

**FLASTER/GREENBERG P.C.**

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Attorneys for Defendant SHISEIDO AMERICAS CORPORATION  
 (successor to BARE ESCENTUALS, INC.)

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

FACE LACE LTD., a limited company,

Plaintiff,

vs.

BARE ESCENTUALS, INC. and  
 DOES 1 through 10, inclusive,

Defendants.

Case No.: 2:18-cv-10316  
 (Assigned to: Judge Consuelo B.  
 Marshall; Referred to: Magistrate  
 Charles F. Eick)

**ANSWER**

Complaint Filed: December 13, 2018

**ANSWER**

Shiseido Americas Corporation (“Shiseido”), successor to Bare Escentuals, Inc., by and through its undersigned counsel, as and for its Answer to the Complaint, states as follows:

**I. INTRODUCTION**

1. Denies the allegations in Paragraph 1 of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint.
6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint.
7. Denies the allegations in Paragraph 7 of the Complaint.
8. Denies the allegations in Paragraph 8 of the Complaint.

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1 **II. JURISDICTION AND VENUE**

2 9. The allegations in paragraph 9 are legal conclusions as to which no  
3 response is required.  
4

5 10. The allegations in paragraph 10 are legal conclusions as to which no  
6 response is required.  
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8 11. The allegations in paragraph 11 are legal conclusions as to which no  
9 response is required.  
10

11 **III. PARTIES**

12 12. Denies knowledge or information sufficient to form a belief as to the  
13 truth of the allegations in paragraph 12 of the Complaint.  
14

15 13. Admits the allegations in Paragraph 13 of the Complaint.

16 14. Denies knowledge or information sufficient to form a belief as to the  
17 truth of the allegations in paragraph 14 of the Complaint.  
18

19 **IV. FACTS**

20 15. Denies knowledge or information sufficient to form a belief as to the  
21 truth of the allegations in paragraph 15 of the Complaint.  
22

23 16. Denies knowledge or information sufficient to form a belief as to the  
24 truth of the allegations in paragraph 16 of the Complaint.  
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1 17. Denies knowledge or information sufficient to form a belief as to the  
2 truth of the allegations in paragraph 17 of the Complaint.

3  
4 18. Denies knowledge or information sufficient to form a belief as to the  
5 truth of the allegations in paragraph 18 of the Complaint.

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7 19. Denies knowledge or information sufficient to form a belief as to the  
8 truth of the allegations in paragraph 19 of the Complaint.

9 20. Denies the allegations in Paragraph 20 of the Complaint.

10 21. Respectfully refers to the website referenced in Paragraph 21 of the  
11 Complaint for the best evidence of its content.

12  
13 22. Denies the allegations in Paragraph 22 of the Complaint.

14 23. Denies knowledge or information sufficient to form a belief as to the  
15 truth of the allegations in Paragraph 23 of the Complaint.

16  
17 24. Denies the allegations in Paragraph 24 of the Complaint.

18  
19 **FIRST CAUSE OF ACTION**  
20 **Federal Copyright Infringement of "Burlesque"**

21 25. In response to Paragraph 25 of the Complaint, repeats and re-alleges each  
22 and every allegation above as if fully set forth herein.

23 26. The allegations in paragraph 26 are legal conclusions as to which no  
24 response is required.

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1           27. Denies knowledge or information sufficient to form a belief as to the  
2 truth of the allegations in Paragraph 27 of the Complaint.

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4           28. Denies the allegations in Paragraph 28 of the Complaint.

5           29. Denies the allegations in Paragraph 29 of the Complaint.

6           30. Denies the allegations in Paragraph 30 of the Complaint.

7  
8           31. Denies the allegations in Paragraph 31 of the Complaint.

9           32. Denies the allegations in Paragraph 32 of the Complaint.

10          33. Denies the allegations in Paragraph 33 of the Complaint.

11  
12                           **SECOND CAUSE OF ACTION**  
13                           **Trade Dress Infringement (Lanham Act)**

14          34. In response to Paragraph 34 of the Complaint, repeats and re-alleges each  
15 and every allegation above as if fully set forth herein.

16          35. Denies knowledge or information sufficient to form a belief as to the  
17 truth of the allegations in Paragraph 35 of the Complaint.

18  
19          36. Denies knowledge or information sufficient to form a belief as to the  
20 truth of the allegations in Paragraph 36 of the Complaint.

21  
22          37. Denies knowledge or information sufficient to form a belief as to the  
23 truth of the allegations in Paragraph 37 of the Complaint.

24          38. Denies the allegations in Paragraph 38 of the Complaint.

25          39. Denies the allegations in Paragraph 39 of the Complaint.

26          40. Denies the allegations in Paragraph 40 of the Complaint.

41. Denies the allegations in Paragraph 41 of the Complaint.

**AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim for relief.

2. This Court lacks jurisdiction over Shiseido (successor to Defendant Bare Escentuals, Inc.).

3. The claims in the Complaint are barred because Plaintiff did not possess a registered copyright at the time Plaintiff filed the Complaint.

4. Damages are limited because Plaintiff did not possess a registered copyright at the time Plaintiff filed the Complaint.

5. The claims in the Complaint are barred by the doctrine of fair use.

6. The claims in the Complaint are barred because there is no substantial similarity between the copyrighted work and the allegedly infringing product.

7. The claims in the Complaint are barred because there is a common public source that precludes copyright infringement.

8. The claims in the Complaint are barred because the allegedly infringing product was an independent creation which precludes copyright infringement.

9. The claims in the Complaint are barred because a lack of originality in the alleged copyrighted work precludes copyright ownership.

10. The claims in the Complaint are barred because Bare Escentuals, Inc. did not have access to the alleged copyrighted work.

1           11. The claims in the Complaint are barred because of fraud on the U.S.  
2 Copyright Office.

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4           12. The claims in the Complaint are barred because the alleged trade dress is  
5 not inherently distinctive.

6           13. The claims in the Complaint are barred because the alleged trade dress  
7 has not acquired secondary meaning.

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9           14. The claims in the Complaint are barred because the alleged trade dress is  
10 functional and not protectable.

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12           15. The claims in the Complaint are barred because Defendant's brand name  
13 is prominently displayed on the relevant products and thus there is no likelihood of  
14 confusion.

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16           16. The claims in the Complaint are barred because there is no likelihood of  
17 confusion.

18           17. The claims in the Complaint are barred by the statute of limitations.

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20           18. The claims in the Complaint are barred based on *laches*.

21           19. The claims in the Complaint are barred because there is no injury and no  
22 damages.

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24           20. The claims in the Complaint are barred because of waiver.

25           21. The claims in the Complaint are barred based on the doctrine of estoppel.

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27           22. The claims in the Complaint are barred because of Plaintiff's unclean  
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1 hands.

2 23. The claims in the Complaint are barred or limited because of Plaintiff's  
3 failure to mitigate its damages.  
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5 24. The claims in the Complaint are barred or limited because the actions of  
6 Defendant Bare Escentuals, Inc. were justified.  
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8 25. The claims in the Complaint are barred or limited because the actions of  
9 Defendant Bare Escentuals, Inc. were taken in good faith.  
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11 26. Plaintiff's claims and/or damages are barred or limited based on the  
12 doctrine of innocent infringement.

13 **WHEREFORE**, Shiseido (successor to Defendant Bare Escentuals, Inc.)  
14 respectfully requests that this Court dismiss the Complaint with prejudice and award  
15 Shiseido its attorney's fees and costs, together with such other and further relief as  
16 this Court deems proper.  
17

18 Respectfully submitted,

19 DATED: January 31, 2019

20 **FLASTER/GREENBERG P.C.**

21 By: /s/ Darren H. Goldstein  
22 DARREN H. GOLDSTEIN *Pro*  
*Hac Vice* Application to be  
Submitted)

23 **ANDRADE GONZALEZ LLP**

24 By: /s/ Henry H. Gonzalez  
25 HENRY H. GONZALEZ  
STEPHEN V. MASTERSON  
26 Attorneys for Defendant  
SHISEIDO AMERICAS  
27 CORPORATION (successor to  
BARE ESCENTUALS, INC.)  
28



## PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California, I am over the age of 18 and not a party to the within action; my business address is 634 S. Spring St., Top Floor, Los Angeles, California 90014.

On January 31, 2019, I served the foregoing document described as: **ANSWER** on all parties and/or their attorney(s) of record to this action by EC/CMF, as follows:

Stephen Charles McArthur Valerie McConnell The McArthur Law Firm, PC 11400 W. Olympic Boulevard Suite 200 Los Angeles, CA 90064 Telephone: (323) 639-90064 Email: <a href="mailto:stephen@smcarthurlaw.com">stephen@smcarthurlaw.com</a> ; <a href="mailto:valerie@smcarthurlaw.com">valerie@smcarthurlaw.com</a>	<i>Attorneys for Plaintiff,  FACE LACE, LTD.</i>
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[X] STATE:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 31, 2019, at Los Angeles, California.

/s/

Gail M. Reese