

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION



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VERA BRADLEY DESIGNS, INC.,

Plaintiff,

vs.

DOLLAR TREE STORES, INC. and
GREENBRIER INTERNATIONAL, INC.

Defendants.

Case No.: 1:20-cv-338

**COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF AND
JURY DEMAND INTRODUCTION**

Plaintiff Vera Bradley Designs, Inc. brings this action against Defendants Dollar Tree Stores, Inc. and Greenbrier International, Inc. for willful copyright infringement of Plaintiff's registered copyrights, contributory infringement of Plaintiff's registered copyrights, unfair and deceptive trade practices under Ind. Code. § 24-5-0.5-03, and common law unfair competition.

THE PARTIES

1. Plaintiff Vera Bradley Designs, Inc. ("Vera Bradley" or "Plaintiff") is a corporation organized and existing under the laws of the State of Indiana with its principal place of business located at 12420 Stonebridge Road, Roanoke, Indiana 46783. Vera Bradley is known nationally and internationally for its unique designs for bags, luggage, and accessories. Vera Bradley is the owner of more than 1,100 valid and subsisting copyright registrations for its many unique fabric designs.

2. On information and belief, Defendant Dollar Tree Stores, Inc. ("Dollar Tree") is a corporation organized and existing under the laws of the Commonwealth of Virginia, with its

principal place of business at 500 Volvo Parkway, Chesapeake, VA 23320. On information and belief, Dollar Tree is registered to do business in Indiana and has a registered agent located at 135 North Pennsylvania Street, Suite 1610, Indianapolis, IN 46204.

3. On information and belief, Defendant Greenbrier International, Inc. (“Greenbrier”) is a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business at 500 Volvo Parkway, Chesapeake, VA 23320. On information and belief, Greenbrier is a wholly-owned importer for Defendant Dollar Tree of goods to be sold in Dollar Tree stores. Defendants Greenbrier and Dollar Tree are referred to collectively herein as “Defendants.”

NATURE OF THE ACTION; JURISDICTION OF THE COURT

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Dollar Tree because Dollar Tree is registered to do business in this District, conducts substantial business in this District, and /or the events giving rise to Vera Bradley’s claims occurred in this District.

6. This Court has personal jurisdiction over Greenbrier because Greenbrier conducts business in this District by and through Dollar Tree and the events giving rise to Vera Bradley’s claims occurred in this District.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and 1400(a) because Defendants conduct substantial business in this District and committed some of the infringement complained of herein in this District causing Vera Bradley harm in this District.

FACTUAL BACKGROUND

I. PLAINTIFF VERA BRADLEY

8. Vera Bradley was founded in 1982, and since then, has become a household name for unique, high-quality bags, luggage, eyeglasses, and accessories. Vera Bradley's products are instantly recognizable because of their creative patterns.

9. Vera Bradley currently owns more than 1,100 valid and subsisting federal copyright registrations for these designs and patterns. True and accurate copies of the registration certificates for each of the below copyrighted patterns and designs at issue in this proceeding are attached hereto as **Exhibit A** (the "Vera Bradley Works"):

- Flutterby Allover P1250, VAu 1-146-828, October 19, 2013
- Flutterby Backing P1260, VAu 1-146-830, October 19, 2013
- Flutterby Wide Trim P1270, VAu 1-146-831, October 19, 2013
- Flutterby Narrow Trim P1290, VAu 1-146-835, October 19, 2013
- Lola Allover 8426/B, VAu 1-123-672, January 31, 2013
- Lola Backing 8427/B, VAu 1-123-671, January 31, 2013
- Lola Wide Trim 821/B, VAu 1-123-670, January 31, 2013
- Lola Medium Trim 822/B, VAu 1-123-669, January 31, 2013
- Lola Narrow Trim 823/B, VAu 1-123-668, January 31, 2013
- Blue Bayou Allover 10890, VA 1-880-269, October 10, 2013
- Blue Bayou Backing 10891, VA 1-880-273, October 10, 2013
- Blue Bayou Wide Trim 10894, VA 1-880-275, October 10, 2013
- Blue Bayou Narrow Trim 10892, VA 1-880-291, October 10, 2013
- Very Berry Paisley Allover WC4338-Berr, VAu 1-018-495, March 28, 2010
- Very Berry Paisley Backing WC4330-Berr, VAu 1-018-541, March 28, 2010
- Very Berry Paisley Wide Trim CV4340-Berr, VAu 1-018-505, March 28, 2010
- Very Berry Paisley Narrow Trim CX4342-Berr, VAu 1-018-508, March 28, 2010

Vera Bradleys' unique copyrighted designs include:

Flutterby



Lola



Blue Bayou



Very Berry Paisley



10. Vera Bradley sells eyeglasses, sunglasses, and cases for such glasses in several of its unique copyrighted designs, and has sold eyeglasses bearing the Vera Bradley Works. A true and correct copy of Vera Bradley's eyeglasses incorporating the Vera Bradley Works is attached hereto as **Exhibit B**.

11. Vera Bradley currently employs approximately 2,700 people and earns approximately \$495 Million in annual net revenue from the sale of its products. Vera Bradley sells its products in over 150 branded retail stores and on its website, www.verabradley.com.

Vera Bradley also sells its products through approximately 2,300 specialty gift retailers, more than 300 department stores, and other key accounts.

12. A unique attribute of Vera Bradley’s business model is that it tightly controls who is authorized to sell its products. As a result, Vera Bradley’s customers have come to expect—and demand—only the highest quality for a product bearing Vera Bradley’s unique patterns and designs.

13. Vera Bradley has taken numerous steps to police its copyrights and prevent copyright infringement of its unique patterns and designs. For example, Vera Bradley has worked closely with online marketplaces, such as eBay and Amazon, to stop the advertising and sale of counterfeit products that infringe Vera Bradley’s copyright registrations. In fact, Amazon and Vera Bradley filed three lawsuits in 2018 in the United States District Court for the Western District of Washington against other counterfeiters. Vera Bradley also currently has a case pending in the Northern District of Illinois for copyright infringement against counterfeiters.

II. DEFENDANTS DOLLAR TREE AND GREENBRIER

14. On information and belief, Dollar Tree has more than 7,000 stores throughout the United States, including stores in this District, at which Dollar Tree sells eyeglasses and related accessories that infringe Vera Bradley’s copyrights in the Vera Bradley Works.

15. On or about April 14, 2020, Vera Bradley was notified of a post on a Vera Bradley fan Facebook page indicating that Dollar Tree was selling eyeglasses and eyeglass cases displaying Vera Bradley’s copyrighted “Flutterby” designs:



A true and correct copy of the Facebook post is attached hereto as **Exhibit C**.

16. Dollar Tree did not seek Vera Bradley's consent to use or copy the "Flutterby" designs, and Vera Bradley has not authorized Dollar Tree to use or copy the "Flutterby" designs. Dollar Tree knew or reasonably should have known that it did not have Vera Bradley's approval to use the "Flutterby" designs.

17. On information and belief, Dollar Tree has sold product(s) bearing the "Flutterby" designs in its stores throughout the United States.

18. On or about April 18, 2020, Vera Bradley purchased at a Dollar Tree store in this District various eyeglasses displaying Vera Bradley’s copyrighted “Lola” designs. Vera Bradley’s “Lola” designs include:



19. Dollar Tree did not seek Vera Bradley’s consent to use or copy the “Lola” designs and Vera Bradley has not authorized Dollar Tree to use or copy the “Lola” designs. Dollar Tree knew or reasonably should have known that it did not have Vera Bradley’s approval to use the “Lola” designs.

20. On information and belief, Dollar Tree has sold product(s) bearing the “Lola” designs in its stores throughout the United States.



True and correct copies of photographs of Dollar Tree’s products infringing the “Lola” design are attached hereto as **Exhibit D**.

21. On April 27, 2020, Vera Bradley sent a cease and desist letter to Dollar Tree regarding its infringement of the Flutterby and Lola designs. A true and correct copy of Vera Bradley’s April 27, 2020 cease and desist letter is attached hereto as **Exhibit E**.

22. On information and belief, Dollar Tree has also sold eyeglasses and related accessories bearing Vera Bradley’s copyrighted “Blue Bayou” and “Very Berry Paisley” designs.

23. After receiving Vera Bradley’s cease and desist letter, Dollar Tree stated that it was unable to remove the infringing products from its stores anywhere in the United States.

24. Even after being put on formal notice of its infringement, Dollar Tree has continued to sell products infringing on Vera Bradley designs. A true and correct copy of

pictures of infringing products purchased by Vera Bradley at Dollar Tree stores in this District and in other jurisdictions since April 27, 2020 is attached hereto as **Exhibit F**.

25. On information and belief, Greenbrier has sourced and/or imported, or assisted Dollar Tree in sourcing and/or importing, eyeglasses and related accessories that infringe the Vera Bradley Works.

26. Defendants are not authorized or licensed to use, copy, or import Vera Bradley's copyrighted designs. Defendants knew or reasonably should have known that they did not have Vera Bradley's approval to use the Vera Bradley Works.

27. On information and belief, Dollar Tree's knowing unauthorized copying of the Vera Bradley Works and selling products bearing designs that are substantially similar to the Vera Bradley Works constitutes willful copyright infringement of Vera Bradley's valid and subsisting copyrights in the Vera Bradley Works and the designs therein.

28. On information and belief, Greenbrier knowingly imported into the United States products bearing designs that are substantially similar to the Vera Bradley Works, thereby inducing, causing to induce, or materially contributing to Dollar Tree's infringement of the Vera Bradley Works. Greenbrier's acts constitute willful direct copyright infringement and contributory copyright infringement of Vera Bradley's valid and subsisting copyrights in the Vera Bradley Works and the designs therein.

29. On information and belief, Dollar Tree's knowing unauthorized copying of the Vera Bradley Works and selling products bearing designs that are substantially similar to the Vera Bradley Works has misled or deceived consumers to believe that the infringing products being sold by Dollar Tree are sponsored or approved by Vera Bradley when they are not.

COUNT I
(Copyright Infringement, 17 U.S.C. § 501—Against All Defendants)

30. Paragraphs 1 through 29 are incorporated by reference herein.

31. Vera Bradley is the sole owner of all right, title, and interest in and to the Vera Bradley Works with the full and exclusive right to bring suit to enforce its copyright and to recover for infringement of the same.

32. Dollar Tree has infringed the Vera Bradley Works by copying, distributing, publicly displaying, and/or selling derivative works of the Vera Bradley Works without Vera Bradley's authorization.

33. Dollar Tree acted willfully in this regard, or at a minimum with willful blindness to, or in reckless disregard of, the Vera Bradley Works.

34. As a result of Dollar Tree's unlawful acts, Vera Bradley is entitled to recover its actual damages and Dollar Tree's profits attributable to the infringement. In the alternative, Vera Bradley is entitled to recover statutory damages under 17 U.S.C. § 504(c) as the Vera Bradley Works were registered prior to Dollar Tree's infringement or within three months of publication.

35. Vera Bradley is further entitled to injunctive relief, including an order impounding all infringing materials, because Vera Bradley has no adequate remedy at law for Dollar Tree's wrongful conduct.

COUNT II
(Vicarious and Contributory Copyright Infringement, 17 U.S.C. § 501 – Against Greenbrier)

36. Paragraphs 1 through 35 are incorporated by reference herein.

37. On information and belief, Greenbrier is the sourcing company for Dollar Tree and at Dollar Tree's direction, has sourced and/or imported products bearing designs that are substantially similar to the Vera Bradley Works.

38. As affiliates and /or under common control with Dollar Tree, Greenbrier had knowledge of the ongoing infringing activity that is the subject of this lawsuit and has materially contributed to the infringing conduct of Dollar Tree, the direct infringer of the Vera Bradley Works.

39. Without authorization or permission, Greenbrier continues to source and/or import infringing products reaping financial and other pecuniary benefits to the detriment of Vera Bradley.

40. As a result of Greenbrier's conduct, acts, and/or omissions in cooperation and coordination with Dollar Tree, Vera Bradley is entitled to recover its actual damages and Greenbrier's profits attributable to the infringement. In the alternative, Vera Bradley is entitled to recover statutory damages under 17 U.S.C. § 504(c).

COUNT III
(Unfair and Deceptive Trade Practices, Ind. Code. § 24-5-0.5-03)

41. Paragraphs 1 through 40 are incorporated by reference herein.

42. Dollar Tree represented that the infringing products it sold bearing designs that are substantially similar to the Vera Bradley Works were sponsored or approved by Vera Bradley, when, in fact, they were not, and Dollar Tree knew or reasonably should have known that the goods were not sponsored or approved by Vera Bradley, in violation of Ind. Code. § 24-5-0.5-03.

43. As a result of Dollar Tree's action, Vera Bradley has suffered and is continuing to suffer irreparable injury, and has incurred and is continuing to incur monetary damages in an amount yet to be determined.

44. As a result of Dollar Tree's actions, Vera Bradley is entitled to attorneys' fees pursuant to Ind. Code. § 24-5-0.5-04.

**COUNT IV
(Unfair Competition – Passing Off)**

45. Paragraphs 1 through 44 are incorporated by reference herein.

46. Dollar Tree’s use of the Vera Bradley Works represents to customers and potential customers that its products are those of Vera Bradley.

47. Dollar Tree’s use of the Vera Bradley Works constitutes “passing off” under Indiana’s common law of unfair competition.

48. Dollar Tree’s conduct was willful and deliberate.

49. Dollar Tree’s use of the Vera Bradley Works has caused and will continue to cause consumer confusion and have caused and will continue to cause great and irreparable injury to Vera Bradley unless such acts are restrained by this Court.

50. Vera Bradley is further entitled to injunctive relief because Vera Bradley has no adequate remedy at law for Dollar Tree’s wrongful conduct.

PRAYER FOR RELIEF

WHEREFORE, Vera Bradley requests that the Court provide the following relief against Defendants:

A. Enter an order permanently and preliminary enjoining and restraining Defendants, their related companies, their parents, officers, agents, representatives, employees, contractors, successors and assigns, and all others acting in active concert or participation with them from:

1) infringing, directly or contributorily, any copyrights of Vera Bradley in any manner, and from copying, exhibiting, transmitting, displaying, distributing, or preparing derivative works from any of the copyrighted material in any past, present, or future variation of Vera Bradley Works.

2) advertising, marketing, distributing, offering for sale, or selling any products bearing the Vera Bradley Works or designs substantially similar to the Vera Bradley Works, or otherwise infringing Vera Bradley's intellectual property;

3) passing-off, inducing, or enabling others to sell or pass off any merchandise which is not genuine Vera Bradley merchandise as and for genuine Vera Bradley merchandise; and

4) assisting, aiding, or abetting any other person or business entity engaged in or performing any of the activities referred to in subsections 1-3 above.

B. Enter judgment in Vera Bradley's favor on all claim brought by it;

C. Enter an order pursuant to 17 U.S.C. § 503 impounding all goods that infringe Vera Bradley's copyrights in the Vera Bradley Works and any related items, including business records, that are in Defendants' possession or under their control;

D. Enter an order requiring Defendants to pay to Vera Bradley such actual damages as it has sustained and/or statutory damages as a result of Defendants' copyright infringement pursuant to 17 U.S.C. § 504;

E. Enter an order requiring Defendants to account for and disgorge to Vera Bradley all gains, profits, and advantages derived from its copyright infringement pursuant to 17 U.S.C. § 504;

F. Enter an order awarding Vera Bradley its reasonable attorneys' fees, costs, and disbursements incurred in this action; and

G. Enter an order awarding Vera Bradley such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, by counsel, respectfully requests a jury trial for all issues deemed triable.

Respectfully submitted,

BARNES & THORNBURG LLP

Dated: September 28, 2020

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*Pro Hac Vice Application to be Submitted

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