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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BLOODROSE ENTERPRISES, INC.	**ECF CASE**
Plaintiff,	Docket No. 07 CV 6445 GBD (HP)
-against-	**COMPLAINT and JURY DEMAND**
CONVERSE, INC., and KINWAY INDUSTRIES (U.S.A.) LTD.,	
Defendants.	

Bloodrose Enterprises, Inc. ("Bloodrose"), by its attorneys, Phillips Nizer LLP, for its complaint against defendants Converse, Inc. ("Converse"), and Kinway Industries (U.S.A.) LTD. ("Kinway"), alleges as follows:

JURISDICTION AND VENUE

1. This is an action for: (i) copyright infringement arising under the United States Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*; and (ii) Unfair Competition under New York common law.

2. This Court has jurisdiction of this action for defendants' copyright infringement under 28 U.S.C. §§ 1331, and 1338(a).

3. This Court has jurisdiction of this action for defendants' Unfair Competition pursuant to 28 U.S.C. § 1338(b) and on the basis of supplemental jurisdiction.

4. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(a). Process properly issues from this Court pursuant to Rule 4 of the Federal Rules of Civil Procedure.

THE PARTIES

5. Bloodrose is a corporation duly organized and existing under the laws of the State of New York with its principal place of business at 2297 Middle Country Road, Suite C, Centereach, New York 11720.

6. Bloodrose is a designer of original, highly stylized and individually designed tattoos. Bloodrose operates a custom tattoo studio for "by appointment only" clients.

7. Converse is, upon information and belief, a corporation duly organized under the laws of the Commonwealth of Massachusetts with a principal place of business at One High Street, North Andover, Massachusetts.

8. Upon information and belief Converse manufactures, imports, and/or distributes, among other things, footwear.

9. Upon information and belief Converse has sold in the United States and within this district footwear which infringes a copyrighted design owned by Bloodrose as set forth hereinafter.

10. Upon information and belief footwear sold by Converse has come into the stream of commerce within the State of New York and specifically within this district.

11. Upon information and belief Converse transacts business within this district, derives substantial revenue from intrastate and interstate commerce, and has sold footwear which infringes Bloodrose's copyrighted design within this district and also without this district having

injurious consequences to Bloodrose, and Converse is otherwise within the jurisdiction of this Court.

12. Kinway is, upon information and belief, a corporation duly organized under the laws of the State of New York with a principal place of business at 5 West 8th Street, New York, New York.

13. Upon information and belief Kinway is in the business of selling, among other things, footwear. It operates a retail store and a retail (e-commerce) web site and transacts business within this district, derives substantial revenue from intrastate and interstate commerce.

14. Upon information and belief Kinway has sold footwear which infringes Bloodrose's copyrighted design within this district and also without this district having injurious consequences to Bloodrose, and Kinway is otherwise within the jurisdiction of this Court.

FACTS COMMON TO ALL CLAIMS

15. Bloodrose is, and has been, prominent in the creation and application of original, highly stylized and individually designed tattoos for its "by appointment only" clients. Bloodrose has operated its private client tattoo studio since 2004.

16. Bloodrose's tattoos are exclusively one-of-a-kind designs for a single client and are usually large scale tattoos. Thus, it is important to Bloodrose's clients, and crucial to Bloodrose's business in achieving customer loyalty and recommendations, that Bloodrose's designs not be copied or used by anyone other than Bloodrose.

17. In or about May 2002 Bloodrose created an original work of art for use as a tattoo which Bloodrose named ***Bishamonten Back*** (the "Tattoo"). Bloodrose used the Tattoo exclusively for one of its clients. A photocopy of the full view and a close up view of the Tattoo and is attached hereto as Exhibit A.

18. Bloodrose first "published" (as that term is defined by the Copyright Act) the Tattoo in or about May 2002.

19. Bloodrose registered the Tattoo with the U.S. Copyright Office under Registration Number VA 1-401-596. A photocopy of the registration certificate for the Tattoo is attached hereto as Exhibit B.

20. The Tattoo is original and copyrightable under the Copyright Laws of the United States, 17 U.S.C. § 101, *et seq*.

21. Bloodrose has fully complied in all respects with the provisions of the United States Copyright Act with respect to the Tattoo.

22. At all times since it created the Tattoo, Bloodrose has been, and still is, the exclusive holder of all rights, title and interest in and to the copyright therein.

23. At some time after May 2002, upon information and belief, an individual providing design services to Converse discovered a photograph of the Tattoo on the internet.

24. Upon information and belief that individual used a portion of the image of the Tattoo in connection with Converse's Chuck Taylor line of footwear.

25. Upon information and belief Converse approved the use of a portion of the image of the Tattoo.

26. Thereafter, Converse proceeded to manufacture or had manufactured thousands of pairs of footwear incorporating a portion of the image of the Tattoo (the "Infringing Shoes").

27. The portion of the image of the Tattoo used by Converse for the Infringing Shoes is an exact copy of the Tattoo. Attached hereto as Exhibit C is a color photocopy of the Infringing Shoes.

28. Upon information and belief Converse sold thousands of pairs of the Infringing Shoes to retailers in the United States and elsewhere including retailers who conduct business in the State of New York and within this district.

29. Kinway is one such retailer who purchased the Infringing Shoes from Converse and sold them within the State of New York and within this district.

AS AND FOR A FIRST CLAIM
VIOLATION OF THE COPYRIGHT ACT

30. Bloodrose repeats and realleges each and every allegation set forth in paragraphs 1 through 29 of this Complaint as fully and completely as if set forth herein.

31. Converse purchased or manufactured and then sold thousands of the Infringing Shoes.

32. Converse sold thousands of the Infringing Shoes to retailers in the United States and elsewhere.

33. Converse's use of the Tattoo was without Bloodrose's knowledge or permission.

34. Upon information and belief, at some time presently unknown, but after May 2002 Converse delivered the Infringing Shoes to its customers including, but not limited to, Kinway.

35. Upon information and belief, at some time presently unknown but after May 2002 Converse's retail customers including Kinway, through their retail stores and retail web sites, offered for sale and sold the Infringing Shoes in this district and elsewhere in the United States.

36. Converse, upon information and belief, having full knowledge of Bloodrose's rights or at least in disregard of Bloodrose's rights, willfully infringed Bloodrose's copyright interests in the Tattoo by manufacturing, importing, distributing, selling, offering for sale, promoting and/or advertising the Infringing Shoes without Bloodrose's consent.

37. All of the above described activities are in violation of Bloodrose's rights under the United States Copyright Act.

38. The acts of the Defendants have damaged Bloodrose in an amount as yet unknown and may further damage Bloodrose in such a manner that Bloodrose has no adequate remedy at law.

AS AND FOR A SECOND CLAIM
UNFAIR COMPETITION

39. Bloodrose repeats and realleges each and every allegation set forth in paragraphs 1 through 38 of this Complaint as fully and completely as if set forth herein.

40. Bloodrose went to great expense and effort in creating the Tattoo and building a business based upon original, highly stylized and individually designed one-of-a-kind tattoos.

41. As a result of expenditure of money and skill in the development and promotion of tattoos, including the Tattoo, Bloodrose has developed significant customer loyalty and good will.

42. Converse, by its acts, has taken advantage of the knowledge and skill of Bloodrose, and of the good will developed by Bloodrose, and has capitalized upon the market created by Bloodrose for its tattoos.

43. The aforesaid acts of Converse, in manufacturing, distributing, offering for sale and selling and/or causing to be manufactured, distributed, offered for sale and/or sold, the Infringing Shoes, constitute inequitable conduct, unfair trade practices and unfair competition, and are likely to deceive and confuse Bloodrose's customers into believing that the Infringing Shoes are sponsored by, licensed by, endorsed by or are otherwise associated with Bloodrose.

44. Converse's acts constitute misappropriation or attempted misappropriation of Bloodrose's copyrighted Tattoo and the good will and reputation which are associated therewith.

45. Converse has misappropriated Bloodrose's good will and the benefits of Bloodrose's skill and expenditures in the development of the Tattoo and by reason thereof has caused irreparable injury to Bloodrose. Bloodrose's customers who have come to Bloodrose for one-of-a-kind

tattoos with the understanding that the tattoos will not be copied or otherwise commercially exploited have now discovered that the Tattoo has been mass-marketed by Converse on its shoes. This has and will continue to injure Bloodrose as long as any of the Defendants continue to manufacture, distribute, offer to sell and/or sell and/or cause to be manufactured, distributed, offered for sale and sold, the Infringing Shoes.

46. Defendants have manufactured, advertised, promoted, distributed and/or sold the Infringing Shoes without authorization, license or permission from Bloodrose.

47. Defendants' acts have damaged Bloodrose in an amount as yet unknown and may further damage Bloodrose in such a manner that Bloodrose has no adequate remedy at law.

JURY DEMAND

48. Bloodrose demands trial by jury on all claims and issues.

WHEREFORE, Bloodrose Enterprises, Inc., respectfully requests as follows:

(a) that the Defendants, and any other of Converse s customers who purchased the Infringing Shoes, their officers, representatives, agents, servants and all parties in privity with Converse be permanently enjoined from infringing the copyrighted Tattoo as covered by United States Copyright, Registration No. VA 1-401-596 in any manner, including but not limited to, manufacturing, distributing, selling, offering for sale, promoting or advertising any footwear or apparel item embodying the copyrighted Tattoo or portion thereof, or any design substantially similar thereto, or by causing and/or participating in such manufacturing, distributing, selling, offering for sale or promoting any such items;

(b) that the Defendants, and any other of Converse's customers who purchased the Infringing Shoes be required to deliver up for destruction all products in their possession or under their control infringing the copyrighted Tattoo or portion thereof;

(c) that the Defendants, and any other of Converse's customers who purchased the Infringing Shoes be required to pay to Bloodrose such damages as have been sustained in consequence of their infringement of the copyrighted Tattoo and to account for all gains, profits and advantages derived by the Defendants, and any other of Converse's customers who purchased the Infringing Shoes from their infringement of the copyrighted Tattoo or portion thereof, or such damages as to the Court shall appear proper within the provisions of the Copyright Act; and

(d) that Bloodrose be entitled to such other and further relief as the Court may deem just and equitable under the circumstances.

Dated: New York, New York
July 12, 2007

PHILLIPS NIZER LLP

By: s/ Michael S. Fischman
Michael S. Fischman (MF 7245)
Jeremy D. Richardson (JR 7706)
Attorneys for Plaintiff
666 Fifth Avenue
New York, New York 10103-0084
(212) 977-9700

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

Form VA
For a Work of the Visual Arts

VA 1-401-596

EFFECTIVE DATE OF REGISTRATION
MAY 7 2007
Month Day Year

IATE CONTINUATION SHEET.

1 **Title of This Work ▼**

BISHAMONTEN BACK

NATURE OF THIS WORK ▼ See instructions

PICTORIAL TATTOO

Previous or Alternative Titles ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. **Title of Collective Work ▼**

If published in a periodical or serial give: **Volume ▼** **Number ▼** **Issue Date ▼** **On Pages ▼**

2 **NAME OF AUTHOR ▼**

a BLOODROSE ENTERPRISES, INC.

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☑ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR { Citizen of U.S.A.
Domiciled in

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☑ No
Pseudonymous? ☐ Yes ☑ No
If the answer to either of these questions is "Yes," see detailed instructions.

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

Nature of Authorship Check appropriate box(es). **See instructions**
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☑ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

b **Name of Author ▼**

Dates of Birth and Death
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR { Citizen of
Domiciled in

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). **See instructions**
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3 a **Year in Which Creation of This Work Was Completed**
2002 Year
This information must be given in all cases.

b **Date and Nation of First Publication of This Particular Work**
Complete this information ONLY if this work has been published.
Month MAY Day 10 Year 2002
U.S.A. Nation

4 **COPYRIGHT CLAIMANT(S)** Name and address must be given even if the claimant is the same as the author given in space 2. ▼

BLOODROSE ENTERPRISES, INC.
16 LINCOLN AVE LAKE RONKONKOMA, NY 11779

See instructions before completing this space

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY

APPLICATION RECEIVED
MAY - 7 2007

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED
MAY - 7 2007

FUNDS RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE

EXAMINED BY RB

CHECKED BY

FORM VA

☐ CORRESPONDENCE
Yes

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? 5

☐ Yes ☑ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

a. ☐ This is the first published edition of a work previously registered in unpublished form.

b. ☐ This is the first application submitted by this author as copyright claimant.

c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation. 6

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

N/A

See instructions before completing this space

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

N/A

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. 7

Name ▼ Account Number ▼

N/A N/A

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼

BLOODROSE ENTERPRISES, INC.
16 LINCOLN AVE LAKE RONKONKOMA, NY 11779

Area code and daytime telephone number (631) 428-2242 Fax number (N/A)

Email ZAMGIRL13@AOL.COM

CERTIFICATION* I, the undersigned, hereby certify that I am the 8

check only one ▶
- ☑ author
- ☐ other copyright claimant
- ☐ owner of exclusive right(s)
- ☐ authorized agent of _____ Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Anthony Zambito Date 4/14/07

Handwritten signature (X) ▼

X Anthony Zambito

Certificate will be mailed in window envelope to this address: 9

Name ▼
BLOODROSE ENTERPRISES, INC.

Number/Street/Apt ▼
16 LINCOLN AVE

City/State/ZIP ▼
LAKE RONKONKOMA, NY 11779

YOU MUST
- Complete all necessary spaces
- Sign your application in space 8

SEND ALL ELEMENTS IN THE SAME PACKAGE
1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

MAIL TO
Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000

*17 USC §506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500