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 10 and Counter-Defendant  
 UNITED STATES OF AMERICA

11  
 12 UNITED STATES DISTRICT COURT  
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 14 WESTERN DIVISION  
 15

16 UNITED STATES OF AMERICA, ) NO. CV 04-2695-CBM(PLAx)  
 17 )  
 Plaintiff, ) JUDGMENT  
 18 v. )  
 )  
 19 ABLE TIME, INC., )  
 a California corporation, )  
 20 )  
 Defendant, )  
 21 \_\_\_\_\_ )  
 )  
 22 )  
 AND RELATED ACTION. )  
 23 )  
 24 \_\_\_\_\_ )

25 This matter came on for a jury trial, commencing on June 8,  
 26 2010. Plaintiff and Counter-Defendant United States of America  
 27 (the "government") was represented by Assistant United States  
 28 Attorney John E. Lee. Defendant and Counterclaimant Able Time,

1 Inc. ("Able Time") was represented by Elon A. Pollack, Esq., and  
2 Kayla R. Owens, Esq., of Stein, Shostak, Shostak, Pollack & O'Hara,  
3 and Robin R. Scroggie, Esq., of the Law Offices of Robin R.  
4 Scroggie.

5 On June 11, 2010, a jury impaneled in this case returned a  
6 verdict in favor of the government in its case-in-chief. (Docket  
7 No. 237.) The jury found for the government on the following  
8 issues: (1) the watches being imported by Able Time bore a mark  
9 that counterfeited a trademark duly registered and recorded by  
10 Tommy Hilfiger Licensing, LLC ("Tommy Hilfiger"), formerly Tommy  
11 Hilfiger Licensing, Inc., (2) Able Time's mark was likely to cause  
12 confusion with Tommy Hilfiger's registered and recorded trademark,  
13 and (3) the penalty amount assessed by Customs and Border  
14 Protection ("Customs") on Able Time, \$32,940, was reasonable.

15 Thereafter, this matter was continued for Phase 2, a court  
16 trial of Able Time's counterclaim challenging the constitutionality  
17 of 19 U.S.C. § 1526(f) and various affirmative defenses. (Docket  
18 Nos. 6 & 7.) On July 2, 2010, the Court ordered further briefing  
19 regarding the constitutionality issue and other legal issues not  
20 requiring factual testimony. (Docket No. 248.)

21 On July 9, 2010, Able Time filed a motion for judgment  
22 notwithstanding the verdict. (Docket No. 250.)

23 On August 4, 2010, the parties filed a joint stipulation of  
24 facts relating to Able Time's counterclaim and affirmative  
25 defenses. (Docket No. 255.)

26 On September 7, 2010, Able Time filed motions for summary  
27 judgment as to its counterclaim and whether there was a seizure on  
28 which to base a penalty under 19 U.S.C. § 1526(f). (Docket Nos.

1 259, 260.) On October 18, 2010, the Court took Able Time's summary  
2 judgment motions under submission. (Docket No. 271.)

3 On October 26, 2010 and November 30, 2010, a court trial was  
4 held and this matter was thereafter submitted to the Court.

5 Having reviewed and considered the evidence and arguments  
6 presented by the parties,

7 IT IS ORDERED, ADJUDGED, AND DECREED as follows:

- 8 1. Judgment shall be and hereby is entered in favor of the  
9 plaintiff as to its claim for a civil penalty against  
10 Able Time pursuant to 19 U.S.C. § 1926(f). Within thirty  
11 (30) days of the filing date of this judgment, Able Time  
12 shall pay Customs the sum of \$32,940.
- 13 2. Able Time's motions for judgment notwithstanding the  
14 verdict and for summary judgment are DENIED.
- 15 3. Able Time's counterclaim and affirmative defenses are  
16 meritless and Able Time shall take nothing by virtue of  
17 its counterclaim and affirmative defenses.

18 DATED: July 7, 2011



19  
20 CONSUELO B. MARSHALL  
Senior U.S. District Judge

21 Presented by:

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23 \_\_\_\_\_/S/\_\_\_\_\_

24 JOHN E. LEE  
Assistant United States Attorney

25 Attorney for Plaintiff  
26 and Counter-Defendant  
UNITED STATES OF AMERICA

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