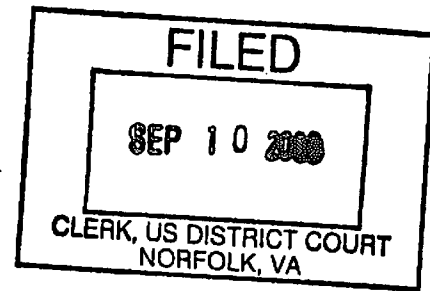


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION



HEADGEAR, INC.,

Plaintiff,

v.

DANIEL LEE d/b/a MANHATTAN,

Defendant.

No. 2:08cv 431

Jury Trial Demanded

Assigned to:

COMPLAINT

COMES NOW Plaintiff Headgear, Inc., and as its Complaint in this action against Daniel Lee doing business as Manhattan, shows the Court the following:

I. Jurisdiction and Venue

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.) and for trade dress infringement, false designation of origin, and unfair competition arising under the Trademark Act of 1946, as amended, 15 U.S.C. §§1051-1127. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright and trademark).

2. This Court has personal jurisdiction over the Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that the Defendant resides in this District, and the acts of infringement complained of herein occurred in this District.

II. Parties

3. Plaintiff, Headgear, Inc., is a corporation duly organized by law having its principal place of business at 3409 Chandler Creek Road, Virginia Beach, Virginia 23453.

4. Defendant Daniel Lee is a resident of this District doing business as Manhattan stores, which conduct business in this District at 880 North Military Highway #1135, Norfolk, Virginia 23502, and 701 Lynnhaven Parkway #1270, Virginia Beach, Virginia 23452.

III. Facts Common to All Counts

5. Plaintiff is in the business of selling clothing at retail and wholesale, which is sold under various trademarks, including the BLAC LABEL mark.

6. Plaintiff is, and at all material times has been, the copyright owner under United States copyright laws with respect to certain original copyrighted artistic works (the "Copyrighted Works"), including but not limited to, original copyrighted artistic works, representations of which are attached hereto as Exhibit A, which are the subject of valid Certificates of Copyright Registration issued by the U.S. Register of Copyrights, copies of which are attached hereto as Exhibit B.

7. Among the exclusive rights granted to Plaintiff under the Copyright Act are the exclusive rights to reproduce, display, and distribute to the public the Copyrighted Works, and the exclusive right to prepare derivative works based on the Copyrighted Works.

8. Defendant is in the business of selling clothing at retail and wholesale.

9. The photographs attached hereto as Exhibit C show front and back views of clothing items sold by Defendant.

10. The items of clothing shown in Exhibit C contain substantial portions of the Copyrighted Works shown in Exhibit A.

11. The sale and offer for sale of these items by Defendant constitute reproduction, display, and distribution of the Copyrighted Works and/or preparation of derivative works based on the Copyrighted Works and infringe Plaintiff's copyrights and exclusive rights under U.S. copyright laws.

12. Upon information and belief, in addition to the items of clothing shown in Exhibit C, Defendant is selling and offering for sale numerous other clothing items containing substantial portions of the Copyrighted Works, the sale and offer for sale of which constitute reproduction, display, and distribution of the Copyrighted Works and/or preparation of derivative works based on the Copyrighted Works and infringe Plaintiff's copyrights and exclusive rights under U.S. copyright laws.

IV. Claim For Relief - Copyright Infringement

13. Plaintiff hereby realleges paragraphs 1-12 of the Complaint as if fully restated herein.

14. Defendant, without the permission or consent of Plaintiff, has reproduced, displayed, and distributed, and continues to reproduce, distribute, and display substantial portions of the Copyrighted Works.

15. Defendant, without the permission or consent of Plaintiff, has prepared derivative works and continues to prepare derivative works based on the Copyrighted Works.

16. Through its reproduction, display, and distribution of substantial portions of the Copyrighted Works and its preparation of derivative works based on the Copyrighted Works,

Defendant has violated and continues to violate Plaintiff's exclusive rights of reproduction, distribution, display, and preparation of derivative works. Defendant's actions constitute infringement of Plaintiff's copyrights and exclusive rights under U.S. copyright laws.

17. On April 23, 2008, Plaintiff, through counsel, sent a letter to Defendant (the "First Letter") directing Defendant to cease and desist, by May 2, 2008, from its reproduction, display, and distribution of substantial portions of the Copyrighted Works and its preparation of derivative works based on the Copyrighted Works. Copies of the First Letter and delivery confirmation from the United States Postal Service are attached hereto as Exhibit D.

18. On May 2, 2008, Defendant responded to Plaintiff's letter with the letter attached hereto as Exhibit E, acknowledging that Defendant sold the infringing items of clothing shown in Exhibit C, apologizing, and stating, "In the future, I will be very cautious as to what I order for the store."

19. Notwithstanding the notice given in the Letter, Plaintiff discovered that at least one new item of clothing subsequently found in Defendant's store was infringing its copyright rights, evidencing Defendant's continued reproduction, display, and distribution of substantial portions of the Copyrighted Works and its preparation of derivative works based on the Copyrighted Works.

20. On July 8, 2008, Plaintiff, through counsel, sent a letter to Defendant (the "Second Letter") notifying Defendant of the new item of infringing clothing found in Defendant's store, and further notifying Defendant of its infringement of Plaintiff's trade dress, as set forth more particularly in Section V of this Complaint. A copy of the Second Letter is attached hereto as Exhibit F.

21. On July 24, 2008, Defendant, through counsel, sent a letter (copy attached hereto as Exhibit G) in reply to Plaintiff's Second Letter, stating that Defendant did not infringe any of Plaintiff's rights, and threatening to take action against Plaintiff for "continued harassment" of Plaintiff.

22. The foregoing acts of copyright infringement have been and are willful and intentional, in disregard of and with indifference to the rights of Plaintiff.

23. As a result of Defendant's infringement of Plaintiff's copyrights and exclusive rights under copyright laws, Plaintiff is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Defendant's infringement of the Copyrighted Works. In addition, Plaintiff is entitled to damages by law for Defendant's willful acts of copyright infringement. These damages may include by election statutory damages of up to \$150,000 per infringing act of Defendant. Plaintiff further is entitled to its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

24. The conduct of Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief (both preliminary and permanent) prohibiting Defendant from further infringing Plaintiff's copyrights and violating Plaintiff's exclusive rights under U.S. copyright laws. This injunctive relief is not adverse to public interest.

25. Plaintiff requests a trial by jury in this action.

WHEREFORE, Plaintiff prays that judgment be entered by this Honorable Court in its favor and against Defendant as follows:

A. For an injunction (both preliminary and permanent) prohibiting Defendant from further infringing Plaintiff's copyrights and violating Plaintiff's exclusive rights under U.S. copyright laws, in particular, providing:

"Defendant shall be and hereby is enjoined from directly or indirectly infringing Plaintiff's rights under federal law in the Copyrighted Works and any other original artistic work, whether now in existence or later created, that is owned or controlled by Plaintiff (collectively, 'Plaintiff's Works'), including, without limitation, the reproduction, display, and distribution to the public of substantial portions of Plaintiff's Works and the preparation of derivative works based on Plaintiff's Works, except pursuant to a lawful license or with the express authority of Plaintiff. Defendant also shall destroy all copies of Plaintiff's Works and all derivative works prepared from Plaintiff's Works in Defendant's possession, custody, or control and certify to the Court within 14 days that all such copies have been destroyed."

B. For Defendant to account for and pay over to Plaintiff all damages sustained by Plaintiff;

C. For Defendant to account for and pay over to Plaintiff all profits realized by Defendant by reason of its unlawful acts alleged herein, as provided by law;

D. For Defendant to pay Plaintiff statutory damages for each infringement of each of the Copyrighted Works pursuant to 17 U.S.C. § 504;

E. For Defendant to pay Plaintiff punitive damages as may be permitted by law or in the discretion of the Court;

- F. For Defendant to pay Plaintiff its attorney's fees and costs expended herein; and
- G. For such other and further relief as the Court may deem just and proper.

**V. Claim For Relief – Trade Dress Infringement,
False Designation of Origin, and Unfair Competition**

- 26. Plaintiff hereby realleges paragraphs 1-25 of the Complaint as if fully restated herein.
- 27. The photographs attached hereto as Exhibit H show front and back views of a tag attached to clothing items sold by Plaintiff, which has been in continuous use by Plaintiff since at least as early as December 2006 and has acquired secondary meaning.
- 28. Subsequent to Defendant's May 2, 2008 letter acknowledging that Defendant sold the infringing items of clothing shown in Exhibit C, apologizing, and stating, "In the future, I will be very cautious as to what I order for the store," Plaintiff discovered clothing items in Defendant's store that have an attached tag, as shown in the photographs attached hereto as Exhibit I, which provide front and back views of the tag attached to clothing items sold by Defendant.
- 29. The tag shown in Exhibit I was intentionally copied from Plaintiff's tag shown in Exhibit H to make it appear as though the tag was created by Plaintiff and to mislead consumers into believing that Plaintiff is the source of the products with which the tag shown in Exhibit I is used.
- 30. Defendant's use of the tag shown in Exhibit I constitutes infringement of Plaintiff's unique trade dress.

31. The aforesaid acts of Defendant are likely to cause confusion, mistake, or deception among consumers as to the source or origin of the parties' respective products by reason of the fact that consumers believe and are likely to believe that Defendant's products originate from, or are in some way properly connected with, approved by, sponsored by, or endorsed by Plaintiff.

32. The aforesaid acts of Defendant constitute trade dress infringement, false designation of origin, and unfair competition in violation of section 43(a) of the Trademark Act of 1946, as amended, 15 U.S.C. §1125(a).

33. Upon information and belief, the aforesaid acts were undertaken willfully and with the intention of causing confusion, mistake, or deception, in disregard of and with indifference to the rights of Plaintiff.

34. As a result of the aforesaid acts, Plaintiff is entitled to damages pursuant to 15 U.S.C. § 1117(a), including treble damages, attorneys' fees, and costs.

35. By reason of the acts of Defendant alleged herein, Plaintiff has suffered, is suffering, and will continue to suffer irreparable damage, and, unless Defendant is restrained from continuing these wrongful acts, the damage to Plaintiff will increase.

36. The conduct of Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money. Plaintiff has no adequate remedy at law.

37. Pursuant to 15 U.S.C. §§ 1116, Plaintiff is entitled to injunctive relief (both preliminary and permanent) prohibiting Defendant from its further acts of trade dress infringement, false designation of origin, and unfair competition. This injunctive relief is not adverse to public interest.

38. Plaintiff requests a trial by jury in this action.

WHEREFORE, Plaintiff prays that judgment be entered by this Honorable Court in its favor and against Defendant as follows:

A. For an injunction against Defendant permanently enjoining and restraining Defendant from:

(i) using in any manner the tag shown in Exhibit I and any other trade dress likely to cause confusion with Plaintiff's tag shown in Exhibit H in connection with the advertising, promotion, or sale of its goods or likely to create the erroneous belief that Defendant's goods are authorized by, sponsored by, licensed by, or are in some way associated with Plaintiff;

(ii) otherwise engaging in any other acts or conduct that would cause consumers to erroneously believe that Defendant's goods are somehow sponsored by, authorized by, licensed by, or in any other way associated with Plaintiff;

B. For Defendant to account for and pay over to Plaintiff all damages sustained by Plaintiff;

C. For Defendant to account for and pay over to Plaintiff all profits realized by Defendant by reason of its unlawful acts alleged herein, and that such amounts be trebled, as provided by law;

D. For Defendant to pay Plaintiff punitive damages as may be permitted by law or in the discretion of the Court;

E. For Defendant to pay Plaintiff its attorney's fees and costs expended herein;

F. For Plaintiff to have such other and further relief as the Court may deem appropriate to prevent the public from deriving the erroneous impression that any goods or services provided by or promoted by Defendant are authorized by Plaintiff or related in any way to Plaintiff or its products; and

G. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

HEADGEAR, INC.,

Dated: September 5, 2008

By: 

MENDELSON & ASSOCIATES, P.C.
Kevin M. Drucker, Esquire (Va. Bar No. 40563)
1500 John F. Kennedy Blvd., Suite 405
Philadelphia, PA 19102
(215) 557-6659
Attorneys for Plaintiff, Headgear, Inc.

EXHIBIT A

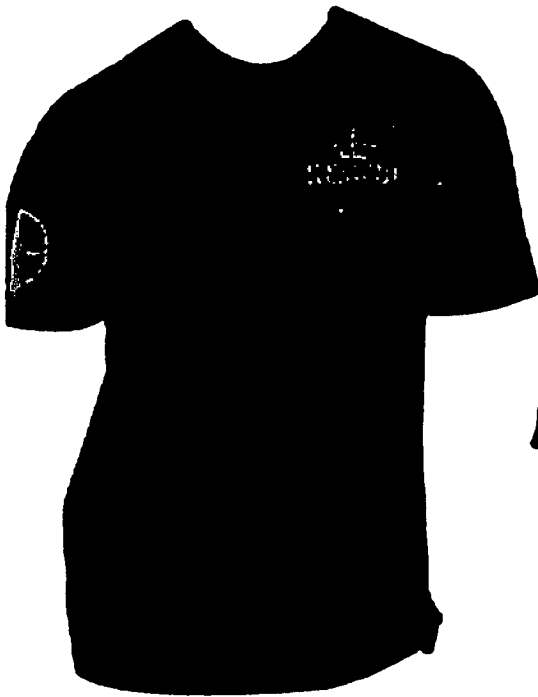






EXHIBIT B

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
Register of Copyrights, United States of America

Registration Number:

VA 1-633-539

Effective date of
registration:

May 16, 2008

Title _____

Title of Work: BLAC LABEL 13

Completion/ Publication _____

Year of Completion: 2007

Date of 1st Publication: April 26, 2007

Nation of 1st Publication: United States

Author _____

■ Author: Headgear, Inc.

Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant _____

Copyright Claimant: Headgear, Inc.

3409 Chandler Creek Road, Virginia Beach, VA, 23453, United States

Certification _____

Name: Kevin M. Drucker

Date: May 16, 2008

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

VA 1-629-133

Effective date of
registration:

March 28, 2008

Title

Title of Work: BLAC LABEL 19 & BLAC LABEL 19 DENTIM

Completion/ Publication

Year of Completion: 2007

Date of 1st Publication: October 1, 2007

Nation of 1st Publication: United States

Author

Author: Headgear, Inc.

Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Headgear, Inc.

3409 Chandler Creek Road, Virginia Beach, VA, 23453, United States

Certification

Name: Kevin M. Drucker

Date: March 28, 2008

EXHIBIT C



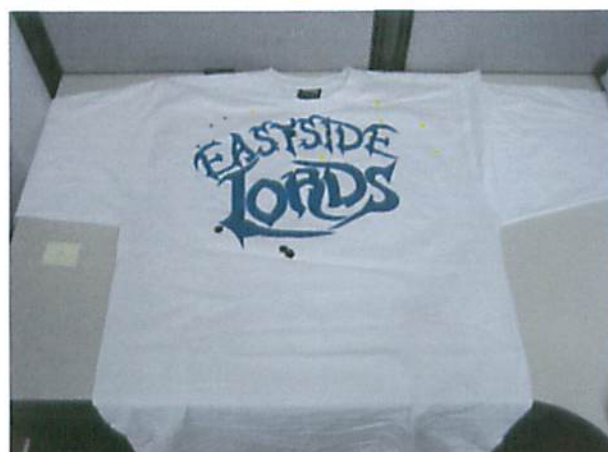


EXHIBIT D

MENDELSON & ASSOCIATES, P.C.
INTELLECTUAL PROPERTY LAW

KEVIN M. DRUCKER
DIRECT: (215) 557-6659
E-Mail: kevin@mendelhp.com

SUITE 405
1500 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PA 19102

TELEPHONE (215) 557-6656
FACSIMILE (215) 557-8477

April 23, 2008

VIA CERTIFIED FIRST-CLASS MAIL WITH RETURN RECEIPT

Daniel Lee
Manhattan
880 North Military Hwy. #1135
Norfolk, VA 23502

Daniel Lee
Manhattan
701 Lynnhaven Pkwy. #1270
Virginia Beach, VA. 23452

RE: Infringement of Headgear's Copyrighted Clothing Designs
United States Copyright Registration Nos. VA 1-629-136,
VA 1-629-132, VA 1-629-133, VA 1-629-134, and
VA 1-629-135
Our Ref. No.: 1152.000

Dear Mr. Lee:

We are intellectual property counsel for Headgear, Inc. ("Headgear"), the owner of all right, title and interest in and to copyrighted lines of clothing and clothing designs, sold under its Blac Label brand name. Headgear is the owner of copyright rights in designs embodied in its Blac Label lines of clothing and routinely files federal copyright applications with the United States Copyright Office to register protection for all of its designs. Below are copies of Headgear's Certificates of Copyright Registration Nos. VA 1-629-136, VA 1-629-132, VA 1-629-133, VA 1-629-134, and VA 1-629-135, which cover proprietary designs appearing on Headgear's clothing:

Daniel Lee
April 23, 2008
Page 2

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with Title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

VA 1-629-136

Effective date of
registration:

March 28, 2008

Title _____

Title of Work: BLAC LABEL 17 & BLAC LABEL 17 DENTM

Completion/ Publication _____

Year of Completion: 2007

Date of 1st Publication: September 1, 2007

Nation of 1st Publication: United States

Author _____

• Author: Headgear, Inc.

Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: United States

Domestic to: United States

Copyright claimant _____

Copyright Claimant: Headgear, Inc.

3409 Chandler Creek Road, Virginia Beach, VA, 23453, United States

Certification _____

Name: Kevin M. Urlicker

Date: March 28, 2008

Certificate of Registration



This Certificate is issued under the seal of the Copyright Office in accordance with title 17, United States Code, attesting that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
Registered Copyrights, United States of America

Registration Number:

VA 1-629-132

Effective date of
registration:

March 28, 2008

Title

Title of Work: BLAC LABEL 13 & BLAC LABEL 18 DENTIM

Completion/ Publication

Year of Completion: 2007

Date of 1st Publication: September 25, 2007

Nation of 1st Publication: United States

Author

Author: Hurdgear, Inc.

Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Hurdgear, Inc.

3409 Chandler Creek Road, Virginia Beach, VA, 23453, United States

Certification

Name: Kevin M. Drucker

Date: March 28, 2008

Daniel Lee
April 23, 2008
Page 4

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
Register of Copyrights, United States of America

Registration Number:

VA 1-629-133

Effective date of
registration:

March 28, 2008

Title _____

Title of Work: BLAC LABEL 19 & BLAC LABEL 19 DENIM

Completion/ Publication _____

Year of Completion: 2007

Date of 1st Publication: October 1, 2007

Nation of 1st Publication: United States

Author _____

• Author: Houdgate, Inc.

Author Created: 2-Dartbank

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant _____

Copyright Claimant: Houdgate, Inc.

3407 Chandler Creek Road, Virginia Beach, VA, 23453, United States

Certification _____

Name: Kevin M. Drucker

Date: March 28, 2008

Daniel Lee
April 23, 2008
Page 5

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with Title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

VA 1-629-134

Effective date of
registration:

March 28, 2008

Title

Title of Work: BLAC LABEL 20 & BLAC LABEL 20 DENTIM

Completion/ Publication

Year of Completion: 2007

Date of 1st Publication: November 1, 2007

Nation of 1st Publication: United States

Author

• Author: Hodgeco, Inc

Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: United States

Domesticated in: United States

Copyright claimant

Copyright Claimant: Hodgeco, Inc

1409 Chandler Creek Road, Virginia Beach, VA, 23451, United States

Certification

Name: Kevin M. Deuster

Date: March 28, 2008

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

VA 1-629-135

Effective date of
registration:

March 28, 2008

Title

Title of Work: BLAC LABEL 21 & BLAC LABEL 21 DENIM

Completion/ Publication

Year of Completion: 2007

Date of 1st Publication: December 10, 2007

Nation of 1st Publication: United States

Author

Author: Houdgenc, Inc.

Author Created: 2 Distinct

Work made for hire: Yes

Created in: United States

Domesticated in: United States

Copyright claimant

Copyright Claimant: Houdgenc, Inc.

3409 Chandler Creek Road, Virginia Beach, VA, 23453, United States

Certification

Name: Kevin M. Drucker

Date: March 28, 2008

Daniel Lee
April 23, 2008
Page 7

It has come to the attention of Headgear that you are offering for sale and selling clothing that infringes Headgear's copyrighted designs. For example, here are front and back photographs of just a few of your infringing products:



Daniel Lee
April 23, 2008
Page 8



Below, for your reference, are some of the Blac Label line clothing designs on file with the United States Library of Congress and covered by Headgear's federal Copyright Registrations and/or pending applications for Copyright Registration:







BLSP14/3



CUT & SEW



As can clearly be seen, your products shown above are substantially similar to, and are infringements of, Headgear's copyrighted designs. These are only some of your infringing products, and Headgear is aware that there are many others.

Headgear will be substantially and irreparably damaged should this infringement continue. We therefore request that you immediately cease and desist from the ongoing sale and offering for sale of these infringing products. In order to mitigate further damage to Headgear, the following actions on your part are required:

- (1) immediate discontinuance of the advertising, promotion, offering for sale, and shipment of infringing products, and delivery to Headgear of a signed certification stating that you have done so;
- (2) immediate recall of all infringing products from all retailers and other parties to whom you have provided such infringing products, and delivery to Headgear of a signed certification stating that you have done so;
- (3) turning over to Headgear all infringing products in your possession and all infringing products you have recalled from retailers and other parties; and
- (4) an accounting of all sales made to date of the infringing products.

Headgear is serious about enforcing its intellectual property rights and does not tolerate infringement. Unless we receive your reply by 5:00pm on May 2, 2008 providing the above four items of information, we will presume that you do not intend to voluntarily take the necessary actions outlined above and we will have no alternative but to commence immediate legal action in federal court against your company and all parties and individuals who have been actively involved in the unlawful infringing activities, including you personally. We will seek all available legal remedies under the Copyright Act, including, but not limited to, an injunction against further sale of infringing products, substantial monetary damages for each act of infringement (either an award of damages for all lost sales and profits or, in the alternative, statutory damages in an amount between \$500 and \$20,000 per act of infringement), and an award of Headgear's attorneys' fees.

Daniel Lee
April 23, 2008
Page 13

We await your prompt response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'KMD', with a horizontal line extending to the right.

Kevin M. Drucker
For MENDELSON & ASSOCIATES, P.C.

KMD:mec
Enclosures

cc: Jeffrey Watson, President, Headgear, Inc.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, on the front if space permits.

1. Article Addressed to:

*Daniel Lee
Manhattan
880 North Military Hwy
#1135
Norfolk, VA 23502*

**2. Article Number
(Transfer from service label)**

7000 1530 0002 0968 6540

PS Form 3811, February 2004

Domestic Return Receipt

102505-02 M-1540

COMPLETE THIS SECTION ON DELIVERY
A. Signature

X [Signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Daniel Lee
Manhattan
701 Lynnhaven Pkwy
#1270
Virginia Beach, VA
23452*

**2. Article Number
(Transfer from service label)**

7000 1530 0002 0968 6557

PS Form 3811, February 2004

Domestic Return Receipt

102505-02 M-1540

COMPLETE THIS SECTION ON DELIVERY
A. Signature

X [Signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

EXHIBIT E

**Daniel Lee
Manhattan**

**880 North Military Hwy. #1135
Norfolk, VA 23502**

**701 Lynnhaven Pkwy. #1270
Virginia Beach, VA 23452**

**Mendelsohn & Associates, P.C.
Suite 405
1500 John F. Kennedy Blvd.
Philadelphia, PA 19102**

Re: Headgear's Copyrighted Clothing

Dear Mr. Drucker:

As per your request, I am writing this letter to reinforce our recent conversation. The merchandise in question was bought before I opened the Blac Label account therefore; I had no knowledge of the similarity in design. Total of 30 pieces were purchased and was divided between the two locations.

Soon after, I opened an account with the Blac Label and Mr. Jeff Watson came to the Military Circle location and requested that all tee shirts with similar designs to be removed from the store. The merchandise in question was removed and disposed from the floor immediately at Military Highway location and I also asked the manager of the Lynnhaven Parkway to do the same since I am not there in person.

I had no idea that there were still at the final clearance rack at the Lynnhaven location. When I realized that my account was closed because there was still "similar merchandise" at the Lynnhaven location, I went to the store in person to remove and disposed them immediately just like I did at the Military location.

Total of 5 pieces were purchased by the employee of the Headgear and 4 more were sold at \$9.99 each. To be totally honest, I had no idea that the designs on the shirts were questionable until I received your letter showing the comparison with the pictures and explanation. I am truly sorry if I caused trouble but it was an honest mistake. In the future, I will be very cautious as to what I order for the store.


Daniel Lee

EXHIBIT F

MENDELSON & ASSOCIATES, P.C.
INTELLECTUAL PROPERTY LAW

KEVIN M. DRUCKER
DIRECT: (215) 557-6659
E-MAIL: kevin@mendellip.com

SUITE 405
1500 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PA 19102

TELEPHONE (215) 557-6656
FACSIMILE (215) 557-8477

July 8, 2008

VIA CERTIFIED FIRST-CLASS MAIL WITH RETURN RECEIPT

Daniel Lee
Manhattan
880 North Military Hwy. #1135
Norfolk, VA 23502

Daniel Lee
Manhattan
701 Lynnhaven Pkwy. #1270
Virginia Beach, VA. 23452

RE: Infringement of Headgear's Copyrighted Clothing Designs and Trademarks
Our Ref. No.: 1152.000

Dear Mr. Lee:

Your response to Headgear's cease-and-desist letter is at hand. Based on the admissions in your letter, it is clear that you have infringed Headgear's registered copyrighted clothing designs. Moreover, despite the assurances in your response letter, Headgear has discovered that you are still selling infringing goods. For example, the shirt shown in the pictures below, which was just purchased from Manhattan, contains designs and bears labeling and hangtags that infringe both copyright and trademark rights of Headgear:

MANHATTAN SHIRT



HEADGEAR SHIRT



Daniel Lee
July 18, 2008
Page 3

The design of the shirt above clearly infringes Headgear's copyrighted design, covered by its U.S. Copyright Registration No. VA 1-629-133. In addition, the use of the words "BLAC SIDE" on this shirt constitute an infringement of Headgear's BLAC LABEL trademark, as shown in pending U.S. Trademark Application Serial No. 77/292,438. Moreover, the slavish copy of Headgear's hangtag, despite a few minor changes, clearly infringes Headgear's unique trade dress.

To protect its rights, Headgear is ready to file suit against you.

However, in an attempt to quickly resolve this matter, Headgear is willing to accept a settlement of \$20,000 in exchange for a release from prior copyright and trademark infringement (see enclosed Release). This is a non-negotiable offer and will be off the table at 5:00pm EST on Friday, August 1, 2008.

At that time, Headgear will file suit against you, seeking a jury trial. Headgear's settlement demands will be substantially greater once suit has been filed. As to the copyright infringement, Headgear will seek all available legal remedies under the Copyright Act, including, but not limited to, an injunction against further sale of infringing products, substantial monetary damages for each act of infringement (either an award of damages for all lost sales and profits or, in the alternative, statutory damages in an amount between \$500 and \$20,000 per act of infringement), and an award of Headgear's attorneys' fees. As to the trademark infringement, Headgear is also fully prepared to seek legal remedies under the Lanham Act, including injunctive relief, treble damages for willful infringement, and attorney's fees.

Headgear has a solid legal basis for action against you. However, Headgear would prefer to settle this matter amicably to avoid litigation. Please contact me directly at 215-557-6659 if you require clarification of any of the above terms.

This settlement offer is made without prejudice. Headgear does not waive and hereby reserves any and all rights and remedies it has in connection with this matter.

We await your prompt response.

Very truly yours,



Kevin M. Drucker

For MENDELSON & ASSOCIATES, P.C.

KMD:mcc

Enclosure (as stated)

cc: Jeffrey Watson, President, Headgear, Inc.

EM132186445US

EM132186454US

EXHIBIT G

IRA M. STEINGOLD
JUDD B. MENDELSON

STEINGOLD & MENDELSON
ATTORNEYS AND COUNSELORS AT LAW
CENTURY PROFESSIONAL BUILDING
3101 AMERICAN LEGION ROAD, SUITE 23
CHESAPEAKE, VIRGINIA 23321

(757) 393-7300
FAX 393-9959

July 24, 2008

VIA FACSIMILE: 215-567-8477
Kevin M. Drucker, Esquire
Mendelsohn & Associates, P.C.
1500 John F. Kennedy Blvd., Suite 405
Philadelphia, PA 19102

RE: Infringement of Headgear's Copyrighted Clothing Designs
United States Copyright Registration Nos. VA 1-629-136,
VA 1-629-132, VA 1-629-133, VA 1-629-134, and VA 1-629-135
Your Reference No.: 1152.00

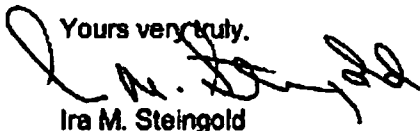
Dear Mr. Drucker:

This office has been retained by Mr. Daniel Y. Lee v/a Manhattan. This office has reviewed all pertinent correspondence regarding this matter.

It is the opinion of our lawfirm that Mr. Lee has committed no act of infringement of any nature or kind. Specifically, our office has reviewed the products in question. No product we have seen falls within any category you have set by either trademark or by copyright. A review of your March 28, 2008 registration involves merchandise unrelated to the merchandise Mr. Lee is selling.

It is suggested you press any legal matter with Regal Wear, Inc., 495 Barell Avenue, Carlstadt, NJ 07072, as they are the manufacturer of my client's merchandise.

Your firm should be sophisticated enough to know that you cannot browbeat my client, Mr. Lee. Your continued harassment of Mr. Lee may result in action against your client.

Yours very truly,

Ira M. Steingold

IMS:bc

c: Mr. Daniel Y. Lee

EXHIBIT H





EXHIBIT I

*Guard for the officers and distinguished persons.
Don't let pass and pass.*

Those who appear in person of the State or people.

*A combination of your grace, a quality of education and literature.
Treason, Only people, leaders, and people may apply.*



Ablanche Premium Product







Court Name: United States District Court
Division: 2
Receipt Number: 24683088432
Cashier ID: pthorbs
Transaction Date: 09/18/2008
Payer Name: MENDELSON AND ASSC PC

CIVIL FILING FEE
For: MENDELSON AND ASSC PC
Case/Party: D-VAE-2-08-CV-988431-001
Amount: \$350.00

CHECK
Check/Money Order Num: 4261
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

MENDELSON AND ASSOC PC

CIV FIL FEE
2:08CV431

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Headgear, Inc.

(b) County of Residence of First Listed Plaintiff N/A
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mendelsohn & Associates, P.C.
1500 JFK Blvd., Suite 405, Philadelphia, PA 19102

DEFENDANTS

Daniel Lee d/b/a Manhattan

County of Residence of First Listed Defendant N/A
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus: <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

17 USC §101 et seq.; 15 USC §§1051-1127

Brief description of cause:

Infringement of copyright and trade dress

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9/8/2008

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

RECEIVED
MENDELSON & ASSOCIATES, P.C.

INTELLECTUAL PROPERTY LAW

KEVIN M. DRUCKER
DIRECT: (215) 557-6659
E-MAIL: kevin@mendellp.com

SUITE 405
1500 JOHN F. KENNEDY BLVD
PHILADELPHIA, PA 19102

2008 SEP -8 P 4: 17
TELEPHONE (215) 557-6656
FACSIMILE (215) 557-8477

September 5, 2008

VIA EXPRESS MAIL

Clerk of Court
United States District Court
for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

RE: Headgear, Inc. v. Daniel Lee d/b/a Manhattan
Our Ref. No.: 1152.056

Dear Clerk:

I enclose, for filing in the above-referenced matter, (i) an original Complaint, (ii) a service copy of the Complaint, (iii) a Summons, and (iv) a Disclosure Statement. A firm check in the amount of \$350 for the filing fee is enclosed.

Kindly return the service package to us by mail, since our office is not local to the courthouse.

Please call me at 215-557-6659 if you have any questions.

Very truly yours,



Kevin M. Drucker
For MENDELSON & ASSOCIATES, P.C.

KMD:mec
Enclosures

RECEIVED
MENDELSON & ASSOCIATES, P.C.

INTELLECTUAL PROPERTY LAW

KEVIN M. DRUCKER
DIRECT: (215) 557-6659
E-MAIL: kevin@mendelip.com

SUITE 405
1500 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PA 19102

2008 SEP -9 AM 11:40
TELEPHONE (215) 557-6656
FACSIMILE (215) 557-8477

September 8, 2008

VIA FEDERAL EXPRESS

Ms. Rhonda Lambert
Clerk's Office
United States District Court
for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

RE: Headgear, Inc. v. Daniel Lee d/b/a Manhattan
Our Ref. No.: 1152.056

Dear Ms. Lambert:

Per our discussion this afternoon, I enclose, for filing in the above-referenced matter, a Civil Cover Sheet.

Kindly return the service package to us by mail, since our office is not local to the courthouse.

Please call me at 215-557-6659 if you have any questions.

Very truly yours,



Kevin M. Drucker
For MENDELSON & ASSOCIATES, P.C.

KMD:mec
Enclosures

MENDELSON & ASSOCIATES, P.C.

INTELLECTUAL PROPERTY LAW

KEVIN M. DRUCKER
DIRECT: (215) 557-6659
E-MAIL: kevin@mendelip.com

SUITE 405
1500 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PA 19102

TELEPHONE (215) 557-6656
FACSIMILE (215) 557-8477

September 9, 2008

VIA EXPRESS MAIL

Ms. Rhonda Lambert
Clerk's Office
United States District Court
for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

RE: Headgear, Inc. v. Daniel Lee d/b/a Manhattan
Our Ref. No.: 1152.056

Dear Ms. Lambert:

Per our discussion this afternoon, I enclose firm check no. 4261 in the amount of \$350.00 for the filing fee in the above-referenced matter. Kindly return to us the undated check you previously received from us along with the service package to us by mail, since our office is not local to the courthouse.

Please call me at 215-557-6659 if you have any questions.

Very truly yours,



Kevin M. Drucker
For MENDELSON & ASSOCIATES, P.C.

KMD:mec
Enclosures

EXHIBIT A





