Page 1 of 38



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Attorneys for Plaintiff
DIANE VON FURSTENBERG STUDIO, LP

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DIANE VON FURSTENBERG STUDIO, LP, a Delaware limited partnership,

Plaintiff,

٧.

FOREVER 21, INC., a Delaware corporation; FOREVER 21 RETAIL, INC., a California corporation; FOREVER 21 LOGISTICS, LLC, a Delaware limited liability company; FOREVER 21 CAPITAL HOLDINGS, LLC, a Delaware limited liability company; FOREVER 21 INVESTMENTS, LLC, a Delaware limited liability company; FOREVER 21 INTERNATIONAL HOLDINGS, INC., a Delaware corporation.

Defendants.

Civil Action No. 07 CV 2413 (VM)

FIRST AMENDED COMPLAINT FOR COPYRIGHT INFRINGEMENT, UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN, UNLAWFUL DECEPTIVE ACTS AND PRACTICES, DEMAND FOR JURY TRIAL

FIRST AMENDED COMPLAINT

Plaintiff Diane von Furstenberg Studio, LP ("DVF") alleges the following for its First Amended Complaint ("Complaint") against Defendants forever 21, Inc., forever 21 Retail, Inc., forever 21 Logistics, LLC, forever 21 Capital Holdings, LLC, forever 21 Investments, LLC, and forever 21 International Holdings, Inc. (collectively "Defendants") on personal knowledge as to DVF's own activities and on information and belief as to the activities of Defendants:

THE PARTIES

- 1. Plaintiff Diane von Furstenberg Studio, LP is a limited partnership, organized and existing under the laws of Delaware, with offices at 440 W. 14th St., New York, New York 10014.
- 2. Upon information and belief, Defendant forever 21, Inc. is a Delaware corporation, with its principal place of business and executive offices at 2001 S. Alameda Street, Los Angeles, California 90058. forever 21, Inc. is doing business throughout the State of New York through its retail stores and website, with multiple retail store locations in this District.
- 3. Upon information and belief, Defendant forever 21 Retail, Inc. is a California corporation, with its principal place of business and executive offices at 2001 S. Alameda Street, Los Angeles, California 90058. forever 21 Retail, Inc. is doing business throughout the State of New York through its retail stores and website at <forever21.com>, with multiple retail store locations in this District.
- 4. Upon information and belief, Defendant forever 21 Logistics, LLC is a Delaware limited liability company, with its principal place of business and executive offices at 9 East Lookerman Street, Dover, Delaware 19901. forever 21 Logistics, LLC is doing business throughout the State of New York and in this District.
- 5. Upon information and belief, Defendant forever 21 Capital Holdings, LLC is a California limited liability company with its principal place of business at 2001 S. Alameda Street, Los Angeles, California 90058. Upon information and belief, forever 21 Capital Holdings, LLC is doing business throughout the State of New York and in this District.

- 6. Upon information and belief, Defendant forever 21 Investments, LLC is a Delaware limited liability company with its principal place of business at 2001 S. Alameda Street, Los Angeles, California 90058. Upon information and belief, forever 21 Investments, LLC is doing business throughout the State of New York and in this District.
- 7. Upon information and belief, Defendant forever 21 International Holdings, Inc. is a Delaware corporation with its principal place of business at 2001 S. Alameda Street, Los Angeles, California 90058. Upon information and belief, forever 21 International Holdings, Inc. is doing business throughout the State of New York and in this District.
- 8. forever 21, Inc., forever 21 Retail, Inc., forever 21 Logistics, LLC, forever 21 Capital Holdings, LLC, forever 21 Investments, LLC, and forever 21 International Holdings, Inc. are collectively referred to as "forever 21" or "Defendants."

JURISDICTION AND VENUE

- 9. This is an action for: (a) copyright infringement in violation of the Copyright Law, 17 U.S.C. §§501, et. seq.; (b) unfair competition and false designation of origin in violation of 15 U.S.C. §1125(a); (c) unlawful and deceptive acts and practices in violation of N.Y. Gen. Bus. Law §349; and (d) unfair competition under New York state law, all of which activities have occurred in this District and elsewhere in interstate commerce.
- 10. Subject matter jurisdiction for the claim of copyright infringement and unfair competition and false designation of origin is proper in this Court pursuant to 28 U.S.C. §§1331, 1332, 1338(a), and 17 U.S.C. §501, 15 U.S.C. §1125(a). Supplemental jurisdiction for the claims of unlawful deceptive acts and practices and unfair competition is proper in this Court pursuant to 28 U.S.C. §1367 because these claims form part of the same case or controversy as the claim for copyright infringement.

- 11. This Court has personal jurisdiction over the Defendants in that Defendants do business throughout the State of New York including this District.
- 12. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a) in that Defendants are transacting business within this District. Further, venue is appropriate since a substantial portion of the acts complained of herein were committed by Defendants within this District.

FACTUAL BACKGROUND

DVF'S PRODUCTS AND SALE OF ITS COPYRIGHTED DESIGNS

- 13. Ms. Diane von Furstenberg has been a fixture in the American fashion world since arriving in New York in 1972 with her signature jersey dresses. By 1976, Ms. von Furstenberg had sold more than five million of her iconic wrap dresses, and came to symbolize female power and freedom to an entire generation.
- 14. In 1997, Ms. von Furstenberg established Diane von Furstenberg Studio LP to sell her signature line of dresses and other women's apparel. Currently, DVF is a leader in the design, development, manufacture, advertising, marketing, distribution, licensing, and sale of designer dresses and other women's apparel, accessories, jewelry, cosmetics, luggage, and other luxury goods (collectively, "DVF Products").
- 15. DVF is the owner of numerous trademark registrations for its marks as well as numerous U.S. copyright registrations for its original print and fabric designs.
- 16. DVF Products have become favorably known throughout the World for their distinctive style, high-quality materials, and superior designs. Genuine DVF Products are easily identified by the mark DIANE VON FURSTENBERG and other marks and by their distinctive fabric designs, many of which have been registered with the U.S. Copyright Office.

- 17. As a result of the high-quality and superb design of DVF Products, these products have achieved an outstanding reputation among consumers, especially fashion-conscious women. DVF's trademarks and copyrights have become well and favorably known in the industry and to the public as the exclusive source of DVF Products and have come to symbolize the goodwill built up in DVF Products.
- 18. DVF Products are sold in high-end department stores, such as Barneys, Neiman Marcus and Saks Fifth Avenue, as well as through DVF's website at <dvf.com>.
- 19. DVF's marketing efforts, combined with its attention to quality, design and construction, have resulted in hundreds of millions of dollars of sales of DVF Products.
- 20. DVF and DVF Products have been the subject of much unsolicited, laudatory press coverage in various media, including editorial coverage in the world's leading fashion and lifestyle magazines.
- 21. At certain times during the year, DVF releases collections of new dress and clothing designs. These collections are shown for the first time at DVF's fashion shows during the New York Fall and Spring fashion weeks and other times during the year, and then released to consumers during the coming months. These new collections are greeted with widespread media coverage and consumers recognize DVF's original dress and clothing print designs in the collections as emanating from DVF.
- 22. One such dress design exclusively owned by DVF is known as "Cerisier." A photograph of DVF's Cerisier dress is attached hereto as Exhibit A. DVF began showing and selling its Cerisier dress in October 2006 as part of DVF's Holiday Collection. The Cerisier dress design consists of two print designs exclusively owned by DVF: the "Small Dentelle" and the "Flower Lace Border" designs. The Small Dentelle design is the subject of U.S. Copyright

Registration No. VA-1-395-624 registered on March 19, 2007. A true and accurate copy of the Certificate of Registration for the Small Dentelle design is attached hereto as Exhibit B. DVF's Dentelle Design is also featured on other DVF's dresses and clothing. The Flower Lace Border is the subject of U.S. Copyright Registration No. VA-1-395-623 registered on March 19, 2007. A true and accurate copy of the Certificate of Registration for the Flower Lace Border is attached hereto as Exhibit C.

- A photograph of DVF's Aubrey dress is attached hereto as Exhibit D. DVF first showed its Aubrey dress in September 2005 at its Spring 2006 fashion show, and began selling Aubrey dresses in Winter 2006. The Aubrey dress design bears a print design exclusively owned by DVF called "Mimosa." The Mimosa design is the subject of U.S. Copyright Registration No. VA-1-395-625 registered on March 19, 2007. A true and correct copy of the Certificate of Registration for the Mimosa design is attached hereto as Exhibit E. DVF's Mimosa design is also featured on other DVF dresses and clothing.
- 24. Another such clothing design exclusively owned by DVF is a blouse known as "Edith." A photograph of DVF's Edith top is attached hereto as Exhibit F. DVF first showed its Edith blouse in September 2006 as part of its Spring 2007 fashion show, and began selling Edith blouses in Winter 2007. The Edith blouse design bears a print design exclusively owned by DVF called "Scattered Stones." The Scattered Stones design collection is the subject of U.S. Copyright Registration No. Vau-711-001 registered on September 11, 2006. A true and correct copy of the Certificate of Registration for the Scattered Stones design collection is attached hereto as Exhibit G. DVF's Scattered Stones design is also featured on other DVF dresses

including DVF's "Parr" and "Edison" dresses. A photograph of DVF's Parr and Edison dresses are attached as Exhibit H.

25. The registrations of the Small Dentelle design, the Flower Lace Border, the Mimosa design and Scattered Stones design collection create a legal presumption in favor of DVF with respect to the ownership of and validity of the copyrights in these works (hereinafter, the Small Dentelle design, the Flower Lace Border, the Mimosa design, and Scattered Stones designs may be referred to separately or collectively as the "DVF Copyrights").

DEFENDANTS' INFRINGING CONDUCT

- 26. Without authorization or license from DVF, forever 21 has produced and is marketing, advertising distributing, offering for sale and selling dresses nearly identical to DVF's Cerisier, Aubrey, Parr and Edison dresses and Edith blouse that bear print designs identical to the DVF Copyrights (the "Infringing Products") in its retail stores and through its website at <forever21.com>.
- 27. forever 21 has copied DVF's exact scale and colorways for each design in the DVF Copyrights. True and accurate copies of photographs of the Infringing Products are attached hereto as Exhibit I.
- 28. Upon information and belief, the conduct of forever 21 was willfully done with knowledge of, and/or reckless disregard for, DVF's rights in the DVF Copyrights for the purpose of damaging DVF's business. forever 21 is profiting from the unauthorized production, distribution, offer to sell and sale of products bearing the DVF Copyrights.

FIRST CLAIM FOR RELIEF (Copyright Infringement Under 17 U.S.C. §§501, et. seq.)

29. DVF repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

- 30. DVF is the owner of the DVF Copyrights.
- 31. DVF has never authorized, licensed or otherwise permitted Defendants to manufacture, distribute or sell copies of the DVF Copyrights.
- 32. DVF has built up valuable goodwill in the distinctive appearance of DVF Copyrights.
- 33. As a direct and proximate result of Defendants' use of the DVF Copyrights, DVF has suffered damages to its valuable DVF Copyrights, and other damages in an amount to be proved at trial.
- 34. DVF does not have an adequate remedy at law, and will continue to be damaged by Defendants' copyright infringement unless this Court enjoins Defendants from such infringing practices.
- 35. Defendants have realized unjust profits, gains and advantages as a proximate result of their infringement.

SECOND CLAIM OF RELIEF UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

- 36. DVF repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.
- 37. The Infringing Products are nearly identical to the genuine DVF Products which bear the DVF Copyrights and, as such, Defendants' sale of the Infringing Products is likely to cause confusion to the general purchasing public.
- 38. By producing and selling exact replicas of these DVF Products bearing the DVF Copyrights, Defendants misrepresent and falsely describe to the general public the origin and

source of the Infringing Products and create a likelihood of confusion by ultimate purchasers as to both the source and sponsorship of such merchandise.

- 39. Defendants' unlawful, unauthorized and unlicensed manufacturing, advertising, distributing, offering for sale and/or selling of the Infringing Products creates express and implied misrepresentations that the Infringing Products were created, authorized or approved by DVF, all to Defendants' profit and DVF's great damage and injury.
- 40. DVF has no adequate remedy at law. If Defendants' activities are not enjoined, DVF will continue to suffer irreparable harm and injury to its goodwill and reputation.

THIRD CLAIM OF RELIEF UNLAWFUL DECEPTIVE ACTS AND PRACTICES (New York General Business Law § 349)

- 41. DVF repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.
- 42. Defendants, without DVF's authorization or consent, and having knowledge of DVF's well-known and prior rights in the DVF Copyrights have manufactured, advertised, distributed, offered for sale and/or sold the Infringing Products to the consuming public in direct competition with DVF Products.
- 43. Defendants' use of copies or simulations of the DVF Copyrights is likely to cause and is causing confusion, mistake and deception among the general purchasing public as to the origin of the Infringing Products, and is likely to deceive the public into believing the Infringing Products being sold by Defendants originate from, are associated with, or are otherwise authorized by DVF.

- 44. Defendants' deceptive acts and practices involve public sales activities of a recurring nature.
- 45. DVF has no adequate remedy at law and, if Defendants' activities are not enjoined, DVF will continue to suffer irreparable harm and injury to its goodwill and reputation.

FOURTH CLAIM OF RELIEF UNFAIR COMPETITION UNDER NEW YORK STATE LAW

- 46. DVF repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.
 - 47. DVF has built up valuable goodwill in the DVF Copyrights.
- 48. Defendants' use of the DVF Copyrights is likely to and does permit Defendants to palm off the Infringing Products as those of DVF, all to the detriment of DVF and the unjust enrichment of Defendants.
- 49. Defendants, upon information and belief, with full knowledge of the fame of DVF and the DVF Copyrights, intended to and did trade on the goodwill associated with the DVF Copyrights and has misled and will continue to mislead the public into assuming a connection between DVF and Defendants by advertising, selling and/or distributing the Infringing Products.
- 50. Defendants' unauthorized use of the DVF Copyrights has caused and is likely to continue to cause DVF damage by tarnishing the valuable reputations and images associated with DVF and its genuine goods. Defendants have further palmed off their goods as DVF

Products by misrepresentations to the consuming public, members of whom are likely to and do believe the Infringing Products emanate from or are otherwise associated with DVF.

- 51. The acts of Defendants mislead and deceive the public as to the source of Defendants' goods, permit and accomplish the palming off of Defendants' goods as those of DVF and falsely suggest a connection with DVF, and therefore constitute acts of unfair competition with DVF in violation of the laws of the State of New York.
- 52. Defendants' acts have and will continue to cause DVF irreparable harm unless enjoined by this Court. DVF has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, DVF prays for the following relief against Defendants:

- 1. That Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under them be permanently enjoined from directly or indirectly infringing the DVF Copyrights in any manner, including, but not limited to, reproducing, adapting, and/or displaying the DVF Copyrights by distributing, importing, exporting, advertising, selling, and/or offering for sale, or causing others to do so, any product, including without limitation clothing, bearing a design substantially similar to the DVF Copyrights;
- 2. That Defendants be required to effectuate the recall, removal, and return from commercial distribution and/or public display of:
 - (a) Any product bearing a design substantially similar to the DVF Copyrights distributed, imported, exported, advertised, sold, and/or offered for sale by Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under them; and

- (b) Any promotional and/or advertising materials, packaging, or other items bearing designs substantially similar to the DVF Copyrights used or displayed by Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under them; and
- (c) Any pattern, or other item used by Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under them, to manufacture any product, promotional and/or advertising materials, packaging, or other item bearing designs substantially similar to the DVF Copyrights;
- 3. That Defendants be required to deliver up for destruction all of the items called for by Paragraph 2 of this Prayer for Relief, above, as well as any remaining products, advertising, packaging, patterns, or other items bearing designs substantially similar to the DVF Copyrights, that are in Defendants' custody or control;
- 4. That Defendants, within thirty (30) days after service of judgment with notice of entry thereof upon it, be required to file with the Court and serve upon Plaintiff a written report under oath setting forth the details of how Defendants have complied with Paragraphs 1 through 3 of this Prayer for Relief, above;
 - 5. For an award of actual damages sustained by Plaintiff;
 - 6. For an award of Defendants' profits attributable to their copyright infringement;
- 7. If elected by Plaintiff, for the maximum statutory damages as permitted under the Copyright Act;
 - 8. For such other amounts as may be proper under 17 U.S.C. § 504;

- 9. For an award of costs and attorneys' fees pursuant to 17 U.S.C. § 505;
- 10. For prejudgment interest as permitted by law;
- 11. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all triable issues raised by this Complaint.

Respectfully submitted,

DATED: April \\, 2007

GREENBERG TRAURIG, LLP

Вy

Harley I. Lewin (HL 1819) Scott Gelin (SG 9599)

200 Park Avenue

New York, New York 10166

Tel: (212) 801-9200 Fax: (212) 801-6400

Attorneys for Plaintiff

Diane von Furstenberg Studio LP

Exhibit A

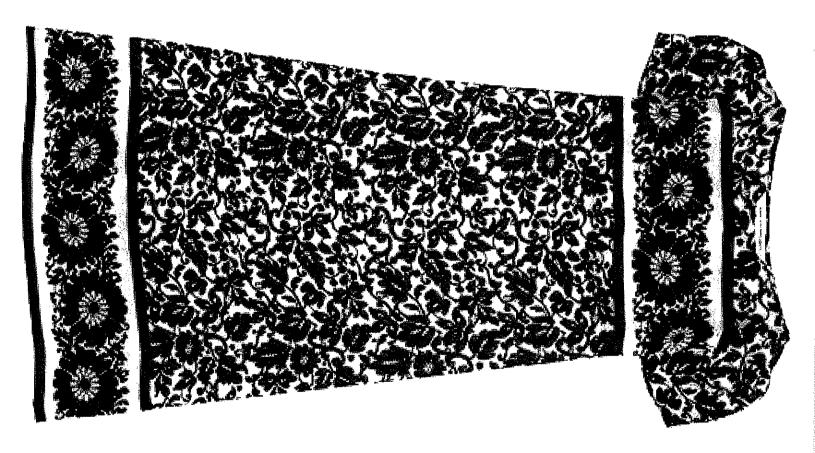


Exhibit B



This Certificate issued under the seal of the Copyright
Office in accordance with title 17, United States Code,
attests that registration has been made for the work
identified below. The information on this certificate has been made a part of the Copyright Office records.

Register of Copyrights, United States of America

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Exhibit C

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17. United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

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Register of Copyrights, United States of America

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Exhibit D



Exhibit E

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Exhibit F



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Exhibit G

Certificate of Registration



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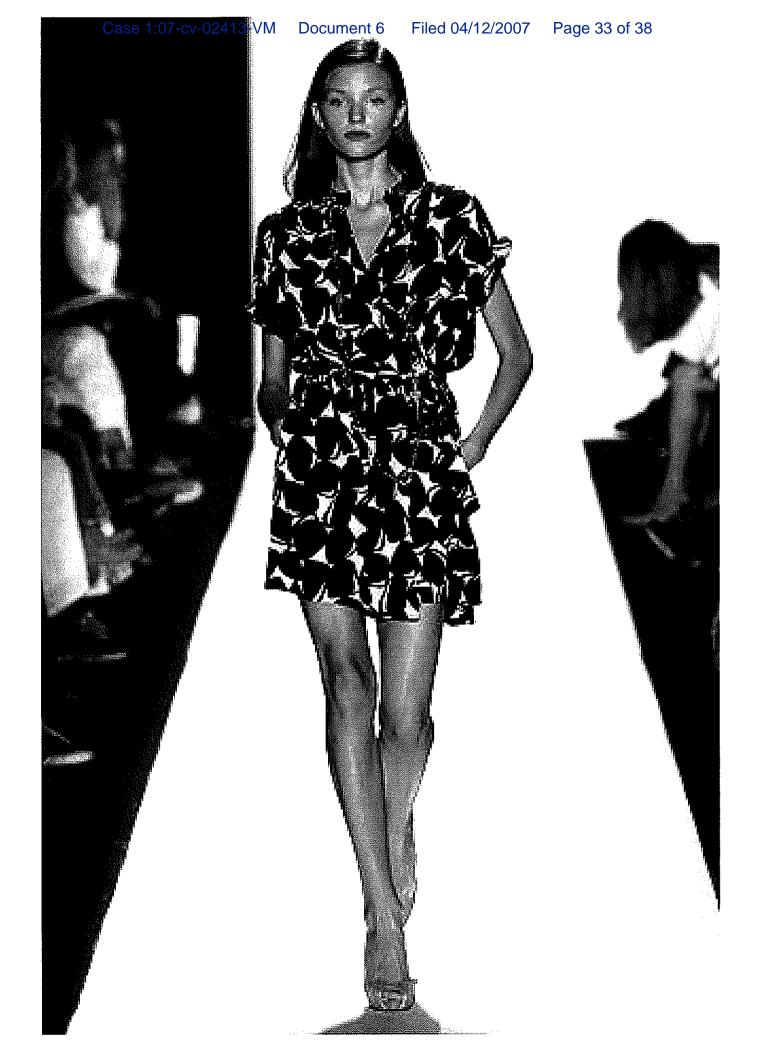
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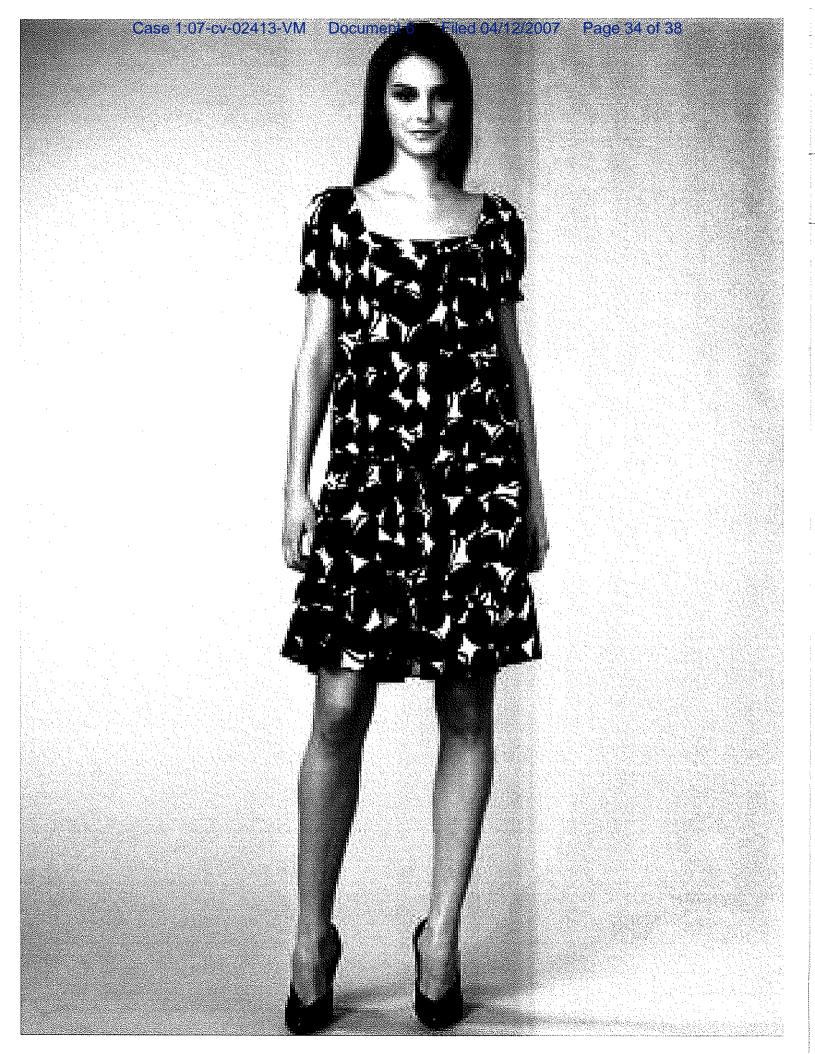
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Exhibit H





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Exhibit I

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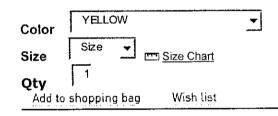
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Silk Sabrina Dress List Price: \$32.80

Sophisticated silk dress with cap sleeves and Sabrina neckline. Features smocked top, 33" shoulder to hem length, 100% silk, hand wash cold, Imported

ProductCode: 2035464561

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complete your look with





Born Free \$13.80

Sandy Scarf \$4.80

Strapless Polka Dot Dress Orig.: \$27.80

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Petal to the Metal Necklace \$5.80

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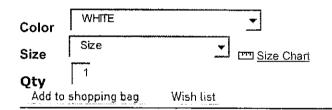


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Pinecone Dress List Price: \$24.80

Fun spray print flower dress with raw edged scoop neck and puff sleeves with one button cuff. Adjustable sash ties at waist and two lower front pockets. 100% cotton, machine wash cold, Imported ProductCode: 2035368585

click swatch to view colors



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Shirred Tunic \$19,80





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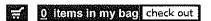
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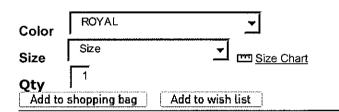
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Lexi Tunic \$24.80

Amazing woven tunic with geometric print, ruched neckline, dual layered cape sleeves with sheer accent, 20" side seam, 100% polyester, hand wash, USA ProductCode: 2037052809

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