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**07 CIV. 6626**

FILED  
U.S. DISTRICT COURT  
2007 JUL 24 A 8:22  
S.D. OF N.Y. W.P.

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TOUGH CITY, INC. and SAMIR RAJPUT,

Plaintiffs,

v.

XENS, INC.,

Defendant.  
-----X

Civil Action No.

**WP4**

**COMPLAINT**

For its Complaint herein, plaintiffs Tough City, Inc. ("Tough City") and Samir Rajput allege as follows:

1. Plaintiff Tough City, Inc. is a New York corporation having an address of 1205 Broadway, Suite 301, New York, NY 10001.
2. Plaintiff Samir Rajput is an individual and a citizen of Pakistan.
3. Upon information and belief, defendant Xens, Inc. is a California corporation, having a principal place of business at 7629 Somerset Boulevard, Paramount, CA 90723.
4. This action arises under the Laws of the United States, United States Code, Title 15. Jurisdiction is predicated upon United States Code, Title 28, Section 1338(a) and (b). Venue is proper under 28 U.S.C. Section 1391(b) and (c).

5. Plaintiff Tough City, Inc. is a distributor of clothing products and fashion accessories, such as shirts, coats, and pants.

6. Plaintiff Samir Rajput is the owner of U.S Trademark Registration no. 3212473, for the mark and design "Tough City." Samir Rajput has licensed the use of the registered trademark exclusively to plaintiff Tough City, Inc. A copy of the Trademark Registration is attached hereto as Exhibit "A."

7. Upon information and belief, Defendant Xens, Inc. is a distributor of clothing goods, and, upon information and belief, has sold and is selling shoes and sneakers bearing the mark TOUGH CITY.

8. Upon information and belief, Defendant Xens, Inc. has sold, offered for sale and/or is selling within this District, and elsewhere, through the internet and otherwise, shoes and sneakers under the name TOUGH CITY, that have not been produced by Tough City, Inc., or with the consent of the trademark owner, plaintiff Samir Rajput.

9. The use of the mark TOUGH CITY on clothing goods from a different producer is likely to cause confusion, to cause mistake and to deceive customers as to the origin, sponsorship, or approval of the TOUGH CITY product.

10. Upon information and belief, the use by Xens, Inc. of the mark TOUGH CITY is in violation of 15 U.S.C. 1114(a), being confusingly similar to the registered mark TOUGH CITY.

11. Upon information and belief, the use by Xens, Inc. of the mark TOUGH CITY is in violation of 15 U.S.C. 1125(a)(1) and constitutes unfair competition.

12. Upon information and belief, Defendant Xens, Inc. has infringed the registered and common law trademarks of TOUGH CITY with the intent to deceive

consumers into believing the goods sold by Xens, Inc. are made by, approved by, sponsored by or affiliated with Tough City, Inc., and these acts were committed with the intent to pass off the Xens, Inc. goods as the goods of Tough City, Inc.

13. Upon information and belief, in its advertising and promotion, Xens, Inc. has misrepresented the nature, characteristics, qualities or origin of Xens, Inc.'s goods, in violation of 15 U.S.C. 1125(a)(2).

14. As a result of the defendant's competitive activities and infringement, Plaintiff Tough City, Inc. has suffered and will continue to suffer grievous and irreparable damage to its business, reputation and good will, and the loss of sales and profits Tough City, Inc. would have made but for the acts of Xens, Inc.

15. Plaintiff repeats and realleges each of the allegations of paragraphs 1-14, inclusive.

16. Upon information and belief, defendant Xens, Inc. has engaged in unfair competition under the common law of the State of New York.

WHEREFORE, Plaintiffs pray that this Court enter judgment:

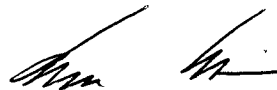
1. Enjoining Defendant and its parent, subsidiaries, agents, officers and employees, and all others acting in concert with them, preliminarily and permanently from the use of the mark TOUGH CITY, or any other mark similar to the trademarks of Tough City, Inc. which is likely to cause confusion and from committing any and all acts of unfair competition as alleged herein.

2. Ordering Defendant to account for their profits and the damages to Plaintiffs for all the unlawful acts alleged herein and specifically for such infringement and that such

award for infringement be trebled pursuant to 15 U.S.C. § 1117(b) in view of Defendant's willful infringement.

3. Assessing attorney's fees, costs and interest against Defendant.
4. Granting such other and further relief as is just and equitable.

Respectfully submitted,



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