

HON. RICARDO S. MARTINEZ

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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.

vs.

ROBERT A. DUNBABIN, SR., a natural person, JEAN A. DUNBABIN, a natural person, and ROBERT A. DUNBABIN, JR., a natural person,

Counterclaim-Defendants,

CAPTION CONTINUED ON NEXT PAGE

Case No. 2:10-cv-00861 RSM

REPLY DECLARATION OF KENNETH D. LANGLEY IN SUPPORT OF PLAINTIFF CASCADE YARNS, INC.'S MOTION FOR PRELIMINARY INJUNCTION

**Note On Motion Calendar:
March 18, 2011**

1	CASCADE YARNS, INC., a Washington Corporation,)
2)
3	Plaintiff and Third-Party Plaintiff,)
4	vs.)
5	EMMEPIEFFE SRL, an entity organized or existing under the laws of Italy,)
6	Third-Party Defendant.)

I, Kenneth D. Langley, hereby declare as follows:

1. I am over eighteen (18) years of age. I was retained by plaintiff Cascade Yarns, Inc. ("Cascade"), to conduct certain tests and complete fiber analysis of certain samples of yarns manufactured and/or distributed by Knitting Fever, Inc. ("KFI"), the subject yarns. I submit this declaration in support of Cascade's Motion for Preliminary Injunction. I have personal knowledge of the facts set forth in this declaration and, if called to do so, I could and would testify truthfully and competently thereto under oath.

2. I have had the opportunity to review the Declaration of Maureen Reitman dated March 14, 2011 and provide this Reply Declaration following my review of Ms. Reitman's Declaration and to elaborate on certain testing and methodologies described in my Declaration dated February 22, 2011.

3. Paragraph number 6 of Ms. Reitman's Declaration is misleading in that the quotation from AATCC Test Method 20 is incomplete. The actual wording of section 9.27 is: "The man-made fibers are best identified by micro-FTIR, solubility, melting point, refractive indices, and other optical characteristics and density: properties which relate to chemical nature rather than physical shape." As noted in my reports, fibers were sectioned with a fiber cutter, mounted on microscope slides and identified. In each sample there were fibers that could have been acrylic, and in one case (report dated February 2, 2011) there was a second synthetic fiber which appeared to be coated. None of the fibers had the general appearance of regenerated

1 protein in general and casein fibers in particular.

2 4. Paragraph 7 of Ms. Reitman's Declaration suggests that my report did not indicate
3 what technique or techniques were applied in the testing I conducted. This is not correct in that
4 my February 22, 2011 Declaration and the test reports attached thereto detailed the testing
5 methodologies. In any event, by way of further explanation, the fibers were examined, in all the
6 cases referred to, for birefringence, an optical characteristic. Light bends when it strikes and
7 enters a fiber. An expression of this is the refractive index ("R.I."). The R.I. values are different
8 for two cases: (1) when polarized light enters the fiber parallel to the fiber axis, and (2) when
9 polarized light enters the fiber perpendicular the fiber axis. The difference between these two
10 numbers is called "birefringence."

11 5. Birefringence can be determined under the microscope by rotating the fibers 45°
12 from the vertical axis, and observing the color given off by the fiber, and then by rotating the
13 fiber in the opposite direction to - 45°. To confirm the color, different filters are inserted into the
14 microscope. Once the color (and the fiber diameter) is determined, the value of birefringence is
15 obtained from a table. Examples of birefringence range from polyester (+0.160), nylon (+0.046
16 to +0.056), rayon (+0.022 to +0.039). Animal fibers (protein) such as wool are lower (+0.010).
17 Regenerated proteins are even lower, ranging from zero to +0.005.

18 6. Acrylic fibers on the other hand behave entirely differently; they have a negative
19 birefringence. The synthetic fibers in the samples examined had a birefringence of - 0.003 to -
20 0.004 (bright orange-red at +45°, bright green-blue at -45°). Acrylic fibers are the only textile
21 fibers with a negative birefringence (with the possible exception of certain modified acrylic
22 fibers). These observed values of birefringence match up with table values for acrylic fibers.

23 7. With respect to the fibers described above that appeared to be coated, these yarns
24 were immersed in a beaker containing sodium hypochlorite (Clorox bleach) for one hour. Then
25 the yarns were removed, washed and dried. Fibers were sectioned with a fiber cutter, mounted on
26 microscope slides and examined. The bleach removed the coating, and the birefringence was

1 identical for all the synthetic fibers, whether they had, or had not, been coated. It is presumed
2 from this, to a reasonable degree of scientific certainty, that these purported "milk" fibers were
3 merely acrylic fibers with a protein coating.

4 8. As expressed my Declaration dated February 22, 2011, and in the reports attached
5 thereto as Exhibits B through F and further described herein, to a reasonable degree of scientific
6 certainty, the fiber content of the subject yarns that were labeled as containing cashmere and/or
7 "Milk" were not consistent with the product labels. In each instance, the fiber content identified
8 in analysis and described in my report varied by more than 3% from the amounts identified on the
9 product labels. A 3% variance is the generally acceptable standard for variation in fiber content
10 as provided in the applicable regulations promulgated by the FTC (the FTC generally applies the
11 3% tolerance from the regulations under the Textile Fiber Products Identification Act). None of
12 the subject yarns tested fell within this 3% variance; each of the subject yarns was more than 3%
13 variance from the content identified on the product labels. No Milk Protein Fiber was observed in
14 the yarns labeled as Ella Rae Milky Soft, KFI Baby Milk and Ella Rae Latte. Those yarns do not
15 contain Casein fiber or any fiber that was derived from milk or milk protein. Instead, these yarns
16 contained a substantial amount of acrylic, in approximately the same percentage as the alleged
17 "Milk Protein Fiber."

18 I declare under penalty of perjury under the laws of the United States of America that the
19 foregoing is true and correct.

20 Executed on March 17, 2011 at Tiverton, Rhode Island.

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22 
23 KENNETH D. LANGLEY

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REPLY DECLARATION OF KENNETH D. LANGLEY
IN SUPPORT OF CASCADE'S MOTION FOR
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SQUIRE, SANDERS & DEMPSEY (US) LLP
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111
415.954.0200 FAX: 415.393.9887