

1 Scott L Nielson (CA State Bar No. 262169)
2 **Law office of Scott L Nielson**
3 1106 Second Street, Ste 550
4 Encinitas, CA 92024
5 Telephone: (760) 334-8350
6 Email: scott@scottnielson.com

7 Attorney for Plaintiff Veni Group, LLC

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 VENI GROUP, LLC, a North Carolina
11 Limited Liability Company,

12 Plaintiff,

13 vs.

14 TIKTOK, INC., BYTEDANCE, INC.,
15 ALIBABA GROUP USA, AMAZON.COM,
16 INC., EBAY, INC., WHALECO, INC. for
17 Temu.com, CONTEXTLOGIC INC., for
18 Wish.com, EVERYMARKET Inc.,
19 PIXALSOFT, INC. for TrueGether.com,
20 SHEIN, Inc., SHEIN TECHNOLOGY, LLC,
21 RUMBLE GEM, LLC, Michelle Lam,
22 MERCARI, Inc, POSHMARK, Inc.,
23 BONANZA, Inc. WALMART, Inc.,
24 DHGATE owner of DHGate.com, PARTS
25 QUICK, LLC, TSRETE, Inc., TRUE
26 CAPITAL SOLUTIONS, LLC, AMMIRATI
27 BIZ, LLC, BALTIMORE REGIONAL
28 HOUSING PARTNERSHIP, INC., WANT
MART, LLC, JINGDONG E-
COMMERCE, Ltd., BEAUTIFEYE LASH
BOUTIQUE, LLC, CHANDRAS BLING
BLING, LLC, Chandra Martinez, THE
ORIGINAL ABBA BOOKS, LLC, BTK
CONCESSIONS, LLC, KANSAMY, LLC,
CHC PARTNERS, LLC, ESMT
CONSULTING, LLC, FEMALE
FINANCIAL, LLC, THE ZAZE, LLC,
TESCA ENTERPRISE, LLC, Does 1-200,
unknown fictitious persons at the time of filing

Defendants.

Case No. 8:24-cv-289

JURY TRIAL DEMANDED

COMPLAINT FOR:

- 1) **FEDERAL FALSE DESIGNATION OF ORIGIN;**
- 2) **FEDERAL TRADEMARK INFRINGEMENT;**
- 3) **COMMON LAW TRADEMARK INFRINGEMENT;**
- 4) **NEGLIGENCE;**
- 5) **CALIFORNIA STATE STRICT PRODUCT LIABILITY;**
- 6) **BREACH OF CONTRACT;**
- 7) **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;**
- 8) **CIVIL CONSPIRACY;**
- 9) **UNJUST ENRICHMENT;**
- 10) **CALIFORNIA STATE UNFAIR COMPETITION AND BUSINESS PRACTICES (B&P 17200).**

1 For its claims against Defendants, Plaintiff VENI GROUP, LLC (“Plaintiff” or “Veni”)
2 alleges as follows:

3 **NATURE OF THE ACTION**

4 1. This is a civil action to enjoin and remedy: Lanham Act Violations of trade dress
5 infringement, false designation, false advertising, infringement under 15 U.S.C. §1125(a);
6 negligence, third-party beneficiary rights in contract, strict products liability, unfair competition,
7 unjust enrichment and civil conspiracy of illegal and abusive acts.

8 2. This action arises out of Defendant’s past and continuous injurious conduct towards
9 Plaintiff. By this action, Plaintiff seeks to permanently put a stop to Defendant’s illegal conduct
10 based in trademark infringement and obtain compensation for the violations that have occurred
11 thus far.

12 **THE PARTIES**

13 3. At all relevant times, VENI GROUP, LLC, was and is a lawfully organized Limited
14 Liability Company with a principal place of business in Clemmons, North Carolina, in the State
15 of North Carolina.

16 4. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
17 times, Defendant ALIBABA GROUP USA (HOLDING LIMITED), was and is a Chinese
18 multinational technology company headquartered in Hangzhou, China, with an operating address
19 located in Santa Clara County, State of California.

20 5. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
21 times, Defendant AMAZON.COM, INC, was and is a Washington Corporation with a principal
22 place of business in King County, in the State of Washington.

23 6. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
24 times, Defendant EBAY, INC, was and is a California Corporation with a principal place of
25 business in Santa Clara County, in the State of California.

26 7. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
27 times, Defendant BYTEDANCE, INC, was and is a California Corporation with a principal place
28 of business in Los Angeles County, in the State of California.

1 8. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
2 times, Defendant TIKTOK, INC, was and is a California Corporation with a principal place of
3 business in Los Angeles County, in the State of California.

4 9. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
5 times, Defendant WHALECO, INC (domain owner of TEMU.COM), was and is a Delaware
6 Corporation with a principal place of business in Suffolk County, in the State of Massachusetts.

7 10. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
8 times, Defendant CONTEXTLOGIC, INC (domain owner of WISH.COM), was and is a Delaware
9 Corporation with a principal place of business in San Francisco County, in the State of California.

10 11. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
11 times, Defendant EVERYMARKET, INC, was and is a Missouri Corporation with a principal
12 place of business in St. Charles County, in the State of Missouri.

13 12. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
14 times, Defendant PIXALSOFT, INC (domain owner of TrueGether.com), was and is a New York
15 Corporation with a principal place of business in Nassau County, in the State of New York.

16 13. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
17 times, Defendant SHEIN, INC (owner of SHEIN.COM), was and is a California Corporation with
18 a principal place of business in Los Angeles County, in the State of California.

19 14. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
20 times, Defendant SHEIN TECHNOLOGY, LLC (owner of SHEIN.COM), was and is a California
21 Limited Liability Company with a principal place of business in Los Angeles County, in the State
22 of California.

23 15. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
24 times, Defendant RUMBLE GEM, LLC, was and is a California Limited Liability Company with
25 a principal place of business in Orange County, in the State of California.

26 16. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
27 times, Defendant MICHELLE LAM, was and is an individual residing in Santa Ana, Orange
28 County, in the State of California.

1 17. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
2 times, Defendant MERCARI, INC (domain owner of MERCARI.COM), was and is a California
3 Corporation with a principal place of business in Santa Clara County, in the State of California.

4 18. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
5 times, Defendant POSHMARK, INC (domain owner of POSHMARK.COM), was and is a
6 California Corporation with a principal place of business in Santa Clara County, in the State of
7 California.

8 19. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
9 times, Defendant BONANZA, INC, was and is a Washington Corporation with a principal place
10 of business in King County, in the State of Washington.

11 20. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
12 times, Defendant WALMART, INC, was and is a Delaware Corporation with a principal place of
13 business in Bentonville, in the State of Arkansas.

14 21. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
15 times, Defendant DHGATE, was and is a multinational business located in Haidian District, at 8F
16 Dimeng Commercial Building No. 3-2, Hua Yean Road, Beijing, China, postal code 100083.

17 22. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
18 times, Defendant PARTS QUICK, LLC, was and is a New Jersey Limited Liability Company with
19 a principal place of business in Hudson County, in the State of New Jersey.

20 23. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
21 times, Defendant TSRETE, INC, was and is a New York Corporation with a principal place of
22 business in Flushing, in the State of New York.

23 24. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
24 times, Defendant TRUE CAPITAL SOLUTIONS, LLC, was and is a Florida Limited Liability
25 Company with a principal place of business in Miami Gardens, in the state of Florida.

26 25. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
27 times, Defendant AMMIRATI BIZ, LLC, was and is a California Limited Liability Company with
28 a principal place of business in Los Angeles County, in the State of California.

1 26. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
2 times, Defendant BALTIMORE REGIONAL HOUSING PARTNERSHIP, INC., was and is a
3 Maryland Corporation with a principal place of business in Baltimore, in the State of Maryland.

4 27. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
5 times, Defendant WANT MART, LLC, was and is a New Jersey Limited Liability Company with
6 a principal place of business in Keasbey, in the State of New Jersey.

7 28. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
8 times, Defendant JINGDONG E-COMMERCE Limited, was and is a Hong Kong Limited
9 Business located in Hong Kong, at Flat/Room 1903 19/F, Lee Garden One, 33 Hysan Avenue
10 Causeway Bay, Hong Kong, WC China, postal code 810002.

11 29. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
12 times, Defendant BEAUTIFEYE LASH BOUTIQUE, LLC, was and is a Wisconsin Limited
13 Liability Company with a principal place of business in Green Bay, in the State of Wisconsin.

14 30. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
15 times, Defendant CHANDRAS BLING BLING, LLC, was and is an Arizona Limited Liability
16 Company with a principal place of business in Surprise, in the State of Arizona.

17 31. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
18 times, Defendant CHANDRA MARTINEZ, was and is an individual residing in Surprise, in the
19 State of Arizona.

20 32. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
21 times, Defendant THE ORIGINAL ABBA BOOKS, LLC, was and is a Nevada Limited Liability
22 Company with a principal place of business in Las Vegas, in the State of Nevada.

23 33. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
24 times, Defendant BTK CONCESSIONS, LLC, was and is a Louisiana Limited Liability Company
25 with a principal place of business in New Orleans, in the State of Louisiana.

26 34. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
27 times, Defendant KANSAMY, LLC, was and is a Colorado Limited Liability Company with a
28 principal place of business in Aurora, in the State of Colorado.

1 35. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
2 times, Defendant CHC PARTNERS, LLC, was and is a New Jersey Limited Liability Company
3 with a principal place of business in Short Hills, in the State of New Jersey.

4 36. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
5 times, Defendant ESMT CONSULTING, LLC, was and is a Florida Limited Liability Company
6 with a principal place of business in Miami, in the State of Florida.

7 37. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
8 times, Defendant FEMALE FINANCIAL, LLC, was and is a Georgia Limited Liability Company
9 with a principal place of business in Duluth, in the State of Georgia.

10 38. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
11 times, Defendant THE ZAZE, LLC, was and is a Connecticut Limited Liability Company with a
12 principal place of business in Newington, in the State of Connecticut.

13 39. Plaintiff is informed and believes, and based upon thereon alleges, that at all relevant
14 times, Defendant TESCA ENTERPRISE, LLC, was and is a Texas Limited Liability Company
15 with a principal place of business in Richmond, in the State of Texas.

16 40. Plaintiff is ignorant of the true name and capacity of Defendant Does 1-200, and
17 therefore Plaintiff sues these Defendants until their identity and capacity can be discovered.
18 Because the true identity of many of the Doe Defendants is hidden or obfuscated by design by
19 many of the named Defendants, Plaintiff is unable to determine their true legal names and capacity
20 at the time of filing of this Complaint. PLAINTIFF is informed and believes, and on that basis
21 alleges, that each Doe Defendant sued under such fictitious name is in some manner responsible
22 for the wrongs and the damages as alleged below, and in so acting, was functioning as the agent,
23 servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and principal of the
24 co-Defendants, and in performing the actions mentioned below was acting, at least in part, within
25 the course and scope of that authority as such agent, proxy, servant, partner, joint venture,
26 employee, alter-ego, managing agent, and principal with the permission and consent of the co-
27 Defendants. PLAINTIFF will amend the Complaint to allege the true names and capacities when
28 the same are ascertained by such fictitious names as discovered and with the Court's permission.

1 41. As used throughout this Complaint, Marketplace Defendants includes the following
2 specific defendants: ALIBABA GROUP USA, AMAZON.COM, INC., EBAY, INC.,
3 BYTEDANCE, INC., TIKTOK, INC., WHALECO, INC., CONTEXTLOGIC INC., SHEIN, Inc.,
4 SHEIN TECHNOLOGY, LLC, WALMART, Inc., DHGATE owner of DHGate.com.

5 42. As used throughout this Complaint, Marketplace Sellers includes the following
6 specific defendants: EVERYMARKET Inc., PIXALSOFT, INC., RUMBLE GEM, LLC,
7 Michelle Lam, MERCARI, Inc, POSHMARK, Inc., BONANZA, Inc., PARTS QUICK, LLC,
8 TSRETE, Inc., TRUE CAPITAL SOLUTIONS, LLC, AMMIRATI BIZ, LLC, BALTIMORE
9 REGIONAL HOUSING PARTNERSHIP, INC., WANT MART, LLC, JINGDONG E-
10 COMMERCE, Ltd., BEAUTIFEYE LASH BOUTIQUE, LLC, CHANDRAS BLING BLING,
11 LLC, Chandra Martinez, THE ORIGINAL ABBA BOOKS, LLC, BTK CONCESSIONS, LLC,
12 KANSAMY, LLC, CHC PARTNERS, LLC, ESMT CONSULTING, LLC, FEMALE
13 FINANCIAL, LLC, THE ZAZE, LLC, TESCA ENTERPRISE, LLC.

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15 **JURISDICTION AND VENUE**

16 43. Jurisdiction and venue are proper in this Court, because at all relevant times, the
17 Defendants does and/or did substantial business within the Central California District, in the state
18 of California. Plaintiff's claims arise under Federal Trademark Law and the Laws of the State of
19 California.

20 44. This Court has subject matter jurisdiction under 15 U.S.C. § 1121 (action arising
21 under the Lanham Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1338(a) (any Act of
22 Congress relating to patents, copyrights, or trademarks); 28 U.S.C. § 1338(b) (action asserting
23 claim of unfair competition joined with a substantial and related claim under the trademark laws);
24 28 U.S.C. § 1332(a)(1) (diversity jurisdiction); and 28 U.S.C. § 1367 (supplemental jurisdiction).

25 45. This Court has personal jurisdiction over Defendant's because Defendant's have
26 committed and continues to commit acts of infringement in violation of 15 U.S.C. §§ 1114 and
27 1125, and places infringing products into the stream of commerce, with the knowledge or
28 understanding that such products are sold within the United States, in the State of California,

1 including in this District. The acts by Defendant's have caused injury and continue to injure
2 Plaintiff within this District.

3 46. Upon information and belief, Defendant's derive substantial revenue from the sale
4 of infringing products within this District, expects its actions to have consequences within this
5 District, and derives substantial revenue from interstate and international commerce.

6 47. This Court has jurisdiction under 28 U.S.C. § 1332 because the amount in
7 controversy exceeds \$75,000 and all parties reside or their principal headquarters are within
8 different states.

9
10 **GENERAL ALLEGATIONS**

11 48. Veni entered the cosmetics industry in 2014 by embracing innovative products,
12 catchy trade dress, and straight forward marketing methods designed to expose customers to its
13 unique products.

14 49. Since 2014, Veni's team has expended tremendous effort to meet with vendors,
15 suppliers, other third parties to ensure that its products meet exacting standards of quality and meet
16 customers' expectations.

17 50. Veni has invested substantial effort to engage with existing and prospective
18 customers to deliver products that meet customers' expectations. Including the quality of the
19 product, design of the packaging, instructions on proper use, speed of delivery of product and
20 reliable customer support.

21 51. By following this approach, Veni's business has grown into a thriving business that
22 provides thousands of customers Veni's products. Veni's products are delivered through several
23 commercial channels which include its own website, marketplace storefronts, reordering
24 opportunities, and other e-commerce channels.

25 52. Veni's distribution channels are well established and many of its brands have become
26 somewhat famous and easily recognizable.

27 53. Veni's product pricing has been stable for years, until recent infringement forced
28 changes upon Veni's pricing structure

1 54. From its inception, Veni’s products and branding reflect unmistakable design and
2 trade dress features throughout its products and packaging. These design and trade dress features
3 have been used consistently throughout the course of Veni’s business operations.

4 55. Veni has approximately 30 different branded products related to cosmetics,
5 pharmaceuticals and fragrances. While each branded product in Veni’s portfolio is unique in its
6 presentation with the related products, Veni’s WOW! branding presents innovative packaging,
7 distinctive design features, combined with well-known quality of the products Veni has become
8 known for; resulting in an exciting combination of desirable products that consumers want.

9 56. Veni deliberately and carefully recognized creative achievements resulting in
10 broad intellectual property protection, including trademark registrations to protect its innovative
11 branding and trade dress.

12 57. After hard years of meticulous effort to build brand trust and expose consumers to
13 the quality goods that Veni has to offer, Veni’s competitors in the marketplace have attempted to
14 capitalize on Veni’s effort by imitating Veni’s innovative, elegant and distinctive branding and
15 packaging. In many cases, simply putting their name next to Veni’s branded products and passing
16 off their products based solely on Veni’s branded products.

17 58. Veni is the owner of the WOW! with design U.S. Federal Trademark as further
18 described in Registration No. 5,716,039 at the U.S. Patent and Trademark Office and the design
19 is shown here



27 Veni adopted and commenced use of the WOW! mark at least as early as April 4, 2014, in
28 connection with Class 3 Goods including “Body creams; Cosmetics; Facial beauty masks; Lip

1 gloss; Lip liner; Lip stains; Non-medicated skin care preparations.” (“WOW!”). The WOW!
2 trademark is inherently distinctive as applied to its Goods. By virtue of Veni’s continuous use in
3 commerce of its WOW! mark in connection with its Goods, Veni’s mark has become well and
4 favorably known to the relevant trade and public. Veni has invested substantial time, effort and
5 expense in extensive promotion throughout the United State of the Goods sold under its WOW!
6 mark. As a result, considerable goodwill has attached to the WOW! mark to VENI’s benefit. The
7 WOW! mark is representative of Veni’s reputation for designing and providing high quality Goods
8 and symbolizes the goodwill of Veni, which is invaluable.

9 59. Veni’s WOW! products and trade dress include the branding, colorful design, and
10 distinctive tube trade dress to help consumers recognize the source for the products



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20 60. As alleged below, Defendants have made and packaged confusingly similar or
21 essentially identical products, in many cases copying Veni’s prominent trademarks in their entirety
22 with only an indication somewhere in the packaging (usually in a small font) to indicate a different
23 seller resulting in widespread copyright, trademark and trade dress infringement.

24 61. Defendants have caused and continue to cause confusion with Veni’s WOW! brand
25 in several ways including:

- 26 a. Copying the entirety of the packaging with the exception of placing some extra
27 detail, i.e. “ROMANTIC BEAR”
28

1 identifier, where a prospective customer can “click” on a link, a video, or URL that takes them to
2 a store front or shopping cart styled website, allowing that customer to purchase the goods
3 similarly as described above.

4 67. The Defendant that operates the Marketplace, fully controls the Marketplace Service.

5 68. As it relates to the Defendants, the Marketplace Service allows, facilitates and
6 encourages transactions where consumers buy and sellers sell various products.

7 69. Marketplace Defendants operate their Marketplace Service with some form of key-
8 word advertising, promotion, or other advertising to improve the ranking of an item listed for sale;
9 or otherwise, direct consumers to a particular seller’s catalog of goods available for sale.

10 70. Defendants use indexing, ranking, or other scoring systems to publish results of
11 products of interest for sale to consumers permitting the consumer to locate an item quickly and
12 conveniently that they wish to purchase. These results are pushed to consumers personal devices
13 including personal computers, mobile phones, televisions, automobiles, and other personal
14 computerized devices. (“Choice Results”).

15 71. Defendants algorithmically push the consumer Choice Results to maximize the
16 defendant’s financial gain, rather than adhere to reasonable controls blocking counterfeit, illegal
17 or trademark violating suppliers.

18 72. Defendants pushing of Choice Results can and often do show infringing products
19 side-by-side with the actual and lawful seller of the same branded product. This behavior alone
20 causes consumer confusion and injures Plaintiff.

21 73. Defendants pushing of Choice Results can and often do show infringing products
22 side-by-side with the actual and lawful seller with a lower price from that of the actual seller of
23 the same product. This behavior causes consumer confusion and injures Plaintiff. This false
24 designation forces Plaintiff to dramatically reduce its product price in order to make any sales
25 causing further injury to Plaintiff.

26 74. Defendants pushing of Choice Results can and often do show infringing products
27 side-by-side with the actual seller with Marketplace Defendants own “off-brand” product at a
28 lower price from the actual seller of the same product. Defendant’s algorithmic push of its own

1 off-brand product to Plaintiff’s customers and prospective customers within a Marketplace Service
2 controlled by Defendant in unethical, unfair and anticompetitive behavior. This behavior further
3 causes consumer confusion and injures Plaintiff as consumers are unsure if the off-branded
4 product is related to the brand they have come to trust. This behavior also allows Marketplace
5 Defendants to manipulate pricing and product presentation to the consumer in a manner that
6 benefits them by either selling their own off-brand version of the product, or to promote or rank
7 higher other “sellers” that pay more in promotion and advertising revenue to the Marketplace
8 Defendant.

9 75. Marketplace Defendant benefits by pushing its Choice Results because it knows a
10 willing buyer is interested in the product, the Marketplace Defendant uniquely benefits from this
11 interest regardless of which final choice a consumer makes when concluding an actual transaction.
12 Because the Marketplace Defendant does not stop listing counterfeit, or infringing sellers this
13 uniquely propagates brand confusion and infringement. In fact, whichever supplier eventually
14 finalizes the sale through the marketplace, the Marketplace Defendant recognizes a benefit and
15 profits from the transaction.

16 76. Consumers within the defendant’s Marketplace Service operate with a belief that the
17 Marketplace Service is operating in an ethical, honest and lawful fashion. Consumers are unaware
18 that defendant’s Marketplace Service does not provide adequate safeguards to protect the
19 consumer from counterfeits, knock-offs, infringing products of defendant’s own unfair business
20 practices by providing its own “off-brand” products.

21 77. Defendant’s Marketplace Service is broken, compromised or operates in error as it
22 needs constant updates because of programming bugs and errors related to issues as alleged in this
23 complaint or other errors that compromise the merchantability, reliability, functionality and safety
24 of the marketplace.

25 78. Defendants’ Marketplace Service has errors, programming bugs and omissions
26 within it.

27 79. Marketplace Service users agree to a terms of service (“TOS”) agreement to use
28 Defendant’s Marketplace Service.

1 80. The TOS includes a provision that indicates that sellers within the marketplace will
2 not infringe the intellectual property rights of third parties. Plaintiff is a third-party beneficiary of
3 these contracts. These TOS agreements indicate that the marketplace defendant is aware that
4 sellers can in fact use their marketplace interface to list infringing products within their digital
5 catalog of products for sale.

6 81. In acknowledging that the Marketplace Service Defendants created is a potentially
7 harmful product, that when placed in the stream of commerce, allows for large-scale infringement
8 of lawful intellectual property owners rights, the Marketplace Service includes a process to allow
9 complaints about third party violations of others intellectual property rights.

10 82. Plaintiff has attempted to use this process to report infringing products and violations
11 of the TOS on many occasions.

12 83. Most complaints using marketplace defendants Intellectual Property Abuse Process
13 go unanswered, unresolved, ignored or returned with no action.

14 84. Marketplace Defendants know the identities of their Marketplace Sellers. Because
15 of this, Defendants can easily determine whether or not a Marketplace “seller” is the lawful owner
16 of any registered trademark like the WOW! trademark.

17 85. After a transaction is accomplished, Defendants reveal buyer information to sellers
18 within their marketplace.

19 86. After a transaction is accomplished, Defendants reveal seller information to buyers
20 within their marketplace.

21 87. Defendants do not reveal the identities of lawful trademark owners to consumers for
22 confusingly similar or identical products.

23 88. The public information regarding registered trademark ownership is publicly
24 available to the Marketplace Defendant through the United States Patent and Trademark Office.

25 89. Defendants are in control of and responsible for all aspects of any given transaction
26 within their Marketplace Service, including:

- 27 a. Control of the process for a seller listing a product for sale
- 28 b. Allowing seller to show pictures of their products

- 1 c. Allowing seller to describe their products
- 2 d. Provide consumers with a product “listing” when they attempt to search or filter
- 3 the available products within the marketplace
- 4 e. Provide the capability for consumers to sort similar products based upon criteria
- 5 like price, location, seller rating, and other factors, sometimes referred to as
- 6 “trending”.
- 7 f. Allowing a Marketplace Seller to promote or advertise their products within the
- 8 Marketplace Service.
- 9 g. They do not provide a filter to sort on any given lawful trademark owner, like
- 10 Plaintiff, so that consumers would be aware that any listing was considered non-
- 11 infringing, counterfeit or a knock-off.
- 12 h. Operate a shopping cart or similar service that allows consumers to place online
- 13 goods into a digital storage bin.
- 14 i. Operate the payment mechanism to allow consumers to “check-out” or pay for
- 15 any items in their shopping cart.
- 16 j. Charge fees or percentages of the sale to the Seller to advertise, market or after a
- 17 sale is achieved.
- 18 k. Responsible for distributing collected funds to the seller after a sale is achieved.
- 19 l. Responsible for ensuring that sellers ship/deliver the products purchased by the
- 20 consumer.
- 21 m. Provide a mechanism for returns or damaged goods

22 90. As it relates to the Defendants and at all relevant times, the Defendants controlled
23 and are responsible for the Marketplace Service as described herein.

24 91. Defendants’ Marketplace Service provides analytics and statistical data that allow
25 other third parties to track trending sales data and other information (“Trending Data”).

26 92. It is this analytical Trending Data that allows the Marketplace Defendant to
27 determine which products to create “off-brand” replicas to compete with the Marketplace Sellers
28 within their own Marketplace Service. This behavior results in unfair competition and unethical

1 business practices, including violations of antitrust regulations.

2 93. This Trending Data is also made available to the public and third-party competitors
3 with no regard to safeguard the lawful trademark rights and interests like those of Veni, or who
4 the brand or trademark owner is, as it relates to any product related sales.

5 94. This Trending Data created by or made available by the Marketplace Defendants
6 allows and encourages counterfeits, knock-offs and trademark infringement.

7
8 **MARKETPLACE SELLERS**

9 95. Marketplace Sellers use the internet in such a manner as to capitalize on confusion
10 or infringement of Veni's WOW! branded products. This behavior can present in several ways
11 (not necessarily exclusive of each other), including: the seller has their own website or URL, they
12 can create a virtual store within the Marketplace Service to sell goods, they can create a channel,
13 handle or nickname that allows the Marketplace Seller to create promotional marketing and
14 advertising material, often with an affiliated identifier, linking to some online mechanism
15 permitting interested customers to purchase infringing goods either directly from the Marketplace
16 Seller or giving them credit for the sale in some fashion. Some of the larger sellers use
17 combinations of the above-described behaviors to sell confusing goods and circumvent all lawful
18 barriers to legal commerce.

19 96. As it relates to Veni, after Veni's continuous efforts to build brand recognition and
20 reputation, the Marketplace Sellers decided to knock-off, copy, infringe or counterfeit Veni's
21 brands and sell them through the Marketplace Service controlled by the Marketplace Defendants.
22 There are many examples of the infringing behavior by Marketplace Sellers using the Marketplace
23 Service controlled by the Marketplace Defendants.

- 24 a. ROMANTIC BEAR Example – in this example, the exact same WOW! branded
25 lip liner/gloss product is used, the top of the tube claims to be ROMANTIC
26 BEAR. It is obvious to anyone that Veni's WOW! brand and trade dress is copied
27 in its entirety.

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97. Without investing any of the resources or innovation required in developing a strong brand identity and intellectual property portfolio, the Marketplace Sellers reaped substantially all the benefits of Veni’s investment and goodwill in the market, by unlawfully using Veni’s WOW! brand on essentially identical goods.

98. Marketplace Seller’s use of Veni’s product trade dress and its use of various trademark brands that infringe Veni’s trademarks rights has and is likely to cause confusion or mistake, or to deceive consumers, purchasers, and others into thinking that the Marketplace Seller products are Veni’s product, or that they are sponsored by or affiliated with Veni, when they are not.

99. Veni’s goodwill among consumers is closely tied to its position as quality provider of uniquely valuable cosmetic related products. The Marketplace Sellers’ flagrant, willful and relentless copying of Veni’s intellectual property rights in its cosmetic products not only allows the Marketplace Seller’s to benefit from Veni’s investment, but it also threatens to diminish the very important goodwill that Veni has cultivated with its products. The value of such goodwill is evident in part in the success that resulted from the Marketplace Seller’s wrongful and illegal appropriation after stealing Veni’s aesthetic and branding strategies, some Marketplace Sellers have made a fortune at Veni’s expense.

100. These Marketplace Sellers do not follow Veni’s quality control standards, meaning

1 their confusingly infringing conduct damages Veni's WOW! brand in ways that are hard to
2 calculate because of potential quality of the product being less than what customers and
3 prospective customers have come to expect.

4 101. Further, this behavior has caused or will cause physical injury to Veni's WOW!
5 customers. The WOW! customers are placing a long-lasting lip liner (like a lip stick) on their lips,
6 without proper quality control, the goods can cause injury to the individual misusing the product
7 because of inferior quality or failure to follow the instructions for proper care/use as Veni has
8 developed over the years.

9 102. The Marketplace Sellers success in copying Veni's branding, trademarks and trade
10 dress has caused immeasurable injury to Veni.

11 103. The Marketplace Sellers success has also caused or will cause harm or injury to
12 Veni's customers as described herein.

13 104. Marketplace Defendants that operate the Marketplace Service have also benefitted
14 from this illegal behavior as they recognize or realize a percentage of gain from every transaction.

15 105. The Marketplace Sellers intentionally chose to infringe Veni's trade dress, and
16 trademark rights through the design, packaging and promotion of its cosmetic products, and it did
17 so willfully to trade upon the goodwill that Veni has developed in connection with its high-quality
18 branded products.

19 106. Veni is informed and believes that the Marketplace Sellers began producing, selling,
20 and marketing its infringing and copycat products after Veni's first use of the WOW! trademark
21 and trade dress.

22 107. Each of the Marketplace Sellers line of accused products embodies a combination of
23 several elements of the Veni Product Trade Dress identified above, namely, a product
24 configuration with a total image and overall appearance that is unique, including features such as
25 size, shape, color or color combinations, texture, graphics, container and sales techniques.

26
27 **CIRCUMVENTION CYCLE**

28 108. On occasions when the Marketplace Defendants responded to a trademark

1 infringement claim made by Veni, the Marketplace Seller circumvented the intent of the terms of
2 service agreement, any purported safeguards in the Marketplace Service and continuously sold
3 infringing products.

4 109. A Marketplace Seller often does this circumvention behavior simply by setting up a
5 separate account within the marketplace controlled by the Marketplace Defendants. This starts a
6 loop of abuse that benefits the Defendants to Veni's detriment. Veni has to constantly monitor
7 and seek out infringing sellers within the marketplace, report the seller, wait for the Marketplace
8 Defendant to act, watch as the offending seller then establishes another marketplace storefront and
9 repeats the same abuse. ("Circumvention Cycle")

10 110. Marketplace Defendants have no or have inadequate safeguards to protect legitimate
11 and lawful trademark owners from brand confusion and infringement within its Marketplace
12 Service. To the extent any reported abuse is acted upon, the Circumvention Cycle of abuse
13 demonstrates that the Marketplace Defendant is not committed to removing infringement
14 behavior.

15 111. The described circumvention behavior benefits the Defendants to Veni's detriment.

16 112. The circumvention is only made possible by the lack of proper safeguards, a correctly
17 programmatically operating Marketplace Service and adequate supervision by the Defendants.

18
19 **FIRST CAUSE OF ACTION**

20 **TRADE DRESS INFRINGEMENT**

21 **(Lanham Act Section 43(a), 15 U.S.C. §1125(a))**

22 113. Plaintiff re-alleges and incorporates herein by reference the preceding paragraphs as
23 though fully set forth herein.

24 114. Veni is the owner of all right and title to the distinctive Veni Trade Dress. The Veni
25 Trade Dress, as embodied in Veni products, has acquired unique and identifiable meaning, and is
26 not functional.

27 115. In addition, the Veni Trade Dress, embodied in the packaging for the Veni products,
28 is inherently distinctive and not functional.

1 116. Based on extensive and consistent advertising, promotion and sales throughout the
2 United States, the Veni Trade Dress enjoys distinctive brand awareness and meaning among
3 consumers, identifying Veni as the source of these products.

4 117. Veni's extensive promotion of the distinctive Veni Trade Dress has resulted in Veni's
5 acquisition of valuable, legally protected rights in the Veni Trade Dress as well as considerable
6 customer goodwill.

7 118. Defendant's line of products has misappropriated the Veni Trade Dress by
8 mimicking a combination of several elements of that trade dress as stated above. The manufacture
9 and distribution of Defendants products with packaging and product design features that mimic a
10 combination of several elements of the Veni Trade Dress is likely to cause confusion, or to cause
11 mistake, or to deceive the consumer as to the affiliation, connection or association of Defendant's
12 with Veni, or as to the origin, sponsorship, or approval by Veni of Defendant's goods, services or
13 commercial activities.

14 119. Defendant's actions constitute unfair competition and false designation of origin in
15 violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

16 120. Defendants knew of Veni's Product Trade Dress when it designed its products, and
17 has refused to change its product or packaging design in response to Veni's requests and demands.
18 Accordingly, Defendant's infringement has been and continues to be intentional, willful and
19 without regard to Veni's Product Trade Dress.

20 121. As a direct and proximate result of Defendant's unlawful acts and practices,
21 including those set forth above, Defendant's has caused, is causing, and unless immediately
22 enjoined by this Court, will continue to cause immediate and irreparable harm to Veni, for which
23 there is no adequate remedy at law, and for which it is entitled to injunctive relief.

24 122. Veni is informed and believes, and on that basis alleges, that Defendants has gained
25 profits by virtue of its infringement of the Veni Product Trade Dress.

26 123. Veni also has sustained damages as a direct and proximate result of Defendant's
27 infringement of the Veni Product Trade Dress in an amount to be proven at trial.

28 124. Because Defendant's actions have been willful, Veni is entitled to treble its actual

1 damages or Defendant's profits, whichever is greater, and to an award of costs, and, this being an
2 exceptional case, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

3
4 **SECOND CAUSE OF ACTION**

5 **FEDERAL TRADEMARK INFRINGEMENT**

6 **(15 U.S.C. §1114)**

7 125. Plaintiff re-alleges and incorporates herein by reference the preceding paragraphs as
8 though fully set forth herein.

9 126. Veni owns multiple federal trademark registrations for the distinctive naming of
10 several of its product lines, i.e., the Registered Trademarks.

11 127. The Defendant's line of products or offerings has infringed the Registered
12 Trademarks by using identical brand names in Defendant's product listings or throughout the
13 Marketplace Service.

14 128. Defendant's use of its infringing product lineup is likely to cause confusion, or to
15 cause mistake, or to deceive the consumer as to the affiliation, connection or association of
16 Defendant's with Veni, or as to the origin, sponsorship, or approval by Veni of Defendant's goods,
17 services or commercial activities.

18 129. Defendant's use of the infringing product lineup enables Defendant's to benefit
19 unfairly from Veni's reputation and success, thereby giving Defendant's infringing products sales
20 and commercial value they would not have otherwise.

21 130. Before Defendant's first use of the infringing product lineup, Defendant's was aware
22 of Veni's business and had either actual notice and knowledge, or constructive notice of, Veni's
23 Registered Trademarks.

24 131. Defendant's unauthorized use of the infringing product lineup is likely, if not certain,
25 to deceive or to cause confusion or mistake among consumers as to the origin, sponsorship or
26 approval of Defendant's products and/or to cause confusion or mistake as to any affiliation,
27 connection or association between Veni and Defendant's, in violation of 15 U.S.C. § 1114(a).

28 132. Veni is informed and believes, and on that basis alleges, that Defendant's

1 infringement of Veni's Registered Trademarks as described herein has been and continues to be
2 intentional, willful and without regard to Veni's rights.

3 133. Veni is informed and believes, and on that basis alleges, that Defendant's has gained
4 profits by virtue of its infringement of Veni's Registered Trademarks.

5 134. Veni will suffer and is suffering irreparable harm from Defendant's infringement of
6 Registered Trademarks insofar as Veni's invaluable goodwill is being eroded by continuing
7 infringement.

8 135. Veni has no adequate remedy at law to compensate it for the loss of business
9 reputation, customers, market position, confusion of potential customers and goodwill flowing
10 from Defendant's infringing activities. Pursuant to 15 U.S.C. § 1116, Veni is entitled to an
11 injunction against Defendant's continuing infringement of Veni's Registered Trademarks. Unless
12 enjoined, Defendant's will continue its infringing conduct.

13 136. Because Defendant's actions have been committed with intent to damage Veni and
14 to confuse and deceive the public, Veni is entitled to treble its actual damages or Defendant's
15 profits, whichever is greater, and to an award of costs and, this being an exceptional case,
16 reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a) and § 1117(b).

17
18 **THIRD CAUSE OF ACTION**

19 **COMMON LAW TRADEMARK INFRINGEMENT**

20 137. Plaintiff re-alleges and incorporates herein by reference the preceding paragraphs as
21 though fully set forth herein.

22 138. Veni has prior rights in Veni's Registered Trademarks and other unregistered marks,
23 including WOW!.

24 139. Defendant's product lineup and offering has infringed Veni's Registered Trademarks
25 and unregistered common law trademark rights by using identical or similar names in Defendant's
26 products.

27 140. Defendant's use of its infringing naming convention is likely to cause confusion, or
28 to cause mistake, or to deceive the consumer as to the affiliation, connection or association of

1 Defendant's with Veni, or as to the origin, sponsorship, or approval by Veni of Defendant's goods,
2 services or commercial activities.

3 141. Defendant's use of the infringing product lineup enables Defendant's to benefit
4 unfairly from Veni's reputation and success, thereby giving Defendant's infringing products sales
5 and commercial value they would not have otherwise.

6 142. Prior to Defendant's first use of the infringing application icons, Defendant's was
7 aware of Veni's business and had either actual notice and knowledge, or constructive notice of
8 Veni's Registered Trademarks and other unregistered marks.

9 143. Defendant's unauthorized use of the infringing product lineup is likely, if not certain,
10 to deceive or to cause confusion or mistake among consumers as to the origin, sponsorship or
11 approval of Defendant's product lineup and/or to cause confusion or mistake as to any affiliation,
12 connection or association between Veni and Defendant's, in violation of 15 U.S.C. § 1114(a).

13 144. Veni is informed and believes, and on that basis alleges, that Defendant's
14 infringement of Veni's Registered Trademarks and unregistered marks, as described herein, has
15 been and continues to be intentional, willful and without regard to Veni's rights in its Registered
16 Trademarks and unregistered common law marks.

17 145. Veni is informed and believes, and on that basis alleges, that Defendant's has gained
18 profits by virtue of its infringement of Veni's Registered Trademarks and unregistered common
19 law marks.

20 146. Veni will suffer and is suffering irreparable harm from Defendant's infringement of
21 Veni's Registered Trademarks and unregistered common law marks insofar as Veni's invaluable
22 goodwill is being eroded by Defendant's continuing infringement. Veni has no adequate remedy
23 at law to compensate it for the loss of business reputation, customers, market position, confusion
24 of potential customers and goodwill flowing from the Defendant's infringing activities.

25 147. Veni is entitled to an injunction against Defendant's continuing infringement of
26 Veni's Registered Trademarks and unregistered common law marks. Unless enjoined,
27 Defendant's will continue its infringing conduct.

28 148. Because Defendant's actions have been committed with intent to damage Veni and

1 to confuse and deceive the public, Veni is entitled to treble its actual damages or Defendant's
2 profits, whichever is greater, and to an award of costs and, this being an exceptional case,
3 reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a) and § 1117(b).

4
5 **FOURTH CAUSE OF ACTION**

6 **NEGLIGENCE**

7 149. Plaintiff re-alleges and incorporates herein by reference the preceding paragraphs as
8 though fully set forth herein.

9 150. Marketplace Defendants as suppliers of the marketplace service owed a duty to the
10 general public, and to Veni in particular, to use reasonable care to ensure that each and every seller
11 or storefront authorized to use the service was trained, lawful and otherwise using the marketplace
12 service for its intended use and complied with the qualities and characteristics that they
13 represented it had. Including the duty owed to Veni through the TOS.

14 151. Marketplace Sellers and DOES 1 to 200, as users/sellers of the marketplace service
15 owed a duty to the general public, and to Veni in particular, to use reasonable care to ensure that
16 their use of the marketplace service was lawful and otherwise using the marketplace service for
17 its intended use and complied with the qualities and characteristics that they represented it had.
18 This includes the duty acknowledged within the TOS.

19 152. Marketplace Defendants, Marketplace Sellers and DOES 1 to 200, breached that duty
20 when they permitted trademark infringement, knowing that, among other things, that the
21 Marketplace Service, had a defect that did result in trademark infringement.

22 153. Defendants as suppliers and users of a marketplace service designed for another for
23 use, which it created, supplied and controlled, had a duty to use reasonable care to give warning
24 of the conditions of the Marketplace Service or of facts which make it likely to be dangerous to
25 consumers and the public that expect to use the Marketplace Service or be endangered by its
26 probable use, when it had reason to know that the marketplace service defects permitted illegal
27 use of trademark infringing products and that the public would not realize its dangerous condition.

28 154. Defendants failed to fulfill their duty to warn.

1 155. Defendants failed to supervise their usage and distribution of the Marketplace
2 Service to the general public.

3 156. Because the marketplace service would be or could be dangerous if negligently used,
4 Defendants, had a duty to exercise reasonable care in the design, manufacture, testing and
5 inspection of the marketplace service and in the testing and inspection of any component parts
6 made by another so that the service could be safely used in the manner and for the purpose for
7 which it was made. Defendants failed to fulfill this duty such that the marketplace service allows
8 trademark infringement and the circumvention cycle, among other things, a defect that did result
9 in injury and trademark infringement.

10 157. Plaintiff is informed and believes and thereon alleges that Defendants, had reason to
11 know that the Marketplace Service was likely to be dangerously defective, in that it had the
12 potential to infringe or otherwise cause intellectual property injury, possibly causing physical
13 injury to Veni's customers and prospective customers for inferior products and therefore had a
14 duty to use reasonable care to inspect and test the marketplace service before selling it to members
15 of the public, including the Marketplace Sellers. Said Defendants failed to fulfill this duty, and
16 the lack of such testing and inspection proximately and directly caused the injuries and damages
17 to Plaintiff, referenced below.

18 158. As a direct and proximate result of the negligence, carelessness, recklessness,
19 wantonness and unlawfulness of Defendants, and each of them, and the resulting marketplace
20 service failure, as aforesaid, Veni sustained severe and serious injury to its trademark property
21 rights and interests, all to Plaintiff's damage in a sum within the jurisdiction of this Court and to
22 be shown according to proof.

23 159. As a further and proximate result of said conduct of Defendants, and each of them,
24 Veni was compelled to incur expenses to protect its intellectual property as well as protect
25 consumers of its products from possible harm or injury from counterfeit products introduced by
26 the Marketplace Service. Plaintiff is informed and believes, and thereon alleges, that further
27 services of said nature will be required by Plaintiff for a yet to be determined period in the future,
28 all to the damage of Plaintiff in an amount to be shown according to proof.

1 160. At the time of the injury, and as a continuing harm, as aforesaid, Veni's trademark
2 interests and rights had unique value and earning capability. By reason of the foregoing, Veni's
3 trademark rights have been damaged and Veni is informed and believes, and upon such
4 information and belief, alleges that the damage to its trademark rights and interests have suffered
5 an incalculable injury as of the filing of this Complaint and into the foreseeable future, all to
6 Plaintiff's damage in an amount to be shown according to proof.

7
8 **FIFTH CAUSE OF ACTION**

9 **CALIFORNIA STATE STRICT PRODUCT LIABILITY**

10 161. Plaintiff re-alleges and incorporates herein by reference the preceding paragraphs as
11 though fully set forth herein.

12 162. Marketplace Defendants, manufactured, designed, assembled, compounded, tested
13 or failed to test, inspected or failed to inspect, packaged, labeled, fabricated, constructed, analyzed,
14 distributed, serviced, merchandised, recommended, warned, instructed, advertised, promoted,
15 marketed, leased, and/or sold a certain marketplace service, which was intended by the
16 Marketplace Defendants', to be used as a Marketplace Service to conduct commerce between
17 buyers and sellers and for other related activities.

18 163. Marketplace Defendants, knew that the previously-described marketplace service
19 was to be used without inspection for defects by consumers, Marketplace Sellers and the general
20 public.

21 164. The previously-described marketplace service was unsafe for its intended use
22 because of defects in its manufacture, design, testing, warnings, installation components and
23 constituents, so that it could not safely serve its purpose, but would instead expose the users of
24 said service to injury because of the failure of Marketplace Defendants, to properly guard, protect,
25 design, manufacture, instruct, or warn the users of the previously-described marketplace service
26 from these defective propensities, including unlawful trademark infringement and exposure to
27 infringing products that can and do cause physical harm to the consumer.

28 165. Marketplace Defendants were aware that the marketplace service contained defects

1 that allowed Marketplace Sellers to misuse, abuse or otherwise conduct illegal activity as it relates
2 to Veni's trademark property rights and interests.

3 166. Marketplace Defendants were aware of the Circumvention Cycle of abuse directly
4 attributed to the defects in the marketplace service provided by Marketplace Defendants.

5 167. Marketplace Defendants claim to care about intellectual property rights, but have
6 introduced into the streams of commerce, products and services that cause injury and harm to
7 intellectual property rights of Veni and place Veni's customers and prospective customers at risk
8 from inferior counterfeit goods.

9 168. Marketplace Defendants owed a duty to ensure that their marketplace service
10 operated in a fashion that did not violate Veni's trademark property rights and interests and did
11 not pose a risk of injury to Veni's customers and prospective customers.

12 169. Plaintiff was either not aware of or when it became aware of reported infringing
13 activities to the Marketplace Defendants.

14 170. Marketplace Defendants, sold, licensed, leased or otherwise transferred for valuable
15 consideration to a third-party access to the previously-described marketplace service.

16 171. The Marketplace Service inherently fails to provide adequate safeguards to protect
17 Veni's trademark rights and interests; or to protect Veni's customers from physical injury caused
18 by inferior counterfeit products.

19 172. As a legal result of the above-described defective condition, Veni's trademark
20 property interest was harmed. As a result of such injuries, Veni has suffered general damages in
21 an amount to be proven at the time of the trial of this action.

22 173. As a further legal result of the above-described defective condition, Veni has
23 incurred, and will continue to incur, expenses to repair, rehabilitate or otherwise protect its
24 trademark property, goodwill and reputation. The full amount of these expenses is not known to
25 him at this time. Veni prays leave to amend this complaint to state the amount when it becomes
26 known to him.

27 174. As a further legal result of the above-described defective condition, Veni has
28 necessarily suffered a loss of earnings, and plaintiff is informed and believes, and thereon alleges,

1 that it will continue such a loss for an indefinite time in the future. Veni's trademark earning
2 capacity has been greatly reduced, all to further special damages in amounts currently unknown.
3 Veni prays leave to amend this Complaint to assert the true amounts when they are ascertained.
4

5 **SIXTH CAUSE OF ACTION**

6 **BREACH OF CONTRACT**

7 175. Plaintiff re-alleges and incorporates herein by reference the preceding paragraphs as
8 though fully set forth herein.

9 176. This cause of action is brought against all Defendants.

10 177. Plaintiff is a Third-Party Beneficiary as contemplated by the Marketplace Seller
11 Terms of Service as such is authorized to pursue remedies at law for breach or anticipatory breach
12 of those terms as they relate to the Defendants conduct. The terms of service entered into by all
13 parties reflect contractual commitments and obligations.

14 178. The contract at issue contains a warrant that a Marketplace Seller will respect the
15 intellectual property rights of others. By selling infringing goods within the marketplace, the
16 Marketplace Seller is in breach of contract.

17 179. The Marketplace Defendants have pledged to respect the rights of intellectual
18 property right holders. However, Marketplace Defendants have designed their marketplace to
19 make it easy to violate those rights. Further, even when put on notice of violation, infringement
20 and other unlawful conduct, Marketplace Defendants have not stopped the illegal conduct.

21 180. Marketplace Defendants have the ability to block, take-down or otherwise stop the
22 sale of counterfeit, infringing or illegal products, but chooses not to do so. Or, when it finally
23 does take action to block infringing products, the circumvention cycle of abuse begins. This is a
24 material breach of the contract as it relates to third-party beneficiaries

25 181. Defendants, and each of them, have failed and refused, and continue to refuse, to
26 tender their performance as required by the contract. This includes that defendant's breached the
27 contract beginning as soon as an infringing product is placed within the marketplace, regardless if
28 Veni ever reported the same.

1 182. This breach of contract, has caused continuous and permanent harm to Veni.

2 183. Defendant's failure and refusal to perform its obligations under the contract has
3 directly damaged plaintiff through the loss of consumer sales of at least \$2,000,000 or an amount
4 to be proven at trial.

5 184. Further, defendants' breach of contract has caused plaintiff to lose the benefit of the
6 contract as it relates to lawful activities and sales within the marketplace.

7 185. Plaintiff has suffered the cost of using the error prone marketplace systems to report
8 counterfeits, infringement or other unlawful conduct. Plaintiff has even received threats from the
9 marketplace defendants to stop alerting them to infringement behavior at the risk of losing access
10 to the marketplace.

11 186. In addition, plaintiff has been damaged in an amount according to proof at trial for
12 the lost opportunities, had it known that Defendants were not going to fulfill their obligations
13 under the contract.

14

15

SEVENTH CAUSE OF ACTION

16

Intentional Interference With Prospective Advantage

17

187. Plaintiff re-alleges and incorporates herein by reference the preceding paragraphs as
18 though fully set forth herein.

19

188. This cause of action is brought against all defendants.

20

189. Defendants, and each of them, knew of or should have known of Plaintiff's ongoing
21 business relationships and knew of Plaintiff's marketing efforts directed to potential clients either
22 interested in Veni's products or returning to purchase Veni's products. Defendants further knew
23 of Plaintiff's previous marketing of other similar products.

24

190. Because of defendants' breach of the contract with plaintiff, defendants, and each of
25 them, intentionally interfered with plaintiff's prospective economic advantage from ongoing
26 relationships and marketing efforts associated with Veni's products.

27

191. As a result of Defendants Analytics and sales trend analysis, Defendants facilitated
28 unfair competitive conduct by encouraging trade dress infringement, trademark infringement,

1 passing-off or unfair competition, resulting in Defendant's intentional interference with Veni's
2 prospective economic advantage from existing and ongoing relationships and marketing efforts
3 associated with Veni's products.

4 192. As a direct result of defendants' actions and omissions, plaintiff has been damaged
5 in an amount according to proof at trial.

6 193. Defendants' actions were undertaken with fraud, malice or oppression, or with a
7 conscious disregard of the rights of plaintiff, and, therefore, plaintiff is entitled to an award of
8 exemplary and punitive damages against defendants, and each of them, in an amount according to
9 proof.

10 194. Veni will suffer and is suffering irreparable harm from Defendant's intentional
11 interference with Veni's prospective advantage as it relates to Veni's Registered Trademarks and
12 products insofar as Veni's invaluable goodwill is being eroded by Defendant's continuing
13 misconduct. Veni has no adequate remedy at law to compensate it for the loss of business
14 reputation, customers, market position, confusion of potential customers and goodwill flowing
15 from the Defendant's misconduct.

16 195. Veni is entitled to an injunction against Defendant's continuing interference with
17 Veni's prospective advantage. Unless enjoined, Defendant's will continue its infringing conduct
18

19 **EIGHTH CAUSE OF ACTION**

20 **CIVIL CONSPIRACY**

21 196. Plaintiff re-alleges and incorporates herein by reference the preceding paragraphs as
22 though fully set forth herein.

23 197. This cause of action is brought against all defendants.

24 198. Marketplace Defendants are aware that the Marketplace Service permits illegal and
25 abusive conduct. The Marketplace Defendants benefit from the harmful and illegal conduct
26 described within this Complaint. The Marketplace Defendants are aware of all actions that occur
27 by all users within their Marketplace Service.

28 199. Marketplace Sellers know and understand that they can use the Marketplace Service

1 for illegal activity with no fear of consequence from Marketplace Defendants. In the event a
2 Marketplace Defendant does revoke access to the Marketplace Service, the Marketplace Seller
3 simply sets up a new shop and continues the Circumvention Abuse described within this
4 Complaint.

5 200. The Trending Data information used by the Defendants is used for an unlawful
6 purpose.

7 201. Creating knock-offs or infringing products violates Veni's trademark rights and is an
8 illegal harmful act.

9 202. Providing "off-brand" goods that are essentially identical to Veni's products,
10 particularly when the off-branded goods are determined because of the Trending Data analytics is
11 a form of unfair competition and harms Veni.

12 203. The Defendants all have an express and implied agreement between them, and that
13 agreement does in fact contribute to the overall harm and injury suffered by Veni.

14 204. The actions of all these parties contributes to unlawful and harmful purpose.

15 205. The actions of Defendants causes harm to Veni as described herein.

16 206. As a direct result of Defendants actions or inaction when action was necessary, Veni
17 has been damaged in an amount according to proof at trial.

18
19 **NINTH CAUSE OF ACTION**

20 **UNJUST ENRICHMENT**

21 207. Plaintiff re-alleges and incorporates herein by reference the preceding paragraphs as
22 though fully set forth herein.

23 208. This cause of action is brought against all defendants.

24 209. Defendants, and each of them jointly and severally, through their wrongful conduct
25 as described in this Complaint, have reaped substantial profits from the monies paid to them,
26 belonging to plaintiff, and in so doing has caused plaintiff, to suffer substantial monetary losses,
27 as well as emotional stress, reputational injury and property injury, all of which damages and costs
28 were not only foreseeable but were the intended consequences of defendants' collective actions.

1 210. Defendants have been unjustly enriched.

2 211. Based on the facts as alleged herein and as proven at trial, in equity and good
3 conscience, it would be unconscionable and otherwise unjust for defendants to enrich themselves
4 at the expense of plaintiff.

5 212. Veni seeks a worldwide accounting and disgorgement of all ill-gotten gains and
6 profits resulting from the Defendants inequitable activities.

7 213. As a proximate result of the unlawful conduct of defendant as herein alleged, plaintiff
8 has incurred damages to be proven at trial, in at least the sum in excess of the jurisdictional amount
9 of this Court, plus attorney's fees and costs, and additional amounts according to proof at time of
10 trial, including interest, attorneys' fees and costs.

11

12

TENTH CAUSE OF ACTION

13

UNFAIR BUSINESS PRACTICES

14

(Violation of § 17200 *et seq* of the California Business and Professions Code)

15

16

214. Plaintiff re-alleges and incorporates herein by reference the preceding paragraphs as
though fully set forth herein.

17

215. This cause of action is brought against all defendants.

18

19

216. The business practice of defendants is unlawful and fraudulent and violates the law
as alleged herein. Further, defendants, and each of them, knew that their business practice were
20 unlawful and fraudulent.

21

22

217. Pursuant to Sections 17200 *et seq.* of the California Business and Professions Code,
unfair business practices include any unlawful, unfair or fraudulent business practice. The
23 fraudulent and unlawful conduct of defendants as alleged herein is an unlawful and fraudulent
24 practice within the provisions of Sections 17200 *et seq.* of the California Business and Professions
25 Code, and, accordingly, constitutes a violation of Sections 17200 *et seq.* of the California Business
26 and Professions Code.

27

28

218. The acts of Defendant's described above constitute fraudulent and unlawful business
practices as defined by California Business & Professions Code § 17200, *et seq.*

1 219. Veni has valid and protectable prior rights in the Veni Product Trade Dress, and the
2 Registered Trademarks. The Veni Product Trade Dress identifies Veni as the source of its
3 cosmetic and fragrance products. The Veni Product Trade Dress is inherently distinctive, and,
4 through Veni's long use, has come to be associated solely with Veni as the source of the products
5 on which it is used.

6 220. Defendant's use of its infringing trade dress is likely to cause confusion as to the
7 source of Defendant's products and is likely to cause others to be confused or mistaken into
8 believing that there is a relationship between Defendant's and Veni or that Defendant's products
9 are affiliated with or sponsored by Veni.

10 221. The above-described acts and practices by Defendant's are likely to mislead or
11 deceive the general public and therefore constitute fraudulent business practices in violation of
12 California Business & Professions Code §§ 17200, et seq.

13 222. The above-described acts constitute unfair competition under Section 43(a) of the
14 Lanham Act, 15 U.S.C. § 1125(a), and trademark and trade dress infringement under Section 32
15 of the Lanham Act, 15 U.S.C. § 1114, and are therefore unlawful acts in violation of California
16 Business & Professions Code §§ 17200, et seq.

17 223. Defendants acted willfully and intentionally in designing its infringing trade dress
18 and product packaging, with full knowledge of Veni's prior rights in the distinctive Veni Product
19 Trade Dress, Registered Trademarks, its common law trademarks, and with an intent to cause
20 confusion or mistake or to deceive customers into believing that there is an affiliation between
21 Defendant's and Veni or between Defendant's products and Veni's products.

22 224. The unlawful and fraudulent business practices of Defendant's described above
23 present a continuing threat to, and is meant to deceive members of, the public in that Defendant's
24 desires to promote its products by wrongfully trading on the goodwill of the Veni Product Trade
25 Dress, the Registered Trademarks and its common law trademarks.

26 225. As a direct and proximate result of these acts, Defendant's has received, and will
27 continue to profit from, the strength of the Veni Product Trade Dress, the Registered Marks and
28 Veni's common law trademarks.

1 226. As a direct and proximate result of Defendant’s wrongful conduct, Veni has been
2 injured in fact and has lost money and profits, and such harm will continue unless Defendant’s
3 acts are enjoined by the Court.

4 227. Veni has no adequate remedy at law for Defendant’s continuing violation of Veni’s
5 rights.

6 228. Defendant’s should be required to restore to Veni any and all profits earned as a result
7 of their unlawful and fraudulent actions, or provide Veni with any other restitutionary relief as the
8 Court deems appropriate.

9
10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, plaintiff prays for judgment against defendants, and each of them, as more
12 fully set forth below.

13 1. A judgment that Defendants have infringed one or more of Veni's trademarks;

14 2. An order preliminarily and permanently enjoining Defendants and their officers,
15 directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in
16 concert with them, and their parents, subsidiaries, divisions, successors and assigns, from directly
17 or indirectly infringing the Veni Product Trade Dress, Registered Trademarks, unregistered
18 common law trademarks, or using any other product or packaging design or designations similar
19 to or likely to cause confusion with the Veni Product Trade Dress, Registered Trademarks, and
20 unregistered common law trademarks; from passing off Defendant’s products as being associated
21 with and or sponsored or affiliated with Veni; from committing any other unfair business practices
22 directed toward obtaining for themselves the business and customers of Veni; and from
23 committing any other unfair business practices directed toward devaluing or diminishing the brand
24 or business of Veni.

25 3. Actual damages suffered by Veni as a result of Defendants’ unlawful conduct, in an
26 amount to be proven at trial, as well as prejudgment interest as authorized by law;

27 4. Reasonable funds for future corrective advertising;

28 5. An accounting of Defendants’ profits pursuant to 15 U.S.C. § 1117;

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6. A judgment trebling any damages award pursuant to 15 U.S.C. § 1117;

7. Punitive damages pursuant to California Civil Code § 3294;

8. Restitutionary relief against Defendants and in favor of Veni, including disgorgement of wrongfully obtained profits and any other appropriate relief;

9. Costs of suit and reasonable attorneys' fees, including, but not limited to, a finding that this case is exceptional and awarding attorneys' fees and costs pursuant to 35 U.S.C. § 285; and

10. Any other remedy to which Veni may be entitled, including all remedies provided for in 15 U.S.C. § 1117, Cal. Bus. & Prof Code §§ 17200, et seq., 17500, et seq., and under any other California law.

Dated: February 12, 2024

By: /Scott L Nielson/
Scott L Nielson
Attorney for Plaintiff Veni Group, LLC