

07-CV-01178-CMP



UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BLUE NILE, INC., a Delaware corporation,

Plaintiff,

GOLDENWEST DIAMOND CORPORATION, a California corporation, d/b/a The Jewelry Exchange, The Jewelry Source, and The Jewelry Factory,

Defendant.

COLT 1178 RSM

JURY DEMAND

T. INTRODUCTION

- 1. This action arises from Goldenwest Diamond Corporation's knowing, willful and intentional copying of photographs displayed on Blue Nile, Inc.'s website.
- Founded in 1999, Blue Nile, Inc. ("Blue Nile") has rapidly grown into the largest 2. and most successful online retailer of certified diamonds and fine jewelry.
 - 3. The Blue Nile websites are the heart of its business.
- 4. Building on the premise that, with the right information and tools, educated buyers will purchase higher-end jewelry on the Internet, Blue Nile developed and continues to refine its retail diamond and fine jewelry websites to do just that. Blue Nile's websites are

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renowned for their industry-leading customization and innovative tools to help customers visualize final customized products.

5. Through its websites, Blue Nile has not only sold goods, Blue Nile has built the "Blue Nile" brand. Today, "Blue Nile" is synonymous with high quality diamonds and fine jewelry and with high-quality online user interface, information and services that provide a nearperfect customer experience.

II. **PARTIES**

- 6. Plaintiff Blue Nile is a Delaware corporation that maintains its principal place of business at 705 Fifth Avenue South, Suite 900, Scattle, Washington 98104. Blue Nile owns and operates an online diamond and fine jewelry retail sales business through the websites www.bluenile.com, www.bluenile.ca, and www.bluenile.co.uk.
- 7. Defendant Goldenwest Diamond Corporation ("Goldenwest Diamond") is a California corporation with its principal place of business in California. Goldenwest Diamond operates an online retail jewelry business under the domain name www.jewelryexchange.com. The www.jewelryexchange.com website is distributed and displayed in interstate commerce and within this judicial district. The Jewelryexchange.com business competes directly with Blue Nile in online retail sales of diamonds and jewelry.

III. JURISDICTION AND VENUE

- 8. The Court has subject-matter jurisdiction over Blue Nile's claims pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (copyright).
- 9. The Court also has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between the parties and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.
- 10. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because a substantial part of the events giving rise to Blue Nile's claims occurred in this district and because Goldenwest Diamond is subject to personal jurisdiction in this district.

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IV. FACTS AND BACKGROUND

THE BLUE NILE COMPANY AND BUSINESS A,

- 11. Blue Nile has, since 1999, provided diamond and fine jewelry retail services over the Internet. It is today the market leader in the online diamond and fine jewelry industry.
- 12. Blue Nile provides its services and products through the websites, www.bluenile.com (serving the United States), www.bluenile.ca (serving Canadian customers), and www.bluenile.co.uk (serving the United Kingdom). Blue Nile's websites are available globally, and it sells diamonds and fine jewelry via its websites in interstate commerce throughout the United States, and elsewhere.
- With no "brick and mortar" stores, the Blue Nile websites are Blue Nile's 13. storefronts and sales clerks. The websites attract the customers, the websites answer questions, and the websites sell the diamonds and jewelry. As an Internet-only company in the high-end jewelry market, one of Blue Nile's highest priorities is the customer interface of its websites.
- In Internet commerce, particularly involving the high-end diamond and jewelry 14. markets, detailed, high-quality imagery is critical to success. High-quality images give online customers a certain level of comfort that the products purchased will be of suitable quality and that the retailer is really an expert in the field.
- As Internet retail experts have commented, Blue Nile is "admittedly obsessed" 15. with the concept of a perfect online order experience.
- 16. Blue Nile provides extraordinary detail in every aspect of its website and customer experience, from the photographs that display diamonds on Blue Nile's websites to the depth of data accessible to customers to the navigation and selection tools available to customers on the websites.
- Through this investment and diligent attention to detail, Blue Nile has proven that 17. luxury items can be sold online. In an online jewelry market where the average purchase is about \$300, Blue Nile customers spend about \$1,536 on each purchase. In addition, where the

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industry average sale price for an engagement ring is about \$2,800, a typical engagement ring order at Blue Nile is about \$5,500.

B. THE BLUE NILE WEBSITES: WWW.BLUENILE.COM

- 18. To attract and build the confidence of customers, Blue Nile's websites explain the complexities of diamond and fine jewelry selection through carefully crafted text, through excellent, sharp imagery, and in clear and creative organization and compilations on its websites that are easy for even novice and other potential buyers to navigate and understand.
- Blue Nile's websites include exquisite photographs of diamonds that illustrate the 19. many beautiful stones and jewelry items Blue Nile offers.
- Blue Nile's diamond photographs are particularly distinctive. The qualities of cut 20. diamonds and the way diamonds reflect light makes them extremely difficult, costly and timeconsuming to photograph. Also as a result of diamonds' qualities and the way they reflect light, every photograph of a diamond is as unique as a fingerprint.

C. PROTECTION OF BLUE NILE'S COPYRIGHTS

- 21. Due to the nature of its business—sales of high-end items exclusively over the Internet—intellectual property is one of Blue Nile's most important and most valued assets. Consequently, Blue Nile invests significant resources into its intellectual property and carefully protects its intellectual property rights.
- 22.. For example, Blue Nile owns all rights, title and interest, including copyrights, in and to the photographs of diamonds displayed on its websites. Blue Nile has registered copyrights in the diamond photographs displayed on its websites, including the following registrations for the preeminent Emerald, Heart, Marquise, Pear, Princess, Oval, Radiant, and Round cut diamond photographs displayed on Blue Nile websites:

Reg. No.	Reg. Date	Title
TX 6-066-539	Sept. 23, 2004	Diamond Wire Frames, V 1

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Reg. No.	Reg Date	Tite
VA 1-266-455	May 25, 2004	Product Line Fall 2003, Blue Nile
VA 1-264-435	May 25, 2004	Product Line 2000, Blue Nile

A true and correct copy of each registration certificate is attached as Exhibit A. Screen shots of the registered photographs displayed on BlueNile.com are attached as Exhibit B.

D. JEWELRYEXCHANGE.COM IS WILLFULLY AND UNLAWFULLY COPYING BLUE NILE'S PHOTOGRAPHS

- 23. Jewelryexchange.com has and is willfully and unlawfully copying Blue Nile's protected photographs.
- Jewelyexchange.com copies these Blue Nile copyright-registered photographs on 24. its website to exemplify Emerald, Heart, Marquise, Pear, Princess, Oval, Radiant, and Round diamonds to its viewers. Screen shots of these photographs on Jewelryexchange.com's website are attached as Exhibit C.

V. CLAIM

COPYRIGHT INFRINGEMENT, 17 U.S.C. § 101 et seq.

- 25 Blue Nile realleges and incorporates by reference the allegations in paragraphs 1 through 24 above as if fully set forth herein.
 - 26. Blue Nile has registered copyrights in its unique and original photographs.
- Jewelryexchange.com had access to Blue Nile's websites, including the 27. photographs on Blue Nile's websites.
- Jewelryexchange.com copied and/or created derivative works from the 28. photographs on Blue Nile's websites.
- The photographs on the Jewelryexchange.com website arc substantially similar to 29. Blue Nile's original copyright-protected photographs.

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- 30. Jewerlyexchange.com is not licensed or authorized by Blue Nile to use Blue Nile's copyrighted works.
- At all times relevant, Jewelryexchange.com obtained direct financial benefit from 31. the infringement and had the right and ability to control the infringing conduct, and/or intentionally induced, encouraged, caused or materially contributed to the infringement.
- 32. The foregoing acts of Jewelryexchange.com constitute direct infringement, vicarious infringement and/or contributory infringement of Blue Nile's exclusive rights in its copyrighted works under 17 U.S.C. § 106.
- Upon information and belief, Jewelryexchange.com's actions were intentional, 33. willful, wanton and performed in disregard of the rights of Blue Nile.
- 34. Blue Nile has been and will continue to be damaged, and Jewelryexchange.com has been unjustly enriched, by Jewelryexchange.com's unlawful infringement of Blue Nilc's copyrighted works in an amount to be proven at trial.

VI. JURY DEMAND

35. Pursuant to Federal Rule of Civil Procedure 38(b), Blue Nile demands a trial by jury as to all issues so triable in this action.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiff Blue Nile, Inc. prays for the following relief:

- A preliminary injunction and permanent injunction pursuant to 17 U.S.C. § 502 enjoining and restraining Goldenwest Diamond, its officers, agents, servants, employees and all persons in active concert or participation with them, during the pendency of this action and thereafter perpetually from copying, distributing, displaying, creating derivative works or otherwise using protected elements of Blue Nile's copyrighted works, including, but not limited to, Blue Nile's photographs;
- 2. An award of damages sustained by Blue Nile pursuant to 17 U.S.C. § 504(b) and as otherwise permitted by law;

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- 3. An accounting and award of profits and other unjust enrichment derived by Goldenwest Diamond from its unlawful conduct pursuant to 17 U.S.C. § 504(b) and as otherwise permitted by law;
- 4. At Blue Nile's election, an award of statutory damages pursuant to 17 U.S.C. § 504(c) and as otherwise permitted by law;
- 6. An award of Blue Nile's costs of suit and reasonable attorneys' fees pursuant to 17 U.S.C. § 505 and as otherwise permitted by law;
 - 7. An award of prejudgment and post-judgment interest; and
 - 8. For such further and other relief as the Court deems just and proper.

DATED: July 30, 2007

PERKINS COIE LLP

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Rebecca S. Engrav, WSBA No. 33275 Angela R. Martinez, WSBA No. 38326

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Attorneys for Plaintiff Blue Nile, Inc.

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EXHIBIT A

Certificate of Registration



This Certificate issued under the real pyright Office in accordance with tall 7, to a State 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

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TX 6-066-539

........ DATE OF REGISTRATION

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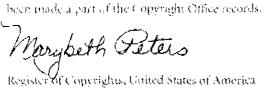
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This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

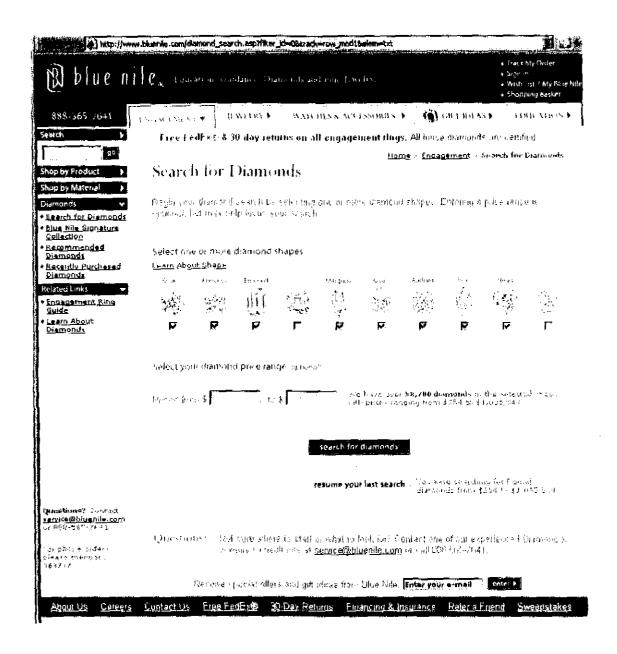
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EXHIBIT B



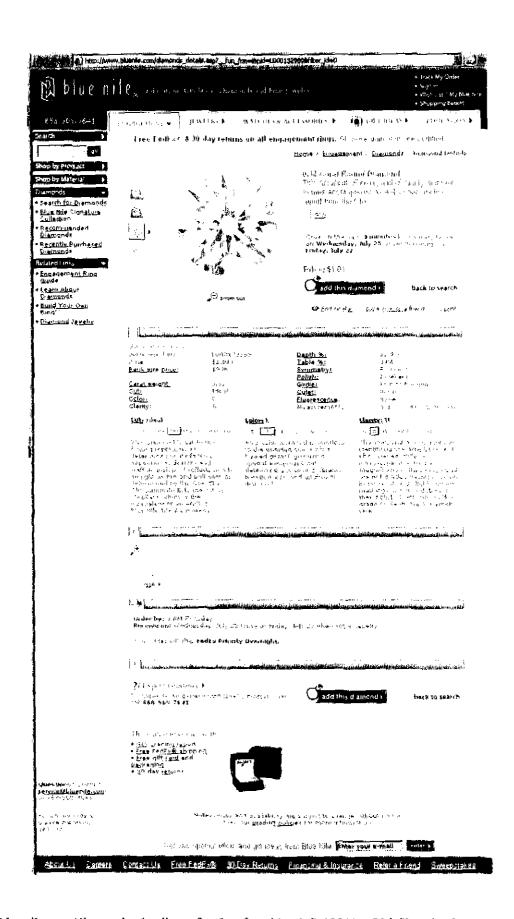
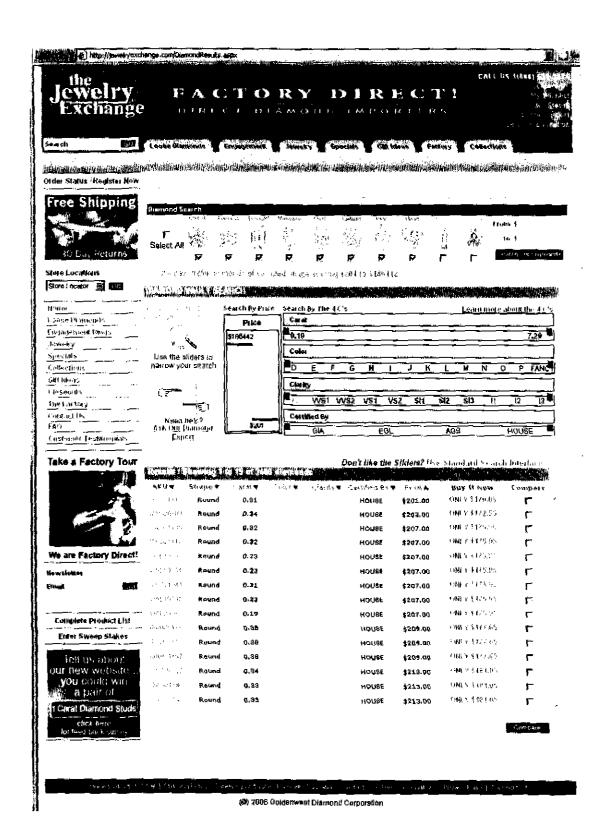


EXHIBIT C



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