

FILED

2013 DEC 16 PM 2:29

U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

MILSTEIN ADELMAN, LLP
Paul D. Stevens, State Bar No. 207107
pstevens@milsteinadelman.com
Shireen Mohsenzadegan, State Bar No. 237882
smohsenzadegan@milsteinadelman.com
2800 Donald Douglas Loop North
Santa Monica, California 90405
Telephone: (310) 396-9600
Fax: (310) 396-9635

Attorneys for Plaintiff Ann Kenney

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ANN KENNEY, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

ALTERNA HOLDINGS CORP., a Delaware Corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 2:13-cv-09014-DSF-MRW

FIRST AMENDED COMPLAINT

1. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*
2. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17500, *et seq.*
3. VIOLATION OF CALIFORNIA CIVIL CODE § 1750, *et seq.* (Consumers Legal Remedies Act)

DEMAND FOR JURY TRIAL

Plaintiff Ann Kenney (“Plaintiff”), individually and on behalf of all other similarly situated purchasers of Alterna Caviar Anti-Aging Shampoo (the “Class”), brings this complaint against Alterna Holdings Corp. (“Alterna” and/or “Defendant”) and Does 1 through 100, inclusive (sometimes collectively referred to herein as “Defendants”) and allege as follows:

1 1. Plaintiff brings this class action to secure injunctive relief and
2 restitution for the Class against Defendants for false and misleading advertising in
3 violation of Business & Professions Code section 17200, *et seq.*, Business &
4 Professions Code section 17500, *et seq.* and Civil Code section 1750, *et seq.*
5 Defendants made and continue to make false and misleading statements in their
6 advertising of Alterna Caviar Anti-Aging Shampoo, a purported hair shampoo that
7 is specially formulated to “combat aging” of the hair and result in “hair [that] acts
8 instantly healthier and younger” (hereinafter “Anti-Aging Shampoo” or the
9 “Product”).

10 2. The central focus of Defendants’ marketing, advertising, and labeling of
11 the Product is that the Product is “anti-aging.” According to Defendants, the
12 Product contains an “Age Control Complex”, which includes caviar extract, and that
13 combats chronological, chemical and environmental aging, resulting in restored and
14 balanced hair that is stronger, healthier and younger.

15 3. Defendants make a variety of statements regarding the “anti-aging”
16 benefits of the Product – some in magazines, on the internet, and on its product
17 label, including by way of example and without limitation:

- 18 a. “Hair acts instantly healthier and younger.
- 19 b. “In a clinical study, 100% of women saw a notable improvement in
20 shine, texture, softness & manageability after just one use.” (emphasis
21 added)
- 22 c. “Proven Ingredients: ... Age Control Complex: Combats chronological,
23 chemical & environmental aging ...
- 24 d. “Revitalize brittle hair and bring back silky radiance with Alterna
25 Caviar Anti-Aging Moisture Shampoo.
- 26 e. “It restores and rebalances moisture while protecting color and
27 improving the overall appearance of dry, brittle hair.

1 f. “Infused with Alterna’s Age-Control Complex, which includes caviar
2 extract, vitamin C, and cytokines, your hair will be left stronger,
3 healthier, and younger-looking.”

4 g. “Revitalizes your hair to bring back silky radiance.”

5 4. Some of the aforementioned claims violate the California Consumers
6 Legal Remedies Act, particularly California Civil Code sections 1770(a)(5) and
7 1770(a)(7). As such, Defendants have committed *per se* violations of Business &
8 Professions Code section 17200, *et seq.*, Business & Professions Code section
9 17500, *et seq.* and Civil Code section 1750, *et seq.*

10 5. The remaining claims misrepresent the effects and purported benefits of
11 the Product. As such, Defendants have engaged in false and misleading advertising.

12 6. On August 28, 2013, Plaintiff effectuated written notice to Defendant
13 Alterna via certified U.S. mail pursuant to Civil Code section 1750, *et seq.*, which
14 set forth Plaintiff’s contentions concerning the Product’s fraudulent advertising and
15 outlined Plaintiff’s demand for support of the above-referenced claims and relief.
16 (*See* Plaintiff’s Letter to Defendant Alterna, dated August 28, 2013, a true and
17 correct copy of which is attached hereto as Exhibit 1.)

18 7. Defendant did not respond and has, in effect, refused to produce any
19 support for the claims it maintains concerning the Anti-Aging Shampoo.

20 **JURISDICTION AND VENUE**

21 8. This Court has jurisdiction over all causes of action asserted herein
22 pursuant to the California Constitution, Article VI, section 10, because this case is a
23 cause not given by statute to other trial courts.

24 9. Plaintiff has standing to bring this action pursuant to Business &
25 Professions Code section 17200, *et seq.*

26 10. Out-of-state participants can be brought before this Court pursuant to
27 the provisions of Code of Civil Procedure section 395.5.

1 11. Defendant is subject to personal jurisdiction in California based upon
2 sufficient minimum contacts which exist between it and California.

3 12. Venue is proper in this Court because Defendant conducts business in
4 Los Angeles County, Defendant receives substantial compensation from sales in
5 Los Angeles County, and Defendant made numerous misrepresentations which had
6 a substantial effect in Los Angeles County, including, but not limited to, print
7 media, and internet advertisements, and on the Product's packaging and labeling.

8 **PARTIES**

9 13. Plaintiff is, and at all times relevant hereto was, an individual residing
10 in San Diego County, California. When purchasing the Product, Plaintiff relied
11 upon the advertising and other promotional material which were prepared and
12 approved by Defendants and their agents and disseminated through its packaging,
13 label, and national advertising media, containing the misrepresentations alleged
14 herein and designed to encourage consumers to purchase the Product.

15 14. Defendant Alterna is a corporation organized and existing under the
16 laws of the State of Delaware, with a principal place of business located at 1209
17 Orange St in Wilmington, Delaware 19801. Alterna offers the Product for sale
18 through various channels, including the internet and a variety of retailers, including
19 beauty supply stores, drugstores, and the like, throughout the nation, including the
20 State of California. Alterna, directly and through its agents, has substantial contacts
21 with and receives substantial benefits and income from and through the State of
22 California. Alterna is the owner and distributor of the Product and is the company
23 that created and/or authorized the false, misleading, and deceptive advertisements
24 and packaging for the Product.

25 15. The true names and capacities, whether individual, corporate, associate
26 or otherwise of certain manufacturers, distributors, and/or their alter egos sued
27 herein as DOES 1 through 100 inclusive are presently unknown to Plaintiff who
28 therefore sue these Defendants by fictitious names. Plaintiff will seek leave of this

1 Court to amend the Complaint to show their true names and capacities when the
2 same have been ascertained. Plaintiff is informed and believes and based thereon
3 alleges that DOES 1 through 100 were authorized to do and did business in San
4 Joaquin County. Plaintiff is further informed and believes and based thereon
5 alleges that DOES 1 through 100 were and/or are, in some manner or way,
6 responsible for and liable to Plaintiff for the events, happenings, and damages
7 hereinafter set forth below.

8 16. Plaintiff is informed and believes and based thereon alleges that at all
9 times relevant herein each of the Defendants was the agent, servant, employee,
10 subsidiary, affiliate, partner, assignee, successor-in-interest, alter ego, or other
11 representative of each of the remaining Defendants and was acting in such capacity
12 in doing the things herein complained of and alleged.

13 17. In committing the wrongful acts alleged herein, Defendants planned
14 and participated in and furthered a common scheme by means of false, misleading,
15 deceptive, and fraudulent representations to induce members of the public to
16 purchase the Product. Defendants participated in the making of such
17 representations in that each did disseminate or cause to be disseminated said
18 misrepresentations.

19 18. Defendants, upon becoming involved with the manufacture,
20 distribution, advertising, marketing, and sale of the Product, knew or should have
21 known that the claims about the Product and, in particular, the claims suggesting
22 and outright stating that the Product is proven to provide “younger hair” is false
23 and/or misleading. Indeed, since the first time that the Product was advertised,
24 Defendants have been aware that they, individually and/or collectively, do not
25 possess support for the claims about the purported benefits and effects of the
26 Product. Defendants affirmatively misrepresented the “benefits” of the Product in
27 order to convince the public to purchase and use the Product, resulting in profits of
28 hundreds of thousands of dollars or more to Defendants, all to the damage and

1 detriment of the consuming public. Thus, in addition to the wrongful conduct
2 herein alleged as giving rise to primary liability, Defendants further aided and
3 abetted and knowingly assisted each other in breach of their respective duties and
4 obligations as herein alleged.

5 **CLASS ACTION ALLEGATIONS**

6 19. Plaintiff brings this action on her own behalf and on behalf of all other
7 persons similarly situated. The Class which Plaintiff seeks to represent comprises:

8 All persons who purchased the Product in the State of
9 California for personal use and not for resale during the
10 time period of October 28, 2009 through the present.
11 Excluded from the Class are Defendants' officers,
12 directors, and employees, and any individual who
received remuneration from Defendants to act as an
endorser of the Product.

13 Said definition may be further defined or amended by additional pleadings,
14 evidentiary hearings, a class certification hearing, and orders of this Court.

15 20. The Class is comprised of many thousands of persons throughout the
16 State of California. The class is so numerous that joinder of all members is
17 impracticable and the disposition of their claims in a class action will benefit the
18 parties and the Court.

19 21. There is a well-defined community of interest in the questions of law
20 and fact involved affecting the parties to be represented. The questions of law and
21 fact common to the Class predominate over questions which may affect individual
22 Class members. Common questions of law and fact include, but are not limited to,
23 the following:

- 24 a. Whether Defendants' conduct is an unlawful business act or practice
25 within the meaning of Business and Professions Code section 17200, *et*
26 *seq.*;

- 1 b. Whether Defendants' conduct is a fraudulent business act or practice
- 2 within the meaning of Business and Professions Code section 17200, *et*
- 3 *seq.*;
- 4 c. Whether Defendants' advertising is untrue or misleading within the
- 5 meaning of Business and Professions Code section 17500, *et seq.*;
- 6 d. Whether Defendants made false and misleading representations in their
- 7 advertising and labeling of the Product;
- 8 e. Whether Defendants knew or should have known that the
- 9 representations were false; and
- 10 f. Whether Defendants represented that the Product has characteristics,
- 11 benefits, uses, or quantities which it does not have.

12 22. Plaintiff's claims are typical of the claims of the proposed Class, as the
13 representations made by Defendants are consistent and uniform and are contained in
14 advertisements and on packaging that was seen and relied on by all members of the
15 Class. Thus, there exists a presumption that all Class members relied upon said
16 uniform and consistent advertising and representations to their detriment. Plaintiff
17 will fairly and adequately represent and protect the interests of the proposed Class.
18 Plaintiff has retained competent and experienced counsel in class action and other
19 complex litigation.

20 23. Plaintiff and the Class have suffered injury in fact and have lost money
21 as a result of Defendants' false, deceptive, and misleading representations.

22 24. The Product as purchased by the Plaintiff and the Class was and is
23 unsatisfactory and worth less than the amount paid for.

24 25. Plaintiff would not have purchased the Product but for the
25 representations by Defendants about the Product.

26 26. The Class is identifiable and readily ascertainable. The names and
27 addresses of the class members are available through business or public records.
28 Notice can be provided to such purchasers via first class mail using techniques and

1 a form of notice similar to those customarily used in class actions, and by internet
2 publication, radio, newspapers, and magazines.

3 27. A class action is superior to other available methods for fair and
4 efficient adjudication of this controversy. The expense and burden of individual
5 litigation would make it impracticable or impossible for proposed members of the
6 Class to prosecute their claims individually.

7 28. The trial and the litigation of Plaintiff's claims are manageable.

8 29. Defendants have acted on grounds generally applicable to the entire
9 Class, thereby making final injunctive relief and/or corresponding declaratory relief
10 appropriate with respect to the Class as a whole. The prosecution of separate
11 actions by individual Class members would create the risk of inconsistent or
12 varying adjudications with respect to individual member of the Class that would
13 establish incompatible standards of conduct for Defendants.

14 30. Absent a class action, Defendants will likely retain the benefits of their
15 wrongdoing. Because of the small size of the individual Class members' claims,
16 few, if any, Class members could afford to seek legal redress for the wrongs
17 complained of herein. Absent a representative action, the Class members will
18 continue to suffer losses and Defendants will be allowed to continue these
19 violations of law and to retain the proceeds of their ill-gotten gains.

20 **FACTS AND DEFENDANTS' COURSE OF CONDUCT**

21 31. As the use of beauty products has become more prevalent among the
22 consuming public, so, too have the incidences of false and misleading claims about
23 such products. With the ever increasing health concerns and scientific revelations
24 regarding the care for one's skin and hair, as well as the consuming public's desire
25 to stay young, "anti-aging" marketing of products has become almost mandatory in
26 order to sell beauty products, in recent years. Indeed, over the course of the last
27 decade, the beauty care and anti-aging product industry has become one of the
28

1 leading consumer businesses in the United States, with overall revenues in the
2 billions of dollars.

3 32. In an effort to capitalize on this growing and robust market,
4 manufacturers routinely make far-fetched claims about the benefits of a product and
5 advertise said product as though it could provide results that it has cannot provide as
6 to make receiving the intended benefit illusory.

7 33. These “snake oil salesmen” engage in marketing campaigns that
8 suggest to vulnerable consumers who are seeking the quick and easy “fountain of
9 youth” that a particular product will “instantly provide hair that acts healthier and
10 younger,” while, in fact, there is no scientific and reliable basis for such claims
11 whatsoever.

12 34. In their marketing of the Product, Defendants have “followed the
13 playbook” to the letter. Defendants’ websites, print media, and its packaging and
14 labeling reiterate those very same claims, and state, among other things:

- 15 a. “Hair acts instantly healthier and younger.
16 b. “In a clinical study, 100% of women saw a notable improvement in
17 shine, texture, softness & manageability after just one use.” (emphasis
18 added)
19 c. “Proven Ingredients: ... Age Control Complex: Combats chronological,
20 chemical & environmental aging ...
21 d. “Revitalize brittle hair and bring back silky radiance with Alterna
22 Caviar Anti-Aging Moisture Shampoo.
23 e. “It restores and rebalances moisture while protecting color and
24 improving the overall appearance of dry, brittle hair.
25 f. “Infused with Alterna’s Age-Control Complex, which includes caviar
26 extract, vitamin C, and cytokines, your hair will be left stronger,
27 healthier, and younger-looking.”
28 g. “Revitalizes your hair to bring back silky radiance.”

1 41. Defendants do not have any competent and reliable scientific evidence
2 to support the claims about the Product made in Defendants' advertising and on
3 Defendants' packaging or label.

4 42. Defendants knew that the claims that they made and continue to make
5 about the Product are false and misleading..

6 43. As alleged in the preceding paragraphs, the misrepresentations by
7 Defendants of the material facts detailed above constitute an unfair, unlawful, and
8 fraudulent business practice within the meaning of California Business &
9 Professions Code section 17200.

10 44. In addition, Defendants' use of various forms of advertising media to
11 advertise, call attention to, or give publicity to the sale of goods or merchandise
12 which are not as represented in any manner constitutes unfair competition, unfair,
13 deceptive, untrue or misleading advertising, and an unlawful business practice
14 within the meaning of Business & Professions Code sections 17200 and 17531,
15 which advertisements have deceived and are likely to deceive the consuming public,
16 in violation of Business & Professions Code section 17200.

17 45. There were reasonably available alternatives to further Defendants'
18 legitimate business interests, other than the conduct described herein.

19 46. All of the conduct alleged herein occurs and continues to occur in
20 Defendants' business. Defendants' wrongful conduct is part of a pattern or
21 generalized course of conduct repeated on thousands of occasions daily.

22 47. Pursuant to Business & Professions Code sections 17203 and 17535,
23 Plaintiff and the members of the Class seek an order of this Court enjoining
24 Defendants from continuing to engage, use, or employ their practice of advertising
25 the sale and use of the Product. Likewise, Plaintiff and the members of the Class
26 seek an order requiring Defendants to disclose such misrepresentations, and
27 additionally request an order awarding Plaintiff and the Class restitution of the
28

1 money wrongfully acquired by Defendants by means of Defendants' failure to
2 disclose the existence and significance of said misrepresentations.

3 48. Plaintiff and the Class have suffered injury in fact and have lost money
4 or property as a result of Defendants' false representations.

5 49. The Product as purchased by the Plaintiff and the Class was and is
6 unsatisfactory and worth less than the amount paid for.

7 50. Plaintiff would not have purchased the Product but for the
8 representations by Defendants about the products.

9 **SECOND CAUSE OF ACTION**

10 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS**

11 **& PROFESSIONS CODE § 17500, et seq.**

12 **(By Plaintiff against all Defendants)**

13 51. Plaintiff repeats and realleges the allegations set forth in the preceding
14 paragraphs and incorporates the same as if set forth herein at length.

15 52. This cause of action is brought pursuant to Business and Professions
16 Code section 17500, *et seq.*, on behalf of Plaintiff and the Class consisting of all
17 persons residing in the State of California who purchased the Product for personal
18 use and not for resale.

19 53. In its advertising of the Product, Defendants knowingly make false and
20 misleading statements regarding the benefits and the effects of the Product,
21 particularly as it applies to restring hair's youth, as set forth in the examples above.

22 54. Defendants' claims about the Product lead people to believe that use of
23 the Product will provide them with healthier, stronger, younger hair that will
24 somehow age at a slower rate.

25 55. Defendants do not have any competent and reliable scientific evidence
26 to support the claims about the Product made in Defendants' advertising and on
27 Defendants' packaging or label.
28

1 56. Defendants knew that the claims that they made and continue to make
2 about the Product are false and misleading.

3 57. Plaintiff would not have purchased the Product but for the
4 representations by Defendants about the products.

5 58. Plaintiff and the Class have suffered injury in fact and have lost or
6 property as a result of Defendants' false representations.

7 59. The Product as purchased by the Plaintiff and the Class was and is
8 unsatisfactory and worth less than the amount paid for.

9 60. As alleged in the preceding paragraphs, the misrepresentations by
10 Defendants of the material facts detailed above constitutes an unfair, unlawful, and
11 fraudulent business practice within the meaning of California Business &
12 Professions Code section 17500.

13 61. In addition, Defendants' use of various forms of advertising media to
14 advertise, call attention to, or give publicity to the sale of goods or merchandise
15 which are not as represented in any manner constitutes unfair competition, unfair,
16 deceptive, untrue or misleading advertising, and an unlawful business practice
17 within the meaning of Business & Professions Code sections 17200 and 17531,
18 which advertisements have deceived and are likely to deceive the consuming public,
19 in violation of Business & Professions Code section 17500.

20 62. Pursuant to Business & Professions Code sections 17203 and 17535,
21 Plaintiff and the members of the Class seek an order of this Court enjoining
22 Defendants from continuing to engage, use, or employ their practice of advertising
23 the sale and use of the Product. Likewise, Plaintiff and the members of the Class
24 seek an order requiring Defendants to disclose such misrepresentations, and
25 additionally request an order awarding Plaintiff and the Class restitution of the
26 money wrongfully acquired by Defendants by means of responsibility attached to
27 Defendants' failure to disclose the existence and significance of said
28 misrepresentations.

1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA CIVIL CODE § 1750, et seq.**

3 **(By Plaintiff against all Defendants)**

4 63. Plaintiff repeats and realleges the allegations set forth in the preceding
5 paragraphs and incorporates the same as if set forth herein at length.

6 64. This cause of action is brought pursuant to Civil Code section 1750, *et*
7 *seq.*, the Consumers Legal Remedies Act, on behalf of Plaintiff and a Class
8 consisting of all persons residing in the State of California who purchased the
9 Product for personal use and not for resale.

10 65. The Class consists of thousands of persons, the joinder of whom, is
11 impracticable.

12 66. There are questions of law and fact common to the class, which
13 questions are substantially similar and predominate over questions affecting the
14 individual members, including but not limited to: (a) Whether Defendants
15 represented that the Product has characteristics, benefits, uses, or quantities which
16 they do not have; (b) Whether the existence, extent, and significance of the major
17 misrepresentations regarding the purported benefits, characteristics, and efficacy of
18 the Product violate the Act; and (c) Whether Defendants knew of the existence of
19 these misrepresentations.

20 67. The policies, acts, and practices heretofore described were intended to
21 result in the sale of the Product to the consuming public, particularly those
22 concerned about the appearance and health of their hair, and violated and continue
23 to violate section 1770(a)(5) of the Act by representing that the Product has
24 characteristics, benefits, uses, or quantities which it does not have.

25 68. Defendants fraudulently deceived Plaintiff and the Class by
26 representing that the Product has certain characteristics, benefits, uses, and qualities
27 which it does not have. In doing so, Defendants intentionally misrepresented and
28 concealed material facts from Plaintiff and the Class, specifically that the Product is

1 clinically proven to instantly produce younger, healthier hair, and in just one use.
2 Said misrepresentations and concealment were done with the intention of deceiving
3 Plaintiff and the Class and depriving them of their legal rights and money.

4 69. Defendants' claims about the Product lead people to believe that use of
5 the Product will provide them with healthier, stronger, younger hair that will
6 somehow age at a slower rate.

7 70. Defendants the claims concerning the Product's purported benefits were
8 false and or misleading.

9 71. Defendants' actions as described hereinabove were done with conscious
10 disregard of Plaintiff's rights, and Defendants were wanton and malicious in their
11 concealment of same.

12 72. Plaintiff and the Class have suffered injury in fact and have lost or
13 property as a result of Defendants' false representations.

14 73. The Product as purchased by the Plaintiff and the Class was and is
15 unsatisfactory and worth less than the amount paid for.

16 74. Plaintiff would not have purchased the Product but for the
17 representations by Defendants about the products.

18 75. Pursuant to section 1780(a) of the Act, Plaintiff seeks injunctive relief
19 in the form of an order enjoining the above-described wrongful acts and practices of
20 Defendants, including, but not limited to, an order:

21 A. Enjoining Defendants from continuing to make the statements set
22 forth above;

23 B. Enjoining Defendants from continuing to offer for sale any unit
24 of the Product that contains any false, misleading, and/or
25 unsupported statements and claims on its packaging and/or its
26 label, including, without limitation, those statements and claims
27 set forth above;

28

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

- C. Ordering that Defendants immediately recall any and all units of the Product that contain any false, misleading, and/or unsupported statements and claims on them and/or their labels, including, without limitation, those statements and claims set forth above;
- D. Enjoining Defendants from continuing to use the packaging and label that it presently uses for the Product; and
- E. Enjoining Defendants from distributing such false advertising and misrepresentations.

76. Plaintiffs shall be irreparably harmed if such an order is not granted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment and relief on all Causes of Action as follows:

- A. An order certifying that the action may be maintained as a Class Action;
- B. For an award of restitutionary damages in an amount according to proof at trial;
- C. An order enjoining Defendants from pursuing the policies, acts, and practices complained of herein and requiring Defendants to pay restitution to Plaintiff and all members of the Class;
- D. For pre-judgment interest from the date of filing this suit;
- E. Reasonable attorney fees;
- F. Costs of this suit; and
- G. Such other and further relief as the Court may deem necessary or appropriate.

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

DATED: December 16, 2013

MILSTEIN ADELMAN LLP

By: s/ Paul D. Stevens

Paul D. Stevens
Shireen Mohsenzadegan
Attorneys for Plaintiff Ann
Kenney

JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all triable issues.

DATED:December 16, 2013

MILSTEIN ADELMAN, LLP

By: s/ Paul D. Stevens

Paul D. Stevens
Shireen Mohsenzadegan
Attorneys for Plaintiff Ann
Kenney