

Ontario
SUPERIOR COURT OF JUSTICE

BETWEEN:

ISKIN INC.

Plaintiff

-and-

**SHUANG (SEAN) SA, SA GROUP LTD., ZCOVER INC.,
AND DAVE MCFARLAND**

Defendants

**STATEMENT OF DEFENCE AND COUNTERCLAIM OF
SHUANG (SEAN) SA, SA GROUP LTD., AND ZCOVER INC.**

1. Except as hereinafter admitted, the Defendants, Shuang (Sean) Sa ("Sa"), SA Group Ltd. ("SA Group"), and zCover Inc. ("zCover") deny all of the allegations in the Statement of Claim ("the Claim"). These Defendants are hereinafter referred to collectively as the "SA Defendants".

THE PARTIES

2. The Defendant SA Group was incorporated on August 26, 1998 under the laws of Ontario. Since September 1998, SA Group, in cooperation with Shanghai MicroJet Electronic Equipment Co. Ltd. of Shanghai, P.R. China (the "Shanghai Factory"), has designed, produced, and sold numerous silicone products, including seals, washers, pouches, and protective cases for small electronic devices.

3. The Defendant zCover was incorporated on March 15, 2005 under the laws of Ontario. Since the time of incorporation, zCover, in cooperation with the Shanghai Factory, has designed, produced, and sold silicone protective cases for portable electronic devices.

4. The Defendant Shuang Sa is the President of both SA Group and zCover. Sa was never and has never held himself out to be a part owner of the Shanghai Factory. Sa currently resides in Richmond, British Columbia. Prior to moving to Richmond on or about May 15, 2005, Sa was a resident of Toronto, Ontario.

5. The Defendant Dave McFarland ("McFarland") was an independent contractor for zCover from about March 2005 to about July 2005. McFarland provided marketing and promotional services to zCover. Prior to working with zCover, McFarland was an employee of Toshiba America Information Systems, Inc. ("Toshiba America") and then an employee of Targus Corporation. McFarland currently resides in Long Beach, California.

6. The Plaintiff iSkin is an Ontario corporation. iSkin is the successor to the business previously operated under the name ackNOWLEDGE, a sole proprietorship of Andrew Ackloo ("Ackloo"), the now President of iSkin.

7. Ackloo is not a party to this action.

THE MARKET FOR SILICONE PROTECTIVE CASES

8. Protective cases for portable electronic devices can be made with a variety of materials, including silicone, plastics, leather and canvas, and in a variety of colors. The concept of covering small electronic devices with protective cases is not novel and protective cases often reach the market soon after the commencement of sales for the devices themselves.

9. For personal music players (or MP3 players) such as Apple Computer, Inc.'s ("Apple") iPod and iPod Mini, there are numerous suppliers of similar silicone protective cases. These companies include iSkin, zCover, Speck Products Inc., the Lajo Group (also known as "Xskn"), XtremeMac, Digital Lifestyle Outfitters, Logic3 International Ltd., and Netalog, Inc. For example, XtremeMac has been selling protective cases since about December 2001, soon after the launch of the iPod. iSkin only began selling protective cases in or about September 2002.

10. Since they are made of the similar materials and are designed for similar functions, all silicone protective cases for iPods and iPod Minis are similar in appearance and design. Accessories and features such as belt clips, straps, and wheel protectors are also common for these protective cases.

11. The vast majority of manufacturers of protective cases for small electronic devices are located in P.R. China. These manufacturers, otherwise known as Original Equipment Manufacturers, produce generic products ("OEM Products") that are stamped with the brand of their customers, who market the products all over the world.

12. Contracting with manufacturers in P.R. China is a common business practice in a variety of industries, including clothing and electronics. Many Canadian companies want to take advantage of the low cost of production offered by Chinese manufacturers. This, however, does not mean that the manufacturer is tied to any one customer for eternity. Depending on its contractual arrangement with its customers, the manufacturer often sells the same product to multiple customers or markets its own branded products. There are more than 100 manufacturers of silicone protective products in P.R. China.

13. SA Group and the Shanghai Factory were the manufacturers who designed and produced generic or OEM silicone protective cases for iSkin.

14. There is no patent or industrial design protection for protective cases for portable electronic devices in Canada.

SA GROUP'S BUSINESS RELATIONSHIP WITH ACKNOWLEDGE AND ISKIN

The Initial Contact

15. On June 21, 2003, Sa was contacted via email by Ackloo, who was then operating business under the name ackNOWLEDGE. In that email, Ackloo inquired as to whether he could source luminous (glow) pigments from SA Group for the production of silicone cases. At that time, ackNOWLEDGE was marketing silicone protective cases manufactured by the Lajo Group in Shenzhen, P.R. China.

16. On July 21, 2003, Sa met with Ackloo and Ivan Harrilal ("Harrilal") of ackNOWLEDGE to discuss the opportunity for ackNOWLEDGE to source iPod cases from the Shanghai Factory through and with the aid of SA Group. Although the Shanghai Factory and SA Group had not manufactured silicone protective cases for iPods before, both were experienced in designing and manufacturing numerous other silicone products, including washers, seals, pouches, and key chains.

17. At the July 21, 2003 meeting, Sa was provided with three of the iPod cases that iSkin had sourced from the Lajo Group, without any accessories, for evaluations and cost estimates.

Confidentiality Agreements

18. Given that SA Group's core business was designing and fabricating silicone wares, Sa was concerned that confidential information relating to the design and manufacturing process could be leaked or used to SA Group's detriment. Accordingly, at the July 21, 2003 meeting, Harrilal, Ackloo, and Sa all agreed that each party's confidential information should be protected. It was apparent at the meeting that iSkin had little experience in manufacturing,

engineering, and materials, as related to silicone wares, and had never manufactured any of its own products.

19. ackNOWLEDGE and SA Group each executed a confidentiality agreement (the "Confidentiality Agreement") protecting, amongst other things, the other party's information about products, projects, technology, manuals, drawing designs, and specifications. Both Confidentiality Agreements were provided by SA Group and contains nearly identical terms. Ackloo had ample time to consider the Agreement prior to executing it on August 5, 2003 on behalf of ackNOWLEDGE.

20. The Confidentiality Agreements executed by SA Group and ackNOWLEDGE do not make any provisions that allow the benefit of the Agreements to inure or pass to the parties' successors or assigns. None of the SA Defendants had ever executed a confidentiality agreement with iSkin and there was no assignment to iSkin of Confidentiality Agreements executed by SA Group and ackNOWLEDGE.

21. As such, iSkin cannot benefit from the Confidentiality Agreements.

No Other Agreements

22. Aside from the Confidentiality Agreements executed by SA Group and ackNOWLEDGE, certain purchase orders and invoices providing for the supply of products, and the agreements outlined in paragraphs 45 to 51 below, the SA Defendants have never executed any other agreement with ackNOWLEDGE or iSkin, including any non-compete or non-solicitation agreements.

SA Group and Shanghai Factory Responsible for Product Design and Manufacturing

23. The Confidentiality Agreements were executed on the understanding that SA Group and iSkin would both contribute to the initial development of the products. Although iSkin had

provided the initial designs for the products, the designs evolved and changed dramatically over time due to SA Group's contribution.

24. All tasks related to engineering, manufacturing, and materials, including mould design, were left in the sole discretion of SA Group and the Shanghai Factory, though iSkin did provide input as to their likes and dislikes as a customer.

25. On the basis of essentially three sample cases, the SA Group and the Shanghai Factory developed moulds and tooling, studied raw materials, and developed novel manufacturing techniques to produce silicone cases in a multitude of color patterns. The SA Group and the Shanghai Factory invented, without any contribution from ackNOWLEDGE or iSkin, techniques to combine silicone with other materials to achieve different effects on protective cases, including one version that glows in the dark.

26. Throughout the course of their collaboration, ackNOWLEDGE, and later iSkin, always acknowledged that all related know-how, patents, and other intellectual property were or would be owned by SA Group alone.

27. ackNOWLEDGE and iSkin were simply customers of SA Group, who provided them with an array of product options to choose from. SA Group produced selected products for ackNOWLEDGE and iSkin on a per-order basis. Contrary to paragraph 10 of the Claim, except for the initial partial cost of developing moulds, which Ackloo stated that ackNOWLEDGE would bear for tax reasons and which were billed by SA Group as R&D costs for tax planning purposes, SA Group has never charged ackNOWLEDGE or iSkin any actual research and development expenses.

28. During the course of their business relationship, ackNOWLEDGE or iSkin has never provided any confidential information to SA Group. To the extent that such information may have been provided, SA Group has never directly or indirectly made use of that information.

iSkin and ackNOWLEDGE did not provide Confidential Design Inputs

29. Contrary to the allegations at paragraph 9 of the Claim, ackNOWLEDGE and iSkin had never provided any confidential design inputs to Sa or SA Group.

30. As a customer, ackNOWLEDGE and later iSkin simply specified the features that they wanted for the cases, such as some aesthetic features and basic sizes and shapes. However, the SA Group and the Shanghai Factory were responsible for designing the products and ensuring feasibility from a manufacturing and functional perspective.

31. Ackloo was in charge of approving product designs at ackNOWLEDGE and iSkin. Ackloo and Sa had many meetings at ackNOWLEDGE's and later iSkin's place of business during which Sa presented iSkin with design options and alternatives. Sa would often explain to Ackloo the designs that he had in mind and Ackloo would draw these designs for Sa on the computer. The computer drawings would then be forwarded to Sa via email, which Sa or the Shanghai Factory would then convert to engineering drawings for production purposes.

32. Neither iSkin nor ackNOWLEDGE has ever provided the SA Defendants with any confidential design inputs. Sa and SA Group were chiefly responsible for the design of products supplied to ackNOWLEDGE and iSkin by SA Group and the Shanghai Factory. Aside from the original samples manufactured by the Lajo Group, which iSkin had asked SA Group to replicate, all other design features originated with Sa and SA Group in working with the Shanghai Factory.

33. To the extent that iSkin or ackNOWLEDGE may have provided design inputs, these inputs are not confidential as they are readily discernable on products which iSkin markets to the public.

Drawings are Not Confidential

34. Contrary to the allegations at paragraph 9 of the Claim, none of the drawings provided by iSkin to Sa and SA Group were confidential in nature:

- (a) Drawings can easily be obtained from measuring protective cases sold on the market or from measuring the small electronic devices for which the cases protect. This is precisely the reason why there are so many similar protective cases on the market; and
- (b) Drawings can also be readily obtained from independent third parties such as Apple, or could easily be produced by measuring the portable electronic devices or silicone cases that are readily available on the market.

Marketing Feedback and Information on Popular Colours and Styles are Not Confidential

35. Contrary to the allegations in paragraph 9 of the Claim, SA Group's product designs were never influenced by any "feedback on problems experienced by customers" and "sales information on popular colours and styles" provided by iSkin. SA Group and the Shanghai Factory employ extensive quality assurance and product testing programs which are design to uncover weakness in the products that they supplies to customers. SA Group has always advised iSkin on issues related to the function and durability of the products supplied to iSkin and has always anticipated customer feedback on such issues.

36. In any event, contrary to the allegations in paragraph 9 of the Claim, customers feedback and sales information on popular colours and styles are not confidential as such

information can be easily obtained from websites with discussion forums in which customers or end users posted both positive and negative feedback on products supplied to ackNOWLEDGE and iSkin by SA Group and the Shanghai Factory.

37. Furthermore, neither ackNOWLEDGE nor iSkin had ever informed Sa and SA Group that it considered customer feedback and sales information on popular colours and styles to be confidential. Such information was not passed to Sa and SA Group in any context of confidentiality.

38. In addition, customer feedback and sales information on popular colours and styles are ultimately reflected on the types of products supplied to ackNOWLEDGE and iSkin over time and can be readily discerned by examining the product lines.

TERMINATION OF BUSINESS RELATIONS

iSkin's Breach of Contract Led to Termination

39. Doing business with iSkin was often stressful and unprofitable for SA Group. To minimize its risk of loss, iSkin would only place orders with SA Group and the Shanghai Factory when it received an order from its customer and had always demanded incredibly short lead times. In addition, orders from iSkin were sporadic. These resulted in chaos at the Shanghai Factory, which needed to maintain more consistent production levels for staffing and supply purposes. Despite Sa's many complaints, iSkin did not change its ordering practice. This in turn strained the relationship between SA Group and the Shanghai Factory.

40. The most egregious of iSkin's conduct was the cancellation of a large order in the last quarter of 2004. iSkin had placed several orders with SA Group in November 2004 for a total of approximately 500,000 units to be turned around in approximately 2 weeks. iSkin was aware that the production capacity of the Shanghai Factory was approximately 10,000 units per day,

but nevertheless demanded that SA Group meet the delivery deadline. As a result and as was known to iSkin, the Shanghai Factory had to make extraordinary efforts to increase production to over 36,000 units per day:

- (a) it hired and trained an additional 580 labourers to staff 3 extra shifts;
- (b) it expanded its factory floor space; and
- (c) it produced 30 moulds for 30 additional fabrication machines at its own cost.

41. However, after a week of furious production, iSkin suddenly cancelled its order with little explanation and refused to pay for the units already produced. This required SA Group and the Shanghai Factory to warehouse, at its own cost, 234,174 units (the "Overstock") with no prospect of sales, in addition to the irrecoverable cost of ramping up production. iSkin's unpaid inventory totalled over US\$2.1 million.

42. By late February 2005, the Shanghai Factory was unable to pay its suppliers due to the huge costs that it had incurred as a result of iSkin's breach of contract. The Shanghai Factory was effectively shutdown as suppliers refused to sell any raw materials to the Factory on credit. iSkin was repeatedly warned that unless it committed to paying for the Overstock, the Shanghai Factory would be in no position to manufacture any additional products for iSkin.

43. Even in the face of the Shanghai Factory's plea for a plan to solve the gridlock, iSkin still refused to pay for the Overstock. In fact, in order to avoid paying for the Overstock in full, iSkin told Sa that it no longer wished to source products from SA Group and the Shanghai Factory.

44. The losses suffered by both the Shanghai Factory and SA Group as a result of iSkin's breach of its contractual obligation to pay for products which it had ordered, coupled with

iSkin's unreasonable and unlawful behaviour, galvanized SA Group's resolve to stop trading with iSkin and enter the market with its own brand of products.

iSkin and SA Group Entered into Settlement

45. By February 28, 2005, it was clear to all parties that iSkin no longer wished to purchase products from SA Group and that SA Group was unable and unwilling to source or produce any products for iSkin. Since February 28, 2005, other than for the purposes of settling accounts and arranging for shipping of the Overstock, SA Group and the Shanghai Factory refused to enter into any supply agreements with iSkin.

46. Faced with the prospect of financial ruin, SA Group and the Shanghai Factory entered into negotiations with iSkin to clear the Overstock soon after February 28, 2005. The negotiations were unnecessarily lengthy due to iSkin's unwillingness to pay for the Overstock at the prices previously agreed to by the parties.

47. The terms of settlement finally reached by the parties are contained in three agreements, which all provide that, upon payment of the settlement amount by iSkin, "[b]oth parties agree to release counter party from all accounts overdue or outstanding, all cost of goods, all inventories, and all shipping related matters and disputes". iSkin has breached all three settlement agreements:

- (a) The parties reached the first settlement on March 28, 2005 (the "March 28 Agreement"), which confirmed that the total amount of iSkin's overdue payment was US\$772,790.37 and that the parties agreed to settle this amount if iSkin paid SA Group: (i) US\$199,479.48 immediately by wire transfer; and (ii) US\$573,310.89 by a cheque post-dated to April 30, 2005. iSkin breached the March 28 Agreement because it could not arrange for payment on April 30, 2005;

- (b) Given the prospect that it may not be able to collect any significant payment from iSkin on the amount overdue, SA Group agreed to enter into a second settlement with iSkin on March 30, 2005 (the "March 30 Agreement"). The March 30 Agreement provided that iSkin must pay: (i) 50% of the overdue balance of US\$573,310.89 in cash immediately; (ii) US\$477.30 as reimbursement to the Shanghai factory for Custom Charges; and (iii) the remaining balance of US\$287,132.75 by cash or wire transfer at a later date. The March 30 Agreement further provides that, upon full payment of the overdue balance of US\$573,310.89 by iSkin, SA Group will release to iSkin all finished and unfinished products and parts, as well as moulds and tooling paid for by iSkin. iSkin breached the March 30 Agreement because it did not make the requisite payments to SA Group; and
- (c) Faced with the prospect of never getting paid in full, SA Group made yet another concession to iSkin on April 4, 2005 (the "April 4 Agreement"). The parties agreed to settle iSkin's overdue payment for a mere total of US\$200,000.00, US\$100,000.00 of which was to be paid immediately by wire transfer and the remainder to be paid by cheque. iSkin breached the April 4 Agreement because it once again did not make the requisite payments to SA Group.

48. The parties also executed a termination agreement (the "Termination Agreement") on the same date as the April 4 Agreement. The Termination Agreement was a formal confirmation of the settlement reached by the parties. The Termination Agreement states that iSkin and SA Group "agreed to terminated business between the two parties hereof February 28, 2005". The effective date of February 28, 2005 was chosen because the parties agreed that it was the date on which they terminated their business relationship. iSkin was given ample time to consider the Termination Agreement prior to its execution.

49. To date, SA Group is still warehousing at its own cost 116,000 units of products worth US\$370,644.13, which iSkin has refused to take possession. All of these products are embossed with iSkin's company logo and cannot be sold by SA Group to any other customer.

50. Sa and SA Group dealt with iSkin in a fair and reasonable manner throughout the course of settlement negotiations.

51. Given iSkin's repeated breach of contract, SA Group was under no obligation to continue supplying products to iSkin.

ZCOVER ENTERS THE MARKET

52. zCover was established soon after the breakdown of the business relationship between SA Group and iSkin.

53. zCover has never directly or indirectly made use of any of ackNOWLEDGE's or iSkin's information:

I. zCover's products are innovative and novel in appearance, functionality, and method of manufacture. zCover also offers a much more extensive line of products than iSkin; and

II. zCover's customers were contacted through publicly available channels such as the internet and trade shows, or contact was initiated by the customers themselves.

zCover Products are Innovative and Novel

54. Compared with iSkin's current product offerings for iPods and iPod Minis, which are effectively SA Group's 2004 product offerings, zCover's products are innovative and novel:

- (a) zCover's silicone protective cases offer protection for over 95% of the surface area on the devices and contain an integrated cover for the Click Wheel of the devices with tactile controls;
- (b) zCover's silicone material has been formulated to offer better tear resistance, elasticity, bounce, and transparency than the material used to manufacture products for iSkin;
- (c) zCover offers far more colour and pattern options than iSkin;
- (d) zCover's cases are manufactured using a more advanced process which zCover considers to be trade secret;
- (e) zCover's belt clip is far more resistant to breakage as it does not use the pivot concept favoured by iSkin;
- (f) zCover's screen protector has a ring pad which is made of duo-mould rubber, as compared to drop plastic used on iSkin's product, and offers superior seam for iPod Photos;
- (g) the sides of zCover's cases are moulded with "S"-patterned dots to allow for better grip and feel, while the sides of iSkin's products are smooth; and
- (h) zCover's packaging appears completely different from that of iSkin. In addition, zCover's packaging allows for advertisement of zCover's other products and has space available for package inserts.

55. In addition to protective cases for iPods and iPod Minis, zCover's other products include innovations such as stylus pens for personal data assistants (PDAs), moulded control pad buttons for game devices, and lanyards with built-in headphone sets. iSkin does not offer products with any of these features.

56. zCover also offers a line of products which cover a much wider range of portable electronic devices than iSkin. For example, zCover offers silicone protective cases for Apple's iPod, iPod Photo, iPod Mini, and iPod Shuffle, Creative's Zen Micro and Zen Portable Media Center, Sony's PSP (Personal Play Station), Palm One's Treo 600 and 650, and iRiver's H10, while iSkin only offer silicone protective cases for Apple's iPod and iPod Mini, and iRiver's H100.

57. Overall, zCover's products are different from their iSkin competition in look, feel, and quality, as well as being more innovative. zCover products cannot and have not been confused with iSkin products and have not been designed to lead to any such confusion.

zCover Never Used iSkin's Marketing Information and Customer Lists

58. zCover has never made use of iSkin's marketing information and customer lists. zCover markets its products in two ways: 1) zCover retails directly to end-users via its web store; and 2) zCover sells to resellers and retailers in bulk.

59. The contact information of resellers and retailers are not confidential. Suppliers readily post the contact information of their resellers and retailers on their websites. In fact, iSkin posts the contact information of all of its resellers and distributors on its own website. The contact information of resellers and retailers for silicone protective cases can also be found through a simple internet search.

60. zCover has also developed clients through chance meetings. For example, earlier in 2005, Sa had a chance meeting with William Powell ("Powell"), the Strategic Development Manager for Apple, on a flight to Toronto. Powell and Sa were seated next to each other and struck up a conversation about zCover's business, during which Sa took the opportunity to promote zCover's products.

61. iSkin cannot keep SA Group and zCover out of the marketplace simply because it had sold goods to the same customers in the past.

SA DEFENDANTS' BUSINESS RELATIONSHIP WITH TOSHIBA AMERICA

62. SA Group first began developing PC keyboard covers when it filled an order for a Taiwanese firm in late October 2003. In or about late January 2004, Sa contacted Toshiba America via the contact information posted on its website to explore the opportunity of supplying it with silicone keyboard covers for its line of notebook computers. A representative of Toshiba America took an interest in SA Group's product and Sa was eventually referred to the Defendant McFarland in April 2004.

63. McFarland was merely a contact person at Toshiba America, and had no authority to make any purchasing decisions. McFarland had little influence on how SA Group's products were received at Toshiba America and in fact left Toshiba America for Targus Corporation prior to any decisions being made about SA Group's product.

64. SA Group and zCover currently only sell covers for keyboards with American layouts to Toshiba America and all packaging for these OEM products are designed and supplied by Toshiba America. SA Group and zCover have never made any sales to Toshiba in the United Kingdom.

65. Overall, this action was brought by iSkin solely for the purposes of forcing the SA Defendants out of the market, something which iSkin cannot do in the normal course of business. The SA Defendants have not received any confidential information from ackNOWLEDGE or iSkin, or acted in breach of confidence. The SA Defendants deny that they stood in a position of trust with respect to iSkin. In the alternative, the SA Defendants have not acted contrary to any position of trust with respect to iSkin or its predecessor ackNOWLEDGE,

or breached or induced the breach of any contractual obligation, fiduciary duty, or duty of good faith to iSkin or ackNOWLEDGE, which obligations or duties the SA Defendants deny as ever having existed. Furthermore, the SA Defendants have not made any misrepresentations about the nature of their business relationship with iSkin or ackNOWLEDGE.

ISKIN HAS WAIVED ITS RIGHTS TO BRING THIS ACTION

66. In any event, by entering into the March 28 Agreement, the March 30 Agreement, the April 4 Agreement, and the Termination Agreement (collectively, the "Settlement Agreements"), iSkin has waived all rights to bring, or is estopped from bringing, the present action. The Settlement Agreements reached by SA Group and iSkin is a settlement of all outstanding disputes between the parties as iSkin entered into the Settlement Agreements with full knowledge that:

- (a) SA Group was supplying Toshiba America with silicone protective covers for notebook computers;
- (b) SA Group has always claimed that it alone owns the designs, manufacturing know-how, patents, and other intellectual property associated with the products supplied to iSkin; and
- (c) SA Group has always claimed ownership over moulds which it has designed, developed, fabricated, and maintained at its own cost.

67. iSkin has thus settled all of its disputes with SA Group, including all causes of actions raised in its Claim.

COUNTERCLAIM OF SA GROUP LTD.

68. The Defendants/Plaintiffs by Counterclaim, Shuang Sa, SA Group Ltd., and zCover Inc. counterclaim the Plaintiff iSkin Inc. for:

- a. Damages for intentional interference with economic relations in the amount of \$500,000.00;
- b. Damages for diminution of zCover's trade-mark and goodwill in the amount of \$500,000.00;
- c. Damages for diminution of SA Group's goodwill in the amount of \$500,000.00;
- d. Damages for breach of confidence in the amount of \$1,500,000.00;
- e. Damages for breach of contract in the amount of \$600,000.00;
- f. An interlocutory and permanent injunction compelling the Plaintiff to withdraw its registration of the internet domain names "zcover.net", "zcover.info", "zcover.biz", and "zcover.co.uk";
- g. An interlocutory and permanent injunction restraining the Plaintiff from interfering with SA Group's and zCover's business relations;
- h. Aggravated, exemplary, and punitive damages in the amount of \$500,000.00;
- i. Pre- and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43;
- j. Its costs on this action on a substantial indemnity basis, payable with GST; and
- k. Such further and other relief that this Honourable Court may deem just.

69. The Defendants/Plaintiffs by Counterclaim, Shuang Sa, SA Group Ltd., and zCover Inc., repeat and rely upon the allegations set out in their Statement of Defence.

INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONS

70. Following the termination of the parties' business relationship as provided in paragraphs 39 to 51 of the SA Defendants' Statement of Claim, iSkin has taken active steps to interfere with the SA Defendants' business relations by:

- (a) unlawfully purchasing various internet domain names including "zcover.net", "zcover.info", "zcover.biz", and "zcover.co.uk" (collectively, the "zCover Domain Names"). "zCover" is a registered trade-mark of the Defendant zCover. iSkin has no legitimate interest in purchasing and registering the zCover Domain Names and have done so in bad faith and for the purpose of causing confusion in the marketplace and of interfering with the sale and distribution of zCover products. By doing so, iSkin has breached the Uniform Domain Name Dispute Resolution Policy, the Nominet Dispute Resolution Service Policy, and the *Trade-marks Act*;
- (b) sending repeated emails and letters to SA Group's and zCover's customers and potential customers in Australia, North America, and Europe threatening lawsuits should they deal with the SA Defendants;
- (c) sending repeated anonymous emails to SA Group and zCover through their respective websites threatening retribution for their defence of this lawsuit and their lawful business activities in the market; and
- (d) sending an email to the Shanghai Factory threatening lawsuits should it continue to collaborate with the SA Defendants.

71. iSkin's actions are unlawful or without legal justification. They were carried out with the intent to harm the business of the SA Defendants or carried out in reckless disregard for the business interests the SA Defendants. The SA Defendants have suffered and continue to suffer

damages and other harm as a result of these actions, including the diminution of zCover's trade-mark and goodwill in the market place.

BREACH OF CONFIDENCE

72. The truly confidential information in this case is that related to the manufacturing and materials of the silicone protective cases.

73. For example, it is very difficult to combine silicones of different colors in a controlled manner to produce intricate patterns on one cohesive case. At the outset of their business relationship with ackNOWLEDGE, it took Sa and SA Group months to develop such a process, with the aid of the Shanghai Factory. Sa spent approximately one month in Shanghai in each of 2003 and 2004 for product development purposes. ackNOWLEDGE or iSkin did not contribute or assist in the process in any way.

74. Below-the-surface details such as mould design, curing technique, material selection and formulation, and hand-craft techniques control how aesthetics features and designs are realized. Aesthetic features and designs cannot be copied through drawings or renderings, they can only be copied by replicating the intricate and technical manufacturing process.

75. SA Group's manufacturing process is what sets its products apart from the competition and is confidential. iSkin's strong sales in the past year and half are largely due to the unique manufacturing process developed by SA Group with the aid of the Shanghai Factory.

76. iSkin became privy to SA Group's confidential manufacturing techniques and recipes during the course of its business relationship with SA Group. iSkin personnel, including Ackloo, visited the Shanghai Factory in late September 2004 and videotaped much of the manufacturing process developed by SA Group with the aid of the Shanghai Factory. iSkin is now using SA Group's confidential information in manufacturing its own products, without SA Group's consent.

77. iSkin is currently using SA Group's proprietary manufacturing information in its attempt to produce silicone protective cases at a factory in Shanghai, P.R. China.

78. Specifically, iSkin is using SA Group's confidential information to produce a line of protective cases that it calls "Wild Sides". This line of product was designed and engineered by SA Group and is a line of OEM products that SA Group calls "Candy". The Candy line is characterized by stripes of vibrant colors interspersed with white bands that glow in the dark. In manufacturing this line without the consent of SA Group, iSkin has used SA Group's process of combining silicones of different colors to form intricate patterns.

79. In addition, iSkin is using SA Group's confidential method of printing on silicone wares. In early 2004, SA Group developed silicone protective cases customized with corporate logos for an iSkin customer.

80. During a subsequent product review session, Ackloo asked Sa for the details of the silicone printing process and the name and type of the ink used. Since that meeting, SA Group has not received any additional orders for silicone printing. Sa later learned that iSkin has coached a small business owner in Toronto to customize silicone cases. iSkin now calls the printing process "tattooing" and offers this process through its website.

81. iSkin has clearly breached the Confidentiality Agreement that it executed on August 5, 2003, as well as the duty of trust and confidence and fiduciary duty that it owes to the SA Defendants, and the SA Defendants have suffered and will continue to suffer damages as a result of iSkin's breach.

BREACH OF CONTRACT

82. As outlined in paragraphs 39 to 51 of the SA Defendants' Statement of Defence, iSkin has breached its supply contract and three settlement agreements with SA Group.

83. To date, SA Group is still warehousing at its own cost 116,000 unit of products worth US\$370,644.12, which iSkin has refused to pay for and take possession. All of these products are embossed with iSkin's company logo and cannot be sold by SA Group to any other customer.

84. Given iSkin's repeated breach of contract, SA Group is entitled to recover the value the warehoused products, plus all expenses associated with the storage and maintenance of such products.

85. In the alternative, SA Group is entitled to, at a minimum, the US\$100,000.00 still outstanding on the April 4 Agreement outlined in paragraph 47 above.

PUNITIVE DAMAGES

86. iSkin's actions were motivated by its self-interest and were purposefully repugnant to the interests of the SA Defendants. iSkin's actions, in breaching its supply contract and settlement agreements with SA Group, in breaching the duty of confidence that it owed SA Group, and in intentionally interfering with the economic relations of the SA Defendants, were high-handed, egregious and oppressive, and were deliberate, in bad faith, and in flagrant disregard of the interests of the SA Defendants. Therefore, the Defendant by Counterclaim, iSkin, is liable to pay aggravated, exemplary, and punitive damages.

87. The SA Defendants plead and rely on the Uniform Domain Name Dispute Resolution Policy, the Nominet Dispute Resolution Service Policy, the *Trade-marks Act*, and the *Business Corporations Act*.

August 10, 2005

GILBERT'S LLP
The Flatiron Building
49 Wellington Street East
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Solicitors for the Defendants, Shuang
Sa, SA Group Ltd., and zCover Inc.

ISKIN INC.
-Plaintiff-

-and-

SHUANG SA (also known as SEAN SA) et al.
-Defendants-

Court File No. 05-CV-289300PD1

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

**STATEMENT OF DEFENCE AND COUNTERCLAIM
OF THE DEFENDANTS, SHUANG (SEAN) SA, SA
GROUP LTD. AND ZCOVER INC.**

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Solicitors for the Defendants
Shuang (Sean) Sa, SA Group
Ltd. and zCover Inc.



Ontario
SUPERIOR COURT OF JUSTICE

BETWEEN:

ISKIN INC.

Plaintiff

- and -

**SHUANG SA (also known as SEAN SA), SA GROUP LTD.,
DAVE MCFARLAND, and ZCOVER INC.**

Defendants

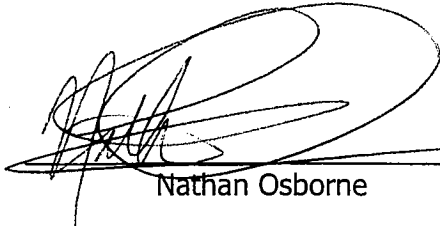
AFFIDAVIT OF SERVICE

I, Nathan Osborne, of the City of Toronto, MAKE OATH AND SAY:

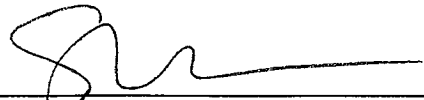
1. I served the Plaintiff, iSkin Inc., with the Statement of Defence and Counterclaim, by leaving a copy with Caroline Jimdar of Rogers, Campbell, Mickelborough, solicitors for the Plaintiff, on August 10, 2005 at 350 Bay Street, 11th Floor, Toronto, Ontario, M5H 2S6.

2. I was able to identify the person by means of verbal confirmation.

SWORN BEFORE ME in the City)
of Toronto, in the Province)
of Ontario, this 11th day)
of August, 2005)
)



Nathan Osborne



A Commissioner, etc.
Shonagh McVean