Johnny Threads Inc.
881 Worcester St. Suite 1
Natick MA 01760

Manon Burns
549 W. Randolph St. Suite 400
Chicago, Illinois 60661

July 10th, 2024

Ms. Burns,

Johnny Threads Inc. (hereby referred to as “JT”) is in receipt of your letter dated June 27th, 2024 regarding a DMCA takedown filed by Heather Firca of MilMie Designs (hereby referred to as “HF”).

After carefully reviewing your letter, JT remains steadfast in its assertion that HF illegally abused the DMCA takedown process by misrepresenting ownership of the aforementioned “Shake Shake Shake Senora” design as detailed in 17 U.S.C. Section 512(f).

First and foremost, in order to file a valid DMCA takedown, HF must first be able to legally assert copyright ownership of her design. In your previous letter you included a picture of the design in question which clearly depicts the graphic as a basic typography design. As I’m sure you are aware, the design created by HF unquestionably *does not* meet the threshold of originality needed for copyright protection as described under section 313.4(c). The law explicitly states that “words and short phrases” are not eligible for copyright protection. While HF has every right to offer her “Shake Shake Shake Senora” design for sale, she has absolutely zero standing to claim her design was infringed upon for the purposes of a DMCA takedown. Eliminating competitors on Etsy,

or any other platform, by falsely claiming infringement and subsequently filing fraudulent DMCA takedowns is not only completely unethical, it is criminal.

As to the HF design itself, a strikingly similar “Shake Shake Shake Senora'' design was first created by the women’s contemporary clothing brand Wildfox Couture. A photo example of the Wildfox Couture design is included below for reference. JT and its owners currently operate multiple apparel and fashion related businesses which span a variety of fashion genres and niches. Since 2015, JT, through its parent organization has had wholesale account access to Wildfox Couture. Additionally, JT has engaged in direct communication with Wildfox Couture in regards to their “Shake Shake Shake Senora'' design. Given the timeline that you provided in your previous letter, it is beyond the realm of possibility to assert that HF created the original concept for her “Shake Shake Shake Senora'' design. While JT does not dispute that HF used a different commercially available font when creating an almost identical copy to the Wildfox Couture design, the assertion that this was a design solely created by HF is not plausible or believable. Additionally, JT agrees with your assessment that first does not mean original, however given the extraordinary circumstances surrounding this issue, JT believes it prudent to include all relevant facts.

The design created by Wildfox Couture was first offered for wholesale purchase in early spring of 2021 at nationwide trade events and through the Wildfox Couture online wholesale platform. This offering occurred prior to the date when HF opened her MilMie Designs Etsy shop. The Wildfox Couture product was also widely distributed and sold at countless clothing boutiques across the United States and at some of the world’s largest retailers including Nordstroms (link below for reference). Given your postulation that JT’s “Infringing Design used a substantially similar, if not identical, design copying Ms. Firca’s creative expression”, is it then your assertion that HF’s “creative expression” was also infringed on by Wildfox Couture? Despite the fact that the Wildfox Couture design was created almost a year ***PRIOR*** to HF opening her Etsy store? JT looks forward to your rationalization of this claim.

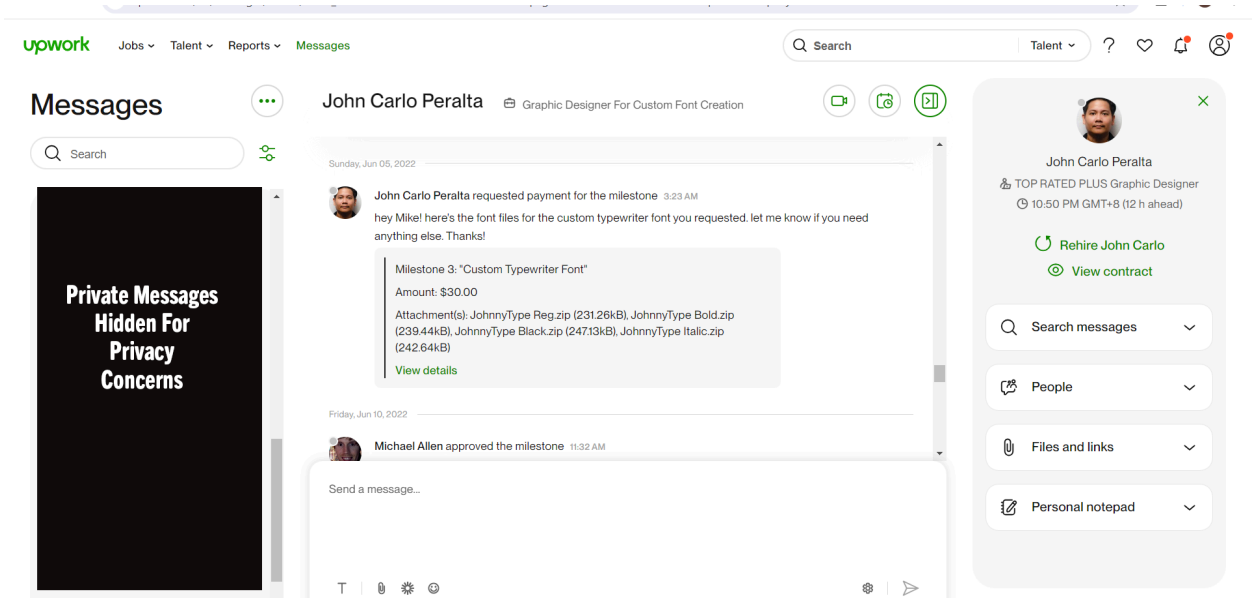
https://www.nordstrom.com/s/wildfox-shake-senora-roadtrip-cotton-sweatshirt/6469456



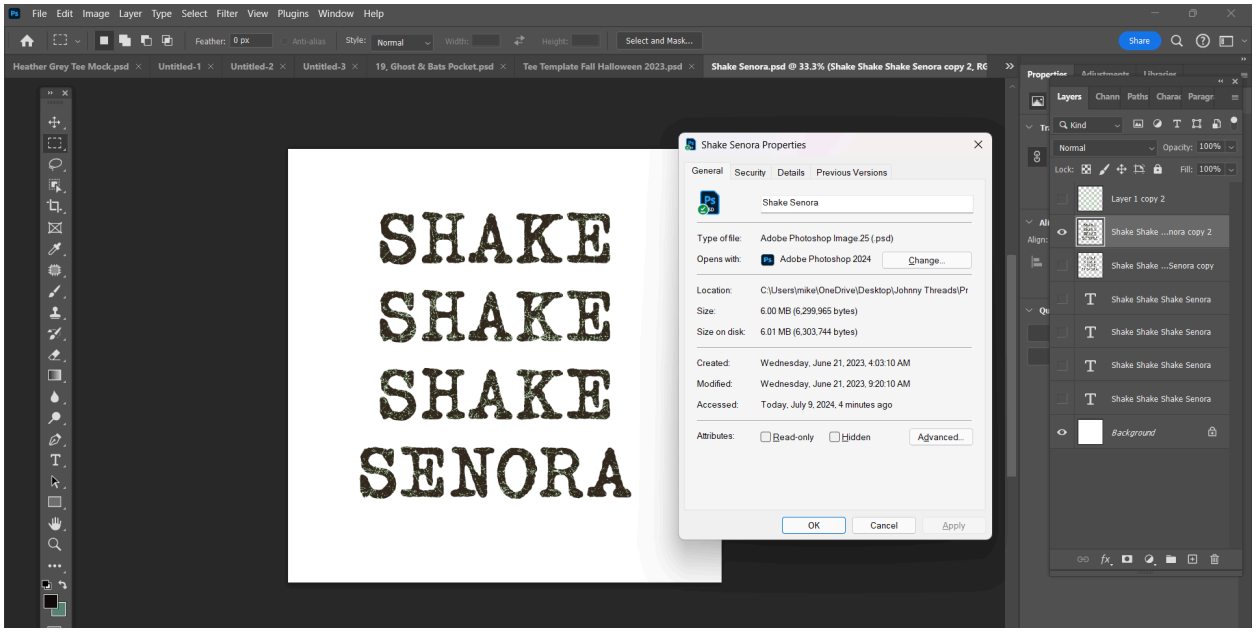
WILDFOX COUTURE DESIGN

In response to the actual font used to create the JT design, this font was purchased from a freelance designer in 2022. JT commissioned the creation of the font for general multi-purpose use. Screenshots of the transaction are included below. Additionally, the "Shake Shake Shake Senora" design which was independently created by JT was designed in June of 2023. Screenshots showing the creation date are included below. JT was completely unaware of HF or MilMie Designs prior to receiving a DMCA takedown notice on June 23rd, 2024. As previously described, JT has wholesale access to Wildfox Couture and in 2023, JT contacted Wildfox Couture in regards to their "Shake Shake

Shake Senora” sweatshirt to inquire about additional purchases. At the time JT was informed the item was no longer being manufactured and there were no plans for additional production. JT inquired about custom manufacturing for the product, but Wildfox Couture declined due to the small order size and suggested JT could create its own version given the nature of the design.



Custom Font Creation



DESIGN CREATION WITH DATE

In your previous letter you made the following accusation: “Johnny Threads is known to engage in the practice of copying popular designs to exploit them”.

JT takes great pride in the design of its website, graphic apparel, and photographic production. While the vast majority of online apparel sellers now fully rely on marketplaces and AI generated mockups, pictures and content, JT has independently designed and developed a completely unique and original website to sell its products. JT spent almost two years developing its website in house and has spent more than $50,000 on models and photographers to generate unique imagery exclusive to JT. Currently, more than 98% of the images on the JT website were created exclusively by JT. The remaining 2% having been purchased from independent photography studios. Furthermore, ***100%*** of the designs being listed by the JT brand were exclusively designed by JT. Your insinuations of engaging in copyright infringement are completely inappropriate and made in poor taste. More importantly however, they are completely false.

Below is a screenshot taken from your previous letter depicting a graphic tee shirt for sale on the JT website. You used this image to try and qualify a false narrative that JT is “copying popular designs to exploit them”. However, if you look at the picture (highlighted in red) you will clearly see that this product is listed from the brand “Cape

June" and *NOT* from JT. At no time did JT present this product as being designed, created, or exclusive to JT. The majority of products listed for sale on the JT website are purchased from other apparel brands and manufacturers and are clearly listed as such.



In regards to the actual filing of the DMCA takedown from HF, JT vehemently disagrees with the claim that HF filed the notice in good faith believing she had legal rights to file a valid takedown. Before filing a DMCA takedown through Etsy's reporting portal, Etsy lays out the legal requirements needed for a valid filing. Etsy also displays a notice that misrepresenting legal ownership can result in serious legal consequences as well as Etsy account repercussions. Additionally, HF has registered several of her works with the US

Copyright Office and undoubtedly has at least a peripheral knowledge of protecting one's work. Despite all of this, HF maliciously filed a fraudulent takedown to expeditiously eliminate competition. Not in an effort to protect a design she copied, but rather to greedily try and protect her sales.

To conclude, JT will be moving forward with legal action against HF, seeking damages in excess of $25,000.00 plus attorney's fees and costs in response to HF's illegal DMCA takedown targeting the JT Etsy store. Additionally, JT will be seeking a court order to have Etsy, Inc. remove the aforementioned copyright strike based off of HF's fraudulent takedown. JT feels it vital that Etsy, Inc. be made fully aware of the actions by HF.

The facts in this matter are quite simple. HF successfully eliminated a direct competitor for financial gain by fraudulently filing a DMCA takedown, claiming ownership over a basic text design which the law clearly defines as being ineligible for copyright protection. HF was then given the opportunity to contact Etsy and rescind her fraudulent claim. She declined. Instead, she approved of a formal response which doubled down on her false claims and included insults and false derogatory assertions about the JT brand. Meanwhile, the listing created by JT, in which JT has every right to offer for sale, remains inactive during a crucial time given the seasonality of the graphic. More importantly, the JT Etsy store now carries a completely unwarranted copyright strike which leaves the JT store in an extremely precarious position, now and in the future. While Etsy does not disclose this information, it is a widely held belief that even if/when a copyright infringement hold on an item is lifted, the strike is permanently attached to the account.

Over the past 10 years JT, and the group of fashion related entities operated by its owners, have been the victim of fraudulent DMCA takedowns on more than 20 occasions. Given its previous experience, JT is highly confident in its position on this matter.

If HF wishes to avoid litigation, JT is willing to offer the following settlement option to be accepted or declined by July 15th, 2024 at 12:00 PM EST.

SETTLEMENT OFFER

1. Immediately contact Etsy, Inc. and retract the copyright infringement claim.
2. Send an email to legal@etsy.com (copy support@johnnythreads.com on this email) with a detailed explanation retracting the copyright infringement claim.
3. Send a message to the JT Etsy store with a message explaining the copyright infringement claim retraction so that JT can prove to Etsy that HF has made a statement of the retraction.
4. A one time payment of $12,000.00 to compensate JT for damages & legal fees incurred from the DMCA takedown.

Regards,
Johnny Threads Inc.