

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

ScantiWear International, L.L.C.

304 CV - 230 - 11

DEFENDANTS

Victoria's Secret Stores, Inc.

FEB - 2 2004

(b) County of Residence of First Listed Plaintiff Dallas (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Delaware (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

G. Scott Damuth
Burt Barr & Associates, L.L.P.
P.O. Box 223667
Dallas, Texas 75222-3667
214-943-0012

Attorneys (If Known)

Angelo Notaro
Colucci & Umans
Manhattan Tower, 101 East 52nd Street
New York, NY 10022-6018

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 310 Airplane, 610 Agriculture, etc.

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause Do not cite jurisdictional statutes unless diversity.)

Patent Infringement, Patent Act 35 U.S.C. §271, et seq., also diversity 28 U.S.C. §1332

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ >100,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

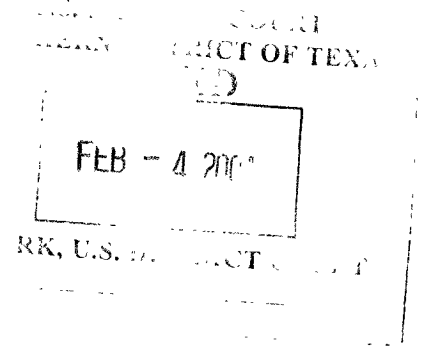
DATE 2-4-04 JUDGE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

LEAD COUNSEL:

G. Scott Damuth
State Bar No. 05351400
John Holman Barr
State Bar No. 01798700
M. Forest Nelson
State Bar No. 14904625
BURT BARR & ASSOCIATES, L.L.P.
P. O. Box 223667
Dallas, Texas 75222-3667
214/943-0012 (Telephone)
214/943-0048 (Telecopier)
Attorneys for ScantiWear International, L.L.C.



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SCANTIWEAR INTERNATIONAL,
L.L.C.,
Plaintiff,

v.

VICTORIA'S SECRET STORES, INC.,
Defendant.

§
§
§
§
§
§
§
§

Civil Action No. _____
JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, ScantiWear International, L.L.C. ("Plaintiff") hereby complains of Defendant, Victoria's Secret Stores, Inc. ("Defendant"), as follows:

1. This is an action for patent infringement under the Patent Act, 35 U.S.C. §271 et seq.
2. This Court has subject matter jurisdiction under 28 U.S.C. §1331, §1332, and §1338a. The amount in controversy exceeds \$75,000.00, excluding interest and costs.
3. Venue is proper in this Court under 28 U.S.C. §1391b and §1400b and the Texas

Statutes.

4. ScantiWear is a limited liability corporation organized and existing under the laws of the State of Texas, with its principal place of business in Addison, Texas. ScantiWear is a Texas citizen.
5. Victoria's Secret Stores is a corporation organized and existing under the laws of the State of Delaware and is registered to do business and is doing business in the State of Texas. Victoria's Secret Stores' principal place of business is in Ohio. Its registered agent for service of process is CT Corporation Systems, 350 N. St. Paul Street, Dallas, Texas 75201. Victoria's Secret Stores is an Ohio and Delaware citizen.
6. Plaintiff is the owner of United States Patent No. 5,345,613 ("the '613 patent"). A copy of '613 patent is attached as Exhibit 1. The '613 patent was duly and legally issued on September 13, 1994 and was subsequently assigned to Plaintiff.
7. Plaintiff owns the referenced patent and has been in negotiation with Defendant for the use and license of the patent for almost two years, although no agreement has been reached. Upon information and belief, Defendant has actually manufactured certain products in anticipation of a written agreement for the use of such patent. As a part of that process, Defendant prepared promotional materials to market and package the product that Plaintiff was going to license to the Defendant. Attached hereto as Exhibit 2 is a photograph that was used with these promotional and packaging materials which the Defendant provided to the Plaintiff several months ago.

8. At some time unknown to Plaintiff, Defendant manufactured other products using Plaintiff's invention for hosiery and related undergarments in violation of Plaintiff's protected rights to such products. Defendant began selling these products at its retail outlets in Dallas County, Texas in late November and has continued since that time. Upon information and belief, Defendant has sold and continues to sell these products at most, if not all, of its stores in the United States. Attached hereto as Exhibit 3 is the exact same photograph as Exhibit 2 but such photograph was contained in promotional mailings to Defendant's customers the same day that Defendant informed the Plaintiff that "Based on how the current situation evolved, Victoria's Secret is unwilling to proceed with further negotiations for a license under either of the ScantiWear patents."
9. Defendant has infringed and is infringing the '613 patent by making, using, offering to sell, selling, and/or importing products that are covered by one or more of the claims of the '613 patent.
10. Defendant has actively induced and is actively inducing third parties to make, use, offer for sale, sell, and/or import products that are covered by one or more of the claims of the '613 patent.
11. The acts of infringement of Defendant have been without express or implied license by Plaintiff, and are in violation of Plaintiff's patent rights.
12. Plaintiff has been damaged by Defendant's acts of infringement.
13. Upon information and belief, Defendant will continue to infringe the '613 patent unless enjoined by this Court.

14. Upon information and belief, Defendant's infringement has been willful and deliberate.

WHEREFORE, Plaintiff, ScantiWear, respectfully prays that:

- a. This Court enter judgment that the Defendant has been and is currently infringing the '613 patent;
- b. This Court enter judgment that Defendant has been and is currently inducing the infringement of the '613 patent;
- c. Defendant, and each of its officers, agents, servants, employees, assigns and successors in interest, those person in active concert or participation with them, and others acting for or on their behalf, be preliminarily and permanently enjoined from infringing the '613 patent;
- d. Defendant be directed to pay Plaintiff the damages suffered by Plaintiff as a result of Defendant's infringing conduct, such damages including, but not limited to Plaintiff's lost profits on sales of the infringing products;
- e. Defendant be directed to pay to Plaintiff the amount of damages, which Plaintiff has sustained as a result of the Defendant's acts of patent infringement, and that such damages be trebled under 35 U.S.C. §284;
- f. This be declared an exceptional case under 35 U.S.C. §285, and Plaintiff be awarded its reasonable attorneys' fees;
- g. Defendant be directed to pay to Plaintiff an award of prejudgment interest, post-judgment interest, and the costs of such suit; and
- h. Plaintiff be granted such other and additional relief as this Court deems equitable and

proper.

Pursuant to RCP 38b, Plaintiff demands a trial by jury.

Dated: February 4, 2004.

Respectfully submitted,

By:



G. SCOTT DAMUTH

SBN: 05351400

JOHN HOLMAN BARR

SBN: 01798700

M. FOREST NELSON

SBN: 14904625

Burt Barr & Associates, L.L.P.

P.O. Box 223667

Dallas, Texas 75222-3667

(214) 943-0012 (office)

(214) 943-0048 (fax)

Attorneys for Plaintiff

EXHIBIT “1”