

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

City Merchandise Inc.,)	
Plaintiff,)	
v.)	Case No. 18-cv-6748 (JSR)
Balenciaga America, Inc.,)	
Defendant.)	

DEFENDANT BALENCIAGA AMERICA INC.’S ANSWER TO COMPLAINT

Defendant Balenciaga America, Inc. (“Defendant”) answers the Complaint of plaintiff City Merchandise Inc. (“Plaintiff”) as follows, with all allegations not expressly admitted being denied, including, in particular, any allegations contained in section and subsection headings of the Complaint:

1. Defendant admits the allegation of Paragraph 1 that Plaintiff attempts to assert a claim under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* Defendant denies the substance of the alleged claim.

2. Paragraph 2 consists of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

3. Defendant admits that the images set forth on the right below Paragraph 3 are images of a tote bag and purse that Defendant offers for sale to the public. Defendant lacks knowledge or information sufficient to form a belief as to the allegation that the images set forth on the left below Paragraph 3 are images of a tote bag and purse that Plaintiff designed and offers for sale to the public. Defendant denies all other allegations of Paragraph 3.

4. Defendant denies the allegations in Paragraph 4.

5. Paragraph 5 consists of legal conclusions and a request for relief to which no response is required. To the extent a response is required, Defendant admits that it has

manufactured the tote bag and purse shown on the right below Paragraph 3 and denies all other allegations of Paragraph 5, including without limitation the suggestion that Defendant required any permission, authorization, or approval from Plaintiff.

6. Defendant lacks knowledge or information sufficient to form a belief as the allegations of Paragraph 6.

7. Defendant admits the allegations of Paragraph 7.

8. Paragraph 8 consists of legal conclusions to which no response is required. To the extent a response is required, Defendant admits that this Court has subject-matter jurisdiction over Plaintiff's First Claim for Relief under the Copyright Act. Defendant lacks knowledge or information sufficient to form a belief as to this Court's jurisdiction over Plaintiff's purported related state and common law claims, which are not asserted in the Complaint.

9. Paragraph 9 consists of legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied, except that Defendant admits that personal jurisdiction exists over Defendant and Defendant transacts business within this State.

10. Paragraph 10 consists of legal conclusions to which no response is required. To the extent that a response is required, for purposes of this action, Defendant does not contest that venue in this District is proper and denies all other allegations of Paragraph 10.

11. Defendant lacks knowledge or information sufficient to form a belief as the allegations of Paragraphs 11.

12. Defendant lacks knowledge or information sufficient to form a belief as the allegations of Paragraphs 12.

13. Paragraph 13 consists of legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

14. Paragraph 14 consists of legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

15. Defendant lacks knowledge or information sufficient to form a belief as the allegations of Paragraphs 15.

16. Defendant lacks knowledge or information sufficient to form a belief as the allegations of Paragraphs 16.

17. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 17 that Plaintiff has applied for and obtained a copyright registration bearing registration numbers VA 2-103-817. Defendant admits that the document attached as Exhibit A to the Complaint purports to be a copy of a Certificate of Registration bearing registration numbers VA 2-103-817. Defendant denies all other allegations of Paragraph 17.

18. Defendant lacks knowledge or information sufficient to form a belief as the allegations of Paragraph 18.

19. Defendant admits that it manufactures and sells the products depicted on the document attached as Exhibit B to the Complaint, but denies all remaining allegations in Paragraph 19.

20. Defendant denies the allegations of Paragraph 20.

21. Defendant lacks knowledge or information sufficient to form a belief regarding the allegation of Paragraph 21 that Defendant's advertising, promotional, and marketing efforts have resulted in widespread favorable public acceptance and recognition of merchandise. Defendant denies all remaining allegations of Paragraph 21, except admits that Defendant sold

certain of the products depicted on the document attached as Exhibit B to the Complaint in the United States, including in New York and this District.

22. Paragraph 22 consists of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

23. Defendant denies the allegations of Paragraph 23.

24. The allegations of Paragraph 24 refer to a tweet posted on Twitter, a document that speaks for itself. Defendant denies the allegations of Paragraph to the extent they paraphrase or characterize the tweet.

25. The allegations of Paragraph 25 refer to a *Daily Mail* article, a document that speaks for itself. Defendant denies the allegations of Paragraph to the extent they paraphrase or characterize the *Daily Mail*.

26. The allegations of Paragraph 26 refer to a *Hollywood Reporter* article, a document that speaks for itself. Defendant denies the allegations of Paragraph to the extent they paraphrase or characterize the *Hollywood Reporter* article.

27. The allegations of Paragraph 27 refer to a *People* magazine article, a document that speaks for itself. Defendant denies the allegations of Paragraph to the extent they paraphrase or characterize the *People* magazine article.

28. Defendant denies the allegations of Paragraph 28.

FIRST CLAIM FOR RELIEF

29. Each of the foregoing responses to the numbered paragraphs of the Complaint is incorporated and repeated herein.

30. Paragraph 30 consists of legal conclusions to which no response is required.

31. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 31 that Plaintiff has applied for and obtained a copyright registration bearing registration numbers VA 2-103-817. Defendant admits that the document attached as Exhibit A to the Complaint purports to be a copy of a Certificate of Registration bearing registration numbers VA 2-103-817. Defendant denies all other allegations of Paragraph 31.

32. Paragraph 32 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 32 that the NYC Skyline Souvenirs have been available for sale to the public through multiple channels, including airport souvenir stores and gift shops in New York City and denies all remaining allegations of Paragraph 32.

33. Defendant denies the allegations of Paragraph 33. To the extent that Paragraph 33 consists of legal conclusions, no response is required.

34. Defendant denies the allegations of Paragraph 34, except admits that it manufactures and sells the products imaged on the document attached as Exhibit B to the Complaint.

35. Paragraphs 35 through 42 consist of legal arguments and legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

PRAYER FOR RELIEF

36. Defendant denies that Plaintiff is entitled to any of the relief requested in the Complaint, including but not limited to the relief sought in the “WHEREFORE” clause paragraphs.

FIRST DEFENSE

37. Defendant has not infringed, does not infringe, and is not liable for infringement of any valid registered copyright owned by Plaintiff, including without limitation the copyright asserted in the Complaint.

SECOND DEFENSE

38. Plaintiff's claim is barred to the extent that it claims rights to elements of works that are *scènes à faire*, are otherwise not original, or are otherwise not protectable by the copyright asserted in the Complaint.

THIRD DEFENSE

39. Plaintiff's claim is barred by the doctrine of fair use pursuant to 17 U.S.C. § 107, in view of the nature of the work covered by the asserted copyright, the amount (if any) and substantiality of the portions of such work used by Defendant, the purpose and character of any use by Defendant, and the effect, if any, of such use on the potential market for the asserted work.

FOURTH DEFENSE

40. Plaintiff's copyright is invalid and/or unenforceable.

FIFTH DEFENSE

41. Plaintiff's claim is barred by the doctrines of laches, estoppel, and/or waiver.

SIXTH DEFENSE

42. Plaintiff's claim is barred by unclean hands.

SEVENTH DEFENSE

43. Defendant is not liable for actual damages because Plaintiff has not suffered any such damages.

EIGHTH DEFENSE

44. Any infringement was not willful, because Defendant had a good faith belief that any use of the work covered by the asserted copyright was permissible.

NINTH DEFENSE

45. Defendant is not liable for statutory damages or attorneys' fees because any alleged infringement commenced before the effective date of registration of Plaintiff's asserted copyright. 17 U.S.C. § 412.

TENTH DEFENSE

46. Any alleged infringement by Defendant was innocent, and therefore any award of statutory damages must be limited in accordance with 17 U.S.C. § 504(c)(2).

RESERVATION OF DEFENSES

47. Defendant reserves the right to assert additional defenses upon discovery of further information concerning Plaintiff's claims.

WHEREFORE Defendant demands judgment:

- (i) declaring that it does not infringe the asserted copyright and dismissing the Complaint;
- (ii) awarding costs and attorneys' fees pursuant to 17 U.S.C. § 505; and
- (iii) awarding such other and further relief as the Court deems just and proper.

Dated: September 20, 2018

BROWN RUDNICK LLP

/s/ Jill L. Forster
Jill L. Forster
Seven Times Square
New York, NY 10036
(212) 209-4800 (telephone)
(212) 209-4801 (facsimile)

jforster@brownrudnick.com

Edward J. Naughton (admitted *pro hac vice*)
One Financial Center
Boston, MA 02111
(617) 856-8200 (telephone)
(617) 856-8201 (facsimile)
enaughton@brownrudnick.com

*Counsel for Defendant Balenciaga
America, Inc.*