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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 YARNS, INC.’S REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AND ENTRY OF STIPULATION AND ORDER RE CONTINUING GUARANTY**

**Note On Motion Calendar: December 17, 2010**

**I. INTRODUCTION AND RELIEF REQUESTED**

The issue here is simple: can KFI properly demand that the Court enjoin Cascade from using a public document, guaranteeing the authenticity of its goods, to make disclosures to or seek redress from governmental agencies for KFI’s fraudulent issuance of the same. Lacking either a basis in fact or law for the desired shield from criminal liability, KFI accuses Cascade of seeking to cause “mischief.”

1 **II. REBUTTAL ARGUMENT**

2 **A. Cascade Submits That Mr. Slavitt's Recollection Of the October 26**  
 3 **Telephone Conference With This Court As Recited In His Declaration Is**  
 4 **Misleading, Incomplete and Incorrect; In Any Event, It Is Irrelevant.**

5 KFI's demand for a prohibition against "use the guaranty of the other for any other  
 6 purpose" did not appear until KFI forwarded yet another draft stipulation, after the October 26  
 7 conference, when Mr. Slavitt apparently realized that the Court would enforce his commitment to  
 8 file a continuing guaranty. Dkt. No. 130, ¶ 2. Mr. Slavitt concedes that prior to receipt of the  
 9 November 4 draft, KFI had not made such a demand in its proposed stipulation. Dkt. No. 139,  
 10 Ex. D.<sup>1</sup> KFI's prior concerns, as expressed on the record at the September 29 oral argument, were  
 11 related to litigating this case on internet news forums, while not infringing upon Cascade's free-  
 12 speech rights or use of the guarantee for litigation. Reply Declaration of Robert J. Guite (Reply  
 13 Guite Decl.), Ex. A.<sup>2</sup>

14 The Court was a party to both the October 26 conference call and prior telephone  
 15 conferences, so it can draw from upon its recollection, and determine if it sought to prohibit  
 16 Cascade for using KFI's executed and filed public document for any meaningful purpose in this  
 17 litigation or elsewhere.

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 20 <sup>1</sup> Mr. Slavitt's *recollection* of the October 26 conference is a feature typical of the pattern of  
 21 dubious factual assertions made by defense counsel in this case. The others include: (1) Ms.  
 22 McInerney's perjured declaration; (2) Mr. Slavitt's assertion that the parties, and the Court,  
 23 agreed that guaranty would not be exchanged **prior to entry of an executed stipulation**, during  
 the October 26 conference (Dkt. No. 139, pgs. 30-31 & 37); and ( 3) Mr. Slavitt's factual  
 assertions (now withdrawn) in KFI's Opposition to Plaintiff's First Motion for Expedited  
 Discovery (Dkt. Nos. 127, 128) which forced Cascade to draft and serve a motion for sanctions.

24 <sup>2</sup> Mr. Slavitt's words then stand in stark contrast to his current position: "We would also agree  
 25 not to use this against Cascade, in terms of touting this, and posting this on [R]avelry, look what  
 26 we got Cascade to do, if Cascade would agree not to do that as well." Reply Guite Decl., Ex. A at  
 37:16-19. "[A]nd we are concerned about -- We are certainly cognizant of individuals' free  
 speech rights. To the extent that this is something that doesn't advance the litigation, I'm not sure  
 what purpose it serves. *Id.* at 37:22-25 (emphasis added).

1           **B.     KFI’s Refusal To Forward A Conformed Copy of The Guaranty, Coupled**  
2           **With Its Demand That It Not Be Used In Any Meaningful Way, Evidences**  
3           **The Willful Nature of KFI’s Continued Sale Of Mislabeled Wool Products.**

4           Lacking any tests to support the accuracy of its labeling, KFI elects to argue that fiber  
5           testing yields only meaningless results. This argument has been the one consistent feature of  
6           KFI’s position. Mr. Elalouf stated as much when he threatened Cascade with litigation on June  
7           22, 2006. Dkt. No. 4, ¶ 44. KFI’s New York attorney took the same position when he authored  
8           the lulling letter that was published to the trade. Reply Guite Decl., Ex. B. Now lacking any  
9           credible explanation for the current perpetuation of the crime, Mr. Slavitt makes the same  
10          argument. Regardless of KFI’s desire to minimize criminal liability for its misdeeds, the Court  
11          should not offer its seal of approval in the form of prior restraint upon Cascade.

12           **C.     KFI Failed To Make A Showing of Good Cause Necessary To Support The**  
13           **Entry Of An Order Enjoining Cascade From Using A Public Document.**

14          The Supreme Court has recognized that First Amendment rights may be implicated by a  
15          protective order. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984) (First Amendment not  
16          implicated by the order which covered only material gathered through the discovery process).  
17          Here, not only does KFI seek to prohibit Cascade from publicly disclosing the public document, it  
18          seeks to prevent Cascade from using it for the purposes of seeking criminal prosecution or  
19          cooperating in governmental investigations.<sup>3</sup>

20          To properly seek this, KFI is required to make a showing of good cause. *Humboldt*  
21          *Baykeeper v. Union Pac. R.R. Co.* 244 F.R.D. 560, 566 (N.D. Cal. 2007). Such a showing  
22          requires KFI to “demonstrate[] that the order would advance or protect some legitimate interest  
23          other than suppression of expression.” *Id.* Here, the only interest is the vitiating of a Wool  
24          Products Guarantee for the purpose of perpetuating a criminal enterprise. Clearly this is not a  
25          showing of good cause.

26          <sup>3</sup> It is ironic that KFI would sign a guaranty, then seek to have the Court defang its bite. Clearly  
the purpose of a guaranty is that it is enforceable and KFI prefers a document which Cascade is  
prohibited from seeking to have enforced.

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**III. CONCLUSION**

KFI has no legitimate interest in hiding or seeking to nullify the criminal consequences of the fraudulent Wool Products Guaranty that it signed. KFI completely fails to make a showing of good cause. Accordingly, the Court should strike KFI’s requested prohibitions from the stipulation and enter the form of stipulation and order proposed by Cascade.

Dated: December 16, 2010

SQUIRE, SANDERS & DEMPSEY L.L.P.

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

Attorneys for Plaintiff  
Cascade Yarns, Inc.