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Court File No. T-513-24

FEDERAL COURT

B E T W E E N:

SILICON VALLEY TEXTILES, INC.

Plaintiff

- and -

**MALHI TRADING CO. LTD., SUKHLAL S. MALHI, JANE DOE, JOHN DOE
and OTHER PERSONS, NAMES UNKNOWN, WHO OFFER FOR SALE, SELL,
IMPORT, MANUFACTURE, DISTRIBUTE, ADVERTISE, OR DEAL IN
SILICON VALLEY TEXTILES INFRINGING GOODS**

Defendants

**STATEMENT OF DEFENCE
OF MALHI TRADING CO. LTD. AND SUKHLAL S. MALHI
TO FRESH AS AMENDED STATEMENT OF CLAIM**

1. Unless otherwise indicated herein, Malhi Trading Co. Ltd. and Sukhlal S. Malhi (collectively, the “**Defendants**”) deny all allegations made in the Statement of Claim (hereafter, “**Claim**”) and put Silicon Valley Textiles, Inc. (the “**Plaintiff**”) to the strict proof thereof.
2. Without limiting the generality of the preceding paragraph, the Defendants deny that the Plaintiff is entitled to any of the relief claimed in paragraph 1 of the Claim as alleged or at all.
3. The Defendants have no knowledge with respect to paragraphs 2 and 5 of the Claim.

4. With respect to paragraph 3 of the Claim, the Defendants plead that Malhi Trading Co. Ltd. (“**Malhi Trading**”) is a company incorporated pursuant to the laws of British Columbia, with its registered office at 68 West 47th Avenue, Vancouver, British Columbia, V5Y 2X8, Canada. Malhi Trading was incorporated on or about June 10, 1980, and carries on business as a wholesaler of textiles, including but not limited to bedding.

5. Malhi Trading is the registered owner of Canadian trademark registration no. TMA1175731 for KOOL TRENDZ & DESIGN, registered on April 12, 2023, in association with bath linen, bed linen and blankets, depicted immediately below:



(the “**KOOL TRENDZ & DESIGN Registered Trademark**”). It also owns and has rights in the common law trademark, KOOL TRENDZ & DESIGN also as depicted above (the “**Common Law Trademark**”) which has been continuously used by Malhi Trading since on or about March 19, 2021, in association with bath linen, bed linen and blankets. The KOOL TRENDZ & DESIGN Registered Trademark and the Common Law Trademark shall be referred to collectively hereinafter as the **KOOL TRENDZ Marks**.

6. With respect to paragraph 4 of the Claim, the Defendants plead that Sukhlal S. Malhi is an individual residing in British Columbia. He is an officer and director of Malhi Trading. Prior to the incorporation of Malhi Trading, Sukhlal S. Malhi carried on business as a sole proprietor. At all material times since the incorporation of Malhi Trading, Sukhlal S. Malhi has been the director of Malhi Trading and has acted in the ordinary course of his activities as a director of Malhi Trading. Sukhlal S. Malhi denies each and every allegation in the Claim, directed at him in his personal capacity, or at all, and puts the Plaintiff to the strict proof thereof.

7. The Defendants have no knowledge with respect to paragraphs 5 through 8 of the Claim and put the Plaintiff to the strict proof thereof.

8. With respect to paragraph 9 of the Claim, the Defendants deny that the NU TRENDZ brand is a well-known and/or famous brand associated exclusively with the Plaintiff and have no knowledge with respect to the balance of this paragraph and put the Plaintiff to the strict proof thereof.

9. Save and except that the Canadian Intellectual Property Office lists the Plaintiff as registrant of the NU TRENDZ trademark registration, referred to throughout the Statement of Claim, including at paragraph 10 of the Claim, as the “**SVT Trademark**”, the Defendants have no knowledge with respect to paragraphs 10 through 12 of the Claim and put the Plaintiff to the strict proof thereof.

10. The Defendants deny the allegations at paragraphs 13 through 15 of the Claim and put the Plaintiff to the strict proof thereof. Without limiting the generality of the foregoing, the Defendants deny that the Plaintiff had developed a significant reputation

and goodwill in Canada in association with the SVT Trademark, that the Defendants knew that the Plaintiff had developed a significant reputation and goodwill in Canada in association with the SVT Trademark, and that the Defendants' allegedly infringing activities, as described in the Claim, which are denied, were intentionally done in an effort to trade on, usurp and appropriate for the Defendants' own benefit the reputation and goodwill earned and owned by the Plaintiff and to create confusion as between the Defendants' goods and the goods of the Plaintiff and the Defendants put the Plaintiff to the strict proof thereof.

11. The Defendants deny that the SVT Trademark was a trademark of the Plaintiff when Malhi Trading first adopted any of the KOOL TRENDZ Marks. In the alternative, if the SVT Trademark was a trademark of SVT when Malhi Trading first adopted any of the KOOL TRENDZ Marks, which is denied, the Defendants deny having any knowledge of same. Further, and in any event, to the extent that there was use of the SVT Trademark prior to or overlapping with, the date the application for registration of the KOOL TRENDZ & DESIGN Registered Trademark was applied for, which is denied, the Defendants plead the degree of resemblance between the SVT Trademark and the KOOL TRENDZ & DESIGN Registered Trademark, including in appearance or sound or in the ideas suggested by them, precludes any determination that there is or can be any confusion or likelihood of confusion arising between the KOOL TRENDZ & DESIGN Registered Trademark and the SVT Trademark.

The Plaintiff's Generic Trade Dress

12. With respect to paragraph 16 of the Claim, the Defendants deny that the Plaintiff has developed a unique look and feel to its packaging for its textiles including bedding sold in association with the SVT Trademark, as further particularized at paragraphs 16 and 17 below, and have no knowledge with respect to the balance of this paragraph and put the Plaintiff to the strict proof thereof. The Defendants deny the existence of the "SVT Trade Dress" (defined at paragraph 16 of the Claim, as being 'a unique look and feel to its [the Plaintiff's] packaging for its textiles including bedding sold in associated with the SVT Trademark') as alleged or at all and put the Plaintiff to the strict proof thereof.

13. With respect to paragraph 17 of the Claim, the Defendants deny that the pattern of the "Work" (defined and depicted at paragraphs 20 to 23 of the Claim as being, the "16112 Design") is a key component of the trade dress and deny that the pattern of the Work is well known and has become associated with the SVT Trade Dress such that the Plaintiff has goodwill in the Work. The Defendants have no knowledge with respect to the balance of paragraph 17 of the Claim and put the Plaintiff to the strict proof thereof.

14. The Defendants have no knowledge with respect to the allegations made at paragraph 18 of the Claim and put the Plaintiff to the strict proof thereof.

15. The Defendants deny the allegations at paragraph 19 of the Claim and put the Plaintiff to the strict proof thereof. In particular, and without limiting the generality of the foregoing, the Defendants deny that the SVT Trademark and the SVT Trade Dress are inherently distinctive and have become well known among consumers and associated exclusively with the Plaintiff.

16. The Defendants plead that a large majority of bedding goods sold in Canada are sold in square shaped (or rectangular shaped) clear plastic bags with the bedding visible through the bag. Similarly, a large number of bedding goods in Canada are packaged in packaging which depicts a bedroom scene in which – most commonly – the bedding within the packaging is the same bedding which is seen on the bed contained in the scene. In the second example, many bedding goods packaged in packaging which depicts a bedroom scene are also packaged within square shaped clear plastic bags.

17. The phrase “silk touch” and the term “reversible” are also commonly used in connection with blankets and similar and related textile goods. The combination of these elements with the positioning of the SVT Trademark in the top left corner and “Bedroom Photo” (as that term is defined at paragraph 26 of the Claim) and the Work, collectively referred to in the Claim as the “SVT Trade Dress” is, like the individual elements, not inherently distinctive and has not acquired distinctiveness such that it is associated by consumers exclusively with the Plaintiff.

Alleged Copyright in the Work and Bedroom Photo

18. With respect to paragraph 20 of the Claim, the Defendants deny that the Work, as defined in the Claim, is an original artistic work in which copyright subsists and have no knowledge with respect to the balance of this paragraph and put the Plaintiff to the strict proof thereof.

19. With respect to paragraph 23 of the Claim, the Defendants deny that copyright subsists in the Work and by extension that the Plaintiff was and remains the owner of copyright in the Work from the date set out therein or at all, and further denies that the

Work is the subject matter of the registration number 1194110, as alleged, and puts the Plaintiff to the strict proof thereof.

20. The Work is an embodiment of traditional Navajo patterns and symbols which long predate the alleged date of authorship of the Work. The designs and patterns of which the Work is made up are not original but are substantially similar to those embodied in many other works which predate the Work. In fact, Malhi Trading itself purchased a substantially similar work in or around 2000 from a third party in South Korea (which appears on the bedspread immediately below):



21. Consequently, the Work is not the product of the exercise of an author's skill and judgement requisite to the subsistence of copyright in a work in Canada. In the alternative, any exercise of skill and judgement involved in the authorship of the Work was so trivial that it could be characterized as a purely mechanical exercise not rising to the degree of originality required to support a claim of copyright in the Work.

22. The Defendants deny that copyright subsists in the Bedroom Photo and by extension that the Plaintiff was at any time or remains the owner of copyright in the Bedroom Photo as alleged, or at all, and puts the Plaintiff to the strict proof thereof.

23. Save as expressly set out above, the Defendants have no knowledge with respect to paragraphs 21 and 22 and paragraphs 24 through 27 of the Claim and put the Plaintiff to the strict proof thereof.

24. With respect to paragraph 28 of the Claim and reliance on section 34.1 of the *Copyright Act*, the Defendants plead that the foregoing establishes that copyright does not subsist in the Work.

No Infringement and No Passing Off of the SVT Trademark, SVT Trade Dress, the Work or the Bedroom Photo

25. The Defendants deny the allegations at paragraph 29 of the Claim and put the Plaintiff to the strict proof thereof.

26. With respect to paragraph 30 of the Claim, the Defendants admit that Malhi Trading imported, offered for sale and sold textile goods, including bedding, bearing the KOOL TRENDZ Marks but otherwise deny the balance of the allegations made in this paragraph and put the Plaintiff to the strict proof thereof. Without limiting the generality of the foregoing, the Defendants deny that they or either of them have infringed the SVT Trademark contrary to s. 20 of the *Trademarks Act* and further deny that they or either of them, have passed off the Plaintiff's common law SVT Trademark as and for their own. Further and again without limiting the generality of the foregoing, the Defendants deny

the existence of the SVT Trade Dress and further deny that they or either of them have manufactured, produced, printed, imported, offered or displayed for sale, distributed, sold, stored or shipped, or have otherwise dealt in goods bearing the SVT Trade Dress.

27. With respect to paragraphs 31 through 34 of the Claim, the Defendants admit that the images depicted therein appear to be of goods bearing the KOOL TRENDZ & DESIGN Registered Trademark, but otherwise deny the allegations contained therein and put the Plaintiff to the strict proof thereof.

28. Malhi Trading's goods are, like many bedding goods, packaged in a square shaped clear plastic and, also like many bedding goods, bear a description of the goods, namely "Reversible Silky Blanket (2 Ply)"; the trademark associated with the goods, namely, KOOL TRENDZ & DESIGN Registered Trademark, is prominently displayed; and an image of a bedroom scene within which the bedding in question is shown (the "**Malhi Photo**"). The bedroom scene in the Malhi Photo depicts a bed, with no headboard, a nightstand next to the bed, and a geometric pattern rug underneath the bed, extending past the front and either side of the bed. There are two picture frames on the wall behind the head of the bed and miscellaneous items on the top of the nightstand. The Plaintiff's Bedroom Photo (as defined in the Claim) forming part of the SVT Trade Dress on the other hand, is readily distinguishable from the Malhi Photo. The bed in the Bedroom Photo has a headboard, the room features a tall dresser on one side of the bed, curtains on the windows, drapery on the wall behind the headboard, a nightstand distinct from that in the Malhi Photo and further includes pillows and floral arrangements which are absent from the Malhi Photo. The rug in the Bedroom Photo is solid white with a contrasting line, extends only partway under the bed and there are no picture frames on

the wall behind the headboard. Imagery of bedrooms is commonly applied to the packaging of bedding goods and the Plaintiff cannot claim an exclusive right thereto such that despite the countless differences between the Bedroom Photo of the SVT Trade Dress and the Malhi Photo, the Plaintiff is entitled to preclude the Defendants from using the Malhi Photo on the packaging for their bedding.

29. Given the common use of imagery of bedrooms on packaging for bedding in Canada, the Plaintiff's Bedroom Photo is not distinctive.

30. In the alternative, even if the Plaintiff's Bedroom Photo is found to be distinctive, which is denied, there is no likelihood of confusion between the SVT Trade Dress and the Defendants' trade dress due to at least the differences between the bedroom photos used in each and further due to *at least*:

- a. the differences between the SVT Trademark and the KOOL TRENDZ Marks (as detailed below at paragraph 43 below);
- b. the distinct positioning, style and verbiage of the Plaintiff's product description "Silk Touch Reversible Blanket" and Malhi Trading's "Reversible Silky Blanket";
- c. the distinct positioning of the trademarks in each case (the Plaintiff's SVT Trademark on the top-left and Malhi Trading's KOOL TRENDZ DESIGN Registered Trademark on the top right); and
- d. the differences between the Work and the Navajo pattern depicted in the image referred to at paragraph 31 of the Claim.

31. The Defendants deny that Malhi Trading’s goods are infringing goods as alleged, or at all; deny that the KOOL TRENDZ Marks are confusingly similar to, likely to be confusing with or infringing upon the SVT Trademark; and deny that Malhi Trading’s goods infringe the SVT Trade Dress, the existence of which is denied, as alleged or at all. The differences between the Bedroom Photo and the Malhi Photo have been addressed above, and the differences between the KOOL TRENDZ Marks and the SVT Trademark will be discussed below. With respect to the Work, which is alleged to be borne by the Defendants’ goods depicted in paragraph 31, the Defendants deny this allegation.

32. A comparison of the Work and the Navajo pattern borne by the goods in paragraph 31 of the Claim (the “**Malhi Pattern**”) reveals at least one difference between them, circled below, such that the Malhi Pattern is not the same as the Work.

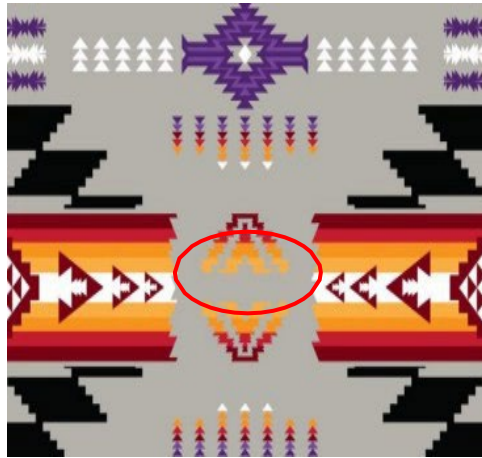


Figure 1. The Work



Figure 2. Malhi Pattern

33. With respect to paragraph 35 of the Claim, the Defendants admit that Malhi Trading's goods include bedding but otherwise deny each and every one of the allegations contained therein and put the Plaintiff to the strict proof thereof.

No Passing Off of the SVT Trademark and No Breach of Section 7(b) of the Trademarks Act

34. Without limiting the generality of the preceding paragraph, with respect to paragraph 35 of the Claim, the Defendants deny that the SVT Trademark has become distinctive of the Plaintiff's goods and/or services and therefore deny that there exists the reputation or goodwill in the SVT Trademark to meet the first of three requirements for establishing the tort of passing off.

35. The Defendants further deny that they or either of them have made any misrepresentation leading the public to believe there is a business association or connection between the parties. The Defendants deny any use or imitation of the SVT Trademark, as alleged or at all, and put the Plaintiff to the strict proof thereof. Malhi Trading's use of the distinct KOOL TRENDZ & DESIGN Marks does not amount to a misrepresentation nor does any other conduct of Malhi Trading or Sukhlal S. Malhi.

36. In addition, and in the alternative, the public would not likely be confused by any such misrepresentation, which is denied, on the part of the Defendants or either of them as to the business association or lack thereof between the parties, for at least the reasons set out below and for the reason that, despite Malhi Trading's long-standing use of the KOOL TRENDZ & DESIGN Marks, the Plaintiff has not alleged that actual confusion has ever arisen.

37. Section 2 of the *Trademarks Act* defines “distinctive” as meaning “in relation to a trademark, describes a trademark that actually distinguishes the goods or services in association with which it is used by its owner from the goods or services of others or that is adapted so to distinguish them”.

38. Trademarks possess some inherent distinctiveness when nothing about them refers the consumer to a multitude of sources when assessed in relation to the associated goods or services. Where a trademark may refer to many sources, it is considered to have no inherent distinctiveness.

39. The SVT Trademark possesses a low degree of inherent distinctiveness, and it is this low inherent distinctiveness which informs an assessment of confusion under section 6(5) of the *Trademarks Act*.

40. The SVT Trademark was registered on July 12, 2024, approximately 15 months after the KOOL TRENDZ & DESIGN Trademark was registered. The Plaintiff had requested expedited examination based on the fact that the Defendant's KOOL TRENDZ & DESIGN Registered Trademark was considered to be confusing and based on unfounded allegations that the Defendant was counterfeiting the Plaintiff's SVT Trademark, both of which are denied. However, when the SVT Trademark was examined, the examiner at the Canadian Intellectual Property Office, basing their analysis as set out in Subsection 6(5) of the *Trademarks Act*, did not find confusion with Malhi Trading's earlier registered trademark, KOOL TRENDZ & DESIGN Registered Trademark and, as such, did not cite the Defendant's KOOL TRENDZ & DESIGN Registered Trademark against the Plaintiff's SVT Trademark. Based on the examiner's

expert analysis and s. 6(5) of the *Trademarks Act*, there is no confusion nor any likelihood of confusion between these two trademarks.

41. As at March 19, 2021, being the date the KOOL TRENDZ & DESIGN Registered Trademark was filed, there were approximately two hundred and forty seven (247) pending applications and registrations for marks including the word, and variants of the word TREND. Among those approximately 247 pending applications and registrations, approximately twenty-four (24) pertained to Class 24 (for textiles and substitutes for textiles; household linen; curtains of textile or plastic) and of those, approximately twelve (12) contained either the word, TRENDS or TRENDZ. Accordingly, due to the prevalence of marks containing a word element including “TREND”, TRENDZ and TRENDS, there is a low level of inherent distinctiveness, and consumers are accustomed to distinguishing between multiple similar trademarks applied to similar and/or identical goods and services, and even small differences are more than sufficient to obviate any likelihood of confusion.

42. As at September 23, 2024, there were approximately forty (40) pending applications and registrations in class 24 (for textiles and substitutes for textiles; household linen; curtains of textile or plastic) for trademarks containing “TREND”. Of these approximately forty (40) applications and registrations, twenty-two (22) contain either “TRENDS” or “TRENDZ”. Accordingly, due to the prevalence of marks containing word elements including “TREND”, NU TRENDZ, being the SVT Trademark, has a low degree of inherent distinctiveness, and consumers continue to be accustomed to distinguishing between multiple similar trademarks applied to similar and/or identical goods and services, and even small differences between Malhi Trading’s

KOOL TRENDZ & DESIGN Registered Trademark and the SVT Trademark are more than sufficient to obviate any likelihood of confusion.

43. The distinct first portions of KOOL TRENDZ and NU TRENDZ, which differ in each of appearance, sound and connotation, are, in at least this context, more than sufficient to distinguish Malhi Trading's KOOL TRENDZ & DESIGN Registered Trademark and/or the KOOL TRENDZ & DESIGN Marks from the SVT Trademark. The distinctive design elements featured in the KOOL TRENDZ & DESIGN Registered Trademark and/or the KOOL TRENDZ & DESIGN Marks further distinguishes the KOOL TRENDZ & DESIGN Registered Trademark and/or the KOOL TRENDZ Marks from the SVT Trademark.

44. For at least these reasons, the Defendants deny that they or either of them have passed off the SVT Trademark. The Defendants deny that they or either of them have infringed sections 20 or 7(b) of the *Trademarks Act*, and further deny the allegations at paragraphs 36 and 37 of the Claim.

45. With respect to paragraph 38 of the Claim, the Defendants have no knowledge with respect to the relative quality or price of the allegedly infringing goods as compared to the "legitimate goods" and otherwise deny the allegations contained in this paragraph.

No Depreciation of Goodwill

46. With respect to paragraph 40 of the Claim, the Defendants have no knowledge with respect to the relative quality or price of the Plaintiff's textiles, bedding and apparel, but otherwise deny the balance of the allegations made in this paragraph and put the

Plaintiff to the strict proof thereof.

47. The Defendants deny the allegations at paragraphs 41, 42 and 44 of the Claim, for at least the reasons set out at paragraphs 25 through 44 above and put the Plaintiff to the strict proof thereof. Without limiting the generality of the foregoing, the Defendants deny that they or either of them have engaged in any illegal activity as alleged and plead that the use of that language is improper and designed to prejudice the Defendants and ought to be struck. The Defendants reserve all rights to have that language struck from the Claim.

48. The Defendants deny the allegations at paragraph 43 of the Claim and put the Plaintiff to the strict proof thereof. Malhi Trading does not specifically target any particular customer(s) and at no time specifically targeted the Plaintiff's wholesale customers. To the extent that Malhi Trading sold one or more goods to a wholesale customer of the Plaintiff, this was nothing more than happenstance in the ordinary course of its business and in any event, there is nothing to preclude Malhi Trading from taking advantage of the free market.

No Infringement of Any Alleged Copyright in the Work

49. The Defendants admit the allegations at paragraphs 46 through 48 of the Claim.

50. The Defendants deny the allegations at paragraph 49 of the Claim. More particularly, and without limiting the generality of the foregoing, the Defendants deny that the Work is an original, creative work in which copyright subsists in Canada. The Work is an embodiment of traditional Navajo patterns and symbols which long predate

the alleged date of authorship of the Work. The designs and patterns of which the Work is made up are not original but are substantially similar to those embodied in many other works which predate the Work. In fact, Malhi Trading itself purchased a substantially similar work in or around 2000. Consequently, the Work is not the product of an author's exercise of skill and judgement requisite to the subsistence of copyright in a work in Canada. In the alternative, any exercise of skill and judgement involved in the authorship of the Work was so trivial that it could be characterized as a purely mechanical exercise not rising to the degree of originality required to support a claim of copyright in the Work.

51. For at least these reasons, the Plaintiff's Canadian copyright registration for the Work, which the Plaintiff erroneously pleads is the subject matter of registration no. 1194110, which is denied, is invalid and does not entitle the Plaintiff to *inter alia* the benefit of paragraphs 39(2) and 53 of the *Copyright Act* or any remedy whatsoever. In the alternative, if copyright subsists in the Work, which is denied, and the Plaintiff is entitled to a remedy in respect thereof, as set out in greater detail at paragraphs 56 through 58 below, the Plaintiff is not entitled to any remedy other than an injunction in respect of the alleged infringement.

52. For at least the reasons in paragraph 50 above, the Defendants deny that the Plaintiff (or anyone) has the exclusive right to produce or reproduce the Work and further deny that section 27(1) and/or 27(2) of the *Copyright Act* provide the Plaintiff with protection against infringement as alleged in paragraphs 46 through 48 of the Claim or at all.

53. In addition, or in the alternative to paragraph 50 above, if copyright does subsist in the Work, which is denied, the Defendants have not produced or reproduced a substantial part of the author's skill and judgment embodied in the Work.

54. Where the originality embodied in a creative work is limited, so too is the protection to which it is entitled under copyright law.

55. The Work is substantially lacking in originality and any part or parts reproduced in the Malhi Pattern do not constitute a substantial part of the author's skill and judgment embodied in the Work.

Defendants Not Aware of Copyright

56. At the date of the alleged infringement, the Defendants were not aware of and had no reasonable ground for suspecting that copyright subsisted in the Work. As plead in paragraph 50 above, the Work is not original and, for at least this reason, the Defendants had no reasonable ground for suspecting that copyright subsisted in the Work until at least June 14, 2022.

57. Further, the Defendants plead that the Plaintiff's copyright registration in respect of the "16112 Design, is invalid, for at least the reasons set out at paragraphs 50 and 51, and does not therefore entitle the Plaintiff to the benefit of paragraph 39(2) of the *Copyright Act*. Accordingly, despite the Plaintiff's registration of the Work, and in view of the Defendants' lack of awareness of the alleged copyright in the Work, the Plaintiff is not entitled to any remedy other than an injunction in respect of the alleged infringement.

58. In the alternative, if Canadian copyright registration no. 1194100 is valid, which is denied, the Plaintiff, in respect of any alleged infringement occurring prior to June 14, 2022, which is also denied, is, in view of the Defendants' lack of knowledge of the copyright, not entitled to any remedy other than an injunction.

No Damages

59. With respect to paragraphs 37, 38 and 39 of the Claim, the Defendants deny that any of the Defendants' activities have caused any actual or potential damages to the Plaintiff and put the Plaintiff to the strict proof thereof.

60. In the event that the Plaintiff's rights have been infringed, which is denied, the Defendants state that the infringement was *de minimis* and is not actionable.

61. In the alternative, if the Plaintiff did suffer any injury, loss or damage, that injury, loss and/or damage is excessive and remote and further, the Plaintiff failed to take reasonable and adequate steps to mitigate its damages.

62. In any event of the foregoing, there are no facts plead to support or sustain a finding of punitive and exemplary damages, and the Defendants deny the Plaintiff is entitled to any such relief.

No Profits

63. To the extent that the Defendants did earn profit, such profit is not attributable in any way to the passing off or infringement of any of the Plaintiff's Intellectual Properties, as defined in the Claim, the whole of which is denied.

Laches, Acquiescence and Delay

64. Without limiting what is set out above, Malhi Trading has been carrying on business in association with the KOOL TRENDZ & DESIGN Marks since on or about 2021. To the extent that the Plaintiff has used the SVT Trademark, which is denied, during the currency of that time, that use has co-existed without any known instances of confusion. While the Defendants expressly deny that Malhi Trading's activities in any way infringe upon the Plaintiff's rights, if any, the Plaintiff, has by its conduct, acquiesced to such use and is therefore estopped from seeking relief with respect to such use at this time.

No Personal Liability of Sukhlal S. Malhi

65. The Defendants deny the allegations at paragraphs 51 through 54 of the Claim and put the Plaintiff to the strict proof thereof.

66. There is no personal liability on the part of Sukhlal S. Malhi. Sukhlal S. Malhi is the director of Malhi Trading and if Malhi dealt with any of the Plaintiff's Intellectual Properties, as defined in the Claim, which is denied, he did so exclusively in the ordinary course of his activities as director not in his personal capacity. Further, there has been no illegal, fraudulent or improper conduct on the part of either Malhi or Malhi Trading, as alleged or at all to warrant or impose personal liability upon Sukhlal S. Malhi.

67. The Plaintiffs plead that the Action must be struck as against Sukhlal S. Malhi and reserve all rights to seek that remedy.

Miscellany

68. The Defendants have no knowledge with respect to the allegations at paragraph 55 of the Claim.

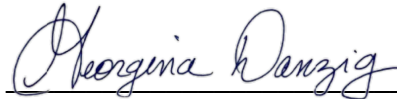
69. The Defendants deny the allegations at paragraph 60 of the Claim. The Defendants had no knowledge of any of the Plaintiff's alleged copyrighted in the Work and Bedroom Photo, the SVT Trademark, or the SVT Trade Dress and deny that, in the circumstances, an award of punitive or exemplary damages is justified.

70. The Defendants plead and rely on at least sections 2, 6 and 7(b) of the *Trademarks Act* RSC 1985, c. T-13, as amended.

71. The Defendants deny that the Plaintiff is entitled to or ought to be granted the relief claimed or any relief at all and asks that this action be dismissed with costs on a solicitor and client basis.

72. The Defendants propose that this action be tried in the City of Toronto, Ontario.

Date: October 31, 2024



HEER LAW

25 Adelaide Street East, Suite
1000 Toronto, ON M5C 3A1

Georgina Danzig

(LSO#: 30875R)

gdanzig@heerlaw.com

Christopher D. Heer

(LSO#: 51305T)

cheer@heerlaw.com

Tel: 416-546-7303

Fax: 416-352-5709

Solicitors for the Defendants, Malhi
Trading Co. Ltd. and Sukhlal S.
Malhi

TO: LOMIC LAW
1 First Canadian Place
100 King Street West, Suite 5700
Toronto, ON M5X 1C7

Paul V. Lomic
paul@lomic-law.ca

Tel: 647-464-6710

Fax: 416-352-5154

Solicitors for the Plaintiff