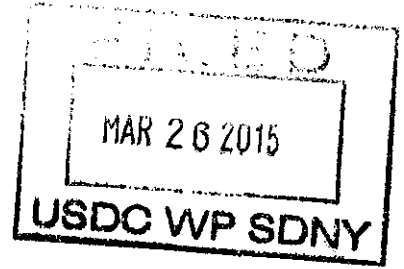


IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



TIANHAI LACE USA INC,  
TIANHAI LACE (GUANGDONG) LTD, and  
TIANHAI LACE CO. LTD.,

*Plaintiffs,*

v.

POSH SHOP, A LIMITED PARTNERSHIP  
OF CALIFORNIA,

*Defendant.*

Civil Action No.

ECF Case

15 CV

2297

JURY TRIAL DEMANDED

JUDGE MARRERO

**COMPLAINT**

Plaintiffs Tianhai Lace USA Inc., Tianhai Lace (Guangdong) Ltd, and Tianhai Lace Co. (collectively, "Tianhai" or "Plaintiffs"), by and through their attorneys, Leason Ellis LLP, for their Complaint against Defendant Posh Shop, on personal knowledge as to Tianhai's own activities and on information and belief as to the activities of Posh Shop, allege the following:

**NATURE OF THIS ACTION**

1. This is a civil action for (i) copyright infringement in violation of 17 U.S.C. § 101 *et seq.* and (ii) unfair competition under New York and California common law. Plaintiffs are the copyright owners of an original work of art for use as a lace design. Posh Shop uses Tianhai's lace design in connection with Posh Shop's promotion and sale of products throughout the United States and such use constitutes an unauthorized reproduction, display, distribution, publication and utilization of the design. Tianhai seeks, *inter alia*, injunctive relief prohibiting further infringement of its rights to the design, an award of damages compensating Tianhai for the unauthorized use, and the costs of the action awardable under 17 U.S.C. § 505.

**THE PARTIES**

2. Plaintiff Tianhai Lace USA, Inc. is a New York corporation with its principal place of business at 152 Madison Avenue, Suite 1103, New York, NY 10016.

3. Plaintiff Tianhai Lace (Guangdong) Ltd. is a foreign corporation with its principal place of business at No. 213, Lian Guang Road, Eastern Section, Economic and Technological Development District, Guangzhou, China.

4. Plaintiff Tianhai Lace Co. Ltd. is a foreign corporation with its principal place of business at Suite 1120, No. 9, Lin He Xi Road, Tianhe, Guangzhou, China.

5. Defendant Posh Shop is a limited partnership organized under the laws of California with offices at 417 Agostino Road, San Gabriel, CA 91776.

6. Posh Shop, on information and belief, has notified the Secretary of State of California, Bureau of Corporations, that its Agent for service of process is Christina Nguyen at 15182 Triton Ln., Huntington Beach, CA 92649.

**JURISDICTION AND VENUE**

7. This complaint alleges causes of action under the Copyright Laws of the United States, Title 17 of the United States Code and under state law claims of unfair competition.

8. This Court has subject matter jurisdiction over this claim pursuant to 28 U.S.C. §§ 1331, 1338 and 2201 as well as under Title 17 of the United State Code. Supplemental jurisdiction for the state law claim of unfair competition is proper pursuant to 28 U.S.C. § 1367 and 28 U.S.C. § 1338(b) because this claim forms part of the same case or controversy as the claim for copyright infringement.

9. This Court has personal jurisdiction over Posh Shop because (1) Defendant has committed, and continues to commit, acts of infringement in the Southern District of New York

and (2) based upon Posh Shop's purposeful direction of infringing conduct at Plaintiff in the State of New York, which caused and continues to cause Plaintiff harm in the State of New York. Defendant purposefully directed its activities toward the Southern District of New York when it willfully infringed Plaintiff's intellectual property rights, knowing that Plaintiff has its principal place of business in the Southern District of New York.

10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) in that Posh Shop has committed acts of infringement in this district and is subject to personal jurisdiction in this district.

### **FACTS COMMON TO ALL COUNTS**

#### **Tianhai's Copyright**

11. Tianhai is a prominent designer and distributor of lace fabric and has been for many years. Tianhai has created new and innovative lace fabric designs for use in connection with women's apparel and, moreover, has developed a reputation as a source of high quality lace in the apparel industry. In order to ensure exclusivity, its designs are protected under the Copyright Laws.

12. Tianhai's original lace designs, which are (and have been) sold throughout the United States and within this district, are the lifeblood of Tianhai's business. Indeed, it is the novelty and distinctiveness of its lace designs that sets Tianhai apart from its competitors.

13. Due to Tianhai's position in the trade and its investment in developing its lace designs, Tianhai's success depends on a conscientious enforcement of its intellectual property rights, which are valuable assets and sources of significant value, customer loyalty, and business.

14. In or about January 2012, Tianhai created an original work of art for use as a lace design. Photographs of the design are attached hereto as **Exhibit A**.

15. Tianhai first “published” (as that term is defined by the Copyright Act) the lace design, which Tianhai named “Pattern XD600”, in or about January 2012.

16. The Pattern XD600 design constitutes an original work of authorship and copyrightable subject matter under the laws of the United States, 17 U.S.C. § 101 *et seq* and Tianhai is the owner of the Pattern XD600 design and owns all right, title and interest therein.

17. Tianhai has complied in all respects with the provisions of the copyright law of the United States and has secured the exclusive rights and privileges in and to the Pattern XD600 design (as well as the copyright therein).

18. Tianhai has duly registered its copyright in the Pattern XD600 design with the United States Copyright Office and is the owner of U.S. Copyright Registration No. VA 1-817-860 for the Pattern XD600 design. A true and correct copy of the copyright registration for the copyright in this work is attached as **Exhibit B**.

19. All copies of the work have been sold in conformity with the provisions of the copyright law of the United States and Tianhai has fully complied in all respects with the provisions of the United States Copyright Act with respect to the Pattern XD600 design.

20. At all times since it created the Pattern XD600 design, Tianhai has been, and still is, the exclusive holder of all rights, title and interest in and to the copyright therein.

#### **Posh Shop’s Infringing Activities**

21. Upon information and belief, Posh Shop is an online retailer of apparel for women, including clothing, accessories and shoes. Posh Shop advertises that it sells and ships women’s apparel products throughout the United States, including in this judicial district.

22. The Pattern XD600 lace design has been reproduced, manufactured, sold, and incorporated by Posh Shop into at least one garment marketed by Posh Shop under the

designation “Lovers Lace Tank Dress” (hereinafter the “Infringing Garments”) with a retail price of approximately \$65.00. A photograph of one version of the infringing garment is annexed hereto as **Exhibit C**.

23. Upon information and belief, Posh Shop had access to the Pattern XD600 design prior to creating, designing, manufacturing, distributing, and marketing the Infringing Products.

24. Upon information and belief, Posh Shop knew at the time that it manufactured, used, distributed, purchased, sold and/or offered for sale Posh Shop’s Infringing Garments that the lace design incorporated therein comprised the intellectual property of Tianhai.

25. Upon information and belief, Posh Shop acted with the intent of offering for sale to its customers women’s garments incorporating the Pattern XD600 design.

26. In or about November 2014, Tianhai learned that stores in the United States and this District were offering for sale and selling Posh Shop Infringing Garments, which product prominently incorporated a lace design throughout the entire garment that was virtually identical, if not identical, to Tianhai’s Pattern XD600 design.

27. Posh Shop’s initial use of the Pattern XD600 design prior to November 2014 was without Tianhai’s knowledge or permission.

28. Posh Shop has not responded to any communication forwarded by defendant’s Agent with respect to the issues herein.

29. Upon information and belief, with full and complete knowledge of Tianhai’s copyrights discussed above, Posh Shop willfully infringed Tianhai’s copyright in its Pattern XD600 design by copying the Pattern XD600 design without Tianhai’s permission, license, or consent.

30. Upon information and belief, Posh Shop did not purchase lace from Tianhai for use in the Infringing Products because, with full knowledge of Tianhai's copyrights, Posh Shop was manufacturing and/or purchasing unauthorized copies of Pattern XD600 design overseas at a greatly reduced rate.

31. Upon information and belief, Posh Shop has committed the infringing acts complained of herein willfully and with conscious disregard for Tianhai's rights.

32. Upon information and belief, Posh Shop's actions have caused damage and irreparable harm to Tianhai. Unless Posh Shop is compelled to discontinue these actions by the Court, Tianhai will continue to suffer such damage and irreparable harm.

33. Tianhai has no adequate remedy at law.

**First Claim for Relief**  
**Copyright Infringement Under 17 U.S.C. § 101 et. seq.**

34. Plaintiffs repeat and reallege by reference each and every allegation contained in the paragraphs above.

35. Tianhai's Pattern XD600 design has never been dedicated to the public.

36. At all times pertinent to this Complaint, Plaintiffs have been, and still are, the sole and exclusive owners of all right, title and interest in and to the Pattern XD600 design, including the copyrights therein. Tianhai has never assigned, licensed, or otherwise transferred any of these rights, including its copyrights to Posh Shop. Nor has Tianhai ever authorized Posh Shop to copy, distribute, or license the Pattern XD600 design.

37. Posh Shop has directly, vicariously or contributorily infringed Tianhai's rights to the lace design protected by U.S. Copyright Registration No. VA 1-817-860 by reproducing, displaying, or distributing unauthorized copies of the design in violation of 17 U.S.C. § 501 *et seq.*

38. Posh Shop, either directly or indirectly, copied Tianhai's lace design for its own commercial gain to the unjust exclusion of Tianhai.

39. By its acts complained of herein, Posh Shop has infringed the copyright in the Pattern XD600 design in violation of §§ 106(1) and (2), and § 501(a) of the United States Copyright Act, 17 U.S.C. § 101, *et seq.* Posh Shop's infringement of Tianhai's rights in and to each of the Copyrighted Works constitutes a separate and distinct act of infringement.

40. Upon information and belief, Posh Shop knew or should have known that its acts constituted copyright infringement.

41. Posh Shop's conduct was willful within the meaning of the Copyright Act.

42. Tianhai has been damaged by Posh Shop's conduct, including, but not limited to economic losses. Tianhai continues to be damaged by such conduct, and has no adequate remedy at law to compensate Tianhai for all the possible damages stemming from Posh Shop's conduct.

43. Because of the willful nature of Posh Shop's conduct, Tianhai is entitled to an award of statutory damages for each instance of copyright infringement by Posh Shop, in lieu of recovery of exemplary damages, attorney's fees, and all associated costs.

#### **Second Claim for Relief**

#### **Unfair Competition Under New York and California State Common Law**

44. Plaintiffs repeat and reallege by reference each and every allegation contained in the paragraphs above.

45. Tianhai has gone to great expense in developing, promoting the sale of, and commercially exploiting its copyrighted Pattern XD600 design.

46. As a result of the expenditure of money and skill in the development and promotion of Tianhai's lace fabrics incorporating Tianhai's copyrighted designs, including the

Pattern XD600 design, Tianhai's lace fabrics have acquired substantial market value in the trade. Moreover, this value has allowed Tianhai to build up substantial goodwill in the distinctive appearance of its lace designs, including its copyrighted Pattern XD600 design.

47. Consumers and the general public have come to associate products incorporating Pattern XD600 design as emanating exclusively from Tianhai or its customers.

48. The Infringing Garments are likely to cause confusion to the general purchasing public as to the source of the lace design incorporated therein.

49. The lace fabric incorporated in the Infringing Garments was manufactured to lower quality standards than those of Tianhai. The use of lower quality lace has tarnished Tianhai's good name in the marketplace due to the perceived association between Posh Shop's lower quality goods being confused with Tianhai's goods.

50. Posh Shop, by its acts, have taken advantage of the knowledge and skill of Tianhai and of the goodwill developed by Tianhai, and has capitalized upon the market created by Tianhai for its distinctive lace designs.

51. The aforesaid acts of Posh Shop, in manufacturing, distributing, offering for sale and selling and/or causing to be manufactured, distributed, offered for sale and/or sold, the Infringing Garments, constitutes inequitable conduct, unfair trade practices and unfair competition as defined by New York and California common law, and are likely to deceive and confuse Tianhai's customers and other apparel and retail distributors into believing that the Infringing Garments are manufactured from lace fabric supplied by Tianhai or are sponsored by, licensed by, endorsed by or are otherwise associated with Tianhai.

52. Posh Shop's acts constitute misappropriation or attempted misappropriation of Tianhai's copyrighted design and the goodwill and reputation which are associated therewith.



53. Posh Shop has misappropriated Tianhai's goodwill and the benefits of Tianhai's skill and expenditures in the development and design of the Pattern XD600 design and by reason thereof have caused irreparable injury to Tianhai.

54. Tianhai's market has been reduced by Posh Shop's conduct, which injury will continue as long as Posh Shop is not enjoined by this Court from further manufacturing, distribution, marketing and/or selling of the Infringing Garments in the United States.

55. Posh Shop has manufactured, advertised, promoted, distributed and/or sold the Infringing Garments without authorization, license or permission from Tianhai.

56. Posh Shop's acts have damaged Tianhai in an amount as yet unknown and may further damage Tianhai in such manner that Tianhai has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request entry of judgment against Posh Shop as follows:

A. Posh Shop has willfully infringed Plaintiffs' rights in the copyrighted design;

B. Posh Shop, its officers, agents, servants, employees, and attorneys, and all others in active concert or participation with them, including any and all third party fabric, lace, ornamental trim, and/or apparel manufacturers, distributors and suppliers who receive actual notice of the Order or Judgment by any method:

- i. be permanently enjoined and restrained from copying, reproducing, using, selling, manufacturing, advertising, or promoting copies of the Pattern XD600 design or any design substantially similar thereto;
- ii. be permanently enjoined and restrained from copying, reproducing, using, selling, manufacturing, or creating derivative works based upon the Pattern XD600 design or any design substantially similar thereto; and
- iii. be ordered to surrender to Tianhai all Infringing Garments or other garments or materials in its possession, custody or control displaying, copying, and/or bearing the Pattern XD600 design or any design substantially similar thereto.

C. Posh Shop be ordered to send written notice, approved by the Court, to each licensee, manufacturer, supplier, distributor, wholesaler, retailer, or any other party who manufactured or sold the Infringing Garments, or manufactured or sold other garments bearing the Pattern XD600 design, with a copy of each such written notice to be furnished to Tianhai:

- i. requesting that the recipient surrender to Tianhai all garments bearing the Pattern XD600 design in its possession, custody or control; and
- ii. advising the recipient that pursuant to the judgment of this Court, Posh Shop has been enjoined from copying, reproducing, using, selling, manufacturing, advertising, or promoting copies of the Pattern XD600 design or authorizing any third party to copy, reproduce, use, sell, manufacture, advertise, or promote copies of the Pattern XD600 design.

D. Posh Shop destroy all Infringing Garments, materials, documents, catalogues, or advertisements bearing the Pattern XD600 design in Posh Shop possession, custody and control pursuant to 17 U.S.C. § 503.

E. Posh Shop remove all webpages, web links, photographs or advertisements bearing the Pattern XD600 design from the [www.poshshop.com](http://www.poshshop.com) website.

F. Posh Shop be required to pay all profits realized by Posh Shop as a result of its unlawful infringing acts as complained of herein pursuant to 17 U.S.C. § 504.

G. Posh Shop be required to compensate Tianhai for all actual damages suffered as a result of Posh Shop's unlawful infringing acts as complained of herein pursuant to 17 U.S.C. § 504.

H. In the alternative, Posh Shop be required to pay Tianhai statutory damages pursuant to 17 U.S.C. § 504, and in respect of Posh Shop's said statutory damages shall be in the amount of \$150,000 as enhanced as a result of Posh Shop's willful infringing acts as complained of herein.

I. Tianhai be awarded its costs, expenses and reasonable attorney's fees incurred in bringing this action pursuant to 17 U.S.C. § 505. Posh Shop file with the Court, and serve upon Tianhai's counsel, within thirty (30) days after the entry of the judgment, a report under oath setting forth in detail the manner in which Posh Shop has complied with such judgment.

J. Such other and further relief as the Court may deem just and proper.

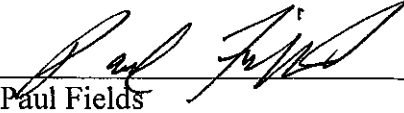
**JURY DEMAND**

Plaintiffs, pursuant to Fed.R.Civ.P. 38, demand trial by jury on all issues triable to a jury.

Dated: March 25, 2015  
White Plains, New York

Respectfully Submitted,

LEASON ELLIS LLP



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