

\*IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

SHELL OIL PRODUCTS COMPANY, LLC	§	
et al	§	
<i>Plaintiffs,</i>	§	Civil Action No. 4:08-cv-01309
	§	
v.	§	
	§	
CLASSIC INDUSTRIES, LP et al	§	
<i>Defendants.</i>	§	
	§	

---

**FIRST AMENDED COMPLAINT**

---

Plaintiffs **Shell Oil Products Company, LLC and Motiva Enterprises, LLC.** (collectively “Shell-Motiva” or “Plaintiffs”) file their First Amended Complaint against Defendants **Classic Industries, LP, Classic Industries, Inc., Classic Architectural Products, LP, Classic Capital Management, LLC, RLW, GP, Management, LLC, SKW, GP, Management, LLC** (collectively “Classic”) and **Rickey L. Wilson (“Rick Wilson”)** and allege as follows:

**I. JURISDICTION AND VENUE**

1. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the patent laws of the United States, Title 35, United States Code. Jurisdiction is based upon 28 U.S.C. §§ 1331, 1338(a), 1338(b) and under supplemental jurisdiction under 28 U.S.C. § 1367 for the state law claims alleged that are so related to the patent claims in this action that they form the same case or controversy under Article III of the United States Constitution. A justifiable controversy exists concerning the non-infringement, unenforceability, and invalidity of the patents referenced in this Complaint.

2. Venue is based upon 28 U.S.C. §§ 1391(b) and (c) and § 1400(a), because, among other things: A substantial part of the events or omissions giving rise to the claims occurred in this District; and/or a substantial part of the property that is the subject of the action is situated in this District.

## **II. PARTIES**

3. Plaintiff Shell Oil Products Company LLC (hereafter “Shell”) is a limited liability company organized under the laws of the State of Delaware and has its principal place of business at Northborough Building, 12700 Northborough, Houston, Texas 77067-2502.

4. Plaintiff Motiva Enterprises LLC (hereafter “Motiva”) is a limited liability company organized under the laws of the State of Delaware and has its principal place of business at 1100 Louisiana, Houston, Texas 77002.

5. Defendant Classic Industries, Inc. (hereafter “Classic Industries, Inc.”) is a corporation organized under the laws of the State of Texas and has a principal place of business at 905 E. Broad Street, Forney, Texas 75126. On information and belief Classic Industries, Inc. was converted into Classic Industries, LP on or around August 28, 2001. Classic Industries, Inc. has already been served with process.

6. Defendant Classic Industries, LP, as successor to Classic Industries, Inc. (hereafter “Classic Industries, LP”) is a limited partnership organized under the laws of the State of Texas and has a principal place of business at 13020 FM 1641, in the extra-territorial limits of Forney, Texas in Kaufman County. Classic Industries, LP has already been served with process.

7. Defendant Classic Architectural Products LP (hereafter “Classic Architectural LP”) is a limited partnership organized under the laws of the State of Texas and has a principal place of business at 3020 FM 1641, in the extra-territorial limits of Forney, Texas in Kaufman County.

8. Defendant Classic Capital Management, LLC (hereafter “Classic Capital LLC”) is a limited liability corporation organized under the laws of the State of Texas and has a principal place of business at 13020 FM 1641, Forney, Texas 75126. The registered agent of Classic Capital LLC is Sandra K. Wilson whose registered office is 13020 FM 1641, Forney, Texas 75126, but can also be served at her residence at 304 Dalview Ct., Forney, Texas 75126. Defendant Classic Capital LLC is the sole general partner of Defendant Classic Architectural LLC.

9. Defendant RLW, GP, Management, LLC (hereafter “RLW LLC”) is a limited liability company organized under the laws of the State of Texas and has a principal place of business at 13020 FM 1641, Forney, Texas 75126. The registered agent of RLW LLC is Rickey L. Wilson whose registered office is 13020 FM 1641, Forney, Texas 75126, but can also be served at her residence at 304 Dalview Ct., Forney, Texas 75126. Defendant RLW LLC is one of the two general partners of defendant Classic Industries, LP.

10. Defendant SKW, GP, Management, LLC (hereafter “SKW LLC”) is a limited liability company organized under the laws of the State of Texas and has its principal place of business at 13020 FM 1641, Forney, Texas 75126. The registered agent of SKW LLC is Sandra K. Wilson whose registered office is 13020 FM 1641, Forney, Texas 75126, but can also be served at her residence at 304 Dalview Ct., Forney, Texas 75126. Defendant SKW LLC is one of the two general partners of Classic Industries, LP.

11. Defendant Rickey L. Wilson aka Rick Wilson (hereafter “Rick Wilson”), an individual who is a citizen of the United States and of Texas and has his principal residence in Texas. Rick Wilson may be served with process at his business address at 13020 FM 1641, Forney, Texas 75126 and a residence address at 304 Dalview Ct., Forney, Texas 75126. Rick

Wilson is a member, officer and director of the general partner RLW LLC., but is sued in his individual capacity as a tortfeasor.

12. The corporate and partnership defendants are hereafter called “Classic”. All the corporate and partnership defendants operate under the common control of Rick Wilson.

### **III. FACTS COMMON TO ALL CLAIMS**

13. Shell-Motiva has a network of Shell-branded retail gas service stations that are owned by dealers, franchisees and/or Shell-Motiva throughout the United States (“Shell service stations”). The Shell service stations adapted and used a Shell-developed Retail Visual Identity (“RVI”) motif with a unique red and yellow fascia with a unique curved shape on Shell service stations in the United States, as well as around the world, for a common and unified identity and distinctive trademark signifying one source of goods and services to its customers. The specific name given to the curved configuration of the red and yellow fascia was the “Lazy S” design. Shell obtained trademark registrations in many countries around the world on the “Lazy S” design and shape. The Lazy S design was to be used for Shell’s premier Level 1 service stations.<sup>1</sup> The Shell RVI program was developed exclusively by affiliates of Shell for a brighter, more appealing visual image in the early 1990’s for brand re-imaging of its Shell-branded service stations around the world. The re-imaging efforts were implemented in widespread efforts primarily beginning in 1995. Through a series of consolidation of interests in Shell, the RVI program began in the United States in 1999. The cost of the Shell RVI program is reported to have been the world’s largest brand re-imaging undertaking.

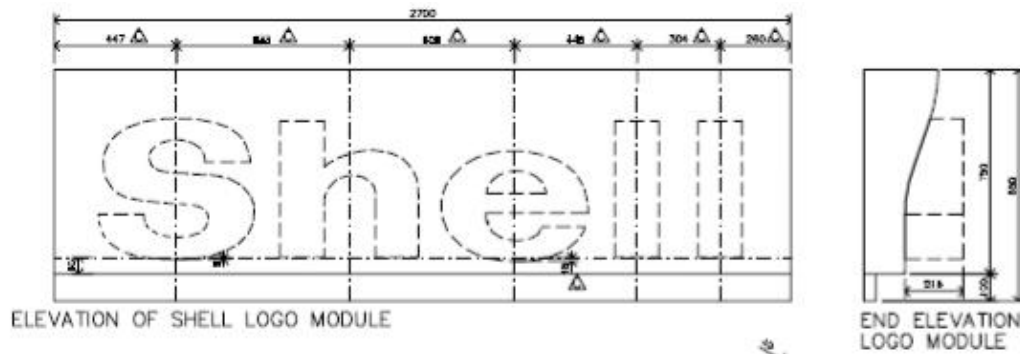
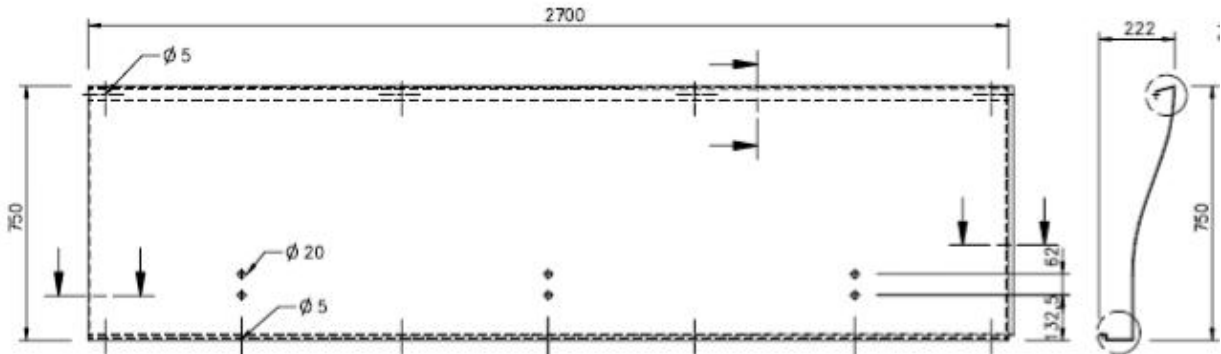
---

<sup>1</sup> For lower volume, less costly service stations, the Shell RVI program also included a flat panel design with the same yellow and red colors as the Lazy S design. The flat panel is not the subject of this instant Declaratory Judgment Action.

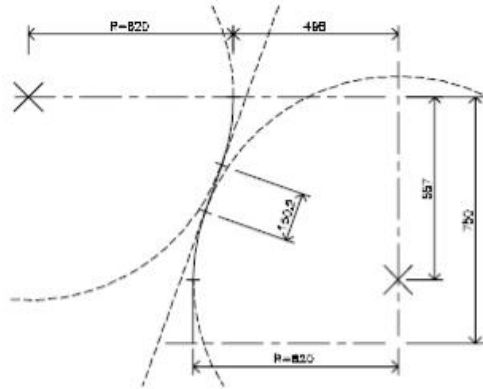
14. When Shell undertook to initiate the Shell RVI program in the United States, it contacted United States vendors and suppliers to manufacture the panels and corners needed for the RVI program. After focusing on Classic as the primary vendor, Shell-Motiva provided to Classic engineering drawings and photographs that revealed the details of the red and yellow fascia that embodied the design of the Shell RVI program. Shell arranged for Classic to manufacture the components for fascia incorporating the Lazy S design. Without authorization from Shell-Motiva, Rick Wilson secretly filed four (4) design patent applications unlawfully claiming to be the inventor of the ornamental shape of a key piece of the Shell RVI program, namely, the Lazy S design used for Shell's premier Level 1 service stations. In the patent application filing, Rick Wilson signed a declaration under penalty of perjury that he was the original and first inventor of the design shown in the drawings of the patent applications. He even gave his patent applications a titles that began with—the "Premier S" design—corresponding to the Shell's authorized use of the Lazy S design on Shell's premier Level 1 service stations. Rick Wilson has assigned his design patent applications and resulting patents to Classic.

15. More specifically, in about 1992, an affiliate of Shell developed the "Lazy S" design for the fascia mounted to the canopies at Shell service stations in the Shell Retail Visual Identity ("RVI") program. The RVI program provided an enhanced visual appearance of the Shell service stations. Shell started implementing the RVI program publicly in Europe no later than the early 1990's, in Canada and other countries in the mid-1990's, and ultimately in about fifty countries worldwide. The implementation was public. The press releases were widespread and reported. The design manuals were issued to available vendors and dealers. The RVI program was widely promoted.

16. The referenced Shell Lazy S design is used for the fascia of a Shell service station that is attached to an overhead canopy or other roof line. A portion of an exemplary drawing of the Shell Lazy S design from the European engineering drawings prepared in the early 1990's is shown below:

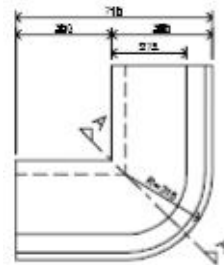
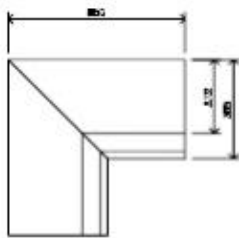


17. The curve of the Lazy S design itself is defined by two radii having a tangent point from one radii on one side of the fascia that is slightly offset from another tangent point of the other radii on the other side of the fascia as shown below:



18. The curved shape for the Lazy S fascia installed on a Shell service station is seen from the street by the general public and customers. The supporting and functional structure is not visible to the general public when the system is installed, including brackets, rails, and other mounting hardware mounted to the back of the panel in an installed system.

19. Further, standard panels are attached to corner panels as the panels are attached around the canopy of the Shell service station. Some corners are mitered with an abrupt change in direction and other corners are curved about a radius. Two exemplary corners are shown below, also from the European engineering drawings prepared by or for Shell affiliates in 1992:



20. Shell showed the RVI project with the external appearance of the Lazy S design in its publications and newsletters to its customers, investors, and in advertisements in the United States prior to 1999.

21. As the various affiliates of Shell consolidated their interests in the 1990's, the decision was made in 1999 to use the Shell RVI program in the United States.

22. Employees of Shell were assigned duties to implement the Shell RVI program in the United States and secure manufacturing of the Shell Lazy S design in the United States. Such individuals obtained design manuals, engineering drawings, product samples and other documentation and used that information to provide details to one or more manufacturers in the United States, including Classic.

23. Before Rick Wilson applied for design patents in his own name on the Lazy S design, Shell employees showed and gave copies of engineering drawings and photographs of the Lazy S design to him, in reliance on the good faith on the relationship him and Classic. On information and belief, before Shell's employees showed Rick Wilson engineering drawings and photographs of the Lazy S design, the Lazy S design was new to him and Classic, and neither Classic nor Rick Wilson conceived, reduced to practice or invented the design that is the subject matter of the Lazy S Patents.

24. Thus, based on information and belief, neither Classic nor Rick Wilson made any inventive contribution to the ornamental features of the Lazy S fascia that are visible to the public when the assembly is installed on a service station. Classic allegedly provided engineering assistance in the functional support structure, including brackets that are hidden from public view when the system is installed on the canopies of the Shell service stations. Classic also modified its roll forming process to form the required curves of the Lazy S design to Shell's specifications in a bendable fascia material generally fed through rollers to create the desired shape. These functional considerations, however, are not and cannot be the subject of the referenced design patents which can only protect the ornamental features of a design.



25. On April 12, 2000, Defendants Rick Wilson and Classic, without the knowledge or awareness of Shell-Motivia, knowingly misappropriated and converted the Lazy S panels and corner brackets (but not the mounting brackets) in the Shell engineering drawings and photographs of the Lazy S design and applied for four United States design patents: Design Patent No. D442,702 (“the ‘702 patent”) entitled “Premier S Corner With Brackets;” Design Patent No. D442,708 (“the ‘708 patent”) entitled “Premier S Panel Without Brackets;” United States Design Patent No. D443,073 (“the ‘073 patent”) entitled “Premier S Corner Without Brackets,” and United States Design Patent No. D443,078 (“the ‘078 patent”) entitled “Premier S Panel with Brackets”(collectively “Lazy S Patents”). As seen from the titles, the design patents can be divided into two categories: Lazy S panels and corner panels with and without brackets, entitled herein “Lazy S Panel and Bracket Patents” and “Lazy S Panel Patents,” respectively. In these design patent applications now granted as design patents, Rick Wilson claimed then and claims now to be the sole inventor of all ornamental features of the Lazy S Patents. Upon information and belief, Defendant Rick Wilson assigned his interest in the Lazy S Patents to Defendant Classic Industries Inc.

26. On information and belief, Defendants Rick Wilson and Classic and/or their predecessors-in-interest and Classic’s lawyers intentionally and fraudulently misled the United States Patent and Trademark Office (“PTO”) to induce it to issue the Lazy S patents by failing to discharge their duty to disclose to the PTO that Shell had communicated to Classic the details of the Lazy S design before any independent invention of the same designs by Defendant Rick Wilson and/or by misrepresenting the state of the prior art to the PTO, and in general the prior development by Shell of the Lazy S design.

27. On information and belief, Defendant Rick Wilson did not invent the patentable subject matter of ornamental aspects the Lazy S Patents. The ornamental aspects of the design of the Lazy S design that Shell gave to Classic are claimed in the Lazy S Patents. To the extent that the brackets in the Lazy S Panel and Bracket Patents are claimed, the bracket subject matter is primarily functional and/or hidden from public view when installed and therefore not the proper subject matter of a design patent by statute and case law. Thus, the only patentable material in both the Lazy S Panel Patents and the Lazy S Panel and Brackets Patents is the Lazy S design configuration, which Defendant Rick Wilson stole and unlawfully converted from Shell and misrepresented to the United States Patent Office as being of his own invention.

28. At least as early as March 1, 2002, Shell-Motiva and Classic entered into a formal written agreement to supply the RVI Lazy S fascia systems. Several subsequent agreements were formed between Shell-Motiva and Classic.

29. In early 2003, Shell-Motiva and Classic enter into a further agreement whereby Classic would continue to supply the RVI Lazy S fascia systems and building treatments (the “2003 Agreement”).

30. Again, on March 1, 2006, Shell-Motiva and Classic entered into a subsequent agreement to continue whereby Classic would continue to supply the RVI Lazy S fascia systems and building treatments (the “2006 Agreement”). The 2006 Agreement was amended on December 21, 2007 to extend the agreement until February 29, 2008, when it expired.

31. In August 2007 was the first time Shell-Motiva and its representatives discovered that Classic had design patents on the ornamental design of the unique curvature and shape of the Lazy S Design. All previous discussions with Rick Wilson and other Classic representatives had led Shell representatives to believe that Classic had utilitarian patents on the mounting brackets

for the Lazy S fascia that do not embody the Lazy S Design and are not visible to the public when the Lazy S fascia is installed on a service station canopy.

32. In the Fall of 2007, an affiliate of Shell-Motiva, Shell Oil Products US negotiated with Classic Industries, Inc. and Classic Architectural, LP for an extension and certain change of terms for the 2006 Blanket Agreement between the successors to the parties named in that agreement. There was an extensive series of negotiations with representatives of Classic, all at the facilities of Shell at 12700 North Borough Drive, Houston, Texas 77067 within the Southern District of Texas.

33. In one of the negotiations, a meeting was held on November 14, 2007 in which representatives of Shell-Motiva inquired about patents held by Classic on the Lazy S Design fascia product that was being manufactured by Classic for Shell's wholesalers and direct dealers. This product is used as part of a retail visual identification ("RVI") system of red and yellow designs displayed on the canopies and buildings on Shell-branded gasoline stations. In attendance at this meeting on November 14, 2007 representing Classic were Defendant Rick Wilson, President and CEO; John Clements, General Counsel and Executive Vice President; and Neil Fondren, National Sales Manager.

34. At the time of this meeting or before, the Shell representatives were contemplating the alternative of not extending or renewing the contract with Classic as supplier and manufacturer. Shell began to seek an alternate, because Shell-Motiva had had difficulties with Classic at various times over the years. Shell knew that Classic had some patents on the shape of the Lazy S Design. Shell asked Classic at the November 14 meeting about the Lazy S patents. The Classic representatives confirmed that they had patents on the Lazy S Design. This was the first time Shell-Motiva and its representatives discovered that Classic had design patents

on the ornamental design of the unique curvature and shape of the Lazy S Design. All previous discussions with Rick Wilson and other Classic representatives had led Shell representatives to believe that Classic had utilitarian patents on the mounting brackets that do not embody the Lazy S Design and are not visible to the public when the Lazy S fascia is installed on a service station canopy. When Shell's representatives inquired about introducing an alternative Lazy S supplier, John Clements (Classic's lawyer) replied, "All any vendor would have to do is pay Classic a license fee to sell Lazy S."

35. The Shell representatives present at the November 14, 2007 meeting were Robert McLaren, Lead Procurement Manager Retail Engineering; Keith McBride, Shell Procurement Manager who is primarily in charge of the Classic relationship and renegotiating a contract with Classic; Shawn Shackelford who was the Shell Procurement Representative at that time, and an attorney, Craig Walker, who was assigned to assist with this project by the Shell Legal Department.

36. At least as early as June 2007, the Shell representatives began to think about alternative vendors. Shell-Motiva approached three vendors: (1) Architectural Graphics, Inc. ("AGI") (2) Thermal Systems KWC Ltd; and (3) Madison Industries Inc.

37. The prospective vendor, AGI, prepared a prototype panel made from photographs, a sample made and the European drawings, for the Lazy S Design. This prototype of the Lazy S Design provided by AGI was sent to Shell-Motiva.

38. Shell learned from AGI, who had prepared the prototype Lazy S Design panel that they would have to do redevelopment on the complete configuration of the Lazy S fascia system without the drawings and specifications from Classic. Under the 2006 Blanket Agreement with Classic, Shell owned the "Word Product" in drawings and the specifications developed by

Classic but Classic has refused to turn them over. Shell was thus handicapped in finding alternative vendors who would manufacture the Lazy S Design fascia at the same price or lower as Classic due to having to incur development costs for which Shell had already paid Classic and run the risk of infringement of the Classic-owned Lazy S Patents.

39. Also, AGI informed Shell that since Classic held patents on the Lazy S Design, they would require an indemnity against patent infringement from suits brought by Classic. AGI even furnished to Shell a legal opinion in a Memorandum dated October 23, 2007 from the attorneys for AGI, Wilcox & Savage. The other alternative supplier, Thermal Systems KWC Ltd., also was informed about the Classic patents.

40. After receiving and reviewing the opinion from Wilcox & Savage, it became clear to Robert McLaren and the other representatives of Shell negotiating with Classic that Shell would incur risk to grant indemnity to alternative suppliers of Lazy S Fascia to Shell Oil Products US. Also, Shell was handicapped in seeking alternative designs by Classic's refusal to turn over the manufacturing drawings for the Lazy S Design product that Shell owned according to the 2006 Blanket Agreement with Classic.

**IV. CAUSES OF ACTION: PATENT; DECLARATORY RELIEF, CONVERSION, FALSE DESIGNATION AND UNFAIR COMPETITION CLAIMS**

**A. Count 1—Declaratory Relief: Invalidity of the 'Lazy S Patents**

41. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

42. A justiciable controversy exists as to the validity of the Classic Lazy S Patents and the rights of Shell-Motiva to authorized vendors to make and sell fascia systems embodying the Lazy S Design without infringing the Classic Lazy S Patents or paying a license fee to Classic, which controversy will be resolved by the declaration sought. Shell-Motiva seeks

declaratory relief to settle the uncertainty and insecurity with respect to its rights, status and other legal relations.

43. On information and belief, the subject matter claimed in each of the Lazy S Patents was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent under 35 U.S.C. § 102(a).

44. On information and belief, the subject matter claimed in each of the Lazy S Patents was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States under 35 U.S.C. § 102(b).

45. On information and belief, the subject matter claimed each of Lazy S Patents was derived from Shell under 35 U.S.C. § 102(f).

46. On information and belief, the subject matter claimed each of Lazy S Patents is obvious over Shell's Lazy S design under 35 U.S.C. § 103.

47. To the extent any remaining elements of each of the Lazy S Patents are asserted as patentable in view of the derived or copied Lazy S design, such elements are functional and non-ornamental and would not qualify for protection under 35 U.S.C. § 171.

48. Each of the Lazy S Patents is invalid and void for failure to comply with requirements of Title 35, United States Code, including, but not limited to, §§ 102(a), 102(b), 102(f), 103, 171. §§ 102(a), 102(b), 102(f), 103, 117.

**B. Declaratory Relief: Count 2—Unenforceability of the Lazy S Patents**

49. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

50. A justiciable controversy exists as to the unenforceability of the Classic Lazy S Patents and the rights of Shell-Motiva to authorized vendors to make and sell fascia systems embodying the Lazy S Design without infringing the Classic Lazy S Patents or paying a license fee to Classic, which controversy will be resolved by the declaration sought. Shell-Motiva seeks declaratory relief to settle the uncertainty and insecurity with respect to its rights, status and other legal relations.

51. Each of the Lazy S Patents are unenforceable by reason of Classic's, the named inventor Rick Wilson's, their attorney's and/or their predecessors-in-interest having intentionally misled the United States Patent and Trademark Office ("PTO") to induce it to issue these patents by failing to disclose to the PTO the highly material fact that Shell communicated the Lazy S Design to Classic.

**C. Declaratory Relief: Count 3—No Infringement of the Lazy S Patents**

52. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

53. A justiciable controversy exists as to the infringement of the Classic Lazy S Patents and the rights of Shell-Motiva to authorized vendors to make and sell fascia systems embodying the Lazy S Design without infringing the Classic Lazy S Patents or paying a license fee to Classic, which controversy will be resolved by the declaration sought. Shell-Motiva seeks declaratory relief to settle.

54. None of Shell-Motiva's products or prototypes infringe or infringed any claim of the '702 Patent and Shell-Motiva is not liable as an infringer of the '702 Patent.

55. None of Shell-Motiva's products or prototypes infringe any of the Lazy S Patents and Shell-Motiva is not liable as an infringer of the Lazy S Patents.

56. None of Shell-Motiva's products or prototypes infringe any of the Lazy S Patents and Shell-Motiva is not liable as an infringer of any of the Lazy S Patents.

**D. Count 4—Conversion of Lazy S Design**

57. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

58. On the date of the filing of the applications for the Lazy S Patents, Shell was and still is the owner of the Lazy S designs provided to Classic prior to the filing of the applications for the Lazy S Patents, including, but not limited to, Lazy S design engineering drawings supplied by Shell, Lazy S design engineering drawings created by Classic for Shell under the Agreement, Lazy S specifications, and Lazy S design information (the "Shell's Lazy S designs") and had right of possession of this property pursuant to the Agreements between the Classic and Shell-Motiva. On information and belief, during negotiations that began in or around August 2007, Shell first learned that Classic's Lazy S patents allegedly cover Shell's Lazy S design or the curvature of the design (as opposed to the bracketing system), which on information and belief, were derived from and converted from the Shell Lazy S designs.

59. On the date of filing of the applications for the Lazy S Patents, Classic was and still is the owner of the Lazy S Patents, including the '702, '708, '073 and '078 patents, and was in possession of this patent property and in possession of this property in that it applied for the patents without the knowledge of Shell-Motiva.

60. On the date of the filing of the applications of the Lazy S Patents, in the City of Forney, Texas, Classic unlawfully and without authority assumed dominion and control over Shell's property, which is described in the prior Paragraphs, which is inconsistent with Shell's rights in this property in that Classic would not return the Shell's Lazy S designs pursuant to the



agreements between the Classic and Shell-Motiva and unlawfully applied for the Lazy S design patent, including the '702, '708, '073 and '078 patents. On August 15, 2007, Classic's National Sales Manager, Neil Fondren, declined a request from Shell for Classic to provide copies of engineering drawings for Shell's trademark Lazy S fascia canopy systems.

61. The fair market value of the engineering drawings, information and materials of the Lazy S design Shell-Motiva provided to Classic at the time and place of the conversion in an amount to be determined.

62. Shell-Motiva is also entitled to the maximum amount of prejudgment interest on the fair market value of the drawings, information and materials of the Lazy S design Shell-Motiva provided to Classic from the date of conversion of the April 12, 2000 to the date of judgment.

#### **E. Count 5—Common Law Unfair Competition**

63. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

64. Classic's fraudulently applied for and was issued the Lazy S Patents. Therefore, Classic has engaged in unfair competition by fraudulently obtaining and wielding the Lazy S Patents that prohibit Shell-Motiva from authorizing other manufacturers to make canopies embodying the Lazy S design or licensing its Lazy S design freely and preventing Shell-Motiva's independent dealers from buying, installing and using canopies embodying the Lazy S design at more favorable prices from other manufacturers than Classic. This unfair competition that has and will continue harm Shell-Motiva and their independent dealers.

65. Classic has acted willfully in unfairly competing with Shell-Motiva.

66. As a result Shell-Motiva has sustained injuries and suffered actual damages to date in an amount to be determined, for which Shell-Motiva sues, plus prejudgment interest and continuing damages until time of trial. Shell-Motiva also sues for defendant's profits, treble damages, punitive damages, costs, attorney's fees and post-judgment interest.

**F. Count 6—Punitive Damages**

67. Classic's conversion of Shell's proprietary Lazy S design and unfair competition, as alleged above, were fraudulent, malicious and/or grossly negligent in that Classic fraudulently converted the proprietary information in Shell's Lazy S design into the Lazy S Patents and subsequently engaged in unfair competition without Shell-Motiva's knowledge or consent. Classic defrauded Shell and the United States Patent Office when it applied for the Lazy S Patents. Classic had the specific intent to cause substantial injury or harm to Shell when it applied for the Lazy S Patents, knowing these patents would restrict Shell's rights in or ability to use the Lazy S design for itself or its affiliates or franchisees. Classic acted with a high degree of risk when it applied for the Lazy S Patents with an awareness of the risk but nevertheless proceeded with conscious indifference for Shell's rights in or ability to use the Lazy S design for itself or its affiliates or franchisees. Accordingly, Shell-Motiva asks that exemplary damages be awarded against Classic in the amount of three fold compensatory damages proved by Shell-Motiva. *See* TEX. CIV. PRAC. & REM. CODE § 41.

**PRAYER FOR RELIEF FOR COUNTS 1-6**

WHEREFORE, Plaintiff, Shell-Motiva, Inc. prays that this Court enter a judgment that:

- a. Declares United States Design Patent No. D442,702, is invalid, unenforceable and not infringed by Shell-Motiva, its wholesalers, dealers or vendors or any of their products or prototypes;

- b. Declares United States Design Patent No. D442,708, is invalid, unenforceable and not infringed by Shell-Motiva, its wholesalers, dealers or vendors or any of their products or prototypes;
- c. Declares United States Design Patent No. D443,073 and each of its claims, is invalid, unenforceable and not infringed by Shell-Motiva, its wholesalers, dealers or vendors or any of their products or prototypes;
- d. Declares United States Design Patent No. D443,078 is invalid, unenforceable and not infringed by Shell-Motiva, its wholesalers, dealers or vendors or any of their products or prototypes;
- e. Orders Defendants and their officers, agents, employees, representatives, counsel and all persons in active concert or participation with any of them, directly or indirectly, be enjoined, both preliminarily and permanently, from threatening, charging infringement, or instituting any action for infringement, of United States Design Patent No. D442,702; United States Design Patent No. D442,708; United States Design Patent No. D443,073; or United States Design Patent No. D443,078; against Plaintiffs, their customers, vendors, wholesalers, dealers, licensees, franchisees, distributors or users of its products or services or the Shell RVI Lazy S fascia systems and building treatments;
- f. Awards to Plaintiffs their reasonable attorneys fees under 35 U.S.C. § 285 of the Patent Act since this is an exceptional case;
- g. Awards a sum to Plaintiffs in compensation for conversion in an amount to be determined;
- h. Awards a sum to Plaintiffs in compensation for common law unfair competition in an amount to be determined;
- i. Awards to Plaintiffs exemplary damages for conversion and common law unfair competition against Classic in a sum determined by the trier of fact, requested to be threefold the amount of economic damages, under Tex. Civ. Prac. & Rem. Code § 41.01 et seq.
- j. Awards prejudgment and post judgment interest as provided by law;
- k. Awards costs of suit;
- l. Awards such other and further relief as this Court deems just and proper.

**V. CAUSES OF ACTION: COMMERCIAL CLAIMS AGAINST CLASSIC<sup>2</sup>**

**A. Facts Related to Commercial Claims**

68. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of the claims asserted against Classic and in particular the Facts Common to All Claims.

69. Because the facts related to the patent claims are so interrelated to those related to the Commercial Claims, Shell-Motiva highlights only certain additional facts herein.

70. Pursuant to the 2006 Agreement for the manufacture and sale of Aluminum Composite Material (“ACM”). Classic was to furnish ACM and related products “Goods” as defined in the 2006 Agreement for architectural use at Shell-branded retail outlets. *See* Agreement, p. 1.

71. Classic maintained the entire inventory of ACM and was the exclusive provider to the Shell-branded retail outlets. *See* Agreement, Schedule A.

72. Pursuant to the Agreement, the engineering drawings, specifications and other data furnished by Shell-Motiva to Classic, including but not limited to those related to the Lazy S design, were to remain the sole and exclusive property of Shell-Motiva. *See* Agreement, pp. 7-8, ¶ 10.

73. The Parties agreed that any engineering drawings, specifications, or other data furnished by Shell-Motiva to Classic would be treated as Confidential Information of Shell-Motiva. *See* Agreement, pp. 7-8, ¶ 10 and p. 13, ¶ 25.

---

<sup>2</sup> The Commercial Claims are subject to binding arbitration pursuant to the Parties’ Agreement. Plaintiffs have filed a Motion to Compel the Commercial Claims Against Classic to Arbitration. Shell-Motiva sent a Notice of Claims on May 6, 2008 and signed for by Classic on May 9, 2008. The Parties had 60 days to consult. The consultation period expired on either July 6 or 9, 2008, and the claims are ripe for arbitration.

74. The Parties further agreed that the 2006 Agreement superseded and replaced any other agreements or understandings that were in place at the time that such drawings, specifications, or other data were originally furnished by Shell-Motiva to Classic.

75. The Confidential Information, including but not limited to the engineering drawings and specifications, were to be promptly returned to Shell-Motiva upon completion of the Work. *See* Agreement, p. 8 ¶ 10.

76. Classic expressly warranted to Shell-Motiva, *inter alia*, that the Goods did not constitute infringement or contributory infringement of any patent or any copyright or trademark, or violation of any trade secret when sold. *See* Agreement, p. 4 ¶ 2.1.

77. Shell-Motiva also supplied Classic with ACM inventory (the “Shell-Motiva Inventory”) so that Classic could sell to dealers of Shell-branded retail outlets.

78. Classic and Shell-Motiva agreed that Classic would sell Shell-Motiva’s prepaid White-Yellow-White ACM (“WYW”) at the price agreed upon in the Agreement for all orders from Shell-Motiva direct sites as well as Shell-branded wholesalers. *See* Agreement, Schedule A.

79. As more particularly described above, Classic has applied for and obtained design patents for the Lazy S design in violation of the warranty against infringement set referred to in the immediately preceding paragraph.

80. Shell-Motiva learned for the first time in 2007 that the design patents that Classic obtained were acquired through use of the very engineering drawings that Shell-Motiva had provided to Classic pursuant to the Agreement.

81. On or about August 15, 2007, Shell-Motiva demanded that Classic return Shell-Motiva’s engineering drawings for the Lazy S. Classic still refused.

82. By letter dated September 12, 2007, Shell-Motiva renewed its demand that Classic return the Lazy S engineering drawings. Classic still refused.

83. In that same correspondence dated September 12, 2007, Shell-Motiva reminded Classic its obligation and requested Classic's assurance that it would honor the obligation to sell Shell-Motiva's prepaid White-Yellow-White ACM ("WYW") at the price agreed upon in the Agreement for all orders from Shell-Motiva direct sites as well as Shell-branded wholesalers.

84. On or about September 21, 2007, Classic indicated that it did not intend to honor this Agreement regarding pricing and rejected its obligation to do so.

85. By the same correspondence dated September 21, 2007, Classic inferred that it had copies of the Lazy S canopy design drawings by offering to provide "additional copies" of the drawings to Shell-Motiva.

86. Continuing through the expiration of the Agreement, it became clear that Classic would not return the drawings, specifications and other data to Shell-Motiva though Classic had an obligation to do so under the Agreement.

87. After the Agreement expired, Shell-Motiva was left without its drawings, specifications and other data, including but not limited to the Lazy S design; without the Shell-Motiva Inventory; and without other Confidential Information, all of which were shared with Classic pursuant to the Agreement.

## **B. Breach of Contract**

88. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

89. The Agreement is a valid and enforceable agreement between Shell-Motiva and Classic.

90. Shell-Motiva has fully performed under the Agreement. In particular, Shell has provided both its Confidential Information and the Shell-Motiva Inventory to Classic.

91. Classic breached the Agreement by:

- a. failing to return Shell-Motiva's Inventory;
- b. failing to return Shell-Motiva's Work Product including, but not limited to, the engineering drawings of the Lazy S design;
- c. failing to treat Shell-Motiva's information shared pursuant to the Agreement as Confidential Information;
- d. refusing to sell WYW ACM at the price agreed upon in the Agreement for all orders from Shell direct sites as well as Shell-branded wholesalers; and
- e. selling unauthorized inventory contrary to the terms of the Agreement, including ¶23.

92. As a result of Classic's breach of the Agreement, as set out in the preceding paragraphs of this Complaint, Shell-Motiva has sustained damages as set forth herein.

93. Shell-Motiva has been required to retain the services of the undersigned counsel to prosecute this action. Accordingly, Shell-Motiva is entitled to recover reasonable attorneys' fees for breach of the Agreement. *See* TEX. CIV. PRAC. & REM. CODE § 38.001.

### **C. Specific Performance**

94. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

95. In the alternative, money damages for the violation of Shell-Motiva's rights under the Agreement would be an inadequate remedy because Shell-Motiva cannot obtain the engineering drawings and specifications from any other source and has maintained ownership of the engineering drawings and specifications.

96. Further, money damages are inadequate because Shell-Motiva needs the Shell-Motiva Inventory to complete construction and repair of its Shell-branded stations. The Shell-Motiva Inventory is unique in value and character such that Specific Performance of Classic's obligations under the Agreement is warranted.

97. Shell-Motiva requests the Court to order Specific Performance and require Classic to return the Shell-Motiva Inventory and Work Product including but not limited to the drawings and specifications of the Lazy S design.

98. The Agreement includes a Right to Audit during the Agreement and for four (4) years after completion. Shell-Motiva requests the Court order Classic to make available all records of associated charges related to the Agreement so that Shell-Motiva may inspect and audit the records as contemplated by the Agreement. *See* Agreement, p. 10 ¶ 17.

#### **D. Request for Injunctive Relief**

99. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

100. Classic has committed wrongful acts as alleged herein against Shell-Motiva by unlawfully and wrongfully maintaining possession of the Shell-Motiva Inventory and Work Product.

101. Shell-Motiva is suffering imminent and irreparable harm because it is unable to provide the opportunity for Shell-branded stations to obtain completed canopy fascia systems, repairs and component parts utilizing the Lazy S design. Further, Shell-Motiva is unable to provide assurance to Shell-branded stations that are currently utilizing the Lazy S design that their canopy fascia systems will be maintained.



102. Shell-Motiva further suffers imminent and irreparable harm because without the drawings and specifications of the Lazy S design, Shell-Motiva cannot approach any other third party to create the design. In fact, Shell-Motiva cannot provide the ACM material for any such designs because Classic is also unlawfully holding the Shell-Motiva Inventory.

103. The injury to Shell-Motiva is irreparable for which there is no adequate remedy at law. Shell-branded stations are incomplete and potentially losing sales because consumers are not recognizing them as Shell-branded stations without the Lazy S design fascia. Due to Classic's actions, Shell-Motiva is left without any option other than Classic to service the stations.

104. As a result of Classic's withholding the Work Product and Shell-Motiva Inventory, both Shell-owned stations and independent dealer-owned stations will be required to purchase the Lazy S fascia design *only* from Classic. This results in harm to Shell-Motiva because it has been deprived of the use of its own Work Product and Inventory. Additionally, Shell-Motiva is unable to direct Shell-branded Shell stations to purchase canopy fascia systems utilizing the Lazy S design from any manufacturer other than Classic.

105. Further, Classic's withholding of the Work Product and Shell-Motiva Inventory effectively provides Classic with a monopoly on the Lazy S fascia design. In addition to the inherent injustice and unfairness of Classic's benefit by depriving Shell-Motiva from the enjoyment and use of its property, Classic will operate without competition using Shell-Motiva's property and may charge unreasonably high prices for the Lazy S fascia design. This is likely to result in inflated pricing of the Lazy S fascia design to Shell-Motiva for the Shell-owned stations and the dealers for independent dealer-owned stations.

106. Because there is no adequate remedy at law, Shell-Motiva requests injunctive relief from this Court requiring Classic to return the Shell-Motiva Inventory and Work Product, including without limitation the Lazy S design drawings and specifications.

**E. Unjust Enrichment**

107. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

108. Classic sold some of the Shell-Motiva Inventory to third parties without the authorization or approval of Shell-Motiva. Said sales were also not pursuant to the Agreement.

109. Upon information and belief, Classic obtained at least \$346,000.00 from the unauthorized sale of the Shell-Motiva Inventory.

110. On or around July 7, 2007, Shell-Motiva requested that Classic pay the proceeds from the unauthorized and unapproved sale of the Shell-Motiva Inventory to Shell-Motiva and Classic has refused to do so.

111. Classic would be unjustly enriched if allowed to retain the Shell-Motiva Inventory, the Lazy S engineering drawings and specifications and/or the proceeds from the sale of the Shell-Motiva Inventory.

**F. Constructive Trust**

112. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

113. To remedy Classic's unjust enrichment to the extent it concerns proceeds from Shell-Motiva Inventory, Shell-Motiva is entitled to the imposition of a constructive trust on the proceeds from the sale of the Shell-Motiva Inventory.

**G. Money Had and Received**

114. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

115. In the alternative, Shell-Motiva requests damages constituting restitution of money had and received along with related interest, fees and costs.

116. Classic holds money received from the sale of the Shell-Motiva Inventory pursuant to the Agreement that in equity and good conscience belongs Shell-Motiva.

**H. Promissory Estoppel**

117. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

118. Classic breached promises that it made under the Agreement to Shell-Motiva including Classic's promises to keep Shell-Motiva's Confidential Information confidential; failure to return Shell-Motiva's Inventory; failure to return Shell-Motiva's engineering drawings of the Lazy S design; and refusal to sell WYW ACM at the price agreed upon in the Agreement for all orders from Shell direct sites as well as Shell-branded wholesalers.

119. Shell-Motiva reasonably and substantially relied on the promises made by Classic to Shell-Motiva's detriment.

120. Shell-Motiva's reliance on Classic's promise(s) was foreseeable by Classic.

121. Injustice can be avoided by enforcing Classic's promise.

122. Shell-Motiva has suffered damages as a result of Classic's actions.

123. As a result of Classic's failure to keep its promises on which Shell-Motiva detrimentally relied, Shell-Motiva has had to employ the undersigned attorneys of record to

prosecute this case. Accordingly, Shell-Motiva is entitled to recover attorneys' fees. *See* TEX. CIV. PRAC. & REM. CODE § 38.001.

## **I. Conversion**

124. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

125. As of the date of the Agreement, Shell-Motiva was and still is the rightful owner of the Shell-Motiva Inventory and the engineering drawings and specifications, including but not limited to the engineering drawings and specifications created by Classic, provided to Classic regarding the Lazy S design.

126. Pursuant to the Agreement, Classic had only a right to possess the Shell-Motiva Inventory and the Lazy S engineering drawings and specifications, including but not limited to the engineering drawings and specifications created by Classic.

127. Classic unlawfully and without authority assumed dominion and control over Shell-Motiva's Inventory, the Lazy S engineering drawings and specifications, and any Work Product developed under the 2006 Agreement to the exclusion of Shell-Motiva.

128. Classic has refused to return the Shell-Motiva Inventory and in some instances has sold some of the Shell-Motiva Inventory without providing any information regarding the sale(s) or potential sale(s) or any proceeds thereof to Shell-Motiva.

129. The value of the Confidential Information, engineering drawings and specifications, and Work Product developed under the 2006 Agreement is immeasurable as it constitutes the very manner in which Shell-Motiva provides a uniform look to its Shell-branded stations.

130. Classic's conduct constitutes conversion of Shell-Motiva's valuable property, of which Shell-Motiva seek return and an award of damages.

131. Classic's conversion of the Confidential Information, including but not limited to the engineering drawings and specifications, as alleged above, was fraudulent and malicious or grossly negligent and was specifically intended to cause substantial injury to Shell-Motiva. Accordingly, Shell-Motiva request that exemplary damages be awarded against the Classic.

**J. Trespass to Chattels**

132. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

133. Classic's conduct as set forth above constitutes trespass to chattel. Shell-Motiva has a possessory right and owns the property in question—the Confidential Information, including the engineering drawings and specifications, and all Work Product developed under the 2006 Agreement. Classic intentionally and voluntarily interfered with Shell-Motiva's possession and ownership of the property.

134. As a result of Classic's unlawful interference with Plaintiff's right of possession and ownership, Shell-Motiva suffered damages for which it is entitled to recover.

**K. Common Law Fraud/Fraudulent Inducement**

135. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

136. Classic represented and agreed in the 2006 Agreement that the Lazy S engineering drawings were the sole and exclusive property of Shell-Motiva. Classic further agreed that the Lazy S engineering drawings were the sole and exclusive property of Shell-Motiva.

137. Classic knowingly made the above representations with full knowledge that it had concealed its application for the Lazy S Patents. Classic further knowingly concealed that it represented to the United States Patent Office that Classic owned the Shell-Motiva Lazy S design.

138. Shell-Motiva alleges that it would not have entrusted Classic with its Confidential Information including Shell-Motiva's engineering drawings and specifications had Shell-Motiva known about the falsity of Classic's representations.

139. Shell-Motiva would not have approved the terms of the 2006 Agreement, including ¶10, if Classic had disclosed material facts about Classic's patents on the Lazy S Design.

140. Shell-Motiva relied on the representations by Classic and Classic intended that Shell-Motiva would rely on those representations.

141. Based on that reliance, Shell-Motiva entered into the 2006 Agreement with Classic and provided its Confidential Information to Classic.

142. Each of the representations made by Classic has caused substantial injury and damage to Shell-Motiva. By reason of Shell-Motiva's reliance on Classic's representations and fraudulent concealment of material facts, Shell-Motiva has been damaged. Further, Shell-Motiva has potentially lost its superior right to the Lazy S design and the use of its Confidential Information.

**L. Theft Liability Act: Theft of Property**

143. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

144. Shell-Motiva alleges a violation of the Theft Liability Act against Classic. Classic is liable for the acts and agreements described above under the Texas Theft Liability Act. TEX. CIV. PRAC. & REM. CODE §§ 134.001, *et seq.*

145. Shell-Motiva has a possessory right in its property—Confidential Information, including its engineering drawings and specifications for the Lazy S design, and all Work Product developed under the 2006 Agreement. Said property that was stolen by Classic.

146. Classic unlawfully appropriated this property by taking it without Shell-Motiva's effective consent, and with the intent to deprive Shell-Motiva of the property.

147. These thefts amount to thefts of property under Section 31.03 and Section 31.05 (theft of trade secrets) of the Texas Penal Code. The unlawful taking was made with the intent to deprive Shell-Motiva of its property, and the taking did result in the deprivation of that property when the information was stolen.

148. Shell-Motiva was damaged as a result of the theft.

149. Accordingly, Classic is liable under the Theft Liability Act and Shell-Motiva entitled to actual damages and attorneys' fees. *See* TEX. CIV. PRAC. & REM. CODE § 134.005.

#### **M. Misappropriation of Trade Secrets**

150. Shell-Motiva re-alleges each of the preceding paragraphs for purposes of this claim against Defendants.

151. Classic's conduct constitutes theft of Shell-Motiva's trade secrets, including all formulas, patterns, devices, or compilations of information developed as Work Product under the 2006 Agreement, of which Shell-Motiva seek return and an award of damages.

152. Classic misappropriated and continues to misappropriate the Confidential Information, including engineering drawings and specifications of the Lazy S design, acquired pursuant to the Agreement.

153. As a result of Classic's actions, Shell-Motiva has suffered actual damages. Further, Shell-Motiva has potentially lost the exclusive use of its proprietary Lazy S design. Shell-Motiva's damages may include the profits to Classic, a reasonable royalty for Classic's use of the Confidential Information and/or the market value of the Lazy S design.

**PRAYER FOR RELIEF FOR COMMERCIAL CLAIMS (SUBJECT TO ARBITRATION):**

WHEREFORE, Plaintiff, Shell-Motiva, Inc. prays that this Court enter a judgment that:

- a. Grants injunctive relief and orders that Classic:
  1. Return the Shell-Motiva Inventory to Shell-Motiva; and
  2. Return the Work Product to Shell-Motiva, including without limitation, the drawings and specifications for the Lazy S fascia design;
- b. Awards General damages;
- c. Orders Classic to return any and all money collected for the sale of Shell-Motiva Inventory;
- d. Awards special damages;
- e. Awards prejudgment and post judgment interest as provided by law;
- f. Awards exemplary damages against Classic in a sum determined by the trier of fact;
- g. Awards costs of suit;
- h. Awards punitive damages;
- i. Awards reasonable attorneys' fees and costs incurred by Shell-Motiva in this action; and
- j. Awards such other and further relief as this Court deems just and proper.



*Of Counsel:*

A. Shonn Brown  
State Bar No. 24007164  
Southern District No. 615288  
Seth M. Roberts  
State Bar No. 24051255  
Southern District No. 904319  
LOCKE LORD BISSELL & LIDDELL LLP  
2200 Ross Avenue, Suite 2200  
Telephone: 214- 740-8714  
Facsimile: 214-740-8800  
[abrown@lockelord.com](mailto:abrown@lockelord.com)  
[sroberts@lockelord.com](mailto:sroberts@lockelord.com)

Respectfully submitted,

s/ Paul C. Van Slyke  
Paul C. Van Slyke  
Attorney in Charge  
State Bar No. 20457000  
Southern District No. 531  
Bruce J. Cannon  
State Bar No. 24055258  
Southern District No. 675598  
LOCKE LORD BISSELL & LIDDELL LLP  
600 Travis Street, Suite 3400  
Houston, Texas 77002  
Telephone: 713-226-1200  
Facsimile: 713-223-3717  
[pvanslyke@lockelord.com](mailto:pvanslyke@lockelord.com)  
[bcannon@lockelord.com](mailto:bcannon@lockelord.com)

**ATTORNEYS FOR PLAINTIFFS**