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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REVISE CLOTHING, INC., Plaintiff, v. JOE'S JEANS SUBSIDIARY, INC., and JOE'S JEANS, INC., Defendants.	Case No. 09-cv-3961 (BSJ)
JOE'S JEANS SUBSIDIARY, INC., and JOE'S JEANS, INC., Third-Party Plaintiffs, v. TARGET CORPORATION and TARGET BRANDS, INC., Third-Party Defendants.	**PLAINTIFF REVISE CLOTHING'S MOTION TO DISQUALIFY DEFENDANTS' COUNSEL**

Plaintiff Revise Clothing, Inc. ("Revise") hereby moves this Court to disqualify the law firm of Pryor Cashman LLP ("Pryor Cashman") from continuing to represent defendants Joe's Jeans Subsidiary, Inc. and Joe's Jeans, Inc. ("Joe's Jeans") based on a

conflict of interest in violation of Canons 4 and 5 of the New York Lawyer's Code of Professional Responsibility.

Revise brings this motion on the basis that Pryor Cashman may not take an adverse position to either a current or former client. From November 2007 through 2008, Pryor Cashman actively represented Revise as a plaintiff in a trademark infringement lawsuit, in addition to performing other trademark related legal work for Revise. During that previous representation, Pryor Cashman had access to Revise's confidential, privileged information relating to such subjects as business plans, distribution channels, strategic plans, apparel design plans, trademark plans and other highly confidential material. Because Pryor Cashman is in a position to use Revise's privileged information to which it had access due to its previous representation, thus giving its current clients an unfair advantage in this trademark infringement lawsuit, Pryor Cashman should be disqualified from representing defendants.

A Memorandum of Law in support of this Motion, along with a supporting declaration, is filed herewith in compliance with Local Rule 7.1.

WHEREFORE, Revise Clothing, Inc. respectfully requests that this Court disqualify Pryor Cashman from continuing to represent defendants in this action and all related actions, and award to Revise attorneys' fees and costs incurred in compelling the disqualification.

Dated: September 15, 2009

Respectfully submitted:
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s/ Gordon E. R. Troy, Esq.
By: _____

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REVISE CLOTHING, INC., Plaintiff, v. JOE'S JEANS SUBSIDIARY, INC., and JOE'S JEANS, INC., Defendants.	Case No. 09-cv-3961 (BSJ)
JOE'S JEANS SUBSIDIARY, INC., and JOE'S JEANS, INC., Third-Party Plaintiffs, v. TARGET CORPORATION and TARGET BRANDS, INC., Third-Party Defendants.	**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF REVISE CLOTHING'S MOTION TO DISQUALIFY DEFENDANTS' COUNSEL**

Plaintiff Revise Clothing, Inc. ("Revise) hereby moves this Court to disqualify the law firm of Pryor Cashman LLP ("Pryor Cashman") from continuing to represent defendants Joe's Jeans Subsidiary, Inc. and Joe's Jeans, Inc. ("Joe's Jeans") based on a

conflict of interest in violation of Canons 4 and 5 of the New York Lawyer's Code of Professional Responsibility. *See* S.D.N.Y. Civ. R. §§ 1.3, 1.5 (b)(5). In accordance with Local Rule 7.1, Revise hereby submits the following memorandum in support of its Motion to Disqualify Defendants' Counsel. As set forth below, Pryor Cashman had access to Revise's confidential, privileged information while representing Revise in a case that bears a substantial relationship between the issues on which Pryor Cashman represented Revise and material issues in this adversary proceeding. As a result, the Court must disqualify Pryor Cashman from representing the defendants in this action and all related actions.

FACTUAL BACKGROUND

In October 2007, Gordon Troy, an attorney for Revise, introduced and referred Revise to Brad Rose, Esq. of the law firm Pryor Cashman to represent Revise in a potential trademark infringement case Revise was contemplating bringing against Wet Jeans Inc. *See* Declaration of Gordon E. R. Troy, ¶ 1 ("Troy Declaration," attached hereto as Exhibit 1). By letter dated November 8, 2007, Pryor Cashman proposed a Retainer Agreement to Revise "in connection with the trademark infringement claims to be asserted against Wet Jeans, Inc.," setting forth the terms of engagement, including a $10,000.00 retainer payment. *See* Troy Declaration, ¶ 2 and Tab 1 attached thereto. Revise paid the retainer fee and Pryor Cashman commenced working on the matter. *Id*. After November 14, 2007, Mr. Troy had no further communication or involvement with Pryor Cashman or Revise concerning the Wet Jeans matter. *Id.* Mr. Troy turned over all of his pre-litigation files to Pryor Cashman. *Id.*

On or about November 27, 2007, Pryor Cashman filed a Complaint on behalf of Revise against Wet Jeans, Inc. in the U.S. District Court for the Southern District of New York alleging, *inter alia*, trademark infringement ("the *Wet Jeans* suit"). Mr. Troy did not draft or review the Complaint prepared by Pryor Cashman, nor was he counsel of record on the Complaint or in the case. *See* Troy Declaration, ¶ 3 and Tab 2 attached thereto. Shortly thereafter, the scope of Pryor Cashman's representation of Revise expanded beyond the *Wet Jeans* suit and the scope of the retainer agreement. On or about December 12, 2007, Pryor Cashman sent Revise a bill which included work for trademark searches on other Revise trademarks. *See* Troy Declaration, ¶ 4.

After the commencement of the *Wet Jeans* suit, settlement discussions between Pryor Cashman and counsel for Wet Jeans began. *See* Troy Declaration, ¶ 5. There was considerable discussion pertaining to channels of trade of both parties. *Id*. Revise disclosed to Pryor Cashman confidential and proprietary information about its business, prospective business and channels of trade to assist it with settlement negotiations. *Id*. On or about May 12, 2008, the parties to the *Wet Jeans* suit entered into a written settlement. *Id*. Pryor Cashman relied on the channels of trade information in order to effectuate a settlement for Revise. *Id.* Although the agreement has a confidentiality clause, Section 12 provided that any notices to Revise must be sent to Pryor Cashman. *Id*. and Tab 3 attached thereto.

The last invoice that Revise received from Pryor Cashman was dated August 6, 2008, which was paid by Revise on or about August 20, 2008. *See* Troy Declaration, ¶ 6. Revise has never received any written notice from Pryor Cashman that its attorney-client relationship has been terminated. *Id*. Revise has never sent Pryor Cashman written

notice terminating its attorney-client relationship. *Id*. The retainer agreement with Pryor Cashman specifically provided that if Pryor Cashman terminated the relationship, it would do so "in a manner which complies with applicable law, court rules and the New York Code of Professional Responsibility." *See* Troy Declaration, ¶ 2 and Tab 1 attached thereto. Pryor Cashman has never sought from Revise a waiver concerning Pryor Cashman's representation of defendants in this litigation. *See* Troy Declaration, ¶ 6. Pryor Cashman never returned any physical or electronic files or documents to Revise. *Id*. To this day, should there be any dispute under the Wet Jeans settlement, Wet Jeans is obligated to send notice to Pryor Cashman. *Id.*

On April 21, 2009, Revise filed its original complaint for declaratory judgment of non-infringement and cancellation of trademark registration against defendants Joe's Jeans. See Troy Declaration, ¶ 7. At that time, defendants were represented by Jordan A. LaVine, Esq. of the law firm Flaster Greenberg. *Id.* Shortly after the original complaint was filed, Mr. Troy received a telephone call from Mr. Brad Rose of Pryor Cashman that they would be taking over representation of Joe's Jeans trademark matters and that a copy of the lawsuit had been delivered to the firm. See Troy Declaration, ¶ 8. In May and June 2009, Mr. Troy, counsel for Revise, had discussions and communications with Pryor Cashman about the litigation and concurrently raised the conflict of interest issue stemming from Pryor Cashman's representation of Revise in the *Wet Jeans* suit. *Id.* Mr. Troy informed Pryor Cashman that despite the conflict, Revise had consented to allow Pryor Cashman to represent Joe's Jeans for the limited purpose of settlement of the litigation. *Id.*

Subsequently, on June 12, 2009, after the complaint in this litigation had been filed and Pryor Cashman agreed to represent defendants, Pryor Cashman sent an e-mail message to Revise, addressed to its chief executive officer, with the subject "Important Information About Your Trademarks from Pryor Cashman," alerting Revise to "Changes to Facebook Puts IP at Risk" and recommending certain action be taken. *See* Troy Declaration, ¶ 9. On June 16, 2009, Pryor Cashman sent an electronic version of its newsletter, "Pryorities," to Revise. *Id.*

On or about July 8, 2009, Revise filed its Amended Complaint for declaratory judgment of non-infringement and cancellation of trademark registration. *See* Troy Declaration, ¶ 10. On or about August 3, 2009, defendants filed their Answer and Counterclaim. *See* Troy Declaration, ¶ 11.

On August 12, 2009, counsel for Revise sent Pryor Cashman a written request to voluntarily withdraw from representation of defendants based on Pryor Cashman's representation of Revise. *See* Troy Declaration, ¶ 12 and Tab 4 attached thereto. On August 26, 2009, Pryor Cashman declined to withdraw from its representation of defendants. *Id*. and Tab 5 attached thereto.

ARGUMENT

A. The Legal Standards Applicable to Granting a Motion to Disqualify

Disciplinary Rule DR 5-108 provides that "a lawyer who has represented a client in a matter shall not, without consent of the former client after full disclosure: (1) thereafter represent another person in the same or substantially related matter in which that person's interest are materially adverse to the interests of the former client; (2) use

any confidences or secrets of the former client." 22 N.Y.C.R.R. 1200.27. The rule governing disqualification of an attorney based upon a former representation of an adverse client arises out of the ongoing duty to preserve client confidences, even after the attorney-client relationship has ended. *See, e.g., Bd. of Educ. of City of New York v. Nyquist,* 590 F.2d 1241, 1246 (2d Cir. 1979); *Miroglio, S.P.A. v. Morgan Fabrics Corp.,* 340 F. Supp. 2d 510, 512 (S.D.N.Y. 2004). The important interests that underlie the attorney-client privilege are eroded if counsel is permitted to proceed with a case knowing the protected confidences of the opposing client. *Id.* "A court should not hesitate to disqualify counsel in appropriate cases." *Huntington v. Great Western Resources, Inc.,* 655 F. Supp. 545, 571 (S.D.N.Y. 1987). Here, Pryor Cashman's representation of Revise in a previous trademark infringement litigation and the confidential information Pryor Cashman had access to during that representation of Revise, create the cornerstone of a conflict that mandates Pryor Cashman's disqualification in the present trademark infringement case.

The standards for the granting of a motion to disqualify counsel are well settled. Courts must be concerned with the "integrity of the adversary process." *Evans v. Artek Systems Corp.,* 715 F.2d 788, 792 (2d Cir. 1993). There is no question that an attorney's duty to preserve confidences remains intact after the termination of the attorney-client relationship. *See T.C. Theatre Corp. v. Warner Bros. Pictures, Inc.,* 113 F. Supp. 265 (S.D.N.Y. 1953). Thus, any doubts must be resolved in favor of disqualification. *See Cheng v. GAF Corp.,* 631 F.2d 1052, 1059 (2d Cir. 1980); *Blue Planet Software, Inc. v. Games Int'l, LLC,* 331 F. Supp. 2d 273, 275 (S.D.N.Y. 2004); *Wieme v. Eastman Kodak*

Co., 2004 WL 2271401 * 2 (S.D.N.Y. 2004); *Arifi v. de Transport Du Cocher, Inc.*, 290 F. Supp. 2d 344, 349 (E.D.N.Y. 2003).[1]

Disqualification is properly granted where "an attorney's conduct tends to taint the underlying trial." *Bd. of Educ*, 590 F.2d at 1246; *In re Polaroid ERISA Litig.*, 354 F. Supp. 2d 494, 497 (S.D.N.Y. 2005). Such taint is encountered "where the attorney is at least potentially in a position to use privileged information concerning the other side through prior representation . . . thus giving his present client a clear unfair advantage." *Bd. of Educ.*, 590 F.2d at 1246; *see also Guerrilla Girls, Inc. v. Kaz*, 2004 WL 2238510 at * 2 (S.D.N.Y. 2004). "Attorneys who violate Canons 4 or 5 of the ABA Code of Professional Responsibility are paradigmatic candidates for disqualification," *Papanicolaou v. Chase Manhattan Bank, N.A.*, 720 F. Supp. 1080, 1083 (S.D.N.Y. 1989) (citing *Bd. of Educ.*, 590 F.2d at 1246), because of the high probability that taint of trial might occur.[2]

The Second Circuit has adopted a three-part test to assist courts in determining whether a representation may become "tainted" as a result of an attorney's prior representation with a now adverse party. The principle that client confidences are sacrosanct has led to the rule that an attorney will be disqualified from representing his present client where:

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[1] In *United States v. Oberoi*, the Second Circuit explained this strict approach:

The dynamics of litigation are far too subtle, the attorney's role in that process is far too critical, and the public's interest in the outcome is far too great to leave room for even the slightest doubt concerning the ethical propriety of a lawyer's representation in a given case. These considerations require application of a strict prophylactic rule to prevent any possibility, however slight, that confidential information acquired from a client during a previous relationship may subsequently be used to the client's disadvantage.

331 F.3d 44, 25 (2d Cir. 2003) (citing *Emle Indus. v. Patentex*, Inc., 478 F.2d 562, 571 (2d Cir. 1973)).

[2] Canon 4 provides that "A lawyer should preserve the confidences and secrets of a client." Canon 5 provides that "A lawyer should exercise independent judgment on behalf of a client."

(1) the moving party is a former client of the adverse party's counsel;

(2) there is a substantial relationship between the subject matter of the counsel's prior representation of the moving party and the issues in the present lawsuit; and

(3) the attorney whose disqualification is sought had access to or was likely to have had access, to relevant privileged information in the course of his prior representation of the client.

Evans v. Artek Sys. Corp., 715 F.2d at 791; *see also Blue Planet Software,* 331 F. Supp. 2d at 276; *Guerrilla Girls, Inc.*, 2004 WL 2238510 at * 1; *Arifi,* 290 F. Supp. 2d at 349. Pryor Cashman's relationship with Revise satisfies all three parts of the Second Circuit's test for disqualification.

B. <u>Revise is a Client of Pryor Cashman</u>

Here, there is no serious question that Revise and Pryor Cashman were in an attorney-client relationship. Revise entered into a retainer agreement with Pryor Cashman and paid the firm to represent Revise in a trademark infringement lawsuit brought against Wet Jeans, Inc. Pryor Cashman filed the complaint on behalf of Revise against Wet Jeans in November 2007, and negotiated a settlement agreement of the litigation, which was entered into in May 2008.

Moreover, it appears that Revise is still a client of Pryor Cashman because (1) Pryor Cashman never terminated the relationship as per the explicit method detailed in its retainer agreement; (2) Revise never terminated the relationship with Pryor Cashman; (3) Pryor Cashman is designated exclusively to receive notices on behalf of Revise with regard to the settlement in the *Wet Jeans* suit; and (4) Pryor Cashman continues to send Revise trademark and intellectual property legal updates and alerts. DR 5-105 (b) states that "a lawyer shall not continue multiple employment if the exercise of independent

professional judgment in (sic) behalf of a client will be or is likely to be adversely affected by the lawyer's representation of another client, or if it would be likely to involve the lawyer in representing differing interests…." 22 N.Y.C.R.R. 1200.24(b). Revise even asked Pryor Cashman to expand its work beyond the scope of the retainer agreement in the *Wet Jeans* suit to include some additional trademark work. Pryor Cashman never sought from Revise a waiver concerning Pryor Cashman's representation of defendants in this litigation. Pryor Cashman never returned any physical or electronic files or documents to Revise. Although Pryor Cashman claims that Revise is merely a former client, no steps were taken by either Pryor Cashman or Revise to terminate their attorney-client relationship. Indeed, Revise expected that Pryor Cashman would continue to serve as its legal counsel even though it did not require any current services from the firm as of the time of this litigation. Moreover, after the first phone call with Pryor Cashman, Mr. Troy informed Mr. Rose on or about May 12, 2009 that Revise had consented to allow him to represent Joe's Jeans for the limited purpose of settlement.

The Disciplinary Rules and ethical standards of the legal profession do not permit a lawyer to simultaneously represent parties who are adverse. Indeed, where simultaneous representation exists, "there is a more serious risk of an appearance of impropriety than in a case of a lawyer who later adopts a position which is adverse to that of a former client in a substantially related matter." *Strategem Dev. Corp. v. Heron Int'l N.V.*, 765 F. Supp. 789, 792 (S.D.N.Y. 1991). Pryor Cashman cannot simply choose one client over another – by resigning from representing Revise in any ongoing or future matters. Even by resigning, Revise becomes a "former client," which still does not alleviate Pryor Cashman from its responsibilities and does not extricate it from the

Disciplinary Rules and ethical standards. Given the existing conflict, Pryor Cashman is required to withdraw from representing defendants in this case.

C. The Subject Matter of Pryor Cashman's Representation of Revise is Substantially Related to Issues in This Adversary Proceeding

The second part of the test is whether the issues in the present adversary proceeding are "substantially related" to the subject matter of Pryor Cashman's representation of Revise. In order to satisfy this element, the Second Circuit requires the party seeking disqualification to demonstrate "that the relationship between issues in the prior and present cases are 'patently clear'" or that "the issues involved are 'identical' or 'essentially the same.'" *Government of India v. Cook,* 569 F.2d 737, 740 (2d Cir. 1978). This does not mean that a "substantial relationship" can only be shown where all of the ultimate issues are identical. *See, e.g., Blue Planet Software,* 331 F. Supp. 2d at 277. Nor does it matter that the legal issues in the two representations may be different. Rather, it "is the congruence of factual matters, rather than areas of law, that establishes a substantial relationship between representations for disqualification purposes." *United States Football League v. Nat'l Football League,* 605 F. Supp. 1448, 1460 n.26 (S.D.N.Y. 1985). "If the two are congruent, then the previously acquired confidential information is at least potentially useful." *Bennett Silvershein Assocs. v. Furman,* 776 F. Supp. 800, 804 (S.D.N.Y. 1991). Confidential information is "useful" where the "facts giving rise to an issue which is material in both the former and the present litigations are as a practical matter the same . . . ." *United States Football League,* 605 F. Supp. at 1459.

Here, a factual overlap is both inevitable and substantial, because the trademark and design of the Revise jeans will be analyzed in careful detail, just as in the *Wet Jeans* litigation. Both cases involve trademark infringements in the apparel industry. The trademark asserted here in this case and the trademark asserted in the *Wet Jeans* suit are in the same U.S. Patent and Trademark Office classification. The products involved in both cases are in the same markets. The defendants allege in their counterclaim that the products are sold "through virtually identical channels of trade to an overlapping consumer base." Counterclaim, ¶ 2. Each legal theory in the four counts of the Third-Party complaint are included in the Wet Jeans complaint. This dispute involves competitors seeking to secure and expand their market share – no different from the *Wet Jeans* suit. Many of the issues that will arise in this case will be essentially the same as in the earlier *Wet Jeans* case, even if the trademarks at issue are not identical. As such, Pryor Cashman's likely exposure to significant confidences held by Revise in the *Wet Jeans* suit would present defendants here with an unfair advantage over Revise in this litigation.

This is similar to the situation faced by this Court in *Miroglio, S.P.A. v. Morgan Fabrics Corp.*, 340 F. Supp. 2d 510 (S.D.N.Y. 2004). There, counsel had previously represented the adverse client on copyright issues relating to fabric designs in three different claims, but was currently adverse to the client in a claim for an increase in statutory damages for knowing and willful infringements on fabric design. *Id.* The Court found that the previous representations were substantially related to the issues in the present litigation, and that "[i]n order to competently represent [the adverse client] on these issues, a reasonable attorney would be expected to acquire a minimum base of

knowledge about how [the adverse client] goes about creating designs." *Id.* at 513. The degree of originality required before a fabric design becomes copyrightable and the extent of copying of a fabric design that constitutes infringement "were questions within the scope of the prior representation and are issues that are likely to arise in this litigation," 340 F. Supp. 2d at 513, and the Court granted the motion to disqualify counsel.

Revise is entitled to protection against the possibility that its now former counsel will be able to use knowledge and confidential information obtained during the course of prior representation in connection with its current assessment, for the benefit of the defendants, of the strength and weaknesses of the *Wet Jeans* trademark litigation. Moreover, Pryor Cashman was in a position to obtain confidential information about Revise's trademarks and business and litigation strategy that was not limited to an analysis of the *Wet Jeans* trademark litigation. Revise is entitled to protection against the ability of the same lawyers who provided it with trademark litigation advice in 2008 to use confidential information as to Revise's designs and trademarks in defense of an adversary proceeding in 2009 in which a critical issue is whether Revise's designs infringe on defendants' trademarks.

It does not matter that there are other issues in the adversary proceeding on which Pryor Cashman never represented Revise and that some of the legal issues in the current proceeding are different than the previous one. It is sufficient that at least one material issue is "congruent" or "identical." *See United States Football League,* 605 F. Supp. at 1459-60. The trademark infringement issues in this case are substantially identical to the issues on which Pryor Cashman represented Revise, namely trademark infringement

under the Lanham Act, unfair competition, false designation of origin, common law unfair competition and unlawful and deceptive acts and practices under New York General Business Law. The channels of trade utilized by Wet Jeans, Revise and the defendants here are the same. They are competitors in every sense of the word. The "substantial relationship" test clearly has been met – the similarity between the current litigation and the *Wet Jeans* suit is such that disqualification is required.

D. Pryor Cashman Was in a Position to Receive Confidential Information

The final element that the Court must consider is whether Pryor Cashman "had access to, or was likely to have had access to, relevant privileged information in the course of [the] prior representation." *Evans*, 715 F.2d at 791. This does **not** require "proof that an attorney **actually had access to or received** privileged information while representing the client in a prior case." *Government of India*, 569 F.2d at 740 (emphasis added). The Second Circuit has indicated that disqualification is generally appropriate "where the attorney is at least potentially in a position to use privileged information concerning the other side through prior representation, . . . thus giving his present client an unfair advantage." *Bd. of Educ.*, 590 F. 2d at 1246; *Blue Planet Software*, 331 F. Supp. 2d at 275. "Instead, finding a substantial relationship leads to the presumption 'that the former client of the challenged firm imparted to the firm confidential information relevant to the present suit.'" *Guerilla Girls*, 2004 WL 2238510 at * 5, quoting *United States Football League*, 605 F. Supp. at 1461. The standard in the Second Circuit does not require the client to prove with specificity the confidential information that was imparted to its counsel. *Evans*, 715 F.2d at 791. The standard is

only that the firm *likely* had access to the client's confidential information by reason of its representation of the client.

There is no serious question that Pryor Cashman had access to information about Revise's designs and trademarks from the *Wet Jeans* litigation and, in particular, Revise's strategic thinking about trademark infringement litigation. Revise retained Pryor Cashman to advise it with regard to a possible trademark infringement lawsuit to be brought against Wet Jeans, Inc., which, in fact, Pryor Cashman filed on Revise's behalf. Pryor Cashman has claimed that it only acted as local counsel in the matter, but its role in the case, its contact with Revise and lack of contact and communication with Mr. Troy concerning the *Wet Jeans* litigation and settlement, belie the limited role which Pryor Cashman now claims. Pryor Cashman had access to Revise's business, trademark infringement litigation and settlement plans and strategies, marketing, trade channels, pricing structure, revenues and sales, product development, proposed trademarks and prospective business plans. After Pryor Cashman investigated Revise's claims against Wet Jeans, drafted the complaint, filed Revise's trademark infringement complaint against Wet Jeans in November 2007 and prepared for trademark infringement litigation, the firm entered into settlement discussions to resolve the litigation on behalf of Revise. Pursuant to its obligations under Fed. R. Civ. P. 11, to reasonably and competently represent Revise in the *Wet Jeans* suit, Pryor Cashman had to have access to Revise's confidential, proprietary information. Pryor Cashman could not have meaningfully prepared for the litigation or participated in those settlement discussions without access to and knowledge of Revise's confidential business plans, prospective business plans, channels of trade, product development, trademarks and designs.

Through the prior representation, Pryor Cashman became aware of Revise's strategies in current and prospective trademark prosecution and infringement matters. The knowledge the firm acquired in representing Revise in the *Wet Jeans* litigation and in advising it with respect to other trademark searches and trademark plans is inherently advantageous to defendants in the present dispute and is fundamentally detrimental to Revise. It is also highly likely that Pryor Cashman had access to and obtained a minimum base of knowledge about Revise's trademark plans in order to competently provide trademark searches and advice to Revise for intellectual property apart from the *Wet* Jeans suit. Because Pryor Cashman is "potentially in a position to use privileged information concerning the other side through prior representation, … thus giving his present client an unfair advantage," *Bd. of Educ.,* 590 F.2d at 1246, this element of the Second Circuit's test is satisfied. Accordingly, Pryor Cashman must be disqualified.

CONCLUSION

The Disciplinary Rules of the New York Lawyer's Code of Professional Responsibility are designed to protect a party from having information to which an opposing attorney likely had access during prior representation used against it to its detriment. The facts of Pryor Cashman's representation of Revise, the substantial relation between the previous litigation and this case and Pryor Cashman's access to Revise's relevant, privileged information, make it a substantial risk in this litigation that the information will be used against Revise here. Accordingly, for the reasons stated herein, plaintiff Revise requests that this Court disqualify Defendants' counsel from any further representation of the defendants in this action and all related actions, and award to

Revise attorneys' fees and costs incurred in compelling the disqualification.

Dated: September 15, 2009

Respectfully submitted:
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Motions

1:09-cv-03961-BSJ-JCF Revise Clothing, Inc. v. Joe's Jeans Subsidiary, Inc. et al
CASREF, ECF

U.S. District Court

United States District Court for the Southern District of New York

Notice of Electronic Filing

The following transaction was entered by Troy, Gordon on 9/15/2009 at 5:13 PM EDT and filed on 9/15/2009

Case Name: Revise Clothing, Inc. v. Joe's Jeans Subsidiary, Inc. et al
Case Number: 1:09-cv-3961
Filer: Revise Clothing, Inc.
Document Number: 13

Docket Text:
FIRST MOTION to Disqualify Counsel *Pryor Cashman LLP*. Document filed by Revise Clothing, Inc.. (Attachments: # (1) Affidavit Declaration of Gordon Troy and Exhibits)(Troy, Gordon)

1:09-cv-3961 Notice has been electronically mailed to:

Gordon E. Troy gtroy@webtm.com

Lisa M. Buckley lbuckley@pryorcashman.com, docketing@pryorcashman.com

1:09-cv-3961 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1008691343 [Date=9/15/2009] [FileNumber=6472786-0
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2cdda3d79ac62e7ba3fb7ce87689df6065c9eed789aa4c5fc21da06de45de]]
Document description: Affidavit Declaration of Gordon Troy and Exhibits
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