

1 **B. Cascade Has Failed To Establish Good Cause For Expedited Discovery**

2 **1. Cascade’s “Concerns” Are Unfounded**

3 Cascade admits that its allegations of KFI’s deliberate deception are based upon a
4 “host of circumstantial evidence.” Cascade’s Brief at 3. Upon examination, however, it is
5 apparent that Cascade’s “evidence” – an assemblage of simply incorrect and unwarranted
6 inferences, and declarations of limited value – fails to establish good cause.

7 **2. The Apparent Vintage Of Cascade Yarn Samples**

8 As an initial matter, Cascade has failed to explain how the apparent age of the
9 samples of its yarn that KFI had tested should affect the fiber contents as reported.
10 Presumably, yarns having the same fiber contents, regardless of vintage, should be
11 interchangeable for purposes of testing. But apart from its illogic, Cascade’s conclusion
12 that the samples KFI had tested were acquired years ago is factually incorrect. According
13 to the Declaration of Jeffrey Denecke, all samples of Cascade’s yarns that KFI tested were
14 acquired after Cascade’s commencement of the present action. *See* Declaration of Jeffrey
15 Denecke, Jr. As a result, whatever inferential value the age of the tested samples was
16 supposed to have in support of Cascade’s “concerns” of intentional deception is lost.

17 **3. Dr. Langley’s Tests**

18 It is true that Cascade has supplemental reports of fiber analysis tests conducted by
19 Dr. Ken Langley which differ from the reports provided by KFI. The most that can be said
20 is that these reports show disparate results. Cascade, however, takes the unwarranted step
21 that Dr. Langley’s supplemental tests *confirm* the accuracy of Cascade’s labels. If the
22 labels are correct, Dr. Langley’s tests might serve as confirmation of their accuracy. If,
23 however, the labels are incorrect, then the tests performed by SGS Cashmere Labs on

1 behalf of KFI (as arranged by Designer Yarns with yarn samples provided by KFI) might
2 serve as confirmation of their *in*accuracy. In similar fashion, all that can be said of two
3 clocks indicating different times is that at least one of them must be wrong; the accuracy of
4 either cannot be assumed.

5 The disparate results of these two sets of tests – each performed on the same or
6 similar dye lots by independent laboratories known to the Cashmere and Camel Hair
7 Manufacturer’s Institute to have facilities and personnel capable of identifying and
8 distinguishing fine animal hair fibers – suggest that these testing methodologies may well
9 yield inconsistent results. Declaration of Joshua R. Slavitt (“Slavitt Decl.”), Exhibit A.
10 Nonetheless, without any reason for discounting other, more likely possibilities, Cascade
11 summarily concludes that Dr. Langley’s supplemental testing is evidence of what can only
12 be intentional deception on KFI’s part. Cascade’s conclusion is simply unwarranted.

13 **4. The Declarations of Elisabeth Loyola and Emanuele Scibanti**

14 The declarations of Elisabeth Loyola and Emanuele Scibanti are of limited value.
15 Insofar as they relate only to Pastaza and Mohair Kiss – two of over eighteen of Cascade’s
16 yarns tested that reported fiber contents at variance with their labels – these declarations,
17 even if accepted, fail to compel Cascade’s conclusion of intentional deception. Notably,
18 Ms. Loyola’s undated declaration contests the findings of an independent laboratory
19 concerning Pastaza with those of her “in house fiber laboratory” (*see* Loyola Decl. at ¶ 7),
20 and Mr. Scibanti’s declaration concerning details in the manufacture of Mohair Kiss
21 offers little in the way of explanation. Shedding at most a small circle of dim light, these
22 declarations fail to support Cascade’s “concerns” of intentional deception.
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on December 6, 2010, I electronically filed the foregoing PRAECIPE with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Robert J. Guite
rguite@ssd.com

DATED this 6th day of December, 2010.

By s/ Warren J. Rheaume
Warren J. Rheaume, WSBA #13627
Davis Wright Tremaine, LLP
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
Telephone: (206) 757-8265
Fax: (206) 757-8265
E-mail: warrenrheaume@dwt.com