



Supreme Court of the State of New York
County of NEW YORK

CAROLINE LOUISE FORSLING,

Plaintiff(x)

against

THE ESTEE LAUDER COMPANIES INC. and
ORIGINS NATURAL RESOURCES INC.,

Defendant(s)

Index No.:

Date purchased 11106310

Plaintiff(x) designate(s)

New York
County as the place of trial.

The basis of the venue is
Parties reside in NY County

Summons

Plaintiff(s) reside(s) at

County of

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.


Dated, New York, New York
May 27, 2011

Frankfurt Kurnit Klein & Selz, P.C.
Attorney(s) for Plaintiff

Office and Post Office Address

Defendant's address:

767 Fifth Avenue
New York, New York 10153

By: 

Edward H. Rosenthal
Amelia K. Brankov
488 Madison Avenue, 10th Floor
New York, NY 10022
(212) 980-0120

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MAY 31 2011
NEW YORK
COUNTY CLERK'S OFFICE

Index No.
Supreme Court of the State of New York
County of New York

Caroline Louise Forsling,

Plaintiff(s)
against

The Estee Lauder Companies Inc. and
Origins Natural Resources Inc.,

Defendant(s)

Summons
ACTION NOT BASED UPON A
CONSUMER CREDIT TRANSACTION

Frankfurt Kurnit Klein & Selz, P.C.
Attorney(s) for Plaintiff(s)

Office, Post Office Address and Tel. No.
488 Madison Avenue, 10th Fl.
New York, NY 10022
(212) 980-0120

Sworn to before me on

Print name beneath signature.

LICENSE NO.

DESCRIPTION
USE WITH
1, 2, OR 3

- Male
- Female
- White Skin
- Black Skin
- Yellow Skin
- Brown Skin
- Red Skin
- Black Hair
- Brown Hair
- Blonde Hair
- Gray Hair
- Red Hair
- White Hair
- Balding
- Mustache
- Beard
- Glasses
- Under 5'
- 5'0"-5'3"
- 5'4"-5'8"
- 5'9"-6'0"
- Over 6'
- Under 100 Lbs.
- 100-130 Lbs.
- 131-160 Lbs.
- 161-200 Lbs.
- Over 200 Lbs.

MAILING TO
RESIDENCE
USE WITH 3 OR 4

Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to defendant at defendant's last known residence, at said envelope in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State. Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class postpaid envelope properly addressed to defendant at defendant's actual place of business, at in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the defendant.

MAILING TO
BUSINESS
USE WITH 3 OR 4

SUITABLE AGE PERSON
AFFIXING TO DOOR, ETC.

by delivering a true copy of each to said defendant therein, personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and knew said individual to be a person of suitable age and discretion. Said premises is defendant's actual place of business—dwelling place—usual place of abode—within the state—by affixing a true copy of each to the door of said premises, which is defendant's actual place of business—dwelling place—usual place of abode—within the state. Deponent was unable, with due diligence to find defendant or a person of suitable age and discretion thereat, having called there

CORPORATION
said defendant therein.

INDIVIDUAL
by delivering a true copy of each to said defendant personally; deponent knew the person so served to be the person described as

corporation, by delivering thereat a true copy of each to personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and knew said individual to be a person of suitable age and discretion. Said premises is defendant's actual place of business—dwelling place—usual place of abode—within the state. Deponent was unable, with due diligence to find defendant or a person of suitable age and discretion thereat, having called there

STATE OF NEW YORK, COUNTY OF
That on
partly herein, is over 18 years of age and resides at
M, at
deponent served the within summons,
SS: The undersigned, being duly sworn, deposes and says; deponent is not a

AFFIDAVIT OF SERVICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
CAROLINE LOUISE FORSLING, :
 :
Plaintiff, :
 : Index No. _____
-against- :
 :
THE ESTÉE LAUDER COMPANIES INC. and :
ORIGINS NATURAL RESOURCES INC., :
 : COMPLAINT
Defendants. :
 :
 :
 :
-----X

Plaintiff, Caroline Louise Forsling (“Forsling” or “Plaintiff”), by and through her attorneys, Frankfurt Kurnit Klein & Selz, P.C., for her Complaint against defendants The Estée Lauder Companies Inc. (“Lauder”) and Origins Natural Resources Inc. (“Origins”) (each a “Defendant,” collectively, the “Defendants”), alleges as follows:

NATURE OF THE ACTION

1. This is an action seeking injunctive and monetary relief under state law for Defendants’ unauthorized and unlawful use of Plaintiff’s image in their advertising.
2. Plaintiff Forsling is a fashion model. She has modeled for numerous fashion designers in runway shows, as well as for many major magazines and clothing, cosmetic and luxury goods retailers.
3. In July 2010, Forsling appeared for a photo shoot (the “Photo Shoot”) for a hair care company that is owned by Lauder.
4. Without her knowledge or consent, Defendants used a test shot from the Photo Shoot, modified it and used it in their campaign for an Origins anti-aging skincare product,

violating Forsling's right of privacy and publicity and other rights under state law, causing her damages.

5. In about March 2011, upon learning that Defendants had used her image without her authority, Forsling demanded that Defendants remove her image from all Origins campaign materials. Defendants represented to Forsling that they would remove all images of her from the Origins materials.

6. Despite this representation, in about April 2011, Defendants *again* used Forsling's image without her authorization. Defendants either issued or caused to be issued a casting call for new models to appear for a photo shoot for their anti-aging product ads. The casting call requested models with "fine wrinkles on their faces through beautiful portrait images and close-ups." As a "reference," Defendants included the very same image of Forsling's face from the test shot. Upon information and belief, Defendants e-mailed the casting call to numerous modeling agencies.

7. The actions of Defendants constitute a blatant infringement of Forsling's right of privacy and publicity and other rights under state law.

PARTIES

8. Plaintiff Forsling is, and at all relevant times was, an individual residing in New York, New York.

9. Upon information and belief, Defendant Lauder is, and at all relevant times was, a corporation organized and existing under the laws of the State of Delaware, with its corporate headquarters located at 767 Fifth Avenue, New York, New York 10153.

10. Upon information and belief, Defendant Origins is, and at all relevant times was, a corporation organized and existing under the laws of the State of Delaware, with its corporate

headquarters located at 767 Fifth Avenue, New York, New York 10153. Upon information and belief, at all times relevant hereto, Origins was and is one of the branded companies that was and is wholly-owned by Lauder.

JURISDICTION AND VENUE

11. Upon information and belief, this Court has personal jurisdiction over Defendants pursuant to CPLR §§ 302 (a) (1), (2) and (4).

12. Venue is proper in this County pursuant to CPLR §§ 503 (a) and (c) because Plaintiff and Defendants reside in this County.

FACTS COMMON TO ALL CLAIMS

Forsling

13. Forsling is a highly successful fashion model. Over the course of her career, she has appeared in runway shows for numerous designers, including Ralph Lauren, Gucci, Chanel, Valentino, Prada, Armani, and many others.

14. Forsling has also appeared in television commercials and print advertising for major clothing, cosmetics and luxury good retailers. These clients include Gap, Target, Macy's, Nike, Hermès, Prescriptives and many others.

15. In addition, Forsling has appeared in and on the cover of several magazines. Notably, she was a *Sports Illustrated* swimsuit model, and also appeared in several fashion magazines, including *Vogue*, *Elle*, *Cosmopolitan*, and *Glamour*, among others.

Origins

16. Upon information and belief, Origins is a corporation that sells an eponymous line of skincare and cosmetic products.

17. According to its website, its mission is to create skincare that is “powered by nature and proven by science.” Origins also claims on its website that its products are developed by a plant physiologist, who heads a global plant science team.

18. Upon information and belief, Origins offers its products in its own stores and in department stores across the country and abroad. Origins also offers its products for sale online.

The Photo Shoot

19. On or about June 30, 2010 Forsling, through her modeling agency, entered into an agreement with a company that manufactures hair care products. Upon information and belief, Defendant Lauder at all times relevant hereto was and is the owner of that hair care company.

20. Pursuant to that agreement, Forsling agreed to appear for the Photo Shoot. The hair care company agreed that it would only use the photographs taken at the Photo Shoot to advertise its own hair care products. Forsling did not authorize the hair care company to use or license the photos to advertise any other products.

21. On or about July 1, 2010, Forsling appeared for the Photo Shoot. Before stylists did Forsling’s hair and make up for the Photo Shoot, the photographer took a photograph of Forsling’s face as a test shot (the “Test Shot”). In the Test Shot, Forsling’s hair was pulled away from her face and she was wearing little or no make up.

22. At all times relevant hereto, Forsling believed that the Test Shot would not be used in any advertisement or otherwise distributed.

The Plantscription Campaign

23. Among other products, Origins sells a skincare product known as “Plantscription.”

24. Origins describes Plantscription as an “anti-aging serum.” According to Origins, although Plantscription is not a prescription drug, it will visibly repair four major signs of aging in just four weeks. Specifically, Origins claims that the product: (i) “[n]oticeably reduces wrinkle length [and] depth; (ii) “[s]mooths uneven skin texture; (iii) “[v]isibly lift[s] sagging contours,” and (iv) “revives youthful ‘bounce’ and firmness.”

25. In early 2011, Defendants used Forsling’s image in their advertising material for Plantscription. They included her image in advertising on the Origins website, both as a static image and in a promotional video, as well as in-store displays. These advertising materials are collectively referred to herein as the “Plantscription Ad Materials.”

26. Upon information and belief, the Plantscription Ad Materials stated that Defendants had conducted a clinical study to test the results of Plantscription use. Upon information and belief, the Plantscription Ad Materials stated that the test subjects of the study were women aged 45-60.

27. In these materials, Defendants used an image of Forsling’s face from the Test Shot. Upon information and belief, the image was modified through the use of photo editing software, though it remained recognizable as an image of Forsling.

28. Defendants divided Forsling’s image from the Test Shot into two parts as part of a purported “dramatization” of the results of using Plantscription. The left side of the image is labeled with the word “Before,” ostensibly to represent the model’s skin condition before Plantscription use. On the left side, Forsling’s face appears dark, with visible wrinkles on the forehead and near the eyes and lips.

29. By contrast, the right side of the image of Forsling's face is labeled with the word "After," ostensibly to represent the model's skin condition after use. On the right side, Forsling's face appears light, with smoother, younger-looking skin.

30. The Plantscription Ad Materials pointed to four parts of the "After" portion of Forsling's face to illustrate Defendants' claim that "[i]n just 4 weeks – 4 signs of aging visibly repaired."

31. *First*, there is a line extending from Forsling's forehead, with the following corresponding text:

1. Noticeably reduces wrinkle length & depth
Visibly helps repair the vertical fret lines between your eyes, the stubborn furrows across your forehead and the deepening frownies that frame your mouth.

32. *Second*, there is a line extending from skin just below Forsling's eye, with the following corresponding text:

2. Smooths uneven skin texture
Helps boost cell turnover to restore smoothness, radiance and clarity.

33. *Third*, there is a line extending from just below Forsling's cheek bone, with the following corresponding text:

3. Visibly lift sagging contours
Helps rebuild natural Collagen and Elastin fibers to make skin stronger and more resilient. Skin is clinically firmer, smoother and more lifted-looking.

34. *Fourth*, there is a line pointing to the skin near Forsling's lips, with the following corresponding text:

4. Revives youthful "bounce" and firmness
Helps increase production of skin's natural Fibrilin, the glycoprotein that gives skin youthful firmness and buoyancy much like a box spring gives support to a mattress.

Forsling Never Used Plantscription

35. Forsling has never used Plantscription. She did not participate in Defendants' study – indeed, she would not have been eligible to participate because she is significantly younger than 45.

36. Defendants did not disclose in the Plantscription Ad Materials that Forsling never used Plantscription, that Forsling is not aged 45-60 or that the so-called “dramatization” of the product did not result from the use of the product by Forsling, but rather reflected Defendants' manipulation of a photograph.

Defendants Never Told Forsling About the Plantscription Campaign

37. Defendants neither sought nor obtained Forsling's written or other consent to use her image in the Plantscription Ad Materials or even informed her of their use of her image.

38. Forsling had no idea that Defendants used her image in the Plantscription Ad Materials until, in early March 2011, a make-up artist told Forsling that the make-up artist had seen Forsling's face on a Plantscription ad.

39. Forsling then contacted Defendants and told them that they had no right to use her image in the Plantscription ads. She demanded that Defendants remove the materials from their website and their stores and discontinue all other unauthorized use of her image.

40. Defendants subsequently represented to Forsling that they would remove her image from the Ad Campaign Materials.

41. Despite this representation, in late April 2011, Defendants *again* used Forsling's image in connection with Plantscription. Defendants either distributed or caused to be distributed by e-mail a casting call for models to appear for a photo shoot to show the before and after effects of Plantscription. The casting call materials stated that they needed models with “fine wrinkles on their faces through beautiful portrait images and close-ups.” As a “reference,”

Defendants included the same manipulated image of Forsling's face from the Test Shot that they previously had displayed on their website.

FIRST CAUSE OF ACTION
(Violation of Right of Privacy and Publicity Pursuant to N.Y. Civ. R. Law §§ 50 and 51)

42. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 41 of this Complaint as if fully set forth herein.

43. Sections 50 and 51 of the N.Y. Civil Rights Law set forth a statutory right of privacy/publicity and provide a claim for an injunction and damages in favor of "[a]ny person whose . . . portrait [or] picture . . . is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained" of such person.

44. As alleged above, Defendants' use of Plaintiff's image from the Test Shot in this State and elsewhere was done for advertising purposes and for purposes of trade.

45. Defendants did not obtain consent, written or otherwise, from Forsling before using the Test Shot.

46. Forsling has been and continues to be irreparably injured as a result of Defendants' actions and has no adequate remedy at law.

47. Unless restrained and enjoined by the Court, Defendants will, upon information and belief, continue to violate Forsling's rights and irreparably impair and damage Forsling.

48. As a result of the foregoing, Forsling has suffered damages in an amount to be determined at trial.

49. Upon information and belief, the aforesaid action and conduct of Defendants has been willful and knowing in a matter that violated Forsling's statutory right of privacy/publicity, and as such, Forsling is entitled to exemplary damages.

50. By reason of the foregoing, Forsling is entitled to an injunction permanently barring Defendants from any unauthorized use of Forsling's image or likeness for purposes of advertising or trade, an award of damages in an amount to be determined at trial, but believed to be no less than \$2 million, and exemplary damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION
(Unjust Enrichment)**

51. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 50 of this Complaint as if fully set forth herein.

52. Defendants received the benefit of using Forsling's image in the Plantscription Ad Materials.

53. Defendants neither sought nor received consent from Forsling to use the Test Shot in the Plantscription Ad Materials.

54. Defendants have been unjustly enriched at Forsling's expense. It would be inequitable to permit Defendants to receive the benefit of the use of Forsling's image without her knowledge or consent.

55. Defendants have been and will continue to be unjustly enriched as a result of their unauthorized use of Forsling's image and likeness in connection with the advertising and sale of their skincare.

56. By reason of the foregoing, Defendants are liable to pay Forsling damages in an amount to be determined at trial, but believed to be no less than \$2 million.

THIRD CAUSE OF ACTION
(Deceptive Trade Practices and False Advertising under N.Y. Gen. Bus. L. §§ 349-350)

57. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 56 of this Complaint as if fully set forth herein.

58. By virtue of the actions and omissions alleged above, Defendants have engaged in false advertising and deceptive acts and practices in the conduct of their business and in trade and commerce in this State in violation of N.Y. Gen. Bus. L. §§ 349-50 and elsewhere.

59. Upon information and belief, the aforesaid acts and omissions by Defendants have been willful and knowing.

60. Forsling has been and continues to be irreparably injured as a result of Defendants' actions and has no adequate remedy at law.

61. Unless restrained and enjoined by the Court, Defendants will, upon information and belief, continue to violate Forsling's rights and irreparably impair and damage Forsling.

62. By reason of the foregoing, Forsling is entitled to an injunction permanently barring Defendants from any unauthorized use of Forsling's image or likeness for purposes of advertising or trade, an award of damages in an amount to be determined at trial, but believed to be no less than \$2 million, and reasonable attorneys' fees. Because Defendants' conduct was willful and knowing, the Court may award treble damages consistent with N.Y. Gen. Bus. L. § 349(h).

DEMAND FOR RELIEF

WHEREFORE, Plaintiff seeks entry of an Order:

- A. Permanently enjoining Defendants from any unauthorized use of Forsling's image or likeness for purposes of advertising or trade;
- B. Awarding Forsling damages in an amount to be determined at trial, but believed to be no less than \$2 million;
- C. Awarding Forsling exemplary damages in an amount to be determined at trial;
- D. Awarding Forsling treble damages consistent with Gen. Bus. L. § 349;
- E. Awarding Forsling costs, attorneys' fees and interest at the maximum allowable rate; and
- F. Granting Forsling such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 19, 2011

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: 

Edward H. Rosenthal
Amelia K. Brankov

488 Madison Avenue
New York, New York 10022
Phone: (212) 980-0120
Fax: (212) 593-9175

Attorneys for Plaintiff Caroline Forsling

TO: The Estée Lauder Companies Inc.
767 Fifth Avenue
New York, New York 10153

Origins Natural Resources Inc.
767 Fifth Avenue
New York, New York 10153

PLEASE take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on

Dated,

Yours, etc.

Frankfurt Kurmit Klein & Selz, P.C.
A Professional Corporation

Attorneys for

Office and Post Office Address
488 Madison Avenue
New York, New York 10022

To

Attorney(s) for

NOTICE OF SETTLEMENT

11106310

PLEASE take notice that an order of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on

M.

at

Yours, etc.

Frankfurt Kurmit Klein & Selz, P.C.
A Professional Corporation

Attorneys for

Office and Post Office Address
488 Madison Avenue
New York, New York 10022

To

Attorney(s) for

Index No.

Year

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CAROLINE LOUISE FORSLING,

Plaintiff,

against-

THE ESTÉE LAUDER COMPANIES INC. and
ORIGINS NATURAL RESOURCES INC.,

Defendants.

COMPLAINT

Signature (Rule 130-1.1-a)

Print name beneath

Frankfurt Kurmit Klein & Selz, P.C.

A Professional Corporation

Plaintiff.

Attorneys for

Office and Post Office Address, Telephone
488 Madison Avenue
New York, New York 10022
(212) 980-0120

To

Attorney(s) for

Service of a copy of the within is hereby admitted.
Dated,

Attorney(s) for