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11 Attorneys for Plaintiff Forever 21, Inc.

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

14 FOREVER 21, INC., 15 16 Plaintiff, 17 18 v. 19 ADIDAS AMERICA, INC., and ADIDAS AG, 20 21 Defendants. 22	}	CASE NO. 2:17-cv-01752 COMPLAINT FOR DECLARATORY JUDGMENT OF (1) NON-INFRINGEMENT OF TRADEMARKS and (2) NON-BREACH OF SETTLEMENT AGREEMENT
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1 Plaintiff Forever 21, Inc. (“**Forever 21**”) hereby states the following allegations
2 for its Complaint for Declaratory Judgment against Defendants Adidas America, Inc.,
3 and Adidas AG (together, “**Adidas**”).

4 **INTRODUCTION**

5 1. Years ago, Adidas managed to secure federal trademark registrations for
6 use of three, parallel stripes placed in specific locations on certain shoes and clothing.
7 Adidas is well known for aggressively enforcing its perceived trademark rights against
8 others, suing and threatening suit against retailers and manufacturers of footwear and
9 clothing who use three stripes in a manner that Adidas believes is likely to cause
10 confusion.

11 2. But Adidas has taken its claims even further—too far—essentially
12 asserting that no item of clothing can have any number of stripes in any location
13 without infringing Adidas’s trademarks. To this end, Adidas has sued clothing and
14 footwear manufacturers who have used two stripes. It has sued those who use four. It
15 has sued over stripe patterns involving multiple widths and colors, and it has sued
16 over garments Adidas is not known for making. It has also threatened to sue many
17 others on similar claims.

18 3. Forever 21, a well-known, international retailer of specialty clothing,
19 headquartered in Los Angeles, has fallen victim to Adidas’s threats on more than one
20 occasion. Since 2006, Adidas has commenced a pattern of complaining about striped
21 apparel sold by Forever 21, and it has steadfastly increased its threats to encompass
22 virtually any item of clothing with decorative stripes. Most recently, in a letter dated
23 February 24, 2017, Adidas’s counsel has again threatened to sue Forever 21 over its
24 use of stripes on six items of clothing. The stripes on the Forever 21 clothing at issue
25 are merely ornamental and decorative. None of these items of clothing display any of
26 Adidas’s three-stripe marks, and no consumer is likely to believe any of these items
27 are manufactured by, or otherwise associated with, Adidas.

1 4. Tired of operating with a cloud over its head with regard to its right to
2 design and sell clothing items bearing ornamental/decorative stripes, and unwilling to
3 stop doing something it has every right to do and pay a bully to leave it alone, Forever
4 21 has decided that enough is enough. Forever 21 is not infringing any Adidas
5 trademark and has not breached any agreements with Adidas. This matter is ripe for a
6 declaratory judgment.

7 **PARTIES**

8 5. Plaintiff Forever 21, Inc., is a Delaware corporation, having its principal
9 place of business at 3880 N. Mission Road, Los Angeles, California 90031.

10 6. On information and belief, Defendant Adidas AG is a joint stock
11 company organized and existing under the laws of the Federal Republic of Germany,
12 having its office and principal place of business at Postach 11230, D-91072
13 Herzogenaurach, Federal Republic of Germany.

14 7. On information and belief Defendant Adidas AG is the owner of the
15 claimed trademarks Adidas has asserted against Forever 21, as set forth below.

16 8. On information and belief, Defendant Adidas America, Inc., is an Oregon
17 corporation, having a principal place of business at 5055 N. Greeley Avenue,
18 Portland, Oregon 97217.

19 9. On information and belief, Adidas America, Inc., is a subsidiary of
20 Adidas AG and directs all U.S.-based operations of Adidas AG.

21 **JURISDICTION AND VENUE**

22 10. This Court has subject matter jurisdiction over this action pursuant to
23 28 U.S.C. § 2201 and 28 U.S.C. § 1338 because Count 1 is for declaratory judgment
24 for claims involving trademarks and because an actual case or controversy exists
25 between Adidas and Forever 21. The Court has supplemental jurisdiction over
26 Count 2 pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 1367 because the claim
27 asserted therein is so related to the claim asserted in Count1 that it forms part of the
28 same case or controversy.

1 11. This Court has personal jurisdiction over Adidas AG and Adidas
2 America, Inc., because they conduct business in the state of California and because
3 they have threatened legal action against a company that is headquartered in Los
4 Angeles, California.

5 12. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b)
6 because a substantial part of the events or omissions giving rise to Forever 21's claim
7 have occurred in this district and a substantial part of the property that is subject to the
8 action is situated in this district.

9 **FOREVER 21**

10 13. Forever 21 is an American success story. It began in 1984 as an
11 immigrant's dream, with a single, 900-square-foot store in Los Angeles, California. It
12 has since grown into a fashion giant whose stores are now housed in 9,000-square-
13 foot spaces in shopping malls and 24,000-square-foot flagship stores in major cities.
14 Today, Forever 21 is one of the most well-known specialty retailers of apparel,
15 clothing, and accessories, operating through its online store and in over 525 retail
16 stores throughout the United States, as well as in stores throughout the Americas,
17 Asia, the Middle East, and the UK.

18 14. Most of the merchandise Forever 21 sells in its online and brick-and-
19 mortar stores is made exclusively for Forever 21.

20 15. Forever 21 owns numerous trademark registrations for retail store
21 services, clothing, and fashion accessories. The well-known FOREVER 21 name
22 appears prominently on all Forever 21 stores, on Forever 21's website, and on all
23 clothing Forever 21 sells. Consumers cannot purchase Forever 21's clothing items
24 without encountering the FOREVER 21 trademark.

25 16. Forever 21 sells clothing displaying a wide variety of colors and
26 ornamental patterns and designs. Some of the clothing Forever 21 sells has
27 ornamental/decorative stripes. Forever 21 does not use stripes as a trademark or
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1 source identifier on any of its clothing items. Any use of stripes on clothing sold by
2 Forever 21 is ornamental, decorative, and aesthetically functional.

3 **THE MOST RECENT ADIDAS “NO-STRIPES” LETTER**

4 17. On or around February 28, 2017, Forever 21 received a letter from an
5 attorney at Kilpatrick Townsend on behalf of Adidas America, Inc., and Adidas AG.
6 The letter was dated February 24, 2017, and generally demanded that Forever 21
7 discontinue all sales of certain clothing items containing stripes. (Adidas’s February
8 24 letter will be referred to throughout this Complaint as the “**No Stripes Letter.**”)

9 18. The specific items identified as “infringing apparel” in the No Stripes
10 Letter are pictured below:



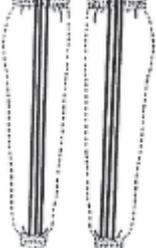
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19. In the No Stripes Letter, Adidas asserted that each of the clothing items pictured above (the “**Striped Clothing**”) infringes Adidas’s rights in various federal

1 trademark registrations for the use of three stripes on clothing items. The registrations
 2 asserted in Adidas’s No Stripes Letter (the “**Adidas Registrations**”) are listed in the
 3 table below:

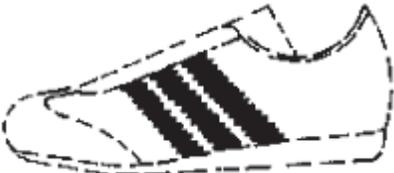
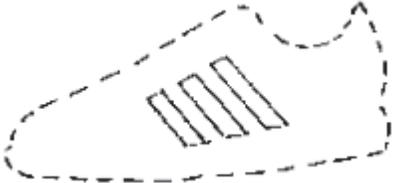
Reg. No.	Mark Drawing	Goods
870,136		Athletic training suits
2,016,963		Jackets
2,058,619		Shirts
2,278,591		Shorts
2,284,308		Pants
3,029,127		T-shirts, sweatshirts, jackets and coats

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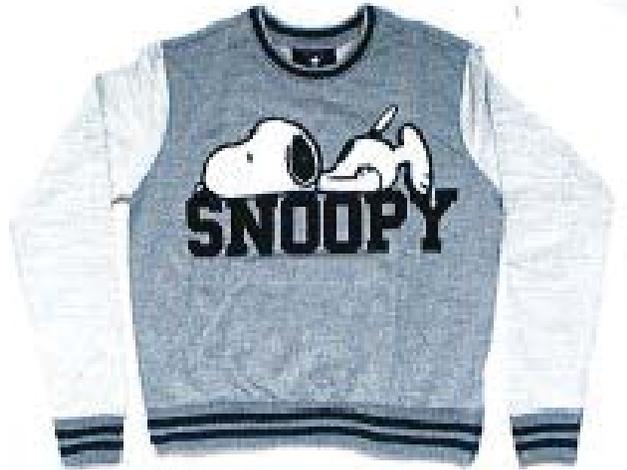
3,087,329		T-shirts, sweatshirts, vests, jackets and coats
4,910,643		Various bags, wallets, and other goods made of leather or imitation leather, various clothing items, athletic sporting goods
1,815,956		Athletic footwear
1,833,868		Athletic footwear
2,278,589		Athletic and leisure footwear
2,909,861		Footwear, namely, slides
2,999,646		Footwear, namely, slides

1 23. All of the Adidas Registrations feature three, parallel stripes of equal
2 width or, in the case of Reg. No. 1,674,229 use of the words, “3 Stripes.”

3 24. *None* of the ornamental designs on the Striped Clothing involve three,
4 parallel stripes of equal width.

5 25. Many clothing items adorned with decorative stripes are sold by
6 countless third parties.

7 26. Adidas’s claims to all things striped did not begin with the recent No
8 Stripes Letter. In a previous letter, dated June 8, 2015, Adidas had threatened to sue
9 Forever 21 over other clothing items, which included a sweatshirt with Snoopy on the
10 front of it and a traditional, generic varsity-style stripe pattern on the collar, cuffs, and
11 bottom of the shirt. A photograph of this “**Snoopy Shirt**” is below:



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20 (From this point forward, references to “Striped Clothing” in this Complaint include
21 the Snoopy Shirt in addition to the six items pictured above.) Forever 21 continues to
22 use this very traditional striped pattern on other clothing items.

23 27. Adidas should not be allowed to claim that Adidas, alone, has a
24 monopoly on all striped clothing.

25 28. Consumers are not likely to be confused into believing the Striped
26 Clothing sold in Forever 21’s stores by Forever 21 is manufactured by, sponsored by,
27 authorized by, or otherwise associated with Adidas.
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1 29. Because Adidas continues its pattern of conduct over the last several
2 years, asserting trademark rights against Forever 21 and threatening to sue Forever 21
3 if Forever 21 has not caved to Adidas's demands, an immediate, justiciable case or
4 controversy exists such that Forever 21 is entitled to seek a declaratory judgment of
5 non-infringement.

6 **FIRST CAUSE OF ACTION**

7 **(Declaration of Non-Infringement)**

8 30. Forever 21 incorporates paragraphs 1 through 29 herein by reference.

9 31. In its No-Stripes Letter, as it had done in the past, Adidas claimed that
10 Forever 21's offer and sale of items with decorative stripes infringed an unspecified
11 number of the Adidas Registrations. This most recent letter claimed the six identified
12 items of Striped Clothing is likely to cause confusion and therefore constitutes
13 infringement of Adidas's purported rights in various 3-stripe trademarks.

14 32. Forever 21's Striped Clothing display stripes in an ornamental,
15 decorative, non-trademark manner. Additionally, or in the alternative, none of Forever
16 21's Striped Clothing is likely to cause confusion with Adidas, its trademarks, or its
17 products.

18 33. Forever 21's Striped Clothing items do not infringe any of the Adidas
19 Registrations or any other trademark rights owned by Adidas.

20 34. An actual, present, and justiciable controversy has arisen between Adidas
21 and Forever 21 concerning the Striped Clothing.

22 35. Unless and until a declaratory judgment of non-infringement is entered in
23 Forever 21's favor, Forever 21 is operating under a cloud and cannot enjoy an
24 unfettered right to design and sell clothing with ornamental, decorative striped
25 designs.

26 **SECOND CAUSE OF ACTION**

27 **(Declaration that Settlement Agreements Have Not Been Breached)**

28 36. Forever 21 incorporates paragraphs 1 through 35 herein by reference.

1 37. Adidas’s No Stripes Letter references one or more confidential settlement
2 agreements between Forever 21 and Adidas.

3 38. Forever 21’s sale of the Striped Clothing does not constitute a breach of
4 any contract entered into by Forever 21 and any Adidas entity.

5 39. An actual, present, and justiciable controversy has arisen between Adidas
6 and Forever 21 concerning the Striped Clothing.

7 40. Unless and until a declaratory judgment of non-breach is entered in
8 Forever 21’s favor, Forever 21 is operating under a cloud and cannot enjoy an
9 unfettered right to design and sell clothing with ornamental, decorative striped
10 designs.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Forever 21 prays for the following relief:

14 1. A judgment declaring that (a) the stripes on Forever 21’s Striped
15 Clothing is ornamental and does not serve a source-identifying function, (b) Forever
16 21’s Striped Clothing does not infringe any trademark rights owned by Adidas, and
17 (c) Forever 21’s sale of the Striped Clothing does not constitute a breach of any
18 contract entered into by Forever 21 and any Adidas entity;

19 2. An award of costs in this action;

20 3. A finding that this case is “exceptional” within the meaning of 15 U.S.C.
21 § 1117 and a corresponding award of attorneys’ fees in Forever 21’s favor; and

22 4. For such other, further, or different relief as the Court deems just and
23 proper.

24 Dated: March 3, 2017

Respectfully submitted,

25 KATTEN MUCHIN ROSENMAN LLP

26 By: /s/ Leah E.A. Solomon

27 Attorneys for Plaintiff Forever 21, Inc.
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