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7 Attorneys for Plaintiff
Salu, Inc.

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9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

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12 SALU, INC., a Delaware corporation,
13 Plaintiff,
14 v.
15 BRENDA PITTS, an individual, and
WILLIAM HOGSETT, an individual,
16 Defendants.
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CASE NO.
COMPLAINT FOR LANHAM ACT
VIOLATION, UNFAIR COMPETITION
JURY TRIAL DEMANDED

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20 **I. OVERVIEW**

21 Through this action, plaintiff Salu, Inc. (“Salu”) brings federal and pendent state
22 claims against defendants for unlawful copying of its website and unfair competition.

23 **II. JURISDICTION AND VENUE**

24 1. The jurisdiction of this court is founded on 28 U.S.C. Section 1331 (federal
25 question), and on 28 U.S.C. Section 1367(a) (supplemental jurisdiction).

26 2. This Court has personal jurisdiction over the defendants as the defendants
27 collectively and individually have, upon information and belief, availed themselves of the
28 state of California through maintaining administrative and technical contacts for their

1 complaint. Salu currently lacks information concerning the identity of these parties and
2 reserves its right to amend this complaint as the identity of additional parties becomes
3 known to Salu.

4 IV. GENERAL ALLEGATIONS

5 A. Salu And Its Business

6 8. Salu owns and operates the website Skinstore.com, through which it has
7 advertised and sold a variety of skin care and related products since 1997.

8 9. For its advertising and marketing of its products Salu has developed a strategy
9 of using search engines to enhance its prominence and recognition among consumers
10 searching online for various skincare products.

11 10. One of these strategies is the use of commercially available product terms as
12 keywords and metatags, which are embedded in the html source code underlying Salu's
13 Skinstore.com website. These keywords and metatags are recognized by common search
14 engines such as Yahoo.com and Google.com. Through the use of keywords and metatags
15 in the code for its site, and because of the number of affiliate sites that Salu has developed
16 and that link to Salu's site, Salu's website Skinstore.com has achieved a high ranking in
17 search results generated by popular search engines such as Google.com. Upon information
18 and belief, search engines such as Google rank websites that are responsive to particular
19 searches on the basis of a variety of factors, including the use of search terms within the
20 website and on the degree to which other websites link to that site. Prior to the
21 commencement of the defendants' activities alleged in this complaint, Salu had obtained a
22 high ranking in search results generated from searches for products sold through its
23 website. As one example, Salu's website Skinstore.com achieve a ranking in or about
24 fourth place for a search of the product name "Hylexin" conducted using the Google.com
25 search engine. The prominence of Salu's website in these search engine rankings is a vital
26 part of Salu's marketing strategy and is prime cause of the high level of traffic to the
27 Skinstore.com website.

28 B. The Defendants

1 11. Upon information and belief, the defendants own and operate, and have
2 **established**, a website called Newskinspa.com.

3 12. Upon information and belief, defendant Pitts is and has claimed to be the owner
4 of the business advertised on the Newskinspa.com website.

5 13. Upon information and belief, defendant Hogsett is an experienced website
6 marketer who operates different businesses and offers marketing services over the Internet
7 through several websites, including Zulumoon.com and Seota.com. Upon information and
8 belief Hogsett used his knowledge concerning website marketing and search engines in the
9 copying of Salu’s Skinstore.com website for Newskinspa.com.

10 14. Upon information and belief, sometime prior to September 9, 2005 the
11 defendants started a website business operating at the domain www.newskinspa.com,
12 offering various skin care and related products.

13 15. On or about September 9, 2005, employees of Salu, who frequently monitored
14 the Internet for competing websites and for potentially infringing uses of Salu’s website
15 material and marks, discovered www.newskinspa.com. Salu employees reviewed the
16 content of the website, including the html code that was viewable through use of the “view
17 – source” feature available on their Internet browser software, and discovered that the
18 www.newskinspa.com website had copied the code and content of the Skinstore.com
19 website. From this review Salu employees were able to determine that the defendants had
20 copied the content of Salu’s website and then made superficial cosmetic changes so the
21 website would not at first appear to be a copy. Salu employees determined, however, that
22 the name “skinstore.com” repeatedly appeared within the code for the www.skinspa.com
23 website, proving that the site had originally been created as a copy of the Skinstore.com
24 website.

25 16. Salu employees then discovered, through a “whois” search conducted via a
26 domain registrar, that the website was registered to defendant Hogsett and that the
27 registration showed his address to be in Carlsbad, California. Salu sent a cease and desist
28 letter to Hogsett and subsequently was contacted by defendant Pitts, believed to reside in

1 Charleston, South Carolina, who claimed on the telephone to own Newskinspa.com and to
2 be the mother in law of defendant Hogsett.

3 17. Hogsett was subsequently contacted, and he agreed to make changes to the
4 website. Since that date some changes have been made, but the website still substantially
5 copies the content of the Salu website.

6 18. Since that date employees of Salu have discovered that the website
7 skinstore.com no longer maintains its high ranking when a search for the product “hylexin”
8 is conducted using the Google.com search engine. Instead, the website “newskinspa.com”
9 appears in exactly the same place in the search rankings that skinstore.com should appear.
10 Upon information and belief, the Google search engine has identified the
11 www.newskinspa.com website as a substitute or update of the www.skinstore.com website,
12 and substituted the former in the latter’s place in search rankings for this product.

13 19. Salu also has discovered that Hogsett’s websites seota.com and zulymoon.com
14 promote the product hylexin and contain links to the www.newskinspa.com website where
15 customers can purchase that product. Upon information, the defendant’s conduct
16 demonstrates that they knowingly have copied Salu’s web content to take over Salu’s high
17 position in search rankings.

18 FIRST CLAIM FOR RELIEF

19 (Trademark Infringement -- Against All Defendants)

20 (15 U.S.C. §1125)

21 20. Salu is the owner of the federally registered mark SKIN STORE, Reg. No.
22 2,354,182, for “computerized on-line retail services in the field of skin care products, acne
23 treatments, bleaching gels, eye contour, facial cleansers, foot care, hair shampoos and
24 conditioners, and body creams, masques, moisturizers, smoothing and refining skin
25 creams, sunscreens, wrinkle reduction agents, and specialty soaps” in International Class
26 35.

27 21. Salu has continuously used this mark in interstate commerce in connection
28 with its website Skinstore.com since 1997.

1 30. As with any website, the Skinstore.com website is the creation of a couple
2 of well-known computer code languages, such as html and css. The source code is used by
3 the website developer to create the content, format, dimensions, and colors for the website.
4 The code also contains keywords used to enhance the website’s recognition by search
5 engines like Google.com and Yahoo.com.

6 31. The specific source code for the Skinstore.com website is a set of words,
7 names, marks, and symbols that is unique to the Skinstore.com website, and the uniqueness
8 of this combination is vitally important to Salu’s online advertising and marketing strategy.
9 Upon information and belief, it is recognized by a search engine algorithm as being
10 peculiar to that specific website.

11 32. The source code underlying the Skinstore.com website, like the source code
12 for any website, is easily visible through any commercial web browser. In Internet
13 Explorer, for example, the source code can be viewed by clicking on the “Source” option
14 under the “View” menu.

15 33. Upon information and belief, sometime around September 9, 2005 the
16 defendants copied the source code to the Skinstore.com website in its entirety, presumably
17 to make it easier for them to create their own website, Newskinspa.com. Although the
18 defendants’ website, when it went online, had some different content and was formatted
19 somewhat differently, it retained a great deal of the underlying code and structure of the
20 code from the Skinstore.com website.

21 34. As a result of the defendants’ misappropriation of the Skinstore.com
22 website source code for their own website, search engines such as Google.com recognize
23 the Newskinspa.com website as an updated version of the Skinstore.com website. For
24 example, when conducting a Google search of the skin care product Hylexin, the user will
25 get a search result list that lists Newskinspa.com in the fourth position, but no results for
26 Skinstore.com. This was the position occupied by Skinstore.com’s website prior to the
27 defendants’ copying. The defendants’ copying has caused Skinstore.com to drop off the
28 search results list altogether and caused Newskinspa.com to take its place.

1 engine results lists. As a result of its familiarity with search engine algorithms, and its use
2 of keywords and metatags in the code for its website, Skinstore.com, Salu could count on a
3 high ranking in search engine results lists for searches of many of the products on its
4 website.

5 42. As a result of its regular and ongoing high ranking in these lists, Salu could
6 expect to maintain high visibility as a commercial retailer of these products and could
7 expect to receive and did in fact receive significant customer traffic to its website,
8 Skinstore.com, resulting in substantial, regular sales of these products. Salu reasonably
9 expected that its ongoing high search results ranking would continue to yield a significant
10 economic advantage in the marketplace.

11 43. Upon information and belief, the defendants, and in particular defendant
12 William Hogsett, through familiarity with web and search engine marketing and
13 advertising methods, became aware of Skinstore.com's prominent position on the Internet
14 as a retailer of a wide variety of skin care products, and was aware of the economic
15 advantage it was likely to gain through its prominence in search engine results by search
16 engines like Google.com and Yahoo.com, among others.

17 44. Upon information and belief, the defendants knowingly interfered with
18 Salu's ongoing search engine rankings and prominence by copying the code for Salu's
19 website and using it to make their own website, Skinstore.com.

20 45. The defendants' acts of copying and interference were unlawful and
21 tortuous under the Copyright Act, 17 U.S.C. §501 et seq., the Lanham Act, 15 U.S.C.
22 §§1117, 1125, California common law, and the California Unfair Business Practices Act,
23 Cal. Bus. & Professions Code §17200 et seq. and 17500 et seq.

24 46. As a result of the defendants' actions, Salu's ongoing business advantage
25 was significantly interfered with, in that its position in search engine result lists for
26 searches for certain products, like Hylexin, completely disappeared, and was replaced by
27 Newskinspa.com.

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1 54. For its claim for violation of the California Business & Professions Code
2 section 17200 et seq., plaintiff seeks relief as set forth below.

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PRAYER FOR RELIEF

5 WHEREFORE, Salu demands judgment against the defendants and relief as
6 follows:

7 1. For actual damages, including Salu’s loss of business and profits, the
8 defendants’ unjust enrichment, reasonable royalty, and any additional consequential
9 damages or loss of profits resulting from the defendants’ wrongful, unlawful, and tortious
10 acts as alleged in this Complaint, in an amount to be proved at trial but believed to
11 significantly exceed \$75,000.

12 2. For an Order preliminarily and permanently enjoining the defendants, and
13 any of them, and any of their officers, agents, agents, employees, and all persons acting in
14 concert with them, temporarily and preliminarily during the pendency of this action, and
15 permanently thereafter (a) copying or infringing Salu’s website, or any of the code from
16 the website, or any of Salu’s valuable trademarks, trade names, or trade dress, in any way;
17 (b) continuing to operate the website Newskinspa.com unless all of Salu’s code is removed
18 from the site and defendants are required to begin the website again using their own code.

19 3. For punitive or exemplary damages as permitted by law in an amount
20 necessary to punish or deter the defendants.

21 4. That, with respect to Salu’s claim under the Lanham Act, 15 U.S.C. §1125,
22 Salu be awarded defendants’ profits and damages to Salu in an amount to be proved at
23 trial.

24 5. That with respect to Salu’s claim under the Lanham Act, pursuant to 15
25 U.S.C. §1117, Salu recover three times its damages.

26 6. For attorneys’ fees and costs to the extent otherwise allowed by law or by
27 contract, including pursuant to 15 U.S.C. §1117.

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1 7. For restitution under Cal. Bus. & Professions Code §17200 et seq. of
2 anything that the defendants have taken from Salu as a result of their unfair business
3 practices.

4 8. For such other and further relief as the Court may deem proper.

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6 Dated: November 17, 2005.

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DAVIS & LEONARD, LLP

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/s/ Stephen L. Davis
Stephen L. Davis
Attorney for Plaintiff
Salu, Inc.

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