

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAIDENFORM BRANDS, INC.

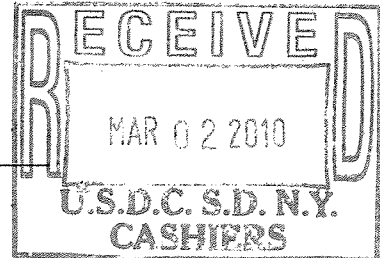
Plaintiff,

vs.

TIMES THREE CLOTHIER LLC d/b/a
YUMMIE TUMMIE

Defendant.

Case No. _____



**COMPLAINT FOR DECLARATORY JUDGMENT OF
NON-INFRINGEMENT AND INVALIDITY**

For its complaint, Plaintiff Maidenform Brands, Inc. (“Maidenform”), by and through its attorneys, Proskauer Rose LLP, avers as follows:

THE PARTIES

1. Maidenform is a corporation organized under the laws of Delaware, with its principal place of business located at Woodbridge Corporate Plaza, 485 US Highway Route 1, South Iselin, NJ 08830. Maidenform is a global company that designs and markets an extensive range of women’s apparel products.

2. Defendant Times Three Clothier LLC d/b/a Yummie Tummie (“Yummie Tummie”) is a limited liability company organized under the laws of the State of New York, with its principal place of business located at 1459 Broadway, Suite 2002, New York, NY 10018. On information and belief, Yummie Tummie is engaged in the business of selling women’s apparel.

JURISDICTION AND VENUE

3. This is an action for a declaration of non-infringement of U.S. Design Patent No. 606,285 (“the ’285 Patent”). This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action concerns a federal question relating to patents arising under Title 35 of the United States Code, and pursuant to 28 U.S.C. §§ 2201 and 2202 because this is a civil action for a declaratory judgment involving a justiciable controversy between Maidenform and Yummie Tummie.

4. This Court has personal jurisdiction over Yummie Tummie because, on information and belief, Yummie Tummie conducts business in the State of New York and within this district, including through sales of its products at department and specialty stores and through Internet sales to New York residents.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391.

GENERAL ALLEGATIONS

6. For many years, Maidenform has designed, sourced, and marketed an extensive range of apparel products for women.

7. Maidenform sells its products through multiple distribution channels, including department stores, national chain stores, warehouse clubs, specialty retailers, its company-operated outlet stores, and its website.

8. Maidenform sells a collection of shapewear products known as Flexees®. Most Flexees® products serve as an under layer for all types of clothing, offering women comfort and flexibility while slimming and shaping. Some Flexees® products, however, can be worn alone, including tank tops, shrugs, leggings, boy shorts, and dresses. The

Flexees[®] collection is designed with shape-defining properties to provide a range of control from firm to lighter control.

9. One of the Maidenform products in the Flexees[®] collection is the Fat-Free Dressing[™] Tank Top. The Fat-Free Dressing[™] Tank Top can be worn alone or under other layers of clothing. The product is made of a lightweight fabric that gives the garment a uniform appearance, while a soft, hidden microfiber liner smoothes and shapes the midsection.

10. On information and belief, Yummie Tummie has been in contact with one or more Maidenform customers, alleging that Maidenform's Flexees[®] Fat-Free Dressing[™] Tank Top infringes the '285 Patent.

11. Maidenform does not infringe the Yummie Tummie design patent. At a minimum, as shown in the chart below, Maidenform's Flexees[®] Fat-Free Dressing[™] Tank Top does not infringe for the following reasons: 1) it does not have an hourglass shape; 2) the entire outer surface of the Maidenform product is made of the same fabric and does not include contrasting materials; and 3) the front neck contour is shallower than the rear neck contour.

D606,285

Flexees® Fat-Free Dressing™ Tank Top

Front View

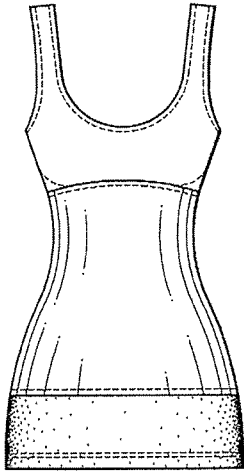
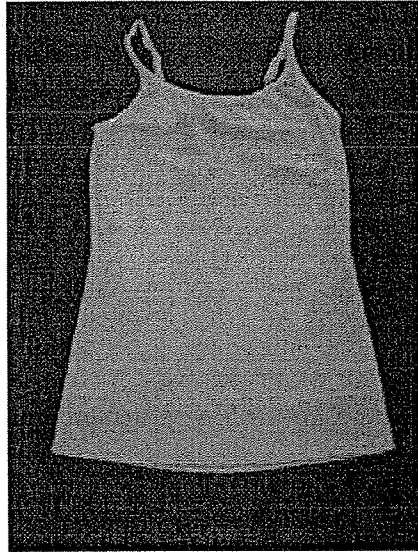


FIG. 1

Front View



Rear View

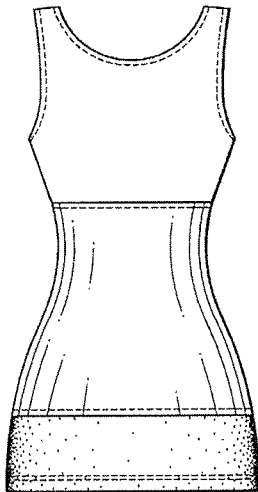
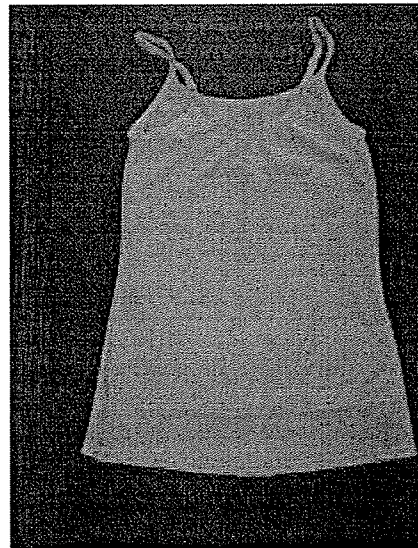


FIG. 2

Rear view



12. An actual controversy exists between Maidenform and YummieTummie regarding whether the Maidenform infringes the '285 Patent.

13. Yummie Tummie's conduct has placed Maidenform in reasonable apprehension of an infringement suit against Maidenform.

COUNT I

Declaratory Judgment Of Non-infringement And Invalidity Of U.S. Design Patent No. 606,285

14. Maidenform restates, realleges, and incorporates by reference Paragraphs 1-13 as if set forth in full herein.

15. Maidenform does not infringe the '285 Patent by making, using, offering to sell, or selling its Flexees® Fat-Free Dressing™ Tank Top, and Maidenform does not induce or contribute to infringement of the '285 Patent in so doing.

16. On information and belief, the '285 Patent is invalid for failing to satisfy one or more of the conditions for patentability set forth in 35 U.S.C. §§ 101, 102, 103, and 112.

17. An actual controversy exists between Maidenform and YummieTummie regarding whether Maidenform infringes the '285 Patent and whether the '285 Patent is invalid.

18. Judicial declarations that Maidenform does not infringe the '285 Patent and that the '285 Patent is invalid are necessary and appropriate so that Maidenform can clear its rights with respect to making, using, selling, and offering for sale the Flexees® Fat-Free Dressing™ Tank Top. Absent such declarations, Yummie Tummie may continue to assert the '285 Patent against Maidenform and its customers, and thereby cause Maidenform irreparable injury.

PRAYER FOR RELIEF

WHEREFORE, Maidenform prays for the following relief:

1. That judgment be entered declaring that Maidenform does not infringe, directly or indirectly, the '285 Patent;
2. That judgment be entered declaring that the '285 Patent is not valid;
3. An assessment of costs, including reasonable attorney fees, pursuant to 35 U.S.C. § 285, with prejudgment interest; and
4. That Maidenform be awarded such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Maidenform hereby makes a demand for a trial by jury as to all issues in this lawsuit so triable.

DATED: March 2, 2010

Respectfully submitted,



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