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13 Attorneys for Plaintiff,

14 AYLA, LLC

15  
16 IN THE UNITED STATES DISTRICT COURT  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
18

19  
20 AYLA, LLC, a Delaware Limited  
Liability Company,

21 Plaintiff,

22 v.

23 ALYA SKIN PTY. LTD., an  
24 Australian Private Company,

25 Defendant.  
26

Case No. 3:19-cv-00679

27 **COMPLAINT FOR TRADEMARK  
INFRINGEMENT, FALSE  
DESIGNATION OF ORIGIN, AND  
UNFAIR COMPETITION**

28 **DEMAND FOR JURY TRIAL**

1 Plaintiff Ayla, LLC (“Ayla”) hereby complains of Ayla Skin Pty. Ltd.  
2 (“Defendant”) and alleges as follows:

3 **I. JURISDICTION AND VENUE**

4 1. This is an action for (1) trademark infringement under 15 U.S.C.  
5 § 1114, (2) trademark infringement and false designation of origin under  
6 15 U.S.C. § 1125(a), (3) unfair competition under California Business &  
7 Professions Code §§ 17200, *et seq.*, and (4) California common law unfair  
8 competition.

9 2. The Court has original subject matter jurisdiction over the claims  
10 that relate to trademark infringement and false designation of origin pursuant to  
11 15 U.S.C. §§ 1116 and/or 1121(a) and also pursuant to 28 U.S.C. §§ 1331 and  
12 1338, as these claims arise under the laws of the United States. The Court has  
13 supplemental jurisdiction over the claims in this Complaint that arise under state  
14 statutory and common law pursuant to 28 U.S.C. §§ 1338(b) and 1367(a),  
15 because the state law claims are so related to the federal claims that they form  
16 part of the same case or controversy and derive from a common nucleus of  
17 operative facts.

18 3. This Court has personal jurisdiction over Defendant because  
19 Defendant has a continuous, systematic, and substantial presence within this  
20 Judicial District and within California. Upon information and belief, Defendant  
21 sells its products offered in connection with the infringing marks to consumers  
22 in California, including within this Judicial District, and ships its products  
23 offered in connection with the infringing marks to California, including within  
24 this Judicial District. Defendant markets and advertises its products and  
25 services online in connection with the infringing marks through the  
26 <https://www.alyaskin.com/> URL, which is available and accessible in  
27 California. As noted on Defendant’s website, they ship throughout the USA,  
28 including to California and this Judicial District. Furthermore, Defendant

1 markets and advertises its products and services through social media through  
2 its Instagram account, <https://www.instagram.com/alyaskinaus/>, and Facebook  
3 profile, <https://www.facebook.com/alyaskinaus/>, which are accessible in  
4 California and this Judicial District. In addition, by committing acts of  
5 trademark infringement, false designation of origin, and unfair competition in  
6 this Judicial District, including, but not limited to, by using infringing marks in  
7 connection with the advertisement, marketing, promotion, sale, and offer for  
8 sale of goods to customers in this Judicial District, Defendant's acts form a  
9 substantial part of the events or omissions giving rise to Ayla's claims.

10 4. Venue is proper in this Judicial District pursuant to 28 U.S.C.  
11 § 1391(b) and (c) at least because Defendant resides in this Judicial District by  
12 virtue of being subject to personal jurisdiction within the Judicial District, and a  
13 substantial portion of the events complained of herein took place in this Judicial  
14 District.

## 15 **II. INTRADISTRICT ASSIGNMENT**

16 5. This action is an intellectual property action subject to district-wide  
17 assignment pursuant to Local Civil Rules 3-2(c) and 3-5(b).

## 18 **III. THE PARTIES**

19 6. Ayla is a corporation organized and existing under the laws of the  
20 State of Delaware, having a principal place of business at 1825 Bush St., San  
21 Francisco, CA 94109.

22 7. Ayla is informed and believes, and based thereon alleges that  
23 Defendant Alya Skin Pty. Ltd. is a private company organized and existing  
24 under the laws of Australia, having a principal place of business at 844 Nepean  
25 Highway, Hampton East, 3188, Victoria, Australia.

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1 **IV. GENERAL ALLEGATIONS**

2 8. Ayla is a successful San Francisco based beauty brand and retail  
3 business that was founded in California and has been operating since 2011.  
4 Since early 2011, Ayla has operated a business devoted to health, wellness and  
5 beauty. Ayla operates a website at aylabeauty.com that offers a large selection  
6 of specialized skin, body, and hair care products, including Ayla's own AYLA®  
7 beauty products. Ayla's website also offers information, perspectives, and  
8 advice on health and personal care authored by professionals with expertise in  
9 areas such as nutrition and dermatology. Ayla also owns the Instagram account  
10 @aylabeauty, located at <https://www.instagram.com/aylabeauty/>, and the  
11 Facebook profile located at <https://www.facebook.com/aylabeauty/>. In 2013,  
12 Ayla opened its first AYLA® retail store location in San Francisco.

13 9. Ayla owns by assignment U.S. Trademark Registration No.  
14 5,033,091 (the "'091 Registration") for the AYLA® Mark. Attached hereto as  
15 **Exhibit 1** is a true and correct copy of the '091 Registration, which is  
16 incorporated by reference.

17 10. Ayla owns by assignment U.S. Trademark Registration No.  
18 4,306,854 (the "'854 Registration") for the AYLA® Mark. Attached hereto as  
19 **Exhibit 2** is a true and correct copy of the '854 Registration, which is  
20 incorporated by reference. Pursuant to 15 U.S.C. § 1065, the '854 Registration  
21 is incontestable.

22 11. Ayla owns by assignment U.S. Trademark Registration No.  
23 4,851,473 (the "'473 Registration") for the AYLA® Mark. Attached hereto as  
24 **Exhibit 3** is a true and correct copy of the '473 Registration, which is  
25 incorporated by reference.

26 12. As a result of Ayla's long, continuous, extensive and exclusive use  
27 of the AYLA® Mark, as well as its marketing, promotion, and sale of beauty  
28 supplies, and retail store services under that mark, the relevant public has come

1 to recognize the AYLA<sup>®</sup> Mark as identifying goods and services that originate  
2 from or are otherwise associated exclusively with Ayla. Ayla has spent  
3 enormous, time, effort, and expense to create valuable goodwill in the AYLA<sup>®</sup>  
4 Mark.

5 13. In early 2018, several years after Ayla started using the AYLA<sup>®</sup>  
6 Mark for beauty supplies and retail store services, Defendant began using the  
7 mark ALYA and ALYA SKIN for beauty products and online retail store  
8 services.

9 14. Defendant is not affiliated with Ayla. Ayla has never given  
10 Defendant license, permission or authority to use or display the AYLA<sup>®</sup> Mark  
11 or any similar mark.

12 15. Defendant has attempted to capitalize on Ayla's valuable  
13 reputation and customer goodwill in the AYLA<sup>®</sup> Mark by using the confusingly  
14 similar ALYA and ALYA SKIN marks in connection with the advertisement,  
15 marketing, promotion, sale, and/or offer for sale of beauty supplies and retail  
16 store services in a manner that creates consumer confusion.

17 16. Without permission or consent from Ayla, Defendant has infringed  
18 Ayla's AYLA<sup>®</sup> Mark in interstate commerce by advertising, marketing,  
19 promoting, selling, and/or offering to sell products and services under the  
20 ALYA and ALYA SKIN marks.

21 17. Ayla is informed and believes, and based thereon alleges that  
22 Defendant's actions alleged herein are intended to cause confusion, mistake, or  
23 deception as to the source of Defendant's beauty supplies and retail store  
24 services and are intended to cause consumers and potential customers to believe  
25 that Defendant's beauty supplies and retail services are associated with,  
26 sponsored by, originate from, or are approved by Ayla, when they are not.

27 18. By virtue of the acts complained of herein, Defendant has created a  
28 likelihood of injury to Ayla's business reputation and goodwill, caused a

likelihood of consumer confusion, mistake, and deception as to the source of, origin, or relationship of Defendant's beauty supplies and retail services with Ayla, and has otherwise competed unfairly with Ayla by unlawfully trading on and using a mark confusingly similar to Ayla's AYL<sup>A</sup> Mark without Ayla's permission or consent.

19. Defendant's acts complained of herein have resulted in actual consumer confusion. Customers have reached out to Ayla with questions and complaints regarding Defendant's products sold under the ALYA and ALYA SKIN marks. Furthermore, consumers have tagged Ayla in reviews and posts about Defendant's products on social media, as shown below:





1 As can be seen in the above images, consumers have tagged Ayla's  
2 Instagram account, @aylabeauty, in their posts relating to Defendant's products  
3 sold bearing the ALYA and ALYA SKIN marks, demonstrating their confusion  
4 caused by Defendant's use of the ALYA and ALYA SKIN marks.

5 20. Ayla is informed and believes, and based thereon alleges that  
6 Defendant's acts complained of herein are willful and deliberate.

7 21. Defendant expanded its product line, and continued to use the  
8 ALYA and ALYA SKIN marks after receiving notice of Ayla's prior rights in  
9 its AYLA® Mark for beauty supplies and retail services.

10 22. Defendant's acts complained of herein have damaged Ayla in an  
11 amount to be determined at trial, and such damages will continue to increase  
12 unless Defendant is enjoined from its wrongful acts and infringement.

13 23. Defendant's acts complained of herein have caused Ayla to suffer  
14 irreparable injury to its business. Ayla will suffer substantial loss of goodwill  
15 and reputation unless and until Defendant is preliminarily and permanently  
16 enjoined from the wrongful acts complained of herein.

17 **V. FIRST CLAIM FOR RELIEF**

18 (Trademark Infringement under 15 U.S.C. § 1114)

19 24. Ayla hereby repeats, realleges, and incorporates by reference  
20 paragraphs 1-23 of this Complaint as though fully set forth herein.

21 25. This is a claim for trademark infringement under 15 U.S.C. § 1114.

22 26. Ayla owns the valid and enforceable federally registered  
23 trademarks for the AYLA® Mark, specifically the '091 Registration, '854  
24 Registration, and '473 Registration.

25 27. Defendant has used in commerce, without permission from Ayla, a  
26 colorable imitation, and/or confusingly similar mark to Ayla's AYLA® Mark,  
27 which is the subject of the '091 Registration, '854 Registration, and the '473  
28 Registration, in connection with the advertising, marketing, promotion, sale,

1 and/or offer for sale of Defendant's products and services. Such use is likely to  
2 cause confusion or mistake, or to deceive.

3 28. Ayla is informed and believes, and based thereon alleges that  
4 Defendant acted with the intent to trade upon Ayla's reputation and goodwill by  
5 causing confusion and mistake among customers and the public and to deceive  
6 the public into believing that Defendant's products are associated with,  
7 sponsored by, originate from, or are approved by, Ayla, when they are not.

8 29. Defendant's activities complained of herein constitute willful and  
9 intentional infringement of Ayla's registered trademarks.

10 30. Ayla is informed and believes, and based thereon alleges that  
11 Defendant had actual knowledge of Ayla's ownership and prior use of the  
12 AYLA<sup>®</sup> Mark, and that Defendant has willfully infringed Ayla's trademark  
13 rights under 15 U.S.C. § 1114.

14 31. Defendant, by its actions, has damaged Ayla in an amount to be  
15 determined at trial.

16 32. Defendant, by its actions, has irreparably injured Ayla. Such  
17 irreparable injury will continue unless Defendant is preliminarily and  
18 permanently enjoined by this Court from further violating Ayla's rights, for  
19 which Ayla has no adequate remedy at law.

20 **VI. SECOND CLAIM FOR RELIEF**

21 (Trademark Infringement and False Designation of Origin  
22 under 15 U.S.C. § 1125(a))

23 33. Ayla hereby repeats, realleges, and incorporates by reference  
24 paragraphs 1-32 of this Complaint as though fully set forth herein.

25 34. This is an action for trademark infringement and false designation  
26 of origin under 15 U.S.C. § 1125(a).

27 35. As a result of Ayla's widespread use and promotion of the AYLA<sup>®</sup>  
28 Mark, the mark has acquired strong secondary meaning to consumers and



1 potential customers, in that consumers and potential customers have come to  
2 associate the AYLA® Mark with Ayla.

3 36. Defendant has infringed the AYLA® Mark and created a false  
4 designation of origin by using in commerce, without Ayla's permission, the  
5 confusingly similar ALYA and ALYA SKIN marks in connection with the  
6 advertising, marketing, promotion, sale, and/or offer for sale of Defendant's  
7 products and services.

8 37. Defendant's actions are likely to cause confusion and mistake, or to  
9 deceive as to the affiliation, connection, or association of Defendant with Ayla,  
10 and/or as to the origin, sponsorship, or approval of Defendant's products and  
11 services or commercial activities, in violation of 15 U.S.C. § 1125(a).

12 38. Ayla is informed and believes, and based thereon alleges that  
13 Defendant has acted with the intent to trade upon Ayla's reputation and  
14 goodwill by causing confusion and mistake among customers and the public and  
15 to deceive the public into believing that Defendant's products and services are  
16 associated with, sponsored by, or approved by Ayla, when they are not.

17 39. Ayla is informed and believes, and based thereon alleges that  
18 Defendant had actual knowledge of Ayla's ownership and prior use of the  
19 AYLA® Mark and, without Ayla's consent, willfully violated 15 U.S.C.  
20 § 1125(a).

21 40. Defendant, by its actions, has damaged Ayla in an amount to be  
22 determined at trial.

23 41. Defendant, by its actions, has irreparably injured Ayla. Such  
24 irreparable injury will continue unless Defendant is preliminarily and  
25 permanently enjoined by this Court from further violating Ayla's rights, for  
26 which Ayla has no adequate remedy at law.

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**VII. THIRD CLAIM FOR RELIEF**

(Unfair Competition under California Business &  
Professions Code §§ 17200 *et seq.*)

42. Ayla hereby repeats, realleges, and incorporates by reference paragraphs 1-41 of this Complaint as though fully set forth herein.

43. This is an action for unfair competition under California Business & Professions Code §§ 17200, *et seq.*

44. By virtue of the acts complained of herein, Defendant has intentionally caused a likelihood of confusion among consumers and the public and has unfairly competed with Ayla in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

45. Defendant's acts complained of herein constitute trademark infringement, unfair competition, and unlawful, unfair, or malicious business practices, which have injured and damaged Ayla.

46. Defendant, by its actions, has irreparably injured Ayla. Such irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by this Court from further violating Ayla's rights, for which Ayla has no adequate remedy at law.

**VIII. FOURTH CLAIM FOR RELIEF**

(California Common Law Unfair Competition)

47. Ayla hereby repeats, realleges, and incorporates by reference paragraphs 1-46 of this Complaint as though fully set forth herein.

48. This is an action for unfair competition under the common law of the State of California.

49. Defendant's acts complained of herein constitute trademark infringement and unfair competition under the common law of the State of California.

50. By virtue of the acts complained of herein, Defendant has willfully

1 and intentionally caused a likelihood of confusion among the purchasing public  
2 in this Judicial District and elsewhere, thereby unfairly competing with Ayla in  
3 violation of the common law of the State of California.

4 51. Defendant's aforementioned acts have damaged Ayla in an amount  
5 to be determined at trial.

6 52. Defendant has irreparably injured Ayla. Such irreparable injury  
7 will continue unless Defendant is preliminarily and permanently enjoined by  
8 this Court from further violating Ayla's rights, for which Ayla has no adequate  
9 remedy at law.

10 53. Defendant's willful acts of unfair competition under California  
11 common law constitute fraud, oppression and malice. Accordingly, Ayla is  
12 entitled to exemplary damages pursuant to Cal. Civ. Code Section § 3294(a).

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Ayla prays for judgment against Defendant as follows:

15 A. That the Court render a final judgment in favor of Ayla and against  
16 Defendant on all claims for relief alleged herein;

17 B. That the Court render a final judgment that Defendant has willfully  
18 violated the provisions of 15 U.S.C. § 1114 by infringing Ayla's trademark  
19 rights in at least the mark that is the subject of Ayla's U.S. Trademark  
20 Registration Nos. 5,033,091, 4,306,854, and 4,851,473;

21 C. That the Court render a final judgment that Defendant has violated  
22 the provisions of 15 U.S.C. § 1125(a) by willfully infringing the AYLA® Mark  
23 by using a false designation of origin, through the marketing, sale, and  
24 promotion of Defendant's products and services;

25 D. That the Court render a final judgment declaring that Defendant  
26 has violated California Business and Professions Code §§ 17200, *et seq.* by  
27 committing trademark infringement and unfairly competing with Ayla;

28 E. That the Court render a final judgment declaring that Defendant

1 has violated California common law by unfairly competing with Ayla;

2 F. That Defendant, its agents, servants, employees, attorneys,  
3 successors, and assigns, and all other persons in active concert or participation  
4 with Defendant be enjoined from:

5 i. using the ALYA and ALYA SKIN marks or any other mark  
6 that is confusingly similar to the AYLA® Mark in connection with the  
7 advertisement, marketing, promotion, sale, or offer for sale of  
8 Defendant's products and services, including, but not limited to, beauty  
9 supplies and retail services;

10 ii. using the AYLA® Mark or any confusingly similar variation  
11 of the AYLA® Mark in any manner that is likely to create the impression  
12 that Defendant's products originate from Ayla, are endorsed by Ayla, or  
13 are connected in any way with Ayla;

14 iii. filing any applications for registration of the ALYA or  
15 ALYA SKIN marks, any trademarks including "AYLA" or "ALYA" or  
16 any other mark that is confusingly similar to the AYLA® Mark;

17 iv. falsely designating the origin of Defendant's products and  
18 services;

19 v. unfairly competing with Ayla in any manner whatsoever;  
20 and,

21 vi. causing a likelihood of confusion or injury to Ayla's  
22 business reputation;

23 G. That Defendant be directed to file with this Court and serve on  
24 Ayla within thirty (30) days after the service of the injunction, a report, in  
25 writing, under oath, setting forth in detail the manner and form in which they  
26 have complied with the injunction pursuant to 15 U.S.C. § 1116;

27 H. That Defendant be required to account to Ayla for any and all  
28 profits derived by Defendant and all damages sustained by Ayla by virtue of

Defendant's acts complained of herein;

I. That Defendant be ordered to pay Ayla all damages which Ayla has sustained as a consequence of the acts complained of herein, subject to proof at trial, together with prejudgment and post-judgment interest;

J. That this case be deemed exceptional and the amount of damages be trebled and that the amount of profits be increased by as many times as the Court deems appropriate, pursuant to 15 U.S.C. § 1117;

K. That Ayla be awarded exemplary damages from Defendant pursuant to Cal. Civ. Code. § 3294;

L. That Defendant's actions be deemed willful;

M. That an award of reasonable costs, expenses, and attorneys' fees be awarded to Ayla pursuant to at least 15 U.S.C. § 1117;

N. That Defendant be required to deliver and destroy all devices, literature, advertising, goods, and other unauthorized materials bearing the ALYA and/or ALYA SKIN mark, the AYL<sup>A</sup> Mark, or any confusingly similar marks, pursuant to 15 U.S.C. § 1118;

O. That Ayla be awarded restitution and disgorgement; and,

P. That Ayla be awarded such other and further relief as this Court may deem just.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 6, 2019 By: /s/ Lynda J. Zadra-Symes

Lynda J. Zadra-Symes

Thomas Y. Yee

Jacob R. Rosenbaum

Attorneys for Plaintiff,

AYLA, LLC

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Ayla, LLC hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 6, 2019 By: /s/ Lynda J. Zadra-Symes

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