Products”).

25 18. Upon information and belief, Defendant has manufactured and sold, and
26 continues to manufacture and sell, the Infringing Products at least under the Defendants’

1 product designation: TEINT ÉCLAT CONFORT AUTOFOCUS (in English, “CLARINS
2 TRUE COMFORT FOUNDATION,” or, collectively with Moringa Compositions and
3 Moringa Cosmetics, “Infringing Products”).

4 19. Defendant’s Infringing Products have at least one compositional feature
5 corresponding to a long-chain oil of moringa with methylene interrupted unsaturation of
6 less than 10%.

7 20. Defendant’s Infringing Products have at least one compositional feature
8 corresponding to at least one tocopherol present in an amount from 0.01 to 5% by weight
9 of the long-chain moringa oil.

10 21. Defendant’s Infringing Products have at least one compositional feature
11 corresponding to tocopherol providing an improved oxidative stability of more than 200%
12 relative to the oxidative stability of moringa oil alone.

13 22. Notwithstanding Defendant’s appreciation of the value and scope of the ‘047
14 Patent, upon information and belief, Defendant has sold, made, imported, and/or used
15 infringing Moringa Cosmetics (referred to herein as “Infringing Products”).

16 23. Defendant’s Infringing Products include at least one cosmetic composition
17 selected from the group consisting of: creams, lotions, sunscreens, perfume sticks,
18 massage oils, eye shadows, blushes, powders, lipsticks, lip balms, foundations, eye liners,
19 mascaras, leave in conditioners, relaxers, and hair dyes.

20 24. Defendant’s CLARINS TRUE COMFORT FOUNDATION includes at least
21 a foundation cosmetic composition, and a sunscreen cosmetic composition.

22 25. Defendant’s Infringing Products have at least one compositional feature
23 corresponding to a long-chain oil of moringa with methylene interrupted unsaturation of
24 less than 1%.

1 26. Defendant's Infringing Products have at least one compositional feature
2 corresponding to a long-chain oil of moringa with a slip value greater than that of castor
3 oil (*i.e.*, 7.0 as measured by a modified Cadicamo method).

4 27. Defendant's Infringing Products have at least one compositional feature
5 corresponding to the features of the immediately two (2) preceding paragraphs and at least
6 one supplemental additive corresponding to sorbic acid, which is substantially equivalent
7 in compositional function to at least one of kojic acid, malic acid and ascorbic acid, so as
8 to produce a substantially similar result to the claimed technology of the '047 Patent.

9 28. Defendant's Infringing Products have at least one compositional feature
10 corresponding to at least one tocopherol present in an amount from 0.01 to 5% by weight
11 of long-chain moringa oil.

12 29. Defendant's Infringing Products have at least one compositional feature
13 corresponding to tocopherol providing an improved oxidative stability of more than 200%
14 relative to the oxidative stability of moringa oil alone.

15 **DEFENDANT'S DISTRIBUTION OF ITS INFRINGING PRODUCTS**

16 30. Defendant sells the Infringing Products in a wide range of locations.
17 Defendant seeks generally to sell the Infringing Products to retailers, distributors, dealers,
18 and/or the general public, including the general public in the State of Arizona and this
19 District. Defendant has sold Infringing Products in the State of Arizona and this District.

20 31. Defendant has sold the Infringing Products to, or has otherwise made the
21 Infringing Products available for subsequent purchase by, Macy's (Cincinnati, Ohio,
22 U.S.A.).

23 32. On or about March 14, 2006, David Ashley purchased two (2) containers of
24 CLARINS TRUE COMFORT FOUNDATION from a Macy's store, located at Biltmore
25 Fashion Park, 2410 E. Camelback Road, Phoenix, Arizona, 85016, for thirty six (36) U.S.
26 dollars each plus tax. A true and correct copy of the product packaging boxes of these

1 two (2) containers of CLARINS TRUE COMFORT FOUNDATION, detailing the
2 Macy's return label affixed to the product packaging boxes, are shown in **Exhibit C1**. A
3 true and correct copy of a notarized purchase verification, detailing the purchase date,
4 purchaser, items purchased, store and address, cost, UPC code, method of purchase and
5 signature of purchaser, is shown in **Exhibit C2**. A true and correct copy of the sales
6 receipt for this purchase, as appended to the purchase verification, is shown in **Exhibit**
7 **C3**.

8 33. Defendant has sold the Infringing Products to, or has otherwise made the
9 Infringing Products available for subsequent purchase by, Nordstrom (Seattle,
10 Washington, U.S.A.).

11 34. On or about May 1, 2006, David Ashley purchased one container of
12 CLARINS TRUE COMFORT FOUNDATION from a Nordstrom store, located at
13 Chandler Fashion Center, 3199 West Chandler Blvd., Chandler, Arizona 85226, for thirty
14 six (36) U.S. dollars plus tax. A true and correct copy of the product packaging box of
15 this of CLARINS TRUE COMFORT FOUNDATION, detailing the Nordstrom return
16 label affixed to the product packaging box, is shown in **Exhibit D1**. A true and correct
17 copy of a notarized purchase verification, detailing the purchase date, purchaser, items
18 purchased, store and address, cost, UPC code, method of purchase and signature of
19 purchaser is shown in **Exhibit D2**. A true and correct copy of the sales receipt for this
20 purchase, as appended to the purchase verification, is shown in **Exhibit D3**.

21 35. Defendant has sold the Infringing Products to, or has otherwise made the
22 Infringing Products available for subsequent purchase by, Dillard's (Little Rock,
23 Arkansas, U.S.A.).

24 36. On or about May 1, 2006, David Ashley purchased one container of
25 CLARINS TRUE COMFORT FOUNDATION from a Dillard's store, located at Chandler
26 Fashion Center, 3101 West Chandler Blvd., Chandler, Arizona, 85226, for thirty six (36)

1 U.S. dollars plus tax. A true and correct copy of the product packaging box of this
2 container of CLARINS TRUE COMFORT FOUNDATION, detailing the Dillard's return
3 label affixed to the product packaging box, are shown in **Exhibit E1**. A true and correct
4 copy of a notarized purchase verification, detailing the purchase date, purchaser, items
5 purchased, store and address, cost, UPC code, method of purchase and signature of
6 purchaser, is shown in **Exhibit E2**. A true and correct copy of the sales receipt for this
7 purchase, as appended to the purchase verification, is shown in **Exhibit E3**.

8 37. Defendant has sold the Infringing Products to, or has otherwise made the
9 Infringing Products available for subsequent purchase by, Sephora (San Francisco,
10 California, U.S.A.).

11 38. On or about May 1, 2006, David Ashley purchased one container of
12 CLARINS TRUE COMFORT FOUNDATION from a Sephora store, located at Chandler
13 Fashion Center, 3111 West Chandler Blvd., Chandler, Arizona, 85226, for thirty six (36)
14 U.S. dollars plus tax. A true and correct copy of the product packaging box of this
15 container of CLARINS TRUE COMFORT FOUNDATION is shown in **Exhibit F1**. A
16 true and correct copy of a notarized purchase verification, detailing the purchase date,
17 purchaser, items purchased, store and address, cost, UPC code, method of purchase and
18 signature of purchaser is shown in **Exhibit F2**. A true and correct copy of the sales
19 receipt for this purchase, as appended to the purchase verification, is shown in **Exhibit**
20 **F3**.

21 39. Defendant has sold the Infringing Products to, or has otherwise made the
22 Infringing Products available for subsequent purchase by, Robinsons-May (St. Louis,
23 Missouri, U.S.A.).

24 40. On or about May 1, 2006, David Ashley purchased one container of
25 CLARINS TRUE COMFORT FOUNDATION from a Robinsons-May store, located at
26 Chandler Fashion Center, 3107 West Chandler Blvd., Chandler Arizona, 85226, for thirty

1 six (36) U.S. dollars plus tax. A true and correct copy of the product packaging box of
2 this container of CLARINS TRUE COMFORT FOUNDATION is shown in **Exhibit G1**.
3 A true and correct copy of a notarized purchase verification, detailing the purchase date,
4 purchaser, items purchased, store and address, cost, UPC code, method of purchase and
5 signature of purchaser is shown in **Exhibit G2**. A true and correct copy of the sales
6 receipt for this purchase, as appended to the purchase verification, is shown in **Exhibit**
7 **G3**.

8 41. Upon information and belief, Defendant has sold the Infringing Products to,
9 or has otherwise made the Infringing Products available for subsequent purchase by, a
10 number of other retail outlets, including but not limited to, Federated Department Stores
11 (Cincinnati, Ohio, U.S.A.); Macys.com (San Francisco, California, U.S.A.);
12 Bloomingdale's (Cincinnati, Ohio, U.S.A.); Neiman Marcus Group, Inc. (Dallas, Texas,
13 U.S.A.); Saks Incorporated (Birmingham, Alabama, U.S.A.); Barney's New York (New
14 York, New York, U.S.A.); Gloss.com (San Francisco, California, U.S.A.); and
15 Strawberry Cosmetics / StrawberryNet.com (Hong Kong Special Administrative Region
16 of the People's Republic of China).

17 42. Defendant has been aware of its infringing activity no later than on or about
18 December 13, 2005, after attorney Paul Carango of DLA Piper Rudnick Gray Cary US
19 LLP received correspondence from International Flora's attorney, Douglas Gilmore of
20 Noblitt & Gilmore LLC, describing Defendant's infringement of the '075 Patent and the
21 '047 Patent.

22 43. Despite notice of its infringing activity, Defendant has continued and
23 continues the infringing activities to date.

24 44. The activities of the Defendant with regard to its sales, importation,
25 manufacture and/or use of the Infringing Products are and have been without authorization
26 from International Flora.