IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SHOPIFY INC., a Corporation organized under the laws of Canada, Plaintiff, v. **SHOPLINE TECHNOLOGY HOLDINGS PTE. LTD.**, a private limited company organized under the laws of Singapore, **SHOPLINE US, INC.**, a Delaware corporation, and **SINOXPRESS INC.,** d/b/a fosterry.com, a New York corporation, Defendants.	**Case No. 1:24-cv-03691** **COMPLAINT FOR COPYRIGHT INFRINGEMENT** **JURY TRIAL DEMANDED**

Plaintiff Shopify Inc. ("Shopify") brings this action against defendants Shopline Commerce Pte. Ltd. and Shopline US, Inc. (collectively, "Shopline"), and SINOXPRESS INC. d/b/a fosterry.com ("Fosterry"). For its Complaint, it alleges on personal knowledge as to its own actions and on information and belief as to the activities of others, as follows:

1.   Shopify is an enormously popular e-commerce service provider, enabling businesses around the globe to design and operate online stores and receive backend support for everything from inventory management to payments to shipping. Today, millions of merchants call Shopify home.

2.   Central to Shopify's success is "Dawn," a computer program that powers a highly customizable storefront template or "theme." Shopify merchants can use Dawn to quickly launch a compelling online presence or to design their own unique store. Dawn receives rave reviews for its striking, clean appearance, its ease of customization and its operational efficiency.

It is the product of many thousands of hours of creative effort by Shopify employees and the

investment of many millions of dollars. And Dawn is protected by copyrights registered in the

United States.

3.   Defendant Shopline is a would-be Shopify competitor and a subsidiary of the

multinational conglomerate Joyy, Inc. Shopline has mimicked Shopify's market-leading

operations in many ways. But Shopline is guilty of far worse than imitation. Unable to compete

fairly with Shopify, Shopline copied Dawn, and is now distributing a thinly-disguised knockoff

that Shopline calls "Seed," in the United States and around the world.

4.   Shopline's derivative of Dawn still carries damning evidence of Shopline's

wholesale copying. The file structure and layout, file names, function names, lines of code and

even icon codes from Shopify's original can still be found in Seed. The "Shopify" name still

appears in the code of various versions of Seed that Shopline is distributing. And Shopify has

found a Chinese webpage hosted by Joyy bearing the title: "Seed Theme" that still carries

headers reading "dawn-test".

5.   By copying, modifying and distributing its Dawn knock-off in the United States,

Shopline has engaged in widespread and willful infringement of Shopify's copyrights in Dawn.

Shopline is also contributorily liable for the infringement of its merchants, like Defendant

Fosterry, who are using this stolen version of Dawn to power their operations and thereby

copying, distributing and publicly displaying it throughout this country and the world.

6.   Shopify seeks redress for this blatant copyright infringement under 17 U.S.C. §§

106 and 501 *et seq*.

PARTIES

7.   Plaintiff Shopify is a corporation organized under the laws of Canada, with its

headquarters in Ottawa, Ontario, Canada. Shopify is a cloud-based, e-commerce service

provider enabling all manner of merchants to promote and operate their businesses online.

8.   Defendant Shopline US, Inc. ("Shopline US") is a Delaware corporation with its

principal place of business in New York. Shopline US contracts with merchants in the United

States, and has directly and contributorily infringed Shopify's copyrights in the United States.

9.   Defendant Shopline Technology Holdings Pte. Ltd. ("Shopline Technology") is a

corporation organized under the laws of Singapore. Shopline Technology directly and

contributorily infringed Shopify's copyrights in the United States, doing so itself and through its

agent, Defendant Shopline US.

10.   Both Shopline entities are subsidiaries of Joyy, Inc., a Chinese corporation now

headquartered in Singapore that trades under the NASDAQ ticker symbol YY. There are a series

of other Joyy subsidiaries operating in various countries under some version of the name

"Shopline." If discovery in this case reveals that these other entities or Joyy itself is responsible

for creating, reproducing, or distributing Shopline's infringing Seed theme, Shopify will seek

leave to amend the complaint to add those entities as defendants.

11.   Defendant Fosterry is a New York corporation with headquarters in New York,

New York. Fosterry is an e-commerce business that sells men's shoes using Shopline's products

and services, including Shopline's Seed theme.

JURISDICTION AND VENUE

12.   The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a)

because this action arises under the Copyright Act of 1976, 17 U.S.C. § 101, *et seq.*

13.   Shopline US is subject to the Court's jurisdiction because it is headquartered in New York. Further, Shopify's claims against it arise directly from Shopline US' contacts with this state. Specifically, Shopline has directly and secondarily infringed Shopify's copyrights in this state by distributing Shopline's infringing theme, Seed, to the New York merchant Fosterry, which in turn exploited that infringement to Fosterry's benefit and to Shopline's.

14.   Shopline Technology is subject to the Court's jurisdiction because Shopify's claims against it arise directly from its contacts with this state. Specifically, Shopline Technology has directly and secondarily infringed Shopify's copyrights in this state by copying, distributing and displaying Shopline's infringing theme, Seed, in this state.

15.   Fosterry is subject to the Court's jurisdiction because it is a New York corporation headquartered and with its principal place of business in New York, New York. Further, Shopify's claims against it arise directly from Fosterry's contacts with this state. Specifically, Fosterry has directly infringed Shopify's copyrights in this state by copying, distributing and displaying Shopline's infringing theme, Seed, in New York.

16.   Venue is proper under 28 U.S.C. § 1400(a) because Defendant Fosterry and Defendant Shopline US reside in this District, and all defendants have committed acts of infringement in this District. Venue is also proper under 28 U.S.C. §§ 1391(b)(2) because a substantial part of Defendants' acts giving rise to Shopify's claims occurred and is occurring in this District.

BACKGROUND

Shopify's Dawn Theme

17.   In simplest terms, a "theme" is a piece of software that forms the backbone of the way an e-commerce site appears and functions. Dawn is Shopify's flagship theme. Launched in

4

2021, Dawn has received high praise for its aesthetic elegance and industry-leading efficiency. It

is compatible with all mainstream browsers and optimized for viewing on mobile devices. It

loads faster than most other e-commerce themes and can make a site easier to find in search

engine results.

18.   For these reasons and more, Dawn has become one of the go-to themes for

merchants operating online stores on Shopify.

19.   Shopify first published the Dawn theme on its theme store in June 2021. Version

1.0.0 was published on June 29, 2021; Version 7.0.0 was published on September 15, 2022; and

Version 13.0.0 was published on January 31, 2024. All three of these versions are registered

copyrighted works. *See* Copyright Registration Numbers TX0009378385, TX0009382135, and

TX0009382137, respectively.

20.   Shopify authorizes Shopify merchants to customize the Dawn theme to suit their

particular needs, but only for use on Shopify. Shopify has not authorized, and in fact has

explicitly prohibited, any copying, modification, distribution or display of the Dawn theme for

use elsewhere, such as on a competing service.

<u>Shopline's Seed Theme</u>

21.   Like Shopify, Shopline offers merchants a customizable website template for their

e-commerce business. Seed plays a critical role in Shopline's operation, as it serves as the

"reference theme" or template upon which many, if not most, of Shopline's customers build their

stores. According to Shopline, "Seed serves as the foundation for all free Shopline themes."[1]

22.   Shopline not only distributes Seed directly to merchants but also encourages web

developers to build upon Seed to design stores for clients, and to develop enhanced themes that

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[1] https://developer.shopline.com/docsv2/ec20/hgr7vj9rpaah1a6m/dvzxhn3ch6pqchbh.

5

the developers can sell. Shopline's online documents instruct developers to "[c]lone and customize Seed for your store or your client's store" and to "[u]se Seed components in your own themes or your client's themes." *Id.*

<p align="center">Shopline's Seed Infringes Shopify's Copyrights In Dawn</p>

23.   In March 2024, Shopline announced it was expanding into the United States and said that "retailers of all sizes should be free to access the best possible technologies." But the "best possible technologies" that Shopline is making "free to access" for its customers in this country and elsewhere, are not the product of Shopline's ingenuity and hard work. They are instead a function of Shopline taking Shopify's software, copying it, and distributing it as Shopline's own.

24.   To create Seed, Shopline started by making an unauthorized copy of Dawn, translated that unauthorized copy into a different programming language, and then made largely cosmetic changes to the Dawn code.

25.   From the highest level of overarching organization to the smallest level of individual lines of code, the evidence of Shopline's copying is overwhelming. The organization of Seed's directory layout matches Dawn's layout, using the same names and same labels, and has virtually identical contents for the code. That would not be if the programs were independently developed. Two independently developed filing systems for two different law offices might include similar materials, but the order structure, labels and names for files that each office used would be very different.

26.   The organization and naming of the Seed theme files storing code are also strikingly similar to those of the Dawn theme. The first-level directories are exactly the same. (*E.g.*, assets, config, layout, etc.) The second-level directory is exactly the same. (*E.g.*,

templates/customers.) And large swaths of the filenames are exactly the same. Roughly half of the file names used in Seed find their ancestor in the Dawn code.

27.   The code of Shopline's Seed was plainly lifted from Dawn as well. The Seed files have the same technical design and properties as Dawn. They have the same internal naming conventions and ordering of coding elements. They contain perfect reproductions of the over one thousand lines and one-hundred thousand characters of code covering forty-two of Dawn's forty-three icons that Shopify authored.

28.   One of many examples of Shopline's code copying is in Seed's section for "product media" and the "srcset" function where Seed's code, structure, order and layout is lifted directly from Dawn 7.0.0's equivalent. "Srcset" tells the browser to adjust images in response to the particular device a user is using. While there are many ways Shopline could write its own code to achieve this, Shopline chose to copy Shopify's. Shopline even mindlessly ripped off the width values that Dawn chose for its rival theme, values that are specific to the overall appearance of Dawn. The copying, which goes on and on, is readily apparent in just a few lines:

Shopify's Dawn[2]	Shopline's Seed[3]
Dawn / snippets / product-media.liquid	Seed / snippets / product-media.html
srcset="{%- if media.preview_image.width >= 550 -%}{{ media.preview_image | image_url: width: 550 }} 550w,{%- endif -%}	srcset="{{#if (if preview_image.width '>=' 550) }}{{ image_url preview_image width=550 }} 550w,{{/if}}
{%- if media.preview_image.width >= 1100 -%}{{ media.preview_image | image_url: width: 1100 }} 1100w,{%- endif -%}	{{#if (if preview_image.width '>=' 1100) }}{{ image_url preview_image width=1100 }} 1100w,{{/if}}
{%- if media.preview_image.width >= 1445 -%}{{ media.preview_image | image_url: width: 1445 }} 1445w,{%- endif -%}	{{#if (if preview_image.width '>=' 1445) }}{{ image_url preview_image width=1445 }} 1445w,{{/if}}
{%- if media.preview_image.width >= 1680 -%}{{ media.preview_image | image_url: width: 1680 }} 1680w,{%- endif -%}	{{#if (if preview_image.width '>=' 1680) }}{{ image_url preview_image width=1680 }} 1680w,{{/if}}
{%- if media.preview_image.width >= 2048 -%}{{ media.preview_image | image_url: width: 2048 }} 2048w,{%- endif -%}	{{#if (if preview_image.width '>=' 2048) }}{{ image_url preview_image width=2048 }} 2048w,{{/if}}
{%- if media.preview_image.width >= 2200 -%}{{ media.preview_image | image_url: width: 2200 }} 2200w,{%- endif -%}	{{#if (if preview_image.width '>=' 2200) }}{{ image_url preview_image width=2200 }} 2200w,{{/if}}

29.   Given Shopline's pervasive copying of the Dawn code, the appearance of stores that Seed generates is often indistinguishable from the ones Dawn generates. Here is one simple example showing a comparison of the default output that the Dawn theme generates for a purchase page, side-by-side with the default purchase page generated by Shopline's Seed. The similarity is overwhelming:

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[2] https://github.com/Shopify/dawn/blob/v7.0.0/snippets/product-media.liquid.

[3] https://github.com/shoplinedev/Seed/blob/main/snippets/product-media.html.
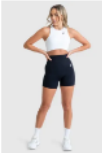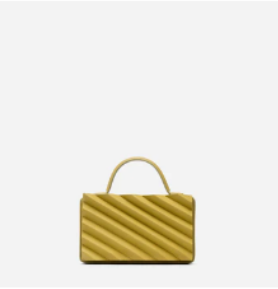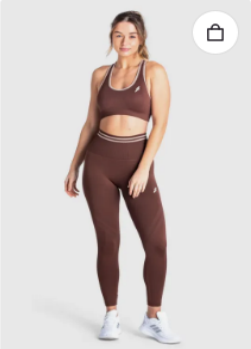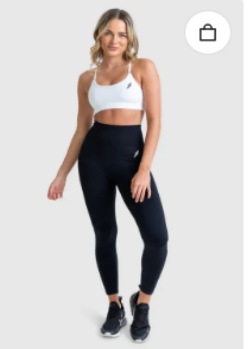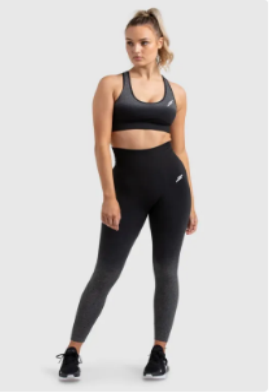
| Shopify Dawn[4]	Shopline Seed[5]
Quantity − 1 + Add to cart Buy it now	Quantity − 1 + Add to cart Buy now
Materials ⌄ Shipping & Returns ⌄ Dimensions ⌄ Care Instructions ⌄ Share	MATERIALS ⌄ SHIPPING & RETURNS ⌄ DIMENSIONS ⌄ CARE INSTRUCTIONS ⌄ Share
🔍 👤 🛍 🛍①	🔍 👤 🛍 🛍①
⚖ Filter and sort	⚖ Filter

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[4] Dawn output found at
https://themes.shopify.com/themes/dawn/styles/default/preview?price%5B%5D=free&surface_i
nter_position=1&surface_intra_position=4&surface_type=all.

[5] Shopline output found at
https://admin.myshopline.com/preview?id=64474d40437ec4073fb9562d&name=Seed&demoUrl
=https://seed-
demo.myshopline.com/&lang=en&styleList=%5B%5D&_gl=1*a15584*_ga*MzI0NzM1NzM4
LjE3MTMyMzM5MjA.*_ga_29GCZ9NC5V*MTcxNTI2NDE2OC4yMC4xLjE3MTUyNjQxO
DQuNDQuMC4w&from_ref=www.shopline.com.

Your cart

Continue shopping

PRODUCT		TOTAL
Louise Slide Sandal $295.00 Color: Buttermilk Size: 37	− 1 + 🗑	$295.00

Pleated Heel Mule
$369.00 USD

Brick
$287.00 USD

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You may also like

Mini Sera Tote
$272.00 USD

Bo Ivy
$291.00 USD

© 2024, theme-dawn-demo Powered by Shopify

SHOPPING CART

Continue shopping

Impact Solid High-Neck Crop - White

$241.00 USD

− 1 + 🗑

DYE SCRUNCH SEAMLESS CROP
$298.00 USD

IMPACT SOLID CROP
$319.00 USD

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YOU MAY ALSO LIKE

OMBRE SEAMLESS CROP – BLUE
$298.00 USD

OMBRE SEAMLESS CROP – BLACK
$342.00 USD

© 2024 Seed

30.   There is no reason for the two independently developed themes to generate

virtually identical purchase pages (differentiated only by the different products being sold). The

reason for the virtual identity is Shopline's copying of Shopify's Dawn theme.

31.   While side-by-side comparisons of codes and the outputs they generate leave no

question about Shopline's theft, there are additional telltale signs of copying as well.

32.   As noted, Seed serves as a base for other themes that Shopline offers to

merchants. Shopline distributes these additional themes online at www.shopline.my/templates.

In the code of each of the themes that Shopline is distributing, the word "Shopify" appears at

least twice. But that word has no place or purpose in the code for a Shopline theme. It is merely

a testament to Shopline's copying of the code from Shopify's Dawn theme.

33.   Shopify has also discovered what appears to be a website that Shopline used to

test the Dawn code it took from Shopify. The site is still accessible at http://sjf-

sin.tina.duowan.com/, a website hosted by Shopline's parent company, Joyy. At the top of the

site is the inscription "seed主题," which translates to "Seed theme." According to information on

the site, the code generating the site is the code from Seed:

"Shopline.themeName="Seed";Shopline.themeVersion="1.1.93";Shopline.themeTypeVers

ion=2.1." And there are countless references to both Shopline and Seed throughout the code.

But the header on the site carries the phrase "dawn-test" and the code contains several,

inexplicable stray references to "Dawn." Such references have no place on a page coded by

Shopline. They again powerfully demonstrate that Shopline derived Seed from Dawn.

34.   The extent of Shopline's copying leaves no doubt that its infringement of Dawn

was willful. But Shopline's illicit intent is further confirmed by its near verbatim copying of

other Shopify materials as well.

35.   Shopline plainly helped itself to the contents of Shopify's developer pages –

public facing manuals for web developers and sophisticated merchants designing their own

storefronts. Many of Shopline's developer pages are copied essentially verbatim from Shopify's.

As but one of many examples, a side-by-comparison of Shopify's and Shopline's developer

pages for theme app extensions is produced below with the language Shopline copied

highlighted in yellow:

Shopify[6]	**Shopline**[7]
Theme app extensions overview	Overview
Theme app extensions allow merchants to easily add dynamic elements to their themes without having to interact with Liquid templates or code.	Theme App extensions allow merchants to easily add dynamic elements to their themes without having to interact with HTML templates or code.
For example, dynamic elements can include product reviews, prices, ratings, or interactive 3D models of products. Theme app extensions can integrate with Online Store 2.0 themes, such as the default Dawn theme, which is Shopify's Online Store 2.0 reference theme.	For example, dynamic elements can include product reviews, prices, ratings, or interactive 3D models of products. Theme App extensions can integrate with Online Store 2.1 themes, such as the default Seed theme, which is SHOPLINE's Online Store 2.1 reference theme.
Benefits of using theme app extensions	Benefits
Theme app extensions automatically expose your app in the theme editor. You can leverage the editor's visual editing capabilities without needing to replicate them in your app.	Theme App extensions automatically expose your App in the theme editor allowing you to leverage visual editing capabilities without having to replicate them in your App.
You can deploy your app at the same time to all online stores that use it. You also have access to versioning, and asset hosting on the Shopify CDN.	You can deploy your App at the same time to all online stores that use it.

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[6] Shopify page available at https://shopify.dev/docs/apps/online-store/theme-app-extensions.

[7] Shopline page available at
https://developer.shopline.com/docsv2/ec20/hgr7vj9rpaah1a6m/z76wwvr4d58479k8.

A single set of integration logic and instructions works for all themes. Merchants won't need to manually edit their theme code.	A single set of integration logic and instructions works for all themes. Merchants won't need to manually edit their theme code.
Theme app extensions resources	Resources
Theme app extensions contain the following resources:	Theme app extensions contain the following resources:

Blocks - Liquid files that act as the entry point for what you want to inject in a theme. The following block types are supported:
    App blocks
    App embed blocks
Assets - CSS, JavaScript, and other static app content that gets injected into themes.
Snippets - Reusable Liquid snippets that can be used across multiple blocks.
	Blocks HTML files that act as the entry point for what you want to inject in a theme. The following block types are supported:
	    App blocks
	    App embed blocks
	Assets CSS, JavaScript, and other static app content that gets injected into themes.
	Snippets - Reusable Html snippets that can be used across multiple blocks.

Learn more about the theme app extensions framework.	Learn more about the theme app extensions framework.
Designing for the best merchant experience	Designing for the best merchant experience
Apps built in the theme app extension framework don't edit theme code, which decreases the risk of introducing breaking changes to the theme, makes it easier to iterate on the content of the integration, and provides for a better merchant experience.	Applications built within the theme extension framework do not edit the theme code, reducing the risk of introducing significant changes to the theme. This makes it easier to iterate and integrate content, providing a better merchant experience.
Merchants can use the theme editor to configure exposed settings and add app blocks in theme sections for precise positioning in a page's layout.	Merchants can use the theme editor to configure exposed settings and add App blocks in theme sections for precise positioning in page layouts.

36. Shopline had and has no interest in respecting Shopify's rights and, in an effort to make itself appear as a legitimate service, is willing to engage in the wholesale appropriation of Shopify's proprietary content.

<u>Harm from Shopline's Infringement</u>

37. Because of Shopline's infringement of Dawn, Shopify has sustained and will continue to sustain substantial injury.

38.   The Shopify service is far superior, more aesthetically pleasing, faster, and more effective for online merchants than Shopline. Dawn is certainly a part of Shopify's competitive advantage.

39.   To create its infringing Seed theme, Shopline duplicated Shopify's Dawn theme, and now distributes it to Shopline's merchant customers, thereby resorting to theft to try and undercut Shopify's competitive advantage.

40.   At the same time as it is infringing Shopify's code so as to mimic Shopify's look, Shopline has actively sought to induce merchant customers to leave Shopify's service for Shopline. Indeed, on its site Shopline boasts of the "[c]onvenient and easy one-click relocation" from competitors like Shopify to Shopline. Shopify has incurred damages caused by Shopline's infringement in the form of lost profits along with significant investigation costs.

41.   Shopline claims it has over 600,000 merchants today. Many use Seed or some derivative, as Shopline claims Seed "serves as the foundation for all free Shopline themes." An e-commerce site cannot function without a theme. Without its infringing theme, Shopline would not have a viable software service to sell to customers. Accordingly, there is a direct causal connection between Shopline's infringement and Shopline's bottom line.

<u>Fosterry's Infringement of Shopify's Copyrights</u>

42.   Fosterry is a New York corporation selling men's shoes online with Shopline's e-commerce software at its website https://fosterry.com.

43.   Fosterry uses Shopline's Seed theme for its online store. This information is available on the Fosterry website page source code at view-source:https://fosterry.com/, in the code line "Shopline.themeName="Seed"."

44.   In operating its site on Shopline, Fosterry is copying, distributing and publicly displaying the Seed theme, an infringing copy of Shopify's Dawn theme. Fosterry is therefore itself infringing Shopify's copyrights.

45.   Fosterry has earned revenue and profit directly and proximately caused by this infringement.

FIRST CAUSE OF ACTION

(Direct Infringement Against All Defendants)

46.   Shopify realleges each and every allegation set forth in the foregoing, and incorporates them by reference herein.

47.   Defendants, and each of them, have infringed the copyright in the Dawn theme by copying, distributing, and displaying the Seed theme which is an infringing derivative of Dawn.

48.   Shopline acted willfully in its infringement of Shopify's Dawn theme.

49.   As a direct and proximate result of Defendants' infringement, Shopify has suffered actual loss, and Defendants have unjustly earned revenue and profits in amounts to be proven at trial. Shopify is entitled to recover both its losses and Defendants' profits as damages. Alternatively, Shopify is entitled to per work statutory damages in the maximum amount allowed.

WHEREFORE, Shopify prays for judgment as set forth below.

SECOND CAUSE OF ACTION

(Contributory Infringement Against All Shopline Defendants)

50.   Shopify realleges each and every allegation set forth in the foregoing paragraphs, and incorporates them by reference herein.

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51.   With knowledge that its Seed theme is an infringing derivative of Dawn, Shopline

directs and encourages its merchants (including Fosterry) and developers to make use of,

distribute, manufacture, and reproduce the infringing Seed theme for their own online stores, and

for use in web development services for their clients.

52.   By actively promoting use of the infringing Seed theme to merchants and

developers, Shopline has induced them to use that infringing work and to further infringe

Shopify's copyrights.

53.   Shopline merchants (including Fosterry) and developers directly infringe the

Dawn theme through their use of Seed.

54.   Shopline is contributorily liable for those direct infringements both because it

knowingly and materially contributed to the direct infringement, and because it induced the

direct infringement.

55.   Shopline acted willfully in its contributory infringement of Shopify's Dawn

theme.

56.   As a direct and proximate result of Shopline's contributory infringement, Shopify

has suffered actual damages in an amount to be proven at trial, and Shopline has unjustly earned

revenue and profits attributable to that infringement. Shopify is entitled to recover both its losses

and Defendants' profits. Alternatively, Shopify is entitled to per work statutory damages in the

maximum amount allowed.

WHEREFORE, Shopify prays for judgment as set forth below.

PRAYER FOR RELIEF

Shopify prays for judgment against Defendants as follows:

a)   For preliminary and permanent injunctive relief barring Defendants and all those in active

concert with them from infringing Shopify's copyrights in Dawn in any manner and in

particular through the copying, modification, distribution or public display of the Seed

theme or any derivative;

b)   For Defendants' actual damages according to proof or, alternatively, for statutory

damages, with any damages adjusted to account for Shopline's willful infringement;

c)   For costs of suit, including reasonable attorneys' fees; and

d)   For such other, further, and different relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Shopify requests a trial by jury.

Dated: May 14, 2024   Respectfully submitted,

                                       s/ *Jeremy Auster*
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