

1 KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
 Michael J. Kump (SBN 100983)
 2 mkump@kwikalaw.com
 Jonathan P. Steinsapir (SBN 226281)
 3 jsteinsapir@kwikalaw.com
 Nicholas C. Soltman (SBN 277418)
 4 nsoltman@kwikalaw.com
 808 Wilshire Boulevard, 3rd Floor
 5 Santa Monica, California 90401
 Telephone: 310.566.9800
 6 Facsimile: 310.566.9850

7 Attorneys for Plaintiffs Kendall Jenner,
 Inc., and Kendall Jenner

8

9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11 **WESTERN DIVISION**

12

13 KENDALL JENNER, INC., a
 California corporation, and KENDALL
 14 JENNER, an individual,

15 Plaintiffs,

16 vs.

17 CUTERA, INC., a Delaware
 corporation, and DOES 1 through 100,
 18 inclusive,

19 Defendants.

Case No. 2:16-CV-00936

COMPLAINT FOR:

- (1) **FEDERAL TRADEMARK INFRINGEMENT [15 U.S.C. § 1114];**
- (2) **FALSE ASSOCIATION [15 U.S.C. § 1125(a)];**
- (3) **VIOLATION OF THE RIGHT OF PUBLICITY; AND**
- (4) **COMMON LAW TRADEMARK INFRINGEMENT**

DEMAND FOR JURY TRIAL

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
 808 WILSHIRE BOULEVARD, 3RD FLOOR
 SANTA MONICA, CALIFORNIA 90401
 TEL 310.566.9800 • FAX 310.566.9850

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KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

INTRODUCTION AND FACTUAL BACKGROUND

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1. Kendall Jenner is one of the one of the world’s most popular supermodels. She has appeared in numerous print advertisements and campaigns. She has graced the covers of the world’s most prestigious fashion magazines, including *Vogue*, *Vogue Paris*, *Vogue Japan*, *Vogue Brazil*, *Harper’s Bazaar* (shot by Karl Lagerfeld), *Allure*, *GQ*, *Glamour*, *Marie Claire*, *LOVE*, *Interview*, *Paper*, *InStyle*, *Cosmopolitan*, *Cleo*, *Garage*, *Dazed*, *Raine* and *BLANK*, amongst others. Ms. Jenner has walked the runways for the elite of the fashion world, modeling for Chanel, Fendi, Givenchy, Balmain, Versace, Marc Jacobs, Oscar de la Renta, Dolce & Gabbana, Vera Wang, Michael Kors, Emilio Pucci, Diane von Furstenberg and Alexander Wang, to name a few.

2. Along with her modeling career, Ms. Jenner has also succeeded in various other endeavors. She is a successful clothing designer herself, designing a line of clothes with her younger sister, Kylie, which are currently sold at high-end department stores such as Neiman Marcus, Saks Fifth Avenue, Nordstrom, Lord & Taylor, and Bloomingdale’s. Ms. Jenner is also a well-known television personality, starring in E! Network’s *Keeping Up with the Kardashians*, which airs in over 160 countries worldwide, and is one of the most popular reality television shows of all time.

3. In addition to all of this, Ms. Jenner has one of the largest social media presences of any young woman of her generation. She has over 48 million followers on Instagram, over 15 million followers on Twitter, and roughly 12 million “likes” on Facebook.

4. Defendant Cutera, Inc., (“Cutera”) is a publicly-traded corporation on the NASDAQ (CUTR). Cutera describes itself as a designer of “medical aesthetic applications” and claims to be at “the forefront of medical aesthetics.” Rather than attempt to earn goodwill on its own, however, Cutera has decided to misappropriate Ms. Jenner’s hard-earned popularity without her permission.

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
 808 WILSHIRE BOULEVARD, 3RD FLOOR
 SANTA MONICA, CALIFORNIA 90401
 TEL 310.566.9800 • FAX 310.566.9850

1 5. In February 2016, just before Fashion Week was set to launch in New
 2 York City, Cutera advertisements began appearing in New York City at public
 3 places, such as outside New York skin care centers. Those advertisements
 4 prominently use Kendall Jenner’s name and image to push Cutera’s “Laser Genesis”
 5 treatment. The advertisements go so far as to claim that Cutera’s Laser Genesis
 6 treatment is responsible for Ms. Jenner’s “nearly flawless skin.” A photograph of
 7 one such prominent advertisement in New York City is attached to this Complaint
 8 as **Exhibit A**. Similar Cutera promotional materials and other documents have been
 9 distributed to dermatologists and doctors in Los Angeles, Beverly Hills, elsewhere
 10 in this judicial district, and throughout the United States and even other countries.
 11 These promotional materials also use Ms. Jenner’s name and image, and falsely
 12 claim that Cutera is somehow responsible for Ms. Jenner’s appearance.

13 6. Cutera’s use of Kendall Jenner’s name and likeness is not, and never
 14 has been, authorized. Cutera has never sought Ms. Jenner’s permission to use her as
 15 a “face” for its products and services, and Ms. Jenner has never given such
 16 permission. Ms. Jenner’s actual endorsement for a worldwide campaign such as this
 17 would command a fee well into eight figures (assuming she would even agree to do
 18 such a campaign, which she most assuredly has not).

19 7. Setting aside the monetary value, however, it is Ms. Jenner’s choice
 20 whether or not to commercially endorse another party’s goods and services. Cutera
 21 took that choice away from her when it decided to prominently use her name and
 22 likeness in commercial advertising without her permission. Cutera took that choice
 23 away from her when it decided to prominently use her name and likeness in
 24 commercial advertising without seeking her permission. Cutera had no right to do
 25 this and, by this action, Ms. Jenner seeks to hold Cutera accountable for its blatant
 26 disregard of her well established rights under state and federal law.

PARTIES

27
 28 8. Plaintiff Kendall Jenner is a citizen of California and resides in this

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SANTA MONICA, CALIFORNIA 90401
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1 judicial district. Plaintiff Kendall Jenner, Inc., is a California corporation, with its
2 principal place of business in Los Angeles County. Kendall Jenner, Inc., administers
3 certain personal services of Ms. Jenner in the entertainment and modeling industry
4 and is the owner of numerous trademarks associated with Ms. Jenner’s services,
5 name, and likeness.

6 9. On information and belief, Defendant Cutera, Inc., is a Delaware
7 corporation, publicly traded on the NASDAQ (CUTR), with its principal place of
8 business in Brisbane, California.

9 10. Plaintiffs are ignorant of the true names and capacities of Defendants
10 DOES 1 through 100 and therefore sues these Defendants by such fictitious names.
11 Plaintiffs will amend this complaint to allege these Defendants’ true names and
12 capacities when ascertained. Each of these Defendants is responsible and liable in
13 some manner for the events alleged herein and the damages caused thereby.

14 **JURISDICTION AND VENUE**

15 11. This is a civil action arising under federal law, the Lanham Act of
16 1946, 15 U.S.C. §§ 1051, et seq. This Court has original jurisdiction over the federal
17 claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental
18 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a), as those
19 claims are so related to the federal claims that they form part of the same case or
20 controversy.

21 12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)
22 because: Cutera “resides” in this judicial district for venue purposes under
23 28 U.S.C. § 1391(c); a substantial part of the events or omissions giving rise to the
24 claims occurred in this district; and a substantial part of property that is the subject
25 of the action is situated in this district.

26 **FIRST CLAIM FOR RELIEF**

27 **(Federal Trademark Infringement – 15 U.S.C. § 1114)**

28 13. Plaintiffs repeat and reallege all prior allegations of the Complaint.

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
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1 14. Plaintiff Kendall Jenner, Inc., is the owner of the mark, KENDALL
2 JENNER, U.S.P.T.O. Reg. No. 85424105 (“the Mark”). The Mark was registered
3 on December 16, 2014, in international class 035 for “advertising services, namely,
4 promoting the brands, goods and services of others” and “endorsement services,
5 namely, promoting the goods and services of others.” Plaintiff Kendall Jenner
6 performs the services associated with the Mark and has consented to the registration
7 of this mark in the name of Kendall Jenner, Inc. Plaintiffs’ use of the mark in
8 commerce predates Cutera’s use.

9 15. Cutera has used, and continues to use the Mark in commerce in
10 connection with the sale, offering for sale, distribution and advertising of Cutera’s
11 goods and services, along with the goods and services of persons associated with
12 Cutera. This use is not, and has never been, authorized by Plaintiffs.

13 16. Cutera’s use of the Mark is likely to cause confusion, or to cause
14 mistake or to deceive consumers as to the affiliation, association, connection,
15 endorsement, or sponsorship of Plaintiffs with Defendants.

16 17. Cutera used the Mark with prior knowledge of Plaintiffs’ rights therein,
17 and with the intent to capitalize on and trade on the established goodwill of
18 Plaintiffs. Cutera’s use of the Mark was in bad faith and with knowledge (or
19 reckless disregard of the fact) that such use would cause confusion, mistake and
20 deception.

21 18. As a result of the Cutera’s conduct alleged above, Plaintiffs have
22 suffered, and will continue to suffer, damages in an amount to be proven at trial, but
23 not less than a number well into eight figures. Plaintiffs are further entitled to
24 disgorge Defendants of all their profits under the Lanham Act. Cutera’s willful
25 infringement and misconduct is of such a nature that an award trebling the amount
26 of damages is necessary and appropriate under the Lanham Act.

27
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1 19. As a result of Cutera’s conduct, Plaintiffs have suffered and will
2 continue to suffer irreparable harm unless Cutera’s conduct is enjoined and
3 restrained by this Court.

4 20. Cutera’s misconduct is such that this is an “exceptional” case within the
5 meaning of the Lanham Act, entitling Plaintiffs to recover their reasonable
6 attorney’s fees.

7 **SECOND CLAIM FOR RELIEF**

8 **(False Association or Endorsement – 15 U.S.C. § 1125(a))**

9 21. Plaintiffs repeat and reallege all prior allegations of the Complaint.

10 22. Plaintiff Kendall Jenner is a famous model and personality. Kendall
11 Jenner’s name and likeness is famously associated with Plaintiffs and conjures up
12 Ms. Jenner’s identity and persona in the minds of the public.

13 23. Cutera has used, and continues to use, Ms. Jenner’s name, likeness,
14 identity, and persona in its advertisements in order to confuse the public into
15 believing that Plaintiffs sponsor, endorse and are associated with Cutera. In fact,
16 Plaintiffs do not sponsor or endorse Cutera, and they are not associated with Cutera.

17 24. As a result of Cutera’s unauthorized use of Ms. Jenner’s name,
18 likeness, identity, and persona, the public is mistakenly confused that Plaintiffs
19 sponsor, endorse and are associated with Cutera.

20 25. Cutera used Ms. Jenner’s name, likeness, identity, and persona with
21 prior knowledge of Plaintiffs’ rights therein, and with the intent to capitalize on and
22 trade on the established goodwill of Plaintiffs. Cutera’s use of Ms. Jenner’s name,
23 likeness, identity, and persona was in bad faith and with knowledge (or reckless
24 disregard of the fact) that such use would cause confusion, mistake and deception.

25 26. As a result of the Cutera’s conduct alleged above, Plaintiffs have
26 suffered, and will continue to suffer, damages in an amount to be proven at trial, but
27 not less than a number well into eight figures. Plaintiffs are further entitled to
28 disgorge Cutera of all of its profits under the Lanham Act. Cutera’s willful

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1 infringement and misconduct is of such a nature that an award trebling the amount
2 of damages is necessary and appropriate under the Lanham Act.

3 27. As a result of Cutera’s conduct, Plaintiffs have suffered and will
4 continue to suffer irreparable harm unless Cutera’s conduct is enjoined and
5 restrained by this Court.

6 28. Cutera’s misconduct is such that this is an “exceptional” case within the
7 meaning of the Lanham Act, entitling Plaintiffs to recover their reasonable
8 attorney’s fees.

9 **THIRD CLAIM FOR RELIEF**

10 **(Violation of the Right to Publicity Under California Law)**

11 29. Plaintiffs repeat and reallege all prior allegations of the Complaint.

12 30. Plaintiff Kendall Jenner’s name and likeness is widely known and
13 closely associated with Plaintiffs. Cutera’s unauthorized use of Ms. Jenner’s name
14 and likeness invokes Ms. Jenner’s identity in the minds of the public. The
15 unauthorized use of Ms. Jenner’s name and likeness are protected by California
16 common law and by California Civil Code § 3344.

17 31. As a result of Cutera’s intentional and unauthorized use of Ms. Jenner’s
18 name and likeness in its advertising, Plaintiffs have suffered and will continue to
19 suffer damages in an amount to be proven at trial, but not less than a number well
20 into eight figures.

21 32. As a result of Cutera’s conduct, Plaintiffs have suffered and will
22 continue to suffer irreparable harm unless Cutera’s conduct is enjoined and
23 restrained by this Court.

24 33. Cutera’s misappropriation of Ms. Jenner’s name and likeness was done
25 with an intent to injure Plaintiffs and to subject Plaintiffs to cruel and unjust
26 hardship in conscious disregard of Plaintiffs’ rights. Such acts were done willfully,
27 maliciously, and oppressively. Plaintiffs are, therefore, entitled to an additional
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SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

1 award of punitive and exemplary damages in an amount sufficient to punish Cutera
2 and to deter it from committing such acts in the future.

3 **FOURTH CLAIM FOR RELIEF**

4 **(California Common Law Trademark Infringement)**

5 34. Plaintiffs repeat and reallege all prior allegations of the Complaint.

6 35. Plaintiff Kendall Jenner is a famous model and personality. Kendall
7 Jenner's name and likeness is famously associated with Plaintiffs and conjures up
8 Ms. Jenner's identity and persona in the minds of the public.

9 36. Cutera has used, and continues to use, Ms. Jenner's name, likeness,
10 identity, and persona in its advertisements in order to confuse the public into
11 believing that Plaintiffs sponsor, endorse and are associated with Cutera. In fact,
12 Plaintiffs do not sponsor or endorse Cutera, and are not associated with Cutera.

13 37. As a result of Cutera's unauthorized use of Ms. Jenner's name,
14 likeness, identity, and persona, the public was mistakenly confused into believing
15 that Plaintiffs sponsor, endorse and are associated with Cutera.

16 38. Cutera used the Ms. Jenner's name, likeness, identity, and persona with
17 prior knowledge of Plaintiffs' rights therein, and with the intent to capitalize on and
18 trade on the established goodwill of Plaintiffs. Cutera's use of Ms. Jenner's name,
19 likeness, identity, and persona was in bad faith and with knowledge (or reckless
20 disregard of the fact) that such use would cause confusion, mistake and deception.

21 39. As a result of Cutera's misconduct, Plaintiffs have suffered and will
22 continue to suffer damages in an amount to be proven at trial, but not less than a
23 number well into eight figures.

24 40. As a result of Cutera's conduct, Plaintiffs have suffered and will
25 continue to suffer irreparable harm unless Defendants' conduct is enjoined and
26 restrained by this Court.

27 41. Cutera's misappropriation of Ms. Jenner's name, likeness, identity, and
28 persona, with prior knowledge of Plaintiffs' rights therein, was done with an intent

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808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

1 to injure Plaintiffs and to subject Plaintiffs to cruel and unjust hardship in conscious
2 disregard of Plaintiffs’ rights, and such acts were done willfully, maliciously, and
3 oppressively. Plaintiffs are, therefore, entitled to an additional award of punitive
4 and/or exemplary damages in an amount sufficient to punish Cutera and to deter it
5 from committing such acts in the future.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for relief as follows:

- 8 A. For a temporary restraining order, as well as preliminary and permanent
- 9 injunctive relief, prohibiting Defendants from any use of the Mark, and any use of
- 10 Kendall Jenner’s name, likeness, identity or persona;
- 11 B. For damages according to proof, but in no event less than \$10 million;
- 12 C. For disgorgement of profits under the Lanham Act and under California
- 13 law;
- 14 D. For treble damages under the Lanham Act;
- 15 E. For punitive and exemplary damages for Defendants’ violations of
- 16 Plaintiffs’ rights of publicity and their California common law trademark rights;
- 17 F. For pre-judgment and post-judgment interest according to proof;
- 18 G. For attorneys’ fees and costs of suit pursuant to 15 U.S.C. § 1117 and
- 19 any and all other sources of law; and
- 20 H. For such other relief as may be just and proper.

21
22 DATED: February 10, 2016

KINSELLA WEITZMAN ISER
KUMP & ALDISERT LLP

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25 By: /s/ Michael J. Kump
26 Michael J. Kump
27 Attorneys for Plaintiffs Kendall Jenner,
28 Inc., and Kendall Jenner

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SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

DEMAND FOR JURY TRIAL

On all issues so triable, Plaintiffs hereby demand a trial by jury.

DATED: February 10, 2016

KINSELLA WEITZMAN ISER
KUMP & ALDISERT LLP

By: /s/ Michael J. Kump
Michael J. Kump
Attorneys for Plaintiffs Kendall Jenner,
Inc., and Kendall Jenner

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TEL 310.566.9800 • FAX 310.566.9850

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EXHIBIT A

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

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