

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MALIBU TEXTILES, INC.,

Plaintiff,

against

J.C. PENNEY CORPORATION, INC. and
CREATIVE DESIGN WORKS, INC.,

Defendants.
-----X

**COMPLAINT AND
JURY DEMAND**

Case No. 07cv2670
Judge RWS
ECF Case

Plaintiff, Malibu Textiles, Inc. (“Malibu”), by its attorneys Cowan, DeBaets, Abrahams, & Sheppard, LLP, for its complaint against defendants J.C. Penney Corporation, Inc. (“JC Penney”) and Creative Design Works, Inc. (“Creative”) (collectively the “Defendants”), alleges as follows:

JURISDICTION AND VENUE

1. This claim arises under the provisions of the Copyright Act of the United States, as amended, 17 U.S.C. § 1 *et seq.*, and is for infringement of a copyright registered in the Copyright Office of the United States.
2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), and personal jurisdiction over defendant pursuant to N.Y. CPLR § 302 *et seq.*
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c) in that the defendants are corporations subject to personal jurisdiction in this district.

PARTIES

4. Malibu is a corporation duly organized and existing under the laws of the State of New York with its principal place of business at 49 West 37th Street, New York, NY 10018.

5. JC Penney is, upon information and belief, a corporation duly organized and existing under the laws of the state of New York with its principal place of business at 6501 Legacy Drive, Plano TX, 75024, and locations across the United States.

6. Upon information and belief, JC Penney is a retail department store and online distributor of, among other things, apparel, and has sold in the United States and within this district, apparel which infringes a copyright protected design which is exclusively licensed to Malibu.

7. Creative is, upon information and belief, a corporation duly organized under the State of New York with its principal place of business at 3215 South Maple Avenue, Los Angeles, CA 90011.

8. Upon information and belief, Creative is a retailer of, among other things, apparel and has sold in the United States and within this district apparel which infringes a copyright protected design which is exclusively licensed to Malibu.

9. Upon information and belief apparel sold by Defendants have come into the stream of commerce within the State of New York and specifically within this district.

10. Upon information and belief the Defendants 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, and defendants are otherwise within the jurisdiction of this Court.

FACTS

11. Malibu is, and has been, prominent in the design and sale of knit fabrics for over 25 years and has earned a reputation in the trade for its original and distinctive fabric designs.

12. Malibu's fabric designs have been and are being sold by Malibu throughout the United States and this district.

13. Malibu holds the copyright in a lace design pattern known as Pattern #2463, formerly pattern #1720 (the "Pattern"). A photocopy of the Pattern is attached as Exhibit A.

14. Malibu registered Pattern #1720 with the U.S. Copyright Office under Registration No. VA 1-166-101 effective December 13, 2002. A copy of the registration certificate is attached hereto as Exhibit B.

15. Upon information and belief, Defendants offered for sale, sold and or caused to be manufactured, distributed, offered for sale, and sold in this district and elsewhere in the United States, garments incorporating a lace pattern which infringes the copyright protected design. A photocopy of an infringing garment ("Infringing Work") as attached as Exhibit C. A photocopy of the garment's tag is attached as Exhibit D.

16. Upon information and belief Defendants, having full knowledge of the rights of Malibu as herein alleged, have infringed the copyright protected design by manufacturing, importing, distributing, selling, offering for sale, promoting and/or advertising without Malibu's consent, garments incorporating the lace design.

17. Plaintiff is informed and believes that the foregoing acts of infringement have been willful and intentional in disregard of and with indifference to the rights of Plaintiff.

18. As a result of Defendants' infringement of Plaintiff's copyright, Plaintiff is entitled to statutory damages under the Copyright Act of 1976, 17 U.S.C §504 (c)(2). Plaintiff is also entitled to their attorneys fees and costs pursuant to 17 U.S.C §505.

19. Defendants' conduct is causing and unless enjoined or restrained by this Court, will continue to cause Plaintiff great and irreparable injury that cannot be compensated by money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C §502 and §503, Plaintiff is entitled to injunctive relief to prohibit Defendants from further infringing Plaintiff's copyrights.

WHEREFORE, Plaintiff prays that this Court:

A. Preliminarily and permanently enjoin Defendants, their officers, directors, principals, agents, servants, employees, successors and assigns from:

- (a) copying, or making any unauthorized use of the Pattern, in any form;
- (b) manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any promotional material bearing any simulation, reproduction, counterfeit, or copy of the Pattern, or by causing and/or participating in such manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any such items;

B. Direct Defendants to deliver for destruction all products in its possession or under their control which infringe the Pattern;

C. Direct Defendants to account for and relinquish to Plaintiff all gains, profits, and advantages derived by Defendants through Defendants' infringement of Plaintiff's copyrights.

D. Direct Defendants to pay to Plaintiff such damages, including statutory damages of up to \$150,000 per infringing work, as Plaintiff is entitled to as a consequence of Defendants' infringement of Plaintiff's copyright in its Pattern.

E. Award to Plaintiff the costs of this action together with reasonable attorney's fees.

F. Award to Plaintiff prejudgment interest on the amount of the award to Plaintiff, and;

G. Award to Plaintiff such other and further relief as the Court may deem just and proper.


DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands trial by jury as to all claims in this litigation.

Dated: New York, New York
March 29, 2007

Respectfully Submitted,

COWAN, DEBAETS, ABRAHAMS, &
SHEPPARD, LLP

By: 
Nancy E. Wolff (NW 7805)
41 Madison Avenue, 34th Floor
New York, New York 10010
(212) 974-7474
ATTORNEY FOR PLAINTIFF