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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

**DECLARATION OF ROBERT J. GUITE
IN SUPPORT OF CASCADE YARNS,
INC.'S OPPOSITION TO DEFENDANT
KNITTING FEVER, INC.'S RULE 56(b)
MOTION TO CONTINUE PARTIAL
SUMMARY JUDGMENT AND MOTION
TO STRIKE**

**Note On Motion Calendar:
January 14, 2011**

I, Robert J. Guite, declare as follows:

1. I am an attorney, admitted to practice before all of the courts of the State of Washington and this court, and am Of Counsel at Squire, Sanders & Dempsey L.L.P., counsel of record for Plaintiff Cascade Yarns, Inc. ("Cascade") in this action. This declaration is based on my personal knowledge and, if called on to do so, I would and could testify competently as to the matters set forth herein.

EXHIBIT A



Direct: +1.415.954.0235
rguite@ssd.com

December 31, 2010

VIA EMAIL AND U.S. MAIL

Warren J. Rheume, Esq.
Rebecca J. Francis, Esq.
Sarah K. Duran, Esq.
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045

**Re: *Cascade Yarns, Inc. v. Knitting Fever, Inc. et al.*
United States District Court, Western District of Washington
Case No. 2:10-cv-00861-RSM**

Dear Counsel:

We are in receipt of defendant's "RULE 56(b) [sic] MOTION TO CONTINUE CASCADE'S PARTIAL SUMMARY JUDGMENT MOTION" purportedly noted for consideration on January 7, 2011, the second Friday after it was filed. First, the motion is not properly noted. Pursuant to LR 7(d)(2), the only motions that may be noted for consideration on the second Friday are motions for relief from a deadline, motions for protective orders and motions to seal. Your motion does not fit within these categories. This is at least the fourth motion that has been filed contrary to LR 7(d) by defendants in this matter. Defendants' improperly noted Motions to Dismiss (Dkt. Nos. 34 and 37) were re-noted by the court on July 27 and, subsequently, defendant VVG's Motion to Dismiss (Dkt. No. 88) was re-noted by the court on October 29. Further, the instant motion was not signed by you as required by GR 2(d). This is not the first time that we have brought this deficiency to your attention. Cascade and/or the Court have been put to the burden of correcting these repeated errors. We renew our request that you properly supervise Philadelphia counsel with respect to compliance with local court rules.

Second, the motion references Fed. R. Civ. P. 56(b) [sic] and appears to constitute defendants' opposition to Cascade's pending Motion for Partial Summary Judgment. As such, it should constitute KFI's entire opposition to Cascade's Motion for Partial Summary Judgment. If the instant motion is not intended to be defendants' opposition, it should be withdrawn immediately and any request for a continuance pursuant to Fed. R. Civ. P. 56(d) should be included in defendants' opposition.

Third, from your motion it appears that you wish to take the deposition of Professor Langley. We are agreeable to stipulate to allow you to conduct early discovery, including the issuance of a Notice of Deposition and a *Subpoena Duces Tecum* to Professor Langley. To that end, we conferred with Professor Langley today and confirmed that he is available for deposition on January 18, January 20, January 27, February 3 or February 8 at our offices in Boston, Massachusetts.

Fourth, Mr. Slavitt makes a false statement in his declaration, which is repeated in the motion. The false statement is that KFI has tests showing the cashmere content of Cascade's yarns being at odds


Warren Rheaume
December 31, 2010
Page 2

with the label. If KFI has such tests, it has yet to furnish them. You should recall that the vast majority of KFI's tests "showing" an issue with Cascade's yarns dealt with minimal discrepancies, or technical issues, such as the name used for a fiber or a missing country of origin.

Please immediately reply and confirm either that the "RULE 56(b) [sic] MOTION TO CONTINUE CASCADE'S PARTIAL SUMMARY JUDGMENT MOTION" constitutes defendants' opposition to Cascade's Motion for Partial Summary Judgment and re-notice it for consideration on January 14 or that the motion has been withdrawn. Finally, if you wish to proceed with Professor Langley's deposition, please let us know your preference among the dates we have offered so that appropriate arrangements may be made. We are particularly concerned with KFI's proposed order, which specifies that Cascade may not move for summary judgment until the close of discovery, without specifying what, if any, discovery that KFI needs.

If I have not heard from you or Mr. Slavitt by 10:00 a.m. PST/ 1:00 p.m. EST on Wednesday, January 5, 2011, I will call Mr. Slavitt at that time. If that date and time are not convenient, please advise me of alternative times for a call to take place on January 3 or January 4.

Very truly yours,



Robert J. Guite

RJG/tmd

cc: Joshua R. Slavitt, Esq.

EXHIBIT B



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San Francisco, CA 94111

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January 3, 2011

VIA EMAIL AND U.S. MAIL

Warren J. Rheume, Esq.
Rebecca J. Francis, Esq.
Sarah K. Duran, Esq.
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045

**Re: *Cascade Yarns, Inc. v. Knitting Fever, Inc. et al.*
United States District Court, Western District of Washington
Case No. 2:10-cv-00861-RSM**

Dear Counsel:

We write in furtherance of our letter of December 31, 2010 in response to Defendants "RULE 56(b) [sic] MOTION TO CONTINUE CASCADE'S PARTIAL SUMMARY JUDGMENT MOTION." In addition to making Professor Langley available for deposition as offered in our December 31 letter, we have confirmed that Professor Langley can make available remnants of the Defendants' yarns that he tested to a qualified expert so that Defendants may obtain their own fiber analysis of those samples.

To that end, if you would like to have an expert conduct analysis of those samples, please let me know so that appropriate arrangements may be made and so that an adequate chain of custody may be maintained.

Very truly yours,


Robert J. Guite

RJG/tmd

cc: Joshua R. Slavitt, Esq.

EXHIBIT C



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Robert.Guite@ssd.com

January 7, 2011

VIA E-MAIL & CERTIFIED U.S. MAIL

Warren J. Rheume, Esq.
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045

John A. Reed, Esq.
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045

**Re: *Cascade Yarns, Inc. v. Knitting Fever, Inc. et al.*
United States District Court, Western District of Washington
Case No. 2:10-cv-00861-RSM**

Dear Messrs. Rheume and Reed:

I write to formally bring your attention to a matter of serious concern, which has yet to be addressed. As Mr. Rheume is aware, I wrote to your firm on October 29 raising the concern of your failure to assist Philadelphia counsel in conforming with LR 7 noting requirements for motions. Efforts to contact your firm were unsuccessful, and I was forced to address the matter with the docketing clerk. On November 1st, I wrote again to alert Mr. Rheume that he had failed to sign any motion or response docketed by Philadelphia counsel, despite the express requirement that he do so under GR 2. Mr. Rheume responded by letter that day, asserting that the omission was a result of "an administrative mistake." Mr. Rheume promised that the matter would be promptly corrected. I responded by letter of November 2 with particularized concerns, regarding the factual assertions made in the Philadelphia counsel's unilateral filing.

Despite Mr. Rheume's written promise to promptly correct the failure to comply with Court rules, I was forced to write once again on December 31, again responding to a motion (1) unsigned by local counsel, and (2) filed with insufficient time according to LR 7. Davis Wright Tremaine and Mr. Rheume elected to not respond, and I was again forced to address the matter with the docketing clerk. It is apparent that Davis Wright Tremaine has taken the position that it merely charges for the service of having Philadelphia counsel admitted *Pro Hac Vice*, yet undertakes no obligation to confirm that the counsel complies with local rules.

Recently and equally troubling is the discovery that letters sent to Davis Wright Tremaine have been returned as deleted unread. For example, my December 31, 2010 letter regarding Rule 56(b) Motion emailed to counsel, was deleted by counsel without reading. If it is Davis Wright Tremaine's position that it wishes no involvement or responsibility in this case, the correct action is to withdraw from representation, so that Philadelphia Counsel can find a local attorney who will supervise and assist him with compliance with local rules.

37 OFFICES IN 17 COUNTRIES

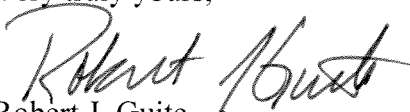
SQUIRE, SANDERS & DEMPSEY (US) LLP IS PART OF THE INTERNATIONAL LEGAL PRACTICE SQUIRE, SANDERS & DEMPSEY WHICH OPERATES WORLDWIDE THROUGH A NUMBER OF SEPARATE LEGAL ENTITIES.

PLEASE VISIT WWW.SSD.COM FOR MORE INFORMATION.

Warren J. Rheaume, Esq.
John A. Reed, Esq.
January 7, 2011
Page 2

Should similar issues continue to occur unaddressed by your firm, we will be forced to take appropriate action, whether it is a second Rule 11 motion, second motion for disqualification, or report to appropriate authorities.

Very truly yours,



Robert J. Guite

RJG/tmd

EXHIBIT D

Pepper Hamilton LLP
Attorneys at Law

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Philadelphia, PA 19103-2799
215.981.4000
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Joshua R. Slavitt
direct dial: 215.981.4680
direct fax: 800.589.4728
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January 7, 2011

VIA EMAIL

Robert J. Guite, Esquire
Squire, Sanders & Dempsey LLP
One Maritime Plaza, Suite 300
San Francisco, CA 94111
Email: rguite@ssd.com

Re: Cascade Yarns, Inc. v. Knitting Fever, Inc. et al.
Civil Action No. 2010-cv-00861

Dear Mr. Guite:

At the outset, let me remind you that while Mr. Rheaume and his firm are acting as local counsel, and in that capacity have been and continue to be actively involved in the case, any correspondence you wish to direct to defense counsel in this matter should be addressed to me with copies to Mr. Rheaume. Moreover, I believe both Mr. Rheaume and I have previously advised you of this.

With regard to the noting date of our client's Rule 56(d) motion, insofar as the motion is, in essence, a motion for relief from a deadline (i.e., the deadline associated with filing an opposition to your client's partial summary judgment motion), it was properly noted for January 7 in accordance with LR 7(d). As a result, we believe that the Court erred in re-noting the motion for January 14. While we acknowledge the formal error in the brief of omitting a signature line for local counsel, we can assure you that Mr. Rheaume reviewed the motion and provided his input prior to its filing, as he has with all of our activities in the Western District of Washington. Further, we will file corrected papers that include a signature line for local counsel. Doing so, however, does not affect the noting date as reset by the Court.

You have identified a typographical error in the title of our client's motion. In view of the substance of the motion as under Rule 56(d), the full quotation of the text of Rule 56(d), and the numerous references to Rule 56(d) throughout the body of the motion and in the footer of every page, we are confident that the true nature of the motion as a Rule 56(d) motion is not obscured by the single reference to Rule 56(b) in its title. That said, we will rectify this typographical error as well with our corrected papers.

Boston

Washington, D.C.

Detroit

New York

Pittsburgh

Berwyn

Harrisburg

Orange County

Princeton

Wilmington



Robert J. Guite, Esquire
January 7, 2011
Page 2

Moreover, there is nothing in the rules that prevents a Rule 56(d) motion from being filed in advance of filing summary judgment opposition papers, or that would lead such a motion to be treated as summary judgment opposition papers. As a result, your assertion that the motion "appears to constitute defendants' opposition to Cascade's pending Motion for Partial Summary Judgment" makes no sense at all.

With regard to discovery of Dr. Langley, the dates you offer are entirely unrealistic for a number of reasons. To begin with, the pleadings have yet to close and formal discovery has yet to begin. Once a scheduling order is in place, the parties can then proceed with discovery in the manner in which they each see fit. Moreover, Dr. Langley is only one of several persons from whom discovery will be sought regarding the essential elements of Cascade's claims and our clients' affirmative defenses, and we expect to notice his deposition, and the depositions of other witnesses, only *after* other discovery has already been conducted.

With regard to my declaration submitted in connection with the Rule 56(d) motion, we disagree that it contains a false statement. While our client has not yet presented any test reports showing variances in the cashmere content of your client's yarns, the variances that were reported were for yarns containing other specialty fibers (e.g., alpaca, mohair, llama, silk). That said, we will file a substitute declaration to preclude the possibility of confusion.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Slavitt".

Joshua R. Slavitt

cc: Warren Rheaume, Esquire
Rebecca Francis, Esquire