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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNICOLORS, INC.,

Plaintiff,

v.

MANGEL STORES CORP.; SUSIE'S
DEALS; RAINBOW SHOPS, INC.; CITI
TRENDS, INC.; DOES 1–10, inclusive,

Defendants.

Case No. 2:13-cv-06152-ODW(FFMx)

**ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT [19]**

I. INTRODUCTION

Plaintiff Unicolors, Inc. alleges that Defendant Susie's Deals infringed Unicolor's copyrighted GT 1058 fabric pattern. Despite being duly served, Susie's Deals has failed to answer or otherwise respond to the Complaint. The Clerk entered default, and Unicolors moved for default judgment. The Court finds that the accused pattern and GT 1058 are substantially similar sufficient to constitute copyright infringement and thus **GRANTS** Unicolor's Motion for Default Judgment.¹

II. FACTUAL BACKGROUND

Unicolors is a California corporation and textile converter that has compiled a library of copyrighted textile patterns. (Nader Decl. ¶¶ 3–4.) One of the copyrights

¹ After carefully considering the papers filed with respect to this Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 Unicolors owns is a textile pattern internally titled GT 1058. (*Id.* ¶ 7; *see also* Ex. 2.)
2 On October 27, 2009, Unicolors received United States Copyright Office Certificate
3 of Registration number VA 1-712-891 for GT 1058. (*Id.* Ex. 1.)

4 Unicolors believes that Susie’s Deals is a garment retailer incorporated in
5 California. (Compl. ¶ 6.) At some point, Unicolors discovered that Susie’s Deals was
6 selling garments with a design similar to that of GT 1058 (the “accused pattern”).
7 (Nader Decl. ¶ 8.) Unicolors also alleges that Susie’s Deals created, sold,
8 manufactured, caused to be manufactured, imported, and distributed fabric infringing
9 upon Unicolors’s GT 1058 registered copyright. (Compl. ¶ 15.) Unicolors purchased
10 at least one shirt from Susie’s Deals with the accused pattern on April 30, 2012.
11 (Nader Decl. Ex. 2.) Unicolors has not licensed GT 1058 to Susie’s Deals. (*Id.* ¶ 9.)
12 Due to Susie’s Deal’s failure to participate in the litigation, Unicolors does not know
13 from where the alleged infringing products originated. (*Id.* ¶ 9.)

14 On August 21, 2013, Unicolors filed suit against, among others, Susie’s Deals,
15 alleging claims for direct and vicarious or contributory copyright infringement of
16 GT 1058. (ECF No. 1.) Unicolors served Susie’s Deals on September 6, 2013. (ECF
17 No. 8.) On October 28, 2013, the Clerk of Court entered default against Susie’s
18 Deals. (ECF No. 13.) Unicolors then moved for default judgment. As of the date of
19 this Order, the Court has received no answer or other response from Susie’s Deals.

20 **III. LEGAL STANDARD**

21 Federal Rule of Civil Procedure 55(b) authorizes a district court to grant default
22 judgment after the Clerk enters default under Rule 55(a). Local Rule 55-1 requires
23 that the movant submit a declaration establishing (1) when and against which party
24 default was entered; (2) identification of the pleading to which default was entered;
25 (3) whether the defaulting party is a minor, incompetent person, or active
26 servicemember; and (4) that the defaulting party was properly served with notice.

27 A district court has discretion whether to enter a default judgment. *Aldabe v.*
28 *Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Upon default, the defendant’s liability

1 generally is conclusively established, and the well-pleaded factual allegations in the
2 complaint are accepted as true. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–
3 19 (9th Cir. 1987) (per curiam) (citing *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560
4 (9th Cir. 1977)).

5 In exercising its discretion, a court must consider several factors, including
6 (1) the possibility of prejudice to plaintiff; (2) the merits of plaintiff’s substantive
7 claim; (3) the sufficiency of the complaint; (4) the sum of money at stake; (5) the
8 possibility of a dispute concerning material facts; (6) whether the defendant’s default
9 was due to excusable neglect; and (7) the strong policy underlying the Federal Rules
10 of Civil Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470,
11 1471–72 (9th Cir. 1986).

12 IV. DISCUSSION

13 A. Notice

14 Unicolors served Susie’s Deals with process on September 6, 2013, in the
15 manner prescribed in California Code of Civil Procedure section 415.20. That section
16 provides that a summons may be served by leaving the summons at a party’s office
17 with someone apparently in charge and then thereafter mailing a copy of the summons
18 via first-class mail. Unicolors’s process server left the summons with a woman
19 apparently in charge at Susie’s Deals on September 6, 2013, and then mailed a copy of
20 the summons on September 10, 2013. The Court therefore finds that Unicolors
21 complied with Code of Civil Procedure section 415.20.

22 B. Copyright-infringement liability

23 Unicolors first alleges that Susie’s Deals committed direct infringement of
24 Unicolor’s GT 1058 registered copyright. To state a copyright-infringement claim,
25 the plaintiff must allege “(1) ownership of a valid copyright, and (2) copying of
26 constituent elements of the work that are original.” *Feist Publ’ns, Inc. v. Rural Tel.*
27 *Serv. Co. Inc.*, 499 U.S. 340, 361 (1991).

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1 Unicolors alleges that “it is apparent that that the elements, composition, color
2 variations, arrangement, layout, and appearance” of GT 1058 and the accused pattern
3 are substantially similar. (Compl. ¶ 16.) Unicolors also alleges that Susie’s Deals had
4 access to GT 1058 via Unicolors’s showroom and design library, illegally distributed
5 copies of GT 1058, legitimate copies of GT 1058 in the marketplace, and Unicolors’s
6 strike-offs and samples. (*Id.* ¶ 23.) Further, Unicolors contends that Susie’s Deals
7 committed contributory and vicarious infringement by inducing, participating in,
8 aiding and abetting, and profiting from the illegal production and distribution of
9 products infringing upon GT 1058 and having the right and ability to supervise
10 infringing conduct. (*Id.* ¶¶ 31–32.)

11 The Court finds that Unicolors has a valid, registered copyright in GT 1058.
12 First, a copyright registration is prima facie evidence of a valid copyright. 17 U.S.C.
13 § 411(b)(1). Unicolors submitted its copyright registration for GT 1058, which the
14 United States Copyright Office granted on October 27, 2009. (Nader Decl. Ex. 1.)

15 Second, GT 1058 appears to portray copyrightable subject matter. While
16 clothes themselves are functional and thus not subject to copyright, fabric designs are
17 considered “writings” and thus copyrightable under 17 U.S.C. § 102(a). *Knitwaves,*
18 *Inc. v. Lollytogs Ltd. (Inc.)*, 71 F.3d 996, 1002 (2d Cir. 1995). Unicolors has not
19 claimed a copyright in any particular garment or other functional item but rather in GT
20 1058’s two-dimensional pattern. Further, while Unicolors’s does not and cannot own
21 a copyright in GT 1058’s colors or geometric elements themselves, 37 C.F.R.
22 § 202.1(a), it does have a copyright in the way its author has “selected, coordinated,
23 and arranged” the colors, shapes, and GT 1058’s other design elements. *See*
24 *Knitwaves*, 71 F.3d at 1004 (holding that a valid fabric copyright covers more than
25 just the “specific pattern” of work).

26 When a plaintiff does not have direct evidence of copying, the plaintiff must
27 establish both the defendant’s access to the copyrighted work and substantial
28 similarity between the registered and accused works. *Funky Films, Inc. v. Time*

1 *Warner Entm't Co., L.P.*, 462 F.3d 1072, 1076 (9th Cir. 2006). At this default-
2 judgment stage, Unicolors's allegations that Susie's Deals had access to GT 1058 via
3 several legitimate and illegal avenues suffice to establish the access element. *See L.A.*
4 *Printex Indus., Inc. v. Aeropostale, Inc.*, 676 F.3d 841, 846–47 (9th Cir. 2012) (noting
5 that the plaintiff must allege access either through a chain of events linking the two
6 works or widespread dissemination of plaintiff's work); (Compl. ¶ 23).

7 In assessing substantial similarity, the Ninth Circuit employs a two-part test.
8 *Shaw v. Lindheim*, 919 F.2d 1353, 1356 (9th Cir. 1990). The plaintiff must show a
9 substantial similarity of the work's "general ideas" under the extrinsic test and
10 substantial similarity of the "protectable expression" under the intrinsic test. *Id.* The
11 Court finds that Susie's Deal's unlicensed sale or other distribution of the accused
12 pattern satisfies both elements.

13 The extrinsic test entails "an objective comparison of specific expressive
14 elements." *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822 (9th Cir. 2002). A
15 court must consider various elements in determining whether a fabric pattern infringes
16 upon a registered design, including the subject matter, shapes, colors, materials, and
17 arrangement of the representations. *L.A. Printex Indus.*, 676 F.3d at 849.

18 An objective comparison of GT 1058 and the accused pattern reveals a
19 substantial similarity between the two patterns. GT 1058 contains blue/violet, purple,
20 green, and brown rectangular bars arranged directly adjacent to each other in a
21 horizontal fashion. The colors range in saturization from muted hues to stronger
22 colors, all set against a near-black background. The bar design almost appears to be
23 dripping, as each bar is juxtaposed at different lengths from the adjacent
24 bars. *See Figure 1.*

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1 **Figure 1**

2 **Unicolors' Design GT1058**

3 **SUSIE'S Accused Product**



11 The accused pattern includes the same color, range of saturization, arrangement,
12 background hue and contrast, and offset design. The photographs provided to the
13 Court reveal that the accused pattern may include more deeply saturized colors, i.e.,
14 the colors appear brighter. But “it is not necessary that [the accused] design be
15 ‘virtually identical’ to infringe.” *Id.* at 851 (noting that stylized fabric designs are
16 entitled to “broad” protection). The objective elements between the two works—
17 including their general colors schemes—are in all other respects virtually identical.

18 The alleged infringement also satisfies the Ninth Circuit’s intrinsic test. This
19 test gauges whether “the total concept and feel of the two works is substantially
20 similar” in the eyes of an ordinary, reasonable person. *Berkic v. Crichton*, 761 F.2d
21 1289, 1292 (9th Cir. 1985). A quick view of both patterns reveals that the “concept
22 and feel” are essentially the same.

23 The Court therefore finds that Susie’s Deals has infringed upon Unicolors’s
24 valid copyright in GT 1058.

25 **C. Statutory damages**

26 Without the aid of discovery, Susie’s Deals requests statutory damages under
27 the Copyright Act. Under 17 U.S.C. § 504(c)(1), the court may award between \$750
28 and \$30,000. In exercising its “wide discretion,” the court must consider the nature of

1 the copyright and the circumstances of the infringement. *F.W. Woolworth Co. v.*
2 *Contemporary Arts*, 344 U.S. 228, 232 (1952); *L.A. News Serv. v. Reuters Television*
3 *Int'l, Ltd.*, 149 F.3d 987, 996 (9th Cir. 1998). An award of statutory damages serves
4 both compensatory and punitive purposes. *Id.*

5 Unicolors requests \$30,000 in statutory damages in order to compensate it for
6 Susie's Deal's infringement and deter others like Defendant from committing similar
7 infringement in the future.

8 The Court is mindful that Unicolors is presented with a situation where it
9 cannot adequately assess the extent of Susie's Deals infringement, including
10 Defendant's total sales dollars and units sold of the accused pattern. Unicolors also
11 cannot establish the extent of the distribution network from which the shirt bearing the
12 accused pattern originated.

13 But the only evidence of infringement Unicolors presented is the sale of one
14 shirt at a discrete retail location. Congress has set a spectrum of statutory damages
15 from \$750 to \$30,000 upon which the Court must place Susie's Deal's conduct while
16 also considering compensatory and punitive goals. It is likely impossible to place an
17 exact dollar figure on each act of infringement, but the Court finds that Susie's Deals
18 infringement falls toward the lower end of the spectrum. Bearing in mind the punitive
19 goal of § 504, the Court adjusts the damage award slightly upward. The Court
20 accordingly awards Unicolors \$5,000.00 in statutory damages.

21 **D. Costs and attorneys' fees**

22 Under 17 U.S.C. § 505, the district court may also award costs and reasonable
23 attorneys' fees. Unicolors seeks \$205 in costs and \$1,700 in attorneys' fees.

24 The Central District Local Rules provide a schedule for an attorneys'-fees
25 award in default judgments. L.R. 55-3. The court may award a greater amount if the
26 court determines that that amount is reasonable. *Id.*

27 The schedule provides that, for a \$5,000 default-judgment award, the plaintiff is
28 entitled to \$300 plus 10 percent of the amount over \$1,000. *See* L.R. 55-3. Here, that

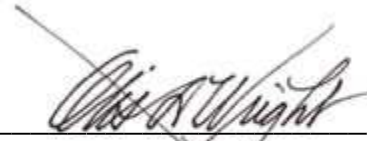
1 calculation yields \$700 in attorneys' fees. Since Unicolors has not presented any
2 supporting documentation regarding its attorneys' fees or otherwise supported its
3 request for a greater fee amount, the Court awards \$700.00 in reasonable attorneys'
4 fees as well as \$205.00 in costs.

5 **V. CONCLUSION**

6 For the reasons discussed above, the Court **GRANTS** Unicolors's Motion for
7 Default Judgment and awards Unicolors a total amount of \$5,905.00. (ECF No. 19.)
8 A default judgment will issue.

9 **IT IS SO ORDERED.**

10
11 November 25, 2013

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14 **OTIS D. WRIGHT, II**
15 **UNITED STATES DISTRICT JUDGE**
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