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14  
15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17 WESTERN DIVISION

18 GIVENCHY S.A., a *société anonyme*  
19 duly organized and existing under the  
laws of France,

20 Plaintiff,

21 v.

22 BCBG MAX AZRIA GROUP, INC., a  
23 California corporation,

24 Defendant.

Case No.: CV 10-8394 GMK (JHx)

**JOINT REPORT OF PARTIES’  
PLANNING MEETING PURSUANT  
TO RULE 26(f)**

Rule 26(f) Scheduling Conference

Date: February 14, 2011

Time: 1:30 p.m.

Place: Courtroom of the Hon. George H.  
King, Roybal Federal Building and  
Courthouse, 255 E. Temple Street, Suite  
650, Los Angeles, California

1 Pursuant to Federal Rule of Civil Procedure 26(f), plaintiff, Givenchy, S.A.  
2 (“Plaintiff”), and defendant, BCBG Max Azria Group, Inc. (“Defendant”), hereby  
3 provide their Joint Report of Parties’ Planning Meeting as follows:

4 **I. RULE 26(f) REQUIREMENTS**

5 **A. Rule 26(f)(3)(A) - What Changes Should Be Made in the**  
6 **Timing, Form, or Requirement for Disclosures Under Rule**  
7 **26(A), Including a Statement of When Initial Disclosures**  
8 **Were Made or Will Be Made.**

9 The parties propose no changes to the timing, form or requirements for  
10 disclosure under Rule 26(a). The parties agree to exchange Initial Disclosures at or  
11 within 14 days after the parties' Rule 26(f) conference pursuant to Rule 26(a)(1)(C).

12 **B. Rule 26(f)(3)(B) - The Subjects on Which Discovery May Be**  
13 **Needed, When Discovery Should Be Completed, and**  
14 **Whether Discovery Should Be Conducted in Phases or Be**  
15 **Limited to or Focused on Particular Issues.**

16 Plaintiff will need to take discovery regarding all aspects of Defendant’s alleged  
17 importing, promoting, marketing, advertising, displaying, distributing, offering for  
18 sale and selling of Defendant’s “Rembrandt” handbags, and other handbags, that  
19 allegedly copy Plaintiff’s Nightingale trade dress.

20 Defendant will need to take discovery regarding all aspects of the functionality  
21 of the elements in Plaintiff’s alleged trade dress, the alleged secondary meaning of  
22 Plaintiff’s trade dress, Plaintiff’s promoting, marketing, advertising, displaying,  
23 distributing, offering for sale and selling of the alleged trade dress, any actual  
24 confusion between the alleged trade dress and Defendant’s handbag.

25 The parties propose that discovery be completed on or before July 29, 2011.

26 The parties do not propose conducting discovery in phases or limiting discovery  
27 to particular issues.

1           **C. Rule 26(f)(3)(C) - Any Issues About Disclosure or Discovery**  
2                                   **of Electronically Stored Information, Including the Form or**  
3                                   **Forms in Which It Should Be Produced.**

4           The parties agree that for any electronically stored information that such  
5 information may be produced in tangible form in an organized manner on CDs or  
6 DVDs in readable format for standard programs for Windows-based operating  
7 systems (e.g., Microsoft Windows, Adobe Acrobat, etc.). In addition, at the election  
8 of a party, with the consent of the other party, not to be unreasonably withheld, and  
9 considering the volume of information to be exchanged, the producing party may elect  
10 to produce such information by printing the files as documents and Bates numbering  
11 the documents. In any event, the parties agree to produce information in a manner  
12 such that it may be easily reviewed and identified by the receiving party and the  
13 Court.

14           **D. Rule 26(f)(3)(D) - Any Issues About Claims of Privilege or**  
15                                   **of Protection as Trial-Preparation Materials, Including — if**  
16                                   **the Parties Agree on a Procedure to Assert These Claims**  
17                                   **After Production — Whether to Ask the Court to Include**  
18                                   **Their Agreement in an Order.**

19           The parties do not anticipate any particular, non-standard issues with respect to  
20 claims of privilege that may be asserted in this action. The parties do anticipate  
21 executing a stipulated protective order, which will be submitted in due course for  
22 entry by the Court.

23           **E. Rule 26(f)(3)(E) - What Changes Should Be Made in the**  
24                                   **Limitations on Discovery Imposed Under These Rules or By**  
25                                   **Local Rule, and What Other Limitations Should Be Imposed.**

26           The parties do not anticipate any particular, non-standard issues that may  
27 require modifying or limiting the federal or local discovery rules.  
28

1           **F.     Rule 26(f)(3)(F) - Any Other Orders That the Court Should**  
2                           **Issue Under Rule 26(C) Or Under Rule 16(b) and (c).**

3           The parties do not propose that the Court issue any additional orders regarding  
4 protective orders under Rule 26(c), scheduling orders under Rule 16(b), or  
5 requirements for the pretrial conference under Rule 16(c) other than those  
6 contemplated herein.

7 **II.    LOCAL RULE REQUIREMENTS**

8           Pursuant to L.R. 26 governing the conference of parties and this report, the  
9 parties state the following:

10           **A.     Complex Cases [L.R. 26-1(a)]**

11           This is an action for trade dress infringement and unfair competition under  
12 federal and state law. The parties do not contend that this action will require  
13 compliance with the procedures of the Manual For Complex Litigation.

14           **B.     Motion Schedule [L.R. 26-1(b)]**

15           The parties’ proposed schedule for dispositive or partially dispositive motions  
16 which are likely to be made, and a cutoff date by which all such motions shall be  
17 made, are set forth below in section III.(C).

18           **C.     Settlement [L.R. 26-1(c)]**

19           The parties have exchanged correspondence in an attempt to resolve their  
20 dispute; however, to date they have not reached an agreement. As noted below, the  
21 parties have agreed to exchange early discovery to facilitate settlement discussions.  
22 The parties have selected SETTLEMENT PROCEDURE NO. 3, agreeing to  
23 participate in a non-judicial dispute resolution proceeding pursuant to L.R. 16-15.

24           **D.     Settlement [L.R. 26-1(d)]**

25           The parties estimate that the time required for trial will be five days.

26           **E.     Additional Parties [L.R. 26-1(e)]**

27           The parties do not presently anticipate joining additional parties.

28

1           **F.     Expert Witnesses [L.R. 26-1(f)]**

2           As noted below in section III.C.2., which sets for the parties’ timing of  
3 disclosures under F.R.Civ.P. 26(a)(2), the parties’ have proposed the following:  
4 August 29, 2011 (last day to submit FRCP 26(a)(2) identification of experts and  
5 expert reports); September 30, 2011 (last day to submit expert rebuttal reports, if any);  
6 October 14, 2011 (last day to depose experts and last day for hearing of any discovery  
7 motion).

8           **III.   COURT’S ADDITIONAL REQUIREMENTS**

9           **A.     The Basis for Subject Matter Jurisdiction**

10          The parties agree that the Court has original and supplemental subject matter  
11 jurisdiction over the claims asserted in this action for Federal Trade Dress  
12 Infringement and False Designation of Origin, State Statutory and Common Law  
13 Unfair Competition and Constructive Trust pursuant to 15 U.S.C. §§ 1116(a) and  
14 1121; 28 U.S.C. §§ 1331, 1332(a), and 1338(a) and (b); and 28 U.S.C. § 1367.

15          **B.     A Concise Statement of the Factual and Legal Basis**  
16                 **of the Claims and Defenses.**

17          Plaintiff states as the factual basis for its claims that Plaintiff owns an  
18 international luxury brand, known worldwide for its haute couture, ready-to-wear  
19 collections for men and women, including, specifically, its Nightingale handbag. The  
20 design and ornamentation of the Nightingale handbag is distinctive and non-  
21 functional. Since the launch of the Nightingale handbags in 2006, Plaintiff and its  
22 distributors have extensively advertised and marketed such handbags worldwide,  
23 resulting in earnings from the sales of the handbags in excess of fifty million dollars.  
24 In addition, Plaintiff’s Nightingale handbags have received unsolicited major media  
25 coverage and been pictured being carried by popular celebrities in major magazines.  
26 As a direct result, the Nightingale handbag has become well-known, and the trade  
27 dress of the Nightingale handbag has attained secondary meaning in the trade and  
28 among the relevant consumers.

1 Long after Plaintiff launched its Nightingale handbag, and long after the  
2 handbag had become well-known, Defendant began importing, promoting, marketing,  
3 advertising, displaying, distributing, offering for sale and selling its “Rembrandt”  
4 handbag, and other handbags, that copied the unique, distinctive and non-functional  
5 elements of Plaintiff’s Nightingale trade dress in order to trade upon Plaintiff’s  
6 goodwill and the popularity of Plaintiff’s Nightingale handbag. Defendant’s acts  
7 constitute, among other things, Federal Trade Dress Infringement and False  
8 Designation of Origin, State Statutory and Common Law Unfair Competition and  
9 Constructive Trust, as set forth more fully in the Complaint.

10 Defendant states as the factual basis for its defenses asserted in this action that  
11 Plaintiff is improperly attempting to assert trade dress over functional items. In  
12 addition, Defendant asserts that Plaintiff’s Nightingale has not acquired secondary  
13 meaning.

14 Defendant independently created the Rembrandt handbag with no reference to  
15 the Nightingale. Further, there is no substantial similarity between the Nightingale  
16 and the Rembrandt. The differences between the Nightingale handbag and the  
17 BCBGeneration Rembrandt handbag are so numerous that the likelihood of confusion  
18 is minimal. For example, the BCBGeneration Rembrandt handbag is not a leather  
19 “satchel” but is made of PVC. See your Exhibit B describing the Rembrandt bag as  
20 PVC. The overall silhouette of the Nightingale and the Rembrandt are unmistakably  
21 different. The Nightingale corners fold in and the shoulder strap, which is a  
22 completely functional element of the handbag, is anchored at the top of the handbag at  
23 the end of the top zipper. In contrast, the Rembrandt’s corners do not fold in and the  
24 handbag and the shoulder strap are anchored in the middle of the handbag. Moreover,  
25 the Rembrandt has a distinctive zipper detail with a prominent BCBGeneration logo  
26 that is not present at all in the Nightingale. Therefore, the overall effect and shape of  
27 the Rembrandt is distinctly different from the Nightingale design. This is not intended  
28 as an exhaustive list of the differences between the Nightingale and the Rembrandt.

1           Moreover, the price points and channels of trade are also distinct and not likely  
2 to cause confusion among consumers. First, the Rembrandt retails for just over \$100  
3 and sold at department stores such as Macy's or online at a handful of retailers such as  
4 zappos.com and amazon.com. By contrast, the Nightingale sells for approximately  
5 \$2,000 and is sold at high-end department stores like Barneys New York. Further, the  
6 BCBGeneration target consumers are young women in their twenties who primarily  
7 shop in malls and seek well-priced, trendy and fashionable clothing, is wholly  
8 distinguishable from Givenchy's clients who are wealthy women and/or celebrity  
9 clients. Therefore, the likelihood that a consumer would purchase a BCBGeneration  
10 PVC handbag with a prominent BCBGeneration logo and sold under the  
11 BCBGeneration trademark believing that she had in fact purchased a Givenchy  
12 Nightingale or a handbag that was licensed by Givenchy is unlikely.

13           **C.    The Proposed Completion Date for All Discovery. If**  
14           **the Parties Anticipate Calling Expert Witnesses,**  
15           **They Shall Propose a Schedule for Compliance With**  
16           **Rule 26(a)(2) and the Completion of Any Discovery**  
17           **Directed at Such Expert Witnesses.**

18           The parties propose the following pre-trial dates for the completion of all  
19 discovery:

20           **1.    Proposed Cut-Off Date to Join Other Parties**  
21           **and to Amend Pleadings [FRCP 16(b)(3)(A)]**

22           The parties propose a cut-off date to join other parties and to amend pleadings  
23 of March 14, 2011 (thirty days from the date of the Scheduling Conference).

24           **2.    Proposed Discovery Cut-Off Dates [FRCP**  
25           **16(b)(3)(A)]**

26           The parties propose the following discovery cut-off dates: July 29, 2011 (last  
27 day to complete discovery of all fact witnesses); August 29, 2011 (last day to submit  
28 FRCP 26(a)(2) identification of experts and expert reports); September 30, 2011 (last

1 day to submit expert rebuttal reports, if any); October 14, 2011 (last day to depose  
2 experts and last day for hearing of any discovery motion).

3 **3. Proposed Cut-Off Date to File Motions (Other**  
4 **Than Motions in Limine) [FRCP 16(b)(3)(A)]**

5 The parties propose a motion filing cut-off date of November 21, 2011.

6 **D. The Proposed dates for Pre-Trial Conference and**  
7 **Trial [FRCP 16(b)(3)(B)(v)].**

8 Final Pre-Trial Conference: January 16, 2011. This date was selected to allow  
9 for a preparation period of four (4) weeks following the final hearing, if any, of a  
10 motion filed on the motion filing cut-off date of November 21, 2011.

11 Trial: January 24, 2012.

12 **E. The Major Procedural or Evidentiary Problems, If Any.**

13 The parties do not anticipate any major procedural or evidentiary problems at  
14 this time.

15 **F. The Prospects of Settlement and Proposed (1) Date and**  
16 **(2) Procedure for Compliance With Local Rules 16-15 to**  
17 **16-15.9.**

18 As with any action, the parties believe a prompt settlement of their dispute that  
19 adequately considers the facts and circumstances underlying the claims and defenses  
20 at issue is a preferable means of resolving their dispute. To that end, and in the spirit  
21 of cooperation, the parties have agreed to an informal early exchange of discovery so  
22 that they may properly frame their negotiations and their expectations for an amicable  
23 settlement. Notwithstanding the parties' intention to seek a resolution of this matter  
24 without the Court's assistance, the parties propose the dates and procedures for  
25 compliance with Local Rules 16-15 to 16-15.9 as set forth herein. The parties agree,  
26 pursuant to L.R. 16-15.2, to file a Notice of Settlement Procedure Selection, signed by  
27 counsel for both sides, not later than fourteen (14) days after entry of the scheduling  
28 order under F.R.Civ.P. 16(b). In addition, the parties agree, pursuant to L.R. 16-15.2,

1 to participate in SETTLEMENT PROCEDURE NO. 3 (participating in a non-judicial  
2 dispute resolution proceeding) no later than December 2, 2011 (forty-five days before  
3 the Final Pretrial Conference).

4 **G. A Realistic Estimate of the Number of Court Days**  
5 **Required to Present Each Side's Case-In-Chief.**

6 The parties propose five (5) court days.

7 **H. Whether Trial Is to Be By Jury or By the Court.**

8 Defendant has invoked its right to a trial by jury.

9 **I. The Name of the Attorney(s) Who Will Actually Try the**  
10 **Case on the Actual Trial Date.**

11 Plaintiff's counsel will be Anthony M. Keats, David K. Caplan, and Konrad K.  
12 Gatién.

13 Defendant's counsel will be Erica Suzanne Alterwitz.

14  
15 KEATS McFARLAND & WILSON, LLP

16  
17 Dated: January 31, 2011

18 By: \_\_\_\_\_ /s/  
19 Anthony M. Keats, Esq.  
20 Attorneys for Plaintiff  
21 GIVENCHY, S.A.

22  
23 BCBG MAX AZRIA GROUP, INC.

24  
25 Dated: January 31, 2011

26 By: \_\_\_\_\_ /s/  
27 Erica S. Alterwitz, Esq.  
28 Attorney for Defendant  
BCBG MAX AZRIA GROUP, INC.