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07-17-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #71

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

1	Applicant:	ABC International Traders, Inc., d/b/a	Attorney Docket No.:	LOVC62296
2		MGA Entertainment Corporation		
3	Serial No.:	76/299,502	International Class:	28
4	Filed:	August 14, 2001	Published for Opposition:	April 30, 2002
5	Mark:	THE BRATZ PACK	Official Gazette:	Vol. 1257, No. 5, Page TM
6	Goods:	dolls and dolls accessories		

LOVINS, INC., D/B/A FRIDAY HARBOR
SPORTSWEAR, a Washington corporation,

Opposer,

v.

ABC INTERNATIONAL TRADERS, INC.,
D/B/A MGA ENTERTAINMENT
CORPORATION, a California corporation,

Applicant.

Opposition No. 152252

MOTION TO SUSPEND
PURSUANT TO 37 C.F.R. § 2.117

02 JUL 23 AM 8:33
TRADEMARK TRIAL AND
APPEAL BOARD

Seattle, Washington 98101

July 15, 2002

TO THE COMMISSIONER FOR TRADEMARKS
TRADEMARK TRIAL AND APPEAL BOARD

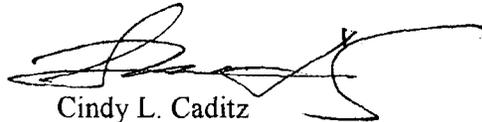
Pursuant to 37 C.F.R. § 2.117, Opposer, Lovins, Inc., d/b/a Friday Harbor Sportswear, respectfully requests that this action be suspended, pending disposition of a civil action in which the parties are currently engaged and which may be dispositive of the issues currently pending in this proceeding before the Trademark Trial and Appeal Board.

1 In support of this Motion, Opposer submits a copy of its First Amended Complaint filed in civil
2 action CV 02-1405R currently pending in the U.S. District Court for the Western District of
3 Washington at Seattle.

4 Dated this 15th day of July, 2002.

5 Respectfully submitted,

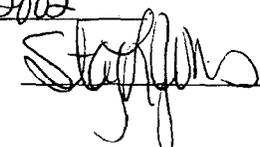
6 CHRISTENSEN O'CONNOR
7 JOHNSON KINDNESS^{PLLC}

8 

9 Cindy L. Caditz
10 Seann W. Hallisky
11 Attorneys for Opposer

12 **CERTIFICATE OF MAILING**

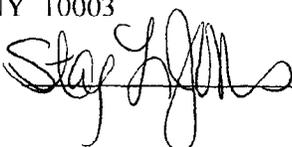
13 I hereby certify that this MOTION TO SUSPEND is being deposited with the U.S. Postal
14 Service in a sealed envelope as first class mail with postage thereon fully prepaid addressed to: BOX
15 TTAB FEE, Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive,
Arlington, VA 22202-3513, on July 15, 2002

16 Date: July 15, 2002 

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that this MOTION TO SUSPEND is being deposited with the U.S. Postal
19 Service in a sealed envelope as first class mail with postage thereon fully prepaid addressed to:

20 Carol A. Witschel
21 White & Case
22 1155 Avenue of the Americas
New York, NY 10003

23 Date: July 15, 2002 

24 SWH:slj
25

Honorable Barbara Jacobs Rothstein

COPY

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

Lovins, Inc. d/b/a Friday Harbor Sportswear, a
Washington corporation,

Plaintiff,

v.

ABC International Traders, Inc., d/b/a MGA
Entertainment Corporation, a California
corporation; Talk of the Town Apparel Corp., a
New York corporation; Jammies Manufacturing,
Inc., a New York corporation; Target
Corporation, a Minnesota corporation; Toys "R"
Us-Delaware, Inc. d/b/a Kids "R" Us, a Delaware
corporation, and John Does (1-5),

Defendants.

No. CV 02-1405R

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

I. THE PARTIES

1. Plaintiff, Lovins, Inc. d/b/a Friday Harbor Sportswear, is a Washington corporation having a principal place of business at 1625 39th Avenue East, Seattle, Washington 98112 (hereinafter "Lovins").

2. On information and belief, Defendant ABC International Traders, Inc., d/b/a MGA Entertainment Corporation, is a California corporation, having a principal place of business at 16730 Schoenborn Street, North Hills, California 91343 (hereinafter "ABC").

AMENDED COMPLAINT
(Cause No. CV 02- 1405R) - 1
LOVCO296PLA (AMENDED COMPLAINT).DOC

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O'CONNOR
JOHNSON
KINDNESS^{LLC}

LAW OFFICES
1420 Fifth Avenue, Suite 2300
Seattle, WA 98101-2347
TELEPHONE: 206.682.3100

1 3. On information and belief, Defendant Talk of the Town Apparel Corp. is a
2 New York Corporation having a place of business at 100 West 33rd Street, Suite 1100, New
3 York, New York 10001 (hereinafter "TOT").

4 4. On information and belief, Defendant Jammies Manufacturing, Inc., is a New
5 York Corporation having a place of business at 100 West 33rd Street, New York, New York
6 10001 (hereinafter "Jammies").

7 5. On information and belief, Defendant Target Corporation is a Minnesota
8 corporation employing as an agent for service of process C T Corp System, 520 Pike Street,
9 Seattle, Washington 98101 (hereinafter "Target").

10 6. On information and belief, Defendant Toys "R" Us-Delaware, Inc. d/b/a Kids
11 "R" Us, is a Delaware corporation employing as an agent for service of process Prentice Hall
12 Corp System, 1010 Union Avenue SE, Olympia, Washington 98501 (hereinafter "TRU").

13 7. On information and belief, Defendants John Does (1-5) are manufacturers,
14 distributors, licensees, licensors, agents or suppliers acting in cooperation with the named
15 defendants. Among the potential John Does are, to the extent they are not included among the
16 named defendants, the entities associated with Federal Trade Commission Registered
17 Numbers RN # 19040 and RN # 84140.

18 II. JURISDICTION AND VENUE

19 8. This is an action arising under the Trademark Act of 1946 (15 U.S.C. § 1051 et
20 seq.), the laws of the State of Washington, and the common law. This Court has jurisdiction
21 pursuant to 15 U.S.C. § 1121 (actions arising under the Lanham Act), 28 U.S.C. § 1338 (acts
22 of Congress relating to trademarks and unfair competition), and 28 U.S.C. § 1367
23 (supplemental jurisdiction over related state law claims). The amount in controversy exceeds
24 the sum or value of \$75,000.

25 9. Venue is proper in this judicial district under 28 U.S.C. § 1391.
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III. THE SENIORITY AND DISTINCTIVENESS OF PLAINTIFF'S RIGHTS IN THE NAME AND MARK "BRATZ"

10. Since at least 1994, and in any event long prior to any date upon which any defendant can rely, Lovins has continuously used the trademark BRATZ in association with the sale of clothing, including infant and children's clothing.

11. Lovins sells and offers to sell clothing in association with the mark BRATZ nationwide and abroad. The mark BRATZ has been affixed to clothing sold and worn throughout the United States. Based upon this prior use, Lovins owns common law trademark rights in the mark BRATZ throughout the United States.

12. By virtue of extensive advertising, promotion, and continuous use of the BRATZ name and mark since at least 1994, customers throughout the United States have come to recognize and rely upon the consistent quality and nature of goods associated with the BRATZ name and mark. By reason of these activities, the name and mark BRATZ has come to be associated with valuable goodwill and is an asset representing high quality and value.

IV. DEFENDANTS' INFRINGING ACTIVITIES

13. On information and belief, defendants, or some of them, have recently offered for sale and sold clothing, children's products and toys in association with marks comprised of or including "Bratz."

14. Defendants' use of names and marks comprised of or including the mark BRATZ, in association with the sale or offer for sale of products for children, is likely to cause confusion or to cause mistake or to deceive.

15. Defendants, or some of them, knew of Lovins' prior rights in the mark BRATZ prior to their use of infringing marks in association with the sale of goods. Indeed, defendants ABC and/or TOT had contacted Lovins to seek rights to use the mark BRATZ. Defendants were in negotiations with Lovins when defendants began using marks comprised of or including the mark BRATZ in association with the sale of goods.

1 16. Defendants are marketing and selling children's products, toys and clothing to
 2 girls under the age of twelve in association with marks comprised of or including the mark
 3 BRATZ. Such marketing is directed toward "Girls with a Passion for Fashion." Furthermore,
 4 some of the infringing "Bratz"-labeled clothing is decorated with a depiction of four young
 5 women in suggestive poses and attire. The inappropriate and sexualized nature of defendants'
 6 products and marketing has caused and is causing immediate and irreparable harm to Lovins'
 7 reputation.

8 17. Despite defendants' actual knowledge of Lovins' superior rights and the
 9 damage being suffered by Lovins as a result of the defendants' infringing activities,
 10 defendants have deliberately infringed Lovins' mark and are diluting the distinctive quality of
 11 the name and mark BRATZ.

12 **COUNT I: TRADEMARK INFRINGEMENT - WASHINGTON**

13 18. Defendants' activities described herein constitute trademark infringement in
 14 violation of R.C.W. § 19.77.140 and the common law.

15 **COUNT II: TRADE NAME INFRINGEMENT**

16 19. Defendants' activities described herein constitute trade name infringement in
 17 violation of the common law.

18 **COUNT III: FALSE DESIGNATION OF ORIGIN**

19 20. Defendants' activities described herein constitute a false designation of origin,
 20 false description and/or misleading representation suggesting or implying that the goods and
 21 services of defendants originate from, are connected with, or are otherwise associated with or
 22 approved by Plaintiff Lovins in violation of 15 U.S.C. § 1125(a), Section 43(a) of the Lanham
 23 Act.

24 **COUNT IV: CONSUMER PROTECTION ACT**

25 21. Defendants' activities described herein constitute unfair business practices and
 26 unfair competition in violation of the Washington State Consumer Protection Act, R.C.W. §
 27 19.86.020.

PAYER FOR RELIEF

WHEREFORE, Plaintiff Lovins prays that judgment be entered in its favor against defendants, providing the following alternative and cumulative relief:

1. An order pursuant to 15 U.S.C. § 1116, R.C.W. § 19.77.150, R.C.W. § 19.77.160, R.C.W. § 19.86.090, and I.C. § 48-511, preliminarily and permanently enjoining defendants ABC International Traders, Inc., d/b/a MGA Entertainment Corporation, Talk of the Town Apparel Corp., Jammies Manufacturing, Inc., Target Corporation, Toys "R" Us-Delaware, Inc. d/b/a Kids "R" Us, and John Does (1-5), their officers, agents, servants, employees, assigns, successors, and all other persons in active concert, combination, or participation with them from: (1) using names or marks comprised of or including the mark BRATZ or any names or marks confusingly similar to BRATZ in connection with the promotion or provision of juvenile products, toys, or clothing; and (2) engaging in unfair competition, or unfair and deceptive acts or practices in connection with defendants' services or products.

2. Judgment awarding Plaintiff compensatory and exceptional damages to be paid jointly and severally by defendants pursuant to 15 U.S.C. § 1117, R.C.W. § 19.86.090, and I.C. § 48-513 plus reasonable attorneys' fees and costs pursuant to these statutes and R.C.W. § 19.77.150.

3. An order pursuant to 15 U.S.C. § 1118 and 19.77.150 directing that defendants' infringing goods and materials be delivered up for destruction.

4. An order pursuant to the authority of this Court granted by 15 U.S.C. § 1119, Section 37 of the Lanham Act, instructing the Commissioner of Patents and Trademarks to cancel any registration owned by defendants for marks comprised of or including the word BRATZ and to deny any application seeking registration of marks comprised of or including the word BRATZ for juvenile products, toys or clothing.

5. Such other and further relief as this Court may deem just and proper.

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JURY DEMAND

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Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Lovins hereby demands a trial by jury of all issues so triable.

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Dated this 2th day of July, 2002.

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CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}

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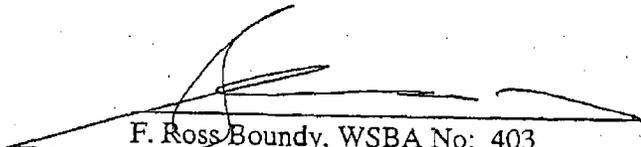
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Attorneys for Plaintiff

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GFW:SLJ

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LAW OFFICES

PATENT, TRADEMARK AND OTHER
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FACSIMILE COVER SHEET

DATE: August 5, 2002

TO: Ms. Letoya Johnson
FACSIMILE NO: 703.746.8164
RE: Lovins, Inc. v. ABC International Traders
OUR REFERENCE: LOVC-6-2296
FROM: Stacy Jones Secretary to Seann W. Hallisky

(Facsimile No. 206.224.0779)

MESSAGE: Please see attached.

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We have 8 pages to send, including this sheet. If any pages need to be retransmitted, please call 206.682.8100, Ext. 1222, within 15 minutes.

SLJ