

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 10-1-10

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GUCCI AMERICA, INC.

Plaintiff,

-against-

FRONTLINE PROCESSING CORPORATION;  
WOODFOREST NATIONAL BANK; DURANGO  
MERCHANT SERVICES LLC d/b/a NATIONAL  
BANKCARD SYSTEMS OF DURANGO; ABC  
COMPANIES; and JOHN DOES,

Defendants.  
-----X

09 Civ. 6925 (HB)

~~WOODFOREST~~  
**FINAL ORDER AND  
JUDGMENT ON CONSENT**

Plaintiff Gucci America, Inc. ("Gucci") and Defendants Woodforest National Bank ("Woodforest") and Durango Merchant Services, LLC d/b/a National Bankcard Systems of Durango ("Durango"), through their undersigned attorneys, hereby stipulate as follows:

WHEREAS, on or about August 5, 2009, Gucci commenced the above-captioned action by the filing of a Complaint against Defendants Frontline Processing Corporation ("Frontline"), Woodforest, and Durango (collectively, "Defendants") alleging, *inter alia*, that Defendants had directly and contributorily infringed Gucci's federally registered trademarks (the "Gucci Marks") through the sale of products bearing unauthorized copies of the Gucci Marks ("Counterfeit Products") and

WHEREAS, on or about October 30, 2009, the Defendants moved to dismiss the Complaint; and

WHEREAS, on or about June 23, 2010, the Court entered an order denying Defendants' motion to dismiss as to the claims for contributory infringement and related New York State law claims; and

WHEREAS, Woodforest and Durango filed their respective answers to the Complaint on or about July 7, 2010; and

WHEREAS, Gucci and Frontline entered into a confidential settlement agreement providing for the release of Gucci's claims against Frontline; and

WHEREAS, Gucci, Woodforest and Durango (collectively, the "Parties") engaged in a mediation before Judge Baer on August 16, 2010, at the conclusion of which the Court entered a sealed Post-Mediation Order of Discontinuance (the "Post-Mediation Order"); and

WHEREAS, on or about September 1, 2010, the Parties entered into a confidential Final Settlement Agreement and Release (the "Settlement Agreement") in order to fully and finally resolve and settle all actual, threatened and potential claims and disputes between them, without any admission of liability, and for the purpose of avoiding further litigation; and

WHEREAS, without admitting any factual or legal allegation, claim alleged, or defense asserted, the Parties have consented to the entry of this Final Order and Judgment on Consent (the "Consent Judgment");

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that:

1. Without admitting any factual or legal allegation, claim alleged, or defense asserted, Woodforest and Durango are immediately PERMANENTLY ENJOINED AND RESTRAINED from:

(a) directly or contributorily manufacturing, distributing, delivering, shipping, importing, exporting, advertising, marketing, promoting, selling or otherwise offering for sale of Counterfeit Products or any other products confusingly similar to authentic products bearing the trademarks of Gucci, Alexander McQueen, Balenciaga, Bottega Veneta, Boucheron, Sergio Rossi, Stella McCartney, or Yves Saint Laurent (collectively, the “Gucci Group Brands”), or that otherwise bear, contain, display or utilize any trademarks of any of the Gucci Group Brands, any derivation or colorable imitation thereof, or any mark confusingly similar thereto; and

(b) directly or contributorily providing merchant broker or credit card processing services to entities that openly sell Counterfeit Products or any other products confusingly similar to authentic products bearing the trademarks of any of the Gucci Group Brands, including but not limited to products described as “replicas” of any of the Gucci Group Brands’ products; and

(c) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in the above subparagraphs (a) and (b) above, or effecting any assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs (a) and (b) above.

IT IS FURTHER ORDERED that:

2. All claims asserted by Gucci against Woodforest and Durango in the Complaint are hereby dismissed with prejudice, subject to the terms of the Post-Mediation Order and the Settlement Agreement, which are incorporated by reference into this Order;

3. Each of the Parties shall comply with the additional terms of settlement, which are set forth in the Post-Mediation Order and Settlement Agreement, the terms of which are incorporated herein by reference;

4. Each of the Parties shall comply with the terms of the Stipulated and Agreed Confidentiality Order, dated March 17, 2010 (Dkt. No. 39) regarding the return or destruction of documents produced during discovery;

5. Each of the Parties shall bear its own costs, expenses and attorney' fees associated with the prosecution and defense of this action;

6. This Court shall retain jurisdiction over this matter for purposes of enforcement of the terms of the Post-Mediation Order and Settlement Agreement;

7. All unresolved pending motions in this action between these settling Parties shall be denied as moot; and

8. This Court's Order dated August 18, 2010 is amended to include the terms of this Consent Judgment and the Clerk of the Court is directed to close the above-captioned action with prejudice in accordance with this Order.

SO STIPULATED AND AGREED.

Dated: Sept. 8, 2010

GIBSON, DUNN & CRUTCHER, LLP

By: \_\_\_\_\_

Robert L. Weigel  
Jennifer C. Halter  
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New York, New York 10166  
Telephone: (212) 351-3845

*Attorneys for Plaintiff Gucci America, Inc.*

Dated: SEPT, 10, 2010

LERNER, DAVID, LITTENBERG, KRUMHOLZ &  
MENTLIK, LLP

By: \_\_\_\_\_

William L. Mentlik  
600 South Avenue West  
Westfield, New Jersey 07090

*Attorneys for Defendant Woodforest National  
Bank and Woodforest Bank.*

Dated: Sept, 10, 2010

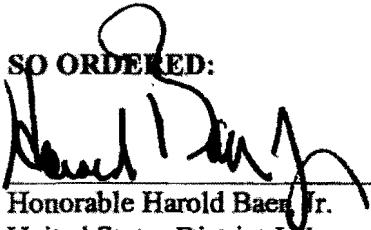
LAW OFFICES OF TODD WENGROVSKY, PLLC

By: \_\_\_\_\_

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285 Southfield Road, Box 585  
Calverton, New York 11933

*Attorneys for Defendant Durango Merchant  
Services LLC d/b/a National Bankcard Systems of  
Durango*

SO ORDERED:

  
\_\_\_\_\_  
Honorable Harold Baer, Jr.  
United States District Judge

Dated: 10/1/10, 2010