

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

HONG KONG LEYUZHEN TECHNOLOGY  
CO. LIMITED,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,  
LIMITED LIABILITY COMPANIES,  
PARTNERSHIPS AND  
UNINCORPORATED ASSOCIATIONS  
IDENTIFIED IN SCHEDULE "A" HERETO,

Defendants.

**Case No.: 1:24-cv-02939-MFK-BWJ**

**Honorable Matthew F. Kennelly**

**Magistrate Beth W. Jantz**

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
ON DEFENDANTS' COUNTERCLAIMS**

Plaintiff Hong Kong Leyuzhen Technology Co., Ltd. ("Plaintiff" or "Leyuzhen"), by and through its undersigned counsel, hereby moves this Court pursuant to Federal Rule of Civil Procedure 56 for summary judgment on all counterclaims asserted by Defendants number 75 Floerns, number 67 Verdusa, and number 63 SweatyRocks (collectively, the "Dykema Defendants"). As demonstrated herein, there is no genuine dispute as to any material fact, and Plaintiff is entitled to judgment as a matter of law on all counterclaims.

**INTRODUCTION**

This case arises from Defendants' unauthorized reproduction, display, and use of Plaintiff's copyrighted photographs of women's apparel. Despite clear evidence of Plaintiff's ownership of the subject photographs as demonstrated by valid copyright registrations, Defendants have asserted counterclaims seeking to invalidate Plaintiff's copyright registrations based on unfounded

allegations of fraud on the Copyright Office, challenging the originality of Plaintiff's works, and asserting tort claims for unfair competition and tortious interference.

Summary judgment is appropriate on all of Defendants' counterclaims because they are predicated on speculative assertions unsupported by admissible evidence and fail as a matter of law. The declarations upon which Defendants rely are inadmissible, lack foundation, and contain unreliable hearsay. By contrast, Plaintiff's valid copyright registrations entitle it to a presumption of validity that Defendants have failed to overcome. Defendants' unfair competition and tortious interference claims likewise fail as a matter of law because they are premised on Plaintiff's legitimate enforcement of its intellectual property rights.

#### **STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. Plaintiff Hong Kong Leyuzhen Technology Co., Ltd. is a corporation organized under the laws of the People's Republic of China.

2. Plaintiff is the owner of numerous federal copyright registrations issued by the United States Copyright Office including Registration Nos. VA0002379907 and VA0002379899 (collectively, the "Asserted Copyright Registrations"), which cover photographs of women's apparel.

3. Copyright Registration No. VA0002379907, titled "Rotita8-2023," covers 568 photographs and was registered with the Copyright Office on November 12, 2023, with a publication range of January 4, 2023, to August 22, 2023. See Page 7 of Exhibit 1 attached to Plaintiff's Complaint [Dkt. 12-1].

4. Copyright Registration No. VA0002379899, titled "Rotita7-2023," covers 534 photographs and was registered with the Copyright Office on November 12, 2023, with a

publication range of July 28, 2023, to November 8, 2023. See Ex. 2. See Page 19 of Exhibit 1 attached to Plaintiff's Complaint [Dkt. 12-1].

5. In its copyright applications, Plaintiff represented to the Copyright Office that it is the author and copyright claimant of the photographs covered by the Asserted Copyright Registrations.

6. The Copyright Office accepted Plaintiff's applications and issued the Asserted Copyright Registrations.

7. Defendants have reproduced, displayed, and used photographs that are substantially similar to those covered by the Asserted Copyright Registrations without Plaintiff's permission.

8. Defendants' counterclaims challenging the validity of Plaintiff's copyright registrations rely on two purported declarations from individuals claiming to be photographers in China who allegedly took some of the photographs at issue.

### **LEGAL STANDARD**

Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine issue of material fact exists only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court "must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor." *Zerante v. DeLuca*, 555 F.3d 582, 584 (7th Cir. 2009). However, "a party who bears the burden of proof on a particular issue may not rest on its pleadings, but must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact that requires trial." *Hemsworth v. Quotesmith.com, Inc.*, 476 F.3d 487, 490 (7th Cir. 2007). "The mere existence of a scintilla of evidence in support of the non-moving party's position

will be insufficient; there must be evidence on which the jury could reasonably find for the non-moving party." *Anderson*, 477 U.S. at 252.

## ARGUMENT

### **I. PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT ON DEFENDANTS' COUNTERCLAIMS FOR DECLARATORY JUDGMENT OF INVALID COPYRIGHTS**

#### **A. Plaintiff's Copyright Registrations Are Entitled to a Presumption of Validity That Defendants Have Failed to Overcome**

Section 410(c) of the Copyright Act provides that "[i]n any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate." 17 U.S.C. § 410(c). This presumption of validity includes the presumption that the author listed in the copyright registration is the actual author of the work and the presumption that the work is original. See *Mid Am. Title Co. v. Kirk*, 59 F.3d 719, 721 (7th Cir. 1995).

Here, Plaintiff's Asserted Copyright Registrations were issued by the Copyright Office on November 12, 2023, within five years of the first publication of the works. As such, they are entitled to a presumption of validity, including a presumption that Plaintiff is the author of the photographs at issue and that the photographs are original works of authorship.

To overcome this presumption, Defendants must offer evidence that would allow a reasonable factfinder to conclude that the Copyright Office's decision to issue the registrations was in error. See *Urbont v. Sony Music Entm't*, 831 F.3d 80, 89 (2d Cir. 2016). Summary judgment must be entered "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at trial." *Tatalovich v. City of Superior*, 904 F.2d 1135, 1139 (7th Cir. 1990) (quoting *Celotex Corp.*

*v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986)). Defendants have failed to meet this burden because the evidence they offer is inadmissible, lacks foundation, and is insufficient as a matter of law to rebut the presumption of validity.

**B. Defendants' Evidence Is Inadmissible and Insufficient to Create a Genuine Issue of Material Fact**

Defendants' counterclaims rely heavily on purported declarations from two individuals—Zhou Hongyi and Xu Yujie—who claim to be photographers in China. These declarations, however, are inadmissible for multiple reasons and therefore cannot create a genuine issue of material fact sufficient to defeat summary judgment.

First, even if the declarations were properly authenticated, they lack foundation and reliability. The declarations vaguely assert that the declarants took photographs that appear similar to some of Plaintiff's copyrighted photographs, but they provide no credible documentation of original creation, no specific details about the circumstances of creation, and no reliable evidence that they, rather than Plaintiff, are the true authors of the photographs at issue. Without such foundation, the declarations are insufficient to create a genuine issue of material fact regarding the authorship of the photographs.

Second, the declarations contain inadmissible hearsay statements regarding the purported photographers' relationships with "clothing suppliers" and alleged business practices of such suppliers. These statements are offered for the truth of the matter asserted and do not fall within any hearsay exception. As such, they are inadmissible and cannot be considered on summary judgment.

**II. PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT ON DEFENDANTS' COUNTERCLAIM FOR DECLARATORY JUDGMENT OF INVALID COPYRIGHTS BASED ON FRAUD ON THE COPYRIGHT OFFICE**

**A. Defendants Have Failed to Establish the Elements of Fraud on the Copyright Office**

To establish fraud on the Copyright Office, Defendants must prove by clear and convincing evidence that: (1) Plaintiff knowingly made a false representation of a material fact; (2) the Copyright Office relied on the misrepresentation; and (3) the Copyright Office's reliance on the misrepresentation resulted in the registration being issued. See *Eckes v. Card Prices Update*, 736 F.2d 859, 861-62 (2d Cir. 1984). Moreover, a party seeking to establish such a fraud must show at a minimum that the author's 'application for copyright registration was factually inaccurate, that the inaccuracies were willful or deliberate, and that the Copyright Office relied on those misrepresentations.'" *Lennon v. Seaman*, 84 F. Supp. 2d 522, 525 (S.D.N.Y. 2000).

Here, Defendants have failed to present admissible evidence establishing any of these elements. They offer no admissible evidence that Plaintiff knowingly made a false representation to the Copyright Office. Instead, they rely on inadmissible declarations that lack foundation and reliability, as discussed above. Moreover, Defendants offer no evidence that any alleged misrepresentation was material to the Copyright Office's decision to issue the registrations or that the Copyright Office actually relied on any such misrepresentation.

**B. Defendants' Allegations of Fraud Are Speculative and Unsupported**

Defendants' fraud allegations amount to nothing more than speculation that Plaintiff is not the true author of the photographs at issue. This speculation is insufficient to establish fraud, which must be proven by clear and convincing evidence. See *Lennon*, 84 F. Supp. 2d at 525.

The mere fact that Defendants claim to have obtained similar photographs from "clothing suppliers" does not establish that Plaintiff is not the true author of the photographs covered by the

Asserted Copyright Registrations. It is equally plausible that Defendants' suppliers obtained copies of Plaintiff's photographs and provided them to Defendants without authorization, or that the photographs Defendants possess are different from those covered by Plaintiff's registrations. Without clear and convincing evidence of knowing misrepresentation, materiality, and reliance, Defendants' fraud claim fails as a matter of law.

**III. PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT ON DEFENDANTS' COUNTERCLAIM FOR DECLARATORY JUDGMENT OF INVALID COPYRIGHTS BASED ON LACK OF ORIGINALITY**

**A. Defendants Have Failed to Rebut the Presumption of Originality**

A valid copyright registration creates a presumption that the registered work is original. See *Fonar Corp. v. Domenick*, 105 F.3d 99, 104 (2d Cir. 1997). To overcome this presumption, Defendants must present substantial evidence that the works lack originality. Here, Defendants have failed to present admissible evidence that Plaintiff's photographs lack the minimal degree of creativity required for copyright protection. See *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991) (noting that the requisite level of creativity is "extremely low" and that "even a slight amount will suffice"). Defendants' vague assertions that the photographs were created by others or that similar photographs existed before Plaintiff's creation dates are unsupported by admissible evidence and are insufficient to rebut the presumption of originality.

**B. Plaintiff's Photographs Possess the Minimal Degree of Creativity Required for Copyright Protection**

Photographs are generally considered to embody the minimal degree of creativity required for copyright protection. See *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 60 (1884); *Mannion v. Coors Brewing Co.*, 377 F. Supp. 2d 444, 450 (S.D.N.Y. 2005). The creative choices involved in producing a photograph—including pose, lighting, background, angle, and timing—

typically satisfy the originality requirement. Defendants have presented no admissible evidence that Plaintiff's photographs lack these creative elements. Accordingly, they have failed to rebut the presumption of originality, and their counterclaim fails as a matter of law.

**IV. PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT ON DEFENDANTS' COUNTERCLAIM FOR UNFAIR COMPETITION**

**A. Defendants' Unfair Competition Claim Is Preempted by the Copyright Act**

Defendants' unfair competition claim is preempted by the Copyright Act because it seeks to vindicate rights that are equivalent to the exclusive rights protected by copyright. Section 301 of the Copyright Act preempts state law claims that (1) come within the subject matter of copyright and (2) assert rights equivalent to the exclusive rights protected by copyright. See 17 U.S.C. § 301; *Baltimore Orioles, Inc. v. Major League Baseball Players Ass'n*, 805 F.2d 663, 674 (7th Cir. 1986). Here, Defendants' unfair competition claim is based on Plaintiff's alleged improper assertion of copyright ownership and enforcement of copyright rights. These allegations fall squarely within the subject matter of copyright and assert rights equivalent to those protected by copyright. As such, the unfair competition claim is preempted and fails as a matter of law.

**B. Defendants' Unfair Competition Claim Fails on the Merits**

Even if not preempted, Defendants' unfair competition claim fails on the merits because it is predicated on Plaintiff's legitimate enforcement of its intellectual property rights. Under Illinois law, a claim for unfair competition requires a showing of unfair or deceptive practices. See *Lynch Ford, Inc. v. Ford Motor Co.*, 957 F. Supp. 142, 146 (N.D. Ill. 1997). Plaintiff's enforcement of its copyrights through this lawsuit is not an unfair or deceptive practice. Rather, it is the legitimate exercise of Plaintiff's legal rights. Defendants have presented no admissible evidence that Plaintiff has engaged in any unfair or deceptive practices beyond the legitimate enforcement of its

copyrights. Accordingly, their unfair competition claim fails as a matter of law. An unfair competition claim requires a misappropriation of the labors and expenditures of another, *i.e.*, one party reaps where another has sown. *Id.*

**V. PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT ON DEFENDANTS' COUNTERCLAIM FOR TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

**A. Defendants' Tortious Interference Claim Is Preempted by the Copyright Act**

Like the unfair competition claim, Defendants' tortious interference claim is preempted by the Copyright Act because it seeks to vindicate rights that are equivalent to the exclusive rights protected by copyright. The claim is based on Plaintiff's alleged improper assertion of copyright ownership and enforcement of copyright rights, which fall within the subject matter of copyright and assert rights equivalent to those protected by copyright. As such, the tortious interference claim is preempted and fails as a matter of law.

**B. Defendants' Tortious Interference Claim Fails on the Merits**

Even if not preempted, Defendants' tortious interference claim fails on the merits because it is predicated on Plaintiff's legitimate enforcement of its intellectual property rights. Under Illinois law, "[i]t is clear that a party to a contract cannot be held liable for tortiously inducing himself to breach the contract," *i.e.*, "[o]nly a *third party* separate from the contracting parties can be liable for such a tort." *Rao v. Rao*, 718 F.2d 219, 225 (7th Cir.1983) (emphasis added); *accord*, *F.E.L. Publications, Ltd. v. Catholic Bishop of Chicago*, 754 F.2d 216, 221 (7th Cir.1985) ("Generally, a party cannot be liable in tort for interfering with its own contract.") *cert. denied*, 474 U.S. 824, 106 S. Ct. 79, 88 L. Ed. 2d 64 (1985); *see*, *Muthuswamy v. Burke*, 269 Ill.App.3d 728, 207 Ill.Dec. 50, 54, 646 N.E.2d 616, 620 (1993) (The first element of such a tort is "the

existence of a valid and enforceable contract between plaintiff and a *third party*." ) (emphasis added).

To establish a *prima facie* case for tortious interference with prospective economic advantage under Illinois law, Defendants must demonstrate: (1) a reasonable expectancy of entering into a valid business relationship; (2) Plaintiff's knowledge of this expectancy; (3) purposeful interference by Plaintiff that prevents the expectancy from ripening into a valid business relationship; and (4) damages resulting from such interference. Defendants' claim is deficient with respect to each of these required elements.

Defendants have failed to identify with requisite specificity any particular third-party relationship with which Plaintiff allegedly interfered. Their generalized references to "Amazon sales" lack the particularity necessary to establish a reasonable business expectancy as required under Illinois law. Illinois courts have consistently held that a claimant must identify the specific third party with whom they had a reasonable expectation of conducting business. Defendants' non-specific allegations fundamentally fail to satisfy this threshold requirement.

Plaintiff's actions in enforcing its copyright interests constitute privileged conduct that cannot, as a matter of law, form the basis of a tortious interference claim. Illinois jurisprudence recognizes that parties possess a privilege to protect their legitimate business interests, including intellectual property rights. Plaintiff's enforcement actions were undertaken to safeguard its copyrighted works from unauthorized use—a legally protected interest that cannot be characterized as tortious conduct.

Defendants have proffered no admissible evidence establishing the requisite causal nexus between Plaintiff's actions and any alleged harm to their business relationships. Their conclusory assertions regarding Plaintiff's lawsuit allegedly interfering with their Amazon sales capabilities

are unsupported by specific factual evidence demonstrating how Plaintiff's actions directly caused third parties to terminate business relationships with Defendants. Absent evidence of causation, the tortious interference claim is fatally deficient.

Defendants have not demonstrated that Plaintiff acted with the requisite improper intent. Illinois law requires a showing that the defendant's intentional and unjustified interference induced third parties not to enter into or continue business relationships. In the instant case, Plaintiff's actions were motivated by the legitimate objective of protecting its intellectual property rights, rather than by any improper purpose to harm Defendants' business relationships.

Defendants have presented no admissible evidence that Plaintiff's actions have prevented any legitimate expectancy from ripening into a valid business relationship. Their unsubstantiated assertions that Plaintiff's lawsuit has interfered with their ability to sell products on Amazon are devoid of evidentiary support and are insufficient, as a matter of law, to establish the elements of tortious interference. Accordingly, Defendants' tortious interference claim fails as a matter of law and should be dismissed.

### **CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court grant summary judgment in its favor on all of Defendants' counterclaims.

DATED: May 19, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of May 2025, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Illinois, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

By: /s/ Katherine M. Kuhn  
Katherine M. Kuhn, Esq.