

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

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Janel Russell Designs, Inc.

Plaintiff,

Civil No. \_\_\_\_\_

v.

A.V. Diamonds, Inc

Defendants

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**COMPLAINT FOR COPYRIGHT INFRINGEMENT**

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Plaintiff, Janel Russell Designs, Inc. for its complaint against A.V. Diamonds, Inc. states and alleges as follows:

**THE PARTIES**

1. Janel Russell Designs, Inc. is a Delaware corporation having its principal place of business at 2866 Middle Street, St. Paul, MN 55117.

2. Upon information and belief, A.V. Diamonds, Inc. is a Texas corporation having its principal place of business at 7500 Bellaire Boulevard, #333, Houston, TX 77036-5022.

**JURISDICTION**

3. This court has subject matter jurisdiction over this action pursuant to Title 17 of the United States Code and 28 U.S.C. § 1338. Venue is proper in the judicial district under 28 U.S.C. §§ 1391(c) and 1400(a).

4. This court has personal jurisdiction over A.V. Diamonds, Inc. As will be set forth below in greater detail, A.V. Diamonds has purposely availed itself of the resources of protection of the State of Minnesota by offering for sale and selling products which infringe certain

copyrights owned by Janel Russell Designs, Inc. Furthermore, A.V. Diamonds, Inc.'s infringement of Plaintiff's copyrights was done with knowledge that the impact of the infringement would be felt by Janel Russell Designs, Inc. in the state of Minnesota.

### **GENERAL ALLEGATIONS**

5. Plaintiff, Janel Russell Designs, Inc. ("JRD") is a corporation which was formed by Janel Russell. For many years, Janel Russell has designed unique pieces of jewelry.

6. Janel Russell created a unique work referred to hereinafter as the "Mother and Child" in 1980. The Mother and Child is shown in Exhibit A to this Complaint. The Mother and Child is subject to U.S. Copyright Registration VAU 23-358 granted by the U.S. Copyright Office on March 2, 1981. A copy of this registration is attached to this Complaint as Exhibit B. The Mother and Child is also subject to U.S. Copyright Registration VA 111-110 granted on October 18, 1982. A copy of this registration is attached as Exhibit C to this Complaint. Both of these registrations have been assigned to JRD.

7. In subsequent years, Janel Russell created derivative works based upon the original work shown in Exhibit A. These works include earrings, locket, bracelets and pendants and the like. Other derivative works include a heart-shaped derivation of the Mother and Child design. The heart-shaped derivation is shown in Exhibit D to this Complaint. Another derivative work places the Mother and Child inside the first of two intersecting rings. This derivation is shown in Exhibit E to this Complaint.

8. Exhibit F includes copies of other registrations relating to earrings and rings incorporating the Mother and Child design. Exhibit G is a copy of the assignment documents reflecting that Janel Russell Designs, Inc. currently has ownership of these copyright registrations.

9. Since 1981, products incorporating the Mother and Child design and derivatives thereof have been sold pursuant to license by a variety of entities. All copies of the original Mother and Child work and derivatives thereof made by JRD or under its authority or license have been published in strict conformity with the provisions of the United States Copyright Act of 1976 and all other laws governing copyright. As a result of the efforts undertaken by Plaintiff and its authorized licensees' products incorporating the Mother and Child design have become widely successful commercial products. More than one million such products have been sold. To date, over one million units have been shipped on a wholesale basis representing approximately \$40 million. Sales continue to increase. In fact, annual sales have more than doubled between 1994 and 2007. Products incorporating the Mother and Child are or have been widely available in Canada, Europe, South Africa, Australia and New Zealand. Since 1981, the licensees have advertised products incorporating the work in various magazines and trade publications such as JCK and Modern Jeweler. Since 1981, newspaper ads have been run by various retailers who carry the product. One of Plaintiff's licensees, Kirchner Corporation, has shown the Mother and Child design in the annual JCK Jewelers directory virtually every year since 1983. From 1990 through present, Kirchner Corporation ran advertisements in other JCK publications, approximately four to six times each year. Almost all of these ads include a picture of the Mother and Child design. Since 1996, Kirchner has also run similar ads six to twelve times per year in Modern Jeweler. The Mother and Child design has also been advertised in periodicals such as Instore, Professional Jeweler, Jewelers, Inc., IJO, RJO, Luxury and USA Today. Again, nearly all of these ads include a picture of the Mother and Child work manufactured by Kirchner pursuant to a license. Licensees have also displayed the Mother and Child design at various trade shows, such as the JCK show, from 1982 to present.

### **DEFENDANT'S INFRINGING CONDUCT**

10. Defendant A.V. Diamonds is a jewelry wholesaler which specializes in comparatively inexpensive jewelry. As a jewelry wholesaler, A.V. Diamonds offers a "flyer program" to retailers. Under the flyer program, retail jewelry stores purchase flyers from A.V. Diamonds which the retailer in turn sends to its clients and customers. The retailer will commit to carrying the jewelry products offered in the A.V. Diamonds flyer.

11. Exhibit H to this Complaint is a true and correct copy of an A.V. Diamonds flyer program which offers for sale products which infringe on the copyrights in the Mother and Child design.

12. On or about May 15, 2007 Janel Russell, on behalf of Janel Russell Designs, Inc., opened an account with A.V. Diamonds, Inc. On June 14, 2007, Ms. Russell ordered from A.V. Diamonds, Inc. samples of the products which she thought may infringe the Mother and Child designs' copyrights. A copy of the A.V. Diamonds, Inc. invoice and receipt is attached to this Complaint as Exhibit I. The infringing pieces are shown in a photograph attached as Exhibit J to this Complaint. Exhibit K to this Complaint is a side-by-side comparison of the original, copyrighted Mother and Child and the infringing piece. As can be seen, the pieces are substantially similar to the copyrighted Mother and Child design.

### **COUNT I: COPYRIGHT INFRINGEMENT**

13. Allegations from the preceding paragraphs of this Complaint are incorporated by reference fully set forth herein.

14. Plaintiff's Mother and Child work and derivatives thereof covered by its copyright registrations are each original and constitute copyrightable subject matter.

15. Plaintiff has complied in all respects with the provisions of the copyright laws of the United States, 17 U.S.C. § 101 et seq. and has secured its rights and privileges in the original Mother and Child work and derivatives thereof and has obtained certificates of registration from the Register of Copyrights, the United States Copyright Office. The registrations for the original Mother and Child work shown in Exhibit A were effective prior to the commencement of infringement by Defendant.

16. The Exclusive rights granted to the copyright owner under 17 U.S.C. § 106 include:

- (a) the right to reproduce the copyrighted works and copies;
- (b) the right to prepare derivative works on the copyrighted work; and
- (c) the right to distribute copies of the copyrighted work to the public.

17. Pursuant to 17 U.S.C. § 105, an infringer is one who violates the exclusive rights of the copyright owner as provided in 17 U.S.C. § 106.

18. Defendant has had access to Plaintiff's copyrighted works, is copying Plaintiff's copyrighted works, and is distributing copies of Plaintiff's copyrighted works within the United States, all without the authorization of Plaintiff and in violation of Plaintiff's rights under the copyright laws of the United States.

19. The acts of the Defendants have been willful, deliberate and despite Plaintiff's notice of copyright, all to the profit of Defendant and to the damage and injury of the Plaintiff. Such damage and injury is irreparable and will continue unless the court enjoins such infringement. The wrongful acts of Defendant has caused the Plaintiff substantial monetary damage in the amount yet to be determined.

### DEMAND FOR JUDGMENT

Wherefore, Plaintiff prays for entry of judgment in favor of Plaintiff and against the Defendant providing:

1. That Defendant, its officers, employees and agents, and all other persons acting in active concert or participation with it, be preliminarily, and then permanently enjoined from further infringement of Plaintiff's copyrights.
2. That all infringing articles be delivered to Plaintiff for destruction.
3. The Defendant pays Plaintiff the greater of Plaintiff's actual damages, Defendant's profits, or statutory damages as provided in 17 U.S.C. § 504(c).
4. That any monetary award be increased in accordance with 17 U.S.C. § 504(c)(2) as willful acts.
5. That Plaintiff be awarded its costs and attorney's fees incurred herein pursuant to 17 U.S.C. § 505.
6. And any other and further relief in favor of Plaintiff as the court deems just and equitable.

### JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury of all issues so triable.

**Date:** February 15, 2008

s/Peter G. Nikolai

Peter G. Nikolai (#322,052)

James T. Nikolai (#144,101)

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**ATTORNEYS FOR PLAINTIFF**

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