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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 DEFENDANTS'
MOTION TO STRIKE CLASS
ALLEGATIONS**

[FILED UNDER SEAL]

I, John Macaluso, declare as follows:

1. I am an attorney for Coach, Inc. and Coach Services, Inc. (collectively, "Coach Companies") 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 Companies, identified counterfeit products is highly confidential. Public

DECLARATION OF MACALUSO IN SUPPORT OF MOTION TO STRIKE CLASS ALLEGATIONS - 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 disclosure of this information would enable counterfeiters to evade detection. I am supplying
2 this information in the understanding that plaintiff's attorneys will maintain its confidentiality
3 and that this declaration will be filed under 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 Companies. Online sales of counterfeit products also injure consumers
13 who believe that they are purchasing genuine merchandise and instead receive knockoffs that
14 are of poor quality and construction.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
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[REDACTED]

13. [REDACTED]

[REDACTED] That process involves logging into a VeRO account and entering information onto an online form. The information includes identifying the offending listing and indicating a reason that the listing should be removed.

14. [REDACTED]

[REDACTED]

[REDACTED] In all, under the [REDACTED] Gibney sent only 18 letters to eBay sellers residing in the state of Washington. Each of these letters concerns Coach Companies' trademarks only, and none of the letters addresses copyrights. Except for those 18 letters to Washington eBay sellers, Gibney did not send any other letters to

1 Washington residents in connection with any Washington resident's attempt to sell infringing
2 and counterfeit Coach Companies products on an online outlet such as Craigslist or other such
3 services.

4 [REDACTED]
5 [REDACTED]
6 16. Drawing every possible inference in plaintiff's favor, **only three individuals**
7 **could possibly meet the class definition in this case.** Of the 18 Washington residents who
8 received letters under the [REDACTED] 15 can be conclusively established
9 to have been selling a counterfeit Coach Companies product because the product listed was
10 clearly not manufactured by Coach Companies.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
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[REDACTED]

[REDACTED] Drawing every inference in plaintiff's favor, this leaves only two individuals who could possibly join Ms. Kim as members of a putative class.

21. Regarding the two individuals who could possibly join Ms. Kim as members of a putative class, Coach Companies provide below the basis for flagging their listings (names are abbreviated, and names and e-mail addresses are redacted in supporting exhibits):

[REDACTED]

22. Thus, including Ms. Kim, there can be, at most, three individuals who meet the class definition in this case. [REDACTED]

[REDACTED]

[REDACTED] Each of the remaining 15 recipients of letters under the Online Brand Protection Program was selling a product that was clearly counterfeit.

23. While not directly pertinent to Coach Companies' Motion to Strike Class Allegations, in Ms. Kim's case, there was a basis for identifying her listing as potentially

1 attempting to sell counterfeit Coach Companies product. [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] Throughout our investigation of Ms.
6 Kim's eBay listing, we relied on her description of the bag as "NEW." A true and correct copy
7 of Ms. Kim's listing is attached as **Exhibit N**.

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

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

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[REDACTED]

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

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

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

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

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

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

3 Executed at New York, New York, this 14th day of April, 2011.

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s/ John Macaluso

John Macaluso

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 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 14th day of April, 2011.

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

WEST\223350418.3

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 N



Home Page

Online Trading



Listing Information: 140460433842

[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 PURSEL 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: [Redacted]

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!

Item Specifics:

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

Number of Bids: 4

Starting Price: 1.99 (USD)

Listing Currency: USD (US Dollar)

Buy Now Price:

Location: Seattle, Washington

Country: US

Item Activity: Delisted On User Request

Seller Status: Previously Warned

Listing Action

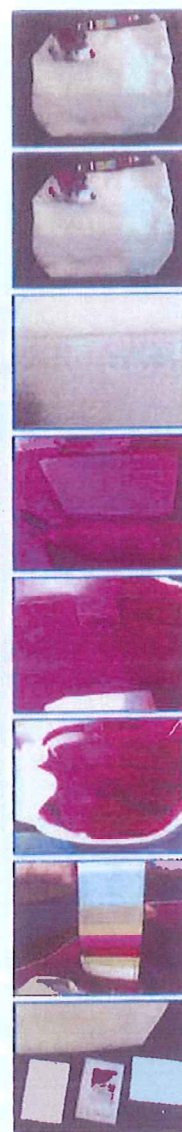
	modify	editor	time
Item Violation	IP Infringement	[Redacted]	2010-10-05 15:59:29

[Update Information](#) [Update and Return](#) [Request PIA Information](#)

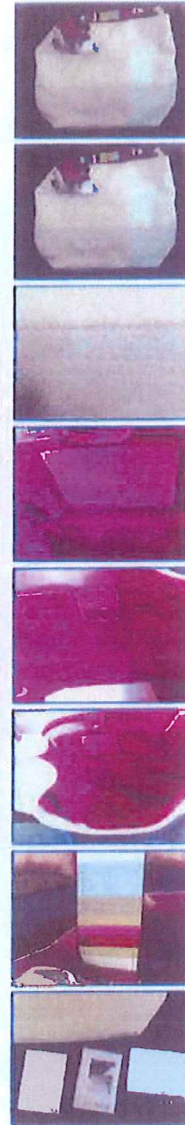
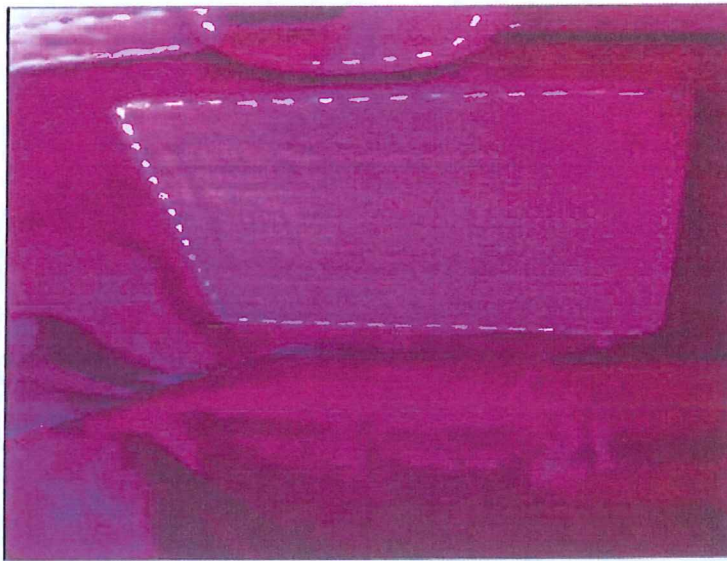
Listing Action History

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

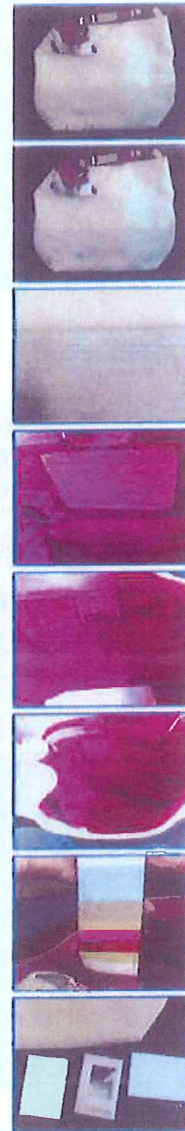
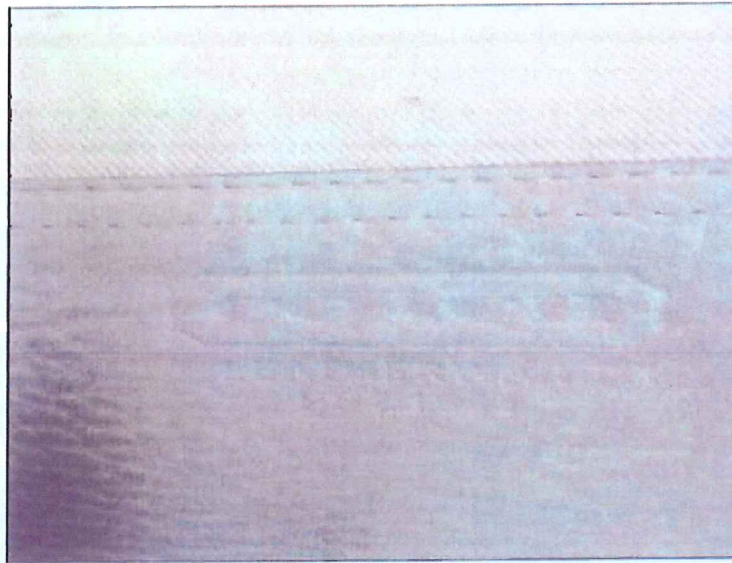
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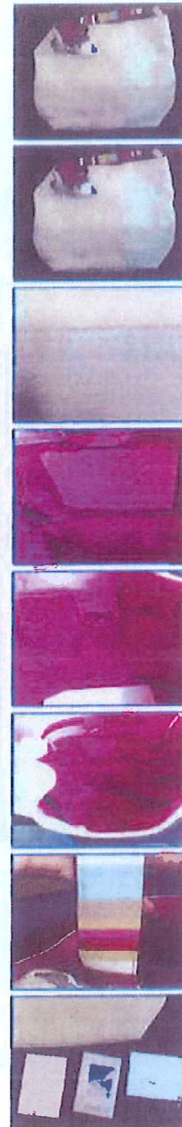
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EXHIBIT O



**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

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



GIBNEY ANTHONY & FLAHERTY ^{LLP}

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:

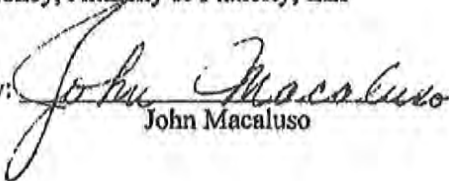

John Macaluso



EXHIBIT P

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 Q

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 hobbes472kbd 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 " 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

This written advice was not intended or written to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer. This statement is made pursuant to I.R.S. Circular 230. This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and delete this message from your system. Thank you.