

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

PELLE PELLE, INC.  
a Michigan corporation,

Plaintiff/Counter Defendant,

Case: 5:07-cv-14281  
Hon: John Corbett O'Meara

v.

FACTORY TEXTILVERTRIEB GmbH,  
a German corporation,

Defendant/Counter Plaintiff.

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**COUNTERCLAIM**

**NOW COMES** the Defendant/Counter Plaintiff FACTORY TEXTILVERTRIEB GmbH, (hereinafter known as "Defendant Textil") by and through it's attorney **PAUL M. HUGHES**, stating a counterclaim against the Plaintiff/Counter Defendant Pelle Pelle, Inc., (hereinafter known as "Plaintiff Pelle Pelle, Inc.") as follows:

**Parties**

1. Defendant Textil is a German corporation and seller of men's and women's clothing.
2. Upon information and belief, the Plaintiff Pelle, Pelle, Inc., is a Michigan corporation located in Rochester Hills, Michigan.
3. Plaintiff Pelle, Pelle, Inc., has brought suit against Defendant Textil primarily based on a contract between the parties and referenced as the "Agreement" (Exhibit B) in the principal complaint of the Plaintiff Pelle, Pelle, Inc., which is incorporated by referenced herein.

**Jurisdiction and Venue**

4. Based on the "Agreement" the location and business activities of the parties herein, jurisdiction and venue are appropriate in this Court and Defendant Textil seeks damages as further set forth against the Plaintiff Pelle, Pelle, Inc., in excess of \$75,000.00.

**Count 1 - Breach of Contract**

5. Including but not limited to other obligations contained in the "Agreement" the Plaintiff Pelle, Pelle, Inc., was to create a collection of clothes and other items for the Defendant Textil to market, distribute and sell in Europe, however during a substantial period of time, specifically from 2005 through 2007, the Plaintiff Pelle, Pelle, Inc., failed to meet this obligation.

6. That as a result of the breach of agreement by the Plaintiff Pelle, Pelle, Inc., at great costs to itself, the Defendant Textil was required to create a collection of clothes for the overall success of the campaign between the parties.

7. That as a result of said breach of contract the Defendant Textil has suffered damages and continues to suffer damages.

Wherefore the Defendant Textil prays for a judgment in whatever amount above \$75,000.00 this Court finds that it is entitled, together with attorneys fees and costs so wrongfully incurred.

#### **Count II - Unjust Enrichment**

8. That even though the Defendant Textil covered the aforementioned breach of contract by the Plaintiff Pelle, Pelle, Inc., by creating a collection of clothes for the overall success of the campaign between the parties, the Defendant Textil continued to pay royalties to the Plaintiff Pelle, Pelle, Inc., which unjustly enriched the Plaintiff Pelle, Pelle, Inc., and Defendant Textil

should be compensated to the extent of such unjust enrichment.

Wherefore the Defendant Textil prays for a judgment in whatever amount above \$75,000.00 this Court finds that it is entitled, together with attorneys fees and costs so wrongfully incurred.

### **Count III - Specific Performance**

9. The aforementioned agreement between the parties contains a termination date of December 31, 2007, however the Plaintiff Pelle, Pelle, Inc., has attempted to terminate said agreement prematurely and accordingly has failed continued to breach the contract in numerous ways causing the Defendant Textil damages.

10. That great injustice and further damages will accrue to the Defendant Textil should the Plaintiff Pelle, Pelle, Inc., be allowed to further it's attempts to terminate the contract between the parties.

Wherefore the Defendant Textil prays for an Order specifically enforcing the contract between the parties until it's natural date of expiration.

### **Count IV - Request for Injunctive Relief**

11. As a consequence of the actions taken in breach of the agreement by Plaintiff Pelle, Pelle, Inc., the Defendant is surely entitled to injunction relief pursuant to Fed.R.Civ.P. 65, the common law of the State of Michigan and various federal statutes.

12. The Defendant Textil has been damaged in the past by the illegal actions of the Plaintiff Pelle, Pelle, Inc., and will continue to suffer damages into the future as a result of same and has no adequate remedy at law or otherwise to protect itself from further losses should this Court not grant a preliminary and permanent injunction enjoining the Plaintiff Pelle, Pelle, Inc., from refusing to abide by its agreement with the Defendant Textil and further to enjoin it from entering into other contracts with third parties for the marketing, distribution and sale of "Pelle Pelle" products in Europe.

Wherefore the Defendant Textil prays that this Court enter appropriate injunctions necessary to protect the Defendant Textil from irreparable harm and as will be further requesting by your Defendant.

Respectfully Submitted,

**LAW OFFICES OF PAUL M. HUGHES**

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