

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SOL DE JANEIRO USA, INC. and
SOL DE JANEIRO IP, INC.,

Plaintiffs,

V.

MCOBEAUTY PTY LTD, MCOBEAUTY,
INC., DBG HEALTH PTY LTD,
VIDACORP PTY LTD,

Defendants.

Civil Action No. 1:24-cv-08862-ER

X

DEFENDANT MCOBEAUTY, INC.'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant MCoBeauty, Inc. (“MCoBeauty Inc.” or “Defendant”), by and through its undersigned counsel, Answers the Complaint of Plaintiffs Sol de Janeiro USA, Inc., and Sol de Janeiro IP, Inc. (together, “Plaintiffs”) as follows:

INTRODUCTION

The “Introduction” unnumbered paragraphs found before the first numbered paragraph of the Complaint constitute introductory material to which no response is required and should be disregarded and/or stricken. To the extent a response is required, those paragraphs are denied.

ALLEGED PARTIES

1. Defendant is without knowledge or information sufficient to admit or deny the allegations set forth in paragraph 1 of the Complaint, and therefore denies those allegations.
2. Defendant is without knowledge or information sufficient to admit or deny the allegations set forth in paragraph 2 of the Complaint, and therefore denies those allegations.
3. Defendant admits that MCoBeauty Pty Ltd is an Australian corporation having a regular place of business at Level 9, 10 Bridge Street, Sydney NSW 200, Australia. Except as expressly admitted, Defendant denies the allegations set forth in paragraph 3 of the Complaint.
4. Defendant admits the allegations set forth in Paragraph 4 of the Complaint.

5. Defendant admits that DBG Healthy Pty Ltd is an Australian corporation. Except as expressly admitted, Defendant denies the allegations set forth in paragraph 5 of the Complaint.

6. Defendant admits that VidaCorp Pty Ltd is an Australian corporation. Except as expressly admitted, Defendant denies the allegations set forth in paragraph 6 of the Complaint.

ALLEGED JURISDICTION AND VENUE

7. Defendant admits that this Court has personal jurisdiction over MCoBeauty Inc. Except as expressly admitted, Defendant denies the allegations set forth in paragraph 7 of the Complaint.

8. Defendant admits that this Court has personal jurisdiction over MCoBeauty Inc. and that MCoBeauty Inc. has a place of business at 50 Rockefeller Plaza, Level 12, Suite A, New York, NY 10020. Except as expressly admitted, Defendant denies the allegations set forth in paragraph 8 of the Complaint.

9. Defendant admits the allegations set forth in Paragraph 9 of the Complaint.

10. Defendant admits the allegations set forth in Paragraph 10 of the Complaint.

ALLEGED FACTS

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint, and therefore denies those allegations.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint, and therefore denies those allegations.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint, and therefore denies those allegations.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint, and therefore denies those allegations.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint, and therefore denies those allegations.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint, and therefore denies those allegations.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint, and therefore denies those allegations.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint, and therefore denies those allegations.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint, and therefore denies those allegations.

20. Defendant admits that Sol de Janeiro's products include Cheirosa Body Mist Products. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 20 of the Complaint, and therefore denies those allegations.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of the Complaint, and therefore denies those allegations.

22. Defendant denies the allegations set forth in paragraph 22 of the Complaint.

23. Defendant denies the allegations set forth in paragraph 23 of the Complaint.

24. Defendant denies the allegations set forth in paragraph 24 of the Complaint.

25. Defendant denies the allegations set forth in paragraph 25 of the Complaint.

26. Defendant denies the allegations set forth in paragraph 26 of the Complaint.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 of the Complaint, and therefore denies those allegations.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28 of the Complaint, and therefore denies those allegations.

29. Defendant denies the allegations set forth in paragraph 29 of the Complaint.

30. Defendant denies the allegations set forth in paragraph 30 of the Complaint.

31. Defendant denies the allegations set forth in paragraph 31 of the Complaint.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 32 of the Complaint, and therefore denies those allegations.

33. Defendant denies the allegations set forth in the first sentence of paragraph 33 of the Complaint. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second sentence of paragraph 33 of the Complaint, and therefore denies those allegations.

34. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 34 of the Complaint, and therefore denies those allegations.

35. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 35 of the Complaint, and therefore denies those allegations.

36. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 36 of the Complaint, and therefore denies those allegations.

37. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 37 of the Complaint, and therefore denies those allegations.

38. Defendant denies the allegations set forth in paragraph 38 of the Complaint.

39. Defendant denies the allegations set forth in paragraph 39 of the Complaint.

40. Defendant admits that McoBeauty Inc. is a beauty brand. Except as expressly admitted, Defendant denies the allegations set forth in paragraph 40 of the Complaint.

41. Defendant admits that as part of its marketing strategy, MCoBeauty Inc. posts pictures and videos. Except as expressly admitted, Defendant denies the allegations set forth in paragraph 41 of the Complaint.

42. Defendant admits that MCoBeauty Inc. works with third parties as part of its marketing strategy. Except as expressly admitted, Defendant denies the allegations set forth in paragraph 42 of the Complaint.

43. The referenced website speaks for itself; to the extent not expressly describing the referenced website, Defendant denies the allegations set forth in paragraph 43 of the Complaint.

44. Defendant denies the allegations set forth in paragraph 44 of the Complaint.

45. Defendant denies the allegations set forth in paragraph 45 of the Complaint.

46. Defendant denies the allegations set forth in paragraph 46 of the Complaint.

47. Defendant denies the allegations set forth in paragraph 47 of the Complaint.

48. Defendant denies the allegations set forth in paragraph 48 of the Complaint.

49. Defendant denies the allegations set forth in paragraph 49 of the Complaint.

50. Defendant denies the allegations set forth in paragraph 50 of the Complaint.

51. Defendant denies the allegations set forth in paragraph 51 of the Complaint.

52. Defendant denies the allegations set forth in paragraph 52 of the Complaint.

53. Defendant denies the allegations set forth in the first sentence of Paragraph 53 of the Complaint. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second sentence of paragraph 53 of the Complaint, and therefore denies those allegations. The referenced ad in the third sentence of Paragraph 53 of the Complaint speaks for itself; to the extent not expressly describing the referenced ad, Defendant denies the allegations set forth in the third sentence of paragraph 53 of the Complaint.

54. The referenced ad in paragraph 54 of the Complaint speaks for itself; to the extent not expressly describing the referenced ad, Defendant denies the allegations set forth in paragraph 54 of the Complaint.

55. The referenced ad in paragraph 55 of the Complaint speaks for itself; to the extent not expressly describing the referenced ad, Defendant denies the allegations set forth in paragraph 55 of the Complaint.

56. The referenced ad in paragraph 56 of the Complaint speaks for itself; to the extent not expressly describing the referenced ad, Defendant denies the allegations set forth in paragraph 56 of the Complaint.

57. Defendant denies the allegations set forth in paragraph 57 of the Complaint.

58. The referenced exhibit speaks for itself; to the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 58 of the Complaint, and therefore denies those allegations.

59. Defendant denies the allegations set forth in paragraph 59 of the Complaint.

60. The referenced Instagram post in paragraph 60 of the Complaint speaks for itself; to the extent not expressly describing the referenced Instagram post, Defendant denies the allegations set forth in paragraph 60 of the Complaint.

61. Defendant denies the allegations set forth in paragraph 61 of the Complaint.

62. Defendant denies the allegations set forth in paragraph 62 of the Complaint.

63. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 63 of the Complaint, and therefore denies those allegations.

64. The referenced post in paragraph 64 of the Complaint speaks for itself; to the extent not expressly describing the referenced post, Defendant denies the allegations set forth in paragraph 64 of the Complaint.

65. The referenced exhibit speaks for itself; to the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 65 of the Complaint, and therefore denies those allegations.

66. Defendant denies the allegations set forth in paragraph 66 of the Complaint.

67. The referenced exhibit speaks for itself; to the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 67 of the Complaint, and therefore denies those allegations.

68. The referenced post in paragraph 68 of the Complaint speaks for itself; to the extent not expressly describing the referenced post, Defendant denies the allegations set forth in paragraph 68 of the Complaint.

69. Defendant denies the allegations set forth in paragraph 69 of the Complaint.

70. The referenced post in paragraph 70 of the Complaint speaks for itself; to the extent not expressly describing the referenced post, Defendant denies the allegations set forth in paragraph 70 of the Complaint.

71. Defendant denies the allegations set forth in paragraph 71 of the Complaint.

72. Defendant denies the allegations set forth in the first sentence of paragraph 72 of the Complaint. The second sentence of paragraph 72 of the Complaint contains legal conclusions to which no response is required; to the extent a response is required, Defendant denies the allegations set forth in the second sentence of paragraph 72 of the Complaint.

73. Defendant denies the allegations set forth in paragraph 73 of the Complaint.

74. The referenced Instagram post in paragraph 74 of the Complaint speaks for itself; to the extent not expressly describing the referenced post, Defendant denies the allegations set forth in paragraph 74 of the Complaint.

75. Defendant denies the allegations set forth in paragraph 75 of the Complaint.

76. Defendant denies the allegations set forth in paragraph 76 of the Complaint.

77. Defendant denies the allegations set forth in paragraph 77 of the Complaint.

78. Defendant denies the allegations set forth in paragraph 78 of the Complaint.

79. The referenced reviews in paragraph 79 of the Complaint speaks for themselves; to the extent not expressly describing the referenced post, Defendant denies the allegations set forth in paragraph 79 of the Complaint.

80. The website referenced in paragraph 80 of the Complaint speaks for itself; to the extent not expressly describing the referenced website, Defendant MCoBeauty Inc. admits that it has a “review team” that monitors product reviews on the website and otherwise denies the allegations set forth in Paragraph 80.

81. Defendant denies the allegations set forth in paragraph 81 of the Complaint.

82. Defendant denies the allegations set forth in paragraph 82 of the Complaint.

83. Defendant denies the allegations set forth in paragraph 83 of the Complaint.

84. The photographs included in paragraph 84 of the Complaint speak for themselves.

Defendant otherwise denies the allegations set forth in paragraph 84 of the Complaint.

85. Defendant denies the allegations set forth in paragraph 85 of the Complaint.

86. The photographs included in paragraph 86 of the Complaint speak for themselves.

Defendant otherwise denies the allegations set forth in paragraph 86 of the Complaint.

87. Defendant denies the allegations set forth in paragraph 87 of the Complaint.

88. Defendant admits that MCoBeauty Inc. offers for sale in the U.S. Fragrance No. 1, No. 2, No. 3 and No. 4.

89. The referenced exhibit speaks for itself; to the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 89 of the Complaint, and therefore denies those allegations.

90. Defendant denies the allegations set forth in paragraph 90 of the Complaint.

91. The referenced website in paragraph 91 of the Complaint speaks for itself. Defendant otherwise denies the allegations set forth in paragraph 91 of the Complaint.

92. Defendant denies the allegations set forth in paragraph 92 of the Complaint.

93. Defendant denies the allegations set forth in paragraph 93 of the Complaint.

94. Defendant denies the allegations set forth in paragraph 94 of the Complaint.

95. Defendant denies the allegations set forth in paragraph 95 of the Complaint.

96. Defendant denies the allegations set forth in paragraph 96 of the Complaint.

97. The referenced communications described in paragraph 97 of the Complaint speak for themselves. To the extent not expressly describing the referenced communications, Defendant denies the allegations set forth in paragraph 97 of the Complaint.

- 98. Defendant denies the allegations set forth in paragraph 98 of the Complaint.
- 99. Defendant denies the allegations set forth in paragraph 99 of the Complaint.
- 100. Defendant denies the allegations set forth in paragraph 100 of the Complaint.
- 101. Defendant denies the allegations set forth in paragraph 101 of the Complaint.

COUNT 1

102. Defendant incorporates each of the foregoing paragraphs as though fully set forth herein.

- 103. Defendant denies the allegations set forth in paragraph 103 of the Complaint.
- 104. Defendant denies the allegations set forth in paragraph 104 of the Complaint.
- 105. Defendant denies the allegations set forth in paragraph 105 of the Complaint.
- 106. Defendant denies the allegations set forth in paragraph 106 of the Complaint.
- 107. Defendant denies the allegations set forth in paragraph 107 of the Complaint.
- 108. Defendant denies the allegations set forth in paragraph 108 of the Complaint.

COUNT 2

109. Defendant incorporates each of the foregoing paragraphs as though fully set forth herein.

- 110. Defendant denies the allegations set forth in paragraph 110 of the Complaint.
- 111. Defendant denies the allegations set forth in paragraph 111 of the Complaint.
- 112. Defendant denies the allegations set forth in paragraph 112 of the Complaint.
- 113. Defendant denies the allegations set forth in paragraph 113 of the Complaint.

COUNT 3

114. Defendant incorporates each of the foregoing paragraphs as though fully set forth herein.

- 115. Defendant denies the allegations set forth in paragraph 115 of the Complaint.

116. Defendant denies the allegations set forth in paragraph 116 of the Complaint.

117. Defendant denies the allegations set forth in paragraph 117 of the Complaint.

118. Defendant denies the allegations set forth in paragraph 118 of the Complaint.

119. Defendant denies the allegations set forth in paragraph 119 of the Complaint.

RELIEF REQUESTED

Defendant denies that Plaintiffs are entitled to any relief for the allegations and claims made in the Complaint, including each prayer for relief in subsections A-I of the “Prayer for Relief” paragraph.

DEFENSES AND AFFIRMATIVE DEFENSES

Defendant asserts the following defenses without assuming the burden of proof where such burden is lawfully borne by Plaintiffs as a matter of law. Defendant reserves the right to withdraw, amend and/or supplement its defenses, including without limitation based upon information learned through investigation or the discovery process, or as otherwise warranted.

FIRST AFFIRMATIVE DEFENSE (Failure to State a Cause of Action)

The Complaint and each cause of action contained therein fails to state a claim upon which relief may be granted. The Complaint is legally and factually insufficient and must be dismissed.

**SECOND AFFIRMATIVE DEFENSE
(Trade Dress Invalidity)**

The purported unregistered trade dress at issue in the Complaint is invalid and unenforceable.

**THIRD AFFIRMATIVE DEFENSE
(No Identifier of Origin)**

Plaintiffs have no valid, protectible trade dress or origin-identifiers in the purported trade dress at issue in the Complaint.

**FOURTH AFFIRMATIVE DEFENSE
(Ornamental, Decorative and/or Informational)**

Plaintiffs have no valid, protectible trade dress in the packaging features Plaintiffs identified in the Complaint because they are ornamental, decorative, and/or informational.

**FIFTH AFFIRMATIVE DEFENSE
(Functional)**

Plaintiffs' claims are barred, in whole or in part, on the basis that the purported trade dress at issue in the Complaint, and the use of the purported trade dress, is functional.

**SIXTH AFFIRMATIVE DEFENSE
(Non-Distinctive)**

Plaintiffs' claims are barred, in whole or in part, on the basis that the purported trade dress at issue in the Complaint lacks distinctiveness, including without limitation, inherent distinctiveness or secondary meaning.

**SEVENTH AFFIRMATIVE DEFENSE
(Generic)**

Plaintiffs' claims are barred, in whole or in part, on the basis that the purported trade dress at issue in the Complaint is generic.

**EIGHTH AFFIRMATIVE DEFENSE
(No Infringement)**

Plaintiffs' claims are barred, in whole or in part, on the basis that Defendant did not and does not infringe Plaintiffs' purported trade dress rights as alleged in the Complaint.

**NINTH AFFIRMATIVE DEFENSE
(No Likelihood of Confusion)**

Plaintiffs' claims are barred, in whole or in part, on the basis that Plaintiffs are unable to establish likelihood of confusion.

**TENTH AFFIRMATIVE DEFENSE
(Puffery, Subjective Opinions and/or Exaggerated Claims)**

Plaintiffs' claims are barred, in whole or in part, on the basis that the alleged statements which constitute false advertising and/or unfair competition are puffery, subjective opinions, and/or exaggerated claims which no reasonable consumer would rely upon and/or proven false.

**ELEVENTH AFFIRMATIVE DEFENSE
(Fair Use)**

Plaintiffs' claims are barred, in whole or in part, on the basis of the fair use doctrine.

**TWELFTH AFFIRMATIVE DEFENSE
(Truthfulness/Non-Misleading)**

Plaintiffs' claims seeking equitable relief are barred, in whole or in part, on the basis that the alleged statements which constitute false advertising and/or unfair competition are truthful and/or not misleading or confusing to consumers.

**THIRTEENTH AFFIRMATIVE DEFENSE
(Materiality)**

Plaintiffs' claims are barred, in whole or in part, on the basis that the alleged statements which constitute false advertising and/or unfair competition are not material and/or do not relate to an inherent quality or characteristic of the products at issue that would affect a consumer's purchasing decision.

**FOURTEENTH AFFIRMATIVE DEFENSE
(No Irreparable Harm)**

Plaintiffs' claims seeking equitable relief are barred, in whole or in part, on the basis that Plaintiffs did not suffer any irreparable harm as a result of Defendant's alleged conduct.

**FIFTEENTH AFFIRMATIVE DEFENSE
(No Willful Infringement)**

Plaintiffs' claims seeking enhanced damages and an award of fees and costs against Defendant have no basis in fact or law and should be denied.

**SIXTEENTH AFFIRMATIVE DEFENSE
(No Damages)**

Plaintiffs' claims, and the relief sought, are barred, in whole or in part, on the basis that Plaintiffs have not incurred damages in any amount or manner by reason of any act alleged against Defendant.

**SEVENTEENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)**

Plaintiffs' claims are barred, in whole or in part, on the basis that Plaintiff failed to mitigate its damages.

Dated: January 28, 2025

POLSINELLI PC

By: /s/ Michelle G. Bernstein

Michelle G. Bernstein

New York Bar No. 4905147

215 S Biscayne Blvd, Suite 400

Miami, FL 33131

(212) 413-2848

mbernstein@polsinelli.com

cmoreno@polsinelli.com

Daniel P. Mullarkey
(*Pro hac vice application forthcoming*)
1401 Eye (“I”) Street, N.W., Suite 800
Washington, D.C. 20005
(202) 626-8035
dmullarkey@polsinelli.com

John C. Cleary
600 Third Avenue, 42nd Floor
New York, NY 10016
(212) 413-2837
john.cleary@polsinelli.com

Attorneys for Defendant MCoBeauty, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed with the Clerk of the Court on January 28, 2025 using the CM/ECF System, which will send notification of such filing to all registered ECF users, including all attorneys of record.

By: s/ Michelle G. Bernstein
Michelle G. Bernstein