

FILED

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. CALIF.
LOS ANGELES

BY _____

8 Attorneys for Plaintiffs,
9 BAREFOOT DREAMS, INC., et al

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 BAREFOOT DREAMS, INC., a
13 California corporation, ANNETTE
14 SEIFERT COOK, an individual,

15 Plaintiffs,

16 v s.

17
18 LOTUS SPRINGS USA, LLC, a
19 California limited liability company;
20 WILLIAM WONG, an individual;
21 DOES I - X, Inclusive,

22 Defendants.

CASE NO.

CV08-00033 PSG VBX

COMPLAINT FOR TRADEMARK
INFRINGEMENT, FALSE DESIGNATION OF ORIGIN AND MISAPPROPRIATION OF CONFIDENTIAL INFORMATION

JURY TRIAL DEMANDED

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25 COME NOW THE PLAINTIFFS, BAREFOOT DREAMS, INC. and
26 ANNETTE SEIFERT COOK, and for causes of action against the defendants,
27 complain and allege as follows:
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MAP-BDI-1645

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JURISDICTION AND VENUE

1. This is a civil action which arises under Sections 32(1) [15 U.S.C. §1114(1)] and 43(a) [15 U.S.C. §1125(1)] of the United States Trademark Act. Jurisdiction is based upon 15 U.S.C. §1121 and 28 U.S.C. §§1338(a) and 1338(b).

2. The Central District of California is a proper venue for this action pursuant to 28 U.S.C. §1391(b) on the ground that this district is one where a substantial part of the events giving rise to the claim occurred.

THE PARTIES

3. Plaintiff, BAREFOOT DREAMS, INC., is a California corporation having its principal place of business in Agoura Hills, California (hereinafter referred to as "Barefoot Dreams").

4. Plaintiff, ANNETTE SEIFERT COOK, is an individual residing in the County of Los Angeles, State of California.

5. Defendant, LOTUS SPRINGS USA, LLC, is a limited liability company organized and existing under the laws of the State of California having its principal place of business in San Gabriel, California (hereinafter referred to as "Lotus Springs").

6. Plaintiffs are informed and believe and, based upon such information and belief, allege that all members of Lotus Springs reside in the State of California.

7. Plaintiffs are informed and believe and, based upon such information and belief, allege that defendant WILLIAM WONG, is an individual residing in the Central District of California and is a member of Lotus Springs (hereinafter referred to as "Wong").

8. The true names or capacities, whether individual, corporate, associate, representative, or otherwise, of the defendants named herein as DOES I - X, Inclusive, are unknown to plaintiffs who therefore, pursuant to Local Rule 19-1 of this Court, sue said defendants by such fictitious names and plaintiff will amend

1 this Complaint to show their true names and capacities when the same have been
2 ascertained.

3 **FIRST COUNT FOR TRADEMARK INFRINGEMENT**

4 9. Plaintiffs hereby repeat and reallege Paragraphs 1 - 8, inclusive, as
5 though set forth in full herein again.

6 10. In or before 1996, and long prior to any of the acts of the defendants
7 complained of in this Complaint, Annette Seifert Cook adopted the trademark
8 BAREFOOT DREAMS as a trademark to designate infant's and children's
9 clothing and infant's and children's blankets, said mark being extensively used,
10 advertised and promoted throughout the United States in general and the State of
11 California in particular.

12 11. Since long prior to any acts of the defendants complained of in this
13 Complaint, Annette Seifert Cook applied for and registered the trademark
14 BAREFOOT DREAMS with the United States Patent and Trademark Office, a
15 copy of the Certificates of Registration Nos. 2,255,852 and 2,531,495 being
16 attached hereto as Exhibits 1 and 2, respectively.

17 12. Since long prior to the acts of the defendants complained of in this
18 Complaint, Annette Seifert Cook granted to plaintiff, Barefoot Dreams, an exclu-
19 sive license to exercise all rights to use, advertise and promote the BAREFOOT
20 DREAMS trademark, and any colorable imitations thereof throughout the United
21 States in general and in the State of California in particular and to contest all acts
22 of infringement of the BAREFOOT DREAMS trademark.

23 13. Since long prior to the acts of defendants complained of in this
24 Complaint, Barefoot Dreams has extensively marketed, sold, advertised and
25 promoted infant's and children's clothing and blankets designated by the trade-
26 mark BAREFOOT DREAMS. Barefoot Dreams has gained a substantial reputa-
27 tion in connection with the infant's and children's clothing and blankets desig-
28 nated by the trademark BAREFOOT DREAMS. By reason of the marketing and

1 sale of products under the above trademark, prior to said acts of the defendants
2 complained of in this Complaint, the trade and public have come to recognize the
3 trademark BAREFOOT DREAMS when used in connection with infant's and chil-
4 dren's clothing and blankets designated by the trademark BAREFOOT DREAMS
5 as identifying such products as being exclusively supplied by, authorized or
6 affiliated with Barefoot Dreams.

7 14. Plaintiffs are informed and believe and, based upon such information
8 and belief, allege that no later than October, 2007, defendants commenced to
9 advertise, promote the sale of and sell baby products, including clothing, through
10 the use of a trademark comprising the illustration of bare, babies' feet, a sample
11 thereof being attached hereto as Exhibit 3 (hereinafter referred to as "Defendants'
12 Trademark"). The defendants, and each of them, have used the Defendants'
13 Trademark despite the fact Defendants' Trademark is a colorable imitation of and
14 wrongfully appropriates the registered BAREFOOT DREAMS trademark and is
15 confusingly similar thereto.

16 15. Defendants' act of marketing and selling infant's and children's
17 clothing and blankets under Defendants' Trademark is directed to the same
18 segment of the purchasing public to which Barefoot Dreams directs its products.

19 16. Defendants' use of the Defendants' Trademark as alleged above, in
20 connection with infant's and children's clothing and blankets is likely to cause
21 confusion or mistake or to deceive the purchasers of its products as to the source of
22 origin of defendants' products and to cause defendants' products to be passed off
23 or viewed as those which are provided or authorized by Barefoot Dreams.

24 17. That unless restrained by this Court, defendants will continue to use
25 the Defendants' Trademark to designate infant's and children's clothing and
26 blankets and, as a result thereof, the public generally will be misled and deceived
27 into believing that the products of the defendant, Lotus Springs, are those of, or are
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1 affiliated with Barefoot Dreams, to the irreparable damage and injury of the
2 business of Barefoot Dreams.

3 18. The aforesaid actions of defendants have irreparably damages
4 Barefoot Dreams and will, unless restrained, continue to so damage the business of
5 Barefoot Dreams and its goods will for all of which there is no adequate remedy at
6 law.

7 **SECOND COUNT FOR FEDERAL UNFAIR COMPETITION**
8 **AND FALSE DESIGNATION OF ORIGIN**

9 19. Plaintiffs hereby repeat and reallege Paragraphs 1 - 8 and 9 - 18,
10 inclusive, of the First Count as though set forth in full herein again.

11 20. Defendants' above-alleged actions constitute the use in connection
12 with goods of false designations or misleading descriptions and representations
13 with respect to the origin, sponsorship or approval of their products and the
14 publicity therefor by suggesting that such goods and the advertising thereof are
15 connected with or associated, sponsored or affiliated with Barefoot Dreams, or that
16 the same truly originated with Barefoot Dreams. Defendants, Lotus Springs and
17 Wong, have caused the Lotus Springs' infant's and children's clothing and blan-
18 kets, and the advertising thereof, to enter United States commerce. The misappro-
19 priation and use of a colorable imitation of the Barefoot Dreams' BAREFOOT
20 DREAMS trademark by defendants, as well as defendants' other actions described
21 above constitute false and misleading descriptions of fact and representations of
22 fact that are likely to give the public a false impression and to confuse the public as
23 to the source of defendants' goods.

24 21. Plaintiffs are informed and believe and, based on such information
25 and belief, allege that defendants adopted and used the Defendants' Trademark
26 with actual knowledge of Barefoot Dreams' long prior use of the BAREFOOT
27 DREAMS trademark and with the intent to trade on the reputation and good will of
28 that mark.

1 22. The aforesaid actions of defendants, and each of them, have irrepar-
2 ably damages Barefoot Dreams and will, unless restrained, continue to so damage
3 the business of Barefoot Dreams and its good will for all of which there is no
4 adequate remedy at law.

5 **THIRD COUNT FOR MISAPPROPRIATION**
6 **OF CONFIDENTIAL BUSINESS INFORMATION**

7 23. Plaintiffs hereby repeat and reallege Paragraphs 1 -87, inclusive, as
8 though set forth in full herein again.

9 24. Prior to the acts complained of herein, defendant Wong was retained
10 by plaintiffs to exclusively manufacture the product line of Barefoot Dreams, said
11 product line including but not limited to infants' and children's clothing and
12 blankets. In his capacity as the exclusive manufacturer of Barefoot Dreams'
13 product line, Wong was given total access to all business information of Barefoot
14 Dreams, including, but not limited to, new and undisclosed designs for Barefoot
15 Dreams' product line, the identification of customers and suppliers and their
16 management and buying personnel, financial data detailing the buying criteria for
17 Barefoot Dreams' customers, the pricing schedules at which the individual
18 products of Barefoot Dreams' product line was to be offered to each of its
19 customers and the costs at which Barefoot Dreams purchased goods from its
20 suppliers, none of which is generally available to the public in general or competi-
21 tors of Barefoot Dreams in particular (hereinafter referred to as "Confidential
22 Business Information").

23 25. That prior to October, 2007, during the period of time when Wong
24 acted as Barefoot Dreams' exclusive manufacturer, Wong formed Lotus Springs
25 and created and commenced to sell a product line that substantially duplicated the
26 product line of Barefoot Dreams in direct competition with the products of
27 Barefoot Dreams. That until in or about October, 2007, defendants, and each of
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1 them intentionally suppressed, concealed or otherwise withheld from plaintiffs any
2 and all information relating to their proposed business and/or the product line to be
3 marketed by Lotus Springs.

4 26. That in or about October, 2007, Barefoot Dreams discovered that
5 defendants:

6 (a) Had formed Lotus Springs for the purpose of manufacturing,
7 distributing and/or selling goods in direct competition to the product line of
8 Barefoot Dreams;

9 (b) Were using Barefoot Dreams' Confidential Business Informa-
10 tion to create a product line copied from Barefoot Dreams' new and undisclosed
11 designs which were to be sold by the defendants, and each of them; and

12 (c) Were soliciting Barefoot Dreams' customers for the purpose of
13 diverting sales of the Barefoot Dreams' product line to Lotus Springs.

14 27. The Confidential Business Information of Barefoot Dreams was
15 created through the expenditure of a substantial amount of time, energy and
16 money. The Confidential Business Information of Barefoot Dreams has great
17 economic value to Barefoot Dreams in that it comprises information not generally
18 known to its competitors and represents the culmination of many years of manu-
19 facturing and design efforts and customer communications. Barefoot Dreams has
20 exercised substantial efforts to insure that said Confidential Business Information
21 remained a secret by disclosing the information only to those of Barefoot Dreams'
22 employees and agents who required access to the information to perform their jobs.

23 28. The Confidential Business Information of Barefoot Dreams merits
24 legal protection from the misappropriation and misuse of the defendants in that:

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1 (a) Defendants gained access to the Confidential Business Informa-
2 tion solely as a result of their agency relationship with Barefoot Dreams;

3 (b) Defendants have misappropriated and misused the Confidential
4 Business Information of Barefoot Dreams with the intent to injure Barefoot
5 Dreams; and

6 (c) Defendants, and each of them, have sought out and have
7 solicited the business of preferred customers and suppliers of Barefoot Dreams
8 whose trade is particularly profitable specifically through the use of Barefoot
9 Dreams' Confidential Business Information.

10 29. The defendants, and each of them, misappropriated and misused the
11 Confidential Business Information of Barefoot Dreams during the period that
12 Wong acted as the exclusive manufacturer of Barefoot Dreams' product line. In or
13 about October, 2007, through their receipt and use of Barefoot Dreams' Confi-
14 dential Business Information, defendants are now engaging in the same business as
15 Barefoot Dreams and is selling goods which are substantially identical to Barefoot
16 Dreams' new and previously undisclosed designs. Defendants, and each of them,
17 are using the Confidential Business Information of Barefoot Dreams to further the
18 sales of Lotus Springs.

19 30. As a result of the aforesaid misappropriation of Barefoot Dreams'
20 Confidential Business Information, Barefoot Dreams has been damaged in a total
21 amount which is presently unknown, but is not less than \$1,500,000.00.

22 **WHEREFORE**, plaintiffs seek judgment against defendants, and each of
23 them, as follows:

24 1. That defendants, and each of them, and their officers, agents, servants,
25 employees, attorneys, confederates, related companies, and all persons acting in
26 concert or participation with it, be enjoined and restrained during the pendency of
27 this action, and permanently thereafter:

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1 (a) from using in any manner as a trademark or trade name the
2 mark comprising the illustration of bare, babies' feet (Defendants' Trademark)
3 alone or in combination with any other word or words or design, in connection
4 with the advertising, offering for sale or sale of infants' and children's clothing
5 and blankets not produced by plaintiff, or not authorized by plaintiffs to be sold in
6 connection with said mark;

7 (b) from passing off, inducing or enabling others to sell or pass off
8 infants' and children's clothing and blankets which are not plaintiffs or not offered
9 under the control and supervision of plaintiffs and approved by plaintiffs, which
10 are sold through advertising or promotion which includes the Defendants' Trade-
11 mark, or formatives thereof;

12 (c) from committing any acts calculated to cause purchasers to
13 believe that defendants' infant's and children's clothing and blankets are spon-
14 sored by or approved or connected with or guaranteed by or offered and sold under
15 the control and supervision of plaintiffs; and

16 (d) from otherwise competing unfairly with plaintiffs in any
17 manner.

18 2. That defendants account for and pay over to plaintiffs all damages
19 sustained by plaintiffs and all profits realized by defendant by reason of defen-
20 dants' unlawful acts and that the amount of damages for infringement of plaintiffs'
21 trademark be increased by a sum not exceeding three times the amount thereof as
22 provided by Section 35 of the United States Trademark Act, 15 U.S.C. §1117.


23 3. For a temporary restraining order, preliminary injunction and a
24 permanent injunction enjoining the defendants, and each of them, and their
25 respective officers, agents, servants, employees, attorneys, affiliates, successors
26 and all parties in concert or participation with them, or any of them, from continu-
27 ing to engage in acts of unfair competition by the wrongful use of Barefoot
28 Dreams' Confidential Business Information.

1 4. For compensatory damages incurred by plaintiffs of not less than
2 \$1,500,000.00 for the wrongful misappropriation and misuse of Barefoot Dreams'
3 Confidential Business Information; and

4 5. That plaintiffs be awarded their costs of suit, including reasonable
5 attorneys' fees and have such other and further relief as to the Court may deem
6 equitable, including but not limited to, any relief set forth under Section 34-39 of
7 the United States Trademark Act.

8 **PLAINTIFFS DEMAND A JURY TRIAL OF THIS ACTION.**

9 Respectfully submitted,
10 ISAACMAN, KAUFMAN & PAINTER, P.C.

11
12 By: 
13 Michael A. Painter
14 Attorneys for Plaintiffs,
15 BAREFOOT DREAMS, INC. and
16 ANNETTE SEIFERT COOK

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Dated: *1/3/2008*

Int. Cl.: 24

Prior U.S. Cls.: 42 and 50

Reg. No. 2,225,852

United States Patent and Trademark Office

Registered Feb. 23, 1999

**TRADEMARK
PRINCIPAL REGISTER**

BAREFOOT DREAMS

SEIFERT, ANNETTE (UNITED STATES CITIZEN)
323 NORTH LIMA STREET
BURBANK, CA 91505

FIRST USE 10-0-1994; IN COMMERCE
10-0-1994.

SER. NO. 75-422,200, FILED 1-23-1998.

FOR: INFANT'S AND CHILDREN'S BLANKETS, IN CLASS 24 (U.S. CLS. 42 AND 50).

GEORGE LORENZO, EXAMINING ATTORNEY

§8&15 Accepted: 4-5-2005

EXHIBIT 1

-11-

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,531,495

United States Patent and Trademark Office

Registered Jan. 22, 2002

**TRADEMARK
PRINCIPAL REGISTER**

BAREFOOT DREAMS

SEIFERT, ANNETTE L. (UNITED STATES CITIZEN)
5832 KANAN DUME ROAD
MALIBU, CA 90265

FOR: INFANT'S AND CHILDREN'S CLOTHING, NAMELY, BABY BUNTING, BIBS, BONNETS, BOOTIES, COVERALLS, CREEPERS, HEAD WEAR, JACKETS, MITTENS, NIGHTGOWNS, PAJAMAS, PANTIES, PANTS, PULLOVERS, ROBES, ROMPERS, SHIRTS, SHORTS, SLIPPERS, SWADDLING

CLOTHES, T-SHIRTS, TOPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 3-0-1996; IN COMMERCE 3-0-1996.

OWNER OF U.S. REG. NO. 2,225,852.

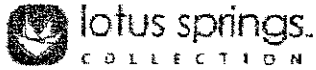
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SKYE YOUNG, EXAMINING ATTORNEY

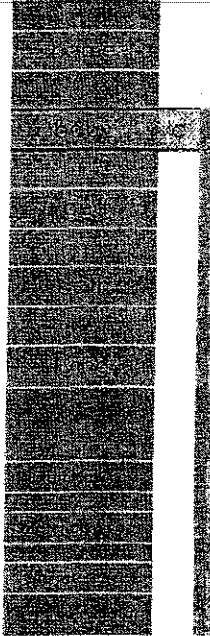
§8&15 Accepted: 9-30-2007

EXHIBIT 2

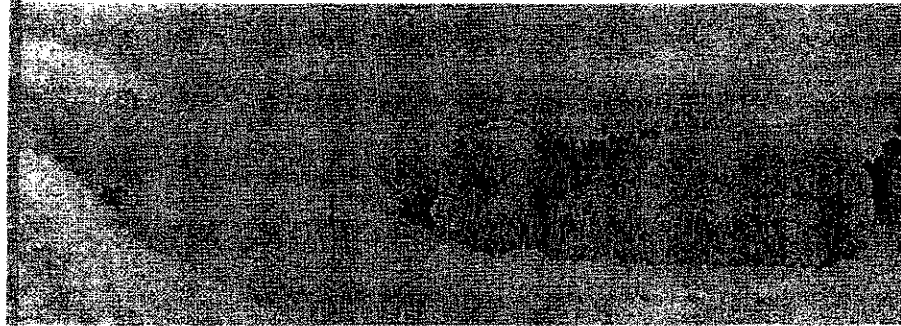
-12-



experience luxury



*Contemporary designs intended to cuddle your baby with tenderness,
created for those who want to give their children the very best.
This is just the beginning...*



conticus

events

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EXHIBIT 3

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