

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**FOURSTAR GROUP USA, INC.**

**Plaintiff,**

**Case No.**

**v.**

**KIRKLAND’S, INC.,**

**Defendant.**

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**COMPLAINT AND DEMAND FOR JURY TRIAL**  
**(Injunctive Relief Sought)**

Plaintiff, Fourstar Group USA, Inc. (“Fourstar”), sues Defendant, Kirkland’s, Inc. (“Kirkland’s”), and alleges the following:

**NATURE OF THE ACTION**

1. This is an action for Defendant’s infringement of Fourstar’s federally-registered copyright.

**THE PARTIES**

2. Plaintiff, Fourstar, is a Delaware corporation with a major office located in Clearwater, Pinellas County, Florida.

3. Defendant, Kirkland’s, is a Tennessee corporation with its principal place of business in Brentwood, Tennessee. Kirkland’s operates stores nationwide, including stores in Clearwater, Pinellas County, Florida, and in Tampa, Hillsborough County, Tampa, Hillsborough County, Florida.

### **JURISDICTION AND VENUE**

4. This is an action, pursuant to 17 U.S.C. §501 et seq., seeking preliminary and permanent injunctive relief, other equitable relief, recovery of Fourstar's actual damages and an award of Kirkland's profits or, alternatively, statutory damages, and recovery of the costs, expert fees, and attorneys' fees Fourstar incurs resulting from Kirkland's infringement of Fourstar's rights granted under the Copyright Laws of the United States.

5. This Court possesses subject matter jurisdiction over this case under 28 U.S.C. §§1331 and 1338 because this is an action by Fourstar under the Copyright Laws for Defendant's infringement of Fourstar's copyright.

6. This Court possesses personal jurisdiction over Kirkland's under Florida's Long Arm Statute, § 48.193, Florida Statutes, and jurisdiction in this Court over Kirkland's comports with the requirements of due process. Kirkland's has committed intentionally tortious acts in Florida within the meaning of Florida's Long Arm Statute through the distribution of products in this judicial district that infringe Fourstar's federally protected copyright rights. This Court additionally has personal jurisdiction over Kirkland's because Kirkland's operates retail stores within the State of Florida and within the Middle District of Florida. Kirkland's also advertises, markets, and offers for sale products on its website, [www.kirklands.com](http://www.kirklands.com), which is accessible to residents of Florida.

7. Venue properly lies in this judicial district under 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to the claims asserted

herein occurred in this judicial district, and also properly lies under 28 U.S.C. §1400(a) because this is a civil action arising under an act of Congress relating to copyrights and is a district in which the Kirkland's or its agents reside or may be found.

### **FACTS**

8. Fourstar specializes in the creation, development, and sourcing of products, including decorations, food and candy, general merchandise, and household goods, for sale in retail mass merchandisers.

9. In connection with developing a new product line, Fourstar designed and authored dancing flamingo artwork and sculptures titled "Solar Dancing Flamingo" which artwork and sculptures were first published on April 27, 2012. ("Fourstar's Dancing Flamingo Artwork").

10. On March 15, 2016, Fourstar obtained a Federal copyright, registration number VA 2-000-594, for Fourstar's Dancing Flamingo Artwork ("Fourstar's Solar Dancing Flamingo Copyright"). A true and accurate copy of the Certificate of Registration and the copyright deposit for Fourstar's Solar Dancing Flamingo Copyright, containing photographs of Fourstar's product embodying Fourstar's Solar Dancing Flamingo Copyright, is attached hereto as Composite Exhibit "A".

11. Fourstar's products bearing Fourstar's Dancing Flamingo Artwork and which are covered by the Fourstar Solar Dancing Flamingo Copyright are marked with a copyright notice, "©2016 FSG" on the base of such products.

12. Fourstar has retained the law firm of Fee & Jeffries, P.A. to vindicate its rights against Kirkland's and is obligated to pay its attorneys reasonable attorneys' fees for their services.

13. All conditions precedent to the maintenance of this action have occurred, been performed, or have been excused or waived.

**COUNT I – FEDERAL COPYRIGHT INFRINGEMENT**  
**(Fourstar's Solar Dancing Flamingo Copyright)**

14. Fourstar realleges and incorporates by reference the allegations in paragraphs 1 through 13 above, as if set forth fully herein.

15. In May of 2017, Fourstar discovered that Kirkland's was selling solar-powered flamingo products that infringe Fourstar's Solar Dancing Flamingo Copyright.

16. Kirkland's marketed and sold products called "Rockin' Solar Buddies" which exactly copy Fourstar's Dancing Flamingo Artwork ("Kirkland's Infringing Solar Flamingo Products"). Attached hereto as Composite Exhibit "B" are photographs of one of Kirkland's Infringing Solar Flamingo Products

17. Kirkland's is copying, distributing, selling, offering for sale, and using Kirkland's Infringing Solar Flamingo Products, which are substantially similar to the Fourstar Dancing Flamingo Artwork, without Fourstar's consent, license, or other permission.

18. Kirkland's' copying, distributing, selling, offering for sale, and use of Kirkland's Infringing Solar Flamingo Products constitutes infringement of the Fourstar Solar Dancing Flamingo Copyright in violation of 17 U.S.C. §501.

19. As a result of the infringement of the Fourstar Solar Dancing Flamingo Copyright by Kirkland's, Fourstar has suffered and continues to suffer damages, and is entitled to all remedies provided by Chapter 5 of Title 17, United States Code.

20. Upon information and belief, Kirkland's infringement of Fourstar's copyright will continue unless enjoined by this Court.

21. Fourstar has suffered irreparable injury and has been damaged by the infringing activities of Kirkland's and will continue to suffer damages and irreparable injury unless such infringing actions are enjoined by this Court.

22. Fourstar has no adequate remedy at law to prevent the injuries caused by the continuing infringement by Kirkland's.

23. Given the clear infringement by Kirkland's of Fourstar's copyright, Fourstar will likely prevail on the merits of this action.

24. The balance of the hardships and public interest require that Kirkland's immediately and permanently cease its infringing activities.

WHEREFORE, Fourstar respectfully request this Court to:

- A. Enter judgment in Fourstar's favor and against Defendant, Kirkland's;
- B. Award to Fourstar and against Kirkland's:
  - 1) Fourstar's actual damages;
  - 2) Kirkland's' profits from sales of Kirkland's Infringing Products;
  - 3) statutory damages, as an alternative to Fourstar's actual damages and Kirkland's' profits; and

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