

SHIBUMI SHADE, INC.

Plaintiff,

V.

BEACH SHADE LLC, and
MATTHEW FINNERAN

Defendants.

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Civil Action No: 5:21-cv-256

COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF AND DAMAGES

JURY TRIAL DEMANDED

Plaintiff Shibumi Shade, Inc. (“Shibumi Shade” or “Plaintiff”), by and through its undersigned counsel, files this Complaint against Defendants Beach Shade LLC (“Beach Shade LLC”) and Matthew Finneran (“Finneran”) (collectively “Defendants”), and, in support thereof, allege as follows:

THE PARTIES

1. Plaintiff Shibumi Shade is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business located at 614 Holden Street, Raleigh, North Carolina 27604-1949.

2. Upon information and belief, Defendant Beach Shade LLC is a limited liability corporation organized and existing under the laws of the State of North Carolina with its principal office at 1607 Royal Red Trail, Apex, North Carolina 27502. Defendant Beach Shade LLC may be served with process by serving its registered agent Matthew Finneran at 1607 Royal Red Trail, Apex, North Carolina 27502, or as otherwise authorized under applicable law.

3. Upon information and belief, Defendant Matthew Finneran is an individual residing in the State of North Carolina. Upon information and belief, Mr. Finneran is a director,

officer, and/or owner of the Beach Shade LLC and has had direction and control over the actions of the Defendants complained of herein. Upon information and belief, Mr. Finneran may be served at his primary address, 1607 Royal Red Trail, Apex, North Carolina 27502.

JURISDICTION AND VENUE

4. This is an action for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271 and for false designation of origin under the Lanham Act, 15 U.S.C. § 1125(a).

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Patent Laws of the United States, including 35 U.S.C. § 1 *et seq.* and the Lanham Act, including 15 U.S.C. § 1125(a).

6. This Court has supplemental jurisdiction over Plaintiff's remaining claims pursuant to 28 U.S.C. § 1367 because those claims arise from part of the same case or controversy as the federal question claims.

7. This Court has personal jurisdiction over Defendants, and venue is proper in this District, because Mr. Finneran is domiciled within this District and Defendant Beach Shade LLC has a regular and established place of business within this District. Upon information and belief, Defendants actively and regularly conduct business within the State of North Carolina and within this District and continuous, systematic, and substantial presence within this District. Further, upon information and belief, Defendants' infringement of Plaintiff's patents and trade dress is occurring within the State of North Carolina and this District through Defendants' importation, manufacture, and distribution of the "Beach Shade" (hereinafter referred to as the "Accused Product" or simply "Beach Shade") within the State of North Carolina and this District and

through Defendants' sales of or offers to sell the Accused Product in the State of North Carolina and in this District.

8. Venue as to Defendants is thus proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

FACTS

9. Plaintiff was founded in 2016 by two brothers and a longtime friend who grew up visiting Emerald Isle, North Carolina every summer. The founders recognized the problems with traditional beach umbrellas, which were flimsy, bulky, and difficult to assemble and set out to create a new design that would be both lightweight and easy to assemble in 2015. The founders worked for more than a year out of their home to perfect their design for the ideal beach shade before formally launching the Shibumi Shade in 2016.

10. Today, the Shibumi Shade is used and sold throughout the United States and has gained widespread recognition for its superior design and high quality of its products, which are still sewn in North Carolina and Virginia and sold through its website, www.shibumishade.com, and in limited quantities at select retail locations throughout the United States.

11. As the Shibumi Shade's popularity grew, the founders set out to protect their designs and intellectual property. Plaintiff makes every attempt to protect its intellectual property rights, to protect its reputation, and to protect its customers from confusion in the marketplace. To that end, Plaintiff has obtained two issued patents to-date, U.S. Patent No. 10,753,117 (the "'117 Patent") and U.S. Patent No. 10,190,330 (the "'330 Patent") (collectively the "Patents-in-Suit").

12. Plaintiff owns all right, title, and interest in and to the Patents-in-Suit.

13. Plaintiff's innovations did not end with the Patents-in-Suit. Plaintiff also has multiple additional utility and design patent applications pending with the U.S. Patent and Trademark Office, including Publication No. US20210002918A1 and Application Nos. 17/232,799, 17/343,107, 17/343,114, 17/343,133, 29/709,175, and 29/753,433. Plaintiff is continuously developing its intellectual property portfolio and is in the process of preparing additional filings with the U.S. Patent and Trademark Office.

14. Plaintiff makes, distributes, offers to sell, and sells products, the Shibumi Shade, that practice the Patents-in-Suit as well as the inventions incorporated into Plaintiff's pending utility and design patent applications. Plaintiff has marked the covered products in accordance with 35 U.S.C. § 287.

15. As a result of the novel and highly distinctive overall appearance of the Shibumi Shade, as well as Plaintiff's extensive promotion, sale, distribution, and use of its product in the marketplace, consumers have come to immediately associate the design of the Shibumi Shade with a single source—and specifically with Plaintiff. Accordingly, Plaintiff enjoys strong trade dress rights in the overall appearance of the Shibumi Shade product.

16. Plaintiff has been manufacturing and selling retail products utilizing its unique design since 2016 online and in select retail stores throughout the United States. Plaintiff has invested significant time, money, and effort in promoting the Shibumi Shade. In addition, the Shibumi Shade is easily visible and instantly recognizable when in use by beachgoers. The combination of Plaintiff's promotional efforts and the highly visible nature of the product when in use has resulted in significant commercial success and public recognition for the product's distinctive design, appearance, and trade dress. The Shibumi Shade has become a beach staple and can be seen lined up on the beach for miles during the summer. The Shibumi Shade has

even been featured in the New York Times and Garden & Gun Magazine and in TV shows. Exemplary photographs of the Shibumi Shade are provided below.





17. Plaintiff's trade dress consists of the overall appearance of its product and the general impression created thereby. The individual elements contributing to the Shibumi Shade's overall appearance and trade dress rights include the following: (a) a rectangular canopy that is attached on only one side to a frame, that floats freely in the wind on the other three sides, that bears two horizontal stripes and the color blue, and that is approximately 15 feet wide and 10 feet deep, (b) a frame consisting of pole segments that are secured to one another and that form a continuous curved frame, each end of which is inserted into the sand, (c) a cord extending from the center of the frame to an anchor, and (d) an anchor consisting of the canopy's carrying case filled with sand. The Shibumi Shade's aerially suspended canopy distinctly waves in the wind creating a unique, immediate impression on consumers when viewed on the beach. As a result of Plaintiff's extensive and exclusive use of this highly distinctive design since at least 2016, consumers instantly and exclusively associate the design with a single source—when consumers see the design, they immediately believe that the products come from Plaintiff. Plaintiff's trade

dress has developed substantial goodwill among consumers, belonging exclusively to Shibumi Shade.

18. The trade dress features of the Shibumi Shade as described above are non-functional, highly distinctive, have acquired secondary meaning, and together comprise a design that identifies the Shibumi Shade as originating from a single source—Plaintiff. The particular design, appearance, and arrangement of these elements as a whole separate it from the utilitarian requirements to create a beach shade. Plaintiff developed and marketed a distinctive trade dress and has expended significant resources with the goal and effect of causing that trade dress to be associated directly and solely with Shibumi Shade. That Plaintiff's product is covered by pending design patent applications is further evidence that Plaintiff's trade dress is non-functional in nature.

19. The Accused Product is a nearly identical copy of the Shibumi Shade, as shown in the following side-by-side comparisons:





20. Defendants unlawfully copied Plaintiff's innovations and distinctive designs in an effort to unfairly compete with Plaintiff. Defendants have, upon information and belief, imported, manufactured, distributed, sold, or offered to sell the Accused Product in the United States, including within the State of North Carolina and within this District.

21. Defendants describe and provide photos of the Accused Product on its website at www.beachshade.com. A copy of the Defendants' website advertising the Accused Product and the corresponding photos (as accessed on June 8, 2021) is attached hereto and incorporated herein by reference as Exhibit A.

22. Upon information and belief, Defendants imported approximately 1,000 of the Accused Products into the United States from China in late 2020 with the intent to sell and distribute them throughout the United States.

23. Upon information and belief, Defendants established the Beach Shade LLC website, www.beachshade.com, before April 2021 and began selling the Accused Product on

their website and advertising the Accused Product on their website, Facebook, and Instagram on or around May 24, 2021. Exhibits A, B, and C. Upon information and belief, Defendants began selling the Accused Product on Amazon on or around June 2, 2021. Further, upon information and belief, Defendants initially offered the Accused Product for sale on its website and on Amazon for \$150.00 but, some period after first offering the Accused Product for sale on Amazon, Defendants raised the price for the Accused Products to \$174.99. *See* Exhibit D and Exhibit E.

24. Upon information and belief, Defendant Beach Shade LLC is the alter ego of Defendant Finneran. Upon information and belief, Defendant Beach Shade LLC is completely controlled by its Chief Executive Officer, Mr. Finneran. Upon information and belief, Mr. Finneran is the sole functioning officer or director of Beach Shade LLC and Beach Shade LLC's Chief Technology Officer, Austin Brown, is a nonfunctioning officer or director. Upon information and belief, Beach Shade LLC does not maintain corporate records or other corporate formalities. Upon information and belief, Beach Shade LLC and Mr. Finneran share the same office space at 1607 Royal Red Trail, Apex, North Carolina 27502. Upon information and belief, Mr. Finneran treats Beach Shade LLC's corporate funds as his own personal funds and fails to maintain any separate corporate identity. Upon information and belief, Beach Shade LLC is undercapitalized and funded solely by Mr. Finneran in his individual capacity.

Defendants' Infringement of the '330 Patent

25. The '330 Patent, entitled "SHADING SYSTEM AND METHOD OF USE," was duly and legally issued on January 29, 2019 to Dane Brooks Barnes, Alexander Griffith Slater, and Scott Christian Barnes. A true and accurate copy of the '330 Patent is attached hereto and incorporated herein by reference as Exhibit F.

26. The Accused Product infringes one or more claims of the '330 Patent, including at least each and every element of Claim 1 either literally or under the doctrine of equivalents, as set forth below and in the claim chart attached as Exhibit G.

27. Claim 1 of the '330 Patent recites:

1. A system for providing shade onto a surface, comprising:

a canopy configured for engagement with, and complete aerial suspension by, a single, continuous frame,

wherein the frame consists essentially of a plurality of sections configured for end-to-end alignment from a left end to a right end, wherein each section is configured to engage with any adjacent sections,

wherein the left end and the right end are configured to be secured to the surface for aerially supporting the frame and completely suspending the canopy aerially, and

a container for housing and transporting all of the other components of the system, wherein the container is also an anchor for housing weight,

a cord selectively engaged or coupled to an interior of the container for inverting the container to serve as the anchor for housing weight, the cord selectively engageable or coupled to the frame.

28. The Accused Product either literally or equivalently contains a system for providing shade onto a surface. *See* Ex. G at 1.

29. The system of the Accused Product either literally or equivalently comprises a canopy configured for engagement with, and complete aerial suspension by, a single, continuous frame. *See* Ex. G at 2.

30. The system of the Accused Product either literally or equivalently comprises a single, continuous frame wherein the frame consists essentially of a plurality of sections configured for end-to-end alignment from a left end to a right end, wherein each section is configured to engage with any adjacent sections and wherein the left end and the right end are configured to be secured to the surface for aurally supporting the frame and completely suspending the canopy aurally. *See* Ex. G at 3-5.

31. The system of the Accused Product either literally or equivalently comprises a container for housing and transporting all of the other components of the system, wherein the container is also an anchor for housing weight. *See* Ex. G at 6-7.

32. The system of the Accused Product either literally or equivalently comprises a cord selectively engaged or coupled to an interior of the container for inverting the container to serve as the anchor for housing weight, the cord selectively engageable or coupled to the frame. *See* Ex. G at 8-9.

Defendants' Infringement of the '117 Patent

33. The '117 Patent, entitled "SHADING SYSTEM AND METHOD OF USE," was duly and legally issued on August 25, 2020 to Dane Brooks Barnes, Alexander Griffith Slater, and Scott Christian Barnes. A true and accurate copy of the '117 Patent is attached hereto and incorporated herein by reference as Exhibit H.

34. The Accused Product infringes one or more claims of the '117 Patent, including at least each and every element of Claim 1 either literally or under the doctrine of equivalents, as set forth below and in the claim chart attached as Exhibit I.

35. Claim 1 of the '117 Patent recites:

1. A system for providing shade onto a surface, the system comprising:

a frame being directly engageable with the surface such that when the frame is directly engaged with the surface, the frame is configured to lie within a plane substantially perpendicular to the surface, wherein the frame comprises a plurality of longitudinally-extending sections arrangeable so that a first longitudinally-extending section and a second longitudinally-extending section are each directly engaged with the surface at first ends thereof and are coupleable to one another about opposing, second ends or are each respectively coupleable to first and second ends of at least one intermediate longitudinally-extending section arranged therebetween;

a cable extending through the plurality of longitudinally-extending sections of the frame from the first end of the first longitudinally-extending section to the first end of the second longitudinally-extending section and any of the at least one intermediate longitudinally-extending sections arranged therebetween so that when the first end of the first longitudinally-extending section and the first end of the second-longitudinally extending section are directly engaged with the surface, the cable is configured to lie within the plane substantially perpendicular to the surface;

a canopy extending between a suspension end and an opposing trailing end, the suspension end of the canopy being coupleable with the frame about a portion of the frame defined between the first ends of the first and second longitudinally-extending sections, wherein the trailing end of the canopy is spaced apart from the portion of the frame such that when a wind force is applied to the

canopy, the canopy extends at an angle relative to the plane, the angle being non-coplanar with the plane and varying with the wind force;

a cord having a first end and a second end, the first end or the second end of the cord being coupleable to the frame; and

an anchor coupleable to the other of the second end or the first end of the cord and being in contact with the surface at an angle relative to the plane so that the frame remains substantially within the plane when the wind force is applied to the canopy.

36. The Accused Product either literally or equivalently contains a system for providing shade onto a surface. *See* Ex. I at 1.

37. The system of the Accused Product either literally or equivalently comprises a frame being directly engageable with the surface such that when the frame is directly engaged with the surface, the frame is configured to lie within a plane substantially perpendicular to the surface, wherein the frame comprises a plurality of longitudinally-extending sections arrangeable so that a first longitudinally-extending section and a second longitudinally-extending section are each directly engaged with the surface at first ends thereof and are coupleable to one another about opposing, second ends or are each respectively coupleable to first and second ends of at least one intermediate longitudinally-extending section arranged therebetween. *See* Ex. I at 2-6.

38. The system of the Accused Product either literally or equivalently comprises a cable extending through the plurality of longitudinally-extending sections of the frame from the first end of the first longitudinally-extending section to the first end of the second longitudinally-extending section and any of the at least one intermediate longitudinally-extending sections arranged therebetween so that when the first end of the first longitudinally-extending section and

the first end of the second-longitudinally extending section are directly engaged with the surface, the cable is configured to lie within the plane substantially perpendicular to the surface. *See Ex. I at 7-8.*

39. The system of the Accused Product either literally or equivalently comprises a canopy extending between a suspension end and an opposing trailing end, the suspension end of the canopy being coupleable with the frame about a portion of the frame defined between the first ends of the first and second longitudinally-extending sections, wherein the trailing end of the canopy is spaced apart from the portion of the frame such that when a wind force is applied to the canopy, the canopy extends at an angle relative to the plane, the angle being non-coplanar with the plane and varying with the wind force. *See Ex. I at 9-12.*

40. The system of the Accused Product either literally or equivalently comprises a cord having a first end and a second end, the first end or the second end of the cord being coupleable to the frame. *See Ex. I at 13.*

41. The system of the Accused Product either literally or equivalently comprises an anchor coupleable to the other of the second end or the first end of the cord and being in contact with the surface at an angle relative to the plane so that the frame remains substantially within the plane when the wind force is applied to the canopy. *See Ex. I at 14-15.*

42. Defendants have purposefully advertised, marketed, promoted, offered for sale, sold, distributed, manufactured, and/or imported, and continues to advertise, market, promote, offer for sale, sell, distribute, manufacture, and/or import products to directly compete with Plaintiff that violate Plaintiff's rights, including Plaintiff's patent rights. Defendants' infringement is causing irreparable harm to Plaintiff, thereby forcing Plaintiff to bring this lawsuit to protect its intellectual property.

43. Defendants' infringing products include at least the Beach Shade, exemplary figures of which are shown below.



Defendants' Infringement of Shibumi Shade's Trade Dress

44. Defendants infringe Plaintiff's trade dress by making, importing, using, offering for sale and/or selling the Accused Product, which unlawfully copies both the overall appearance of the Shibumi Shade and nearly all of its individual design elements.

45. The Accused Product includes the distinctive blue color of the Shibumi Shade.

46. The Accused Product (top) features (a) a rectangular canopy that is attached to a frame only on one side, that floats freely in the wind on the other three sides, that bears two horizontal stripes and the color blue, and that is approximately 15 feet wide and 10 feet deep, (b) a frame consisting of pole segments that are secured to one other and that form a continuous curved frame, each of which is inserted into the sand, (c). with a cord extending from the center of the frame to an anchor, and (d) an anchor consisting of the canopy's carrying case filled with sand similar to the Shibumi Shade (bottom).



47. Upon information and belief, the Accused Product uses the same fabric as the Shibumi Shade—a canopy made of 100% polyester and a nylon carrying bag. Upon information and belief, the Accused Product is similar in size and shape to the Shibumi Shade—approximately 16 feet wide and 9 feet long—and has a similar shade footprint as the Shibumi Shade.

48. The suspended blue canopy design of the Accused Product (left) distinctively waves in the wind creating the same visual impression on consumers as the Shibumi Shade (right) when viewed on the beach.



49. The Accused Product is marketed and sold to the same class of consumers—beachgoers—and sold through the same channels as the Shibumi Shade, primarily online through Beach Shade LLC’s website and social media accounts.

50. Overall, the design of the Accused Product is so similar to the highly distinctive design of the Shibumi Shade as to give consumers the false impression that the Accused Product originates from, is endorsed by, or is otherwise affiliated with the Shibumi Shade, thus leading to

a high risk of consumer confusion, mistake, and deception as to the source of the Accused Product.

51. Upon information and belief, Defendants' use of Plaintiff's distinctive trade dress has already resulted in multiple instances of actual confusion by consumers in the marketplace.

52. Upon information and belief, Defendants are making, using, offering for sale, and/or selling the Accused Product with the specific intent to cause confusion, mistake, and deception among consumers and to erode the substantial goodwill that Plaintiff has created with its customers through its extensive use of its highly distinctive trade dress. Upon information and belief, Defendants intentionally copied Plaintiff's trade dress in a manner that would increase the likelihood that consumers would mistakenly believe Defendants' products originated from Plaintiff. Upon comparison, Defendants' trade dress is confusingly similar with Plaintiff's trade dress.

Defendants' Notice of the Patents-in-Suit and Plaintiff's Trade Dress

53. On May 24, 2021, shortly after learning that Defendants were offering the Accused Product for sale, Shibumi Shade co-founder Dane Barnes reached out to Defendant Finneran to notify him of Plaintiff's intellectual property rights. Defendant did not agree to cease infringement.

54. Soon thereafter, on May 27, 2021, counsel for Plaintiff sent a letter to Defendants notifying Defendants that the Accused Product infringe one or more claims of the '117 and the '330 Patents in addition to Plaintiff's trade dress. Plaintiff's letter requested that Defendants respond to its allegations of infringement and confirm their intention to cease selling the Accused Product by no later than June 4, 2021. Exhibit J.

55. Counsel for Defendants responded on June 2, 2021, but Defendants did not agree to cease infringement. Exhibit K. Upon information and belief, Defendants listed the Beach Shade for sale on Amazon that same day, June 2, 2021.

56. The following day, on June 3, 2021, Mr. Finneran and Shibumi Shade co-founders Dane and Scott Barnes met in person to discuss whether Defendants would cease the infringing activity. Defendants again refused to do so.

57. Plaintiff discovered that Defendants had listed the Accused Product for sale on Amazon on June 6, 2021. Mr. Barnes reached out to Mr. Finneran regarding Defendants' decision to list the Accused Product for sale on Amazon, but Defendants refused to remove the offending Amazon listing.

58. The following day, June 7, 2021, counsel for Plaintiff promptly notified Defendants' counsel that it intended to seek emergency relief from Defendants' infringement unless Defendants confirmed that they would immediately halt sales of the Accused Products and destroy existing inventory. Exhibit L.

59. On June 9, 2021, counsel confirmed that Defendants did not intend to immediately halt sales of the Accused Products or destroy existing inventory. Exhibit M.

60. On June 11, 2021, counsel for Plaintiff notified counsel for Defendants that Plaintiff had no other choice but to file the present suit and seek immediate emergency relief from the Court given Defendants' ongoing and willful infringement and the ongoing and imminent irreparable harm Plaintiff is facing. Exhibit N.

61. Upon information and belief, Defendants knew of the patent applications resulting in the '330 and/or '117 Patents at least as early as 2018. Defendants have known of the '330 and the '117 Patents and its own infringing activities since at least as early as May 24, 2021.

Defendants have known of Plaintiff's trade dress and its own infringing activities since at least as early as May 27, 2021.

COUNT I – INFRINGEMENT OF THE '330 PATENT

62. Plaintiff repeats and incorporates by reference the allegations contained in the foregoing paragraphs, as if stated fully herein.

63. Plaintiff is the owner of the '330 Patent, with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '330 Patent against infringers, and to collect damages for all relevant times.

64. Defendants have, either alone or in concert, directly infringed and continue to infringe the '330 Patent, either literally or through the doctrine of equivalents, by making, using, importing, supplying, distributing, selling and/or offering for sale the Beach Shade within the United States, in violation of 35 U.S.C. § 271(a).

65. Upon information and belief, Defendants have made and continue to make unlawful gains and profits from its infringement of the '330 Patent.

66. At least as early as May 24, 2021, Defendants have been on notice and have had knowledge of the '330 Patent and of Plaintiff's allegations of infringement. Defendants' infringement of the '330 Patent has been willful and deliberate at least since this date.

67. Plaintiff has been damaged and irreparably harmed by Defendants' infringement of the '330 Patent for which Plaintiff is entitled to relief under 35 U.S.C. § 284. Plaintiff will continue to suffer damages and irreparable harm unless Defendants are enjoined preliminarily and permanently by this Court from continuing their infringement.

COUNT II – INFRINGEMENT OF THE '117 PATENT

68. Plaintiff repeats and incorporates by reference the allegations contained in the foregoing paragraphs, as if stated fully herein.

69. Plaintiff is the owner of the '117 Patent, with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '117 Patent against infringers, and to collect damages for all relevant times.

70. Defendants have, either alone or in concert, directly infringed and continue to infringe the '117 Patent, either literally or through the doctrine of equivalents, by making, using, importing, supplying, distributing, selling and/or offering for sale the Beach Shade within the United States, in violation of 35 U.S.C. § 271(a).

71. Upon information and belief, Defendants have made and continue to make unlawful gains and profits from its infringement of the '117 Patent.

72. At least as early as May 24, 2021, Defendants have been on notice and have had knowledge of the '117 Patent and of Plaintiff's allegations of infringement. Defendants' infringement of the '117 Patent has been willful and deliberate at least since this date.

73. Plaintiff has been damaged and irreparably harmed by Defendants' infringement of the '117 Patent for which Plaintiff is entitled to relief under 35 U.S.C. § 284. Plaintiff will continue to suffer damages and irreparable harm unless Defendants are enjoined preliminarily and permanently by this Court from continuing their infringement.

COUNT III – FALSE DESIGNATION OF ORIGIN

Lanham Act, 15 U.S.C. § 1125(a)

74. Plaintiff repeats and incorporates by reference the allegations contained in the foregoing paragraphs, as if stated fully herein.

75. Plaintiff invested significant time, money, and effort in developing the Shibumi Shade, resulting in commercial success and public recognition of its distinctive design, appearance, and trade dress. Plaintiff has used its distinctive trade dress since the Shibumi Shade was first launched in 2016, more than five years ago.

76. As a result of Plaintiff's advertising and promotion of the Shibumi Shade, the trade and consuming public have come to associate the distinctive trade dress of the Shibumi Shade with a single producer or source. Accordingly, the Shibumi Shade trade dress has acquired secondary meaning in the marketplace as to the origin of the product.

77. Plaintiff's trade dress is non-functional and highly distinctive.

78. Defendants have used, made, imported, offered for sale and/or sold online the Accused Product which copies and is confusingly similar in appearance to Plaintiff's trade dress. The Accused Product is therefore likely to deceive and confuse the consuming public as to the source or origin of the infringing shades in violation of 15 U.S.C. § 1125(a).

79. Both the Shibumi Shade and the Accused Product are sold in overlapping and directly competing trade channels, further exacerbating the likelihood of confusion between the Shibumi Shade and the Accused Product.

80. Defendants have engaged in such wrongful conduct with the willful purpose of misleading, deceiving, or confusing customers and the public as to the origin and authority of their infringing products, thereby trading on Plaintiff's extensive goodwill, reputation, and creative designs.

81. Defendants' conduct constitutes willful infringement of Plaintiff's protectable trade dress, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

82. Defendants' infringing activities have caused Plaintiff irreparable injury and monetary damages. Unless enjoined, Plaintiff will continue to suffer irreparable injury and monetary damages.

COUNT V – UNFAIR AND DECEPTIVE TRADE PRACTICES
N.C. Gen. Stat. §§ 75-1.1

83. Plaintiff repeats and incorporates by reference the allegations contained in the

foregoing paragraphs, as if stated fully herein.

84. Plaintiff is based in North Carolina and is therefore entitled to the protections afforded under the laws of the State of North Carolina.

85. Plaintiff invested significant time, money, and effort in advertising and promoting the Shibumi Shade and, as a result, the Shibumi Shade is associated exclusively with Plaintiff by the consuming public.

86. Defendants' acts and conduct as alleged above, including Defendants' infringement and intentional copying of Plaintiff's trade dress, constitute unfair or deceptive acts or practices in or affecting North Carolina commerce, as defined by N.C. Gen. Stat. § 75-1.1.

87. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered and will continue to suffer pecuniary damages, including but not limited to losses and damages in an amount to be determined at trial. Defendants' conduct therefore justifies an award of treble damages pursuant to N.C. Gen. Stat. § 75-16.

88. Because much of the damages suffered by Plaintiff as a result of Defendants' conduct is and will be irreparable, for which Plaintiff has no adequate remedy at law, Plaintiff is further entitled to preliminary and permanent injunctive relief.

89. Defendants have willfully engaged in the acts and practices alleged in this Complaint. For these reasons, Plaintiff is further entitled to recover attorneys' fees from Defendants under N.C. Gen. Stat. § 75-16.1(1).

ATTORNEYS' FEES

90. Pursuant to 35 U.S.C. § 285, Plaintiff seeks reasonable attorneys' fees in this case.

JURY DEMAND

91. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff respectfully

requests a trial by jury of any issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. that Defendants be declared to have directly infringed one or more of the claims of the '330 and '117 Patents under 35 U.S.C. § 271(a);

B. that that Court issue a temporary restraining order and preliminary and permanent injunction pursuant to 35 U.S.C. § 283 against the continuing infringement of the claims of the '330 and '117 Patents by Defendants, their officers, agents, employees, attorneys, representatives, and all others acting in concert therewith;

C. that the Court order an accounting for all monies received by or on behalf of Defendants and all damages sustained by Plaintiff as a result of Defendants' aforementioned infringements, that such monies and damages be awarded to Plaintiff, and that interest and costs be assessed against Defendants pursuant to 35 U.S.C. § 284 and 35 U.S.C. § 154(d);

D. that the Court declare that Defendants' infringement was and is willful from the time it became aware of the infringing nature of their product and award treble damages for the period of such willful infringement of the '330 and '117 Patents, pursuant to 35 U.S.C. § 284;

E. that Defendants be declared to have directly infringed Plaintiff's trade dress in violation of 15 U.S.C. § 1125(a);

F. For a judgment that, by the acts complained of above, Defendants have engaged in acts of unfair and deceptive trade practices in violation of N.C. Gen. Stat. § 75-1.1;

G. that the Court declare this an exceptional case and order that Defendants pay to Plaintiff its reasonable attorneys' fees and costs, pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117;

H. that the Court award Plaintiff treble damages pursuant to N.C. Gen. Stat. § 75-16;

I. that the Court issue a temporary restraining order and preliminary and permanent injunction against the continuing infringement of Plaintiff's trade dress by Defendants, their officers, agents, employees, attorneys, representatives, and all others acting in concert therewith;

J. that the Court award such further and other relief to Plaintiff as the Court deems just, together with its costs and disbursements in this action.

Dated: June 11, 2021

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

/s/ Samuel B. Hartzell

Samuel B. Hartzell

North Carolina Bar No. 49256

555 Fayetteville Street, Suite 1100

Raleigh, North Carolina 27601

Telephone: 919-755-2112

Facsimile: 919-755-6772

Sam.Hartzell@wbd-us.com

Preston H. Heard (*pro hac vice* to be filed)

Georgia Bar No. 476319

Lauren Baker (*pro hac vice* to be filed)

Georgia Bar No. 345536

271 17th Street, NW, Suite 2400

Atlanta, GA 30363

Telephone: (404) 862-7527

Facsimile: (404) 879-2966

Preston.heard@wbd-us.com

Telephone: (404) 888-7466

Lauren.Baker@wbd-us.com

Attorneys for Plaintiff Shibumi Shade, Inc.