UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DITTO APPAREL OF CALIFORNIA, INC. and JORDACHE ENTERPRISES, INC.,

Plaintiffs,

v.

CYNTHIA STEMRICH, DITTOS, INC., FRANKIE B., INC., DANIELLA CLARKE and PARAMOUNT SPORTSWEAR SALES CORP. DBA KATHY WALKER SALES,

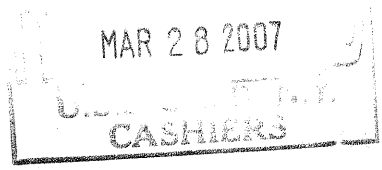
Defendants.

07 CV 2549

Civil Action No.

ECF CASE

Judge Berman



COMPLAINT FOR TRADE NAME INFRINGEMENT, UNFAIR COMPETITION AND CANCELLATION OF A REGISTERED TRADEMARK

Plaintiffs Ditto Apparel of California, Inc., and Jordache Enterprises, Inc., by and through their undersigned attorneys, for their Complaint against the defendants, allege:

PRELIMINARY STATEMENT

1. Plaintiffs have been using the name and mark DITTOS as a trade name in connection with the marketing and manufacture of high quality jeans and other apparel for more than 30 years. Plaintiffs have a distinct reputation under the DITTOS name among consumers and in the apparel trade. Defendants recently publicly announced that they were appropriating the term DITTOS for their own use as a label for a clothing line. The primary purpose of this lawsuit is to obtain injunctive relief to stop defendants from the deliberate and intentional infringement of plaintiffs' DITTOS trade name and brand name and from engaging in acts of unfair competition in falsely implying that defendants' line of DITTOS clothing, which they intend to ship to customers throughout the United States on March 30, 2007, is associated with plaintiffs and their earlier use of the DITTOS brand for clothing. Unless defendants are enjoined

from further misappropriation of plaintiffs' goodwill, plaintiffs will suffer substantial ongoing and irreparable harm.

JURISDICTION AND VENUE

2. This complaint alleges causes of action for trade name infringement, unfair competition and cancellation of a trademark registration pursuant to the Lanham Act, 15 U.S.C. § 1051, et seq., unfair competition arising under the laws of New York State, and violations of Section 349 of the New York General Business Law.

3. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 with respect to the claims arising under federal law, and supplemental jurisdiction pursuant to 28 U.S.C. §§ 1338 and 1367 with respect to the claims arising under the laws of the State of New York.

4. This Court has personal jurisdiction over defendants Cynthia Stemrich, Dittos, Inc., Frankie B., Inc., Daniella Clarke and Paramount Sportswear Sales Corp., d/b/a Kathy Walker Sales and venue is proper in this district pursuant to 28 U.S.C. § 1391 (b) and (c) because such defendants are doing business within this State and judicial district, transact business within this State and judicial district, derive substantial revenue from intra-state and inter-state commerce and have committed tortious acts within this State and judicial district and without this State and judicial district having injurious consequences within this State and judicial district.

THE PARTIES

5. Plaintiff Ditto Apparel of California, Inc. is corporation duly organized and existing under the laws of Louisiana, located and doing business at Highway 8 East, Colfax, Louisiana 71417.

6. Plaintiff Jordache Enterprises, Inc. ("Jordache") is a corporation duly organized and existing under the laws of New York, located and doing business at 1400 Broadway, New York, New York 10018.

7. Defendant Cynthia Stemrich ("Stemrich") is an individual with an address and residence at 31824 Corte Mendoza, Temecula, California 90014.

8. Defendant Stemrich claims to own trademark rights in the mark DITTOS in connection with clothing products and is a principal of and controls defendant Dittos, Inc.

9. Defendant Dittos, Inc. is a California corporation with an address of 31824 Corte Mendoza, Temecula, California 90014, the residence of Stemrich.

10. Defendant Dittos, Inc. is a party to a license agreement pursuant to which it has licensed purported trademark rights in the trademark DITTOS for clothing to defendants Frankie B., Inc. and Daniella Clarke.

11. Defendant Frankie B., Inc. ("Frankie B.") is a California corporation with an address of 850 South Broadway, Suite 504, Los Angeles, California 90014.

12. Defendant Frankie B. is a manufacturer, distributor and retailer of clothing, which it markets throughout the United States.

13. Defendant Daniella Clarke ("Clarke") is an individual with an address c/o Frankie B., 850 South Broadway, Suite 504, Los Angeles, California 90014.

14. Upon information and belief, defendant Clarke is a designer of clothing products and is a principal of defendant Frankie B.

15. Defendant Paramount Sportswear Sales Corp. d/b/a Kathy Walker Sales ("Walker") is a New York corporation with an address of 485 7th Avenue, Suite 900, New York, New York 10018.

16. Upon information and belief, defendant Walker acts as a sales representative for defendant Frankie B. and/or defendant Clarke.

FACTS COMMON TO ALL COUNTS

History of the DITTOS Jeans Brand

17. Plaintiffs' and their predecessors' use of DITTOS as a brand name and trade name for jeans and other apparel and as a trade name and brand name in the clothing field associated with the manufacture and marketing of jeans and other apparel, started more than 30 years ago.

18. In the early 1970s, a clothing manufacturer, Ditto Apparell of California, Inc., a California corporation ("Ditto Apparell"), the predecessor of plaintiff Ditto Apparel of California, Inc., started to manufacture and distribute a line of jeans and other apparel under the brand name DITTOS. In that connection and starting at the same time, the DITTOS brand name appeared on clothing labels and Ditto Apparell used "DITTO" as the dominant part of various trade names that included Ditto Apparell of California, Inc., Ditto Apparel of California, Inc., Ditto Apparel, Ditto and Dittos (collectively, the "Ditto Trade Name"). The Ditto Trade Name appeared on invoices, purchase orders and other sales and business documents, on the exterior of Ditto Apparell's manufacturing facilities, in the press, in phone book listings and in other manners customary in the trade.

19. The DITTOS brand featured tight fitting jeans in various colors and styles including a style with a distinctive horseshoe shaped seam on the rear of the jeans. The DITTOS brand was marketed and promoted through a nationwide advertising campaign including a sponsorship of the Grammy Awards. The slogan "Feel the Fit" was also used in advertising for the DITTOS brand.

20. By the late 1970s, the DITTOS brand was extremely popular with sales of more than $30 million per year and the DITTOS brand name became very well known to the interested consumer public and the apparel trade. Representative copies

of advertisements and promotional materials for DITTOS brand jeans and other apparel that were used in the 1970s are annexed hereto as Exhibit A.

21. In 1980, due to financial difficulties, Ditto Apparell filed a petition for bankruptcy under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Central District of California.

Jordache and Its Purchase of Ditto Apparell

22. In 1978, plaintiff Jordache began designing, manufacturing and distributing jeans under the Jordache® brand. The Jordache® jeans were an immediate success with $72 million in sales in 1979. By 1981 Jordache was producing 1.2 million jeans per month which were sold to 25 countries around the world.

23. In the early 1980s, Jordache was actively looking to expand its portfolio beyond Jordache® jeans, including licensing the Jordache® mark for other products, and purchasing other clothing brands. As a component of this strategy, Jordache decided to purchase the stock of Ditto Apparell in the bankruptcy proceeding, especially for the purpose of buying its manufacturing facilities.

24. On April 27, 1981, the Bankruptcy Court entered an Order confirming the reorganization plan pursuant to which Jordache purchased the shares owned by Ditto Apparell. A copy of the Order is annexed hereto as Exhibit B. The assets included all right, title and interest in and to the DITTOS brand and the Ditto Trade Name in connection with apparel and a 250,000 square feet manufacturing facility in Colfax, Louisiana.

25. Upon the purchase, Ditto Apparell became a subsidiary of Jordache, and continued its operations as a clothing manufacturer and distributor using the Ditto Trade Name. In this regard, Ditto Apparell started manufacturing private label clothing products including jeans, casual pants, shorts, skirts, overalls, jackets, and other items in a variety of sizes. A private label clothing manufacturer manufactures

clothing products that bear a brand designated by the customer who purchases the clothing, and not the manufacturer's brand. For example, private label jeans manufactured by Ditto Apparel for Sears have the name Sears affixed to the jeans.

26. Ditto Apparell marketed itself to the apparel trade as a provider of private label manufacturing services, as "the next generation private label supplier" and advised prospective customers that it was affiliated with and backed by the resources of Jordache. Ditto Apparell used both the Ditto Trade Name and the DITTOS mark in its marketing materials for its clothing manufacturing services and products. A copy of Ditto Apparell's brochure, which has been distributed to prospective customers, is annexed hereto as Exhibit C.

27. Ditto Apparell was particularly successful in developing the private label business and sold private label clothing products to many different high profile retailers, including Sears, Montgomery Wards, Lerner's, Lane Bryant, Mervyn's, Target, The Gap, Limited Too, American Eagle, Casual Male, Tommy Hilfiger and Bob's Stores. It has continued this private label business to the present.

28. In 2002, Ditto Apparell was merged into plaintiff Ditto Apparel of California, Inc., a Louisiana corporation (collectively, "Ditto Apparel"). Since 1981, Ditto Apparel has manufactured and sold tens of millions of units of clothing products with gross sales in excess of $600 million. During the last five years, Ditto Apparel has sold more than 7 million units of private label clothing with gross sales of almost $200 million all utilizing the Ditto Trade Name.

29. Ditto Apparel has consistently used and continued to use the Ditto Trade Name in connection with its manufacture, distribution and sale of clothing. Thus, the Ditto Trade Name has consistently and continuously appeared on invoices, on the exterior of Ditto Apparel's facilities, in the press, in phone book listings, on business

cards, on shipping labels, in the e-mail addresses of its sales representatives and in other manners customary in the trade.

30. As a result of Ditto Apparel's continuous activities in the clothing field for more than 30 years, including its usage of the Ditto Trade Name and the continuous and large volume of sales of private label apparel by Ditto Apparel to the trade, the Ditto Trade Name and the DITTOS brand name are well known in the trade as identifying the private label clothing products and services of Ditto Apparel and Jordache, and the Ditto Trade Name and the DITTOS brand name have achieved a secondary meaning in the marketplace.

31. As a result of the fame of the DITTOS brand and the popularity of DITTOS clothing, consumers still associate jeans bearing DITTOS with plaintiffs.

Defendants and Their Infringing Line of DITTOS Apparel

32. Upon information and belief, defendant Stemrich is an individual who has attempted to enter the apparel field by exploiting the good will of other clothing brands with whom she is not associated.

33. For example, on March 21, 2002, Stemrich filed a trademark application with the United States Patent and Trademark Office for the name SASSOON in connection with clothing products. This application was later abandoned. The name SASSOON that Stemrich attempted to register is a close variation of the registered trademark SASSON for clothing (see, e.g., Registration Nos. 1,307,158 and 1,307,159). The SASSON brand was very popular for jeans and clothing in the early 1980s and is registered to an entity unrelated to Stemrich. Obviously, Stemrich has no connection with the SASSON mark. By filing this application, Stemrich was trying to misappropriate the goodwill associated with the SASSON mark for clothing.

34. Stemrich similarly is attempting to trade on the excellent reputation of plaintiffs and their Ditto Trade Name and DITTOS brand by adopting the mark

DITTOS and the slogan "Feel the Fit" for use on clothing. Stemrich has known of the DITTOS brand since the 1970s and has known since at least 2004 of plaintiffs' association with that brand. Notwithstanding her knowledge, Stemrich has sold DITTOS branded clothing through her entity defendant Dittos, Inc. and now intends to sell DITTOS branded clothing through a licensee.

35. Upon information and belief, defendant Daniella Clarke is a fashion designer and the owner and Chief Executive of Frankie B., a company that she started in 2000 that sells apparel including jeans. Upon information and belief, Frankie B.'s signature product is line of low-rise jeans designed by Clarke that are sold under the brand name Frankie B. to customers in New York and throughout the United States.

36. Stemrich and her entity defendant, Dittos, Inc., in February 2006 licensed to Clarke and/or Frankie B. the mark DITTOS for clothing. Stemrich did so notwithstanding her knowledge of plaintiffs' prior use of the Ditto Trade Name and DITTOS brand in connection with the manufacture and sale of clothing products.

37. The licensing activities of defendants Stemrich and/or Dittos, Inc., were based upon Stemrich's U.S. Trademark Registration No. 2,767,215 for the mark DITTOS (Stylized) in connection with "clothing, namely young men's, children's and junior's jeans, t-shirts, tops, jackets and coats".

38. In July 2006, plaintiff Ditto Apparel petitioned to cancel Registration No. 2,767,215 based on, among other things, its prior use of the DITTOS brand and the Ditto Trade Name in connection with clothing products. This proceeding is Cancellation No. 92,046,087 which is currently pending before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

39. Defendant Clarke has recently designed a line of clothing products (the "Clarke Apparel") using DITTOS as a brand name (the "Clarke DITTOS Mark") and is holding herself out as the "Dittos" company in promotional materials. Copies of a

style book and line drawings showing the Clarke Apparel and the Clarke DITTOS Mark are annexed hereto as Exhibits D and E.

40. Defendant Clarke is also well aware of plaintiffs' DITTOS brand name and the Ditto Trade Name. In an interview posted on the website denimology.co.uk on November 30, 2006, she showed her knowledge of, and affection for, the original DITTOS jeans:

> [Interviewer:] 6) What are the first pair of jeans you remember?
>
> [Clarke:] My first love affair with jeans started in the early 80's when I found a brand called Dittos. I was obsessed! I thought I was the hottest thing going when I wore those jeans, so I slept in them.

A copy of a printout of this interview as it appears on the denimology.co.uk website is annexed hereto as Exhibit F.

41. Defendant Clarke announced for the first time in an article appearing in the March 8, 2007 issue of Women's Wear Daily, that through her Clarke Apparel line, she is "reviving Dittos, which reached a pinnacle from 1976 to 1981 with snug T-shirts and high-waisted jeans made in a rainbow of colors."

42. The article states that:

> Dittos will be recast for a 21st Century fit with a contemporary look. For instance, the signature jeans' 9 ½-inch rise is 1 ½ inches shorter than the length in the original line. But **Clarke adhered to Dittos' reputation** for brightly colored denim, introducing eight hues such as yellow and pink for the first season and then switching to a new palette for subsequent collections. (Emphasis added)

A copy of this article is attached as Exhibit G.

43. Clarke's use of the DITTOS name for jeans and apparel is intended to create an association with the DITTOS brand of the1970s owned by plaintiffs.

44. Clarke openly admits this association.

45. Upon information and belief, defendant Clarke by herself, through defendant Frankie B. and/or through sales representative defendant Walker has marketed and promoted the Clarke Apparel and the Clarke DITTOS Mark.

46. Upon information and belief, the Clarke Apparel with the Clarke DITTOS Mark was exhibited in February 2007 in New York City at the Coterie trade show, and upon information and belief, defendant Frankie B. attended that show for the purpose of promoting the infringing DITTOS apparel and line.

47. Upon information and belief, defendants Clarke and/or Frankie B. have received orders for the Clarke Apparel with the Clarke DITTOS Mark from customers throughout the United States including customers in New York.

48. According to the March 8, 2007 Women's Wear Daily article, on March 30, 2007, defendant Clarke will begin shipping the Clarke Apparel products with the Clarke Dittos Mark to such customers including to customers in New York.

COUNT I
[TRADE NAME INFRINGEMENT]

49. Plaintiffs repeat and reallege the allegations of paragraphs 1 - 48, as if set forth fully herein.

50. Defendants have affixed, applied and used or intend to affix, apply and use the term "Dittos" in connection with the sale of apparel and have caused or intend to cause such apparel to enter into commerce in the United States, to plaintiffs' detriment.

51. Defendants have improperly taken orders for apparel bearing the term "Dittos" with the intent to cause confusion and mistake, to deceive and mislead the purchasing public and to improperly appropriate plaintiffs' valuable trade name rights in the Ditto Trade Name.

52. Defendants have also improperly registered the domain name dittosbrand.com and nine other domain names that include the word "Ditto," and have

established a website which displays the use of the Ditto Trade Name in connection with clothing products with the intent to cause confusion and mistake, to deceive and mislead the purchasing public and to improperly appropriate plaintiffs' valuable trade name rights in the Ditto Trade Name.

53. The acts of the defendants described herein were undertaken without the permission, license or consent of plaintiffs and are damaging to plaintiffs.

54. The acts of the defendants described herein are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of defendants with plaintiffs, or as to the origin, sponsorship, or approval of defendants' goods, services, or commercial activities by plaintiffs in violation of Section 43 (a) of the Lanham Act, 15 U.S.C. § 1125 (a).

55. By reason of the acts of the defendants as alleged herein, plaintiffs have, and will, suffer irreparable damage to their reputation and a loss of sales and profits which plaintiffs would have made but for said acts of the defendants.

56. Defendants have been unjustly enriched and plaintiffs are entitled to an accounting of the profits of the defendants.

57. Defendants' foregoing activities have damaged plaintiffs in an amount as yet unknown, but the damage to plaintiffs and their reputation, if continued, is believed to be in excess of $1,000,000.

COUNT II
[FALSE DESIGNATION OF ORIGIN]

58. Plaintiffs repeat and reallege the allegations of paragraphs 1 - 57, as if fully set forth herein.

59. Defendants have falsely held themselves out as the successors in interest to the original DITTOS line of clothing, claiming to be reviving or recasting the DITTOS clothing line in contravention of plaintiffs' trade name and brand name rights.

60. Defendants have also falsely held themselves out as the owners of the right to use the name DITTOS in connection with the manufacture and sale of clothing in contravention of plaintiffs' trade name and brand name rights.

61. By reason of defendants' material false statements and representations, customers and prospective customers of both parties and the trade are deceptively led to believe that defendants are associated with plaintiffs, licensed or authorized by plaintiffs to use the DITTOS mark and render services thereunder pursuant to plaintiffs' quality controls and/or that defendants are sponsored or approved by, or otherwise affiliated with plaintiffs, when in fact defendants have no such license, sponsorship, authorization or affiliation.

62. Customers, prospective customers and the trade have been and are likely to be confused, deceived and mislead by defendants' false statements and representations and have purchased and are likely to purchase products from the defendants as a result thereof.

63. The aforesaid willful activities of the defendants constitute unfair competition, false descriptions, false representations, false designations of origin and false advertising, in violation of Section 43(a) of the Trademark Act of 1946, 15 U.S.C. Section 1125(a).

64. By reason of the acts of defendants as alleged herein, plaintiffs have, and will, suffer irreparable damage to their reputation and a loss of sales and profits, while defendants are profiting at plaintiffs' expense.

65. Defendants have been unjustly enriched and plaintiffs are entitled to an accounting of the profits of the defendants.

66. Defendants' foregoing activities have damaged plaintiffs in an amount as yet unknown, but the damage to plaintiffs and their reputation, if continued, is believed to be in excess of $1,000,000.

COUNT III
[CANCELLATION OF U.S. TRADEMARK REGISTRATION NO. 2,767,215 BASED ON PRIORITY]

67. Plaintiffs repeat and reallege the allegations of paragraphs 1 - 66, as if set forth fully herein.

68. Plaintiff Ditto Apparel has been using the Ditto Trade Name and/or the DITTOS mark in connection with clothing since at least as early as 1971.

69. Defendant Stemrich is the owner of record of Registration No. 2,767,215 for the mark DITTOS (stylized) in International Class 25 for "clothing, namely, young men's, children's and junior's jeans, shorts, t-shirts, tops, jackets and coats".

70. Upon information and belief, Stemrich began using her DITTOS (stylized) mark on or about October 2, 2002, well after plaintiff Ditto Apparel began using the Ditto Trade Name and/or the DITTOS mark.

71. Stemrich's mark is identical to, a colorable imitation of, and confusingly similar to the Ditto Trade Name and/or the DITTOS mark.

72. The goods set forth in Registration No. 2,767,215 are identical, similar and/or related to the goods and/or services in connection with which plaintiff Ditto Apparel has used the Ditto Trade Name and/or the DITTOS mark since at least as early as 1971, and on information and belief, the goods set forth in Registration No. 2,767,215 are sold through the same sources and/or similar channels of trade, and/or to the same general class of purchasers in and to which plaintiff Ditto Apparel's products and/or services are marketed and/or sold.

73. Stemrich's registration of its DITTOS (stylized) mark is likely to cause confusion, mistake and/or to deceive as to origin, sponsorship and/or association of plaintiff Ditto Apparel's goods and/or services sold under its Ditto Trade Name and/or DITTOS mark, and/or to mislead purchasers of Stemrich's and/or plaintiff Ditto Apparel's goods and/or services, and/or the public in general, into believing that plaintiff

Ditto Apparel's goods and/or services are sold by, emanate from and/or in some way, directly or indirectly, are associated with Stemrich and/or Stemrich's DITTOS (stylized) mark, or products, or vice versa, to the damage and detriment of plaintiff Ditto Apparel.

74. Plaintiff Ditto Apparel is therefore likely to be damaged by Stemrich's registration for the DITTOS (stylized) mark.

75. Registration No. 2,767,215 should be cancelled under Section 2 of the Trademark Act, 15 U.S.C. § 1052, on the basis that plaintiff Ditto Apparel's use of the Ditto Trade Name and/or the DITTOS mark is prior to Stemrich's use of the DITTOS (stylized) mark.

COUNT IV
[CANCELLATION OF U.S. TRADEMARK REGISTRATION NO. 2,767,215 BASED ON FRAUD]

76. Plaintiffs repeat and reallege the allegations of paragraphs 1 - 75, as if set forth fully herein.

77. Upon information and belief, defendant Stemrich has fraudulently obtained registration of Registration No. 2,767,215 for the mark DITTOS (stylized) in International Class 25 for "clothing, namely, young men's, children's and junior's jeans, shorts, t-shirts, tops, jackets and coats".

78. In connection with the trademark application that issued to Registration No. 2,767,215, on May 20, 2003, Stemrich signed a Statement of Use Under 37 CFR § 2.88, which was submitted to the United States Patent and Trademark Office on May 26, 2003 (the "Statement of Use").

79. The Statement of Use stated in pertinent part, "Applicant/owner is using the trademark in commerce in connection with the following goods: Those goods identified in the Notice of Allowance in this Application. Notice of Allowance Mailing

Date: 12/17/2002." Those goods were "clothing, namely, young men's, children's and junior's jeans, shorts, t-shirts, tops, jackets and coats".

80. Upon information and belief, statements made by Stemrich in the Statement of Use, as set forth above, were not true, and were known by Stemrich not to be true.

81. Upon information and belief, as of May 20, 2003, Stemrich was not using in commerce the mark DITTOS (Stylized) on or in connection with all of the goods covered by Registration No. 2,767,215, including young men's jeans, shorts, t-shirts, tops, jackets and coats.

82. The continued existence of Registration No. 2,767,215 for the goods described therein would damage and injure plaintiff Dittos Apparel.

83. Registration No. 2,767,215 should be cancelled under Section 14 of the Trademark Act, 15 U.S.C. § 1064, on the basis that it was obtained fraudulently.

COUNT V
[COMMON LAW UNFAIR COMPETITION]

84. Plaintiffs repeat and reallege the allegations of paragraphs 1 - 83 hereof as if fully set forth herein.

85. This cause of action arises under the New York common law of unfair competition.

86. Defendants have engaged in a course of unfair competition by holding themselves out as the successors in interest to the original DITTOS brand clothing and by manufacturing and selling clothing bearing the name "Dittos" in contravention of plaintiffs' trade name and brand name rights.

87. Upon information and belief, the acts alleged herein are a specifically oriented predatory business practice undertaken by defendants, the dominant purpose and effect of which is to pass off and palm off their line of clothing as

originating with plaintiffs and to confuse buyers as to the source or origin of such goods, in violation of the common law of New York.

88. Defendants' foregoing activities have damaged plaintiffs in an amount as yet unknown, but the damage to plaintiffs and their reputation, if continued, is believed to be in excess of $1,000,000.

89. By reason of the acts of defendants as alleged herein, plaintiffs have, and will, suffer irreparable damage to their reputation and a loss of sales and profits which plaintiffs would have made but for said acts of the defendants.

90. Defendants have been unjustly enriched and plaintiffs are entitled to an accounting of the profits of defendants.

COUNT VI
[VIOLATION OF SECTION 349 OF THE NEW YORK GENERAL BUSINESS LAW]

91. Plaintiffs repeat and reallege the allegations of paragraphs 1 - 90 hereof as if fully set forth herein.

92. This cause of action arises under Section 349 of the New York General Business Law.

93. Defendants without permission, willfully, and with the intention of benefitting from the reputation and goodwill of plaintiffs, are manufacturing and selling clothing bearing the name "Dittos" in contravention of plaintiffs' trade name and brand name rights.

94. Upon information and belief, the acts alleged herein are a deceptive business practice undertaken by defendants, the dominant purpose and effect of which is to pass off and palm off their line of clothing as originating with plaintiffs and to confuse buyers as to the source or origin of such goods, in violation of the laws of New York.

95. Customers, prospective customers and the trade have been and are likely to be confused, deceived and mislead by defendants' actions and have purchased and are likely to purchase products from defendants as a result thereof.

96. The conduct of the defendants violates Section 349 of the New York General Business Law.

97. Defendants' foregoing activities have damaged plaintiffs in an amount as yet unknown and defendants' activities will damage plaintiffs in a manner wherein plaintiffs have no adequate remedy at law, and the acts of defendants, if continued, will damage plaintiffs and their reputation, in an amount that are registered to an entity unrelated to Stemrich. believed to be in excess of $1,000,000.

98. By reason of the acts of defendants as alleged herein, plaintiffs have, and will, suffer irreparable damage to their reputation and a loss of sales and profits which plaintiffs would have made but for said acts of the defendants.

99. Defendants have been unjustly enriched and plaintiffs are entitled to an accounting of the profits of defendants.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand judgment against defendants as follows:

A. Preliminarily and permanently enjoining defendants and their officers, agents, servants, employees, attorneys and those persons, firms or corporations, acting in concert and participation with them from manufacturing, assembling, advertising, promoting, offering for sale, selling, purchasing, distributing, or in any other way becoming involved with apparel items bearing the term "Dittos", or any other colorable imitation of plaintiffs' Ditto Trade Name, including the registration and use of any domain names that include the term "Ditto";

B. Finding that defendants have infringed plaintiffs' rights in the Ditto Trade Name and have committed acts of unfair competition and false designation of origin;

C. Ordering that defendants forthwith recall from their customers and sales representatives, at their sole cost, all products which allegedly infringe plaintiffs' Ditto Trade Name, namely defendants' "Dittos" clothing products;

D. Adjudging that Registration No. 2,676,215 be cancelled based on plaintiff Ditto Apparel's prior use of the Ditto Trade Name;

E. Adjudging that Registration No. 2,676,215 be cancelled because it was fraudulently obtained by defendant Stemrich;

F. Determining that plaintiffs' rights in and to the Ditto Trade Name in connection with apparel are prior to any rights claimed by defendants and enjoining the filing, prosecution or registration by defendants of any applications for trademark registration of marks that include the term "Ditto"or any other colorable imitation of plaintiffs' Ditto Trade Name connection with apparel;

G. Directing defendants to transfer to plaintiffs any and all domain name registrations that include the word "Ditto," including but not limited to the dittosbrand.com domain name registration;

H. Directing an accounting by defendants to plaintiffs of any profit gained from the sale of goods bearing the term "Ditto" or any other colorable imitation of plaintiffs' Ditto Trade Name;

I. Awarding damages to plaintiffs, including damages for injury to plaintiffs' Ditto Trade Name, business reputation and goodwill, and all other damages arising out of defendants' acts of trade name infringement and

unfair competition in an amount to be determined, but if defendants' activities are continued without abatement, in an amount of at least $1,000,000;

J. Awarding three times the amount of plaintiffs' damages or defendants' profits, whichever is greater;

K. Destroying all materials and means of production of defendants' infringing goods; and

L. Awarding such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs demand a jury trial on all issues so triable by jury.

GOTTLIEB, RACKMAN & REISMAN, P.C.

Attorneys for Plaintiffs

By: _____

George Gottlieb (GG-5761)
Barry A. Cooper (BC-9298)
Marc P. Misthal (MM-6636)
Yuval H. Marcus (YM-5348)
270 Madison Avenue
New York, New York 10016
(212) 684-3900

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March 27, 2007

Of Counsel:

McDermott Will & Emery LLP
Michael S. Sommer (MS-2727)
Ann Schofield (AS-6832)
340 Madison Avenue
New York, New York 10173-1922
(212) 547-5471