

HON. RICARDO S. MARTINEZ



10-CV-00861-PRO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington Corporation,

Plaintiff,

Case No. 2:10-cv-00861 RSM

vs.

LETTER OF REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE PURSUANT TO THE HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE IN CIVIL OR COMMERCIAL MATTERS

KNITTING FEVER, INC., a New York Corporation, DESIGNER YARNS, LTD., a corporation of England, FILATURA PETTINATA V.V.G. DI STEFANO VACCARI & C. (S.A.S.), and entity organized or existing under the laws of Italy, SION ELALOUF, an individual, DIANE ELALOUF, an individual, JAY OPPERMAN, an individual, DEBBIE BLISS, an individual, DAVID WATT, an individual and DOES 1-50,

Defendant.

TO: Foreign and Commonwealth Office
Clive House Petty France
London SW1, England, U.K.

FROM: The United States District Court
Western District of Washington
700 Stewart Street
Seattle, WA 98101

1 PERSON TO WHOM THIS REQUEST FOR EVIDENCE IS DIRECTED:

2 SGS Cashmere Labs
3 SGS United Kingdom Ltd.
4 Unit 73, Warfield Road
5 Kellythorpe Industrial Estate
6 Drifffield, East Yorkshire
7 YO25 9DJ, United Kingdom

8 Please return the evidence directly to the attention of the requesting court.

9 I. Names and Addresses of the Parties and Their Representatives

10 Plaintiff
11 Cascade Yarns, Inc.
12 1224 Andover Park East
13 Tukwila, WA 98188

Counsel for Plaintiff
Robert J. Guite, Esq.
Squire, Sanders & Dempsey L.L.P.
275 Battery Street, Suite 2600
San Francisco, CA 94111

14 Defendants
15 Knitting Fever, Inc.
16 315 Bayview Avenue
17 P.O. Box 336
18 Amityville, NY 11701-2801

Counsel for All Defendants
Joshua R. Slavitt, Esq.
Pepper Hamilton LLP
3000 Two Logan Square
Philadelphia, PA 19102

19 Designer Yarns, Ltd.
20 Unit 8-10 Newbridge Industrial Estate, Pitt Street
21 Keighley, West Yorkshire
22 United Kingdom BD21 4PQ

Counsel for All Defendants
Warren J. Rheume, Esq.
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101

23 Filatura Pettinata V.V.G. Di Stefano Vaccari & C. (S.A.S.)
24 11 Vin Giannasso
25 13871 Benna (Bi) Italia

26 Sion Elalouf
22 Longwood Road
Port Washington, NY 11050-1260

Diane Elalouf
22 Longwood Road
Port Washington, NY 11050-1260

Jay Opperman
78 Clinton Avenue
Montclair, NJ 07042-2116

1 Debbie Bliss
9 Folkestone Road
2 Walthamstow, London
United Kingdom E17 9SD

3 David Watt
Designer Yarns, Ltd.
4 Unit 8-10 Newbridge Industrial Estate, Pitt Street
Keighley, West Yorkshire
5 United Kingdom BD21 4PQ

6 **II. Summary of the Case**

7 This is a civil action arising under: (a) the United States Trademark Act of 1946, as
8 amended, 15 U.S.C. § 1051, *et seq.* (“Lanham Act”); (b) the Racketeer Influenced And Corrupt
9 Organization Act, 28 U.S.C. § 1964 *et seq.* (“RICO”); and (c) RCW 19.86, for unfair competition
10 and false advertising. Cascade is one of the nation’s finest purveyors of yarns and sells its
11 products through specialty retailers and boutiques throughout the United States. Cascade’s
12 products include many yarns containing wool and natural fibers including kid mohair, silk and
13 cashmere. Cascade extensively promotes its trade name and products.

14 KFI imports and distributes a variety of hand knitting yarns generally identified as its
15 *Cashmerino* lines. The labels and marketing materials for KFI’s *Cashmerino* yarns, marketed
16 under various trade names including Sirdar, Debbie Bliss and Elsebeth Lavold, provide that the
17 products contain 12% cashmere 55% merino wool and 33% acrylic. Contrary to the labels, and
18 contrary to the WPLA, independent testing completed in 2006 confirmed that these yarns did not
19 contain the fibers listed on their labels. The testing revealed that the yarns contained no cashmere
20 or considerably less cashmere than as represented on the labels.

21 Following this testing, KFI provided written statements that its products were then
22 accurately labeled but also admitted that it had earlier imported and sold yarn that did not contain
23 cashmere -- contrary to the product labels. Indeed, KFI and its supplier corresponded regarding
24 the lack of cashmere in the yarns and KFI’s supplier (defendant Filatura Pettinata V.V.G. Di
25 Stefano Vaccari & C. (“VVG”)) wrote to KFI to suggest “alternative” approaches. VVG
26

1 recognized that the absence of cashmere could be “quite dangerous” and suggested that KFI “try
2 stopping the rumors.” VVG further wrote:

- 3 a) we continue so as done so far if we think that the risks are not too big;
4 b) we stop using this kind of blend;
5 c) we change the blend and use the best possible cashmere quality, which will be
6 easier to find in case of lab checks. Of course, the price would change.

7 Also included with VVG’s correspondence were test reports from a laboratory in Italy
8 confirming that no more than 6.4% cashmere was found in any of the samples tested. On July 20,
9 2006, KFI issued a three-page letter addressing the lack of cashmere in its *Cashmerino* yarns. In
10 that letter, KFI asserted that the yarns contained cashmere; KFI did not provide a separate
11 guaranty or a continuing guaranty pursuant to section 68g of the WPLA. Tellingly, KFI issued
12 letters to its customers purportedly affirming the accuracy of its labels but did not issue any
13 continuing guaranty under section 68g of the Act. Contrary to these assertions, test results of the
14 *Cashmerino* yarns obtained during this time, and confirmed by a second independent laboratory,
15 show that the *Cashmerino* yarns contained 57% wool and 43% acrylic.

16 KFI’s prices for its *Cashmerino* yarns are commensurate with the prices of competing
17 yarns, including Cascade’s yarns, that actually contain the fibers identified on their labels. Thus,
18 KFI’s profit margin on its *Cashmerino* is many times greater than it would be if it had included
19 the more expensive cashmere fibers in its products. KFI’s sale and marketing of its products as
20 labeled is misleading and causes customer confusion and damage to Cascade. Such harm
21 includes, but is not limited to: (i) unfair competition and violation of the WPLA; (ii) damages to
22 Cascade’s reputation and goodwill; (iii) diminution in the market value and acceptance of
23 Cascade’s wool and cashmere yarns; and (iv) damage to Cascade’s reputation in that KFI’s
24 inferior product may be confused with Cascade’s product that actually contains a similar
25 percentage of cashmere to the content represented on KFI’s labels thereby causing further harm to
26 Cascade.

1 KFI is attempting hide the fact that its yarns do not contain the labeled quantities of
2 cashmere and wool in order to unfairly compete with hand knitting yarns that are accurately
3 labeled, including Cascade's products. Of course, if the products were accurately labeled they
4 would also sell for a much lower price; KFI charges a higher price for the *Cashmerino* yarns
5 because they purport to contain cashmere. KFI's marketing, sale and promotion of its products
6 including those marketed under its Sirdar, Debbie Bliss and Elsebeth Lavold brands is
7 inconsistent with the labeling requirements of the WPLA and with the reasonable expectations of
8 retailers and consumers purchasing wool yarns.

9 In reliance upon the Defendants' representations made in the Fall of 2006 regarding the
10 accuracy of KFI's labels, Cascade took no further immediate actions in 2006. Nevertheless,
11 Cascade's lingering concerns remained. In 2010, it commissioned fiber tests of certain of KFI's
12 yarns. Independent testing of the subject yarns -- and other KFI yarns -- was conducted in 2010
13 and again confirmed that the KFI yarns did not contain the fiber content identified on their labels.
14 For example, the *Cashmerino* yarns contained no cashmere at all -- or if they did that they
15 contained 10% to 50% of the amounts listed on the labels. In addition, KFI has been sued by one
16 of its customers for breach of warranty and other causes of action arising out of the mislabeled
17 *Cashmerino* yarns. A motion for summary judgment against KFI in that matter is presently
18 pending. Testing conducted by plaintiff in that matter similarly confirms that the misbranding
19 and mislabeling is ongoing. Testing of samples of *Cashmerino Baby* yarn offered to customers
20 by KFI at a national trade show held June 12-14, 2010 confirms that the yarn presently being sold
21 contains *no cashmere*, although its label purports that it contains 12% cashmere.

22 In July 2010, Cascade moved for a preliminary injunction asking that KFI be enjoined
23 from selling improperly labeled yarns. Cascade sought a preliminary injunction pursuant to 15
24 U.S.C. § 1116 restraining KFI, its officers, directors, agents, servants, employees and all persons
25 in active concert or participation with it who receive actual notice of the injunction by personal
26 service or otherwise from doing, abiding, causing, aiding or abetting any of the following:

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- 1 (1) marketing, offering for sale or shipping/delivering products whose fiber content is
2 not as provided on its product labels; and
- 3 (2) making false statements of fact on its website or in other advertising, including
4 statements to the effect that KFI's products contain the fiber content identified on
5 its product labels.

6 In response to the motion, KFI asserted the defense of "unclean hands" alleging that
7 Cascade's own products were not properly labeled and that as a result injunctive relief was not
8 available to Cascade. In support of that defense, KFI submitted the declaration of its principal,
9 Sion Elalouf, and the reports of fiber analysis of certain of Cascade's yarns allegedly conducted
10 by SGS. Cascade immediately notified its customers of these test results and conducted further
11 tests of its products. Cascade's notice of the alleged mislabeling damaged Cascade's business and
12 reputation. Since that time, Cascade has completed further testing of its own yarns and obtained a
13 declaration from one of its suppliers; this evidence casts doubt on the validity of the test reports
14 submitted by KFI purportedly conducted by SGS. Cascade has also learned that Mr. Elalouf's
15 credibility is in issue given his alleged alteration of evidence in another matter that proceeded in
16 the United States District Court for the Eastern District of New York.

17 Cascade now seeks verified or certified copies of the reports of fiber analysis of Cascade's
18 products maintained by SGS to confirm the accuracy and completeness of the excerpts of those
19 reports submitted by Mr. Elalouf. Cascade intends to use these reports at trial regarding the true
20 fiber content of its yarns and to support its claims against Defendants for various claims including
21 injury to its trade, business and reputation.

22 **III. Requested Evidence**

23 Cascade seeks true accurate and complete copies of the reports of fiber analysis of each
24 product sold by Cascade that was examined by SGS on behalf of Defendants, including but not
25 limited to Designer Yarns, Ltd., Knitting Fever, Inc., Sion Elalouf and David Watt. The reports
26 sought are outlined in Exhibit A attached hereto. Any responses and/or evidence returned to

1 **this court will be submitted as evidence at trial. The requested evidence is necessary for the**
2 **continuance of these proceedings.** As allowed by the internal laws of the United Kingdom,
3 please have all returned evidence verified and/or certified as to completeness and authenticity.

4 If any portion of this Request is deemed to be unacceptable under the laws of the United
5 Kingdom, please disregard that portion and continue to comply with as much of the Request as is
6 legally permissible.

7 **IV. Local Counsel**

8 Plaintiff has obtained local counsel who will be assisting in the matter. Plaintiff has
9 appointed the following as its local counsel in the United Kingdom:

10 Claire Scott-Priestley, Esq.
11 Squire, Sanders & Dempsey L.L.P.
12 Tower 42, 25th Floor
13 25 Old Broad Street
14 London EC2N 1HQ
15 United Kingdom

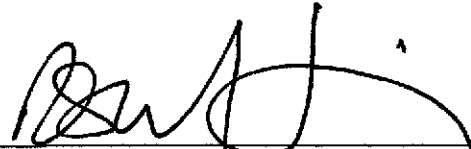
16 The Court should make record of this representation. Ms. Scott-Priestley is also
17 authorized by the Plaintiff to participate in the proceedings for testimony and to examine the
18 witnesses in such proceedings.

19 **V. Reimbursement**

20 This Court understands that any fees and costs incurred in the execution of this Request
21 are reimbursable under the second paragraph of Article 14 or under Article 26 of the Hague
22 Evidence Convention.

23 These fees and costs will be reimbursed by the above-named counsel for the Defendants
24 up to US\$500.00. Robert J. Guite, Esq. (Squire, Sanders & Dempsey L.L.P., 275 Battery Street,
25 Suite 2600, San Francisco, California 94111, USA; Telephone: +1.415.954.0235; Facsimile:
26 +1.415.393.9887; E-mail: rguite@ssd.com) should be informed before the costs exceed this
amount.

1 DATED this 15th day of ~~October~~ Nov., 2010.

2 

3 Honorable Ricardo S. Martinez
4 United States District Judge
5 The United States District Court
6 for the Western District of Washington
7 700 Stewart Street
8 Seattle, Washington 98101
9 U.S.A.

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EXHIBIT A

EXHIBIT A to
LETTER OF REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE
Pursuant to the Hague Convention of 18 March 1970 on the Taking
Of Evidence in Civil or Commercial Matters

PERSON TO WHOM REQUEST FOR EVIDENCE IS DIRECTED:

SGS Cashmere Labs
SGS United Kingdom Ltd.
Unit 73, Warfield Road
Kellythorpe Industrial Estate
Driffield, East Yorkshire
YO25 9DJ, United Kingdom

True and complete copies of all reports of fiber analysis and related documents (including product labels and photographs) for any product marketed by Cascade that was tested by SGS on behalf of Designer Yarns, Limited, Sion Elalouf, David Watt and/or Knitting Fever, Inc. Such products include:

- 109 Tweed
- 128 Tweed
- 220 Tweed
- Bulky Leisure
- Bulky Leisure HD
- Cloud 9
- Dolce
- Pastaza
- Pima Tencel
- Mohair Kiss
- Baby Folie
- Bouton Colour
- Etoile
- Sissi
- Eden Bamboo
- Fiordo
- Kid Seta
- Inspire
- Luxury Mohair
- Bamboo Cotton DK
- Dreams Chunky
- Mirage
- Zig Zag 4 Ply
- Venezia
- Rebus
- Sierra
- Lana Bamboo
- Heritage
- Starship
- Venezia
- Pelouche