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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES
BY [Signature]

10 CV 08-03383 ABC VDKx

11 STANLEY DONEN,

Case No.

12 Plaintiff,

COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND, IN THE
13 ALTERNATIVE, FOR AN
ACCOUNTING

14 vs.

14 PARAMOUNT PICTURES
CORPORATION, VIACOM CONSUMER
15 PRODUCTS, INC. and THE GAP, INC.,

DEMAND FOR JURY TRIAL

16 Defendants.

17
18 Plaintiff alleges the following:

19 1. Jurisdiction And Venue. This court has jurisdiction based upon the United
20 States Copyright Act, 17 U.S.C. §§ 101 *et seq.* This Court has original jurisdiction over
21 the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

22 This Court has personal jurisdiction over each of the defendants named in this
23 Complaint, because each defendant does sufficient business, has sufficient minimum
24 contacts with California and this Judicial District, or otherwise intentionally avails itself
25 of the California and Los Angeles markets, through the sale, marketing, distribution and
26 use of its products in this Judicial District, to render the exercise of jurisdiction over it by
27 this Court consistent with traditional notions of fair play and substantial justice.
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18938-00003/1628885.1

COMPLAINT FOR COPYRIGHT INFRINGEMENT AND, IN THE ALTERNATIVE, FOR AN ACCOUNTING

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1 Venue in this Judicial District is proper under 28 U.S.C. §§ 1391(b) and (c) and
2 1400(a), in that one or more defendants reside and may be found in this Judicial District
3 within the meaning of 28 U.S.C. §§ 1391(c) and 1400(a), a substantial part of the events
4 giving rise to plaintiff's claims occurred in this Judicial District and defendants' products
5 are sold in this Judicial District.

6 2. The Parties. Plaintiff is a motion picture director and a resident of New
7 York. Defendant Paramount Pictures Corporation ("Paramount") is a Delaware
8 corporation with its principal place of business in this District. Defendant The Gap, Inc.
9 ("The Gap") is a Delaware corporation doing substantial business in this District. Plaintiff
10 is informed and believes and, on that ground, alleges that Viacom Consumer Products,
11 Inc. ("Viacom Products") is a Delaware corporation and an affiliate of Paramount doing
12 substantial business in this District. Paramount is a producer and distributor of filmed
13 entertainment. The Gap owns and operates a chain of retail clothing stores, including
14 stores in this Judicial District.

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16 **FIRST CLAIM FOR RELIEF**

17 **(Copyright Infringement – Against All Defendants)**

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19 3. Plaintiff incorporates by reference paragraphs 1 and 2 hereinabove as
20 though fully set forth herein.

21 4. Plaintiff was the director or co-director of many motion pictures including
22 such noted films as "Singing In The Rain," "On The Town," "Seven Brides For Seven
23 Brothers," "Damn Yankees," "The Pajama Game," "Two For The Road" and "Charade."
24 Plaintiff's films have included highly creative dance sequences that have been widely
25 acclaimed. Plaintiff also directed a motion picture distributed by Paramount entitled
26 "Funny Face," starring Audrey Hepburn. Plaintiff was the author of a significant part of
27 "Funny Face," including his creation and control of the design, filming and editing of a
28

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1 famous scene in which Audrey Hepburn does an original and highly unique dance in a
2 Parisian Café (the “Dance Scene”).

3 5. Plaintiff was not a Paramount employee, had no written contract with
4 Paramount regarding “Funny Face,” and has never conveyed to Paramount his interest in
5 that film. As the creator and author of the Dance Scene, plaintiff was and is the rightful
6 owner of the copyright in that scene. Plaintiff is informed and believes and, on that
7 ground, alleges that Paramount registered the copyright in the entirety of “Funny Face,”
8 including the Dance Scene, in its own name and that it holds the copyright in the Dance
9 Scene and other aspects of that film in trust for plaintiff, as the rightful author and owner
10 thereof. Plaintiff has acquiesced in Paramount’s licensing others to exhibit the entire film
11 “Funny Face” in theatres or on television, uses for which it was intended. Having done
12 so, plaintiff had no claim with respect to such distribution, which was intended when the
13 film was made. But, as alleged hereinbelow, defendants have now exceeded the uses in
14 which plaintiff acquiesced and plaintiff has strong objections to Paramount’s selling the
15 Dance Scene he created and directed for use as a third party’s commercial advertisement,
16 such as television commercials for ladies’ pants, a use for which the film was never
17 intended and to which plaintiff has never consented and in which he has never acquiesced.

18 6. During 2006, without any consent or authority from plaintiff, or any right to
19 do so, Paramount, through its sister company Viacom Products, purported to grant to The
20 Gap the exclusive right to copy and use the Dance Scene in 30 and 60 second television
21 commercials advertising its chain of clothing stores and its merchandise, as well as
22 photographs copied from the Dance Scene in print advertisements and posters promoting
23 its chain stores and its merchandise. The Gap paid Viacom Products and Paramount
24 \$750,000 for this purported grant of rights in the Dance Scene.

25 7. Thereafter, without any consent or authority from plaintiff, but based on the
26 purported grant from Paramount and Viacom Products, The Gap infringed the copyright
27 in the Dance Scene held in trust for plaintiff by copying a substantial portion of the Dance
28 Scene and publicly performing it on repeated occasions in television commercials for its

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1 chain of clothing stores and its merchandise, particularly ladies' pants, as well as copying
2 and widely displaying photographs it copied from the Dance Scene in print advertisements
3 and posters promoting its chain stores and such merchandise. A copy of the Dance Scene
4 and a copy of The Gap's infringing 30 second commercial are included in Exhibit "A"
5 attached hereto and incorporated by reference herein. Copies of The Gap's 60 second
6 commercial and its print advertisements and posters will be obtained from defendants.
7 The Gap's own news release describing how the Dance Scene would be used in
8 advertising and promoting its stores and its merchandise is attached as Exhibit "B" hereto
9 and incorporated by reference herein.

10 8. As a direct and proximate result of defendants' infringing conduct, The
11 Gap's sales and profits were significantly increased, and plaintiff has been damaged in a
12 substantial sum, which plaintiff is informed and believes and, on that ground, alleges
13 exceeds \$5 million.

SECOND CLAIM FOR RELIEF

**(In The Alternative, For An Accounting –
Against Paramount and Viacom Products)**

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19 9. Plaintiff incorporates by reference paragraphs 1 through 7 hereinabove as
20 though fully set forth herein.

21 10. Neither Paramount nor Viacom Products has paid plaintiff any part of the
22 sum they received from The Gap for its grant of the right to make such uses of the Dance
23 Scene. If Paramount and plaintiff were deemed joint authors and owners of the Dance
24 Scene and Paramount were held entitled, as a joint author and owner, to grant such rights
25 to The Gap through Viacom Products, plaintiff is entitled to an accounting and payment
26 from Paramount and Viacom Products of one-half of the sum paid to it or Viacom
27 Products by The Gap.

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WHEREFORE, plaintiff prays judgment as follows:

- 1. For damages in the sum of \$5 million or such greater sum as shall be found;
- 2. In the alternative, for an accounting and payment from Paramount and Viacom Products of one-half of the \$750,000 they received from The Gap for the grant of rights in the Dance Scene; and
- 3. For plaintiff's attorneys fees, costs and such other relief as the Court shall deem proper.

DATED: May 21, 2008

GREENBERG GLUSKER FIELDS
CLAMAN & MACTINGER LLP

By: 
 BERTRAM FIELDS
 Attorneys for Plaintiff Stanley Donen

DEMAND FOR JURY TRIAL

Plaintiff Stanley Donen hereby demands a trial by jury in the above entitled action.

DATED: May 21, 2008

GREENBERG GLUSKER FIELDS
CLAMAN & MACTINGER LLP

By: 
 BERTRAM FIELDS
 Attorneys for Plaintiff Stanley Donen

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NEW GAP MARKETING CAMPAIGN FEATURING ORIGINAL FILM FOOTAGE OF AUDREY HEPBURN HELPS GAP 'KEEP IT SIMPLE' THIS FALL

SAN FRANCISCO – September 6, 2006 – This week, the skinny black pant is back at Gap with the introduction of a new, groundbreaking campaign featuring original film footage of timeless style icon Audrey Hepburn. The campaign, entitled "Keep It Simple," is centered on innovative television spots incorporating a memorable scene of Audrey Hepburn dancing in the classic film *Funny Face*. Celebrating Gap's re-launch of the perfect black pant, the ads mark Gap's third and final marketing campaign of the fall season.

"Gap has a rich history of integrating memorable choreography and music into our advertising, but we've never done anything quite like this before," said Trey Laird, creative director of Gap. "We wanted to do something really special to re-launch our skinny black pants and thought who better to showcase them than actress Audrey Hepburn – an iconic woman famous for dressing with sophistication and classic style."

Debuting September 7, Gap's new "Keep It Simple" TV spots juxtapose classic footage of Audrey Hepburn dancing in skinny black pants to the 1980 AC/DC hit song "Back in Black". The ad opens with a scene from *Funny Face* as Audrey Hepburn dances through a Parisian café. It continues as she jumps out of the movie and onto a backdrop resembling the look and feel of an iconic Gap ad. Special effects and graphics help her navigate her way across the screen in a series of energetic dance steps. She then jumps back into *Funny Face* as the spot concludes with the tagline "It's Back – The Skinny Black Pant."

"We're thrilled because this is the first time in more than 12 years that a film clip of Audrey Hepburn has been authorized to endorse a commercial product in North America," said Kyle Andrew, vice president of Gap Marketing. "This ad is a true testament to timeless style and we couldn't be more excited to have Audrey Hepburn – the ultimate style icon – represented in our campaign."

Gap became known for fabulous "must-have" black pants more than a decade ago – they flew off shelves and helped millions of women across the country dress with sophistication and style. Gap's reintroduction of the perfect fitting pair of skinny black pants this fall is a celebration of this classic, iconic piece. Named after timeless fashion icon Audrey Hepburn – "The Audrey Hepburn™ Pant" is sleek and simple with modern details that are undeniably cool. It has an updated bi-stretch fabrication, which allows for greater flexibility and movement and helps the pant keep its shape. Gap's new skinny black pants are destined to become a modern day classic.

In addition to black pants, Gap has a long heritage of offering a wide variety of clean, classic and simple styles. And this fall Gap is back with a collection of great fitting, sophisticated pants in a range of lengths and shapes, as well as classic shirts, turtlenecks, sweaters and outerwear. Worn day or night, dressed up or down, these are the simple, iconic pieces that will never go out of style. In Gap stores this fall, the clean collection is featured in a one-stop shopping destination. You'll find a new dedicated space within Gap stores filled with the classic "must-have" items you always need and want.

The "Keep It Simple" television campaign features 30 and 60-second spots that will air in the United States on all major networks, spot markets and cable from September 7 through October 5. The spots will premiere on network television shows including "Grey's Anatomy" (ABC), "CSI" (CBS) and "Studio 60" (NBC). Gap.com will also feature the new "Keep It Simple" television commercial, as well as exclusive, behind-the-scenes footage of the making of the ad. Complementing this outstanding broadcast effort are a series of black-and-white print ads featuring models in clean, simple looks anchored in skinny black pants will run in October issues of major national magazines including *Vogue*, *InStyle* and *Elle*. There will also be outdoor ads in major markets.

Laird+Partners, Gap's creative agency, developed the "Keep It Simple" marketing campaign. The TV spots were developed using visual effects by Method Studios and graphic design and animation by Logan and print ads were photographed by famed fashion photographers Inez van Lamsweerde and Vinoodh Matadin.

In celebration of the launch of the "Keep It Simple" ad campaign, Gap is making a generous contribution to the Audrey Hepburn Children's Fund. The Audrey Hepburn Children's Fund is a non-profit organization created to continue Ms. Hepburn's international appeals on behalf of children around the world.

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EXHIBIT
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