

ESTTA Tracking number: **ESTTA117199**

Filing date: **12/28/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding.	91171530
Applicant	Plaintiff Kosmedix
Other Party	Defendant LABORATOIRES D'ESTHETIQUE APPLIQUEE

Motion for Suspension in View of Civil Proceeding With Consent

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Kosmedix hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Kosmedix has secured the express consent of all other parties to this proceeding for the suspension requested herein.

Kosmedix has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,
/Kurt Lewis/
Kurt Lewis
kurt@lewisscheid.com
Fred.Meyers@ladas.net
12/28/2006

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM).

I.(a) PLAINTIFFS KOSMEDIX, INC., a Texas corporation

DEFENDANTS ALLERGAN, INC., a Delaware corporation; INAMED CORPORATION, a Delaware corporation; LABORATOIRES D'ESTHETIQUE APPLIQUEE CORPORATION, a French corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Denver
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION TRACT OF LAND INVOLVED

(C) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Kurt S. Lewis, Lewis Scheid LLC, 2300 Fifteenth Street, Suite 320, Denver, CO 80202; (303) 534-5040

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
- 3 FEDERAL QUESTION (U.S. Government Not a Party)
- 2 U.S. GOVERNMENT DEFENDANT
- 4 DIVERSITY (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE FOR DEFENDANT))
(For Diversity Cases Only)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACTS	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage - Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food and Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/ etc. <input type="checkbox"/> 460 Deportation and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease and Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accomodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Order <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- Original Proceeding
- Removal from State Court
- Remanded from Appellate Court
- Reinstated or Reopened
- Transfer from another district (specify)
- Multidistrict Litigation
- Appeal to District Judge from Mag. Judgment

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Federal False Advertising and Unfair Competition, 15 U.S.C. Section 1125(a); Declaratory Judgment, 28 U.S.C. § 2201

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** Injunctive Relief Unspecified Damages CHECK YES only if demanded in complaint: **JURY DEMAND** YES NO

VIII. RELATED CASE(S) IF ANY (SEE INSTRUCTIONS) N/A JUDGE _____ DOCKET NUMBER _____

DATE May 18, 2006 SIGNATURE OF ATTORNEY OF RECORD s/Kurt S. Lewis



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

Civil Action No. _____

KOSMEDIX, INC., a Texas Corporation,

Plaintiff,

v.

ALLERGAN, INC., a Delaware corporation;
INAMED CORPORATION, a Delaware corporation; and
LABORATOIRES D'ESTHETIQUE APPLIQUEE CORPORATION, a French corporation,

Defendants.

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF
WITH JURY DEMAND**

Plaintiff Kosmedix, Inc. ("Kosmedix") through its attorneys, Lewis Scheid, LLC and Hill & Robbins, P.C., states and alleges the following as its Complaint for Damages and Injunctive Relief with Jury Demand ("Complaint") against Defendants Allergan, Inc. ("Allergan"), Inamed Corporation ("Inamed"), and Laboratoires D'Esthetique Appliquee Corporation ("Laboratoires") (collectively referred to herein as "Defendants"). All of the allegations and other factual contentions which are made upon information and belief were formed after inquiry reasonable under the circumstances and are premised on the belief that the same are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

I. INTRODUCTION

1. Kosmedix brings this action for declaratory judgment, federal unfair competition and false designation of origin pursuant to § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), common law unfair competition and misappropriation, violation of the Colorado Consumer Protection Act, C.R.S. § 6-1-101, *et seq.*, unjust enrichment, and civil conspiracy arising from Defendants' unauthorized use of the mark JUVEDERM to market and promote aesthetic skincare products in competition with Kosmedix's JUVIDERM brand aesthetic skincare products in the United States.

II. PARTIES

2. Kosmedix is a corporation organized and existing under the laws of the State of Texas, registered with the state of Colorado, with its principal place of business located at 7847 E. Severn Place, Denver, Colorado 80230. Kosmedix is a dermatological skincare company that markets and sells aesthetic skincare products in the United States.

3. Allergan is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal of business located at 2525 Dupont Drive, Irvine, California 92612. Allergan is a pharmaceutical company engaged in, among other things, research, development, manufacture, and sale of aesthetic skincare products in the United States and elsewhere. Allergan acquired Defendant Inamed in March 2006, and Inamed is now a wholly owned subsidiary of Allergan.

4. Inamed is a corporation organized, existing, and doing business under the laws of the state of Delaware, with its principal place of business located at 5540 Ekwill Street, Suite D,

Santa Barbara, California 93111-2336. Inamed is engaged in research, development, manufacture and sale of aesthetic skincare products in the United States and elsewhere. In January 2004, Inamed acquired the exclusive rights to develop, market and distribute products under the mark JUVEDERM in the United States. As of March 2006, Inamed merged with and became a wholly owned subsidiary of Allergan. Upon information and belief, Inamed is currently developing, marketing, and distributing products bearing the JUVEDERM mark as a wholly owned subsidiary of Defendant Allergan.

5. Laboratoires is a French corporation with its principal place of business located at 31 rue des Colonnes du Trone, Paris, France. Upon information and belief, Laboratoires is a member of the Corneal Group in France and is the owner of the JUVEDERM mark in France.

III. JURISDICTION AND VENUE

6. This Court has original jurisdiction pursuant to 15 U.S.C. § 1121, 15 U.S.C. § 1125(a) and 28 U.S.C. §1338(a) because this is a civil action arising under the Lanham Act, 15 U.S.C. § 1051, *et seq.* This Court also has jurisdiction over Plaintiff's claims under Colorado law pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

7. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2), § 1391(c), and § 1391(d) because: (a) a substantial part of the events giving rise to these claims occurred in this judicial district, as described herein; (b) each Defendant was subject to personal jurisdiction in this district at the time the action was commenced; and (c) Defendant Laboratoires is an alien, as described above, and thus, may be sued in any district.

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