

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
FYC APPAREL GROUP, LLC,

Civil Action No. 07 CV 3876 (WAP)

Plaintiff,

COMPLAINT

-against-

VICTORIA'S SECRET DIRECT and
LP APPAREL, INC.,

Defendants.
-----X

Plaintiff FYC Apparel Group, LLC (“FYC”), through its attorneys, Silverberg Stonehill Goldsmith & Haber, P.C., as and for its Complaint, complains of defendants Victoria's Secret Direct (“Victoria’s Secret”) and LP Apparel, Inc. (“LP”) as follows:

JURISDICTION AND PARTIES

1. This is an action for copyright infringement, which arises under the Copyright Laws of the United States, Title 17, United States Code. This Court has jurisdiction over the subject matter of this claim pursuant to 28 U.S.C. 1338.

2. Venue properly lies in this Judicial District pursuant to 28 U.S.C. §1400(a) and 28 U.S.C. §1391(b). Process properly issues from this Court pursuant to Rule 4 of the Federal Rules of Civil Procedure.

3. FYC is a New York limited liability company with a principal place of business at 1450 Broadway, New York, New York.

4. Victoria's Secret, upon information and belief, is a foreign corporation with offices and a place of business at 3425 Morse Crossing, Columbus, Ohio 43219.

5. Victoria's Secret, upon information and belief, is a manufacturer, distributor and retailer of, among other things, apparel, and has sold in the United States and within this district, dresses which infringe FYC's copyright as set forth hereinafter.

6. LP, upon information and belief, is a foreign corporation with offices and a place of business at 450 North Brand Boulevard, Glendale, California 91203.

7. LP, upon information and belief, is a manufacturer and distributor of, among other things, apparel, and has sold in the United States and within this district, dresses which infringe FYC's copyright as set forth hereinafter.

8. Defendants, upon information and belief, transact business within this district, derive substantial revenue from intrastate and interstate commerce and have committed tortious acts within this district and also without this district having injurious consequences within this district, and defendants are otherwise within the jurisdiction of this Court.

CLAIM I - COPYRIGHT INFRINGEMENT

9. In 2005, Owens & Kim created an original work of art identified as "VC2119". On or about February 22, 2005,, Owens & Kim sold and assigned all of its rights to design VC2119 to FYC, including its copyright therein. FYC renamed the design "RB1045/5". A photograph of textiles printed with the "RB1045/5" design is attached hereto as Exhibit "1".

10. The said work of art was wholly original and is copyrightable subject matter under the laws of the United States. FYC secured statutory copyrights in said original design.

11. FYC has duly complied in all respects with the provisions of the Copyright Law of the United States, and has secured the exclusive rights and privileges in and to the said design, and FYC thereupon duly requested and has received from the Register of Copyrights, Certificate of Registration VA 1-400-902. A copy of the Copyright Registration is annexed hereto as Exhibit "2".

12. All copies of said work of art have been published by only the FYC, and all copies of it have been printed, reproduced, and published in strict conformity with the provisions of the Copyright Law of the United States.

13. On or about October 3, 2005, FYC published RB1045/5.

14. At all relevant times since its publication, FYC has been, and is now, the sole proprietor of all rights, title, and interest in the copyright and the right to exploit the copyright of the exclusive design.

15. Pursuant to such sole and exclusive rights FYC commenced to manufacture apparel with textiles printed with its "RB1045/5" design and has promoted and offered for sale and sold such apparel to retailers throughout the United States.

16. Upon information and belief, at some time presently unknown after FYC first published its copyrighted design, Victoria's Secret and LP infringed FYC's copyright by causing to be manufactured, offering for sale, and selling, without FYC's consent apparel made with textiles printed with a work of art which is copied from and substantially similar to FYC's copyrighted work of art. A photograph of one such infringing garment is attached hereto as Exhibit "3".

17. Defendants' infringing design is clearly copied from FYC's design.

18. The layout of defendants' design is virtually the same as that of the copyrighted design.

19. FYC has no adequate remedy at law.

WHEREFORE, FYC demands judgment:

(a) That defendants, their officers, agents, servants, employees, attorneys and all parties in active concert or participation with them be enjoined from infringing FYC's copyrighted design, including but not limited to, manufacturing, vending, printing, distributing, selling, displaying, promoting, or advertising fabric or garments or other products incorporating a design copied from the copyrighted design or by causing and/or participating in manufacturing, printing, vending, distributing, offering for sale, selling, displaying, promoting, or advertising by others pursuant to 17 U.S.C. §502.

(b) That defendants be required to deliver up for destruction, all infringing copies of FYC's copyrighted design in their possession or under their control, whether in the form of fabric or apparel or other products incorporating the infringing design, to withdraw all advertising or promotional material bearing a copy of such copyrighted design, and print rollers, screens matrices, and the like utilized in the manufacture of infringing textiles pursuant to 17 U.S.C. § 503.

(c) That defendants be required to pay FYC such damages as FYC has sustained as a consequence of their infringement of FYC's copyrighted design, and to account for all gains, profits, and advantages derived by them from their infringements, including profits on all sales of fabrics and goods embodying any copy of the copyrighted design, pursuant to 17 U.S.C. § 504.

(d) That defendants be required to pay to FYC the costs of this action pursuant to 17 U.S.C. § 505.

(e) That FYC have such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York
May 17, 2007

Respectfully submitted,

SILVERBERG STONEHILL
GOLDSMITH & HABER, P.C.
Attorneys for Plaintiff

By: s/Kenneth R. Schachter
Kenneth R. Schachter (KRS/8833)

111 West 40th Street
New York, New York 10016
(212) 730-1900



RB1045/5

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America



EFFECTIVE DATE OF REGISTRATION

4 24 07
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 Title of This Work ▼ **NATURE OF THIS WORK ▼** See Instructions
RB1045/4 design on textiles

Previous or Alternative Titles ▼
VC 2119

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

a NAME OF AUTHOR ▼ DATES OF BIRTH AND DEATH
Owens and Kim Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? Yes No
Author's Nationality or Domicile Name of Country OR Citizen of _____ Domiciled in England
Was This Author's Contribution to the Work Anonymous? Yes No Pseudonymous? Yes No

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

Nature of Authorship Check appropriate box(es). See instructions
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

b Name of Author ▼ Dates of Birth and Death
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? Yes No
Author's Nationality or Domicile Name of Country OR Citizen of _____ Domiciled in _____
Was This Author's Contribution to the Work Anonymous? Yes No Pseudonymous? Yes No

Nature of Authorship Check appropriate box(es). See instructions
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

3 Year in Which Creation of This Work Was Completed 2005 Date and Nation of First Publication of This Particular Work Month October Day 3 Year 2005
This information must be given in all cases. Complete this information ONLY if this work has been published. United States Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼
FYC Apparel Group, LLC, 1450 Broadway, NY, NY 10018

APPLICANT RECEIVED APR 24 2007
ONE DEPOSIT RECEIVED APR 24 2007
TWO DEPOSITS RECEIVED
FUNDS RECEIVED

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼
By written assignment

See instructions before completing this space.

EXAMINED BY STI FORM VA

CHECKED BY _____

CORRESPONDENCE
Yes

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

- Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▾
- a. This is the first published edition of a work previously registered in unpublished form.
- b. This is the first application submitted by this author as copyright claimant.
- c. This is a changed version of the work, as shown by space 6 on this application.
- If your answer is "Yes," give: Previous Registration Number ▾ Year of Registration ▾

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

- a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▾

6

- b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▾

a See instructions before completing this space.

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

- Name ▾ Account Number ▾

7

a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▾

b

Kenneth R. Schachter, Esq.
Silverberg Stonchill Goldsmith & Haber, P.C., 111 W. 40th St., NY, NY 10018

Area code and daytime telephone number (212) 730-1900 Fax number (212) 391-4556

Email krschachter@ssghlaw.com

CERTIFICATION* I, the undersigned, hereby certify that I am the

- check only one ▶ author
- other copyright claimant
- owner of exclusive right(s)
- authorized agent of FYC Apparel Group, LLC
Name of author or other copyright claimant, or owner of exclusive right(s) ▾

8

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▾ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Kenneth R. Schachter Date 4/17/07

Handwritten signature (X) [Signature]

Certificate will be mailed in window envelope to this address:

Name ▾
Silverberg Stonchill Goldsmith & Haber, P.C.

Number/Street/Apt ▾
111 West 40th Street

City/State/ZIP ▾
New York, New York 10018

- YOU MUST:**
- Complete all necessary spaces
 - Sign your application in space 8
- SEND ALL 3 ELEMENTS IN THE SAME PACKAGE**
- Application form
 - Nonrefundable filing fee in check or money order payable to Register of Copyrights
 - Deposit material
- MAIL TO**
- Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20558-6000

*17 USC §508(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

