



# SAN FRANCISCO PLANNING DEPARTMENT

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April 8, 2010

Mr. Jim M. Abrams  
Gibson, Dunn & Crutcher LLP  
555 Mission Street  
San Francisco, CA 94105-2933

**RE: Request for Written Determination Pursuant to Planning Code Section 307(a)  
Athleta Retail Store and Formula Retail Classification**

Dear Mr. Abrams,

This is in response to your letter of March 18, 2010 regarding a proposal to open a retail store for the "Athleta" brand of clothing in San Francisco. You ask whether or not the use would be considered a Formula Retail Use under the Planning Code. I have reviewed the information in your letter and based upon my examination and analysis of the circumstances have made the determination discussed below.

Your letter indicates that the Athleta brand, which produces "women's active lifestyle apparel" is owned by the Gap, Inc. According to your letter, "Athleta traditionally sold its apparel by catalog and online order only, and currently has no physical retail store in the United States or elsewhere in the world." The current proposal would represent Athleta's first retail store anywhere.

Planning Code Section 703.3(b) lists a number of criteria which characterize Formula Retail uses and states that uses meeting at least two of these criteria are considered Formula Retail. However, before listing these criteria, 703.3(b) clearly states that any Formula Retail use must be conducted "along with eleven or more other [such] retail sales establishments that are located in the United States."

You indicate that, despite being owned by the Gap, which operates a number of Formula Retail uses in San Francisco and elsewhere, Athleta would not share standardized features or merchandise with the Gap. On the contrary, you indicate that the Athleta store would be operated in a manner analogous to "Banana Republic" or "Old Navy," both of which are also owned by the Gap. As Athleta has no existing stores, the first through the tenth stores in the United States would not trigger a Formula Retail determination for a store in San Francisco.

**As such, it is my determination that should Athleta seek to open a retail store in San Francisco as generally set forth in your letter, it would *not* be considered a Formula Retail Use.**

If anyone has substantial reason to believe that there is an error in the interpretation of the Planning Code, or abuse of discretion on the part of the Zoning Administrator, this determination may be appealed to the Board of Appeals within fifteen (15) days from the date of this letter. For further information regarding the appeals process, please contact the Board of Appeals, 1650 Mission Street, Suite 304, San Francisco, or by telephone at (415)575.6880.

[www.sfplanning.org](http://www.sfplanning.org)

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

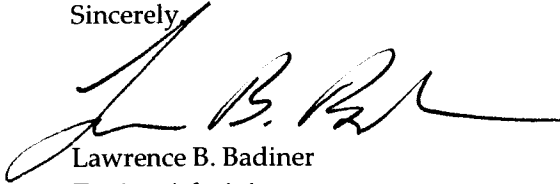
Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

Mr. Jim M. Abrams  
Athleta Stores and Formula Retail Uses  
April 8, 2010  
Page 2

Please direct any questions regarding this letter to Daniel Sider of my staff at (415) 558.6697 or via email at dan.sider@sfgov.org.

Sincerely,

A handwritten signature in black ink, appearing to read "L. B. Badiner", written in a cursive style.

Lawrence B. Badiner  
Zoning Administrator

cc: Daniel A. Sider, SF Planning Department

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MAR 18 2010

Gibson, Dunn & Crutcher LLP  
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ID# 8849  
CK # 060045 \$ 549.50  
WFB  
DANIEL SIDER

Client Matter No.: G 00000-00000

Jim M. Abrams  
Direct: +1415.393.8370  
Fax: +1415.374.8405  
JAbrams@gibsondunn.com

March 18, 2010

Mr. Larry Badiner  
Zoning Administrator  
San Francisco Planning Department  
1650 Mission Street Suite 400  
San Francisco, CA 94103

Re: Request for Letter of Determination Regarding Athleta Retail Store

Dear Mr. Badiner:

This firm represents the Gap, Inc., the owner of the Athleta brand, which was founded in Sonoma County in 1998 and produces women's active lifestyle apparel. Athleta traditionally sold its apparel by catalog and online order only, and currently has no physical retail store in the United States or elsewhere in the world. Athleta is considering plans to open its first retail store in San Francisco. As such, this is a request for a Zoning Administrator determination as to whether the proposed Athleta store would represent a formula retail use as defined by Planning Code section 703.3. Section 703.3 defines a formula retail use as:

[A] type of retail sales activity or retail sales establishment, which, along with eleven or more retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark.

This definition provides that the proposed retail store must share design or branding features with eleven or more retail establishments in order to qualify as a formula retail use. The proposed Athleta store in San Francisco falls outside of this definition because it would represent the first Athleta store in the United States. In addition, the proposed Athleta store would not share standardized design features with existing Gap brand stores. Instead, similar to the retail stores for other Gap Inc. owned brands such as Banana Republic and Old Navy, the Athleta store would have a wholly unique design vocabulary that is specific to the

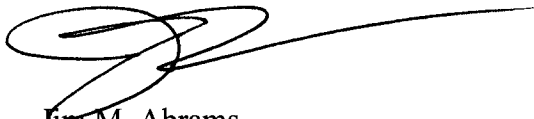
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Mr. Larry Badiner  
March 18, 2010  
Page 2

Athleta brand. Therefore, the proposed Athleta store could not reasonably be described as the same retail use as existing Gap stores.

Thank you for your time and consideration. Please call me at (415) 393-8370 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim M. Abrams', with a long horizontal flourish extending to the right.

Jim M. Abrams

JMA/jma

THIS DOCUMENT HAS A TRUE DOCUCHECK™ WATERMARK AND VISIBLE FIBERS DISCERNIBLE FROM BOTH SIDES

**GIBSON, DUNN & CRUTCHER LLP**

Lawyers

555 Mission Street, Suite 3000  
San Francisco, California 94105-2933

WELLS FARGO BANK  
1 MONTGOMERY STREET  
SAN FRANCISCO, CA 94104

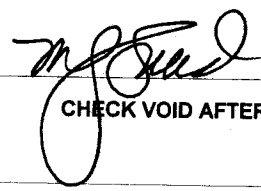
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060045

Date: March 17, 2010

Pay: Five hundred forty-nine and 50/100\*\*\*\*\* \$ \*\*\*\*549.50\*\*\*

PAY TO THE ORDER OF: SAN FRANCISCO PLANNING DEPARTMENT  
1650 MISSION STREET, SUITE 500  
SAN FRANCISCO, CA 94103-2414



CHECK VOID AFTER 90 DAYS

ID# 8849 - LTR OF DETERMINATION  
RE: ATHLETA RETAIL STORE

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