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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.

vs.

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

Counterclaim-Defendants,

Case No. 2:10-cv-00861 RSM

CASCADE YARNS, INC.'S ANSWER TO COUNTERCLAIM AND THIRD PARTY COMPLAINT

CAPTION CONTINUED ON NEXT PAGE

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

8 COMES NOW Plaintiff and Counterclaim-Defendant Cascade Yarns, Inc. ("Cascade"),
 9 by and through counsel and answers the Counterclaim of Knitting Fever, Inc. ("KFI") as follows:

- 10 1. Answering paragraph 132 of the Counterclaim, Cascade admits the allegation.
- 11 2. Answering paragraph 133 of the Counterclaim, Cascade admits the allegation.
- 12 3. Answering paragraphs 134 through 136 of the Counterclaim, the allegations are
 13 not directed to Cascade and no response is required. To the extent a further response is required,
 14 the allegations are denied.
- 15 4. Answering paragraph 137 of the Counterclaim, Cascade objects to the allegations
 16 to the extent the allegations call for a legal conclusion and/or the application of law to fact. To
 17 the extent a further response is required, the allegations are denied.
- 18 5. Answering paragraph 138 of the Counterclaim, Cascade objects to the allegations
 19 to the extent the allegations call for a legal conclusion and/or the application of law to fact. To
 20 the extent a further response is required, the allegations are denied.
- 21 6. Answering paragraph 139 of the Counterclaim, Cascade objects to the allegations
 22 to the extent the allegations call for a legal conclusion and/or the application of law to fact. To
 23 the extent a further response is required, the allegations are denied.
- 24 7. Answering paragraph 140 of the Counterclaim, Cascade states that it is a
 25 competitor of KFI.
- 26 8. Answering paragraph 141 of the Counterclaim, Cascade admits that it and KFI

1 market to specialty yarn retailers. Except as so admitted, all remaining allegations are denied.

2 9. Answering paragraph 142 of the Counterclaim, Cascade denies the allegations.

3 10. Answering paragraph 143 of the Counterclaim, the allegations are not directed to
4 Cascade and no response is required. To the extent a further response is required, the allegations
5 are denied.

6 11. Answering paragraph 144 of the Counterclaim, Cascade denies the allegations.

7 12. Answering paragraph 145 of the Counterclaim, Cascade denies the allegations.

8 13. Answering paragraph 146 of the Counterclaim, Cascade objects to the allegations
9 to the extent the allegations call for a legal conclusion and/or the application of law to fact. To the
10 extent a further response is required, the allegations are denied.

11 14. Answering paragraph 147 of the Counterclaim, Cascade denies the allegations.

12 15. Answering paragraph 148 of the Counterclaim, the allegations are not directed to
13 Cascade and no response is required. To the extent a further response is required, the allegations
14 are denied.

15 16. Answering paragraph 149 of the Counterclaim, Cascade lacks knowledge and,
16 therefore, denies the allegations.

17 17. Answering paragraph 150 of the Counterclaim, the allegations are not directed to
18 Cascade and no response is required. To the extent the allegations relate to Cascade, the
19 allegations are denied.

20 18. Answering paragraph 151 of the Counterclaim, Cascade admits that its labels state
21 the fiber content of yarns and that certain product and content information is also available on its
22 website.

23 19. Answering paragraph 152 of the Counterclaim, Cascade denies the allegations.

24 20. Answering paragraph 153 through 156 of the Counterclaim, Cascade denies the
25 allegations.

26 21. Answering paragraph 157 of the Counterclaim, no response is required. To the

1 extent a further response is required, the allegations are denied.

2 22. Answering paragraph 158 of the Counterclaim, the allegations are not directed to
3 Cascade and no response is required. To the extent a further response is required, the allegations
4 are denied.

5 23. Answering paragraph 159 of the Counterclaim, Cascade denies the allegations.

6 24. Answering paragraph 160 of the Counterclaim, the allegations are not directed to
7 Cascade and no response is required. To the extent a further response is required, the allegations
8 are denied.

9 25. Answering paragraph 161 of the Counterclaim, the allegations are not directed to
10 Cascade and no response is required. To the extent a further response is required, the allegations
11 are denied.

12 26. Answering paragraph 162 of the Counterclaim, Cascade denies the allegations.

13 27. Answering paragraphs 163 and 164 of the Counterclaim, Cascade objects to the
14 allegations to the extent that the allegations call for a legal conclusion and/or the application of
15 law to fact. Further, to the extent that the allegations are not directed to Cascade, no response is
16 required. To the extent a further response is required, the allegations are denied.

17 28. Answering paragraph 165 of the Counterclaim, no response is required. To the
18 extent a response is required, the allegations are denied.

19 29. Answering paragraphs 166 through 170 of the Counterclaim, to the extent the
20 allegations are directed to Cascade, the allegations are denied. To the extent the allegations are
21 not directed to Cascade, the allegations require no response. To the extent a further response is
22 required, the allegations are denied.

23 30. Answering paragraph 171 of the Counterclaim, Cascade objects to the allegations
24 to the extent that the allegations call for a legal conclusion and/or the application of law to fact.
25 Further, to the extent that the allegations are not directed to Cascade, no response is required. To
26 the extent a further response is required, the allegations are denied.

1 31. Answering paragraph 172 of the Counterclaim, to the extent the allegations are
2 directed to Cascade, the allegations are denied. To the extent the allegations are not directed to
3 Cascade, the allegations require no response. To the extent a further response is required, the
4 allegations are denied.

5 32. Answering paragraph 173 of the Counterclaim, no response is required. To the
6 extent a further response is required, the allegations are denied.

7 33. Answering paragraphs 174 through 177 of the Counterclaim, to the extent the
8 allegations are directed to Cascade, the allegations are denied. To the extent the allegations are
9 not directed to Cascade, the allegations require no response. To the extent a further response is
10 required, the allegations are denied.

11 34. Answering paragraph 178 of the Counterclaim, no response is required. To the
12 extent a further response is required, the allegations are denied.

13 35. Answering paragraph 179 of the Counterclaim, Cascade lacks knowledge and,
14 therefore, denies the allegations.

15 36. Answering paragraphs 180 through 182 of the Counterclaim, to the extent the
16 allegations are directed to Cascade, the allegations are denied. To the extent the allegations are
17 not directed to Cascade, the allegations require no response. To the extent a further response is
18 required, the allegations are denied.

19 37. Answering paragraph 183 of the Counterclaim, Cascade objects to the allegations
20 to the extent that the allegations call for a legal conclusion and/or the application of law to fact.
21 Further, to the extent that the allegations are not directed to Cascade, no response is required. To
22 the extent a further response is required, the allegations are denied.

23 38. Answering paragraph 184 of the Counterclaim, to the extent the allegations are
24 directed to Cascade, the allegations are denied. To the extent the allegations are not directed to
25 Cascade, the allegations require no response. To the extent a further response is required, the
26 allegations are denied.

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FIRST DEFENSE

(Waiver)

KFI's Counterclaim is barred, in whole or in part, by the doctrine of waiver. KFI waived known rights it had against Cascade by and through its acts and/or its omissions to act in relation to this action and its prior dealings with Cascade.

SECOND DEFENSE

(Laches)

KFI's Counterclaim is barred, in whole or in part, by the doctrine of laches. KFI unreasonably delayed in exercising its alleged rights, which delay was relied upon by Cascade to its detriment. By virtue of the foregoing acts and omissions in relation to this action and its prior dealings with Cascade, KFI is not entitled to the relief it seeks in the Counterclaim by reason of the doctrine of laches.

THIRD DEFENSE

(Acquiescence)

KFI's Counterclaim is barred, in whole or in part, because it acquiesced in Cascade's acts.

FOURTH DEFENSE

(Privilege and/or Qualified Privilege)

KFI's Counterclaim is barred, in whole or in part, as any acts, conduct or publication made by Cascade was subject to an absolute or qualified privilege and/or were fairly reported.

FIFTH DEFENSE

(Competitive Privilege)

KFI's Counterclaim is barred, in whole or in part, as acts, conduct or publication made by Cascade was made as against KFI as a competitor of Cascade and subject to the Privilege of a Competitor as Cascade did not employ improper means, attempt to illegally restrain competition and was made to advance Cascade's interest.

1 CASCADE'S THIRD PARTY COMPLAINT

2 45. Cascade incorporates paragraphs 1 through 131 of its First Amended Complaint
3 ("FAC") as if fully set forth herein.

4 46. **Emmepieffe Srl**, on information and belief, is a closely held entity organized or
5 held under the laws of Italy with a principal place of business at VIA DE RONCHI 45/I, 10091
6 ALPIGNANO (TO) ITALIA.

7 47. Emmepieffe Srl contracted with Cascade for the sale of yarns, including but not
8 limited to certain of the yarns identified in paragraph 153 of the Counterclaim between 2001 and
9 2009. Emmepieffe Srl transacted business with Cascade at Cascade's offices in Seattle,
10 Washington and/or Tukwila, Washington between 2005 and 2009. Emmepieffe Srl delivered
11 those yarns to Cascade in Tukwila, Washington between 2005 and 2009. Emmepieffe Srl also
12 sent requests for payment, statements, invoices, catalogs and price lists to Cascade at its offices in
13 Seattle, Washington and/or Tukwila, Washington.

14 48. Emmepieffe Srl represented to Cascade that the fiber content of the yarns it sold to
15 Cascade were accurately stated and represented on its product labels, catalogs and invoices.

16 49. Cascade reasonably relied on the accuracy of the labels and fiber content
17 information provided to it by Emmepieffe Srl for each of the yarns Cascade purchased.

18 50. Emmepieffe Srl never advised Cascade that any of the product labels or
19 identifications of fiber content on any of the products Cascade purchased from it were inaccurate.

20 51. At all times prior to KFI asserting that certain of the yarns Cascade purchased
21 from Emmepieffe Srl were not properly labeled, Cascade believed that those yarns were properly
22 labeled.

23 52. As soon as Cascade became aware of allegations that certain of its yarns were not
24 properly labeled, including those yarns it purchased from Emmepieffe Srl, Cascade undertook
25 prompt investigation and remedial action to confirm the accuracy of its product labels and to
26 advise its customers of the allegations.

1 **FIRST CAUSE OF ACTION**

2 **(Indemnity)**

3 53. Cascade incorporates by reference paragraphs 45-52 of its Counterclaim as if fully
4 set forth herein.

5 54. Cascade has denied the allegations of the Counterclaim, and, without admitting the
6 allegations contained therein, if it is found that Cascade is liable to KFI for any damages arising
7 out of or related to the alleged mislabeling, misbranding or unfair competition related to the
8 alleged mislabeling or misbranding of the yarns that are the subject of the Counterclaim, Cascade
9 alleges that that Emmepieffe Srl negligently, carelessly and wrongfully failed to use reasonable
10 care in procuring, labeling and selling the yarns that are the subject of the Counterclaim to
11 Cascade.

12 55. By reason of the foregoing, if KFI recovers against Cascade then Cascade is
13 entitled to indemnity from Emmepieffe Srl for injuries and damages sustained by KFI, if any, for
14 any sums paid by way of settlement, or in the alternative, judgment rendered against Cascade on
15 the Counterclaim based upon claims arising out of or related to the alleged mislabeling,
16 misbranding or unfair competition.

17 **SECOND CAUSE OF ACTION**

18 **(Contribution)**

19 56. Cascade incorporates by reference paragraphs 45-52 of its Counterclaim as if fully
20 set forth herein.

21 57. Cascade has denied the allegations of the Counterclaim, and, without admitting the
22 allegations contained therein, if it is found that Cascade is liable to KFI for any damages arising
23 out of or related to the alleged mislabeling, misbranding or unfair competition related to the
24 alleged mislabeling or misbranding of the yarns that are the subject of the Counterclaim, Cascade
25 alleges that that Emmepieffe Srl negligently, carelessly and wrongfully failed to use reasonable
26 care in procuring, labeling and selling the yarns that are the subject of the Counterclaim to

1 Cascade.

2 58. By reason of the foregoing, if KFI recovers against Cascade then Cascade is
3 entitled to contribution from Emmepieffe Srl for injuries and damages sustained by KFI, if any,
4 for any sums paid by way of settlement, or in the alternative, judgment rendered against Cascade
5 on the Counterclaim based upon claims arising out of or related to the alleged mislabeling,
6 misbranding or unfair competition.

7 **THIRD CAUSE OF ACTION**
8 **(Breach of Warranty)**

9 59. Cascade incorporates by reference paragraphs 45-52 of its Counterclaim as if fully
10 set forth herein.

11 60. Emmepieffe Srl warranted to Cascade that the yarns it sold to Cascade were
12 properly and accurately labeled.

13 61. Cascade has denied the allegations of the Counterclaim, and, without admitting the
14 allegations contained therein, if it is found that Cascade is liable to KFI for any damages arising
15 out of or related to the alleged mislabeling, misbranding or unfair competition related to the
16 alleged mislabeling or misbranding of the yarns that are the subject of the Counterclaim, Cascade
17 alleges that that Emmepieffe Srl negligently, carelessly and wrongfully failed to use reasonable
18 care in procuring, labeling and selling the yarns that are the subject of the Counterclaim to
19 Cascade.

20 62. By reason of the foregoing, if KFI recovers against Cascade then Cascade is
21 entitled to recover from Emmepieffe Srl for injuries and damages sustained by KFI, if any, for
22 any sums paid by way of settlement, or in the alternative, judgment rendered against Cascade on
23 the Counterclaim based upon claims arising out of or related to the alleged mislabeling,
24 misbranding or unfair competition because the labels affixed to the subject yarns constitute
25 express and/or implied warranties to which the yarns as delivered did not comply thereby
26 breaching the express and/or implied warranties.

FOURTH CAUSE OF ACTION
(Breach of Contract)

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3 63. Cascade incorporates by reference paragraphs 45-52 of its Counterclaim as if fully
4 set forth herein.

5 64. Emmepieffe Srl warranted to Cascade that the yarns it sold to Cascade were
6 properly and accurately labeled and the product labels, purchase orders, bills of lading and
7 shipping documents evidence the parties' contract.

8 65. Cascade has denied the allegations of the Counterclaim, and, without admitting the
9 allegations contained therein, if it is found that Cascade is liable to KFI for any damages arising
10 out of or related to the alleged mislabeling, misbranding or unfair competition related to the
11 alleged mislabeling or misbranding of the yarns that are the subject of the Counterclaim, Cascade
12 alleges that that Emmepieffe Srl negligently, carelessly and wrongfully failed to use reasonable
13 care in procuring, labeling and selling the yarns that are the subject of the Counterclaim to
14 Cascade.

15 66. By reason of the foregoing, if KFI recovers against Cascade then Cascade is
16 entitled to recover from Emmepieffe Srl for injuries and damages sustained by KFI, if any, for
17 any sums paid by way of settlement, or in the alternative, judgment rendered against Cascade on
18 the Counterclaim based upon claims arising out of or related to the alleged mislabeling,
19 misbranding or unfair competition because the labels affixed to the subject yarns were contrary to
20 the contract of the parties and delivery of the yarns, if mislabeled or misbranded, constitutes a
21 breach of contract.

22 WHEREFORE, having answered KFI's Counterclaim and having asserted affirmative
23 defenses, Cascade prays for judgment as follows:

24 1. For dismissal of KFI's Counterclaim with prejudice and judgment on its
25 Counterclaim;

1 2. For all costs, disbursements and legal fees in an amount to be determined at the
2 time of trial; and

3 3. For such other and further relief as the Court deems just and equitable.
4

5 Dated: February 8, 2011

SQUIRE, SANDERS & DEMPSEY (US) LLP

6
7 By: /s/ Robert J. Guite
8 Robert J. Guite, WSBA No. 25753

9 Attorneys for Plaintiff
10 Cascade Yarns, Inc.
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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2011, I made arrangements for my assistant to electronically file the aforementioned Cascade Yarns, Inc.'s Answer to Counterclaim and Third Party Complaint with the Clerk of Court using the Court's CM/ECF system which will send notice to counsel as follows:

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I declare under penalty of perjury under the laws of the State of Washington, the State of California and the United States of America that the foregoing is true and correct.

Executed this 8th day of February, 2011 at San Francisco, California.

SQUIRE, SANDERS & DEMPSEY L.L.P.

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

Attorneys for Plaintiff
CASCADE YARNS, INC.