

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

FOSSIL, INC.,

Plaintiff,

v.

THE JONES GROUP, INC.,

Defendant.

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Civil Action No. _____
JURY TRIAL DEMANDED

**PLAINTIFF’S ORIGINAL COMPLAINT AND APPLICATION FOR
PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, Plaintiff Fossil, Inc. (“Fossil”), files this Original Complaint and Application for Preliminary Injunction and Permanent Injunction complaining of the actions of Defendant The Jones Group, Inc. (“Defendant”) and would show this Honorable Court as follows:

I.

PARTIES

1. Plaintiff Fossil, Inc. is a Delaware corporation whose principal place of business is at 901 S. Central Expressway, Richardson, Texas 75080.

2. Defendant The Jones Group, Inc. is a Pennsylvania corporation whose principal place of business is at 1411 Broadway, New York, New York 10018. It may be served by process by service upon its registered agent for service of process, Corporation Service Company, 80 State Street, Albany, NY 12207.

II.

JURISDICTION AND VENUE

3. This action arises under the Copyright Act, 17 U.S.C. § 101 *et seq.* The Court has jurisdiction pursuant to 28 U.S.C. § 1338(a) and §1367(a).

4. Venue is proper in the United States District Court for the Northern District of Texas, Dallas Division, under 28 U.S.C. §1391(b) because Defendant does substantial business in this District and it is a judicial district in which a substantial portion of the events giving rise to the claims herein occurred and in which witnesses reside and much of the evidence exists.

III.

FACTUAL BACKGROUND

5. Fossil sells watches, handbags, leather goods, clothing, sunglasses and fashion accessories, including jewelry, in its own FOSSIL branded stores as well as in major department stores around the country and through its website at www.fossil.com. Beginning in around July of 2007, Fossil began marketing and selling jewelry items under a line called Fossil Accessory Jewelry and from July 2007 through 2011, Fossil added a number of items to that jewelry line. Many of these jewelry products had a vintage feel, consistent with Fossil's vintage style for its products. The jewelry was and continues to be very popular and successful and was sold at several national retailers, such as Macy's, Dillard's, Bon Ton and Belk. While Fossil has launched its Fall 2012 collection, many of the styles at issue in this case continue to be offered for sale in Fossil accounts.

6. Defendant bills itself as a leader in the apparel and fashion industry, marketing its products under various brands, including but not limited to NINE WEST. Its products are offered in many of the same retail channels as Fossil's products and Fossil and Nine West

compete for sales in certain categories, including but not limited to costume jewelry, leather goods and sunglasses.

7. In around 2010, Defendant, under its brand Nine West, began marketing and selling jewelry under the designation NINE WEST VINTAGE AMERICA COLLECTION. On information and belief, these earlier jewelry designs did not copy any Fossil designs.

8. In August of 2012, one of Fossil's account executives learned that Defendant had a new group of products in its Nine West Vintage America Collection line that appeared to be copies of Fossil's jewelry line. The account executive went to a retail store where the products were offered for sale and confirmed that the majority of the products were slavish copies of Fossil's jewelry line (the "Infringing Jewelry"). Photographs showing side by side comparisons of the Fossil jewelry line and the Defendant's jewelry line are attached hereto as Exhibit A.

9. Fossil filed 35 copyright applications to register its jewelry designs with the United States Copyright Office and each of the applications was filed with the appropriate filing fee and requisite deposit copies and transmitted to the Copyright Office electronically prior to the filing of this Complaint. Thus, Fossil has complied with the statutory formalities for registration of the copyrighted works that are the subject of this Complaint. Copies of the applications for the copyrighted designs are attached hereto as Exhibit B (the "Works").

10. As shown by the side by side photographs in Exhibit A, Defendant has made wholesale copies of many of Fossil's most popular jewelry products. The extent of the copying is so egregious that it can only be concluded that this conduct was willful.

IV.

CAUSES OF ACTION

COUNT ONE: COPYRIGHT INFRINGEMENT

11. Fossil hereby incorporates the allegations in paragraphs 1-10 as if fully set forth herein.

12. Fossil is the owner of the Works and, as such, has the exclusive right in the copyrighted Works, including the exclusive right to display the copyrighted Works, prepare derivative works based on the copyrighted Works, distribute and/or offer for sale the copyrighted Works. Copyright Act, 17 USC §106.

13. Defendant's sale or offering for sale of the Infringing Jewelry violates the exclusive rights of Fossil under the Copyright Act and has damaged Fossil. Defendant's actions were committed willfully, as it was aware of the Works prior to creating and offering for sale the Infringing Jewelry, yet proceeded to slavishly copy Fossil's Works and to advertise and sell the Infringing Jewelry.

14. As a result of the actions of Defendant in making and distributing the Infringing Jewelry and in continuing sales of same, Fossil has been irreparably harmed and will continue to be irreparably harmed for which Fossil has no adequate remedy at law for relief from Defendant's wrongful conduct. Accordingly, Fossil is entitled to a preliminary injunction and permanent injunction barring Defendant and all subsidiaries and their respective officers, directors, agents, employees, attorneys, successors, and assigns, and all others acting in privity or in concert therewith to be enjoined and restrained during the pendency of this action and permanently thereafter from making, advertising, distributing, selling or offering to sell its Infringing Jewelry or any derivations of such Infringing Jewelry or the Works.

15. Fossil is also entitled to recover Defendant's profits attributable to the infringement, impoundment and destruction of the infringing goods, and costs of court.

COUNT TWO: COMMON LAW UNFAIR COMPETITION

16. Fossil incorporates the allegations in paragraphs 1 through 15, above of this Complaint as fully set forth herein. Defendant's actions described above constitute unfair competition under Texas common law.

17. As a result of Defendant's wrongful conduct, Fossil is entitled to injunctive relief as set forth above and damages to be proven at trial.

V.

JURY DEMAND

18. Fossil requests a trial by jury of all claims.

VI.

PRAYER FOR RELIEF

WHEREFORE, Fossil respectfully request that, after a hearing on this cause, this Court enter judgment for Plaintiffs and against Defendant as follows:

(a) That Defendant's advertising, distribution and sale of the Infringing Jewelry constitutes infringement of Fossil's copyrights in the Works;

(b) That Defendant is temporarily, preliminarily and permanently enjoined as set forth in ¶14, above;

(c) That all Infringing Jewelry in Defendant's possession or control, all molds or other means by which such products have been made, and all records documenting the manufacture, sale or receipt of such Infringing Jewelry be impounded during the pendency of this action and then all molds and product be destroyed upon the conclusion of this matter;

