

MAGISTRATE JUDGE  
SNOW

THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

07-60420

CASE NO.

CIV-ZLOCH

COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF

FILED BY  
2007 MAR 23 PM 12:44  
CLARENCE MADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA.-FT. L.

CHANEL, INC., )  
a New York corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ILIA S. NICHOLAS a/k/a SCOTT )  
NICHOLAS a/k/a I.S. NICHOLAS d/b/a )  
FASHIONBAGCAFE.COM d/b/a )  
EBAGSFASHION.COM d/b/a FASTLINE )  
UNLIMITED PREMIER; COMPLETE )  
TRACE, INC, an inactive Florida )  
Corporation, d/b/a FASTLINE )  
UNLIMITED TRACE, and DOES 1-10, )  
 )  
Defendants. )

Plaintiff, CHANEL, INC., a New York corporation ("Chanel") hereby sues Defendants, ILIA S. NICHOLAS a/k/a SCOTT NICHOLAS a/k/a I.S. NICHOLAS ("Nicholas") d/b/a FASHIONBAGCAFE.COM d/b/a EBAGSFASHION.COM d/b/a FASTLINE UNLIMITED PREMIER; COMPLETE TRACE, INC, an inactive Florida Corporation d/b/a FASTLINE UNLIMITED TRACE 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 Defendants' principal place of doing business is within this District and Defendants conduct substantial business activities

within this District. Furthermore, 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, fashionbagcafe.com and ebagsfashion.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 under the federally registered trademarks CHANEL and CC MONOGRAM (collectively the “Chanel Marks”).

3. Nicholas is an individual, who upon information and belief, resides and conducts business within this Judicial District at 4220 N. 58<sup>th</sup> Avenue, Hollywood, Florida 33021, and who, upon information and belief, also conducts business at 3120 Pembroke Road, SW 115, Hallandale, Florida 33009. Nicholas uses at least the names “fashionbagcafe.com,” “ebagsfashion.com,” and “Fastline Unlimited Premier” as aliases to operate his business. Upon information and belief, Nicholas is the President and Secretary of Complete Trace, Inc.

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

5. Complete Trace, Inc. is an inactive corporation organized under the laws of the State of Florida that, upon information and belief, conducts business within this Judicial District at 4000 3<sup>rd</sup> Street, West Palm Beach, Florida 33406. Complete Trace, Inc. uses the name “Fastline Unlimited Premier” as an alias to operate its business.

6. Upon information and belief, Complete Trace, Inc. is directly engaging in the sale of counterfeit and infringing products within this District as alleged herein.

7. 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 Defendants. 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.

8. 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 Defendants. 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**

9. Chanel is the owner of the following United States 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
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 Class 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. Additionally, Chanel is the owner of the trade dress rights associated with its handbag products (“Trade Dress”). Chanel’s Trade Dress encompasses the overall look, feel, texture, and patterns used by Chanel in connection with the advertisement, marketing, and sale of its genuine goods.

10. The Chanel Marks and Trade Dress have been used in interstate commerce to identify and distinguish Chanel’s high quality handbags and other products for an extended period of time.

11. The Chanel Marks and Trade Dress have never been assigned or licensed to any of the Defendants in this matter.

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

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

14. Chanel has extensively used, advertised, and promoted the Chanel Marks and Trade Dress in the United States in association with the sale of high quality handbags and other goods and has carefully monitored and policed the use of the Chanel Marks and Trade Dress.

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

16. Accordingly, the Chanel Marks and Trade Dress have achieved secondary meaning as identifiers of high quality handbags and other goods.

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

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

19. Upon information and belief, the 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, the 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 the Defendants' actions will be to result in the confusion of consumers who will believe the Defendants' Counterfeit Goods are genuine goods originating from and approved by Chanel.

20. Upon information and belief, the Defendants, import and/or manufacture their Counterfeit Goods and advertise those goods for sale to the consuming public. In so advertising these products, the Defendants use the Chanel Marks and Trade Dress. Indeed, the 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 Trade Dress has occurred, in part, in the course of Defendants' advertising activities and has been the proximate cause of damage to Chanel.

21. Upon information and belief, the 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, the Defendants are defrauding Chanel and the consuming public for the Defendants' own benefit.

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

23. Further, the Defendants may be, upon information and belief, engaging in the above-described illegal counterfeiting and infringing activities knowing 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 the 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.

24. The Defendants' above identified infringing activities are likely to cause confusion, deception and mistake in the minds of consumers, the public and the trade. Moreover, the 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 the Defendants' Counterfeit Goods.

25. Chanel has no adequate remedy at law.

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

27. 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.

28. 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**

29. The Plaintiff hereby readopts and realleges the allegations set forth in Paragraphs 1 through 28 above.

30. 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.

31. 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, 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 and other goods.

32. 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.

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

34. 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.

35. 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**

36. Plaintiff hereby readopts and realleges the allegations set forth in Paragraphs 1 through 28 above.

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

38. 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.

39. 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 and trade dress 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.

40. 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 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.

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

42. 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**

43. Plaintiff readopts and realleges the allegations set forth in Paragraphs 1 through 28 above.

44. 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.

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

46. 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.

47. 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.

48. 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**

49. The Plaintiff hereby readopts and realleges the allegations set forth in Paragraphs 1 through 28 above.

50. 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.

51. Specifically, the Defendants, upon information and belief, are importing or manufacturing, promoting and otherwise advertising, selling, offering for sale, and distributing

infringing handbags and other goods bearing marks substantially similar to and indistinguishable from the Chanel Marks.

52. 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.

53. 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**

54. Plaintiff hereby readopts and realleges the allegations set forth in Paragraphs 1 through 28 above.

55. 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.

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

57. Defendants' wrongful of unauthorized use of the Chanel Marks and Trade Dress, 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 and Trade Dress.

58. 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.

59. Defendants' wrongful acts of unauthorized use of Chanel Marks and Trade Dress 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.

60. 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 and Trade Dress, or any mark or trade dress similar thereto, in connection with the sale of any unauthorized

goods; from using any logo, trade name or trademark or trade dress 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 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 Defendants 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.

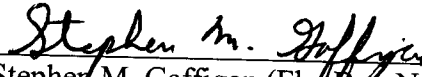
e. That Plaintiff be awarded at least treble damages as well as its costs and reasonable attorneys' fees and investigators' fees associated with bringing this action.

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

DATED this 7<sup>th</sup> day of March 2007.

Respectfully submitted,

STEPHEN M. GAFFIGAN, P.A.  
Counsel for Plaintiff, Chanel, Inc.,  
312 S.E. 17th Street, Second Floor  
Ft. Lauderdale, Florida 33316  
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E-mail: Stephen@smgpa.net

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

JS 44 (Rev. 11/05)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

Chanel, Inc., a New York corporation

CIV-ZLOCH

DEFENDANTS

Ilia S. Nicholas, et al.

MAGISTRATE JUDGE

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Stephen M. Gaffigan/STEPHEN M. GAFFIGAN, P.A. 312 S.E. 17th Street, Second Floor Ft. Lauderdale, Florida 33316 954-767-4819

07-60420

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

Handwritten: 0107 CV 60420-WJZ-SS

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, PERSONAL PROPERTY, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (see VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO b) Related Cases YES NO
(See instructions second page): JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

Trademark infringement pursuant to 15 USC 1114

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

Handwritten signature: Stephen M. Gaffigan

Handwritten date: 3/23/07

FOR OFFICE USE ONLY

AMOUNT

RECEIPT #

Handwritten amount: 2500

Handwritten number: 539652