

Federal Court



Cour fédérale

Date: 20191115

Docket: T-1887-17

Citation: 2019 FC 1389

Ottawa, Ontario, November 15, 2019

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

**LOUIS VUITTON MALLETIER S.A.;  
LOUIS VUITTON CANADA, INC.; CELINE;  
CHRISTIAN DIOR COUTURE, S.A.;  
GIVENCHY S.A.**

**Plaintiffs**

and

**AUDREY WANG AKA NINI WANG AKA NI  
YANG; JOHN DOE AKA “MICHAEL”,  
CANADA ROYAL IMPORT & EXPORT  
CO. LTD.; COLLECTIVELY DOING  
BUSINESS AS NI FASHION,  
NIYANGBAZZA AND NI BAZZA, AND  
LIAN TONG COURIER SERVICE**

**Defendants**

**AMENDED JUDGMENT AND REASONS**

[1] The plaintiffs issued a statement of claim against the defendants on December 6, 2017, alleging a number of infringements of the *Trade-marks Act*, R.S.C., 1985, c T-13 [the *Act*] and

the *Copyright Act*, R.S.C., 1985, c C-42. The matter before the Court concerns a motion seeking an order pursuant to rule 216 of the *Federal Courts Rules*, SOR/98-106, for a summary trial on all of the issues raised in the pleadings.

[2] Such a summary trial is conducted on the basis of the record assembled by the parties which must contain all of the evidence on which the parties rely. The applicants' motion record runs for close to 4,200 pages while the defendants' motion record consists of upwards of 900 pages.

[3] None of the numerous affiants for the applicants/plaintiffs was cross-examined on their affidavit, except one, and no order pursuant to rule 216(3) was sought. Accordingly, no *viva voce* evidence was heard. If there is sufficient evidence for adjudication, the Court may grant judgment either generally or on an issue. The Court was urged by the plaintiffs to adjudicate on all the issues, including damages, as they did not intend to offer different evidence if the Court were to direct "a trial to determine the amount to which the moving party is entitled" (rule 216(7)).

[4] I will review the pleadings to ascertain what is at stake. I will then present the evidence before the Court, both from the perspective of the applicants/plaintiffs and the defendants. Once a better understanding of the evidence has been ascertained, I will consider more fully whether the motion for summary trial is the appropriate vehicle to adjudicate on the matter before the Court. If so, I will then seek to adjudicate on the issues that are ripe for adjudication. However, before delving into the issues, it might be useful to address, as a preliminary issue, what, from a

procedural standpoint, is before the Court because of amendments to the pleadings which were granted at the hearing of this case.

I. Preliminary Issue

[5] There have been a number of proceedings in association with the original statement of claim. The same day it was served on the defendants (December 13, 2017), an Anton Piller Order, executed at the residence of Ms. Wang and Mr. Yang (the “Wang residence” or “the residence”) and at the store located at the Parker Place Mall in Richmond, BC, was served. A number of items were seized at both locations. The following day, on December 14, 2017, a Mareva injunction (to prevent dissipation of assets) was granted. Furthermore, a contempt hearing was held on December 19, 2017 (concerning an incident involving Ms. Wang who refused to surrender her mobile telephone in spite of a specific order to that effect in the Anton Piller Order, while the Anton Piller Order was executed at the store). The Anton Piller Order and the Mareva injunction, which this Court refused to dismiss (2018 FC 1198), were continued until final judgment.

[6] Statements of defence were eventually filed: July 20, 2018 for the defendants, Ms. Wang and Mr. Yang, and August 13, 2018, for Canada Royal Import & Export Co. Ltd.

[7] The plaintiffs sought to amend their statement of claim shortly before the trial was to commence. The Court issued on January 30, 2019 an oral order for the purpose of granting the amendment. As is well known, the Court enjoys a significant measure of discretion as “the general rule is that an amendment should be allowed at any stage of an action for the purpose of

determining the real questions in controversy between the parties, provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of justice” (*Canderel Ltd. v Canada*, [1994] 1 FC 3, at p. 10).

[8] The defendants did not object to the amendments. The proposed amendments did not go to the heart of the case: the defendants are alleged to have sold counterfeit merchandise (Louis Vuitton Trade-marks, Celine Trade-marks, Dior Trade-marks, Givenchy Trade-marks) and to have used some Louis Vuitton Copyrighted Works. The amended statement of claim names the second defendant, Mr. Yang, whose identity was not known at the time the original statement of claim was served and filed. It also adds three trade-marks, two now found at schedule B to this judgment (Celine Trade-marks) and one now found at schedule D to this judgment (Givenchy Trade-marks). The additional trade-marks are those underlined in schedules B and D.

[9] Thus, these amendments were incorporated in the Amended Statement of Claim served and filed on January 31, 2019. The Court proceeded on that basis.

## II. The allegations

[10] It is not disputed that the plaintiffs own the trade-marks as presented in schedules A, B, C and D to this judgment, and the validity of the trade-marks is not litigated in this case.

[11] The applicants/plaintiffs each assert that their trade-marks have established a well-known reputation and goodwill in Canada. Each contends that the defendants have imported, offered for sale and sold counterfeit merchandise which bear their trade-marks, or some of them:

- a) Louis Vuitton Trade-marks: The allegation is that the Trade-mark violations date back to February 1, 2009 and include not only counterfeit merchandise (referred to as the “counterfeit Louis Vuitton merchandise”), but also merchandise bearing trade-marks likely to be confusingly similar to the Louis Vuitton Trade-marks (referred to as the “infringing Louis Vuitton merchandise”);
- b) Celine Trade-marks: the allegation is that the Trade-mark violations involve counterfeit Celine merchandise bearing the Celine Trade-marks;
- c) Dior Trade-marks: the allegation is that the Trade-mark violations involve counterfeit Dior merchandise bearing the Dior Trade-mark;
- d) Givenchy Trade-marks: the allegation is that the Trade-mark violations involve counterfeit Givenchy merchandise bearing the Givenchy Trade-marks.

[12] The execution of the Anton Piller Order generated allegedly the seizure of:

- a) Counterfeit and infringing Louis Vuitton merchandise, together with counterfeit packaging bearing the Louis Vuitton Trade-marks, were allegedly seized at the Wang residence, in Ms. Wang vehicle (as authorized in the Anton Piller Order) and at the Parker Place premises, considered as being the principal store operated by the defendants;
- b) Counterfeit Dior merchandise, bearing the Dior trade-marks, were allegedly seized at the Wang residence and at the Parker Place store.

[13] The applicants/plaintiffs allege that since 2009, the alleged importation of counterfeit merchandise has happened every two weeks. The allegation is made on the basis of statements made by Ms. Wang to investigators retained by the applicants/plaintiffs operating undercover. They also contend that documents seized and preserved will help demonstrate such importation every two weeks.

[14] As for the activities conducted by the defendants which may constitute instances of infringements, the applicants/plaintiffs allege a total of 36 instances relating to the importation, offer for sale and sale of counterfeit merchandise. The following list is taken from the notice of motion, as it frames the contours of the evidence to be led at trial with a view to establishing each instance on a balance of probabilities:

- (a) On February 1, 2009, offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Cloverdale Flea Market;
- (b) On March 15, 2009, offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Cloverdale Flea Market;
- (c) On April 26, 2009, offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Cloverdale Flea Market;
- (d) On April 8, 2010 offering for sale Counterfeit Louis Vuitton Merchandise at the Parker Place Store, including by way of actual merchandise (taken from a drawer behind a curtained area) and showing Louise Vuitton catalogues for items to be ordered;
- (e) On January 9, 2015, offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store, including by way of actual merchandise and

online and through the use of physical Louis Vuitton catalogues for items to be ordered;

- (f) In February and March, 2015, advertising for sale Counterfeit Louis Vuitton Merchandise online at <921nini.blog.163.com> (the “defendants’ website”);
- (g) On April 2, 2015, offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store;
- (h) On April 20, 2015, offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store;
- (i) On May 13, 2015, offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store;
- (j) On June 15, 2015, advertising for sale through the defendants’ WeChat Account, each of Counterfeit Louis Vuitton Merchandise, Counterfeit Celine Merchandise and Counterfeit Dior Merchandise;
- (k) Also on June 15, 2015, offering for sale Counterfeit Louis Vuitton Merchandise at the Parker Place Store, including by way of actual merchandise and showing a Louis Vuitton catalogue for items to be ordered;
- (l) On July 15, 2015, offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store;
- (m) On August 23, 2016, offering for sale and selling Counterfeit Louis Vuitton Merchandise, both to the investigator and another customer, at the Parker Place Store;
- (n) In January, 2017, offering for sale Counterfeit Louis Vuitton Merchandise, Counterfeit Dior Merchandise and Counterfeit Givenchy Merchandise;
- (o) On January 31, 2017, offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store;

- (p) In March and April, 2017, advertising for sale Counterfeit Louis Vuitton Merchandise through the Defendants' WeChat Account;
- (q) On May 12, 2017, offering for sale (from underneath the counter) and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store;
- (r) On June 7, 2017, advertising for sale Counterfeit Louis Vuitton Merchandise through the Defendants' WeChat Account;
- (s) On July 11, 2017, offering for sale Counterfeit Louis Vuitton Merchandise at the Richmond Night Market;
- (t) On August 11, 2017, offering for sale Counterfeit Louis Vuitton Merchandise at the Parker Place Store;
- (u) On September 15, 2017, offering for sale and selling Counterfeit Louis Vuitton Merchandise (stored in plastic bags) at the Richmond Night Market;
- (v) On October 29, 2017, advertising for sale through the Defendants' WeChat Account, each of Counterfeit Celine Merchandise, Counterfeit Dior Merchandise and Counterfeit Givenchy Merchandise;
- (w) On November 25, 2017, offering for sale Counterfeit Dior Merchandise, Counterfeit Givenchy Merchandise and Counterfeit Celine Merchandise via messaging on the Defendants' WeChat Account;
- (x) On December 4, 2017, advertising for sale Counterfeit Louis Vuitton Merchandise on the Defendants' Website;
- (y) On December 13, 2017, being in possession of significant quantities of Counterfeit Louis Vuitton Merchandise and Counterfeit Dior Merchandise, including associated counterfeit packaging, intended for sale by the Defendants, stored at both the Parker Place Store and the Wang Residence; and



- (z) On December 13, 2017, having imported Counterfeit Louis Vuitton and Dior Merchandise, delivered to the Wang Residence.

It is noteworthy that there is no evidence of instances of infringement between May 2010 and December 2014, yet the plaintiffs, through some interpolation, sought damages during that period on the basis of an allegation of an inventory turn-over every two weeks. As I indicated during the hearing, this is not an inference that can be made for a period during which there is a lack of evidence of any level of business activity that could help support such an inference, assuming of course that an inventory turn-over, over and above shipments of merchandise received on a regular basis, can be justified in the circumstances of this case in view of the evidence.

[15] These occurrences, if proven, give rise to violations of various provisions of the *Trade-marks Act* and the *Copyright Act*. They are:

- (a) S. 19 of the *Trade-marks Act*: exclusive rights of the four applicants/plaintiffs to their trade-marks;
- (b) S. 20 of the *Trade-marks Act*: for each of the four applicants/plaintiffs, the use made by the defendants is said to be likely to cause the public to believe or infer that the defendants' wares originate from and are authorized by the four owners of their trade-marks; as such they are deemed to have infringed the exclusive rights in their marks;
- (c) S. 22 of the *Trade-marks Act*: the use made by the defendants of the trade-marks of the four applicants/plaintiffs is likely to depreciate the value of the goodwill attached to the trade-marks;

- (d) S. 7(b) of the *Trade-marks Act*: the defendants are accused of having called public attention to their goods and business in a manner likely to cause confusion in Canada with the goods and business of the four plaintiffs;
- (e) S. 7(c) of the *Trade-marks Act*: the defendants have passed off their goods as and for those of the four plaintiffs;
- (f) S. 7(d) *Trade-marks Act*: the defendants used in association with goods and services a description which is false in a material way and is of a nature to mislead the public concerning the character, quality and composition of those goods and services;
- (g) S. 52 of the *Competition Act*, R.S.C., 1985, c C-34: false and misleading material representations to the public were made by the defendants for the purpose of directly or indirectly promoting the supply or use of their goods and business interests;
- (h) Sections 3, 27 and 38.1 of the *Copyright Act* by infringing the Copyrighted Works owned by Louis Vuitton.

### III. The parties

[16] The plaintiffs involved in this litigation are well known and their corporate existence is not disputed. The plaintiffs are:

- Louis Vuitton Malletier S.A. is a “société anonyme” existing under the laws of France; Louis Vuitton Canada Inc is a subsidiary of Louis Vuitton Malletier S.A. incorporated under the laws of Canada;
- Celine, Dior and Givenchy are all “sociétés anonymes” existing under the laws of France.

As for the defendants, they are:

- Audrey Wang, aka Nini Wang, aka Ni Yang, a person who is a director of Canada Royal Import & Export Co. Ltd., and carried business at the Parker Place Mall (principal place of business), the Cloverdale Flea Market and the Richmond Night Market;
- Jun Yang, aka Michael Yang, is the spouse of Ms. Wang and he carries business in the same location as his wife, although he argued not to be involved to a great extent in the business activities;
- Canada Royal Import and Export Co. Ltd is a company existing under the laws of British Columbia.

The style of cause refers to the defendants as collectively doing business as Ni Fashion, Niyangbazza and Ni Bazza, and Lian Tong Courier Service. For greater certainty, it must be understood that these are not entities constituting defendants.

[17] The four plaintiffs are well known manufacturers of high-end luxury products and they own trade-marks that have been registered in Canada. The trade-marks (see schedules A, B, C, D) are used to identify their products in Canada. The plaintiffs maintain strict quality controls; they have created, developed, manufactured, advertised and marketed their products at great cost in order to convey the highest standards and utmost quality. They have all established a well-known reputation and goodwill: that goodwill is of very high value and of fundamental importance to their overall business.

[18] Louis Vuitton owns the copyright in Canada in what is described as “Multicolored Monogram-White Print” and “Multicolored Monogram-Black Print”. It has the exclusive right to produce and reproduce the artistic works, in whole or in substantive part.

[19] It is alleged that the defendants conducted business out of three locations (Parker Place Mall, Cloverdale Flea Market and Richmond Night Market) as well as websites associated with the domain names <picasaweb.google.com/nifahion08> and <921nini.blog.163.com/album/#m=0&p=1>. Moreover, the defendants are alleged to infringe through the social media platform WeChat, using the nickname “NI BAZZA” and WeChat ID “niyangbazza”.

#### IV. Summary trial

[20] The first issue that must be addressed is whether or not it is appropriate to proceed with a summary trial in accordance with rule 216 of the *Rules of the Federal Courts*. The parties agree that if the Court is unable to find the facts necessary to decide the issue, it must decline to rule on the issue. They also agree that if it is unjust to give judgment, the Court must also decline to do so. Indeed, rule 216(6) says that much:

**Judgment generally or on issue**

(6) If the Court is satisfied that there is sufficient evidence for adjudication, regardless of the amounts involved, the complexities of the issues and the existence of conflicting evidence, the Court may grant judgment

**Jugement sur l'ensemble des questions ou sur une question en particulier**

(6) Si la Cour est convaincue de la suffisance de la preuve pour trancher l'affaire, indépendamment des sommes en cause, de la complexité des questions en litige et de l'existence d'une preuve contradictoire, elle peut rendre

either generally or on an issue, unless the Court is of the opinion that it would be unjust to decide the issues on the motion.	un jugement sur l'ensemble des questions ou sur une question en particulier à moins qu'elle ne soit d'avis qu'il serait injuste de trancher les questions en litige dans le cadre de la requête.
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[21] Summary trials are possible in trade-mark cases. In the context of a motion for summary trial involving trade-mark infringements (*Chanel S. de R.L., Chanel Limited and Chanel Inc. v Lam Chan Kee Company Limited et al*, 2015 FC 1091 [*Lam Chan Kee*]), the Federal Court of Appeal (2016 FCA 111) observed:

[16] Here, the trial judge committed no reviewable error in finding that it was unnecessary to hold a trial and hear evidence in order to assess the appellant's credibility. There was ample basis for the judge to have rejected the appellant's version of events and to have found that there was no need for a full trial to be held in light of the convincing proof of infringement offered by the respondents' affiants and the paucity of the appellant's evidence. It is not simply because a defendant raises an unbelievable defence of denial in response to a motion for summary trial that the motion must be dismissed. Cases like the present, involving ongoing sales of counterfeit goods by a defendant that seeks to put forward a specious defence, are particularly well-suited to being decided by way of summary trial. Thus, the decision of the trial judge to proceed by way of summary trial discloses no reviewable error.

The plaintiffs are right to point out that there have been numerous instances where courts have been able to satisfy the requirements for a summary trial in trade-mark infringement cases. That does not imply, however, that every such case is appropriate as a procedural vehicle.

[22] In the case at bar, there is sufficient evidence for adjudication and it is not unjust to adjudicate on the basis of the written record, although it is quite extensive. In fact, the extensive

written record allows the Court to be satisfied it has the evidence sufficient to adjudicate. The instances of infringement alleged by the plaintiffs are based on the evidence in affidavits, together with numerous photographs and other documentary evidence. Most of the affidavits presented by the plaintiffs were not made the subject of cross-examination, thus allowing the Court to draw inferences without having to consider the credibility of witnesses other than through internal contradictions in their testimony. None were detected. As we shall see, that evidence has great probative value given the convincing proof of infringement relative to the limited evidence offered by the defendants and the obvious implausibility of it. As for the one witness who was cross-examined, Ms. Christine Li Zhou evidence is corroborated with respect to some essential elements by the evidence of another witness, Lisa Reid, whose evidence was accepted in its entirety as she was not cross-examined.

[23] The defendants make two submissions regarding the availability of summary trial proceedings. First, they claim that the Mareva injunction executed in this case limited their resources. It is not clear how a trial that would take much longer and require very likely more resources than a summary trial would assist in the context of limited resources. As the Supreme Court noted in *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87 [*Hryniak*], the length of civil trials is becoming the enemy of the access to justice because, among many factors, the cost of holding trials becomes prohibitive:

[1] ... Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened. Without public adjudication of civil cases, the development of the common law is stunted.

[2] Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pretrial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.

[3] Summary judgment motions provide one such opportunity. Following the *Civil Justice Reform Project: Summary of Findings and Recommendations (2007)* (the Osborne Report), Ontario amended the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (Ontario Rules or Rules) to increase access to justice. This appeal, and its companion, *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, [2014] 1 S.C.R. 126, address the proper interpretation of the amended Rule 20 (summary judgment motion).

Moreover, in this case, submissions in writing were produced on behalf of the corporate defendant by counsel. The submissions in writing of the other two defendants were largely taken verbatim from the submissions of the corporate defendant. The corporate defendant's counsel was present, together with an associate, throughout the summary trial and, later on, for the damages phase of the case for which counsel produced supplemental written representations. He argued the case for his client. More importantly, the evidence has been fulsome and the defendants have been given every opportunity to present their case. More expenses were not warranted in view of the record presented to the Court.

[24] The second submission relates to the one witness who was submitted to a cross-examination, one Christine Li Zhou. In fact, she was cross-examined extensively by counsel who was representing the corporate defendant as well as Ms. Wang at the time of the cross-examination. Ms. Wang benefited from the cross-examination of counsel and she was able to

cross-examine Ms. Li Zhou. The cross-examination lasted more than four hours during which Ms. Li Zhou was asked by counsel and Ms. Wang 512 questions. The second submissions is limited to the view taken by the defendants that Ms. Zhou's deposition contains inconsistencies and unverifiable assertions. These are in the nature of arguments to be part of submissions on the weight to be given to a testimony. This does not affect the ability to achieve a fair and just adjudication. The Supreme Court devised the following test in *Hryniak*, at paragraph 4:

[4] ... a trial is not required if a summary judgment motion can achieve a fair and just adjudication, if it provides a process that allows the judge to make the necessary findings of fact, apply the law to those facts, and is a proportionate, more expeditious and less expensive means to achieve a just result than going to trial.

[25] It will not be every intellectual property case that would be appropriate for having a summary trial. In the case at bar the plaintiffs' theory of the case is relatively straight forward, and the evidence that they marshalled was not overly complex. It is, by and large, evidence of alleged instances of infringement. The complexity comes from the abundance of evidence given the theory of the case of the defendants who claims not being involved in selling counterfeit merchandise. As we shall see, it is a hard argument to make in the face of considerable evidence that was not even challenged through cross-examination. The defendants participated fully in the process, with the assistance of counsel. The motion for summary trial is an appropriate procedural vehicle in view of the evidence and the issues raised. I have not been persuaded by the defendants that a summary trial is not appropriate in the circumstances of this case. It constitutes a means to achieve a just result through a fair process of adjudication, being more expeditious and less expensive than going to trial.



V. The evidence

[26] The evidence for the plaintiffs in this case comes in the form of affidavits of 17 persons, most of whom were involved in the investigation and the execution of court orders. Except for one investigator who was cross-examined, no other affiant was submitted to cross-examination by the defendants. Together, they were involved in a rather large number of instances, 36 in total, that are alleged to be instances of infringement. The Court has reviewed each and every one of those affidavits as well as the abundant documentary evidence.

A. *Ms. Jana Checa Chong*

[27] The investigators' affidavits were supplemented by the affidavit of Ms. Jana Checa Chong, a senior Intellectual Property counsel for Louis Vuitton North America, operating out of New York. Since plaintiffs Dior S.A., Celine and Givenchy S.A. are all part of a group of companies which include Louis Vuitton Malletier S.A. and Louis Vuitton Canada, Inc (LVMH Moët Hennessy Louis Vuitton SE), Ms. Checa Chong was able to testify concerning the products of the four plaintiffs in order to identify authentic and counterfeit merchandise. In other words the witness can distinguish between authorized products which bear the marks of the four plaintiffs and unauthorized merchandise bearing those marks.

[28] Thus, she testifies that she reviewed the affidavits of the six investigators and confirms that the counterfeit exhibits are all counterfeit items. In order to do so, she identifies features that allow her to conclude that merchandise is counterfeit:

- The materials and craftsmanship of the products shown in the Counterfeit Exhibits are not consistent with those of genuine Louis Vuitton products;
- The packaging is not consistent with that of genuine Louis Vuitton products;
- The care cards are not consistent genuine Louis Vuitton products;
- The interior lining is not consistent with that of genuine Louis Vuitton products;
- The hardware is not consistent with that of genuine Louis Vuitton products;
- The production code is not consistent with that of genuine Louis Vuitton products.

[29] The witness also testified about merchandise seized as part of the execution of the Anton Piller Order on December 13 and merchandise delivered to the Wang residence during the execution of the Anton Piller Order. The items delivered to the residence are found to be “not genuine”: the witness lists the products’ characteristics that made her reach the conclusion. As for the items seized through the execution of the Anton Piller Order, the witness states that the quality of photographs of items she received was not always sufficient to allow her to conclude. Accordingly, 21 items were shipped to her in New York. They are mostly Louis Vuitton items. The physical inspection made her conclude that 19 of the 21 items were not genuine, while two were. They are two Louis Vuitton bags. The fact that she concluded that some items were genuine enhances her credibility. At any rate, she was not even cross-examined by the defendants.

[30] Ms. Checa Chong examined the “packaging photographs” taken from the seizure conducted during the execution of the Anton Piller Order. They are packaging, labelling, hand ware and other similar items. She concluded that they too are not genuine. The same is said of catalogues seized at the same time. In her view, the photographs of the catalogues depict counterfeit catalogues. She said at paragraph 61 of her affidavit that “(t)he catalogues show in the “catalogue photographs” are not authorized, printed, manufactured or distributed by or on behalf of Louis Vuitton, and show advertisement of items bearing one or more of the LOUIS VUITTON trademarks”. This of course is evidence of how significant an operation is run by the defendants that they would have in their possession not only counterfeit items as well as counterfeit packaging, but they also had counterfeit catalogues of products.

[31] The activities depicted in the investigators’ affidavits and in relation to the various counterfeit items seized as part of the execution of the Anton Piller Order “may lead the public to believe that the counterfeit merchandise sold by the Defendants are authentic [plaintiffs’ products] or have ben authorized, approved or manufactured by [the plaintiffs], and are likely to lead to confusion between the Defendants’ goods and the goods and business of [the plaintiffs]” (affidavit of Jana Checa Chong, para 63).

[32] The witness also offers evidence about the damage done to the brands through the offer for sale of counterfeit merchandise. Consumers who purchase, or who would be inclined to purchase the plaintiffs’ products will no longer do so in view of the availability of counterfeit products in the market place. In support of that common sense observation, the witness even produces a report commissioned by the Business Action to Stop Counterfeiting and Piracy, of the

International Chamber of Commerce, and the International Trademark Association. The Report, which is close to 60 pages long, seeks to establish “the “enormous” drain that counterfeit and pirated products have on the global economy, affecting billions in the legitimate economic activity, dislocating hundreds of thousands of legitimate jobs and exposing consumers to dangerous and ineffective products” (affidavit of Jana Checa Chong, para 66). In fact, the report projects astronomical numbers. The report commissioned in 2015 “forecast that the value of trade in counterfeit and pirated goods could reach \$991 billion by 2022” (page 54). Even if one were to discount the figures as being somewhat inflated as they assume growth rates, there is no doubt that counterfeiting and piracy are significant problems.

B. *The investigators*

[33] The plaintiffs offered the evidence of six investigators who testified as to their involvement with the defendants, each documenting instances of infringement of the trade-marks of the plaintiffs. These witnesses are Brian Lambie, Lisa Low, Jasper Smith, Lisa Reid, Rojen Nouri and Christine Li Zhou. Only the evidence of Christine Li Zhou was made the subject of contestation.

(1) Brian Lambie

[34] As with respect to the other investigators, Brian Lambie asserts having been trained to identify counterfeit and authentic merchandise with respect to a number of brands, including Louis Vuitton. That was not challenged. He testifies that in late December 2008, Ms. Wang and Royal Import & Export Co., Ltd came to his attention as allegedly selling counterfeit

merchandise at the Parker Place Mall and the Cloverdale Flea Market. Mr. Lambie observed Ms. Wang offering for sale counterfeit Louis Vuitton merchandise. He purchased one item for \$35 on March 15, 2009 at the Cloverdale Flea Market. On March 22, 2009, a cease and desist letter was served on Ms. Wang. The cease and desist letter was very explicit. I note that Mr. Lambie testified that while he was waiting for Ms. Wang to unload merchandise from her vehicle, an announcement over the PA system warned vendors not to sell counterfeit merchandise. Ms. Wang quickly disappeared only to come back 25 minutes later.

[35] Upon being served with the cease and desist letter, Ms. Wang surrendered three shoes bearing the Chanel Trade-marks. No other counterfeit merchandise was at the stall at that time.

[36] Mr. Lambie observed Ms. Wang selling counterfeit merchandise one month after having been served with the cease and desist letter. On April 26, 2009, Ms. Wang was seen showing boxes, hidden in a bag under a table, at the Cloverdale Flea Market. The boxes bore the Louis Vuitton Trade-marks. The investigator or other investigators observed on May 19, 2009 (Parker Place Mall), on June 20, 2009 (Richmond Night Market) and October 25, 2009 (Cloverdale Flea Market) Ms. Wang selling counterfeit merchandise; however the investigator cannot attest whether such merchandise bore Louis Vuitton Trade-marks.

[37] The rest of Mr. Lambie's affidavit describes surveillance conducted by him and other investigators showing clearly the involvement of Mr. Yang on the premises used by Ms. Wang at the Parker Place Mall and the Richmond Night Market on September 15 and 16, 2017.

(2) Lisa Low

[38] Lisa Low attests that she is capable of differentiating counterfeit from authentic Louis Vuitton merchandise. She testifies that on February 1, 2009, she observed Ms. Wang offering for sale and selling purses, wallet, shoes, jewellery, sunglasses and jeans, some of which bore Louis Vuitton Trade-mark at the Cloverdale Flea Market. Based on her training and experience, she testifies that the Louis Vuitton merchandise offered for sale were counterfeit. The investigator purchased a Louis Vuitton wallet for \$55. The purses on display were offered at prices ranging from \$180 to \$280. Ms. Wang told the investigator that her products were of a “higher quality”; she advised the investigator that she could order merchandise to purchase, “anything with a style number”. She even had a catalogue on the table (although it was not a Louis Vuitton catalogue). The photographs taken from screen captures of a video made by Ms. Low, of the person Lisa Low met on that occasion are those of the defendant, Ms. Wang.

[39] A business card obtained from Ms. Wang identifies her as Audrey Wang, Managing Director of Canada Royal Import & Export Co. Ltd, and refers to the telephone number she used, an email presented as “w\_nini@hotmail.com” and two websites : “921nini.blog.163.com/album” and “picasaweb.google.com/nifashion08”

(3) Jasper Smith

[40] Jasper Smith is another private investigator who has been trained to identify counterfeit and authentic Louis Vuitton merchandise. Mr. Smith was involved in the surveillance conducted on the two defendants on September 15 and 16, 2017. This constitutes corroboration of the

testimony of Brian Lambie. Furthermore, he testified about a visit to the Parker Place store operated by the defendants done by another investigator, Lisa Leung, who worked for him at the time. On April 8, 2009, that investigator met a person named “Joyce” who worked on a part time basis for the owner, a person named “Audrey”. No Louis Vuitton merchandise was on display at the store. But “Joyce” advised the investigator that there were two handbags she had, which she retrieved from a drawer behind a curtained area. Ms. Leung purchased the two bags for \$390 and \$420: photographs of the bags, as well as a receipt are appended to the affidavit. They are a brown monogram handbag and a white multicolor handbag. Furthermore, “Joyce” showed the investigator 2009 and 2010 Louis Vuitton catalogues, stating that orders can be placed, with shipments being made every week from a manufacturer in China; an order could be filled in two weeks. She ordered one handbag which arrived on April 27 and was picked up on April 30, 2009.

[41] Mr. Smith also testified on surveillance he conducted in September 2017. The surveillance produced observations by the investigator of activities of Ms. Wang and Mr. Yang transporting a large vinyl bag. They drove to the Richmond Night Market, but only Ms. Wang left the Night Market to go back to the Parker Place Mall. Ms. Wang then left the Parker Place Mall with two bags to go back to the Night Market. A few hours later, both Ms. Wang and her husband left together to go back to the Wang residence. This suggests that Mr. Yang was left by himself at the Richmond Night Market for a few hours.

[42] The day after (Sept. 16), Ms. Wang and Mr. Yang left their residence together in one car to go to the Parker Place Mall, carrying a large bag, which was removed by Mr. Yang once at the

Mall. Later that day, M. Wang and Mr. Yang were seen driving to the Richmond Night Market, with a smaller bag having been put into the trunk of the car. Late that night, they left the Night Market together.

[43] This surveillance of Ms. Wang and Mr. Yang tends to show the joint activities of the two defendants.

(4) Lisa Reid

[44] Lisa Reid is another investigator who was involved in this investigation. She was trained in the recognition of counterfeit merchandise bearing the plaintiffs' trade-marks. She attended the Parker Place Mall store on January 9, 2015, where she met with Ms. Wang. Ms. Reid perused some large magazines that included Louis Vuitton merchandise, together with a digital magazine. Returning shortly thereafter, the investigator purchased a Louis Vuitton handbag and a Louis Vuitton wallet for a total amount of \$350. The investigator was then shown a box containing numerous items, including Louis Vuitton items. All of these were counterfeit merchandise according to the investigator. Upon leaving the store, Audrey Wang provided the investigator with her business card which clearly identifies her. It is the same business card as that given to investigator Lisa Low six years earlier, in February 2009.

[45] The investigation continued. In February and March 2015, the investigator testifies about online offerings of counterfeit Louis Vuitton merchandise. The websites were associated with domain names appearing on Ms. Wang's business card. Contact was kept with Ms. Wang who invited through an exchange of text messages Ms. Reid to come into her store to order products.



During a visit on April 2, 2015, the investigator placed an order, using a Louis Vuitton catalogue. A purse was purchased on site for \$235. As confirmed by Ms. Checa Chong, the item is a counterfeit. The investigator placed an order for a Louis Vuitton catalogue and four Louis Vuitton items (total of \$1,450). Ms. Wang provided Ms. Reid with a handwritten note where were written her personal and business WeChat account (“niyangbazza”). During the April 2 visit, Ms. Reid conveyed to Ms. Wang her intention of setting up her own store. She was advised by Ms. Wang that she and her partner were in the process of opening a “backroom store”, to be located inside a restaurant in Seattle, for Chinese women who generally prefer to shop in private.

[46] During another visit, on April 20, 2015, Ms. Wang showed a new counterfeit handbag, just arrived, and the investigator placed a cash deposit for the prior order; a receipt for that transaction was produced.

[47] Another visit to the Parker Place Mall premises occurred on May 13, 2015, during which two more Louis Vuitton handbags were purchased. Moreover, the Louis Vuitton catalogue purchased on a prior occasion was delivered that day. Ms. Checa Chong confirmed that the bags were counterfeit.

[48] Ms. Reid continued to pose as someone interested in setting up her own store. Ms. Reid testified that on July 15, 2015, Ms. Wang offered her some advice:

14. On July 15, 2015, I again attended the Parker Place Premises with Agent Gagnon. Ms. Wang asked us about how our “stores” were coming along. Agent Gagnon asked Ms. Wang if it was better to set up a backroom and sell the counterfeit products from the backroom. Ms. Wang quickly replied that “you do not need a backroom, all you need is a display with some real products

on it to show the customers that you have authentic products”. Ms Wang further stated “you can always trust Vietnamese and Chinese people as they will cause no trouble for you and they will always buy product and spend their money”. She stated that she has been doing this for a long time without any trouble, by simply placing a few authentic items in a display cabinet and then introducing the counterfeit items once she feels there is no threat with the person visiting the store.

[Affidavit of Lisa Reid, para 14.]

Mr. Wang offered to be acting as a wholesaler for Ms. Reid. Ms. Reid also purchased a purse on that occasion for \$300. The purse was confirmed by Ms. Checa Chong as being a counterfeit.

[49] The investigator had opened her own WeChat account following her visit of April 2, 2015 during which Ms. Wang gave a handwritten note where she wrote “#WeChat niyangbazza”. The witness testified at paragraph 18 of her affidavit:

18. In April 2015, I also opened a WeChat account, and located numerous counterfeit items for sale through the WeChat account niyangbazza, including Louis Vuitton. In an update on the niyangbazza WeChat account as of June 15, 2015, at least the following brands were for sale: Louis Vuitton, Celine and Dior.

(5) Rojen Nouri

[50] Rojen Nouri, another trained investigator, testified through her affidavit about a number of instances of infringements. On June 15, 2015, she attended the defendants’ store located at the Parker Place Mall. She met there an individual who identified herself as “Audrey Wang”. The witness testified that she observed four bags bearing the Louis Vuitton trade-marks. Ms. Wang indicated that it was possible to order Louis Vuitton merchandise through a catalogue that was shown to her: shipments are arriving each week.

[51] On August 7 and August 18, 2016, Ms. Nouri attended the Parker Place Mall store. It was closed. On August 22, she called the telephone number written on a sign on the store's door, the same number given to Lisa Reid on the handwritten note where Ms. Wang made reference to "niyangbazza" in relation to a WeChat account. A person identifying herself as "Audrey Wang" answered. She indicated that the stock was low but there were catalogues available for Ms. Nouri to consult. The day after, Ms. Wang called to advise that a new shipment has just arrived. Ms. Nouri attended the store shortly thereafter. She saw merchandise branded as "Louis Vuitton", but also "Chanel", "Chloé", "Hermès" and "Gucci". The shipment appeared to be fairly large, with at least 5 bags and wallets for each brand. While on location, the witness saw a man picking up a bag bearing Louis Vuitton trade-marks.

[52] On July 11, 2017, close to a year later, Ms. Nouri saw Ms. Wang at the Richmond Night Market selling merchandise bearing the Louis Vuitton Trade-marks. As a variation on the same theme, Ms. Nouri attended the booth operated by Ms. Wang at the Richmond Night Market on September 15, 2017. However, the person minding the store was an Asian man who identified himself as "Michael". When Ms. Nouri inquired about items, "Michael" removed two Louis Vuitton items from a vinyl bag that was in the booth; there were other items in the vinyl bag, but they were not identified. The Louis Vuitton items were being offered for sale at \$120. The witness purchased a Louis Vuitton wallet for \$90 from "Michael". Given her experience and training, the witness testified that the Louis Vuitton items offered for sale and sold were counterfeit.

[53] None of these five witnesses involved in these 17 alleged instances of infringement were cross-examined. In my view, there is no reason to conclude that their testimony is anything but truthful. The only evidence from the defendants is limited to a general denial that they continued to sell counterfeit merchandise after the cease and desist letter of 2009. The specific comments made by Ms. Wang about the testimony of Lisa Low, Brian Lambie and Rojen Nouri amount to very little, if anything.

- Ms. Wang does not remember the encounter with Lisa Low;
- Ms. Wang has not attended the Cloverdale Flea Market for “at least last 7 to 8 years” (affidavit of Audrey Wang, para 65). This was in response to the affidavit of Brian Lambie who testified about his encounter with Ms. Wang in March 2009 and his observations in April 2009 at the Cloverdale Flea Market. Ms. Wang’s affidavit is dated October 25, 2018. It is not clear what the purpose is to make such statement. Mr. Lambie testified that a cease and desist letter, which was unambiguous, was delivered to Ms. Wang on March 22, 2009 at her stall at the Cloverdale Flea Market. He returned on April 26, 2009. If Ms. Wang was not at the Cloverdale Flea Market on those two occasions, then some of her comments in her affidavit are rather bizarre. For instance, she says that she did not sell any Louis Vuitton merchandise at her stall at the Cloverdale Flea Market in 2009 and 2010. Evidently, she had a stall at the flea market. Even more surprising is her response to an incident on March 22, 2009 when Mr. Lambie related that came over the PA system a warning to vendors not to sell counterfeit merchandise. Mr. Lambie says that Ms. Wang disappeared for 25 minutes. It is surprising that Ms. Wang acknowledges her presence at the Cloverdale Flea Market by seeking to provide an explanation for her sudden departure from her stall for some 25 minutes. It is clear that these statements do not affect in any way the evidence of Mr. Lambie. A less charitable interpretation about the statement

at paragraph 65 of Ms. Wang’s affidavit would be that it is misleading. Ms Wang was operating a stall at the Cloverdale Flea Market in 2009;

- Ms. Wang stressed, in response to the Nouri affidavit, that shipments did not arrive every week. In the circumstances of this case, this is completely inconsequential as Ms. Nouri testified about alleged specific offerings for sale and selling of counterfeit merchandise.

[54] I note that there was not even an attempt by the defendants to take issue with the evidence of Lisa Reid and Jasper Smith. It should be remembered that it is Ms. Reid who gave evidence about Ms. Wang giving her a handwritten note connecting her WeChat account with “niyangbazza”.

[55] As a result, the Court finds that rule 216(4) applies fully in this case. It reads:

**Adverse inference**

**4)** The Court may draw an adverse inference if a party fails to cross-examine on an affidavit or to file responding or rebuttal evidence.

**Conclusions défavorables**

**(4)** La Cour peut tirer des conclusions défavorables du fait qu’une partie ne procède pas au contre-interrogatoire du déclarant d’un affidavit ou ne dépose pas de preuve contradictoire.

The evidence of these five witnesses is unassailable. The instances of infringement are proven to the Court’s satisfaction.

(6) Christine Li Zhou

[56] The testimony of Christine Li Zhou, contrary to that of the other main witnesses, was challenged. She testified about 14 alleged instances of infringement. It appears from the evidence that she befriended Ms. Wang or, at the very least, that her fluency in Cantonese and Mandarin may have had a positive impact on the good relationship that developed between the two.

[57] Christine Li Zhou was not an experienced investigator. She is a paralegal with university education. Nevertheless she had been trained to differentiate counterfeit and authentic merchandise, including merchandise that bears the Louis Vuitton Trade-marks. Her involvement in this investigation begins in January 2017.

[58] On January 7, 2017, she noted that was offered for sale, at the Parker Place Mall store, the defendants' merchandise that could be counterfeit products; it included merchandise presented as genuine Louis Vuitton, Givenchy and Dior products.

[59] Having noted that the defendants' store located in the Parker Place Mall was often closed, she entered the number posted on the door into her contacts on her phone. Ms. Li Zhou has her own WeChat account. When she opened her WeChat application, "a WeChat profile came up for that phone number [the phone number posted on the store's door], with the "nickname" NI BAZZA and WeChat ID: niyangbazza" (affidavit of Christine Li Zhou, para 5). The affiant goes on to describe what WeChat is:

5. ... WeChat is a predominantly Chinese social media platform, somewhat similar to a combination of Facebook,

Pinterest and online sales platforms like eBay and Alibaba. It is a software application platform that operates predominately [sic] on smart phones, though it is available for use via the internet as well. It is used for many different purposes, one of which is to facilitate the offer for sale and sale of merchandise.

6. The WeChat platform uses a “nickname” that appears on a user’s profile page and all postings, with the WeChat ID appearing on the profile page. Through my exchanges with Ms. Yang, as described herein, her “nickname” appeared originally as NI BAZZA and subsequently as BAZZA, both as associated with the WeChat ID: niyangbazza (“Ni Bazza”).

[60] On January 31, 2017, Ms. Li Zhou attended the Parker Place premises. She asked if the person working at the store was “Ni Yang”, based on the WeChat ID name (“niyangbazza”). The person nodded but indicated that she can be called “Audrey”. The witness testified that a conversation ensued. Ni Yang indicated her preference for doing business through WeChat as it can reach more customers and have an extensive catalogue. Ms. Yang confided that she had recently given birth to a child. The photographs taken that day show counterfeit merchandise, including Louis Vuitton merchandise. The witness also testified that in January 2017, she observed merchandise offered for sale bearing the trade-marks of Louis Vuitton, Givenchy and Dior at the Parker Place Mall store.

[61] On February 14, 2017, Ms. Li Zhou sent a “friend request” to the Ni Bazza profile, using her own “WeChat handle” which is linked to her own telephone number. The request was accepted and she was able to review the Ni Bazza postings, which revealed, according to the witness, a significant amount of Louis Vuitton products. A screen capture made on February 17, 2017 shows what appears to be some advertisement for counterfeit Chanel merchandise as the message translate as “Haha we invested 4000 + USD in buying the real product as a template.

Soft lambskin, hardware, made 5 color tones, we made a big investment with this one. Burgundy color now available”.

[62] An initial contact was made with Ni Bazza (Ms. Yang/Audrey) on February 24, 2017. The short exchange produced the confirmation that Ni Bazza’s store is located at “Parker Place”.

[63] The affiant asserts that followed numerous exchanges through the Ni Bazza profile. In March and April 2017, the affiant passed by the store on several occasions: the store was closed with the sign on the door informing interested persons passing by of a return in 10 minutes, together with the same telephone number. Ms. Li Zhou stated that she perused Ni Bazza posts, noting postings for Louis Vuitton merchandise. In May 2017, Ms. Li Zhou made an appointment with Ni Bazza (the nickname) through WeChat. The appointment was made for that evening, Ni Bazza insisting that the store would be opened for her. There is produced the screen capture of the exchange. The appointment happened as planned, with Ms. Yang arriving after the affiant.

[64] Ms. Yang showed the affiant a number of handbags, including Louis Vuitton bags, pulled from under a counter underneath the cash register. Ms. Yang spoke about shipments arriving every two weeks from China; the shipments are with respect to specific orders requested from the WeChat catalogue. Ms. Li Zhou bought a Louis Vuitton purse for \$350. On that occasion scarves were also seen. As she was leaving, Ms. Li Zhou asked about Ms. Yang’s Chinese name, to which Ms. Yang is said to have responded something to the effect that is whatever it is on WeChat, but you can call me Audrey. A photograph of Ni Bazza/Ms. Yang/Audrey was taken on



May 12 by the affiant. There is no doubt that it is a photograph of Ms. Wang, one of the defendants.

[65] The appointment to visit the store on May 12 was confirmed through WeChat, with screen captures available to prove the existence of the exchange. The appointment happened that night. In other words, an appointment arranged through communications via WeChat produces the presence of Ms. Wang at the time and the place for the pre-arranged appointment.

[66] Evidence concerning a Chanel handbag is relevant to the proceedings because it connects the WeChat account with Ms. Wang. I reproduce in its entirety the evidence offered by Ms. Li Zhou:

13. In May 2, 2017, using an April 2017 posting on WeChat made by Ni Bazza for a Chanel handbag, I sent a WeChat message to Ni Bazza, again using my WeChat handle “christinez899”. In my message, I asked Ms. Yang if I could purchase that particular Chanel bag from her. Within a half hour, I received a voice mail from an individual, now known to me as Ms. Yang, stating that the “bags are of the highest quality, the bags are custom made per order and sent from China”, that she already had two orders for the bag and that she offers the bag in either silver or gold trim. Attached hereto as Exhibit D is a screen capture, taken from my phone, of the April 19, 2017 postings that I used to commence inquiries with the Ni Bazza profile, along with a translation of the April 19, 2017 postings that was provided to me by Norton Rose Fulbright Canada LLP.

The exchange was followed on May 17 by a WeChat voice message from Ms. Wang. That message was produced by the witness on a CD.

[67] During another encounter at the Parker Place Mall, on May 19, 2017, Ms. Yang confirmed receiving shipments every two weeks: they are to satisfy orders placed by customers. Ms. Yang also confirmed that bags are high quality fakes, being handmade and are replicas of genuine bags “immediately in front of them as they craft the fakes” (affidavit of Christine Li Zhou, para 22).

[68] The exchange of WeChat messages continued concerning the Chanel bag ordered earlier. The exchange is about the projected date of arrival of the item and is in evidence. It took place on June 11 and 12. An appointment was arranged for June 17 in order to pick up the Chanel bag. On June 17, Ms. Li Zhou met with Ms. Yang. There was a man at the store opening boxes and placing their contents out of sight, under the cash register or in drawers.

[69] More evidence of the connexion between Ms. Li Zhou and Ms. Yang came on August 9, 2017, concerning the purchase of a Hermès bag. The exchange of messages seems to have been initiated by Ms. Li Zhou, but Ms. Wang responded to it by adding that a new shipment had arrived.

[70] On August 11, 2017, during yet another visit at the Parker Place premises (the affiant had purchased a counterfeit Hermès bag and she picked it up), Ms. Li Zhou was shown several Louis Vuitton wallets taken from plastic bags. During their conversation, Ms. Yang spoke about the grades of quality for goods, claiming that she sells the highest quality to Chinese customers, while Caucasian customers get the lower quality.

[71] The affiant was asked by the plaintiffs to screen capture various postings from the Ni Bazza profile. It is a good thing they did because Ms. Li Zhou could not find them the day the Anton Piller Order was executed. They are:

- on June 7, 2017: there are upwards of 400 captures of Louis Vuitton products (exhibit Q to the Li Zhou affidavit);
- on October 29, 2017: there are 37 captures of Givenchy products (exhibit R to the Li Zhou affidavit);
- on October 29, 2017: there are 10 captures of Celine products (exhibit S to the Li Zhou affidavit);
- on October 29, 2017: there are 188 captures of Dior products(exhibit T to the Li Zhou affidavit).

[72] On November 25, 2017, the affiant inquired about the availability of Dior, Givenchy and Celine products. The availability would be better early in 2018, for Givenchy and Celine products, while a shipment of Dior products was expected shortly. However, it is unclear whether these products were already sold out.

[73] On December 13, 2017, the day the Anton Piller Order was executed at the Wang residence and at the store located at the Parker Place Mall, the witness and Ms. Wang exchanged messages using the WeChat Ni Bazza profile and Ms. Li Zhou's ID. The WeChat exchange was screen captured and is in evidence. Those were voice messages that appeared to ascertain when Ms. Wang would be at the store. The exchange appears to have taken place to ascertain the presence of the defendant at the store before the Anton Piller Order was to be executed. These

messages, as well as others, were not accessible when Ms. Li Zhou attempted to access them in August 2018.

[74] Furthermore, on that same day, December 13, 2017, but late at night, the witness attempted to gain access to the photos posted on WeChat in association with the Ni Bazza profile, to which reference is made at paragraph 71 of these reasons and which are found at exhibits Q, R, S, T to the Li Zhou affidavit (showing Louis Vuitton, Givenchy, Celine and Dior items). The images had disappeared from the WeChat profile.

[75] Ms. Li Zhou deposed, in conclusion in her affidavit, that Ms. Yang/Wang spoke in terms of shipments every two weeks. Furthermore, Ms. Yang/Wang told her on numerous occasions that shipments were unpacked by her husband, which she witnessed herself once. On cross-examination, the witness was asked how she knew that it was Ms. Wang's husband whom the witness saw unpacking: the answer was simply that it is Ms. Wang who introduced him to the witness. That was not challenged further.

[76] In all her interactions with Ms. Yang/Wang, Ms. Wang represented the merchandise she was offering for sale and selling as being copies. She never represented the merchandise as being in any way genuine. Finally, the witness identified specifically Ni Yang as being the defendant, Ms. Wang.

[77] The attempt at discrediting Ms. Christine Li Zhou was in my view completely unsuccessful. In essence, the defendants offer a complete denial of the evidence offered in this

case. That of course includes the evidence of Ms. Li Zhou. However, the uncontradicted evidence of other witnesses establishes the involvement of the defendants in the selling and offering for sale of counterfeit merchandise. For instance Ms. Wang denies having used websites to sell counterfeit goods; she even claims not having used the website and blog for many years. However, the same business card, with the addresses of a website and a blog, were given to investigator Low in 2009 and investigator Reid in 2015 who also received from Ms. Wang the handwritten note connecting WeChat with “niyangbazza”. Neither one of these investigators was cross-examined. It will be recalled that Ms. Li Zhou testified as to how she established her connection with “niyangbazza”. I reproduced at paragraph 59 of the Court’s reasons for judgment the evidence from Ms. Li Zhou’s affidavit. This constitutes the same WeChat/ID “niyangbazza” appearing on the handwritten note given to Lisa Reid by Ms. Wang. It corroborates the evidence of Ms. Li Zhou. The said note not only referred to WeChat/niyangbazza, but also to the telephone number which appeared on the store’s door when Ms. Wang was not present. The contacts between her and Ms. Wang are substantiated by numerous screen captures of exchanges of messages that, among other things, confirm appointments, following which Ms. Wang actually shows up when and where agreed to.

[78] Thus the general denial by the defendants that Ms. Wang never used the WeChat names “Ni Bazza” or “Bazza”, nor the WeChat ID “niyangbazza” (Audrey Wang’s affidavit, para 34), rings rather hollow. Her claim that she has had a WeChat profile that is different from what is in evidence in this case is suspect and makes her denial less than believable. The evidence strongly points in the direction of Ms. Wang being associated to WeChat names and WeChat ID. As for the denial about the use of the WeChat account for the purpose of advertising for sale Louis

Vuitton, Givenchy, Dior and Celine merchandise, it bears repeating that Lisa Reid, whose testimony was not challenged, also testified about the use of WeChat concerning Louis Vuitton, Dior and Celine merchandise. Moreover, the Q, R, S, T exhibits to the Li Zhou affidavit are difficult to refute and have not been refuted.

[79] The more than four hours of cross-examination of Ms. Li Zhou did not produce much in terms of revelations. To be sure, the fact that she did not make or keep notes concerning various encounters with Ms. Wang during 2017 did not enhance her testimony. One would think that it is preferable to keep notes. However, having read the cross-examination on three occasions, I conclude that Ms. Li Zhou's credibility was not affected significantly because of the lack of notes. It is to be noted that her account is largely corroborated by documentary evidence.

C. *Evidence arising out of the execution of the Anton Piller Order*

[80] The plaintiffs allege that a number of instances of infringement arise out of the execution of the Anton Piller Order on December 13, 2017. There are four such allegations and they pertain to Louis Vuitton and Dior merchandise.

[81] The Anton Piller Order was authorized by the Court on December 12, 2018, and gave authority to search and seize at two locations: the Wang residence and the store at the Parker Place Mall, together with the Wang vehicle. Here is a short summary of what was found at the three locations. Will be found in schedule E a fuller lists prepared by the plaintiffs of items preserved during the execution of the order:

- (a) Parker Place store: goods, packaging, bags, labels, tags and authenticity cards bearing the plaintiffs' trade-marks. Ledgers and notebooks that contain names, product names as well as dollar values, with notations suggesting sale of products bearing trade-marks of Louis Vuitton, Dior and Celine;
- (b) Wang vehicle: in the trunk of the car were found what proved to be counterfeit Louis Vuitton goods and key chains bearing the Dior trade-marks, together with some notebooks;
- (c) Wang residence: here again Louis Vuitton and Dior merchandise were found, as well as records.

[82] During the execution of the Order was delivered a package to the Wang residence. It was presented as a "Commercial invoice" addressed to "Ni Ni Wang". The package contained a variety of brand name merchandise, including counterfeit Louis Vuitton and Dior goods (bag and scarves). The items retained were documented through an impressive number of photographs.

[83] The evidence of infringement on December 13, 2017 was with respect to Louis Vuitton and Dior merchandise. The evidence presented comes from the affidavit of the two independent supervising solicitors, a bailiff on duty at the residence, Ms. Checa Chong and Amy Jobson who introduced into evidence a large quantity of documentary evidence. Concerning Dior and Louis Vuitton, the allegations are that (1) the defendants were in possession of counterfeit Dior and Louis Vuitton merchandise for sale and that (2) they had imported Louis Vuitton and counterfeit Dior merchandise, delivered to the Wang residence. I have concluded that only 3 of the four allegations are supported by sufficiently clear evidence. The alleged infringement with respect to

Dior that is rejected is that of the importation of Dior merchandise received in the package delivered to the residence.

[84] Robert Lynch is a bailiff who was part of the team executing the Anton Piller Order at the Wang residence. While performing his duty under the Order, he answered the door as a package was being delivered. He opened the package. He reported on the contents of the package and provides photographs of the items received. Many different brands were represented, including Louis Vuitton merchandise.

[85] From the photographs of the contents of the package, the items presented as being products from Chanel, Hermès, Saint-Laurent, Manolo Blahnik, Gucci and Louis Vuitton are easily recognizable.

[86] An independent supervising solicitor acting at the Wang residence, David Wotherspoon, produced his report which was filed into evidence. Like every witness other than Ms. Li Zhou, he was not cross-examined. He accepted the package which was identified as having been shipped from China. A list of items seized at the residence is appended. The plaintiffs also bring to the Court's attention the affidavit of Ms. Checa Chong who testifies about the contents of the package. She identifies specifically the Louis Vuitton merchandise found in the package (annex G to her affidavit) and confirms that they constitute counterfeit merchandise.

[87] This uncontradicted evidence satisfies the Court that the Louis Vuitton merchandise was counterfeit merchandise and was delivered to the residence.



[88] On the other hand, the plaintiffs, using exactly the same evidence offered by Mr. Lynch, Mr. Wotherspoon and Ms. Checa Chong, claim that counterfeit Dior merchandise was delivered to the Wang residence on December 13, 2017. That is meant to constitute another specific instance of infringement. Although, as already found, the evidence is sufficient with respect to the Vuitton merchandise received at the residence and coming from China, it is not the case for the Dior plaintiff. It is clear from the Wotherspoon evidence that the list of items seized at the residence does not differentiate between items which were at the residence and those delivered on December 13, 2017. That includes Dior merchandise, but does not differentiate between the merchandise seized on the premises and Dior merchandise allegedly included in the package received at the residence. It would therefore appear that the Dior plaintiff relies on the photographs found in the Lynch and Checa Chong affidavits. Both Mr. Lynch and Ms. Checa Chong provide photographs of the items having been shipped from China: I have not been able to identify any Dior product out of the photographs, which are of poor quality, offered as evidence of Dior merchandise received from China that day. It follows that the allegation concerning counterfeit Dior merchandise alleged to be a counterfeit Dior scarf received in a package delivered to the Wang residence on December 13, 2017 has not been proven on a balance of probabilities, which requires that the evidence be sufficiently clear, convincing and cogent.

[89] As for merchandise seized during the execution of the Anton Piller Order at the Parker Place store, two allegations were made: being in possession for sale of counterfeit Dior merchandise and being in possession of significant quantities of counterfeit Louis Vuitton merchandise. In both cases, the plaintiffs rely on the evidence of Paul Smith, the independent

supervising solicitor for the Parker Place execution, Amy Jobson who introduced into evidence a large number of photographs representing, among others, Louis Vuitton and Dior items, and Ms. Checa Chong.

[90] The evidence of Mr. Smith is his report following the execution of the Anton Piller Order at the store. The list of seized items is quite impressive (schedule E to this judgment). The evidence of Ms. Checa Chong confirms that with respect to items which were such that she was unable to determine from photographs whether counterfeit or genuine, she confirmed that 19/21 items sent to her in New York were not genuine; the two genuine items were Louis Vuitton purses (it is to be recalled that the evidence of one investigator who posed as being interested in opening her one store, was to the effect that a retailer should have some genuine items).

[91] In view of the large amount of merchandise seized (goods, packaging, bags, labels, tags, authenticity cards) at the store, it is established on the evidence that the defendants operated on a rather large scale.

[92] Although in much smaller quantity, there are Dior items clearly identified as such. They are all counterfeit. Accordingly these items seized as part of the Anton Piller Order on the premises of the defendants' store are instances of infringement concerning Louis Vuitton and Dior.

[93] Accordingly, out of the 36 allegations of instances of infringement, 35 must be considered further for the purpose of concluding whether they constitute instances of

infringement. Is appended as schedule F to the reasons for judgment a summary of evidence of instances of infringement. I have identified as not proven with sufficiently clear and convincing evidence the alleged instance of infringement, on December 13, 2017, with an asterisk.

D. *Audrey Wang's evidence*

[94] The plaintiffs in their written case present a litany of contradictions in the evidence of Ms. Wang in these proceedings. She testified at the contempt proceedings, at the defendants' motion to set aside the Mareva injunction and there is her evidence in the summary trial examination. They note in particular the evidence with respect to the Ni Bazza WeChat profile. In view of the importance taken in these proceedings of issues around the WeChat profile, I have reviewed in some details this issue to conclude that the evidence points in the direction adverse to the interests of the defendants. It is not necessary, for our purposes, to examine carefully the contradictions between the various versions offered by Ms. Wang. It suffices that the various contradictions were left to stand.

[95] The plaintiffs dedicate 35 paragraphs to various contradictions in the evidence offered by Ms. Wang over a rather short period of time, i.e. since the execution of the Anton Piller Order. I have reviewed the various affidavits and the cross-examinations and, indeed there are a large number of unexplained contradictions or unexplained "evolutions" of Ms. Wang's testimony. The plaintiffs' factum, where the numerous contradictions are presented, was filed on December 21, 2018 while the factum of the various defendants, which have some not insignificant similarities, came three weeks later. There was ample time for the defendants to seek to dispel

misunderstandings, or to provide a persuasive explanation in the three weeks that followed before the written representations were filed. That did not happen.

[96] Given the sheer volume of alleged contradictions made by the Plaintiffs, and very explicitly described, none is addressed in the facta presented on behalf of the corporate defendant and by Ms. Wang. Eleven pages and 35 paragraphs are dedicated to attacking the credibility of Ms. Wang, yet she has not sought to refute any of the allegations. The defendants simply ignore the issues. That is surprising. That would leave the Court with little to discard the allegations of significant contradictions. As reminded by the plaintiffs, my colleague Mr. Justice Lafrenière, in dismissing the motion to set aside the Mareva injunction, on November 28, 2018, stated that “Ms. Wang is at best a stranger to the truth” at paragraph 26 of his reasons for judgment (2018 FC 1198). An explanation that never came was called for. Instead, ignoring the allegations tends to give even more weight to the words of my colleague.

[97] A case in point is of course the WeChat profile. A significant piece of evidence is the handwritten note given to investigator Reid in 2015 which, if believed, would corroborate the testimony of Ms. Li Zhou in that it connects Ms. Wang with the WeChat account and with the ID “niyangbazza”. Ms. Reid’s evidence stands as the defendants chose not to cross-examine her. I have already found that this is a linchpin in linking Ms. Wang with the WeChat ID. Ms. Wang may well have realized the importance of this piece of evidence because she first denied writing the handwritten note (it is rather brief) during her Mareva injunction cross-examination, then she admitted that the handwriting was hers (in the summary trial examination) to then concoct a story that the note was for Ms. Reid to look elsewhere for merchandise she sought because they

can be found on the internet. Implausible is not a word strong enough to describe that story in view of the sinuous route taken to get there and the propensity of Ms. Wang to generate and drum up business. The lack of precision of what would have been said to Ms. Reid on that occasion and the decision not to cross-examine Ms. Reid weaken even more the new version to acknowledge finally having written the short note. The two stories cannot both be true: denying having written the note and having written the note to help a customer by directing her to a WeChat account which, perhaps by coincidence, has in its ID, the letters NI YANG.

[98] Instead of addressing the contradictions put squarely before the Court in the plaintiffs' written case, the plaintiffs ignore them to double down and continue to argue that they are not associated with that WeChat account. Ignoring evidence will not make it go away. As the evidence shows, the connexion between the WeChat account and Ms. Wang, as testified to by Ms. Li Zhou, is supported by the fact that meetings arranged through WeChat, including meetings directly related to this case (but also concerning other brands), are actually taking place on May 12, 2017, in August 2017 and on the day the Anton Piller Order was executed. Each time, the appointments are arranged for meeting at the store with the user of the WeChat account and, each time, Ms. Wang/Yang is the person who shows up at the store (usually late) to receive Ms. Li Zhou.

[99] In fact there is more. Ms. Wang claims that there exists a different WeChat profile which is hers. The plaintiffs assert that during her summary trial examination, she conceded that the evidence around the "other profile" was created after the execution of the Anton Piller Order, on December 13, 2017, the day Ms. Li Zhou further claims the images of counterfeit goods posted

on the WeChat account were removed. “Concession” may be a strong word in the circumstances but, importantly, Ms. Wang never produced a single WeChat conversation from that other, and seemingly new, WeChat account. That called for an explanation, not ignoring the issue. Instead, Ms. Wang lamely continued to argue that “(t)he plaintiffs failed to produce substantive evidence that Ms. Wang is the WeChat account holder for the Infringing WeChat Profile” (Wang’s factum, para 100). I disagree. Such is not the case. The evidence of investigators Reid and Li Zhou, on the contrary, is cogent as the evidence of one strengthens and corroborates the evidence of the other.

[100] There were other surprising statements. Ms. Wang claims that following the cease and desist letter served on her in 2009, in spite of the fact that she was not selling counterfeit merchandise, she ceased to sell the products in order to avoid conflict. This is a surprising statement. The cease and desist order was served on March 22, 2009. The investigator had bought the week before a counterfeit Louis Vuitton item. Furthermore, according to the affidavit of Brian Lambie, upon being served with the cease and desist letter, Ms. Wang surrendered three wallets and three shoes bearing the Chanel Trade-marks. It seems that Ms. Wang knew on March 22, 2009 that she was selling counterfeit merchandise, although not merchandise of the plaintiffs. On April 26, 2009, with the cease and desist letter still fresh, she was seen showing customers boxes bearing Louis Vuitton Trade-marks, taken from a bag hidden under a table. M. Lambie was not cross-examined and his evidence stands. In that same vein, she claims that “(s)ince 2009 Ms. Wang and the Company have sold non-luxury clothing brands” (affidavit of Audrey Wang, para 28, repeated in the factum of the corporate defendant at para 22 and the factum of Audrey

Wang, at para 22). That does not concord with the uncontradicted evidence of other investigators.

[101] As seen in these reasons, the evidence is solid and unblemished. The only other arguments offered by the defendants relate to other instances of alleged infringement. The Court has already addressed the instances of infringement about which the other five investigators testified without their evidence being challenged. As for the evidence of Ms. Li Zhou, her evidence concerning the Givenchy and Celine trade-marks is of course disputed because it relies on advertising for sale or offering for sale through the defendants' WeChat account. Given the conclusion that the WeChat account was that used by Ms. Wang, the arguments fail. The Court is also satisfied on the balance of probabilities that Givenchy, Dior and Louis Vuitton items offered for sale in January 2017 at the Parker Place store were counterfeit Givenchy, Dior and Louis Vuitton merchandise, in view of the evidence presented by Ms. Li Zhou and other evidence of grand scale selling of counterfeit merchandise.

E. *Evidence of Jun Yang, aka Michael Yang*

[102] Mr. Yang is the spouse of Audrey Wang, aka Nini Wang, aka Ni Ni Yang. He claims that he has no role or position in the corporate defendant. He claimed being a full time auto body mechanic. That too is surprising as he was not gainfully employed since his departure from a firm in July 2015. The rest of his evidence serves to support his wife's evidence and the defendants' argument that a summary trial is inappropriate in the circumstances.

[103] In fact Mr. Yang helped around the Parker Place store with unloading merchandise, including in the presence of Ms. Li Zhou, and, indeed he minded the store and sold a counterfeit item to one of the investigators. He appeared to be the person taking charge in his wife's absence. In fact he was seen on numerous occasions loading and unloading merchandise, as he claimed that his wife had recently given birth (January 2016) and suffered from some back ailment. Indeed if that were the case, he would have had to be at the Richmond Night Market every day for the duration of the market because the inventory had to be taken in and out of the booth every day the booth was used to sell merchandise.

[104] Under cross-examination emerged a completely different picture. Mr. Yang may be an auto body mechanic, but he has been far from a full time body mechanic since his departure from his job in July 2015. In fact, he spent very little time as a body mechanic. He was not an auto body mechanic between July 2015 and around the execution of the Anton Piller Order. During his examination, Mr. Yang refused to answer questions about his involvement with the business. When he felt cornered during his examination, he become animated and was asked on numerous occasions to stop raising his voice and yelling. For instance, the cross-examiner brought to the fore some commercial invoices for goods to be delivered to the Wang residence. That became problematic because at questions 206, 207 and 208 he had stated forcefully that he had never received inventory at the house, paid for it or ever dealt with customs issues. The cross-examination became animated. Mr. Yang was taking his distance from the truth.

[105] These commercial invoices for ladies shoes (2), handbags (5), wallets (2), ladies scarves (10) were dated in November 2016. A week later, it was 7 "gift packages" that were exported



from China. In July 2017, the commercial invoice indicated ladies shoes (3), handbags (12), ladies wallets (3), ladies scarves (2), and ladies jewelry (5). Each entry on the commercial invoice identify the items as gifts.

[106] The invoices are at the attention of Nini Wang, but not all. On November 28, 2017, there is an invoice to the attention of “Yang Jun”, the affiant, for ladies clothes (15), handbags (3), ladies’ scarves (9), ladies’ shoes (4), and ladies’ ornaments (8). There is even a document identified by the mention of “Vancouver International Mail Centre, Canada Border Services Agency (CBSA)” designating the affiant, Jun Yang, as the importer of commercial goods exceeding \$2,500 which were intercepted by CBSA. The document which advises Mr. Yang of the interception lists in a handwritten form the contents of the box:

- 2 Chanel purses;
- 1 Chanel watch;
- 1 Jimmy Choo shoes;
- 5 Louis Vuitton purses;
- 1 Gucci purse;
- 1 Valentino shoes;
- 1 Yves Saint-Laurent purse;
- 1 Chanel pendant/brooch;
- 1 Cartier watch;
- 1 box of miscellaneous jewelry.

Obviously Mr. Yang was doing more than opening boxes once in a while.

[107] During the cross-examination, Mr. Yang had to concede that his alleged limited presence on location where Ms. Wang was conducting her business, in an obvious attempt to distance himself from the business activities of his wife, was more frequent than originally indicated. The surveillance conducted in September 2017 adds to the weight of the evidence that they were

operating together. The evidence of Mr. Yang, like that of Ms. Wang, is very problematic and misleading. It is clear that they were both involved in the business of selling counterfeit merchandise and they did so in a joint venture. Mr. Yang's involvement has been proven to be significant.

## VI. Analysis

[108] The *Trade-marks Act* provides the owner of a trade-mark with the exclusive use of the registered trade-mark (s. 19). It is not disputed in this case that the plaintiffs are the owners of the trade-marks in issue. Section 20(1) gives the scope of the protection afforded by the *Act*:

### **Infringement**

**20 (1)** The right of the owner of a registered trademark to its exclusive use is deemed to be infringed by any person who is not entitled to its use under this Act and who

**(a)** sells, distributes or advertises any goods or services in association with a confusing trademark or trade name;

**(b)** manufactures, causes to be manufactured, possesses, imports, exports or attempts to export any goods in association with a confusing trademark or trade name, for the purpose of their sale or distribution;

**(c)** sells, offers for sale or distributes any label or

### **Violation**

**20 (1)** Le droit du propriétaire d'une marque de commerce déposée à l'emploi exclusif de cette dernière est réputé être violé par une personne qui est non admise à l'employer selon la présente loi et qui :

**a)** soit vend, distribue ou annonce des produits ou services en liaison avec une marque de commerce ou un nom commercial créant de la confusion;

**b)** soit fabrique, fait fabriquer, a en sa possession, importe, exporte ou tente d'exporter des produits, en vue de leur vente ou de leur distribution et en liaison avec une marque de commerce ou un nom commercial créant de la confusion;

**c)** soit vend, offre en vente ou distribue des étiquettes ou des

packaging, in any form, bearing a trademark or trade name, if

**(i)** the person knows or ought to know that the label or packaging is intended to be associated with goods or services that are not those of the owner of the registered trademark, and

**(ii)** the sale, distribution or advertisement of the goods or services in association with the label or packaging would be a sale, distribution or advertisement in association with a confusing trademark or trade name; or

**(d)** manufactures, causes to be manufactured, possesses, imports, exports or attempts to export any label or packaging, in any form, bearing a trademark or trade name, for the purpose of its sale or distribution or for the purpose of the sale, distribution or advertisement of goods or services in association with it, if

**(i)** the person knows or ought to know that the label or packaging is intended to be associated with goods or services that are not those of the owner of the registered trademark, and

emballages, quelle qu'en soit la forme, portant une marque de commerce ou un nom commercial alors que :

**(i)** d'une part, elle sait ou devrait savoir que les étiquettes ou les emballages sont destinés à être associés à des produits ou services qui ne sont pas ceux du propriétaire de la marque de commerce déposée,

**(ii)** d'autre part, la vente, la distribution ou l'annonce des produits ou services en liaison avec les étiquettes ou les emballages constituerait une vente, une distribution ou une annonce en liaison avec une marque de commerce ou un nom commercial créant de la confusion;

**d)** soit fabrique, fait fabriquer, a en sa possession, importe, exporte ou tente d'exporter des étiquettes ou des emballages, quelle qu'en soit la forme, portant une marque de commerce ou un nom commercial, en vue de leur vente ou de leur distribution ou en vue de la vente, de la distribution ou de l'annonce de produits ou services en liaison avec ceux-ci, alors que:

**(i)** d'une part, elle sait ou devrait savoir que les étiquettes ou les emballages sont destinés à être associés à des produits ou services qui ne sont pas ceux du

(ii) the sale, distribution or advertisement of the goods or services in association with the label or packaging would be a sale, distribution or advertisement in association with a confusing trademark or trade name.

propriétaire de la marque de commerce déposée,

(ii) d'autre part, la vente, la distribution ou l'annonce des produits ou services en liaison avec les étiquettes ou les emballages constituerait une vente, une distribution ou une annonce en liaison avec une marque de commerce ou un nom commercial créant de la confusion.

[109] I have reviewed at some length the evidence presented in this case. The standard of proof in civil matters is proof on a balance of probabilities. In *F.H. v McDougall*, 2008 SCC 53, [2008] 3 SCR 41 [*McDougall*], it was stated that there is “only one civil standard of proof at common law and that is proof on a balance of probabilities” (para 40). In *Tervita Corp. v Canada (Commissioner of Competition)*, 2015 SCC 3, [2015] 1 SCR 161, at para 66, and in *Canada (Attorney General) v Fairmont Hotels Inc.*, 2016 SCC 56, [2016] 2 SCR 720, para 36, the Court confirmed its earlier finding. As said in *McDougall*, “evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency” (para 46). Mere possibilities will not do. But, on the other hand, the test cannot be treated as if there exists a heightened standard of a balance of probabilities between the balance of probabilities and the standard in criminal trials, that of beyond a reasonable doubt. It felt at times as if the plaintiffs were attempting to raise a doubt of some sort. If they did, they were mistaken as the reasonable doubt standard has no application in these proceedings.

[110] In this case, the evidence is simply overwhelming. Not only do we have the unchallenged evidence of investigators who have purchased counterfeit merchandise and made numerous observations about the activities of the defendants, but we have the evidence of Christine Li Zhou which is corroborated by the unchallenged evidence of Lisa Reid on the WeChat account connected to Ms. Wang. It has to be remembered that contacts between Ms. Wang and Ms. Li Zhou about numerous appointments made through WeChat resulted in Ms. Wang showing up for the meetings, with screen captures being put into evidence as supporting documentary evidence.

[111] Moreover, there was a large quantity of goods, bags, packaging, etc. that were seized through the execution of the Anton Piller Order. While the Order was executed, a package delivered to the Wang residence contained numerous counterfeit items. That is further evidence of the involvement of the defendants in the business of selling counterfeit merchandise. The finding of Lafrenière J. on the motion for an order to set aside the Mareva injunction that, there is “a strong prima facie case that Ms. Wang, with the assistance of her husband and using their business as a front, blatantly and repeatedly offered for sale and sold Louis Vuitton and other counterfeit merchandise on numerous occasions in their store or online” (para 19) is confirmed following my close examination of the evidence of Mr. Yang and Ms. Wang. Far from constituting a credible denial, their evidence carries little weight and does not come close to constituting a counter-weight to the overwhelming evidence offered by the plaintiffs. The strong prima facie case has become an overwhelming case once all the evidence has been presented.

[112] The evidence presented by the defendants is in the form of a general denial accompanied by a counter-narrative that is implausible to the point of not having an air of reality. The

evidence of the investigators was much more impressive, to the point where it was not even challenged (except for Ms. Li Zhou). The quip of Lafrenière J. that “Ms. Wang is at best a stranger to the truth” has even been strengthened in the face of the review of the evidence and the lack of answers to the numerous contradictions in the versions of events. I can only echo the words of my colleague.

[113] The defendants find themselves in violation of the *Trade-marks Act*. In particular, the activities of the defendants are in breach of subsections 7(b), (c) and (d). they read as follows:

**Prohibitions**

7 No person shall

...

**(b)** direct public attention to his goods, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time he commenced so to direct attention to them, between his goods, services or business and the goods, services or business of another;

**(c)** pass off other goods or services as and for those ordered or requested; or

**(d)** make use, in association with goods or services, of any description that is false in a material respect and likely to mislead the public as to

**(i)** the character, quality, quantity or composition,

**Interdictions**

7 Nul ne peut :

[...]

**b)** appeler l’attention du public sur ses produits, ses services ou son entreprise de manière à causer ou à vraisemblablement causer de la confusion au Canada, lorsqu’il a commencé à y appeler ainsi l’attention, entre ses produits, ses services ou son entreprise et ceux d’un autre;

**c)** faire passer d’autres produits ou services pour ceux qui sont commandés ou demandés;

**d)** employer, en liaison avec des produits ou services, une désignation qui est fautive sous un rapport essentiel et de nature à tromper le public en ce qui regarde:

**(i)** soit leurs caractéristiques, leur qualité, quantité ou composition,

(ii) the geographical origin, or	(ii) soit leur origine géographique,
(iii) the mode of the manufacture, production or performance	(iii) soit leur mode de fabrication, de production ou d'exécution.

of the goods or services.

Once the facts as found by the Court are applied to the law, the only conclusion that can be reached is that there was infringement of the *Act* and depreciation of the value of the goodwill attaching to the plaintiffs' trade marks.

[114] Concerning violations of the Copyright Act, there is voluminous documentary evidence of items bearing the Multicolored Monogram-White Print and the Multicolored Monogram-Black Print reproduced at schedule G to this judgment. The evidence is found in the affidavit of Amy Jobson at pages 1586, 1587, 1591, 1592, 1726, 1729, 1731, 1798 à 1803, 1814, 1817, 1828 (plaintiffs' motion record, vol. 6). Accordingly, the defendants have violated sections 3 and 27 of the *Copyright Act* and are liable to the remedy of statutory damages.

## VII. Remedies

[115] As already shown, the evidence of violations of the trade-marks of the applicants is overwhelming. The plaintiffs request a declaration confirming the validity and ownership of their trade-marks, an injunction for the purpose of forbidding the defendants from continuing infringing activities, as well as requiring the delivery-up and destruction of infringing goods. The more difficult issue is the assessment of damages suffered by the plaintiffs because of the

infringements of the *Trade-marks Act*. As for infringements of the *Copyright Act*, the damages are statutory in nature.

[116] The problem is not new and it is not exclusive to damages to be assessed pursuant to subsection 53.2(1) of the *Trade-marks Act*, which reads:

**Power of court to grant relief**

**53.2 (1)** If a court is satisfied, on application of any interested person, that any act has been done contrary to this Act, the court may make any order that it considers appropriate in the circumstances, including an order providing for relief by way of injunction and the recovery of damages or profits, for punitive damages and for the destruction or other disposition of any offending goods, packaging, labels and advertising material and of any equipment used to produce the goods, packaging, labels or advertising material.

**Pouvoir du tribunal d'accorder une réparation**

**53.2 (1)** Lorsqu'il est convaincu, sur demande de toute personne intéressée, qu'un acte a été accompli contrairement à la présente loi, le tribunal peut rendre les ordonnances qu'il juge indiquées, notamment pour réparation par voie d'injonction ou par recouvrement de dommages-intérêts ou de profits, pour l'imposition de dommages punitifs, ou encore pour la disposition par destruction ou autrement des produits, emballages, étiquettes et matériel publicitaire contrevenant à la présente loi et de tout équipement employé pour produire ceux-ci

Here, the plaintiffs seek damages and punitive damages on account of the violation of the *Trade-marks Act*, which have their own governing rules. I begin with the compensatory damages.

A. *Compensatory damages*



[117] The starting point is that damages are meant to be purely compensatory. The principle calls “in relation to “economic” torts ... that the measure of damages is to be, so far as possible, that sum of money which will put the injured party in the same position as he would have been in if he had not sustained the wrong” (*General Tire and Rubber Co. v Firestone Tyre and Rubber Co.*, [1976] R.P.C. 197, p. 212). Stating the principle is much easier than finding an appropriate method for assessing damages while minimizing the risk of under or over-compensation, as the evolution of the jurisprudence in this Court has shown.

[118] A trademark infringement may result in reduced sales and profits. With products like those involved in this case, it is less than likely that the sale of counterfeits, which constitutes a violation of the *Act* for which damages are payable, will result in lost sales. That is because they are luxury goods for which the significant attraction for counterfeiters and customers is the difference in price between the counterfeits and the actual product. As recognized by the parties, “... given the nature of the counterfeit business, someone who buys a “knock off” would not necessarily have otherwise bought a genuine product” (plaintiffs’ supplemental memorandum of fact and law, para 3; *Oakley, Inc. v Doe*, (2000) 8 CPR (4th) 506 [*Oakley*], at para 9).

[119] It is therefore not surprising that the attention is focused on the depreciation of goodwill. In *Veuve Clicquot Ponsardin v Boutiques Clicquot Ltée*, 2006 SCC 23, [2006] 1 SCR 824, the Court recognized that the *Trade-marks Act* does not define goodwill, but the case law does. The Supreme Court finds that goodwill “connotes the positive association that attracts customers towards its owner’s wares or services rather than those of its competitors” (para 50). The Court endorses two definitions coming from the jurisprudence:

“Goodwill” is a word sometimes used to indicate a ready formed connection of customers whose custom is of value because it is likely to continue. But in its commercial sense the word may connote much more than this. It is, as Lord Macnaghten observed in *Inland Revenue Commissioners v. Muller & Co.’s Margarine Ltd.* [1901] A.C. 217, 224, “the attractive force which brings in custom,” and it may reside, not only in trade connections, but in many other quarters, such as particular premises, long experience in some specialised sphere, or the good repute associated with a name or mark. It is something generated by effort that adds to the value of the business.

[Emphasis in original.]

(*Manitoba Fisheries Ltd. v The Queen*, [1979] 1 SCR 101, at p. 108)

[T]he goodwill attaching to a trade mark is I think that portion of the goodwill of the business of its owner which consists of the whole advantage, whatever it may be, of the reputation and connection, which may have been built up by years of honest work or gained by lavish expenditure of money and which is identified with the goods distributed by the owner in association with the trade mark.

(*Clairol International Corp. v Thomas Supply & Equipment Co.*, [1968] 2 EX.C.R. 552, at p. 573).

In a case like this one, the plaintiffs lose control over the impact and reputation of their trade-mark. The exclusivity of the brand is diminished, if not lost altogether, when luxury products are reproduced and available at a much reduced price.

[120] As it is notoriously difficult to assess lost sales, the courts have sought to assess damages as best as can be (*Singh v Hall* (1940) 2 Fox Pat. C 1, BCSC). Our Court found 17 years ago that not only is a defendant’s ability to pay not a factor in deciding if damages are owed, but that the difficulty in reaching an appropriate level of damages (*Ragdoll Productions (UK) Ltd. v Jane Doe*, 2002 FCT 918, [2003] 2 FC 120 [*Ragdoll*], at paras 32 and 44) cannot relieve the Court from seeking to assess damages. The difficulty is compounded by the fact that the quantity and

the value of counterfeit items are often unknown and, indeed, unknowable, in the absence of business records, as is such often in these kinds of cases (*Ragdoll*, para 38). That is certainly the case here, although the evidence suggests significant activities on the part of the defendants.

[121] That made Pelletier J., as he then was, to consider that a court assessing damages provide its best estimate of damages. He reckoned that “(w)hen defendants keep no records and the quantity of goods seized is not a reliable indicator of the scale of the defendants' commercial activities, it is not obvious how plaintiffs are to bring fine gradations of proof as to the extent of the damages caused by particular defendants” (*Ragdoll*, para 46). The judge commented that “(i)t would be very poor policy to reward the suppression of business records by raising it as a bar to the assessment of damages” (*Ragdoll*, para 48). It is a sentiment this Court shares.

[122] On the other hand, damages should not become a penalty for the violation of one's trademark, providing a measure of deterrence. That would be usurping the role that is played, in part, by punitive damages. Instead, the general rule was well captured in *Fox on Canadian Law of Trade-Marks and Unfair Competition*, by Kelly Gill, 4<sup>th</sup> ed., #13.6 (e) [*Fox*]:

The plaintiff is entitled to an award of damages, which represents the actual loss suffered that is the natural and direct consequence of the unlawful acts of the defendant.<sup>224</sup> This will include any loss of trade the plaintiff actually suffered, either directly from the offending acts, or any damage properly attributable to injury to the plaintiff's reputation, business, good-will, and trade and business connections caused by the offending acts.<sup>225</sup> Although, as previously discussed, assessment with “mathematical certainty” is elusive,<sup>226</sup> the damage award must not include any speculative and unproven damage.<sup>227</sup> The court must roughly estimate the damages as a jury would,<sup>228</sup> and is similarly entitled to use ordinary business knowledge and common sense. Some measure of damage to goodwill will occur if deceptive trading of any substantial volume persists.<sup>229</sup> The proper measure of damages is an award of a sum as

the court thinks is properly and reasonably shown to be, by taking all proper inferences into account, the damage suffered by the plaintiff by reason of the wrongful acts of the defendant.<sup>230</sup>

[Footnotes omitted.]

Damages that are unproven and are speculative are not damages that can be assessed.

[123] This Court has developed over time an approach that has, mistakenly in my view, been labeled as a “nominal award”. In 1997, this Court issued three orders involving marks owned by Nike Canada Ltd (*Nike International Ltd and Nike (Ireland) Ltd v Goldstar Design Ltd et al.*, T-1951-95) [*Nike*]. Damages were ordered to be paid “arising from the infringement by the defendant of the Nike Intellectual Properties”. They were of different amounts: \$3,000, \$6,000, \$24,000. These amounts have been associated with different types of operations. In *Oakley, Inc (supra)*, the Court found that these had been “assessed damages on a global basis at \$3,000 per plaintiff in the case of defendants operating from temporary premises such as flea markets” (para 3). The Court declared that the scale has achieved the status of precedent, which it felt should be left undisturbed (para 11), without being cast in stone (paras 22-23).

[124] Moreover, in *Ragdoll*, the Court advised that “(i)n uncontested cases, plaintiffs have been awarded damages of \$3,000 in the case of street vendors and flea market operators, \$6,000 in the case of sales from fixed retail premises, and \$24,000 in the case of manufacturers and distributors” (para 35). Obviously the scale increases with the scope of the operation, from a short lived operation, to one where fixed premises exist, to those who manufacture or distribute the counterfeit goods to retailers.

[125] The plaintiffs rely on the scale used in *Nike*, with adjustments to account for inflation in the last twenty years. They also rely on the evolution of the methodology used to assess. It is summarized thusly in *Fox*, at 13.6 (a):

... A presumption exists therefore that, in itself, the invasion of the plaintiff's exclusive right in the mark will cause the plaintiff damages.<sup>187</sup> If the infringement trifling, the court may award nominal damages.<sup>188</sup> The Federal Court has also fashioned a "nominal award" per infringing activity in situations where proof of damages and profits has been made impractical due to the activities of the defendant. This approach to date has been restricted to counterfeiting situations. The first case to create such an award was determined in 1997 at set [sic] an amount of \$6000 to represent a fair approximation of damages.<sup>188.1</sup> A 2007 decision adjusted that amount for inflation to arrive [sic] a nominal award of \$7250 per infringing activity.<sup>188.2</sup> ...

[Footnotes omitted.]

[126] The Court in *Ragdoll* suggested that the use of a scale does not detract from the compensatory nature of the awarding of damages, no more than damages which are awarded for personal injury, for instance: the scale becomes the standard by convention.

[127] From these principles, the plaintiffs argued initially that they were entitled to the following compensatory damages:

- Louis Vuitton: \$13,938,000;
- Celine: \$442,500;
- Christian Dior: \$2,929,500;
- Givenchy: \$103,500.

It appears that the plaintiffs thought that an amount of more than \$17 million constitutes the best reasonable estimate that would reflect the loss actually sustained (compensatory) by them, in this

case from a flea market operation in 2009 and sales from the 200 square feet premises located in a local strip mall and a night market. In my view, as the model used in assessing damages has evolved over time, it has become a model that is imbued with speculation and unproven damages if this case is worth \$17 million in damages. It is impossible to fathom that the operation run by the defendants in this case generated a depreciation of the goodwill worth upwards of \$17 million. It is true that the scope of the operation remains largely unknown, and that the lack of business records should not benefit the defendants. On the other hand, over-compensation should not be tolerated either. In my view, a model that would generate damages of that magnitude must be reviewed and modulated to provide a more proper assessment of damages.

(1) How did we get here

[128] It appears that the model the plaintiffs seek to apply in this case found its genesis in three orders issued by this Court in 1997 concerning products about which the trade-marks held by Nike Canada Ltd, Nike International Ltd and Nike (Ireland) Ltd had been infringed. Two of the orders came on June 23, 1997 in the case of *Nike Canada Ltd, Nike International Ltd and Nike (Ireland) Ltd v Goldstar Design Ltd Jane Doe and John Doe and other persons, names unknown, who offer for sale, sell, import, manufacture, distribute, advertise, or deal in unauthorized counterfeit Nike merchandise, and those persons listed in schedule "A" hereto*, court file No T-1951-95. A third order was issued on October 20, 1997.

[129] They all provide that the trade-marks owned by Nike had been infringed. As for the damages suffered by Nike, the Court orders that be paid "to Plaintiffs damages arising from the infringement by the Defendant of the NIKE INTELLECTUAL PROPERTIES in the amount of

\$3,000, \$6,000 and \$24,000”. These all resulted from motions for default judgment following various Anton Piller Orders that had been executed. The damages ordered were not with respect to each item found on the premises, but rather were with respect to the infringement of the NIKE INTELLECTUAL PROPERTIES. But then, why different amounts? Because the scale was created around categories of infringers: \$3,000 against flea market operators, street vendors and itinerant sellers; \$6,000 against fixed retail establishments; \$24,000 in damages against importers and manufacturers and distributors. I note that NIKE INTELLECTUAL PROPERTIES is defined in the orders as meaning “the trade-marks, trade names or logos shown on schedule “B” ”; more than 20 trade-marks are found in schedule “B”, covering a variety of sports such as golf, cross-training or basketball.

[130] The factum in file T-1951-95 reported that, in one case, the defendant was carrying out the manufacture of products bearing Nike’s trade-mark using computerized equipment. Counterfeit products were found on site when an Anton Piller Order was executed. Damages in the order of \$3,000 and \$6,000 had already been awarded at the time against 200 retailers, depending on the type of operations. Clearly, the damages awarded were a function of the type of operations.

[131] Three years later, judgment in default for trade-mark infringement was rendered in a number of cases involving 8 plaintiffs (Oakley Inc, Viacom Ha! Holding Co, Ragdoll Productions (UK) Ltd, Nike Canada Ltd, Nintendo of America Inc, Fila Canada Inc, Tommy Hilfiger Licensing Inc, Adidas-Salomon AG)) (*supra*). The plaintiffs co-operated in the execution of Anton Piller Orders, which resulted in the end in nominal damages of \$3,000 per

action. As the Court put it, “(t)he issue in that hearing was whether nominal damages are still nominal damages if they are assessed nine times over” (*Oakley*, at para 2).

[132] In an attempt to simplify and speed up the process, the Court in *Nike* “assessed damages on a global basis at \$3,000 per plaintiff in the case of defendants operating from temporary premises such as flea markets. This has become the accepted measure of damages by the judges of this Court, though there have been instances where other amounts have been assessed” (para 3).

[133] In *Oakley*, the defendants in each action were the same but there were numerous plaintiffs. The Court finds that “it does not seem unfair or unreasonable to approach the question of damages, in the case of judgments in default, from the perspective of a global assessment for which, by convention, a fixed amount is awarded” (para 10). Accordingly, the amount of \$3,000, in the case of that flea market, constitutes the damages owed in the circumstances. The global assessment implies that the number of items does not matter for an infringement to occur; an amount for damages does not reflect a number of items or transactions. The Court comments that the amount of damages is seen to be fair in the case of undefended claims as a defendant can always put the question of damages in issue. As for plaintiffs who acted in co-operation, they are each entitled to damages because, having acted by themselves individually, they would all be entitled to damages. In the result, nine statements of claim resulted in \$27,000 in damages.

[134] The next decision deserving of mention in the evolution of the jurisprudence is another case out of this Court, *Ragdoll*, another decision of Pelletier J. The case results from the



execution of three Anton Piller Orders. However, this time around, the Court gives an account of the items seized. They are:

[TELETUBBIES]	7 keychains
[DISNEY]	3 novelty items
[NINTENDO]	7 model kits
[NINTENDO]	4 toy sets
[NINTENDO]	1 water bottle
[NINTENDO]	214 keychains w/ figures

[para 4.]

Disney sought \$6,000\$ in damages for items whose total value is perhaps just a few dollars.

[135] Having commented that the defendant's ability to pay damages is not relevant to a plaintiff's entitlement to damages, the plaintiffs argued for an award of damages according to the scale established since *Nike*. While a defendant can prove the extent of the trade, if the evidence is not available, for whatever reason, the defendants cannot complain. As the Court states, "(i)n the absence of business records, the quantity of goods seized is unreliable as an indicator of the level of a defendant's business activity" (para 38).

[136] The Court in *Ragdoll* is clearly wrestling with the amount of damages to be awarded. Nevertheless, the difficulty in assessing damages cannot justify failing to award them; once there is proven infringement which results in damages, plaintiffs are "entitled to the court's best estimate of those damages without necessarily being limited to nominal damages" (para 45).

[137] The *Ragdoll* court justifies resorting to the scale in spite of a measure of arbitrariness which, to some extent, results from defendants refusing to provide any indication of their business activities. “When defendants keep no records and the quantity of goods seized is not a reliable indicator of the scale of the defendants' commercial activities, it is not obvious how plaintiffs are to bring fine gradations of proof as to the extent of the damages caused by particular defendants” (para 46). Although there may be an element of arbitrariness, that is no different than damages payable for an injury to an eye which are determined by reference to a scale that has become the standard by convention. The Court writes:

[48] In these cases, the Court is dealing with pecuniary as opposed to non-pecuniary damages. Does this preclude recourse to the use of a conventional scale of damages? The unadorned fact of the matter is that without access to detailed accounting records, plaintiffs cannot be expected to show their losses with mathematical precision. It would be very poor policy to reward the suppression of business records by raising it as a bar to the assessment of damages. Where a defendant's business methods and failure to defend a claim have made the calculation of damages impossible, the use of conventional awards is fairer to that defendant than would be a system in which each case was treated as *sui generis* and damages assessed without reference to like cases. The present system distinguishes between flea market and transient vendors, fixed retail operations and manufacturers and distributors and to that extent treats like cases alike. It may be that finer gradations are possible, a matter which the court can consider when it arises.

[138] As a result, the *Ragdoll* court applies the scale and assesses damages at \$6,000 in each of the three files (*Ragdoll*, Nintendo, The Walt Disney Company), irrespective of the number of items seized and their value. Indeed among the three plaintiffs, there were significant differences, with Nintendo having many more items seized as counterfeit items, yet the same amount of damages was assessed.

[139] It may be worth noting that none of the cases involves luxury counterfeit items where the value of genuine items is significantly higher.

[140] The next relevant case in the evolution of awards of damages being assessed is *Louis Vuitton Malletier S.A. and Louis Vuitton Canada, Inc v Yang et al*, 2007 FC 1179, 62 CPR (4th) 362 [*Yang*]. In that case, the Court was dealing with recidivists who, since 2001, had been continuing to sell counterfeit luxury merchandise in spite of two judgments and numerous letters, seizures and other actions taken by the plaintiffs. The case was also about another motion for default judgment, as the defendants did not contest the action launched. The infringement was established to the Court's satisfaction.

[141] Six distinct "incidents" were proven:

- a) a cease and desist letter which produced the relinquishment of 130 counterfeit items;
- b) three months later, an investigator purchased an infringing necklace;
- c) seven months later, another purchase, this time of a counterfeit change purse, took place. The investigator noticed a larger amount of counterfeit goods;
- d) less than three months later, another cease and desist letter was served: 239 counterfeit items were relinquished, together with counterfeit copies for copyrighted works along with catalogues offering for sale counterfeit goods;
- e) less than three months later, another such letter was served. There were more than 50 counterfeit items;
- f) four months later, an investigator purchased an infringing necklace and observed earrings and other necklaces bearing the Louis Vuitton trade-marks.

[142] For our purpose, it is the awarding of damages that is significant. As other members of this Court before her, it was acknowledged that the calculation of damages in cases like these is difficult, such that “the best reasonable estimate must be made without being limited to nominal damages” (decision, para 28). First, the amount of depreciation of the goodwill would require a much more extensive record in order to assess it, if it is possible at all. Second, it is not reasonable to assume lost sales because those who purchase “knock off” items are not likely to purchase genuine products in view of the price difference.

[143] Thus, the Court turned to the profits. Again, a clear assessment would be difficult in view of the lack of documentation: the Court must rely in such circumstances on the available evidence, reasonable inferences and a dose of common sense. The plaintiffs’ experience is also something that can be used.

[144] However, the calculations of profits are, in effect, less than a reliable method to establish damages. As the court notes, “(t)he difficulties that I have arise from the fact that the Plaintiffs would have me extrapolate this estimate [based on items seized] of approximate average profit to an assumed number of turnovers a year and to apply it from 2003” (decision, para 38). The Court was willing to consider the likely profits of \$31,000 for goods delivered when the defendants were served with cease and desist letters. The Court noted that there were instances witnessed by investigators when counterfeit Louis Vuitton merchandise was seen on the premises. The Court was prepared to estimate the profits from the likely sale of the items as being \$15,000 per incident with respect to goods observed on the premises. There were three such incidents for a total of \$45,000.

[145] The Court considered that there was a further alternative, one that was to become the new standard: “nominal” award per infringing activity. Applying the “rate” set in *Nike* (\$6,000 per infringing activity for each plaintiff) (decision, para 43), the Court comes to a total of \$72,000 (\$6,000 X 6 incidents X 2 plaintiffs). The Court adjusted the rate for inflation since 1997 to reach an amount of \$7,250 per incident, for a total of \$87,000.

[146] Punitive damages were also awarded, based on the leading case of *Whiten v Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 SCR 595 [*Whiten*]. The Court awarded the quantum of punitive damages asked for by the plaintiffs: \$100,000. In the result, damages of \$87,000 (\$7,250 X 6 incidents X 2 plaintiffs) and punitive damages of \$100,000 were awarded. Solicitor-client costs for an amount of \$36,699.14 and statutory damages of \$40,000 for infringements of the *Copyright Act* were also awarded. This is obviously a far cry from the amounts considered some 10 years earlier, in the *Nike* cases. There had been an evolution.

[147] The British Columbia Supreme Court followed in the footsteps of this Court’s judgment in *Yang* in its decision in *Louis Vuitton Malletier S.A. and Louis Vuitton Canada, Inc v. 486353 B.C. Ltd, dba Winnie Lee Fashion*, 2008 BCSC 799 [*Lee*]. The BCSC applied the rates, adjusted for inflation.

[148] The BCSC starts with the quote coming from Fox’s Canadian Law of Trade-marks and Unfair Competition, as found in *Ragdoll* at para 40, where the point is made that “(s)peculative and unproven damages must be deleted from the calculation”. The Court then goes on the follow *Yang* and accept that damages may be awarded “per infringement”, saying that “the [*Yang*] Court

applied the Anton Pillar [*sic*] order scale of damages on a “per instance of infringement” basis, that is six times” (decision, para 62). There was not a definition of what constitutes an appropriate infringement for the purpose of assessing damages. The BCSC accepted that damages are owed to each plaintiff “since a defendant would be liable for damages to each plaintiff, if each plaintiff had enforced its rights individually” (decision, para 67).

[149] Neither in *Yang* nor in the *Lee* decision do we find an explanation for why two plaintiffs, one the subsidiary of the other, would each be entitled to damages for the infringement of the same trade-marks.

[150] The BCSC also found in a statement made on discovery that an award on a “per-inventory turn-over” basis was sufficiently proven. It also found that the rate for importers/distributor had been established on that record, contrary to the finding of our Court in *Yang*. A total of \$580,000 in damages for trade-mark infringements was awarded.

[151] Again, in *Louis Vuitton Malletier S.A., Louis Vuitton Canada, Inc, Burberry Limited and Burberry Canada Inc v Singga Enterprises (Canada) Inc et al*, 2011 FC 776, [2013] 1 FCR 413 [*Singga*], the participation of the defendants (8 in total) was very limited in the summary trial held, as only one defendant participated, and in a defendant-in-person capacity at that. That defendant did not file a motion record, and conceded having engaged in the infringing activities. The involvement came because that defendant wanted to plead mitigating factors as to damages and costs. There was no robust debate before the Court.

[152] In *Singga*, the Court conducted a more extensive review of the facts leading to the conclusion of infringement than in other cases. It found that the activities of the defendants were large in scale, involving the manufacture and/or importation of bulk quantities, together with warehousing and distribution (in two cases Canada-wide distribution) of counterfeit items (decision, paras 26, 55 and 78). *Singga* is said to have been involved in 16 specific instances relating to counterfeit Louis Vuitton merchandise (decision, para 140). Similarly, another defendant (*Altec*) was said to have been involved in 16 specific instances relating to counterfeit Louis Vuitton merchandise (decision, para 144). However, out of the 16 specific proposed instances in the case of *Altec*, 14 were for offers for sale on websites, in catalogues and via unsolicited emails; only two instances were about actual purchases. The disproportion in favor of merely offers for sale was less so with respect to *Singga* (10 of 16).

[153] The *Singga* Court accepted that the scale developed in prior cases was “designed to reflect damages based on a single instance of infringement evidenced by the seizure in an *Anton Piller* [*sic*] order” (decision, para 131). However, the Court offered a rationale for using the scale in different circumstances:

[131] ... Where a defendant is engaged in continuous and blatantly recidivist activities over a period of time, as is the case in the present instance, it has been recognized that such activities warrant a much higher award of damages than in the case of a one time execution of an *Anton Piller* order. Where the evidence shows, as it does here, activities continuing over a period of time, and involving importation from a factory in China and national distribution of bulk, repeated orders, damages need to be considered on a much higher level.

[132] The Federal Court and British Columbia Supreme Court have both recognized the need to allow for a higher calculation of damages in situations of recidivist counterfeiting activities over a period of time. Therefore, where there is evidence of more than a single attendance at the location in question, and it can be shown

that a defendant engaged in the complaint of activities over a period of time, the Courts in Canada have allowed that the “nominal damages” *Anton Piller* award needs to be calculated on a “per instance of infringement” or, where the evidence is available, “per inventory turnover”. See *Louis Vuitton Malletier S.A. v Lin Pi-Chu Yang*, 2007 FC 1179, 62 C.P.R. (4th) 362 at paragraph 43; and *Louis Vuitton Malletier S.A. et al. v 486353 B.C. Ltd. et al.*, 2008 BCSC 799, [2008] B.C.W.L.D. 5075 at paragraphs 59-60 and 65-67.

With respect, I have not found in paragraph 43 of *Yang* support for the rationale for the proposition: if at all, it may have been implied. Similarly, paragraphs 59 and 60 of *486353 BC Ltd (Lee)* do not support the proposition: they are about adjusting the scale for inflation.

However, paragraph 65 of *486353 BC Ltd (Lee)* spells out a rationale that was not presented in *Yang*. The BCSC wrote at paragraph 65:

[65] I agree that the historical once-only nominal award of damages is inapplicable in the case of a group of defendants whose continuous and blatantly recidivist infringing activities have taken place over a period of three years since the date the *Anton Pillar* [*sic*] Order was served, and for a period of approximately six years in the case of J. Lee. If a plaintiff was only entitled to a single award of damages under the “nominal” damages scale for multiple occasions of infringement, then once a defendant was found liable for infringement, the defendant would essentially be immune from liability for damages for all subsequent infringements.

The proposition strikes me as being reasonable if a court is to seek to compensate an aggrieved plaintiff whose actual damages have occurred over a period of time. An award based only on a “nominal rate” does not start to compensate a plaintiff in view of the type of goods, but also in view of the number of instances of infringement over a period of time. The approach followed in a number of cases is well suited for the kind of goods like luxury merchandise where goodwill has attained such importance. The depreciation of goodwill is significant. However, as I will



endeavour to show later, this is an approach that needs modulation and restraint. A plaintiff may be able to prove infringing activities every day of the year, and indeed many times a day, which could be argued as supporting astronomical amounts of damages. Furthermore, damages are meant to be compensatory: an approach that would get out of hand would stray from the principle and jeopardize the value of the model used. As the *Ragdoll* and *486353 BC Ltd (Lee)* courts noted by citing Fox's Canadian Law of Trade-marks and Unfair Competition, "(s)peculative and unproven damages must be deleted from the calculation".

[154] The *Singga* court also accepted that "(t)here is no reason to limit damage awards merely because multiple plaintiffs advanced their claims in one action. Applying such damages to each plaintiff is available in the case of a joint action brought by a trade-mark owner and its licensee/distributor" (decision, para 134). While it stands to reason why various plaintiffs are entitled to damages for the infringement of their trade-mark, it is less clear what the basis is for allowing damages for each of the owner of the trade-mark and then its subsidiary in cases like *Yang* and *Lee*. The case law referred to in support simply accepts that many plaintiffs may be involved in the same lawsuit. It does not justify the same family of companies all having access to the damages.

[155] That may help explain why these basic principles of damage assessment lead the *Singga* court to list 16 specific instances of infringing the Louis Vuitton Trade-marks, yet only six instances are sanctioned by damages (decision, para 141). It remains unclear, in my view, what the six instances are and why these six are treated as being worth the level of importer/manufacturer/distributor.

[156] Another defendant, Altec, is said to have infringed the Louis Vuitton mark on 16 specific instances. For reasons that remain difficult to decipher, perhaps because the Court did not state all the evidence that was available, the Court finds that the evidence suggests a high level of importation and inventory turn-over. Indeed, the defendants' participation in the proceedings was very limited, resulting in a less robust debate. Although it is stated at paragraph 146 that there were shipments coming into their warehouse "on at least a monthly basis", the *Singga* Court considers that a "conservative estimate of such inventory turn-over, based on the evidence available, is at least every two months, though it is likely higher". The Court seems to create a new category, beyond temporary premises, store location and importer/manufacturer/distributor, worth \$30,000 "per inventory turn-over".

[157] I have not been able to ascertain clearly the basis on which the *Singga* Court was operating other than being rough justice being dispensed on the basis of the level of activities shown to be present, with a good dose of common sense and reasonable inferences drawn from the evidence. Mathematical certainty is elusive. It appears to be the manifestation of the rough estimate of damages, as would be performed by a jury, relying on ordinary business knowledge and common sense.

[158] The last set of cases to be reviewed involves *Chanel S. de R.L. v Lam Chan Kee*. On appeal of a decision of the Federal Court (2015 FC 1091) following a summary trial, the Federal Court of Appeal (2016 FCA 111) concluded that it was ambiguous from the reasons for judgment how many acts of infringement there were (para 19). The Court of Appeal did not find it to be inappropriate to have used the scale (adjusted for inflation being set at \$8,000) and to

have awarded damages to both the trade-mark owner and the licensee for each infringement. The Court of Appeal found support, in the case law already reviewed in this case, together with *Harley-Davidson Motor Company Group, LLC v Manoukian*, 2013 FC 193, at paras 39 to 43. In essence, the Court of Appeal agreed specifically that “nominal damages” are available where the defendant is uncooperative, proof of actual damages is difficult and it is hard to estimate the harm done to the goodwill.

[159] The Court of Appeal was also concerned about the punitive damages, set at \$250,000, and the cost award, given that they are significantly higher than the compensatory damages of \$64,000. Accordingly, the matter was remanded to the trial judge for redetermination.

[160] The redetermination came later in 2016 (2016 FC 987). That redetermination was itself the subject of an appeal (2017 FCA 38).

[161] As for the punitive and exemplary damages, the Court of Appeal expressly found that there is no ratio between the amount of compensatory damages and punitive damages.

Furthermore, it was satisfied that the punitive damages had been amply justified:

[11] I note, amongst other considerations, the judge’s findings that the defendants were motivated by profit; the vulnerability to, and erosion of, the plaintiffs trade-mark rights arising from counterfeiting and infringement; the defendants’ attempts to mislead the Court; the fraudulent transfer, after the filing of the Statement of Claim, of ownership of the defendants’ company to avoid liability; the defendants’ recidivist conduct in light of previous orders in respect of the same matter; the defendants’ awareness of the unlawful nature of the activity; the scope of the infringement; the sale of infringing articles after filing and service of the Statement of Claim; the defendants’ failure to produce any records; and, the judge’s conclusion that the infringement was

continuous and deliberate. The judge also situated the award in light of relevant judicial precedent.

This is how we get to this case and what constitutes the state of the law on the assessment of damages for infringement of trade-marks in association with luxury goods.

(2) Compensatory damages

[162] The awarding of damages in cases like the case at bar has evolved considerably in the past twenty years, from awards, said to be nominal, of a few thousand dollars in cases where Anton Piller Orders were executed resulting in seizures of many items, to an award of close to \$2 M in *Singga* in favor of Louis Vuitton Malletier S.A. and its Canadian subsidiary, and Burberry Limited and its Canadian subsidiary. The amount reaches \$1 M with respect to the Louis Vuitton Trade-marks and upwards of \$800,000 with respect to the Burberry Trade-marks.

[163] This Court was concerned with the evolution of the model over time. Why the trade-mark owners and their Canadian subsidiary are compensated each for infringements of the marks they use, which has obviously the effect of doubling the amount of damages for that one set of trade-marks? And what about the use of infringements being the basis for the calculations where there does not appear to be a cap on the number of infringements, big or small? What about taking into account the value of items being the subject of infringements?

[164] The Federal Court of Appeal has not been confronted with an award of damages that would appear to be excessive and show what might well become deficiencies in the application of the model if applied without restraint. Obviously, the circumstances have not presented

themselves yet. There is case law in this Court that support a “per infringement” basis using the scale and the Court of Appeal found support in our Court for the owner of the mark and its Canadian subsidiary to be granted damages each. Given that the matter has not been litigated in this case other than a remark in passing by the defendants that “the plaintiffs have failed to clearly submit how each of the plaintiffs have suffered damages” (Corporate defendant’s supplemental written representations on damages, para 34), the findings, endorsed by the Court of Appeal, should not be revisited on this record. The consistent jurisprudence, as endorsed by the Federal Court of Appeal, requires much more than what was offered in passing by the defendants in this case. However, the *Singga* Court appears to have modulated the general model as used. A model that would reach an absurd result could not be appropriate without adjustments.

[165] In this case, the initial position taken by the plaintiffs was to build further on the model. They suggested that be applied an assumed inventory turn-over every two weeks and that the Court infer business activities on the part of the defendants during years where there is no evidence. With respect to Louis Vuitton merchandise, the total damages sought were \$13,898,000 on account of damages evaluated at \$6,949,000 each for Louis Vuitton Malletier S.A. and its Canadian subsidiary. As for the counterfeit Celine merchandise, the amount is \$442,500. The counterfeit Dior merchandise generates in the view of the plaintiff \$2,929,500 in damages, while the Givenchy Trade-marks would be worth damages of \$103,500. According to the plaintiffs, based on their application of the model, compensatory damages totalling \$17,413,500 are owed by the defendants operating out of modest premises. In my view, if it is possible to stretch the model to that level, it would prove that the model is defective, perhaps to the point of being irremediably defective.

[166] I indicated at the initial hearing of this summary trial that I was not inclined to follow the plaintiffs in awarding compensatory damages of close to \$17.5 M. Thus, a hearing dedicated to the issue of compensatory damages was set for later in the year, the parties being asked to prepare written submissions, focusing exclusively on damages. I am grateful for the further submissions presented by the plaintiffs and the defendants.

[167] The plaintiffs duly note the evolution of the model over the years, acknowledging that the compensatory damages have an element of arbitrariness. They argue that the Court must consider two variables: the appropriate damage “base” and what constitutes the “per instance” or “per inventory turn-over”. I accept this approach if the model is to be used at all.

[168] It seems to me that the initial three amounts (\$3,000 for operations of transient vendors, \$6,000 for operations from more conventional retail premises and \$24,000 for operations as importers, manufacturers and distributors of counterfeit goods) reflect the size of the operation in a very particular context. The amount of \$24,000 (before factoring in inflation since 1997) reflects that the counterfeiter operates on a significant grander scale than the retailer. There must be evidence that quantities of counterfeit products are larger such that those falling in that general category distribute to retailers. For instance, someone operating a conventional retail store, who knows that the “knock offs” are imported from abroad, does not become an importer simply because she orders goods from abroad. The importer is rather the outfit that brings across the border large quantities of goods that are then supplied to distributors or retail operators. In the *Singga* case, Singga and Altec operated warehouses for the imported goods that were then distributed to retailers. The third defendant in that case advertised itself as a manufacturer and

wholesaler. In my estimation, for a scale four times that of retailers, there must be proof of a larger scale of operations. I have not found in this case evidence of that kind. The defendants are retailers operating out of modest retail premises. On the other hand, they are not transient vendors, but rather retailers doing business as retailers in various locations. The defendants have achieved a measure of success but that does not make them distributors. In my view, they are retailers and the instances of infringement should be treated as such. They must be treated as retailers and not merely as street vendors.

[169] “Per instance” infringement does not appear to be defined. As I have indicated before, there is an inherent danger in multiplying *ad infinitum* the number of instances where infringement may be generated by plaintiffs. Nevertheless, the case law suggests that purchases, observation of counterfeit goods, offers for sale of such goods may all constitute “per instance” basis for damages assessed according to the scale.

[170] The “per inventory turnover” category was revealed in *Yang*, but not used for lack of sufficient evidence. It was used in *486353 BC Ltd (Lee)* and *Singga*, although in this latter case the Court used a turn-over of every two months in spite of the fact that there was evidence of monthly turn-over. I note however that in these cases, the basis on which is calculated the turn-over frequency remained nebulous.

[171] I agree with the plaintiffs that the evidence in this case showed that the defendants were uncooperative, not being disposed to produce any kind of documentation or adequate records concerning their operations; in such circumstances, it is impossible to estimate the actual

damages, by way of recovery of profits or otherwise; is equally impossible to estimate with precision the harm done to the trade-marks. It follows that the approach (nominal damages) followed in like circumstances is justified and appropriate (*Lam Chan Kee*, 2016 FCA 111, para 5).

[172] On the other hand, I have to reject the plaintiffs' early suggestion that an appropriate base for damages is that of the "category" importer/distributor/manufacture. The argument was based on the claimed high level of importations and inventory turn-overs. In my view, the evidence falls well short of justifying their claim.

[173] As in *Yang* (2007 FC 1179), I find myself incapable of reaching the conclusion that the evidence supports an inventory turn-over, let alone a turn-over of the whole inventory every two weeks. The Court is asked to make an assumption that the volume of counterfeit goods, which would be relatively stable, would be sold 24 times a year (*Yang*, para 40). On this record in this case, this is speculative and not supported by evidence. In their written case on damages, the plaintiffs speak of shipments coming every two weeks: but a shipment is not an inventory turn-over. It is rather a delivery of goods, often in response to orders placed, as the evidence shows. The truth of the matter is that it has not been possible to establish any level of business such that can be shown any turn-over. Furthermore, there is no evidence of the activities of the plaintiffs between 2011 and 2015, as the investigation in 2009 and 2010 did not resume before 2015. There are instances of infringement proven in 2009 and 2010, followed by evidence of infringements in January 2015. I find that evidence of an actual turn-over rate, which was asserted for the alleged inventory turn-over, must be proven to use this method. Resorting to the



fact that the counterfeit goods were imported (these are all “knock offs” sent from China) and that “shipments” arrived on a regular basis do not establish an inventory turn-over. Finally, the Court is not ready to infer an inventory turn-over for the periods during which there is not even evidence of infringements. The plaintiffs are in fact claiming that, from 2010 to the end of 2014, the defendants must have been continuing to carry business the same way than in 2009 and between 2015 and 2017. The plaintiffs ask the court to infer that situation. In my view, this is more speculation than inference; it is a bridge too far.

[174] It seems to me that an assessment on the basis of “per instance” infringements is on a much stronger footing. The Court has already found that a number of instances have been proven on a balance of probabilities. The only one that must be rejected is that of December 13, 2017 where the close examination of the affidavit evidence of Robert Lynch, David Wotherspoon and Jana Checa Chong does not satisfy the Court of the alleged importation of counterfeit Dior merchandise delivered to the Wang residence. This Court’s jurisprudence supports that sales of counterfeit merchandise, but also offers for sale, including offers for sale online, and various forms of infringement such as importations of goods as a retailer receiving orders from abroad are instances of infringement. The plaintiffs offered the following calculations:

- (a) for Louis Vuitton:
    - (i) For 2009: 3 instances x \$7,500 = \$22,500
    - (ii) For 2010: 1 instance x \$7,500 = \$7,500
    - (iii) For 2015: 8 instances x \$8,500 = \$68,000
    - (iv) For 2016: 1 instance x \$8,500 = \$8,500
    - (v) For 2017: 10 instances x \$8,500 = \$85,000
- Total: \$191,500**

It is to be noted that there are 11 instances of infringement for 2017 appearing at schedule F. Louis Vuitton Malletier S.A. and Louis Vuitton Canada, Inc combine the

two incidents of January 2017 which brings the number of instances for which damages are owed to a total of 10 for 2017 (plaintiffs' supplemental written representations on trade-mark damages, para 37). This was in my estimation a wise decision.

Given the case law of this Court and the Court of Appeal, each plaintiff in the Louis Vuitton family is entitled to the same compensatory damages; the total damage award relating the counterfeit Louis Vuitton merchandise is \$383,000:

- |                   |   |
|-------------------|---|
| (b) for Celine:   | (i) For 2015: 1 instance x \$8,500 = \$8,500<br>(ii) For 2017: 2 instances x \$8,500 = \$17,000<br><b>Total: \$25,500</b> |
| (c) for Dior:     | (i) For 2015: 1 instance x \$8,500 = \$8,500<br>(ii) For 2017: 5 instances x \$8,500 = \$42,500<br><b>Total: \$51,000</b> |
| (d) for Givenchy: | For 2017: 3 instances x \$8,500 = <b>Total \$25,500</b>   |

Given that the allegation concerning the alleged importation of counterfeit Dior merchandise delivered to the Wang residence during the execution of the Anton Piller Order on December 13, 2017 was not proven to the satisfaction of the Court, it is 4 instances that should be tabulated in 2017, rather than 5. As a result, the damages suffered by the plaintiff Dior are brought back to \$34,000 (\$42,500 - \$8,500), for a grand total of \$42,500.

The plaintiffs argue for the retail level adjusted for inflation in the following way (affidavit of Amy Jobson at paras 28 to 37, PMR v. 5):

- for 2009: \$7,500
- for 2010: \$7,500
- for 2011: \$8,000
- for 2012: \$8,000
- for 2013: \$8,000
- for 2014: \$8,500
- for 2015: \$8,500
- for 2016: \$8,500
- for 2017: \$8,500

These figures were not contested by the defendants and they will be used for the purpose of the required calculations.

[175] The defendants offered their observations at the hearing held to discuss damages. They start with a general denial that they are guilty of infringing the plaintiffs' intellectual property. In so doing, they do not even acknowledge the sale of counterfeit items and the seizure of counterfeit merchandise on December 13, 2017. For the reasons already stated, the complete denial cannot carry any weight and, contrary to the assertion of the defendants, the plaintiffs have not failed their burden to show that they have suffered damages as a result of infringements.

[176] Defendants Wang and Yang claim that they have not caused the plaintiffs to lose sales. However, as has been acknowledged many times in the case of luxury products, the issue is not the loss of sales. The price difference between a genuine product and a "knock-off" is such that the purchase of a counterfeit is not a candidate for the substitution to the genuine product. The issue is rather the depreciation of goodwill, which is to be compensated.

[177] For the past twenty years, this Court has compensated for the depreciation of goodwill where there are counterfeit goods that have been sold. Ever since *Oakley* and *Ragdoll*, it has been found that the damages incurred are not so much lost sales, as “(i)t is more likely that the intellectual property holder’s goodwill will be damaged by the presence of inferior quality goods bearing its marks or copyrighted material” (*Oakley*, para 9). Given the evidence presented in this case, which proves the defendants’ operation being of significant scale, there is no doubt that the depreciation of goodwill must be compensated.

[178] Is equally without merit the defendants’ assertion that there lacks direct economic evidence of damages. The Federal Court of Appeal in *Lam Chan Kee* case (2016 FCA 111), at paragraph 17, states that “(t)he authorities support a nominal damages award in a case like this, where the defendants are uncooperative, proof of actual damages is difficult and it is hard to estimate the harm done to the trade-mark owner’s goodwill through the sale of inferior quality counterfeit good”.

[179] The defendants’ attempt at discounting the evidence of various infringements was in vain. The evidence was overwhelming, including the evidence of Christine Li Zhou, as well as the use by the defendants of the WeChat profile. The denial of Ms. Wang and Mr. Yang strains credulity. As the Court found before, it accepts as proven on the balance of probabilities most of the alleged infringements.

[180] Consequently, the defendants are jointly and severally liable for the following damages:

- Louis Vuitton plaintiffs: \$383,000
- Celine plaintiff: \$25,000

- Dior plaintiff: \$42,500
- Givenchy plaintiff: \$25,500

The total is \$476,000 for compensatory damages from defendants that are in the retail business of providing counterfeit goods on a not insignificant scale. It appears to this Court, in view of the record presented, to be a fair result, as compared to other awards made in the past, and considering the level of activities displayed by the defendants.

(3) Punitive and exemplary damages

[181] The plaintiffs argue that the defendants are liable for punitive damages. I agree.

[182] The principles applicable to the assessment of punitive and exemplary damages are found in the leading case of *Whiten v Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 SCR 595 [*Whiten*]. In that case, the Supreme Court was concerned about “the spectre of uncontrolled and uncontrollable awards of punitive damages in civil actions” (para 1).

[183] Having conducted a comparative survey of common law jurisdictions, the Supreme Court found that the general objectives of punitive damages are retribution, deterrence of the wrongdoer and others, and denunciation. Furthermore, terms that have been used to describe the conduct that must be sanctioned like “high-handed”, “oppressive”, “vindictive” do not provide much guidance, yet a formulaic approach is discouraged. The focus must be on a defendant’s misconduct. On the other hand, governing principles call for restraint and proportionality. The Court refers specifically (at paragraph 100) to the dictum of Cory J. in *Hill v Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at para 197:

**197** Unlike compensatory damages, punitive damages are not at large. Consequently, courts have a much greater scope and discretion on appeal. The appellate review should be based upon the court's estimation as to whether the punitive damages serve a rational purpose. In other words, was the misconduct of the defendant so outrageous that punitive damages were rationally required to act as deterrence?

[My emphasis.]

[184] Better guidance than a few adjectives to assess the level of blameworthiness is provided in *Whiten*, at paragraph 112:

112 The more reprehensible the conduct, the higher the *rational* limits to the potential award. The need for denunciation is aggravated where, as in this case, the conduct is persisted in over a lengthy period of time (two years to trial) without any rational justification, and despite the defendant's awareness of the hardship it knew it was inflicting (indeed, the respondent anticipated that the greater the hardship to the appellant, the lower the settlement she would ultimately be forced to accept).

The level of blameworthiness may be influenced by many factors, but some of the factors noted in a selection of Canadian cases include:

- (1) whether the misconduct was planned and deliberate: ...
- (2) the intent and motive of the defendant: ...
- (3) whether the defendant persisted in the outrageous conduct over a lengthy period of time: ...
- (4) whether the defendant concealed or attempted to cover up its misconduct: ...
- (5) the defendant's awareness that what he or she was doing was wrong: ...
- (6) whether the defendant profited from its misconduct: ...
- (7) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff ...

[Italics in original and reference to authorities omitted.]

[185] In a case close to our case, the Federal Court of Appeal (*Lam Chan Kee*, 2017 FCA 38) noted the following factors used to ascertain the blameworthiness where four infringements had been assessed compensatory damages of \$64,000 (4 infringements X \$8,000 (retail) X 2 plaintiffs):

[11] I note, amongst other considerations, the judge's findings that the defendants were motivated by profit; the vulnerability to, and erosion of, the plaintiffs trade-mark rights arising from counterfeiting and infringement; the defendants' attempts to mislead the Court; the fraudulent transfer, after the filing of the Statement of Claim, of ownership of the defendants' company to avoid liability; the defendants' recidivist conduct in light of previous orders in respect of the same matter; the defendants' awareness of the unlawful nature of the activity; the scope of the infringement; the sale of infringing articles after filing and service of the Statement of Claim; the defendants' failure to produce any records; and, the judge's conclusion that the infringement was continuous and deliberate. The judge also situated the award in light of relevant judicial precedent.

That resulted in the confirmation, on appeal, of punitive damages of \$250,000. The same amount is sought in this case.

[186] The plaintiffs stress that a larger number of factors lead to punitive damages of \$250,000, the level of damages imposed in *Lam Chan Kee*:

- recidivist nature of behaviour;
- on-going sales of counterfeit goods;
- volume of sales;
- deliberate and knowing infringement of trade-marks and copyrighted works;
- behaviour of defendants during the proceedings;

- intentional conduct: repeatedly obscuring the sale of counterfeit goods by keeping the goods out of sight of regular customers;
- use of “authenticity documents” which are themselves counterfeit documents aimed at authenticating goods that are counterfeit, together with boxes, hangtags, labels to support sales that were known to be of counterfeit goods, but were meant to have the contrivance of the genuine goods.

[187] For their part, the defendants, in essence, continue to argue that they have not been involved in the sale of counterfeit goods, in spite of the overwhelming evidence, including that of investigators who were not even cross-examined and whose evidence stands, and the inventory of counterfeit goods seized on December 13, 2017. They claim that they stopped the infringements when they found out about the conduct constituting infringements. That is not accurate. That does not begin to explain the behaviour in the years that follow, until an Anton Piller Order was executed and a large number of counterfeit goods and infringing items were seized. Indeed, during the execution of the Order at the location where Ms. Wang was, she refused expressly to give her cellphone which was remitted only a few days later, in clear contravention of the Order. That constitutes at the very least conscientiousness of guilt.

[188] Contrary to what was asserted by the defendants, the evidence demonstrates behaviour that is persistent and recidivistic. In my view, most of the factors presented in *Whiten* are clearly reflected in this case; those found in *Lam Chan Kee*, in the context of trade-marks infringements, are also largely reflected in this case.

[189] In *Yang*, punitive damages of \$100,000 were awarded. The compensatory damages were for 6 instances of infringement for which Louis Vuitton Malletier S.A. and Louis Vuitton Canada, Inc. were awarded \$43,500 each. In *486353 (Lee)*, punitive damages were ordered



against three defendants for \$100,000 and, against the principal of the enterprise who was the mastermind of the importation and distribution of counterfeit Louis Vuitton merchandise, an award of \$200,000 was made. In *Singga*, punitive damages against three defendants were awarded at the levels of \$200,000, \$250,000 and \$50,000. In *Lam Chan Kee*, the Federal Court of Appeal endorsed punitive damages of \$250,000 in spite of the fact that the compensatory damages were relatively light. As the Court of Appeal noted (2017 FCA 38), determining the appropriateness of punitive and exemplary damages is a highly contextual exercise.

[190] The context in this case includes the recidivism of the defendants, having been served with a cease and desist letter in 2009 and having chosen to continue offering for sale counterfeit merchandise in 2009-10, and then again during the period starting in January 2015 until December 2017, thus showing an on-going disregard for the plaintiffs' property, but also for the law. Furthermore, the defendants took liberties with the accuracy of their evidence in an attempt to escape liability. The misconduct was obviously planned and deliberate, with the defendants taking measures to avoid detection, which shows awareness that what is being done was wrong. These defendants profited from their misconduct and that was their motivation.

[191] The focus of the Court must be on the misconduct with the objectives of punitive damages being retribution, deterrence, not only of these particular defendants but also of others who might be tempted, and denunciation. The amount of punitive damages must be significant and commensurate with amounts awarded in like circumstances.

[192] Nevertheless, the level of blameworthiness that justified punitive damages of \$250,000 in *Lam Chan Kee* may be sufficiently inferior in the case at hand to, on account of proportionality and restraint, assess punitive damages at a slightly inferior level. First, there had been many court orders and judgments against the defendants in that case (*Lam Chan Kee*, 2016 FC 987, paras 46 to 48). Second they were already subject to an injunction permanently restraining them from further infringing the Chanel Trade-marks. The defendants were in fact defying orders directly applicable to them. They had been taken to court before, and more than once. Third, the business assets of the original corporate defendant were sold to a numbered company after a number of court proceedings had been launched against the corporate defendants. But the Lam spouses continued to operate the business venture after a new corporate entity was formed. In that case, the Court allowed the substitution of corporate defendant after the action was filed. There have not been those kinds of prior court proceedings and possible deceptions in this case. The level of blameworthiness is marginally inferior to that in *Lam Chan Kee*, an appropriate comparator in my estimation. An amount of \$225,000 in punitive and exemplary damages is therefore awarded to the plaintiffs, to be payable jointly and severally by the defendants.

(4) Copyrighted Works

[193] The *Copyright Act* provides for a statutory regime to award damages in cases of violation of the *Act*. Section 38.1 reads:

**Statutory damages**

**38.1 (1)** Subject to this section, a copyright owner may elect, at any time before final judgment is rendered, to

**Dommages-intérêts préétablis**

**38.1 (1)** Sous réserve des autres dispositions du présent article, le titulaire du droit d'auteur, en sa qualité de

recover, instead of damages and profits referred to in subsection 35(1), an award of statutory damages for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally,

**(a)** in a sum of not less than \$500 and not more than \$20,000 that the court considers just, with respect to all infringements involved in the proceedings for each work or other subject-matter, if the infringements are for commercial purposes; and

**(b)** in a sum of not less than \$100 and not more than \$5,000 that the court considers just, with respect to all infringements involved in the proceedings for all works or other subject-matter, if the infringements are for non-commercial purposes.

demandeur, peut, avant le jugement ou l'ordonnance qui met fin au litige, choisir de recouvrer, au lieu des dommages-intérêts et des profits visés au paragraphe 35(1), les dommages-intérêts préétablis ci-après pour les violations reprochées en l'instance à un même défendeur ou à plusieurs défendeurs solidairement responsables :

**a)** dans le cas des violations commises à des fins commerciales, pour toutes les violations — relatives à une œuvre donnée ou à un autre objet donné du droit d'auteur —, des dommages-intérêts dont le montant, d'au moins 500 \$ et d'au plus 20 000 \$, est déterminé selon ce que le tribunal estime équitable en l'occurrence;

**b)** dans le cas des violations commises à des fins non commerciales, pour toutes les violations — relatives à toutes les œuvres données ou tous les autres objets donnés du droit d'auteur —, des dommages-intérêts, d'au moins 100 \$ et d'au plus 5 000 \$, dont le montant est déterminé selon ce que le tribunal estime équitable en l'occurrence.

[194] Jana Checa Chong testified that Louis Vuitton owns the copyright in Canada in association with “Multicolored Monogram Prints”, in Black Prints and in White Prints. These prints are reproduced at Annex B of Ms. Checa Chong’s affidavit, which is found at Shedule G

to this judgment. The two Multicolored Monogram Prints form the artistic works used in several of Louis Vuitton Trade-marks.

[195] Only the owner of the copyright in the Copyrighted Works can produce and reproduce such works, in whole or in substantial part (s. 3 of the *Copyright Act*). No authorization was ever given by Louis Vuitton to the defendants. In fact the defendants did not challenge the infringement of the plaintiff's copyright in the two copyrighted works, relying instead on their argument that they have not infringed trade-marks, an argument the Court has already concluded does not have an air of reality.

[196] As a result, they are liable to damages for the violation of the *Copyright Act*. Plaintiff Louis Vuitton elected to seek statutory damages as allowed under section 38.1 of the *Copyright Act*. In *Singga*, the Court ordered damages at the maximum of the statutory scale. That is also appropriate in this case. The Court noted in that case that relevant factors in the exercise of discretion are the good or bad faith of defendants, the conduct during and before the proceeding and the need for deterrence. I find myself in complete agreement with the rationale expressed by the Court in *Singga* which, in my view applies, with equal strength, in a case where there is overwhelming evidence, over a period of a few years, of continuous infringement of the *Trade-marks Act* and the *Copyright Act*. I make mine in this case what was said by the *Singga* Court:

[157] Damages should be awarded on the high end of the scale where the conduct of the defendants, both before and during the proceedings, is dismissive of law and order and demonstrates a necessity for deterring future infringements. See *Microsoft Corporation v 9038-3746 Quebec Inc.*, 2006 FC 1509, 57 C.P.R. (4<sup>th</sup>) 204 at paragraph 113; and *Louis Vuitton Malletier S.A. v Lin Pi-Chu Yang*, 2007 FC 1179, 62 C.P.R. (4<sup>th</sup>) 362 at paragraphs 21-25.

[158] The need for deterrence in awarding statutory damages is important. There is a need for deterrence where, as in the present case, a defendant ignores the Court process while continuing the counterfeit activities complained of. See *Telewizja Polsat S.A. v Radiopol Inc.*, 2006 FC 584, 52 C.P.R. (4th) 445 at paragraph 50; and *Louis Vuitton Malletier S.A. v Lin Pi-Chu Yang*, 2007 FC 1179, 62 C.P.R. (4th) 362 at paragraph 25.

[159] The activities of the Defendants, and each of them, have been wilful and knowing, and entirely in bad faith. These Defendants have treated with disrespect the process of this Court in this proceeding, and at least the Altec Defendants continue to engage in blatant recidivist counterfeit activities. Given their ongoing actions, there is a clear need to deter the activities of the Defendants from continuing, and their actions are entirely dismissive of law and order.

[160] Each group of Defendants (Singga Defendants, Altec Defendants and Guo) has infringed copyright in each of the two Copyrighted works. Accordingly, the Court finds that statutory damages in the amount of \$20,000, per each of the Louis Vuitton Copyrighted Works infringement, is appropriate, for a total of \$40,000 per group of Defendants.

[197] I note that our Court in *Yang*, twelve years ago, awarded the maximum amount with respect to two Louis Vuitton copyright works (para 26). I cannot see any reason why statutory damages of less than \$20,000 per infringement would be awarded in this case.

[198] The infringements are equally egregious and the defendants have acted in bad faith throughout. In my view, plaintiff Louis Vuitton Malletier S.A. is entitled to these damages on account of the violation of the two copyrighted works. Accordingly, they are awarded damages of \$40,000, with the defendants being jointly and severally liable for the damages.

B. *Déclaration*

[199] The plaintiffs do not limit the relief sought to the various heads of damages. They also asked for a declaration confirming the validity and ownership of their trade-marks, a permanent injunction precluding the three defendants from continuing their infringing activities and injunctive relief requiring the defendants to allow for the destruction of the remaining infringing goods.

[200] The plaintiffs' trade-marks have been registered in Canada and their ownership has not been made the subject of contestation. Thus, the plaintiffs are entitled to a declaration that the trade-marks, reproduced at schedules A (Louis Vuitton), B (Celine), C (Dior) and D (Givenchy) to this judgment are owned by the plaintiffs. However, the Court is not prepared to confirm the validity of these trade-marks in view of the fact that the matter was not litigated. That does not suggest that the trade-marks are invalid, only that the Court is not prepared to rule on an issue that was not squarely before it and does not require adjudication.

[201] The plaintiffs also ask that there be a declaration concerning two copyrighted works of Louis Vuitton to the effect that the defendants have infringed or are deemed to have infringed the copyright. The two copyrighted works, a Multicolored Monogram-White Print and a Multicolored Monogram-Black Print are shown at schedule G to the judgment. The Court has already dealt with the issue of the statutory damages available under the *Copyright Act*. There was an infringement and the plaintiffs are entitled to the declaration sought.

[202] Having found the defendants to have infringed the plaintiffs' trade-marks, it cannot be seriously challenged that the plaintiffs are not entitled to a permanent injunction restraining the defendants, by themselves or their workmen, agents and employees from, directly or indirectly, infringing the Louis Vuitton Trade-marks, the Celine Trade-marks, the Dior Trade-marks and the Givenchy Trade-marks.

[203] The plaintiffs are also entitled to an order requiring the delivery-up and destruction of any remaining infringing good.

[204] As for costs, the plaintiffs indicated at the hearing that if they prevail, they may seek solicitor and client costs. They contended that the costs issue should be dealt with once judgment has been rendered on the summary trial motion. I agree. The parties will therefore be afforded the opportunity to provide their views on appropriate costs through submissions in writing that are limited to 8 pages to be served and filed according to the following schedule:

- (1) for the four plaintiffs, no later than November 15, 2019;
- (2) for the three defendants, no later than November 22, 2019.

The Court may order a hearing by teleconference or videoconference once the written submissions have been received.

**JUDGMENT in T-1887-17**

**THIS COURT'S JUDGMENT is:**

1. As between the plaintiffs and the defendants, the Plaintiff Louis Vuitton Malletier S.A. ("Louis Vuitton") is the owner in Canada of the trade-marks and trade-mark registrations listed in Schedule A hereto (the "LOUIS VUITTON Trade-marks"); and the LOUIS VUITTON Trade-marks have been infringed by the Defendants and each of them. The Plaintiff Celine is the owner in Canada of the trade-marks and trade-mark registrations listed in Schedule B hereto (the "CELINE Trade-marks"); and the CELINE Trade-marks have been infringed by the Defendants and each of them. The Plaintiff Christian Dior Couture, S.A. ("Dior") is the owner in Canada of the trade-marks and trade-mark registrations listed in Schedule C hereto (the "DIOR Trade-marks"); and the DIOR Trade-marks have been infringed by the Defendants and each of them. The Plaintiff Givenchy S.A. ("Givenchy") is the owner in Canada of the trade-marks and trade-mark registrations listed in Schedule D hereto (the "GIVENCHY Trade-marks"); and the GIVENCHY Trade-marks have been infringed by the Defendants and each of them;
2. The Defendants, and each of them, have used the LOUIS VUITTON Trade-marks, the Celine Trade-marks, the Dior Trade-marks and the Givenchy 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. The Defendants, and each of them, have directed public attention to their goods in such a way as to cause or to be likely to cause confusion in Canada between the their goods and the goods and business of Louis Vuitton, Celine, Dior and Givenchy, contrary to section 7(b) of the *Trade-marks Act*;
4. The Defendants, and each of them, have passed off their goods as and for those of Louis Vuitton, Céline, Dior and Givenchy, contrary to section 7(c) of the *Trade-marks Act*;
5. The Defendants, and each of them, have 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 goods, contrary to section 7(d) of the *Trade-marks Act*;
6. The Defendants, and each of them, have infringed and are deemed to have infringed copyright in the artistic works shown in Schedule G hereto (the “Copyrighted Works”), owned by Louis Vuitton, contrary to sections 3 and 27 of the *Copyright Act*;
7. The Defendants are permanently enjoined, by themselves and their directors, officers, servants, workmen, agents and employees from directly or indirectly:
  - (a) further infringing the LOUIS VUITTON Trade-marks; Celine Trade-marks, Dior Trade-marks and Givenchy Trade-marks;
  - (b) using the LOUIS VUITTON Trade-marks, Celine Trade-marks, Dior Trade-marks and Givenchy Trade-marks, any words, or combination of words, or

any other design, likely to be confusing with the LOUIS VUITTON Trade-marks, Celine Trade-marks, Dior Trade-marks and Givenchy Trade-marks, as or in a trade-mark or trade-name, or for any other purpose;

- (c) depreciating the value of the goodwill attaching to the LOUIS VUITTON Trade-marks, Celine Trade-marks, Dior Trade-marks and Givenchy Trade-marks;
- (d) directing public attention to any of the Defendants' goods in such a way as to cause or to be likely to cause confusion between the goods and business of the Defendants and the goods and business of Louis Vuitton, Celine, Dior and Givenchy;
- (e) passing off the Defendants' goods as and for those of Louis Vuitton, Celine, Dior and Givenchy
- (f) further infringing Louis Vuitton's copyright in the Copyrighted Works;
- (g) 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 goods; and
- (h) making false or misleading material representations to the public for the purpose of directly or indirectly promoting either the supply or use of the Defendants' goods and their business interests.

8. Within seven (7) days of the date of Judgment herein, the Defendants shall relinquish all right, title and interest in and deliver-up to the custody of the Plaintiffs, at their own expense, all articles in their possession, custody or power which offend in any way against paragraph 7 above;
9. The Defendants are liable jointly and severally, and shall pay to the Plaintiffs, Louis Vuitton Malletier S.A. and Louis Vuitton Canada, Inc., \$383,000 in compensatory damages;
10. The Defendants are liable jointly and severally, and shall pay to the Plaintiff, Celine, \$25,500 in compensatory damages;
11. The Defendants are liable jointly and severally, and shall pay to the Plaintiff, Dior, \$42,500 in compensatory damages;
12. The Defendants are liable jointly and severally, and shall pay to the Plaintiff, Givenchy, \$25,500 in compensatory damages;
13. The Defendants are liable jointly and severally, and shall pay to the Plaintiffs \$225,000 in punitive and exemplary damages;
14. The Defendants are liable jointly and severally, and shall pay to the Plaintiff, Louis Vuitton S.A., \$40,000 on account of violations of the Copyright Act;
15. The Defendants shall pay costs to be determined following the serving and filing of written submissions, limited to 8 pages for the plaintiffs (as a group) and the defendants (as a group) no later than:

- for the four plaintiffs, November 15, 2019; and
- for the defendants, November 22, 2019.

16. The Defendants shall pay to the Plaintiffs post-judgment interest on all amounts owed herein at the rate of 3 % per year from the date of this judgment.

“Yvan Roy”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1887-17

**STYLE OF CAUSE:** LOUIS VUITTON MALLETTIER S.A. ET AL v  
AUDREY WANG AKA NINI WANG AKA NI YANG  
ET AL

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** JANUARY 29, 30 AND FEBRUARY 22, 2019

**JUDGMENT AND REASONS:** ROY J.

**DATED:** NOVEMBER 5, 2019

**AMENDED:** NOVEMBER 15, 2019

**APPEARANCES:**

Karen F. MacDonald Mathew D. Brechtel	FOR THE PLAINTIFFS
Audrey Wang	FOR THE DEFENDANT (SELF-REPRESENTED)
Michael Yang	FOR THE DEFENDANT (SELF-REPRESENTED)
David Chen <u>Junki Hong</u>	FOR THE RESPONDENT CANADA ROYAL IMPORT & EXPORT CO. LTD.


**SOLICITORS OF RECORD:**

Norton Rose Fulbright Canada LLP Barristers & Solicitors Vancouver, British Columbia	FOR THE PLAINTIFFS
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D. Chen Law Corporation  
Barristers & Solicitors  
Richmond, British Columbia

FOR THE RESPONDENT  
CANADA ROYAL IMPORT & EXPORT CO. LTD.

**SCHEDULE A**

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
	LV Dessin	TMA621,622	(1) Oct. 31, 1983  (2) Mar. 31, 1985  (3) use in France	Oct. 4, 2004	(1) Optical instruments and apparatus, namely: spectacles, spectacle frames, spectacle cases, eyeglasses, sunglasses.  (2) Textiles and textile goods, namely: bath linen, handkerchiefs of textile.  (3) Textiles and textile goods, namely: upholstery fabrics, tapestries (wall hangings) of textile, bed and table linen.
	LV (DESSIN)	TMA557,176	Jan. 16, 2002	Jan. 30, 2002	(1) Vêtements, et autres articles d'habillement, nommément: chandails, chemises, costumes, gilets, imperméables, jupes, manteaux, pantalons, pull-overs, robes, vestes, cravates, pochettes (habillement), gants, maillots, costumes de bain; chaussures, nommément: souliers à talons hauts, souliers à talons plats, bottes, bottillons, sandales, sabots, mules, mocassins, escarpins, chaussures de sport; articles de chapellerie, nommément: chapeaux, casquettes.
	LV DESSIN	TMA326,814	Oct. 11, 1983	Apr. 24, 1987	(1) Opération de magasins offrant en vente des articles de maroquinerie, nommément: bagages, valises, sacs et housses de tout genre, portefeuilles, portemonnaie, pochettes pour clés, carnets d'adresses, étuis à lunettes et parapluies











	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
			(3) 1988  (4) 1989  Services (1) 1971		(3) Montres en métaux précieux, montres bracelets, bracelets et boîtiers de montres, chronographes et chronomètres.  (4) Stylos en métaux précieux, stylographes, stylos plumes, stylos à billes.  (1) L'opération, l'administration et la gestion de magasins de vente au détail d'articles de maroquinerie, de bagages, de papeterie, d'articles de bureau, papeterie pour le bureau et à usage personnel, stylos, jeux, meubles de voyage et accessoires de voyage, accessoires de mode, lunettes, parapluies, bijouterie et montres; services de réparation des articles de maroquinerie, bagages et parapluies.
<b>LOUIS VUITTON</b>	LOUIS VUITTON	TMA623,159	Oct. 31, 1983  Mar. 31, 1985	Oct. 21, 2004	(1) Optical instruments and apparatus namely: spectacles, eyeglasses, spectacle cases.  (2) Household linen, namely: blankets and bath linen.



	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
	LOUIS VUITTON	TMA557,173	Jan. 16, 2002	Jan. 30, 2002	(1) Vêtements, et autres articles d'habillement, notamment chandails, chemises, corsages, costumes, gilets, imperméables, jupes, manteaux, pantalons, pull-overs, robes, vestes, cravates, pochettes (habillement), gants, maillots, costumes de bain; chaussures, notamment: souliers à talons hauts, souliers à talons plats, bottes, bottillons, chaussures de randonnée, sandales, sabots, mules, mocassins, escarpins, chaussures de sport; articles de chapellerie, notamment: chapeaux, casquettes.
	LOUIS VUITTON	TMA327,219	Oct. 11, 1983	May 8, 1987	(1) Opération de magasins offrant en vente des articles de maroquinerie, notamment: bagages, valises, sacs et housses de tout genre, portefeuilles, portemonnaie, pochettes pour clés, carnets d'adresses, étuis à lunettes et parapluies.
	LOUIS VUITTON	TMA288,667	(1)1971	Mar. 9, 1984	(1) Articles de maroquinerie, notamment: bagages, valises, sacs et housses de tout genre, portefeuilles, portemonnaie, pochettes pour clés, carnets d'adresses, étuis à lunettes et parapluies.

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
			(2) 1971		<p>(2) Articles de maroquinerie nommément: malles et mallettes de tous genres, boîtes-voyages de tous genres, pochettes de tous genres, classeurs et attachés-cases, porte-documents de tous genres, porte-billets, porte-chéquiers et cartes de crédits, étuis à cigarettes, étuis pour balles de golf, boîtes à cartouches, boîtes à chapeaux et coffrets à bijoux, cadenas, clés, pièces constitutives des bagages, malles, valises, sacs, boîtes, classeurs et porte-documents nommément: serrures métalliques, vis métalliques, rivets, boucles et anneaux, articles de papeterie nommément: livres et affiches, blocs, répertoires, écrivains, tablettes à écrire, agendas, boîtes fiches, calendriers, recharges d'agendas, boîtes en carton ou en papier, catalogues, livrets, publications, enveloppes, étiquettes, papier à lettres, papier d'emballage, sachets d'emballage, sacs d'emballage, rubans, photographies, adhésifs, enseignes, articles de bureau nommément: corbeilles à courrier, corbeilles à papier, sous main, tubes-crayons, porte-cartes, supports pour plumes et crayons, presse-papier, etuis de jeux et de cartes à jouer, meubles de voyage nommément: malle secrétaire malle contenant un lit pliant, tabourets et tables pliantes, couvertures de voyage, accessoires de mode nommément: châles, écharpes, foulards et ceintures, poches et embauchoirs à chaussures.</p>

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
			(3) 1988  (4) 1989  Services (1) 1971		(3) Montres en métaux précieux, montres bracelets, bracelets et boîtiers de montres, chronographes et chronomètres.  (4) Stylos en métaux précieux, stylographes, stylos plumes, stylos à billes.  (1) Opération, l'administration et la gestion de magasins de vente au détail; service de réparation des articles de maroquinerie, bagages et parapluies.
	LOUIS VUITTON	TMA796,513	May 1996	May 2, 2011	(1) Bijouterie.
	TOILE DAMIER DESSIN	TMA550,893	Use in France	Sept. 17, 2001	(1) Vêtements et autres articles d'habillement, notamment: chandails, chemises, corsages, corsets, costumes, gilets, imperméables, jupes, manteaux, pantalons, pull-overs, robes, vestes, sous-vêtements, châles, écharpes, foulards, cravates, pochettes (habillement), bretelles, gants, ceintures, bas, collants, chaussettes, maillots, costumes et peignoirs de bain; chaussures, notamment souliers; articles de chapellerie, notamment chapeaux.


	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
	TOILE DAMIER & DESSIN	TMA492,021	August, 1996 in France	Mar. 26, 1998	(1) Produits en cuir, en imitation du cuir et en toile nommément, sacs à main, sacs à dos, sacs de plage, sacs à provisions, sacs d'épaule, coffres, coffrets destinés à contenir des articles de toilette dits "vanity-cases", valises, bagages, mallettes, sacs et troussees de voyage; petite maroquinerie nommément, troussees-beauté, porte-monnaie, portefeuilles, porte-chéquiers, porte-documents, porte-cartes, étuis pour clés.
	TOILE DAMIER (DESSIN)	TMA722,343	Use in France	Aug. 26, 2008	(1) Boîtes en cuir ou en imitations du cuir, malles, valises, troussees de voyage (maroquinerie), sacs de voyage, bagages, sacs-housses de voyage pour vêtements, boîtes à chapeaux, coffrets destinés à contenir des articles de toilette dit "vanity cases", troussees de toilette, sacs à dos, sacoches, sacs à main, sacs de plage, sacs à provisions, sacs à bandoulière, cabas, sacs d'épaule, sacs à porter à la ceinture, bourses, mallettes, serviettes (maroquinerie), cartables, porte-documents, pochettes, portefeuilles, porte-monnaie, étuis pour clés, porte-cartes (portefeuilles), parapluies, ombrelles.
	TOILE MONOGRAM (DESSIN)	TMA557,200	Jan. 16, 2002	Jan. 31, 2002	(1) Vêtements, et autres articles d'habillement, nommément: imperméables, jupes, manteaux, vestes, cravates, pochettes (habillement), maillots de bain; accessoires de mode, nommément: ceintures; chaussures, nommément: souliers à talons hauts, chaussures à talons plats, sandales, mules, escarpins, chaussures de sport;


	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					articles de chapellerie, notamment: chapeaux, casquettes.
	TOILE MONOGRAM NsurB (LV & DESSIN)	1,576,647			(1) Bougies pour l'éclairage, bougies parfumées.
	TOILE MONOGRAM NsurB (LV & DESSIN)	TMA960,128	Mar. 28,2011 in France	Jan. 13, 2017	(1) Sunglasses, spectacles; accessories for telephone, mobile phones, smart phones, electronic tablets, personal digital assistants and MP3 players, namely, cases, back covers, covers, neck straps or cords. Jewellery and costume jewellery, namely rings, earrings, cuff links, bracelets, trinkets, brooches, chains, necklaces, pendants, key rings, tie pins, medallions, jewellery cases; watches; wrist watches; watch straps; alarm clocks; cases for watches. Printed matter, namely postcards; catalogues; books; publications, namely brochures; articles of stationery, namely note pads; diaries; directories; covers for diaries; indexes and pads; office requisites except furniture, namely paper knives, pencils, inkstands, inkwells, paperweights, pencil holders, penholders, writing pads, pens, balls and nibs for pens. Boxes of leather or imitations of leather; travelling bags, travelling sets in leather, trunks and valises, garment bags for travel; vanity cases not fitted, toiletry bags sold empty; backpacks, handbags; attaché cases and briefcases of leather; pocket wallets; purses, key rings; umbrellas. Textiles and textile goods, namely, bath linen, bed blankets. Clothing, namely shirts, t-



	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					shirts, pullovers, skirts, dresses, trousers, coats, jackets, belts, sashes for wear, scarves, gloves, neckties, socks, swimsuits; underwear. Shoes; Headgear, namely, caps, hats, visors. Cigar and cigarettes cases of leather and imitations of leather.
	LV & DESSIN	TMA352,916	(1) Jan. 1972  (2) 1971	Mar. 10, 1989	(1) Articles de maroquinerie nommément bagages, valises, sacs et housses de tout genre, portefeuilles, porte-monnaie, pochettes pour clés, carnets d'adresse, étuis à lunettes et parapluies.  (2) Articles de maroquinerie nommément: malles et mallettes de tous genres, boîtes-voyages de tous genres, pochettes de tous genres, classeurs et attachés-cases, porte-documents de tous genres, porte-billets, porte-chéquiers et cartes de crédits, étuis à cigarettes, étuis pour balles de golf, boîtes à cartouches; articles de papeterie nommément: blocs, répertoires, écri-toires, tablettes à écrire, agendas, boîtes fiches; articles de bureau nommément: corbeilles à courrier, corbeilles à papier, sous mains, tubes crayons, porte-cartes, supports pour plumes et crayons; étuis de jeux de cartes; boîtes à chapeaux et coffrets à bijoux; accessoires de mode nommément: châles, écharpes, foulards; poches et émbauchoirs à chaussures; meubles de voyage nommément: malle secrétaire, malle contenant un lit pliant, tabourets et tables pliantes.
	FLEUR (DESSIN)	TMA671,117	Use in France	Aug. 24, 2006	(1) Produits en métaux précieux, en alliages, ou en plaqué, nommément : objets d'art artisanal, objets d'ornement, vaisselle, cendriers, boites et


	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					<p>coffrets, poudriers; joaillerie, articles de bijouterie (y compris bijouterie de fantaisie) nommément : anneaux, anneaux-clés, bagues, boucles, boucles d'oreilles, boutons de manchettes, bracelets, breloques, broches, chaînes, colliers, épingles de cravates, épingles de parure, médaillons; articles d'horlogerie et instruments chronométriques nommément : bracelets de montres, montres, montres-bracelets, pendules, pendulettes, réveils matin, écrins et étuis pour articles d'horlogerie. Produits en cuir et imitations du cuir nommément : boîtes en cuir ou en carton-cuir, enveloppes en cuir ou imitation du cuir; coffres, sacs et trousse de voyage, sacs-housses de voyage pour vêtements, malles, valises, bagages, coffrets destinés à contenir des articles de toilette dits vanity-cases vendus vides, sacs à dos, sacs à main, sacs de plage, sacs à provisions, sacs d'épaule, malles, porte-documents, serviettes, cartables, pochettes, articles de maroquinerie nommément : portefeuilles, portemonnaie non en métaux précieux, bourses, étuis pour clés, porte-cartes; parapluies, parasols, ombrelles, cannes, cannes-sièges. Vêtements, sous-vêtements et autres articles d'habillement nommément : chandails, chemises, corsages, corsets, costumes, gilets, imperméables, jupes, manteaux, pantalons, pull-overs, robes, vestes, châles, écharpes, foulards, cravates, pochettes (habillement), bretelles, gants, ceintures, bas, collants, chaussettes, maillots, costumes et peignoirs de bain; chaussurés, nommément : bottes, bottines, pantoufles, sandales, chaussures de tennis, escarpins, mocassins; articles de chapellerie nommément : chapeaux, bérets, casquettes,</p>

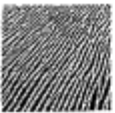





	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					canotiers, bobs.  (2) Lunettes, lunettes de soleil et étuis à lunettes.
	FLEUR (DESSIN)	TMA671,118	Use in France	Aug. 24, 2006	(1) Produits en métaux précieux, en alliages, ou en plaqué, notamment : objets d'art artisanal, objets d'ornement, vaissellé, cendriers, boîtes et coffrets, poudriers; joaillerie, articles de bijouterie (y compris bijouterie de fantaisie) notamment : anneaux, anneaux-clés, bagues, boucles, boucles d'oreilles, boutons de manchettes, bracelets, breloques, broches, chaînes, colliers, épingles de cravates, épingles de parure, médailles; articles d'horlogerie et instruments chronométriques notamment : bracelets de montres, montres, montres-bracelets, pendules, pendulettes, réveils matin, écrins et étuis pour articles d'horlogerie. Produits en cuir et imitations du cuir notamment : boîtes en cuir ou en carton-cuir, enveloppes en cuir ou imitation du cuir; coffres, sacs et trousse de voyage, sacs-housses de voyage pour vêtements, malles, valises, bagages, coffrets destinés à contenir des articles de toilette dits vanity-cases vendus vides, sacs à dos, sacs à main, sacs de plage, sacs à provisions, sacs d'épaule, malles, portefeuilles, cartables, pochettes, articles de maroquinerie notamment : portefeuilles, portemonnaie non en métaux précieux, bourses, étuis pour clés, porte-


	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					<p>cartes; parapluies, parasols, ombrelles, cannes, cannes-sièges. Vêtements, sous-vêtements et autres articles d'habillement nommément : chandails, chemises, corsages, corsets, costumes, gilets, imperméables, jupes, manteaux, pantalons, pull-overs, robes, vestes, châles, écharpes, foulards, cravates, pochettes (habillement), bretelles, gants, ceintures, bas, collants, chaussettes, maillots, costumes et peignoirs de bain; chaussures, nommément : bottes, bottines, pantoufles, sandales, chaussures de tennis, escarpins, mocassins; articles de chapellerie nommément : chapeaux, bérêts, casquettes, canotiers, bobs.</p> <p>(2) Lunettes, lunettes de soleil et étuis à lunettes.</p>
	FLEUR DANS UN LOSANGE DESSIN	TMA678,565	Use in France	Dec. 19, 2006	<p>(1) Lunettes, lunettes de soleil et étuis à lunettes. Bijoux, nommément : anneaux, porte-clefs, boucles et boucles d'oreilles, boutons de manchettes, bracelets, breloques, broches, colliers, épingles de cravates, parures, médaillons; horlogerie et instruments et appareils chronométriques, nommément : montres, boîtiers de montres, réveils matins; boîtes à bijoux en métaux précieux, leurs alliages ou en plaqué. Cuir et imitations du cuir, nommément : sacs de voyage, trousse de voyage (maroquinerie), malles et valises, sac-housses de voyage pour vêtements, coffrets destinés à contenir des articles de toilette dits</p>



	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					'vanity-cases' (vendus vides), sacs à dos, sacs en bandoulière, sacs à main, attachés-cases, portedocuments et serviettes en cuir, pochettes, portefeuilles, bourses, étuis pour clefs, porte-cartes; parapluies. Vêtements et sous-vêtements, nommément : chandails, chemises, tee-shirts, lingerie, ceintures (habillement), foulards, cravates, châles, gilets, jupes, imperméables, pardessus, bretelles, pantalons, pantalons en jeans, pull-overs, robes, vestes, écharpes, gants, collants, chaussettes, maillots de bain, peignoirs de bain, pyjamas, chemises de nuit, shorts, pochettes (habillement), à savoir carré de tissu décoratif; souliers, bottes, pantoufles; chapellerie, nommément : chapeaux, bérets, casquettes, canotiers, bobs.
	LV DESSIN	TMA384,607	1986	May 17, 1991	(1) Coffres, sacs et trousse de voyage, coffrets destinés à contenir des articles de toilette dits "vanity cases", mallettes, cartables, serviettes, portedocuments, porte-cartes, portefeuilles, porte-monnaie, porte-clés, sacs à main, sacs à dos, sacs à provisions, sacs de plage; malles et valises; parapluies, parasols, cannes-sièges.
	CUIR EPI BLEU (DESSIN)	TMA455,585	1986	March 15, 1996	(1) Cuir et produits en ces matières nommément, bagages et accessoires pour voyage nommément, malles, valises, beauty cases, train et travel cases, pochettes ceinture voyage, écrins et poches à bijoux, caves à whisky, sacs à main, sacs d'épaule, sacs marins, pochettes et trousse à main, trousse toilette, étuis pour peignes et

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					miroirs, ceintures; petite maroquinerie, nommément portefeuilles, porte-monnaie, portechéquier, porte-cartes, portepapiers, porte-billets, porte-trésor, pochettes porte-monnaie et portecartes, pochettes clefs et porteclefs; organizer de poche, boîtes de rangement, boîtes flacons; accessoires pour les affaires nommément, classeurs, serviettes, porte-documents, sacs fourre-tout, pochette et poche enveloppe (portfolios), agendas, trousse crayons, couvertures pour les agendas, les répertoires, les blocs notes, les plannings de poche et les passeports; parapluies.
	CUIR EPI SANS COULEUR (DESSIN)	TMA484,488	1986	Oct. 23, 1997	(1) Cuir et produits en ces matières nommément, bagages et accessoires pour voyage nommément, valises, beauty cases, train et travel cases, pochettes ceinture voyage, écrins et poches à bijoux, caves à whisky; sacs à main, pochettes et trousse à main, étuis pour peignes et miroirs, ceintures; petite maroquinerie nommément, portefeuilles, porte-monnaie, portechéquier, porte-cartes, portepapiers, porte-billets, porte-trésor, pochettes porte-monnaie et portecartes, pochettes clefs et porteclefs, organizer de poche; accessoires pour les affaires nommément, classeurs, serviettes, porte-documents, sacs fourre-tout, pochette et poche enveloppe (portfolios), agendas, trousse crayons.

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
	CUIR EPI JAUNE (DESSIN)	TMA455,587	1986	March 15, 1996	(1) Cuir et produits en ces matières nommément, bagages et accessoires pour voyage nommément, malles, valises, beauty cases, train et travel cases, pochettes ceinture voyage, écrins et poches à bijoux, caves à whisky, sacs à main, sacs d'épaule, sacs marins, pochettes et troussees à main, troussees toilette, étuis pour peignes et miroirs, ceintures; petite maroquinerie, nommément portefeuilles, porte-monnaie, porte-chéquier, porte-cartes, porte-papiers, porte-billets, porte-trésor, pochettes porte-monnaie et porte-cartes, pochettes clefs et porte-clefs; organizer de poche, boîtes de rangement, boîtes flacons; accessoires pour les affaires nommément, classeurs, serviettes, porte-documents, sacs fourre-tout, pochette et poche enveloppe (portfolios), agendas, troussees crayons, couvertures pour les agendas, les répertoires, les blocs notes, les plannings de poche et les passeports; parapluies.
	CUIR EPI NOIR (DESSIN)	TMA484,588	1986	Oct. 24, 1997	(1) Cuir et produits en ces matières nommément, bagages et accessoires pour voyage nommément, valises, beauty cases, train et travel cases, pochettes ceinture voyage, écrins et poches à bijoux, caves à whisky; sacs à main, pochettes et troussees à main, étuis pour peignes et miroirs, ceintures; petite maroquinerie nommément, portefeuilles, porte-monnaie, porte-chéquier, porte-cartes, porte-papiers, porte-billets, porte-trésor, pochettes porte-monnaie et porte-cartes, pochettes clefs et porte-clefs, organizer de poche; accessoires pour les affaires

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					nommément, classeurs, serviettes, porte-documents, sacs fourre-tout, pochette et poche enveloppe (portfolios), agendas, trousse crayons.
	CUIR EPI ROUGE (DESSIN)	TMA484,489	1986	Oct. 23, 1997	(1) Cuir et produits en ces matières nommément, bagages et accessoires pour voyage nommément, valises, beauty cases, train et travel cases, pochettes ceinture voyage, écrins et poches à bijoux, caves à whisky; sacs à main, pochettes et trousse à main, étuis pour peignes et miroirs, ceintures; petite maroquinerie nommément, portefeuilles, porte-monnaie, porte-chéquier, porte-cartes, porte-papiers, porte-billets, porte-trésor, pochettes porte-monnaie et porte-cartes, pochettes clefs et porte-clefs, organizer de poche; accessoires pour les affaires nommément, classeurs, serviettes, porte-documents, sacs fourre-tout, pochette et poche enveloppe (portfolios), agendas, trousse crayons.
	RELIEF CUIR EPI VERT DESSIN	TMA448,621	1986	Oct. 6, 1995	(1) Cuir et produits en ces matières nommément, bagages et accessoires pour voyage nommément, valises, beauty cases, train et travel cases, pochettes ceinture voyage, écrins et poches à bijoux, caves à whisky; sacs à main, pochettes et trousse à main, étuis pour peignes et miroirs, ceintures; petite maroquinerie nommément, portefeuilles, porte-monnaie, porte-chéquier, porte-cartes, porte-papiers, portes-billets, porte-trésor, pochettes porte-monnaie et porte-cartes, pochettes clefs et porte-clefs, organizer de poche; pour les

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					affaires nommément, classeurs, serviettes, porte-documents, sacs fourre-tout, pochette et poche enveloppe (portfolios), agendas, trousse crayons.
	DECOR FLORAL DESSIN	TMA692,843	(1) Dec 1, 2002  (2) Oct 1, 1983  (3) Oct. 3, 2003	July 26, 2007	<p>(1) Cuff links, charms, tie pins ; horological and chronometric instruments and apparatus, namely : watches, watch cases, alarm clocks.</p> <p>(2) Leather and imitations of leather, namely: travelling bags, travelling sets (leatherware) namely sets of complete range of luggage sold empty, trunks and valises, garment bags for travel, vanity cases (not fitted), rucksacks, shoulder bags, handbags, attaché-cases, briefcases, pouches, pocket wallets, purses, key holders, card holders ; umbrellas.</p> <p>(3) Clothing and underwear, namely : sweaters, shirts, T-shirts, suits, hosiery, belts, scarves, neck ties, shawls, waistcoats, skirts, raincoats, overcoats, suspenders, trousers, jeans, pullovers, frocks, jackets, winter gloves, dressed gloves, tights, socks, bathing suits, bath robes, pyjamas, night dresses, shorts, pocket squares ; high-heeled shoes, namely: low-fronted shoes, stiletto heels shoes, boots, thigh boots ; low-heeled shoes, namely: moccasins, trotters, golf shoes, dance slippers ; sandals, boots, slippers, tennis shoes ; headgear, namely: hats and caps.</p> <p>(4) Sunglasses and glass cases.</p>

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
	FLOWERS DESSIN	TMA401,088	January 1972	Aug 7, 1992	(1) Articles de maroquinerie en cuir, imitation de cuir et en tissu nommément: malles, coffres et mallettes de tous genres, bagages, valises, trousse, sacs et housses de tous genres, boîtes-voyages de tous genres, classeurs et attachés-cases, porte-documents de tous genres, portefeuilles, portemonnaies, porte-billets, portochéquier et cartes de crédit, porte-clés, pochettes de tous genres, étuis à lunettes, poches pour chaussures, articles de bureau nommément: étuis pour stylos, trousse à crayons, agendas, blocs, répertoires, écriroires, tablettes à écrire et boîtes-fiches, parapluies.
	LV DESSIN	TMA384,882	1974	May 24, 1991	(1) Coffres, sacs et trousse de voyage, coffrets destinés à contenir des articles de toilette dits "vanity cases", mallettes, cartables, serviettes, portedocuments, portecartes, portefeuilles, portemonnaie, porteclés, sacs à main, sacs à dos, sacs à provisions, sacs de plage; malles et valises; parapluies, parasols, cannes-sièges.



**SCHEDULE B**


	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
CELINE	CELINE	TMA422,452	(2) 1968  (3) September, 1969  (4) September, 1973  (5) September, 1974  (6) September, 1977  (7) September, 1980	January 28, 1994	(1) Savons; parfumerie nommément: parfums, eaux de parfum, colognes, eaux fraîches, eaux de toilette; huiles essentielles, cosmétiques nommément: ombres à paupières, crayons pour les yeux, crayons pour les sourcils, mascaras, démaquillants pour les yeux, rouges à joues, lustres à lèvres, rouges à lèvres, stylos pour les lèvres, crayons pour les lèvres, pommades pour les lèvres, vernis à ongles, couches de base pour les ongles, dissolvants pour les ongles, lotions à cuticules, lotions revitalisantes pour les ongles, fonds de teint en liquide, fonds de teint en poudre, poudres solides, poudres inconsistantes, fards en crème, crèmes pour le bain, crèmes pour le bronzage; lotions pour les cheveux, dentifrices; instruments optiques, nommément: lunettes, y compris les lunettes de soleil, les lunettes anti-éblouissantes, les lunettes pour le sport, les verres de lunettes, les étuis à lunettes, monocles, jumelles, faces-à-main, montures pour lunettes et montures pour faces-à-main, verres de contact et étuis pour verres de contact; métaux précieux et leurs allages; joaillerie; bijouterie et imitations de bijouterie nommément: colliers, bracelets, bagues, boucles d'oreilles, broches; pierres précieuses; horlogerie et autres instruments chronométriques, nommément: montres pour hommes et dames, bracelets de montres, pendulettes, réveils, pièces détachées, notamment cadrans, écrans et étuis pour lesdits articles; papier nommément: papier pour écrire; carton, cartonnage, papier d'emballage, enveloppes, sachets, sacs, pochettes pour l'emballage en papier ou en matières plastiques, papier à lettre, étiquettes, publications, imprimés, nommément: documents publicitaires, journaux, périodiques et livres; articles de librairie et de papeterie nommément: livres, papiers à écrire, enveloppes, plumes, colles, effaces; stylos, stylomines, stylos-bille, stylos feutre et leurs recharges; crayons et tous instruments pour écrire nommément: plumes fontaines; adhésifs (matières collantes) pour la papeterie ou le ménage; cartes à jouer; cuir et imitations du cuir nommément: valises, sacs, sacs à main, sacs de voyage; peaux d'animaux, malles et valises, sacs à main, sacs de voyage et autres bagages, ces articles étant nommément: les mallettes extra plates servant à transporter des dossiers, mallettes pour produits de beauté, pochettes, trousse, trousse de toilette et de maquillage, porte-feuilles, porte-


	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					<p>monnaie, parapluies, parasols et cannes, fouets et sellerie nommément selles; vaisselle, assiettes, récipients à boire, carafes, plateaux, corbeilles, coupes, porte-couteaux, dessous de plats, ramasse-miettes, bougeoirs, chandeliers, brûle-parfums, pots et vases, cache-pots, seaux, seaux à glace, bonbonnières, poignées de portes, distributeurs de papier, distributeurs de savons, porte-savons, porte-serviettes, ustensiles de toilette; tissus; couvertures de lit et de table, linge de maison: linge de lit et de table, linge de bain, mouchoirs; vêtements et tous articles d'habillement nommément: vêtements et vêtements de fourrure, nommément: costumes, manteaux, pantalons, tailleurs, blousons, pardessus, vestes de sport, smoking, jaquettes, écharpes, boléros, capes, étoles, chemisiers, hauts, gilets, robes, jupes, foulards, kilts, serre-pognets, mouchoirs; vêtements de plein air et pour le sport et la détente pour hommes, femmes et enfants nommément: manteaux, vestes, gilets, costumes, blaisers, robes, jupes, gilets, mini-gilets, chandails, cardigans, pulls d'entraînement, pantalons d'entraînement, tenues de jogging, chemisiers, chemises, jerseys, sweat shirts, t-shirts, débardeurs, sweaters, guêtres, tuniques, chasubles, combinaisons-pantalons, haut de soleil, shorts, pantalons, jeans, anoraks, vestes coupe-vent, uniformes, vestes de ski, pantalons de ski pyjamas, robes de nuit, chemises de nuit, peignoirs; ensembles de bain nommément: robes de plage, maillots de bain, manteaux de plage, sorties de bain; robes de chambre, sous-vêtements, cache-corsets, gilets de corps, combinaisons, bodys slips, corselets, culottes, porte-jarretelles, gaines, gants, mouflés, cravates, ascots, mouchoirs-pochettes, ceintures, ponchos, haut de soleil, pantalons corsaires, robes d'intérieur, liseuses, négligés, salopettes, caleçons, soutiens-gorge, châles, cols, foulards, bretelles, mouchoirs, imperméables, pantalons, chape-poussière, blouses, tabliers, chaussettes, léotards, bas culottes, bas, collants, jambières, mitaines; chaussures nommément: souliers de toutes sortes pour hommes, femmes et enfants nommément: souliers, bottes, pantoufles, moccasins, sandales, souliers de basket, souliers de football, souliers de golf, souliers de jogging, sabots, tongs, escarpins, sans-gènes, bottes en caoutchouc, bottes en vinyl, couvre-chaussures, ouvre-souliers, bottines, bottes de chasseur, bottes de moto-neigistes; articles de chapellerie nommément: chapeaux, casquettes, serre-tête, tuques, cache-nez, cache-oreilles, visières; boutons; articles pour fumeurs nommément: briquets, boîtes d'allumettes;</p>



	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					porte-allumettes, boîtes et étuis pour cigares et cigarettes, fume-cigares et fume-cigarettes, pipes.
					(2) Imprimés nommément: documents publicitaires. (3) Joaillerie, bijouterie imitations de bijouterie nommément: colliers, bracelets, bagues, boucles d'oreilles, broches.
					(4) Papier nommément: papiers pour écrire; papier d'emballages, enveloppes; vêtements et tous articles d'habillement nommément: vêtements et vêtements de fourrure, nommément: costumes, manteaux, pantalons, tailleurs, blousons, pardessus, veste de sport, smokings, jaquettes, écharpes, boléros, capes, étoles, chemisiers, hauts, gilets, robes, jupes, foulards, kilts, serre-poignets, mouchoirs; vêtements de plein air et pour le sport et la détente pour hommes, femmes et enfants nommément: manteaux, vestes, gilets, costumes, blaisers, robes, jupes, gilets, mini-gilets, chandails, cardigans, pulls d'entraînement, pantalons d'entraînement, tenues de jogging, chemisiers, chemises, jerseys, sweat shirts, t-shirts, débardeurs, sweaters, guêtres, tuniques, chasubles, combinaisons-pantalons, haut de soleil, shorts, pantalons, jeans, anoraks, vestes coupe-vent, uniformes, vestes de ski, pantalons de ski pyjamas, robes de nuit, chemises de nuit, peignoirs; ensembles de bain nommément: robes de plage, maillots de bain, manteaux de plage, sorties de bain; robes de chambre, sous-vêtements, cache-corsets, gilets de corps, combinaisons, bodys, slips, corselets, culottes, porte-jarretelles, gaines, gants, mouffes, cravates, ascots, mouchoirs-pochettes, ceintures, ponchos, haut de soleil, pantalons corsaires, robes d'intérieur, liseuses.

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					négligés, salopettes, caleçons, soutiens-gorge, châles, cols, foulards, bretelles, mouchoirs, imperméables, pantalons, chache-poussière, blouses, tabliers, chaussettes, léotards, bas culottes, bas, collants, jambières, mitaines; chaussures nommément: souliers de toutes sortes pour hommes, femmes et enfants nommément: souliers, bottes, pantoufles, mocassins, sandales, souliers de basket, souliers de football, souliers de golf, souliers de jogging, sabots, tongs, escarpins, sans-gênes, bottes en caoutchouc, bottes en vinyl, couvre-chaussures, couvre-souliers, bottines, bottes de chasseur, bottes de moto-neigistes; briquets, boîtes d'allumettes.
					(5) Cuir et imitations de cuir nommément: valises, sacs, sacs à main, sacs de voyage; peaux d'animaux, malles et valises, sacs de voyage et autres bagages, nommément: mallettes extra-plâtes faites pour transporter des dossiers, mallettes pour produits de beauté, trousse de toilette et de maquillage; porte-feuilles, parapluies. (6) Parfumerie nommément: parfums, eaux de parfum, colognes, eaux fraîches, eaux de toilette. (7) Instruments optiques nommément: lunettes, lunettes de soleil, étuis à lunettes; pochettes pour l'emballage en papier ou en matière plastique, sacs, sacs à main, mallettes pour produit de beauté; articles de chapellerie nommément: chapeaux, casquettes, serre-tête, tuques, cache-nez, cache-oreilles, visières.
					(8) Savons; huiles essentielles, cosmétiques nommément: ombres à paupières, crayons pour les yeux, crayons pour les sourcils,

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					<p> mascaras, démaquillants pour les yeux, rouges à joues, lustres à lèvres, rouges à lèvres, stylos pour les lèvres, crayons pour les lèvres, pommades pour les lèvres, vernis à ongles, couches de base pour les ongles, dissolvants pour les ongles, lotions à cuticules, lotions revitalisantes pour les ongles, fonds de teint en liquide, fonds de teint en poudre, poudres solides, poudres inconsistantes, fards en crème, crèmes pour le bain, crèmes pour le bronzage; lotions pour les cheveux, dentifrices; instruments optiques, notamment: les lunettes anti-éblouissantes, les lunettes pour le sport, les verres de lunettes, monocles, jumelles, faces-à main, montures pour lunettes et montures pour faces-à-main, verres de contact et étuis pour verres de contact; métaux précieux et leurs allages; pierres précieuses, horlogerie et autres instruments chronométriques, notamment: montres pour hommes et dames, bracelets de montres, pendulettes, réveils, pièces détachées, notamment: cadrans, écrins et étuis pour lesdits articles; carton, cartonnage, papier d'emballage, sachets, papier à lettre, étiquettes, publications, journaux, périodiques et livres, articles de librairie et de papeterie; notamment: livres, papiers à écrire, enveloppes, plumes, colles, effaces; stylos, stylomines, stylos-bille, stylos feutre et leurs recharges; crayons et tous instruments pour écrire; notamment: plumes fontaines; adhésifs (matières collantes) pour la papeterie ou le ménage; cartes à jouer; mallettes extra plates servant à transporter des dossiers, pochettes, trousse, trousse de toilette et de maquillage, portemonnaie, parasols et cannes, fouets et sellerie notamment </p>

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					selles; vaisselle, assiettes, récipients à boire, carafes, plateaux, corbeilles, coupes, portecouteaux, dessous de plats, ramasse-miettes, bougeoirs, chandeliers, brûle-parfums, pots et vases, cache-pots, seaux, seaux à glace, bonbonnières, poignées de portes, distributeurs de papier, distributeurs de savon, portesavons, porte-serviettes, ustensiles de toilette; tissus et produits textiles; nommément: draps et couvertures; couvertures de lit et de table, linge de maison: linge de lit et de table, linge de bain, mouchoirs.; boutons; article pour fumeurs, nommément: porte-allumettes, boîtes et étuis pour cigares et cigarettes, fume-cigares et fume-cigarettes, pipes.
	CÉLINE & DESIGN	TMA304,033	November, 1972	June 21, 1985	(1) Cuir et imitations de cuir, articles en ces matières nommément: valises, sacs de voyage, sacs à main, ceintures, vêtements en peau nommément: manteaux, vestes, pantalons, robes, jupes, ensembles pantalons/vestes; parapluies, vêtements en laine, coton, soie naturelle et artificielle, en tissu éponge nommément: manteaux, robes, vestes, jupes, pantalons, chemisiers, pullovers, gilets; cravates et foulards.
	C & DESSIN	TMA594,782	Use and registration in France	November 14, 2003	(1) Cuir et imitations du cuir; sacs de voyage, trousse de voyage (maroquinerie), malles et valises, sacs-housses de voyage pour vêtements, coffrets destinés à contenir des articles de toilette dits "vanity cases", sacs à dos, sacs en bandoulières, sacs à main, attaché-cases, porte-documents et serviettes en cuir, pochettes, portefeuilles, bourses, étuis pour clefs, porte-cartes, portechéquiers, couvertures d'agendas;

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					<p>parapluies.</p> <p>(2) Vêtements et sous-vêtements, notamment chandails, chemises, T-shirts, lingerie, ceintures (habillement), foulards, cravates, châles, gilets, jupes, imperméables, pardessus, bretelles, pantalons, pantalons en jeans, pull-overs, robes, vestes, écharpes, gants, collants, chaussettes, maillots de bain, peignoirs de bain, pyjamas, chemises de nuit, shorts, pochettes (habillement); souliers, bottes, pantoufles; chapellerie.</p>
	CELINE (& DESIGN)	TMA567,808	Usé and registration in France	September 23, 2002	<p>(1) Papier, notamment: papier à dactylographier, papier d'emballage, papier d'impression, papier à lettres; carton (brut, mi-ouvert ou pour la papeterie, l'imprimerie ou l'emballage); cahiers, albums, chemises pour documents, classeurs; journaux, périodiques, livres, revues, catalogues; photographies; supports en papier ou en carton pour photographies; adhésifs (matières collantes) pour la papeterie ou le ménage; pinceaux; machines à écrire; matériel d'instruction ou d'enseignement (à l'exception des appareils), notamment: livres, cassettes préenregistrées contenant de l'information sur la mode; sacs, sachets et pochettes en matières plastiques pour l'emballage; films plastiques (étirables et extensibles) pour la palettisation; cartes d'abonnement (non magnétiques); cartes de crédit (non magnétiques); cartes à jouer; caractères d'imprimerie; clichés; stylos, blocs-notes, sous main, cartes de visite, chéquiers, porte-chéquiers; agendas, calendriers muraux; cartes postales.</p>

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
	CC (INVERSES) Dessin	<u>TMA355,774</u>	<u>1982</u>	<u>May 12, 1989</u>	(1) Cuir et imitations du cuir, articles en ces matières, nommément: valises, sacs de voyage, ceintures, sacs à main, vêtements de toutes sortes en peau, nommément: manteaux, vestes, pantalons, robes, jupes, shorts, ensembles pantalons, vestes; peaux, sacs, malles et valises, parapluies, parasols et cannes, fouets, harnais et sellerie; vêtements en laine, coton, soie naturelle et artificielle et en tissu éponge, nommément: manteaux, robes, vestes, jupes pantalons, shorts, lingerie, chemisiers, pull-overs, gilets, cravates, foulards, chapeaux, chaussures, nommément pantoufles, bottes, souliers, espadrilles, sandales, escarpins, mocassins, souliers de tennis.
	SULKY & DESSIN	<u>TMA303,606</u>	<u>November, 1972</u>	<u>June 14, 1985</u>	(1) Cuir et imitations du cuir, articles en ces matières non compris dans d'autres classes, nommément: valises, sacs de voyage, ceintures, sacs à main, vêtements de toutes sortes en peau, nommément: manteaux, vestes, pantalons, robes, jupes, shorts, ensembles pantalons, vestes; peaux, sacs, malles et valises; parapluies, parasols et cannes; fouets, harnais et sellerie; vêtements en laine, coton, soie naturelle et artificielle et en tissu éponge, nommément: manteaux, robes, vestes, jupes pantalons, shorts; lingerie; chemisiers, pull-overs, gilets, cravates, foulards, chapeaux; chaussures, pantoufles et bottes.





**SCHEDULE C**


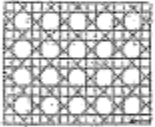
	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
<b>Dior</b>	DIOR DESIGN	TMA449,265	(1) December, 1957  (2) January, 1992	October 20, 1995	(1) Precious metals and their alloys, precious stones, jewelry and imitation jewelry, namely, necklaces, bracelets, rings, earrings and brooches. (2) Articles made of leather and imitation of leather, namely, suitcases, bags, handbags, purses, travel bags; animals hides, trunks and suitcases, other luggage, namely, briefcases, cases for beauty products, bags, cases, vanity cases, pouches and make-up kits, pocketbooks, wallets, belts, gloves and key-holders.
DIOR	DIOR	UCA50697	(1) February 27, 1947  (2) 1965	April 7, 1954	(1) Men's and boys' coats, suits, jackets, dressing gowns, evening capes, knitted scarves, sweaters, underwear, anklets, socks, stockings, shoes, slippers, hats, handkerchiefs, T-shirts, ski-suits, swimming trunks, swimming and bathing suits, pants, vests, outer shirts, outer shorts, neckties, bow ties, pyjamas, beach coats, bath-robies, gloves made of leather, fabric and combinations thereof, scarves and collars made of fur, junior misses', misses' and ladies coats, dresses, gowns for outerwear, suits, jackets, boleros, evening capes, sport ensembles made up of blouses, vests and skirts, shawls and scarfs, neckties, cravats and bow ties, pullovers and sweaters, coats, jackets, capes, stoles, scarfs, muffs and collars all made out of fur; underwear, stockings, shoes, and hats. (2) Ladies' swimsuits, ladies' swimsuit accessories, namely, matching and co-ordinated skirts, slacks, short and long cover-ups; women's short coats, pants and blazers.


	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
	DIOR	TMA203,924	(1) Use in France (2) February, 1947	December 13, 1974	(1) Men's jewelry, including men's cuff links, tie tacks, tie clasps, stud sets, key jewelry, pill boxes and money clips. (2) Men's scarves.
	DIOR	TMA203,928	(1) Use in France	December 13, 1974	(1) Watches.
Christian Dior	CHRISTIAN DIOR	TMA436,699		December 9, 1994	(1) All articles of clothing namely jackets, coats, suits, trousers, lady's suits, shirts, dresses, gowns, skirts, frocks, tailored ensembles, capes, nether garments, namely, slippers, petticoats, windchesters, topcoats, brassieres, raincoats, stoles, boleros, evening capes, sport ensembles made up of blouses, lady's scarves, tops, vests and skirts, pants and blazers, ladies' swimsuits, slacks, shorts and long cover-ups, men's and boys' coats, suits, jackets, dressing gowns, tuxedos, riding jackets, cardigans, evening capes, knitted scarves, pullovers and sweaters, underwear, anklets, socks, stockings, T-shirts, ski-suits, swimming and bathing suits, pants, vests, outer shirts, outer shorts, neckties, bow ties, pyjamas, beach coats, bathrobes, shawls and scarves, furs namely: coats, jackets, capes, hats, scarves and collars, shoes; headgear, namely: hats, caps, toques, balaclavas and kerchiefs, umbrellas, bags, namely: sport bags, handbags and travel bags, luggage, spectacles, jewellery, horological instruments, namely: watches for men and women, watch straps, small clocks and alarm clocks, writing instruments, namely: pencils, pens, fountain pens, all point pens, fibre tip pens and their refills,

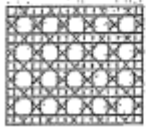
	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					smoking articles, namely: lighters, ashtrays, cigar and cigarette boxes and cases, cigar and cigarette holders, match boxes and match holders, smoker's pipes, household linen, namely: bedding and table linen, bathroom linen, handkerchiefs, buttons; silver plate, namely plates, platters, cups, saucers, glasses, goblets, serving bowls, mugs, coffee pots, teapots, sugar and creamer, salt and pepper sets; cutlery, namely forks, knives and spoons.
CHRISTIAN DIOR	Christian Dior	TMA203,927		December 13, 1974	(1) Eyeglass frames, sunglasses and eyeglass cases.
CHRISTIAN DIOR	Christian Dior	TMA203,738		December 6, 1974	(1) Luggage
CHRISTIAN DIOR	Christian Dior	TMA203,926	(1) Use in France	December 13, 1974	(1) Watches.
CHRISTIAN DIOR	Christian Dior	TMA203,925	(1) Use in France (2) February, 1947	December 13, 1974	(1) Men's jewelry, including men's cuff links, tie tacks, tie clasps, stud sets, key jewelry, pill boxes and money clips.  (2) Men's scarves.
Christian Dior	Christian Dior Design	TMA226,743	(1) Use and registration in France  (2) Use and registration in France  (3) March 7, 1978  (4) March 7, 1978	March 17, 1978	(1) Tobacco, raw or manufactured; cigars, cigarillos, cigarettes, matches; smokers' articles, namely, lighters, match boxes, match holders, cigar and cigarette boxes and cases; cigar and cigarette holders; smokers' pipes.  (2) Writing paper and envelopes, packaging and wrapping paper, newspapers and periodicals, books, bookbinding material, photographs, fountain pens, propelling-pencils, ball point pens, fibre tip pens and their refills,

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					<p>pencils, and playing cards.</p> <p>(3) Smokers' articles, namely, lighters.</p> <p>(4) Writing paper and envelopes, packaging and wrapping paper, fountain pens, propelling-pencils, ball point pens, fibre tip pens and their refills.</p>
CHRISTIAN DIOR	Christian Dior	UCA50698	<p>(1) February 27, 1947</p> <p>(2) 1965</p>	April 7, 1954	<p>(1) Men's and boys' coats, suits, jackets, dressing gowns, evening capes, knitted scarves, underwear, anklets, socks, stockings, shoes, slippers, hats, handkerchiefs, T-shirts, ski-suits, swimming trunks, swimming and bathing suits, pants, vests, outer shirts, outer shorts, neckties, bow ties, pyjamas, beach coats, bathrobes, gloves made of leather, fabric and combinations thereof; junior misses, misses and ladies coats, dresses, gowns for outerwear, suits, jackets, boleros, evening capes, sport ensembles made up of blouses, vests and skirts; shawls and scarfs; neckties, cravats and bow ties, underwear, stockings, shoes and hats and handbags.</p> <p>(2) Ladies' swimsuits, ladies' swimsuits accessories namely, matching and co-ordinated skirts, slacks, shorts and long cover-ups, women's short coats, pants and blazers.</p>
	D DESIGN	TMA209,063	(1) April, 1973	August 29, 1975	(1) Articles of luggage, fabrics for men, neckties, blouses, umbrellas, dresses and raincoats, linings for men's shoes, elastic belts of panty hose, sweaters for men and women and embroidery on sweaters.
CD	CD	TMA190,704	(1) April 25, 1973	May 4, 1973	(1) Men's and women's and children's wearing apparel; namely, men's and boys' coats, suits, jackets, dressing gowns,

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
			(2) November, 1972 (3) June, 1957 (4) August, 1972		anklets, socks, stockings, shoes, slippers, hats, pants, vests, neckties, gloves; made of leather, fabric and combinations thereof; ladies' coats, blouses, hats and handbags.  (2) Optical apparatus namely eyeglass frames  (3) Jewelry and horological instruments, namely women's costume jewelry including bracelets, and watches for men and women,  (4) Articles made from leather and imitations thereof and travelling bags, namely, men's belts, and luggage for men and women.
	 MONOGRAMME DIOR DESIGN	TMA446,002		August 11, 1995	(1) Anoraks, tabliers, cravates, ensembles de bain, robes de plage, ceintures, blazers, chemisiers, blousons, bodies, boléros, shorts, soutien-gorge, slips, caftans, camisoles, capes, chapeaux, cardigans, chemises, manteaux de fourrure, vestes, corselets, culottes, robes, protège-oreilles, porte-jarretelles, gaines, gants, déshabillés, blouses sans manches, chapeaux, serre-têtes, bonneterie, nommément bas, chaussettes, maillots, slips; vestes, jeans, joggings, jumpers, combinaisons, foulards, kimonos, mitaines, pantalons, caleçons, mocassins, moufles, tours de cou, cravates, tenues d'intérieur nommément robes de chambre, liseuses; chemises de nuit, pardessus, protège-chaussures, pyjamas, panties, pantalons, ensembles pantalons, collants, parkas, peignoirs, tabliers pour enfants, combinaisons de jeux, mouchoirs-pochettes, ponchos, pullovers, vêtements de pluie nommément imperméables; sandales, écharpes, châles,

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					<p>chemises, culottes courtes, sous-vêtements, chaussures en cuir, en toile et en caoutchouc, bottes, chaussures pour la pluie, pour le golf et pour la marche, sandales et chaussons, culottes de gymnastique, sweatshirts, jupes, ensembles de ski, pantalons, ensembles pour la neige, socquettes, vestes de sport, chemises pour le sport, bas, étoles, costumes, porte-jarretelles, sweaters, T-shirts, smokings, jaquettes, gilets et survêtements nommément blousons et pantalons molletonnés.</p> <p>(2) Tissus, mouchoirs, linge de maison nommément couvre-lits, nappes et serviettes; doublures nommément étoffe garnissant l'intérieur de vêtements; dentelles et broderies, rubans et lacets, boutons, crochets et oeillets, épingles et aiguilles, fleurs artificielles, boucles de ceintures, de chaussures et de sacs, fermoirs, fermetures à glissière.</p>
	CD DESSIN	TMA449,866	(1) February, 1990	November 10, 1995	(1) Bag buckles and clasps, belt buckles, shoe buckles, buckles for key cases and key rings, for wallets, gloves, umbrellas, and pens; clasps for belts, necklaces, bracelets and purses, dress fastenings, zippers and buttons.
	DESSIN D'UN CANNAGE	TMA486,077	(1) Used in France	November 21, 1997	(1) Boîtes à chapeaux, boîtes en cuir, bourses, cartables, porte-cartes, étuis pour clés, vanity case, mallettes pour documents faits en cuir, en imitation de cuir et en tissu, moleskine nommément toile imitant l'aspect du cuir, portemonnaie, porte-documents, portefeuilles, sacs à main, sacs de voyage, trousse de voyage nommément trousse de toilette faits en cuir, en imitation de cuir et en tissu, peaux d'animaux, malles et valises; parapluies, parasols et

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					cannes; fouets, harnais et sellerie.
	CD & dessin	TMA938,821		May 25, 2016	<p>(1) Appareils optiques nommément lunette, lunettes de soleil, étuis à lunettes, montures de lunettes, verres de lunettes, lunettes de sport, lentilles de contact, masque de ski et leurs étuis; caisses enregistreuses, machines à calculer et les ordinateurs; extincteurs; batteries électriques de téléphone; fils électriques; combinaisons, costumes, gants ou masques de plongée; lunettes (optique); articles de lunetterie nommément étuis à lunettes; appareils à micro-processeur; téléphones portables; appareils téléphoniques et leurs périphériques nommément étuis et écouteurs; machines à dicter; agendas électroniques; chargeurs de batterie électrique; batteries solaires; podomètres (compte-pas), instruments laser de mesure; sextants; alarmes; antennes; caméra; hauts-parleurs; chaînes pour lunettes.</p> <p>(2) Joaillerie, bijouterie; pierres précieuses et semi-précieuses et leurs imitations, horlogerie et instruments chronométriques nommément montres, chaînes de montres, bracelets de montres, verres de montres, boîtiers de montres, chronomètres et leurs étuis; métaux précieux et leurs alliages; objets d'art en métaux précieux nommément statuettes; coffrets à bijoux; boîtes en métaux précieux; boîtiers, bracelets, chaînes, ressorts ou verres de montre; porte-clés de fantaisie; statues, figurines, statuettes en métaux précieux; étuis ou écrins pour horlogerie, médailles; breloques, boucles en métal précieux.</p> <p>(3) Cuir et imitations de cuir; peaux</p>

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					<p>d'animaux; malles et valises; parapluie, parasol et cannes; fouets et sellerie; portefeuilles; porte-monnaie; sacs à main, à dos, à roulettes; sacs nommément sacs d'alpinistes, de campeurs, de voyage, de plage, d'écoliers; porte-cartes, portefeuilles; coffrets destinés à contenir des affaires de toilette; étuis pour clefs (maroquinerie); colliers ou habits pour animaux; filets ou sacs à provisions; sacs ou sachets (enveloppes, pochettes) en cuir pour l'emballage.</p> <p>(4) Vêtements, chaussures, chapellerie; chemises; vêtements en cuir ou en imitation du cuir nommément vestes, manteaux, blousons, pantalons, jupes, robes, ceintures, gants, chapeaux, shorts; ceintures; vêtements en fourrure nommément vestes, manteaux, blousons, écharpes, gants, chapeaux; gants, foulards, cravates; bonneterie; chaussettes; chaussons; chaussures de plage, de ski ou de sport; sous-vêtements.</p> <p>(5) Appareils optiques nommément lunette, lunettes de soleil, étuis à lunettes, montures de lunettes, verres de lunettes, lunettes de sport, lentilles de contact, masque de ski et leurs étuis; lunettes (optique); articles de lunetterie nommément étuis à lunettes; chaînes pour lunettes.</p>
	DESSIN D'UN CANNAGE	TMA525,096		March 16, 2000	<p>(1) Lunettes, étuis à lunettes et essuie-lunettes; joaillerie et bijouterie nommément, boucles d'oreilles, bracelets, colliers, bagues, broches, anneaux, pendentifs et breloques.</p> <p>(2) Tissus et produits textiles nommément couvertures, couvertures de lit, couvre-lits;</p>





	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					couvertures de voyage. Vêtements nommément anoraks, foulards, blousons, maillots de corps, brassières, bonnets, cardigans, manteaux, pardessus, robes, gants, pyjamas, tricot - nommément gilets en tricot, pull-overs, barboteuses, justaucorps, moufles, cravates, noeuds-papillons, combinaisons, parkas, châles, chandails, étoles, ceintures, chaussures nommément souliers, bottes, talons, chapeaux.
MISS DIOR	MISS DIOR	TMA139,425		March 5, 1965	(1) Women's apparel namely hats.  (2) Women's apparel, namely dresses, ensembles, coats, suits, shirt-waists, lingerie, hats.
DIORAMA	DIORAMA	TMA954,336		November 3, 2016	(1) Lunettes de vue, lunettes de soleil, lunettes de sport; montures de lunettes, étuis à lunettes; étuis pour lentilles de contact; étuis, sacs, sacoques et housses de protection pour ordinateurs, tablettes, téléphones portables et lecteurs MP3.  (2) Articles de joaillerie, articles de bijouterie; pierres précieuses; métaux précieux et leur alliages, bracelets (bijouterie), broches (bijouterie), colliers (bijouterie), chaînes (bijouterie), médailles, pendentifs, boucles d'oreilles, bagues, breloques, épingles de cravates; boutons de manchettes; porte-clefs; coffrets à bijoux; boîtes en métaux précieux; boîtiers, étuis et écrins pour articles de bijouterie et articles d'horlogerie; horlogerie et instruments chronométriques, nommément montres et bracelets de montres.  (3) Cuir et imitation du cuir; peaux d'animaux et fourrures; malles et valises; portefeuilles; portemonnaie; porte-cartes; serviettes en cuir ou imitation du cuir; housses de protection pour

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					vêtements; étuis pour clés en cuir ou imitation du cuir; sacs, notamment sacs à dos, sacs à main et sacs de voyage; coffrets destinés à contenir des affaires de toilette; pochettes (maroquinerie), trousse de voyage (maroquinerie), trousse de toilette et de maquillage (vidés); boîtes en cuir; parapluies.

**SCHEDULE D**

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
GIVENCHY	GIVENCHY	TMA164,283	(1) Use in France	August 1, 1969	(1) Métaux précieux et leurs alliages et objets en ces matières ou en plaqué, nommément: bijouterie, joaillerie, pierres précieuses; horlogerie et autres instruments chronométriques, nommément: montres, réveils, pendulettes; articles en cuir et imitations du cuir et articles en ces matières non compris dans d'autres classes, nommément: portefeuilles, porte-monnaie, ceintures, peaux, malles, valises et sacs; parapluie, parasols et cannes; tissus, couvertures de lit et de table; vêtements en général et notamment vêtements féminins de tous genres, nommément: complets, vestons, vestes, gilets, cravates, pantalons, imperméables, pardessus, uniformes, vêtements de travail, jupes, blouses, pyjamas, chemisiers, robes, cardigans, tablier, costumes de bain, chandails, bas, chaussettes, manteaux, gants, jupons, slips, soutien-gorges, corsets, gaines, shorts, mouchoirs, blousons, chemises, corsages, écharpes, chales, manchons, cols, capes, manchettes, ceintures, chapeaux, bonnets de bain, casquettes, tailleurs, robes de chambre, bottes, souliers et pantoufles; dentelles et broderies, rubans et lacets, boutons, boutons à pression, crochets et ceilllets, épingles et aiguilles, fleurs artificielles.
	GIVENCHY	TMA167,985	(1) Use in France (2) 1962 (3) 1966	March 6, 1970	(1) Produits de parfumerie, nommément; parfums, eaux de toilette, eaux de cologne; produits de beauté, nommément: savons de toilette, huiles essentielles; produits cosmétiques, nommément; lotions pour la peau, la barbe, les cheveux, rouges à lèvres, vernis à ongles, dentifrices.

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					sels pour le bain. (2) Parfums, eaux de cologne et de toilette. (3) Savons de toilette, fards, crèmes et poudres de beauté produits pour maquiller et démaquiller, lotions, sels et huiles pour le bain.
	GIVENCHY	TMA372,204		August 24, 1990	(1) Small leather goods, namely, briefcases, portfolios, bags, handbags, suitcases, purses, card cases, wallets, billfolds, key cases, tote bags; clothing, namely, shirts, tops, slacks, jeans, pants, shorts, coats, sport coats, jackets, suits, sweaters, cardigans, furs, hosiery, undershorts, undershirts, robes, loungewear, namely, lounging pants and jackets, warm-up suits, tennis-wear, formal clothes, ties, scarves, mufflers, pocket squares, shoes, belts, rainwear, namely, raincoats and rainjackets, underwear, swimwear, headwear, namely, hats and caps, handkerchiefs, socks, sports jackets, overcoats, gloves, pyjamas, skirts, dresses, blouses, negligees, bras, slips, panties and pantyhose.
	GIVENCHY	TMA336,883		February 12, 1988	(1) Ophthalmic eyewear and sunglasses and cases for same.
GIVENCHY	GIVENCHY DESSIN	TMA390,077	Use in France	November 15, 1991	(1) Draps et taies d'oreillers, dessus de lit, couvertures, serviettes de bain, serviettes à main, gants de toilette, douillettes, édredons, draperies et rideaux, serviettes de plage, tapis de bain, volants de lit et couvre-pieds, rideaux de douche, coussins décoratifs, housses de couette.
	SQUARE & DESIGN	TMA228,850	August 26, 1971	July 7, 1978	(1) Toilet soaps, perfume, cologne and toilet waters; bath oils, bath salts, hair, skin and bath lotions; personal deodorants, talc, shaving cream, face powder, lipstick,

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
					eyebrow pencil and eyelash cosmetic, eyeliner, cream and oils for the skin, dentifrice and shampoos.
	4 G'S & DESIGN	TMA402,123		September 4, 1992	(1) Small leather goods, namely briefcases, portfolios, bags, handbags, suitcases, purses, card cases, wallets, billfolds, key cases, tote bags; clothing, namely, shirts, tops, slacks, jeans, pants, shorts, coats, sport coats, jackets, suits, sweaters, cardigans, furs, hosiery, undershorts, undershirts, robes; loungewear, namely, lounging pants and jackets, warm-up suits; tennis-wear, namely, culottes, tennis shorts, t-shirts, tennis dresses, athletic shoes, crew socks, vests, sweaters, headbands, wrist-bands, wrist-supports, visors, hats, sweatshirts, sweatpants, sweat-suits, gloves; formal clothes, namely, cocktail dresses, gowns, tuxedos, dinner jackets, dress shirts, cummerbunds, bowties, ascots, cravats, spats; ties, scarves, mufflers, pocket squares, shoes, belts; rainwear, namely, raincoats, and rainjackets; underwear, swimwear; headwear, namely, hats and caps; handkerchiefs, socks, sports jackets, overcoats, gloves, pyjamas, skirts, dresses, blouses, negligees, bras, slippers, panties, and pantyhose.
	SQUARE & DESIGN	TMA228,849	May 22, 1974	July 7, 1978	(1) Toilet soaps, perfume, cologne, toilet waters; bath oils, bath salts; hair, skin and bath lotions; personal deodorants, talc, shaving cream, face powder, lipstick, eyebrow pencil, and eyelash cosmetic, eyeliner, cream and oils for the skin, dentifrice and shampoos.

	Trademark	Registration No.	Date of first use:	Registration Date:	Goods/Services
<u>GIVENCHY MONSIEUR</u>	<u>Givenchy Monsieur</u>	<u>TMA372,203</u>		<u>August 24, 1990</u>	(1) Small leather goods, namely, briefcases, portfolios, bags, handbags, suitcases, purses, card cases, wallets, billfolds, key cases, tote bags; clothing, namely, shirts, tops, slacks, jeans, pants, shorts, coats, sport coats, jackets, suits, sweaters, cardigans, furs, hosiery, undershorts, undershirts, robes, loungewear, namely, lounging pants and jackets, warm-up suits, tennis-wear, formal clothes, ties, scarves, mufflers, pocket squares, shoes, belts, rainwear, namely, raincoats and rainjackets, underwear, swimwear, headwear, namely, hats and caps, handkerchiefs, socks, sports jackets, overcoats, gloves, pyjamas, skirts, dresses, blouses, negligees, bras, slips, panties and pantyhose.

**SCHEDULE E****Summary of Items bearing Plaintiffs' Trademarks Preserved During APO****LOUIS VUITTON Merchandise**

<b>ITEM DESCRIPTION</b>	<b>Parker Place Premises</b>	<b>Wang Residence</b>	<b>Total</b>
Box of LV Four Leaf Pattern Merchandise		1 (54)	1 (54)
Box of LV Man Purses		2 (300)	2 (300)
LV Man Purses		17	17
LV Backpack		1	1
LV Bag (1 genuine item)	12	6	18
LV Belt	0	1	1
LV Purse (1 genuine item)	6		6
LV Scarf	2	5	7
LV Shoes	1	3	4
LV Wallet	7	7	14
<b>TOTAL</b>	<b>28</b>	<b>394</b> <b>23 (excluding infringements)</b>	<b>422</b>

**LOUIS VUITTON Packaging, etc.**

<b>ITEM DESCRIPTION</b>	<b>Parker Place Premises</b>	<b>Wang Residence</b>	<b>Total</b>
"LC" Strap	1		1
Envelopes / Folders Marked LV	1		1
LV Authentication/Accreditation Items (LV-branded business cards, tissue paper, envelopes, item cards, booklets, promotional material, etc.)	149	1	150
LV Box (Merchandise inside)	11	2	13
LV Box (No Merchandise inside)	20	5	25
LV Box Sleeves	4		4
LV Buckle	3		3
LV Chain		1	1
LV Cloth	1		1
LV Garment/Item Bag (Merchandise inside)	2	1	3

LV Garment/Item Bag (No Merchandise inside)	26	17	43
LV Glasses Microfiber Cloth	1		1
LV Hoop	1		1
LV Lock	1		1
LV Tag	10	2	12
LV Paper Bag	20	1	21
LV Plastic Bags	23		23
LV Receipt	47		47
LV Strap	7	1	8
LV Watch Strap		1	1
LV Zipper Pull		1	1
<b>TOTAL</b>	<b>328</b>	<b>33</b>	<b>361</b>

**DIOR Merchandise**

ITEM DESCRIPTION	Parker Place Premises	Wang Residence	Total
DIOR Bag	1		1
DIOR Jacket	1		1
DIOR Scarf		1	1
DIOR Shoes	2		2
<b>TOTAL</b>	<b>4</b>	<b>1</b>	<b>5</b>

**DIOR Packaging, etc.**

ITEM DESCRIPTION	Parker Place Premises	Wang Residence	Total
DIOR "C" Metal Tags	3		3
DIOR "D" & "C" Chrome Chains / Pendants	1		1
DIOR Box (No merchandise inside)	3		3
DIOR Authentication/Accreditation Items (DIOR-branded envelopes, promotional material, etc.)	3		3
DIOR Box (Merchandise inside)		1	1
DIOR Poster	1		1
DIOR Receipt		1	1



DIOR Sleeve	1		1
<b>TOTAL</b>	<b>12</b>	<b>2</b>	<b>14</b>

**Miscellaneous / Other**

<b>ITEM DESCRIPTION</b>	<b>Parker Place Premises</b>	<b>Wang Residence</b>	<b>Total</b>
Images of LV Merchandise	3		3
Plastic Folder with Notes and Images of Shoes Marked Channel, LV and DIOR	1		1

**SCHEDULE F****Summary of Evidence of Instances of Infringement****LOUIS VUITTON**

<b><u>Date:</u></b>	<b><u>Instance:</u></b>	<b><u>Evidence Citations:</u></b>
February 1, 2009	Offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Cloverdale Flea Market	Low Affidavit, at paras. 3-5, Exhibits A and B (PMR, V. 1, Tab 7)
March 15, 2009	Offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Cloverdale Flea Market	Lambie Affidavit, at para. 4, Exhibit A. (PMR, V. 1, Tab 6)
April 26, 2009	Offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Cloverdale Flea Market	Lambie Affidavit, at para. 9. (PMR, V. 1, Tab 6)
April 10, 2010	Offering for sale Counterfeit Louis Vuitton Merchandise at the Parker Place Store, including by way of actual merchandise (taken from a drawer behind a curtained area) and showing Louise Vuitton catalogues for items to be ordered	Jasper Smith Affidavit, at paras. 4-8, Exhibit A. (PMR, V. 1, Tab 8)
January 9, 2015	Offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store, including by way of actual merchandise and online and physical Louis Vuitton catalogues for items to be ordered	Reid Affidavit, at paras. 3-5, Exhibit A. (PMR, V. 1, Tab 9)
February and March, 2015	Advertising for sale Counterfeit Louis Vuitton Merchandise via the Infringing Websites and WeChat Account	Reid Affidavit, at para. 6, Exhibit B. (PMR, V. 1, Tab 9)
April 2, 2015	Offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store	Reid Affidavit, at paras. 7-10, Exhibits C and D. (PMR, V. 1, Tab 9)
April 20, 2015	Offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store	Reid Affidavit, at para. 11, Exhibit E. (PMR, V. 1, Tab 9)

May 13, 2015	Offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store	Reid Affidavit, at paras. 12-13, Exhibit F. (PMR, V. 1, Tab 9)
June 15, 2015	Advertising for sale through the Defendants' WeChat Account Counterfeit Louis Vuitton Merchandise	Reid Affidavit, at paras. 10, 18-19. (PMR, V. 1, Tab 9)
June 15, 2015	Offering for sale Counterfeit Louis Vuitton Merchandise at the Parker Place Store, including by way of actual merchandise and showing a Louise Vuitton catalogue for items to be o	Nouri Affidavit #1, at paras. 3-5, Exhibit A. (PMR, V. 1, Tab 10)
July 15, 2015	Offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store	Reid Affidavit, at paras. 14, 16, 17, Exhibit G. (PMR, V. 1, Tab 9)
August 23, 2016	Offering for sale and selling Counterfeit Louis Vuitton Merchandise, both to the investigator and another customer, at the Parker Place Store	Nouri Affidavit #1, at paras. 6-10. (PMR, V. 1, Tab 10)
January, 2017	Offering for sale Counterfeit Louis Vuitton Merchandise at the Parker Place Store	Zhou Affidavit, at paras. 2-4, 7-8. (PMR, V. 1, Tab 11)
January 31, 2017	Offering for sale and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store	Zhou Affidavit, at paras. 7-8, Exhibits A and B. (PMR, V. 1, Tab 11)
March and April, 2017	Advertising for sale Counterfeit Louis Vuitton Merchandise through the Defendants' WeChat Account	Zhou Affidavit, at paras. 8-10, Exhibit B. (PMR, V. 1, Tab 11)
May 12, 2017	Offering for sale (from underneath the counter) and selling Counterfeit Louis Vuitton Merchandise at the Parker Place Store	Zhou Affidavit, at paras. 15-18, Exhibit G. (PMR, V. 1, Tab 11)
June 7, 2017	Advertising for sale Counterfeit Louis Vuitton Merchandise through the Defendants' WeChat Account	Zhou Affidavit, at para. 34, Exhibits Q. (PMR, V. 1 - V.3, Tab 11)

July 11, 2017	Offering for sale Counterfeit Louis Vuitton Merchandise at the Richmond Night Market	Nouri Affidavit #1, at para. 11. (PMR, V. 1, Tab 10)
August 11, 2017	Offering for sale Counterfeit Louis Vuitton Merchandise at the Parker Place Store.	Zhou Affidavit, at para. 31. (PMR, V. 1, Tab 11)
September 15, 2017	Offering for sale and selling Counterfeit Louis Vuitton Merchandise (stored in plastic bags) at the Richmond Night Market	Nouri Affidavit #1, at para. 12. (PMR, V. 1, Tab 10)
December 4, 2017	Advertising for sale Counterfeit Louis Vuitton Merchandise on the Defendants' Website	Second Affidavit of Rojen Nouri sworn November 1, 2018, at para. 3, Exhibit A. (PRA, Tab 2)
December 13, 2017	Being in possession of significant quantities of Counterfeit Louis Vuitton Merchandise for sale	Paul Smith Affidavit at Exhibit C. (PMR, V. 4, Tab 15) Jobson Affidavit at pp. 1643-1796. (PMR, V. 8, Tab 21) Chong Affidavit, paras. 52-61. (PMR, V. 13, Tab 22)
December 13, 2017	Having imported Counterfeit Louis Vuitton Merchandise, delivered to the Wang Residence	Lynch Affidavit #1, paras. 6,7, Exhibit A. (PMR, V. 4, Tab 14) Wotherspoon Affidavit, esp. at Appendix C, pp. 1178-1179. (PMR, V. 4, Tab 16) Chong Affidavit, paras. 52-61. (PMR, V. 13, Tab 22)

**DIOR**

<u>Date:</u>	<u>Instance:</u>	<u>Evidence Citation:</u>
June 15, 2015	Advertising for sale through the Defendants' WeChat Account, Counterfeit Dior Merchandise	Reid Affidavit, at paras. 10, 18-19. (PMR, V. 1, Tab 9)
January, 2017	Offering for sale Counterfeit Dior Merchandise at the Parker Place Store	Zhou Affidavit, at paras. 2-4, 7-8. (PMR, V. 1, Tab 11)
October 29, 2017	Advertising for sale through the Defendants' WeChat Account, Counterfeit Dior Merchandise	Zhou Affidavit, at para. 34, Exhibits T. (PMR, V. 1 - V.3, Tab 11)
November 25, 2017	Offering for sale Counterfeit Dior Merchandise via messaging on the Defendants' WeChat Account	Zhou Affidavit, at para.33 (PMR, V. 1, Tab 11)
December 13, 2017	Being in possession of Counterfeit Dior Merchandise for sale	Paul Smith Affidavit at Exhibit C. (PMR, V. 4, Tab 15) Jobson Affidavit at pp. 1643-1796. (PMR, V. 8, Tab 21) Chong Affidavit, paras. 52-61. (PMR, V. 13, Tab 22)
December 13, 2017  *	Having imported Counterfeit Counterfeit Dior Merchandise, delivered to the Wang Residence	Lynch Affidavit #1, paras. 6,7, Exhibit A. (PMR, V. 4, Tab 14) Wotherspoon Affidavit, esp. at Appendix C, pp. 1178-1179. (PMR, V. 4, Tab 16) Chong Affidavit, paras. 52-61. (PMR, V. 13, Tab 22)

## CELINE

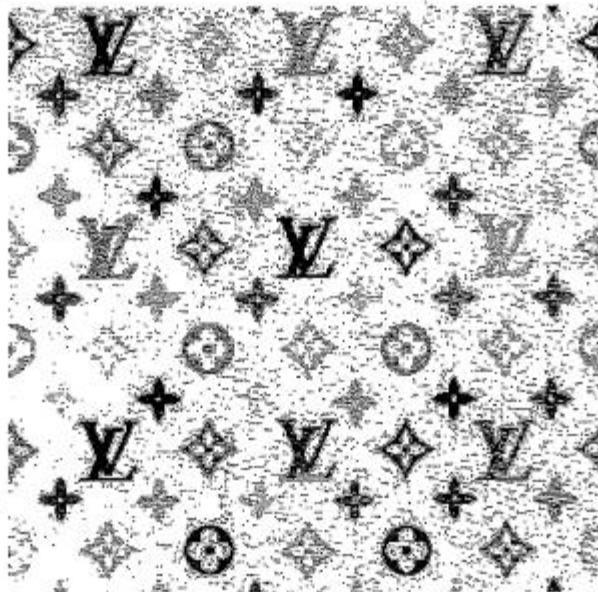
<u>Date:</u>	<u>Instance:</u>	<u>Evidence Citation:</u>
June 15, 2015	Advertising for sale through the Defendants' WeChat Account, Counterfeit Celine Merchandise	Reid Affidavit, at paras. 10, 18-19. (PMR, V. 1, Tab 9)
October 29, 2017	Advertising for sale through the Defendants' WeChat Account, Counterfeit Celine Merchandise	Zhou Affidavit, at para. 34, Exhibits S. (PMR, V. 1 - V.3, Tab 11)
November 25, 2017	Offering for sale Counterfeit Celine Merchandise via messaging on the Defendants' WeChat Account	Zhou Affidavit, at para.33 (PMR, V. 1, Tab 11)

## GIVENCHY

<u>Date:</u>	<u>Instance:</u>	<u>Evidence Citation:</u>
January, 2017	Offering for sale Counterfeit Givenchy Merchandise at the Parker Place Store	Zhou Affidavit, at paras. 2-4, 7-8. (PMR, V. 1, Tab 11)
October 29, 2017	Advertising for sale through the Defendants' WeChat Account, Counterfeit Givenchy Merchandise	Zhou Affidavit, at para. 34, Exhibits R. (PMR, V. 1 - V.3, Tab 11)
November 25, 2017	Offering for sale Counterfeit Givenchy Merchandise via messaging on the Defendants' WeChat Account	Zhou Affidavit, at para.33 (PMR, V. 1, Tab 11)

SCHEDULE G

Multicolored Monogram-White Print



Multicolored Monogram-Black Print

