

The Honorable Ricardo S. Martinez

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington corporation,

Plaintiffs,

v.

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.), an entity organized under the laws of Italy; SION ELALOUF, a natural person, DIANE ELALOUF, a natural person, JAY OPPERMAN, a natural person, DEBBIE BLISS, a natural person, DAVID WATT, a natural person, and DOES 1-50,

Defendants.

Civil Action No. 2:10-cv-00861 RSM

MOTION FOR RELIEF FROM A DEADLINE IN ORDER TO SUBMIT A SUPPLEMENTAL DECLARATION IN OPPOSITION TO THE MOTION FOR PRELIMINARY INJUNCTION

NOTE ON MOTION CALENDAR:
September 24, 2010

ORAL ARGUMENT REQUESTED

Pursuant to Local Rule of Civil Procedure 7(d)(2)(A), Defendant Knitting Fever, Inc. (“KFI”) respectfully requests relief from the existing preliminary injunction briefing schedule. KFI requests this relief in order to allow for submission of the supplemental declaration of Sion Elalouf and its accompanying exhibits which further support KFI’s opposition to Plaintiff’s motion for a preliminary injunction.

I. ARGUMENT

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2 Plaintiff, Cascade Yarns, Inc. (“Cascade”), has moved to enjoin the sale of knitting yarns
3 by KFI whose labels are alleged to incorrectly identify the fiber content of the yarn. The parties
4 have briefed the motion, and the Court has scheduled oral argument for September 29, 2010.¹
5 Recently, however, it has come to KFI’s attention that Cascade is engaged in advertising and
6 selling over twenty different knitting yarn products bearing labels that contain either false and
7 misleading representations regarding fiber content or improper designations as to country of
8 origin. Cascade’s false and misleading conduct in the labeling of its yarns violates various
9 provisions of, *inter alia*, the Wool Products Labeling Act, 15 U.S.C. § 68, the Textile Products
10 Identification Act, 15 U.S.C. § 70, the Tariff Act, 19 U.S.C. § 1304, and the Lanham Act, 15
11 U.S.C. § 1125, and constitutes unclean hands that preclude it from the equitable relief it now
12 seeks. Moreover, evidence that Cascade is selling goods with false and misleading labels would
13 serve to rebut allegations that Cascade has suffered injury to its goodwill and reputation.

14 It is well-established that unclean hands is a defense to claims brought under the Lanham
15 Act. *CIBA-GEIGY Corp. v. Bolar Pharmaceutical*, 747 F.2d 844, 855 (3d Cir. 1984), cert.
16 denied, 471 U.S. 1137, 105 S. Ct. 2678 (1985); *see generally Coca-Cola Co. v. Overland, Inc.*,
17 692 F.2d 1250, 1256-58 (9th Cir. 1982). The Ninth Circuit has recognized that “it is essential
18 that the plaintiff should not in his trade mark, or in his advertisements and business, be himself
19 guilty of any false or misleading representation.” *Japan Telecom, Inc. v. Japan Telecom*
20 *America Inc.*, 287 F.3d 866, 870 (9th Cir. 2002) (quoting *Worden v. Cal. Fig Syrup Co.*, 187
21 U.S. 516, 528, 23 S. Ct. 161 (1903)); *see also Campagnolo S.R.L. v. Full Speed Ahead, Inc.*,
22 2009 U.S. Dist. LEXIS 22863 (W.D. Wash. Mar. 23, 2009). To prevail, the defendant must
23 demonstrate that the plaintiff’s conduct is inequitable and that the conduct relates to the subject

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25 ¹ Cascade filed the motion on July 8, 2010 (Dkt. No. 10). KFI submitted its opposition on
26 July 26, 2010 (Dkt. No. 38) and Cascade submitted a reply on July 30, 2010 (Dkt. No. 42). In
27 seeking to strike certain misstatements made by Cascade, KFI submitted a sur-reply on August 4,
2010 (Dkt. No. 50).

1 matter of its claims. *CIBA-GEIGY*, 747 F.2d at 855. “Equity requires that those seeking its
2 protection shall have acted fairly and without fraud or deceit as to the controversy in issue.”
3 *Ellenburg v. Brockway, Inc.*, 763 F.2d 1091, 1097 (9th Cir. 1985)(emphasis added).

4 Local Rule of Civil Procedure 7(d)(2)(A) permits a party to move for relief from a
5 deadline. The evidence KFI seeks to submit indicates that Cascade has presented its preliminary
6 injunction motion (and indeed this entire lawsuit) with unclean hands. This evidence also serves
7 to rebut Cascade’s allegations of injury – allegations which are essential to its success on the
8 merits. In light of these newly-discovered facts, KFI now seeks such relief to enable it to file a
9 supplemental declaration and exhibits that document this new information. *See, e.g., Block v.*
10 *Solis*, No. 08-cv-1850, 2010 U.S. Dist. Lexis 497113, *23 (W.D. Wash. May 20, 2010) (granting
11 leave to file a supplemental declaration). A copy of the proposed declaration and exhibits are
12 attached hereto as Exhibit A. Such relief is appropriate in this case because the complete
13 analyses of Cascade’s yarns were not available until after KFI submitted its briefing on the
14 motion for a preliminary injunction. As a result, this is KFI’s first opportunity to present this
15 evidence to the Court.² In the event this action moves forward, KFI intends to use this
16 information as grounds for asserting counterclaims against Cascade. Resolution of the
17 preliminary injunction motion without consideration of these new facts would condone
18 Cascade’s deceitful conduct and unfairly prejudice KFI.

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25 ² KFI’s counsel advised Cascade’s counsel of this newly discovered information by letter
26 dated September 15, 2010, and provided Cascade the opportunity to withdraw its motion for
27 preliminary injunction. Cascade’s counsel, however, did not respond.

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II. CONCLUSION

For the foregoing reasons, Defendant Knitting Fever, Inc. respectfully requests that this Honorable Court grant KFI’s motion for relief from a deadline in order to permit the filing of a supplemental declaration in opposition to Plaintiff’s motion for a preliminary injunction.

DATED this 16th day of September, 2010.

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[PROPOSED] ORDER

**NOTE ON MOTION CALENDAR:
September 24, 2010**

ORAL ARGUMENT REQUESTED

ORDER

AND NOW, this ____ day of _____, 2010, upon consideration of
Defendant Knitting Fever, Inc.'s Motion for Relief from a Deadline to file a Supplemental
Declaration, any opposition filed in response thereto, and for good and sufficient cause shown, it
is hereby ORDERED that the Motion is GRANTED.

BY THE COURT:

Ricardo S. Martinez, U.S.D.J.