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NEWS

Quiksilver, Kymsta in Dispute Over Roxy Name

By Claudia Figueroa *Manufacturing Editor*

Huntington Beach, Calif.–based surfwear giant **Quiksilver Inc.** has filed a complaint against **Kymsta Corp.**, a Los Angeles–based manufacturer that produces junior sportswear under the **Roxywear** label, for trademark infringement in United States District Court for the Central District of California in Los Angeles and Orange County.

Quiksilver—which produces junior apparel and accessories under the **Roxy** label, girls' apparel under the **Roxy Girl** label and tween apparel under the **Roxy Teenie Wahine** label—claims it first started the Roxy collection in the early 1990s as **Quiksilver Roxy**. Sales alone for the Roxy junior division exceeded \$1.2 million in 2001.

Kymsta owners Arthur Pereira and Roxanne Heptner maintain they have produced their young women's line, Roxywear, since 1991.

Pereira and Heptner said they tried unsuccessfully for several years to register the company's name, but there was already a similar trademark owned by an Australian company that produced a swimwear line called Roxanne. Quiksilver secured the trademark rights for the name Roxy in 1996 after the Roxanne registration expired.

Jeff Van Hoosear, an attorney at **Knobbe, Martens, Olson and Bear** in Newport Beach, the law firm representing Quiksilver, said the surf manufacturer mainly doesn't want its customers to get the labels confused.

"It might cause customers to associate the Roxywear name with the Quiksilver label," he said.

Since last May, when Quiksilver filed a complaint against Kymsta, the latter decided to countersue Quiksilver, claiming that it began selling its Roxywear apparel a few years prior to the launch of Quiksilver's Roxy label.

"My company's contention is that neither Quiksilver or my company could get the rights to the label a few years ago," explained Pereira. "So what it really should come down to is whoever used the name first is who should be able to own the mark."

According to the complaint filed by Quiksilver, the company "since at least as early as Jan. 1, 1992," has extensively used and advertised its Roxy mark. The company's site says Roxy was launched in 1991.

Quiksilver's Roxy line is sold at the company's flagship stores as well as specialty retailers nationwide. Roxywear's line is sold at specialty retailers and department stores. Currently, both Roxy and Roxywear labels are carried at **Nordstrom** stores nationwide.

Nordstrom spokeswoman Shasha Richardson said her company is aware of the pending lawsuit between both companies, and that it will comply with the court's decision or any agreement reached between both vendors.

One industry observer, Crystal Zarpas, a partner at **Mann & Zarpas** in Woodland Hills, Calif., said: "Under trademark law, use is king. As a general rule, the individual or company who first uses a trademark almost always is entitled to continuing based on common law rights."

As of press time, the court has not scheduled a settlement conference.