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BLACK MOON COSMETICS

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BLACK MOON COSMETICS

Plaintiff,

vs.

MANNY GUTIERREZ
d/b/a MANNY MUA;
JEFFREE STAR;
and
JEFFREE STAR COSMETICS

Defendants.

Case: CV-17-2548

COMPLAINT FOR

- 1. Common Law Trademark Infringement**
- 2. Copyright Infringement**
- 3. Federal False Designation of Origin**
- 4. California Statutory Unfair Competition**
- 5. California Common Law Unfair Competition**
- 6. Federal Trade Dress Infringement**

Plaintiff, Black Moon Cosmetics (“Black Moon” or “Plaintiff”) by and through its undersigned counsel, states as follows for this complaint against Manny Gutierrez d/b/a Manny Mua (“Manny Mua”), Jeffree Star and Jeffree Star Cosmetics (collectively, the “Jeffree Star Defendants”) (Jeffree Star Defendants and Manny Mua collectively referred to as “Defendants”) and alleges as follows:

I. INTRODUCTION

1. This action arises out of Defendants' intentional and willful business decision to ignore Black Moon's first use, trademark rights, and copyright in Black Moon's packaging for its cosmetic products.

2. Plaintiff Black Moon Cosmetics launched in 2015 as a mother-daughter duo that manufactures and sells high quality, well-crafted cosmetic products to consumers at <https://www.blackmooncosmetics.com/> and <https://www.instagram.com/blackmooncosmetics/?hl=en>.

3. Black Moon is known for their use of bold and eye-catching packaging for their products.

4. Black Moon has grown organically to over 250,000 social media followers and has been featured numerous times on outlets such as BuzzFeed, Allure, and Top Knot.

5. One of Black Moon's most successful packaging offerings, introduced in June 2015, incorporates a mark consisting of a holographic crescent moon on a black background, with "Black Moon" embossed in holographic types near the crescent moon.

6. Black Moon was the first cosmetic company to use packaging incorporating a mark consisting of holographic crescent moon on a black background to distribute cosmetic products.

7. Defendant Manny Mua subsequently communicated with Black Moon expressing a fondness for Black Moon's packaging design.

8. Approximately four months after Black Moon first popularized the use of the aforementioned packaging and mark, Manny Mua released his own extremely similar product packaging incorporating a mark using a holographic crescent moon on a black, starry background, with "Manny Mua" and "MUA" embossed near the crescent moon.

9. Despite his knowledge of Black Moon's product and its superior rights, Manny Mua continues to sell its infringing product to this day.

10. Additionally, in early 2017, Manny Mua and the Jeffree Star Defendants entered into a collaboration to produce a product with packaging incorporating a second infringing mark using a holographic crescent moon on a black background that is substantially similar to and likely to cause confusion with Black Moon's trademarked and copyrighted designs.

11. Despite their knowledge of Black Moon's substantially similar logo and product packaging, Manny Mua and the Jeffree Star Defendants still plan to sell its infringing product, which is scheduled for release on April 8, 2017.

12. Accordingly, due to Defendants' blatant and willful infringement, Black Moon has no choice but to file this lawsuit seeking damages that it has suffered as a result of Defendants' copyright and trademark infringement, as well as a preliminary and permanent injunction.

II. JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over Black Moon's Lanham Act claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1367, and 1338(a).

14. This Court has supplemental jurisdiction over Black Moon's pendent state law claims pursuant to 28 U.S.C. § 1367 in that the state law claims are integrally interrelated with Black Moon's federal claims and arise from a common nucleus of operative facts such that the administration of Black Moon's state law claims with its federal claims furthers the interest of judicial economy.

15. This Court has personal jurisdiction over all Defendants because all Defendants are located in this District, do substantial business and sales in this district, and advertises, distributes, offers for sale, and sells the infringing products

in this District. All Defendants have purposefully availed themselves and directed their business at the opportunities of this District. All Defendants committed tortious acts in this district against Plaintiff whose principle place of business is located in this District.

16. Venue is proper in this District under 28 U.S.C. § 1391.

III. PARTIES

17. Plaintiff Black Moon Cosmetics is a California Corporation with an address of 1812 Burbank Blvd, #513, Burbank, CA 91506.

18. Defendant Manny Mua is, upon information and belief, a California resident with PO Box at 374 E. H St., STE A PMB 280, Chula Vista, CA, 91910-7496.

19. Defendant Jeffree Star, aka Jeffrey Lynn Steininger, is, upon information and belief, a California resident with an address of 9400 Lurline Ave. Unit F, Chatsworth, CA 91311.

20. Defendant Jeffree Star Cosmetics is a California Limited Liability Corporation with an address of 9400 Lurline Ave Unit F, Chatsworth, CA 91311.

IV. FACTS

A. Black Moon's First Use of the Crescent Moon Trademarks

21. On June 20, 2015, Black Moon first began employing packaging incorporating a mark consisting of a holographic crescent moon on a black background for its cosmetic products (the "Crescent Moon Trademark").

22. Black Moon designed the Crescent Moon Mark because it was unique and visually striking.

23. On September 27, 2015, Black Moon's products bearing the Crescent Moon Trademark first went on sale.

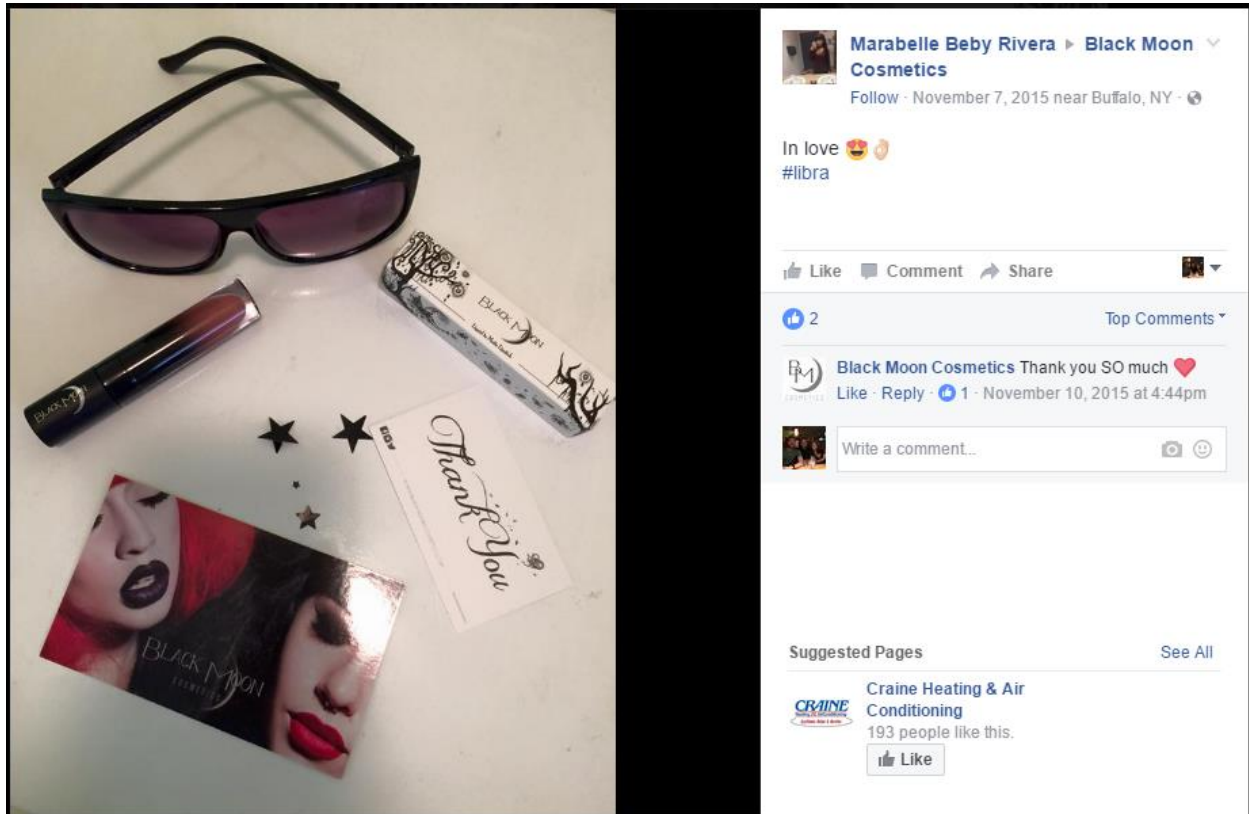
24. A holographic crescent moon on a black background quickly became commonly associated by consumers as identifying Black Moon products.

25. Below is a true and correct copy of a photograph uploaded by Black Moon to Facebook dated and timestamped June 20, 2015, showing a lipstick product using the holographic Crescent Moon Trademark and Plaintiff's trade dress.



26. Below is a true and correct copy of a photograph uploaded by a customer to Facebook on November 11, 2015, showing the Crescent Moon

Trademark being used in association with cosmetic products.



27. Below is a true and correct copy of the long form Crescent Moon Trademark.



28. Below is a true and correct copy of Black Moon's abbreviated Crescent Moon Trademark as shown on a sticker distributed by Plaintiff in October 2015 (the long form Crescent Moon Trademark and the abbreviated Crescent Moon Trademark are hereinafter collectively referred to as the "Crescent Moon Trademarks").



29. The abbreviated Crescent Moon Trademark was first published by Plaintiff on October 12, 2015, as seen in the top right-hand corner of the dated Instagram screenshot below—long before Defendants started using a highly similar mark to sell their own competing cosmetic products.

30. Plaintiff uses the two Crescent Moon Trademarks to advertise and sell lipsticks and eyeshadows.



31. Plaintiff has pending trademark applications for each of the Crescent Moon Trademarks, serial numbers 87051343 and 87051398.

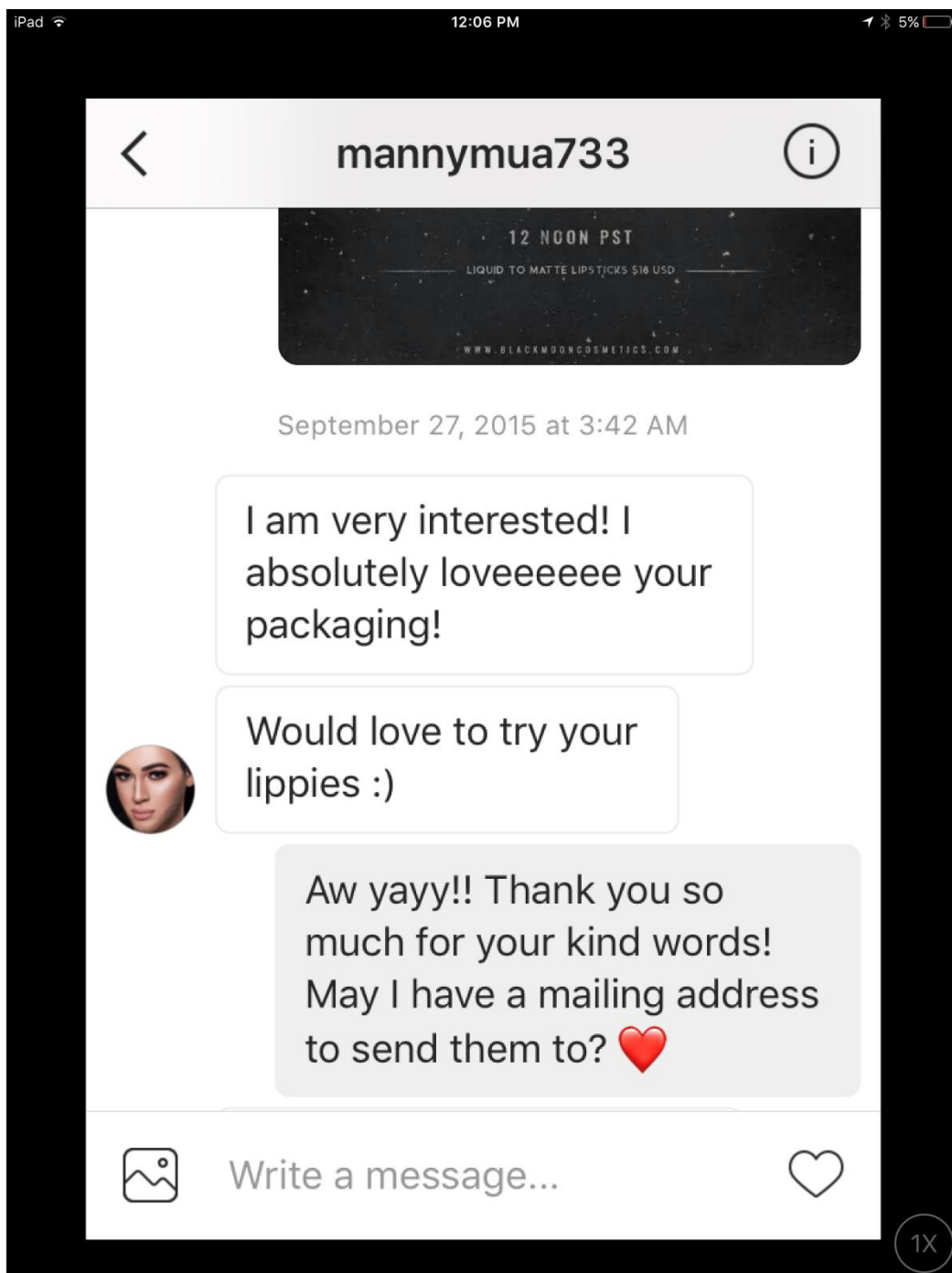
32. Plaintiff has also applied for copyright registrations for each of the designs incorporated in the Crescent Moon Trademarks as well, copyright case numbers 1-4649298781 and 1-4649298877.

B. Manny Mua's Knew of Black Moon's Trademarks and Packaging

33. Manny Mua had actual knowledge of Black Moon's use of the Crescent Moon Trademarks, products, and distinctive packaging at least by September 2015.

34. In fact, on September 27, 2015, Manny Mua responded to a "direct message" from Plaintiff over Instagram offered admiration and praise for Black Moon's abbreviated Crescent Moon Trademark design on a starry back background and writing that he "absolutely loveeeee[s] your packaging!".

35. Below is a true and correct copy of a screenshot of a conversation between Manny Mua and a Black Moon representative showing Manny Mua offering praise for Black Moon's packaging on September 27, 2015, several months before Manny Mua debuted his packaging and trademark.



C. Manny Mua Begins Selling Cosmetic Products Branded with a Holographic Crescent Moon on a Black Background

36. Five months after Manny Mua learned of Black Moon's unique and distinctive packaging and trademarks, he began selling a competing eyeshadow product using a packaging incorporating an extremely similar style and trademark of a holographic crescent moon on a black background, referred to hereafter as the "Manny MUA Infringing Mark".

37. Below is a true and correct copy of a photograph uploaded to Instagram on February 8, 2016, depicting the Manny MUA Infringing Mark.



38. The Manny MUA Infringing Mark simply took the abbreviated Crescent Moon Trademark on a black background and combined it with the starry background that had been the feature of the Black Moon Cosmetics website since its launch in February 2015:

<https://www.blackmooncosmetics.com/>.

39. Manny Mua's willful use of and sale of competing eyeshadow products using the Manny MUA Infringing Mark, despite knowledge that the trademark was first used by Black Moon, is likely to create (and has already created) confusion among the purchasing public as to the source of those goods.

40. For example, in Manny Mua's Instagram post from June 2016 showing the Manny MUA Infringing Mark and packaging, a consumer with a username *quirabethdoll* wrote "that packaging reminds me of blackmoonconsmetics though."¹



¹ <https://www.instagram.com/p/BGAuZ5VCfq2/?taken-by=mannyMua733&hl=en>

41. Manny Mua must now answer for infringing Black Moon's trademarks and copyrights, which will include an injunction barring all future use of any and all products bearing the Manny MUA Infringing Mark, the disgorgement of 100% of his profits to Black Moon, enhanced damages for Manny Mua's willful infringement, and actual damages to Black Moon for the harm this has caused to its brand.

D. Defendants are About to Release a Second Infringing Logo

42. On or around March 2017, the Defendants announced a collaboration which would result in a cosmetic product to be released on April 8, 2017.

43. Defendants' collaborative product would incorporate a holographic crescent moon logo on a black background (hereinafter, the "Star Collaboration Infringing Logo") that is extremely similar to Black Moon's preexisting abbreviated Crescent Moon Trademark.

44. Defendants chose their highly similar mark despite at least one collaborator, Manny Mua, having knowledge that an extremely similar trademark was already being used by Plaintiff Black Moon in association with competing lipstick and face powder cosmetic products.

45. Below is a side-by-side comparison of packaging bearing Defendants' Star Collaboration Infringing Logo on the left, and Plaintiff's abbreviated

Crescent Moon Trademark, copyright, and trade dress on the right.



46. The Defendants' willful use and sale of the Star Collaboration Infringing Logo, is likely to create confusion among the purchasing public, and indeed has already begun creating confusion among the purchasing public in this District and elsewhere.

E. Consumer Confusion For Collaboration Packaging

47. Since Defendants released their infringing product, hundreds of unaffiliated consumers have commented on both Defendants' and Plaintiff's social media accounts expressing confusion between the logos, noting that the Star Collaboration Infringing Logo clearly copied Black Moon's Crescent Trademarks and trade dress, and inquiring as to whether there is a collaboration between Defendants and Plaintiff.

48. For example, Manny MUA announced the product bearing the Star Collaboration Infringing Logo in a series of Instagram and Facebook posts. A

true and correct copy of a screenshot of one such representative post is below.



49. Numerous of Manny Mua’s followers, who are not affiliated with Plaintiff, went out of their way to express their confusion as to whether Defendants were collaborating with Black Moon or whether Defendants had simply stolen Black Moon’s logo and design.

50. While many of those comments have already been deleted by Defendants, a representative example of some of the remaining comments demonstrating consumer confusion from Manny Mua’s social media are copied below and are also attached as Exhibit A.

- “Kinda looks like #blackmooncosmetics” by shiori_dono, located at <https://www.instagram.com/p/BR16e4vvgK5/?hl=en> , Exhibit A, page 1
- “Damn I thought this was a @blackmooncosmetics review” by theonlyrosequartz, located at <https://www.instagram.com/p/BR16e4vvgK5/> , Exhibit A, page 2
- “Ok but why does this look like you guys just ripped off @blackmooncosmetics lmao” by cruxcorvus, located at <https://www.instagram.com/p/BR16e4vvgK5/> , Exhibit A, page 3

- “Ur a thief!! Way to steal @blackmooncosmetics logo!” by sarahhhh.leigh, located at <https://www.instagram.com/p/BRj5AWfgBW3/> , Exhibit A, page 4
- “Yaaas. Keep copying black moon cosmetics. Totally slaying in the creative department” by adalwolff, located at <https://www.instagram.com/p/BRj5AWfgBW3/> , Exhibit A, page 5
- “I thought of @blackmooncosmetics when I saw the moon because it looks exactly like blackmoon’s interesting” by little.goth_princess, located at <https://www.instagram.com/p/BRj5AWfgBW3/> , Exhibit A, page 6
- “Looks like from Blackmooncosmetics !!” by leadrianalove, located at <https://www.instagram.com/p/BRj5AWfgBW3/> , Exhibit A, page 7
- “Why is it so similar to @blackmooncosmetics logo?” by merthiaellabeauty, located at <https://www.instagram.com/p/BRj5AWfgBW3/> , Exhibit A, page 8
- “So excited but you should at least use a different logo because it looks like Black Moon’s worried you’ll get in trouble.” By primeandpose, located at <https://www.instagram.com/p/BRj5AWfgBW3/> , Exhibit A, page 9
- “Wen u wanna be @blackmooncosmetics so bad” by sarahhhh.leigh, located at <https://www.instagram.com/p/BSB456pgtxD/> , Exhibit A, page 10
- “@mannymua733 love the colab and cant wait but can all make a video addressing the drama of your packaging looking like a copy of Blackmoon cosmetics box? I mean the ate just SO similar...” by gingerpristavec, located at <https://www.instagram.com/p/BSB456pgtxD/> , Exhibit A, page 11
- “You guys are lowkey ripping off @blackmooncosmetics packaging but okay” by haileeeyyyyy, located at <https://www.instagram.com/p/BSB456pgtxD/> , Exhibit A, page 12

51. Separately, the Jeffree Star Defendants announced the same Star Collaboration Infringing Logo on their own social media, including on their Instagram and Facebook accounts. A true and correct copy of a screenshot of one such representative post is below.



52. Numerous of the Jeffree Star Defendants followers, who are not affiliated with Plaintiff, also went out of their way to express their confusion as to whether Defendants were collaborating with Black Moon or whether Defendants had simply stolen Black Moon's logo and design.

53. A representative example of some of those undeleted comments demonstrating consumer confusion are copied below and are also attached as Exhibit A.

- "i love the copied black moon cosmetics logo" by revengewhore, located at <https://www.instagram.com/p/BR3u39OAwE4/>, Exhibit A, page 13
- "I thought this was Black Moon Cosmetics oops" by k0rnyy, located at <https://www.instagram.com/p/BR3u39OAwE4/>, Exhibit A, page 14
- "Looks like black moon cosmetics packaging..." by anjelica_of_house_ayers, located at <https://www.instagram.com/p/BR3u39OAwE4/>, Exhibit A, page 15
- "Why does this look so much like Black Moon Cosmetics ??????" by rebelgirrrl_, located at <https://www.instagram.com/p/BRjpzt9AEsd/>, Exhibit A, page 16

- “@rebelgirrrl_dude. You are absolutely right. I went and look at black moon cosmetics and yep. I wonder if it’s a copycat tactic” by cute_palestinian_arab, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 16
- “Y’all getting sued by Blackmoon Cosmetics tho” by babydoll.madi, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 17
- “Looks like Black Moon Cosmetics palette so much” by yaelyup, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 18
- “Damn this is exactly like the Black Moon logo” by ilsondevries, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 19
- “Looks a lot like Black Moon Cosmetics’ logo” by isabella_calcagno, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 20
- “You copied Black Moon Cosmetics” by alfhkm, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 21
- “@blackmooncosmetics has had the holographic moon logo and black packaging WAY before” by _megaturtle, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 22
- “I hope @blackmooncosmetics sues this rat” by miadosin, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 22
- “Lmaoooo they deadass stole the logo for their chalky ass new eyeshadow palette” by ossuaryboy, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 22
- “@cherryceren74 lmao still a Fucking rip off sis learn your brands @blackmooncosmetics has had the holographic moon logo waaay before many” by _megaturtle, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 23
- “Have you seen their packaging though? They could have done the collab in pink or not used the holographic font so it would look just a little less like bmc logo and packagain though” by officertwek, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 23
- “Ur a bully n a thief! Hope @blackmooncosmetics sues u n u get eat u deserve for stealing from indie brands. Unoriginal” by sarahhhh.leigh, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 24
- “Seriously, I thought this was a collab with @blackmooncosmetics when I first saw it. Not cool to rip off of smaller brands labels, logos, and packaging” by officertwerk, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 24
- “@crucifucked with you 100%. I thought this was a collab with bmc first. The test for trademark infringement is consumer confusion! There ya go. They have a good case

in my opinion” by officertwerk, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 24

- “Packaging is a total knockoff of @blackmooncosmetics” by _megaturtle, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 25
- “I think it looks like bmc then that’s my opinion” by crucifucked, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 26
- “I really hope @blackmooncosmetics sues u. Ur a thief and bully deleting comments” by sarahhhh.leigh, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 27 [demonstrating not only a destruction of evidence by Defendants, but that what we have identified here is only the tip of the iceberg].
- “@mygodangel yes ... the same as @blackmooncosmetics #ripoff” by crucifucked, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 28
- “Dude I love this brand But why did you do the same logo as @blackmooncosmetics ???” by crucifucked, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 28
- “@crucifucked oh trueeeeeeeee I see where they got the inspiration from. But it still looks good” by mygodangel, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 28
- “@blackmagiccosmetics packaging looks familiar lol” by b.deezie, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 28
- “I’d buy it if manny’s name wasn’t on it. tbh that packaging looks beautiful but many probably made it like that to be petty towards black moon cosmetics #fake” by mandatorysuicide, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 29
- “Looks exactly like the Black Moon Cosmetics logo ?? Not cool dude” by natalie.rose____, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 30
- “I thought this was a @blackmooncosmetics box at first glance” by timetravelingdandy, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 30
- “This is kinda a rip off of Black Moon Cosmetics. Yes, it’s pretty, but it’s been done before for years” by unexplained_gore, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 31
- “It reminds me of black moon cosmetics packaging, which I love so that’s good: by thewicked1_26, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 32 [indicating an unfair market advantage Defendants are gaining from the infringing use of Black Moon’s Crescent Moon Trademarks].

- “I thought this was @blackmooncosmetics for a few seconds” by macabremonster, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 33
- “This looks so similar to the @blackmooncosmetics logo! I love the holographic everything” by odorky, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 34
- “The crescent moon reminds me of @blackmooncosmetics as their logo is very similar to that on this video, it looks almost exactly like their video as its on their liquid lipsticks, and on the box/vault that liquid eye” by little.goth_princess, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 35
- “packaging looks like @blackmooncosmetics” by _pentagrandma, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 36
- “This looks a lot like @blackmooncosmetics packaging?” by kmackup, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 37
- “Thought I was looking at @blackmooncosmetics ... same shiny crescent moon. Hmm” by imdoingitwrong, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 38
- “Looks like @blackmooncosmetics holographic logo thought it was them for a min...” by glitteredsloth, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 39
- “Packing reminds me of @blackmooncosmetics. I love both lines of cosmetics!” by lovesus4eva, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 40
- “Why does this look so much like @blackmooncosmetics” by xdragonsbreath, located at <https://www.instagram.com/p/BRjpzt9AEsd/> , Exhibit A, page 41
- “I got excited cuz i thought it was Black Moon cosmetics.... damn” by Kaz ‘Freddy’ Moore, located at <https://www.facebook.com/JeffreeStar/photos/a.10150451011370589.411753.61614240588/10154800247000589/?type=3&theater> , Exhibit A, page 42
- “I love jeffree and many but I would just like to know if anyone sees the similarities? Maybe its just coincidence? Im really confused because I thought this was a really original idea for packaging until someone sent this to me” by Kayla Marie Webb, accompanied by a photograph of Black Moon Cosmetics’ logo, located at <https://www.facebook.com/JeffreeStar/photos/a.10150451011370589.411753.61614240588/10154780589050589/?type=3&theater> , Exhibit A, page 43
- “I’m not trying to hate but doesn’t this look a lot like another makeup set from Black Moon Cosmetics?” by Meg Cunningham, accompanied by a photograph of Black Moon Cosmetics’ logo, located at <https://www.facebook.com/JeffreeStar/photos/a.10150451011370589.411753.61614240588/10154780589050589/?type=3&theater> , Exhibit A, page 44

- “I really look forward to this...but doesn’t the packaging look similar to Black Moon Cosmetics?” by Luna Nyz, located at <https://www.facebook.com/JeffreeStar/photos/a.10150451011370589.411753.61614240588/10154780589050589/?type=3&theater>, Exhibit A, page 45

54. While it is not practical here to include every comment from consumers expressing confusion between Plaintiff’s Crescent Moon Trademarks and Defendants’ Star Collaboration Infringing Logo, we have quoted a few more below.

- “[Am] I the only one that thinks that this packaging and jeffree stars/many mua’s packaging looks similar”? A comment with over 900 likes and dozens of people responding with agreement on @buzzfeedtopknot’s Facebook page dated March 13, 2017², user Victoria McCourt.
- “I had to do a double take when I saw Manny’s packaging this morning on IG because I thought they looked WAY too similar.” *Id.*
- “I literally thought this was many mua and heffree stars collan I was like whoooo what!!!!” *Id.*, Vicki Michaud.
- “WOOWWW, does this not look like the jeffree star and many packaging?????” *Id.*, Hailey Marie
- “Jeffree and many mua collab makeup packaging looks exactly like this.” *Id.*, Nina Watson.

55. To this day, Defendants continue to use Black Moon’s trademarks and copyrights in association with products soon to be on sale, despite knowledge of Black Moon’s first use of those trademarks and copyrights.

56. Defendants must now answer for their infringing conduct, which will include an injunction barring all future use of any and all products bearing the Star Collaboration Infringing Logo, the disgorgement of 100% of Defendants’ profits to Black Moon, enhanced damages for Manny Mua’s willful

² <https://www.facebook.com/buzzfeedtopknot/> (this is a promotional post from BuzzFeed about Black Moon Cosmetics that devolved into a debate about two competitors, which damages Black Moon’s brand and promotional opportunities).

infringement, and actual damages to Black Moon for the harm this has caused to its brand.

CLAIM I

(Manny MUA Infringing Mark: Common Law Trademark Infringement)

57. Black Moon Cosmetics incorporates by reference the allegations in the preceding paragraphs of this Complaint.

58. Manny Mua has caused a likelihood of confusion among the purchasing public in this District and elsewhere, thereby infringing Black Moon Cosmetics' common law trademark rights in its Crescent Moon Trademarks.

59. Black Moon Cosmetics is being irreparably injured. Such irreparable injury will continue unless Manny Mua is preliminarily and permanently enjoined by this Court from further violations of Black Moon Cosmetics' rights.

CLAIM II

(Star Collaboration Infringing Logo: Common Law Trademark Infringement)

60. Black Moon Cosmetics incorporates by reference the allegations in the preceding paragraphs of this Complaint.

61. Manny Mua and Jeffree Star Defendants have caused a likelihood of confusion among the purchasing public in this District and elsewhere, thereby infringing Black Moon Cosmetics' common law trademark rights in its Crescent Moon Trademarks.

62. Black Moon Cosmetics is being irreparably injured. Such irreparable injury will continue unless Manny Mua and Jeffree Star Defendants are

preliminarily and permanently enjoined by this Court from further violations of Black Moon Cosmetics' rights.

CLAIM III

(Manny MUA Infringing Mark: Federal Copyright Infringement)

63. Black Moon Cosmetics incorporates by reference the allegations in the preceding paragraphs of this Complaint.

64. This Count arises under the Copyright Act of 1976, Title 17 United States Code §101 *et seq.*

65. Black Moon's abbreviated and long form crescent moon on a black background are wholly original, creative works that constitute copyrightable subject matter under the Copyright Act, 17 U.S.C. § 101 *et seq.* Plaintiff Black Moon Cosmetics owns the exclusive rights and privileges in and to the crescent moon designs, and in compliance with the law has filed for federal copyright registration, case numbers 1-4649298781 and 1-4649298877. At all relevant times, Black Moon Cosmetics has owned all applicable rights, titles, and interest in and to the copyrighted works.

66. Manny Mua intentionally copied, displayed, and used the copyrighted works and works substantially similar to them in the Manny MUA Infringing Mark.

CLAIM IV

(Star Collaboration Infringing Logo: Federal Copyright Infringement)

67. Black Moon Cosmetics incorporates by reference the allegations in the preceding paragraphs of this Complaint.

68. This Count arises under the Copyright Act of 1976, Title 17 United States Code §101 *et seq.*

69. Black Moon's abbreviated and long form crescent moon on a black background are wholly original, creative works that constitute copyrightable

subject matter under the Copyright Act, 17 U.S.C. § 101 *et seq.* Plaintiff Black Moon Cosmetics owns the exclusive rights and privileges in and to the crescent moon designs, and in compliance with the law has filed for federal copyright registration, case numbers 1-4649298781 and 1-4649298877. At all relevant times, Black Moon Cosmetics has owned all applicable rights, titles, and interest in and to the copyrighted works.

70. Defendants intentionally copied, displayed, and used the copyrighted works and works substantially similar to them in the Star Collaboration Infringing Logo packaging.

CLAIM V

(Manny MUA Infringing Mark: False Designation of Origin Under 15 U.S.C. § 1125(a))

71. Black Moon Cosmetics incorporates by reference the allegations in the preceding paragraphs of this Complaint.

72. Manny Mua's use of an infringing logo has resulted in and continues to result in confusion, mistake, and deception among consumers as to the source of origin of Black Moon's and Manny Mua's products and services.

73. Manny Mua was aware at least as early as September 2015 of Black Moon's prior rights to the holographic crescent moon on a black background.

74. By having actual and constructive knowledge of Black Moon's rights and trademarks and continuing to use an infringing logo, Manny Mua has, without consent of Black Moon, willfully violated 15 U.S.C. § 1125(a).

75. Manny Mua has done and is doing so with the intent to unfairly compete against Black Moon, to trade upon Black Moon's reputation and goodwill by causing confusion and mistake among consumers and the public, and to deceive the public into believing that Manny Mua's products are associated with, sponsored by, or approved by Black Moon, when they are not.

76. Manny Mua's aforementioned acts and statements have caused damages to Black Moon in an amount to be proven at trial.

77. Black Moon is also being irreparably injured. Such irreparable injury will continue unless Manny Mua is permanently enjoined by this Court from further violation of Black Moon's rights, for which Black Moon has no adequate remedy at law.

CLAIM VI

(Star Collaboration Infringing Logo: False Designation of Origin Under 15 U.S.C. § 1125(a))

78. Black Moon Cosmetics incorporates by reference the allegations in the preceding paragraphs of this Complaint.

79. Defendants' use of the Star Collaboration Infringing Logo has resulted in and continues to result in confusion, mistake, and deception among consumers as to the source of origin of Black Moon's and the Defendants' products and services.

80. Defendants were aware at least as early as September 2015 of Black Moon's prior rights to the Crescent Moon Trademarks.

81. By having actual and constructive knowledge of Black Moon's rights and trademarks and continuing to use an infringing logo, Defendants have, without consent of Black Moon, willfully violated 15 U.S.C. § 1125(a).

82. Defendants have done and are doing so with the intent to unfairly compete against Black Moon, to trade upon Black Moon's reputation and goodwill by causing confusion and mistake among consumers and the public, and to deceive the public into believing that the Defendants' products are associated with, sponsored by, or approved by Black Moon, when they are not.

83. Defendants' aforementioned acts and statements have caused damages to Black Moon in an amount to be proven at trial.

84. Black Moon is also being irreparably injured. Such irreparable injury will continue unless Defendants are permanently enjoined by this Court from further violation of Black Moon's rights, for which Black Moon has no adequate remedy at law.

CLAIM VII

(Manny MUA Infringing Mark: California Statutory Unfair Competition § 17200)

85. Black Moon Cosmetics incorporates by reference the allegations in the preceding paragraphs of this Complaint.

86. By virtue of the acts complained of herein, Manny Mua has intentionally caused a likelihood of confusion among consumers and the public and has unfairly competed with Plaintiff in violation of Cal. Bus. & Prof. Code § 17200, et seq.

87. Manny Mua's acts constitute unlawful, unfair, malicious or fraudulent business practices, which have injured and damaged Black Moon.

88. As a direct and proximate result of Manny Mua's acts, Black Moon will suffer great harm in an amount to be determined at trial. Black Moon has also been irreparably injured. Black Moon will continue to be irreparably damaged unless Manny Mua is enjoined from further committing unfair and unlawful business practices against Black Moon.

CLAIM VIII

(Star Collaboration Infringing Logo: California Statutory Unfair Competition § 17200)

89. Black Moon Cosmetics incorporates by reference the allegations in the preceding paragraphs of this Complaint.

90. By virtue of the acts complained of herein, Defendants have intentionally caused a likelihood of confusion among consumers and the public and has unfairly competed with Plaintiff in violation of Cal. Bus. & Prof. Code § 17200, et seq.

91. Defendants' acts constitute unlawful, unfair, malicious or fraudulent business practices, which have injured and damaged Black Moon.

92. As a direct and proximate result of the Defendants' acts, Black Moon will suffer great harm in an amount to be determined at trial. Black Moon has also been irreparably injured. Black Moon will continue to be irreparably damaged unless Manny Mua and Jeffree Star Defendants are enjoined from further committing unfair and unlawful business practices against Black Moon.

CLAIM IX

(Manny MUA Infringing Mark: California Common Law Unfair Competition)

93. Black Moon Cosmetics incorporates by reference the allegations in the preceding paragraphs of this Complaint.

94. Manny Mua has caused a likelihood of confusion among the purchasing public in this District and elsewhere, thereby infringing Black Moon's trademark rights, in violation of the common law of the State of California.

95. Black Moon is being irreparably injured. Such irreparable injury will continue unless Manny Mua is permanently enjoined by this Court from further violations of Black Moon's rights.

CLAIM X

(Star Collaboration Infringing Logo: California Common Law Unfair Competition)

96. Black Moon Cosmetics incorporates by reference the allegations in the preceding paragraphs of this Complaint.

97. Defendants have caused a likelihood of confusion among the purchasing public in this District and elsewhere, thereby infringing Black Moon's trademark rights, in violation of the common law of the State of California.

98. Black Moon is being irreparably injured. Such irreparable injury will continue unless the Defendants are permanently enjoined by this Court from further violations of Black Moon's rights.

CLAIM XI

**(Manny MUA: Federal Trade Dress Infringement Under
15 U.S.C. § 1125(a))**

99. Black Moon Cosmetics incorporates by reference the allegations in the preceding paragraphs of this Complaint.

100. Plaintiff's trade dress, as shown in Section IV. A above, including a black box with a holographic crescent moon and the company name inside of or adjacent to the crescent moon (the "Black Moon Trade Dress") is nonfunctional and distinctive.

101. Manny Mua's packaging used together with the Manny MUA Infringing Mark is nonfunctional, used without Plaintiff's permission, is likely to result in confusion, mistake, and deception among consumers as to the source of Manny Mua's products and services. The trade and consuming public are likely to believe that Manny Mua's products and services originate from Black

Moon or from the same source as products sold under the Black Moon Trade Dress, or that there is some connection between the makers of Black Moon's products and Manny Mua's products, when such is not the case.

102. Manny Mua was aware at least as early as November 2015 of Black Moon's prior rights to the holographic crescent moon on a black background.

103. By having actual and constructive knowledge of Black Moon's rights and trademarks and continuing to use infringing trade dress, Manny Mua has willfully violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

104. As a direct and proximate cause of Manny Mua's unlawful conduct, Black Moon has suffered, and will continue to suffer unless and until such activity is enjoined by this Court, irreparable damage and inherently unquantifiable injury and harm to its business, reputation, and customer goodwill.

105. Manny Mua's conduct is causing and is likely to continue to cause injury to the public and to Black Moon, and Black Moon is entitled to injunctive relief and to recover Black Moon's actual damages, costs, and/or an award of Manny Mua's profits.

CLAIM XII

(Star Collaboration Infringing Logo: Federal Trade Dress Infringement Under 15 U.S.C. § 1125(a))

106. Black Moon Cosmetics incorporates by reference the allegations in the preceding paragraphs of this Complaint.

107. Plaintiff's trade dress as shown in Section IV. A above including a black box with a holographic crescent moon and the company name inside of or adjacent to the crescent moon (the "Black Moon Trade Dress") is nonfunctional and distinctive.

108. Defendants' packaging used together with its Star Collaboration Logo is nonfunctional, used without Plaintiff's permission, is likely to result in confusion, mistake, and deception among consumers as to the source of Defendants' products and services. The trade and consuming public are likely to believe that Defendants' products and services originate from Black Moon or from the same source as products sold under the Black Moon Trade Dress, or that there is some connection between the makers of Black Moon's products and Defendants' products, when such is not the case.

109. Manny Mua was aware at least as early as November 2015 of Black Moon's prior rights to the holographic crescent moon on a black background.

110. By having actual and constructive knowledge of Black Moon's rights and trademarks and continuing to use infringing trade dress, Defendants have willfully violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

111. As a direct and proximate cause of Manny Mua's unlawful conduct, Black Moon has suffered, and will continue to suffer unless and until such activity is enjoined by this Court, irreparable damage and inherently unquantifiable injury and harm to its business, reputation, and customer goodwill.

112. Defendants' conduct is causing and is likely to continue to cause injury to the public and to Black Moon, and Black Moon is entitled to injunctive relief and to recover Black Moon's actual damages, costs, and/or an award of Defendants' profits.

PRAYER FOR RELIEF

WHEREFORE, Black Moon Cosmetics demands a judgment against Manny Mua and the Jeffree Star Defendants and prays that this Court Grants:

- a. Preliminary and permanent injunctive relief against all Defendants and their parents, subsidiaries, affiliated companies, and their respective officers, directors, employees, and agents from using Plaintiff's trademarks, copyrights or trade dress, and any trademarks or copyrights likely to cause confusion with the Black Moon Cosmetics' trademarks, and selling any of the products bearing similar trademarks or images.
- b. An accounting of, and disgorgement of, any and all profits derived by the Defendants and all damages sustained by Black Moon Cosmetics, trebled, by virtue of the Defendants' infringing and illegal acts, in an amount to be determined at trial;
- c. Prejudgment interest, the costs of this action, witness fees, and Black Moon Cosmetics' attorneys' fees, pursuant to 15 U.S.C. § 1117, 1118, and California Civil Code § 3288;
- d. Punitive, enhanced, and exemplary damages for the Defendants' acts of unfair competition and willful infringement;
- e. Other economic and consequential damages in an amount to be determined at trial;
- f. The destruction of all materials bearing infringements of Black Moon Cosmetic's trademarks;
- g. That the Defendants be held jointly and severally liable;
- h. A judgment that Defendants have unfairly competed with Black Moon Cosmetics and violated the trademark laws of California and the United States;
- i. Grant to Black Moon Cosmetics such further relief as may be equitable and proper.

Respectfully submitted,

By: /s/ Stephen McArthur
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Los Angeles, CA 90034
(323) 639-4455
Attorneys for Plaintiffs
Black Moon Cosmetics

Dated: April 3, 2017

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all issues in this lawsuit.

By: /s/ Stephen McArthur
Stephen Charles McArthur
The McArthur Law Firm PC
Attorneys for Plaintiff
Black Moon Cosmetics
10008 National Blvd., #295
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(323) 639-4455

Dated: April 3, 2017