

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

UNIVERSITY OF MASSACHUSETTS)	
MEDICAL SCHOOL and CARMEL)	
LABORATORIES, LLC,)	
)	
Plaintiffs,)	
)	C.A. No. 17-868-JFB-SRF
v.)	
)	
L'ORÉAL S.A. and L'ORÉAL USA, INC.,)	
)	
Defendants.)	

**DEFENDANT L'ORÉAL USA, INC.'S OPENING BRIEF IN SUPPORT OF
L'ORÉAL USA, INC.'S MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT**

Of Counsel:

Dennis S. Ellis
Katherine F. Murray
Paul Hastings LLP
515 South Flower Street, 25th Floor
Los Angeles, CA, 90071
(213) 683-6000

Naveen Modi
Joseph E. Palys
Paul Hastings LLP
875 15th Street, N.W.
Washington, D.C., 20005
(202) 551-1990

Blaine M. Hackman
Paul Hastings LLP
200 Park Avenue
New York, NY 10166
(212) 318-6000

Frederick L. Cottrell, III (#2555)
Jeffrey L. Moyer (#3309)
Katharine L. Mowery (#5629)
Richards, Layton & Finger, P.A.
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
(302) 651-7700
cottrell@rlf.com
moyer@rlf.com
mowery@rlf.com

Attorneys for L'Oréal USA and L'Oréal S.A.

Dated: August 23, 2017

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. STATEMENT OF NATURE AND STAGE OF THE PROCEEDINGS	1
II. SUMMARY OF ARGUMENT	1
III. STATEMENT OF FACTS	3
A. The Allegations in Support of Plaintiffs’ Claims	3
B. Correspondence Relating to the Complaint	6
IV. ARGUMENT	7
A. Legal Standard	7
B. The Court Should Dismiss Plaintiffs’ Claims.....	8
1. The FAC Does Not Adequately Plead Direct Infringement	9
2. The FAC Does Not Adequately Plead Induced Infringement	12
3. The FAC Does Not Adequately Plead Contributory Infringement	13
4. The FAC Does Not Adequately Plead Willful Infringement.....	13
C. Plaintiffs’ Repeated Failure to Plausibly Allege Infringement Warrants Dismissing the FAC with Prejudice.....	14
V. CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Benak ex rel. Alliance Premier Growth Fund v. Alliance Capital Mgmt. L.P.</i> , 435 F.3d 396 (3d Cir. 2006).....	8
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	1, 7, 8
<i>Bayer AG v. Elan Pharm. Research Corp.</i> , 212 F.3d 1241 (Fed. Cir. 2000).....	10
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	2, 7, 9
<i>In re Burlington Coat Factory Sec. Litig.</i> , 114 F.3d 1410 (3d Cir. 1997).....	8
<i>Foman v. Davis</i> , 371 U.S. 178 (1962).....	8, 14
<i>Gibbs v. Coupe</i> , 192 F. Supp. 3d 503 (D. Del. 2016).....	7
<i>Global-Tech Appliances, Inc. v. SEB S.A.</i> , 563 U.S. 754 (2011).....	2, 3, 12, 13
<i>Halo Elecs., Inc. v. Pulse Elecs., Inc.</i> , 136 S. Ct. 1923 (2016).....	3, 14
<i>Krantz v. Prudential Investments Fund Mgmt. LLC</i> , 305 F.3d 140 (3d Cir. 2002).....	14
<i>M2M Solutions LLC v. Telit Commc'ns PLC</i> , No. 14-1103-RGA, 2015 WL 4640400 (D. Del. Aug. 5, 2015).....	12
<i>Macronix Int'l Co., Ltd. v. Spansion Inc.</i> , 4 F. Supp. 3d 797 (E.D. Va. 2014)	9, 10
<i>Mayne Pharma Int'l PTY Ltd. v. Merck & Co.</i> , No. 15-438-LPS-CJB, 2015 WL 7833206 (D. Del. Dec. 3, 2015).....	14
<i>N. Star Innovations, Inc. v. Toshiba Corp.</i> , No. 16-115-LPS-CJB, 2016 WL 7107230 (D. Del. Dec. 6, 2016).....	7

TABLE OF AUTHORITIES

(continued)

	Page(s)
<i>Raindance Techs., Inc. v. 10x Genomics, Inc.</i> , No. 15-152-RGA, 2016 WL 927143 (D. Del. Mar. 4, 2016)	11
<i>S. Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Grp. Ltd.</i> , 181 F.3d 410 (3d Cir. 1999).....	8
<i>SIPCO, LLC v. Streetline, Inc.</i> , 230 F. Supp. 3d 351 (D. Del. 2017).....	9
<i>Tellabs, Inc. v. Makor Issues & Rights, Ltd.</i> , 551 U.S. 308 (2007).....	5
<i>Varian Med. Sys., Inc. v. Elekta AB</i> , No. 15-871-LPS, 2016 WL 3748772 (D. Del. July 12, 2016).....	13

OTHER AUTHORITIES

Fed. R. Civ. P. 8(a)(2).....	1
Fed. R. Evid. 201	5

...

I. STATEMENT OF NATURE AND STAGE OF THE PROCEEDINGS

On June 30, 2017, plaintiffs University of Massachusetts Medical School (“UMass”) and Carmel Laboratories, LLC (“Carmel Labs”) (collectively “Plaintiffs”) filed a Complaint against L’Oréal USA, Inc. (“L’Oréal USA”) and L’Oréal S.A. alleging that L’Oréal USA and L’Oréal S.A. infringe two patents covering methods of applying topical compositions containing adenosine to skin (the “Complaint”). On August 4, 2017, in accordance with a stipulation extending L’Oréal USA’s deadline to move, answer, or otherwise respond to the Complaint (D.I. 4), L’Oréal USA moved to dismiss Plaintiffs’ Complaint under Fed. R. Civ. P. (“Rule”) 8(a)(2) and 12(b)(6) (“L’Oréal USA’s Motion to Dismiss”). (D.I. 7-10.) On August 18, 2017, the date Plaintiffs’ response to the Motion to Dismiss was due, Plaintiffs filed a First Amended Complaint (“FAC”), which was essentially identical to their Complaint, and which contains the same deficiencies identified by L’Oréal USA in its Motion to Dismiss the Complaint.¹ (D.I. 13)

L’Oréal USA now moves to dismiss Plaintiffs’ FAC with prejudice under Rule 8(a)(2) and 12(b)(6).

II. SUMMARY OF ARGUMENT

The FAC leaves Plaintiffs’ inadequately pled Complaint effectively unchanged and now confirms that, despite their opportunity to do so, Plaintiffs cannot plead any infringement claims against L’Oréal USA. Accordingly, the FAC should be dismissed with prejudice pursuant to Rule 12(b)(6). Rule 8 requires “a short and plain statement of [each] claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This standard “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Complaints must allege sufficient facts to “raise a right to relief above the speculative level”

¹ L’Oréal S.A. separately plans to move, answer, or otherwise respond to the FAC on or by October 16, 2017, the stipulated deadline for L’Oréal S.A.’s response to the FAC. (D.I. 14.)

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.