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HON. RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington Corporation,

Plaintiff,

vs.

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

Defendants.

Case No. 2:10-cv-00861 RSM

**[PROPOSED] ORDER GRANTING
CASCADE YARNS, INC.'S MOTION
FOR PRELIMINARY INJUNCTION**

Note On Motion Calendar: July 30, 2010

1 THIS MATTER was noted for consideration on July 30, 2010 upon Plaintiff Cascade
2 Yarns. Inc.'s ("Cascade") Motion for Preliminary Injunction to Enjoin Unfair Competition and
3 False Advertising Under The Lanham Act, 15 U.S.C. § 1051, and, having considered the briefs,
4 declarations, exhibits and files herein in support of and in opposition thereto the Court ORDERS
5 that the motion be granted as follows:

6 Specifically, Cascade's motion addresses the following brands of yarn sold by Defendant
7 Knitting Fever, Inc. ("KFI"):

- 8 • Debbie Bliss Baby Cashmerino;
- 9 • KFI Cashmerino;
- 10 • Debbie Bliss Cashmerino Aran;
- 11 • Debbie Bliss Cashmerino Astrakan;
- 12 • Louisa Harding Kashmir Aran;
- 13 • Noro Cash Iroha;
- 14 • Noro Silk Garden;
- 15 • Debbie Bliss Cashmerino Superchunky;
- 16 • Queensland Collection Big Wave;
- Queensland Collection Katmandu Aran Tweed;
- Queensland Collection Katmandu DK Tweed;
- Elsebeth Lavold Silky Cashmere;
- Debbie Bliss Cashmerino Chunky;
- Elsebeth Lavold Calm Wool;
- Louisa Harding Kashmir Aran;
- Louisa Harding Kashmir DK;
- Louisa Harding Aimee

17 These brands of yarn are hereinafter referred to as the "subject yarns."

18 A plaintiff seeking a preliminary injunction must establish that it is likely to succeed on
19 the merits, is likely to suffer irreparable harm in the absence of preliminary relief, that the balance
20 of equities tips in its favor, and that an injunction is in the public interest. *Winter v. Natural*
21 *Resources Defense Council, Inc.*, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). A "possibility" of
22 irreparable harm is insufficient; irreparable injury must be "likely" in the absence of an
23 injunction. *Id.*; *Scentsy, Inc. v. deDisse*, 2010 U.S. Dist. LEXIS 38400 (D. Idaho, Apr. 19, 2010).
24 The moving party must show (1) a likelihood of success on the merits; (2) a significant threat of
25 irreparable injury; (3) that the balance of hardships favors the applicant; and (4) whether any
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1 public interest favors granting an injunction. *Raich v. Ashcroft*, 352 F.3d 1222, 1227 (9th Cir.
2 2003). As discussed below, Cascade has met its burden.

3 The Court finds that Cascade has demonstrated that it will likely succeed on the merits for
4 its Lanham Act § 43(a) Unfair Competition claim. A Lanham Act § 43(a) false advertising claim
5 requires, as is relevant to the facts of this case, the following showing: (1) a false statement of fact
6 by the defendant about its own product; (2) the statement actually deceived or has the tendency to
7 deceive a substantial segment of its audience; (3) the deception is material, in that it is likely to
8 influence the purchasing decision; (4) the defendant caused its false statement to enter interstate
9 commerce; and (5) the plaintiff has been or is likely to be injured as a result of the false
10 statement, either by direct diversion of sales from itself to defendant or by a lessening of the
11 goodwill associated with its products. *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134,
12 1139 (9th Cir. 1997); *see also Cook, Perkiss and Liehe, Inc. v. Northern Cal. Collection Serv.,*
13 *Inc.*, 911 F.2d 242, 244 (9th Cir. 1990).

14 Here Cascade, has demonstrated that it will likely succeed in proving that KFI's fiber-
15 content labels of the subject yarns are literally false. As literally false statements, actual
16 deception of consumers is presumed. *See, e.g., Johnson & Johnson, v. GAC Int'l, Inc.*, 862 F.2d
17 975, 977 (2d Cir. 1988); *PPX Enters., v. Audiofidelity Enters., Inc.*, 818 F.2d 266, 272 (2d Cir.
18 1987); *U-Haul*, 793 F.2d at 1040. Furthermore, the fiber content of the subject yarns is material
19 because it is likely to influence the consuming public's purchasing decision and relates to an
20 "inherent quality or characteristic" of the products. *Johnson & Johnson Vision Care, Inc.*, 299 F.
21 3d at 1250. The subject yarns were sold in interstate commerce. As a direct competitor, Cascade
22 has demonstrated that it has been and will continue to be injured as a result of KFI's false
23 representation of the subject yarns fiber content, either by direct diversion of sales from itself to
24 defendant and/or by a lessening of the goodwill associated with its products. *Southland Sod*
25 *Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th Cir. 1997); *see also Cook, Perkiss and Liehe,*
26 *Inc. v. Northern Cal. Collection Serv., Inc.*, 911 F.2d 242, 244 (9th Cir. 1990).

1 Cascade has also demonstrated that if KFI is allowed to continue selling its falsely labeled
2 products, there is a significant risk that it will be irreparably harmed. KFI is a competitor of
3 Cascade in the specialty yarn industry selling similar products to the same customer base. The
4 characteristics of a purportedly cashmere yarn (that actually contains no cashmere, or only a trace
5 of cashmere) are likely going to be perceived by consumers as inferior to their expectations.
6 Thus, other products actually containing cashmere (including those sold by Cascade) are likely to
7 suffer decreased sales as a result of being compared to KFI's mislabeled products. Such a
8 comparison would injure competitors like Cascade whose products may be rejected out of hand
9 by consumers who were dissatisfied by KFI's seemingly-comparable products. *Id.* In light of
10 this direct competition and the impact of KFI's behavior on the yarn marketplace, Cascade has
11 shown that there is a significant threat of irreparable injury because KFI's behavior will prevent it
12 from an opportunity to expand its business. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*,
13 240 F.3d 832, 841 (9th Cir. 2001) (evidence of threatened loss of prospective customers or
14 goodwill supports a finding of irreparable harm); *see also Tom Doherty Assocs., Inc. v. Saban*
15 *Entm't, Inc.*, 60 F.3d 27, 37-38 (2d Cir. 1995).

16 The balance of hardships in this case also favors Cascade because it has demonstrated a
17 strong probability of success on the merits and the possibility of irreparable harm. *See Odessa*
18 *Union Warehouse Co-Op*, 833 F.2d at 174, 175 (recognizing that there is "a sliding scale in which
19 the required degree of irreparable harm increases as the probability of success decreases," and
20 vice versa.); *SuccessFactors*, 2008 U.S. Dist. LEXIS 27939 at *9 (The test is a "continuum in
21 which the required showing of harm varies inversely with the required showing of
22 meritoriousness.") If an injunction is not granted, Cascade has shown that it will likely lose
23 customers and revenue as well as face potentially serious damage to its reputation and goodwill.
24 Further, the consuming public is being harmed by KFI's deceptive acts. KFI, on the other hand,
25 has no legitimate interest to protect. KFI's labels do not accurately represent the fiber contents of
26 the subject yarns and are in violation of the Wool Products Labeling Act. 15 U.S.C. § 68a. In

1 any event, entry of the preliminary injunction will not preclude KFI from marketing and selling
2 its products; it will only be required to re-label its product so that its product description is not
3 false and misleading. KFI will suffer no competitive disadvantage in fairly competing with
4 Cascade and in complying with the WPLA.

5 Finally, entry of the preliminary injunction requested by Cascade will serve the public
6 interest not to be deceived or confused. Indeed, in cases such as this, the “public interest” is
7 “most often a synonym for the right of the public not to be deceived or confused.” *Opticians*
8 *Ass’n of Am. v. Independent Opticians of America*, 920 F.2d 187, 197 (3d Cir. 1990). KFI’s
9 literally false representations as to the fiber content of the subject yarns deceives the consuming
10 public. Accordingly, enjoining the marketing and labeling of knitting yarn as containing
11 specified quantities of wool and/or cashmere fibers when those products do not contain the fibers
12 identified on the labels and enjoining KFI from falsely stating on KFI’s website (or anywhere else
13 in its marketing materials and ancillary products) that its products contain specified quantities of
14 wool and/or cashmere fibers when those products do not contain the fibers identified on the labels
15 will benefit the public.

16 Therefore, good cause appearing, the Court hereby **ENJOINS** KFI from:

17 (1) Marketing and labeling of the subject yarns as containing specified quantities of
18 wool and/or cashmere fibers when those products do not contain the fibers identified on the
19 labels; and

20 (2) Falsely stating on KFI’s website (or anywhere else in its marketing materials and
21 ancillary products) that the subject yarns contain specified quantities of wool and/or cashmere
22 fibers when they do not contain the fibers identified on the labels.

23 Furthermore, in light of the pervasiveness of KFI’s misrepresentations as to the fiber
24 content of its yarn products, the Court **ORDERS** KFI to submit a continuing guaranty to the
25 Federal Trade Commission as contemplated by § 68g(a) of the Wool Products Labeling Act for
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1 all its products which it represents contain fiber from the fleece of the sheep or lamb or hair of the
2 Angora or Cashmere goat.

3 DATED this ____ day of July, 2010.

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HONORABLE RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

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Presented by:

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SQUIRE, SANDERS & DEMPSEY, L.L.P.

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By /s/ Robert J. Guite
Robert J. Guite, WSBA No. 25753

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Attorneys for Plaintiff
Cascade Yarns, Inc.

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