

The Honorable Ricardo S. Martinez

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

**KNITTING FEVER, INC.’S
SUPPLEMENTAL RESPONSE IN
OPPOSITION TO CASCADE’S
MOTION FOR A PRELIMINARY
INJUNCTION**

**NOTE ON MOTION CALENDAR:
July 30, 2010**

I. INTRODUCTION

Pursuant to the Court’s Order, dated September 21, 2010, Defendant Knitting Fever, Inc. (“KFI”), submits this supplemental response in opposition to Plaintiff’s motion for a preliminary injunction.

1
2 **II. LEGAL ARGUMENT**

3 **A. Cascade’s Motion Is Unwarranted As KFI Is Already Providing Guaranties**

4 By its motion, Cascade seeks “to preliminarily enjoin the false advertising and false
5 labeling of wool products imported or sold by Knitting Fever, Inc. (“KFI”) *and/or for an Order*
6 *requiring KFI to submit a continuing guaranty* as provided by the Wool Products Labeling
7 Act, 15 U.S.C. § 68g(a).” *See* Cascade’s Motion at 1 (emphasis added). As further explained
8 in its reply brief, “Cascade seeks a narrow preliminary injunction *either requiring KFI to*
9 *submit a continuing guaranty* as provided by the [Wool Act], certifying that its products are
10 not misbranded, and/or restraining KFI from selling products whose labels do not accurately
11 reflect the products’ actual fiber content.” *See* Cascade’s Reply Brief at 5 (emphasis added).

12 Through the Declaration of Robert Guite (the “Guite Declaration”) submitted with its
13 reply brief, Cascade introduced its counsel’s correspondence to KFI’s counsel of July 22, 2010,
14 in which Cascade conveyed an offer to withdraw its motion if KFI filed a continuing guaranty
15 with the Federal Trade Commission in accordance with 15 U.S.C. § 68g. *See* Reply Br. at 2.
16 Rather than supporting Cascade’s motion, this correspondence actually demonstrates Cascade’s
17 willingness to waste the Court’s time and resources simply in order to harass KFI.

18 The Wool Products Labeling Act, 15 U.S.C. § 68 *et seq.* (the “Wool Act”), declares that
19 “the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or
20 distribution, in commerce, of any wool product which is misbranded ... is unlawful” and that
21 “any person who shall manufacture or deliver for shipment or ship or sell or offer for sale in
22 commerce, any such wool product which is misbranded ... is guilty of an unfair method of
23 competition, and an unfair and deceptive act or practice, in commerce within the meaning of the
Federal Trade Commission Act.” *Id.* at § 68a. Section 68g(a) of the Wool Act, however,
provides a safe harbor from liability. As stated in the Wool Act:

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1 No person shall be guilty under section 68a of this title if he establishes a
2 guaranty received in good faith signed by and containing the name and
3 address of the person residing in the United States by whom the wool product
4 guaranteed was manufactured and/or from whom it was received, that said
5 wool product is not misbranded under the provisions of this subchapter.

6 15 U.S.C. § 68g(a). This section of the Wool Act goes on to specify two types of guaranties
7 which will suffice to establish the safe harbor. According to the Wool Act:

8 Said guaranty shall be either (1) a separate guaranty specifically designating
9 the wool product guaranteed, in which case it may be on the invoice or other
10 paper relating to said wool product; or (2) a continuing guaranty filed with
11 the Commission applicable to all wool products handled by a guarantor in
12 such form as the Commission by rules and regulations may prescribe.

13 *Id.* Notably, there is nothing in the Wool Act that favors one type of guaranty over the other, nor
14 is there anything in the Wool Act (or otherwise) that would entitle persons seeking such a
15 guaranty to demand a specific type of guaranty. Rather, the safe harbor of § 68g(a) is
16 established by either type of guaranty.

17 As Cascade's counsel's correspondence of June 22, 2010 shows, KFI has provided, and is
18 continuing to provide, guaranties under § 68g(a) to any KFI customer in good standing upon
19 request. *See* Exhibit A to the Guite Declaration. In so doing, Cascade has effectively conceded
20 that KFI is already providing the very same safe harbor that Cascade seeks through its
21 preliminary injunction motion. That KFI is providing one type of guaranty under the Wool Act
22 while Cascade seeks the other is of no moment as the relief from liability afforded by both types
23 of guaranties is precisely the same. *See* 15 U.S.C. § 68g(a). In view of KFI's open offer to
provide such guaranties to its customers upon request, Cascade's insistence that KFI be required
to file a continuing guaranty with the FTC cannot be justified by any real concern for KFI's
customers or indeed for the industry. Lacking such justification, KFI is left to conclude that
Casacade's continued pursuit of the present motion is simply intended to harass KFI even if
doing so wastes the valuable time and resources of the Court. On this ground alone, the Motion
should be denied.

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B. The Ravelry Postings Submitted by Cascade Should Be Disregarded

It is well established that new arguments and evidence presented for the first time in reply are waived. *DocuSign, Inc. v. Sertifi, Inc.*, 468 F. Supp.2d 1305, 1307 (W.D. Wash. 2006). It has also been held that anonymous Internet postings constitute hearsay. *Sony Computer Entertainment, Inc. v. Connectix Corp.*, 48 F. Supp.2d 1212, 1223 (N.D. Cal. 1999), rev'd on other grounds, 203 F.3d 596 (9th Cir. 2000). Further, to the extent a party engages in a version of the "spaghetti approach," in which the entire contents of a post is heaved against the wall in hopes that something sticks, courts are not required to sort through the noodles. As the Seventh Circuit has observed in its now familiar maxim, "judges are not like pigs, hunting for truffles buried in briefs." *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991); *see also Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003).

In its Motion, Cascade offered no evidence whatsoever of its claimed irreparable harm other than the unfounded speculations of Robert Dunbabin, Cascade's in-house counsel, about Cascade's customers. In its opposition, KFI pointed out Cascade's complete lack of evidence and asserted that Cascade's failure to establish irreparable harm warranted the Court's denial of the Motion. In an attempt to remedy this critical flaw in the Motion, Cascade has now submitted over 140 pages of postings to the website www.ravelry.com in connection with its Reply Brief. *See* Exhibit G to the Guite Declaration. This voluminous submission, however, should be disregarded for three reasons. First, as evidence presented for the first time in reply, it is waived. *See DocuSign, supra*. Second, even if the Court were to disregard the fact that Cascade presented this

1 evidence for the first time in reply, the anonymous Ravelry postings constitute
2 inadmissible hearsay. *See Sony Computer Entertainment, supra.* And finally, even if the
3 Court were to overlook the first two shortcomings of Cascade’s submission, Cascade has
4 offered this 140+ page document as support for its assertion that “[s]uch widespread
5 discussion evidenc[es] consumer mistrust of the accuracy of fiber content labeling of
6 handknitting yarn...” yet Cascade fails to identify any specific comments from these many
7 pages which actually support its assertion. Rather, Cascade has simply heaved a jumble of
8 literally hundreds of comments at the Court in hopes that something would stick and that
9 the Court would find it. As such, this Court should disregard the Ravelry postings
10 submitted by Cascade, and in doing do, confirm that Cascade has failed to present any
11 admissible evidence of its asserted irreparable harm.

12
13 **I. CONCLUSION**

14 For all the foregoing reasons, and the reasons stated in KFI’s opposition brief,
15 Cascade’s motion for a preliminary injunction should be denied.

16 Dated: September 27, 2010

/s/ Joshua R. Slavitt

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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 27th day of September, 2010.

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