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June 27, 2024

VIA EMAIL

Michael Allen
Johnny Threads, Inc.
881 Worcester St. Suite 1
Natick, MA 01760
support@johnnythreads.com

Re: MilMie Designs DMCA Request

Dear Mr. Allen:

This firm has the pleasure of representing MilMie Designs ("MilMie") in intellectual property matters. We are in receipt of your email correspondence dated June 23, 2024, and letter dated June 24, 2024, sent on behalf of Johnny Threads, Inc. ("Johnny Threads"). In it, you demand that MilMie Designs retract its DMCA takedown request of Johnny Threads' listing ID# 1749647929 of a "Shake Shake Shake Senora" shirt design (the "Infringing Design"). We have carefully considered the discussion contained in your letter and must reject your assertion that MilMie's conduct is in any way "fraudulent." Regardless of whether or not MilMie Designs or Heather Firca have registered the copyright in her design with the U.S. Copyright Office, Ms. Firca owns the copyright in the creative expression of her own "Shake Senora" design and the concomitant right to protect that specific creative expression. Pursuant to DMCA takedown procedures, Johnny Threads is within its own rights to dispute the takedown request with a counter notice comprising evidence of Johnny Threads' independent creation, if any. Accordingly, we welcome any additional information that Johnny Threads can provide showing it independently created its Infringing Design without access to Ms. Firca's design.

As you are likely aware, copyright protection attaches to original works of authorship fixed in a tangible medium of expression. "Original" in the copyright sense does not mean "first," but rather "not copied." Accordingly, an artist or author does not need to be the first in time to secure rights in a creative work. They do, however, need to have independently created the work and applied some amount of creativity in the design of the work. Therefore, your assertions that you have identified other "Shake Shake Shake Senora" shirts pre-dating Ms. Firca's design are inapposite.

Ms. Firca first created her shirt design approximately three years ago to coincide with Halloween. She designed its layout and presentation in a design application, inspired by the movie Beetlejuice. In particular, she selected a large font to occupy the entire shirt to express boisterous yelling, along with a rough vintage appearance because the movie is from 1988. Ms. Firca's shirt design has become a best seller on Etsy, leading many others to directly copy her creative expression to capitalize on its success.



Ms. Firca's Design



The Infringing Design

In comparison, Johhny Threads' Infringing Design used a substantially similar, if not identical, design copying Ms. Firca's creative expression. And, in fact, Johnny Threads is known to engage in the practice of copying popular designs to exploit them. *See*, *e.g.*:



Design by Lovers and Friends



Copied Design by Johnny Threads

Moreover, your assertions regarding trademark law are inapplicable here. Ms. Firca has never claimed trademark rights to the phrase “Shake Shake Shake Senora.” Rather, Ms. Firca claims rights in the creative expression of her original shirt design, which it appears that Johnny Threads has copied.

As discussed above, the DMCA takedown process can be used regardless of whether the copyright owner has registered their work with the U.S. Copyright Office. In good faith, MilMie Designs submitted a takedown request to Etsy based on the belief that Johnny Threads’ Infringing Design copied the protected creative elements of Ms. Firca’s design. We welcome any additional evidence provided by Johnny Threads showing that you independently created the Infringing Design without access to Ms. Firca’s design, and we encourage Johnny Threads to proceed through the counter notice process with Etsy to provide that evidence, if any.

MilMie reserves all of its rights and remedies and nothing contained herein should be construed as in any way limiting or waiving MilMie’s rights or to seek relief in any appropriate forum. Our investigation into this matter is ongoing and we also reserve the right to expand our analysis and allegations based on further investigations.

Respectfully,

s/ Manon L. Burns
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