

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 1 2015

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ITC TEXTILE, LTD,

Plaintiff - Appellant,

v.

WAL-MART STORES, INC.; et al.,

Defendants - Appellees.

No. 13-55361

D.C. No. 2:12-cv-02650-JFW-  
AJW

MEMORANDUM\*

ITC TEXTILE, LTD,

Plaintiff - Appellant,

v.

ROSS STORES, INC.; et al.,

Defendants - Appellees.

No. 13-55706

D.C. No. 2:13-cv-00036-JFW-  
AJW

Appeal from the United States District Court  
for the Central District of California  
John F. Walter, District Judge, Presiding

Argued and Submitted May 8, 2015  
Pasadena, California

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: BEA and FRIEDLAND, Circuit Judges and RICE,\*\* District Judge.

Appellant ITC Textile, Ltd. brings a consolidated appeal from the district court's entry of summary judgment in favor of Avalon Apparel Group, LLC, Disorderly Kids, LLC, and Wal-Mart Stores, Inc., and from the district court's dismissal of ITC's suit against Avalon Apparel, Disorderly Kids, and Ross Stores, Inc. We have jurisdiction over both cases under 28 U.S.C. § 1291, and we reverse.

The district court held that, although ITC's copyright registrations for the two designs at issue in these cases—the *Symphony Sweet* design and the *Medallion Art* design—were prima facie evidence of validity, Appellees had rebutted the presumption of validity by showing that the designs were unoriginal and that ITC's copyrights were therefore invalid as a matter of law. But the declaration submitted by Appellees to rebut the presumption of validity did not actually show that the designs were unoriginal in the relevant sense, because it presented no evidence that the *compilation* of elements in either the *Symphony Sweet* or *Medallion Art* design lacked originality. *See L.A. Printex Indus., Inc. v.*

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\*\* The Honorable Thomas O. Rice, United States District Judge for the Eastern District of Washington, sitting by designation.

*Aeropostale, Inc.*, 676 F.3d 841, 850 (9th Cir. 2012); *United Fabrics Int'l, Inc. v. C&J Wear, Inc.*, 630 F.3d 1255, 1257 (9th Cir. 2011). Because the declaration did not rebut the presumption of validity, ITC was not required to produce further evidence of originality (beyond its copyright registrations) to defeat summary judgment. See *United Fabrics*, 630 F.3d. at 1258 (holding, in a case reversing *sua sponte* dismissal at summary judgment stage, that the plaintiff did not have to produce any evidence, because, as the copyright claimant, the plaintiff was presumed to own a valid copyright).

Therefore, we **REVERSE** the district court's order granting summary judgment to Appellees in case number 13-55361, and **REVERSE** the district court's order granting Appellees' motion to dismiss in case number 13-55706. We also **VACATE** the district court's order denying ITC additional time for discovery so the district court may, if it finds doing so to be appropriate, reconsider that order in light of this ruling.