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MARIN COUNTY SUPERIOR COURT
By J. Chen, Deputy

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

VIVIAN BOGDANIC, On Behalf of
Herself and All Others Similarly
Situated,

Plaintiff,

v.

PHILOSOPHY, INC., an Arizona
company, PHILOSOPHY
MEZZANINE CORP., a Delaware
corporation, and COTY, INC., a
Delaware company,

Defendants.

Case No. 1702773
**CLASS ACTION COMPLAINT
FOR:**

**VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 et seq.**

1 Plaintiff Vivian Bogdanic brings this action on behalf of herself and all
2 others similarly situated against Defendants Philosophy, Inc., Philosophy
3 Mezzanine Corp., and Coty, Inc. and states:

4 NATURE OF ACTION

5 1. Defendants manufacture, market, sell and distribute several skin care
6 creams in their Philosophy “ultimate miracle worker” line. Four of the products are:
7 ultimate miracle worker *eye* multi-rejuvenating eye cream, ultimate miracle worker
8 multi-rejuvenating cream, ultimate miracle worker multi-rejuvenating lightweight
9 emulsion, and ultimate miracle worker *night* multi-rejuvenating nighttime serum-
10 in-cream (collectively, “Ultimate Miracle Worker Products” or the “Products”).¹
11 The Products are sold online and in major mass retail outlets such as Sephora, Ulta,
12 Nordstrom, and Macy’s.

13 2. The Products are marketed as drugs. Drugs are held to a higher
14 standard than cosmetics, requiring pre-approval from the FDA and their represented
15 benefits usually must be supported by randomized, placebo controlled, double-blind
16 clinical trials. Further, the label claims, including represented product benefits,
17 must be truthful and not misleading. Defendants have been selling and marketing
18 the Products unlawfully as drugs, without monographs for the Products’ active
19 ingredients, without subjecting the Products to the FDA New Drug Application
20 process, and without pre-approval from the FDA.

21 3. On the front of each and every Ultimate Miracle Worker Product
22 package, where consumers cannot miss it, Defendants represent that the Products
23 are “multi-rejuvenating”. Defendants affirmatively represent on every Product
24 package that the Products work “from the inside out” to “help your skin rebuild its
25 natural collagen” and help your skin “naturally rejuvenate itself”. The ultimate
26

27 ¹ Plaintiff reserves the right to add additional products upon completion of
28 discovery.

1 miracle worker multi-rejuvenating cream and ultimate miracle worker multi-
2 rejuvenating lightweight emulsion packages further represent that the products
3 contain “dermatologically proven skin rejuvenators.” And, the ultimate miracle
4 worker *night* multi-rejuvenating nighttime serum-in-cream also represents it is
5 proven to improve “skin regeneration and epidermal repair while helping skin
6 rebuild its natural collagen and rejuvenate its appearance layer by layer”
7 (collectively, the “rejuvenation, regeneration, repair and collagen rebuilding
8 representations” or “unlawful representations”). The rejuvenation, regeneration,
9 repair and collagen rebuilding representations are drug claims.

10 4. As more fully set forth below, Plaintiff brings this action on behalf of
11 herself and other similarly situated California consumers who have purchased the
12 Products under the “unlawful” prong of the UCL. By means of the rejuvenation,
13 regeneration, repair and collagen rebuilding representations, the Products claim to
14 affect the structure of skin making them a drug. By selling the Ultimate Miracle
15 Worker Products without monographs for the Products’ active ingredients and
16 without submitting New Drug Applications to the FDA and obtaining FDA
17 approval to sell these drugs, Defendants have been selling and marketing the
18 Products “unlawfully”.

19 5. As more fully set forth below, Plaintiff also brings this action on
20 behalf of herself and other similarly situated California consumers who have
21 purchased the Ultimate Miracle Worker Products under the “fraudulent” prong of
22 the UCL. Defendants sell the Products with the unlawful rejuvenation, regeneration,
23 repair and collagen rebuilding representations on each and every Product package,
24 where they cannot be missed by consumers. Consumers comparing the Products
25 with other Philosophy or competitor products without the unlawful representations
26 but otherwise comparable to the Ultimate Miracle Worker Products are likely to be
27 misled into believing that the Ultimate Miracle Worker Products are of higher
28

1 quality and/or provide superior skin benefits than lower priced competitors'
2 products or lower priced Philosophy skin care creams without the unlawful
3 representations. Plaintiff seeks to halt the dissemination of these misleading and
4 deceptive advertising messages, correct the misleading perception they have created
5 in the minds of consumers, and obtain redress for those who have purchased the
6 Products. Plaintiff and Class members paid a substantial (approximately \$6.50-\$64
7 per ounce) price premium for the Ultimate Miracle Worker Products with the
8 rejuvenation, regeneration, repair and collagen rebuilding representations over other
9 comparable Philosophy and competitor products that do not make unlawful drug
10 claims. For example, Defendants offer a non-ultimate miracle worker Philosophy
11 "renewed hope in a jar eye" product that retails for approximately \$102 per ounce
12 and Origins brand "Eye Doctor" retails for approximately \$76 per ounce compared
13 to the ultimate miracle worker eye multi-rejuvenating eye cream that retails for
14 \$140 per ounce. Similarly, Origins brand "GinZing Energy-boosting moisturizer"
15 retails for approximately \$16 per ounce, its "High Potency Night-A-Mins Mineral-
16 enriched renewal cream" retails for approximately \$25 per ounce, and its "Dr.
17 Andrew Weil for Origins Mega-Bright SPF 30 Skin Tone Correcting Oil-Free
18 Moisturizer" retails for approximately \$31 per ounce compared to the Ultimate
19 Miracle Worker Products that retail between \$37.50 to \$50 per ounce depending on
20 the particular product. These other non-ultimate miracle worker Philosophy and
21 competitor products share several common main ingredients with the Ultimate
22 Miracle Worker Products and are sold at the same retail establishments right next
23 to, or in close proximity to each other. And, when consumers look at the Ultimate
24 Miracle Worker Products online, the above identified non-ultimate miracle worker
25 philosophy and Origins products are listed as "similar products." Based on
26 violations of California's unfair competition laws (detailed below), Plaintiff seeks
27 injunctive and monetary relief for consumers who purchased the Products.
28

JURISDICTION AND VENUE

6. This Court has jurisdiction over Defendants and the claims set forth below pursuant to Code of Civil Procedure §410.10 and the California Constitution, Article VI §10 because this case is a cause not given by statute to other trial courts.

7. This Court has personal jurisdiction over Defendants because Defendants are authorized to conduct and do conduct business in California, including Marin County. Defendants have marketed, promoted, distributed, and sold Ultimate Miracle Worker Products in Marin County, causing Defendants to incur both obligations and liabilities in Marin County.

8. The amount in controversy does not exceed \$74,999.00 with respect to Plaintiff's claim and the Class members' claims as a whole do not exceed the jurisdictional limit of \$5,000,000 for purposes of establishing diversity jurisdiction pursuant to the Class Action Fairness Act. More than two thirds of the members of the Class currently reside in California. The amount in controversy requirement exceeds the jurisdiction minimum of this Court.

9. Venue is proper in Marin County because Defendants systematically and continuously transact business in Marin County, California and the transactions with Plaintiff took place in Marin County.

PARTIES

10. Plaintiff Vivian Bogdanic is a resident of Corte Madera, California. On approximately July 1, 2017, Plaintiff purchased ultimate miracle worker multi-rejuvenating lightweight emulsion from a Sephora store in Novato, California. She paid approximately \$75.00 for the Product. Plaintiff Bogdanic read the Product package and relied on Defendants' rejuvenation, regeneration, repair and collagen rebuilding representations when she purchased the Products and she selected the Product instead of less expensive other Philosophy or competitor products based on the representations that the Product is "multi-rejuvenating", that it works "from the

1 inside out” to “help your skin rebuild its natural collagen” and help your skin
2 “naturally rejuvenate itself”, and that it contains “dermatologically proven skin
3 rejuvenators.” Plaintiff would not have purchased the Product but for the
4 rejuvenation, regeneration, repair and collagen rebuilding representations. She paid
5 a substantial premium for the Product. Had Plaintiff known that the rejuvenation,
6 regeneration, repair and collagen rebuilding representations were unapproved drug
7 claims such that the Product was being sold illegally, that no evidence of the
8 Product’s effectiveness or safety had been presented to the FDA, and that the
9 Product was not found by the FDA to be safe or to actually provide the represented
10 rejuvenation, regeneration, repair, and collagen benefits as required by law,
11 Plaintiff would not have purchased the Product and certainly would not have paid a
12 premium price for it. As a result, Plaintiff suffered injury in fact and lost money.

13 11. Defendant Philosophy, Inc. is an Arizona company with its principal
14 place of business in Phoenix, Arizona. Philosophy, Inc. manufactures, distributes,
15 markets and sells the Ultimate Miracle Worker Products and created the
16 rejuvenation, regeneration, repair and collagen rebuilding representations, which it
17 caused to be disseminated to consumers in California.

18 12. Defendant Philosophy Mezzanine Corp. is a Delaware corporation.
19 Philosophy Mezzanine Corp. manufactures, distributes, markets and sells the
20 Ultimate Miracle Worker Products and created the rejuvenation, regeneration,
21 repair and collagen rebuilding representations, which it caused to be disseminated
22 to consumers in California.

23 13. Defendant Coty, Inc. is a Delaware company with its principal place of
24 business in New York City, New York. Coty, Inc. manufactures, distributes,
25 markets and sells the Ultimate Miracle Worker Products under its Philosophy brand
26 with the rejuvenation, regeneration, repair and collagen rebuilding representations,
27 which it caused to be disseminated to consumers in California.
28

FACTUAL ALLEGATIONS

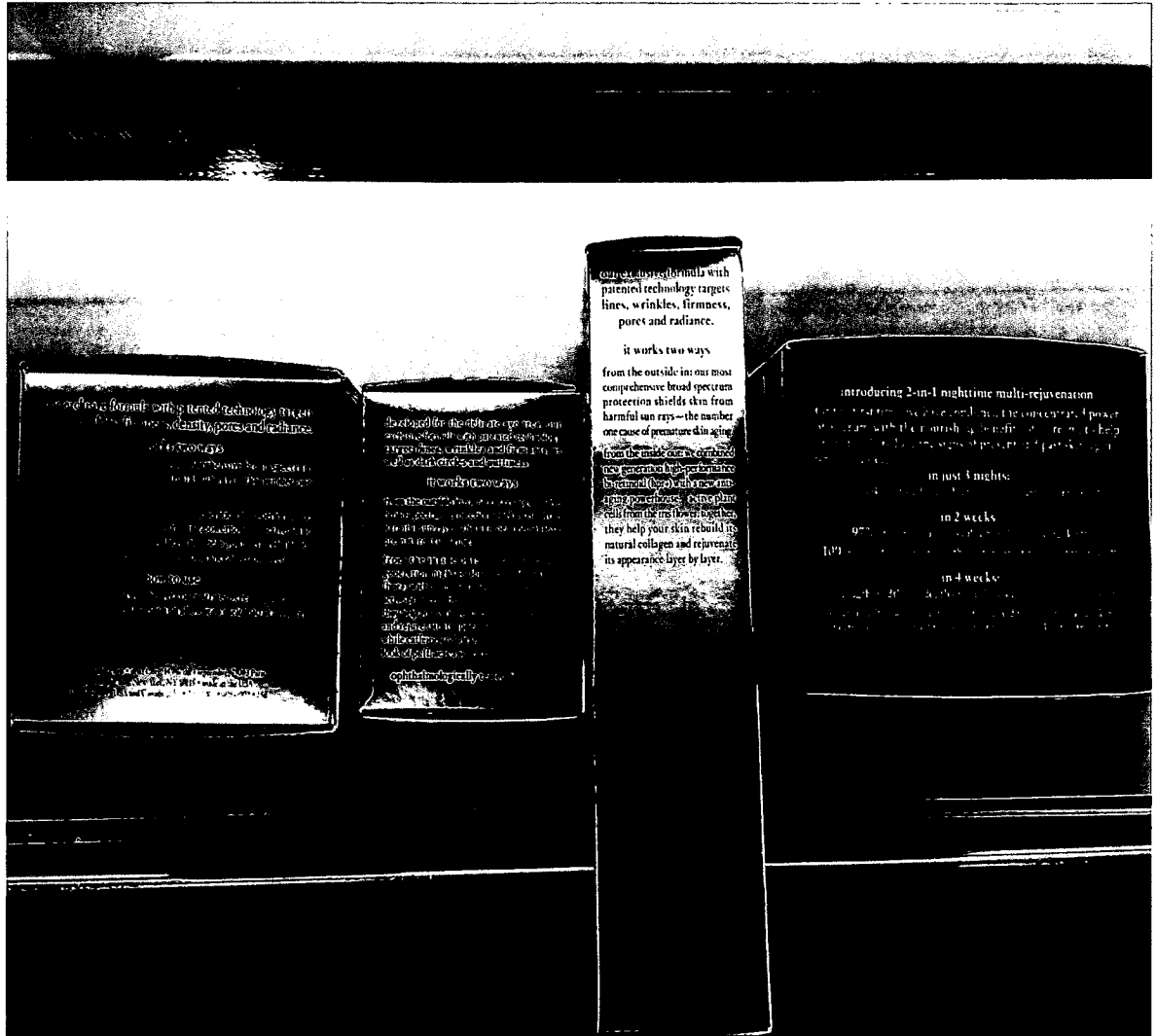
14. Defendants' rejuvenation, regeneration, repair and collagen rebuilding representations appear prominently and conspicuously on each Product package as follows:

The front of each package represents the Products are "multi-rejuvenating".



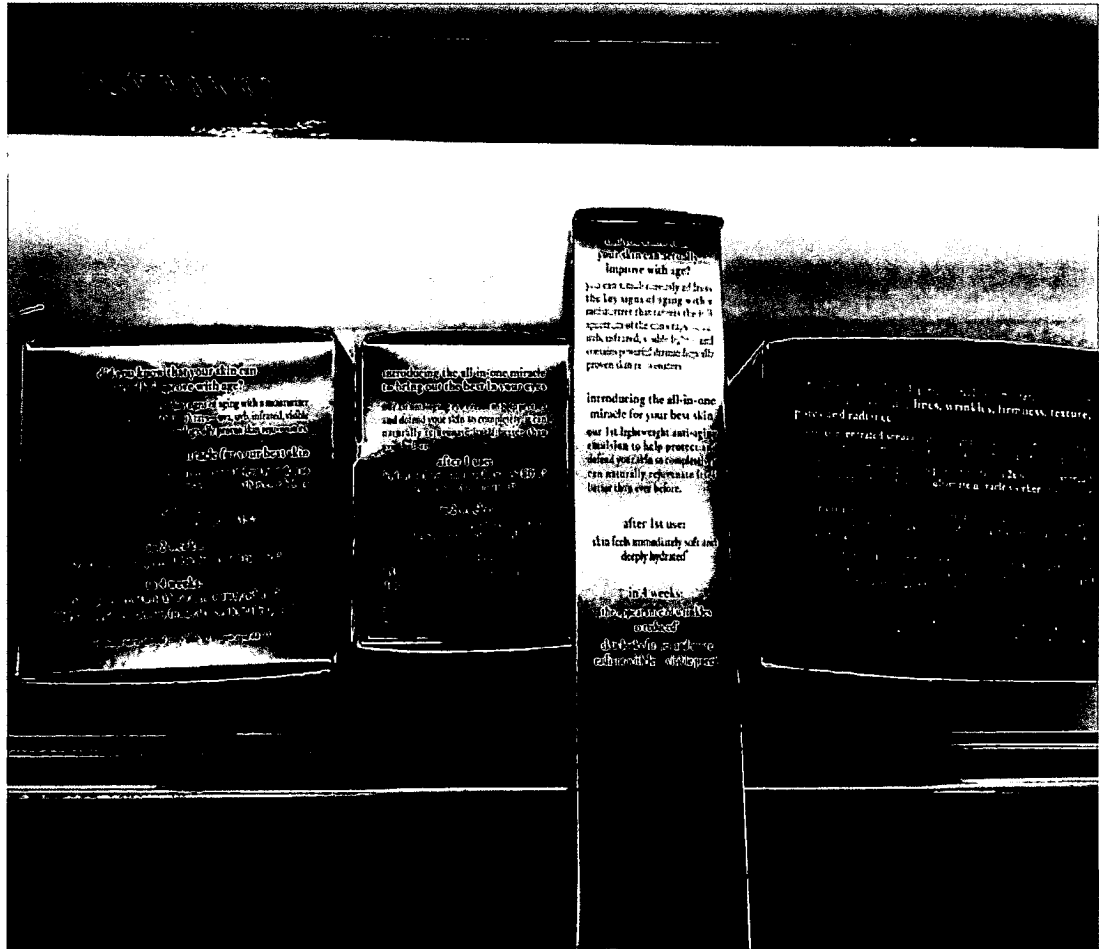
(front of 2 ounce ultimate miracle worker multi-rejuvenating cream, 0.5 ounce ultimate miracle worker *eye* multi-rejuvenating eye cream, 1.5 ounce ultimate miracle worker multi-rejuvenating lightweight emulsion, and 1.7 ounce ultimate miracle worker *night* multi-rejuvenating nighttime serum-in-cream, respectively).

The side panels all represent that the Products work “from the inside out” to “help your skin rebuild its natural collagen”.



(side #1 of ultimate miracle worker multi-rejuvenating cream, ultimate miracle worker *eye* multi-rejuvenating eye cream, ultimate miracle worker multi-rejuvenating lightweight emulsion, and ultimate miracle worker *night* multi-rejuvenating nighttime serum-in-cream, respectively).

The side panels also all represent that the Products help your skin “naturally rejuvenate itself”.



(side #2 of ultimate miracle worker multi-rejuvenating cream (also representing contains “dermatologically proven skin rejuvenators”), ultimate miracle worker *eye* multi-rejuvenating eye cream, ultimate miracle worker multi-rejuvenating lightweight emulsion (also representing contains “dermatologically proven skin rejuvenators”), and ultimate miracle worker *night* multi-rejuvenating nighttime serum-in-cream (also representing proven to improve “skin regeneration and epidermal repair while helping skin rebuild its natural collagen and rejuvenate its appearance layer by layer”), respectively).

Copies of representative labels are attached hereto as Exhibit A.

1 15. An over-the-counter skin cream can be a drug, a cosmetic, or a
2 combination of both. 21 U.S.C. §359 (the categories of “drug” and “cosmetic” are
3 not mutually exclusive).

4 16. The federal Food, Drug, and Cosmetics Act (“FDCA”) (21 U.S.C.
5 §§301, et. seq.) defines cosmetics as “articles intended to be rubbed, poured,
6 sprinkled, or sprayed on, introduced into, or otherwise applied to the human body ...
7 for cleansing, beautifying, promoting attractiveness, or altering the appearance.” 21
8 U.S.C. §321(i). The Ultimate Miracle Worker Products are cosmetics.

9 17. Whether a cosmetic is also a drug depends on its “intended use.” 21
10 U.S.C. § 321(g)(1)(A)-(C). A cosmetic is also a drug if it is “intended to affect the
11 structure or any function of the body of man”. 21 U.S.C. § 321(g)(1).

12 18. California’s Sherman Food, Drug, and Cosmetic Law (“Sherman
13 FD&C”) (California’s Health & Safety Code §§109875, et. seq.) parallels the
14 FDCA in material part and adopts all nonprescription drug regulations.

15 19. Like the FDCA, the Sherman FD&C defines a drug as “Any article
16 other than food, that is used or intended to affect the structure or any function of the
17 body of human beings.” Cal. Health & Safety Code § 109925(c).

18 20. Since at least 2012, and repeatedly thereafter, and as recently as
19 October 18, 2016, the FDA has made clear that any representation that a product
20 will increase the skin’s collagen – such as the Ultimate Miracle Worker Products’
21 promise to rebuild the skin’s natural collagen – is a drug claim. In its industry
22 publications, the FDA explains that products “intended to affect the structure or
23 function of the body, such as the skin are drugs . . . even if they affect the
24 appearance. So, if a product is intended, for example, to remove wrinkles or
25 *increase the skin’s production of collagen*, it’s a drug or a medical device.”
26 Wrinkle Treatments and Other Anti-aging Products, *available at*
27 <http://www.fda.gov/Cosmetics/ProductsIngredients/Products/ucm388826.htm>
28

(emphasis added). And, consistent with its position that collagen production claims are drug claims, the FDA has sent numerous warning letters to product manufacturers making such claims without FDA approval or pursuant to an established monograph. *See, e.g.*, FDA's October 18, 2016 letter to PhytoCeuticals, Inc., *available at* www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm525938.htm (representations that products "assists in" and "facilitates" the "formation of collagen" and "collagen production" indicate that products are drugs); FDA's September 20, 2016 letter to Face Naturals, *available at* www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm525667.htm (representation that product "boosts collagen production" indicate that product is a drug); FDA's August 29, 2016 letter to ZO Skin Health Group, LLC, *available at* www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm521019.htm (representation that product "Stimulates ... collagen production..." indicates that product is a drug); FDA's August 1, 2016 letter to Tata's Natural Alchemy, LLC, *available at* www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm521011.htm (representation that product "Stimulates healthy collagen production" indicates that product is a drug); FDA's July 22, 2016 letter to Peter Thomas Roth Labs, LLC, *available at* www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm504411.htm (representations that product "mimics body's own mechanism to produce collagen" and "promote[s] collagen production" indicate that product is a drug); FDA's July 21, 2016 letter to La Bella Figura, LLC, *available at* www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm518518.htm (representations that products "help rebuild collagen", and "[S]timulate new collagen growth" indicate that products are drugs); FDA's July 20, 2016 letter to

1 Finally Pure, LLC, *available at*
2 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm515125.htm
3 (representation that product “Aids in stimulating collagen production” indicates that
4 product is a drug); FDA’s July 19, 2016 letter to Sevani Botanica, *available at*
5 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm513404.htm
6 (representation that product “encourages collagen production” indicates that
7 product is a drug”); FDA’s July 18, 2016 letter to Michael Todd True Organics
8 LLC, *available at*
9 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm516160.htm
10 (representation that products “stimulate collagen production” indicate that products
11 are drugs); FDA’s July 15, 2016 letter to Annmarie Gianni Skin Care, *available at*
12 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm512070.htm
13 (representation that product provides a “new way for your skin to build collagen”
14 indicates that product is a drug); FDA’s December 3, 2015 letter to Dr. Brandt
15 Skincare, *available at*
16 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm476560.htm
17 (representation that product “[b]oosts collagen production” indicates that product is
18 a drug); FDA’s May 22, 2015 letter to Pharmagel International, *available at*
19 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm453709.htm
20 (representation that the product “[S]timulates collagen production” indicates that
21 the product is a drug); FDA’s March 25, 2015 letter to Skin Authority, LLC,
22 *available at*
23 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm440960.htm
24 (representation that product will “help stimulate collagen” indicates that product is
25 a drug); FDA’s October 5, 2012 Warning Letter to Avon Products, Inc., *available*
26 *at*
27 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm323738>.
28

1 htm (representation that product will help to “rebuild[] collagen” indicates that the
2 product is a drug); FDA’s October 5, 2012 letter to Bioque Technologies, *available*
3 *at* www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm323767.htm
4 (representation that product will “stimulate production of collagen” indicates that
5 the product is a drug); FDA’s September 21, 2012 letter to Andes Natural Skin
6 Care, LLC, *available at*
7 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm321094.htm
8 (representation that product will “help the skin to regenerate new collagen”
9 indicates that the product is a drug); FDA’s September 21, 2012 letter to Janson-
10 Beckett, *available at*
11 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm321111.htm
12 (representations that products will “aid[] new collagen production” and “promote[]
13 collagen synthesis” indicate that the products are drugs); FDA’s September 7, 2012
14 letter to Greek Island Labs, *available at*
15 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm318805.htm
16 (representations that products will “help[] promote the development of collagen”
17 and “increase[] water soluble collagen” indicate that the products are drugs).

18 21. By representing that the Products will “help your skin rebuild its
19 natural collagen”, the Products are new drugs as defined in 21 U.S.C. § 321(p) and
20 Cal. Health & Safety Code § 109980(a).

21 22. The FDA has also warned that representations that a product will
22 “repair”, “regenerate”, and/or “rejuvenate” the skin – such as the Ultimate Miracle
23 Worker Products’ “multi-rejuvenating”, “epidermal repair”, and “proven skin
24 rejuvenators” representations – are drug claims. *See, e.g.*, FDA’s October 18, 2016
25 letter to PhytoCeuticals, Inc., *available at*
26 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm525938.htm
27 (representations that products “assist[] in skin regeneration” indicate that products
28

1 are drugs); FDA's August 29, 2016 letter to ZO Skin Health Group, LLC, *available*
2 *at* www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm521019.htm
3 ("Stimulates cellular regeneration", "Promotes healthy cell regeneration" and
4 "Helps support skin's natural mechanism to repair damage" indicates that products
5 are drugs); FDA's September 7, 2012 letter to Greek Island Labs, *available at*
6 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm318805.htm
7 ("effective cell regenerator" that has "tissue regeneration properties" indicate that
8 the product is a drug); FDA's July 15, 2016 letter to Annmarie Gianni Skin Care,
9 *available at*
10 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm512070.htm (a
11 "new way for your skin to ... repair itself" indicates that product is a drug); FDA's
12 July 20, 2016 letter to Finally Pure, LLC, *available at*
13 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm515125.htm
14 ("Promotes skin repair and cell regeneration" indicates that product is a drug);
15 FDA's July 21, 2016 letter to La Bella Figura, LLC, *available at*
16 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm518518.htm
17 (aids in "repairing skin" indicates that product is a drug); and FDA's December 3,
18 2015 letter to Dr. Brandt Skincare, *available at*
19 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm476560.htm
20 ("[R]epairs damaged skin" indicates that product is a drug).

21 23. By representing the Products are "multi-rejuvenating", "skin
22 rejuvenators" and/or will improve "epidermal repair", the Products are new drugs
23 as defined in 21 U.S.C. § 321(p) and Cal. Health & Safety Code § 109980(a).

24 24. These structural improvement representations – as opposed to strictly
25 appearance enhancing representations (such as a product will improve or
26 temporarily maintain the appearance or feel of the skin by moisturizing or softening
27 the skin) – make the Products drugs.
28

1 25. Thus, by representing that the Products “help your skin rebuild its
2 natural collagen”, “naturally rejuvenate itself”, improve “skin regeneration and
3 epidermal repair” and contain “dermatologically proven skin rejuvenators”, the
4 Products are new drugs as defined in 21 U.S.C. § 321(p) and Cal. Health & Safety
5 Code § 109980(a).

6 26. Because they are new drugs, Defendants may not sell their Ultimate
7 Miracle Worker Products without an approved New Drug Application (“NDA”).
8 21 U.S.C. § 355(a); Cal. Health & Safety Code § 111550. Defendants do not have
9 an approved NDA for any of the Ultimate Miracle Worker Products.

10 27. In lieu of an approved NDA, a drug may conform to a monograph for a
11 particular drug category, as established by the FDA’s Over-the-Counter Drug
12 Review. *See* FDA, “Is It a Cosmetic, a Drug, or Both? (Or Is It Soap?), *available at*
13 [http://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm074201](http://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm074201.htm)
14 [.htm](http://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm074201.htm). The OTC Drug Review process results in monographs for active ingredients,
15 which establish whether the ingredients are safe and effective for certain uses. If the
16 ingredients in a drug are generally recognized as safe for their intended uses, an
17 approved New Drug Application is not required. *Id.* Products containing active
18 ingredients that are nonmonograph require an approved New Drug Application for
19 marketing. *See* FDA, “Over-the-Counter (OTC) Drug Monograph Process”,
20 *available* *at*
21 <http://www.fda.gov/drugs/developmentapprovalprocess/howdrugsaredevelopedand>
22 [approved/ucm317137.htm](http://www.fda.gov/drugs/developmentapprovalprocess/howdrugsaredevelopedand). None of the active ingredients in the Ultimate Miracle
23 Worker Products conform to a monograph for skin rejuvenation, regeneration,
24 repair or collagen building. Thus, the Ultimate Miracle Worker Products require an
25 approved New Drug Application for marketing, which Defendants do not have.

26 28. Integral to the NDA process is demonstrating that the products are
27 generally recognized as safe for their intended uses – here skin regeneration, repair,
28

1 rejuvenation and rebuilding collagen. *See* FDA, Over-the-Counter (OTC) Drug
2 Monograph Process, *available at*
3 <http://www.fda.gov/drugs/developmentapprovalprocess/howdrugsaredevelopedand>
4 [approved/ucm317137.htm](http://www.fda.gov/drugs/developmentapprovalprocess/howdrugsaredevelopedand); FDA, How Drugs are Developed and Approved,
5 *available at*
6 [www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandAp](http://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ucm2007006.htm)
7 [proved/ucm2007006.htm](http://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ucm2007006.htm) (it is the responsibility of the company seeking to market
8 a drug to test it and submit evidence that it is safe and effective). By failing to have
9 their Ultimate Miracle Worker Products screened and approved for safety,
10 Defendants are putting consumers at risk of adverse reactions and other ill effects
11 from their indicated use.

12 29. By making the unlawful representations Defendants also are able to
13 charge a substantial premium for their Ultimate Miracle Worker Products over what
14 they and competitors charge for similar products without the unlawful drug claims.
15 Consequently, consumers are paying for premium priced unlawful drugs banned by
16 law from sale because they have not been found effective for their represented
17 structural skin benefits rendering them valueless or, at a minimum, overpriced.

18 30. For all these reasons, Defendants should be enjoined from selling the
19 Ultimate Miracle Worker Products with the illegal rejuvenation, regeneration,
20 repair and collagen rebuilding representations and consumers, like Plaintiff, who
21 purchased the illegal drugs must be refunded their money or, at a minimum, the
22 premium they paid to purchase Defendants' illegal Products.

23 CLASS DEFINITION AND ALLEGATIONS

24 31. Plaintiff brings this action on behalf of herself and all other similarly
25 situated California consumers pursuant to C.C.P. §382 and Cal. Civ. Code §1781
26 and seeks certification of the following Class:
27
28

1 All consumers who, within the applicable statute of limitations period,
2 purchased Ultimate Miracle Worker Products in California.

3 Excluded from this Class are Defendants and their officers, directors and
4 employees and those who purchased Ultimate Miracle Worker Products for
5 the purpose of resale.²

6 32. Plaintiff and the members of the Class are so numerous and
7 geographically dispersed throughout the state of California that joinder of all
8 members of the Class individually is impracticable. While the exact number and
9 identities of the Class members are presently unknown, such information can be
10 obtained through appropriate investigation and discovery.

11 33. The disposition of Plaintiff's and proposed Class members' claims in a
12 class action will provide substantial benefits to both the parties and the Court.

13 34. The proposed Class is ascertainable and there is a well-defined
14 community of interest in the questions of law or fact alleged herein since the rights
15 of each proposed Class member were infringed or violated in a similar fashion
16 based upon Defendants' unlawful conduct.

17 35. This action involves common questions of law and fact, which
18 predominate over any questions affecting individual Class members. These
19 common legal and factual questions include, but are not limited to, the following:

20 (a) whether Defendants engaged in the unlawful sale of an illegal
21 drug in violation of the FDCA and California's Sherman FD&C laws;

22 (b) whether Defendants engaged in misleading and/or deceptive
23 advertising;

24 (c) whether the alleged conduct constitutes violations of the UCL;

25 (d) whether Plaintiff and Class members are entitled to restitution;

26 ² The Products are: ultimate miracle worker *eye* multi-rejuvenating eye cream,
27 ultimate miracle worker multi-rejuvenating cream, ultimate miracle worker multi-
28 rejuvenating lightweight emulsion, and ultimate miracle worker *night* multi-
rejuvenating nighttime serum-in-cream. Plaintiff reserves the right to add additional
products upon completion of discovery.

1 and

2 (e) whether Plaintiff is entitled to declaratory, equitable, and
3 injunctive relief.

4 36. Judicial determination of the common legal and factual issues essential
5 to this case would be far more efficient and economical as a class action than in
6 piecemeal individual determinations.

7 37. Plaintiff's claims are typical of the claims of the members of the Class
8 because, *inter alia*, all Class members were injured through the uniform misconduct
9 described. Plaintiff is advancing the same claim and legal theories on behalf of
10 herself and all members of the Class.

11 38. Plaintiff is willing and prepared to serve the Court and the proposed
12 Class in a representative capacity with all of the obligations and duties material
13 thereto. Plaintiff will fairly and adequately protect the interests of the members of
14 the Class. Plaintiff has retained counsel experienced in complex consumer class
15 action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff
16 has no adverse or antagonistic interests to those of the Class.

17 39. Plaintiff seeks preliminary and permanent injunctive relief individually
18 to enjoin and prevent Defendants from engaging in the acts described.

19 40. Unless a Class is certified, Defendants will retain monies received as a
20 result of their conduct that were illegally taken from Plaintiff and Class members.

21 **COUNT I**

22 **Violation of Business & Professions Code §17200, *et seq.*** **Unlawful Business Acts and Practices**

23 41. Plaintiff repeats and re-alleges the allegations contained in the
24 paragraphs above, as if fully set forth herein.

25 42. Plaintiff brings this claim individually and on behalf of the California
26 Class.

27
28

1 43. The Unfair Competition Law, Business & Professions Code §17200, *et*
2 *seq.* (“UCL”), prohibits any “unlawful” business act or practice.

3 44. As alleged herein, Defendants engaged in illegal conduct by
4 unlawfully making rejuvenation, regeneration, repair and collagen rebuilding
5 representations about the Products that resulted in them being deemed drugs under
6 FDA and Sherman Act regulations, but did so without monographs for the active
7 ingredients and without obtaining required FDA approval through the NDA
8 process. Defendants committed unlawful business practices by violating
9 California’s Sherman Food, Drug and Cosmetic Law, California’s Health & Safety
10 Code §§ 109875 *et seq.* and the Food Drug and Cosmetic Act, 21 U.S.C. §§ 301, *et*
11 *seq.* Plaintiff and the California Class reserve the right to allege other violations of
12 law, which constitute other unlawful business acts or practices. Such conduct is
13 ongoing and continues to this date.

14 45. Plaintiff and the California Class suffered “injury in fact”/economic
15 loss by spending money on Products not generally recognized as safe and effective
16 that, but for Defendants’ illegal conduct, would not have been on the market.

17 46. The NDA process and the FDA and Sherman Act
18 misbranding/consumer protections are intended to ensure that if the consuming
19 public (e.g., Plaintiff and the Class) are sold a product that is a drug as defined
20 under the FDA law and regulations, that it will have been put through the rigorous
21 NDA approval process to ensure that it is safe and effective.

22 47. The UCL unlawful prong is intended to hold Defendants who engage
23 in unlawful conduct accountable for their violations by, among other things, paying
24 full compensation to consumers who have purchased such illegally sold products
25 that, by virtue of being banned from sale to the public, are valueless or, at a
26 minimum, overpriced.

27 48. But for Defendants illegally selling the Ultimate Miracle Worker
28

1 Products when they were unapproved and misbranded drugs and illegally placing
2 them in the market for sale to the public, Plaintiff and the Class would never have
3 purchased these illegal Products. As result of Defendants' illegal conduct, Plaintiff
4 and the Class have suffered injury/economic loss and are entitled to a full refund of
5 their purchase price or, at a minimum, a refund of the premium they paid for the
6 Products.

7 49. Plaintiff, on behalf of herself, all other similarly situated California
8 consumers, and the general public, seeks restitution of all money they paid for
9 Defendants' illegally sold Products or, at a minimum, the premiums paid for the
10 Products, consistent with Business & Professions Code §17203.

11 50. Plaintiff, on behalf of herself, seeks preliminary and permanent
12 injunctive relief to enjoin and prevent Defendants from engaging in the acts
13 described.

14 **COUNT II**
Violation of Business & Professions Code § 17200, *et seq.*
Fraudulent Business Acts and Practices

15 51. Plaintiff repeats and re-alleges the allegations contained in the
16 paragraphs above, as if fully set forth herein.

17 52. Plaintiff brings this claim individually and on behalf of the Class.

18 53. As alleged herein, Plaintiff has suffered injury in fact and lost money
19 or property as a result of Defendants' conduct because she purchased the premium
20 priced Ultimate Miracle Worker Product in reliance on Defendants' unlawful
21 rejuvenation, regeneration, repair and collagen rebuilding representations instead of
22 purchasing less-expensive comparable products that do not make unlawful drug
23 claims.

24 54. The Unfair Competition Law, Business & Professions Code § 17200,
25 *et seq.* ("UCL") prohibits any "fraudulent" business act or practice and any false or
26 misleading advertising.
27
28

1 55. In the course of conducting business, Defendants committed fraudulent
2 business acts or practices and disseminated Product packaging that is false,
3 misleading, and/or likely to deceive the consuming public within the meaning of
4 Business & Professions Code § 17200, *et seq.* by, *inter alia*, making the
5 rejuvenation, regeneration, repair and collagen rebuilding representations (which
6 also constitutes advertising within the meaning of § 17200) on each and every
7 Ultimate Miracle Worker Product, as more fully set forth herein.

8 56. By making the unlawful rejuvenation, regeneration, repair and
9 collagen rebuilding representations on their Products, Defendants misled consumers
10 into believing that the Ultimate Miracle Worker Products are of a higher quality
11 and/or provide superior skin benefits than other comparable products that comply
12 with the law and do not make unlawful drug claims.

13 57. Plaintiff and other members of the Class have in fact been deceived as
14 a result of their reliance on Defendants' unlawful representations. This reliance has
15 caused harm to Plaintiff and other members of the Class who each purchased
16 Defendants' Products. Plaintiff and other members of the Class have suffered injury
17 in fact and lost money as a result of these false, misleading, and/or deceptive
18 practices by paying a premium for Defendants' Products over similar products that
19 do not make such unlawful drug claims.

20 58. Plaintiff, on behalf of herself, and all others similarly situated, and the
21 general public, seeks restitution of the premium paid for Defendants' Ultimate
22 Miracle Worker Products.

23 59. Plaintiff, on behalf of herself, seeks preliminary and permanent
24 injunctive relief to enjoin and prevent Defendants from engaging in the acts
25 described.
26
27
28

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

A. Certifying the Class as requested herein;

B. Awarding restitution to Plaintiff and the proposed Class members of all monies paid for the Products or, at a minimum, the premium paid for the Products;


C. Enjoining Defendant's conduct and order Defendant to engage in a corrective advertising campaign;

D. Awarding attorneys' fees and costs pursuant to Cal. Civ. Proc. Code § 1021.5; and

E. Providing such further relief as may be just and proper.

Dated: July 31, 2017

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.



BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
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EXHIBIT A

ultimate
miracle
worker

multi-rejuvenating cream
broad spectrum spf 30 sunscreen
wrinkles, firmness, texture, pores, radiance

philosophy: the best is yet to come.

60 ml/2 fl. oz.

ultimate
miracle
worker eye

multi-rejuvenating eye cream
broad spectrum spf 30 sunscreen
wrinkles, firmness, texture, pores, radiance

philosophy: the best is yet to come.

15 ml/0.5 fl. oz.

ultimate
miracle
worker

multi-rejuvenating
high-velocity emulsion
broad spectrum
spf 30 sunscreen

wrinkles, firmness,
pores, radiance

philosophy: the best
is yet to come.

ultimate
miracle
worker night

multi-rejuvenating nighttime
serum-in-cream

wrinkles, firmness, texture, pores, radiance

philosophy: the best is yet to come.

serum: 10 ml/0.34 fl. oz. cream: 50 ml/1.7 fl. oz.

our exclusive formula with patented technology targets lines, wrinkles, firmness, density, pores and radiance.

It works two ways

from the outside in: our most comprehensive broad spectrum protection shields skin from harmful sun rays—the number one cause of premature skin aging.

from the inside out: our exclusive comprehensive broad spectrum protection shields skin from harmful sun rays—the number one cause of premature skin aging.

How to use

Apply a small amount of the cream to the face and neck, avoiding the eyes and mouth. Use twice daily, morning and evening.

designed for the skin's outer and inner layers. It works two ways: from the outside in, it shields skin from harmful sun rays—the number one cause of premature skin aging.

It works two ways

from the outside in: our most comprehensive broad spectrum protection shields skin from harmful sun rays—the number one cause of premature skin aging.

from the inside out: our exclusive comprehensive broad spectrum protection shields skin from harmful sun rays—the number one cause of premature skin aging.

ophthalmologically tested for eye safety.

our exclusive formula with patented technology targets lines, wrinkles, firmness, pores and radiance.

It works two ways

from the outside in: our most comprehensive broad spectrum protection shields skin from harmful sun rays—the number one cause of premature skin aging.

from the inside out: our exclusive comprehensive broad spectrum protection shields skin from harmful sun rays—the number one cause of premature skin aging.

introducing 2-in-1 nighttime multi-rejuvenation
for the first time, we have combined the concentrated power of a serum with the nourishing benefits of a cream, to help dramatically reduce the signs of present and past skin aging, while you sleep.

in just 3 nights:
you'll wake up to a dewy, vibrant and more-rested complexion*

in 2 weeks:
97% of women had noticeably healthier-looking skin**
100% dramatically improved the texture and firmness of their skin**

in 4 weeks:
the length, width and depth of wrinkles was significantly reduced**
more than half of women agreed that they had their best-looking skin in years— even compared to receiving professional skin treatments*

* Based on a survey of 100 women who used the product for 4 weeks. ** Based on a survey of 100 women who used the product for 4 weeks.

**Did you know that your skin can
actually improve with age?**

Our exclusive formula with patented technology targets all major signs of aging including lines, wrinkles, firmness, texture, pores and radiance.

Introducing the all-in-one miracle for your best skin. Our exclusive formula with patented technology targets all major signs of aging including lines, wrinkles, firmness, texture, pores and radiance.

After 1st use:

Skin hydration levels increase by 73%*

In 2 weeks:

90% decrease in pore size and firmness*

In 4 weeks:

Reduction in wrinkles and fine lines by 50%*
100% increase in skin firmness and radiance*

*Data based on clinical studies conducted by independent labs.

**Introducing the all-in-one miracle
to bring out the best in your eyes**

Our exclusive eye cream to help protect and defend your eyes so completely that you will naturally experience visibly better than ever before.

after 1 use:

hydration levels increase by nearly 80%*
eye redness and irritation*

In 2 weeks:

under eye puffiness appears reduced (in 1 week) and further reduced*

In 4 weeks:

83% decrease in puffiness and redness*
100% increase in skin firmness and radiance*

*Data based on clinical studies conducted by independent labs.

**Did you know that
your skin can actually
improve with age?**

you can simultaneously address the key signs of aging with a moisturizer that targets the full spectrum of the sun's rays - uva, uvb, infrared, visible light - and contains powerful dermatologically proven skin rejuvenators.

**Introducing the all-in-one
miracle for your best skin**

Our exclusive formula with patented technology targets all major signs of aging including lines, wrinkles, firmness, texture, pores and radiance.

after 1st use:

skin feels immediately soft and deeply hydrated

In 4 weeks:

the appearance of wrinkles is reduced*
skin looks firmer and more radiant with less visible pores*

our exclusive formula with patented technology targets all major signs of aging including lines, wrinkles, firmness, texture, pores and radiance.

in our concentrated serum: patented pearl system encapsulates active plant cells from the iris flower exceptionally rich in natural polyphenols. for enhanced nighttime repair, this product contains a 2x more-concentrated dose of active plant cells than our ultimate miracle worker products for daytime use.

in our cream: patented high performance bi-retinoid (hpra) boasts targeted-release technology helping deliver active and stable retinol directly to skin cells.

both ingredients have been proven to help improve skin regeneration and epidermal repair while helping skin rebuild its natural collagen and rejuvenate its appearance layer by layer.

philosophy.com

100% natural ingredients. 100% cruelty-free. 100% vegan. 100% clean. 100% safe. 100% effective. 100% philosophy.

ultimate
miracle
worker

multi-rejuvenating
lightweight emulsion
broad spectrum
spf 30 sunscreen

*wrinkles, firmness,
pores, radiance*

philosophy: the best
is yet to come.

our exclusive formula with
patented technology targets
lines, wrinkles, firmness,
pores and radiance.

it works two ways

from the outside in: our most
comprehensive broad spectrum
protection shields skin from
harmful sun rays---the number
one cause of premature skin aging.

from the inside out: we combined
new generation high-performance
bi-retinoid (hpr) with a new anti-
aging powerhouse---active plant
cells from the iris flower. together,
they help your skin rebuild its
natural collagen and rejuvenate
its appearance layer by layer.

**did you know that
your skin can actually
improve with age?**

you can simultaneously address the key signs of aging with a moisturizer that targets the full spectrum of the sun's rays—uva, uvb, infrared, visible light—and contains powerful dermatologically proven skin rejuvenators.

**introducing the all-in-one
miracle for your best skin**

our 1st lightweight anti-aging emulsion to help protect and defend your skin so completely, it can naturally rejuvenate itself better than ever before.

after 1st use:

skin feels immediately soft and
deeply hydrated*

in 4 weeks:

the appearance of wrinkles
is reduced*

skin looks firmer and more
radiant with less-visible pores*

ultimate
miracle
worker eye

multi-rejuvenating eye cream
broad spectrum spf 15 sunscreen
wrinkles, firmness, dark circles, puffiness

philosophy the best is yet to come.

15 ml/0.5 fl. oz.

developed for the delicate eye area, our exclusive formula with patented technology targets lines, wrinkles and firmness, as well as dark circles and puffiness.

it works two ways

from the outside in: our most comprehensive broad-spectrum protection shields skin from harmful sun rays—the number one cause of premature skin aging.

from the inside out: we combined new technology with a powerful bi-retinoid and vitamin C—our skin care powerhouse—to work on skin from the inside out. Together, they help stimulate collagen production in the dermis, improve skin hydration, and help reduce the appearance of fine lines and wrinkles.

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**introducing the all-in-one miracle
to bring out the best in your eyes**

our 1st anti-aging eye cream to help protect
and defend your skin so completely, it can
naturally rejuvenate itself better than
ever before.

after 1 use:

hydration levels increase by nearly 80%*
eye area looks smoother**

in 2 weeks:

under-eye puffiness appears reduced for a
fresher and healthier look**

in 4 weeks:

83% saw a decrease in appearance of wrinkles**
100% showed dramatically firmer skin*

*Clinical study with 33 women ages 44-65
showed a 83% decrease in appearance of wrinkles and
100% showed dramatically firmer skin

**Clinical study with 40 women ages 45-65
showed a 83% decrease in appearance of wrinkles and
100% showed dramatically firmer skin

Moisture

ultimate miracle worker

multi-rejuvenating cream
broad spectrum spf 30 sunscreen

wrinkles, firmness, density, pores, radiance

philosophy: the best is yet to come.

60 ml/2 fl. oz.

our exclusive formula with patented technology targets
lines, wrinkles, firmness, density, pores and radiance.

it works two ways

from the outside in: our most comprehensive broad spectrum protection shields skin from harmful sun rays—the number one cause of premature skin aging.

from the inside out: we combined new generation high-performance bi-retinoid (hpr+) with a new anti-aging powerhouse—active plant cells from the iris flower. together, they help your skin rebuild its natural collagen and rejuvenate its appearance layer by layer.

how to use

just a little of this lightweight, yet concentrated, cream goes a long way. apply a dime-size amount and allow it to melt into skin. apply more as needed.

philosophy.com • dist. Coty, 14 rue du 4 septembre, 75002 Paris

philosophy inc. New York, NY 10118 • made in the USA

1-800-368-3737 (USA and Canada only) • 70531002 • 00531002 • 15d

**did you know that your skin can
actually improve with age?**

It can simultaneously address all key signs of aging with a moisturizer that protects the full spectrum of the sun's rays—uva, uvb, infrared, visible light—and contains powerful dermatologically proven skin rejuvenators.

It's the all-in-one miracle for your best skin

It's a moisturizer to help protect and defend your skin so it can naturally rejuvenate itself better than ever before.

It's the ultimate skin care use:

It's the ultimate skin care use: increase by 73%*

bestsellers s

ultimate
miracle
worker *night*

multi-rejuvenating nighttime
serum-in-cream

wrinkles, firmness, texture, pores, radiance

philosophy: the best is yet to come.

serum: 10 ml/0.34 fl. oz. cream: 50 ml/1.7 fl. oz.

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for the first time, we have combined the concentrated power
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while you sleep.

in just 3 nights:

you'll wake up to a dewy, vibrant and more-rested complexion*

in 2 weeks:

97% of women had noticeably healthier-looking skin**

100% dramatically improved the texture and firmness of their skin**

in 4 weeks:

the length, width and depth of wrinkles was significantly reduced**
more than half of women agreed that they had their best-looking skin in
years—even compared to receiving professional skin treatments*

**self-assessment study, 42 women ages 45-65 ** independent clinical study, 32 women ages 45-65*

our exclusive formula with patented technologies targets all major signs of aging including **lines, wrinkles, firmness, texture, pores and radiance.**

in our concentrated serum: patented pearl system encapsulates active plant cells from the iris flower exceptionally rich in natural polyphenols.

for enhanced nighttime repair, this product contains a **2x** more-concentrated dose of active plant cells than our **ultimate miracle worker** products for daytime use.

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