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**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

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DERMALOGICA, LLC
Plaintiff,
v.
TARGET CORPORATION, a
Minnesota Corporation,
Defendant.

Case No. 2:18-cv-09580
**DEFENDANT TARGET
CORPORATION'S ANSWER
AND AFFIRMATIVE DEFENSES
IN RESPONSE TO PLAINTIFF
DERMALOGICA, LLC'S
COMPLAINT**
DEMAND FOR JURY TRIAL

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1 Defendant Target Corporation, a Minnesota Corporation (“Target” or
2 “Defendant”) hereby answers Plaintiff Dermalogica, LLC’s (“Plaintiff” or
3 “Dermalogica”) Complaint (“Complaint” or “the Complaint”), as set forth below.

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JURISDICTION AND THE PARTIES

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1. Target lacks the requisite knowledge to form a belief as to the truth of the allegations contained therein, but does not intend to challenge this Court’s original jurisdiction over this matter.

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2. Target lacks the requisite knowledge to form a belief as to the truth of the allegations contained therein, but does not intend to challenge that venue is proper in this federal jurisdiction.

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3. Target admits that Plaintiff Dermalogica is a Limited Liability Company organized and existing under the laws of California. Target lacks the requisite knowledge to form a belief as to the truth of the principal place of business of Plaintiff Dermalogica.

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4. Target denies that it markets and sells products bearing the Dermalogica trademark to California residents as alleged in this Complaint. Target admits the remainder of this paragraph.

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GENERAL ALLEGATIONS

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5. Target lacks the requisite knowledge to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contain herein.

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6. Target lacks the requisite knowledge to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contain herein.

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1 7. Target lacks the requisite knowledge to form a belief as to the truth of
2 the allegations contained therein, and on that basis denies each and every allegation
3 contain herein.

4 8. Target lacks the requisite knowledge to form a belief as to the truth of
5 the allegations contained therein, and on that basis denies each and every allegation
6 contain herein.

7 9. Target lacks the requisite knowledge to form a belief as to the truth of
8 the allegations contained therein, and on that basis denies each and every allegation
9 contain herein.

10 10. Target lacks the requisite knowledge to form a belief as to the truth of
11 the allegations contained therein, and on that basis denies each and every allegation
12 contain herein.

13 11. Target lacks the requisite knowledge to form a belief as to the truth of
14 the allegations contained therein, and on that basis denies each and every allegation
15 contain herein.

16 12. Target lacks the requisite knowledge to form a belief as to the truth of
17 the allegations contained therein, and on that basis denies each and every allegation
18 contain herein.

19 13. Target lacks the requisite knowledge to form a belief as to the truth of
20 the allegations contained therein, and on that basis denies each and every allegation
21 contain herein.

22 14. Target lacks the requisite knowledge to form a belief as to the truth of
23 the allegations contained therein, and on that basis denies each and every allegation
24 contain herein.

25 15. Target lacks the requisite knowledge to form a belief as to the truth of
26 the allegations contained therein, and on that basis denies each and every allegation
27 contain herein.

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1 16. Target lacks the requisite knowledge to form a belief as to the truth of
2 the allegations contained therein, and on that basis denies each and every allegation
3 contain herein.

4 17. Target admits it is not an authorized reseller for Dermalogica products
5 and that Target markets for sale products bearing the Dermalogica trademark.
6 Target lacks the requisite knowledge to form a belief as to the truth of the remainder
7 of allegations contained therein, and on that basis denies the remainder of the
8 allegations contain herein.

9 18. Target lacks the requisite knowledge to form a belief as to the truth of
10 the allegations contained therein, and on that basis denies each and every allegation
11 contain herein.

12 19. Target admits that the photograph is similar to a display that may be
13 found in a Target Store, but lacks the requisite knowledge to form a belief as to
14 which Target Store, if any. Target lacks the requisite knowledge to form a belief as
15 to the truth of the allegations regarding how Dermalogica designed or markets the
16 identified product, and on that basis denies that allegation. Target denies the
17 remainder of the allegations contained in this paragraph.

18 20. Target denies.

19 21. Target denies.

20 22. Target admits it is selling a Dermalogica branded product called
21 Dynamic Skin Recovery. Target lacks the requisite knowledge to form a belief as
22 to the truth of remainder of the allegations contained therein, and on that basis
23 denies the remainder of the allegations contain herein. Target further lacks the
24 requisite knowledge to form a belief as to the truth of the allegations contained in
25 subparts (a) through (f), and on that basis denies the allegations contained herein.

26 23. Target admits that Dermalogica has notified Target of its position that
27 Target is not authorized to sell goods bearing the Dermalogica trademark. Target
28

1 lacks the requisite knowledge to form a belief as to the truth of remainder of
2 allegations contained therein, and on that basis denies each and every allegation
3 contained herein.

4 24. Target denies that it “disregarded Dermalogica’s demands.” Target
5 lacks the requisite knowledge to form a belief as to the truth of remainder of
6 allegations contained therein, and on that basis denies each and every allegation
7 contained herein.

8 25. Target denies that it was placed “on notice.” Target lacks the requisite
9 knowledge to form a belief as to the truth of remainder of allegations contained
10 therein, and on that basis denies each and every allegation contained herein.

11 26. Target denies.

12 27. Target denies that damage to Dermalogica’s brand and its contractual
13 and economic relationships is ongoing. Target lacks the requisite knowledge to
14 form a belief as to the truth of the remainder of allegations contained therein, and
15 on that basis denies the remainder of the allegations contain herein.

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FIRST CLAIM FOR RELIEF

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Unfair Competition, False Designation of Origin – Violation of Lanham Act, 15

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U.S.C. § 1125(a)(1)(A)

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28. Target repeats and incorporates by reference its responses to
21 paragraphs 1 through 27.

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29. Target denies the allegations contained in paragraph 29.

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30. Target denies the allegations contained in paragraph 30.

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31. Target denies the allegations contained in paragraph 31.

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32. Target denies the allegations contained in paragraph 32.

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SECOND CLAIM FOR RELIEF

False Advertising – Violation of Lanham Act, 15 U.S.C. § 1125(a)(1)(B)

33. Target repeats and incorporates by reference its responses to paragraphs 1 through 32.

34. Target denies the allegations contained in paragraph 34.

35. Target denies the allegations contained in paragraph 35.

36. Target denies the allegations contained in paragraph 36.

37. Target denies the allegations contained in paragraph 37.

THIRD CLAIM FOR RELIEF

False Advertising – Cal. Bus. & Prof. Code § 17500 et. seq.

38. Target repeats and incorporates by reference its responses to paragraphs 1 through 37.

39. Target denies the allegations contained in paragraph 39.

40. Target denies the allegations contained in paragraph 40.

41. Target denies the allegations contained in paragraph 41.

42. Target denies the allegations contained in paragraph 42.

43. Target denies the allegations contained in paragraph 43.

FOURTH CLAIM FOR RELIEF

Tortious Interference with Contractual Relations

44. Target repeats and incorporates by reference its responses to paragraphs 1 through 43.

45. Target lacks the requisite knowledge to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contain herein.

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1 56. Target denies the allegations contained in paragraph 56.

2 57. Target denies the allegations contained in paragraph 57.

3 58. Target denies the allegations contained in paragraph 58.

4 59. Target denies the allegations contained in paragraph 59.

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SIXTH CLAIM FOR RELIEF

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Unfair Competition – Cal. Bus. & Prof. Code § 17200 et. seq.

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60. Target repeats and incorporates by reference its responses to paragraphs 1 through 59.

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10 61. Target denies the allegations contained in paragraph 61.

11 62. Target denies the allegations contained in paragraph 62.

12 63. Target denies the allegations contained in paragraph 63.

13 64. Target denies the allegations contained in paragraph 64.

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AFFIRMATIVE DEFENSES

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The following affirmative defenses are asserted by Target.

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FIRST AFFIRMATIVE DEFENSE

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(Failure to State a Claim)

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1. Plaintiff's Complaint fails to state a claim against Target upon which relief can be granted.

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SECOND AFFIRMATIVE DEFENSE

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(Subject Matter Jurisdiction)

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2. This court lacks subject matter jurisdiction.

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THIRD AFFIRMATIVE DEFENSE

(Fair Use)

3. The conduct of which Plaintiff complains is protected by the fair use doctrine.

FOURTH AFFIRMATIVE DEFENSE

(License)

4. Plaintiff's claims are barred to the extent the allegedly unlawful sales at issue were licensed or otherwise authorized by persons or entities with the right to license or authorize such use.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

5. Plaintiff's claims and/or remedies Plaintiff seeks are barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

6. Plaintiff waived the claims and/or remedies it asserts.

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

7. Plaintiff's claims, and each of them, are barred by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

(Ratification)

8. Plaintiff ratified the conduct of which it complains.

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NINTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

9. Without in any way admitting any of the allegations contained in the Complaint, and without admitting that Plaintiff suffered any damages at all, Plaintiff failed, and has continued to fail, to take reasonable steps to mitigate those purported damages.

TENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

10. Plaintiff's claims are barred by the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

(No Damages)

11. Plaintiff's claims fail in whole or in part to the extent Plaintiff has suffered no damages.

TWELFTH AFFIRMATIVE DEFENSE

(No Statutory Damages or Attorney Fees)

12. Plaintiff's prayer for statutory damages and attorney's fees under 15 U.S.C. § 1117 is barred because no trademark infringement has been alleged.

THIRTEENTH AFFIRMATIVE DEFENSE

(Excuse)

13. To the extent Target engaged in any of the acts in the Complaint, such acts were excused, justified and/or privileged.

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FOURTEENTH AFFIRMATIVE DEFENSE

(First Sale Doctrine)

14. The Complaint, and each and every claim alleged therein, is barred by the first sale doctrine.

FIFTEENTH AFFIRMATIVE DEFENSE

(Indemnification and Contribution)

15. Target is entitled to indemnification and/or contribution from any and all other persons, whether or not parties to this action, whose negligence or fault proximately caused or contributed to Plaintiff's damages, if any.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Unfair Business Practice)

16. As a sixteenth and separate affirmative defense to each and every claim, Target alleges that Plaintiff failed to state facts sufficient to constitute a cause of action for unfair competition because Plaintiff failed to identify an unfair or fraudulent business practice.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Bona Fide Purchaser)

17. The alleged claims, and each of them, are barred by California Commercial Code § 2403(2) and § 2403(3).

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EIGHTEENTH AFFIRMATIVE DEFENSE

(Contracts Invalid or Unenforceable)

18. The Plaintiff's claims for relief are barred, in whole or in part because the alleged contracts with which Target allegedly interfered were not valid or enforceable in whole or in part.

NINETEENTH AFFIRMATIVE DEFENSE

(Unreasonable Restraint of Trade)

19. The alleged claims are barred, in whole or in part, because Plaintiff has engaged in unreasonable restraints of trade with respect to the sale of its goods.

TWENTIETH AFFIRMATIVE DEFENSE

(Speculative Damages)

20. The alleged claims are barred, in whole or in part, because any damages possibly available in connection therewith are speculative and uncertain.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

(Right to Assert Additional Affirmative Defenses)

21. Target reserves the rights to assert additional affirmative defenses in the event that discovery and/or further investigation of Plaintiff’s claims indicates that additional affirmative defenses are available, including without limitation affirmative defenses that are referenced in Rule 8(c) of the Federal Rules of Civil Procedure or are otherwise available under applicable law.

Dated: February 6, 2019

By: /s/ Michael N. Cohen
Michael N. Cohen
Galen W. Bean
Attorneys for Defendant,
TARGET CORPORATION

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DEMAND FOR JURY TRIAL

Pursuant to the Federal Rules of Civil Procedure, Rule 38(b), and Local Rule 38-1, Answering Defendant Target Corporation, a Minnesota Corporation, hereby respectfully demands a jury trial with respect to all the issues and claims asserted in this action.

Dated: February 6, 2019

By: /s/ Michael N. Cohen
Michael N. Cohen
Galen W. Bean
Attorneys for Defendant,
TARGET CORPORATION

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CERTIFICATE OF SERVICE

I hereby certify that on the below date, I filed the foregoing document via the Court’s CM/ECF Filing System, which will serve electronic notice of the same on the following:

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Dated: February 6, 2019

/s/ Michael N. Cohen
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