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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROMEX TEXTILES, INC., a
California Corporation,

Plaintiff,

v.

HK WORLDWIDE, LLC, d/b/a
HOT KISS, a New York
Limited Liability Company;
APOLLO APPAREL NY, LLC, a
New York Limited Liability
Company; ROSS STORES, INC.,
a Delaware Corporation; R&R
GOLDMAN ASSOCIATES, INC.,
d/b/a DISCOVERY CLOTHING
COMPANY, an Illinois
Corporation; SPECIALTY
RETAILERS, INC., a Texas
Corporation; BEALL'S OUTLET
STORES, INC., a Florida
Corporation; and DOES 1-10,
inclusive,

Defendants.

CV 18-06543-RSWL-AGR

**ORDER re: Defendants'
Motion for Summary
Judgment [63]**

Plaintiff Romex Textiles, Inc. ("Plaintiff") brings
this copyright infringement Action against Defendants

1 Apollo Apparel NY, LLC; Ross Stores, Inc.; R&R Goldman
 2 Associates, Inc., d/b/a Discovery Clothing Company;
 3 Specialty Retailers, Inc.; Beall's Outlet Stores, Inc.;
 4 and Does 1 through 10 (collectively, "Defendants").¹
 5 Am. Compl., ECF No. 46. Currently before the Court is
 6 Defendants' Motion for Summary Judgment ("Motion")
 7 [63]. Having reviewed all papers submitted pertaining
 8 to this Motion, the Court **NOW FINDS AND RULES AS**
 9 **FOLLOWS:** the Court **DENIES** Defendants' Motion.

10 I. BACKGROUND

11 A. Factual Background

12 Plaintiff is a California corporation. Am. Compl.
 13 ¶ 4. Defendants are a series of corporations domiciled
 14 in New York, Delaware, Illinois, Texas, and Florida.
 15 Id. ¶¶ 6-10. Plaintiff is the owner and author of a
 16 two-dimensional artwork (the "Subject Design") called
 17 "AE_T1697" under the title of work "AE Design Studio 3-
 18 31-2014". Decl. of Shawn Binafard ("Binafard Decl.")
 19 ISO Pl.'s Opp'n ¶ 4, ECF No. 67-1. On March 31, 2014,
 20 Plaintiff was granted a copyright for the Subject
 21 Design, with Registration No. VA 1-903-180. Pl.'s
 22 Opp'n, Ex. A ("Subject Design Registration"), ECF No.
 23 67-3. The Subject Design is a floral design, which is
 24 depicted below. Defs.' Mot. for Summ. J. ("Mot."), Ex.
 25

26
 27 ¹ Plaintiff initially included HK Worldwide, LLC as a
 28 Defendant in this Action. HK Worldwide, LLC was dismissed
 without prejudice by stipulation on March 25, 2019. ECF No. 53.

1 B (the "Subject Design"), ECF No. 67-4.



14 Plaintiff alleges that Defendants manufactured,

15 purchased, sold, or marketed two garments (the "Accused

16 Designs") which infringe the Subject Design. The two

17 allegedly infringing garments are depicted below, and

18 entitled Version 1 and Version 2, respectively.

19 **Version 1**



1 **Version 2**



12 Mot., Ex. C ("Accused Designs"), ECF No. 63-5.

13 Defendants deny that they infringed the Subject Design,
14 and bring this Motion alleging that they are entitled
15 to judgment as a matter of law because the Subject
16 Design and Accused Designs are not substantially
17 similar. See generally Mot.

18 **B. Procedural Background**

19 Plaintiff filed its Complaint [1] on July 30, 2018
20 and then filed its Amended Complaint [46] on March 6,
21 2019. Defendants timely filed their Answers to the
22 Amended Complaint [55-59], denying Plaintiff's
23 allegations and asserting affirmative defenses,
24 including lack of substantial similarity between the
25 Subject Design and Accused Designs.

26 On May 28, 2019, Defendants filed the instant
27 Motion for Summary Judgment [63], alleging that the
28 Subject Design and Accused Designs are not

1 substantially similar. Plaintiff filed its Opposition
2 on June 4, 2019 [67]. Defendants filed their Reply
3 [68] on June 10, 2019. Plaintiff then filed a Sur-
4 Reply [69] in support of its Opposition, in which
5 Plaintiff filed evidentiary objections to Defendants'
6 Reply, responses to Defendants' evidentiary objections,
7 and a Statement of Controverted Facts. Defendants
8 filed an Objection to Plaintiff's Sur-Reply on June 17,
9 2019 [70].

10 II. DISCUSSION

11 A. Legal Standard

12 Summary judgment should be granted "if the movant
13 shows that there is no genuine dispute as to any
14 material fact and the movant is entitled to judgment as
15 a matter of law." Fed. R. Civ. P. 56(a). A fact is
16 "material" for purposes of summary judgment if it might
17 affect the outcome of the suit, and a "genuine" issue
18 exists if the evidence is such that a reasonable fact-
19 finder could return a verdict for the nonmovant.

20 Anderson v. Liberty Lobby, Inc., 477 U.S. 244, 248
21 (1986). The evidence, and any inferences based on
22 underlying facts, must be viewed in the light most
23 favorable to the nonmovant. Twentieth Century-Fox Film
24 Corp. v. MCA, Inc., 715 F.2d 1327, 1328-29 (9th Cir.
25 1983). In ruling on a motion for summary judgment, the
26 court's function is not to weigh the evidence, but only
27 to determine if a genuine issue of material fact
28 exists. Anderson, 477 U.S. at 255.

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