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6 **dba BILA OF CALIFORNIA**

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **CV 07-07652 PA (SHY)**

11 ITALIAN CONNECTION, INC. dba BILA)
OF CALIFORNIA, a California Corporation)

12 Plaintiff,)

13 v.)

14)
15)
16 ROSS STORES, INC. dba ROSS DRESS)
FOR LESS, a Virginia Corporation,)
17 "T'TEASE," an entity of unknown form, and)
DOES 1-10, inclusive.)

18 Defendants.)

- 11) CASE NO.:
12)
13) **COMPLAINT FOR:**
14) **1. COPYRIGHT INFRINGEMENT**
15) **2. FEDERAL UNFAIR COMPETITION**
16) **3. CALIFORNIA UNFAIR**
17) **COMPETITION; and,**
18) **4. UNJUST ENRICHMENT**
19) **DEMAND FOR JURY TRIAL**
20)
21)
22)
23)

1 Plaintiff Italian Connection, Inc. dba BILA of California ("BILA") complains of
2 defendants as follows:

3 **I. JURISDICTION AND VENUE**

4 1. This is an action for copyright infringement arising under the Federal
5 Copyright Act, 17 U.S.C. §101, and unfair competition in violation of the Lanham
6 Act, 15 U.S.C. §1125(a), and also for unfair competition under the laws of the State of
7 California. This Court is vested with jurisdiction of the parties and the subject matter
8 of the action under 28 U.S.C. §§ 1338(a) and (b) and 15 U.S.C. §1121. In addition,
9 this Court has pendent jurisdiction over the State claims alleged herein as the actions
10 arise out of the same transactions and occurrence.

11 2. Venue is proper in this Judicial District pursuant to 28U.S.C. §§1391(b)
12 and (c) and 1400.

13 **II. THE PARTIES**

14 3. BILA is, and at all times herein mentioned was, a corporation
15 incorporated under the laws of the State of California having its principal place of
16 business at 320 West Venice Boulevard, Los Angeles, California 90015.

17 4. BILA is informed and believes, and on that basis alleges, that defendant
18 ROSS STORES, INC. dba DRESS FOR LESS (hereinafter "Ross") is, and was at all
19 times mentioned herein, a corporation incorporated under the laws of the State of
20 Virginia having its principal place of business at 4440 Rosewood Drive, Pleasanton,
21 California, and is doing business within this judicial district.

22 5. BILA is informed and believes, and on that basis alleges that Ross is a
23 clothing retailer that operates approximately 800 Dress for Less stores in 27 states
24 mostly in the Western United States and Guam.

25 6. BILA is informed and believes, and on that basis alleges, that "TEASE"
26 or "T' TEASE" (hereinafter "Tease") is a designer and/or manufacturer and/or
27 manufacturer and designer of women's clothes.
28

1 7. BILA is informed and believes, and on that basis alleges, that Tease is an
2 entity of unknown form organized and existing under the laws of a State of the United
3 States with its principal place of business in New York, New York, doing business in
4 this judicial district.

5 8. The true capacity, whether corporate, individual, associated or otherwise
6 of the defendants sued herein as Does 1 through 10, inclusive, are unknown to BILA
7 who, for that reason, sues them by such fictitious names. BILA will amend this
8 complaint to show the true names and capacities of Does 1 through 10 when such
9 have been ascertained.

10 9. BILA is informed and believes, and on that basis alleges, that during all
11 times mentioned herein, each of the defendants was the duly authorized agent, servant
12 or representative of each other defendant and was acting at all times both on its own
13 behalf and on behalf and within the course and scope of its agency or representative
14 capacity, with the knowledge and consent of the other defendant.

15 **III. GENERAL ALLEGATIONS**

16 10. BILA is engaged in the business of creating, manufacturing, distributing
17 and selling women's clothing items and has been doing so since 1977. BILA has
18 developed a reputation for producing high quality, creative, innovative women's
19 fashion designs that are highly prized in the clothing market.

20 **IV. ARTWORK PRINTS DESIGN**

21 11. In 2005 BILA caused to be created a design entitled ARTWORKS
22 PRINTS (hereinafter "Artwork design") which is used for women's clothing items.
23 This fabric design, which is a flower and leaf motif, is wholly original with Pool
24 Studio who assigned all rights, title, and interest in the copyright to BILA for good
25 and valuable consideration on or about November 2, 2005. The Artwork design is
26 copyrightable subject matter under the laws of the United States. Attached hereto as
27 Exhibit "A" is a photocopy from BILA's clothing inventory of a clothing item which
28

1 uses the Artwork design and a photocopy from Bila's catalogue of a clothing item
2 which uses the artwork design.

3 12. BILA has complied in all respects to the copyright laws of the United
4 States and received from the Register of Copyrights a Certificate of Registration for
5 its Artwork design, Registration No. VAu 733-661. Attached hereto as Exhibit "B,"
6 and incorporated herein by this reference is a true and correct copy of the Assignment
7 of Copyright and a true a correct copy of the Certificate of Registration for the
8 Artwork design.

9 13. The Artwork design has been used by BILA, or under its authority and in
10 conformity with the provisions of the copyright laws of the United States, on women's
11 clothing items such as depicted in Exhibit "A." BILA has been, and still is, the sole
12 owner of all right, title and interest in and to the copyright in the Artwork design.

13 14. BILA has expended large sums of money from and prior to 2005 to the
14 present in developing, advertising and promoting its product designs in the United
15 States, including California, and elsewhere. Clothing items utilizing Artwork design
16 which have been widely distributed by BILA since 2005.

17 15. As a result of BILA's advertising and promotion of its fabric designs,
18 BILA has developed, and has continued to develop a large and growing business in
19 women's fashion designs in the United States, including California, and elsewhere.
20 That business is very valuable to BILA.

21 16. Prior to the acts of defendants' herein, and as a result of BILA's
22 advertising and promotional efforts and the wide distribution of BILA's clothing items
23 utilizing Artwork design, BILA's women's clothing designs have become well known
24 and recognized in the trade and among customers and potential customers of BILA's
25 products in the United States, including California, and elsewhere, as associated with
26 and signifying BILA's fabric designs and clothing items.

1 17. BILA is informed and believes, and on that basis alleges, that Ross is a
2 retail distributor of, among other things, women's clothing items in the United States,
3 including California. BILA is further informed and believes, and on that basis alleges,
4 that Tease is a manufacturer and distributor of women's clothing items, and that they
5 have sold and are selling clothing items and products to Ross, and other defendants,
6 for distribution to the consuming public, some of which are sold within this judicial
7 district.

8 18. BILA is informed and believes, and on that basis alleges, that defendants
9 have recently commenced the manufacture, distribution, and sale of clothing items
10 incorporating a design that is substantially similar if not identical to BILA's
11 copyrighted Artwork design. Copies of a clothing item sold by Ross, manufactured
12 and distributed by Tease and which was purchased within this judicial district are
13 attached hereto as Exhibit "C" and incorporated herein by reference.

14 19. BILA has never consented to the use of the design by defendants and
15 objects to said infringement of its Artwork design. This Complaint demands that
16 defendants, and each of them, cease and desist further manufacture, sale, and
17 distribution of any clothing items incorporating any design which is substantially
18 similar to the Artwork design in the United States or elsewhere.

19 20. Such copying and use of BILA's copyrighted design has been, and
20 continues to be, unauthorized and to the detriment of BILA and to the commercial
21 advantage of defendants, and each of them.

22 21. Such unauthorized copying and use of BILA's Artwork design has, and
23 will cause substantial injury to BILA's reputation and business and, upon information
24 and belief, already has caused such injury.

1 **FIRST CLAIM FOR RELIEF**
2 **(Copyright Infringement)**
3 **(17 U.S.C. §101, et seq.)**
4 **(As to Defendants Ross and Tease)**

5 22. BILA incorporates herein by this reference the allegations contained in
6 paragraphs 1-21, above, as though fully set forth herein.

7 23. BILA's Artwork design is protected under the Copyright Act of 1976, 17
8 U.S.C. §102 and §302.

9 24. The foregoing acts of defendants, and each of them, violate BILA's
10 exclusive right to reproduce or display, or cause to be reproduced or displayed, the
11 Artwork design in violation of BILA's exclusive copyright under 17 U.S.C. § 106.
12 Such acts constitute copyright infringement under 17 U.S.C. §501.

13 25. Unless restrained, defendants will continue the acts complained of herein,
14 all to BILA's irreparable injury.

15 26. Defendant's unlawful acts set forth here and above constitute willful
16 copyright infringement under 17 U.S.C. §504. As a result of defendants' unlawful
17 and willful acts, BILA has been and will continue to be, irreparably injured, unless
18 defendants are enjoined immediately by this Court.

19 27. As a direct and proximate result of the foregoing acts and conduct of
20 defendants, and each of them, BILA has suffered damages and defendants have made
21 substantial profits, both in an amount which cannot be now ascertained or computed,
22 but that is capable of proof at trial and with an accounting.

23 **SECOND CLAIM FOR RELIEF**
24 **(Federal Unfair Competition)**
25 **(15 U.S.C. §1125(a))**
26 **(As to Defendants Tease and Ross)**

27 28. BILA incorporates by this reference the allegations contained in
28 paragraphs 1-27, above as though fully set forth herein.

1 29. In copying BILA's Artwork design and using it in defendants' products,
2 defendants used false designations of origin, false or misleading descriptions of fact
3 and false or misleading representations of fact which are likely to cause confusion, or
4 to cause mistake or to deceive as to the origin, sponsorship or approval of defendants'
5 goods or commercial activities within the meaning of 15 U.S.C. §1125(a)(I) and
6 which misrepresents the nature, characteristics and qualities of defendants' goods or
7 commercial activities, within the meaning of 15 U.S.C. §1125(a)(2).

8 30. Unless restrained, defendants will continue the acts complained of herein,
9 all to BILA's irreparable damage.

10 31. As a direct and proximate result of the foregoing acts and conduct of
11 defendants, BILA has suffered damages in an amount which cannot now be
12 ascertained or computed, but that it is capable of proof at trial.

13 **THIRD CLAIM FOR RELIEF**
14 **(California Unfair Competition)**
15 **(As to all Defendants)**

16 32. BILA incorporates herein by this reference the allegations contained in
17 paragraphs 1-31, above as though fully set forth herein.

18 33. The aforementioned unauthorized acts of defendants, and each of them,
19 in direct competition with BILA, constitute unfair business practices and unfair
20 competition in violation of the California common law of unfair competition and
21 California statutes pertaining to unfair competition, California Business and
22 Professions Code §17200, et seq.

23 34. Defendants, unless restrained, will continue the acts complained of
24 herein, all to BILA's irreparable damage.

25 35. As a direct and proximate result of the foregoing acts and conduct of
26 defendants, BILA has suffered damages in an amount which cannot now be
27 ascertained or computed, but that are capable of proof at trial.

1 36. BILA is informed and believes, and on that basis alleges, that defendants
2 did the acts herein alleged with intent to injure BILA, and said acts were done
3 fraudulently, maliciously and oppressively with knowledge of BILA's exclusive rights
4 in the fabric design and thus justify the awarding of exemplary and punitive damages.

5 **FOURTH CLAIM FOR RELIEF**

6 **(Unjust Enrichment)**

7 **(As to all Defendants)**

8 37. BILA incorporates herein by this reference the allegations contained in
9 paragraphs 1-36, above, as though fully set forth herein.

10 38. By the acts complained of herein, defendants, and each of them, have
11 been unjustly enriched by their wrongful acts at the expense of BILA. These acts
12 have unjustly enriched and wrongfully benefitted defendants, and each of them, by an
13 amount presently unknown to BILA, to which BILA is rightfully entitled.

14 WHEREFORE, Italian Connection, Inc. dba BILA of California prays for the
15 entry of judgment against defendants, and each of them, as follows:

16 39. First Claim for Relief.

17 (a). For damages according to proof at trial including BILA's lost
18 profits, and for all profits derived by defendants by their acts;

19 (b). For statutory damages under 17 U.S.C. §504(c)(2);

20 (c). For an Order that defendants and their agents, employees and all
21 entities affiliated therewith, be enjoined, during the pendency of this action, and
22 permanently from manufacturing, reproducing, displaying, or causing to be
23 reproduced or displayed, distributing or selling items containing a design that is
24 substantially similar to the Artwork design of BILA and from using any design that is
25 substantially similar to the Artwork design on clothing items, or on any items
26 whatsoever;
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1 (d). For an Order that all clothing items of defendants utilizing the
2 Artwork design of BILA, or any design substantially similar thereto, and all other
3 articles by which such copies may be produced, be impounded during the pendency of
4 this action and that the Court order their destruction as part of a final judgment or
5 decree;

6 40. Second Claim for Relief.

7 (a). For damages according to proof at trial;

8 (b). For an accounting of all proceeds received by defendants from all
9 sales resulting from defendants' use of the fabric design complained of herein;

10 (c). For an Order that defendants are enjoined, during the pendency of
11 this action, and permanently, from using any design that is substantially similar to the
12 Artwork design on any items and from using any false or misleading descriptions or
13 representations of fact with respect to defendants' goods or commercial activity; and

14 (d). For attorneys' fees and costs pursuant to 15 U.S.C. §1117.

15 41. Third Claim for Relief.

16 (a). For damages according to proof at trial;

17 (b). For an accounting of all profits received by defendants from sales
18 of clothing items incorporating the Artwork design, or any design substantially similar
19 thereto;

20 (c). For an accounting of all profits received by defendants from sales
21 of clothing items incorporating the Artwork Design, or any design substantially
22 similar thereto;

23 (d). For an order that defendants be enjoined, during the pendency of
24 this action, and permanently, from utilizing the Artwork design or any design
25 substantially similar thereto, on any items; and

26 (e). For punitive damages.

27 42. Fourth Claim for Relief.

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(a). For damages according to proof at trial;

(b). For an accounting of all profits received by defendants from sales of clothing items incorporating the Artwork design and any design substantially similar thereto.

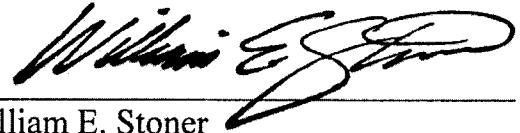
43. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Italian Connection, Inc. dba BILA of California, pursuant to Federal Rules of Civil Procedure, Rule 38(b), demands a jury trial of all issues herein triable of right by jury.

Dated: November 26, 2007

YUHL STONER CARR LLP



William E. Stoner
Attorneys for Plaintiffs
ITALIAN CONNECTION, INC. dba
BILA OF CALIFORNIA, a California
Corporation

EXHIBIT "A"

SAMS CLUB Confidential

Additional Information

Date 09/02/06

Please modify the size scales and Style/Colors to fit to the appropriate buy plan.

ITEM # _____
 Supplier # (9 Digits) 414995820
 Supplier Name B/LA
 Supplier Contact Marilyn Reiman
 TOLL FREE Phone # 1-800-930-2452

PACKAGING
 Acetate Box _____
 Vmly Bag _____
 Banded _____
 Boxed _____
 Size indicator on front and top of packaging _____
 Tray Information: (inches) H _____ x W _____ x D _____
 Display _____
 Display Tray Checklist
 Bumper Sticker Approved _____
 Sizes listed on tray _____

Domestic _____
 Composite Supplier _____
 MASTER SHIPPING CARTON
 Minimum requirements: _____

PACKAGING Approved _____
 Caps _____
 Tissue Paper _____
 Security Tags _____
 * Do NOT use individual poly bags for shipment.
 HANGING Yes/No _____ NO
 Hanger Code _____
 FOLDED Yes/No _____
 Fold Type _____

HANG TAG APPROVAL _____
 Adult - 3" swt back _____ Children - 3" swt back _____
 2 sided hang tag - FRONT - Brand name and picture of garment on model
 BACK - Item #, size & UPC code
 Hang Tag Placement
 Hanging Item _____
 Shirts - Left underarm _____
 Pants - Left side seam _____

Folded Item _____
 Shirts - Through care label - center neck _____
 Pants - See below _____
 JOCKER TAGS - PANTS
 Placement _____
 Shorts & Pants - Right back pocket _____
 SIZE STRIPS Approved _____
 Style _____
 Placement _____
 Short Straps _____ Located on waist band and short leg

WOMEN'S TEE

STYLE/COLOR	S	M	L	XL	XXL	Total
1st. CROSSBRED	454	454	918	918		2704
GOSEB/LACK	454	454	918	918		2704
STRER/WHITE	918	918	1836	1836		5508
2 & 3 BL/SE/PLNK	270	270	540	540		1620
DRS/SGREEN	270	270	540	540		1620
DRS/SGREEN	270	270	540	540		1620
54RSB/BLUSH	270	270	540	540		1620
29148	29148	58296	116592	0	0	175036
16.07%	16.07%	33.33%	33.33%	0.00%	0.00%	100.00%

WOMEN'S PANTS

STYLE/COLOR	2	4	6	8	10	12	14	16	18	Total
1	0	0	0	0	0	0	0	0	0	0
2	0	0	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0

MEN'S PANTS

INSEAM	29	30	31	32	33	34	36	38	40	42	44	Total
30	0	0	0	0	0	0	0	0	0	0	0	0
32	0	0	0	0	0	0	0	0	0	0	0	0
34	0	0	0	0	0	0	0	0	0	0	0	0
36	0	0	0	0	0	0	0	0	0	0	0	0

CHILDRENS

STYLE/COLOR	3M	5M	5M	12M	18M	24M	2T	3T	Total
1	0	0	0	0	0	0	0	0	0
2	0	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0

CHILDRENS

STYLE/COLOR	4	5	5	5K	7	Total
1	0	0	0	0	0	0
2	0	0	0	0	0	0
3	0	0	0	0	0	0
4	0	0	0	0	0	0
5	0	0	0	0	0	0
6	0	0	0	0	0	0

MEN'S COATS

STYLE/COLOR	38	40	42	44	46	48	Total
1	0	0	0	0	0	0	0
2	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0