

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

YETI Coolers, LLC,

Plaintiff,

v.

Wal-Mart Stores, Inc.,

Defendant.

Case No. 1:17-CV-01145

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

- (1) BREACH OF CONTRACT;**
- (2) TRADEMARK DILUTION IN
VIOLATION OF TEX. BUS. & COM.
CODE § 16.103;**
- (3) TRADE DRESS DILUTION IN
VIOLATION OF TEX. BUS. & COM.
CODE § 16.103;**
- (4) TRADEMARK INFRINGEMENT IN
VIOLATION OF 15 U.S.C. § 1114(1);**
- (5) TRADEMARK INFRINGEMENT IN
VIOLATION OF 15 U.S.C. § 1125(a);**
- (6) TRADE DRESS INFRINGEMENT IN
VIOLATION OF 15 U.S.C. § 1125(a);**
- (7) TRADEMARK DILUTION IN
VIOLATION OF 15 U.S.C. § 1125(c);**
- (8) TRADE DRESS DILUTION IN
VIOLATION OF 15 U.S.C. § 1125(c);**
- (9) UNFAIR COMPETITION AND
FALSE DESIGNATION OF ORIGIN
IN VIOLATION OF 15 U.S.C. §
1125(a);**
- (10) COPYRIGHT INFRINGEMENT
UNDER 17 U.S.C. § 501**
- (11) PATENT INFRINGEMENT IN
VIOLATION OF 35 U.S.C. § 271;**
- (12) COMMON LAW TRADEMARK
INFRINGEMENT;**
- (13) COMMON LAW TRADE DRESS
INFRINGEMENT;**
- (14) COMMON LAW UNFAIR
COMPETITION;**
- (15) COMMON LAW
MISAPPROPRIATION; AND**
- (16) UNJUST ENRICHMENT.**

Jury Trial Demanded

COMPLAINT

Plaintiff, YETI Coolers, LLC (“YETI”), for its complaint against Wal-Mart Stores, Inc. (“Wal-Mart”) alleges as follows:

The Parties

1. YETI is a company organized and existing under the laws of the State of Delaware with a principal place of business at 7601 Southwest Parkway, Austin, TX 78735.

2. Upon information and belief, Wal-Mart Stores, Inc. is a corporation organized under the laws of the State of Delaware with a principal place of business at 702 S.W. 8th Street, Bentonville, Arkansas, 72716, that does business under the name Walmart, including through the web site www.walmart.com.

Jurisdiction and Venue

3. This is an action for damages and injunctive relief for Wal-Mart’s breach of contract of a settlement agreement entered into on March 10, 2017 by YETI and Wal-Mart (the “Settlement Agreement”). This action is also for trademark and trade dress infringement, trademark and trade dress dilution, unfair competition and false designation of origin, patent infringement, misappropriation, unjust enrichment, and copyright infringement. This action arises under the Texas Business & Commerce Code, the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq.* (“the Lanham Act”), the Patent Act, 35 U.S.C. § 1, *et seq.*, federal common law, and state common law, including the law of Texas.

4. This Court has subject matter jurisdiction over this action pursuant to at least 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a) & (b), and 1367(a).

5. This Court has personal jurisdiction over Wal-Mart because, *inter alia*, Wal-Mart agrees that jurisdiction for the enforcement of the Settlement Agreement is in the Western

District of Texas. This Court also has personal jurisdiction over Wal-Mart because, *inter alia*, Wal-Mart is purposefully and intentionally availing itself of the privileges of doing business in the State of Texas, including in this District. Among other things, (i) Wal-Mart operates multiple store locations in the State of Texas, including in this District, (ii) Wal-Mart has advertised, marketed, promoted, offered for sale, sold, and/or distributed, and continues to advertise, market, promote, offer for sale, sell, distribute, manufacture, and/or import, infringing products to customers and/or potential customers in the State of Texas, including in this District, (iii) Wal-Mart's tortious acts giving rise to this lawsuit and harm to YETI have occurred and are occurring in the State of Texas, including in this District, (iv) Wal-Mart has regularly and intentionally done business in this District and sold its infringing products in this District providing Wal-Mart with substantial infringing business revenue from this District, (v) Wal-Mart acted with knowledge that its unauthorized use of YETI's rights would cause harm to YETI in the State of Texas and in this District, (vi) Wal-Mart's customers and/or potential customers reside in the State of Texas, including in this District, and (vii) Wal-Mart benefits financially from the Texas market, including, for example, through sales of infringing products that ultimately occur in Texas, including in this District. Wal-Mart has sold infringing products, including on or through its website at www.walmart.com, for distribution throughout Texas and this District, and has delivered infringing products into the stream of commerce to purchasers in Texas, including in this District.

6. Venue is proper in this District pursuant to at least 28 U.S.C. §§ 1391(a)-(d), federal law, and judicial doctrine. In the alternative, venue is proper under 28 U.S.C. § 1400. Venue is also proper because this Court previously entered an Order of Dismissal in a prior litigation between YETI and Wal-Mart, Civil Action No. 1:16-cv-00454, and pursuant to that

Order and to YETI's and Wal-Mart's Settlement Agreement, venue is proper in this District for the purpose of enforcement of or the resolution of any dispute arising from YETI's and Wal-Mart's settlement or related to their Settlement Agreement.

General Allegations – YETI's Business and Intellectual Property

7. For years, YETI has engaged in the development, manufacture, and sale of insulated products, including insulated drinkware. YETI created unique, distinctive, and non-functional designs to use with YETI's insulated drinkware. YETI has extensively and continuously promoted and used these designs for years in the United States and in Texas. Through that extensive and continuous promotion and use, YETI's designs have become well-known indicators of the origin and quality of YETI's insulated drinkware products. YETI's designs also have acquired substantial secondary meaning in the marketplace and have become famous. As discussed in more detail below, YETI owns various rights relating to its insulated drinkware designs, including trademark rights, trade dress rights, patent rights, and copyrights.

8. Several years ago, YETI introduced, amongst others, its 30 oz. Rambler® Tumbler, 20 oz. Rambler® Tumbler, and Rambler® Colster® Beverage Holder into the marketplace (collectively, "Rambler® Drinkware"). YETI has sold millions of the Rambler® Drinkware throughout the United States, including sales to customers in the State of Texas. YETI has invested significant resources in the design, development, manufacture, advertising, and marketing of the Rambler® Drinkware. The designs and features of the Rambler® Drinkware have received widespread and unsolicited public attention. For example, the Rambler® Drinkware have been featured in numerous newspaper, magazine, and Internet articles.

9. The designs of the Rambler® Drinkware have distinctive and non-functional features that identify to consumers that the origin of the Rambler® Drinkware is YETI. As a result of at least YETI's continuous and exclusive use of the Rambler® Drinkware, YETI's marketing, advertising, and sales of the Rambler® Drinkware, and the highly valuable goodwill and substantial secondary meaning acquired as a result, YETI owns trade dress rights in the designs and appearances of the Rambler® Drinkware, which consumers have come to uniquely associate with YETI. YETI's trade dress rights in the designs and appearances of the Rambler® Drinkware are collectively referred to as "YETI's Trade Dress."

10. Exemplary images of a YETI 30 oz. Rambler® Tumbler are shown below:



11. YETI has trade dress rights in the overall look, design, and appearance of the YETI 30 oz. Rambler® Tumbler, which includes the design and appearance of the curves, tapers, and lines in the YETI 30 oz. Rambler® Tumbler; the design and appearance of the profile of the YETI 30 oz. Rambler® Tumbler; the design and appearance of the walls of the YETI 30 oz.

Rambler® Tumbler; the design and appearance of the rim of the YETI 30 oz. Rambler® Tumbler; the design, appearance, and placement of the taper in the side wall of the YETI 30 oz. Rambler® Tumbler; the design, appearance, and placement of the upper portion, mid portion, and bottom portion of the side wall of the YETI 30 oz. Rambler® Tumbler; the design, appearance, and placement of the style line around the base of the YETI 30 oz. Rambler® Tumbler; the design, appearance, and placement of the tab on the lid of the YETI 30 oz. Rambler® Tumbler; the design, appearance, and placement of the drinking opening on the lid of the YETI 30 oz. Rambler® Tumbler; the design, appearance, and placement of the top plane of the lid of the YETI 30 oz. Rambler® Tumbler; the design, appearance, and placement of the side walls of the lid of the YETI 30 oz. Rambler® Tumbler; the color contrast and color combinations of the YETI 30 oz. Rambler® Tumbler and the tumbler lid of the YETI 30 oz. Rambler® Tumbler; and the relationship of these features to each other and to other features.

12. Exemplary images of a YETI 20 oz. Rambler® Tumbler are shown below:

Illustration 2: Exemplary Images of a YETI 20 oz. Rambler® Tumbler.



13. YETI has trade dress rights in the overall look, design, and appearance of the YETI 20 oz. Rambler® Tumbler, which includes the design and appearance of the curves, tapers, and lines in the YETI 20 oz. Rambler® Tumbler; the design and appearance of the profile of the YETI 20 oz. Rambler® Tumbler; the design and appearance of the walls of the YETI 20 oz. Rambler® Tumbler; the design and appearance of the rim of the YETI 20 oz. Rambler® Tumbler; the design, appearance, and placement of the taper in the side wall of the YETI 20 oz. Rambler® Tumbler; the design, appearance, and placement of the style line around the base of the YETI 20 oz. Rambler® Tumbler; the design, appearance, and placement of the tab on the lid of the YETI 20 oz. Rambler® Tumbler; the design, appearance, and placement of the drinking opening on the lid of the YETI 20 oz. Rambler® Tumbler; the design, appearance, and placement of the top plane of the lid of the YETI 20 oz. Rambler® Tumbler; the design, appearance, and placement of the side walls of the lid of the YETI 20 oz. Rambler® Tumbler; the color contrast and color combinations of the YETI 20 oz. Rambler® Tumbler and the

tumbler lid of the YETI 20 oz. Rambler® Tumbler; and the relationship of these features to each other and to other features.

14. Exemplary images of a YETI Rambler® Colster® Beverage Holder are shown below:



15. YETI has trade dress rights in the overall look, design, and appearance of the YETI Rambler® Colster® Beverage Holder, which includes the design and appearance of the curves and lines in the YETI Rambler® Colster® Beverage Holder; the design and appearance of the profile of the YETI Rambler® Colster® Beverage Holder; the design and appearance of the walls of the YETI Rambler® Colster® Beverage Holder; the design and appearance of the rim of the YETI Rambler® Colster® Beverage Holder; the design, appearance, and placement of the top plane of the upper band of the YETI Rambler® Colster® Beverage Holder; the design, appearance, and placement of the side walls of the upper band of the YETI Rambler® Colster® Beverage Holder; the design, appearance, and placement of the style line around the base of the YETI Rambler® Colster® Beverage Holder; the color contrast and color combinations of the

YETI Rambler® Colster® Beverage Holder and the upper band of the YETI Rambler® Colster® Beverage Holder; and the relationship of these features to each other and to other features.

16. As a result of YETI's substantially exclusive and continuous use, advertising, and sales of insulated drinkware products bearing YETI's Trade Dress, and the publicity and attention that has been paid to YETI's Trade Dress, YETI's Trade Dress has become famous and has acquired valuable goodwill and substantial secondary meaning in the marketplace, as consumers have come to uniquely associate YETI's Trade Dress as source identifiers of YETI.

17. YETI has also used the trademark "YETI" throughout the United States and the state of Texas in connection with its insulated drinkware products, cooler products, and other products, and the trademarks "RAMBLER," "YETI COLSTER," and "YETI RAMBLER COLSTER" throughout the United States and the state of Texas in connection with at least its insulated drinkware products. YETI has used these trademarks throughout the United States and the State of Texas, including with advertising and promoting YETI's Rambler® Drinkware. YETI has sold millions of units of the Rambler® Drinkware bearing the "YETI," "RAMBLER," "YETI COLSTER," and "YETI RAMBLER COLSTER" trademarks throughout the United States.

18. In view of YETI's extensive and continuous use of "YETI," "RAMBLER," "YETI COLSTER," and "YETI RAMBLER COLSTER," consumers have come to associate "YETI," "RAMBLER," "YETI COLSTER," and "YETI RAMBLER COLSTER" as source identifiers of YETI, and YETI owns trademark rights in the marks. Further, YETI owns several trademark registrations, including:

- i. Trademark Registration No. 3,203,869 ("the '869 Registration") for "YETI" for portable coolers;

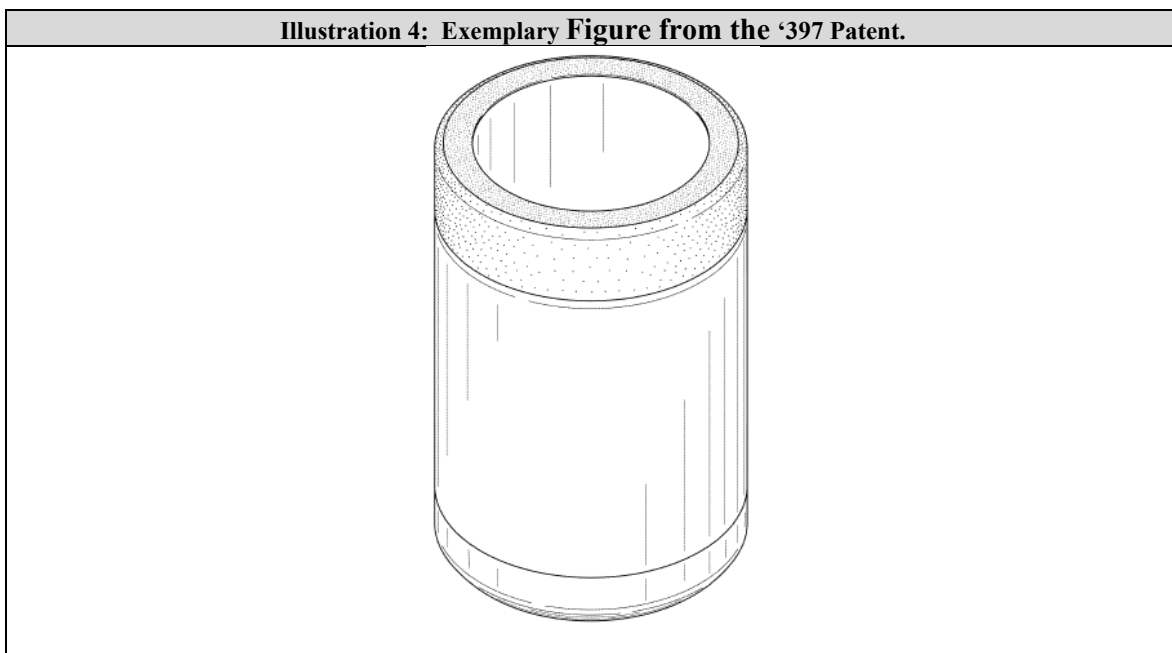
- ii. Trademark Registration No. 4,948,370 (“the ‘370 Registration”) for “YETI” for clothing;
- iii. Trademark Registration No. 4,948,371 (“the ‘371 Registration”) for “YETI” for clothing;
- iv. Trademark Registration No. 4,833,419 (“the ‘419 Registration”) for “YETI COLSTER” for stainless steel drink holders;
- v. Trademark Registration No. 5,233,441 (“the ‘441 Registration”) for “RAMBLER” for beverageware, cups, drinking glasses, tumblers for use as drinking vessels, jugs, mugs, temperature-retaining drinking vessels, storage containers for household or domestic use, namely, vacuum container for hot or cold food and drink, beer growlers, insulated food and drink containers, stainless steel tumblers for use as drinking vessels, stainless steel drinking glasses, stainless steel beverageware, drinking straws; and
- vi. Trademark Registration No. 4,871,725 (“the ‘725 Registration”) for “YETI RAMBLER COLSTER” for stainless steel drink holders.

19. Collectively, these trademarks are referred to as “YETI’s Trademarks.” Copies of the trademark registrations are attached as Exhibits 1-6.

20. As a result of, *inter alia*, YETI’s exclusive, continuous, and substantial use of “YETI,” “RAMBLER,” “YETI COLSTER,” and “YETI RAMBLER COLSTER,” YETI’s exclusive, continuous, and substantial advertising and promoting of products bearing “YETI,” “RAMBLER,” “YETI COLSTER,” and “YETI RAMBLER COLSTER,” and the publicity and attention that has been paid to YETI’s “YETI,” “RAMBLER,” “YETI COLSTER,” and “YETI

RAMBLER COLSTER” marks, these marks have become famous in the United States, including in the State of Texas, and have acquired valuable goodwill and substantial secondary meaning in the marketplace, as consumers have come to uniquely associate YETI’s “YETI,” “RAMBLER,” “YETI COLSTER,” and “YETI RAMBLER COLSTER” trademarks as source identifiers of YETI.

21. YETI also owns U.S. Design Patent No. D752,397 (“the ‘397 patent”) related to a beverage holder. The ‘397 patent is entitled “Beverage Holder.” On March 29, 2016, the ‘397 patent was duly and legally issued by the U.S. Patent Office to YETI. YETI owns the entire right, title, and interest to the ‘397 patent. A copy of the ‘397 patent is attached as Exhibit 7. An exemplary figure from the ‘397 patent is shown in Illustration 4 below.



22. YETI also owns several copyrights related to its Rambler® Drinkware products. The U.S. Copyright Office registered these copyrights as follows:

- i. Copyright Registration No. VA 1-974-722 (“the ‘722 Registration”);
- ii. Copyright Registration No. VA 1-974-730 (“the ‘730 Registration”);

- iii. Copyright Registration No. VA 1-974-735 (“the ’735 Registration”);
- iv. Copyright Registration No. VA 1-974-732 (“the ’732 Registration”); and
- v. Copyright Registration No. VA 2-074-727 (“the ’727 Registration”).

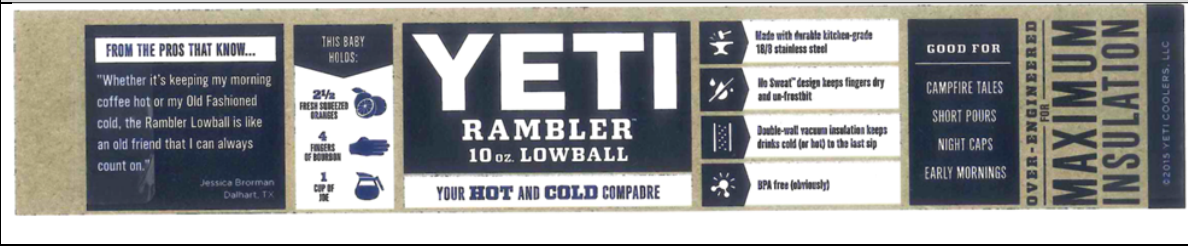
23. Collectively, these copyrights are referred to as “YETI’s Copyrights.” Copies of the copyright certificates are attached as Exhibits 8-12.

24. The ’722 Registration is entitled “YETI Rambler Colster Label.” The ’722 Registration certificate was duly and legally issued by the U.S. Copyright Office to YETI on October 7, 2015. YETI owns the entire right, title, and interest to the YETI Rambler Colster Label copyright. A copy of the ’722 Registration certificate is attached as Exhibit 8 and the corresponding label is shown in Illustration 5 below.



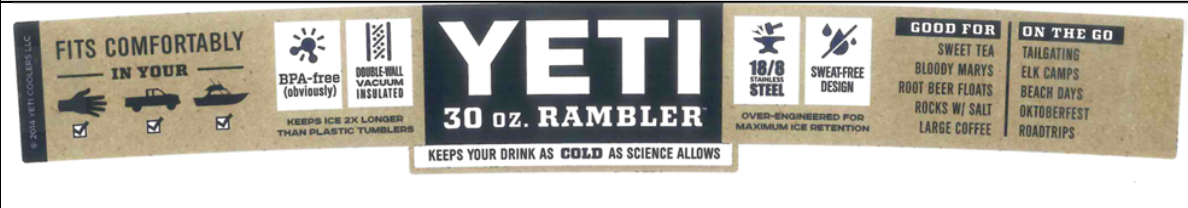
25. The ’730 Registration is entitled “YETI Rambler 10 oz. Lowball Label.” The ’730 Registration certificate was duly and legally issued by the U.S. Copyright Office to YETI on October 7, 2015. YETI owns the entire right, title, and interest to the YETI Rambler 10 oz. Lowball Label copyright. A copy of the ’730 Registration certificate is attached as Exhibit 9 and the corresponding label is shown in Illustration 6 below.

Illustration 6: YETI Rambler 10 oz. Lowball Label for the '730 Registration.



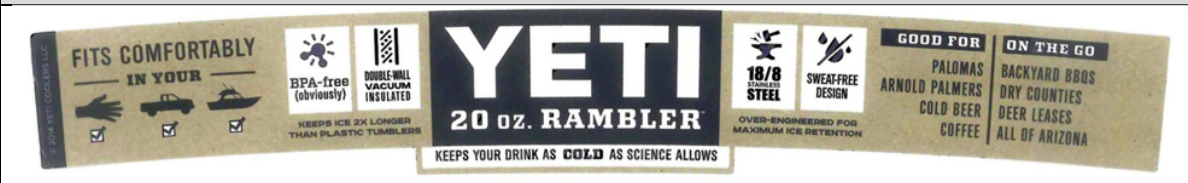
26. The '735 Registration is entitled “YETI 30 oz. Rambler Tumbler Label.” The '735 Registration certificate was duly and legally issued by the U.S. Copyright Office to YETI on October 7, 2015. YETI owns the entire right, title, and interest to the YETI 30 oz. Rambler Tumbler Label copyright. A copy of the '735 Registration certificate is attached as Exhibit 10 and the corresponding label is shown in Illustration 7 below.

Illustration 7: YETI 30 oz. Rambler Tumbler Label for the '735 Registration.



27. The '732 Registration is entitled “YETI 20 oz. Rambler Tumbler Label.” The '732 Registration certificate was duly and legally issued by the U.S. Copyright Office to YETI on October 7, 2015. YETI owns the entire right, title, and interest to the YETI 20 oz. Rambler Tumbler Label copyright. A copy of the '732 Registration certificate is attached as Exhibit 11 and the corresponding label is shown in Illustration 8 below.

Illustration 8: YETI 20 oz. Rambler Tumbler Label for the '732 Registration.



28. The '727 Registration is entitled "YETI 36 oz. Rambler Bottle Label." The '727 Registration certificate was duly and legally issued by the U.S. Copyright Office to YETI on September 27, 2017. YETI owns the entire right, title, and interest to the YETI 36 oz. Rambler Bottle Label copyright. A copy of the '727 Registration certificate is attached as Exhibit 12 and the corresponding label is shown in Illustration 9 below.



General Allegations – Wal-Mart’s Unlawful Activities

29. Wal-Mart has purposefully advertised, promoted, offered for sale, sold, distributed, manufactured and/or imported, and continues to advertise, market, promote, offer for sale, sell, distribute, manufacture, and/or import drinkware products, that violate YETI’s rights, including the rights protected by YETI’s Trade Dress, YETI’s Trademarks, YETI’s Copyrights, and the ‘397 patent. On information and belief, Wal-Mart also is making or having made and/or importing the infringing products into the United States. Wal-Mart’s infringing products are confusingly similar imitations of YETI’s products and are in the same size as YETI’s products. Wal-Mart’s actions have all been without the authorization of YETI.

30. Illustrations 10-13 below show examples of Wal-Mart’s infringing products.

Illustration 10: Exemplary Image of Wal-Mart's "Koozie" Infringing Product.



Illustration 11: Exemplary Image of Wal-Mart's 30 oz. Infringing Product.



Illustration 12: Exemplary Image of Wal-Mart's 20 oz. Infringing Product.



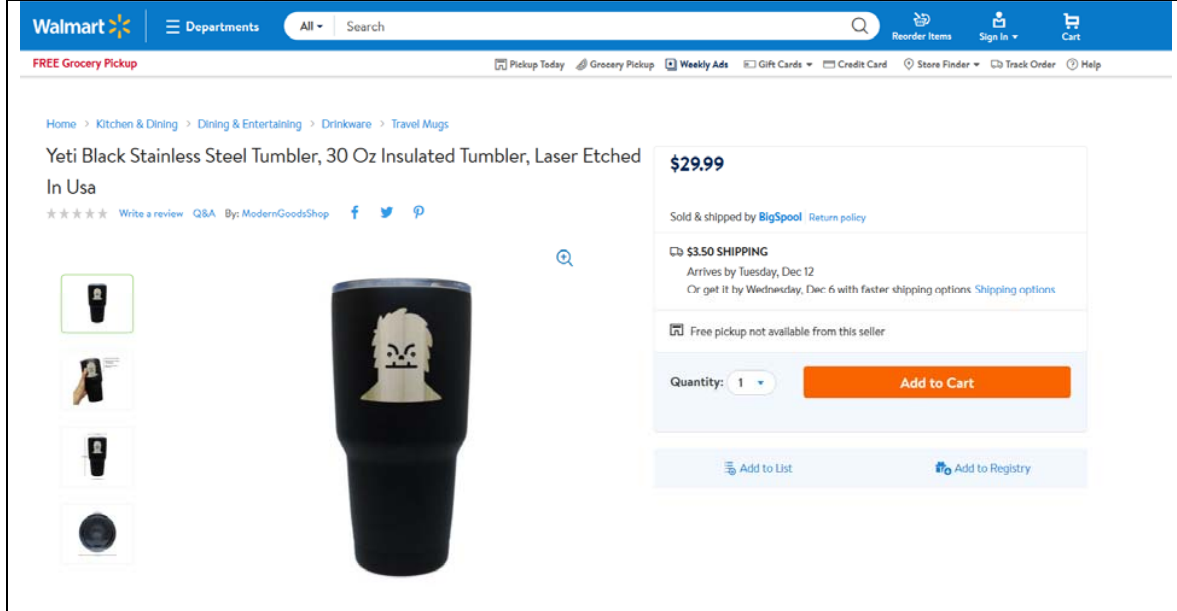
31. As a result of Wal-Mart's activities related to the infringing products, there is a strong likelihood of confusion between Wal-Mart and its products on the one hand, and YETI and its products on the other hand.

32. YETI used YETI's Trade Dress and Copyrights extensively and continuously before Wal-Mart began advertising, promoting, selling, offering to sell, distributing, manufacturing, and/or importing its infringing products. Moreover, YETI's Trade Dress became famous and acquired secondary meaning in the United States and in the State of Texas generally and in geographic areas in Texas before Wal-Mart commenced unlawful use of YETI's Trade Dress.

33. On April 8, 2016, YETI filed a complaint against Wal-Mart regarding Wal-Mart's infringing products. YETI and Wal-Mart settled the dispute by entering into the Settlement Agreement on March 10, 2017. This Court entered a Stipulated Order of Dismissal in that prior suit pursuant to the Settlement Agreement. Order, YETI Coolers, LLC v. Wal-Mart Stores, Inc., No. 1:160-cv-454-RP (W.D. Tex. June 14, 2017), ECF No. 49. Despite Wal-Mart's clear and express obligations under the Settlement Agreement with regard to the "Accused Products" identified in the Settlement Agreement, Wal-Mart continues to unlawfully advertise, market, promote, sell, offer to sell, and/or distribute Accused Products, and take other actions, in breach of the Settlement Agreement and in violation of YETI's rights.

34. Illustrations 13-17 below show examples of Wal-Mart's continued advertisement, marketing, promotion, and offers for sale of the Accused Products and infringing products in breach of the Settlement Agreement and in violation of YETI's rights:

**Illustration 13: Exemplary Image of Wal-Mart Accused Product
Called “YETI Black Stainless Steel Tumbler”**



**Illustration 14: Exemplary Image of Wal-Mart Accused Product
Called “Stainless Steel Tumbler Vacuum Insulated Water Cup”**



**Illustration 15: Exemplary Image of Wal-Mart Accused Product
Called “Steel 700ml Cups Cooler Rambler Tumbler”**



**Illustration 16: Exemplary Image of Wal-Mart Accused Product
Called “2Pcs Handle for Ozark Trail 30-Ounce Tumbler, Yeti Rambler 30 oz.”**



Illustration 17: Exemplary Image of Wal-Mart Accused Product Called “Oak Leaf 3 Pcs Spill Proof and Splash Resistant Lid for Ozark Trail 20 Ounce Tumbler, Yeti Rambler 20 oz.”



35. In addition to infringing and diluting YETI’s Trade Dress, Wal-Mart has also unlawfully used and continues to unlawfully use YETI’s Trademarks, including through counterfeits, reproductions, copies, and/or colorable imitations thereof, in *inter alia*, advertising, promoting, offering to sell, selling, distributing, manufacturing, and/or importing the infringing products and/or labels, and is thereby infringing and diluting YETI’s Trademarks and intentionally trading on YETI’s goodwill.

36. As a result of Wal-Mart’s activities related to use of YETI’s Trademarks, including through counterfeits, reproductions, copies, and/or colorable imitations thereof, there is a likelihood of confusion between Wal-Mart and Wal-Mart’s products on the one hand, and YETI and YETI’s products on the other hand.

37. YETI used its Trademarks and Copyrights extensively and continuously before Wal-Mart began advertising, promoting, selling, offering to sell, distributing, manufacturing, and/or importing into the United States the infringing products. Moreover, YETI’s Trademarks

became famous and acquired secondary meaning in the United States and in the State of Texas before Wal-Mart commenced unlawful use of YETI's Trademarks.

38. Illustrations 18 and 19 below show exemplary images of Wal-Mart's unlawful use of YETI's Trade Dress, YETI's Trademarks, and YETI's Copyrights, including through the use of counterfeit products:

Illustration 18: Exemplary Images of Wal-Mart's Counterfeit 20 oz. Tumbler Product.	Illustration 19: Exemplary Images of YETI's 20 oz. Rambler® Tumbler.
