

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

VS RHINESTONE DESIGNS, INC.

Plaintiff,

v.

**ROSALIA TEJEDA d/b/a BLINGTASTIC
APPAREL DESIGNS**

Defendants.

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CIVIL ACTION NO.
3:12-cv-2219

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, Plaintiff VS Rhinestone Designs, Inc., (“Plaintiff” or “VS Rhinestone”) by its undersigned attorneys, and files this Original Complaint in the above-entitled and numbered action, complaining of Defendant Rosalia Tejada d/b/a Blingtastic Apparel Designs (“Defendant” or “Blingtastic”), and in support thereof would show the Court as follows:

**I.
INTRODUCTION**

1. This is a civil action for copyright infringement under the United States Copyright Act (17 U.S.C. § 501 *et seq.*); trade dress infringement, false designation of origin and false advertising under the Lanham Act (15 U.S.C. § 1125); and unfair competition and unjust enrichment under the common law of the state of Texas.

2. Defendant is offering blatant copies and knock-offs of VS Rhinestone’s hotfix rhinestone and rhinestud transfer designs for various types of apparel. The knock-offs copy the look and feel of, and are substantially similar, and in most cases identical, to VS Rhinestone’s

designs, mirroring the patterns, color schemes, and naming/description conventions used by VS Rhinestone. Moreover, Defendant has also unlawfully copied both form and content from VS Rhinestone's sales and advertising materials, including its website, for use in Defendant's advertising and sales. VS Rhinestone brings this action to stop Defendant from further unauthorized use and infringement of VS Rhinestone's intellectual property and to recover for the damages caused by Defendant's unfair competitive actions.

II. **PARTIES**

3. Plaintiff VS Rhinestone Designs, Inc. is a Texas corporation with its principal place of business in Wylie, Texas.

4. Defendant Rosalia Tejada d/b/a Blingtastic Apparel Designs is an individual and citizen of the State of Texas. Ms. Tejada may be served with process at 725 Scottsdale Drive, Richardson, TX 75080, or wherever she may be found.

III. **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because they arise under the Copyright Act, 17 U.S.C. § 101 *et seq.* and pursuant to 15 U.S.C. § 1121 because it arises under the Lanham Act.

6. This Court has personal jurisdiction over the parties in this action. Defendant maintains her residence in the state of Texas and has independently transacted business in the state of Texas. More particularly, Defendant's acts of violating federal laws and the proprietary rights of Plaintiff took place, at least in part, within the state of Texas. Thus, this Court has personal jurisdiction over Defendant.

7. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and 1400(a) because Defendant resides in this District, may be found in this District, and/or a substantial part of the events giving rise to the claims in this action occurred within this District.

IV.
BACKGROUND FACTS

A. OVERVIEW OF VS RHINESTONE AND ITS INTELLECTUAL PROPERTY

8. VS Rhinestone is a business offering hotfix rhinestone, crystal, and rhinestud transfer designs (the “VS Rhinestone Designs”) for various types of apparel. Among other channels, VS Rhinestone sells the VS Rhinestone Designs in person through trade shows, via mail, and via the internet. VS Rhinestone began doing business in or around July 2007.

9. VS Rhinestone has developed a highly valuable property interest, including, but not limited to, legally-protected trade dress and copyrights, on and in connection with the VS Rhinestone Designs and the corresponding images, product descriptions, and pricing information for same.

10. VS Rhinestone expended a considerable investment of time, reputation, effort, and resources in creating, developing, advertising, and otherwise promoting the VS Rhinestone Designs. In particular, VS Rhinestone invested significant amounts of time and effort in developing its website, which consists of hundreds of pages of handwritten product descriptions, product layout, page design, and .html coding for each page. As a result, the VS Rhinestone Designs are widely recognized and exclusively associated by consumers, the public, and the trade as being high quality products sourced from VS Rhinestone and have acquired strong secondary meaning. VS Rhinestone continues to invest substantial sums in promoting and advertising the VS Rhinestone Designs.

11. In addition, VS Rhinestone is the owner of a variety of unique and distinctive trade dress relating to the VS Rhinestone Designs, consisting of a combination of one or more features, including sizes, shapes, colors, designs, and other non-functional elements, comprising the overall look and feel of the VS Rhinestone Designs (the “VS Rhinestone Trade Dress”). Through its use of the VS Rhinestone Designs, as well as its packaging, products descriptions, and marketing materials, VS Rhinestone has established protectable rights in its distinctive VS Rhinestone Trade Dress, which consumers have come to associate with VS Rhinestone, and the VS Rhinestone Designs. The VS Rhinestone Trade Dress associated with the VS Rhinestone Designs is independent of the functional aspects of the VS Rhinestone Designs. VS Rhinestone has employed the VS Rhinestone Trade Dress associated with the VS Rhinestone Designs exclusively and without interruption, and the VS Rhinestone Trade Dress has never been abandoned.

12. Furthermore, the decorative and artistic combinations of the VS Rhinestone Designs as well as and the corresponding photographs and images, product descriptions, text descriptions for categories of products, site structure, programming, and pricing information are independently protected works under the United States Copyright Laws. These design elements are wholly original works and fixed in various tangible products and media, thereby qualifying as copyrightable subject matter under the United States Copyright Act, 17 U.S.C. Sections 101 *et seq.* (the “VS Rhinestone Design Elements”). VS Rhinestone is the sole owner and proprietor of the VS Rhinestone Design Elements, which are registered with the U.S. Copyright Office, Registration No. VA-1-817-320, issued on June 8, 2012. At all times relevant hereto, VS Rhinestone has been the sole owner and proprietor of all rights, title, and interest in and to the copyrights in and to the VS Rhinestone Design Elements used in conjunction with the VS

Rhinestone Designs, and such copyrights are valid, subsisting and in full force and effect. A true and correct copy of copyright registration VA-1-817-320 is attached hereto as **Exhibit A**.

13. In summary, the VS Rhinestone Designs, the VS Rhinestone Trade Dress, and the VS Rhinestone Design Elements (collectively, the “VS Rhinestone Intellectual Property”) represent a highly valuable property interest that is essential to the continuation and success of VS Rhinestone’s business. VS Rhinestone, as the rightful owner of the VS Rhinestone Intellectual Property, is responsible for protecting its property interest in the VS Rhinestone Intellectual Property from the infringing actions of others.

B. BLINGTASTIC GAINS ACCESS TO AND COPIES VS RHINESTONE’S INTELLECTUAL PROPERTY

14. In July 2010, Blingtastic gained access to the VS Rhinestone Intellectual Property by creating a customer account with VS Rhinestone and subscribing to VS Rhinestone’s newsletter. Additionally, Blingtastic directly contacted VS Rhinestone regarding the VS Rhinestone Designs and VS Rhinestone’s suppliers.

15. In or around May 2012, by way of an internet search, VS Rhinestone discovered that Blingtastic had copied substantially all of the VS Rhinestone Intellectual Property from VS Rhinestone’s website, located at www.vsrhinestones.com, and was passing off the VS Rhinestone Intellectual Property as its own. Almost all of the VS Rhinestone Designs, photographs and images of the VS Rhinestone Designs and related product descriptions and pricing information that were featured on Blingtastic’s website at that time were copied verbatim from and were identical, or substantially similar, to VS Rhinestone’s website and the VS Rhinestone Intellectual Property.

16. Blingtastic’s actions in designing, manufacturing, advertising, promoting, distributing, selling, and/or offering for sale goods bearing source-identifying indicia, trade

dress, and design elements that are studied imitations of the VS Rhinestone Intellectual Property (the “Infringing Goods”) constitute violations of state and federal law. In some instances, Blingtastic was also undercutting VS Rhinestone on prices for the Infringing Goods that it had reproduced as knock-offs.

C. BLINGTASTIC CONTINUES TO INFRINGE UPON VS RHINESTONE’S INTELLECTUAL PROPERTY

17. On May 10, 2012, VS Rhinestone sent a cease and desist letter to Blingtastic informing her that the actions referenced above constituted copyright infringement and trade dress infringement and demanding that Blingtastic cease and desist from any further manufacture, use, distribution, display, and/or sale of any goods, including, but not limited to, the Infringing Goods, identical or substantially similar to, or incorporating any of the VS Rhinestone Intellectual Property. VS Rhinestone also sent a takedown notice to Blingtastic’s domain name registrar and website host, GoDaddy.com, requesting that GoDaddy.com remove Blingtastic’s website from the internet based on violations of GoDaddy.com’s copyright infringement policy.

18. Following receipt of the cease and desist letter and GoDaddy.com’s takedown of the Blingtastic website, Blingtastic apparently changed the domain name for her website from www.blingtasticappareldesigns.com to www.blingtasticdesigns.com in an attempt to conceal her wrongdoing and removed the VS Rhinestone Intellectual Property from the website.

19. However, upon information and belief, even after receipt of the cease and desist letter, Blingtastic continues to engage in designing, manufacturing, advertising, promoting, distributing, selling, and/or offering for sale the Infringing Goods in-person and via mail. Blingtastic’s piracy is blatant and willful.

20. Blingtastic is aware of the fame and strength of the VS Rhinestone brand, the VS Rhinestone Intellectual Property, and the incalculable goodwill associated therewith.

21. Blingtastic has no license, authority, or other permission from VS Rhinestone to use any of the VS Rhinestone Intellectual Property in connection with the designing, manufacturing, advertising, promoting, distributing, selling, and/or offering for sale of the Infringing Goods.

22. Blingtastic has been engaging in the above-described infringing and unauthorized activities knowingly and intentionally, or, at the very least, with reckless disregard or willful blindness to VS Rhinestone's rights, and in bad faith, for the purpose of trading on the goodwill and reputation of the VS Intellectual Property.

23. Blingtastic's activities, as described above, are likely to create a false impression and deceive consumers, the public, and the trade into believing that there is a connection or association between the Infringing Goods and VS Rhinestone and the VS Rhinestone Intellectual Property.

24. Upon information and belief, Blingtastic will continue to design, manufacture, advertise, promote, import, distribute, sell, and/or offer for sale the Infringing Goods, unless otherwise restrained.

25. VS Rhinestone is suffering irreparable injury and substantial damages as a result of Blingtastic's activities, and has no adequate remedy at law.

V.
CONDITIONS PRECEDENT

26. All conditions precedent have been performed or have occurred. FED. R. CIV. P. 9(c).

VI.

CAUSES OF ACTION

COUNT ONE – COPYRIGHT INFRINGEMENT
IN VIOLATION OF THE COPYRIGHT ACT [17 U.S.C. § 501]

27. The allegations of the preceding paragraphs are incorporated herein by reference.

28. Many of the VS Rhinestone Design Elements contain original decorative and artistic combinations that are protected under the United States Copyright Act (17 U.S.C. § 101 *et seq.*).

29. Plaintiff is the owner of the VS Rhinestone Design Elements, which are registered with the U.S. Copyright Office, Registration No. VA-1-817-320, issued on June 8, 2012. Plaintiff is the owner of all rights, titles, and interest in the VS Rhinestone Design Elements.

30. Defendant had access to and copied the VS Rhinestone Design Elements present on the VS Rhinestone Designs.

31. Defendant intentionally and willfully infringed Plaintiff's copyrights in and to the VS Rhinestone Design Elements, including, but not limited to, the VS Rhinestone Designs. Specifically, Blingtastic has, without Plaintiff's consent or authorization, copied, reproduced, and distributed to the public, works identical and/or substantially similar to the VS Rhinestone Design Elements, including, but not limited to, the VS Rhinestone Designs, and/or produced and distributed unauthorized derivative works of the VS Rhinestone Design Elements, including, but not limited to, the VS Rhinestone Designs.

32. Defendant has infringed Plaintiff's copyrights in violation of 17 U.S.C. § 501 *et seq.*

33. Upon information and belief, Defendant has made and will continue to make substantial profits and gains to which she is not in law or equity entitled.

34. Upon information and belief, Defendant has continued and intends to continue her infringing acts, unless restrained by this Court. Indeed, upon information and belief, even after receipt of actual notice of infringement, Blingtastic continues to engage in designing, manufacturing, advertising, promoting, distributing, selling, and/or offering for sale the Infringing Goods in-person and via mail, which constitutes willful infringement.

35. Defendant's acts have damaged and will continue to damage Plaintiff, and Plaintiff has no adequate remedy at law.

**COUNT TWO – TRADE DRESS INFRINGEMENT
IN VIOLATION OF § 43(a) OF THE LANHAM ACT [15 U.S.C. § 1125(a)]**

36. The allegations of the preceding paragraphs are incorporated herein by reference.

37. The VS Rhinestone Trade Dress is used in commerce, non-functional, inherently distinctive, and has acquired secondary meaning in the marketplace.

38. Upon information and belief, Defendant, without authorization from Plaintiff, has designed, manufactured, advertised, promoted, distributed, sold, and/or offered for sale, and/or is causing to be designed, manufactured, advertised, promoted, distributed, sold, and/or offered for sale, products which contain a collection of design elements that is confusingly similar to the VS Rhinestone Trade Dress.

39. The foregoing acts of Defendant are intended to cause, have caused, and are likely to continue to cause confusion, mistake, and deception among consumers, the public, and the trade who recognize and associate the VS Rhinestone Trade Dress with the VS Rhinestone Designs produced by Plaintiff. Moreover, Defendant's conduct is likely to cause confusion, to cause mistake, or to deceive consumers, the public, and the trade as to the source of the Infringing Goods, or as to a possible affiliation, connection, or association between Plaintiff and Defendant and/or the Infringing Goods and the true VS Rhinestone Designs.

40. Upon information and belief, Defendant has acted with knowledge of Plaintiff's ownership of the VS Rhinestone Trade Dress and with deliberate intention or willful blindness to unfairly benefit from the incalculable goodwill symbolized thereby.

41. Defendant's acts constitute trade dress infringement in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

42. Upon information and belief, Defendant has made and will continue to make substantial profits and gains to which she is not in law or equity entitled.

43. Upon information and belief, Defendant intends to continue her infringing acts, unless restrained by this Court.

44. Upon information and belief, Defendant's acts demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Plaintiff's ownership of the VS Rhinestone Trade Dress to the great and irreparable injury of Plaintiff.

45. Defendant's acts have damaged and will continue to damage Plaintiff, and Plaintiff has no adequate remedy at law.

**COUNT THREE – FALSE DESIGNATION OF ORIGIN
IN VIOLATION OF § 43(a) OF THE LANHAM ACT [15 U.S.C. § 1125(a)]**

46. The allegations of the preceding paragraphs are incorporated herein by reference.

47. Defendant's promotion, advertising, distribution, sale, and/or offering for sale of the Infringing Goods, together with Defendant's use of other indicia associated with Plaintiff is intended, and is likely to confuse, mislead, or deceive consumers, the public, and the trade as to the origin, source, sponsorship, or affiliation of the Infringing Goods. The foregoing acts of Defendant are intended, and are likely, to cause such parties to believe that the Infringing Goods have been authorized, sponsored, approved, endorsed, or licensed by Plaintiff, or that Defendant

is in some way affiliated with Plaintiff, where in fact there is no such affiliation, connection, association, or authorization.

48. The foregoing acts of Defendant constitute false designation of origin, and false and misleading descriptions and representations of fact, all in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

49. Upon information and belief, Defendant has made and will continue to make substantial profits and gains to which she is not in law or equity entitled.

50. Upon information and belief, Defendant intends to continue her infringing acts, unless restrained by this Court.

51. Defendant's acts have damaged and will continue to damage Plaintiff, and Plaintiff has no adequate remedy at law.

COUNT FOUR – COMMON LAW UNFAIR COMPETITION

52. The allegations of the preceding paragraphs are incorporated herein by reference.

53. The foregoing acts of Defendant permit Defendant to use and benefit from the goodwill and reputation earned by Plaintiff and to obtain a ready customer acceptance of Defendant's goods, and constitute unfair competition, palming off, and misappropriation in violation of Texas common law, for which Plaintiff is entitled to recover any and all remedies provided by such common law.

54. Upon information and belief, Defendant has made and will continue to make substantial profits and gains to which she is not in law or equity entitled.

55. Upon information and belief, defendant intends to continue her infringing acts, unless restrained by this Court.

56. Defendant's acts have damaged and will continue to damage Plaintiff, and Plaintiff has no adequate remedy at law.

COUNT FIVE – COMMON LAW UNJUST ENRICHMENT

57. The allegations of the preceding paragraphs are incorporated herein by reference.

58. By reason of the foregoing, Defendant has unjustly enriched herself, and continues to do so.

59. Plaintiff is entitled to just compensation under the common law of the state of Texas.

COUNT SIX – ATTORNEYS' FEES

60. The allegations of the preceding paragraphs are incorporated herein by reference.

61. Plaintiff is entitled to an award of attorneys' fees and costs under state and federal law, including 15 U.S.C. § 1117(a).

XII.

COUNT SEVEN – APPLICATION FOR INJUNCTIVE RELIEF

62. The allegations of the preceding paragraphs are incorporated herein by reference.

63. Defendant violated 17 U.S.C. § 501 and 15 U.S.C. § 1125, and Plaintiff is therefore entitled to injunctive relief under 17 U.S.C. § 502 and 15 U.S.C. § 1116. Plaintiff is further entitled to injunctive relief under traditional equitable principles of federal and state law.

64. Plaintiff request that the Court issue permanent injunctive relief enjoining Defendant and her officers, directors, principals, agents, servants, employees, successors, assigns, and attorneys, and all those in concert or participation with them from directly or indirectly:

- (a) engaging in any acts or activities directly or indirectly calculated to trade upon the VS Rhinestone Intellectual Property, reputation, or goodwill,

including any further use of the Infringing Goods or any other trade dress or designs that are identical to or confusingly or substantially similar to the VS Rhinestone Intellectual Property;

- (b) using in any manner, including on any website owned and operated by or otherwise associated with Defendant, the VS Rhinestone Intellectual Property, or any other designation that is confusingly similar to the VS Rhinestone Intellectual Property, in connection with the advertising or offering for sale or selling the VS Rhinestone Designs or any similar goods covered by the VS Rhinestone Intellectual Property;
- (c) simulating, reproducing, imitating, copying, making unauthorized use of, distributing, or selling the VS Rhinestone Intellectual Property or any other trade dress or designs that are identical to or confusingly or substantially similar to the VS Rhinestone Intellectual Property, including, but not limited to, the Infringing Goods;
- (d) committing any acts calculated to cause purchasers to believe that Defendant's goods are those sold under the control and supervision of Plaintiff, or sponsored or approved by, or connected with, or guaranteed by, or produced under the control and supervision of Plaintiff;
- (e) further infringing the VS Rhinestone Intellectual Property, and damaging Plaintiff's goodwill; and
- (f) otherwise competing unfairly with Plaintiff in any manner.

65. Plaintiff will suffer immediate and irreparable damage, injury, and harm for which there is no adequate remedy at law if Defendant is not permanently enjoined from the conduct listed above.

66. Public policy favors the protection of trade dress rights and copyrights and the prevention of unfair competition and unjust enrichment, and any injunctive relief granted herein will therefore be in accordance with public policy.

67. The potential damage to Plaintiff if the injunctive relief requested herein is not granted far outweighs any harm that Defendant will suffer as a result of the injunctive relief requested. Permanent injunctive relief is therefore appropriate.

VIII.
REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered in its favor and against Defendant, granting to Plaintiff the relief as follows:

- (a) Finding that: (i) Defendant has violated Section 501 of the United States Copyright Act (17 U.S.C. § 501); (ii) Defendant has violated Section 43(a) of the Lanham Act (15 U.S.C. § 1125); (iii) Defendant has engaged in unfair competition, including, but not limited to, violations of “palming off” and misappropriation under the common law of Texas; and (iv) Defendant has been unjustly enriched in violation of Texas common law;
- (b) Granting an injunction permanently restraining and enjoining Defendant, her officers, directors, principals, agents, servants, employees, successors, assigns, and attorneys, and all those in concert or participation with them from directly or indirectly:
 - (1) engaging in any acts or activities directly or indirectly calculated to trade upon the VS Rhinestone Intellectual Property, reputation, or goodwill, including any further use of the Infringing Goods or any other trade dress or designs that are identical to or confusingly or substantially similar to the VS Rhinestone Intellectual Property;
 - (2) using in any manner, including on any website owned and operated by or otherwise associated with Defendant, the VS Rhinestone Intellectual Property, or any other designation that is identical to or confusingly or substantially similar to the VS Rhinestone

Intellectual Property, in connection with the advertising or offering for sale or selling the VS Rhinestone Designs or any similar goods covered by the VS Rhinestone Intellectual Property;

- (3) simulating, reproducing, imitating, copying, making unauthorized use of, distributing, or selling the VS Rhinestone Intellectual Property or any other trade dress or designs that are identical to or confusingly or substantially similar to the VS Rhinestone Intellectual Property, including, but not limited to, the Infringing Goods;
 - (4) committing any acts calculated to cause purchasers to believe that Defendant's goods are those sold under the control and supervision of Plaintiff, or sponsored or approved by, or connected with, or guaranteed by, or produced under the control and supervision of Plaintiff;
 - (5) further infringing the VS Rhinestone Intellectual Property, and damaging Plaintiff's goodwill; and
 - (6) otherwise competing unfairly with Plaintiff in any manner.
- (c) Requiring Defendant to recall from any distributors and retailers and to deliver to Plaintiff for destruction or other disposition all remaining inventory of all Infringing Goods, including all advertisements, promotional, and marketing materials therefore, as well as means of making same;
 - (d) Requiring Defendant to file with this Court and serve on Plaintiff within thirty (30) days after entry of the injunction a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;
 - (e) Directing such other relief as the Court may deem appropriate to prevent consumers, the public, and/or the trade from deriving any erroneous impression that any goods at issue in this action that have been manufactured, imported, advertised, marketed, promoted, supplied, distributed, offered for sale, or sold by Defendant, has been authorized by Plaintiff, or is related in any way with Plaintiff and the VS Rhinestone Designs;
 - (f) Awarding Plaintiff its actual damages suffered as a result of the copyright infringement;
 - (g) Ordering Defendant to account to and pay to Plaintiff any and all profits realized by her wrongful acts, including, but not limited to, from any and all sales of the Infringing Goods;

- (h) Awarding Plaintiff treble damages against Defendant related to Defendant's willful infringement of the VS Rhinestone Design Elements, including, but not limited to, the VS Rhinestone Designs;
- (i) Awarding Plaintiff actual and punitive damages to which it is entitled under applicable federal and state laws;
- (j) Awarding Plaintiff its costs, attorneys' fees, investigatory fees, and expenses to the full extent allowed by law, including, but not limited to, relief provided by Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a));
- (k) Awarding Plaintiff pre-judgment interest and post-judgment interest on any monetary award made part of the judgment against Defendant; and
- (l) Awarding Plaintiff such additional and further relief as the Court deems just and proper.

Respectfully submitted,

BELL NUNNALLY & MARTIN LLP

By: /s/ John R. W. Fugitt

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