

Fashion Apparel Law Blog

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A & F Wages a Fierce Fragrance Fight: The Battle Over Dollars & Scents

Abercrombie & Fitch has taken quick action to protect its signature fragrance "Fierce" against pop diva, Beyonce Knowles' proposed naming of her forthcoming perfume by Coty, Inc. after her alter ego, "Sasha Fierce". According to the complaint for trademark infringement filed by A & F on September 19, 2009, A & F has held a registered trademark for the mark "Fierce" for fragrances since May 2003, and "Fierce" is the scent wafting from all A & F stores as it is dispersed either through a scent machine or by constant spraying of the cologne by A & F employees. The goal being that every A & F garment is infused by the citrus scent.

In the United States, scent does not garner intellectual property protection and creators are forced to rely on trademark or tradedress to protect their perfumes and colognes. Hence, companies spend much of their marketing money on the name and image of their perfumes while the actual smell is secondary. According to A & F's complaint, consumers might be confused into thinking that Beyonce's anticipated "Sasha Fierce" perfume is associated with their "Fierce" cologne. If this occurs, there is a possibility that Beyonce would unfairly benefit from the reputation A & F has built for their scent through misguided association. According to A & F's complaint, sales of "Fierce", which have exceeded \$190 million since the cologne debuted in 2002 and is projected to exceed \$64 million in sales in 2009, could be hindered by consumer confusion.

The announcement of Beyonce's perfume, projected to launch in early 2010, did not specify a name, and Coty spokespersons have alleged that the terms "Sasha Fierce" and "Fierce" will not be used as names for the Beyonce fragrance. However, according to A & F's complaint, in connection with Beyonce's 2008 album entitled, "I am . . . Sasha Fierce", she filed and applied for an intent-to-use trademark for "Sasha Fierce" in connection with her launch of her fragrance. The complaint also alleged that Beyonce disputed A & F's request that she cease and desist from any use of "Sasha Fierce" in connection with fragrance due to the likelihood of confusion. The complaint further noted that shortly before announcing her Coty deal, Beyonce alleged "rights to compete" with A & F in response to A & F's Notice of Opposition against her application to register the mark "Sasha Fierce" for fragrance.

Despite how unlikely it is that Beyonce's perfume bottle would feature the nude chiseled men's torso that appears on the rectangular A & F "Fierce" bottles, or that the smell which personifies her as a women, would resemble the scent of the "Fierce" male cologne, currently, a trademarked name in fragrance packs a more powerful punch in the legal arena than the aroma spritzed from the atomizer. Therefore, it is important for those interested in debuting a new fragrance to have a

lawyer involved in the pre-development stage to obtain clearance for the trademark sought prior to any announcement or launch of the scent. A lawyer will be able to evaluate whether a desired trademark may be obtained and to prevent litigation and the associated costs later on.