

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAZZLE UP, LLC,

Plaintiff,

v.

SUGARTOWN WORLDWIDE LLC,

Defendant.

Civil Action No. 17-cv-15

**DEFENDANT SUGARTOWN WORLDWIDE LLC'S ANSWER,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIM**

Defendant Sugartown Worldwide LLC (“Sugartown”) hereby submits this Answer, Affirmative Defenses, and Counterclaim to the Complaint filed by Plaintiff Dazzle Up, LLC (“Dazzle Up”), as follows:

1. Sugartown admits that Dazzle Up purports to bring a civil action related to copyright infringement arising under the Copyright Act and that Dazzle Up purports to seek a declaratory judgment. Sugartown denies that Dazzle Up is entitled to any relief arising out of its claims.
2. Sugartown admits that it has contacted Dazzle Up concerning Dazzle Up’s infringement of copyrighted designs owned by Sugartown. Sugartown also admits that Dazzle Up purports to seek a declaration of non-infringement of Sugartown’s asserted copyrights.

3. Sugartown is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 3 and, therefore, denies those allegations.

4. Sugartown admits the allegations in Paragraph 4.

5. Sugartown admits that this Court has original jurisdiction over (1) all civil actions arising under the laws of the United States and (2) any civil action arising under the Copyright Act. Sugartown denies the remaining allegations in Paragraph 5.

6. Sugartown admits that this Court has personal jurisdiction over Sugartown for purposes of this action only. Sugartown also admits that (a) it is the owner of the Lilly Pulitzer brand and the designs sold under that brand, (b) it markets and distributes Lilly Pulitzer apparel and accessories in retail stores in multiple states, including states in this District, (c) it distributes its products through stores which it refers to as “A Lilly Pulitzer Specialty Store” or “A Lilly Pulitzer Department Store,” (d) operates a website that is available to consumers in North Carolina, (e) has distributed and sold products in North Carolina, and (f) Sugartown has sent letters to Dazzle Up’s attorney concerning Dazzle Up’s infringement of copyrighted designs owned by Sugartown. Sugartown denies the remaining allegations in Paragraph 6.

7. Sugartown admits that venue is proper in this District, that it is subject to personal jurisdiction in this District for purposes of this action only, and that a substantial part of the events giving rise to the claims at issue occurred in this District. Sugartown denies the remaining allegations in Paragraph 7.

8. Sugartown is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 8 and, therefore, denies those allegations.

9. Sugartown is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 9 and, therefore, denies those allegations.

10. Sugartown is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 10 and, therefore, denies those allegations.

11. Sugartown is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 11 and, therefore, denies those allegations.

12. Sugartown admits that a trademark registration for the trademark SIMPLY SOUTHERN identifies Dazzle Up as the owner of the mark.

13. Sugartown is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 13 and, therefore, denies those allegations.

14. Sugartown is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 14 and, therefore, denies those allegations.

15. Sugartown is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 15 and, therefore, denies those allegations.

16. Sugartown admits the basic legal principle that registration of a copyright is not a condition of copyright protection.

17. Sugartown admits that Dazzle Up has attached to its complaint copyright registration certificates, which list Dazzle Up as the owner. Sugartown is without sufficient information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 17 and, therefore, denies those allegations.

18. Sugartown admits that it sent a letter to Dazzle Up's attorney on November 18, 2016 regarding Dazzle Up's infringement of Sugartown's copyrights, requesting that Dazzle Up cease and desist use of the infringing marks and provide an accounting of gross revenues and profits from products bearing the infringing designs, and stating that absent a response from Dazzle Up, Sugartown

would have no choice but to consider its legal options. Sugartown also admits that it sent Dazzle Up a letter on December 21, 2016, disagreeing with Dazzle Up's position in its response to Sugartown's November 18 letter and noting that if Dazzle Up did not provide the requested information by January 5, 2017, Sugartown would begin considering other available mechanisms to pursue its rights. Sugartown denies the remaining allegations in Paragraph 18.

19. Sugartown admits that Exhibit 2 to the Complaint compiles images that Sugartown attached to its November 18, 2016 letter.

20. Sugartown admits that Exhibit 3 to the Complaint compiles images that Sugartown attached to its November 18, 2016 letter.

21. Sugartown denies the allegations in Paragraph 21.

22. Sugartown admits the basic legal premise of copyright law that no party has exclusive rights in ideas, common themes, or common descriptions of items, although the expression of those ideas, common themes, or common descriptions may be protectable. Sugartown denies any remaining allegations in Paragraph 22 and denies that this basic legal premise is applicable to Sugartown's claims in this dispute.

23. Sugartown denies the allegations in Paragraph 23.

24. Sugartown denies the allegations in Paragraph 24.

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