

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

KELLY TRACHT, LLC,
a Florida limited liability company,

CASE NO. 9:17-CV-81328-DMM

Plaintiff,

JURY TRIAL REQUESTED

v.

ESCAPADA INC., a South Carolina
Corporation,
ESCAPADA RESORTWEAR LLC,
a South Carolina Limited Liability Company,
ESCAPADA ECOMMERCE LLC,
a South Carolina Limited Liability Company,
NATALIA CASTILLO, an Individual,

Defendants.

AMENDED COMPLAINT FOR COPYRIGHT INFRINGEMENT

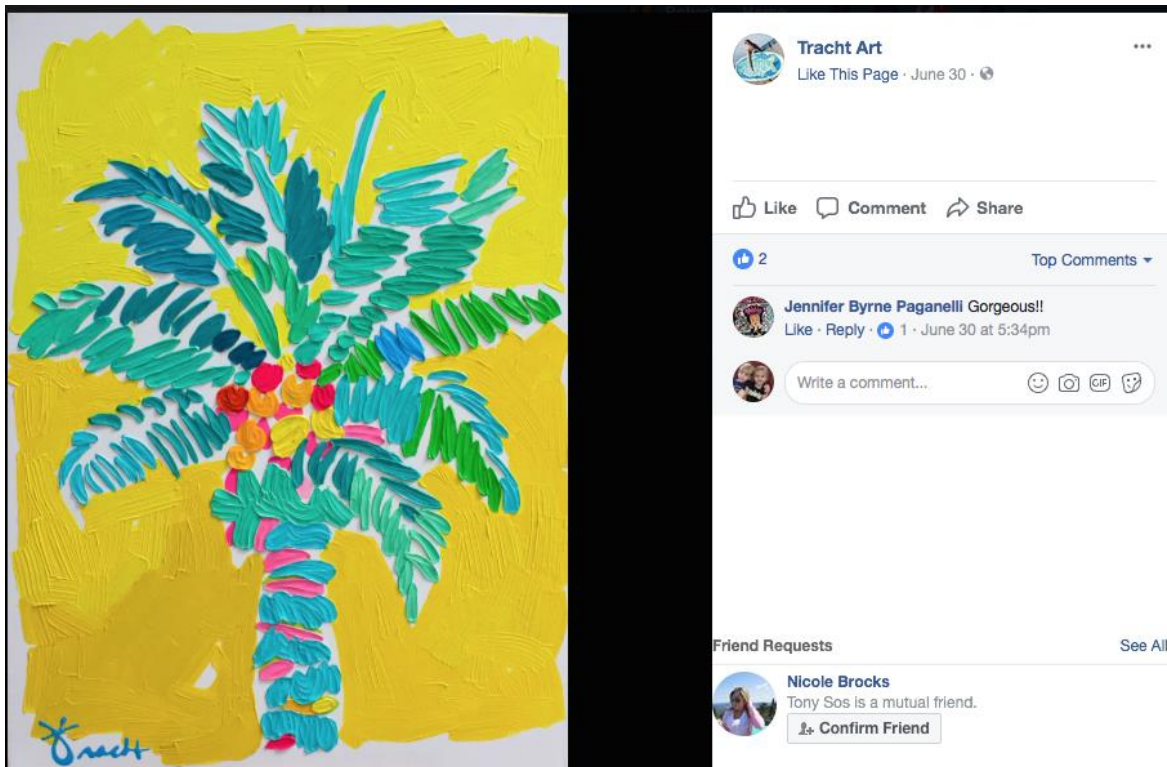
Plaintiff KELLY TRACHT, LLC (“Plaintiff” or “Tracht”) hereby files its Complaint sounding in Copyright Infringement against Defendants ESCAPADA INC. (“Escapada Inc.”), ESCAPADA RESORTWEAR LLC (“Escapada Resortwear”), ESCAPADA ECOMMERCE LLC (“Escapada Ecommerce”) and NATALIA CASTILLO (“Mrs. Castillo”) (wherein Escapada Inc., Escapada Resortwear, Escapada Ecommerce, and Mrs. Castillo are collectively referred to as “Escapada” or “Defendants”). In support, Tracht provides the following:

THE PARTIES & THE NATURE OF THE ACTION

1. Tracht is limited liability company formed and organized under the laws of the State of Florida and located at 10152 Indiantown Road, Suite 130, Jupiter, Florida 33478. Since its formation in February 2014, Tracht has marketed, promoted, distributed, exhibited, offered for sale, and sold both on-line and through various art galleries the works of Jupiter, Florida based painter Kelly Tracht. Tracht sells these works of fine art directly on-line through its website

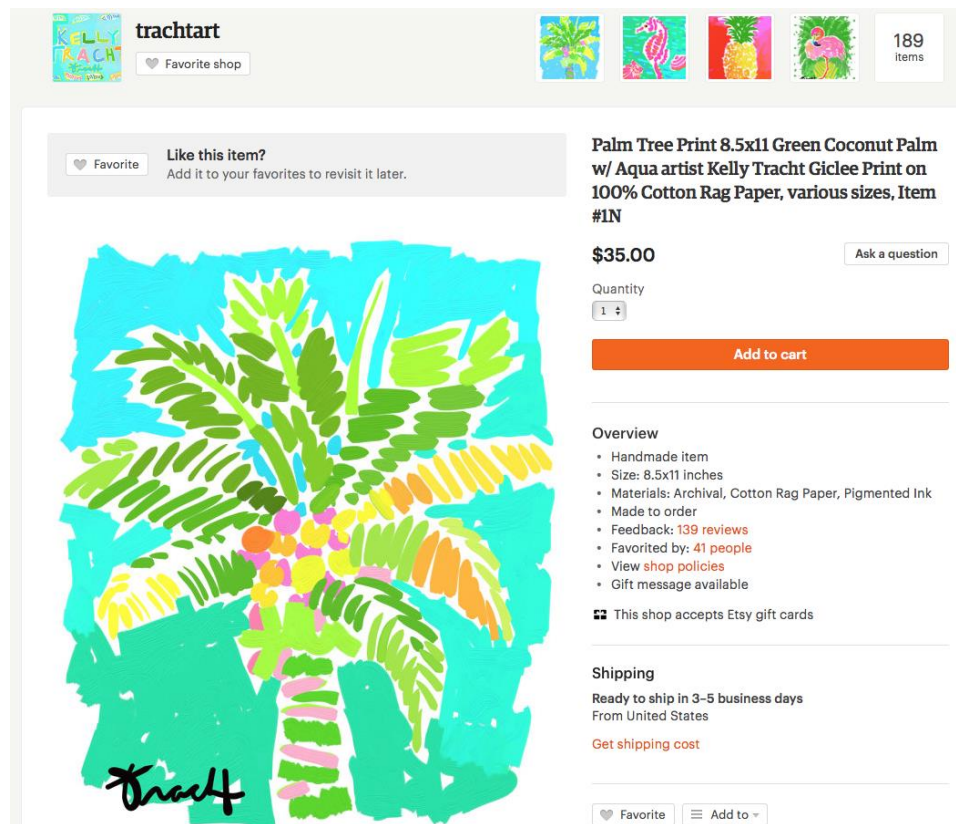
www.KellyTracht.com (the “Tracht Website”), at its Jupiter, Florida art gallery, as well as at art exhibitions throughout Florida, Georgia and the Carolinas.

2. Tracht also markets and promotes the various lines of original artwork via social media including at www.Facebook.com/TrachtArt/ (the “Tracht Facebook Page”):



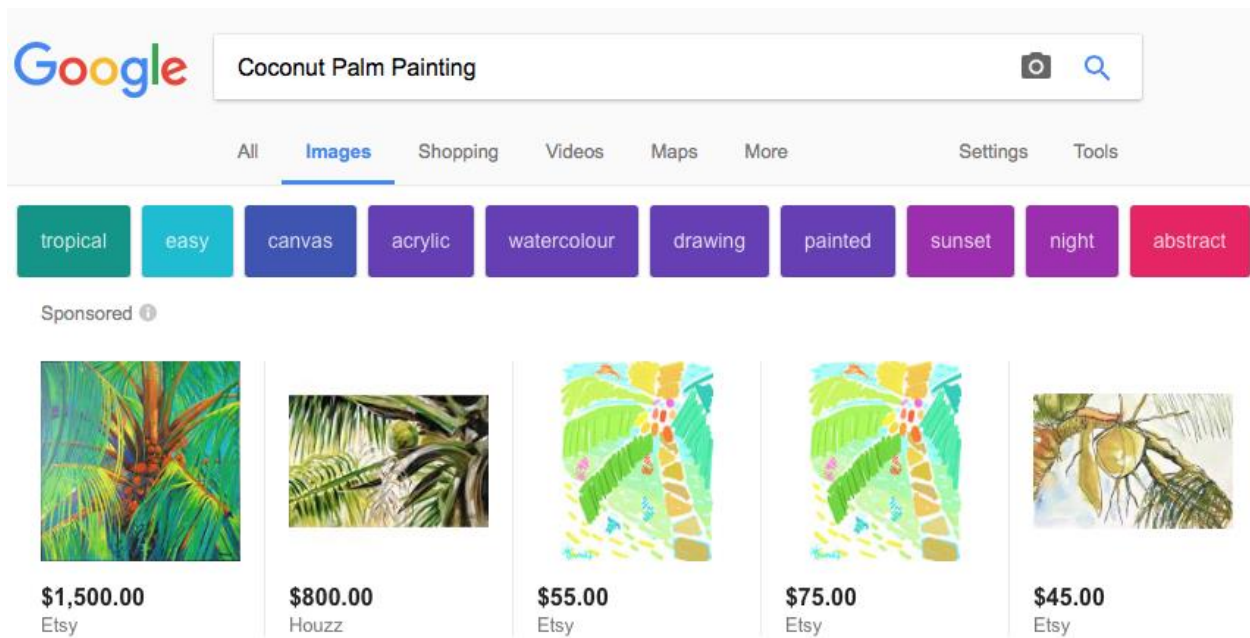
To date, there are some 6,000+ people who follow the Tracht Facebook Page. Upon information and belief, viewership in the Tracht Facebook Page greatly exceeds its number of followers.

3. Since 2012, Tracht has also marketed and sold various original artwork at www.etsy.com/shop/trachtart (the “Tracht Etsy Page”) including its coconut palm trees imagery:



To date, the Tracht Etsy Page has resulted in approximately 990 sales and there are some 1,662 “admirers” who follow the page. Upon information and belief, viewership in the Tracht Etsy Page greatly exceeds its number of listed or self-identified admirers.

4. Information on the Tracht Etsy Page is highly searchable through Google’s image search capabilities, including searches regarding “Coconut Palm Painting” which yield the following first page results that include Plaintiff’s imagery:



5. Tracht further maintains various postings on Pinterest at <https://www.pinterest.com/trachtart/> (the “Tracht Pinterest Page”).

6. Through advertising and marketing via the Tracht Website, the Tracht Facebook Page, the Tracht Etsy Page, and the Tracht Pinterest Page the Plaintiff’s various works (including the three implicated works addressed herein) have been widely dissemination, including throughout the State of South Carolina.

7. Escapada Inc. is a corporation formed and organized under the laws of the State of South Carolina located at 1315 Thompson Ave., Sullivan’s Island, South Carolina 29482. Escapada Inc. goes by the trade name “Escapada Living.” Escapada designs, imports, markets, promotes, offers for sale, and sells women’s apparel.

8. Escapada Inc. touts itself as a global lifestyle brand, which offers for sale and sells women’s clothing inspired by the vibrant, effortless culture of the Islands. Escapada Inc. further markets and promote how its clothing exudes a vibrant, yet relaxed aesthetic. Escapada Inc. designs its island-inspired women’s apparel, through its in-house creative team, which it then

manufacturers in Indonesia.

9. Escapada Inc. does not directly own any brick-and-mortar location(s). Rather, it sells its women's apparel through some 2,000 boutiques worldwide.

10. Escapada Resortwear is a limited liability company formed and organized under the laws of the State of South Carolina located at 543 Long Point Road, Suite 103, Mount Pleasant, South Carolina 29464. Escapada Resortwear runs and operates the "Escapada Living Signature Store" – which is Defendants' sole brick-and-mortar location at the Belle Hall Shopping Center.

11. Escapada Resortwear is an affiliate of Escapada Inc., which sells women's apparel sourced from Escapada Inc.

12. Escapada Ecommerce is a limited liability company formed and organized under the laws of the State of South Carolina located at 543 Long Point Road, Suite 103, Mount Pleasant, South Carolina 29464. Escapada Ecommerce markets, promotes, advertises, offers for sale and sells women's apparel sourced from Escapada Inc. online at www.EscapadaLiving.com (the "Escapada Website").

13. Escapada Ecommerce is an affiliate of Escapada Inc., which sells women's apparel sourced from Escapada Inc.

14. Escapada Ecommerce markets and promotes, on behalf of Escapada Inc and Escapada Resortwear, women's apparel through the Escapada Facebook Page located at www.Facebook.com/EscapadaLiving/ (the "Escapada Facebook Page"):



Escapada Living
Like This Page · September 2 · 🌐

Picture perfect palm prints are always a good idea!
How adorable is this mommy and me look from
@natalie.williams_on Instagram?

Like Comment Share

11

Write a comment...

Recommended for You Nearby



2013 F-150 4x4
\$1,500 · Homestead, FL

View Details

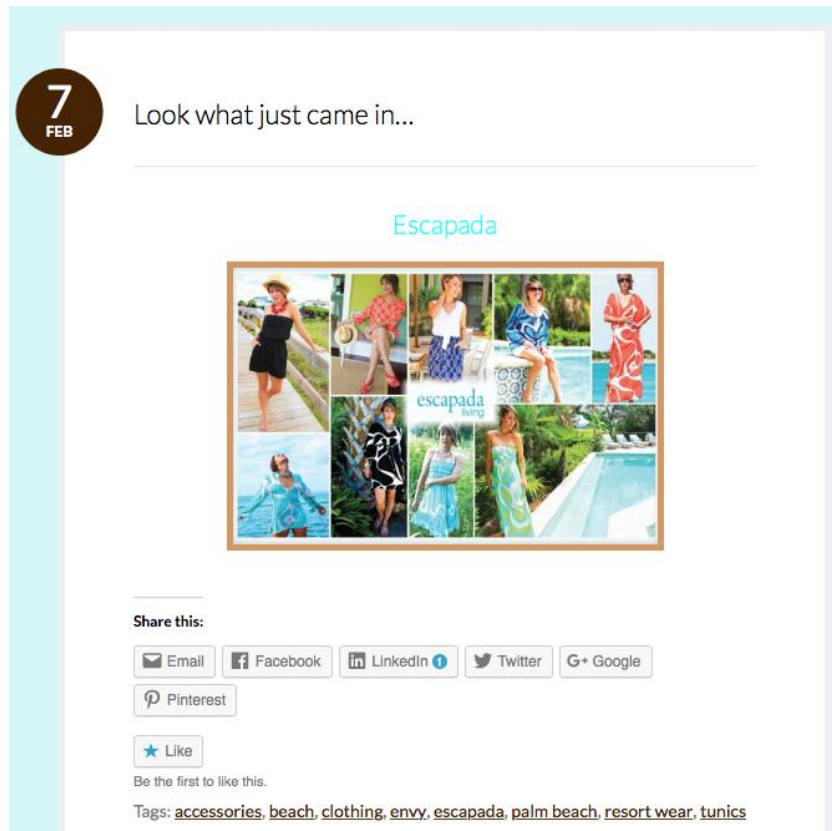
15. Mrs. Castillo is an individual working and located at 1315 Thompson Ave., Sullivan's Island, South Carolina 29482. Mrs. Castillo is the sole owner of Escapada Inc., Escapada Resortwear, as well as Escapada Ecommerce. In addition, Mrs. Castillo is the sole owner of the domain name www.EscapadaLiving.com. Mrs. Castillo is the primary designer of women's apparel offered by Escapada Inc. More specifically, Mrs. Castillo approves the designs of all of Escapada Inc.'s women's apparel before they are manufactured in Indonesia and imported into the United States for sale. As such, she is the moving force behind Escapada Inc., Escapada Resortwear, as well as Escapada Ecommerce.

JURISDICTION AND VENUE

16. Escapada regularly conduct business within the State of Florida and has likewise committed the acts complained of in this State, which have caused injury to Tracht within the State

of Florida. This includes, but is not limited to, continuous and systematic acts relating to distribution of implicated women's apparel (and related accessories) within the State of Florida.

17. This includes selling at brick-and-mortar locations throughout South Florida, including but not limited to Envy of Palm Beach:



18. Examples of continuous and systematic acts which accord general jurisdiction upon Escapada within this State include selling University of Florida collegiate themed wear ("Florida College Apparel"):



19. In addition to the sale of Florida College Apparel as identified above, Escapada has sufficient minimal contacts to meet the minimal jurisdictional requirements under the laws of Florida.

20. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338.

21. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391, as a substantial part of the events or omissions giving rise to the claims concern copyright claims that occurred in this judicial district. Additionally, Escapada transacts business in this judicial district.

GENERAL ALLEGATIONS

Kelly Tracht and Her Tropical Themed Lifestyle Art

22. Kelly Tracht is one of Florida's leading visual artists focused on authoring unique and colorable southern casual and tropical themed lifestyle imagery:



Artist Kelly Tracht

23. Located in Jupiter, Florida, artist Kelly Tracht has created, over the course of the last several years, various well known and highly regarded, highly expressive lines of aquatic, beach, and related Caribbean themed prints and related original works.

24. Artist Kelly Tracht assigns her works of authorship over to Tracht, which in turn markets and promotes these works of fine art through the Tracht Website, the Tracht Facebook Page, the Tracht Etsy Page, the Tracht Pinterest as well as the Tracht Twitter Page (at handle: @KellyTrachtArt).

25. Tracht markets and promotes the works of Kelly Tracht under United States Trademark Registration No. 4,710,679 issued on March 31, 2015 in International Class 16 for “[w]orks of art, namely, paintings, art prints and watercolors” (hereinafter the “Tracht Mark”).

26. In addition to securing the Tracht Mark, Tracht also has secured various registrations before the United States Copyright Office (“Copyright Office”) regarding the original expressions found in Kelly Tracht’s various works of art.

27. This includes Copyright Registration VA 2-073-081 entitled Sugar Sand Regatta having an effective date of April 17, 2015, for the following original work of authorship (the

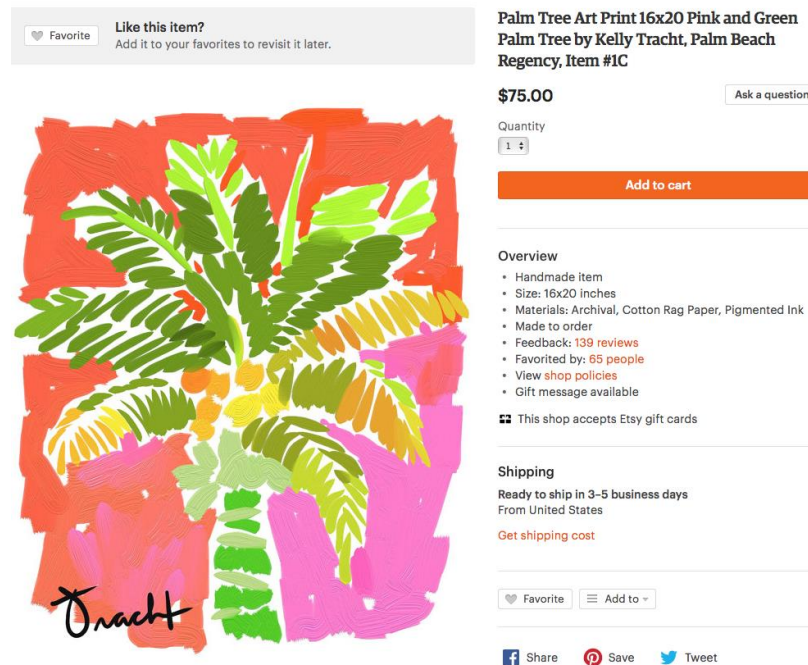
“Sugar Sand Registration”). The Sugar Sand Registration protects the “Sugar Sand Image”:



28. This also includes Copyright Registration VA 2-071-634 entitled Palm Beach Coco Palm having an effective date of May 17, 2017 (the “Coco Palm Registration”). The Coco Palm Registration protects the “Coco Palm Image”:



29. Tracht has monetized both the Sugar Sand Registration and the Coco Palm Registration through the sales of various original artworks, prints of both the Sugar Sand Image and the Coco Palm Image, as shown in the below offering on Etsy:



30. Accordingly, the Sugar Sand Image and the Coco Palm Image and the related artwork prints identified above, represent well-known and highly recognized examples of Tracht's artwork.

31. Moreover, Tracht has widely marketed, advertised and published these throughout Tracht Website, the Tracht Facebook Page, the Tracht Pintrest Page, the Tracht Etsy Page, as well as the Tracht Twitter Page – making them highly accessible and known on-line.

32. What is more, individuals who desire to seek colorable southern casual and tropical themed lifestyle imagery have come to know Tracht as the source of these highly unique and distinctive works of art.

Escapada's Prior Collaborative discussions Kelly Tracht
between November 2015 to March 2016

33. In November 2015, Escapada approached Tracht for purposes of exploring opportunities to collaborate, specifically the licensing of certain of Tracht's copyright protected imagery for use in a print design for a new collection by Escapada. The discussions addressed Escapada's planned "2017 Resort Collection" which would require negotiation of finalized prints by "February 2016." The underlying premise was that Tracht would design and/or develop three prints that would be "recolored in 3 different ways." Once those designs were licensed, Escapada's "in-house graphics designer" would finalize the print design based on Tracht's imagery. A true and correct copy of the initial November 2015 email exchanges is attached as **Exhibit A** hereto.

34. Proximate this timeframe, Tracht had been actively advertising and promoting its Coco Palm Image the Tracht Website, as well as specifically through the Tracht Facebook Page, as shown below:

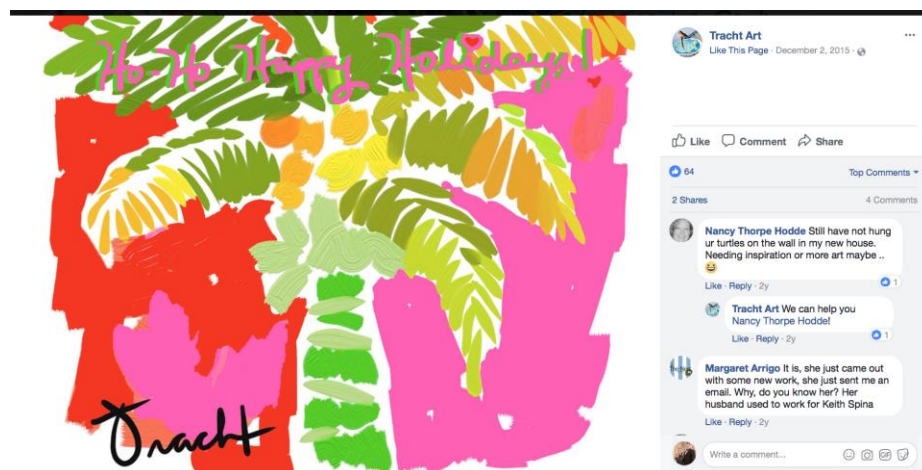


35. In addition, Tracht just a few weeks prior – on October 19, 2015 – had posted regarding an October 22, 2015 "Meet the Artist" even that featured the Sugar Sands Image:



36. On November 23, 2015, Tracht confirmed interest in this licensing opportunity – so long as the resulting branding would include Kelly Tracht to identify the source of the print. A true and correct copy of this November 23, 2015 response is attached as **Exhibit B** hereto.

37. In early December 2015, Tracht had posted the following on the Tracht Facebook Page yet again promoting and advertising the Coco Palm Image:



38. On or about December 18, 2015, follow up discussions occurred between Escapada and Tracht regarding the proposed “collaboration.” A true and correct copy of this December 18, 2015 email attached as **Exhibit C** hereto.

39. On February 22, 2016, Tracht posted the following image which contained variations of the sailboats shown in the Sugar Sands Image:



40. On or about March 1, 2016, Tracht followed up to confirm interest in such collaboration – which was confirmed that same day by Escapada. Moreover, a June 15, 2016 date was addressed regarding supplying necessary artwork and imagery for the planned three prints. A true and correct copy of this March 2016 email exchanges attached as **Exhibit D** hereto.

41. Throughout the November 2015 through March 2016 time period, the Tracht Website included imagery of the Coco Palm Image, as illustrated in the below screen capture from www.Archive.org:

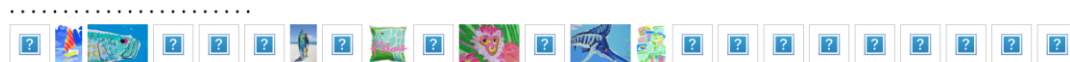


42. Throughout the November 2015 through March 2016 time period, the Tracht Website included the following sailboat imagery as illustrated in the below screen capture from www.Archive.org:



prev / next

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

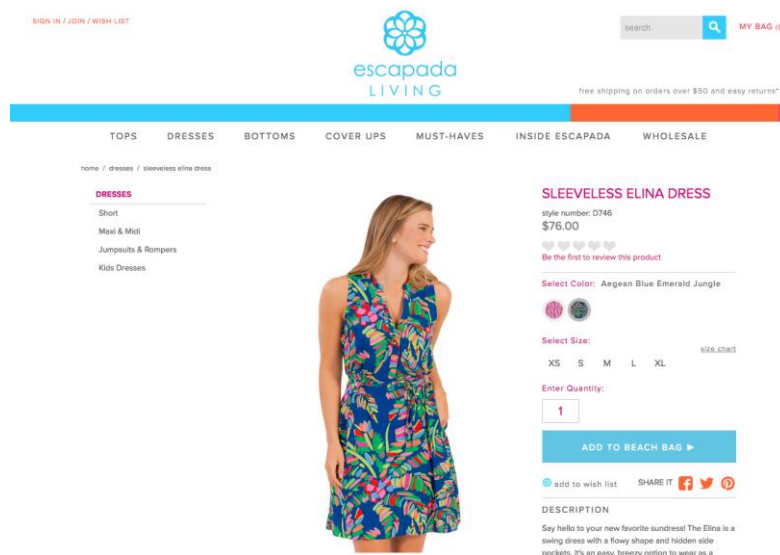


43. Tracht and Escapada were unable to reach agreement regarding monetary compensation for the planned imagery. As such, there was no agreement reached between the Parties to license Tracht's imagery or provide Escapada authority to use any of Tracht's imagery for Escapada's 2017 line of women's apparel.

Escapada's Implicated Jungle Print Apparel for its 2017 Resort Collection

44. Despite the foregoing inability to reach agreement regarding licensure and/or approval to use Tracht's imagery, Escapada nonetheless launched its "2017 Resort Collection" during the summer of 2017. Just as Escapada had addressed with Tracht, this included three related forms of print design for use as part of that resort collection.

45. Specifically, the resort line included a print called the "Aegean Blue Emerald Jungle", as show below in offering various dresses, cover-ups, tops and related women's apparel:



46. In addition to its "Aegean Blue Emerald Jungle" Print, Escapada has also offered two additional color combinations: (a) Poppy Aegean Blue Jungle and (b) Aegean Blue Shamrock Jungle which feature the same design (*i.e.*, all three collectively the "Aegean Jungle Print"):



47. Based upon the three related Aegean Jungle Prints, Escapada has offered between seven to ten different product offerings (*i.e.*, the “Jungle Print Apparel”) for the 2017 Resort Collection:



48. Escapada first announced the Aegean Jungle Print on May 14, 2017 by the following Facebook Post:



49. Escapada Inc. designed the Aegean Jungle Print – between March 1, 2016 and May 14, 2017 – through its in-house creative team.

50. Mrs. Castillo approved the Aegean Jungle Print prior to its manufacture in Indonesia.

51. Upon information and belief, the Jungle Print Apparel is some of Escapada's best-selling and most desired apparel offerings.

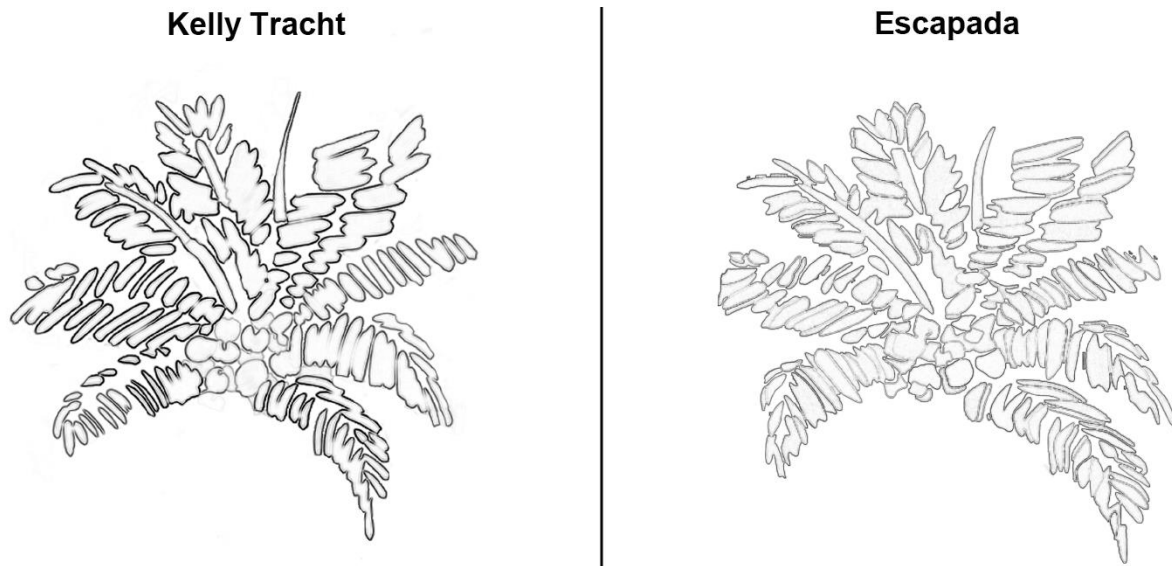
52. In review of the print used for the Jungle Print Apparel the three related designs are substantially similar to the original expressions contained in Tracht's Coco Palm Print, as protected by the Coco Palm Registration owned and maintained by Tracht:



53. Moreover, the Coco Palm Print had been addressed and/or discussed with Escapada as one of the potential images to be potentially used for purposes of the 2017 Resort Collection imagery to be licensed from Tracht.

54. Additional review of the Jungle Print Apparel denotes that the underlying print was

likely traced via a digital illustrator program and based upon the original expression found within Tracht's Coco Palm Print:



55. As shown by the foregoing, Defendant Escapada likely created a digital copy of the imagery found in the Coco Palm Print (likely by copying it from Tracht's website and/or Etsy.com), created a tracing of that print, and then digitally replicated this via a software illustrator for purposes of creating an unauthorized and unlicensed derivative of Tracht's copyrighted work.

56. Kelly Tracht's original expression within the Coco Palm Print goes beyond the image of a typical palm tree, but instead is more abstract and creative.

57. As such, the Coco Palm Print imagery contains expressive elements that are far from the common themes and general concepts found in typical palm tree imagery.

58. Escapada accomplished this improper copying and misappropriation through digital and/or computer means to replicate the protected and original expressions of the Coco Palm Print for purposes of developing slavish prints resulting in the 2017 Resort Collection imagery.

59. Escapada's taking of Tracht's unique and artistic expressions of imagery was done without the knowledge, permission, authority, license or right of Tracht.

60. What is more, Escapada has made careful efforts to digitally isolate portions of Tracht's protected palm tree expressions for purposes of creating a substantially similar image.

61. Escapada (based upon the aforementioned wide dissemination of the Coco Palm Print via social media, the web, as well as through gallery exhibitions) has had more than a reasonable opportunity to view the works in question.

62. Upon information and belief, Escapada has acted knowingly and willfully in digitally isolating Tracht's imagery and then populating its slavish copies to create its implicated women's apparel.

63. In creating the Jungle Print Apparel, Escapada's copying of Tracht's Coco Palm Print was substantial.

64. In making a visual comparison of the works, the Jungle Print Apparel as used on the 2017 Resort Collection contains the same total concept and feel of the Coco Palm Print.

65. Moreover, an average lay observer would recognize the alleged copying found within the Jungle Print Apparel as being substantially copied (beyond mere basic anatomical similarities) from Tracht's Coco Palm Print.

66. Moreover, Escapada's copying was through the use of the protected elements of the Coco Palm Print – including but not limited to the shapes, arrangement and coloring found in those images.

67. The end result of Escapada's aforementioned copying and related misconduct is the unauthorized exploitation of Tracht's aforementioned copyright registrations. Escapada's ensuing promotion of foregoing, and ultimate commercial success, has resulted in considerable pecuniary gain to Escapada.

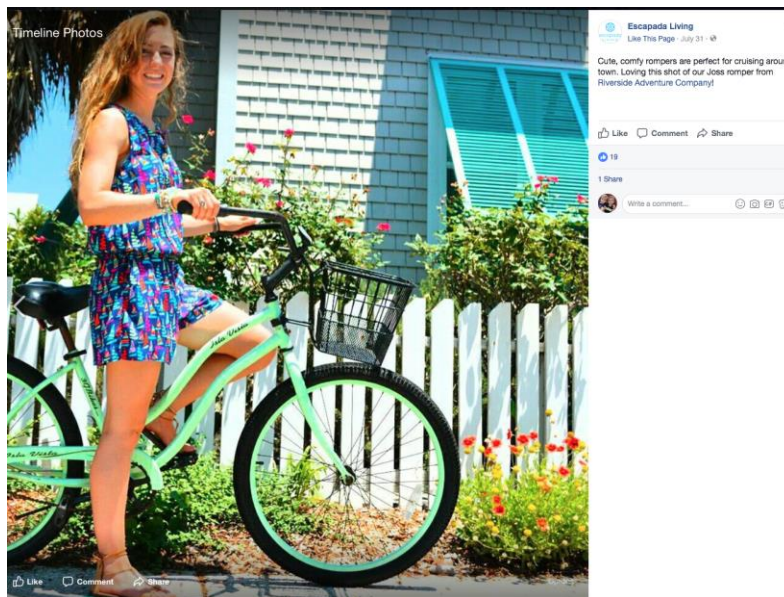
68. All of the foregoing has caused irreparable harm to Tracht.

Escapada's 2017 Regatta Prints and Related Apparel

69. Escapada also launched for its 2017 Spring Collection its Regatta print apparel line, which featured two versions (a) the Aegean Blue/Red Regatta Print and (b) the Aegean Blue/Aqua Regatta Print (the "Regatta Print"):



70. The Regatta Print and its related apparel (the "Regatta Print Apparel") was used for on-line advertising and promotion of Escapada for its Spring 2017 Collection, as shown below:



71. Based upon the two related Regatta Prints, Escapada has offered various different Regatta Print Apparel products since the summer of 2017, including various rompers, dresses, and tops.

72. Escapada first announced the Regatta Print on February 16, 2017 by the following

Facebook Post:

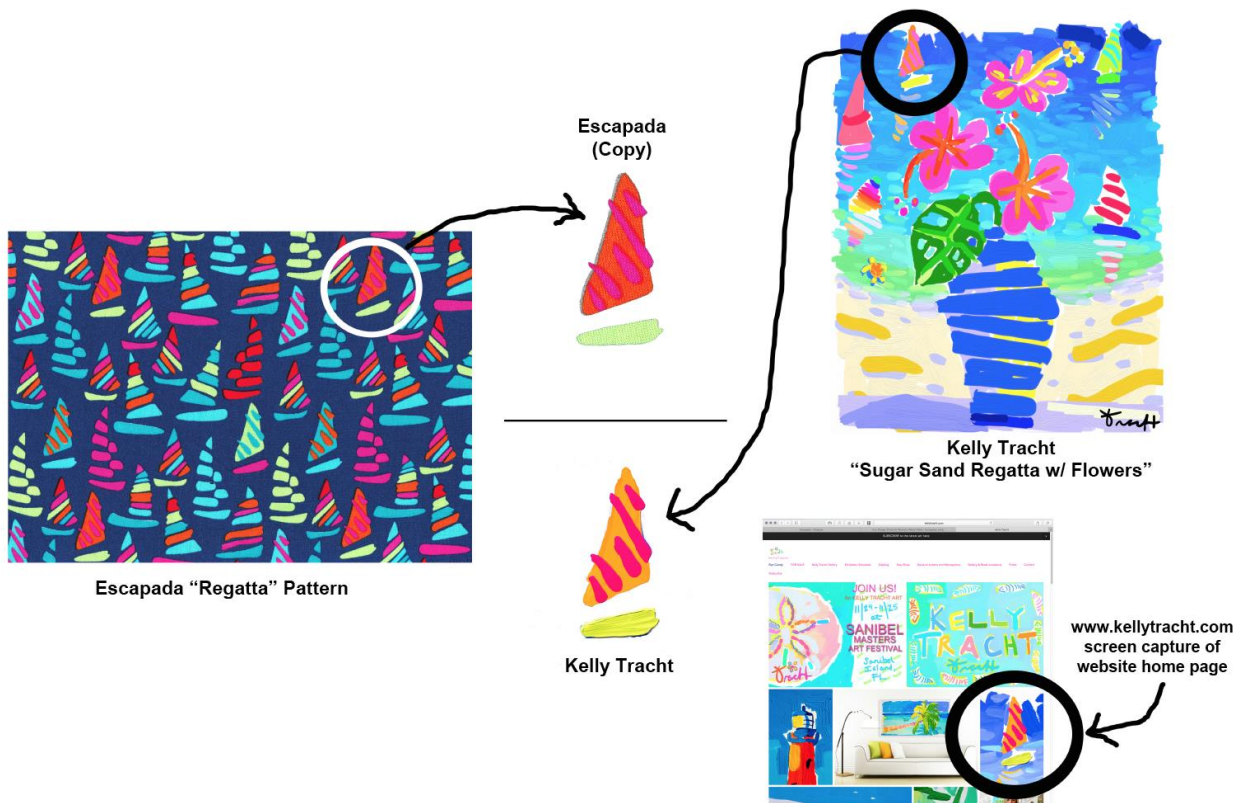


73. Escapada Inc. designed the Regatta Print – between March 1, 2016 and February 16, 2017 – through its in-house creative team.

74. Mrs. Castillo approved the Regatta Print prior to its manufacture in Indonesia.

75. Upon information and belief, the Regatta Apparel is some of Escapada's best-selling and most desired apparel offerings.

76. In review of the print used for the Regatta Apparel, this design is substantially similar to the original expressions contained in Tracht's Sugar Sand Image as protected by Copyright Registration VA 2-073-08:



77. Moreover, the Sugar Sand Image had been addressed and/or discussed with Escapada as one of the potential images to be potentially used for purposes of the 2017 Spring Collection imagery to be licensed from Tracht.

78. As shown by the foregoing, Escapada likely created a digital copy of the imagery found in the Sugar Sand Print (likely by copying it from Tracht's website as shown above), created a tracing of that print, and then digitally replicated this via a software illustrator for purposes of creating an unauthorized and unlicensed derivative of Tracht's copyrighted work.

79. Kelly Tracht's original expression within the Sugar Sand Image goes beyond the image of a typical sailboat, but instead is more abstract and creative.

80. As such, the Sugar Sand Image contains expressive elements that are far from the common themes and general concepts found in typical sailboat.

81. Escapada accomplished this improper copying and misappropriation through

digital and/or computer means to replicate the protected and original expressions of the Sugar Sand Image for purposes of developing slavish prints resulting in the Regatta Print.

82. Escapada's taking of these unique and artistic expressions of imagery was done without the knowledge, permission, authority, license or right of Tracht.

83. What is more, Escapada has made careful efforts to digitally isolate portions of Tracht's protected sailboat imagery for purposes of creating a substantially similar image.

84. Escapada (based upon the aforementioned wide dissemination of the Sugar Sands Print via social media, the web, as well as through gallery exhibitions) has had more than a reasonable opportunity to view the works in question.

85. Upon information and belief, Escapada has acted knowingly and willfully in the way and manner it digitally isolated such imagery and then populated them in a way and manner as to create its implicated women's apparel.

86. In creating the Regatta Print Apparel, Escapada's copying of Tracht's Sugar Sands Image was substantial.

87. In making a visual comparison of the works, the Regatta Print as used on Regatta Print Apparel has the same total concept and feel of the Sugar Sands Image.

88. Moreover, an average lay observer would recognize the alleged copying found within the Regatta Print Apparel as being substantially copied (beyond mere basic anatomical similarities) from Tracht's Sugar Sands Image.

89. Moreover, the copying engaged in by Escapada was through the use of the protected elements of the Sugar Sand Image – including but not limited to the shapes, arrangement and coloring found in those images.

90. The end result of Escapada's aforementioned copying and related misconduct is the

unauthorized exploitation of all three of the aforementioned Tracht copyright registrations. Escapada's ensuing promotion of foregoing, and ultimate commercial success, has resulted in considerable pecuniary gain to Escapada.

91. All of the foregoing has caused irreparable harm to Tracht.

COUNT I
COPYRIGHT INFRINGEMENT
(United States Copyright Registration VA 2-071-634)

92. This Count I is an action for damages and injunctive relief based on copyright infringement in violation of 17 U.S.C. § 501, *et seq.*

93. Tracht repeats and re-alleges the allegations of paragraphs 1-91 of this Complaint as though fully set forth herein.

94. The United States Register of Copyrights issued VA 2-071-634 entitled Palm Beach Coco Palm having an effective date of May 17, 2017, which protects the following image:



95. Registration VA 2-071-634 is both valid and subsisting, and protects the original

expression found in the Coco Palm Image depicted above.

96. Tracht is the owner, by written assignment, of the entire right, title and interest in Registration VA 2-071-634, which protects the Coco Palm Image.

97. Defendant Escapada had access to (and/or had a reasonable opportunity to view) the Coco Palm Image.

98. Defendant Escapada directly and indirectly infringed Registration VA 2-071-634 by violating the exclusive rights of Tracht, through its copying, reproduction, distribution, and display of this imagery, namely through the preparation, distribution, and display of the Jungle Print Apparel, as well as related use via social media as shown below:



99. Defendant Escapada has also controlled and financially benefitted from the Jungle Print Apparel.

100. Upon information and belief, Defendant Escapada's infringing activities were

knowingly engaged in with a willful and reckless disregard of Tracht's rights.

101. Escapada's reproduction, preparation of derivative copies, advertising, distribution, and display of the Jungle Print Apparel was, and continues to be, without license, and therefore constitutes an infringement in violation of 17 U.S.C. § 501.

102. Tracht has suffered a compensable injury due to the infringing activities of Defendant Escapada, and will continue to suffer irreparable injury unless Defendant's infringing activities are enjoined.

103. Tracht is entitled to recover either statutory and/or actual damages incurred as a result of Defendant's infringing activities.

COUNT II
COPYRIGHT INFRINGEMENT
(United States Copyright Registration VA 2-073-08)

104. This Count II is an action for damages and injunctive relief based on copyright infringement in violation of 17 U.S.C. § 501, *et seq.*

105. Tracht repeats and re-alleges the allegations of paragraphs 1-91 of this Complaint as though fully set forth herein.

106. Tracht is the owner of a copyright for the original work of authorship entitled Sugar Sands Regatta, for the following image:



107. The United States Register of Copyrights issued Copyright Registration VA 2-073-08 (the “Sugar Sands Registration”).

108. The Sugar Sands Registration is both valid and subsisting, and protects the original expression found in the Sugar Sands Image.

109. Tracht is the owner, by written assignment, of the entire right, title and interest in and to the Sugar Sands Registration, which protects the Sugar Sands Image.

110. Defendants had access to (and/or had a reasonable opportunity to view) the Sugar Sands Image.

111. Defendants directly and indirectly infringed the Sugar Sands Registration by violating the exclusive rights of Tracht, through Defendants’ copying, reproduction, distribution, and display of this imagery, namely through the preparation, distribution, and display of the Regatta Apparel, as well as related advertising and promotion of the underlying print:



112. Moreover, such copying includes, but is in no way limited to the use of substantially similar vibrant colors, as well as similar arrangement, location, orientation of sailboat imagery.

113. Escapada has also controlled and financially benefitted from the Regatta Apparel.

114. Upon information and belief, Escapada's infringing activities were knowingly engaged in with a willful and reckless disregard of Tracht's rights.

115. Escapada's reproduction, preparation of derivative copies, advertising, distribution, and display of portions of the sailboat imagery found in the Sugar Sands Image was, and continues to be, without license, and therefore constitutes an infringement in violation of 17 U.S.C. § 501.

116. Tracht has suffered a compensable injury due to the infringing activities of Escapada, and will continue to suffer irreparable injury unless Escapada's infringing activities are enjoined.

117. Tracht is entitled to recover either statutory and/or actual damages incurred as a result of Defendants' infringing activities.

PRAYER FOR RELIEF

WHEREFORE, for all of the foregoing reasons, Plaintiff KELLY TRACHT, LLC requests this Honorable Court grant relief in the following manner:

- a. Escapada (and their agents, servants, employees, and those people in active concert or participation with them) be preliminary and permanently enjoined from infringing on Copyright Registration VA 2-073-081 (the "Sugar Sand Registration") including the underlying Sugar Sand Image;
- b. Escapada (and their agents, servants, employees, and those people in active concert or participation with them) be preliminary and permanently enjoined from infringing on Copyright Registration VA 2-071-634 (the "Coco Palm

- Registration”) including the underlying Coco Palm Image;
- c. Be awarded all other monetary remedies available under the Copyright Act, including but not limited to, compensatory damages, statutory damages, treble damages, interest, costs and attorney’s fees as legally permitted.
 - d. Enjoin Escapada from filing any copyright registrations regarding such works of authorship;
 - e. Enter a judgment against Escapada in an amount suitable to recompense Plaintiff KELLY TRACHT for the loss of copyright licensing revenues; and
 - f. Any and all other relief that this Honorable Court deems just.

JURY TRIAL REQUEST

Plaintiff KELLY TRACHT, LLC requests a trial by jury.

Respectfully submitted on January 2, 2018.

/s/ **Robert H. Thornburg**

Robert Thornburg
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E-Mail: rthornburg@allender.com
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Facsimile: (305) 374-8306

Counsel for Plaintiff Kelly Tracht LLC

Exhibit A



Kelly Tracht <keylimetree@gmail.com>

Fwd: Kelly Tracht for Escapada

2 messages

Rich <rich@kellytracht.com>
To: Kelly Tracht <keylimetree@gmail.com>

Mon, Nov 23, 2015 at 10:51 AM



RichTracht
www.kellytracht.com
rich@kellytracht.com
<https://www.etsy.com/shop/trachtart>
<http://www.facebook.com/trachtart>

Begin forwarded message:

From: Cassie Comardelle <cassie@escapadaliving.com>
Subject: Kelly Tracht for Escapada
Date: November 20, 2015 4:40:37 PM EST
To: rich@kellytracht.com, Natalia Castillo <natalia@escapadaliving.com>

Hi Rich,

Thank you again for taking the time to speak to me regarding a collaboration with Kelly!

I have copied Natalia and the easiest communication for her is email. Please reach out to her and she can help coordinate a time to speak and answer any additional questions you all may have. Her phone number is [843-388-3471](tel:843-388-3471) x 110.

A small recap of our phone call:

We are hoping to create this limited edition collection for our 2017 Resort Collection. This would require finalized prints around February 2016. We are hoping for 3 prints from Kelly that can be recolored in 3 different ways. We have an in-house graphic designer that can assist with any speed bumps along the way.

We are very excited for the opportunity to work with you all! We love Kelly's work and believe her style works well with our Resortwear line. Thank you again for your time.

Best,

Cassie

--

Cassie Comardelle

Executive Assistant




p. 843.388.3471 x 121 | **f.** 843.558.8552

cassie@escapadaliving.com | www.escapadaliving.com

[Facebook](#) | [Instagram](#) | [Pinterest](#) | [Twitter](#)

Exhibit B

From: Natalia Castillo <natalia@escapadaliving.com> 
Subject: Re: Touching base regarding collaboration
Date: November 23, 2015 4:15:40 PM EST
To: Kelly Tracht <keylimetree@gmail.com>

1 Attachment, 5 KB

Kelly, that would be great! Will you call me at 415-606-9481 at 2 pm on Wed?

Best,

Natalia

Natalia Castillo
Founder / Visionary



p. 843.388.3471 ext. 110 | f. 843.558.8552
natalia@escapadaliving.com | www.escapadaliving.com

On Nov 23, 2015, at 4:11 PM, Kelly Tracht <keylimetree@gmail.com> wrote:

Wednesday is great Natalia. Just let me know what time, and I will be sure to have my phone by me;) Thanks!

Kelly



Kelly Tracht
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On Mon, Nov 23, 2015 at 12:49 PM, Natalia Castillo <natalia@escapadaliving.com> wrote:

Dear Kelly,

So nice to hear from you! Would you be available to talk on Wednesday? I will be traveling and will have 5 hours of downtime in the car. :-)

If that is not convenient, pls let me know some other dates that might work.

Best,

Natalia

Natalia Castillo
Founder / Visionary

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natalia@escapadaliving.com | www.escapadaliving.com

On Nov 23, 2015, at 11:33 AM, Kelly Tracht <keylimetree@gmail.com> wrote:

Good Morning Natalia!

We are so thrilled to have you contact us regarding a collaboration with your beautiful brand.

I understand from Rich that you are looking for 3 patterns to be used in 3 color ways, and that you have a Feb 2016 deadline. He also said that there will be branding with my name as the artist. This sounds like a perfect fit for us and I'm really excited to move forward.


Please let me know when a good time is for you and I to speak on the phone. I look forward to speaking with you soon.

Thanks and have a great day!

Kelly
Kelly Tracht
www.kellytracht.com
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Exhibit C

From: Natalia Castillo <natalia@escapadaliving.com> 
Subject: Re: Hi!
Date: December 18, 2015 11:16:13 AM EST
To: Kelly Tracht <keylimetree@gmail.com>

1 Attachment, 5 KB

Thanks so much! I wish the same success for you!

Hope you called your mom! :-)

Best,

Natalia

Natalia Castillo
Founder / Visionary



p. 843.388.3471 ext. 110 | f. 843.558.8552
natalia@escapadaliving.com | www.escapadaliving.com

On Dec 18, 2015, at 11:14 AM, Kelly Tracht <keylimetree@gmail.com> wrote:

Ditto Natalia! Thank you so much for your time, I appreciate you forwarding me this article. I'm thrilled about the collaboration and wish you all the success possible with your company in general:)

Merry Christmas to you and yours!

Kelly and Rich



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On Fri, Dec 18, 2015 at 10:58 AM, Natalia Castillo <natalia@escapadaliving.com> wrote:

Kelly,

Hi! It was such a pleasure speaking with you today! I am so excited about our collaboration. I wanted to share this article that is appearing in

the Charleston Home and Design magazine next month, only because it shares my story and the idea about the brand.

Merry Christmas!

Best,

Natalia

Natalia Castillo
Founder / Visionary

p. 843.388.3471 ext. 110 | f. 843.558.8552
natalia@escapadaliving.com | www.escapadaliving.com

On Dec 17, 2015, at 8:43 PM, Kelly Tracht <keylimetree@gmail.com> wrote:

Sorry to hear you won't be coming down Natalia, it was almost 90 degrees the last few days, but winter has to hit sometime I guess!

I can talk tomorrow for sure, how about 10 am? I am flexible but swamped as usual, and I am sure you are too:)

Thank you!

Kelly

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On Thu, Dec 17, 2015 at 5:33 PM, Natalia Castillo <natalia@escapadaliving.com> wrote:

Kelly,

Sorry for the delayed reply! I somehow missed this email in my inbox. We decided at the last minute to cancel our trip, because the weather is not suppose to be ideal for the beach. I was hoping to spend a few days in the sunshine sipping cocktails under a coconut tree, but it does not look like that would be possible.

Instead would you be available to talk on the phone tomorrow? My schedule is pretty flexible up until 4 pm. I could also be available on Sat morning to speak. Please let me know what works best for you.

Regards,

Natalia

Natalia Castillo
Founder / Visionary

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natalia@escapadaliving.com | www.escapadaliving.com

On Dec 16, 2015, at 6:20 PM, Kelly Tracht <keylimetree@gmail.com> wrote:

Hello Natalia!

We are so sorry about your dog:(And we completely understand about getting busy, life is so crazy sometimes!

We're happy to hear you will be in Palm Beach this weekend and would love to meet up with you, we can come to you if it's convenient. We are heading out West for the holidays early Sunday morning so things are rushed for us right now, so we may not have more than an hour or so to meet, would that work?

Let us know what a good time would be for you on Saturday if possible. I have another appt. that afternoon but will be free in the morning or later afternoon after 3 or so. Thanks again!

Kelly

Kelly Tracht

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On Tue, Dec 15, 2015 at 6:05 PM, Natalia Castillo <natalia@escapadaliving.com> wrote:

Hi there! I am so sorry that I am just now getting back to you. My life has been crazy....I had to put my little dog down and then I have been so busy with the holidays. I would love to talk to you soon about the collaboration. I will be in Palm Beach this weekend. I don't know if you would be available to meet in person, I understand it is the last weekend before Xmas. If not, maybe we could talk over the phone on Sat, Sun or Monday if it is not convenient to meet in person. I am staying at the Eau Palm Beach. Please let me know what works best for you!

Best,

Natalia


Natalia Castillo
Founder / Visionary

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Exhibit D

From: Natalia Castillo <natalia@escapadaliving.com> 
Subject: Re: Escapada
Date: March 4, 2016 10:00:08 AM EST
To: Kelly Tracht <keylimetree@gmail.com>

1 Attachment, 5 KB

What about Monday at 2 pm?

Happy Friday!!!!

Natalia Castillo
Founder / Visionary



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On Mar 4, 2016, at 9:53 AM, Kelly Tracht <keylimetree@gmail.com> wrote:

sure! good luck Natalia! You must be so excited, congratulations!:)



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On Thu, Mar 3, 2016 at 10:44 PM, Natalia Castillo <natalia@escapadaliving.com> wrote:

Hi! Sorry, I am actually in meetings tomorrow morning. We were suppose to open our store tomorrow, but it has been delayed a few days. Can you speak on Monday?

Best,

Natalia

Natalia Castillo
Founder / Visionary

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natalia@escapadaliving.com | www.escapadaliving.com

On Mar 3, 2016, at 8:32 PM, Kelly Tracht <keylimetree@gmail.com> wrote:

Hi! Is it possible to talk earlier maybe before noon? Im sorry I know how busy you are, we are too booked right now it's ridiculous! 😊

Kelly Tracht

www.trachtart.com

info@trachtart.com

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On Mar 3, 2016, at 6:21 PM, Natalia Castillo <natalia@escapadaliving.com> wrote:

Would 3 tomorrow work?

Sent from my iPhone

On Mar 3, 2016, at 1:40 PM, Kelly Tracht <keylimetree@gmail.com> wrote:

Hi! sure! Do you have a time in mind for say Friday? thank you! 😊

Kelly Tracht

www.trachtart.com

info@trachtart.com

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On Mar 3, 2016, at 1:23 PM, Natalia Castillo <natalia@escapadaliving.com> wrote:

Hi Kelly! Do you have any time this week to briefly chat? We are opening a new store early next week and are crazy busy trying to get the store opened.

Hope you have a great day!

Best,

Natalia

Natalia Castillo

Founder / Visionary

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natalia@escapadaliving.com | www.escapadaliving.com

On Mar 3, 2016, at 12:56 PM, Kelly Tracht <keylimetree@gmail.com> wrote:

It may be possible, I just didn't want to confirm that until I knew more about what exactly you all decided to have me do... 😊

Kelly Tracht

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On Mar 1, 2016, at 2:31 PM, Natalia Castillo <natalia@escapadaliving.com> wrote:

Ok, could you create the art by June 15th?

Natalia Castillo

Founder / Visionary

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natalia@escapadaliving.com | www.escapadaliving.com

On Mar 1, 2016, at 2:07 PM, Kelly Tracht <keylimetree@gmail.com> wrote:

June would be ideal...

Kelly Tracht

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On Tue, Mar 1, 2016 at 1:35 PM, Natalia Castillo <natalia@escapadaliving.com> wrote:
Are you thinking June?

Sent from my iPhone

On Mar 1, 2016, at 1:32 PM, Kelly Tracht <keylimetree@gmail.com> wrote:

Would this summer be too late? 😊

Kelly Tracht

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On Mar 1, 2016, at 12:49 PM, Natalia Castillo <natalia@escapadaliving.com> wrote:

Hi there! So nice to hear from you! I completely understand. I have been insanely busy as well. :-))))

I am still interested. When would be good timing for you to develop artwork? I understand that you have several shows coming up.

Have a great day!

Best,

Natalia

Natalia Castillo
Founder / Visionary

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On Mar 1, 2016, at 10:18 AM, Kelly Tracht <keylimetree@gmail.com> wrote:

Good morning Natalia!

I am so incredibly sorry for the delay in getting back you to you! We had 3 back to back shows in Feb and it was mayham. I am just getting back to my desk and caught up on everything and realized that I didn't respond to your last email, and I apologize:) I literally didn't have one free minute so please forgive me.

I am still interested in a collaboration, yes!:) I think we've missed the window for this spring however, we are still lined up for several more shows and I have a big one coming up in New York that I am working like crazy to prepare for in April. Would it be possible since we both got behind to push

the deadline back to the summer? If that would work, it would still make this all possible for us to do the new artwork, otherwise, I have no idea how I will fit it in at this point.

As always, we so appreciate your interest and are excited about the project:) Thank you and hope you are well Natalia...ciao!

Kelly and Rich

Kelly Tracht

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On Sun, Feb 28, 2016 at 10:37 PM, Natalia Castillo <natalia@escapadaliving.com> wrote:

Kelly,

Hi! I am so sorry that I have been out of touch. I have been so busy traveling and working on a new store.

Are you still interested in a collaboration project? If so, would love to speak with you!

Best,

Natalia

Natalia Castillo
Founder / Visionary

<escapada-living-logo-e1374523356271.jpg>

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