

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,

NO. 2:11-cv-00214-RSM

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

**COACH, INC.'S AND COACH
SERVICES, INC.'S STATUS REPORT &
DISCOVERY PLAN**

v.

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

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

17
18 Pursuant to the Court's July 13, 2011 Order Regarding Initial Disclosures, Joint Status
19 Report, and Early Settlement ("Scheduling Order"), Coach, Inc. and Coach Services, Inc.
20 submit this Status Report & Discovery Plan. Despite the Scheduling Order's mandate that
21 "Plaintiff's counsel ... will be responsible for starting the communications to comply with this
22 Order," plaintiffs' counsel did not do so. Therefore, defense counsel initiated the
23 communication. Defense counsel, in a voice message and in multiple e-mails, requested
24 plaintiffs' draft joint status report to review and discuss. Plaintiffs never provided a draft.
25 Plaintiffs' counsel instead, as shown by the email string attached hereto, declined to participate
26 in formulating a joint status report, stating: "You should rather expect to see documents

COACH COMPANIES' STATUS REPORT AND
DISCOVERY PLAN - 1
NO. 2:11-cv-00214-RSM

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1 seeking dismissal [of plaintiffs' claims]." Defendants are hopeful that plaintiffs will file a
2 voluntary dismissal of claims. But because plaintiffs' counsel have not yet responded to
3 defense counsel's several requests to see plaintiffs' proposed form of voluntary dismissal,
4 Coach, Inc. and Coach Services, Inc. submit this Status Report & Discovery Plan in compliance
5 with the Scheduling Order.

6 **1. NATURE AND COMPLEXITY OF THE CASE.**

7 After Gina Kim listed on eBay a single Coach bag, described in her listing as "NEW,"
8 the trademark enforcement attorney for Coach, Inc. and Coach Services, Inc. (together, "Coach
9 Companies"), acting in reliance on Kim's false listing of the bag as "NEW," appropriately
10 concluded that the listed bag was counterfeit and requested eBay to suspend the listing.
11 Immediately upon learning from Kim that her description of the bag as "NEW" was false and
12 that the bag was actually several years old and a genuine Coach product, the Coach Companies'
13 trademark enforcement attorney caused eBay to reinstate Kim's eBay account. Based solely on
14 the few days' suspension of her eBay listing resulting from her false description of the bag as
15 "NEW, Kim sued the Coach Companies, erroneously (and without any basis) claiming that the
16 Coach Companies were illegally suppressing resales of genuine Coach products. Kim has
17 subsequently conceded that she did not again list the bag on eBay after the few-days'
18 suspension of her eBay sales effort, and Kim has conceded she never sold the bag.

19 Kim originally filed the lawsuit as a class action and asserted a broad range of claims,
20 including a federal copyright-based claim and state Consumer Protection Act, defamation, and
21 tortious interference claims.

22 Early in the litigation, the Coach Companies explained to Kim's attorneys why the
23 lawsuit could not proceed as a class action and urged Kim's attorneys to drop the class
24 allegations. Kim's attorneys refused, forcing the Coach Companies to incur the significant
25 expense of preparing a motion to preclude class certification and associated detailed
26

1 declarations. Kim ultimately did not oppose the Coach Companies' anti-certification motion,
2 and the Court entered an Order striking Kim's class allegations.

3 At the time the lawsuit was commenced, two of Kim's lawyers held a widely publicized
4 press conference in which they defamed the Coach Companies by falsely stating that the Coach
5 Companies' trademark enforcement lawyer had written to Kim that the Coach Companies "are
6 going to sue you for two million dollars" and falsely stating that "Coach did nothing to
7 investigate." Coach, Inc. initially filed a defamation counterclaim against Kim's two defaming
8 attorneys because their defamatory statements caused loyal Coach customers to announce they
9 would never again buy Coach products. For reasons already explained to the Court in
10 connection with the defaming attorneys' failed anti-SLAPP effort, Coach, Inc. later filed an
11 amended counterclaim that does not assert counterclaims against Kim's attorneys. Remaining
12 in the case are Kim's defamation claim, Kim's attorneys' request for a declaration that they did
13 not defame the Coach Companies, and Coach, Inc.'s request for a declaration that it did not
14 defame Kim.

15 As noted above, the entire lawsuit arises from Kim's falsely advertising a several-years-
16 old Coach bag as "NEW." In reliance on Kim's false representation, the Coach Companies'
17 trademark enforcement lawyer concluded that the bag was counterfeit and took the appropriate
18 step of asking eBay to remove the listing. Had Kim correctly listed the bag as a "never used"
19 bag, rather than as a "NEW" bag, the Coach Companies' lawyer would not have contacted
20 eBay, and Kim would have been allowed uninterrupted advertisement of her years-old bag on
21 eBay.

22 The Coach Companies acted properly, given Kim's false representation of the bag as
23 "NEW." Each of Kim's claims is groundless. And even if the Coach Companies had done
24 something wrong, Kim suffered no damages.

25 This is not a complex case.
26

1 **2. ADR.**

2 Based on the position Kim's attorneys have taken during informal discussions, the
3 Coach Companies are certain that ADR will not be productive.

4 **3. ADR TIMING**

5 Not applicable. See No. 2 above.

6 **4. PROPOSED DEADLINE FOR JOINING ADDITIONAL PARTIES**

7 September 6, 2011.

8 **5. PROPOSED DISCOVERY PLAN**

9
10 a. FRCP 26(f) conference: Despite the Coach Companies' objections, a premature
11 FRCP 26(f) conference as to the only defendant served as of the time (Coach,
12 Inc.) occurred on March 31, 2011. On August 9 and 10, 2011, defendants
13 proposed to Kim's attorneys, in a voice message and an email, that the prior
14 FRCP 26(f) conference be deemed to apply also to Coach Services, Inc. Kim's
15 attorneys never responded.

16
17 FRCP 26(a) initial disclosures: Coach, Inc. timely served conforming initial
18 disclosures on April 14, 2011. Plaintiffs served nonconforming, inadequate
19 initial disclosures on April 14, 2011. Coach Services, Inc. timely served
20 conforming initial disclosures on August 17, 2011.

21 b. If the balance of plaintiffs' claims are not voluntarily dismissed (as Kim's
22 lawyers have suggested they will do) or disposed of on motion, the appropriate
23 subjects of discovery are: (1) facts regarding Kim's eBay listing and her false
24 listing of the bag as "NEW"; (2) alleged damages suffered by Kim, especially
25 her purported emotional distress (necessitating thorough discovery of Kim's
26 physical and emotional health, such as Rule 35 examinations of Kim and

1 depositions of parents, boyfriends, dates, spouse (if any), work supervisors, co-
2 workers, physicians, psychologists, psychiatrists, friends, neighbors, etc.); and
3 (3) issues surrounding plaintiffs' counsel Jay Carlson's and Christopher
4 Carney's defamation of the Coach Companies, including the supposed basis for
5 stating publicly that the Coach Companies did no investigation.

6 c. The Coach Companies contend that no changes need to be made to the
7 discovery limitations imposed by the Federal and Local Civil Rules.

8
9 d. Voluntary dismissal or additional motions practice may preclude the need for
10 much of the otherwise necessary discovery. In addition, the Coach Companies
11 have offered in the past to exchange documents with plaintiffs informally, to
12 maximize judicial and litigant efficiency. The Coach Companies will continue
13 to consider, as appropriate, exchanging documents informally, to minimize
14 discovery expense.

15 e. As the Court is already aware from the parties' filings regarding the need for
16 certain matters to be under seal, confidential and proprietary business
17 information of the Coach Companies is germane to claims in the lawsuit. The
18 Court should issue a protective order governing the use of such information.

19
20 **6. DISCOVERY COMPLETION DATE**

21 February 29, 2012.

22 **7. MAGISTRATE JUDGE**

23 The parties do not agree to the assignment of this case to a Magistrate Judge.

24 **8. BIFURCATION**

25 No.
26

1 **9. PRETRIAL STATEMENTS AND PRETRIAL ORDER**

2 The Coach Companies submit that the parties should comply with Local Rule 16(e), (h),
3 and (l), and 16.1.

4 **10. ANY OTHER SUGGESTIONS FOR SHORTENING OR SIMPLIFYING CASE**

5 None at this time, other than the possibility that dispositive motions may eliminate
6 additional or all of plaintiffs' claims.

7 **11. THE DATE THE CASE WILL BE READY FOR TRIAL**

8 May 23, 2012.

9 **12. WHETHER TRIAL WILL BE JURY OR NON-JURY TRIAL**

10 Plaintiffs' amended complaint includes a jury demand. If certain of plaintiffs' claims
11 survive motions practice, a jury trial may be held.

12 **13. NUMBER OF TRIAL DAYS REQUIRED**

13 Five days.

14 **14. NAMES, ADDRESSES, AND TELEPHONE OF TRIAL COUNSEL**

15 Stellman Keehnel, WSBA No. 9309
16 R. Omar Riojas, WSBA No. 35400
17 DLA Piper LLP (US)
18 701 Fifth Avenue, Suite 7000
19 Seattle, WA 98104
20 Tel: 206.839.4800
21 Fax: 206.839.4801
22 E-mail: stellman.keehnel@dlapiper.com
23 E-mail: omar.riojas@dlapiper.com

24 **15. IF ALL DEFENDANTS HAVE NOT BEEN SERVED, PLAINTIFF SHALL
25 ADVISE COURT WHEN SERVICE WILL BE EFFECTED**

26 Not applicable.

**16. WHETHER ANY PARTY WISHES A SCHEDULING CONFERENCE PRIOR
TO A SCHEDULING ORDER BEING ENTERED IN CASE.**

The Coach Companies do not request such a conference.

1 Dated this 24th day of August, 2011.

2
3 DLA Piper LLP (US)

4
5 By: *s/ Stelman Keehnel*

6 Stelman Keehnel, WSBA No. 9309
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15 Attorneys for defendants Coach, Inc. and Coach
16 Services, Inc.
17
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25
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 24, 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 of record.

- 5
- 6 • **Jay S Carlson**
JayCarlson.legal@gmail.com
 - 7 • **Christopher Robert Carney**
8 christopher.carney@cgi-law.com, margarita.vanegas@cgi-law.com
 - 9 • **Jason Moore**
10 jason@vaneyk-moore.com

11 Dated this 24th day of August, 2011.

12 /s/ Stelman Keehnel
13 Stelman Keehnel, WSBA No. 9309

14 WEST224266199.1

Keehnel, Stellman

From: Keehnel, Stellman
Sent: Tuesday, August 23, 2011 3:33 PM
To: 'Jay Carlson'; Riojas, Omar
Cc: christopher.carney@cgi-law.com; jason@vaneyk-moore.com
Subject: RE: Kim v. Coach -- JSR

Jay, no lack of cooperation on our side, if what you're trying to do is get rid of this case. Please take a second now and shoot over to me the form of document you propose. We have been urging you to share a draft with us for the past four months and, I think, have never seen a draft from you in response to our entreaties. If I missed an email in which you sent us a draft, please resend that email. Thanks much.

From: Jay Carlson [mailto:jaycarlson.legal@gmail.com]
Sent: Tuesday, August 23, 2011 1:35 PM
To: Riojas, Omar
Cc: christopher.carney@cgi-law.com; jason@vaneyk-moore.com; Keehnel, Stellman
Subject: Re: Kim v. Coach -- JSR

I think you should rather expect to see documents by us seeking dismissal on the terms outlined in our previous proposals to you. We will let the court know that you have refused to participate in dismissal on those terms.

Best.

Jay

On Mon, Aug 22, 2011 at 3:43 PM, Riojas, Omar <Omar.Riojas@dlapiper.com> wrote:
 Jay,

Stellman and I are well aware of your discussions with Patrick regarding your desire to dismiss this case while attempting to preserve any right you might have to appeal the anti-SLAPP ruling by the Court. Coach's position was outlined in Patrick's April 22, 2011 e-mail to you, Chris, and Jason, in which Coach proposed to resolve the entire dispute through dismissal with prejudice of all claims by all parties and mutual releases by all parties for all claims. We are aware that, in early May, you had a subsequent conversation with Patrick in which you proposed that the parties (i) stipulate to a Rule 54(b) judgment on the Court's anti-SLAPP ruling, and (ii) stipulate to voluntary dismissal without prejudice of the remaining claims. As Patrick expressed to you in that conversation, we do not believe that your proposal to stipulate to a Rule 54(b) judgment on the anti-SLAPP ruling is procedurally proper. But Patrick invited you to send us a proposed Rule 54(b) judgment in order for Coach to properly evaluate your proposal. We never received your proposed form of judgment.

When can we expect your draft JSR?

Omar

From: Jay Carlson [mailto:jaycarlson.legal@gmail.com]
Sent: Monday, August 22, 2011 11:50 AM
To: Riojas, Omar
Cc: christopher.carney@cgi-law.com; jason@vaneyk-moore.com; Keehnel, Stellman
Subject: Re: Kim v. Coach -- JSR

Omar:

I notice that Patrick withdrew from this case. Has he left your firm?

I ask because we had fairly detailed discussions with him before his withdrawal about our desire to dismiss this case, while preserving our right to appeal the

SLAPP ruling of Judge Martinez. We haven't received a substantive response from your firm about that, and we have been waiting for that response. Those discussions were all with Patrick.

At this point, do you want to cooperate with us in dismissing this case?

Jay

On Fri, Aug 19, 2011 at 3:48 PM, Riojas, Omar <Omar.Riojas@dlapiper.com> wrote:

Gentlemen,

This e-mail follows up on the voicemail I left for Jay earlier today. As you know, the parties are required to prepare and file a Combined Joint Status Report and Discovery Plan by August 24, 2011. Coach, Inc. previously prepared and filed a discovery plan. When can we expect a draft JSR from plaintiffs for review and discussion?

Omar



R. Omar Riojas

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--

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