UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YURMAN STUDIO, INC. and YURMAN DESIGN INC.,

Plaintiffs,

- against -

ELLEN CASTANEDA and EJEWELER LLC d/b/a OVERSTOCKJEWELER.COM,

Defendants.

ORDER

07 Civ. 1241 (SAS)

CARTIER, a division of RICHEMONT NORTH AMERICA, INC., CARTIER INTERNATIONAL, N.V., CARTIER CREATION STUDIO, S.A., VAN CLEEF & ARPELS S.A., VAN CLEEF & ARPELS, INC., VAN CLEEF & ARPELS DISTRIBUTION INC., GUCCI AMERICA INC., and BULGARI S.p.A.,

Plaintiffs,

- against -

ELLEN CASTANEDA and EJEWELER LLC d/b/a OVERSTOCKJEWELER.COM,

Defendants.

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07 Civ. 7862 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

On March 2, 2009, the Court received a letter from plaintiffs informing it that Castaneda has violated the Court's October 31, 2008 Preliminary Injunction yet again by using plaintiffs' brand and collection names while marketing products on one of her websites, www.overstockjeweler.net. In the Court's February 23, 2009 Opinion and Order on plaintiffs' first motion for contempt, the Court warned Castaneda that if she was found to be in further contempt of the Preliminary Injunction, she would be fined $1,000 for each day that she was found in violation of the Injunction. Plaintiffs request that the Court fine Castaneda in accordance with its February 23, 2009 Opinion and Order.

In response to plaintiffs' letter, Castaneda has submitted a declaration from her e-consultant, Ashwani Bhasin, who attests that despite significant efforts by Castaneda and her staff to comply with the Preliminary Injunction, some references to plaintiffs' brand names continued to appear on www.overstockjeweler.net due to internet glitches that were out of Castaneda's control.[1] While this Court sympathizes with Castaneda's predicament, it cannot

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[1] *See* 3/4/09 Declaration of Ashwani Bhasin ¶¶ 5, 9 (theorizing that some of the webpages containing offending references might have been "orphaned" because of bad internet jargon or that search engines like Google may have picked up and listed the offending webpages after customers bookmarked those pages even if they do not actually exist on the website).

turn a blind eye to these violations, particularly because it is clear that with reasonable diligence, she could have identified these offending references herself.[2]

As a result, this Court has no choice but to find Castaneda in contempt of the Preliminary Injunction and fine her for her violations. As the Court has recognized time and again, the object of this litigation is not to put Castaneda out of business. Because Castaneda has already been fined a number of times during the course of this litigation, this Court exercises its discretion to impose a $250 per day fine on Castaneda. Castaneda does not dispute that the offending references were present on www.overstockjeweler.net from February 23, 2009, the date this Court issued its Opinion and Order on plaintiffs' first contempt motion until March 2, 2009, when plaintiffs sent their letter informing the Court of Castaneda's further transgressions. Castaneda is therefore directed to pay to the Court $1,750 within ten (10) days of this Order.

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[2] It apparently took plaintiffs' counsel a total of ten minutes to discover the offending references on www.overstockjeweler.net. *See* 3/19/09 Declaration of Matthew Salzmann ¶¶ 3, 6. Counsel was able to discover these references by using the search function on the www.overstockjeweler.net website and Google's "Advanced Search" tool. *See id.*

SO ORDERED:

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
March 24, 2009

- Appearances -

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