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19 UNITED STATES DISTRICT COURT
 20 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 21 SAN FRANCISCO DIVISION

23 LEVI STRAUSS & CO.,
 24 Plaintiff,
 25 v.
 26 ABERCROMBIE & FITCH TRADING CO.,
 27 Defendant.

Case No. C 07-03752 JSW
 ORDER ON
**JOINT LIST OF OBJECTIONS TO
 DEPOSITION DESIGNATIONS**
 Trial Date: December 15, 2008
 Courtroom: 2, 17th Floor
 Hon. Jeffrey S. White

The Court's rulings follow. If an objection is based upon an incomplete designation, and the Court sustains that objection, the additional designations shall be read to the jury. If an objection is based on an incomplete designation as well as other grounds, the Court will identify the basis on which the objection is sustained. If it is not based upon the incomplete designation, the additional portions

L&CO. Designations / A&F Objections

shall not be read to the jury.

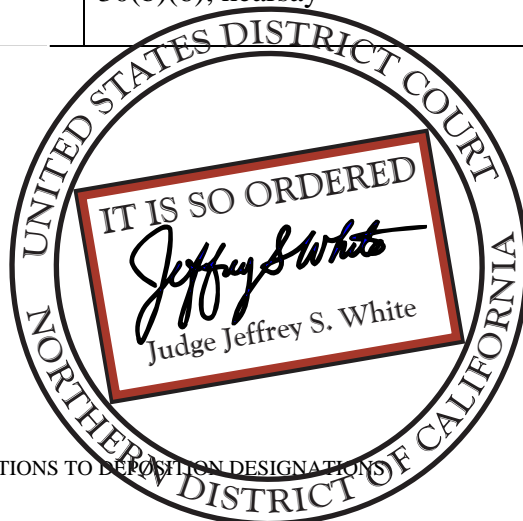
Designation – Stacie Beaver	Objection	Response
35:4-36:7 Sustained.	Incomplete Designation – add: 34:1-35:3	This addition is not necessary to explain the designated portion.
38:25-39:16 Overruled.	Lacks sufficient knowledge	Witness is A&F’s senior merchandise manager for denim and was designated as 30(b)(6) witness on adoption and use of the Ruehl stitching design; she is familiar with A&F’s market research and has sufficient knowledge to testify to the importance of pocket stitching designs to jeans consumers
60:4-61:20 Sustained, in part.	Incomplete Designation – add: 39:17-40:23 Omit 39:20-23.	Contains speculation about consumer impressions and is not necessary to explain the designated portion
87:11-89:6 Sustained.	Incomplete Designation – add: 89:7-90:6 to further explain exhibit about which witness is testifying	The additional testimony explains portions of the exhibit that are irrelevant, and is unnecessary to the designation
94:20-95:9 Overruled.	Relevance	Relevant to how jean is shown at point of sale and choice to show stitching

Designation – Nicole Sanger	Objection	Response
46:20-47:9 Sustained.	Relevance	Relevant to witness’s experience and scope of her knowledge of third party use of stitching designs, a topic on which she has been designated to testify
60:14-61:24 Sustained, in part.	61:14-24 – calls for speculation; Incomplete Designation – add: 61:25-64:22 to give context to and explain how witness conducted her focus groups Omit 63:21-64:4.	Does not call for speculation, but merely asks the witness whether the participants in the focus groups she conducted were shown any product; proposed addition contains several pages of testimony and is not necessary to explain designated portion
68:14-71:5 Overruled.	Incomplete Designation – add: 71:5-17 to give context to and explain designated testimony	Addition contains speculation

Designation – Kevin Cothren	Objection	Response
13:12-21 Overruled. Per Levi's response, additions to be given.	Refers to unidentified testimony of another witness; calls for speculation; incomplete designation – add: 11:20-25, 13:21-16:13	Refers to design process, does not call for speculation. Requested portion has been added, to the extent not already designated.
33:6 Sustained as to 33:6-9.	Relevance; no response; privilege	Inappropriate to refer to privilege designation as it suggests that a review by the legal department was undertaken.
71:11-73:5 Overruled.	72:19-73:5 – lacks sufficient knowledge; relevance	Witness is testifying to his knowledge of a particular line of LEVI'S® jeans that carries a design similar to the Ruehl design; relevant to knowledge of LS&CO.'s mark and intent

Designation – Reid Wilson	Objection	Response
97:18-97:22 Overruled.	Relevance/lacks foundation	Relevant to use of challenged design; will add 97:8-17 to establish foundation
101:22-102:3 Sustained - incomplete designation.	Relevance/outside scope of 30(b)(6); Incomplete designation – add: 102:4-103:18	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; relevant to pending application to register challenged design; requested portion has been added
103:13-104:21 Sustained - incomplete designation.	Relevance/outside scope of 30(b)(6); Incomplete designation – add: 101:22-103:12	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; relevant to pending application to register challenged design; requested portion has been added, to the extent not already designated
105:11-25 Overruled.	Relevance/outside scope of 30(b)(6)	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; relevant to pending application to register challenged design
125:16-127:10 Overruled, but omit 126:20-21.	Relevance/outside scope of 30(b)(6); calls for attorney/client communications	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; relevant to A&F's decision to clear and use challenged design; does not call for privileged communications and no privilege objection was made at the time
128:7-129:7 Overruled.	Relevance/outside scope of 30(b)(6)	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; relevant to A&F's decision to

		clear and use challenged design
135:3-136:3 Overruled.	Relevance/outside scope of 30(b)(6); lacks foundation	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; witness testified he had seen the exhibit and could identify it
137:6-15 Overruled.	Relevance/outside scope of 30(b)(6); calls for speculation	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; testified to his understanding of the document
137:24-143:3 Overruled.	Relevance/outside scope of 30(b)(6); 137:24-139:3, 142:18-143:3 lacks foundation; calls for speculation	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; witness identified and produced the documents in discovery so there is adequate foundation
146:15-147:25 Sustained in part.	Relevance/outside scope of 30(b)(6) Omit 147:19-20.	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; relevant to creation of challenged design
155:12-20 Sustained.	Relevance/outside scope of 30(b)(6)	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; relevant to design process and to A&F's intent to copy competitors' marks
166:3-168:24 Sustained - relevance.	Relevance/outside scope of 30(b)(6); lacks foundation/hearsay/Fed. R. Evid. 408; Alternatively, Incomplete designation – add: 168:25-169:25	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; relevant to willfulness. Requested portion will be added, to the extent not already designated.
169:22-171:23 Sustained - relevance.	Relevance/outside scope of 30(b)(6); lacks foundation/hearsay/Fed. R. Evid. 408; Alternatively, Incomplete designation – add: 168:21-169:21	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; relevant to willfulness. Requested portion will be added, to the extent not already designated.
191:2-7 Sustained - relevance.	Relevance/outside scope of 30(b)(6); hearsay	Witness testified in individual capacity as well as pursuant to FRCP 30(b)(6) notice; relevant to intent; not hearsay.



December 11, 2008