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JS-6

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

RICHLOOM FABRICS GROUP, a
Delaware corporation,

Plaintiff,

v.

DRAGON CLAW (U.S.A.), INC.,
a California corporation, d/b/a D.C.
AMERICA, INC., et al.,

Defendants.

CASE NO. CV09-4013 SJO (VBK)

CONSENT DECREE AND FINAL JUDGMENT

NOTE: CHANGES HAVE BEEN
MADE TO THIS DOCUMENT

CONSENT DECREE AND FINAL JUDGMENT

WHEREAS, plaintiff Richloom Fabrics Group (“Richloom”) owns a federal copyright registration, Registration No. VA 1-324-460, for its Waterford textile design (the “Waterford Design”), which defendant Dragon Claw (U.S.A.) Inc., d/b/a D.C. America, Inc. (“D.C. America”), hereby acknowledges; and

WHEREAS, Richloom supplies home decor fabric to customers worldwide for

1 use with home and outdoor furnishings, including fabric that bears the Waterford
2 Design; and

3 WHEREAS, D.C. America, a supplier of outdoor living products which it sells
4 through retailers and catalog outlets nationwide, including Orchard Supply Hardware,
5 LLC (“OSH”), a seller of home improvement and decorative products which it sells in
6 stores located throughout California and on its website, has sold umbrellas that
7 Richloom alleges bear a substantially similar design to its Waterford Design
8 (hereinafter referred to as the “Umbrellas”);
9

10 WHEREAS, on June 4, 2009, in the United States District Court for the Central
11 District of California, Richloom commenced this action against D.C. America,
12 alleging copyright infringement relating to the use of an allegedly infringing design on
13 Defendants’ Umbrellas and amended its complaint on July 14, 2009 to add OSH as a
14 defendant (the “Litigation”); and
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18 WHEREAS, Richloom and D.C. America have agreed to entry of this Consent
19 Decree;
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21 WHEREAS, the parties agree to dismissal of the complaint against OSH with
22 prejudice.
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24 **IT IS ORDERED, ADJUDGED AND DECREED THAT:**

- 25 1. This Court has personal jurisdiction over Richloom and D.C. America
26 and has subject matter jurisdiction of this action.
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2. D.C. America acknowledges that Richloom is the sole owner of all rights concerning the copyright in the Waterford Design and further acknowledges that its does not own any copyright in the Waterford Design. D.C. America agrees not to challenge or contest the validity of and/or Richloom’s ownership of the copyright in the Waterford Design, Registration No. VA 1-324-460.

3. D.C. America, its officers, agents, servants, employees and all other persons, companies or other entities in privity with any of the foregoing, excluding OSH, with respect to any allegedly infringing conduct, and all other persons and entities acting in concert with any of the foregoing who receive actual notice of this Consent Decree by personal service or otherwise, shall immediately cease and permanently refrain from:

(1) printing, publishing, reproducing, distributing, displaying, transmitting, selling or otherwise disseminating any fabric which bears a design that is identical or substantially similar to the Waterford Design or any other design for which Richloom is entitled to copyright protection unless D.C. America or its respective vendors or suppliers have been given the express permission and authority to do so by Richloom; and

(2) manufacturing, importing, exporting, distributing, selling, marketing, promoting or advertising any umbrellas or other products bearing any designs that are identical or substantially similar to the Waterford Design or any other design for which Richloom is entitled to copyright protection unless D.C.

America or its respective vendors or suppliers have been given the express permission and authority to do so by Richloom.

4. D.C. America represents that 750 umbrellas bearing the Waterford Design were sold to OSH by D.C. America, and that OSH has sold 456 of such umbrellas, that approximately 43 umbrellas were returned or otherwise defective and unfit for sale, that 251 umbrellas remained in OSH’s inventory prior to their return to D.C. America (as described below), and that D.C. America is not in possession of any other umbrellas or products which bear the Waterford Design or any design which is substantially similar to the Waterford Design.

5. No later than October 30, 2009, D.C. America shall destroy the remaining inventory of the Umbrellas and D.C. America shall destroy all packages, labels, wrappers, containers, and advertising or promotional materials depicting any umbrellas with designs that are identical or substantially similar to the Waterford Design, to the extent such materials exist.

6. D.C. America shall comply with the terms of the parties’ Settlement Agreement dated as of October 27, 2009.

7. D.C. America expressly recognizes and acknowledges that a violation or breach by it of any of the representations, covenants, conditions, agreements, or undertakings in the Settlement Agreement will cause Richloom irreparable harm which cannot be adequately calculated or remedied solely in money damages in an action at law, thereby entitling Richloom to obtain (in addition to any other remedy to

1 which it may be entitled at law) immediate injunctive relief or other equitable
2 remedies with respect to such violation or breach, as well as its costs and attorneys
3 fees incurred in connection with applying to the court to obtain such relief.
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5 8. Plaintiff and defendants, having settled the matter of damages, profits,
6 costs and attorney's fees between them, this Consent Decree is entered without any
7 monetary award or damages to any party to this action and without taxation of costs or
8 attorney's fees.
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10 9. This Court shall retain continuing jurisdiction over the persons and
11 entities identified in this Consent Decree and over the subject matter of plaintiff's
12 Complaint to ensure compliance and performance with the terms of the Parties'
13 Settlement Agreement and this Consent Decree and to modify the Consent Decree as
14 justice so requires.
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17 10. The provisions of this Consent Decree shall apply worldwide **as to DC**
18 **America.**

19 11. The complaint against OSH is dismissed with prejudice.
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21 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**
22

23 *S. James Otero*

24 Dated: November 4, 2009

25 S. JAMES OTERO
26 UNITED STATES DISTRICT JUDGE
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