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Attorney for Defendant
BCBG MAX AZRIA GROUP, INC.,
a California corporation,

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GIVENCHY S.A., a *société anonyme* duly
organized and existing under the laws of
France,

Plaintiff,

v.

BCBG MAX AZRIA GROUP, INC., a
California corporation,

Defendant.

Case No. CV 10-8394 GMK(JHx)

**DEFENDANT BCBG MAX
AZRIA GROUP, INC.'S
ANSWER TO COMPLAINT
FOR:**

- 1. **FEDERAL TRADE DRESS
INFRINGEMENT AND FALSE
DESIGNATION OF ORIGIN
(15 U.S.C. §1125(a))**
- 2. **STATE STATUTORY AND
COMMON LAW UNFAIR
COMPETITION (Cal. Bus. &
Prof. Code §§ 17200 et seq.); and**
- 3. **CONSTRUCTIVE TRUST**

DEMAND FOR JURY TRIAL

1 Defendant BCBG MAX AZRIA GROUP, INC. (referenced herein as
2 “BCBG”), by its undersigned attorney, hereby answers the Complaint for Federal
3 Trade Dress Infringement and False Designation of Origin (15 U.S.C. §1125(a)),
4 State Statutory and Common Law Unfair Competition Law (Cal. Bus. & Prof. Code
5 §§ 17200 et seq.) and Constructive Trust (“Complaint”) by Plaintiff GIVENCHY
6 S.A. (“Plaintiff”) as follows:

7 **JURISDICTION AND VENUE**

8 1. In response to Paragraph 1 of the Complaint, BCBG admits that
9 Plaintiff purports to base jurisdiction over this action pursuant to 15 U.S.C. §§
10 1116(a) and 1121; 28 U.S.C. §§ 1331, 1332(a) and 1338 (a) and (b); and 28 U.S.C.
11 § 1367 and that Plaintiff purports to base proper venue under 28 U.S.C. § 1391 (b)
12 and (c).

13 **NATURE OF THE ACTION**

14 2. In response to Paragraph 2 of the Complaint, denies each and every
15 allegation contained in Paragraph 2.

16 **THE PARTIES**

17 3. In response to Paragraph 3 of the Complaint, BCBG admits on
18 information and belief that Plaintiff is a *société anonyme* duly organized and
19 existing under the laws of France and having its principal place of business in Paris,
20 France.

21 4. In response to Paragraph 4 of the Complaint, BCBG admits that it is a
22 an active California corporation with its principal place of business located at 2761
23 Fruitland Avenue, Vernon, California 90058 and an online website of
24 <http://www.bcbg.com> which has been doing business in this judicial district and the
25 state of California. Except as otherwise expressly admitted, BCBG denies the
26 allegations in Paragraph 4 of the Complaint.
27
28

1 **FACTUAL ALLEGATIONS**

2 **Givenchy's History, Rights and Products**

3 5. In response to Paragraph 5 of the Complaint, BCBG is without
4 knowledge or information sufficient to form a belief as to the truth of the
5 allegations contained in Paragraph 5 and, on that basis, denies each and every
6 allegation contained in Paragraph 5.

7 6. In response to Paragraph 6 of the Complaint, BCBG is without
8 knowledge or information sufficient to form a belief as to the truth of the
9 allegations contained in Paragraph 6 and, on that basis, denies each and every
10 allegation contained in Paragraph 6.

11 7. In response to Paragraph 7 of the Complaint, BCBG is without
12 knowledge or information sufficient to form a belief as to the truth of the
13 allegations contained in Paragraph 7 and, on that basis, denies each and every
14 allegation contained in Paragraph 7.

15 8. BCBG admits that Exhibit 1 purports to be a photograph of a
16 Givenchy Nightingale handbag. Except as otherwise expressly admitted, BCBG
17 denies the allegations in Paragraph 8 of the Complaint.

18 9. BCBG denies the existence of any trade dress in the Givenchy
19 Nightingale. In response to the remaining allegations in Paragraph 9 of the
20 Complaint, BCBG is without knowledge or information sufficient to form a belief
21 as to the truth of the allegations contained in Paragraph 9 and, on that basis, denies
22 each and every allegation contained in Paragraph 9.

23 10. BCBG denies the existence of any trade dress in the Givenchy
24 Nightingale. In response to the remaining allegations in Paragraph 10 of the
25 Complaint, BCBG is without knowledge or information sufficient to form a belief
26 as to the truth of the allegations contained in Paragraph 10 and, on that basis, denies
27 each and every allegation contained in Paragraph 10.

28 11. BCBG denies the existence of any trade dress in the Givenchy

1 Nightingale. In response to the remaining allegations in Paragraph 11 of the
2 Complaint, BCBG is without knowledge or information sufficient to form a belief
3 as to the truth of the allegations contained in Paragraph 11 and, on that basis, denies
4 each and every allegation contained in Paragraph 11.

5 12. In response to Paragraph 12 of the Complaint, BCBG is without
6 knowledge or information sufficient to form a belief as to the truth of the
7 allegations contained in Paragraph 12 and, on that basis, denies each and every
8 allegation contained in Paragraph 12.

9 13. BCBG denies the existence of any trade dress in the Givenchy
10 Nightingale or that any such trade dress is a unique indicator of Plaintiff as the
11 source of origin. In response to the remaining allegations in Paragraph 13 of the
12 Complaint, BCBG is without knowledge or information sufficient to form a belief
13 as to the truth of the allegations contained in Paragraph 13 and, on that basis, denies
14 each and every allegation contained in Paragraph 13.

15 14. In response Paragraph 14 of the Complaint, BCBG is without
16 knowledge or information sufficient to form a belief as to the truth of the
17 allegations contained in Paragraph 14 and, on that basis, denies each and every
18 allegation contained in Paragraph 14.

19 15. In response to Paragraph 15 of the Complaint, denies each and every
20 allegation contained in Paragraph 15.

21 16. In response Paragraph 16 of the Complaint, BCBG is without
22 knowledge or information sufficient to form a belief as to the truth of the
23 allegations contained in Paragraph 16 and, on that basis, denies each and every
24 allegation contained in Paragraph 16.

25 17. In response to Paragraph 17 of the Complaint, denies each and every
26 allegation contained in Paragraph 17.

27 **Defendant's Infringing Activities**

28 18. BCBG admits that it began selling the Rembrandt handbag in or about

1 2009. Except as otherwise expressly admitted, BCBG denies the allegations in
2 Paragraph 18 of the Complaint.

3 19. BCBG denies the existence of any trade dress in the Givenchy
4 Nightingale and on the basis thereof denies the allegations in Paragraph 19 of the
5 Complaint.

6 20. In response to Paragraph 20 of the Complaint, denies each and every
7 allegation contained in Paragraph 20.

8 21. In response to Paragraph 21 of the Complaint, denies each and every
9 allegation contained in Paragraph 21.

10 22. In response to Paragraph 22 of the Complaint, denies each and every
11 allegation contained in Paragraph 22.

12 23. In response to Paragraph 23 of the Complaint, denies each and every
13 allegation contained in Paragraph 23.

14 24. In response to Paragraph 24 of the Complaint, denies each and every
15 allegation contained in Paragraph 24.

16 25. In response to Paragraph 25 of the Complaint, denies each and every
17 allegation contained in Paragraph 25.

18 26. In response to Paragraph 26 of the Complaint, denies each and every
19 allegation contained in Paragraph 26.

20 27. In response to Paragraph 27 of the Complaint, denies each and every
21 allegation contained in Paragraph 27.

22 28. In response to Paragraph 28 of the Complaint, denies each and every
23 allegation contained in Paragraph 28.

24 29. In response to Paragraph 29 of the Complaint, denies each and every
25 allegation contained in Paragraph 29.

1 **FIRST CLAIM FOR RELIEF**

2 **(Federal Trade Dress Infringement and False Designation of Origin)**

3 [15 U.S.C. §1125(a)]

4 30. In response to Paragraph 30, BCBG incorporates by reference herein
5 each and every response contained in Paragraphs 1 through 29.

6 31. In response to Paragraph 31 of the Complaint, denies each and every
7 allegation contained in Paragraph 31.

8 32. In response to Paragraph 32 of the Complaint, denies each and every
9 allegation contained in Paragraph 32.

10 33. In response to Paragraph 33 of the Complaint, denies each and every
11 allegation contained in Paragraph 33.

12 34. In response to Paragraph 34 of the Complaint, denies each and every
13 allegation contained in Paragraph 34.

14 35. In response to Paragraph 35 of the Complaint, denies each and every
15 allegation contained in Paragraph 35.

16 36. In response to Paragraph 36 of the Complaint, denies each and every
17 allegation contained in Paragraph 36.

18 37. In response to Paragraph 37 of the Complaint, denies each and every
19 allegation contained in Paragraph 37.

20 38. In response to Paragraph 38 of the Complaint, denies each and every
21 allegation contained in Paragraph 38.

22 39. In response to Paragraph 39 of the Complaint, denies each and every
23 allegation contained in Paragraph 39.

24 40. In response to Paragraph 40 of the Complaint, denies each and every
25 allegation contained in Paragraph 40.

26 41. In response to Paragraph 41 of the Complaint, denies each and every
27 allegation contained in Paragraph 41.

28 42. In response to Paragraph 42 of the Complaint, denies each and every

1 allegation contained in Paragraph 42.

2 43. In response to Paragraph 43 of the Complaint, denies each and every
3 allegation contained in Paragraph 43.

4 44. In response to Paragraph 44 of the Complaint, denies each and every
5 allegation contained in Paragraph 44.

6 **SECOND CLAIM FOR RELIEF**

7 **(State Statutory and Common Law Unfair Competition)**

8 [Cal. Bus. & Prof. Code §§17200, *et seq.*]

9 45. In response to Paragraph 45, BCBG incorporates by reference herein
10 each and every response contained in Paragraphs 1 through 44.

11 46. In response to Paragraph 46 of the Complaint, BCBG admits that
12 Plaintiff purports to base jurisdiction over the subject matter of the claim pursuant
13 to 28 U.S.C. § 1338(b).

14 47. In response Paragraph 47 of the Complaint, BCBG is without
15 knowledge or information sufficient to form a belief as to the truth of the
16 allegations contained in Paragraph 47 and, on that basis, denies each and every
17 allegation contained in Paragraph 47.

18 48. In response to Paragraph 48 of the Complaint, denies each and every
19 allegation contained in Paragraph 48.

20 49. In response to Paragraph 49 of the Complaint, denies each and every
21 allegation contained in Paragraph 49.

22 50. In response to Paragraph 50 of the Complaint, denies each and every
23 allegation contained in Paragraph 50.

24 **THIRD CLAIM FOR RELIEF**

25 **(Constructive Trust)**

26 [Cal. Civ. Code §2224]

27 51. In response to Paragraph 51, BCBG incorporates by reference herein
28 each and every response contained in Paragraphs 1 through 50.

1 52. In response to Paragraph 52 of the Complaint, BCBG admits that
2 Plaintiff purports to base jurisdiction over the subject matter of the claim pursuant
3 to 28 U.S.C. § 1338(b).

4 53. In response to Paragraph 53 of the Complaint, denies each and every
5 allegation contained in Paragraph 53.

6 54. In response to Paragraph 54 of the Complaint, denies each and every
7 allegation contained in Paragraph 54.

8 55. In response to Paragraph 55 of the Complaint, denies each and every
9 allegation contained in Paragraph 55.

10 **AFFIRMATIVE DEFENSES**

11 BCBG hereby asserts the following separate affirmative defenses to the
12 claims and averments contained in the Complaint, without admitting or
13 acknowledging that BCBG bears the burden of proof as to any of them. BCBG
14 reserves the right to seek leave to amend its Answer to the Complaint to plead
15 additional defenses or counterclaims, or to supplement existing defenses, if
16 information developed through discovery, trial or otherwise merits such additional
17 defenses, counterclaims or supplementation.

18 **FIRST AFFIRMATIVE DEFENSE**

19 **(Functionality Of Alleged Trade Dress)**

20 1. As its First and Separate Affirmative Defense, BCBG alleges it that
21 Plaintiff cannot obtain trade dress protection over functional aspects of its product.

22 **SECOND AFFIRMATIVE DEFENSE**

23 **(Lack of Substantial Similarity)**

24 2. As its Second and Separate Affirmative Defense, BCBG alleges there
25 is a lack of similarity between the ideas and expression of ideas in goods sold by it
26 and Plaintiff's purported trade dress.

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THIRD AFFIRMATIVE DEFENSE

(Lack of Secondary Meaning)

3. As its Third and Separate Affirmative Defense, BCBG alleges that Plaintiff’s product has failed to achieve secondary meaning.

FOURTH AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

4. As its Fourth and Separate Affirmative Defense, BCBG alleges Plaintiff has failed to state a cause of action against BCBG.

FIFTH AFFIRMATIVE DEFENSE

(Lack of Damages)

5. As its Fifth and Separate Affirmative Defense, BCBG alleges Plaintiff has sustained no loss or damages as a result of BCBG' alleged conduct.

SIXTH AFFIRMATIVE DEFENSE

(Mitigation of Damages)

6. As its Sixth and Separate Affirmative Defense, BCBG, upon information and belief, alleges Plaintiff has failed to mitigate the damages, if any, that Plaintiff has allegedly suffered.

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

7. As its Seventh and Separate Affirmative Defense, BCBG, upon information and belief, alleges Plaintiff’s claims are barred because Plaintiff has unreasonably delayed in bringing this action by failing to exercise reasonable diligence, and because Plaintiff’s delay in filing and pursuing this action has prejudiced BCBG.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver)

8. As its Eighth and Separate Affirmative Defense, BCBG, upon information and belief, alleges as a result of Plaintiff’s own conduct, affirmative

1 statements and admissions, as well as a result of Plaintiff's failure to timely assert
2 any objection to the alleged wrongful or tortious acts attributed to BCBG, Plaintiff
3 has waived any cause of action and/or claim for relief in conjunction therewith, and
4 thus is barred or precluded from maintaining such action or obtaining any judgment
5 or relief whatsoever against BCBG.

6 **NINTH AFFIRMATIVE DEFENSE**

7 **(Estoppel)**

8 9. As its Ninth and Separate Affirmative Defense, BCBG, upon
9 information and belief, alleges Plaintiff is estopped from asserting its claims
10 because Plaintiff has unreasonably delayed in bringing this action by failing to
11 exercise reasonable diligence, and because Plaintiff's delay in filing and pursuing
12 this action has prejudiced BCBG.

13 **TENTH AFFIRMATIVE DEFENSE**

14 **(No Infringement)**

15 10. As its Tenth and Separate Affirmative Defense, BCBG alleges that it
16 does not infringe Plaintiff's purported trade dress, if any.

17 **ELEVENTH AFFIRMATIVE DEFENSE**

18 **(Attorneys' Fees Improper)**

19 11. As its Eleventh and Separate Affirmative Defense, BCBG alleges
20 Plaintiff fails to state facts sufficient to permit recovery of attorneys' fees against
21 BCBG.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 **(Trade Dress Not Protectable)**

24 12. As its Twelfth and Separate Affirmative Defense, BCBG, upon
25 information and belief, alleges Plaintiffs purported trade dress, if any, is not
26 protectable under the trade dress or unfair competition law.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(No Malice/Intent)**

3 13. As its Thirteenth and Separate Affirmative Defense, BCBG alleges
4 its alleged acts in connection with the manufacture and sale of products were
5 without malice and/or intent, and were done in the good faith belief that such acts
6 were duly authorized and proper.

7 **FOURTEENTH AFFIRMATIVE DEFENSE**

8 **(De Minimis Damage)**

9 14. As its Fourteenth and Separate Affirmative Defense, BCBG alleges
10 that its activities with respect to any sale or distribution of clothing which may be
11 alleged to infringe the purported intellectual property rights of Plaintiffs are de
12 minimus and small and did not cause damage to Plaintiffs.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 **(No Distinctiveness)**

15 15. As its Fifteenth and Separate Affirmative Defense, BCBG alleges
16 Plaintiff's trade dress is not inherently distinctive and/or has not acquired
17 distinctiveness.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 **(Lack of Notice)**

20 16. As its Sixteenth and Separate Affirmative Defense, BCBG, upon
21 information and belief, alleges Plaintiff failed to register or properly mark its
22 alleged protected material and failed to give BCBG written notice.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 **(Innocent Infringement and Good Faith)**

25 17. As its Seventeenth and Separate Affirmative Defense, BCBG alleges
26 that, to the extent Plaintiff's work was infringed, BCBG acted in good faith,
27 innocent of any knowledge or intent to infringe Plaintiff's rights. If such good faith
28 and lack of intent does not, as a matter of law, preclude a finding of liability, any

1 general or statutory damages awarded to Plaintiff should be correspondingly
2 reduced.

3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

4 **(No Likelihood of Confusion)**

5 18. As its Eighteenth and Separate Affirmative Defense, BCBG, alleges
6 that there is no likelihood of confusion between Plaintiff's products and BCBG's
7 products.

8 **NINETEENTH AFFIRMATIVE DEFENSE**

9 **(Generic Trade Dress)**

10 19. As its Nineteenth and Separate Affirmative Defense, BCBG alleges
11 that Plaintiff's alleged trade dress is generic.

12 **TWENTIETH AFFIRMATIVE DEFENSE**

13 **(Unclean Hands)**

14 20. As its Twentieth and Separate Affirmative Defense, BCBG, upon
15 information and belief, alleges Plaintiff's claims are barred, in whole or in part, by
16 the doctrine of unclean hands.

17 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

18 **(Statute of Limitations)**

19 21. As its Twenty-First and Separate Affirmative Defense, BCBG upon
20 information and belief, alleges Plaintiff's claims are barred, in whole or in part, by
21 the statute of limitations.

22 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

23 **(Reservation of Defenses)**

24 22. As its Twenty-Second and Separate Affirmative Defense, BCBG
25 alleges it has insufficient knowledge or information upon which to form a belief as
26 to whether it may have additional, and as yet unstated affirmative defenses
27 available, and reserve the right to assert such additional defenses in the event that
28 further discovery, investigation or analysis indicate they are proper.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and C.D. Cal. L.R. 38-1, Defendant BCBG MAX AZRIA GROUP, INC. demands a jury trial on all issues that are triable of right by a jury in this action.

Dated: November 30, 2010

BCBG MAX AZRIA GROUP, INC.

By

/s/ Erica Alterwitz

ERICA ALTERWITZ
Attorney for Defendant
BCBG MAX AZRIA GROUP, INC.