

17. Since the time of their introduction, Plaintiff has continuously used one or more of the Moroccanoil Trademarks in commerce in the United States. All Moroccanoil Products sold in commerce bear one or more of the Moroccanoil Trademarks. Moroccanoil owns all right, title and interest in the United States and in other countries to the Moroccanoil Trademarks and Moroccanoil Trade Dress and the goodwill associated with them (collectively “Moroccanoil Intellectual Property”).

### **THE COUNTERFEIT PRODUCTS**

18. The counterfeit Moroccanoil Products distributed and sold by Defendants are substandard imitations of genuine Moroccanoil Oil Treatment. The counterfeits look very similar to genuine Moroccanoil Products as they are packaged in nearly identical, amber colored, druggist-style bottles with black screw-on caps. The trade dress of the counterfeits is very similar to that of the genuine products, including the size, shape, color, wording, and overall appearance of the products. The counterfeit labels bear copies of the Moroccanoil Trademarks.

19. The counterfeit bottles, labels and trade dress are not genuine since they were not used by Moroccanoil in the manufacture of its genuine products. The physical indicia of counterfeiting on the counterfeit product purchased from defendant Total Beauty show it to be the same as other identical products purchased from other sellers, which were tested by a laboratory and were determined to be counterfeit. Thus, Plaintiff believes that the product purchased from Total Beauty is counterfeit although it has not been tested by a testing laboratory.

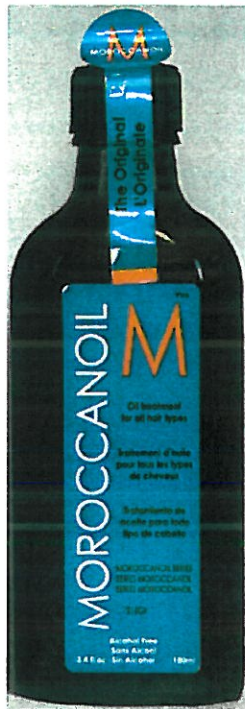
20. The labels on these counterfeit products recite numerous false statements, including:

a. *Batch Numbers:* The counterfeit products list a batch number of “216GH” (a batch number which MoroccanOil actually used) even though this product did not come from a genuine batch of MoroccanOil Oil Treatment.

b. *Designations of Origin and Distribution:* The counterfeits are marked “Made in Israel by A.P.P. Ltd.” which is false because the contents of the bottles are counterfeit and could not have come from A.P.P. Ltd. in Israel. Similarly, the counterfeits are marked “Distributed by MoroccanOil North America” which is false because the bottles were not distributed by MoroccanOil in North America.

c. *UPC Codes:* The counterfeits bear a UPC code number of 7290011-521011 which is false because the products are not genuine and could not have been manufactured or distributed by MoroccanOil.

21. The following images are true and correct photographs of one of the counterfeit products purchased from Total Beauty:



**FIRST CLAIM FOR RELIEF  
TRADEMARK COUNTERFEITING AND INFRINGEMENT  
AGAINST ALL DEFENDANTS  
(15 U.S.C. § 1114)**

22. Plaintiff alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 21, as if fully set forth herein.

23. Moroccanoil has extensively advertised and promoted its products and trademarks. Since their introduction into the United States in or about January 2007, Moroccanoil products have enjoyed tremendous sales growth and widespread popularity. As a result, any product bearing one or more of the Moroccanoil Trademarks is immediately associated by purchasers and the public as being a genuine Moroccanoil product.

24. The use of one or more copies of the Moroccanoil Trademarks by Defendants on the counterfeits of Moroccanoil Oil Treatment, which Moroccanoil believes the Defendants developed, manufactured, transported, offered for sale and sold, confuses and deceives consumers into believing that the counterfeit Moroccanoil Products are genuine Moroccanoil Products. In fact, the counterfeit Moroccanoil Products supplied by Defendants are not genuine Moroccanoil Products but bear counterfeit and infringing copies of Moroccanoil Trademarks.

25. The acts of Defendants have been committed without the consent of Plaintiff. The acts of Defendants are likely to cause confusion and mistake in the minds of the purchasing public, and, in particular, falsely create the impression that the counterfeit products sold by Defendants are manufactured, distributed, warranted, authorized, sponsored, or approved by Plaintiff when, in fact, they are not.

26. As a direct and proximate result of the counterfeiting and infringement of the Moroccanoil Trademarks, Plaintiff has suffered damages in the form of increased costs and reduced revenue in an amount unknown, but not less than \$500,000, and those damages will continue to increase every day. Plaintiff will amend its Complaint, at or before trial, to conform to proof of the amount of its damages.

27. As a proximate result of their wrongful conduct, Defendants have been unjustly enriched. Plaintiff demands and is entitled to an accounting from Defendants, including all information necessary to permit Plaintiff to determine the gains, profits and advantages that Defendants have obtained by reason of their wrongful conduct described herein.

28. Plaintiff has no adequate remedy at law. Monetary compensation will not afford Plaintiff adequate relief. The acts and omissions of Defendants as alleged herein will engender the need for a multiplicity of judicial proceedings and will cause damages to Plaintiff that are difficult, if not impossible, to measure. Unless Defendants are preliminarily and permanently enjoined from committing the unlawful acts alleged, including infringement of the Moroccanoil Trademarks, Plaintiff will continue to suffer irreparable harm. Injunctive relief is therefore appropriate pursuant to 15 U.S.C. § 1116 to prevent Defendants from engaging in any further violations of 15 U.S.C. § 1114.

29. Upon information and belief, the activities of Defendants complained of herein constitute willful and intentional counterfeiting and infringement of the Moroccanoil Trademarks in violation of the Lanham Act, including, but not limited to, 15 U.S.C. § 1114. The willfulness of the counterfeiting and infringement by Defendants is evidenced by the similar bottles, labels, wording, logos, and oil of the

counterfeits. Defendants' activities are in total disregard of the rights of Plaintiff. As a result, Plaintiff is further entitled to damages and remedies as provided by 15 U.S.C. §§ 1116 and 1117.

**SECOND CLAIM FOR RELIEF  
FALSE DESIGNATION OF ORIGIN  
AND FALSE REPRESENTATION  
AGAINST ALL DEFENDANTS  
(15 U.S.C. § 1125(a))**

30. Plaintiff alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 29, as if fully set forth herein.

31. The distribution and sale of counterfeit Moroccanoil Products by Defendants which are indistinguishable from authentic Moroccanoil Products constitutes a violation of 15 U.S.C. § 1125(a), a false designation of origin, false description and a false representation that the counterfeit products manufactured, distributed and sold by Defendants originate from, or are sponsored or authorized by Moroccanoil.

32. As a direct and proximate result of violations of 15 U.S.C. § 1125(a), Plaintiff has suffered damages in the form of increased costs and reduced revenue in an amount unknown, but not less than \$500,000, and those damages will continue to increase every day. Plaintiff will amend its Complaint, at or before trial, to conform to proof to state the amount of its damages.

33. As a proximate result of their wrongful conduct, Defendants have been unjustly enriched. Plaintiff demands and is entitled to an accounting from Defendants, including all information necessary to permit Plaintiff to determine the gains, profits

and advantages that Defendants have obtained by reason of their wrongful conduct described herein.

34. Plaintiff has no adequate remedy at law. Monetary compensation will not afford Plaintiff adequate relief. The acts and omissions of Defendants as alleged herein will engender the need for a multiplicity of judicial proceedings and will cause damages to Plaintiff that are difficult, if not impossible, to measure. Unless Defendants are preliminarily and permanently enjoined from committing the unlawful acts alleged, including the counterfeiting of the Moroccanoil Trademarks, Plaintiff will continue to suffer irreparable harm. Injunctive relief is therefore appropriate pursuant to 15 U.S.C. § 1116 to prevent Defendants from engaging in any further violations of 15 U.S.C. § 1125(a).

35. Upon information and belief, the activities of Defendants complained of herein constitute willful and intentional infringement of Moroccanoil Trademarks in violation of the Lanham Act, including, but not limited to, 15 U.S.C. § 1125(a). The willfulness of the infringement by Defendants is evidenced by the similar bottles, labels, wording, logos, and contents of the counterfeit products. The activities of Defendants are in total disregard of the rights of Plaintiff. As a result, Plaintiff is further entitled to damages as provided by 15 U.S.C. §§ 1116 and 1117.

### **PRAYER**

WHEREFORE, Plaintiff prays for an award as follows:

1. Preliminary and permanent injunctive relief against all Defendants, and each of them, and their officers, agents, attorneys, representatives and assigns, and all persons acting in active concert or participation with them, from doing any of the

following acts, either directly or indirectly, and from doing any act prefatory to the prohibited acts:

- a. Developing, manufacturing, acquiring, transporting, distributing, developing, offering to sell or selling any counterfeits of Moroccan Oil Treatment product bearing counterfeit Moroccan trademarks;
- b. Using any of Moroccan's Trademarks, or any other Moroccan trademark in connection with their business, including but not limited to:
  - (1) the word "Moroccan" (USPTO Registration No. 3,478,807);
  - (2) "M Moroccan Design" (vertical) - with the word Moroccan in white lettering written vertically with the letter M in orange written horizontally on the right side (USPTO Registration No. 3,684,910); and
  - (3) "M Moroccan Design" (horizontal) - with the word Moroccan in white lettering written horizontally across the orange letter M (USPTO Registration No. 3,684,909).
- c. Otherwise infringing the Moroccan Trademarks or any other Moroccan trademarks;

- d. Causing likelihood of confusion, deception, or mistake as to the source, nature, or quality of the goods of Defendants;
- e. Using any false designation of origin or false representation concerning any Moroccanoil product;
- f. Misrepresenting to anyone that they are authorized Moroccanoil manufacturers or distributors;
- g. Misrepresenting to anyone that they carry, distribute or sell genuine Moroccanoil Products or that they obtain their products directly from Moroccanoil;
- h. Soliciting, assisting, aiding or abetting any other person or business entity engaging in or performing any of the activities referred to in the above subparagraphs "a" through "g".

2. For an order directing Defendants, and each of them, to file with this Court and serve on Plaintiff within 30 days after service of an injunction, a report in writing and under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

3. For an order requiring Defendants, and each of them, to deliver to Plaintiff:

- a. all products, literature, and other material bearing any counterfeits of the Moroccanoil Trademarks, any other infringement of the



intellectual property of Plaintiff, or which falsely identifies the source of any products;

- b. printing devices, labels, packing, bottles, or any other items used in the manufacture or sale of products bearing any counterfeits of the Moroccanoil Trademarks; and
- c. the names of the supplier(s) of Moroccanoil Products, and all facts and circumstances known to them about the diversion of Moroccanoil Products, including the counterfeit Moroccanoil Products, and concerning all of their dealings in Moroccanoil Products, or counterfeit Products, including but not limited to all purchase orders, invoices, bills of lading, and communications with suppliers.

4. For a seizure of all counterfeit, repackaged, defaced, and damaged Moroccanoil goods and marks;

5. For damages and remedies as provided by 15 U.S.C. §§ 1116 and 1117;

6. For damages and remedies as provided by 15 U.S.C. § 1125;

7. For damages and remedies as provided by 19 U.S.C. § 1526;

8. For punitive and exemplary damages;

9. For attorney's fees;

10. For costs; and

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

**DEMAND FOR JURY TRIAL**

Plaintiff Moroccanoil, Inc. demands trial by jury of all triable issues.

Dated: June 9, 2011

GOTTLIEB, RACKMAN & REISMAN,  
P.C.

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