

JUDGE CROTTY

Milton Springut (MS6571)  
Tal S. Benschar (TSB0838)  
KALOW & SPRINGUT LLP  
488 Madison Avenue  
New York, New York 10022  
(212) 813-1600

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

07 CV 11476

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VAN CLEEF & ARPELS, S.A.,  
VAN CLEEF & ARPELS, INC. and  
VAN CLEEF & ARPELS DISTRIBUTION, INC.,

Plaintiffs,

v.

HEIDI KLUM GmbH and  
MOUAWAD USA, INC.,

Defendants.  
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Civil Action

No.

COMPLAINT

FILED COURT  
2007 DEC 21 PM 12:44  
U.S. DISTRICT COURT  
S.D.N.Y.

Plaintiffs, complaining of defendants, through their undersigned counsel, hereby allege as follows:

**NATURE OF THE CASE, JURISDICTION AND VENUE**

1. This is an action for copyright and trade dress infringement for sale of jewelry items bearing copies of Plaintiffs' proprietary jewelry designs. Plaintiffs represent the interests of the jewelry house Van Cleef & Arpels – famous for over a century for its designs and quality. For nearly forty years, Van Cleef & Arpels has marketed the Alhambra collection of jewelry, which has become world renowned for its distinctive well-recognized design.

2. Defendants have appropriated this design and incorporated it into their jewelry line, attempting to appropriate the goodwill built up by Van Cleef & Arpels to create their own

“symbol.” Such use of the Van Cleef & Arpels design has created great confusion in the marketplace; Defendants’ products are often confused or believed to originate from Van Cleef & Arpels.

3. Similarly, a recent *New York Times* article about the Alhambra jewelry collection entitled “Coming Up Clover” stated that “[k]nockoffs [of the Alhambra design] are rampant” and that “Heidi Klum appropriated the clover design for the jewelry she designs for Mouawad . . .”

4. Given the confusion in the marketplace caused by defendants’ misappropriation of the distinctive Alhambra look, as well as misappropriation of more specific, copyrighted designs, Van Cleef & Arpels brings this action to put a stop to such infringements of its rights.

5. This Court has subject matter jurisdiction over the claims in this action arising under the Copyright and Trademark Acts pursuant to 28 U.S.C. §§ 1331 and 1338.

6. This Court has subject matter jurisdiction over the claims in this action arising under State law pursuant to 28 U.S.C. §§ 1367 and 1338.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400.

#### THE PARTIES

8. Plaintiff Van Cleef & Arpels, S.A., is a corporation organized and existing under the laws of Switzerland, having an office and place of business at 8 Route de Chandolan, 1752 Villars-sur-Glane, Switzerland.

9. Plaintiff Van Cleef & Arpels, Inc. is a corporation organized and existing under the laws of the State of New York, having an office and place of business at 12 West 57<sup>th</sup> Street, New York, NY 10015. Van Cleef & Arpels, Inc. is a licensed importer of Van Cleef & Arpels

brand products, and is the exclusive licensee for the sale of such products at retail in the United States.

10. Plaintiff Van Cleef & Arpels Distribution, Inc. is a corporation organized and existing under the laws of the State of Delaware, having an office and place of business at 12 West 57<sup>th</sup> Street, New York, New York 10019. Van Cleef & Arpels Distribution, Inc. is a licensed importer of Van Cleef & Arpels brand products, and is the exclusive licensee for the sale of such products at wholesale in the United States.

11. For the purposes of this Complaint, except where specified, the interests of plaintiffs Van Cleef & Arpels, S.A., Van Cleef & Arpels, Inc. and Van Cleef & Arpels Distribution, Inc. herein are as a practical matter identical, and they are hereinafter referred collectively and interchangeably as "Plaintiffs" or "VCA."

12. Defendant Heidi Klum GmbH is, upon information and belief, a corporation organized under the laws of Germany, having an office and place of business at Postfach 200584, 51435 Bergisch Gladbach, Germany (hereinafter "HKG"). Defendant HKG is transacting and doing business in this judicial district or is otherwise subject to the personal jurisdiction of this Court.

13. Defendant Mouawad USA, Inc. is a corporation organized under the laws of the State of California, having an office and place of business at 2029 Century Park East, Suite 2880, Los Angeles, CA 90067 ("Mouawad") Defendant Mouwad is transacting and doing business in this judicial district or is otherwise subject to the personal jurisdiction of this Court.

14. All of the defendants named hereinabove are collectively referenced herein as "Defendants."

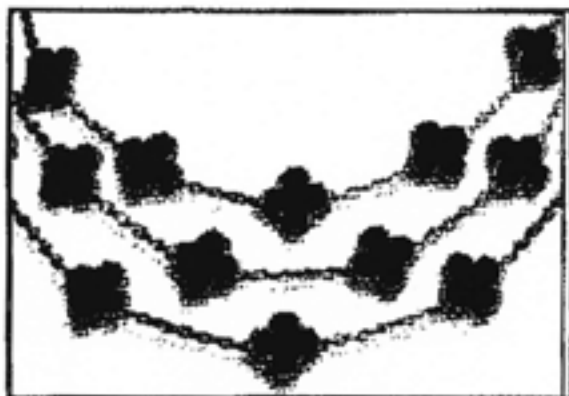
## FACTS COMMON TO ALL COUNTS

### The Van Cleef & Arpels Brand and Business

15. The Van Cleef & Arpels business has its origins in 1898, when Alfred Van Cleef married Estelle Arpels, and proceeded to open a jewelry business with her brothers at 22 Place Vendome in Paris. Plaintiffs and their affiliates and predecessors in interest are famous for the production of fine luxury watches and jewelry, innovation in watch and jewelry styles and designs, and introduction of new and important jewelry technologies, including the introduction of a patented invisible-setting technique in the 1930s. For many years, and long since before the acts of the Defendants complained of herein, VCA has been engaged in the manufacture and sale in interstate and intrastate commerce of high quality luxury jewelry, watches and related goods (the "VCA Products").

### The Vintage Alhambra Jewelry Design

16. VCA is the owner of all rights, including the copyright, in the Vintage Alhambra Jewelry design (hereinafter the "VINTAGE ALHAMBRA Jewelry Design"). That design appears thus:



17. The VINTAGE ALHAMBRA Jewelry Design is an original and creative work of VCA and its team of designers, and such design is validly protected by copyright. VCA is the owner of all rights in such design.

18. VCA owns Copyright Registration No. GP 101,958 for the VINTAGE ALHAMBRA Jewelry Design, which was first received by the Copyright Office on January 7, 1976. A copy of this registration is attached hereto and identified as Complaint Exhibit 1 (the "VINTAGE ALHAMBRA Jewelry Design Registration").

19. On November 15, 2007 VCA recorded a document entitled "Second Statement Regarding Copyright Registration." A copy of such recordation is attached hereto and identified as Complaint Exhibit 2.

**The Alhambra 2000 Jewelry Design**

20. VCA is the owner of all rights, including the copyright, in what is known as the Alhambra 2000 jewelry design. That design appears thus:



(hereinafter the "ALHAMBRA 2000 Jewelry Design").

21. The ALHAMBRA 2000 Jewelry Design is an original and creative work of VCA and its team of designers, and such design is validly protected by copyright. VCA is the owner of all rights in such design.

22. VCA filed an application for registration of the ALHAMBRA 2000 Jewelry Design, but such application was refused. VCA is thus entitled to maintain this action under 17 U.S.C. § 411, because "the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused," 17 U.S.C. § 411. As required by the statute, notice of this action, along with a copy of the complaint, is being served upon the Register of Copyrights.

**The MODERN ALHAMBRA Jewelry Design**

23. VCA is the owner of all rights, including the copyright, in the Modern Alhambra jewelry design collection. That design appears thus:



(hereinafter the "MODERN ALHAMBRA Jewelry Design").

24. The MODERN ALHAMBRA Jewelry Design is an original and creative work of VCA and its team of designers, and such design is validly protected by copyright. VCA is the owner of all rights in such design.

25. The MODERN ALHAMBRA Jewelry Design was first offered for sale outside the United States, and its respective designers were not all U.S. nationals. Accordingly, such a design is not a "U.S. Work" within the meaning of 17 U.S.C. §§ 101 and 411 and no registration is required to maintain this action.

26. All of the above-identified jewelry designs are collectively referenced herein as the "VAN CLEEF ALHAMBRA Jewelry Designs" and the copyrights therein collectively as the "VAN CLEEF ALHAMBRA Copyrights."

#### **The ALHAMBRA Trade Dress**

27. Since the introduction of the VINTAGE ALHAMBRA Jewelry Design in 1968, VCA has created, marketed and promoted new variations of the VINTAGE ALHAMBRA Jewelry Design that incorporate the distinctive look of the VINTAGE ALHAMBRA Jewelry Design and are marketed under the Alhambra name. The family members of the Alhambra collection include the Alhambra 2000, the Modern Alhambra, the Lucky Alhambra, the Byzantine Alhambra and the Magic Alhambra. Through extensive advertising and promotion of the entire Alhambra collection and the various Alhambra family members, the entire Alhambra collection and its distinctive look have come to be associated with VCA as a single source.

28. VCA's Alhambra Jewelry thus features a distinctive and unique combination of elements that collectively create a particular trade dress (the "ALHAMBRA Trade Dress"). The

ALHAMBRA Trade Dress consists of a collocation of design elements. The combination of all or almost all such elements together give the jewelry a distinct overall look and commercial impression. Although these elements cannot be perfectly described in words, the following generally describes the elements of the ALHAMBRA Trade Dress:

A quatrefoil shaped ornament comprising:

1. four identical lobes;
2. each lobe having a semicircular shape;
3. the lobes having both left-right and top-bottom symmetry;
4. an outer band;
5. having a constant width;
6. the outer surface of the band defining the contour of the ornament;
7. the inner surface of the band defining an inner or central portion;
8. having four identical cusps (inner points of the lobes) which extend about half way into the ornament;
9. the inner portion;
10. having a quatrefoil shape defined by the inner surface of the outer band; and
11. which is either hollowed out or made of a single filling material, such as mother of pearl, onyx, lapis, diamonds or metal, and may include a small centered jewel.

29. The collocation of features set forth in the above paragraph herein constitutes a distinctive trade dress that has secondary meaning. This design has been extensively promoted by VCA in the United States and has achieved significant sales success. The public has come to recognize this design as distinctive of this collection of VCA jewelry and as an indication of source of such jewelry. The ALHAMBRA Trade Dress is thus a means by which VCA is known to the public and the trade as the sole source and origin of Alhambra jewelry.

30. The ALHAMBRA Trade Dress is in no way functional.

**Defendants' Infringing Activities**

31. On information and belief, Defendants have created, designed, manufactured, sold, offered for sale and/or distributed copies of the VAN CLEEF ALHAMBRA Jewelry Designs and products embodying the ALHAMBRA Trade Dress.

32. On information and belief, such activities were done willfully and knowingly, knowing that certain of such jewelry was based upon designs copied from the VAN CLEEF Jewelry Designs and that such products (including both pieces which directly copy the VAN CLEEF Jewelry Designs as well as other products) are confusingly similar to the ALHAMBRA Trade Dress.

33. No Defendant in this action has sought or received a license or authorization from the Plaintiffs for any purpose whatsoever, including for the acts described herein.

**COUNT I**

**COPYRIGHT INFRINGEMENT  
17 U.S.C. § 501**

34. VCA repeats and reincorporates herein by reference each of the foregoing allegations.

35. Defendants have infringed upon VCA's copyrights in the VAN CLEEF ALHAMBRA Jewelry Designs identified hereinabove, by reproducing such designs without

authorization and distributing copies thereof by sale and other means, and/or contributing to or inducing the reproduction and distribution of said design.

36. Defendants' copyright infringement, unless enjoined by this Court, will continue to cause VCA to sustain irreparable damage, loss and injury, for which VCA has no adequate remedy at law.

37. VCA has no adequate remedy at law and is suffering irreparable harm and damage as a result of the acts of Defendants as aforesaid in an amount thus far not determined, but believed to be in excess of Twenty-Five Thousand Dollars (\$25,000).

## COUNT II

### TRADE DRESS INFRINGEMENT 15 U.S.C. § 1125(a)

38. VCA repeats and incorporates herein by reference each of the foregoing allegations.

39. Defendants have reproduced, copied and imitated the ALHAMBRA Trade Dress in designing certain of their jewelry in a manner that is confusingly similar to the distinctive trade dress of VCA.

40. Defendants' adoption and use of the ALHAMBRA Trade Dress constitutes trade dress infringement and deliberate and willful violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125 (a).

41. The actions and conduct of Defendants complained of herein have damaged VCA and will, unless restrained, further impair, if not destroy, the value of the ALHAMBRA Trade Dress and the goodwill associated therewith.

42. Defendants' trade dress infringement has caused VCA to sustain monetary damage, loss and injury, in an amount to thus far not determined, but believed to be in excess of Twenty-Five Thousand Dollars (\$25,000).

43. Defendants' trade dress infringement, unless enjoined by this Court, will continue to cause VCA to sustain irreparable damage, loss and injury, for which VCA has no adequate remedy at law.

### COUNT III

#### **COMMON LAW TRADE DRESS INFRINGEMENT AND UNFAIR COMPETITION**

44. VCA repeats and incorporates herein by reference each of the foregoing allegations.

45. Defendants have reproduced, copied and imitated the ALHAMBRA Trade Dress in designing certain of their jewelry in a manner that is confusingly similar to the distinctive trade dress of VCA.

46. Defendants' actions constitute common law trade dress infringement and unfair competition.

47. The actions and conduct of Defendants complained of herein have damaged VCA and will, unless restrained, further impair, if not destroy, the value of the ALHAMBRA Trade Dress and the goodwill associated with them.

48. Defendants' trade dress infringement has caused VCA to sustain monetary damage, loss and injury, in an amount thus far not determined, but believed to be in excess of Twenty-Five Thousand Dollars (\$25,000).

49. Defendants' trade dress infringement, unless enjoined by this Court, will continue to cause VCA to sustain irreparable damage, loss and injury, for which VCA has no adequate remedy at law.

**WHEREFORE, Plaintiffs demand:**

1. That Defendants, their officers, agents, servants, employees and attorneys, and those in active concert or participation with them or any of them, be permanently enjoined and restrained from further copying or otherwise infringing upon Plaintiffs' copyrights identified herein.
2. That Defendants be required to deliver up to Plaintiffs for destruction any and all goods in their possession that infringe upon the copyrights identified herein.
3. That Defendants be required, pursuant to 17 U.S.C. § 504, to account to Plaintiffs for any and all profits derived by them, and for all damages sustained by Plaintiffs by reason of said Defendants' actions complained of herein, and/or statutory damages, which Plaintiffs may at a later time elect to recover.

4. That pursuant to 17 U.S.C. § 505, Plaintiffs have and recover from Defendants, Plaintiffs' reasonable attorneys' fees, costs and disbursements of this civil action.

5. That Defendants, their officers, agents, servants, employees and attorneys, and those in active concert or participation with them or any of them, be permanently enjoined and restrained:

- (a) From using in any manner the ALHAMBRA Trade Dress, alone or in combination with any other words or designs, in manner likely to cause confusion, deception, or mistake on or in connection with advertising, offering for sale or sale of any goods not manufactured by VCA, or not authorized by VCA to be sold in connection with their respective said marks;
- (b) From representing, suggesting in any fashion to any third party, or performing any act that may give rise to the belief that Defendants, or any of their goods, are authorized or sponsored by VCA;
- (c) From passing off, inducing or enabling others to sell or pass off any goods as products produced by Plaintiffs that are not in fact genuine VCA goods, or not produced under the control and supervision of VCA and approved by VCA and
- (d) From otherwise competing unfairly with Plaintiffs in any manner.

6. That Defendants be required to deliver up to Plaintiffs for destruction, any and all goods in their possession or under their control that were or are being advertised, promoted, offered for sale or sold in connection with the ALHAMBRA Trade Dress, whether alone or in combination with any words or designs.

7. That Defendants be required to deliver up to Plaintiffs for destruction, any and all catalogs, circulars and other printed material in their possession or under their control displaying or promoting the goods that were or are being advertising, promoted, offered for sale or sold in connection with the ALHAMBRA Trade Dress, whether alone or in combination with any words or designs.

8. That Defendants be ordered pursuant to 15 U.S.C. § 1116(a) to file, with the Court and serve upon Plaintiffs, within thirty (30) days of the entry of injunction prayed for herein, a written report under oath or affirmed under penalty of perjury setting forth in detail the form and manner in which it has complied with permanent injunction.

9. That Defendants be required, pursuant to 15 U.S.C. § 1117, to account to Plaintiffs for any and all profits derived by it, and for all damages sustained by Plaintiffs by reason of Defendants' actions complained of herein, including an award of treble damages as provided for statute.

10. That Plaintiffs be awarded punitive damages.

11. That Plaintiffs be awarded both pre-judgment and post-judgment interest on each and every damage award.

12. That pursuant to 15 U.S.C. § 1117, Plaintiffs have and recover from Defendants, Plaintiffs' reasonable attorneys' fees, costs and disbursements of this civil action.

13. That Plaintiffs have such other and further relief as the Court may deem just and proper.

Dated: December 21, 2007

By: Milton Springut  
Milton Springut, Esq.  
David A. Kalow, Esq.  
Tal S. Benschar, Esq.  
KALOW & SPRINGUT LLP  
488 Madison Avenue  
New York, New York 10022  
(212) 813-1600

Attorneys for Plaintiffs  
Van Cleef & Arpels, S.A.; Van Cleef &  
Arpels, Inc. and Van Cleef & Arpels  
Distribution, Inc.

TMZ