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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STELLA MCCARTNEY LIMITED,

Plaintiff,

v.

STEVE MADDEN LTD.,

Defendant.

No. _____

COMPLAINT

Plaintiff, Stella McCartney Limited, by its undersigned attorneys, Fross Zelnick Lehrman & Zissu, P.C., for its Complaint against Defendant, Steve Madden Ltd., alleges as follows:

NATURE OF THE ACTION AND RELIEF SOUGHT

1. This is an action for trade dress infringement, unfair competition, deceptive trade practices, trade dress dilution, and design patent infringement, arising out of Defendant's marketing and sale of a knock-off of Plaintiff's famous FALABELLA Foldover Tote bag.

2. Plaintiff markets and sells clothing, accessories, eyewear, and fragrance products designed by world-famous designer Stella McCartney. One of Plaintiff's products is the well-known and enormously popular FALABELLA Collection of bags.

3. Long after Plaintiff's FALABELLA Collection of bags, with their distinctive trade dress, achieved prominence in the fashion industry, and after Plaintiff obtained design patent protection for its design, Defendant began importing and selling a tote bag, that, although virtually identical in appearance to Plaintiff's design, is a poorly-made copy.

4. By selling this knock-off, which Defendant calls the BTOTALLY bag, Defendant is likely to confuse consumers into believing that Defendant's product is Plaintiff's product, and to cause economic harm to consumers, given its shoddy quality. Further, given the likelihood of confusion, the sale of Defendant's product harms Plaintiff's reputation and diverts sales from Plaintiff.

5. To protect its extensive investment and the goodwill it has established in its FALABELLA trade dress, Plaintiff brings this action. Plaintiff seeks an injunction, an accounting of Defendant's profits flowing from use of the infringing trade dress, damages, attorneys' fees, and such other and further relief as the Court deems just and proper.

THE PARTIES

6. Plaintiff, Stella McCartney Limited, is a limited liability company organized and existing under the laws of the United Kingdom, with a principal place of business at 3 Olaf Street, London W114BE, United Kingdom.

7. On information and belief, Defendant, Steve Madden Ltd., is a New York corporation with a place of business at 52-16 Barnett Avenue Long Island City, New York 11104.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action under Section 39 of the Lanham Act, 15 U.S.C. § 1121, and under Sections 1331, 1338(a) and 1338(b) of the United States Judicial Code, 28 U.S.C. §§ 1331, 1338(a)-(b).

9. The Court has supplemental jurisdiction over Plaintiff's state law claims under Section 1367(a) of the United States Judicial Code, 28 U.S.C. § 1367(a).

10. This Court has personal jurisdiction over Defendant because Defendant sells its infringing products in the Southern District of New York, and a significant portion of the events at issue have arisen and will arise in this judicial district.

11. Venue is proper in this district pursuant to Section 1391(b) of the United States Judicial Code, 28 U.S.C. § 1391(b), because a substantial part of the events at issue and Defendant's acts of infringement have occurred in this district and Plaintiff is suffering harm in this district.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. Plaintiff's Well-Known FALABELLA Trade Dress

12. Plaintiff is a world-famous fashion house, headquartered in London, England. It markets designs of Stella McCartney under the STELLA MCCARTNEY brand not only in England, but also in many other countries, including the United States.

13. One of Plaintiff's most successful lines of products is the well-known and enormously popular FALABELLA Collection of bags. First launched in the summer of 2009, Plaintiff's FALABELLA Collection includes a variety of shapes and styles, all of which feature a chain attached to the body of each bag with a whip-stitch.

14. The very first bag launched in the FALABELLA Collection was Plaintiff's FALABELLA tote bag in black (depicted below):



15. Shortly after the FALABELLA tote bag was launched, Plaintiff launched a slight variation of the original bag as a FALABELLA Foldover Tote. The FALABELLA Foldover Tote incorporated an additional chain shoulder strap. Both the FALABELLA tote bag and the FALABELLA Foldover Tote have since become iconic designs of the STELLA MCCARTNEY brand. The FALABELLA Foldover Tote is depicted below:



16. The bags in the FALABELLA Collection all feature a continuous chain attached to the main body of the bag with whip-stitching, with the chain itself extending beyond the top of the bag to form handles. The top edges of the bag – the opening – are finished with whip-stitching of a similar size to that used to apply the chain. The combination of the Plaintiff’s signature whipstitch chain and the overall tote bag design makes the FALABELLA tote bag and the FALABELLA Foldover Tote instantly recognizable as part of Plaintiff’s collection.

17. Plaintiff’s FALABELLA tote bag and FALABELLA Foldover Tote have received overwhelming media attention since the launch in summer 2009 and have been extremely popular with celebrities, including Anne Hathaway, Kim Kardashian, Kate Hudson, Demi Lovato, Victoria Beckham, Fergie, and Jennifer Lopez, to name just a few. As a result of the unique and highly distinctive features of the FALABELLA bags, and popularity among fashion leaders, the FALABELLA design has been acclaimed by the press. For example, one journalist commented, “With her ‘Falabella bag’ she [Stella McCartney] became the first designer to create an ‘It bag’ without the use of any animal products. Now that’s a statement.” (<http://www.redflagmagazine.org/>).

18. Plaintiff is the owner of U.S. Design Patents Nos. D654,691 and D646,894, which claim a bag design in which a continuous chain is attached to the body of the bag with a whip-stitch and forms handles. (Copies of these Design Patents are annexed as **Exhibit A**).

19. In addition to Plaintiff’s Design Patent rights, Plaintiff owns trade dress rights in its FALABELLA Collection. Trade dress protects the design of a product as an indication of origin. In this case, by virtue of the chain attached to the body with a whip-stitch in all bags in the FALABELLA Collection, and the widespread sale, advertising and promotion of the

Collection, the public understands the trade dress as indicating Stella McCartney as the designer and Plaintiff as the source of the bags.

20. In the United States, Plaintiff's FALABELLA bags are sold through a wide variety of channels, including but not limited to:

- Department stores, including but not limited to Neiman Marcus, Saks Fifth Avenue, Nordstrom, and Bergdorf Goodman;
- Independent stores;
- Retailers' websites, including but not limited to www.saksfifthavenue.com, and www.shop.nordstrom.com;
- Plaintiff's own online store at www.stellamccartney.com

21. Plaintiff's FALABELLA line has sold extremely well. In the past six years, U.S. sales of bags featuring the FALABELLA trade dress have been in the tens of millions of dollars.

22. Over the same period of time, Plaintiff has extensively promoted its FALABELLA line. Plaintiff's promotional activity for its FALABELLA products has reached millions of consumers in the United States.

23. Stories about, references to, and illustrations of Plaintiff's FALABELLA line have appeared in numerous fashion, leisure, women's, and general interest publications, including but not limited to Vogue US, Elle US, InStyle US, and Harper's Bazaar, to name only a few.

24. Plaintiff's FALABELLA trade dress has become famous, in part as a result of the tremendous press coverage it has received in New York, nationally, and internationally.

25. As shown in the photographs in this complaint, the key elements of the distinctive FALABELLA trade dress include: (a) a continuous chain attached to the main body of the bag,

(b) attached by means of whip-stitching, (c) the chain itself extending beyond the top of the bag to form handles, and (d) the top edges of the bag – the opening – finished with whip-stitching of a similar size to that used to apply the chain.

26. The striking and distinctive nature of the FALABELLA trade dress ensures that, even from far away, consumers will recognize and be drawn to the products.

27. The combination of elements that make up the FALABELLA trade dress is not functional for purposes of Section 43(a)(3) of the Lanham Act, 15 U.S.C. § 1125(a)(3), as it is not essential to the use or purpose of the products, does not affect the cost or quality of products, and, when used exclusively by Plaintiff, does not put Plaintiff's competitors at a significant non-reputation-related disadvantage.

28. As a result of Plaintiff's substantial effort and investment and the success of Plaintiff's products bearing the FALABELLA trade dress, Plaintiff's FALABELLA trade dress has acquired "secondary meaning" in that it has become distinctive and instantly recognizable to the public as a symbol exclusively denoting Plaintiff and signaling the high quality of its products. The FALABELLA trade dress achieved this status long before Defendant first began its infringing activities, described below.

29. The FALABELLA trade dress represents enormous goodwill of Plaintiff and is a tremendously valuable asset of Plaintiff.

30. Based on Plaintiff's extensive use, marketing and promotion of its goods bearing the FALABELLA trade dress, Plaintiff owns common law rights in the FALABELLA trade dress in connection with its products.

B. Defendant's Unlawful Use of Plaintiff's Trade Dress

31. Defendant is a company involved in the manufacture, importation, distribution, and sale of shoes and accessories and has on more than one occasion been involved in selling shoes that are alleged to copy the trade dress of well-known fashion designers.

32. Long after Plaintiff obtained exclusive rights in its FALABELLA trade dress, Defendant – in a blatant attempt to trade off the renown of the FALABELLA line and to confuse consumers – began marketing its BTOTALLY knock-off tote bag (the “Infringing Bag”) using a chain and whip-stitch border trade dress confusingly similar to that used by Plaintiff for its genuine FALABELLA bags.

33. On a visual comparison, the Infringing bag is virtually identical to Plaintiff's iconic FALABELLA Foldover Tote bag, as shown below:

Falabella Foldover Tote



Steve Madden BTOTALLY Bag



34. The Infringing Bag has fabric inserts at the apex of the chain handles, mirroring the newer designs in Plaintiff's FALABELLA collection, which feature similar fabric inserts.

Images of Plaintiff's fabric inserts are shown below:



35. Thus, Defendant's Infringing Bag mimics every key element of the famous and distinctive FALABELLA trade dress.

36. The similarities include Defendant's use of (a) a continuous chain attached to the main body of the bag, (b) attached by means of whip-stitching, (c) the chain itself extending beyond the top of the bag to form handles, and (d) the top edges of the bag – the opening – finished with whip-stitching of a similar size to that used to apply the chain.

37. Indeed, one fashion blogger has suggested that the two are so close in appearance that even sophisticated consumers can't tell the difference. (See: "Can You Tell Which Black Bag Costs \$1,087 More Than The Other?" attached as **Exhibit B**.)

38. Defendant's use of Plaintiff's design patent and trade dress clearly seeks to mislead consumers into believing that the Infringing Bag and Plaintiff's FALABELLA Foldover Tote are one and the same, or that the Infringing Bag is made, approved, sponsored or endorsed by Plaintiff, or that the two companies are somehow connected. The risk that consumers will be misled in this way is heightened since Stella McCartney is well-known for working with other

brands on collaborations to market garments incorporating key design features associated with Plaintiff. For example, Plaintiff has worked with Adidas since 2004 designing several high profile sportswear collections. In 2005, a highly-anticipated collection for H&M was produced and was a huge success, attracting considerable media attention and selling out within days of launch. More recently, Plaintiff collaborated with Gap. It is therefore entirely plausible that consumers will, on seeing Defendant's Infringing Bag, mistakenly believe that it is part of a diffusion line for Plaintiff or is associated with or endorsed by Plaintiff, given its striking similarity to the Falabella Foldover Tote. This confusion will occur not only at the point of sale, but also post-sale.

39. On information and belief, Defendant has imported, advertised, offered for sale, and sold the Infringing Bag in the United States, including New York State and this judicial district.

40. On information and belief, Defendant is intentionally targeting and seeking to sell the Infringing Bag to Plaintiff's customers and potential customers and consumers who are familiar with Plaintiff's well-known FALABELLA trade dress.

41. Defendant has never been associated or affiliated with or licensed by Plaintiff in any way, and the Infringing Bag is not made by, affiliated with, sponsored by, or endorsed by Plaintiff.

42. Comments on Defendant's website show that its Infringing Bag is of poor quality.

Some examples are:

- "Got this bag a month ago. It was pretty then but now it is falling apart! Do not waste your money."
- "Love the look of this bag but with less than 24 hours of use the laces began to unravel."
- "Maybe a week (if that) after receiving it the sides began to unravel"

- “I purchased this about a month ago, the picture on the website is an accurate description of the purse[.] I think it looks lovely. However, I have not been able to wear the purse as the lining inside of the purse has the most ungodly smell. [I]t smells like spoiled fish. I don't know how to remove the fishy smell without ruining the purse. Very dis[ap]ointed.”

Because of the poor quality of the Infringing Bag, consumers will be harmed by having wasted their money on it.

43. Moreover, Plaintiff's reputation is likely to be damaged and it is likely to lose sales as a result of post-sale confusion. For example, a woman who sees on her friend's shoulder what appears to be the FALABELLA bag (but is really the Infringing Bag), notices that that the stitching is unravelling and that the bag is falling apart, may say to herself, “I will never buy a Falabella bag.” The harm to Plaintiff is obvious.

44. On information and belief, Defendant uses the infringing trade dress to pass off its goods as Plaintiff's and otherwise to benefit from the recognition and goodwill of Plaintiff's famous FALABELLA trade dress. On information and belief, Defendant's conduct is calculated to confuse and mislead consumers, create a false impression as to the source and sponsorship of Defendant's Infringing Bag, divert business from Plaintiff, pass off the Infringing Bag as being authorized and endorsed by Plaintiff, and otherwise falsely misrepresent the nature and quality of Defendant's product and misappropriate the goodwill associated with Plaintiff and its FALABELLA trade dress.

45. On information and belief, Defendant began using and is using the infringing trade dress with full knowledge of Plaintiff's prior exclusive rights, with knowledge of the reputation

and goodwill of the FALABELLA trade dress, and with knowledge that the trade dress is associated exclusively with Plaintiff and Plaintiff's goods.

46. The goodwill that Plaintiff has built up in the FALABELLA trade dress is put at risk by Defendant's sale of the Infringing Bag. Defendant's continued use of a trade dress nearly identical to that of the FALABELLA bag in connection with a competing business is likely to cause confusion in the marketplace, because purchasers and potential purchasers will assume that the Infringing Bag sold by Defendant emanates from or is authorized by, licensed by, endorsed by, associated with, or otherwise connected with Plaintiff and/or Plaintiff's goods. By virtue of Defendant's use of a nearly identical trade dress, potential purchasers will assume, incorrectly, that the infringing goods are Plaintiff's.

47. Defendant's use of trade dress that so closely resembles Plaintiff's FALABELLA trade dress unfairly and unlawfully wrests from Plaintiff control over its reputation.

48. Defendant's unauthorized acts as described herein have caused and will continue to cause irreparable damage to Plaintiff's business and goodwill unless restrained by this Court.

49. Plaintiff has no adequate remedy at law.

**FIRST CLAIM FOR RELIEF – FEDERAL
TRADE DRESS INFRINGEMENT (15 U.S.C. § 1125(a))**

50. Plaintiff repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

51. The FALABELLA trade dress is used in commerce, is not functional, is inherently distinctive, and has acquired secondary meaning in the marketplace.

52. Defendant's Infringing Bag, which is now being used in commerce, features a trade dress that is confusingly similar to the FALABELLA trade dress and is being marketed through a scheme designed to confuse consumers.

53. Defendant's manufacture, importation, distribution, sale and promotion of the Infringing bag is likely to cause confusion and mistake and to deceive consumers as to the source, origin or sponsorship of the Defendant's product.

54. Defendant chose to use the trade dress of the Infringing Bag with knowledge of Plaintiff's prior use of and rights in the well-known and distinctive FALABELLA trade dress. On information and belief, Defendant has used the Infringing Bag trade dress in commerce with the intent to cause confusion, to cause mistake, or to deceive.

55. Defendant's actions constitute willful trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

**SECOND CLAIM FOR RELIEF – FEDERAL
UNFAIR COMPETITION (15 U.S.C. § 1125(a))**

56. Plaintiff repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

57. Defendant's use of the FALABELLA trade dress on the Infringing Bag constitutes a false designation of origin and a false representation as to the origin of Defendant's goods, is likely to cause confusion, mistake, or deception as to the source of Defendant's goods, and is likely to create the false impression that Defendant's goods are authorized, sponsored, endorsed, licensed by, or affiliated with Plaintiff.

58. On information and belief, Defendant chose to use the trade dress of the Infringing Bag with knowledge of Plaintiff's prior use of, and rights in, the FALABELLA trade dress. On information and belief, Defendant used the trade dress of the Infringing Bag in commerce with the intent to cause confusion, to cause mistake, or to deceive.

59. Defendant's actions constitute unfair competition, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

**THIRD CLAIM FOR RELIEF
UNFAIR COMPETITION UNDER NEW YORK COMMON LAW**

60. Plaintiff repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

61. Defendant's conduct complained of herein is likely to confuse the public as to the origin, source or sponsorship of Defendant's goods, or to cause mistake or to deceive the public into believing that Defendant's goods are made, authorized, sponsored, endorsed, licensed by, or affiliated with Plaintiff, in violation of Plaintiff's rights in the FALABELLA trade dress under New York State common law.

62. On information and belief, Defendant chose to use the trade dress of the Infringing Bag with knowledge of Plaintiff's prior use of, and rights in, the FALABELLA trade dress in connection with tote bags. By adopting and using a colorable imitation of the valuable and distinctive FALABELLA trade dress, Defendant has been unjustly enriched and Plaintiff has been damaged.

63. By misappropriating and trading on the goodwill and business reputation represented by the FALABELLA trade dress, Defendant has been and, unless enjoined by this Court, will continue to be unjustly enriched at Plaintiff's expense.

64. Defendant's use of a trade dress nearly identical to the FALABELLA trade dress in connection with its Infringing Bag constitutes unfair competition under New York common law.

65. Defendant's conduct has caused and is causing immediate and irreparable injury to Plaintiff and will continue to injure Plaintiff and injure and deceive the public, unless enjoined by this Court. Plaintiff has no adequate remedy at law.

**FOURTH CLAIM FOR RELIEF: DESIGN PATENT INFRINGEMENT
(35 U.S.C. § 271) (Patent No. D654,691)**

66. Plaintiff repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

67. Plaintiff owns U.S. Design Patent Number No. D654,691 (the “’691 Patent”), which is valid and subsisting.

68. Defendant, without authorization from Plaintiff, has manufactured, imported distributed, advertised, promoted, offered for sale and sold tote bags bearing a design that substantially resembles each design claimed in the ’691 Patent. Defendant has known of the Patent at least since October 28, 2014.

69. An ordinary observer, giving such attention as a purchaser usually gives, would find the design of Defendant’s Infringing Bag to be substantially the same as Plaintiff’s patented design.

70. By the foregoing acts, Defendant has directly infringed, infringed under the doctrine of equivalents, contributorily infringed, and/or induced infringement of, and continues to so infringe, the ’691 Patent.

71. On information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and in bad faith, and with knowledge of Plaintiff’s exclusive patent rights. Defendants’ acts constitute violations of Section 271 of the Patent Act, 35 U.S.C. § 271.

72. By adopting and using a colorable imitation of the patented design of the FALABELLA Foldover Tote, Defendant has caused and is causing substantial irreparable harm to Plaintiff and will continue to damage Plaintiff unless enjoined by this Court.

73. Plaintiff has no adequate remedy at law.

**FIFTH CLAIM FOR RELIEF: DESIGN PATENT INFRINGEMENT
(35 U.S.C. § 271) (Patent No. D646,894)**

74. Plaintiff repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

75. Plaintiff owns U.S. Design Patent Number No. D646,894 (the “’894 Patent”), which is valid and subsisting.

76. Defendant, without authorization from Plaintiff, has manufactured, imported distributed, advertised, promoted, offered for sale and sold tote bags bearing a design that substantially resembles each design claimed in the ’894 Patent. Defendant has known of the Patent at least since October 28, 2014.

77. An ordinary observer, giving such attention as a purchaser usually gives, would find the design of Defendant’s Infringing Bag to be substantially the same as Plaintiff’s patented design.

78. By the foregoing acts, Defendant has directly infringed, infringed under the doctrine of equivalents, contributorily infringed, and/or induced infringement of, and continues to so infringe, the ’894 Patent.

79. On information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and in bad faith, and with knowledge of Plaintiff’s exclusive patent rights. Defendants’ acts constitute violations of Section 271 of the Patent Act, 35 U.S.C. § 271.

80. By adopting and using a colorable imitation of the patented design of the FALABELLA Foldover Tote, Defendant has caused and is causing substantial irreparable harm to Plaintiff and will continue to damage Plaintiff unless enjoined by this Court.

81. Plaintiff has no adequate remedy at law.

**SIXTH CLAIM FOR RELIEF
VIOLATION OF THE NEW YORK DECEPTIVE
AND UNFAIR TRADE PRACTICES ACT
(N.Y. General Business Law § 349)**

82. Plaintiff repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

83. Defendant's use of the trade dress of the Infringing Bag has the capacity to deceive and is deceiving the public as to the source of sponsorship of Defendant's goods. As a result, the public will be damaged.

84. Defendant's conduct is willful and in knowing disregard of Plaintiff's rights.

85. Defendant has been and is engaged in deceptive acts or practices in the conduct of a business, trade or commerce, in violation of Section 349 of the New York General Business Law.

86. Defendant's conduct has caused and is causing immediate and irreparable injury to Plaintiff and will continue to both damage Plaintiff and deceive the public unless enjoined by this Court. Plaintiff has no adequate remedy at law.

**SEVENTH CLAIM FOR RELIEF
TRADE DRESS DILUTION UNDER NEW YORK STATE LAW
(N.Y. General Business Law § 360-1)**

87. Plaintiff repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

88. Plaintiff's FALABELLA trade dress is distinctive and acquired its distinctiveness in connection with tote bags before Defendant's first sale of the Infringing Bag.

89. The FALABELLA trade dress is used in commerce, is non-functional, and is inherently distinctive. The FALABELLA trade dress acquired its distinctiveness in connection with tote bags before Defendant's first use of the trade dress of the Infringing Bag.

90. Defendant's manufacture, importation, distribution, sale and promotion of the Infringing Bag, which features a trade dress confusingly similar to the FALABELLA trade dress, is diluting and is likely to continue diluting Plaintiff's FALABELLA trade dress by blurring the distinctiveness thereof, and is likely to injure Plaintiff's business reputation, in that Plaintiff's reputation has been removed from its authority and control and that deficiencies in or complaints about Defendant's poorly made goods will tarnish the goodwill in Plaintiff's trade dress and harm Plaintiff, all in violation of Section 360-1 of the General Business Law of the State of New York.

91. Defendant's unauthorized acts, described above, have caused and will continue to cause irreparable damage to Plaintiff's business and goodwill unless enjoined by this Court. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully demands judgment as follows:

- (1) That an injunction be issued enjoining Defendant, its officers, agents, directors, shareholders, principals, licensees, distributors, dealers, attorneys, servants, employees, affiliates, subsidiaries, and assigns, and all those persons in concert or participation with any of them from:
 - a. manufacturing, importing, distributing, shipping, advertising, marketing, promoting, selling or otherwise offering for sale the Infringing Bag or any product bearing the trade dress of the Infringing Bag or in any other trade dress that is confusingly similar to the FALABELLA trade dress;
 - b. conducting any activities in the United States that relate to, refer to or concern the advertising, promotion, manufacture, production, importation, distribution, displaying, sale or offering for sale of tote bags, in any media or format, using the trade dress of the Infringing Bag or any other dress that is a simulation,

reproduction, copy, colorable imitation or confusingly similar variation of the FALABELLA trade dress;

c. using any false designation of origin or false description (including, without limitation, any trade dress), or performing any act, which can, or is likely to, lead members of the trade or public to believe that any goods manufactured, imported, advertised, promoted, distributed, displayed, produced, sold or offered for sale by Defendant, are in any manner associated or connected with Plaintiff, or are authorized, licensed, sponsored or otherwise approved by Plaintiff;

d. infringing the '691 Patent or the '894 Patent or inducing or contributing to such infringement;

e. engaging in any other activity constituting unfair competition with Plaintiff, or constituting an infringement of the FALABELLA trade dress;

f. applying to register or registering in the United States Patent and Trademark Office or in any state trademark registry the trade dress of the Infringing Bag, or any other trade dress consisting in whole or in part of any simulation, reproduction, copy or colorable imitation of the FALABELLA trade dress, for tote bags, or any goods related to the foregoing;

g. diluting or tarnishing Plaintiff's FALABELLA trade dress;

h. assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (g) above;

(2) That Defendant and those acting in concert or participation with them (including, but not limited to, their officers, directors, agents, distributors, dealers, servants, employees,

representatives, attorneys, subsidiaries, related companies, successors, and assigns) take affirmative steps to dispel such false impressions that heretofore have been created by their use of the trade dress of Infringing Bag, including, but not limited to, delivering up to Plaintiff's attorneys for destruction or other disposition all goods, labels, tags, signs, stationery, prints, packages, promotional and marketing materials, advertisements and other materials (a) currently in Defendant's possession, custody, or control, or (b) recalled by Defendant pursuant to any order of the Court or otherwise, incorporating, featuring or bearing the trade dress of Infringing Bag or any other simulation, reproduction, copy or colorable imitation of the FALABELLA trade dress in connection with any products;

(3) Directing Defendant to deliver up to Plaintiff's attorneys an accounting of all profits earned on the Infringing Bag;

(4) Directing such other relief as the Court may deem appropriate to prevent the public from deriving the erroneous impression that any product manufactured, imported, advertised, promoted, distributed, displayed, produced, sold or offered for sale by or on behalf of Defendant is in any manner authorized by Plaintiff or related in any way to Plaintiff;

(5) Directing Defendant to file with the Court and serve on Plaintiff's counsel within thirty (30) days after entry of judgment a report in writing under oath, setting forth in detail the manner and form in which it has complied with the above;

(6) Awarding Plaintiff such damages it has sustained or will sustain by reason of Defendant's acts of trade dress infringement and unfair competition and that such sums be trebled pursuant to 15 U.S.C. § 1117;

(7) Awarding Plaintiff such damages it has sustained or will sustain by reason of Defendant's acts of design patent infringement, pursuant to 35 U.S.C. §§ 284 and 289.

(8) Awarding Plaintiff all gains, profits, property and advantages derived by Defendant from Defendant's unlawful conduct and that such profits be enhanced pursuant to 15 U.S.C. § 1117;

(9) Awarding to Plaintiff exemplary and punitive damages to deter any further willful infringement as the Court finds appropriate;

(10) Awarding to Plaintiff its costs and disbursements incurred in this action, including reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a) and 35 U.S.C. § 285;

(11) Awarding to Plaintiff interest, including pre-judgment interest, on the foregoing sums; and

(12) Awarding to Plaintiff such other and further relief as the Court may deem just and proper.

Dated: October 6, 2015
New York, New York

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