

1 MICHAEL E. PAPPAS (SBN 130400)
mpappas@lesnickprince.com
2 ANDREW R. CAHILL (SBN 233798)
acahill@lesnickprince.com
3 LESNICK PRINCE & PAPPAS LLP
315 W. Ninth St., Suite 705
4 Los Angeles, California 90015
Telephone: (213) 493-6585
5 Facsimile: (213) 493-6596

6 Attorneys for Plaintiff Dermalogica, LLC

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DERMALOGICA, LLC

Plaintiff,

v.

TARGET CORPORATION,

Defendant.

Case No. 2:18-cv-09580

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Dermalogica, LLC (“Dermalogica”) files this Complaint
2 against Defendant Target Corporation (“Target”) and states as follows:

3 **JURISDICTION AND THE PARTIES**

4 1. The Court has original jurisdiction over this matter pursuant to
5 15 U.S.C. Section 1121 (the Lanham Act) and 28 U.S.C. Sections 1331 (federal
6 question) and 1367 (supplemental jurisdiction).

7 2. Venue is proper in this federal judicial district pursuant to 28
8 U.S.C. Section 1391(b)(2) because a substantial part of the events giving rise to the
9 claims alleged herein occurred within this district.

10 3. Plaintiff Dermalogica is a Limited Liability Company organized
11 and existing under the laws of California with its principal place of business in
12 Carson, California.

13 4. Defendant Target is a citizen of Minnesota incorporated and
14 existing under the laws of Minnesota with its principal place of business in
15 Minneapolis, Minnesota. Target operates an extensive network of stores physically
16 located in this district and the State, and such stores market and sell product bearing
17 the DERMALOGICA trademark to California residents as alleged in this
18 Complaint. Additionally, Target sells such product through www.target.com to
19 residents in this forum.

20 **GENERAL ALLEGATIONS**

21 5. Dermalogica manufactures and sells premium skin-care products
22 under the DERMALOGICA trademark. Dermalogica’s parent corporation Unilever
23 N.V. owns incontestable federal trademark registrations for the DERMALOGICA
24 trademark for use in connection with a wide range of personal-care goods and
25 services, Registration Nos. 1539948, 3466148 and 4703796. Those registrations
26 were assigned to Unilever as part of Unilever’s acquisition of Dermalogica in 2015
27 and then licensed to plaintiff Dermalogica.

1 6. Examples of the DERMALOGICA trademark in use are below:



7 7. Goods bearing the DERMALOGICA trademark undergo
8 extensive research and testing to ensure superior performance and acceptance by
9 professional skin care salons and spas which carry DERMALOGICA products.
10 Dermalogica offers a wide variety of goods for different purposes and personal-care
11 needs, and it is important to Dermalogica that consumers have accurate information
12 about the characteristics and purpose of each product so that they can select the
13 appropriate products to achieve the best results. Accordingly, a key principle of
14 Dermalogica is to educate consumers and resellers about the characteristics and use
15 of DERMALOGICA products.

16 8. In addition, Dermalogica goes to great lengths to control the
17 quality of goods bearing the DERMALOGICA trademark, including localized
18 production and packaging. This control is particularly important given the nature of
19 such goods, being personal-care products, that consumers apply directly to their
20 bodies.

21 9. In accordance with the premium nature of the Dermalogica
22 brand, and to ensure better control over the quality and use of its products,
23 Dermalogica markets and sell goods only through a network of authorized resellers
24 or directly to consumers through its online platform. Indeed, for more than thirty
25 years, Dermalogica has built its brand through its focused support of professional
26 skincare therapists (“PSTs”) – state licensed therapists to whom Dermalogica makes
27 available comprehensive and ongoing educational and training programs so that
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1 they can become experts in the field of personal-care products. In fact,
2 Dermalogica’s agreements with its authorized resellers require that such resellers
3 retain the services of PSTs to offer professional skincare treatments and services
4 using genuine Dermalogica products. Importantly, such PSTs are available to aid
5 customers in the selection and correct application of Dermalogica brand products
6 purchased by the consumer.

7 10. In keeping with Dermalogica’s connection with the PST, all
8 Dermalogica products come with a guarantee that is noted on each carton and
9 primary package. The guarantee reads “Product guaranteed when professionally
10 recommended.”

11 11. Dermalogica’s agreements with authorized resellers (“Account
12 Agreements”) prohibit diversion of Dermalogica’s products to other resellers. For
13 example, Account Agreements provide that such resellers only can sell to end
14 consumers for their ultimate consumption. The agreements also contain an anti-
15 diversion provision by which resellers specifically agree not to sell or transfer
16 DERMALOGICA brand products to any other location (other than their account
17 location), or to any other reseller, distributor, website operator or retailer. In
18 addition, authorized resellers agree that they will not sell any products, directly or
19 indirectly, through the Internet, except when explicitly authorized by Dermalogica
20 to do so.

21 12. Dermalogica’s Account Agreements require resellers to stock a
22 reasonable selection of DERMALOGICA products. Dermalogica takes great
23 efforts to ensure that its resellers are selling fresh and therefore genuine
24 DERMALOGICA product, as product that is stale and sitting on shelves or in
25 warehouses for too long can impact negatively the product’s quality and
26 effectiveness.

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1 13. Dermalogica has designated significant resources to develop and
2 maintain consumer association of the DERMALOGICA brand as a premium brand
3 with high-quality personal-care products and customer support. The requirements
4 to be an authorized reseller, including the prohibition on diversion to unauthorized
5 resellers, are material and essential terms of Dermalogica’s agreements with
6 resellers and form part of Dermalogica’s quality control system.

7 14. Also, genuine DERMALOGICA products contain labels –
8 authenticity holograms and serialized quality control tags – that Dermalogica uses
9 as part of its efforts to monitor and control the quality of its goods. Among other
10 things, such labels provide Dermalogica with the ability to identify and track
11 products to allow Dermalogica to recall products effectively in the event a recall is
12 necessary or provide notices relating to health or safety concerns should such
13 notices be necessary. Such labels also provide Dermalogica with the ability to
14 assess the freshness of product and monitor for counterfeit products, knock-offs, or
15 grey market goods.

16 15. Dermalogica sells certain of its products on its own website
17 directly to consumers, but only with a carefully designed platform for consumers,
18 including detailed self-education on each product, a PST available online and over
19 the phone to aid customers, and the ability to ensure fresh product is shipped to
20 consumers. Additionally, Dermalogica is able to monitor the freshness of its
21 product that it sells online, and therefore ensure that consumers receive high quality
22 and effective product for their personal-care needs.

23 16. DERMALOGICA brand product is sold in the United States and
24 in other countries abroad. Goods that are sold in different countries may use
25 different product packaging to serve the consumers in that country and to comply
26 with local law. Thus, for example, some DERMALOGICA brand product that is
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1 sold in Canada is different from product sold in the United States, and it is neither
2 intended nor authorized to be imported into, distributed or sold in the United States.

3 17. Target is not an authorized reseller for DERMALOGICA
4 product and does not meet Dermalogica's requirements to be an authorized reseller
5 of DERMALOGICA product, including Dermalogica's requirements concerning
6 the use and availability of PSTs to help consumers. However, commencing in or
7 around Fall of 2017 and until the present, Target has been stocking and marketing
8 for sale products bearing the DERMALOGICA trademark in many of its stores (a
9 number of which are located in this District and State) and online on its
10 www.target.com website as if Target were an authorized reseller. On information
11 and belief, Target is being supplied such goods by Dermalogica's authorized
12 resellers in violation of their agreements with Dermalogica.

13 18. Some of the goods being sold by Target have had their
14 authenticity holograms and serialized quality control tags removed and replaced
15 with counterfeit labels. On information and belief, such tags have been removed in
16 an effort to thwart Dermalogica's ability to track product, conceal the identity of the
17 supplying reseller, and impede Dermalogica's quality control systems.

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1 19. At its physical stores, Target has developed its own displays to
2 sell product bearing the DERMALOGICA trademark. For example, here is a
3 photograph of a Target display at its store in Manhattan Beach, California.



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24 In the image above, Target’s point of sale marketing materials state that the
25 Dermalogica product “Active Moist” will “Prevent future breakouts.” Actually, the
26 product is designed and marketed by Dermalogica for moisturizing only and has no
27 acne inhibiting qualities. Target’s marketing materials are therefore misleading to
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1 consumers and picture the product in a false light and offend Federal Food and
2 Drug Administration (“FDA”) laws and regulations.

3 20. Also, Target is using designs in its display ads featuring the
4 DERMALOGICA trademark and mimicking the characteristics of Dermalogica’s
5 own marketing materials and artwork. Target is not authorized to use the
6 DERMALOGICA trademark to create its own displays and marketing materials, or
7 to mimic the characteristics of Dermalogica’s distinctive marketing materials and
8 artwork, such as in this display ad:

9 Dermalogica Marketing Materials



Target’s Materials



21. On information and belief, Target is using the DERMALOGICA
trademark on its display and marketing materials, and is mimicking the
characteristics of Dermalogica’s marketing materials, to confuse consumers and
create the appearance that Target is an authorized reseller of DERMALOGICA
personal-care products.

22. In addition, Target is selling DERMALOGICA brand products
in this country that are manufactured and packaged exclusively for sale in other
countries. Dermalogica has not authorized or consented to Target’s sale of product
intended for sale in foreign countries in the United States, which product may be

1 different from the product intended for the United States market. In particular,
2 Target is selling DERMALOGICA branded product called Dynamic Skin Recovery
3 that is manufactured and packaged for and intended for sale in Canada, and which
4 differs from the Dynamic Skin Recovery product sold in the United States in at least
5 the following ways:

- 6 (a) the Canadian product does not comply with the United
7 States Food and Drug Administration’s labeling
8 requirements, including 21 CFR § 201.66 and 21 CFR §
9 201.327;
- 10 (b) the Canadian product does not comply with the FDA
11 labeling standards followed by Dermalogica in the United
12 States;
- 13 (c) the product packaging in the United States provides that
14 the product offers “UVA high protection” at a SPF grade
15 50, whereas the Canadian product does not;
- 16 (d) The product packaging in the United States provides a
17 “DRUG FACTS” section that includes “uses” and
18 “directions” as required by the FDA, and these items are
19 not included in the Canadian product.
- 20 (e) The product packaging in the Canadian product includes
21 different language to describe the product’s
22 characteristics, and includes a French translation, whereas
23 the United States product does not.
- 24 (f) The product packaging for the Canadian product does not
25 direct consumers to call the toll-free phone number for
26 questions and comments, which is an FDA requirement.

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1 23. Dermalogica has notified Target and its counsel on at least 3
2 occasions that Target is not authorized to sell goods bearing the DERMALOGICA
3 trademark. Dermalogica made clear to Target that Dermalogica's agreements with
4 its authorized resellers prohibit diversion of Dermalogica product. In fact, in a
5 letter to Target dated October 17, 2017, Dermalogica provided Target with
6 language from its agreements with resellers, including provisions that authorized
7 resellers will only sell within the reseller's location and only to consumers for their
8 ultimate personal use. Dermalogica also notified Target that its resellers
9 contractually agree not to move or transfer product to any other location, and not to
10 sell product to a retailer, reseller, distributor or website operator.

11 24. Dermalogica notified Target that it was selling product with
12 evidence of tampering, and that the authenticity hologram and serialized control tag
13 served a quality control function and evidenced the genuineness of the product for
14 consumers. In accordance with its efforts to ensure the quality of goods,
15 Dermalogica demanded that Target notify customers that such product had the
16 potential of being diluted, unsafe, expired or even knock-offs. Target disregarded
17 Dermalogica's demand.

18 25. Dermalogica placed Target on notice that Dermalogica would
19 pursue Target for any interference with its contracts and economic relationships
20 with its customers, any interference with its quality control system, and any
21 representation or implication that Target is an authorized reseller of Dermalogica
22 products.

23 26. Despite Target being informed that its sales of product bearing
24 the DERMALOGICA mark interfered with Dermalogica's contracts and economic
25 relationships, and constituted violations of the Lanham Act, among other wrongs,
26 Target has continued to stock and sell such product. Similarly, Target has
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1 continued to use its misleading displays and marketing materials, which feature
2 Dermalogica's intellectual property, to sell such product.

3 27. The damage to Dermalogica's brand and its contractual and
4 economic relationships is ongoing. Dermalogica has received and noted complaints
5 from authorized resellers and from consumers arising from its products being sold
6 at Target.

7 **FIRST CLAIM FOR RELIEF**

8 **(Unfair Competition, False Designation of Origin - Violation of the Lanham**
9 **Act, 15 U.S.C. § 1125(a)(1)(A))**

10 28. Dermalogica re-alleges and incorporates by reference
11 Paragraphs 1 through 27 of this Complaint.

12 29. The DERMALOGICA mark used by Target in the distribution,
13 advertising, and sale of its products is virtually identical to the DERMALOGICA
14 mark that has been long used by Dermalogica in the market for skin-care products
15 and services. Target's misuse of the DERMALOGICA mark includes stocking and
16 selling products bearing the mark that are not subject to Dermalogica's quality
17 control and not genuine DERMALOGICA brand products intended for sale in the
18 United States. Target's use constitutes a false designation of origin or false
19 description of goods.

20 30. Target's advertising and sale of infringing products in interstate
21 commerce has created and continues to create a likelihood of confusion, mistake or
22 deception as to the affiliation, connection, or association of Dermalogica with
23 respect to the origin, sponsorship, or approval of goods bearing the
24 DERMALOGICA mark being sold by Target.

25 31. As a direct and proximate result of Target's actions,
26 Dermalogica has been and will continue to be injured, including injury to its
27 reputation and to its sales. Dermalogica is entitled to preliminary and permanent
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1 injunctive relief to enjoin Target’s acts alleged above, in addition to recovery of its
2 damages and Target’s profits obtained as a result of the acts alleged above.

3 32. Given that Target’s actions were willful, this is an exceptional
4 case, and Dermalogica is entitled to Target’s profits and an award of reasonable
5 attorneys’ fees against Target.

6 **SECOND CLAIM FOR RELIEF**

7 **(False Advertising - Violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B))**

8 33. Dermalogica re-alleges and incorporates by reference
9 Paragraphs 1 through 27 of this Complaint.

10 34. In marketing and selling products in interstate commerce that
11 feature the DERMALOGICA trademark, Target has made statements about the use
12 and character of such goods that are misleading and will have the tendency to
13 mislead consumers. In particular, Target’s point of sale marketing materials state
14 that the Dermalogica product “Active Moist” will “Prevent future breakouts.”
15 Actually, the product is designed and marketed by Dermalogica for moisturizing
16 only and has no acne inhibiting qualities.

17 35. Target’s statements are material as they are likely to influence a
18 consumer’s purchasing decision as to which product to purchase. Unfortunately,
19 such consumers will be disappointed with their purchases when the product does
20 not perform as advertised and when another Dermalogica product would have
21 provided a solution to the customer.

22 36. As a direct and proximate result of Target’s actions,
23 Dermalogica has been and will continue to be injured, including injury to its
24 reputation and to its sales. Dermalogica is entitled to preliminary and permanent
25 injunctive relief to enjoin Target’s acts alleged above, in addition to recovery of its
26 damages and Target’s profits obtained as a result of the acts alleged above.

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1 37. Given that Target’s actions were willful, this is an exceptional
2 case, and Dermalogica is entitled to Target’s profits and an award of reasonable
3 attorneys’ fees against Target.

4 **THIRD CLAIM FOR RELIEF**

5 **(False Advertising - Cal. Bus. & Prof. Code § 17500 et seq.)**

6 38. Dermalogica re-alleges and incorporates by reference
7 Paragraphs 1 through 27 of this Complaint as though fully set forth herein.

8 39. In selling product bearing the DERMALOGICA trademark,
9 Target has used advertising and marketing materials to the public containing
10 statements concerning such product that are untrue and misleading, including that
11 such product was genuine Dermalogica product and statements that certain product
12 had uses or properties that are inaccurate. In particular, Target’s point of sale
13 marketing materials state that the Dermalogica product “Active Moist” will
14 “Prevent future breakouts.” Actually, the product is designed and marketed by
15 Dermalogica for moisturizing only and has no acne inhibiting qualities. Target’s
16 marketing materials are therefore misleading to consumers and picture the product
17 in a false light.

18 40. Target knew, or in the exercise of reasonable care should have
19 known, that such statements were untrue or misleading.

20 41. Target’s conduct has caused Dermalogica to suffer monetary and
21 irreparable harm, and Dermalogica will continue to suffer irreparable harm and loss.

22 42. Dermalogica has no adequate remedy at law and is entitled to
23 restitution, disgorgement, injunctive relief or such other equitable relief as is
24 appropriate.

25 43. Dermalogica is informed and believes, and on that basis alleges
26 that Target’s actions were willful, intentional, malicious, deliberate and in bad faith,
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1 such that punitive damages are justified and reasonable, at an amount to be proved
2 at trial.

3 **FOURTH CLAIM FOR RELIEF**
4 **(Tortious Interference with Contractual Relations)**

5 44. Dermalogica re-alleges and incorporates by reference
6 Paragraphs 1 through 27 of this Complaint as though fully set forth herein.

7 45. Dermalogica has valid and enforceable contracts with each of its
8 authorized resellers. Each one of these contracts with its resellers prohibits selling
9 product to a retailer like Target for sale in Target's stores or online. When a
10 reseller sells to Target, it breaches its contract with Dermalogica, and is subject to
11 termination.

12 46. Dermalogica notified Target that Dermalogica had contracts
13 with authorized resellers that prohibited diversion of Dermalogica products and that
14 such contracts only permitted authorized resellers to sell at their own location and to
15 consumers for ultimate consumption. Dermalogica notified Target that Target was
16 interfering with Dermalogica's contracts by purchasing product from Dermalogica's
17 authorized resellers in violation of Dermalogica's contracts with them and
18 demanded that Target cease doing so.

19 47. Target has disregarded Dermalogica's demands and continues to
20 interfere with Dermalogica's contracts with its resellers by purchasing Dermalogica
21 product to sell in its stores and online thereby causing the authorized resellers to
22 breach their contracts.

23 48. In addition, Target's continuing practice of sourcing product
24 from authorized resellers has made performance of the contracts by Dermalogica
25 more expensive and difficult because Dermalogica must spend time, effort and
26 money to track product where possible and terminate offending resellers.

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1 49. Dermalogica is informed and believes, and on that basis alleges,
2 that Target intended to disrupt Dermalogica's contracts with its resellers and/or
3 knew or should have known that disruption of those contracts was certain or
4 substantially likely to occur and was a substantial factor in disrupting those
5 relationships.

6 50. Dermalogica's contractual provisions that prohibit diversion and
7 sale to retailers are material components of Dermalogica's distribution network and
8 quality control systems. Target's conduct has damaged Dermalogica by, among
9 other things, disrupting Dermalogica's relationships with its resellers and causing it
10 to incur unnecessary costs to track and stop diversion in an amount according to
11 proof.

12 51. Target's interference was done intentionally, willfully, and with
13 callous disregard for the rights of the very brand owner whose product it sells,
14 entitling Dermalogica to punitive and exemplary damages against Target.

15 **FIFTH CLAIM FOR RELIEF**

16 **(Tortious Interference with Prospective Economic Relationships)**

17 52. Dermalogica re-alleges and incorporates by reference
18 Paragraphs 1 through 27 of this Complaint as though fully set forth herein.

19 53. Dermalogica has legitimate existing and prospective economic
20 relationships with current authorized resellers of Dermalogica products, prospective
21 authorized resellers of Dermalogica products, and consumers who purchase genuine
22 Dermalogica product from Dermalogica.

23 54. There is a high probability of future economic benefit to
24 Dermalogica as a result of these existing and prospective business relationships
25 with such customers.

26 55. Target has knowledge of these existing and prospective
27 economic relationships.

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1 56. Target has acted knowingly and intentionally to disrupt the
2 relationships between Dermalogica and its customers or divert such business to
3 itself and has engaged in separate wrongful conduct in this respect. Such wrongful
4 conduct includes interfering with the contracts with the authorized resellers from
5 whom they are obtaining goods, stocking and selling product with authenticity
6 holograms and serialized quality control tags removed, engaging in false
7 advertising, and creating the false appearance that Target is an authorized reseller of
8 Dermalogica goods or otherwise misrepresenting the affiliation, connection or
9 association with or certification of Target as an authorized reseller of Dermalogica
10 products or Dermalogica's sponsorship, approval or certification of goods and
11 services provided by Target.

12 57. Dermalogica is informed and believes, and on that basis alleges,
13 that Target intended to disrupt Dermalogica's prospective economic relationships
14 with its customers and/or knew or should have known that disruption of those
15 relationships was certain or substantially likely to occur as a result of Target's
16 improper and unlawful conduct.

17 58. Dermalogica has been proximately damaged and continues to be
18 damaged as a result of Target's conduct. Such damage includes, but is not limited
19 to, authorized resellers not purchasing Dermalogica product for resale to consumers,
20 potential accounts declining to carry Dermalogica products because they are on the
21 shelf at Target, and consumers of Dermalogica product not buying product from
22 Dermalogica.

23 59. Dermalogica is informed and believes, and on that basis alleges
24 that Target's actions were willful, intentional, malicious, deliberate and in bad faith,
25 such that punitive damages are justified and reasonable, in an amount to be proved
26 at trial.

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SIXTH CLAIM FOR RELIEF

(Unfair Competition - Cal. Bus. & Prof. Code § 17200 et seq.)

60. Dermalogica re-alleges and incorporates by reference Paragraphs 1 through 27 of this Complaint as though fully set forth herein.

61. Target has engaged in unfair competition, including unlawful fraudulent and unfair business practices, in violation of California Business & Professions Code section 17200 et. seq. Target's unfair competition includes, among other things, interfering with Dermalogica's contracts and economic relationships, stocking and selling product with authenticity holograms and serialized quality control tags removed which disrupts Dermalogica's distribution and quality control systems, selling DERMALOGICA brand product that is authorized for sale abroad that is materially different from product sold in the United States (including materially different by not complying with the United States Food and Drug Administration's labeling requirements), engaging in false advertising, engaging in marketing in violation of United States Federal Food, Drug, and Cosmetic Act and FDA requirements, and creating the false appearance that Target is an authorized reseller of Dermalogica goods or otherwise misrepresenting the affiliation, connection or association with or certification of Target as an authorized reseller of Dermalogica products or Dermalogica's sponsorship, approval or certification of goods and services provided by Target. In addition, Target's acts and omissions alleged above constitute fraudulent business practices because Target markets and sells Dermalogica products of unknown age or quality, which is likely to deceive consumers with respect to the quality of Dermalogica products.

62. Target's conduct is improper or unlawful and has caused Dermalogica to suffer monetary and irreparable harm, and Dermalogica will continue to suffer irreparable harm and loss.

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e. making any claim that any Dermalogica products treat or prevent acne unless such claims are made by Dermalogica;

4. An order that all of Target’s materials of any kind using the DERMALOGICA mark and any confusingly similar marks or designations be destroyed;

5. An order awarding Dermalogica its reasonable attorneys’ fees and costs associated with this action;

6. An award of punitive and exemplary damages; and

7. Such other and further relief that the Court deems just and proper.

Date: November 13, 2018 LESNICK PRINCE & PAPPAS LLP

By: /s/Michael E. Pappas
Michael E. Pappas
Attorneys for Dermalogica, LLC

DEMAND FOR JURY TRIAL

Pursuant to Local Rule 38-1, Dermalogica, LLC hereby demands a trial by jury on all issues so triable.

Date: November 13, 2018 LESNICK PRINCE & PAPPAS LLP

By: /s/Michael E. Pappas
Michael E. Pappas
Attorneys for Dermalogica, LLC.