

ZIMMERMAN REED LLP

Arielle M. Canepa (SBN 329546)
Email: Arielle.canepa@zimmreed.com
6420 Wilshire Blvd., Suite 1080
Los Angeles, CA 90048
(877) 500-8780 Telephone
(877) 500-8781 Facsimile

Attorney for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JENNIFER L. COOK, d/b/a JL Cook, JL Cook
Sculptor and SNAKEARTS.COM,

Plaintiff,

vs.

META PLATFORMS, INC., f/k/a FACEBOOK,
INC.,

Defendant.

CASE NO.:

COMPLAINT (CLASS ACTION)

(Jury Trial Demanded)

1 Plaintiff Jennifer L. Cook d/b/a “JL Cook,” “JL Cook Sculptor” and “SnakeArts.com”
2 (“Plaintiff” or “JL Cook”), and others similarly situated, by and through her undersigned counsel, brings
3 this class action seeking monetary and injunctive relief against Defendant Meta Platforms, Inc. f/k/a
4 Facebook, Inc. (“Facebook” or “Defendant”). Plaintiff alleges the following upon the investigation of
5 counsel, and upon information and belief, except as to those allegations that specifically pertain to
6 Plaintiff, which are alleged upon personal knowledge.

7 **INTRODUCTION**

8 1. Facebook, a multi-billion-dollar advertising company disguised as a social media
9 platform, is the source and cause of some of the most detrimental and largest e-commerce scams, the
10 majority of which are connected to Facebook advertisements that violate unfair competition laws and
11 several sections of the Copyright Act.

12 2. Facebook publishes and displays millions of copyright infringing images every single
13 day. Copyright infringement on the site has been called both “out of control” and an online “epidemic.”¹

14 3. Facebook’s core business function is to sell ads. On its face, the site is a social media
15 platform used to connect people online, but the social media platform is simply the means to the end.
16 Every day, Facebook knowingly displays, publishes, controls, communicates and directs infringing,
17 stolen images, which it has previously copied and stored, to its users through revenue generating
18 advertisements.

19 4. The bulk of Facebook’s billions of dollars in annual revenue comes from advertising—a
20 practice in which Facebook actively participates through the use of algorithms that approve and deny
21 ads based on the ads’ content, human moderators that further review ads, for both legality and aesthetics
22 prior to and after the ads are published, and other algorithms that connect ads to specific users, without
23 the assistance or input of the advertiser.

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27 ¹ Rob Price, *Facebook’s Copyright Infringement Epidemic*, THE DAILY DOT (Oct. 29, 2014),
28 <https://www.dailydot.com/upstream/facebook-video-content-id-copyright-infringement/> (last visited
Apr. 19, 2022).

1 5. Facebook makes money every time it is able to trick one of its users into clicking on a
2 scam advertisement. This is to the direct detriment of the owners of the images and the creators and
3 owners of the unlawfully advertised products or pieces of art.

4 6. Facebook infringes copyrights, and facilitates, enables, and simplifies copyright
5 infringement by others, to pad its own bottom line. The social media giant uses repeat counterfeiters
6 and copyright infringement to the detriment of copyright owners, who create images and works that are
7 used to advertise and sell counterfeit goods on Facebook’s platform. Facebook’s exploitation of small
8 business owners and struggling artists is harmful to both the survival of small businesses and the
9 creativity the Copyright Act is designed to protect and encourage.

10 7. Over the last decade, Facebook has become one of the largest and fastest growing online
11 advertisers in the world. Since its creation in 2004, Facebook’s daily, monthly, and annual user base
12 has grown by the billions.

13 8. Facebook’s response to its growth has lacked any substantial increase in advertisement
14 policing, a more robust takedown program in connection with the Digital Millennium Copyright Act
15 (“DMCA”) or reasonable protection of Creators’ (as defined herein) intellectual property rights. This is
16 intentional because a substantial percentage of Facebook’s ad revenue comes from advertisements
17 related to counterfeit scams.

18 9. In typical Facebook fashion, the social media giant not only denies any responsibility for
19 the mass copyright infringement it perpetrates on its site, but also claims to be “proactively” removing
20 “potential counterfeit or copyright infringement before it [is] reported” by the Creators.² Facebook is
21 not proactive in the fight against copyright infringement on its site, it is to blame for the problem.

22 10. Facebook knows the prevalence of scams on its site. In fact, an internal Facebook report
23 from November 2018 identified that 40 percent of its pages traffic directed users to pages that stole or
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27 ² Mark Fiore, *How We’re Proactively Combating Counterfeits and Piracy*, META (May 19, 2021),
28 <https://about.fb.com/news/2021/05/how-were-proactively-combating-counterfeits-and-piracy/> (last visited Apr. 19, 2022).

1 recycled most of their content.³ Upon information and belief, this number has dramatically increased
2 since 2018.

3 11. Facebook’s supposedly “robust” takedown program is anything but, particularly with
4 respect to disabling who it knows to be repeat copyright infringers. For instance, from June to September
5 of 2021, Plaintiff, alone, reported sixty-five pages/accounts and hundreds of infringing ads to Facebook
6 for violating her copyright rights through the display, distribution, derivative copying and sale of
7 counterfeit versions of her artwork. As of the date of this Complaint, those accounts are still active
8 Facebook accounts. Facebook, despite actual and apparent knowledge of these pages/accounts’
9 infringing behavior, allows the pages/accounts to continue using the platform to advertise counterfeit
10 products, displaying stolen images, and victimizing legitimate Creators and copyright holders.

11 12. Facebook has become one of the largest breeding grounds for foreign e-commerce scams.
12 The scams generally involve third party, Counterfeiters (“Counterfeiters”) who steal images of unique,
13 one-of-a-kind artworks or products directly from business owners’ websites, or social media accounts
14 (“Creative Works”) and use those images to advertise counterfeit products for sale on Facebook as their
15 own, often for a heavily discounted price. This directly infringes the exclusive rights held by the owners
16 and creators of the works (“Creators”) and unfairly competes with the legitimate business owners.

17 13. Facebook uses its more than three billion users and ad targeting algorithms, which draw
18 from user data that has been catalogued and categorized based upon users’ likelihood to respond to ads,
19 to entice Counterfeiters to pay for ads on the site. Facebook then uses its algorithms to directly connect
20 Counterfeiters with Counterfeit ad victims, and Facebook profits from making these connections.
21 Without Facebook, Counterfeiters could not reach such an immense number of potential customers.

22 14. Through the Facebook Ad Platform, legitimate advertisers and Counterfeiters alike can
23 be certain that their ads make it to interested consumers. If the ads are not reaching the right audience,
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25 ³ Keith Hagey, *Facebook Allows Stolen Content to Flourish, Its Researchers Warned*, THE WALL
26 STREET JOURNAL (Nov. 9, 2018, 4:43 PM ET), https://www.wsj.com/articles/facebook-stolen-content-copyright-infringement-facebook-files-11636493887?mod=article_inline (last visited Feb. 16, 2022).

27 Kim Lyons, *Artists are Plying Takedown Whack-A-Mole to Fight Counterfeit Merch*, THE VERGE,
28 (Feb. 11, 2022, 8:00 AM ET), <https://www.theverge.com/22924353/artists-counterfeit-merch-facebook-amazon-etsy-dmca> (last visited Feb. 16, 2022).

1 Facebook tracks that data and provides an opportunity to monitor the directed advertisements to obtain
2 better results, or in some cases uses its data and resources to target users without any input from the
3 Counterfeiters.

4 15. Until very recently, Facebook guaranteed results through a money back guarantee for
5 any advertisement that did not achieve the advertiser's desired result.⁴ For example, in instances where
6 Counterfeit ads are not achieving the desired results (high click rates or views) Facebook modifies the
7 targeted user base, using its own data and resources, thereby communicating or displaying the ads to
8 users the Counterfeiters would not otherwise reach or consider targeting with the ads. Facebook may
9 also do this when the Counterfeiter has not spent the entirety of their proposed ad budget.⁵

10 16. Facebook uses information it collects from billions of user profiles and user selected
11 preferences to create an inventory of data that it can exploit for ad revenue. Then, Facebook inputs that
12 information into its algorithm to deliberately and knowingly direct Counterfeiter Ads to specific users
13 who fall into certain categories--- a determination Facebook makes without material input from the
14 Counterfeiters.

15 17. Facebook connects Counterfeiters to Facebook users based upon the users' interests,
16 certain statistics and user preferences. Facebook then calculates who will be most interested in the
17 advertised products and shows those advertisements to those users. Counterfeiters do not assist
18 Facebook in determining which Facebook users should see which advertisements. Indeed,
19 Counterfeiters never have access to this data.

20 18. Copyright infringement on Facebook, and sites like it, is harmful to both consumers and
21 Creators. If a Facebook user makes a purchase through a Counterfeiter's ad or linked website, the user
22 receives a cheap knockoff of the advertised product, or nothing at all. The users pay for a product that
23 they never receive, suffering easily cognizable damages.

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26 ⁴ <https://www.facebook.com/business/gelp/201828565289?id6293384416215> (last visited Dec. 7,
2021).

27 ⁵ Recently, Facebook updated this money guarantee policy to state that decisions about refunds are
28 "made at [Facebook's] sole discretion and without admission of liability." *About Refunds*,
FACEBOOK.COM, <https://www.facebook.com/business/help/626428078224265?id=1468738389987593>

1 19. The Creators have their copyrights violated, lose out on sales and, in the case of artist
2 products, the scams cause irreparable damage to the integrity of the art created and the reputation of the
3 artist. This violates the Creators' exclusive ownership rights, including display, duplication, and
4 distribution, which are protected by statute.

5 20. It can be common for online service providers (in this case, Facebook) to be used as a
6 device for scams. In fact, Congress enacted a safe harbor to protect both online service providers and
7 Creators. The safe harbor is the DMCA. The DMCA gives Creators a way to have their content removed
8 from websites that are using it without authorization. If online service providers take reasonable
9 measures to stop copyright infringement, DMCA also provides them protection from liability for hosting
10 infringing content—for which they would otherwise be liable.

11 21. For DMCA protection, the online service provider cannot: (1) have a role in posting the
12 infringing material; (2) have knowledge that the content violated a copyright; and (3) profit from the
13 infringing material. Facebook violates all three and cannot claim any DMCA protections.

14 22. Facebook directly facilitated copyright infringement on its site through the storage of
15 infringing images on its computers or systems and display of the images on its site to its users. Facebook
16 had knowledge of the infringement on its site and profited directly from the infringement.

17 23. Moreover, pursuant to DMCA and to receive safe harbor protection, Facebook was
18 required to follow certain policing guidelines to prevent copyright violations. This includes creating,
19 implementing and reasonably enforcing a specific copyright infringement policy that includes a promise
20 to take down any infringing content upon notification that it exists and to remove Repeat Infringers (a
21 Facebook account, page or advertiser that a Creator reported to Facebook as violating their exclusive
22 ownership rights (copyright or trademark) on more than one occasion). While Facebook purports to
23 have a copyright infringement policy and a Repeat Infringer policy, it does little to implement or enforce
24 either. If it did, Counterfeiters would go elsewhere with their scams.

25 24. Facebook has failed to police its site, and in some cases deliberately encouraged
26 copyright violative ads from Counterfeiters. As a result, Facebook has fostered an explosion in scams
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1 and exploitation of Creators and the billions of people who use its sites.⁶ It is Facebook's own direct
2 infringement and its failure to comply with basic policies and precautions, particularly relating to Repeat
3 Infringers (as defined herein) that disqualifies the social media giant from safe harbor protection and
4 gives rise to this action.

5 25. Facebook knowingly assists and encourages Counterfeiters. This is particularly true for
6 Repeat Infringers. Creators can notify Facebook of a Counterfeiter's use of an infringing photograph in
7 an advertisement and, even if Facebook manages to take that ad down, more ads, using the same image
8 will pop up on the site and other sites immediately.

9 26. Facebook's powerful ad tools and lax enforcement helped it become the preferred
10 platform of shady affiliate marketers that target people with scams and use false claims and infringing
11 photographs to entice users to pay for products that never arrive or are far from what was promised.
12 This is ruining Creators' ability to publish their work out of fear that it will be immediately ripped off.

13 27. The stolen and infringing images Facebook publishes unfairly compete with legitimate
14 business owners and infringe copyrights, both of which create direct liability for Facebook pursuant to
15 Federal and State unfair competition laws and the Copyright Act. Facebook is also contributorily liable
16 for its facilitation, enablement, and simplification of the copyright infringement by others, to pad its own
17 bottom line.

18 28. This is a complaint for the violations of various Federal and State unfair competition
19 laws and intellectual property laws arising from Facebook's use of stolen images for ad revenue and
20 direct infringement of Plaintiff's and the Class's exclusive right to display and distribute Registered
21 Works and Facebook's participation, and contributions to the advertising and sale of creative works and
22 products that constitute inferior knockoff duplications of copyrighted and protected products. Plaintiff
23 and the Class also seek to enforce certain artistic moral rights pursuant to the Visual Artists Rights Act
24 ("VARA") and other related violations.

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27 ⁶ Craig Silverman, *Facebook Gets Paid*, BUZZFEED NEWS, (Dec. 10, 2021, 5:44 PM ET),
28 <https://www.buzzfeednews.com/article/craigsilverman/facebook-ad-scams-revenue-china-tiktok-vietnam> (last visited Apr. 19, 2022).

1 33. At all times relevant, Facebook was and continues to be engaged in the business of
2 advertising and selling goods on its platforms, together with third-party advertisers—many of which
3 are Counterfeiters. Facebook’s largest source of income is advertisement revenue.⁸

4 **JURISDICTION, VENUE AND CHOICE OF LAW**

5 34. This action is for and related to copyright infringement and arises under the Copyright
6 Act of the United States (17 U.S.C. § 101) by virtue of the Defendant’s direct infringement of the rights
7 of Plaintiff, and others similarly situated, along with Defendant’s inducement and encouragement of,
8 and material contributions to, the unauthorized display, distribution, and creation of derivative works
9 embodying Registered Works owned and/or controlled by Plaintiff and the other members of the Class.

10 35. This Court has exclusive jurisdiction of this action under § 1338(a) of the Judicial Code
11 (28 U.S.C. § 1338(a)).⁹ This Court also has diversity jurisdiction under 28 U.S.C. § 1332.

12 36. This Court has personal jurisdiction over Facebook because it transacts business in this
13 State, and because the conduct alleged in this Complaint occurred in, was directed from, and/or
14 emanated from California.

15 37. Venue is proper in this District under 28 U.S.C. §1391 and § 1400(a) because Facebook
16 is headquartered in this District, and conducts business transactions in this District, and because the
17 wrongful conduct giving rise to this case occurred in, was directed from, and/or emanated from this
18 District.

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21 ⁸Matthew Johnston, *How Facebook (Meta) Makes Money*, INVESTOPEDIA, investopedia.com (in upper
22 right corner, enter in search “how Facebook makes money”; then select the first result) (last visited
23 Apr. 20, 2022).

24 ⁹To the extent any portion of this action is governed by Facebook’s Terms of Service (“Terms”), which
25 Plaintiff is not conceding, the Terms contain a choice of law and venue provision providing as follows:

26 For any claim, cause of action, or dispute you have against us that arises out of or relates to these
27 Terms or the Facebook Products (“claim”), you agree that it will be resolved exclusively in the
28 U.S. District Court for the Northern District of California, or a state court located in San Mateo
County. You also agree to submit to the personal jurisdiction of either of these courts for the
purpose of litigating any such claim, and that the laws of the State of California will govern these
Terms and any claim, without regard to conflict of law provisions.

Terms of Service, FACEBOOK.COM, <https://www.facebook.com/terms.php> (last visited Dec. 6, 2021).

1 **FACEBOOK TERMS AND CONDITIONS**

2 46. Facebook has several policies, terms of use, and rules, including a Terms of Service,
3 Commercial Terms, and Facebook Advertising Terms and Conditions. All of these internal policies
4 require both Facebook and its users and advertisers to comply with relevant laws.

5 ***Terms of Service***

6 47. According to Facebook’s Terms of Service, Facebook does not charge its users to use the
7 site. Instead, businesses and organizations, including Counterfeiters, pay Facebook for running
8 advertisements. Facebook uses the personal data of its users to determine which ads to show them. The
9 site touts: “We can show [users] relevant and useful ads without telling advertisers who [the users] are.”

10 48. The Terms of Service bar Facebook users from using any of Facebook’s products to do
11 or share anything that: (1) violates the Terms, Community Standards, and other terms and policies that
12 apply to use of its products; (1) is unlawful, misleading, discriminatory or fraudulent; or (3) infringes or
13 violates someone else’s rights, including their intellectual property rights. If a user violates the Terms
14 of Service, Facebook can remove or restrict access to content.

15 49. Specifically, Facebook’s Terms of Service states:

16 If we determine that you have clearly, seriously, or repeatedly breached our Terms or
17 Policies, including in particular our Community Standards, we may suspend or
18 permanently disable access to your account. We may also suspend or disable your account
if you repeatedly infringe other people’s intellectual property rights or where we are
required to do so for legal reasons.

19 ***Commercial Terms***

20 50. The Commercial Terms apply if a user accesses or uses Facebook Products for any
21 commercial or business purpose, including advertising, operating an app on the Meta Platform, using
22 Facebook measuring services, managing a group or a Page for a business, or selling goods or services.

23 51. These terms require users to represent and warrant that their access or use of Facebook
24 for business or commercial purposes complies with all applicable laws, rules, and regulations.

1 ***Facebook Advertising Terms and Conditions***

2 52. The Facebook Advertising Terms and Conditions specify what types of ad content is
3 allowed on the site. In addition, this is where Facebook lists its Copyright Infringement and Repeat
4 Infringer policies.

5 53. Facebook’s copyright infringement policy states:

6 Ads must not contain content that infringes upon or violates the rights of any third party,
7 including copyright, trademark, privacy, publicity, or other personal or proprietary rights.

8 Advertising Policies: Prohibited Content, Section 9.

9 54. Facebook’s repeat infringer policy states:

10 In addition to removing content and bad actors when they are reported, we disable the accounts
11 of repeat infringers where appropriate. We also take other actions before someone can become
12 a repeat infringer, such as imposing temporary feature limits or removing access to certain
13 product features like Marketplace.

14 Repeat Infringer Policy¹⁰

15 55. Facebook violated, and continues to violate its Terms of Service, Commercial Terms, and
16 Advertising Terms through the conduct described herein.

17 **FACTUAL ALLEGATIONS**

18 **I. Creators have exclusive ownership rights to their Creative Works.**

19 56. Creative Works are protected by copyright laws, including, but not limited to the
20 Copyright Act, when they are affixed in the tangible form (such as a painting, sculpture, or drawing).

21 57. The owner of a Creative Work has exclusive rights to do or authorize: (1) reproduction
22 of the work in copies or phonorecords; (2) preparation of derivative works; (3) distribution of copies of
23 the work to the public for sale or other transfers of ownership; (4) performance; (5) display; and (6)
24 digital performance of audio works.¹¹ Anyone who violates any of these exclusive rights of the
25 copyright owner is an infringer of the copyright or right of the author, as the case may be. These rights
26 exist whether or not the Creator has registered her Creative Works with the U.S. Copyright Office.

27 ¹⁰ *How Meta helps protect against counterfeits*, [https://www.facebook.com/business/tools/anti-](https://www.facebook.com/business/tools/anti-counterfeiting/guide)
28 [counterfeiting/guide](https://www.facebook.com/business/tools/anti-counterfeiting/guide), *supra* note 9.

¹¹ 17 U.S.C. § 106.

1 **II. Facebook is directly violating Creators' Ownership Rights and also helping Counterfeiters**
 2 **violate the exclusive rights of Creators.**

3 58. Counterfeiters locate and target small businesses or local artists selling unique, one-of-a-
 4 kind products. These products come in all shapes and forms, including photography, figurines,
 5 sculptures, holiday decorations, or quilting patterns. Once a Counterfeiter locates a product they want
 6 to rip off, they steal images from the Creator's or Registered Owner's website or social media account
 7 and use Facebook, who acts collaboratively with Counterfeiters and on its own, to display and distribute
 8 those images to Facebook users.

9 59. Counterfeiters have more success swiping images from small businesses, often found on
 10 Etsy, Pinterest, or other e-commerce websites. Unique items from small businesses on these kinds of
 11 sites stand out to Counterfeiters because the Creators' or Registered Owners' original websites may be
 12 easily copied, making it more difficult for customers to discern the actual source. The Counterfeiters'
 13 use of the copyright owner's original photographs adds to the confusion. Additionally, small businesses
 14 or independent artists may not have the resources to fight fraud on a larger scale—a fact that Facebook
 15 knows and exploits when it ignores takedown notices from Creators or Registered Owners. As a result,
 16 small businesses and creative individuals across the globe are turning into Facebook's collateral damage.

17 60. The Counterfeiter websites appear legitimate to the average consumer. The Counterfeiter
 18 websites often have terms of service and a privacy policy, and various payment methods are accepted,
 19 including PayPal and Mastercard.¹² However, the Counterfeiter websites are full of pictures stolen from
 20 websites like Plaintiff's website (SnakeArts.com) and are only selling knockoff products.

21 61. According to a 2020 Time article, after further review of the Counterfeiter websites, there
 22 are striking similarities. For example, on more than 65,000 of these Counterfeiter sites, the "About Us"
 23 page includes the following sentence: "We love every passion and interest on Earth because it is a
 24 reference to your UNIQUENESS." Other similarities, like the IP addresses, customer support emails,
 25 phone numbers, and warehouse shipping addresses in mainland China, also exist.¹³ The Counterfeiter

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 27 ¹² Andrew Chow, *Here's How Shopping Scams on Facebook Are Ripping off Thousands of Customers,*
 28 *with the Money Flowing Overseas*, TIME (Dec. 18, 2020, 7:02 PST),
<https://time.com/5921820/facebook-shopping-scams-holidays-covid-19/> (last visited Sept. 14, 2021).

¹³ *Id.*

1 sites' photos overlap and many of the sites will have either bad reviews or good reviews filled with
2 repeat phrases and malapropisms.¹⁴ Facebook is aware, or should be aware, of these similarities among
3 Counterfeit websites and could easily find and remove links from its site that direct users to Counterfeit
4 sites.

5 62. Likewise, some Counterfeiters set up Facebook pages to sell the stolen products--- adding
6 to the appearance of legitimacy because small businesses regularly market their products on social media
7 sites. The Counterfeiter Ads direct Facebook Users to click on a link to a Facebook Page where the
8 counterfeit product can be purchased. Several of these Counterfeiter Facebook pages, created and
9 controlled by Counterfeiters, remain active on the site even after Creators report the pages to Facebook.

10 63. Facebook allows Counterfeiters to use its ad platform to advertise the counterfeit
11 products with stolen images hundreds to thousands of times over short periods—sometimes referred to
12 as “ad blasts” or “scam blasts.” This makes it difficult for Registered Owners to keep track of the
13 infringement and Facebook does nothing to stop it, including ignoring Repeat Infringers using the same
14 account name or page or variations of the same company/account names to advertise and sell counterfeit
15 products over and over again. Based upon an examination of the Counterfeiter Ads and websites, these
16 Counterfeiters do not sell anything non-infringing or legitimate. The Counterfeiters only business is
17 collaborating with Facebook to sell counterfeit goods through infringing advertisements, for which
18 Facebook gets paid on a per click basis.

19 64. The majority of the Counterfeiters who violated Plaintiff's exclusive rights under the
20 Copyright Act maintain active pages and accounts on Facebook, even after being reported, and can still
21 use the ad platform to advertise counterfeit products. Facebook continues to generate revenue from the
22 Repeat Infringers who have violated Plaintiff's Registered Works and many others.

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24 **III. The Rise of Scamming and Facebook's Prioritization of Revenue Over the Rights of Users
and Copyright Holders.**

25 65. One in four Americans is a victim of cybercrime each year, from relationship scams to
26 fake IT support to Ponzi schemes to phishing.¹⁵ The e-commerce scam is perhaps the fastest rising and

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28 ¹⁴ *Id.*

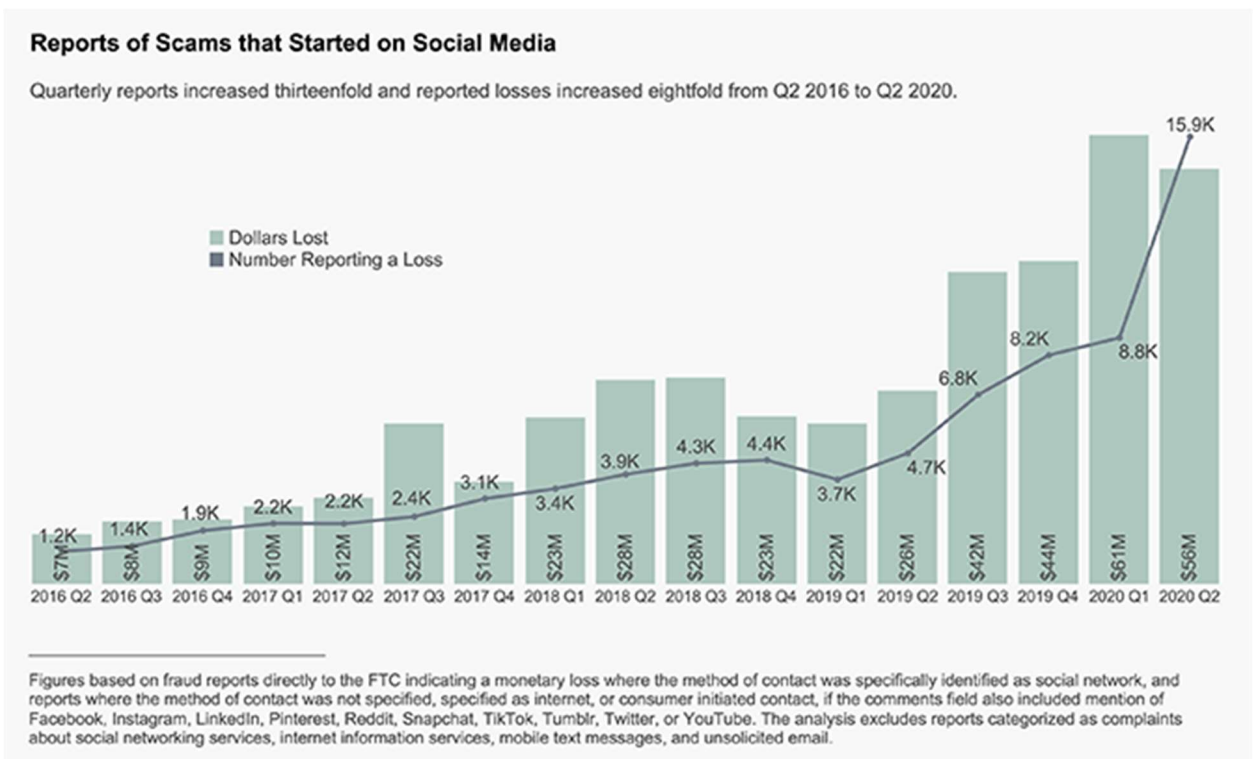
¹⁵ *Id.*

one of the most worrisome. E-commerce fraud is the process of duping customers seeking to buy a legitimate product. A customer might order a certain product or service and receive a knockoff, a damaged product, or nothing at all.

66. In 2015, just 13 percent of scams reported to the Better Business Bureau Scam Track were online purchase cons; in 2020, they made up 64%.¹⁶ Online shopping scams are also the number one fraud in every age group according to the Federal Trade Commission (“FTC”).¹⁷

67. Social media sites, like Facebook, have created such an advertiser friendly environment that the sites have become feeding grounds for scam artists.

68. Below is a table demonstrating the increase in cybercrime from 2016 through 2020.



69. In an FTC study, 94% of Counterfeit Ad victims said their scam originated on Facebook or Instagram (which Facebook owns).¹⁹ Counterfeiters use Facebook to blast out targeted advertisements, posting hundreds to thousands of ads in just a few days. Facebook does nothing to

¹⁶ *Id.*
¹⁷ *Id.*
¹⁸ *Id.*
¹⁹ *Id.*

1 confirm ownership or authenticity of the photos or products advertised (despite the readily accessible
2 ability to do so)—which gives Counterfeiters an incentive to use the site. If Facebook takes a
3 Counterfeiter ad down, the Counterfeiters resubmit new ads almost immediately, leaving no gap in the
4 exploitation. This openly allowed “whack-a-mole” model allows Facebook the ability to obtain the new
5 ads, collect the ad revenue, and appear as though it is complying with DMCA takedown notices.

6 70. As Counterfeiter Ads increasingly dominate feeds, a community has grown that is
7 dedicated to reporting these Counterfeiter Ads. But members of these communities,
8 like Facebook Ad Scambusters and Scam Alert Global, say that their complaints are often
9 ignored or overruled, with Facebook representatives deeming the pages as within community
10 standards.²⁰

11 71. In some instances, Facebook responds to complaints from these scam policing
12 groups by shutting down the group’s Facebook page or account, instead of addressing the actual
13 fraud the group identified and reported. Facebook is not only ignoring certain Counterfeiters
14 but also assisting Counterfeiters by removing the groups who report the Counterfeiter Ads and
15 copycat websites.

16 72. Facebook prioritizes revenue over copyright holders, the safety of its three billion users,
17 the public good, and the integrity of its own platform. The consequences vary: consumers are sold
18 knockoff goods or goods they never receive; legitimate advertisers’ accounts or pages are hacked and
19 used to peddle those knockoff or non-existent goods; credit card numbers are stolen; and copyright
20 holders/ legitimate Creators are forced out of business. All the while, Facebook banks the ad revenue.²¹

21 73. Facebook further exacerbates these serious issues relying on a small number of low-paid,
22 unempowered contractors to manage a daily onslaught of ad moderation and policy enforcement
23 decisions that often have far reaching and high impact consequences for users and copyright holders.²²

24 74. According to BuzzFeed News, Facebook ad workers have at times been told to ignore
25 suspicious behavior unless it would result in financial losses for Facebook, and the company is pushing
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27 ²⁰ *Id.*

28 ²¹ Craig Silverman, *supra* note 5.

²² *Id.*

1 to grow revenue in areas that are responsible for many of the scams.²³ Many of these areas involve
2 foreign e-commerce markets, particularly China.

3 75. Facebook has been aware of an epidemic of violative ads and Counterfeiters operating
4 out of China and other countries for years, yet the company continues to undertake major initiatives to
5 increase revenue in China. In 2019, Facebook posted on a Chinese messaging platform that it is
6 “committed to becoming the best marketing platform for Chinese companies going abroad.” Shortly
7 thereafter, in 2020, Facebook moved employees from Silicon Valley to Singapore to focus on growing
8 Chinese revenue.²⁴

9 76. Facebook’s scheme, which denies Creators and Registered Owners the right to protect
10 their Creative Works or Registered Works while simultaneously generating traffic and advertising
11 revenue from infringing ads, constitutes the direct infringement, inducement of copyright infringement,
12 contributory copyright infringement, and vicarious copyright infringement, making Facebook liable to
13 Registered Owners for damages for each copyrighted work infringed by each third-party Counterfeiter
14 Facebook ads, and additionally liable to Creators at large for various violations of other laws, including
15 unfair competition laws.

16 **IV. Facebook Generates Nearly All of its Revenue from Advertisements.**

17 77. There are millions of small and large businesses on the Facebook platform trying to court
18 the company’s nearly 3 billion monthly active users.²⁵ Facebook makes money by auctioning off space
19 for ads within Facebook and Instagram users’ feeds and stories.²⁶ On average, Facebook earned \$32
20 from each of its users worldwide in 2020, and more than \$80 billion in aggregate revenue from
21 advertisers worldwide.²⁷

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24 ²³ *Id.*

25 ²⁴ *Facebook Gets Paid*, BUZZFEED NEWS,
[https://www.buzzfeednews.com/article/craigilverman/facebook-ad-scams-revenue-china-tiktok-](https://www.buzzfeednews.com/article/craigilverman/facebook-ad-scams-revenue-china-tiktok-vietnam)
26 [vietnam](https://www.buzzfeednews.com/article/craigilverman/facebook-ad-scams-revenue-china-tiktok-vietnam) (last visited Sept. 14, 2021).

27 ²⁵ Andrew Chow, *supra* note 11.

28 ²⁶ Kamil Franek, *How Facebook Makes Money: Business Model Explained*,
<https://www.kamilfranek.com/how-facebook-makes-money-business-model-explained/> (last visited
Aug. 19, 2021).

²⁷ *Id.*

1 78. Facebook has data about whom its users communicate with, what content its users
 2 consume and react to, and even what pages and apps its users visit outside of Facebook Apps.²⁸ Facebook
 3 knows its users' age, religion, ethnicity, interests, political opinions, relationship states and much more.
 4 Based on this information, Facebook uses algorithms that estimate personal profiles and categorize its
 5 users based on granular statistics to target advertisements from third parties to a specific, and revenue
 6 inducing audience.

7 79. There are ten million advertisers that use Facebook's ad platform, and they are primarily
 8 small businesses, or Counterfeiters.^{29 30}

9 **V. Advertising on Facebook—How It Works.**

10 80. Facebook entices advertisers, including Counterfeiters, to use its ad platform through its
 11 large user base, consisting of more than three billion active user accounts and billions of active users
 12 every day.³¹ The social media company tells advertisers, including Counterfeiters, “No matter what
 13 kind of audience you want to reach, you'll find them here.”³²

14 81. Facebook also promises, through use of its mass data catalogue and advertisement
 15 targeting algorithm, to connect advertisers to users that are more likely to pursue the advertised good or
 16 service. The site specifically promotes it will “automatically show ads to people who are most likely to
 17 find the ads relevant.”³³ The advertisers never have access to Facebook user information—Facebook
 18 takes care of connecting the advertiser to the user. Without Facebook, the advertisers, and the
 19 Counterfeiters, would not have access to these specific customers and would never reach a customer
 20 base of Facebook's magnitude.

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 22 82. Mark Zuckerberg, Facebook CEO, explained during a Senate hearing:

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 24 ²⁸Chyelle Dvorak, *What Data Does Facebook Collect*, REVIEWS.ORG, <https://www.reviews.org/internet-service/what-data-does-facebook-collect/> (last visited Dec. 7, 2021).

25 ²⁹ Kamil Franek, *supra* note 25.

26 ³⁰ Matthew Johnston, *supra* note 7.

27 ³¹ *The Cumulative Number of Daily Facebook Product Users as of 3rd Quarter 2021*, STATISTA, <https://www.statista.com/statistics/1092227/facebook-product-dau/> (last visited Dec. 8, 2021).

28 ³² *Facebook Ads*, <https://www.facebook.com/business/ads>, META (last visited Dec. 6, 2021).

³³ *Ad Targeting*, <https://www.facebook.com/business/ads/ad-targeting>, META (last visited Dec. 6, 2021).

1 What we allow is for advertisers to tell us who they want to reach, then we do the placement.
2 So, if an advertiser comes to us and says, ‘All right, I am a ski shop and I want to sell skis to
3 women,’ then we might have some sense, because people shared skiing related content, or said
4 they were interested in that, they shred whether they’re a woman, and then we can show the ads
5 to the right people without that data ever changing hands and going to the advertiser.³⁴

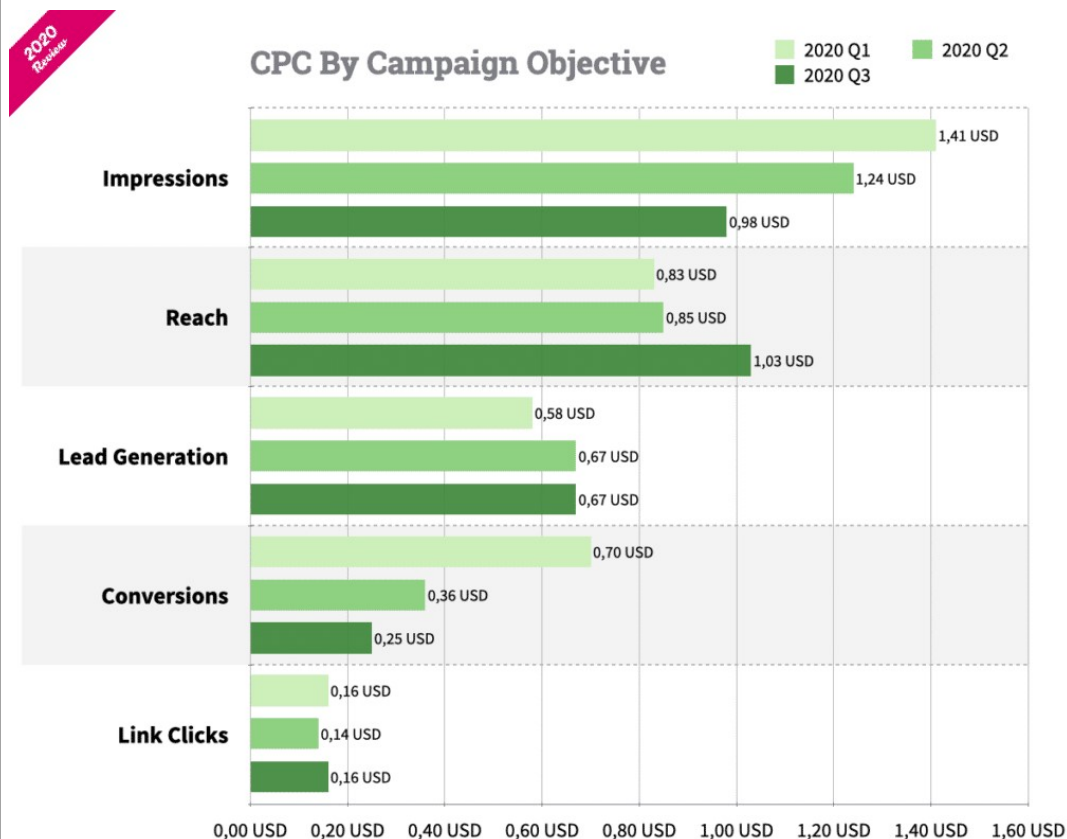
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83. There are seven basic steps to set up an advertisement on Facebook. First advertisers
select an “objective”—which can be brand awareness, reach, app installs, traffic (link clicks), lead
generation, messages, engagement, or video views. Second, the advertiser selects an audience—at
which point Facebook again reassures the advertiser that it will direct ads to consumers who will find
the ads most relevant. Third, the advertiser must decide where to run the ad—Facebook, Instagram,
Messenger, or Audience Network. For this step, Facebook recommends “automatic placement” because
it allows Facebook to use its technology to deliver the ads in the most efficient way, especially if the
advertisers are on a budget. Fourth, advertisers set up a budget at which point Facebook promises “if
we’re not able to get you the result you care about, we’ll stop delivering your ad. You won’t get charged
unless we’re getting you results.”³⁵

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84. AdEspresso calculated the average cost per click for Facebook ads in Q3 2020. Broken
down by campaign objective, the average costs were:

- **Impressions:** \$0.98
- **Reach:** \$1.03
- **Lead generation:** \$0.67
- **Conversions:** \$0.25
- **Link clicks:** \$0.16

³⁴Ben Gilbert, *How Facebook makes money from your data, in Mark Zuckerberg’s words*, INSIDER, <https://www.businessinsider.com/how-facebook-makes-money-according-to-mark-zuckerberg-2018-4> (last visited Aug. 19, 2021).

³⁵ <https://www.facebook.com/business/gelp/2018285865289?id6293384416215> (last visited Dec. 6, 2021). Recently, Facebook updated this money guarantee policy to state that decisions about refunds are “made at [Facebook’s] sole discretion and without admission of liability.” *About Refunds*, FACEBOOK.COM, <https://www.facebook.com/business/help/626428078224265?id=1468738389987593>.



85. This data demonstrates that link clicks are the most economical way to advertise on Facebook. From searches conducted on the Facebook site and review of the ads Counterfeiters posted using Plaintiff's images, it appears this is the objective most Counterfeiters select for their fraud ads. Counterfeiters use links to direct Facebook users from Facebook to their Scam sites, where they also display stolen images, as a low per user, per click cost.

86. In most cases, Facebook is compensated each time a Facebook User clicks on an ad, or on a per click basis. The more clicks Facebook generates for advertisers and Scammers, the more money Facebook makes.

87. The Fifth step in setting up an advertisement is to pick a format for the ad (photo ad, video ad, Facebook story ad, etc.). Advertisements which include images, or photo ads, are approved

³⁶ Madis Birk, *Facebook Ads Cost Benchmarks 2022 (Based on \$636 million Ad Spend)*, ADESPRESSO BY HOOTSUITE (Dec. 8, 2021), <https://adespresso.com/blog/facebook-ads-cost/> (last visited Apr. 8, 2022).

1 by Facebook for aesthetics (i.e. the text to photo ratio) and, in some cases, legality. Facebook controls
 2 the ad review process, including what images are published on the platform. The review process include
 3 human moderators that participate in approving ads before and after they are published.

4 88. After the advertiser has completed steps one through five, it will place the order and
 5 Facebook will begin the “ad auction.” The ad auction occurs when a Facebook user falls into multiple
 6 target audiences. Factors that contribute to the ad auction are bid, estimated action rates, and ad quality.
 7 This is all part of Facebook’s process of connecting advertisers, and Scammers, to the most relevant
 8 audience. Finally, the last step of the process is to measure and manage the ad for results. Facebook
 9 can adjust the ad to obtain more desirable results.³⁷

10 89. As mentioned before, Facebook continues to monitor the ads after they are published for
 11 results, including making adjustments to the Facebook users receiving the ads and/or directing the ad to
 12 entirely different categories of users.

13 ***VI. Plaintiff’s Experiences***

14 ***A. Plaintiff’s Creative Works***

15 90. JL Cook owns, and owned prior to the infringing acts complained of herein, the
 16 copyrights for numerous Creative Works, including three-dimensional sculpture designs for works
 17 designated as the “Matched Pair of Rattlesnake Entrance Sculptures” (“Rattlesnakes”) and “Python,”
 18 previously identified (before registration with the U.S. Copyright Office) collectively as “Plaintiff’s
 19 Creative Works.” Plaintiff registered the Registered Works with the United States Copyright Office as
 20 indicated in the below table.

<u>Registration Number</u>	<u>Title of Work</u>	<u>Effective Date of Registration</u>	<u>Registration Decision Date</u>
VA-2-267-344	Matched Pair of Rattlesnake Entrance Sculptures	June 16, 2021	Sept. 20, 2021
VA-2-264-055	Python	Aug. 25, 2021	Aug. 27, 2021

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 28 ³⁷ *Facebook Ads*, <https://www.facebook.com/business/ads>, *supra* note 31.

1 91. Plaintiff registered the Creative Works to Jennifer Leanne Cook, a citizen of the United
2 States and residing in the State of Florida.

3 ***B. Plaintiff's Creation of the Artworks***

4 92. JL Cook completed the Rattlesnakes in August 2019—at which time the piece was
5 displayed at a local museum. Since that time, JL Cook has been selling renditions of Rattlesnakes,
6 which she creates, to the public.

7 93. Through a complex creative process, Plaintiff designed various iterations of the
8 Rattlesnakes, consisting of different molds, materials, and color schemes. The creative variations
9 included, but not limited to, design, thickness, orientation, and arrangement.

10 94. JL Cook completed Python in late August 2017. She has been selling this sculpture to
11 the public since approximately that same time.

12 95. Plaintiff displayed Rattlesnakes and Python on SnakeArts.com in 2021. She also
13 displayed them through the JL Cook Etsy store. Counterfeiters stole images of the Rattlesnakes in June
14 2021 and images of the Python in late August 2021.

15 ***C. Direct Infringement of Rattlesnakes***

16 96. After JL Cook displayed images of Rattlesnakes on SnakeArts.com, Counterfeiters stole
17 her images, the title of the piece and certain language from SnakeArts.com describing the pieces. They
18 then used the images and information in Counterfeiter Ads on Facebook and on Counterfeiter websites.

19 97. Below is an image of the Rattlesnakes from SnakeArts.com, taken by JL Cook.
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All Products



**Matched Pair of Rattlesnake
Entrance Sculptures**

\$6,000.00

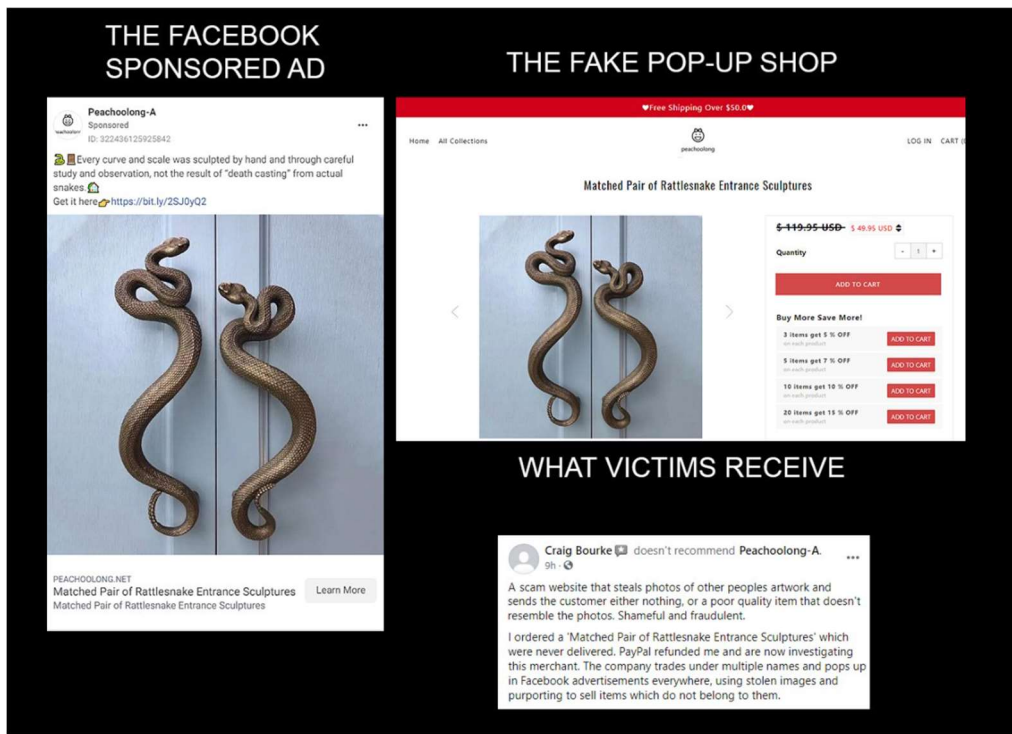
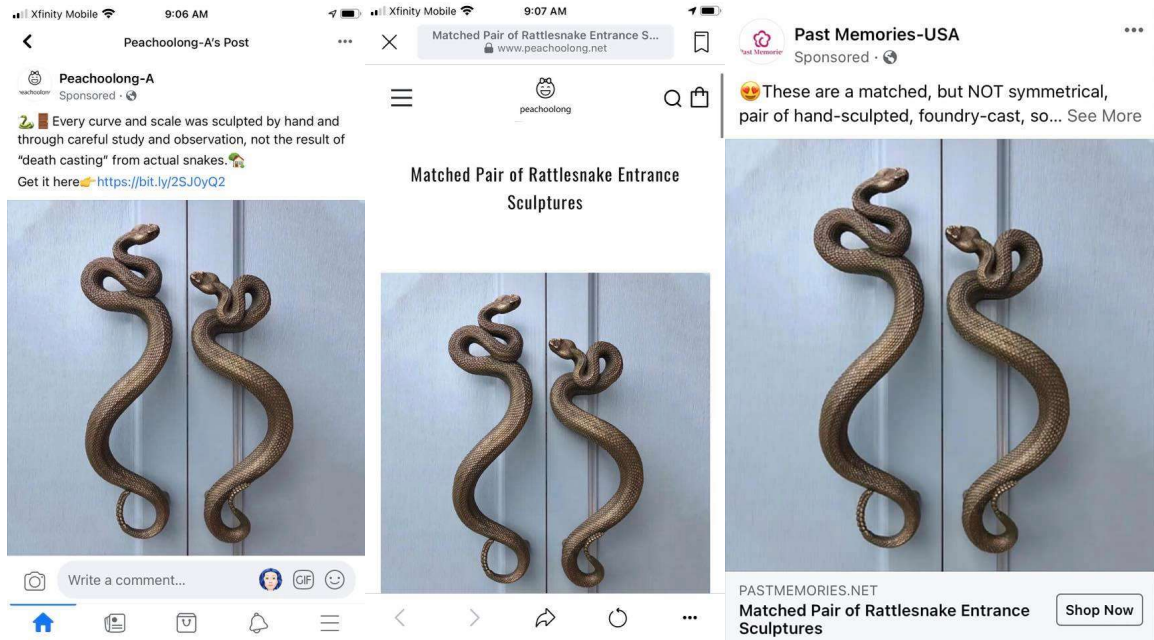
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Hereinafter referred to as the “Rattlesnake Image.”

98. The image of the Rattlesnakes includes two identifying marks over the image. The first is “SnakeArts.com” and the other is “JL Cook SnakeArts.com.” JL Cook sold the piece for \$6,000.

99. Below are examples of the Counterfeiter advertisements, posted on Facebook starting in June through August of 2021, and Counterfeiter websites selling duplicates of the Rattlesnakes without Plaintiff’s authorization. There is also a customer review of one of the Counterfeiter websites included to demonstrate the confusion these ads created for customers.

³⁸ SNAKE ARTS, SnakeArts.com (last visited Dec. 7, 2021).



100. The image the Counterfeiters used of Rattlesnakes is the same image from SnakeArts.com. The Counterfeiters also included the same title for the sculpture and quotes from SnakeArts.com, such as “from actual snakes.” However, in these particular ads, Counterfeiters, or Facebook, removed the identifying marks from the image, to claim the images and the sculpture more

1 effectively as their own. These Counterfeiters sell the counterfeit product for \$49.99.³⁹

2 **D. Direct Infringement of the Python**

3 101. In August 2021, Counterfeiters stole images of the Python for use in Counterfeiter
4 advertisements. Below is an image of the Python from JL Cook’s Etsy store, as taken by JL Cook.



14 Hereinafter referred to as the “Python Image.”

15 102. The image of the Python also has two identifying marks. This image includes the
16 markings “JL Cook SnakeArts.com” and “Python ‘weathered copper patina.’”



17 103. Below are examples of Counterfeiter advertisements posted on Facebook starting in
18 August 2021. Facebook published all of the advertisements depicted below.

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³⁹ The price Counterfeiters charge for Rattlesnakes and Python varies.




27 ⁴⁰ *Python “weathered copper patina”*, ETSY.COM, https://www.etsy.com/listing/595978445/python-weathered-copper-patina?show_sold_out_detail=1&ref=nla_listing_details (last visited Apr. 21, 2022).

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 **Slowfever-Sky**
Sponsored · 

🔥 This little serpent is sculpted in the Art Nouveau style 🍷
Get it 🛒 <https://rb.gy/lz8gyn>




SLOWFEVER.NET
Python "weathered copper patina" Shop Now
Each one is hand cast in "cold-cast" copper (urethane resin filled with met...
  

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CuteStart
Sponsored · 🌐

This little serpent is sculpted in the Art Nouveau style and was inspired by a serpent mirror created by the jewelry master Rene Lalique. 🐍
GET IT 🛒 <https://cutt.ly/fQc5eXT>
GET IT 🛒 <https://cutt.ly/fQc5eXT>



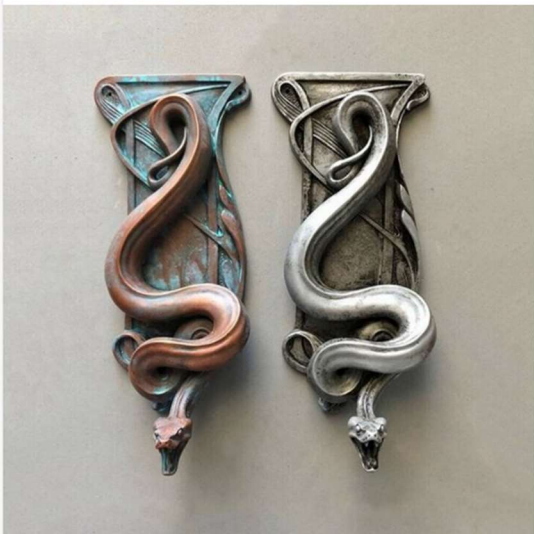
CUTESTART.NET
Python "weathered copper patina" Shop Now
This little serpent is sculpted in the Art Nouveau style and was inspired by ...

About the Ad

Multiple versions of this ad ⓘ < 9 of 9 >

Slowfever-Sky
Sponsored
ID: 384567686437976

🥰 This little serpent is sculpted in the Art Nouveau style 🥰
Get it 🛒 <https://rb.gy/lz8gyn>

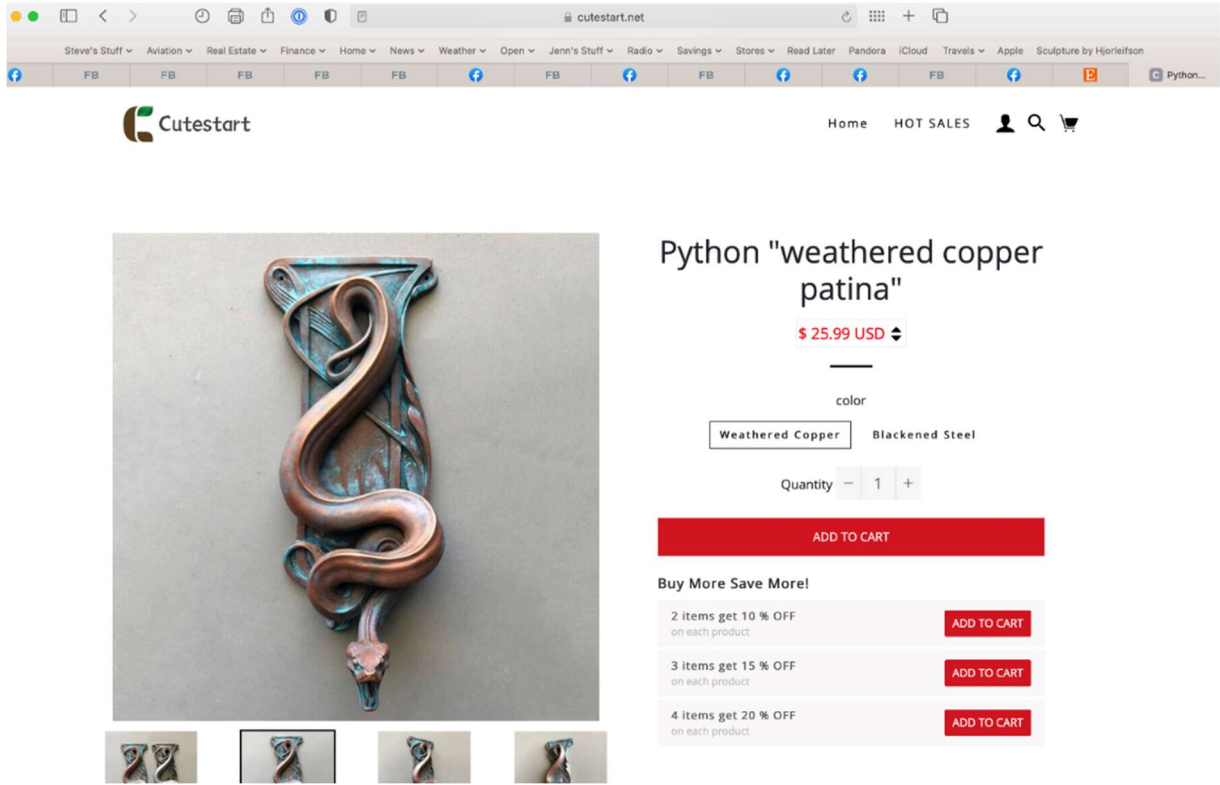


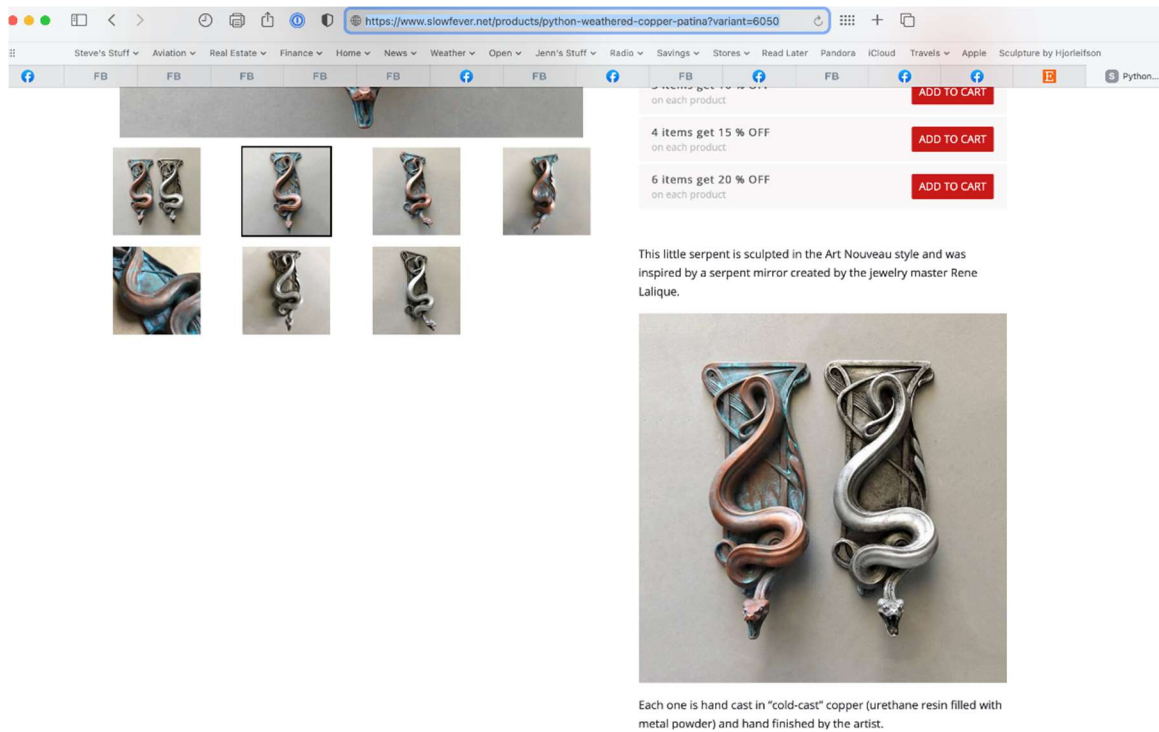
About the Page See

Slowfever-Sky
ID: 102420665337959
251 likes · Product/Service

More info
We carry all of the coolest products and gadgets that you've probably seen trending on social media or just online in general.

1 100. Below are examples of the Counterfeiter websites selling duplicates of Python without
2 Plaintiff's authorization. These are some of the websites a Facebook user would be redirected to if he/she
3 clicked on the links provided in the corresponding advertisements.





101. Counterfeiter Ads on Facebook, like the ones depicted above, directed consumers to click on a link, which then navigated the user to the fake, pop-up shop websites where the user could purchase the pictured product. Unbeknownst to the consumer, they were purchasing a cheap knockoff of the product pictured in the advertisements, or in some cases, sending money to Counterfeiters who had no intention of providing any product in return.

102. The Counterfeiters advertise on Facebook, and other social media and e-commerce websites, purporting to sell products that appear to be the same as the designs JL Cook and members of the Class embodied in the Creative Works and Registered Works. The resemblance is such to deceive the observers, inducing him or her to purchase the Scammers' infringing products, supposing them to be the claimed Creative Works or Registered Works. This is a direct result of the large outreach and targeted advertising Facebook provides through its platform and algorithms.

103. Facebook users purchased Plaintiff's Registered Works through Counterfeiters and some of them received cheap, plastic knockoffs or nothing at all. Customers contacted JL Cook after receiving the Counterfeiters' cheap duplicates and requested refunds. Plaintiff reported the Counterfeiters, many of them multiple times, but Facebook was slow to act or failed to act at all in protecting Plaintiff's

1 Registered Works from infringement. Many of the Counterfeiters Plaintiff and members of the Class
2 reported to Facebook for infringing their content still have active accounts on Facebook and are still
3 able to advertise on the site.

4 104. Below is a table (Table One) identifying the Counterfeiter websites/companies that sold
5 knockoffs of Rattlesnake, all of which used Facebook to advertise and redirect user traffic to their own
6 sites to sell the knock-off products. This is a non-exhaustive list and Plaintiff reserves the right to
7 identify additional infringement from any period. Each time a unique, Counterfeiter infringed on
8 Plaintiff's copyright for the Rattlesnakes constitutes a distinct direct infringement for which Facebook
9 directed and materially contributed. Facebook is liable for each distinct direct infringement perpetrated
10 on its site. It is also contributorily and vicariously liable for each act of infringement.

11 **Table One: Matched Pair Rattlesnake Entrance Sculptures**

Counterfeiter URLs

1. <https://www.planeoak.shop/products/matched-pair-of-rattlesnake-entrance-sculptures>
2. <https://www.hooenred.com/products/matched-pair-of-rattlesnake-entrance-sculptures>
3. <https://www.facebook.com/Bluebel-103600218648616/>
4. https://www.biaclo.top/products/matched-pair-of-rattlesnake-entrance-sculptures?sales_pop=true
5. https://www.globalhight.com/products/matched-pair-of-rattlesnake-entrance-sculptures?sales_pop=true
6. <https://www.panepa.top/products/rattlesnake-entrance-sculptures>
7. <https://www.facebook.com/Lullabop-103193921889137/>
8. <https://www.seestarrisky.com/products/matched-pair-of-rattlesnake-entrance-sculptures>
9. <https://rayrioj.com/products/matched-pair-of-rattlesnake-entrance-sculptures>
10. <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewjosa-mivfyAhV2TjABHc-kCZYQFnoECACQAQ&url=https%3A%2F%2Fkewstern.com%2Fproducts%2Famazing-python-curly-body-snake-door-handles%2F&usg=AOvVaw2K6rf866hrYSkTdNec6Xe>
11. <https://coaco.top/products/matched-pair-of-rattlesnake-entrance-sculptures>
12. <https://www.jagely.top/products/matched-pair-of-rattlesnake-entrance-sculptures>
13. <https://www.relblog.com/products/matched-pair-of-rattlesnake-entrance-sculptures>
14. <https://www.facebook.com/Azurejelly1-104624431808200/>
15. Exclusive-Romantic.com
16. <https://www.facebook.com/Buoyancyworld-110718567832661/>
17. <https://www.facebook.com/prettylifiiii/>
18. <https://www.peachoolong.net/products/matched-pair-of-rattlesnake-entrance-sculptures>
19. Reallydream.net
20. <https://www.facebook.com/Firerise-106273118344219/>
21. <https://www.facebook.com/Past-Memories-USA-103679968635252/>
22. <https://www.facebook.com/Happy-Cheer-US-109493738043970/>
23. <https://www.facebook.com/Likair-102377992084065/>

Counterfeiter URLs

24. <https://www.facebook.com/Fasife-100545975150901/>

25. <https://www.facebook.com/CharmStall-110935934566492/>

26. <https://www.facebook.com/Pointatbette-r-101867185486049/>

27. <https://eternitar.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR3SqyXtNDs0uwD88A7gKSRgIn6dl0vwNZ1CgpMGoJFFgMIOpd1p7vVmOfY>

28. https://www.zingisoe.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR2F6J0CfiyFOtPhjsxn6EyxECCRNZfnhGH65BqagfA7_NMcf gHwc5vzJpM

29. <https://apprical.com/product/amazing-python-curly-body-snake-door-handles/?fbclid=IwAR1K6WWBhN1fXNHvUlggGhSQ2eOkKW6Hj7ISAqn6WGcq TGrNoQ6ndenDyyA>

30. <https://bidforums.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR3SB13JpsNK0qj25B992NXCseUzYsr0y7Cg26Ck5467F5dF U4unPbaU7mQ>

31. <https://cdhjtng.shop/products/matched-pair-of-rattlesnake-entrance-sculptures/?fbclid=IwAR2imF7o6psjJPdnJR9ngOB0swAYwR5Lqm1FNBhyHhechgr N8ehb0atxQm>

32. <https://eternitar.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR3SqyXtNDs0uwD88A7gKSRgIn6dl0vwNZ1CgpMGoJFFgMIOpd1p7vVmOfY>

33. https://www.zingisoe.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR2F6J0CfiyFOtPhjsxn6EyxECCRNZfnhGH65BqagfA7_NMcf gHwc5vzJpM

34. <https://apprical.com/product/amazing-python-curly-body-snake-door-handles/?fbclid=IwAR1K6WWBhN1fXNHvUlggGhSQ2eOkKW6Hj7ISAqn6WGcq TGrNoQ6ndenDyyA>

35. <https://bidforums.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR3SB13JpsNK0qj25B992NXCseUzYsr0y7Cg26Ck5467F5dF U4unPbaU7mQ>

36. <https://cdhjtng.shop/products/matched-pair-of-rattlesnake-entrance-sculptures/?fbclid=IwAR2imF7o6psjJPdnJR9ngOB0swAYwR5Lqm1FNBhyHhechgr N8ehb0atxQm>

37. <https://cdhjtng.shop/products/matched-pair-of-rattlesnake-entrance-sculptures/?fbclid=IwAR3qpgmktilM1YPLoT6SnW3pmBzaAPgLaU9MpOhAwnQ6 qj6N9xazYhwnagg>

38. https://courierbeauty.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR2doZFRRIXmxr0fQpZQSmvBfKH7XEWzrVcV3jfrl3llec_to 4sZ3_QvFeE

39. <https://ddlyyds.shop/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR0AN4Ubdsv0HV28SMGMov-VTyX0KPyr8fKe6fbxb7akDLmgZgfDoNXs4y4>

Counterfeiter URLs

40. https://eternitar.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR230c_vX7X-hUH9spNoAhs-7oeqzXBwiJhL7Fi60erUi_cTaUEYkqstBVQ
41. https://gasfu.top/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR09uIS6GGx4reFNCT1fAOJwnQODB_8l8h5RsD0ywnnezgEdh30fdxUGcJrQ
42. https://jinxueda.shop/products/matched-pair-of-rattlesnake-entrance-sculptures/?fbclid=IwAR0Au_vTvs8paEk-wdQaNCN5cmEez9Md2QbTBVdf3cCqCF8bAItwGWvUiWA
43. https://kronpgv.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR1KR2SGUXjmiLW6N9IJ5m7ztI-sEk5T1Hj_28OlVYAUQW-x7Lwilg43W_U
44. <https://letaojia.store/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR3whcUbOLxb90IYGRBwO-1TOReMShOP56z9xIOHeeLXWfuHAKoE4O7BiBI>
45. https://opportes.com/product/amazing-python-curly-body-snake-door-handles/?fbclid=IwAR2sRjC9ni9kXjFZITeJQ_oTDpF5p997QWpWgVwyvOy1SYjPKrdi5Xqnhw8
46. <https://opportes.com/product/amazing-python-curly-body-snake-door-handles/?fbclid=IwAR3UjHyh2M5Au6U3nUcRut6NkQzIufxpAHOXcs4ZHwI16niPlM7xLh9z-z4>
47. https://prettylifiiii.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR0Dntybi8bOTTnUQ-X8v-8hI7d1tcsBIZxve7jt-AI9njVa_Y3OB2zsho
48. <https://topaini.shop/products/matched-pair-of-rattlesnake-entrance-sculptures>
49. <https://uunning.com/products/matched-pair-of-rattlesnake-entrance-sculptures>
50. <https://www.boxartis.com/products/matched-pair-of-rattlesnake-entrance-sculptures>
51. https://www.buoyancyworld.net/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR31yhs_HWCopczVLXUFiFAI03UGIQV17IdITssoG1wzb8NZPliW3FBSxsE
52. <https://www.charmstall.net/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR1fc5z6DGXxFse4-XyZ4JSL4PSwnmnFXzMB1y1-8w1Q-CRWMM4WREgWOOM>
53. <https://www.charmstall.net/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR3m0pZ2-y4yo3f2LLDhLGyZlZ9FYzOziRt7NuPwNwFfyZdyAvtcmsLcVes>
54. <https://www.cutestart.net/products/python-weathered-copper-patina?variant=8636>
55. <https://www.evoccin.com/collections/statue-art>
56. <https://www.evoccin.com/products/matched-pair-of-rattlesnake-entrance-sculptures>
57. <https://www.evoccin.com/products/matched-pair-of-rattlesnake-entrance-sculptures>
58. <https://www.exclusiveromantic.com/products/matched-pair-of-rattlesnake-entrance-sculptures>

Counterfeiter URLs

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| 1 | |
| 2 | 59. https://www.exclusivesoulmate.com/products/matched-pair-of-rattlesnake-entrance-sculptures |
| 3 | 60. https://www.fanpat.com/products/matched-pair-of-rattlesnake-entrance-sculptures |
| 4 | 61. https://www.fantasticise.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR1-XpxNjgiYts9JKO9EutfjvJfBugyAnL_JMdVAMSAigz8H7fzP27y5zeE |
| 5 | 62. https://www.firefare.net/products/matched-pair-of-rattlesnake-entrance-sculptures |
| 6 | 63. https://www.firerise.net/products/matched-pair-of-rattlesnake-entrance-door-handle |
| 7 | |
| 8 | 64. https://www.fortunateroad.com/products/matched-pair-of-rattlesnake-entrance-sculptures |
| 9 | 65. https://www.fortunatewish.com/products/matched-pair-of-rattlesnake-entrance-sculptures |
| 10 | 66. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEWjkw_yyqZXxAhXCpJ4KHZ8KBJ04ChAWMAJ6BAGKEAM&url=https%3A%2F%2Fwww.luckliytrend.com%2Fproducts%2Fmatched-pair-of-rattlesnake-entrance-sculptures&usg=AOvVaw250JQFXosVUKVrdYb10TrO |
| 11 | |
| 12 | 67. https://www.happycheer.net/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR1dOuDqZjKjcsNvpT99RjS0Dek2shS90rciJzZ3R4aiLOfPgJrJhEmUQzQ |
| 13 | |
| 14 | 68. https://www.koply.net/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR2jt4rjHWISuxT8_GadmdawBbLZG_ThoRudMSIeqxg6LpNLT25A5WhZJHU |
| 15 | |
| 16 | 69. https://www.likair.com/products/6234?fbclid=IwAR3W7vslqmyTFYvb5_HOf60hCRNHTEqJ2OMklXW7lXX-PGcgbfcg1WaK_FA |
| 17 | 70. https://www.luckliytrend.com/products/matched-pair-of-rattlesnake-entrance-sculptures |
| 18 | 71. https://www.luckliyway.com/products/matched-pair-of-rattlesnake-entrance-sculptures |
| 19 | 72. https://www.lullabop.com/products/matched-pair-of-rattlesnake-entrance-sculptures?variant=4d01f791-591a-426a-933e-e1749f61d439&fbclid=IwAR0uqyB4g_DWlhaga0pIxieYXnR1CEQvJQYrCg9wYBcSGtIpkIL2ymJ5zDQ |
| 20 | |
| 21 | |
| 22 | 73. https://www.lunaticui.com/products/rattlesnake-entrance-sculptures?fbclid=IwAR1KCgREJ7qA0F_TxN3uTDEXlejNtEg9ivCz_YA-RLulBTjwclA1GV1uQbU |
| 23 | 74. https://www.lushyouth.net/products/matched-pair-of-rattlesnake-entrance-sculptures |
| 24 | 75. https://www.pastmemories.net/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR0oY5xgFpF7Rs19Yh-drWpqNK4_4jqM9-rhky8yJiJHkz-F514Pqgv8LPc |
| 25 | |
| 26 | 76. https://www.pointatbetter.com/products/matched-pair-of-rattlesnake-entrance-sculptures |
| 27 | |
| 28 | |

Counterfeiter URLs	
1	
2	77. https://www.pointatbetter.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR1EYVeO6jCVM78EuF8k4SvybJ9m7YxuLbQa5GBf-93fIPu4qa6yvlIZKeQ
3	
4	78. https://www.pointatbetter.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR2pa3rQGwh0Z_bIMiH-IAF-2L_6kD1-GwcN_hJS8n_uWR5aaE3WRUicQUc
5	
6	79. https://www.rdawfvng.com/products/matched-pair-of-rattlesnake-entrance-sculptures
7	
8	80. https://www.shopnzing.top/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR3x5tZUusK0Uha95qfgphSbOFFNHYyO84zWlZHo5omJ27D2fbe9VNJu3N0
9	
10	81. https://www.shopnzing.top/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR3x5tZUusK0Uha95qfgphSbOFFNHYyO84zWlZHo5omJ27D2fbe9VNJu3N0
11	
12	82. https://www.starawy.com/products/matched-pair-of-rattlesnake-entrance-sculptures
13	
14	83. https://www.sweetpast.net/products/matched-pair-of-rattlesnake-entrance-sculptures
15	
16	84. https://www.toypkr.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR2oifhuMMkC9njARpIM_j0I4Ak0IL-nRsbPr7rcfEIZE-5-jQxKf3xzglo
17	
18	85. https://www.toypkr.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR3-q3hnoFpZo_3FmPVEbYppnAtafiIOBMTfv3UO-lrNYHCqsLNcWb-2u-c
19	
20	86. https://www.turbohik.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR09MQMf3BTGm212ZsDTH-iZ4tXJ9gZFlcA8pBHQ0m4HD0PuyT2ymKzGX8U
21	
22	87. https://www.turbohik.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR09MQMf3BTGm212ZsDTH-iZ4tXJ9gZFlcA8pBHQ0m4HD0PuyT2ymKzGX8U
23	
24	88. https://www.zingisoe.com/products/matched-pair-of-rattlesnake-entrance-sculptures?fbclid=IwAR3i1t2k6ge4H3NbDo9wKJiV9Ft8hs5biKeb22HpuSAzD_Op_gpET8WNE5A

105. Facebook published multiple Counterfeiter Ads for the Rattlesnakes from each of the above indicated Counterfeiters, totaling hundreds of unauthorized ads for the piece. Facebook stores this ad data, and it is readily accessible.

106. Below is a table (Table Two) identifying the Counterfeiter websites/companies selling knockoffs of Python. This is a non-exhaustive list and Plaintiff reserves the right to identify additional infringement from any period. Each time a unique Counterfeiter infringed on Plaintiff's copyright for the Python constitutes a distinct direct infringement for which Facebook materially contributed.

1 Facebook is directly, contributorily, and vicariously liable for each distinct direct infringement
2 perpetrated on its site.

3 **Table Two: Python**

<u>Counterfeiter URLs</u>
1. https://www.cutestart.net/products/python-weathered-copper-patina?variant=8636
2. https://www.slowfever.net/products/python-weathered-copper-patina?variant=6050
3. https://www.facebook.com/Slowfever-Sky-102420665337959/
4. https://hangsnow.com/products/python-weathered-copper-patina?fbclid=IwAR3OwVRDw-OEmYFwcvXaFimpWcrMXUcXajH-ThD80TsabcGYeDTgfmHIOQ
5. https://www.feeldestiny.net/products/python-weathered-copper-patina
6. https://www.rosenbrunnen.com/products/python
7. https://www.seacalm.net/products/python-weathered-copper-patina?variant=8637

13 107. Facebook published multiple Counterfeiter Ads for the Python from the each of the above
14 indicated Counterfeiters, totaling hundreds of unauthorized ads for the piece. Facebook stores this ad
15 data, and it is readily accessible.

16 108. After combining Table One and Table Two, there are ninety-five distinct Counterfeiter
17 websites, representing distinct acts of direct copyright infringement by Facebook and contributory
18 copyright infringement in connection with the Counterfeiters, of Plaintiff's Registered Works.
19 Facebook is directly, contributorily, and vicariously liable for each of these infringements.

20 ***E. Facebook's Contributory Infringement of Plaintiff's Registered Works***

21 109. In June 2021 Plaintiff found advertisements for the Rattlesnakes on Facebook. JL Cook
22 has never advertised on Facebook and did not authorize any Facebook advertisements. Later in 2021,
23 Counterfeiters also stole images of the Python and advertised it for sale on Facebook. Since that time,
24 there have been hundreds of ads on Facebook using Plaintiff's images and purporting to sell her
25 Registered Works.

26 1. ***DMCA Takedown Notices***

27 110. JL Cook filed DMCA notices each time that she saw one of her Creative Works or
28 Registered Works advertised without authorization. DMCA requires Facebook to act expeditiously

1 when removing advertisements subject to DMCA takedown notices. Facebook failed to act reasonably
2 under this standard.

3 111. Below is a table of the DMCA notices Plaintiff sent to Facebook in June 2021 to remove
4 Counterfeiter Ads using copyrighted images from SnakeArts.com and Plaintiff's Etsy store. This does
5 not represent every infringing ad posted on Facebook. Facebook maintains records of these DMCA
6 notices and the related information.

<u>Date Plaintiff Sent DMCA Notice</u>	<u>Complaint #</u>	<u>Image Infringed</u>	<u>Counterfeiter Reported</u> ⁴¹
6-3-2021	332555038441352	Rattlesnake Image	Unknown, <i>see</i> fn. 41.
6-4-2021	1176771982766482	Rattlesnake Image	Azurejelly1
6-4-2021	311540223745586	Rattlesnake Image	Unknown, <i>see supra</i> fn. 41.
6-4-2021	332555038441352	Rattlesnake Image	Unknown, <i>see supra</i> fn. 41.
6-4-2021	1484597475217447	Rattlesnake Image	ExclusiveRomantic
6-6-2021	311540223745586	Rattlesnake Image	Unknown, <i>see supra</i> fn. 41.
6-21-2021	1137375050103890	Rattlesnake Image	Unknown, <i>see supra</i> fn. 41.
6-21-2021	815741069371126	Rattlesnake Image	Happy-Cheer
6-25-2021	156954442005866	Rattlesnake Image	Prettylifiiii

19
20 112. After sending at least nine DMCA takedown notices to Facebook, each notice containing
21 multiple ads and Counterfeiters, for ads all using the *exact same image* stolen from Plaintiff's website,
22 and continuing to see the same Counterfeiter Ads popping up on the site, Plaintiff took additional action.

23 113. On June 29, 2021, Plaintiff contacted one of Facebook's Intellectual Property (IP)
24 attorneys, Allan Lo ("Lo"). She again reported the copyright infringing Counterfeiter Ads to Lo, totaling
25 hundreds of individual ads. Plaintiff also reported the following Counterfeiters to Lo: Prettylifiiii,

26 _____
27 ⁴¹ This is not an exhaustive list of the Counterfeiters Plaintiff reported to Facebook in each takedown
28 notice. Facebook also has additional details from each takedown notice Plaintiff sent to Facebook,
including the other Counterfeiters, images, and advertisements Plaintiff reported. Facebook has records
of all takedown notices from Plaintiff and the Class for the relevant time period.

1 Ddlyydsshopk, Apprical, Toypkr, Kronpgv, Happy-Cheer, Firerise, Charm Stall, Koply,
 2 Past_Memories, and Pointatbetter-r. Lo was able to remove every ad within twenty-four hours of the
 3 conversation. Facebook did not suspend or remove the accounts of the Counterfeiters. Approximately
 4 ten days later, Counterfeiter Ads, again using the *exact same* stolen images, reappeared on Facebook in
 5 mass quantities, many of which appeared on the same accounts that Plaintiff previously reported as
 6 infringing her works. Facebook allowed this to continue to happen even after JL Cook reported the
 7 images as infringing.

8 114. Below are additional DMCA takedown notices Plaintiff sent to Facebook from June
 9 through August 2021, after Plaintiff had previously, and repeatedly, reported the images as infringing
 10 upon her works. This does not represent every infringing ad posted on Facebook. Facebook maintains
 11 records of these DMCA notices, along with takedown notices from the Class members and the related
 12 information.

<u>Date Plaintiff Sent DMCA Notice</u>	<u>Complaint #</u>	<u>Image Infringed</u>	<u>Counterfeiter Reported⁴²</u>
6-30-2021	4308190729204391	Rattlesnake Image	Pointatbette-r Firefare Toypkr Koply Prettylifiiii Kenzzi CharmStall Happy Cheer Past_Memories Buoancyworld Kronpgv

27 ⁴² This is not an exhaustive list of the Counterfeiters Plaintiff reported to Facebook in each takedown
 28 notice. Facebook also has additional details from each takedown notice Plaintiff sent to Facebook,
 including the other Counterfeiters, images, and advertisements Plaintiff reported.

<u>Date Plaintiff Sent DMCA Notice</u>	<u>Complaint #</u>	<u>Image Infringed</u>	<u>Counterfeiter Reported⁴²</u>
			Apprical Likeair Boxartis Rdawfvng Luckilyway Fanpat Starawy Evoccin Luckilytrend Luckilyway UsLethercom Exclusive Soulmate Exclusive Romantic Fortunate Wish Fortunate Road Really Dream Azurejelly1 Peachoolong-A Fasife Exquisite-life
7-1-2021	1163208184199614	Rattlesnake Image	Purplebag-xia
7-3-2021	832721527664437	Rattlesnake Image	Westoft-ring Hoenred

<u>Date Plaintiff Sent DMCA Notice</u>	<u>Complaint #</u>	<u>Image Infringed</u>	<u>Counterfeiter Reported⁴²</u>
7-5-2021	4308190729204391	Rattlesnake Image	Unknown, <i>see supra</i> fn. 42.
7-12-2021	338165371378722	Rattlesnake Image	Ddlyyds.shop Jinxedshop Oportes Shingou.shop Hrtimd Store
7-13-2021	327873858982590	Rattlesnake Image	Ddlyyds.shop
7-17-2021	150962200470318	Rattlesnake Image	Toypkr
7-19-2021	340703630944084	Rattlesnake Image	Toypkr
7-23-2021	374591684230539	Rattlesnake Image	Cdhjzthgshoph
7-25-2021	669568774441893	Rattlesnake Image	Unknown, <i>see supra</i> fn. 42.
8-4-2021	378257200489282	Python Image	Slowfever-sky Letaojia

115. The copyright infringing ads continued to pop up, even after Plaintiff notified Facebook the images infringed upon her ownership rights. On August 23, 2021, Plaintiff contacted Lo a second time. This time, Plaintiff identified the following Counterfeiters: Andey.top, Somnaio, Peacetishop, Lunaticui, and Eternitar. In her email to Lo, Plaintiff provided images of the infringing ads from the Facebook Ad Library. Each image identified the total number of ads using the “creative and text”--- demonstrating how easy this would be for Facebook to monitor.

116. Again, on August 23, 2021, Facebook removed the specifically reported Counterfeiter Ads, this time in less than two hours. But more ads popped up again on Facebook.

1 117. Below is a table including additional DMCA takedown notices Plaintiff sent to Facebook
 2 through the end of August 2021.⁴³ This does not represent every infringing ad posted on Facebook.
 3 Facebook maintains records of these DMCA notices, along with takedown notices submitted by the
 4 Class members and the related information.

<u>Date Plaintiff Sent Notice</u>	<u>Complaint #</u>	<u>Image Infringed</u>	<u>Counterfeiter Reported⁴⁴</u>
8-30-2021	233883711999070 23847919891620052 23847919952630052 23847919957490052 23847919962480052	Rattlesnake Image	Koply.shop Somnaio Andey.top Swissgambs Lullabop Fantatioeshop Bidforums CourierBeauty Zingisoe Hitcome Shopnzingtopdef Lunaticui Turbohik Eternitary-Shop Gasfu Uunning Uuning Shop Lushyouthnet

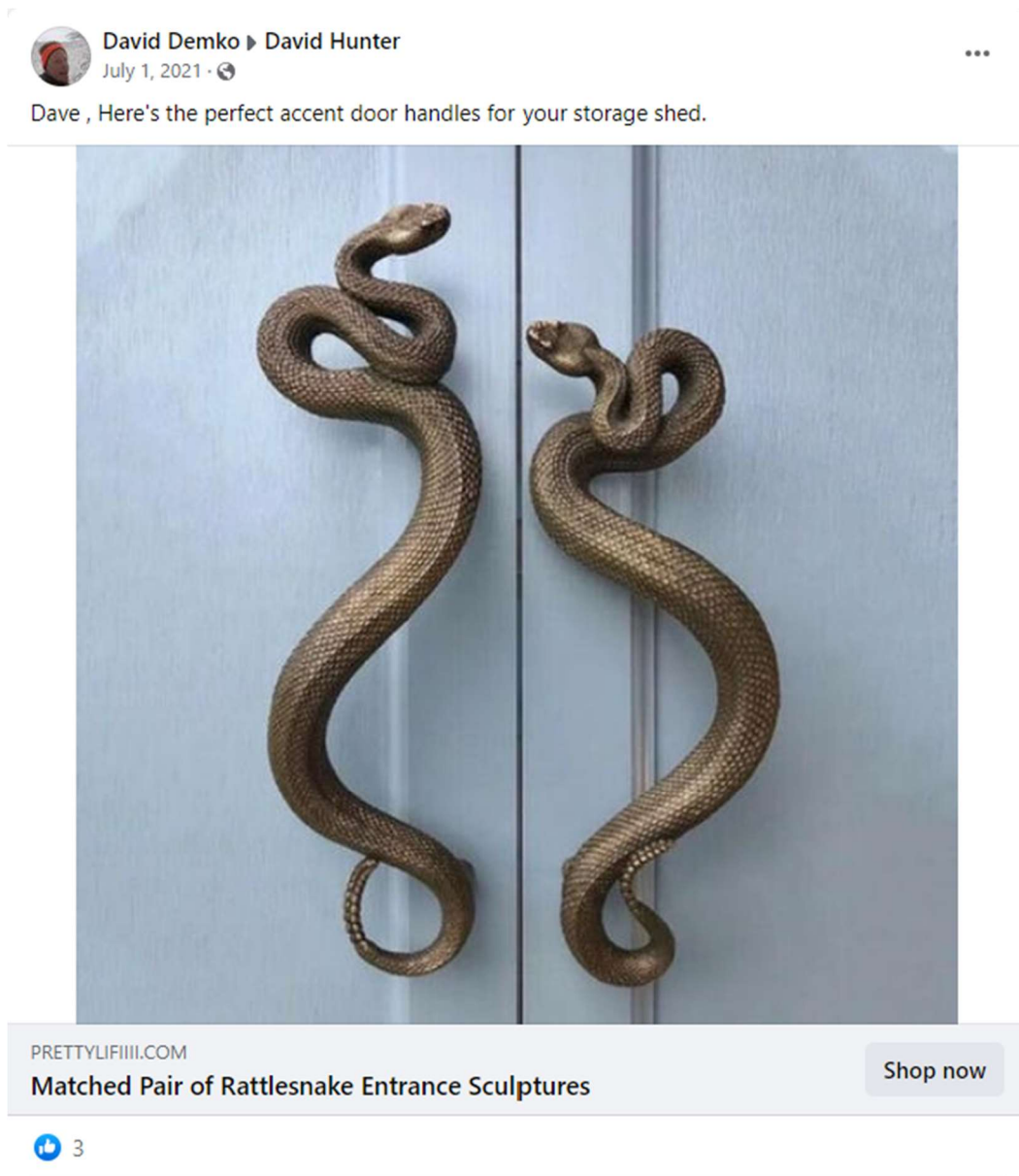
26 ⁴³ New Counterfeiter Ads for Plaintiff's Copyrighted Works continued to appear on Facebook until
 27 October 22, 2021.

28 ⁴⁴ This is not an exhaustive list of the Counterfeiters Plaintiff reported to Facebook in each takedown
 notice. Facebook also has additional details from each takedown notice Plaintiff sent to Facebook,
 including the other Counterfeiters, images, and advertisements Plaintiff reported.

<u>Date Plaintiff Sent Notice</u>	<u>Complaint #</u>	<u>Image Infringed</u>	<u>Counterfeiter Reported⁴⁴</u>
			Landou.s Ronadocc Ronadocc.store Ronadoccshop RonadoccOnline QueenStarService Xdsing-US Xdsing-UK Xdsing-AU Peacetishop
8-31-2021	985868942365682	Rattlesnake Image	Unknown, <i>see supra</i> fn. 44.
9-1-2021	145234537786344	Rattlesnake Image	Unknown, <i>see supra</i> fn. 44.
9-6-2021	903783090555404	Rattlesnake Image	Unknown, <i>see supra</i> fn. 44.

118. Shortly after Plaintiff saw her images all over Facebook, again, she ran a search on Facebook through the site's Ad Library, for images like the Registered Works. She started the search by using the names given to her pieces: (1) Matched Pair of Rattlesnake Entrance Sculpture; and (2) Python. These names appear on SnakeArts.com. Within seconds, Facebook's basic search functionality was able to locate and display hundreds of ads, posted by nearly one hundred different Counterfeiters, all using Plaintiff's images and selling counterfeit versions of Plaintiff's Registered Work. The Counterfeiter Ads included the same previously reported, copyright infringing images, Matched Pair of Rattlesnake Entrance Sculptures and Python, which, if searched at that time, returned hundreds of results on Facebook's own Ad Library.

1 119. Additionally, even after Facebook “removes” a Counterfeit ad pursuant to a DMCA
2 takedown notice, if any Facebook user shared that ad, that ad remains on that user’s page. This includes
3 ads shared by accounts owned by Counterfeiters. Below is an example of a Counterfeiter’s Ad which
4 Facebook claims it removed from the site in 2021. The below screenshots were taken on January 14,
5 2022.



27
28 ⁴⁵<https://www.facebook.com/search/posts/?q=matched%20pair%20rattlesnake%20entrance%20sculptures> (lasted visited Jan. 14, 2021).


Matched Pair of Rattlesnake Entrance Sculptures

Shop now

Matched Pair of Rattlesnake Entrance Sculptures

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4 Sunny Ackermann
October 22, 2021 · 🌐



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BULLSHOP.SHOP
Matched Pair of Rattlesnake Entrance Sculptures
★ Returns100% Money Back Guarantee. 📦 ShippingExpress Delivery fromCali...

Shop now

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19 120. Facebook possesses and regularly uses technology that is readily available to search for

20 and identify specific images, text appearing in images, and even to identify things in a picture, like

21 people, text, animals, landmarks, products and more across the internet. In fact, recent litigation against

22 Facebook revealed that Facebook actively used, up until recently, facial recognition software which

23 could automatically identify people who appeared in users' digital photo albums.⁴⁸ Facebook is not the

24

25 ⁴⁶<https://www.facebook.com/search/posts/?q=matched%20pair%20rattlesnake%20entrance%20sculptures> (last visited on Jan. 14, 2021).

26 ⁴⁷<https://www.facebook.com/search/posts/?q=matched%20pair%20rattlesnake%20entrance%20sculptures> (last visited on Jan. 14, 2021).

27 ⁴⁸ Kasmir Hill and Ryan Mac, *Facebook, Citing Societal Concerns, Plans to Shut Down Facial Recognition System*, THE NEW YORK TIMES (Nov. 2, 2021),

28

1 only company with this kind of software. It is sold by Amazon, Microsoft, and IBM to law
2 enforcement.⁴⁹

3 121. Facebook has the ability and the technology to locate infringing ads, through image
4 searches and other technology, but also, to block infringing ads from entering the Facebook feed
5 (sometimes called “gating”). Facebook chooses to allow Counterfeiters to use the site on a repeat basis
6 and ignores pleas from Creators and Registered Owners to fix the problem in a meaningful way.

7 2. Repeat Infringers on Facebook

8 122. In a recent Intellectual Property Campaign, Facebook attempted to downplay the
9 counterfeit and copyright infringement issues on its site and convince users and business owners alike
10 that it is doing everything in its power to prevent and/or remove infringing content. Facebook stated
11 that it removes Facebook profiles and Instagram accounts that repeatedly violate someone else’s IP
12 rights, its repeat infringer policy applies to blatant copyright, trademark, and counterfeit violations that
13 appear on Pages, groups, video-related actions, and so on.⁵⁰ These are misrepresentations—Facebook
14 allows accounts and pages displaying infringing content and distributing counterfeit products on its site,
15 even after they are reported as infringers – and actively connects those infringers with potential buyers.

16 123. Below is a list of Repeat Infringers Plaintiff reported to Facebook between June 2021
17 and September 2021. Several of these accounts and/or pages, if not all of them, are still active on
18 Facebook and have advertised counterfeit products owned by other members of the Class. A current
19 Facebook URL is included for sites where it was available. This list is non-exhaustive, and Plaintiff
20 reserves the right to supplement it:

- 21 • Azurejelly; current Facebook URL is <https://www.facebook.com/Azurejelly-111845651009792>
- 22 • Azurejelly1; current Facebook URL is <https://www.facebook.com/Azurejelly1-104624431808200>

24 _____
25 [https://www.nytimes.com/2021/11/02/technology/facebook-facial-recognition.html#:~:text=the%20main%20story-,Facebook%2C%20Citing%20Societal%20Concerns%2C%20Plans%20to%20Shut%20Down%20Facial%20Recognition,more%20than%20one%20billion%20users.\(last%20visited%20Apr.%2022,%202022\).](https://www.nytimes.com/2021/11/02/technology/facebook-facial-recognition.html#:~:text=the%20main%20story-,Facebook%2C%20Citing%20Societal%20Concerns%2C%20Plans%20to%20Shut%20Down%20Facial%20Recognition,more%20than%20one%20billion%20users.(last%20visited%20Apr.%2022,%202022).)

27 ⁴⁹ *Id.*

28 ⁵⁰ IP Protection of Facebook and Instagram, Meta, May 2021, <https://www.facebook.com/business/tools/anti-counterfeiting/guide> (last visited Feb. 8, 2022).

- 1 • Peaachoolong-A; current Facebook URL is <https://www.facebook.com/Peaachoolong-A-110397264529981>
- 2 • Koply-shop
- 3 • Spmnaio
- 4 • Andey.top; current Facebook URL is <https://www.facebook.com/Andeytop-109312494674577>
- 5 • Swissgamb; current Facebook URL is <https://www.facebook.com/Swissgamb-112157274251034>
- 6 • Lullabop; current Facebook URL is <https://www.facebook.com/Lullabop-103193921889137>
- 7 • Tastioship
- 8 • Bidforums; current Facebook URL is <https://www.facebook.com/Bidforums-102342228604115>
- 9 • Courierbeauty; current Facebook URL is <https://www.facebook.com/Courierbeauty-110407671124822>
- 10 • Hitcome
- 11 • Zingisoe; current Facebook URL is <https://www.facebook.com/profile.php?id=100065139895324>
- 12 • Shopnzin.todef; current Facebook URL is <https://www.facebook.com/Shopnzingtopdef-111063701213108>
- 13 • Lunaticui
- 14 • Turbohik; current Facebook URL is <https://www.facebook.com/Turbohik-109997554470020>
- 15 • Eternitar-shop; current Facebook URL is <https://www.facebook.com/Eternit-Shop-249469126942531>
- 16 • Gasfu-US; current Facebook URL is <https://www.facebook.com/Gasfu-US-102662748794805>
- 17 • Uunning
- 18 • Uunning Shop; current Facebook URL is <https://www.facebook.com/Uunningshop-105302571701988>
- 19 • Lushyouth.net; current Facebook URL is <https://www.facebook.com/Lushyouthnet-103649088679458>
- 20 • Landou.s
- 21 • Ronadocc; current Facebook URL is <https://www.facebook.com/Ronadocc-111777031165018>
- 22 • Ronadocc.store; current Facebook URL is <https://www.facebook.com/RonadoccStore-111423497866486>
- 23 • RonadoccOnline; current Facebook URL is <https://www.facebook.com/RonadoccOnline-104212975265985>
- 24 • QueenstarService; current Facebook URL is <https://www.facebook.com/QueenstarService-108952261474253>
- 25 • Xdsing-US
- 26 • Xdsing-UK
- 27 • Xdsing-AU
- 28 • Peactisshop
- Letaojia; current Facebook URL is <https://www.facebook.com/Letaojia-107544234922380>

- 1 • Letaojia-com; current Facebook URL is <https://www.facebook.com/Letaojia-com-109080168099418>
- 2 • Letaojia-store
- 3 • Letaojia-top; current Facebook URL is <https://www.facebook.com/Letaojia-top-107973094878684>
- 4 • Letaojia-tv; current Facebook URL is <https://www.facebook.com/Letaojia-tv-142700047930097>
- 5 • Ddlyydsshopd⁵¹; current Facebook URL is <https://www.facebook.com/Ddlyydsshopd-104171848540348/>
- 6 • Cdhjztngshoph
- 7 • Opportes⁵²; current Facebook URL is <https://www.facebook.com/Opportes-104811174721523/>
- 8 • Firerise
- 9 • Firefare
- 10 • Toypkr; current Facebook URL is <https://www.facebook.com/Toypkr-101444995379403>
- 11 • Koply; current Facebook URL is <https://www.facebook.com/Koplyshop-106857294961310>
- 12 • Prettylifiiii
- 13 • Kenzzi⁵³; current Facebook URL is <https://www.facebook.com/Kenzzi-694466360734018>
- 14 • Jinxuedashop
- 15 • Shingou.shop⁵⁴; current Facebook URL is <https://www.facebook.com/Shingoushop-101903778773840>
- 16 • Hrtimd
- 17 • Westoft-ring
- 18 • Hoenred; current Facebook URL is <https://www.facebook.com/hoenredcom-102414358811616>
- 19 • Pointatbetter⁵⁵; current Facebook URL is <https://www.facebook.com/Pointatbetter-101887255292309>
- 20 • Charmstall⁵⁶; current Facebook URL is <https://www.facebook.com/Charm-stall-111143991214503>

21
22 ⁵¹ This account is associated with at least 408 Counterfeit ads for Plaintiff's Registered Works. It was reported to Facebook.

23 ⁵² This account is associated with at least 11 Counterfeit Ads for Plaintiff's Registered Works. It was reported to Facebook.

24 ⁵³ This account is associated with at least 83 Counterfeit Ads for Plaintiff's Registered Works. It was reported to Facebook.

25 ⁵⁴ This account is associated with at least 17 Counterfeit Ads for Plaintiff's Registered Works. It was reported to Facebook.

26 ⁵⁵ This account is associated with at least 24 Counterfeit Ads for Plaintiff's Registered Works. It was reported to Facebook.

27 ⁵⁶ This account is associated with at least 68 Counterfeit Ads for Plaintiff's Registered Works. It was reported to Facebook.

- 1 • Happy Cheer⁵⁷; current Facebook URL is <https://www.facebook.com/AdminHappyCheer>
- 2 • PastMemories⁵⁸; current Facebook URL is https://www.facebook.com/Past_Memories-111127794536530
- 3 • Bouancy World⁵⁹
- 4 • Krongpv⁶⁰
- 5 • Purple Bag XIA
- 6 • Sweet Past; current Facebook URL is <https://www.facebook.com/Sweetpast-106127318390327>
- 7 • Apprical
- 8 • Likair; current Facebook URL is <https://www.facebook.com/Likair-102377992084065>
- 9 • Boxartis; current Facebook URL is <https://www.facebook.com/Boxartis-107613001534921>
- 10 • Planeoak.shop; current Facebook URL is <https://www.facebook.com/Planeoak-100206535802643>
- 11 • Luckilyway
- 12 • Funpat
- 13 • Staraway
- 14 • Evoccin
- 15 • Luckiltrned
- 16 • USLeathercom
- 17 • Exclusive Soulmate; current Facebook URL is <https://www.facebook.com/ExclusiveSoulmate-101525192126827>
- 18 • Exclusive Romantic
- 19 • Fortunate Wish; current Facebook URL is <https://www.facebook.com/FortunateWish-109972304601919>
- 20 • Fortunate Road
- 21 • Reallydream
- 22 • Fasife
- 23 • Exquisite-life
- 24 • Hangsnow; current Facebook URL is <https://www.facebook.com/Hangsnow-101660592118339>
- 25 • Blubel; current Facebook URL is <https://www.facebook.com/blubel>
- 26 • Hoenred.com
- 27 • Hoenred-max
- 28 • Hoenred
- Hoenred-mix

⁵⁷ This account is associated with at least 35 Counterfeit Ads for Plaintiff’s Registered Works. It was reported to Facebook.

⁵⁸ This account is associated with at least 256 Counterfeit Ads for Plaintiff’s Registered Works. It was reported to Facebook.

⁵⁹ This account is associated with at least 10 Counterfeit Ads for Plaintiff’s Registered Works. It was reported to Facebook.

⁶⁰ This account is associated with at least 39 Counterfeit Ads for Plaintiff’s Registered Works. It was reported to Facebook.

- 1 • Lullbop; current Facebook URL is <https://www.facebook.com/Lullabop-103193921889137>
- 2 • Lullabop-shop
- 3 • Biaclo-US
- 4 • Biaclo-UK
- 5 • Biaclo-AU
- 6 • Panepa-UK
- 7 • Panepa-US
- 8 • Seestarrysky
- 9 • Seestarrysky-1; current Facebook URL is <https://www.facebook.com/Seestarrysky-1-110019804726303>
- 10 • Rayrioj; current Facebook URL is <https://www.facebook.com/Rayrioj-110043398047743>
- 11 • Kewstern
- 12 • Coaco-AU
- 13 • Jagely-US; current Facebook URL is <https://www.facebook.com/Jagely-US-177743597678642>
- 14 • Jagely-CN
- 15 • Jagely-AU
- 16 • Relblog; current Facebook URL is <https://www.facebook.com/Relblog-107257065013934>
- 17 • Mossoak.shop; current Facebook URL is <https://www.facebook.com/Mossoakshop-109894678048309>
- 18 • Bestlovelycute; current Facebook URL is <https://www.facebook.com/Bestlovelycute-132272379004184>
- 19 • Amazomb-shop
- 20 • Pecs-top.shop; current Facebook URL is <https://www.facebook.com/Pecstopfashion>

21 124. Plaintiff reported all the above listed accounts for infringing upon her copyrights and
 22 other violations of her rights as a small business owner. Many of these accounts posted ads for Plaintiff's
 23 Registered Works on more than 10 occasions, and some posted hundreds of infringing ads. Facebook
 24 did not block or disable these accounts and encouraged, enabled, and/or allowed these accounts to
 25 continue posting advertisements for counterfeit goods containing copyrighted images and works owned
 26 by Plaintiff and other members of the Class.

CLASS ALLEGATIONS

27 125. Plaintiff brings this action as a class action under Rules 23(a), (b)(2), and (b)(3) of the
 28 Federal Rules of Civil Procedure, on behalf of herself and all others similarly situated, on behalf of the
 following proposed Class and Subclasses: (1) a nationwide Class, including Creators residing in all 50

1 states (the “Nationwide Creators’ Class”); (2) a nationwide Subclass, including Registered Owners
2 residing in all 50 states; and (3) a Florida Subclass, comprised of Creators residing in Florida.

3
4 The Nationwide Creators’ Class is initially defined as:

5 All Creators in the United States for whom, during the Class period, Facebook displayed an
6 image of their Creative Works in an advertisement on Facebook, without the Creators’ consent.

7 The Nationwide Registered Owners Subclass is initially defined as:

8 All Registered Owners in the United States for whom, during the Class period, Facebook
9 displayed an image of their Registered Works, as defined herein, in an advertisement on
10 Facebook, without the Creators’ consent.

11 The Florida Creators’ Subclass is initially defined as:

12 All Creators in the State of Florida for whom, during the Class period, Facebook displayed an
13 image of their Creative Works in an advertisement on Facebook, without their consent.

14 126. Excluded from the Class and Subclasses are Defendants, their employees, officers,
15 directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates.

16 127. The number of persons who are members of the Class and Subclasses is so numerous that
17 joinder of all members in one action is impracticable. The Class and Subclasses are reasonably estimated
18 to be at least in the thousands. While the precise number, names, and addresses of all members of the
19 Class are unknown to Plaintiff, such information is ascertainable from Defendants’ records.

20 128. The claims of the Class all derive from a single uniform policy by Defendant to both
21 actively connect infringers with potential customers and to allow Repeat Infringers to continue to use
22 the site to sell counterfeit products after being reported as an infringer.

23 129. The objective facts are the same for all Class members in that: (a) each owns a copyright;
24 and (b) each had images or copies of their Created Works stolen and displayed by Facebook in
25 advertisements or on Repeat Infringer accounts or pages.

26 130. Facebook did not differentiate, in degree of care or candor, its actions or inactions with
27 respect to individual members of the Class. The objective facts are the same for all members of the
28 Class. Within each Claim for relief asserted below by the respective Class, the same legal standards
govern resolution of the same operative facts existing across all members’ individual claims.

1 131. Because the claims of each member of the class have a common origin and share a
2 common basis in terms of Defendant's systematic misconduct, there are common questions of fact and
3 law that exist as to each Class member under Federal Rule of Civil Procedure 23(a)(2), and which
4 predominate over any questions affecting only individual members under Federal rule of Civil Procedure
5 23(b).

6 132. Substantial questions of fact and law that are common to all members of the Class, and
7 which control this litigation and predominate over any individual issues, include the following:

- 8 a. Whether Facebook displayed and distributed images of Creative Works and/or
9 Registered Works owned or controlled by Creators and/or Registered Owners;
- 10 b. Whether Facebook was authorized by Creators and/or Registered Owners to display or
11 distribute images of Creative Works and/or Registered Works;
- 12 c. Whether Facebook directly stored, controlled, and communicated images of Creative
13 Works and/or Registered Works to its users, without authorization;
- 14 d. Whether Facebook's display and distribution of Creative and/or Registered Works
15 constitutes copyright infringement;
- 16 e. Whether Facebook, after considering its direct communication of Creative Works and/or
17 Registered Works to its users and failure to reasonably implement a Repeat Infringer
18 policy can assert any DMCA safe harbor protection;
- 19 f. Whether Facebook contributed to the Counterfeiters' communication of images of
20 Creative Works and/or Registered Works to Facebook's users;
- 21 g. Whether Facebook reasonably complied with its duties to expeditiously remove
22 infringing or unlawful content from its site after receiving DMCA takedown notices or
23 other reports;
- 24 h. Whether Facebook's direct and contributory copyright infringement was willful;
- 25 i. Whether Facebook receives a financial benefit from the infringement described herein;
- 26
- 27
- 28

1 j. Whether the Class and Subclasses suffered damages as a result of Facebook's acts or
2 omissions;

3 k. Whether injunctive and/or declaratory relief is appropriate.

4 133. Plaintiff's claims are typical of the claims of the Class and Subclasses and arise from the
5 same course of conduct undertaken by Defendant against the Class and Subclasses as a whole. There
6 are no conflicts between the interest of the named Plaintiffs and the interests of the members of the
7 Class. The relief Plaintiff seeks is typical of the relief sought for the members of the Class.

8 134. Plaintiff will fairly and adequately represent and protect the interests of the Class and
9 Subclasses because of the common injury and interest of the members of the Class and Subclasses and
10 the singular conduct of Defendant that is, and was, applicable to all members of the Class or Subclasses.
11 Plaintiff has retained counsel competent and experienced in class action litigation that will adequately
12 represent and protect the interests of the members of the Class.

13 135. Class certification is appropriate pursuant to Rule 23(b)(2) because Facebook has acted
14 and refused to act on grounds generally applicable to the Class, making appropriate declaratory and
15 injunctive relief with respect to Plaintiff and the Nationwide Creators' Class as a whole. The members
16 of the Nationwide Creators' Class are entitled to injunctive relief to end Facebook's failure to implement
17 and enforce a reasonable Repeat Infringer policy.

18 136. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) not only
19 because common questions of fact and law predominate, but also because a class action is superior to
20 other available methods for fairly and efficiently adjudicating the controversy. The prosecution of
21 separate actions by individual members of the Class would impose heavy burdens upon the courts and
22 Defendants and would create a risk of inconsistent or varying adjudications of the questions of law and
23 fact common to the Class. A class action, on the other hand, would achieve substantial economies of
24 time, effort, and expense, and would assure uniformity of decision as to persons similarly situated
25 without sacrificing procedural fairness or bringing about other undesirable results.

26 137. Plaintiff is also not aware of management difficulties that should preclude maintenance
27 of this litigation as a class action. Rule 23 provides the Court with the authority and flexibility to
28

1 maximize the efficiencies and benefits of the class mechanism and reduce management challenges. The
2 Court may, on motion of Plaintiff or on its own determination, certify nationwide, statewide and/or
3 multistate classes for claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to
4 certify any claims, issues, or common questions of fact or law for class-wide adjudication; certify and
5 adjudicate bellwether class claims; and utilize Rule 23 (c)(5) to divide any class into further Subclasses.

6 **FIRST CAUSE OF ACTION**
7 **DIRECT COPYRIGHT INFRINGEMENT**
8 **(Nationwide Registered Owners' Subclass)**

9 138. Plaintiff realleges and incorporates by reference the allegations in all preceding
10 paragraphs as if fully set forth herein.

11 139. Facebook has infringed upon the rights of Creators in violation of the Copyright Act.
12 Without authorization, Facebook displayed copies of Registered Works to and through Facebook
13 advertisements. It did this through its ad targeting algorithms and profit focused policies.

14 140. Facebook displayed, reproduced, and generated revenue from Registered Works without
15 authority from Registered Owners.

16 141. Facebook's acts and omissions alleged herein are in total disregard of Plaintiff's and the
17 Registered Owners' Subclass's exclusive rights to display, create derivative works, and distribute their
18 works. Facebook's violations of the Copyright Act are intentional and willful acts of copyright
19 infringement and constitute hundreds, if not thousands, of acts of infringement.

20 142. Facebook stores images of Registered Works on its computers and/or systems and
21 communicates those images to its users and the public. It does this through advertisements and shared
22 posts. Facebook goes beyond merely posting what users provide it and takes the next step of using
23 technology to purposely approve or deny ads and directly connect the ads (which contain the infringing
24 content) to potential purchasers of the counterfeit goods, reaching an audience that Counterfeiters could
25 not otherwise reach.

26 143. Facebook directly participates in Counterfeit ad approval and publication through the
27 Facebook Ad Platform approval process, which includes scanning ads for things like discrimination and
28 design issues (*i.e.*, an improper text to image ratio).

1 151. Facebook materially contributes to the Counterfeiters' direct infringement in two three
2 distinct ways: (1) knowingly publishing copyright infringing advertisements on its site; (2) configuring
3 and applying an algorithm to Counterfeiter Ads to target specific consumers; and (3) failing to remove
4 infringing advertisements after being notified.

5 152. The Counterfeiters are never privy to the specific Facebook user information that
6 Facebook applies to connect the Counterfeiters' ads to the users. Additionally, Facebook promotes the
7 use of its advertising platform by flaunting its large user base and its ability to increase advertiser sales
8 through ad targeting. In fact, Facebook guarantees that if it cannot get advertisers the results they seek,
9 it will not charge for its service.

10 153. By supplying the advertising platform, and failing to monitor, manage and control the
11 advertisements on the site, Facebook facilitates, encourages, and enables the direct infringement of
12 Registered Works.

13 154. Facebook's conduct constitutes contributory infringement of Plaintiff's and Subclass's
14 copyrights and exclusive rights in violation of Sections 106 and 504 of the Copyright Act. 17 U.S.C. §
15 504(b). Moreover, Facebook's knowing and material contribution to the infringement of Registered
16 Works, each time it was advertised (either through a unique URL or unique third-party Counterfeiter, or
17 Counterfeiter entity name) constitutes a separate and distinct act of infringement for which Facebook is
18 liable.

19 155. Facebook's knowing and material contribution to the infringement of Plaintiff's and the
20 Subclass's Registered Works is willful, intentional, and purposeful, and in disregard of and with
21 indifference to Plaintiff's and the Subclass's rights. Rather than using its vast technical, and financial
22 capabilities and resources to stop blatant and open copyright infringement, Facebook actively solicits,
23 encourages, assists and protects Counterfeiters' activities.

24 156. As a direct and proximate result of Facebook's infringement, Plaintiff and the Subclass
25 have suffered damages and is entitled to recover actual damages and Defendant's profits in amounts to
26 be proven at trial.

27 157. Alternatively, Plaintiff and the Subclass are entitled to the maximum statutory damages,
28 pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 per infringed work each time that it was

1 infringed, by virtue of Defendant's willful infringement, or for such other amounts as may be proper
2 under 17 U.S.C. § 504.

3 158. As required by the Copyright Act, Plaintiff and the Registered Owners' Subclass have
4 registered their copyrights with the U.S. Copyright Office and hold the copyright certificates for their
5 Registered Works.

6 159. Plaintiff provided a DMCA takedown notice to Facebook each time she encountered an
7 infringing advertisement of Rattlesnakes or Python. No matter how many DMCA takedown notices
8 Plaintiff provided to Facebook, the site published new, infringing advertisements, using the same images
9 stolen from Plaintiff, repeatedly. It is impossible for Plaintiff, and others similarly situated, to keep up.
10 It is possible, however, for Facebook to use resources and technology, readily available to it, to remove
11 ads using images it knows are infringing copyrights.

12 160. As a direct and proximate result of the foregoing acts and conduct, Plaintiff and the
13 Registered Owners' Subclass have sustained and will continue to sustain substantial, immediate, and
14 irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this
15 Court, Defendant will continue to infringe Plaintiff's and the Subclass's rights to the Registered Works
16 and will continue to allow infringing material on its site. Plaintiff and the Subclass are further entitled
17 to injunctive relief under 17 U.S.C. § 502-505 and compensatory damages (including, but not limited to
18 actual damages and/or Defendants' profits), statutory damages, punitive damages, and Plaintiff's costs
19 and attorneys' fees in amounts to be determined at trial.

20
21 **THIRD CAUSE OF ACTION**
22 **VICARIOUS LIABILITY FOR COPYRIGHT INFRINGEMENT**
23 **(Nationwide Registered Owners' Subclass)**

24 161. Plaintiff realleges and incorporates by reference the allegations in all preceding
25 paragraphs as if fully set forth herein.

26 162. Plaintiff is the exclusive owner of Rattlesnakes and Python. Both Registered Works are
27 registered with the United States Copyright Office. The Registered Owners' Subclass members each
28 own their Registered Works.

1 163. Counterfeiters using Facebook’s products and services have directly infringed and are
2 directly infringing Plaintiff’s and the Subclass’s copyrights, daily, through use of Plaintiff’s and the
3 Subclass’s images in advertisements without authorization. This is a violation of Plaintiff’s and the
4 Subclass’s exclusive rights pursuant to Copyright Act U.S.C. §§ 106, 501. Said infringement is
5 occurring on an immense scale and constitutes voluminous infringing acts.

6 164. Facebook is liable as a vicarious infringer for the copyright infringement committed
7 through each of the products and services it provides Counterfeiters, including: (1) knowingly publishing
8 advertisements for Registered Works on its site; (2) configuring and applying an algorithm to
9 Counterfeiter Ads to deliver the infringing images to specific, targeted consumers; and (3) failing to
10 remove infringing advertisements after being notified—allowing Counterfeiters additional time on the
11 site and an new opportunities to create infringing ads. At all relevant times to this action, Facebook has
12 had: (1) the right and ability to control and/or supervise the infringing conduct of Counterfeiters; and
13 (2) a direct financial interest in and derives a substantial benefit from the infringement of Registered
14 Works.

15 165. Facebook has the right and ability to terminate advertisers and remove advertisements
16 and products from its site or to block certain accounts from using the platform to advertise. Facebook
17 approves every ad before it is published to its sites. Facebook has the right and ability to accept or reject
18 any proposed advertisement before it enters the social media feed—including the ability to scan for
19 infringing content.

20 166. Indeed, Facebook’s Advertising Terms and Conditions, agreed to by every Facebook
21 advertiser, on the one hand, and Facebook, on the other, gives Facebook the right to “monitor and
22 otherwise investigate” links and ads to ensure compliance with Facebook’s policies.⁶¹ Through the
23 terms and conditions, Facebook further reserves the right to terminate any non-compliant users or
24 advertisers. Facebook’s has complete control over advertisers and Counterfeiters.

25 167. Additionally, Facebook has the ability, and right through the terms and conditions, to
26 scan images for infringing content on a large-scale basis, especially after an image is reported as

27 _____
28 ⁶¹ *Facebook Advertising Terms and Conditions*, FACEBOOK.COM,
https://www.facebook.com/business/direct_terms_ads_en.php (last visited Jan. 22, 2022).

1 infringing upon a copyright owner's rights. This means Facebook can run a search for every instance
2 an image is used on the site or proposed as part of a Facebook ad during the ad posting process. Instead
3 of using its technological abilities, Facebook chooses to allow Counterfeiters to repeatedly use the same
4 infringing images in new ads after they are reported.

5 168. Facebook obtains a direct financial benefit from the Counterfeiters through their ad
6 purchases. In fact, Facebook makes money each time a Facebook user clicks on a Counterfeiter ad, in
7 many cases. This means the more times Facebook can convince its users to click on Counterfeiter Ads,
8 the money it makes.

9 169. Despite having control over the Counterfeiter Ads, and ability to stop all the infringing
10 conduct, Facebook does not stop the ongoing infringement of Registered Works. This is directly harmful
11 to Plaintiff's and the Subclass's ability to sell their products and it is detrimental to Plaintiff's and the
12 Subclass's reputation as Creators producing unique, one-of-a-kind pieces.

13 170. As a direct and proximate result of Facebook's misconduct, Plaintiff and the Registered
14 Owners' Subclass suffered damages and are entitled to relief, in an amount to be proven at trial.

15 171. As a direct result of Facebook's infringements Plaintiff and the Subclass are entitled to
16 the maximum statutory penalties under 17 U.S.C. § 504, in the amount of \$150,000 with respect to each
17 timely registered work that was infringed and all other relief the Court deems just and proper under the
18 law.

19 172. Plaintiff and the Subclass are further entitled to their costs, including reasonable
20 attorneys' fees, pursuant to 17 U.S.C. § 505.

21 173. Facebook's conduct has caused and, unless enjoined by this Court, will continue to cause,
22 Plaintiff and the Registered Owners great and irreparable injury that cannot be compensated or measured
23 in money. Plaintiff and the has no adequate remedy at law because even if damages are paid, the works
24 will continue to be infringed. Pursuant to 17 U.S.C. § 502, Plaintiff and the Registered Owners are
25 entitled to a permanent injunction prohibiting further infringement of Registered Works.

26 **FOURTH CAUSE OF ACTION**
27 **VIOLATIONS OF THE VISUAL ARTISTS' RIGHTS ACT (17 U.S.C. § 106A)**
28 **(Nationwide Creators Class and All Subclasses)**

1 174. Plaintiff realleges and incorporates by reference the allegations in all preceding
2 paragraphs as if fully set forth herein.

3 175. Under the Visual Artists' Rights Act, 17 U.S.C. § 106A(a) ("VARA"), an artist who
4 created a visual work has the right to attribution and to preserve the integrity of the artist's work.
5 Congress enacted VARA to protect both the reputations of certain visual artists and the works of art they
6 create. It exclusively grants authors of works that fall under the protection of the Act the following four
7 core rights to: (i) claim authorship; (ii) prevent the use of one's name on any work the author did not
8 create; (iii) prevent use of one's name on any work that has been distorted, mutilated, or modified in a
9 way that would be prejudicial to the author's honor or reputation, and (iv) to prevent distortion,
10 mutilation, or modification that would prejudice the author's honor or reputation.

11 176. Here, the Counterfeiters used and continue to use images from Plaintiff's and the Class's
12 websites to sell cheap knockoffs of their Creative Works. This damaged and continues to damage
13 Plaintiff's and the Creators Class's reputations with customers and with the public. Additionally, the
14 knockoffs constitute a modification of Plaintiff's and Class's originally designed works that customers
15 now associate with Plaintiff and the Class members.

16 177. Counterfeiters stole images, language, descriptions, and titles of the Creative Works and
17 included that information in their Counterfeiter Ads. Then, using its algorithms, Facebook widely
18 disseminated the ads to thousands of targeted Facebook users. Through the overlapping information,
19 Facebook users who purchased Counterfeiter versions of Plaintiff's and the Class's Creative Works
20 found Plaintiff's, and other's similarly situated Class members' websites and contact information and
21 contacted each respective Creator to complain about the quality of the product they received. JL Cook,
22 like many artists, is now associated with the low-quality products and bad customer service that came
23 from the Counterfeiters. This is detrimental to her reputation and corrupts the integrity of the art.

24 178. As a result of the misconduct alleged herein, Plaintiff and the Creator Class and all
25 Subclasses are entitled to damages in an amount to be proven at trial.

26 **FIFTH CAUSE OF ACTION**
27 **REQUEST FOR INJUNCTIVE RELIEF**
28 **(Nationwide Creators Class)**

1 179. Plaintiff realleges and incorporates by reference the allegations in all preceding
2 paragraphs as if fully set forth herein.

3 180. Facebook has not implemented a reasonable Repeat Infringer policy and thereby
4 participates in and encourages copyright infringement on its site.

5 181. This Court may grant an injunction when the Defendant's actions or omissions will
6 continue to produce great injury to the Plaintiffs and members of the Class.

7 182. Without the injunctive relief requested herein, Plaintiff and the Class lack an adequate
8 remedy at law and will suffer irreparable harm if Defendant continues to display their copyright works,
9 display Counterfeit Ads, actively directs and connects the infringing images to consumers, and further
10 induces and encourages Counterfeiters to run advertisements on Facebook.

11 183. The Court should enter an order enjoining Defendants from engaging in the wrongful
12 and unlawful acts and omissions described herein and specifically require Defendant to implement a and
13 enforce a reasonable Repeat Infringer policy and take further steps to cease the copyright infringement
14 in which it directly and contributorily participates. In addition, the Court should enjoin Facebook from
15 retaining profits earned from reported Counterfeiter Ads.

16
17 **SIXTH CAUSE OF ACTION**
VIOLATION OF LANHAM ACT—FALSE DESIGNATION OF ORIGIN
(15 U.S.C. § 1125)
18 **(Nationwide Creators Class and All Subclasses)**

19 184. Plaintiff realleges and incorporates by reference the allegations in all preceding
20 paragraphs as if fully set forth herein.

21 185. Facebook's acts and omissions in relation to Counterfeiter Ads are false and misleading
22 material representations of fact conducted via commercial advertising in interstate commerce.

23 186. Pursuant to 15 U.S.C. § 1125, any person in commerce who uses any false designation
24 of origin, false or misleading description of fact, or false or misleading representation of fact, which

25 (a) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation,
26 connection or association of such person with another person, or as to the origin or
sponsorship; or

27 (b) in commercial advertising promotion, misrepresents the nature, characteristics,
28 qualities, or geographic origin of his or her or another person's foods, services, or
commercial activities

1 is liable to any person who believes that he or she is or is likely to be damaged by such act. 15 U.S.C. §
2 1125(a)(1). Section 1125 protects against several deceptive commercial practices, including false
3 advertising or promotion or the origin of the product.

4 187. The Counterfeiter Ads Facebook shows to its users misrepresent the nature, quality and
5 origin of the Creative Works and otherwise confuse the public, leading the public to believe erroneously
6 that the Creators are associated with the ads and offers for sale. The ads Facebook generates can be
7 Nationwide and target millions of consumers.

8 188. The misrepresentations are material. Indeed, when a Facebook user sees a Counterfeiter
9 Ad, he or she assumes the products pictured are the products he or she will receive, and that Facebook
10 has approved (which it has) the use of its platform to advertise goods.

11 189. After purchasing a product from a Counterfeiter Ad, many consumers received cheap
12 knockoffs of the product depicted in a Counterfeiter Ad or nothing at all. Because using images of the
13 Creative Works or Registered Works caused actual confusion among consumers, dissatisfied Counterfeit
14 Ad victims have mistakenly contacted the Creators or the Registered Owners to complain.

15 190. As a direct and proximate result of Facebook's publication and sharing of Counterfeit
16 Ads, particularly after it has been notified that use of images of Creative Works violate the Creators'
17 rights, caused Plaintiff and the Class harm. Plaintiff and the Class suffered both a diversion of sales and
18 a lessening of goodwill associated with the Creative Works.

19 191. Plaintiff and the Creators are entitled to damages in an amount to be proven at trial.
20 Additionally, Plaintiff and the Creators are entitled to enhanced damages in an amount up to three times
21 the amount of actual damages suffered.

22 **SEVENTH CAUSE OF ACTION**
23 **VIOLATIONS OF THE DIGITAL MILLENIUM COPYRIGHT ACT**
24 **(Nationwide Creators' Class and All Subclasses)**

25 192. Plaintiff realleges and incorporates by reference the allegations in all preceding
26 paragraphs as if fully set forth herein.

27 193. DMCA is designed, in part, to protect online service providers ("OSPs") from liability
28 from copyright claims arising out of conduct by their end-users. OSPs, however, need to earn this

1 protection through compliance with a series of conditions, including, but not limited to, expeditiously
2 blocking or removing infringing materials after being notified of the infringement.

3 194. Facebook does not qualify for DMCA safe harbor protections both because it is a direct
4 infringer and because it has not otherwise met the prerequisite conditions.

5 195. The Storage Safe Harbor protects OSPs for liability arising for infringing material that
6 users direct to be stored, controlled or made available on the OSPs website. This is limited, however,
7 to instances where the user, not the OSP, is responsible for the presence of the infringing content on the
8 OSPs system.

9 196. Facebook is not eligible to claim any safe harbor protections because it used its
10 technology and business policies and practices to directly connect and communicate infringing images
11 to potential buyers on its site. Facebook requires all advertisements to go through its own approval
12 process, during which an automated system and moderators review the ads for legality, including
13 intellectual property, issues and aesthetic. Facebook, not its users or advertisers, is responsible for the
14 presence of the infringing content on its site, and for the direct connection of that content with potential
15 consumer buyers.

16 197. Additionally, to be eligible for the Storage Safe Harbor, Facebook must: (1) adopt and
17 inform users of and implement a repeat infringer policy; (2) lack actual knowledge of infringement and
18 lack awareness of facts and circumstances (“red flags”) making infringement apparent; (3) on obtaining
19 knowledge of infringement, it must expeditiously remove the infringing material; and (4) not have a
20 direct financial benefit from the infringement.

21 198. Facebook purports to have a Repeat Infringer policy but failed to enforce it. To qualify
22 for safe harbor protection, Facebook must have adopted and implemented an internal copyright
23 infringement policy that provides for the termination of Facebook account holders that are repeat
24 copyright infringers.

25 199. Facebook’s copyright infringement policy states:

26 Ads must not contain content that infringes upon or violates the rights of any third party,
27 including copyright, trademark, privacy, publicity, or other personal or proprietary rights.

28 Advertising Policies: Prohibited Content, Section 9.

1 200. Facebook's repeat infringer policy states:

2 In addition to removing content and bad actors when they are reported, we disable the accounts
3 of repeat infringers where appropriate. We also take other actions before someone can become
4 a repeat infringer, such as imposing temporary feature limits or removing access to certain
5 product features like Marketplace.

6 Repeat Infringer Policy⁶²

7 201. Facebook does not enforce these policies, as demonstrated by the thousands of
8 Counterfeiter Ads, openly infringing on Creators' rights, posted to and by Facebook every single day.
9 Defendant does little, either in the advertisement approval process or afterwards, to ensure that
10 advertisement content does not infringe upon the rights of Creators. This is a violation of Facebook's
11 duty, both pursuant to its own policies and to the DMCA's requirements, to remove infringing material
12 after notification and to prevent infringing material from re-entering the site through Repeat Infringers.

13 202. Facebook does not lack actual knowledge of infringement or lack awareness of facts and
14 circumstances ("red flags") making infringement apparent. It knew, or should have known, and willfully
15 ignored, that infringing activity was occurring through advertisements on its site. The number of
16 Counterfeiters selling Plaintiff's Registered Works alone (nearly one hundred different accounts/pages)
17 is so egregious and obvious that Facebook, after being repeatedly notified of the specific images and
18 works being infringed, knew of the infringement and was required to stop it.

19 203. Facebook failed to expeditiously remove infringing content after being notified by
20 Registered Owners. Indeed, Plaintiff had to submit several DMCA takedown notices for the same
21 images and was required to research and contact Facebook's IP attorney to get the images removed from
22 the site.

23 204. Finally, Facebook generates its main source of revenue from advertisements, including
24 Counterfeit Ads. Facebook retains all revenue earned from Counterfeit Ads, even after being notified
25 that the ads contained infringing content.

26 205. As a direct and proximate result of Facebook's failure to block, gate, or otherwise remove
27 Repeat Infringers, along with its other DMCA failures and its violations of its own internal copyright

28 ⁶² *How Meta helps protect against counterfeits*, META, <https://www.facebook.com/business/tools/anti-counterfeiting/guide> (last visited Feb 16, 2022).

1 infringement policy, Plaintiff and the Class and Subclasses have suffered damages in an amount to be
2 proven at trial.

3 **EIGHTH CAUSE OF ACTION**
4 **VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (§**
5 **501.201 et seq)**
6 **(Creators' Florida Subclass)**

7 206. Plaintiff realleges and incorporates by reference the allegations in all preceding
8 paragraphs as if fully set forth herein.

9 207. Pursuant to Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), § 501 *et*
10 *seq*, a business can sue other businesses based upon consumer harm. FDUTPA states that "[u]nfair
11 methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in
12 the conduct of any trade or commerce are hereby declared unlawful." Fla. Stat. § 501.204(1).

13 208. An unfair practice offends established public policy and is immoral, unethical,
14 oppressive, and unscrupulous or substantially injurious to consumers. Deception occurs if there is a
15 representation, omission, or practice that is likely to mislead the consumer action reasonably in the
16 circumstances, to the consumer's detriment.

17 209. Facebook's conduct, as described herein, creates harm to both Plaintiff and the members
18 of the Class (non-consumers) and Facebook users (consumers). Indeed, Facebook users, lured by
19 Facebook advertisements targeted directly at them, purchase Counterfeit products and receive cheap
20 knockoffs of the advertised product, or nothing at all. The users pay for a product that is materially
21 different than what Facebook advertised. The Creators have their ownership rights violated, lose out on
22 sales and, in the case of artist products, the scams cause irreparable damage to the integrity of the art
23 created and the reputation of the artist. These harms are distinct but are unequivocally detrimental to
24 both groups.

25 210. The FDUTPA allows Plaintiff and the Class to sue Facebook because Facebook is using
26 unfair, unconscionable, and deceptive trade practices, specifically targeted at misleading and confusing
27 consumers, and this harms both Plaintiff and the Class and consumers.
28

1 WHEREFORE, Plaintiff and the Class respectfully pray for a judgment in their favor as follows:

- 2 A. For an injunction enjoining Facebook from copying, reproducing, distributing, adapting,
3 publishing, advertising or publicly displaying, without prior authorization from Creators,
4 Creative Works and requiring Facebook to remove or block any and all Repeat Infringers
5 who have been previously reported by Creators for violating ownership rights and/or
6 unfair competition laws through the display and distribution of Creative Works and
7 Registered Works, or whom it otherwise is aware are Repeat Infringers;
- 8 B. Awarding Plaintiff monetary compensation in the form of actual, consequential, and
9 enhanced damages, and any other monetary damages or compensation allowed by law;
- 10 C. Awarding maximum statutory damages under 17 U.S.C. § 504(c), in the amount of
11 \$150,000 to Registered Owners, with respect to each timely registered work that was
12 infringed, for each time it was directly infringed;
- 13 D. Awarding Plaintiff's and the Class's attorneys' fees and costs as allowed by law;
- 14 E. Awarding Plaintiff and the Class pre- and post-judgment interest; and
- 15 F. Ordering any and all further relief as the Court may deem just and proper.

16
17 **JURY DEMAND**

18 Plaintiffs and the Class request a trial by jury on all claims that can be so tried.

19 **ZIMMERMAN REED LLP**

20 Dated: April 22, 2022

21 By: /s/ Arielle M. Canepa
Arielle M. Canepa
6420 Wilshire Blvd., Suite 1080
Los Angeles, CA 90048
Tel. (877) 500-8780
Fax (877) 500-8781
Email: arielle.canepa@zimmreed.com

22
23
24 Brian C. Gudmundson
Rachel K. Tack
Michael J. Laird
25 **ZIMMERMAN REED LLP**
26 1100 IDS Center
80 South 8th Street
27 Minneapolis, MN 55402
28 Tel. (612) 341-0400

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Jonathan L. Hardt
James F. McDonough
ROZIER HARDT MCDONOUGH PLLC
712 W. 14th Street
Suite C
Austin, TX 78701
Tel. (210) 289-7541

Counsel for Plaintiff and the Class