

---

**The RICO Report Podcast: RICO Lawsuit Against Shein****Host: Cal Stein****Guests: Austin Padgett****Recorded 11/01/23****Cal Stein:**

Hello, and thank you for joining me on this installment of the *RICO Report*. Today, we are going to be talking about a single RICO case, but not one that's before the Supreme Court or a Circuit Court, or even one that has already been decided. Today, we are going to talk about a case that was actually just filed this past summer by three plaintiffs against one of the largest companies in the world in the fashion industry. And you guessed it, the lawsuit not only contains a RICO claim, but the plaintiffs advance a theory of RICO liability that is novel, particularly in this type of case and particularly in the fashion industry.

My name is Cal Stein, and I'm a partner in the white collar litigation practice groups at Troutman Pepper. I represent clients in white collar criminal and government investigation matters, as well as in complex civil lawsuits and in RICO litigation. We are, of course, anxious to get talking about the case in question, but before we do, I'm very pleased to have one of my partners here with me today, Austin Padgett. I'm going to let Austin introduce himself in a moment, but I will say that I'm particularly grateful to have Austin here to talk about this case, because he actually represents clients in the fashion industry in these types of cases. So he has great real world experience with these types of fact patterns that often do not contain a RICO claim. So I'm excited that we're going to be able to leverage his expertise in those areas to enhance our understanding of how RICO is being used here.

Austin, thank you so much for joining the podcast. Can you introduce yourself?

**Austin Padgett:**

Sure, Cal, and greetings to your listeners. My name's Austin Padgett. I'm a partner at Troutman Pepper and the IP Group, and my practice really focuses on copyright, trademark and advertising issues.

**Cal Stein:**

We are certainly going to see a lot of those today in the case that we're talking about. Let's get into that case, and let me give a little bit of background here. The case is brought by three plaintiffs, Krista Perry, Larissa Martinez, and Jay Baron versus a number of defendants, the Shein Distribution Corporation, Roadget Business PTE Limited, Zoetop Business Company Limited, and John Does one through 10. And there has not been much activity in the case thus far. The only really important pleadings being, of course, the complaint, and recently, a notice by the defendants of a motion to dismiss that they intend to file. We'll certainly be watching closely when that gets filed and then decided. But what it means for today is that we have a lot of room to talk about the case and what it could possibly mean.

So with that, let's get into the facts of the case. And as I mentioned in the opening, the case involves one of the largest companies in the world, the Shein company, or companies as it is

---

alleged in the case that Shein is actually made up of many different entities. So let's start with that. Austin, who or what is Shein?

**Austin Padgett:**

Yeah, it's a good question. We have a few dozen pages in the complaint trying to describe what the Shein entities are. But at a high level, Shein is where young people go to buy inexpensive but fashionable clothes. It's primarily through an app, but in the fashion industry, it's what we'd call a fast fashion retailer, though it appears to also have manufacturing capabilities.

**Cal Stein:**

And Austin, I know you represent a number of companies in the fast fashion industry that you just mentioned. For those out there who are not completely familiar with what that is, can you give a little bit of an explanation of what fast fashion is?

**Austin Padgett:**

Sure. Yeah. I'm betting you have a ton of fashion magazines hanging around where you can go and you can go and get the "look", as they say, where there's this idea that you can follow celebrities or maybe other trends that show up in fashion and you want to go and achieve that same look. That's kind of the heart of fast fashion is that the industry keeps an eye on what is happening, what is cool and great in the fashion world and is able to recreate it very quickly and sell it very quickly to consumers so that they can get the look that they're looking for, most typically, and the key piece of it is in an inexpensive way so that you're not paying the high market value of the big fashion houses, but you're achieving a similar look.

**Cal Stein:**

Got it. Very, very helpful. There are three plaintiffs in this case that I mentioned, Perry, Martinez and Baron. Who are they?

**Austin Padgett:**

All of them are designers. So they have created some sort of artwork that is featured on either a piece of clothing, or in some other cases, it looks like a poster. But they're designers, and they are the authors of the works that are at issue in the copyright claims.

**Cal Stein:**

Okay. So I'm glad you mentioned the works at issue in the copyright claim, because as someone who doesn't work in this industry all that often, I found the facts here, or at least the alleged facts, a little bit complicated. Since you work in this industry, Austin, can you give us an overview of what these three designers, what their allegations are against Shein?

**Austin Padgett:**

Some interesting allegations here in that the complaint is alleging that Shein has this proprietary AI driven system that combs online sources for fashion and other hip designs and essentially

creates copies of these by sending them to their manufacturers with an order for a small grouping of products that they can quickly take to market and sell. The allegations are that they come up with thousands of new products each day. It is truly fest in that regard as far as the allegations go, and that is the heart of the copyright claim is that these designs were taken and used on products without permission.

**Cal Stein:**

Got it. Okay. And as you mentioned, there are a number of claims here. There are actually six total claims against the defendants. The first five are pretty straightforward. They're basically straight copyright infringement claims, exactly the type of claim you might expect to see in a suit like this from individual smaller designers against a much larger fashion company.

The sixth claim is the RICO claim. That's the one that brings us here today, and it's brought under section 1962c, which is no surprise, but it's a unique claim given the type of dispute that we have here. So we're going to get into that a little bit now, and we're going to focus and build on all of the discussions we've had on the *RICO report* about the various elements of RICO and the legal theories of a RICO claim. I want to pull at some of the strings in this case and explore how the plaintiffs have crafted this case to plead, or at least that they believe sufficiently pleads a RICO claim. We'll see if the court agrees in response to the defendant's motion to dismiss.

So let's pick and choose some of the more interesting RICO elements to discuss here. And I want to start with the enterprise element that we have talked about at length on this podcast. As listeners know, RICO requires the existence of a "enterprise", and here, since the plaintiffs bring the claim under Section 1962c, the RICO enterprise has to be a legal entity or association in fact that each of the individual defendants were either employed by or associated with and for which they participated in the enterprise's affairs through a pattern of racketeering activity.

Now, plaintiffs' allegations about the RICO Enterprise in this case are actually really quite interesting to me. On the one hand, they accused Shein of being not a single entity, but rather an association in fact of a "decentralized constellation of entities designed to improperly avoid liability." But on the other hand, they admit that very little is actually known about the Shein corporate structure. I understand why the plaintiffs here are trying to portray Shein as an amalgamation of different entities across the world working together. Those are exactly the types of allegations that I would expect to see from a plaintiff or plaintiffs asserting a RICO claim. But ultimately, I'm not sure that they'll be able to square those allegations with the admitted lack of information about Shein's actual corporate structure.

Austin, what did you make of these allegations about all the various Shein entities and how they fit together?

**Austin Padgett:**

Yeah. Not being a RICO specialist, I took away that where the plaintiff had some weakness in having some knowledge, they cast it almost as if it falls within this same line that the complaint begins with several pages just detailing how bad an actor Shein is. It has nothing to do with copyright or intellectual property. It talks about labor issues and environmental issues. And I thought that the plaintiffs' spin that they didn't actually know much about the operations of this

company seemed to fall in line with the idea of, "This is a shadowy organization that has a lot of nefarious motives," as the complaint seems to allege in numerous ways.

**Cal Stein:**

Yeah, I agree with that. And ultimately, that kind of stuff isn't all that relevant, at least legally speaking, for the claims to this lawsuit. You mentioned things like labor and hour issues. They also mentioned hazardous workplaces. That stuff certainly provides color on the Shein organization, at least the color that the plaintiffs want to portray, but it doesn't seem all that relevant to the actual claims.

And as you mentioned before, Austin, in the complaint, the plaintiffs actually list no fewer than 15 separate entities or individuals that they claim comprise this enterprise. And these things run the gamut. They run the gamut from the named entities to individuals comprising the leadership group of Shein, to even Shein's lawyers and law firms. And it's not entirely clear to me reading the complaint how plaintiffs allege each of these entities, particularly those who are not the named defendants, are part of this overall Shein enterprise. Perhaps, this is something they'll explore in discovery. But I think you're exactly right, that their strategy with respect to the enterprise element seems to be to cast some aspersions about Shein and hope that carries the day.

All right. The next element of RICO that I think is worth talking about here is the conduct element. And I mentioned earlier that this RICO claim, like most RICO claims, is brought under 18 USC 1962, which, as mentioned, makes it unlawful for any person employed by or associated with an enterprise to conduct or participate in the conduct directly or indirectly of the enterprise's affairs through a pattern of racketeering activity. And here critically, the plaintiffs allege that the Shein entities all worked in concert together to conduct the enterprise's affairs. Specifically, they claim, "Each part of the overall enterprise has a role that is vital to the whole and in fact facilitates the workings."

Austin, I'm curious as to what you make of this allegation, because personally, I'm not so sure the complaint actually alleges facts that each Shein entity that is named as a defendant did in fact conduct the enterprise. What were some of the allegations you saw in the complaint, if there were any, that you found most important to this?

**Austin Padgett:**

Yeah. I think at least comparing it to what we would typically see in more straightforward copyright infringement cases is it seems that they're alleging that there are really no true third party actors here. And in a typical case, what we'd have is a fast fashion retailer as a defendant, and no one would really know who supplied the goods, but typically, it's a third party that is manufacturing these things in Asia and the retailers picking them up for the season, a quick purchase of a lot, and then a sale. There are potential finger pointing items in these types of cases where you can say, "I'm an innocent infringer, because I didn't know that these were infringing. They were supplied by a manufacturer. We like the look of them when we purchased a lot of them and brought them back and sold them."

Here, they're really eliminating any sort of that level of distinction and saying, "No, the whole operation, soup to nuts, particularly this item where the AI robot goes and finds a style and

sends it directly to a manufacturer," employing some level of seemingly slave labor is what they seem to allege, "and they just slavishly copy the item, and then quickly get it through to ordering status." To me, it's different than other copyright types of actions in just that element in that they're trying to eliminate any finger pointing.

**Cal Stein:**

That's really fascinating and something that I admit didn't pick up on, mostly because this case is the first time I've ever even heard of the fast fashion industry. So to hear someone in the industry like you who can talk about how it's typically done with these third parties and finger pointings, that's really, really invaluable, and I think a really great insight into what's happening here.

Okay. Let's talk next about the pattern of racketeering activity element. And this is the one that often gets the most attention, and this'll be no exception. And I want to break it down into its two components. The first being the racketeering activity that the plaintiffs allege. And as listeners of the *RICO Report* know, racketeering activity under the RICO statute is actually defined. It's defined in 18 USC 1961 subsection one, and it contains a list of crimes, a list of federal crimes mostly, and the racketeering activity that is alleged must be on that list. If it's not on the list, it doesn't constitute racketeering activity. And again, as most listeners know, what we usually see here, when we talk about the racketeering activity alleged in a RICO claim, what we usually see is wire fraud. That's by far the broadest of all of the racketeering acts that are listed.

But what's interesting is that's not at all what we see in this case. We see racketeering activity allegations of copyright infringement. But not just any copyright infringement, it has to be criminal copyright infringement. That is what is listed in the definition of racketeering activity. So the crux of this complaint against Shein is that it not only engages in intellectual property infringement, most notably copyright infringement, but it infringes so egregiously that it rises to a violation of RICO.

And Austin, I know we've talked about the fact that you represent companies in this industry in lawsuits that involve copyright and trademark infringement allegations. So in your view, how do the copyright infringement allegations that the plaintiffs make here against Shein compared to what you have seen in the cases you've represented clients in, in which I understand there has not been a RICO claim?

**Austin Padgett:**

That's right. Typically, what you'll see is either a copyright trademark, sometimes a design patent claim, and the allegation is that the product that your defendant has created is too close to the other, that you must have had access, and it's substantially similar. Those are your typical ways of showing copyright infringement is that independent creation is permitted under the copyright law. If you came up with an idea yourself and it just happens to be the same or similar to someone else's work, then they had to have been copying. So you have it infringed.

So the typical way you show it is that you had access to our work in some way or other, you saw it online, or were so prevalent that you must have seen it. And then your work that you created is just too similar. Now, and we'll talk about this in a second, exact copies can be strikingly similar. So in that way, you don't have to prove as much access. So the scales of justice tip in a

certain way, that the more access you have, maybe the less similarity you need to show, and vice versa. So that's what you typically have.

So in these cases, the designs are not dead on, they're close. The designs are alleged to be lookalikes in the sense that someone would glance at them and think, "Oh, those must be a type of Doc Marten shoe," but they don't necessarily have all of the indicators of that particular product. Maybe the stitching is a different color, or the stitching is in a different pattern, or something like that. But it's too close for comfort and they want it removed because of the potential confusion and eating into the profits of their product.

So that's what you typically see in these types of cases. And in general, they're teed up so that the cases can settle rather quickly. And that is usually the impetus of the case is that, "We just want these products off the shelves," is what the plaintiffs would say. A lot of times, "We'll want some monetary payments in the settlement, and then we'll come to some sort of release and you'll agree never to do it again." And these are often relatively quick cases where there's no answer or even response of pleading of any sort.

**Cal Stein:**

Yeah. That's all very, very helpful, Austin. So let me pick up on one thing that I found interesting, and this was the allegation that plaintiffs made about testing the waters, how Shein will test the waters every time it infringes a copyright. And by that, what they meant is, "Look, they'll produce only a small number of infringing clothing items, and they'll put them out in the marketplace so that they can then gauge the reaction from the copyright holder."

I actually thought this could become important to our discussion of the RICO elements. So Austin, what was your reaction to that? Do I have it right in terms of what the core allegation is here?

**Austin Padgett:**

That's certainly the allegation. I wasn't particularly convinced, because that is part and parcel of fast fashion is that you are typically seeing relatively small lots of products, and if there is a large success, maybe it would be followed by a subsequent purchase or manufacturer of a similar or the same product. But you're typically dealing with a small, fixed set of items, because it's built into the entire business model is that they're just moving things really quickly because fashion moves really quickly.

**Cal Stein:**

That's a fascinating insight, because that was something that I read and it caught my attention. But here you are, as someone in the industry who says, "No, no, no, that's the way it works. I wouldn't necessarily ascribe the meaning to it that plaintiffs do." A really, really helpful insight here.

All right. So we've been talking about the racketeering activity, which is criminal copyright infringement, which plaintiffs correctly point out, is racketeering activity under the RICO statute. But if you dig down a little bit deeper into the actual statute criminal copyright statute that the plaintiffs have to prove, allege, and then prove Shein violated, which is 18 USC 2319, that



statute requires proof that Shein willfully infringed a copyright and that it did so either to gain commercial advantage or private financial gain. It also requires proof that Shein reproduced or distributed copies of the copyrighted works of a total retail value of more than a thousand dollars over a 180-day period.

So Austin, focusing on the first part, the requirement of willfulness, it seems that the plaintiffs are trying in this complaint to plead facts of willfulness. Would you agree? And what do you make of that?

**Austin Padgett:**

Yeah, absolutely. I mean, mainly because that is a key distinction in the civil versus the criminal copyright action is that you have to have this mindset to establish the criminal copyright infringement. On the civil, you can show willfulness and that helps you get a broader injunction, it can heighten your damages and those sorts of things. But it really is at the heart of making sure this is seen as the criminal level of activity required for a criminal copyright violation.

**Cal Stein:**

Yeah. And perhaps, unsurprisingly, this element, and I think that distinction in particular, is one that the defendants have at least signaled they plan to attack in their forthcoming motion to dismiss. In their notice of motion to dismiss, the defendants state that "Garden variety copyright infringement claims, like those alleged by plaintiffs here, cannot serve as predicate acts to establish a RICO violation," which I think is a true statement of law. And I, for one, am anxious to see how the defendant's briefing on this issue comes out and what the court ultimately rules. As a defense attorney, I wonder if the plaintiffs' decision to focus exclusively on allegations of criminal copyright infringement will come back to bite them. I mean, it's possible that they explored wire fraud allegations to pair with those, but found they couldn't plead them. But ultimately, it seems that plaintiffs were aware of this very argument, the garden variety copyright infringement argument, and that's why they have tried to enhance their copyright infringement allegations in the way that you just mentioned. So it'd be interesting to see how that turns out.

All right. Let's shift and talk about the latter portion of this element, the pattern. And again, just as a brief reminder, to plead a pattern under RICO, a plaintiff must allege facts demonstrating two things, continuity plus relatedness, that is the famous Supreme Court case. And let's focus here on continuity, because I think that's the harder of the two aspects of the pattern for the plaintiffs to allege in this case. And to me, it appears that the plaintiffs are alleging both closed-ended continuity and open-ended continuity to satisfy the pattern element. That is, they are alleging that if you look backwards, the conduct they allege occurred happened over a long enough period of time to constitute a pattern under RICO, that's closed-ended. But they are also alleging that if you look forward, this conduct that they're alleging will continue, the criminal copyright infringement will continue if it is not stopped. That's the open-ended continuity. And plaintiffs, to my eyes, did something pretty interesting here. To try to enhance their continuity allegations, they talked about other lawsuits that have been filed against Shein by other fashion designers for stealing designs.

Austin, what can you tell us about those? It seems like even though this may be the loadstar RICO suit against Shein, there are other infringement lawsuits that are out there against Shein alleging similar conduct.

---

**Austin Padgett:**

I have no doubt about that. There is a cottage industry of plaintiff firms that will essentially just sue these types of companies. They have different design houses or different designers that they have in their stock stable, and they have web spiders that crawl and go find the products that use a similar design. So the fact that Shein has a number of copyright infringement lawsuits, it is essentially no surprise, particularly if the facts in the complaint are true that it's launching thousands of products each week, that there are so many products that it's launching. I have no doubt that there are a number of plaintiffs seeking to address what they view as incorrect.

I thought one of the least satisfying aspects of the complaint was that they didn't take these cases and show us pictures of the products. They show us the pictures of these plaintiffs' products versus the alleged infringing products. And what I find is that a lot of the heavy lifting is done just looking at the product side by side. How close are they? And I'd love to see, are all of these 50 or so cases that are pending, are they all this type of just strikingly similar types of activity? Or are these more of the kind of garden variety, so to speak, copyright infringement where this is pretty close to a design? Whether it would be infringing, we'd have to look and see what the facts are underneath the hood of each of those cases, because they're each going to have their own sets of strengths and weaknesses. But the fact that there's this number of cases, I was actually a little shocked that it wasn't higher, given the number of products that are alleged to be offered each week.

**Cal Stein:**

Yeah. Really interesting insights there as well. And the fact that these other cases, at least we don't believe, contain RICO claims probably is a signal that they are more garden-variety copyright infringement cases, which don't rise to the level of RICO. So I do wonder, I think your question about how similar are the products in those other cases matters. Because ultimately, I think what the plaintiffs are pitching in raising these other cases is that their allegations against Shein are not isolated. This is how they claim Shein does business, and I think what they're hoping is that the court is going to infer both that this type of thing has been happening for a long time and also that it's going to continue happening into the future as a way to help them plead continuity.

These are certainly interesting allegations for the plaintiff to make, and they may even carry the day for the plaintiff at the Rule 12 stage. It is not clear from the defendant's notice of their motion to dismiss that they will be attacking the pattern element at the Rule 12 stage, but I, for one, see that as something they may end up attacking at a summary judgment. Of course, that'll depend on what comes out during the course of discovery.

Well, we're about out of time here today, so I want to bring this discussion to a close. But before we do, since this episode has been about one single case in one single industry, I want to ask you, Austin, as someone who practices in this industry and who candidly just taught me what the fast fashion industry is, do you have any real key takeaways from this case?



---

**Austin Padgett:**

I think my key takeaway is that, without the RICO claim, this looks very similar to other cases where a lot of the allegations are China or Asia-based company infringement, we're seeking damages injunction. But with that claim, unlike those cases where they're just seeking to get products down, this is really going to the heart of the business model for the Shein app and the entire setup of that industry. So it will be interesting to monitor how that plays out.

The other big item as I was walking through the complaint is just how much of the current zeitgeist you get when that RICO claim is added. You get art versus technology, natural versus mechanical, human versus machine. All of these very hard dichotomies are playing themselves out in that complaint, and I think it's really because they're trying to build up the pattern of wrongdoing that they think has happened here. That essence really comes out in the case, and it's basically that core of, "We're trying to attack this entire business model at the heart of this."

**Cal Stein:**

Really interesting stuff, Austin. Things that completely went over my head. I can talk about RICO all day. But I think this case and this discussion here today really highlights the importance of subject matter expertise to be paired with the legal expertise in RICO, because so much of this case I missed and would not have understood fully the RICO claim without your insights. So I really want to thank you for joining me on this podcast.

I also want to thank everybody for listening. If anyone has any thoughts or any comments about this series, I invite you to contact me directly at [callan.stein@troutman.com](mailto:callan.stein@troutman.com). If you have any questions about the fast fashion industry or about this case or this episode in particular, you can email me, or Austin at [austin.padgett@troutman.com](mailto:austin.padgett@troutman.com). You can subscribe and listen to other Troutman Pepper podcasts wherever you listen to podcasts, including on Apple, Google, and Spotify. Thank you for listening and stay safe.

Copyright, Troutman Pepper Hamilton Sanders LLP. These recorded materials are designed for educational purposes only. This podcast is not legal advice and does not create an attorney-client relationship. The views and opinions expressed in this podcast are solely those of the individual participants. Troutman Pepper does not make any representations or warranties, express or implied, regarding the contents of this podcast. Information on previous case results does not guarantee a similar future result. Users of this podcast may save and use the podcast only for personal or other non-commercial, educational purposes. No other use, including, without limitation, reproduction, retransmission or editing of this podcast may be made without the prior written permission of Troutman Pepper. If you have any questions, please contact us at [troutman.com](http://troutman.com).