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Pocket Patent Suit Against Levi's To Be Tossed

By **Mike Cherney**

Law360, New York (August 06, 2009) -- An Ohio magistrate judge recommended Wednesday that a lawsuit brought by an Ohio man against a slew of clothing companies he said copied his design for a joint cell phone and CD player pocket be dismissed.

Magistrate Judge Sharon L. Ovington wrote for the U.S. District Court for the Southern District of Ohio that Gregory Walker Johnson had failed to make the proper claims for patent and copyright infringement against Columbia Sportswear Inc., Sean John Clothing Inc., Target Corp., Iconix Brands Inc., Phillips-Van Heusen Corp., VF Sportswear Inc., Levi Strauss & Co. and others.

Joe Dreitler, an attorney representing some of the companies, said his clients were pleased with the recommendation.

Johnson represented himself in the lawsuit and initially submitted a handwritten complaint.

The district judge still needs to affirm the recommendation for the case to be officially dismissed, Dreitler said.

"It just points out that one of the problems still inherent in our system is that anybody ... can cause large companies to have to spend significant amounts of money just to get themselves out of cases which to anyone objectively looking at it would say, 'On so many levels, there's nothing to this case,'" Dreitler said.

Johnson, 55, who had asked for nearly \$3 billion in damages, said Thursday that he had not yet heard of Judge Ovington's recommendation. But he said he was still confident he would prevail, was thinking about getting an attorney and would appeal any dismissal ruling.

Johnson approached several of the companies to obtain a licensing agreement, but none signed on, he said.

Johnson held a copyright for a drawing of his pocket, but copyright law does not provide for the protection of "useful" items, the judge wrote. The law does allow for ornamentation that can be isolated from an item's functionality to be copyrighted, but Johnson's copyright failed to identify any specific design elements.

"He had a copyright registration for a drawing, just like if you drew a picture of the skyline of Manhattan and filed it," Dreitler said. "You could get a copyright on your drawing, not on the skyline of Manhattan."

Johnson also held a design patent for the pocket, but the patent covers only the design and ornamentation of the pocket, not the pocket itself, the judge wrote. Johnson had applied for a utility patent, which would have protected the functionality of the pocket, but it had yet to be granted, the judge wrote.

Judge Ovington also noted that Johnson had failed to identify what ornamental aspects of his pocket had been copied by the clothing companies aside from its general location on clothing.

Without a more specific description of the patented design and more specific allegations of what was copied, Judge Ovington wrote, a patent infringement claim was largely unsustainable.

Johnson has filed another suit in district court with similar allegations against several other clothing companies. That case is still pending, and Dreitler is also representing some of those companies, which include Perry Ellis International Inc. and Sears Holding Management Co.

Columbia, Sean John, Target, Iconix, Van Heusen and The Bon-Ton Stores Inc. were represented in this matter by Bricker & Eckler LLP. VF Sportswear was represented by Benesch. Levi Strauss was represented by Hahn Loeser & Parks LLP.

The case is Johnson v. Levi Strauss et al., case number 3:08cv00461, in the U.S. District Court for the Southern District of Ohio.

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