

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TACORI ENTERPRISES,

Plaintiff,

v.

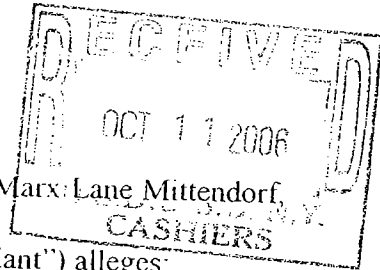
GOLDA JEWELRY CO., LTD.,

Defendant.

Case No. **06 CV 8282**
[ELECTRONIC]

**COMPLAINT WITH DEMAND
FOR TRIAL BY JURY**

JUDGE BAER



Plaintiff Tacori Enterprises ("Plaintiff"), by its attorneys Windels Marx Lane Mittendorf, LLP, for its Complaint against defendant Golda Jewelry Co., Ltd. ("Defendant") alleges:

1. Plaintiff brings this action for injunctive relief and damages on the grounds that Defendant has engaged in copyright infringement, trade dress infringement, deceptive acts and practices, and unfair competition and has been unjustly enriched.

SUBJECT MATTER JURISDICTION AND VENUE

2. This case is a civil action arising under the Trademark, and Copyright Laws of the United States, 15 U.S.C. §§ 1051, *et seq.*, and 17 U.S.C. §§ 101, *et seq.*, respectively. This Court has subject matter jurisdiction over the claims in this Complaint that relate to trade dress and copyright infringement pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over the claims in this Complaint that arise under state statutory and common law of the State of New York for deceptive acts and practices under New York General Business Law § 349, unfair competition under New York common law and General Business Law § 360, and unjust enrichment under New York common law, because the state law claims are so related to the

federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

4. Venue is proper in this court pursuant to 28 U.S.C. §§ 1391(b) and 1400(a). The infringing products that are the subject of this litigation are and have been distributed and offered for distribution in the Southern District of New York; the claims alleged in this action arose in the Southern District of New York; and, the Defendant may be found in the Southern District of New York.

PARTIES AND PERSONAL JURISDICTION

5. Plaintiff Tacori Enterprises is a California corporation with its principal place of business at 1736 Gardena Avenue, Glendale, California.

6. Upon information and belief, Defendant Golda Jewelry Co., Ltd. is a New York business corporation with its principal place of business at 29 West 47th Street, New York, New York 10036.

THE BUSINESS OF PLAINTIFF TACORI ENTERPRISES

7. For over 35 years, Plaintiff Tacori Enterprises has been an innovator in the design, creation, and marketing of fine jewelry. Tacori Enterprises designs its own jewelry and has created exclusive collections from only top quality platinum and 18 or 22 karat gold.

8. Among Plaintiff's original jewelry designs are HT 2229 Tacori "Crescent Silhouette" Ring Design; HT 2229A Tacori "Crescent Silhouette" Ring Design; HT 2255 Tacori "Crescent Silhouette" Ring Design; HT 2256 Tacori "Crescent Silhouette" Ring Design; HT 2257 Tacori "Crescent Silhouette" Ring Design; HT 2258 Tacori "Crescent Silhouette" Ring Design; HT 2259 Tacori "Crescent Silhouette" Ring Design; HT 2259B Tacori "Crescent Silhouette" Ring Design; HT 2260 Tacori "Crescent Silhouette" Ring Design; HT 2260D Tacori "Crescent

Silhouette" Ring Design; HT 2261 Tacori "Crescent Silhouette" Ring Design; HT 2262S Tacori "Crescent Silhouette" Ring Design; HT 2263A Tacori "Crescent Silhouette" Ring Design; HT 2264 Tacori "Crescent Silhouette" Ring Design; HT 2265A Tacori "Crescent Silhouette" Ring Design; HT 2266A Tacori "Crescent Silhouette" Ring Design; HT 2267S Tacori "Crescent Silhouette" Ring Design; HT 2271 Tacori "Crescent Silhouette" Ring Design; HT 2272 Tacori "Crescent Silhouette" Ring Design; HT 2273 Tacori "Crescent Silhouette" Ring Design; HT 2275 Tacori "Crescent Silhouette" Ring Design; HT 2276 Tacori "Crescent Silhouette" Ring Design; HT 2277 Tacori "Crescent Silhouette" Ring Design; HT 2278 Tacori "Crescent Silhouette" Ring Design; HT 2280 Tacori "Crescent Silhouette" Ring Design; HT 2283D Tacori "Crescent Silhouette" Ring Design; HT 2284 Tacori "Crescent Silhouette" Ring Design; HT 2319 Tacori "Crescent Silhouette" Ring Design; HT 2324 Tacori "Crescent Silhouette" Ring Design; HT 2326 Tacori "Crescent Silhouette" Ring Design; HT 2352 Tacori "Crescent Silhouette" Ring Design; and HT 2353 Tacori "Crescent Silhouette" Ring Design (collectively the "Crescent Silhouette Rings"). Photographs of the Crescent Silhouette Rings are attached to this Complaint as **Exhibit A**. Each of the Crescent Silhouette Rings is an original design comprising copyrightable subject matter under the laws of the United States.

9. Plaintiff introduced the first of its distinctive and unique Crescent Silhouette Rings in 1999.

10. Since the introduction of its first distinctive Crescent Silhouette Rings, Tacori has introduced additional rings and other types of jewelry, all of which incorporate the same distinctive design elements, referred to herein as the "Tacori Look." The Tacori Look consists of two essentially concentric rings, with one ring having a larger diameter than the other. Embedded between the concentric rings are at least two semi-circles or arcs that appear

contiguous to each other. Contained within each semi-circle or arc is a stone. A space is created between the contiguous semi-circles or arcs. Exemplars of the Tacori Look are pictured in **Exhibit B** to this Complaint.

11. Plaintiff has made and continues to make a substantial investment of time, effort, and expense in the design, manufacturing, and marketing of its jewelry featuring the Tacori Look. For example, Plaintiff's custom designed platinum and diamond wedding bands with the Tacori Look were featured on the TV Show "The Bachelorette," and were selected by Trista Rehan (the Bachelorette) and Ryan Sutter for their internationally televised wedding.

12. Plaintiff advertises its Tacori Look jewelry designs in national publications, such as Instyle-Wedding, Instyle, Marie Claire, Martha Stewart Wedding, Modern Bride, Bride's, Bridal Guide, Robb Report, Town & Country and Elegant Bride. Plaintiff also has had its Tacori Look ring designs featured in national publications such as People, US, Wedding Bells, Modern Bride, Marie Claire and Bride's. Furthermore, Plaintiff advertises its products, particularly those with the Tacori Look, in trade publications and over the World Wide Web through its website at www.tacori.com.

13. Plaintiff's Crescent Silhouette Rings, which exemplify the Tacori Look, have been featured prominently in its national advertising. Representative copies of advertisements that have featured Plaintiff's Crescent Silhouette Rings and the Tacori Look are attached to this Complaint as **Exhibit C**.

14. Plaintiff's Crescent Silhouette Rings and other rings bearing the Tacori Look have been sold to retail stores throughout the United States. These retail stores display and offer for sale Plaintiff's Crescent Silhouette Rings and rings and other jewelry with the Tacori Look to the general public.

15. Tacori's jewelry featuring the Tacori Look has had outstanding commercial success. As a result, jewelers and the public recognize the Tacori Look as designating an exclusive source, thereby creating a goodwill that inures to Tacori's benefit.

16. At all relevant times, Plaintiff complied in all respects with the Copyright Act, 17 U.S.C. § 101, *et seq.*, and secured the exclusive rights and privileges in and to the copyright in the Crescent Silhouette Rings. The Crescent Silhouette Rings are an original work, copyrightable under the Copyright Act, and they have been copyrighted in full compliance with the Copyright Act.

17. Plaintiff has received Certificates of Registration and Supplementary Registrations from the Register of Copyrights for the Crescent Silhouette Rings. Copies of the registrations are attached to this Complaint as **Exhibit D**.

18. Since its creation, the Crescent Silhouette Rings have been manufactured by Plaintiff, or under its authority.

19. Since the creation of the Crescent Silhouette Rings, Plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the copyrights in the Crescent Silhouette Rings and the Certificates of Registration corresponding therewith.

THE BUSINESS OF DEFENDANT GOLDA JEWELRY CO., LTD.

20. Plaintiff is informed and believes that Defendant is a wholesale manufacturer of jewelry to the jewelry industry and is in the business of manufacturing, marketing and selling jewelry.

21. Defendant sells or has sold jewelry under the trade name Golda Jewelry or Golda Jewelry Co., Ltd.

22. Plaintiff has not authorized Defendant to copy, reproduce, manufacture, duplicate, disseminate, or distribute the Crescent Silhouette Rings or rings with a design that is substantially similar to the Crescent Silhouette Rings and is confusingly similar to the Tacori Look.

23. Plaintiff is informed and believes that Defendant has engaged in the marketing, manufacture, distribution, duplication and/or sale of infringing copies of Plaintiff's Crescent Silhouette Rings.

24. Plaintiff is informed and believes that Defendant has engaged in the marketing, manufacture, distribution, duplication and/or sale of rings with designs that are confusingly similar to the Tacori Look.

25. Plaintiff is informed and believes that Defendant has sold unauthorized and infringing copies of Plaintiff's Crescent Silhouette Rings, which bear designs that are confusingly similar to the Tacori Look, wholesale and through retailers, including, but not limited to, a ring setting with a style name or inventory number used by Defendant consisting of or similar to "FFR0056-1" and including, but not limited to, ring settings with style names or inventory numbers used by Defendant consisting of or similar to "SER0132-1"; "SER0065-2"; and D-R6037. Pictures of unauthorized and infringing copies of Plaintiff's Crescent Silhouette Rings and the Tacori Look sold by Defendant are attached to this Complaint as **Exhibit E**.

FIRST CLAIM FOR RELIEF
(Copyright Infringement)

26. Plaintiff realleges and incorporates by reference each of the allegations contained in Paragraphs 1 through 25 of this Complaint as though fully set forth.

27. Defendant's acts constitute infringement of Plaintiff's copyrights in the Crescent Silhouette Rings in violation of the Copyright Act, 17 U.S.C. § 101, *et seq.*

28. Plaintiff is informed and believes that Defendant's manufacture, distribution, duplication and/or sale of infringing copies of Plaintiff's Crescent Silhouette Rings was deliberate, willful, malicious, oppressive, and without regard to Plaintiff's proprietary rights.

29. Defendant's copyright infringement has caused, and will continue to cause Plaintiff to suffer substantial injuries, loss, and damage to its proprietary and exclusive rights to the copyrights in the Crescent Silhouette Rings and further, has damaged Plaintiff's business reputation and goodwill, diverted its trade, and caused loss of profits, all in an amount not yet determined. In addition, Plaintiff is entitled to receive the profits made by Defendant from its wrongful acts pursuant to 17 U.S.C. § 504.

30. Defendant's copyright infringement, and the threat of continuing infringement, has caused, and will continue to cause, Plaintiff repeated and irreparable injury. It would be difficult to ascertain the amount of money damages that would afford Plaintiff adequate relief at law for Defendant's acts and continuing acts. Plaintiff's remedy at law is not adequate to compensate it for the injuries already inflicted and further threatened by Defendant. Therefore, Plaintiff is entitled to preliminary and permanent injunctive relief pursuant to 17 U.S.C. § 502, and to an order under 17 U.S.C. § 503, and 28 U.S.C. § 1651(a) that the infringing copies of the Crescent Silhouette Rings, and all molds by which such infringing copies were produced, be seized, impounded and destroyed.

31. Plaintiff is also entitled to recover its attorneys' fees and cost of suit pursuant to 17 U.S.C. § 505.

SECOND CLAIM FOR RELIEF
(Trade Dress Infringement)

32. Plaintiff realleges and incorporates by reference each of the allegations contained in Paragraphs 1 through 31 of this Complaint as though fully set forth.

33. Tacori's rings incorporating the Tacori Look have a unique and distinctive design that designates a single source of origin.

34. The above-described acts of Defendant constitute trade dress infringement in violation of 15 U.S.C. § 1125 in that Defendant has used a jewelry trade dress which is likely to cause confusion or mistake or to deceive the relevant public that Defendant's jewelry are authorized by or are affiliated with Plaintiff and have caused such goods to enter into interstate commerce.

35. Plaintiff is being damaged and is likely to be damaged in the future by Defendant's infringement by reason of the likelihood that purchasers of Defendant's goods will be confused or mistaken as to source, sponsorship or affiliation of Defendant's jewelry.

36. Defendant has unfairly profited from the actions alleged herein and will continue to unfairly profit and become unjustly enriched unless and until such conduct is enjoined.

37. By reason of Defendant's acts alleged herein, Plaintiff has suffered and will continue to suffer damage to its goodwill and has and will continue to suffer irreparable harm unless and until Defendant's conduct is enjoined.

38. Plaintiff is informed and believes that Defendant's acts alleged herein were willful and conducted in conscious disregard of Plaintiff's rights.

THIRD CLAIM FOR RELIEF
(Violation of New York Law Prohibiting Deceptive Acts and Practices)

39. Plaintiff realleges and incorporates by reference each of the allegations contained in Paragraphs 1 through 38 of this Complaint as though fully set forth.

40. Defendant's willful, knowing and unauthorized marketing, manufacture, distribution, duplication and/or sale of infringing copies of Plaintiff's Crescent Silhouette Rings and rings with a design that is confusingly similar to the Tacori Look constitute deceptive trade practices

in violation of the New York General Business Law § 349, *et seq.*, as a result of which Plaintiff is entitled to injunctive relief and damages, including punitive damages, and reasonable attorney's fees pursuant to New York statutory and common law.

FOURTH CLAIM FOR RELIEF
(Violation of New York Unfair Competition and Trademark Law)

41. Plaintiff realleges and incorporates by reference each of the allegations contained in Paragraphs 1 through 40 of this Complaint as though fully set forth.

42. Defendant's willful, knowing and unauthorized marketing, manufacture, distribution, duplication and/or sale of infringing copies of Plaintiff's Crescent Silhouette Rings and rings with a design that is confusingly similar to the Tacori Look constitute unfair competition and trademark infringement in violation of New York common law and New York General Business Law § 360, for which Plaintiff is entitled to injunctive relief and damages, including punitive damages, and reasonable attorney's fees pursuant to New York statutory and common law.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

43. Plaintiff realleges and incorporates by reference each of the allegations contained in Paragraphs 1 through 42 of this Complaint as though fully set forth.

44. Defendant's willful, knowing and unauthorized marketing, manufacture, distribution, duplication and/or sale of infringing copies of Plaintiff's Crescent Silhouette Rings and rings with a design that is confusingly similar to the Tacori Look exploited the goodwill and distinctiveness of Plaintiff's copyright in the Crescent Silhouette Rings and trade dress in the Tacori Look. Defendant is and has been unjustly enriched by such use in violation of New York common law. Plaintiff is therefore entitled to injunctive relief and damages, including punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That the Court enter a judgment against Defendant that Defendant has:
 - (a) infringed the rights of Plaintiff in its "Tacori Look" trade dress;
 - (b) infringed the rights of Plaintiff in Plaintiff's federally registered copyrights under 17 U.S.C. § 501; and
 - (c) infringed the rights of Plaintiff in its Trademark in violation of New York law.
2. That the Court issue a Preliminary Injunction enjoining and restraining Defendant and its respective agents, servants, employees, successors and assigns, and all other persons acting in concert with or in conspiracy with or affiliated with Defendant, from:
 - (a) manufacturing, producing, selling, distributing, destroying, altering, or otherwise disposing of any jewelry that is in the possession of Defendant that is confusingly similar to Plaintiff's proprietary "Tacori Look" trade dress or that is substantially similar to Plaintiff's Crescent Silhouette Rings;
 - (b) destroying any documents, electronic files, wax models, molds, business records, or any other tangible object pertaining to the copying, reproduction, manufacture, duplication, distribution, or advertisement of any such jewelry; and,
 - (c) engaging in any other activity constituting an infringement of Plaintiff's "Tacori Look" trade dress or Plaintiff's copyrights of the Crescent Silhouette Rings.
3. That Plaintiff be awarded damages for Defendant's trade dress infringement.
4. That Plaintiff be awarded Defendant's profits resulting from Defendant's infringement of Plaintiff's trade dress rights.
5. That damages resulting from Defendant's willful infringement be trebled in accordance with the provisions of 15 U.S.C. § 1117.

6. That Plaintiff be awarded damages for Defendant's copyright infringement either: (i) actual damages in an amount to be determined at trial, together with Defendant's profits derived from its unlawful infringement of Plaintiff's copyright; or (ii) statutory damages for each act of infringement in an amount provided by law, as set forth in 17 U.S.C. § 504, at Plaintiff's election before the entry of final judgment, together with prejudgment and post-judgment interest.

7. That Plaintiff be awarded all profits and property acquired by means of Defendant's unfair competition with Plaintiff.

8. That Defendant be ordered to account for and disgorge to Plaintiff all amounts by which Defendant has been unjustly enriched by reason of the unlawful acts complained of.

9. That Plaintiff be awarded its actual damages resulting from Defendant's violation of New York General Business Law § 349, *et seq.*

10. That Plaintiff be awarded exemplary or punitive damages in an amount appropriate to punish Defendant and to make an example of Defendant to the community.

11. That the Court issue a Permanent Injunction enjoining and restraining Defendant and its respective agents, servants, employees, successors and assigns, and all other persons acting in concert with or in conspiracy with or affiliated with Defendant, from copying, reproducing, manufacturing, duplicating, disseminating, distributing, or using Tacori's trade dress or infringing copies of Plaintiff's Crescent Silhouette Rings.

12. That the Court issue an Order at the conclusion of the present matter that the jewelry infringing Tacori's trade dress and all infringing copies of the Crescent Silhouette Rings, and all molds by which such infringing jewelry was produced, be seized, impounded and destroyed.

13. That the Court award Plaintiff its reasonable attorneys' fees pursuant to 17 U.S.C. § 505, 15 U.S.C. § 1117, New York law, and any other applicable provision of law.

14. That the Court award Plaintiff its costs of suit incurred herein.

15. That Plaintiff be awarded such other relief as may be appropriate.

DEMAND FOR JURY TRIAL


Plaintiff hereby demands a trial by jury to decide all issues so triable in this case.

Dated: New York, New York
October 10, 2006

Respectfully submitted,

WINDELS MARX LANE & MITTENDORF, LLP

By:



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