

ORIGINAL

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BODY WISE INTERNATIONAL, LLC

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

AUG 06 2007

ALAN SLATER, Clerk of this Court
T. [Signature]
By: F. [Signature]

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

10 BODY WISE INTERNATIONAL, LLC, a
11 Delaware Limited Liability Corporation

12 Plaintiff,

13 vs.

14 GARY DERITTER, an individual, EDWARD
DERITTER, an individual, DAN
15 McCORMICK, an individual, LON
WARDROP, an individual, JERRY
16 ANDERSON, an individual, JANIS
ANDERSON, an individual, PHARMANEX,
17 INC., a Delaware Corporation, PHARMANEX,
LLC, a Delaware Limited Liability Corporation,
18 formerly named as DOE 1, NU SKIN
ENTERPRISES UNITED STATES, INC. a
19 Delaware Corporation, formerly named as DOE
2, and DOES 3 through 100, inclusive.

20 Defendants.

Case No. 07CC05534

ASSIGNED FOR ALL PURPOSES TO:
JUDGE DAVID T. McEACHEN
DEPARTMENT C~~1~~ 2)

SECOND AMENDED COMPLAINT FOR:

- (1) BREACH OF EXPRESS TERMS OF WRITTEN CONTRACT;
- (2) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- (3) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS;
- (4) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;
- (5) MISAPPROPRIATION OF TRADE SECRETS;
- (6) UNFAIR COMPETITION; AND
- (7) UNJUST ENRICHMENT AND RESTITUTION

[JURY TRIAL DEMANDED]

Date Action Filed: May 2, 2007
Trial Date: Not Assigned

22 AND RELATED CROSS-ACTION

26 Plaintiff Body Wise International, LLC alleges:

27 **GENERAL ALLEGATIONS**

28 1. Plaintiff Body Wise International, LLC ("Body Wise") is a Delaware limited

8-14-07
DOWNTOWN SET FOR

1 liability company with its principal place of business and headquarters in Tustin, California, in the
2 County of Orange. Body Wise is the successor of Body Wise International, Inc.

3 2. Body Wise is informed and believes and on that basis alleges that defendant Gary
4 Deritter is a former Body Wise distributor residing in Huntington Beach, California, in the County
5 of Orange.

6 3. Body Wise is informed and believes and on that basis alleges that defendant
7 Edward Deritter is a former Body Wise distributor residing in Los Angeles County, California.

8 4. Body Wise is informed and believes and on that basis alleges that defendant Jerry
9 Anderson is a former Body Wise distributor residing in San Diego County, California.

10 5. Body Wise is informed and believes and on that basis alleges that defendant Janis
11 Anderson is a former Body Wise distributor residing in San Diego County, California.

12 6. Body Wise is informed and believes and on that basis alleges that defendant Dan
13 McCormick is an individual residing in Orange County, California. On information and belief,
14 Dan McCormick is a distributor of Pharmanex, as defined below.

15 7. Body Wise is informed and believes and on that basis alleges that defendant Lon
16 Wardrop is an individual residing in Provo, Utah and is a distributor of Pharmanex, as defined
17 below. On information and belief, Mr. Wardrop intentionally caused injuries to Body Wise in the
18 State of California by his tortious conduct, as alleged herein.

19 8. Body Wise is informed and believes and on that basis alleges that defendant
20 Pharmanex, Inc. is a Delaware corporation that does business, either directly or through its
21 authorized agents, representatives, distributors or contractors, in Orange County, California.

22 9. Body Wise is informed and believes and on that basis alleges that defendant
23 Pharmanex, LLC, named in the prior complaints in this action as Doe 1, is a Delaware limited
24 liability company that does business, either directly or through its authorized agents,
25 representatives, distributors or contractors, in Orange County, California.

26 10. Body Wise is informed and believes and on that basis alleges that defendant Nu
27 Skin Enterprises United States, Inc., named in the prior complaints in this action as Doe 2, is a
28 Delaware corporation that does business, either directly or through its authorized agents,

1 representatives, distributors or contractors, in Orange County, California.

2 11. Body Wise collectively refers to Defendants Pharmanex, Inc., Pharmanex LLC,
3 and Nu Skin Enterprises United States, Inc. as "Pharmanex."

4 12. Body Wise sues defendants DOES 3 through 100 under fictitious names. Their
5 true names and capacities, whether individual, corporate, associate, or otherwise, are unknown to
6 Body Wise. When Body Wise ascertains their true names and capacities, it will seek permission
7 from this Court to amend the Second Amended Complaint to insert the true name and capacity of
8 each fictitiously-named defendant. On information and belief, each fictitiously-named defendant
9 is legally responsible in some manner for the occurrences alleged in this Second Amended
10 Complaint and for the relief and damages requested herein.

11 13. Body Wise is informed and believes and on that basis alleges that at all times
12 relevant to this Second Amended Complaint defendants, and each of them, were the agents,
13 servants, employees, alter egos, successors-in-interest, subsidiaries, affiliated companies or
14 corporations, and joint ventures of the other defendants, and were, as such, acting within the
15 course, scope, and authority of each other defendant.

16 14. Body Wise is informed and believes and on that basis alleges that defendants, and
17 each of them, formed a conspiracy and combination among themselves to engage in the wrongful
18 acts and omissions alleged herein and by virtue of this conspiracy are jointly and severally liable
19 for the relief and damages requested herein. Body Wise is further informed and believes and on
20 that basis alleges that defendants acted in concert with, and with the consent of, the other
21 defendants, and that each defendant ratified or agreed to accept the benefits of the acts and
22 omissions of the other defendants.

23 15. Body Wise is informed and believes and on that basis alleges that many of the
24 breaches, misappropriations and other wrongful acts herein alleged by defendants took place in
25 Orange County, California.

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1 **FIRST CAUSE OF ACTION**

2 **For Breach of Written Contract**

3 **(Against Gary Deritter, Edward Deritter, Jerry Anderson, Janis Anderson And Does 3-100)**

4 16. Body Wise incorporates by reference as though fully set forth herein all previous
5 allegations of this Second Amended Complaint.

6 17. Body Wise is a leading provider of dietary, herbal, health and nutritional products.
7 By spending millions of dollars, over a number of years, Body Wise has developed a highly
8 successful distribution network that sells its products to end users and this network is an integral
9 part of its success.

10 18. Body Wise allows its distributors access to Body Wise's confidential and trade
11 secret information, including distribution network, downline, and genealogy information,
12 commissions and sales reports, customer information, sales projections and business forecasts,
13 marketing strategies, product and research development information, and costs of goods (Body
14 Wise's "Confidential and Trade Secret Information"). The development of Body Wise's
15 distributor and customer relationships, and its Confidential and Trade Secret Information, was the
16 result of Body Wise and its predecessor expending substantial time and resources and is
17 information not generally known to the public or to Body Wise competitors.

18 19. Before Body Wise's distributors are given access to Body Wise's Confidential and
19 Trade Secret Information, Body Wise requires they sign a written "Consultant Application and
20 Agreement" ("Consultant Agreement"), in which they agree to abide to the terms of Body Wise's
21 Policies and Procedures Manual, which is incorporated by reference. In the Consultant
22 Agreement, the distributors further agree that Body Wise, in its sole discretion, may amend its
23 Policies and Procedures, and the distributors agree to abide by any subsequent amendments.

24 20. Defendants Gary Deritter, Edward Deritter, Jerry Anderson, and Janis Anderson
25 signed written Consultant Agreements with Body Wise. True and correct copies of those
26 agreements signed by Gary Deritter, Edward Deritter, Jerry and Janis Anderson (jointly as
27 spouses)(collectively, together with some of the Doe defendants, the "Distributor Defendants") are
28 attached as Exhibits A, B, and C, respectively, and are incorporated by reference. In conjunction

1 with Body Wise's acquisition of Body Wise International, Inc.'s assets and liabilities, Body Wise
2 International, Inc. assigned the Consultant Agreements to Body Wise who succeeded to all rights
3 therein.

4 21. The Body Wise Policies & Procedures Manual, which is incorporated by reference
5 in the Consultant Agreements, obligates the Distributor Defendants, to, among other things:

6 a. Refrain from selling competing network marketing products or services
7 while simultaneously holding a Body Wise distributorship;

8 b. For Three Star Manager distributors, refrain from selling any network
9 marketing products or services while simultaneously holding a Body Wise distributorship;

10 c. Preserve the confidentiality of Body Wise's confidential, proprietary and
11 trade secret information;

12 d. Refrain from using Body Wise's confidential information, including its
13 genealogy, to compete with Body Wise or for any purpose other than promoting Body Wise's
14 products and services;

15 e. Refrain from making any negative, disparaging, untrue or misleading
16 comments about Body Wise, its products, owners, directors, officers, employees, or other
17 Distributors of Body Wise; and

18 f. Refrain for a period of one year following the termination of the agreement,
19 from soliciting any Body Wise distributor or customer (i) to enter into any business relationship
20 with any other direct sales or network marketing company or (ii) terminate or alter his or her
21 business or contractual relationship with Body Wise.

22 22. After the execution of the Consultant Agreements, the Distributor Defendants, and
23 each of them, became active Body Wise distributors and, in connection therewith, were given
24 access to Body Wise's Confidential and Trade Secret Information, which was, as previously
25 alleged, confidential, proprietary, and a trade secret, representing the distillation of years of effort
26 and the expenditure of substantial sums, and which was not generally known to the public or
27 within the industry.

28 23. Body Wise and Body Wise International, Inc. have performed all covenants and

1 promises to be performed by them in accordance with the terms of the agreements with the
2 Distributor Defendants, except those that have been waived or excused.

3 24. Within the past year, the Distributor Defendants, and each of them, breached their
4 agreements with Body Wise by acts and omissions that included, without limitation:

5 a. While under contract with Body Wise, defendants breached their contracts
6 with Body Wise by simultaneously selling competing direct marketing products and services on
7 behalf of Pharmanex.

8 b. While under contract with Body Wise as Three Star Manager distributors,
9 defendants breached their contracts with Body Wise by simultaneously selling direct marketing
10 products or services on behalf of Pharmanex.

11 c. While under contract with Body Wise, defendants made negative,
12 disparaging, untrue or misleading comments about Body Wise, its products, owners, directors,
13 officers, employees, or other Distributors of Body Wise.

14 d. While under contract with Body Wise, defendants met with representatives
15 of Pharmanex, a Body Wise competitor, including, on information and belief, Defendants Dan
16 McCormick and Lon Wardrop, and discussed and agreed that they would become Pharmanex
17 distributors and establish downlines and distribution networks for Pharmanex with the goal of
18 selling competing Pharmanex products rather than Body Wise products.

19 e. In these discussions, and otherwise, the Distributor Defendants disclosed
20 they had Body Wise's Confidential and Trade Secret Information, including data concerning Body
21 Wise distributors, distribution networks, genealogies, payment terms, compensation arrangements,
22 and customer sales, and they would be willing to use this information for their own benefit, and
23 for the benefit of Pharmanex, and to the detriment of Body Wise.

24 f. The Distributor Defendants in fact misappropriated and misused Body
25 Wise's Confidential and Trade Secret Information for their own benefit, and for the benefit of
26 defendant Pharmanex, by promoting, distributing and selling Pharmanex's competing products
27 while working for Body Wise and by targeting and soliciting existing Body Wise distributors and
28 customers in attempts to entice them to reduce or terminate their relationship with Body Wise, and

1 to reduce or cease their sale of Body Wise products, and instead replace those relationships and
2 sales with Pharmanex distributors and products.

3 25. Body Wise is informed and believes and on that basis alleges that these wrongful
4 acts have significantly benefited defendant Pharmanex, who has been able to capitalize on Body
5 Wise's past efforts in developing Body Wise's sales and distribution network. By using
6 information misappropriated from Body Wise, defendants have unlawfully solicited, and continue
7 to unlawfully solicit, Body Wise's distributors and customers to abandon their contractual and
8 business relationships with Body Wise for the same or similar relationships with defendants.
9 Pharmanex has previously sought to purchase Body Wise on multiple occasions in the past few
10 years, but Body Wise did not agree to sell the company. By now raiding Body Wise's distributors
11 and misappropriating Body Wise's Confidential and Trade Secret Information, Pharmanex is
12 attempting to acquire illegally the Body Wise assets and resources that Pharmanex could not
13 acquire legally and consensually.

14 26. By engaging in these acts and omissions, defendants used Body Wise's
15 Confidential and Trade Secret Information for their own benefit, and in furtherance of the separate
16 and competitive enterprise that profited from their misuse at Body Wise's expense.

17 27. Each of these wrongful acts has provided defendants with an unfair competitive
18 advantage and has allowed defendants to benefit from their unlawful use of Body Wise's
19 Confidential and Trade Secret Information and from their unlawful and wrongful breaches of their
20 agreements with Body Wise.

21 28. As a direct result of defendants' breaches of contract, Body Wise has been
22 damaged in an amount presently unascertained, but which likely exceeds \$25 million, with the
23 amount to be established at trial. These damages include, without limitation, losses to the value of
24 Body Wise's Confidential and Trade Secret Information, loss of present and future business, good
25 will and profits, the disruption of contractual and client relationships, the loss of future economic
26 advantage, lost management time, and other costs and expenses.

27 29. Furthermore, unless enjoined by this Court, defendants will continue to disrupt
28 Body Wise's relationships with its distributors and customers resulting in great and irreparable

1 injury to Body Wise. Body Wise has no adequate remedy at law for such acts and threatened acts.
2 Body Wise thus requests that, during the pendency of this action, this Court issue a preliminary
3 injunction, and that after trial, this Court issue a permanent injunction through the expiration of the
4 non-solicitation periods of the applicable agreements, restraining and enjoining the Distributor
5 Defendants and applicable Doe defendants and their agents, employees, attorneys, and
6 representatives, and anyone acting at their direction or on their behalf, from (a) soliciting Body
7 Wise's distributors or customers in breach of the Consultant Agreement, and (b) misusing Body
8 Wise's Confidential and Trade Secret Information, including its genealogy.

9 **SECOND CAUSE OF ACTION**

10 **For Breach of the Implied Covenant of Good Faith and Fair Dealing**

11 **(Against Gary Deritter, Edward Deritter, Jerry Anderson, Janis Anderson And Does 3-100)**

12 30. Body Wise incorporates by reference as though fully set forth herein all previous
13 allegations of this Second Amended Complaint.

14 31. By virtue of the written agreements alleged above, the Distributor Defendants had
15 an implied covenant of good faith and fair dealing not to take any action that would interfere with
16 Body Wise's enjoyment of the anticipated benefits of the agreements.

17 32. Body Wise has performed the obligations owed to the Distributor Defendants under
18 the aforementioned contracts, except to the extent performance has been waived or excused.

19 33. Body Wise is informed and believes and on that basis alleges that by engaging in
20 the wrongful conduct alleged above, including the misappropriation and misuse of Body Wise's
21 Confidential and Trade Secret Information, the formation and operation of a competitive
22 enterprise, and by related conduct, defendants, and each of them, have breached the covenant of
23 good faith and fair dealing implied in those agreements.

24 34. As a proximate result of the Distributor Defendants' breach of the implied covenant
25 of good faith and fair dealing, Body Wise suffered damages and loss of profits and good will in an
26 amount in excess of the minimum jurisdiction of this Court in an amount presently unascertained
27 but which will be proven at trial.

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1 **THIRD CAUSE OF ACTION**

2 **For Intentional Interference with Contractual Relations**

3 **(Against All Defendants)**

4 35. Body Wise incorporates by reference as though fully set forth herein all previous
5 allegations of this Second Amended Complaint.

6 36. Body Wise is informed and believes and on that basis alleges that at all times
7 relevant, defendants, and each of them, were aware of the existence of the contracts between Body
8 Wise and its distributors.

9 37. By acts and omissions that include, without limitation, those set forth above, Body
10 Wise is informed and believes and on that basis alleges that defendants, and each of them,
11 intentionally interfered with these existing contracts. These acts and omissions include, without
12 limitation, encouraging Body Wise distributors to sell competing products and using Body Wise's
13 Confidential and Trade Secret Information to identify and encourage Body Wise distributors to
14 breach or terminate their agreements with Body Wise and for the benefit of Pharmanex.

15 38. Body Wise is informed and believes and on that basis alleges that defendants, and
16 each of them, intended that their acts would disrupt Body Wise's contractual agreements with its
17 distributors or knew that their acts would be substantially certain to cause Body Wise to suffer
18 consequential losses.

19 39. As a proximate result of the acts of defendants, and each of them, Body Wise has
20 suffered, and will continue to suffer, compensatory and consequential damages, including lost
21 profits and good will, in an amount presently unascertained, but which Body Wise estimates likely
22 exceeds \$25,000,000, said sum to be proven at trial.

23 40. The conduct of defendants, and each of them, is and was despicable and malicious
24 and has been carried out with a willful and conscious disregard of Body Wise's rights. Defendants
25 acted with the deliberate intent to injure Body Wise's business and to benefit their own economic
26 interests at Body Wise's expense. Body Wise is therefore entitled to recover punitive damages in
27 an amount to be determined at trial.

28 41. Unless enjoined by this Court, defendants will continue to interfere with valid and

1 existing agreements between Body Wise and its distributors by acts and omissions that include,
2 without limitation, encouraging Body Wise distributors to breach the express and implied terms of
3 their agreements with Body Wise, by misusing Body Wise's Confidential and Trade Secret
4 Information, including information regarding Body Wise's distribution networks and downlines,
5 and by soliciting those networks and downlines to do business with and to act for the benefit of
6 Pharmanex.

7 42. These acts and omissions have caused and continue to cause irreparable injury to
8 Body Wise and Body Wise has no adequate remedy at law to redress this harm. Body Wise thus
9 requests that during the pendency of this action, the Court issue a preliminary injunction, and that
10 after trial, this Court issue a permanent injunction, restraining and enjoining defendants, their
11 agents, employees, attorneys, representatives, and those acting in concert and participation with
12 them, or anyone acting at their direction or on their behalf, from intentionally interfering with
13 these contractual relationships and legally protectable rights.

14 **FOURTH CAUSE OF ACTION**

15 **Intentional Interference with Prospective Economic Advantage**

16 **(Against All Defendants)**

17 43. Body Wise incorporates by reference as though fully set forth herein all previous
18 allegations of this Second Amended Complaint.

19 44. Body Wise has and had valid existing and prospective economic interests with its
20 current and prospective distributors and customers that had a probable future economic benefit or
21 advantage to Body Wise.

22 45. Defendants knew of these existing and prospective economic relationships and of
23 the economic benefit or advantage to Body Wise from these relationships.

24 46. Body Wise is informed and believes and on that basis alleges that defendants' acts,
25 which constitute an independently actionable tort, were intended by each of the defendants to
26 interfere with Body Wise's ability to fairly compete in the marketplace. Body Wise further
27 alleges that none of the acts by defendants was justifiable by any law or privilege of competition.

28 47. Body Wise is informed and believes and on that basis alleges that Body Wise

1 distributors and customers would not have cancelled, repudiated, modified or terminated their
2 arrangements and relations with Body Wise or diverted business from Body Wise but for the
3 wrongful acts and omissions of defendants as herein alleged.

4 48. As a direct and proximate result of defendants' unlawful conduct, defendants
5 interfered with and disrupted Body Wise's relationships with its existing and prospective
6 distributors and customers, and Body Wise lost the economic benefit and advantage reasonably
7 expected from these relationships.

8 49. As a direct and proximate result of defendants' conduct, Body Wise has been and
9 will continue to be damaged, in an amount presently unascertained, but which Body Wise
10 estimates likely exceeds \$25,000,000, which includes, among other things, actual damages for loss
11 of valuable information, loss of competitive advantage gained by such information, loss of
12 customers and distributors, lost profits, loss of good will, lost management time, and costs
13 incurred attempting to mitigate damages, and otherwise.

14 50. Body Wise is informed and believes and on that basis alleges that in committing
15 the acts alleged herein, defendants, and each of them, acted willfully and with the express intent of
16 benefiting themselves at Body Wise's expense and as a result of their oppression, fraud and
17 malice, Body Wise is entitled to punitive damages in an amount to be determined at the time of
18 trial.

19 51. Unless enjoined by this Court, defendants will continue to disrupt Body Wise's
20 business relationships with its distributors and customers, resulting in great and irreparable injury
21 to Body Wise, for which Body Wise has no adequate remedy at law. Body Wise thus requests
22 that, during the pendency of this action, this Court issue a preliminary injunction, and that after
23 trial, this Court issue a permanent injunction, restraining and enjoining defendants and their
24 agents, employees, attorneys, and representatives, and anyone acting at their direction or on their
25 behalf, from (a) disparaging Body Wise's products and services to existing and potential
26 distributors and customers; (b) using, disclosing, and misappropriating Body Wise's Confidential
27 and Trade Secret Information, including information regarding Body Wise's distribution networks
28 and downlines; and (c) encouraging Body Wise's distributors to terminate their contractual

1 relationship with Body Wise in order to enter into business relationships with Body Wise
2 competitors, including Pharmanex; and (d) otherwise intentionally interfering with Body Wise's
3 prospective economic advantage with its distributors and customers.

4 **FIFTH CAUSE OF ACTION**

5 **Misappropriation of Trade Secrets**

6 **(Against All Defendants)**

7 52. Body Wise incorporates by reference as though fully set forth herein all previous
8 allegations of this Second Amended Complaint.

9 53. Body Wise's Confidential and Trade Secret Information includes distribution
10 network, downline, and genealogy information, commissions and sales reports, customer
11 information, sales projections and business forecasts, marketing strategies, product and research
12 development information, and costs of goods.

13 54. The Distributor Defendants had knowledge and possession of Body Wise's
14 Confidential and Trade Secret Information, acquired either through their former relationship with
15 Body Wise or by surreptitiously obtaining this information from present or former Body Wise
16 distributors or those acting in concert or participation with them.

17 55. Body Wise's Confidential and Trade Secret Information derives independent
18 economic value because it is not known to the public and it provides Body Wise with a
19 competitive advantage in the marketplace. Recognizing the value of this information, Body Wise
20 takes reasonable steps to preserve its secrecy. Body Wise also requires all independent contractors
21 with access to its Confidential and Trade Secret Information to sign contracts that expressly
22 communicate the proprietary nature of Body Wise's Confidential and Trade Secret Information
23 and impose restrictions on its dissemination and use.

24 56. As alleged above, defendants formed a conspiracy to misappropriate, and have in
25 fact misappropriated, Body Wise's trade secrets, confidential and proprietary data through their
26 unauthorized possession, disclosure, and use of this information.

27 57. Body Wise is informed and believes and on that basis alleges that its damages as a
28 result of defendants' unauthorized use of Body Wise's Confidential and Trade Secret Information

1 and through the other illegal conduct alleged in this Second Amended Complaint is an amount
2 presently unascertained, but which Body Wise estimates likely exceeds \$25,000,000, said sum to
3 be proven at trial. In addition, Body Wise is informed and believes that defendants have obtained
4 substantial business by wrongfully soliciting Body Wise's former distributors to modify or
5 abandon business relationships with Body Wise and to form new relationships with competitors,
6 including defendants.

7 58. Pursuant to section 3426.3 of the California Civil Code, Body Wise is entitled to
8 recover as damages and restitution all of the value achieved from defendants' use of the
9 misappropriated trade secrets including, without limitation: (a) all profits or revenues achieved by
10 them as a result of the misappropriation; (b) all intangible value (such as goodwill) defendants
11 created as a result of such misappropriation; (c) all costs and fees Body Wise incurred in
12 connection with the investigation and discovery of the misappropriation and in this action; and
13 (d) all other direct or indirect economic harm Body Wise incurs or economic gains defendants
14 achieve as a consequence thereof. Body Wise seeks an accounting of all direct or indirect uses of
15 the trade secrets and data that defendants misappropriated and/or misused.

16 59. Body Wise further seeks the imposition of a constructive trust over all of the
17 benefits defendants derive from such misappropriation and/or misuse, including, without
18 limitation, for all profits derived directly or indirectly therefrom.

19 60. Body Wise is informed and believes, and based thereon alleges, that defendants'
20 acts of conspiracy and misappropriation were willful, wanton, malicious, and oppressive in that
21 Defendants misappropriated Body Wise's trade secrets with the deliberate intent to injure Body
22 Wise's business and improve their own. Body Wise is therefore entitled to an award of punitive
23 damages pursuant to Civil Code § 3426.3 (c), and an award of reasonable attorneys' fees and
24 costs, as provided by Civil Code § 3426.4. Body Wise has been and will continue to be damaged
25 by defendants misappropriation and misuse of Body Wise's Confidential and Trade Secret
26 Information and, unless enjoined by this Court, Body Wise has and will continue to suffer great
27 and irreparable injury for which it has no adequate remedy at law. Body Wise requests that,
28 during the pendency of this action, this Court issue a preliminary injunction, and that after trial,

1 this Court issue a permanent injunction, restraining and enjoining defendants and their agents,
2 employees, attorneys, representatives, and anyone acting at their direction, on their behalf, or in
3 concert or participation with them, from using or disclosing Body Wise's Confidential and Trade
4 Secret Information. Body Wise further requests that this Court order defendants to return such
5 information to Body Wise.

6 **SIXTH CAUSE OF ACTION**

7 **Unfair Competition in Violation of Cal. Business & Professions Code § 17200**

8 **(Against All Defendants)**

9 61. Body Wise incorporates by reference as though fully set forth herein all previous
10 allegations of this Second Amended Complaint.

11 62. As previously alleged, defendants have engaged in a variety of acts and omissions
12 that constitute unlawful, unfair, and fraudulent business practices in violation of California
13 Business and Professions Code section 17200, including without limitation: (a) the making of
14 unfair, deceptive and untrue statements to distributors and customers of Body Wise; (b) the unfair
15 use of Body Wise's Confidential and Trade Secret Information for the purpose of gaining a
16 competitive advantage or personal profit at Body Wise's expense; and (c) the intentional
17 interference with Body Wise's contracts and prospective economic relations.

18 63. Body Wise is informed and believes and on that basis alleges that as a direct result
19 of these acts and omissions of defendants, it has suffered and will continue to suffer substantial
20 and irreparable injury not compensable by monetary damages, such that a temporary restraining
21 order and preliminary and permanent injunction should issue against defendants. Body Wise is
22 informed and believed and on that basis alleges that unless restrained by this Court, defendants
23 will continue the acts herein complained of, including but not limited to retaining, misusing and
24 misappropriating Body Wise's proprietary information and trade secrets.

25 64. California's unfair competition law specifically authorizes injunctive relief to
26 prevent unfair business practices and permits restitution of any money or property of Body Wise's
27 wrongfully obtained. Body Wise is entitled to permanent injunctive relief from defendants' acts
28 of unfair competition and, to the extent that defendants, and any of them, have utilized the

1 misappropriated Confidential and Trade Secret Information to their personal advantage and
2 enrichment, Body Wise is entitled to the reasonable value thereof.

3 65. Furthermore, Body Wise is informed and believes and on that basis alleges that
4 defendants have profited and will, in the future, profit unjustly from their unfair business practices.
5 Pursuant to California Business and Professions Code section 17203, Body Wise therefore seeks
6 an award of restitution and disgorgement of defendants' ill-gotten gains.

7 **SEVENTH CAUSE OF ACTION**

8 **Unjust Enrichment and Restitution**

9 **(Against All Defendants)**

10 66. Body Wise incorporates by reference as though fully set forth herein all previous
11 allegations of this Second Amended Complaint.

12 67. Defendants have been unjustly enriched as a result of their misappropriation of
13 Body Wise's Confidential and Trade Secret Information, and by their other wrongful conduct
14 directed toward Body Wise, as alleged herein, at Body Wise's expense. It would be unjust for
15 defendants to retain any value they obtained as a result of their wrongful conduct.

16 68. Body Wise is accordingly entitled to full restitution of all amounts that defendants
17 have been unjustly enriched at Body Wise's expense.

18
19 **PRAYER FOR RELIEF**

20 Plaintiff Body Wise International, LLC prays for judgment against defendants as follows:


- 21 1. For the equitable relief requested in this Second Amended Complaint;
22 2. For general damages, plus interest, according to proof at trial;
23 3. For lost profits according to proof at trial;
24 4. For a reasonable royalty for defendants' misappropriation of Body Wise's
25 Confidential and Trade Secret Information;
26 5. For restitution and disgorgement of all profits in an amount sufficient to force
27 defendants to disgorge all ill-gotten gains;
28 6. For punitive damages according to proof at trial;

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- 7. For reasonable attorneys' fees and costs incurred herein for defendants' willful and malicious trade secret misappropriation;
- 8. For an accounting;
- 9. For prejudgment interest; and
- 10. For such other relief as the Court deems just and proper.

Dated: August 6, 2007

RUTAN & TUCKER, LLP
ROBERT BRAUN
EDSON K. MCCLELLAN
SUMMER YOUNG AGRIESTI

By: 

Summer Young Agriesti
Attorneys for Plaintiff
BODY WISE INTERNATIONAL, LLC