UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GINA KIM, on behalf of a class consisting of herself and all other persons similarly situated, Plaintiffs, vs. COACH, INC., a Maryland corporation, and COACH SERVICES, INC., a Maryland corporation, Defendants.	Cause No. 2:11-CV-00214 RSM **DECLARATION OF JAY CARLSON IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL RULE 26(F) INITIAL DISCOVERY CONFERENCE**

1. I am an attorney of record for the plaintiff in the above captioned action, and I am competent to make this declaration. I make the statements herein based on my own personal knowledge.

2. Attached as Exhibit A are true and correct copies of e-mail correspondence between counsel for the parties, reflecting numerous requests from Plaintiff's counsel that Defendant participate in the Rule 26(f) initial discovery conference.

3. Attached as Exhibit B is a true and correct copy of an e-mail from defense counsel to plaintiff's counsel, dated Monday, February 21, in which Defense counsel refuses to schedule a Rule 26(f) initial discovery conference, stating: "I will alert you when the Coach companies' counsel has completed the necessary preparation work, so that a Rule 26 conference may be scheduled."

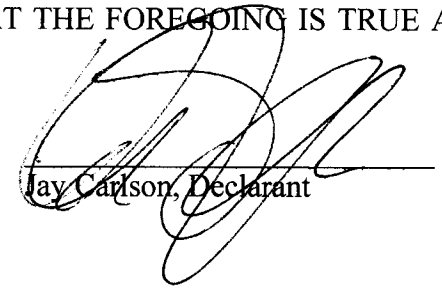
4. I hereby certify that during a phone conference on February 28, 2011, I conferred with

CARLSON LEGAL
100 W. HARRISON ST.
SUITE N440
SEATTLE, WA 98119
(206) 291-7419

defense counsel and informed them of my intention to seek to compel them to participate in a Rule 26(f) initial conference. Defense counsel again refused to schedule a Rule 26(f) initial discovery conference. I have therefore exhausted the Rule 37 meet and confer obligation in advance of filing this motion.

Dated this March 16, 2011, at Seattle, Washington.

I HEREBY DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



Jay Carlson, Declarant

CARLSON LEGAL
100 W. HARRISON ST.
SUITE N440
SEATTLE, WASHINGTON 98119
(206) 291-7419

EXHIBIT A

EXHIBIT A

Gmail by Google

Jay Carlson <jaycarlson.legal@gmail.com>

Re: Response to Voice Message 2/11

1 message

Jay Carlson <jaycarlson.legal@gmail.com> **Mon, Feb 14, 2011 at 11:26 AM**
To: "Keehnel, Stellman" <Stellman.Keehnel@dlapiper.com>
Cc: jason moore <jason@vaneyk-moore.com>, "christopher.carney@cgi-law.com" <christopher.carney@cgi-law.com>

Mr. Stellman:

First, please appear in the case so we can confirm that you are representing and are empowered to speak for Coach.

Once you do so, if you have arguments as to why you think an immediate dismissal is "prudent," we would be happy to review a written summary. We think it makes sense for you send us something in writing, as it would allow us to review it in the fullness of time, and will create a record.

Once you appear, we also want to schedule a phone conference with you to complete the Rule 26 initial conference. Why don't you send us a few scheduling options for late this week, assuming you can get your appearance served on us by that time, and we will confirm one of those times for the initial conference.

Thank you.

Jay Carlson

On Sat, Feb 12, 2011 at 5:08 PM, Keehnel, Stellman <Stellman.Keehnel@dlapiper.com> wrote:

> Messrs. Moore, Carlson and Carney:
>
> I am representing Coach, Inc. and Coach Services, Inc. in connection with the putative class action you filed February 8. The purpose of my call yesterday to Mr. Moore was to arrange a time early next week to sit down with the three of you to discuss reasons an immediate dismissal of the lawsuit is prudent. Given Mr. Moore's vacation, he will have to participate by speaker phone. I am at an out-of-state hearing Monday. The balance of the early part of the week is good for me, with the exception of a board meeting Tuesday beginning at 3:30pm. How about 1:00pm Tuesday? I am happy to host.
>
> Stellman Keehnel
> Chair of Seattle Litigation Group
> DLA Piper US LLP
> 701 Fifth Avenue, 70th Floor
> Seattle, WA 98104-7044
> Phone: (206) 839-4888
> Fax: (206) 839-4801
> Cell: (206) 618-4836
> email: stellman.keehnel@dlapiper.com
> www.dlapiper.com
>
> -----Original Message-----
> From: jason moore [mailto:jason@vaneyk-moore.com]
> Sent: Friday, February 11, 2011 4:46 PM
> To: Keehnel, Stellman

Subject: Response to Voice Message 2/11

Mr. Keehnel,

I will be on vacation until 2/20 and telephone access is limited.
Please email and I'll respond as soon as possible.

JASON B. MOORE
jason@vaneyk-moore.com

VAN EYK & MOORE, PLLC
100 W. Harrison Street, Suite N440
Seattle, WA 98119
vaneyk-moore.com

TEL 206 414 8968
FAX 206 452 0722

</PRE>

<PRE>

--
Jay Carlson
Carlson Legal
100 West Harrison Street
Suite N440
Seattle, WA 98119
P: (206) 445-0214
F: (206) 260-2486

Gmail

Jay Carlson <jaycarlson.legal@gmail.com>

Re: Coach, Inc. adv. Kim

1 message

Jay Carlson <jaycarlson.legal@gmail.com> **Thu, Feb 17, 2011 at 4:05 PM**
To: "Keehnel, Stellman" <Stellman.Keehnel@dlapiper.com>
Cc: jason moore <jason@vaneyk-moore.com>, "christopher.carney@cgi-law.com" <christopher.carney@cgi-law.com>

Stellman:

You have not appeared in the case. Please do so. Also, do you represent E-Bay?

I would note that, despite the repetitive threats in your lengthy and bullying letter, nowhere do you deny the central allegation in the case: that Coach falsely accuses its own customers of trademark infringement, without a reasonable basis for doing so, as a business tactic. The basis for our claim that Coach did no reasonable investigation is obvious: they accused our client of selling a counterfeit Coach bag, when she clearly and plainly was not doing so. Even a cursory investigation by Coach would have shown that. Moreover, Coach's campaign of threat letters is well documented. As only one example, we look forward to discovery regarding the other consumers in Washington who you admit have received such a letter from Coach's New York law firm.

I note that your own letter is in keeping with your client's tactic of using meritless legal threats to achieve its ends. I also note that you provide no legal basis whatsoever for your request that we dismiss the state law claims.

After reviewing the multiple layers of specious threats in your letter, it is difficult to see what could possibly be gained by an in person meeting. We don't feel it necessary to meet with you so you can repeat the threats contained in this letter. I will, however, confirm that we will hold the Rule 26 initial conference tomorrow at 2 pm. We will call you then, and we look forward to completing the conference. If for some reason you feel it necessary to threaten us again as you have in this letter, I suppose you can go ahead and do that during the conference.

Having clerked for Judge Zilly here in Seattle, and having worked at Preston Gates & Ellis for many years, Rule 11 allegations are something I take seriously. In this town, I tend to think that my fellow practitioners are pretty careful about throwing around Rule 11 threats. It's unfortunate that rather that addressing the merits of this case, you have chosen to start out by directly threatening your opposing counsel with sanctions. While I understand that your client is upset about the lawsuit, I personally think this tactic, right out of the starting gate, is overly aggressive and unprofessional. And I just don't see any legitimate basis for a request for Rule 11 sanctions.

Best.
Jay Carlson

On Thu, Feb 17, 2011 at 2:00 PM, Keehnel, Stellman <Stellman.Keehnel@dlapiper.com> wrote:
Please see the attached letter.

Stellman Keehnel
Chair of Seattle Litigation Group
DLA Piper US LLP
701 Fifth Avenue, 70th Floor
Seattle, WA 98104-7044
Phone: (206) 839-4888
Fax: (206) 839-4801
Cell: (206) 618-4836
email: stellman.keehnel@dlapiper.com
www.dlapiper.com

--
Jay Carlson
Carlson Legal
100 West Harrison Street
Suite N440
Seattle, WA 98119
P: (206) 445-0214
F: (206) 260-2486

Gmail by Google

Jay Carlson <jaycarlson.legal@gmail.com>

Coach matter - Rule 26(f) conference

1 message

Jay Carlson <jaycarlson.legal@gmail.com> **Fri, Feb 18, 2011 at 2:23 PM**
To: "Keehnel, Stellman" <Stellman.Keehnel@dlapiper.com>, Christopher Carney <christopher.carney@cgi-law.com>, Jason Moore <jason@vaneyk-moore.com>, Margarita Vanegas <margarita.vanegas@cgi-law.com>

Stellman:

I was disappointed that you are unwilling to speak with me today to complete our initial discovery conference in this case. As you know, we confirmed the time for the conference during a time slot when you had indicated in writing that you were available to confer. Moreover, since you have repeatedly said that it is imperative that we speak to you, your unavailability to do so is confounding.

One substantive issue I wanted to address with you: From your February 17, 2011 letter, I understand you to be representing that Coach's notifications to E-Bay, such as the one resulting in the takedown of our client's ad, are not DMCA notifications, but are some other form or type of notice. I ask you to produce to us a copy of all of the notifications sent to E-Bay, by Coach (or its counsel), for the "fewer than 20" Washington residents who you admit have received cease and desist letters from Coach. Presumably, this will include the notice regarding our client's ad. If we confirm from our review that these notices are not DMCA notices, we will consider dismissal of the 512(f) portion of our Complaint. We do need to see those notices, as I am sure you can understand, to verify that they don't implicate the DMCA.

As I told you in my phone message, I am travelling out of the country on a long planned trip for the entirety of next week. I return to the office on the 28th. Mr Carney is out of the office the majority of next week as well. Please accept this as my notice of unavailability for next week, and please do not file or note any motions during that time. It appears that since you were unavailable to confer today, our initial conference will need to wait until the week of the 28th. Thank you.

--
Jay Carlson
Carlson Legal
100 West Harrison Street
Suite N440
Seattle, WA 98119
P: (206) 445-0214
F: (206) 260-2486

Gmail

Jay Carlson <jaycarlson.legal@gmail.com>

Coach, Inc. adv. Kim

1 message

Keehnel, Stellman <Stellman.Keehnel@dlapiper.com> **Fri, Feb 18, 2011 at 4:51 PM**
To: Jay Carlson <jaycarlson.legal@gmail.com>

Mr. Carlson:

Allow me to correct several errors or misimpressions in your below email.

First, "we" did not "confirm[] the time for [a Rule 26] conference...," as you state below. In your February 17 email, you unilaterally (and erroneously) purported to "confirm that we will hold the initial Rule 26 conference tomorrow at 2pm." I have never proposed a Rule 26 conference, let alone confirmed, such a conference with you, and I believe that it is premature to discuss scheduling of a Rule 26 conference. We likely will have a Rule 26 conference after Judge Martinez issues his scheduling order, but I will alert you if the Coach companies determine that it makes sense to schedule a Rule 26 conference prior to that time, including during the week of February 28.

Second, the Coach companies remain open to my meeting with you, and/or the other two law firms representing plaintiff, regarding the subjects of my February 17 letter. Please let me know if you now have Ms. Kim's permission to meet with me.

Third, please explain why you "need to see those notices [,if any, with respect to persons other than Ms. Kim]...to verify that they don't implicate the DMCA." Your request seems contrary to the fact that your only client in this matter is Ms. Kim. I read your below email to mean that Ms. Kim will not dismiss her federal claim unless the Coach companies first produce notices regarding people other than Ms. Kim. Please correct me if I am wrong.

Fourth, I do not at this moment contemplate filing a motion next week. However, with three law firms at the wheel, your absence next week would not be a legitimate reason to refrain from filing a motion.

Stellman Keehnel
Chair of Seattle Litigation Group
DLA Piper US LLP
701 Fifth Avenue, 70th Floor
Seattle, WA 98104-7044
Phone: (206) 839-4888
Fax: (206) 839-4801
Cell: (206) 618-4836
email: stellman.keehnel@dlapiper.com
www.dlapiper.com

From: Jay Carlson [mailto:jaycarlson.legal@gmail.com]
Sent: Friday, February 18, 2011 2:24 PM
To: Keehnel, Stellman; Christopher Carney; Jason Moore; Margarita Vanegas
Subject: Coach matter - Rule 26(f) conference

Stellman:

I was disappointed that you are unwilling to speak with me today to complete our initial discovery conference in this case. As you know, we confirmed the time for the conference during a time slot when you had indicated in writing that you were available to confer. Moreover, since you have repeatedly said that it is imperative that we speak to you, your unavailability to do so is confounding.

One substantive issue I wanted to address with you: From your February 17, 2011 letter, I understand you to be representing that Coach's notifications to E-Bay, such as the one resulting in the takedown of our client's ad, are not DMCA notifications, but are some other form or type of notice. I ask you to produce to us a copy of all of the notifications sent to E-Bay, by Coach (or its counsel), for the "fewer than 20" Washington residents who you admit have received cease and desist letters from Coach. Presumably, this will include the notice regarding our client's ad. If we confirm from our review that these notices are not DMCA notices, we will consider dismissal of the 512(f) portion of our Complaint. We do need to see those notices, as I am sure you can understand, to verify that they don't implicate the DMCA.

As I told you in my phone message, I am travelling out of the country on a long planned trip for the entirety of next week. I return to the office on the 28th. Mr Carney is out of the office the majority of next week as well. Please accept this as my notice of unavailability for next week, and please do not file or note any motions during that time. It appears that since you were unavailable to confer today, our initial conference will need to wait until the week of the 28th. Thank you.

--
Jay Carlson
Carlson Legal

100 West Harrison Street
Suite N440
Seattle, WA 98119
P: (206) 445-0214
F: (206) 260-2486

Gmail by Google

Jay Carlson <jaycarlson.legal@gmail.com>

Coach adv. Kim -- Confidentiality Agreement

1 message

Keehnel, Stellman <Stellman.Keehnel@dlapiper.com> **Mon, Feb 28, 2011 at 10:50 AM**
To: Jay Carlson <jaycarlson.legal@gmail.com>, Christopher Carney <christopher.carney@cgi-law.com>, Jason Moore <jason@vaneyk-moore.com>

Messrs. Carlson, Carney, and Moore:

In order to be able to provide a complete answer to the complaint you filed, the Coach companies need to provide details about their counterfeits detection program. Public disclosure of the program would enable potential counterfeiters to escape detection. Therefore, we need to get a confidentiality agreement in place. Attached is a proposed Confidentiality Agreement. Please let me know ASAP today whether it is in a form acceptable to you. If there are details you want to discuss, please call me ASAP. Let's use the time you set aside today at 2pm to meet-and-confer on the proposed Confidentiality Agreement, if you are unable to reach me prior to that time.

The Coach companies are not prepared today to have the full Rule 26(f)(2) conference you proposed, for three reasons. First, the complaint was served on Coach, Inc. on February 9, only 19 days ago. I have not yet been able to ascertain whether Coach Services, Inc. has been served, and the mandatory proof of service is not on file. Has Coach Services, Inc. been served? If so, when? Second, while the Rule 26(f)(2) conference is to be conducted as soon as practicable, the list of matters to be covered in such a conference is extensive and requires corporate defendants, such as the Coach companies, to do a great deal of factual investigation and legal analysis to be prepared to address each of the many topics. That work is continuing. Third, Rule 26(a)(1)(C) initial disclosures are due within 14 days of a full Rule 26(f)(2) conference, and Rule 26(g)(1)(A) mandates that initial disclosures be complete and correct. It would be reckless for the Coach companies, at this very early point, to represent that their initial disclosures will be ready by March 14; too much work remains to be done.

I look forward to hearing from you right away on the proposed Confidentiality Agreement.

Stellman Keehnel
Chair of Seattle Litigation Group
DLA Piper US LLP
701 Fifth Avenue, 70th Floor
Seattle, WA 98104-7044
Phone: (206) 839-4888
Fax: (206) 839-4801
Cell: (206) 618-4836
email: stellman.keehnel@dlapiper.com
www.dlapiper.com

[Untitled].pdf
384K

Gmail by Google

Jay Carlson <jaycarlson.legal@gmail.com>

Re: Coach adv. Kim -- Confidentiality Agreement

2 messages

Jay Carlson <jaycarlson.legal@gmail.com> **Mon, Feb 28, 2011 at 11:11 AM**
To: "Keehnel, Stellman" <Stellman.Keehnel@dlapiper.com>
Cc: Christopher Carney <christopher.carney@cgi-law.com>, Jason Moore <jason@vaneyk-moore.com>

Why does Coach Services, Inc. need to be served? Do you represent them? Will you accept service of process on their behalf?

As for your proposal regarding discovery documents, we would be happy to discuss the possibility of a confidentiality agreement during the Rule 26 initial conference that we have repeatedly proposed and which you are refusing to participate in. You claim your client isn't ready to have that conference, yet with the same e-mail you forward a fully drafted proposed confidentiality agreement covering discovery. Obviously, a possible confidently agreement is an appropriate topic for the Rule 26 conference, and we would be happy to have that Rule 26 discussion at your earliest convenience. How about 2 pm today, or anytime tomorrow?

As for your other justifications for refusing to confer, obviously we can discuss issues such as the deadline for initial disclosures at the Rule 26 conference. If there are issues regarding the discovery plan that you want to discuss, the time to do so is the Rule 26 initial conference. So let's have that conference, and get it over with.

Take care.

Jay

On Mon, Feb 28, 2011 at 10:50 AM, Keehnel, Stellman <Stellman.Keehnel@dlapiper.com> wrote:

> Messrs. Carlson, Carney, and Moore:
>
> In order to be able to provide a complete answer to the complaint you filed, the Coach companies need to provide details about their counterfeits detection program. Public disclosure of the program would enable potential counterfeiters to escape detection. Therefore, we need to get a confidentiality agreement in place. Attached is a proposed Confidentiality Agreement. Please let me know ASAP today whether it is in a form acceptable to you. If there are details you want to discuss, please call me ASAP. Let's use the time you set aside today at 2pm to meet-and-confer on the proposed Confidentiality Agreement, if you are unable to reach me prior to that time.
>
> The Coach companies are not prepared today to have the full Rule 26(f)(2) conference you proposed, for three reasons. First, the complaint was served on Coach, Inc. on February 9, only 19 days ago. I have not yet been able to ascertain whether Coach Services, Inc. has been served, and the mandatory proof of service is not on file. Has Coach Services, Inc. been served? If so, when? Second, while the Rule 26(f)(2) conference is to be conducted as soon as practicable, the list of matters to be covered in such a conference is extensive and requires corporate defendants, such as the Coach companies, to do a great deal of factual investigation and legal analysis to be prepared to address each of the many topics. That work is continuing. Third, Rule 26(a)(1)(C) initial disclosures are due within 14 days of a full Rule 26(f)(2) conference, and Rule 26(g)(1)(A) mandates that initial disclosures be complete and correct. It would be reckless for the Coach companies, at this very early point, to represent that their initial disclosures will be ready by March 14; too much work remains to be done.
>
> I look forward to hearing from you right away on the proposed Confidentiality Agreement.

Stellman Keehnel
Chair of Seattle Litigation Group
DLA Piper US LLP
701 Fifth Avenue, 70th Floor
Seattle, WA 98104-7044
Phone: (206) 839-4888
Fax: (206) 839-4801
Cell: (206) 618-4836
email: stellman.keehnel@dlapiper.com
www.dlapiper.com

--
Jay Carlson
Carlson Legal
100 West Harrison Street
Suite N440
Seattle, WA 98119
P: (206) 445-0214
F: (206) 260-2486

Jay Carlson <jaycarlson.legal@gmail.com> **Mon, Feb 28, 2011 at 4:50 PM**
Draft To: "Keehnel, Stellman" <Stellman.Keehnel@dlapiper.com>
Cc: Christopher Carney <christopher.carney@cgi-law.com>, Jason Moore <jason@vaneyk-moore.com>

Stellman:

I got your voice message, thank you for calling.

As we've told you previously, we are happy to schedule a Rule 26 initial conference any time that is convenient for you. We think it makes sense to have the Rule 26 initial discussion as a whole, so we can actually get started on this case, rather than trying piecemeal to negotiate a confidentiality agreement, divorced from discussion of discovery issues overall.

I have to raise issue with your complaints about not being prepared to conduct the conference. First, you already sent us a lengthy threat letter in which you represented, in no uncertain terms, that you understood this case and the relevant facts completely and that, in fact, your comprehension of the case was detailed enough that you were in a position to threaten Rule 11 sanctions and lawsuits against us. I'm sure you didn't write that letter without doing extensive research into the validity of your threats, correct? Also, the fact that you have had time to draft a comprehensive confidentiality agreement governing all discovery and litigation suggests that your preparations for this matter are coming along just fine. We believe that the real reason you are refusing to hold an initial conference is because you think you are preserving some sort of procedural advantage by not doing so.

Moreover, as you haven't appeared in this case, we aren't going to be able to execute legal documents with you in any case. Feel free to raise the confidentiality issue again after you have appeared on behalf of the defendant.

Let me know when you are in the posture of no longer refusing to conduct a Rule 26 initial conference. We look forward to hearing from you on that. We do, of course, reserve our right to move to compel such a conference.

Jay Carlson
[Quoted text hidden]

Gmail

Jay Carlson <jaycarlson.legal@gmail.com>

Re: Kim v. Coach -- Meet and Confer Confirmation

1 message

Jay Carlson <jaycarlson.legal@gmail.com> **Wed, Mar 9, 2011 at 12:06 PM**
To: "Eagan, Patrick" <Patrick.Eagan@dlapiper.com>
Cc: Christopher Carney <christopher.carney@cgi-law.com>, "jason@vaneyk-moore.com" <jason@vaneyk-moore.com>, "Riojas, Omar" <Omar.Riojas@dlapiper.com>

From only a cursory and incomplete review (which is all we've had time to do), I can tell you that the confidentiality proposal you sent Tuesday night is unacceptable in several respects. We would be happy to discuss those, and other discovery issues that we need to discuss, at the Rule 26 initial conference. We also have no idea what documents you intend to produce and what you therefore want treated as attorney eyes only, and sealed, so we are unable to fairly judge whether and under what circumstances we would agree to an attorneys eyes only designation for those documents. I would also note that your request to treat substantially all discovery documents in this case as attorney eyes only is a non-starter. The Judge will never approve a protective order of such unlimited scope.

We never saw your proposed confidentiality agreement before Tuesday night, and again, we have not had time to fully review it and determine our reaction. The confidentiality agreement is an integral part of a broader discussion that the parties need to have about a discovery plan. So, we will be happy to discuss this and other discovery issues with you when you are ready to have the Rule 26 initial conference, which we have repeatedly requested.

Let us know when you are ready to schedule the Rule 26 initial conference, and we can start making progress on these issues in a coherent way.

Thanks.

Jay

On Tue, Mar 8, 2011 at 10:15 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:

> Jay,
>
> You, Stellman, and I discussed at length the subject of a limited confidentiality agreement covering these issues in our February 28 telephone conference. We indicated at that time that we were preparing to make a motion for a protective order in order to be able to share this information with you and the Court, if you would not consent to a confidentiality agreement. We asked then whether you felt that we had fulfilled our meet and confer obligation, and you said that we had not. You refused to explain why not, despite our willingness to continue to discuss the matter with you during that call.
>
> Yesterday, in an effort to redundantly meet our obligation to try to reach agreement, I sent you a proposed confidentiality agreement that includes the terms of the protective order we discussed on February 28.
>
> I understand your need to have time to consider this issue, but you have already had more than a week to consider it. If you do not believe that we have met our obligation to confer, then I am available to discuss the proposed confidentiality agreement at your convenience at any time tomorrow. Please let me know when would be a good time to discuss.
>
> Thanks,
> Patrick
>
> ---
>
> **From:** Jay Carlson [mailto:jaycarlson.legal@gmail.com]
> **Sent:** Tuesday, March 08, 2011 7:42 PM
> **To:** Eagan, Patrick
> **Cc:** Christopher Carney; jason@vaneyk-moore.com
> **Subject:** Re: Kim v. Coach -- Meet and Confer Confirmation
>
> > Patrick:
> >
> > I believe you sent us a proposed confidentiality agreement last night. We will review it in due time and respond to your proposal after we have had a chance to do that review. Otherwise, no, we don't agree you've fulfilled any meet and confer obligation as to this proposal, as we had never seen it before last night, and we have never discussed it.
> >
> > We will get back to you when time permits. Thanks.
> >
> > Jay
> >
> > On Tue, Mar 8, 2011 at 2:32 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:
> >
> > > Gentlemen,
> > >
> > > Regarding the short confidentiality agreement I sent you yesterday (substituting for the proposed confidentiality agreement you rejected last week), please let me know as soon as possible the following:
> > >
> > > (1) Whether you believe that we have fulfilled our meet and confer obligation on this matter, and, if not, what more you think we need to do; and
> > > (2) Whether you intend to oppose our motion for a protective order, assuming you will not sign the confidentiality agreement.
> > >
> > > Please let me know the answers to these questions today. If we can't work out a confidentiality agreement, we will have to file a motion for protective order.
> > >
> > > Thanks,
> > >
> > > Patrick

From: Christopher Carney [mailto:christopher.carney@cqi-law.com]
Sent: Monday, March 07, 2011 7:38 PM
To: Eagan, Patrick
Cc: jaycarlson.legal@gmail.com; jason@vaneyk-moore.com; Keehnel, Stellman
Subject: Re: Kim v. Coach -- Meet and Confer Confirmation

Mr. Eagan -

Thank you for your proposal. We will review it in due time and get back to you with our position on your suggestion.

On Mon, Mar 7, 2011 at 7:20 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:

Gentlemen,

Attached, please see a pared-down confidentiality agreement that addresses the potential disclosure of the following information:

(1) Descriptions of the online counterfeiting detection program by Gibney Anthony & Flaherty or Coach; and
(2) Documents relating to the online counterfeiting detecting program by Gibney Anthony & Flaherty or Coach.

If you are amenable to executing this agreement, please do so and return a signed copy. If not, this message is to confirm that we have fulfilled our obligation to meet and confer before filing a motion for a protective order obligating all plaintiffs to protect as confidential and file under seal evidence relating to or disclosing any of the above information. In substance, our proposed protective order will seek the same protections described in the attached agreement.

We anticipate filing a motion for a protective order relatively soon. If you believe that we have not fulfilled our obligation to meet and confer on the motion, please immediately let me know why. Also, please let me know if you intend to oppose the motion.

Yours very truly,

Patrick Eagan

Patrick Eagan
DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, Washington 98104
T 206.839.4840
F 206.494.1830
Patrick.Eagan@dlapiper.com
www.dlapiper.com

Admitted to practice in Washington, Virginia, and the District of Columbia.

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Christopher Carney, Attorney at Law
Carney Gillespie Isitt PLLP
100 W. Harrison Street, Suite N440
Seattle, WA 98119
Tel (206) 445-0212
Fax (206) 260-2486

EXHIBIT B

EXHIBIT B

Gmail

Jay Carlson <jaycarlson.legal@gmail.com>

Re: Kim v. Coach, Class Action lawsuit, illegal action by Coach

1 message

Jay Carlson <jaycarlson.legal@gmail.com> **Mon, Feb 28, 2011 at 10:54 AM**
To: "Keehnel, Stellman" <Stellman.Keehnel@dlapiper.com>
Cc: Christopher Carney <christopher.carney@cgi-law.com>, Jason Moore <jason@vaneyk-moore.com>

Stellman:

Please copy all co-counsel on all correspondence, as I have asked before. Thanks.

You haven't appeared in this case. Until you do, it is not entirely clear to us that you do represent Coach, or in what capacity. Please appear. Your refusal to do so at this point looks like nothing except a bad faith attempt to preserve any, whatever miniscule, form of advantage you think you can glean from procedural posturing.

As we have suggested multiple times, if you have anything to add to your original threat letter, the CR 26 conference would be a good time to do that. You are refusing to have that conference, so are depriving yourself and your client of the opportunity for further communication. You have an obligation to confer under the civil rules, and your refusal to do so is another attempt to preserve advantage through procedural posturing. In short, if you want to talk to us, let's have a Rule 26 conference. We aren't going to meet with you in person just to allow you to repeat the unprofessional threats contained in your first letter.

You say that if we understood how the Coach program works, we would drop the case. In the same e-mail, you refuse to show us the documents we requested to better understand how the Coach program works. And, you refuse to hold a discovery conference to allow us to request that material through formal discovery. You can't have it both ways. This is a class complaint. You have said there are fewer than 20 class members, and have made certain representations about those class members. We have asked you to prove it, which should be a simple matter if your representations are correct. You refuse to do so. You cannot possibly bring a Rule 12 motion under those circumstances, and we are sure you wouldn't waste your client's money so wantonly.

The back and forth posturing is tiresome, don't you think? Why don't you appear in this case, and stop refusing to hold a Rule 26 conference, and we can go from there. Until you do those two things, you aren't in a position to demand anything.

Take care.

Jay

On Mon, Feb 21, 2011 at 6:07 PM, Keehnel, Stellman <Stellman.Keehnel@dlapiper.com> wrote:

> Mr. Carlson:
>
> I renew my original proposal that we sit down face-to-face at the earliest practicable time, even if the Coach companies have not yet completed their necessary work to prepare for a complete Rule 26 conference. I believe such a meeting would go a long way toward eliminating the impetus for emails such as your below email. Indeed, I remain of the belief that if had even rudimentary knowledge of how the counterfeit detection program operates, you would drop the lawsuit. You seem intent on avoiding knowledge of that program. That bury-your-head-in-the-sand approach to this lawsuit does not strike me as reasonable, given your duties to the Court and your duties under Rule 11. Please reconsider your refusal to meet with me.
>
> Given that you are claiming unavailability for the next seven days, I will briefly here correct a few of your erroneous statements, rather than waiting for your return in a week.
>
> 1. The Coach companies are not refusing to participate in the mandatory Rule 26 conference. Your saying that the Coach companies are refusing to participate in the mandatory Rule 26 conference does not make it so. In order to participate in an effective Rule 26 conference, a lawyer must first cover a lot of territory with his clients. We are in the process of doing that necessary pre-Rule 26 conference work. Your unilateral imposition of premature dates and times does not advance the process. Just because *I* am not tied up in another client matter at a particular moment does not signify that the requisite pre-Rule 26 work has been completed for the Coach companies. I would think that fact is obvious, but I am apparently mistaken. Following your return to Seattle, I will alert you when the Coach companies' counsel has completed the necessary preparation work, so that a Rule 26 conference may be scheduled. If that work is completed prior to February 28, 2011 at 2:00 p.m., then that slot may be a good time to meet. We want the Rule 26 conference to be face-to-face, and we will be happy to host.
>
> 2. Regarding your too-early request for communications not relating to Ms. Kim, please understand the Coach companies' perspective. To our knowledge, you have not been engaged by anyone in regards to the lawsuit other than Ms. Kim. (Please correct me if I am wrong on this point.) If Ms. Kim has no DMCA claim, you cannot proceed with the lawsuit. Let's focus on what matters here -- whether Ms. Kim has a DMCA claim; she doesn't. Notices to eBay regarding persons other than Ms. Kim do not answer the question of whether Ms. Kim has a DMCA claim. You illogically conclude that the Coach companies' declining to give you documents that do not bear on the question of whether Ms. Kim has DMCA claim, means that notices to eBay regarding people other than Ms. Kim do implicate the DMCA. Your conclusion is wrong. The notices I reference do not implicate the DMCA.
>
> Enjoy your time away from Seattle.

Stellman Keehnel
Chair of Seattle Litigation Group
DLA Piper US LLP
701 Fifth Avenue, 70th Floor
Seattle, WA 98104-7044
Phone: (206) 839-4888
Fax: (206) 839-4801