

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

Case No.: 5:08-cv-25

CULP, INC.,)	
)	
Plaintiff,)	
)	
v.)	<u>COMPLAINT</u>
)	
MORGAN FABRICS CORPORATION,)	
)	
Defendant.)	
)	
)	
_____)	

NATURE OF ACTION

1. Plaintiff Culp, Inc. (“Culp”) brings this action against defendant, Morgan Fabrics Corporation, (hereinafter referred to as “Defendant”) seeking injunctive relief and damages for Defendant’s willful copyright infringement in violation of 17 U.S.C. § 501 and the Common Law.

PARTIES AND JURISDICTION

2. Culp is a North Carolina corporation with its principal place of business in High Point, North Carolina.

3. Upon information and belief, Defendant is an Illinois corporation with its principal place of business in California.

4. Defendant is conducting business within this jurisdiction, and is subject to the jurisdiction of this Court. Upon information and belief, Defendant maintains a warehouse and/or showroom in Hickory, North Carolina.

5. Jurisdiction is proper in this Court based on 28 U.S.C. §§ 1331, 1338(a), 1338(b) and this Court's supplemental jurisdiction.

6. Venue is proper in this Court based on 28 U.S.C. §§ 1391 and 1400(a).

FACTUAL BACKGROUND
Facts Concerning Culp and Its Copyrighted Fabric Designs

7. Culp is one of the world's largest marketers of bedding and upholstery fabrics for furniture.

8. In 2002, Culp created a fabric design called "Carmel Valley." Culp is the owner of a federal copyright registration for this fabric design as follows: VA 1-622-334 (The "Culp Copyrighted Design").

9. A true and accurate copy of the copyright registration is attached hereto as Exhibit A and incorporated herein by reference.

10. Culp has displayed its Culp Copyrighted Design at various trade events, including at The Furniture Market in High Point, North Carolina.

Facts Concerning Defendant's Infringement of the Culp Copyrighted Design

11. Upon information and belief, Defendant is an importer, converter and marketer of upholstery fabrics.

12. Defendant is selling fabric which is identical to the Culp Copyrighted Design.

13. Upon information and belief, Defendant attends and markets its products at various trade events, including at The Furniture Market in High Point, North Carolina.

14. Upon information and belief, Defendant has had access to the Culp Copyrighted Design through various sources, including through trade events, such as The Furniture Market in High Point, North Carolina.

15. Defendant's sale of fabric identical to the Culp Copyrighted Design is an infringement of Culp's rights pursuant to Title 17 of the United States Code.

16. Upon information and belief, Defendant's infringement was either willful or with reckless disregard of Culp's rights.

17. Defendant's infringing activities have caused and will cause harm to Culp's sales, Culp's goodwill, and the reputation of Culp's products.

18. Culp's ability to maintain the unique, high-quality reputation for its products is hampered by Defendant's sales of a high volume of its products, regardless of whether they are high-end or discount.

19. Further, the infringing products sold by Defendant, while virtually identical to Culp's, are of substantially lesser quality, further tarnishing its reputation and goodwill.

20. Culp has never licensed nor otherwise authorized Defendant to produce the Culp Copyrighted Design or any derivatives thereof.

21. Culp's remedies at law are not adequate to fully compensate for the injury caused and continuously being caused by Defendant's acts of infringement. Injunctive relief is therefore necessary to prevent continuing and escalating damage and injury to Culp.

FIRST CLAIM FOR RELIEF
Copyright Infringement—17 U.S.C. § 501

22. The allegations of paragraphs 1 through 21 are hereby realleged and incorporated as if fully set forth herein.

23. Culp owns a federal copyright registration in the fabric being infringed by Defendant.

24. Defendant has infringed the Culp Copyrighted Design.

25. Upon information and belief, Defendant has knowingly or willfully infringed the Culp Copyrighted Design.

26. The natural, probable and foreseeable result of Defendant's wrongful conduct has been and will continue to be to deprive Culp of the benefits of the copyright registrations in its fabric designs, to deprive Culp of goodwill, and to injure Culp's relations with present and prospective customers.

27. By selling its infringing fabric without the permission of Culp, Defendant has violated the exclusive right of Culp to reproduce its copyrighted works pursuant to 17 U.S.C. § 106(1), and/or to make derivative works pursuant to 17 U.S.C. § 106(2), and/or to distribute its copyrighted works pursuant to 17 U.S.C. § 106(3) and/or to display its copyrighted works publicly pursuant to 17 U.S.C. § 106(5). These acts constitute copyright infringement in violation of 17 U.S.C. § 501.

28. Culp has suffered damages including lost sales and profits as a result of Defendant's wrongful conduct and its production and sale of infringing products.

29. Defendant's wrongful conduct has also deprived and will continue to deprive Culp of business opportunities.

30. Upon information and belief, unless enjoined by this Court, Defendant intends to continue its course of conduct and to wrongfully copy, use, infringe upon, republish and otherwise profit from the Culp Copyrighted Designs. As a direct and proximate result, Culp has sustained and will continue to sustain irreparable harm.

31. Culp has no adequate remedy at law to redress all of the injuries that Defendant has caused and intends to cause by its conduct and will continue to suffer irreparable harm until Defendant's actions are enjoined by the Court.

SECOND CLAIM FOR RELIEF
Preliminary and Permanent Injunction

32. The allegations of paragraphs 1 through 31 are hereby realleged and incorporated as if fully set forth herein.

33. The damages and injuries caused to Culp by reason of Defendant's violations of 17 U.S.C. § 501 constitute damages and injuries which are ongoing and for which there is no adequate remedy at law.

34. Defendant's violations of 17 U.S.C. § 501 are likely to continue to cause confusion and mistake among retailers and consumers if it is not preliminarily and permanently enjoined from infringing the Culp Copyrighted Designs.

35. By reason of the foregoing, Culp is entitled to a preliminary and permanent injunction, prohibiting Defendant from using, manufacturing, promoting, selling or distributing the Culp Copyrighted Designs or any derivatives thereof.

WHEREFORE, for the foregoing reasons, Culp prays that:

1. Defendant, its officers, agents, representatives, employees, and attorneys, and those persons acting in concert or in participation with Defendant be preliminarily and permanently enjoined from:

- (a) infringing the Culp Copyrighted Designs;
- (b) directly or indirectly reproducing, selling, distributing, displaying or creating derivative works based on the Culp Copyrighted Designs without permission or authority from Culp; and
- (c) any other conduct which would cause or is likely to cause confusion, mistake, or misunderstanding in the minds of the public with regard to the Culp Copyrighted Designs;

2. Defendant be ordered to pay to Culp all damages suffered as a result of its infringing activities;

3. Defendant be ordered to disgorge all profits and other gains obtained as a result of its wrongful acts of infringement as described herein;

4. Defendant be ordered under 17 U.S.C. § 503(a) to deliver up for impounding during the pendency of this action all infringing copies of the Culp Copyrighted Design or any derivative thereof in Defendant's possession;

5. Defendant be ordered under 17 U.S.C. § 503(b) as part of a final judgment to destroy all infringing copies of the Culp Copyrighted Design or any derivative thereof;

6. Defendant be ordered to pay to Culp all punitive or exemplary damages as provided by law;

7. Defendant be ordered to pay to Culp its costs, including reasonable attorneys' fees; and

8. The Court grant such other and further relief as may be just and proper.

Jury Demand

Culp hereby demands trial by jury of all issues so triable.

This the 12TH day of March, 2008.

s/Allison G. Runge

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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

Registration Number:

VA 1-622-334

Effective date of registration:

October 15, 2007

Title

Title of Work: Carmel Valley

Nature of Work: Fabric Design

Completion/Publication

Year of Completion: 2002

Date of 1st Publication: April 11, 2002

Author

Author: Culp, Inc.

Author Created: 2-Dimensional artwork

Work made for hire: Yes

Domiciled in: United States

Copyright claimant

Copyright Claimant: Culp, Inc.

1823 Eastchester Drive, High Point, NC, 27265

Limitation of copyright claim

Previously registered: No

Certification

Name: Karl S. Sawyer, Jr.

Date: October 12, 2007

