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 and HUTTON WILKINSON

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CLERK U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES

12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14 CV 09-00594 FMC (RCx)

15 TONY DUQUETTE, INC. and
 16 HUTTON WILKINSON,
 17 Plaintiffs,
 18 vs.
 19 MICHAEL KORS (USA), INC.
 20 Defendant

No.
 COMPLAINT FOR:

1. FEDERAL TRADEMARK INFRINGEMENT
2. FEDERAL UNFAIR COMPETITION
3. FEDERAL TRADEMARK DILUTION
4. FEDERAL TRADE DRESS INFRINGEMENT
5. FALSE DESIGNATION OF ORIGIN
6. STATE TRADEMARK DILUTION AND UNFAIR TRADE PRACTICES
7. COMMON LAW TRADEMARK INFRINGEMENT & UNFAIR COMPETITION
8. COPYRIGHT INFRINGEMENT
9. USE OF DECEASED PERSON'S NAME IN VIOLATION OF CA CIVIL CODE § 3344.1

JURY TRIAL DEMAND

Complaint for
 Trademark Infringement

CA, ALAW 76009127
 2010 1/26/09 10:17
 MICHAEL KORS (USA), INC.
 1/26/09 10:17

1 Plaintiffs TONY DUQUETTE, INC. (hereinafter “TDI”) and
2 HUTTON WILKINSON (hereinafter “Wilkinson”) (or collectively referred
3 to as “Plaintiffs”) hereby allege as follows:

4 **INTRODUCTION**

5 1. This is an action at law and in equity for trademark
6 infringement, trademark dilution, trade dress infringement, copyright
7 infringement, unfair competition, and false designation of origin with respect
8 to Defendant’s use of Plaintiffs’ copyrighted materials, proprietary
9 trademarks and trademarks, and images in commerce., as well as improper
10 use of a deceased person’s name.

11
12 **JURISDICTION AND VENUE**

13 2. This action arises under the Copyright Act, 17 U.S.C. § 101, *et.*
14 *seq.*, and section 43(a) of the Lanham Trademark Act of 1946 (15 U.S.C. §
15 1125(a)); the anti-dilution laws of the several states, including the New York
16 and California anti-dilution statutes; the unfair and deceptive trade practices
17 acts of the several states, including California Business & Professions Code
18 section 17200 and New York General Business Law section 349; California
19 Civil Code section 3344.1; the general common law, and the laws of the
20 States of California and New York, which claims are substantial and related
21 to the claims arising under Federal Law. This Court has exclusive
22 jurisdiction over this action under 28 U.S.C. § 1338(a).

23 3. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b)
24 and (c) and 1400(a), in that the Defendant “resides” in this District and
25 substantial portions of the unlawful acts and violations hereinafter described
26 occurred in this District.

27
28

PARTIES

1
2 4. Plaintiff Wilkinson is, and at all times herein mentioned was, an
3 individual residing in Beverly Hills, California.

4 5. Plaintiff Wilkinson is, and at all times herein mentioned was, a
5 designer employed as President of TDI, a corporation organized and existing
6 under the laws of the State of California, having its principal place of
7 business in Beverly Hills, California.

8 6. On information and belief, Defendant Michael Kors (USA), Inc.
9 (hereinafter “Kors” or “Defendant”) is a Delaware corporation with a
10 principal place of business at 14 East 42nd St., New York, NY 10036. Kors
11 has stores, offices and employees located in the state of California, including
12 within this District.
13

14 **FACTUAL BACKGROUND**

15 7. Tony Duquette was an internationally renowned designer, artist,
16 and arbiter of style whose works and designs, for clients including the Duke
17 and Duchess of Windsor and Elizabeth Arden, have garnered awards and
18 recognition around the world. Tony Duquette’s name was used in association
19 with Mr. Duquette’s designs, works, styles and authorized products. During
20 Tony Duquette’s lifetime he established TDI as a business entity. Tony
21 Duquette’s commercial enterprises were handled by TDI and TDI became the
22 holder of various intellectual property associated with Tony Duquette,
23 including his proprietary name, and works.

24 8. Plaintiffs, or their predecessors in interest, have used the
25 proprietary name “Tony Duquette” for designs, works, styles and authorized
26 products associated with Tony Duquette and the Plaintiffs since 1941, and
27 have established significant secondary meaning and goodwill in the “Tony
28 Duquette” mark (sometimes referred to herein simply as the “Mark”),

1 particularly among high-end, fashion and art conscious consumers. The
2 Mark is further evidenced by Plaintiffs' registered trademarks in and to the
3 name Tony Duquette. As a result of the many accomplishments of Tony
4 Duquette and the fame associated with his designs, works, styles and
5 authorized products, the Tony Duquette mark has become well-known and
6 famous.

7 9. After Tony Duquette's death in 1999, his business partner,
8 Hutton Wilkinson, a designer in his own right, took the helm of TDI and has
9 continued to design, license, promote, and market Tony Duquette's designs
10 and products around the world to purveyors of high end luxury, fashion,
11 jewelry, and home furnishings. Either TDI or Wilkinson hold all rights to the
12 Tony Duquette name and other intellectual property associated with Tony
13 Duquette.

14 10. In 2006, Plaintiff Wilkinson co-authored a book detailing the
15 life, designs, and accomplishments of Tony Duquette and in October 2007,
16 Abrams Publishing Company (hereinafter "Publisher") published a large
17 format hardbound fine art book entitled "Tony Duquette" (hereinafter the
18 "Book") with 367 pages. The Book includes many distinctive designs,
19 works, styles, photographs, images and authorized products associated with
20 Tony Duquette, including, for example, distinctive deep green "malachite"
21 prints on the front and back inside pages.

22 11. In the Book, the Publisher complied with all requirements of
23 federal copyright laws with respect to fixation, notice and publication
24 providing a clear record of ownership. Additionally, the Book features
25 distinguishable text indicating Copyright ownership in and to the book in the
26 name of Publisher with a clear reservation of rights which reads: "All rights
27 reserved. No portion of this book may be reproduced, stored in a retrieval
28 system, or transmitted in any form or by any means, mechanical, electronic,

1 photocopying, recording or otherwise, without written permission from the
2 publisher.”

3 12. On February 14, 2008 the Publisher properly registered the Book
4 with the United States Copyright Office listing Wendy Goodman and
5 Plaintiff Wilkinson as the authors. The U.S. Copyright Office accepted such
6 submission and registered the copyright in and to the Book, issuing
7 Registration certificate number TX0006847093 dated February 14, 2008.

8 13. On information and belief, on or about January 2008, Defendant
9 Kors designed, created and introduced into interstate commerce a collection
10 of clothing for Defendant Kors’s ready-to-wear Resort Collection 2008-09
11 (hereinafter, the “Collection”). The Collection consisted of a variety of
12 ready-to-wear women’s clothing. Various pieces in the collection directly
13 used Plaintiffs’ proprietary name and Mark, *e.g.*, *Duquette Sheath Dress*,
14 *Duquette Kimono Sleeve Dress*, *Duquette Multi Malachite Print Slip Skirt*,
15 *Duquette Mini Caftan*, *Duquette Slip Skirt*, *Duquette Print Shantung Shift*
16 *Dress*, and *Duquette Off-The-Shoulder Top*, among others.

17 14. On information and belief, Defendant presented its Resort
18 Collection to retail buyers, retail partners and the fashion press and
19 international media on or about June 3, 2008 identifying the products for
20 promotion and sale by retailers and magazines using Plaintiff’s proprietary
21 designs and Mark. Plaintiffs are further informed and thereupon believe that
22 Defendant even referred to the Collection as the “Duquette Collection.”

23 15. On information and belief, Defendant created or authorized the
24 printing of catalogs, brochures, retail “look books,” and other marketing and
25 promotional materials using Plaintiffs’ proprietary Mark and directed,
26 instructed, and trained their retail staff, retail buyers, retail partners, such as
27 Saks Fifth Avenue and Nordstrom, among others, online retailers, and others
28 to use and refer to Plaintiffs’ proprietary Mark in identifying and promoting

1 the Resort Collection and specific items in the Resort Collection for sale.
2 Plaintiffs' unique designs and symbols associated with Tony Duquette, the
3 Tony Duquette image, and the Plaintiffs' proprietary intellectual property
4 have been used in conjunction with these materials. For example, the
5 distinctive malachite pattern used in front and end matter in the Book has
6 been copied and included in Defendant's material.

7 16. Defendant further displayed the proprietary Mark online on
8 Defendant Kors's official website at www.michaelkors.com with in-color
9 photographs of specific garments from the Resort Collection identified using
10 Plaintiff's proprietary Mark in the name and the garment description.

11 17. Defendant Kors further created a promotional video to market
12 and promote the Resort Collection. This promotional video specifically
13 mentioned Tony Duquette as having inspired the Collection. Defendant Kors
14 posted the promotional video on the Kors website. In the video, designer
15 Michael Kors, a representative of Defendant Kors, speaks about being
16 inspired by the Book. The video displays the Book, proprietary photographs
17 from the Book, proprietary photographs of Tony Duquette, and a proprietary
18 photograph of Wilkinson from the Book.

19 18. On information and belief Plaintiffs allege that Defendant Kors
20 intended consumers to believe that the Collection was endorsed by and or
21 associated with Tony Duquette, particularly since it used numerous marks,
22 words, symbols, materials, marketing pieces, and statements through trained
23 sales personnel to enhance the Collection's association with Plaintiff's
24 protected proprietary marks.

25 19. On information and belief, Defendant's Resort Collection
26 featuring Plaintiffs' proprietary designs and Marks has sold extensively
27 online, in Defendant's retail stores, in Defendant's retail partners' stores, and
28 in Defendant's online retail partners websites without permission or consent

1 of Plaintiffs and without compensation therefor. Defendant's use of the Mark
2 in connection with advertising, sale and distribution of products that
3 Plaintiffs did not make or authorize is likely to cause confusion, mistake or
4 deception as to the source or origin of Defendant's goods. In particular, the
5 public and others are likely to believe that Defendant's goods are provided,
6 sponsored, approved or licensed by Plaintiffs, or are affiliated with or in
7 some other way legitimately connected with Plaintiffs, all causing Plaintiffs
8 irreparable harm.

9 20. Defendant has infringed and are continuing to infringe upon
10 Plaintiff's copyrights without the consent of Plaintiff and in complete
11 disregard for Plaintiff's exclusive rights under U.S. Copyright Law.
12 Defendant has falsely passed off their goods as those of Plaintiffs, have
13 indicated endorsement of their goods by Tony Duquette and/or TDI, and have
14 caused consumers to be confused into believing their goods are in fact
15 associated with Plaintiffs.

16 21. The unauthorized and infringing use by Defendant of Plaintiffs'
17 design and Mark, unless enjoined, has and will continue to cause irreparable
18 harm, damage and injury to Plaintiff, in that Plaintiff's exclusive rights under
19 copyright have been exploited and Plaintiffs' reputation has been damaged as
20 a result of Defendant's actions. Defendant has also unlawfully and
21 wrongfully derived, and will continue to derive, income and profits from their
22 many infringing acts.

23 22. At all times relevant herein Defendant had actual knowledge of,
24 or in the exercise of reasonable diligence could have determined, that
25 Plaintiffs' design and Mark were proprietary as commonly known, noted in
26 the Book, and noted on the Tony Duquette website with a reservation of
27 rights. Plaintiffs are informed and believe that Defendant was well aware of
28 Plaintiffs' rights in the Marks and other proprietary designs and works.

1 Accordingly, Plaintiffs believe that Defendant's infringement has been a
2 willful and intentional effort to trade off Plaintiffs' marks, name and
3 goodwill.

4 23. Defendant neither sought nor obtained authority or permission
5 from Plaintiff, nor did it seek to remunerate Plaintiffs to adopt or use the
6 design and Mark for their commercial purposes.

7 24. Plaintiffs' Mark is now connected to Defendant's products in
8 retail, in retail advertising, and in over 150,000 online searches from various
9 online search engines despite Plaintiff and Defendant's lack of association
10 and the fact that all use of the Marks and other proprietary intellectual
11 property was without Plaintiffs' permission or consent and without
12 compensation therefor.

13 25. Defendant's use of the Plaintiffs' copyrighted materials, the
14 Mark, the Book, and the photographs of Plaintiffs in promoting and selling
15 Defendant's products amounts to a violation of Plaintiffs rights under federal
16 law, various state laws and the common law.

17

18

FIRST CLAIM FOR RELIEF

19

(Federal Trademark Infringement)

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26. Plaintiffs repeat and incorporate by reference the allegations in
paragraphs 1-25.

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27. Defendant's use of Plaintiffs' Mark is likely to cause confusion,
deception, and mistake by creating the false and misleading impression that
Defendant's goods are manufactured or distributed by Plaintiffs, or are
associated or connected with Plaintiffs, or have the sponsorship,
endorsement, or approval of Plaintiffs.

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28

28. Defendant's activities have caused and, unless enjoined by this
Court, will continue to cause a likelihood of confusion and deception of

1 members of the trade and public and, additionally, injury to Plaintiffs'
2 goodwill and reputation for which Plaintiffs have no adequate remedy at law.

3 29. Defendant's actions demonstrate an intentional, willful, and
4 malicious intent to trade on the goodwill associated with Plaintiffs' Mark to
5 Plaintiffs' great and irreparable injury.

6 30. Defendant has caused and is likely to continue causing
7 substantial injury to the public and to Plaintiffs, and Plaintiffs are entitled to
8 injunctive relief and to recover Defendant's profits, actual damages, enhanced
9 profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§
10 1114, 1116 and 1117.

11
12 **SECOND CLAIM FOR RELIEF**
13 **(Federal Unfair Competition)**

14 31. Plaintiffs repeat and incorporate by reference the allegations in
15 paragraphs 1-30.

16 32. Defendant's use of Plaintiffs' Mark has caused and is likely to
17 cause confusion, deception, and mistake by creating the false and misleading
18 impression that Defendant's goods are manufactured or distributed by
19 Plaintiffs, or are affiliated, connected, or associated with Plaintiffs, or have
20 the sponsorship, endorsement, or approval of Plaintiffs.

21 33. Defendant has made false representations, false descriptions, and
22 false designations of origin of its goods in violation of 15 U.S.C. § 1125(a),
23 and Defendant's activities have caused and, unless enjoined by this Court,
24 will continue to cause a likelihood of confusion and deception of members of
25 the trade and public and, additionally, injury to Plaintiffs' goodwill and
26 reputation as symbolized by the Mark, for which Plaintiffs have no adequate
27 remedy at law.

28 34. Defendant's actions demonstrate an intentional, willful, and

1 malicious intent to trade on the goodwill associated with Plaintiffs' Mark to
2 the great and irreparable injury of Plaintiffs.

3 35. Defendant's conduct has caused, and is likely to continue
4 causing, substantial injury to the public and to Plaintiffs, and Plaintiffs are
5 entitled to injunctive relief and to recover Defendant's profits, actual
6 damages, enhanced profits and damages, costs, and reasonable attorneys' fees
7 pursuant to 15 U.S.C. §§ 1125(a), 1116 and 1117.

8
9 **THIRD CLAIM FOR RELIEF**

10 **(Federal Dilution)**

11 36. Plaintiffs repeat and incorporate by reference the allegations in
12 paragraphs 1-35.

13 37. Plaintiffs have extensively and continuously promoted, used,
14 and authorized the use of the name Tony Duquette and Duquette both in the
15 United States and throughout the world for Plaintiffs' luxury products and
16 designs, and the Mark has thereby become a famous and well-known symbol
17 of Plaintiffs' goods and services.

18 38. Defendant is making commercial use of the Marks in commerce
19 and such use dilutes and is likely to dilute the distinctiveness of Plaintiffs'
20 Mark by eroding the public's exclusive identification of this famous mark
21 with Plaintiffs, tarnishing and degrading the positive associations and
22 prestigious connotations of the mark, and otherwise lessening the capacity of
23 the mark to identify and distinguish very specific and historic goods, designs
24 and services.

25 39. Defendant's actions demonstrate an intentional, willful, and
26 malicious intent to trade on the goodwill associated with Plaintiffs' Mark or
27 to cause dilution of the Mark, to the great and irreparable injury of Plaintiffs.

28 40. Defendant has caused and will continue to cause irreparable

1 injury to Plaintiffs' goodwill and business reputation, and dilution of the
2 distinctiveness and value of Plaintiffs' famous and distinctive Mark in
3 violation of 15 U.S.C. § 1125(c), and Plaintiffs therefore are entitled to
4 injunctive relief and to Defendant's profits, actual damages, enhanced profits
5 and damages, costs, and reasonable attorneys' fees pursuant to 15 U.S.C. §§
6 1125(c), 1116 and 1117.

7
8 **FOURTH CLAIM FOR RELIEF**
9 **(Federal Trade Dress Infringement)**

10 41. Plaintiffs repeat and incorporate by reference the allegations in
11 paragraphs 1-40.

12 42. Over time and through extensive efforts, including shows,
13 openings, appearances, interviews, books (including the "Book"),
14 promotions, advertising, and other activities, Plaintiffs and Tony Duquette
15 himself established various trade dress in association with the "Tony
16 Duquette" name and the designs, works, styles and authorized products
17 associated with that name. That trade dress includes distinctive styles,
18 designs, colors, and images, including use of prints and designs based on
19 malachite and lapis lazuli stone, use of coral in displays and advertising, and
20 use of deep greens, emerald and similar hues which are used in association
21 with the Mark, the Book, and images of Tony Duquette and Plaintiff
22 Wilkinson, and images of Tony Duquette's real property, furnishings, and
23 works of art. All of these (collectively referred to as the "Trade Dress")
24 create a distinctive trade dress which identifies Plaintiffs.

25 43. Defendant's use of Plaintiffs' Trade Dress is likely to cause
26 confusion, deception, and mistake by creating the false and misleading
27 impression that Defendant's goods are manufactured or distributed by
28 Plaintiffs, or are associated or connected with Plaintiffs, or have the

1 sponsorship, endorsement, or approval of Plaintiffs.

2 44. Defendant's activities relating to the Trade Dress have caused
3 and, unless enjoined by this Court, will continue to cause a likelihood of
4 confusion and deception of members of the trade and public and,
5 additionally, injury to Plaintiffs' goodwill and reputation for which Plaintiffs
6 have no adequate remedy at law.

7 45. Defendant's actions demonstrate an intentional, willful, and
8 malicious intent to trade on the goodwill associated with Plaintiffs' Trade
9 Dress or to cause dilution of the Trade Dress, to the great and irreparable
10 injury of Plaintiffs.

11 46. Defendant has caused and will continue to cause irreparable
12 injury to Plaintiffs' goodwill and business reputation, and dilution of the
13 distinctiveness and value of Plaintiffs' famous and distinctive Trade Dress in
14 violation of 15 U.S.C. § 1125(c), and Plaintiffs therefore are entitled to
15 injunctive relief and to Defendant's profits, actual damages, enhanced profits
16 and damages, costs, and reasonable attorneys' fees pursuant to 15 U.S.C. §§
17 1125(c), 1116 and 1117.

18
19 **FIFTH CLAIM FOR RELIEF**
20 **(False Designation of Origin)**

21 47. Plaintiffs repeat and incorporate by reference the allegations in
22 paragraphs 1-46.

23 48. Plaintiffs have extensively and continuously promoted, used,
24 and authorized the use of the name Tony Duquette and Duquette both in the
25 United States and throughout the world for Plaintiffs' luxury products and
26 designs, and the Mark, as well as the Trade Dress, has thereby become a
27 famous and well-known symbol of Plaintiffs' goods and services.

28 49. Defendant is making commercial use of the Mark and Trade

1 Dress in commerce and such use dilutes and is likely to dilute the
2 distinctiveness of Plaintiffs' Mark by eroding the public's exclusive
3 identification of this famous mark with Plaintiffs, tarnishing and degrading
4 the positive associations and prestigious connotations of the mark, and
5 otherwise lessening the capacity of the mark to identify and distinguish very
6 specific and historic goods, designs and services.

7 50. Defendant's actions demonstrate an intentional, willful, and
8 malicious intent to trade on the goodwill associated with Plaintiffs' Mark and
9 Trade Dress, to the great and irreparable injury of Plaintiffs.

10 51. Defendant has caused and will continue to cause irreparable
11 injury to Plaintiffs' goodwill and business reputation, and dilution of the
12 distinctiveness and value of Plaintiffs' famous and distinctive Mark and
13 Trade Dress in violation of 15 U.S.C. § 1125(c), and Plaintiffs therefore are
14 entitled to injunctive relief and to Defendant's profits, actual damages,
15 enhanced profits and damages, costs, and reasonable attorneys' fees pursuant
16 to 15 U.S.C. §§ 1125(c), 1116 and 1111.

17

18 **SIXTH CLAIM FOR RELIEF**
19 **(State Trademark Dilution and**
20 **Unfair and Deceptive Trade Practices)**

21 52. Plaintiffs repeat and incorporate by reference the allegations
22 contained in paragraphs 1-51.

23 53. Plaintiffs have extensively and continuously promoted and used
24 the Mark and Trade Dress throughout the United States including in the
25 States of California and New York, and the Mark and Trade Dress have
26 thereby become a distinctive, famous and well-known symbols of Plaintiffs'
27 goods and services.

28 54. Defendant is causing and will continue to cause irreparable

1 injury to Plaintiffs' goodwill and business reputation, and dilution of the
2 distinctiveness and value of Plaintiffs' famous and distinctive Mark and
3 Trade Dress in violation of California Business and Professions Code section
4 14330 and New York General Business Law section 360-1. Plaintiffs
5 therefore are entitled to injunctive relief, damages and costs, as well as, if
6 appropriate, enhanced damages and reasonable attorneys' fees.

7
8 **SEVENTH CLAIM FOR RELIEF**

9 **(Common Law Trademark Infringement and Unfair Competition)**

10 55. Plaintiffs repeat and incorporate by reference the allegations in
11 paragraphs 1-54.

12 56. Defendant's acts constitute common law trademark infringement
13 and unfair competition, and have created and will continue to create a
14 likelihood of confusion to the irreparable injury of Plaintiffs unless restrained
15 by this Court. Plaintiffs have no adequate remedy at law for this injury.

16 57. As a result of Defendant's acts, Plaintiffs have been damaged in
17 an amount not as yet determined or ascertainable. At a minimum, however,
18 Plaintiffs are entitled to injunctive relief, to an accounting of Defendant's
19 profits, to damages, and to costs. In light of the deliberately fraudulent and
20 malicious use of Plaintiffs' Mark and Trade Dress, and the need to deter
21 Defendant from similar conduct in the future, Plaintiffs additionally are
22 entitled to punitive damages.

23
24 **EIGHTH CLAIM FOR RELIEF**

25 **(Federal Copyright Infringement)**

26 58. Plaintiffs repeat and incorporate by reference the allegations in
27 paragraphs 1-57.

28 59. Defendant has infringed and continues to infringe Plaintiffs'

1 copyrights by copying, using, and distributing Plaintiffs' copyrighted Book,
2 images, photographs, prints and designs without the consent of Plaintiffs and
3 in complete disregard of Plaintiffs' exclusive rights under copyright and has
4 caused and will cause irreparable injury to Plaintiffs unless restrained by this
5 Court. Plaintiffs have no adequate remedy at law for this injury.

6 60. On information and belief, Defendant acted with full
7 knowledge of Plaintiffs' rights under copyright without regard for the damage
8 to Plaintiffs created by Defendant's activities.

9 61. Defendant's actions demonstrate an intentional, willful, and
10 malicious intent to infringe upon Plaintiffs' copyrights to the great and
11 irreparable injury to Plaintiffs.

12 62. Plaintiffs have been, and will continue to be, irreparably harmed,
13 damaged and injured as a result of Defendant's infringements and threatened
14 infringements of Plaintiffs' copyrights. In addition, Defendant has unlawfully
15 and wrongfully derived, and will continue to derive, income and profits from
16 its infringing acts.

17 63. As a result of Defendant's acts, Plaintiffs have been damaged in
18 an amount not as yet determined or ascertainable. At a minimum, however,
19 Plaintiffs are entitled to injunctive relief, to an accounting of Defendant's
20 profits, to damages, and to costs. Plaintiffs additionally are entitled to
21 punitive damages.

22
23 **NINTH CLAIM FOR RELIEF**

24 **(Use of Deceased Personality's Name, Voice and Likeness**
25 **in Violation of California Civil Code § 3344.1)**

26 64. Plaintiffs repeat and incorporate by reference the allegations
27 contained in paragraphs 1-63.

28 65. Defendant's use of Tony Duquette's name and images on and in

1 Defendant's products and for purposes of advertising, selling, or soliciting
2 purchases of products, merchandise or goods without prior consent of
3 Plaintiffs is in violation of California Civil Code section 3344.1. Defendant
4 has caused and will continue to cause irreparable injury to the goodwill and
5 reputation and image of decedent Tony Duquette, and thereby to Plaintiffs.

6 66. As a result of Defendant's improper use of Tony Duquette's
7 name, Plaintiffs are entitled to statutory damages or actual damages
8 according to proof, any profits from the unauthorized use that are not taken
9 into account in calculating actual damages, an accounting, punitive damages,
10 attorneys' fees and costs.

11
12

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs TONY DUQUETTE, INC. and HUTTON
15 WILKINSON pray that the Court enter judgment in their favor and against
16 Defendant providing as follows:

- 17 1. That Defendant Kors:
- 18 a. Willfully infringed and is willfully infringing Plaintiffs' rights in
19 their federally registered trademarks as set forth in 15 U.S.C. § 1114;
- 20 b. Committed and is committing acts of false designation or origin,
21 false or misleading description of fact, and false or misleading representation
22 against Plaintiffs as set forth in 15 U.S.C. § 1125(c);
- 23 c. Willfully diluted and is willfully diluting Plaintiffs' rights in
24 their mark and trade dress within the meaning of 15 U.S.C. § 1125(c),
25 California's antidilution statute, Bus. & Prof. Code § 14330, and New
26 York's antidilution statute, New York Gen. Bus. L §360-1;
- 27 d. Willfully infringed and is willfully infringing Plaintiffs' rights in
28 their federally registered copyright as set forth in 17 U.S.C. §§106 and 510;

1 e. Unfairly competed and is unfairly competing with, and has
2 injured and is injuring the business, reputation and goodwill of Plaintiffs; and

3 f. Used the name of decedent Tony Duquette in violation of
4 California Civil Code § 3344.1;

5 2. That the Court issue an injunction against Defendant and its
6 officers, agents, representatives, servants, employees, attorneys, accountants,
7 successors and assigns, and anyone in active concert with Defendant,
8 enjoining them from continuing the unauthorized infringing and violative
9 acts set forth herein;

10 3. That the Court enter an order under 15 U.S.C. § 1116(d)(1)(A)
11 and 17 U.S.C. §§ 503 and 509(a), authorizing the impounding of all
12 infringing products;

13 4. That the Court order Defendant to pay Plaintiffs damages as
14 follows:

15 a. Plaintiffs' damages and Defendant's illegally realized profits
16 pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b); or
17 in the alternative enhanced statutory damages pursuant to 15 U.S.C. §
18 1117(c)(2) for Defendant's willful infringement of Plaintiffs' federally
19 registered trademark;

20 b. Plaintiffs' damages and Defendant's illegally realized profits for
21 Defendant's violation of Section 43(a) of the Lanham Act (15 U.S.C. §
22 1125(a), including damages and Defendant's illegal profits for Defendant's
23 dilution of Plaintiffs' famous mark in violation of both federal and state law;

24 c. Plaintiffs' damages and Defendant's illegal profits from
25 Defendant's unfair competition (under both state and federal law) and other
26 illegal trade practices, in violation of state and federal statutory and common
27 law;

28

1 d. At Plaintiffs' election, either actual or enhanced statutory
2 damages pursuant to 17 U.S.C. § 504 and 505 for Defendant's infringement
3 of Plaintiffs' federally registered copyright; and

4 e. At Plaintiffs' election, either actual or enhanced statutory
5 damages pursuant to California Civil Code § 3344.1 for Defendant's
6 unauthorized use of Tony Duquette's name and likeness;

7 5. That the Court enter an order disgorging Defendant's profits and
8 such other orders as deemed equitable under California Business and
9 Professions Code § 17200;


10 6. That the Court enter an order requiring Defendant to provide a
11 complete accounting of all gains, profits and advantages derived by them,
12 based upon their illegal activities as set forth in this complaint;

13 7. That the Court award Plaintiffs reasonable attorneys' fees and
14 costs they have incurred as a result of Defendant's illegal activities as set
15 forth in this complaint; and

16 8. For such other and further relief as the Court deems just and
17 proper.

18 Dated: January 26, 2009

KIMBERLY A. DONOVAN
GCA LAW PARTNERS LLP

20
21 By: 
22 Kimberly A. Donovan

23 Attorneys for Plaintiffs
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DEMAND FOR JURY TRIAL

Plaintiffs respectfully demand a trial by jury of all issues so triable.

Dated: January 26, 2009

KIMBERLY A. DONOVAN
GCA LAW PARTNERS LLP

By: 
Kimberly A. Donovan

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TONY DUQUETTE, INC. and HUTTON
WILKINSON

PLAINTIFF

CASE NUMBER

CV09-00594 FMC (R&S)

v.
MICHAEL KORS (USA), INC.

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S): MICHAEL KORS (USA), INC.

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Kimberly A. Donovan, whose address is GCA Law Partners LLP, 1891 Landings Drive, Mountain View, CA 94043. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JAN 26 2009

Dated: _____

Clerk, U.S. District Court

By:  _____
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].