UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

Olem Shoe Corp., A Florida corporation,

Plaintiff,

vs.

Case No.

07-22529-CIV-GRAHAM/O'SULLIVAN

FILED by JC D.C.					
Sept. 26, 2007					
CLARENCE MADDOX CLERK U.S. DIST. CT. S.D. OF FLA. MIAMI					

R&S Accessories, Inc., A New York corporation and Haim Cohen Saban a/k/a Victor Cohen, individually,

]	Def	end	ant	s.	

COMPLAINT FOR DECLARATORY RELIEF

COMES NOW the Plaintiff, Olem Shoe Corp. (hereinafter "Plaintiff" or "Olem"), and files its Complaint for Declaratory Relief, as follows:

NATURE OF ACTION

This is an action for declaratory judgment under 28 § 2201 of The United States Code.

JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 1338 and the Federal Declaratory Judgment Act, 28 USC 2201 and 2202, and has jurisdiction over the defendants, *inter alia*, by

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virtue of the fact that they have transacted business within the State of Florida in this District; and/or promoted and/or sold goods in the District.

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2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) and § 1400(b) because a substantial part of the events or omissions giving rise to the claim occurred in this District and Defendant does business in this district.

THE PARTIES

- 3. Plaintiff is a Florida corporation incorporated on March 27, 1964, and has been engaged in the business of importing and distributing footwear since at least as early as its incorporation date.
- 4. Defendant R&S Accessories, Inc. is a New York corporation incorporated on October 8, 1992, and has been engaged in the business of distributing shoes.
- 5. Upon information and belief, Defendant Victor Cohen, a/k/a
 Haim Cohen Saban, is a resident of New York and an officer of R&S Accessories,
 Inc.
- 6. The parties shall be referred to collectively as "Defendants", and separately as "Defendant R&S" and Defendant "Cohen."

 FACTS
- 7. On August 21, 2007, Defendants served Plaintiff with the letter, attached hereto as Exhibit "1". The letter included attachments purporting to be visual arts copyright certificate and graphic representations of a beaded shoe and a hand-bag which were inferred to have been the deposits made with the

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Copyright Office. This letter will be referred to as the Letter and the copyright certificate as the Copyright.

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- 8. The letter was authored by Defendant Cohen who signed as the president for Defendant R&S.
- 9. Upon information and belief, none of the shoes sold by Defendants purportedly covered by the Copyright include a copyright notice.
- 10. The Copyright papers list Defendant Cohen as the author of the two-dimensional work submitted to the Library of Congress as work made for hire. The claimant of the Copyright is Defendant R&S. The Copyright refers to sequin shoes and handbags describing the two-dimensional work submitted and allegedly infringed. There is no apparent relationship between the articles described in the application for registration and purportedly illustrated in the two-dimensional work deposited.
- 11. Plaintiff has imported and distributed shoes, including those made with sequins, for many years. Plaintiff does not generally import and sell handbags, with or without sequins, and it is only incidentally that it has sold hand bags.
- 12. One of the shoe styles that Plaintiff started commercializing, includes sequins arranged in an arbitrary design that Defendants claim infringes their Copyright.

ACTION FOR DECLARATORY JUDGMENT AND OTHER RELIEF

Plaintiff Olem realleges the matters set for in paragraphs 1 through 12, above.

- Counter-Defendant R&S has claimed in its Letter to be the owner 13. of the Copyright and that said Copyright has been infringed by Plaintiff Olem.
- The allegedly copyrighted material is part of the public domain 14. and/or not infringed and/or non-enforceable by Defendants and/or said Copyright is invalid.
- It is in the interest of justice that this Honorable Court declare the 15. rights of the parties with respect to the Copyright in the United States since there is a boun fide justifiable controversy between said parties.
 - There is no adequate remedy at law available to Plaintiff Olem. 16.
- Plaintiff Olem has suffered irreparable harm and will continue to 17. suffer irreparable harm in the absence of the relief prayed for herein.
- There is an actual present and practical need for the declaratory and 18. other relief prayed for herein.

WHEREFORE, Plaintiff Olem demands entry of a judgment against Defendant R&S, as follows:

Declaring said Copyright invalid and/or not infringed by Plaintiff a. and/or unenforceable.

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SANCHELIMA & ASSOC.

- b. Permanently enjoining Defendants from threatening Plaintiff Olem, its employees and distributors from bringing legal action based on the Copyright.
- c. Such other and further relief as the Court deems proper and just in light of the circumstances.

Respectfully submitted,

Olem Shoe Corp. 800 Northwest 21 Street Miami, Florida 33127

By:_

Roberto Olemberg, President

SANCHELIMA & ASSOCIATES, P.A. Attorneys for Plaintiff 235 Southwest Le Jeune Road Miami, Florida 33134

Tel. 305 447 1616 - Fax. 305 445 8484 --

By:

Jesus Fanchelima

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

Olem Shoe Corp., A Florida corporation,

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R&S Accessories, Inc., A New York corporation and Mr. Ham Cohen Saban a/k/a Victor Cohen, individually,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

EXHIBIT "1"

R&S Accessories Corp 330 5th ave Suite 302a NY,NY 10001 212 629 0530

Att, Mr Issac Olemberg / Mr Eduardo Delmonte Olem Shoe 800 NW 21 Street Miami, Florida 33127-4626 VIA UPS DELIVERY

Aug 21 2007

Dear Sirs,

It has come to our attention that Olem shoe corporation is offering for sale at trade shows (ATLANTA & WSA AUG 2007, B&STA NY MARCH 19-20 2007) beaded evening bags and shoes that are identical to our copyrighted works. The Reproduction of these works (We have enclosed a copy of the approved copyright application and a picture of the SOFIA bag and shoe) identical to our copyrighted bags and shoes is not authorized by anyone and constitutes infringement under the laws of the Untied States and international treaties and damaging to the reputation of R&S Accessories Corp.as a source of quality designers products.

We have enclosed

- 1. Our Postcard mailing from January 2006 with the SOFIA STYLE
- 2. Proof of copyright on the SOFIA pattern (SHOE & BAG)
- 3. Picture of Olem shoe #WR7510 or 37565 dated 2/11/2007, taken at the trade show in ATLANTA AUG 19-20 2007

In the light of the above, we demand that you immediately cease and desist reproducing and selling bag and shoes identical to R&S Accessories Corp. evening bags and shoes.

If we do not receive confirmation of compliance on or before Sept 25th 2007 we will have no alternative but to pursue all legal remedies available.

Sincered

Mr/Haim Cohen Sabah

R&S Accessories Corporation

TEL 212 629 0530 FAX 212 629 0536

EXHIBIT

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.

brubeth Geters

Register of Copyrights, United States of America

Form VA For a Work of the Visual Arts UNITRINGTATES COPYRIGHT ASSESSED

VA 1-360-403



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SJS 44 (Rev. 11/05)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provi by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initial Section September 1975.

P / N INE A ENTERPRETARIO						
I. (a) PLAINTIFFS		DEFENDA	.NTS sories, Inc., A New York corpo	ration Ham Cohen Sahor		
Olem Shoe Corp., A Florida corporation			Cohen, individually	ration, fram Concil Salva		
(b) County of Residence of First (EXCEPT I	Listed Plaintiff Miami-Dade Cou	County of Resi	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)			
(c) Attorney's (Firm Name, Address, and	nd Telephone Number)	l l	N LAND CONDEMNATION CASES, USE	THE LOCATION OF THE TR/		
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II. BASIS OF JURISDICTION	ON (Place an "X" in One Box Only)		OF PRINCIPAL PARTIES	(Place an "X" in One Box for Plai and One Box for Defendant)		
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VII. CAUSE OF ACTION	diversity): Declaratory judgment action for		ng and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless copyright infringement of two-dimensional work of visual art.			
	CHECK IF THIS IS A CLASS ACT UNDER F.R.C.P. 23			if demanded in complaint: :		

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