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ALEXANDER & SONG LLC, D.B.A. PARK LIFE.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 11 0308

15 ALEXANDER & SONG LLC, D.B.A.
PARK LIFE,
16 Plaintiff,
17 v.
18 JEFF KOONS LLC, a Delaware limited
19 liability company,
20 Defendant.

Case No.
COMPLAINT FOR DECLARATORY RELIEF;
DEMAND FOR JURY TRIAL

✓
FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO, CA

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1 Plaintiff Alexander & Song LLC, d.b.a. Park Life Store and Gallery ("Park Life") for its
2 Complaint alleges as follows:

3 **THE NATURE OF THE ACTION**

4 1. As virtually any clown can attest, no one owns the idea of making a balloon dog,
5 and the shape created by twisting a balloon into a dog-like form is part of the public domain. In
6 this action for declaratory judgment and attorneys' fees, Park Life seeks to eliminate any doubt
7 that a "Balloon Dog Bookend" sold by Park Life does not infringe on any alleged copyright or
8 other intellectual property right in and to the three-dimensional "Balloon Dog Structure"
9 allegedly created by defendant Jeff Koons LLC ("Koons"), who has demanded that Park Life stop
10 advertising, marketing, promoting, selling and/or distributing the Balloon Dog Bookends.

11 2. Having been threatened with legal action, Park Life seeks a declaration from this
12 Court that the Balloon Dog Bookend does not infringe on any copyrights or other purported
13 intellectual property owned by Koons, because any similarities between the Balloon Dog
14 Bookend compared with the Balloon Dog Structure are driven by the wholly unprotectable idea
15 of depicting the shape of a balloon dog in a solid form. This unprotectable idea will yield
16 elements that naturally follow from the idea of such a form that cannot give rise to a copyright
17 claim. Plaintiff Park Life seeks declaratory judgment on these bases (and the additional bases
18 described herein) so that there will be no controversy clouding the right of Park Life or others to
19 continue distributing the Balloon Dog Bookend products.

20 **JURISDICTION AND VENUE**

21 3. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201 and the
22 Copyright Act, 17 U.S.C. § 101, *et seq.* This Court has subject matter jurisdiction over the claims
23 asserted herein under 28 U.S.C. §§ 1331 and 1338(a).

24 4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 in that a
25 substantial part of the events giving rise to the claims herein occurred in this judicial district, and
26 that, on information and belief, Koons is subject to personal jurisdiction in this district by virtue
27 of its transacting, doing and soliciting business in this district.
28

1 INTRADISTRICT ASSIGNMENT

2 5. This action arises in San Francisco County, where Plaintiff Park Life is located
3 and where a substantial part of the actions, statements, and threats described below were directed.
4 As this action seeks declaratory relief as to an intellectual property issue, it is subject to district-
5 wide assignment pursuant to Civil L.R. 3-2(c).

6 PARTIES

7 6. Plaintiff Alexander & Song LLC, d.b.a. Park Life is a company organized and
8 existing under the laws of the state of California, licensed to do business in California, with its
9 principal place of business in San Francisco, California.

10 7. Plaintiff Park Life is informed and believes, and on that basis alleges, that
11 Defendant Jeff Koons LLC is a corporation organized under the laws of Delaware with a
12 principal place of business located at 601 West 29th Street Studio, New York, New York, 10001.
13 Upon information and belief, Jeff Koons LLC purports to represent the intellectual property rights
14 of Jeff Koons, a retired stock broker whose sculptures and other works are well-known for
15 copying pre-existing forms and images from popular culture. Upon information and belief, Jeff
16 Koons LLC displays and sells sculptures and artwork in the United States and the state of
17 California.

18 8. Plaintiff Park Life is informed and believes, and on that basis alleges, that Koons
19 has engaged in continuous and systematic business in California and within this judicial district,
20 by, *inter alia*, distributing or authorizing the display and distribution of sculptures and/or artwork,
21 and selling or authorizing the sale of the sculptures and/or artwork in this judicial district.

22 GENERAL ALLEGATIONS

23 Park Life and the Balloon Dog Bookend

24 9. Plaintiff Park Life is a retail bookstore and art gallery featuring art and design
25 products from all over the world. Park Life features hard to find, limited edition and unique items
26 that include books, modern design objects, prints, paper goods, tee-shirts, homewares, jewelry,
27 artist multiples, original art and more. In addition to its retail shop and gallery located in San
28 Francisco, Park Life has an online store located at www.parklifestore.com. Park Life participates

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1 in fundraising and support for several Bay Area non-profit organizations and provides
2 opportunities for lesser known artists to display and promote their work.

3 10. Park Life purchases the Balloon Dog Bookends from Toronto-based manufacturer,
4 imm Living, which upon information and belief sells its goods in more than 700 stores across the
5 United States.

6 11. The Balloon Dog Bookends manufactured by imm Living and sold by Park Life
7 are painted resin statues based on the classic art of twisting balloons into the shape of animals,
8 commonly practiced by clowns, magicians and street performers.

9 **Jeff Koons' Work**

10 12. Jeff Koons is a controversial artist known for, among other things, reproducing
11 well-known designs, iconic to popular culture, from the public domain and reproducing them on a
12 large scale.

13 13. The Balloon Dog Sculpture that Koons claims to be infringed is a highly reflective
14 metal reproduction, measuring over ten feet tall, based on a balloon twisted into shape to make a
15 toy dog.

16 **History of Balloon Animal Making, or "Balloon Modeling"**

17 14. The art of twisting balloons into the shape of animals, or "balloon modeling" long
18 predates Koons' work. While the origin of balloon modeling is unknown, upon information and
19 belief, balloon modeling has been traced back as far as 1939 when H.J. Bonnert of Scranton,
20 Pennsylvania performed a balloon modeling act at the Pittsburgh Magicians' Convention. On
21 information and belief, balloon modeling appears in books published at least as early as 1958.

22 15. Today, balloon modeling has grown to include a large body of followers, many of
23 whom are members of the National Association of Balloon Artists and who attend the
24 International Balloon Arts Convention. Balloon modeling is the subject of various books and
25 instructional videos, many of which include the balloon dog as one of the more basic balloon
26 animals created using the art.

27 **The Controversy Between the Parties**

28 16. Park Life received a letter dated December 20, 2010 sent by attorneys representing

1 Jeff Koons LLC concerning the Balloon Dog Bookend, a true and correct copy of which is
2 attached to this Complaint as Exhibit A. In that letter, Koons states its position that the Balloon
3 Dog Bookend offered by Park Life violates Jeff Koons' intellectually property rights in his
4 Balloon Dog Sculpture. As evidence of this alleged "infringement," Koons' letter points simply
5 to alleged similarity in the "shape and style" of the Koons Balloon Dog Sculpture and the Balloon
6 Dog Bookend, both of which resemble the "shape and style" of a commonplace balloon twisted
7 into the shape of a dog. The letter further claims that "consumers are likely to form the mistaken
8 belief that Jeff Koons is somehow associated with, or endorsing the actions of, Park Life, and/or
9 authorizes and approves of the [Balloon Dog Bookend]." The letter also states Koons' position
10 that "Park Life is violating Jeff Koons' intellectual property rights in the [Balloon Dog
11 Sculpture]." Thus, Koons purports to have removed from the public domain the iconic shape and
12 design of a balloon dog by simply having implemented that classic shape in a large metal
13 sculpture.

14 17. The December 20, 2010 letter further demands that Park Life immediately (1)
15 cease and desist all advertisements, marketing, or promotions concerning the Balloon Dog
16 Bookend (including on its website); (2) cease and desist all sale and/or distribution of the Balloon
17 Dog Bookend; (3) send all existing and remaining inventory of the Balloon Dog Bookend in Park
18 Life's possession to a mutually agreed upon address; (4) provide an accounting of all sales of the
19 Balloon Dog Bookend; (5) provide written assurance that Park Life will no longer make, offer for
20 sale, sell and/or distribute the Balloon Dog Bookend (or anything substantially similar to the
21 Balloon Dog Bookend); and (6) identify the original source of the Balloon Dog Bookend (*e.g.*
22 manufacturer), including such source's name and address.

23 18. The December 20, 2010 letter explicitly threatens Park Life, noting that Park
24 Life's failure to comply with its cease and desist demands by December 24, 2010—Christmas
25 Eve—"will result in [Koons] taking further steps against Park Life to enforce Jeff Koons'
26 intellectual property rights."

27 19. The threat of litigation described above has created in Park Life a reasonable
28 apprehension of imminent suit by Koons for copyright infringement relating to the Balloon Dog

1 Bookend.

2 **FIRST CLAIM FOR RELIEF**
3 **(Declaratory Judgment – No Infringement: 17 U.S.C. § 501, 15 U.S.C. § 1125)**

4 20. Plaintiff Park Life incorporates by reference all the allegations of paragraphs 1
5 through 19, inclusive.

6 21. This Claim is brought pursuant to 28 U.S.C. §§ 2201 and 2202. An actual
7 controversy presently exists between Park Life and Koons, regarding Park Life's sale of the
8 Balloon Dog Bookend, particularly whether the bookend infringes Koons' alleged copyrights or
9 other intellectual property rights. In the letter dated December 20, 2010 sent to Park Life, Koons
10 contends that the Balloon Dog Bookend infringes Koons' intellectual property rights. Koons has
11 further demanded that Park Life immediately cease and desist selling the Balloon Dog Bookend.

12 22. Plaintiff Park Life contends that the Balloon Dog Bookend was independently
13 created by a third party manufacturer and does not directly or indirectly infringe any copyrights or
14 other intellectual property rights owned or held by Koons relating to the Balloon Dog Sculpture.

15 23. Plaintiff Park Life hereby requests a declaration of this Court under the provisions
16 of the Declaratory Judgment Act, 28 U.S.C. § 2201, setting forth the respective rights and other
17 legal relations of Park Life and Koons. In particular, Park Life requests a declaration that the
18 Balloon Dog Bookend does not directly or indirectly infringe Koons' copyrights (if any), rights
19 under the Lanham Act, 15 U.S.C. § 1051 et seq. (if any), or other purported intellectual property
20 rights, so that there will be no controversy clouding Park Life's right to continue distributing the
21 Balloon Dog Bookend.

22 24. Because of Koons' actions and threats described herein, including Koons' explicit
23 demands and threats of litigation, there is a substantial controversy between parties having
24 adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a
25 declaratory judgment. Accordingly, an actual controversy has arisen and exists between Park
26 Life and Koons within the meaning of 28 U.S.C. § 2201.

PRAYER FOR RELIEF

THEREFORE, Park Life prays for judgment against Koons as follows:

A. Plaintiff Park Life requests a declaration that Park Life has not infringed any copyrights owned or held by Koons related to the Balloon Dog Sculpture;

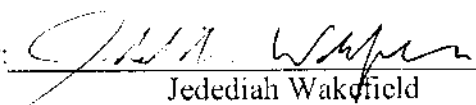
B. Injunctive relief restraining Jeff Koons LLC, its agents, licensees, servants, employees, successors, and assigns, and all others in concert and privity with them, from threatening or bringing any lawsuit against Park Life for copyright infringement, violations of the Lanham Act, or other purported intellectual property infringement in connection with the development, marketing, or distribution of the Balloon Dog Bookend;

C. An award of the costs, expenses, and attorneys' fees incurred by Park Life herein pursuant to 17 U.S.C. § 505, 15 U.S.C. § 1117(a), and other applicable law; and

E. Such other and further relief as the Court deems proper and just.

Dated: January 20, 2011

FENWICK & WEST LLP

By: 
Jedediah Wakfield

Attorneys for Plaintiff
ALEXANDER & SONG LLC, D.B.A. PARK
LIFE.

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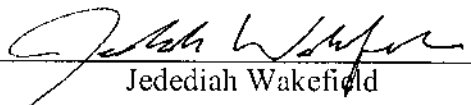
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DEMAND FOR JURY TRIAL

Plaintiff Park Life hereby requests a trial by jury of all issues so triable.

Dated: January 20, 2011

FENWICK & WEST LLP

By: 
Jedediah Wakefield

Attorneys for Plaintiff
ALEXANDER & SONG LLC, D.B.A. PARK
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