

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Janel Russell Designs, Inc.

Plaintiff,

Civil No. _____

v.

Fair Indigo, LLC

Defendant

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, Janel Russell Designs, Inc. (hereinafter “JRD”) for its complaint against Fair Indigo, LLC (hereinafter “Fair Indigo”) hereby states and alleges as follows:

THE PARTIES

1. Plaintiff Janel Russell Designs, Inc. is a Delaware corporation having its principal place of business at 2866 Middle Street, St. Paul, MN 55117.

2. Defendant Fair Indigo, LLC is a Wisconsin limited liability company having its principal place of business at 2140 West Greenview Drive, Suite No. 7, Middleton, WI 53562.

JURISDICTION

3. This Court has subject matter jurisdiction over JRD’s copyright infringement count pursuant to Title 17 of the United States Code and 28 U.S.C. § 1338. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and 1400(a).

4. This Court has personal jurisdiction over Fair Indigo because Fair Indigo has purposely availed itself of the privilege of doing business in the State of Minnesota by offering jewelry for sale on its website www.fairindigo.com, taking orders on its website from Minnesota

customers and shipping jewelry to customers in the State of Minnesota. Moreover, Fair Indigo has intentionally infringed the copyrights of JRD knowing that the impact of an infringement would be felt by JRD in Minnesota.

GENERAL ALLEGATIONS

5. Plaintiff, Janel Russell Designs, Inc. is a corporation which was formed by Janel Russell. For many years, Janel Russell has designed unique pieces of jewelry.

6. Janel Russell created a unique work referred to herein as the "Mother and Child" in 1980. This work, shown in Exhibit A, is subject to U.S. Copyright Registration VAU 23-358 granted by the U.S. Copyright Office on March 2, 1981 and the U.S. Copyright Registration VA 111-110 granted on October 18, 1982. Both of these registrations have been assigned to Janel Russell Designs, Inc.

7. In subsequent years, Janel Russell created derivative works based upon the original work shown in Exhibit A. These works include earrings, locket, bracelets and pendants and the like.

8. Copies of copyright registration VAu 23-359 and VA 111-110 are attached here as Exhibits B and C. Exhibit D includes copies of other registrations relating to earrings and rings incorporating Ms. Russell's Mother and Child design.

9. Janel Russell Designs, Inc. currently has ownership of these copyright registrations. Exhibit E consists of copies of the assignment documents related to the Mother and Child.

10. Since 1981, products incorporating the original Mother and Child work and derivatives thereof have been sold pursuant to license by a variety of entities. All copies of the original Mother and Child work and derivatives thereof made by Plaintiff or under its authority

or license have been published in strict conformity with the provisions of the United States Copyright Act of 1976 and all the laws governing copyright. As a result of the efforts undertaken by Plaintiff and its authorized licensees, products incorporating the Mother and Child work have become widely successful commercial products. More than 800,000 such products have been sold.

11. Fair Indigo operates a website at www.fairindigo.com. On its website, Fair Indigo claims that “[w]e wanted to create stylish, high-quality clothes while paying a fair and meaningful wage to the people who produce them.” (Emphasis added.) Fair Indigo also alleges that it designs “beautiful, well-made clothing and accessories for women and men.” Attached as Exhibit F is a printout from Fair Indigo’s website entitled “About Fair Indigo.”

12. Fair Indigo is offering for sale on its website a charm bracelet which includes an unauthorized copy of JRD’s Mother and Child design. Exhibit G to this Complaint consists of printouts from the Fair Indigo website showing the unauthorized version of the Mother and Child pendant. Fair Indigo did not design the unauthorized Mother and Child pendant.

13. In September 2007, Janel Russell ordered a sample of the unauthorized version of the Mother and Child pendant from Fair Indigo’s website. Exhibit H is a printout of the e-mail receipt generated by Fair Indigo for the order of the unauthorized product.

14. Exhibit I is a photograph of the unauthorized Mother and Child that was shipped to Minnesota by Fair Indigo. Exhibit J is a side-by-side comparison of the unauthorized Mother and Child piece to the copyrighted Mother and Child. As can be seen from Exhibit J, the unauthorized copy is substantially similar to the Mother and Child and is an infringement of JRD’s copyright in the Mother and Child design.

15. Fair Indigo, through its unauthorized infringement of the Mother and Child copyright has denied Janel Russell Designs, Inc. the fair compensation it is due under its licensing agreements. The infringement by Fair Indigo denies the artist the compensation due to her.

COUNT I: COPYRIGHT INFRINGEMENT

16. The allegations from the preceding paragraphs of this Complaint are incorporated by reference as is fully set forth herein.

17. Plaintiff's original Mother and Child work and derivatives thereof covered by its copyright registrations are each original and constitute copyrightable subject matter.

18. Plaintiff has complied in all respects with the provisions of the Copyright Laws of the United States, 17 U.S.C. § 101, et seq., and has secured its rights and privileges in the Mother and Child work and derivatives thereof and has obtained certificates of registration from the Register of Copyrights, the United States Copyright Office. The registrations for the original Mother and Child work shown in Exhibit A were effective prior to the commencement of the infringement by Defendant.

19. The exclusive rights granted to copyright owners under 17 U.S.C. § 106 include: (a) the right to reproduce the copyrighted work in copies; (b) the right to prepare derivative works of the copyrighted work; and (c) the right to distribute copies of the copyrighted work to the public.

20. Pursuant to 17 U.S.C. § 105, an infringer is one who violates the exclusive right of the copyright owner as provided by 17 U.S.C. § 106.

21. Defendant has had access to Plaintiff's copyright works, is copying Plaintiff's copyrighted works and is distributing copies of Plaintiff's copyrighted works within the United

States, all without the authorization of the Plaintiff and in violation of Plaintiff's rights under the Copyright Laws of the United States.

22. The acts of the Defendants have been willful, deliberate and despite Plaintiff's notice of copyright, all to the profit of Defendant and to the damage and injury of Plaintiff. Such damage and injury is irreparable and will continue unless the Court enjoins such infringement. The wrongful acts of the Defendants have caused the Plaintiff substantial monetary damage in an amount yet to be determined.

DEMAND FOR JUDGMENT

Wherefore, Plaintiff prays for entry of judgment in favor of Plaintiff and against the Defendant providing:

1. That Defendant, its officers, employees and agents, and all other persons acting in active concert or participation with it, be preliminarily, and then permanently enjoined from further infringement of Plaintiff's copyrights.
2. That all infringing articles be delivered to Plaintiff for destruction.
3. The Defendant pays Plaintiff the greater of Plaintiff's actual damages, Defendant's profits, or statutory damages as provided in 17 U.S.C. § 504(c).
4. That any monetary award be increased in accordance with 17 U.S.C. § 504(c)(2) as willful acts.
5. That Plaintiff be awarded its costs and attorney's fees incurred herein pursuant to 17 U.S.C. § 505.
6. And any other and further relief in favor of Plaintiff as the court deems just and equitable.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury of all issues so triable.

Date: February 26, 2008

s/Peter G. Nikolai

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