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WYORK  
OCT - 3 2011  
U.S.D.C. S.D. N.Y.  
CASHIERS  
SE NO.

CASE NO.

COMPLAINT

Infringement of a Federally  
Registered Trademark  
False Designation of Origin  
Under 15 USC §1125(a);  
Unfair Competition;  
Common Law Trademark  
Infringement)

## JURY TRIAL DEMANDED

Defendants,

## I. PARTIES

1

2. Since long prior to the acts of defendants complained of herein, Plaintiff has been in the business of offering medspa services and in particular has operated a medspa offering a full range of skin care products under the trademark Skin N.Y.

3. Upon information and belief, Marisa Martino, is a resident of New York and an individual having a place of business at 112 East 61<sup>st</sup> Street, New York, NY 10065 and is doing business as SKINNY Medspa & Wellness.

4. Upon information and belief, Adriana Martino, is a resident of New York and an individual having a place of business at 112 East 61<sup>st</sup> Street, New York, NY 10065 and is doing business as SKINNY Medspa & Wellness.

5. Upon information and belief, SKINNY Aesthetics L.L.C. is a limited liability Company organized and existing under the laws of the State of New York with a principal office at 188 East 64<sup>th</sup> Street, Suite 906, New York, NY 10065 and a place of business at 112 East 61<sup>st</sup> Street, New York, NY 10065.

6. Upon information and belief defendant SKINNY Aesthetics L.L.C. is doing business as SKINNY Medspa & Wellness, 112 East 61<sup>st</sup> Street, New York, NY 10065.

7. Upon information and belief, defendants are operating a medspa and offering medical aesthetic services and skin care treatments identical to plaintiff's.

## **II. JURISDICTION**

8. Upon information and belief, this court has personal jurisdiction over defendant, Marisa Martino, because defendant is a resident of this district and/or has committed acts of infringement in this district.

9. Upon information and belief this court has personal jurisdiction over defendant Adriana Martino because defendant Adriana Martino is a resident of this district and/or has committed acts of infringement in this district.

10. Upon information and belief this court has jurisdiction over defendant SKINNY Aesthetics L.L.C. because SKINNY Aesthetics L.L.C. is doing business in this district.

11. This is an action for infringement of a federally registered trademark under 15 U.S.C. § 1051 et. seq., and for false designation of origin arising under the Trademark Act of 1946 (15 U.S.C. § 1051 et. seq.). The court has jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a). Venue lies within this district pursuant to 28 U.S.C. § 1391. In addition, a substantial part of the events giving rise to the claims occurred in this district. This Court has jurisdiction over the cause of action for unfair competition and common law trademark infringement under 28 U.S.C. §1338(b).

### **III. FACTUAL BACKGROUND**

12. Since long prior to the acts of defendants complained of herein, the plaintiff has been continuously engaged in the offering of medspa services and in particular facials and peels, laser treatments and other skin treatments, under the trademark Skin N.Y.

13. Since long prior to the acts of defendants complained of herein, the plaintiff has become well known in the area for quality of its medspa services and related skin

products. The products sold under the Skin N.Y. trademark include a full range of skin treatment products including cleansers, toners, creams, gels, lotions, serums, etc.

14. Plaintiff has been continuously offering medspa services under the Skin N.Y. trademark since long prior to the acts of defendants complained of herein.

15. Plaintiff's Skin N.Y. trademark and the products and services sold under the Skin N.Y. trademark have received considerable publicity in the area where it has done business.

16. Plaintiff has extensively advertised its medspa services and products under the Skin N.Y. trademark.

17. Since long prior to the acts of defendants complained of herein, the plaintiff has been continuously engaged in the offering, selling and advertising of medspa services and related skin treatment products under the Skin N.Y. trademark.

18. On November 7, 2006 plaintiff was granted a United States Trademark Registration No. 3,167,571 for Skin N.Y. This registration is valid and subsisting. Under 15 U.S.C. § 1057 the registration is prima facie evidence that the registered mark is valid, of registrant's ownership of the mark and of registrant's exclusive right to use the registered mark in commerce in connection with the goods and services.

#### **IV. ILLEGAL ACTS OF DEFENDANTS COMPLAINED OF**

19. Without the permission of the plaintiff, defendants have used plaintiffs' Skin N.Y. trademark for their medspa services.

20. Defendants are offering the same type of services as plaintiff as well as selling the same type of products as plaintiff, including cleansers.

21. Plaintiff has written to defendants objecting to their use of the Skin N.Y. trademark but defendants have continued to use it.

22. On February 18, 2011, defendant SKINNY Aesthetics, LLC filed U.S. Trademark Application Serial No. 85/246,584 to register the trademark SKINNY MEDSPA WELLNESS with the United States Patent and Trademark Office.

23. On May 22, 2011, the United States Patent and Trademark Office issued a rejection of defendant SKINNY Aesthetics application on the ground there was a likelihood of confusion with plaintiff's SKIN NY registered trademark.

24. After responding to the Examiner's rejection on September 20, 2011, the United States Patent and Trademark Office issued a second rejection of the application to defendant SKINNY Aesthetics, LLC on the ground, *inter alia*, there was a likelihood of confusion with plaintiff's SKIN NY trademark.

25. The defendants' use of the trade name SKINNY a short distance from Plaintiff's office in commerce in the United States of America, including the State of New York, is likely to cause and has caused confusion, mistake and deception of purchasers as to the source or origin of said services and products in that persons are likely to believe and have believed that defendants are legitimately connected with, licensed by or in some way sponsored, endorsed or approved by plaintiff.

26. The defendants' use of SKINNY for its services and products a short distance from Plaintiff's offices, in commerce in the United States of America, including the State

of New York, is likely to cause and has caused confusion, mistake and deception of purchasers as to the source or origin of said products in that persons are likely to believe and have believed that defendants are legitimately connected with, licensed by or in some way sponsored, endorsed or approved by plaintiff.

27. The defendants' use of plaintiff's trademark Skin N.Y. on products offered for sale by defendants, a short distance from Plaintiff's offices, in commerce in the United States of America, including the State of New York, is likely to cause, and has caused confusion, mistake and deception of purchasers as to the source or origin of said products in that persons are likely to believe and have believed that defendant is legitimately connected with, licensed by or in some way sponsored, endorsed or approved by plaintiffs.

28. Defendants have had full knowledge of plaintiff's Skin N.Y. trademark.

29. On information and belief, the defendants willfully misappropriated plaintiff's Skin N.Y. trademark.

30. The defendant's conduct is a fraudulent business practice and permits the defendant to undertake misleading advertising and representation, thereby unfairly competing with the plaintiff.

31. The defendant's aforesaid conduct is causing immediate and irreparable injury and damage to the plaintiff and will continue to cause irreparable injury and damage to the plaintiff unless restrained by this Court; wherefore, the plaintiff is without an adequate remedy at law.

**First Claim for Relief**  
**(False Designation of Origin)**

32. Plaintiff repeats and reavers paragraphs numbered "1" to "28" as though specifically pleaded herein.

33. Defendants' use of SKINNY is an infringement of plaintiff's registered trademark. By reason of the foregoing acts, defendants are liable to plaintiff for federal trademark infringement.

**Second Claim for Relief**  
**(False Designation of Origin)**

34. Plaintiff repeats and reavers paragraphs numbered "1" to "33" as though specifically pleaded herein.

35. The defendants have threatened to and will continue their conduct of false designation of origin, common law trademark infringement and unfair competition as hereinabove alleged unless restrained from doing so by this Court.

36. Plaintiff alleges that defendants' conduct has caused and will continue to cause such false designations to enter commerce, all to the plaintiff's damage and irreparable injury, unless restrained by this Court; wherefore, the plaintiff is without an adequate remedy at law.

37. Defendants' conduct constitutes unfair competition under 15 U.S.C. §1125 (a) of the Lanham Act.

**Third Claim for Relief**  
**(Common Law Trademark Infringement)**

38. As a complete and further ground for relief against defendants, plaintiff hereby charges defendants with common law trademark infringement and plaintiff hereby repeats and realleges paragraphs 1 to 37 hereof, as though fully recited herein.

39. Defendants' unauthorized use of the common law trademark Skin N.Y., a short distance from Plaintiff's offices, in commerce in the United States of America, including the State of New York, is likely to cause and has caused confusion, mistake and deception of purchasers as to the source or origin of said products and services in that persons are likely to believe and have believed that defendants are legitimately connected with, licensed by or in some way sponsored, endorsed or approved by plaintiff.

40. On information and belief, the defendants willfully misappropriated plaintiff's trademark Skin N.Y. .

41. Defendants' unlawful use of the plaintiff's trademark constitutes common law trademark infringement under the New York Common Law

**Fourth Claim for Relief**  
**(Unfair Competition)**

42. As a complete and further ground for relief against defendants, plaintiff hereby charges defendants with common law unfair competition and plaintiff hereby repeats and realleges paragraphs 1 to 41 hereof, as though fully recited herein.

43. Defendants' unauthorized use of the trademark SKINNY, a short distance from Plaintiff's medspa, in commerce in the United States of America, including the



State of New York on medspa services and related products, is likely to cause and has caused confusion, mistake and deception of purchasers as to the source or origin of said products and services in that persons are likely to believe and have believed that defendants are legitimately connected with, licensed by or in some way sponsored, endorsed or approved by plaintiff.

44. Defendants' used the SKINNY trademark without the authorization or permission of plaintiffs for the willful and calculated purpose of trading upon plaintiff's good will and reputation.

45. The defendants' conduct is a fraudulent business practice and permits the defendants to undertake misleading advertising and representation, thereby unfairly competing with plaintiff.

46. The defendants' aforesaid conduct is causing immediate and irreparable injury and damage to the plaintiff and will continue to cause irreparable injury and damage to the plaintiff unless restrained by this Court; wherefore, the plaintiff is without an adequate remedy at law.

47. The defendants have threatened to and will continue their conduct of common law trademark infringement and unfair competition as hereinabove alleged unless restrained from doing so by this Court.

WHEREFORE, plaintiff prays that this Court will enter judgment in its favor and against defendants:

A. Temporarily and permanently enjoining the defendants, their officers, agents, servants, employees, and such other persons in active concert or participation with them who receive actual notice of the Order by personal service or otherwise, and each of them, from infringing plaintiff's trademark from falsely designating the origin of defendants, products and services, from unfairly competing with plaintiff, and specifically from:

- (a) using the trademark SKINNY or any colorable imitations thereof;
- (b) making in any manner whatsoever any statement or representation that is likely to lead the public to believe that either the defendants or their business is associated or connected with, approved or sponsored or licensed by or authorized or franchised by plaintiff; and
- (c) any other acts which constitute unfair competition with plaintiff;

B. Requiring defendants to deliver up for destruction all labels, signs, prints, menus, packages, wrappers, receptacles, advertisements and all other material in their possession used in connection with defendants' restaurant that use Angelina; as well as require defendants to deliver up for destruction all plates, molds, matrices, and other means for making the same;

C. Requiring the defendants within thirty (30) days after the service of the injunction on it to file with the Court a report in writing under oath setting forth in detail the manner and form in which said defendants have complied with the injunction;

D. Granting plaintiff an accounting of defendants' profits caused by such conduct;


E. Granting to plaintiff damages for defendants' conduct; and

F. Granting to plaintiff such further relief as may be just and proper.

Plaintiff demands a jury trial.

DATED: September 28, 2011

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