

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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Civil Action No. 09-6925-HB
District Judge Harold Baer, Jr.

3. Woodforest denies the allegations of the third sentence of paragraph 3, denies the allegation of the fifth sentence that well-known credit or debit cards informally communicate to consumers that counterfeit goods are authorized by Gucci, and is without knowledge or

information sufficient to form a belief as to the truth of the allegations of the first, second, and fourth sentences of paragraph 3, and therefore denies them.

4. Woodforest denies that it has provided credit card services to merchants who it knew were selling counterfeit products, denies that it was a partner in any counterfeiting activities, and otherwise denies the allegations of paragraph 4.

5. Woodforest denies that it was aware that TheBagAddiction.com sold counterfeit products, but admits the other allegations of paragraph 5.

6. Woodforest denies that the judgment in the Laurette case was actually "in the amount of \$5.2 million," avers that Gucci failed to inform Judge Lewis Kaplan regarding the true and much lower amount of the judgment that Gucci had agreed to with the Laurette Company, but admits the remaining allegations of paragraph 6.

7. Woodforest denies that it knew that the sole purpose of the Laurette business was to sell counterfeit goods or that it was willfully blind to any counterfeiting activities, and denies that it was a knowing or indispensable participant and agent for the Laurette Company's operation, and denies all other allegations of paragraph 7.

8. Woodforest denies that it provided credit card and debit card services to parties that it knew or had reason to know were sellers of counterfeit products, and denies all other allegations of paragraph 8.

9. The Court has dismissed Gucci's claims and allegations that defendants engaged in direct trademark infringement, and to the extent that such allegations of paragraph 9 have not been dismissed, Woodforest denies them.

10. Woodforest denies the allegations of paragraph 10.

PARTIES

11. Woodforest is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and therefore denies them.

12. This paragraph relates to defendant Frontline Processing Corporation and does not require a response by Woodforest.

13. Woodforest admits the allegations of paragraph 13.

14. Woodforest denies that it provides credit card processing services to Internet merchants, denies that MCCS is an "affiliate" of Woodforest, and further denies that MCCS has satellite offices throughout the country, including New York State. Woodforest admits that MCCS, as an independent entity, provides credit card processing services to many merchants, including some Internet merchants, and admits the address stated for MCCS.

15. This paragraph relates to defendant Durango Merchant Services LLC and does not require a response from Woodforest.

16. No response is required from Woodforest.

17. Gucci has not identified any of the ABC Companies, so Woodforest is unable to respond.

18. Gucci has not identified any of the John Does, so Woodforest is unable to respond.

JURISDICTION AND VENUE

19. Woodforest admits the allegations of paragraph 19.

20. Woodforest admits the allegations of paragraph 20.

21. Woodforest denies the allegations of paragraph 21.

22. Woodforest denies the allegations of subparagraphs (a), (c)(i)(ii), (d), (f), and (g) to the extent they apply to Woodforest; Woodforest is without knowledge or information

sufficient to form a belief as to the truth of the allegations of (b) and (e), and therefore denies them; no response is required from Woodforest as to subparagraph (c)(iii).

23. Woodforest denies the allegations of paragraph 23.

FACTUAL BACKGROUND

24. Woodforest admits that the mark Gucci is a recognized trademark for certain luxury products, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 24, and therefore denies them.

25. Woodforest admits that the chart in this paragraph lists various trademark registrations owned by Gucci.

26. Woodforest admits that Exhibit 1 contains copies of trademark registrations owned by Gucci, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 26, and therefore denies them.

27. Woodforest is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27, and therefore denies them.

28. Woodforest is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28, and therefore denies them.

29. Woodforest is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29, and therefore denies them.

30. Woodforest is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30, and therefore denies them.

31. Woodforest avers that the consent judgment to which Gucci refers contained a misrepresentation as the amount of the judgment, and Woodforest is without knowledge or information sufficient to form a belief as to the truth of the other allegations in the consent judgment.

32. Woodforest denies that the Web site for TheBagAddiction.com represented that its products were counterfeit, and avers that the Web site specifically represented that the products were replicas, not original or authentic Gucci products, and that the Web site did not disclose that the replica (similar looking) products actually used the Gucci registered trademark on the goods; Woodforest admits that paragraph 32 shows a screen shot from The Bag Addiction Web site, but denies all other allegations of paragraph 32.

33. Woodforest is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33, and therefore denies them.

34. Woodforest avers that the image that Gucci contends is a counterfeit handbag offered for sale on TheBagAddiction.com Web site appears to be a similar looking style bag to a Gucci handbag, *i.e.*, a replica, but one which does not show clearly the use of the Gucci registered trademark; Woodforest denies that such image is of a counterfeit product, as opposed to a replica designed to look like a Gucci product but not to use the Gucci registered trademark; and denies all other allegations of paragraph 34.

35. Woodforest is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35, and therefore denies them.

36. Woodforest avers that the image that Gucci contends is a counterfeit handbag offered for sale on TheBagAddiction.com Web site appears to be a similar looking style bag to a Gucci handbag, *i.e.*, a replica, but one which does not show clearly the use of the Gucci registered trademark; Woodforest denies that such image is of a counterfeit product, as opposed to a replica designed to look like a Gucci product but not to use the Gucci registered trademark; and denies all other allegations of paragraph 36.

37. Woodforest denies that the images of the goods on TheBagAddiction.com Web site showed use of the GUCCI trademark on the goods, and denies all other allegations of paragraph 37.

38. Woodforest denies that the products on The Bag Addiction were sold as genuine Gucci products since the Web site represented specifically that the products were replicas and not original products and each purchaser was required to confirm that they were not ordering an original product, and otherwise denies the allegations of paragraph 38.

39. Woodforest avers that the consent judgment to which Gucci refers contained a misrepresentation as the amount of the judgment, and accordingly Woodforest is without knowledge or information sufficient to form a belief as to the truth of any other allegations in the consent judgment.

40. Woodforest denies that the products on The Bag Addiction were sold as genuine Gucci products since the Web site represented specifically that the products were replicas and not original products and each purchaser was required to confirm that they were not ordering an original product, and otherwise denies the allegations of paragraph 40.

41. Woodforest did not see the screen shot from The Bag Addiction shown in this paragraph, and is without knowledge or information sufficient to form a belief as to the true of the allegations made regarding the conduct of the Laurette defendants in paragraph 41.

42. Woodforest admits that the products shown on The Bag Addiction Web site were represented to be replicas and not originals, but Woodforest is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph relating to the conduct of plaintiff and the Laurette Company.

43. Woodforest avers that the consent judgment in which the Laurette Company is said to have made certain statements is known to contain a misrepresentation as to the amount of the judgment, since Gucci did not disclose the actual amount of the judgment that it had reached in an agreement with the Laurette Company, and accordingly Woodforest is without knowledge or information sufficient to form a belief as to the truth of other allegations from this consent judgment regarding the conduct of the Laurette Company, and therefore denies them.

44. Woodforest admits that the Laurette Company sold over \$500,000 worth of replica goods during the time it utilized the credit card processing services of the defendants, but denies all other allegations of paragraph 44.

45. Woodforest denies that merchants are designated as "high risk" because they deal in counterfeit products, and avers that businesses are designated as "high risk" because their sales are over the Internet and they are associated with a higher percentage of chargebacks; Woodforest denies that it accepts merchants who sell replica products over the Internet; and denies all other allegations of paragraph 45.

46. Woodforest admits that it provided credit card processing services for TheBagAddiction.com Web site operated by the Laurette Company under the belief that this Web site sold replica but not counterfeit or illegal products, but denies all other allegations of paragraph 46.

47. Woodforest denies the allegations of paragraph 47.

48. This paragraph makes allegations against the defendant Durango, which do not require a response from Woodforest.

49. Woodforest denies that Durango acts as its agent in locating potential customers; is without knowledge as to how Durango obtains fees, and Woodforest denies all the remaining allegations of paragraph 49.

50. This paragraph asserts allegations against defendant Durango, which do not require a response from Woodforest.

51. Woodforest admits that Durango, through Mr. Counley, submitted an application to Woodforest to obtain credit card processing services for TheBagAddiction.com Web site, but denies that it was aware that the products on The Bag Addiction Web site were counterfeit products, and denies all other allegations of paragraph 51.

52. Woodforest denies that either the Laurette Company or its employees or Mr. Counley informed Woodforest that the products of TheBagAddiction.com Web site were counterfeit products, but is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the activities and conduct of Laurette and Mr. Counley as alleged in paragraph 52, and therefore denies them.

53. Woodforest admits that Exhibit 3 appears to include a copy of a September 11, 2006 e-mail exchange between Jennifer Kirk and Mr. Counley; and to the extent that the complaint contains quotations or statements from such documents, Woodforest avers that the documents provide such statements accurately.

54. Woodforest admits that Exhibit 3 appears to be a copy of a September 14, 2006 e-mail exchange between Jennifer Kirk and Mr. Counley; and to the extent that the complaint contains quotations or statements from such documents, Woodforest avers that the documents provide such statements accurately.

55. Woodforest admits that Exhibit 4 is a copy of a retail merchant application checklist from Frontline and that Exhibit 5 is a copy of an application for Frontline and that certain of the information from those documents has been set forth in this paragraph; and to the extent that the complaint contains quotations or statements from such documents, Woodforest avers that the documents provide such statements accurately.

56. This paragraph alleges facts regarding the conduct of Frontline and Mr. Counley of which Woodforest lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies them.

57. Woodforest admits that Mr. Counley's statement that he was aware of a bank that "can do replica accounts now" was a reference to Frontline, but lacks sufficient knowledge or information to form a belief as to the truth of the remaining alleges of paragraph 57 regarding Frontline and Mr. Counley, and therefore denies them.

58. This paragraph alleges facts regarding the conduct of Frontline and Mr. Counley of which Woodforest lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies them.

59. This paragraph alleges facts regarding the conduct of Frontline and Mr. Counley of which Woodforest lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies them.

60. Woodforest admits that Frontline began providing credit card processing services for the Laurette Company and The Bag Addiction Web site in September 2006, but lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 60, and therefore denies them.

61. This paragraph alleges facts regarding the conduct of Frontline and Mr. Counley of which Woodforest lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies them.

62. This paragraph alleges facts regarding the conduct of Frontline and Mr. Counley of which Woodforest lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies them.

63. This paragraph alleges facts regarding the conduct of Frontline and Mr. Counley of which Woodforest lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies them.

64. This paragraph alleges facts regarding the conduct of Frontline and Mr. Counley of which Woodforest lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies them.

65. This paragraph alleges facts regarding the conduct of Frontline and Mr. Counley of which Woodforest lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies them.

66. This paragraph alleges facts regarding the conduct of Frontline and Mr. Counley of which Woodforest lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies them.

67. Woodforest admits the allegations of paragraph 67.

68. This paragraph alleges facts regarding the conduct of Frontline and Mr. Counley of which Woodforest lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies them.

69. Woodforest is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 69.

70. Woodforest admits that the Laurette Company used Frontline to process credit card payments on The Bag Addiction Web site until June 2008 when the Court ordered the Web site to cease business.

71. Woodforest admits that on November 15, 2006, Mr. Counley submitted an application to Woodforest National Bank for Laurette Company, Inc. d/b/a TheBagAddiction.com for merchant services.

72. Woodforest denies that Mr. Counley acted as its agent in soliciting credit card processing business from the Laurette Company, denies that Mr. Counley was listed as Woodforest's agent on the application, denies that Exhibit 6 is a true copy of Laurette's application with Woodforest, denies that Woodforest is charged with knowledge of Mr. Counley since he is not Woodforest's agent, and denies all remaining allegations of paragraph 72.

73. Woodforest admits that the application by the Laurette Company stated that the goods were "wholesale/retail Designer Handbags," and also states that a vendor from whom the products were purchased is Suijian Liao Wholesale Bags Company of Guangzhou City, China, specifically denies that Woodforest believed that The Bag Addiction Web site sold Gucci products, and denies all allegations of paragraph 73 that have not been admitted.

74. Woodforest denies that it had specific knowledge that the Laurette Company was selling and intended to use Woodforest's merchant services to facilitate the sale of and to sell counterfeit products, avers that Woodforest considered TheBagAddiction.com to be a high risk merchant because it dealt in Internet sales, not because of any knowledge that the Laurette

Company was selling counterfeit products, and denies all other allegations of paragraph 74 that have not been admitted.

75. Woodforest denies that a Woodforest employee completed an "Internet Merchant Review Checklist" that required that the employee check a box that the Web site included a "complete description of the services or goods offered," denies that The Bag Addiction Web site states or otherwise shows that the items being offered for sale bore Gucci's trademarks, admits that The Bag Addiction Web site states that the products sold are replicas that are not original products, and denies all other allegations of paragraph 75.

76. Woodforest denies any of its employees printed out pages from The Bag Addiction Web site, denies that pages of such Web site had handbags labeled "Gucci," or that any of the photographs from the Web site show the use of the Gucci trademark on the products, and denies all other allegations of paragraph 76.

77. Woodforest admits that below one photograph taken from The Bag Addiction Web site was a description "Gucci Horsebit Hobo in Black Signature" and a description of "list price: \$1,280.00 our price: \$180.00," but denies that this information in combination with the information regarding the vendor from whom the products were purchased either alerted or should have alerted Woodforest that Laurette was engaged in the sale of counterfeit products, and denies all remaining allegations of paragraph 77.

78. Woodforest denies that it approved the Laurette application or processed credit card transactions by the Laurette Company for TheBagAddiction.com Web site or provided any services except settlement services, and denies all other allegations of paragraph 78.

79. Woodforest denies that an employee or agent of Woodforest or MCCS was required to purchase a product from The Bag Addiction or did purchase a product from The Bag Addiction, and denies all other allegations of paragraph 79.

80. Woodforest denies that it knew or was willfully blind to the fact that the Laurette Company was selling counterfeit products, and denies all other allegations of paragraph 80.

81. Woodforest denies that it produced monthly account statements containing summaries of card deposits, admits that monthly statements listed the Web site www.mccs-corp.com or the telephone number 1-800-327-0093 for customer support, denies that Woodforest received and investigated requests for chargebacks in connection with purchases on TheBagAddiction.com Web site, and specifically denies that any such chargeback, correspondence or activities provided Woodforest with notice that the Laurette Company was selling counterfeit products.

82. Woodforest admits that Exhibit 7 is a letter from the chargeback department to MCCS wherein a cardholder claim that merchandise received was not as described because "the bag was supposed to be genuine leather but was not"; Woodforest denies that such information indicates that the customer thought that the product was a genuine Gucci product, but instead received a counterfeit or that the customer even purchased a replica of a Gucci handbag; Woodforest denies that the basis for any of the chargeback supports that Woodforest was willfully blind to the Laurette's sales of counterfeit items on The Bag Addiction Web site; and Woodforest denies all other allegations of paragraph 82.

83. Woodforest denies the allegations of paragraph 83.

84. Woodforest denies that it received any sum more than \$.02 per sale for business from the Laurette Company processed using its credit card services, denies that more than \$1

million in transactions were processed using Woodforest credit card services through The Bag Addiction Web site, denies that it profited even to the extent of \$30,000 from the sales of products on The Bag Addiction Web site, and denies all other allegations of paragraph 84.

85. Woodforest denies that it used a discount rate of 3.75% for Laurette, denies that it charged a higher rate for replica merchants, as opposed to other high risk merchants whose sales were over the Internet, and denies all other allegations of paragraph 85.

86. Woodforest denies that MCCS maintains offices in New York, but admits the remaining allegations of paragraph 86.

87. Woodforest denies the allegations of paragraph 87.

88. Woodforest denies the allegations of paragraph 88.

89. Woodforest is without knowledge or information sufficient to form a belief as to the truth of the allegations of what appears on Durango's Web site, and Woodforest denies the allegations of the first two sentences of paragraph 89.

90. Woodforest denies the allegations of paragraph 90.

FIRST CAUSE OF ACTION

91-96. In the Opinion and Order of June 23, 2010 (Dkt.42), the Court dismissed plaintiff's claim, so no response is required.

SECOND CAUSE OF ACTION

97-102. In the Opinion and Order of June 23, 2010 (Dkt.42), the Court dismissed plaintiff's claim, so no response is required.

THIRD CAUSE OF ACTION

103. Woodforest repeats and realleges its response to each and every allegation in the foregoing paragraphs, as if fully set herein.

104. Woodforest is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 104, and therefore denies them.

105. Woodforest is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 105, and therefore denies them.

106. Woodforest denies the allegations of paragraph 106.

107. In the Opinion and Order of June 23, 2010 (Dkt.42), the Court dismissed plaintiff's claim that Woodforest had induced infringement by the Laurette Company, so no response is needed to this paragraph.

108. Woodforest denies the allegations of paragraph 108.

109. Woodforest denies the allegations of paragraph 109.

110. Woodforest denies the allegations of paragraph 110.

111. Woodforest denies the allegations of paragraph 111.

112. Woodforest denies the allegations of paragraph 112.

113. Woodforest denies the allegations of paragraph 113.

114. Woodforest denies the allegations of paragraph 114.

FOURTH CAUSE OF ACTION

115-124. In the Opinion and Order of June 23, 2010 (Dkt.42), the Court dismissed plaintiff's claim, so no response is required.

FIFTH CAUSE OF ACTION

125. Woodforest repeats and realleges its response to each and every allegation in the foregoing paragraphs as if fully set forth herein.

126. As to the contention about contributory infringement, Woodforest denies the allegations of this paragraph. As to the allegations about direct and vicarious trademark infringement, the Court has dismissed such claims, so no response is required.

SIXTH CAUSE ACTION

127. Woodforest repeats and realleges its response to each and every allegation in the foregoing paragraphs, as if fully set forth herein.

128. Woodforest denies the allegations of paragraph 128.

AFFIRMATIVE DEFENSES

129. The Complaint fails to state a claim for which relief can be granted against Woodforest.

130. The Court lacks personal jurisdiction as to Woodforest.

131. Woodforest is not liable under the contributory infringement claim because it lacks any direct control over the offering for sale and sale of the alleged counterfeit goods through The Bag Addiction Web site, which comprises and is the instrumentality of the infringement.

132. Woodforest is not liable under the contributory infringement claim because it did not have knowledge that the replica products sold over TheBagAddiction.com Web site were counterfeit goods, and was not willfully blind to such activities.

CLAIM FOR RELIEF

WHEREFORE, Woodforest requests that the Court grant the following relief:

- A. dismissal of the Complaint with prejudice;
- B. an award to Woodforest of its attorney fees and costs in connection with defending this action; and
- C. such other and further relief as this Court deems proper.

Respectfully submitted,

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Dated: July 7, 2010

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