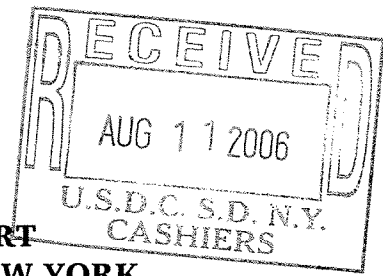


JUDGE SPRIZZO

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PEPE JEANS LONDON, LLC
and JEAN DESIGN, LTD.



**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
PEPE JEANS LONDON, LLC, :
and JEAN DESIGN, LTD., :
 : Civil Action No.
Plaintiffs, :
 :
v. :
 :
FASHION STUDIO, LLC, :
 :
Defendant. :
-----X

COMPLAINT AND DEMAND FOR JURY TRIAL

1. Plaintiffs Pepe Jeans London, LLC ("Pepe Jeans London") and Jean Design, Ltd. ("Jean Design") (collectively, "Pepe Jeans"), through their attorneys, for their Complaint against Defendant Fashion Studio, LLC. ("Defendant"), allege as follows:

NATURE OF THE ACTION

2. This is an Action arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and state law. Defendant has willfully and unlawfully infringed Pepe Jeans' trade dress rights with the clear and unmistakable intent and effect of causing confusion, mistake

and deception among customers and potential customers of jeans. Defendant has engaged in these acts of trade dress infringement and unfair competition by using design elements which were clearly copied from those of Pepe Jeans, but which have been slightly modified in a transparent attempt to immunize Defendant's improper conduct.

3. Pepe Jeans London is a limited liability company organized and existing under the laws of the state of Delaware, having an office and place of business at 1385 Broadway, 19th Floor, New York, New York 10018.

4. Jean Design is a corporation organized and existing under the laws of the state of New York, having an office and place of business located at 1385 Broadway, 19th Floor, New York, New York 10018. Jean Design is the exclusive licensee of Pepe Jeans London.

5. On information and belief, Defendant is a limited liability company organized and existing under the laws of the state of either Delaware or New Jersey, having an office and place of business at 222 Bridge Plaza South, Fort Lee, New Jersey 07024 and/or 140 Kero Road, Carlstadt, New Jersey 07072.

6. On information and belief, Defendant also does business under the name Lot 29.

7. Defendant is transacting and doing business within this judicial district and has committed the acts complained of herein within this judicial district. Defendant is subject to the jurisdiction of this court pursuant to laws of this state and Rule 4 of the Federal Rules of Civil Procedure.

Plaintiff's Well Known Trade Dress

8. Pepe Jeans has adopted, used and continues to use a series of trade dress elements in connection with certain of its polyester jackets which, individually and in combination, have come to be recognized by the trade and purchasing public as representing products of Pepe Jeans, are non functional and inherently distinctive. Furthermore, each of these trade dress elements has acquired a secondary meaning as indicating the products of Pepe Jeans. These elements include, without limitation:

- use of a distinct multi-thread embroidered clashed-line design on the upper left hand portion of the jacket which extends to the zipper in the middle of the jacket and the left sleeve.
- use of a dark colored, leather-type fabric with multiple tiny holes running vertically down each arm of the jacket and bordered on either side by three horizontal lines of color (the same three colors used throughout).

(collectively, the "Pepe Jeans Trade Dress"). The Pepe Jeans Trade Dress are assets of immense value to Pepe Jeans. Representative photographs of garments showing the Pepe Jeans Trade Dress are attached hereto as Exhibit 1.

9. Among the diverse articles of wearing apparel sold by Pepe Jeans under the Pepe Jeans Marks and incorporating the Pepe Jeans Trade Dress, are several jacket styles, namely Style Nos. 35098L, 35098LG, 35098LK, 35098LP (collectively "the Pepe Jeans Styles"). Another style incorporating the Pepe Jeans Trade Dress, Style No. 35135L, will be shipped to customers shortly. Each of the Pepe Jeans Styles has enjoyed widespread commercial success and they have achieved significant sales.

10. Wearing apparel, including the jacket styles sold under the Pepe Jeans Trade Dress have come to be known to the purchasing public throughout the United States as representing products of high quality, emanating from a single source. As a

result thereof the Pepe Jeans Trade Dress and the goodwill associated therewith are of inestimable value to Pepe Jeans.

11. The diverse articles of wearing apparel, including without limitation, the Pepe Jeans Styles, sold by Pepe Jeans incorporating the Pepe Jeans Trade Dress have been widely promoted to the purchasing public and to the trade throughout the United States.

12. By virtue of the wide renown acquired by the Pepe Jeans Trade Dress, coupled with the wide geographic distribution and extensive sale of various articles of clothing distributed under the Pepe Jeans Trade Dress, the Pepe Jeans Trade Dress have developed a secondary meaning and significance in the minds of the purchasing public and products bearing such trade dress are identified by the trade and the purchasing public with a single source.

Defendant's Infringing Activities

13. Long after Pepe Jeans creation, adoption and use of the Pepe Jeans Trade Dress, Defendant began the manufacturer, production, distribution and sale of wearing apparel which infringe the Pepe Jeans Styles (the "Infringing Styles") as they bear trade dress and other designs and indicia of origin which were clearly copied from and are confusingly similar to the Pepe Jeans Trade Dress.

14. The Infringing Styles are labeled under the house trademark LOT29, and the neck label indicates that LOT29 "is a trademark of Fashion Studio LLC." The neck label also bears "RN No. 106663." A search on the United States Federal Trade Commission's website, located at www.ftc.gov indicates that this RN number is registered to Fashion Studio, LLC.

15. The Infringing Styles have been sold within this judicial district.

16. A photograph of one of the Infringing Styles is annexed hereto as Exhibit 2.

17. The distribution and sale by Defendant of the Infringing Styles have been in total disregard of Pepe Jeans' rights and were commenced and have continued in spite of Defendant's knowledge that sale of the Infringing Styles was and is in direct contravention of Pepe Jeans' rights.

18. The likelihood of confusion is exacerbated by the fact that there both Pepe Jeans and Defendant sell their respective Styles to some of the same retail customers, such as Macy's, thereby increasing the likelihood that consumers who shop in these retail stores will be confused.

19. The likelihood of confusion is also exacerbated because at least some of the Infringing Styles incorporate the same color combination as some of the Pepe Jeans Styles, namely, a black jacket with red and white stitching.

20. The willful nature of Defendant's activities is demonstrated, by means of illustration only, by the fact that Pepe Jeans sold quantities of the Pepe Jeans Styles to a company, Against All Odds, the principal of which, upon information and belief, is related to one of the principals of Defendant. Accordingly, upon information and belief, Defendant had actual knowledge of Pepe Jeans' use of and rights in the Pepe Jeans Styles.

COUNT I
(VIOLATION OF 15 U.S.C. § 1125(a))

21. This claim arises under the provisions of the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq.*, particularly under 15 U.S.C. § 1125(a) and alleges the use in

commerce by Defendant of false designations of origin and false descriptions and representations of fact. This Court has jurisdiction over the subject matter of this claim pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

22. Pepe Jeans repeats and realleges the allegations contained in the preceding Paragraphs as if fully set forth herein.

23. Defendant has affixed, applied, or used in connection with the sale of its goods, false designations of origin which tend falsely to describe or represent that the goods and services offered by Defendant are sponsored by, authorized by or connected with Pepe Jeans, when they are not.

24. Upon information and belief, Defendant has marketed, distributed and sold goods in connection with colorable imitations and simulations of the Pepe Jeans Trade Dress with the express intent of causing confusion and mistake, of deceiving and misleading the purchasing public to buy and otherwise trade in its products in the erroneous belief that they were relying upon the reputation of Pepe Jeans. Defendant's acts therefore constitute use of false designation of origin and false descriptions of fact in violation of 15 U.S.C. § 1125(a).

25. Pepe Jeans has no adequate remedy at law and is suffering irreparable harm and damage as a result of the acts of Defendant complained of herein in an amount thus far not determined, to be determined at trial.

COUNT II
(UNFAIR COMPETITION UNDER NEW YORK LAW)

26. This claim arises under the common law of the State of New York relating to trademark infringement and unfair competition. This Court has jurisdiction over the subject matter of this claim pursuant to the provisions of 28 U.S.C. § 1338(b), this being a claim of unfair competition joined with a substantial and related claim under the Trademark Laws of the United States, and pursuant to 28 U.S.C. § 1367 under the doctrine of supplemental jurisdiction. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

27. Pepe Jeans repeats and realleges the allegations contained in the preceding Paragraphs as if fully set forth herein.

28. As more fully set forth above, the Pepe Jeans Trade Dress has come to have a secondary meaning indicative of origin, relationship, sponsorship, and/or association with Pepe Jeans. The purchasing public is likely to attribute to Pepe Jeans use by Defendant of the Infringing Styles as a source of authorization and/or sponsorship for Defendant's business.

29. On information and belief, Defendant has intentionally appropriated the Pepe Jeans Trade Dress with the intent of causing confusion, mistake, and deception as to its relationship with Pepe Jeans and with the intent to palm itself off as being authorized by, sponsored by, approved, by or licensed by Pepe Jeans and, as such Defendant has committed trademark infringement and unfair competition under the common law of this State.

30. Pepe Jeans has no adequate remedy at law and has suffered irreparable harm and damage as a result of Defendant's acts as aforesaid in an amount thus far not determined, to be determined at trial.

WHEREFORE, Pepe Jeans demands:

I. That an injunction be issued enjoining Defendant and Defendant's officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them:

- a. From using the Pepe Jeans Trade Dress or any portion thereof or any trade dress confusingly similar thereto including, without limitation, the Infringing Styles;
- b. From using any trade dress which may be calculated to falsely represent or which has the effect of falsely representing that the services or products of Defendant or third parties are sponsored by, authorized by, or in any way associated with Pepe Jeans;
- c. From infringing the Pepe Jeans Trade Dress;
- d. From otherwise unfairly competing with Pepe Jeans; and
- e. From falsely representing itself as being connected with Pepe Jeans, or sponsored by or approved by or associated with Pepe Jeans or engaging in any act which is likely to falsely cause the trade, retailers and/or members of the purchasing public to believe that Defendant is, in any way, associated with Pepe Jeans.

II. That Defendant be required to pay to such actual damages as Pepe Jeans has sustained in consequence of the acts of Defendant complained of herein, and that any such monetary award be enhanced pursuant to the provisions of 15 U.S.C. § 1117.

III. That Defendant be required to account to Pepe Jeans for all profits resulting from Defendant's infringing activities and that such award of profits to Pepe Jeans be increased by the Court as provided for under 15 U.S.C. § 1117.

IV. That Defendant be required to pay to Pepe Jeans punitive damages in connection with Pepe Jeans' common law unfair competition claim.

V. That Pepe Jeans have recovery from Defendant of the costs of this action and Plaintiffs' reasonable attorneys fees pursuant to 15 U.S.C. § 1117.

VI. That Pepe Jeans have all other further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,

Dated: August 11, 2006
New York, New York

By: 

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SP'06

STYLE NO: 35098L

NAME: MIRIAM

DESCRIPTION: LONG SLEEVE MOCK NECK TOP

W / LEATHER SLEEVE PANEL & EMBROIDERY

A GRADE PRODUCT CHECK

APPROVED



215 GM2 100% POLYESTER TRICOT



BLACK

Pepe Jeans
LONDON





10/1/2010

