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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BLUE NILE, INC., a Delaware corporation,

Plaintiff,

v.

GEM STONE KING, INC., a New York corporation,

Defendant.

No. **C09-0828** *PSL*

COMPLAINT

JURY DEMAND



08-CV-00828-CMP

I. INTRODUCTION

1. This action arises from Gem Stone King, Inc.'s ("Gem Stone King") willful and unauthorized copying and display of Blue Nile, Inc.'s proprietary and copyright-protected diamond photographs.

2. Founded in 1999, Blue Nile, Inc. ("Blue Nile") has rapidly grown into the largest and most successful online retailer of certified diamonds and fine jewelry.

3. Building on the premise that, with the right information and tools, educated buyers will purchase higher-end jewelry on the Internet, Blue Nile developed and continues to refine its industry-leading website, including its own exceptional diamond photography.

COMPLAINT - 1

**ORIGINAL**

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1 4. Through its websites, including its imagery, Blue Nile has not only sold goods,  
2 Blue Nile has built the "Blue Nile" brand. Today, "Blue Nile" is synonymous with high-quality  
3 diamonds and fine jewelry and with high-quality online user interface, images, information and  
4 services that provide a near-perfect customer experience.  
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8 **II. PARTIES**

9  
10 5. Plaintiff Blue Nile is a Delaware corporation with its principal place of business  
11 at 705 Fifth Avenue South, Suite 900, Seattle, Washington 98104. Blue Nile owns and operates  
12 the online diamond and fine jewelry retail sales business through the websites  
13 www.bluenile.com, www.bluenile.ca, and www.bluenile.co.uk.  
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18 6. Defendant Gem Stone King, Inc. is a New York corporation with its principal  
19 place of business at 241 West 37<sup>th</sup> Street, Suite 718, New York, New York 10018. Gem Stone  
20 King operates an online retail jewelry business through its website www.gemstoneking.net and  
21 through its eBay store located at http://stores.shop.ebay.com/gem-stone-king\_W0QQ\_nkwZ.  
22 The www.gemstoneking.net website and the Gem Stone King eBay store are distributed and  
23 displayed in interstate commerce and within this judicial district. Gem Stone King's online  
24 businesses compete directly with Blue Nile in online retail sales of diamonds and jewelry.  
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33 **III. JURISDICTION AND VENUE**

34 7. The Court has subject-matter jurisdiction over Blue Nile's claims pursuant to  
35 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (copyright).  
36  
37  
38

39 8. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because a  
40 substantial part of the events giving rise to Blue Nile's claims occurred in this district and  
41 because Gem Stone King is subject to personal jurisdiction in this district.  
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45 **IV. FACTS AND BACKGROUND**

46 **A. THE BLUE NILE COMPANY AND BUSINESS**

47 9. Started in 1999, Blue Nile is today the market leader in the online diamond and  
48 fine jewelry retail industry.  
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51

1 10. Blue Nile provides its services and products through the websites  
2  
3 www.bluenile.com (serving the United States), www.bluenile.ca (serving Canadian customers),  
4  
5 and www.bluenile.co.uk (serving the United Kingdom). Blue Nile's websites are available  
6  
7 globally, and it sells diamonds and fine jewelry via its websites in interstate commerce  
8  
9 throughout the United States and elsewhere.

10  
11 11. Blue Nile provides extraordinary detail in every aspect of its website and  
12  
13 customer experience, from the photographs that display diamonds on Blue Nile's websites to the  
14  
15 depth of data accessible to customers to the navigation and selection tools available to customers  
16  
17 on the websites.

18  
19 12. Through this investment and diligent attention to detail, Blue Nile has proven that  
20  
21 luxury items can be sold online. In an online jewelry market where the average purchase is  
22  
23 about \$300, Blue Nile customers spend about \$1,536 on each purchase. In addition, where the  
24  
25 industry average sale price for an engagement ring is about \$2,800, a typical engagement ring  
26  
27 order at Blue Nile is about \$5,500.

28  
29 13. With no "brick and mortar" stores, the Blue Nile websites are Blue Nile's  
30  
31 storefronts and sales clerks. The websites attract the customers, the websites answer questions,  
32  
33 and the websites sell the diamonds and jewelry.

34  
35 14. As a result, detailed, high-quality imagery is critical to Blue Nile, its website and  
36  
37 its success. High-quality photographs of diamonds give online customers a heightened level of  
38  
39 confidence in the products that they consider purchasing as well as confidence in the retailer.

40  
41 15. Blue Nile's websites include exquisite photographs of diamonds, pearls,  
42  
43 gemstones, settings, and fine jewelry that illustrate Blue Nile's offerings.

44  
45 16. Blue Nile's diamond photographs are particularly distinctive. The qualities of cut  
46  
47 diamonds and the way diamonds reflect light makes them extremely difficult, costly and time-  
48  
49 consuming to photograph. Blue Nile expends significant resources to create the high-quality  
50  
51 diamond photographs displayed on its website.

COMPLAINT - 3

1 17. Also as a result of diamonds' qualities and the way they reflect light, every  
2 photograph of a diamond is as unique as a fingerprint.  
3

4 18. As an Internet-only enterprise, intellectual property is one of Blue Nile's most  
5 important and most valued assets. Consequently, Blue Nile invests significant resources into its  
6 intellectual property and carefully protects its intellectual property rights. Its websites display  
7 copyright notices.  
8  
9

10 19. Blue Nile owns rights, title and interest, including copyrights, in and to diamond  
11 photographs displayed on its websites.  
12

13 **B. GEM STONE KING IS WILLFULLY AND UNLAWFULLY COPYING BLUE**  
14 **NILE'S COPYRIGHT-PROTECTED WORKS**

15 20. Without authorization, Gem Stone King has and is willfully and unlawfully  
16 copying Blue Nile's copyright-protected photographs.  
17

18 21. For example, Gem Stone King is copying Blue Nile photographs on Gem Stone  
19 King's website to exemplify princess cut diamonds, round diamond earrings in white gold, and  
20 round diamond earrings in gold. Below is a screen shot of the princess cut diamond photograph  
21 from the Blue Nile website:  
22  
23

24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51

**0.34-Carat Blue Nile Signature Princess-Cut Diamond**  
 This *Signature Ideal-cut*, E-color, and VVS2-clarity diamond comes accompanied by a diamond grading report from the GIA and the GCAL.

View Certificate: [GIA](#) [GCAL](#)

★★★★★ 4.9 [Signature Diamond Feedback](#)

Order now to receive set in jewelry on Friday, June 19.

Order in the next 1 hour 3 minutes to receive loose on Wednesday, June 17.

Price: \$701

sample image, not actual size



1 29. Gem Stone King is not licensed or authorized by Blue Nile to use Blue Nile's  
2 copyrighted works.  
3

4 30. At all times relevant, Gem Stone King obtained direct financial benefit from the  
5 infringement and had the right and ability to control the infringing conduct, and/or intentionally  
6 induced, encouraged, caused or materially contributed to the infringement.  
7  
8

9 31. The foregoing acts of Gem Stone King constitute direct infringement, vicarious  
10 infringement and/or contributory infringement of Blue Nile's exclusive rights in its copyrighted  
11 works under 17 U.S.C. § 106.  
12

13 32. Upon information and belief, Gem Stone King's actions were intentional, willful,  
14 wanton and performed in disregard of the rights of Blue Nile.  
15

16 33. Blue Nile has been and will continue to be damaged, and Gem Stone King has  
17 been unjustly enriched, by Gem Stone King's unlawful infringement of Blue Nile's copyrighted  
18 works in an amount to be proven at trial.  
19  
20

## 21 VI. JURY DEMAND

22 34. Pursuant to Federal Rule of Civil Procedure 38(b), Blue Nile demands a trial by  
23 jury as to all issues so triable in this action.  
24  
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## 26 VII. PRAYER FOR RELIEF

27 WHEREFORE, plaintiff Blue Nile, Inc. prays for the following relief:  
28

29 1. A preliminary injunction and permanent injunction enjoining and restraining Gem  
30 Stone King, Inc, its officers, agents, servants, employees and all persons in active concert or  
31 participation with them, during the pendency of this action and thereafter perpetually from  
32 copying, distributing, displaying, creating derivative works or otherwise using protected  
33 elements of Blue Nile's copyrighted works, including, but not limited to, Blue Nile's  
34 photographs;  
35

36 2. An award of damages sustained by Blue Nile pursuant to 17 U.S.C. § 504(b) and  
37 as otherwise permitted by law;  
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40 COMPLAINT – 6  
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1           3.       An accounting and award of profits and other unjust enrichment derived by Gem  
2 Stone King, Inc. from its unlawful conduct pursuant to 17 U.S.C. § 504(b) and as otherwise  
3 permitted by law;  
4

5  
6  
7           4.       At Blue Nile's election, an award of statutory damages pursuant to 17 U.S.C.  
8 § 504(c) and as otherwise permitted by law;  
9

10  
11           5.       An award of Blue Nile's costs of suit and reasonable attorneys' fees pursuant to 17  
12 U.S.C. § 505 and as otherwise permitted by law;  
13

14  
15           7.       An award of prejudgment and post-judgment interest; and  
16

17           8.       For such further and other relief as the Court deems just and proper.  
18  
19

20  
21 DATED: June 16, 2009

**PERKINS COIE/LLP**

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23  
24 By: \_\_\_\_\_

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33 Attorneys for Plaintiff Blue Nile, Inc.  
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COMPLAINT – 7

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