

Seth D. Levy (SBN 217638)
slevy@nixonpeabody.com
Erica J. Van Loon (SBN 227712)
evanloon@nixonpeabody.com
Mark S. Zhai (SBN 287988)
mzhai@nixonpeabody.com
NIXON PEABODY LLP
300 South Grand Ave., Suite 4100
Los Angeles, CA 90071
Telephone: (213) 629-6000
Facsimile: (213) 629-6001

*Attorneys for Plaintiff
Lifetime Brands, Inc.*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

LIFETIME BRANDS, INC., a Delaware
Corporation,

Plaintiff,

v.

ZOETOP BUSINESS CO., LIMITED
d/b/a SHEIN, a Hong Kong Private
Limited Company; SHEIN
DISTRIBUTION CORPORATION, a
Delaware Corporation; FASHION
MARKETING AND
MERCHANDISING GROUP, INC, a
California Corporation; and DOES 1-10,
inclusive,

Defendants.

CASE NO.: 22-8037

COMPLAINT FOR:

- 1. PATENT INFRINGEMENT
UNDER 35 U.S.C. § 1, *et seq.***
- 2. COPYRIGHT INFRINGEMENT
UNDER 17 U.S.C. § 101 *et seq.***
- 3. TRADEMARK INFRINGEMENT
UNDER 15 U.S.C. § 1051, *et seq.***
- 4. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. &
PROF. CODE § 17200 *et seq.***
- 5. UNFAIR COMPETITION UNDER
CALIFORNIA COMMON LAW**

JURY TRIAL DEMANDED

1 Plaintiff Lifetime Brands, Inc. (“Lifetime Brands” or “Plaintiff”) for its
2 Complaint against Defendants Zoetop Business Co., Limited (“Zoetop”), Shein
3 Distribution Corporation (“Shein Distribution”), Fashion Marketing and
4 Merchandising Group, Inc. (“FMMG”), and DOES 1-10 (collectively, “Defendants”)
5 alleges as follows:

6 **NATURE OF THE ACTION**

7 1. This action arises out of Defendants’ complicit and unlawful acts
8 constituting: (i) patent infringement under the patent laws of the United States, 35
9 U.S.C. § 1, *et seq.*; (ii) copyright infringement under the Copyright Act, 17 U.S.C. §
10 101 *et seq.* (the “Copyright Act”); (iii) trademark infringement and unfair competition
11 under the Lanham Act of 1946, 15 U.S.C. § 1051, *et seq.* (the “Lanham Act”); and (iv)
12 unfair or unlawful business practices in violation of Cal. Bus. & Prof. Code § 17200, *et*
13 *seq.* and California common law.

14 2. Plaintiff brings this action seeking injunctive relief and damages, including
15 but not limited to lost profits, actual damages, and/or statutory damages, as well as
16 attorneys’ fees and costs arising out of Defendants’ willful infringement of Lifetime
17 Brands’ patents, copyrights, and trademarks.

18 **THE PARTIES**

19 3. Plaintiff Lifetime Brands is a Delaware corporation with a registered office
20 located at 241 Little Falls Drive, Wilmington, Delaware 19808 and a principal place of
21 business at 1000 Stewart Avenue, Garden City, New York, 11530.

22 4. Defendant Zoetop Business Co., Limited d/b/a SHEIN (“Zoetop”) is a
23 Private Limited Company organized and existing under the laws of Hong Kong Special
24 Administrative Region, with a registered office and principal place of business located
25 at Room 11-12, 2/F, Hong Leong Plaza (Phase 1), No. 33 Lok Yip Road, Fanling Hong
26 Kong. Upon information and belief, Zoetop conducts continuous and systematic
27 business within the state of California and owns, manages, or otherwise controls the
28

1 other Shein entities named as Defendants in this action.

2 5. Defendant Fashion Marketing and Merchandising Group, Inc. (“FMMG”),
3 originally incorporated as SHEIN Fashion Group, Inc. on December 22, 2015, is a
4 California Corporation having its principal place of business at 345 N. Baldwin Park
5 Blvd. in the City of Industry, CA 91746. Upon information and belief, FMMG is a
6 subsidiary or affiliate of Zoetop that manages the online marketing of Shein products,
7 including sales of products made through the websites www.shein.com and
8 us.shein.com.

9 6. Defendant Shein Distribution Corporation (“Shein Distribution”) is a
10 Delaware Corporation having its principal place of business at 757 S. Alameda St., Suite
11 220 in Los Angeles, CA 90021. Upon information and belief, Shein Distribution is a
12 subsidiary or affiliate of Zoetop that imports and distributes Shein products sold through
13 the websites www.shein.com and us.shein.com to consumers throughout the United
14 States.

15 7. Upon information and belief, together with the named Defendants, other
16 individuals and entities currently identified as DOES 1-10 are also responsible in one
17 manner or another for the wrongs alleged herein, in that at all relevant times, each one
18 (including all named Defendants) was the agent and servant of the others and acting
19 within the course and scope of said agency and employment. The other individuals and
20 entities are sued under fictitious names DOES 1-10 because their true names and
21 capacities are currently unknown, but Plaintiff will seek leave to amend this Complaint
22 when the true names and capacities of DOES 1-10 are ascertained.

23 **JURISDICTION AND VENUE**

24 8. This Court has subject matter jurisdiction over Plaintiff’s claims arising
25 under federal law pursuant to 28 U.S.C. §§ 1331 and 1338(a) and supplemental
26 jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367(a) because
27 they are so related to Plaintiff’s federal claims that they form an integral part of the
28

1 same case or controversy.

2 9. This Court has personal jurisdiction over Defendants Zoetop, Shein
3 Distribution, FMMG, and DOES 1-10 (collectively, “Defendants”) because Defendants
4 conduct continuous and systematic business within the state of California, played an
5 integral part in placing infringing products in the stream of commerce directed to
6 residents of this judicial district, derived commercial benefit from the sale of infringing
7 products in this judicial district, and caused injuries to Plaintiff within the Central
8 District of California.

9 10. Venue is proper under 28 U.S.C. §§ 1391 because Defendants are
10 domiciled in this judicial district, a substantial part of the events or omissions giving
11 rise to the claims alleged occurred in this judicial district, and Plaintiff has been injured
12 in this judicial district, and 28 U.S.C. § 1400(b) because Defendants committed acts of
13 infringement in this judicial district.

14 **ALLEGATIONS APPLICABLE TO ALL CLAIMS**

15 **A. Lifetime Brands’ Famous Consumer Products**

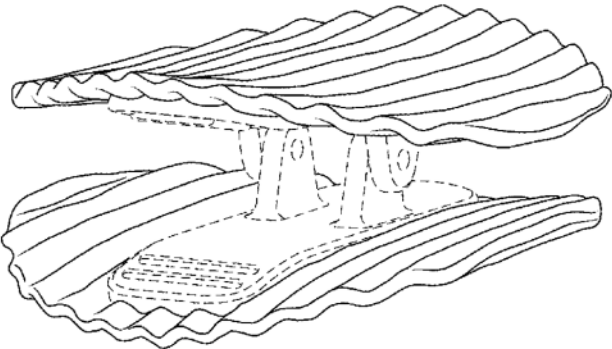
16 11. Lifetime Brands is a leader in the consumer products industry that designs,
17 sources and sells branded kitchenware, tableware and other products used in the home.
18 The Lifetime Brands family of companies markets its products under a number of
19 widely-recognized brand names and trademarks such as Farberware®, KitchenAid®,
20 Sabatier®, Amco Houseworks®, Chef’n®, Chicago Metallic™, Copco®, Fred® and
21 Friends, Houdini™, KitchenCraft®, Kamenstein®, Kizmos™, La Cafetière®,
22 MasterClass®, Misto®, Swing-A-Way®, Taylor Kitchen®, and Rabbit®.

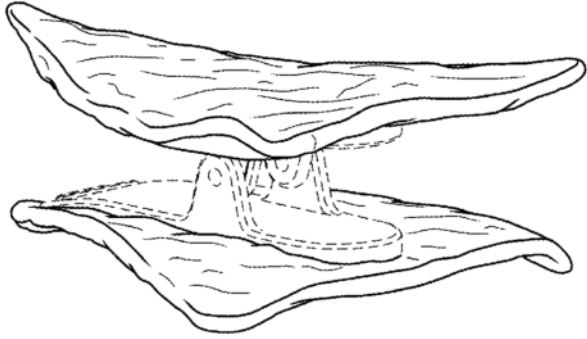

23 12. Lifetime Brands’ company, FRED®, takes every day home and kitchen
24 products and turns them into fresh, fun, and often unexpected designs. FRED® markets
25 and sells its creative one-of-a-kind home and kitchen products to consumers in every
26 state, including California, through authorized brick-and-mortar retailers such as Bed,
27 Bath, & Beyond, as well as online through marketplaces such as Amazon.com and
28

directly to consumers from www.genuinefred.com.


13. Due to Lifetime Brands' continuous commitment to quality and innovation, and in particular FRED®'s focus on creative, "unexpected" designs, FRED® brand products have enjoyed wide-spread praise from the industry and achieved millions of dollars in sales.

14. Lifetime Brands makes substantial investments in its products, including the development of intellectual property to protect the reputation of its brands such as FRED® and the market exclusivity of its innovative products. Today, Lifetime Brands owns hundreds of patents, copyrights, and trademarks covering its consumer products, including the intellectual property rights asserted by this Complaint, namely: (i) U.S. Design Patent Nos. D893,995 and D911,832; (ii) U.S. Copyright Reg. Nos. VA 1-974-622, VA 2-211-979, VA 2-029-633, and VA 2-029-631; and (iii) U.S. Trademark Registration Nos. 4,386,868, 5,164,826 and 5,591,783 (collectively, the "Asserted IP"). The following table provides a brief overview of the individual designs and marks covered by the Asserted IP.

Asserted IP:	Covering:
U.S. Design Pat. No. D893,995 ("the '995 Patent") issued August 25, 2020.	<p>The ornamental design for a bag clip shown in the following exemplary figure:</p> 

Asserted IP:	Covering:
<p>U.S. Design Pat. No. D911,832 (“the ‘832 Patent”) issued March 2, 2021.</p>	<p>The ornamental design for a bag clip shown in the following exemplary figure:</p> 
<p>U.S. Copyright Reg. No. VA 1-974-622 (“the ‘622 Mr. Tea Copyright”), first published June 25, 2012.</p>	<p>The sculpture shown in the following exemplary photograph (one of several attached to the registration):</p> 

Asserted IP:	Covering:
<p>U.S. Copyright Reg. No. VA 2-211-979 (“the ’979 Cat Tea Copyright”) first published January 1, 2018.</p>	<p>The sculpture shown in the following exemplary photograph (one of several attached to the registration):</p> 
<p>U.S. Trademark Reg. No. 4,386,868 (“the ’868 FRED Mark”).</p>	<p>The word mark “FRED” for goods within Int. Class 021, including, among other product categories, Tea Infusers.</p>
<p>U.S. Trademark Reg. No. 5,591,783 (“the ’783 PURR-TEA Mark”).</p>	<p>The word mark “PURR-TEA” for goods within Int. Class 21, namely Tea Infusers.</p>
<p>U.S. Trademark Reg. No. 5,164,826 (“the ’826 WINE LIVES Mark”).</p>	<p>The word mark “WINE LIVES” for goods within Int. Class 21, including charms for attachment to beverage glassware for identification purposes, namely, wine glass identifiers or markers.</p>
<p>U.S. Copyright Reg. No. VA 2-029-633 (“the ’633 Wine Lives Copyright”) first published January 1, 2015.</p>	<p>The sculpture shown in the following exemplary photograph (one of several attached to the registration):</p> 

Asserted IP:	Covering:
U.S. Copyright Reg. No. VA 2-029-631 (“the ’631 Winer Dogs Copyright”) first published January 1, 2016.	<p>The sculpture shown in the following exemplary photograph (one of several attached to the registration):</p> 


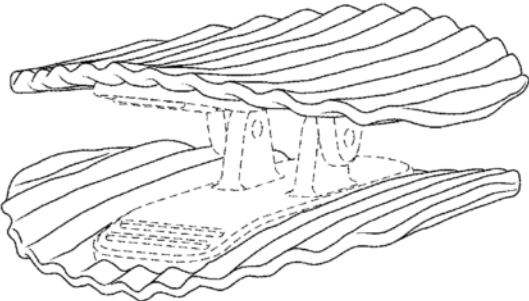
B. Defendants’ Infringing Activities

15. This lawsuit arises from Defendants’ design, manufacture, importation, distribution, advertisement, marketing, offering for sale, and/or sale of pirated “copycats” of certain FRED® brand products, each one infringing upon one or more of the Asserted IP (collectively, the “Accused Products”).


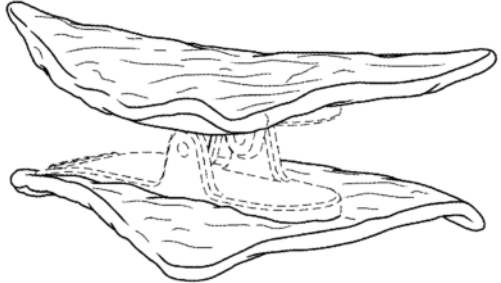

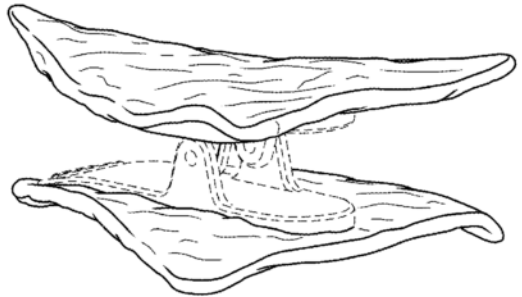
16. Upon information and belief, Defendants own, operate, and manage the e-commerce websites www.shein.com and us.shein.com, from which they market, offer for sale, and sell a variety of apparel, stationary, electronics, and home products, including the Accused Products, to consumers within this judicial district and throughout the United States.





17. Plaintiff recently discovered that Defendants have systematically and without authorization reproduced, displayed, distributed, created derivative works of, and otherwise infringed Plaintiff’s design patents, copyrights, and trademarks. Defendants have offered for sale, sold, and imported into the U.S.—including shipments to consumers located within this judicial district—at least the Accused

Products identified in the table below.¹ As demonstrated by the side-by-side comparisons with Plaintiff's Asserted IP, each Accused Product features either a virtually identical design or trademark, or is at least substantially and/or confusingly similar to Plaintiff's Asserted IP.





Accused Product	Asserted IP Infringed
<p>Including but not limited to products sold by Defendants under the name "2pcs Potato Chip Shaped Sealing Clip," SKU: sh2108311188896153, an example of which is shown below:</p> 	<p>The ornamental design of the '995 Patent</p> 

¹ Accused Products are not limited to the specific product names and SKUs that are identified herein, and include all products that infringe the Asserted IP, including those marketed, offered for sale, and sold by Defendants under different product names and SKUs.

Accused Product	Asserted IP Infringed
<p>1 Including but not limited to products sold</p> <p>2 by Defendants under the name “1pc Potato</p> <p>3 Chip Design Binder Clip,” SKU:</p> <p>4 ss2207160680376446, an example of</p> <p>5 which is shown below:</p> <p>6</p>  <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p>	<p>The ornamental design of the '832</p> <p>Patent:</p> 
<p>13 Including but not limited to products sold</p> <p>14 by Defendants under the name “2pcs Potato</p> <p>15 Chips Shaped Sealing Clip,” SKUs:</p> <p>16 sh2109133406624663 and/or</p> <p>17 ss2208292217737474, an example of</p> <p>18 which is shown below:</p> <p>19</p>  <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>The ornamental design of the '832</p> <p>Patent:</p> 

Accused Product	Asserted IP Infringed
<p>1 Including but not limited to products sold</p> <p>2 by Defendants under the name “1pc Figure</p> <p>3 Design Tea Filter,” SKU:</p> <p>4 shkitchen18210428958, an example of</p> <p>5 which is shown below:</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> 	<p>The '622 Mr. Tea Copyright:</p> <p>15</p> 
<p>16 Including but not limited to products sold</p> <p>17 by Defendants under the name “1pc Figure</p> <p>18 Shaped Tea Filter,” SKU:</p> <p>19 sh2208181101612694, an example of</p> <p>20 which is shown below:</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> 	<p>The '622 Mr. Tea Copyright:</p> <p>26</p> 

Accused Product	Asserted IP Infringed
<p>Including but not limited to products sold by Defendants under the name “Cat Shaped Tea Filter,” SKU: shkitchen18201109382, an example of which is shown below:</p> 	<p>The '979 Cat Tea Copyright:</p> 
<p>Including but not limited to products advertised as “FRED® brand PURR TEA® Tea Infusers” and sold by Defendants under the name “Cat Shaped Tea Filter,” SKU: shkitchen18201109382, an example of which is shown below:</p> 	<p>The '868 FRED Mark and the '783 PURR-TEA Mark</p>

Accused Product	Asserted IP Infringed
<p>Including but not limited to products sold by Defendants under the name “6pcs Cat Shaped Glass Marker,” SKU: sh2207155171736304, an example of which is shown below:</p> 	<p>The '633 Wine Lives Copyright:</p> 
<p>Including but not limited to products advertised as “WINE LIVES® Wine Markers” and sold by Defendants under the name “6pcs Cat Shaped Glass Marker,” SKU: sh2207155171736304, an example of which is shown below:</p> 	<p>The '826 WINE LIVES Mark and the '631 Winer Dogs Copyright:</p> 

18. Lifetime Brands has never granted Defendants a license to use any of Lifetime Brands' trademarks, copyrights, or patents, including any of the Asserted IP.

1 19. Upon information and belief, Defendants’ infringement has at all times
2 been knowing, intentional and willful, or Defendants knew or should have known and
3 were willfully blind to the fact each Accused Product is protected by the Asserted IP.

4 20. Upon information and belief, Defendants intentionally turned a blind eye
5 to intellectual property rights of others in order to profit from the sale of “copycat”
6 products, including the Accused Products, because otherwise their business model
7 could not function. For example, a number of news outlets have commented that “The
8 fact that the Chinese brand [Shein] also copies independent designers is also allegedly
9 public knowledge.”² One commentator noted that Shein has been accused of selling a
10 variety of knockoff and copycat products “stolen from everyone—Sincerely Jules to
11 Nasty Gal.”³ On the internet review site Trustpilot.com, a search for the word “fake”
12 among customer reviews for Shein returns over 2,335 reviews such as “Attention:
13 ILLEGAL!!!! FAKE!!!” and “CHEAP FAKE GOODS Minus ten stars for Shein.”⁴

14 21. Upon information and belief, all of the Defendants are part of the same
15 ongoing piracy scheme as evidenced by the fact that they share employees, agents,
16 officers and other representatives who actively participate in or exercise control over
17 the different Shein entities named as Defendants.

18 22. Upon information and belief, Defendants have attempted to hide their
19 continuing piracy of Lifetime Brands’ products by constantly changing the names,
20 SKUs, and webpage URLs of Accused Products, and by incorporating different entities.

21
22
23 ² “Welcome To The Dark Side: Why Shein Might Be The Biggest Rip-Off Since Fast
24 Fashion Was Born,” (available at www.euronews.com/living/2020/08/20/welcome-to-the-dark-side-shein-is-the-biggest-rip-off-since-fast-fashion-was-born).

25 ³ Alyssa Coscarelli, “Here’s What Happened When We Bought Clothes From Those
26 Sketchy Online Sites,” June 27, 2017 (available at <https://www.refinery29.com/en-us/2015/11/96886/shopping-asian-e-commerce-style-websites>).

27 ⁴ Trustpilot, “Shein Reviews,” (last accessed September 15, 2022, available at
28 <https://www.trustpilot.com/review/sheinside.com?search=fake>).

23. Upon information and belief, Defendants may have sold additional products that infringe upon the Asserted IP, as well as products infringing other trademarks, copyrights, and/or patents owned or exclusively licensed by Lifetime Brands. Plaintiff will seek leave to amend if discovery reveals additional infringement by Defendants.

24. Upon information and belief, Defendants' unlawful acts have misled and confused, and were intended to cause confusion, or to cause mistake, or to deceive consumers as to the affiliation, connection, or association of the "Cat Shaped Tea Filter" Accused Products with FRED® and FRED®-brand PURR TEA® Tea Infusers, and/or the origin, sponsorship, or approval of said Accused Products by Lifetime Brands.

25. Upon information and belief, Defendants' unlawful acts have misled and confused, and were intended to cause confusion, or to cause mistake, or to deceive consumers as to the affiliation, connection, or association of the "Cat Shaped Glass Marker" Accused Products with FRED® and WINE LIVES® Wine Markers, and/or the origin, sponsorship, or approval of said Accused Products by Lifetime Brands.

26. Defendants' willful and pervasive infringement of the Asserted IP has caused Lifetime Brands to lose sales and licensing income because Defendants are not authorized licensees, and paid no royalties or licensing fees for the right to use any of the Asserted IP.

27. Defendants' willful and pervasive infringement of the Asserted IP has caused Lifetime Brands to suffer irreparable harm, at least to its reputation and in lost market exclusivity, and if permitted to continue, will further damage and irreparably injure Plaintiff.

COUNT ONE

Patent Infringement Under 35 U.S.C. § 1, *et seq*

28. Plaintiff incorporates by reference each and every one of the preceding paragraphs as though fully set forth herein.

29. At all relevant times, Lifetime Brands has been and is the owner by assignment of all rights, title and interest in and to U.S. Pat. No. D893,995 (“the ’995 Patent”) issued on August 25, 2020, a true and correct copy of which is attached hereto as **Exhibit A**, and U.S. Pat. No. D911,832 (“the ’832 Patent”) issued on March 2, 2021, a true and correct copy of which is attached hereto as **Exhibit B**.

30. Upon information and belief, Defendants manufactured, imported into the U.S., distributed, advertised, offered for sale, and/or sold at least, but not limited to Accused Products identified as “2pcs Potato Chip Shaped Sealing Clip,” SKU: sh2108311188896153, which bears a design substantially similar to the ornamental design of the ’995 Patent.

31. Upon information and belief, Defendants manufactured, imported into the U.S., distributed, advertised, offered for sale, and/or sold at least, but not limited to Accused Products identified as “1pc Potato Chip Design Binder Clip,” SKU: ss2207160680376446 and “2pcs Potato Chips Shaped Sealing Clip,” SKUs: sh2109133406624663 and/or s2208292217737474, which bear a design substantially similar to the ornamental design of the ’832 Patent.

32. Lifetime Brands has never granted Defendants a license to practice either the ’995 or ’832 Patents and Defendants’ use of the ornamental design covered by the ’995 and ’832 Patents is without Lifetime Brands’ permission.

33. Upon information and belief, Defendants’ infringing actions have been willful and were undertaken with full knowledge of, and/or reckless disregard for, Lifetime Brands’ intellectual property rights in the ’995 and ’832 Patents.

34. As a direct and proximate result of the foregoing acts, Lifetime Brands has suffered monetary damages in an amount to be established at trial, and Lifetime Brands is entitled to recover all damages under 35 U.S.C. § 289, including, but not limited to actual monetary losses, Defendants’ profits, as well as treble damages and recovery of attorneys’ fees as a result of Defendants’ willfulness.

sh2207155171736304, which is identical to or a substantially similar derivative of the '633 Wine Lives Copyright.

41. Upon information and belief, Defendants manufactured, imported into the U.S., distributed, advertised, offered for sale, and/or sold at least, but not limited to Accused Products under the name "6pcs Cat Shaped Glass Marker," SKU: sh2207155171736304, which is identical to or a substantially similar derivative of the '631 Winer Dogs Copyright.

42. Upon information and belief, Defendants had access to Lifetime Brands' copyrighted designs under U.S. Copyright Reg. Nos. VA 1-974-622, VA 2-211-979, VA 2-029-633 and VA 2-029-631, at least through product listings on www.genuinefred.com and online marketplaces such as Amazon.com, and without authorization, reproduced, distributed, displayed, created derivative works of, or otherwise infringed Lifetime Brands' copyrighted designs in violation of Lifetime Brands' rights under the Copyright Act.

43. Lifetime Brands has never granted Defendants a license to use Lifetime Brands' copyrighted designs under U.S. Copyright Reg. Nos. VA 1-974-622, VA 2-211-979, VA 2-029-633 and VA 2-029-631, and Defendants' unauthorized reproduction, display, and creation of derivative works is without Lifetime Brands' permission.

44. Upon information and belief, Defendants' actions have been willful, intentional, and malicious, and were undertaken with full knowledge of, and/or reckless disregard for Lifetime Brands' copyrights at issue.

45. As a direct and proximate result of the foregoing acts, Lifetime Brands has suffered monetary damages in an amount to be established at trial, and Lifetime Brands is entitled to recover actual monetary losses, Defendants' profits, or statutory damages under Section 504 of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per infringement and recovery of attorneys' fees as a result of

1 Defendants' willfulness. Within the time permitted by law, Plaintiff will make its
2 election between actual damages and profits or statutory damages.

3 46. Lifetime Brands has also suffered irreparable harm to its reputation and
4 loss in market exclusivity due to Defendants' infringement and, unless enjoined by this
5 Court, Defendants will continue their infringement of the Copyrights, thereby also
6 continuing to cause Lifetime Brands irreparable harm.

7 **COUNT THREE**

8 **Trademark Infringement Under 15 U.S.C. § 1051, *et seq.***

9 47. Plaintiff incorporates by reference each and every one of the preceding
10 paragraphs as though fully set forth herein.

11 48. At all relevant times, Lifetime Brands has been and is the owner of U.S.
12 Trademark Registration Nos. 4,386,868 ("the '868 FRED Mark"), 5,164,826 ("the '826
13 WINE LIVES Mark"), and 5,591,783 ("the '783 PURR-TEA Mark"), which are all
14 valid, subsisting, in full force and effect. The '868 FRED Mark is incontestable
15 pursuant to 15 U.S.C. § 1065. True and correct copies of each trademark registration
16 are attached hereto as **Exhibit G** (the '868 FRED Mark), **Exhibit H** (the '826 WINE
17 LIVES Mark), and **Exhibit I** (the '783 PURR-TEA Mark).

18 49. The registrations for the '868 FRED Mark, the '826 WINE LIVES Mark,
19 and the '783 PURR-TEA Mark constitute prima facie evidence of their validity and
20 Lifetime Brands' exclusive right to use each Mark under 15 U.S.C. § 1057(b). Lifetime
21 Brands has exclusively and continuously used in commerce the '868 FRED Mark, the
22 '826 WINE LIVES Mark, and the '783 PURR-TEA Mark since October 26, 2005,
23 January 30, 2015, and January 5, 2018, respectively, and none of the Marks have been
24 abandoned to date.

25 50. Lifetime Brands has spent significant time and money in advertising,
26 promoting and marketing products featuring the '868 FRED Mark, the '826 WINE
27 LIVES Mark, and the '783 PURR-TEA Mark. FRED® brand products, including its
28

1 PURR TEA® Tea Infusers and WINE LIVES® Wine Markers, have received
2 unsolicited praise from both the industry and general consumers due to their quality and
3 innovative one-of-a-kind designs.

4 51. Upon information and belief, Defendants have sold, offered to sell,
5 marketed, distributed, and advertised products using counterfeit reproductions of the
6 '868 FRED Mark, the '826 WINE LIVES Mark, and the '783 PURR-TEA Mark
7 without permission from Lifetime Brands. Defendants' unauthorized counterfeit
8 reproductions of the '868 FRED Mark, the '826 WINE LIVES Mark, and the '783
9 PURR-TEA Mark is likely to cause and has caused confusion, mistake, and deception
10 as to the origin of the Accused Products among consumers, constituting trademark
11 infringement and counterfeiting under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

12 52. Upon information and belief, Defendants' counterfeiting activities were
13 willful, intentional, and malicious, and were undertaken with full knowledge of, and/or
14 reckless disregard for Lifetime Brands' rights in the '868 FRED Mark, the '826 WINE
15 LIVES Mark, and the '783 PURR-TEA Mark.

16 53. As a direct and proximate result of the foregoing acts, Lifetime Brands has
17 suffered monetary damages in an amount to be established at trial, and Lifetime Brands
18 is entitled to disgorgement of the defendants' profits, actual damages, a reasonable
19 royalty, attorneys' fees in exceptional cases, and costs under 15 U.S.C. § 1117(a) of the
20 Lanham Act, trebling for intentional infringement of the '868 FRED, '826 WINE
21 LIVES, and '783 PURR-TEA Marks under 15 U.S.C. § 1117(b), or statutory damages
22 under 15 U.S.C. § 1117(c) on account of Defendants' willful counterfeiting up to a
23 maximum of \$2,000,000 per counterfeit mark used per type of goods or services.
24 Within the time permitted by law, Plaintiff will make its election between actual
25 damages and profits or statutory damages.

26 54. Lifetime Brands has also suffered irreparable harm to its reputation and
27 loss in market exclusivity due to Defendants' infringement of the '868 FRED, '826
28

1 WINE LIVES, and '783 PURR-TEA Marks and, unless enjoined by this Court,
2 Defendants will continue their infringement, thereby also continuing to cause Lifetime
3 Brands irreparable harm.

4 **COUNT FOUR**

5 **Unfair Competition in Violation of Cal. Bus. & Prof. Code, § 17200 *et seq.***

6 55. Plaintiff incorporates by reference each and every one of the preceding
7 paragraphs as though fully set forth herein.

8 56. Defendants' misappropriation and unauthorized use of the Asserted IP in
9 the sale of Accused Products is likely to confuse or mislead consumers into believing
10 that such products are authorized, licensed, affiliated, sponsored, and/or approved by
11 Lifetime Brands, constituting deceptive, unfair, and fraudulent business practices and
12 unfair competition in violation of the California Unfair Business Practices Act, Cal.
13 Bus. & Prof. Code, § 17200 *et. seq.*

14 57. Upon information and belief, Defendants' deceptive, unfair, and
15 fraudulent business practices were willfully undertaken with full knowledge of the
16 Asserted IP and with the intent to misappropriate the goodwill and reputation of
17 Lifetime Brands, FRED®, and copyrighted works.

18 58. Upon information and belief, Defendants knew, or should have known, the
19 differences between the genuine FRED® products and the Accused Products, but made
20 no effort to distinguish between them before using Lifetime Brands' patented designs,
21 copyrighted works, and trademarks on Accused Products and in marketing to the public.

22 59. Upon information and belief, Defendants deceived the consuming public
23 into believing they were purchasing genuine FRED® products, when in fact they were
24 sold unauthorized, pirated copies bearing Lifetime Brands' patented designs,
25 copyrighted works, and trademarks.

26 60. As a direct and proximate result of the foregoing acts, Lifetime Brands has
27 suffered and will continue to suffer significant injuries in an amount to be determined
28

1 at trial, and Lifetime Brands is entitled to all available relief provided for under the
2 California Unfair Business Practices Act, Cal. Bus. & Prof. Code, § 17200 *et. seq.*,
3 including an accounting and disgorgement of all illicit profits that Defendants made on
4 account of its deceptive, unfair, and fraudulent business practices.

5 61. Lifetime Brands has also suffered irreparable harm to its reputation and
6 loss in market exclusivity due to Defendants' unfair competition and unlawful acts in
7 violation of Cal. Bus. & Prof. Code, § 17200 *et. seq.*, and unless enjoined by this Court,
8 Defendants will continue their unfair and/or unlawful business practices, thereby also
9 continuing to cause Lifetime Brands irreparable harm.

10 **COUNT FIVE**

11 **Unfair Competition Under California Common Law**

12 62. Plaintiff incorporates by reference each and every one of the preceding
13 paragraphs as though fully set forth herein.

14 63. Defendants' misappropriation and unauthorized use of the Asserted IP in
15 the sale of Accused Products is likely to confuse or mislead consumers into believing
16 that such products are authorized, licensed, affiliated, sponsored, and/or approved by
17 Lifetime Brands, constituting unfair competition in violation of common law of the state
18 of California.

19 64. Upon information and belief, Defendants knew, or should have known, the
20 differences between the genuine FRED® products and the Accused Products, but made
21 no effort to distinguish between them before using Lifetime Brands' patented designs,
22 copyrighted works, and trademarks on Accused Products and in marketing to the public.

23 65. Upon information and belief, Defendants deceived the consuming public
24 into believing they were purchasing genuine FRED® products, when in fact they were
25 sold unauthorized, pirated copies bearing Lifetime Brands' patented designs,
26 copyrighted works, and trademarks.

27 66. Upon information and belief, Defendants' unfair business practices were
28

1 willfully undertaken with full knowledge of the Asserted IP and with the intent to
 2 misappropriate the goodwill and reputation of Lifetime Brands, FRED®, and
 3 copyrighted works. As such, an award of exemplary and punitive damages is necessary
 4 in an amount sufficient to deter similar misconduct in the future.

5 67. As a direct and proximate result of the foregoing acts, Lifetime Brands has
 6 suffered and will continue to suffer significant injuries in an amount to be determined
 7 at trial, and Lifetime Brands is entitled to recover all damages, including attorneys' fees,
 8 that it has sustained on account of Defendants' unfair competition, and all gains, profits
 9 and advantages obtained by Defendants as a result of its unlawful acts.

10 68. Lifetime Brands has also suffered irreparable harm to its reputation and
 11 loss in market exclusivity due to Defendants' unfair competition, and unless enjoined
 12 by this Court, Defendants will continue their unfair and/or unlawful business practices,
 13 thereby also continuing to cause Lifetime Brands irreparable harm.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff Lifetime Brands, Inc. prays for judgment against
 16 Defendants Zoetop Business Co., Limited, Fashion Marketing and Merchandising
 17 Group, Inc., Shein Distribution Corporation, and DOES 1-10, jointly and severally, as
 18 follows:

- 19 a. A judgment that Defendants infringed U.S. Patent Nos. D893,995 and
 20 D911,832;
- 21 b. An award of damages equal to Defendants' profits and all damages
 22 sustained by Plaintiff as a result of Defendants' patent infringement,
 23 trebled on account of Defendants' willfulness;
- 24 c. A judgment that Defendants infringed U.S. Copyright Reg. Nos. VA 1-
 25 974-622, VA 2-211-979, VA 2-029-633, and VA 2-029-631;
- 26 d. At Plaintiff's election, an award of statutory damages under 17 U.S.C. §
 27 504(c) for willful copyright infringement or an award of damages equal to
 28

1 Defendants' profits and all damages sustained by Plaintiff as a result of
2 Defendants' copyright infringement under 17 U.S.C. § 504(b);

3 e. A judgment that Defendants infringed U.S. Trademark Registration Nos.
4 4,386,868, 5,164,826, and 5,591,783;

5 f. At Plaintiff's election, an award of damages equal to Defendants' profits
6 and all damages sustained by Plaintiff as a result of Defendants'
7 trademark infringement under 15 U.S.C. § 1117(a), trebled on account of
8 Defendants' willfulness under 15 U.S.C. § 1117(b), or statutory damages
9 under 15 U.S.C. § 1117(c) on account of Defendants' counterfeiting up to
10 a maximum of \$2,000,000 per counterfeit mark per type of goods or
11 services.

12 g. An order permanently enjoining and restraining Defendants, their agents,
13 servants, employees, officers, associates, and all persons acting in concert
14 with any of them from infringing Plaintiff's Asserted IP, including but not
15 limited to:

16 i. manufacturing, importing, advertising, marketing, promoting,
17 supplying, distributing, offering for sale, or selling the Accused
18 Products or any other products that bear an identical or substantially
19 similar design as U.S. Design Patent Nos. D893,995 and D911,832

20 ii. reproducing, distributing, displaying, creating derivative works
21 thereof, or otherwise infringing U.S. Copyright Reg. Nos. VA 1-
22 974-622, VA 2-211-979, VA 2-029-633, and VA 2-029-631;

23 iii. manufacturing, importing, advertising, marketing, promoting,
24 supplying, distributing, offering for sale, or selling the Accused
25 Products or any other products that bear or use U.S. Trademark
26 Registration Nos. 4,386,868, 5,164,826, and 5,591,783;

- 1 iv. engaging in any other activity constituting unfair competition with
2 Lifetime Brands, or acts and practices that deceive consumers, the
3 public, and/or trade, including without limitation, the use of
4 designations and design elements used or owned by or associated
5 with Lifetime Brands; and
6 v. committing any other act which falsely represents or which has the
7 effect of falsely representing goods and services of Defendants are
8 licensed, authorized, offered, produced, sponsored, or in any other
9 way associated with Lifetime Brands;
10 h. An award of punitive damages and Lifetime Brands' costs, attorneys'
11 fees, and interest to the extent allowed under all applicable statutes; and
12 i. Any other relief that the Court may deem just and proper.

13
14 Respectfully submitted,

15
16 Dated: November 3, 2022

NIXON PEABODY LLP

17 By: /s/ Mark S. Zhai
18 Seth D. Levy (SBN 217638)
19 Erica J. Van Loon (SBN 227712)
20 Mark S. Zhai (SBN 287988)

21 *Attorneys for Plaintiff*
22 *Lifetime Brands, Inc.*
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules, Plaintiff Lifetime Brands, Inc. hereby demands a trial by jury as to all issues and claims so triable in this Civil Action.

Dated: November 3, 2022

NIXON PEABODY LLP

By: /s/ Mark S. Zhai
Seth D. Levy (SBN 217638)
Erica J. Van Loon (SBN 227712)
Mark S. Zhai (SBN 287988)

*Attorneys for Plaintiff
Lifetime Brands, Inc.*