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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91237760
Party	Defendant Secret of the Islands, Inc.
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Signature	/Joanne bolos/
Date	03/21/2018
Attachments	020317 Complaint ECF 1.pdf(788390 bytes ) Motion to Suspend.pdf(151445 bytes ) Memorandum filed with summons and complaint from civil action.pdf(197431 bytes )

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Secret of the Islands, Inc.,	)	
	)	
Plaintiff,	)	C/A No.: 2:17-cv-00342-DCN
	)	
	)	
	)	<b>COMPLAINT</b>
	)	<b>(Jury Trial Demanded)</b>
vs.	)	
	)	
Hymans Seafood Company, Inc., Eli	)	
Hyman, Aaron Hyman, Brad Gena, Holy	)	
City Skin Products, Inc., U.S. Foods, Inc.,	)	
USA Distributions, LLC.	)	
	)	
Defendants.	)	
	)	

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Plaintiff, Secret of the Islands, Inc. (“Plaintiff”), for Its complaint against defendants, Hymans Seafood Company, Inc. (“Hymans”), Eli Hyman (“Eli Hyman”), Aaron Hyman (“Aaron Hyman”), and Brad Gena (“Gena”) (Hymans, Eli Hyman, Aaron Hyman, and Brad Gena collectively “Hyman Group”), Holy City Skin Products, Inc. (“HC”), (Hyman Group, and HC collectively “HYHC”), and U.S. Foods, Inc. (“USF”), USA Distributions, LLC, (“USA”), all defendants herein (collectively “Defendants”), alleges as follows:

**SUBSTANCE OF THE ACTION**

1. Overview:

A) Plaintiff brings this action to enjoin all Defendants’ ongoing and willful efforts, and specifically HYHC’s willful and malicious efforts, to market and sell salts, scents, soaks, lotions, skin products, and other bathroom and personal care products, packaging, jars, bowls, spoons, and displays which are strikingly and confusingly similar to Plaintiff’s line of products, and copies thereof, made known by Plaintiff and viewed widely within the industry as coming

from Plaintiff as the one and only original source of goods, and using a marketing method strikingly similar to Plaintiff's, and marketing using Plaintiff's slogans or confusingly similar slogans and underlying concepts as Plaintiff's established slogan marks such as: "Turn your bathroom into a profit center™", "Turn your bathroom into a display™", "Turn your bathroom into a showroom™", and "Turn your bathroom into a display and showroom™", made known by Plaintiff and viewed widely within the industry established as coming from Plaintiff as the one and only original source of goods. Defendants have intentionally, willfully, and maliciously copied the features that make Plaintiff's line of products, company, business, good will, instantly recognizable to customers.

B) In fact, upon information and belief, Defendants have been displaying and accepting orders through the practice of showing strikingly similar products, samples, and displays, in substantially similar display set-ups as the SOTI "Turn your bathroom into a display™" displays in a manner to make them appear as if they were Plaintiff's displays and products and in many cases they are using and/or have used Plaintiff's own displays and/or samples, to induce customers into believing they are Plaintiff's products, and then have sold Defendants' merchandise under this pretense that it is Plaintiff's and in some cases even filling Defendants' jars with Plaintiff's products.

C) Specifically, at times Plaintiff would get requests for more free sample buckets from Defendants, acting as a client of SOTI, and Defendants would be rapidly going through and reordering Plaintiff's free sample buckets while not selling SOTI products and not requesting (ordering from Plaintiff) anything near the usual quantity of merchandise, including jars of product, to sell from SOTI in relation to the free sample buckets being ordered from Plaintiff by Defendants. Plaintiff discovered Defendants' own jars were being sold in competition with

Plaintiff and the reason for the large quantity of free samples requested by Defendants was because Defendants were filling Defendants' infringing jars with Plaintiff's free sample product from Plaintiff's free sample buckets being ordered by Defendant Hymans.

D) Specifically, the Plaintiff's independent sales representative who was covering the Hymans account went to defendant's location and noticed Defendant Hymans had Plaintiff's buckets of free sample product in the bathroom but now had its own infringing jars of product in its gift shop shelves with Defendant HC's labels replacing Plaintiff's jars of product.

E) Plaintiff's manager then called Defendant Eli Hyman to find out what is going on. The Plaintiff's manager confronted and said to Eli Hyman that Hymans was selling Plaintiff's product in infringing jars with HC labels and infringing various intellectual property and intellectual property rights belonging to Plaintiff while at the same time still ordering from Plaintiff and even owing Plaintiff substantial moneys for merchandise ordered, received, and not paid for. Eli Hyman replied that his products were better and it's a free society for anyone to sell anything they want in competition. Plaintiff's manager, obviously very upset that he believed his job and livelihood was at stake, responded. Eli Hyman threatened and carried through with initiating a criminal prosecution. (See Exhibit 4)

F) Plaintiff's sales representative, after Plaintiff had lost Defendants as a client (because Defendant was copying Plaintiff and competing in the business), went to Defendants' location to try to re-open the account and still saw buckets of Plaintiff's free sample product in the bathroom positioned for and being used for filling free sample bowls which were owned by Plaintiff, and Defendants' own jars with Defendants' labels were for sale. So, Defendants were continuing Defendants practice of using Plaintiff's product to sell Defendants' own jars.

G) Unless immediately enjoined, Defendants' intentional, willful, malicious and

continued infringement of Plaintiff's rights will substantially further damage the value of Plaintiff's name, alienate Plaintiff's retailers and other customer outlets into which that Plaintiff has invested time and money, will further erode the distinctiveness of the "Secret of the Islands®" brand, and undermine Plaintiff's overall investment in the "Secret of the Islands®" line of products. The losses due to the infringing efforts of the Defendants has been increasing until now the loses are hitting critical mass as many SOTI accounts are being lost to Defendants. The lowball pricing in conjunction with the willful infringing practices of the Defendants has caused Plaintiff to lower pricing to meet Defendants' price while keeping up the standards of quality product Plaintiff is known for which Plaintiff believes is more costly and higher quality product than Defendants' products.

H) Specifically, Plaintiff believes the Defendants' products were not and/or are not following FDA guidelines. Plaintiff brought this to Defendants attention and does not know if Defendants have made any improvements in this regard but Plaintiff, as the known source and origin for these products, was hurt and damaged by this practice by Defendants of knowingly not following FDA guidelines, in reputation and the public perception of Plaintiff's brand, and Plaintiff can continue to be hurt by Defendants actions or non-actions with regard to this very serious issue if it is not or has not been immediately remedied or Defendants immediately enjoined from continuing to market, manufacture, and sell.

I) Specifically, there are new recent claims over the last two (2) years of soured product coming from and being sold by Defendants, being brought to Plaintiff's attention by consumers who are calling in to complain about soured products in HC jars and they are calling Plaintiff because they are confusing the source and origin of these goods as coming from Plaintiff and are confusing Defendants' product, thinking that Defendants' lower quality

defectively soured product is Plaintiff's product.

J) Specifically, Plaintiff is called on a regular basis by potential customers to discuss or answer questions concerning Defendants' jars of product available for purchase on the web. These customers are clearly confusing the origin and source of the goods.

K) The lowball pricing which is in conjunction with the unethical and infringing willful practices by Defendants that is significantly damaging Plaintiff's sales, are achievable by Defendants and are due in part to the Defendants using untrained distributors with no product knowledge to cut corners as oppose to Plaintiff's practice of qualifying, educating, training, and monitoring closely sales representatives and agents and distributors including even significant draw. Between losing approximately 35% to 60% (and more) of the price it must sell to its existing customers to not lose them and losing the percentage of accounts that keep migrating to Defendants, Plaintiff is being driven out of the business (as Eli Hyman has promised) and this court must act to prevent Plaintiff from going out of business before its day in court by immediately enjoining the Defendants from manufacturing, selling, and marketing the samples and products, and infringing Plaintiff's intellectual property and intellectual property rights on a daily basis, again and again by copying Plaintiff's displays, jars, bowls, spoons, products, marketing and merchandising program, business, good will, etc.

L) In fact, after Defendants' repeated bullying and threats and the arrest of Plaintiff's manager due to Defendants' actions has caused additional loses and damages to Plaintiff as Plaintiff has been reluctant to take action against Defendants repeated damaging and infringing acts, due to Defendants' increasing size and ability and due to the intimidation and threats by Defendants.

M) Specifically, in the last two and a half (2½) years yet more new infringing practices and infringement resulting in significant damages to SOTI have occurred as major accounts and opportunities are now more than ever before migrating to Defendants by Defendants use of major trade show presence and prime locations at these tradeshows, due to association with USF, and thus the availability being offered to Hyman Group and HC to present, market and advertise, take orders, and sell in prime locations, utilizing significant sized display room space for displaying the competing infringing products in conjunction with Defendant's lowball pricing. These tradeshows have become a major source of new business in the industry that many of Plaintiff's potential customers are in, over the last two and a half (2½) years thus significantly hurting Plaintiff's abilities for new accounts or keeping existing accounts. For the last two and a half (2½) years and currently Plaintiff's customers and potential customers are all (or at least a significant majority) going to these major tradeshows and are now see the Defendants' high profile booths right away as they enter and going to Defendants' high profile and prime location booths immediately. Defendants then present Plaintiff's customers and potential customers with lower pricing, and whatever it takes them to say for Defendants to steal the customer or potential customer from Plaintiff.

N) Specifically, the price lowballing in conjunction with the Defendants' actions described herein has caused Plaintiff to significantly lower its' prices which has reduced the SOTI sales person's commissions causing great reductions in sales commissions. This has caused a great loss of sales persons and others becoming part-time which has greatly hurt Plaintiff's sales abilities and servicing abilities.

O) Specifically, Hyman Group and HC infringing then combining with USF and USA to compete has additionally hurt Plaintiff as USF has been a vendor of Plaintiff's for

ingredients for Plaintiff's trade secret formulas (licensed to Plaintiff by Joanne Bolos) and upon information and believe USF has provided HC with information concerning Plaintiff's ingredients purchased which has been helpful to HC and/or Hyman group in connection with USF in developing its infringing and competing product.

P) Specifically, Plaintiff's gross sales and profit margins were increasingly growing year to year at high percentages until Defendants that first had become a customer continues to willfully infringe upon Plaintiff in increasing and new ways. Over the last two and a half (2½) years with Defendants added, new, and increase level of power, trade show presence, and infringements and copying further damaging Plaintiff's business results in a need for immediate injunctive relief and damages awarded to Plaintiff.

2. All the claims asserted herein arise out of and are based on Defendants' willful and malicious infringement of Plaintiff's intellectual property, and intellectual property and other rights, which Defendants are aware of but choose to blatantly disregard. Defendants unlawfully use Plaintiff's own displays and samples to market and sell their own copied and infringing products. Plaintiff's products are protected under trademark, trade dress, patent, trade secret, copyright law, and other legal grounds.

3. Plaintiff brings claims for unfair competition, false advertising, false designation of origin, trademark infringement, and trade dress infringement under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), along with related South Carolina state and common law claims for unfair competition and deceptive trade practices, and Title 17 of the United States Code. Plaintiff seeks injunctive and monetary relief. Unless immediately enjoined, Defendants' intentional, willful, malicious and continued infringement of Plaintiff's rights will damage the value of Plaintiff's name, alienate Plaintiff's retailers that have invested time and

money in the distinctiveness of the “Secret of the Islands®” brand, and undermine Plaintiff’s investment in the Secret of the Islands® line of products. The losses due to the infringing efforts of the Defendants has been increasing until now it is hitting critical mass as major accounts are being swept away. The lowball pricing of Defendant in conjunction with Defendants’ actions has caused Plaintiff to lower pricing to meet Defendant’s price while Plaintiff is keeping up the standards of quality product Plaintiff is known for which is more costly and of higher quality than Defendant’s products.

**DEFENDANTS’ INFRINGING ACTIVITIES CONCERNING  
PLAINTIFF’S COPYRIGHTS**

4. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.
5. Overview

The Defendants have each played an integral role in the development, manufacture, marketing, distribution, and sale of the products, displays, display cards, packaging, marketing plans, marketing methods, and free samples which everyday infringe on Plaintiff’s copyrights and copyright rights, without any license, grant, or permission from SOTI, or payment to SOTI. Plaintiff is owner of copyright registration number VA0002026397 for “TURNING YOUR BATHROOM INTO A SHOWROOM OR DISPLAY”, “TURN YOUR RESTROOM INTO A PROFIT CENTER”, “Turn your bathroom into a display”, “Turn your bathroom into a showroom”, “Display consisting of Bowl, sample product, spoon, message card”, “Please enjoy a one minute hand message compliments of us available for purchase ask our staff”, “TURN YOUR BATHROOM INTO A PROFIT CENTER”, “TURN YOUR RESTROOM INTO A DISPLAY”, as well as, additional copyrights and other intellectual property applications in “TURN YOUR BATHROOM INTO A PROFIT CENTER™” program, and the “TURN YOUR BATHROOM INTO A DISPLAY AND/OR SHOWROOM™” program, and Plaintiff’s trademarks including

but not limited to “Turn your bathroom into a profit center™”, “Turn your bathroom into a display™”, “Turn your bathroom into a showroom™” , and “Turn your bathroom into a display and showroom™”, and the development, manufacture, marketing, distribution, and sale of the products, displays, display cards, packaging, marketing plans, marketing methods, and free samples associated therewith, (See exhibit 6) , and these original works owned by SOTI are all jointly hereinafter referred to as (“SOTI ITEMS”), the intellectual property owned by Secret of the Islands, Inc. hereinafter referred to as (“SOTI IP”).

Defendants accessed the SOTI ITEMS and SOTI IP was through direct contact with Plaintiff and Plaintiff’s representatives on a significant and continuous basis for over a year. Defendant was a client of Plaintiff originally and purchased product (over \$50,000 of product purchased by Defendants from Plaintiff in 2009, 2010, 2011) directly from Plaintiff and having Plaintiff supply free samples, displays, jars of product, and was privy to all of Plaintiff’s SOTI IP except its trade secret formula, however upon information and belief in reverse engineering HYHC was given information as to raw ingredients used and quantities by USF (See Above). Through these and other actions as described herein, Defendants violated Plaintiff’s exclusive copyright in the original works of Plaintiff and committed copyright infringement under federal law. Defendants copied Plaintiff’s original works every day or almost every day and have been doing this for the past two and a half (2½) years.

6. In the last two (2) or two and a half (2½) years, Hymans, HC and/or USF, upon information and belief, sourced and/or manufactured the various infringing products, and packaging, jars, and displays. Upon information and belief, the defendants sold the products, jars, packaging, displays, to USF, and/or licensed USF to produce and/or sell same in significant quantities, and/or USF acted as a representative or agent for HC and/or Hymans Group, or they

have another relationship, partnership, or kind of joint venture. USF manufactures, and/or markets, distributes, uses, and/or sells the products, displays, packaging, marketing plan, marketing method, free samples, "TURN YOUR BATHROOM INTO A PROFIT CENTER™" program, "TURN YOUR BATHROOM INTO A DISPLAY AND/OR SHOWROOM™" program, "TURNING YOUR BATHROOM INTO A SHOWROOM OR DISPLAY", "TURN YOUR RESTROOM INTO A PROFIT CENTER", "Turn your bathroom into a display", "Turn your bathroom into a showroom", "Display consisting of Bowl, sample product, spoon, message card", "Please enjoy a one minute hand message compliments of us available for purchase ask our staff", "TURN YOUR BATHROOM INTO A PROFIT CENTER", "TURN YOUR RESTROOM INTO A DISPLAY", original works to the public through its vast network of distribution and sale.

7. For their own profit and advantage, Defendants misappropriated the copyrighted the original works for which Plaintiff spent significant monies, time, and energy to create same. Plaintiff has demanded that Defendants stop copying, selling, making, and publicly displaying Plaintiff's copyrighted works and products and SOTI ITEMS and content.

In the last two and a half (2½) years, for their own profit and advantage, Defendants have misappropriated the copyrighted original works for which Plaintiff spent significant monies, time, and energy to create same daily increasing the infringements, types of infringements, ways of infringement, vehicles of or aiding to infringement or vehicles used for infringement implementation, places and locations of infringement. Plaintiff has demanded that Defendants stop copying, selling, making, and publicly displaying Plaintiff's copyrighted works and products and SOTI ITEMS and content.

However, Defendants have refused to cease their infringing activities. Specifically, HC and USF, after receiving notice, continued to market and sell the SOTI ITEMS and use SOTI IP.

**HISTORY OF PLAINTIFF'S PUTTING DEFENDANT  
USF ON NOTICE SINCE 2012**

8. Johnny Hoy ("Hoy") manager of Plaintiff, Secret of the Islands, Inc., spoke to Defendant, US Foods Inc., on or about July of 2012. Hoy spoke to the South Carolina Hilton Head territory district manager that over saw the Hymans account. After calls were attempted, only one call connected to the right person. They spoke for 1 to 2 minutes. Hoy told USF Representative that Hymans stole the marketing, product, intellectual property and put him on notice that his company (USF) will be selling pirated goods and infringing if they marketed, sold, distributed and/or manufactured for Hymans. He (USF Representative) said to Plaintiff: "that is between you and Hymans" and then the USF Representative hung up phone.

**JURISDICTION AND VENUE**

9. This Court has jurisdiction under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); under 28 U.S.C. §§ 1331 and 1338(a) and (b); and under principles of pendant jurisdiction. Supplemental jurisdiction exists over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

10. This Court has jurisdiction under 28 U.S.C.A. §§ 1331 (general federal question jurisdiction), 1332 (diversity jurisdiction), 1338(a) and (b) (specific federal question jurisdiction), and 1367(a) (supplemental jurisdiction) because the parties are of diverse citizenship and/or the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

11. This Court has jurisdiction over Defendants because Defendants have engaged in acts or omissions within the District of South Carolina causing injury; Defendants have sought protection and benefit from the Laws of the State of South Carolina; Defendants have

purposeful availed themselves of the privileges of conducting business in the State of South Carolina and the District of South Carolina.

12. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c).

**PARTIES**

13. Plaintiff is a corporation duly organized and validly existing under the laws of the State of South Carolina with its principal place of business 1051 Broad Stone Road, Irmo, SC 29063.

14. Upon information and belief, Defendants Hyman and HC have their principal office at 215 Meeting Street, Charleston, SC 2940.

15. Upon information and belief, Defendant USF is a Delaware Corporation which has its main office in the State of Illinois, located at 9399 West Higgins Road, Suite 500, Rosemont, IL 60018, 1-847-720-8000; and upon information and belief USA Distributions, LLC is located at 227 Sandy Springs Place NE Suite D - 307, Atlanta, GA 30328; and Eli Hyman, Aaron Hyman, Brad Gena, upon information and belief are residents of South Carolina.

**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

16. Plaintiff is and has been famous with in its industry as a manufacturer, retailer, seller, and wholesaler of the “Secret of the Islands®” Brand of products since 2009 servicing many venues, selling thousands of cases of product a year in venues, and selling product to customers worldwide from its website. Since its inception in 2009 as Secret of the Islands, Inc., Plaintiff has been known for well made, quality, affordable products that meet the needs of adults young and old in the skin care, salts, soaks, lotions, and other personal care product areas.

17. Plaintiff, and its authorized distributors, sales representatives, agents, and retailers, are the only source of genuine “Secret of the Island brand” products. Today, the company offers a wide range of its products through its website at <http://secretoftheislands.com>, copies of

webpages from this site are attached hereto and incorporated herein as Exhibit 5., and through its authorized distributors, sales representatives and agents, its sales force, restaurant, casino, hotel, wholesale and retail channels. The products and brand have been featured, advertised, and/or sold-in such publications and websites, and signage including but not limited to vehicle, boat, and plane signage used by Plaintiff (As depicted in Exhibits including 5 and 6) as Amazon.com, Zulily.com, Bed, Bath and Beyond, and many more places.

18. Plaintiff's products are protected by common law copyright and registered copyright in the United States.

19. The copyrighted original works, images, text, jars, displays, products, designs belonging to Plaintiff have been illegally utilized and infringed upon by Defendants many times, in many ways within the last two and a half (2½) years. Plaintiff has submitted several formal applications for registration of the original works with the United States Patent and Trademark. Plaintiff maintains its website ([www.secretoftheislands.com](http://www.secretoftheislands.com)) where the original copyrighted works are displayed, and have been continuously displayed. Plaintiff is owner of copyright registration number VA0002026397 for "TURNING YOUR BATHROOM INTO A SHOWROOM OR DISPLAY", "TURN YOUR RESTROOM INTO A PROFIT CENTER", "Turn your bathroom into a display", "Turn your bathroom into a showroom", "Display consisting of bowl, sample product, spoon, message card", "Please enjoy a one minute hand message compliments of us available for purchase ask our staff", "TURN YOUR BATHROOM INTO A PROFIT CENTER", "TURN YOUR RESTROOM INTO A DISPLAY".

#### **PLAINTIFF'S TRADEMARK RIGHTS**

20. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

21. Plaintiff is engaged in the business of manufacturing, marketing, advertising, and selling

unique, high quality skin products and personal care products for consumers throughout the United States including this district.

22. Plaintiff's products are sold under the famous SECRET OF THE ISLANDS® brand.

23. The SECRET OF THE ISLANDS® brand has been used in commerce by Plaintiff continuously since 2009.

24. Through the years, the SECRET OF THE ISLANDS® brand has become synonymous with Plaintiff's high quality products.

25. The SECRET OF THE ISLANDS® branding appears on the packaging that the products are sold in, as well as, on hang tags that can be found on the Jars and other products, on message and direction sheets, the website, in the form "Secret of the Islands™" or "Secret of the Islands®" and ©2009 – 2016. The packaging and tagging of some of Plaintiff's "Secret of the Islands®" products can be seen in the photographs contained in Exhibits including 1 and 5 to this Complaint attached hereto and incorporated herein by this reference.

26. Plaintiff's products, including those at issue here, also possess on packaging, tagging and other materials several trademarks, trade dress, and trademark slogans which include those contained in a list in Exhibit 6 attached hereto and incorporated herein by this reference. The presence of the marks on Plaintiff's products can be seen in the photographs contained in Exhibits including 1 and 5 to this Complaint.

27. When consumers see the Secret of the Islands® mark or brand name, they associate it with the high-quality skin and personal care products manufactured and sold by the Plaintiff.

28. Defendants' use of the products it purchased from Plaintiff, and Plaintiff's marks (See Exhibit 6) to solicit sales mislead consumers into believing that Plaintiff is affiliated with, or endorsing, Defendants.

**PLAINTIFF'S TRADE DRESS RIGHTS**

29. Plaintiff's products have certain characteristics that, when viewed in their entirety, signal to consumers that a product is Plaintiff's product that has been made by the Plaintiff and Plaintiff is the one and only source of these products and services. Specifically, Plaintiff's products appearance, but with the recognized features of the bathroom displays such as:

- a) The characteristic bowls with free sample product inside, spoons, and framed market sheets and its distinctive look.
- b) This type of skin products sold in the recognizable mason jars is recognize and assumed by consumers to be the "Secret of the Islands®" brand products which consumers expect to be of the high quality of the "Secret of the Islands" corporation.
- c) The products displayed for free sample are a distinctive look and shape.
- d) The products, packaging, and jars is distinctive.

30. Examples of these trade dress features of Plaintiff's can be seen in the photographs contained in Exhibits including 1, 5, 6, 12. and specifically, the trade dress features of the displays with product and packaging and jars can be seen in the photographs contained in Exhibits including 1, 5, 6, 12 to this Complaint.

31. Consumers worldwide have come to associate the features identified above with the Plaintiff and the "Secret of the Islands®" brand.

32. The features mentioned above, of SECRET OF THE ISLANDS® products, can be seen in the photographs contained in Exhibits including 1, 5, 6, 12 to this Complaint.

33. The slogans and labels on the Plaintiff's products only further serves to identify them as SECRET OF THE ISLANDS® products, signifying to consumers that Plaintiff is the source of the goods.

34. Thus, Defendants' of products to solicit sales mislead consumers into believing that Plaintiff is affiliated with, or endorsing, Defendants.

**PLAINTIFF'S QUALITY CONTROL**

35. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

36. Plaintiff maintains strict quality control over the sourcing, manufacturing, packaging, distribution, sale, and service of products bearing the SECRET OF THE ISLANDS® mark. The Plaintiff had designed a service program for clients and accounts, cleaning, resetting up, refilling, etc. Defendants also eliminated some accounts by lowballing Plaintiff, stealing accounts, not servicing with service quality of Plaintiff, then many of these accounts are lost forever because of the Defendant's lack of service.

37. This quality control helps to ensure that customers enjoy and get the benefits of Plaintiff's products the way they were meant to.

38. To ensure that consumers remain satisfied with their purchases long after the initial sale is made, each of Plaintiff's products comes with a guarantee. Plaintiff's guarantee can be found on Plaintiff's website at <http://secretoftheislands.com>. In the last two and a half (2½) years, the Defendants sold product which had soured and gone rancid and the purchasers call Plaintiff thinking it was Plaintiff's products. This type of complaint is increasing.

39. Plaintiff has also invested significant time, money and effort to promote and market its products. These efforts have built a superior image for its products and the "Secret of the Islands®" brand.

40. The combination of its high-quality products and promotional activity have kept Plaintiff at the forefront of the business, resulting in millions of dollars of annual sales.

41. Plaintiff's efforts have also served to create enormous good will. Plaintiff's products, and

the quality with which they are built, are extremely well-known to consumers interested in these type of skin products.

**DEFENDANTS AND THEIR UNAUTHORIZED AND  
INFRINGEMENT USE OF PLAINTIFF'S PRODUCTS**

42. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

43. Upon information and belief, Defendants are marketers, manufacturers, wholesalers, distributors, who sell products to hotels, casinos, restaurants, retailers, as well as direct to consumers and to others who sell products directly to consumers.

44. Defendants display and offer for sale their products through their website(s), as well as through other websites and web media locations, including but not limited to you tube, direct sales, and other types of sales efforts.

45. Upon information and belief, Defendants have displayed, advertised, distributed, exported, offered for sale, sold, and/or passed off unauthorized copies of Plaintiff's products, which depict Plaintiff's trade dress and/or trademarks, to increase their own future sales.

46. Company executives and sales associates have personally seen Defendants selling their own products by using Plaintiff's display and samples.

47. As seen in Exhibit 3, the Defendants' products are packaged in packaging and presented in displays that are designed to confuse consumers into thinking they are from SOTI.

48. However, Defendants' products clearly have the unauthorized use of trade dress of SECRET OF THE ISLANDS® brand owned by the Plaintiff which are photographed and contained in the Exhibits attached to this Complaint.

49. Defendants' infringing products also clearly have the elements described above about Plaintiff's trade dress. These elements can clearly be seen in the photographs contained in Exhibit 3 attached to this Complaint.

50. On information and belief, Defendants removed the Secret of the Islands® tags from the front of the products shown in Exhibits including exhibits 1 and 5 of this Complaint to hide the fact that the products were SECRET OF THE ISLANDS products made by the Plaintiff.

51. The similarity between Defendants' products and Plaintiff's products is further evidenced by a statement made by "Turn your bathroom into a profit center™" , "TURNING YOUR BATHROOM INTO A SHOWROOM OR DISPLAY", "TURN YOUR RESTROOM INTO A PROFIT CENTER", "Turn your bathroom into a display", "Turn your bathroom into a showroom", "Display consisting of Bowl, sample product, spoon, message card", "Please enjoy a one minute hand message compliments of us available for purchase ask our staff", "TURN YOUR BATHROOM INTO A PROFIT CENTER", "TURN YOUR RESTROOM INTO A DISPLAY" which are all trademark slogans of Plaintiff, which slogans appear on Defendants website and YouTube videos without permission, grant, or license from Plaintiff. Some samples of Defendants' use with authorization from Plaintiff of Plaintiffs trademark slogans are shown in Exhibit 3 and in YouTube videos including but not limited to those in which we submitted links to also said links are in Exhibit 3 attached hereto.

52. Defendants are not related to or affiliated with Plaintiff in any way. Defendants have not sought or received a license or authorization for the acts described herein.

53. Defendants' display for free samples, bathroom display, and/or sale of Plaintiff's brand products was done with willful disregard of Plaintiff's rights after severing of relationship between Plaintiff and Defendant. (See the copy of the Police Report in Exhibit 4 attached hereto)

54. Upon information and belief. Defendants will continue to copy, package and distribute Plaintiff's products unless enjoined from doing so in willful violation of Plaintiff's rights.

55. Upon information and belief, Defendants' improper use of Plaintiff's intellectual property

and goodwill is unjustly enriching Defendants.

56. Defendants' unauthorized acts as described herein have caused and will continue to cause irreparable damage to Plaintiff and its business and goodwill unless restrained by this Court.

**THEFT OF INTELLECTUAL PROPERTY**

57. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

58. Plaintiff and Defendants agreed that all free sample product and display materials given from Plaintiff to Defendants was owned by Plaintiff and given only for the specific use of selling Plaintiff's products.

59. Defendant used all or part of the free sample product and display materials owned by Plaintiff to exclusively sell Defendants own products.

60. The foregoing constitutes theft of intellectual property.

61. Upon information and belief, Defendants' aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

**FIRST CLAIM FOR RELIEF:**  
**UNFAIR COMPETITION IN VIOLATION OF 15 U.S.C. § 1125(a)**

62. Plaintiff incorporates by reference all the foregoing paragraphs of this Complaint from the paragraph labeled 1. through the paragraph labeled 61.

63. Defendants have displayed and offered to sell and induce customers to buy their products by putting Plaintiff's products on display in patron bathrooms after severing relationship with Plaintiff.

64. Defendants' conduct is a misrepresentation likely to cause confusion, mistake and to deceive as to the affiliation, connection or association between Defendants and Plaintiff and as to Plaintiff's sponsorship or approval of Defendants' goods, services, or commercial activities.

65. Because of the foregoing, Defendants have committed unfair competition, in violation of

Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

66. Upon information and belief, Defendants' aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

67. Plaintiff should be awarded monetary relief, including Defendants' profits, Plaintiff's actual damages, multiple damages and increased profits, multiple profits or damages, or, if applicable and Plaintiff elects, statutory damages as the Court considers just; and punitive and/or enhanced damages as provided for under applicable law, costs, fees, and all other damages recoverable by law. as well as, attorney's fees, and additionally because Defendants' aforesaid conduct has caused, and unless enjoined by this court will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury to its goodwill and reputation, for which Plaintiff has no adequate remedy at law.

**SECOND CLAIM FOR RELIEF:**  
**FALSE ADVERTISING IN VIOLATION OF 15 U.S.C. § 1125(a)**

68. Plaintiff incorporates by reference all the foregoing paragraphs of this Complaint from the paragraph labeled 1. through the paragraph labeled 67.

69. Plaintiff's trade dress and trademarks are used in commerce. and are non- functional, inherently distinctive, and have acquired secondary meaning as the indicator of Plaintiff as the exclusive source of products containing or incorporating such designs and marks.

70. Defendants have used Plaintiff's products, which contain or depict Plaintiff's trade dress and trademarks. and have, without Plaintiff's authorization or consent displayed, advertised, distributed, exported, offered for sale, sold, and/or passed them off to induce sales of Defendants' products.

71. Specifically, Defendants have placed Plaintiff's products, using Plaintiff's trade dress, and used Plaintiff's samples in Defendants' packaging, and removed the tags from product packaging

and jars identifying them as “Secret of the Islands <sup>TM</sup>”, used products produced by Plaintiff effort to solicit future purchases of their own products.

72. Defendants’ false advertising misrepresents the nature, characteristics, qualities, or geographic origin of Defendants’ products, and is likely to cause confusion, mistake, and/or to deceive as to the affiliation, connection or association between Defendants and Plaintiff, and/or as to Plaintiff’s sponsorship or approval of Defendants’ goods, services, or commercial activities.

73. As a result of the foregoing, Defendants have falsely advertised their products, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

74. Upon information and belief, Defendants’ aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

75. Plaintiff should be awarded monetary relief, including Defendants’ profits, Plaintiff’s actual damages, multiple damages and increased profits, multiple profits or damages, or, if applicable and Plaintiff elects, statutory damages as the Court considers just; and punitive and/or enhanced damages as provided for under applicable law, costs, fees, and all other damages recoverable by law. as well as, attorney’s fees, and additionally because Defendants’ aforesaid conduct has caused, and unless enjoined by this court will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury to its goodwill and reputation, for which Plaintiff has no adequate remedy at law.

**THIRD CLAIM FOR RELIEF:**  
**FALSE DESIGNATION OF ORIGIN IN VIOLATION OF 15 U.S.C. §1125(a)**

76. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

77. Plaintiff’s trade dress, slogans, and trademarks are used in commerce, and are non-functional, inherently distinctive, and have acquired secondary meaning as the indicator of Plaintiff as the exclusive source of products containing or incorporating such designs and marks.

78. Defendants have used Plaintiff's products which contain or depict Plaintiff's trade dress and trademarks. and have, without Plaintiff's authorization or consent, displayed, advertised, distributed, exported, offered for sale, sold, and/or passed them off to induce sales of Defendants' products.

79. Specifically, Defendants have placed Plaintiff's products, into packaging and displays which depict the Plaintiff's trade dress and sometimes actually used Plaintiff's product removed the tags, identifying them as SECRET OF THE ISLANDS products, produced by Plaintiff, to solicit future purchases of their own products.

80. Defendants' false designation of origin misrepresents the nature, characteristics, qualities, or geographic origin of Defendants' products, and is likely to cause confusion, mistake, and/or to deceive as to the affiliation, connection or association between Defendants and Plaintiff, and/or as to Plaintiff's sponsorship or approval of Defendants' goods, services, or commercial activities.

81. As a result of the foregoing, Defendants have falsely designated the origin of them products, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

82. Upon information and belief, Defendants' aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

83. Plaintiff should be awarded monetary relief, including Defendants' profits, Plaintiff's actual damages, multiple damages and increased profits, multiple profits or damages, or, if applicable and Plaintiff elects, statutory damages as the Court considers just; and punitive and/or enhanced damages as provided for under applicable law, costs, fees, and all other damages recoverable by law, as well as, attorney's fees, and additionally because Defendants' aforesaid conduct has caused, and unless enjoined by this court, will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury to its goodwill and reputation, for which Plaintiff's no

adequate remedy at law.

**FOURTH CLAIM FOR RELIEF:**  
**TRADEMARK INFRINGEMENT UNDER SECTION 1125 OF THE LANHAM ACT**

84. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

85. Plaintiff's SECRET OF THE ISLANDS trademarks and other trademark slogan are used in commerce, and are non-functional, inherently distinctive, and have acquired secondary meaning as the indicator of Plaintiff as the exclusive source of products containing or incorporating such designs and marks.

86. Defendants have used Plaintiff's products, which contain or depict Plaintiff's Trademarks and have, without Plaintiff's authorization or consent, displayed, advertised, distributed, exported, offered for sale, sold, and/or passed them off to induce sales of Defendants' products.

87. Defendants' use of Plaintiff's trademarks is likely to cause confusion, mistake, and/or to deceive as to the affiliation, connection or association between Defendants and Plaintiff; and/or as to Plaintiff's sponsorship or approval of Defendants goods, services, or commercial activities.

88. Specifically, Defendants have placed Plaintiff's products, which not only depict the Plaintiff's trademarks, but Plaintiff's trade dress, into Defendants' packaging, and removed the tags identifying them as Plaintiff's products, produced by Plaintiff, to solicit future purchases of their own products.

89. Defendants' aforesaid conduct constitutes trademark infringement under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

90. Plaintiff should be awarded monetary relief, including Defendants' profits, Plaintiff's actual damages, multiple damages and increased profits, multiple profits or damages, or, if applicable and Plaintiff elects, statutory damages as the Court considers just; and punitive and/or enhanced damages as provided for under applicable law, costs, fees, and all other damages

recoverable by law. as well as, attorney's fees, and additionally because Defendants aforesaid conduct has caused. and unless enjoined by this court, will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury to its goodwill and reputation, for which Plaintiff has no adequate remedy at law.

**FIFTH CLAIM FOR RELIEF:**  
**TRADE DRESS INFRINGEMENT UNDER SECTION 1125 OF THE LANHAM ACT**

91. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

92. Plaintiff's trade dress is used in commerce, is non-functional, inherently distinctive, and has acquired secondary meaning as the indicator of Plaintiff as the exclusive source of products containing or incorporating such designs.

93. Defendants have used Plaintiff's products, which contain or depict Plaintiff's trade dress, and have, without Plaintiff's authorization or consent, displayed, advertised, distributed, exported, offered for sale, sold, and/or passed them off to induce sales of Defendants' products and similar looking products and displays that infringe Plaintiff's trade dress.

94. Defendants' use of Plaintiff's trade dress is likely to cause confusion, mistake, and/or to deceive as to the affiliation, connection or association between Defendants and Plaintiff, and/or as to Plaintiff's sponsorship or approval of Defendants' goods, services, or commercial activities.

95. Defendants' aforesaid conduct constitutes trade dress infringement under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

96. Plaintiff should be awarded monetary relief, including Defendants' profits, Plaintiff's actual damages, multiple damages and increased profits, multiple profits or damages, or, if applicable and Plaintiff elects, statutory damages as the Court considers just; and punitive and/or enhanced damages as provided for under applicable law, costs, fees, and all other damages recoverable by law. as well as, attorney's fees, and additionally because Defendants' aforesaid

conduct has caused, and unless enjoined by this court will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury to its goodwill and reputation, for which Plaintiff has no adequate remedy at law.

**SIXTH CLAIM FOR RELIEF:**  
**UNFAIR COMPETITION**  
**S.C. CODE ANN. § 39-5-10, et seq., as amended OR SCUTPA**

97. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

98. Plaintiff's trade dress and trademarks are used in commerce, and are non-functional, inherently distinctive, and have acquired secondary meaning as the indicator of Plaintiff as the exclusive source of products containing or incorporating such designs and marks.

99. Defendants have used Plaintiff's products and trade dress packaging, jars, and displays, which contain or depict Plaintiff's trade dress and trademarks, and have, without Plaintiff's authorization or consent displayed, advertised, distributed, exported, offered for sale, sold, and/or passed them off to induce sales of Defendants' products.

100. Specifically, Defendants have placed Plaintiff's products, which depict the Plaintiff's trade dress, into Defendants' packaging, jars, displays to identify them as SECRET OF THE ISLANDS® products, produced by Plaintiff, in an effort solicit future purchases of their own products.

101. Defendants' conduct is a representation likely to and has caused confusion, mistake, and/or to deceive and thereby harm the public in addition to Plaintiff as to the affiliation, connection or association between Defendants and Plaintiff, and/or as to Plaintiff's sponsorship or approval of Defendants' goods, services, or commercial activities.

102. As a result of the foregoing, Defendants have committed unfair competition, in violation of South Carolina Code Ann. § 39-5-10, et seq., as amended, or SCUTPA

103. Upon information and belief, Defendants' aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

104. Defendants' conduct as described herein is also harming the public.

105. Plaintiff should be awarded monetary relief, including Defendants' profits, Plaintiff's actual damages, multiple damages and increased profits, multiple profits or damages, or, if applicable and Plaintiff elects, statutory damages as the Court considers just; and punitive and/or enhanced damages as provided for under applicable law, costs, fees, and all other damages recoverable by law. as well as, attorney's fees, and additionally because Defendants' aforesaid conduct has caused, and unless enjoined by this court will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury to its goodwill and reputation, for which Plaintiff has no adequate remedy at law.

**SEVENTH CLAIM FOR RELIEF:**  
**DECEPTIVE TRADE PRACTICES**  
**S.C. CODE ANN. § 39-5-10, et seq., as amended OR SCUTPA**

106. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

107. By engaging in the activities set forth above, including using Plaintiff's products to solicit customers for their own products, Defendants have engaged in activities that deceive or have a tendency to deceive a material segment of the public to which Defendants have directed their marketing activities.

108. Upon information and belief, through such deceptive acts, Defendants have engaged in consumer directed conduct that has affected the public interest of South Carolina and has resulted in injury to consumers and harm to the public in the State of South Carolina.

109. Upon information and belief, Defendants' conduct is willful and in knowing disregard of Plaintiff's rights and those of the public.

110. By reason of the acts set forth above, Defendants have been and are engaged in deceptive acts or practices in the conduct of a business, trade or commerce, in violation of the South Carolina Unfair Trade Practices Act, SC Code Ann. § 39-5-10, et seq, as amended.

111. Plaintiff should be awarded monetary relief, including Defendants' profits, Plaintiff's actual damages, multiple damages and increased profits, multiple profits or damages, or, if applicable and Plaintiff elects, statutory damages as the Court considers just; and punitive and/or enhanced damages as provided for under applicable law, costs, fees, and all other damages recoverable by law. as well as attorney's fees, and additionally because Defendants' aforesaid conduct has caused, and unless enjoined by this court will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury to its goodwill and reputation, for which Plaintiff has no adequate remedy at law.

**EIGHTH CLAIM FOR RELIEF:**  
**COMMON LAW UNFAIR COMPETITION**

112. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

113. Defendants' aforesaid conduct constitutes common law unfair competition with Plaintiff under the South Carolina common law.

114. Defendants' conduct as described herein is harming Plaintiff and also harming the public.

115. Plaintiff should be awarded monetary relief, including Defendants' profits, Plaintiff's actual damages, multiple damages and increased profits, multiple profits or damages, or, if applicable and Plaintiff elects, statutory damages as the Court considers just; and punitive and/or enhanced damages as provided for under applicable law, as well as, attorney's fees, and additionally because Defendants' aforesaid conduct has caused, and unless enjoined by this court. will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury to its goodwill and reputation, for which Plaintiff has no adequate remedy at law.

**NINTH CLAIM FOR RELIEF**  
**ACTION FOR DAMAGES DUE TO FEDERAL COPYRIGHT INFRINGEMENT**

116. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

117. Plaintiff is owner of copyright registration number VA0002026397 for “TURNING YOUR BATHROOM INTO A SHOWROOM OR DISPLAY”, “TURN YOUR RESTROOM INTO A PROFIT CENTER”, “Turn your bathroom into a display”, “Turn your bathroom into a showroom”, “Display consisting of Bowl, sample product, spoon, message card”, “Please enjoy a one minute hand message compliments of us available for purchase ask our staff”, “TURN YOUR BATHROOM INTO A PROFIT CENTER”, “TURN YOUR RESTROOM INTO A DISPLAY”

118. Plaintiff owns various copyright applications and various common law copyrights on various works as further shown or described in Exhibits including Exhibit numbers 1, 5, 6, 12 attached hereto and incorporated herein by this reference. Furthermore, Plaintiff has applied for registrations of Plaintiff’s original works with the United States Copyright Office. Plaintiff has displayed the SOTI ITEMS on its website, as well as, various other places.

119. Plaintiff has complied in all respects with 17 U.S.C. §§ 101 et seq., and secured exclusive rights and privileges in and to copyright in Plaintiff’s copyright works. Plaintiff has been and still is the sole proprietor of all rights, title, and interest in and to any and all copyrights in the SOTI ITEMS as referenced herein.

120. Defendants could access the Plaintiff’s copyrighted worked through significant and direct contact with Plaintiff, purchasing and/or receiving Plaintiff’s displays, products, packaging, jars, message cards, and various other materials, confidential discussions with Plaintiff, confidential materials given to Defendant directly from Plaintiff, and Plaintiff’s website and used the SOTI ITEMS and SOTI IP illegally and with the intent of making substantial profit without making any payment to Plaintiff.

121. Defendants' conduct violates the exclusive rights belonging to Plaintiff as the owner of the copyrights, including without limitation Plaintiff's rights under 17 U.S.C. § 106.

122. As a direct and proximate result of Defendants' wrongful conduct, Defendants have realized profits and other benefits rightfully belonging to Plaintiff.

123. Accordingly, Plaintiff seeks an award of damages pursuant to 17 U.S.C. §§ 504 and 505, which would include but not be limited to Defendants' collective profits, actual damages, costs, fees, and all other damages recoverable by law.

**TENTH CLAIM FOR RELIEF**  
**INJUNCTIVE RELIEF TO IMPOUND RECORDS AND DESTROY INFRINGING**  
**ARTICLES UNDER 17 U.S.C. § 503**

124. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

125. Defendants' infringing conduct has also caused and is causing substantial and irreparable injury and damage to Plaintiff in an amount not capable of determination, and, unless restrained, will cause further irreparable injury, leaving Plaintiff with no adequate remedy at law.

126. On information and belief, Defendants have willfully engaged in, and are willfully engaging in, the acts complained of in conscious disregard of the rights of Plaintiff. Therefore, the Court should grant injunctive relief under federal law to enjoin Defendants from further infringement of Plaintiff's copyright and to impound records that are relevant to the manufacture, sale and receipt of the infringing goods and services by each Defendant.

127. Pursuant to 17 U.S.C. 503(a)(1)(C), the Court is empowered to order the impounding of "records documenting the manufacture, sale, or receipt of things involved in any such violation, if any records seized under this subparagraph will be taken into the custody of the Court." Under the circumstances, this relief is appropriate and supports judicial economy by allowing prompt

determination of Defendants' collective revenues received through the manufacture, licensing and sale of the infringing goods, from which Defendants' profits can be determined consistent with applicable law.

128. In addition, the Court, should order destruction of any unsold products relating to the infringement that have not been sold as Defendants should not be allowed to yield further profits because of their wrongful conduct.

**ELEVENTH CLAIM FOR RELIEF**  
**ACCRUING DAMAGES FOR US PATENT PENDING**

129. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

130. The Plaintiff's marketing and sales methods are unique and original and have been filed under a utility patent application with the "USPTO" United States Patent and Trademark Office. The Defendants are additionally put on notice by this filing that should a patent be issued from this application or any associated application or any application with priority from the pending application or any continuation in part or whole of any application or patent with priority to this patent application, that at any time was or is active, the Defendants are hereby on notice the damages shall accrue upon notice for any patent infringement and that Plaintiff believes that once a patent is issued the products and business practices of the Defendants will be covered and the damages shall accrue from first notice, this paragraph also serves as notice to Defendants of the application and the accruing damages should the patent issue.

130. Plaintiff should be awarded any relief available by law which may include monetary relief, including Defendants' profits, Plaintiff's actual damages, multiple damages and increased profits, multiple profits or damages, or, if applicable and Plaintiff elects, statutory damages as the Court considers just; and punitive and/or enhanced damages as provided for under applicable law, costs, fees, and all other damages recoverable by law. as well as,

attorney's fees, and additionally because Defendants' aforesaid conduct has caused, and unless enjoined by this court will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury to its goodwill and reputation, for which Plaintiff has no adequate remedy at law.

**TWELFTH CLAIM FOR RELIEF**  
**TRADE SECRETS INCLUDING FORMULAS, METHODS OF MARKETING,**  
**GENERAL SALES PRACTICES, CUSTOMER LISTS**  
**SC TRADE SECRETS ACT, SC CODE ANN. § 39-8-10, et seq., as amended**

131. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

132. Defendant has obtained Plaintiff's trade secrets without authorization from Plaintiff or in some cases obtained through confidential disclosure from Plaintiff with no authorization, grant, or license from Plaintiff to use for its own benefit, or in some cases has reverse engineered trade secret formulas of Plaintiff's for use of its own, the trade secrets of Plaintiff's taken and used by Defendant include formulas for Plaintiff's products, Plaintiff's proprietary business methods and marketing, sales practices, and use of Plaintiff's customer lists and customer account information.

133. Defendant's actions constitute trade secret infringement and theft, and are violations of SC Code Ann. § 39-8-10, et seq., as amended.

134. Plaintiff should be awarded monetary relief, including Defendants' profits, Plaintiff's actual damages, multiple damages and increased profits, multiple profits or damages, or, if applicable and Plaintiff elects, statutory damages as the Court considers just; and punitive and/or enhanced damages as provided for under applicable law, costs, fees, and all other damages recoverable by law. as well as, attorney's fees, and additionally because Defendants' aforesaid conduct has caused, and unless enjoined by this court will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury to its goodwill and reputation, for which Plaintiff has no adequate remedy at law.

**THIRTEENTH CLAIM FOR RELIEF**  
**TRADE SECRET FORMULAS AND REVERSE ENGINEERING**  
**SC TRADE SECRETS ACT, SC CODE ANN. § 39-8-10, et seq., as amended**

135. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

136. Upon information and belief Defendants have attempted to reverse engineer and either completely or partially succeeded in acquiring Plaintiff's trade secret formulas/products and with the help of Defendant USF did so willfully and maliciously to compete with Plaintiff constituting misappropriation of Plaintiff's formulas. The acquisition of a trade secret of Plaintiff's was by improper means through reverse information by Defendants and disclosure of confidential information by Defendant USF in giving Defendant HYHC the purchasing information of Plaintiff's including ingredients purchased and quantities and this acquisition of trade secrets of Plaintiff's by Defendants was done knowingly that the trade secrets were acquired by improper means then used by Defendants without express or implied consent by Plaintiff.

137. The trade secrets misappropriated here by Defendant were the Plaintiff's formulas, Plaintiff's method of doing business, Plaintiff's method of marketing, Plaintiff's process, Plaintiff's techniques, Plaintiff's system of doing business, Plaintiff's products, derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

138. A trade secret may consist of a simple fact, item, or procedure, or a series or sequence of items or procedures which, although individually could be perceived as relatively minor or simple, collectively can make a substantial difference in the efficiency of a process or the

production of a product, or may be the basis of a marketing or commercial strategy. The collective effect of the items and procedures must be considered in any analysis of whether a trade secret exists and not the general knowledge of each individual item or procedure.

139. For the last two and a half (2½) years Plaintiff has gotten calls and complaints of soured products being sold which in fact were Defendants products.

140. This misappropriation is causing damages to Plaintiff as the accounts that have soured product usually won't continue ordering from either Plaintiff or Defendants.

141. Plaintiff prays for injunction of this actual misappropriation by causing Defendants to stop manufacturing, marketing, and selling Defendants' competing products.

142. Plaintiff prays for damages for misappropriation; exemplary damages for willful and malicious misappropriation and attorney's fees.

143. This action for misappropriation has been brought within three (3) years of discovery of the soured product.

144. A person aggrieved by a misappropriation, wrongful disclosure, or wrongful use of his trade secrets may bring a civil action to recover damages incurred as a result of the wrongful acts and to enjoin its appropriation, disclosure, use, or wrongful acts pertaining to the trade secrets. Plaintiff prays for actual damages actual loss caused by misappropriation or the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss and request that the court may award separate exemplary damages.

WHEREFORE, Plaintiff demands judgment as follows:

1. That a permanent injunction, as provided by 15 U.S.C. § 1116 and applicable law, be issued enjoining Defendants, any of their respective officers, agents, privies, shareholders, principals, directors, licensees, attorneys, servants, employees, affiliates, subsidiaries,

successors and assigns, and all those persons and entities in concert or participation with any of them who receives actual notice of the order by personal service or otherwise, from:

- (a) offering to sell to establishments or consumers the Defendants products which would infringe upon Plaintiff's products including by using Plaintiff's products as bait;
- (b) infringing any of Plaintiff's trademarks or trade dress or causing a likelihood of confusion as to the source of the goods;
- (c) using any false designation of origin or false or misleading representation of fact, or falsely advertising or performing any act, which can, or is likely to, lead members of the trade or public to believe that Defendants are associated with Plaintiff or that Plaintiff authorizes, licenses, sponsors or otherwise approves the sale or distribution of Defendants' products;
- (d) using any false or misleading representations of fact, or performing any act, which can, or is likely to, lead members of the trade or public to hold false beliefs concerning the nature, qualities or characteristics of the products advertised, promoted, offered for sale, sold or distributed by Defendants;
- (e) using any of Plaintiff's trademarks, including but not limited to those identified in the Complaint, or any simulation, reproduction, copy, colorable imitation or confusingly similar variation of any of Plaintiff's trademarks on or in connection with any hangtag, label, advertisement, promotion, offering for sale, sale, or

distribution of SECRET OF THE ISLANDS branded products;

- (f) using the Plaintiff's brand or mark, or any simulation, reproduction, copy, colorable imitation or confusingly similar variation of the Plaintiff's

SECRET OF THE ISLANDS trademarks or trade names, about any advertisement, including without limitation in the form of hangtags or labels,

promotion, offering for sale, sale or distribution of Plaintiff's branded products unless such advertisement, promotion, offering for sale, sale or distribution has been authorized by Plaintiff;

- (g) engaging in any other activity constituting unfair competition with Plaintiff, or

(h) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (g) above or taking any action that contributes to any of the activities referred to in subparagraphs (a) through (g) above.

2. That Defendants be directed to take such other action as the to prevent the trade and public from deriving the erroneous impression that any goods manufactured, advertised, promoted, offered, sold or distributed by Defendants are authorized or warrantied by Plaintiff or are identical to goods advertised, promoted, offered. sold or distributed through Plaintiff's authorized retailers.
3. That Defendants be ordered to, at their own expense, immediately deliver up for destruction its entire inventory of unauthorized products.
4. Plaintiff be awarded monetary relief, including Defendants' profits, Plaintiff's actual damages, multiple damages and increased profits, multiple profits or damages, or, if applicable and Plaintiff elects, statutory damages as the Court considers just; and punitive and/or enhanced damages as provided for under applicable law, costs, fees, and all other damages recoverable by law as well as, attorney's fees.

Plaintiff prays for judgment against Defendants with regard to Copyright infringement

as follows:

(a) finding that Defendants' unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act, as well as, Plaintiff's rights stemming from common law copyright infringement;

(b) immediately and permanently enjoining Defendants, their officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing any of Plaintiff's SOTI ITEMS and SOTI IP including copyrighted works or copyrighted material without consent or otherwise infringing Plaintiff's copyrights or other rights in any manner and destroying any unsold units of the infringing products;

(c) impounding the records including but not limited to those documenting the manufacture, sale, marketing, by each Defendant;

(d) awarding Plaintiff his actual damages, statutory damages, and punitive damages;

(e) ordering Defendants to account and pay over to Plaintiff for all gains, profits, and advantages derived by Defendants by their infringement of Plaintiff's copyrights;

(f) awarding Plaintiff's their full costs, reasonable attorneys' fees, and disbursements in this action, pursuant to 17 U.S.C. § 505;

(g) ordering the destruction of any unsold, infringing articles suits; and

(h) awarding Plaintiff's such other and further relief as is just and proper.

5. That Plaintiff be awarded interest including pre-judgment interest, on the foregoing sums.

6. That Plaintiff be awarded its costs in this civil action, including reasonable attorneys'

fees and expenses.

7. That Plaintiff be awarded such other and further relief as the Court may deem just and proper.

8. That Plaintiff be awarded its actual business losses and damages which is at least as much as the following follow:

A) Since Defendant's infringing and pirating competition Plaintiff has lost in profits due to forced reduction in price to be competitiveness' with Defendant's lowball pricing in conjunction with Defendant's activities described above in Defendants' effort to take over the market place as follows:

i) Plaintiff's original sales price has been dropped.

ii) The average loss to Plaintiff has been \$80 per case.

iii) Plaintiff currently sells approximately 14,000 cases per year

a.  $\$80 \times 14,000$  cases sold per year = \$1,120,000.00 of profit losses per year due to Defendant's actions.

b. Defendant's actions causing this yearly loss has been consistent and especially in the last three years.

c.  $\$1,120,000 \times 6$  years = total damages in lost profits on Plaintiff's own sales to be \$6,720,000.00.

iv) This competitive profit loss to Plaintiff caused by Defendant's actions was willful and malicious so Plaintiff asks that treble damages be fairly given in this case -  $\$6,720,000.00 \times 3 = \$20,160,000.00$ .

B) Defendant has successfully battled to take over, or conquer what Plaintiff believes to be well over 400 accounts

i) Each account on average ordering approximately \$360 per month of product.

ii) Each account on average ordering approximately \$4,320.00 per year.

iii)  $400 \times \$4,320.00 = \$1,728,000.00$

iv) Using only the last 6 years – this would add up to \$10,368,000.00

v) This competitive profit loss to Plaintiff caused by Defendant's actions was willful and malicious so Plaintiff asks that treble damages be fairly given in this case -  $\$10,368,000.00 \times 3 = \$31,104,000.00$ .

C) On-line reorders –

i) Around 12 new customers a month per venue

ii) 144 new customer per year

iii) customers per year are ordering on-line around \$50.

iv)  $144 \times \$50 = \$7,200.00$  per year

v)  $6 \text{ years} \times \$7,200 = \$43,200.00$

vi) This competitive profit loss to Plaintiff caused by Defendant's actions was willful and malicious so Plaintiff asks that treble damages be fairly given in this case -  $\$43,200,000.00 \times 3 = \$129,600,00.00$ .

D) Customer Service – By Defendants not servicing accounts properly or submitting sourced product the Defendants are losing those accounts which are also most of the time a loss for Plaintiff due to Defendants neglect.

### **DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands

a trial by jury of all claims in this litigation.

RESPECTFULLY SUBMITTED,

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February 3, 2017  
Columbia, SC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matters of Applications Serial No.: 87/328,055,  
87/328,045, 87/328,062, 87/250,354, 87/328,071

Holy City Skin Products, LLC,

Opposition No.: 91237760, 91237759, 91237761,  
91237762, 91237763

Opposer,

MOTION TO SUSPEND  
ACTION UNDER 37 C.F.R.  
2.117

-against-

Secret of The Islands, Inc.,

Applicant.

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MEMORANDUM OF LAW IN SUPPORT TO SUSPEND ACTION  
UNDER 37 C.F.R.2.117

Applicant, Secret of The Islands, Inc., moves for this action to be suspended pending the disposition of a civil action pending in IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA COLUMBIA DIVISION, C/A No.: 2:17-cv-00342-DCN, between the parties designated in that case as Plaintiff, Secret of the Islands, Inc. (“Plaintiff”), for Its complaint against defendants, Hymans Seafood Company, Inc. (“Hymans”), Eli Hyman (“Eli Hyman”), Aaron Hyman (“Aaron Hyman”), and Brad Gena (“Gena”) (Hymans, Eli Hyman, Aaron Hyman, and Brad Gena collectively “Hyman

Group”), Holy City Skin Products, Inc. (“HC”), (Hyman Group, and HC collectively “HYHC”), and U.S. Foods, Inc. (“USF”), USA Distributions, LLC, (“USA”), all defendants herein (collectively “Defendants”) for the reasons below.

#### STATEMENT OF THE FACTS

On or about November 13, 2017 Opposer filed an opposition proceeding to prevent Applicant from registering the mark.

Applicant, Secret of The Islands, Inc., moves for this action to be suspended pending the disposition of a civil action pending in IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA COLUMBIA DIVISION, C/A No.: 2:17-cv-00342-DCN, filed on February 3, 2017.

An overview of that case is as follows:

“Plaintiff brings this action to enjoin all Defendants’ ongoing and willful efforts, and specifically HYHC’s willful and malicious efforts, to market and sell salts, scents, soaks, lotions, skin products, and other bathroom and personal care products, packaging, jars, bowls, spoons, and displays which are strikingly and confusingly similar to Plaintiff’s line of products, and copies thereof, made known by Plaintiff and viewed widely within the industry as coming from Plaintiff as the one and only original source of goods, and using a marketing method strikingly similar to Plaintiff’s, and marketing using Plaintiff’s slogans or confusingly similar slogans and underlying concepts as Plaintiff’s established slogan marks such as: “Turn your bathroom into a profit center™”, “Turn your bathroom into a display™”, “Turn your bathroom into a showroom™”, and “Turn your bathroom into a display and showroom™”, made known by Plaintiff and viewed widely within the industry established as coming from Plaintiff as the one and only original source of goods. Defendants have intentionally, willfully, and maliciously copied the features

that make Plaintiff's line of products, company, business, good will, instantly recognizable to customers. "

"In fact, upon information and belief, Defendants have been displaying and accepting orders through the practice of showing strikingly similar products, samples, and displays, in substantially similar display set-ups as the SOTI "Turn your bathroom into a display™" displays in a manner to make them appear as if they were Plaintiff's displays and products and in many cases they are using and/or have used Plaintiff's own displays and/or samples, to induce customers into believing they are Plaintiff's products, and then have sold Defendants' merchandise under this pretense that it is Plaintiff's and in some cases even filling Defendants' jars with Plaintiff's products."

The case is still pending in federal court as the parties' dispute about infringement of Plaintiff's intellectual property rights, and the dispute includes the ownership of the application in question in this proceeding.

#### ARGUMENT

The Board has the power to suspend proceedings in favor of a pending civil action pursuant to Trademark Rule 2.117(a), which states "Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding." 37 C.F.R. 2.117(a). The Trademark Trial and Appeal Board Manual of Procedure also states "ordinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding may have a bearing on the issues before the Board."

T.B.M.P. 510.026) (3d ed. 2011).

The Board commonly suspends actions "in the interest of judicial economy and consistent with [its] inherent authority to regulate its own proceedings to avoid duplicating the effort of the court and the possibility of reaching an inconsistent conclusion." *Soc'y of Mex. Am. Eng'rs & Scientists, Inc. v. GVR Pub. Relations Agency, Inc.*, opp. No. 91121723, 2002 WL 31488947, at \*4 (TTAB Nov. 6, 2002). A civil action only needs to have a bearing on the issues before the Board in order for the Board to suspend the action. See 6 McCarthy on Trademarks and Unfair Competition §32:47 (4<sup>th</sup> ed. updated June 2011) ("It is standard procedure for the Trademark Board to stay administrative proceedings pending the outcome of court litigation between the same parties involved in related issues.").

The federal case has a bearing on this proceeding, because the federal court is determining various rights in Applicant's intellectual property, which includes the applicant's rights to the trademark application for the mark and Applicant's application that is the subject of the present opposition. The present applicant's rights to the proposed mark in the disputed application are being challenged in the federal case. Therefore, it would be a waste of the Board's resources to continue prosecuting this opposition proceeding.

CONCLUSION

For the foregoing reasons, Applicant respectfully make this motion and ask the Board to grant this Motion to Suspend this Action under 37 C.F.R. 2.117 and for such other and further relief as may be deemed just and proper by the Board.

Dated: February 13, 2013

Secret of The Islands, Inc.

/Joanne Bolos/

By: Joanne Bolos

President

5326 Bush River Road

Columbia SC 29212

Pro Se Applicant

March 21, 2018

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matters of Applications Serial No.: 87/328,055,  
87/328-045, 87/328,062, 87/250,354, 87/328,071

Opposition No: 91237760, 91237759, 91237761, 91237762, 91237763

Memorandum filed with summons and complaint from civil action

Pursuant to the TTAB court document mailed March 19, 2018 concerning applicant pro se motion to suspend on February 16, 2018, applicant pro se has filed here with a copy of the summons and complaint in the civil action no. 2:17-CV-00342-DCN filed on February 3, 2017 in the United States District Court for the district of South Carolina Columbia Division. This satisfied the requirement for applicant to file within 15 days of the March 19<sup>th</sup> mail in date a copy of the operative pleadings from the civil action. Applicants phone number is 803-312-3581 and applicants email address is [joannesadie@gmail.com](mailto:joannesadie@gmail.com). If this court requires any further documentation, please do not hesitate to contact the applicant pro se directly.

Applicant pro se has also filed here with a copy of the motion to suspend which was filed on February 16, 2018 and request this court to sustain and continue suspension of the above listed oppositions until such time as there is a resolution to the underline civil action.

Secret of The Islands, Inc.  
/Joanne Bolos/  
By: Joanne Bolos  
President  
5326 Bush River Road  
Columbia SC 29212  
Pro Se Applicant

CERTIFICATE OF MAILING

I hereby certify that a true and complete copy of the summons and complaint from civil action no. 2:17-CV-00342-DCN and the MOTION TO SUSPEND filed on February 16, 2018 and the Memorandum filed with summons and complaint from civil action has been served on attorneys for Holy City Skin Products, LLC on March 21, 2018 via UPS 3 Day Select, postage prepaid to:

Natalma M. McKnew, Esq.  
Thomas W. Epting, Esq  
SMITH MOORE LEATHERWOOD LLP  
2 W. Washington Street, Suite 1100  
Greenville, SC 29601

/Joanne Bolos/  
Secret of the Islands  
5326 Bush River Road  
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