

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BELFER COSMETICS, LLC

Plaintiff,

vs.

ESTEE LAUDER INC., BEAUTYBANK
INC. d/b/a GOOD SKIN LABS,
KALOLOGIE LABS LLC, MCPHERSON
LABS, INC., and VIVA TEXAS
MEDSPAS, LLC

Defendants.

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Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Belfer Cosmetics, LLC (“Belfer”) brings this action against defendants Estee Lauder Inc. (“Estée Lauder”), BeautyBank Inc. d/b/a Good Skin Labs (“Good Skin”), Kalologie Labs LLC (“Kalologie”), McPherson Labs, Inc. (“McPherson”), and Viva Texas Medspas, LLC (“VTM”), and alleges:

THE PARTIES

1. Belfer is a limited liability company organized and existing under the laws of the State of Texas, and the owner of the patent-in-suit, i.e., U.S. Patent No. 7,566,464.

2. On information and belief, Estée Lauder is a corporation organized under the laws of the State of Delaware, has a principal place of business at 7 Corporate Center Drive, Melville, New York, 11747-3115, and has designated its registered agent for purposes of service of process as The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. In addition, since Estée Lauder neither maintains a regular place of business in Texas nor has a designated agent for service of process in Texas, Estée Lauder may also be served with process

by serving the Secretary of State of the State of Texas pursuant to the Texas Long Arm Statute, Texas Civil Practice & Remedies Code § 17.044 and asking the Secretary of State to serve Estée Lauder at its principal place of business at 7 Corporate Center Drive, Melville, New York, 11747-3115 via Certified Mail - Return Receipt Requested.

3. On information and belief, Good Skin is a corporation organized under the laws of the State of Delaware, has a principal place of business at 767 Fifth Avenue, New York, New York 10153, and has designated its registered agent for purposes of service of process as Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. In addition, since Good Skin neither maintains a regular place of business in Texas nor has a designated agent for service of process in Texas, Good Skin may also be served with process by serving the Secretary of State of the State of Texas pursuant to the Texas Long Arm Statute, Texas Civil Practice & Remedies Code § 17.044 and asking the Secretary of State to serve Good Skin at its principal place of business at 767 Fifth Avenue, New York, New York 10153 via Certified Mail - Return Receipt Requested.

4. On information and belief, Kalologie is a limited liability company organized under the laws of the State of Delaware, has a principal place of business at 501 Colorado Avenue, Suite 170, Santa Monica, California 90401-2455, and has designated its registered agent for purposes of service of process as Harvard Business Services, Inc., 16192 Coastal Highway, Lewes, Delaware 19958. In addition, since Kalologie neither maintains a regular place of business in Texas nor has a designated agent for service of process in Texas, Kalologie may also be served with process by serving the Secretary of State of the State of Texas pursuant to the Texas Long Arm Statute, Texas Civil Practice & Remedies Code § 17.044 and asking the Secretary of State to serve Kalologie at its

principal place of business at 501 Colorado Avenue, Suite 170, Santa Monica, California 90401-2455 via Certified Mail - Return Receipt Requested.

5. On information and belief, McPherson is a corporation organized under the laws of the State of Texas, has a principal place of business in this judicial district at 12818 Century Drive, Suite 101, Stafford, Texas 77477-4224, and has designated its registered agent for purposes of service of process in Texas as Miriam Wong, 12307 Maple Leaf Lane, Stafford, Texas 77477-1691.

6. On information and belief, VTM is a limited liability company organized under the laws of the State of Texas, has a principal place of business in this judicial district at 15890 Southwest Freeway, Sugar Land, Texas 77478, and has designated its registered agent for purposes of service of process in Texas as Wong Chit, 9109 Creekstone Lake Drive, Houston, Texas 77054-1003.

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code.

8. Subject-matter jurisdiction over Belfer's claims is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

9. On information and belief, each defendant has solicited business in the State of Texas and this district, transacted business within the State of Texas and this district, and attempted to derive financial benefit from residents of the State of Texas and this district, including benefits directly related to the instant patent infringement cause of action set forth herein.

10. On information and belief, each defendant has placed its allegedly infringing products into the stream of commerce throughout the United States with the expectation that such products would be offered for sale, sold and/or used in this judicial district.

11. Each defendant is subject to personal jurisdiction in Texas and this judicial district, and is doing business in this judicial district.

12. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

PATENT INFRINGEMENT

13. On July 28, 2009, U.S. Patent No. 7,566,464 (“the ‘464 patent”), entitled “Cosmetic Composition To Accelerate Repair of Functional Wrinkles”, a copy of which is attached hereto as Exhibit A, was duly and legally issued. Belfer is the owner by assignment of all right, title and interest in and to the ‘464 patent, including the right to sue for and recover all past, present and future damages for infringement of the ‘464 patent.

14. Upon information and belief, each defendant has in the past and continues to infringe, contribute to infringement, and/or induce infringement of the ‘464 patent by making, using, selling, offering to sell and/or importing, and/or causing others to use, sell and/or offer to sell, skin care compositions that improve the appearance of expression lines of the human face, which compositions are covered by at least one claim of the ‘464 patent. Each defendant is liable for infringement of the ‘464 patent pursuant to 35 U.S.C. § 271.

15. Estée Lauder was given actual notice of the ‘464 patent shortly following issuance of the ‘464 patent and long before the filing of this lawsuit. Despite such notice and having had actual knowledge of the ‘464 patent, defendant Estée Lauder has nevertheless continued its infringement of the ‘464 patent and such infringement has been willful and deliberate.

16. Each defendant’s acts of infringement have caused damage to Belfer, and Belfer is entitled to recover from defendants the damages sustained by Belfer as a result of each defendant’s wrongful acts in an amount subject to proof at trial.

17. As a consequence of the infringement complained of herein, Belfer has been irreparably damaged to an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless each defendant is enjoined by this Court from committing further acts of infringement.

PRAYER FOR RELIEF

WHEREFORE, Belfer prays for entry of judgment that:

- A.** Each defendant has infringed the '464 patent;
- B.** Each defendant account for and pay to Belfer all damages caused by its infringement of the '464 patent in accordance with 35 U.S.C. § 284;
- C.** Defendant Estée Lauder's infringement of the '464 patent has been willful and deliberate;
- D.** The Court increase the amount of damages with respect to defendant Estée Lauder's infringement to three times the amount found or assessed by the Court because of the willful and deliberate nature of the infringement, in accordance with 35 U.S.C. § 284;
- E.** Belfer be granted permanent injunctive relief pursuant to 35 U.S.C. § 283 enjoining each defendant and its respective officers, agents, servants, employees and those persons in active concert or participation with them from further acts of patent infringement;
- F.** Belfer be granted pre-judgment and post-judgment interest on the damages caused to it by reason of defendants' patent infringement complained of herein;
- G.** Belfer be granted its reasonable attorneys' fees;
- H.** Costs be awarded to Belfer; and,
- I.** Belfer be granted such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Belfer demands trial by jury on all claims and issues so triable.

Respectfully submitted,

Dated: August 30, 2010

By: /s/ C. Dale Quisenberry

C. Dale Quisenberry
State Bar No. 24005040
dquisenberry@pqelaw.com

John T. Polasek
State Bar. No. 16088590
tpolasek@pqelaw.com

Jeffrey S. David
State Bar No. 24053171
jddavid@pqelaw.com

POLASEK, QUISENBERRY & ERRINGTON, L.L.P.
6750 West Loop South, Suite 920
Bellaire, Texas 77401
Telephone: (832) 778-6000
Facsimile: (832) 778-6010

ATTORNEYS FOR PLAINTIFF
BELFER COSMETICS, LLC