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8 Attorney for Plaintiff
9 GREG YOUNG PUBLISHING, INC.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 GREG YOUNG PUBLISHING, INC., a
13 corporation,

Case No. 2:15-CV-3142

14 Plaintiff,

COMPLAINT FOR COPYRIGHT
INFRINGEMENT

15 v.

16 AMAZON.COM, INC., a corporation,
17 3D ROSE LLC, a limited liability
18 corporation, LENS ART BY FLORENE
19 LLC, a limited liability corporation, and
20 DOES 1 to 10,

JURY TRIAL DEMANDED

21 Defendants.

22
23 **COMPLAINT**

24 Plaintiff, Greg Young Publishing, Inc. (“GYP”), by its undersigned counsel,
25 for its complaint against Amazon.com, Inc. (“Amazon”), 3D Rose LLC (“3D
26 Rose”), and Lens Art by Florene LLC (“Lens Art by Florene”), alleges as follows:
27
28

PARTIES

- 1
2 1. Greg Young Publishing, Inc. (Plaintiff) is a California corporation domiciled
3 in Santa Barbara, California. Greg Young is the corporation's president
4 and sole shareholder.
- 5 2. Amazon.com, Inc. (Defendant) is a Washington corporation domiciled in
6 Seattle, Washington. Amazon conducts its business from its offices in
7 Seattle. Amazon is the largest internet based retailer in the world and
8 conducts business worldwide.
- 9 3. 3D Rose LLC (Defendant) is a New Jersey limited liability corporation
10 domiciled in Jackson, New Jersey. 3D Rose provides its merchants with a
11 market place for selling their art and photography on merchandise such as
12 mouse pads, switch plates, and coffee mugs. 3D Rose also sells the
13 aforementioned merchandise on its website and other ecommerce
14 websites such as Amazon.com to consumers.
- 15 4. Lens Art by Florene LLC (Defendant) is a Florida limited liability corporation
16 domiciled in Cape Coral, Florida. Lens Art by Florene operates an online
17 art gallery where patrons can purchase art. Florene M. Welebny is the de
18 facto owner of Lens Art by Florene and creates much of the artwork that is
19 sold through the company's online art gallery. Additionally, Lens Art by
20 Florene offers reproductions of other works of art, that the company sells to
21 various third party vendors, such as 3D Rose. Plaintiff is informed and
22 believes that Lens Art by Florene, provided 3D Rose the infringing artwork
23 which 3D Rose then put into commerce.

JURISDICTION AND VENUE

- 24
25 5. This case is a civil action arising under the copyright laws of the United
26 States, 17 U.S.C. section 101 *et seq.* This Court has subject-matter
27

1 jurisdiction over this action pursuant to 17 U.S.C. section 501, 28 U.S.C.
2 section 1331, and 28 U.S.C. section 1338.

3 6. Personal jurisdiction and venue are proper in this district pursuant to
4 28 U.S.C. section 1400(a), as defined by 28 U.S.C. section 1391(b) and (c)

5 7. Venue is proper in this judicial district pursuant to 28 U.S.C.
6 section 1391(b) and 1400(a), because defendants conduct business in this
7 district, and because a substantial part of the events giving rise to plaintiff's
8 claims occurred in this judicial district.

9
10 **FACTUAL BACKGROUND**

11 8. Plaintiff, Greg Young Publishing, Inc. (hereinafter "GYP") is a California-
12 based art publisher. GYP represents several artists, including the artist
13 Kerne Erickson.

14 9. Kerne Erickson is one of many successful artists that GYP represents. The
15 vintage-inspired travel and beach themed paintings created by Mr.
16 Erickson have proven to be some of the most popular works licensed by
17 GYP. Mr. Erickson's works are unique within those offered by GYP in that
18 GYP personally commissions works of art from Mr. Erickson and
19 purchases the copyrights in those works by way of an assignment.

20 10. Since the late 1990's, GYP has collaborated with Mr. Erickson on a series
21 of original designs that have become internationally known in the area of
22 retro-vintage poster art. At that time, GYP began publishing the designs as
23 posters and selling them to the public.

24 11. Mr. Erickson's works have been a top seller on Art.com, the largest retailer
25 of poster and wall decor art. In about 2002, GYP started to license Mr.
26 Erickson's designs to manufacturers of various products such as puzzles,
27 greeting cards, postcards, shower curtains, shoes, apparel and much
28

1 more. In 2006, GYP published a coffee table book entitled Kerne Erickson,
2 which showcases Mr. Erickson's work. This book was sold through the
3 Tommy Bahama retail outlets.

4 12. Mr. Erickson has been and continues to be one of Hawaii's most
5 recognizable artists for postcard, greeting card and calendar printed
6 materials. Mr. Erickson's designs have been used on a number of
7 television and motion picture films as background set dressing. The
8 Bequia Beach Hotel, a five star hotel in the eastern Caribbean, promotes in
9 its marketing materials the fact that Mr. Erickson's work, is a feature of
10 their hotel rooms. Mr. Erickson has also worked for Disney - the last
11 project was the 130 foot mural in Disney's Grand California Adventure
12 Hotel. In 2007, Norwegian Cruise lines, through GYP, created an
13 exclusive line of merchandise that features Mr. Erickson's designs. This
14 merchandise is sold on their cruise ships operating in the Hawaiian
15 Islands. The November 2014 issue of Harrods Travel Magazine featured
16 an article with three of Mr. Erickson's works.

17 13. When licensing to manufacturers, GYP requires a visible attribution that
18 notices Kerne Erickson as the artist and GYP as the copyright owner.
19 Despite this fact, and because of Mr. Erickson's popularity, GYP is
20 constantly required to protect its rights in and out of court against willful
21 infringers who believe that they can do as they please without any
22 consequences and in violation of U.S. Copyright laws.

23 14. GYP goes to great lengths to protect the copyrights that it owns for Mr.
24 Erickson's works. GYP registers all of its artwork with the U.S. Copyright
25 Office and places a watermark on all of the artwork it displays on its
26 website, along with a notice of copyright. In addition, all licensees of
27
28

1 GYP's artworks, also place a copyright notice and a Kerne Erickson
2 attribution on the artwork that they offer for sale.

3
4 **THE INFRINGED ARTWORK**

5 15. Kerne Erickson painted three original and separate pieces of artwork
6 entitled: 1) "Pineapple," 2) "Coconut," and 3) "Ginger." ("The Artwork")
7 Copies of these works of art are attached hereto as Exhibit "A," Exhibit "B,"
8 and Exhibit "C," respectively.

9 16. At all times relevant herein, Mr. Erickson and GYP have complied in all
10 respects with the Copyright Act, 17 U.S.C. section 101, *et seq.*, and
11 secured the exclusive rights and privileges in and to the copyrights of "The
12 Artwork."

13 17. A registration for "Pineapple" was issued by the U.S. Copyright Office
14 effective on April 15, 2003, carrying Registration Number VA1-211-672. A
15 supplemental registration for this work was issued by the U.S. Copyright
16 Office effective July 25, 2013, carrying Registration Number VA1-433-537.
17 Attached as part of Exhibit "A" is a true and correct copy of the certificate
18 of registration for "Pineapple."

19 18. A registration for "Coconut" was issued by the U.S. Copyright Office
20 effective on April 15, 2003, carrying Registration Number VA1-205-134. A
21 supplemental registration for this work was issued by the U.S. Copyright
22 Office effective July 23, 2013, carrying Registration Number VA1-433-516.
23 Attached as part of Exhibit "B" is a true and correct copy of the certificate
24 of registration for "Coconut."

25 19. A registration for "Ginger" was issued by the U.S. Copyright Office effective
26 on May 23, 2003, carrying Registration Number VA1-202-082. A
27 supplemental registration for this work was issued by the U.S. Copyright
28

1 Office effective July 25, 2013, carrying Registration Number VA1-433-539.
2 Attached as part of Exhibit "C" is a true and correct copy of the certificate
3 for "Ginger."
4

5 **3D ROSE'S INFRINGING ACTIVITIES**

6 20. Founded in 2000, defendant 3D Rose offers merchants and artists a place
7 to display their own artwork on a variety of different gift related
8 merchandise which 3D Rose manufactures on behalf of its patrons. 3D
9 Rose solicits patrons of its website to submit artwork or photographs which
10 their patrons have created. 3D Rose then takes the patron's submitted
11 artwork or photograph and places the artwork on one of the myriad of gift
12 products the company manufactures via what 3D Rose describes on its
13 website as a "unique process." The products 3D Rose manufactures
14 include: 1) single and double toggle switch covers, 2) desk clocks, 3) wall
15 clocks, 4) porcelain plates, 5) t-shirts, 6) sweatshirts, 7) mouse pads, 8)
16 mugs, 9) aprons, 10) baseball caps, 11) ceramic tiles, 12) coasters, as well
17 as other products.

18 21. 3D Rose also maintains a large inventory of other gift related merchandise
19 that patrons can purchase through its website: <https://www.3drose.com/>.
20 These gift related items are personalized with artwork or photographs
21 affixed to the merchandise. In addition to using its own website, 3D Rose
22 uses other ecommerce websites such as Amazon.com to sell the
23 merchandise it manufactures to the general public.

24 22. Recognizing the popularity and appeal of Mr. Erickson's designs, 3D Rose
25 obtained a copy of the artwork entitled "Pineapple" created by Mr. Erickson
26 and owned by GYP. 3D Rose in turn willfully and brazenly displayed and
27 affixed "Pineapple" on the following nine items the company manufactures:
28

1 1) 10 inch quilts, 2) heat transfer plates, 3) porcelain ornaments, 4) single
2 toggle switch plates, 5) double toggle switch plates, 6) wall mounted
3 electronic outlet covers, 7) gift cards, 8) mouse pads, and 9) an 18 inch
4 garden flag. 3D Rose placed these items for sale on Amazon.com.

5 23. Exhibit "D" displays the infringing 3D Rose merchandise using "Pineapple,"
6 which 3D Rose places for sale on Amazon.com.

7 24. Recognizing the popularity and appeal of Mr. Erickson's designs, 3D Rose
8 obtained a copy of the artwork entitled "Ginger" created by Mr. Erickson
9 and owned by GYP. 3D Rose in turn willfully and brazenly displayed and
10 affixed "Ginger" on the following four items the company manufactures: 1)
11 10 inch quilts, 2) 14 ounce steel travel mugs, 3) 10 x 10 wall clocks, and 4)
12 an 18 inch garden flag.

13 25. Exhibit "E" displays the infringing 3D Rose merchandise using "Ginger,"
14 which 3D Rose places for sale on Amazon.com.

15 26. Recognizing the popularity and appeal of Mr. Erickson's designs, 3D Rose
16 obtained a copy of the artwork entitled "Coconut" created by Mr. Erickson
17 and owned by GYP. 3D Rose in turn willfully and brazenly displayed
18 "Coconut" on the following seven items the company manufactures: 1)
19 porcelain ornaments, 2) 18 inch garden flags, 3) greeting cards, 4) double
20 and single toggle switch plates, 5) 10 inch quilts, and 6) plug outlet covers.

21 27. Exhibit "F" displays the infringing 3D Rose merchandise using "Coconut,"
22 which 3D Rose places for sale on Amazon.com.

23 28. 3D Rose placed "The Artwork" on its merchandise without permission,
24 license, or authorization from the copyright holder GYP.

25 29. 3D Rose also had Mr. Erickson's signature cropped out of "The Artwork"
26 thereby depriving the general public of vital information as to the authorship
27 and copyright of the artwork.

1 30. 3D Rose has been in business for fifteen years making their actions
2 complained about in this lawsuit inexcusable.

3 31. On March 23, 2015, plaintiff's counsel sent a Notice of Copyright
4 Infringement to 3D Rose, demanding that it remove all infringing
5 merchandise from Amazon.com, immediately cease all sales of infringing
6 merchandise, and provide a complete accounting of its sales for the
7 infringing merchandise. Exhibit "G."

8 32. To date, 3D Rose is still manufacturing merchandise willfully or with
9 reckless disregard to GYP's copyright stake in the artwork.

10
11 **AMAZON.COM, INC'S. INFRINGING ACTIVITIES**

12 33. Amazon.com, Inc. is the largest internet retailer in the world. What an
13 individual can purchase on Amazon.com is limited only by one's
14 imagination. In 2014, the Company realized revenue of approximately 89
15 billion U.S. dollars.

16 34. 3D Rose uses Amazon.Com, Inc., as its ecommerce vendor of choice to
17 sell the infringing merchandise.

18 35. On March 20, 2015, plaintiff learned that unauthorized copies of "The
19 Artwork" were being offered for sale on Amazon.com.

20 36. On March 20, 2015, plaintiff's counsel emailed and provided Amazon.com,
21 Inc.'s registered Digital Millennium Copyright Act (DMCA) agent, with
22 notice that it was offering for sale unauthorized copies of "The Artwork,"
23 and demanded that it take down the infringing merchandise from it's
24 website.

25 37. Counsel for plaintiff provided Amazon.com, Inc. with the required and
26 necessary information of the infringing activity per the requirements of 17
27 U.S.C. section 512(c)(3). Exhibit "H" displays the notice plaintiff's counsel
28

1 sent to Amazon.com, Inc.'s DMCA agent, Adrian Garver.

2 38. On March 20, 2015, plaintiff's counsel received a response from
3 Amazon.com, Inc. indicating that it received plaintiff's counsel's March 20,
4 2015 email and that it would review it and respond within 5 - 7 days.
5 Exhibit "I."

6 39. Noticing that the infringing 3D Rose merchandise was still listed for sale on
7 Amazon.com, on April 10, 2015, plaintiff's counsel sent a second email to
8 Amazon.com, Inc's DMCA agent requesting that they respond to the March
9 20, 2015 correspondence. Exhibit "J."

10 40. On April 10, 2015, plaintiff's counsel received an automated response from
11 Amazon.com, Inc. indicating that it received plaintiff counsel's April 10,
12 2015 email and that it would review it and respond within 5 - 7 days.
13 Exhibit "K."

14 41. As of April 23, 2015, Amazon.com, Inc., still displays and offers for sale the
15 infringing merchandise on its website, despite receiving proper and
16 adequate DCMA copyright infringement notice.

17 42. Amazon has failed to "expeditiously" remove the infringing merchandise as
18 required by 17 U.S.C. section 512 (c).

19
20 **LENS ART BY FLORENE LLC'S INFRINGING ACTIVITIES**

21 43. Lens Art by Florene obtained copies of "The Artwork." Plaintiff is informed
22 and believes that Lens Art by Florene, provided 3D Rose the infringing
23 artwork which 3D Rose then put into commerce without authorization and
24 in violation of plaintiff's copyrights in "The Artwork."

25
26 **COPYRIGHT INFRINGEMENT COUNT**

27 44. GYP incorporates the prior paragraphs by reference as though fully set
28

1 7. An Order granting GYP such other and further relief as this Court deems
2 equitable and proper.

3
4 **DEMAND FOR JURY TRIAL**

5
6 Plaintiff GYP demands a trial by jury on all claims so triable.

7
8 Respectfully submitted,

9
10 Dated: April 24, 2015

LAW OFFICES OF JEFFREY YOUNG

11 */s/ Jeffrey S. Young*
12 By: _____

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