

ORIGINAL

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

JUN 15 2007

JAMES N. HATTEN, CLERK
Deputy Clerk

TOMMY BAHAMA GROUP, INC.)
)
Plaintiff,)
)
v.)
)
THE WALKING COMPANY,)
)
Defendant.)

1:07-CV-1402
CIVIL ACTION NO. _____

ODE

**PLAINTIFF'S VERIFIED COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES**

Plaintiff TOMMY BAHAMA GROUP, INC. ("Tommy Bahama Group" or "Plaintiff") files this Verified Complaint for Injunctive Relief and Damages against Defendant THE WALKING COMPANY ("TWC" or "Defendant") and in support alleges as follows:

I. NATURE AND BASIS OF ACTION

1. This is an action for: false advertising under the Federal Lanham Act, 15 U.S.C. § 1125(a); trade dress infringement under the Federal Lanham Act, 15 U.S.C. § 1125(a); unfair competition under the Federal Lanham Act, 15 U.S.C. § 1125(a) and the laws of the State of Georgia; unfair and deceptive trade practices under the laws of the State of Georgia; and conversion under the laws of the State of Georgia. Plaintiff

seeks preliminary and permanent injunctive relief, compensatory, statutory, and punitive damages, and recovery of its reasonable costs and attorneys' fees.

2. This Court has original jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1331 and 28 U.S.C. §§ 1337 and 1338, because this case arises under the Trademark Act of 1946, 15 U.S.C. §§ 1051, *et seq.*, and pursuant to 15 U.S.C. § 1332, this being an action between citizens of different States where the matter in controversy exceeds the sum of \$75,000.

2. This Court has supplemental jurisdiction over Tommy Bahama Group's state law claims pursuant to 28 U.S.C. § 1367.

3. This Court has personal jurisdiction over Defendant because it is currently transacting business in and is committing tortious acts in this State and District.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District, and because Defendant is subject to personal jurisdiction within this District.

II. THE PARTIES

5. Plaintiff Tommy Bahama Group, Inc. is a Delaware corporation with its principal place of business in Seattle, WA.

6. Defendant The Walking Company is a California corporation with its principal place of business in Westlake, CA. Defendant can be served by service upon its registered agent, Anthony J. Wall, 121 Gray Ave., Burbank, CA 91361.

III. FACTUAL BACKGROUND

Facts Regarding Tommy Bahama Group and the Tommy Bahama® Brand

7. Tommy Bahama Group is in the business of designing and marketing casual sportswear, denim, swimwear, accessories and a complete home furnishings collection. Since at least as early as 1992, Tommy Bahama Group has used the TOMMY BAHAMA® Mark in connection with its upscale island-inspired men's and women's apparel and accessories.

8. Since 1992, Tommy Bahama Group has enjoyed tremendous success in the marketplace. Over the last decade, Plaintiff has accrued over \$2 billion in sales of goods sold under the TOMMY BAHAMA® Mark.

9. Based on the tremendous success that these TOMMY BAHAMA® apparel items enjoy in the marketplace, the TOMMY BAHAMA® line of products has been expanded to include a "lifestyle" line

of island-inspired merchandise, such as footwear, swimwear, wallets, watches, bedding, eyewear, fragrances, personal care products, home furnishings and outdoor furnishings.

Facts Regarding Plaintiff's Development of and Rights to the Tommy Bahama Trade Dress

10. To further promote the TOMMY BAHAMA® brand, the “lifestyle” line of island-inspired merchandise and the products offered and sold by Plaintiff, Plaintiff developed and promoted a distinct trade dress in its advertising and promotional materials to distinguish such materials and identify Plaintiff as the source of the advertisements and products.

11. Plaintiff's trade dress consists of the following elements:

- a. Advertisements and promotional materials;
- b. Featuring model Andrew C. Lucchesi;
- c. Wearing island-inspired TOMMY BAHAMA® brand casual clothing;
- d. In island, coastal or tropical settings.

(The above trade dress shall be described as the “Tommy Bahama Trade Dress”).

12. An important element of the Tommy Bahama Trade Dress is that model Andy Lucchesi is featured therein. Tommy Bahama Group first

displayed Mr. Lucchesi's image in connection with TOMMY BAHAMA® products on or about February 1, 1998, in connection with the Spring 1998 season. In 2002, Mr. Lucchesi and Tommy Bahama Group entered into an agreement pursuant to which Mr. Lucchesi agreed to model exclusively for Tommy Bahama Group and its related companies.

**Facts Regarding Plaintiff's Advertising and Promotion of the
Tommy Bahama Trade Dress**

13. Since 1998, and in furtherance of the development and promotion of TOMMY BAHAMA® products and the Tommy Bahama Trade Dress, Mr. Lucchesi and Tommy Bahama Group have collaborated in undertaking photo shoots in the following locations:

- Spring 1998: Naples, FL
- Spring 1999: Jamaica
- Spring 2000: Martinique
- Spring 2001: Hawaii
- Holiday 2001: Charleston, SC
- Spring 2002: Santa Barbara, CA
- Fall 2002: New Orleans, LA
- Spring 2003: Harbor Island, Bahamas
- Holiday 2003: Jamaica

- Spring 2004: Mexico
- Holiday 2004: Mexico
- Spring 2005: Hawaii
- Holiday 2005: Hawaii
- Spring 2006, St. Bart, West Indies
- Spring 2007: Italy

14. Advertisements featuring TOMMY BAHAMA® products and the Tommy Bahama Trade Dress utilizing images from the above photo shoots have appeared in a wide variety of publications, including, *inter alia*, Yachting, Desert Living, Town & Country, Vanity Fair, Wine Spectator, Travel & Leisure Golf, Esquire, Vogue, Men's Journal, Elle Décor, Architectural Digest, Cigar Aficionado, Food & Wine, Departures, and Best Life, with the estimated circulation of such advertisements at over 60 million. (Examples of photographs displaying the Tommy Bahama Trade Dress are attached at Exhibit A hereto).

15. In addition to advertising the Tommy Bahama Trade Dress in publications with over 60 million in circulation, Plaintiff also has featured the Tommy Bahama Trade Dress in a variety of other advertising and promotion materials, including, *inter alia*: point-of-sale displays, including counter cards, posters, and postcards shown in stores featuring TOMMY

BAHAMA® footwear, apparel and other goods; mailers sent by retailers such as Nordstrom and Macy's; on the Internet at www.tommybahama.com; on billboards in various locations preceding store openings; throughout Tommy Bahama stores; and on television commercials, such as during the broadcasts of the Tommy Bahama Challenge featured on CBS and in related television promotions, and viewed by tens of millions of viewers. (Excerpts from Plaintiff's website, www.tommybahama.com, featuring the Tommy Bahama Trade Dress, are attached hereto at Exhibit B).

16. Plaintiff has incurred considerable expense to market and advertise the Tommy Bahama Trade Dress. Plaintiff has expended millions of dollars advertising and promoting the goods sold under the TOMMY BAHAMA® mark and the Tommy Bahama Trade Dress.

17. Because of the extensive advertising and promotion of the Tommy Bahama Trade Dress to a broad spectrum of consumers over the last decade, and as demonstrated by over \$2.6 billion in sales of TOMMY BAHAMA® goods, the Tommy Bahama Trade Dress has gained notoriety among the purchasing public and is distinctly associated with Plaintiff and its goods sold under the TOMMY BAHAMA® mark.

18. The Tommy Bahama Trade Dress has been used by Plaintiff continuously since its introduction almost a decade ago, it has great value to

Plaintiff, and is used by Plaintiff to distinguish Plaintiff and its goods from those of others.

Facts Regarding The Walking Company and Its Unlawful Acts

19. In promoting the sale of its TOMMY BAHAMA® goods and the Tommy Bahama Trade Dress, Plaintiff works through authorized licensees, one of which is Phoenix Footwear Group, Inc. (“Phoenix”), which licensees contract with retailers such as Defendant to offer and sell Plaintiff’s goods.

20. When promoting TOMMY BAHAMA® products, licensees and retailers are prohibited by Plaintiff from using Plaintiff’s advertising images and promotional materials, including materials comprising the Tommy Bahama Trade Dress, to promote products and services not directly associated with Plaintiff.

21. The Walking Company is a retailer based in California offering footwear and related goods at retail locations around the country, including at several retail locations in the Atlanta, Georgia area. Through Plaintiff’s authorized licensee, Phoenix, TWC began offering TOMMY BAHAMA® products for sale in its stores, and displaying Plaintiff’s goods and the

Tommy Bahama Trade Dress in its stores and through its Internet site on or about February 2006.

22. Plaintiff authorized Defendant to use Plaintiff's Spring 2007 advertising and promotional materials, including materials employing the Tommy Bahama Trade Dress, but only to the extent that Defendant used such materials solely in the promotion of Plaintiff's TOMMY BAHAMA® products. (Examples of the materials employing the Tommy Bahama Trade Dress for utilization during the Spring 2007 season, for which permission was granted to Defendant, are shown at Exhibit C).

23. On or about June 5, 2007, it was discovered that TWC was using the Tommy Bahama Trade Dress in an impermissible and deceptive manner. For one, TWC had created posters using one of Plaintiff's advertisements containing the Tommy Bahama Trade Dress to advertise Defendant's own products and services. Particularly, Defendant added text to the poster describing Defendant's own giveaway promotion, displaying Defendant's own logo laid over top of Plaintiff's Tommy Bahama Trade Dress, and promoting Defendant's holiday sales. (Copies of TWC's referenced advertisements are attached hereto at Exhibits D and E).

24. Defendant's advertisements using Plaintiff's Tommy Bahama Trade Dress have been displayed at Defendant's website (a copy of which is

attached hereto at Exhibit D) and, on information and belief, in Defendant's storefronts.

25. Further, Plaintiff learned and represents on information and belief, that Defendant has used the Tommy Bahama Trade Dress on the cover of Defendant's own promotional catalogue, which catalogue advertises the products of many manufacturers, including competitors of Plaintiff.

26. Defendant's impermissible use of the Tommy Bahama Trade Dress in the promotion of its services and goods, in the publication of its catalogue, and otherwise as described herein, conveys the false impression that Plaintiff, the Tommy Bahama Trade Dress, and the TOMMY BAHAMA® brand, are affiliated with, connected to or associated with the goods and services of Defendant, and that Defendant has authorized the Tommy Bahama Trade Dress and the TOMMY BAHAMA® brand to be associated with Defendant and its products and services.

27. Defendant's acts described herein have damaged and irreparably injured Plaintiff and the goodwill Plaintiff has developed, at considerable expense, in its TOMMY BAHAMA® brand and in the Tommy Bahama Trade Dress.

**Facts Regarding the Irreparable Damage to Oxford Industries and the
Need for Immediate Injunctive Relief**

28. With due promptness upon learning of Defendant's illicit activities, Plaintiff demanded in writing that Defendant immediately cease and desist from the use of Plaintiff's advertising and promotional materials in connection with the offering and sale of goods and services of any other person or entity than Plaintiff. (A copy of Plaintiff's cease and desist letter to Defendant is attached hereto at Exhibit F).

29. Defendant has refused and failed to comply fully with Plaintiff's demands, such that Plaintiff and the goodwill it has built up in its TOMMY BAHAMA® brand and in the Tommy Bahama Trade Dress is being harmed, which harm will continue as long as such use is allowed to continue. Monetary damages will not adequately remedy the harm to Plaintiff.

IV. PLAINTIFF'S CLAIMS AGAINST DEFENDANT

COUNT I: FALSE ADVERTISING

30. Plaintiff hereby incorporates the allegations set forth in paragraphs 1 through 29 above.

31. Defendant's misuse of the Tommy Bahama Trade Dress as described herein is false and misleading under 15 U.S.C. 1125(a). Defendant's use of the Tommy Bahama Trade Dress, with additional text and images not associated with Plaintiff, as posters on Defendant's storefronts and in connection with Defendant's catalogues, deceives consumers and has the ongoing capacity to deceive consumers. Defendants' acts have had and will continue to have a material effect on the purchasing decisions of consumers.

32. Such acts are in and affect interstate commerce, and Plaintiff has been and is damaged as a result of Defendant's false advertising, which damage will continue unabated until enjoined.

COUNT II: TRADE DRESS INFRINGEMENT

33. Plaintiff hereby incorporates the allegations set forth in paragraphs 1 through 32 above.

34. Defendant has infringed Plaintiff's rights in and to the Tommy Bahama Trade Dress by virtue of its actions described herein, and pursuant to 15 U.S.C. § 1125(a). Defendant's use of the Tommy Bahama Trade Dress, with additional text and images not associated with Plaintiff, as posters on Defendant's storefronts and in connection with Defendant's

catalogues, materially alters Plaintiff's Tommy Bahama Trade Dress and creates new images that are confusingly similar to that depicted in Plaintiff's Tommy Bahama Trade Dress.

35. The features of Plaintiff's Tommy Bahama Trade Dress are primarily non-functional.

36. Plaintiff's Tommy Bahama Trade Dress is inherently distinctive, or it has acquired secondary meaning by virtue of Plaintiff's extensive advertising and promotion of the Tommy Bahama Trade Dress for nearly a decade.

37. Plaintiff has been and is damaged as a result of Defendant's trade dress infringement, which damage will continue unabated until enjoined.

COUNT III: UNFAIR COMPETITION

38. Plaintiff hereby incorporates the allegations set forth in paragraphs 1 through 37 above.

39. Defendants' actions constitute unfair competition under 15 U.S.C. § 1125(a) and the common law of the State of Georgia.

40. Defendant's use of the Tommy Bahama Trade Dress, with additional text and images not associated with Plaintiff, as posters on

Defendant's storefronts and in connection with Defendant's catalogues, materially alters Plaintiff's Tommy Bahama Trade Dress and creates new images that are confusingly similar to that depicted in Plaintiff's Tommy Bahama Trade Dress.

41. The features of Plaintiff's Tommy Bahama Trade Dress are primarily non-functional.

42. Plaintiff's Tommy Bahama Trade Dress is inherently distinctive, or it has acquired secondary meaning by virtue of Plaintiff's extensive advertising and promotion of the Tommy Bahama Trade Dress for nearly a decade.

43. Defendant, by its actions, willfully has created a likelihood of confusion in the marketplace.

44. Plaintiff has been and is damaged as a result of Defendant's unfair competition, which damage will continue unabated until enjoined.

COUNT IV: GEORGIA UNFAIR & DECEPTIVE TRADE PRACTICES ACT VIOLATION

45. Plaintiff hereby incorporates the allegations set forth in paragraphs 1 through 44 above.

46. Defendants' actions described herein constitute unfair and deceptive trade practices within the meaning of the Georgia statute prohibiting unfair and deceptive trade practices.

47. Defendant's actions were done willfully and recklessly, and without concern for Plaintiff's rights.

48. Plaintiff has been and is damaged as a result of Defendant's unfair and deceptive trade practices, which damage will continue unabated until enjoined.

COUNT V: CONVERSION

49. Plaintiff hereby incorporates the allegations set forth in paragraphs 1 through 48 above.

50. Defendant's actions described herein constitute conversion under the common law of the State of Georgia. Defendant wrongfully and without justification has misappropriated Plaintiff's intellectual property, including the Tommy Bahama Trade Dress, for its own use.

51. Plaintiff has been and is damaged as a result of Defendant's conversion, which damage will continue unabated until enjoined.

V. JURY DEMAND

Plaintiff TOMMY BAHAMA GROUP hereby demands trial by jury of all issues raised in this Verified Complaint.

PRAYER FOR RELIEF

WHEREFORE, by virtue of Defendant's unlawful conduct as alleged in Counts I through V above, Plaintiff, TOMMY BAHAMA GROUP, respectfully prays that:

1. The Court enter judgment that Defendant, as a result of its unlawful conduct, has:
 - a. engaged in false advertising in violation of the Federal Lanham Act, 15 U.S.C. § 1125(a);
 - b. infringed TOMMY BAHAMA GROUP'S rights in its Tommy Bahama Trade Dress in violation of the Federal Lanham Act, 15 U.S.C. § 1125(a); and
 - c. engaged in unfair competition with TOMMY BAHAMA GROUP in violation of the Federal Lanham Act, 15 U.S.C. § 1125(a) and the common law of the State of Georgia;
 - d. engaged in unfair and deceptive trade practices under Georgia statute; and

e. committed conversion in violation of the common law of the State of Georgia.

2. The Court enter a temporary restraining order enjoining Defendant, and each of its divisions, related companies, officers, directors, agents, servants, employees, and all those persons in concert or participation with them, from utilizing the TOMMY BAHAMA® mark or the Tommy Bahama Trade Dress in any manner than in the offering and sale of Plaintiff's goods.

3. The Court enter a preliminary and, thereafter, permanent injunction, enjoining Defendant, and each of its divisions, related companies, officers, directors, agents, servants, employees, and all those persons in concert or participation with them, from:

- a. using or authorizing the use of the Tommy Bahama Trade Dress, or any reproduction, counterfeit, copy or colorable imitation thereof, in any form, or in any manner, except in direct connection with the offering and sale of Plaintiff's TOMMY BAHAMA® products;
- b. otherwise unfairly competing with, injuring the business or reputation of, or damaging the good will of Tommy Bahama Group in any manner; and

c. otherwise falsely representing themselves as being connected with, sponsored by, or associated with Tommy Bahama Group.

4. Pursuant to Section 36 of the Trademark Act of 1946, 15 U.S.C. § 1118, Defendants be directed to deliver up to Plaintiff for destruction all items, advertising and promotional materials, signs, business cards and all other materials which bear the Tommy Bahama Trade Dress in any form other than that explicitly authorized by Plaintiff, together with all plates, molds, matrices and other means of making or duplicating the same.

5. Pursuant to Section 35 of the Trademark Act of 1946, 15 U.S.C. § 1117, an accounting be had and judgment be rendered against Defendant for the profits, gains and advantage derived from its wrongful actions and the damages sustained by Tommy Bahama Group as a result of Defendant's actions, with such amounts to be trebled as provided by law because of the willful and deliberate nature of Defendant's actions;

6. Defendant be required to pay Tommy Bahama Group actual damages, enhanced damages, and punitive damages in light of the willful, intentional and predatory nature of its actions, in excess of \$75,000;

7. Pursuant to Section 35 of the Trademark Act of 1946, 15 U.S.C. § 1117(a), Defendant be required to pay Tommy Bahama Group both the

costs of this action and the reasonable attorneys' fees Tommy Bahama Group has incurred in connection with this action; and

8. The Court grant Tommy Bahama Group such other and further relief as the Court deems just and proper.

VERIFICATION

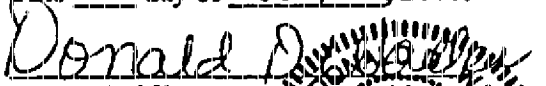
Personally appearing before me, the undersigned officer duly authorized by law to administer oaths, **MARY MARGARET HEATON**, who, after being duly sworn, states on oath that the statements of fact contained in the Verified Complaint are true and correct to the best of her personal knowledge and upon information and belief.

This the 15th day of June, 2007.

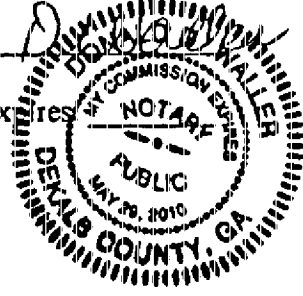


MARY MARGARET HEATON

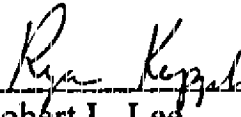
Sworn to and subscribed before me,
This 15 day of June, 2007.



Notary Public
My Commission expires _____



Respectfully submitted, this 15th day of June, 2007.



Robert L. Lee

bob.lee@alston.com

Georgia Bar No. 443978

Charlena Thorpe

charlena.thorpe@alston.com

Georgia Bar No. 760954

Ryan Koppelman

ryan.koppelman@alston.com

Georgia Bar No. 428404

ALSTON & BIRD, LLP

1201 W. Peachtree Street

Atlanta, Georgia 30309

(404) 881-7000 (telephone)

(404) 881-7777 (facsimile)

Counsel for Plaintiff

TOMMY BAHAMA GROUP, INC.

EXHIBIT E



The Best Brands From Around The World

Shop by Category

Shop by Brand

Lifestyle

Community

About Us

Health

Remember Dad!



STEP INTO THE CASUAL, UPGRADE COMFORT OF TOMMY BAHAMA FOOTWEAR MADE IN ITALY AND SPAIN USING THE HIGHEST QUALITY MATERIALS. INCLUDING CUSHIONING INSOLES AND LIGHTWEIGHT FLEXIBLE OUTSOLES. WHILE SUPPLIES LAST, TAKE

30% OFF



The Best Brands From  Around The World



free gift offer:

perfect for dad, our multi-tool pocket knife is yours free with any 2 pairs of regular-priced shoes or any purchase of \$150 or more. SIHOP NOW

CLOSE

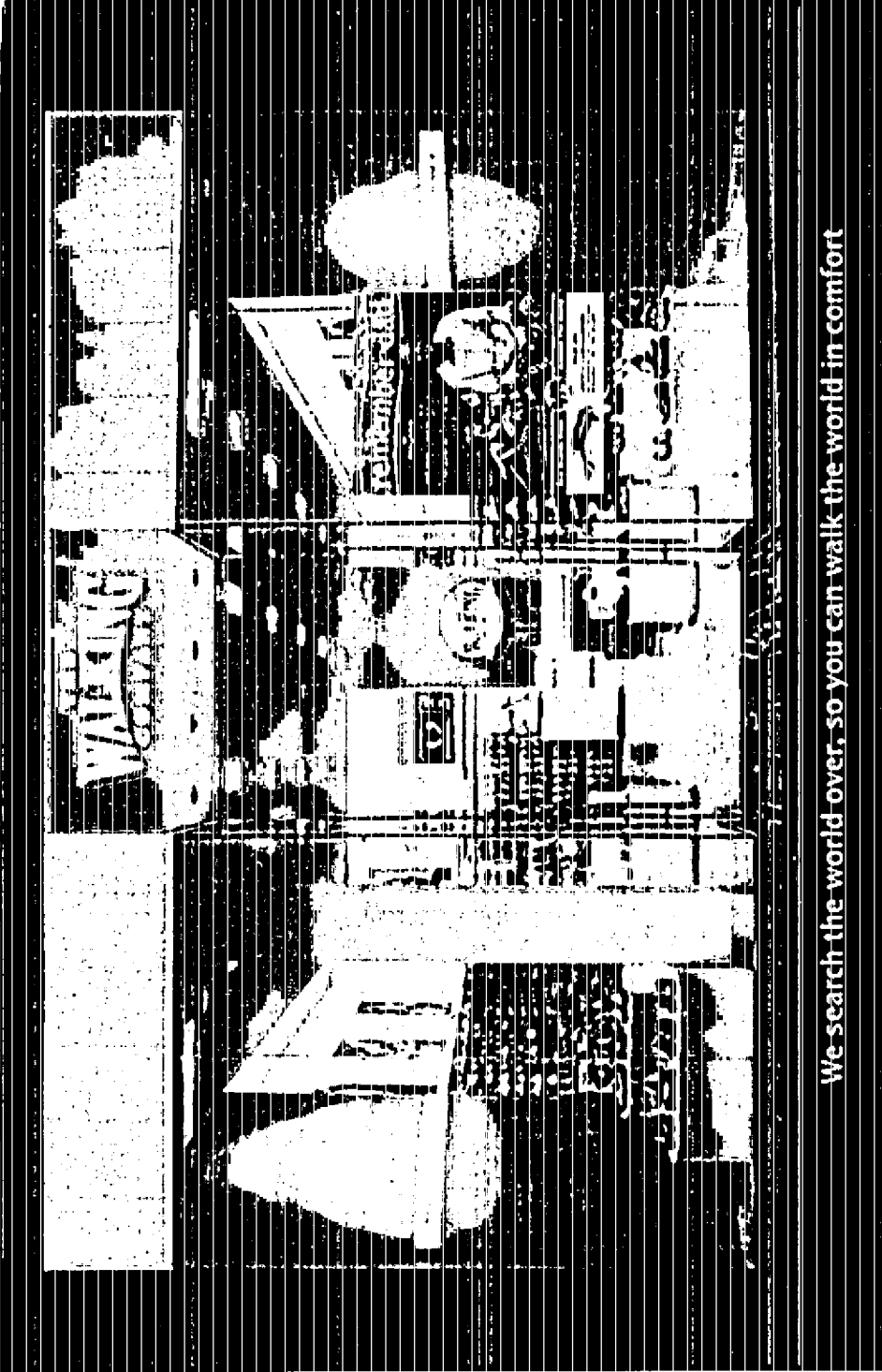
[Shipping Policy](#) [FAQ](#) [Track Your Gear](#) [Mailing List](#) [Store Locator](#) [Contact Us](#) [Privacy Policy](#) [A](#)

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EXHIBIT D

THE WALKING COMPANY The Best Brands from Around The World

Shop by Category Shop by Brand Lifestyle Community About Us Health Stores



We search the world over, so you can walk the world in comfort

Shipping Policy FAQ Track Your Gear Mailing List Store Locator Contact Us Privacy Policy Affiliate Program

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EXHIBIT C



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11rocky_relaxer_10mb.tif



12easy_10mb.tif



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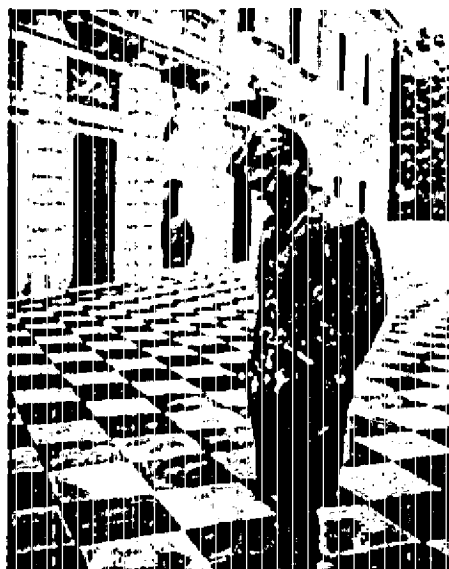
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EXHIBIT B



MENS

WOMENS

ACCESSORIES

HOME FURNISHINGS

STORES & CAFES

EVENTS

Tommy Bahama

PURVEYOR OF ISLAND LIFESTYLES

Relaxed fashions for men and women.

Island inspired accessories

Store and café getaways

Private oasis home collection

Kindred spirits at Paradise Nation

PARADISE NATION

User Name:

Password:

ENTER

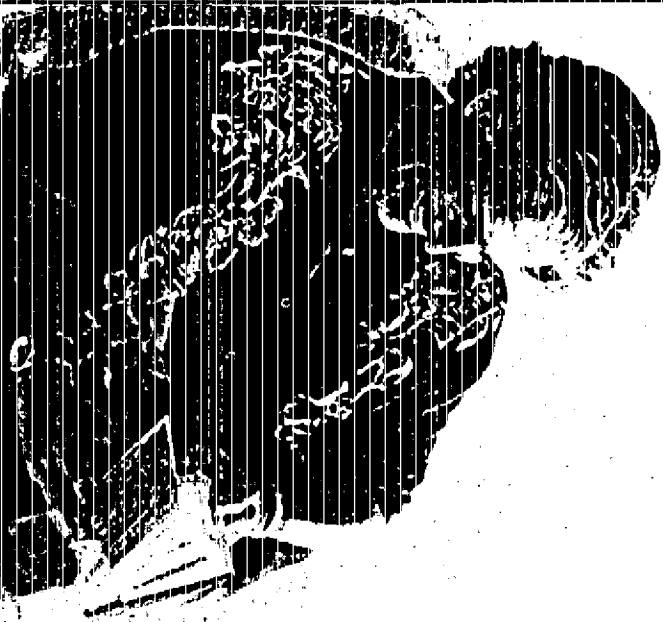
Are Paradise Nation??
Forgot your password??

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Tommy Bahama

HERITAGE OF ISLAND LIFESTYLES

HOME MENS WOMENS ACCESSORIES HOME FURNISHINGS STORES & CAREERS EVENTS



MENS

No man is an island... but who wouldn't prefer living on one? Experience an elegant and relaxed array of island-inspired clothing fashioned in our signature prints, and denim, linen and washable silk.



Live in your own island retreat.

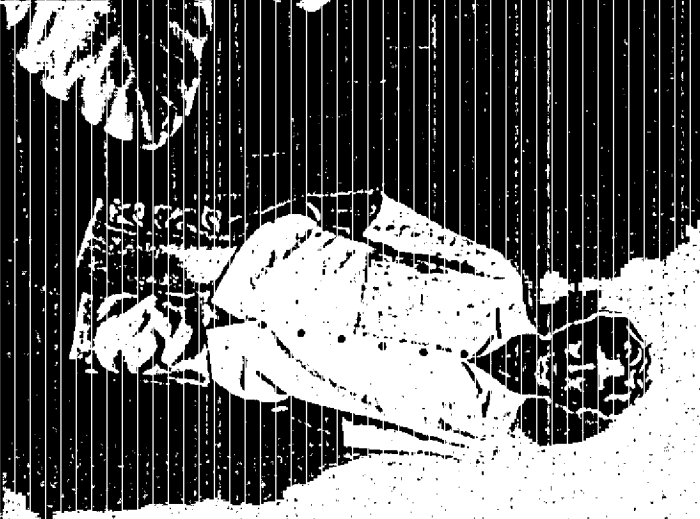


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Tommy Bahama
 A SYMBYON OF ISLAND LIFESTYLES

HOME MENS WOMENS ACCESSORIES HOME FURNISHINGS STORES & CATES EVENTS




MENS

No man is an island... but who wouldn't prefer living on one? Experience an elegant and relaxed array of island-inspired clothing fashioned in our signature prints, and crafted from the finest cotton, denim, linen and washable silk.



Live in your own island retreat.



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Tommy Bahama

REBORN OF ISLAND LIFESTYLES

HOME MENS WOMENS ACCESSORIES HOME FURNISHINGS STORES & CAFES EVENTS



MENS

No man is an island... but who wouldn't prefer living on one? Experience an elegant and relaxed array of island inspired clothing fashioned in our signature prints, and crafted from the finest cotton, denim, linen and washable silk.



Live in your own island retreat.

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Tommy Bahama

THE SHERIFF OF ISLAND LIFESTYLES

HOME MENS WOMENS ACCESSORIES HOME FURNISHINGS STORES & CAPES EVENTS

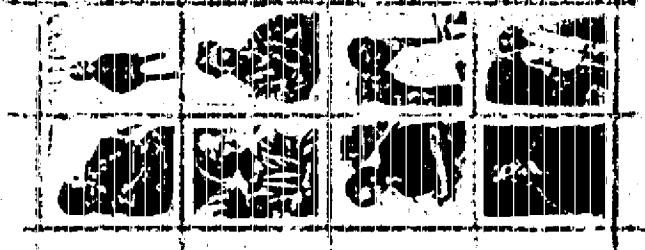


MENS

No man is an island... but who wouldn't prefer living on one? Experience an elegant and relaxed array of island-inspired clothing fashioned in our signature prints, and crafted from the finest cotton, denim, linen and washable silk.



Live in your own island retreat.



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EXHIBIT A

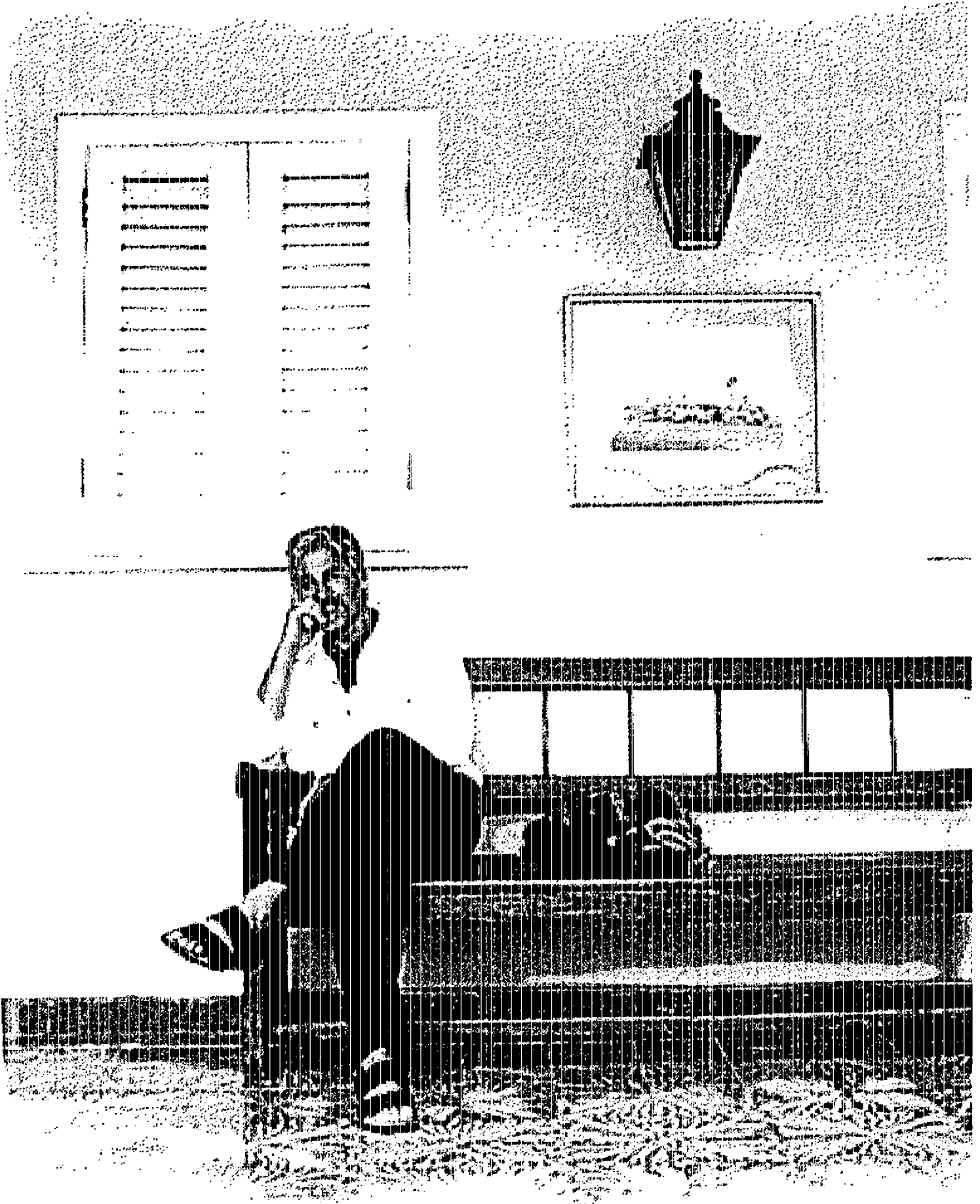


















EXHIBIT F



Thomas E. Campbell
Vice President -- Law, General Counsel
and Secretary
Direct Line: 404.653.1437
Fax Line: 404.653.1224
Email: tcampbell@oxfordinc.com

June 13, 2007

Via Email and Facsimile No. (805) 962-9460

Anthony J. Wall, Esq.
Executive Vice President & General Counsel
Big Dog Holdings, Inc.
121 Cray Avenue
Santa Barbara, CA 93101

*Re: Cease and Desist -- Unauthorized Use of Tommy Bahama Photographs
and Images*

Dear Tony:

As you know, I am the General Counsel of Oxford Industries, Inc., the parent company of Tommy Bahama Group, Inc. I am writing on behalf of Tommy Bahama concerning the ongoing use by The Walking Company ("TWC") of proprietary Tommy Bahama photographs and images in TWC's advertising materials.

When we spoke on Friday, you expressed your belief that TWC had acted in good faith with permission from Tommy Bahama's licensee, Phoenix Footwear Group, Inc. ("Phoenix"), in using certain Tommy Bahama photographs and images in advertising designed to solely promote TWC, as opposed to promoting TOMMY BAHAMA® footwear sold by TWC. However, since Friday, Oxford and Tommy Bahama have investigated the matter, and now understand that neither Tommy Bahama nor Phoenix gave TWC any such permission. Indeed, as we discussed on Friday, it is against Tommy Bahama's corporate policy to allow any licensee or retailer to use its proprietary photographs and images to promote products or services that are not directly associated with Tommy Bahama.

Tommy Bahama's intellectual property rights are among its most valuable assets, and Tommy Bahama must take steps to protect its rights from unauthorized use. Accordingly, we must demand that TWC immediately cease any and all use of any Tommy Bahama photographs and images that TWC is using to promote its business, including without limitation the removal

222 Piedmont Ave., NE, Atlanta, Georgia 30308

Mr. Anthony Wall, Esq.
June 13, 2007
Page 2 of 2

and destruction of any and all posters, banners, web site images, or catalogs containing the photographs or images. Tommy Bahama requests that TWC confirm its acceptance of and compliance with this demand no later than the end of the day tomorrow, Thursday, June 14, 2007.

Tommy Bahama also demands a detailed written accounting of all usage by TWC of Tommy Bahama photographs or images. Such accounting should be provided no later than the end of the day Monday, June 18, 2007.

The foregoing demands and requests are without prejudice, and neither Tommy Bahama nor Oxford waive any rights and remedies available to it.

Notwithstanding the foregoing, on a personal note, I hope this finds you well.

I look forward to hearing from you.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'TEC', with a long horizontal flourish extending to the right.

Thomas E. Campbell

TEC/

Cc: Mr. Doug Wood
Ms. Chrisann Furciato
Ms. Mary Margaret Heaton, Esq.