

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

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

Plaintiffs,

vs.

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

Defendants

**Cause No.**

**COMPLAINT FOR DAMAGES  
CLASS ACTION ALLEGED**

**SUMMARY**

Defendant Coach, Inc. is engaged in an illegal, statewide and nationwide campaign to suppress “second hand” sales of its handbags and other products. Through this campaign, Coach is trying to force all consumers to purchase Coach products only in their expensive retail stores, rather than through online second hand online outlets such as E-Bay. Unfortunately, in its pursuit of maximum profits, Coach has employed unfair and deceptive practices and has violated state and federal law.

Without investigating the validity of its allegations, Coach wantonly accuses consumers of infringing its trademarks by selling counterfeit Coach products. Coach apparently monitors online retailers such as E-Bay, looking for ads from consumers selling second hand Coach products. In response to such ads, Coach delegates a New York law firm to launch a threatening letter to the consumer. These letters accuse the consumer of trademark infringement, threaten legal action, and demand the immediate payment of damages to Coach in “settlement” of Coach’s threats. At the same time, Coach (or its New York law firm) informs the online retailer that infringing merchandise is being sold on its website. In many cases, this causes the online

COMPLAINT FOR DAMAGES  
CLASS ACTION ALLEGED

VAN EYK & MOORE, PLLC.  
100 West Harrison Street, N440  
Seattle, WA 98119  
(206) 414-8968  
(206) 452-0722 FAX

1 retailer to involuntarily remove the allegedly infringing ad, and to disable the consumer's online  
2 account. This destroys any chance the consumer had to sell the Coach product second hand, and  
3 otherwise damages the consumer.

4 In many cases (such as that of the lead plaintiff identified here), Coach's allegations of  
5 infringement are flatly false. It appears that Coach fails to conduct even a minimally reasonable  
6 investigation into its counterfeiting claims before threatening legal action. For example, the  
7 lead plaintiff identified in this Complaint *is a former Coach employee*, who owned, and tried to  
8 sell, genuine and legitimate Coach products. It was entirely legal for her to do so. Coach's  
9 threats against her were false, reckless, and unwarranted.

10 On information and belief, many consumers have paid Coach its demanded damages to  
11 try and "make them go away," even though such consumers never tried to sell infringing or  
12 counterfeit merchandise.

13 On behalf of herself and all others similarly situated and unknown, the PLAINTIFF  
14 alleges as follows:

15 **I. NATURE OF PLAINTIFF'S CLAIMS**

16 This class action lawsuit arises on the following grounds: (1) the Washington Consumer  
17 Protection Act, RCW 19.86 *et seq.* ("CPA"), (2) Misrepresentation of Trademark Infringement,  
18 17 U.S.C., Section 512(f), (3) Defamation, and (4) Tortious interference with business  
19 expectancy.

20 **II. PARTIES**

21 1. Gina Kim is the representative plaintiff in this action. She is a resident of King  
22 County, Washington, which is within this judicial district.

23 2. The plaintiff class alleged consists of all consumers in Washington State who  
24 have, in the last three years, received a cease and desist letter from Coach or any agents of  
25 Coach, accusing them of attempting to sell infringing and counterfeit Coach products through an  
online outlet such as E-Bay, Craigslist, or other such services, where such allegation is false.

3. Defendants Coach, Inc. and Coach Services, Inc. are Maryland corporations  
having their principal office and place of business in a state other than Washington. Coach does  
extensive business in Washington State.

COMPLAINT FOR DAMAGES  
CLASS ACTION ALLEGED

VAN EYK & MOORE, PLLC.  
100 West Harrison Street, N440  
Seattle, WA 98119  
(206) 414-8968  
(206) 452-0722 FAX

1           **III.    JURISDICTION AND VENUE**

2           1.    The events giving rise to this claim arose in King County, Washington.

3           2.    This Court has jurisdiction over this matter under 28 U.S.C. § 1331 because the  
4 cases raises questions of federal law. This Court has jurisdiction over the state law claims  
5 pursuant to 28 U.S.C. § 1367.

6           3.    Personal jurisdiction over the Defendants is proper because Defendants market  
7 and sell their trademarked products in this jurisdiction and because Defendants directed  
8 damaging, defamatory, and tortious statements against a resident of this district.

9           4.    Venue is proper in this district under 28 U.S.C. § 1391(a), (b), and (c).

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

11           1.    Plaintiff is an online vendor of goods, including handbags.

12           2.    Plaintiff operates a Washington-based seller account on Ebay.

13           **1.    VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**

14           1.    Plaintiff incorporates and re-alleges the preceding paragraphs.

15           2.    Plaintiff's attempt to sale an "asset," a handbag, on Ebay constituted "trade" and  
16 "commerce" under RCW 19.96.010.

17           3.    In October 2010, Defendants, without conducting any reasonable investigation,  
18 notified Ebay that a handbag sold by Plaintiff was counterfeit and infringed Defendants'  
19 trademarks.

20           4.    Defendants' unsubstantiated claims led to the removal of Plaintiff's  
21 advertisement for sale of a handbag from Ebay and the elimination of Plaintiff's seller account.

22           5.    On October 8, 2010, Defendants, through their attorney, notified Plaintiff of the  
23 alleged trademark violation and demanded that Plaintiff return the handbag to Defendants and  
24 pay monetary damages.

25           6.    Plaintiff's handbag was not counterfeit.

          7.    Defendants statements that Plaintiff sold counterfeit products are false and  
misleading statements of fact.

          8.    The aforementioned statements disparage the goods and business of Plaintiff,  
hindering commerce and adversely impacting Plaintiff's business interests.

1 9. Defendants' accusations amount to unfair and deceptive trade practices in  
2 violation of RCW 19.86.020.

3 10. Under RCW 19.86.090, Plaintiff is entitled to actual damages, treble damages,  
4 and attorney's fees.

5 11. Defendants have engaged in an ongoing pattern of this conduct which has  
6 damaged all members of the class.

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

9 1. Plaintiff incorporates and re-alleges the preceding paragraphs.

10 2. Defendants claim rights in various federal trademarks.

11 3. In October 2010, Defendants, without conducting a thorough investigation,  
12 notified Ebay that a handbag sold by Plaintiff was counterfeit and infringed Defendants'  
13 trademarks. This constituted a knowing, material misrepresentation of trademark infringement.

14 4. On October 8, 2010, Defendants, through their attorney, notified Plaintiff of the  
15 alleged trademark violation and requested that Plaintiff return the handbag to Defendants and  
16 pay monetary damages. This constituted a knowing, material misrepresentation of trademark  
17 infringement.

18 5. Contrary to Defendants' accusations, Plaintiff did not infringe Defendants'  
19 trademarks or violate any other law.

20 6. Accordingly, there is a substantial controversy between parties having adverse  
21 legal interests of sufficient immediacy.

22 7. Plaintiff is entitled to a declaration that she has not infringed Defendant's  
23 trademarks. Such a declaration is necessary and appropriate at this time so that the parties may  
24 ascertain their respective rights and duties regarding the matters in dispute.

25 8. Plaintiff is entitled to other relief, including reasonable attorneys fees,  
enumerated in 17 U.S.C. 512(f).

9. Defendants have engaged in an ongoing pattern of this conduct which has damaged  
all members of the class.

**3. DEFAMATION**

1. Plaintiff incorporates and re-alleges the preceding paragraphs.

COMPLAINT FOR DAMAGES  
CLASS ACTION ALLEGED

VAN EYK & MOORE, PLLC.  
100 West Harrison Street, N440  
Seattle, WA 98119  
(206) 414-8968  
(206) 452-0722 FAX

1           2.     In October 2010, Defendants, without conducting a thorough investigation,  
2 notified Ebay that a handbag sold by Plaintiff on her Ebay seller account was counterfeit and  
3 infringed Defendants' trademarks.

4           3.     By letter dated October 8, 2010, Defendants, through their attorney, falsely stated  
5 that Plaintiff's merchandise was counterfeit.

6           4.     Contrary to Defendants' accusations, Plaintiff did not infringe Defendants'  
7 trademarks or violate any other law.

8           5.     The aforementioned statements are defamatory because they refer to Plaintiff and  
9 tend to prejudice her business credit, property, and operations.

10          6.     Defendants had no factual basis for stating that Plaintiff sold counterfeit  
11 products.

12          7.     Defendants have engaged in an ongoing pattern of this conduct which has  
13 damaged all members of the class.

14 **4.     TORTIOUS INTERFERENCE WITH A BUSINESS EXPECTANCY**

15           1.     Plaintiff incorporates and re-alleges the preceding paragraphs.

16           2.     In October 2010, Defendants, without conducting a thorough investigation,  
17 notified Ebay that a handbag sold by Plaintiff was counterfeit and infringed Defendants'  
18 trademarks. This constituted a knowing, material misrepresentation of trademark infringement.  
19 Defendants knew that plaintiff had a valid business expectancy for the sale of the handbag.

20           3.     On October 8, 2010, Defendants, through their attorney, notified Plaintiff of the  
21 alleged trademark violation and requested that Plaintiff return the handbag to Defendants and  
22 pay monetary damages.

23           4.     This conduct intentionally interfered, induced or caused a breach of the known  
24 business expectancy, causing damage to the plaintiff.

25           5.     Defendants have engaged in an ongoing pattern of this conduct which has  
26 damaged all members of the class.

**V.     CLASS ALLEGATIONS**

1           1.     Plaintiff seeks certification of a class as defined below.

1 (a) **The Class:** The plaintiff class alleged consists of all consumers in  
2 Washington State who have, in the last three years, received a cease and desist letter from Coach  
3 or the agents of Coach, accusing them of attempting to sell infringing and counterfeit Coach  
4 products through an online outlet such as E-Bay, Craigslist, and other such services, where such  
5 allegation was made without basis and has harmed the consumer.

6 Excluded from the Class are (i) any judge presiding over this action and members of  
7 their families; (ii) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and  
8 any entity in which Defendant or its parents have a controlling interest and their current or  
9 former employees, officers and directors; (iii) persons who properly execute and file a timely  
10 request for exclusion from the Class; and (iv) the legal representatives, successors or assigns of  
11 any such excluded persons.

12 2. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this  
13 time, but on information and belief, Defendant has threatened many Class members throughout  
14 the State of Washington, making joinder of each individual member impracticable. Ultimately,  
15 the Class and members will be easily identified through Defendant's records. Plaintiff believes  
16 that the members of the Class are geographically dispersed throughout the State, and that joinder  
17 of all Class members would therefore be impracticable.

18 3. **Commonality and Predominance:** Common questions of law and fact exist as  
19 to all members of the Class and predominate over any questions affecting only individual  
20 members. Defendant has acted or refused to act on grounds generally applicable to the class,  
21 thereby making appropriate final injunctive relief or corresponding declaratory relief with  
22 respect to the Class as a whole.

23 Common questions of law and fact include but are not limited to:

24 (a) Whether Defendants threatened legal action and demanded payment of  
25 settlement damages with no basis in fact;

1 (b) Whether Defendants notified online retailers that counterfeit merchandise  
2 was being sold on their website with no basis in fact;

3 (c) Whether Defendant's practices violate the CPA;

4 (d) Whether Defendant's practices violate 17 U.S.C. 512(f);

5 (e) Whether Defendant's conduct constituted defamation;

6 (f) Whether Defendant's conduct tortiously interfered with a legitimate business  
7 expectancy of the Class members;

8 (g) Whether Plaintiff and the Class are entitled to relief, and the nature of such  
9 relief.

10 4. **Typicality:** Plaintiff's claims are typical of the claims of the other members of  
11 the Class. Plaintiff and the Class members sustained damages as a result of Defendant's uniform  
12 wrongful conduct toward Plaintiff and the Class.

13 5. **Adequate Representation:** Plaintiff will fairly and adequately represent and  
14 protect the interests of the Class, and has retained counsel competent to litigate this action.  
15 Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses  
16 unique to Plaintiff.

17 6. **Appropriateness:** This class action is appropriate for certification because class  
18 proceedings are superior to all other available methods for the fair and efficient adjudication of  
19 this controversy and joinder of all members of the Class is impracticable. The prosecution of  
20 separate actions by individual members of the Class would impose heavy burdens upon the  
21 courts and Defendant, and would create a risk of inconsistent or varying adjudications of the  
22 questions of law and fact common to the Class. The damages suffered by the individual  
23 members of the Class will likely be small relative to the burden and expense of individual  
24 prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it  
25 would be virtually impossible for the individual members of the Class to obtain effective relief  
from Defendant's misconduct. Even if members of the Class could sustain such individual

1 litigation, it would not be preferable to a class action because individual litigation would  
2 increase the delay and expense to all parties due to the complex legal controversies presented in  
3 this Complaint. By contrast, a class action presents far fewer management difficulties and  
4 provides the benefits of single adjudication, economy of scale, and comprehensive supervision  
5 by a single court. Economies of time, effort, and expense will be fostered and uniformity of  
6 decisions will be ensured.

7       **7. Policies Generally Applicable to the Class:** This class action is also appropriate  
8 for certification because Defendant has acted on grounds generally applicable to the Class,  
9 thereby requiring the Court's imposition of uniform relief to ensure compatible standards of  
10 conduct toward the members of the Class, and making final injunctive relief appropriate with  
11 respect to the Class and Subclasses as a whole. Defendant's conduct challenged herein apply  
12 and affect members of the Class uniformly and Plaintiff's challenge of that conduct hinges on  
13 Defendant's conduct with respect to the Class as a whole, not on facts or law applicable only to  
14 Plaintiff.

15       **8. Reservation:** Plaintiff reserves the right to revise the Class definition and Class  
16 allegations based upon information learned through discovery.

17       **VI. PRAYER FOR RELIEF**

18 Plaintiff prays for a judgment against Defendants as follows:

19       1. For an order certifying this case as a class action pursuant to FRCP 23, and for an  
20 order appointing Plaintiff as Class representative and the undersigned counsel as class counsel;

21       2. That the defendant be temporarily and permanently enjoined from continuing to  
22 engage in the conduct described in this Complaint;

23       3. Under Count 1, class wide damages, treble class wide damages, and reasonable  
24 attorney fees and costs for the class as a whole;

25       4. On Count 2, class wide damages, and reasonable attorney fees and costs for the  
class as a whole; and that a declaratory judgment be entered declaring that Plaintiff did not  
infringe any valid and enforceable trademarks owned by Defendants and that Defendant's  
conduct violated federal law;

COMPLAINT FOR DAMAGES  
CLASS ACTION ALLEGED

VAN EYK & MOORE, PLLC.  
100 West Harrison Street, N440  
Seattle, WA 98119  
(206) 414-8968  
(206) 452-0722 FAX



1 5. On Count 3, class wide damages, and an injunction prohibiting Defendant from  
2 continuing to disparaging the goods, services, and business of Plaintiff class members;

3 6. On Count 4, class wide damages;

4 7. For an order requiring Defendant to disgorge all profits, benefits, and other  
5 compensation obtained from the conduct described in this Complaint;

6 7. That Plaintiff and the Class be awarded their costs and expenses incurred in  
7 connection with this action, including attorneys' fees, and pre-judgment and post-judgment  
8 interest; and

8 8. For any other relief that the Court deems just and proper.

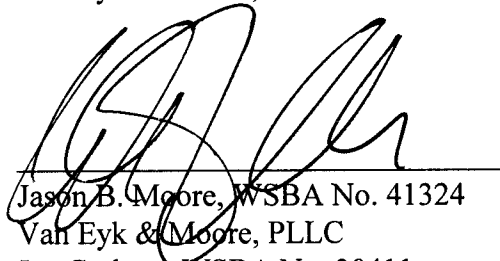
9 **VII. JURY DEMAND**

10 Plaintiff demands a trial by a jury of twelve of all claims so triable.

11 Dated this 8<sup>th</sup> day of February, 2011

12 Respectfully submitted,

13 Van Eyk & Moore, PLLC.

14   
15  
16 Jason B. Moore, WSBA No. 41324  
17 Van Eyk & Moore, PLLC  
18 Jay Carlson, WSBA No. 30411  
19 Carlson Legal  
20 Christopher Carney, WSBA No. 30325  
21 Carney Gillespie & Isitt PLLC

22  
23  
24  
25 COMPLAINT FOR DAMAGES  
CLASS ACTION ALLEGED

VAN EYK & MOORE, PLLC.  
100 West Harrison Street, N440  
Seattle, WA 98119  
(206) 414-8968  
(206) 452-0722 FAX