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6 *Attorneys for Plaintiff COMBE INCORPORATED*

7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 COMBE INCORPORATED, a Delaware
11 Corporation,

Case No. 2:23-cv-3796

12 Plaintiff,

**PLAINTIFF COMBE
INCORPORATED'S COMPLAINT
FOR PATENT INFRINGEMENT**

13 v.

JURY TRIAL DEMANDED

14 KOS KOS USA LLC d/b/a CARICARE,
15 a California Corporation,

16 Defendant.

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1 Plaintiff Combe Incorporated (“Combe”) brings this action for patent
2 infringement against Defendant Kos Kos USA LLC d/b/a CariCare (“Kos Kos” or
3 “Defendant”), and alleges as follows:

4 **PARTIES**

5 1. Plaintiff Combe is a corporation organized and existing under the laws
6 of the State of Delaware, having its principal place of business at 1101 Westchester
7 Avenue, White Plains, New York 10604. Combe is a personal-care company
8 founded in 1949, involved in the research, innovation, manufacturing, and sale of
9 personal care, beauty, and healthcare products.

10 2. On information and belief, Defendant is a corporation organized and
11 existing under the laws of California, doing business as CariCare, having a
12 principal place of business at 14107 Dinard Ave., Santa Fe Springs, California
13 90670.

14 3. On information and belief, Defendant also has business addresses at
15 13905 Maryton Ave., Santa Fe Springs, California 90670 and 3000 W. Olympic
16 Blvd., Suite 305, Los Angeles, California 90006.

17 4. On information and belief, Kos Kos transacts business within
18 California and throughout the United States, including but not limited to
19 marketing, distribution, sales and/or offers to sell haircare products.

20 **JURISDICTION AND VENUE**

21 5. This is an action for patent infringement arising under the patent laws
22 of the United States, Title 35 of the United States Code. This Court has subject
23 matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332(a) and 1338(a).

24 6. This Court has jurisdiction over Kos Kos because, *inter alia*, upon
25 information and belief, Kos Kos has substantial, continuous, and systematic
26 contacts with the State of California, and directly or indirectly manufactures,
27 imports, markets, distributes, offers to sell, and/or sells products in California.
28 Defendant’s products include CariCare Naturally Darkening Shampoo (“CariCare

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1 Darkening shampoo”) which, as discussed in more detail below, infringes the
2 patent-in-suit. Upon information and belief, Kos Kos derives substantial revenue
3 from the sale, use, and consumption of its products, including the CariCare
4 Darkening shampoo, in the State of California.

5 7. On information and belief, Defendant offers to sell and sells its
6 products, including CariCare Darkening shampoo, through a storefront on
7 Defendant’s website *caricareusa.com* and additional storefronts that Defendant has
8 established, operates, and/or controls on *Amazon.com* and *Walmart.com*.
9 Defendant’s online storefronts permit customers to view, order, and purchase
10 Defendant’s products, including the CariCare Darkening shampoo.

11 8. Indeed, on or about January 19, 2023, two bottles of CariCare
12 Darkening shampoo were purchased in accordance with Plaintiff’s instructions
13 from Defendant’s storefront on *caricareusa.com*. Subsequently, on or about
14 January 26, 2023, a shipment of two boxes, each of which contained a bottle of
15 CariCare Darkening shampoo, was delivered. The shipment had been sent from
16 Defendant (identified as “CARICARE OFFICIAL” on the shipping label). Each
17 box in the shipment, as well as each bottle of shampoo inside the box, identified
18 “KOSKOS USA LLC” as the distributor of the product and further identified
19 Defendant’s 13905 Maryton Ave. business address and its *caricareusa.com*
20 website.

21 9. On information and belief, Defendant also offers to sell and sells its
22 products, including CariCare Darkening shampoo, through brick-and-mortar
23 storefronts throughout this district.

24 10. Venue is proper for Defendant in this district under 28 U.S.C. §§
25 1391(b) and (c) and 1400(b). Defendant is incorporated, and therefore resides, in
26 this district and also has committed the infringing acts in this district giving rise to
27 the infringement allegations herein. Venue is also proper in this district because
28 Defendant is subject to this Court’s personal jurisdiction.

THE PATENT-IN-SUIT

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2 11. On October 25, 2016, Combe’s U.S. Patent No. 9,474,704 (“the ’704
3 patent”), titled “Gradual Haircolor Compositions and Methods of Using the Same,”
4 was issued by the United States Patent and Trademark Office. A true and correct
5 copy of the ’704 patent is attached as Exhibit A.

6 12. The ’704 patent is owned by Combe.

7 13. The ’704 patent relates to an air oxidation haircolor shampoo
8 composition comprising an air oxidation hair dye; at least one cleansing surfactant;
9 and optionally, at least one conditioning agent, where a conditioning agent content
10 is about 0.5% to about 15% weight by weight, wherein the air oxidation haircolor
11 shampoo composition cleanses hair, and wherein the air oxidation haircolor
12 shampoo composition gradually colors hair with repeated use.

13 14. The ’704 patent also relates at least to methods for gradually coloring
14 hair comprising the steps of: a) applying an air oxidation haircolor composition to
15 hair; b) removing the air oxidation haircolor composition from the hair directly
16 after application; and c) repeating a set comprising steps a) and b) in multiple
17 spaced intervals. The air oxidation haircolor composition can include a grooming
18 agent.

19 **DEFENDANT’S INFRINGING PRODUCT AND ACTIVITIES**

20 15. On information and belief, Defendant is engaged in the business of
21 manufacturing, using, selling and/or offering to sell within the United States
22 (including within this judicial district), or importing into the United States,
23 shampoo which is covered by one or more claims of the asserted ’704 patent.
24 Specifically, CariCare Darkening shampoo infringes claims of the ’704 patent.

25 16. Defendant has been aware of the ’704 patent since at least February 1,
26 2023, the date a cease-and-desist letter including this patent number was sent by
27 Combe to Defendant via e-mail and Federal Express. Defendant did not
28 substantively respond to the February 1 letter. A second cease-and-desist letter

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1 including the '704 patent number was sent by Combe to Kos Kos via e-mail and
2 Federal Express on March 3, 2023. Defendant's infringing acts, including the
3 operation of its online storefronts, has continued.

4 **COUNT I**

5 **INFRINGEMENT OF THE '704 PATENT**

6 17. Combe incorporates and realleges paragraphs 1-16 above, as if set
7 forth specifically here.

8 18. Combe's claim arises under the Patent Laws of the United States, 35
9 U.S.C. § 271.

10 19. Defendant has directly infringed and is directly infringing the '704
11 patent by manufacturing, using, selling and/or offering to sell within the United
12 States and/or importing into the United States the CariCare Darkening shampoo
13 embodying the invention defined by one or more claims of the '704 patent, without
14 authority of Combe. More particularly, Defendant's manufacture, use, sale and/or
15 offer for sale in the United States and/or importation into the United States of the
16 CariCare Darkening shampoo infringes at least claims 18-21 and 23 of the '704
17 patent.

18 20. On information and belief the CariCare Darkening shampoo is an air
19 oxidation haircolor shampoo composition which contains, among other
20 ingredients, Water, Sodium C14-16 Olefin Sulfonate, Lauryl Glucoside, Disodium
21 Laureth Sulfosuccinate, 1,2,4-Trihydroxybenzene, Sodium Chloride,
22 Polyquaternium-10, Menthol, Salicylic Acid, Chlorphenesin, Panthenol, Caramel,
23 Allantoin, Citric Acid, Glycyrrhiza Uralensis (Licorice) Root Extract, Zingiber
24 Officinale (Ginger) Root Extract, Schizandra Chensis Fruit Extract, Coptis
25 Japonica Root Extract, Propolis Wax, Butylene Glycol, Glycerin, Capryl Glycol,
26 Lycium Chinese Extract, Propanediol, Ricinus Communis (Castor) Seed Oil,
27 Camellia Sinesis Leaf Extract, Asiaticoside, Tannic Acid, Gallic Acid, Biotin,
28 Camellia Japonica Seed Oil, Camellia Sinensis Seed Oil, Camellia Japonica

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1 Flower Extract, Camellia Japonica Seed Extract, Aloe Barbadensis Leaf Extract,
2 Houttuynia Cordata Extract, Bioflavonoids, Rhus Semialata Extract, Brassica
3 Oleracea Italica (Broccoli) Extract, Ethylhexylglycerin, Caprylhydroxamic Acid,
4 Fragrance.

5 21. On information and belief the CariCare Darkening shampoo has an air
6 oxidation hair dye, including but not limited to: 1,2,4-Trihydroxybenzene.

7 22. On information and belief the CariCare Darkening shampoo has at
8 least one cleansing surfactant, including but not limited to: Sodium C14-16 Olefin
9 Sulfonate, Lauryl Glucoside, Disodium Laureth Sulfosuccinate.

10 23. On information and belief the CariCare Darkening shampoo
11 optionally has at least one conditioning agent at a content of about 0.5% to about
12 15% weight by weight, including but not limited to: Polyquaternium-10.

13 24. On information and belief the CariCare Darkening shampoo cleanses
14 hair.

15 25. On information and belief the CariCare Darkening shampoo gradually
16 colors hair with repeated use. The CariCare Darkening shampoo packaging
17 contains images showing how repeated use achieves gradual darkening.



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28 26. On information and belief the CariCare Darkening shampoo has at

1 least one anionic, an amphoteric, or a nonionic cleansing surfactant, including but
2 not limited to: Sodium C14-16 olefin Sulfonate, Disodium Laureth Sulfosuccinate,
3 Lauryl Glucoside.

4 27. On information and belief the CariCare Darkening shampoo has at
5 least one conditioning agent, including but not limited to: Polyquaternium-10.

6 28. On information and belief the CariCare Darkening shampoo has at
7 least one anti-dandruff agent, including but not limited to: Salicylic Acid.

8 29. On information and belief the CariCare Darkening shampoo has 1,2,4-
9 benzenetriol.

10 30. On information and belief, the CariCare Darkening shampoo
11 simultaneously grooms, cleans, conditions, and gradually colors hair with repeated
12 daily use. Kos Kos states on its website and on its CariCare Darkening shampoo
13 packaging that its Darkening shampoo has “amazing effects in four weeks.”
14 Additionally, the CariCare Darkening shampoo packaging contains images
15 showing how repeated use achieves gradual darkening.



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26 31. Kos Kos is also indirectly infringing the '704 patent at least by virtue
27 of its inducement of direct infringement of that patent by customers who use the
28 CariCare Darkening shampoo. Kos Kos has been aware of the '704 patent since at

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1 least February 1, 2023. On information and belief, Kos Kos knowingly induces
2 customers to use the CariCare Darkening shampoo, including, for example, by
3 promoting it to be used in an infringing manner and/or providing customers with
4 instructions for using it in an infringing manner. Thus, Kos Kos induces
5 infringement of at least claims 1-6, 9-11, 13-17, and 24-25 of the '704 patent under
6 35 U.S.C. § 271(b). Combe is unaware of any substantial non-infringing uses of
7 the CariCare Darkening shampoo, and therefore the marketing of the CariCare
8 Darkening shampoo will contribute to infringement of at least claims 1-6, 9-11, 13-
9 17, and 24-25 of the '704 patent under 35 U.S.C. § 271(c).

10 32. Kos Kos instructs its customers on the CariCare Darkening shampoo
11 packaging to “Wet your hair and scalp with water;” “Apply shampoo generously,
12 lather, and massage with your fingers for about 3 minutes;” and “Rinse thoroughly
13 with warm water.” Kos Kos further instructs its customers to use the shampoo
14 daily and informs users that the effects will gradually be seen over four weeks.

15 33. On information and belief, Defendant’s infringement of the '704
16 patent has been willful, intentional, and deliberate. Kos Kos has had actual
17 knowledge of the '704 patent and actual knowledge that the CariCare Darkening
18 shampoo infringes one or more claims of the '704 patent since at least February 1,
19 2023, the date a cease-and-desist letter including this patent number was sent by
20 Combe to Kos Kos via e-mail and Federal Express. Further, a second cease and
21 desist letter including this patent number was sent by Combe to Kos Kos via e-mail
22 and Federal Express on March 3, 2023. In addition, the filing of this Complaint
23 provides actual notice to Kos Kos of the '704 patent under 35 U.S.C. § 287 and the
24 infringement as alleged here. On information and belief, Kos Kos has willfully
25 infringed, and continues to willfully infringe, the '704 patent by continuing to
26 make, use, offer for sale, sell, or import the CariCare Darkening shampoo in the
27 United States and by continuing to induce infringement and contribute to
28 infringement of that patent by customers who use the CariCare Darkening

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1 shampoo.

2 34. Combe contends that each element of each asserted claim is literally
3 present in the CariCare Darkening shampoo. If, as a result of the Court’s
4 constructions or other determinations, one or more claim elements are not literally
5 present, Combe contends that each such element is present under the doctrine of
6 equivalents and reserves its right to provide more detailed doctrine of equivalents
7 contentions after discovery, a claim construction order from the Court, or at
8 another appropriate time.

9 35. Defendant’s acts complained of herein are damaging and will
10 continue to cause irreparable injury and damage to Combe for which there is no
11 adequate remedy at law. Combe is therefore entitled to a permanent injunction
12 restraining and enjoining Kos Kos from infringing the claims of the ’704 patent.

13 36. By reason of Defendant’s infringing activities, Combe has suffered,
14 and will continue to suffer, substantial damages in an amount to be determined at
15 trial.

16 **Prayer for Relief**

17 WHEREFORE, Combe prays for judgment and relief as follows:

18 A. That Kos Kos has infringed the ’704 patent;

19 B. That Kos Kos and its subsidiaries, affiliates, officers, directors, agents,
20 servants, employees, successors, and assigns, and all other persons and
21 organizations in active concert or participation with them, be permanently enjoined
22 from further acts of infringement of the ’704 patent pursuant to 35 U.S.C. § 283;

23 C. That Kos Kos be ordered to pay damages adequate to compensate
24 Combe for its infringement of the ’704 patent pursuant to 35 U.S.C. § 284,
25 including lost profits and/or a reasonable royalty, together with interest thereon;

26 D. A judgment declaring that Kos Kos’ infringement has been willful and
27 awarding enhanced damages under 35 U.S.C. § 284;

28 E. A declaration that this is an exceptional case under 35 U.S.C. § 285

1 and awarding Combe’s costs, expenses, and disbursements in this action, including
2 reasonable attorney fees;

3 F. That Combe be awarded its costs and expenses in this action; and
4 That Combe be granted such other and additional relief as the Court deems
5 equitable, just, and proper.

6 **Jury Demand**

7 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Combe
8 demands a jury trial on all issues so triable.

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11 DATE: May 17, 2023

VENABLE, LLP

12 By: /s/ Sarah S. Brooks
13 Sarah S. Brooks
14 Alicia Sharon
15 Ha Kung Wong (*PHV Application to*
16 *be Filed*)
17 Jason M. Okun (*PHV Application to*
18 *be Filed*)

19 *Attorney for Plaintiff COMBE*
20 *INCORPORATED*

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