

US Pony Holdings, LLC v Fashion Footwear LLC

2026 NY Slip Op 31748(U)

April 21, 2026

Supreme Court, New York County

Docket Number: Index No. 655022/2022

Judge: Melissa A. Crane

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

US PONY HOLDINGS, LLC, Plaintiff, - v - FASHION FOOTWEAR LLC, Defendant. INDEX NO. 655022/2022 MOTION DATE 08/28/2025, 08/28/2025, 08/28/2025, 08/28/2025, 08/29/2025 MOTION SEQ. NO. 009 010 011 012 013

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 009) 305, 306, 307, 308, 328, 329, 330, 331, 332, 333, 334, 335, 361

were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 010) 309, 310, 311, 312, 313, 336, 337, 338, 339, 340, 341, 342, 343, 362

were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 011) 314, 315, 316, 317, 344, 345, 346, 347, 348, 349, 350, 351, 363

were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 012) 320, 321, 352, 353, 354, 355, 356, 357, 358, 359, 364, 367, 368

were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 013) 322, 323, 324, 325, 327, 360, 365, 366

were read on this motion to/for PRECLUDE

The court heard oral argument on motions 9-13 on February 27, 2026. The court decided motions 9-12 on the record and asked for additional briefing on motion 13. The need for additional briefing was because the parties came into oral argument with starkly different views as to the scope of the trial (see, e.g. discussion page 2-5 of the transcript [EDOC 370]).

Motion 9 is Pony's motion precluding defendant Fashion from introducing any evidence at trial of its purported "General Administrative Expenses" and its "Loan Interest Expenses", including but not limited through Exhibit FF-P (VEC Doc. 1-15). In motion 10, Pony seeks to exclude those documents Fashion failed to produce during discovery. These motions have somewhat overlapping issues.

In this case, the Appellate Division, First Department has ruled that "defendant is entitled to out-of-pocket expenses including those concerning its inventory...resulting from plaintiff's improper termination of the license agreement." (*US Pony Holdings, LLC v. Fashion Footwear LLC*, 238 AD3d 554, 555 [1st Dep't 2025] [EDOC 302 pg. 3]). Therefore, what Fashion paid to warehouse the shoes, or the interest on the money it had to borrow to pay to purchase, manufacture, design and sell same, are recoverable as out of pocket expenses to the extent these expenses can be traced to actual overhead. However, as explained on the record at pages 27-31, the court precludes the documents Fashion has produced on the eve of trial concerning these expenses. As the court found at pages 28-31 of the transcript, the failure to produce these documents, FOR YEARS, was willful. The defendant was warned repeatedly that failure to produce documents risked preclusion. Defendant was under an ongoing obligation to produce as it became aware of additional documents. It should not have waited until the time for trial preparation to cough up these documents. Waiting until after the close of discovery, and then ambushing plaintiff once the court ordered the parties to exchange exhibits, is unfair and unacceptable.

Fashion insists that it overlooked these documents, but this claim does not stand to reason. How could defendant have calculated its own damages, that it then served upon plaintiff, without the documents? Moreover, defendant claimed the documents produced on the eve of

trial were materially the same as the documents produced during discovery. If this is the case, then Fashion can rely on those documents it timely produced and there is no prejudice to it from preclusion of the documents that were untimely.

Nevertheless, Fashion's witness can testify about these damages. Moreover, recent bills, that came in after the exchange of exhibits, such as warehouse bills, can be used at trial, because these documents did not exist until recently. Finally, Fashion can utilize demonstrative exhibits in its closing, if the evidence supports them (Tr. pg 35). A word of caution-- it is reversible error to send demonstrative exhibits back to the jury during deliberations.

In motion **11**, plaintiff seeks to preclude the following witnesses who appeared on defendant's witness list: Devito, Choi, Chen and Greenspan. At pages 38-39 of the record, it became apparent that Choi and Greenspan were only necessary to authenticate documents. Should the parties stipulate that the court can admit these documents as business records, then the testimony of these individuals will not be necessary. However, should there be no stipulation, plaintiff is free to use these witnesses for authentication purposes only.

In addition, as explained at pages 39-42 of the record, Ms. Chen can testify about documents, but not damages. Fashion already has Mr. Abraham to testify about damages. Therefore, Chen's testimony would be cumulative. Devito is on plaintiff's list and therefore the court did not preclude this witness (Tr. pg. 39)

The court denied motion **12**, to preclude defendant from introducing evidence about "sales below cost," and to permit Pony to use us the Unauthorized Sales Documents as evidence of Fashion's breach of the Agreement, infringement of Pony's trademark, and Fashion's unfair competition, for the reasons specified on page 51 of the transcript.

Much of motion **13** was resolved on the record. At page 53 of the transcript, plaintiff agreed not to use documents relating to the parties' prior contract. Plaintiff withdrew PL Exhibits **7 and 8, 9** at page 60 of the transcript. However, PL **6** can come in, at the very least, to rebut causation (Tr. pg. 60). The court allowed plaintiff to use PL **10** at page 62 of the transcript because that document is evidence of damages, but will need authentication. As discussed at pages 63-64, plaintiff may use PL **11** at trial, because that document could support plaintiff's theory that Fashion over ordered and thereby enhanced its own damages. Plaintiff withdrew PL **13** at page 66 of the record. The court allowed PL **14** at page 67 of the record, because it contains defendant's "laundry list" of reasons why it could not sell the shoes, such as the "Russia/Ukraine war," none of which have anything to do with plaintiff. The court allowed PL **15-19** per the reasoning on the record at page 69-70. The court precluded PL **21** per the reasoning on the record at pages 70-72, and PL **23** and **25** per the reasoning at pages 74-75.

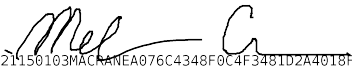
As for that part of motion 13 dealing with witnesses, plaintiff withdrew potential witness Warren on the record. However, the court allowed plaintiff to call Greg Gierek at page 81 of the record. Gierek is different than Chen, because no one else is testifying about that to which Gierek will testify. Therefore, to have Gierek testify is not bolstering.

Gideon Halter, Elaine Beeson, Elaine van der Westhulzen, and Ronnie Platovsky are buyers that Pony introduced to Fashion. To the extent these buyers are new, they are precluded. To the extent these buyers were introduced around the time plaintiff improperly terminated the contract, but while defendant was unaware the contract was improperly terminated, their testimony is relevant to defendant's efforts to mitigate.

The balance of Motion **13** was held for additional briefing and now the court decides it.

The disparate views of the parties concerning the scope of the trial deeply impacted motion 13. Fashion maintains that the Appellate Division, First Department, in holding that Pony improperly terminated the contract, necessarily limited the trial to Fashion’s damages only. Meanwhile, Pony maintains that its affirmative claims were never dismissed, that the Appellate Division ruled that the “contract remained in full force and effect,” and that therefore, its claims for, *inter alia* guaranteed royalty payments, survive.

Pony is correct. First, Fashion never moved to dismiss Pony’s affirmative claims on summary judgment. All Fashion moved for was and order “(i) granting partial summary judgment as to liability on Fashion’s First and Second Causes of Action against Plaintiff/Counterclaim US Pony Holdings, LLC and Third-Party Defendant Icon DE Holdings LL” [see Notice of Motion, EDOC 122]. Accordingly, neither this court, nor the Appellate Division, has had occasion to rule about the continued legitimacy of Pony’s claims. Moreover, it was Fashion that asked for a declaration that the agreement remained in “full force and effect” on appeal. Fashion cannot be heard to complain about getting what it wanted now. Fashion could have asked to be relieved of its obligations under the contract, but it never did until these motions *in limine*. Thus, what Fashion asks for is summary judgment in disguise. Now is too late for summary judgment. Thus, the jury trial in this case will encompass Fashion’s damages as well as Pony’s affirmative claims. Fashion’s next opportunity to challenge Pony’s claims will be at the CPLR 4401 phase.


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MELISSA A. CRANE, J.S.C.

4/21/2026
DATE

CHECK ONE:

<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART
<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE