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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 REPLY IN SUPPORT OF ITS MOTION AND MEMORANDUM FOR WRIT OF ATTACHMENT**

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

**I. REPLY**

The ineptitude of Defendants’ Opposition is evidenced by both what it fails to state and what it refuses to deny. Nowhere in their Opposition do defendants state that they have any admissible testimony supporting the accuracy of labeling of their products.<sup>1</sup> Also absent from the

<sup>1</sup> The Court should note that not only does defense counsel admit that tests of the Defendants yarns have been “at variance” with their labels but also that Defendants refuse to offer any tests regarding the content of the subject yarns.

1 Opposition any denial that Mr. Elalouf or Knitting Fever, Inc. (“KFI”) are liquidating assets;  
2 instead, there is just the statement that Mr. Elalouf’s yacht has been for sale since 2005 and that  
3 he does not own a Ferrari.

4       Instead of dealing with the central facts, the Opposition focuses primarily on its assertion  
5 that this Court lacks personal jurisdiction over defendants other than KFI. As demonstrated in  
6 Cascade’s opposition to the pending Motions to Dismiss (and in subsequent supplemental  
7 briefing requested by this Court), this Court has jurisdiction over Defendants Elalouf and  
8 Opperman thereby rendering these arguments moot. Of course, KFI admits that this Court has  
9 jurisdiction over it.<sup>2</sup> Further, Mr. Elalouf is the alter ego of KFI thereby rendering attachment of  
10 his property appropriate on that basis.

11       For purposes of personal jurisdiction, the “effects” of individual defendants’ conduct,  
12 even if they are employees of a business entity, are relevant and confer personal jurisdiction  
13 where (1) where the corporation is the agent or alter ego of the individual defendant, or (2) by  
14 virtue of the individual’s control of, and direct participation in the alleged activities. *See Swartz*  
15 *v. Deutsche Bank*, 2008 U.S. Dist. LEXIS 36139, at \*31 (W.D. Wash., May 2, 2008); *Wolf*  
16 *Designs, Inc. v. DHR & Co.*, 322 F. Supp. 2d 1065, 1072 (C.D. Cal. 2004). Mr. Elalouf is the  
17 alter ego of KFI, and Mrs. Elalouf and Mr. Opperman were primary participants in the  
18 wrongdoing directed at Cascade in Washington. Dkt. No. 4 at ¶¶ 6-8, 10-12, 44-56, 94-95, 103,  
19 107, 111, 118, 126-131. Accordingly, this Court has jurisdiction over each of them. Further,  
20 contrary to counsel’s assertion, Mr. Opperman has significant personal contacts with Washington  
21 -- he personally calls on yarn stores in Washington to sell KFI’s products, including the  
22 mislabeled yarns.<sup>3</sup> Declaration of Yvonne M. Moore.

23 \_\_\_\_\_  
24 <sup>2</sup> This is likely because Defendants have gutted it of any assets. The Court should note that KFI  
25 does not appear to have any assets which are not secured. Reply Declaration of Robert J. Guite,  
26 Ex. A.

<sup>3</sup> It is extremely doubtful that Jay Opperman came to Washington purely to make one sales call  
on Ms. Moore.

1           The credibility of Defense counsel’s retelling of the Court’s statements, at the September  
2 29 hearing, of Cascade’s likelihood of success hearing speaks for itself. The Court is well aware  
3 of what it said and may judge the accuracy of Cascade and Defendants’ recollection. Cascade  
4 submits that it has neither overstated nor misapprehended the Court’s statement as to the probable  
5 validity of the unfair competition claim.<sup>4</sup> The validity of evidence was not in dispute as Cascade  
6 offered to proceed with an evidentiary hearing in connection with that motion; KFI did not, and  
7 does not, request such a hearing. Cascade stands willing to present such a hearing if the Court  
8 sees fit.

9           Despite the calculated decision to forego an evidentiary hearing, Defendants bizarrely  
10 persist in *arguing* that fiber analysis is inherently suspicious and unreliable. Needless to say,  
11 Defendants lack expert testimony on this point. In short, there is no basis for the Court to believe  
12 that Defendants will ever have an expert or offer *Daubert*-qualified testimony. Defense counsel  
13 persists in offering non-expert argument, which the Court previously rejected. (Dkt. No. 71).

14           Finally, as mentioned above, Defendants never deny that they are in the process of  
15 disposing of assets. In any event, Cascade did not attempt to prove, nor does it need to establish  
16 the disposition of assets in order to obtain the Writ of Attachment. The Defendants concede that  
17 attachment is proper if: (1) there is probable cause to believe that the alleged statutory grounds  
18 for attachment exist, and (2) the probable validity of the claim. (Opp. at 3:21-4:3). Cascade  
19 merely offered information regarding Mr. Elalouf’s attempts to dispose of assets by way of  
20 further background; it is not required to demonstrate evasion or depletion of assets in order to  
21 obtain the relief it requests. To satisfy RCW 6.25.030(1) or 6.25.030(2) it need only show that  
22 the defendants are foreign corporations or non-residents, respectively. Nor do the Defendants  
23

24 \_\_\_\_\_  
25 <sup>4</sup> The Court stated: “I am just trying to maintain the status quo without giving them their  
26 injunction. Frankly, in looking at the four factors the court looks at for preliminary injunction, I  
am pretty convinced they might have success on the merits here.” Dkt. No. 95, Ex. C. at 35:24-  
36:3.

1 contest that their conduct is a crime under the Wool Products Labeling Act (“WPLA”), 15 U.S.C.  
2 § 68h, thereby establishing another statutory basis, RCW 6.25.030(9).

3 **II. DISCUSSION ON REPLY**

4 **A. Cascade Has Satisfied The Elements of RCW 6.25.030; A Writ Of**  
5 **Attachment Should Issue.**

6 KFI does not dispute that a Writ of Attachment should issue against it; the dispute relates  
7 to the individuals who actually have assets. KFI cannot dispute that it is a foreign corporation;  
8 this satisfies RCW 6.25.030(1). Nor can the Elaloufs or Mr. Opperman dispute that Cascade has  
9 satisfied RCW 6.25.030(2); they admit they are not residents of Washington. Finally, KFI, the  
10 Elaloufs and Mr. Opperman do not discuss -- let alone dispute -- that the violation of § 68h of the  
11 WPLA (established by the misbranding of wool products) is a misdemeanor such that attachment  
12 is also proper under RCW 6.25.030(9). Instead, the Elaloufs and Mr. Opperman attempt to  
13 sidestep the merits by arguing this Court lacks jurisdiction over them (when Cascade has clearly  
14 demonstrated the basis for the same). Defendants later whine that “attachment is a harsh  
15 remedy.” (Opp. at 4:18.) Their arguments avoid addressing the merits, which are clearly against  
16 them. Nor have the Defendants submitted evidence to rebut Cascade’s showing that its Lanham  
17 Act claim and its RCW 19.86 claims are valid.

18 **B. Cascade’s Claims Are Probably Valid.**

19 This Court recognized Cascade is likely to prevail on its claims for unfair competition.  
20 KFI admits that its products are “at variance” with their labels. The Defendants have no  
21 admissible evidence that their yarns are accurately labeled. As a knee-jerk reaction, Defendants  
22 offer merely speculation regarding the science of fiber testing. (Opp. at 5:14-7:8.) Speculation is  
23 insufficient to rebut the evidence before the Court. This Court recognized the same when it  
24 struck the exhibits to Mr. Slavitt’s Declaration and struck Mr. Elalouf’s Declaration. (Dkt. No.  
25 71). Simply put, Defendants have no defense.  
26

1 Cascade has presented un rebutted evidence that the subject yarns lack cashmere or  
 2 contains only trace amounts of cashmere. Thus, KFI's labeling of its *Cashmerino* yarns as  
 3 containing 12% cashmere (1) is literally false; (2) has a tendency to deceive a substantial segment  
 4 of potential customers; (3) is meant to influence the purchasing decisions of potential customers;  
 5 (4) was made in interstate commerce by (at least) being posted on KFI's website and offered for  
 6 sale nationwide; and (5) is likely to injure Cascade by diverting sales from it, since Cascade and  
 7 KFI are direct competitors. Consequently, Cascade has satisfied the elements of its § 43(a)  
 8 Lanham Act claim and its claim arising under RCW 19.86.<sup>5</sup> See *Southland Sod Farms v. Stover*  
 9 *Seed Co.*, 108 F.3d 1134, 1139 (9th Cir. 1997).

10 The Defendants' argument that Cascade's claims are subject to offset is also puzzling as  
 11 they hint at bringing counterclaims supported by fiber analysis. (Opp. at 9:6-9). Brazenly these  
 12 claims will be "presented [by] the very same type of evidence against Cascade that Cascade has  
 13 used as the basis for its claims against KFI, namely, fiber analysis test reports." *Id.* Of course,  
 14 even if there were offsets to be applied, these would not preclude the Court from granting the  
 15 Writ of Attachment; at most, the amount attached could be modified if the Defendants presented  
 16 evidence to support the validity of a counterclaim.

17 Finally, Cascade is compelled to respond to one final mischaracterization<sup>6</sup> of Washington  
 18 law made by defense counsel regarding the amount of any bond required to issue a Writ of

19 \_\_\_\_\_  
 20 <sup>5</sup> Nor do the defendants dispute that Cascade may recover their profits under 15 U.S.C. § 1117(a).  
 21 Where, as here, defendants willfully violate § 43(a) of the Lanham Act, a plaintiff may be entitled  
 22 to recover the defendant's profits under § 35(a) "subject to the principles of equity." 15 U.S.C. §  
 23 1117(a); see also *U-Haul Intern., Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1042 (9th Cir. 1986).

22 <sup>6</sup> The Defendants also imply that Cascade is asking this Court to attempt to reach property beyond  
 23 its territorial limits (Opp. at 4:8-17.) Cascade is not. Rather, as set forth in the opening motion, a  
 24 Writ of Attachment may be issued against defendants even if their property is located outside of  
 25 Washington. RCW §6.25.030 expressly contemplates extraterritorial application and orders  
 26 under similar statutes have been afforded Full Faith and Credit. 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 to attach property in New Jersey).

1 Attachment. To state that Cascade is required to post a bond for double the amount of the writ  
2 sought is at best a misrepresentation of the law. The Defendants assert that “RCW 6.25.080  
3 requires Cascade to first post an attachment bond for double the amount for which it seeks  
4 judgment.” (Opp. at 9:20-21 (citing RCW 6.25.080 and *L.C. v. Gilbert*, 2010 U.S. Dist. LEXIS  
5 80825 (W.D. Wash., June 30, 2009)). RCW 6.25.080(1) provides in relevant part:

6 [B]efore the writ of attachment shall issue, the plaintiff, or someone in the  
7 plaintiff’s behalf, shall execute and file with the clerk a surety bond or undertaking  
8 in the sum in no case less than three thousand dollars, in the superior court, nor  
9 less than five hundred dollars in the district court, and double the amount for  
10 which plaintiff demands judgment, *or such other amount as the court shall fix*[.]  
(emphasis added.)

11 If the language of the statute providing that the amount of the bond may be in any amount set by  
12 the court was not clear enough, review of the opinion in *L.C.* -- the case cited by Defendants --  
13 confirms that the amount of the bond may be nominal and is within the court’s “authorized  
14 discretion.” 2010 U.S. Dist. LEXIS 80825 at \*3. In *L.C.*, a bond of \$500 was required and a  
15 Writ of Attachment in the amount of \$500,000 issued. *Id.* To state that the amount of the bond  
16 must be double the amount of the writ sought misstates Washington law. In any event, no bond is  
17 required for attachments only to the real property of foreign corporations or non-resident  
18 individual defendants. RCW 6.25.080(2).

19 **III. CONCLUSION**

20 This Court has already recognized that Cascade is likely to prevail on the merits of its  
21 false labeling and unfair competition claims. KFI admits that its yarns are not properly labeled.  
22 This establishes the probable validity of Cascade’s claims as required by RCW 6.25 *et seq.* and  
23 Cascade satisfies the remaining statutory criteria. Writs of Attachment should issue.

24 Dated: November 19, 2010

SQUIRE, SANDERS & DEMPSEY L.L.P.

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

Attorneys for Plaintiff  
Cascade Yarns, Inc.