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THE HONORABLE RICARDO S. MARTINEZ

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, and as to Ms.
Kim, counterclaim
defendant,

v.

COACH, INC., a Maryland corporation,
and COACH SERVICES, INC., a
Maryland corporation,

Defendants, and, as to
Coach, Inc., counterclaim
plaintiff.

No. 2:11-cv-00214-RSM

**DECLARATION OF JOHN MACALUSO
IN SUPPORT OF DEFENDANT COACH,
INC.'S OPPOSITION TO SPECIAL
MOTION TO STRIKE**

FILED UNDER SEAL

I, John Macaluso, declare as follows:

1. I am an attorney for Coach, Inc. ("Coach") in connection with certain intellectual property matters. I am a partner in the New York office of Gibney Anthony & Flaherty LLP ("Gibney"). I have personal knowledge of the facts set forth in this declaration, and if called to do so, I can and would testify competently thereto. This declaration is submitted without waiving and without intending to waive the attorney-client privilege. The information in this declaration regarding how Gibney, on behalf of Coach, identified counterfeit products is highly confidential. Public disclosure of this information would enable

DECLARATION OF MACALUSO IN SUPPORT
OF COACH'S OPPOSITION TO MOTION TO
STRIKE - 1
No. 2:11-cv-00214-RSM

DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044 | Tel: 206.839.4800

1 counterfeiters to evade detection. I am supplying this information in the understanding that
2 plaintiff's attorneys will maintain its confidentiality and that this declaration will be filed under
3 seal.

4 2. I have devoted the bulk of my 21-year professional career to assisting brand-
5 name companies in protecting their intellectual property rights and in combating counterfeiters
6 and other infringers. My CV is attached hereto as **Exhibit A**. From my work with numerous
7 brand-name companies, from my extensive work with law enforcement agencies to combat
8 counterfeiting, and from my frequent participation in and presentations at national and
9 international conferences on anti-counterfeiting efforts, I have expertise in and substantial
10 knowledge of all facets of the enormous markets in counterfeit products.

11 3. Online sales of counterfeit products are a major problem for intellectual property
12 holders such as Coach. Online sales of counterfeit products also injure consumers who believe
13 that they are purchasing genuine merchandise and instead receive knockoffs that are of poor
14 quality and construction.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
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[REDACTED]

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[REDACTED]

12. In reviewing eBay listings, it is critical that we are permitted to rely on the listing party's description of the goods. eBay mandates that sellers not make misrepresentations in product descriptions, and Gibney necessarily relies on non-counterfeiters to describe listed products accurately. The sheer quantity of counterfeit goods online is staggering. If we cannot rely on the truth of the statements by non-counterfeiters in listings to make our determination of authenticity, then we and all intellectual property holders are powerless to combat online counterfeiting.

13. If a product is described as "New," we have to be able to rely on the truth of that statement in determining whether it could possibly have been manufactured or licensed by the intellectual property holder. For purposes of handbags, "New" means "of recent origin, production or purchase" or "recently manufactured." The term "New" is not used on eBay to describe a product that is several years old. Description of a product as "New" denotes that the product features the latest in fashion and technology. If a handbag is described as "New," the buyer believes that she is obtaining a recently-manufactured and cutting-edge product.

[REDACTED]

[REDACTED] That process involves logging into a

1 VeRO account and entering information onto an online form. The information includes
2 identifying the offending listing and indicating a reason that the listing should be removed.

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 [REDACTED] In all,
8 under the [REDACTED] Gibney sent only 18 letters to eBay sellers residing
9 in the state of Washington. Each of these letters concerns Coach trademarks only, and none of
10 the letters addresses copyrights.

11 [REDACTED]
12 [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED] Throughout our investigation of Ms. Kim's eBay listing, we relied
18 on her description of the bag as "NEW." A true and correct copy of Ms. Kim's listing is
19 attached as **Exhibit B**.

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

1 [REDACTED]
2 21. On October 5, 2010, a Gibney paralegal used a software program to contact the
3 VeRO program to request that eBay remove Ms. Kim's listing from eBay, which was in
4 violation of eBay's policy against the sale of infringing merchandise.

5 22. On October 8, 2010, a letter was sent to Ms. Kim regarding her "NEW" Coach
6 handbag listed on eBay. A true and correct copy of that letter is attached to this declaration as
7 **Exhibit C.**

8 23. Late in the evening on Thursday, October 14, 2010, Ms. Kim sent an email
9 response to my letter, stating that her item is authentic.

10 24. On October 15, 2010, after Ms. Kim's email was read, Gibney staff reviewed
11 Ms. Kim's listing again. After review, and in reliance upon Ms. Kim's October 14 assertions,
12 Gibney staff sent an email to eBay on the afternoon of Friday, October 15, 2010, requesting
13 that Ms. Kim's listing be reinstated. A true and correct copy of that email is attached to this
14 declaration as **Exhibit D.**

15 25. On the morning of Monday, October 18, 2010, eBay responded to the email
16 from Gibney staff, indicating that Ms. Kim's listing had been reinstated, that Ms. Kim and all
17 bidders had been notified, and that any consequences Ms. Kim had suffered as a result of the
18 removal of her listing had been eliminated. A true and correct copy of that email is attached to
19 this declaration as **Exhibit E.**

20 26. Neither I nor Gibney staff have had direct contact with Ms. Kim since we
21 received her email on October 14, 2010. Neither I nor Gibney staff have had indirect contact
22 with Ms. Kim since she received a notification from eBay that her listing was being reinstated.

23 27. Plaintiff's statement that "Clearly Coach did nothing to investigate their threats
24 against [Ms. Kim]" is false. In fact, an investigation took place, as described above, before any
25 letter was sent to Ms. Kim and before eBay was contacted. Moreover, after it became clear
26 what had occurred (*i.e.*, that Ms. Kim had misrepresented the bag in her listing as "NEW"),

1 Gibney staff did not hesitate to conduct a further investigation and take aggressive action to
2 prevent any disruption of Ms. Kim's affairs. Ms. Kim's listing was reinstated as a result of that
3 further investigation, as Ms. Kim's attorneys would know if they conducted any inquiry into
4 the matter.

5 28. More generally, Gibney staff clearly indicated by our actions on October 15,
6 2010 that we were no longer taking the position that Ms. Kim's bag is counterfeit. It would
7 therefore be false to portray my October 8, 2010 letter as Coach's or my position on the matter
8 after October 15, 2010.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 30. The [REDACTED] was not designed to suppress second-
15 hand sales of Coach products.

16 I declare under penalty of perjury under the laws of the United States of America that
17 the foregoing is true and correct.

18 Executed at New York, New York, this 28th day of March, 2011.

19
20 /s/ John Macaluso
21 John Macaluso
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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2011, I electronically filed the foregoing, under seal, with the Clerk of the Court using the CM/ECF System.

Copies of the foregoing document were served on counsel of record via email, by agreement, at the following email addresses:

- **Jay S Carlson**
JayCarlson.legal@gmail.com
- **Christopher Robert Carney**
christopher.carney@cgi-law.com
- **Jason Moore**
jason@vaneyk-moore.com

Dated this 28th day of March, 2011.

s/ *Stellman Keehnel*
Stellman Keehnel, WSBA No. 9309

WEST\223325909.1

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 12, 2011, I electronically filed the foregoing with the
3 Clerk of the Court using the CM/ECF System which will send notification of such filing to all
4 counsel or record.

5 Dated this 12th day of April, 2011.

6 *s/ Stelman Keehnel*
7 _____
8 Stelman Keehnel, WSBA No. 9309
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DECLARATION OF MACALUSO IN SUPPORT
OF COACH'S OPPOSITION TO MOTION TO
STRIKE - 9
No. 2:11-cv-00214-RSM

DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044 | Tel: 206.839.4800

EXHIBIT A

John Macaluso

665 FIFTH AVENUE, NEW YORK, NY 10022

(212) 688 – 5151 – Phone

jmacaluso@gibney.com – Email

PROFESSIONAL EXPERIENCE

Partner – Intellectual Property Practice Group

Gibney, Anthony & Flaherty, LLP, New York, NY (1999 to Present)

Associate

Gibney, Anthony & Flaherty, LLP, New York, NY (1990 to 1998)

AREAS OF PRACTICE

Trademark and copyright protection and enforcement, computers and new media, corporate and sports law.

Successfully litigated scores of trademark counterfeiting and copyright infringement cases, as well as civil and administrative proceedings under the UDRP, DMCA and ACPA.

Counsel clients in the luxury goods, fashion, sports and entertainment industries in developing nationwide programs to protect and enforce intellectual property rights.

Advise federal, state and local law enforcement agencies on procedures to combat the counterfeiting of trademarked goods, as well as training members of these agencies as an expert in the identification of counterfeit merchandise.

Co-founder of Gibney's Online Brand Protection Group, supervising a staff devoted exclusively to protecting and enforcing brand owner's rights on the World Wide Web.

John Macaluso

665 FIFTH AVENUE, NEW YORK, NY 10022

(212) 688 – 5151 – Phone

jmacaluso@gibney.com – Email

PRIOR EMPLOYMENT

Law Clerk

United States Department of Justice, United States Attorney, EDNY, Brooklyn, NY (September 1989 – June 1990)

Legal Intern

Commodity Futures Trading Commission, New York, NY (January 1989 – May 1989)

Summer Associate

The Port Authority of New York and New Jersey, New York, NY (May 1988 – August 1988)

Law Clerk

Wingate & Cullen, Brooklyn, NY (September 1986 – August 1987)

REPORTED DECISIONS

Louis Vuitton Malletier and Oakley, Inc. v. Veit, 211 F.Supp.2d 567, E.D.Pa., Jun 26, 2002

Rolex Watch U.S.A., Inc. v. Jones, 2002 WL 596354, S.D.N.Y., Apr 17, 2002

Time Warner Entertainment Co., L.P. v. Does Nos. 1-2, 876 F.Supp. 407, E.D.N.Y., Dec 19, 1994

Microsoft Corp. v. CMOS Technologies, Inc., 872 F.Supp. 1329, D.N.J., Oct 24, 1994

Saban Entertainment v. 222 World Corp. 865 F.Supp 1047, S.D.N.Y. Oct 19, 1994

Polo Ralph Lauren Corp. v. Chinatown Gift Shop, 855 F. Supp. 648, S.D.N.Y., Jun 21, 1994

BAR ADMISSIONS

New York State – March 27, 1991

United States District Court, Eastern District of New York – July 30, 1991

United States District Court, Southern District of New York – July 30, 1991

District of Columbia – February 27, 1992

United States Supreme Court – June 1, 2004

United States Court of Appeals for the Federal Circuit – June 1, 2004

United States Court of Federal Claims – June 1, 2004

United States Court of Appeals for the Armed Forces – June 1, 2004

John Macaluso

665 FIFTH AVENUE, NEW YORK, NY 10022

(212) 688 – 5151 – Phone

jmacaluso@gibney.com – Email

PRO HAC VICE ADMISSIONS

United District Court for the:

Central District of California;
Northern District of California;
Southern District of California;
Eastern District of Illinois
District of Massachusetts
District of Nebraska
District of New Jersey
Northern District of New York
Eastern District of Pennsylvania
District of Puerto Rico
Southern District of Texas
District of Utah
Virgin Islands District Court

PROFESSIONAL MEMBERSHIPS & AFFILIATIONS

International AntiCounterfeiting Coalition

Co-chair, Internet Task Force

International Trademark Association

Internet Committee, Online Trademark Use Subcommittee

American Bar Association

New York State Bar Association

SEMINARS & SPEAKING ENGAGEMENTS

International Anticounterfeiting Coalition Annual Conference – “Turmoil and Evolution: Internet Liability Issues in the US and Europe” – Atlanta, GA, October 14, 2009.

International Anticounterfeiting Coalition Annual Conference – “State of the Net: A Cyberview of internet Enforcement” – Washington, DC, October 18, 2007.

International Anticounterfeiting Coalition Annual Conference – Moderator: “Recent Federal Prosecutions in Trademark Counterfeiting/Internet Cases, the Link Between Counterfeiting and

John Macaluso

665 FIFTH AVENUE, NEW YORK, NY 10022
(212) 688 – 5151 – Phone
jmacaluso@gibney.com – Email

Terrorism and Aspects of Civil Anticounterfeiting Enforcement in New York” - New York, NY, April 30, 2003.

United States Patent & Trademark Office – A Trademark Law Overview: Trends in Litigation and Anticybersquatting Procedures - Crystal City, VA January 31, 2002.

United States Patent & Trademark Office – Domain Name Protection and Enforcement – Crystal City, VA – February 1, 2001.

International Anticounterfeiting Coalition Annual Conference – Moderator: “Legal Survey of Decisions Related to Anticounterfeiting” - Chicago, IL October 15, 1999.

United States Customs and Border Protection – Seminars and Product Identification Training – JFK Airport, NY; Newark, NJ; Houston, TX; Laredo, TX; Chicago, IL; Detroit, MI; Salt Lake City, UT; San Diego, CA:

Florida Department of Law Enforcement Annual Conference – Speaker, “Federal and State Civil and Criminal Trademark and Anticounterfeiting Laws” Key West, FL.

Florida Department of Law Enforcement Annual Conference – Speaker, “Federal and State Civil and Criminal Trademark and Anticounterfeiting Laws” Tallahassee, FL November 6, 1997.

Western States Investigators Coalition Annual Conference – Speaker, “Protection of Intellectual property Rights and Enforcement of Civil Trademark Laws” – Las Vegas, NV.

United States Customs and Border Protection – Trademark Enforcement and Product Identification Training at various ports in the US and Commonwealth Territories.

EDUCATION

St. John’s University School of Law, Jamaica, NY

Juris Doctor, May 1990

Honors / Achievements: Moot Court, Junior Bar

Fordham University College of Business Administration, Bronx, NY

Bachelor of Science, Finance, May 1986

Honors / Achievements: Varsity Letters in Baseball (Div I-A) and Football (Div. III-A); Dean’s List; Regent’s Scholarship; ILA Local 1814 Scholarship; President – Finance Society

EXHIBIT B



Contact Info Reports

Home Page



Online Trading



Listing Information: 140460433842

HELP

Return to Results Table View Item Listing

<< Prev Listing | (1 of 1) | Next Listing >>

Listing Information



Category: Clothing, Shoes & Accessories: Women's Handbags & Bags: Handbags & Purses
Item Title: NWT COACH PURSE! Pieced Strap Tote
Quantity: 1
Last Price: 8.50 (USD)
Listing Site: United States
Last Price(USD): 8.50 (USD)
Start Time: 2010-09-30 18:44:14
End Time: 2010-10-07 18:44:14
Trading Status: Closed
Seller: [hobbes472kbd](#)
Description: NEW WITH TAGS! COACH PIECED STRAP TOTE! Never been used, original tag still attached as well as the packaging covering the hardware that attaches the strap to the bag. It is super cute with the colorful leather strap! It is a slightly offwhite pebbled leather on the bottom third of the purse, then a cream colored canvas on the top 2/3rd of the purse. The colors are not exactly the same, but close. The interior is a bright pink with a zip pocket, opposite side of that is two additional pockets that could hold a cell phone. It is a large tote with the rectangle bottom measuring 6.5" x 12.5". The height of the tote is 14.5". The strap length, including the hardware is 20". It would be a great addition to anyone's collection! Thanks for looking, and happy bidding!

Number of Bids: 4
Starting Price: 1.99 (USD)
Listing Currency: USD (US Dollar)
BuyNow Price:
Location: Seattle, Washington
Country: US
Item Activity: Delisted On User Request
Seller Status: Previously Warned

Item Specifics:

Main Color: White
Brand: Coach
Material: Leather&Canvas
Style: Tote
Size: Large

Listing Action

	modify	editor	time
Item Violation	IP Infringement	rmathews4	2010-10-05 15:59:29

Update Information Update and Return Request PIA Information

Listing Action History

time	user/seller	description
2010-10-05 15:59:29	rmathews4	Request to Shut Down Trading Site
2010-10-05 15:59:25	rmathews4	Request to Shut Down Trading Site
2010-10-05 15:58:36	rmathews4	Item Violation updated: IP Infringement
2010-10-05 13:13:45	cillg4	Item moved to Activity Queue

NEW WITH TAGS! COACH PIECED STRAP TOTE! Never been used, original tag still attached as well as the packaging covering the hardware that attaches the strap to the bag. It is super cute with the colorful leather strap! It is a slightly offwhite pebbled leather on the bottom third of the purse, then a cream colored canvas on the top 2/3rd of the purse. The colors are not exactly the same, but close. The interior is a bright pink with a zip pocket, opposite side of that is two additional pockets that could hold a cell phone. It is a large tote with the rectangle bottom measuring 6.5" x 12.5". The height of the tote is 14.5". The strap length, including the hardware is 20". It would be a great addition to anyone's collection! Thanks for looking, and happy bidding!



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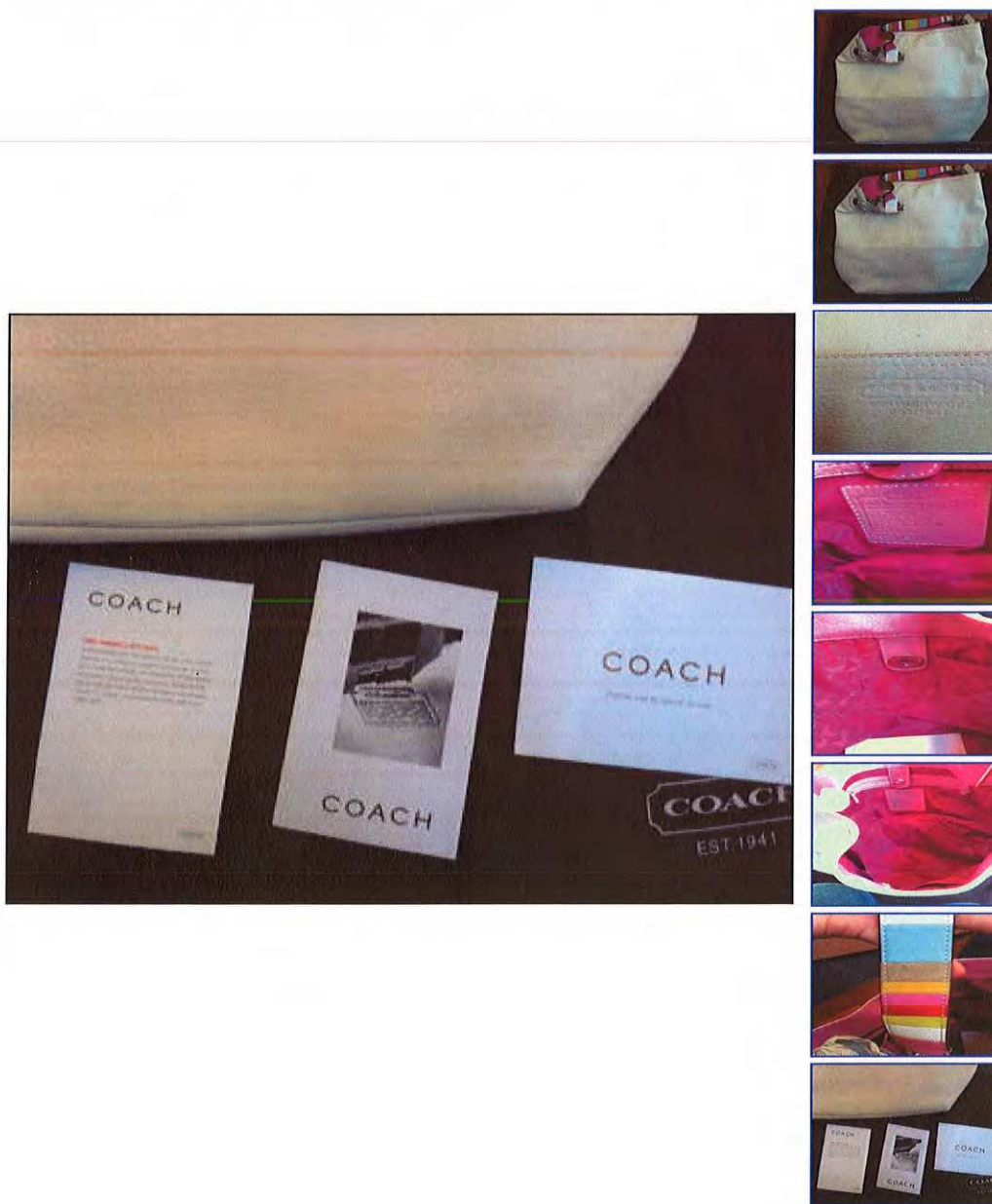


EXHIBIT C



**GIBNEY
ANTHONY &
FLAHERTY LLP**

Attorneys at Law
665 Fifth Avenue
New York, NY 10022
212.688.5151
212.688.8315 Fax
www.gibney.com

John Macaluso
212.688.5151
coach@gibney.com

October 8, 2010

BY EMAIL: ginayunkim@gmail.com
AND FIRST CLASS MAIL

Gina Kim
9069 17th Avenue SW
Seattle, WA 98106

Re: Coach, Inc.

Dear Ms. Kim:

This firm is counsel to Coach, Inc. and Coach Services, Inc. (hereinafter collectively referred to as "Coach"), with respect to certain intellectual property matters. Coach is the owner of the federally-registered "COACH" trademark, among others (the "Coach Trademarks").

It has recently come to our attention that you are offering for sale and selling merchandise bearing counterfeits of the Coach Trademarks (the "Infringing Merchandise") on eBay.com.

Such action is likely to cause confusion and constitutes trademark counterfeiting, infringement and dilution of our clients' intellectual property rights. Your conduct violates federal and state trademark laws. As a result, you may be held liable for trademark counterfeiting and infringement. The penalties for such conduct are severe and may include injunctive relief, actual damages, statutory damages of up to \$2,000,000 for each trademark that has been counterfeited, costs and attorneys' fees.

Therefore, we demand that you immediately cease and desist from any and all offering for sale, sale, distribution, importation, manufacture, advertisement, promotion and display of the Infringing Merchandise. We also demand that you do the following immediately:

1. Surrender all Infringing Merchandise in your possession, custody or control.
2. Provide the identity of the source of the Infringing Merchandise.

San Francisco Office: Two Transamerica Center, 505 Sansome Street, Suite 1200, San Francisco, CA 94111 tel 415.901.2270

Associated Offices: Gros & Waltenspuhl, Rue Beauregard 9, CH-1204 Geneva, Switzerland tel +41 22.311.3833
Magrath LLP, 66/67 Newman Street, London, W1T 3EQ, United Kingdom tel +44 207.495.3003



3. Make payment to "Coach, Inc." by Cashier's Check, Certified Check or Money Order, for all damages and costs incurred by our clients in connection with your infringing conduct, in the amount of \$300.

We strongly urge you not to contact the supplier of the Infringing Merchandise or to take any other action which would interfere with Coach's ability to eliminate Infringing Merchandise from the marketplace and will hold you responsible for your complicity in any such actions to the maximum extent provided by law.

Please complete the information below and return it along with the merchandise and payment to the undersigned at: Gibney, Anthony & Flaherty, LLP, 665 Fifth Avenue, New York, NY 10022.

You hereby warrant and represent that:

1. Your eBay.com seller ID is: _____.
2. All Infringing Merchandise has been withdrawn from eBay.com and all other venues and you have surrendered all Infringing Merchandise in your possession or control to the undersigned counsel for Coach.
3. You sold _____ pieces of Infringing Merchandise and your profits from these sales were \$ _____.
4. Your supplier(s) for the Infringing Merchandise and its (their) contact information is:

5. You will never again advertise, manufacture, offer for sale, sell or otherwise distribute the Infringing Merchandise in any venue, including, but not limited to, eBay.com.
6. You have made monetary payment of \$300 to Coach, either by certified check or money order, made payable to "Coach, Inc." based upon your profits and Coach's attorneys' fees and costs in connection with your sale of the Infringing Merchandise.



GIBNEY ANTHONY & FLAHERTY LLP

IN WITNESS WHEREOF, you agree to the foregoing.

Date: _____

Print Name: _____

Signature: _____

Please be advised that your failure to respond or to comply with these demands before **October 15, 2010**, may result in Coach taking legal action to enforce their rights, all of which are hereby expressly reserved.

Sincerely,

Gibney, Anthony & Flaherty, LLP

By:

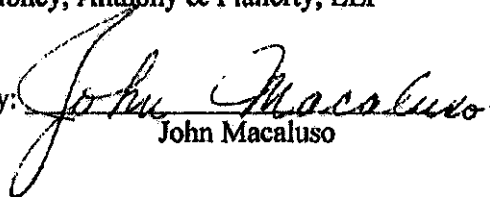

John Macaluso



EXHIBIT D

Isselin, Michael

From: Coach IP Counsel
Sent: Friday, October 15, 2010 3:52 PM
To: 'vero@ebay.com'; 'schaffin@ebay.com'
Subject: Coach, Inc. and Coach Services, Inc.
October 15, 2010

BY ELECTRONIC MAIL: vero@ebay.com; schaffin@ebay.com

Re: Coach, Inc. and Coach Services, Inc.

I, the undersigned, certify under penalty of perjury that I am an agent authorized to act on behalf of the owner of certain intellectual property rights, said owner being named Coach, Inc. and Coach Services, Inc. ("IP Owner").

Please be advised that we recently requested the following item by vendor " **hobbes472kbd**" to be cancelled on our good faith belief that the merchandise was counterfeit:

140460433842

We request the vendor be allowed to relist the items and the high bidder be notified of this matter.

We appreciate your continued cooperation and apologize for any inconvenience this may have caused.

Regards,
Gibney, Anthony & Flaherty LLP

EXHIBIT E

Isselin, Michael

From: eBay Customer Support - vero [vero@ebay.com]
Sent: Monday, October 18, 2010 11:07 AM
To: Coach IP Counsel
Subject: Re: VE62823 Coach, Inc. and Coach Services, Inc. (KMM33904144V14406L0KM)

Dear VeRO Participant,

Thank you for writing eBay in regard to your request to reinstate listing, 140460433842.

We appreciate your willingness to communicate and work with sellers who have had listings removed at your request. We have reinstated the listing in question and have notified hobbess472kbd and all participating bidders. We have also removed any consequence the seller may have incurred due to the removal of the listing.

We appreciate your participation in the eBay VeRO Program and your desire to resolve this issue with the seller.

Sincerely,
Michael B.

eBay Customer Support

Original Message Follows:

October 15, 2010

BY ELECTRONIC MAIL: vero@ebay.com; schaffin@ebay.com

Re: Coach, Inc. and Coach Services, Inc.

I, the undersigned, certify under penalty of perjury that I am an agent authorized to act on behalf of the owner of certain intellectual property rights, said owner being named Coach, Inc. and Coach Services, Inc. ("IP Owner").

Please be advised that we recently requested the following item by vendor " hobbess472kbd" to be cancelled on our good faith belief that the merchandise was counterfeit:

140460433842

We request the vendor be allowed to relist the items and the high bidder be notified of this matter.

We appreciate your continued cooperation and apologize for any inconvenience this may have caused.

Regards,
Gibney, Anthony & Flaherty LLP

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