

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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NICOLE MILLER, LTD., a New York	:	Civil Action No.: 07 CV 371 (DLC)
Corporation and KOBRA	:	
INTERNATIONAL, LTD., a New York	:	
Corporation,	:	
	:	AMENDED COMPLAINT
	:	
Plaintiff,	:	
	:	
- against -	:	
	:	
RUBBER DUCKY PRODUCTIONS, INC., a	:	
California Corporation; GABRIELLA	:	
BOUTIQUE, a New York business, LUCIA, a	:	
New York business; JOHN DOES 1-15; XYZ	:	
CORPORATIONS 2-15,	:	
	:	
	:	
	:	
Defendants.	:	
	:	
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Plaintiffs Nicole Miller, Ltd. and Kobra International, Ltd. hereby file this Complaint on personal knowledge as to their own activities and on information and belief as to the activities of others:

THE PARTIES

1. Plaintiff Nicole Miller, Ltd. is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 525 Seventh Avenue, New York, New York 10018.

2. Plaintiff Kobra International, Ltd. is a corporation, organized and existing under the laws of the State of New York, having its principal place of business at 525 Seventh Avenue,

New York, New York 10018. Nicole Miller, Ltd. and Kobra International, Ltd. are collectively referred to as “Nicole Miller” or “Plaintiff.”

3. Upon information and belief, Defendant Rubber Ducky Productions, Inc. (“Rubber Ducky”) is a corporation organized and existing under the laws of the State of California, transacting business within the State of New York and throughout the United States, and having its principal place of business at 1100 Wall Street, Suite 103, Los Angeles, California 90015.

4. Upon information and belief, Gabriella Boutique (“Gabriella Boutique”) is a business located at 1410 Broadway, New York, New York 10018, transacting business within the State of New York.

5. Upon information and belief, XYZ Corporation 1 has been identified as Lucia (“Lucia”), a company located at 243 Smith Street, Brooklyn, New York 11231, transacting business within the State of New York.

6. Upon information and belief, defendants, including yet to be identified JOHN DOES and JANE DOES, 1-10, are present and/or doing business in New York, and are subject to the jurisdiction of this Court. The identities of the various JOHN DOE and JANE DOE defendants are not presently known and the Complaint herein will be amended to include the name or names of these individuals when such information becomes available (each a “Doe” and collectively, “Does”).

7. Defendants John Does 1-15 and XYZ Corporations 2-15, whose identities and addresses are presently unknown to Nicole Miller, are individuals and corporate entities that, upon information and belief, have made, imported, offered to sell or sold to the Defendants or the infringing items complained of herein. The Complaint herein will be amended, if

appropriate, to include the name or names of these individuals when such information becomes available. Rubber Ducky, Gabriella Boutique, Lucia, John Does 1-15 and XYZ Corporations 2-15 are collectively referred to as “Defendants.”

JURISDICTION AND VENUE

8. This is an action for copyright infringement in violation of the Copyright Law, 17 U.S.C. §§501, *et. seq.*, all of which activities have occurred in this District and elsewhere in commerce.

9. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1332, 1338(a), and 17 U.S.C. §501.

10. This Court has personal jurisdiction over the Defendants in that Defendants do business throughout the State of New York including this District.

11. Venue is proper in this District pursuant to 28 U.S.C. §§1391 and 1400(a) in that the Defendants are subject to personal jurisdiction in this Judicial District.

FACTUAL BACKGROUND

A. NICOLE MILLER PRODUCTS AND SALE OF ITS COPYRIGHTED DESIGNS

12. Nicole Miller is one of the leading designers of clothing and fashion accessories in the World. Nicole Miller’s designs have been prominently featured in numerous magazines, television shows, and other forms of media. Nicole Miller’s designs are also frequently worn by celebrities at prestigious events. Accordingly, Nicole Miller has become a preeminent symbol of luxury apparel and fashion goods of the highest quality (“Nicole Miller Products”).

13. Nicole Miller is the exclusive owner of the copyright in many fabric designs, including a design known as “Africa”, which is the subject of U.S. Copyright Registration No. VA-1-378-665 registered on November 2, 2006 (the “Africa Design”). A true and accurate copy of the Certificate of Registration and related deposit for the Africa Design is attached hereto as

Exhibit A. In March 2006, Nicole Miller introduced the Africa Design on dress style # BM0155, and has sold over 1,000 dresses of the Africa Design to date. Nicole Miller has sold out of the Africa Design dresses.

14. Nicole Miller is also the exclusive owner of the copyright in a design known as “Tiki,” which is the subject of U.S. Copyright Registration No. VA-1-387-646 registered on December 28, 2006 (the “Tiki Design”). A true and accurate copy of the Certificate of Registration and related deposit for the Tiki Design is attached hereto as Exhibit B. In January 2006, Nicole Miller introduced the Tiki Design on dress style # BH0351, and has sold more than 2,000 dresses with the Tiki Design. The Tiki Design dresses are also sold out.

15. The registration of the Africa and Tiki Designs creates a legal presumption in favor of Nicole Miller with respect to the ownership of and the validity of the copyrights in these works (hereinafter the Africa and Tiki Designs may be referred to separately or collectively as the “Nicole Miller Copyrights”).

16. Nicole Miller Products bearing the Nicole Miller Copyrights are sold in high-end department stores, such as Bloomingdale’s, Neiman Marcus and Nordstrom, as well as in Nicole Miller boutiques throughout this District and elsewhere in the United States. A copy of the Nicole Miller store locator for New York is attached hereto as Exhibit C. Nicole Miller has spent millions of dollars and has expended significant effort in advertising, promoting and developing the Nicole Miller Products throughout the world. Nicole Miller has advertised the Africa Design in the April 2006 issues of *Elle* and *In Style* magazines. Copies of these advertisements are attached hereto as Exhibit D. As a result of such advertising and expenditures, Nicole Miller has established considerable goodwill in the Nicole Miller Products, namely the Africa and Tiki Designs.

B. RUBBER DUCKY DEFENDANT'S UNLAWFUL ACTS

17. On or about October 2006, Nicole Miller learned that Rubber Ducky was manufacturing and offering for sale dresses that bear designs identical to the Africa and Tiki Designs (the "Infringing Products"). True and accurate copies of photographs of the Infringing Products are attached hereto as Exhibit E.

18. On December 1, 2006, Nicole Miller, through its attorneys, Greenberg Traurig LLP, sent a cease and desist letter to Rubber Ducky. A true and accurate copy of the cease and desist letter is attached hereto as Exhibit F. To date, no response has been received to the cease and desist letter.

19. Upon information and belief, Rubber Ducky has distributed and/or sold the Infringing Products throughout the United States, including in New York and this District. Rubber Ducky has sold dresses that bear designs identical to the Africa Design (the "Infringing Africa Products") to stores within New York and this District, including to Defendant Gabriella Boutique.

20. Upon information and belief, Rubber Ducky has willfully and/or negligently infringed the Nicole Miller Copyrights by manufacturing, distributing, advertising, selling and/or offering for sale infringing products bearing the Africa and Tiki Designs without Nicole Miller's authorization. Nicole Miller has neither licensed nor authorized Rubber Ducky to reproduce, adapt and/or display Nicole Miller's copyrighted Africa and Tiki Designs or to manufacture, distribute, advertise, sell or offer to sell apparel that are infringing copies of the Nicole Miller Products.

21. Upon information and belief, Rubber Ducky willfully continues to sell, offer to sell, manufacture, and/or distribute the Infringing Products despite being put on notice by Nicole

Miller of its copyright rights in the Africa and Tiki Designs and the infringing nature of the Infringing Products.

22. Upon information and belief, the conduct of Rubber Ducky was and is willfully done with knowledge of, and/or reckless disregard for, Nicole Miller's rights in its copyrighted Africa and Tiki Designs for the purpose of damaging Nicole Miller's business and profiting from the unauthorized manufacture, distribution, and sale of products bearing the Nicole Miller Copyrights.

C. GABRIELLA BOUTIQUE DEFENDANT'S UNLAWFUL ACTS

23. On or about October 2006, Nicole Miller learned that Gabriella Boutique was selling a dress bearing designs identical to the Africa Design, manufactured by Rubber Ducky, in its New York store. True and accurate copies of printouts showing the Infringing Africa Products being offered for sale are attached hereto as Exhibit G.

24. On December 1, 2006, Nicole Miller, through its attorneys sent a cease and desist letter to Gabriella Boutique. A true and accurate copy of the cease and desist letter is attached hereto as Exhibit H.

25. Upon information and belief, Gabriella Boutique has distributed, offered for sale and/or sold the Infringing Africa Products in New York and this District.

26. Upon information and belief, Gabriella Boutique has willfully and/or negligently infringed the Africa Design by selling and/or offering for sale the Infringing Africa Products without Nicole Miller's authorization. Nicole Miller has neither licensed nor authorized Gabriella Boutique to advertise, sell or offer to sell apparel that are infringing copies of the Nicole Miller Products, including the Africa Design.

27. Upon information and belief, despite being put on notice by Nicole Miller of the Africa Design and the infringing nature of the Infringing Africa Products, Gabriella Boutique willfully continues to sell, offer to sell, and/or distribute the Infringing Africa Products.

28. Upon information and belief, the conduct of Gabriella Boutique was and is willfully done with knowledge of, and/or reckless disregard for, Nicole Miller's rights in the Africa Design for the purpose of damaging Nicole Miller's business and profiting from the unauthorized manufacture, distribution, and sale of the Infringing Africa Products.

D. LUCIA DEFENDANT'S UNLAWFUL ACTS

29. On or about January 2007, Nicole Miller learned that Lucia was selling a dress bearing designs identical to the Africa Design, manufactured by Rubber Ducky, in its New York store. True and accurate copies of printouts showing the Infringing Africa Products being offered for sale are attached hereto as Exhibit I.

30. On January 18, 2007, Nicole Miller, through its attorneys sent a cease and desist letter to Lucia. A true and accurate copy of the cease and desist letter is attached hereto as Exhibit J. No response has been received to the cease and desist letter.

31. Upon information and belief, Lucia has distributed, offered for sale and/or sold the Infringing Africa Products in New York.

32. Upon information and belief, Lucia has willfully and/or negligently infringed the Africa Design by selling and/or offering for sale the Infringing Africa Products without Nicole Miller's authorization. Nicole Miller has neither licensed nor authorized Lucia to advertise, sell or offer to sell apparel that are infringing copies of the Nicole Miller Products, including the Africa Design.

33. Upon information and belief, despite being put on notice by Nicole Miller of the Africa Design and the infringing nature of the Infringing Africa Products, Lucia willfully continues to sell, offer to sell, and/or distribute the Infringing Africa Products.

34. Upon information and belief, the conduct of Lucia was and is willfully done with knowledge of, and/or reckless disregard for, Nicole Miller's rights in the Africa Design for the purpose of damaging Nicole Miller's business and profiting from the unauthorized manufacture, distribution, and sale of the Infringing Africa Products.

FIRST CLAIM FOR RELIEF
(Copyright Infringement Under 17 U.S.C. §501)

35. Nicole Miller realleges and incorporates by reference the allegations above.

36. Nicole Miller is the owner of the Nicole Miller Copyrights.

37. Nicole Miller has never authorized Defendants to make copies of the Nicole Miller Copyrights, or to distribute or display those designs. Defendants' acts of copying, distributing and displaying the Nicole Miller Copyrights, which have been willful and deliberate, have been performed without license, authorization or consent from Nicole Miller.

38. As a direct and proximate result of Defendants' acts, Nicole Miller has suffered damages to its valuable Nicole Miller Copyrights, and other damages in an amount to be proved at trial.

39. Nicole Miller does not have an adequate remedy at law, and will continue to be damaged by Defendants' copyright infringement unless this Court enjoins Defendants from such fraudulent business practices.

40. Defendants have realized unjust profits, gains and advantages as a proximate result of its infringement.

PRAYER FOR RELIEF

WHEREFORE, Nicole Miller prays for the following relief against Defendants:

1. That Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it be permanently enjoined from directly or indirectly infringing the Nicole Miller Copyrights in any manner, including, but not limited to, reproducing, adapting, and/or displaying the Nicole Miller Copyrights by manufacturing, distributing, importing, exporting, advertising, selling, and/or offering for sale, or causing others to do so, any product, including without limitation clothing, bearing designs substantially similar to the Nicole Miller Copyrights;

2. That Defendants be required to effectuate the recall, removal, and return from commercial distribution and/or public display of:

(a) Any product bearing a design substantially similar to the Nicole Miller Copyrights manufactured, distributed, imported, exported, advertised, sold, and/or offered for sale by Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it; and

(b) Any promotional and/or advertising materials, labels, packaging, or other items bearing a design substantially similar to the Nicole Miller Copyrights used or displayed by Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it; and

(c) Any mold, pattern, or other item used by Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all

persons and entities acting for, with, by, through, or under it, to manufacture any product, promotional and/or advertising materials, labels, packaging, or other item bearing a design substantially similar to the Nicole Miller Copyrights;

3. That Defendants be required to deliver up for destruction all of the items called for by Paragraph 2 of this Prayer for Relief, above, as well as any remaining products, advertising, packaging, molds, patterns, or other items bearing a design substantially similar to the Nicole Miller Copyrights, or used to manufacture any item bearing a design substantially similar to the Nicole Miller Copyrights, that are in Defendants' custody or control;

4. That Defendants, within thirty (30) days after service of judgment with notice of entry thereof upon it, be required to file with the Court and serve upon Plaintiff a written report under oath setting forth the details of how Defendants have complied with Paragraphs 1 through 3 of this Prayer for Relief, above;

5. For an award of actual damages sustained by Plaintiff;

6. For an award of Defendants' profits attributable to its copyright infringement;

7. If elected by Plaintiff, for the maximum statutory damages as permitted under the Copyright Act;

8. For such other amounts as may be proper under 17 U.S.C. § 504;

9. For an award of costs and attorneys' fees pursuant to 17 U.S.C. § 505;

10. For prejudgment interest as permitted by law;

11. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all triable issues raised by this Complaint.

Dated: January ____, 2007
New York, New York

Respectfully submitted,

GREENBERG TRAURIG, LLP

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Ltd.*