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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

6 Attorneys for Plaintiff
7 GOLF APPAREL BRANDS, INC.

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 GOLF APPAREL BRANDS, INC., a)
California corporation,)
12 Plaintiff,)
13 v.)
14 KELLWOOD COMPANY, a Delaware)
corporation,)
15 Defendant.)
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Case No.: **CV07-08239**
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND
DECLARATORY RELIEF FOR:
PSG (JWJX)
1. FALSE DESIGNATION OF
ORIGIN (15 U.S.C. §1125);
2. STATE REGISTERED
TRADEMARK INFRINGEMENT
(CAL. BUS. & PROF. CODE
§14320);
3. STATE COMMON LAW
TRADEMARK INFRINGEMENT
AND UNFAIR COMPETITION;
4. STATE STATUTORY UNFAIR
BUSINESS PRACTICES (CAL.
BUS. & PROF. CODE §17200);
AND
5. DECLARATORY JUDGMENT

22 For its Complaint, Plaintiff Golf Apparel Brands, Inc. ("Golf Apparel
23 Brands") hereby alleges as follows against Defendant Kellwood Company
24 ("Kellwood"):

25 INTRODUCTION

26 1. This case concerns Kellwood's unauthorized commercial use of the
27 trademark CASHMERLON in connection with clothing products. This case
28 arises under the trademark and unfair competition laws of the United States

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LAWYERS

1 and California and includes the following counts: false designation of origin
2 under the Lanham Act, 15 U.S.C. §§1125, *et seq.*; state registered trademark
3 infringement under Cal. Bus. & Prof. Code §§14320, *et seq.*; state common law
4 trademark infringement and unfair competition under California common law;
5 state statutory unfair business practices under Cal. Bus. & Prof. Code §§17200,
6 *et seq.*; and declaratory judgment under 28 USC §§2201, *et seq.*

7 THE PARTIES

8 2. Plaintiff Golf Apparel Brands is a California corporation with its
9 principal place of business in this judicial district in Los Angeles, California.

10 3. On information and belief, defendant Kellwood is a Delaware
11 corporation which has its corporate offices in Chesterfield, Missouri and which
12 is doing business in this judicial district.

13 JURISDICTION AND VENUE

14 4. This Court has jurisdiction pursuant to 15 U.S.C. § 1121 and 28
15 U.S.C. §§ 1331, 1338(a), 1338(b), and 1367 as Golf Apparel Brands is alleging
16 claims under the federal Lanham Act, 15 U.S.C. §§ 1125, *et seq.* and substantial
17 and related state trademark infringement and unfair competition claims.

18 5. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (e) and
19 (d) as Kellwood transacts business in this judicial district and a substantial part
20 of the events giving rise to the claims pleaded herein occurred or had effects in
21 this judicial district.

22 THE FACTS

23 6. Golf Apparel Brands markets and sells clothing products under the
24 trademark CASHMERLON. Golf Apparel has been doing so continuously in
25 interstate commerce since at least September 1978, when its predecessor-in-
26 interest first began using the CASHMERLON trademark in interstate commerce.

27 / / /

1 7. Golf Apparel Brands' CASHMERLON trademark is registered by the
2 State of California, which, in 1997, issued California Registration No. 103,053.
3 Golf Apparel Brands renewed this registration in May 2007.

4 8. Golf Apparel Brands currently is an applicant for a federal
5 trademark registration for the CASHMERLON mark, having filed its application
6 (Serial No. 76/679,624) on July 18, 2007. Golf Apparel Brands' application is
7 currently pending before the United States Patent and Trademark Office; said
8 application has been prevented from registering at least in part due to a federal
9 trademark application which, earlier in 2007, Kellwood filed for the same mark.

10 9. In Kellwood's federal trademark application for the CASHMERLON
11 mark (Serial No. 77/164,338), for "synthetic fabric sold as a component of
12 women's clothing; women's clothing, namely, sweaters and tops," Kellwood
13 claims a first use date of November 10, 2005. Thus, Kellwood claims a date of
14 first use of the CASHMERLON mark that is *twenty-seven years after the first use*
15 *date of Golf Apparel Brands.*

16 10. On information and belief, on a date subsequent to the date of Golf
17 Apparel Brands' first commercial use of the CASHMERLON mark in California
18 and in interstate commerce, Kellwood first began using the CASHMERLON
19 mark to identify, advertise, and promote Kellwood's products, including but not
20 limited to Kellwood's clothing and clothing-related products. On information
21 and belief, the CASHMERLON mark is distinctive and is subject to legal
22 protection, and Golf Apparel Brands is the senior user thereof.

23 11. Kellwood has never obtained permission from Golf Apparel Brands
24 to use the CASHMERLON mark, or any version or derivative thereof, for any
25 purpose whatsoever.

26 12. As a result of Kellwood's commercial use of the CASHMERLON
27 mark, consumers are likely to be confused, mistaken, or deceived as to source,
28 origin, sponsorship, approval, endorsement, affiliation, or association.

1 Kellwood's use of the CASHMERLON mark creates a likelihood of confusion as
2 to the origin of Golf Apparel Brands' and Kellwood's products and as to whether
3 Kellwood or its products are affiliated with or related to or licensed or endorsed
4 by Golf Apparel Brands (or vica versa).

5 13. On information and belief, Golf Apparel Brands alleges that at all
6 relevant times Kellwood has been notice of and has been actually aware of Golf
7 Apparel Brands' prior commercial use of, and Golf Apparel Brands' priority
8 trademark rights to, the CASHMERLON mark, and that Kellwood's
9 unauthorized use of the same mark has been intentional.

10 FIRST CLAIM FOR RELIEF

11 FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125)

12 14. Golf Apparel Brands incorporates herein by this reference all of the
13 allegations of the preceding paragraphs, as though fully set forth herein.

14 15. This claim is against Kellwood for false designation of origin in
15 violation of Section 43(a) of the Lanham Act, 15 U.S.C. §§1125(a), *et seq.*

16 16. On information and belief, Kellwood has used, is using, and intends
17 to continue using the CASHMERLON mark, in commerce, for clothing and
18 clothing-related products, in such a way that consumers are likely to be
19 confused, mistaken, or deceived as to source, origin, sponsorship, approval,
20 endorsement, affiliation, or association. Kellwood's use of the CASHMERLON
21 mark creates a likelihood of confusion as to the origin of Golf Apparel Brands'
22 and Kellwood's products and as to whether Kellwood or its products are
23 affiliated with or related to or licensed or endorsed by Golf Apparel Brands (or
24 vica versa).

25 17. Golf Apparel Brands never consented to or authorized Kellwood's
26 use of the CASHMERLON mark, and Kellwood's actions constitute a false
27 designation of origin under 15 U.S.C. §§1125(a), *et seq.*

1 18. On information and belief, Golf Apparel Brands alleges that at all
2 relevant times Kellwood has been notice of and has been actually aware of Golf
3 Apparel Brands' prior commercial use of, and Golf Apparel Brands' priority
4 trademark rights to, the CASHMERLON mark, and that Kellwood's
5 unauthorized use of the same mark has been willful and deliberate.

6 19. Kellwood's commercial use of the CASHMERLON mark has
7 damaged Golf Apparel Brands. Unless restrained and enjoined, that use will
8 cause great and irreparable damage to Golf Apparel Brands which cannot be
9 adequately measured or compensated by money alone. Golf Apparel Brands
10 has no adequate remedy at law and is entitled to preliminary and permanent
11 injunctive relief.

12 20. As a result of Kellwood's conduct, Golf Apparel Brands has suffered
13 and will continue to suffer damages in an amount subject to proof at trial.

14 21. As a result of Kellwood's conduct, Kellwood has received wrongful
15 profits and benefits which Kellwood must disgorge to Golf Apparel Brands.

16 22. On information and belief, Kellwood has engaged in the foregoing
17 conduct knowingly, willfully, and with the intent to injure Golf Apparel Brands
18 and to deprive it of its rights to the CASHMERLON mark. As a result, Golf
19 Apparel Brands is entitled to recover three times Kellwood's wrongful profits as
20 well as actual damages plus attorneys' fees and costs as an "exceptional case"
21 within the meaning of the Lanham Act.

22 SECOND CLAIM FOR RELIEF

23 STATE REGISTERED TRADEMARK INFRINGEMENT

24 (CAL. BUS. & PROF. CODE § 14320)

25 23. Golf Apparel Brands incorporates herein by this reference all of the
26 allegations of the preceding paragraphs, as though fully set forth herein.

27 24. This claim is against Kellwood for state registered trademark
28 infringement under California Business & Professions Code §§ 14320, *et seq.*

1 25. Golf Apparel Brands' CASHMERLON trademark is registered by the
2 State of California, which, in 1997, issued California Registration No. 103,053.
3 Golf Apparel Brands renewed this registration in May 2007. On information
4 and belief, the CASHMERLON mark is distinctive and is subject to legal
5 protection, and Golf Apparel Brands is the senior user thereof in California as
6 both its commercial use of the mark in California, as well as its Registration No.
7 103,053, existed long before Kellwood began using the CASHMERLON mark in
8 California or with consumers located in California.

9 26. On information and belief, Kellwood has used, is using, and intends
10 to continue using the CASHMERLON mark, in commerce, for clothing and
11 clothing-related products, in such a way that consumers in California are likely
12 to be confused, mistaken, or deceived as to source, origin, sponsorship,
13 approval, endorsement, affiliation, or association. Kellwood's use of the
14 CASHMERLON mark creates a likelihood of confusion as to the origin of Golf
15 Apparel Brands' and Kellwood's products and as to whether Kellwood or its
16 products are affiliated with or related to or licensed or endorsed by Golf
17 Apparel Brands (or vica versa).

18 27. On information and belief, Golf Apparel Brands alleges that at all
19 relevant times Kellwood has been notice of and has been actually aware of Golf
20 Apparel Brands' prior commercial use of, and Golf Apparel Brands' priority
21 California trademark rights to, the CASHMERLON mark, and that Kellwood's
22 unauthorized use of the same mark in California and with consumers located in
23 California has been willful and deliberate.

24 28. Kellwood's commercial use of the CASHMERLON mark in California
25 and with consumers located in California has damaged Golf Apparel Brands.
26 Unless restrained and enjoined, that use will cause great and irreparable
27 damage to Golf Apparel Brands which cannot be adequately measured or

1 compensated by money alone. Golf Apparel Brands has no adequate remedy at
2 law and is entitled to preliminary and permanent injunctive relief.

3 29. As a result of Kellwood's conduct, Golf Apparel Brands has suffered
4 and will continue to suffer damages in an amount subject to proof at trial.

5 30. As a result of Kellwood's conduct, Kellwood has received wrongful
6 profits and benefits which Kellwood must disgorge to Golf Apparel Brands.

7 31. On information and belief, Kellwood has engaged in the foregoing
8 conduct with malice, oppression, or fraud. As a result, Golf Apparel Brands is
9 entitled to an award of punitive or exemplary damages to punish Kellwood as
10 well as to deter others from such misconduct in the future.

11 THIRD CLAIM FOR RELIEF

12 STATE COMMON LAW UNFAIR COMPETITION

13 32. Golf Apparel Brands incorporates herein by this reference all of the
14 allegations of the preceding paragraphs, as though fully set forth herein.

15 33. On information and belief, the CASHMERLON mark is distinctive
16 and is subject to legal protection, and Golf Apparel Brands is the senior user
17 thereof in California. On information and belief, on a date subsequent to the
18 date of Golf Apparel Brands' first commercial use of the CASHMERLON mark in
19 California, Kellwood first began using the CASHMERLON mark to identify,
20 advertise, and promote Kellwood's products in California and with consumers
21 located in California, including but not limited to Kellwood's clothing and
22 clothing-related products.

23 34. On information and belief, Kellwood has used, is using, and intends
24 to continue using the CASHMERLON mark, in commerce, for clothing and
25 clothing-related products, in such a way that consumers in California are likely
26 to be confused, mistaken, or deceived as to source, origin, sponsorship,
27 approval, endorsement, affiliation, or association. Kellwood's use of the
28 CASHMERLON mark creates a likelihood of confusion as to the origin of Golf

1 Apparel Brands' and Kellwood's products and as to whether Kellwood or its
2 products are affiliated with or related to or licensed or endorsed by Golf
3 Apparel Brands (or vica versa).

4 35. On information and belief, Golf Apparel Brands alleges that at all
5 relevant times Kellwood has been notice of and has been actually aware of Golf
6 Apparel Brands' prior commercial use of, and Golf Apparel Brands' priority
7 California trademark rights to, the CASHMERLON mark, and that Kellwood's
8 unauthorized use of the same mark in California and with consumers located in
9 California has been willful and deliberate.

10 36. Kellwood's commercial use of the CASHMERLON mark in California
11 and with consumers located in California has damaged Golf Apparel Brands.
12 Unless restrained and enjoined, that use will cause great and irreparable
13 damage to Golf Apparel Brands which cannot be adequately measured or
14 compensated by money alone. Golf Apparel Brands has no adequate remedy at
15 law and is entitled to preliminary and permanent injunctive relief.

16 37. As a result of Kellwood's conduct, Golf Apparel Brands has suffered
17 and will continue to suffer damages in an amount subject to proof at trial.

18 38. As a result of Kellwood's conduct, Kellwood has received wrongful
19 profits and benefits which Kellwood must disgorge to Golf Apparel Brands.

20 39. On information and belief, Kellwood has engaged in the foregoing
21 conduct with malice, oppression, or fraud. As a result, Golf Apparel Brands is
22 entitled to an award of punitive or exemplary damages to punish Kellwood as
23 well as to deter others from such misconduct in the future.

24 FOURTH CLAIM FOR RELIEF

25 STATE STATUTORY UNFAIR BUSINESS PRACTICES

26 (CAL. BUS. & PROF. CODE § 17200)

27 40. Golf Apparel Brands incorporates herein by this reference all of the
28 allegations of the preceding paragraphs, as though fully set forth herein.

1 41. Kellwood's conduct as alleged herein constitutes an unlawful,
2 unfair, or fraudulent business act or practice under California Business &
3 Professions Code §§1700, *et seq.*

4 42. Kellwood's conduct as alleged herein has damaged Golf Apparel
5 Brands. Unless restrained and enjoined, it will cause great and irreparable
6 damage to Golf Apparel Brands which cannot be adequately measured or
7 compensated by money alone. Golf Apparel Brands has no adequate remedy at
8 law and is entitled to preliminary and permanent injunctive relief.

9 FIFTH CLAIM FOR RELIEF

10 DECLARATORY JUDGMENT

11 43. Golf Apparel Brands incorporates herein by this reference all of the
12 allegations of the preceding paragraphs, as though fully set forth herein.

13 44. An actual controversy has arisen and now exists between Golf
14 Apparel Brands on the one hand and Kellwood on the other hand with regard to
15 the existence, nature, and extent of their respective rights, or lack thereof, to
16 make commercial use of the word CASHMERLON within the State of California
17 and, furthermore, within the United States. Golf Apparel Brands respectfully
18 requests that the Court declare each of the parties' respective rights and
19 interests, pursuant to the Court's power under 28 U.S.C. §2201 and grant all
20 other further necessary or proper relief pursuant to 28 U.S.C. §2202.

21 WHEREFORE, Plaintiff Golf Apparel Brands prays for judgment as follows,
22 in favor of Golf Apparel Brands and against Kellwood:

- 23 1. For an award of damages, according to proof;
- 24 2. For a trebling of the damages;
- 25 3. For an award of all of Kellwood's wrongful profits, gains, and other
- 26 benefits resulting from Kellwood's conduct, according to proof;
- 27 4. For a trebling of the wrongful profits, gains, and other benefits;

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- 5. For an award of punitive and exemplary damages in an amount sufficient to punish Kellwood and to deter future such conduct;
- 6. For a preliminary and permanent injunction to prevent Kellwood and any agents or other persons acting in concert or participation with Kellwood from making any commercial use of the word CASHMERLON or of any other word confusingly similar thereto;
- 7. That the Court declare each of the parties' respective rights and interests, pursuant to the Court's power under 28 U.S.C. §2201;
- 8. For other further necessary or proper relief under 28 U.S.C. §2202;
- 9. For an Order requiring Kellwood to file an express withdrawal of federal trademark application Serial No. 77/164,338 for the mark CASHMERLON with the United States Patent and Trademark Office, and to refrain from seeking any other trademark registration which is inconsistent with the relief ordered by the Court in this action;
- 10. For an Order to the United States Patent and Trademark Office to refuse registration of federal trademark application Serial No. 77/164,338 for the mark CASHMERLON, filed by one or more of Kellwood, and to refuse registration of any other federal trademark applications filed by Kellwood which are inconsistent with the relief ordered by the Court in this action;
- 11. For Golf Apparel Brands' reasonable attorneys' fees and costs; and
- 12. For such other or further relief as the Court deems just and proper.

DATED: December 19, 2007

RUTTER HOBBS & DAVIDOFF
INCORPORATED

By 
 Gregory J. Sater
 Attorneys for Plaintiff
 GOLF APPAREL BRANDS, INC.

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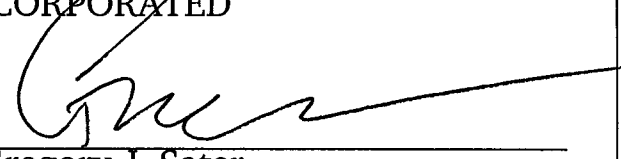
DEMAND FOR JURY TRIAL

Golf Apparel Brands hereby requests a trial by jury on all issues so triable.

DATED: December 19, 2007

RUTTER HOBBS & DAVIDOFF
INCORPORATED

By



Gregory J. Sater
Attorneys for Plaintiff
GOLF APPAREL BRANDS, INC.