

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

DESTINATION MATERNITY)
CORPORATION,)
) CASE NO. 2:12-CV-05680-AB
Plaintiff,)
) HON. ANITA BRODY
v.)
) JURY TRIAL DEMANDED
TARGET CORPORATION, CHEROKEE)
INC., and ELIZABETH LANGE LLC,)
)
Defendants.)

**DECLARATION OF DEBBIE CAIRNS IN SUPPORT OF
DEFENDANTS' UNCONTESTED MOTION TO SERVE
DEFENDANTS' FIRST SUPPLEMENTAL INVALIDITY CONTENTIONS**

Pursuant to 28 U.S.C. § 1746, I, Debbie Cairns, hereby declare as follows:

1. I am more than eighteen (18) years of age, have personal knowledge of the facts stated herein, and am competent to testify to such facts if asked to do so.
2. I am a paralegal at the law firm of Faegre Baker Daniels LLP, which has appeared in the above-captioned matter on behalf of Defendant Target Corporation ("Target").
3. I make this declaration in support of Defendants' Unopposed Motion for Leave to Serve Defendants' First Supplemental Invalidity Contentions (the "Motion for Leave").
4. Attached hereto as Exhibits 1-3, respectively, are a true and accurate redline cover pleading, true and accurate new Exhibits A-19 – A-24, and a true and accurate redline Exhibit B, all of which will be included in Defendants' First Supplemental Invalidity Contentions.
5. Attached hereto as Exhibits 4, 5, and 6 are true and accurate copies of e-mail chains that include e-mails from Target's counsel to Plaintiff's counsel seeking Plaintiff's

position on the Motion for Leave, and the resulting responses from Tamar Duvdevani, counsel for Plaintiff, dated October 2, 2013, October 7, 2013, and October 14, 2013, setting forth Plaintiff's position that it does not oppose the relief sought in Defendants' Motion for Leave.

6. The JCP-Levi's prior art reference (charted as Exhibit A-19 in Defendants' First Supplemental Invalidity Contentions and attached hereto as part of Exhibit 2), was first identified during a July 25, 2013 inspection of several J.C. Penney Corporation, Inc.'s ("JCP") catalogs, which was conducted by Target's counsel and occurred at JCP's offices in Plano, Texas. Attached hereto as Exhibit 7 is a true and accurate copy of a July 12, 2013 email confirming the inspection at JCP (*see* JCPDLA000135).

7. The purpose of the July 25, 2013 inspection was to capture larger and clearer, higher resolution images of documents JCP produced to Target on April 5, 2013 in response to Target's third party subpoena to JCP.

8. Attached hereto as Exhibit 8 are true and accurate copies of documents produced to Target by JCP on April 5, 2013 under Bates numbers JCP000048 through JCP000051. Specifically, JCP000048 is a true and accurate copy of the cover page of the JCP 2005 Fall/Winter Maternity catalog, JCP000050 is a true and accurate copy of page 15 of the JCP 2005 Fall/Winter Maternity catalog, and JCP000051 is a true and accurate copy of page 28 of the JCP 2005 Fall/Winter Maternity catalog, all of which were included in Defendants' June 20, 2013 Invalidity Contentions.

9. Attached hereto as Exhibit 9 is a true and accurate copy of a June 21, 2013 e-mail from Daniel Lechleiter, counsel for Defendant Target, to counsel for JCP, for the purpose of coordinating an inspection of JCP's catalogs.

10. Page 19 from the Fall/Winter 2005 Maternity Catalog was not included in JCP's April 5, 2013 production.

11. Attached hereto as Exhibit 10 is a true and accurate copy of an e-mail from Sarah Jakobsen to me confirming shipment of the scanned copies of the relevant JCP catalogs for delivery on August 5, 2013. The JCP-Levi's reference was included in the scanned copies Target received from JCP on August 5, 2013.

12. On August 28, 2013, I produced to Plaintiff in this matter Bates numbered versions of the JCP catalogs obtained by Target during the July 25th inspection, including the JCP-Levi's prior art reference as Bates number JCP000168.

13. The JCP-Levi's prior art was also cited in Defendant Target's IPR petitions, which were filed with the PTO on August 27, 2013.

14. A Japanese prior art reference, Japanese Registered Utility Model No. JP U3086624 ("JP U3086624") was first discovered by counsel for Defendants on October 2, 2013 while reviewing documents that were produced by Plaintiff on September 27, 2013.

15. Counsel for Target obtained a certified translation of the JP U3086624 prior art reference on October 3, 2013, and on that day I produced a copy of the same to Plaintiff as Bates numbers TAR060_00055822-33.

16. While counsel for Target was drafting its IPR petitions in July and August, it was also drafting Target's Motion to Stay this case in view of Target's IPR petitions (*see* ECF Nos. 48 and 49) as well as Target's Emergency Motion for Teleconference with the Court, which sought a protective order from further discovery while the Court decided Target's Motion to Stay (*see* ECF No. 50).

17. After the Court's September 4, 2013 denial of Target's request for a protective order, counsel for Defendants compared their Invalidity Contentions to the references relied on in the IPR petitions and determined that, along with Target's IPR petitions, the JCP-Levi's reference was important and should be added to Defendants' Invalidity Contentions.

18. Since the Court's September 4, 2013 Order denying Target's request for a protective order, Defendants have produced several thousand pages of documents; Target has prepared and served a privilege log; and Plaintiffs have served tens of thousands of pages of documents.

I affirm under penalty of perjury that the foregoing is true and correct.

DATE: 10-14-2013



Debbie Cairns