

COPY

1 Peter R. Afrasiabi (Bar No. 193336)
 2 Email: pafraziabi@onellp.com
 3 Christopher W. Arledge (Bar No. 200767)
 4 Email: carledge@onellp.com
 5 Imran F. Vakil (Bar No. 248859)
 6 Email: ivakil@onellp.com
 7 **ONE LLP**
 8 4000 MacArthur Boulevard
 9 West Tower, Suite 1100
 10 Newport Beach, California 92660
 11 Telephone: (949) 502-2870
 12 Facsimile: (949) 258-5081

FILED
 10 AUG 19 PM 12:36
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES

Attorneys for Plaintiff LA TRIUMPH, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

L.A. TRIUMPH, INC, a California corporation,

Plaintiff,

v.

MADONNA LOUISE VERONICA
 CICCONI, an individual; MATERIAL
 GIRL BRAND, LLC, an entity of unknown
 form; and DOES 1 through 10, inclusive,

Defendants.

Case No.

CV 10 6195-550
[Signature]

COMPLAINT FOR:

- (1) DECLARATORY RELIEF; and**
- (2) VIOLATION OF LANHAM ACT 43(A).**

DEMAND FOR JURY TRIAL

1 L.A. Triumph, Inc. ("LA Triumph" or "Plaintiff"), by and through its attorneys of
2 record, complains against Material Girl Brand, LLC ("MGB"), Madonna Louise Veronica
3 Ciccone ("Madonna"), and DOES 1 through 10 (collectively "Defendants") alleging as
4 follows:

5 JURISDICTION AND VENUE

6 1. The jurisdiction of this Court is based on 28 U.S.C. §§ 1331 and 2201-02
7 (Federal Declaratory Judgment Act), arise under federal question subject matter jurisdiction
8 involving questions of rights and responsibilities pursuant to federal trademark laws (the
9 Lanham Act). Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §
10 1338. This Court also has supplemental jurisdiction over the state law claims herein
11 pursuant to 28 U.S.C. § 1367(a).

12 2. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (c) in that
13 the claim arises in this Judicial District and the Plaintiff and Defendants may be found and
14 transact business in this Judicial District.

15 PARTIES

16 3. Plaintiff is a corporation existing under the laws of California, with its
17 principal place of business located in Cerritos, California, in the County of Los Angeles.

18 4. Defendant MGB is an entity of unknown form. MGB's United States
19 Trademark Office Application No. 77/886,045 indicates that MGB is a Delaware limited
20 liability company, however, Plaintiff's review of the Delaware Secretary of State's
21 corporation status report indicates that Delaware has no record of "Material Girl Brand
22 LLC". Plaintiff is informed and believes that MGB's principle place of business is denoted
23 as an accounting firm in Century City, California as provided on Application No.
24 77/886,045, which accounting firm on information and belief is Madonna's and MGB's
25 accounting firm.

26 5. Defendant Madonna is an individual residing in New York, NY 10028. On
27 information and belief, Plaintiff alleges that Madonna is the principal of MGB.
28

1 12. In 2003, LA Triumph succeeded OC Mercantile and continued the sale of the
2 same types of clothes under the same "Material Girl" brand both in California and
3 nationwide.

4 13. Between 1997 and present day, LA Triumph and its predecessor have sold
5 millions of dollars of the "Material Girl" brand of clothes in commerce throughout the
6 United States, and have spent large sums in its promotion and advertisement.

7 14. Plaintiff has received national exposure for its unique and fashionable apparel
8 designs under the "Material Girl" mark and takes enormous pride in its reputation for
9 excellence and quality workmanship.

10 15. Plaintiff is entitled to the exclusive use and benefit of the "Material Girl"
11 mark, which has been in continuous use since 1997.

12 16. Recently in 2010, Plaintiff became aware that Defendants Madonna and MGB
13 started promoting, advertising, and selling a line of juniors' clothing for young women
14 under the mark "Material Girl", including advertising and selling such clothes at the
15 website <http://materialgirlcollection.com/>, which on information and belief is owned by
16 MGB and Madonna and which links to the retail outlet Macy's website whereby consumers
17 can purchase such infringing "Material Girl" clothes online.

18 17. Madonna and MGB's clothing line for young women has garnered significant
19 press attention for its risqué advertising campaign. Plaintiff's "Material Girl" clothing line
20 retails at the same general price point and in the same general retail space as the
21 Defendant's infringing clothes.

22 18. Further, MGB has improperly filed a United States Trademark Application for
23 the "Material Girl" mark for clothing in *inter alia* international class 025 for clothing,
24 under application number 77/886,045 on December 4, 2009 as an "intent to use
25 application."

26 19. Plaintiff is also informed and believes that Macy's is one retailer currently
27 selling, advertising, and promoting the infringing "Material Girl" line of juniors' clothing
28

1 in its retail establishments across the nation. This Complaint will be amended to add name
2 DOE Defendants when appropriate as a result of discovery.

3 20. Defendants' conduct has confused and is likely to confuse the public
4 deception, and mistake among the consuming public and trade by creating the erroneous
5 impression that Defendants' products have been manufactured, approved, sponsored,
6 endorsed or guaranteed by, or in some way are affiliated with, the Plaintiff.

7 **FIRST CLAIM FOR RELIEF**

8 **(Declaratory Relief against MGB and Madonna, 28 U.S.C. § 2201)**

9 21. LA Triumph incorporates paragraphs 1 through 20 above as if set forth fully
10 herein.

11 22. There exists a live, substantial controversy and dispute between Plaintiff, on
12 the one hand, and Defendants Madonna and MGB, on the other hand, over: (1) Defendants
13 Madonna and MGB's right to use the "Material Girl" mark in clothing; and (2) their right
14 to secure a trademark registration on the "Material Girl" mark. As to the first, Plaintiff
15 contends that it is the senior user of the mark in interstate commerce nationwide in the
16 goods and classes of apparel and fashion and as such Defendants have no right to use the
17 "Material Girl" brand in clothing. Defendants on information and belief and as evidenced
18 by Defendants' infringing use of the "Material Girl" mark and pending federal registration
19 application contend otherwise. As to the second, Plaintiff contends that Defendants have
20 no right to issuance of a federal registration on the "Material Girl" mark in the clothing,
21 apparel or fashion classes (*inter alia* international class 025). Defendants on information
22 and belief contend otherwise as evidenced by their federal application. As such, the parties
23 have adverse interests of immediate concern and a live, justiciable controversy, which
24 warrants issuance of a declaratory judgment.

25 23. Plaintiff seeks a Declaration that it is the rightful owner of the "Material Girl"
26 mark with respect to clothing, Defendants have no right to sell clothes under the "Material
27 Girl" brand, and an order by this court to deny registration of Defendants' United States
28 Trademark Application 77/886,045.

1 29. Plaintiff is entitled to recover from Defendants the damages sustained as a
2 result of Defendants' acts in violation of §43(a). Plaintiff is at present unable to ascertain
3 the full extent of the monetary damages suffered by reason of Defendants' acts.

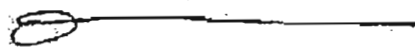
4 30. Plaintiff is further entitled to recover from Defendants the gains, profits, and
5 advantages Defendants have obtained as a result of Defendants' acts in violation of §43(a).

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays the following relief and judgment be granted jointly
9 and severally against all Defendants as follows:

- 10 1. For a declaration that Plaintiff has senior rights to the mark "Material Girl" in
11 commerce nationwide in the clothing space;
- 12 2. For a declaration that Defendants have no right to use the mark "Material Girl"
13 in connection with clothing sales, advertising or merchandising;
- 14 3. For a declaration that Defendant's pending Federal Trademark Application be
15 denied;
- 16 4. For Plaintiff's actual damages along with Defendants' profits attributable to
17 their unlawful conduct according to proof to be proved at trial;
- 18 5. For such further and additional relief as the Court may deem just and proper,
19 including pre-and post-judgment interest.

20
21
22 Dated: August 19, 2010 **ONE LLP**

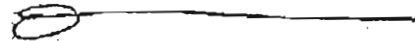
23
24 
25 By: _____
26 Imran F. Vakil
27 Attorneys for Plaintiff, LA TRIUMPH, Inc.
28

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

DEMAND FOR JURY TRIAL

Plaintiff LA TRIUMPH, Inc. hereby demands trial by jury of all issues so triable under the law.

Dated: August 19, 2010 ONE LLP

By: 
Imran F. Vakil
Attorneys for Plaintiff, LA TRIUMPH, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

L.A. TRIUMPH, INC., a California corporation,

PLAINTIFF(S)

v.

MADONNA LOUISE VERONICA CICCONE, an individual; MATERIAL GIRL BRAND, LLC, an entity of unknown form; and DOES 1 through 10, inclusive

DEFENDANT(S).

CASE NUMBER

CV 10 6195-STO (JG)

SUMMONS

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Imran F. Vakil of One LLP, whose address is 4000 MacArthur Boulevard, West Tower, Suite 1100, Newport Beach, CA 92660. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 19 AUG 2010

By: [Signature]
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

COPY

FILED

NAME, ADDRESS & TELEPHONE NUMBER OF ATTORNEY(S) FOR, OR, PLAINTIFF OR DEFENDANT IF PLAINTIFF OR DEFENDANT IS PRO PER

Imran F. Vakil (Bar No. 248859)
Email: ivakil@onellp.com
ONE LLP
4000 MacArthur Boulevard
West Tower, Suite 1100
Newport Beach, CA 92660 949-502-2870
ATTORNEYS FOR: Plaintiff, L.A. Triumph, Inc.

10 AUG 19 PM 12:36

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

L.A. TRIUMPH, INC., a California corporation,

CASE NUMBER:

CV 10 6195-SJD(JC)

v.

Plaintiff(s),

CERTIFICATION AND NOTICE
OF INTERESTED PARTIES
(Local Rule 7.1-1)

MADONNA LOUISE VERONICA CICCONI, an individual;
MATERIAL GIRL BRAND, LLC, an entity of unknown form;
and DOES 1 through 10, inclusive, Defendant(s)

TO: THE COURT AND ALL PARTIES APPEARING OF RECORD:

The undersigned, counsel of record for Plaintiff, L.A. Triumph, Inc. (or party appearing in pro per), certifies that the following listed party (or parties) may have a direct, pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal. (Use additional sheet if necessary.)

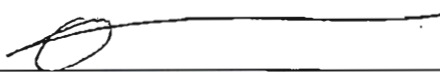
PARTY

CONNECTION

(List the names of all such parties and identify their connection and interest.)

L.A. Triumph, Inc.	Plaintiff
Madonna Louise Veronica Ciccone	Defendant
Material Girl Brand, LLC	Defendant

August 19, 2010
Date


Sign

Imran F. Vakil
Attorney of record for or party appearing in pro per