



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

FILED-CLERK  
DISTRICT COURT  
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TEXAS EASTERN  
BY: [Signature]

(1) PSKS, Inc. d/b/a Kay's  
Kloset...Kay's Shoes; and  
(2) Toni Cochran, L.L.C., d/b/a Toni's  
*Plaintiffs.*

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v.

Civil Action No. 2:03-CV-107

(1) Leegin Creative Leather Products,  
Inc.

(Ward)

*Defendant.*

**DEFENDANT LEEGIN CREATIVE LEATHER PRODUCTS, INC.'S  
ORIGINAL ANSWER AND COUNTERCLAIMS**

Subject to the Motion to Dismiss Plaintiffs' Claims for Fraud ("Motion to Dismiss") filed contemporaneously herewith, Defendant Leegin Creative Leather Products, Inc. ("Leegin") files this Original Answer and Counterclaim to Plaintiffs'<sup>1</sup> Original Complaint (the "Complaint") and respectfully shows the Court as follows:

**I.  
ANSWER**

1. Leegin is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 and therefore denies same.

2. Leegin is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 and therefore denies same.

3. In response to paragraph 3 of the Complaint, Leegin admits that it is a California corporation and has been duly served in this lawsuit.

<sup>1</sup> Plaintiff PSKS, Inc. d/b/a Kay's Kloset . . . Kay's Shoes shall be referred to herein as "Kay's Kloset." Plaintiff Toni Cochran, L.L.C., d/b/a Toni's shall be referred to herein as "Toni's." Collectively, Kay's Kloset and Toni's shall be referred to as "Plaintiffs."

[Handwritten signature and initials]

4. In response to paragraph 4 of the Complaint, Leegin does not contest jurisdiction.

5. In response to paragraph 5 of the Complaint, Leegin does not contest jurisdiction.

6. In response to paragraph 6 of the Complaint, Leegin does not contest venue.

7. In response to paragraph 7 of the Complaint, Leegin admits that Kay's Kloset acted as a retailer in Lewisville, Texas, for products manufactured by Leegin. Leegin lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 7 and therefore denies them.

8. Leegin admits that Toni's acted as a retailer in Livingston, Texas, for products manufactured by Leegin. Leegin lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 8 of the Complaint and therefore denies them.

9. Leegin admits that in the early 1990's Leegin began to manufacture the Brighton Ladies brand of products. Leegin admits the remaining allegations in paragraph 9.

10. In response to the allegations in paragraph 10 of the Complaint, Leegin admits that it has maintained a retail pricing and promotion policy, a copy of which is appended to the Complaint. Leegin admits that Kay's Kloset discounted Brighton products. Leegin denies the remaining allegations in paragraph 10.

11. In response to the allegations in paragraph 11 of the Complaint, Leegin admits that it enforced its retail pricing and promotion policy against Kay's Kloset.

Leegin denies that it attempted to secure an agreement from Kay's Kloset or from any other retailers to comply with the policy. Leegin lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 11 of the Complaint and therefore denies them.

12. In response to the allegations in paragraph 12 of the Complaint, Leegin admits that it stopped shipping products to Kay's Kloset when Kay's Kloset refused to adhere to Leegin's retail pricing and promotion policy. Leegin otherwise denies the remaining allegations in paragraph 12.

13. Leegin lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 13 of the Complaint, and, therefore, denies them. Leegin denies the remaining allegations of paragraph 13.

14. Leegin denies the allegations in paragraph 14 of the Complaint.

15. Leegin denies the allegations in the first sentence of paragraph 15 of the Complaint. Leegin lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 15 of the Complaint, and, therefore, denies them.

16. Leegin denies the allegations in the first sentence of paragraph 16 of the Complaint. Leegin admits it is a manufacturer of Brighton products and that Plaintiffs were retailers of Brighton products. Leegin admits that the Brighton product line is sold and used throughout the country. Leegin denies the remaining allegations in paragraph 16.

17. Leegin denies the allegations in paragraph 17 of the Complaint.

18. Leegin denies the allegations in paragraph 18 of the Complaint.

19. Leegin denies the allegations in paragraph 19 of the Complaint.

20. Leegin denies the allegations in paragraph 20 of the Complaint.

21. Leegin admits that it sold goods to the Plaintiffs and that Plaintiffs were obligated to pay for the shipping costs for goods delivered from Leegin's factory to their stores. Leegin denies the remaining allegations in paragraph 21 of the Complaint.

22. Subject to the Motion to Dismiss filed contemporaneously herewith, Leegin denies the allegations in paragraph 22 of the Complaint.

23. Subject to its affirmative defense of lack of proper notice, Leegin denies the allegations in paragraph 23 of the Complaint.

## **II.** **AFFIRMATIVE DEFENSES**

24. Leegin affirmatively alleges and pleads that some or all of Plaintiffs have not suffered an antitrust injury.

25. Leegin affirmatively alleges and pleads that some or all of Plaintiffs have suffered no injury as a result of any conduct of Leegin.

26. Leegin affirmatively alleges and pleads that to the extent Plaintiffs have suffered any injury, the injury was not caused by the unlawful acts of Leegin.

27. Leegin affirmatively alleges and pleads that some or all of Plaintiff's claims are barred by the equitable doctrine of laches.

28. Leegin affirmatively alleges and pleads that some or all of Plaintiff's claims are barred by the equitable doctrine of estoppel.

29. Leegin affirmatively alleges and pleads that some or all of Plaintiff's claims are barred by the equitable doctrine of unclean hands.

30. Leegin affirmatively alleges and pleads that some or all of Plaintiff's claims are barred by the equitable doctrine of waiver.

31. Leegin affirmatively alleges and pleads that some or all of Plaintiff's claims are barred by the equitable doctrine of ratification.

32. Leegin affirmatively alleges and pleads that Plaintiffs are barred from recovery for any alleged damages because of their failure to mitigate damages.

33. Leegin affirmatively alleges and pleads that Plaintiff are barred from recovery under their Deceptive Trade Practices Act claim for failure to provide written notice to Leegin as required by TEX. BUS. & COM. C. § 17.505(a).

### **III. COUNTERCLAIMS**

#### **A. Parties**

34. Counter-Plaintiff Leegin Creative Leather Products, Inc. is a California corporation with its principal place of business at 14022 Nelson Ave., City of Industry, California 91746.

35. Upon information and belief, Counter-Plaintiff PSKS, Inc. d/b/a Kay's Kloset . . . Kay's Shoes ("Kay's Kloset) is a corporation duly organized and registered under the laws of Texas.

#### **B. Jursidiction**

36. This Court has subject matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §1367(a).

#### **C. Background Facts**

37. Leegin is a manufacturer of the Brighton brand of accessories.

38. Kay's Kloset received goods and services from Leegin. Upon information and belief, Kay's Kloset still owes \$1910.00 to Leegin for goods and services received.

39. Upon information and belief, the principal amount Kay's Kloset now owes Leegin on the account is \$1910.00, after allowing for all just and lawful offsets, credits, and payments.

40. As a result of Kay's Kloset's refusal to pay the account, Leegin has had to retain counsel to recover the amount duly owed on the accounts.

41. All conditions precedent have been performed or have occurred as required by FED. R. CIV. P. 9(c).

**D. Cause of Action: Suit for Goods Sold and Delivered**

42. Leegin incorporates ¶¶ 31-41 herein by reference as if fully set forth at length.

43. As described above, Leegin sold and delivered to Kay's Kloset goods on open accounts for an amount totaling \$1910.00. Although the amounts still owed on the accounts are now well overdue, Kay's Kloset has failed to make payment. Therefore, Leegin now brings this suit to recover the remaining principal of \$1910.00.

44. In addition, Leegin seeks all prejudgment interest on this principal amount as allowed under law.

45. Furthermore, Leegin seeks reimbursement for its reasonable and necessary attorney's fees under TEX. CIV. PRAC. & REM. CODE §§ 38.001 *et. seq.*

**WHEREFORE**, Defendant and Counter-Plaintiff, Leegin Creative Leather Products, Inc. respectfully requests the entry of an order denying all relief requested in the *Original Complaint* and that Plaintiff PSKS, Inc. d/b/a Kay's Kloset . . . Kay's Shoes

be cited to appear and answer and that upon final judgment, Leegin have judgment against Kay's Kloset for \$1910.00, plus prejudgment interest at the maximum lawful rates, reasonable and necessary attorneys' fees, costs of court, postjudgment interest on the whole at the maximum lawful rate, and for such other and further relief to which Leegin is justly entitled.

Dated: June 5, 2003.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument was served on the parties listed below, by first-class mail, postage prepaid on this 5th day of June, 2003:

Melissa Smith  
Jack Baldwin  
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