

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DESTINATION MATERNITY
CORPORATION

Plaintiff,

v.

M'CHIC LLC

Defendant.

CASE NO.:

COMPLAINT

The Plaintiff, Destination Maternity Corporation (“DMC”), by their undersigned counsel, files this action against the Defendant, M’Chic LLC (“M’Chic”), and in support states as follows:

The Parties

1. DMC is a Delaware corporation having its principal place of business at 456 North 5th Street, Philadelphia, PA 19123-4007.
2. Upon information and belief, M’Chic is a New Jersey Limited Liability Company with its principal place of business at 313 Church Street, Swedesboro, NJ 08085.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a). This Court also has jurisdiction pursuant to 28 U.S.C. §1332, because the parties in this action are

corporations of different states and therefore there is diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000.00, exclusive of costs and interest.

4. Personal jurisdiction exists over M'Chic by virtue of it doing business and transacting business in Pennsylvania and in the Eastern District, which includes the unlawful actions that give rise to the claims in this Complaint.

5. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(c) and 1400(b).

Patent Infringement

6. This is a claim for patent infringement arising under all applicable paragraphs of 35 U.S.C. § 271.

7. On October 19, 2010, United States Patent No. 7,814,575 (the "'575 Patent") for "Belly Covering Garment" was legally issued by the United States Patent and Trademark Office to inventors Lisa A. Hendrickson, James H. Gardner III and Richard Adelman. A copy of the '575 Patent is attached hereto as Exhibit A.

8. On March 8, 2011, United States Patent No. 7,900,276 (the "'276 Patent") for "Belly Covering Garment" was legally issued by the United States Patent and Trademark Office to inventors Lisa A. Hendrickson, James H. Gardner III and Richard Adelman. A copy of the '276 Patent is attached hereto as Exhibit B.

9. The '575 Patent and the '276 Patent (collectively, the "Patents-in-Suit") have been assigned by the inventors to DMC, which, among other things, holds the sole and exclusive right to make, use, offer to sell, sell and import under the Patents-in-Suit and the right to enforce the

Patents-in-Suit against alleged infringers. Any and all conditions precedent to suit by DMC have been satisfied, waived, or rendered inapplicable as a matter of law.

10. M'Chic is infringing and/or infringed the Patents-in-Suit because it is manufacturing, using, offering for sale and selling, and/or was manufacturing, using, offering for sale and selling, in the United States without authority or license, clothing that is covered by at least one of the claims of each of the Patents-in-Suit (collectively, the "Infringing Products"). As such, M'Chic are and/or have been infringing, either literally and/or under the doctrine of equivalents, the Patents-in-Suit in violation of 35 U.S.C. § 271.

11. M'Chic is infringing and/or infringed the Patents-in-Suit because it is or was actively inducing another to infringe by providing Infringing Products to third parties who are or were using, offering for sale and/or selling Infringing Products.

12. Upon information and belief, the Infringing Products include clothing named "Skinny Leg Jean," "Straight Leg Jean" and "Capri pant in midnight blue."

13. Upon information and belief, the Infringing Products are or were available, and are or were being offered for sale and sold, at stores carrying M'Chic products and at the following websites, including at stores and to consumers located in this Judicial District:

- a. <http://www.mchicfashion.com/catalog/item/7095055/7901472.htm>
- b. <http://www.mchicfashion.com/catalog/item/7095055/7901507.htm>
- c. <http://www.mchicfashion.com/catalog/item/7095055/7901460.htm>

14. M'Chic's infringement has been, and continues to be, willful and deliberate. M'Chic has been on constructive notice of the Patents-in-Suit by at least as early as December 4, 2008 when

the applications that matured into the Patents-in-Suit were published and further on October 19, 2010 and March 8, 2011, when the Patents-in-Suit were issued. M'Chic has had actual notice of the Patents-in-Suit since by at least as early as a letter dated April 7, 2009 from DMC to M'Chic.

15. The inventions covered by the Patents-in-Suit are of great value to DMC. M'Chic's infringing conduct has taken place within the United States without license or permission of DMC and it is believed that such activity will continue unless enjoined by this Court.

16. DMC has suffered and will continue to suffer damages from the acts of infringement complained of herein.

DEMAND FOR RELIEF

WHEREFORE, DMC respectfully demands judgment against M'Chic, its subsidiaries, affiliates, agents, servants, employees, attorneys and all persons in active concert or in participation with them, granting DMC the following relief:

- (1) A permanent injunction prohibiting M'Chic from further acts of infringement of the Patents-in-Suit;
- (2) Damages sufficient to compensate DMC for the infringement by M'Chic in an amount to be proved at trial, but in no event less than a reasonable royalty, together with prejudgment interest from the date infringement of the Patents-in-Suit began;
- (3) An award to DMC of three times the amount of damages so determined, as provided for in 35 U.S.C. § 284;

(4) A finding that this case is “exceptional,” and an award to DMC of its costs and reasonable attorneys' fees, as provided in 35 U.S.C. § 285; and

(5) Such other and further relief as this Court or jury may determine to be proper and just.

Respectfully submitted,

Date: _____

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