

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

DURGAMRITHA T. SUNDARAM

Plaintiff,

v.

NORDSTROM, INC., individually and doing
business as “NORDSTROM RACK” AND
JD FINE & CO., INC.

Defendants.

C.A. No. 22-3280

JURY TRIAL DEMANDED

DURGAMRITHA T. SUNDARAM’S COMPLAINT

Plaintiff Durgamritha T. Sundaram (“Plaintiff”) by her attorneys, for her Complaint against Defendants Nordstrom, Inc. and J.D. Fine & Co., Inc. (“Tart”) (collectively “Defendants”), alleges as follows:

NATURE OF THE ACTION

1. This is an action for infringement of U.S. Patent No. RE 48,710 (“RE710,” attached hereto as Exhibit A) arising under the patent laws of the United States, 35 U.S.C. § 100 *et seq.* This action relates to the field of reversible dresses and a method of manufacturing reversible dresses.

PARTIES

2. Plaintiff Durgamritha Sundaram resides in the State of New York, is an individual over the age of 18, a citizen of New York, a resident of New York City, the inventor of RE710 and the owner of all rights in and to RE710.

3. Defendant Nordstrom, Inc. is a corporation organized and existing under the laws of the State of Washington with a place of business at 225 West 57th Street, New York, New York 10019. Upon information and belief, Nordstrom Inc. does business as Nordstrom Rack (together “Nordstrom”).

4. Defendant JD Fine & Co., Inc. is a corporation organized and existing under the laws of the State of Texas with a place of business at 179 Mason Circle, Concord, CA 94520. Upon information and belief, JD Fine & Co. manufactures, sells, distributes, advertises, and licenses various types of clothing and accessories under the TART line of trademarks, including “Tart Collections” and “Lemon Tart.”

5. Upon information and belief, Defendants are in the business of manufacturing, distributing and/or selling apparel, including reversible dresses

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338(a) (patent infringement).

7. This Court has personal jurisdiction over Defendants because Defendants have committed acts of patent infringement in this district. Specifically, on information and belief, Defendants have been making, using, selling, offering to sell, and/or distributing reversible dresses throughout the United States and in this judicial district and/or have been causing to be made, used, sold, offered for sale, and/or distributed throughout the United States and in this judicial district.

8. This Court also has jurisdiction over Defendants because this action arises from actions of Defendants directed towards New York, and because Defendants have purposefully availed themselves of the rights and benefits of New York law by engaging in systematic and

continuous contacts with New York. Defendants have conducted and are conducting business in this judicial district by Defendants Tart and Nordstrom selling and offering for sale products through its internet website, tartcollections.com and nordstromrack.com, respectively, from which products may be purchased directly from Defendants' website. As such, at least a portion of the infringements have occurred in New York, and Defendants regularly do and solicit businesses, engage in other persistent courses of conduct and derive substantial revenue from goods and services provided to individuals in New York and in this judicial district.

9. Moreover, upon information and belief, Defendant Nordstrom has seventeen stores located in the State of New York, with six stores located in Manhattan, with a designated agent located at 80 State Street, Albany, NY 12207, at least a portion of the infringements have occurred in New York, and Nordstrom regularly does and solicits businesses, engages in other persistent courses of conduct and derives substantial revenue from goods and services provided to individuals in New York and in this judicial district.

10. Venue is proper in this District under 28 U.S.C. § 1400(b) because Defendants have committed acts of patent infringement in this District and have a regular and established place of business in this District.

THE PATENT

11. On December 27, 2016, the United States Patent and Trademark Office ("USPTO"), after a full and fair examination, duly and legally issued U.S. Patent No. 9,526,281 (the "281 patent"), entitled "SHORT REVERSIBLE DRESS".

12. Due to an inadvertent omission of the claim for benefit of a prior filed provisional application, Reissue Patent Application No. 16/661,706 was filed on October 23, 2019. The

'281 patent was duly and legally reissued on August 31, 2021 as RE48,710 ("RE710," attached hereto as Exhibit A) after a full and fair examination.

13. Plaintiff is the sole inventor and the owner of RE710 and possesses all rights of recovery under RE710.

14. RE710 claims reversible dresses (claims 1-9) and a method of manufacturing reversible dresses (claim 10). (*See* Ex. A, RE710 at claims 1-10.)

15. Claims 1 claims "[a] reversible dress comprising:

- a. a first layer of fabric having a first length, a first top end, a first bottom end, a first external side and a first internal side;
- b. a second layer of fabric having a second length longer than the first length, a second bottom end, a second top end attached to the first top end, thereby defining a distance between the first bottom end and the second bottom end, a second external side and a second internal side in operative contact with the first internal side; and
- c. a hem facing having a bottom hem end attached to the second bottom end on the second internal side and having a top hem end attached to the second internal side between the first bottom end and the first top end, wherein the size of the hem facing covers the second layer of fabric between the first bottom end and the second bottom end.

16. Claim 10 claims "[a] method of manufacturing a reversible dress, comprising:

- a. providing a first layer of fabric having a first length, a first top end, a first bottom end, a first external side and a first internal side;
- b. providing a second layer of fabric having a second length longer than the first length, a second bottom end, a second top end attached to the first top end, thereby defining a distance between the first bottom end and the second bottom end, and a second internal side in operative contact with the first internal side; and
- c. operatively connecting a hem facing having a bottom hem end attached to the second bottom end on the second internal side and having a top hem end attached to the second internal side between the first bottom end and the first top end, wherein the size of the hem facing covers the second layer of fabric between the first bottom end and the second bottom end.

INFRINGEMENT PRODUCTS

17. Defendants have been manufacturing, using, selling, offering for sale, importing, and/or otherwise commercializing that include each and every element of claims 1-3, 5, and 7-8. Defendants have been manufacturing or causing to be manufactured or importing dresses manufactured by a method that includes each and every step of claim 10. (Claims 1-3, 5, 7-8, and 10 are referred to herein as the “Asserted Claims”).

18. The infringing dresses (“Infringing Dresses”) are:

| Description | Color | Identifying No. | URL |
|---|----------------------------------|--------------------|---|
| Tart Reversible Shift Dress | Navy Varig | Item #6603450 | https://www.nordstromrack.com/s/tart-reversible-shift-dress/6167293 |
| Tashi Reversible Dress | Summer Aztec with Micro Dot | 31855497805866 | https://www.tartcollections.com/products/tashi-reversible-dress?variant=31855497805866 |
| Lemon Tart 2-in-1 Surplice Reversible Dress | navy floral print / navy pattern | n/a | |
| Mariana Reversible Dress | Black / black patterned | Style#: Tart347858 | |

19. For example, Tart’s Tart Reversible Shift Dress (hereinafter “the Dress”), sold by Nordstrom, meets each and every limitation of the Asserted Claims as described in Exhibit B.

20. The first external side of the Dress and innovative hem (referred to as “hem facing”) is shown below in Figure A. (*See* RE710 at 5:47-58.) The second external side of the dress, which is longer than the first, is shown in Figure B.

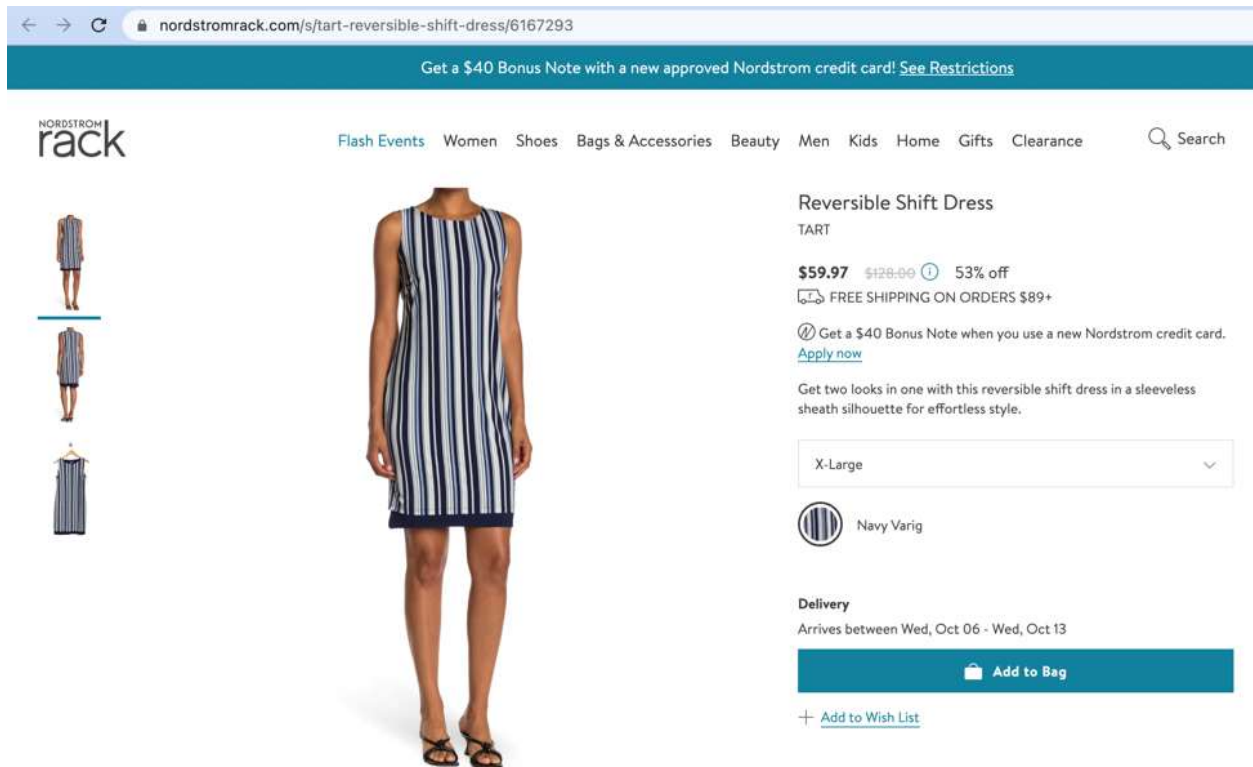


Figure A

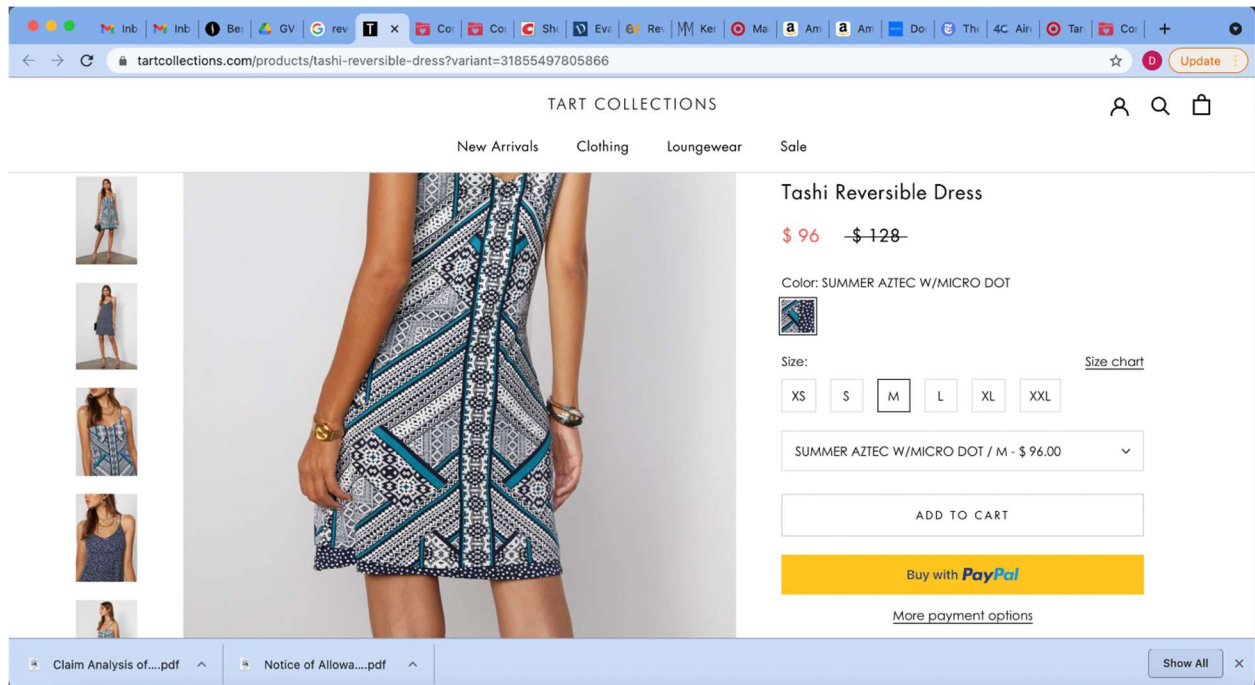


Figure B

21. Defendant Nordstrom has been selling and offering for sale Infringing Dresses using its online store at nordstromrack.com as shown below in the following screenshot of <url> showing Tart Reversible Shift Dress.



22. Defendant Tart also has been selling and offering for sale Infringing Dresses using its online store at www.tartcollections.com as shown below in the following screenshot of <url> showing Tashi Reversible Dress.



23. Defendants have at all relevant times been on notice of the existence of at least a pending patent application (U.S. Application Nos. 15/163,764 or 16/661,706) or issued patent (U.S. Patent No. 9,526,281 or RE710).

24. As recited in claim 1 of RE710, the Infringing Dresses include a first layer of fabric having a first length, a first top end, a first bottom end, a first external side and a first internal side.

25. As recited in claim 1 of RE710 Patent, the Infringing Dresses include a second layer of fabric having a second length longer than the first length, second bottom end, a second top end attached to the first top end, thereby defining a distance between the first bottom end and the second bottom end, a second external side, and a second internal side in operative contact with the first internal side.

26. As recited in claim 1 of RE710, the Infringing Dresses include a hem facing having a bottom hem end attached to the second bottom end on the second internal side and

having a top hem end attached to the second internal side between the first bottom end and the first top end, wherein the size of the hem facing is selected so that the hem facing covers the second layer of fabric between the first bottom end and the second bottom end.

27. As recited in claim 2 of RE710, the Infringing Dresses include a hem, wherein the size of the hem facing is determined by the distance between the first bottom end and the second bottom end.

28. As recited in claim 3 of RE710, the Infringing Dresses include a first external side of the first layer of fabric, wherein the first external side of the first layer of fabric is patterned or colored.

29. As recited in claim 5 of RE710, the Infringing Dresses include a second external side of the second layer, wherein the second external side of the second layer of fabric has a different color, pattern or texture than the first external side of the first layer of fabric.

30. As recited in claim 7 of RE710, the Infringing Dresses include a hem, wherein the size of the hem facing is selected to cover the distance between the first bottom end and the second bottom end.

31. As recited in claim 8 of RE710, the Infringing Dresses include a hem, wherein the size of the hem facing is selected to completely cover the distance between the first bottom end and the second bottom end.

32. As recited in claim 10 of RE710, the Infringing Dresses are manufactured by providing a first layer of fabric having a first length, a first top end, a first bottom end, a first external side and a first internal side.

33. As recited in claim 10 of RE710, the Infringing Dresses are manufactured by providing a second layer of fabric having a second length longer than the first length, a second

bottom end, a second top end attached to the first top end, thereby defining a distance between the first bottom end and the second bottom end, and a second internal side in operative contact with the first internal side.

34. As recited in claim 10 of RE710, the Infringing Dresses are manufactured by operatively connecting a hem facing having a bottom hem end attached to the second bottom end on the second internal side and having a top hem end attached to the second internal side between the first bottom end and the first top end, wherein the size of the hem facing covers the second layer of fabric between the first bottom end and the second bottom end.

35. Defendants' actions as alleged have caused and will continue to cause irreparable harm to Plaintiff and her valuable Patent, and to the business and substantial goodwill represented thereby, remedies at law are inadequate to compensate for that injury, considering the balance of hardships between Plaintiff and Defendants, a remedy in equity is warranted, the public interest would not be disserved by an injunction, and said acts and damage will continue unless restrained by this Court.

COUNT I
DIRECT INFRINGEMENT OF RE710 UNDER 35 U.S.C. § 271(a)

36. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1 through 35 as though fully set forth herein.

37. In violation of 35 U.S.C. §271(a), and as described in greater detail above, Defendants have been directly infringing RE710 Patent, literally or under the doctrine of equivalents.

38. Defendants been directly infringing the Asserted Claims of RE710 by making, using, selling and/or offering to sell the Dress without authority in the United States, and will continue to do so unless enjoined by this Court. For example, Defendants have been making,

selling, offering to sell, and advertising the Infringing Dresses that meet each and every element of the Asserted Claims, as described in Exhibit B.

39. Defendants have had knowledge of infringement of RE710, making Defendants' infringement willful.

40. Plaintiff is in compliance with 35 U.S.C § 287.

41. On information and belief, Defendants will continue to infringe RE710 unless and until they are enjoined by the Court, the patent is licensed, or the patent expires.

42. As a direct and proximate result of Defendants' infringement of RE710, Plaintiff has been and continues to be damaged. As such, Defendants should be finally and permanently enjoined from further infringement.

COUNT II
INFRINGEMENT OF RE710 UNDER 35 U.S.C. § 271(g)

43. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1 through 42 as though fully set forth herein.

44. In violation of 35 U.S.C. §271(g), and as described in greater detail above, Defendants have been importing into the United States or are offering to sell, selling, or using reversible dresses manufactured by the process claimed in RE710 Patent, literally or under the doctrine of equivalents.

45. Defendants, acting alone or in concert, have imported and are importing, Dresses that infringe at least claim 10 of RE710, which have been manufactured in China, without authority in the United States.

46. Defendants, acting alone or in concert, have sold, offered to sell, are selling, sell, use and/or used the Infringing Dresses, made in China, in this District.

47. Defendants have committed these acts of infringement without license or authorization.

48. Defendants know or should have known that the importation, offer for sale or sale in the United States of the Infringing Dresses infringe RE710, at least as of the service of the present complaint, making Defendants' infringement willful.

49. Plaintiff is in compliance with 35 U.S.C § 287.

50. On information or belief, Defendants will continue to infringe RE710 unless enjoined by this Court, the patent is licensed, or the patent expires.

51. As a direct and proximate result of Defendants' direct infringement of the RE710, Plaintiff has been and continues to be damaged. As such, Defendants should be finally and permanently enjoined from further infringement.

DEMAND FOR JURY TRIAL

52. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that it be granted the following relief:

- A. That judgement be entered that Defendants infringed RE710 directly, literally and/or under the doctrine of equivalents by making, selling, and offering to sell their Dresses within the United States and/or importing their Dresses into the United States;
- B. That Defendants, their officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing RE710;

- C. That Plaintiff be awarded damages pursuant to 35 U.S.C. § 284 sufficient to compensate Plaintiff for Defendants' past infringement and any continuing or future infringement of RE710 up until the date that Defendants are finally and permanently enjoined from further infringement, including compensatory damages;
- D. An assessment of pre-judgment and post-judgment interest and costs against Defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;
- E. That Plaintiff be awarded enhanced damages pursuant to 35 U.S.C. § 284 for Defendants willful infringement of RE710;
- F. That this case be declared exceptional under 35 U.S.C. § 285 and award Plaintiff their attorneys' fees, expenses and costs incurred in this action;
- G. That an accounting be performed of Defendants' infringing activities through trial and judgment; and
- H. Any such further relief that the Court deems equitable and just.

Respectfully submitted on April 21, 2022, by:

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