



**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION**

DESIGN TOSCANO, INC.,)	
)	
Plaintiff,)	Civil Action No. 4:22-cv-45
)	
v.)	
)	JURY TRIAL DEMANDED
THE CONCRETE LADY, INC.)	
)	
Defendant.)	

COMPLAINT

Plaintiff, Design Toscano, Inc. (“Plaintiff” or “Design Toscano”), brings this action against Defendant, The Concrete Lady, Inc. (“Defendant” or “Concrete Lady”), for injunctive relief, damages and statutory attorneys’ fees under the copyright laws of the United States.

NATURE OF THE CASE

1. This is an action for copyright infringement.
2. Concrete Lady has advertised, manufactured, offered for sale, and/or sold numerous products and molds that infringe the copyrights of Design Toscano. The products at issue involve various statues and/or sculptures that Concrete Lady has advertised, manufactured, offered for sale, and/or sold.
3. On May 23, 2017, Design Toscano sent a letter to the President of Concrete Lady, Peggy R. Woods, notifying Mrs. Woods of Concrete Lady’s unauthorized copying of Design Toscano’s products.
4. The dispute appeared to be resolved at that time.

5. Concrete Lady has recently resumed its acts which infringe upon Design Toscano's copyrights.

SUBJECT MATTER JURISDICTION

6. This action arises under the Copyright Act of 1976, 17 U.S.C. § 101 et seq. ("the Copyright Act").

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

VENUE

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(1) and 1400(a).

9. Concrete Lady has a place of business in this judicial district and resides in this judicial district.

PARTIES AND PERSONAL JURISDICTION

10. Plaintiff, Design Toscano, is an Illinois corporation with a principal place of business at 1400 Morse Avenue, Elk Grove Village, IL 60007-5722.

11. Design Toscano is the owner of numerous copyrights for various decorative pieces, including wall sculptures. Design Toscano sells these pieces through various means, including its website (*www.DesignToscano.com*), catalog, previously through SkyMall magazine, as well as through various authorized on-line retailers and through its network of North American brick-and-mortar distributors and retailers.

12. Defendant, Concrete Lady, is an Indiana corporation with its headquarters and principal place of business located at 4910 Highway 3, Otisco, Clark County, Indiana 47163.

13. Concrete Lady offers for sale and sells decorative pieces, including the pieces it is accused of infringing (as discussed in more detail below) through its website (*theconcretelady.com*).

14. Concrete Lady offers for sale and sells decorative pieces, including the pieces it is accused of infringing (as discussed in more detail below) through a catalogue that can be ordered on its website (<https://www.theconcretelady.com/wholesale-information>). Concrete Lady further sells molds that infringe upon Design Toscano's copyrights.

15. According to information on its website, Concrete Lady has been in business since 1976, and purports to have the largest variety of statuary in the United States.

FACTS

16. Design Toscano owns all right, title and interest in and to United States Copyright Certificate of Registration for the sculptural work "Hear-No, See-No, Speak-No Evil Elephants: Large" Registration No. VA0002274999, effective October 13, 2021, and has standing to sue for enforcement of that copyright. A true and correct copy of Certificate of Registration VA0002274999 is attached as Exhibit A.

17. Design Toscano owns all right, title and interest in and to United States Copyright Certificate of Registration for the sculptural work "Regal Peacock Garden Statue: Large" Registration No. VA0002278592, effective October 15, 2021, and has standing to sue for enforcement of that copyright. A true and correct copy of Certificate of Registration VA0002278592 is attached as Exhibit B.

18. Design Toscano owns all right, title and interest in and to United States Copyright Certificate of Registration for the sculptural work "Elephant's Majesty Glass-Topped Cocktail Table" Registration No. VA0002275477, effective October 14, 2021, and has standing to sue for

enforcement of that copyright. A true and correct copy of Certificate of Registration VA0002275477 is attached as Exhibit C.

19. Design Toscano owns all right, title and interest in and to United States Copyright Certificate of Registration for the sculptural work “Hawaiian Hula Wahine Serving Table Statue” Registration No. VA0002277658, effective October 14, 2021, and has standing to sue for enforcement of that copyright. A true and correct copy of Certificate of Registration VA0002277658 is attached as Exhibit D.





20. Design Toscano owns all right, title and interest in and to United States Copyright Certificate of Registration for the sculptural work “Staverden Castle Peacock on an Urn Garden Statue: Giant” Registration No. VA0002280460, effective October 14, 2021, and has standing to sue for enforcement of that copyright. A true and correct copy of Certificate of Registration VA0002280460 is attached as Exhibit E.







21. Design Toscano owns all right, title and interest in and to United States Copyright Certificate of Registration for the sculptural work “Balancing a Dream Cherub Garden Statue” Registration No. VA0002277654, effective October 14, 2021, and has standing to sue for enforcement of that copyright. A true and correct copy of Certificate of Registration VA0002277654 is attached as Exhibit F.

22. Design Toscano owns all right, title and interest in and to United States Copyright Certificate of Registration for the sculptural work “Talysus the Terrible Gargoyle Sculpture” Registration No. VA0002277652, effective October 14, 2021, and has standing to sue for enforcement of that copyright. A true and correct copy of Certificate of Registration VA0002277652 is attached as Exhibit G.

23. The copyrights in paragraphs 16 through 22 will hereafter be referred to collectively as the “Copyrighted Works.”

24. Concrete Lady has manufactured, offered for sale, and/or sold molds that are unmistakably similar to Design Toscano’s Copyrighted Works. Shown below are side-by-side comparisons of Design Toscano’s Copyrighted Works with Concrete Lady’s infringing products.

Design Toscano’s Copyrighted Work	Concrete Lady’s Infringing Product
 <p data-bbox="219 1098 781 1161">Hear-No, See-No, Speak-No Evil Elephants (Ex. A)</p>	
 <p data-bbox="261 1566 743 1598">Regal Peacock Garden Statue (Ex. B)</p>	

Design Toscano's Copyrighted Work	Concrete Lady's Infringing Product
 <p>Elephant's Majesty Glass-Topped Cocktail Table (Ex. C)</p>	
 <p>Hawaiian Hula Wahine Serving Table (Ex. D)</p>	
 <p>Staverden Castle Peacock on an Urn Garden (Ex. E)</p>	

Design Toscano's Copyrighted Work	Concrete Lady's Infringing Product
 <p data-bbox="227 688 776 730">Balancing a Dream Cherub Garden (Ex. F)</p>	
 <p data-bbox="243 1354 760 1430">Talusus the Terrible Gargoyle Sculpture (Ex. G)</p>	

25. Concrete Lady's infringing sculptures and molds will hereafter be referred to collectively as the "Infringing Works." Copies of pages from Concrete Lady's online and physical catalog with the Infringing Works are attached hereto as Exhibit H.

26. The offering for sale and/or sale of the Infringing Works has resulted in damage to Design Toscano and caused Design Toscano irreparable injury.

27. On May 23, 2017, Design Toscano sent Concrete Lady a notice of infringement letter requesting that Concrete Lady “immediately cease and desist ordering, buying, importing, offering to sell, advertising, manufacturing, or selling any products from Design Toscano...”

28. Concrete Lady does not have, nor has it ever sought, Design Toscano’s authorization for the manufacturing, production, offer for sale, and/or sale of the Infringing Works.

COUNT I

COPYRIGHT INFRINGEMENT

29. Design Toscano realleges paragraphs 1 through 28 above and incorporates those allegations as if fully set forth herein.

30. Design Toscano is, and at all material times hereto has been, the owner of the copyrights in the Copyrighted Works and is entitled and authorized to protect itself against copyright infringement, including the enforcement of copyright actions against infringers.

31. Pursuant to 17 U.S.C. § 106, Design Toscano has the exclusive rights to reproduce, publicly display, and distribute the Copyrighted Works.

32. Pursuant to 17 U.S.C. § 106, Design Toscano has the exclusive right to prepare derivative works based upon the Copyrighted Works.

33. Design Toscano owns all right, title and interest in and to United States Copyright Certificate of Registration for Copyright Nos.: VA0002274999, VA0002278592, VA0002275477, VA0002277658, VA0002280460, VA0002277654, and VA0002277652.

34. Concrete Lady had access to the copyrighted works depicted in Copyright Registration Nos.: VA0002274999, VA0002278592, VA0002275477, VA0002277658, VA0002280460, VA0002277654, and VA0002277652.

35. Concrete Lady copied the copyrighted works depicted in Copyright Registration Nos. VA0002274999. The “Hear-No, See-No, Speak-No Evil Elephants: Large” products and molds manufactured and sold by Concrete Lady are strikingly and substantially similar to the Copyright Registration No. VA0002274999 entitled “Hear-No, See-No, Speak-No Evil Elephants: Large” in that the look and feel of the infringing product and the copyrighted work are similar. Concrete Lady has violated and infringed upon Design Toscano’s Registered Copyright No. VA0002274999.

36. Concrete Lady copied the copyrighted works depicted in Copyright Registration No. VA0002278592. The “Regal Peacock Garden Statue: Large” products and molds manufactured and sold by Concrete Lady are strikingly and substantially similar to the Copyright Registration No. VA0002278592 entitled “Regal Peacock Garden Statue: Large” in that the look and feel of the infringing product and the copyrighted work are similar. Concrete Lady has violated and infringed upon Design Toscano’s Registered Copyright No. VA0002278592.

37. Concrete Lady has copied the copyrighted works depicted in Copyright Registration No. VA0002275477. The “Elephant’s Majesty Glass-Topped Cocktail Table” products and molds manufactured and sold by Concrete Lady are strikingly and substantially similar to the Copyright Registration No. VA0002275477 entitled “Elephant’s Majesty Glass-Topped Cocktail Table” in that the look and feel of the infringing product and the copyrighted work are similar. Concrete Lady has violated and infringed upon Design Toscano’s Registered Copyright No. VA0002275477.

38. Concrete Lady has copied the copyrighted works depicted in Copyright Registration No. VA0002277658. The “Hawaiian Hula Wahine Serving Table Statue” products and molds manufactured and sold by Concrete Lady are strikingly and substantially similar to the

Copyright Registration No. VA0002277658 entitled “Hawaiian Hula Wahine Serving Table Statue” in that the look and feel of the infringing product and the copyrighted work are similar. Concrete Lady has violated and infringed upon Design Toscano’s Registered Copyright No. VA0002277658.

39. Concrete Lady has copied the copyrighted works depicted in Copyright Registration No. VA0002280460. The “Staverden Castle Peacock on an Urn Garden: Giant” products and molds manufactured and sold by Concrete Lady are strikingly and substantially similar to the Copyright Registration No. VA0002280460 entitled “Staverden Castle Peacock on an Urn Garden: Giant” in that the look and feel of the infringing product and the copyrighted work are similar. Concrete Lady has violated and infringed upon Design Toscano’s Registered Copyright No. VA0002280460.

40. Concrete Lady has copied the copyrighted works depicted in Copyright Registration No. VA0002277654. The “Balancing a Dream Cherub Garden Statue” products and molds manufactured and sold by Concrete Lady are strikingly and substantially similar to the Copyright Registration No. VA0002277654 entitled “Balancing a Dream Cherub Garden Statue” in that the look and feel of the infringing product and the copyrighted work are similar. Concrete Lady has violated and infringed upon Design Toscano’s Registered Copyright No. VA0002277654.

41. Concrete Lady has copied the copyrighted works depicted in Copyright Registration No. VA0002277652. The “Talysus the Terrible Gargoyle Sculpture” products and molds manufactured and sold by Concrete Lady are strikingly and substantially similar to the Copyright Registration No. VA0002277652 entitled “Talysus the Terrible Gargoyle Sculpture” in that the look and feel of the infringing product and the copyrighted work are similar. Concrete

Lady has violated and infringed upon Design Toscano's Registered Copyright No. VA0002277652.

42. Design Toscano became aware that Concrete Lady was selling and offering to sell molds and concrete structures and statues that were substantially similar to Design Toscano's Copyrighted Works.

43. Concrete Lady infringed, and continues to infringe, Design Toscano's Copyrighted Works by reproducing, publicly displaying, distributing, or preparing derivative works based on the Copyrighted Works without Design Toscano's authorization.

44. At a minimum, Concrete Lady acted in reckless disregard of Design Toscano's copyrights in the Copyrighted Works.

45. As a direct and proximate result of Concrete Lady's infringement of Design Toscano's copyrights and exclusive rights under copyright, Design Toscano is entitled no less than the maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). Pursuant to 17 U.S.C. § 504(b), Design Toscano is entitled to its actual damages, including Concrete Lady's profits from infringement, in amounts to be proven at trial.

46. Design Toscano is entitled to its costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505. Concrete Lady's conduct is causing and, unless enjoined by this Court, will continue to cause Design Toscano irreparable injury that cannot fully be compensated or measured in money. Design Toscano has no adequate remedy at law.

47. Design Toscano has been irreparably harmed by the infringing acts. Pursuant to 17 U.S.C. § 502, Design Toscano is entitled to permanent injunctive relief prohibiting infringement of Design Toscano's copyrights and exclusive rights under copyright.

WHEREFORE, Plaintiff, Design Toscano prays for the following relief:

A) A judgment finding that Concrete Lady copied each of the Copyrighted Works and is liable for copyright infringement in each of the Infringing Works and Molds;

B) a judgment finding that such infringement is willful;

C) a judgment finding that Concrete Lady, and all those in active concert or participation with it, be permanently enjoined from infringement of Design Toscano's copyrights in the Copyrighted Works pursuant to 17 U.S.C. § 502;

D) a judgment and order for Concrete Lady to account for and turn over to Design Toscano all copies or other articles by which copies of the Copyrighted Works may be reproduced pursuant to 17 U.S.C. § 503;

E) an award of damages adequate to compensate for the infringement, by no less than statutory damages pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 per infringed work, arising from Concrete Lady's violations of Design Toscano's rights under the Copyright Act, or Design Toscano's actual damages, including Concrete Lady's profits, in amounts to be proven at trial;

F) an award of costs and attorney's fees pursuant to 17 U.S.C. § 505;

G) an award of prejudgment and post-judgment interest to provide such other remedies under the copyright laws of the United States and/or as the Court deems reasonable and just; and

H) an award of enhanced damages for willful infringement; and

I) all other relief the Court deems just and fair.

JURY TRIAL DEMAND

Design Toscano requests a jury trial on all such issues triable by a jury.

Dated: March 31, 2022

/s/ Kenan L. Farrell
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EXHIBIT INDEX

Exhibit A: Certificate of Registration VA0002274999, “Hear-No, See-No, Speak-No Evil Elephants: Large”

Exhibit B: Certificate of Registration VA0002278592, “Regal Peacock Garden Statue”

Exhibit C: Certificate of Registration VA0002275477, “Elephant’s Majesty Glass-Topped Cocktail Table”

Exhibit D: Certificate of Registration VA0002277658, “Hawaiian Hula Wahine Serving Table Statue”

Exhibit E: Certificate of Registration VA0002280460, “Staverden Castle Peacock on an Urn Garden Statue: Giant”

Exhibit F: Certificate of Registration VA0002277654, “Balancing a Dream Cherub Garden Statue”

Exhibit G: Certificate of Registration VA0002277652, “Talysus the Terrible Gargoyle Sculpture”

Exhibit H: Concrete Lady’s Online Catalog with the Infringing Works