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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,  
  
Defendant.

Case No. 2:10-cv-00861 RSM

**CASCADE’S MOTION AND  
MEMORANDUM FOR WRIT OF  
ATTACHMENT**

**Note On Motion Calendar:  
November 19, 2010**

**I. INTRODUCTION AND RELIEF REQUESTED**

Plaintiff Cascade Yarns, Inc. (“Cascade”) moves this Court for a Writ of Attachment as Cascade has shown, in connection with its Motion for Preliminary Injunction and herein, that a Writ of Attachment is proper under at least three alternative bases set forth in RCW 6.25.030 and that its claim for, at a minimum, unfair competition is probably valid. As demonstrated by its conduct to date, Knitting Fever, Inc.’s (“KFI”) defense strategy is to delay the inevitable judgment against it, while minimizing exposure to criminal liability. As the Court recognized

1 when deliberating on Cascade's Motion for Preliminary Injunction, Cascade is likely to prevail on  
2 the merits; thus, a Writ of Attachment against Knitting Fever, Inc. ("KFI") and its principals Sion  
3 and Diane Elalouf, and Jay Opperman is both necessary and appropriate.

## 4 **II. FACTUAL BACKGROUND**

5 This is a civil action arising under: (a) the United States Trademark Act of 1946, as  
6 amended, 15 U.S.C. § 1051, *et seq.* ("Lanham Act"); (b) the Racketeer Influenced And Corrupt  
7 Organization Act, 28 U.S.C. § 1964 *et seq.* ("RICO"); and (c) RCW 19.86, for unfair competition  
8 and false advertising. This Court has subject matter jurisdiction over this case under 15 U.S.C. §  
9 1121, 28 U.S.C. §§ 1331 and 1338 and the principles of supplemental jurisdiction. Cascade is a  
10 Washington corporation and KFI is a New York corporation that does business in the State of  
11 Washington. Defendants Elalouf and Opperman are residents of New York. Declaration of  
12 Robert J. Guite ("Guite Decl."), Ex. A.

13 Cascade is one of the nation's finest purveyors of yarns and sells its products through  
14 specialty retailers and boutiques throughout the United States. Dkt. No. 11, ¶ 2. Cascade's  
15 products include many yarns containing wool and natural fibers including kid mohair, silk and  
16 cashmere. *Id.* ¶ 3. KFI imports and distributes a variety of hand knitting yarns and related  
17 products. Guite Decl., Ex. A at ¶ 1. KFI is described in the press as the largest distributor of  
18 yarns in the United States. *Id.*, Ex. B. In a verified complaint filed by KFI in 2005, it stated that  
19 \$5,641,649 represented 16% of its total annual revenues for the year 2004. *Id.*, Ex. A at ¶ 15.  
20 Thus, KFI's total sales for a single year exceed \$35 million. *Id.* The labels and marketing  
21 materials for KFI's *Cashmerino* yarns (described in the press as its best sellers),<sup>1</sup>, marketed under  
22 various trade names including KFI, Debbie Bliss and Elsebeth Lavold, provide that the products  
23 contain 12% cashmere 55% merino wool and 33% acrylic. Dkt. 12, Ex. B.

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<sup>1</sup> Guite Decl., Ex. C.

1 Contrary to the labels, and contrary to the Wool Products Labeling Act, 15 U.S.C. § 68  
 2 (“WPLA”), independent testing confirms that these yarns did not contain the fibers listed on their  
 3 labels.<sup>2</sup> See Cascade’s Amended Complaint (Dkt. Nos 4-2, 4-3, 4-4). The testing revealed that  
 4 the yarns contained no cashmere or considerably less cashmere than as represented on the labels.  
 5 *Id.* Following this testing, KFI provided written statements that its products were then accurately  
 6 labeled but also admitted that it had earlier imported and sold yarn that did not contain cashmere -  
 7 - contrary to the product labels. Dkt. No. 12, Ex. A at Ex. 15. In fact, at oral argument before  
 8 this Court on September 29, KFI admitted that fiber analysis of its yarns (never produced in  
 9 opposition to Cascade’s Motion for Preliminary Injunction) confirmed that its yarns were not  
 10 properly labeled. Guite Decl., Ex. C at 23:25-24:2.

11 KFI’s prices for its *Cashmerino* yarns are commensurate with the prices of competing  
 12 yarns, including Cascade’s yarns, that actually contain the fibers identified on their labels. Dkt.  
 13 No. 11, ¶ 5. Thus, KFI’s profit margin on its *Cashmerino* is many times greater than it would be  
 14 if it had included the more expensive cashmere fibers in its products. *Id.* ¶ 6. KFI’s sale and  
 15 marketing of its products as labeled is misleading and causes customer confusion and damage to  
 16 Cascade. Such harm includes, but is not limited to: (i) unfair competition and violation of the  
 17 WPLA; (ii) damages to Cascade’s reputation and goodwill; (iii) diminution in the market value

18 <sup>2</sup> Indeed, KFI and its supplier corresponded regarding the lack of cashmere in the yarns and KFI’s  
 19 supplier (defendant Filatura Pettinata V.V.G. Di Stefano Vaccari & C. (“VVG”)) wrote to KFI to  
 20 suggest “alternative” approaches. Dkt. No. 12, Ex. A at Ex. 11. VVG recognized that the  
 absence of cashmere could be “quite dangerous” and suggested that KFI “try stopping the  
 rumors.” *Id.* VVG further wrote:

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

24 *Id.*

25 Also included with VVG’s correspondence were test reports from a laboratory in Italy confirming  
 26 that no more than 6.4% cashmere was found in any of the samples tested. *Id.* On July 20, 2006,  
 KFI issued a three-page letter addressing the lack of cashmere in its *Cashmerino* yarns. Dkt. No.  
 12, Ex. A at Ex. 2.

1 and acceptance of Cascade's wool and cashmere yarns; and (iv) damage to Cascade's reputation  
2 in that KFI's inferior product may be confused with Cascade's product that actually contains a  
3 similar percentage of cashmere to the content represented on KFI's labels thereby causing further  
4 harm to Cascade.

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

13 In reliance upon the Defendants' representations made in the Fall of 2006 regarding the  
14 accuracy of KFI's labels, Cascade took no further immediate actions in 2006. Nevertheless,  
15 Cascade's lingering concerns remained. In 2010, it commissioned fiber tests of certain of KFI's  
16 yarns. Independent testing of the subject yarns -- and other KFI yarns -- was conducted in 2010  
17 and again confirmed that the KFI yarns did not contain the fiber content identified on their labels.  
18 For example, the *Cashmerino* yarns contained no cashmere at all -- or if they did, they contained  
19 10% to 50% of the amounts listed on the labels. Dkt. No. 4-5. In addition, KFI has been sued by  
20 one of its customers for breach of warranty and other causes of action arising out of the  
21 mislabeled *Cashmerino* yarns. Testing conducted by plaintiff in that matter similarly confirms  
22 that the misbranding and mislabeling is ongoing. Dkt. No. 12, Ex. A at Exs. 21, 24, 25. Testing  
23 of samples of *Cashmerino Baby* yarn offered to customers by KFI at a national trade show held  
24 June 12-14, 2010 confirms that the yarn presently being sold contains *no cashmere*, although its  
25 label purports that it contains 12% cashmere. Dkt. No. 12, Exs. 27, 28.

1           Given that KFI's product labels continue to be misleading, Cascade brought a Motion for  
2 Preliminary Injunction to stop KFI from selling falsely labeled products and/or to obtain an order  
3 from this Court requiring KFI to provide the continuing guaranty called for by the WPLA. At  
4 oral argument on the motion, counsel for KFI admitted that KFI's yarns were mislabeled and  
5 conceded that it produced no test results confirming that the subject yarns were properly labeled  
6 stating "frankly, your Honor, while some tests have shown that the yarns are properly labeled,  
7 others are at variance." Guite Decl., Ex. C at 23:25-24:2. Thereafter, this Court stated:

8           I am just trying to maintain the status quo without giving them their injunction.  
9           Frankly, in looking at the four factors the court looks at for preliminary injunction,  
10           I am pretty convinced they might have success on the merits here.

11           Guite Decl., Ex. C at 35:24-36:3. This Court then offered KFI the alternative of  
12 stipulating to submit a continuing guaranty to the FTC instead of proceeding to rule on the  
13 Motion for Preliminary Injunction. *Id.*, Ex. C at 35:9-37:3. KFI purported to accept this  
14 alternative. To date, KFI has not signed the stipulation or submitted the continuing guaranty.  
15 Cascade fears that KFI has no intention of complying with the agreement its counsel made on the  
16 record on September 29, and that it merely sought the advantage of additional delay (rather than  
17 the Court's entry of a preliminary injunction on September 29). Indeed, despite a further  
18 conference with this Court nearly a month later on October 26, there has been no resolution.  
19 Cascade fears that KFI and defendants Elalouf and Opperman have used the six weeks that have  
20 elapsed since the hearing to attempt to dispose of assets. For example, the Elaloufs are  
21 attempting to sell, or have sold, their 60-foot luxury yacht. Declaration of Robert A. Dunbabin,  
22 Jr. ("Dunbabin Decl."), Ex. A. The Elaloufs have additional, significant assets, including their  
23 showcase home that has been the subject of media coverage. *Id.*, Ex. B. In addition, Cascade  
24 understands that the Elaloufs are attempting to sell exotic and collectors' automobiles, including a  
25 Ferrari that was sold at the time this suit was commenced for a fraction of its value. *Id.* ¶ 11. Of  
26 course, this delay also provides the opportunity to continue to sell mislabeled yarn as no  
injunction has been entered and no continuing guaranty has been submitted. Writs of Attachment

1 should be issued to prohibit Defendants from further disposing of, encumbering and/or secreting  
2 their assets.

3 **III. DISCUSSION**

4 **A. The Facts Established By Cascade And Recognized by This Court At Oral**  
5 **Argument On The Motion For Preliminary Injunction Support The Issuance**  
6 **Of A Writ Of Attachment.**

7 Pursuant to Fed. R. Civ. P. 64, every remedy available under state law for seizing a person  
8 or property to secure satisfaction of a potential judgment is available to a federal court litigant,  
9 including attachment. *L.C. v. Gilbert*, 2010 U.S. Dist. LEXIS 80825, \* 1 (W.D. Wash., June 30,  
10 2010). Under Washington law, prejudgment attachment is governed by RCW 6.25 *et seq.* *Id.*  
11 That statute expressly provides that a claimant is entitled to a prejudgment writ of attachment in  
12 order to obtain security for satisfaction of any judgment the claimant may recover. *Id.*

13 Specifically:

14 The writ of attachment may be issued by the court in which the action is  
15 pending on one or more of the following grounds:

16 (1) That the defendant is a foreign corporation; or

17 (2) That the defendant is not a resident of this state; or

18 (3) That the defendant conceals himself so that the ordinary process of law  
19 cannot be served upon him; or

20 (4) That the defendant has absconded or absented himself from his usual  
21 place of abode in this state, so that the ordinary process of law cannot be served  
22 upon him; or

23 (5) That the defendant has removed or is about to remove any of his  
24 property from this state, with intent to de-lay or defraud his creditors; or

25 (6) That the defendant has assigned, secreted, or disposed of, or is about to  
26 assign, secrete, or dispose of, any of his property, with intent to delay or defraud  
his creditors; or

(7) That the defendant is about to convert his property, or a part thereof,  
into money, for the purpose of placing it beyond the reach of his creditors; or

(8) That the defendant has been guilty of a fraud in contracting the debt or  
incurring the obligation for which the action is brought; or

1 (9) That the damages for which the action is brought are for injuries arising  
2 from the commission of some felony, gross misdemeanor, or misdemeanor; or

3 (10) That the object for which the action is brought is to recover on a  
4 contract, express or implied.

5 Here, Cascade may pursue a Writ under grounds (1), (2) and (9) of RCW §6.25.030.

6 Defendant KFI, a New York corporation with its principal place of business in New York, is a  
7 foreign corporation and is not a resident of the state of Washington. Guite Decl., Ex. A, ¶ 1.

8 Thus, grounds (1) and (2) are satisfied as to KFI. *See Offshore-Inland Servs. of Alabama, Inc. v.*

9 *R/V Deepocean Quest (ex-Nadir), IMO No. 7347823, in rem*, 2009 U.S. Dist. LEXIS 45710 at \*7

10 (W.D. Wash., May 5, 2009) (finding that a Panamian corporation is a foreign corporation and

11 nonresident under RCW 6.25.030 (1) and (2)). Defendants Jay Opperman, Sion and Diane

12 Elalouf claim that they are only subject to personal jurisdiction in the state of New York, the state

13 in which Cascade alleged they reside. Dkt. No. 34 at 2. As nonresidents of the state of

14 Washington, Cascade has met ground (2) as to Opperman and the Elaloufs. Cascade may also

15 seek a Writ against each of these defendants because this action seeks damages for injuries arising

16 from their commission of a misdemeanor -- violating the WPLA. *See* RCW 6.25.030(9). Under

17 the WPLA, 15 U.S.C. § 68h, “[a]ny person who willfully violates sections 68(a), 68(c), 68f, or

18 68g(b) of this title shall be guilty of a misdemeanor. . . .” Thus, although Cascade need only meet

19 one of the requirements for issuance of a Writ to each defendant under section 6.25.030 it

20 satisfies at least two as to each defendant.

21 **B. Cascade’s Claims Satisfy The Probable Validity Standard Applicable Under  
22 RCW 6.25 *et seq.***

23 In order to prevail on a motion for issuance of a prejudgment writ of attachment and/or

24 garnishment, a claimant must also establish two elements: (1) that there is probable cause to

25 believe that the alleged statutory ground for attachment and/or garnishment exists; and (2) the

26 probable validity of the claim sued on. *L.C. v. Gilbert*, 2010 U.S. Dist. LEXIS 80825 at \*3

1 (citing RCW 6.25.070(1) and RCW 6.26.060(1)); *Offshore-Inland Servs. of Alabama*, 2009 U.S.  
2 Dist. LEXIS at \*7.

3 This Court has recognized that Cascade is likely to prevail on its claims for unfair  
4 competition. Guite Decl., Ex. D at 35:24-36:3. Indeed, KFI admits that at least some of its  
5 products are not properly labeled and submits no evidence that its yarns contain the fiber content  
6 disclosed on the product labels. These facts establish violation of the Lanham Act, 15 U.S.C. §  
7 1125(a), RCW 19.86 and the WPLA.

8 KFI is a competitor of Cascade in the specialty yarn industry selling similar products to  
9 the same customer base. Dkt. No. 11, ¶ 4. KFI's unfair competing and windfall profits from its  
10 mislabeled yarn damage Cascade. Cascade is required to compete against KFI, while it earns  
11 windfall profits from its mislabeled yarns and uses those profits to prop up its marketing efforts  
12 and finance inventories of yarn KFI sells to yarn stores. Similarly, the characteristics of a  
13 purportedly cashmere yarn (that actually contains no cashmere, or only a trace of cashmere) are  
14 likely going to be perceived by consumers as inferior to their expectations. Thus, other products  
15 actually containing cashmere (including those sold by Cascade) are likely to suffer decreased  
16 sales as a result of being compared to KFI's mislabeled products. Dunbabin Decl., ¶¶ 5-8. Such  
17 a comparison would injure competitors like Cascade whose products may be rejected out of hand  
18 by consumers who were dissatisfied by KFI's seemingly-comparable products. *Id.*

19 Cascade has made a strong showing that KFI's labels are literally false and has satisfied  
20 the elements and standards to prevail on a claim of false advertising under the Lanham Act. 15  
21 U.S.C. § 1125(a); *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th Cir. 1997).  
22 The threatened loss of prospective customers or goodwill constitutes irreparable harm supporting  
23 an unfair competition/false advertising suit. *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush &*  
24 *Co., Inc.*, 240 F.3d 832, 841 (9th Cir. 2001); *see also Tom Doherty Assocs., Inc. v. Saban Entm't,*  
25 *Inc.*, 60 F.3d 27, 37-38 (2d Cir. 1995) (deprivation of opportunity to expand business is  
26 irreparable harm); *Vision Sports, Inc. v. Melville Corp.*, 888 F.2d 609, 612, fn. 3 (9th Cir. 1989).

1 Simply put, as this Court already recognized at the September 29 hearing on the Motion for  
2 Preliminary Injunction, Cascade is likely to prevail on the merits. Stated differently, Cascade's  
3 claims are probably valid entitling it to a Writ of Attachment.

4 Under Section 35(a) of the Lanham Act, when a violation of the unfair-competition  
5 provisions of Section 43(a) of the Act occurs, "the plaintiff shall be entitled . . . , subject to the  
6 principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff,  
7 and (3) the costs of the action." 15 U.S.C. § 1117(a). Such profits and damages shall be assessed  
8 either by the court or shall be "caused to be assessed under [the Court's] direction." *Id.*

9 In assessing damages, the court may enter judgment for any sum above the amount found  
10 as actual damages, not exceeding three times such amount. 15 U.S.C. § 1117(a); *Go Med. Indus.*  
11 *Pty., Ltd. v. Inmed Corp.*, 471 F.3d 1264 (Fed. Cir. 2006). Alternatively, when the plaintiff is  
12 unable to prove actual damages based on any measure, courts in the Ninth Circuit have generally  
13 allowed a monetary award based on equitable theories of unjust enrichment and deterrence. *See*  
14 *CollegeNET, Inc. v. XAP Corp.*, 483 F. Supp. 2d 1058 (D. Or. 2007) (citing *Lindy Pen Co. v. Bic*  
15 *Pen Corp.*, 982 F.2d 1400, 1406-07 (9th Cir. 1993)).

16 As noted, the plaintiff may prove actual damages based either on its lost sales or on the  
17 defendant's profits as a measure of lost sales. *Adray v. Adry-Mart, Inc.*, 76 F.3d 984, 988 (9th  
18 Cir. 1995). Where a defendant willfully violates § 43(a) of the Lanham Act, a plaintiff may be  
19 entitled to recover the defendant's profits under § 35(a) of the Act "subject to the principles of  
20 equity." 15 U.S.C. § 1117(a); *see also U-Haul Intern., Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1042  
21 (9th Cir. 1986) (the remedies available under § 35(a) of the Lanham Act apply to unfair-  
22 competition claims as well as trademark-infringement claims brought pursuant to § 43(a) of the  
23 Lanham Act). The purpose of § 35(a) is to "take all the economic incentive out of [unfair  
24 competition]." *Polo Fashions, Inc. v. Dick Bruhn, Inc.*, 793 F.2d 1132, 1135 (9th Cir. 1986).  
25 Accordingly, disgorgement of profits in direct-competition cases may be necessary "to secure the

26

1 return of all profits” to the plaintiff. *Playboy Enters., Inc. v. Baccarat Clothing Co., Inc.*, 692  
 2 F.2d 1272, 1274 (9th Cir. 1982).

3 Here, KFI admits that at least some of its yarns are not properly labeled. Cascade has  
 4 presented un rebutted evidence that the subject yarns contain no cashmere or only trace amounts  
 5 of cashmere. Thus, KFI’s labeling of its *Cashmerino* yarns as containing 12% cashmere (1) is  
 6 literally false; (2) has a tendency to deceive a substantial segment of potential customers; (3) is  
 7 meant to influence the purchasing decisions of potential customers; (4) was made in interstate  
 8 commerce by (at least) being posted on KFI’s website and offered for sale nationwide; and (5) is  
 9 likely to injure Cascade by diverting sales from it, since Cascade and KFI are direct competitors.  
 10 Consequently, Cascade has satisfied the elements of its § 43(a) Lanham Act claim and its claim  
 11 arising under the CPA, RCW 19.86.<sup>3</sup>

12 Cascade is entitled to recover actual damages or disgorgement of Defendants’ profits.  
 13 Although Cascade is unaware of the exact amount Defendants’ profits from these mislabeled  
 14 yarns, that information is wholly within Defendants’ knowledge as they know the exact amount  
 15 of yarn sold. The specific amount Cascade seeks to recover is capable of exact proof; that proof  
 16 is not speculative, although it may presently be in the exclusive control of the Defendants. Thus,  
 17 Cascade’s Motion for Writ of Attachment is proper. KFI stated that its sales were in excess of  
 18 \$35 million in 2004. In addition, publicly-available records of imports made by KFI in 2010

19  
 20 <sup>3</sup> Washington’s CPA provides that “[u]nfair methods of competition and unfair or deceptive acts  
 21 or practices in the conduct of any trade or commerce are hereby declared unlawful.” RCW  
 22 19.86.020. The purpose of the CPA is to “complement the body of federal law governing  
 23 restraints of trade, unfair competition and unfair, deceptive and fraudulent acts and practices in  
 24 order to protect the public and foster fair and honest competition.” RCW 19.86.920; *Haberman v.*  
 25 *Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 169, 744 P.2d 1032, 750 P.2d 254 (1987). To  
 26 establish a CPA violation, the plaintiff must prove five elements: (1) an unfair or deceptive act or  
 practice that (2) occurs in trade or commerce, (3) impacts the public interest, (4) and causes injury  
 to the plaintiff in her business or property, and (5) the injury is causally linked to the unfair or  
 deceptive act. *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 200 P.3d 695, 699 (citing *Hangman*  
*Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986)).  
 Here, Cascade can establish the elements of a claim brought under RCW 19.86 as described  
 herein in connection with its Lanham Act claim.

1 alone from manufacturers of the subject yarns (defendants VVG and Designer Yarns, Ltd. and  
2 Noro) indicate that tens of thousands of kilos of yarn were imported. Dunbabin Decl., Ex. C. At  
3 the wholesale level, these types of yarns are sold and priced by weight per kilo. *Id.* The  
4 wholesale cost of these yarns identified by weight is likely in excess of \$6 million. *Id.* Records  
5 regarding VVG's exports to KFI of the *Cashmerino* yarns over a longer time period (2007  
6 through 2010) also show that thousands of kilos of yarns were imported by KFI from VVG. *Id.*,  
7 Ex. E. Based on the weight of the yarns, the expected wholesale cost of these yarns would be in  
8 the tens of millions of dollars. *Id.* Thus, defendants' revenue for the sales of these yarns (at  
9 multiples of the wholesale costs) for the years 2006 through 2010 likely exceed \$60 million.

10 Cascade believes that sales of the *Cashmerino* yarns, described as KFI's best sellers,  
11 including the similarly mislabeled Noro Silk Garden yarn as well as other cashmere blends are at  
12 least half of KFI's annual sales. *Id.* Thus, at this juncture, Cascade has a reasonable belief that  
13 Defendants' sales of the mislabeled *Cashmerino* yarns since 2006 are approximately \$30 million.  
14 Given that the Defendants received windfall profits as they sold the *Cashmerino* yarns for prices  
15 that were commensurate with yarns that actually contained cashmere (rather than vastly less  
16 expensive acrylic fibers), Cascade believes that Defendants' gross profit for selling acrylic wool  
17 blend as acrylic wool cashmere blend (*i.e.*, *Cashmerino* yarns) would be at least 60% and as high  
18 as 70% or \$21 million, and possibly more if Defendants were getting a volume discount from the  
19 mill. One of Cascade's remedies under the Lanham Act is disgorgement of those profits.

20 *Playboy Enters., Inc.*, 692 F.2d at 1274.

21 Attachment is proper here because the specific amount of damages Cascade seeks is  
22 capable of exact proof and that proof is not speculative. *U.S. v. Pacific Forwarding Co., Ltd. et*  
23 *al.*, 8 F. Supp. 647, 654-55 (W.D. Wash. 1934) (upholding attachment where specific amount of  
24 shipments of liquor sued upon was not speculative because it could be obtained from defendants  
25 as a "matter of bookkeeping.") Cascade has provided estimates of Defendants' profits here using  
26 the sources available to it. Although Cascade is presently unaware of the exact amount of

1 Defendants' profits from sales of these mislabeled yarns, that information is wholly within  
2 Defendants' knowledge as they know the exact amount of yarn sold. Thus, Writs of Attachment  
3 securing at least \$10 million of assets should be entered.<sup>4</sup>

4 **IV. CONCLUSION**

5 This Court has already recognized that Cascade is likely to prevail on the merits of its  
6 false labeling and unfair competition claims. KFI admits that its yarns are not properly labeled.  
7 This establishes the probable validity of Cascade's claims as required by RCW 6.25 *et seq.*  
8 Defendants' conduct since that time further demonstrates the need for the Writs of Attachment.  
9 KFI has delayed signing the continuing guaranty presumably for the purpose of continuing to sell  
10 mislabeled yarns and/or to allow it and its principals to sell, transfer and hide assets. This  
11 conduct falls squarely within the criteria set forth in RCW 6.25.030, therefore, Writs of  
12 Attachment should issue as against Defendants KFI, Elalouf and Opperman.

13  
14 Dated: November 4, 2010

SQUIRE, SANDERS & DEMPSEY L.L.P.

15  
16 By: /s/ Robert J. Guite  
Robert J. Guite, WSBA No. 25753

17 Attorneys for Plaintiff  
18 Cascade Yarns, Inc.

19  
20  
21  
22  
23 <sup>4</sup> These Writs may be issued as against defendants even if their property is located outside of  
24 Washington state. RCW §6.25.030 expressly contemplates extraterritorial application. Section  
25 (5) authorizes the issuance of a writ of attachment where a defendant "has removed or is about to  
26 remove any of his property from this state." §6.25.030(5). *See Union Underwear Co., Inc. v. GI  
Apparel, Inc.*, 2008 U.S. Dist. LEXIS 62182 at \*9-26 (D.N.J., Aug. 12, 2008) (New Jersey court  
holding Kentucky court's prejudgment attachment order applies extraterritorially to nonresident  
defendants with no property in Kentucky and that the order is entitled to Full Faith and Credit).