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JAMES N. HATTEN, Clerk  
By: *[Signature]* Clerk

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SPANX, INC. and SARA BLAKELY, )  
Individually, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
SEXY PANTIES AND NAUGHTY )  
KNICKERS LIMITED and POM )  
LAMPSON, individually, )  
 )  
Defendants. )

*[Stamp]*

Civil Action File No.

**1 08 - CV - 1375**

COMPLAINT

Plaintiffs Spanx, Inc. and Sara Blakely ("Ms. Blakely") (collectively referred to herein as "Spanx"), aver as follows:

INTRODUCTION

1. Plaintiffs seek injunctive relief and damages for acts of trademark infringement, trademark dilution, false designation of origin, palming off, and unfair competition, all in violation of the Lanham Act, 15 U.S.C. §§ 1114, 1125, and in violation of Georgia statutory and common law.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this controversy under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Lanham Act, 15 U.S.C. §§ 1501, *et seq.* This Court has subject matter jurisdiction over the remaining causes of action pursuant to 28 U.S.C. § 1367(a) because those causes of action are so related to the federal claims under the Lanham Act that they form part of the same case or controversy.

3. This Court has jurisdiction over the Defendants because the Defendants transact business within this district and this case arises out of transactions and events that occurred within this district. Defendants operate an interactive website and have delivered catalogues and infringing product directly to purchasers within this district.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (d) because the Defendants have transacted business in this district, have knowingly and purposefully directed acts to this district, a substantial part of the events giving rise to the claims in this action occurred in this district, and the Defendants are aliens.

**THE PARTIES**

5. Plaintiff Spanx, Inc. is a Georgia corporation with its principal place of business at 3391 Peachtree Road, Suite 300, Atlanta, Georgia 30326.

6. Plaintiff Ms. Sara Blakely is an individual residing in this district.

7. Upon information and belief, Sexy Panties and Naughty Knickers Limited is a United Kingdom entity with its principal place of business at Unit 2H Woodstock Studios, 36 Woodstock Grove, London, W12 8LE, United Kingdom.

8. Upon information and belief, Pom Lampson is an individual citizen of the United Kingdom, is the owner and/or controller of Defendant Sexy Panties and Naughty Knickers Limited, and actively assisted, directed, conspired, participated with, or otherwise cooperated with Defendant Sexy Panties and Naughty Knickers in the acts complained of herein.

**FACTUAL BACKGROUND**

**Spanx's Famous Trademark**

9. Spanx, Inc. was formed in 2000 and is in the business of merchandising hosiery, undergarments, clothing and related items.

10. Ms. Blakely is an entrepreneur and the founder and sole shareholder of Spanx, Inc. Ms. Blakely started Spanx, Inc. in 2000 to market her patented

footless pantyhose and has since developed a number of other hosiery, undergarments, other clothing and related items.

11. Ms. Blakely is the owner of the famous and distinctive SPANX trademark (the "SPANX Mark"). She also owns two federal registrations for the SPANX Mark: (1) incontestable U.S. Registration No. 2,464,430 for "hosiery, lingerie, pants, dresses, shirts, shoes, swimwear"; and (2) U.S. Registration No. 3,330,367 for "cosmetics." By virtue of an intellectual property agreement dated June 1, 2004, Ms. Blakely has licensed use of the SPANX Mark to Spanx.

12. The SPANX Mark has been used continually by Ms. Blakely and Spanx in interstate commerce to identify their goods and to distinguish such goods from those sold by others. Spanx's goods include, without limitation, hosiery, panties, brassieres, slips, pants, tops, and skirts.

13. Spanx also uses the SPANX Mark in connection with goods other than clothing, including but not limited to, laundry detergent and cosmetics.

14. Spanx has expended considerable time, effort and money to advertise, promote, and publicize the SPANX Mark in order to foster the public's identification of the SPANX Mark with Spanx. As a result of the extensive promotion by Spanx of the SPANX Mark, and Spanx's careful attention to quality, the SPANX Mark has acquired a strong and widespread reputation for quality, and

is firmly identified in the public mind with Spanx. Additionally, through its extensive promotion and expense, Spanx has created substantial goodwill and publicity value in the SPANX Mark.

15. Further, by virtue of extensive advertising, promotion and sales through the use of the SPANX Mark, the SPANX Mark has become well known to the public as an indicator of source for a variety of types of hosiery, undergarments and other clothing, and has become famous. The SPANX brand was featured on the Oprah Winfrey show in 2000 when Spanx's footless pantyhose made the "Oprah's Favorite Things" list. In addition, the SPANX brand has been featured in a number of nationally distributed magazines including Us Weekly, People, Vogue, O-The Oprah Magazine, Good Housekeeping, and Redbook. True and correct copies of representative covers with the relevant copy superimposed thereon is attached hereto as Exhibit A.

**Defendants' Infringement of  
the Famous SPANX Mark**

16. Upon information and belief, the Defendant, Sexy Panties and Naughty Knickers Ltd. is a U.K. entity owned and/or controlled by Defendant Pom Lampson.

17. Upon information and belief, Defendants are engaged in the advertising and/or offering for sale or sale of various lingerie products, including,

but not limited to, panties, brassieres, camisoles, and sleepwear bearing the mark S•P•A•N•K. Attached as Exhibit B are photographs of Defendants' merchandise demonstrating use of the S•P•A•N•K mark.

18. Upon information and belief, Defendants operate an interactive online business advertising, promoting, and accepting orders for goods bearing the S•P•A•N•K mark in all U.S. jurisdictions, including the Northern District of Georgia, through a website displayed under and through the URL [www.sexypantiesandnaughtyknickers.com](http://www.sexypantiesandnaughtyknickers.com). A true and correct copy of a screen capture of the homepage of this website is attached hereto as Exhibit C. True and correct copies of screen captures of representative web pages showing use of the S•P•A•N•K mark are attached hereto as Exhibit D.

19. Upon information and belief, Defendants advertise and offer these goods through a mail order catalogue. A true and correct copy of a catalogue page on which merchandise bearing the S•P•A•N•K mark is advertised is attached hereto as Exhibit E.

20. Upon information and belief, Defendants also advertise and offer these goods through a number of other retailers throughout the United Kingdom, the United States and Australia. A true and correct copy of a screen capture of the

webpage at <http://www.sexypantiesandnaughtyknickers.com/t-stockists.aspx> containing a list of Defendants' retailers is attached hereto as Exhibit F.

21. Pursuant to the WHOIS database, which reflects domain name registration information, the domain name [sexypantiesandnaughtyknickers.com](http://www.sexypantiesandnaughtyknickers.com) is registered to Defendant Sexy Panties and Naughty Knickers, and the administrative contact person is Defendant Pom Lampson. A true and correct copy of the WHOIS record for [sexypantiesandnaughtyknickers.com](http://www.sexypantiesandnaughtyknickers.com) is attached hereto as Exhibit G.

22. Spanx has, on numerous occasions, notified Defendants of its rights in the famous SPANX Mark and of Defendants' infringement of those rights. On or about October 24, 2007, counsel for Spanx sent a letter to Defendant Lampson asserting its rights and requesting that Defendants cease using the S•P•A•N•K mark. A true and correct copy of that letter is attached hereto as Exhibit H. Spanx's counsel received a response from counsel for the Defendants on November 9, 2007 and again asserted its rights in a responsive letter dated December 6, 2007, a true and correct copy of which is attached hereto as Exhibit I.

23. Defendants have refused to comply with Spanx's demands and have continued their infringing conduct.

**COUNT I - FEDERAL TRADEMARK  
INFRINGEMENT UNDER 15 U.S.C. § 1114**

24. Spanx repeats and realleges Paragraphs 1 through 23 of the Complaint as if fully set forth herein.

25. Defendants' use of the S•P•A•N•K mark constitutes trademark infringement in violation of 15 U.S.C. §1114, in that such use has caused, or is likely to cause, confusion, deception, or mistake among the consuming public and trade as to the source of Defendants' goods.

26. Defendants' use of the S•P•A•N•K mark is with knowledge and in willful disregard of Plaintiffs' rights in and to the SPANX Mark.

27. Defendants' aforesaid acts have irreparably harmed Spanx and will continue to irreparably harm Spanx unless enjoined by this Court, as a result of which Spanx is without an adequate remedy at law.

28. Defendants' use of the S•P•A•N•K mark has injured and continues to injure Spanx in an amount not yet ascertained.

**COUNT II - FEDERAL UNFAIR COMPETITION --  
FALSE DESIGNATION OF ORIGIN -- PALMING OFF -  
UNDER 15 U.S.C. § 1125(a)**

29. Spanx repeats and realleges Paragraphs 1 through 28 of the Complaint as if fully set forth herein.



30. Defendants have used the S•P•A•N•K mark to create a false designation of origin and have falsely represented in commerce, in a manner likely to cause confusion, mistake, or deception among consumers, that they are associated with, sponsored by, or approved by Spanx, in violation of 15 U.S.C. §1125(a).

31. Defendants use of the S•P•A•N•K mark is with knowledge and in willful disregard of Spanx's rights therein.

32. Defendants' conduct has irreparably harmed Spanx and will continue to irreparably harm Spanx unless enjoined by this Court, as a result of which Spanx is without an adequate remedy at law.

33. Defendants' use of the S•P•A•N•K mark has injured and continues to injure Spanx in an amount not yet ascertained.

**COUNT III - FEDERAL DILUTION**  
**UNDER 15 U.S.C. § 1125(c)**

34. Spanx repeats and realleges Paragraphs 1 through 33 of the Complaint as if fully set forth herein.

35. Defendants adopted and began using in interstate commerce the mark S•P•A•N•K, which is similar to the SPANX Mark, long after the SPANX Mark had become distinctive and famous among the consuming public.

36. Defendants' use of the S•P•A•N•K mark has diluted, continues to dilute, and/or is likely to cause future dilution of the distinctive quality of the famous SPANX Mark by lessening the capacity of the SPANX Mark to identify and distinguish Spanx's goods, in violation of 15 U.S.C. § 1125(c).

37. On information and belief, Defendants willfully intended to trade on Spanx's reputation or to cause dilution of the SPANX Mark.

38. Defendants' dilution of the distinctive SPANX Mark has irreparably damaged Spanx and will continue to damage Spanx irreparably unless enjoined by this Court, as a result of which Spanx is without an adequate remedy at law.

39. Defendants' use of the S•P•A•N•K mark has injured and continues to injure Spanx in an amount not yet ascertained.

**COUNT IV - COMMON LAW TRADEMARK INFRINGEMENT**

40. Spanx repeats and realleges Paragraphs 1 through 39 of the Complaint as if fully set forth herein.

41. By reason of the foregoing, Defendants have engaged and are continuing to engage in acts of trademark infringement in violation of the common law of Georgia.

42. Defendants use of the S•P•A•N•K mark is with knowledge and in willful disregard of Spanx's rights therein.

43. Defendants' aforesaid acts have irreparably damaged Spanx and will continue to irreparably damage Spanx unless enjoined by this Court, as a result of which Spanx is without an adequate remedy at law.

44. Defendants' use of the S•P•A•N•K mark has injured and continues to injure Spanx in an amount not yet ascertained.

**COUNT V - DILUTION UNDER O.C.G.A. § 10-1-451(b)**

45. Spanx repeats and realleges the allegations of Paragraphs 1 through 44 as if set forth fully herein.

46. By reason of the foregoing acts of Defendants, there exists a likelihood of injury to business reputation or of dilution of the distinctive quality of SPANX Mark in violation of O.C.G.A. § 10-1-451(b).

47. Defendants' use of the S•P•A•N•K mark is with knowledge and in willful disregard of Plaintiffs' rights in and to the SPANX Mark.

48. Defendants' dilution of the distinctive SPANX Mark has irreparably damaged Spanx and will continue to damage Spanx irreparably unless enjoined by this Court, as a result of which Spanx is without an adequate remedy at law.

**COUNT VI - UNFAIR COMPETITION UNDER  
O.C.G.A. § 23-2-55 AND GEORGIA COMMON LAW**

49. Spanx repeats and realleges the allegations of Paragraphs 1 through 48 as if set forth fully herein.

50. By reason of the foregoing, Defendants have engaged and are continuing to engage in acts of unfair competition in violation of O.C.G.A. § 23-2-55 and the common law of Georgia.

51. Defendants' use of the S•P•A•N•K mark is with knowledge and in willful disregard of Plaintiffs' rights in and to the SPANX Mark.

52. Defendants' acts of unfair competition have caused and will continue to cause financial damage to Spanx and irreparable injury for which Spanx has no adequate remedy at law.

53. Defendants' use of the S•P•A•N•K mark has injured and continues to injure Spanx in an amount not yet ascertained.

**COUNT VII - DECEPTIVE TRADE PRACTICES**  
**UNDER O.C.G.A. §§ 10-1-371 et seq.**

54. Spanx repeats and realleges the allegations of Paragraphs 1 through 53 as if set forth fully herein.

55. By reason of the foregoing acts, Defendants have engaged in deceptive trade practices as described under the Uniform Deceptive Trade Practices Act at O.C.G.A. § 10-1-372, including passing off goods or services as those of another; causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services; causing likelihood of confusion or of misunderstanding as to affiliation, connection or

association with or certification by another; and representing that goods or services have sponsorship or approval that they do not have.

56. Defendants have willfully engaged in the foregoing trade practices, knowing them to be deceptive.

57. Defendants' actions were with knowledge and in willful disregard of Plaintiffs' rights in and to the SPANX Mark.

58. Defendants' deceptive trade practices have caused and will continue to cause financial damage to Spanx and irreparable injury for which Spanx has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Spanx prays:

1. That this Court issue a preliminary and permanent injunction pursuant to 15 U.S.C. § 1116, and/or under applicable Georgia law or statute, enjoining and restraining Defendants, and their affiliates, agents, partners, servants and employees, or anyone acting with their authority or on their behalf, from directly or indirectly using S•P•A•N•K or any name, designation or mark containing S•P•A•N•K, or any other term similar to the SPANX Mark; which is likely to cause confusion, mistake or to deceive;

2. That this Court, pursuant to 15 U.S.C. § 1118, and/or under applicable

Georgia law or statute, order that all goods, labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession or under the control of Defendants bearing S•P•A•N•K or any name, designation or mark containing S•P•A•N•K, or any other term confusingly similar to the SPANX Mark, and all plates, molds, matrices and other means of making the same, shall be delivered up and destroyed;

3. That Defendants be required to account to Spanx for any and all benefits or profits derived by Defendants from the use of S•P•A•N•K, or any name, designation or mark containing S•P•A•N•K, or any other term confusingly similar to the SPANX Mark, including the sale of any and all products or services associated with any such name or mark, and for all damages sustained by Spanx by reason of said acts of infringement, unfair competition, dilution, and other causes of action and conduct complained of herein;

4. That this Court award Spanx the amount of Defendants' profits obtained from Defendants' unlawful actions as set forth herein, pursuant to 15 U.S.C. § 1117;

5. That this Court award Spanx all damages sustained as a result of Defendants' unlawful actions as set forth herein, pursuant to 15 U.S.C. § 1117, and/or under applicable Georgia law or statute, and that the award of damages be

trebled and/or increased in accordance with 15 U.S.C. § 1117;

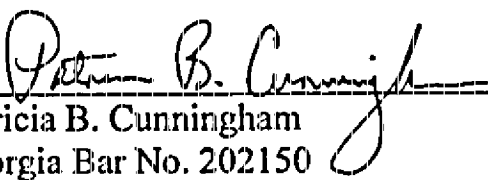
6. That this Court award punitive damages against Defendants pursuant to O.C.G.A. § 23-2-55;

7. That this Court award Spanx the costs of this action and its reasonable attorneys' fees pursuant to 15 U.S.C. § 1117, O.C.G.A. § 10-1-373 and other applicable Georgia law; and

8. That this Court grant such other and further relief as it shall deem just.

Respectfully submitted, this 9<sup>th</sup> day of April, 2008.

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