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

JURISDICTION AND VENUE

- The jurisdiction of this Court is based on 28 U.S.C. §§ 1331 and 2201-02 1. (Federal Declaratory Judgment Act), arise under federal question subject matter jurisdiction involving questions of rights and responsibilities pursuant to federal trademark laws (the Lanham Act). Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338. This Court also has supplemental jurisdiction over the state law claims herein pursuant to 28 U.S.C. § 1367(a).
- Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (c) in that the claim arises in this Judicial District and the Plaintiff and Defendants may be found and transact business in this Judicial District.

PARTIES

- 3. Plaintiff is a corporation existing under the laws of California, with its principal place of business located in Cerritos, California, in the County of Los Angeles.
- Defendant MGB is an entity of unknown form. MGB's United States 4. Trademark Office Application No. 77/886,045 indicates that MGB is a Delaware limited liability company, however, Plaintiff's review of the Delaware Secretary of State's corporation status report indicates that Delaware has no record of "Material Girl Brand LLC". Plaintiff is informed and believes that MGB's principle place of business is denoted as an accounting firm in Century City, California as provided on Application No. 77/886,045, which accounting firm on information and belief is Madonna's and MGB's accounting firm.
- 5. Defendant Madonna is an individual residing in New York, NY 10028. On information and belief, Plaintiff alleges that Madonna is the principal of MGB.

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- Plaintiff is informed and believes and thereupon alleges, that Defendant 6. Madonna is, and at all times relevant hereto was, the owner and sole proprietor of MGB. In fact, there exists and at all times herein mentioned existed, a unity of interests and ownership between Madonna and MGB such that all individuality and separation ceased and Madonna became the alter ego of MGB and vice versa.
- DOES 1-10 are sued by their fictitious names herein. When their true identity 7. is ascertained, this Complaint will be amended to so state them. On information and belief. the DOE defendants are those who acted in concert with MGB and Madonna, are alter egos or agents of MGB and Madonna in perpetrating the acts described herein, or are contributing to the infringements alleged herein.

FACTS COMMON TO ALL COUNTS

- LA Triumph has itself been continually selling and marketing clothes under the "Material Girl" mark since 2003 itself and since 1997 through its predecessor in interest (OC Mercantile Corporation).
- Specifically, since 1996 the OC Mercantile Corporation ("OC Mercantile") specialized in the manufacture and distribution of clothing, including that for men, women, juniors¹, and children's' wear.
- On or about 1997, OC Mercantile started a line of juniors' clothing for women under the trade name "Material Girl". Concurrently therewith, OC Mercantile filed a trademark registration with the California Secretary of State for "Material Girl" on January 1997, which registration was issued by the State of California.
- 11. OC Mercantile advertised and sold its "Material Girl" brand nationwide to retailers including Nordstrom, Ross, and other large retail chains from 1997 to 2003.

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¹ "Juniors" is a clothing industry term that generally refers to individuals between the ages of 15 and 30.

- 12. In 2003, LA Triumph succeeded OC Mercantile and continued the sale of the same types of clothes under the same "Material Girl" brand both in California and nationwide.
- 13. Between 1997 and present day, LA Triumph and its predecessor have sold millions of dollars of the "Material Girl" brand of clothes in commerce throughout the United States, and have spent large sums in its promotion and advertisement.
- 14. Plaintiff has received national exposure for its unique and fashionable apparel designs under the "Material Girl" mark and takes enormous pride in its reputation for excellence and quality workmanship.
- 15. Plaintiff is entitled to the exclusive use and benefit of the "Material Girl" mark, which has been in continuous use since 1997.
- 16. Recently in 2010, Plaintiff became aware that Defendants Madonna and MGB started promoting, advertising, and selling a line of juniors' clothing for young women under the mark "Material Girl", including advertising and selling such clothes at the website http://materialgirlcollection.com/, which on information and belief is owned by MGB and Madonna and which links to the retail outlet Macy's website whereby consumers can purchase such infringing "Material Girl" clothes online.
- 17. Madonna and MGB's clothing line for young women has garnered significant press attention for its risqué advertising campaign. Plaintiff's "Material Girl" clothing line retails at the same general price point and in the same general retail space as the Defendant's infringing clothes.
- 18. Further, MGB has improperly filed a United States Trademark Application for the "Material Girl" mark for clothing in *inter alia* international class 025 for clothing, under application number 77/886,045 on December 4, 2009 as an "intent to use application."
- 19. Plaintiff is also informed and believes that Macy's is one retailer currently selling, advertising, and promoting the infringing "Material Girl" line of juniors' clothing

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

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

FIRST CLAIM FOR RELIEF

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

- 21. LA Triumph incorporates paragraphs 1 through 20 above as if set forth fully herein.
- There exists a live, substantial controversy and dispute between Plaintiff, on the one hand, and Defendants Madonna and MGB, on the other hand, over: (1) Defendants Madonna and MGB's right to use the "Material Girl" mark in clothing; and (2) their right to secure a trademark registration on the "Material Girl" mark. As to the first, Plaintiff contends that it is the senior user of the mark in interstate commerce nationwide in the goods and classes of apparel and fashion and as such Defendants have no right to use the "Material Girl" brand in clothing. Defendants on information and belief and as evidenced by Defendants' infringing use of the "Material Girl" mark and pending federal registration application contend otherwise. As to the second, Plaintiff contends that Defendants have no right to issuance of a federal registration on the "Material Girl" mark in the clothing, apparel or fashion classes (inter alia international class 025). Defendants on information and belief contend otherwise as evidenced by their federal application. As such, the parties have adverse interests of immediate concern and a live, justiciable controversy, which warrants issuance of a declaratory judgment.
- 23. Plaintiff seeks a Declaration that it is the rightful owner of the "Material Girl" mark with respect to clothing, Defendants have no right to sell clothes under the "Material Girl" brand, and an order by this court to deny registration of Defendants' United States Trademark Application 77/886,045.

COMPLAINT

SECOND CLAIM FOR RELIEF

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(Violation of Lanham Act § 43(a) against MGB and Does 1-10)

- 24. LA Triumph incorporates paragraphs 1 through 24 above as if set forth fully herein.
- 25. In connection with its product and service offerings Plaintiff has continuously used the mark "Material Girl" over the past thirteen years in connection with the marketing, distribution and sale of Plaintiff's junior clothing.
- 26. "Material Girl" is inherently distinctive. In the alternative, because of Plaintiff's exclusive and extensive use of the mark "Material Girl", this trademark has acquired considerable value and has become well known to the consuming public as identifying and distinguishing Plaintiff exclusively and uniquely as the source of juniors' clothing, and thus "Material Girl" has acquired a secondary meaning.
- Defendants have in the past and will continue to advertise, distribute, and sell 27. under the name "Material Girl". Plaintiff does not consent to or authorize such infringing use by the Defendants of the mark "Material Girl".
- Defendants' conduct has confused and is likely to confuse the public and cause deception and mistake among the consuming public and trade by creating the erroneous impression that Defendants' products have been manufactured, approved, sponsored, endorsed or guaranteed by, or in some way are affiliated with, the Plaintiff in violation of the Lanham Act 43(a), 15 U.S.C. §1125(a). Furthermore, Defendants' commercial advertising and promotion misrepresents an ongoing association with Plaintiff and owing to Defendants' size and resources threatens to overwhelm the market and crowd out the senior user. Irreparable harm and injury is actual and ongoing, and is causing the Plaintiff injury to its business reputation and dilution of the distinctive quality of Plaintiff's "Material Girl" trademark as a result of Defendants' conduct and Plaintiff is without adequate remedy at law.

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:

[X]	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.

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UNITED STATES	DISTRICT COURT
CENTRAL DISTRI	CT OF CALIFORNIA
L.A. TRIUMPH, INC., a California corporation,	CASE NUMBER
. PLAINTIFF(S)	CV10 6195_STOCICE
v. · ·	0110 07 07 2000
MADONNA LOUISE VERONICA CICCONE, an individual; MATERIAL GIRL BRAND, LLC, an entity of unknown form; and DOES \\ \text{\text{hrough 0, inclusive}} \text{DEFENDANT(S)}.	SUMMONS
TO: DEFENDANT(S):	
A lawsuit has been filed against you.	
A lawsuit has been med against you.	
· · · · · · · · · · · · · · · · · · ·	mran F. Vakil of One LLP, whose address in 1100, Newport Beach, CA 92660. If you fail to do so relief demanded in the complaint. You also must file
	Clerk, U.S. District Court
Dated: 19 AUG 2000	By: Many Dun
	(Deputy Clerk
	(Seal of the Court)
[Use 60 days if the defendant is the United States or a United States of a United States	tes agency, or is an officer or employee of the United States. Allowe

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

I (a) PLAINTIFFS (Check box if you are representing yourself)				DEFENDANTS			
L.A. TRIUMPH, INC., a California				MADONNA LOUISE VERONICA CICCONE, an individual;			
corporation,			4	MATERIAL GIRL BRAND, LLC, an entity of unknown			
•			t	form; and DOES 1 through 10, inclusive			
(h) Attornava (Eigen Nama Ad	dress and Telephone Number. If	VAN 2TE TENT	esenting	Attomeys (If Known)			
yourself, provide same.)	areas and rerephone runnoer. If	Andrere rebr	cocuming 1	recenteds (in principal)			
	(ivakil@onellp.co	om)					
ONE LLP	· -		1				
4000 MacArthur H							
West Tower, Suit							
Newport Beach, (CA 92660					•	
949-502-2870							
II. BASIS OF JURISDICTION	ON (Place an X in one box only.)			IZENSHIP OF PRINCIPAL		y Cases Only	
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V. REQUESTED IN COMP	LAINT: JURY DEMAND:	X Yes	No (C)	heck 'Yes' only if demanded	in complaint.)		
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CLASS ACTION under F.R.C.	P. 23: Yes LX No		لما	MONEY DEMANDED IN	COMPLAINT: 5 to p	e determined	
VI. CAUSE OF ACTION (C	cite the U.S. Civil Statute under v	vhich you ar	e filing and v	write a brief statement of cau	se. Do not cite jurisdiction	al statutes unless diversity.)	
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VII. NATURE OF SUIT (Pla	ace an X in one box only.)	•					
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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

	S: Has this action b	een previously filed in this	court and dismissed, remanded or closed? X No Yes		
	Have any cases bee	en previously filed in this co	ourt that are related to the present case? X No Yes		
If yes, list case numbet(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.					
- 1 <u>- 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 </u>	rict; California Cou	nty outside of this District;	sheet if necessary.) State if other than California; or Foreign Country, in which EACH named plaintiff resides. intiff. If this box is checked, go to item (b).		
County in this District:* Los Angeles			California County outside of this District; State, if other than California; or Foreign Country		
Check here if the govern	•	•	State if other than California; or Foreign Country, in which EACH named defendant resides. Tendant. If this box is checked, go to item (c).		
County in this District:* Material Girl Brand, LLC - Los Angeles			California County outside of this District; State, if other than California; or Foreign Country Madonna Louise Veronica Ciccone – New York		
		nty outside of this District; see location of the tract of la	State if other than California; or Foreign Country, in which EACH claim arose.		
County in this District:* Los Angeles			California County outside of this District; State, if other than California; or Foreign Country		
* Los Angeles, Orange, San Be Note: In land condemnation case	-		ra, or San Luis Obispo Counties		
X. SIGNATURE OF ATTORN	EY (OR PRO PER)	Imran F. Vak	Date <u>August 19, 2010</u>		
or other papers as required by	y law. This form, ap) Civil Cover Sheet and the proved by the Judicial Confi	information contained herein neither replace nor supplement the filing and service of pleadings erence of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)		
Key to Statistical codes relating	to Social Security C	Cases:			
Nature of Suit Code	Abbreviation	Substantive Statement o	f Cause of Action		
861 .	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))			
862	BL .	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)			
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title.2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))			
863	DIWW All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))				
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.			
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))			
CV-71 (05/08)		CIVI	IL COVER SHEET Page 2 of		