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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

DERMAQUEST, INC.,

Defendant.

Case No: RG 10497526

COMPLAINT FOR VIOLATION OF CARTWRIGHT ACT (Bus. & Prof. Code § 16720 et seq.) AND UNFAIR COMPETITION LAW (Bus. & Prof. Code § 17200 et seq.)

[Not Subject to Filing Fees Per Gov't Code § 6103]

The People of the State of California ("California"), through Edmund G. Brown Jr., Attorney General of California ("AG Brown"), allege as follows:

INTRODUCTION

1. California brings this civil antitrust lawsuit against DermaQuest, Inc., dba DermaQuest Skin Therapy ("DermaQuest"), for engaging in vertical price-fixing of DermaQuest cosmeceuticals and related products, in per se violation of the Cartwright Act (Bus. & Prof. Code § 16720 et seq.), as well as the Unfair Competition Law (the "UCL," Bus. & Prof. Code § 17200 et seq.). California seeks injunctive relief and the imposition of statutory penalties, as well as other relief, against DermaQuest for engaging in this unlawful business practice.

PARTIES

2. Plaintiff California is represented in this lawsuit by AG Brown.

3. As Attorney General of California, under Business & Professions Code section 16754, *inter alia*, AG Brown is empowered to initiate and to litigate lawsuits in California superior courts for violations of the Cartwright Act (Bus. & Prof. Code § 16720 et seq.).

4. As Attorney General of California, under Business & Professions Code section 17204, *inter alia*, AG Brown is empowered to initiate and to litigate lawsuits in courts of competent jurisdiction for violations of the UCL (Bus. & Prof. Code § 17200 et seq.).

5. Defendant DermaQuest is a California corporation, with its physical headquarters located in Hayward.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over this matter pursuant to the California Constitution, article VI, section 10, and Business & Professions Code sections 16750, 16754, 16754.5, 17203, 17204, and 17206.

7. This Court has personal jurisdiction over DermaQuest, because DermaQuest resides in Alameda County, and DermaQuest's physical headquarters (and sole offices) are located in this County.

8. Venue is proper in Alameda County under Business & Professions Code section 16754 because the offenses complained of were committed in this County, DermaQuest resides in this County, and DermaQuest does business in this County.

FACTUAL ALLEGATIONS

9. DermaQuest makes, packages, and markets a line of human beauty-care products, of the type sometimes called cosmeceuticals, under the brand name DERMAQUEST and other brand names, such as DERMALASH, often including the term "derma."

10. Since 2007, DermaQuest has entered into a total of eight written contracts, entitled either "Distribution Agreement" or "Resale Agreement," with third-party companies that distribute and/or sell, retail to the public, DermaQuest products, where such contracts contained resale price maintenance components, as described further immediately below.

11. One of these contracts states, in part, that "Distributor may not resell Product in a price structure that yields a Product price at ultimate retail sale below Dermaquest's Suggested Retail Price ('DSRP') in effect at the time of Product purchase by Distributor. Distrubutor [sic] represents and warrants that it [sic] sales by Establishments and Professionals to end users/consumers of Products will not be at a price structure below DSRP. Dermaquest will provide DSRP information with orders shipped or through its website, in Dermaquest's discretion."

12. The other seven contracts state, in part, that "Reseller may not resell Product in a price structure that yields a Product price at resale below Dermaquest's Suggested Retail Price (DSRP) in effect at the time of Product purchase by Reseller. Dermaquest will provide DSRP information with orders shipped or through its website, in Dermaquest's discretion."

ALLEGED VIOLATIONS OF LAW

First Count: Violation of the Cartwright Act

13. California realleges paragraphs 1 through 12, above.

14. DermaQuest has engaged in vertical price-fixing in per se violation of the Cartwright Act, Business & Professions Code section 16720 et seq. *Harris v. Capitol Records Distrib. Corp.*, 64 Cal. 2d 454, 463 (1966); *Mailand v. Burckle*, 20 Cal. 3d 367, 377 (1978); *Chavez v. Whirlpool Corp.*, 93 Cal. App. 4th 363, 369 (2001); *Kunert v. Mission Fin. Servs. Corp.*, 110 Cal. App. 4th 242, 263 (2003).

15. DermaQuest must immediately and permanently be enjoined from further violation of the Cartwright Act.

Second Count: Violation of the Unfair Competition Law

16. California realleges paragraphs 1 through 12, above.

17. DermaQuest has engaged in unfair competition, in violation of the UCL, Business & Professions Code section 17200 et seq., including by vertical price-fixing in violation of the Cartwright Act, Business & Professions Code section 16720 et seq.

18. DermaQuest must immediately and permanently be enjoined from further violation of the UCL.

PRAYER FOR RELIEF

California prays for judgment against DermaQuest including the following relief:

1. That the Court declare that DermaQuest's above-described conduct constitutes per se illegal vertical price-fixing under the Cartwright Act, Business & Professions Code section 16720 et seq.

2. That the Court declare that DermaQuest's above-described conduct constitutes unfair competition under the UCL, Business & Professions Code section 17200 et seq.

3. That, under Business & Professions Code sections 16750 and/or 16754.5, the Court immediately enter a permanent injunction against further participation in vertical price-fixing by DermaQuest and its successors, assigns, agents, employees, representatives, and all entities or persons acting in concert with them.

4. That, under Business & Professions Code section 17203 the Court immediately enter a permanent injunction against further engaging in acts of unfair competition, including vertical price-fixing, by DermaQuest and its successors, assigns, agents, employees, representatives, and all entities or persons acting in concert with them.

5. That, under Business & Professions Code section 17206, the Court assess a $2,500 civil penalty against DermaQuest for each violation of the UCL, Business & Professions Code section 17200 et seq.

6. That, under Business & Professions Code sections 16750, the Court order DermaQuest to reimburse California for the reasonable attorney fees and costs accrued by California in investigating this matter and pursuing this lawsuit.

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7. That the Court grant such other legal and equitable relief as the Court deems just and proper.

Dated: February 2, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California

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