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13 *Counsel for Plaintiff and all*  
14 *others similarly situated*

15 UNITED STATES DISTRICT COURT  
16 SOUTHERN DISTRICT OF CALIFORNIA

17 MATTHEW DRONKERS, on behalf of  
18 himself and all others similarly situated,

19 Plaintiff,

20 v.

21 KISS MY FACE, LLC, a Delaware  
Limited Liability Company, and DOES  
22 1-10, inclusive,

23 Defendant.

Case No. '12CV1151 JAH WMc

24 **CLASS ACTION**  
25 **COMPLAINT FOR:**

26 **1. VIOLATION OF THE FALSE**  
**ADVERTISING LAWS ("FAL");**  
**Bus. & Prof. Code §17500 et seq.;**

27 **2. VIOLATION OF CALIFORNIA'S**  
**UNFAIR COMPETITION LAWS**  
**("UCL"); Bus. & Prof. Code §17200**  
**et seq.;**

28 **3. VIOLATION OF CALIFORNIA'S**  
**CONSUMER LEGAL REMEDIES**  
**ACT ("CLRA"), Civil Code §1750 et**  
**seq.**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Matthew Dronkers, on behalf of himself and all others similarly  
2 situated, alleges the following upon information and belief based upon investigation  
3 of counsel, except as to his own acts, which he alleges upon personal knowledge:

4 **PARTIES**

5 1. Plaintiff Matthew Dronkers is a resident of San Diego County who purchased  
6 Kiss My Face products in early 2012. Plaintiff relied on Defendant's  
7 representations that the Kiss My Face personal care products he purchased  
8 were organic, as detailed herein, and but for those representations, Plaintiff  
9 would not have purchased or paid as much for such products.

10 2. Defendant, Kiss My Face, LLC, is a Delaware limited liability company with  
11 its principal place of business in New York. Defendant has sold its products  
12 in California and across the United States of America.

13 3. The true names and capacities of the Defendants sued herein as DOES 1  
14 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues  
15 such Defendants by fictitious names. Each of the Defendants designated  
16 herein as a DOE is legally responsible for the unlawful acts alleged herein.  
17 Plaintiff will seek leave of Court to amend this Complaint to reflect the true  
18 names and capacities of the DOE Defendants when such identities become  
19 known.

20 4. At all relevant times, each and every Defendant was acting as an agent and/or  
21 employee of each of the other Defendants and was acting within the course  
22 and/or scope of said agency and/or employment with the full knowledge and  
23 consent of each of the Defendants. Each of the acts and/or omissions  
24 complained of herein were alleged and made known to, and ratified by, each  
25 of the other Defendants.

26 **JURISDICTION AND VENUE**

27 5. A Court has diversity jurisdiction over this class action pursuant to 28 U.S.C.  
28 § 1332 as amended by the Class Action Fairness Act of 2005 because the

1 amount in controversy exceeds \$5,000,000, exclusive of interest and costs,  
2 and is a class action in which some members of the class are citizens of  
3 different states than the Defendant. *See* 28 U.S.C. §1332(d)(2)(A).

4 6. This Court also has personal jurisdiction over Defendant because Defendant  
5 currently does business in this state.

6 7. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because  
7 Defendant is subject to personal jurisdiction in this District and a substantial  
8 portion of the conduct complained of herein occurred in this District.

9 **FACTUAL ALLEGATIONS**

10 8. Defendant manufactures, markets, and sells a wide variety of consumer  
11 products. Such products include moisturizers, hand cremes, shampoo, shine,  
12 lighteners, and toothpaste. One such line of products that Defendant sold was  
13 labeled as “obsessively organic” clearly on the front of the product packaging  
14 (hereafter referred to as “Products”).

15 9. In reality, they are nothing of the sort. This false marketing – known as  
16 “greenwashing” – enables Defendant to unfairly capture sales that it would  
17 not make but for its deception, and also charges consumers a premium based  
18 upon the false perception that the products are organic.

19 10. The market for natural personal care products is expected to gross over \$11.7  
20 billion by 2013. In fact, the market for natural personal care products is  
21 expected to grow by over 13% annually while the market for general personal  
22 care products is only expected to expand by 3%. Likewise, according to the  
23 Organic Trade Association, the market for organic non-food products grew at  
24 an alarming rate of over 9.7% in 2010 and reached nearly \$2 billion in sales.  
25 Defendant exploits this rapidly growing, highly profitable market by falsely  
26 and misleadingly labeling its Products to imply that its Products too should be  
27 considered “organic.”  
28

- 1 11. To a reasonable and ordinary consumer, an "Organic" beauty product is one  
2 that is derived from fruits, vegetables and other crops that are grown,  
3 produced, handled, and processed according to strict guidelines. This  
4 includes, at a minimum, that: (1) the land used to produce organic source  
5 materials must be free of synthetic fertilizers and conventional pesticides; (2)  
6 the product must be derived from farming practices where the ingredients  
7 have not been genetically engineered or exposed to radiation; and most  
8 importantly, (3) the product must contain no synthetic ingredients.
- 9 12. Likewise, the U.S. Department of Agriculture National Organic Program, 7  
10 C.F.R. §205.660(a), which was promulgated pursuant to the Organic Foods  
11 Production Act of 1990, 7 U.S.C. §6519, has provided guidance for  
12 circumstances under which products intended for ingestion – not the products  
13 at issue in this complaint – may be properly be labeled as “organic.” Such  
14 products must, at a minimum: (1) contain 95% organic ingredients (excluding  
15 water and salt); (2) be derived from organic agricultural material that has  
16 been grown without the use of pesticides, synthetic fertilizers, genetic  
17 engineering, or irradiation; and (3) be made entirely without the use of  
18 petrochemical compounds. The products at issue satisfy none of the  
19 preceding criteria. Instead, they are completely conventional non-organic  
20 formulations.
- 21 13. Regrettably, the United States Department of Agriculture disclaims any  
22 authority over the labeling of personal care products. Specifically, in an April  
23 2008 “Guidance Document” entitled “Cosmetics, Body Care Products and  
24 Personal Care Products,” the USDA advised that, except in limited  
25 circumstances not applicable here, the Agency “has no authority over the  
26 production and labeling of cosmetics, body care products, and personal care  
27 products.”  
28

1 14. The Kiss My Face Products do not qualify as “Organic” under any of the  
2 preceding criteria Defendant’s misrepresentations regarding the character and  
3 quality of its Products were designed to, and did, lead Plaintiff and others  
4 similarly situated to believe that the Products were organic. Plaintiff and  
5 members of the Class relied on Defendant’s misrepresentations and would not  
6 have paid as much, if at all, for the Products but for Defendant’s  
7 misrepresentations.

8 15. Accordingly, Plaintiff brings this lawsuit to enjoin the ongoing deception of  
9 thousands of California consumers by Defendant, and to recover the funds  
10 taken by this unlawful practice.

11 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

12 16. Plaintiff brings this action on behalf of herself, on behalf of all others  
13 similarly situated, as members of the class (referred to hereafter as the  
14 “Class”) defined as follows:

15 California Class: The class the Plaintiff seeks to represent consists of all  
16 persons who are citizens or residents of California who purchased any Kiss  
17 My Face personal care product labeled as “Organic” during the four years  
18 preceding the filing of this complaint through the date of final judgment in  
19 this action. Excluded from the class are Defendant, any parent, subsidiary,  
20 affiliate, or controlled person of Defendant, as well as the officers and  
21 directors of Defendant, and the immediate family member of any such person.  
22 Also excluded is any judge who may preside over this case, and such judge’s  
23 immediate family or courtroom staff.

24 17. This action is brought and may be properly maintained as a class action  
25 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and  
26 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy,  
27 predominance and superiority requirements of those provisions.

28 18. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual

1 joinder of all of its members is impractical. While the exact number and  
2 identities of Class members are unknown to Plaintiff at this time and can only  
3 be ascertained through appropriate discovery, Plaintiff is informed and  
4 believes the Class includes thousands of members. Plaintiff alleges that the  
5 Class may be ascertained by the records maintained by Defendant.

6 19. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all  
7 members of the Class which predominate over any questions affecting only  
8 individual members of the Class. These common legal and factual questions,  
9 which do not vary from class member to class member, and which may be  
10 determined without reference to the individual circumstances of any class  
11 member, include, but are not limited to, the following:

- 12 (a) Whether Defendant's advertising or labeling is false or misleading;
- 13 (b) Whether Defendant's Products are in fact organic;
- 14 (c) Whether Defendant's conduct violates the CLRA or other laws;
- 15 (d) Whether Defendant's conduct is "unfair" under Bus. & Prof. Code  
16 Section 17200;
- 17 (e) Whether, as a result of Defendant's misconduct, Plaintiff and the  
18 Class are entitled to damages, restitution, equitable relief and other  
19 relief, and the amount and nature of such relief.

20 20. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the  
21 members of the Class. Plaintiff and all members of the Class have sustained  
22 injury and are facing irreparable harm arising out of Defendant's common  
23 course of conduct as complained of herein. The losses of each member of the  
24 Class were caused directly by Defendant's wrongful conduct as alleged  
25 herein.

26 21. [Fed. R. Civ. P. 23(a)(4)] Plaintiff will fairly and adequately protect the  
27 interests of the members of the Class. Plaintiff has retained attorneys  
28

1 experienced in the prosecution of class actions, including complex consumer  
2 and mass tort litigation.

3 22. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available  
4 methods of fair and efficient adjudication of this controversy, since individual  
5 litigation of the claims of all Class members is impracticable. Even if every  
6 Class member could afford individual litigation, the court system could not.  
7 It would be unduly burdensome to the courts in which individual litigation of  
8 numerous issues would proceed. Individualized litigation would also present  
9 the potential for varying, inconsistent, or contradictory judgments and would  
10 magnify the delay and expense to all parties and to the court system resulting  
11 from multiple trials of the same complex factual issues. By contrast, the  
12 conduct of this action as a class action, with respect to some or all of the  
13 issues presented herein, presents fewer management difficulties, conserves  
14 the resources of the parties and of the court system, and protects the rights of  
15 each Class member.

16 23. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by  
17 thousands of individual Class members would create the risk of inconsistent  
18 or varying adjudications with respect to, among other things, the need for and  
19 the nature of proper notice, which Defendant must provide to all Class  
20 members.

21 24. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by  
22 individual class members would create a risk of adjudications with respect to  
23 them that would, as a practical matter, be dispositive of the interests of the  
24 other Class members not parties to such adjudications or that would  
25 substantially impair or impede the ability of such non-party Class members to  
26 protect their interests.

27  
28

1 25. [Fed. R. Civ. P. 23(b)(2)] Defendant has acted or refused to act in respects  
2 generally applicable to the Class, thereby making appropriate final injunctive  
3 relief with regard to the members of the Class as a whole.

4 **FIRST CAUSE OF ACTION**

5 **Business and Professions Code §17500**

6 **(Violation of the False Advertising Act)**

7 **(By Plaintiff and the Class Against All Defendants)**

8 26. Plaintiff hereby incorporates paragraphs 1-25 above as if set forth in full.

9 27. California Business and Professions Code (the "Code") § 17500 provides that  
10 "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ...  
11 personal property ... to induce the public to enter into any obligation relating  
12 thereto, to make or disseminate or cause to be made or disseminated ... from  
13 this state before the public in any state, in any newspaper or other publication,  
14 or any advertising device, or by public outcry or proclamation, or in any other  
15 manner or means whatever, including over the Internet, any statement ...  
16 which is untrue or misleading, and which is known, or which by the exercise  
17 of reasonable care should be known, to be untrue or misleading . . . ."

18 28. Defendant misled consumers by making untrue statements and failing to  
19 disclose what is required as stated in the Code, as alleged above.

20 29. As a direct and proximate result of Defendant's misleading and false  
21 advertising, Plaintiff and the members of the Class have suffered injury in  
22 fact and have lost money or property.

23 30. The misleading and false advertising described herein presents a continuing  
24 threat to Plaintiff and the Class in that Defendant persists and continues to  
25 engage in these practices, and will not cease doing so unless and until forced  
26 to do so by this Court. Defendant's conduct will continue to cause  
27 irreparable injury to consumers unless enjoined or restrained.

28 //



**SECOND CAUSE OF ACTION**

**Business and Professions Code § 17200, et seq.**

**(Violation of the Unfair Competition Law)**

**(By Plaintiff and the Class Against All Defendants)**

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2  
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4  
5 31. Plaintiff hereby incorporates paragraphs 1-30 above as if set forth in full.

6 32. California Business and Professions Code § 17200, et seq., (the “Unfair  
7 Competition Law” or “UCL”) authorizes private lawsuits to enjoin acts of  
8 “unfair competition” which includes any unlawful, unfair, or fraudulent  
9 business practice.

10 33. The UCL imposes strict liability. Plaintiff need not prove that Defendant  
11 intentionally or negligently engaged in unlawful, unfair or fraudulent  
12 business practices—but only that such practices occurred.

13 34. The material misrepresentations, concealment, and non-disclosures by  
14 Defendant and DOES 1-10 as part of their marketing and advertising of their  
15 Products are unlawful, unfair, and fraudulent business practices prohibited by  
16 the UCL.

17 35. In carrying out such marketing, Defendant has violated the Consumer Legal  
18 Remedies Act, the False Advertising Law, and various other laws,  
19 regulations, statutes, and/or common law duties. Defendant’s business  
20 practices alleged herein, therefore, are unlawful within the meaning of the  
21 UCL.

22 36. The harm to Plaintiff and members of the public outweighs the utility of  
23 Defendant’s practices and, consequently, Defendant’s practices, as set forth  
24 fully above, constitute an unfair business act or practice within the meaning  
25 of the UCL.

26 37. Defendant’s practices are additionally unfair because they have caused  
27 Plaintiff and the Class substantial injury, which is not outweighed by any  
28

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1 43. The Consumer Legal Remedies Act (“CLRA”) creates a non-exclusive  
2 statutory remedy for unfair methods of competition and unfair or deceptive  
3 acts or business practices. *See Reveles v. Toyota by the Bay*, 57 Cal. App. 4th  
4 1139, 1164 (1997). Its self-declared purpose is to protect consumers against  
5 these unfair and deceptive business practices, and to provide efficient and  
6 economical procedures to secure such protection. Cal. Civil Code § 1760 et  
7 seq. The CLRA was designed to be liberally construed and applied in favor  
8 of consumers to promote its underlying purposes. *Id.*

9 44. Plaintiff has standing to pursue this claim as Plaintiff purchased Kiss My  
10 Face personal care products labeled as “obsessively organic,” believing that  
11 they were in fact pure, natural, and organic. Plaintiff relied on Defendant’s  
12 advertising and has been damaged because the Products he purchased are not  
13 pure, natural and organic; had he known this, he would have either not  
14 bought the Products or paid less for them.

15 45. Plaintiff has filed concurrently herewith the declaration of venue required by  
16 Civil Code Section 1780(d).

17 46. Defendant’s wrongful business practices constituted, and constitutes, a  
18 continuing course of conduct in violation of the California CLRA since  
19 Defendant is still representing that its products have characteristics which are  
20 false and misleading.

21 47. More specifically, Plaintiff alleges that Defendant has violated paragraphs 5,  
22 7, and 9 of California Civil Code § 1770(a) by engaging in the unfair and/or  
23 deceptive acts and practices set forth herein. Defendant’s unfair and  
24 deceptive business practices in carrying out the marketing program described  
25 above were and are intended to and did and do result in Plaintiff and Class  
26 members purchasing Defendant’s products, in violation of the CLRA. Cal.  
27 Civil Code § 1770, et seq.

28

1 48. As a result of Defendant's unfair and/or deceptive business practices, Plaintiff  
2 and all consumers who purchased Defendant's supplement products have  
3 suffered damage and lost money in that they paid for products that did not  
4 have the characteristics and benefits as represented. Plaintiff seeks and is  
5 entitled to an order enjoining Defendant from continuing to engage in the  
6 unfair and deceptive business practices alleged herein.

7 49. Pursuant to Section 1782 of the CLRA, Plaintiff intends to notify Defendant  
8 in writing of the particular violations of Section 1770 of the CLRA (the  
9 "Notice Letter"). If Defendant fails to comply with Plaintiff's demands  
10 within thirty days of receipt of the Notice Letter, pursuant to Section 1782 of  
11 the CLRA, Plaintiff will amend this Complaint to further request damages  
12 under the CLRA.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for  
15 relief and judgment as follows:

16 1. For preliminary and permanent injunctive relief enjoining Defendant,  
17 its agents, servants and employees, and all persons acting in concert with them,  
18 from engaging in, and continuing to engage in, the unfair, unlawful and/or  
19 fraudulent business practices alleged above and that may yet be discovered in the  
20 prosecution of this action;

21 2. For certification of the putative class;

22 3. For restitution and disgorgement of all money or property wrongfully  
23 obtained by Defendant by means of its herein-alleged unlawful, unfair, and  
24 fraudulent business practices;

25 4. For an accounting by Defendant for any and all profits derived by  
26 Defendant from its herein-alleged unlawful, unfair, and/or fraudulent conduct  
27 and/or business practices;

28

1 5. An award of statutory damages according to proof, except that no  
2 damages are currently sought on Plaintiffs' Cause of Action regarding the  
3 Consumer Legal Remedies Act at this time;

4 6. An award of general damages according to proof, except that no  
5 damages are currently sought on Plaintiffs' Cause of Action regarding the  
6 Consumer Legal Remedies Act at this time;

7 7. An award of special damages according to proof, except that no  
8 damages are currently sought on Plaintiffs' Cause of Action regarding the  
9 Consumer Legal Remedies Act at this time;

10 8. Exemplary damages, except that no damages are currently sought on  
11 Plaintiffs' Cause of Action regarding the Consumer Legal Remedies Act at this  
12 time;


13 9. For attorneys' fees and expenses pursuant to all applicable laws  
14 including, without limitation, Code of Civil Procedure §1021.5, the CLRA, and the  
15 common law private attorney general doctrine;

16 10. For costs of suit; and

17 11. For such other and further relief as the Court deems just and proper.

18 DATED: May 10, 2012

KIRTLAND & PACKARD LLP

19 By:   
20 MICHAEL LOUIS KELLY  
21 BEHRAM V. PAREKH  
22 HEATHER M. PETERSON  
23 *Counsel for Plaintiff and all others*  
24 *similarly situated*

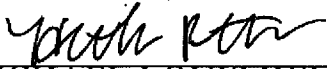
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury for all causes of actions so triable.

DATED: May 10, 2012

KIRTLAND & PACKARD LLP

By:   
MICHAEL LOUIS KELLY  
BEHRAM V. PAREKH  
HEATHER M. PETERSON  
*Counsel for Plaintiff and all others  
similarly situated*

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1 I, Matt Dronkers, declare as follows:

2 1. I am a Plaintiff in this action, and am a citizen of the State of California. I have  
3 personal knowledge of the facts herein and, if called as a witness, I could and would testify  
4 competently thereto.

5  
6 2. The Complaint in this action, filed concurrently with this Declaration, is filed in the  
7 proper place for trial under Civil Code Section 1780(d) in that San Diego County is a county in which  
8 Defendants are doing business.

9  
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
11 true and correct.

12  
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14 \_\_\_\_\_  
15 Matt Dronkers  
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CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MATTHEW DRONKERS, on behalf of himself and all others similarly situated,

DEFENDANTS

KISS MY FACE, LLC, a Delaware Limited Liability Company, and DOES 1-10, inclusive,

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

KIRTLAND & PACKARD LLP
2041 Rosecrans Avenue
Third Floor
El Segundo, CA 90245
(310) 536-1000

Attorneys (If Known)

'12CV1151 JAH WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d)(2)(A) - Class Action Fairness Act Diversity - false and misleading advertising causing Plaintiff and the Class to purchase Defendant's products. Brief description of cause: Unfair business practices and false advertising.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ TBD CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE May 11, 2012 SIGNATURE OF ATTORNEY OF RECORD Heather M. Peterson

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE