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## Abercrombie Goes For Win In Muslim Bias Suit

By **Ryan Davis**

Law360, New York (April 15, 2011) -- Abercrombie & Fitch Stores Inc. asked an Oklahoma court Friday to rule in its favor in a suit that claims it refused to hire a Muslim woman because she wore a religious head scarf, arguing such attire would damage its brand.

The U.S. Equal Employment Opportunity Commission filed the suit in the U.S. District Court for the Northern District of Oklahoma. In its motion for summary judgment, Abercrombie alleges that during her interview, Samantha Elauf never requested that she be allowed to wear a hijab at work, and did not mention that she was Muslim.

Unless the employee requests an accommodation for her religious beliefs, a company cannot reasonably be expected to make such an accommodation, the company argues. As a result, Abercrombie claims it should be granted summary judgment.

"A finding to the contrary would open the floodgates to religious accommodation lawsuits, and would also simultaneously subject employers to liability for inquiries into an employee's religious beliefs," the company said.

Furthermore, even if Elauf had asked to be allowed to wear the hijab, Abercrombie cannot be legally required to permit her to, because that would create an undue hardship for the company, it argues.

Because Abercrombie does little advertising, an essential function of store employees, which the company refers to as models, is to show off Abercrombie clothing, it says.

As a result, the company has a "look policy," which requires employees to wear Abercrombie-style clothing and dictates the type of makeup and hairstyles they can have, the company claims.

Abercrombie does not sell any type of head scarf, and a hijab conflicts with the company's "New England preppy cool" style, the company argues.

Therefore, the company cannot be legally compelled to allow its employees to wear hijabs, which would "damage Abercrombie's careful branding efforts" and cause it undue hardship, it claims.

"There are simply some tasks which are absolutely essential to the performance of a particular job," the company said. "To be employed as a truck driver, one must be able to drive. To be employed as a typist, one must be able to type. To be employed as a model at Abercrombie, one must wear the Abercrombie style."

The EEOC filed the suit in September 2009 based on a complaint by the Council on American-Islamic Relations. It alleges that Elauf wore a hijab to an interview for a sales

position at an Abercrombie Kids store in Tulsa, Okla., and was not hired as a result.

The suit alleges violations of Title VII provisions requiring employers to accommodate religious beliefs of employees.

In its motion, Abercrombie admits that Elauf was not hired because she wore a hijab, but only because the company does not hire people who violate the look policy during a job interview.

It maintains that the company did not know she was Muslim, and that it would have been illegal for the company to ask.

In February 2010, the CAIR filed another complaint against Abercrombie at the EEOC on behalf of an employee at a San Mateo, Calif., Hollister Co. store. Hollister is a division of Abercrombie.

In that case, the CAIR alleged that the employee was told when she was hired that she could wear a hijab at work, but was later told it conflicted with the look policy. The company demanded she stop wearing it, and fired her when she refused, the complaint claims.

Vorys Sater Seymour and Pease LLP and Doerner Saunders Daniel & Anderson LLP represent Abercrombie in the Elauf case.

The case is U.S. Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores Inc., case number 4:09-cv-00602, in the U.S. District Court for the Northern District of Oklahoma.

--Editing by John Williams.

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