

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

LIZA PHOENIX,

Plaintiff,

v.

AMAZON DIGITAL SERVICES LLC and
WOOT INC.,

Defendants.

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Civil Action No. 3:16-cv-02692

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff, LIZA PHOENIX, by and through undersigned counsel, brings this Complaint against Defendants, AMAZON DIGITAL SERVICES LLC and WOOT INC., for damages and injunctive relief, and in support thereof states as follows:

JURISDICTION AND VENUE

1. This is an action arising under the Copyright Act, 17 U.S.C. § 501.
2. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).
3. Defendants are doing business in Texas and are subject to personal jurisdiction in Texas.
4. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendants engaged in infringement in this district, Defendants reside in this district, and Defendants are subject to personal jurisdiction in this district.

PLAINTIFF

5. Plaintiff LIZA PHOENIX (“Phoenix”), who resides in Seattle, Washington, brings this action for violations of Phoenix’s exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Phoenix’s original copyrighted works of authorship in her illustrations.

6. Phoenix is a prolific and highly accomplished graphic artist. Phoenix’s original illustrations and artwork spans genres including fantasy, decorative, and pop art. More recently, Phoenix has achieved success with her illustrations that capitalize on the interest in “kawaii,” a Japanese influenced trend that emphasizes the quality of cuteness in the context of Japanese culture. Kawaii has emerged as a prominent aspect of Japanese popular culture, entertainment, clothing, food, toys, personal appearance, behavior, and mannerisms. The “Hello Kitty” and “Pokemon” characters are examples of popular kawaii images that earn hundreds of millions of dollars annually in licensing fees for their owners.

7. One of Phoenix’s popular kawaii images entitled “Sprinkle Poo” (the “Work”).



Sprinkle Poo, 2013
digital image, original size 5600 x 4800 pixels

8. Phoenix registered the Work with the Register of Copyrights on December 14, 2015 and was assigned the registration number VA 2-007-632. The Certificate of Registration is attached hereto as Exhibit 1.

9. At all relevant times Phoenix was the owner of the copyrighted Work at issue in this case.

INFRINGEMENT BY DEFENDANTS

10. AMAZON DIGITAL SERVICES LLC (“ADS”) is a Delaware limited liability company with a principal place of business in Seattle, Washington. ADS can be served via its registered agent Corporation Service Company, 211 E. 7th Street, Suite 620, Austin TX 78701. ADS does business in Texas and is registered with the Texas Comptroller of Public Accounts for Franchise Tax purposes.

11. WOOT INC. (“Woot”) is a Texas corporation with a principal place of business at 4121 International Parkway, Carrollton, TX 75007. Woot can be served via its registered agent Corporation Service Company, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin TX 78701.

12. ADS and Woot are subsidiaries of Amazon.com, Inc.

13. ADS and Woot are in the business of advertising, marketing, manufacturing, distributing and selling shirts and other garments decorated with screen printed and ink jet printed designs on Amazon.com.

14. The Defendants have never been licensed to use the Work at issue in this action for any purpose.

15. On a date after the Work at issue in this action was created, but prior to the filing of this action, Defendants copied the Work.

16. Defendants copied Phoenix's copyrighted Work without Phoenix's permission.

17. After Defendants copied the Work, they displayed the work, made further copies, created derivative works, and distributed the Work on the Internet and on shirts and other garments as evidenced by Exhibit 2 which is a shirt displaying an infringement of the Work purchased from ADS and fulfilled by Woot.

18. Defendants produced the shirts and other garments in this federal district and shipped them from this district as evidenced by Exhibit 2 showing the package in which the infringing shirt was shipped with a return address in this district.

19. Phoenix never gave Defendants permission or authority to copy, distribute or display the Work or make derivatives of the Work at issue in this case.

20. Plaintiff has engaged the undersigned attorneys and has agreed to pay them a reasonable fee.

COUNT I
COPYRIGHT INFRINGEMENT

21. Plaintiff Phoenix incorporates the allegations of paragraphs 1 through 20 of this complaint as if fully set forth herein.

22. Phoenix owns a valid copyright in the Work at issue in this case.

23. Phoenix registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

24. Defendants copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without Phoenix's authorization in violation of 17 U.S.C. § 501.

25. Defendants performed the acts alleged in the course and scope of its business.

26. Phoenix has been damaged.

27. The harm caused to Phoenix has been irreparable.

WHEREFORE, the Plaintiff Phoenix prays for judgment against the Defendants that:

a. Defendants and their officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501 and that the infringing garments and other items be impounded and destroyed at Defendants' expense;

b. Defendants be required to pay Plaintiff her actual damages and Defendant's profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. § 504;

c. Plaintiff be awarded her attorneys' fees and costs of suit under the applicable statutes sued upon; and

d. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: September 21, 2016

Respectfully submitted,

/s/ Joel B. Rothman

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