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Shumaker's Intellectual Property Litigation Team Secures Dismissal of Lanham Act and Trade Secret Misappropriation Claims

CHARLOTTE, NC – Today, the Honorable Judge Max O. Cogburn, Jr. of the United States District Court for the Western District of North Carolina Ordered dismissal *with prejudice* of (1) claims under the federal Lanham Act for false designation of original, trade dress infringement, and false advertising and (2) claims under the federal Defend Trade Secrets Act for trade secret misappropriation. To the extent that any of the Plaintiff's state law claims survive preemption, those claims were dismissed *without prejudice* on jurisdictional grounds.

In the Order, citing the Supreme Court's *Dastar* decision, the Court held that the Lanham Act claims were preempted by the Copyright Act since the Plaintiff's claims were within the "subject matter of copyright" and sought "to vindicate rights equivalent to those protected by copyright law." The Court held that a claim may be preempted by the Copyright Act even if the subject matter of the work could not be registered by the Copyright Office." Specifically, the Court cited the plaintiff's use of "terms synonymous with 'copying' throughout the Amended Complaint."

With respect to the trade secret misappropriation claims, the Court held the plaintiff failed to state a claim for protection of any cognizable trade secret. Specifically, the Court held that plaintiff "fail[ed] to define the trade secrets in sufficient detail to put Defendants on notice as to the precise information at issue" and that "[e]ven if Plaintiffs described the alleged trade secrets with sufficient specificity, the confidentiality of those alleged

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trade secretions has not been protected.” The Court noted that Plaintiffs’ alleged trade secrets included building plans for kitchen cabinets that had actually be constructed: “to the extent that Plaintiffs contend that their unique cabinetry design ... constitutes a trade secret, Plaintiffs do not allege how they maintain the secrecy of the alleged trade secret, particularly when they install the cabinets in the homes of their customers where customers and visitors may view the cabinets.”

Defendants Peters Custom Homes, Inc., Peters Custom Design, LLC, Nicholas Peters, and Miriam Peters are represented by Alex Long, Lucas Garber, Christy Trimmer, and Tom BenGera of Shumaker, Loop & Kendrick, LLP. The case is *Design Gaps, Inc. et al. v. Jocelyn Hall et al.*, no. 3:23-cv-186-MOC (W.D.N.C. 2023).