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07-CV-01830-CMP

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DEREK ANDREW, INC., a Washington  
corporation,

Plaintiff,

v.

CHROME HEARTS, INC., a California limited  
liability corporation,

Defendant.

No.

**C 07-1830** 282

COMPLAINT FOR  
DECLARATORY JUDGMENT  
OF COPYRIGHT AND  
TRADEMARK NON-  
INFRINGEMENT

Plaintiff Derek Andrew, Inc. ("Derek Andrew") hereby alleges as follows:

1. Pursuant to 28 U.S.C. §§2201, *et seq.*, Derek Andrew seeks a declaration that it has not infringed any valid copyright of Registration No. VA 705-194 entitled Filigree Cross owned by defendant Chrome Hearts, Inc. ("Chrome Hearts"), that it has not infringed any valid trademarks owned by Chrome Hearts, Inc., that Chrome Hearts has interfered with Derek Andrew's contractual and business expectancy relationships, and that Chrome Hearts has violated the Washington Consumer Protection Act.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1367.

3. Venue is proper in this district pursuant to 28 U.S.C. §1391.

## PARTIES

4. Derek Andrew is a Washington corporation having its principal place of business in Bellevue, Washington.

5. On information and belief, defendant Chrome Hearts is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Hollywood, California. On information and belief, Defendant does business in the state of Washington.

## FACTUAL ALLEGATIONS

6. Derek Andrew is the designer, manufacturer and distributor of clothing sold under the TWISTED HEART and other trademarks.

7. Upon information and belief, Chrome Hearts is the designer, manufacturer and distributor of clothing, jewelry, leather goods and accessories.

8. Upon information and belief, Chrome Hearts is the owner of copyright Registration No. VA 705-194 for the Filigree Cross design. The registration certificate identifies the nature of work as "jewelry design."

9. Upon information and belief, Chrome Hearts' Filigree Cross products do not include a copyright notice.

10. Upon information and belief, the Filigree Cross design does not constitute a trademark or designation of origin.

11. Upon information and belief, Chrome Hearts owns a number of federal trademark registrations and trademark applications, including Registration Numbers 2962976 and 2644724 and Application Numbers 78825591 and 78833228, all for design marks with a fleur de lis design (collectively "Chrome Hearts Trademarks").

12. On or about October 16, 2007, an attorney representing Chrome Hearts sent a letter to COLORZ, a retail outlet in Henderson, Nevada. In the letter, Chrome Hearts alleged that COLORZ had violated its copyright Registration No. VA 705-194 for the Filigree Cross

1 design, "which is used by Chrome Hearts, among other things on its apparel, jewelry and  
2 handbag lines."

3 13. In addition, the letter referenced the "CHROME HEARTS family of  
4 trademarks" and alleged that COLORZ had violated 15 U.S.C. § 1125(a). The letter did not  
5 specify which trademark(s) or other designation(s) of origin COLORZ had allegedly  
6 infringed.

7 14. Attached to Chrome Hearts' October 16, 2007, letter to COLORZ was a copy  
8 of the registration certificate for Registration No. VA 705-194 and photographs of clothing  
9 bearing a fleur de lis cross or other ancient cross. The letter did not appear to include a copy  
10 of the images of the subject work, i.e. a jewelry design, that accompanied the original  
11 application for registration that resulted in Registration No. VA 705-194, but rather included  
12 copies of clothing samples.

13 15. Also attached to the letter were photographs of clothing sold by COLORZ that  
14 allegedly infringed Registration No. VA 705-194. The photographs depicted TWISTED  
15 HEART clothing designed, manufactured and distributed by Derek Andrew.

16 16. Also on or about October 16, 2007, an attorney representing Chrome Hearts  
17 sent a letter to Electric Ladyland Chandler, LLC ("Electric Ladyland"), a retail outlet in  
18 Scottsdale, Arizona. In the letter, Chrome Hearts alleged that Electric Ladyland had violated  
19 its copyright Registration No. VA 705-194 for the Filigree Cross design, "which is used by  
20 Chrome Hearts, among other things on its apparel, jewelry and handbag lines."

21 17. In addition, the letter referenced the "CHROME HEARTS family of  
22 trademarks" and alleged that Electric Ladyland had violated 15 U.S.C. § 1125(a). The letter  
23 did not specify which trademark(s) of other designation(s) of origin Electric Ladyland had  
24 allegedly infringed.

25 18. Attached to Chrome Hearts' October 16, 2007, letter to Electric Ladyland was  
26 a copy of the registration certificate for Registration No. VA 705-194 and photographs of  
27 clothing bearing a fleur de lis cross or other ancient cross. The letter did not appear to include

1 a copy of the images of the subject work, i.e. a jewelry design, that accompanied the original  
2 application for registration that resulted in Registration No. VA 705-194, but rather included  
3 copies of clothing samples.

4 19. Also attached to the Electric Ladyland letter were photographs of the clothing  
5 sold by Electric Ladyland that allegedly infringed Registration No. VA 705-194. The  
6 photographs depicted TWISTED HEART clothing designed, manufactured and distributed by  
7 Derek Andrew.

8 20. The letters to COLORZ and Electric Ladyland were substantially identical  
9 with respect to the claims asserted.

10 21. Derek Andrew subsequently learned of the letters sent to COLORZ and  
11 Electric Ladyland. On or about October 23, 2007, Derek Andrew sent a letter to Chrome  
12 Hearts identifying itself as the manufacturer and distributor of the clothing that was the  
13 subject of the letter sent to COLORZ.

14 22. In the letter, Derek Andrew stated its use of the accused fleur de lis design did  
15 not create a trademark or false designation of origin cause of action and that Derek Andrew  
16 had not violated Chrome Hearts' trademark right or similar rights. Derek Andrew also  
17 requested a copy of the images of the subject work that accompanied the original application  
18 that resulted in Registration No. VA 705-194 that is the subject matter of that registration.  
19 Derek Andrew further stated that the fleur de lis cross appears to be an ancient design which  
20 is long in common and widespread use. The letter requested additional information to allow  
21 Derek Andrew to fully and adequately investigate the claims asserted in Chrome Hearts' letter  
22 to COLORZ. Specifically, Derek Andrew asked for:

- 23 1. Photographs, copies, or samples of the specimens submitted in  
24 connection with U.S. copyright registration VA 705-194;
- 25 2. Evidence of Chrome Hearts' conception of its "Filigree Cross"  
26 design, including the names and contributions of the individual(s)  
27 responsible for work; and
3. The identification of any pre-existing works on which the "Filigree  
Cross" design was based in whole or in part.

1           23.     On or about October 25, 2007, Derek Andrew sent a second letter to Chrome  
2     Hearts advising that it had been made aware of the letter sent to Electric Ladyland and  
3     identifying itself as the manufacturer and distributor of the clothing that was the subject of the  
4     Electric Ladyland letter.

5           24.     On or about November 8, 2007, Chrome Hearts responded to Derek Andrew's  
6     letters. With respect to Derek Andrew's request for deposit samples, Chrome Hearts refused  
7     to produce any documents and suggested that Derek Andrew obtain the documents from  
8     COLORZ or Electric Ladyland. The letter otherwise did not address Derek Andrew's request  
9     for information. Chrome Hearts also refused to address any factual basis for its claim of false  
10    designation of origin pursuant to 15 U.S.C. § 1125(a). The letter further alleged that by  
11    admitting that it was the supplier of the allegedly infringing clothes sold by COLORZ and  
12    Electric Ladyland, Derek Andrew was violating Chrome Hearts' copyright and trademark  
13    rights. The letter demanded that Derek Andrew provide:

- 14               1. An accounting of all Infringing Products sold to this date;
- 15               2. The exact inventory Derek Andrew, Inc. has of the Infringing Products;
- 16               3. The price for which the Infringing Products were sold;
- 17               4. A list of Derek Andrew, Inc.'s customers for the Infringing Products;  
18               and,
- 19               5. The name and address of Derek Andrew, Inc.'s manufacturer for the  
20               Infringing Products.

21    The letter stated that "unless we receive the information requested in this letter within five (5)  
22    business days, we have been instructed by our client to commence an action against Derek  
23    Andrews, Inc. in federal court for copyright infringement and unfair competition."

24           25.     Derek Andrew has business relationships with COLORZ and Electric  
25    Ladyland whereby COLORZ and Electric Ladyland sell Derek Andrew's products. Upon  
26    information and belief, Chrome Hearts knew of or should have known of Derek Andrew's  
27    business relationships with COLORZ and Electric Ladyland.

26. As a result of the cease and desist letters sent by Chrome Hearts to COLORZ and Electric Ladyland, these two retailers are unable to sell the clothing products that are the subject of the cease and desist letters. Derek Andrew was been directly damaged as a result of the cease and desist letters sent by Chrome Hearts to COLORZ and Electric Ladyland.

27. There is an actual controversy as to whether copyright Registration No. VA 705-194 for the Filigree Cross design is valid, whether the subject jewelry design is original, whether Derek Andrew infringed any valid claim of copyright Registration No. VA 705-194, whether Derek Andrew violated 15 U.S.C. § 1125(a), whether Chrome Hearts' cease and desist letters tortiously interfered with Derek Andrew's contractual relationships and business expectancies with its retailers and whether Chrome Hearts' cease and desist letters violated the Washington Consumer Protection Act, RCW 19.86.020.

## FIRST CLAIM FOR RELIEF: DECLARATION OF COPYRIGHT INVALIDITY

28. Plaintiff incorporates the allegations of Paragraphs 1 through 27 above as if set forth fully herein.

29. Plaintiff is entitled to a declaration that Registration No. VA 705-194 for the Filigree Cross design is invalid for failure to comply with one or more of the provisions of the Copyright Act, 17 U.S.C. §§101 *et seq.*

**SECOND CLAIM FOR RELIEF: DECLARATION OF NON-INFRINGEMENT OF  
REGISTRATION NO. VA 705-194**

30. Plaintiff incorporates the allegations of Paragraphs 1 through 27 above as if set forth fully herein.

31. Plaintiff is entitled to a declaration that it does not infringe U.S. Copyright Registration No. VA 705-194.

### THIRD CLAIM FOR RELIEF: DECLARATION OF NON-INFRINGEMENT OF CHROME HEARTS TRADEMARKS

32. Plaintiff incorporates the allegations of Paragraphs 1 through 27 above as if set forth fully herein.

1           33. Plaintiff is entitled to a declaration that it does not infringe any valid Chrome  
2 Hearts trademark or designation of origin, or otherwise used any trade designation of origin.

3                   **FOURTH CLAIM FOR RELIEF: DECLARATION OF TORTIOUS**  
4                   **INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS AND BUSINESS**  
5                   **EXPECTANCIES**

6           34. Plaintiff incorporates the allegations of Paragraphs 1 through 27 above as if set  
7 forth fully herein.

8           35. Plaintiff is entitled to a declaration that Defendant interfered with Derek  
9 Andrew's contractual relationships and business expectancies with its retailers by sending the  
10 threatening and improper cease-and-desist letters to COLORZ and Electric Ladyland.

11                   **FIFTH CLAIM FOR RELIEF: VIOLATION OF THE WASHINGTON CONSUMER**  
12                   **PROTECTION ACT**

13           36. Plaintiff incorporates the allegations of Paragraphs 1 through 27 above as if set  
14 forth fully herein.

15           37. Plaintiff is entitled to a declaration that Defendant violated the Washington  
16 Consumer Protection Act, RCW 19.86.020 by sending the threatening and improper cease-  
17 and-desist letters to COLORZ and Electric Ladyland.

18                   **PRAYER FOR RELIEF**

19           WHEREFORE plaintiff, Derek Andrew, Inc., prays for judgment against defendant,  
20 Chrome Hearts LLC, alternatively and cumulatively as follows:

- 21           1. Declaring that Registration No. VA 705-194 is invalid;
- 22           2. Declaring that plaintiff has not infringed Registration No. VA 705-194;
- 23           3. Declaring that plaintiff has not infringed any valid Chrome Hearts Trademarks  
24 or designations of origin, or used any trade designation of origin;
- 25           4. Declaring the defendant tortiously interfered with Derek Andrew's contractual  
26 relationships and expectancies with its retailers;
- 27           5. Declaring that defendant violated the Washington Consumer Protection Act,  
RCW 19.86.020;


1           6.       Declaring that plaintiff is free to make, use, sell, import and offer for sale  
2 products that defendant claims infringe the Registration No. VA 705-194 and the Chrome  
3 Hearts trademarks and designations of origin, and that plaintiff's customers are free to use,  
4 sell, and offer for sale such products;

5           7.       Finding that this plaintiff is entitled to costs and attorneys' fees pursuant to 17  
6 U.S.C. § 505; and

7           8.       Granting such and further relief as may be just and equitable under the  
8 circumstances.

9           DATED this 13<sup>th</sup> day of November, 2007.

10                               Davis Wright Tremaine LLP  
11                               Attorneys for Plaintiff Derek Andrew, Inc.

12                                 
13 By \_\_\_\_\_  
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