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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

HUGE SPORTSWEAR, INC., a Utah  
corporation,

Plaintiff,

vs.

THE MOUNTAIN CORPORATION, a  
New Hampshire corporation,

Defendant.

**COMPLAINT  
JURY DEMAND**

Case No.

For a complaint against The Mountain Corporation, Huge Sportswear, Inc. alleges as follows:

1. This is an action for copyright infringement, unfair competition, and unfair and deceptive trade practice under federal law and Utah law. Plaintiffs seek injunctive relief, damages, treble damages, attorneys' fees, and costs as provided by applicable law.

**PARTIES, JURISDICTION, AND VENUE**

2. Plaintiff Huge Sportswear, Inc. is a Utah corporation with its principal place of business in the state of Utah.

3. Defendant, The Mountain Corporation, is a New Hampshire corporation that conducts business within the state of Utah and in other channels of interstate commerce.

4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1332 and this Court's pendent jurisdiction.

5. Under 28 U.S.C. §§ 1391, this District is the appropriate venue for this action.

#### **GENERAL ALLEGATIONS**

6. Huge Sportswear is a Utah company which designs, manufactures, and markets a signature line of t-shirts geared towards the outdoor recreation market. Each of Huge Sportswear's designs depicts a unique outdoor scene or event, coupled with a distinctive slogan.

7. Huge Sportswear has invested considerable time, resources, and artistic talent into creating its designs, each of which are copyrightable under the law of the United States. Huge Sportswear has developed significant goodwill and consumer recognition in the outdoor retail market, such that its designs have acquired a secondary meaning in the minds of outdoor retail customers as being associated with Huge Sportswear's unique line of products.

8. Huge Sportswear owns each of the designs and all exclusive copyrights to the designs. Huge Sportswear has applied for and obtained a registration of various copyrights pertaining to its designs.

9. Huge Sportswear has built a valuable business through its promotion and sale of its designs. Huge Sportswear's client base now includes numerous vendors, outdoor retail stores, and individual consumers. Huge Sportswear has continuously marketed and sold its designs and products in interstate commerce, through its internet sites, and through other commercial channels.

10. As early as January 2007, The Mountain Company launched a line of t-shirts known as the "Mountain Life" line, which is intended to knock-off Huge Sportswear's designs. The designs, graphics, and related copy that appear on the Mountain Life t-shirts are

substantially similar to Huge Sportswear's designs, and in some cases, are direct copies of Huge Sportswear's copyrighted designs.

11. Upon information and belief, The Mountain Company commissioned its knock-off designs from B-Creative and/or Laurie Lambe of Laurie Lambe's Great Stuff. The Mountain Company specifically instructed Ms. Lambe to copy Huge Sportswear's designs, and to pattern the Mountain Life t-shirt line after Huge Sportswear's designs.

12. The Mountain Company's promotion of the Mountain Life line of t-shirts infringes upon Huge Sportswear's exclusive rights to its copyrighted designs and creates a likelihood of confusion among consumers as to the origin and / or sponsorship of the products. The Mountain Company has misappropriated Huge Sportswear's designs with the intent of passing off the Mountain Life line of t-shirts as genuine Huge Sportswear designs.

13. The Mountain Company has marketed and sold the Mountain Life line of t-shirts to consumers in Utah and in other states. The Mountain Company targets the same customer base as Huge Sportswear, using similar channels of commerce, including the Outdoor Retailers Convention held in Salt Lake City, Utah. The Mountain Company further targets outdoor retail stores / vendors, and individual customers through its internet sites and direct sales efforts.

14. Huge Sportswear has provided The Mountain Company with written notice of its infringing conduct and demanded that The Mountain Company cease and desist sales of the Mountain Life line of t-shirts. The Mountain Company, however, refuses to discontinue its promotion and sales of the Mountain Life line of t-shirts to consumers.

**FIRST CAUSE OF ACTION**

**Violation of the Federal Copyright Act — 17 U.S.C. § 101**

15. The preceding paragraphs of this complaint are incorporated and reasserted herein.

16. The Mountain Company has infringed upon Huge Sportswear's copyright in Utah and elsewhere by designing, reproducing, and distributing the Mountain Life line of t-shirts

which includes, at least in part, materials that are substantially similar and / or exact replicas of Huge Sportswear's proprietary designs.

17. The Mountain Company had access to Huge Sportswear's copyrighted designs and infringed upon Huge Sportswear's copyright in complete disregard of Huge Sportswear's rights.

18. The Mountain Company's unauthorized and infringing use of Huge Sportswear's copyrighted works is causing immediate and irreparable harm, and unless enjoined will continue to cause irreparable harm to Huge Sportswear.

19. The Mountain Company's unauthorized and infringing use of Huge Sportswear's copyrighted works has further damaged Huge Sportswear in that the sale of the infringing products and display of infringing work will greatly diminish the value of the original works and unlawfully supplant Huge Sportswear's products in the marketplace.

20. Huge Sportswear is entitled to preliminary and permanent injunctive relief enjoining The Mountain Company from infringing upon Huge Sportswear's copyrights, an order impounding all infringing articles, and an order enjoining The Mountain Company from any future use of Huge Sportswear's designs or substantially similar designs.

21. Huge Sportswear has also been damaged by The Mountain Company's conduct, in that it has lost sales and customers to The Mountain Company's infringing line of products. Huge Sportswear is entitled to an award of actual damages in an amount to be proven at trial, as well as statutory damages and fees as allowed by federal law.

22. The Mountain Company has engaged in these activities knowingly, willfully, with actual malice. As a result, Huge Sportswear is entitled to an award of punitive damages in an amount to be proven at trial.

**SECOND CAUSE OF ACTION**  
**Lanham Act – 11 U.S.C. § 1125**

23. The preceding paragraphs of this complaint are incorporated and reasserted herein.

24. Huge Sportswear's designs are inherently distinctive and / or have acquired secondary meaning by which they have become associated with Huge Sportswear in the minds of consumers in the outdoor retail market.

25. The Mountain Company's infringing use of the Mountain Life line of t-shirts has caused and continues to cause, confusion, mistake and deceit among consumers as to the origin, sponsorship and approval of the products. Among other things, The Mountain Company's conduct is likely to mislead consumers into believing that the Mountain Life line is affiliated with Huge Sportswear, or otherwise approved, sponsored by, or authorized by Huge Sportswear.

26. The above-mentioned activities enable The Mountain Company to reap undeserved credibility and monetary gain and to unfairly compete with Huge Sportswear in the outdoor retail market.

27. The Mountain Company's use of infringing designs, words, and tradenames, or combinations thereof constitute false and misleading statements, representations, and descriptions of fact that are material and have had and will have an effect on consumers' purchasing decisions.

28. Huge Sportswear is irreparably harmed by The Mountain Company's conduct. Huge Sportswear is entitled to preliminary and permanent injunctive relief enjoining The Mountain Company and its officers, agents, and employees, from further acts of unfair competition.

29. Huge Sportswear is further entitled to monetary damages resulting from this conduct, in an amount to be proven at trial.

30. The Mountain Company has engaged in this activity knowingly, willfully, with actual malice. As a result, Huge Sportswear is entitled to an award of treble damages, as well as statutory damages, attorneys' fees and costs incurred in this action.

**THIRD CAUSE OF ACTION**

**Unfair or Deceptive Trade Practices (Utah Code Ann. § 13-11a-3)**

31. The preceding paragraphs of this complaint are incorporated and reasserted herein.

32. The Mountain Company, in connection with services it purportedly offers, has used and is using in commerce false or misleading statements, representations, and descriptions of fact.

33. The Mountain Company's false or misleading statements, representations, and descriptions of fact have caused and do cause a likelihood of confusion or of misunderstanding as to the source, sponsorship, or approval of the "Mountain Life" line of t-shirts, which will necessarily be confused with Huge Sportswear's original designs.

34. As a result of The Mountain Company's conduct, and given the likelihood of irreparable harm to Huge Sportswear resulting from this conduct, Huge Sportswear is entitled to preliminary and permanent injunctive relief enjoining The Mountain Company and its officers, agents, and employees, together with all persons acting in concert with them, from engaging in unfair or deceptive trade practices.

35. As a result of The Mountain Company's conduct, Huge Sportswear is entitled to an award of its actual damages due to the unfair or deceptive trade practices, statutory damages, costs, attorneys' fees, and pre- and post-judgment interest.

**FOURTH CAUSE OF ACTION**

**Common Law Unfair Competition**

36. The preceding paragraphs of this complaint are incorporated and reasserted herein.

37. Huge Sportswear's designs are unique, proprietary and creative in nature, and are the product of the original work and investment of Huge Sportswear's creative team. Huge Sportswear has invested significant time, resources, and effort into developing its original

designs, which are now widely-recognized among consumers and vendors within the outdoor retail market.

38. Huge Sportswear has extensively promoted its designs through regional and national advertising, which has resulted in strong public recognition and goodwill.

39. The Mountain Company has commissioned B-Creative and/or Laurie Lambe to create a substantially similar knock-off line of products, which in some cases, directly copy Huge Sportswear's designs. The Mountain Company engaged B-Creative and/or Ms. Lambe knowing that Huge Sportswear's designs were widely recognized, and with intent of trading off of the brand recognition and original designs of Huge Sportswear.

40. The Mountain Company committed the above-mentioned acts with the intent of misappropriating and trading upon the goodwill and reputation of Huge Sportswear and its designs.

41. Huge Sportswear has been, and continues to be, irreparably harmed by The Mountain Company's conduct, which is undermining the business goodwill and reputation of Huge Sportswear. Huge Sportswear is entitled to preliminary and permanent injunctive relief enjoining The Mountain Company and its officers, agents, and employees, together with all persons acting in concert with them, from engaging in these unfair acts of competition.

42. Huge Sportswear has also been damaged by The Mountain Company's conduct, in that it has lost sales and customers to The Mountain Company's infringing line of products. Huge Sportswear is entitled to an award of actual damages in an amount to be proven at trial.

43. The Mountain Company has engaged in these activities knowingly, willfully, and with actual malice. As a result, Huge Sportswear is entitled to an award of actual and punitive damages in an amount to be proven at trial.

**FIFTH CAUSE OF ACTION**  
**(Interference with Prospective Economic Relations)**

44. The preceding paragraphs of this complaint are incorporated and reasserted herein.

45. Huge Sportswear has an economic relationship with its customers through which it derives an economic benefit from the retail sale of products. This economic relationship exists largely because Huge Sportswear's customers trust Huge Sportswear as a reliable source of quality consumer goods.

46. Huge Sportswear further enjoys an economic relationship with its vendor and retail intermediaries, who market Huge Sportswear's products in their stores and in other retail forums. Huge Sportswear has an interest in this current business relationship, as well as its prospective relationship with its vendors as new products are introduced.

47. The Mountain Company has misappropriated Huge Sportswear's designs and has targeted Huge Sportswear's customer base with the improper purpose of defrauding Huge Sportswear's consumers and driving legitimate competition out of the market.

48. The Mountain Company's actions are intentional and are carried out through improper means including misappropriation of proprietary designs, misleading consumers, and other deceitful conduct.

49. As a direct and proximate result of The Mountain Company's conduct, Huge Sportswear has suffered damages in an amount to be proven at trial.

50. The Mountain Company's actions were willful, wanton, malicious, intentional, and in bad faith, such as to justify an award of punitive damages in an amount to be proven at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Huge Sportswear prays for the following relief:

A. On its first cause of action (copyright infringement), for: (i) preliminary and permanent injunctive relief enjoining The Mountain Company from infringing upon Huge Sportswear's copyrights; (ii) an order impounding all infringing articles; (iii) an order enjoining The Mountain Company from any future use of Huge Sportswear's designs or substantially



similar designs; (iv) actual, punitive, and statutory damages as allowed by applicable law; and (v) attorneys' fees and costs as allowed by applicable law.

B. On its second cause of action (Lanham Act), for: (i) preliminary and permanent injunctive relief enjoining The Mountain Company and its officers, agents, and employees, together with all persons acting in concert with them, from acts of infringement; and (ii) damages and treble damages in an amount to be proven at trial, plus statutory damages, costs, attorneys' fees, and pre- and post-judgment interest.

C. On its third cause of action (Utah Unfair or Deceptive Trade Practices Act), for: (i) preliminary and permanent injunctive relief enjoining defendant and its officers, agents, and employees, together with all persons acting in concert with them, from engaging in unfair or deceptive trade practices; and (ii) damages in an amount to be proven at trial, plus statutory damages, costs, attorneys' fees, and pre- and post-judgment interest.

D. On its fourth cause of action (common law unfair competition), for actual and punitive damages in an amount to be proven at trial.

E. On its fifth cause of action (common law unfair competition), for actual and punitive damages in an amount to be proven at trial.

F. For such other relief as the equities of the case may require and as this Court may deem just and proper under the circumstances.

**JURY DEMAND**

Huge Sportswear demands a trial by jury and has tendered the required jury fee to the Clerk of Court.

DATED this \_\_\_\_ day of September, 2007.

Snell & Wilmer L.L.P.

/s/ Kimberly Neville  
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Kimberly Neville  
*Attorneys for Plaintiff Huge Sportswear, Inc.*