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Attorneys for Plaintiffs

VITALIANO, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

VAN CLEEF & ARPELS, S.A., :
VAN CLEEF & ARPELS, INC. and :
VAN CLEEF & ARPELS DISTRIBUTION, INC., :
: Plaintiffs, :
: v. :
SILVER ANGEL & COMPANY, INC., :
SOLOMON FACH; and JOHN DOES 1-20, :
: Defendants. :
_____ X

Civil Action
No.

GOLD, M.J.

COMPLAINT

Plaintiffs, complaining of defendants, through their undersigned counsel, hereby allege as follows:

NATURE OF THE CASE, JURISDICTION AND VENUE

1. This is an action for copyright and trade dress infringement for sale of jewelry items bearing copies of plaintiffs' proprietary jewelry designs.
2. This Court has subject matter jurisdiction over the claims in this action arising under the Copyright and Trademark Acts pursuant to 28 U.S.C. §§ 1331 and 1338.
3. This Court has subject matter jurisdiction over the claims in this action arising under state law pursuant to 28 U.S.C. §§ 1367 and 1338.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400.

THE PARTIES

5. Plaintiff Van Cleef & Arpels, S.A., is a corporation organized and existing under the laws of Switzerland, having an office and place of business at 8 Route de Chandolan, 1752 Villars-sur-Glane, Switzerland.

6. Plaintiff Van Cleef & Arpels, Inc. is a corporation organized and existing under the laws of the State of New York, having an office and place of business at 12 West 57th Street, New York, NY 10015. Van Cleef & Arpels, Inc. is a licensed importer of Van Cleef & Arpels brand products, and is the exclusive licensee for the sale of such products at retail in the United States.

7. Plaintiff Van Cleef & Arpels Distribution, Inc. is a corporation organized and existing under the laws of the State of Delaware, having an office and place of business at 12 West 57th Street, New York, New York 10019. Van Cleef & Arpels Distribution, Inc. is a licensed importer of Van Cleef & Arpels brand products, and is the exclusive licensee for the sale of such products at wholesale in the United States.

8. For the purposes of this Complaint, except where specified, the interests of plaintiffs Van Cleef & Arpels, S.A., Van Cleef & Arpels, Inc. and Van Cleef & Arpels Distribution, Inc. herein are as a practical matter identical, and they are hereinafter referred collectively and interchangeably as "Plaintiffs" or "VCA."

9. Defendant Silver Angel & Company, Inc. (hereinafter "Silver Angel") is a corporation organized and existing under the laws of the State of New York, having an office

and place of business at 144-22 68th Drive, Flushing, New York 11367. Defendant Silver Angel is transacting and doing business in this judicial district and is subject to the personal jurisdiction of this Court.

10. Defendant Solomon Fach (hereinafter "Fach") is an individual who is an officer or a managing agent of Silver Angel, having an office and place of business at Silver Angel, 144-22 68th Drive, Flushing, New York 11367 and is a conscious dominant and active force behind the wrongful acts of Silver Angel complained of herein, which wrongful acts he has engaged in for the benefit of Silver Angel and for his own individual gain and benefit. Defendant Fach is transacting and doing business in this judicial district and is subject to the personal jurisdiction of this Court.

11. Upon information and belief, defendants John Does 1-10 are individuals who are officers or other managing agents of the corporate defendant named above and are conscious dominant and active forces behind the wrongful acts the corporate defendant named above and complained of herein, which wrongful acts they have engaged in for the benefit of the corporate defendant above and for their own individual gain and benefit. Defendants John Does 1-10 are transacting and doing business in this judicial district and are subject to the personal jurisdiction of this Court.

12. Upon information and belief, defendants John Does 11-20 are jewelers or other suppliers of infringing jewelry items to the named Defendants. Defendants John Does 11-20 are accordingly liable for copyright and/or contributory or inducement of copyright infringement and/or trade dress infringement. Defendants John Does 11-20 are transacting and doing business in this judicial district and are subject to the personal jurisdiction of this Court.

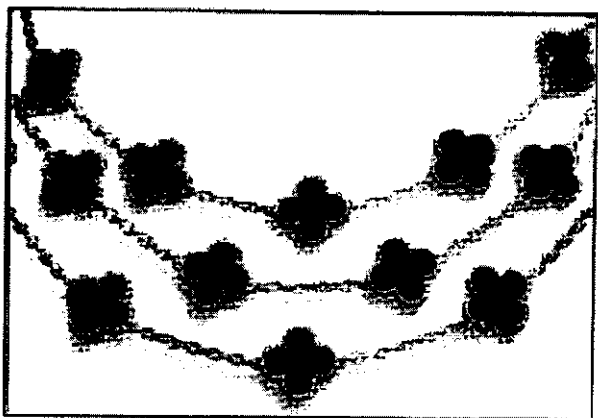
13. Defendants Silver Angel, Fach and John Does 1-20 are collectively referenced herein as “Defendants.”

The Van Cleef & Arpels Brand and Business

14. The Van Cleef & Arpels business has its origins in 1898, when Alfred Van Cleef married Estelle Arpels, and proceeded to open a jewelry business with her brothers at 22 Place Vendome in Paris. Plaintiffs and their affiliates and predecessors in interest are famous for the production of fine luxury watches and jewelry, innovation in watch and jewelry styles and designs, and introduction of new and important jewelry technologies, including the introduction of a patented invisible-setting technique in the 1930s. For many years, and long since before the acts of the Defendants complained of herein, VCA has been engaged in the manufacture and sale in interstate and intrastate commerce of high quality luxury watches and jewelry, rings and related goods (the “VCA Products”).

The Alhambra Jewelry Design

15. VCA is the owner of all rights, including the copyright, in the Alhambra Jewelry Design (hereinafter the “ALHAMBRA Jewelry Design”). That design appears thus:



16. The ALHAMBRA Jewelry Design is an original and creative work of VCA and its team of designers, and such design is validly protected by copyright. VCA is the owner of all rights in such design.

17. VCA owns Copyright Registration No. GP 101,958 for the ALHAMBRA Jewelry Design, which was first received by the Copyright Office on January 7, 1976 (the “ALHAMBRA Jewelry Design Registration”).

18. On November 13, 2007 VCA recorded a document entitled “Second Statement Regarding Copyright Registration” in which it clarified the authorship of the ALHAMBRA Jewelry Design.

The ALHAMBRA Trade Dress

19. VCA’s Alhambra Jewelry features a distinctive and unique combination of elements that collectively create a particular trade dress (the “ALHAMBRA Trade Dress”). The ALHAMBRA Trade Dress consists of a collocation of design elements. The combination of all or almost all such elements together give the jewelry a distinct overall look and commercial impression making it instantly recognisable. Although these elements cannot be perfectly described in words, the following generally describes the elements of the ALHAMBRA Trade Dress:

A quatrefoil shaped ornament comprising:

1. four identical lobes;
2. each lobe having a semicircular shape;
3. the lobes having both left-right and top-bottom symmetry;
4. an outer band;

5. having a constant width;
6. the outer surface of the band defining the contour of the ornament;
7. the inner surface of the band defining an inner or central portion;
8. having four identical cusps (inner points of the lobes) which extend about half way into the ornament;
9. the inner portion;
10. having a quatrefoil shape defined by the inner surface of the outer band; and
11. which is either hollowed out or made of a single filling material, such as mother of pearl, onyx, lapis, diamonds or metal, and may include a small centered jewel.

20. The collocation of features set forth in the above paragraph herein constitutes a distinctive trade dress that has secondary meaning. This design has been extensively promoted by VCA in the United States and has achieved significant sales success. The public has come to recognize this design as distinctive of this line of VCA jewelry and as an indication of source of such jewelry. The ALHAMBRA Trade Dress is thus a means by which VCA is known to the public and the trade as the sole source and origin of Alhambra jewelry.

21. The ALHAMBRA Trade Dress is in no way functional.

Defendants' Infringing Activities

22. Defendants have manufactured, sold, offered for sale and/or distributed copies of the Alhambra Jewelry Design and products embodying the ALHAMBRA Trade Dress. Upon information and belief, Defendants have further manufactured, sold, offered for sale and/or distributed copies of other designs proprietary to VCA, which are protected by copyrights and/or trade dress rights.

23. Such activities were done willfully and knowingly, knowing that such jewelry was based upon designs copied from the VAN CLEEF Jewelry Designs and, where applicable, that such products are confusingly similar to the ALHAMBRA Trade Dress.

24. No Defendant in this action has sought or received a license or authorization from the Plaintiffs for any purpose whatsoever, including for the acts described herein.

COUNT I

**COPYRIGHT INFRINGEMENT
17 U.S.C. § 501**

25. VCA repeats and reincorporates herein by reference each of the foregoing allegations.

26. Defendants have infringed upon VCA's copyrights in the Alhambra Jewelry Design by reproducing such designs without authorization and distributing copies thereof by sale and other means, and/or contributing to or inducing the reproduction and distribution of said design.

27. Defendants' copyright infringement, unless enjoined by this Court, will continue to cause VCA to sustain irreparable damage, loss and injury, for which VCA has no adequate remedy at law.

28. VCA has no adequate remedy at law and is suffering irreparable harm and damage as a result of the acts of Defendants as aforesaid in an amount thus far not determined, but believed to be in excess of Twenty-Five Thousand Dollars (\$25,000).

29. Defendants' copyright infringement, unless enjoined by this Court, will continue to cause VCA to sustain irreparable damage, loss and injury, for which VCA has no adequate remedy at law.

COUNT II

**TRADE DRESS INFRINGEMENT
15 U.S.C. § 1125(a)**

30. VCA repeats and incorporates herein by reference each of the foregoing allegations.

31. Defendants have reproduced, copied and imitated the ALHAMBRA Trade Dress in designing certain of their jewelry in a manner that is confusingly similar to the distinctive trade dress of VCA.

32. Defendants' adoption and use of the ALHAMBRA Trade Dress constitutes trade dress infringement and upon information and belief, deliberate and willful violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125 (a).

33. The actions and conduct of Defendants complained of herein have damaged VCA and will, unless restrained, further impair, if not destroy, the value of the ALHAMBRA Trade Dress and the goodwill associated therewith.

34. Defendants' trade dress infringement has caused VCA to sustain monetary damage, loss and injury, in an amount to thus far not determined, but believed to be in excess of Twenty-Five Thousand Dollars (\$25,000).

COUNT III

**COMMON LAW TRADE DRESS
INFRINGEMENT AND UNFAIR COMPETITION**

35. VCA repeats and incorporates herein by reference each of the foregoing allegations.

36. Defendants have reproduced, copied and imitated the ALHAMBRA Trade Dress in designing certain of their jewelry in a manner that is confusingly similar to the distinctive trade dress of VCA.

37. Defendants' actions constitute common law trade dress infringement and unfair competition.

38. The actions and conduct of Defendants complained of herein have damaged VCA and will, unless restrained, further impair, if not destroy, the value of the ALHAMBRA Trade Dress and the goodwill associated with them.

39. Defendants' trade dress infringement has caused VCA to sustain monetary damage, loss and injury, in an amount thus far not determined, but believed to be in excess of Twenty-Five Thousand Dollars (\$25,000).

40. Defendants' trade dress infringement, unless enjoined by this Court, will continue to cause VCA to sustain irreparable damage, loss and injury, for which VCA has no adequate remedy at law.

WHEREFORE, Plaintiffs demand:

I. That Defendants, their officers, agents, servants, employees and attorneys, and those in active concert or participation with them or any of them, be permanently enjoined and

restrained from further copying or otherwise infringing upon Plaintiffs' copyrights identified herein.

II. That Defendants be required to deliver up to Plaintiffs for destruction any and all goods in their possession that infringe upon the copyrights identified herein.

III. That Defendants be required, pursuant to 17 U.S.C. § 504, to account to Plaintiffs for any and all profits derived by them, and for all damages sustained by Plaintiffs by reason of said Defendants' actions complained of herein, and/or statutory damages, which Plaintiffs may at a later time elect to recover.

IV. That pursuant to 17 U.S.C. § 505, Plaintiffs have and recover from Defendants, Plaintiffs' reasonable attorneys' fees, costs and disbursements of this civil action.

V. That Defendants, their officers, agents, servants, employees and attorneys, and those in active concert or participation with them or any of them, be permanently enjoined and restrained:

- a. From using in any manner the ALHAMBRA Trade Dress, alone or in combination with any other words or designs, in manner likely to cause confusion, deception, or mistake on or in connection with advertising, offering for sale or sale of any goods not manufactured by VCA, or not authorized by VCA to be sold in connection with their respective said marks;
- b. From representing, suggesting in any fashion to any third party, or performing any act that may give rise to the belief that Defendants, or any of their goods, are authorized or sponsored by VCA;

- c. From passing off, inducing or enabling others to sell or pass off any goods as products produced by Plaintiffs that are not in fact genuine VCA goods, or not produced under the control and supervision of VCA and approved by VCA and
- d. From otherwise competing unfairly with Plaintiffs in any manner.

VI. That Defendants be required to deliver up to Plaintiffs for destruction, any and all goods in their possession or under their control that were or are being advertised, promoted, offered for sale or sold in connection with the ALHAMBRA Trade Dress, whether alone or in combination with any words or designs.

VII. That Defendants be required to deliver up to Plaintiffs for destruction, any and all catalogs, circulars and other printed material in their possession or under their control displaying or promoting the goods that were or are being advertising, promoted, offered for sale or sold in connection with the ALHAMBRA Trade Dress, whether alone or in combination with any words or designs.

VIII. That Defendants be ordered pursuant to 15 U.S.C. § 1116(a) to file, with the Court and serve upon Plaintiffs, within thirty (30) days of the entry of injunction prayed for herein, a written report under oath or affirmed under penalty of perjury setting forth in detail the form and manner in which it has complied with permanent injunction.

IX. That Defendants be required, pursuant to 15 U.S.C. § 1117, to account to Plaintiffs for any and all profits derived by it, and for all damages sustained by Plaintiffs by reason of Defendants' actions complained of herein, including an award of treble damages as provided for statute.

X. That Plaintiffs be awarded punitive damages.

XI. That Plaintiffs be awarded both pre-judgment and post-judgment interest on each and every damage award.

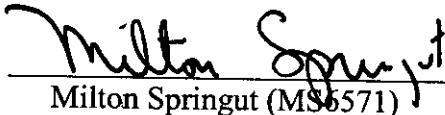
XII. That pursuant to 15 U.S.C. § 1117, Plaintiffs have and recover from Defendants, Plaintiffs' reasonable attorneys' fees, costs and disbursements of this civil action.

XIII. That Plaintiffs have such other and further relief as the Court may deem just and proper.

Dated: March __, 2008
New York, New York

Respectfully submitted,

KALOW & SPRINGUT LLP

By: 
Milton Springut (MS6571)
Tal S. Benschar (TB0838)