

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABERCROMBIE & FITCH CO., a Delaware
corporation,

Plaintiff,

v.

JOHN DOES 1-13,

Defendants.

NO.

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

Plaintiff Abercrombie & Fitch Co. ("A&F") brings this action against Defendants
JOHN DOES 1-13 (collectively "Defendants"), and alleges as follows:

I. JURISDICTION AND VENUE

1. This is a complaint for an injunction, damages and other appropriate relief to
stop Defendants from infringing A&F's trade and service marks by registering Internet
domain names that are identical or confusingly similar to A&F's trademarks and service
marks, and by using those domain names in bad faith to profit from A&F's marks.

2. In this action, A&F asserts violations of the Anticybersquatting Consumer
Protection Act, 15 U.S.C. § 1125(d); of sections 32 and 43 of the Lanham Act, 15 U.S.C. §
1114 (Trademark Infringement) and §1125(a) (False Designation of Origin, Unfair

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF - 1

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K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 Competition/False Advertising); of the Washington Consumer Protection Act (RCW Ch.
2 19.86); and of Washington common law.

3 3. This Court has subject matter jurisdiction over A&F's claims pursuant to 15
4 U.S.C. §1221 and 28 U.S.C. §§1331 and 1338.

5 4. This Court has personal jurisdiction over Defendants, all of whom have
6 conducted business activities in and directed to this district and are primary participants in
7 tortious acts within this district.

8 5. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because a
9 substantial part of the events or omissions giving rise to the claim pled herein occurred in this
10 judicial district.

11 **II. THE PARTIES**

12 6. Plaintiff A&F is a Delaware corporation with its principal place of business in
13 New Albany, Ohio.

14 7. A&F is unaware of the true names and capacities of Defendants sued herein as
15 JOHN DOES 1-13 and therefore sues these Defendants by such fictitious names. A&F will
16 amend this complaint to allege their true names and capacities when ascertained. A&F is
17 informed and believes and therefore alleges that each of the fictitiously named Defendants are
18 responsible in some manner for the occurrences herein alleged, and that A&F's injuries as
19 herein alleged were proximately caused by such Defendants. These fictitiously named
20 Defendants are herein referred to collectively as "Defendants."

21 **III. A&F'S BUSINESS AND TRADEMARKS**

22 8. A&F is a specialty retailer that operates stores and direct-to-consumer
23 operations selling casual apparel under the Abercrombie & Fitch, Abercrombie kids, Hollister

1 and Gilly Hicks brands. A&F operates over 1000 retail stores globally.

2 9. David Abercrombie founded Abercrombie Co., the predecessor of
3 Abercrombie & Fitch, in 1892 as an upscale sporting goods store. Forming a partnership with
4 Ezra Fitch in 1900, the company continued to expand in the new 20th century. In 1909, A&F
5 mailed over 50,000 copies of its 456 page catalog worldwide, featuring outdoor clothing,
6 camping gear, articles, and advice columns.
7



18 10. A&F continued to grow during the 20th century. By the mid-1990s, there were
19 dozens of A&F stores in the United States. In 1996, A&F became publicly listed on the New
20 York Stock Exchange with the ticker symbol "ANF." Today, Abercrombie & Fitch is one of
21 the world's most recognizable brands.
22

23 11. A&F owns registrations for a number of trademarks and service marks that it
24 uses to identify its products in the marketplace. Among the marks owned by A&F are the
25 following registered marks (collectively the "A&F Marks"): ABERCROMBIE & FITCH;
26 A&F; ABERCROMBIE; HOLLISTER; GILLY HICKS.

1 12. Since at least August 1902, A&F has used in commerce the trademark
2 “ABERCROMBIE & FITCH” to promote the sale of men’s and women’s clothing and
3 footwear. On February 16, 1971, A&F applied to register the ABERCROMBIE & FITCH
4 mark, and on January 23, 1973, the United States Patent and Trademark Office issued
5 Registration No. 951,410 to A&F for the ABERCROMBIE & FITCH mark. The
6 ABERCROMBIE & FITCH mark is also the subject of United States Trademark Registration
7 Nos. 1,999,665, 2,061,284, 3,372,809, 3,381,675 and others. The ABERCROMBIE &
8 FITCH mark is broadly recognized as a brand identifier for A&F's business and clothing line.

9
10 13. Since at least 1908, A&F has used in commerce the trademark “A&F” to
11 promote its products. On November 14, 1979, A&F applied to register the A&F mark and on
12 June 23, 1981 the United States Patent and Trademark Office issued Registration No.
13 1,169,714 to A&F for the A&F mark. The A&F mark is also the subject of United States
14 Trademark Registration Nos. 2,530,664, 2,872,186, 3,349,895, 3,739,561 and others. A&F’s
15 A&F mark is broadly recognized as a brand identifier for A&F's business and clothing line.

16
17 14. Since at least 1892, A&F has used in commerce the trademark / service mark
18 “ABERCROMBIE” to promote its sale of clothing, including coats, jackets, knit shirts,
19 woven shirts, t-shirts, shirts, underwear, pants, jeans, hats and shoes. On April 14, 1998,
20 A&F applied to register the ABERCROMBIE mark, and on January 4, 2000, the United
21 States Patent and Trademark Office issued Registration No. 2,305,464 to A&F for the
22 ABERCROMBIE mark. The ABERCROMBIE mark is also the subject of United States
23 Trademark Registration Nos. 3,484,799, 3,484,812 and others. The ABERCROMBIE mark is
24 broadly recognized as a brand identifier for A&F's business and clothing line.

25
26 15. Since at least July 2001, A&F has used in commerce the trademark mark

1 “HOLLISTER” to promote its sale of clothing. On July 7, 2006, A&F applied to register the
2 HOLLISTER mark, and on October 16, 2007 the United States Patent and Trademark office
3 issued Registration No. 3,310,650 to A&F for the HOLLISTER mark. The HOLLISTER
4 mark is also the subject of United States Trademark Registration Nos. 2,648,144, 2,774,426,
5 3,358,499 and others. The HOLLISTER mark is broadly recognized as a brand identifier for
6 A&F's business and clothing line.

7
8 16. Since at least January 21, 2008, A&F has used in commerce the trademark
9 mark “GILLY HICKS” to promote its sale of clothing. On July 25, 2007, A&F applied to
10 register the GILLY HICKS mark, and on October 30, 2007 the United States Patent and
11 Trademark office issued Registration No. 3,635,948 to A&F for the GILLY HICKS mark.
12 The GILLY HICKS mark is broadly recognized as a brand identifier for A&F's business and
13 clothing line.

14
15 17. The A&F Marks, as well as others owned by A&F, are used in interstate
16 commerce in connection with the sale, offering for sale, distribution, and advertising of
17 A&F's products and services. The A&F Marks are distinctive and were distinctive at the time
18 of all acts alleged herein. As a result of A&F's substantial investment, the A&F Marks have
19 developed extensive goodwill in the market. Accordingly, the A&F Marks are extremely
20 valuable to A&F.

21 22 **IV. A&F'S INTERNET PRESENCE**

23 18. A&F also maintains a substantial presence on the Internet. Via the Internet,
24 A&F advertises its products, transacts business with its customers, and provides customer
25 service and support, among other things. In order to provide its customers with easy access to
26 its online products and services, A&F has registered a number of Internet domain names.

1 Many of these domain names correspond to A&F's trademarks and service marks, including
2 the following: abercrombie.com; abercrombiekids.com; hollisterco.com; and gillyhicks.com.

3 19. Each of these domain names, as well as others registered to A&F, resolves to
4 an A&F-created website that provides A&F's customers with access to A&F's products.
5 These websites generate business for A&F and allow A&F to maintain relationships with its
6 customers.
7

8 20. A&F's Internet-based sales are significant. For example, during fiscal year
9 2009, aggregate total net sales through direct-to-consumer operations exceeded \$290 million,
10 representing almost 10% of the company's net sales.

11 V. DEFENDANTS' UNLAWFUL ACTIONS

12 21. Defendants are the registrants and users of numerous Internet domain names
13 that contain or consist of A&F's marks and/or intentional misspellings of A&F's marks.
14 These domain names are hereinafter referred to as the "Infringing Domain Names." A
15 representative, though not necessarily exhaustive, list of Defendants' Infringing Domain
16 Names is attached hereto as **Appendix A**.
17

18 22. Almost all the Infringing Domain Names domains are registered using fictional
19 or misleading names and contact information. Many of the Infringing Domain Names use
20 what appear to be "privacy protection services" that shield the name and contact information
21 of the true registrant and user of the domain name. Upon information and belief, A&F
22 believes the current registration information for the Infringing Domain Names to be false or
23 materially inaccurate.
24

25 23. The Infringing Domain Names are identical or confusingly similar to A&F's
26 marks. The Infringing Domain Names do not resolve to websites owned or endorsed by

1 A&F.

2 24. Many of the Infringing Domain Names resolve to websites that are controlled
3 by Defendants (collectively referred to as “Defendants’ websites”). Many of Defendants’
4 websites contain numerous advertisements for and/or hyperlinks featuring goods that are
5 directly competitive with A&F products.
6

7 25. When a person looking for a A&F website lands on one of Defendants’
8 websites, that person may click on one of the advertisements or hyperlinks on the site either
9 because the person finds it easier to click on the advertisement or hyperlink than to continue
10 searching for the A&F site, or because the person mistakenly believes A&F has authorized or
11 endorsed the advertisements or hyperlinks. In either case, the person has been diverted from
12 the A&F website he or she was seeking to visit, and A&F has lost the opportunity to interact
13 with that person.
14

15 26. Defendants use the Infringing Domain Names to profit from the A&F Marks.
16 Some of the websites are used by Defendants to advertise or sell pirated “knock off” goods
17 that are imitations of A&F’s products. Others are used to generate revenue, which is received
18 by Defendants when Internet users click on one or more links or advertisements on the
19 websites of the Infringing Domain Names. Defendants receive these payments from one or
20 more advertisers, affiliate programs, or search engines.
21

22 27. Defendants are not affiliated with, or sponsored by, A&F and have not been
23 authorized to use the A&F Marks. Defendants have not now or ever been able to use or
24 register any name or mark that includes the A&F Marks.

25 28. Defendants’ registration and use of the Infringing Domain Names is to
26 primarily capitalize on the goodwill associated with the A&F Marks.

29. Defendants registered and used the Infringing Domain Names willfully and with bad faith intent to profit from the A&F Marks.

30. The actions alleged herein to have been undertaken by the Defendants were undertaken by each defendant individually, were actions that each defendant caused to occur, were actions that each defendant authorized, controlled, directed, or had the ability to authorize, control or direct, and/or were actions in which each defendant assisted, participated, aided and abetted or otherwise encouraged, and are actions for which each defendant is liable.

COUNT I
(Cybersquatting under the Anticybersquatting Consumer Protection Act – 15 U.S.C. § 1125(d))

31. A&F realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 30 above.

32. The A&F Marks were distinctive at the time Defendants registered the Infringing Domain Names and remain distinctive today.

33. The Infringing Domain Names were identical or confusingly similar to the A&F Marks at the time Defendants registered the Infringing Domain Names, and remain so today.

34. Defendants have registered and used the Infringing Domain Names with bad faith intent to profit from the A&F Marks.

35. As a result of their wrongful conduct, Defendants are liable to A&F for violation of the Anticybersquatting Consumer Protection Act.

36. Each defendant also has contributory and vicarious liability for these acts. With knowledge of the illegal activity, each defendant intentionally induced the conduct

1 described above and continued to undertake these acts. Similarly, each defendant had the
2 right and ability to control the illegal activity and received a direct financial benefit from the
3 activity.

4 37. Defendants' registration and use of the Infringing Domain Names has caused
5 and will continue to cause damage to A&F, in an amount to be proven at trial, and is causing
6 irreparable harm to A&F, for which there is no adequate remedy at law. Therefore, A&F is
7 entitled to injunctive relief.
8

9 38. A&F is entitled to recover Defendants' profits, actual damages and costs in an
10 amount to be proven at trial or statutory damages of up to \$100,000 per domain name, treble
11 damages, attorneys' fees and transfer of the Infringing Domain Names to A&F.
12

13 **COUNT II**
14 **(Trademark Infringement Under the Lanham Act - 15 U.S.C. § 1114)**

15 39. A&F realleges and incorporates by this reference each and every allegation set
16 forth in paragraphs 1 through 38 above.

17 40. Defendants' wrongful and unauthorized use of the A&F Marks and
18 counterfeits of the A&F Marks to promote, market, or sell products and services constitutes
19 trademark infringement pursuant to 15 U.S.C. § 1114.

20 41. Each defendant also has contributory and vicarious liability for these acts of
21 trademark infringement. With knowledge of the infringing activity, each defendant
22 intentionally induced the infringing conduct described above and continued to distribute the
23 infringing material. Similarly, each defendant had the right and ability to control the
24 infringing activity and received a direct financial benefit from the infringement.
25

26 42. Defendants' intentional and willful infringement of the A&F Marks has caused

1 and will continue to cause damage to A&F, in an amount to be proven at trial, and is causing
2 irreparable harm to A&F for which there is no adequate remedy at law.

3 43. A&F is entitled to recover damages and to recover its costs herein in an
4 amount to be proven at trial. A&F is also entitled to injunctive relief against Defendants.

5 44. A&F is further entitled to recovery of statutory damages, treble damages and
6 attorneys' fees.
7

8 **COUNT III**
9 **(False Designation of Origin Under the Lanham Act - 15 U.S.C. § 1125(a))**

10 45. A&F realleges and incorporates by this reference each and every allegation set
11 forth in paragraphs 1 through 44 above.

12 46. The A&F Marks are distinctive marks that are associated with A&F and
13 exclusively identify A&F's business, products, and services.

14 47. Defendants have used and continue to use the A&F Marks in connection with
15 goods or services, in commerce, in a manner that is likely to cause confusion, mistake, or
16 deception as to the origin, sponsorship, or approval of such goods or services.

17 48. As a result of their wrongful conduct, Defendants are liable to A&F for
18 violation of this provision of the Lanham Act.
19

20 49. Each defendant also has contributory and vicarious liability for these acts.
21 With knowledge of the illegal activity, each defendant intentionally induced the conduct
22 described above and continued to undertake these acts. Similarly, each defendant had the
23 right and ability to control the illegal activity and received a direct financial benefit from the
24 activity.
25

26 50. A&F has been damaged by these acts in an amount to be proven at trial. A&F

1 is also entitled to injunctive and other equitable relief against Defendants.

2 **COUNT IV**
 3 **(Unfair Competition/False Advertising Under the Lanham Act - 15 U.S.C. § 1125(a))**

4 51. A&F realleges and incorporates by this reference each and every allegation set
 5 forth in paragraphs 1 through 50 above.

6 52. Defendants have used and continue to use the A&F Marks in connection with
 7 goods or services with false and misleading descriptions or representations of fact in
 8 commercial advertising or promotion, thereby misrepresenting the nature, characteristics, and
 9 qualities of their or another person's goods, services, or commercial activities.
 10

11 53. As a result of their wrongful conduct, Defendants are liable to A&F for
 12 violation of this provision of the Lanham Act.

13 54. Each defendant also has contributory and vicarious liability for these acts.
 14 With knowledge of the illegal activity, each defendant intentionally induced the conduct
 15 described above and continued to undertake these acts. Similarly, each defendant had the
 16 right and ability to control the illegal activity and received a direct financial benefit from the
 17 activity.
 18

19 55. A&F is entitled to damages in an amount to be proved at trial and attorneys'
 20 fees. A&F is also entitled to injunctive relief and other equitable relief against Defendants.

21 **COUNT V**
 22 **(Unfair Business Practices - RCW § 19.86 *et seq*)**

23 56. A&F realleges and incorporates by this reference each and every allegation set
 24 forth in paragraphs 1 through 55 above.

25 57. Defendants' use of the A&F Marks to promote, market, or sell products and
 26 services constitutes an unfair business practice pursuant to RCW § 19.86 *et seq*. Defendants'

1 use of the A&F Marks is an unfair or deceptive practice occurring in trade or commerce that
2 impacts the public interest and has caused injury to A&F.

3 58. Defendants' unfair business practice has caused and will continue to cause
4 damage to A&F, and is causing irreparable harm to A&F for which there is no adequate
5 remedy at law.

6 59. Defendants' actions violated RCW Ch. 19.86 *et seq.*, and A&F is entitled to
7 injunctive relief and to recovery of actual damages. A&F is also entitled to treble damages
8 and an award of its attorneys' fees and costs.

10 **COUNT VI**
11 **(Washington Common Law Unfair Competition)**

12 60. A&F realleges and incorporates by this reference each and every allegation set
13 forth in paragraphs 1 through 59 above.

14 61. Defendants' use of the A&F Marks has infringed on their distinctive features
15 in a manner that tends to confuse, in the public mind, Defendants' products and advertising
16 with A&F's products and advertising. Defendants' conduct has caused and will continue to
17 cause damage to A&F, and is causing irreparable harm to A&F for which there is no adequate
18 remedy at law.

20 **COUNT VII**
21 **(Unjust Enrichment)**

22 62. A&F realleges and incorporates by this reference each and every allegation set
23 forth in paragraphs 1 through 61 above.

24 63. The acts of Defendants complained of herein constitute unjust enrichment of
25 the Defendants at A&F's expense in violation of the common law of Washington.

26 64. A&F has been damaged in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, A&F respectfully requests that the Court enter judgment against Defendants, jointly and severally, as follows:

1. That the Court issue temporary and permanent injunctive relief against Defendants, and that Defendants, their officers, agents, representatives, servants, employees, attorneys, successors and assignees, and all others in active concert or participation with Defendants, be enjoined and restrained from:

- a) infringing A&F's trademarks and service marks;
- b) registering, using or trafficking any domain names that are identical or confusingly similar to the A&F Marks, including but not limited to domain names containing the A&F Marks and domain names containing misspellings of the A&F Marks; and
- c) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs a) through b) above.

2. That the Court orders the forfeiture or cancellation of the Infringing Domain Names and the transfer of the Infringing Domain Names to A&F;

3. That the Court award A&F actual damages, liquidated damages and statutory damages, in amount to be proven at trial;

4. That the Court award A&F treble damages, and profits in an amount to be proven at trial;

5. That the Court award A&F its attorneys' fees and costs incurred herein; and

6. That the Court grants A&F all other relief to which it is entitled and such other or additional relief as is just and proper under these circumstances.

1 DATED this 10th day of December, 2010.

2
3 K&L GATES LLP

4
5 By /s/ David A. Bateman

6 David A. Bateman, WSBA # 14262

7 Pallavi Mehta Wahi, WSBA # 32799

8 Attorneys for Plaintiff

9 Abercrombie & Fitch Co.

10 925 Fourth Ave., Suite 2900

11 Seattle, Washington 98104

12 Tel: (206) 370-6682

13 Fax: (206) 370-6013

14 Email: david.bateman@klgates.com

Appendix A – Defendants’ Infringing Domain Names

1	abercrombie.com	hollistertco.com	hollisterclo.com
2	abercrombie7fitch.com	hollistet.com	hollisterclothescompany.com
3	abercrombieaandfichuk.com	hollister.com	hollisterclothig.com
4	abercrombienfinch.com	hvo.org	hollistercloting.com
5	abercrombiewardrobe.com	abercrombielive.com	hollistercloyhing.com
6	abercromnbie.com	anfcom.com	hollistercoc.com
7	abercvrombie.com	hllister.com	hollistercolthing.com
8	anadf.com	hollistercokids.com	hollistercopany.com
9	gillyhivks.com	hollisteroutfitter.com	hollistercorp.com
10	hollioster.com	hollistr.com	hollistercothing.com
11	hollisterc0.com	holisterjeans.com	hollistercp.com
12	hollisterclothe.com	abercrombieandfitcheuropa.com	hollisterincorporated.com
13	hollistercol.com	abercrombieandfitchlondon.com	hollisterjackets.com
14	hollistercoonline.com	abercrombieandfitchstore.com	hollisteroutfiter.com
15	hollisterfitch.com	abercrombieclothes.net	hollisteroutfits.com
16	wwwabercrombiekid.com	abercrombieclothing.net	hollisteroutlets.com
17	aberceombie.com	abercrombiefortracy.com	hollisteroutwear.com
18	abercrombiecoupon.com	abercrombiehoodie.com	hollister-store.com
19	abercrombiefitchkid.com	abercrombiejacket.com	hollistersurfcompany.com
20	abercrombiefitchmodel.com	abercrombiejackets.com	hollistrer.com
21	abercrombiefitchoutlet.com	abercrombieshirt.com	hollisterco.com
22	abercrombiefitchquarterly.com	abercrombieshop.net	hollitser.com
23	abercrombiwallpaper.com	buy-abercrombie.net	holloister.com
24	abercrombiefitch.com	buyabercrombieclothes.com	holluster.com
25	holilsterco.com	buyabercrombieclothing.com	kidsabercrombie.com
26	hollister-company.com	cheapabercrombieclothes.com	www.hollister.com
27	hollisterxo.com	abercrombieandftch.com	www.hollister.com
28	abbercrombie.com	abercrombirandfitch.com	abercrombiess.com
29	abercrombbie.com	abercrombis.com	abercrombie4sale.com
30	abercrombieaandfitch.com	avercrombie.com	abercrombieandfitchclub.com
31	abercrombieandfetch.com	careerhollisterco.com	abercrombiefitchforsale.com
32	abercrombieandfich.com	careershollister.com	abercrombiefitchlive.com
33	abercrombieandfitchco.com	hhollister.com	abercrombieforyou.com
34	abercrombieandfitvh.com	hillisterco.com	abercrombieonsale.com
35	abercrombieclothes.com	hllisterco.com	abercrombieshopping.com
36	abercrombiemodel.com	hoillisterco.com	ant.com
37	abercrombiemodels.com	holilster.com	asnf.com
38	abercrombieoutlet.com	holliaterco.com	cheap-abercrombiefitch.com
39	abercrombietravels.com	holliaster.com	fierce.org
40	abercromble.com	holliasterco.com	ghco.org
41	aberrrombie.com	holliseter.com	hcko.info
42	bercrombie.com	hollisster.com	hcko.net
43	calihollister.com	hollissterco.com	hdco.info
44	hcos.org	hollisterandfitch.com	hjco.info
45	hiollister.com	hollisterc.com	hoillister.com
46	hollistercalis.com	hollistercal.com	hollisrer.com
47	hollistercl.com	hollistercali.com	hollistere.com
48	hollistercolths.com	hollistercaliforniaoutfitters.com	hollisterrco.com

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K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

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COMPLAINT FOR DAMAGES AND
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K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022