

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

A & H SPORTSWEAR CO., INC. &	:	
MAINSTREAM SWIMSUITS, INC.,	:	Civil Action
	:	
Plaintiffs and	:	
Counterclaim-Defendants.	:	
	:	
v.	:	
	:	
VICTORIA'S SECRET STORES, INC. &	:	
VICTORIA'S SECRET CATALOGUE, INC.,	:	No. 94-7408
	:	
Defendants and	:	
Counterclaim-Plaintiffs.	:	

REVISED ORDER

AND NOW, this 1st day of July, 1997, upon consideration of our opinion in A&H Sportswear, 926 F. Supp. 1233 (1996); the evidence presented during trial on November 4th and 5th of 1996; Plaintiffs' Post-Trial Memorandum and Findings of Fact filed November 27, 1996; Plaintiffs' Amended Conclusions of Law filed December 10, 1996; Defendants' Response to Plaintiffs' Findings of Fact and Amended Conclusions of Law filed January 2, 1997; Defendants' Post-Trial Brief,¹ Proposed Findings of Fact, and Proposed Conclusions of Law filed January 2, 1997; Plaintiffs' Response to Defendants' Proposed Findings of Fact and Conclusions of Law filed January 13, 1997; and Plaintiffs' Reply to Defendants' Post-Trial Brief filed January 13, 1997, it is hereby

1. We also considered, as referenced by Defendants' Post-Trial Brief filed January 1, 1997, Defendants' Trial Memorandum filed November 1, 1996.

ORDERED and DECREED consistent with our Decision dated June 27, 1997 that:

1. Judgment is entered in favor of Plaintiffs and against Defendant Victoria's Secret Stores, Inc. for \$63,480.00;

2. Judgment is entered in favor of Plaintiffs and against Defendant Victoria's Secret Catalogue, Inc. for \$1,086,640.00;

3. Defendants are hereby PERMANENTLY ENJOINED from using the mark "THE MIRACLE BRA," "MIRACLESUIT," and any other "miracle" mark in connection with swimwear including the promotion, advertising, sale, and identification of swimwear UNLESS:

a. Defendants publish the disclaimer, "The Miracle Bra™ swimwear collection is exclusive to Victoria's Secret and not associated with MIRACLESUIT® by Swim Shaper®" in connection with any promotion, advertising, sale, or identification of such swimwear. The disclaimer shall be published on every page of any catalog spread or magazine advertisement in which a "miracle" mark appears to identify swimwear on the

same page. The disclaimer shall appear in type no smaller than Defendants' disclaimer appeared in Defendants' Ex. 296. If Defendants utilize a toll free number at any point in their catalog, such toll free number shall also appear within one half inch of each disclaimer required by this paragraph. Such disclaimer shall appear in a color which clearly distinguishes it from the background on which it is printed as illustrated by Defendants' Ex. 296. In addition, the Defendants shall publish the same disclaimer in type and size described above on a hangtag on each piece of swimwear identified by reference to "THE MIRACLE BRA," or other "miracle" mark. The disclaimer is the only use Defendants' may make of the MIRACLESUIT mark;

b. Defendants' pay Plaintiffs 2% royalty of all net sales from November 6, 1996 to the date of this opinion. Said payment shall be made within 90 days of the date of this opinion; and

c. In the future, Defendants shall pay Plaintiffs 2% royalty of all net sales, to be remitted quarterly on the fifteenth day following the completion of each quarter. All payments shall be

accompanied by a verified statement from a certified public accountant to the effect that the 2% royalty has been calculated as required by our opinion in this matter.

d. It is further ordered that this injunction is binding upon Defendants, their officers, agents, servants, employees, and attorneys, and all other persons in active concert with them who receive actual notice of this order by personal service or otherwise;

4. Requests for all other relief by the parties are DENIED;

5. All other outstanding motions are DENIED as moot;

6. This case is CLOSED, however the Court will retain jurisdiction for enforcement and other appropriate purposes; and

7. The purpose of this Revised Order is to correct the typographical error in the amount of judgment entered in our Order dated June 27, 1997.

BY THE COURT

Franklin S. Van Antwerpen, U.S.D.J.