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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

GIANNI VERSACE S.R.L.,

Plaintiff,

- against -

FASHION NOVA, INC.,

Defendant.

Case No. 2:19-cv-10074-PA-RAO

**DEFENDANT'S ANSWER  
AND AFFIRMATIVE DEFENSES**

**DEMAND FOR JURY TRIAL**

District Judge: Percy Anderson  
Complaint Filed: Nov. 25, 2019

**ANSWER TO COMPLAINT**

Defendant, Fashion Nova, Inc. ("Fashion Nova"), by and through  
undersigned counsel, hereby answers the Complaint filed by Versace, Gianni  
Versace, S.r.l. ("Versace") as follows, with each numbered paragraph

1 corresponding to the numbered paragraphs of the Complaint. Unless expressly  
2 admitted, Fashion Nova denies each and every allegation of the Complaint.

3 **Nature of the Action**

4 1. Fashion Nova denies the allegations set forth in Paragraph 1 of the  
5 Complaint, except admits that this purports to be an action for injunctive relief and  
6 damages.

7 2. Fashion Nova lacks knowledge or information sufficient to form a  
8 belief as to the truth of the allegations set forth in Paragraph 2 of the Complaint,  
9 and on that basis denies them.

10 3. Fashion Nova lacks knowledge or information sufficient to form a  
11 belief as to the truth of the allegations set forth in Paragraph 3 of the Complaint,  
12 and on that basis denies them.

13 4. Fashion Nova denies the allegations set forth in Paragraph 4 of the  
14 Complaint.

15 5. Fashion Nova denies the allegations set forth in Paragraph 5 of the  
16 Complaint.

17 6. Fashion Nova denies the allegations set forth in Paragraph 6 of the  
18 Complaint, except admits that the Company has been named as a defendant in  
19 other lawsuits but: (i) denies liability with respect to all such actions; (ii) avers that  
20 no judgment finding Fashion Nova liable for infringement has ever been entered  
21 in any court; and (iii) states that allegations by Versace with respect to allegations

1 of infringement in other actions are irrelevant, immaterial and inadmissible in this  
2 action.

3 7. Paragraph 7 of the Complaint attempts to state a legal conclusion to  
4 which no response is required. To the extent that a response may be required,  
5 Fashion Nova denies the allegations set forth in Paragraph 7 of the Complaint.

6 **Jurisdiction and Venue**

7 8. Fashion Nova admits that this purports to be an action under the  
8 Copyright Act, 17 U.S.C., §§ 101 *et seq.*, and the Lanham Act, 15 U.S.C. §§ 1051  
9 *et seq.*, but denies any and all liability thereunder. Fashion Nova will not contest  
10 this Court's jurisdiction over the subject matter of this action.

11 9. Fashion Nova will not contest this Court's jurisdiction over the  
12 subject matter of this action.

13 10. Fashion Nova will not contest this Court's personal jurisdiction over  
14 it with respect to this action.

15 11. Fashion Nova will not contest venue in this District.

16 **The Parties**

17 12. Fashion Nova lacks knowledge or information sufficient to form a  
18 belief as to the truth of the allegations set forth in Paragraph 12 of the Complaint,  
19 and on that basis denies them.

13. Fashion Nova denies the allegations set forth in Paragraph 13 of the Complaint, except admits that it is a California corporation with an address at 2801 E. 46<sup>th</sup> St, Vernon, CA 90058.

## The Facts

14. Fashion Nova lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Complaint, and on that basis denies them.

15. Fashion Nova lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Complaint, and on that basis denies them.

16. Fashion Nova lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 of the Complaint, and on that basis denies them.

17. Fashion Nova denies the allegations set forth in Paragraph 17 of the Complaint and states that while Versace may have recently obtained U.S. Copyright Registrations for certain designs at issue in this suit, all such Registrations are invalid for the reasons set forth in Fashion Nova's counterclaims.

18. Fashion Nova denies the allegations set forth in Paragraph 18 of the Complaint, except admits that Versace is the record owner of Copyright Registration No. VA 2-176-201 and that Fashion Nova seeks to invalidate that Registration herein.

19. Fashion Nova denies the allegations set forth in Paragraph 19 of the Complaint, except admits that Versace is the record owner of Copyright Registration No. VA 2-173-519 and that Fashion Nova seeks to invalidate that Registration herein.

20. Fashion Nova denies the allegations set forth in Paragraph 20 of the Complaint, except admits that Versace is the record owner of Copyright Registration No. VA 2-175-854 and that Fashion Nova seeks to invalidate that Registration herein.

21. Fashion Nova denies the allegations set forth in Paragraph 21 of the Complaint.

22. Fashion Nova lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 of the Complaint, and on that basis denies them.

23. Fashion Nova denies the allegations set forth in Paragraph 23 of the Complaint, except admits that Versace is the record owner of the U.S. Trademark Registrations listed in Paragraph 23 and states that the records of such registrations speak for themselves.

24. Fashion Nova denies the allegations set forth in Paragraph 24 of the Complaint, except admits that Versace is the record owner of the U.S. Trademark Registrations referenced in Paragraph 24 and states that the records of such registrations speak for themselves.

1           25. Fashion Nova lacks knowledge or information sufficient to form a  
2 belief as to the truth of the allegations set forth in Paragraph 25 of the Complaint,  
3 and on that basis denies them, and further states that foreign trademark  
4 registrations are irrelevant, immaterial and inadmissible for purposes of this  
5 lawsuit in the United States.

6           26. Fashion Nova denies the allegations set forth in Paragraph 26 of the  
7 Complaint.

8           27. Fashion Nova denies the allegations set forth in Paragraph 27 of the  
9 Complaint, except lacks knowledge or information sufficient to form a belief as to  
10 the truth of the allegations regarding the extent of Versace's advertising,  
11 marketing and promotion, and on that basis denies them.

12           28. Fashion Nova denies the allegations set forth in Paragraph 28 of the  
13 Complaint.

14           29. Fashion Nova denies the allegations set forth in Paragraph 29 of the  
15 Complaint.

16           30. Fashion Nova denies the allegations set forth in Paragraph 30 of the  
17 Complaint.

18           31. Fashion Nova denies the allegations set forth in Paragraph 31 of the  
19 Complaint.

1           32. Fashion Nova lacks knowledge or information sufficient to form a  
2 belief as to the truth of the allegations set forth in Paragraph 32 of the Complaint,  
3 and on that basis denies them.

4           33. Fashion Nova denies the allegations set forth in Paragraph 33 of the  
5 Complaint.

6           34. Fashion Nova denies the allegations set forth in Paragraph 34 of the  
7 Complaint, except admits that: (i) the Company was founded in 2006; (ii) the  
8 Company has operated retail stores in the Los Angeles area since 2006; and (iii)  
9 the Company launched the [www.FashionNova.com](http://www.FashionNova.com) e-commerce site in 2013.

10          35. Fashion Nova denies the allegations set forth in Paragraph 35 of the  
11 Complaint.

12          36. Fashion Nova denies the allegations set forth in Paragraph 36 of the  
13 Complaint, except admits that the Company offered for sale on the  
14 [www.FashionNova.com](http://www.FashionNova.com) site the items listed as “Fashion Nova Dresses.”

15          37. Fashion Nova denies the allegations set forth in Paragraph 37 of the  
16 Complaint, except admits that Versace did not manufacture the “Fashion Nova  
17 Dresses.”

18          38. Fashion Nova admits the allegations set forth in Paragraph 38 of the  
19 Complaint.

39. Fashion Nova lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 39 of the Complaint, and on that basis denies them.

40. Fashion Nova denies the allegations set forth in Paragraph 40 of the Complaint.

41. Fashion Nova denies the allegations set forth in Paragraph 41 of the Complaint.

42. Fashion Nova denies the allegations set forth in Paragraph 42 of the Complaint.

43. Fashion Nova denies the allegations set forth in Paragraph 43 of the Complaint.

44. Fashion Nova denies the allegations set forth in Paragraph 44 of the Complaint.

45. Fashion Nova denies the allegations set forth in Paragraph 45 of the Complaint.

46. Fashion Nova denies the allegations set forth in Paragraph 46 of the Complaint, except admits that it received notices sent on Versace's behalf on or about July 26, 2019, September 20, 2019, October 1, 2019, and November 13, 2019.

47. Fashion Nova denies the allegations set forth in Paragraph 47 of the Complaint and states that Versace's objections are without merit.





57. Fashion Nova denies the allegations set forth in Paragraph 57 of the Complaint.

58. Fashion Nova denies the allegations set forth in Paragraph 58 of the Complaint.

59. Fashion Nova denies the allegations set forth in Paragraph 59 of the Complaint.

60. Fashion Nova denies the allegations set forth in Paragraph 60 of the Complaint.

61. Fashion Nova denies the allegations set forth in Paragraph 61 of the Complaint.

62. Fashion Nova denies the allegations set forth in Paragraph 62 of the Complaint.

63. Fashion Nova denies the allegations set forth in Paragraph 63 of the Complaint.

## SECOND CLAIM

64. Fashion Nova repeats and incorporates by reference its responses to all prior paragraphs of the Complaint as though fully set forth herein.

65. Fashion Nova lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 65 of the Complaint, and on that basis denies them.

66. Fashion Nova denies the allegations set forth in Paragraph 66 of the Complaint.

67. Fashion Nova denies the allegations set forth in Paragraph 67 of the Complaint.

68. Fashion Nova denies the allegations set forth in Paragraph 68 of the Complaint.

69. Fashion Nova denies the allegations set forth in Paragraph 69 of the Complaint.

70. Fashion Nova denies the allegations set forth in Paragraph 70 of the Complaint.

### THIRD CLAIM

71. Fashion Nova repeats and incorporates by reference its responses to all prior paragraphs of the Complaint as though fully set forth herein.

72. Fashion Nova denies the allegations set forth in Paragraph 72 of the Complaint.

73. Fashion Nova denies the allegations set forth in Paragraph 73 of the Complaint.

74. Fashion Nova denies the allegations set forth in Paragraph 74 of the Complaint.

75. Fashion Nova denies the allegations set forth in Paragraph 75 of the Complaint.

76. Fashion Nova denies the allegations set forth in Paragraph 76 of the Complaint.

77. Fashion Nova denies the allegations set forth in Paragraph 77 of the Complaint.

## FOURTH CLAIM

78. Fashion Nova repeats and incorporates by reference its responses to all prior paragraphs of the Complaint as though fully set forth herein.

79. Fashion Nova lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 79 of the Complaint, and on that basis denies them.

80. Fashion Nova denies the allegations set forth in Paragraph 80 of the Complaint.

81. Fashion Nova denies the allegations set forth in Paragraph 81 of the Complaint.

82. Fashion Nova denies the allegations set forth in Paragraph 82 of the Complaint.

83. Fashion Nova denies the allegations set forth in Paragraph 83 of the Complaint.

84. Fashion Nova denies the allegations set forth in Paragraph 84 of the Complaint.

**FIFTH CLAIM**

85. Fashion Nova repeats and incorporates by reference its responses to all prior paragraphs of the Complaint as though fully set forth herein.

86. Fashion Nova denies the allegations set forth in Paragraph 86 of the Complaint.

87. Fashion Nova denies the allegations set forth in Paragraph 87 of the Complaint.

88. Fashion Nova denies the allegations set forth in Paragraph 88 of the Complaint.

89. Fashion Nova denies the allegations set forth in Paragraph 89 of the Complaint.

90. Fashion Nova denies the allegations set forth in Paragraph 90 of the Complaint.

91. Fashion Nova denies the allegations set forth in Paragraph 91 of the Complaint.

92. Fashion Nova denies the allegations set forth in Paragraph 92 of the Complaint.

**SIXTH CLAIM**

93. Fashion Nova repeats and incorporates by reference its responses to all prior paragraphs of the Complaint as though fully set forth herein.

94. Fashion Nova denies the allegations set forth in Paragraph 94 of the Complaint.

95. Fashion Nova denies the allegations set forth in Paragraph 95 of the Complaint.

96. Fashion Nova denies the allegations set forth in Paragraph 96 of the Complaint.

97. Fashion Nova denies the allegations set forth in Paragraph 97 of the Complaint.

## SEVENTH CLAIM

98. Fashion Nova repeats and incorporates by reference its responses to all prior paragraphs of the Complaint as though fully set forth herein.

99. Fashion Nova denies the allegations set forth in Paragraph 99 of the Complaint.

100. Fashion Nova denies the allegations set forth in Paragraph 100 of the Complaint.

101. Fashion Nova denies the allegations set forth in Paragraph 101 of the Complaint.

102. Fashion Nova denies the allegations set forth in Paragraph 102 of the Complaint.

103. Fashion Nova denies the allegations set forth in Paragraph 103 of the Complaint.

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1 113. Fashion Nova denies the allegations set forth in Paragraph 113 of the  
2 Complaint.

3 114. Fashion Nova denies the allegations set forth in Paragraph 114 of the  
4 Complaint.

5 **VERSACE’S PRAYER FOR RELIEF**

6 Fashion Nova denies that Versace is entitled to any of the relief it requests  
7 in the eleven alphabetical paragraphs of the “WHEREFORE” section following  
8 Paragraph 114 of the Complaint.

9  
10 **AFFIRMATIVE DEFENSES**

11 As further, separate and distinct affirmative defenses, and without assuming  
12 the burden of proof on any matter where it otherwise lies with Versace, Fashion  
13 Nova asserts the following:

14 **FIRST DEFENSE**

15 The Complaint, in whole or in part, fails to state a claim upon which relief  
16 may be granted.

17 **SECOND DEFENSE**

18 Versace’s claims are barred, in whole or in part, because Fashion Nova has  
19 not infringed (including, *inter alia*, directly, indirectly, contributorily, or  
20 vicariously) any copyrighted work or any trademark or trade dress with respect to  
21 which Versace owns protectable and enforce eable rights.



1 **THIRD DEFENSE**

2 Versace's claims are barred, in whole or in part, because Fashion Nova's  
3 alleged actions were innocent and non-willful.

4 **FOURTH DEFENSE**

5 Versace's claims are barred, in whole or in part, because Fashion Nova's  
6 alleged infringements were *de minimis*.

7 **FIFTH DEFENSE**

8 Versace's claims are barred, in whole or in part, by the doctrines of fair use,  
9 nominative fair use, and/or descriptive fair use.

10 **SIXTH DEFENSE**

11 Versace's claims are barred, in whole or in part, by the doctrines of  
12 estoppel, waiver, consent and/or acquiescence.

13 **SEVENTH DEFENSE**

14 Versace's claims are barred, in whole or in part, by the doctrine of laches  
15 and/or any applicable statute of limitations and/or repose.

16 **EIGHTH DEFENSE**

17 Versace's claims are barred, in whole or in part, by the doctrine of unclean  
18 hands.

1 **NINTH DEFENSE**

2 Versace's claims are barred, in whole or in part, to the extent Versace lacks  
3 ownership of a valid U.S. Copyright Registration covering any work with respect  
4 to which Versace alleges copyright infringement by Fashion Nova.

5 **TENTH DEFENSE**

6 Versace's claims are barred, in whole or in part, because Fashion Nova's  
7 accused products are not substantially similar to any protectable elements of any  
8 copyright-registered work asserted by Versace.

9 **ELEVENTH DEFENSE**

10 Versace's claims are barred, in whole or in part, to the extent that Versace's  
11 allegedly-infringed copyrighted works and/or elements thereof lack originality.

12 **TWELFTH DEFENSE**

13 Versace's claims are barred, in whole or in part, to the extent that elements  
14 of Versace's allegedly-infringed copyrighted works are in the public domain and  
15 thus not subject to copyright protection.

16 **THIRTEENTH DEFENSE**

17 Versace's claims are barred, in whole or in part, to the extent that elements  
18 of Versace's allegedly-infringed copyrighted works are widely used in the  
19 fashion/apparel industry and thus not subject to copyright protection.

1 **FOURTEENTH DEFENSE**

2 Versace's claims are barred, in whole or in part, to the extent that elements  
3 of Versace's allegedly-infringed copyrighted works consist of standard geometric  
4 figures and patterns that are not subject to copyright protection.

5 **FIFTEENTH DEFENSE**

6 Versace's claims are barred, in whole or in part, by the doctrine of  
7 independent development.

8 **SIXTEENTH DEFENSE**

9 Versace's claims are barred, in whole or in part, by the doctrine of  
10 copyright misuse.

11 **SEVENTEENTH DEFENSE**

12 Versace is not entitled to recovery of statutory damages or attorney's fees  
13 pursuant to 17 U.S.C. §504(c).

14 **EIGHTEENTH DEFENSE**

15 If Versace is entitled to any monetary recovery, which Fashion Nova  
16 denies, the monetary recovery available to Versace, if any, must be limited  
17 because Fashion Nova's alleged copyright infringements constitute innocent  
18 and/or non-willful infringements.

1 **NINETEENTH DEFENSE**

2 Versace's claims are barred, in whole or in part, because there is no  
3 likelihood of confusion between Fashion Nova's allegedly-infringing products and  
4 Versace's purported trademarks and/or trade dress.

5 **TWENTIETH DEFENSE**

6 Versace's claims are barred, in whole or in part, because Fashion Nova's  
7 alleged actions did not dilute any trademark or trade dress purportedly owned by  
8 Versace.

9 **TWENTY-FIRST DEFENSE**

10 Versace's claims are barred, in whole or in part, by the doctrine of  
11 functionality.

12 **TWENTY-SECOND DEFENSE**

13 Versace's claims are barred, in whole or in part, because Fashion Nova's  
14 alleged use of Versace's purported trademarks and trade dress constitutes non-  
15 trademark use.

16 **TWENTY-THIRD DEFENSE**

17 Versace's claims are barred, in whole or in part, because the scope of  
18 Versace's alleged trademark and trade dress rights, if any, is not broad enough to  
19 preclude Fashion Nova's marketing and sale of the accused products.

1 **TWENTY-FOURTH DEFENSE**

2 Versace's claims are barred, in whole or in part, by the doctrine of  
3 trademark misuse.

4 **TWENTY-FIFTH DEFENSE**

5 If Versace is entitled to any monetary recovery, which Fashion Nova denies,  
6 the monetary recovery available to Versace, if any, must be reduced, in whole or in  
7 part, due to Versace's failure to take reasonable steps to mitigate its alleged  
8 damages.

9 **TWENTY-SIXTH DEFENSE**

10 Versace's claims are barred, in whole or in part, because Versace would be  
11 unjustly enriched if allowed to recover on its Complaint.

12 **TWENTY-SEVENTH DEFENSE**

13 If Versace is entitled to any monetary recovery, which Fashion Nova denies,  
14 the monetary recovery available to Versace, if any, must be reduced under the  
15 doctrine of apportionment.

16 **TWENTY-EIGHTH DEFENSE**

17 Versace's claims are barred, in whole or in part, because any alleged injury  
18 or damage to Versace was the result of the intentional, negligent, or otherwise  
19 wrongful acts of third parties, and any claims against Fashion Nova should be  
20 reduced in proportion to the fault of such third parties.

1 **TWENTY-NINTH DEFENSE**

2 Should Fashion Nova be found liable to Versace (which Fashion Nova  
3 denies and assumes solely for the purpose of asserting this defense), Fashion Nova  
4 is entitled to have any judgment against it abated, reduced, or eliminated to the  
5 extent that the negligence, carelessness, fault, or otherwise wrongful conduct  
6 caused by any other party in this action or by any other person or entity  
7 contributed to Versace's damages, if any.

8 **THIRTIETH DEFENSE**

9 Should Fashion Nova be found liable to Versace (which Fashion Nova  
10 denies and assumes solely for the purpose of asserting this defense), Fashion Nova  
11 is entitled to indemnification.

12 **THIRTY-FIRST DEFENSE**

13 Versace is barred from recovering treble or punitive damages because  
14 Versace has failed to allege facts sufficient to recover such damages. An award of  
15 such damages requires clear and convincing evidence of fraud, oppression, or  
16 malice; Versace has not made and cannot make that showing against Fashion Nova,  
17 and therefore, no basis for such an award exists. In addition, the prayer for relief in  
18 the Complaint for an award of punitive damages is barred, in whole or in part, by  
19 the Eighth and Fourteenth Amendments to the U.S. Constitution as constituting  
20 excessive fines.

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Dated: Los Angeles, CA  
January 9, 2020

/s/ John F. Olsen

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24 Answer and Affirmative Defenses  
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/s/ John F. Olsen

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