

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEVI STRAUSS & COMPANY,

Plaintiff,

No. 07-03752 JSW

v.

**COURT'S INTENDED VOIR DIRE
FOR PANEL**

ABERCROMBIE & FITCH TRADING
COMPANY,

Defendants.

STATEMENT OF THE CASE

Plaintiff Levi Strauss & Co. ("Levi Strauss") claims that Defendant Abercrombie & Fitch ("Abercrombie") has infringed Levi Strauss's rights in its trademark. Levi Strauss manufactures casual apparel and jeans. Levi Strauss owns the LEVI'S® brand of denim blue jeans, which are sold throughout the United States. Levi Strauss also owns a pocket stitching design that it uses as a trademark on its LEVI'S® jeans called the Arcuate Design or Arcuate Trademark. Levi Strauss started manufacturing and selling garments displaying its Arcuate Trademark on the back pockets of its jeans in 1873. The Arcuate Trademark continues to be used on Levi Strauss's garments today. Levi Strauss owns a federal trademark registration for the Arcuate Trademark, which is incontestable.

Abercrombie & Fitch Trading Co. manufactures casual apparel and jeans. Abercrombie owns the RUEHL No. 925 brand of denim blue jeans, which are sold throughout the United States in its RUEHL No. 925 retail stores and on its RUEHL No. 925 website. Abercrombie's

1 RUEHL No. 925 brand of denim blue jeans display a pocket stitching design (the “Ruehl”
2 design) for which Abercrombie has applied for federal trademark registration.

3 Levi Strauss asserts that the RUEHL design is confusingly similar to Levi Strauss’s
4 Arcuate Trademark. If you are selected for the jury, you will see the jeans displaying these
5 designs during the opening statements and the trial. Levi Strauss charges that Abercrombie has
6 infringed and diluted the Arcuate Trademark in violation of federal and California laws.
7 Abercrombie denies there is any likelihood of confusion, or likelihood of dilution between the
8 RUEHL design and Levi Strauss’s Arcuate Trademark.

9 **QUESTIONS FOR THE PANEL**

- 10 1. Has any member of the panel heard or read anything about the case?
- 11 2. As I indicated, my name is Jeffrey S. White. Do any of you know me?
- 12 3. My courtroom deputy is Jennifer Ottolini and my Law Clerks are Daisy Salzman,
13 Melissa Goldberg, and Kristin Ring. Do any of you know any of these people?
- 14 4. Levi Strauss will be represented at trial by Gregory S. Gilchrist, Gia L. Cincone and
15 Raquel Pacheco. Abercrombie will be represented at trial by Michael J. Bettinger,
16 Rachel R. Davidson and J. Michael Keyes. The parties may also call the following
17 witnesses: (1) Lynn Downey; (2) Robert Hanson; (3) Caroline Calvin; (4) Will Mitchell;
18 (5) Thomas Onda; (6) Dr. Sanjay Sood; (7) Clifford Kupperberg; (8) Reid Wilson; (9)
19 Kevin Cothren; (10) Nicole Sanger; (11) Stacey Beaver; (12) Mark Breitbard; (13)
20 Gretchen Kulicka; (14) Lee Holman; (15) Stacy Whaley; (16) Michael Doty; and (17)
21 Dr. Gerald Ford.
- 22 a) Do any of you know any of these persons?
- 23 b) Have any of you had any business dealing with them or been represented by
24 them?
- 25 c) Have any of you had any other similar relationship or business connection with
26 any of them?
- 27 d) Do any of you own stock in either Levi Strauss or Abercrombie & Fitch?
- 28

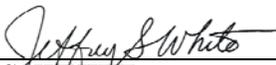
- 1 5. Are any of you related to or acquainted with any employees or representatives of Levi
2 Strauss? If so, who and what is your relationship to them?
- 3 6. Are any of you related to or acquainted with any employees or representatives of
4 Abercrombie & Fitch? If so, who and what is your relationship to them?
- 5 7. This case involves the apparel and fashion industry, and the design and sale of blue
6 jeans in particular. Have any of you had any training or experience in the sale or design
7 of clothing or fashion?
- 8 a) Do any of you have any experience in selling or designing blue jeans? If so,
9 what is that experience?
- 10 b) Did your experience leave you with any feelings, whether positive or negative,
11 about the sale or design of clothing, fashion, or of blue jeans that would make it
12 difficult for you to sit as a juror in this case?
- 13 8. Do any of you have any members of your immediate family or close friends who have
14 experience in the sale or design of clothing, fashion, or of blue jeans in particular? If so,
15 who and what was their experience?
- 16 9. Are any of you interested in the apparel and fashion industry?
- 17 a) What is your interest in the industry?
- 18 b) How did you become interested in the industry?
- 19 10. Do any of you read any magazines or trade journals about the apparel and fashion
20 industry? If so, which ones?
- 21 11. Do any of you have any interest in the design and sale of blue jeans? If so, what is the
22 nature of that interest?
- 23 12. Do any of you know what a trademark is?
- 24 a) Please describe in your own words what your understanding of a trademark is.
- 25 13. Have any of you had any education, training, or experience in the registration, purpose,
26 or use of trademarks? If so, please describe that education, training, or experience.
- 27 14. Do any you have any feelings about trademarks, their purpose, their lack of purpose,
28 their usefulness, or their lack of usefulness?

- 1 a) Would those feelings, whether positive or negative, make it difficult for you to
2 sit as a juror in this case?
- 3 15. Do any of you purchase blue jeans?
- 4 a) How often?
- 5 b) Do you favor or prefer any particular brands?
- 6 c) What features of blue jeans cause you to select one brand over another?
- 7 16. Do any you have any opinions or impressions of Levi Strauss, including any impression
8 of Levi Strauss clothing or jeans?
- 9 a) Have you ever purchased Levi Strauss clothing or jeans?
- 10 b) Have you had a good or bad experience with the Levi Strauss clothing or jeans
11 that you purchased?
- 12 c) Would any of those opinions, impressions, or experiences make it difficult for
13 you to sit as a juror in this case?
- 14 17. Do any you have any opinions or impressions of Abercrombie, including any impression
15 of Abercrombie clothing or jeans?
- 16 a) Have you ever purchased Abercrombie clothing or jeans?
- 17 b) Have you had a good or bad experience with the Abercrombie clothing or jeans
18 that you purchased?
- 19 c) Would any of those opinions, impressions, or experiences make it difficult for
20 you to sit as a juror in this case?
- 21 18. Have any of you heard of the RUEHL brand?
- 22 a) What is your opinion of the RUEHL brand?
- 23 b) Have you ever purchased any RUEHL brand clothing or jeans?
- 24 c) Have you had a good or bad experience with the RUEHL clothing or jeans that
25 you purchased?
- 26 d) Would any of those opinions, impressions, or experiences make it difficult for
27 you to sit as a juror in this case?
- 28 19. Is there anything else that you would like to bring to the Court's attention (e.g., health

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

problems, hearing problems, difficulty understanding English, personal bias, financial problems, etc.) that might affect your ability to be an effective, fair and impartial juror?

Dated: December 4, 2008



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE