

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

WHALECO INC.

Plaintiff,

v.

SHEIN US SERVICES, LLC, SHEIN
DISTRIBUTION CORPORATION, and
ROADGET BUSINESS PTE. LTD.

Defendants.

No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Whaleco Inc. (“Temu” or “Plaintiff”), by its attorneys, Boies Schiller Flexner LLP, bring this Complaint against Shein US Services, LLC, Shein Distribution Corporation, and Roadget Business Pte. Ltd. (collectively, “Shein” or “Defendants”) and alleges, upon personal knowledge as to events or actions taking place in its presence, and upon information and belief as to all other events or actions, as follows:

NATURE OF THE ACTION

1. Temu and Shein are at the vanguard of ultra-fast fashion, where technology and highly efficient supply chains meet to satisfy consumer demand for cutting-edge fashions at ultra-low prices. The speed of communications and rapidly changing consumer preferences and fashion have created strong consumer demand for the ultra-fast fashion business model. Critically, that model relies on relationships with tens of thousands of clothing manufacturers capable of meeting the rigors of the ultra-fast fashion business model.

2. Temu and Shein both have extensive experience with ultra-fast fashion in Asian markets. Shein entered the United States market in 2017 and obtained a monopoly position. Temu entered the U.S. market in September 2022. Temu quickly became U.S. consumers' favorite ultra-fast fashion retailer, topping the app store charts and consistently offering lower prices than Shein. An analysis of identical products that were offered on both Shein and Temu's platforms showed that the prices on Temu were usually 10-40% less than those on Shein.

3. In response to Temu's entry and lower prices, Shein chose not to compete on the merits by offering better prices, terms, service, or quality to maintain or expand its U.S. business. Instead, Shein has undertaken a Scheme as alleged herein to protect and expand its power in the United States ultra-fast fashion market.

4. Specifically, Shein has engaged in a campaign of threats, intimidation, false assertions of infringement, and attempts to impose baseless punitive fines and has forced exclusive dealing arrangements on clothing manufacturers. As the dominant ultra-fast fashion retailer, Shein knows that manufacturers need Shein's volume and its access to the U.S. market and it is, therefore, able to coerce manufacturers into arrangements that force manufacturers not to do business with Temu. The intent and effect of Shein's anticompetitive conduct is to exclude Temu so that Shein can charge higher prices to consumers while offering a smaller selection and lower quality than Shein would if it faced competition from Temu.

5. As detailed below, Shein's conduct violates Sections 1 and 2 of the Sherman Act, the Clayton Act, as well as the Massachusetts Consumer Protection Law, and further constitutes common-law tortious interference. Shein's Scheme harms consumers and competition by raising prices to consumers, restricting choice and innovation, and impairing the expansion of the ultra-fast fashion market in the United States.

BACKGROUND

6. On December 24, 2022, as the peak shopping season in the U.S. was about to take a short break to celebrate the holidays, *The Wall Street Journal* published an article dedicated to a retailer that had entered the market only three months prior. “American Bargain Hunters Flock to a New Online Platform Forged in China” read the headline. The byline continued, “Temu, a marketplace with deep discounts and copious coupons, has become the most downloaded app in the U.S.”

7. Temu entered the U.S. market in September 2022. Its goal: To drastically reduce consumer prices and increase responsiveness to new fashion trends and consumer demands.

8. On February 12, 2023—Super Bowl Sunday—Temu took out two spots to run a commercial depicting a young woman buying a number of dresses and other apparel at affordable prices and finishing with the message “shop like a billionaire” in reference to the affordability of the clothing and other items available on the app.



9. Until Temu’s launch, Shein comfortably dominated the segment of the fashion industry generally referred to as the ultra-fast fashion market in the United States.

10. The ultra-fast fashion business distinguishes itself from fast fashion by offering not only an overwhelming number of products, but also frequently replacing those products with new designs. Unlike high-end fashion—which is characterized by exclusivity, high prices, and slow style refreshes—ultra-fast fashion offers a huge number of ever-changing styles for extraordinarily low prices.

11. As it announced during the Super Bowl, Temu had entered the market to provide U.S. customers with another option for affordable, quality products on its own website and mobile app (the “Temu Platform”). Temu’s demonstrated ability to offer hundreds of thousands of new and frequently updated products at low prices poses a direct competitive threat to Shein.

12. There has been quick public recognition that Temu is creating a competitive constraint on Shein.¹

13. Temu is better situated than any other firm to challenge Shein’s dominance and deliver better consumer value.

14. Though new to the U.S., Temu’s affiliated companies are some of the most successful online retailers. Shein is well aware that Temu has the experience and ability to identify and source from the most efficient apparel manufacturers and build an agile business model that offers an ever-evolving product line to lure customers to its platform. Temu’s entry into the U.S. market was, therefore, a disruption to Shein’s easy dominance in ultra-fast fashion. As a result, Shein now views itself as being “at war” with Temu and has engaged in an elaborate

¹ THE CHINA PROJECT, *Temu vs Shein: Which platform will rule the ecommerce world?* (March 17, 2023) (available at <https://thechinaproject.com/2023/03/17/temu-vs-shein-which-platform-will-rule-the-ecommerce-world/>).

and anticompetitive Scheme aimed at stymieing Temu's business. The U.S. market is the primary theatre of this war.

15. Faced with direct competition from another platform capable of taking on its business model, Shein retaliated with exclusionary conduct to lock up the supply chain, and directed other unlawful conduct at Temu to undermine its ability to offer similar products at prices that are consistently lower than Shein's. Specifically, Shein has implemented at least four strategies geared toward stifling competition from Temu (collectively, the "Scheme"):

- (a) Shein forces manufacturers to enter into adhesion agreements that effectively create exclusive supplier relationships with Shein and threatens manufacturers with onerous fines and penalties if they supply product to Temu;
- (b) Shein forces manufacturers to sign loyalty oaths certifying that they will not do business with *Temu*, but which are silent as to any other competitor or potential competitor;
- (c) Shein issues public penalty notices and imposes extrajudicial fines on disobedient manufacturers for supplying product to Temu, practices that simultaneously punish manufacturers that dare to do business with Shein's closest competitor and warns other manufacturers that Shein will not tolerate any manufacturer's doing business with Temu; and
- (d) Shein sends numerous false notices of copyright infringement to Temu in order to disrupt sales of products that are offered for sale on Temu. These notices are almost always aimed at products that Temu sells at lower prices than Shein charges for identical or similar products.

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