

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PACIFIC BIOSCIENCE
LABORATORIES, INC., a Washington
corporation,

Plaintiff,

v.

OUR FAMILY JEWELS INC., d/b/a
Epipür Skincare, an Oregon corporation,

Defendant.

No.

COMPLAINT FOR PATENT
INFRINGEMENT, TRADE DRESS
INFRINGEMENT, STATE UNFAIR
COMPETITION AND COMMON LAW
UNFAIR COMPETITION

JURY DEMAND

Plaintiff Pacific Bioscience Laboratories, Inc. (“PBL”), for its Complaint for Patent Infringement, Trade Dress Infringement, State Unfair Competition, and Common Law Unfair Competition against Defendant Our Family Jewels Inc., d/b/a Epipür Skincare, (“Our Family Jewels”), hereby alleges, by and through its attorney, on personal knowledge as to its own actions and on information and belief as to the actions of others, as follows:

I. INTRODUCTION

1. Plaintiff PBL dramatically changed the market for skin cleansing products when it introduced its innovative Clarisonic Sonic Skin Cleansing System (the “Clarisonic System”) in 2004. The Clarisonic System employs motion and forces at sonic frequencies to cleanse, soften, and smooth skin.

1 2. Prior to the introduction of the Clarisonic System, there were no sonic facial
2
3 cleansing devices on the market. PBL created today’s market for such products.

4
5 3. The Clarisonic System has been an enormous success and has achieved national
6
7 recognition and awards. In 2010, PBL was named one of Inc. 500’s Fastest Growing Private
8
9 Companies.

10 4. PBL received broad protection for its innovations, including utility and design
11
12 patents and trade dress. However, PBL’s innovations have been the subject of widespread
13
14 imitation by others, who have attempted to capitalize on PBL’s success.

15 5. Defendant Our Family Jewels is one such imitator. After seeing PBL’s success,
16
17 Our Family Jewels introduced its Episonic facial cleansing system (“Episonic”). Our Family
18
19 Jewels has made the Episonic work and look like PBL’s products, thereby infringing PBL’s
20
21 patents and trade dress.
22

23
24 6. Our Family Jewels sells or has sold the Episonic throughout the United States
25
26 through, at least, Our Family Jewels’ website, [http://www.epipurskincare.com](http://www.epipurskincare.com/products/episonic-facial-cleansing-system.html)
27
28 [/products/episonic-facial-cleansing-system.html](http://www.epipurskincare.com/products/episonic-facial-cleansing-system.html), and through Amazon.com,
29
30 <http://www.amazon.com/Episonic-Facial-Cleansing-Brush-System/dp/B00FWZRCGS/>.

31
32 7. PBL seeks to stop Our Family Jewels’ infringing conduct and obtain
33
34 compensation for the violations that have occurred thus far.
35

36
37 **II. PARTIES**

38 8. Plaintiff PBL is a Washington corporation incorporated in January 2001, with its
39
40 principal place of business at 17275 NE 67th Court, Redmond, WA 98052.
41

42 9. In December 2011, PBL was acquired by L’Oréal S.A., a French société anonyme
43
44 (“L’Oréal”). L’Oréal is the owner, and PBL is the exclusive U.S. licensee with the right, *inter*
45
46 *alia*, to bring suit, of protectable patent and trade dress rights in electric skin care brushes as
47
48 described herein.
49
50
51

1 10. On information and belief, Our Family Jewels Inc., d/b/a Epipür Skincare, is a
2 corporation organized and existing under the laws of Oregon with its principal place of business
3 at 10226 S Dransfeldt Road, Parker, CO 80134.
4

5
6
7 11. On information and belief, Our Family Jewels manufactures, markets, and sells
8 electric skin care devices under the name Episonic.
9

10
11 **III. JURISDICTION AND VENUE**
12

13 12. This case arises under the patent laws of the United States, 35 U.S.C. § 101 et seq.
14 and the Lanham Act, 15 U.S.C. §§ 1051, et seq. Supplemental jurisdiction exists over PBL's
15 state law claims pursuant to 28 U.S.C. § 1367(a).
16

17
18 13. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.
19 §§ 1331, 1332, 1338, and 1367.
20

21
22 14. PBL has its principal place of business in this District, and makes its Clarisonic
23 devices available for sale in this District.
24

25
26 15. This Court has personal jurisdiction over Our Family Jewels because, on
27 information and belief, Our Family Jewels has committed and continues to commit the acts
28 violating PBL's intellectual property described herein within the State of Washington, including
29 in this District, and places infringing products into the stream of commerce, with the knowledge
30 or understanding that such products are sold in the State of Washington, including in this
31 District.
32
33
34
35
36
37

38 16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), (c), and 28
39 U.S.C. § 1400(b) because, *inter alia*, PBL's principal place of business is within this District and
40 PBL suffered harm in this District, because a substantial part of the events giving rise to the
41 claims against Our Family Jewels occurred and are occurring in this District, and because Our
42 Family Jewels transacts business within this District and offers for sale in this District products
43 that infringe PBL's intellectual property.
44
45
46
47
48
49
50
51

IV. BACKGROUND

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

17. Since the early 2000s, PBL has designed, developed, manufactured, marketed, and sold in the United States (and worldwide) its innovative Clarisonic System, which is a line of skin care products including a number of Sonic Cleansing Brushes and accessories, the Clarisonic Opal® Sonic Infusion System, and targeted treatment solutions. Examples of Clarisonic products are pictured below:



18. The Clarisonic System was developed by PBL over many years at great expense and effort and represents a breakthrough in devices and methods for treatment of early stage acne and for effective cleansing of skin. Those devices and methods employ motion and forces at sonic frequencies to cleanse, soften, and smooth skin. They alleviate clogged pores and remove debris from skin more gently and effectively than alternative devices or methods, such as manual cleansing.

19. The innovations embodied in the Clarisonic System are protected by numerous United States and foreign intellectual property rights, including rights deriving from patents, trademarks, and trade dress.

20. Prior to the introduction of the Clarisonic System, there were no sonic facial cleansing devices on the market. Indeed, before development of the Clarisonic System, no market existed for sonic skin care devices. PBL expended considerable resources to create the

1 sonic skin care market and to educate the public regarding facial cleansing, as well as to market
2
3 its sonic facial cleansing devices.

4
5 21. Since its introduction, the Clarisonic System has become widely acclaimed by
6
7 professionals and consumers, and has garnered many media awards from sources such as
8
9 authoritative magazines in the beauty industry, Oprah’s Favorite Things in 2007 on the Oprah
10
11 Winfrey Show, Best of Sephora in 2007 and 2008, and QVC Customer Choice in 2008, 2009,
12
13 and 2010.

14
15 22. The success of the Clarisonic System has spurred a large number of imitations,
16
17 such as Our Family Jewels’ Episonic, pictured below.



35
36 **V. PBL’S INTELLECTUAL PROPERTY RIGHTS**

37
38 **U.S. Patent No. 7,320,691**

39
40 23. U.S. Patent No. 7,320,691 (“the ’691 patent”) issued on January 22, 2008, and is
41
42 entitled “Apparatus and Method for Acoustic/Mechanical Treatment of Early Stage Acne.” The
43
44 inventors are Kenneth A. Pilcher, David Giuliani, and Stephen M. Meginniss.

45
46 24. A copy of the ’691 patent is attached as Exhibit 1.
47
48
49
50
51

1 25. PBL is the exclusive licensee having all substantial rights in and to the '691
2 patent, with the rights to bring enforcement actions for past, present and future infringement and
3 to collect damages for past infringement.
4

5
6
7 26. The '691 patent has been reexamined pursuant to Reexamination Request Nos.
8 90/009,797 and 90/011,343. The patentability of all of the originally issued claims 1-52 of the
9 '691 patent was confirmed pursuant to these reexamination requests, and claims 53-64 were
10 added. A reexamination certificate issued on September 20, 2011. See Exhibit 1.
11
12

13 27. The '691 patent is valid, enforceable, and currently in full force and effect.
14

15
16
17 **U.S. Patent No. 7,386,906**

18 28. U.S. Patent No. 7,386,906 ("the '906 patent") issued on June 17, 2008, and is
19 entitled "Oscillating Brushhead Attachment System for a Personal Care Appliance." The
20 inventors are Dane M. Roth, Stephen M. Meginniss, III, Kenneth A. Pilcher, Richard A. Reishus,
21 and David Giuliani.
22
23

24 29. A copy of the '906 patent is attached as Exhibit 2.
25
26

27 30. PBL is the exclusive licensee having all substantial rights in and to the '906
28 patent, with the rights to bring enforcement actions for past, present and future infringement and
29 to collect damages for past infringement.
30
31

32 31. The '906 patent is valid, enforceable, and currently in full force and effect.
33
34

35
36
37 **U.S. Patent No. D523,809**

38 32. U.S. Patent No. D523,809 ("the D'809 patent") issued on June 27, 2006, and is
39 entitled "Charger for an Electric Skin Brush." The inventors are Dane M. Roth, Robert E.
40 Akridge, and Kenneth A. Pilcher.
41
42

43 33. A copy of the D'809 patent is attached as Exhibit 3.
44
45

46 34. PBL is the exclusive licensee having all substantial rights in and to the D'809
47 patent, with the rights to bring enforcement actions for past, present and future infringement and
48 to collect damages for past infringement.
49
50
51

1 35. The D’809 patent is valid, enforceable, and currently in full force and effect.
2

3 **PBL’s Clarisonic Trade Dress**
4

5 36. PBL’s Clarisonic products include the Clarisonic Plus model and the Clarisonic
6 Pro model. The Clarisonic Plus and Clarisonic Pro are substantially identical in appearance.
7 The products are sold with a distinctive charging station, in which they rest to recharge.
8

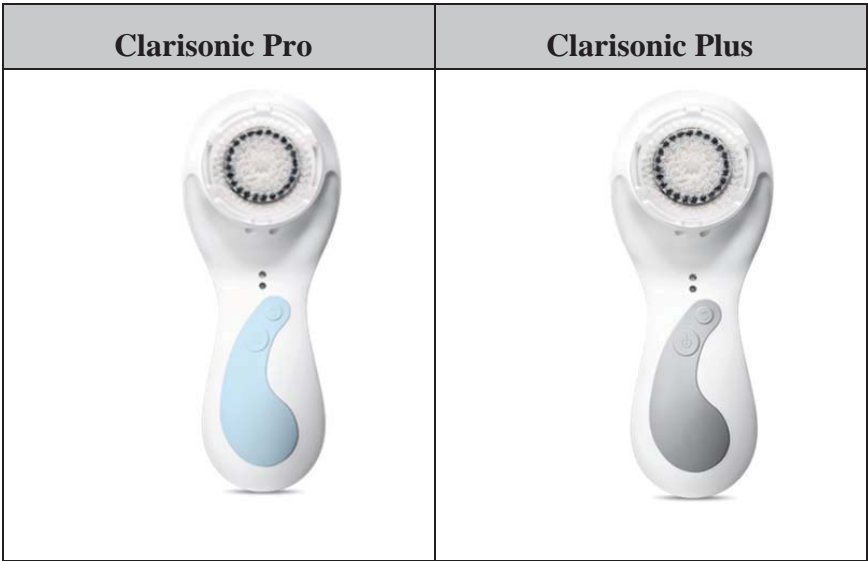
9
10
11 37. The Clarisonic Plus, including its current trade dress, has been used in commerce
12 in the United States since at least as early as 2007. The Clarisonic Pro, including its current trade
13 dress, has been used in commerce in the United States since at least as early as 2007.
14

15
16 38. The Clarisonic Plus and Clarisonic Pro enjoy wide distribution throughout the
17 United States. The Clarisonic Plus is a three-speed model sold directly to consumers via
18 department stores, assisted self-service stores, retail.com, e-tailers, professional salons,
19 professional spas, and dermatologists’ offices as well as online at Clarisonic.com. The
20 Clarisonic Plus sells for approximately \$ 225. The Clarisonic Pro is a four-speed model
21 available in salons, and sells for approximately \$ 225.
22

23
24
25 39. Since at least as early as 2007, in an effort to set its products apart from others,
26 PBL has adopted and used a distinctive product configuration for its Clarisonic Plus and
27 Clarisonic Pro devices and their charging stations that unmistakably identify PBL as the source.
28

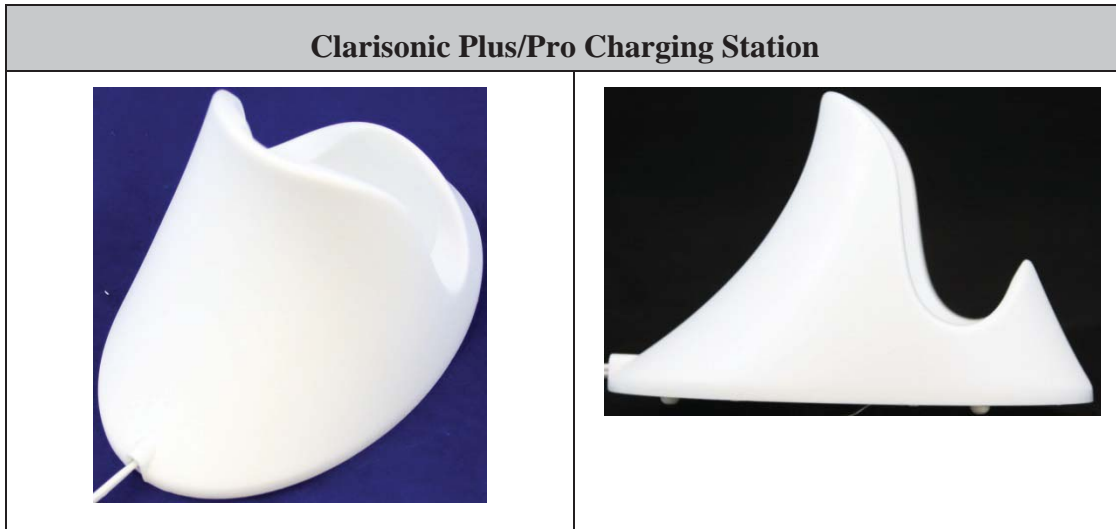
29
30
31 40. The elements of the trade dress for the Clarisonic Plus and Clarisonic Pro devices
32 that create its distinctive overall commercial impression include, but are not limited to, the
33 following (the “Clarisonic Device Trade Dress”):
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51



- hourglass shape of the product;
- shape of the head unit;
- identical molded arcs on each side of the head unit;
- a droplet or “teardrop” shaped pad of contrasting texture on the front of the device;
- one or more control buttons located towards the top of the droplet, inside its perimeter;
- two round lights or “dots” located just above the droplet on the front of the device;
- four round lights or “dots” centered on the narrowest part of the back of the device;
- location of the product name at the widest part of the back of the device;
- contrasting-color ring of bristles located within the bristles on the brush head;
- the shape and contour of the ring surrounding the brush head, with alternating protrusions and indentations; and
- the brush cap, with six large holes spaced evenly on the face, around the perimeter of the cap.

1 41. The key elements of the trade dress for the charging stations sold and used in
 2 connection with the Clarisonic Plus and Clarisonic Pro devices include, but are not limited to, the
 3 following (the “Clarisonic Charging Station Trade Dress”):
 4
 5



- boot-last shape of the product;
- front plane of product extending forward in exaggerated proportion; and
- cradle for product dramatically higher in front than in back.

24
25
26
27
28
29
30 42. The Clarisonic Device Trade Dress and Clarisonic Charging Station Trade Dress
 31 (separately asserted but referred to collectively herein as the “Clarisonic Trade Dress” for
 32 convenience) are not functional. Although individual elements may serve a purpose, that
 33 purpose does not dictate the appearance of the element or of the trade dress as a whole. There is
 34 no functional reason for PBL to have adopted the specific silhouettes, contours and other design
 35 elements that comprise the Clarisonic Trade Dress. It did so in order to have a distinctive and
 36 memorable product configuration that signals to consumers that other products bearing the
 37 Clarisonic Trade Dress also emanate from PBL.
 38
 39
 40
 41
 42
 43
 44

45
46 43. The Clarisonic Trade Dress has acquired secondary meaning in the minds of
 47 consumers through PBL’s substantially continuous and exclusive use for more than seven years,
 48
 49
 50
 51

1 as well as through unsolicited media attention, commercial success, and substantial sales,
2
3 advertising, and promotion.

4
5 44. In the minds of consumers, the Clarisonic Trade Dress stands for and identifies a
6
7 single source of high quality facial cleansing devices. PBL, through its continuous, exclusive,
8
9 and prolonged use of its trade dress, has developed substantial goodwill, value, and recognition
10
11 in it. Customers, potential customers and the trade recognize and associate the Clarisonic Trade
12
13 Dress with high quality facial cleansing devices emanating from a single source.

14
15 45. PBL's Clarisonic Plus and Clarisonic Pro devices have been widely promoted
16
17 through in-store promotions, displays, and advertisements, as well as directly to consumers via
18
19 the Internet. The Clarisonic Plus and Clarisonic Pro, including their trade dress, have been
20
21 featured in editorial coverage in national, trade, and regional magazines. Those editorial features
22
23 have been seen by millions upon millions of consumers since 2007.

24
25 **CLAIM I – INFRINGEMENT OF THE '691 PATENT**

26
27 46. PBL hereby incorporates and realleges Paragraphs 1 - 45 as if fully set forth
28
29 herein.

30
31 47. Our Family Jewels has been and/or is directly infringing one or more claims of
32
33 the '691 patent pursuant to 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, by
34
35 making, using, offering to sell, and/or selling in the United States and/or importing into the
36
37 United States, products, devices, or systems that are covered by the '691 patent, including the
38
39 Episonic.

40
41 48. PBL has consistently and continuously marked its products with the '691 patent
42
43 number pursuant to 35 U.S.C. § 287 and has provided constructive notice of the '691 patent.
44
45 PBL seeks monetary and all other damages permitted by statute.

46
47 49. Our Family Jewels' infringement of the '691 patent has been and will continue to
48
49 be willful and deliberate, by making, using, offering to sell, and/or selling in the United States
50
51 and/or importing into the United States, infringing devices despite that such actions constitute

1 infringement and despite being at least on constructive notice that its actions constitute
2 infringement.
3

4
5 50. Our Family Jewels' infringement of the '691 patent has caused and will continue
6 to cause PBL substantial and irreparable injury, for which PBL is entitled to all of the relief
7 provided by 35 U.S.C. §§ 281, 283, 284, and 285, including but not limited to injunctive relief,
8 compensatory damages not less than the amount of a reasonable royalty, interest, costs, enhanced
9 damages, and reasonable attorney's fees, as the court deems just and appropriate.
10

11
12 **CLAIM II – INFRINGEMENT OF THE '906 PATENT**
13

14
15
16
17 51. PBL hereby incorporates and realleges Paragraphs 1 - 50 as if fully set forth
18 herein.
19

20
21 52. Our Family Jewels has been and/or is directly infringing one or more claims of
22 the '906 patent pursuant to 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, by
23 making, using, offering to sell, and/or selling in the United States and/or importing into the
24 United States, products, devices, or systems that are covered by the '906 patent, including the
25 Episonic.
26
27

28
29
30
31 53. PBL has consistently and continuously marked its products with the '906 patent
32 number pursuant to 35 U.S.C. § 287 and has provided constructive notice of the '906 patent.
33 PBL seeks monetary and all other damages permitted by statute.
34

35
36
37 54. Our Family Jewels' infringement of the '906 patent has been and will continue to
38 be willful and deliberate, by making, using, offering to sell, and/or selling in the United States
39 and/or importing into the United States, infringing devices despite that such actions constitute
40 infringement and despite being at least on constructive notice that its actions constitute
41 infringement.
42
43

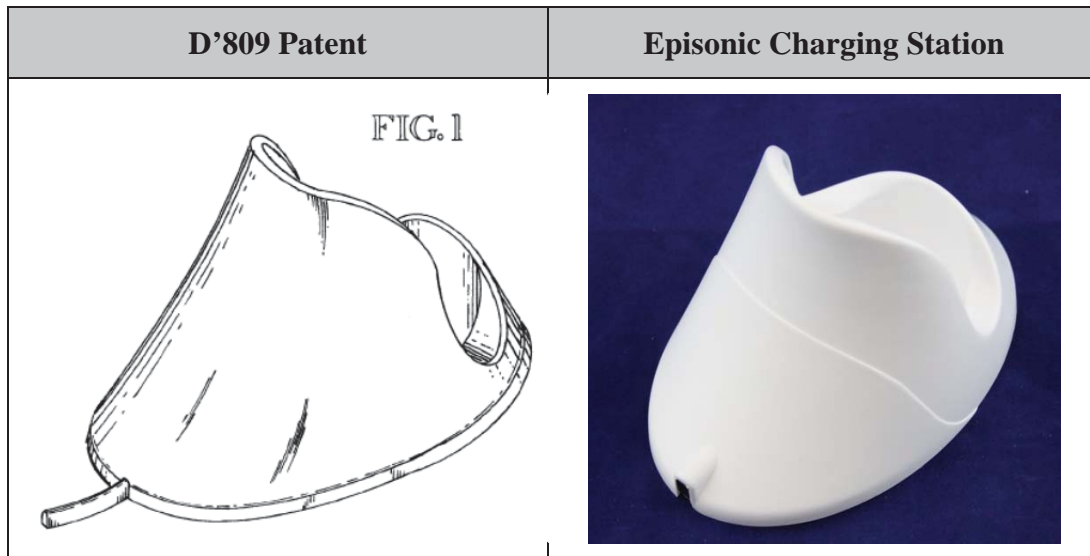
44
45
46
47 55. Our Family Jewels' infringement of the '906 patent has caused and will continue
48 to cause PBL substantial and irreparable injury, for which PBL is entitled to all of the relief
49 provided by 35 U.S.C. §§ 281, 283, 284, and 285, including but not limited to injunctive relief,
50
51

1 compensatory damages not less than the amount of a reasonable royalty, interest, costs, enhanced
 2 damages, and reasonable attorney’s fees, as the court deems just and appropriate.
 3

4 **CLAIM III – INFRINGEMENT OF THE D’809 PATENT**

5
 6 56. PBL hereby incorporates and realleges Paragraphs 1 - 55 as if fully set forth
 7 herein.
 8

9
 10 57. Our Family Jewels has been and/or is directly infringing the D’809 patent
 11 pursuant to 35 U.S.C. § 271(a), by making, using, offering to sell, and/or selling in the United
 12 States and/or importing into the United States, products, devices, or systems that embody the
 13 design covered by the D’809 patent, including the Episonic.
 14
 15
 16
 17



37 58. PBL has consistently and continuously marked its products with the D’809 patent
 38 number pursuant to 35 U.S.C. § 287 and has provided constructive notice of the D’809 patent.
 39 PBL seeks monetary and all other damages permitted by statute.
 40

41
 42 59. Our Family Jewels’ infringement of the D’809 patent has been and will continue
 43 to be willful and deliberate, by making, using, offering to sell, and/or selling in the United States
 44 and/or importing into the United States, infringing devices despite that such actions constitute
 45 infringement and despite being at least on constructive notice that its actions constitute
 46
 47
 48
 49
 50
 51 infringement.

1 60. Our Family Jewels’ infringement of the D’809 patent has caused and will
2
3 continue to cause PBL substantial and irreparable injury, for which PBL is entitled to all of the
4
5 relief provided by 35 U.S.C. §§ 281, 283, 284, 285, and 289, including but not limited to
6
7 injunctive relief, compensatory damages not less than the amount of a reasonable royalty,
8
9 interest, costs, enhanced damages, Our Family Jewels’ profits, and reasonable attorney’s fees, as
10
11 the court deems just and appropriate.

12 **CLAIM IV – INFRINGEMENT OF THE CLARISONIC TRADE DRESS**

13 61. PBL hereby incorporates and realleges Paragraphs 1 - 60 as if fully set forth
14
15 herein.

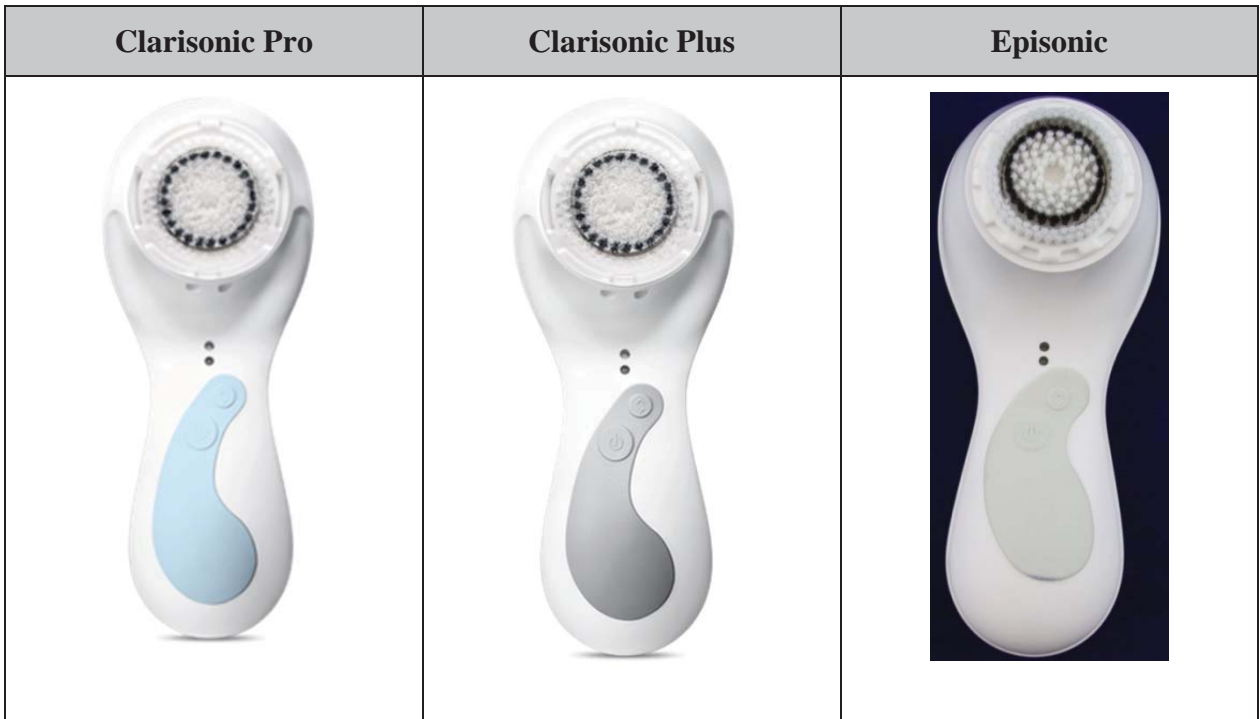
16 62. PBL owns and is the senior user of the Clarisonic Device Trade Dress for its
17
18 facial cleansing brush and the Clarisonic Charging Station Trade Dress for its charging station,
19
20 which are entitled to protection under 15 U.S.C. § 1125(a).
21
22

23 63. PBL owns common law trademark rights in the Clarisonic Device Trade Dress
24
25 and the Clarisonic Charging Station Trade Dress (separately asserted but referred to collectively
26
27 herein as the “Clarisonic Trade Dress” for convenience). These rights are superior to any rights
28
29 that Our Family Jewels may claim with respect to its infringing products. The Clarisonic Trade
30
31 Dress is nonfunctional and has acquired secondary meaning among the relevant public in that it
32
33 identifies products emanating from a single source.
34
35

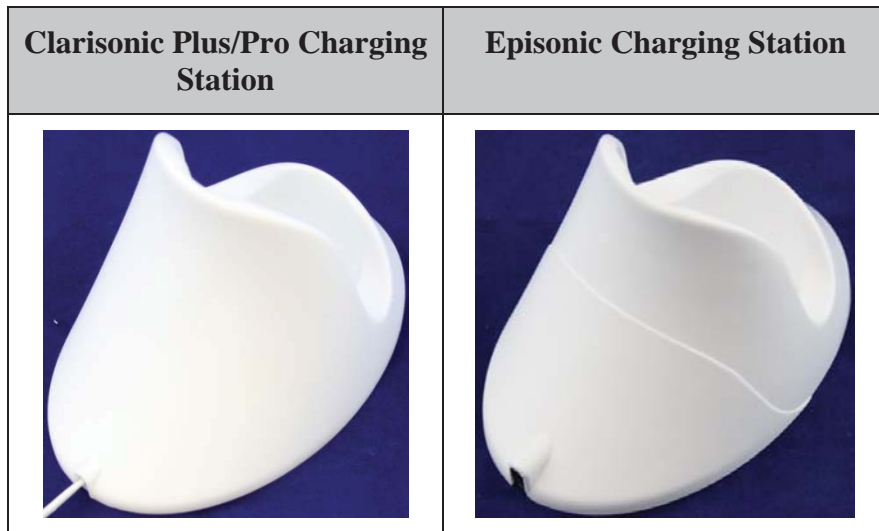
36 64. Our Family Jewels is promoting, offering for sale, and selling products that
37
38 intentionally copy and imitate the Clarisonic Trade Dress.
39

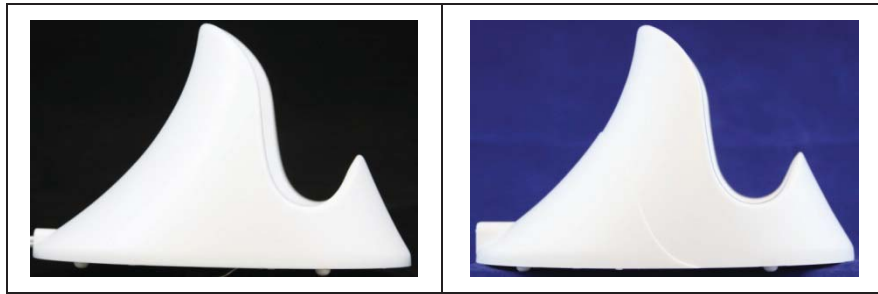
40 65. Our Family Jewels’ Episonic brush and brushhead embody a combination of
41
42 several elements of the Clarisonic Device Trade Dress identified above in Paragraph 40.
43
44
45
46
47
48
49
50
51

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51



66. Our Family Jewels’ Episonic charging station embodies a combination of several elements of the Clarisonic Charging Station Trade Dress identified above in Paragraph 41.





1
2
3
4
5
6
7
8
9
10
11 67. Our Family Jewels' sale and advertising of the Episonic is likely to cause
12 confusion, or to cause mistake, or to deceive as to an affiliation, connection, or association of
13 Our Family Jewels with PBL that does not exist, or as to the origin, sponsorship, or approval of
14 the Episonic product by PBL in violation of Section 43(a) of the Lanham Act, 15 U.S.C.
15 § 1125(a).
16
17
18
19

20
21 68. Our Family Jewels copied the Clarisonic Trade Dress with the intent to trade on
22 the goodwill developed by PBL in the Clarisonic Trade Dress. Our Family Jewels' intentional
23 copying is evidenced by the high degree of similarity between the Episonic and the Clarisonic
24 Trade Dress.
25
26
27

28
29 69. Our Family Jewels has willfully taken these actions with the intent to confuse or
30 deceive consumers and unfairly profit from the goodwill PBL has developed in the Clarisonic
31 Trade Dress.
32
33

34
35 70. Our Family Jewels' intentional and willful actions have infringed PBL's common
36 law rights in the Clarisonic Trade Dress in violation of 15 U.S.C. § 1125(a).
37
38

39
40 71. As a result of Our Family Jewels' actions, Our Family Jewels has been and will
41 continue to be unjustly enriched by profits made through the sale of its infringing products.
42

43
44 72. Our Family Jewels' infringement of the Clarisonic Trade Dress has caused and
45 will continue to cause PBL substantial and irreparable injury, for which PBL is entitled to all of
46 the relief provided by 15 U.S.C. §§ 1116 and 1117, including but not limited to injunctive relief,
47 compensatory damages, enhanced damages, and Our Family Jewels' profits.
48
49
50
51

1 73. Our Family Jewels’ intentional and willful violations entitle PBL to recover three
2
3 times its actual damages, pursuant to 15 U.S.C. § 1117.

4 74. This is an exceptional case under 15 U.S.C. § 1117(a), thus entitling PBL to an
5
6 award of reasonable attorney’s fees.

7 75. PBL has no adequate remedy at law for Our Family Jewels’ continued
8
9 infringement.

10
11 **CLAIM V – VIOLATION OF WASHINGTON STATE’S CONSUMER PROTECTION**
12 **ACT – RCW § 19.86.020 (UNFAIR COMPETITION)**

13
14 76. PBL hereby incorporates and realleges Paragraphs 1 - 75 as if fully set forth
15
16 herein.

17
18 77. The State of Washington has an important interest in ensuring that companies
19
20 doing business with Washington residents fully comply with Washington laws.

21
22 78. Our Family Jewels’ unauthorized use of the Clarisonic Trade Dress is an unfair or
23
24 deceptive act or practice that has the capacity to and does in fact deceive consumers into
25
26 believing that Our Family Jewels is affiliated, connected, or associated with PBL, or that Our
27
28 Family Jewels’ product comes from or is sponsored or approved by PBL.

29
30 79. Our Family Jewels’ conduct occurred in the conduct of trade or commerce or the
31
32 sale of products in the State of Washington.

33
34 80. Our Family Jewels’ unfair and deceptive acts and practices implicate the public
35
36 interest because of the widespread deception they are causing on the consuming public.

37
38 81. All the conduct alleged herein occurs and continues to occur in the course of Our
39
40 Family Jewels’ business. The conduct is part of a pattern or generalized course of conduct
41
42 repeated on numerous occasions daily.

43
44 82. Our Family Jewels has engaged and continues to engage in these activities
45
46 knowingly, willfully, and deliberately.

1 83. PBL has been directly and proximately injured in its business and property by Our
2 Family Jewels' conduct complained of herein, in violation of PBL's rights under RCW
3 § 19.86.020.
4
5

6 84. Our Family Jewels' violations of RCW § 19.86.020 have caused and will continue
7 to cause PBL to sustain damage, loss, and injury in an amount that cannot be fully measured or
8 compensated in economic terms.
9
10

11 85. Pursuant to RCW § 19.86.090, PBL is entitled to actual and trebled damages,
12 reasonable attorney's fees and costs of suit.
13
14

15 86. PBL has no adequate remedy at law, unless the acts of Our Family Jewels are
16 enjoined during the pendency of this action and thereafter.
17
18

19
20
21 **CLAIM VI – COMMON LAW UNFAIR COMPETITION**
22

23 87. PBL hereby incorporates and realleges Paragraphs 1 - 86 as if fully set forth
24 herein.
25

26 88. Our Family Jewels has used and continues to use in advertising and commerce
27 false and misleading descriptions of fact, and/or false and misleading representations of fact,
28 concerning its merchandise. Our Family Jewels has further displayed, distributed, sold, and used
29 merchandise that infringes the Clarisonic Trade Dress, thereby unfairly taking advantage of the
30 goodwill and business reputation of PBL. These activities constitute unfair competition.
31
32

33 89. Our Family Jewels has engaged in unfair competition willfully and with a bad
34 faith intent to confuse consumers and injure PBL.
35
36

37 90. PBL has sustained, and will continue to sustain, substantial injuries, loss, and
38 damage to its business by reason of the unfair competition of Our Family Jewels.
39
40

41 91. On information and belief, unless restrained and enjoined, Our Family Jewels will
42 continue to engage in unfair competition that injures PBL and thereby causes irreparable damage
43 to PBL, as it would be unreasonably difficult to ascertain the amount of compensation that could
44
45
46
47
48
49
50
51

1 afford PBL adequate relief for such continuing infringement. PBL has no adequate remedy at
2 law.
3

4
5 **VI. DEMAND FOR JURY TRIAL**

6 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, PBL respectfully requests a
7 trial by jury of all issues properly triable by jury.
8
9

10
11 **VII. PRAYER FOR RELIEF**

12 WHEREFORE, PBL prays for relief, as follows:

13
14 A. A judgment that Our Family Jewels has infringed one or more claims of the '691
15 patent;
16

17
18 B. A judgment that Our Family Jewels has infringed one or more claims of the '906
19 patent;
20

21
22 C. A judgment that Our Family Jewels has infringed the D'809 patent;

23
24 D. An order and judgment preliminarily and permanently enjoining Our Family
25 Jewels and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others
26 acting in privity or in concert with them, and their investors, partners, parents, subsidiaries,
27 divisions, successors, and assigns, from further acts of infringement of PBL's asserted patents;
28

29
30 E. A judgment awarding PBL all damages adequate to compensate for Our Family
31 Jewels' infringement of PBL's asserted patents and/or Our Family Jewels' total profits pursuant
32 to 35 U.S.C. § 289, and in no event less than a reasonable royalty for Our Family Jewels' acts of
33 infringement, including all pre-judgment and post-judgment interest at the maximum rate
34 permitted by law;
35

36
37 F. A judgment declaring that Our Family Jewels' infringement of the asserted
38 patents has been willful and deliberate;
39

40
41 G. A judgment awarding PBL all damages, including treble damages, as a result of
42 Our Family Jewels' willful and deliberate infringement of the asserted patents, pursuant to 35
43 U.S.C. § 284, together with pre-judgment and post-judgment interest;
44
45
46
47
48
49
50
51

1 H. A judgment declaring that this case is exceptional;

2
3 I. A judgment awarding PBL its expenses, costs, and attorney's fees in accordance
4 with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure;

5
6 J. An order preliminarily and permanently enjoining Our Family Jewels and its
7 officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in
8 privity or in concert with them, and their investors, partners, parents, subsidiaries, divisions,
9 successors, and assigns, from directly or indirectly infringing the Clarisonic Trade Dress or using
10 any other product or packaging design or designations constituting a colorable imitation of or
11 likely to cause confusion with the Clarisonic Trade Dress; from passing off Our Family Jewels'
12 products as being associated with and/or sponsored or affiliated with PBL; from committing any
13 other unfair business practices directed toward obtaining for themselves the business and
14 customers of PBL; and from committing any other unfair acts or practices directed toward
15 devaluing or diminishing the goodwill, brand, or business of PBL;

16
17 K. Actual damages suffered by PBL as a result of Our Family Jewels' unlawful
18 conduct, in an amount to be proven at trial, as well as pre-judgment and post-judgment interest as
19 authorized by law;

20
21 L. A recall of all infringing products and destruction thereof;

22
23 M. An accounting of Our Family Jewels' profits pursuant to 15 U.S.C. § 1117;

24
25 N. A judgment trebling any profits and/or damages award pursuant to 15 U.S.C.
26 § 1117;

27
28 O. The filing of a declaration with this Court in accordance with 15 U.S.C. § 1116
29 within 30 days of any injunction that issues;

30
31 P. An award of PBL's actual and trebled damages and costs of suit, including
32 attorney's fees, in an amount to be proved at trial and as provided under RCW § 19.86.090;

33
34 Q. Costs of suit and reasonable attorney's fees; and

35
36 R. Such other and further relief as the Court deems just and proper.
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

1
2 DATED: May 1, 2015.
3
4

Respectfully submitted,

5 By: s/ Ramsey M. Al-Salam

6 Ramsey M. Al-Salam WSBA #18822

7 **Perkins Coie LLP**

8 1201 Third Avenue, Suite 4900

9 Seattle, WA 98101-3099

10 Tel: (206) 359-8000

11 Fax: (206) 359-9000

12 Email: RAlsalam@perkinscoie.com

13
14 Attorneys for Plaintiff

15 Pacific Bioscience Laboratories, Inc.

16
17 COUNSEL:

18
19 Robert M. Masters (*pro hac to be submitted*)

20 Timothy P. Cremen (*pro hac to be submitted*)

21 Lisa Y. Leung (WSBA No. 43015)

22 PAUL HASTINGS LLP

23 875 15th St. NW

24 Washington, D.C. 20005

25 Tel: (202) 551-1700

26 Fax: (202) 551-1705

27 robertmasters@paulhastings.com

28 timothy cremen@paulhastings.com

29 lisaleung@paulhastings.com

30
31 Robert L. Sherman (*pro hac to be submitted*)

32 Natalie G. Furman (*pro hac to be submitted*)

33 PAUL HASTINGS LLP

34 75 East 55th Street

35 New York, NY 10022

36 Tel: (212) 318-6000

37 Fax: (212) 230-7841

38 robertsherman@paulhastings.com

39 nataliefurman@paulhastngs.com