

1 BUCHALTER  
2 A Professional Corporation  
3 WILLMORE F. HOLBROW III (SBN: 169688)  
4 1000 Wilshire Boulevard, Suite 1500  
5 Los Angeles, CA 90017-2457  
6 Telephone: 213.891.0700  
7 Fax: 213.896.0400  
8 Email: wholbrow@buchalter.com

9 Attorneys for Plaintiff

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13 Lather, Inc. a California corporation

14 Plaintiff,

15 vs.

16 Gilchrist & Soames, Inc., a Delaware  
17 corporation, Celebrity Cruises Inc., a  
18 Florida corporation

19 Defendants.

Case No. \_ 2:19-cv-05868

**COMPLAINT FOR TRADEMARK  
INFRINGEMENT, FALSE  
DESIGNATION OF ORIGIN AND  
UNFAIR COMPETITION**

**[DEMAND FOR JURY TRIAL]**

20 **JURISDICTION, VENUE AND PARTIES**

21 1. This is an action for preliminary and permanent injunctive relief and  
22 for damages arising from Defendants, GILCHRIST & SOAMES, INC., a Delaware  
23 corporation and CELEBRITY CRUISES INC., a Florida corporation (hereinafter,  
24 collectively “Defendants”) of 15 U.S.C. §§1114 and 1125(a), for trademark  
25 infringement, passing off, unfair competition, for breach of contract and for relief in  
26 equity under the common law and the laws of the State of California.

27 2. This Court has jurisdiction over the subject matter of this action under  
28 28 U.S.C. §§1338(a), 1338(b), and 15 U.S.C. §1121.

1           3.     Plaintiff is a corporation organized and existing under the laws of the  
2 State of California with its principal place of business at 76 North Fair Oaks  
3 Avenue, Pasadena, California 91103.

4           4.     Plaintiff is informed and believes that at all times material hereto,  
5 Defendant Gilchrist & Soames, Inc., is a Delaware corporation with its principal  
6 place of business located 2425 E. Perry Road, Suite 150, Plainfield, IN 46168-  
7 7620.

8           5.     Plaintiff is informed and believes that at all times material hereto,  
9 Defendant Celebrity Cruises Inc., is a Florida corporation with its principal place of  
10 business located 1050 Caribbean Way, Miami, Florida 33132.

11          6.     This Court has general personal jurisdiction over Defendants, as  
12 Defendants do business in this judicial district, Defendants' conduct directly effects  
13 Plaintiff which resides in this judicial district, Defendants' direct marketing and  
14 advertising in California, and this Court has long arm jurisdiction over Defendants  
15 pursuant to California Civil Procedure §410.10 et seq.

16          7.     Venue is proper in this district under 28 U.S.C. §1391(a), in that the  
17 Defendants are subject to personal jurisdiction in this District and under 28 U.S.C.  
18 §1391(b) and (c) because a substantial part of the events giving rise to the claims  
19 occurred in this District.

20                   **FACTS COMMON TO ALL CAUSES OF ACTION**

21          8.     Plaintiff is a well-known manufacturer and distributor of skin and hair  
22 care products in this District and various other districts and is known in the  
23 marketplace as "LATHER."

24          9.     In light of its longstanding use of LATHER as a trademark ("LATHER  
25 Mark"), on a wide array of hair and skin care products, since at least as early as  
26 1999, Plaintiff has created a significant amount of goodwill and consumer  
27 recognition in the LATHER Mark.

28

1           10. Plaintiff is also the owner of U.S. Trademark Registration Nos.  
2 2553156 registered on March 26, 2002, 2712854 registered on May 6, 2003,  
3 2861919 registered on July 13, 2004, 3022811 registered on December 6, 2005,  
4 3604777 registered on April 14, 2009, for the LATHER Mark for use on a variety  
5 of goods and services, primarily non-medicated skin care preparations; hair care  
6 preparations, hair shampoos and conditioners, hair gels, skin soaps, skin lotions,  
7 skin masks, skin moisturizers, skin cleansers, hair lotions, sun care lotions,  
8 sunscreens, skin creams, hair styling creams, skin toners, non-medicated lip balms,  
9 bath lotions, bath oils, essential oils for personal use, aromatherapy oils.

10           11. The LATHER Mark is incontestable pursuant to 15 U.S.C. §1065.

11           12. Plaintiff, many years ago, and well before Defendants' conduct  
12 complained of herein, began using the term LATHER to refer to its products  
13 featuring the LATHER Mark, creating an association, in the minds of purchasers,  
14 between Plaintiff and the LATHER Mark.

15           13. Defendant GILCHRIST & SOAMES is marketing and selling skin and  
16 hair shampoo featuring the LATHER Mark (See photographs attached as Exhibit A,  
17 hereinafter referred to as the "Infringing Products".) Defendant markets its goods  
18 through the same or similar channels as Plaintiff markets its goods.

19           14. Defendant GILCHRIST & SOAMES is supplying the Infringing  
20 Products to Defendant CELEBRITY CRUISES, which in turn provides such  
21 products to customers.

22           15. Defendant CELEBRITY CRUISES was well aware of Plaintiff's  
23 rights in the LATHER Mark, as it has engaged Plaintiff, more than once, to pitch it  
24 with packaging and design concepts for hair care and skin products, since as early  
25 as 2014.

26           16. Defendant GILCHRIST & SOAMES was also well aware of Plaintiff's  
27 rights in the LATHER Mark. In fact in 2005, Plaintiff discovered that Defendant  
28 GILCHRIST & SOAMES was using Plaintiff's mark on a hair care product it sold

1 to various third-party establishments. In view of Plaintiff's demands, Defendant  
2 GILCHRIST & SOAMES agreed in writing that it would cease from and not  
3 recommence selling products bearing the LATHER Mark, after it exhausted its  
4 limited inventory of products.

5 17. Defendants' use in commerce of the LATHER Mark is causing and is  
6 likely to continue to cause confusion, deception and mistake in the minds of the  
7 public with respect to the origin and source of the products.

8 18. Defendants' goods, which feature the LATHER Mark, are such that  
9 prospective purchasers or consumers of the goods of Defendants and the goods of  
10 Plaintiff, have been confused as to source.

11 19. Plaintiff is informed and believes that Defendants deliberately  
12 misappropriated Plaintiff's LATHER Mark in order to trade upon the goodwill  
13 which Plaintiff has developed in connection therewith, and to lead customers to  
14 believe that Plaintiff is the source of such products and services, which in fact do  
15 not originate with Plaintiff and are not sponsored by, or affiliated with Plaintiff.  
16 Defendants intentionally and knowingly misappropriated Plaintiff's LATHER Mark  
17 with oppression, fraud and malice.

18 **FIRST CAUSE OF ACTION**

19 **FEDERAL TRADEMARK INFRINGEMENT**

20 20. Plaintiff realleges and incorporates herein by reference paragraphs 1 to  
21 19 above.

22 21. Defendants' continued and unauthorized use of the LATHER Mark  
23 constitutes trademark infringement under 15 U.S.C. §1114.

24 22. Defendants' wrongful use in commerce of the LATHER Mark is likely  
25 to (i) cause confusion and mistake in the minds of the public with respect to the  
26 origin, affiliation, and source of Defendants' products and (ii) to deceive purchasers  
27 and users of such products into believing that Plaintiff controls the quality thereof  
28 and endorses the same.

1 23. Defendants' acts of trademark infringement are willful and have been  
2 committed with the intent to cause confusion, mistake, and deception.

3 24. As a direct and proximate result of Defendants' wrongful acts, Plaintiff  
4 has suffered and continues to suffer lost profits and damages to its business  
5 reputation and goodwill. Defendants will continue, unless restrained, to use  
6 Plaintiff's trademark and will cause irreparable damage to Plaintiff. Plaintiff has no  
7 adequate remedy at law. Plaintiff is entitled to an injunction restraining  
8 Defendants, its officers, agents and employees, and all persons acting in concert  
9 with them, from engaging in further acts of trademark infringement.

10 25. Plaintiff is further entitled to recover from Defendants, damages  
11 sustained by Plaintiff as a result of Defendants' wrongful acts. Plaintiff is presently  
12 unable to ascertain the full extent of the monetary damages it has suffered by reason  
13 of Defendants' acts of trademark infringement.

14 26. Plaintiff is further entitled to recover from Defendants the gains,  
15 profits and advantages Defendants have obtained as a result of its wrongful acts.  
16 Plaintiff is presently unable to ascertain the full extent of the gains, profits and  
17 advantages Defendants have realized by reason of its acts of trademark  
18 infringement.

19 **SECOND CAUSE OF ACTION**

20 **FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))**

21 27. Plaintiff realleges and hereby incorporates by reference paragraphs 1  
22 to 26 above.

23 28. Defendants' actions constitute a false designation of origin in violation  
24 of 15 U.S.C. §1125(a).

25 29. As a direct and proximate result of Defendants' wrongful acts, Plaintiff  
26 has suffered and continues to suffer lost profits and damages to its business  
27 reputation and goodwill. Defendants will continue, unless restrained, to use marks  
28 confusingly similar to Plaintiff's LATHER Mark and will cause irreparable damage

1 to Plaintiff. Plaintiff has no adequate remedy at law. Plaintiff is entitled to an  
2 injunction restraining Defendants, their officers, agents and employees, and all  
3 persons acting in concert with them, from engaging in further acts of false  
4 designation of origin.

5 30. Plaintiff is further entitled to recover from Defendants damages  
6 sustained by Plaintiff as a result of Defendants' wrongful acts. Plaintiff is presently  
7 unable to ascertain the full extent of the monetary damages they have suffered by  
8 reason of Defendants' acts of false designation of origin.

9 31. Plaintiff is further entitled to recover from Defendants the gains,  
10 profits and advantages Defendants have obtained as a result of its wrongful acts.  
11 Plaintiff is presently unable to ascertain the full extent of the gains, profits and  
12 advantages Defendants have realized by reason of its acts of false designation of  
13 origin.

14 **THIRD CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 32. Plaintiff hereby incorporates by reference paragraphs 1 to 31 above.

17 33. Defendants' actions constitute unfair competition under the common  
18 law.

19 34. As a direct and proximate result of Defendants' wrongful acts, Plaintiff  
20 has suffered and continues to suffer lost profits and damages to its business  
21 reputation and goodwill. Defendants will continue, unless restrained, to use  
22 Plaintiff's LATHER Mark and will cause irreparable damage to Plaintiff. Plaintiff  
23 has no adequate remedy at law. Plaintiff is entitled to an injunction restraining  
24 Defendant, its officers, agents and employees, and all persons acting in concert with  
25 them from engaging in further acts of unfair competition.

26 35. Plaintiff is further entitled to recover from Defendants damages  
27 sustained by Plaintiff as a result of Defendants' wrongful acts. Plaintiff is presently  
28 unable to ascertain the full extent of the monetary damages it has suffered by reason

1 of Defendants' acts of unfair competition.

2 36. Plaintiff is further entitled to recover from Defendants the gains,  
3 profits and advantages Defendants have obtained as a result of its wrongful acts.  
4 Plaintiff is presently unable to ascertain the full extent of the gains, profits and  
5 advantages Defendants have realized by reason of its acts of unfair competition.

6 37. Defendants have engaged in such misconduct with a conscious,  
7 deliberate, intentional and/or reckless disregard of the rights of Plaintiff and the  
8 public; Plaintiff is therefore entitled to punitive damages to deter Defendant and  
9 others from again engaging in such misconduct in an amount to be established at  
10 trial.

11 **PRAYER FOR RELIEF**

12  
13 WHEREFORE, Plaintiff prays that this Court enter judgment as follows:

14 1. Finding that Defendants have violated 15 U.S.C. §1114, 15 U.S.C.  
15 §1125(a), and the common law, has infringed Plaintiff's LATHER Mark, have  
16 unfairly competed with Plaintiff by falsely designating the origin of its products and  
17 has engaged in other acts of unfair competition;

18 2. Ordering that Defendants and their officers, agents, servants, employees  
19 and attorneys and all persons in active concert or participation with any of the  
20 foregoing, be enjoined preliminarily during the pendency of this action and  
21 permanently thereafter from:

22 a. Offering for sale, soliciting sales, or selling any products in any  
23 product under any mark, name, symbol, logo, or other indicia that  
24 incorporates or is confusingly similar to Plaintiff's LATHER Mark;

25 b. Offering for sale, soliciting sales, or selling any hair and  
26 skincare related-products in any medium, under any mark, name, symbol,  
27 logo, or other indicia which is likely to cause confusion or to cause mistake  
28 or to deceive persons into the erroneous belief that Defendants' products or



1 services originate from Plaintiff, or that Defendants or their agents are  
2 authorized by Plaintiff or are endorsed by Plaintiff or are sponsored by  
3 Plaintiff, or are connected in some way with Plaintiff or Plaintiff's LATHER  
4 Mark;

5 c. Using false designations or from engaging in any act or series of  
6 acts which, either alone or in combination, constitutes deceptive or unfair  
7 methods of competition with Plaintiff and from otherwise interfering with, or  
8 injuring Plaintiff's trademark or the goodwill associated therewith;

9 d. Infringing upon the LATHER Mark;

10 e. Unfairly competing with Plaintiff in any manner whatsoever;

11 4. Ordering that Plaintiff is the exclusive owner of the LATHER Mark  
12 and that such mark is valid and enforceable;

13 5. Ordering that Defendant deliver to Plaintiff for destruction all signs,  
14 products, advertisements, literature, and any other promotional material, which  
15 feature the LATHER Mark or any other trademarks confusingly similar to  
16 Plaintiff's mark;

17 6. Ordering that Defendants account to Plaintiff for, and disgorge, all  
18 profits Defendants have derived by reason of the wrongful acts described above,  
19 including without limitation the revenue/profits realized from using, benefitting  
20 from or selling products bearing the LATHER Mark;

21 7. Granting an award of damages suffered by Plaintiff according to proof  
22 at the time of trial herein, and an accounting of Defendant's profits as a result of  
23 Defendant's aforesaid acts of infringement in violation of Plaintiff's rights under the  
24 Lanham Act;

25 8. Granting an award of three times the amount of compensatory  
26 damages and profits pursuant to 15 U.S.C. §1117 and punitive damages in an  
27 amount to be established at trial;  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

9. Ordering that Defendants pay Plaintiff reasonable attorney's fees, prejudgment interest, and costs of this action under 15 U.S.C. §1117, and other and further legal and equitable relief as is just and proper;

10. Ordering that Defendants be directed under 15 U.S.C. §1116 to file with the Court and serve upon Plaintiff within thirty (30) days after the issuance of any injunction a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the injunction; and

11. Granting an award of Plaintiff's costs, expenses and reasonable attorneys' fees and other and further relief as is just and proper.

Dated: July 8, 2019

/s/ Willmore F. Holbrow, III  
Willmore F. Holbrow, III  
BUCHALTER  
Attorneys for Plaintiff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury of all claims triable by jury.

DATED: July 8, 2019\_

BUCHALTER  
A Professional Corporation

By: /s/Willmore F. Holbrow, III  
WILLMORE F. HOLBROW III  
Attorneys for Plaintiff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

