

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HONG KONG LEYUZHEN TECHNOLOGY
CO., LTD.,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,
LIMITED LIABILITY COMPANIES,
PARTNERSHIPS AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED IN
SCHEDULE "A" HERETO,

Defendants.

Case No. 1:24-CV-02939-MFK-BWJ

Honorable Matthew F. Kennelly

Magistrate Beth W. Jantz

**PLAINTIFF'S ANSWER TO DEFENDANT'S COUNTERCLAIMS AND
AFFIRMATIVE DEFENSES**

Plaintiff Hong Kong Leyuzhen Technology Co., Ltd. ("Plaintiff" or "Counterclaim Defendant") hereby answers the following Counterclaims by Defendants Floerns, Verdusa, and Sweatyrocks (the "Dykema Defendants," or "Defendants").

COUNTERCLAIMS

As counterclaims against Plaintiff, the Dykema Defendants hereby alleges as follows:

ANSWER: Denied.

PARTIES

1. Defendants and Counterclaimants Floerns, Verdusa, SweatyRocks ("Counterclaimants" or "Dykema Defendants") are Chinese business entities. The Dykema Defendants promote and sell clothing products via their respective internet stores.

ANSWER: Admitted in part and denied in part. Plaintiff admits that the Dykema Defendants promote and sell clothing products through the internet. Plaintiff lacks sufficient

information and belief as to all remaining allegations in Paragraph 1 and on that basis denies them.

2. Counterclaim Defendant admitted in its Complaint that it is a corporation organized under the laws of the People's Republic of China.

ANSWER: Admitted.

JURISDICTION AND VENUE

3. By these counterclaims, the Dykema Defendants seek declarations pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

ANSWER: Counterclaim Defendant admits that the Dykema Defendants seek such relief, but deny that they are entitled to entry of the relief requested.

4. This Court has jurisdiction over the subject matter of these counterclaims under 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

ANSWER: Denied.

5. By commencing this action in this Court, Plaintiff/Counter-Defendant consented to this Court's exercise of personal jurisdiction over it.

ANSWER: Admitted.

6. An actual controversy exists under the Declaratory Judgment Act because Plaintiff/Counter-Defendant filed an action for copyright infringement, false designation of origin under the Lanham Act, and violation of the Illinois Uniform Deceptive Trade Practices Act against the Dykema Defendants, amongst other defendants, alleging infringement and counterfeiting of certain photographs. The Dykema Defendants deny these assertions, deny that Plaintiff/Counter-Defendant lawfully owns the asserted copyrights, deny they have infringed Plaintiff/Counter-Defendant's alleged copyrights, and deny they violated 15 U.S.C. § 1125(a) and the Illinois Uniform Deceptive Trade Practices Act.

ANSWER: Admitted to the extent the Dykema Defendants have asserted viable claims for non-infringement and contest ownership of the copyright protected images asserted against them. To the extent the Dykema Defendants seek relief beyond the scope of what has been asserted against them by Plaintiff, Plaintiff denies the allegations of Paragraph 6.

FACTS

7. The Dykema Defendants repeat, reallege and incorporate by reference herein its allegations contained in paragraphs 1 through 7, above.

ANSWER: Plaintiff/Counter-Defendant incorporates by reference its answers to the preceding paragraphs. 1 through 7 as though fully incorporated herein.

8. Plaintiff/Counter-Defendant filed an application, with the United States Copyright Office (the “Copyright Office”), titled “Rotita8-2023” for the group registration of certain published photographs. With respect to its “Rotita8-2023” application, Plaintiff/Counter-Defendant represented to the Copyright Office that it is the author and copyright claimant of the 569 submitted photographs. On November 12, 2023, the Copyright Office approved the “Rotita8-2023” application and issued Copyright Registration No. VA0002379907 for a “Group Registration Of Published Photographs.568 Photographs. 2023-01-04 To 2023-08-22.” *See* Dkt. 35-1, pp. 9-10.

ANSWER: Admitted.

9. Plaintiff/Counter-Defendant also filed an application, with the Copyright Office, titled “Rotita7-2023” for the group registration of certain published photographs. With respect to its “Rotita7-2023” application, Plaintiff/Counter-Defendant represented to the Copyright Office that it is the author and copyright claimant of the 534 submitted photographs. On November 12, 2023, the Copyright Office approved “Rotita7-2023” application and issued Copyright

Registration No. VA0002379899 for a “Group registration of published photographs.534 photographs. 2023-07-28 to 2023-11-08. *See* Dkt. 35-1, pp. 19-20.

ANSWER: Admitted.

10. In the Complaint, Plaintiff/Counter-Defendant accused Defendant Floerns of infringing one photo in a group of 568 photos in Copyright Registration No. VA0002379907. Plaintiff/Counter-Defendant also accused Defendants Verdusa of infringing one photo and SweatyRocks of infringing two additional photos in a group of 534 photos in Copyright Registration No. VA0002379899.

ANSWER: Admitted.

11. Plaintiff/Counter-Defendant claims it has exclusive rights to Copyright Registration Nos. VA0002379899 and VA0002379907 (the “Asserted Copyright Registrations”).

ANSWER: Admitted.

12. On information and belief, the accused infringing photos of the Dykema Defendants were created prior to the creation date of the asserted photos in Plaintiff’s Asserted Copyright Registrations and some or all were published on the Dykema Defendants’ respective online stores to promote clothing products for sale before the asserted photos were published by Plaintiff. The Dykema Defendants do not sell counterfeit Rotita Brand products, and Plaintiff/Counter-Defendant does not claim to have intellectual property rights in those products, only in the photos of such products.

ANSWER: Denied. Plaintiff/Counter-Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Counterclaims, and therefore deny the same.

13. The Dykema Defendants did not copy Plaintiff/Counter-Defendant’s photographs

from the Rotita website or otherwise, but rather obtained the photographs from their clothing suppliers. The clothing suppliers obtained the photographs from photography businesses who are the photographers of the photos and provided them to the suppliers; the suppliers assigned ownership of the copyrights in the accused photos to the Dykema Defendants.

ANSWER: Denied. Plaintiff/Counter-Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Counterclaims, and therefore deny the same.

14. Zhou Hongyi is a photographer who works for NEW STAR Photography Base located at Shatou Daping Industrial Street, Panyu District, Guangzhou, China (the “First Photography Business”). Part of Zhou Hongy’s job involves taking photographs of models wearing clothing products supplied by clothing suppliers. These clothing suppliers hire the First Photography Business to take such photographs for them. These clothing suppliers supply clothing products to online stores and provide such photographs to these stores so that the stores can display the photographs in connection with the stores’ listings of the clothing products for sale. The Declaration of Zhou Hongyi is attached hereto as Exhibit A.

ANSWER: Denied. Plaintiff/Counter-Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Counterclaims, and therefore deny the same. In addition, Plaintiff/Counter-Defendant denies the admissibility and/or the veracity of the statements contained in Exhibit A.

15. Zhou Hongyi was the photographer of the following three (3) photographs that were provided to a clothing supplier who hired the Photography Business.

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