

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SPIN-BALLS, LLC,

Plaintiff,

Case No. 8:23-02743

vs.

JURY DEMANDED

FIVE BELOW, INC.,
1616 HOLDINGS, INC.
JM MANUFACTURING (HK) LTD., AND
RMS INTERNATIONAL (USA) INC.

Defendants.

**COMPLAINT FOR PATENT, TRADEMARK, TRADE DRESS
INFRINGEMENT AND UNFAIR COMPETITION**

Plaintiff, Spin-balls, LLC d/b/a Fun In Motion Toys (“FIMT”), by and through its undersigned counsel, brings this suit against Defendants Five Below, Inc. (“Five Below”), 1616 Holdings, Inc. (“1616 Holdings”), JM Manufacturing (HK) Ltd. (“JMM”), and RMS International (USA), Inc. (“RMS”) (collectively, the “Defendants”) and alleges:

INTRODUCTION

1. This is an action for patent infringement, trademark infringement, trade dress infringement and unfair competition in violation of the laws of the United States and the State of Florida. FIMT seeks a temporary restraining order, preliminary injunction, permanent injunction, damages, including Defendants’ profits, trebled under the law, punitive damages, and other relief as more fully described herein.

2. In 2011, Kevin Schlapik (“Mr. Schlapik”) and Stephen James Dennison (“Mr. Dennison”) founded Spin-balls, LLC d/b/a Fun In Motion Toys, a Florida limited liability company. Fun In Motion Toys would enter the toy market with the launch of its first product, SPINBALLS™. Spinballs, a patent-protected LED Poi set, introduced the ancient art of spinning Poi to the general public worldwide. FIMT’s Spinballs product would ultimately become a successful product, putting FIMT on the map and allowing Schlapik and Dennison to further expand their newly formed toy company.

3. Through hard work, dedication and sacrifice, Schlapik and Dennison have made FIMT one of the fastest growing companies in the toy industry, earning numerous industry awards for their innovative products including three Toy of the Year nominations at the toy industry’s premier event, The New York Toy Fair. FIMT has sold millions of its products worldwide with sales in over fifty countries and was recently ranked at number 389 on the 2023 “Inc. 5000” Annual List.

4. Mr. Schlapik and Mr. Dennison have each worked tirelessly to develop and promote FIMT’s innovative products through expansive marketing campaigns, attendance and exhibition at trade shows worldwide, distribution of catalogs to a robust customer base, through e-commerce via its Amazon.com Storefront, the FIMT website, www.funinmotiontoys.com, and the wholesale distribution of its products to thousands of resellers worldwide, including specialty, independent and mass retailers including Walmart and Target.

5. Moreover, FIMT has engaged in consistent and continuous marketing activities including comprehensive social media campaigns, across all major social media platforms, giving FIMT a substantial Internet presence. FIMT’s Internet marketing efforts have resulted in over one-hundred million combined consumer

impressions of its SHASHIBO®, SPINBALLS™ and KARMAGAMI® product lines. Additionally, FIMT has spent millions of dollars advertising and marketing its SHASHIBO®, SPINBALLS™ and KARMAGAMI® product lines, having spent over five-million dollars in advertising and marketing expenditures to promote its products in 2023 alone. As a result of its efforts, over time, FIMT has grown into a tremendously successful toy company dedicated to and known to the consuming public as a toy company that provides high-quality, safe and innovative products to consumers worldwide.

6. Throughout its existence, FIMT has designed, developed and manufactured a plethora of novel toys, each sold under and protected by FIMT's federally registered and common law trademarks including: FUN IN MOTION®, FUN IN MOTION TOYS®, KARMAGAMI®, SPINBALLS™, SPINBALLS GLOW.O® and SHASHIBO® (collectively, the "FIMT Trademarks").

7. By virtue of years of extensively using and promoting its trademarks and distinctive trade dress in connection with the promotion, marketing and sale of its products in the toy market, FIMT has established enormous goodwill in its trademarks and distinctive trade dress, which have become known to consumers worldwide in identifying FIMT as the source of origin of such products.

FIMT'S TRADE DRESS

8. Since at least 2019, in connection with its products and marketing materials, as further described below, FIMT has developed, consistently and continuously used in commerce, promoted, marketed, advertised, offered for sale and sold goods and services using the following inherently distinctive and non-functional trade dress which has set its products apart from those of its competitors, and has come to be associated with FIMT as the source of origin of

goods and marketing materials bearing such trade dress to consumers in the toy industry, further acquiring secondary meaning in the marketplace (the “FIMT Trade Dress”; *see also* **Figures 1-3**):

9. Products bearing the FIMT Trade Dress include: KARMAGAMI®, SHASHIBO®, and SPINBALLS™ (collectively, the “FIMT Trade Dress Products”). *See* **Figures 1-3** (providing exemplary images of FIMT’s distinctive trade dress and identifying the distinctive style, design, configuration and overall appearance of FIMT’s trade dress as used in connection with its products and marketing).

10. FIMT has trade dress rights in the overall look and distinctive appearance of its product designs, packaging and marketing materials. FIMT’s Trade Dress Products each include a well-defined look and feel which identifies FIMT as the source of origin. FIMT also utilizes and incorporates elements of its distinctive trade dress in its marketing materials, point of purchase displays, product packaging, promotional materials and its website, funinmotiontoys.com. Like its products, FIMT’s trade dress is unique and distinctive in the toy industry and creates a recognizable commercial impression in the minds of consumers such that consumers identify FIMT as the source of origin of products bearing the FIMT trade dress. *See* **Figures 1-3**.

11. FIMT’s trade dress is distinctive and non-functional. FIMT’s trade dress features create a total commercial impression and overall look and distinctive appearance that uniquely identifies to consumers that the origin of such high quality products bearing such trade dress features is FIMT. *See e.g.*, **Figures 1-3** (showing exemplary images of the FIMT Trade Dress Products utilizing FIMT’s trade dress features, unique to each FIMT Trade Dress Product in connection with the total commercial impression created by FIMT’s trade dress). Indeed, the

products, marketing materials, packaging, product displays and promotional materials bearing the FIMT Trade Dress, which are also marketed in connection with FIMT's federally registered trademarks, including its FUN IN MOTION TOYS®, SHASHIBO®, SPINBALLS GLOW.O®, SPINBALLS™ and KARAMAGAMI® trademarks, create a distinctive and immediately recognizable overall look and commercial impression to consumers identifying FIMT as the source of origin of such products.

12. FIMT has used its distinctive trade dress in commerce to set its products apart from those of competitors in the toy industry. FIMT has invested substantial advertising expenditures, over time, in order to consistently and continuously use, display and exhibit its trade dress in its expansive marketing campaigns to promote a conscious connection in the minds of consumers between the FIMT Trade Dress and FIMT as the sole source of origin of products bearing such trade dress. The FIMT Trade Dress serves as a source identifier in association with products it manufactures, markets, offers for sale and sells in International Trademark Class 28 including puzzles and poi balls. The FIMT Trade Dress is readily identifiable by consumers due to its unique and distinctive configuration, packaging, color combinations and the specific placement and arrangement of the FIMT Trade Dress elements.

13. Furthermore, FIMT has used in commerce, advertised, promoted, sold, marketed and exhibited its SHASHIBO®, SPINBALLS™, SPINBALLS GLOW.O® and KARAMAGAMI® lines of products in association with the FIMT Trade Dress through its website, www.funinmotiontoys.com, catalogs, brochures, social media websites and at industry leading trade shows worldwide, including the Toy Industry Association's New York Toy Fair, American Specialty Toy

Retailing Association (“ASTRA”) Marketplace & Academy, Nuremberg International Toy Fair in Nuremberg, Germany and others since 2011.

14. The primary significance of FIMT’s Trade Dress is non-functional. That is, FIMT’s Trade Dress is not essential to the use or purpose of its products nor does the FIMT Trade Dress affect the cost or quality of FIMT’s products. Instead, FIMT utilizes its trade dress in a manner which serves as a source identifier. The specific, unique and distinctive configuration, placement, arrangement and presentation of FIMT’s Trade Dress is well defined and strategically developed to create a memorable commercial impression in the minds of consumers identifying FUN IN MOTION TOYS® as the exclusive source of origin of such products. The trade dress elements of FIMT’s product designs set them apart from competitors such that they are immediately recognizable to consumers as products emanating from FIMT. FIMT’s selection, adoption and extensive use of its distinctive trade dress in commerce, in association with the marketing, promotion, exhibition, offering for sale and sale of its products in the United States, and in Florida, has resulted in an association between the unique products it sells bearing the FIMT Trade Dress, including the unique trade dress developed and used in commerce in association with each of its SHASHIBO®, SPINBALLS™ and KARAMAGAMI® lines of products, and FIMT as the sole source of origin of such products.

15. FIMT has also continuously and extensively utilized its trade dress since at least 2011 in its marketing materials including its catalogs, brochures, flyers, product displays, promotional materials, promotional and instructional videos, manuals, packaging, social media campaigns, company websites, exhibits and other advertising. As a result, both consumers and resellers in the toy industry

have come to identify the FIMT's Trade Dress as a sign of the high-quality, safe and long-lasting products produced and sold by FIMT. Indeed, through FIMT's extensive and continuous use in commerce and its advertising campaigns, comprising millions of dollars in advertising expenditures across multiple channels of commerce, the FIMT Trade Dress has been exposed to a massive audience of consumers in the United States and worldwide, resulting in FIMT's Trade Dress becoming well-known indicators of the origin and high quality of FIMT's Trade Dress Products, acquiring substantial secondary meaning in the toy industry and marketplace, including within the State of Florida.

16. Unfortunately, FIMT's hard-earned success in developing innovative products and a loyal customer base has also led others to knock-off and attempt to misappropriate its product designs and marketing materials, including the FIMT Trade Dress and its successful SHASHIBO®, SPINBALLS™ and KARAMAGAMI® lines of products (identified herein in **Figures 1-3**). Defendants, Five Below, Inc., 1616 Holdings, Inc., JM Manufacturing (HK) Ltd., and RMS International (USA) Inc., coveted FIMT's lucrative customer base and sales success in the marketplace. As a result, Defendants have intentionally engaged in unlawful activities in an effort to lure FIMT's customers away, including offering cheap, grossly inferior and, in some cases, potentially dangerous, knock-offs of FIMT's products, including its innovative SHASHIBO®, SPINBALLS™ and KARAMAGAMI® products, unlawfully adopting the FIMT Trade Dress to confuse and deceive consumers. Despite the almost infinite availability of alternative product packaging, configurations, arrangements and trade dress features, which do not affect the price or quality of the products, and notwithstanding the fact that FIMT was solely responsible for the inception of the FIMT Trade Dress it

developed for the SHASHIBO®, SPINBALLS GLOW.o® and KARAMAGAMI® product lines, Defendants have intentionally and willfully misappropriated the FIMT's Trade Dress.

U.S. Trademark No. 6,316,497

United States of America
United States Patent and Trademark Office

KARMAGAMI

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|---------------------------------|--|
| Reg. No. 6,316,497 | Spinballs, LLC (FLORIDA LIMITED LIABILITY COMPANY), DBA Fun In |
| Registered Apr. 06, 2021 | Motion Toys |
| Int. Cl.: 28 | 222 West Bay Dr. |
| Trademark | Largo, FLORIDA 33770 |
| Principal Register | CLASS 28: Puzzles |
| | FIRST USE 2-22-2020, IN COMMERCE 2-22-2020 |
| | THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR |
| | SER. NO. 88-592,233, FILED 08-26-2019 |

17. In association with and in furtherance of its intentional infringement of FIMT's trade dress, Defendants have also unlawfully and without consent, utilized a deceptively and confusingly similar trademark to FIMT's federally registered, fanciful, KARAMAGAMI® trademark, adopting and emblazoning upon their products an obviously and confusingly similar mark, CALMAGAMI, to market its knock-off products, further using virtually identical packaging, font style, phrases, placement of text, ornamentation and the overall commercial impression, look and feel of FIMT's KARAMAGAMI® trade dress, including within Defendants' importation, distribution, advertising, marketing, offering for sale and sale of their knock-off CALMAGAMI products. See **Figure 2**.

18. FIMT has used its trademarks and trade dress, in interstate commerce extensively and continuously for years, exposing its KARMAGAMI® trademark and trade dress to consumers through its expansive marketing campaigns, garnering millions of consumer impressions, establishing secondary meaning in the same, long before Defendants unlawfully adopted its trade dress and trademarks and began advertising, promoting, selling, offering to sell, or distributing their infringing products.

19. Defendants use of FIMT's fanciful KARMAGAMI® trademark and distinctive KARMAGAMI® trade dress, is unauthorized, unlawful, has caused and is causing FIMT substantial damages, including irreparable harm. FIMT does not license its trademarks or trade dress to any third parties, they are exclusive to FIMT and, as such, Defendants do not hold a license or FIMT's permission to utilize FIMT's trademarks or trade dress.

20. Worse, on October 23, 2023, shocked at the discovery that Defendant Five Below, 1616 Holdings and JMM were manufacturing, offering for sale and selling yet another infringing product—this time a knock-off of FIMT's flagship and most important product, SHASHIBO®, sold by Five Below as the “Magic Cube”—and the obvious likelihood of confusion Defendants' actions would undoubtedly cause in the marketplace, FIMT, through its legal counsel, immediately placed Defendants on express written notice of its infringement and demanded Defendants cease and desist from their infringement of FIMT's valuable and hard-earned intellectual property rights. See *Notice of Patent Infringement, Trademark Infringement, Trade Dress Infringement, False Designation of Origin, Unfair Competition and Copyright Infringement and Demand to Immediately Cease and Desist*_dated October 23, 2023 (“10/23/23 Notice and

Demand”), attached hereto as **Exhibit A**. FIMT’s 10/23/23 Notice and Demand also attached as exhibits thereto, which are incorporated herein by reference, clear evidence of Defendants’ infringing products and copies of FIMT’s relevant trademarks and patents. *Id.*

21. While FIMT confirmed Defendants’ receipt of its written notice to Defendants Five Below’s and 1616 Holdings’ Headquarters as well as Five Below’s Florida Registered Agent through the United States Postal Service, FIMT’s 10/23/23 Notice and Demand went ignored for almost four weeks, during the critical lead up to the Holiday Season wherein many toy companies earn in excess of fifty percent of their annual revenues.

22. As FIMT would later learn, FIMT’s 10/23/23 Notice and Demand was not only received by Five Below’s Florida Registered Agent but also specifically transmitted to Five Below’s leadership. See **Exhibit A**, at p.1 (denoting electronic copies sent to, at least, seven members of Five Below’s leadership team including its Vice President, Deputy General Counsel, Kristen Han, making clear an “Answer or Appearance” was due in “24 hours.”). Accordingly, the express written notice provided to Five Below and the urgency communicated therein to avoid irreparable harm to FIMT is indisputable.

23. Instead of ceasing and desisting from its infringement of FIMT’s intellectual property rights immediately upon being placed on express written notice, as demanded, as illustrated by their subsequent and continuing actions, up to and including the initiation of this lawsuit, Defendants have stubbornly and willfully continued to infringe upon FIMT’s intellectual property rights, substantially expanding upon, rather than ceasing to manufacture, market,

distribute, offer for sale and sell inferior knock-offs and confusingly similar products, unlawfully infringing upon FIMT's trade dress and patent rights.

24. On November 16, 2023, after learning of Defendants continued, willful and massively expanded infringement, in a final effort to avoid the need to engage in distracting and costly litigation, FIMT sent Defendants a Second Notice and Demand to Cease and Desist along with attachments as exhibits thereto, which are incorporated herein by reference, clear evidence of Defendants' infringing products and copies of FIMT's relevant trademarks and patents ("11/16/23 Notice and Demand", attached hereto as **Exhibit B**).

25. FIMT would later learn that its 11/16/23 Notice and Demand would be transmitted to the very same leadership team at Five Below as its 10/23/23 Notice and Demand, again, establishing express notice was undeniably provided, received and twice ignored in lieu of Five Below's brazen disregard for, willful and malicious continued infringement of FIMT's intellectual property rights.

26. On November 17, 2023, approximately four weeks following FIMT's 10/23/23 Notice and Demand, counsel for Defendant Five Below responded to FIMT's counsel with a brief boilerplate e-mail communication confirming Defendant Five Below's "receipt of [] recent letters (attached) sent on behalf of Spinballs, LLC d/b/a Fun In Motion Toys regarding the Calmagami, Led Poi Balls, and Magic Cube toy products **sold in our stores**." (emphasis added) See *E-mail Communication from Shaton C. Menzie, Corporate Counsel, Intellectual Property for Five Below, Inc.* dated Nov. 17, 2023 (attached hereto as **Exhibit C**). The responsive e-mail confirmed and admitted Five Below's sale of the infringing products in its stores and Five Below's refusal to confirm or even suggest

Defendants' intention to comply with the demand to cease and desist from further infringement of FIMT's intellectual property rights.

27. Instead, as of the date of the filing of this action, Defendants Five Below and 1616 Holdings¹ still refuse to cease and desist from their willful infringement of FIMT's intellectual property rights and continue to unlawfully misappropriate FIMT's intellectual property rights for their own unjust enrichment.

28. Determined to continue their scheme to trade on and profit from the reputation and goodwill associated with FIMT's trademarks and trade dress, and following express notice to Defendants of FIMT's federally registered and common law trademarks and trade dress, along with FIMT's patent rights, Defendants have purposefully continued to advertise, market and promote their infringing Calmagami, Led Poi Balls, and Magnetic Magic Cube products to consumers nationwide through their vast network of retail stores and interactive commercial website, accessible to consumers in the United States, including within this judicial district.

29. As of the date of the filing of this action, Five Below continues to advertise their infringing Calmagami, Led Poi Balls, and Magnetic Magic Cube products on their interactive e-commerce website, www.fivebelow.com. See **Exhibit D**.

30. Further, as confirmed on the Five Below website and through its product listing page for the Magic Cube, Five Below continues to offer for sale, at

¹ Defendant 1616 Holdings, Inc. (formerly known as Five Below Merchandising, Inc.) is the distributor identified on Five Below's infringing Magnetic Magic Cube product packaging. 1616 Holdings, Inc. is not a vendor but a wholly-owned subsidiary of Five Below, Inc. doing business as Five Below. See Five Below, Inc., Q3 2023 FORM 10-Q (available at, <https://www.sec.gov/ix?doc=/Archives/edgar/data/1177609/000117760923000022/five-20230729.htm> accessed November 20, 2023).

least, three different styles of its infringing Magic Cube products in its brick and mortar retail stores, including in many Five Below retail stores in this judicial district and division. See **Exhibit E**.

31. On November 19, 2023, FIMT confirmed the existence of infringing products offered for sale by Five Below through test purchases of the infringing Magic Cube products at Five Below's Pinellas Park, Florida location. See **Exhibit F**.

DEFENDANTS' ACTS OF UNFAIR COMPETITION

32. Defendants Five Below, 1616 Holdings JMM and RMS, alone and collectively, have willfully and intentionally engaged in various forms of unfair competition, infringing FIMT's federally registered and common law trademarks, trade dress and otherwise capitalizing on its goodwill in the marketplace by manufacturing, importing, distributing, selling, offering to sell, advertising, exhibiting and promoting Defendants' infringing products nationwide, including within the State of Florida and this judicial district, which are confusingly similar, poor quality imitations of FIMT's products.

33. Defendants also continue to use FIMT's trademarks and trade dress in product listings at www.fivebelow.com to trade upon FIMT's well-established goodwill and reputation in the toy industry and to deceive and confuse consumers, including through search engine optimization, into purchasing Defendants' inferior knock-offs and confusingly similar products, all without the authorization of FIMT.

34. Defendants Five Below, 1616 Holdings and JMM have unlawfully adopted and infringed FIMT's rights in the FIMT SPINBALLS™ trade dress by using confusingly similar trade dress which misappropriates the distinctive source

identifying elements of FIMT's packaging and marketing style trade dress associated with its SPINBALLS™ product line. Five Below's, 1616 Holding's and JMM's unlawful conduct in so doing has caused substantial harm to FIMT, including damages and irreparable harm.

35. Defendants Five Below, 1616 Holdings and JMM have unlawfully adopted and infringed FIMT's rights in the FIMT SHASHIBO® trade dress by using confusingly similar trade dress which misappropriates the distinctive source identifying elements of FIMT's packaging and marketing style trade dress associated with its SHASHIBO® product line. Five Below's, 1616 Holdings' and JMM's unlawful conduct in so doing has caused substantial harm to FIMT, including damages and irreparable harm.

36. Defendants Five Below and RMS have unlawfully adopted and infringed FIMT's rights in the FIMT KARMAGAMI® trademark and KARMAGAMI® trade dress by using a confusingly similar trademark, CALMAGAMI, and misappropriating FIMT's KARMAGAMI® trade dress, including the distinctive source identifying elements of FIMT's packaging and marketing style trade dress associated with its KARMAGAMI® product line. Five Below's and RMS's unlawful conduct in so doing has caused substantial harm to FIMT, including damages and irreparable harm.

37. Defendants' infringements and acts of unfair competition complained of herein have been willful, intentional, systematic and unlawful. Defendants' infringements and acts of unfair competition have in the past, are currently causing, and are likely to cause in the future, consumer confusion regarding the quality and source of origin of products bearing FIMT's federally registered and common law trademarks and the FIMT Trade Dress. Defendants continued

misappropriation of FIMT's valuable intellectual property is currently causing, and is likely to cause in the future, irreparable harm to FIMT if not immediately enjoined.

38. Defendants' willful infringement and unfair competition has harmed consumers and irreparably damaged the hard earned goodwill associated with FIMT's federally registered and common law trademarks and trade dress as well as its reputation for high quality, long-lasting and safe products.

39. Defendants' willful infringing use of FIMT's intellectual property rights and unfair competition has caused in the past, and is likely to continue to cause FIMT irreparable harm because such use has effectively and unlawfully stripped FIMT of control over its valuable intellectual property rights. Defendants' inferior and potentially unsafe infringing products are being sold nationwide through Five Below's e-commerce website and through a network of 1,526 retail stores in 44 states, with 151 stores in the State of Florida alone, representing Five Below's highest single state concentration of brick and mortar stores in the nation. Defendants' infringing products are of an exceedingly poor quality compared to FIMT's authentic products and have the very real propensity to irreparably damage consumer opinion, expectations, repeat purchases and, if injury were to occur through use of Defendants' products, effectively cause catastrophic and irreparable harm to the goodwill and reputation of FIMT and its flagship product, SHASHIBO®, through no fault of its own.

40. FIMT's patent rights in its SHASHIBO® and SPINBALLS™ product lines are exclusive to FIMT, making FIMT the only lawful source of its SHASHIBO® and SPINBALLS™ products. FIMT does not license its intellectual property to any third-parties and the exclusivity of its patent rights forms the

substantial basis for FIMT's success in the marketplace. Defendants' unlawful and infringing use of FIMT's patent rights in the Infringing Products is the only substantial reason for consumer demand for Defendants' infringing products evidencing a causal nexus as between Defendants' infringement and the irreparable harm FIMT is suffering as a result of Defendants' unlawful acts.

41. FIMT has spent substantial resources marketing its flagship SHASHIBO® line of products, including through its successful Collect and Connect™ campaign. Users of SHASHIBO® that purchase two or more units can connect them in order to build larger, more complex, structures and shapes. Defendants' sale of inferior, poor quality, infringing Magic Cube products, is likely to result in disappointment amongst consumers, who are unlikely to return in order to purchase a second or third authentic SHASHIBO® product, causing irreparable harm for which there is no adequate remedy at law.

42. Defendants' sale of cheap, inferior, and potentially unsafe, Magic Cube products will cause irreparable harm to FIMT through the erosion, loss and destruction of market share SHASHIBO® holds in a unique category of toys for which the SHASHIBO® product was the pioneering product line. Thus, Defendants' acts of infringement of FIMT's patent rights and the SHASHIBO® trade dress will cause irreparable harm which cannot be easily quantified or adequately remedied through an award of damages.

43. Defendants' unlawful sale of the Magic Cube, unlike FIMT's patent-protected SHASHIBO® product, fails to provide third-parties notice of the patent rights protecting the product line. Accordingly, if the Magic Cube is allowed to remain in the marketplace, there is an imminent risk that Defendants' acts of infringement could induce or encourage others, including manufacturers in China,

to also manufacture knock-off products, proximately causing further irreparable, and potentially catastrophic harm to FIMT and the marketplace for its flagship product, SHASHIBO®.

44. FIMT respectfully requests that this Court issue a temporary restraining order and preliminary injunction during the pendency of this matter to maintain the status quo and avoid the almost certain irreparable harm that will be caused to FIMT in the event Defendants are not enjoined from further infringement. There is no adequate remedy at law for the harm FIMT is at risk of suffering. FIMT further respectfully requests that this Court enter a judgment of willful patent infringement, willful trademark infringement, willful trade dress infringement, unfair competition, and unjust enrichment against Defendants, jointly and severally, and grant FIMT permanent injunctive relief against Defendants' infringement and issue an award of damages, including Defendants' profits, trebled under the law, punitive damages, attorneys' fees and costs associated with this action, and other just and proper relief.

THE PARTIES

45. Plaintiff, FIMT is a limited liability company duly organized and existing under the laws of Florida. Plaintiff's principal place of business is located in Florida. Plaintiff sells the products subject to the patents-in-suit, trademarks-in-suit and trade dress-in-suit through its catalog, website at www.funinmotiontoys.com and its Amazon.com storefront and extensive distribution and placement of its products in brick-and-mortar stores worldwide.

46. Defendant, Five Below, Inc. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business in Philadelphia, Pennsylvania. Five Below is a specialty value retailer

that, upon information and belief, sells its products through 1,481 retail stores in 43 states which it operates under the name “Five Below.” Five Below also sells its merchandise on the internet, through its fivebelow.com e-commerce website, offering home delivery and the option to buy online and pick up in store. Additionally, Five Below sells merchandise through on-demand third-party services to enable consumers to shop online and receive convenient same day delivery.

47. Defendant, 1616 Holdings, Inc. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business in Philadelphia, Pennsylvania. 1616 Holdings, Inc. is a wholly owned subsidiary of Five Below, Inc. with the same listed address as Five Below, Inc. for its headquarters.

48. Defendant, RMS International (USA), Inc. is a multinational corporation organized and existing within the United States under the laws of the State of Massachusetts, with its principal place of business in North Andover, Massachusetts. RMS International (USA), Inc., designs, develops and sells products to retailers in the United States, including Five Below, Inc., under its Grafix brand.

49. Defendant JM Manufacturing (HK) Ltd. is a Hong Kong based limited liability company that operates eight satellite offices worldwide. Upon information and belief, JM Manufacturing (HK) Ltd. offers manufacturing services, including through outsourcing, for Five Below, Inc. and 1616 Holdings and retailers in the United States and other jurisdictions worldwide. Upon information and belief, JM Manufacturing (HK) Ltd. was commissioned by Five Below, by or through its wholly-owned subsidiary, 1616 Holdings, to source the manufacture of the

infringing LED Poi Balls and Magic Cube products in Hong Kong or mainland China, which Five Below, by or through its wholly-owned subsidiary, 1616 Holdings, imported into the United States for distribution and sale by Five Below through its vast network of retail stores and fivebelow.com.

JURISDICTION AND VENUE

50. This Court has subject matter jurisdiction pursuant to: 28 U.S.C. §§ 1331, 1338 (a) and (b), and 15 U.S.C. §§ 1121, 1125(a), (c) & (d) because FIMT's patent infringement, trademark infringement, trade dress and unfair competition claims arise under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, 15 U.S.C. §§ 1125 *et seq.*, and 35 U.S. Code § 271 for a claim arising under an Act of Congress relating to patents, trademarks, trade dress and unfair competition.

51. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §§ 1367 and 1338(b) over claims arising under the laws of the State of Florida with regard to common law trademark infringement, trade dress infringement, unfair competition and unfair trade practices.

52. Venue is proper in this Court pursuant to, at least, 28 U.S.C. § 1391 and § 1400(b). A substantial part of the events giving rise to the claims asserted in this lawsuit arose out of Defendants' tortious acts in the State of Florida, in this judicial district, including sales of infringing products to consumers from retail stores operating and located within this judicial district. Defendants are also subject to this Court's jurisdiction because Defendants' regularly conduct business in this district and have committed intentional and willful tortious acts of infringement of Plaintiff's patent rights, federally registered trademarks, common law trademarks, trade dress and unfair competition, complained of herein, within this district and division. Moreover, Defendants have engaged in interstate

commerce, transported, distributed and sold products infringing on Plaintiff's rights into this district, and Defendants' acts have caused harm to consumers and Plaintiff in this district. Defendants have committed intentional tortious acts in the State of Florida, including this judicial district, by advertising, exhibiting, offering to sell and selling their products *inter alia* through retail stores and an interactive commercial website to consumers in this District, including through social media and direct marketing, targeting consumers in the State of Florida, intentionally deceiving consumers and causing harm to Plaintiff within this district through Defendants' tortious acts. Finally, Defendants have purposely availed themselves of the benefits of doing business in this district by either selling products directly to consumers or selling products intended for resale to consumers located in this district, including through its interactive commercial website, registering their business with the Florida Secretary of State, maintaining a Florida Registered Agent and conducting regular business activities, including interstate commerce and the operation of multiple retail stores in this district.

53. The exercise of personal jurisdiction over RMS International (USA), Inc. and JM Manufacturing (HK) Ltd. is proper pursuant to, *inter alia*, Florida's long-arm statute, section 48.193 (1) and (2), Florida Statutes (2000).

54. RMS and JMM are subject to this Court's jurisdiction at least by acting in concert with Defendants Five Below and/or 1616 Holdings in designing, developing, manufacturing, distributing, inducing and contributing to the infringement of Defendants and, directly, through RMS's and JMM's offers for sale, sale and/or distribution of infringing products to Defendants Five Below and/or 1616 Holdings for the distribution and resale to customers which infringe upon Plaintiff's patents and trademarks, including at least Plaintiff's federally

registered KARMAGAMI® mark and FIMT's KARMAGAMI® and SHASHIBO® Trade Dress in this judicial district; committing the tortious acts giving rise to this lawsuit in the State of Florida, including within this judicial district; shipping or otherwise transporting infringing products in interstate commerce under a confusingly similar, deceptive and infringing trademark and trade dress to consumers in this judicial district; unlawfully causing, contributing to and inducing the display, promotion, marketing, exhibition and sale of infringing products bearing Plaintiff's federally registered trademark and distinctive trade dress in this district; targeting consumers in this district; engaging in trademark infringement and other acts of unfair competition described herein that deceive, harm, confuse and are likely to confuse consumers in this district causing harm to FIMT and consumers in this judicial district; violating the patent rights of FIMT, a Florida limited liability company, causing infringing instrumentalities to be sold to consumers within this district, causing products which may be unsafe for consumers within this district, and acting in concert with a Defendant and receiving revenue, directly or indirectly, or other benefit including increased sales to Five Below as a result of purchases or payments from Florida residents and consumers through advertising, sales, offers for sale and promotion within this district and directed to consumers within this district, therefore purposefully and voluntarily directing its activities toward this forum.

PLAINTIFF, SPIN-BALLS, LLC d/b/a FUN IN MOTION TOYS

55. Since its inception, FIMT has been a pioneer in the manufacture, distribution and sale in interstate commerce of high-quality toys.

56. Like many successful businesses built from the ground up, FIMT had humble beginnings. FIMT has its origins as a part time business venture operated out of Mssrs. Schlapik's and Dennison's respective homes and a storage facility.

57. Mr. Schlapik and Dennison were each employed in the pharmaceutical and technology industries, respectively, and worked to develop their toy company after hours and on weekends.

58. Eventually, the demand for FIMT's products swelled to the point where it constituted a sustainable business that required the full-time attention of Mssrs. Schlapik and Dennison.

59. Accordingly, in an effort to fully develop their vision for FIMT as an industry leading toy company, Mssrs. Schlapik and Dennison risking everything and left their professional careers behind in order to dedicate their full-time, combined efforts to FIMT.

60. As a result of many years of sacrifice, arduous labor, innovation and passion for the toy business held by Mr. Schlapik and Mr. Dennison, FIMT has grown into the successful company it is today.

61. Through trial and error, at great expense and after extensive testing and quality control measures, FIMT has identified and used high-quality materials in each of FIMT's products, including its KARMAGAMI®, SHASHIBO® and SPINBALLS™ product lines.

62. FIMT's KARMAGAMI®, SHASHIBO® and SPINBALLS® products adhere to industry safety standards and are subjected to extensive testing internally and by third party testing labs before being brought to the consumer marketplace.

63. The fruits of FIMT's labor are self-evident. FIMT has earned a multitude of toy industry awards for its SPINBALLS™, SHASHIBO® and KARMAGAMI® product lines. SHASHIBO®, FIMT's flagship product, is a six-time finalist for the Toy Industry Association's Toy of the Year Award from 2020-2023, placing FIMT in the company of fellow nominees including industry giants and mainstays, Mattel, Lego and Hasbro. KARMAGAMI® was selected for the American Specialty Toy Retailing Association's 2020 Best Toys for Kids Award in the puzzle category. SPINBALLS™ is also a multiple award-winning product and recipient of a National Parenting Products Award.

64. FIMT has sold approximately 5,000,000 units of its SHASHIBO® products worldwide. The SHASHIBO® trademark and SHASHIBO® trade dress have been exposed to tens of millions of consumers through the marketing efforts of FIMT and its SHASHIBO® product has consistently held the highly coveted number one ranking amongst *all* products in the Toys and Games category on Amazon.com on numerous occasions over the past three years.

65. SPINBALLS™, FIMT's first product, has consistently performed well in the marketplace year after year for more than a decade. FIMT, most recently, invested in improvements to its SPINBALLS™ product, relaunching its LED Poi Balls set as SPINBALLS GLOW.O®.

FIMT'S SPINBALLS® TRADE DRESS

66. FIMT understood the importance and value of protecting their intellectual property early on. After working to perfect his first invention, a set of innovative LED Poi Balls sold under the SPINBALLS™ trademark, Mr. Schlapik pursued patent protection, applying for and receiving utility patents in the United

States and Canada. Additionally, FIMT chose to adopt and utilize a specific trade dress in association with the marketing and sale of its SPINBALLS™ product.

67. The SPINBALLS™ trade dress is unique and inherently distinctive in the toy industry. Notwithstanding the availability of numerous other packaging and marketing choices, FIMT developed their own SPINBALLS™ packaging and marketing materials which features unique and distinctive elements including circular cut outs and an image of multicolored spiraling graphics encircling a human figure. A similar swirling graphic design is consistently present at the center of FIMT's federally registered SPINBALLS GLOW.O® trademark.

68. FIMT's non-functional trade dress packaging has no function which is essential to the use or purpose of the article or that affects the cost or quality of the product and, instead, has been intentionally utilized in commerce for more than a decade to provide its SPINBALLS™ products with a distinctive and immediately identifiable overall look and feel to consumers who have come to attach secondary meaning to the SPINBALLS™ trade dress which consumers identify, recognize and associate with FIMT as the sole source of origin of the SPINBALLS™ product.

69. FIMT's SPINBALLS™ trade dress packaging also utilizes specific inherently distinctive multi-colored patterns, shapes and color combinations in marketing the unique and innovative SPINBALLS™ products to consumers, distinguishing the SPINBALLS™ product from the goods of others.

70. For example, as pictured in **Figure 3**, FIMT's placement, stylization, design, combination, configuration and specific use of its unique circular cut outs, color scheme and colorful graphics on a black background as part of its trade dress creates a unique and total overall commercial impression in the minds of

consumers which serves to identify FIMT as the source of origin of its SPINBALLS™ products and to set apart FIMT as the sole source of origin of the SPINBALLS™ products from other companies in the toy marketplace.

71. FIMT has extensively utilized its SPINBALLS™ trade dress in association with its products and marketing since at least 2011, including products bearing the SPINBALLS™ trademark, to set FIMT's products apart from others in the toy marketplace and to identify FIMT as the sole source of origin of products and marketing materials bearing such trade dress.

72. FIMT's extensive worldwide marketing efforts in connection with its unique trade dress have resulted in consumers identifying its trade dress with FIMT as the sole source of products bearing the unique and specific color combinations, shapes, pattern, placement, size and design comprising the FIMT Trade Dress.

73. The FIMT Trade Dress, as used in connection with the products it produces, and markets to the toy industry, including the KARMAGAMI®, SPINBALLS™ and SHASHIBO® trade dress, is not functional. None of the trade dress elements which comprise each of the KARMAGAMI®, SPINBALLS™ and SHASHIBO® trade dresses are essential to the use or purpose of the products nor do they affect the cost or quality of the products. Instead, the distinctive combination and configuration of design elements of the FIMT Trade Dress for each of the KARMAGAMI®, SPINBALLS™ and SHASHIBO® trade dresses have as their primary purpose the creation of a distinctive commercial impression in the minds of consumers aimed at associating the total image and commercial impression of the trade dress with FIMT as the exclusive source of origin of such products. Alternative designs for each of the KARMAGAMI®, SPINBALLS™ and

SHASHIBO® trade dresses are readily available but Defendants chose FIMT's Trade Dress to ride off of FIMT's goodwill, resulting in a likelihood of consumer confusion as to the true source of origin of their inferior knock-offs.

74. The FIMT KARMAGAMI®, SPINBALLS™ and SHASHIBO® Trade Dresses are not essential to the use, purpose or function of the products it produces, including KARMAGAMI®, SPINBALLS™ and SHASHIBO®, nor does it affect the cost or quality of said products it produces nor place competitors at a non-reputational disadvantage. Indeed, the alternative color combinations, imagery and packaging selections available to competitors is virtually endless. Despite thousands upon thousands of alternative choices Defendants could have made with regard to the presentation of their knock-off products, Defendants chose to intentionally copy and use confusingly similar trade dress to the FIMT KARMAGAMI®, SPINBALLS™ and SHASHIBO® Trade Dress for each of FIMT's KARMAGAMI®, SPINBALLS™ and SHASHIBO® products in order to evoke some relationship, endorsement, approval or connection to FIMT's successful products and company, and to ride off of the goodwill, recognition, inherent distinctiveness and secondary meaning FIMT has built over time in FIMT's KARMAGAMI®, SPINBALLS™ and SHASHIBO® Trade Dress.

75. FIMT's unique and inherently distinctive trade dress is used in conjunction with its distinctive and stylized product packaging, marketing and promotional efforts, each of which is recognizable and consistent as an overall source identifying, commercial impression of FIMT as the sole source of origin of its successful products including KARMAGAMI®, SPINBALLS™ and SHASHIBO®.

FIMT'S MARKETING EFFORTS

76. FIMT has experienced remarkable growth and success from its earliest days. Such growth and success were not only the product of FIMT's innovative efforts, but also its comprehensive and expansive marketing efforts to consumers. As a result, FIMT products have been sold in more than 50 countries, reaching tens of millions of consumers through its marketing efforts. FIMT's KARMAGAMI®, SPINBALLS™ and SHASHIBO® Trade Dress and trademarked products have received substantial unsolicited media coverage, with SHASHIBO® having been featured on NBC's nationwide hit morning news and talk show, The Today Show, on two separate occasions, within numerous publications' suggested gift listings, in organically produced social media videos by consumers and fans, podcasts and other media. In 2019, SHASHIBO® was also featured in The Washington Post and awarded the Best Travel Toy for kids. Further, the SHASHIBO® trade dress has been viewed by tens of millions of consumers on the Internet, including Amazon.com, multiple channels in social media and on store shelves in thousands of stores in the United States and worldwide including Walmart, Target and many others. Indeed, FIMT has sold approximately five million units of its flagship SHASHIBO® product worldwide. As a result of its marketing efforts, FIMT's KARMAGAMI®, SPINBALLS™ and SHASHIBO® Trade Dress and trademarks have been viewed by tens of millions of people, creating a commercial impression in the minds of consumers who have come to associate FIMT's Trade Dress and trademarks with FIMT as the sole source of origin, giving its KARMAGAMI®, SPINBALLS™ and SHASHIBO® Trade Dress and trademarks secondary meaning.

77. For more than a decade, FIMT has consistently and continuously engaged in the development, manufacture, and sale of high-quality, innovative and unique toys. FIMT created unique, distinctive, and non-functional packaging designs to use in connection with FIMT's toys in order to set itself apart from the competition, including the trademarks it has adopted for use in commerce and the FIMT Trade Dress used in conjunction with its KARMAGAMI, SPINBALLS and SHASHIBO products. FIMT has extensively and continuously marketed and sold millions of its products worldwide, including in Florida, through distribution to resellers, through its interactive commercial website, Amazon.com, Walmart.com, Target.com, catalogs, social media and through the exhibition of its product lines including the KARMAGAMI, SPINBALLS and SHASHIBO at leading toy industry trade shows in the United States, including in Florida, and throughout the world.

78. FIMT has invested substantially, spending millions of dollars each year in marketing and promoting its products using the KARMAGAMI®, SPINBALLS® and SHASHIBO® trademarks, its common law marks and the KARMAGAMI®, SPINBALLS™ and SHASHIBO® Trade Dress throughout the United States, including within Florida, and worldwide, spending countless hours engaging, educating and developing its customer base including the general public, distributors and resellers of its KARMAGAMI, SPINBALLS and SHASHIBO products.

79. FIMT has expended a great deal of effort in authoring, developing and continuously improving upon its interactive commercial website: www.funinmotiontoys.com. Consumers viewing FIMT's website are provided with detailed information, including high definition imagery and videos regarding FIMT's product lines bearing the KARMAGAMI®, SPINBALLS™ and

SHASHIBO® trademarks and trade dress, showcasing the high-quality of FIMT's products, their unique design, packaging, marketing materials, safety features, instructional videos, apps, benefits of play and the potential returns on investment resellers may realize upon the purchase and resale of FIMT's products at the wholesale level.

80. FIMT also invests a great deal of time in strategically marketing its product lines through each of the leading social networking websites including Facebook, Instagram, TikTok, YouTube and LinkedIn. At such social media sites, FIMT further engages, educates and interacts with its customer base in promoting its products, including the KARMAGAMI®, SPINBALLS™ and SHASHIBO® product lines and those bearing its common law trademarks and trade dress, to consumers and the toy industry.

81. FIMT's efforts have led to a substantial presence on the aforementioned social media sites further enhancing the recognition of its product lines, including the KARMAGAMI®, SPINBALLS™ and SHASHIBO® product lines, trademarks and trade dress, to consumers in the general public and resellers in the toy industry.

82. FIMT has invested heavily in policing and ensuring the enforceability of its KARMAGAMI®, SPINBALLS™ and SHASHIBO® trademarks and trade dress, regularly and consistently making efforts to ensure counterfeiters and copycats are stopped from misappropriating its source identifying trademarks and trade dress which are FIMT's valuable intellectual property rights.

THE FIMT TRADEMARKS

83. FIMT owns numerous federally registered trademarks, including but not limited to: KARMAGAMI® (U.S. Trademark Reg. No. 6,316,497) in International Class 28 for puzzles, (**Exhibit G**), (ii) SPINBALLS GLOW.o® (U.S. Trademark Reg. Nos. 6,654,563 & 7,057,314) in International Class 28 for toys with LED light features for use in performance arts, namely, dance, poi, rope dart, flow art performances and glow art performances, (**Exhibit H**) (iii) SHASHIBO® (U.S. Trademark Reg. No. 5,777,594) in International Class 28 for puzzles, (**Exhibit I**), and (iv) FUN IN MOTION TOYS® (U.S. Trademark Reg. No. 5,458,121) in International Class 28 for toys, namely, juggling balls, and juggling sticks, helical spring toys and multi-colored helical spring toys, collapsible helical and spherical spring toys, and multi-colored collapsible helical and spherical spring toys, tether balls, balls for games and rubber balls; wearable toys that roll up and down the user's arms; toys with LED light features for use in performance arts, namely, poi (**Exhibit J**). True and correct copies of the United States Patent and Trademark Office ("USPTO") trademark registration certificates for each of the KARMAGAMI®, SPINBALLS GLOW.o®, SHASHIBO® and FUN IN MOTION TOYS® trademarks (collectively, the "FIMT trademarks") have been attached hereto and are incorporated by reference as **Exhibits G-J**.

84. The KARMAGAMI®, SPINBALLS GLOW.o®, SHASHIBO® and FUN IN MOTION TOYS® trademarks are each registered with the USPTO.

85. FIMT has used each of the FIMT trademarks in commerce, including within the State of Florida, in association with its products and services, to identify the source and quality of FIMT's goods and services to consumers and resellers in the toy marketplace.

86. By virtue of years of extensively using, marketing and promoting the FIMT trademarks in association with its products, FIMT has consciously promoted a connection between the FIMT trademarks and FIMT as the source of origin of products bearing the FIMT trademarks, resulting in the establishment of substantial and highly valuable goodwill in FIMT trademarks.

87. The FIMT trademarks are well-known and uniquely associated with FIMT in the minds of consumers throughout the United States as identifying a source of origin associated with the high-quality products sold by FIMT and FIMT's reputation in delivering safe, innovative, educational, impactful, distinctive and unique products to consumers and resellers in the toy marketplace.

88. The KARMAGAMI® trademark is fanciful in that it is an invented word which only has meaning in relation to the source identifying function it holds with regard to the unique puzzle toy that FIMT exclusively produces, markets, distributes, offers for sale and sells to consumers.

89. The SHASHIBO® trademark is fanciful in that it is an invented word which only has meaning in relation to the source identifying function it holds with regard to the unique puzzle toy that FIMT exclusively produces, markets, distributes, offers for sale and sells to consumers.

90. Given their extensive and continuous use in commerce, including within Florida, the FIMT trademarks are also entitled to common law trademark protection.

91. FIMT owns numerous common law marks including SPINBALLS™.

92. FIMT has extensively used the SPINBALLS™ trademark for more than a decade, since the company's inception in 2011, in commerce in the United States, including in Florida to identify its products and services.

93. As a result of its marketing efforts, sales and longevity of the product in the marketplace, over time, consumers have come to associate the SPINBALLS™ trademark with the unique and exclusive product it describes, FIMT's unique and patent-protected, LED Poi Balls, along with FIMT as the sole and exclusive producer of SPINBALLS™ LED Poi Balls.

94. Accordingly, the SPINBALLS™ trademark has acquired secondary meaning and is also entitled to protection under the common law trademark as a result of its consistent use in commerce to identify the source of origin of the SPINBALLS™ product line.

95. In addition to its exclusive federal and common law rights in the FIMT trademarks, developed through many years of commercial use, marketing and promotion in interstate commerce, including in Florida, FIMT has also used its trademarks in combination with its trade dress, as sources identifier including in connection with the KARMAGAMI®, SPINBALLS™, SHASHIBO® product lines of toys for years.

**FIVE BELOW'S INFRINGEMENT OF
FIMT'S INTELLECTUAL PROPERTY**

96. Founded in 2002 and headquartered in Philadelphia, Pennsylvania, Five Below is an American chain of specialty discount stores that sells trending products, including toys, which are less than \$5, plus an assortment of products from \$1 to \$25. Five Below also offers its products for sale through its fully interactive commercial website, fivebelow.com.

97. Five Below is a publicly traded company, trading under the NASDAQ ticker symbol FIVE, with a \$10.64B market capitalization as of the date of this Complaint.

98. All Five Below retail stores nationwide and the interactive commercial website, fivebelow.com, are owned and operated by Five Below, Inc.

99. Five Below has its largest concentration of retail stores in the State of Florida, with 151 stores currently operating within the State and additional stores slated to open in 2024.

100. Five Below markets its products through print, direct, e-mail and social media (including on Instagram, TikTok, X and Facebook) marketing, focusing on the tweens and teens demographics.

101. Five Below has become a direct competitor of FIMT, including, by way of their introduction of knock off KARMAGAMI®, SPINBALLS™ and SHASHIBO® products which infringe upon FIMT's patent, trademark and trade dress rights constituting acts of unfair competition.

102. Defendants' advertisements, promotions, marketing, offers to sell, sales and/or distribution of its infringing products, in direct competition with FIMT are likely to deceive and/or to cause consumer confusion as to the origin, sponsorship and/or affiliation of Defendants' infringing products, at least by creating the false and misleading impression that its infringing products emanate from, or are sponsored, affiliated, manufactured, authorized, or otherwise associated with FIMT when they are not.

103. Upon information and belief, Five Below contracts with Defendant JMM to manufacture Five Below's approved product packaging and approved product designs for distribution and sale by and through Defendants Five Below and 1616 Holdings, who act alone and in concert to distribute and sell infringing products through their vast network of retail stores and online through fivebelow.com.

104. Defendants infringing products are of a grossly inferior quality, lack any indicia of third-party testing and, with regard to, at least, Five Below's Magic Cube, may pose a threat to consumer safety.

105. Defendants advertise, market and promote their infringing products in the same industry, through many of the same channels of commerce, and offer to sell and sell products and services in the same class of goods as FIMT to the same consumers in the United States, including to consumers in the State of Florida. For example, both Plaintiff and Defendants market and sell their products to consumers in the toy industry through website sales, the Internet, social media websites including X, Facebook, Instagram and YouTube and direct marketing.

106. Five Below has stores in every state and marketplace resellers of FIMT's products exist, nationwide. Thus, Five Below also directly competes with FIMT's authorized resellers and wholesale customers, including Walmart, Target and thousands of mid-tier, specialty and independent retailers.

107. Defendants have intentionally targeted consumers in the State of Florida, including within the Middle District of Florida, through their fully interactive commercial website, social media campaigns, direct marketing, regular and consistent, exhibition, marketing and sales activities in the State of Florida, including within Hardee, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk and Sarasota Counties, where it operates dozens of Five Below retail stores.

108. Defendants have also intentionally targeted Florida consumers through interstate commerce and the shipment and transportation of infringing products into the State of Florida for pickup at stores located within the Tampa Division of the Middle District of Florida and home delivery to consumers located within the Tampa Division of the Middle District of Florida.

109. Even after being placed on express written notice and demand to cease and desist its infringement of FIMT's patent, trademark and trade dress rights, Defendants have in the past and continue to unlawfully, brazenly and willfully manufacture, import, market, offer for sale and sell products which infringe upon FIMT's patent, trademark and trade dress rights.

110. Defendants' willful infringement of FIMT's patent, trademark and trade dress rights is likely to cause confusion in the minds of relevant consumers as to the source of origin, affiliation, sponsorship, approval or connection of such products with those of FIMT and co-opting the goodwill that FIMT has worked tirelessly for more than a decade to build.

111. Given Defendants' failure to voluntarily cease and desist from infringing upon FIMT's intellectual property rights, FIMT sought legal counsel regarding Defendants' infringement. Defendants were twice placed on express written notice of their infringement, through FIMT's undersigned counsel, with two formal cease and desist demand and preservation of documents and information notices. See **Exhibits A & B**. Although Defendants have admitted receipt of both cease and desist letters, Defendants still fail to adhere to the demand to cease and desist from infringement and, as of the date of this filing, have, instead, continued to willfully and unlawfully arrogate FIMT's patent, trademark and trade dress rights by selling infringing products through, at least, its vast network of Five Below retail stores and the Five Below interactive commercial website.

112. Even after extending its original deadline for compliance in an effort to avoid litigation and in the hope that Defendants would act reasonably and cease and desist from their infringement after being placed on express detailed notice

attaching copies of FIMT's patents, trademarks and side-by-side analyses of its trade dress infringement, FIMT sent a second express notice to ensure Defendants' receipt and full understanding of the urgency of the compliance demanded. Unfortunately, Defendants still chose to ignore FIMT's second express notice, and have stubbornly continued to engage in the deliberate, intentional misappropriation of FIMT's intellectual property rights, targeting Plaintiff and consumers and causing Plaintiff damages and irreparable harm, throughout the United States, including in the State of Florida.

113. Defendants have intentionally and voluntarily conducted business in the State of Florida, in this judicial district, and this division, on a continuous, systematic and substantial basis from at least 2015, having also sold infringing products to FIMT's existing customers and potential customers located within the State of Florida during this period of time.

114. Defendants' stubborn refusal to cease and desist from their willful and knowing illegal activity has caused substantial damage to the goodwill FIMT has developed, at great cost and effort, in the FIMT trademarks and FIMT Trade Dress, actual confusion and a likelihood of confusion in the toy marketplace as to the source of products utilizing FIMT's trademarks and FIMT Trade Dress, deceiving and harming consumers, including Florida consumers, and has forced FIMT to take legal action in enforcing and policing its trademark and trade dress rights at great expense, including the filing of this suit.

**FIVE BELOW AND RMS INTENTIONALLY ENGAGED IN
TRADEMARK INFRINGEMENT, TRADE DRESS INFRINGEMENT
AND UNFAIR COMPETITION**

115. Defendants, including Five Below and 1616 Holdings, alone and in concert, have intentionally, with notice of FIMT's KARMAGAMI® federally registered trademark and KARMAGAMI® trade dress, traded off of the goodwill that FIMT has established in its KARMAGAMI® trademark and KARMAGAMI® trade dress in interstate commerce, including within the State of Florida, in this district and division.

116. Beginning at least as early as March 2022, Defendant RMS sold and offered for sale infringing products utilizing a confusingly similar mark, CALMAGAMI, to FIMT's federally registered KARMAGAMI® trademark and a colorable imitation of FIMT's KARMAGAMI® trade dress, including confusingly similar variants of the same, to Five Below for further distribution through Five Below's vast network of retail stores, fivebelow.com interactive commercial website, social media accounts, direct marketing and through third-party websites such as Instacart.com, including such sales to consumers in the State of Florida, within this district and division.

117. Even after express written notice on two separate occasions, Defendants RMS and Five Below continued their deliberate, intentional, and willful misappropriation of Plaintiff's KARMAGAMI® trademark and trade dress rights, and continued to use, offer for sale, sell, ship and transport infringing CALMAGAMI products in interstate commerce to consumers nationwide through its fully interactive commercial website, www.fivebelow.com, Five Below's vast network of retail stores, social media accounts and direct marketing, including to consumers in this district and division.

118. Defendants have thus, intentionally and willfully, following notice, marketed, promoted, exhibited, offered for sale and sold products unlawfully using the FIMT KARMAGAMI® trademarks and FIMT KARMAGAMI® trade dress in order to sell knock-off products which appear virtually identical to FIMT's authentic KARMAGAMI® product in commerce, including within the State of Florida, this district and division.

119. Defendants' unlawful acts of unfair competition, including its infringement of FIMT's KARMAGAMI® trademark and FIMT's KARMAGAMI® trade dress have caused FIMT damages, including irreparable damages.

120. Upon information and belief, at the time Defendants commenced the development, manufacture, offering for sale and sale of the infringing products utilizing FIMT's KARMAGAMI® trademark and KARMAGAMI® trade dress, including colorable imitations thereof, Defendants knew of FIMT's intellectual property rights and use of the same in commerce, and intentionally chose to infringe upon such rights.

121. Upon information and belief, Defendants selected the KARMAGAMI® trademark and KARMAGAMI® trade dress, including colorable imitations thereof, with notice of FIMT's prior use and trademark rights in the same, with the intent of causing consumer confusion, including within Florida, thereby enabling Defendants to profit from the goodwill FIMT established in its KARMAGAMI® trademark and KARMAGAMI® trade dress.

122. Worse more, Defendants also adopted confusingly similar verbiage in its product titles and descriptions in order to further lure consumers away from FIMT including use of certain keywords and trademarks that are confusingly

similar to those used by FIMT as part of its KARMAGAMI® trade dress and marketing materials.

123. Defendants' infringement of FIMT's KARMAGAMI® federally registered trademarks and KARMAGAMI® trade dress is incontrovertible. Five Below intentionally used a confusingly similar mark, CALMAGAMI to FIMT's KARMAGAMI® federally registered trademark and a colorable imitation of the overall and total appearance of FIMT's KARMAGAMI® trade dress on its website, social media and in connection with the sale, offering for sale, distribution and marketing of products in Five Below retail stores in a manner likely to deceive, cause confusion or mistake, as to the affiliation, connection, or association of Defendants with FIMT and/or as to the origin, sponsorship, or approval of Defendants' products by the true and exclusive source of origin of products bearing the KARMAGAMI® trademark and trade dress, FIMT.

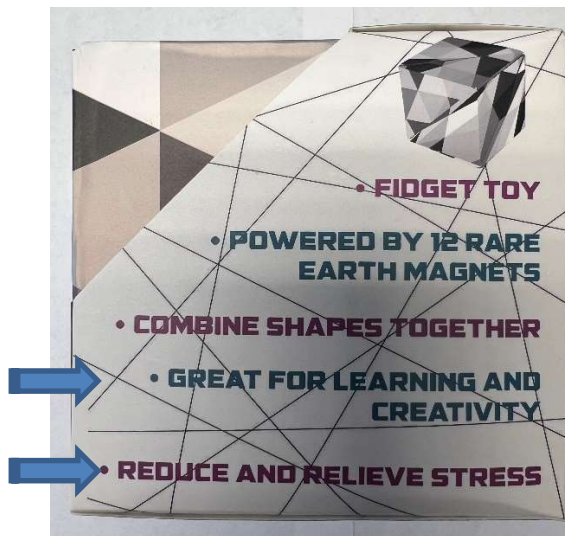
124. Defendants RMS's and Five Below's deliberate infringements of FIMT's KARMAGAMI® federally registered trademark and KARMAGAMI® trade dress, including colorable imitations thereof, are clearly illustrated through a side-by-side comparison of FIMT's KARMAGAMI® products with the CALMAGAMI product sold by Defendants RMS and Five Below. **See Figure 2.**

**EXEMPLARY INFRINGEMENTS OF
FIMT'S TRADEMARKS AND TRADE DRESS**

**DEFENDANTS FIVE BELOW'S, 1616 HOLDINGS' AND JMM'S
INFRINGEMENT OF
FIMT'S SHASHIBO® TRADE DRESS**

FIGURE 1

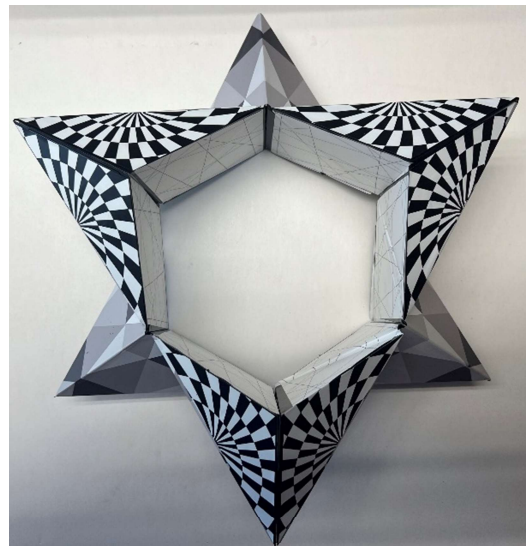
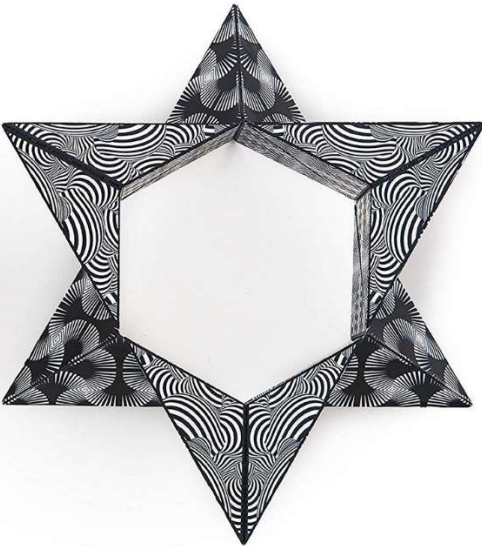
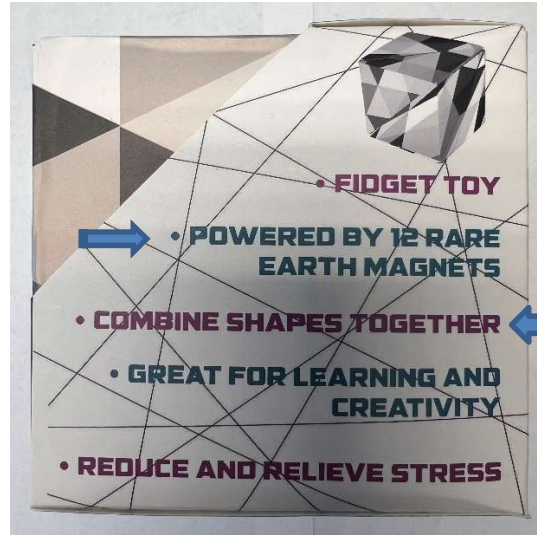
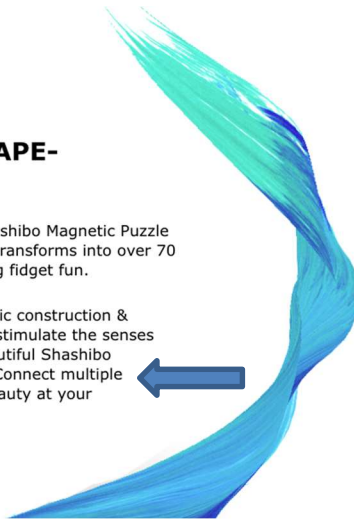


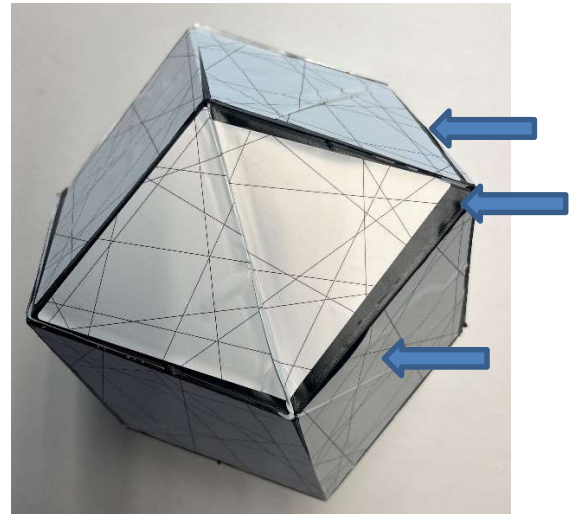
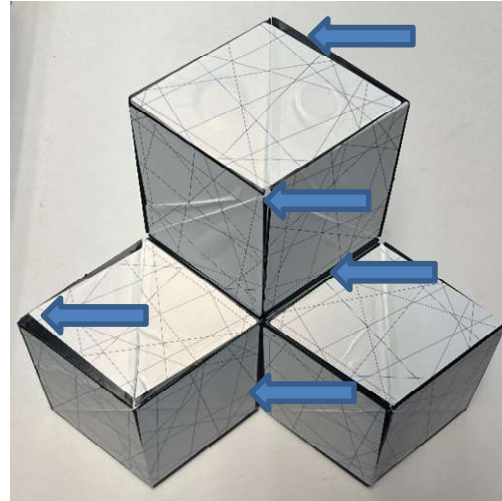


THE ULTIMATE IN SHAPE-SHIFTING FUN!

➔ Powered by 36 rare earth magnets Shashibo Magnetic Puzzle Box fits comfortably in hand & rapidly transforms into over 70 stunning shapes for endlessly satisfying fidget fun.

Shashibo's durable, injection-cast plastic construction & stunning 4-pattern tear-proof artwork stimulate the senses and challenge the mind. Collect all beautiful Shashibo designs for endless structure options! Connect multiple cubes for an ever-changing array of beauty at your fingertips. ➔





**FUN IN MOTION TOYS®
SHASHIBO®**

**FIVE BELOW'S
MAGIC CUBE**

FIGURE 2

**DEFENDANTS' FIVE BELOW'S AND RMS'S
INFRINGEMENT OF
FIMT'S KARMAGAMI® TRADEMARK AND KARMAGAMI® TRADE
DRESS**



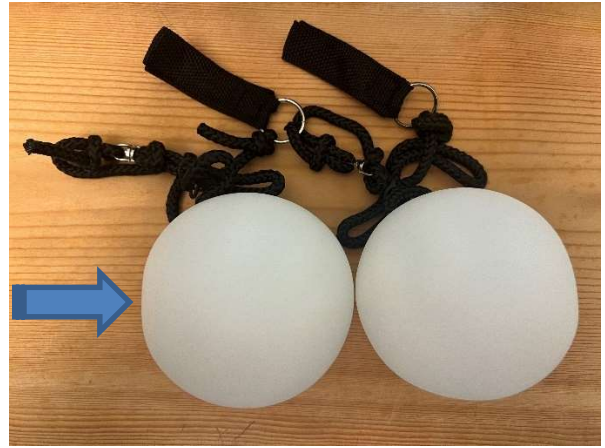
**FUN IN MOTION TOYS®
KARMAGAMI®**

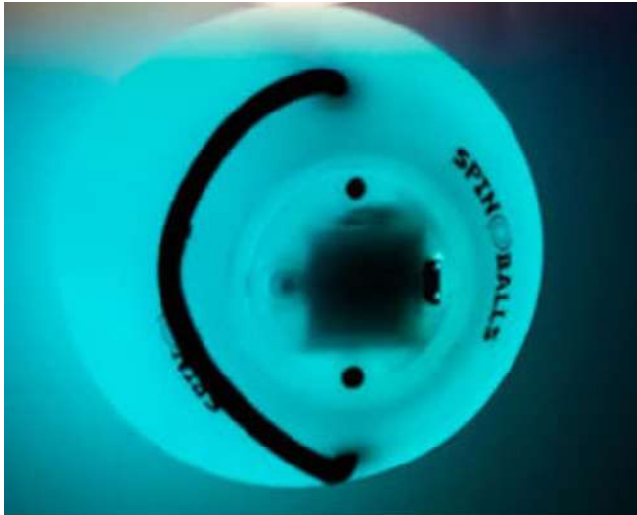
**FIVE BELOW'S and RMS'S
CALMAGAMI**

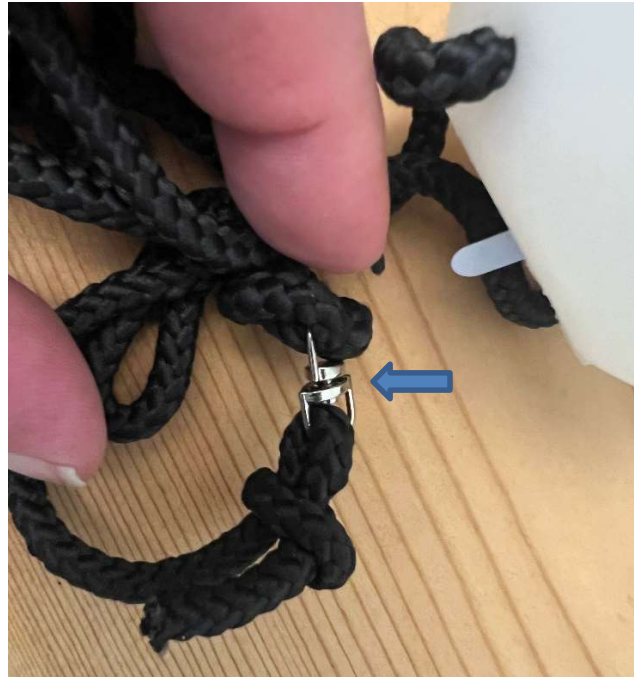
FIGURE 3

**DEFENDANTS FIVE BELOW'S, 1616 HOLDINGS'
AND JMM'S INFRINGEMENT OF
FIMT'S SPINBALLS™ TRADE DRESS**









**SPINBALLS™ LED POI BALLS
FUN IN MOTION TOYS®**

**LED POI BALLS
SOLD BY FIVE BELOW**

DEFENDANTS FIVE BELOW'S AND RMS'S UNFAIR COMPETITION

125. Defendants Five Below and RMS have systematically copied numerous aspects of FIMT's product designs, trade dress, brand identification, marketing materials and have made unlawful use of FIMT's federally registered KARMAGAMI® trademark by emblazoning their knock off products with a confusingly similar trademark, Calmagami, in an effort to unlawfully pass off Defendants' products as originating from FIMT, causing damage to FIMT.

126. As shown in **Figure 2**, the copying by Defendants Five Below and RMS is manifest, having utilized FIMT's KARMAGAMI® trademarks and trade dress in connection with its marketing materials, packaging and product design to sell confusingly similar products which have incontrovertibly and falsely adopted a confusingly similar mark, Calmagami, to the KARMAGAMI® trademark and confusingly similar trade dress to the KARMAGAMI® trade dress.

127. As illustrated in the side-by-side comparisons in **Figure 2**, Defendants have not only unlawfully used and adopted a confusingly similar mark to the FIMT's federally registered KARMAGAMI® trademark but have also arrogated the FIMT KARMAGAMI® Trade Dress to sell a knock off product using virtually identical trade dress inclusive of the same configuration, packaging design, marketing style, verbiage, product presentation, placement, shape and overall commercial impression present in FIMT's KARMAGAMI® trade dress in a confusingly similar and deceptive manner in association with the offer for sale, sale and marketing of their infringing Calmagami products.

128. Defendants' marketing, promotion, offering for sale and sale of infringing Calmagami products to the consuming public, including consumers in the State of Florida, has likely resulted in, and unless enjoined, is likely to continue

to result in the false belief and likelihood of confusion in the minds of consumers that there is a connection, association or endorsement of Defendants and their infringing Calmagami products by FIMT.

129. Upon information and belief, Defendants' marketing, promotion, offering for sale and sale of the infringing Calmagami products to the consuming public, including consumers in the State of Florida, has already resulted in actual confusion.

130. As shown in **Figure 2**, Defendants' clear attempt to lure consumers away from FIMT is manifest in its use of the KARMAGAMI® trademark, and a confusingly similar use of the KARMAGAMI® trade dress in using confusingly similar packaging, design, marketing style, text and FIMT's overall appearance to mimic the commercial impression of the KARMAGAMI® trademark and FIMT's KARMAGAMI® trade dress in association with the infringing Calmagami products Defendants' offered for sale and sold through its interactive commercial website, www.fivebelow.com and its vast network of Five Below retail stores. Taken together, the broad infringement shown in exemplary **Figure 2** and in **Exhibits M & N**, Defendants copied virtually every material aspect of FIMT's KARMAGAMI® product line and brazenly utilized the KARMAGAMI® trademark and KARMAGAMI® Trade Dress, including colorable imitations and confusingly similar variants thereof, in an effort to falsely suggest a connection, association with, or endorsement of, its products by FIMT, in order to deceive consumers, cause consumer confusion and take advantage of search engine optimization tactics in using FIMT's Federally Registered trademark to piggyback on the goodwill and reputation of FIMT, a competitor, including within the State of Florida.

131. Defendants Five Below and RMS were placed on express written notice of their infringement and continued thereafter to willfully infringe upon FIMT's KARMAGAMI® trademark and the KARMAGAMI® trade dress.

132. Defendants Five Below's and RMS's infringement of FIMT's KARMAGAMI® trademark and the KARMAGAMI® trade dress was with the intent to confuse, mislead and deceive consumers as to the true source of origin of Defendants' products and to pass off, falsely advertise and suggest to consumers its products were associated with, endorsed, licensed or identical to those sold by FIMT.

133. Based on the foregoing, Defendants Five Below and RMS have traded upon, illegally and intentionally sought to co-opt the goodwill associated with the FIMT's federally registered KARMAGAMI® trademark and the KARMAGAMI® trade dress.

134. Upon information and belief, Defendant Five Below, alone and in concert with RMS, manufactured, imported, marketed, offered for sale and sold many thousands of infringing Calmagami products in interstate commerce to Five Below, including, with knowledge, such products were for distribution and resale by Five Below through its fully interactive website, fivebelow.com and its vast network of retail stores nationwide, including in the State of Florida.

135. Upon information and belief, Defendant Five Below, alone and in concert with RMS, manufactured, imported, marketed, offered for sale and sold many thousands of infringing Calmagami products in interstate commerce through its fully interactive website, fivebelow.com, and through its vast network of Five Below retail stores nationwide, including in the State of Florida.

DEFENDANTS FIVE BELOW'S AND RMS'S ACTS OF INFRINGEMENT OF THE KARMAGMI® TRADEMARK, KARMAGAMI® TRADE DRESS AND UNFAIR COMPETITION ARE LIKELY TO CAUSE AND HAVE CAUSED ACTUAL CONSUMER CONFUSION AND HAVE CAUSED FIMT DAMAGES

136. The net effect of Defendants Five Below's and RMS's willful trademark infringement, trade dress infringement and unfair competition is a likelihood of confusion, actual confusion, past, continuing and potential future harm, including irreparable harm, to consumers and FIMT.

137. By virtue of Defendants Five Below's and RMS's documented actions in unlawfully misappropriating FIMT's federally registered KARMAGAMI® trademark and the KARMAGAMI® trade dress, used by FIMT to identify and set its products and company apart from the competition as the sole source of origin of such products, the likelihood of confusion in the marketplace is manifest.

138. For example, as is apparent in view of Defendants Five Below's and RMS's exemplary infringing uses of FIMT's federally registered KARMAGAMI® trademark and the KARMAGAMI® trade dress, as provided for in **Figure 2**, including, but not limited to Defendants Five Below's and RMS's marketing, promotion, offering for sale and sales of multiple versions and series of the infringing Calmagami products, Defendants Five Below and RMS used and continue to unlawfully use FIMT's KARMAGAMI® trademark and KARMAGAMI® trade dress, in a manner that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants Five Below and RMS with FIMT, or as to the source of origin, sponsorship, endorsement or approval of Defendants Five Below's and RMS's infringing Calmagami products by FIMT.

139. Defendants Five Below and RMS have unlawfully used FIMT's federally registered KARMAGAMI® trademark and the KARMAGAMI® trade dress in commerce within the United States, including within the State of Florida, through the fully interactive commercial website, fivebelow.com, and through Five Below's vast network of retail stores nationwide, including within Florida.

140. Defendants Five Below and RMS have manufactured, imported, marketed, transported, shipped, offered for sale and sold products unlawfully using FIMT's federally registered KARMAGAMI® trademark and the KARMAGAMI® trade dress to consumers in the United States, Florida and, more specifically, within this judicial district and division.

141. Defendants Five Below's and RMS's acts of unfair competition, including Defendants Five Below's and RMS's infringement of FIMT's federally registered KARMAGAMI® trademark and the KARMAGAMI® trade dress, were done with the intent to damage the reputation and goodwill associated with FIMT's goods and services and otherwise harm the business interests of FIMT.

142. Defendants Five Below's and RMS's unauthorized adoption of FIMT's federally registered KARMAGAMI® trademark and KARMAGAMI® trade dress, including colorable imitations thereof, on the infringing Calmagami products and packaging they manufacture, import, distribute, market, offer for sale and sell is confusingly similar in that the overall style, appearance and commercial impression of Defendants Five Below's and RMS's Calmagami trademark and trade dress to pass off and sell knock off products infringes upon FIMT's KARMAGAMI® trademark and KARMAGAMI® trade dress in its product design, presentation, marketing and packaging and is likely to cause

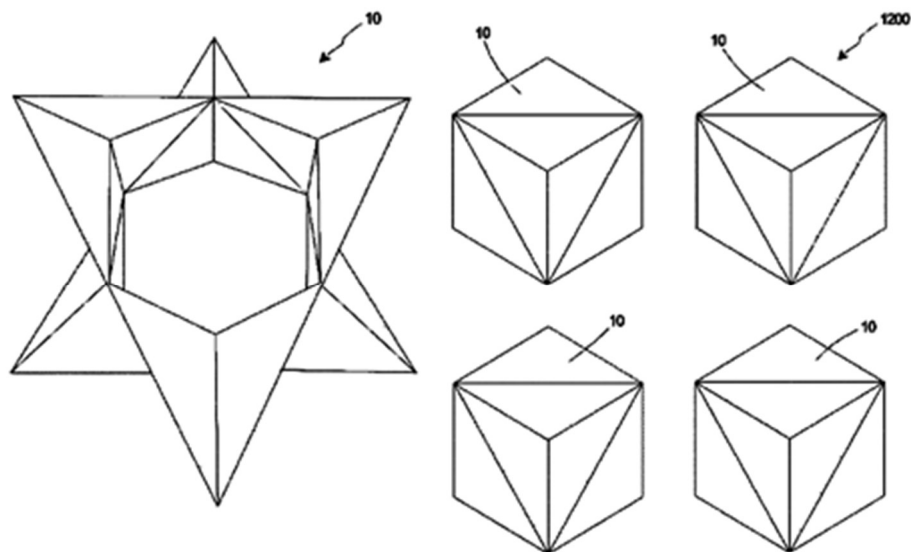
confusion in the minds of consumers and be mistaken by consumers as products originating from FIMT.

143. By reason of the foregoing, FIMT has suffered, and continues to suffer, irreparable harm, damages and a loss of its hard-earned and valuable goodwill; as a result, FIMT has no adequate remedy at law. Furthermore, by reason of the foregoing, consumers, including consumers in the State of Florida, are likely to suffer damage by being deceived into purchasing an inferior product they believe originates from FIMT or is part of the KARMAGAMI® brand resulting in artificial price devaluation, the wrongful perception of consumers FIMT is associated with or endorses Defendants' Calmagami products, and overall depletion of the value of the KARMAGAMI® product and brand.

THE FIMT PATENTS

144. FIMT patents its innovations to protect its products, brand, and market share. FIMT's patents also protect customer safety by ensuring that only safe products enter the marketplace. Presently, FIMT owns or has exclusive license to over fifty issued utility patents, utility models, and design patents worldwide. As relevant to this action, FIMT's patent portfolio includes patents that protect its SHASHIBO® and SPINBALLS™ product lines.

145. Specifically, FIMT's patent portfolio includes exclusive licenses to U.S. Patents 10,918,964 (the "964 Patent") and 11,660,547 (the "547 Patent"). The '964 and '547 Patents were respectively issued on February 16, 2021 and May 30, 2023 for inventions titled, "Three-Dimensional Geometric Art Toy." True and correct copies of the '964 Patent and the '547 Patent are attached hereto and incorporated by reference as **Exhibit O** and **Exhibit P**, respectively. Figures 6 and 12 of the '964 Patent (same as the '547 Patent) are reproduced below.



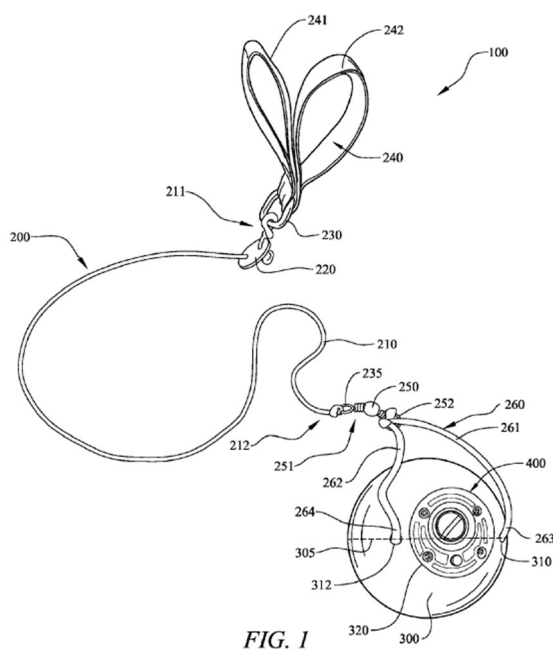
146. FIMT owns all substantial rights to the '964 Patent and the '547 Patent pursuant to an exclusive license agreement with the inventor, Mr. Andreas Hoenigschmid. A true and correct copy of the Third Amendment to License Agreement dated November 20, 2023 is attached hereto as **Exhibit Q** (the “Exclusive License Agreement”). The Exclusive License Agreement expressly transfers all substantial rights to FIMT, including, “the right to sue for infringement and to obtain equitable relief” and, “the sole and exclusive right to use, manufacture, market, sell, import and distribute any and all goods, including the Geometric Puzzles, incorporating or using the Property, inclusive of any goods using, incorporating, relating to or practicing the methods, disclosures and/or claims of the foregoing patents and patent applications.”

147. The '964 Patent and the '547 Patent benefit from a presumption of validity under 35 U.S.C. §282 and have never been challenged in a court of law or administrative proceeding before the USPTO. There are no maintenance fees due for either the '964 Patent or the '547 Patent, and the USPTO currently shows both

patents as a “Patented Case.” The ‘964 Patent and the ‘547 Patent are therefore valid and enforceable by FIMT.

148. Defendants have had actual knowledge of the ‘964 Patent and the ‘547 Patent since October 23, 2023, when Defendants were served the 10/23/2023 Notice & Demand. **Exhibit A.** Defendants are not currently licensed to practice the ‘964 Patent or the ‘547 Patent.

149. Additionally, FIMT owns U.S. Patent No. 8,926,331 (the “‘331 Patent”) and U.S. Patent No. 9,333,398 (the “‘398 Patent”). The ‘331 Patent was duly issued by the USPTO on January 6, 2015 for an invention called “Tethered LED Illuminating Ball.” The ‘398 Patent was duly issued by the USPTO on May 10, 2016 for an invention called “Handheld Tethered Ball Device.” True and correct copies of the ‘331 Patent and the ‘398 Patent are attached hereto and incorporated by reference as **Exhibit R** and **Exhibit S**, respectively. Figure 1 from the ‘331 Patent is reproduced below.



150. FIMT owns all rights in the '331 Patent and the '398 Patent pursuant to an assignment from the inventor, Mr. Kevin Schlapik, a true and correct copy of which is attached hereto as **Exhibit T**.

151. The '331 Patent and the '398 Patent benefit from a presumption of validity under 35 U.S.C. §282 and have never been challenged in a court of law or administrative proceeding before the USPTO. There are no maintenance fees due for either the '331 Patent or the '398 Patent, and the USPTO currently shows both as a "Patented Case." The '331 Patent and the '398 Patent are therefore valid and enforceable by FIMT.

152. To give notice of its patents, FIMT marks its SPINBALLS™ product with the '331 Patent and the '398 Patent, as shown below. Defendants therefore have had constructive knowledge under 35 U.S.C. §287(a) of the '331 Patent and the '398 Patent since FIMT began marking its SPINBALLS™ product.



153. Defendants have had actual knowledge of the '331 and '398 Patent since October 23, 2023, when Defendants were served the 10/23/2023 Notice &

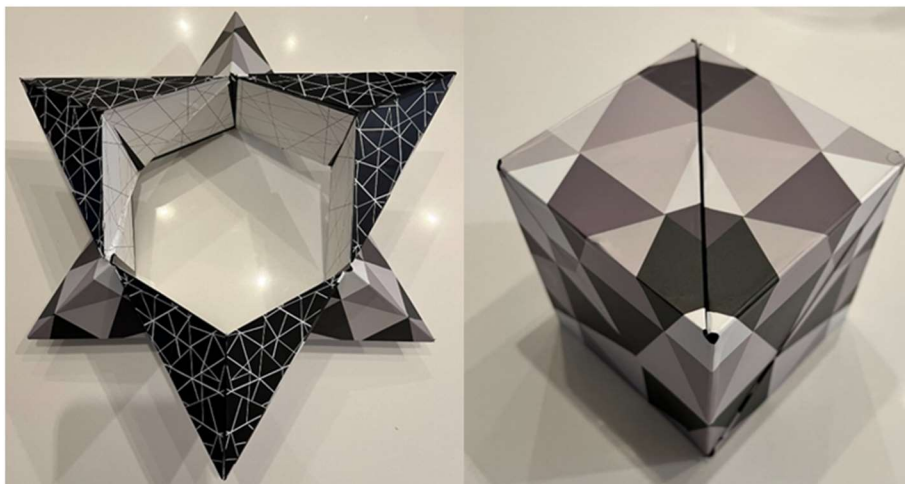
Demand. **Exhibit A.** Defendants are not currently licensed to practice the ‘331 Patent or the ‘398 Patent.

Five Below’s Infringing Products

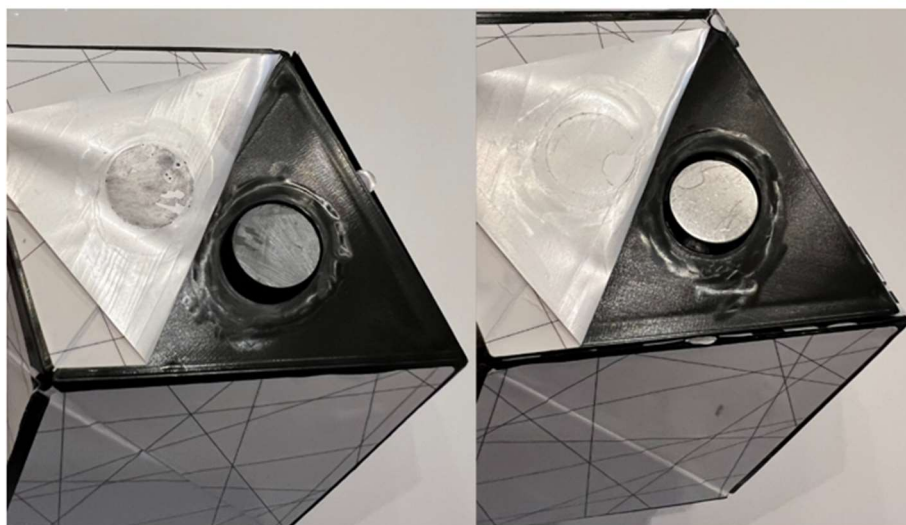
154. On information and belief, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. have made since at least October 23, 2023, and continue to make, use, sell, offer for sale, import, and/or induce the same, in/into the United States, products called the Magnetic Magic Cube (hereinafter, the “Magic Cube”), including, but not limited to, SKUs 1922342843680, 1922342843673, and 1922342843697, shown below. **Exhibits D, W.**



155. The Magic Cube is a puzzle that includes twelve tetrahedral modules hingedly coupled to each other by adhesive stickers. The Magic Cube can be manipulated between numerous configurations, including the same “star” and “cube” configurations.



156. The Magic Cube includes twenty-four magnets, including twelve rare earth magnets and twelve metal magnets. Each magnet is coupled to an external surface of its respective tetrahedral module by a flexible adhesive sticker.



157. On information and belief, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. also have made since at

least October 23, 2023, and continue to make, use, sell, offer for sale, import, and/or induce the same, in/into the United States, a product called the LED Poi Balls (hereinafter, the “LED Poi Balls”) which includes, but is not limited to, SKU 1922343100706, shown below. **Exhibits D, W.**



158. As shown on the packaging thereof, each LED Poi Ball includes translucent ball body containing an internal battery-powered LED light source with six color, strobe, and morph modes. Each LED Poi Ball further includes a retention cord extending from the ball body. The retention cord is coupled by a swivel with a tether.



GENERAL PATENT INFRINGEMENT ALLEGATIONS

159. The Magic Cube meets all limitations of at least one claim of the '964 Patent.

160. The Magic Cube meets all limitations of at least one claim of the '547 Patent.

161. The LED Poi Balls meets all limitations of at least one claim of the '331 Patent.

162. The LED Poi Balls meets all limitations of at least one claim of the '398 Patent.

163. Defendants are not licensed under the '964 Patent, the '547 Patent, the '331 Patent, or the '398 Patent.

164. Defendants have directly infringed, induced infringement, and continue to infringe, the '964 Patent, the '547 Patent, the '331 Patent, and the '398 Patent by engaging in acts constituting infringement under 35 U.S.C. §271(a), (b), and/or (c), including but not limited to making, using, selling, and offering for sale, in this District and elsewhere in the United States, and importing into the United States, the Magic Cube and the LED Poi Balls.

COUNT I

(Patent Infringement of U.S. Patent No. 10,918,964 in Violation of 35

U.S.C. § 271)

(as to Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM

MANUFACTURING (HK) LTD.)

165. FIMT restates and incorporates by reference the allegations made in paragraphs 1-31, 40-65, 96-114, 144-148, 154-156, 159-160, 163-164 as though fully set forth herein.

166. FIMT owns all substantial rights in U.S. Patent No. 10,918,964 (the “’964 Patent”) by exclusive license from the inventor of the ‘964 Patent, Mr. Andreas Hoenigschmid. **Exhibit Q.** The Exclusive License Agreement expressly transfers all substantial rights to FIMT, including, “the right to sue for infringement and to obtain equitable relief” and, “the sole and exclusive right to use, manufacture, market, sell, import and distribute any and all goods, including the Geometric Puzzles, incorporating or using the Property, inclusive of any goods using, incorporating, relating to or practicing the methods, disclosures and/or claims of the foregoing patents and patent applications.”

167. The ‘964 Patent was duly issued on February 16, 2021 from U.S. Patent Application No. 16/718,123, filed December 17, 2019, which is a continuation of U.S. Patent Application No. 14/487,219, filed September 16, 2014. **Exhibit O.** The ‘964 Patent benefits from a presumption of validity under 35 U.S.C. §282. There are no maintenance fees due for the ‘964 Patent and the USPTO currently shows the ‘964 Patent as a “Patented Case.” The ‘964 Patent has never been challenged in a court of law or administrative proceeding. The ‘964 Patent is therefore valid and enforceable by FIMT.

168. On information and belief, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. have made since at least October 23, 2023, and continue to make, use, sell, offer for sale, import, and/or induce the same, in/into the United States, products called the Magnetic Magic Cube (hereinafter, the “Magic Cube”), including, but not limited to, SKUs 1922342843680, 1922342843673, and 1922342843697, shown below. **Exhibits D, W.**

169. An exemplary claim chart comparing independent claim 7 of the '964 Patent to the Magic Cube is attached hereto as **Exhibit U**.

170. As shown in the claim chart, the Magic Cube meets every limitation of at least claim 7 of the '964 Patent.

171. Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC., and JM MANUFACTURING (HK) LTD. have had knowledge that the Magic Cube infringes the '964 Patent since at least October 23, 2023, when Defendants were served 10/23/23 Notice and Demand. **Exhibit A**. With full knowledge of the legal consequences of their actions, Defendants continue to willfully infringe the '964 Patent.

172. Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC., and JM MANUFACTURING (HK) LTD. have directly infringed, literally or under the doctrine of equivalents, one or more claims of the '964 Patent under 35 U.S.C. §271(a) by making, using, selling, and offering for sale, in this District and elsewhere in the United States, and importing into the United States, products including the Magic Cube.

173. With knowledge that the Magic Cube infringes the '964 Patent since at least October 23, 2023, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC., and JM MANUFACTURING (HK) LTD. have indirectly infringed, literally or under the doctrine of equivalents, one or more claims of the '964 Patent under 35 U.S.C. §271(b) by inducing their suppliers and customers to make, use, sell, and offer for sale, in this District and elsewhere in the United States, and importing into the United States, products including the Magic Cube.

174. With knowledge that the Magic Cube infringes the '964 Patent since at least October 23, 2023, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC.,

and JM MANUFACTURING (HK) LTD. have contributed to infringement, literally or under the doctrine of equivalents, of one or more claims of the '964 Patent under 35 U.S.C. §271(c) by offering to sell and/or selling within the United States and/or importing into the United States a component of infringing products including the Magic Cube, constituting a material part of the invention claimed by the '964 Patent, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use.

175. As a result of Defendants' direct, indirect, contributory, and willful infringement of at least claim 7 of the '964 Patent, FIMT has suffered irreparable injury and is entitled to an injunction under 35 U.S.C. §283. Although damages are not adequate to compensate for the irreparable harm to FIMT, to the extent an injunction is not granted by this Court, FIMT is nevertheless entitled to monetary damages under 35 U.S.C. § 284 for Defendants' past infringement, together with enhanced damages, attorneys' fees, interest, and costs.

COUNT II
(Patent Infringement of U.S. Patent No. 11,660,547 in Violation of 35
U.S.C. § 271)
(as to Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM
MANUFACTURING (HK) LTD.)

176. FIMT restates and incorporates by reference the allegations made in paragraphs 1-31, 40-65, 96-114, 144-148, 154-156, 159-160, 163-164 as though fully set forth herein.

177. FIMT owns all substantial rights in U.S. Patent No. 11,660,547 (the "547 Patent") by exclusive license from the inventor of the '547 Patent, Mr.

Andreas Hoenigschmid. **Exhibit Q.** The Exclusive License Agreement expressly transfers all substantial rights to FIMT, including, “the right to sue for infringement and to obtain equitable relief” and, “the sole and exclusive right to use, manufacture, market, sell, import and distribute any and all goods, including the Geometric Puzzles, incorporating or using the Property, inclusive of any goods using, incorporating, relating to or practicing the methods, disclosures and/or claims of the foregoing patents and patent applications.”

178. The '547 Patent was duly issued on May 30, 2023 from U.S. Patent Application No. 17/149,499, filed January 14, 2021, which is a continuation from U.S. Patent Application No. 16/718,123, filed December 17, 2019, which is a continuation of U.S. Patent Application No. 14/487,219, filed September 16, 2014. **Exhibit P.** The '547 Patent benefits from a presumption of validity under 35 U.S.C. §282. There are no maintenance fees due for the '547 Patent and the USPTO currently shows the '547 Patent as a “Patented Case.” The '547 Patent has never been challenged in a court of law or administrative proceeding. The '547 Patent is therefore valid and enforceable by FIMT.

179. On information and belief, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. have made since at least October 23, 2023, and continue to make, use, sell, offer for sale, import, and/or induce the same, in/into the United States, products called the Magnetic Magic Cube (hereinafter, the “Magic Cube”), including, but not limited to, SKUs 1922342843680, 1922342843673, and 1922342843697, shown below. **Exhibits D, W.**

180. An exemplary claim chart comparing independent claim 12 of the '547 Patent to the Magic Cube is attached hereto as **Exhibit V.**

181. As shown in the claim chart, the Magic Cube meets every limitation of at least claim 12 of the '547 Patent.

182. Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC., and JM MANUFACTURING (HK) LTD. have had knowledge that the Magic Cube infringes the '547 Patent since at least October 23, 2023, when Defendants were served the 10/23/23 Notice and Demand. **Exhibit A.** With full knowledge of the legal consequences of their actions, Defendants continue to willfully infringe the '547 Patent.

183. Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC., and JM MANUFACTURING (HK) LTD. have directly infringed, literally or under the doctrine of equivalents, one or more claims of the '547 Patent under 35 U.S.C. §271(a) by making, using, selling, and offering for sale, in this District and elsewhere in the United States, and importing into the United States, products including the Magic Cube.

184. With knowledge that the Magic Cube infringes the '547 Patent since at least October 23, 2023, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC., and JM MANUFACTURING (HK) LTD. have indirectly infringed, literally or under the doctrine of equivalents, one or more claims of the '547 Patent under 35 U.S.C. §271(b) by inducing their suppliers and customers to make, use, sell, and offer for sale, in this District and elsewhere in the United States, and importing into the United States, products including the Magic Cube.

185. With knowledge that the Magic Cube infringes the '547 Patent since at least October 23, 2023, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC., and JM MANUFACTURING (HK) LTD. have contributed to infringement, literally or under the doctrine of equivalents, of one or more claims of the '547 Patent under

35 U.S.C. §271(c) by offering to sell and/or selling within the United States and/or importing into the United States a component of products including Magic Cube, constituting a material part of the invention claimed by the '547 Patent, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use.

186. As a result of Defendants' direct, indirect, and willful infringement of at least claim 12 of the '547 Patent, FIMT has suffered irreparable injury and is entitled to an injunction under 35 U.S.C. §283. Although damages are not adequate to compensate for the irreparable harm to FIMT, to the extent an injunction is not granted by this Court, FIMT is nevertheless entitled to monetary damages under 35 U.S.C. § 284 for Defendants' past infringement, together with enhanced damages, attorneys' fees, interest, and costs.

COUNT III
(Patent Infringement of U.S. Patent No. 8,926,331 in Violation of 35
U.S.C. § 271)
(as to Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM
MANUFACTURING (HK) LTD.)

187. FIMT restates and incorporates by reference the allegations made in paragraphs 1-31, 40-65, 96-114, 149-153, 157-158, 161-164, as though fully set forth herein.

188. FIMT owns all rights in U.S. Patent No. 8,926,331 (the "331 Patent") by assignment from the inventor, Mr. Kevin Schlapik. **Exhibit T.**

189. The '331 Patent was duly issued on January 6, 2015 from U.S. Patent Application No. 13/425,502, filed March 21, 2012, which claims the benefit of U.S.

Provisional Patent Application No. 61/467,259, filed March 24, 2011. **Exhibit R.** The '331 Patent is titled "Tethered LED Illuminating Ball." There are no maintenance fees due for the '331 Patent and the USPTO currently shows the '331 Patent as a "Patented Case." The '331 Patent has never been challenged in a court of law or administrative proceeding. The '331 Patent is therefore valid and enforceable by FIMT.

190. On information and belief, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. also have made since at least October 23, 2023, and continue to make, use, sell, offer for sale, import, and/or induce the same, in/into the United States, a product called the LED Poi Balls (hereinafter, the "LED Poi Balls") which includes, but is not limited to, SKU 1922343100706. **Exhibits D, W.**

191. An exemplary claim chart comparing the LED Poi Balls to independent claim 1 of the '331 Patent is attached hereto as **Exhibit X.**

192. As shown, the LED Poi Balls meet every limitation of at least claim 1 of the '331 Patent.

193. Because FIMT marks the packaging of its SPINBALLS™ product with the "U.S. Pat. No. 8,926,331 B1 & 9,333,398 B1," Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. have had constructive knowledge under 35 U.S.C. §287(a) of the '331 Patent since FIMT began marking its SPINBALLS™ product. Further, Defendants have had actual knowledge that their products, including the LED Poi Balls, infringe the '331 Patent since at least October 23, 2023, when Defendants were served the 10/23/23 Notice and Demand. **Exhibit A.** With full knowledge of the legal consequences of their actions, Defendants continue to willfully infringe the '331 Patent.

194. Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. have directly infringed, literally or under the doctrine of equivalents, one or more claims of the '331 Patent under 35 U.S.C. §271(a) by making, using, selling, and offering for sale, in this District and elsewhere in the United States, and importing into the United States, products including the LED Poi Balls.

195. With knowledge of the '331 Patent since January 6, 2015 and knowledge that the LED Poi Balls infringe the '331 Patent since at least October 23, 2023, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. have indirectly infringed, literally or under the doctrine of equivalents, one or more claims of the '331 Patent under 35 U.S.C. §271(b) by inducing their suppliers and customers to make, use, sell, and offer for sale, in this District and elsewhere in the United States, and importing into the United States, products including the LED Poi Balls.

196. With knowledge of the '331 Patent since January 6, 2015 and knowledge that the LED Poi Balls infringe the '331 Patent since at least October 23, 2023, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. have contributed to infringement, literally or under the doctrine of equivalents, of one or more claims of the '331 Patent under 35 U.S.C. §271(c) by offering to sell and/or selling within the United States and/or importing into the United States a component of the LED Poi Balls, constituting a material part of the invention claimed by the '331 Patent, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use.

197. As a result of Defendants' direct, indirect, and willful infringement of at least claim 1 of the '331 Patent, FIMT has suffered irreparable injury and is entitled to an injunction under 35 U.S.C. §283. Although damages are not adequate to compensate for the irreparable harm to FIMT, to the extent an injunction is not granted by this Court, FIMT is nevertheless entitled to monetary damages under 35 U.S.C. § 284 for Defendants' past infringement, together with enhanced damages, attorneys' fees, interest, and costs.

COUNT IV
(Patent Infringement of U.S. Patent No. 9,333,398
in Violation of 35 U.S.C. § 271)
(as to Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC.
and JM MANUFACTURING (HK) LTD.)

198. FIMT restates and incorporates by reference the allegations made in paragraphs 1-31, 40-65, 96-114, 149-153, 157-158, 161-164 as though fully set forth herein.

199. FIMT owns all rights in U.S. Patent No. 9,333,398 (the "398 Patent") by assignment from the inventor, Mr. Kevin Schlapik. **Exhibit T.**

200. The '398 Patent was duly issued on May 10, 2016 from U.S. Patent Application No. 14/560,955, filed December 4, 2014, which is a continuation-in-part of U.S. Patent Application No. 13/425,502, filed March 21, 2012, which claims the benefit of U.S. Provisional Patent Application No. 61/467,259, filed March 24, 2011. **Exhibit S.** The '398 Patent is titled "HANDHELD TETHERED BALL DEVICE." There are no maintenance fees due for the '398 Patent and the USPTO currently shows the '398 Patent as a "Patented Case." The '398 Patent has never

been challenged in a court of law or administrative proceeding. The '398 Patent is therefore valid and enforceable by FIMT.

201. On information and belief, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. also have made since at least October 23, 2023, and continue to make, use, sell, offer for sale, import, and/or induce the same, in/into the United States, a product called the LED Poi Balls (hereinafter, the "LED Poi Balls") which includes, but is not limited to, SKU 1922343100706. **Exhibits D, W.**

202. An exemplary claim chart comparing the LED Poi Balls to independent claim 1 of the '398 Patent is attached hereto as **Exhibit Y.**

203. As shown, the LED Poi Balls meet every limitation of at least claim 1 of the '398 Patent.

204. Because FIMT marks the packaging of its SPINBALLS™ product with the "U.S. Pat. No. 8,926,331 B1 & 9,333,398 B1," Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. have had constructive knowledge under 35 U.S.C. §287(a) of the '398 Patent since FIMT began marking its SPINBALLS™ product. Further, Defendants have had knowledge that their products, including the LED Poi Balls, infringe the '398 Patent since at least October 23, 2023, when Defendants were served the 10/23/23 Notice and Demand. **Exhibit A.** With full knowledge of the legal consequences of their actions, Defendants continue to willfully infringe the '398 Patent.

205. Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. have directly infringed, literally or under the doctrine of equivalents, one or more claims of the '398 Patent under 35 U.S.C. §271(a) by making, using, selling, and offering for sale, in this District and

elsewhere in the United States, and importing into the United States, products including the LED Poi Balls.

206. With constructive knowledge of the '398 Patent since at least May 10, 2016, and knowledge that their products, including the LED Poi Balls, infringe the '398 Patent since at least October 23, 2023, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. have indirectly infringed, literally or under the doctrine of equivalents, one or more claims of the '398 Patent under 35 U.S.C. §271(b) by inducing their suppliers and customers to make, use, sell, and offer for sale, in this District and elsewhere in the United States, and importing into the United States, products including the LED Poi Balls.

207. With constructive knowledge of the '398 Patent since at least May 10, 2016, and knowledge that their products, including the LED Poi Balls, infringe the '398 Patent since at least October 23, 2023, Defendants FIVE BELOW, INC., 1616 HOLDINGS, INC. and JM MANUFACTURING (HK) LTD. have contributed to infringement, literally or under the doctrine of equivalents, of one or more claims of the '398 Patent under 35 U.S.C. §271(c) by offering to sell and/or selling within the United States and/or importing into the United States a component of the LED Poi Balls, constituting a material part of the geometric art toy claimed by the '398 Patent, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use.

208. As a result of Defendants' direct, indirect, and willful infringement of at least claim 1 of the '398 Patent, FIMT has suffered irreparable injury and is entitled to an injunction under 35 U.S.C. §283. Although damages are not adequate to compensate for the irreparable harm to FIMT, to the extent an

injunction is not granted by this Court, FIMT is nevertheless entitled to monetary damages under 35 U.S.C. § 284 for Defendants' past infringement, together with enhanced damages, attorneys' fees, interest, and costs.

COUNT V

**(Trademark Infringement in Violation of 15 U.S.C. § 1114)
(as to Defendants' Five Below, Inc. and RMS International (USA),
Inc.)**

209. FIMT incorporates by reference paragraphs 1-39, 43-65, and 76-143 as if fully set forth herein.

210. Defendants Five Below and RMS unlawfully used in commerce a confusingly similar mark, Calmagami, to FIMT's KARMAGAMI® trademark in connection with the labeling, marketing, promotion, presentation, offering for sale and sale of confusingly similar knock-off products in International Class 28 to consumers in the United States, including in this Judicial District and Division, and have thus infringed upon FIMT's rights in its federally registered KARMAGAMI® trademark.

211. Defendants Five Below and RMS have unlawfully used FIMT's KARMAGAMI® trademark in marketing, promoting, exhibiting, offering for sale and selling the following non-exhaustive list of infringing Calmagami products identified by the style printed on the Calmagami packaging used by Five Below and RMS: Calmagami Galaxies, Calmagami Swirling Galaxies, Calmagami Graffiti Vibes, Calmagami Neon Kaleidoscope, Calmagami Mandala, Calmagami Watercolor Marble, Calmagami Calming Waters, Calmagami Galaxies, Calmagami Geometric Shapes, Calmagami Geo Shapes, Calmagami Folk, Calmagami Optical Illusions, Calmagami Illusions, Calmagami Floral and others (collectively, the

“infringing KARMAGAMI® products”). Additionally, many of the aforementioned products are sold in differing variations, each using and prominently displaying a confusingly similar Calmagami product name, each substantiating a different product and infringement of FIMT’s federally registered KARMAGAMI® trademark and KARMAGAMI® trade dress.

212. Defendants Five Below and RMS offered for sale and sold at least four different series of the Calmagami products, Series 1, 2, 3 and 4, with each series comprised of multiple styles of infringing KARMAGAMI® products.

213. The infringing KARMAGAMI® products were sold in Five Below retail stores in the United States, through fivebelow.com for home delivery to consumers and through third-party websites such as Instacart.com for same day home delivery to consumers, including in Florida, this Judicial District and Division. See **Exhibit M**.

214. Defendants Five Below and RMS has in the past and is now knowingly and deliberately directing and controlling the infringing activities complained of herein, alone and in concert, for their own financial gain, including the infringement of FIMT’s KARMAGAMI® trademark and trade dress through the use, promotion, marketing, offering for sale and sale of infringing KARMAGAMI® products in commerce, in the United States. As of the date of this filing, Defendants are still displaying the infringing KARMAGAMI® products on their interactive commercial website, fivebelow.com. See **Exhibit E**.

215. Defendant Five Below has the authority and ability to direct the activities of Five Below retail stores nationwide, which are each corporate owned and operated, as well as fivebelow.com. Accordingly, Defendant Five Below supervises and approves the activities of its Five Below retail stores nationwide and

fivebelow.com, financially benefits from the infringing activities of Five Below retail stores nationwide and fivebelow.com and despite holding the authority and ability to stop Five Below retail stores' and fivebelow.com's infringing activities upon repeated express written notice of its infringement of FIMT's KARMAGAMI® trademark and KARMAGAMI® trade dress rights, Defendant Five Below refused to cease and desist from its infringement and, instead, continued to intentionally and willfully direct and control the infringing activities of Five Below retail stores nationwide and fivebelow.com.

216. Defendant RMS, a multinational designer, developer and supplier of toys, has the authority and ability to direct the activities of its employees and agents. Upon information and belief, RMS supplied Five Below retail stores nationwide and fivebelow.com, directly or indirectly, with the infringing KARMAGAMI® products, supervised and approved the design, manufacture, importation and supply of infringing KARMAGAMI® products to Five Below retail stores nationwide and fivebelow.com, financially benefited from its own infringing activities and that of Five Below retail stores nationwide and fivebelow.com and despite holding the authority and ability to cease RMS's infringing activities, continued, with express written notice of its infringement of FIMT's KARMAGAMI® trademark and KARMAGAMI® trade dress rights, refused to cease and desist from its infringement and, instead, continued to intentionally and willfully direct and control the further supply of infringing KARMAGAMI® products to Five Below retail stores nationwide and fivebelow.com.

217. Defendants Five Below and RMS have knowingly and without the consent of FIMT used the FIMT's KARMAGAMI® trademark and KARMAGAMI® trade dress in interstate commerce in connection with the sale,

offering for sale, distribution, promotion and/or advertising of goods in International Class 28, and such activities are likely to cause confusion or mistake, or to deceive consumers in the United States as to the source of origin of such goods.

218. Defendants Five Below and RMS selected and targeted FIMT's KARMAGAMI® trademark and trade dress, and intentionally developed and offered for sale a confusingly similar line of products, further incorporating a colorable imitation of the FIMT KARMAGAMI® trademark and KARMAGAMI® trade dress, with the intent of deriving benefit from FIMT's reputation and goodwill in the toy industry.

219. Defendants Five Below and RMS have caused a likelihood of confusion and actual confusion between FIMT's products sold using the KARMAGAMI® trademark and KARMAGAMI® trade dress, and Defendants' infringing KARMAGAMI® products.

220. Defendants were on express written notice of FIMT's KARMAGAMI® trademark and the KARMAGAMI® trade dress and their infringing activities constitute intentional, willful infringement in violation of FIMT's trademark rights under 15 U.S.C. § 1114 and 15 U.S.C. § 1125(a), and have caused and will continue to cause FIMT damages, including irreparable harm, if not enjoined.

221. Unless immediately restrained and enjoined by this Court under 15 U.S.C. § 1116(a) and the equitable powers of this Court, Defendants Five Below and RMS will persist in their systematic and calculated infringing activities, thereby causing FIMT additional irreparable harm.

222. FIMT has sustained damages as a result of the infringing activities in an amount to be ascertained at trial, but in no event less than \$75,000.

223. Because Defendants Five Below's and RMS's infringement was willful, with notice of FIMT's intellectual property rights and in bad faith, this case qualifies for a judgment of three times profits or damages, whichever amount is greater, together with attorney's fees and costs pursuant to 15 U.S.C. § 1117(a).

224. FIMT has suffered damages as a result of Defendants Five Below's and RMS's acts of trademark infringement, trade dress infringement and unfair competition and, pursuant to the remedies set forth in Sections 34-36 of the Lanham Act, 15 U.S.C. §§ 1116-1118, FIMT is entitled to recover: (1) Defendants Five Below's and RMS's profits, (2) any damages sustained by FIMT, (3) the costs of this action, including reasonable attorney's fees and costs of suit, and (4) a preliminary and permanent injunction enjoining Defendants Five Below and RMS from any further use of the infringed upon trademark and trade dress, and (5) a Destruction Order mandating the destruction of all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession or control of Defendants Five Below and RMS bearing the infringing trademarks or trade dress.

225. Plaintiff also requests an Order requiring Defendants to pay for the costs associated with corrective advertising to remedy the confusion caused by Defendants Five Below and RMS.

COUNT VI

(Common Law Trade Dress Infringement) (as to Defendants Five Below, Inc. and RMS International (USA), Inc.)

226. FIMT incorporates by reference paragraphs 1-39, 43-82, 95-143 as if fully set forth herein.

227. Through FIMT's extensive and continuous use in commerce in the United States and in Florida, FIMT's KARMAGAMI® trade dress has become a

well-known indicator of the source of origin, innovation, high quality and goodwill associated with FIMT and its unique KARMAGAMI® products in the toy industry.

228. Likewise, through the widespread success of FIMT's KARMAGAMI® products in the toy marketplace, FIMT's substantial marketing efforts and advertising spend over time, multiple industry awards and due to the unique nature of their product and packaging trade dress, FIMT's KARMAGAMI® trade dress has acquired substantial secondary meaning in the toy industry and consumer marketplace.

229. FIMT acquired the rights in its KARMAGAMI® trade dress well before Defendants Five Below and RMS commenced their unlawful use of FIMT's KARMAGAMI® trade dress in connection with their infringing KARMAGAMI® products.

230. FIMT began using its KARMAGAMI® trade dress as early as 2020 upon the launch of its first KARMAGAMI® product in the toy marketplace.

231. The KARMAGAMI® trade dress is comprised of immediately recognizable and well-defined trade dress elements including the KARMAGAMI® packaging design and marketing style which is both inherently distinctive and which has acquired secondary meaning in the minds of consumers who identify the unique design and overall look and feel of the KARMAGAMI® trade dress with FIMT as its sole source of origin. The overall look and feel of the packaging trade dress of the KARMAGAMI® product is immediately recognizable to consumers and is comprised of the KARMAGAMI® trademark in large typeface centered within the upper third of the packaging with the phrase "Calming Sensory Fidget Toy" centered directly under the KARMAGAMI® trademark in a smaller font, a hexagonal border design surrounding a transparent custom formed plastic

encasement cover formed to the specific hexagonal shape of the KARMAGAMI® product which is specifically placed and configured therein such that two of the hexagonal sides run parallel to each side of the packaging, leaving three evenly spaced openings between three parts of the KARMAGAMI® product with one opening running vertically from the center of the product and two openings running diagonally from the center of the product in opposing directions, with a backer card containing stylized marketing call outs including “Flips Infinitely” and “4 Colorful Designs” on a background which contains the color combinations of each specific style KARMAGAMI® product contained therein. In addition to the aforementioned trade dress elements, FIMT also utilizes the same unique imagery and marketing style as part of its KARMAGAMI® trade dress in order to further create a distinctive commercial impression and connection in the minds of consumers between the KARMAGAMI® trade dress and FIMT as the sole source of origin of its unique KARMAGAMI® product (collectively, the “KARMAGAMI® trade dress”).

232. FIMT’s KARMAGAMI® trade dress is not functional. Instead, FIMT’s KARMAGAMI® trade dress is both inherently distinctive and has acquired secondary meaning providing consumers with a unique commercial impression, serving as a distinctive source identifier, identifying and setting the KARMAGAMI® brand and its source of origin, FIMT, apart from competitors in the toy marketplace.

233. The KARMAGAMI® product, along with its immediately recognizable packaging and marketing trade dress, was the recipient of the 2020 ASTRA Best Toys for Kids Award in the puzzle category, an industry award presented by the American Specialty Toy Retailing Association. KARMAGAMI®

has enjoyed multiple years of consistent sales on Amazon.com, through Plaintiff's website, funinmotiontoys.com, and is also present in thousands of brick and mortar retail stores nationwide and around the world including mass, mid-market, specialty and independent retailers, where the KARMAGAMI® trade dress has been viewed by millions of consumers in the toy marketplace.

234. Accordingly, FIMT's KARMAGAMI® trade dress is entitled to protection under the common law.

235. Defendants Five Below and RMS have unlawfully used in commerce, including within the State of Florida, reproductions, copies and colorable imitations of FIMT's KARMAGAMI® trade dress in connection with the sale, offering for sale, distribution and advertising of confusingly similar products and services in the toy industry, and such use is likely to cause confusion, mistake, or to deceive consumers as to the true source of origin of such products, the sponsorship, affiliation and/or approval of Defendants' infringing products, at least by creating the false and misleading impression that its infringing products are manufactured by, authorized by, licensed by or otherwise associated with FIMT.

236. Despite the availability of alternative packaging designs, Defendants Five Below and RMS reproduced, counterfeited, copied and adopted a colorable imitation of FIMT's KARMAGAMI® trade dress by unlawfully using in commerce FIMT's KARMAGAMI® trade dress on their knock off products using a confusingly similar Calmagami mark on their packaging, labels, signs, prints, marketing and advertisements intended to be used upon or in connection with the offering for sale, sale, distribution, or advertising of goods or services on or in connection with Defendants' infringing KARMAGAMI® products, including Five

Below's and RMS's knock off Calmagami toys in the United States, including within the State of Florida, which is likely to cause confusion, mistake, or to deceive consumers, including consumers in the State of Florida.

237. Defendants Five Below's and RMS's unlawful use of FIMT's KARMAGAMI® trade dress in connection with the distribution, advertising, marketing, promotion, offering for sale, and sale of its infringing KARMAGAMI® products has resulted in confusion, mistake and/or deception and is likely to result in confusion, mistake and/or deception and the misleading impression and false belief of the consuming public that Defendants' infringing products and/or services emanate from the same source, are manufactured by, authorized, affiliated, approved with and/or sponsored by FIMT, all of which constitute violations of the common law.

238. Upon information and belief, Defendants Five Below's and RMS's unlawful use of FIMT's KARMAGAMI® trade dress, which is confusingly similar and a colorable imitation thereof, has been intentional, willful, and malicious. Defendants' bad faith is evidenced, at least, by the continuing and wholesale adoption of FIMT's KARMAGAMI® trade dress following express notice, in connection with the marketing, offering for sale and sale of Defendants' directly competing and infringing KARMAGAMI® products and continuing disregard for FIMT's exclusive intellectual property rights, valuable goodwill and the irreparable damage that Defendants were expressly warned would result from their infringement. Defendants' bad faith is also evidenced by Defendants' acts following express written notice, which went ignored. Instead of ceasing their infringement upon express notice, Defendants accelerated and expanded upon their continued infringement by distributing and offering for sale their infringing

KARMAGAMI® products in Five Below retail stores nationwide, through fivebelow.com and third party shopping and delivery services such as Instacart.com.

239. Because Defendants were placed on express written notice of FIMT's KARMAGAMI® trade dress and intentionally continued their infringing activities, Defendants' infringement constitutes intentional, willful and bad faith infringement in violation of FIMT's common law trade dress rights.

240. Upon information and belief, Defendant Five Below had the authority and ability to order the cessation of RMS's infringing activities but, instead, approved of the infringing activities of RMS, financially benefitted from the infringing activities of RMS and despite holding the authority and ability to cease their own infringing activities, as well as those of RMS, failed to cease and desist from its infringing acts and failed to stop those of RMS. Instead, Five Below and RMS, alone, and in concert, with express written notice, continued to intentionally and willfully infringe upon FIMT's KARMAGAMI® trade dress rights, causing FIMT damages.

241. Defendants Five Below's and RMS's intentional infringing and tortious acts of trade dress infringement have caused damages to FIMT and consumers, including consumers within the State of Florida, and, unless enjoined by this Court, will continue to cause such damages including irreparable harm to FIMT's goodwill.

242. Further, under Florida common law, including Fla. Stats. Pursuant to Florida Statutes §§495.131, 495.141, 495.161, 501.201, 501.204, 768.72(2) and 817.41 and Florida Common Law, FIMT is entitled to injunctive relief and to recover all damages caused by Defendants Five Below's and RMS's trade dress

infringement, including compensatory damages, statutory damages and/or Defendants' illicit profits, reasonable attorney's fees, costs of suit as well as punitive damages due to the willful nature of Defendants Five Below's and RMS's infringement. Defendants had actual knowledge of the wrongfulness of their acts of trade dress infringement and acts of unfair competition, and were fully aware of the high probability that injury or damage to Plaintiff FIMT would result, including irreparable harm, and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage to FIMT.

243. Defendants Five Below and RMS directly and knowingly participated, condoned, ratified, directed, controlled and consented to such conduct, for their own financial benefit. FIMT is entitled to all damages proximately caused by the intentional tortious acts of Defendants Five Below and RMS, including at least FIMT's damages, Defendants' profits, FIMT's costs, reasonable attorney fees and, due to the willful, intentional and bad faith nature of the unfair competition, an award of exemplary and punitive damages.

COUNT VII

(Federal Trade Dress Infringement) (as to Defendants Five Below, Inc. and RMS International (USA) Inc.)

244. FIMT incorporates by reference paragraphs 1-39, 43-82, 95-143 as if fully set forth herein.

245. Defendants Five Below and RMS are engaging in infringing conduct in direct violation of the Lanham Act, 15 U.S.C. § 1125(a) and common law, including but not limited to, using in interstate commerce trade dress that is confusingly similar to FIMT's KARMAGAMI® trade dress in connection with the importation, offering for sale, sale, distribution and/or advertising knock-offs of

Plaintiff's KARMAGAMI® products and such activities are likely to cause confusion or mistake, or to deceive consumers in the United States, including in the State of Florida.

246. Defendants Five Below, with knowledge and intent, has in the past, and is currently materially and intentionally participating, engaging in and directing acts of infringement of FIMT's KARMAGAMI® trade dress in the United States, including in the State of Florida, by and through RMS, Five Below's retail stores and through fivebelow.com, its interactive commercial website, for its own financial benefit, resulting in damages to FIMT, including irreparable harm.

247. Upon information and belief, RMS knew or had reason to know that Five Below was engaging in trade dress infringement, including after being placed on express written notice of said trade dress infringement on, at least, two separate occasions, April 14, 2022 and May 6, 2022, when FIMT concurrently served Defendants RMS and Five Below, with two separate formal demands to cease and desist with incorporated notices, legal analysis, evidence of infringement and a notice to preserve all relevant documents and information. See *April 14, 2022 and May 6, 2022 Notices of Infringement and Demand to Cease and Desist*, attached hereto as **Exhibits K & L** (each of which are incorporated herein by reference, along with the clear evidence provided therein and as attached exhibits thereto evidencing Defendants' infringing conduct, unfair competition and offers for sale of the Calmagami products).

248. Nevertheless, following express notice, even though it knew or had reason to know that it was itself engaging in trade dress infringement, and that Five Below was also engaging in trade dress infringement, RMS failed to remove its products from commerce and, upon information and belief, persisted in

supplying knock-off KARMAGAMI® products to Five Below with knowledge and intent and/or willful disregard that such products infringed upon FIMT's intellectual property rights, including its KARMAGAMI® trademark and KARMAGAMI® trade dress, would be distributed nationwide, offered for sale and sold in interstate commerce, including within Florida, substantiating RMS's willful and contributory infringement of FIMT's KARMAGAMI® trade dress.

249. Infringing KARMAGAMI® products distributed by RMS were offered for sale and sold in interstate commerce, including in Florida, by Five Below, following express written notice of infringement to RMS and Five Below. See **Exhibit N**.

250. Upon information and belief, despite Defendants Five Below's and RMS's authority, ability, right and power to remove the infringing KARMAGAMI® products from the stream of interstate commerce following express written notice of infringement to Five Below and RMS, Defendants knowingly and willfully continued to advertise, offer for sale and sell the infringing KARMAGAMI® products through Five Below retail stores and fivebelow.com.

251. Upon information and belief, Defendant Five Below directs, controls, ratifies, personally participates in, approves, and is the moving, conscious force behind the infringing activities of RMS, which financially benefits both Five Below and RMS. Accordingly, there is a unity of interest and control between Defendants Five Below and RMS such that the acts of trade dress infringement as controlled, directed, approved and supervised by Five Below by and through RMS, are indistinguishable from its own acts of trade dress infringement.

252. Defendant Five Below has directly profited and continues to profit from both its own participation in the infringing conduct described herein, and the

infringing activities of RMS, including infringing activities in interstate commerce within the United States and within the State of Florida in connection with the marketing, offers for sale and sales of the infringing KARMAGAMI® products to *inter alia* Florida residents and consumers within the toy marketplace in violation of FIMT's trade dress rights under federal and common law.

253. Even though Five Below knew, should have known and/or had reason to know that RMS had in the past engaged in, and continued to engage in, acts of trade dress infringement in violation of FIMT's KARMAGAMI® trade dress rights, Five Below intentionally continued to direct, control, benefit from, induce and participate in such infringing acts and failed to cease its own infringing acts and failed to stop RMS from continuing to engage in such infringement through Five Below, including its retail stores and website, fivebelow.com, in the United States, including within Florida, despite having the authority and ability to do so.

254. Upon information and belief, Five Below and RMS acted alone and in concert to engage in the infringement of FIMT's KARMAGAMI® trade dress in violation of the common law.

255. Upon information and belief, RMS contributed in the past and continued to contribute to Five Below's infringement of FIMT's KARMAGAMI® trade dress by unlawfully manufacturing, importing and distributing to Five Below, including Five Below retail stores and fivebelow.com, products it knew, should have known and/or had reason to know infringed FIMT's KARMAGAMI® trade dress, including following express written notice to RMS of its infringing acts.

256. Upon information and belief, Five Below induced in the past and continues to induce RMS's acts of infringement of FIMT's KARMAGAMI® trade

dress by approving, assisting, participating in, directing and funding the design, development, manufacture, importation and/or distribution by RMS of products it knew, should have known and/or had reason to know, including after express notice, infringed FIMT's KARMAGAMI® trade dress including through the purchase and resale of infringing KARMAGAMI® products purchased from RMS by Five Below which it directed RMS to supply.

257. Defendant Five Below, therefore also bears contributory and vicarious liability for RMS's infringement of FIMT's KARMAGAMI® trade dress in violation of the common law and is, thus, jointly and severally liable for damages, costs and any other award ordered by the Court pursuant to the common law.

258. FIMT has no adequate remedy at law and has suffered irreparable harm and damage as a result of the direct, contributory and/or vicarious infringing, willful and malicious conduct of Defendants Five Below's and RMS's infringement of FIMT's KARMAGAMI® trade dress.

259. FIMT has sustained damages as a result of the direct, contributory and/or vicarious infringing conduct of Defendants Five Below and RMS in an amount to be ascertained at trial, but in no event less than \$75,000.

260. Because Defendants Five Below's and RMS's infringement was intentional, with express written notice, and in bad faith, this case qualifies for a judgment of three times profits or damages, whichever amount is greater, together with attorney's fees and costs pursuant to the common law.

COUNT VIII

**(Federal Unfair Competition under § 43(a) of the Lanham Act, 15
U.S.C. § 1125(a))
(as to Defendants Five Below, Inc. and RMS.)**

261. FIMT incorporates by reference paragraphs 1-39, 43-65, 76-82, 95-143 as if fully set forth herein.

262. Defendants Five Below and RMS have unlawfully and intentionally adopted and used a mark, Calmagami, which is confusingly similar to that of FIMT's registered KARMAGAMI® trademark in commerce in association with the infringing KARMAGAMI® products imported, advertised, offered for sale, sold, marketed, promoted and/or distributed by Defendants through Five Below retail stores, the fully interactive commercial website, fivebelow.com, social media websites and direct marketing.

263. The damage caused to FIMT by Defendants Five Below's and RMS's unlawful acts of infringement and unfair competition are manifest because Defendants sell their infringing knock-off products within the same marketplace including retail stores, online through an ecommerce website, fivebelow.com, using the same advertising media, including social media advertising, to the same consumers, all involving Defendants Five Below's and RMS's unlawful use and adoption of a colorable imitation and/or confusingly similar mark to that of Plaintiff's registered KARMAGAMI® trademark.

264. Defendants Five Below's and RMS's unlawful acts, constituting unfair competition, including Defendants' unlawful use of a confusingly similar and/or colorable imitation of FIMT's KARMAGAMI® trademark has caused actual confusion and/or a likelihood of confusion in the minds of consumers regarding the true source of origin of FIMT's products.

265. Defendants Five Below's and RMS's unlawful acts of trademark infringement through the offering for sale, sale, distribution and marketing of the infringing products, including its false advertising and passing off of its products as those of FIMT's, tend to falsely represent and mislead consumers, suggesting that the Defendants' infringing KARMAGAMI® products are legitimately connected with FIMT, emanate from, or are sponsored or approved by FIMT; and falsely and misleadingly designate that Defendants' infringing KARMAGAMI® products originate from FIMT, all of which constitute violations of 15 U.S.C. § 1125(a). Defendants' infringing acts harm consumers in the United States, including consumers in the State of Florida, by creating a likelihood of confusion such that consumers are confused, mistaken or deceived as to the true source of origin and/or quality of the infringing KARMAGAMI® products.

266. Defendants Five Below's and RMS's unlawful use of FIMT's KARMAGAMI® trademark in its advertising, marketing, promotion, offering for sale and sale of the confusingly similar Calmagami products it sells within the toy marketplace constitutes false or misleading advertising in that such statements have deceived, or have the capacity to deceive, consumers by causing a likelihood of confusion regarding the true source of origin of the infringing KARMAGAMI® products, having a material effect on consumers' purchasing decisions. Defendants' false and misleading statements in unlawfully adopting Plaintiff's federally registered KARMAGAMI® trademark affects interstate commerce, has caused, and unless enjoined by this Court, will continue to cause, harm to FIMT and consumers, including irreparable harm.

267. Defendants' Five Below's and RMS's acts of unfair competition, following express written notice, were done willfully, intentionally, and in bad faith.

268. Defendants Five Below's and RMS's acts have proximately caused and are causing substantial and irreparable harm to FIMT and the KARMAGAMI® brand, and will continue to be substantially and irreparably damaging to FIMT unless enjoined by this Court. As a result, FIMT is without an adequate remedy at law.

269. FIMT has sustained damages as a result of the infringing activities and unfair competition in an amount to be ascertained at trial, but in no event less than \$75,000.

270. Because Defendants Five Below's and RMS's trademark infringement, trade dress infringement and unfair competition was willful, with express written notice of FIMT's federally registered KARMAGAMI® trademark, and in bad faith, this case qualifies for a judgment of three times profits or damages, whichever amount is greater, together with attorney's fees pursuant to 15 U.S.C. § 1117(a).

271. FIMT has suffered damages as a result of Defendants' acts of unfair competition and, pursuant to the remedies set forth in 15 U.S.C. §§1116-1118, FIMT is entitled to recover: (1) Defendants' profits, (2) any damages sustained by FIMT, (3) the costs of this action, including reasonable attorney's fees, and (4) a permanent injunction enjoining Defendants from any further acts of unfair competition.

COUNT IX

(Common Law Unfair Competition)

(as to Defendants Five Below, Inc. and RMS International (USA), Inc.)

272. FIMT incorporates by reference paragraphs 1-39, 43-65, 76-82, 95-143 as if fully set forth herein.

273. FIMT's KARMAGAMI® trademark is entitled to protection under the common law. FIMT has adopted and used the KARMAGAMI® trademark in commerce, including in the State of Florida, which serves to identify the quality and source of origin of FIMT's award-winning and unique KARMAGAMI® products to consumers of toys, in the United States, including in Florida, since at least 2020.

274. FIMT commenced use of the KARMAGAMI® trademark long before Defendants commenced the unlawful use of its confusingly similar Calmagami mark in connection with the marketing, offer for sale, sale and/or distribution of Defendants' infringing KARMAGAMI® products.

275. FIMT's expansive use of the KARMAGAMI® trademark to describe, identify and denominate the particular goods it offers for sale and to distinguish them from similar goods and services offered by others in the toy market, has resulted in an association in the minds of consumers between the KARMAGAMI® trademark FIMT has adopted and the high quality products FIMT provides, leading to the establishment of substantial goodwill and FIMT's reputation in the marketplace as the source of origin of the high quality, unique and innovative toy it manufactures and sells.

276. As a result of FIMT's extensive, continuous and consistent marketing of its products in association with FIMT's KARMAGAMI® trademark, the

KARMAGAMI® trademark has acquired substantial secondary meaning in the marketplace.

277. Defendants Five Below's and RMS's unlawful and intentional use and adoption of FIMT's KARMAGAMI® trademark in Defendants' marketing, advertisements, promotions, offers for sale and/or sale of Defendants' infringing KARMAGAMI® products in the toy marketplace, including within the State of Florida, constitutes common law unfair competition, at least, by Defendants' palming off and/or passing off of Defendants' goods and services as those of FIMT.

278. Defendants have also engaged in unfair competition through their intentional and willful actions in advertising, marketing, promoting, distributing, offering for sale and/or selling confusingly similar goods and services in the toy market using FIMT's KARMAGAMI® trademark, without authorization, have caused and is likely to cause consumer confusion as to the true source of origin and quality of such goods and services at least by creating the false and misleading impression that its infringing products are manufactured by, sponsored, approved, endorsed, connected or otherwise associated with FIMT.

279. Defendants' willful acts, following express written notice of FIMT's KARMAGAMI® trademark rights, in marketing, promoting, offering for sale and selling similar goods in the same marketplace as FIMT, including within the State of Florida, and unlawfully utilizing FIMT's KARMAGAMI® trademark without license or permission in the same channels of commerce, to the same consumers, constitutes unfair competition in that:

- (a) Said acts have a tendency to enable and will continue to have a tendency to enable Defendants to obtain the benefit of and trade on the goodwill of FIMT;

- (b) Said acts damage and will continue to damage FIMT's goodwill in that FIMT does not have control over the business and products of Defendants including the quality of its infringing KARMAGAMI® products;
- (c) Said acts have a tendency to cause and are likely to continue to have a tendency to cause confusion, mistake, or deception of the public; and
- (d) Said acts have in the past and will continue to result in the unjust enrichment of Defendants.

280. Defendants Five Below's and RMS's acts constituting unfair competition were done following express notice to Defendants of FIMT's ownership of the KARMAGAMI® trademark and were thus intentional, willful and malicious. Defendants' bad faith is evidenced at least by its wholesale adoption of the mark Calmagami, which is a colorable imitation of FIMT's KARMAGAMI® trademark in relation to the marketing, offering for sale and sale of Defendants' infringing KARMAGAMI® products, the unmistakable similarity of the infringing products, as demonstrated in, for example, the side-by-side comparison in **Figure 2** above, and by Defendants' continuing and brazen disregard for FIMT's rights.

281. Defendants' acts are causing and will continue to cause FIMT irreparable harm unless enjoined by this Court; as a result, FIMT is without an adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with FIMT and FIMT's KARMAGAMI® products in the toy marketplace.

282. FIMT has sustained damages and will continue to sustain damage as a result of the Defendants' unlawful activities in an amount to be ascertained at trial, but in no event less than \$75,000.

283. Further, under Florida common law, including Fla. Stats. Pursuant to Florida Statutes §§495.131, 495.141, 495.161, 501.201, 501.204, 768.72(2) and 817.41 and the Common Law, FIMT is entitled to injunctive relief and to recover all damages caused by Defendants Five Below's and RMS's trade dress infringement, including compensatory damages, statutory damages and/or Defendants' illicit profits, reasonable attorney's fees, costs of suit as well as punitive damages due to the willful nature of Defendants' infringement. Defendants had actual knowledge of the wrongfulness of their acts of trademark infringement, trade dress infringement and acts of unfair competition, and were fully of aware of the high probability that injury or damage to FIMT would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage. Defendants Five Below and RMS directly and knowingly participated, condoned, ratified, directed, controlled and consented to such conduct for their own financial benefit. Defendants are entitled to all damages proximately caused by the intentional tortious acts of Defendants Five Below and RMS including at least FIMT's damages, Defendants Five Below's and RMS's profits, costs, reasonable attorney fees and, due to the willful, intentional and bad faith nature of the unfair competition, an award of exemplary and punitive damages.

COUNT X
(Federal Trade Dress Infringement)
(as to Defendants Five Below, Inc., 1616 Holdings, Inc., and JM
Manufacturing (HK) Ltd.)

284. FIMT incorporates by reference paragraphs 1-39, 43-82, 96-114 as if fully set forth herein.

285. Through FIMT's extensive and continuous use in interstate commerce in the United States, FIMT's SHASHIBO® and SPINBALLS™ trade dresses, have become well-known indicators of the source of origin, innovation, high quality and goodwill associated with FIMT's unique products in the toy industry. See **Figs. 1 & 3.**

286. Likewise, through their widespread success in the toy marketplace, FIMT's substantial marketing efforts and advertising spend over time, multiple industry awards and due to the distinctive nature of their product and packaging trade dress, FIMT's SHASHIBO® trade dress and SPINBALLS™ trade dress have each acquired substantial secondary meaning in the toy industry and consumer marketplace in the United States.

287. FIMT acquired the rights in its SHASHIBO® and SPINBALLS™ trade dresses, through use of each of the SHASHIBO® and SPINBALLS™ trade dress in interstate commerce well before Defendants Five Below, 1616 Holdings and JMM commenced their unlawful use of FIMT's SHASHIBO® and SPINBALLS™ trade dresses in connection with their infringing Magic Cube and LED Poi Balls products.

288. FIMT began using its SPINBALLS™ trade dress as early as 2011 upon the launch of its first product into the toy marketplace. Indeed, the company's

premier product would also provide the initial basis for Plaintiff's trade name, Spin-balls, LLC.

289. The SPINBALLS™ packaging trade dress is comprised of a unique selection and combination of trade dress elements which, taken as a whole, creates an inherently distinctive commercial impression, identifies the source of origin, and sets the SPINBALLS™ product apart from others in the toy industry. The packaging features an immediately recognizable image of a human figure surrounded by a spiraling array of multicolored spiraling green, blue and magenta graphics against a black background. The packaging also features circular cutouts which are unique to the SPINBALLS™ product and immediately recognizable to consumers as the LED Poi ball kit produced, originated and marketed by FIMT. FIMT also heavily utilizes the same unique imagery of a human figure surrounded by spiraling light trails as part of its accompanying marketing style and materials as part of its SPINBALLS™ trade dress and even incorporates the same spiraling LED light trails and poi balls of its trade dress at the center of each of its SPINBALLS™ and SPINBALLS GLOW.O® trademarks in order to further create a connection in the minds of consumers between the SPINBALLS™ trade dress and FIMT as the sole source of origin of its unique SPINBALLS™ product (collectively, the “SPINBALLS™ trade dress”; see also **Figure 3**).

290. FIMT's SPINBALLS™ trade dress is not functional. Instead, FIMT's SPINBALLS™ trade dress has secondary meaning and provide consumers with a unique commercial impression, serving as a distinctive source identifier, identifying and setting the SPINBALLS™ brand and its source of origin, FIMT, apart from competitors in the toy marketplace.

291. FIMT began using its SHASHIBO® trade dress as early as 2019. Through the marketing efforts of FIMT, the SHASHIBO® product has become FIMT's flagship product line, with approximately five million SHASHIBO® units sold to date. The SHASHIBO product, along with its immediately recognizable packaging and marketing trade dress, has been the recipient of multiple toy industry awards and has enjoyed multiple years as a top-rated toy across the entire category of literally hundreds of thousands of competing toys and games on Amazon.com. As of the filing of this Complaint, SHASHIBO® currently holds the #1 Best Selling position in the Toys and Games category of Amazon.com. SHASHIBO® is also present in thousands of brick and mortar retail stores nationwide and around the world including mass, mid-market, specialty and independent retailers, where the SHASHIBO® trade dress has been viewed by tens of millions of consumers in the toy marketplace.

292. The SHASHIBO® trade dress is comprised of immediately recognizable and well-defined trade dress elements including the SHASHIBO packaging design and marketing style which is both inherently distinctive and which has undoubtedly acquired secondary meaning in the minds of consumers who identify the unique design and overall look and feel of the SHASHIBO® trade dress with FIMT as its sole source of origin. Painstakingly designed, the SHASHIBO® packaging trade dress is sleek, modern and sophisticated with its readily identifiable and uniquely cut out cube shape, featuring a specifically designed, modified forty-five degree angle cut out design with a narrow strip at the rear of the top panel and front panel. The SHASHIBO® packaging design is also consistently dressed with specific elements which consumers identify with the brand and source of origin of the SHASHIBO® product line as FIMT including

images of specific geometric shapes comprised of tetrahedrons, including illustrations of a star, dodecahedron and triangle shape, with marketing catch phrases on its side panel, including “Can you create more than 70 shapes?” Further, FIMT’s SHASHIBO® point of purchase displays, marketing and promotional materials each also include the distinctive SHASHIBO® trade dress, further enhancing the ability of the SHASHIBO® trade dress to serve as a distinctive source identifier setting the SHASHIBO® brand and its source of origin, FIMT, apart from competitors in the toy marketplace (collectively, the “SHASHIBO® trade dress”; see also **Figure 1**).

293. FIMT’s SHASHIBO® trade dress is not functional. Instead, FIMT’s SHASHIBO® trade dress has secondary meaning and provide consumers with a unique commercial impression, serving as a distinctive source identifier, identifying and setting the SHASHIBO® brand and its source of origin, FIMT, apart from competitors in the toy marketplace.

294. Accordingly, FIMT’s SPINBALLS™ and SHASHIBO® trade dress are each entitled to protection under the Lanham Act, 15 U.S.C. § 1125(a).

295. Defendants Five Below, 1616 Holdings and JMM have engaged and continue to engage in infringing conduct in direct violation of the Lanham Act, 15 U.S.C. § 1125(a), including but not limited to, using in interstate commerce trade dress that is confusingly similar to FIMT’s SHASHIBO® and SPINBALLS™ trade dress in connection with the importation, offering for sale, sale, distribution and/or advertising knock-offs of Plaintiff’s SHASHIBO® and SPINBALLS™ products and such activities are likely to cause confusion or mistake, or to deceive consumers in the United States, including in the State of Florida, in this Judicial District and Division.

296. Upon information and belief, Defendant Five Below, as the parent company and owner of 1616 Holdings, with knowledge and intent, has in the past, and is currently materially and intentionally participating, engaging in and directing acts of infringement of FIMT's SHASHIBO® and SPINBALLS™ trade dress in the United States, including in the State of Florida, by and through 1616 Holdings and JMM, Five Below's retail stores and through fivebelow.com, its interactive commercial website, for its own financial benefit, resulting in damages to FIMT, including irreparable harm.

297. Upon information and belief, 1616 Holdings and JMM knew or had reason to know that Five Below was engaging in trade dress infringement, including after being placed on express written notice of said trade dress infringement on, at least, two separate occasions, on October 23, 2023 and November 16, 2023, when FIMT served Defendants 1616 Holdings and Five Below, located at the same address, along with Five Below's Florida Registered Agent, expressly noting 1616 Holdings, Inc. was concurrently served with two separate formal demands to cease and desist with incorporated notices to preserve all relevant documents and information. See **Exhibits A & B**.

298. Nevertheless, following express notice, even though it knew or had reason to know that it was itself engaging in trade dress infringement, and that Five Below was also engaging in trade dress infringement, 1616 Holdings and JMM persisted in supplying knock-off SHASHIBO® and SPINBALLS™ products to Five Below with knowledge and intent and/or willful disregard that such products infringe upon FIMT's intellectual property rights, including its trade dress in both products, would be distributed nationwide, offered for sale and sold in interstate commerce, including within Florida, substantiating 1616 Holdings' and JMM's

willful and contributory infringement of FIMT's SHASHIBO® and SPINBALLS™ trade dress.

299. Upon information and belief, Defendant Five Below has the authority, ability, right and power to supervise and control and stop the infringing activities of its wholly owned subsidiary, 1616 Holdings, and its employees and its vendor, JMM, with regard to the infringing acts of JMM.

300. Upon information and belief, Defendant Five Below directs, controls, ratifies, personally participates in, dominates and is the moving, conscious force behind the infringing activities of 1616 Holdings and JMM, which financially benefits both 1616 Holdings and Five Below. Accordingly, there is a unity of interest and control between Defendant Five Below and Defendant 1616 Holdings such that the vicarious acts of trade dress infringement as controlled, directed, approved and supervised by Five Below by and through 1616 Holdings and/or JMM, are indistinguishable from its own acts of trade dress infringement.

301. Defendant Five Below has directly profited and continues to profit from both its own participation in the infringing conduct described herein, and the infringing activities of 1616 Holdings and JMM, including infringing activities in interstate commerce within the United States and within the State of Florida in connection with the marketing, offers for sale and sales of the infringing products to *inter alia* Florida residents and consumers within the toy marketplace in violation of FIMT's federal and common law trade dress rights.

302. Even though Five Below knew, should have known and/or had reason to know that 1616 Holdings has in the past engaged in, and continues to engage in, acts of trade dress infringement in violation of FIMT's trade dress rights, Five Below has intentionally continued to direct, control, dominate, benefit from,

induce and participate in such infringing acts and has failed to stop its wholly owned subsidiary, 1616 Holdings, and its manufacturer JMM, from continuing to engage in such infringement in the United States, including within Florida, despite having the authority and ability to do so.

303. Upon information and belief, 1616 Holdings, JMM and Five Below have acted in concert to engage in the infringement of FIMT's SHASHIBO® and SPINBALLS™ trade dress in violation of the Lanham Act, 15 U.S.C. § 1125(a) and the common law.

304. Upon information and belief, 1616 Holdings and JMM have contributed in the past and continue to contribute to Five Below's infringement of FIMT's SHASHIBO® and SPINBALLS™ trade dress by unlawfully importing and distributing to Five Below, including Five Below retail stores and fivebelow.com products it knew, should have known and/or had reason to know infringed FIMT's SHASHIBO® and SPINBALLS™ trade dress.

305. Upon information and belief, Five Below induced in the past and continues to induce 1616 Holdings' and JMM's acts of infringement of FIMT's SHASHIBO® and SPINBALLS™ trade dress by approving, assisting, participating in, directing and funding the design, development, manufacture, importation and/or distribution by 1616 Holdings and manufacture of products by JMM, of products it knew, should have known and/or had reason to know, including after express notice, infringed FIMT's SHASHIBO® and SPINBALLS™ trade dress including the Magic Cube and LED Poi Balls.

306. Defendant Five Below, therefore also bears contributory and vicarious liability for 1616 Holdings' and JMM's infringing activities with regard to FIMT's SHASHIBO® and SPINBALLS™ trade dress in violation of 15 U.S.C. § 1125 and

the common law and is, thus, jointly and severally liable for damages, costs and any other award ordered by the Court pursuant to 15 U.S.C. §§ 1116-1118 and the common law.

307. FIMT has no adequate remedy at law and has suffered irreparable harm and damage as a result of the direct, contributory and/or vicarious infringing, willful and malicious conduct, alone and/or in concert, of Defendants Five Below, 1616 Holdings and JMM in infringing FIMT's SHASHIBO® and SPINBALLS™ trade dress.

308. FIMT has sustained damages as a result of the contributory and/or vicarious infringing conduct of Defendants Five Below, 1616 Holdings and JMM in an amount to be ascertained at trial, but in no event less than \$75,000.

309. Because Defendants Five Below's, 1616 Holdings' and JMM's infringement was intentional, with express written notice, and in bad faith, this case qualifies for a judgment of three times profits or damages, whichever amount is greater, together with attorney's fees and costs pursuant to 15 U.S.C. § 1117(a) and the common law.

COUNT XI

(Common Law Trade Dress Infringement) (as to Defendants' Five Below, Inc., 1616 Holdings, Inc., and JM Manufacturing (HK) Ltd.)

310. FIMT incorporates by reference paragraphs 1-39, 43-82, 96-114 as if fully set forth herein.

311. Through FIMT's extensive and continuous use in commerce in the United States and in Florida, FIMT's SHASHIBO® and SPINBALLS™ trade dresses, have become well-known indicators of the source of origin, innovation,

high quality and goodwill associated with FIMT's unique products in the toy industry.

312. Likewise, through their widespread success in the toy marketplace, FIMT's substantial marketing efforts and advertising spend over time, multiple industry awards and due to the unique nature of their product and packaging trade dress, FIMT's SHASHIBO® and SPINBALLS™ trade dresses have acquired substantial secondary meaning in the toy industry and consumer marketplace.

313. FIMT acquired the rights in its SHASHIBO® and SPINBALLS™ trade dresses well before Defendants Five Below, 1616 Holdings and JMM commenced their unlawful use of FIMT's SHASHIBO® and SPINBALLS™ trade dresses in connection with their infringing Magic Cube and LED Poi Balls products.

314. FIMT began using its SPINBALLS™ trade dress as early as 2011 upon the launch of its first product into the toy marketplace. Indeed, the company's premier product would also provide the initial basis for Plaintiff's trade name, Spin-balls, LLC.

315. The SPINBALLS™ packaging trade dress is comprised of a unique selection and combination of trade dress elements which, taken as a whole, creates an inherently distinctive commercial impression, identifies the source of origin, and sets the SPINBALLS™ product apart from others in the toy industry. The packaging features an immediately recognizable image of a human figure surrounded by a spiraling array of multicolored spiraling green, blue and magenta graphics against a black background. The packaging also features circular cutouts which are unique to the SPINBALLS™ product and immediately recognizable to consumers as the LED Poi ball kit produced, originated and marketed by FIMT. FIMT also heavily utilizes the same unique imagery of a human figure surrounded

by spiraling light trails as part of its accompanying marketing style and materials as part of its SPINBALLS™ trade dress and even incorporates the same spiraling LED light trails and poi balls of its trade dress at the center of each of its SPINBALLS™ and SPINBALLS GLOW.O® trademarks in order to further create a connection in the minds of consumers between the SPINBALLS™ trade dress and FIMT as the sole source of origin of its unique SPINBALLS™ product (collectively, the “SPINBALLS™ trade dress”; see also **Figure 3**).

316. FIMT’s SPINBALLS™ trade dress is not functional. Instead, FIMT’s SPINBALLS™ trade dress has secondary meaning and provide consumers with a unique commercial impression, serving as a distinctive source identifier, identifying and setting the SPINBALLS™ brand and its source of origin, FIMT, apart from competitors in the toy marketplace.

317. FIMT began using its SHASHIBO® trade dress as early as 2019. Through the marketing efforts of FIMT, the SHASHIBO® product has become FIMT’s flagship product line, with approximately five million SHASHIBO® units sold to date. The SHASHIBO product, along with its immediately recognizable packaging and marketing trade dress, has been the recipient of multiple toy industry awards and has enjoyed multiple years as a top-rated toy across the entire category of literally hundreds of thousands of competing toys and games on Amazon.com. As of the filing of this Complaint, SHASHIBO® currently holds the #1 Best Selling position in the Toys and Games category of Amazon.com. SHASHIBO® is also present in thousands of brick and mortar retail stores nationwide and around the world including mass, mid-market, specialty and independent retailers, where the SHASHIBO® trade dress has been viewed by tens of millions of consumers in the toy marketplace.

318. The SHASHIBO® trade dress is comprised of immediately recognizable and well-defined trade dress elements including the SHASHIBO packaging design and marketing style which is both inherently distinctive and which has undoubtedly acquired secondary meaning in the minds of consumers who identify the unique design and overall look and feel of the SHASHIBO® trade dress with FIMT as its sole source of origin. Painstakingly designed, the SHASHIBO® packaging trade dress is sleek, modern and sophisticated with its readily identifiable and uniquely cut out cube shape, featuring a specifically designed, modified forty-five degree angle cut out design with a narrow strip at the rear of the top panel and front panel. The SHASHIBO® packaging design is also consistently dressed with specific elements which consumers identify with the brand and source of origin of the SHASHIBO® product line as FIMT including images of specific geometric shapes comprised of tetrahedrons, including illustrations of a star, dodecahedron and triangle shape, with marketing catch phrases on its side panel, including “Can you create more than 70 shapes?” Further, FIMT’s SHASHIBO® point of purchase displays, marketing and promotional materials each also include the distinctive SHASHIBO® trade dress, further enhancing the ability of the SHASHIBO® trade dress to serve as a distinctive source identifier setting the SHASHIBO® brand and its source of origin, FIMT, apart from competitors in the toy marketplace (collectively, the “SHASHIBO® trade dress”; see also **Figure 1**).

319. FIMT’s SHASHIBO® trade dress is not functional. Instead, FIMT’s SHASHIBO® trade dress has secondary meaning and provide consumers with a unique commercial impression, serving as a distinctive source identifier,

identifying and setting the SHASHIBO® brand and its source of origin, FIMT, apart from competitors in the toy marketplace.

320. Accordingly, FIMT's SPINBALLS™ trade dress and SHASHIBO® trade dress are each entitled to protection under the common law and the Lanham Act.

321. Defendants Five Below, 1616 Holdings and JMM have unlawfully used in commerce, including within the State of Florida, reproductions, copies and colorable imitations of FIMT's SPINBALLS™ trade dress and SHASHIBO® trade dress in connection with the sale, offering for sale, distribution and advertising of confusingly similar products and services in the toy industry, and such use is likely to cause confusion, mistake, or to deceive consumers as to the true source of origin of such products and/or the sponsorship, affiliation of Defendants' infringing products, at least by creating the false and misleading impression that its infringing products are manufactured by, authorized by, licensed by or otherwise associated with FIMT.

322. Defendants Five Below, 1616 Holdings and JMM reproduce, counterfeit, copy and colorably imitate each of the FIMT's SPINBALLS™ and SHASHIBO® trade dresses by unlawfully adopting, using, reproducing, counterfeits, copies and colorable imitations of FIMT's SPINBALLS™ trade dress and SHASHIBO® trade dresses on their LED Poi Ball and Magic Cube products, packaging, labels, signs, prints, marketing and advertisements intended to be used upon or in connection with the offering for sale, sale, distribution, or advertising of goods or services on or in connection with Defendants' infringing products, including Five Below's and 1616 Holdings' LED Poi Balls and Magic Cube knock off toys in the United States, including within the State of Florida, which is likely

to cause confusion, mistake, or to deceive consumers, including consumers in the State of Florida.

323. Defendants Five Below's, 1616 Holdings' and JMM's unlawful use of FIMT's SPINBALLS™ trade dress and SHASHIBO® trade dress in connection with the distribution, advertising, marketing, promotion, offering for sale, and sale of its infringing LED Poi Ball and Magic Cube products has resulted in confusion, mistake and/or deception and is likely to result in confusion, mistake and/or deception and the misleading impression and false belief of the consuming public that Defendants' infringing products and/or services emanate from the same source, are manufactured by, authorized, affiliated, approved with and/or sponsored by FIMT, all of which constitute violations of the common law.

324. Upon information and belief, Defendants Five Below's, 1616 Holdings' and JMM's unlawful use of FIMT's SPINBALLS™ trade dress and SHASHIBO® trade dresses, which are confusingly similar and colorable imitations thereof, have been intentional, willful, and malicious. Defendants' bad faith is evidenced, at least, by the continuing and wholesale adoption of FIMT's SPINBALLS™ and SHASHIBO® trade dress, following express notice, in connection with the marketing, sale and offering for sale of Defendants' directly competing and infringing products and continuing disregard for FIMT's exclusive intellectual property rights, valuable goodwill and the irreparable damage that Defendants were expressly warned would result from their infringement. Defendants' bad faith is also evidenced by Defendants' acts following express written notice, which went ignored. Instead of ceasing their infringement upon express notice, Defendants accelerated and expanded upon their continued infringement by distributing and offering for sale their infringing LED Poi Ball and Magic Cube

products in additional Five Below retail stores and on the Internet through fivebelow.com.

325. Because Defendants were placed on express written notice of FIMT's SPINBALLS™ and SHASHIBO® trade dress on October 23, 2023 and intentionally continued their infringing activities, Defendants' infringement thus constitutes intentional, willful and bad faith infringement in violation of FIMT's common law trade dress rights.

326. Upon information and belief, Defendant 1616 Holdings (formerly known as Five Below Merchandising, Inc.) is a wholly owned subsidiary company of Five Below, Inc., and JM Manufacturing (HK) Ltd., is a vendor commissioned by Five Below to manufacture the infringing LED Poi Balls and Magic Cubes, Defendant Five Below has had the authority and ability to direct the activities of Defendant 1616 Holdings and JMM, supervises and approves the activities of 1616 Holdings and JMM, financially benefits from the infringing activities of 1616 Holdings and JMM, and despite holding the authority and ability to cease their own infringing activities, as well as those of 1616 Holdings' and JMM's infringing activities, failed to cease and desist from its infringing acts and failed to stop those of 1616 Holdings and JMM, instead, continued, with express notice of FIMT's trade dress rights, to intentionally and willfully direct and control the continuing infringing activities of 1616 Holdings and JMM for its own financial benefit.

327. Defendants Five Below's, 1616 Holdings' and JMM's intentional infringing and tortious acts of trade dress infringement have caused damages to FIMT and consumers, including consumers within the State of Florida, and, unless enjoined by this Court, will continue to cause such damages including irreparable harm to FIMT's goodwill.

328. Further, under Florida common law, including Fla. Stats. Pursuant to Florida Statutes §§495.131, 495.141, 495.161, 501.201, 501.204, 768.72(2) and 817.41 and Florida Common Law, FIMT is entitled to injunctive relief and to recover all damages caused by Defendants Five Below's, 1616 Holdings' and JMM's trade dress infringement, including compensatory damages, statutory damages and/or Defendants' illicit profits, reasonable attorney's fees, costs of suit as well as punitive damages due to the willful nature of Defendants Five Below's, 1616 Holdings' and JMM's infringement. Defendants had actual knowledge of the wrongfulness of their acts of trade dress infringement and acts of unfair competition, and were fully aware of the high probability that injury or damage to Plaintiff FIMT would result, including irreparable harm, and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage to FIMT.

329. Defendants Five Below, 1616 Holdings and JMM directly and knowingly participated, condoned, ratified, directed, controlled and consented to such conduct, for their own financial benefit. FIMT is entitled to all damages proximately caused by the intentional tortious acts of Defendants Five Below, 1616 Holdings and JMM, including at least FIMT's damages, Defendants' profits, costs, reasonable attorney fees, and due to the willful, intentional and bad faith nature of the unfair competition, an award of exemplary and punitive damages.

330. Defendants Five Below, 1616 Holdings and JMM are engaging in infringing conduct in direct violation of the common law, including but not limited to, using a trade dress that is confusingly similar to FIMT's SHASHIBO® trade dress and SPINBALLS™ trade dress in connection with the importation, offering for sale, sale, distribution and/or advertising knock-offs of Plaintiff's

SHASHIBO® and SPINBALLS™ products and such activities are likely to cause confusion or mistake, or to deceive consumers in the United States, including in the State of Florida.

331. Upon information and belief, Defendant Five Below, as the parent company and owner of 1616 Holdings and contractor of JMM, with knowledge and intent, has in the past, and is currently materially and intentionally participating, engaging in and directing acts of infringement of FIMT's SHASHIBO® and SPINBALLS™ trade dress in the United States, including in the State of Florida, by and through 1616 Holdings and JMM, Five Below's retail stores and through fivebelow.com, its interactive commercial website, for its own financial benefit, resulting in damages to FIMT, including irreparable harm.

332. Upon information and belief, 1616 Holdings and/or JMM knew or had reason to know that Five Below was engaging in trade dress infringement, including after being placed on express written notice of said trade dress infringement on, at least, two separate occasions, on October 23, 2023 and November 16, 2023, when FIMT served Defendants 1616 Holdings and Five Below, located at the same address, along with Five Below's Florida Registered Agent, expressly noting 1616 Holdings, Inc. was concurrently served with two separate formal demands to cease and desist with incorporated notices to preserve all relevant documents and information. See **Exhibits A & B**.

333. Nevertheless, following express notice, even though it knew or had reason to know that it was itself engaging in trade dress infringement, and that Five Below was also engaging in trade dress infringement, 1616 Holdings and JMM persisted in supplying knock-off SHASHIBO® and SPINBALLS™ products to Five Below with knowledge and intent and/or willful disregard that such products

infringe upon FIMT's intellectual property rights, including its trade dress in both products, would be distributed nationwide, offered for sale and sold in interstate commerce, including within Florida, substantiating 1616 Holdings and JMM's willful and contributory infringement of FIMT's SHASHIBO® and SPINBALLS™ trade dress.

334. Upon information and belief, Defendant Five Below has the authority, ability, right and power to supervise and control the activities of its wholly owned subsidiary, 1616 Holdings, and its employees, as well as the infringing activities complained of herein with regard to Defendant JMM.

335. Upon information and belief, Defendant Five Below directs, controls, ratifies, personally participates in, dominates and is the moving, conscious force behind the infringing activities of 1616 Holdings and JMM, which financially benefits both 1616 Holdings and Five Below. Accordingly, there is a unity of interest and control between Defendant Five Below and Defendant 1616 Holdings such that the acts of trade dress infringement as controlled, directed, approved and supervised by Five Below by and through 1616 Holdings, are indistinguishable from its own acts of trade dress infringement, including the manufacture of infringing goods by JMM directed and controlled by Five Below.

336. Defendant Five Below has directly profited and continues to profit from both its own participation in the infringing conduct described herein, and the infringing activities of 1616 Holdings and JMM, including infringing activities in interstate commerce within the United States and within the State of Florida in connection with the marketing, offers for sale and sales of the infringing products to *inter alia* Florida residents and consumers within the toy marketplace in

violation of FIMT's common law trade dress rights and activities outside the United States effecting commerce in the United States, including Florida.

337. Even though Five Below knew, should have known and/or had reason to know that 1616 Holdings and JMM has in the past engaged in, and continues to engage in, acts of trade dress infringement in violation of FIMT's trade dress rights, Five Below has intentionally continued to direct, control, dominate, benefit from, induce and participate in such infringing acts and has failed to stop its wholly owned subsidiary, 1616 Holdings, and its manufacturer, JMM, and its retail stores and website, fivebelow.com, from continuing to engage in such infringement in the United States, including within Florida, despite having the authority and ability to do so.

338. Upon information and belief, 1616 Holdings, JMM and Five Below have acted alone and in concert to engage in the infringement of FIMT's SHASHIBO® and SPINBALLS™ trade dress in violation of the common law.

339. Upon information and belief, 1616 Holdings and JMM has contributed in the past and continues to contribute to Five Below's infringement of FIMT's SHASHIBO® and SPINBALLS™ trade dress by unlawfully importing and distributing to Five Below, including Five Below retail stores and fivebelow.com products it knew, should have known and/or had reason to know infringed FIMT's SHASHIBO® and SPINBALLS™ trade dress.

340. Upon information and belief, Five Below induced in the past and continues to induce 1616 Holdings' and JMM's acts of infringement of FIMT's SHASHIBO® and SPINBALLS™ trade dress by approving, assisting, participating in, directing and funding the design, development, manufacture, importation and/or distribution by 1616 Holdings and/or JMM of products it knew, should

have known and/or had reason to know, including after express notice, infringed FIMT's SHASHIBO® and SPINBALLS™ trade dress including the Magic Cube and LED Poi Balls.

341. Defendant Five Below, therefore also bears contributory and vicarious liability for 1616 Holdings' and JMM's infringing activities with regard to FIMT's SHASHIBO® and SPINBALLS™ trade dress in violation of the common law and is, thus, jointly and severally liable for damages, costs and any other award ordered by the Court pursuant to the common law.

342. FIMT has no adequate remedy at law and has suffered irreparable harm and damage as a result of the direct, contributory and/or vicarious infringing, willful and malicious conduct of Defendants Five Below, 1616 Holdings and JMM infringing FIMT's SHASHIBO® and SPINBALLS™ trade dress.

343. FIMT has sustained damages as a result of the direct, contributory and/or vicarious infringing conduct of Defendants Five Below, JMM and 1616 Holdings in an amount to be ascertained at trial, but in no event less than \$75,000.

344. Because Defendants Five Below's, JMM's and 1616 Holdings' infringement was intentional, with express written notice, and in bad faith, this case qualifies for a judgment of three times profits or damages, whichever amount is greater, together with attorney's fees and costs pursuant to the common law.

COUNT XII

**(Federal Unfair Competition under § 43(a) of the Lanham Act, 15
U.S.C. § 1125(a))
(as to Defendants' Five Below, Inc., 1616 Holdings, Inc., and JM
Manufacturing (HK) Inc.)**

345. FIMT incorporates by reference paragraphs 1-39, 43-82, 96-114 as if fully set forth herein.

346. Defendants Five Below, 1616 Holdings and JMM have unlawfully and intentionally adopted and used a trade dress which is confusingly similar to that of FIMT's SHASHIBO® and SPINBALLS™ trade dress in commerce in association with the infringing Magic Cube and LED Poi Balls products imported, advertised, offered for sale, sold, marketed, promoted and/or distributed by Defendants through Five Below retail stores, the fully interactive commercial website, fivebelow.com, social media websites and direct marketing.

347. The damage caused to FIMT by Defendants Five Below's, JMM's and 1616 Holdings' unlawful acts of infringement and unfair competition are manifest because Defendants sell their infringing knock-off products within the same marketplace including retail stores, online through an ecommerce website, using the same advertising media, including social media advertising, directed to the same consumers, all involving Defendants Five Below's, JMM's and 1616 Holdings' unlawful use and adoption of a colorable imitation and/or confusingly similar trade dress to that of FIMT's SHASHIBO® and SPINBALLS™ trade dress.

348. Defendants Five Below's, JMM's and 1616 Holdings' unlawful acts, constituting unfair competition, including Defendants' unlawful use of a confusingly similar and/or colorable imitation of FIMT's SHASHIBO® and SPINBALLS™ trade dress has caused actual confusion and/or a likelihood of confusion in the minds of consumers regarding the true source of origin of FIMT's products.

349. Defendants Five Below's, JMM's and 1616 Holdings' unlawful acts of trade dress infringement through the offering for sale, sale, distribution and marketing of the infringing Magic Cube and LED Poi Balls products, including its false advertising and passing off of its Magic Cube and LED Poi Balls products as

those of FIMT's, tend to falsely represent and mislead consumers, suggesting that the Defendants' infringing Magic Cube and LED Poi Balls products are legitimately connected with FIMT, emanate from, or are sponsored or approved by FIMT; and falsely and misleadingly designate that Defendants' infringing Magic Cube and LED Poi Balls products originate from FIMT, all of which constitute violations of 15 U.S.C. § 1125(a). Defendants' infringing acts harm consumers in the United States, including consumers in the State of Florida, by creating a likelihood of confusion such that consumers are confused, mistaken or deceived as to the true source of origin and/or quality of the infringing Magic Cube and LED Poi Balls products.

350. Defendants Five Below's, JMM's and 1616 Holdings' unlawful use of FIMT's SHASHIBO® and SPINBALLS™ trade dress in its advertising, marketing, promotion, offering for sale and sale of the confusingly similar Magic Cube and LED Poi Balls products it sells within the toy marketplace constitutes false or misleading advertising in that such statements have deceived, or have the capacity to deceive, consumers by causing a likelihood of confusion regarding the true source of origin of the infringing Magic Cube and LED Poi Balls products, having a material effect on consumers' purchasing decisions. Defendants' false and misleading statements in unlawfully adopting Plaintiff's FIMT's SHASHIBO® and SPINBALLS™ trade dress affects interstate commerce, has caused, and unless enjoined by this Court, will continue to cause, harm to FIMT and consumers, including irreparable harm.

351. Defendants' Five Below's, JMM's and 1616 Holdings' acts of unfair competition, following express written notice, were done willfully, intentionally, and in bad faith.

352. Defendants Five Below's, JMM's and 1616 Holdings' acts have proximately caused and are causing substantial and irreparable harm to FIMT and the SHASHIBO® and SPINBALLS™ brands, and will continue to be substantially and irreparably damaging to FIMT unless enjoined by this Court. As a result, FIMT is without an adequate remedy at law.

353. FIMT has sustained damages as a result of Defendants Five Below's, JMM's and 1616 Holdings' infringing activities and unfair competition in an amount to be ascertained at trial, but in no event less than \$75,000.

354. Because Defendants Five Below's, JMM's and 1616 Holdings' trade dress infringement and unfair competition was willful, with express written notice of FIMT's SHASHIBO® and SPINBALLS™ trade dress, and in bad faith, this case qualifies for a judgment of three times profits or damages, whichever amount is greater, together with attorney's fees pursuant to 15 U.S.C. § 1117(a).

355. FIMT has suffered damages as a result of Defendants' acts of unfair competition and, pursuant to the remedies set forth in 15 U.S.C. §§1116-1118, FIMT is entitled to recover: (1) Defendants' profits, (2) any damages sustained by FIMT, (3) the costs of this action, including reasonable attorney's fees, and (4) a permanent injunction enjoining Defendants from any further acts of unfair competition.

COUNT XIII

**(Common Law Unfair Competition)
(as to Defendants' Five Below, Inc., 1616 Holdings, Inc., and JM
Manufacturing (HK) Inc.)**

356. FIMT incorporates by reference paragraphs 1-39, 43-82, 96-114 as if fully set forth herein.

357. FIMT's SHASHIBO® and SPINBALLS™ trade dress is entitled to protection under the common law. FIMT has adopted and used the SHASHIBO® and SPINBALLS™ trade dress in commerce, including in the State of Florida, which serves to identify the quality and source of origin of FIMT's award-winning and unique SHASHIBO® and SPINBALLS™ products to consumers of toys, in the United States, including in Florida.

358. FIMT commenced use of the SHASHIBO® and SPINBALLS™ trade dress long before Defendants commenced their unlawful use of the confusingly similar trade dress in connection with the marketing, offer for sale, sale and/or distribution of Defendants' infringing Magic Cube and LED Poi Balls products.

359. FIMT's expansive use of the SHASHIBO® and SPINBALLS™ trade dress to describe, identify and denominate the particular goods it offers for sale and to distinguish them from similar goods offered by others in the toy market, has resulted in an association in the minds of consumers between the SHASHIBO® and SPINBALLS™ trade dress FIMT has adopted and the high quality products FIMT provides, leading to the establishment of substantial goodwill and FIMT's reputation in the marketplace as the source of origin of the high quality, unique and innovative toys it manufactures and sells.

360. As a result of FIMT's extensive, continuous and consistent marketing of its products in association with FIMT's SHASHIBO® and SPINBALLS™ trade dress, FIMT's SHASHIBO® and SPINBALLS™ trade dress has acquired substantial secondary meaning in the marketplace.

361. Defendants Five Below's, JMM's and 1616 Holdings' unlawful and intentional use and adoption of FIMT's SHASHIBO® and SPINBALLS™ trade dress in Defendants' marketing, advertisements, promotions, offers for sale and/or

sale of Defendants' infringing Magic Cube and LED Poi Balls products in the toy marketplace, including within the State of Florida, constitutes common law unfair competition, at least, by Defendants' palming off and/or passing off of Defendants' goods and services as those of FIMT.

362. Defendants have also engaged in unfair competition through their intentional and willful actions in advertising, marketing, promoting, distributing, offering for sale and/or selling confusingly similar goods and services in the toy market using FIMT's SHASHIBO® and SPINBALLS™ trade dress, without authorization, have caused and is likely to cause consumer confusion as to the true source of origin and quality of such goods and services at least by creating the false and misleading impression that its infringing products are manufactured by, sponsored, approved, endorsed, connected or otherwise associated with FIMT.

363. Defendants' willful acts, following express written notice of FIMT's SHASHIBO® and SPINBALLS™ trade dress rights, in marketing, promoting, offering for sale and selling similar goods in the same marketplace as FIMT, including within the State of Florida, and unlawfully utilizing FIMT's SHASHIBO® and SPINBALLS™ trade dress without license or permission in the same channels of commerce, to the same consumers, constitutes unfair competition in that:

- (e) Said acts have a tendency to enable and will continue to have a tendency to enable Defendants to obtain the benefit of and trade on the goodwill of FIMT;
- (f) Said acts damage and will continue to damage FIMT's goodwill in that FIMT does not have control over the business and

products of Defendants including the quality of its infringing Magic Cube and LED Poi Balls products;

- (g) Said acts have a tendency to cause and are likely to continue to have a tendency to cause confusion, mistake, or deception of the public; and
- (h) Said acts have in the past and will continue to result in the unjust enrichment of Defendants.

364. Defendants Five Below's, JMM's and 1616 Holdings' acts constituting unfair competition were done following express notice to Defendants of FIMT's ownership of the FIMT's SHASHIBO® and SPINBALLS™ trade dress and were thus intentional, willful and malicious. Defendants' bad faith is evidenced at least by its unlawful adoption of FIMT's SHASHIBO® and SPINBALLS™ trade dress, which are confusingly similar, colorable imitations, in association with the packaging, marketing, offering for sale and sale of Defendants' infringing Magic Cube and LED Poi Balls products, the unmistakable similarity of the infringing products, as demonstrated in, for example, the side-by-side exemplary comparisons in **Figures 1 (Magic Cube) & 3 (LED Poi Balls)** above, and by Defendants' continuing and brazen disregard for FIMT's rights following express written notice.

365. Defendants' acts are causing and will continue to cause FIMT irreparable harm unless enjoined by this Court; as a result, FIMT is without an adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with FIMT as the source of origin of the SHASHIBO® and SPINBALLS™ products in the toy marketplace.

366. FIMT has sustained damages and will continue to sustain damages as a result of the Defendants' unlawful activities in an amount to be ascertained at trial, but in no event less than \$75,000.

367. Further, under Florida common law, including Fla. Stats. Pursuant to Florida Statutes §§495.131, 495.141, 495.161, 501.201, 501.204, 768.72(2) and 817.41 and the Common Law, FIMT is entitled to injunctive relief and to recover all damages caused by Defendants Five Below's, JMM's and 1616 Holdings' trade dress infringement, including compensatory damages, statutory damages and/or Defendants' illicit profits, reasonable attorney's fees, costs of suit as well as punitive damages due to the willful nature of Defendants' infringement. Defendants had actual knowledge of the wrongfulness of their acts of trademark infringement, trade dress infringement and acts of unfair competition, and were fully of aware of the high probability that injury or damage to FIMT would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage. Defendants Five Below, JMM and 1616 Holdings directly and knowingly participated, condoned, ratified, directed, controlled and consented to such conduct for their own financial benefit. Defendants are entitled to all damages proximately caused by the intentional tortious acts of Defendants Five Below, JMM and 1616 Holdings including at least FIMT's damages, Defendants Five Below's, JMM's and 1616 Holdings' profits, FIMT's costs, reasonable attorney fees and, due to the willful, intentional and bad faith nature of the unfair competition perpetrated by Defendants Five Below, JMM and 1616 Holdings, an award of exemplary and punitive damages.

COUNT XIV
(Unjust Enrichment)
(as to All Defendants)

236. FIMT incorporates by reference paragraphs 1-164, as if fully set forth herein.

237. This is an action, pleaded in the alternative, for unjust enrichment.

238. Upon information and belief, Defendants have obtained revenues, profits and earnings from Defendants' unlawful conduct complained of herein.

239. Defendants have unlawfully used and/or exploited FIMT's valuable intellectual property rights including FIMT's patent, trademark and trade dress rights, having engaged in unfair competition under the Lanham Act and the common law and having unjustly profited from its unlawful conduct, causing damages, including irreparable harm, to FIMT.

240. Under the circumstances, it would be inequitable for Defendants to retain all of the profits that Defendants obtained based on its misappropriation of FIMT's patent, trademark, trade dress rights and goodwill wrongfully acquired and/or used or the interference with the business relationship between FIMT and its customers, and/or the solicitation of FIMT's customers, directly or indirectly, through its unlawful conduct.

241. As a result, Plaintiff is entitled to recover from Defendants a portion of the monies paid to Defendants, with interest, Defendants acquired as a result of

its wrongful acts or misappropriation of FIMT's proprietary patent, trademark, trade dress rights and/or goodwill.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, FIMT prays for a Judgment for Damages, and Permanent Injunctive Relief as follows:

- A. Permanent Injunctive relief ordering that Defendants, their officers, directors, members, shareholders, agents, servants, employees, subsidiaries, affiliates, successors, assigns, attorneys, representatives, any entities owned or controlled by any of them, and all those in active concert or participation with any of them, and each of them who receives notice directly or otherwise, be permanently enjoined and restrained, *inter alia*, from:
1. Using the KARMAGAMI® trademark, KARMAGAMI® trade dress, SHASHIBO® trade dress and SPINBALLS™ trade dress or any confusingly similar variation thereof;
 2. Publishing, producing, marketing, selling, transporting, distributing, moving and/or otherwise circulating any and all products or services, including, but not limited to toys, puzzles, poi balls, and products or services related thereto, which bear the KARMAGAMI® trademark, KARMAGAMI® trade dress, SHASHIBO® trade dress and SPINBALLS™ trade dress or any confusingly similar variation thereof;
 3. Acting in any manner which causes Defendants' products, including, but not limited to toys, puzzles, poi balls, products related thereto, and Defendants' online advertising and selling

of same, to be in any way confused with FIMT, FIMT's products and the goodwill associated with the KARMAGAMI® trademark, KARMAGAMI® trade dress, SHASHIBO® trade dress and SPINBALLS™ trade dress or any confusingly similar variation thereof, or any colorable imitation or confusingly similar variation thereof;

4. Continuing to unjustly enrich themselves at Plaintiff's expense;
5. Continuing to use Plaintiff's intellectual property rights; and,
6. Aiding, assisting or abetting any act prohibited by subparagraphs 1-5 above.

- B. Ordering that, in accordance with 15 U.S.C. § 1117(a) and the common law, Defendants be required to account for and pay over to FIMT an amount equal to Plaintiff's actual damages, and all of the gains, profits, savings, and advantages realized by Defendants as a result of Defendants' patent infringement, unfair competition, trademark infringement, trade dress infringement, unjust enrichment and if Defendants' infringing acts of infringement are deemed willful and intentional, then such amount should be increased to three times such amount.
- C. An order finding Defendant Five Below contributorily and/or vicariously liable, holding Defendant Five Below jointly and severally liable for any damages, attorneys' fees or costs awarded to Plaintiff as a result of Defendants 1616 Holdings, Inc. RMS's or JMM's patent infringement, trademark infringement, trade dress infringement, unfair competition or unjust enrichment.

- D. An order that Defendants remove any and all infringing products from its inventory, including its warehouses, stores, website(s), social media, and marketing materials and immediately surrender or verify the destruction of all such inventory;
- E. An order awarding damages, including exemplary and punitive damages, for willful, intentional and bad faith patent infringement, trademark infringement, trade dress infringement or unfair competition that the Court finds appropriate to deter any future tortious or unlawful conduct;
- F. An order awarding FIMT for any and all reasonable attorney's fees, costs and expenses incurred as a result of Defendants' unfair competition, patent infringement, trademark infringement and trade dress infringement as recoverable under applicable law;
- G. An order awarding damages sufficient to pay for corrective advertising to correct the confusion caused by Defendants' unfair competition, trademark infringement and trade dress infringement in the toy marketplace;
- H. An order awarding pre-judgment and post-judgment interest on the foregoing sums, and reasonable attorneys' fees, costs and expenses;
- I. Any and all other relief as the Court deems just or proper.

JURY DEMAND

Plaintiff hereby respectfully demands trial by jury in this action under Rule 38 of the Federal Rules of Civil Procedure on all issues so triable as a matter of right.

Dated: November 30, 2023

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Joseph R. Sozzani".

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