

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JENNY YOO COLLECTION, INC., a New York corporation,

Plaintiff,

v.

WATTERS DESIGNS, INC., DBA WATTERS & WATTERS, a Texas corporation; Wtoo Partners, L.P., a Texas Limited Partnership

Defendants.

Civil No.

JURY TRIAL DEMAND

**COMPLAINT FOR PATENT
INFRINGEMENT, FEDERAL TRADE
DRESS INFRINGEMENT AND
COMMON LAW TRADE DRESS
INFRINGEMENT**

Plaintiff Jenny Yoo Collection, Inc. (“Plaintiff” or “JY”) complains and alleges as follows against Defendants Watters Designs, Inc., d/b/a Watters & Watters, and Wtoo Partners, L.P., a Texas Limited Partnership (jointly “Watters” or “defendants”).

THE NATURE OF THE ACTION

1. JY was formed when its founder, Chief Executive Officer and President, Jenny Yoo, recognized the absence in the market of stylish, quality bridesmaid dresses. The Company’s initial focus was to create a collection of bridesmaid dresses to fill this gap in the market. JY launched its first collection of bridesmaid dresses in 2002. Since then, JY has expanded dramatically, and Jenny Yoo has designed many stylish and well-received wedding dress and bridesmaid dress collections.

2. JY revolutionized the bridal gown industry in 2012 when it introduced its wildly popular, convertible “Aidan” and “Annabelle” bridesmaid dress designs, products that dramatically changed the way consumers view bridal and bridesmaid dresses. JY markets these dresses under the “NABI by Jenny Yoo” and “Jenny Yoo Collection” trademarks. Reviewers, analysts and consumers immediately recognized the convertible dress as a “game changer.”

Before the introduction of JY's convertible dress, convertible dresses were bulky, awkward and utilitarian, requiring that conversions be made by tying together components of the dress in different and often unattractive configurations. The JY convertible dress design was radically different. It provided for use of lightweight material with two rear and two front convertible panels attached at the waist seam that blended seamlessly into the design of the bottom part of the dress, and could be easily raised by hand and rearranged for purposes of converting the dress into different neckline styles and inherently attractive, elegant looks. Because the design permitted conversion of the dress into different "looks", bridesmaids wearing the dresses could express their individuality while wearing matching dresses. This innovative, elegant and visually distinct design was highly appealing to consumers, and it found almost immediate success and acclaim within the market for bridal dresses (and in particular, bridesmaid dresses). While the JY convertible dress can be worn in many different configurations, it also can be worn in its natural form as a strapless dress without moving the panels from their initial position.

3. JY's bridesmaid and wedding designs, including the convertible dress designs at issue in this case, have been featured on various network television programs, such as NBC's "Today Show" and "Fab Life", local television programs in major markets throughout the United States, and in major publications such as Martha Stewart, Martha Stewart Weddings, The Knot, Brides Magazine and many others. JY's convertible bridesmaid dress designs are aesthetically pleasing and have become famous both within the industry and among consumers.

4. JY's creative achievements have resulted in intellectual property protection for its innovations, including issued design patents, pending utility patents, trademarks, and trade dress protection. Nevertheless, JY's innovations have been the subject of widespread emulation by its competitors, who have attempted to capitalize on JY's success by imitating JY's innovative,

elegant, and distinctive product designs. One of the principal imitators is Watters, which has introduced and sold lines of bridesmaid dresses (styles numbers 800 and 852i, 245 and Heath 1307), which compete directly with JY's patented convertible dresses. Instead of pursuing independent product development or licensing products from third parties, Watters has chosen to slavishly copy JY's innovative and distinctive design, in violation of JY's valuable intellectual property rights. Watters passes off JY's famous convertible dress designs as its own. As alleged below in detail, Watters has made its lines of convertible dresses, 800, 852i, 245 and Heath 1307, work and look like JY's patented dress designs, engaging in widespread patent and trade dress infringement. Watters has even misappropriated and copied JY's distinctive approach to marketing, using models wearing its "knock-off" dresses in poses and presentations that are substantially identical to the poses and presentations presented by JY on its website and in its advertising and promotional materials.

5. By this action, JY seeks to put a stop to Watters' illegal conduct and obtain compensation for the violations that have occurred thus far.

THE PARTIES

6. JY is a New York corporation having its principal place of business at 132 West 36th Street, 9th Floor, New York, New York 10018.

7. Watters Designs, Inc. (referred to individually herein as "Watters Designs") is a Texas corporation having its principal place of business at 4801 Spring Valley Rd., Suite 108, Dallas, TX 75244.

8. Wtoo Limited Partners, LLP (referred to herein individually as "Wtoo"), is a Texas Limited Partnership having its principal place of business at 4801 Spring Valley Rd., Suite 108, Dallas, TX 75244.

9. Watters offers and sells bridal gowns, and dresses for bridesmaids, flower girls, junior bridesmaids, and mothers of the bride. It sells its gowns and dresses using several brands including: (a) “Watters” for designer bridal gowns and bridesmaid dresses, (b) “Wtoo” for “affordable” bridal gowns and bridesmaid dresses, (c) “Willowby” for bridal dresses with a “chic, laid-back elegance”, (d) “Encore” for short dresses suitable for cocktail parties or wedding receptions, (e) “C20” for mother of the wedding dresses and (f) “Seahorse” for junior bridesmaids and flower girl dresses. Wtoo is a prominent, well-known competitor of JY. Watters Designs is also a prominent competitor of JY.

JURISDICTION

10. This Court has subject matter jurisdiction under 15 U.S.C. § 1121 (action arising under the Lanham Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1332 (diversity); 28 U.S.C. § 1338(a) (any Act of Congress relating to patents or trademarks); 28 U.S.C. § 1338(b) (action asserting claim of unfair competition joined with a substantial and related claim under the trademark laws); and/or 28 U.S.C. § 1367 (supplemental jurisdiction).

11. This Court has personal jurisdiction over Watters Designs and Wtoo because Watters Designs and Wtoo are incorporated in this State and both Watters Designs’ and Wtoo’s principal places of business are in this district.

VENUE

12. Venue is proper within this district and division under 28 U.S.C. § 1400(b) because Watters Designs and Wtoo are incorporated in this State and both Watters Designs’ and Wtoo’s principal places of business are in this district and division.

BACKGROUND

JY'S Innovations

13. JY is a leading designer and manufacturer of bridesmaid gowns, wedding gowns, and other wedding apparel. JY was founded by Jenny Yoo, who launched her first collection of bridesmaid dresses in 2002. As a result of the extraordinary creativity of Jenny Yoo and JY's significant investment in research and development, in 2012, JY introduced into the market its innovative, convertible "Aidan" and "Annabelle" bridesmaid dress designs that have changed the face of the bridal fashion industry. JY's convertible bridesmaid gowns were unique when JY introduced them into the market because they are constructed with two front and two rear convertible panels attached to the waist of the dresses which blend seamlessly into the bottom of the dress, creating an aesthetically pleasing look. These panels are easily reconfigured into many different "looks", and their design and placement at the waist of the dresses allow the dresses to be made of lightweight material. The dresses feature convertible panels that can be raised and manipulated to create alternative necklines and skirt details. JY introduced into the market both short and floor length dresses with these unique and distinctive convertible features. The "Aidan" and "Annabelle" bridesmaid dresses share a unique—indeed, revolutionary ornamental feature that has become famous—the two front and two rear panels attached at the waist in a manner that allows them to seamlessly blend into the bottom of the dress, regardless of the specific configuration in which the dress is worn and regardless of the length of the dress. As described with more specificity below, this ornamental, non-functional feature has become JY's renowned Trade Dress (the "JY Trade Dress"), instantly recognizable among consumers and industry professionals alike as being associated with JY.

14. As a direct result of its innovative and distinctive design and its cutting edge

technological features, including the JY Trade Dress, JY's convertible bridal gowns were an instant success, and they immediately became uniquely associated with JY as its source. Reviewers and analysts universally praised JY's bridesmaid gowns for their "game changing" features. Sales were strong, and the popularity of this new design contributed substantially to the success of the JY brand and JY's reputation as a leader in the market for bridal and bridesmaid designs.

15. JY's convertible bridesmaid dresses, sold under the "NABI by Jenny Yoo" and "Jenny Yoo Collection" brand names, are sold in major retail stores throughout the United States, such as, for example, Nordstrom. In substantial part because of these convertible bridesmaid dress designs and their unique JY Trade Dress, Jenny Yoo has become recognized nationally as one of the leading and most successful designers in the bridal industry. Since 2012, JY has sold more than 132,000 of these convertible dresses, and over 37,000 in Nordstrom alone, resulting in revenues from this single source in excess of \$30 million total and over \$10 million from sales at Nordstrom.

16. In addition to Nordstrom, JY's convertible bridesmaid dresses are sold at other major bridal and general retailers such as Saks Fifth Avenue, Lord & Taylor, BHLDN Weddings, Kleinfeld, ModCloth, Amazon Fashion, Brideside, Bella Bridesmaids, and Vow to be Chic, each of which displays JY's convertible bridesmaid dresses on its website, and in its marketing and promotional efforts such as catalogs, advertisements, in-store events, and many others. The advertisements and promotions of the convertible dresses by these major retailers have contributed substantially to the national fame of the JY Trade Dress.

17. From 2012 through 2017, JY has spent a total of \$585,000 on advertising for dresses sold "NABI by Jenny Yoo" brand name, which includes the "Aidan" and "Annabelle"

dresses embodying the JY Trade Dress. The major retailers who have carried the dresses have also expended substantial sums to advertise them in their catalogues, print advertisements, websites and other advertisements and promotions.

18. JY also actively utilizes social media to market and promote its products, including the JY Trade Dress embodied in the convertible dresses at issue in this case. JY's Facebook page has 15,565 followers nationwide, and JY uses it to announce its various trunk shows and other events which feature the bridesmaid dresses at issue in this case which embody the JY Trade Dress. JY also utilizes Twitter and Instagram to market and promote its products, including the convertible dresses at issue here. JY has about 74,400 followers nationwide on its "jennyoonyc" Instagram account alone, and a search on Instagram for JY bridesmaid dresses reveals numerous other Instagram accounts that show JY's bridal dresses including those at issue in this case. Photographs of JY's famous convertible dress embodying the JY Trade Dress are ubiquitous on Instagram. Photographs of JY's famous convertible dress embodying the JY Trade Dress on Tumblr and Pinterest are also extensive.

19. The national fame of the JY convertible dresses that embody the JY Trade Dress is demonstrated by a search using the Google web browser for "Jenny Yoo bridesmaid dresses" which yields 2,600,000 results. Another search for "Jenny Yoo convertible bridesmaid dresses" reveals 580,000 results. Likewise, a search for "Jenny Yoo Collection" (the company name) yields 2,940,000 results. This demonstrates that the JY convertible dresses and JY Trade Dress have achieved a dynamic, remarkable presence in social media and on internet-based websites.

20. Further, major publications within the bridal gown industry and entertainment industry regularly feature JY's convertible dresses and the JY Trade Dress in their postings in Facebook, Twitter and Instagram, Tumblr, among other such websites.

21. JY showcases the “Aidan” and “Annabelle” dresses at her show room locations in New York, NY, and Chicago, IL. JY also markets and advertises its products at trunk shows, bridal shows, and numerous other events all across the United States. By promoting its convertible dress products at these trunk shows and industry trade events, by developing a strong social media presence on Facebook and Instagram, among other social media websites, and through the advertising and promotional efforts of its retail customers (such as those identified in paragraph 16 above), JY and the JY Trade Dress at issue in this case have achieved widespread recognition in the bridal industry and among consumers and have become immensely famous and popular.

22. JY also regularly publishes catalogs and press releases and maintains an extensive, sophisticated, and visually compelling website, which promote JY’s products and make the brand, and the convertible dress products, known nationally and internationally.

23. In 2012, JY began a national campaign to market and sell “Aidan” style number 1282 convertible bridesmaid dress, now sold under the “NABI by Jenny Yoo” and “Jenny Yoo Collection” brands. The following is a drawing that shows this dress in configurations which vary depending upon the placement of the flaps attached to the front and rear waist band of the dress, together with a technical sketch showing the placement of two panels hanging downward from the front waist portion of the dress and two panels hanging downward from the rear waist portion of the dress. In each case, the JY Trade Dress is shown, because the flaps (other than flaps which are raised to form a specific configuration), blend seamlessly into the bottom portion of the dress. This design was revolutionary, because no previous design for a convertible bridesmaid dress involved placement of flaps in this manner, and it created an aesthetically pleasing, new, non-obvious, non-functional look.

“Aidan” convertible dress (Style #1282)



24. Soon thereafter, JY also introduced another version of essentially the same design, which it calls “Annabelle, style number 1452”, and sells under the “NABI by Jenny Yoo” and “Jenny Yoo Collection” brand names. The Annabelle is essentially the same as the Aidan except that the band attached to the waist in the Aidan design is removed, and replaced with an attachable sash. It contains the same revolutionary feature as the Aidan—namely, two front and two rear flaps that flow downward from the waist. It also contains the same distinctive, non-functional JY Trade Dress—namely that the flaps (other than flaps which are raised to form a specific configuration), blend seamlessly into the bottom portion of the dress. The following is a sketch showing the Annabelle design, and a technical drawing of the design showing the flaps flowing downward from the front waist and rear waist position and blending seamlessly and in a non-functional manner into the bottom of the dress (except where raised to form one of

numerous possible configurations).



25. With the exception of the waist band, the ordinary observer would find no discernable difference between the Aidan and Annabelle designs. Moreover, in most configurations, the difference in the waist band is not noticeable. This is because in many configurations of the Annabelle design, one or more of the flaps are wound around the waist, and the appearance at the waist then becomes exactly the same as the Aidan design. Consumers and industry professionals alike would recognize that both the Aidan and Annabelle designs feature the same unique placement and configuration of the flaps—the JY Trade Dress described above—a configuration that was a radical departure from prior convertible bridesmaid dress

designs. From an ornamental perspective, this unique placement and JY Trade Dress allows the flaps to blend seamlessly and elegantly into the gown. This is true whether the gown is worn in a strapless configuration with all four flaps facing downward from the waist, or whether one or more of the straps is raised to change the “look” of the gown. This seamless, elegant blending of the flaps into the gown is a prominent feature of the Aidan and Annabelle designs and constitutes JY’s distinctive, non-functional JY Trade Dress—contributing substantially to the widespread popularity of the Aidan and Annabelle designs. From the standpoint of the ordinary observer, these two designs and their distinctive JY Trade Dress are essentially the same—because of the placement of and uses for the convertible flaps.

26. Soon after JY introduced the Aidan and Annabelle dresses into the market, they became immensely popular. These “NABI by Jenny Yoo” designs received extensive unsolicited press coverage and many positive reviews both within industry circles and publications that focus on the consumer market. And sales skyrocketed. At present, JY’s “Aidan” and “Annabelle” dresses are on sale in major department stores and prominent bridal shops and boutiques in virtually every major metropolitan market in the United States (and most small towns as well). They are also sold on numerous on-line, e-commerce websites.

27. The fame of these dress designs is underscored by the existence of a substantial secondary market for these dresses on eBay—where consumers sell used clothing. At any one time, hundreds, and sometimes more than 1,000, “Aidan” and “Annabelle” dresses are available for resale on eBay.

28. Indeed, year after year, the “Aidan” and “Annabelle” dress designs are among the best-selling bridesmaid designs nationwide. So widespread is their penetration within the market for bridesmaid and wedding dresses, that the unique look and configuration of these designs,

including most importantly, the JY Trade Dress described above, is now closely associated in the minds of average wedding and bridal-wear consumers with JY (and Jenny Yoo as the designer and founder of JY.) It is fair to say that in the minds of most consumers, these famous designs, and the JY Trade Dress which they embody, have become synonymous with the designer Jenny Yoo and her company, JY.

29. Within the bridal dress design industry, at both the wholesale and retail store level, the “Aidan” and “Annabelle” dress designs have become ubiquitous. Consumers who see these dresses hanging in racks in stores or photographs of them on e-commerce websites invariably associate the look and configuration of these dresses with JY and its founder, Jenny Yoo. The “Aidan” and “Annabelle” convertible dress designs, sold under the “NABI by Jenny Yoo” and “Jenny Yoo Collection” brand names, have become among the most well-known bridal dress designs in the United States, closely associated in the minds of ordinary consumers with JY and its founder, Jenny Yoo.

JY’S INTELLECTUAL PROPERTY RIGHTS

JY’s Design Patents

30. JY has protected its innovative designs and cutting-edge technologies through a broad range of intellectual property rights. Recognizing that its innovative designs involve both unique ornamental designs and functional innovations, JY has sought both design patents and utility patents. Since 2012, JY has notified the public in its website and marketing materials that these patents were either pending or issued (as appropriate in the time frame). The United States Patent Office has issued the design patents listed below. JY’s design patents cover the ornamental features of JY’s “Aidan” and “Annabelle” bridesmaid dress designs, such as two rear and two front convertible panels attached at the waist which blend naturally and seamlessly into

the dress. JY owns all right, title, and interest in and to each of the asserted design patents listed below, copies of which are attached as Exhibits 1 and 2. The designs covered by these patents are distinctive and serve to identify JY as the source of the bridesmaid dresses which embody such designs. Moreover, the features covered by these patents are not dictated by function; rather, they are the product of aesthetic choices made by Jenny Yoo when she created the designs.

Patent Number	Title
D 698,120 (the “D120 patent”)	Dress
D744,723 (the “D723 patent”)	Convertible Dress

JY’S Utility Patent Applications

31. JYs utility patent applications cover many of the elements that have come to be associated with JY’s convertible bridesmaid dresses. These include (a) a patent covering functional features of the convertible dresses, including the front and rear panels extending downward, attached to the front and rear panels of the gathered skirt with fastening means that allow for multiple adaptations and configuration, and (b) a patent covering unique methods for using a multi-use garment consisting of specified functional convertible and adoptable elements.

32. These pending patent applications include the following to which JY owns all rights, title, and interest.

Patent Number	Title
13/657,422 (the “422 application”)	Multi-Use Garment
14/720,453 (the “453 application”)	Multi Use Garment

JY's Trademarks and Design Marks

33. JY owns United States trademark registration number 3339930 for “Jenny Yoo Collection”, which was registered on November 30, 2007, and acknowledged by the United States Patent and Trademark Office as incontestable on September 13, 2013. JY also owns United States trademark registration number 4524466 for “NABI by Jenny Yoo”, which was registered on May 6, 2014.

34. JY also owns common law trademark rights for the brand names, “NABI by Jenny Yoo”, “Aidan” and “Annabelle” which it has used in commerce to market its convertible dress designs since 2012. JY has filed trademark applications for the combined word/design marks “NABI by Jenny Yoo”, serial numbers 86937259 and 86937318, which are pending before the United States Patent and Trademark Office.

JY's Trade Dress

35. As described above, JY's Annabelle and Aidan bridesmaid dress designs, as covered by the aforesaid design patents, share a critical, distinctive, non-functional, ornamental JY Trade Dress that has become associated with JY as its source—namely, the existence of two front panels and two rear panels attached to the waist in a manner that allows them to blend seamlessly and elegantly into the bottom of the dress; this seamless blending of panels into the bottom of the dress occurs whether in a strapless configuration, or when one or more of the panels is raised to transform the dress into a classic halter, V-neck, one-shoulder, or two-shoulder strap configuration. The existence of this elegant, seamless blending of panels, regardless of the specific configuration of the dress, is a non-functional, ornamental feature of the JY Trade Dress that distinguishes JY's Annabelle and Aidan bridesmaid dress designs from many other competing dress designs, and is the design feature that resulted in the unparalleled

commercial success of JY's Annabelle and Aidan bridesmaid dress designs.

36. The JY Trade Dress is non-functional; JY's competitors have produced numerous alternative designs for convertible dresses, but none of them feature two front and two rear panels attached to the waist that permit this elegant, seamless integration of panels into the bottom of the dress.

37. JY has used, marketed and sold this distinctive JY Trade Dress in commerce throughout the United States beginning in 2012 and continuously thereafter, and consumers identify JY as the source of the dresses which embody this JY Trade Dress. Accordingly, JY has acquired common law rights in this JY Trade Dress.

38. The JY Trade Dress is embodied in each different configuration of Aidan and Annabelle dress design, including the specific design configurations shown in the paragraphs below.

39. The first Aidan dress design configuration incorporates the JY Trade Dress in the manner described and shown below ("First Aidan Configuration"):

- a dress having a strapless upper garment (bodice) portion covering an area above the waist of the user having a front and rear portion;
- a skirt having a front portion and rear portion attached to the upper garment (bodice);
- a waist band attached at the bottom portion of the upper garment (bodice); and
- front and rear panels attached to the waist seam of the skirt, extending downward so that they blend seamlessly with the skirt.



40. The second Aidan design configuration incorporates the JY Trade Dress in the manner described and shown below (“Second Aidan Configuration”):

- a dress having a strapless upper garment (bodice) portion covering an area above the waist of the user having a front and rear portion;
- a skirt having a front and rear portion attached to the upper garment (bodice);
- a waist band attached at the bottom portion of the upper garment (bodice);

- 2 front and two rear panels attached to the waist seam of the skirt of which both back panels wrap around the front waist and tie at the back waist creating a tied sash configuration; and
- 2 front panels are raised over the bodice covering both sides of the neckline of the user to create a Classic Halter Strap configuration.

Aidan Halter with Tied Sash look



41. The third Aidan design configuration incorporates the JY Trade Dress in the

manner described and shown below (“Third Aidan Configuration”):

- a dress having a strapless upper garment (bodice) portion covering an area above the waist of the user having a front and rear portion;
- a skirt having a front and rear portion attached to the upper garment (bodice);
- a waist band attached at the bottom portion of the upper garment (bodice);
- 2 front and 2 rear panels attached to the waist seam of the skirt of which both back panels wrap around the front waist and tie at the back waist creating a tied sash configuration; and
- 2 front panels raised over the bodice covering both shoulders of the user to create Criss Cross V-neck configuration.



42. The fourth Aidan design configuration incorporates the JY Trade Dress in the

manner described and shown below (“Fourth Aidan Configuration”):

- a dress having a strapless upper garment (bodice) portion covering an area above the waist of the user having a front and rear portion;
- a skirt having a front and rear portion attached to the upper garment (bodice);
- a waist band attached at the bottom portion of the upper garment (bodice);
- 2 front and 2 rear panels attached to the waist seam of the skirt of which both back panels wrap around the front waist and tie at the back waist creating a tied sash configuration; and
- one front panel extends downward so that it blends seamlessly with the skirt, while the second front panel is raised above the bodice to create a One Panel/One Shoulder configuration covering a portion of the right or left shoulder of the user.



43. The fifth Aidan design configuration incorporates the JY Trade Dress in the

manner described and shown below (“Fifth Aidan Configuration”):

- a dress having a strapless upper garment (bodice) portion covering an area above the waist of the user having a front and rear portion;
- a skirt having a front and rear portion attached to the upper garment (bodice);
- a waist band attached at the bottom portion of the upper garment (bodice);
- 2 front and 2 rear panels attached to the waist seam of the skirt of which both back panels wrap around the front waist and tie at the back waist creating a tied sash configuration; and
- 2 front panels are raised up over the bodice covering and draping over both shoulders of the user to create a Blouson Wrap configuration.



44. The sixth Aidan design configuration incorporates the JY Trade Dress in the manner described and shown below (“Sixth Aidan Configuration”):

- a dress having a strapless upper garment bodice portion covering an area above the waist of the user having a front and rear portion;
- a skirt having a front and rear portion attached to the upper garment (bodice);
- a waist band attached to the bottom portion of the upper garment (bodice);
- 2 front and 2 rear panels attached to the waist seam of the skirt, of which both front panels and one or more back panels are raised over bodice to create a One Shoulder Bow configuration covering a portion of the right or left shoulder of the user; and
- one back panel may, at the option of the user, extend downward to blend seamlessly with skirt.



45. The first “Annabelle” design configuration comprises the First Aidan Configuration, but excluding a waistband attached at a bottom portion of the upper garment (bodice), with a coordinating detachable sash.

Annabelle w/ clean waist seam & detachable sash.



46. The second “Annabelle” design configuration comprises the Second Aidan Configuration, but excludes a waistband attached to the upper garment (bodice), and instead features a coordinating detachable sash used to wrap around the waist, with the rear panels extending downward so that they blend seamlessly with the skirt.

Annabelle w/ sash view



47. The third “Annabelle” configuration comprises the Third Aidan Configuration, but excludes a waistband attached to the upper garment (bodice), and instead features a coordinating detachable sash used to wrap around the waist, with the real panels extending downward so that they blend seamlessly with the skirt.



48. The fourth “Annabelle” design configuration comprises the Fourth Aidan Configuration, but excludes a waistband attached to the upper garment (bodice), and instead features a coordinating detachable sash used to wrap around the waist, with the rear panels extending downward so that they blend seamlessly with the skirt.



49. The fifth “Annabelle” design configuration comprises the Fifth Aidan Configuration, but excludes a waistband attached to the upper garment (bodice), and instead features a coordinating detachable sash used to wrap around the waist, with the rear panels extending downward so that they blend seamlessly with the skirt.



50. The sixth “Annabelle” design configuration comprises the Sixth Aidan Configuration, but excludes a waistband attached to the upper garment (bodice), with one of the rear panels extending downward so that it blends seamlessly with the skirt.

Annabelle one shoulder bowtie

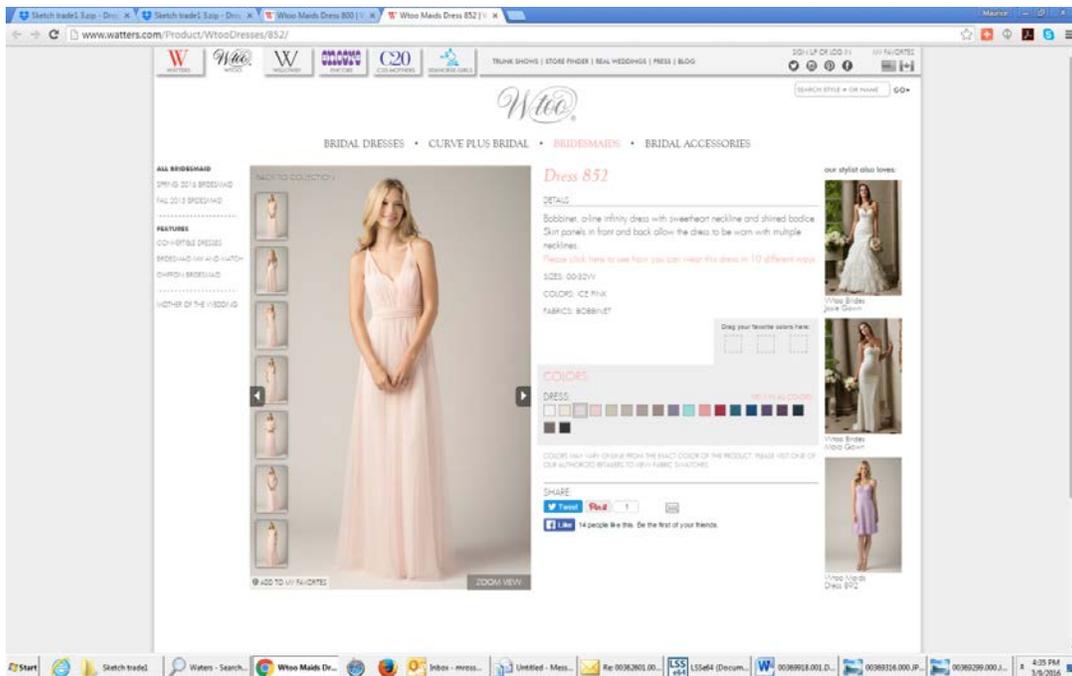
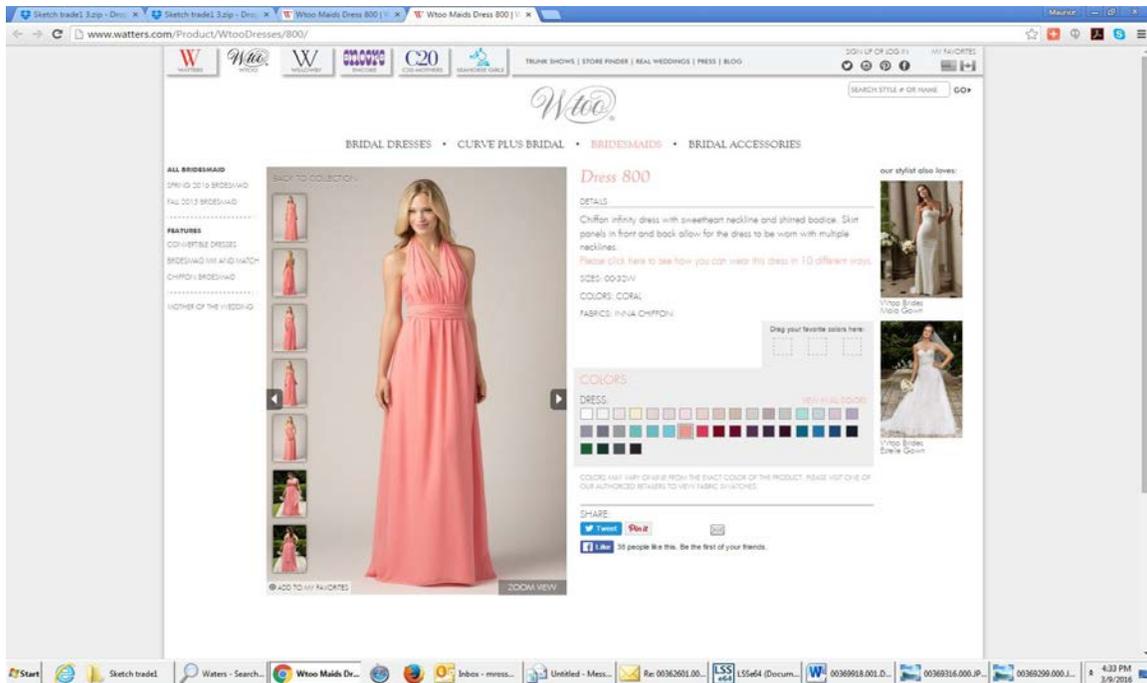


51. Each of the foregoing Aidan and Annabelle product configurations incorporates the JY Trade Dress.

WATTERS' INFRINGING PRODUCTS

52. Watters has made, or caused to be made, imported into or sold in the United States at least four products, each of which infringes one or more of JY's intellectual property rights: (i) Bridesmaid Dress 800, (ii) Bridesmaid Dress 852, (iii) Bridesmaid Dress Heath 1307, and (iv) Bridesmaid Dress 245 (collectively, the "Infringing Products"). Each of these dresses

incorporates the JY Trade Dress into its design configuration. The following are screenshots from Watters' website that show these dresses.



Watters.com

watters.com/Collection/WtooDresses/Featured:ConvertibleDresses/

W WATTERS Wtoo W WILLOWBY ENCORE C20 C20 MOTHERS SEAHORSE GIRLS TRUNK SHOWS | STORE FINDER | REAL WEDDINGS | PRESS | BLOG SIGN UP OR LOG IN MY FAVORITES

SEARCH STYLE # OR NAME GO

Wtoo

BRIDAL DRESSES • CURVE PLUS BRIDAL • BRIDESMAIDS • BRIDAL ACCESSORIES

ALL BRIDESMAID
 SPRING 2016 BRIDESMAID
 FALL 2015 BRIDESMAID
 FEATURES
 CONVERTIBLE DRESSES
 BRIDESMAID MIX AND MATCH
 CHIFFON BRIDESMAID
 MOTHER OF THE WEDDING

← BACK

1 DRESS,
6 WAYS!

view this dress

Watters.com

watters.com/Collection/WtooDresses/Featured:ConvertibleDresses/

W WATTERS Wtoo W WILLOWBY ENCORE C20 C20 MOTHERS SEAHORSE GIRLS TRUNK SHOWS | STORE FINDER | REAL WEDDINGS | PRESS | BLOG SIGN UP OR LOG IN MY FAVORITES

SEARCH STYLE # OR NAME GO

Wtoo

BRIDAL DRESSES • CURVE PLUS BRIDAL • BRIDESMAIDS • BRIDAL ACCESSORIES

ALL BRIDESMAID
 SPRING 2016 BRIDESMAID
 FALL 2015 BRIDESMAID
 FEATURES
 CONVERTIBLE DRESSES
 BRIDESMAID MIX AND MATCH
 CHIFFON BRIDESMAID
 MOTHER OF THE WEDDING

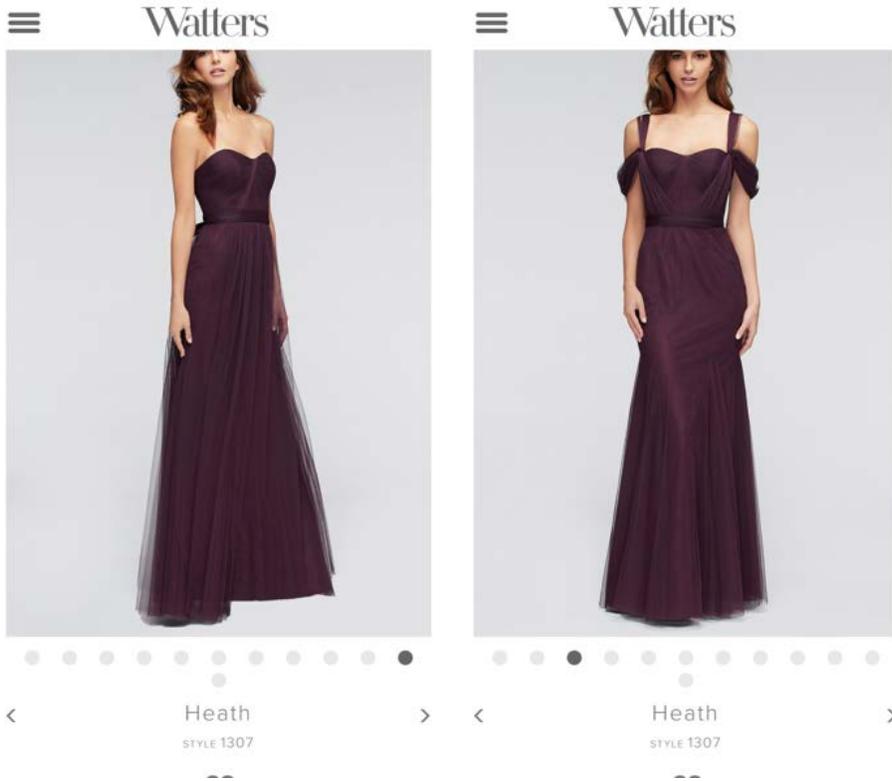
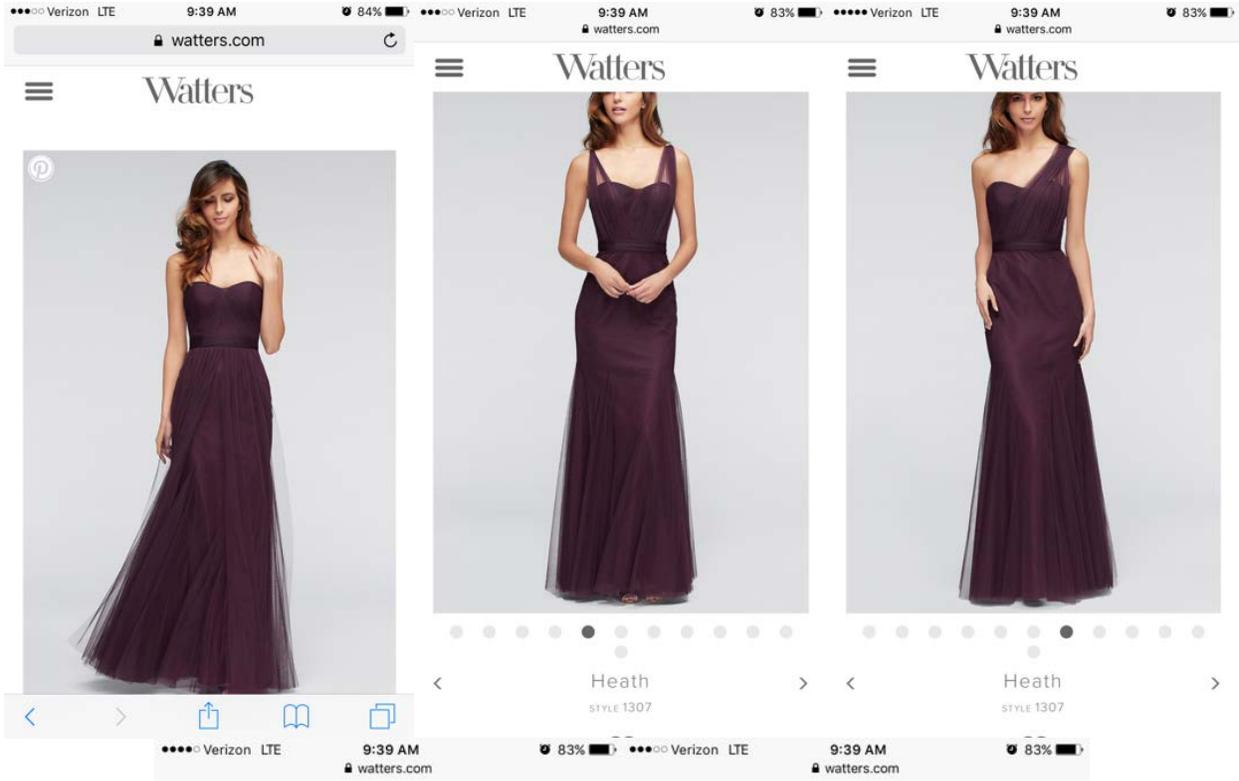
CONVERTIBLE DRESSES

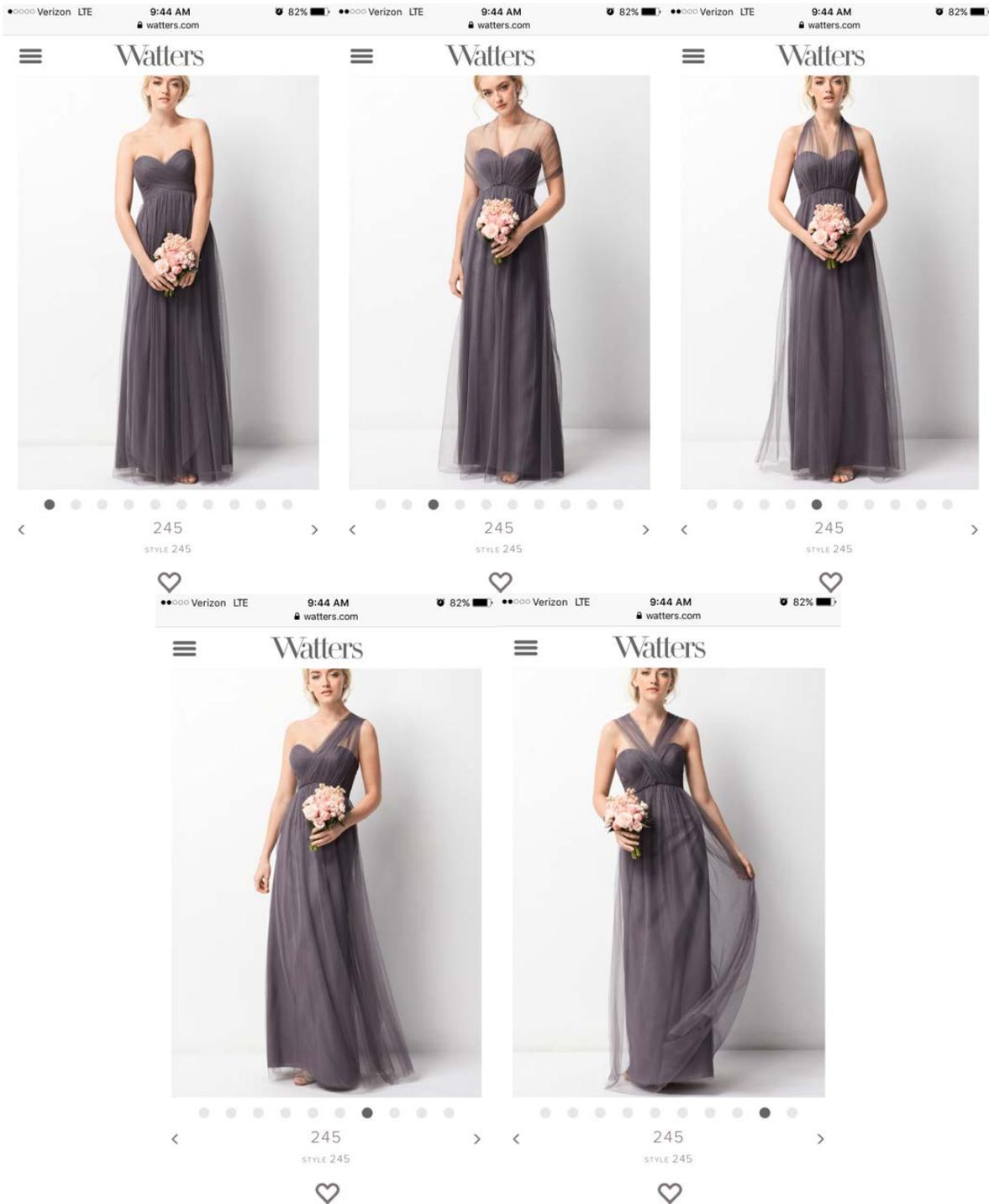
From strapless to halter, your girls will love all the options they'll have with our convertible bridesmaid dresses. Way cool.

→ MORE

1 DRESS,
4 WAYS!

view this dress





53. Rather than innovate and develop its own bridesmaid dress designs, Watters chose to copy JY’s designs, including, most importantly, JY’s distinctive Trade Dress, and marketed and passed off these designs under its “WToo” brand and “Watters” brands.

54. The copying by Watters is so pervasive that the Infringing Products appear to be actual JY dresses—with the same ornamental, non-functional and functional features. When the Infringing Products are worn in public, there can be little doubt that they would be viewed as JY products based upon the design alone, and most importantly, because they incorporate the JY Trade Dress.

55. Watters, and its founder, Vantana Watters, had previously designed original weddings and bridesmaid gowns under the “Watters” brand, but those original designs did not embody JY’s distinctive Trade Dress.

56. In response to competition from JY’s innovative and successful designs, Watters chose to infringe JY’s patent, trade dress, and trademark rights through the manufacturing, marketing, promotion, use and sale of the Infringing Products, and it did so willfully to trade upon the goodwill that JY has developed in connection with its innovative and high quality dress designs.

Infringement of JY’s Patents and Trade Dress

57. As the side-by-side comparisons shown below reveal, Watters has misappropriated JY’s dress design by marketing and selling the Infringing Products in its violation of JY’s ‘723 patent.



JY Aidan (#1282) Wtoo (#800) JY Annabelle (#1452) Wtoo (#852)



JY Aidan (#1282) Wtoo (#800) JY Annabelle (#1452) Wtoo (#852)



JY Aidan (#1282) Wtoo (#800) JY Annabelle (#1452) Wtoo (#852)



JY Aidan (#1282)

Wtoo (#800)

JY Annabelle (#1452)

Wtoo (#852)



Wtoo (#800)

JY Annabelle (#1282)

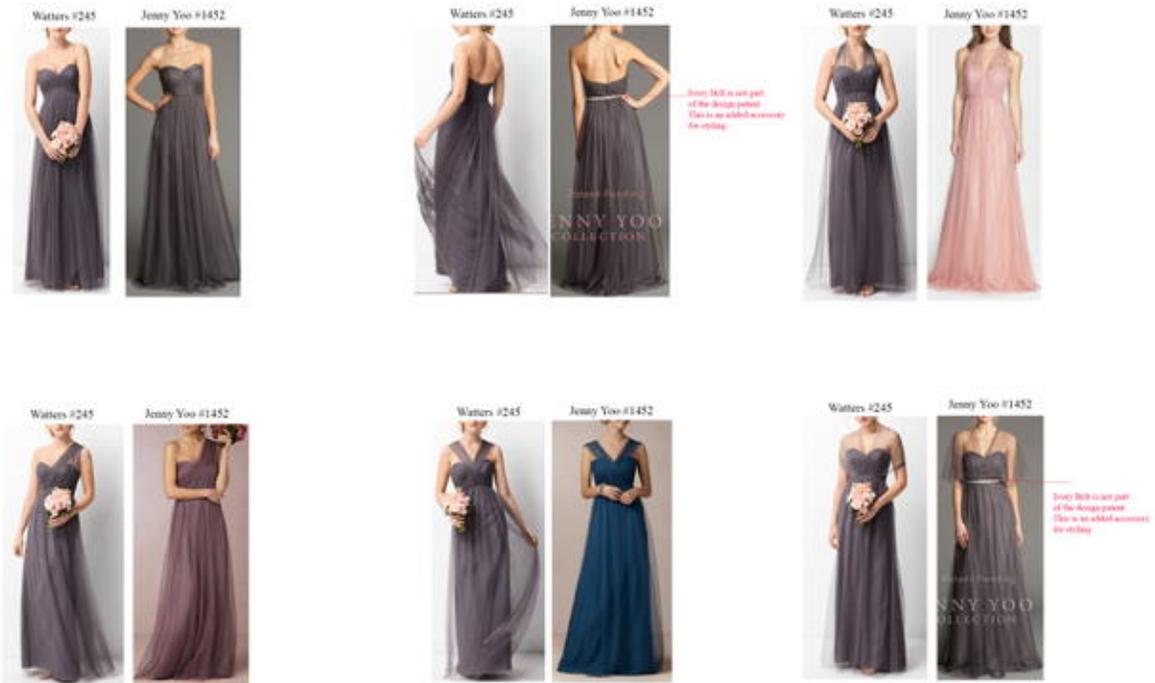
Wtoo (#852)



Watters Tulle Convertible - Heath Style #1307



Watters Tulle Convertible - Style # 245



58. Each of Watters’ Infringing Products embodies the JY Trade Dress identified above in product configurations that are identical to the Aidan and Annabelle Product Configurations shown above, including:

- a dress having a strapless upper garment (bodice) portion covering an area above the waist of the user having a front and rear portion;
- a skirt having a front and rear portion attached to the upper garment (bodice);
- two front and two rear panels attached to the skirt, which extend downward so that they blend seamlessly with the skirt, and which can be raised, lowered and attached into different configurations to create different design looks, such as a strapless configuration, classic halter configuration, Criss-Cross V-neck

configuration; One Panel/One Shoulder Configuration, Blouson Wrap Configuration and One shoulder bow configuration.

59. Watters' adoption of the JY Trade Dress has caused, and is likely to cause, confusion or mistake, or to deceive consumers, purchasers, and others into thinking that Watters' dress designs shown above are JY dress designs, or that they are sponsored by or affiliated with JY, when they are not. The copying is particularly problematic because the JY designs featuring the distinctive Trade Dress are the type of products that will be used in public at various wedding and social events where third parties, who were not present when the products were purchased, will associate them with JY because they have the unmistakable JY look that results from incorporation of the JY Trade Dress.

60. Of particular concern for JY is that JY devotes significant resources to develop its innovative dress products, and to market them to an upscale customer base. JY's dress designs are premium-priced products compared to the dresses ordinarily sold by Watters, which has a more budget conscious client base. Part of the cachet of JY's products is the very fact that they consistently stand-out from all of the other products on the market. JY's goodwill among consumers is closely tied to its position as a leader and innovator in the bridal and bridesmaid dress industry, which causes each release of a new dress design to be highly anticipated among consumers, and allows JY to market and sell them at premium price levels. Watters' flagrant and relentless copying of JY's intellectual property rights not only allows Watters to reap benefits from JY's investment and creative designs, it also threatens to diminish the very important goodwill that JY has cultivated with its dress designs, and threatens JY's ability to sell its products at premium price points.

61. Watters' marketing and sales personnel have deliberately played up the

similarities between the Infringing Products and the JY Trade Dress. The Infringing Products have been marketed by Watters as the dress products that are the closest to the JY Trade Dress—for consumers who wanted a product with the distinctive JY look, but who did not want to pay for the real product.

62. In view of the brazen and willful copying by Watters, JY is left with no choice but to file this lawsuit in order to protect its valuable intellectual property rights and the dress designs embodied in them.

FIRST CLAIM FOR RELIEF

(Trade Dress Infringement) (Lanham Act Section 43(a), 15 U.S.C. § 1125(a))

63. JY incorporates and re-alleges paragraphs 1 through 62 of this Complaint.

64. JY is the owner of all right and title to the distinctive JY Trade Dress and exclusively used the JY Trade Dress from 2012 to around 2015, when Watters and other infringers began producing and selling infringing products. The JY Trade Dress has acquired secondary meaning, and is not functional.

65. In addition, based on extensive and consistent advertising and advertising expenditures, widespread promotion and remarkable sales success throughout the United States, and unsolicited media coverage on television, the Internet, and print media, the JY Trade Dress has acquired distinctiveness and enjoys secondary meaning among consumers, identifying JY as the source of these products.

66. JY's extensive promotion of the distinctive JY Trade Dress has resulted in JY's acquisition of valuable, legally protected rights in the JY Trade Dress as well as considerable customer goodwill.

67. Watters has misappropriated the JY Trade Dress by mimicking a combination of

several elements of that trade dress in the Infringing Products.

68. Watters' manufacture, marketing, distribution and sale of the Infringing Products is likely to cause confusion, or to cause mistake, or to deceive the consumer as to the affiliation, connection or association of Watters with JY.

69. Watters' manufacture, distribution, use and sale of the Infringing Products enables Watters to benefit unfairly from JY's reputation and success, thereby giving Watters' Infringing Products sales and commercial value they would not have otherwise.

70. Watters' actions constitute unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

71. Watters knew of the JY Trade Dress when it designed and procured its Infringing Products. Accordingly, Watters' infringement has been and continues to be intentional, willful and without regard to the JY Trade Dress.

72. JY has been and will continue to be irreparably harmed and damaged by Watters' actions, and JY lacks an adequate remedy at law to compensate for this harm.

73. JY is informed and believes, that Watters has gained profits by virtue of its infringement of the JY Trade Dress.

74. JY also has sustained damages, including but not limited to lost sales, as a direct and proximate result of Watters' infringement of the JY Trade Dress in an amount to be proven at trial.

75. Because Watters' actions have been willful, JY is entitled to treble its actual damages or Watters' profits, whichever is greater, and to an award of costs, and, this being an exceptional case in view of Watters' willful infringement, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

SECOND CLAIM FOR RELIEF

(Common Law Trade Dress Infringement and Unfair Competition)

76. JY incorporates and re-alleges paragraphs 1 through 75 of this Complaint.

77. Watters' use of the JY Trade Dress constitutes common law trade dress infringement and unfair competition with JY under the common law of the State of Texas.

78. Watters has infringed the JY Trade Dress by manufacturing, distributing, marketing and selling the Infringing Products.

79. Watters' use of these infringing designs on dresses which it manufactures, distributes, markets and sells is likely to cause confusion, or to cause mistake, or to deceive the consumer as to the affiliation, connection or association of Watters with JY, or as to the origin, sponsorship, or approval by JY of Watters' goods, services or commercial activities.

80. Watters' use of JY Trade Dress enables Watters to benefit unfairly from JY's reputation and success, thereby giving the Infringing Products sales and commercial value they would not have otherwise. Further, Watters unfairly competes with JY by selling its infringing dress products at a price substantially below the price that JY charges for its substantially identical dresses to the same pool of wholesale and retail customers.

81. Prior to Watters' first use of the infringing dress designs, Watters was aware of JY's business and had either actual notice and knowledge, or constructive notice of the JY Trade Dress.

82. Watters' unauthorized use of the JY Trade Dress is likely, if not certain, to deceive or to cause confusion or mistake among consumers as to the origin, sponsorship or approval of the Infringing Products and/or to cause confusion or mistake as to any affiliation, connection or association between JY and Watters.

83. Watters' infringement of the JY Trade Dress as described herein has been and continues to be intentional, willful and without regard to JY's rights in the JY Trade Dress.

84. Watters has wrongfully gained profits by virtue of its infringement of the JY Trade Dress.

85. JY has suffered and will continue to suffer irreparable harm from Watters' infringement of the JY Trade Dress and related unfair competition insofar as JY's invaluable good will is being eroded by Watters' continuing infringement and unfair competition. JY has no adequate remedy at law to compensate it for the loss of business reputation, customers, market position, confusion of potential customers and good will flowing from the Watters' infringing and unfair activities. JY is entitled to an injunction against Watters' continuing infringement of the JY Trade Dress. Unless enjoined, JY will continue its infringing conduct.

86. Because Watters' actions have been committed with intent to damage JY and to confuse and deceive the public, JY is entitled to punitive damages, in addition to any actual or compensatory damages.

THIRD CLAIM FOR RELIEF

(Infringement of the 'D723 Patent)

87. JY incorporates and re-alleges paragraphs 1 through 86 of this Complaint.

88. The 'D723 Patent claims the design as shown in the drawings contained therein. Each of the Infringing Products is the same, or is substantially identical to, the design claimed in the '723 patent as shown in the drawings contained therein. The following comparison of drawings contained in the '723 patent to the Infringing Products shows that each of the Infringing Products is the same, or is substantially identical to, the design claimed in the '723 patent:

Watters Chiffon Convertible Style #800



FIG. 1



FIG. 2



FIG. 3



FIG. 4



FIG. 7



FIG. 8

Watters Tulle Convertible Styles #852, #852i



FIG. 1



FIG. 2



FIG. 3



FIG. 4



FIG. 7



FIG. 8

Watters Tulle Convertible - Heath Style #1307



Watters Tulle Convertible - Style # 245



89. Comparing the drawings in the patents with the infringing products as shown above, an ordinary observer with an understanding of the relevant prior art in the bridal gown industry, would be deceived into believing that each of the Infringing Products is the same as the patented design of the ‘D723 patent.

90. The patented design of the ‘D723 patent is the same, or substantially identical to, the patented design of the D’120 patent.

91. Each of the Infringing Products is identical to, or substantially the same as, the patented design of the ‘D723 patent regardless of the length of such Infringing Product as worn on a human or otherwise displayed or used. Each of the Infringing Products would infringe the ‘D723 patent regardless of whether it is worn as a short dress with length ending at or above the knees, or a long dress, with length ending below the knee, including, but not limited to, floor length.

92. Watters has infringed and continues to infringe ‘D723 Patent by using, selling and/or offering to sell, in the United States and/or importing into the United States the Infringing Products.

FOURTH CLAIM FOR RELIEF

(Infringement of the ‘D120 Patent)

93. JY incorporates and re-alleges paragraphs 1 through 92 of this Complaint.

94. The ‘D120 Patent claims the design as shown in the drawings contained therein. Each of the Infringing Products is the same, or is substantially identical to, the design claimed in the ‘D120 patent as shown in the drawings contained therein. The following comparison of drawings contained in the ‘D120 patent to the Infringing Products shows that each of the Infringing Products is the same, or is substantially identical to, the design claimed in the ‘120

patent:

Watters Chiffon Convertible Style #800



FIG. 1



FIG. 3

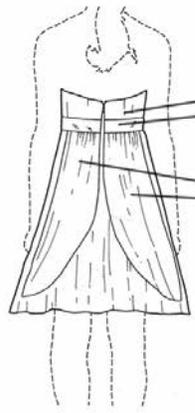


FIG. 2



FIG. 4



Watters Tulle Convertible Styles #852, #852i



Watters Tulle Convertible - Heath Style #1307



Watters Tulle Convertible - Style # 245



95. Comparing the drawings in the patents with the infringing products as shown above, an ordinary observer, with an understanding of the relevant prior art in the bridal gown industry, would be deceived into believing that each of the Infringing Products is the same as the patented design of the 'D120 patent.

96. Each of the Infringing Products is identical to, or substantially the same as, the patented design of the 'D120 patent regardless of the length of such Infringing Product as worn on a human or otherwise displayed or used. Each of the Infringing Products would infringe the 'D120 patent regardless of whether it is worn as a short dress with length ending at or above the knees, or a long dress, with length ending below the knee, including, but not limited to, floor length.

97. Watters has infringed and continues to infringe the 'D120 Patent by using, selling

and/or offering to sell in the United States, and/or importing into the United States the Infringing Products.

PRAYER FOR RELIEF

WHEREFORE, JY prays for relief, as follows:

1. A judgment that Watters has infringed JY's asserted design patents, the JY Trade Dress and JY's asserted trademarks;

2. An Order and judgment preliminarily and permanently enjoining Watters and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from further acts of infringement of JY's asserted design patents, the JY Trade Dress and JY's asserted trademarks;

3. A judgment awarding JY damages in an amount to be determined at trial for Watters' infringement of JY's asserted design patents, the JY Trade Dress and JY's asserted trademarks;

4. A judgment awarding JY all damages adequate to compensate for Watters' infringement of JY's asserted design patents, the JY Trade Dress and JY's asserted trademarks, and in no event less than a reasonable royalty for Watters' acts of infringement, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

5. A judgment awarding JY all damages, including treble damages, based on any design patent infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment interest;

6. An Order preliminarily and permanently enjoining Watters and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in

concert with them, and their parents, subsidiaries, divisions, successors and assigns, from directly or indirectly infringing the JY Trade Dress; from passing off Watters' bridal dresses as being associated with and or sponsored or affiliated with JY and its trademarks; from committing any other unfair business practices directed toward obtaining for themselves the business and customers of JY; and from committing any other unfair business practices directed toward devaluing or diminishing the brand or business of JY;

7. Actual damages suffered by JY as a result of Watters' unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest as authorized by law;

8. Reasonable funds for future corrective advertising;

9. An accounting of Watters' profits pursuant to 15 U.S.C. § 1117;

10. A judgment trebling any damages award pursuant to 15 U.S.C. § 1117;

11. Restitutionary relief against Watters and in favor of JY, including disgorgement of wrongfully obtained profits and any other appropriate relief;

12. Costs of suit and reasonable attorneys' fees; and

13. Any other remedy to which JY may be entitled under federal law, state law, or common law.

Dated: November 21, 2017

Respectfully submitted,

/s/ Shayne D. Moses

Shayne D. Moses

State Bar No. 14578980

smoses@mph-law.com

David A. Palmer

State Bar No. 00794416

dpalmer@mph-law.com

MOSES, PALMER & HOWELL, L.L.P.

309 W. 7th Street, Suite 815

Fort Worth, Texas 76102

817/255-9100

817/255-9199 (Fax)

Attorneys for the Plaintiff

Pending Admission Pro Hac Vice:

Maurice Ross

BARTON LLP

420 Lexington Avenue, 18th Floor

New York, NY 10170

mross@bartonesq.com

212/687-6262

212/687-3667 (Fax)

Attorneys for the Plaintiff

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, JY hereby demands trial by jury on all issues raised by the Complaint.

Dated: November 21, 2017

/s/ Shayne D. Moses

Shayne D. Moses