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One of a Kind, LV, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ONE OF A KIND, LV, LLC, a Nevada
limited liability company,

Plaintiff,

vs.

SHAHIDA CLAYTON, an individual, and
SHYLAA CREATIONS, a business of
unknown form,

Defendants.

Case No. 2:07-CV-

COMPLAINT

JURY DEMAND

For its Complaint, Plaintiff One of a Kind, LV, LLC alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) & (b).

2. This Court has personal jurisdiction over Defendants because they regularly conduct business in this judicial district and the claims asserted arise of their conduct in this judicial district.

3. Venue is proper in this judicial district because a substantial portion of the events underlying this action occurred in this judicial district and the situs of the property at issue in this action is deemed to have a situs in this judicial district.

FACTUAL ALLEGATIONS

4. One of a Kind, LV LLC, dba Instyle Trend (“Instyle”) is in the business of selling fashion clothing as a wholesaler and retailer.

5. In early 2006, Instyle met Defendants at the ASD trade show in Las Vegas. Defendants showed Instyle samples of saris made from vintage scraps of fabric. Instyle subsequently agreed to purchase saris from Defendants and Defendants agreed to supply the saris with “Instyle” private labels to Instyle.

6. In or around January 2007, based on Instyle’s success in selling Defendants products, Instyle and Defendants agreed that Defendants would grant Instyle the exclusive right to distribute Defendants’ saris in Las Vegas, Nevada.

7. In early 2007, Instyle hired a photographer/graphic artist to create brochures featuring the saris supplied by the Defendants. A true and accurate copy of the finished brochure is attached as Exhibit A. The brochure (including each of the photographs contained in the brochure) are original work of authorship fixed in a tangible medium of expression.

8. In or around February, 2007, Defendants asked Instyle if Defendants could use Instyle’s brochure for distribution as Defendants’ own brochure. Instyle refused to grant the Defendants permission to use Instyle’s brochure.

9. On or about May 2007, Instyle applied for a federal copyright registration for the Instyle brochure (“Copyrighted Work”). A true and accurate copy of the copyright application is attached hereto as Exhibit B.

10. Instyle has learned that Defendants are supplying saris to Instyle’s competitors and customers in Las Vegas. Defendants have even mistakenly delivered to Instyle several saris that bear the private label of Instyle’s competitor, Iris Impressions.

11. Instyle has learned that Defendants have used Instyle’s Copyrighted Work, including approximately twenty-two (22) photographs therefrom, on the home page of Defendants’ web site at <shylaacreations.com>. Defendants attempted to conceal their use of Instyle’s Copyrighted Work by eliminating the “INSTYLE” mark used in the

1 background of the photos, removing the heads of the models in the photos, and changing
2 the coloring of each of the photos.

3 **COUNT I**
4 **(Copyright Infringement under the**
5 **Copyright Act, 17 U.S.C. § 101 et seq.)**

6 12. Plaintiff incorporates the allegations set forth in the preceding paragraphs
7 as if set forth herein.

8 13. Defendants had access to Plaintiff's Copyrighted Work.

9 14. Defendants have created works that are substantially similar to Plaintiff's
10 Copyrighted Work.

11 15. Defendants infringed Plaintiff's rights in its Copyrighted Work by
12 reproducing the Copyrighted Work, creating a derivative work based thereon, and
13 publicly displaying the Copyrighted Work and/or the derivative work.

14 16. As a direct and proximate result of such copyright infringement, Plaintiff
15 will suffer monetary loss and irreparable injury to its business, reputation, and goodwill.

16 17. Defendants' infringement was willful.

17 18. Each of the Defendants is directly, vicariously, contributorily and/or jointly
18 liable for the infringing conduct.

19 **COUNT II**
20 **(Breach of Contract)**

21 19. Plaintiff incorporates the allegations set forth in the preceding paragraphs
22 as if set forth herein.

23 20. Plaintiff and Defendants entered into a valid and binding contract.

24 21. As a direct and proximate result of Defendants' breach of contract, Plaintiff
25 has suffered damages in an amount to be determined at trial.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff respectfully requests that the Court:

28 A. Grant temporary, preliminary and permanent injunctive relief prohibiting
Defendants from copying, publicly displaying, distributing, or creating derivative works
based on the Copyrighted Works;

1 B. Award compensatory, consequential, statutory, exemplary, and other
2 damages (including, but not limited to, actual damages, profits, award for corrective
3 advertising) to Plaintiff in an amount to be determined at trial;

4 C. Award attorneys' fees and costs to Plaintiff; and

5 D. Grant to Plaintiff whatever other relief is just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff demands trial by jury on all claims.

8 DATED this 30th day of July, 2007.

9 LEWIS AND ROCA LLP

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11 /s/ _____
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