

Federal Court



Cour fédérale

Date: 20111110

Docket: T-453-11

Citation: 2011 FC 1303

Vancouver, British Columbia, November 10, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**CHANEL S. DE R.L.
and CHANEL INC.**

Plaintiffs

and

JIANG CHU

Defendant

REASONS FOR ORDER AND ORDER

I. Introduction

[1] This action was commenced by Statement of Claim issued March 16, 2011. By the action, the Plaintiffs, Chanel S. de R.L. (Chanel) and Chanel Inc. (Chanel Canada) allege that the Defendant has infringed and passed off on various trade-marks owned by Chanel and set out in Schedule A to the Statement of Claim (the CHANEL Trade-marks), through the importation, advertisement, offer for sale and/or sale of fashion accessories bearing the CHANEL Trade-marks.

[2] On June 3, 2011, this Court made an Order (the Substitutional Service Order) permitting the Plaintiffs to serve the Statement of Claim in this action substitutionally on the Defendant, Jiang Chu. On June 4, 2011, service of the Statement of Claim in this action was effected in accordance with the Substitutional Service Order and proof of service was filed with the Court on June 13, 2011.

[3] The deadline for the Defendant Jiang Chu to serve and file a Statement of Defence was on July 13, 2011.

[4] As of October 27, 2011, the Defendant Jiang Chu has not served a Statement of Defence and has not in any way contacted counsel for the Plaintiffs directly, or indirectly.

II. Background

[5] The Plaintiff, Chanel S. de R.L. (Chanel), is the owner in Canada of the trade-marks (the CHANEL Trade-marks) listed in Exhibit A of the Affidavit of Lynette Oka, sworn October 18, 2011, which have been used by Chanel to identify Chanel products in Canada since at least as early as the dates listed in Exhibit A. The CHANEL Trade-marks have been registered in Canada by Chanel for use in association with the wares and services also listed in Exhibit A to the Affidavit of Lynette Oka, and such registrations are valid and subsisting. (Affidavit of Lynette Oka, sworn, October 18, 2011 (Oka Affidavit), para 3, Exhibit A; Affidavit of Amy L. Jobson, sworn October 27, 2011 (Jobson Affidavit 1), para 2, Exhibit A)

[6] The CHANEL Trade-marks are and have been continuously used by Chanel in association with its products, and have never been abandoned. (Oka Affidavit, para 4)

[7] Chanel is the only authorized manufacturer and distributor of genuine products bearing the CHANEL Trade-marks. Chanel sells Chanel products in Canada through its wholly owned subsidiary, the Plaintiff, Chanel Inc. (Chanel Canada), who is licensed to use the CHANEL Trade-marks in Canada. Chanel controls all use made by Chanel Canada of the CHANEL Trade-marks. (Oka Affidavit, para 5)

[8] Chanel maintains strict quality control standards for all its products. All genuine Chanel products are inspected and approved by Chanel prior to distribution and sale, and genuine clothing and fashion accessories, including jewellery, purses and shoes, bearing the CHANEL Trade-marks, are sold in Canada only through Chanel boutiques and a limited number of high quality department stores and speciality retailers, such as Holt Renfrew. (Oka Affidavit, para 6)

[9] At great expense, Chanel has created, developed, manufactured, advertised and marketed its products such that they convey, and are associated with, the highest standards and utmost quality, employing the most luxurious materials and design to produce luxury products. (Oka Affidavit, para 7)

[10] Chanel has established a well-known reputation and goodwill in the CHANEL Trade-marks in Canada. As a result of the fame that the CHANEL Trade-marks have achieved in Canada, the goodwill associated with the CHANEL Trade-marks is of very high value to Chanel and Chanel

Canada and of fundamental importance to their overall business in Canada. (Oka Affidavit, paras 8 and 9)

A. Activities of the Defendant

[11] On dates unknown to Chanel, but at least as early as December 2006, the Defendant, Jiang Chu, began importing, advertising, offering for sale and/or selling fashion accessories, including handbags, wallets and jewellery, in Canada in association with the CHANEL Trade-marks (the Counterfeit Items), fraudulently representing to the public that such Counterfeit Items were in fact "Chanel". (Affidavit of Pilar Toro, sworn October 11, 2011 (Toro Affidavit), para 4)

[12] The full extent and nature of such activities by the Defendant was not, and is still not, known by the Plaintiffs, both since his activities commenced and to the date of this claim, as the Defendant has attempted to hide his activities as outlined herein, including his identity in operating the websites as outlined herein.

B. The Counterfeit Network

[13] The fraudulent importation, advertisement, offer for sale and sale of the Counterfeit Items at various times was, and continues to be, carried out by Jiang CHU through numerous websites, including at least the websites operating from the domain names <uubag.com>, <evoguer.com>, <lahota.com>, and <lasuta.com> (the Operating Websites).

[14] In addition to the Operating Websites, the Defendant also owned and operated a network of over 300 websites and domain names listed in Schedule A hereto which either actively link or

previously linked to the Operating Websites, and in most instances also contained independent offers for sale of the Counterfeit Items (the Network Domain Names).

[15] The specific Network Domain Names and Operating Websites, through which the Defendant has offered for sale and sold Counterfeit Items in Canada, respectively, have also changed over time. The Network Domain Names that linked to different active Operating Websites at different dates are listed in Schedule B. (Oka Affidavit, para 15; Affidavit of Kathrin Wardowicz, sworn January 25, 2011 (Wardowicz Affidavit), paras 28, 54, 61, 77, 98, 282, 284, 290, and 294)

[16] The Defendant has attempted to hide his infringing activities through these various websites, using different contact information and various aliases on his various websites and domain names, and registering such domain names under false registrant and contact information and/or through proxy registration services which shield the true domain name registrant. The following is a summary of the information from the Toro Affidavit, Wardowicz Affidavit, and Jobson Affidavit:

Operating Websites	Name	Email	Address	Phone
evoguer.com	Jay Williams (Organization)	priceofbeauty@ hotmail.com	25147 Wilson Ave Vancouver, British Columbia V8U 4R6	(600) 212-3232
	Susan Shaw (Contact)	jerrychn@ hotmail.com	4758 Smith Ave New York, New York, 10038	(601) 9573528
lasuta.com	Susan Shaw (Organization)	jerrychn@ hotmail.com	4758 Smith Ave New York, New York, 10038	(601) 9573528
	Jian Cu (Contact)	vogueland@ hotmail.com	2635 She Su Road, Hen Yuan, 207261 CN	86.134785421
uubag.com	Domains by Proxy	N/A	N/A	N/A
lahota.com	Susan Shaw	jerrychn@ hotmail.com	4758 Smith Ave, New York, New York, 10038	(601) 9573528
voguepurse.com	Jay Williams	vogueland@ hotmail.com	103-27106 Wilson Ave, New York, New York, 10041	(315) 165-5471

# of Network Domain Names	Name	Redirects to	Email	Address	Phone
3	Fang Chang	lasuta.com	baoxianxiangl@hotmail.com	452 lu shan kon ma lu, Sen Gong, Quang Dong, 654235	+86.159354786
6	Jason Wilson	evoguer.com	nvbags@hotmail.com	2837 Roboson Ave New York, New York, 10036	(213) 215-4732
4	Jay Williams	evoguer.com	priceofbeauty@hotmail.com	25147 Wilson Ave Vancouver, British Columbia V8U 4R6	(600) 212-3232
4	Jay Williams	evoguer.com	vogueland@hotmail.com	103-27106 Wilson Ave New York, New York, 10041	(315) 165-5471
1	Jiang Chu	evoguer.com	delingster@msn.com	Tian Tong Yu Beijing, N/A 102218 CN	+1.15125478965
109	Sarah Jones	lasuta.com	uubag@hotmail.com	6542-512 Parks Ave New York, New York, 10378	(307)-841-2201
4	Susan Shaw	lasuta.com	jerrychn@hotmail.com	4758 Smith Ave New York, New York, 10038	(601) 9573528
118	Domains by Proxy	lasuta.com	N/A	N/A	N/A

(Toro Affidavit, paras 5-24, Exhibits B-U, Wardowicz Affidavit, para 2-298, Exhibits A-KK, Jobson Affidavit 1, paras 17-, Exhibits S-U)

[17] Notwithstanding the false Registrant and Contact information provided, through investigations in the following Operating Websites outlined below (<lasuta.com>, <evoguer.com>, and <uubag.com>), it was confirmed that the Defendant is the operator, with the Defendant's name and contact details being provided as the payee in the payment information provided for those websites. (Affidavit of Jasper Smith, sworn September 26, 2011 (Smith Affidavit 1), paras 13, 18-19, and 22, Exhibits D and J; Affidavit of Raymond Viswanathan, sworn September 26, 2011 (Viswanathan Affidavit), para 7, Exhibit B)

[18] The information summary noted above shows the following discrepancies which evidence the domain name registrant and contact information as being false:

- Jiang Chu is a listed registrant for a Network Domain Name that previously linked to an Operating Website that lists "Jay Williams" and "Susan Shaw" as registrants,

supporting the position that Jiang Chu is using “Jay Williams” and “Susan Shaw” as aliases.

- “Jian Cu” (a deliberate misspelling of Jiang Chu) and “Jay Williams” use the same email address <vougeland@hotmail.com> in different domain name registrations, supporting the position that Jiang Chu is using “Jian Cu” as an alias and further showing that Jiang Chu is using “Susan Shaw” as an alias.
- “Susan Shaw” appears with “Jian Cu” (a deliberate misspelling of Jiang Chu) and “Jay Williams” in different domain name registrations, further supporting the position that Jiang Chu is using “Susan Shaw”, “Jian Cu” and “Jay Williams” as aliases.
- The remaining different contact names, “Fang Chang”, “Jason Wilson”, and “Sarah Jones” are all listed registrants for Network Domain Names that either actively link or previously linked to Operating Websites that list “Susan Shaw”, “Jian Cu”, or “Jay Williams” as the Operating Website registrants; thus, supporting the position that Jiang Chu is also using “Fang Chang”, “Jason Wilson”, and “Sarah Jones” as aliases.

[19] The Defendant has also used AdWords containing one or more of the Chanel Trade-marks to have his websites come up in search results for online Google searches, in a deliberate attempt to attract customers to his websites for the sale of Counterfeit Items. Starting in or about April 2009, at the requests of Chanel, Google Inc. has removed 78 AdWords linking to various Network Domain Names under the control of the Defendant that either actively link or previously linked to one of the Operating Websites. (Oka Affidavit, paras 12-15, Exhibit B; Toro Affidavit, paras 12-13 and 22, Exhibits I-J, and S)

[20] The Defendant's activities outlined herein have been and are therefore also wilful, knowing, and calculated to get around the Plaintiffs' efforts to cease such activities, through the use of different aliases and switching which Operating Websites the Network Domain Names redirect to. Further, the Defendant's continued replenishing of AdWords to restock the AdWords removed by Google indicates the Defendant's recidivist efforts to attract customers to his websites for the purchase of Counterfeit Items.

C. Operating Website uubag.com

[21] For <uubag.com>, one of the Operating Websites, there were at least four (4) Network Domain Names, as listed in Schedule A, which either actively link or previously linked to the <uubag.com> website.

[22] On October 25, 2010, Jasper Smith, a licensed private investigator and Director of Investigations at IPSA International Inc. (IPSA), made a request to purchase Chanel White CC Logo earrings through the Operating Website <uubag.com>. The earrings, which bear one or more of the CHANEL Trade-marks, were shipped to him in Vancouver and subsequently confirmed to be counterfeit. (Smith Affidavit 1, paras 4-9, Exhibits A-C; Toro Affidavit, para 27)

[23] On October 26 and 27, 2010, Mr. Smith also exchanged emails with a "Shawn" at info@uubag.com about purchasing a Chanel necklace. After being advised that the necklace was out of stock but being offered six other alternative "Chanel" necklaces, "Shawn" at info@uubag.com provided Mr. Smith with direct deposit payment information, which included

the name Jiang Chu as the payee, with an address of 108-1859 Woodway Place Burnaby, B.C, V5B 4T6, Canada. (Smith Affidavit 1, paras 10-13 and 16, Exhibits D and G)

D. Operating website evoguer.com

[24] For <evoguer.com>, one of the Operating Websites, there were at least 33 Network Domain Names, as listed in Schedule A, which either actively link or previously linked to the <evoguer.com> website.

[25] On October 18, 2010, Raymond Viswanathan, a licensed private investigator employed by IPSA, made a request to purchase item CN113, Chanel Cute White and Gold earrings, through the Operating Website <evoguer.com>. The earrings, which bear one or more of the CHANEL Trade-marks, were shipped to him in Vancouver, and subsequently confirmed to be counterfeit.

(Viswanathan Affidavit, paras 5 and 11, Exhibit A; Smith Affidavit 1, paras 13, 15, Exhibits D and F; Toro Affidavit, para 27)

[26] On October 18, 2010, a "Susan" at info@evoguer.com provided Mr. Viswanathan with direct deposit payment information which included the name Jiang Chu as the payee, with an address of 108-1859 Woodway Place Burnaby, B.C, V5B 4T6 Canada. (Viswanathan Affidavit, para 7, Exhibit B)

E. Operating Website lasuta.com

[27] For <lasuta.com>, one of the Operating Websites, there were at least 280 Network Domain Names, as listed in Schedule A, which either actively link or previously linked to the <lasuta.com> website.

[28] On January 18, 2011, Mr. Smith made a request to purchase item CN134, the Chanel Chic Black Crystal Heart Pendant Golden Chain Necklace, through the Operating Website <lasuta.com>. The necklace, which did not match item CN134, but nonetheless bears one or more of the CHANEL Trade-marks, was shipped to him in Vancouver and subsequently confirmed to be counterfeit. (Smith Affidavit 1, paras 17 and 24, Exhibits H and L; Toro Affidavit, para 27)

[29] On January 20, and 26, 2011, "Frank" at info@lasuta.com provided Mr. Smith with direct deposit payment information which included the name Jiang Chu as the payee, with an address of 108-1859 Woodway Place Burnaby, B.C, V5B 4T6, Canada. After, "Frank" at info@lasuta.com indicated that shipments will be delayed because the factories are closed for vacation. (Smith Affidavit 1, paras 19, 22 and 23, Exhibits J and K)

F. Operating Website lahota.com

[30] For <lahota.com>, one of the Operating Websites, there was at least one (1) Network Domain Name(s), as listed in Schedule A, which either actively link or previously linked to the <lahota.com> website. While no purchase was made from this website, the website offers for sale Counterfeit Items, which have been confirmed to be counterfeit. (Wardowicz Affidavit, paras 279-280, Exhibits JR to JS; Toro Affidavit, para 27)

III. The Current Proceeding

[31] The present action was commenced by Statement of Claim issued March 16, 2011. The Plaintiffs allege that the Defendant has infringed and passed off counterfeit fashion accessories making use of the CHANEL Trade-marks.

[32] On June 3, 2011, upon *ex parte* motion, the Plaintiffs were granted an order to substitutionally serve the Defendant Jiang Chu. On June 4, 2011, the Defendant Jiang Chu was substitutionally served with the Statement of Claim in this action by posting a copy of the Statement of Claim, together with a copy of the Order for Substitutional Service to the door at unit number 108 at 1859 Woodway Place, Burnaby, BC (the address indicated in Jiang Chu's Royal Bank of Canada bank account). Further, on June 7, 2011, the Defendant Jiang Chu was substitutionally served with the Statement of Claim in this action by sending a PDF copy of the Statement of Claim, together with a copy of the Order for Substitutional Service, to info@uubag.com (the email address associated with Operating Website <uubag.com>) and info@lasuta.com (the email address associated with Operating Website <lasuta.com>). On June 7 and 9, 2011, an attempt was made to substitutionally serve the Defendant Jiang Chu by sending a PDF copy of the Statement of Claim, together with a copy of the Order for Substitutional Service, to info@evoguer.com (the email address associated with Operating Website <evoguer.com>); but both attempts resulted in notifications of non-delivery.

Affidavit of Roderick David Livingston, sworn June 6, 2011
(the Livingston Affidavit)

Solicitor's Certificate of Service, June 6, 2011

Letter from Karen F. MacDonald of Smart & Biggar
to Federal Court of Canada, dated June 13, 2011

Directions from Court Accepting Service

Smith Affidavit, paras 13 and 19, Exhibits D and J

Viswanathan Affidavit, para 7, Exhibit B

[33] As of October 27, 2011, the Defendant Jiang Chu has not served a Statement of Defence and has not in any way contacted counsel for the Plaintiffs directly, or indirectly. (Jobson Affidavit 1, para 7)

[34] As of February 1 and 28, 2011, and April 23, 2011, <uubag.com>, <evoguer.com>, and <lasuta.com> respectively, were online. As of October 20, 2011, <uubag.com>, <evoguer.com>, <lasuta.com>, and <lahota.com> are no longer online. (Jobson Affidavit 1, paras 20-23 and paras 25-27, Exhibits V-Y and Z-AB, respectively)

III. Analysis

[35] The Court is in agreement with the position of the Plaintiffs due to the following.

A. Burden of Proof on a Motion for Default Judgment

[36] On a motion for default judgment pursuant to Rule 210 of the *Federal Courts Rules*, the plaintiff must establish: (1) that the defendant is in default of filing a statement of defence, and (2) that the evidence in support of the motion makes it possible to grant the judgment sought. (*Les Engrais Naturels McInnes Inc v Bio-Lawncare Services Inc*, 2004 FC 1027 at para 3, 260 FTR 11 (TD))

[37] On a motion for default judgment where no statement of defence has been filed every allegation in the statement of claim must be treated as denied. The burden of proof required on a motion for default judgment is simply that which will persuade a judge, on a balance of probabilities, that the plaintiff is entitled to the relief that it seeks. (*Ragdoll Productions (UK) Ltd v Jane Doe*, 2002 FCT 918, 21 CPR (4th) 213 at paras 23 and 25 (TD) [*Ragdoll Productions*]; *Louis Vuitton Malletier SA v Lin Pi-Chu Yang*, 2007 FC 1179 at para 4, 62 CPR (4th) 362 (TD) [*Louis Vuitton 2007*])

B. The Defendant is in Default of Filing a Statement of Defence

[38] The Defendant Jiang Chu was duly substitutionally served with the Statement of Claim as required by the Order for Substitutional Service on June 4, 7, and 9, 2011. Although one of the three email addresses subject to the Order for Substitutional Service was inoperable, this Court accepted the Plaintiffs' Substitutional Service.

Livingston Affidavit

Solicitor's Certificate of Service, June 6, 2011

Letter from Karen F. MacDonald of Smart & Biggar
to Federal Court of Canada, dated June 13, 2011

Directions from Court Accepting Service

[39] As the Plaintiffs' proof of service was accepted on June 13, 2011, the Defendant Jiang Chu had thirty (30) days from June 13, 2011 to defend the action by serving and filing a statement of defence. (Rule 204, *Federal Courts Rules*.)

[40] As of October 27, 2011, the Defendant Jiang Chu has not served a Statement of Defence and has not in any way contacted counsel for the Plaintiffs directly, or indirectly. (Jobson Affidavit 1, para 7)

C. It is Just to Award Default Judgment in this Case

[41] Where a defendant has been served substitutionally, default judgment will only be ordered where it is just to do so having regard to all the circumstances. (Rule 211, *Federal Courts Rules*)

[42] Prior to obtaining the Substitutional Service Order, the Plaintiffs made numerous attempts, investigations and searches in an attempt to serve Mr. Jiang Chu with the Statement of Claim:

- (a) the Plaintiffs' investigators, Jasper Smith and Raymond Viswanathan, confirmed that 108-1859 Woodway Place, Burnaby, British Columbia (the Burnaby Address), is the address associated with Jiang Chu's Royal Bank of Canada bank account; (Smith Affidavit, paras 13 and 19, Exhibits D and J; Viswanathan Affidavit, para 7, Exhibit B)
- (b) the Plaintiffs were also informed through a confidential source that 10320 Leonard Road, Richmond, British Columbia (the Richmond Address), was at one time Jiang Chu's address of residence; (Affidavit of Amy Jobson, sworn June 1, 2011 (Jobson Affidavit 2) at para 4)
- (c) the Plaintiffs' second investigator, Mr. Brian Lambie, a licensed private investigator of McLamb Consulting, an investigation company, was hired to serve the Statement of Claim in this matter on Jiang Chu at the Richmond Address and the Burnaby Address; (Affidavit of Brian Lambie, sworn June 1, 2011 (Lambie Affidavit) at

para 2) and

(d) the Plaintiffs' investigator, Mr. Lambie, confirmed with the property manager of the Burnaby Address and the owner occupant of the Richmond Address that Jiang Chu had previously lived at the respective residences. (Lambie Affidavit at paras 7 and 8)

[43] Notwithstanding the former failed attempts and the beliefs of the property manager of the Burnaby Address and the owner-occupant of the Richmond Address, the results of the investigations suggest an ongoing association of the Defendant with the Burnaby Address, which was given to investigators by <evoguer.com>, <uubag.com>, and <lasuta.com> respectively on October 19, 2010, October 27, 2010, and January 20, 2011. (Smith Affidavit, paras 13 and 19, Exhibits D and J; Viswanathan Affidavit, para 7, Exhibit B)

[44] Therefore, it is submitted that service of the Statement of Claim by posting the Statement of Claim to the Burnaby Address, and sending a Portable Document Format (PDF) copy of the Statement of Claim to info@uubag.com and info@lasuta.com would in all likelihood, and certainly on a balance of probabilities, have reached Mr. Jiang Chu given his association with such email addresses and physical address. (Federal Court Order, dated June 3, 2011)

[45] Additionally, subsequent to the substitutional service on info@uubag.com and info@lasuta.com, the Operating Websites have all been shut down. Such shutting down of the websites, which had otherwise not previously occurred notwithstanding removal of AdWords, supports the position that the Statement of Claim in this matter came to the attention of Mr. Jiang

Chu as the operator of the Operating Websites. (Jobson Affidavit 1, paras 20-23, 25-27, Exhibits V-AB)

[46] The activities of the Defendant reflect a clear pattern and attempt to evade the process of this Court and therefore avoid liability for their infringing activities. It would be unjust to allow Mr. Jiang Chu to avoid default judgment against him on the technicality that the Plaintiffs have been unable, despite substantial effort on their part, to determine Mr. Jiang Chu's current whereabouts and personally serve him with the Statement of Claim.

[47] Given the extensive steps that were taken to serve Mr. Jiang Chu with the Statement of Claim both before and after the Substitutional Service Order, it is just to render default Judgment against the Defendant, having regard to all the circumstances.

D. The Defendant Has Infringed the CHANEL Trade-marks

[48] By virtue of its trade-mark registrations, Chanel has the exclusive right to advertise, offer for sale and sell the aforesaid wares in association with the CHANEL Trade-marks in Canada, to preclude others from using the CHANEL Trade-marks, or any other trade-marks, trade-names, words or designs likely to be confusing therewith and to prevent others from depreciating the value of the goodwill attached thereto. (Sections 19, 20 and 22 of the *Trade Marks Act*)

[49] Further, by virtue of its extensive reputation and goodwill in the CHANEL Trade-marks, Chanel has the right to prevent others from calling public attention to their wares and business in a manner that causes or is likely to cause confusion in Canada between their wares and business and

the wares and business of Chanel, passing off their wares as and for those of Chanel, or using a description, in association with fashion accessories, which is false in a material respect and which is of such a nature as to mislead the public as regards to the character, quality and/or composition of such wares. (Sections 7(b), 7(c) and 7(d) of the *Trade-marks Act*)

[50] As outlined in paragraphs 11 to 30 above, the Defendant, through his Network Domain Names and Operating Websites, has on several different occasions, imported, advertised, offered for sale and/or sold counterfeit items in Canada bearing one or more of the CHANEL Trade-marks. Such items sold by the Defendant are not, and have never been, authorized by the either of the Plaintiffs, but have been confirmed to be counterfeit. The Defendants are not, and have never been, authorized by the Plaintiffs to manufacture, import, distribute, offer for sale, sell or otherwise deal in any product bearing the CHANEL Trade-marks. (Oka Affidavit, para 16; Toro Affidavit, paras 25-28, Exhibits B to T and V)

[51] Given that the items sold by the Defendant bear trade-marks identical to the CHANEL Trade-marks, the public may be led to believe that the counterfeit merchandise sold by the Defendant is authentic Chanel merchandise, or that such items have been authorized, approved or manufactured by the Plaintiffs. (Toro Affidavit, para 29)

[52] Use by the Defendant of the CHANEL Trade-marks as outlined above is likely to cause confusion between the Defendant's wares and business and the wares and business of Chanel. (Oka Affidavit, para 17)

[53] The offer for sale of Counterfeit Chanel Merchandise causes serious irreparable harm to the reputation of superior quality attaching to the CHANEL Trade-marks and genuine Chanel products. The longer that counterfeit Chanel products remain on the market, the greater the chance that, *inter alia*, consumers who purchase or who would purchase authentic Chanel product will no longer do so given the availability of counterfeit product in the marketplace. The Defendant's actions have therefore caused serious harm to both Plaintiffs. Furthermore, the Defendant has made a profit from his illegal sale of the Counterfeit Items. (Oka Affidavit, para 17)

[54] The Counterfeit Items being sold by the Defendant differ from Chanel's legitimate products in material respects, in that the Counterfeit Items are of lower and/or different quality, and lack the high standard quality control imposed by Chanel, which is only associated with genuine Chanel products in Canada. Further, the prices of the Counterfeit Items are well below what genuine Chanel products retail for. (Toro Affidavit, paras 27 and 30)

[55] The activities of the Defendant are therefore contrary to the following statutory provisions:

- (a) Section 19 of the *Trade-marks Act*, in that the Defendant has infringed the exclusive rights of Chanel in and to the CHANEL Trade-marks;
- (b) Section 20 of the *Trade-marks Act*, in that the use that the Defendant makes of the CHANEL Trade-marks is likely to lead the consuming public to believe or infer that the Defendant's wares originate from or are authorized by Chanel, and are therefore deemed to have infringed Chanel's exclusive rights in the CHANEL Trade-marks;
- (c) Section 22 of the *Trade-marks Act*, in that the use that the Defendant makes of the CHANEL Trade-marks is likely to have the effect of depreciating the value of the

goodwill attaching thereto;

- (d) Section 7(b) of the *Trade-marks Act*, in that the Defendant has also called public attention and continues to call public attention to his wares in a manner that causes or is likely to cause confusion in Canada between his wares and business and the wares of Chanel;
- (e) Section 7(c) of the *Trade-marks Act*, in that the Defendant has also passed off his wares as and for those of Chanel; and
- (f) Section 7(d) of the *Trade-marks Act*, in that the Defendant has used, in association with fashion accessories, a description which is false in a material respect and which is of such a nature as to mislead the public as regards to the character, quality and/or composition of such wares.

E. Entitlement to the Relief Requested

[56] Section 53.2 of the *Trade-marks Act* provides that, where a Court is satisfied that any act has been done contrary to the *Trade-marks Act*, it may make any order it considers appropriate, including an order providing for relief by way of injunction, the recovery of damages or profits, and the delivery up for the destruction or other disposition of any offending wares, packages, labels and advertising material and of any dies used in connection therewith. (*Louis Vuitton Malletier SA v Singga Enterprises (Canada) Inc*, 2011 FC 776 at para 121 [*Louis Vuitton 2011*])

(1) Declaratory Relief, Injunction, Destruction of Infringing Goods

[57] Given the activities of the Defendant were continued over several years, and given the nature of the activities involved, it is submitted that the Plaintiffs are entitled to declarations

regarding validity and ownership, injunctive relief against the infringing activity and delivery up and destruction of infringing goods as appropriate remedies under section 53.2 of the *Trade-marks Act*. (*Microsoft Corporation v 9038-3746 Quebec Inc*, 2006 FC 1509, 57 CPR (4th) 204 at para 100-102; *Louis Vuitton 2011* above, at para 123)

(2) Monetary Compensation – Damages and/or Profits

[58] The *Trade-marks Act* provides for an award of damages or profits in relation to infringing activities. (Section 53.2 of the *Trade-marks Act*; *Louis Vuitton 2011* above, at para 124)

[59] In relation to damages, the defendant is liable for all loss actually sustained by the plaintiff that is the natural and direct consequence of the unlawful acts of the defendant, including any loss of trade actually suffered by the plaintiff, either directly from the acts complained of or properly attributable thereto, that constitute an injury to the plaintiff's reputation, business, goodwill or trade. The Court may apply ordinary business knowledge and common sense, and is entitled to consider that there cannot be deceptive trading without inflicting some measure of damage on the goodwill. (*Ragdoll Productions* above, at para 40; *Louis Vuitton 2011* above, at para 125)

[60] Difficulty in assessing damages or profits does not relieve the Court from the duty of assessing them and doing the best it can. The Court is entitled to draw inferences from the actions of the parties and the probable results that they would have. Once the plaintiff has proven infringement, if damages or profits cannot be estimated with exactitude, the best reasonable estimate must be made without being limited to nominal damages. (*Ragdoll Productions* above, at paras 40-45; *Louis Vuitton 2011* above, at para 126)

[61] In situations such as the present, an accurate or even reasonably close calculation of damages is very difficult. There are generally two aspects of damages to be considered in cases of trade-mark infringement. First, the depreciation of goodwill indirectly results in lost sales of legitimate merchandise bearing the CHANEL Trade-marks. While Canadian courts have held that it is self-evident that the sale of counterfeit goods results in a depreciation of the goodwill attaching to the brand-name trade-marks, quantifying the amount of such depreciation, if at all possible, would arguably require a substantially complete record. The second aspect of damages reflects the lost sales of the Plaintiffs due to the Defendant's activity that would have been made by the Plaintiffs, an aspect complicated by the possibility that, given the nature of the counterfeit business, someone who buys a "knock-off" would not necessarily have otherwise bought a genuine product. (*Louis Vuitton*, above at paras 30-31). (*Louis Vuitton 2007*, above at paras 30-31; *Louis Vuitton 2011*, above at para 127)

[62] The fact that the Plaintiffs have been unable to obtain any documentation from the Defendant in respect of the scope of his activities and sale of counterfeit Chanel merchandise further frustrates the assessment of damages. (*Louis Vuitton 2011* above, at para 128).

[63] The Federal Court has in a past decision from 1997 (*Nike Canada Ltd v Holdstart Design Ltd et al*, T-1951-85 (FCTD)) held that damages per plaintiff could be quantified under certain circumstances in the amount of \$3,000 where the defendants were operating from temporary premises, \$6,000 where the defendants were operating from conventional retail premises, and \$24,000 where the defendants were manufacturers and distributors of counterfeit goods. The scaled quantum of damages has been applied generally to relate to the execution of an *Anton Piller* order

where a one-time attendance and seizure of counterfeit goods took place. (*Ragdoll Productions*, above at paras 48 and 52; *Oakley Inc v Jane Doe* (2000), 193 FTR 42, 8 CPR (4th) 506 at para 3 [*Oakley*]; *Louis Vuitton 2011* above, at para 129)

[64] Canadian courts have more recently and repeatedly held that the nominal \$6,000 or \$24,000 damage awards should be recalculated to allow for inflation since 1997, with the exact adjusted amount depending on the year(s) in which the infringing activity took place. (*Louis Vuitton 2007* above, at para 43; *Louis Vuitton Malletier SA et al v 486353 BC Ltd et al*, 2008 BCSC 799 at paras 59-60 [*Louis Vuitton 2008*]; *Louis Vuitton 2011* above, at para 130)

[65] The Federal Court and British Columbia Supreme Court have also both recognized that when there is evidence of more than a single instance of infringement in question, and it can be shown that the defendant engaged in the complained of activities over a period of time, the “nominal damages” *Anton Piller* award is to be calculated on a “per instance of infringement” or “per turn-over of inventory”, where such turn-over is supported by the evidence. (*Louis Vuitton 2007* above, at para 43; *Louis Vuitton 2008* above, at paras 59-60 and 65-67; *Louis Vuitton 2011* above, at para 132.

[66] Additionally, Canadian Courts have held that when the intellectual property rights of both trade-mark owner and its licensee have been infringed, each plaintiff is entitled to damages, as if each plaintiff enforced its rights against the defendant individually. (*Oakley* above, at paras 12-13; *Louis Vuitton 2007* above, at para 43; *Louis Vuitton 2008* above, at paras 67 and 72; *Louis Vuitton 2011* above, at para 134)

[67] In the circumstances of the present case, and given the difficulty in assessing damages that has been compounded by the Defendant's refusal to participate in this process and to disclose any of its records, the basic principles of damages assessment as applied by the Courts in *Louis Vuitton 2007* above, *Louis Vuitton 2008* above, and *Louis Vuitton 2011* above, should be applied in this instance.

[68] As outlined in paragraphs 21 to 34 above, the Defendant operated four Operating Websites, each of which can be classified as an independent retail establishment, and correspondence from the Defendant during investigations also suggests a direct association with the manufacturing factories. The Defendant also directly imports product to the customer in Canada. As in the cases of *Louis Vuitton 2008* above, at paras 71-72; *Louis Vuitton Malletier SA v 486353 BC Ltd et al*, 2008 BCSC 1418, [2008] BCJ No 276 at para 34; and *Louis Vuitton 2011* above, at para 136, the Defendant was operating at the higher level of importer and distributor, rather than a mere retail establishment.

[69] The 1997 rate of \$24,000 is therefore the proper starting point for calculation of damages. Taking into account inflation based on the Bank of Canada statistics, \$24,000 in 1997 is equivalent to approximately \$30,384.11 in 2009, \$30,966.89 in 2010, and \$31,947.02 in 2011, and an appropriate damages calculation takes into account this inflation. Since the evidence of purchase and offers for sale of Counterfeit goods extends from 2009 to 2011, a fair and reasonable estimation of base damages is \$31,000 for that time frame, and \$31,000 is therefore be used as a starting point for calculating the damages in relation to the retail premises operated by the Defendant. (Jobson Affidavit, paras 3-5, Exhibits F-H)

[70] The activities of the Defendant were conducted continuously from at least December 2009 to January 2011, and the Plaintiffs have evidence of the following specific instances relating to the unauthorized importation, advertisement, offering for sale and sale of fashion accessories bearing the CHANEL Trade-marks:

- (a) unauthorized advertisement and offering for sale of Counterfeit Items through <uubag.com> and <evoguer.com> in or about June, October, and March 2009;
(Toro Affidavit, paras 5 to 23, Exhibits B to T)
- (b) a purchase of a pair of Chanel earrings from <evoguer.com> on October 22, 2010;
(Viswanathan Affidavit, paras 8-10, Exhibits C and D; Smith Affidavit, para 15, Exhibit F)
- (c) a purchase of a Chanel necklace from <uubag.com> on November 1, 2010;
(Smith Affidavit, para 14, Exhibits E and G)
- (d) unauthorized advertisement and offering for sale of Counterfeit Items through <uubag.com>, <lahota.com>, <evoguer.com>, and <lasuta.com> in January 2011;
(Wardowicz Affidavit, paras 2 to 295, Exhibits A to KH) and
- (e) a purchase of a Chanel necklace from <lasuta.com> on January 24, 2011.
(Smith Affidavit, paras 21-22, Exhibits I and J)

[71] In view of the above-noted instances of infringement by the Defendant, the Court can conservatively and reasonably find at least three “instances” of infringement by the Defendant (based on the assumption that the October 22, 2010, November 1, 2010, and January 24, 2011 purchases can be treated as a single “instance” of distribution from the multiple websites).

[72] Accordingly, damages ought to be properly assessed on a per Plaintiff basis, in the amount of \$31,000 multiplied by three instances of infringement, equaling \$93,000 (per Plaintiff).

[73] It is therefore submitted that the total damages, after \$93,000 is awarded to each Plaintiff, is properly assessed at a minimum of \$186,000.

(3) Punitive and Exemplary Damages

[74] Additionally, the Plaintiffs are entitled to punitive and exemplary damages.

[75] Punitive damages are awarded when a party's conduct has been malicious, oppressive and high-handed, it offends the Court's sense of decency, and it represents a marked departure from ordinary standards of decent behaviour. (*Whiten v Pilot Insurance Co*, 2002 SCC 18, [2002] 1 SCR 595, at para 36 [*Whiten*]; *Louis Vuitton 2011* above, at para 163)

[76] Punitive damages are awarded if all other penalties have been taken into account and found to be inadequate to accomplish the objectives of retribution, deterrence, and denunciation. (*Whiten* above, at para 123; *Louis Vuitton 2011* above, at para 164)

[77] The Supreme Court of Canada has recognized that it is rational to use punitive damages to relieve a wrongdoer of its profit where compensatory damages would amount to nothing more than a licence fee to earn greater profits through outrageous disregard of the rights of others. (*Whiten* above, at para 72; *Louis Vuitton 2011* above, at para 165)

[78] The need for denunciation is augmented when conduct is more reprehensible. The Supreme Court of Canada has set out factors that inform the inquiry into a defendant's blameworthiness.

These are:

- (a) whether the misconduct was planned and deliberate;
- (b) the intent and motive of the defendant;
- (c) whether the defendant persisted in the outrageous conduct over a lengthy period of time;
- (d) whether the defendant concealed or attempted to cover up its misconduct;
- (e) the defendant's awareness that what he or she was doing was wrong;
- (f) whether the defendant profited from its misconduct; and
- (g) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff or a thing that was irreplaceable.

(*Whiten* above, at paras 112-113; *Louis Vuitton 2011* above, at para 166)

[79] The courts in Canada have recognized the egregious and outrageous nature of activities involving counterfeit goods, recognizing the principal that:

...this kind of theft constitutes a very serious offence, more serious than a theft of some other material or property because it strikes at the heart of what differentiates a progressive, creative society from one that is not.

(*Regina v Chui Lau*, 48082-1-48984-2C, Unreported Decision at para 3 (BC Provincial Court, November 16, 2006); *Louis Vuitton 2011* above, at para 167)

[80] Punitive and exemplary damages have been awarded in cases of trade-mark infringement, where, for example, the conduct of the defendants was "outrageous" or "highly reprehensible", or

where the defendant's actions constituted a callous disregard for the rights of the plaintiff or for injunctions granted by the court, including numerous cases involving the sale of counterfeit goods.

[81] Similarly, having little regard for the legal process and requiring the plaintiff to expend additional time and money in enforcing its' rights, can attract an award of punitive and exemplary damages. (*Louis Vuitton 2007* above, at paras 48-51; *Louis Vuitton 2008* above, at para 86; *Louis Vuitton 2011* above, at para 168; *Nintendo of America Inc et al v COMPC Canada Trading Inc*, 22 September 2009) Vancouver S082517 at paras 37-38)

[82] An award of punitive and exemplary damages ought to be substantial enough to get the attention of the defendants. (*Louis Vuitton 2011* above, at para 169)

[83] The fact that the Defendant was not previously put on notice by the Plaintiffs of his infringing activities does not alleviate the need of the Court to award punitive and exemplary damages to denounce the prior willful, knowing and recidivist activities of the Defendant. (*Louis Vuitton 2011* above, at para 177)

[84] The activities of the Defendant are outrageous and require an award of punitive and exemplary damages to be awarded against him, particularly as the damages award sought is relatively low as compared to the likely scope of the Defendant's activities.

[85] As detailed herein, the Defendant was engaged in the importation, offer for sale and/or sale of counterfeit merchandise bearing the CHANEL Trade-mark, from at least December 2006 to

the present, operating over 300 Network Domain Names in an effort to draw internet traffic to his Operating Websites. Further, since April 2009, 78 Google AdWords linked to the Defendant's Network Domain Names were removed on several different occasions following complaints to Google. Notwithstanding such removals, the Defendant continued to generate new Google AdWords to link to his Network Domain Names. (Oka Affidavit, paras 14-15)

[86] As outlined in paragraphs 16 to 18 above, the Defendant has been attempting to deliberately conceal his identity by using several different aliases on the registration information for the Network Domain Names and the Operating Websites. The Defendant has also attempted to deliberately conceal his identity by having his Network Domain Names re-direct to different Operating Websites. Further, by operating several different Operating Websites that ship counterfeit goods directly to the consumer from the manufacturer, the Defendant is clearly trying to avoid being detected by Customs by fragmenting the large volume of goods he is importing.

[87] There can be no question that the recidivist actions of the Defendant in infringing the Plaintiffs' rights in the CHANEL Trade-marks were deliberate and knowing, and evidence a complete lack of regard for the laws of Canada and the intellectual property rights of Chanel. Given the egregious nature of the Defendant's activities, the normal trade-mark damages assessments would not be sufficient to accomplish the objectives of retribution, deterrence and denunciation, and the highly reprehensible conduct justifies an award of punitive and exemplary damages.

[88] The Plaintiffs therefore seek punitive and exemplary damages in the amount of at least \$100,000 which is in line with the recently developed body of case law on punitive and exemplary damages in counterfeiting matters.

(4) Post-Judgment Interest

[89] The Plaintiffs also seek post-judgment interest on all damages, profits and/or punitive and exemplary damages awarded, at the current rate of 3.00% and at future rates determined according to the *Court Order Interest Act*, which is the legal post-judgment interest rate in British Columbia, where the Defendant appears to reside, or has resided at the relevant time, and where he received payment for the infringing activities. (Section 37(1) of the *Federal Courts Act*, Section 7 of the British Columbia *Court Order Interest Act*; Jobson Affidavit 1, para 6, Exhibit D)

(5) Costs

(a) *Solicitor and Client Costs*

[90] The Plaintiffs also seek costs on a solicitor and client basis.

[91] Solicitor and client costs are to be awarded only exceptional circumstances, for example where a party has displayed reprehensible, scandalous or outrageous conduct.

[92] Solicitor and client costs may be awarded in cases where the party's actions during a proceeding are reprehensible, scandalous and outrageous, the party's actions are dismissive towards the proceeding at hand, and the party continues in flagrant infringement of the plaintiff's intellectual property rights as to be worthy of rebuke. Such an award of costs is appropriate where the defendant

has committed a deliberate and inexcusable violation of the plaintiff's rights, particularly those resulting in substantially higher legal fees and disbursements than would otherwise have been necessary. (*Louis Vuitton 2007* above, at paras 58-59; *Louis Vuitton 2008* above, at paras 92-94; *Prise de parole Inc v Guérin, éditeur Ltée* (1995), 104 FTR 104, 66 CPR (3d) 257 at 268-269 (TD); affirmed (1996), 121 FTR 240 (note), 73 CPR (3d) 557 (CA); *Louis Vuitton 2011* above, at para 184.

[93] From December 2006 to the present, the Defendant has committed deliberate and inexcusable repeat infringement of the Plaintiffs' trade-mark rights. Further, the Defendant has shown an utter disregard for the process of this Court, in refusing to participate in the proceeding, and, as a result, the Plaintiffs have incurred substantially higher legal fees and disbursements than would otherwise have been necessary.

[94] An award of solicitor and client costs is appropriate.

[95] In terms of quantum of solicitor and client costs, the award of costs on a solicitor and client basis is intended to provide full indemnification of costs reasonably incurred in the course of carriage by the plaintiff in the litigation. Rule 400 provides discretion for the Court in an appropriate case to fix costs in a lump sum in lieu of later assessed costs. (*Merck & Co v Apotex*, 2002 FCT 1210, 23 CPR (4th) 89 at para 11 (TD); *Merck & Co v Apotex*, 2001 FCT 589, 12 CPR (4th) 456 at para 23 (TD))

[96] During the course of litigation, the Plaintiffs have incurred legal fees in the amount of \$31,270 and will likely incur additional fees in the amount of approximately \$2,000 in finalizing the present motion record and in counsel preparing for and arguing the present motion. The Plaintiffs' total legal fees in relation to this matter will therefore be \$33,270. (Jobson Affidavit 1, paras 8-9, Exhibits J-K)

[97] The Plaintiffs also claim the disbursements summarized below, totaling \$4,608.72, rendered necessary by the Defendant's illegal activities and its failure to defend the Plaintiffs' action.

Item	Amount	Evidence
Obtaining Certified Copies of Chanel's trade-marks	\$187.00	Jobson Affidavit 1, para 10, Exhibit L
Issuance of Statement of Claim	\$150.00	Jobson Affidavit 1, para 11, Exhibit M
Substituted Service of Statement of Claim on the Defendant	\$88.00	Jobson Affidavit, para 13, Exhibit O
Investigator Fees relating to Jiang Chu (2010-2011 investigations)	\$1,995.00	Jobson Affidavit 1, para 15, Exhibit Q
Investigator Fees relating to Jiang Chu (execution of Smith Affidavit and Viswanathan Affidavit)	\$416.00	Jobson Affidavit 1, para 16, Exhibit R
Investigator Fees relating to Jiang Chu (attempted personal service)	\$1,020.34	Jobson Affidavit 1, para 12, Exhibit N
Investigator Fees relating to Jiang Chu (execution of the Lambie Affidavit)	\$116.24	Jobson Affidavit 1, para 14, Exhibit P
Computer and phone charges	\$447.84	Jobson Affidavit 1, para 8, Exhibit J
SST	\$188.30	Jobson Affidavit 1, para 8, Exhibit J

[98] Based on the fees and disbursements incurred, the Plaintiffs therefore seek a lump sum award of solicitor and client costs in the amount of \$35,878.72, less the \$2,000 already ordered paid by this Honourable Court, for a total additional award of \$33,878.72.

[99] The Plaintiffs also seek post-judgment interest on this amount, again at the current rate of 3.00% and at future rates determined according to the *Court Order Interest Act*, RSBC 1996, c 79.

[100] Further, the Defendant was ordered by this Honourable Court to pay the Plaintiffs' costs of the motion dated June 3, 2011, in the lump sum amount of \$2,000, forthwith and in any event of the cause. The entire amount of such order remains outstanding and the Plaintiffs seek confirmation of such Orders on the entire amount of \$2,000 owing. (Federal Court Order, dated June 3, 2011)

[101] The Plaintiffs also seek post-judgment interest with respect to the Order of June 3, 2011 as such costs were payable forthwith calculated from June 3, 2011, at a rate of 3.00% from June 3, 2011 through October 27, 2011, and at future rates determined according to the *Court Order Interest Act*, RSBC 1996, c 79.

(b) *Tariffed Costs in the Alternative*

[102] In the alternative, the Plaintiffs seek costs in the total amount of \$5,668.38 reflecting tariffed fees in the amount of \$2,080 as outlined below, plus disbursements of \$3,588.38 based on the breakdown of disbursements above, less the disbursement amount of \$1,020.34 for "Investigator Fees relating to Jiang Chu (attempted personal service)" as such amount was included in the Order of June 3, 2011.

Item	Assessable Service	Number of Units of Column III	Unit Value*	Dollar Amount
	A. Originating Documents and Other Pleadings			
1.	Preparation of Statement of Claim	6	\$130	\$780
	B. Motions			
4.	Preparation and filing of Plaintiffs' Motion for Default Judgment	4	\$130	\$520
6.	Appearance on Plaintiffs' Motion for Default Judgment (1 hour x 2 unit/hour)	2	\$130	\$260
	E. Trial or Hearing			
26.	Assessment of costs	4	\$130	\$520
				\$2,080

* Pursuant to the Memorandum of the Chief Justice of the Federal Court dated May 4, 2011 and s. 4(2) of Tariff B of the *Federal Court Rules*, the unit value is \$130.

[103] The Plaintiffs also again seek post-judgment interest on the tariffed amount, again at the current rate of 3.00% and at future rates determined according to the *Court Order Interest Act*, RSBC 1996, c 79.

[104] The above breakdown of tariffed costs does not include the steps or disbursements for which the costs of \$2,000 have already been award by the Court. The Plaintiffs seek both the tariffed costs and disbursements (totaling \$5,668.38), plus confirmation of such previous Order on the entire amount of \$2,000 owing, and post-judgment interest on such rates.

ORDER

THIS COURT ORDERS that:

1. Since the Plaintiff, Chanel S. de R.L., Inc. (Chanel), is the owner in Canada of the trade-marks and trade-mark registrations listed in Schedule A hereto (the CHANEL Trade-marks); said registrations are valid; and the CHANEL Trade-marks have been infringed by the Defendant, contrary to sections 19 and 20 of the *Trade-marks Act*.
2. Since the Defendant has used the CHANEL Trade-marks in a manner likely to have the effect of depreciating the value of the goodwill attaching thereto, contrary to section 22 of the *Trade-marks Act*.
3. Since the Defendant has directed public attention to his wares in such a way as to cause or to be likely to cause confusion in Canada between the Defendant's wares and the wares and business of the Plaintiffs, contrary to section 7(b) of the *Trade-marks Act*.
4. Since the Defendant has passed off his wares as and for those of the Plaintiffs, contrary to section 7(c) of the *Trade-marks Act*.
5. Since the Defendant has used, in association with fashion accessories, a description which is false in a material respect and which is of such a nature as to mislead the public as regards to the character, quality and/or composition of such wares, contrary to section 7(d) of the *Trade-marks Act*.
6. Since the Defendant, by himself and his servants, workmen, agents and employees, are permanently restrained and enjoined from, directly or indirectly:

- (i) further infringing the CHANEL Trade-marks;
- (ii) using the CHANEL Trade-marks, any words, or combination of words, or any other design, likely to be confusing with the CHANEL Trade-marks, as or in a trade-mark or trade-name, or for any other purpose;
- (iii) depreciating the value of the goodwill attaching to the CHANEL Trade-marks;
- (iv) directing public attention to any of the Defendant's wares in such a way as to cause or to be likely to cause confusion between the wares of the Defendant and the wares and business of the Plaintiffs;
- (v) passing off the Defendant's wares as and for those of the Plaintiffs; or
- (vi) using in association with fashion accessories a description which is false in a material respect and which is of such a nature as to mislead the public as regards to the character, quality and/or composition of such wares.

THIS COURT ORDERS that:

1. The Defendant shall pay forthwith to the Plaintiffs the amount of \$186,000, as damages.
2. The Defendant shall pay forthwith to the Plaintiffs the amount of \$100,000, as punitive and exemplary damages.
3. The Defendant shall pay forthwith to the Plaintiffs their cost of these proceedings in the amount of \$33,878.72, inclusive of disbursements.




4. The Defendant shall pay to the Plaintiffs' post-judgment interest in the amounts awarded in paragraphs 1, 2, and 3 (above), calculated from the date of this Judgment at the current rate of 3.00% and at future rates determined according to the *Court Order Interest Act*, RSBC 1996, c 79.
5. The Defendant shall pay to the Plaintiffs the amount of \$2,000 as costs, in accordance with the Order of this Court dated June 3, 2011.
6. The Defendant shall pay to the Plaintiffs post-judgment interest on the amount awarded in paragraph 11, calculated from June 3, 2011 at the rate of 3.00% and at future rates determined according to the *Court Order Interest Act*, RSBC 1996, c 79.
7. Within twenty-one (21) days of the Judgment, the Defendant shall, deliver up to the Plaintiffs, at his own expense, all articles in his possession, custody or power which offend in any way against any order which is made herein.


"Michel M.J. Shore"

Judge

Schedule A

	Trade-mark	Registration/ Application No.	Date of first use:	Registration Date:	Wares/Services
CHANEL	CHANEL	TMA143,648	(1) 1925	January 28, 1966	WARES (1) Wearing apparel for women, namely ensembles, tailor-made suits, dresses, jackets, blouses and neckwear, namely, silk neckerchiefs, silk squares and scarves.
			(2) 1925		(2) Buttons, pins and artificial jewellery.
			(3) 1925		(3) Jewellery.
			(4) April 6, 1972		(4) Shoes and leather goods, namely wallets, pocketbooks, purses and belts.
			(5) March 22, 1985		(5) Neckties, belts made of metal, fabric, synthetic materials or combinations of these with leather.
			(6) September 4, 1986		(6) Hair accessories, namely, pins, bows, hair bands, clips; artificial flowers.
			(7) February 18, 1987		(7) Lighters.
			(1) February 18, 1987		SERVICES (1) Operation of boutiques selling clothing, perfumery, and accessories.

	Trade-mark	Registration/ Application No.	Date of first use:	Registration Date:	Wares/Services
	CC Design	TMA345,284	(1) April 11, 1988	September 23, 1988	(1) Wearing apparel, namely skirts, blouses, pants, jackets, sweaters, cardigans and strapless bras; costume jewellery; leather goods, namely handbags, belts, leather purses, pouches; accessories, namely barrettes, gloves, ties, shawls, scarves, cloth and chain belts.
	CC Design	TMA649,677	(1) March 15, 2004	October 5, 2005	(1) Handbags.
	CC Design	UCA18537	(1) 1920	August 12, 1943	(1) Toilet preparations, namely perfume, eau de cologne, eau de toilette, bath powder, bath oil, after bath oil spray, body lotion, body crème, milk bath crème, bathing gel, soap, after shave balm, cologne, deodorant stick.
			(2) August 8, 1986		(2) Costume jewelry.
			(3) September 4, 1986		(3) Hair accessories, namely, pins, bows, hair bands, clips; artificial flowers.
			(4) January 25, 1988		(4) Men's and woman's clothing, namely neckties, hats, shawls, belts, suits, jackets, skirts, dresses, pants, blouses, tunics, sweaters, cardigans, T-shirts, coats, hairbows; shoes.

	Trade-mark	Registration/ Application No.	Date of first use:	Registration Date:	Wares/Services
	CC Design (continued)	UCA18537 (continued)	(5) January 25, 1988		(5) Cosmetic products, namely skin creams, beauty masks, body lotion, moisturizers, blush, liquid and crème makeup, toner, freshner, lip makeup, nail enamel, nail enamel remover, nail and cuticle treatment, powder, eye makeup, skin cleansers, makeup remover; makeup brushes.
	CC Design	TMA339,904	(1) February 11, 1988	May 6, 1988	(1) Operation of boutiques selling clothing, perfumery, and accessories.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-453-11

STYLE OF CAUSE: CHANEL S. DE R.L. et al. v. JIANG CHU

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: November 7, 2011

**REASONS FOR ORDER
AND ORDER:** SHORE J.

DATED: November 10, 2011

APPEARANCES:

Karen F. MacDonald	FOR THE PLAINTIFFS
No one	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Smart & Biggar Vancouver, BC	FOR THE PLAINTIFFS
n/a	FOR THE DEFENDANT