

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

**(1) KATIE CAROLINE TURNER,**

**Plaintiff,**

**v.**

**Case No. 09-CV-762-CVE-FHM**

**(1) FOREVER 21, INC., (2) FOREVER 21  
RETAIL, INC., (3) FOREVER 21  
LOGISTICS, LLC, (4) FOREVER 21  
CAPITAL HOLDINGS, LLC, (5)  
FOREVER 21 INVESTMENTS, LLC, and  
(6) FOREVER 21 INTERNATIONAL  
HOLDINGS, INC.,**

**DEMAND FOR JURY TRIAL**

**Defendants.**

**COMPLAINT**

The plaintiff, Katie Caroline Turner (“Turner”), for her claims against the defendants, Forever 21, Inc., Forever 21 Retail, Inc., Forever 21 Logistics, LLC, Forever 21 Capital Holdings, LLC, Forever 21 Investments, LLC, and Forever 21 International Holdings, Inc., alleges and states as follows:

**NATURE OF COMPLAINT**

1. This is an action arising under federal, state, and common law for copyright infringement, unlawful and deceptive acts and practices, unfair competition, and other related causes of action arising out of the defendants’ unauthorized copying, manufacturing, distributing, advertising, sales, infringement, and use of Turner’s intellectual property.

**PARTIES**

2. The plaintiff, Katie Caroline Turner, is an individual having a permanent address of 5805 South New Haven Avenue, Tulsa, Oklahoma, 74135.

3. Upon information and belief, the defendant Forever 21, Inc., is a Delaware

corporation, with its principal place of business and executive offices at 2001 S. Alameda Street, Los Angeles, California, 90058. Forever 21, Inc. is doing business throughout the State of Oklahoma through multiple retail stores in the state, including a retail store located in this District; and through its website, [www.forever21.com](http://www.forever21.com), through which it engages in advertising and retail sales in the State of Oklahoma and this District.

4. Upon information and belief, the remaining defendants (“the Forever 21 affiliates”) are companies affiliated with Forever 21, Inc. Forever 21 Retail, Inc., is a California corporation; Forever 21 Capital Holding, LLC, is a California limited liability company; Forever 21 Investments, LLC is a Delaware limited liability company; and Forever 21 International Holdings, Inc., is a Delaware corporation. These entities affiliated with Forever 21, Inc. all have their principal place of business and executive offices at 2001 S. Alameda Street, Los Angeles, California, 90058. The defendant Forever 21 Logistics, LLC, is a Delaware limited liability company, with its principal place of business and executive offices at 9 East Lookerman Street, Dover, Delaware, 19901. Upon information and belief, some one or all of the Forever 21 affiliates are doing business throughout the State of Oklahoma and in this District.

#### **JURISDICTION AND VENUE**

5. This is an action for (a) copyright infringement in violation of the Copyright Law of the United States, 17 U.S.C. §§ 501, *et seq.*; (b) unlawful and deceptive acts and practices in violation of the Oklahoma Deceptive Trade Practices Act, Okla. Stat. tit. 78, §§ 51-55; and (c) unfair competition and passing off under the common law of the State of Oklahoma, all of which activities have occurred in this District and elsewhere in interstate commerce.

6. Subject matter jurisdiction for the claim of copyright infringement is proper in this court pursuant to 28 U.S.C. §§ 1331, 1332, and 1338, and 17 U.S.C. § 501. Jurisdiction as

to all other causes of action is proper pursuant to 28 U.S.C. § 1367 because these claims form part of the same case or controversy as the claim for copyright infringement.

7. The court has personal jurisdiction over the defendants in that the defendants regularly do business throughout the State of Oklahoma including this District.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a) in that defendants are transacting business within this District and a substantial portion of the acts complained of herein were and continue to be committed by the defendants within this District.

### **FACTUAL BACKGROUND**

#### **PLAINTIFF'S COPYRIGHTED WORK**

9. Turner is an artist and current student at the prominent and renowned Parsons The New School for Design in New York City. To date, Turner's works have received recognition and accolades throughout the world.

10. In December 2008, Turner created a work entitled BOYFRIEND CRITERIA attached hereto as Exhibit A. In December 2008, Turner uploaded BOYFRIEND CRITERIA to Flickr<sup>®</sup>, an online sharing application which Turner uses to display her works in a photostream online gallery.

11. Turner first published BOYFRIEND CRITERIA by uploading the work to her Flickr<sup>®</sup> photostream online gallery on December 8, 2008, as evidenced by Exhibit B. In accordance with 17 U.S.C. § 401, Turner included a notice of copyright so as to give reasonable notice of the claim of copyright to this work.

12. Turner published a second copy of BOYFRIEND CRITERIA by uploading another image of the work to her Flickr<sup>®</sup> photostream online gallery on December 9, 2008, as evidenced by Exhibit C. In accordance with 17 U.S.C. § 401, plaintiff again included a notice of

copyright so as to give reasonable notice of the claim of copyright to this work.

13. BOYFRIEND CRITERIA is the subject of U.S. Copyright Registration No. VA-1-689-060 registered on November 6, 2009 (“BOYFRIEND CRITERIA Copyright”). A true and accurate copy of the Certificate of Registration for BOYFRIEND CRITERIA is attached hereto as Exhibit D.

### **DEFENDANTS’ INFRINGING CONDUCT**

14. Without authorization or license from Turner, Forever 21, Inc. and some or all of the Forever 21 affiliates (collectively “Forever 21”) have produced and are marketing, advertising, distributing, offering for sale, and selling in interstate commerce tee shirts bearing a work that is substantially similar to plaintiff’s copyrighted work BOYFRIEND CRITERIA (the “Infringing Products”) in its retail stores and through the website at [www.forever21.com](http://www.forever21.com). The Infringing Products are so strikingly similar to Turner’s copyrighted work as to eliminate any coincidence of independent artistic endeavor by Forever 21 and as to suggest direct copying. True and accurate copies of the Infringing Products as depicted on [www.forever21.com](http://www.forever21.com) are attached hereto as Exhibits E and F.

15. Upon information and belief, Forever 21 willfully engaged in the infringing acts with knowledge of or reckless disregard for Turner’s copyright in her work. Forever 21 is further profiting from the unauthorized production, distribution, offer to sell, and sale of products bearing Turner’s copyrighted work BOYFRIEND CRITERIA.

### **FIRST CLAIM FOR RELIEF**

#### **(Copyright Infringement Under 17 U.S.C. §§ 501, et. seq.)**

16. Turner realleges and incorporates by reference the allegations contained in each preceding paragraph of this Complaint.

17. Turner is the author of BOYFRIEND CRITERIA and the owner of the

BOYFRIEND CRITERIA Copyright.

18. Turner has never authorized, licensed, or otherwise permitted Forever 21 to manufacture, distribute, or sell copies of the Infringing Products.

19. As a direct and proximate result of Forever 21's unauthorized use of Turner's copyrighted work, Turner has suffered damages in an amount to be proved at trial.

20. Turner does not have an adequate remedy at law and will continue to be damaged by the Forever 21's copyright infringement unless this court enjoins Forever 21 from such infringing practices.

21. Forever 21 has realized unjust profits, gains, and advantages as a proximate result of their infringement.

**SECOND CLAIM FOR RELIEF**

**Oklahoma Deceptive Trade Practices Act**

22. Turner realleges and incorporates by reference the allegations contained in each preceding paragraph of this Complaint.

23. This claim is brought pursuant to the Oklahoma Deceptive Trade Practices Act, Okla. Stat. tit. 78, §§ 51-55, based upon Forever 21's unauthorized manufacture, distribution, offer to sell, and sale of the Infringing Products to the consuming public.

24. Forever 21, in the course of business, is passing off Turner's copyrighted work, BOYFRIEND CRITERIA, as their own.

25. Forever 21 has knowingly created the false representation that there is an affiliation, connection, or association between Turner and Forever 21.

26. Forever 21 has been unjustly enriched by its conduct. Turner will suffer irreparable harm should Forever 21 be allowed to continue such acts.

27. Turner has no adequate remedy at law and Forever 21's conduct entitles Turner to injunctive relief pursuant to Okla. Stat. tit. 78, § 54 and to damages.

28. Forever 21's acts are in conscious or reckless disregard of Turner's rights such that Turner is entitled to attorneys' fees in accordance with Okla. Stat. tit. 78, § 54.

**THIRD CLAIM FOR RELIEF**  
**Unfair Competition and Passing Off**

29. Turner realleges and incorporates by reference the allegations contained in each preceding paragraph of this Complaint.

30. This claim is brought under the common law of the State of Oklahoma for unfair competition and passing off.

31. Forever 21's use of Turner's copyrighted work BOYFRIEND CRITERIA is likely to and does permit Forever 21 to palm off the Infringing Product as its own creation, all to the detriment of Turner and to the unjust enrichment of Forever 21.

32. Forever 21's unauthorized use of Turner's copyrighted work BOYFRIEND CRITERIA is likely to cause damage to Turner by diminishing the value of the work associated with Turner, all to the detriment of Turner and her reputation as an artist.

33. Forever 21's acts have and will continue to cause Turner irreparable harm unless enjoined by this court. Turner has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Turner prays for the following relief against the defendants:

A. That the defendants, their officers, agents, servants, employees, representatives, successors, and assigns, and all persons and entities acting for, with, by, through, or under them be permanently enjoined from directly or indirectly infringing Turner's copyrighted work BOYFRIEND CRITERIA in any manner, including, but not limited to, reproducing, adapting,

and/or displaying BOYFRIEND CRITERIA by distributing, importing, exporting, advertising, selling, or offering for sale, or causing others to do so, any product, including without limitation, clothing, bearing a work substantially similar to BOYFRIEND CRITERIA.

B. That the defendants be required to effectuate the recall, removal, and return from commercial distribution or public display of:

(a) Any product bearing a work substantially similar to BOYFRIEND CRITERIA distributed, imported, exported, advertised, sold, or offered for sale by the defendants, their officers, agents, servants, employees, representatives, successors, and assigns, and all persons and entities acting for, with, by, through, or under them; and

(b) Any other items bearing works substantially similar to BOYFRIEND CRITERIA used or displayed by the defendants, their officers, agents, servants, employees, representatives, successors, and assigns, and all persons and entities acting for, with, by, through, or under them.

C. That the defendants be required to deliver up for destruction all of the Infringing Products, as well as any remaining products or other items bearing works substantially similar to BOYFRIEND CRITERIA, that are in the defendants' possession, custody, or control;

D. That the defendants, within thirty (30) days after service of judgment with notice of entry thereof upon it, be required to file with the Court and serve upon Turner a written report under oath setting forth the details of how the defendants have complied with Paragraphs A through C of this Prayer for Relief, above;

E. For an award of actual damages sustained by plaintiff;

F. For an award of the defendants' profits attributable to their copyright infringement;

G. For an award of costs and such other amounts as may be proper under 17 U.S.C.

§§ 504 and 505; and

H. For such other and further relief as the court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Turner hereby demands a jury trial on all triable issues raised by this Complaint.

Dated: December 2, 2009

Respectfully submitted,

**HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.**

s/Robert D. Nelon

Robert D. Nelon, OBA #6610  
Julianna P. Deligans, OBA #19792  
Chase Tower, Suite 2900  
100 North Broadway  
Oklahoma City, OK 73102-8865  
Telephone: (405) 553-2828  
Facsimile: (405) 553-2855  
Email: bnelon@hallestill.com  
jdeligans@hallestill.com

**ATTORNEYS FOR PLAINTIFF,  
KATIE CAROLINE TURNER**

445191.1:812896:00650