

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LUCKY BRAND DUNGAREES, INC.,
LIZ CLAIBORNE, INC.,

Plaintiffs,

vs.

ALLY APPAREL RESOURCES LLC d/b/a
GET LUCKY, KEY APPAREL
RESOURCES, LTD., MARCEL FASHION
GROUP, INC., and EZRA MIZRACHI,

Defendants.

~~PROPOSED~~ ORDER ^{GRANTING} ~~AND~~
PARTIAL JUDGMENT ^{AND INJUNCTION}
Civil Action No. 05-CV-6757 (LTS)

SUMMARY

Hon. Laura Taylor Swain
United States District Judge:

In accordance with Judge Dolinger's Memorandum and Order dated January 8 (Dkt. No. 164), and Memorandum and Order dated February 13, 2009 (Dkt. No. 171), it is hereby ORDERED as follows:

Defendants Marcel Fashion Group, Inc. and Ezra Mizrachi (collectively "Marcel Fashions") are, as a matter of law, entitled to partial judgment that they have established Lucky Brand Dungarees, Inc.'s and Liz Claiborne, Inc.'s (collectively "Lucky Brand") liability as to Marcel Fashions' Counterclaims I through VI as follows:

COUNTERCLAIMS I & II
FEDERAL TRADEMARK INFRINGEMENT

(i) Lucky Brand's sales and offers for sale of men's t-shirts bearing the unauthorized designation GET LUCKY have infringed Marcel Fashions' United States Trademark

Registration No. 2,765,974 for GET LUCKY in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114.

(ii) Lucky Brand's sales and offers for sale of women's t-shirts bearing the unauthorized designation GET LUCKY have infringed Marcel Fashions' United States Trademark Registration No. 2,765,974 for GET LUCKY in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114.

(iii) Lucky Brand's sales and offers for sale of women's long sleeve shirts bearing the unauthorized designation GET LUCKY have infringed Marcel Fashions' United States Trademark Registration No. 2,765,974 for Get Lucky in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114.

COUNTERCLAIM III
FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN

Lucky Brand's sales and offers for sale of men's and women's t-shirts and women's long sleeve shirts bearing the unauthorized designation GET LUCKY constitute federal unfair competition, false designation of origin and false description or representation in violation of Section 42(a) of the Lanham Act, 15 U.S.C. §1125(a).

COUNTERCLAIM IV
COMMON LAW UNFAIR COMPETITION

Lucky Brand's sales and offers for sale of men's and women's t-shirts and women's long sleeve shirts bearing the unauthorized designation of GET LUCKY constitute unfair competition in violation of the common law of the state of New York.

COUNTERCLAIM V
NEW YORK GENERAL BUSINESS LAW §349

Lucky Brand's sales and offers for sale of men's and women's t-shirts and women's long sleeve shirts bearing the unauthorized designation of GET LUCKY constitute violations of New York General Business Law §349.

COUNTERCLAIM VI
BREACH OF SETTLEMENT AGREEMENT

Lucky Brand's sales and offers for sale of men's and women's t-shirts and women's long sleeve shirts bearing the unauthorized designation GET LUCKY constitute a breach of Section 7 of the Settlement Agreement between the parties dated May 20, 2003. Lucky Brand's admitted advertising and promotion of fragrances using Defendants' GET LUCKY trademark also constitutes a breach of Section 7 of the 2003 Settlement Agreement.

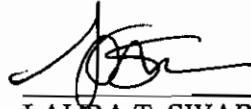
Pursuant to section 34(a) of the Lanham Act, 15 U.S.C. §1116(a), the common law of New York and New York General Business Laws §349, Lucky Brand is hereby enjoined from using in commerce any reproduction, counterfeit, copy or any colorable imitation of Marcel Fashions' GET LUCKY trademark on or in connection with men's and women's apparel, fragrances, and accessories.

Issues relating to Marcel Fashions' counterclaims not specifically addressed herein shall be subject to the trial of this action and nothing in this Order and Partial Judgment shall be deemed to limit in any way either parties' rights to fully pursue all of their claims or

counterclaims or defenses, including for monetary and non-monetary remedies, at trial.

Dated: April 22, 2009

SO ORDERED.



~~LAURA T. SWAIN~~
UNITED STATES DISTRICT JUDGE

LAURA TAYLOR SWAIN, U.S.D.J.