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U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA

CHANEL, INC.,  
a New York corporation,

Plaintiff,

v.

HAROLD E. SMITH a/k/a HAROLD  
SMITH a/k/a HAL SMITH a/k/a HAL E.  
SMITH a/k/a H.E. SMITH a/k/a HOWELL  
SMITH d/b/a 123REPLICA.COM d/b/a  
THEFAKETHINGS.COM d/b/a THE  
FAKE THINGS, INC. d/b/a  
LEDINTERNATIONAL.COM d/b/a LED  
LIGHTS INT'L d/b/a HES MERCHANT  
SERVICES d/b/a MPH MARKETING,  
and DOES 1-10,

Defendants.

CASE NO. 07-07-CV-1204-DRL-19DAB

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF**

Plaintiff, CHANEL, INC., a New York corporation ("Chanel") hereby sues Defendants, HAROLD E. SMITH a/k/a HAROLD SMITH a/k/a HAL SMITH a/k/a HAL E. SMITH a/k/a H.E. SMITH a/k/a HOWELL SMITH ("Smith") d/b/a 123REPLICA.COM d/b/a THEFAKETHINGS.COM d/b/a THE FAKE THINGS, INC. d/b/a LEDINTERNATIONAL.COM d/b/a LED LIGHTS INT'L d/b/a HES MERCHANT SERVICES d/b/a MPH MARKETING, and DOES 1-10 (collectively "Defendants") and alleges as follows:

**JURISDICTION AND VENUE**

1. This is an action pursuant to (i) 15 U.S.C. §§ 1114, 1116, 1121, and 1125.

Furthermore, this is an action where diversity of citizenship exists and the amount in dispute

exceeds \$75,000.00. Accordingly, this Court has jurisdiction under 28 U.S.C. §§ 1331, 1332, and 1338. Venue is proper in this Court pursuant 28 U.S.C. § 1391 since a substantial part of the events giving rise to the Plaintiff's claims occurred in this District and Defendants conduct substantial business activities within this District. Defendants are subject to personal jurisdiction in this District since Defendants may be found conducting business in this District through various fully interactive Internet websites, including, but not limited to, 123Replica.com and TheFakeThings.com.

### **THE PARTIES**

2. Chanel is a corporation duly organized under the laws of the State of New York with its principal place of business in the United States located at Nine West 57th Street, New York, New York 10019. Chanel is, in part, engaged in the business of manufacturing and distributing throughout the world, including within this Judicial District, high quality handbags, wallets, and key chains under the federally registered trademarks CHANEL and CC MONOGRAM (collectively the "Chanel Marks").

3. Smith is an individual, who upon information and belief, resides and conducts business within this Judicial District at 240 Windsor Drive, Kissimmee, Florida 34746, and who, upon information and belief, also resides and conducts business at 1709 Lafayette Avenue, Lebanon, Indiana 46052. Smith uses at least the names "123Replica.com," "TheFakeThings.com," "The Fake Things, Inc.," "LedInternational.com," "Led Lights Int'l," "HES Merchant Services," and "MPH Marketing" as aliases to operate his business.

4. Upon information and belief, Smith is directly and personally engaging in the sale of counterfeit and infringing products within this District as alleged herein.

5. Defendant Does 1-5 are, upon information and belief, individuals who reside and/or conduct substantial business within this Judicial District. Further, Does 1-5 are directly and personally contributing, inducing and engaging in the sale of counterfeit products as alleged herein as partners or suppliers to the named Defendant. The Plaintiff is presently unaware of the true names of Does 1-5. The Plaintiff will amend this Complaint upon discovery of the identities of such fictitious Defendants.

6. Defendants Does 6-10 are business entities which, upon information and belief, reside and/or conduct business within this Judicial District. Moreover, Does 6-10 are, upon information and belief, directly engaging in the sale of counterfeit products as alleged herein as partners or suppliers to the named Defendant. The Plaintiff is presently unaware of the true names of Does 6-10. The Plaintiff will amend this Complaint upon discovery of the identities of such fictitious Defendants.

### **COMMON FACTUAL ALLEGATIONS**

7. Chanel is the owner of the following trademarks protected by the following U.S. Federal Trademark Registrations:

<b><u>Mark</u></b>	<b><u>Reg. No.</u></b>	<b><u>Reg. Date</u></b>
CHANEL	0,626,035	May 1, 1956
CC MONOGRAM	1,314,511	January 15, 1985
CHANEL	1,347,677	July 9, 1985
CC MONOGRAM	1,501,898	August 30, 1988
CHANEL	1,733,051	November 17, 1992
CC MONOGRAM	1,734,822	November 24, 1992
CC MONOGRAM	3,022,708	December 6, 2005

CC MONOGRAM

3,025,934

December 13, 2005

The Chanel Marks are registered in International Classes 6 and 18 and are used in connection with the manufacture and distribution of, among other things, handbags, wallets, travel bags, luggage, credit card and business card cases, change purses, tote bags, cosmetic bags, vanity cases sold empty, briefcase type portfolios, attaché cases, and key chains.

8. The Chanel Marks have been used in interstate commerce to identify and distinguish Chanel's high quality handbags, wallets, key chains and other products for an extended period of time.

9. The Chanel Marks have never been assigned or licensed to any of the Defendants in this matter.

10. The Chanel Marks are symbols of Chanel's quality, reputation and goodwill and have never been abandoned.

11. Further, Chanel has expended substantial time, money and other resources developing, advertising and otherwise promoting the Chanel Marks. The Chanel Marks qualify as famous marks as that term is used in 15 U.S.C. §1125(c)(1).

12. Chanel has extensively used, advertised, and promoted the Chanel Marks in the United States in association with the sale of high quality handbags, wallets, key chains, and other goods and has carefully monitored and policed the use of the Chanel Marks.

13. As a result of the Chanel's efforts, members of the consuming public readily identify merchandise bearing the Chanel Marks, as being high quality merchandise sponsored and approved by Chanel.

14. Accordingly, the Chanel Marks have achieved secondary meaning as identifiers of high quality handbags, wallets, key chains, and other goods.

15. Upon information and belief, at all times relevant hereto, Defendants in this action had full knowledge of Chanel's ownership of the Chanel Marks, including its exclusive right to use and license the Chanel Marks and the goodwill associated therewith.

16. Chanel has discovered Defendants are promoting and otherwise advertising, distributing, selling and/or offering for sale counterfeit products, including at least high quality handbags, wallets, and key chains bearing trademarks which are exact copies of the Chanel Marks (the "Counterfeit Goods"). Specifically, upon information and belief, Defendants are using the Chanel Marks in the same stylized fashion, for different and inferior quality goods.

17. Upon information and belief, Defendants' Counterfeit Goods are of a quality substantially different to that of Chanel's genuine goods. Despite the nature of their Counterfeit Goods and the knowledge they are without authority to do so, Defendants, upon information and belief, are actively using, promoting and otherwise advertising, distributing, selling and/or offering for sale substantial quantities of their Counterfeit Goods with the knowledge that such goods will be mistaken for the genuine high quality products offered for sale by Chanel. The net effect of Defendants' actions will be to result in the confusion of consumers who will believe Defendants' Counterfeit Goods are genuine goods originating from and approved by Chanel.

18. Upon information and belief, Defendants, import and/or manufacture their Counterfeit Goods and advertise those goods for sale to the consuming public. In so advertising these products, Defendants use the Chanel Marks. Indeed, Defendants herein, upon information and belief, misappropriated the Chanel's advertising ideas and entire style of doing business with regard to the advertisement and sale of Chanel's genuine products. Upon information and belief, the misappropriation of Chanel's advertising ideas in the form of the Chanel Marks and has

occurred, in part, in the course of Defendants' advertising activities and has been the proximate cause of damage to Chanel.

19. Upon information and belief, Defendants are conducting their counterfeiting and infringing activities at least within this Judicial District and elsewhere throughout the United States. Defendants' infringement and disparagement of Chanel's trademark rights do not simply amount to the wrong description of their goods or the failure of the goods to conform to the advertised quality or performance. As a result, Defendants are defrauding Chanel and the consuming public for Defendants' own benefit.

20. Defendants' use of the Chanel Marks, including the manufacture and/or importation, promotion, advertising, distribution, sale and/or offering for sale of their Counterfeit Goods, is without Chanel's consent or authorization.

21. Further, Defendants may be, upon information and belief, engaging in the above-described illegal counterfeiting and infringing activities knowingly and intentionally or with reckless disregard or willful blindness to Chanel's rights, for the purpose of trading on the goodwill and reputation of Chanel. If Defendants' intentional counterfeiting and infringing activities are not preliminarily and permanently enjoined by this Court, Chanel and the consuming public will continue to be damaged.

22. Defendants' above identified infringing activities are likely to cause confusion, deception, and mistake in the minds of consumers, the public, and the trade. Moreover, Defendants' wrongful conduct is likely to create a false impression and deceive customers, the public, and the trade into believing there is a connection or association between Chanel's genuine goods and Defendants' Counterfeit Goods.

23. Chanel has no adequate remedy at law.

24. Chanel is suffering irreparable injury and has suffered substantial damages as a result of the Defendants' counterfeiting and infringing activities.

25. The injuries and damages sustained by the Plaintiff are directly and proximately caused by Defendants' wrongful importation or manufacture, advertisement, promotion, distribution, sale and/or offering for sale of their Counterfeit Goods.

26. Chanel has retained the undersigned counsel to represent it in this matter and is obligated to pay said counsel a reasonable fee for such representation.

### **COUNT I - TRADEMARK COUNTERFEITING AND INFRINGEMENT**

27. The Plaintiff hereby readopts and realleges the allegations set forth in Paragraphs 1 through 26 above.

28. This is an action for trademark counterfeiting and infringement against the Defendants based on their importation or manufacture, promotion, advertisement, distribution, sale and/or offering for sale of the Counterfeit Goods bearing the Chanel Marks.

29. Specifically, the Defendants, upon information and belief, are importing or manufacturing, promoting and otherwise advertising, selling, offering for sale and distributing at least counterfeit and infringing handbags, wallets, and key chains bearing the Chanel Marks. The Defendants are continuously infringing and inducing others to infringe the Chanel Marks by using them to advertise, promote and sell counterfeit handbags, wallets, key chains and other goods.

30. Defendants' counterfeiting and infringing activities are likely to cause and actually are causing confusion, mistake, and deception among members of the trade and the general consuming public as to the origin and quality of Defendants' Counterfeit Goods bearing the Chanel Marks.

31. The Defendants' unlawful actions have caused and are continuing to cause unquantifiable damages to Chanel.

32. Defendants' above-described illegal actions constitute counterfeiting and infringement of the Chanel Marks in violation of Chanel's rights under § 32 of the Lanham Act, 15 U.S.C. § 1114.

33. Chanel has suffered and will continue to suffer irreparable injury due to the above described activities of the Defendants if the Defendants are not preliminarily and permanently enjoined.

**COUNT II - FALSE DESIGNATION OF ORIGIN  
PURSUANT TO § 43(a) OF THE LANHAM ACT**

34. Plaintiff hereby readopts and realleges the allegations set forth in Paragraphs 1 through 26 above.

35. Defendants' Counterfeit Goods bearing the Chanel Marks have been widely advertised and distributed throughout the United States.

36. Defendants' Counterfeit Goods bearing the Chanel Marks are virtually identical in appearance to each of Chanel's respective genuine goods. However, the Counterfeit Goods are different and likely inferior in quality. Accordingly, the Defendants' activities are likely to cause confusion in the trade and among the general public as to at least the origin or sponsorship of the Counterfeit Goods.

37. The Defendants, upon information and belief, have used in connection with their sale of Counterfeit Goods, false designations of origins and false descriptions and representations, including words or other symbols which tend to falsely describe or represent such goods and have caused such goods to enter into commerce with full knowledge of the



falsity of such designations of origin and such descriptions and representations, all to the detriment of the Plaintiff.

38. Specifically, the Defendants, upon information and belief, have authorized an infringing use of the Chanel Marks, in the Defendants' advertisement and promotion of their counterfeit and infringing handbags, wallets, key chains and other goods. The Defendants, upon information and belief, have misrepresented to members of the consuming public that the Counterfeit Goods being advertised and sold by them are genuine, non-infringing products.

39. The Defendants' above-described actions are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

40. Chanel has sustained injury and damage caused by Defendants' conduct, and absent an entry of an injunction by this Court, the Plaintiff will continue to suffer irreparable injury to its goodwill and business reputation as well as monetary damages.

### **COUNT III - TRADEMARK DILUTION**

41. Plaintiff readopts and realleges the allegations set forth in Paragraphs 1 through 26 above.

42. The Chanel Marks are famous trademarks within the meaning of 15 U.S.C. §1125(c). The Chanel Marks are advertised and used extensively throughout the United States and the remainder of the world and are highly recognizable by the trade and the consuming public. Further, the Plaintiff actively polices the use of the Chanel Marks by third parties.

43. Defendants are engaged in a commercial use of the Chanel Marks in commerce.

44. Defendants' above-described counterfeiting activities are disparaging, damaging and lessening the distinctiveness of the Chanel Marks through, at least, blurring and tarnishment of said Marks. Indeed, Defendants are publishing materials in their advertising which disparage

Chanel's products by, at least, creating an unfair comparison between Chanel's genuine goods and the Defendants' Counterfeit Goods.

45. Defendants' actions described herein may have been engaged in intentionally or with a reckless disregard for or willful blindness to Chanel's rights for the purpose of trading on Chanel's reputation and diluting the Chanel Marks.

46. As a result of the above described diluting and disparaging activities of the Defendants, the Plaintiff has suffered, and will continue to suffer, irreparable injury and substantial damages, and the Defendants have been unjustly enriched.

#### **COUNT IV - COMMON LAW TRADEMARK INFRINGEMENT**

47. The Plaintiff hereby readopts and realleges the allegations set forth in Paragraphs 1 through 26 above.

48. This is an action for common law trademark infringement against the Defendants based on their manufacture, promotion, advertisement, sale and/or offering for sale of goods bearing marks which are virtually identical, both visually and phonetically, to the Chanel Marks in violation of Chanel's common law trademark rights.

49. Specifically, the Defendants, upon information and belief, are importing or manufacturing, promoting and otherwise advertising, selling, offering for sale, and distributing infringing handbags, wallets, key chains and other goods bearing marks substantially similar to and indistinguishable from the Chanel Marks.

50. Defendants infringing activities are likely to cause and actually are causing confusion, mistake and deception among members of the trade and the general consuming public as to the origin and quality of Defendants' products by their use of the Chanel Marks.

51. As a result of the above described trademark infringement activities of the Defendants, Chanel has suffered, and will continue to suffer, irreparable injury and substantial damages, and the Defendants have been unjustly enriched.

**COUNT V - COMMON LAW UNFAIR COMPETITION**

52. Plaintiff hereby readopts and realleges the allegations set forth in Paragraphs 1 through 26 above.

53. This is an action for common law unfair competition against the Defendants based on their unauthorized manufacture, promotion, advertisement, distribution, sale and/or offering for sale of goods bearing marks which are virtually identical, both visually and phonetically, to the Chanel Marks in violation of Florida's common law of unfair competition.

54. Specifically, the Defendants are unlawfully importing or manufacturing, promoting and otherwise advertising, selling, offering for sale and distributing infringing and counterfeit handbags, wallets, key chains and other goods bearing the Chanel Marks.

55. Defendants' wrongful of unauthorized use of the Chanel Marks, in attempting to pass off their products as if they are Chanel products in a manner calculated to deceive members of the trade and the general public, are likely to cause and are actually causing confusion, mistake, and deception among members of the trade and general consuming public as to the origin and quality of the Defendants' products by their use of the Chanel Marks.

56. The natural, probable, and foreseeable consequences of the Defendants' wrongful conduct has been and will continue to be the deprivation of the exclusive rights Chanel has in and to its intellectual property.

57. Defendants' wrongful acts of unauthorized use of Chanel Marks have and will continue to cause Chanel substantial injury including loss of customers, dilution of its reputation,

dilution of its goodwill, confusion of existing and potential customers, loss of its reputation, and diminution of the value of its intellectual property. The harm these wrongful acts cause to Chanel is both imminent and irreparable, and the amount of damage sustained by Chanel will grow even more difficult to ascertain if these acts continue.

58. As a result of the above described wrongful activities of unfair competition by the Defendants, the Plaintiff has suffered, and will continue to suffer, irreparable injury and substantial damages, and the Defendants have been unjustly enriched.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff demands judgment jointly and severally against the Defendants as follows:

a. The Court enter a preliminary and permanent injunction enjoining Defendants, their agents, representatives, servants, employees, and all those acting in concert or participation therewith, from manufacturing or causing to be manufactured, importing, advertising or promoting, distributing, selling or offering to sell their Counterfeit Goods; from infringing, counterfeiting, or diluting the Chanel Marks; from using the Chanel Marks, or any mark similar thereto, in connection with the sale of any unauthorized goods; from using any logo, trade name, or trademark which may be calculated to falsely advertise the services or products of the Defendants as being sponsored by, authorized by, endorsed by, or in any way associated with the Plaintiff; from falsely representing themselves as being connected with the Plaintiff, through sponsorship or association, or engaging in any act which is likely to falsely cause members of the trade and/or of the purchasing public to believe any goods or services of the Defendants, or in any way endorsed by, approved by, and/or associated with the Plaintiff; from using any reproduction, counterfeit, copy, or colorable imitation of the Chanel Marks in

connection with the publicity, promotion, sale, or advertising of any goods sold by the Defendants, including, without limitation, handbags, wallets, and key chains and/or any other goods; from affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation, including words or other symbols tending to falsely describe or represent Defendants' goods as being those of the Plaintiff, or in any way endorsed by the Plaintiff and from offering such goods in commerce; and from otherwise unfairly competing with the Plaintiff.

b. The Defendants be required to account to and pay the Plaintiff for all profits and damages resulting from Defendants' infringing and counterfeiting activities and that the award to the Plaintiff be trebled, as provided for under 15 U.S.C. §1117, or, at the Plaintiff election with respect to Count I, that Plaintiff be awarded statutory damages from each Defendant in the amount of one million (\$1,000,000.00) dollars per each counterfeit Chanel Mark used and product sold, as provided by 15 U.S.C. §1117(c)(2) of the Lanham Act.

c. That Plaintiff be awarded punitive damages.

d. That Plaintiff be awarded pre-judgment interest on its judgment.

e. That Plaintiff be awarded at least treble damages as well as its costs and reasonable attorneys' fees and investigators' fees associated with bringing this action.

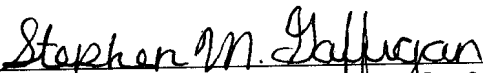
f. That Plaintiff be awarded such other and further relief as the Court may

deem just and proper.

DATED this 18<sup>th</sup> day of July, 2007.

Respectfully submitted,

STEPHEN M. GAFFIGAN, P.A.  
Counsel for Plaintiff, Chanel, Inc.,  
312 S.E. 17th Street, Second Floor  
Ft. Lauderdale, Florida 33316  
Telephone: (954) 767-4819  
Facsimile: (954) 767-4821  
E-mail: Stephen@smgpa.net

  
Stephen M. Gaffigan (Fla. Bar No. 025844)