

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>STERLING JEWELERS INC.,</b>	)	<b>CASE NO.</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE</b>
	)	
v.	)	
	)	
<b>SB&amp;T IMPORTS, L.P.,</b>	)	<b><u>COMPLAINT</u></b>
	)	
<b>Defendant.</b>	)	

Plaintiff, Sterling Jewelers Inc. (“Sterling”), by and through its attorneys, for its complaint alleges the following against defendant SB&T Imports, L.P. (“SB&T”):

**NATURE OF THIS ACTION**

1. This action for damages and injunctive relief arises from the unauthorized copying, reproduction, distribution, promotion and sale by SB&T of multiple copies of two copyrighted jewelry designs exclusively licensed to Sterling (collectively, the “Copyrighted Designs”).

2. The Copyrighted Designs were created by the actress and artist Jane Seymour as works-for-hire for Catfish Productions, Inc. (“Catfish”), which, as the owner of the designs, granted Sterling the exclusive license to manufacture, distribute, sell, advertise and promote jewelry based on those and other designs created by Ms. Seymour (and owned by Catfish) in the United States. Pursuant to the licenses, Sterling has been marketing and selling the “Open Hearts by Jane Seymour” jewelry collection, including the Copyrighted Designs, since April 2008. Since its introduction, the Open Hearts by Jane Seymour jewelry collection has become one of the most popular and best-selling jewelry lines in the United States.

3. Deliberately trading off the success of the Open Hearts by Jane Seymour jewelry collection, SB&T has intentionally copied, reproduced, distributed, promoted and sold unauthorized copies of the Copyrighted Designs (“SB&T Copies”) to retailers in Ohio and, on information and belief, throughout the United States, in violation of Sterling’s exclusive rights under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*

### **PARTIES**

4. Plaintiff Sterling is a Delaware corporation, with its principal place of business at 375 Ghent Road, Akron, Ohio 44333. Sterling is a leading specialty jewelry retailer that distributes, sells, markets and advertises high-quality jewelry products throughout the United States.

5. Upon information and belief, SB&T is a limited partnership organized under the laws of Texas with its principal place of business at 7500 San Felipe, Suite 560, Houston, Texas 77063. Upon further information and belief, SB&T is a jewelry wholesaler that manufactures, distributes, and sells jewelry merchandise in the United States and imports jewelry merchandise from overseas, in particular from its parent company, S.B. & T. International Limited (“SB&T India”) in Mumbai, India.

### **JURISDICTION AND VENUE**

6. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*

7. This Court has jurisdiction over the subject matter of this action pursuant to 17 U.S.C. §§ 101 *et seq.* and 28 U.S.C. §§ 1331 and 1338(a).

8. Upon information and belief, this Court has personal jurisdiction over SB&T because SB&T does business in the state of Ohio and in this District. In addition,

SB&T's conduct, which constitutes copyright infringement, occurred in this District and has caused harm in this District.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(a). 0

## **ALLEGATIONS**

### **Sterling's Jewelry Business**

10. Sterling is one of the largest specialty retail jewelry companies in the United States. Sterling's sales exceeded \$2.7 billion for fiscal year ending February 2, 2008.

11. Sterling or its predecessors has provided retail jewelry services under the Kay Jewelers® ("Kay") brand since 1916, the Jared® The Galleria Of Jewelry ("Jared") brand since 1993, and the Belden® Jewelers ("Belden") brand since 1910. Under the Kay, Jared, Belden and other regional brands, Sterling operates more than 1,400 stores in all fifty states in the United States.

12. Sterling distributes and sells an extensive assortment of high-quality jewelry products, including the Copyrighted Designs that are the subject of this Complaint. Sterling closely controls the distribution and quality of its merchandise, including the Copyrighted Designs. Sterling diligently protects its intellectual property rights in its trademarks and copyrights, including its licensed products such as the Copyrighted Designs.

13. Sterling markets its merchandise through national cable and network television advertising, in addition to national print and network radio advertising, catalogues, direct mailing, telephone marketing, point-of-sale signage, in-store displays and the Internet.

14. Sales of jewelry items typically increase significantly during the several weeks leading up to such holidays as Christmas, Valentine's Day, and Mother's Day.

**Jane Seymour and the Development and Promotion of the Copyrighted Designs**

15. Ms. Seymour, the creator of the Copyrighted Designs, is a renowned actress, winner of Emmy and Golden Globe awards and honored as an Officer of the British Empire. Among the roles Ms. Seymour has played was “Dr. Quinn” in the television drama “Dr. Quinn, Medicine Woman,” which aired for six seasons on the CBS television network. Ms. Seymour recently starred as a celebrity contestant on the popular television show “Dancing with the Stars.”

16. Ms. Seymour also has enjoyed success as a designer and artist, particularly as a painter in watercolors and oils. She has exhibited her work in her own art gallery in Los Angeles, California, and at fine art galleries throughout the United States.

17. In early 2008, Ms. Seymour began designing jewelry items for manufacture and sale by Sterling. In April 2008, Sterling launched the “Open Hearts by Jane Seymour” line, based on several of these designs, which included the Copyrighted Designs, at Kay stores nationwide. The “Open Hearts by Jane Seymour” line is now also sold at Jared, Belden, and other regional branded Sterling stores throughout the United States.

18. The design of the Copyrighted Designs is based on a painting by Ms. Seymour, which itself has been registered with the U.S. Copyright Office as Registration VAU-756-640.

19. Since the launch of the “Open Hearts by Jane Seymour” jewelry line in April 2008, Sterling has invested, and continues to invest, substantial sums of money in developing, reproducing, distributing, advertising and promoting the Copyrighted Designs and creating a successful product. To date, Sterling’s gross revenue from the Copyrighted Designs has reached several million dollars.

20. The Copyright Act vests Sterling, as the exclusive licensee of the Copyrighted Designs, with the exclusive rights “(1) to reproduce the copyrighted work in copies...; (2) to prepare derivative works based upon the copyrighted work; and (3) to distribute copies ... of the copyrighted work to the public by sale....” 17 U.S.C. § 106(1)-(3).

21. Each of the Copyrighted Designs is an original work of authorship protected by copyright and registered with the United States Copyright Office. Open Hearts Necklace (Silver) is registered under VA 1-651-346 and Open Hearts Necklace (Silver & Diamonds) and (Gold & Diamonds) is registered under VA 1-651-345. True and correct copies of the Copyright Registrations are attached as Exhibit A; true and correct copies of the photographs included in the copyright applications are attached as Exhibit B. These copyright registrations are *prima facie* evidence of ownership and validity of the copyrights.

**SB&T’s Infringing Activity**

22. Upon information and belief, SB&T is a wholesale distributor of jewelry and maintains a joint venture in jewelry manufacturing with overseas entities. SB&T also operates a website located at <http://www.sbtimports.com>.

23. Upon information and belief, SB&T provides assistance to SB&T India in identifying, developing and marketing jewelry responsive to the latest trends in the United States market. Upon further information and belief, SB&T has directors on the board of SB&T India and holds equity in the company.

24. Upon information and belief, SB&T, without authorization, began reproducing and distributing the SB&T Copies in violation of Sterling’s exclusive rights, in or before December 2008. The SB&T Copies have the same double-open heart design as the Copyrighted Designs.

25. Sterling learned about SB&T's unauthorized and infringing conduct on or about January 1, 2009 through a posting on the Independent Jewelers Organization's blog. The posting, dated December 30, 2008, included an email from Michael Pietrangelo, evidently an SB&T employee, stating that SB&T was planning to have a shipment of the SB&T Copies for sale in time for Valentine's Day 2009 and soliciting offers to purchase the SB&T Copies. A true and correct copy of the blog posting showing this email is attached as Exhibit C; *see* page 4.

26. On February 4, 2009, Sterling undertook to have purchased a silver and diamond copy of the Copyrighted Designs from SB&T. Mr. Pietrangelo is listed as the salesperson on the invoice. The purchased copy is made of silver with diamonds and is substantially similar to the subject matter of U.S. Copyright Registration VA 1-651-345.

27. Upon information and belief, SB&T sent its salesperson, Mr. Pietrangelo, to Ohio to solicit business at jewelry retailers and sold SB&T Copies to at least one jewelry retailer in Ohio.

28. Upon information and belief, SB&T intentionally sold its merchandise in the weeks leading up to the 2008 Christmas and 2009 Valentine's Day holidays in order to capitalize on these seasons for jewelry purchases.

29. Upon information and belief, SB&T sold the SB&T Copies so that it could trade on the good will and reputation of Sterling, as well as Sterling's extensive investment in developing, distributing, advertising and promoting the Copyrighted Designs.

30. On February 11, 2009, after learning of the solicitations by Mr. Pietrangelo and the sales of SB&T Copies in Ohio, Sterling, through its outside legal counsel, sent a cease-and-desist letter to SB&T. That letter demanded that SB&T:

- cease and desist from copying, reproducing, or distributing the SB&T Copies;

- contact all retailers who have purchased or ordered SB&T Copies and any jewelry variations thereof and instruct them to stop selling such merchandise;
- securely preserve its entire inventory of SB&T Copies;
- provide Sterling with the identities of all other entities involved in the chain of distribution of SB&T Copies; and
- provide Sterling with a full accounting of inventory, sales, purchases, profits, advertising and marketing activities and expenses associated with SB&T Copies, including the identity of all entities to whom any number of the SB&T Copies have been sent.

31. Despite Sterling's demand that SB&T take these actions by close of business on February 11, 2009 due to the urgency of the matter, SB&T did not respond in any manner until February 13, 2009.

32. On February 13, 2009, Sterling received a letter from SB&T, but the letter did not provide most of the information Sterling had requested. SB&T's letter stated, with respect to the SB&T Copies, that SB&T "simply distributed" the SB&T Copies and that SB&T's previous inventory had "left [SB&T's] control."

33. On February 13, 2009, Sterling, through its counsel, sent a follow-up letter to SB&T requesting that it provide the information requested in its initial letter.

34. Sterling has attempted to resolve this matter amicably, but, to date, SB&T has ignored its efforts.

### **CLAIM FOR RELIEF**

#### **Direct Copyright Infringement in Violation of 17 U.S.C. § 106**

35. Paragraphs 1-34 are incorporated by reference as if set forth fully herein.

36. By copying, reproducing, and distributing the Copyrighted Designs on a continuing basis, SB&T's conduct constitutes infringement of copyright in violation of Sections 106, 501-505 of the Copyright Act, 17 U.S.C. §§ 106, 501-505.

37. SB&T's acts have been and continue to be willful, intentional, and purposeful, in violation of Sterling's rights.

38. As a direct and proximate result of SB&T's infringement of copyright and its violation of Sterling's exclusive rights, Sterling is entitled to injunctive relief and damages. Unless enjoined by this Court, SB&T's conduct will continue to cause severe harm to Sterling.

WHEREFORE, Plaintiff, Sterling Jewelers Inc. prays that this Court enter judgment against Defendant, SB&T Imports, L.P. as follows:

A. Enter an order pursuant to 17 U.S.C. § 502 declaring that SB&T's actions as complained of herein constitute copyright infringement, and granting injunctive relief enjoining SB&T and any individual in their employ or control, now or in the future, without seeking the appropriate authorization from Sterling, from copying, reproducing, or distributing the Copyrighted Designs;

B. Award Sterling an equitable accounting of SB&T's profits and award damages in an amount yet to be determined, plus pre-judgment and post-judgment interest;

C. Require SB&T to file with the Court and serve upon Sterling a report in writing, under oath, setting forth in detail the manner and form in which SB&T has complied with the terms of any injunction entered; and

D. Grant such other and further relief as it deems just and proper.

Dated: March 9, 2009

Respectfully submitted,

/s/ John B. Schomer

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