

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

LENNON IMAGE TECHNOLOGIES, LLC,	§	
	§	
<i>Plaintiff,</i>	§	
	§	Civil Action No. 3:15-cv-551
v.	§	
	§	JURY TRIAL DEMANDED
MARY KAY INC.,	§	
	§	
<i>Defendant.</i>	§	

**PLAINTIFF LENNON IMAGE TECHNOLOGIES, LLC’S  
COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Lennon Image Technologies, LLC (“Plaintiff” or “LIT”) files this Complaint against Defendant Mary Kay Inc. (“Defendant” or “Mary Kay”) and alleges as follows:

**PARTIES**

1. Plaintiff LIT is a Texas Limited Liability Company with its principal place of business at 1910 East Southeast Loop 323, #244, Tyler, Texas 75701.
2. Upon information and belief, Defendant Mary Kay is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 16251 Dallas Parkway, Addison, Texas 75001. Defendant may be served with process through its registered agent CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

**BACKGROUND**

3. On information and belief, Defendant is in the business of selling cosmetic products.
4. On information and belief, Defendant engages in electronic commerce conducted on and using at least, but not limited to, the website <http://www.marykay.com/>.

5. On information and belief, Defendant owns, operates, and/or directs the operation of the website <http://www.marykay.com/>, which has a Virtual Makeover application at, for example, <http://www.marykay.com/en-US/TipsAndTrends/MakeoverAndBeautyTools/layouts/MaryKayCoreTipsAndTrends/VirtualMakeOver.aspx> and other related webpages (“Virtual Makeover Application”).

6. On information and belief, Defendant owns, operates, and/or directs the operation of mobile Virtual Makeover applications at, for example, <https://itunes.apple.com/us/app/marykay-mobile-virtual-makeover/id504989389?ls=1&mt=8>, <https://play.google.com/store/apps/details?id=air.com.marykay.enterprise.VMO>, and <http://www.amazon.com/gp/mas/dl/android?p=air.com.marykay.VMO> (“Virtual Makeover Mobile Apps”).

7. On information and belief, Defendant has made and continues to make available to its customers its Virtual Makeover Application and Virtual Makeover Mobile Apps for manipulating an image corresponding to a customer.

8. Defendant currently provides and/or has provided website visitors (“Website End Users”) access to its site, <http://www.marykay.com/>, including its Virtual Makeover Application.

9. Defendant currently provides and/or has provided mobile apps users (“Mobile Apps End Users”) access to its Virtual Makeover Mobile Apps and the ability to download the same on mobile devices.

10. Defendant directs Website End Users to operate the Virtual Makeover Application of its website, <http://www.marykay.com/>, for example, by providing links and directions to its Virtual Makeover Application as well as instructions on its proper use and operation.

11. Defendant directs Mobile Apps End Users to operate its Virtual Makeover Mobile Apps, for example, by providing links and directions to its mobile applications as well as instructions on its proper use and operation, such as through the site <http://www.marykay.com/en-US/TipsAndTrends/MakeoverAndBeautyTools/Pages/The-Look-Makeover-App.aspx>.

### **JURISDICTION AND VENUE**

12. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code.

13. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

14. Upon information and belief, Defendant is subject to this Court's general and/or specific personal jurisdiction because it (a) is a resident of the State of Texas; (b) has designated an agent for service of process in the State of Texas; (c) has committed acts of infringement in the State of Texas as alleged below; and/or (d) is engaged in continuous and systematic activities in the State of Texas.

15. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant has a regular and established place of business in this district, and/or have transacted business in this district, and/or have committed, contributed to the commitment of, and/or induced acts of patent infringement in this district.

### **THE PATENT-IN-SUIT**

16. On September 23, 2003, the United States Patent and Trademark Office issued United States Patent No. 6,624,843 ("the '843 Patent") entitled "Customer Image Capture and Use Thereof in a Retailing System," a true copy of which is attached as Exhibit A.

17. Plaintiff is the owner by assignment of the '843 Patent and owns all right, title and interest in the '843 Patent, including the right to sue for and recover all past, present and future damages for infringement of the '843 Patent.

**CLAIM 1 – INFRINGEMENT OF U.S. PATENT NO. 6,624,843**

18. Defendant has been and is now directly infringing one or more claims of the '843 Patent in violation of 35 U.S.C. § 271(a), by making, using, selling, offering for sale or importing in the United States its Virtual Makeover Application and Virtual Makeover Mobile Apps, which manipulate a customer image corresponding to a customer.

19. In addition and/or in the alternative, Defendant has been and/or is now indirectly infringing one or more claims of the '843 Patent and is continuing to engage in such indirect infringement in violation of 35 U.S.C. § 271(b) by inducing its customers to directly infringe the '843 Patent through their use of the infringing instrumentalities. Defendant induces such infringement by at least making its Virtual Makeover Application and Virtual Makeover Mobile Apps available to customers and providing links and directions to the same as well as providing instructions on their proper use and operation. Defendant engages in such activities knowingly and, at least from the time of receipt of the present complaint, has done so with the knowledge that such activity encourages end users to directly infringe the '843 Patent.

20. As a direct and proximate consequence of the acts and practices of the Defendant in infringing, directly and/or indirectly, one or more claims of the '843 Patent, Plaintiff has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 in an amount to be determined at trial.

21. The limitation of damages provision of 35 U.S.C. § 287(a) is not applicable to Plaintiff.

## **DEMAND FOR JURY TRIAL**

22. Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Lennon Image Technologies, LLC requests entry of judgment that:

1. Defendant has infringed the patent-in-suit;
2. Defendant accounts for and pays to Plaintiff all damages caused by its infringement of the patent-in-suit;
3. Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of one or more of Defendant's patent infringement;
4. Costs be awarded to Plaintiff; and
5. Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: February 17, 2015

Respectfully submitted,

**BUETHER JOE & CARPENTER, LLC**

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**ATTORNEYS FOR PLAINTIFF  
LENNON IMAGE TECHNOLOGIES, LLC**

**CERTIFICATE OF SERVICE**

Pursuant to Local Rule 5.1(d), the undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on this 17th day of February, 2015. Any other counsel of record will be served by facsimile transmission.

/s/ Christopher M. Joe  
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