

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**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**

**SECOND AMENDED COMPLAINT**

**COMPLAINT FOR DAMAGES AND REQUEST FOR DECLARATION OF NO DEFAMATION PURSUANT TO 28 U.S.C. § 2201**

**CLASS ACTION ALLEGED**

**SUMMARY**

Defendant Coach, Inc. is engaged in an illegal, statewide and nationwide campaign to suppress “second hand” sales of its handbags and other products. Through this campaign, Coach is trying to force all consumers to purchase Coach products only in their expensive retail stores, rather than through online second hand online outlets such as E-Bay. Unfortunately, in its pursuit of maximum profits, Coach has employed unfair and deceptive practices and has violated state and federal law.

Without thoroughly investigating the validity of its allegations, Coach wantonly accuses consumers of infringing its trademarks by selling counterfeit Coach products. Coach apparently monitors online retailers such as eBay.com, looking for ads from consumers selling second hand Coach products. In response to such ads, Coach delegates a New York law firm to launch a threatening letter to the consumer. These letters accuse the consumer of trademark infringement, threaten legal action, and demand the immediate payment of damages to Coach in “settlement” of Coach’s threats. At the same time, Coach (or its New York law firm) informs the online retailer that infringing merchandise is being sold on its website. In many cases, this

FIRST AMENDED COMPLAINT FOR DAMAGES  
CLASS ACTION ALLEGED

VAN EYK & MOORE, PLLC.  
100 West Harrison Street, N440  
Seattle, WA 98119  
(206) 414-8968  
(206) 452-0722 FAX

1 causes the online retailer to involuntarily remove the allegedly infringing ad, and to disable the  
2 consumer's online account. This destroys any chance the consumer had to sell the Coach  
3 product second hand, and otherwise damages the consumer.

4 In many cases (such as that of the lead plaintiff identified here), Coach's allegations of  
5 infringement are flatly false. It appears that Coach fails to conduct even a minimally reasonable  
6 investigation into its counterfeiting claims before threatening legal action. For example, the  
7 lead plaintiff identified in this Complaint *is a former Coach employee*, who owned, and tried to  
8 sell, genuine and legitimate Coach products. It was entirely legal for her to do so. Coach's  
9 threats against her were false, reckless, and unwarranted.

10 On information and belief, many consumers have paid Coach its demanded damages to  
11 try and "make them go away," even though such consumers never tried to sell infringing or  
12 counterfeit merchandise.

13 On behalf of herself and all others similarly situated and unknown, the PLAINTIFF  
14 alleges as follows:

15 **I. NATURE OF PLAINTIFF'S CLAIMS**

16 This class action lawsuit arises on the following grounds: (1) the Washington Consumer  
17 Protection Act, RCW 19.86 *et seq.* ("CPA"), (2) Misrepresentation of Trademark Infringement,  
18 17 U.S.C., Section 512(f), (3) Defamation, and (4) Tortious interference with business  
19 expectancy.

20 The declaration of no defamation is requested because the Defendant, through its  
21 counsel Stellman Keehnel, has repeatedly threatened to sue Plaintiff's counsel for defamation.  
22 He first made this threat in a letter dated February 17, 2011, in which he also demanded that  
23 Plaintiff's counsel dismiss the lawsuit. He reiterated this defamation threat during a phone  
24 conference on Monday, February 28, in which he represented that a defamation lawsuit by  
25 Coach against Plaintiff's counsel was a certainty. There is therefore an actual controversy  
regarding Coach's allegations of defamation, pursuant to 28 U.S.C. § 2201.

**II. PARTIES**

1. Gina Kim is the representative plaintiff in this action. She is a resident of King  
County, Washington, which is within this judicial district.

1           2.       The plaintiff class alleged consists of all consumers in Washington State who  
2 have, in the last three years, received a cease and desist letter from Coach or any agents of  
3 Coach, accusing them of attempting to sell infringing and counterfeit Coach products through  
4 an online outlet such as E-Bay, Craigslist, or other such services, where such allegation is false.

5           3.       Defendants Coach, Inc. and Coach Services, Inc. are Maryland corporations  
6 having their principal office and place of business in a state other than Washington. Coach does  
7 extensive business in Washington State.

8           4.       The declaratory judgment parties include Plaintiff's counsel, who have been  
9 directly threatened with a defamation lawsuit by Coach's counsel.

10           **III.    JURISDICTION AND VENUE**

11           1.       The events giving rise to this claim arose in King County, Washington.

12           2.       This Court has jurisdiction over this matter under 28 U.S.C. § 1331 because the  
13 cases raises questions of federal law and 28 U.S.C. § 1332 because of diversity between the  
14 parties and the amount in controversey. The Court has jurisdiction over the declaratory  
15 judgment action pursuant to 28 U.S.C. § 2201-02. This Court has jurisdiction over the state law  
16 claims pursuant to 28 U.S.C. § 1367.

17           3.       Personal jurisdiction over the Defendants is proper because Defendants market  
18 and sell their trademarked products in this jurisdiction and because Defendants directed  
19 damaging, defamatory, and tortious statements against a resident of this district.

20           4.       Venue is proper in this district under 28 U.S.C. § 1391(a), (b), and (c).

21           **IV.    FACTS COMMON TO ALL COUNTS**

22           1.       Plaintiff is an online vendor of goods, including handbags.

23           2.       Plaintiff operates a Washington-based seller account on Ebay.

24           **1.    VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**

25           1.       Plaintiff incorporates and re-alleges the preceding paragraphs.

          2.       Plaintiff's attempt to sale an "asset," a handbag, on Ebay constituted "trade" and  
"commerce" under RCW 19.96.010.

          3.       In October 2010, Defendants, without conducting any reasonable investigation,  
notified Ebay that a handbag sold by Plaintiff was counterfeit and infringed Defendants'  
trademarks.

1 4. Defendants' unsubstantiated claims led to the removal of Plaintiff's  
2 advertisement for sale of a handbag from Ebay and the elimination of Plaintiff's seller account.

3 5. On October 8, 2010, Defendants, through their attorney, notified Plaintiff of the  
4 alleged trademark violation and demanded that Plaintiff return the handbag to Defendants and  
5 pay monetary damages.

6 6. Plaintiff's handbag was not counterfeit.

7 7. Defendants statements that Plaintiff sold counterfeit products are false and  
8 misleading statements of fact.

9 8. The aforementioned statements disparage the goods and business of Plaintiff,  
10 hindering commerce and adversely impacting Plaintiff's business interests.

11 9. Defendants' accusations amount to unfair and deceptive trade practices in  
12 violation of RCW 19.86.020.

13 10. Under RCW 19.86.090, Plaintiff is entitled to actual damages, treble damages,  
14 and attorney's fees.

15 11. Defendants have engaged in an ongoing pattern of this conduct which has  
16 damaged all members of the class.

17 **2. MISREPRESENTATION OF TRADEMARK INFRINGEMENT IN VIOLATION**  
18 **OF 17 U.S.C. 512(f), AND DECLARATORY JUDGMENT**

19 1. Plaintiff incorporates and re-alleges the preceding paragraphs.

20 2. Defendants claim rights in various federal trademarks.

21 3. In October 2010, Defendants, without conducting a thorough investigation,  
22 notified Ebay that a handbag sold by Plaintiff was counterfeit and infringed Defendants'  
23 trademarks. This constituted a knowing, material misrepresentation of trademark infringement.

24 4. On October 8, 2010, Defendants, through their attorney, notified Plaintiff of the  
25 alleged trademark violation and requested that Plaintiff return the handbag to Defendants and  
26 pay monetary damages. This constituted a knowing, material misrepresentation of trademark  
27 infringement.

28 5. Contrary to Defendants' accusations, Plaintiff did not infringe Defendants'  
29 trademarks or violate any other law.

1           6.       Accordingly, there is a substantial controversy between parties having adverse  
2 legal interests of sufficient immediacy.

3           7.       Plaintiff is entitled to a declaration that she has not infringed Defendant's  
4 trademarks. Such a declaration is necessary and appropriate at this time so that the parties may  
5 ascertain their respective rights and duties regarding the matters in dispute.

6           8.       Plaintiff is entitled to other relief, including reasonable attorneys fees,  
7 enumerated in 17 U.S.C. 512(f).

8           9.       Defendants have engaged in an ongoing pattern of this conduct which has damaged  
9 all members of the class.

10 **3.       DEFAMATION BY DEFENDANT AGAINST PLAINTIFF**

11           1.       Plaintiff incorporates and re-alleges the preceding paragraphs.

12           2.       In October 2010, Defendants, without conducting a thorough investigation,  
13 notified Ebay that a handbag sold by Plaintiff on her Ebay seller account was counterfeit and  
14 infringed Defendants' trademarks.

15           3.       By letter dated October 8, 2010, Defendants, through their attorney, falsely  
16 stated that Plaintiff's merchandise was counterfeit.

17           4.       Contrary to Defendants' accusations, Plaintiff did not infringe Defendants'  
18 trademarks or violate any other law.

19           5.       The aforementioned statements are defamatory because they refer to Plaintiff and  
20 tend to prejudice her business credit, property, and operations.

21           6.       Defendants had no factual basis for stating that Plaintiff sold counterfeit  
22 products.

23           7.       Defendants have engaged in an ongoing pattern of this conduct which has  
24 damaged all members of the class.

25 **4.       TORTIOUS INTERFERENCE WITH A BUSINESS EXPECTANCY**

          1.       Plaintiff incorporates and re-alleges the preceding paragraphs.

          2.       In October 2010, Defendants, without conducting a thorough investigation,  
notified Ebay that a handbag sold by Plaintiff was counterfeit and infringed Defendants'  
trademarks. This constituted a knowing, material misrepresentation of trademark infringement.  
Defendants knew that plaintiff had a valid business expectancy for the sale of the handbag.

1           3.       On October 8, 2010, Defendants, through their attorney, notified Plaintiff of the  
2 alleged trademark violation and requested that Plaintiff return the handbag to Defendants and  
3 pay monetary damages.

4           4.       This conduct intentionally interfered, induced or caused a breach of the known  
5 business expectancy, causing damage to the plaintiff.

6           5.       Defendants have engaged in an ongoing pattern of this conduct which has  
7 damaged all members of the class.

8           **5.       DECLARATION OF NO DEFAMATION BY PLAINTIFF’S COUNSEL**

9           1.       It appears that defendant Coach, Inc. has hired counsel named Stellman Keehnel,  
10 practicing at DLA Piper in Seattle, to represent it in this matter. Mr. Keehnel has been in  
11 regular communication with Plaintiff’s counsel since this lawsuit was filed and has held himself  
12 out as Coach’s counsel. Mr. Keehnel has, however, refused to formally appear in this case as  
13 defense counsel, despite repeated written and oral requests by Plaintiff’s counsel that he confirm  
14 his representation by formally appearing.

15           2.       In a letter dated February 27, 2011, Mr. Keehnel wrote to Plaintiff’s counsel,  
16 demanding that we summarily dismiss this lawsuit. In this letter, he stated that if the lawsuit  
17 was not dismissed, he would, on behalf of Coach, Inc., seek Rule 11 sanctions against counsel  
18 and against class representative plaintiff Gina Kim herself. He claimed that there were no fewer  
19 than 10 separate instances of a Rule 11 violation. He further urged Plaintiff’s counsel “to  
20 inform your client, as the rules of Professional Conduct require, of the likelihood that she will  
21 have to pay the Coach companies’ legal fees if she fails to dismiss the lawsuit.”

22           3.       In this letter demanding dismissal of the lawsuit, Mr. Keehnel also repeatedly  
23 asserted that Plaintiff’s counsel had committed defamation against the Defendant. He  
24 repetitively claimed that during a media interview related to the lawsuit, Plaintiff’s counsel  
25 committed defamation against Coach.

          4.       During a phone conference on February 28, 2011, Mr. Keehnel repeated his  
threat to sue Plaintiff’s counsel for defamation. He represented that such a lawsuit against  
Plaintiff’s counsel by Coach was a certainty.

1           5.       On information and belief, it is counsel's opinion that Mr. Keehnel has advanced  
2 threats of Rule 11 proceedings and defamation lawsuits against Plaintiff's counsel in order to  
3 intimidate Plaintiff's counsel into dismissing the lawsuit against his client. Indeed, these threats  
4 were first advanced in a letter explicitly demanding that Plaintiff's counsel dismiss the lawsuit.

5           6.       The media interview at issue in Mr. Keehnel's defamation threats was not  
6 solicited or arranged by Plaintiff's counsel. A reporter from King 5 news independently  
7 acquired a copy of the Complaint in this case after it was filed, and contacted Plaintiff's counsel  
8 to request an interview with Plaintiff's counsel. During that interview, Plaintiff's counsel  
9 repeated the allegations in the Complaint and answered questions about the case.

10          7.       The allegedly defamation statements were substantially true. Defendant Coach  
11 sent class representative plaintiff Gina Kim a letter declaring unequivocally that she had  
12 attempted to sell a counterfeit Coach bag on eBay.com, threatening her with legal action. This  
13 statement was flatly false – the Coach bag Ms. Kim attempted to sell was a legitimate Coach  
14 product. Indeed, Ms. Kim was a former Coach employee. Therefore, Coach failed to  
15 reasonably investigate whether the product was, in fact, counterfeit, as they had asserted. If  
16 Coach *had* reasonably investigated that issue, they could have easily discovered that the product  
17 was genuine. The actual product was depicted in photographs taken by Ms. Kim and posted in  
18 the eBay.com advertisement. Coach could have easily contacted Ms. Kim to inquire about the  
19 product for sale, which it never did, rather than sending her a letter declaring with no  
20 uncertainty that she had violated trademark law by attempting to sell a counterfeit product.  
21 Plaintiff's counsel therefore had a good faith basis to assert that Coach failed to investigate, and  
22 the statement was substantially true. There has been no defamation against Coach.

23          8.       For the purposes of defamation law, Coach is an all-purpose and/or a limited  
24 purpose public figure. Coach is a world famous brand and the company spends a great deal of  
25 money on marketing to ensure that it remains a world famous brand. Indeed, the reason the  
media was interested in this Complaint in the first place was because of Coach's fame and  
success at branding itself globally. Coach's conduct is therefore of continuing legitimate public  
interest.

          9.       Any defamation claims by Coach are subject to the opinion and fair comment  
exception.

1                   **V.     CLASS ALLEGATIONS**

2  
3           1.     Plaintiff seeks certification of a class as defined below.

4                   (a)   **The Class:** The plaintiff class alleged consists of all consumers in  
5 Washington State who have, in the last three years, received a cease and desist letter from  
6 Coach or the agents of Coach, accusing them of attempting to sell infringing and counterfeit  
7 Coach products through an online outlet such as E-Bay, Craigslist, and other such services,  
8 where such allegation was made without basis and has harmed the consumer.

9                   Excluded from the Class are (i) any judge presiding over this action and members of  
10 their families; (ii) Defendant, Defendant’s subsidiaries, parents, successors, predecessors, and  
11 any entity in which Defendant or its parents have a controlling interest and their current  
12 employees, officers and directors; (iii) persons who properly execute and file a timely request  
13 for exclusion from the Class; and (iv) the legal representatives, successors or assigns of any  
14 such excluded persons.

15                   2.     **Numerosity:** The exact number of Class members is unknown to Plaintiff at this  
16 time, but on information and belief, Defendant has threatened many Class members throughout  
17 the State of Washington, making joinder of each individual member impracticable. Ultimately,  
18 the Class and members will be easily identified through Defendant’s records. Plaintiff believes  
19 that the members of the Class are geographically dispersed throughout the State, and that  
20 joinder of all Class members would therefore be impracticable.

21                   3.     **Commonality and Predominance:** Common questions of law and fact exist as  
22 to all members of the Class and predominate over any questions affecting only individual  
23 members. Defendant has acted or refused to act on grounds generally applicable to the class,  
24 thereby making appropriate final injunctive relief or corresponding declaratory relief with  
25 respect to the Class as a whole.

                  Common questions of law and fact include but are not limited to:

1 (a) Whether Defendants threatened legal action and demanded payment of  
2 settlement damages with no basis in fact;

3 (b) Whether Defendants notified online retailers that counterfeit merchandise  
4 was being sold on their website with no basis in fact;

5 (c) Whether Defendant's practices violate the CPA;

6 (d) Whether Defendant's practices violate 17 U.S.C. 512(f);

7 (e) Whether Defendant's conduct constituted defamation;

8 (f) Whether Defendant's conduct tortiously interfered with a legitimate business  
9 expectancy of the Class members;

10 (g) Whether Plaintiff and the Class are entitled to relief, and the nature of such  
11 relief.

12 4. **Typicality:** Plaintiff's claims are typical of the claims of the other members of  
13 the Class. Plaintiff and the Class members sustained damages as a result of Defendant's uniform  
14 wrongful conduct toward Plaintiff and the Class.

15 5. **Adequate Representation:** Plaintiff will fairly and adequately represent and  
16 protect the interests of the Class, and has retained counsel competent to litigate this action.  
17 Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses  
18 unique to Plaintiff.

19 6. **Appropriateness:** This class action is appropriate for certification because class  
20 proceedings are superior to all other available methods for the fair and efficient adjudication of  
21 this controversy and joinder of all members of the Class is impracticable. The prosecution of  
22 separate actions by individual members of the Class would impose heavy burdens upon the  
23 courts and Defendant, and would create a risk of inconsistent or varying adjudications of the  
24 questions of law and fact common to the Class. The damages suffered by the individual  
25 members of the Class will likely be small relative to the burden and expense of individual  
prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it

1 would be virtually impossible for the individual members of the Class to obtain effective relief  
2 from Defendant's misconduct. Even if members of the Class could sustain such individual  
3 litigation, it would not be preferable to a class action because individual litigation would  
4 increase the delay and expense to all parties due to the complex legal controversies presented in  
5 this Complaint. By contrast, a class action presents far fewer management difficulties and  
6 provides the benefits of single adjudication, economy of scale, and comprehensive supervision  
7 by a single court. Economies of time, effort, and expense will be fostered and uniformity of  
8 decisions will be ensured.

9       7.     **Policies Generally Applicable to the Class:** This class action is also appropriate  
10 for certification because Defendant has acted on grounds generally applicable to the Class,  
11 thereby requiring the Court's imposition of uniform relief to ensure compatible standards of  
12 conduct toward the members of the Class, and making final injunctive relief appropriate with  
13 respect to the Class and Subclasses as a whole. Defendant's conduct challenged herein apply  
14 and affect members of the Class uniformly and Plaintiff's challenge of that conduct hinges on  
15 Defendant's conduct with respect to the Class as a whole, not on facts or law applicable only to  
16 Plaintiff.

17       8.     **Reservation:** Plaintiff reserves the right to revise the Class definition and Class  
18 allegations based upon information learned through discovery.

## 19     **VI.     PRAYER FOR RELIEF**

20     Plaintiff prays for a judgment against Defendants as follows:

21       1.     For an order certifying this case as a class action pursuant to FRCP 23, and for  
22 an order appointing Plaintiff as Class representative and the undersigned counsel as class  
23 counsel;

24       2.     That the defendant be temporarily and permanently enjoined from continuing to  
25 engage in the conduct described in this Complaint;

      3.     Under Count 1, class wide damages, treble class wide damages, and reasonable  
attorney fees and costs for the class as a whole;

