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14 UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 LEVI STRAUSS & CO.,
17 Plaintiff,
18 v.
19 NEVERLAND ONLINE PTY LTD
20 and CSD BRANDS,
21 Defendants.

Case No. 3:19-cv-04178

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, UNFAIR
COMPETITION, AND DILUTION
(INJUNCTIVE RELIEF SOUGHT)**

JURY TRIAL DEMAND

22 Plaintiff Levi Strauss & Co. (“LS&Co.”) complains against Defendants Neverland Online Pty
23 Ltd and CSD Brands (collectively “Neverland”) as follows:

JURISDICTION, VENUE, AND INTRA-DISTRICT ASSIGNMENT

24 1. Plaintiff LS&Co.’s first, second, and third claims arise under the Trademark Act of
25 1946 (the Lanham Act), as amended by the Trademark Dilution Revision Act of 2006 (15 U.S.C.
26 §§ 1051 *et seq.*). This Court has jurisdiction over such claims pursuant to 28 U.S.C. §§ 1338(a)
27 and 1338(b) (trademark and unfair competition), 28 U.S.C. § 1331 (federal question), and 15 U.S.C.
28 § 1121 (Lanham Act). This Court has supplemental jurisdiction over the remaining state law claims
under 28 U.S.C. § 1367.

1 2. LS&Co. is informed and believes that venue is proper in this Court under 28 U.S.C.
2 § 1391(b) because Neverland transacts affairs in this district and because a substantial part of the
3 events giving rise to the claims asserted arose in this district.

4 3. Intra-district assignment to any division of the Northern District is proper under Local
5 Rule 3-2(c) and the Assignment Plan of this Court as an “Intellectual Property Action.”

6 **PARTIES**

7 4. LS&Co. is a Delaware corporation with its principal place of business at Levi’s Plaza,
8 1155 Battery Street, San Francisco, California 94111. Operating since approximately the 1850s,
9 LS&Co. is one of the oldest and best known apparel companies in the world. It manufactures,
10 markets, and sells a variety of apparel, including its traditional LEVI’S® brand products.

11 5. LS&Co. is informed and believes that defendant Neverland Online Pty Ltd, trading
12 as Nena and Pasadena, is an Australian company headquartered at 104, McEwan Road, Heidelberg
13 West, Victoria, Australia, 3081.

14 6. LS&Co. is informed and believes that defendant CDS Brands is an Australian company
15 headquartered at 104, McEwan Road, Heidelberg West, Victoria, Australia, 3081.

16 7. LS&Co. is informed and believes that Neverland manufactures, distributes, and/or
17 sells, or has manufactured, distributed, and/or sold, garments, including jeans, shorts, track pants,
18 and jackets, under the brand names Neverland, NXP / Nena and Pasadena, KSCY / Kiss Chacey, and
19 Nomadic Paradise, which are offered for sale and sold throughout the United States, including in this
20 judicial district. LS&Co. is further informed and believes that Neverland has authorized, directed,
21 and/or actively participated in the wrongful conduct alleged herein.

22 **FACTS AND ALLEGATIONS COMMON TO ALL CLAIMS**

23 **LS&Co.’s Tab Trademark**

24 8. LS&Co. marks its LEVI’S® brand products with a set of trademarks that are famous
25 around the world. For many years prior to the events giving rise to this Complaint and continuing to
26 the present, LS&Co. annually has spent great amounts of time, money, and effort advertising and pro-
27 moting the products on which its trademarks are used and has sold many millions of these products all
28 over the world, including throughout the United States and in California. Through these investments

1 and large sales, LS&Co. has created considerable goodwill and a reputation for quality products.
2 LS&Co. continuously has used these trademarks, some for well over a century, to distinguish its
3 products.

4 9. Most of LS&Co.'s trademarks are federally registered; all are in full force and effect,
5 valid and protectable, and exclusively owned by LS&Co. LS&Co. continuously has used each of its
6 trademarks, from the registration date or earlier, until the present, and during all time periods relevant
7 to LS&Co.'s claims.

8 10. Among its marks, LS&Co. owns the famous Tab Device Trademark (the "Tab trade-
9 mark"), which consists of a textile marker or other material sewn into one of the regular structural
10 seams of the garment. LS&Co. uses the Tab trademark on LEVI'S[®] jeans and pants, and a variety
11 of other clothing products.

12 11. LS&Co. began to display the Tab trademark on the rear pocket of its pants in 1936
13 when its then National Sales Manager, Leo Christopher Lucier, proposed placing a folded cloth ribbon
14 in the structural seams of the rear pocket. The purpose of this "tab" was to provide "sight identifica-
15 tion" of LS&Co.'s products. Given the distinctiveness of the Tab trademark, Mr. Lucier asserted that
16 "no other maker of overalls can have any other purpose in putting a colored tab on an outside patch
17 pocket, unless for the express and sole purpose of copying our mark, and confusing the customer."

18 12. LS&Co. owns, among others, the following United States Registrations for its Tab
19 trademark, attached as Exhibit A. These registrations have become incontestable under the provisions
20 of 15 U.S.C. § 1065.

- 21 a. Registration No. 516,561 (first used as early as September 1, 1936;
22 registered October 18, 1949);
- 23 b. Registration No. 1,157,769 (first used as early as September 1, 1936;
24 registered June 16, 1981);
- 25 c. Registration No. 2,791,156 (first used as early as September 1, 1936;
26 registered December 9, 2003);
- 27 d. Registration No. 356,701 (first used as early as September 1, 1936;
28 registered May 10, 1938);

- 1 e. Registration No. 577,490 (first used as early as September 1, 1936;
2 registered July 21, 1953);
- 3 f. Registration No. 774,625 (first used as early as May 22, 1963; registered
4 August 4, 1964);
- 5 g. Registration No. 775,412 (first used as early as October 9, 1957;
6 registered August 18, 1964);
- 7 h. U.S. Registration No. 2,726,253 (first used as early as March 7, 1969;
8 registered June 17, 2003); and
- 9 i. California Registration No. 052312 (first used as early as March 7,
10 1969; registered June 12, 1974).

11 13. The Tab trademark is valid and protectable, and exclusively owned by LS&Co. The
12 Tab trademark is famous and recognized around the world and throughout the United States by con-
13 sumers as signifying authentic, high quality LEVI'S® jeans and pants. The Tab trademark became
14 famous prior to Neverland's conduct that is the subject of this Complaint.

15 14. Examples of LS&Co.'s use of its Tab trademark on LEVI'S® jeans, pants, shorts, and
16 jackets are attached as Exhibit B.

17 **Neverland's Infringement of LS&Co.'s Trademarks**

18 15. Beginning at some time in the past and continuing until the present, Neverland has
19 manufactured, promoted, and sold garments that infringe and dilute LS&Co.'s trademarks.

20 16. In particular, LS&Co. is informed and believes that Neverland has manufactured,
21 sourced, imported, exported, licensed, marketed, and/or sold substantial quantities of jeans, shorts,
22 track pants, and jackets bearing pocket tab devices that are highly similar to LS&Co.'s Tab trademark
23 (hereinafter "Neverland Tab") and are likely to confuse consumers about the source of Neverland's
24 products and/or a relationship between Neverland and LS&Co. LS&Co. is also informed and believes
25 that Neverland uses the Neverland Tab as a source identifier and/or mark, constituting an intent to
26 acquire ill-gotten goodwill and/or rights in the Neverland Tab, and increasing the damage caused to
27 LS&Co.'s famous trademark. Images of some of Neverland's products bearing the Neverland Tab are
28 attached to this Complaint as Exhibit C.

1 17. LS&Co. is informed and believes that Neverland has manufactured, sourced, imported,
2 exported, licensed, marketed, and/or sold substantial quantities of products bearing the Neverland Tab,
3 and has obtained and continues to obtain substantial profits from these sales.

4 18. Neverland's actions have caused and will cause LS&Co. irreparable harm for which
5 money damages and other remedies are inadequate. Unless Neverland is restrained by this Court, it
6 will continue and/or expand its illegal activities and otherwise continue to cause great and irreparable
7 damage and injury to LS&Co. by, among other things:

8 a. Depriving LS&Co. of its statutory rights to use and control use of its
9 trademarks;

10 b. Creating a likelihood of confusion, mistake, and deception among
11 consumers and the trade as to the source of the infringing products;

12 c. Causing the public falsely to associate LS&Co. with Neverland and/or
13 its products, or vice versa;

14 d. Causing incalculable and irreparable damage to LS&Co.'s goodwill
15 and diluting the capacity of its Tab trademark to differentiate LEVI'S®
16 products from others; and

17 e. Causing LS&Co. to lose sales of its genuine clothing products.

18 19. Accordingly, in addition to other relief sought, LS&Co. is entitled to injunctive relief
19 against Neverland, its affiliates, licensees, subsidiaries, and all persons acting in concert with it.

20 **FIRST CLAIM**
21 **FEDERAL TRADEMARK INFRINGEMENT**
22 **(15 U.S.C. §§ 1114-1117; Lanham Act § 32)**

23 20. LS&Co. realleges and incorporates by reference each of the allegations contained in
24 paragraphs 1 through 19 of this Complaint.

25 21. Without LS&Co.'s consent, Neverland has used, in connection with the sale, offering
26 for sale, distribution, or advertising of its products, designs that infringe upon LS&Co.'s registered
27 Tab trademarks.

28 22. These acts of trademark infringement have been committed with the intent to cause
confusion, mistake, or deception, and are in violation of 15 U.S.C. § 1114.

1 23. As a direct and proximate result of Neverland’s infringing activities, LS&Co. is
2 entitled to recover Neverlands’s unlawful profits and LS&Co.’s substantial damages under 15 U.S.C.
3 § 1117(a).

4 24. Neverland’s infringement of LS&Co.’s Tab trademark is an exceptional case and was
5 intentional, entitling LS&Co. to treble the amount of its damages and Neverland’s profits, and to an
6 award of attorneys’ fees under 15 U.S.C. § 1117(a).

7 25. LS&Co. is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).

8 **SECOND CLAIM**
9 **FEDERAL UNFAIR COMPETITION**
10 **(False Designation of Origin and False Description)**
11 **(15 U.S.C. § 1125(a); Lanham Act § 43(a))**

12 26. LS&Co. realleges and incorporates by reference each of the allegations contained in
13 paragraphs 1 through 25 of this Complaint.

14 27. Neverland’s use of the Neverland Tab tends falsely to describe its products within
15 the meaning of 15 U.S.C. § 1125(a)(1). Neverland’s conduct is likely to cause confusion, mistake,
16 or deception by or in the public as to the affiliation, connection, association, origin, sponsorship,
17 or approval of Neverland’s products to the detriment of LS&Co. and in violation of 15 U.S.C.
18 § 1125(a)(1).

19 28. As a direct and proximate result of Neverland’s infringing activities, LS&Co. is
20 entitled to recover Neverland’s unlawful profits and LS&Co.’s substantial damages under 15 U.S.C.
21 § 1117(a).

22 29. Neverland’s infringement of LS&Co.’s Tab trademark is an exceptional case and was
23 intentional, entitling LS&Co. to treble the amount of its damages and Neverland’s profits, and to an
24 award of attorneys’ fees under 15 U.S.C. § 1117(a).

25 30. LS&Co. is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).

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THIRD CLAIM
FEDERAL DILUTION OF FAMOUS MARKS
(Trademark Dilution Revision Act of 2006)
(15 U.S.C. § 1125(c); Lanham Act § 43(c))

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3 31. LS&Co. realleges and incorporates by reference each of the allegations contained
4 in paragraphs 1 through 30 of this Complaint.

5 32. LS&Co.’s Tab trademark is distinctive and famous within the meaning of the
6 Trademark Dilution Revision Act of 2006, 15 U.S.C. § 1125(c), and was distinctive and famous
7 prior to Neverland’s conduct as alleged in this Complaint.

8 33. Neverland’s conduct is likely to cause dilution of LS&Co.’s Tab trademark by
9 diminishing its distinctiveness in violation of the Trademark Dilution Revision Act of 2006, 15
10 U.S.C. § 1125(c).

11 34. LS&Co. is entitled to injunctive relief pursuant to 15 U.S.C. §§ 1116(a) and 1125(c).

FOURTH CLAIM
CALIFORNIA TRADEMARK INFRINGEMENT AND DILUTION
(Cal. Bus. & Prof. Code §§ 14200 *et seq.*; Cal. Bus. & Prof. Code § 14247)

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14 35. LS&Co. realleges and incorporates by reference each of the allegations contained in
15 paragraphs 1 through 34 of this Complaint.

16 36. LS&Co. owns registered and common law rights in its Tab trademark.

17 37. Neverland is using the Neverland Tab, a mark that is identical or nearly identical
18 to the Tab trademark, without the consent of LS&Co. in connection with goods that are identical
19 to LS&Co.’s.

20 38. LS&Co.’s Tab trademark became famous long before Neverland began using the
21 Neverland Tab.

22 39. Neverland’s infringement of LS&Co.’s Tab trademark is likely to cause consumer
23 confusion and dilution of LS&Co.’s marks in violation of California Business & Professions Code
24 sections 14200 *et seq.*, and California Business & Professions Code section 14247.

25 40. Neverland infringed and diluted LS&Co.’s Tab trademark with knowledge and intent
26 to cause confusion, mistake, or deception.

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1 41. Neverland’s conduct is aggravated by that kind of willfulness, wantonness, malice,
2 and conscious indifference to the rights and welfare of LS&Co. for which California law allows the
3 imposition of exemplary damages.

4 42. Pursuant to California Business & Professions Code sections 14247 and 14250,
5 LS&Co. is entitled to injunctive relief and damages in the amount of three times Neverland’s profits
6 and three times all damages suffered by LS&Co. by reason of Neverland’s manufacture, use, display,
7 or sale of infringing goods.

8 **FIFTH CLAIM**
9 **CALIFORNIA UNFAIR COMPETITION**
10 **(Cal. Bus. & Prof. Code § 17200)**

11 43. LS&Co. realleges and incorporates by reference each of the allegations contained in
12 paragraphs 1 through 42 of this Complaint.

13 44. Neverland’s conduct as alleged in this Complaint constitutes “unlawful, unfair or fraud-
14 ulent business act[s] or practice[s] and unfair, deceptive, untrue or misleading advertising” within the
15 meaning of California Business & Professions Code section 17200.

16 45. As a consequence of Neverland’s actions, LS&Co. is entitled to injunctive relief
17 preventing the conduct alleged in this Complaint.

18 **PRAYER FOR JUDGMENT**

19 WHEREFORE, LS&Co. prays that this Court grant it the following relief:

- 20 1. Adjudge that LS&Co.’s Tab trademark has been infringed by Neverland in violation of
21 LS&Co.’s rights under common law, 15 U.S.C. § 1114, and/or California law;
- 22 2. Adjudge that Neverland has competed unfairly with LS&Co. in violation of LS&Co.’s
23 rights under common law, 15 U.S.C. § 1125(a), and/or California law;
- 24 3. Adjudge that Neverland’s activities are likely to dilute LS&Co.’s famous Tab trade-
25 mark in violation of LS&Co.’s rights under common law, 15 U.S.C. § 1125(c), and/or California law;
- 26 4. Adjudge that Neverland and its agents, employees, attorneys, successors, assigns,
27 affiliates, and joint venturers, and any person(s) in active concert or participation with it, and/or any
28 person(s) acting for, with, by, through, or under it, be enjoined and restrained at first during the
pendency of this action and thereafter permanently from:

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- a. Manufacturing, producing, sourcing, importing, exporting, selling, offering for sale, distributing, licensing, advertising, or promoting any goods that display any words, symbols, or designs that so resemble LS&Co.’s Tab trademark as to be likely to cause confusion, mistake, or deception, on or in connection with any product that is not authorized by or for LS&Co., including, without limitation, any product that bears the Neverland Tab which is the subject of this Complaint and for which Neverland is responsible, or any other approximation of LS&Co.’s trademarks;
- b. Using any word, term, name, symbol, device, or combination thereof that causes or is likely to cause confusion, mistake, or deception as to the affiliation or association of Neverland or its products with LS&Co. or as to the origin of Neverland’s goods, or any false designation of origin, false or misleading description or representation of fact, or any false or misleading advertising;
- c. Claiming trademark rights in the Neverland Tab or any other word, symbol, or design that is similar to the Tab trademark, including by applying now or in the future for federal registration of trademarks for the Neverland Tab or any other word, symbol, or design that is similar to the Tab trademark;
- d. Further infringing the rights of LS&Co. in and to any of its trademarks in its LEVI’S® brand products or otherwise damaging LS&Co.’s goodwill or business reputation;
- e. Further diluting the Tab trademark;
- f. Otherwise competing unfairly with LS&Co. in any manner; and
- g. Continuing to perform in any manner whatsoever any of the other acts complained of in this Complaint;

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1 5. Adjudge that Neverland be required immediately to supply LS&Co.’s counsel with
2 a complete list of individuals and entities from whom or which it purchased, and to whom or which
3 it sold, offered for sale, distributed, advertised, or promoted infringing products as alleged in this
4 Complaint;

5 6. Adjudge that Neverland be required immediately to deliver to LS&Co.’s counsel
6 its entire inventory of infringing products, including, without limitation, pants, shirts, and any other
7 clothing, packaging, labeling, advertising and promotional material, and all plates, patterns, molds,
8 matrices, and other material for producing or printing such items, that are in its possession or subject
9 to its control and that infringe LS&Co.’s trademarks as alleged in this Complaint;

10 7. Adjudge that Neverland, within thirty (30) days after service of the judgment
11 demanded herein, be required to file with this Court and serve upon LS&Co.’s counsel a written
12 report under oath setting forth in detail the manner in which it has complied with the judgment;

13 8. Adjudge that LS&Co. recover from Neverland its damages and lost profits, and
14 Neverland’s profits, in an amount to be proven at trial, as well as punitive damages under California
15 law;

16 9. Adjudge that Neverland be required to account for any profits that are attributable to
17 its illegal acts, and that LS&Co. be awarded (1) Neverland’s profits and (2) all damages sustained by
18 LS&Co., under 15 U.S.C. § 1117, plus prejudgment interest;

19 10. Adjudge that the amounts awarded to LS&Co. pursuant to 15 U.S.C. § 1117 shall be
20 trebled;

21 11. Order an accounting of and impose a constructive trust on all of Neverland’s funds
22 and assets that arise out of its infringing activities;

23 12. Adjudge that LS&Co. be awarded its costs and disbursements incurred in connection
24 with this action, including LS&Co.’s reasonable attorneys’ fees and investigative expenses; and

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