

HON. RICARDO S. MARTINEZ



10-CV-00861-FINAFF

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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CASCADE YARNS, INC., a Washington Corporation,

Plaintiff,

vs.

KNITTING FEVER, INC., a New York Corporation, DESIGNER YARNS, LTD., a corporation of England, EMMEPIEFFE SRL, an entity organized or existing under the laws of Italy, 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, JAY OPPERMAN, an individual, DEBBIE BLISS, an individual, and DOES 1-50

Defendant.

AND RELATED CROSS-ACTIONS

) Case No. 2:10-cv-00861 RSM

) **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**

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

LETTER OF REQUEST FOR INTERNATIONAL
JUDICIAL ASSISTANCE - 1
Case No. 2:10-cv-00861 RSM

SQUIRE SANDERS (US) LLP
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111
415.954.0200 FAX: 415.393.9887

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 **I. NAMES AND ADDRESSES OF THE PARTIES AND THEIR**
9 **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 (US) LLP
275 Battery Street, Suite 2600
San Francisco, CA 94111

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

Counsel for KFI 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
21 Pitt Street
22 Keighley, West Yorkshire
23 United Kingdom BD21 4PQ

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

24 Sion Elalouf
25 22 Longwood Road
26 Port Washington, NY 11050-1260

Jay Opperman
78 Clinton Avenue
Montclair, NJ 07042-2116

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

Emmepieffe S.r.l.
Via De Ronchi 45/1
10091 Alpignano (TO) Italia

William O. Ferron, Esq.
Seed Intellectual Property Law Group PLLC
701 Fifth Avenue, Suite 5400
Seattle, WA 98104

1 **II. SUMMARY OF THE CASE**

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

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

16 Following this testing, KFI provided written statements that its products were then
17 accurately labeled but also admitted that it had earlier imported and sold yarn that did not contain
18 cashmere -- contrary to the product labels. Indeed, KFI and its supplier corresponded regarding
19 the lack of cashmere in the yarns and KFI's supplier (Filatura Pettinata V.V.G. Di Stefano
20 Vaccari&C. ("VVG")) wrote to KFI to suggest "alternative" approaches. VVG recognized that
21 the absence of cashmere could be "quite dangerous" and suggested that KFI "try stopping the
22 rumors." VVG further wrote:

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

1 Also included with VVG's correspondence were test reports from a laboratory in Italy
2 confirming that no more than 6.4% cashmere was found in any of the samples tested. On July 20,
3 2006, KFI issued a three-page letter addressing the lack of cashmere in its *Cashmerino* yarns. In
4 that letter, KFI asserted that the yarns contained cashmere; KFI did not provide a separate
5 guaranty or a continuing guaranty pursuant to section 68g of the WPLA. Tellingly, KFI issued
6 letters to its customers purportedly affirming the accuracy of its labels but did not issue any
7 continuing guaranty under section 68g of the Act. Contrary to these assertions, test results of the
8 *Cashmerino* yarns obtained during this time, and confirmed by a second independent laboratory,
9 show that the *Cashmerino* yarns contained 57% wool and 43% acrylic.

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

21 KFI is attempting hide the fact that its yarns do not contain the labeled quantities of
22 cashmere, wool, alpaca and silk (or labeling yarns as containing milk protein fiber when the yarns
23 contain no such constituent fiber) in order to unfairly compete with hand knitting yarns that are
24 accurately labeled, including Cascade's products. Of course, if the products were accurately
25 labeled they would also sell for a much lower price; KFI charges a higher price for the
26 *Cashmerino* yarns because they purport to contain cashmere. KFI's marketing, sale and

1 promotion of its products including those marketed under its Sirdar, Debbie Bliss and Elsebeth
2 Lavold brands is inconsistent with the labeling requirements of the WPLA and with the
3 reasonable expectations of retailers and consumers purchasing wool yarns. Labeling of the
4 purported milk fiber yarns is inconsistent with the requirements of the WPLA and/or the Textile
5 Products Identification Act and applicable regulations, including 16 C.F.R. § 300.3(a)(1) and 16
6 C.F.R. § 303.16(a)(1).

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

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

- 24 (1) marketing, offering for sale or shipping/delivering products whose fiber content is
25 not as provided on its product labels; and
26

1 (2) making false statements of fact on its website or in other advertising, including
2 statements to the effect that KFI's products contain the fiber content identified on
3 its product labels.

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

15 This Court entered an order in November 2010 granting Cascade's Request for
16 International Judicial Assistance. After that time, and in the course of meeting and conferring
17 with SGS' counsel to obtain responsive documents, Cascade learned that Designer Yarns
18 communicated with SGS regarding the fiber content of yarns manufactured by other parties and
19 obtained reports of fiber analysis for those yarns. Because documents regarding these tests and
20 reports are relevant to Cascade's claims and defenses in this litigation, Cascade sought and
21 obtained a second Letter of Request for International Judicial Assistance providing for their
22 production. Cascade now seeks to depose a witness qualified to testify regarding and verify the
23 authenticity of the documents SGS has produced in this action.

24 **III. REQUESTED EVIDENCE**

25 Cascade has obtained copies of certain reports of fiber analysis of yarns examined by SGS
26 on behalf of Defendants, including but not limited to Designer Yarns, Ltd., Knitting Fever, Inc.,

1 KFI, Inc., Sion Elalouf, David Watt and John Cashell, as well as correspondence, statements and
2 invoices regarding those tests and/or fiber analysis. Cascade now seeks the deposition of an SGS
3 officer, agent, employee or other representative qualified to testify regarding the documents and
4 their authenticity, as outlined in Exhibit A attached hereto. **Any responses and/or evidence**
5 **returned to this court will be submitted as evidence at trial. The requested evidence is**
6 **necessary for the continuance of these proceedings.**

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

10 **IV. LOCAL COUNSEL**

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

13 Christopher J. Hubbard
14 Squire Sanders (UK) LLP
15 7 Devonshire Square
16 London EC2M 4YH
17 England

18 The Court should make record of this representation. Mr. Hubbard is also authorized by
19 the Plaintiff to participate in the proceedings for testimony and to examine the witnesses in such
20 proceedings.

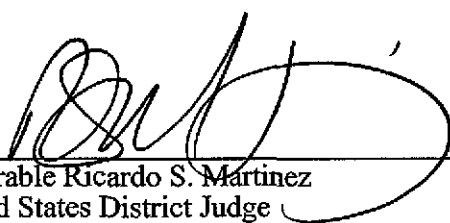
21 **V. REIMBURSEMENT**

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

25 These fees and costs will be reimbursed by the above-named counsel for the Defendants
26 up to US \$500.00. Robert J. Guite, Esq. (Squire Sanders (US) LLP, 275 Battery Street, Suite
2600, San Francisco, California 94111, USA; Telephone: +1.415.954.0235; Facsimile:

1 +1.415.393.9887; E-mail: robert.guite@ssd.com) should be informed before the costs exceed this
2 amount.

3
4 DATED this 27 day of January, 2012.

5 
6 _____
7 Honorable Ricardo S. Martinez
8 United States District Judge
9 The United States District Court
10 for the Western District of Washington
11 700 Stewart Street
12 Seattle, Washington 98101
13 U.S.A.

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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

A witness qualified to testify regarding (1) the authenticity of previously-produced copies of reports of fiber analysis and related documents (including product labels, photographs, invoices, facsimiles, correspondence) for yarns submitted for testing or fiber analysis to SGS by or on behalf of Designer Yarns, Limited, Sion Elalouf, David Watt, John Cashell, KFI, Inc. and/or Knitting Fever, Inc. and (2) SGS's policies, practices and procedures related to its fiber analysis testing and documentation thereof.