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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CASCADE YARNS, INC., a Washington  
corporation,

Plaintiff,

v.

KNITTING FEVER, INC., a New York  
corporation, et al.,

Defendants.

CASE NO. C10-861RSM

ORDER ON MOTION FOR A  
PRELIMINARY INJUNCTION

This matter is now before the Court for consideration of plaintiff’s second motion for a preliminary injunction. Dkt. # 192. Plaintiff asks the Court to enjoin defendant Knitting Fever, Inc., (“KFI”) from selling hand-knitting yarns that are falsely labeled as containing milk fibers when they actually contain acrylic fibers instead of extruded milk protein fibers. Motion for Preliminary Injunction, Dkt. # 192, p. 2. Defendant KFI has opposed the motion. The Court deems it unnecessary to hear oral argument on this motion and shall deny it for the reasons set forth below.

## DISCUSSION

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2 “The purpose of a preliminary injunction is merely to preserve the relative positions of  
3 the parties until a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390,  
4 395, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981). A party seeking a temporary injunctive relief must  
5 either establish a likelihood of success on the merits, a likelihood of irreparable injury if  
6 injunctive relief is not granted, a balance of hardships favoring the movant, and an advancement  
7 of the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 16, 129 S.Ct. 365, 172  
8 L.Ed.2d 249 (2008) (internal citations omitted). In the alternative, the party must demonstrate  
9 that “serious questions going to the merits were raised and the balance of hardships tips sharply  
10 in the plaintiff’s favor.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir.  
11 2010) (quoting *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir.2008)).

12 A court grants preliminary injunctive relief to preserve the status quo and prevent  
13 irreparable harm pending a resolution on the merits of a lawsuit. *Los Angeles Memorial*  
14 *Coliseum Com'n v. National Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). As the  
15 Supreme Court has long noted, a preliminary injunction must relate to the allegations in the  
16 complaint. *De Beers Consol. Mines v. U.S.*, 325 U.S. 212, 220, 65 S.Ct. 1130, 1134, 89 L.Ed.  
17 1566 (1945) (preliminary injunction not appropriate for matters “lying outside the issues in the  
18 suit”). That is, it is appropriate for a preliminary injunction “to grant intermediate relief of the  
19 same character as that which may be granted finally.” *Id.* If there is no relation, it is not an  
20 injunctive relief situation. A party seeking preliminary injunctive relief “must necessarily  
21 establish a relationship between the injury claimed in the party’s motion and the conduct asserted  
22 in the complaint.” *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir.1994). In other words,  
23 plaintiff must seek injunctive relief related to the merits of his underlying claim. A court need  
24

1 not consider claims that were not raised in the complaint. *McMichael v. Napa County*, 709 F.2d  
2 1268, 1273 n. 4 (9th Cir.1983).

3 Plaintiff originally filed this action for unfair competition, false advertising, and business  
4 injury in May, 2010. Dkt. # 2. The complaint alleges, in relevant part, that defendants  
5 engaged in a concerted scheme, beginning nearly a decade ago, to defraud consumers  
6 and injure their competitors by making literally false representations regarding the  
7 fiber content of certain yarn products, including but not necessarily limited to the  
8 *Noro Silk Garden*, *Debbie Bliss Cashmerino*, *Elsebeth Lavold Silky Wool* and *Louisa  
Harding Kashmir* brands. Defendants' conduct caused harm to its competitors,  
including Cascade, by driving customers away from purchasing Cascade's products.

9 . . . .

10 On information and belief, in order to make an unreasonable profit and to undercut  
11 its competitors' (including Cascade's) business, beginning sometime in the early  
12 2000s and certainly no later than 2006, KFI began selling products that had literally  
13 false labels misrepresenting the products' cashmere, kid mohair and/or silk content.  
The literally false labels allowed KFI to sell their products for a significantly lower  
price than Cascade's products, thereby damaging Cascade in the form of lost profits  
and business injury.

14 Complaint, Dkt. # 2, ¶¶ 1, 3.

15 Plaintiff amended the complaint as a matter of right on June 9, 2010, and then filed a  
16 Second Amended Complaint with leave of court on February 17, 2011. Dkt. ## 4, 190. This  
17 Second Amended Complaint, filed just a week prior to the filing of the motion for a preliminary  
18 injunction, asserts the allegations set forth above with no changes. Second Amended Complaint,  
19 Dkt. # 190, ¶¶ 1, 3. Nowhere in the Second Amended Complaint does plaintiff allege any false  
20 labeling of milk fiber yarn, or even mention milk fiber yarn.

21 Plaintiff argues that milk fiber yarns are included in the Second Amended Complaint  
22 with the language in ¶ 1 that defendants' scheme involves making false representations regarding  
23 the fiber content of certain yarns "including but not necessarily limited to" the four named  
24 yarns, *Noro Silk Garden*, *Debbie Bliss Cashmerino*, *Elsebeth Lavold Silky Wool*, and *Louisa*

1 Harding Kashmir. Plaintiff also points to the allegation at ¶ 103 that defendants have made and  
2 continue to make deceptive statements in their marketing materials “regarding the true content of  
3 certain of its yarn products, including but not necessarily limited to the mislabeled products  
4 identified in this Complaint.” Second Amended Complaint, Dkt. # 190, ¶ 103. Plaintiff argues  
5 that under “liberal notice pleading standards,” any (and by implication all) mislabeled yarns are  
6 at issue in this action. Plaintiff’s Reply, Dkt. # 208, p. 5. The Court declines to adopt plaintiff’s  
7 expansive reading of the allegations.

8 The language in ¶ 3 of the Second Amended Complaint, set forth above, specifically  
9 limits this action to claims of false labeling of yarns with respect to their cashmere, kid mohair  
10 and/or silk content. It is the sale of these yarns, and only these yarns, as to which plaintiff has  
11 alleged injury. The “including but not necessarily limited to” language to which plaintiff points  
12 expands the products at issue to yarns beyond the ones specifically named in the complaint, but  
13 they are still yarns which are allegedly mislabeled with respect to their cashmere, kid mohair, or  
14 silk content. There is no allegation whatsoever regarding milk protein fiber yarn, and no  
15 allegation of injury to plaintiff from the sale of milk protein fiber yarns. There is thus no basis  
16 for the issuance of an injunction to prevent irreparable injury to plaintiff.

17 The motion for a preliminary injunction (Dkt. # 192) is accordingly DENIED.

18  
19 Dated March 28, 2011.

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22 RICARDO S. MARTINEZ  
23 UNITED STATES DISTRICT JUDGE  
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