

HARLEY I. LEWIN (HL 1819)  
SCOTT GELIN (SG 9599)  
GREENBERG TRAUIG, LLP  
200 Park Avenue, 34<sup>th</sup> Floor  
MetLife Building  
New York, NY 10166  
Telephone: (212) 801-9200  
Facsimile: (212) 801-6400  
lewinh@gtlaw.com  
gelins@gtlaw.com

Attorneys for Plaintiff and Counterclaim-Defendant  
DIANE VON FURSTENBERG STUDIO, LP

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DIANE VON FURSTENBERG STUDIO, LP, a  
Delaware limited partnership,

Plaintiff and Counterclaim-  
Defendant,

v.

FOREVER 21, INC., a Delaware corporation;  
FOREVER 21 RETAIL, INC., a California  
corporation; FOREVER 21 LOGISTICS, LLC, a  
Delaware limited liability company; FOREVER  
21 CAPITAL HOLDINGS, LLC, a Delaware  
limited liability company; FOREVER 21  
INVESTMENTS, LLC, a Delaware limited  
liability company; FOREVER 21  
INTERNATIONAL HOLDINGS, INC., a  
Delaware corporation.

Defendants,

and

FOREVER 21, INC., a Delaware corporation.

Defendant and Counterclaim- Plaintiff.

Civil Action No. 07 CV 2413 (VM)

**PLAINTIFF AND COUNTERCLAIM-  
DEFENDANT'S ANSWER TO THE  
COUNTERCLAIM OF DEFENDANT  
AND COUNTERCLAIM-PLAINTIFF  
FOREVER 21, INC.**

For its Answer to the Counterclaim of Defendant and Counterclaim-Plaintiff Forever 21, Inc. (“Defendant”), Plaintiff and Counterclaim-Defendant Diane von Furstenberg Studio, LP (“DVF”), by and through its attorneys, responds as follows:

### **COUNTERCLAIM**

#### **PARTIES**

73. Forever 21, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 2001 S. Alameda Street, Los Angeles, California 90058.

**ANSWER:** DVF admits the allegations set forth in Paragraph 73 of Defendant’s Counterclaim.

74. Upon information and belief, Plaintiff/Counterclaim-Defendant Diane von Furstenberg Studio, LP (hereinafter referred to as “DVF”) is a corporation organized and existing under the laws of the State of New York with its principal place of business at 440 W. 14<sup>th</sup> St., New York, New York 10014.

**ANSWER:** DVF admits that its principal place of business is 440 W. 14<sup>th</sup> St., New York, New York 10014 but denies the other allegations set forth in Paragraph 74 of Defendant’s Counterclaim.

#### **JURISDICTION**

75. This counterclaim arises under the Copyright Laws of the United States, 17 U.S.C. § 101 et. seq., and 28 U.S.C. §§ 2201, 2202, and seeks a declaration of copyright invalidity and non-infringement. This Court has jurisdiction over the subject matter of this counterclaim pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

**ANSWER:** DVF admits that the Counterclaim purports to arise under the Copyright Laws of the United States, 17 U.S.C. § 101 et. seq., and 28 U.S.C. §§ 2201, 2202, and purports to seek a declaration of copyright invalidity and non-infringement. DVF denies having knowledge or information sufficient to form a belief as to the truth of the other allegations set forth in Paragraph 75 of Defendant’s Counterclaim.

76. Upon information and belief, DVF is subject to the jurisdiction of this Court. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391.

**ANSWER:** DVF admits the allegations set forth in Paragraph 76 of Defendant’s Counterclaim.

77. DVF brought this civil action for, *inter alia*, copyright infringement against Forever 21 in this District. This institution of the suit constitutes the basis for this counterclaim against DVF. There is an actual justiciable controversy between Forever 21 and DVF concerning the validity of one of the copyrights at issue and Forever 21's alleged liability for infringement thereof.

**ANSWER:** DVF admits that DVF brought this civil action for, *inter alia*, copyright infringement against Defendant in this District. DVF denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 77 of Defendant's Counterclaim.

### **COUNT ONE**

78. Forever 21 repeats and realleges the allegations of paragraphs 73 through 77 of its counterclaim as if fully set forth herein.

**ANSWER:** DVF repeats and realleges Paragraphs 73 through 77 of Defendant's Counterclaim as if fully set forth herein.

79. Upon information and belief, the design of the fabric in the Lexi Tunic dress shown in Exhibit I to the First Amended Complaint is original and not copied from any other design.

**ANSWER:** DVF denies the allegations set forth in Paragraph 79 of Defendant's Counterclaim.

80. Upon information and belief, the design of the fabric in the Lexi Tunic dress shown in Exhibit I to the First Amended Complaint was designed on or about January 17, 2005.

**ANSWER:** DVF denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 80 of Defendant's Counterclaim.

81. The January 17, 2005 date of creation of the design of the fabric in the Lexi Tunic dress shown in Exhibit I to the First Amended Complaint precedes the first showing of the Edith blouse, which bears the print design called "Scattered Stones," which is the subject of U.S. Copyright Registration No. VAU-711-001, in September 2006, as alleged in paragraph 24 of the First Amended Complaint.

**ANSWER:** DVF admits that the Edith blouse, which bears the print design called "Scattered Stones" is the subject of U.S. Copyright Registration No. VAU-711-001 but denies the other allegations set forth in Paragraph 81 of Defendant's Counterclaim.

82. Upon information and belief, the design of the fabric covered by U.S. Copyright Registration Number VAu711-001 is not original and entitled to protection under the copyright laws.

**ANSWER:** DVF denies the allegations set forth in Paragraph 82 of Defendant's Counterclaim.

83. Upon information and belief, the design of the fabric in the Lexi Tunic dress shown in Exhibit I to the First Amended Complaint does not bear the requisite similarity to any original and protectable elements in the design covered by U.S. Copyright Registration Number VAu711-001.

**ANSWER:** DVF denies the allegations set forth in Paragraph 83 of Defendant's Counterclaim.

84. By reason of the foregoing, Forever 21 is entitled to a declaratory judgment that the design of the fabric in the Lexi Tunic dress shown in Exhibit I to the First Amended Complaint does not infringe U.S. Copyright Registration Number VAu711-001.

**ANSWER:** DVF denies the allegations set forth in Paragraph 84 of Defendant's Counterclaim.

### **AFFIRMATIVE DEFENSES**

In further response to Defendant's Counterclaim, DVF asserts the following affirmative defenses. DVF reserves the right to assert any additional affirmative defenses that may now exist or in the future be available based upon discovery and further investigation.

#### **FIRST AFFIRMATIVE DEFENSE**

1. Defendant's Counterclaim fails to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

2. Defendant's Counterclaim is barred by the doctrine of unclean hands.

#### **THIRD AFFIRMATIVE DEFENSE**

3. Defendant's Counterclaim is barred by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

4. Defendants' Counterclaim is barred because it was filed for an improper purpose and lacks a reasonable and good faith basis in fact.

**FIFTH AFFIRMATIVE DEFENSE**

5. Defendant lacks standing to bring its Counterclaim.

**SIXTH AFFIRMATIVE DEFENSE**

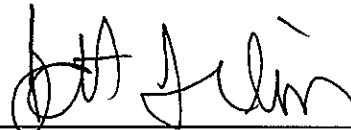
6. Defendant's Counterclaim is vague and ambiguous and fails to identify necessary facts and parties.

Respectfully submitted,

DATED: July 9, 2007

GREENBERG TRAURIG, LLP

By



Harley I. Lewin (HL 1819)  
Scott Gelin (SG 9599)  
200 Park Avenue  
New York, New York 10166  
Tel: (212) 801-9200  
Fax: (212) 801-6400

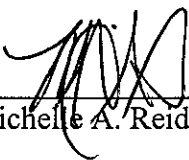
*Attorneys for Plaintiff and Counterclaim-  
Defendant Diane von Furstenberg Studio, LP*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- )  
DIANE VON FURSTENBERG STUDIO, LP, a ) **Civil Action No. 07 CV 2413 (VM)**  
Delaware limited partnership, )  
Plaintiff and Counterclaim-Defendant, )  
) **Certificate of Service**  
v. )  
FOREVER 21, INC., a Delaware corporation; )  
FOREVER 21 RETAIL, INC., a California )  
corporation; FOREVER 21 LOGISTICS, LLC, a )  
Delaware limited liability company; FOREVER 21 )  
CAPITAL HOLDINGS, LLC, a Delaware limited )  
liability company; FOREVER 21 INVESTMENTS, )  
LLC, a Delaware limited liability company; )  
FOREVER 21 INTERNATIONAL HOLDINGS, )  
INC., a Delaware corporation. )  
Defendants, )  
) )  
and )  
) )  
FOREVER 21, INC., a Delaware corporation. )  
) )  
Defendant and Counterclaim- Plaintiff. )  
----- )

This is to certify that on July 9, 2007, I, Michelle A. Reid, caused a copy of the within **PLAINTIFF AND COUNTERCLAIM-DEFENDANTS ANSWER TO THE COUNTERCLAIM OF DEFENDANT AND COUNTERCLAIM-PLAINTIFF FOREVER 21, INC.** to be served by ECF notification and by first class mail upon:

Peter Sloane, Esq.  
Art C. Cody, Esq.  
Ostrolenk, Faber, Gerb & Soffen, LLP  
1180 Avenue of the Americas  
New York, New York 10036

  
\_\_\_\_\_  
Michelle A. Reid