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8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 FAIRE WHOLESale, INC.,

13 Plaintiff,

14 v.

15 TUNDRA INC.,

16 Defendant.
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Case No.:

COMPLAINT FOR:

**VIOLATION OF THE COMPUTER
FRAUD AND ABUSE ACT, 18 U.S.C.
§ 1030**

**VIOLATIONS OF CALIFORNIA
PENAL CODE SEC. 502**

**TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE**

**INTENTIONAL INTERFERENCE
WITH CONTRACT**

**VIOLATION OF CALIFORNIA BUS. &
PROF. CODE § 17200, ET SEQ.**

**VIOLATION OF THE LANHAM ACT,
15 U.S.C. § 1125**

JURY TRIAL DEMANDED

1 Plaintiff Faire Wholesale, Inc. brings this action against Defendant Tundra Inc. and alleges
2 as follows:

3 **INTRODUCTION**

4 1. Faire brings this action to stop Tundra's unauthorized solicitation, storage and use
5 of Faire's users' credentials for logging into Faire's online marketplace and Tundra's use of those
6 credentials to gain access to non-public portions of Faire's computer network without Faire's
7 authorization. Despite Faire's demands that Tundra stop its unauthorized access, Tundra
8 continues to carry out this scheme to copy data from Faire's computer systems for Tundra's
9 commercial benefit.

10 2. Founded in 2017, Faire operates a curated online wholesale marketplace platform
11 that connects independent brands and retailers, allowing them to compete more effectively with
12 both big box brick-and-mortar stores as well as online retail giants. Faire specializes in working
13 with small and medium-sized businesses and structures its commission so that Faire only gets
14 paid when these businesses make new and successful connections. Over 350,000 North American
15 retailers have used Faire's platform to find and connect with brands, discover new products, and
16 grow their businesses.

17 3. To list wholesale products for sale on Faire, brands must create a Faire account and
18 login to that account with a username and password. Similarly, to search the complete catalog of
19 wholesale products offered by brands for sale on Faire and place orders, retailers must create a
20 Faire account and login to that account with a username and password. It is not possible to search
21 the complete catalog of wholesale products on Faire without logging into a password protected
22 account.

23 4. Tundra operates what it describes as "one of the biggest online wholesale
24 marketplaces."¹

25 5. In 2022, Tundra launched a new line of business named Wholesale Co-Op, which
26 it described in a June 9, 2022 blog post as:

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¹ <https://www.tundra.com/content/wholesale-coop-launch> (last visited May 23, 2023).

1 “A one-stop, members-only comparison tool that delivers
 2 unprecedented visibility on sales, deals, prices, lead times, in-stock
 3 availability, and minimums aggregated from over 100,000 brands,
 4 10+ major wholesale marketplaces, and 30+ major distributors.
 That means visibility across Faire, Tundra, Abound, JuniperMarket,
 FashionGo, Mable, Handshake, Creolate, Bulletin, Orangeshine and
 more *all in one place*.”²

5 6. Faire does not make publicly available the prices, lead times, in-stock availability
 6 or other inventory and pricing information of goods offered by brands on the Faire platform.
 7 Only retailers or brands who have created accounts on Faire may access this information by
 8 logging into the Faire platform using a username and password.

9 7. To obtain wholesale prices, inventory, pricing, retailers’ orders, shopping carts and
 10 other information from Faire, Wholesale Co-Op induces Faire retailers to divulge their Faire login
 11 credentials to Tundra. To use Wholesale Co-Op for Faire purchases, retailers must divulge their
 12 Faire login credentials by logging into Faire through the Wholesale Co-Op platform. Wholesale
 13 Co-Op then uses those login credentials to access password-protected portions of the Faire
 14 platform, copy information from Faire’s protected computers, and otherwise use the Faire
 15 platform, all without Faire’s authorization.

16 8. Tundra’s actions compromise the security of the Faire platform and user accounts.
 17 Faire has demanded that Tundra stop accessing its platform, but it refuses. Faire has also
 18 implemented technological measures to try to stop Tundra from accessing and scraping the Faire
 19 platform without permission, but Tundra has devised means to circumvent Faire’s security tools.

20 9. Tundra has also interfered with Faire’s business and contractual agreements,
 21 including by inducing Faire’s users to breach their agreements with Faire in order to use
 22 Wholesale Co-Op, and by causing Faire users to be locked out of their accounts or otherwise
 23 creating turmoil and customer confusion that Faire must respond to.

24 10. Because Tundra flatly refuses to modify its behavior and cease its harmful
 25 business practices, Faire brings this action to make Tundra compete fairly in the market.
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28 ² <https://www.tundra.com/content/wholesale-coop-launch> (last visited May 23, 2023).

1 **PARTIES**

2 11. Faire is a Delaware corporation with its principal place of business at 100 Potrero
3 Ave., San Francisco, CA 94103.

4 12. Tundra is a Delaware corporation with its principal place of business at 116
5 Sheridan Ave., San Francisco, CA 94129. Tundra operates Wholesale Co-Op, which is located at
6 the same address.

7 **JURISDICTION**

8 13. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338
9 because this action alleges violations of federal statutes, the Computer Fraud and Abuse Act (18
10 U.S.C. § 1030) and the Lanham Act (15 U.S.C. § 1125). The Court has supplemental jurisdiction
11 over the remaining claims under 28 U.S.C. § 1367.

12 14. This Court has personal jurisdiction over Tundra because it is headquartered in this
13 district, and because it directed its business activities toward and conducts business with
14 consumers within this district. Furthermore, among other acts, Tundra unlawfully accessed and
15 used Plaintiff's computers, data, and servers located in this district.

16 15. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2) because
17 Defendant Tundra is a resident of this district, and a substantial part of the events giving rise to
18 the claims raised in this lawsuit occurred in this district. Among other acts, Tundra unlawfully
19 accessed, altered, and/or used Faire's computers, data, and servers in this district.

20 **FACTUAL ALLEGATIONS**

21 16. Faire operates an online wholesale marketplace that connects independent retailers
22 and brands around the world.

23 17. Faire offers several benefits to retailers, including net 60 payment terms and free
24 returns. Faire's net 60 payment terms enable approved retailers to place orders and pay up to 60
25 days later, helping retailers better manage their cash flow. Retailers also benefit from free returns
26 on opening orders (i.e., when they order from a brand for the first time), which helps reduce their
27 inventory risk.

1 18. Most Faire retailers source inventory through other channels, in addition to Faire.
2 These other channels include other business-to-business marketplaces, and the use of sales
3 representatives, distributors, and trade shows. Retailers also place wholesale orders directly with
4 brands.

5 19. Among the incentives for small businesses to make deals on Faire instead of
6 through trade shows or other online marketplaces is the Faire Direct program. Under this
7 program, Faire provides brands with a personalized link that they can use to invite retailers to
8 order from their shop on Faire. When retailers order through this link, brands pay 0%
9 commission on these orders. This can be distinguished from ordinary sales on the Faire
10 Marketplace where the brand pays a commission on successful transactions.

11 **I. FAIRE STRIVES TO MAINTAIN THE SECURITY OF ITS PLATFORM**

12 20. Faire takes seriously the security of its platform and its users. Faire's anti-abuse
13 team works constantly to ensure that a user logged into the Faire platform is the valid owner of
14 the credentials they used to access the platform. Faire routinely improves and updates its
15 processes to prevent unauthorized actors from accessing Faire accounts or secured portions of the
16 Faire platform, scraping information from the platform, and unauthorized automated traffic
17 including credential stuffing attacks or the use of bots and other such tools.

18 21. As part of its security protocols, Faire requires users of its platform to agree to
19 abide by certain rules.

20 22. To list or buy products on the Faire platform, brands and retailers must first agree
21 to Faire's Terms of Service,³ which includes various provisions governing the use of Faire's
22 services.

23 23. One provision of Faire's Terms of Service is a requirement in Section 4 that users
24 must protect the passwords to their accounts and may not disclose them to third parties: "You are
25 responsible for safeguarding your password and you agree that you will not disclose it to any
26 third party."

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³ Available at <https://www.faire.com/tos>. A copy of the Faire Terms of Service is attached as **Exhibit A**.

24. Faire’s Terms of Service also prohibit copying or disseminating the material on the Faire platform, at Section 7.b.: “you shall not copy, reproduce, disseminate, distribute, modify, adapt, create derivative works of, publicly display, publicly perform, stream, broadcast, republish, download, disassemble, reverse compile, reverse engineer, store, post or transmit any of the material or content on our Services”

25. Section 7.b. of the Faire Terms of Service likewise prohibit interfering with or circumventing any feature on the Faire platform, in particular security or access control: “you shall not interfere with or circumvent any feature of the Services, including any security or access control mechanism, in whole or in part, except as permitted in these Terms.”

26. Section 14 of the Faire Terms of Service also set out a number of restrictions on the use of the Faire platform, including using, mirroring, or framing the Faire platform without Faire’s express written consent (Section 14.b.); breaching any security or authentication measures, or testing the vulnerability of the Faire platform (Section 14.d); circumventing any technological measure to protect the Faire platform (Section 14.e.); attempting to use software or tools such as robots or crawlers to access or download material from the Faire platform (Section 14.f.); impersonate or misrepresent your affiliation with any person or entity (Section 14.n.); or encouraging or enabling any third party to do any of the foregoing prohibited activities (Section 14.p).

II. TUNDRA’S UNAUTHORIZED ACCESS TO FAIRE’S SERVICE AND FALSE REPRESENTATIONS IN FURTHERANCE OF ITS SCHEME TO DIVERT FAIRE COMMISSION REVENUE TO ITSELF

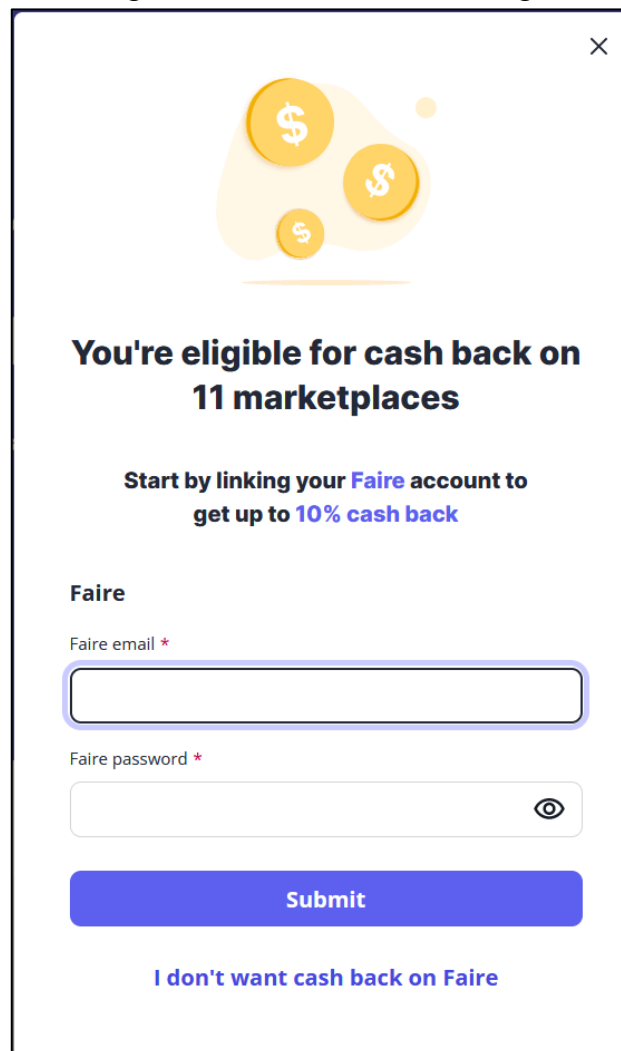
27. Like Faire, Tundra also operates an online marketplace for brands and retailers to connect and do business. Although both businesses have competed over roughly the same period, Tundra has been less successful at attracting users.

28. In 2022, Tundra attempted to grow the number of retailers using its service by launching Wholesale Co-Op, a business line that solicits retailers to conduct their transactions on Faire and other marketplaces through the Wholesale Co-Op platform.

29. On information and belief, Tundra's business model for its Wholesale Co-Op business line is based on arbitrage, wherein Wholesale Co-Op convinces brands to misuse Faire's incentive program in order to line Tundra's own pockets or attract patrons to its business.

30. To encourage retailers to join Wholesale Co-Op and disclose their Faire login credentials, Wholesale Co-Op promises to pay the retailers up to 10% "cash back" on every purchase they make through Wholesale Co-Op from a brand listed on Faire.

31. After a retailer creates a Wholesale Co-Op account, Wholesale Co-Op encourages the retailer to disclose its Faire login credentials on the following screen:



×


You're eligible for cash back on 11 marketplaces

Start by linking your Faire account to get up to 10% cash back

Faire

Faire email *

Faire password *



Submit

[I don't want cash back on Faire](#)

32. By incentivizing Faire's retailer users to disclose their Faire login credentials, Wholesale Co-Op induces those users to breach their agreement with Faire not to disclose their passwords to third parties.

1 33. On information and belief, to enable and even profit from this cash back program,
2 Wholesale Co-Op abuses Faire's Faire Direct program. Wholesale Co-Op directly solicits brands
3 that sell on Faire to provide Faire Direct links to retailers that have registered with Wholesale Co-
4 Op. These Faire Direct links enable the retailers to purchase products from brands on Faire's
5 marketplace without the brand paying a commission to Faire. Wholesale Co-Op encourages
6 brands to provide their Faire Direct links by promising to promote their brands to new retailers
7 and give them greater exposure to the retailers who are members of Wholesale Co-Op.
8 Wholesale Co-Op then charges the brand what it describes in email solicitations as a "fee that
9 replaces the marketplace commission for new retailers to a marketplace and their reorders."

10 34. On information and belief, Wholesale Co-Op charges brands that participate in this
11 program a fee of 15% of sales to new retailers who make their purchases from the Faire
12 marketplace through Wholesale Co-Op. Wholesale Co-Op then pays a percentage of this fee as
13 "cash back" to the retailer and pockets the rest for itself. Thus, Wholesale Co-Op diverts a 15%
14 commission that would have been payable to Faire to itself and the retailer.

15 35. When soliciting brands, Wholesale Co-Op falsely represents that Faire has
16 approved of this program. Specifically, on December 15, 2022, a Wholesale Co-Op "Supplier
17 Development" employee told a Faire brand user ("Brand A") that Faire had approved of this
18 scheme and that it was above board. In fact, Faire only recently learned of this program and has
19 never authorized or endorsed it.

20 36. Wholesale Co-Op's arbitrage and misappropriation of Faire commissions through
21 this scheme is only possible if Wholesale Co-Op has access to retailers' Faire login credentials so
22 that the retailers can search for products and make purchases from the Faire marketplace through
23 Wholesale Co-Op.

24 37. Tundra employs automated processes to use the Faire retailers' credentials to
25 access the retailer's Faire account and copy information and content from secured portions of the
26 Faire platform—in the process circumventing Faire's security features by copying cookie values
27 and deploying a wide range of user agents that deliberately misrepresent their identities and
28 proxying requests through virtual private network (VPN) connections.

1 38. By using these measures to bypass Faire's security features, Tundra apparently
2 knows that what it is doing is wrong, and being unable to accomplish its ends openly, has resorted
3 to subterfuge and technological circumvention.

4 39. By causing Faire users to assist Tundra in its circumvention, unpermitted access,
5 scraping, and other misuse of the Faire platform, Tundra causes those users to breach multiple
6 provisions in Section 14 of Faire's Terms of Service, identified above.

7 40. Tundra's actions also violate several provisions of Faire's Terms of Service,
8 including the restrictions in Section 7.b., and many of the prohibited uses in Section 14.

9 41. Tundra's storage and use of Faire users' account credentials without Faire's
10 consent jeopardize the security of the Faire platform.

11 42. For example, if Tundra's system is breached, then the Faire user credentials Tundra
12 stores can be stolen or used. Such a breach may not only result in harm to those users, but also
13 harm to Faire's business and reputation.

14 43. Some of the tools that Faire has had to deploy to address this unauthorized access
15 and scraping has the unfortunate effect of slowing access to Faire by legitimate users.

16 44. Faire has expended more than \$5,000 investigating and addressing Tundra's
17 unauthorized access and copying of data from the Faire platform via Wholesale Co-Op.

18 45. Faire retailers have complained to Faire's customer service agents about login
19 issues and notices of potential unauthorized login attempts that, upon information and belief, were
20 caused by Tundra's use of their account credentials to access the Faire platform through Tundra's
21 Wholesale Co-Op business unit.

22 46. Faire has deployed numerous technological measures to try to stop Tundra from
23 accessing and scraping the Faire platform without permission, but Tundra has devised means to
24 circumvent Faire's security tools.

25 47. As part of its approach to circumvent Faire's security tools, Tundra uses automated
26 means to access the password-protected portions of the Faire platform from a wide range of IP
27 addresses in different geographic locations to mask the true origin of those login attempts.
28

48. Tundra also uses a wide range of user agents, including user agents for browsers that are years out of date to gain unauthorized access to Faire's protected computer servers.

49. The methods by which Tundra accesses the Faire platform via Wholesale Co-Op, including by supplying a misleading user agent and proxying its activity through a virtual private network (VPN), suggests that it uses software and tools specifically configured to misrepresent itself to appear as if the activity was coming from an ordinary (human) Faire user.

III. TUNDRA REFUSES TO CEASE ITS UNAUTHORIZED ACCESS TO THE FAIRE PLATFORM AND INDUCEMENT OF FAIRE'S USERS TO PROVIDE THEIR LOGIN CREDENTIALS

50. On February 14, 2023, Faire sent a letter to Tundra notifying it that its conduct violated Faire's terms, and instructing it to stop its unpermitted intrusion on the Faire platform, scraping of material from the platform, and interference with Faire's business and contracts. A copy of the letter is attached as **Exhibit B**.

51. Faire continues to receive complaints from brands about solicitations from Wholesale Co-Op, including as recently as May 15, 2023.

52. Tundra refuses to cease the actions complained of in Faire's letter and in this complaint and continues to engage in the same conduct through its Wholesale Co-Op line of business.

FIRST CLAIM FOR RELIEF **(Violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030)**

53. Faire repeats and incorporates by reference each of the allegations set forth in the paragraphs above, as if set forth fully here.

54. Faire owns its computer systems, on which the Faire platform resides.

55. Faire's computer systems described herein, including the Faire platform, are involved in interstate and foreign commerce and communication, and are protected computers as defined under 18 U.S.C. § 1030(e)(2).

56. Tundra knowingly and intentionally accessed, and continues to access, alter, or destroy Faire's computers, computer systems, servers, and databases (the "computer systems") without authorization or in excess of authorization.

1 65. Without permission from Faire, Tundra knowingly accessed and altered, damaged,
2 deleted, destroyed, or otherwise used data on the Faire platform, in order to devise or execute a
3 scheme or artifice to defraud, deceive, or extort.

4 66. Without permission from Faire, Tundra knowingly accessed and altered, damaged,
5 deleted, destroyed, or otherwise used data on the Faire platform, in order to wrongfully control or
6 obtain money, property, or data.

7 67. Without permission from Faire, Tundra knowingly accessed took, copied, or made
8 use of data from the Faire platform.

9 68. Without permission from Faire, Tundra knowingly used computer services from
10 the Faire platform.

11 69. Without permission from Faire, Tundra knowingly accessed and added, altered,
12 damaged, deleted, or destroyed data that resided on the Faire platform.

13 70. Faire was harmed by the alteration, damage, deletion, destruction, or use of the
14 data described above, in an amount to be proven at trial.

15 71. Tundra's conduct was a substantial factor in causing that harm to Faire.

16 72. Faire is entitled to compensatory damages for the harm Tundra caused, as well as
17 an award of its attorneys' fees.

18 73. Tundra's acts were willful, malicious and oppressive, and were undertaken with
19 the intent to cause harm to Faire and Faire's business relationships. Therefore, Faire is also
20 entitled to an award of punitive damages to punish Tundra for its wrongful conduct and to deter it
21 from engaging in similar conduct in the future.

22 **THIRD CLAIM FOR RELIEF**
23 **(Tortious Interference with Prospective Economic Advantage)**

24 74. Faire repeats and incorporates by reference each of the allegations set forth in the
25 paragraphs above, as if set forth fully here.

26 75. Faire has economic relationships with its brand and retailer customers that were
27 likely to benefit Faire.
28

1 76. At all relevant times, Tundra knew about the economic relationships between Faire
2 and its customers, including as a result of Tundra's investigation of and familiarity with Faire's
3 business, and subsequently through communication from Faire's counsel.

4 77. Tundra engaged in conduct that disrupted the economic relationships between
5 Faire and its customers. Tundra interfered with these contracts by, among other things, inducing
6 many of Faire's retailer customers to divulge their confidential account login credentials to
7 Tundra in violation of their agreements with Faire.

8 78. In addition to inducing Faire's retailers to disclose their Faire login credentials in
9 breach of Faire's Terms, Tundra also interfered with section 9.b. of the Faire Wholesale, Inc.
10 Brand Terms of Service, at <https://www.faire.com/tos-brand> (attached as **Exhibit C**). That section
11 provides that only "existing retailers" are eligible for a waiver of commissions if the Brand is
12 satisfying Faire's current policies. Tundra's abuse of Faire's Faire Direct program encouraged
13 Faire brand customers to violate this provision by applying the Faire Direct commission waiver to
14 new users, instead of retailers with whom they have a pre-existing relationship, thereby depriving
15 Faire of commissions.

16 79. Due to Tundra's actions, many of Faire's economic relationships with its
17 customers were disrupted.

18 80. Tundra intended to disrupt the economic relationships between Faire and both its
19 brand and retailer customers, or else knew that it was likely to disrupt the economic relationships
20 between Faire and its customers.

21 81. Tundra's disruption of Faire's economic relationships with its customers was
22 accomplished through wrongful means, including by violation of the Computer Fraud and Abuse
23 Act, California's Comprehensive Computer Data Access and Fraud Act, Cal. Penal Code § 502,
24 and through false and misleading representations that Faire approved of brands providing Faire
25 Direct codes for use by retailers with which they did not have an existing relationship to make
26 commission-free purchases through Wholesale Co-Op.

27 82. Tundra's disruption of these economic relationships harmed Faire and caused it to
28 be damaged in an amount to be determined at trial.

1 83. Tundra's acts were willful, malicious and oppressive, and were undertaken with
2 the intent to cause harm to Faire and Faire's business relationships. Therefore, Faire is also
3 entitled to an award of punitive damages to punish Tundra for its wrongful conduct and to deter it
4 from engaging in similar conduct in the future.

5 **FOURTH CLAIM FOR RELIEF**
6 **(Intentional Interference with Contract)**

7 84. Faire repeats and incorporates by reference each of the allegations set forth in the
8 paragraphs above, as if set forth fully here.

9 85. Faire has entered into binding and enforceable contractual agreements with its
10 retailer customers.

11 86. At all relevant times, Tundra knew about the contracts between Faire and its brand
12 and retailer customers, including as a result of Tundra's investigation of and familiarity with
13 Faire's business, and subsequently through communication from Faire's counsel.

14 87. In addition to inducing Faire's retailers to disclose their Faire login credentials in
15 breach of Faire's Terms, Tundra also interfered with section 9.b. of the Faire Wholesale, Inc.
16 Brand Terms of Service, at <https://www.faire.com/tos-brand>. That section provides that only
17 "existing retailers" are eligible for a waiver of commissions if the Brand is satisfying Faire's
18 current policies. Tundra's abuse of Faire's Faire Direct program causes Faire brand customers to
19 violate this provision by applying the Faire Direct commission waiver to new users, instead of
20 retailers with whom they have a pre-existing relationship.

21 88. Tundra engaged in conduct that prevented or hindered performance of many of
22 those contracts between Faire and its brand and retailer customers. Tundra interfered with these
23 contracts by, among other things, inducing many of Faire's retailer customers to divulge their
24 confidential account login credentials to Tundra in violation of their agreements with Faire.

25 89. Due to Tundra's actions, many of Faire's brand and retailer customers have
26 breached their agreements with Faire.

SIXTH CLAIM FOR RELIEF**(False or Misleading Advertising Under Section 43 of the Lanham Act, 15 U.S.C. § 1125)**

97. Faire repeats and incorporates by reference each of the allegations set forth in the paragraphs above, as if set forth fully here.

98. Tundra manages, controls, and directs the advertising and promotion of its Wholesale Co-Op business unit.

99. Tundra is a competitor in the market for online wholesale marketplace platforms.

100. Tundra makes the false and misleading factual claim in its advertising that Faire was aware of, and approved, Tundra's scheme of abusing the Faire Direct program.

101. Tundra's false advertising and promotion of Faire's endorsement is likely to deceive brands into believing that Tundra's marketplace is associated or partnered with Faire's marketplace. The false advertising will also cause brands to believe that Faire has approved Tundra's scheme.

102. Tundra's conduct constitutes intentional and willful false statements in connection with goods and/or services distributed in interstate commerce in violation of 15 U.S.C. § 1125 (a)(1)(A-B).

103. As a direct and proximate result of Tundra's conduct, Faire has suffered and will continue to suffer damages in an amount to be determined at trial.

104. Faire has been, is now, and will be irreparably injured and damaged by Tundra's aforementioned acts, and unless enjoined by the Court, Faire will suffer further harm to its name, reputation, and goodwill. This harm constitutes an injury for which Faire has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Faire Wholesale, Inc. prays for judgment against Defendant Tundra Inc. as follows:

1. Enter judgment for Faire against Tundra;
2. Grant permanent injunctive relief to prevent the recurrence of the violations for which redress is sought in this complaint;

3. Award Faire monetary damages;
4. Award Faire its costs, fees, and expenses of this action;
5. Award Faire pre- and post-judgment interest at the applicable rates on all amounts awarded; and
6. Order any other such relief as the Court deems appropriate.

JURY DEMAND

Plaintiff hereby requests a trial by jury.

Dated: May 23, 2023

FENWICK & WEST LLP

By: s/ Tyler G. Newby
Tyler G. Newby

Attorneys for Plaintiff
Faire Wholesale, Inc.

FENWICK & WEST LLP

EXHIBIT A

Shop wholesale online from over 85,000 brands. [Sign up](#)

FAIRE WHOLESale, INC. TERMS OF SERVICE

Last Updated: April 21st, 2021

1. Overview and Acceptance of Use

Welcome to Faire! Faire Wholesale, Inc. (“**Faire**”) is a curated wholesale online marketplace connecting creative brands with retailers, accessible through its websites (collectively, the “**Site**”) and mobile applications (collectively, the “**Application**”) (together, the “**Services**”). Throughout these Terms of Service (“**Terms**”), the terms “**Faire**”, “**our**”, “**us**”, and/or “**we**” refer to Faire. The terms “**you**” and/or “**your**” refer to any visitor of the Site and/or the Application and any user of the Services, including any Member (as defined below). These Terms govern your access to and use of the Services and Collective Content (defined below), and constitute a binding legal agreement between you and Faire.

Please read these Terms, our [Privacy Policy](#), the [Retailer Terms of Service](#), and [Brand Terms of Service](#), all of which are incorporated herein by reference and govern your access to and use of the Services. The Services are offered and available solely to users who are 18 or older. By using the Services, you represent and warrant that you are of legal age to form a binding contract with Faire and meet the foregoing eligibility requirements. If you do not meet these requirements, you must not access or use the Services. If you are entering into these Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that party to these Terms and, in such event, “you” and “your” will refer and apply to that party.

YOU ACKNOWLEDGE AND AGREE THAT BY ACCESSING OR USING THE SERVICES (INCLUDING BY DOWNLOADING OR POSTING ANY CONTENT FROM OR ONTO THE SERVICES), YOU AGREE TO BE BOUND BY THESE TERMS AND ALL OTHER TERMS AND POLICIES REFERENCED IN THESE TERMS. THIS APPLIES WHETHER OR NOT YOU HAVE REGISTERED ON OR THROUGH THE SERVICES. IF YOU DO NOT AGREE, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE SERVICES OR COLLECTIVE CONTENT.

THESE TERMS REQUIRE THE USE OF ARBITRATION TO RESOLVE INDIVIDUAL DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU SHOULD THERE BE A DISPUTE. YOUR AGREEMENT TO THESE TERMS INDICATES YOUR EXPRESS ACKNOWLEDGEMENT AND AGREEMENT THAT YOU HAVE READ AND UNDERSTAND HOW THE ARBITRATION PROVISION SET FORTH IN SECTION 26 BELOW WORKS.

2. Modification

We reserve the right, at our sole discretion to modify, suspend, discontinue or terminate the Services or any content, feature or material we provide thereon, or to modify these Terms, at any time and without prior notice, and have no obligation to update any information thereon. We will

not be liable if for any reason all or any part of the Services is unavailable at any time or for any period. From time to time, we may restrict access to some or all parts of the Services to users, including Members. You agree that it is your responsibility to monitor changes to our Services. If we modify these Terms we will post the modification on the Site or via the Application and/or provide you with notice of the modification. By continuing to access or use the Services thereafter, you are indicating that you agree to be bound by the modified Terms. If the modified Terms are not acceptable to you, your only recourse is to cease using the Services.

3. Key Definitions

- a. **"Collective"** means, collectively, Faire Content and Member Content.
- b. **"Content"** means text, graphics, images, music, software (excluding the Application), audio, video, information or other materials.
- c. **"Faire Content"** means Content that Faire makes available through the Services including any Content licensed from a third party, but excluding Member Content.
- d. **"Member"** means a business that completes Faire's account registration process, as described under the "Account Registration" section below.
- e. **"Member Content"** means Content that a Member posts, uploads, publishes, submits or transmits to Faire to be made available through the Services.

4. Account Registration

To access certain features of the Services and to post any Member Content thereon, you must register to create an account ("**Account**") and become a Member. Faire offers two types of Accounts. The first is a "**Retailer Account**" for buyers who purchase goods through the Services for the purpose of resale ("**Retailers**"). The second is a "**Brand Account**" for sellers who offer to sell and/or sell their goods to Retailers through the Services ("**Brand**"). Each type of Account gives access to different aspects of the Services.

You may register directly via the Site or Application. During the registration process, you will be required to provide certain information (depending on the type of Account), and you will establish a username and a password. You agree that all information you provide to register for an Account (and/or for any subsequent activity or interaction with Faire and the Services), including through the use of any interactive features on the Services, is governed by our [Privacy Policy](#), and you consent to all actions we take with respect to your information or information you provide, consistent with our Privacy Policy.

You agree to provide accurate, current and complete information during the registration process and to update such information to keep it accurate, current and complete. We reserve the right to temporarily suspend or permanently terminate your Account if any information provided during the registration process or thereafter proves to be inaccurate, not current or incomplete. You are responsible for safeguarding your password and you agree that you will not disclose it to any third party. You agree that you are solely responsible for any activities or actions under your Account, whether you authorized them or not. You will immediately notify us of any unauthorized use of your Account. We have the right to disable any user name, password or other identifier, whether

chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms.

5. Account Levels

- a. **Brand Account.** To sell goods through the Services as a Brand, you must submit an application to, and be approved by, Faire. The application process and Brand Account are both free. The application seeks basic information about you, your company and your products. If approved as a Brand, you will be required to submit additional information, including about your business, where to deposit funds from sales of your products and applicable tax and related documentation (e.g., EIN, W-8, etc.). Additional detail regarding information collected can be found in our [Privacy Policy](#). **For clarity, your use of the Services as a Brand is subject to the Brand Terms of Service referenced above.**
- b. **Retailer Account.** To purchase goods through the Services as a Retailer, you need to establish a Retailer Account, which is free. When you sign up as a Retailer, you will be required to submit customary information such as your first and last name, store type (e.g., online, brick & mortar), email address and other information about your business. Before you make your first purchase as a Retailer, you may be required to provide additional information such as payment method information, reseller ID number and related documentation and any other information as may be required by Faire. Additional detail regarding information collected can be found in our [Privacy Policy](#). **For clarity, your use of the Services as a Retailer is subject to the Retailer Terms of Service referenced above. You acknowledge and agree that by submitting your application to become a Retailer, you authorize Faire and its designated agents to access your personal and business credit history, including obtaining a consumer credit report, for the purpose of evaluating your eligibility for a line of credit with Faire. You further understand that credit inquiries may impact your credit score.**

By submitting payment details in conjunction with registering for a Retailer Account and/or purchasing goods, you agree to pay for the goods purchased and any applicable taxes and other fees that may accrue, and authorize us to charge the payment method with the information you have supplied to us, and/or to credit such payment method to make any adjustments if necessary. We reserve the right to correct any errors in pricing. We, and the Brand, have the right to refuse any order.

6. Ownership

The Services and Collective Content are each protected by copyright, trademark and other laws of the United States and foreign countries. You acknowledge and agree that the Services and Collective Content, excluding your specific Member Content, including all associated intellectual property rights, are the exclusive property of Faire, its licensors and/or other providers of such material. Other than expressly stated herein, there are no implied licenses granted under these Terms. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services or Collective Content. Additionally Faire is the owner of pending, registered and/or unregistered trademarks, trade dress and trade name appearing on the Services, including the Faire name and logo, and all related names, logos, product and service names, designs and slogans. You agree to not use such marks without Faire's prior written permission. Any other trademarks, service marks, logos, trade names

and any other proprietary designations are the trademarks or registered trademarks of their respective parties.

7. License Granted by Faire

- a. **License Grant.** Subject to the terms and conditions of these Terms, Faire grants you: (a) a non-transferable, non-exclusive, revocable, limited license, with no right to sublicense, to use and access the Services, and to view any Collective Content to which you are permitted access solely for the purposes set forth in these Terms; and (b) a limited non-exclusive, revocable, non-transferable license to download and install a copy of the Application on your device solely in connection with your use of the Services.
- b. **Restrictions.** Except as otherwise stated, the rights granted herein are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, distribute, host or otherwise commercially exploit the Services or Collective Content; (b) you shall not copy, reproduce, disseminate, distribute, modify, adapt, create derivative works of, publicly display, publicly perform, stream, broadcast, republish, download, disassemble, reverse compile, reverse engineer, store, post or transmit any of the material or content on our Services; and (c) you shall not interfere with or circumvent any feature of the Services, including any security or access control mechanism, in whole or in part, except as permitted in these Terms. Except as expressly granted in these Terms, no licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Faire, its licensors or others. If you violate the rights of Faire, its licensors or others, your right to use the Services will stop immediately and you must, at our option, return or destroy any copies of the materials you have made.

8. License Granted by Member

In order to get the most out of the Services, Members can provide or otherwise make Member Content available to us for use in connection with the Services. For these purposes, you hereby grant to Faire a worldwide, perpetual, non-exclusive, transferable, sublicensable, royalty-free license to use, view, copy, adapt, modify, distribute, publicly display and publicly perform (through any means necessary) such Member Content on, through or by means of the Services and/or any of Faire's advertising, marketing, publicity or other initiatives or events. Faire does not claim any ownership rights in any Member Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit any Member Content.

You acknowledge and agree that you are solely responsible for any and all Member Content that you make available through the Services. Accordingly, you represent and warrant that: (a) you either are the sole and exclusive owner of all such Member Content or you have all rights, licenses, consents and releases necessary to grant to Faire the rights in such Member Content as contemplated under these Terms; and (b) neither the Member Content or any portion thereof nor your posting, uploading, publication, submission or transmittal of the Member Content or Faire's use of the Member Content (or any portion thereof) on, through or by means of the Services and/or third party platforms will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy, or contain libelous, misleading, or otherwise unlawful, abusive, harassing or obscene material, or contain any computer virus or other malware that could in any way affect the operation of the Services, or result in the violation of any applicable law or regulation. You agree

that you will not use a false e-mail address, pretend to be someone other than yourself or otherwise mislead us or third parties as to the origin of any posts. You are solely responsible for any Member Content you make and its accuracy. Faire takes no responsibility and assumes no liability for any Member Content posted by you or any third party, and you agree to indemnify Faire per the terms of the Indemnification section herein.

9. Content from Social Media and Networking Sites

As a Brand, you may link your social media accounts to your Brand store (collectively, “**Social Media Accounts**”). You represent that you are entitled to grant Faire access to, or otherwise make available, your Social Media Accounts and the content therein for the purposes described herein, without breach by you of any of the terms and conditions that govern your use of the applicable Social Media Account, and without obligating Faire to pay any fees or making Faire subject to any usage limitations imposed by such social media service providers. Depending on the Social Media Accounts you choose and subject to the privacy settings that you have set in such Social Media Accounts, personally identifiable information that you post to your Social Media Accounts will be available on and through your Brand Account on the Services.

Please note that if a Social Media Account or associated service becomes unavailable for any reason, then the Social Media Account Content that was available from such Social Media Account will no longer be available on and through the Services. You have the ability to unlink your Brand Account and your Social Media Accounts, at any time, by contacting Faire. PLEASE NOTE THAT YOUR RELATIONSHIP WITH THE SOCIAL MEDIA SERVICE PROVIDERS ASSOCIATED WITH YOUR SOCIAL MEDIA ACCOUNTS IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH SOCIAL MEDIA SERVICE PROVIDERS. Faire makes no effort to review any Social Media Account Content for any purpose, including for accuracy, legality or non-infringement and Faire is not responsible for any Social Media Account Content. Faire may, however, at any time and without prior notice, screen, remove, disable or block any Social Media Account Content that in Faire’s sole judgment violates these Terms or is otherwise objectionable.

10. Feedback

We welcome and encourage you to provide feedback, comments and suggestions for improvements to the Services (“**Feedback**”). You acknowledge and agree that if you submit any Feedback to us (through any communication channel), you hereby grant to us a non-exclusive, worldwide, perpetual, irrevocable, fully-paid, royalty-free, sub-licensable and transferable license under any and all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose.

11. Reliance on Information Posted

The information presented on or through the Services is made available solely for general information purposes. We do not warrant the accuracy, completeness or usefulness of this information. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such materials by you or any other visitor to the Site or user of the Services, or by anyone who may be informed of any of its contents.

The Services include content provided by third parties, including materials provided by other users, Members, bloggers and third party licensors. All statements and opinions expressed in these materials, and all articles and responses to questions and other Content, other than the Content provided by Faire, are solely the opinions and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect the opinion of Faire. We are not responsible, or liable to you or any third party, for the content or accuracy of any materials provided by any third parties.

12. Links to Third Party Websites

The Services may contain links to third-party websites or resources. You acknowledge and agree that Faire is not responsible or liable for: (a) the availability or accuracy of such websites or resources; or (b) the Content, products or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by Faire of such websites or resources or the Content, products or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources or the Content, products, or services on or available from such websites or resources. Also, Apple Inc. ("**Apple**") and Google, Inc. will be a third party beneficiary to these Terms if you access the Services using applications developed for Apple iOS or Android, respectively. These third party beneficiaries are not parties to these Terms and are not responsible for the provision or support of the Services in any manner. Your access to the Services using these applications or devices is subject to terms set forth in their respective terms of service and privacy policies.

13. Notice Regarding Apple

This Section only applies to the extent you are using our mobile application on an iOS device. You acknowledge that these Terms are between you and Faire only, not with Apple, and Apple is not responsible for the Services or the content thereof. Apple has no obligation to furnish any maintenance and support services with respect to the Services. If the Services fails to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the mobile application to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Services. Apple is not responsible for addressing any claims by you or any third party relating to the Services or your possession and/or use of the Services, including: (a) product liability claims; (b) any claim that the Services fail to conform to any applicable legal or regulatory requirement; or (c) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that the Services and/or your possession and use of the Services infringe a third party's intellectual property rights. You agree to comply with any applicable third party terms when using the Services. Apple and Apple's subsidiaries are third party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary of these Terms.

14. Prohibited Uses

You agree not to do any of the following

- a. Post, upload, publish, submit or transmit any Content that: (a) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (b) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (c) is fraudulent, false, misleading or deceptive; (d) is defamatory, obscene, pornographic, vulgar or offensive; (e) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (f) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (g) promotes illegal or harmful activities or substances.
- b. Use, embed, display, mirror or frame the Site or Application, or any individual element within the Services, Faire's name, any Faire trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Faire's express written consent or as enabled by features made available by Faire (e.g., widgets) (you may link to Faire's homepage, so long as you do not imply or suggest any form of association, approval or endorsement on our behalf without our express written consent but you may not link to the Site in a libelous, misleading or otherwise unlawful manner, or in any manner that violates these Terms);
- c. Access, tamper with or use non-public areas of the Site or Application, Faire's computer systems or the technical delivery systems of Faire's providers;
- d. Attempt to probe, scan, or test the vulnerability of any Faire system or network or breach any security or authentication measures;
- e. Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Faire or any of Faire's providers or any other third party (including another user) to protect the Services or Collective Content;
- f. Attempt to access or search the Services or Collective Content or download Collective Content from the Services through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Faire or other generally available third party web browsers;
- g. Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation to, through, or with any assistance from, the Services;
- h. Use any meta tags or other hidden text or metadata utilizing a Faire trademark, logo URL or product name without Faire's express written consent;
- i. Use the Services or Collective Content in any manner not permitted by these Terms;
- j. Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services or Collective Content to send altered, deceptive or false source-identifying information;
- k. Attempt to decipher, decompile, disassemble or reverse engineer any of the software or algorithms used to provide the Services or Collective Content;

- l. Interfere with, or attempt to interfere with, the access of any user, host or network, including sending a virus, overloading, flooding, spamming or mail-bombing the Services;
- m. Collect or store any personally identifiable information from the Services from other users of the Site, Services or Application without their express permission and in a manner that does not violate Faire's [Privacy Policy](#);
- n. Impersonate or misrepresent your affiliation with any person or entity;
- o. Violate any applicable law or regulation; or
- p. Encourage or enable any other third party to do any of the foregoing.

Faire will have the right to investigate and prosecute violations of any of the above to the fullest extent of the law. Faire may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms. You acknowledge that Faire has no obligation to monitor your access to or use of the Services or Collective Content, or to review or edit any Collective Content, but has the right to do so for the purpose of operating the Services, to ensure your compliance with these Terms, to investigate a complaint or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body. Faire reserves the right, at any time and without prior notice, to remove or disable access to any Member Content or Collective Content that Faire, in its sole discretion, considers to be in violation of these Terms or otherwise harmful to the Services. Faire reserves the right to cooperate fully with law enforcement, and to involve and share information with law enforcement, governmental agencies or other oversight bodies if Faire suspects illegal activity may be taking place.

15. Text Messages and Telephone Calls

Faire, and those acting on Faire's behalf, may contact you by telephone or text message (including through use of an automatic telephone dialing system) at the phone numbers you have provided to us. These messages may include operational messages about your use of the Service. You understand that you are not required to consent to communications as a condition of purchasing any property, goods or services. You may opt out of receiving telephone calls or text messages from us at any time, either by texting the word "STOP" in response to a text message received from us using the mobile device that is receiving the messages. You may continue to receive text messages for a short period while Faire processes your request, and you may also receive text messages confirming the receipt of your opt-out request. Opting out of receiving operational text messages may impact the functionality of the Services. Standard data and message rates may apply whenever you send or receive such messages, as specified by your carrier.

16. Procedure for Claiming Intellectual Property Infringement – DMCA Notice

Faire respects intellectual property laws and expects its users to do the same. It is Faire's policy to terminate, in appropriate circumstances, Members or other account holders who infringe or are believed to be infringing the intellectual property rights of others. [Click here for Faire's Copyright & IP Policy](#).

17. Information We Collect About You

All information we collect about you when you apply for an account or use or visit the Services is subject to our [Privacy Policy](#). By using the Services, you consent to the terms and conditions of the Privacy Policy and all actions taken by us in accordance with it.

18. Termination and Account Cancellation

If you breach any of these Terms, Faire will have the right to suspend or disable your Account or terminate these Terms, in its sole discretion and without prior notice to you. Faire reserves the right to revoke your access to and use of the Services and Collective Content at any time, with or without cause. In the event Faire terminates these Terms for your breach, you will remain liable for all amounts due hereunder. You may cancel your Account at any time by [contacting us](#).

19. Disclaimers

THE SERVICES AND COLLECTIVE CONTENT ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING, FAIRE EXPLICITLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. FAIRE MAKES NO WARRANTY THAT THE SERVICES OR COLLECTIVE CONTENT WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE OR ERROR-FREE BASIS. FAIRE MAKES NO WARRANTY REGARDING THE QUALITY OF ANY PRODUCTS, SERVICES OR COLLECTIVE CONTENT PURCHASED OR OBTAINED THROUGH THE SERVICES OR THE ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY CONTENT OBTAINED THROUGH THE SERVICES. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM FAIRE OR THROUGH THE SERVICES OR COLLECTIVE CONTENT, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES. YOU UNDERSTAND THAT FAIRE DOES NOT SCREEN OR INQUIRE INTO THE BACKGROUND OF ANY USERS OF THE SERVICES, NOR DOES FAIRE MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS OF THE SERVICES. FAIRE MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS OF THE SERVICES OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE USERS OF THE SERVICES. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES, PARTICULARLY IF YOU DECIDE TO MEET OFFLINE OR IN PERSON.

20. Indemnity

You agree to defend, indemnify, and hold Faire, and its parent, subsidiaries, affiliates, partners, successors, and assigns, and each of their owners, members, officers, directors, employees, agents, representatives, contractors, subcontractors, licensors, service providers and third party content providers, harmless from any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable legal and accounting fees) made by any third party due to or arising out of your violation of these Terms, and/or any law or the rights of a third party, and/or your use of the Services, including your Member Content.

21. LIMITATION OF LIABILITY

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ENTIRE RISK ARISING OUT OF YOUR ACCESS TO AND USE OF THE SERVICES AND COLLECTIVE CONTENT REMAINS WITH YOU. NEITHER FAIRE NOR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SITE, SERVICES, APPLICATION OR COLLECTIVE CONTENT WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR COLLECTIVE CONTENT, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE SERVICES OR OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT FAIRE HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

IN NO EVENT WILL FAIRE'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR COLLECTIVE CONTENT EXCEED US\$100. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN FAIRE AND YOU. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

22. Controlling Law and Jurisdiction

These Terms and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions. The exclusive jurisdiction and venue of any action or court proceeding permitted under these Terms will be the state and federal courts located in the Northern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

23. Export Control

You agree to comply fully with all U.S. and foreign export laws and regulations to ensure that neither the Application nor any technical data related thereto nor any direct product thereof is exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations. You represent and warrant that: (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) you are not listed on any U.S. Government list of prohibited or restricted parties.

24. Assignment

You may not assign or transfer these Terms, by operation of law or otherwise, without Faire's prior written consent. Any attempt by you to assign or transfer these Terms without such consent will

be null and of no effect. Faire may assign or transfer these Terms in its sole discretion without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

25. Notices

Any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms, will be in writing and given: (a) by Faire via email (in each case to the primary account email address that you provide); (b) by posting to the Site; or (c) via the Application. For notices made by email, the date of receipt will be deemed the date on which such notice is transmitted.

26. DISPUTE RESOLUTION – ARBITRATION

PLEASE READ THIS ARBITRATION PROVISION CAREFULLY BECAUSE IT AFFECTS YOUR RIGHTS.

You and Faire agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services (collectively, “**Disputes**”) will be settled by binding arbitration, except that each party retains the right to: (a) bring an individual action in small claims court; (b) the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party’s copyrights, trademarks, trade secrets, patents or other intellectual property rights; (c) pursue an enforcement action through the applicable federal, state or local agency if that action is available; and (d) seek injunctive relief in a court of law in aid of arbitration. **YOU ACKNOWLEDGE AND AGREE THAT YOU AND FAIRE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.** Further, unless both you and Faire otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this “Dispute Resolution” section will be deemed void. Except as provided in the preceding sentence, this “Dispute Resolution” section will survive any termination of these Terms.

Arbitration Rules and Governing Law. The arbitration will be administered by the American Arbitration Association (“**AAA**”) in accordance with the Commercial Arbitration Rules (the “**AAA Rules**”) then in effect, except as modified by this “Dispute Resolution” section. The parties agree that the Federal Arbitration Act applies and will govern the interpretation and enforcement of this Arbitration Agreement.

Arbitration Process. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. The arbitrator will be either a retired judge or an experienced (15+ years practicing) attorney licensed to practice law in the state of California.

Arbitration Location and Procedure. Unless you and Faire otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed US\$10,000, then the arbitration will be conducted solely on the basis of documents you and Faire submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds US\$10,000, your right to a hearing will be determined by the AAA Rules.

Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties.

Arbitrator's Decision. The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award damages must be consistent, to the extent permitted by law, with the terms of the "Limitation of Liability" section above as to the types and the amounts of damages for which a party may be held liable.

Fees. Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. If applicable arbitration rules or laws require us to pay a greater portion or all of such fees and costs in order for this Dispute Resolution provision to be enforceable, then we will have the right to elect to pay the fees and costs and proceed to arbitration.

Changes. Notwithstanding the provisions of the "Modification" section above, if Faire changes this "Dispute Resolution" section after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by contacting us) within 30 days of the date such change became effective, as indicated in the "Last Updated Date" above or in the date of Faire's email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Faire in accordance with the arbitration provisions of this "Dispute Resolution" section (however entitled) as of the date you first accepted these Terms or accepted any subsequent changes to these Terms.

27. Entire Agreement

These Terms constitute the entire and exclusive understanding and agreement between Faire and you regarding the Services and Collective Content, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Faire and you regarding the Services and Collective Content.

28. Miscellaneous

The failure by Faire to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Faire. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. Throughout these Terms, the word "include" or "including" means "including, but not limited to". Provisions that by their nature are intended to survive the termination of these Terms or your use of the Services will survive.

29. Contact Us

If you have any questions about these Terms, please contact Faire at:

Faire Wholesale, Inc.
100 Potrero Avenue

San Francisco, CA 94103

[contact us](#)

Company

[About Us](#)

[Newsroom](#)

[Careers](#)

[Partnerships](#)

Support

[Help Center](#)

[Open with Faire](#)

[Faire Markets](#)

[Sell on Faire](#)

Connect

[Blog](#)

[Instagram](#)

[Facebook](#)

[Twitter](#)

Get the Faire app

Shop on the go, message brands, and track orders with the Faire app.



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EXHIBIT B



555 California Street
12th Floor
San Francisco, CA 94104

415.875.2300
Fenwick.com

Matthew Becker
mbecker@fenwick.com | 650-335-7930

February 14, 2023

ACTION REQUIRED
VIA EMAIL AND U.S. MAIL

Arnold Engel and Katie Engel
Tundra, Inc. d/b/a Wholesale Co-Op
116 Sheridan Ave.
San Francisco, CA 94129

Re: Notice to Cease & Desist Interference, Computer Intrusion, and Scraping of Faire
Wholesale, Inc.

Mr. and Ms. Engel:

Fenwick & West represents Faire Wholesale, Inc. We recently learned of Wholesale Co-Op's campaign to induce Faire's customers to breach their agreements with Faire, compromise the security of Faire's platform and services, and surreptitiously access and scrape the Faire website (www.faire.com). Despite your attempt to hide your activity on the Faire website, Faire has identified your intrusion and has put in place technological measures to block further access. **Wholesale Co-Op, and its parent company Tundra, Inc., must cease and desist its interference with Faire's customers, and must cease accessing and scraping the secured, password protected portions of Faire's website that Faire has not authorized Wholesale Co-Op to access.**

Wholesale Co-Op's business model appears to be based on arbitrage, acting as an intermediary between the retailer customers who use Faire and misusing Faire's incentive program to line its own pockets or attract patrons to its business. To accomplish its goals, Wholesale Co-Op first induces Faire's retailer customers to breach their agreement not to disclose their login credentials. See Faire's Terms of Service,¹ Section 4 ("You are responsible for safeguarding your password and you agree that you will not disclose it to any third party.").

After acquiring login credentials, Wholesale Co-Op then uses them to access the customer's Faire account and scrape information and content from secured portions of the Faire

¹ <https://www.faire.com/tos>

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platform—in the process circumventing Faire’s security features by copying cookie values and deploying a wide range of user agents that deliberately misrepresent their identities and proxying requests through virtual private network (VPN) connections. By using these measures to bypass Faire’s security features, Wholesale Co-Op apparently knows that what it is doing is wrong, and being unable to accomplish its ends openly, has resorted to subterfuge and technological circumvention. Indeed, Wholesale Co-ops actions also violate several provisions of Faire’s Terms of Service, including the restrictions in section 7.b., and the prohibited uses in section 14.a., b., d., e., f., j., m., n., and p.

By inducing Faire customers to breach their agreements, your actions potentially expose you to claims for tortious interference with contract and prospective economic advantage, as well unfair competition under California law. Your retention and use of Faire login credentials also creates a host of security and privacy concerns. And your circumvention of Faire’s security features through copied cookie values, misleading user agents, and VPN connections potentially exposes you to claims under the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030 *et seq.* and California Penal Code § 502. Courts routinely find violations of the CFAA when companies access or scrape information from a website despite having been expressly notified that it is not allowed to access the website, and where the website has implemented a technological measure to stop the perpetrator from continuing to access the website. *See, e.g., Southwest Airlines Co. v. Farechase, Inc.*, 318 F.Supp.2d 435 (N.D. Tex. 2004); *Craigslist v. 3Taps Inc., et al.*, 942 F. Supp. 2d 962 (N.D. Cal. 2013); *Sw. Airlines Co. v. Kiwi.com, Inc.*, No. 3:21-CV-00098-E, 2021 WL 4476799 (N.D. Tex. Sept. 30, 2021). Perpetrators cannot sidestep the law simply by claiming they are accessing the website on behalf of other users and with their credentials. *See Facebook, Inc. v. Power Ventures, Inc.*, 844 F.3d 1058 (9th Cir. 2016). Now that Faire has prohibited your access through this cease and desist letter and added new technological measures to prevent your access, any further circumventing such access control measures after the date of this letter may expose you to even greater liability under state and federal law. Additionally, you are now inarguably on notice that use of Faire’s site constitutes an agreement to its Terms of Service, and continued fraudulent access to users’ accounts and data scraping will breach those Terms. *See, e.g., Southwest Airlines Co. v. Kiwi.com, Inc., et al.*, 2021 WL 4476799 at *2.

By no later than **February 21, 2023**, we require a response to this letter (1) listing all Faire customer email addresses used by Wholesale Co-Op for the purposes described above; (2) identifying how you stored and deployed the user credentials provided by Faire’s customers, including what security methods you used for storing and deploying those

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credentials; and (3) confirming that Tundra and Wholesale Co-Op have ceased access to the Faire website, will not resume access, and have destroyed all copies of the Faire user credentials obtained from Faire customers (including but not limited to passwords, usernames, cookies, and authentication tokens).

All of Faire's rights are expressly reserved.

Sincerely,

FENWICK & WEST LLP

s/ Matthew Becker

Matthew Becker

MB:an

EXHIBIT C

Shop wholesale online from over 85,000 brands. [Sign up](#)

FAIRE WHOLESALE, INC. BRAND TERMS OF SERVICE

Last Updated: June 24th, 2022

1. Overview

Thank you for your interest in becoming a brand on the Faire wholesale online marketplace, accessible through its websites (collectively, the “**Site**”) and mobile applications (collectively, the “**Application**”) (together, the “**Services**”). Throughout these Brand Terms of Service (“**Brand Terms**”), the terms “**Faire**,” “**us**,” and/or “**we**” refer to Faire Wholesale, Inc. The terms “**you**” and/or “**your**” refer to you as a user of the Services as a Brand. These Brand Terms, along with [Faire’s Terms of Service \(“General Terms”\)](#) and [Privacy Policy](#), govern your sale of products as a Brand through the Services. These Brand Terms reference and link to various Faire policies that provide additional details regarding the Services, and such policies are incorporated herein by reference and are to be treated as part of these Brand Terms. You hereby acknowledge and agree to the set forth below. Capitalized terms used herein but not defined shall have the meanings given to them in the General Terms. Throughout these Brand Terms, the word “include” or “including” means “including, but not limited to”.

2. Key Definitions

- a. “**Brand**” means a seller who offers to sell and/or sells its products to Retailers through the Services. The term “Brand” also includes “Distributor” as defined below.
- b. “**Distributor**” means a seller who offers to sell and/or sells a third party brand’s products to Retailers on the Services under express, valid and continuous authorization from such third party brand.
- c. “**Retailer**” means a buyer who purchases products through the Services for the purpose of resale.

3. Account Registration – Brand Account

- a. Brand Account. To sell products through the Services as a Brand, you must submit an application to become a brand and be approved by Faire for an account (“**Brand Account**”), as further set forth in the General Terms. By accepting these Brand Terms and providing the requested information (including any necessary documentation evidencing product compliance and safety, and if you are a Distributor, proof that you have the necessary rights

from applicable third party brands whose products you seek to distribute on the Services) during the Brand application process (as detailed in the General Terms), you authorize Faire and its affiliates and payment processors to settle and disburse funds to you and on your behalf, and on behalf of any third party brands whose products you seek to distribute on the Services. Faire will use good faith efforts to review your application to become a Brand as soon as possible. You acknowledge that Faire is only able to accept a limited number of Brands at any given time, and that Faire is not obligated to accept you as a Brand. You hereby release Faire from any liability regarding the acceptance process.

- b. Wholesale Relationships. Faire understands that Brands have sales representatives in certain territories. If you have such sales representatives, Faire will work with you to block off certain geographical areas where your sales representatives are located so that you do not receive orders from those geographical areas. To initiate geographical blocking, you will need to contact us.
- c. Distributors. If you intend to distribute a third party brand's products on the Services, you must obtain express written consent from the applicable third party brand. Such consent must include all relevant third party brand details (including, without limitation, brand name, products to be sold, and relevant contact information), all of which Faire requires for legal and quality purposes. As a Distributor, you acknowledge and agree that a third party brand may in its discretion choose to list its products directly on the Services, in which case the relevant products would be removed from your listing as a Distributor.

4. Onboarding

- a. Shop Page. Each Brand has its own dedicated store page on the Site featuring its products (including descriptions and other pertinent information) ("**Shop Page**"). Faire will create and design your Shop Page with the information you provide (or you may do so yourself if certain self-onboarding features are available in our discretion, except that such self-onboarding features do not apply to Distributors unless otherwise authorized by Faire in writing in its sole discretion). You agree that Faire may adjust, edit or remove Content you submit in order to comply with Faire's internal specifications and requirements. Faire reserves the right to approve the final look and feel of your Shop Page in its sole discretion. To have Faire create your Shop Page, you must provide a line sheet, high resolution photography (product and lifestyle) in accordance with Faire's photography guidelines, and your minimum order number, all described below. Faire may ask for additional information as needed. As soon as your Shop Page is created, Faire will send you an activation email.
- b. Line Sheet. As part of the onboarding process, you are required and agree to submit to Faire a line sheet of your entire and complete wholesale product catalog containing the following information: (i) product name; (ii) individual or prepack; (iii) product variations; (iv) case size; (v) wholesale price by region; (vi) retail price; (vii) product descriptions; and (viii) whether products are active or inactive. The line sheet must be in accordance with Faire's Product Guidelines.
- c. High-Resolution Photographs. You are required and agree to provide high-resolution photographs of your products in accordance with Faire's photography guidelines. Photographs that could reasonably be considered objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful or otherwise inappropriate are prohibited. You

shall submit all photographs as indicated by Faire, and Faire will select the best quality and most appropriate photographs for your Shop Page. Faire reserves the right to reject content that violates Faire's guidelines or these Brand Terms.

- d. Order Minimums. You may set minimum order quantities for your products on a region-by-region basis. If you wish to have minimum order quantities, you agree to provide Faire with your first order and reorder minimums (together, an "**Order Minimum**"), which will be displayed on your Shop Page.
- e. Shipping Lead Time. You must set your typical shipping lead time, which should be an accurate estimation of your actual lead times and which you should use all reasonable efforts to meet. Faire reserves the right to adjust the shipping lead time, based on actual historical lead times. The lead time you set will be displayed on your Shop Page for the purpose of informing Retailers, who may rely on it when making a purchase. You must also enter an expected shipping date once orders are placed in order to approve/accept the order. You may edit your lead time in your Brand Account settings.

5. Content License, Representations and Warranties

- a. License. In connection with your use of the Services, you hereby grant to Faire a worldwide, perpetual, non-exclusive, transferable, sublicensable, royalty-free license to use, view, copy, adapt, modify, distribute, publicly display and publicly perform (through any means necessary) your Content on, through or by means of the Services and any of Faire's advertising, marketing, publicity and other initiatives and events. Faire does not claim any ownership rights in any of your Content and nothing in these Brand Terms will be deemed to restrict any rights that you may have to use and exploit your Content. You hereby agree that Faire may at its option, grant a limited, revocable sublicense to Retailers to use your Content on their website for the sole purpose of promoting products purchased from you through the Services.
- b. Representations and Warranties. You acknowledge and agree that you are solely responsible for all Content that you make available through the Services. Accordingly, you represent and warrant that: (i) you are either the sole and exclusive owner of the Content that you make available through the Services or you have all rights, licenses, consents and releases necessary to grant to Faire the rights in such Content as contemplated under these Terms (including, without limitation, all rights, licenses, consents and releases from applicable third party brands if you are a Distributor); and (ii) neither the Content nor your posting, uploading, publication, submission or transmittal of the Content or the use by Faire or a Retailer of the Content (or any portion thereof) on, through or by means of the Services or social media platforms will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy, or contain inaccurate, misleading, libelous, misleading or otherwise unlawful, abusive, harassing or obscene material, or contain any computer virus or other malware that could in any way affect the operation of the Services, or result in the violation of any applicable law or regulation. You agree that you will not use a false e-mail address, pretend to be someone other than yourself or otherwise mislead us or third parties as to the origin of any posts. You are solely responsible for any Content you provide and its accuracy. Faire takes no responsibility and assumes no liability, and you hereby release Faire from any such liability related to any

Content posted or otherwise made available by you, and you agree to indemnify Faire per the terms of the Indemnification section herein.

6. Product Listing and Compliance

- a. Product Listing. Faire requires each Brand to list their entire wholesale catalog, unless otherwise agreed in writing by Faire, and provide a description for each product. Faire reserves the right to accept or reject any products and has final discretion as to the content of the final Shop Page. Brand's available products will at all times comply with Faire's Product Guidelines regarding prohibited products.
- b. Maximum List Price. Faire has a maximum price for products listed on the Services. Please visit for Faire's current policy.
- c. Product and Content Compliance. All products made available on Faire, and related Content, must meet Faire's Product Guidelines, found here. You acknowledge and agree to: (i) abide by Faire's Product Guidelines and to refrain from making available any prohibited products identified in Faire's Product Guidelines; (ii) comply with all applicable laws, rules and regulations, including safety, labeling, testing, warning, import/export and other consumer protection law requirements; (iii) not infringe upon or misappropriate the intellectual property, publicity or other rights of others; (iv) not provide any false, inaccurate or misleading information about your products; and (v) ensure that you have all necessary rights, licenses, permissions and consents to offer for sale and sell the products through the Services, including (a) that they are allowed to be sold from your jurisdiction and into the Retailer's jurisdiction and (b) if you are a Distributor, that you are properly authorized to do so by the applicable third party brand(s). You acknowledge and agree that Faire is not responsible for determining whether you meet the above requirements, you hereby release Faire from any liability with respect thereto and agree to indemnify Faire as set forth in the Indemnification section set forth below. Failure to comply with Faire's Products Guidelines may result in the temporary suspension or permanent termination of your Brand Account, in our sole discretion.

7. Product Pricing

- a. Pricing Consistency. You acknowledge and agree that your prices on your Shop Page will be consistent with all other wholesale and retail channels where your products can be found in the applicable region.
- b. Price Audits. You acknowledge and agree that Faire may perform routine price and content audits of the products listed on your Shop Page. That includes reviewing for wholesale and retail price consistency between your sites, and reviewing discrepancies that are communicated to us from Retailers. In the event a discrepancy is found, Faire may reach out to you and require certain action be taken to resolve the issue. If you fail to properly and/or timely respond to the discrepancy, Faire reserves the right to temporarily suspend or permanently terminate your Brand Account.

8. Title, Returns, Promotions

- a. Flash Title. With respect to Brands located in the United States, as soon as you accept an order from a Retailer located in the United States, title to the product(s) in the order passes to Faire before passing to the Retailer. If the Retailer cancels the order prior to you shipping the order, or if the Retailer cancels the order because you have delayed shipping the order past the expected shipping date, then title passes back to you.
- b. First Orders with a Brand. Faire offers free returns on the first order placed with any Brand. From the date the order is placed, a Retailer has a limited period of time to return the product for a full refund. Any additional orders (reorders) from a Brand are not eligible for return unless otherwise determined by Faire in its sole discretion. However, Faire, not the Brand, takes on this return risk, as returned items will not be deducted from your payout for the order.
- c. Returned Products. Faire takes title to all products returned by a Retailer, subject to its return policies (not all products are eligible for return). Faire may, at its option, promote and distribute any returned products through its various redistribution channels. Retailers may purchase these returned products without meeting the Brand's Minimum. You acknowledge and agree that Faire may promote and redistribute such products bearing your brand name through these and/or other avenues. If you do not want your returned products to be re-sold or redistributed by Faire, you may opt-in to our Buy-Back Program, where available, which will allow you to buy back your returned inventory subject to certain additional terms and conditions made available to you prior to opting in (Faire will also consider individual buy-backs in its reasonable discretion).

9. Commissions, Placement Fees, and Payout Schedule

- a. Acceptance of Terms. By accepting these Brand Terms, you acknowledge and agree to the commissions, fees, calculations and payout schedule set forth below. You agree and authorize Faire and/or its payment processors to deduct all commissions and fees due and owing from your payout amount, and to settle and transfer funds to your bank account. If you are a Distributor, you acknowledge and agree that you have the power and authority to agree to the foregoing with respect to all third party brands whose products you distribute on the Services.
- b. Percentage. Unless otherwise agreed by Faire in writing, Faire charges Brands a commission (the "**Commission**") of 25% on first orders, which includes a first order surcharge fee of 10%. Faire charges Brands a Commission of 15% on any subsequent orders. If an existing Retailer account places an order through the Services, then Faire agrees to waive the Commission (including the first order surcharge) for such Retailers, provided the Brand satisfies Faire's then-current policies. Certain categories of products and a Brand's location may result in a Commission structure different from the foregoing, which will be communicated to you during onboarding or creation of your Brand Account.
- c. Calculation. Commissions (including the first order surcharge) are calculated based on the dollar amount of the order total, excluding shipping costs. Any items that a Retailer marks as damaged or missing are deducted from the payout of the order (Faire does not receive a commission on these items). If you send a replacement for a damaged or missing item, Faire will pay you for the invoice value of the replacement item.
- d. Payout Schedule. Faire currently offers two types of payout accounts for U.S.-based Brands (international options may vary by region), at the Brand's choice: (1) ACH Net 30; and (2) ACH

Next Day. If you choose ACH Net 30, amounts owed will be transferred to your chosen bank account 30 days from the date the shipment has been scanned by your shipping provider and is in transit. There are no fees with ACH Net 30. You acknowledge and agree that you are not entitled to any interest or other compensation associated with this type of account. If you choose ACH Next Day, you will incur a 3% processing fee that is applied to the total order, including shipping costs, which amount will be deducted from your payout amount. With ACH Next Day, amounts owed will be transferred to your chosen bank account the day after the shipment has been scanned by your shipping provider and is in transit. It is anticipated that funds for either payout account will appear within 1 to 2 business days of being processed. Faire is not responsible for any actions taken by your bank that may result in some or all of the funds not being made available to you. Faire reserves the right to suspend payouts to your bank account due to pending disputes, excessive chargebacks or refunds and/or other improper or illegal activity.

In addition, as set forth below, Faire will reimburse you for your shipping costs.

10. Shipping - Costs, Lead Times, Shipping Providers, Damaged Products

- a. Shipping Costs. Brands have the option to use "Ship with Faire" for Faire negotiated discounted shipping rates. Faire reimburses Brands only for shipping costs incurred by Brand if Brand chooses to ship on its own account and not with Faire. Shipping costs will appear on a Retailer's invoice and shall reflect the actual shipping costs incurred by the Brand. Shipping costs may not be inflated in any way. For the avoidance of doubt, Faire is not responsible for handling transport or customs clearance of any Brand products.
- b. Tracking Number. You will be asked by Faire for, and you agree to provide within your account, tracking information for each order. If an order is shipped in multiple packages, you agree to provide tracking numbers for each package. When you input the tracking number(s), Faire will automatically send an email to the Retailer letting them know the order is on its way. Although not required, Faire recommends that you require a signature for your shipments to ensure delivery and provide evidence that an order was in fact received.
- c. Damaged or Missing Products. Retailers are responsible for reaching out to you through the Services to try to resolve issues relating to damaged or missing items in an order. Faire will notify you if a Retailer reports to Faire directly that a product is damaged or if an order is missing items. Faire will pass along any photographs of any damaged item or of the order as a whole that it receives. You acknowledge and agree that you alone are responsible for resolving the issue, including making a claim with your shipping provider, and you hereby release Faire from any liability with regard thereto. Faire reserves the right to deduct payouts or charge the bank account associated with your account related to items that are reported as damaged or missing. You have the right to dispute the charge with Faire but we reserve the right to reject any dispute/claim created by you about the charge.
- d. Shipping Insurance. Faire does not require you to purchase shipping insurance. However, Faire strongly recommends that you do so in order to facilitate any shipping dispute you have with a Retailer. Shipping protection may be available.

11. Inventory, Orders, Recalled Products

- a. Inventory. You agree to keep sufficient inventory on hand for products advertised as being available, and to keep inventory numbers current. You agree to promptly remove any products that are discontinued or are out of stock through your Brand Account portal. It is your responsibility to keep your product catalog current and up-to-date based on availability (whether items are back-ordered or discontinued).
- b. Orders. Faire will send you an email each time a Retailer places an order for your products. Your Brand Account will also be updated with new order details. You will be able to review the order details, edit inventory availability and accept or cancel the order. You must accept or cancel an order within 2 business days of receiving the email notifying you of the order. If you cancel an order, you will be asked to provide a reason for not being able to fulfill the order. Consistent order cancellation may result in the temporary suspension or permanent termination of your Brand Account, in our sole discretion.
- c. Right to Refuse. You have the right to refuse any order by a Retailer for any reason. Consistent refusal may impact your visibility and search placement within the Services to Retailers.
- d. Recalled Products. You agree to immediately inform Faire if any of your products have been recalled, giving at least the following information: (i) product name; (ii) SKU number or other identifying number; (iii) number of units sold to Retailers; (iv) purpose of recall; and (v) any other information necessary so that the products may be properly and quickly recalled.
- e. No Circumvention. Once an order has been placed through your Shop Page by a Retailer, you agree that you will fulfill all orders placed by such Retailer through the Services. You further agree to not influence Retailers to transact offline outside of the Services in any manner, or otherwise circumvent Faire's process in order to transact orders with Retailers who were introduced to you through the Services offline or outside of the Services in any manner. Faire reserves the right to deactivate or terminate your account if you fail to abide by these terms.
- f. Pause Mode. If you are going on vacation, or are unable to accept new orders for a period of time, you may pause your Shop Page for up to 12 weeks at a time using "Pause Mode" found in your Brand Account tab. You will still be able to access your Brand Account and we encourage you to fulfill any orders you have already accepted while on "Pause Mode."

12. Commitment to Quality and Service

- a. Minimum Standards. Brand and Retailer satisfaction is of utmost importance to the long-term health and success of the Faire community. Accordingly, Brands are subject to the following minimum standards in connection with the Services:
 - 1. To accurately list and describe available products on your Shop Page;
 - 2. To timely accept or cancel an order from a Retailer;
 - 3. To timely fulfill and ship orders to Retailers using a reputable shipping provider;
 - 4. To promptly and effectively respond to Retailer inquiries; and
 - 5. To promptly resolve missing or damaged orders with a Retailer.
- b. Metrics. You acknowledge and agree that in order to ensure that you are meeting the foregoing Brand's minimum standard requirements, Faire will track and measure your

performance using a variety of metrics, including collecting reviews and ratings from your Retailers. Reviewed individually and as a whole, these metrics help Faire determine whether you are meeting Faire's expectations on delivering a great experience for the Retailers. Such metrics also include:

1. Accuracy of product listings;
 2. Catalog completeness;
 3. How often your shipments are later than the expected shipping date;
 4. How often you provide a valid tracking number;
 5. How long it takes you to accept or cancel new orders;
 6. How often your orders are reported as damaged or missing products;
 7. How often your products are on backorder, returned or canceled;
 8. How promptly and effectively you respond to Retailer inquiries;
 9. How promptly and effectively you resolve missing or damaged orders with a Retailer.
- c. Volume Considerations. Faire takes volume consideration into account when calculating metrics. For example, if a Brand has only 10 orders, and 1 was damaged, then the damaged order rate is 10%. While that metric is technically over Faire's target, it does not necessarily reflect an actual problem with performance given the low volume of orders.
- d. Evaluation. Faire typically evaluates a Brand's performance using the above metrics on an ongoing monthly basis, and more frequently during high volume periods such as the holiday selling season. The length of time between reviews depends on the volume of transactions of each flagged Brand Account and/or the extent of available data. Faire reserves the right to adjust its evaluation criteria as needed.
- e. Accountability. If Faire determines that you are not meeting the minimum standards of quality and service, Faire may reach out to you in an attempt to resolve the issue and/or temporarily suspend or permanently terminate your Brand Account. Faire also reserves the right to put limits on your Brand Account, lower your visibility and/or search placement across the Services, limit your ability to sell with new Retailers until you resolve outstanding issues, and/or deny signing up any affiliated, related or duplicate accounts.
- f. Suspended Accounts. If your Brand Account is suspended for performance issues, you may appeal for re-activation by providing Faire with a plan of action for correcting the problems that contributed to the account being flagged and suspended. If Faire in its sole discretion approves the plan of action, you may resume selling through the Services. If you believe that the flag on your Brand Account is erroneous, you may contact Faire and explain why.

13. Promotion

Unless you opt out as set forth below, Faire may feature certain Brands, products and Content at the top of their respective category, on Faire's landing pages, in advertisements, email, social media accounts or in any other channels or media in its discretion. Faire may choose to bid on Brand brand names and keywords relating to the Brand's products in advertising products and may create SEO optimized pages or campaigns for Brand brands. Faire shall not be liable for any pricing or availability of a particular product featured in a particular ad or marketing. If you do not

want to participate in the Marketing and Advertising Program, please contact us. Faire may also offer Brands email marketing tools to use for their business. Additional terms and conditions may apply, including that all account leads must be sourced by you directly (purchasing lead lists from third parties is not permitted), the tools are not to be used for spam, and Faire reserves the right to throttle or limit the number of emails sent to Retailers via such tools.

14. Faire Messenger

Retailers and Brands may contact each other directly through Faire Messenger on the Services. You agree to use Faire Messenger only for legitimate business purposes, such as responding to a Retailer's question about your products or the status of an order, or to resolve business issues. You agree to not abuse Faire Messenger, to use it only as is reasonably necessary and to not use it for the purpose of harassment or other improper purposes. If you are not able to answer a Retailer's question or resolve issues, you may contact Faire directly.

15. Product Liability Insurance

All Brands are required to maintain, at their own cost and expense, general commercial liability insurance (including comprehensive product liability) with respect to its products listed on Faire in such amount as is reasonable and customary for companies of comparable size and activities. Faire reserves the right to request proof of such insurance coverage and other relevant information at any time.

16. Indemnity

You agree to defend, indemnify, and hold Faire, and its parent, subsidiaries, affiliates, partners, successors, and assigns, and each of their owners, members, officers, directors, employees, agents, representatives, contractors, subcontractors, licensors, service providers and third party content providers, harmless from any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable legal and accounting fees) made by any third party due to or arising out of your violation of these Brand Terms, the General Terms and/or any law or the rights of a third party, and/or your use of or participation on the Services.

17. Prohibited Uses

Faire will have the right to investigate and prosecute violations of these Brand Terms to the fullest extent permitted by law. Faire may involve and cooperate with law enforcement authorities in prosecuting users who violate these Brand Terms. You acknowledge and agree that Faire has no obligation to monitor your access to or use of the Services or Content, or to review or edit any Content, but has the right to do so for the purpose of operating the Services, to ensure your compliance with these Brand Terms, to investigate a complaint or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body. Company reserves the right, at any time and without prior notice, to remove or disable access to any Content that Faire, in its sole discretion, considers to be in violation of these Brand Terms or otherwise harmful to the Services. Faire reserves the right to cooperate fully with law enforcement, and to involve and share information with law enforcement, governmental agencies or other oversight bodies if Faire suspects illegal activity may be taking place.

18. Termination

If you breach any of these Brand Terms, Faire will have the right to temporarily suspend or permanently terminate your Brand Account, and/or terminate these Brand Terms and/or the

General Terms, in its sole discretion and without prior notice to you. Faire reserves the right to revoke your access to and use of the Services at any time, with or without cause. In the event Faire terminates these Brand Terms for your breach, you will remain liable for all amounts due hereunder. You may terminate your relationship with Faire at any time by [contacting us](#) or as otherwise indicated in your Brand Account portal. Faire will take down your Shop Page as soon as practicable, and will close your Brand Account once there has been an accounting of all monies due and owing.

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