

"Sleevey Wonders" are "Arm Tight" in California Lawsuit

January 23, 2018 – The TMCA

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The women's hosiery powerhouse, Spanx, is being sued for allegedly copying designs of a small shapewear company (*R and A Synergy, LLC, v. Spanx, Inc., (C.D. Cal. 2017)*). In the Complaint filed on December 21, 2017 in the Western District of California, R and A Synergy claimed that Spanx copied the design of and advertising for R and A's "Sleeve Wonders" product. The twist here: R and A has evidence showing that Spanx ordered and received two pairs of Sleeve Wonders and had them sent directly to the office of Spanx's CEO four years before Spanx launched its new products.

R and A Synergy is a small business that first sold its “Sleevey Wonders” in 2011. R and A alleged that it spent several years on research and development to invent the “Sleevey Wonders,” a “unique [] sleeved garment specifically designed as a layering piece to wear under sleeveless and strapless tops and dresses.” In 2009, R and A filed a trademark application for the mark SLEEVEY WONDERS and began filing a series of utility and design patents covering the undergarments. Shortly after, R and A launched its Sleeveve Wonders website, where it advertised and sold its products. R and A alleges that “prior to the launch of the Sleeveve Wonders under sleeves, no category of garment existed for slip-on sleeves made to wear under sleeveless and strapless tops and dresses that give the appearance of being part of the outer garment with which they are worn.”

Fast forward to May 15, 2013. R and A, which had been selling Sleeveve Wonders in boutiques across the U.S., received an order from the assistant to Sara Blakely, CEO of Spanx, for two Sleeveve Wonders products. The order was shipped to Spanx’s headquarters in Georgia to Ms. Blakely’s assistant.

R and A followed up, inquiring about whether Spanx had any interest in discussing a potential business partnership. Spanx, however, had another idea. To R and A’s dismay, Spanx debuted its new “Sheer Fashion” and “Arm Tights” products “as layering pieces to be worn under sleeveless garments” in September 2017. According to the Complaint, Spanx’s Blakely claimed that Arm Tights filled a “white space” in the fashion industry that had never existed before, though it had two pairs of Sleeveve Wonders sitting right in its offices.

R and A further claims that Spanx had even gone as far as to copy several key advertising and branding elements from the Sleeveve Wonders products, such as the use of illustrations of paper dolls wearing a sleeved under garment with various interchangeable outfits, a bullet-pointed list on the packaging, and the use of a mathematical equation to show that the products combine with other items to create new items. R and A also points out interesting similarities in the branding slogans for each product: R and A asserts that like its use of the slogan “Made in the USA, with love” to advertise its product, Spanx also uses the phrase “#Madewithlove” to advertise its products. R and A also asserts that “similar to the slogan of R and A, ‘Magically transforming your outfit into something NEW!’ Spanx advertises [its] Arm Tights on its website and its product packaging using the slogan, ‘Transform your wardrobe!’ and advertises its product as being magic.”

According to the Complaint, after receiving a cease and desist letter from R and A, Spanx’s attorneys attempted to distinguish the products claiming that Spanx’s packaging and promotional materials are readily distinguishable from R and A’s and that Spanx’s products are “all in a pull-on style, whereas Sleeveve Wonders [] products snap under the bust.” R and A contends, however, that the packaging and promotion are nearly identical to one another and the original Sleeveve Wonders are pull-on style, similar to Spanx’s products.

R and A was not convinced and now pursues claims for copyright infringement based on

Spanx's alleged copying, reproduction and distribution of R and A's marketing materials, such as the use of the paper doll illustrations, equations to show wardrobe expansion, and buzz words and slogans; trade dress infringement for the identical look and feel of the fabric design of the two products; false advertising; and federal and state unfair competition. However, R and A makes no claim for patent infringement based on its utility and design patent applications.

The outcome of this case will be interesting, as those in the fashion industry have long expressed their concern over the lack of intellectual property protection for unique fashion designs. Technology has made it increasingly difficult for designers to stay ahead of copyists, who can immediately begin producing knockoffs and counterfeits, or, in this case, a direct competitor. The TMCA will keep you posted about further developments in the case!