

1 A. Douglas Mastroianni (State Bar No. 150438)
2 Mastroianni Law Firm
3 633 West Fifth Street
4 28th Floor
5 Los Angeles, California 90071
6 Telephone: (213) 223-2246
7 Fax: (213) 223-2247

8 Attorney for Plaintiff Koi Design, LLC

FILED
2009 SEP 17 AM 10:08
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 CV 09-06757 CBM (FFMx)

13 KOI DESIGN, LLC, a California
14 Limited Liability Corporation,

15 Plaintiff,

16 vs.

17 MARK'S WORK WEARHOUSE, a
18 Corporation Organized under the laws
19 of Canada; SASSYSCRUBS, INC., a
20 Corporation Organized under the laws
21 of Canada, Inclusive,

22 Defendants.

Case No.

COMPLAINT FOR:

- 23 (1) Copyright Infringement;
- 24 (2) Violation of the Lanham Act [15 USC §1225];
- 25 (3) Common Law Unfair Competition;
- 26 (4) Statutory Unfair Business Practices [Cal. Bus. & Pro. Code §17200]

27 **DEMAND FOR JURY TRIAL**

1 NATURE OF THIS ACTION

2
3 1. This is an action for, among other things, copyright infringement and
4 unfair competition, brought by Koi Design, LLC (“koi”). koi is an innovative,
5 women-owned and operated designer of medical uniforms and nursing scrubs
6 based in Santa Monica, California. Founded by Kathy Peterson, a former fashion
7 designer at such houses as *Guess?* and *Carole Little*, koi has established a
8 reputation in the clothing industry for creating medical uniforms with a unique,
9 high fashion sensibility.

10
11 2. Two of koi’s unique nursing scrubs designs – The *Monica Grateful*
12 and *Kathryn Rosa* were exactly copied and sold by defendant Mark’s Work
13 Wearhouse (“Mark’s”). Mark’s is a subsidiary of the \$10 Billion Canadian Tire
14 Corporation and operates more than 330 retail stores in Canada. Mark’s also does
15 substantial sales in the United States, advertising its goods for export in, among
16 other venues, its website. koi competes with Mark’s for medical uniform sales.

17
18 3. The *Kathryn Rosa* appeared in koi’s Fall, 2008 catalog and Mark’s
19 knockoff version of the garment was released by Mark’s in the Spring of 2009.
20 Attached as Exhibit “A” is a copy of koi’s Fall, 2008 catalog showing the top
21 (with the date in the upper right corner of the page). Exhibit “B” is a photo of the
22 *Kathryn Rosa* top next to Mark’s knockoff design with the genuine koi garment on
23 the left. Exhibit “C” is a closeup photograph of the genuine koi top showing a
24 small hole in the rose petal on the top center of the photo. Exhibit “D” shows the
25 same hole on the rose petal of the Mark’s knockoff.

1 4. The *Kathryn Rosa* was obtained by Mark’s employees and provided to
2 defendant Sassyscrubs complete with the original tag identifying koi as the
3 garment’s designer. Thus, Sassyscrubs knew it was copying a design already
4 created by another company – not one that had been created by Mark’s. Mark’s
5 asked Sassyscrubs to provide it with knockoff *Kathryn Rosa* tops and paid
6 Sassyscrubs a substantial sum to copy the design and produce the knockoff
7 garments. Monies paid to Sassyscrubs to produce the knockoff garments are ill-
8 gotten gains of which koi seeks disgorgement in this action.

9
10 5. Mark’s advertised its knockoff version of the *Kathryn Rosa* in its
11 Spring, 2009 catalog and offered it for sale in its retail stores, through mail order,
12 and on-line through its website. Sales of the garment – which directly competed
13 with koi’s own sales of the top – were made in Canada and in the United States,
14 including in the Central District of California.

15
16 6. koi’s *Monica Grateful* top shipped to stores in December, 2007.
17 Mark’s included its knockoff garment in its Spring, 2009 line. The side-by-side
18 photograph of the tops attached as Exhibit “E” show that they are identical.
19 Exhibits “F” and “G” show closeups of the necklines of the koi and Mark’s tops
20 respectively. The Mark’s garment carries the “HealthPro” label. HealthPro is an in-
21 house brand of Mark’s. Exhibit “H” is a closeup of the identical pockets on each of
22 the tops. Mark’s copied koi’s designs wholesale and even placed its tag in nearly
23 the exact position as koi’s.

1 7. Exhibit “I” shows how koi subtly integrated its own name into
2 the design of the top (upper left corner of the photo). Mark’s lazily altered “koi” in
3 its knockoff to “koc” in the identical place on the garment where the authentic
4 *Monica Grateful* carries koi’s name (Exhibit “J”).

5
6 8. Mark’s knockoffs sold for approximately 30% less than the genuine
7 koi garments. In short, while misappropriating the design of the prints and, in
8 effect, misappropriating the considerable expense koi incurred to design and
9 market the tops, Mark’s substantially undercut koi’s price in a deliberate attempt to
10 undermine its sales and use koi’s own misappropriated designs to place the plaintiff
11 at an unfair competitive disadvantage. Moreover, plaintiff believes that Mark’s
12 promoted sales of the knockoff garments by claiming a portion of sales proceeds
13 would be donated to the Ronald McDonald House charity. It is not known whether
14 the donations were actually made.

15
16 **THE PARTIES**
17

18 9. koi is California limited liability corporation with its principal place
19 of business in Santa Monica, California. To the extent this court’s subject
20 matter jurisdiction is based on diversity of citizenship (28 USC §1332), koi is a
21 citizen of the state of California.

22
23 10. Both Mark’s and Sassyscrub’s are corporations organized under the
24 laws of Canada with their principal places of business in Canada. Both Mark’s
25 and Sassyscrubs are, therefore, citizens of Canada. Mark’s and Sassyscrubs are
26 agents of one another and co-conspirators and are vicariously liable for the acts of
27 copyright infringement and unfair competition alleged in the complaint.

28

1 JURISDICTION AND VENUE

2
3 11. This court has both “federal question” (28 USC §1331) and “diversity
4 jurisdiction” (28 USC §1332) over the subject matter of the action. Plaintiff is a
5 citizen of California and both defendants are citizens of Canada. Plaintiff’s
6 damages exceed \$75,000.

7
8 12. Plaintiff’s federal claims are based on the Copyright Act (17 USC
9 §§101 *et seq*) and the provisions of the Lanham Act which prohibit unfair
10 competition, misappropriation and “reverse palming off” (15 USC §1225).

11
12 13. The court has supplemental jurisdiction over plaintiff’s state law
13 claims pursuant to its supplemental jurisdiction (28 USC §1367).

14
15 14. Venue is proper in the Central District of California since koi
16 designed, marketed, and sold its products here, and defendants solicited koi’s
17 designs with the intention of copying them in this district. Defendants have
18 minimum contacts with this district and are, thus, subject to the personal
19 jurisdiction of the District Courts in the Central District of California. A
20 substantial part of the events and omissions giving rise to the claims occurred in
21 this District.

22
23 ////

24
25 ////

26
27 ////

28

1 **FIRST CLAIM FOR RELIEF**

2 (Copyright Infringement Against Mark's & Sassyscrubs)

3 15. Plaintiff incorporates as fully set forth herein paragraphs 1- 14 above.

4
5 16. Plaintiff has complied in all respects with the copyright laws of the
6 United States, (17 USC §101 *et seq*) and has secured exclusive rights and
7 privileges in the *Monica Grateful* and *Kathryn Rosa* designs. koi enjoys protection
8 from copyright infringement in Canada through the Berne Convention for the
9 Protection of Literary and Artistic Works ("Berne Convention"). Both the United
10 States and Canada are signatories to that convention. koi's protection under the
11 Berne Convention is not dependant on securing formal copyright registrations. (*See*
12 *Article V of the Berne Convention.*) However, Exhibits "K" & "L" are the
13 copyright registrations for the copied garments at issue. Defendants' sales of the
14 copyrighted garments continued after copyright registrations were obtained.

15
16 17. Unbeknownst to koi, Defendants requested that koi send to the
17 defendants copies of koi's catalogs so they could review koi's designs and copy
18 them. Defendants then purchased the garments so that they could be meticulously
19 and exactly copied and re-sold under their own in-house labels, passing off Koi's
20 designs as their own. For example, Mark's knockoff version of the *Monica*
21 *Grateful* design carries the "Healthpro" label, a private, in-house label utilized by
22 Mark's.

23
24 18. Defendants infringed koi's rights in the designs by exactly copying
25 them and selling them as their own without koi's permission.

26
27 19. Defendant's infringement was willful.

1 20. After koi discovered the infringement, it demanded that the defendant
2 immediately halt all sales of the knockoff garments. Defendants represented that all
3 sales of the knockoff garments would stop. However, these representations were
4 false as koi's representatives continued to find the knockoff garments offered for
5 sale in defendants' stores weeks after they represented that sales of the counterfeit
6 garments would be discontinued.

7
8 21. As a legal result of defendants' conduct, plaintiff has been damaged in
9 an amount in excess of \$75,000 and is entitled to an award of: (1) actual or
10 statutory damages; (2) disgorgement of defendants' profits from the manufacture
11 and sale of the garments; (3) attorneys fees; and (4) injunctive relief.

12
13 **SECOND CLAIM FOR RELIEF**

14 (Violation of 15 USC 1125(a) – "Reversing Palming Off" against Mark's &
15 Sassyscrubs)
16

17 22. Plaintiff incorporates as fully set forth herein paragraphs 1- 21 above.

18
19 23. The *Kathryn Rosa* and *Monica Grateful* designs were created
20 by koi.

21
22 24. Defendants falsely designated the designs by affixing to them
23 Mark's and Sassyscrubs' own labels.

24
25 25. Consumers were likely to be confused by the false designation of
26 origin and believe that koi's garments were actually designed by the defendants.

27
28

1 33. Defendants' misconduct was undertaken by its officers or managing
2 agents who were responsible for its general management and operations.
3 Defendants' misconduct was undertaken with a conscious disregard for plaintiff's
4 rights. Defendants' had advance knowledge of the actions and conduct of its
5 agents, managing agents, and officers whose conduct was ratified, authorized, and
6 approved by defendants.

7
8 **FOURTH CLAIM FOR RELIEF**

9 (Violation of Business & Professions Code §17200 *et seq* against Mark's &
10 Sassyscrubs)

11 34. Plaintiff incorporates as fully set forth herein paragraphs 1- 33 above.

12
13 35. Defendants' conduct is a violation of the California Business &
14 Professions Code §17200 *et seq*.

15
16 36. As a direct and legal result of defendants' misconduct, defendants
17 have obtained revenues properly belonging to the plaintiff. Plaintiff seeks
18 restitution or disgorgement or both of these amounts.

19
20 37. Plaintiff also seeks injunctive relief prohibiting further copying and
21 sales of koi's designs.

22
23 **PRAYER**

24 Plaintiff prays for judgment as follows:

- 25 1. For general and special damages;
26 2. For punitive damages;
27 3. For all costs of suit incurred;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 4. For attorneys fees as permitted by law;
- 5. For injunctive relief, including that defendants be enjoined from copying koi's designs without authorization;
- 6. For restitution and disgorgement;
- 7. For such other relief as the court deems just and proper.

Dated: September 16, 2009 MASTROIANNI LAW FIRM

By: _____
A. Douglas Mastroianni
for Plaintiff Koi Design LLC

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

Dated: September 16, 2009 MASTROIANNI LAW FIRM

By: _____
A. Douglas Mastroianni
for Plaintiff Koi Design LLC

A

"Of all the different brands that I have seen, I prefer yours the best. I think that your designs are the most unique and I love all the colors." —Cherie B.

Koi Fall 2008 ❁

KATHRYN Top

Based on our popular Kate top that was inspired by the ready-to-wear market. We modified the body to include side slits and added some fun new prints. Adjustable front ties and two patch pockets. Flattering for all shapes and sizes. 100% cotton. Imported. Sizes XS-3X.

KATHRYN Top (Steel/Pink)

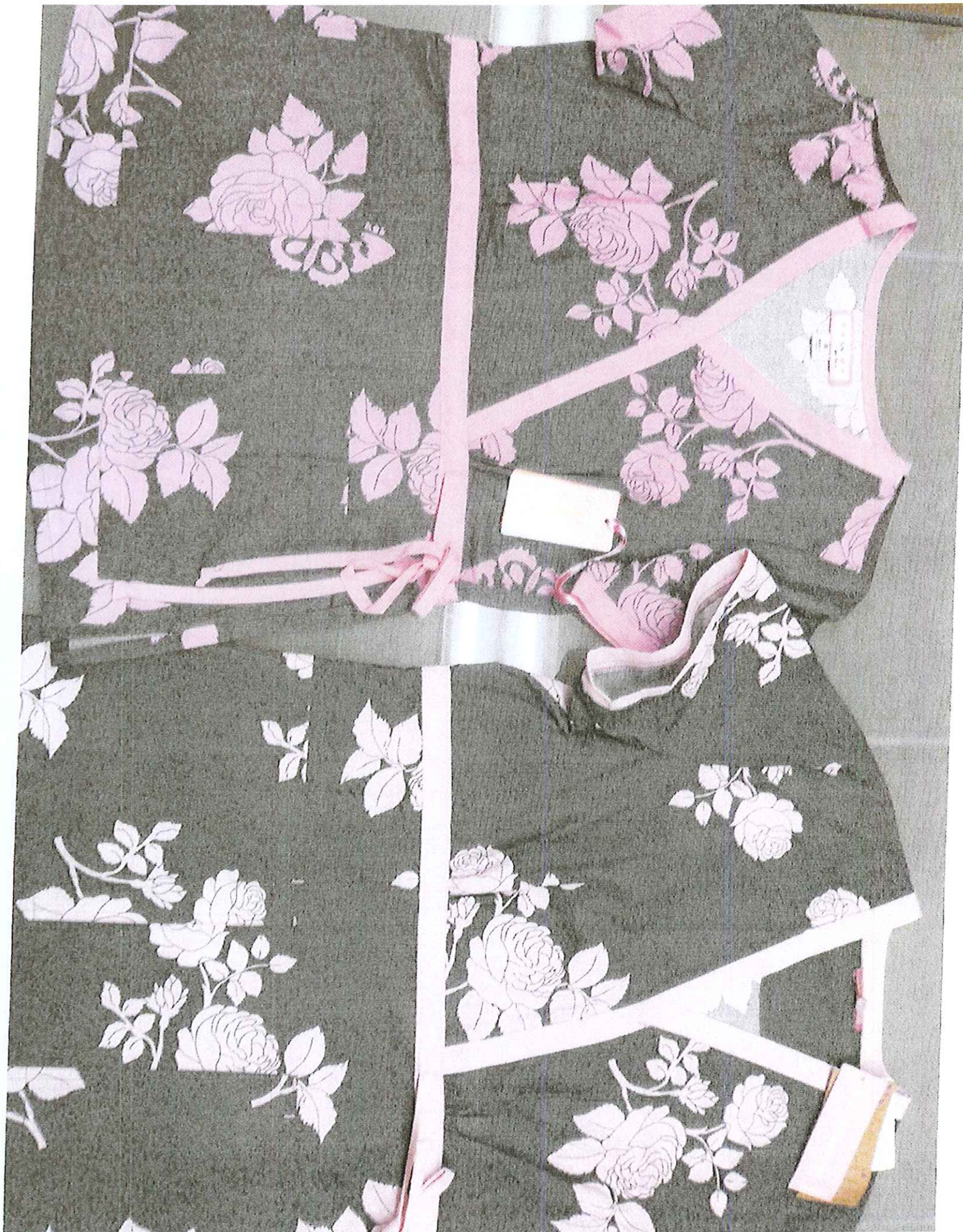
Pattern: Rosa
115PR-ROS

Coordinating Colors

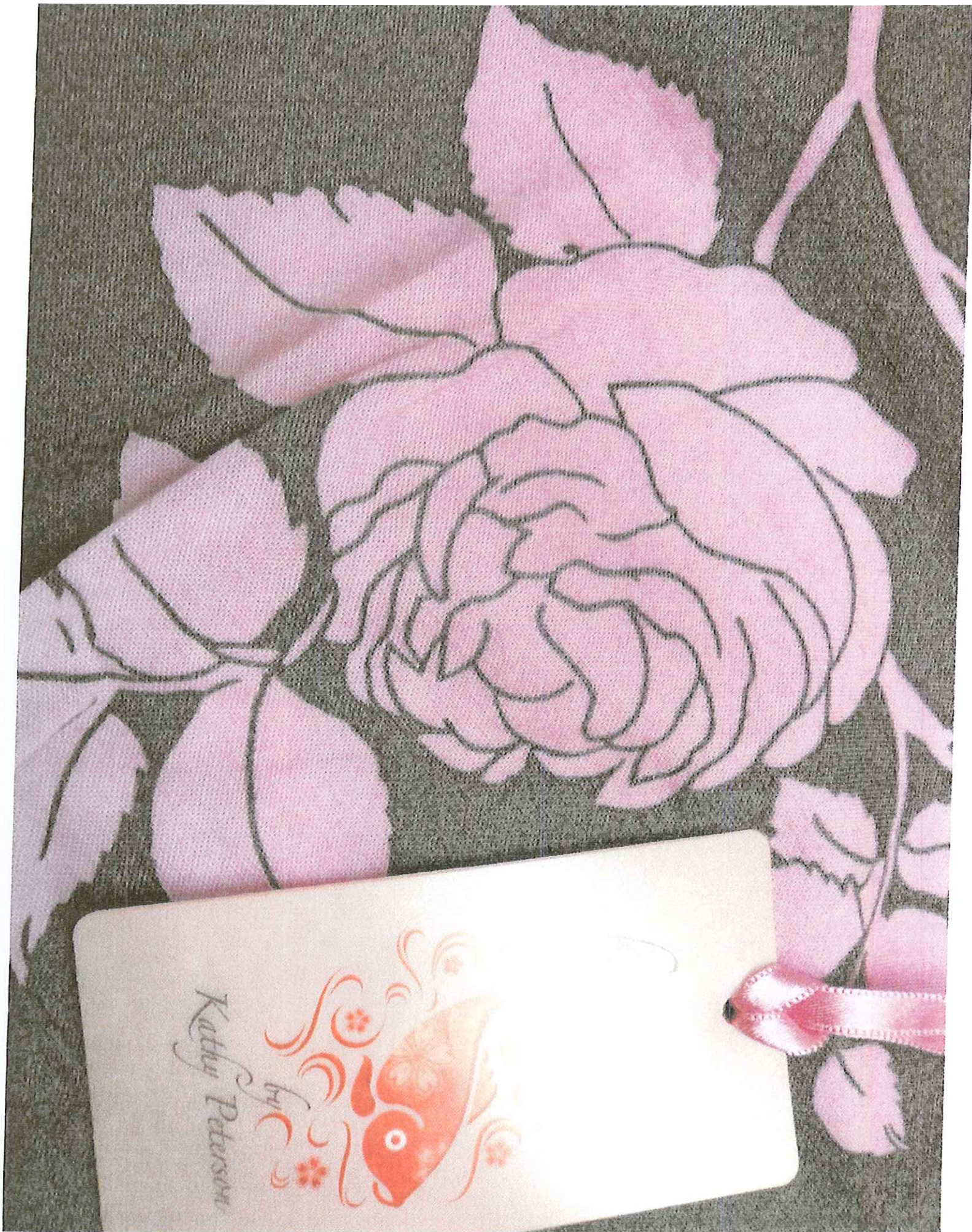


For customer service, call 800.828.4526

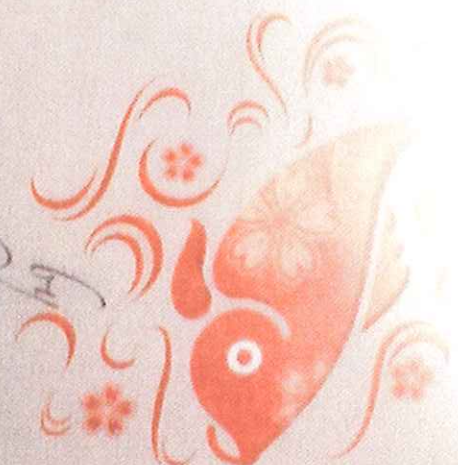
B



C



Kathy Peterson



D



E



HEATH PRO

HEATH PRO

CLIMATE
TRAIL WORK
S
P
S

F



G



HEALTH
PRO-SIT

HEALTH
PRO-SIT

И





Koi

Koi

J



K

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

VAu 988-722

Effective date of registration:

April 21, 2009

Title _____

Title of Work: Rosa Steel Print

Completion/ Publication _____

Year of Completion: 2008

Author _____

▪ Author: Koi Design, LLC

Author Created: 2-D artwork

Work made for hire: Yes

Domiciled in: United States

Copyright claimant _____

Copyright Claimant: Koi Design, LLC

2904 Colorado Avenue, Santa Monica, CA, 90404, United States

Rights and Permissions _____

Organization Name: Koi Design, LLC

Telephone: 310-828-0055

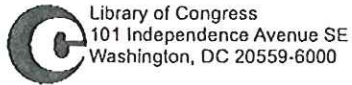
Address: 2904 Colorado Avenue

Santa Monica, CA 90404 United States

Certification _____

Name: Jeremy Husk

Date: April 8, 2009



Library of Congress
101 Independence Avenue SE
Washington, DC 20559-6000



U.S. Copyright Office Receipt

Deposit Copy Shipping Slip for Deposit Copies Sent to Accompany an
Electronically Submitted Application

Case / SR#: 1-177482141
Case Date: 4/8/2009
Title: Rosa Steel Print

Applicant's Internal Tracking

Materials Submitted:

Quantity	Format
1	8.5" x 11" printout
1	12" x 12" sample of printed fabric

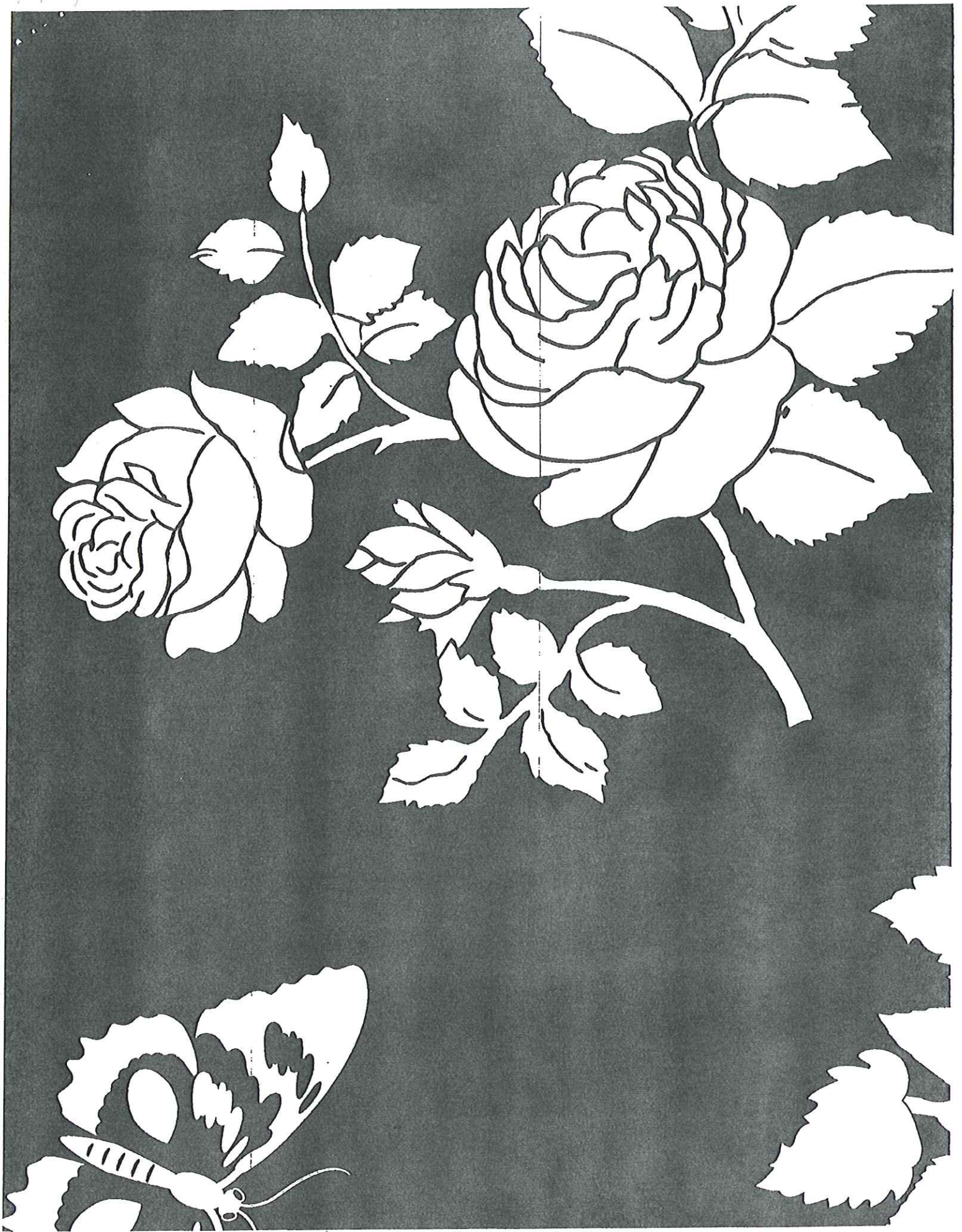
Instructions for Sending Deposit Copies

- I. Attach this shipping slip securely to the deposit copy or copies for this work.
- II. Mail the deposit copy or copies within 30 days of the case date listed above.

Please Mail To:

Library of Congress
Copyright Office - VA
101 Independence Avenue, SE
Washington, DC 20559 - 6211

4/8/2009



L

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

VAu 988-721

Effective date of registration:

April 21, 2009

Title _____

Title of Work: Ocean Grateful Print

Completion/ Publication _____

Year of Completion: 2007

Author _____

▪ Author: Koi Design, LLC

Author Created: 2-D artwork

Work made for hire: Yes

Domiciled in: United States

Copyright claimant _____

Copyright Claimant: Koi Design, LLC

2904 Colorado Avenue, Santa Monica, CA, 90404, United States

Rights and Permissions _____

Organization Name: Koi Design, LLC

Telephone: 310-828-0055

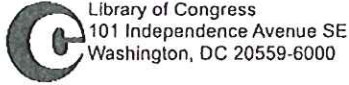
Address: 2904 Colorado Avenue

Santa Monica, CA 90404 United States

Certification _____

Name: Jeremy Husk

Date: April 8, 2009



U.S. Copyright Office Receipt

Deposit Copy Shipping Slip for Deposit Copies Sent to Accompany an Electronically Submitted Application

Case / SR#: 1-179752133
 Case Date: 4/8/2009
 Title: Ocean Grateful Print

Applicant's Internal Tracking

Materials Submitted:

Quantity	Format
1	8.5" x 11" printout
1	12" x 12" sample of printed fabric

Instructions for Sending Deposit Copies

- I. Attach this shipping slip securely to the deposit copy or copies for this work.
- II. Mail the deposit copy or copies within 30 days of the case date listed above.

Please Mail To:

Library of Congress
 Copyright Office - VA
 101 Independence Avenue, SE
 Washington, DC 20559 - 6211

4/8/2009

Print Name: "Grateful!"

Blind-stamped embroidery on the Dye-ground

*REPEAT

SELVAGE 12 5/8"

TOP 10"

