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9 Attorneys for Defendant
 10 Shihreen, Inc.

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 13 UNITED STATES DISTRICT COURT
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 15 OAKLAND DIVISION

17 S. CLAUDIA KOCH, doing business as
 Zazou,

18 Plaintiff,

19 vs.

20 EXOTIC SILKS, INC., et al,

21 Defendants.

CASE NO. CV-05-02966-SBA

**ANSWER OF DEFENDANT SHIHREEN,
 INC. TO COMPLAINT FOR COPYRIGHT
 INFRINGEMENT**

1 Defendant Shihreen, Inc. (“Defendant”) answers the Complaint filed by S. Claudia Koch
2 doing business as Zazou as follows:

3 **JURISDICTION AND VENUE**

4 1. Admitted.

5 **INTRADISTRICT ASSIGNMENT**

6 2. Admitted that this action is excepted as an intellectual property case pursuant to
7 Local Rule 3-2(c). However, “[a]ctions arising in the excepted categories shall be assigned on a
8 district-wide basis.” Local Rule 3-2(c).

9 **PARTIES**

10 3. Defendant lacks knowledge or information sufficient to form a belief as to the
11 truth of the allegations in this paragraph and, on that basis, denies those allegations.

12 4. Defendant lacks knowledge or information sufficient to form a belief as to the
13 truth of the allegations in this paragraph and, on that basis, denies those allegations.

14 5. Defendant lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations in this paragraph and, on that basis, denies those allegations.

16 6. Defendant lacks knowledge or information sufficient to form a belief as to the
17 truth of the allegations in this paragraph and, on that basis, denies those allegations.

18 7. Defendant lacks knowledge or information sufficient to form a belief as to the
19 truth of the allegations in this paragraph and, on that basis, denies those allegations.

20 8. Defendant lacks knowledge or information sufficient to form a belief as to the
21 truth of the allegations in this paragraph and, on that basis, denies those allegations.

22 9. Defendant lacks knowledge or information sufficient to form a belief as to the
23 truth of the allegations in this paragraph and, on that basis, denies those allegations.

24 10. Defendant lacks knowledge or information sufficient to form a belief as to the
25 truth of the allegations in this paragraph and, on that basis, denies those allegations.

26 11. Admitted.

27 12. Defendant lacks knowledge or information sufficient to form a belief as to the
28 truth of the allegations in this paragraph and, on that basis, denies those allegations.

1 24. Defendant lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations in this paragraph and, on that basis, denies those allegations.

3 25. Defendant lacks knowledge or information sufficient to form a belief as to the
4 truth of the allegation that “Fabric designers, like Zazou, routinely undertake great efforts to
5 protect their designs, including copyright infringement litigation,” and, on that basis, denies that
6 allegation. Defendant denies the remaining allegations in this paragraph.

7 26. The allegations in this paragraph state legal conclusions to which no response is
8 required. To the extent that a response is required, Defendant lacks knowledge or information
9 sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis,
10 denies those allegations.

11 **ALLEGATIONS OF “DEFENDANTS’ INFRINGING ACTS”**

12 27. Defendant lacks knowledge or information sufficient to form a belief as to the
13 truth of the allegations in this paragraph and, on that basis, denies those allegations.

14 28. Defendant lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations in this paragraph and, on that basis, denies those allegations.

16 29. Defendant lacks knowledge or information sufficient to form a belief as to the
17 truth of the allegations in this paragraph and, on that basis, denies those allegations.

18 30. Defendant lacks knowledge or information sufficient to form a belief as to the
19 truth of the allegations in this paragraph and, on that basis, denies those allegations.

20 31. Defendant lacks knowledge or information sufficient to form a belief as to the
21 truth of the allegations in this paragraph and, on that basis, denies those allegations.

22 32. Defendant lacks knowledge or information sufficient to form a belief as to the
23 truth of the allegations in this paragraph and, on that basis, denies those allegations.

24 33. Defendant lacks knowledge or information sufficient to form a belief as to the
25 truth of the allegations in this paragraph and, on that basis, denies those allegations.

26 34. Defendant admits that it purchased fabric with the design in dispute from Exotic
27 Silks and resold it. Defendant lacks knowledge or information sufficient to form a belief as to the
28 truth of the remaining allegations in this paragraph and, on that basis, denies those allegations.

1 35. Defendant lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations in this paragraph and, on that basis, denies those allegations.

3 36. Defendant lacks knowledge or information sufficient to form a belief as to the
4 truth of the allegations in this paragraph and, on that basis, denies those allegations.

5 37. Defendant lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations in this paragraph and, on that basis, denies those allegations.

7 38. Defendant lacks knowledge or information sufficient to form a belief as to the
8 truth of the allegations in this paragraph and, on that basis, denies those allegations.

9 39. Defendant lacks knowledge or information sufficient to form a belief as to the
10 truth of the allegations in this paragraph and, on that basis, denies those allegations.

11 40. The allegations contained in this paragraph on their face relate exclusively to
12 inadmissible and irrelevant settlement discussions and therefore do not require a response. To the
13 extent that a response is required, Defendant lacks knowledge or information sufficient to form a
14 belief as to the truth of the allegations in this paragraph and, on that basis, denies those
15 allegations.

16 41. The allegations contained in this paragraph on their face relate exclusively to
17 inadmissible and irrelevant settlement discussions and therefore do not require a response. To the
18 extent that a response is required, Defendant lacks knowledge or information sufficient to form a
19 belief as to the truth of the allegations in this paragraph and, on that basis, denies those
20 allegations.

21 42. The allegations contained in this paragraph on their face relate exclusively to
22 inadmissible and irrelevant settlement discussions and therefore do not require a response. To the
23 extent that a response is required, Defendant lacks knowledge or information sufficient to form a
24 belief as to the truth of the allegations in this paragraph and, on that basis, denies those
25 allegations.

26 43. The allegations contained in this paragraph on their face either relate to
27 inadmissible and irrelevant settlement discussions or purport to state legal conclusions. In either
28 case, no response is required. To the extent that a response is required, Defendant lacks

1 knowledge or information sufficient to form a belief as to the truth of the allegations in this
2 paragraph and, on that basis, denies those allegations.

3 44. Denied.

4 45. Denied.

5 46. Denied.

6 47. Denied.

7 **CLAIM FOR RELIEF**

8 **(Copyright Infringement)**

9 **[17 U.S.C. § 501]**

10 48. Defendant incorporates its responses to paragraphs 1-47 by reference as if fully set
11 forth herein.

12 49. Defendant lacks knowledge or information sufficient to form a belief as to the
13 truth of the allegations in this paragraph and, on that basis, denies those allegations.

14 50. Defendant lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations in this paragraph and, on that basis, denies those allegations.

16 51. Denied.

17 52. Denied.

18 53. Denied.

19 54. Denied.

20 55. Denied.

21 **Affirmative Defenses**

22 **First Affirmative Defense**

23 The Complaint and the Claim fail to state a claim upon which relief can be granted.

24 **Second Affirmative Defense**

25 Plaintiff lacks standing to bring the Claim.

26 **Third Affirmative Defense**

27 The Claim is barred because the subject matter of the alleged works is not original and/or
28 otherwise lacks the requirements for protection under the Copyright Act.

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Fourth Affirmative Defense

The Claim is barred by the fraud on the copyright office.

Fifth Affirmative Defense

The Claim is barred because any “copying” by Defendant was *de minimis*.

Sixth Affirmative Defense

The Claim is barred to the extent Plaintiff seeks to claim copyright protection over a work or any aspect thereof that is in the public domain.

Seventh Affirmative Defense

The Fair Use Doctrine (17 U.S.C. § 107 and the common law) and related doctrines bar the Claim.

Eighth Affirmative Defense

The Claim is barred because Plaintiff does not own or control the rights giving rise to the Claim purportedly raised in the Complaint.

Ninth Affirmative Defense

Plaintiff has failed to mitigate its damages, if any.

Tenth Affirmative Defense

Plaintiff’s prayer for actual and statutory damages is barred because such alleged damage s did not arise from any acts, representations or omissions on the part of Defendant.

Eleventh Affirmative Defense

Plaintiff’s prayer for statutory damages based on alleged willful infringement is barred because any infringement arising from the acts complained of in the Complaint or Claim was innocent and not intentional.

WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff take nothing as a result of the Complaint and that Plaintiff’s Claim be dismissed with prejudice; and
2. An award of attorneys’ fees, expenses and costs of suit incurred herein; and
3. Such other and further relief as this Court may deem just and proper.

1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Federal Rule of Civil Procedure 38(b), Defendant hereby demands a jury trial
3 on all issues so triable.

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5 MUNGER, TOLLES & OLSON, LLP

6 DATED: October 11, 2005

7 /s/ Amy C. Tovar
8 AMY C. TOVAR
9 Attorney for Defendant
10 Shihreen, Inc.

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