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BY: _____

CLERK U.S. DISTRICT COURT
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Attorneys for Plaintiff LA TRIUMPH, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

L.A. TRIUMPH, INC, a California corporation,

Plaintiff,

v.

MADONNA LOUISE VERONICA
CICCONE, an individual; MATERIAL
GIRL BRAND, LLC, an entity of unknown
form; and DOES 1 through 10, inclusive,

Defendants.

Case No.

CV 10 6195-SJO
(JGJ)

COMPLAINT FOR:

- (1) DECLARATORY RELIEF; and
- (2) VIOLATION OF LANHAM ACT 43(A).

DEMAND FOR JURY TRIAL

1 L.A. Triumph, Inc. ("LA Triumph" or "Plaintiff"), by and through its attorneys of
2 record, complains against Material Girl Brand, LLC ("MGB"), Madonna Louise Veronica
3 Ciccone ("Madonna"), and DOES 1 through 10 (collectively "Defendants") alleging as
4 follows:

5 JURISDICTION AND VENUE

6 1. The jurisdiction of this Court is based on 28 U.S.C. §§ 1331 and 2201-02
7 (Federal Declaratory Judgment Act), arise under federal question subject matter jurisdiction
8 involving questions of rights and responsibilities pursuant to federal trademark laws (the
9 Lanham Act). Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §
10 1338. This Court also has supplemental jurisdiction over the state law claims herein
11 pursuant to 28 U.S.C. § 1367(a).

12 2. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (c) in that
13 the claim arises in this Judicial District and the Plaintiff and Defendants may be found and
14 transact business in this Judicial District.

15 PARTIES

16 3. Plaintiff is a corporation existing under the laws of California, with its
17 principal place of business located in Cerritos, California, in the County of Los Angeles.

18 4. Defendant MGB is an entity of unknown form. MGB's United States
19 Trademark Office Application No. 77/886,045 indicates that MGB is a Delaware limited
20 liability company, however, Plaintiff's review of the Delaware Secretary of State's
21 corporation status report indicates that Delaware has no record of "Material Girl Brand
22 LLC". Plaintiff is informed and believes that MGB's principle place of business is denoted
23 as an accounting firm in Century City, California as provided on Application No.
24 77/886,045, which accounting firm on information and belief is Madonna's and MGB's
25 accounting firm.

26 5. Defendant Madonna is an individual residing in New York, NY 10028. On
27 information and belief, Plaintiff alleges that Madonna is the principal of MGB.

28

1 12. In 2003, LA Triumph succeeded OC Mercantile and continued the sale of the
2 same types of clothes under the same "Material Girl" brand both in California and
3 nationwide.

4 13. Between 1997 and present day, LA Triumph and its predecessor have sold
5 millions of dollars of the "Material Girl" brand of clothes in commerce throughout the
6 United States, and have spent large sums in its promotion and advertisement.

7 14. Plaintiff has received national exposure for its unique and fashionable apparel
8 designs under the "Material Girl" mark and takes enormous pride in its reputation for
9 excellence and quality workmanship.

10 15. Plaintiff is entitled to the exclusive use and benefit of the "Material Girl"
11 mark, which has been in continuous use since 1997.

12 16. Recently in 2010, Plaintiff became aware that Defendants Madonna and MGB
13 started promoting, advertising, and selling a line of juniors' clothing for young women
14 under the mark "Material Girl", including advertising and selling such clothes at the
15 website <http://materialgirlcollection.com/>, which on information and belief is owned by
16 MGB and Madonna and which links to the retail outlet Macy's website whereby consumers
17 can purchase such infringing "Material Girl" clothes online.

18 17. Madonna and MGB's clothing line for young women has garnered significant
19 press attention for its risqué advertising campaign. Plaintiff's "Material Girl" clothing line
20 retails at the same general price point and in the same general retail space as the
21 Defendant's infringing clothes.

22 18. Further, MGB has improperly filed a United States Trademark Application for
23 the "Material Girl" mark for clothing in *inter alia* international class 025 for clothing,
24 under application number 77/886,045 on December 4, 2009 as an "intent to use
25 application."

26 19. Plaintiff is also informed and believes that Macy's is one retailer currently
27 selling, advertising, and promoting the infringing "Material Girl" line of juniors' clothing
28

1 in its retail establishments across the nation. This Complaint will be amended to add name
2 DOE Defendants when appropriate as a result of discovery.

3 20. Defendants' conduct has confused and is likely to confuse the public
4 deception, and mistake among the consuming public and trade by creating the erroneous
5 impression that Defendants' products have been manufactured, approved, sponsored,
6 endorsed or guaranteed by, or in some way are affiliated with, the Plaintiff.

7 **FIRST CLAIM FOR RELIEF**

8 **(Declaratory Relief against MGB and Madonna, 28 U.S.C. § 2201)**

9 21. LA Triumph incorporates paragraphs 1 through 20 above as if set forth fully
10 herein.

11 22. There exists a live, substantial controversy and dispute between Plaintiff, on
12 the one hand, and Defendants Madonna and MGB, on the other hand, over: (1) Defendants
13 Madonna and MGB's right to use the "Material Girl" mark in clothing; and (2) their right
14 to secure a trademark registration on the "Material Girl" mark. As to the first, Plaintiff
15 contends that it is the senior user of the mark in interstate commerce nationwide in the
16 goods and classes of apparel and fashion and as such Defendants have no right to use the
17 "Material Girl" brand in clothing. Defendants on information and belief and as evidenced
18 by Defendants' infringing use of the "Material Girl" mark and pending federal registration
19 application contend otherwise. As to the second, Plaintiff contends that Defendants have
20 no right to issuance of a federal registration on the "Material Girl" mark in the clothing,
21 apparel or fashion classes (*inter alia* international class 025). Defendants on information
22 and belief contend otherwise as evidenced by their federal application. As such, the parties
23 have adverse interests of immediate concern and a live, justiciable controversy, which
24 warrants issuance of a declaratory judgment.

25 23. Plaintiff seeks a Declaration that it is the rightful owner of the "Material Girl"
26 mark with respect to clothing, Defendants have no right to sell clothes under the "Material
27 Girl" brand, and an order by this court to deny registration of Defendants' United States
28 Trademark Application 77/886,045.

1 29. Plaintiff is entitled to recover from Defendants the damages sustained as a
2 result of Defendants' acts in violation of §43(a). Plaintiff is at present unable to ascertain
3 the full extent of the monetary damages suffered by reason of Defendants' acts.

4 30. Plaintiff is further entitled to recover from Defendants the gains, profits, and
5 advantages Defendants have obtained as a result of Defendants' acts in violation of §43(a).

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays the following relief and judgment be granted jointly
9 and severally against all Defendants as follows:

10 1. For a declaration that Plaintiff has senior rights to the mark "Material Girl" in
11 commerce nationwide in the clothing space;

12 2. For a declaration that Defendants have no right to use the mark "Material Girl"
13 in connection with clothing sales, advertising or merchandising;

14 3. For a declaration that Defendant's pending Federal Trademark Application be
15 denied;

16 4. For Plaintiff's actual damages along with Defendants' profits attributable to
17 their unlawful conduct according to proof to be proved at trial;

18 5. For such further and additional relief as the Court may deem just and proper,
19 including pre-and post-judgment interest.

20
21
22 Dated: August 19, 2010

ONE LLP

23
24
25 By: _____

26 Imran F. Vakil
27 Attorneys for Plaintiff, LA TRIUMPH, Inc.
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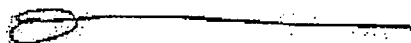
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DEMAND FOR JURY TRIAL

Plaintiff LA TRIUMPH, Inc. hereby demands trial by jury of all issues so triable under the law.

Dated: August 19, 2010

ONE LLP

By: 
Imran F. Vakil
Attorneys for Plaintiff, LA TRIUMPH, Inc.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge S. James Otero and the assigned discovery Magistrate Judge is Jacqueline Chooljian.

The case number on all documents filed with the Court should read as follows:

CV10- 6195 SJO (JCx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

ORIGINAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

L.A. TRIUMPH, INC., a California corporation,	CASE NUMBER
PLAINTIFF(S) v.	CV 10 6195-SJO(JC)
MADONNA LOUISE VERONICA CICCONE, an individual; MATERIAL GIRL BRAND, LLC, an entity of unknown form; and DOES 1 through 10, inclusive DEFENDANT(S).	SUMMONS

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Imran F. Vakil of One LLP, whose address is 4000 MacArthur Boulevard, West Tower, Suite 1100, Newport Beach, CA 92660. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 19 AUG 2010

By: *Marilyn Dawn*
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

COPY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself)

L.A. TRIUMPH, INC., a California corporation,

DEFENDANTS

MADONNA LOUISE VERONICA CICCONE, an individual; MATERIAL GIRL BRAND, LLC, an entity of unknown form; and DOES 1 through 10, inclusive

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Imran F. Vakil (ivakil@onellp.com) ONE LLP 4000 MacArthur Boulevard West Tower, Suite 1100 Newport Beach, CA 92660 949-502-2870

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business in this State, Incorporated and Principal Place of Business in Another State, Foreign Nation

IV. 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 Multi-District Litigation, 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No MONEY DEMANDED IN COMPLAINT: \$ to be determined

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Trademark Infringement and Federal Unfair Competition under the Lanham Act Section 43(a), 15 U.S.C. Section 1125(a)

VII. NATURE OF SUIT (Place an X in one box only.)

Table with columns: OTHER STATUTES, CONTRACT, TORTS, FORFEITURE, PRISONER PETITIONS, LABOR, REAL PROPERTY, SOCIAL SECURITY, FEDERAL TAX SUITS. Includes checkboxes for various legal categories like 400 State Reapportionment, 110 Insurance, 310 Airplane, 370 Other Fraud, 510 Motions to Vacate Sentence, 710 Fair Labor Standards Act, etc.

CV10 6195

FOR OFFICE USE ONLY: Case Number: AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? [X] No [] Yes

If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? [X] No [] Yes

If yes, list case number(s):

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) [] A. Arise from the same or closely related transactions, happenings, or events; or
[] B. Call for determination of the same or substantially related or similar questions of law and fact; or
[] C. For other reasons would entail substantial duplication of labor if heard by different judges; or
[] D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

[] Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

Table with 2 columns: County in this District, California County outside of this District; State, if other than California; or Foreign Country. Row 1: Los Angeles

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

[] Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

Table with 2 columns: County in this District, California County outside of this District; State, if other than California; or Foreign Country. Row 1: Material Girl Brand, LLC - Los Angeles; Madonna Louise Veronica Ciccone - New York

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

Table with 2 columns: County in this District, California County outside of this District; State, if other than California; or Foreign Country. Row 1: Los Angeles

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): [Signature] Date August 19, 2010
Imran F. Vakil

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Table with 3 columns: Nature of Suit Code, Abbreviation, Substantive Statement of Cause of Action. Rows include codes 861 (HIA), 862 (BL), 863 (DIWC), 863 (DIWW), 864 (SSID), and 865 (RSI).