

1 THE HONORABLE RICARDO S. MARTINEZ

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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 GINA KIM, on behalf of a class consisting
11 of herself and all other persons similarly
situated,

12 Plaintiffs, and as to Ms.
13 Kim, counterclaim
defendant,

14 v.

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

16 Defendants and, as to
17 Coach, Inc., counterclaim
18 plaintiff.

NO. 2:11-cv-00214-RSM

**COACH SERVICES, INC.'S ANSWER,
DEFENSES, AND AFFIRMATIVE
DEFENSES TO FIRST AMENDED
COMPLAINT**

19 Pursuant to Federal Rule of Civil Procedure 12(a)(1)(A)(ii), defendant Coach Services,
20 Inc. ("Coach") hereby submits its answer to the First Amended Complaint¹ (the "Amended
21 Complaint") filed by plaintiff Gina Kim on behalf of a putative class consisting of Ms. Kim and
22 all other Washington residents similarly situated, and filed by plaintiffs Jay Carlson, Carlson
23 Legal, Christopher Carney, Carney Gillespie & Isitt PLLC, Jason B. Moore, and Van Eyk &
24

25 ¹ On March 22, 2011, counsel for Ms. Kim filed a stipulated request for leave to file a second amended complaint.
26 (Dkt. No. 20.) The Court has not yet entered the second amended complaint. For purposes of Coach's answer, defenses, and affirmative defenses, the second amended complaint is identical to the first amended complaint. For this reason, Coach directs its answer, defenses, and affirmative defenses at whichever complaint is currently extant.

COACH SERVICES, INC.'S ANSWER, DEFENSES,
AND AFFIRMATIVE DEFENSES TO FIRST
AMENDED COMPLAINT – 1
NO. 2:11-CV-00214-RSM

DLA Piper LLP (US)
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Seattle, WA 98104-7044 • Tel: 206.839.4800

1 Moore, PLLC. Coach’s answer, defenses, and affirmative defenses are based on information
2 and knowledge thus far secured by Coach, and Coach reserves the right to amend or
3 supplement its answer, defenses, and affirmative defenses based on facts later discovered,
4 pleaded, or offered. To the extent that any express or implied allegations in the Amended
5 Complaint are not specifically admitted herein, Coach hereby denies any such allegations.

6 **ANSWER TO THE FIRST AMENDED COMPLAINT**

7 **SUMMARY**

8 Coach denies each and every allegation in plaintiffs’ “Summary,” except to admit that
9 its law firm Gibney, Anthony & Flaherty, LLP (“Gibney”) monitors certain items listed for sale
10 on eBay, that Gibney alerts eBay when counterfeit Coach products are detected, that Gibney
11 delivers communications to sellers when counterfeit Coach products are detected, and that
12 Ms. Kim is a former employee of Coach, Inc. Coach specifically denies that it “is trying to
13 force all consumers to purchase Coach products” only in Coach’s retail stores. Coach
14 specifically denies that it “wantonly accuses consumers of infringing its trademarks”
15 Coach specifically denies that it makes any accusations of counterfeiting “[w]ithout
16 investigating the validity of its allegations” Coach specifically denies that it “fails to
17 conduct even a minimally reasonable investigation into its counterfeiting claims”

18 **I. NATURE OF PLAINTIFF’S CLAIMS**

19 To the extent that this section contains allegations of fact, Coach denies the allegations
20 contained therein, except to state that counsel for Coach indicated to counsel for Ms. Kim that
21 counsel for Ms. Kim had committed actionable defamation that would be the subject of a claim.
22 Coach specifically denies that any threats were made.

23 **II. PARTIES**

24 1. Coach denies that Ms. Kim is representative of any purported class in this
25 matter. As to the remaining allegations in Paragraph 1, Coach lacks sufficient knowledge or
26

1 information to form a belief as to the truth of the allegations contained therein and, on that
2 basis, denies such allegations.

3 2. Coach denies that the putative class described in Paragraph 2 is valid under
4 Fed.R.Civ.P. 23. As to the remaining allegations in Paragraph 2, Coach lacks sufficient
5 knowledge or information to form a belief as to the truth of the allegations contained therein
6 and, on that basis, denies such allegations.

7 3. Coach admits that Coach, Inc. and Coach Services, Inc. are Maryland
8 corporations and that their principal places of business are not in Washington. The meaning of
9 the term “extensive” is undefined and, on that basis, Coach denies the remaining allegations in
10 Paragraph 3.

11 4. Coach denies that counsel for Ms. Kim “have been directly threatened with a
12 defamation lawsuit by Coach’s counsel.” As to the remaining allegations in Paragraph 4,
13 Coach lacks sufficient knowledge or information to form a belief as to the truth of the
14 allegations contained therein and, on that basis, denies such allegations, except to acknowledge
15 that Ms. Kim’s lawyers have been made named plaintiffs in this lawsuit.

16 **III. JURISDICTION AND VENUE**

17 1. Answering Paragraph 1, Coach lacks sufficient knowledge or information to
18 form a belief as to the truth of the allegations contained therein and, on that basis, denies such
19 allegations.

20 2. Paragraph 2 contains legal conclusions to which no response is necessary. To
21 the extent that Paragraph 2 contains allegations of fact, Coach admits that the Amended
22 Complaint purports to invoke jurisdiction under 28 U.S.C. §§ 1331, 1332, 1367, and 2201-02.

23 3. Coach admits that its affiliates market and sell trademarked goods in
24 Washington. Coach denies the remaining allegations in Paragraph 3.

25 4. Paragraph 4 contains legal conclusions to which no response is necessary. To
26 the extent that Paragraph 4 contains allegations of fact, Coach admits that the Amended

1 Complaint purports to invoke venue under 28 U.S.C. §§ 1391(a), (b), & (c).

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

3 1. Answering Paragraph 1, Coach lacks sufficient knowledge or information to
4 form a belief as to the truth of the allegations contained therein and, on that basis, denies such
5 allegations.

6 2. Answering Paragraph 2, Coach lacks sufficient knowledge or information to
7 form a belief as to the truth of the allegations contained therein and, on that basis, denies such
8 allegations.

9 **1. “VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT”**

10 1. Coach incorporates and realleges the preceding paragraphs as if set forth fully
11 herein.

12 2. Paragraph 2 contains legal conclusions to which no response is necessary. To
13 the extent that Paragraph 2 contains allegations of fact, Coach lacks sufficient knowledge or
14 information to form a belief as to the truth of the allegations contained therein and, on that
15 basis, denies such allegations.

16 3. Coach admits that, in October 2010, Gibney notified eBay that Gibney believed,
17 on the basis of Ms. Kim’s eBay listing, that a handbag listed for sale by Ms. Kim is counterfeit
18 and infringed Coach’s trademarks. Coach denies the remaining allegations in Paragraph 3.
19 Coach specifically denies that it acted “without conducting any reasonable investigation.”

20 4. Coach admits that the listing referenced in the preceding paragraph was briefly
21 removed from eBay but denies that Ms. Kim’s characterization, which implies that the listing
22 was never re-instated, is accurate. Coach further denies that it made any claims at all. As to
23 the remaining allegations in Paragraph 4, Coach lacks sufficient knowledge or information to
24 form a belief as to the truth of the allegations contained therein and, on that basis, denies such
25 allegations.

1 5. Coach admits that, on or about October 8, 2010, Gibney sent a letter to Ms. Kim
2 regarding her eBay listing. Coach denies that Ms. Kim's characterization of the letter is
3 accurate or complete, and submits that the letter is the best evidence of its contents.

4 6. Answering Paragraph 6, Coach lacks sufficient knowledge or information to
5 form a belief as to the truth of the allegations contained therein and, on that basis, denies such
6 allegations.

7 7. Coach denies the allegations contained in Paragraph 7.

8 8. Coach denies the allegations contained in Paragraph 8.

9 9. Coach denies the allegations contained in Paragraph 9.

10 10. Coach denies the allegations contained in Paragraph 10.

11 11. Coach denies the allegations contained in Paragraph 11.

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

14 1. Coach incorporates and realleges the preceding paragraphs as if set forth fully
15 herein.

16 2. Coach admits the allegations in Paragraph 2.

17 3. Coach admits that, in October 2010, Gibney notified eBay that Gibney believed,
18 on the basis of Ms. Kim's eBay listing, that a handbag listed for sale by Ms. Kim is counterfeit
19 and infringed Coach's trademarks. Coach denies the remaining allegations in Paragraph 3.

20 4. Coach admits that, on October 8, 2010, Gibney sent a letter to Ms. Kim
21 regarding her eBay listing. Coach denies that Ms. Kim's characterization of the letter is
22 accurate or complete, and submits that the letter is the best evidence of its contents. Coach
23 denies the remaining allegations in Paragraph 4.

24 5. Answering Paragraph 5, Coach lacks sufficient knowledge or information to
25 form a belief as to the truth of the allegations contained therein and, on that basis, denies such
26 allegations.

1 6. Coach denies the allegations in Paragraph 6.

2 7. Coach denies the allegations in Paragraph 7.

3 8. Coach denies the allegations in Paragraph 8.

4 9. Coach denies the allegations in Paragraph 9.

5 **3. “DEFAMATION BY DEFENDANT AGAINST PLAINTIFF”**

6 1. Coach incorporates and realleges the preceding paragraphs as if set forth fully
7 herein.

8 2. Coach admits that, in October 2010, Gibney notified eBay that Gibney believed,
9 on the basis of Ms. Kim’s eBay listing, that a handbag listed for sale by Ms. Kim is counterfeit
10 and infringed Coach’s trademarks. Coach denies the remaining allegations in Paragraph 2.

11 3. Coach denies the allegations in Paragraph 3.

12 4. Answering Paragraph 4, Coach lacks sufficient knowledge or information to
13 form a belief as to the truth of the allegations contained therein and, on that basis, denies such
14 allegations.

15 5. Coach denies the allegations in Paragraph 5.

16 6. Coach denies the allegations in Paragraph 6.

17 7. Coach denies the allegations in Paragraph 7.

18 **4. “TORTIOUS INTERFERENCE WITH A BUSINESS EXPECTANCY”**

19 1. Coach incorporates and realleges the preceding paragraphs as if set forth fully
20 herein.

21 2. Coach admits that, in October 2010, Gibney notified eBay that Gibney believed,
22 on the basis of Ms. Kim’s eBay listing, that a handbag listed for sale by Ms. Kim is counterfeit
23 and infringed Coach’s trademarks. Coach denies the remaining allegations in Paragraph 2.

24 3. Coach admits that, on October 8, 2010, Gibney sent a letter to Ms. Kim
25 regarding her eBay listing. Coach denies that Ms. Kim’s characterization of the letter is
26 accurate or complete, and submits that the letter is the best evidence of its contents.

1 4. Coach denies the allegations in Paragraph 4.

2 5. Coach denies the allegations in Paragraph 5.

3 **5. “DECLARATION OF NO DEFAMATION BY PLAINTIFF’S COUNSEL”**

4 1. Coach admits that Coach, Inc. hired counsel named Stellman Keehnel, who
5 practices at DLA Piper in Seattle. Coach further admits that Mr. Keehnel has been in
6 communication with counsel for Ms. Kim. Coach further admits that, as of the filing of the
7 Amended Complaint, Mr. Keehnel had not yet filed a notice of appearance in this matter
8 because there was no occasion to do so, as the time for Coach, Inc. to appear and respond,
9 following service of process, had not run, and Coach had not yet been served. Coach denies the
10 remaining allegations in Paragraph 1. Coach specifically denies that Mr. Keehnel has been in
11 “regular communication” with counsel for Ms. Kim. Coach specifically denies that Mr.
12 Keehnel was under any obligation to appear in this case because of “repeated written and oral
13 requests” to appear.

14 2. Coach denies that Mr. Keehnel sent counsel for Ms. Kim a letter dated February
15 27, 2011. Coach denies that counsel for Ms. Kim’s characterization of any letter sent by
16 Mr. Keehnel is accurate or complete, and submits that the best evidence of the contents of any
17 letter sent to Ms. Kim’s counsel is such letter.

18 3. Coach again denies that Mr. Keehnel sent counsel for Ms. Kim a letter dated
19 February 27, 2011. Coach admits that, in a February 17, 2011 letter, Mr. Keehnel informed
20 counsel for Ms. Kim that they committed defamation. Coach denies that counsel for Ms. Kim’s
21 characterization of any letter sent by Mr. Keehnel is accurate or complete, and submits that the
22 best evidence of the contents of any letter sent to Ms. Kim’s counsel is such letter.

23 4. Coach denies that any “threat” was made. Coach admits that Mr. Keehnel
24 informed counsel for Ms. Kim that counsel for Ms. Kim committed defamation and that a claim
25 would be filed. Coach denies the remaining allegations in Paragraph 4.

26 5. Coach denies the allegations in Paragraph 5.

1 6. Coach denies that the description of counsel for Ms. Kim’s actions during the
2 interview – that they “repeated the allegations in the Complaint and answered questions about
3 the case” – is accurate or complete. As to the remaining allegations in Paragraph 6, Coach
4 lacks sufficient knowledge or information to form a belief as to the truth of the allegations
5 contained therein and, on that basis, denies such allegations.

6 7. Coach admits that Gibney sent Ms. Kim a letter, although Coach denies that
7 counsel for Ms. Kim’s characterization of the letter is accurate or complete, and submits that
8 the letter is the best evidence of its contents. Coach admits that Ms. Kim is a former Coach,
9 Inc. employee. Coach lacks sufficient knowledge or information to form a belief as to the truth
10 of the allegation that “[t]he actual product was depicted in photographs taken by Ms. Kim and
11 posted in the eBay.com advertisement” Coach denies the remaining allegations in
12 Paragraph 7. Coach specifically denies that the defamatory statements by counsel for Ms. Kim
13 were substantially true. Coach specifically denies that Coach “failed to reasonably investigate”
14 the authenticity of the product. Coach specifically denies that “[i]f Coach had reasonably
15 investigated that issue, they could have easily discovered that the product was genuine.” Coach
16 specifically denies that counsel for Ms. Kim had a “good faith basis to assert that Coach failed
17 to investigate, and the statement was substantially true.” Coach specifically denies that “[t]here
18 has been no defamation against Coach.”

19 8. Coach admits that its brand is famous. Coach lacks sufficient knowledge or
20 information to form a belief as to the truth of the allegation regarding “the reason the media
21 was interested in this Complaint in the first place” The meaning of the phrase “great deal
22 of money” is undefined and, on that basis, Coach denies the allegation regarding the amount of
23 money it spends on marketing. Coach denies the remaining allegations in Paragraph 8.

24 9. Coach denies the allegations in Paragraph 9.
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1 **V. CLASS ALLEGATIONS**

2 1. Paragraph 1 contains legal conclusions to which no response is necessary. To
3 the extent that Paragraph 1 contains allegations of fact, Coach denies the allegations in
4 Paragraph 1.

5 2. Coach denies the allegations in Paragraph 2.

6 3. Paragraph 3 contains legal conclusions to which no response is necessary. To
7 the extent that Paragraph 3 contains allegations of fact, Coach denies the allegations in
8 Paragraph 3.

9 4. Coach denies the allegations in Paragraph 4.

10 5. Coach denies the allegations in Paragraph 5.

11 6. Coach denies the allegations in Paragraph 6.

12 7. Coach denies the allegations in Paragraph 7.

13 8. No response is necessary to Paragraph 8.

14 **VI. PRAYER FOR RELIEF**

15 Coach denies that Ms. Kim is entitled to the relief sought in the Amended Complaint or
16 to any other relief.

17 **DEFENSES AND AFFIRMATIVE DEFENSES**

18 As separate and distinct defenses and affirmative defenses to the Amended Complaint,
19 Coach further alleges as follows, without admission that Coach carries the burden of proof on
20 any of the defenses set forth below:

21 1. **Failure to State a Claim.** The Amended Complaint fails to state a claim for
22 which relief can be granted.

23 2. **Unclean Hands.** Ms. Kim is not entitled to obtain recovery for damages she has
24 incurred, if any, arising out of her own wrongful conduct.

25 3. **Prior Breach.** Each and every one of Ms. Kim's causes of action in the
26 Amended Complaint is barred by the doctrine of prior breach.

1 4. **Intervening Cause.** Each and every one of Ms. Kim’s causes of action in the
2 Amended Complaint is barred by the doctrine of intervening cause.

3 5. **Kim’s Own Conduct.** Each and every one of Ms. Kim’s causes of action in the
4 Amended Complaint is barred by Ms. Kim’s own conduct.

5 6. **Estoppel.** Each and every one of Ms. Kim’s causes of action in the Amended
6 Complaint is barred by the doctrine of estoppel.

7 7. **Justification.** Each and every one of Ms. Kim’s causes of action in the
8 Amended Complaint is barred by the doctrine of justification.

9 8. **Truth.** Ms. Kim’s claim for defamation is barred by the doctrine of truth.

10 9. **Lack of Damages.** The Amended Complaint, and each purported claim by
11 Ms. Kim for relief therein, is barred because Ms. Kim has not suffered any damages as a result
12 of any acts, conduct, or omissions by Coach.

13 10. **Failure to Mitigate.** Ms. Kim is precluded from pursuing her Amended
14 Complaint and each claim for relief therein because Ms. Kim has failed to mitigate her
15 damages, if any, which she seeks to recover.

16 11. **Successful Mitigation of Damages.** Ms. Kim is precluded from pursuing her
17 Amended Complaint and each claim for relief therein because Ms. Kim has successfully
18 mitigated her damages, such that there are no damages to recover.

19 12. **Justifiable Reliance.** Coach justifiably relied on Ms. Kim’s false statement that
20 the subject bag is “NEW.” In fact, the subject bag was six or seven years old at the time
21 Ms. Kim falsely represented that the bag is “NEW.”

22 13. **No Typicality.** Ms. Kim is not typical of the class she purports to represent.

23 14. **No Numerosity.** The putative class does not satisfy the numerosity
24 requirement.

25 15. **Counsel Not Qualified.** Ms. Kim’s selected counsel are not qualified to serve
26 as class counsel.

1 Dated this 31st day of May, 2011.

2 DLA Piper LLP (US)

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4 By: *s/ Stellman Keehnel*

5 Stellman Keehnel, WSBA No. 9309
6 R. Omar Riojas, WSBA No. 35400
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16 Attorneys for defendants Coach, Inc. and Coach
17 Services, Inc., and counter claim plaintiff Coach,
18 Inc.
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 31, 2011, I electronically filed the foregoing with the Clerk
3 of the Court using the CM/ECF system which will send notification of such filing to all counsel
4 of record.

5 Dated this 31st day of May, 2011.

6 */s/ Stelman Keehnel*
7 _____
8 Stelman Keehnel, WSBA No. 9309
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