

JUDGE KOELTL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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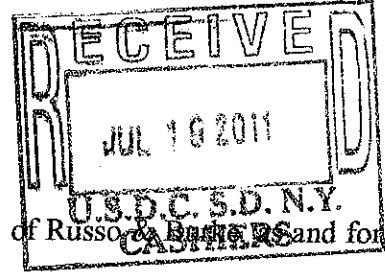
Gail Albert Halaban,
Plaintiff,

-against-

Maclaren USA, Inc., and Bahman Kia,
Defendants.
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11 Civ. Action No. 11 Civ. 4931

COMPLAINT



Plaintiff, by her attorneys, Joel L. Hecker, Esq. of Russo & Batters and for her complaint against defendants herein, alleges as follows:

JURISDICTION

1. This action arises under Title 17 of the United States Code, and jurisdiction is vested in this Court under 28 U.S.C. Sec. 1338. Proper venue exists under 28 U.S.C. Sec. 1400(a) in that defendants reside, do business and/or may be found in this district and certain of the transactions complained of occurred in this district.

THE PARTIES

2. Plaintiff was and at all relevant times herein had been a resident of the City, County, and State of New York.

3. Upon information and belief, defendant Maclaren USA, Inc., ("Maclaren") is a Delaware corporation that sells furniture and other related merchandise for children worldwide, over the internet through its website, through retail stores, and directly to customers, including those residing in New York County, New York and elsewhere within the Southern District of New York.

4. Upon information and belief, defendant Bahman Kia ("Kia") is a Connecticut resident, chairman of Maclaren, and the person who personally made all the relevant decisions by or on behalf of Maclaren herein.

**COUNT I
COPYRIGHT INFRINGEMENT**

5. Plaintiff is and at all relevant times herein has been engaged in the business of creating professional photography.

6. In 2007, prior to commencement of this action, plaintiff caused a series of six photographs of separate lines of baby furniture to be created (the "Copyrighted Photographs").

7. The Copyrighted Photographs were and are wholly original to plaintiff and are copyrightable subject matter under the copyright laws of the United States.

8. Plaintiff, by causing the creation of the Copyrighted Photographs, thereby secured the exclusive rights granted to the author of copyrightable work under the copyright laws of the United States.

9. Since the creation of the Copyright Photographs, publication of same by plaintiff or under her authority or license has been in strict conformity with the provisions of the copyright laws.

10. Since the creation of the Copyrighted Photographs, plaintiff has been the sole proprietor of all rights, title and interest in and the copyright of said Photographs.

11. On April 27, 2011, plaintiff complied in all respects with the United States Copyright Act and all other laws governing copyrights by filing the Copyrighted Photographs with the United States Copyright Office, along with payment of the requisite fees and obtained registration of the Copyrighted Photographs under Registration Number VA 1-777-334.

12. On March 25, 2007, plaintiff licensed to NettoCollection LLC the limited rights to use the Copyrighted Photographs in print media, in North America only, for the one year period terminating on February 13, 2008.

13. On information and belief, defendant Maclaren through its subsidiary, 2Fab2Design, LLC, purchased certain assets from NettoCollection LLC. In connection therewith, beginning in June 2009, defendants, without the knowledge, authorization or consent of plaintiff, deliberately and willfully used the Copyrighted Photographs in connection with the advertising, promotion, display and sale of children's furniture under its newly purchased NettoCollection brand of children's furniture.

14. Defendants and plaintiff were unable to agree upon the terms of a license agreement in connection with Maclaren's unauthorized use of the Copyrighted Photographs. Instead of ceasing and desisting from such use as demanded by plaintiff, defendant Kia, individually and on behalf of Maclaren, as well as Maclaren, knowingly and willfully, continued to use the Copyrighted Photographs in connection with Maclaren's ongoing 2011 Marketing Campaign.

15. Such continuing uses, after demand by plaintiff to cease and desist, were and continue to be deliberate and willful infringements by defendants of plaintiff's copyright in her Copyrighted Photographs.

16. The decisions to initially use, and then continue to use plaintiff's Copyrighted Photographs, after defendants were notified such use was unauthorized, were knowingly made by defendant Kia.

17. Defendants thus violated plaintiff's exclusive rights in the copyright to the Copyrighted Photographs, in violation of Sections 106(2) and (5) of the Copyright Act of 1976, 17 U.S.C. Sections 106(2) and (5).

WHEREFORE, plaintiff demands judgment against defendants, jointly and severally, as follows:

(A) that defendants, their agents, servants, employees, officers, attorneys and all those persons in active concert or participation with each and any of them be enjoined during the pendency of this action and permanently, from directly or indirectly infringing the copyright of plaintiff in any manner, and from publishing the infringing material.

(B) that defendants be required to deliver up to plaintiff to be impounded during the pendency of this action, all advertising material, promotional material, photographs, and all or other material infringing the Copyrighted Photographs, which are in their possession or under their control and to deliver up for destruction any such material used in the making or publishing of such infringing matter;

(C) for an accounting of the proceeds derived by each defendant from the publication, distribution and sale of the infringing material and upon such accounting, that defendants pay to plaintiff all monies determined to be benefits generated or arising from such infringing material, and the damages which plaintiff has suffered as a result of such infringement;

(D) that defendants pay to plaintiff her actual damages as determined by the court,

(E) that defendants pay to plaintiff damages provided by statute for defendants' statutory copyright infringement; and

(F) that defendants pay to plaintiff all the costs and expenses of this action, including reasonable attorneys' fees to be assessed by the Court, plus interest as appropriate, and such other and further relief as to this Court seems just and proper.

Dated: New York, New York
July 18, 2011

Russo & Burke

By: 

Joel L. Hecker (JH0842)
Attorneys for Plaintiff
600 Third Avenue
New York, New York 10016
(212) 557-9600

PLEASE TAKE NOTICE

Index No.

Year 2011

that the within is a (certified) true copy of a
entered in the office of
the clerk of the within named Court on

that an Order of which the within is a true copy
will be presented for settlement to the
Honorable one of
the judges of the within named Court, at
on
, at

Dated: _____

RUSSO & BURKE
ATTORNEYS AT LAW
Attorneys for Plaintiff
600 THIRD AVENUE
NEW YORK, N.Y. 10016

GAIL ALBERT HALABAN,

Plaintiff,


-against-

MACIAREN USA, INC., and
BAHMAN KIA,

Defendants.

COMPLAINT

Pursuant to 22 NYCRR 130-1.1, the undersigned, an
attorney admitted to practice in the courts of New York
State, certifies that, upon information and belief and
reasonable inquiry, the contentions contained in the
annexed document are not frivolous.

Dated: 7/18/11

Joel L. Hecker, Esq.

RUSSO & BURKE
ATTORNEYS AT LAW
Attorneys for Plaintiff

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NEW YORK, N.Y. 10016

To
Attorney(s) for

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To
Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for