

The Honorable Ricardo S. Martinez

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CASCADE YARNS, INC., a Washington corporation, )

Plaintiff, )

v. )

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.) an 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. )

Defendants. )

No. C10-00861 RSM  
DECLARATION OF JOHN A. REED  
IN OPPOSITION TO CASCADE'S  
MOTION TO DISQUALIFY DAVIS  
WRIGHT TREMAINE LLP

**Noted On Motion Calendar:  
August 6, 2010**

I, John A. Reed, do hereby depose and state as follows:

1. I have been a lawyer with the law firm of Davis Wright Tremaine LLP ("DWT") and a member of the Washington State Bar Association since Fall 1977. I have been a DWT partner since January 1, 1983. I am, and since January 1, 2009, have been,

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1 DWT's General Counsel and co-chair of DWT's Quality Assurance Committee, the  
2 committee responsible for, among other things, dealing with lawyers' ethical issues and  
3 assisting lawyers' compliance with the Rules of Professional Conduct. I also was a  
4 member of the Quality Assurance Committee from 1989 until becoming the firm's General  
5 Counsel in 2009.

6 2. In my role as General Counsel and co-chair of the Quality Assurance  
7 Committee, I am often called upon to assist DWT lawyers and staff personnel in analyzing  
8 and giving advice with respect to ethical issues, including issues arising under Washington  
9 RPC 1.7 (concurrent conflicts of interest), RPC 1.9 (former client conflicts), RPC 1.10 (the  
10 imputation of concurrent client conflicts and former client conflicts to lawyers associated  
11 with each other in the same law firm), and RPC 1.18 (conflicts of interest arising from  
12 having dealt with a prospective client and the ethical representation of clients with interests  
13 adverse to a former prospective client).

14 3. I also am responsible for implementing firm-wide screening procedures  
15 under RPC 1.18(d)(2). These screening procedures may be put in place to enable a DWT  
16 lawyer to represent a client having interests adverse to a former prospective client, even in  
17 a matter that is the same or substantially related to the matter that was the subject of the  
18 discussion between the former prospective client and another DWT lawyer. As part of this  
19 process, I distribute an electronic firm-wide notice to all DWT lawyers and staff identifying  
20 (i) the former prospective client and the current client affected by the screen, (ii) the DWT  
21 lawyers to be screened, and (iii) the rules and procedures for enforcing and honoring the  
22 screen.

23 4. In my position as General Counsel, I am also familiar with DWT's policies  
and procedures relating to new client engagements and am responsible for their  
enforcement. The principal policy in this area is that no DWT lawyer may accept an  
engagement from a new client without first: (i) performing a conflict of interest check and

1 satisfying himself or herself that the firm has no disabling conflict; (ii) obtaining the written  
2 approval of the new client from either the appropriate partner in charge (the "PIC") or the  
3 intake lawyer's practice group chair (the "PGC"); and (iii) memorializing DWT's  
4 acceptance of the engagement, in a written engagement letter, setting forth DWT's  
5 proposed terms of engagement that have been approved by the PIC or the PGC as part of  
6 the second-partner approval process. To obtain PIC or PGC approval, the intake attorney  
7 must also satisfy the PIC or the PGC that the prospective client meets DWT's minimum  
8 client quality standards and will be willing and able to pay the reasonable fees that DWT  
9 will charge, and that the matter can be adequately staffed.

10 5. In any proposed new client engagement that DWT does not accept, the  
11 intake lawyer is required to send a letter to the declined client confirming that DWT has  
12 elected not to accept the engagement. In reviewing DWT's records, it appears that Mr.  
13 Killeen did not end up seeking or obtaining the approval of Cascade Yarns as a new client  
14 and instead declined the engagement on March 5, 2009, the day after Mr. Dunbabin first  
15 called him, and that Mr. Killeen confirmed the declination in a letter that same day.

16 6. I implemented DWT's standard RPC 1.18 screening procedures in this  
17 matter on July 19, 2010. Attached as Exhibit A is a true and correct copy of the screen  
18 notice that I distributed firm-wide. I included on the Cascade Yarns side of the screen  
19 Michael Killeen, Gillian Murphy, an associate with whom Mr. Killeen spoke briefly in  
20 assessing whether to take the potential engagement (principally as to the possible staffing  
21 of the case), and the outgoing and incoming practice group chairs of the Employment  
22 Group, Lawton Humphrey and Henry Farber. I included Mr. Farber and Ms. Humphrey on  
23 the Cascade Yarns side of the screen out of an abundance of caution, even though I later  
learned that Mr. Killeen had had no communication with either of them about the substance  
of the pregnancy discrimination lawsuit that Ms. Kohn had filed against Cascade Yarns.  
Consistent with RPC 1.18(d)(2), I also instructed DWT's Accounting Department to

1 implement DWT's standard procedures to assure that none of the attorneys on the Cascade  
2 Yarns side of the screen would receive any portion of any fee that Knitting Fever et al. end  
3 up paying DWT in its defense of them in connection with the claims asserted by Cascade  
4 Yarns.

5 7. On July 12, 2010, in my capacity as General Counsel, I sent Robert Guite a  
6 letter responding to his letter that had requested a copy of our Cascade Yarns "file." Guite  
7 Decl. ¶ 8, Ex. F. I communicated to him my conclusion that there was no ethical basis for  
8 Cascade Yarns disqualifying DWT from defending Knitting Fever et al. in the claims that  
9 Cascade Yarns has asserted against them. I informed him that DWT would nonetheless  
10 erect a screen, under RPC 1.18(d)(2), and would not permit Mr. Killeen to share in any part  
11 of the fee.

12 8. On July 20, 2010, Mr. Guite called me and indicated that his client had  
13 directed him to call me for the purpose of asking me to reconsider the firm's decision to  
14 remain in the case. Mr. Guite indicated to me that "his client thinks it disclosed  
15 information to Mike Killeen during their telephone conversation that could be used against  
16 it." He explained that his client contact at Cascade Yarns had told him that he believes that  
17 Mr. Killeen had learned about the "way [Cascade Yarns] sees risk" and the "way it makes  
18 decisions." I asked him if he could illustrate more specifically the types of information to  
19 which his client was referring. He responded that his client believes that Mr. Killeen  
20 learned in his telephone conversation on March 5, 2009 with Mr. Dunbabin, Mr.  
21 Dunbabin's father, and other relatives, about how Cascade Yarns, as a closely held  
22 business, makes decisions and evaluates risk. Mr. Guite indicated that he was told by his  
23 client that Mr. Killeen learned that there is not always a "unity of decision makers" at  
Cascade Yarns. According to his client, Mr. Killeen learned that Cascade Yarns' multiple  
decision makers demonstrated an "inability to make decisions" and an "inability to  
accomplish objectives." He indicated that his client believes that Mr. Killeen's knowledge

1 of this information could lead to increased exposure for his client in its lawsuit against  
2 Knitting Fever et al.

3 9. I declined Mr. Guite's request that DWT withdraw from the case. I  
4 explained to him DWT's rationale that the Knitting Fever case is not the same or  
5 substantially related to the pregnancy discrimination claim that Ms. Kohn had asserted  
6 against Cascade Yarns more than a year before, and that Mr. Killeen had not received  
7 confidential information that could be used to harm Cascade Yarns in the Knitting Fever  
8 case. I also explained that even though DWT does not agree with his client's description  
9 and characterization of the communications involving Mr. Killeen and Mr. Guite's client  
10 on March 4 and 5, 2009, DWT addressed any concerns by promptly erecting a screen under  
11 RPC 1.18 between (i) Mr. Killeen and others at DWT with whom Mr. Killeen had talked  
12 about taking or declining the potential engagement, and (ii) the attorneys who are currently  
13 representing Knitting Fever. I reminded Mr. Guite that we had instructed the Accounting  
14 Department to make sure that none of those on the Cascade Yarns side of the screen,  
15 including Mr. Killeen, would receive any portion of any fee DWT might receive from  
16 Knitting Fever et al. in the case involving Cascade Yarns. I also reminded him that I had  
17 given him written notice of the screen via letter.

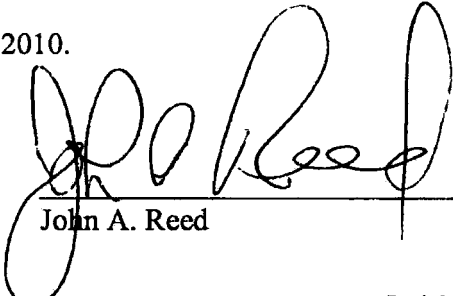
18 10. I also assured Mr. Guite that neither Warren Rheaume, nor any other DWT  
19 attorney currently representing Knitting Fever et al. in the case involving Cascade Yarns,  
20 received or had any knowledge of the substance of whatever information, if any, Mr. Killeen  
21 had learned.  
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I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

DATED this 2nd day of August, 2010.

Executed at Seattle,  
Washington.

  
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John A. Reed

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**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on August 2, 2010, I electronically filed the foregoing  
DECLARATION OF JOHN A. REED 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 2nd day of August, 2010.

Davis Wright Tremaine LLP  
Attorneys for Defendants

By /s/ Rebecca Francis  
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# **EXHIBIT A**

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**From:** Reed, John  
**Sent:** Monday, July 19, 2010 10:13 AM  
**To:** DWTALL (All)  
**Subject:** Ethical Screen Involving Representation of Knitting Fever, Inc., Designer Yarns, Ltd, Filatur, Sion Elalouf, Diane Elalouf, Jay Opperman, Debbie Bliss and David Watt (File No. 92376-1)

This memorandum confirms the decision of Davis Wright Tremaine ("DWT") to establish an ethical screen pursuant to Rule 1.18(d)(2) of the Washington Rules of Professional Conduct ("RPC") in connection with DWT's representation of the defendants, Knitting Fever, Inc., Designer Yarns, Ltd, Filatur, Sion Elalouf, Diane Elalouf, Jay Opperman, Debbie Bliss and David Watt (collectively, the "Defendants") in litigation brought by Cascade Yarn, Inc. in which Cascade Yarn, Inc. has asserted claims against the Defendants for violation of the Lanham Act and RICO (the "Matter").

The Defendants' interests in the Matter are adverse to Cascade Yarn, Inc. Warren Rheume is the DWT lawyer who primarily will handle the Matter. RPC 1.18(d)(2) recognizes an exception to the rule that a law firm cannot represent a client (the "Current Client") with interests materially adverse to those of a former prospective client ("Prospective Client") in the same or substantially related matter if one of the firm's lawyers (the "Personally Disqualified Lawyer") has previously received information from the Prospective Client that could be significantly harmful to the Prospective Client in the matter ("Disqualifying Information") if, among other things, the Personally Disqualified Lawyer is effectively screened from participation in the matter on behalf of the Current Client.

In the present case, the persons to be screened are Mike Killeen, Lawton Humphrey, Henry Farber, and Gillian Murphy (collectively, the "Prospective Client Lawyers"). Rob Dunbabin of Cascade Yarn, Inc. left a voice message for Mike Killeen on March 3, 2009 inquiring as to whether Mike Killeen would be willing to defend Cascade Yarn, Inc. in a pregnancy discrimination lawsuit. Mike Killeen had a subsequent phone conversation with Mr. Dunbabin to discuss the possibility of forming an attorney-client relationship with Cascade Yarn, Inc. and internal staffing discussions with Henry Farber, Lawton Humphrey and Gillian Murphy. On March 5, 2009, Mike Killeen sent Mr. Dunbabin a letter declining to represent Cascade Yarns, Inc. Although DWT does not believe that the pregnancy discrimination lawsuit is the same as, or substantially related to, the Matter or that any of the Prospective Client Lawyers received any Disqualifying Information, this screen is being erected under RPC 1.18(d)(2) out of an abundance of caution.

This memorandum communicates to all offices the decision that an ethical screen has been established regarding the Matter. In connection therewith, the following procedures have been adopted and must be strictly observed:

1. None of the Prospective Client Lawyers shall discuss with Warren Rheume or any other DWT attorney, legal assistant, secretary or other staff who has worked or will work on the Matter (collectively, the "Defendants' Team"), any aspect of the Matter, any matter substantially related thereto or any potentially Disqualifying Information learned from Mr. Dunbabin in any communications leading up to the date that DWT declined the proposed engagement on March 5, 2009. None of the members of the Defendants' Team shall discuss the Matter or any aspect thereof with any of the Prospective Client Lawyers.

2. None of the Prospective Client Lawyers shall be given access to any of the DWT client files concerning the Matter.

3. Each of the client files in the Matter shall have a label affixed to each file as follows:

CONFIDENTIAL CLIENT FILES - DO NOT DISCLOSE TO MIKE KILLEEN, HENRY FARBER,

LAWTON HUMPHREY, OR JILLIAN MURPHY

4. Any records of, or resulting from, the discussions between Mike Killeen and Mr. Dunbabin or among the Prospective Client Lawyers that could contain Disqualifying Information shall be maintained in a "Refusal to Represent" file which shall be labeled so as to make clear that the file is not to be disclosed to any member of the Defendants' Team.

5. Anyone at DWT who knowingly violates these procedures and instructions will be subject to disciplinary action, which may include termination.

6. If anyone has questions about these procedures, please discuss them with me.

Thank you for your strict adherence to these important procedures.

**John Reed** | Davis Wright Tremaine LLP  
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Circular 230 - To comply with IRS rules, we must inform you that this message (including any attachment) if it contains advice relating to federal taxes, was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties that may be imposed under federal tax law. Under these rules, a taxpayer may rely on professional advice to avoid federal tax penalties only if that advice is reflected in a comprehensive tax opinion that conforms to stringent requirements under federal law.