

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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KEV & COOPER LIMITED LIABILITY
COMPANY

Plaintiff,

-against-

GLADWELL EDUCATION LLC,

Defendant.

-----X

Civ. No.:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Kev & Cooper Limited Liability Company, by its undersigned attorneys, as and for its Complaint against Gladwell Education LLC, alleges on information and belief, and otherwise as to its own knowledge as follows:

INTRODUCTION

1. Plaintiff Kev & Cooper Limited Liability Company (“Kev & Cooper” or “Plaintiff”) is a designer, manufacturer, retailer and wholesaler of children’s furnishings, primarily children’s educational rugs bearing creative and playful designs and artwork.

2. Defendant Gladwell Education LLC (“GEL” or “Defendant”) is a competitor of Kev & Cooper and has, without authorization, intentionally copied, offered for sale, and sold rugs bearing the Plaintiff’s copyrighted artworks or derivatives thereof in direct competition with Plaintiff.

3. This action is brought to recover damages arising from Defendant’s misappropriation of Plaintiff’s copyrighted works, as well as obtain injunctive relief barring Defendant’s future sale of products infringing the Plaintiff’s copyrighted designs.

JURISDICTION AND VENUE

4. This action arises under the Copyright Act of 1976, Title 17 U.S.C. § 101, *et seq.*

5. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(a).

7. This Court has personal jurisdiction over Defendant, which conducts business in the State of New Jersey, and within this district, including having contracted with New Jersey customers for sales, purchase and delivery of the goods to New Jersey, as well as having advertised and sold its products through the Internet and other means to New Jersey residents.

PARTIES

8. Plaintiff Kev & Cooper is a New Jersey limited liability company in good standing, and has a place of business at 2 Cranberry Rd, Unit 1A, Parsippany, New Jersey.

9. Plaintiff designs, manufactures and sells educational carpets that are designed to appeal to children.

10. Defendant GEL is a Wyoming limited liability company having a place of business at 1603 Capitol Ave., Suite 310 A483, Cheyenne, Wyoming 82001.

11. Defendant is a direct competitor of Plaintiff, and creates, commissions, advertises, sells and delivers rugs across the United States, including to this judicial district.

12. Third parties unknown to Plaintiff may have contributed to and profited from the infringement alleged herein, and because such individuals and/or corporations are unknown to Plaintiff, it may seek leave to amend this Complaint when such parties' names and capacities have been ascertained.

PLAINTIFF'S COPYRIGHTED DESIGNS

13. The artwork for Plaintiff's ABC Shapes rug (the "ABC Shapes Design") was created in early 2016. A copy of the ABC Shapes Rug bearing the ABC Shapes Design is attached hereto as Exhibit A.

14. Plaintiff's ABC Shapes Design is an original work of authorship and constitutes copyrightable subject matter under the laws of the United States.

15. The ABC Shapes Design has been printed on paper and also exists in digital media, and has been applied to numerous rugs manufactured and sold in the United States by Plaintiff.

16. The selection, arrangement, organization, layout and depiction of the elements comprising the ABC Shapes Design, as well as the icons and artwork depicted therein, are original works of authorship protectable under the Copyright Act, and Plaintiff has at all times after its creation, owned all rights, title and interest in and to the copyright in the ABC Shapes Design.

17. Plaintiff applied for, and the United Copyright Office has granted registration of the ABC Shapes Design assigning it Copyright Registration No. VA 002139787.

DEFENDANT'S INFRINGING ACTS

18. Defendant has, without Plaintiff's authorization, created, caused to be manufactured, displayed, offered for sale, imported, and/or sold children's educational carpets (the "Infringing Rugs") bearing designs copied from and strikingly or substantially similar to Plaintiff's ABC Shapes Design.

19. The Infringing Rugs were copied, published and sold by Defendant or its agents years after Plaintiff's publication and widespread offer and sale of carpets bearing the Plaintiff's ABC Shapes Design, and also after Plaintiff registered the ABC Shapes Design in the United States Copyright Office.

20. The Defendant has advertised and sold its Infringing Rugs on and through Defendant's website and on Amazon.com's Internet marketplace to the public, including to New Jersey residents. An image showing the Infringing Carpet (obscured in part) is attached hereto as Exhibit B.

21. Unless enjoined and restrained, Defendant's conduct threatens to further infringe Plaintiff's copyright interests.

FIRST CLAIM FOR RELIEF
(Copyright Infringement of Plaintiff's ABC Shapes Design)

22. Plaintiff repeats and realleges and incorporates by reference the above allegations.

23. Subsequent to Plaintiff's publication of the ABC Shapes Design, and with full knowledge of Plaintiff's rights, Defendant or Defendant's agent or vendor infringed said copyright by copying the ABC Shapes Design and by placing and using such design on Infringing Rugs sold in and across the United States, including New Jersey.

24. All of Defendant's acts were performed without the permission, authorization or license of Plaintiff.

25. Defendant, or Defendant's agents or manufacturers, prior to producing the Infringing Rugs, had access to the ABC Shapes Design, including, without limitation, either through access to Plaintiff's carpets or advertising materials, or access to unauthorized reproductions in the possession of Defendant, manufacturers, other vendors, retailers or consumers in the marketplace.

26. Defendant's conduct is and has at all times been willful and constitutes infringement of Plaintiff's rights in Plaintiff's ABC Shapes Design in violation of 17 U.S.C. § 101, *et seq.*

27. Defendant's conduct has caused and continues to cause Plaintiff irreparable injury, loss and damage to Plaintiff and its ownership rights in Plaintiff's ABC Shapes Design, and unless such acts or enjoined, they will continue to cause such injury, which in addition to financial damages, threaten to cause Plaintiff irreparable harm for which there is no adequate legal remedy.

28. Due to Defendant's infringement of Plaintiff's ABC Shapes Design, Plaintiff has suffered, and continues to suffer substantial damages in an amount to be established at trial.

29. Moreover, Defendant has obtained profits (direct and indirect) from its infringing acts, which profits Defendant would not have otherwise realized but for its infringement of the ABC Shapes Design.

30. In light of the foregoing, Plaintiff is entitled to recover from Defendant statutory damages in the amount of \$150,000 per work in this action, or alternatively, Plaintiff is entitled to disgorgement of Defendant's profits directly and indirectly attributable to Defendant's infringement of the ABC Shapes Design in amounts that are not ascertainable but which are to be established at trial, and which are believed to be in excess of \$150,000.

31. Plaintiff also is entitled to recover from Defendant its reasonable attorneys' fees in this action.

WHEREFORE, Plaintiff requests judgment from the Court, as follows:

A. Finding that Defendant has infringed the Plaintiff's copyrighted ABC Shapes Design, and granting to Plaintiff an award of (i) actual damages sustained by Plaintiff, including, without limitation, lost sales, a reasonable royalty, and any profits realized by Defendant as a direct or indirect result of Defendant's infringement, to the extent that such recoveries are not duplicative; or, at Plaintiff's election, and to the extent permitted by the Copyright Act, (ii) an award of statutory damages up to \$150,000 per work infringed by Plaintiff; and

B. Ordering that Defendant, its officers, agents, servants, employees, related companies, parent companies, subsidiary companies, licensees, assigns, members and all parties in privity and/or acting in concert with it, be enjoined and restrained from manufacturing, advertising, promoting, selling, reproducing, displaying, creating derivative works from, and/or

distributing the Infringing Rugs or any items bearing the ABC Shapes Design or any derivatives;
and

C. Ordering that Defendant segregate all proceeds from orders for any products that infringe the ABC Shapes Design or its derivatives, which have been sold, and to hold such proceeds in trust to be delivered to Plaintiff as the Court may order; and

D. Ordering that the Defendant surrender to Plaintiff all products or items bearing the Plaintiff's ABC Shapes Designs or any derivatives, in Defendant's possession, custody or control;
and

E. Ordering that the Defendant file with the Court a sworn statement detailing its compliance with the requirements of such Court order or judgment;

F. Ordering Defendant to pay to Plaintiff the costs and disbursements of this action, as well as, under 17 U.S.C. § 504(c), Plaintiff's reasonable attorneys' fees under 17 U.S.C. §§ 412 and 505; and

H. Such other and further relief as the Court may deem just and equitable.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury on all applicable issues.

Dated: April 7, 2022

Respectfully Submitted,

s/ Scott K. McClain
Scott K. McClain
Attorneys for Plaintiff
Merle, Brown & Nakamura PC
90 Broad Street, Suite 2201
New York, New York 10004
Tel. 212-471-2990
Email. s.mcclain@mbnpc.com

EXHIBIT A

PLAINTIFF'S ABC SHAPES RUG BEARING ABC SHAPES DESIGN



EXHIBIT B



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KEY & COOPER LIMITED LIABILITY COMPANY

(b) County of Residence of First Listed Plaintiff **MORRIS COUNTY**
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
Scott K. McClain
Merle, Brown & Nakamura, P.C.
90 Broad Street, Suite 2201, New York, NY 10004
Tel.: 212-471-2990

DEFENDANTS

GLADWELL EDUCATION LLC

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability		INTELLECTUAL PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander		<input checked="" type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	LABOR	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting		FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	IMMIGRATION	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 448 Education			
	PRISONER PETITIONS			
	Habeas Corpus:			
	<input type="checkbox"/> 463 Alien Detainee			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	Other:			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			
	<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): **17 U.S.C. 101 et seq.**Brief description of cause: **Copyright Infringement**

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$150,000 or greater plus attorneys' fees

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE **April 7, 2022**SIGNATURE OF ATTORNEY OF RECORD
s/ Scott K. McClain

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.