

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

UNIVERSITY OF MASSACHUSETTS  
MEDICAL SCHOOL and CARMEL  
LABORATORIES, LLC,

Plaintiffs,

v.

L'ORÉAL S.A. and L'ORÉAL USA, INC.,

Defendants.

**Civil Action No.**

JURY TRIAL DEMANDED

**COMPLAINT FOR PATENT INFRINGEMENT**

1. Plaintiffs UNIVERSITY OF MASSACHUSETTS MEDICAL SCHOOL (“UMass”) and CARMEL LABORATORIES, LLC (“Carmel Labs”) for their Complaint against Defendants L'ORÉAL S.A. (“L'Oréal”) and L'ORÉAL USA, INC. (“L'Oréal USA”) (together, “Defendants”) allege:

**THE PARTIES**

1. Plaintiff UMass is a public institution of higher education with its principal address at 333 South Street, Suite 400, Shrewsbury, MA 01545.

2. Teresian Carmelites, Inc. (“Teresian Carmelites”) is a non-profit religious organization with its principal address at 167 Riverlin Street, Millbury, MA 01527.

3. Plaintiff Carmel Labs is a limited liability company with its principal place of business at 167 Riverlin Street, Millbury, MA 01527. Carmel Labs is a wholly-owned for-profit subsidiary of Teresian Carmelites. Profits realized by Carmel Labs are used to support Teresian Carmelites' charitable works.

4. UMass is the assignee and Carmel Labs is the exclusive licensee of United States Patent Numbers 6,423,327 (attached as Exhibit 1) and 6,645,513 (attached as Exhibit 2) (the “patents-in-suit”).

5. Plaintiffs are informed and believe, and on that basis allege, that Defendant L’Oréal is a French corporation with its principal place of business at 41 Rue Martre, Clichy, Paris, Ile-de-France 92117, France.

6. Plaintiffs are informed and believe, and on that basis allege, that Defendant L’Oréal USA is a Delaware corporation with its principal place of business at 10 Hudson Yards, New York, NY 10001. Plaintiffs are further informed and believe that L’Oréal USA’s registered agent is The Prentice-Hall Corporation System, Inc., 2711 Centerville Road Suite 400, Wilmington, DE 19808.

7. L’Oréal USA is a wholly-owned subsidiary of L’Oréal. On information and belief, L’Oréal USA is the agent of L’Oréal, which controls or otherwise directs and authorizes the activities of L’Oréal USA.

#### **JURISDICTION AND VENUE**

8. The court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* Venue is proper in this federal district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

#### **THE CLAIMED ADENOSINE TECHNOLOGY**

9. Adenosine is a naturally occurring purine nucleoside that plays an important role in a variety of biochemical processes. It is used by physicians in therapeutic and diagnostic cardiac applications, for example, to treat arrhythmias or during cardiac stress tests.

10. Dr. James G. Dobson, Jr., a renowned cardiovascular physiologist and the former Chairman of the Department of Physiology at the University of Massachusetts Medical School, has been conducting research on adenosine since approximately the mid 1960's. Dr. Dobson and his colleague, Dr. Michael Ethier, discovered that topical application of adenosine can be used to enhance the condition of the skin by applying adenosine to the dermal cells in specified concentrations without increasing dermal cell proliferation.

11. Their discoveries are embodied in U.S. Patent Nos. 6,423,327 (the "'327 patent") and 6,645,513 (the "'513 patent") (collectively, the "patents-in-suit").

12. Claim 1 of the '327 patent recites, for example: "A method for enhancing the condition of unbroken skin of a mammal by reducing one or more of wrinkling, roughness, dryness, or laxity of the skin, without increasing dermal cell proliferation, the method comprising topically applying to the skin a composition comprising a concentration of adenosine in an amount effective to enhance the condition of the skin without increasing dermal cell proliferation, wherein the adenosine concentration applied to the dermal cells is  $10^{-4}$  M to  $10^{-7}$  M." Claim 1 of the '513 patent reads identically, but provides that "the adenosine concentration applied to the dermal cells is  $10^{-3}$  M to  $10^{-7}$  M."

13. Other dependent claims of both patents add more limitations. For example, dependent claims 9 of both the '327 and '513 patents provide additional limitations, stating that "[t]he method of claim 1, wherein the composition further comprises a transdermal agent."

#### **PLAINTIFFS' EASEAMINE PRODUCTS**

14. Teresian Carmelites is a non-profit Christian monastery dedicated to prayer, contemplation, and service to the poor and marginalized. The members of Teresian Carmelites fulfill their mission through charitable works such as rehabilitation programs for the incarcerated

or persons with alcohol or drug addictions, inner city educational programs, and other programs to benefit the disadvantaged in their surrounding community.

15. Through Dr. Dobson's long-standing relationship with the religious order, Teresian Carmelites became aware of the technology covered by the patents-in-suit. Teresian Carmelites negotiated a license and founded Carmel Labs, a for-profit subsidiary. Carmel Labs has been the exclusive licensee of the patents-in-suit for all cosmetic applications since 2008. Profits realized by Carmel Labs sustain Teresian Carmelites' financial needs, and fund its charitable programs.

16. Carmel Labs developed "Easeamine," a high-end anti-aging face cream using the patented adenosine technology. Easeamine was initially released in 2009 and, due to its innovative and unique properties, received favorable press in newspapers around the world, leading to significant sales in its first year.

17. Based on the strength of initial sales, Carmel Labs reinvested substantial sums—obtained in part by leveraging property owned by the monastery—to expand the Easeamine line. Carmel Labs retained experienced cosmetic industry professionals as well as a contract manufacturer and a branding and public relations firm to assist in creating and marketing a full Easeamine product line, with an anticipated release date in fall of 2010.

#### **DEFENDANTS' USE OF PLAINTIFFS' PATENTED TECHNOLOGY**

18. Defendants comprise one of the world's largest cosmetic companies. Defendants manufacture and sell products such as hair care, skin care, make-up and perfume all over the world.

19. Defendants have been aware of Plaintiffs' adenosine technology and the patents-in-suit since at least 2002.

20. For example, in U.S. Patent Application No. 10/701,495 (“Method for Softening Lines and Relaxing the Skin with Adenosine and Adenosine Analogues”), filed by L’Oréal on November 6, 2003, and as a provisional application on December 12, 2002, L’Oréal stated that “it has been suggested, in U.S. Pat. No. 6,423,327 [i.e., the ’327 patent] and US-2003/044439 [i.e., the application that issued the ’513 patent], that adenosine or an analogue of adenosine can be used in a composition that is topically applied to the skin to improve skin condition.” *See* Exhibit 3 at 2 (attached).

21. L’Oréal later abandoned U.S. Patent Application No. 10/701,495 after it was rejected for, among other reasons, being obvious over the ’327 patent. *See* Exhibit 4 at 4 (attached).

22. L’Oréal has also cited the patents-in-suit in its own issued patents numerous times. For example, L’Oréal cited the ’327 and ’513 patents in its U.S. Patents Nos. 9,018,177, 9,023,826, 9,072,919, and 9,107,853. *See* Exhibits 7, 8, 9, and 10 (attached).

23. In fall of 2003, an agent of both Defendants contacted Dr. Dobson to discuss the patents-in-suit. Defendants, however, did not obtain a license to the patents-in-suit.

24. Nonetheless, after speaking to Dr. Dobson, and with full knowledge of the technology exclusively licensed to Carmel Labs, Defendants began creating, marketing, and selling cosmetic products using the patented adenosine technology.

25. On October 15, 2010, two weeks before the launch of Plaintiffs’ expanded Easeamine product line, Defendants publicly announced their new Youth Code line of anti-aging skin care, promoting its use of “adenosine, a molecule that is found in skin cells that acts at the dermis level to produce collagen.” *See* Exhibit 5 (attached).

26. Defendants tout the benefits of adenosine on their brand’s website as well, stating:

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