

**IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF NEW YORK**

**BTL INDUSTRIES, INC.,** a  
Delaware corporation,

**Plaintiff**

v.

**INFINITE BEAUTY ESTHETICS  
LLC,** a New York limited liability  
Company.

**Civil Action No.** \_\_\_\_\_

**Jury Trial Demanded**

**COMPLAINT**

Plaintiff BTL Industries, Inc. (hereinafter “BTL”), by and through its undersigned counsel, files this Complaint against Infinite Beauty Esthetics LLC (hereinafter “Infinite Beauty”) and alleges as follows:

**NATURE OF THIS ACTION**

1. This is a civil action by BTL against Infinite Beauty for trademark infringement, unfair competition, false designation of origin, false advertising under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), unlaw and deceptive acts under the N.Y Gen. Bus. L §349, injury to business reputation and dilution under N.Y Gen. Bus. L §360-1, trademark dilution and unfair competition under the common laws of New York, copyright infringement under Copyright Act of 1976, 17 U. S. C. § 505, and patent infringement under the patent laws of the United States, 35 U.S.C. § 1 et seq.

2. BTL and its affiliates pioneered the use of high-intensity electromagnetic energy for non-invasive aesthetic muscle toning. BTL launched the popular EMSCULPT aesthetic

body-contouring device in the United States in June 2018. EMSCULPT has been cleared by the U.S. Food and Drug Administration (FDA) for non-invasive toning and strengthening of muscles in the abdomen, buttocks, legs, and arms. BTL and its affiliates have since protected the ground-breaking EMSCUPLT device with numerous patents and federally registered trademarks.

3. According to their website, Infinite Beauty is a U.S. “Beauty, cosmetic & personal care” company. To that end, Infinite Beauty offers for sale various beauty and cosmetic procedures, including body-contouring sessions using a device (or devices) labeled as EMSCULPT NEO<sup>®</sup>. But the purported EMSCULPT NEO device (or devices) is counterfeit.

4. Through its false and misleading representations, Infinite Beauty has sold services purporting to use authentic BTL EMSCULPT NEO<sup>®</sup> devices to unknowing consumers. Infinite Beauty’s false and misleading representations as to the authenticity of the devices mislead consumers into believing they were purchasing services using devices manufactured by BTL. Infinite Beauty did this in part through advertising for sale body-contouring sessions using counterfeit devices on social media (e.g., Instagram) that contained BTL’s EMSCULPT, EMSCULPT NEO<sup>®</sup>, BTL<sup>®</sup>, and HIFEM<sup>®</sup> trademarks, as well as citing BTL’s clinical study results of using the BTL EMCULPT NEO<sup>®</sup> device.

5. As detailed below, Infinite Beauty’s actions violate BTL’s federal and common law trademark rights, copyrights, constitute unfair competition, false advertising, and deceptive practices under federal, state, and common law.

6. Furthermore, on information and belief, Infinite Beauty’s actions violate BTL’s federal patent rights and constitute patent infringement.

7. Infinite Beauty's infringing, misleading, and fraudulent conduct irreparably harmed BTL's EMSCULPT brand, the goodwill associated with the EMSCULPT brand, and the quality and goodwill of BTL's EMSCULPT NEO<sup>®</sup> device. Importantly, the counterfeit devices, which unlike BTL's EMSCULPT device, are not FDA cleared, may pose serious health and safety risks to the public as the counterfeit devices are of unknown quality and condition. Customers who bought the body-contouring sessions using counterfeit devices were misled into believing they were purchasing and using BTL's FDA-cleared EMSCULPT NEO<sup>®</sup> device to their potential health detriment.

8. BTL has filed this action to protect itself and the public against Infinite Beauty's unauthorized use of BTL's trademarks and promotion and sale of services using the counterfeit devices that infringe BTL's patent rights.

### **PARTIES**

9. BTL is a privately held corporation organized and existing under the laws of Delaware with a principal place of business at 362 Elm Street, Marlborough, Massachusetts 01752. BTL is the owner or the exclusive U.S. licensee of U.S. Patent Nos. 10,695,576 and 10,478,634, as well as the owner or exclusive licensee of the trademarks and copyrights at issue in this instant action.

10. On information and belief, Infinite Beauty is a limited liability company organized and existing under the laws of the State of New York, with a store at 1959 Front St, Suite 201, East Meadow, New York 11554.

### **JURISDICTION AND VENUE**

11. This Court has subject-matter jurisdiction over BTL's claims arising under the Lanham Act, 15 U.S.C. § 1121, and 15 U.S.C. § 1501, BTL's claims arising under the patent

laws of the United States, 35 U.S.C. § 1 et seq, pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a)-(b).

12. This Court has supplemental jurisdiction over BTL's claims arising under the laws of New York, pursuant to 28 U.S.C. § 1367(a) because the state-law claims are so related to BTL's federal law claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

13. This Court has personal jurisdiction over Infinite Beauty because Infinite Beauty is a New York registered limited liability company with a store in New York and committed acts of trademark infringement and dilution, patent infringement, copyright infringement, and false, unlawful and deceptive acts under the Lanham Act and N.Y Gen. Bus. L §349, as well as injury to business reputation and dilution in under N.Y Gen. Bus. L §360-1,

14. Infinite Beauty lists Susete Marei at 66 ALBERTSON PLACE, MINEOLA, NY, UNITED STATES, 11501 as its agent for Service of Process.

15. Venue is proper in the District under 28 U.S.C §1400(b) because Infinite Beauty has a regular and established place of business in this District and has committed acts of infringement in the District. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events that gave rise to the claims occurred in this District, and Infinite Beauty is subject to personal jurisdiction in this District.

### **FACTUAL ALLEGATIONS**

16. BTL specializes in the innovation, development, and implementation of equipment and treatments for non-invasive body contouring. A true and correct copy of BTL's press release entitled "BTL Continues to Make Waves With Its Revolutionary HIFEM® Technology" is attached hereto as Exhibit 1. BTL and its affiliates developed

proprietary and patent-protected HIFEM technology that uses high-intensity electromagnetic stimulation to tone and strengthen muscles in targeted areas. BTL applied its proprietary technology to develop a series of new FDA-cleared devices and developed protocols for using the technology for aesthetic therapies.

17. BTL's EMSCULPT NEO<sup>®</sup> device and treatments use high-intensity electromagnetic energy to induce powerful muscle contractions not achievable through voluntary contractions. The EMSCULPT device is currently cleared by the FDA as a non-invasive treatment for the abdomen, buttocks, arms, calves and thighs. A true and correct copy of BTL's EMSCULPT webpage is attached hereto as Exhibit 2.

18. A representative picture of an EMSCULPT NEO<sup>®</sup> device is shown below:



19. BTL markets and distributes its non-invasive aesthetic body-contouring EMSCULPT NEO<sup>®</sup> device to healthcare professionals, and licenses these healthcare professionals to provide associated treatment services administered via authentic

EMSCULPT devices that incorporate its proprietary technology, muscle toning protocols, and applicators in the United States.

20. The aesthetic industry has recognized BTL and its innovations, praising BTL's EMSCULPT device as a "pioneer or trailblazer throughout the aesthetic enhancement world," and identifying BTL's EMSCULPT device as "unparalleled in the industry." A true and correct copy of the article entitled "How Does EMSCULPT Work? Your EMSCULPT Questions Answered" by Holden Timeless Beauty is attached hereto as Exhibit 3. The EMSCULPT device has been renowned as a "breakthrough in non-invasive body shaping," with The Bend Magazine noting that EMSCULPT "is not a different version of an existing device. It's a totally new technology." True and correct copies of the article "Why is EmSculpt a Breakthrough in Non-Invasive Body Shaping?" by DC Derm Docs is attached hereto as Exhibit 4.

21. Indeed, commentators have recognized the technology's significant departure from prior body-contouring procedures, comparing EMSCULPT to an iPhone or Botox, and describing the EMSCULPT device as a "revolutionary advance in non-surgical body contouring." A true and correct copy of the article entitled "EmSculpt Changing the Rules" by Health Life Magazine is attached hereto as Exhibit 6.

22. BTL's EMSCULPT NEO<sup>®</sup> device built off the legacy of its predecessor, EMSCULPT, and continued the award-winning trend. For example, the EMSCULPT NEO<sup>®</sup> won Dermacsope.com's Aesthetician's Choice Award in 2022. A true and correct copy of the article is attached as Exhibit 5. Similarly, the EMSCULPT NEO<sup>®</sup> was included in Glamour's Best Beauty Innovators of 2022 in Glamour's Beauty Awards, describing the EMSCULPT

NEO<sup>®</sup> as a “revolutionary body-sculpting technology that has taken over our social media feeds the past year.” A true and correct copy of the article is attached as Exhibit 9.

### **THE PATENTS-IN-SUIT**

23. As a result of BTL’s efforts and technological advances over the prior body-contouring devices, BTL applied for and was awarded U.S. Patents No. 10,695,576 (“the ’576 patent”) and 10,478,634 (“the ’634 patent”)

24. The ’576 patent, entitled “Aesthetic Method of Biological Structure Treatment by Magnetic Field” was duly and legally issued on June 30, 2020. A true and correct copy of the ’576 patent is attached as Exhibit 7.

25. The ’576 patent names Thomás Schwarz and Ondra Prouza as co-inventors.

26. The ’576 patent relates to, among other things, a novel device that uses magnetic and induced electric fields for muscle toning a patient. The claimed devices “produce a time varying magnetic field for patient treatment which has a unique hardware components topology, provide effective treatment protocols and provide a new treatment.” *See* Exhibit 7 ’576 patent, col. 3, lines 14-17.

27. As noted above, the inventions claimed in the ’576 patent represent an advancement over what was then the existing available body-contouring devices and procedures.

28. The ’576 patent has been in full force and effect since its issuance. BTL is the exclusive licensee of the ’576 patent and owns the right to seek damages for past, current, and future infringement thereof.

29. The '634 patent, entitled ““Aesthetic Method of Biological Structure Treatment by Magnetic Field” was duly and legally issued on Nov. 19, 2019. A true and correct copy of the '576 patent is attached as Exhibit 8

30. The '634 patent names Thomás Schwarz and Ondra Prouza as co-inventors.

31. The '634 patent relates to, among other things, methods for toning muscles of a patient using time-varying magnetic fields. *See* Exhibit 8, Claim 1.

32. As noted above, the inventions claimed in the '634 patent represent an advancement over what was then the existing available body-contouring devices and procedures.

33. The '634 patent has been in full force and effect since its issuance. BTL is the exclusive licensee of the '634 patent and owns the right to seek damages for past, current, and future infringement thereof.

34. BTL's EMSCULPT device has also received numerous awards and accolades from well-respected media outlets and aesthetic industry organizations. For example, RealSelf identified BTL's EMSCULPT device as one of the 2019 and 2020 “Most Worth It Procedures.” True and correct copies of RealSelf, Inc.'s 2019 and 2020 rankings are attached hereto as Exhibits 10 and 11, respectively. Harper's Bazaar named EMSCULPT the “Best Body-Firming Treatment” in its 2020 Anti-Aging Awards. A true and correct copy of the article entitled “BAZAAR's 2020 Anti-Aging Awards” is attached hereto as Exhibit 12. BTL's EMSCULPT device earned the American Health & Beauty 2018 Readers' Choice Award for “Most Innovative Device.” A true and correct copy of the article entitled “Emsculpt Awarded ‘Most Innovative Device’” by American Health & Beauty is attached hereto as Exhibit 13. And NewBeauty named BTL's EMSCULPT device one of the “Best



Innovations” in its NewBeauty 2019 Awards. A true and correct copy of the article entitled “NewBeauty 2019 Award Winners: Best Innovations” by NewBeauty Editors is attached hereto as Exhibit 14.

35. BTL’s market success and superior performance are by-products of technological innovations. BTL continues to implement these innovations today, for example, by continuing to obtain additional FDA indications for use of its non-invasive aesthetic body-contouring devices.

### **BTL’S TRADEMARKS**

36. BTL uses and licenses registered and unregistered trademarks and trade dress, to market its aesthetic equipment and treatments in the U.S. (the “BTL Trademarks”), including the following federally registered marks:

<b>Reg. No.</b>	<b>Mark</b>	<b>Reg. Date</b>	<b>First Use in Commerce or Priority Date</b>	<b>Goods/Services</b>
5,572,801	EMSCULPT	Oct. 2, 2018	Sept. 29, 2017	Class 10: Medical apparatus and instruments for the treatment of cellulite; medical apparatus and instruments for body toning and body shaping; medical apparatus and instruments for the removal of fat, circumference reduction, tightening of skin, reduction of wrinkles, reduction of scars, reduction of stretch marks, rejuvenation of skin, and treatment of pigmentation spots; above medical apparatuses with exception for the treatment of the nasopharynx including inhalers and nasal irrigators; massage apparatus; medical apparatus and instruments for aesthetic skin treatment procedures; medical apparatus generating electromagnetic, magnetic, electrical, mechanical or thermal energy for use in skin treatment procedures; medical apparatus particularly apparatus for pain management, elimination of muscle spasms; gynaecological and urological apparatus and instruments, namely, for genital rejuvenation, treatment sexual

				dysfunction, gynecological treatment and pelvic floor treatment
6,069,279	EMSCULPT	Jun. 2, 2020	Sept. 29, 2017	Class 44: medical services; gynecology services; medical equipment rental; cosmetic and plastic surgery; beauty salons; liposuction services; removal of body cellulite
5,688,619	HIFEM	Mar. 5, 2019		Class 10: Medical apparatus and instruments for the treatment of cellulite; medical apparatus and instruments for body toning and body shaping; medical apparatus and instruments for the removal of fat, circumference reduction, tightening of skin, reduction of wrinkles, reduction of scars, reduction of stretch marks, rejuvenation of skin, and treatment of pigmentation spots; above medical apparatuses with exception for the treatment of the nasopharynx including inhalers and nasal irrigators; massage apparatus; medical apparatus and instruments for aesthetic skin treatment procedures; medical apparatus generating electromagnetic, magnetic, electrical, mechanical or thermal energy for use in skin treatment procedures; medical apparatus particularly apparatus for pain management, elimination of muscle spasms; gynaecological and urological apparatus and instruments, namely, for genital rejuvenation, treatment sexual dysfunction, gynecological treatment and pelvic floor treatment  Class 44: Health care services
6,373,947	EMSCULPT NEO	Jun. 1, 2021		Class 10: Medical apparatus and instruments for the treatment of cellulite; medical apparatus and instruments for body toning and body shaping; medical apparatus and instruments for the removal of fat, circumference reduction, tightening of skin, reduction of wrinkles, reduction of scars, reduction of stretch marks, rejuvenation of skin, and treatment of pigmentation spots; above medical apparatuses with exception for the treatment of the nasopharynx including inhalers and nasal irrigators; massage apparatus; medical apparatus and instruments for aesthetic skin treatment procedures; medical apparatus generating electromagnetic, magnetic, electrical, mechanical or thermal energy for use in skin treatment procedures; medical apparatus particularly apparatus for pain management, elimination of muscle

				<p>spasms; gynaecological and urological apparatus and instruments, namely, for genital rejuvenation, treatment sexual dysfunction, gynecological treatment and pelvic floor treatment</p> <p>Class 44: Medical services; medical equipment rental; cosmetic and plastic surgery; beauty salons; liposuction services; medical services, namely, removal of body cellulite</p>
4,750,101	BTL (figurative)	Jun. 09, 2015	Apr. 03, 2014	<p>Class 10: Physiotherapy apparatus in the nature of apparatus for electrotherapy, laser therapy, ultrasound therapy, magnetotherapy, and shockwave therapy, all for electrical nerve and muscle stimulation, infrared heat, wound healing, pain therapy, and treatment of inflammation; body rehabilitation apparatus for medical purposes; esthetic massage apparatus; hydrotherapy massage apparatus; medical and veterinary diagnostic apparatus and instruments, namely, electrocardiographs, heart monitors, spirometers, and blood pressure monitors; Medical devices for nonsurgical cosmetic treatments; medical devices for body toning and body shaping, tightening of skin, treatment of skin laxity, wrinkles, rhytides, and cellulite, and fat removal; lymphatic drainage equipment, namely, massage apparatus and lasers for medical use</p>

37. The BTL Trademarks have been used exclusively and continuously by BTL and have never been abandoned. The above U.S. registrations are valid and subsisting in full force and effect. True and correct “status” copies of these registrations, obtained from the Trademark Status Document Retrieval (“TSDR”) database of the United States Patent and Trademark Office, are attached hereto as Exhibit 15. These registrations constitute *prima facie* evidence of their validity and of BTL’s exclusive right to use the trademarks pursuant to 15 U.S.C. § 1057(b).

38. The BTL Trademarks perform an important source-identifying function for BTL’s aesthetic body-contouring devices and associated treatment services, signifying to purchasers

that the devices come from BTL, and that the services are rendered by BTL devices and administered by BTL trained and authorized service providers. The BTL Trademarks are inherently distinctive, and have acquired considerable brand loyalty through BTL's sales and promotion, and via direct word-of-mouth promotion by consumers. In addition, BTL has expended significant time, money, and resources in developing, marketing, advertising, promoting, and selling its products and services under the BTL Trademarks in the United States. The market reputation and consumer goodwill associated with the BTL Trademarks are of incalculable and inestimable value to BTL.

### **BTL'S COPYRIGHTS**

39. BTL uses copyrighted material as part of its advertisement and sales of its EMSCULPT NEO<sup>®</sup> device. A true and correct copy of the Certificate of Registration by the U.S. Copyright Office is attached as Exhibit 16.

40. Below is a representative example of BTL's copyrighted works at issue:



## **INFINITE BEAUTY'S UNLAWFUL CONDUCT**

41. Upon information and belief, Infinite Beauty promoted on its website and through social media body-contouring services using a counterfeit EMSCULPT NEO device or devices. Upon information and belief, Infinite Beauty made numerous social media posts, for example via Instagram, advertising body-contouring sessions using an EMSCULPT NEO<sup>®</sup> device at its East Meadow location along with using the hashtags #emsculpt<sup>®</sup> and #emsculptneo.

42. Upon information and belief, in its social media posts, Infinite Beauty used BTL's HIFEM trademark in advertising for its body-contouring sessions using a counterfeit EMSCULPT NEO device

43. Upon information and belief, Infinite Beauty also referenced BTL's clinical study results in connection with the advertisement of its body-contouring sessions using a counterfeit EMSCULPT NEO device. For example, in at least one advertisement on its Instagram page, Infinite Beauty described "How Does EMS sculpt NEO Machine Work?" by stating that "Clinical Studies showed on average a 30% reduction in subcutaneous fat."

44. Upon information and belief, the EMSULPT NEO device Infinite Beauty uses in its body-contouring sessions and advertised to consumers is counterfeit. Upon information and belief, Infinite Beauty has claimed, improperly, that the counterfeit device is FDA-cleared.

45. As shown in the below picture from one of Infinite Beauty's advertisements, Infinite Beauty's counterfeit devices used BTL's EMSCULPT NEO® Trademark:



46. As shown in the top-left corner of the image below, Infinite Beauty also markets its counterfeit devices using the BTL Trademarks:



47. Upon information and belief, along with the use of BTL's Trademarks, Infinite Beauty used BTL's copyrighted materials as part of their marketing and sales of the

counterfeit EMSCULPT NEO device. The following is a screenshot of Infinite Beauty's social media page:



48. A representative from BTL contacted Infinite Beauty regarding the counterfeit nature of its device and related services. Infinite Beauty refused to cease marketing and providing these services. Upon information and belief, Infinite Beauty was aware EMSCULPT NEO<sup>®</sup> device it used and uses in connection with its body-contouring services is a counterfeit device. Infinite Beauty nevertheless repeatedly advertised and continues to advertise services using EMSCULPT NEO<sup>®</sup> as well as the EMSCULPT and HIFEM trademarks.

49. Upon information and belief, Infinite Beauty used its East Meadow, New York shop to offer and perform body-contouring services using the counterfeit device.



50. Upon information and belief, Infinite Beauty was aware of and hid from its customers that the device it used and uses are not authentic EMSCULPT NEO® devices.

### **BTL HAS BEEN HARMED BY INFINITE BEAUTY'S CONDUCT**

51. Infinite Beauty's use of BTL's trademarks on counterfeit devices has injured and, if allowed to continue, will continue to irreparably harm BTL's business and goodwill associated with its brand, as well as BTL's reputation for providing high-quality and safe body-contouring aesthetic devices, which are subject to strict quality control standards.

52. Furthermore, Infinite Beauty's offer for sale and sale of services using counterfeit devices using BTL's Trademarks and holding those devices out to be authentic BTL EMSCULPT NEO® devices risks exposing consumers and patients to unnecessary safety and health risks because these devices are not FDA cleared and have an unknown level of quality or quality control.

53. Infinite Beauty's actions are likely to and have caused confusion, mistake, or deception as to the source and origin of the devices offered for sale and sold by Infinite Beauty. For example, on July 27, 2022, a prospective patient contacted BTL to inquire whether Infinite Beauty was offering services with an authentic BTL EMSCULPT NEO device, as the patient had already purchased a treatment package from Infinite Beauty via Groupon. The patient was disappointed to learn that the EMSCULPT NEO device was not authentic. Infinite Beauty's actions are likely to and do falsely suggest that the devices are authentic BTL EMSCULPT NEO® devices.

## **FIRST CLAIM FOR RELIEF**

### **(TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114)**

54. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

55. BTL owns exclusive rights to enforce the EMSCULPT, EMSCULPT NEO, and HIFEM trademarks in the U.S. The United States trademark registrations for the BTL Trademarks are in full force and effect. Upon information and belief, Infinite Beauty had knowledge of BTL's rights in its trademarks and willfully infringed those trademarks. Infinite Beauty's willful, intentional, and unauthorized use of the BTL Trademarks likely caused confusion, mistake, and deception as to the origin and quality of the services Infinite Beauty advertises and the authenticity of the device used to the general public.

56. Infinite Beauty's actions constitute willful trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

57. The injuries and damages BTL sustained have been directly and proximately caused by Infinite Beauty's wrongful promotion, marketing, offering for sale, and sale of the services using a counterfeit EMSCULPT NEO device that infringes BTL's brand.

58. As a result of Infinite Beauty's infringement, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Infinite Beauty's wrongful acts in an amount yet to be determined, plus the cost of this action.

## **SECOND CLAIM FOR RELIEF**

### **(FALSE ADVERTISING UNDER 15 U.S.C. § 1125)**

59. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

60. Infinite Beauty's promotion, marketing, offering for sale, and sale services using counterfeit devices using BTL's Trademarks constitute false advertising and created a likelihood and/or caused actual confusion, mistake, and deception among the general public as to the affiliation, connection, or association between the counterfeit EMSCULPT NEO devices and BTL.

61. By using BTL's Trademarks within its promotion, marketing, offering for sale, and sale of the services using counterfeit devices, Infinite Beauty engaged in false advertising and created the false impression that the counterfeit EMSCULPT NEO devices are genuine BTL EMSCULPT NEO<sup>®</sup> devices.

62. Infinite Beauty's actions constitute a willful violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

63. Infinite Beauty's false advertising practices constitute misleading descriptions and misrepresentations of fact in commerce that, in commercial advertising and promotion, misrepresent the nature, characteristics, and quality of the devices used in violation of the Lanham Act, 15 U.S.C. § 1125.

64. The injuries and damages BTL sustained have been directly and proximately caused by Infinite Beauty's wrongful promotion, marketing, offering for sale, and sale of services using counterfeit EMSCULPT NEO devices that infringe BTL's brand.

65. As a result of Infinite Beauty's infringement, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Infinite Beauty's wrongful acts in an amount yet to be determined, plus the cost of this action.

### **THIRD CLAIM FOR RELIEF**

#### **(Unlawful and Deceptive Acts Under N.Y. Gen. Bus. L §349)**

66. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

67. This claim arises under New York General Business Law §349.

68. Infinite Beauty engaged in unlawful and deceptive acts through its misrepresentation to consumers that the EMSCULPT NEO device used in its advertisement and services were related to actual BTL EMSCULPT<sup>®</sup> and EMSCULPT NEO<sup>®</sup> products by using the BTL Trademarks on its counterfeit device(s) as well as using the hashtags #emsculpt and #emsculptneo in its advertisements.

69. Infinite Beauty's intentional acts constitute unlawful and deceptive acts under New York General Business Law §349.

70. The injuries and damages BTL sustained have been directly and proximately caused by Infinite Beauty's wrongful promotion, marketing, offering for sale, and sale of services using the counterfeit EMSCULPT NEO<sup>®</sup> device.

71. As a result of Infinite Beauty's actions, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Infinite Beauty's wrongful acts in an amount yet to be determined, plus the cost of this action.

### **FOURTH CLAIM FOR RELIEF**

#### **(Injury to Business Reputation and Dilution under N.Y. Gen. Bus. L §360-l)**

72. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

73. This claim arises under New York General Business Law §360-l.

74. Infinite Beauty engaged in acts that resulted in injury to BTL's business reputation and dilution of the EMSCULPT trademarks through its deliberate use of BTL's Trademarks on or in connection with the promotion, offering for sale, and sale of services using the counterfeit EMSCULPT NEO<sup>®</sup> device, specially using the BTL Trademarks on its counterfeit device(s) as well as using the hashtag #emsculpt repeatedly in its advertisements.

75. Infinite Beauty's intentional acts constitute an injury to business reputation and dilution under New York General Business Law §360-L.

76. The injuries and damages BTL sustained have been directly and proximately caused by Infinite Beauty's wrongful promotion, marketing, offering for sale, and sale of services using the counterfeit EMSCULPT NEO<sup>®</sup> device.

77. As a result of Infinite Beauty's actions, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Infinite Beauty's wrongful acts in an amount yet to be determined, plus the cost of this action.

## **FIFTH CLAIM FOR RELIEF**

### **(Common Law Trademark Infringement and Unfair Competition)**

78. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

79. This claim arises under the common law of the State of New York.

80. Infinite Beauty engaged in unfair competition through its reliance and exploitation of consumer mistake and confusion, and its deliberate efforts to exploit the goodwill of BTL's Trademarks in connection with the marketing and sale of services using the counterfeit EMSCULPT NEO device.

81. Infinite Beauty's intentional acts constitute trademark infringement and unfair competition in violation of New York common law.

82. The injuries and damages BTL sustained have been directly and proximately caused by Infinite Beauty's wrongful promotion, marketing, offering for sale, and sale of services using the counterfeit EMSCULPT NEO device that infringe BTL's brand.

83. As a result of Infinite Beauty's actions, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Infinite Beauty's wrongful acts in an amount yet to be determined, plus the cost of this action.

### **SIXTH CLAIM FOR RELIEF**

#### **(Infringement of U.S. Patent No. 10,695,576)**

84. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

85. BTL is informed and believes, and on this basis alleges, that Infinite Beauty has committed and may commit in the future acts of direct infringement of the '576 patent by making, using, selling, offering for sale, and/or importing into the United States a counterfeit EMSCULPT NEO device.

86. BTL is informed and believes, and on this basis alleges, that Infinite Beauty has intentionally aided and encouraged third parties (including Infinite Beauty's supplier) to import into the United States at least one counterfeit EMSCULPT NEO device, having known that the acts it was causing would infringe or have a high probability of infringing the '576 patent and with the specific intent that those performing the acts infringe the '576 patent.

87. As a result of Infinite Beauty's infringement of the '576 patent, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Infinite Beauty's wrongful acts in an amount yet to be determined, plus the cost of this action.

### **SEVENTH CLAIM FOR RELIEF**

#### **(Infringement of U.S. Patent No. 10,478,634)**

88. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

89. BTL is informed and believes, and on this basis alleges, that Infinite Beauty has committed and may commit in the future acts of infringement of the '634 patent by using in the United States a counterfeit EMSCULPT NEO device on customers.

90. BTL is informed and believes, and on this basis alleges, that Infinite Beauty has committed and may commit in the future acts of infringement of the '634 patent by offering for sale and selling services in the United States using a counterfeit EMSCULPT NEO device to customers.

91. As a result of Infinite Beauty's infringement of the '634 patent, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Infinite Beauty's wrongful acts in an amount yet to be determined, plus the cost of this action.

### **EIGHTH CLAIM FOR RELIEF**

#### **(Copyright Infringement)**

92. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

93. BTL is informed and believes, and on this basis alleges, that Infinite Beauty has committed and may commit in the future acts of copyright infringement by using BTL's

copyrighted materials as part of Infinite Beauty's marketing and sales of its counterfeit device.

94. BTL is informed and believes, and on this basis alleges, that Infinite Beauty use of BTL's copyrighted materials was knowingly and constitutes willful copyright infringement under the Copyright Act.

95. As a result of the above-described conduct by Infinite Beauty, BTL has been damaged in an amount to be proven at trial.

96. In the alternative, at the election of BTL, BTL is entitled to recover from Defendants statutory damages up to \$150,000.00 per copyright infringed for Defendants' willful copyright infringement, plus attorneys' fees.

### **PRAYER FOR RELIEF**

WHEREFORE, BTL requests that this Court enter judgment against Infinite Beauty as follows:

- A. That Infinite Beauty has violated the Lanham Act, 15 U.S.C. § 1114 by committing acts of trademark infringement;
- B. That Infinite Beauty has violated the Lanham Act, 15 U.S.C. § 1125 by committing acts of federal unfair competition, false designation of origin, and false advertising;
- C. That Infinite Beauty has violated the New York Gen. Bus. L §349 by committing unlawful and deceptive acts;
- D. That Infinite Beauty has violated the New York Gen. Bus. L §360-L by committing acts that injured BTL's business reputation and diluted BTL's marks;



- E. That Infinite Beauty has violated New York common law;
- F. That Infinite Beauty pay damages to BTL adequate to compensate BTL for Infinite Beauty's unlaw, unfair, and deceptive acts;
- G. That Infinite Beauty is liable for treble damages for its willful acts;
- H. That Infinite Beauty has infringed the '576 patent;
- I. That Infinite Beauty pay damages adequate to compensate BTL for Infinite Beauty's infringement of the '576 patent, together with interest and costs under 35 U.S.C. § 284;
- J. That Infinite Beauty has infringed the '634 patent;
- K. That Infinite Beauty pay damages adequate to compensate BTL for Infinite Beauty's infringement of the '634 patent, together with interest and costs under 35 U.S.C. § 284;
- L. That Infinite Beauty has infringed BTL's copyrights;
- M. That Infinite Beauty's copyright infringement was willful;
- N. That BTL be awarded costs under 17 U.S.C. § 505 or as otherwise provided by law;
- O. The BTL be awarded actual damages suffered by BTL as a result of Infinite Beauty's copyright infringement;
- P. Or that in the alternative, BTL be awarded the statutory damages for each act of copyright infringement by Infinite Beauty;
- Q. That Infinite Beauty be ordered to pay pre-judgment and post-judgement interest on the damages assessed;

- R. That Infinite Beauty's infringement is willful and that the damages awarded to BTL should be enhanced up to three times the actual damages awarded;
- S. That this is an exception case under 35 U.S.C. § 284 and that Infinite Beauty pay BTL's attorney's fees and costs in this action; and
- T. That BTL be awarded any such other and further relief, including equitable relief, as this Court deems just and proper.

### **JURY DEMAND**

BTL hereby demands a trial by jury on all issues so triable.

Dated: August 8, 2022

The Law Office of Rami Bardenstein, LLC

By /s/ Rami Bardenstein

Rami Bardenstein

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