

12 CIV 1623

JUDGE COTE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SERVICE
COPY

HERMÈS INTERNATIONAL, and
HERMÈS OF PARIS, INC.,

Plaintiffs,

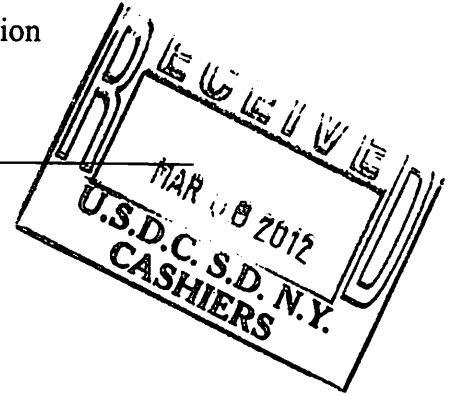
v.

JOHN DOE 1 A/K/A LI HUA A/K/A
YAO DONG; JOHN DOE 2 A/K/A
HAO DA TOU A/K/A DA TOU LI
A/K/A HUWEISHENG
A/K/A GOU YI LU;
JOHN DOE 3 A/K/A LUOXIAOBO
A/K/A LIU MIAN A/K/A ZHEN
HONGXING A/K/A LIANGGUILIN
A/K/A LUO DA YOU A/K/A GAOHONG;
JOHN DOE 4 A/K/A JIU MA;
JOHN DOE 5 A/K/A CHEN YIBIN
A/K/A LEONA WANGQIANG;
JOHN DOE 6 A/K/A IAAI A/K/A
JKUOIU;
JOHN DOE 7 A/K/A XIN HONG;
JOHN DOE 8 A/K/A ZHENG RUISHAN;
JOHN DOES 9-100;
AND XYZ COMPANIES,

Defendants.

Civil Action

No. _____



COMPLAINT

Plaintiff Hermès International and Hermès of Paris, Inc., (“Hermès” or “Plaintiffs”), by their counsel THE GIOCONDA LAW GROUP PLLC, complain and allege against Defendants John Doe 1 a/k/a Li Hua a/k/a Yao Dong; John Doe 2 a/k/a Hao Da Tou a/k/a Da Tou Li a/k/a Huweisheng a/k/a Gou Yi Lu; John Doe 3 a/k/a Luoxiaobo a/k/a Liu Mian a/k/a Zhen Hongxing a/k/a Liangguilin a/k/a Luo Da You a/k/a Gao hong; John Doe 4 a/k/a Jiu Ma; John Doe 5 a/k/a

Chen YiBin a/k/a Leona Wangqiang; John Doe 6 a/k/a Iaai a/k/a Jkuoiu; John Doe 7 a/k/a Xin Hong; John Doe 8 a/k/a Zheng Ruishan; John Does 9-100; and XYZ Companies (hereinafter “Defendants”), as follows.

NATURE OF THE ACTION

1. In this Complaint, Hermès seeks immediate, preliminary, and permanent injunctive relief and damages because of the Defendants’ widespread campaign of willful trademark counterfeiting, infringement and cybersquatting, in violation of Sections 32, 43(a), and 43(c) of the Lanham Act, 15 U.S.C. §§ 1114, 1125(a) and (c), Sections 349, 350, and 360-1 of the New York General Business Law, and New York State common law.

2. The Defendants, who have no affiliation with Hermès, have created and registered a large number of Internet domain names which intentionally incorporate the famous HERMÈS® and/or BIRKIN® and/or KELLY® names, alongside the word “OUTLET” and/or “BAGS” (the “Infringing Domain Names”). To consumers, the term “OUTLET” connotes an authorized retailer that sells authentic products such as overstock inventory.

3. The Defendants have registered at least the following Infringing Domain Names:

1. HermesBags-Outlet.net;
2. HermesBagsOutletStore.com;
3. HermesBagsOutlet.org;
4. HermesOutlet1.com;
5. HermesOutlet.org;
6. HermesHandbagOutlet.org;
7. HermesHandbagsOutlet.org;
8. HermesHandbagsOutlet1.org;
9. HermesHandbagsOutlet2.org;
10. HermesOutlet2.org;
11. HermesBagss.org;
12. HermesBirkin-Bags.org;
13. HermesBirkin-Bags1.org;
14. HermesOutletStore.com;
15. Outlet-Hermes.net;
16. Hermes--Outlet.com;

17. DiscountHermesBag.com;
18. HermesOutletMall.com;
19. HermesOutletBags.com;
20. HermesHandbags-Outlet.net
21. HermesKellyOutlet.com;
22. HermesOutletBags.net;
23. HermesOutletBags.org;
24. HermesOutletHandbags.com;
25. HermesOutletSale.com;
26. HermesOutletShop.com;
27. HermesOutletShop.info;
28. Hermes-BagsOutlet.com;
29. HermesBagsOutlets.net;
30. Hermes-BagsOutlets.com;
31. HermesBagsOutlet.net;
32. DeHermesHandbags.com;
33. Outlet-eHermes.com; and
34. HermesHandbagsOutlets.com.

4. When a consumer searches in the Google or Yahoo! Internet search engines for genuine Hermès products, she discovers numerous sophisticated websites associated with each of these Infringing Domain Names (the “Infringing Websites”).

5. On the Infringing Websites, she views the Defendants offering a wide variety of “Hermès”-branded items for sale, including ladies handbags and purses; men’s briefcases; wallets and passport cases; ladies’ and men’s belts; scarves; jewelry (including necklaces, bracelets and bangles), and wristwatches that bear a variety of federally registered Hermès Trademarks and Designs (as defined herein), but which are actually unauthorized counterfeits (“Counterfeit Products”).

6. Many of the Counterfeit Products are being offered for sale at prices over two hundred dollars (\$200.00) each, with some of the Counterfeit Products priced up to six hundred ninety-two dollars (\$692.00) each.

7. In a deliberate attempt to confuse consumers and defraud the public, the Defendants create, promote, and operate the Infringing Domain Names and Infringing Websites

as though they were authorized Hermès online retail stores by misappropriating Hermès' logos and advertising images throughout the Infringing Websites. Below is a banner image displayed on www.HermesKellyOutlet.com, describing itself as an "Hermès Online Store," and offering "Free Shipping":



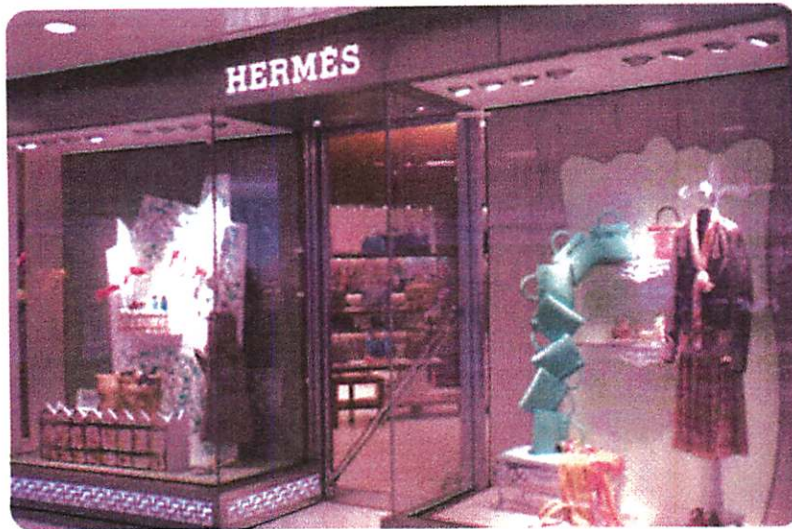
8. Below is another banner image displayed on HermesOutletHandbags.com:



9. The Defendants go so far as to utilize Hermès' distinctive and trademarked product names including BIRKIN[®], SHOULDER BIRKIN[®], PLUME[®], JYPSIERE[®], SO

KELLY[®], PICOTIN[®], BOLIDE[®] and LINDY[®], and even displaying Hermès store images.

Below is an image displayed on www.HermesOutletBags.com:



10. To ensure consumers are thoroughly defrauded, the Defendants display images of the Counterfeit Products in orange Hermès boxes, packaging, and dust bags, along with counterfeit receipts and fraudulent documentation.

11. Upon information and belief, certain of the Defendants tell prospective consumers to “SHOP WITH CONFIDENCE,” pretending to be legitimized by third parties, such as the Better Business Bureau[®], when they are not.

12. Upon information and belief, the Defendants have made active use of the services of banks, credit card companies, credit card processing agencies, and other financial institutions or agencies that engage in the transfer of funds in order to carry out, facilitate, complete, or ratify the unlawful actions complained of herein, or used such entities to hold, transfer, remit, relay, maintain, or invest profits from the unlawful activities described herein.

13. Additionally, upon information and belief, the Defendants utilize Internet-based payment processors that make use of the PayPal[®] service and major credit cards such as Visa,

MasterCard, and American Express to receive financial payment for Counterfeit Products sold on the Infringing Websites.

14. Further, upon information and belief, to evade detection, the Defendants frequently conceal their true identities by submitting materially false contact information to Internet registrars and registries. A chart detailing the investigation related to the Defendants, the Infringing Domain Names, and Infringing Websites is attached hereto as Exhibit 1.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the subject matter of this action pursuant to Section 39 of the Lanham Act, 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338(a) for the claims arising out of the violations of Sections 32 and Section 43 of the Lanham Act; has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 for the claims arising out of the violation of Sections 349, 350, and 360-1 of the New York Business Law, and all other claims arising under the common law of the State of New York; and has jurisdiction pursuant to 28 U.S.C. §§ 1338(b) and 1367 for the claims under the common law of unfair competition.

16. This Court has personal jurisdiction over the Defendants because the products that are the subject of this action were, and continue to be, sold to consumers in New York. Venue is proper in this judicial district under 28 U.S.C. § 1391, as a substantial part of the events giving rise to the claims occurred in this district.

PARTIES AND JURISDICTION

17. **Plaintiff Hermès International** is a French corporation having its principal place of business at 24 Rue du Faubourg St. Honoré 75008 Paris, France. Hermès does business in the United States through its wholly owned subsidiary Hermès of Paris, Inc., a New York corporation having its principal office at 55 East 59th Street, New York NY 10022.

18. **Plaintiff Hermès of Paris, Inc.** is a New York corporation with a principal place of business at 55 East 59th Street, New York, NY 10022. Hermès International does business in the United States through its wholly-owned subsidiary Hermès of Paris, Inc. Hermès of Paris distributes Hermès merchandise in the United States and is duly authorized to use the intellectual property rights owned by Hermès International in the United States. Consequently, Hermès of Paris, Inc. possesses the right and obligation to enforce such rights in the United States.

19. Upon information and belief, **DEFENDANT JOHN DOE 1** is an individual or entity whose actual name is unconfirmed, who is the registrant of at least the following Infringing Domain Names: **HermesBags-Outlet.net; HermesBagsOutletStore.com; HermesBagsOutlet.org; HermesOutlet1.com; HermesOutlet.org; HermesHandbagOutlet.org; HermesHandbagsOutlet.org; HermesHandbagsOutlet1.org; HermesHandbagsOutlet2.org; HermesOutlet2.org; HermesBagss.org; HermesBirkin-Bags.org; and HermesBirkin-Bags1.org.**

20. Upon information and belief, **DEFENDANT JOHN DOE 1** has used the names **LI HUA** and/or **YAO DONG**. Upon information and belief, **DEFENDANT JOHN DOE 1** is engaged in the manufacture, distribution, sale, and advertisement of Counterfeit Products on websites associated with these Infringing Domain Names. Screenshots of these Infringing Websites are attached hereto as Exhibit 2.

21. Upon information and belief, **DEFENDANT JOHN DOE 2** is an individual or entity whose actual name is unconfirmed, who is the registrant of at least the following Infringing Domain Names: **HermesOutletStore.com; Outlet-Hermes.net; Hermes--Outlet.com; DiscountHermesBag.com; and HermesOutletMall.com.**

22. Upon information and belief, **DEFENDANT JOHN DOE 2** has used the names **HAO DA TOU, DA TOU LI, HUWEISHENG**, and/or **GOU YI LU**. Upon information and belief, **DEFENDANT JOHN DOE 2** is engaged in the manufacture, distribution, sale, and advertisement of Counterfeit Products on websites associated with these Infringing Domain Names. Screenshots of these Infringing Websites are attached hereto as Exhibit 3.

23. Upon information and belief, **DEFENDANT JOHN DOE 3** is an individual or entity whose actual name is unconfirmed, who is the registrant of at least the following Infringing Domain Names: **HermesOutletBags.com; HermesHandbags-Outlet.net; HermesKellyOutlet.com; HermesOutletBags.net; HermesOutletBags.org; HermesOutletHandbags.com; and HermesOutletSale.com.**

24. Upon information and belief, **DEFENDANT JOHN DOE 3** has used the names **LUOXIAOBO, LIU MIAN, ZHEN HONGXING, LIANGGUILIN, LUO DA YOU** and/or **GAOHONG**. Upon information and belief, **DEFENDANT JOHN DOE 3** is engaged in the manufacture, distribution, sale, and advertisement of Counterfeit Products on websites associated with these Infringing Domain Names. Screenshots of these Infringing Websites are attached hereto as Exhibit 4.

25. Upon information and belief, **DEFENDANT JOHN DOE 4** is an individual or entity whose actual name is unconfirmed, who is the registrant of at least the following Infringing Domain Names: **HermesOutletShop.com and HermesOutletShop.info.**

26. Upon information and belief, **DEFENDANT JOHN DOE 4** has used the name **JIU MA**. Upon information and belief, **DEFENDANT JOHN DOE 4** is engaged in the manufacture, distribution, sale, and advertisement of Counterfeit Products on websites associated

with these Infringing Domain Names. Screenshots these Infringing Websites are attached hereto as Exhibit 5.

27. Upon information and belief, **DEFENDANT JOHN DOE 5** is an individual or entity whose actual name is unconfirmed, who is the registrant of the Infringing Domain Names **Hermes-BagsOutlet.com, HermesBagsOutlet.net and Hermes-BagsOutlets.com.**

28. Upon information and belief, **DEFENDANT JOHN DOE 5** has used the names **CHEN YIBIN** and **LEONA WANGQIANG.** Upon information and belief, **DEFENDANT JOHN DOE 5** is engaged in the manufacture, distribution, sale, and advertisement of Counterfeit Products on a website associated with these Infringing Domain Names. Screenshots of these Infringing Websites are attached as Exhibit 6.

29. Upon information and belief, **DEFENDANT JOHN DOE 6** is an individual or entity whose actual name is unconfirmed, who is the registrant of at least the following Infringing Domain Names **HermesBagsOutlet.net** and **DeHermesHandbags.com.**

30. Upon information and belief, **DEFENDANT JOHN DOE 6** has used the names **IAAI** and/or **JKUOIU.** Upon information and belief, **DEFENDANT JOHN DOE 6** is engaged in the manufacture, distribution, sale, and advertisement of Counterfeit Products on a website associated with these Infringing Domain Names. Screenshots of these Infringing Websites are attached as Exhibit 7.

31. Upon information and belief, **DEFENDANT JOHN DOE 7** is an individual or entity whose actual name is unconfirmed, who is the registrant of the Infringing Domain Name **Outlet-eHermes.com.**

32. Upon information and belief, **DEFENDANT JOHN DOE 7** has used the name **XIN HONG.** Upon information and belief, **DEFENDANT JOHN DOE 7** is engaged in the

manufacture, distribution, sale, and advertisement of Counterfeit Products on a website associated with this Infringing Domain Name. A screenshot of this Infringing Website is attached as Exhibit 8.

33. Upon information and belief, **DEFENDANT JOHN DOE 8** is an individual or entity whose actual name is unconfirmed, who is the registrant of the Infringing Domain Name **HermesHandbagsOutlets.com**.

34. Upon information and belief, **DEFENDANT JOHN DOE 8** has used the name **ZHENG RUIZHAN**. Upon information and belief, **DEFENDANT JOHN DOE 8** is engaged in the manufacture, distribution, sale, and advertisement of Counterfeit Products on a website associated with this Infringing Domain Name. A screenshot of this Infringing Website is attached as Exhibit 9.

35. Upon information and belief, **DEFENDANTS JOHN DOES 9-100** are individuals and/or entities consciously engaged in directing, controlling, ratifying, facilitating, promoting, or otherwise participating in the manufacture, sale, distribution, and advertisement of Counterfeit Products in connection with the Infringing Websites and Infringing Domain Names, or who consciously and directly benefit financially from the manufacture, distribution, sale, and advertisement of Counterfeit Products in connection with the Infringing Websites and Infringing Domain Names, but whose identities, actual names, addresses, and telephone numbers are presently unknown.

36. Upon information and belief, **DEFENDANTS XYZ COMPANIES** are companies consciously engaged in directing, controlling, ratifying, facilitating, promoting, or otherwise participating in the manufacture, sale, distribution, and advertisement of Counterfeit Products in connection with the Infringing Websites and Infringing Domain Names, or who

consciously and directly benefit financially from the manufacture, distribution, sale, and advertisement of Counterfeit Products in connection with the Infringing Websites and Infringing Domain Names, but whose identities, actual names, addresses, and telephone numbers are presently unknown.

HERMÈS' HISTORY

37. Hermès is a world famous designer and producer of high-fashion clothing, fashion accessories, leather goods such as handbags, purses, wallets, and briefcases, as well as jewelry and watches, and has been in business for approximately one hundred seventy four (174) years.

38. Hermès' origins, including through its predecessors in interest, date from 1837, when the company began producing high quality, elegant harnesses for horses.

39. Hermès' products were first offered for sale in the United States in or around 1924. Accordingly, Hermès' continuous use of the name "Hermès" in the United States has spanned approximately eighty seven (87) years, although many Americans were already familiar with Hermès and its products when Hermès products were first introduced to the United States.

40. Hermès currently operates stores in many states throughout the United States, including several in the State of New York, and in this judicial district.

41. Hermès does business through its website www.Hermes.com, which receives substantial viewership from consumers in the State of New York, and this judicial district.

42. Hermès' two flagship products are its "Kelly" and "Birkin" handbags -- styles famous throughout the world, which are well known as exclusive Hermès designs. Hermès has spent millions of dollars promoting the distinctive design of these handbags.

43. Emile Hermès designed the famous Hermès Kelly bag in the 1930's. The bag became known as the Hermès Kelly bag because Princess Grace Kelly carried the Hermès bag in

famous photographs. The Hermès Kelly bag is undoubtedly one of the most famous bags in the world. The design of the Kelly bag, specifically its unique closure, lock, key, and shape, are strongly associated with Hermès.

44. Hermès designed the Hermès Birkin bag in the 1980's after Jean-Louis Dumas, the late Chairman of Hermès International, sat next to actress Jane Birkin on an airplane, and she struggled to find diapers in the bag she was then carrying. The bag is now universally known as the Hermès Birkin bag. The design of the Birkin bag, especially its unique closure, lock, key, and shape, are strongly associated with Hermès.

45. Hermès has also introduced newer products that incorporate the Birkin bag's unique closure, lock, key, and shape, such as the "SHOULDER BIRKIN®."

46. Many of Hermès' other popular handbags, such as the PLUME®, JYPSIERE®, SO KELLY®, PICOTIN®, BOLIDE®, and LINDY®, are also well known as Hermès designs.

47. All of Hermès' handbags are handmade by highly skilled craftsmen at Hermès' workshops in France. To maintain the uncompromising quality of Hermès' products, Hermès' craftsmen train for five years under a senior craftsman before being allowed to make an Hermès bag on their own. Any blemish in the bag that arises during its creation results in its destruction. And each handbag is marked on the inside with a code identifying the craftsman who made it.

48. Only the finest materials available are used to make Hermès' products.

49. Hermès has expended substantial amounts of money to promote its name and market its products, including through special events at Hermès' shops.

50. Hermès has expended significant sums to advertise the Hermès Trademarks in the United States. Hermès has engaged in extensive publicity and advertising for its entire product line. Print advertisements have appeared for many years in most major fashion magazines,

general interest magazines, and newspapers having local, nationwide and international circulation. Hermès and related companies have spent millions of dollars to advertise in the United States, including placing advertisements for the Hermès Kelly and Birkin bags.

51. Hermès also publishes a regular publication entitled *Le Monde D'Hermès*. This promotional publication is circulated throughout the United States and abroad.

52. The long period of use and promotion of the Hermès name, and the extraordinarily high quality of Hermès' products generally, have caused the media to give considerable attention to Hermès.

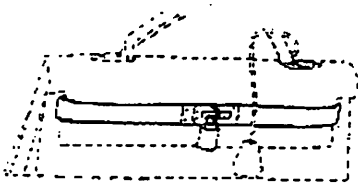
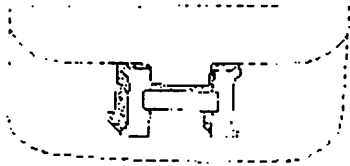

53. The name "Hermès" is synonymous in the mind of the consuming public with elegant fashionable goods of the highest quality and style. In addition, the Hermès' Birkin handbag in particular has received an enormous amount of media attention. An example of such attention includes an episode of the HBO hit television show "Sex and the City." That episode focused its storyline around one character's efforts to acquire an Hermès Birkin bag. The movie "The Royal Tenenbaums" also featured both Hermès Birkin and Kelly bags. Widespread media coverage reported that Martha Stewart carried a genuine Hermès Birkin bag during her trial. Recent media reports covered Jessica Simpson's, and the Kardashian sisters' collections of Hermès Birkin bags.


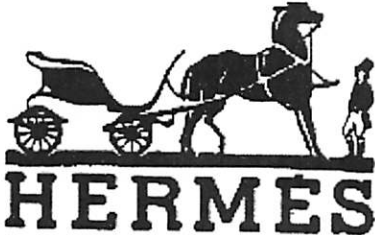
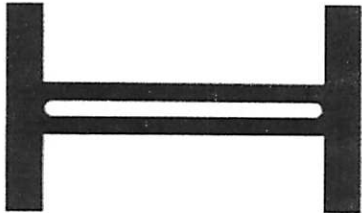
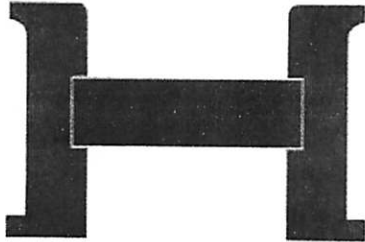
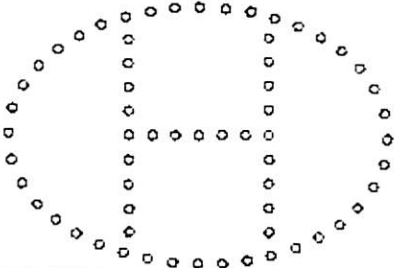
54. To protect its valuable intellectual property, Hermès owns the following relevant U.S. Trademark Registrations on word marks (the "Hermès Trademarks"), attached as Exhibit 10:


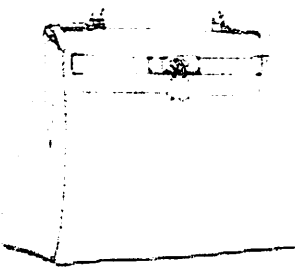
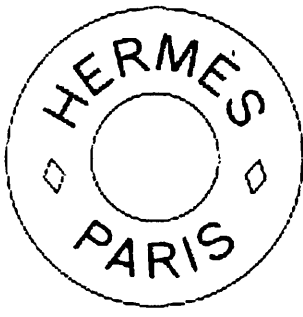
Registration Number	Registered Trademark	Registration Date	Relevant International Classes
368,785	HERMES	June 27, 1939	IC 8 and 14 (Jewelry)
369,271	HERMES	July 18, 1939	IC 14 (Watches)
369,681	HERMES	Aug. 1, 1939	IC 18 (Handbags and purses)
369,944	HERMES	August 8, 1939	IC 10, 25 and 26 (Belts, scarves)

2,893,199	PLUME	Oct. 12, 2004	IC 18 (Handbags and purses)
2,991,927	BIRKIN	Sept. 6, 2005	IC 18 (Handbags and purses)
3,198,963	HERMES	January 16, 2007	IC 35 (Computerized online retail store services in the fields of clothing and fashion accessories)
3,480,825	LINDY	August 5, 2008	IC 18 (Handbags and purses)
3,730,618	JYPSIERE	Dec. 29, 2009	IC 18 (Handbags and purses)
3,834,062	SO KELLY	August 17, 2010	IC 18 (Handbags and purses)
3,994,070	BOLIDE	July 12, 2011	IC 18 (Handbags and purses)

55. Additionally, Hermès owns the following relevant U.S. Trademark Registrations, (the “Hermès Designs”), attached as Exhibit 11:

Registration Number	Registered Trademark	Registration Date	Relevant International Classes
1,806,107		Nov. 23, 1993	IC 18 (Handbags and purses)
1,806,108		Nov. 23, 1993	IC 18 (Handbags and purses)
2,436,099		March 20, 2001	IC 18 (Handbags and purses)

<p>2,866,641</p>		<p>July 27, 2004</p>	<p>IC 35 (Online retail store services in the fields of clothing, fashion accessories, etc.).</p>
<p>3,198,973</p>		<p>Jan. 16, 2007</p>	<p>IC 35 (Online retail store services in the fields of clothing, fashion accessories, etc.).</p>
<p>3,233,558</p>		<p>Apr. 24, 2007</p>	<p>IC 6 (wallets); 14 (jewelry); 18 (handbags and purses); 25 (clothing); 26 (belt buckles)</p>
<p>3,233,557</p>		<p>Apr. 24, 2007</p>	<p>IC 6 (wallets); 14 (jewelry); 18 (handbags and purses); 25 (clothing); 26 (belt buckles)</p>
<p>3,348,789</p>		<p>Dec. 4, 2007</p>	<p>IC 6 (Metal locks for handbags and purses, wallets, etc.); IC 18 (Handbags and purses)</p>

3,936,105		Mar. 29, 2011	IC 18 (Handbags and purses)
3,939,358		Apr. 5, 2011	IC 18 (Handbags and purses)
3,980,546		June 21, 2011	IC 14 (Jewelry products, namely necklaces, bracelets, watches, etc.)

56. These federal registrations for the Hermès Trademarks and Hermès Designs (collectively, the “Hermès Trademarks and Designs”) are in full force and effect and many have become incontestable pursuant to 15 U.S.C. § 1065.

57. The Hermès Trademarks and Designs have been used by Plaintiffs on, and in connection with, the advertising and sale of Hermès’ products, including, but not limited to, ladies handbags and purses; men’s briefcases; wallets and passport cases; ladies’ and men’s belts; scarves; jewelry (including necklaces, bracelets and bangles), and wristwatches, in

interstate and intrastate commerce, including commerce in the State of New York, and in this Judicial District.

58. As a result of their widespread use, the Hermès Trademarks and Designs have become symbols of modern luxury and symbols of Hermès. All of the Hermès Trademarks and Designs have acquired secondary meaning and have come to be known as source identifiers for authentic Hermès products.

THE DEFENDANTS' CONDUCT

59. As described more fully above, the Defendants created and registered a number of Infringing Domain Names.

60. Upon information and belief, the Defendants have also designed and operate a large number of Infringing Websites associated with the Infringing Domain Names that they have intentionally and deliberately designed to resemble authorized Hermès retail outlet stores.

61. Upon information and belief, the Defendants use the Infringing Websites to sell a wide variety of counterfeit "HERMÈS"-branded merchandise. The Infringing Websites sell, and offer to sell at least the following types of goods:

- a. Ladies handbags and purses;
- b. Men's briefcases;
- c. Wallets and passport cases;
- d. Ladies' and men's belts;
- e. Scarves;
- f. Jewelry including necklaces, bracelets and bangles; and
- g. Watches.

62. The Defendants have registered the Infringing Domain Names and are using the Infringing Domain Names in association with the Infringing Websites with the bad-faith intent to profit from the Hermès Trademarks and Designs, namely confusing consumers into believing

that the Defendants' Infringing Websites are retail outlet stores selling authentic Hermès goods, when they are not.

63. Each of the Infringing Domain Names registered and used by the Defendants wholly incorporate or are confusingly similar to one or more of the Hermès Trademarks.

64. Long after Hermès' adoption, use, and federal registration of the Hermès Trademarks and Designs, the Defendants began to sell and offer for sale merchandise bearing counterfeit reproductions of one or more of the Hermès Trademarks and Designs.

65. The Defendants have offered for sale, sold, and advertised Counterfeit Products.

66. Upon information and belief, the Defendants have repeatedly engaged in this conduct over a significant period of time.

67. Upon information and belief, the Defendants have continued to import, distribute, supply, advertise, promote, and sell counterfeit goods bearing the Hermès Trademarks and Designs with knowledge that the merchandise was in fact counterfeit. Through these acts, Defendants have demonstrated that their infringement of the Hermès Trademarks and Designs is willful.

68. Upon information and belief, the Defendants have sold and shipped Counterfeit Products into New York, including into this Judicial District.

FIRST CLAIM FOR RELIEF

(Against All Defendants)

**Federal Trademark Counterfeiting In Violation of
Sections 32(1)(a) and (b) of the Lanham Act
(15 U.S.C. § 1114)**

69. Hermès hereby repeats each and every allegation set forth in paragraphs 1 to 68 above as if fully set forth herein.

70. Sections 32(1)(a) and (b) of the Lanham Act, 15 U.S.C. § 1114(1)(a) and (b), provide in relevant part that any person who shall, without the consent of the registrant –

- (a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive;
- (b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive...

shall be liable in a civil action by the registrant for the remedies hereinafter provided.

71. Defendants have willfully used numerous designations that are counterfeits of the registered Hermès Trademarks and Designs on goods for which Plaintiff holds federal trademark registrations.

72. Additionally, without the consent of Hermès, Defendants have applied one or more counterfeit Hermès Trademarks onto packaging materials, sales receipts, and other printed materials in connection with the sale, offering for sale, and distribution of goods for their own personal financial gain.

73. Hermès has not authorized Defendants' use of any of the Hermès Trademarks or Designs to advertise, offer for sale, sell, and distribute Defendants' counterfeit products.

74. Defendants' unauthorized use of the Hermès Trademarks and Designs on or in connection with the advertising and sale of goods constitutes Defendants' use of Plaintiff's registered marks in commerce.

75. Defendants' unauthorized use of the Hermès Trademarks and Designs is likely to cause confusion, mistake or deceive; cause the public to believe that Defendants' products are

authorized, sponsored, or approved by Hermès when they are not; and result in Defendants unfairly and illegally benefitting from Hermès' goodwill.

76. Accordingly, Defendants have engaged in trademark counterfeiting in violation of Sections 32(1)(a) and (b) of the Lanham Act, 15 U.S.C. § 1114(1)(a) and (b), and are liable to Hermès for all damages related thereto, including but not limited to actual damages, infringing profits, and/or statutory damages, as well as attorney's fees.

77. Defendants' acts have caused, and will continue to cause, irreparable injury to Hermès.

78. Hermès has no adequate remedy at law and is thus entitled to damages in an amount yet to be determined.

79. Defendants' egregious conduct in repeatedly selling counterfeit merchandise bearing the unauthorized Hermès Trademarks and Designs is willful and intentional, and thus this constitutes an exceptional case.

SECOND CLAIM FOR RELIEF

(Against All Defendants)

Federal Trademark Infringement In Violation of Section 32 of the Lanham Act (15 U.S.C. § 1114)

80. Hermès hereby repeats each and every allegation set forth in paragraphs 1 to 79 above as if fully set forth herein.

81. Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a), prohibits any person from using in commerce, without the consent of the registrant:

any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive . . .

82. The Hermès Trademarks and Designs are federally registered. These trademarks are distinctive and are associated in the public mind with Hermès.

83. Additionally, based on Hermès' extensive advertising, sales, and the popularity of their respective products, the Hermès Trademarks and Designs have acquired secondary meaning so that the public associates these trademarks exclusively with Hermès.

84. Defendants have used counterfeit reproductions of one or more of the Hermès Trademarks and Designs in connection with the advertising, sale, offering for sale, and distribution of goods for their own financial gain.

85. Hermès has not authorized Defendants' use of any of the Hermès Trademarks or Designs.

86. Defendants' unauthorized use of the Hermès Trademarks and Designs on or in connection with the advertising and sale of goods constitutes Defendants' use of Plaintiff's registered marks in commerce.

87. Defendants' unauthorized use of the Hermès Trademarks and Designs is likely to cause confusion, mistake, or deceive; cause the public to believe that Defendants' products emanate or originate from Hermès when they do not, or that Hermès has authorized, sponsored, approved, or otherwise associated itself with Defendants or their counterfeit products bearing the Hermès Trademarks and Designs.

88. Defendants' unauthorized use of the Hermès Trademarks and Designs has resulted in Defendants unfairly and illegally benefitting from Hermès' goodwill. This has caused substantial and irreparable injury to the public, Hermès, the Hermès Trademarks and Designs, and the substantial goodwill represented thereby.

89. Accordingly, Defendants have engaged in trademark infringement in violation of 15 U.S.C. § 1114.

90. Defendants' acts have caused, and will continue to cause, irreparable injury to Hermès.

91. Hermès has no adequate remedy at law and is thus entitled to damages in an amount yet to be determined.

92. Defendants' egregious conduct in repeatedly selling infringing merchandise bearing the unauthorized Hermès Trademarks and Designs is willful and intentional, and thus this constitutes an exceptional case.

THIRD CLAIM FOR RELIEF

(Against All Defendants)

Cybersquatting Under the Anticybersquatting Consumer Protection Act (15 U.S.C. § 1125(d)(1))

93. Hermès hereby repeats each and every allegation set forth in paragraphs 1 to 92 above as if fully set forth herein.

94. 15 U.S.C. § 1125(d)(1)(A) provides that:

A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person—

- (i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; and
- (ii) registers, traffics in, or uses a domain name that—
 - (I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;
 - (II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark...

95. The domain names that Defendants have registered are identical to or confusingly similar to one or more of the Hermès Trademarks, which were distinctive and/or famous at the time that the Defendants registered each of these domain names.

96. The Defendants registered and have used their domain names with bad-faith intent to profit from the Hermès Trademarks.

97. Defendants' activities as alleged herein violate the federal Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(1).

98. The Defendants had no bona fide non commercial or fair use of the Hermès Trademarks.

99. The Defendants intended to divert consumers away from Hermès to a site accessible under Infringing Domain Names that could harm the goodwill represented by the Hermès Trademarks for commercial gain, and with the intent to dilute the Hermès Trademarks, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Infringing Domain Names and Infringing Websites.

100. Defendants' acts have caused and will continue to cause irreparable injury to Hermès. Hermès has no adequate remedy at law and is thus damaged in an amount yet to be determined.

FOURTH CLAIM FOR RELIEF

(Against All Defendants)

**Trade Dress Infringement and False Designation of Origin
In Violation of Section 43(a) of the Lanham Act
(15 U.S.C. § 1125(a))**

101. Hermès hereby repeats each and every allegation set forth in paragraphs 1 to 100 above as if fully set forth herein.

102. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) provides, in relevant part, that:

Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—(1)(a) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

103. By making unauthorized use, in interstate commerce, of the Hermès Trademarks and Designs, the Defendants have used a “false designation of origin” that is likely to cause confusion, mistake or deception as to the affiliation or connection of the Defendants with Hermès and as to the origin, sponsorship, association or approval of the Defendants’ services and goods by Hermès, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

104. The Defendants’ acts constitute the use in commerce of false designations of origin and false and/or misleading descriptions or representations, tending to falsely or misleadingly describe and/or represent the Defendants’ products as those of Hermès, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

105. The Defendants’ wrongful acts will continue unless and until enjoined by this Court.

106. The Defendants’ acts have caused and will continue to cause irreparable injury to Hermès. Hermès has no adequate remedy at law and is thus damaged in an amount yet to be determined.

107. The Defendants’ egregious conduct in selling infringing merchandise is willful and intentional.

FIFTH CLAIM FOR RELIEF

(Against All Defendants)

**Federal Trademark Dilution In Violation of Section 43(c) of the Lanham Act
(15 U.S.C. § 1125(c))**

108. Hermès hereby repeats each and every allegation set forth in paragraphs 1 to 107 above as if fully set forth herein.

109. Section 43(c)(1) of the Lanham Act, 15 U.S.C. § 1125(c)(1), provides, in relevant part, that:

Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

110. Hermès International is the exclusive owner of the Hermès Trademarks and Designs.

111. The Hermès Trademarks and Designs are famous and distinctive within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

112. The Hermès Trademarks and Designs are all distinctive marks that have been in use for many years and play a prominent role in Hermès' marketing, advertising, and the popularity of its products across many different media.

113. The Hermès Trademarks and Designs were famous long before the Defendants began using unauthorized reproductions, counterfeits, copies, and colorable imitations of the Hermès Trademarks and Designs on their unauthorized merchandise.

114. The Hermès Trademarks and Designs have gained widespread publicity and public recognition in New York and elsewhere.

115. To enhance its rights further, Hermès obtained federal registrations for the Hermès Trademarks and Designs.

116. The Defendants' sale of goods that use the Hermès Trademarks and Designs constitutes use in commerce of the Hermès Trademarks and Designs.

117. Hermès has not licensed or otherwise authorized the Defendants' use of the Hermès Trademarks and Designs

118. Consumers are likely to purchase the Defendants' products in the erroneous belief that the Defendants are associated with, sponsored by, or affiliated with Hermès, or that Hermès is the source of those products.

119. The Defendants' use of the Hermès Trademarks and Designs dilutes and/or is likely to dilute the distinctive quality of those marks and to lessen the capacity of such marks to identify and distinguish Hermès' goods. The Defendants' unlawful use of the Hermès Trademarks and Designs in connection with inferior goods is also likely to tarnish those trademarks and cause blurring in the minds of consumers between Hermès and the Defendants, thereby lessening the value of the Hermès Trademarks and Designs as unique identifiers of Hermès' products.

120. The Defendants' acts have caused and will continue to cause irreparable injury to Hermès. Hermès has no adequate remedy at law and is thus damaged in an amount yet to be determined.

SIXTH CLAIM FOR RELIEF

(Against All Defendants)

Trademark Dilution In Violation of the New York General Business Law (N.Y. Gen. Bus. Law § 360-1)

121. Hermès hereby repeats each and every allegation set forth in paragraphs 1 to 120 above as if fully set forth herein.

122. New York General Business Law, Section 360-1 provides that:

Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark or trade name shall be a ground for injunctive relief in cases of infringement of a mark registered or not registered or in cases of unfair competition, notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

123. Hermès International is the exclusive owner of the Hermès Trademarks and Designs.

124. Through prominent, long, and continuous use in commerce, including commerce within New York, the Hermès Trademarks and Designs have become and continue to be famous and distinctive.

125. Long after the Hermès Trademarks and Designs became famous, the Defendants, without authorization from Hermès, used unauthorized reproductions, counterfeits, copies, and colorable imitations of the Hermès Trademarks and Designs.

126. The Defendants' unauthorized use of the Hermès Trademarks and Designs dilutes or is likely to dilute the distinctive quality of those marks and to lessen the capacity of such marks to identify and distinguish Hermès' goods.

127. The Defendants' unlawful use of the Hermès Trademarks and Designs in connection with inferior goods is also likely to tarnish those trademarks and cause blurring in the

minds of consumers between Hermès and the Defendants, thereby lessening the value of the Hermès Trademarks and Designs as unique identifiers of Hermès' products.

128. By the acts described above, the Defendants have diluted, and is likely to dilute the distinctiveness of the Hermès Trademarks and Designs and caused a likelihood of harm to Hermès' business reputation in violation of Section 360-1 of the New York General Business Law.

129. The Defendants' acts have caused, and will continue to cause, irreparable injury to Hermès. Hermès has no adequate remedy at law and is thus damaged in an amount not yet determined.

SEVENTH CLAIM FOR RELIEF

(Against All Defendants)

Deceptive Acts and Practices Unlawful In Violation of the New York General Business Law (N.Y. Gen. Bus. Law §§ 349 and 350)

130. Hermès hereby repeats each and every allegation set forth in paragraphs 1 to 129 above as if fully set forth herein.

131. New York General Business Law, Section 349 states in relevant part that: "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

132. New York General Business Law, Section 350 states in relevant part that: "False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful."

133. Through their importation, advertisement, distribution, offer to sell, and sale of unauthorized products bearing the Hermès Trademarks and Designs, the Defendants have

engaged in consumer-oriented conduct that has affected the public interest of New York and has resulted in injury to consumers in New York.

134. The Defendants' deceptive acts or practices, as described herein, are materially misleading. Such acts or practices have deceived or have a tendency to deceive a material segment of the public to whom the Defendants have directed their marketing activities, and Hermès has been injured thereby.

135. By the acts described above, the Defendants have willfully engaged in deceptive acts or practices in the conduct of business and furnishing of services in violation of Section 349 and 350 of the New York General Business Law.

136. The Defendants' acts have caused, and will continue to cause, irreparable injury to Hermès. Hermès has no adequate remedy at law and is thus damaged in an amount not yet determined.

EIGHTH CLAIM FOR RELIEF

(Against All Defendants)

Trademark Infringement In Violation of New York State Common Law

137. Hermès hereby repeats each and every allegation set forth in paragraphs 1 to 136 above as if fully set forth herein.

138. Hermès International owns all right, title, and interest in and to the Hermès Trademarks and Designs as described above, including all common law rights in the Hermès Trademarks and Designs.

139. The products sold by the Defendants incorporate imitations of Hermès' common law trademarks. The Defendants' use of the Hermès Trademarks and Designs is unauthorized, and is likely to cause consumer confusion.

140. By the acts described above, the Defendants have engaged in trademark infringement in violation of the common law of the State of New York.

141. The Defendants' acts have caused, and will continue to cause, irreparable injury to Hermès. Hermès has no adequate remedy at law and is thus damaged in an amount not yet determined.

NINTH CLAIM FOR RELIEF

(Against All Defendants)

Unfair Competition In Violation of the New York Common Law

142. Hermès hereby repeats each and every allegation set forth in paragraphs 1 to 141 above as if fully set forth herein.

143. The Defendants have palmed off their goods as those of the Plaintiff, improperly trading upon the Plaintiff's goodwill and valuable rights in and to the Hermès Trademarks and Designs.

144. The Defendants committed the above alleged acts willfully, and in conscious disregard of Hermès' rights, and Hermès is therefore entitled to exemplary and punitive damages pursuant to the common law of the State of New York in an amount sufficient to punish, deter, and make an example of the Defendants.

145. By the acts described above, the Defendants have engaged in unfair competition in violation of the common law of the State of New York.

146. The Defendants' acts have caused and will continue to cause irreparable injury to Hermès. Hermès has no adequate remedy at law and is thus damaged in an amount yet to be determined.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays:

1. For a **FINAL JUDGMENT** that:
 - a. The Defendants have engaged in trademark counterfeiting and infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114;
 - b. The Defendants have violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);
 - c. The Defendants have violated Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c);
 - d. The Defendants have diluted the distinctiveness of the Hermès Trademarks and Designs and caused injury to Hermès' business reputation in violation of Section 360-1 of the New York General Business Law;
 - e. The Defendants have engaged in deceptive acts and practices unlawful in violation of Sections 349 and 350 of the New York General Business Law;
 - f. The Defendants have engaged in trademark infringement in violation of the common law of the State of New York;
 - g. The Defendants have engaged in unfair competition in violation of the common law of the State of New York;
 - h. That the above acts were done willfully, and/or intentionally.

2. For entry of an **ORDER** immediately, preliminarily, and permanently enjoining and restraining the Defendants, and its officers, agents, servants, employees, and attorneys, and all those in active concert or participation with any of them, from:

- a. Registering or seeking to register any additional Internet domain names that incorporates any of the Hermès Trademarks in whole or in part;
- b. Using any reproduction, counterfeit, copy, or colorable imitation of the Hermès Trademarks or Designs (as defined herein) for and in connection with any goods or their packaging not authorized by Hermès;
- c. Engaging in any course of conduct likely to cause confusion, deception, or mistake, or to injure Plaintiff's business reputation or dilute the distinctive quality of the Hermès Trademarks or Designs;
- d. Using any false description or representation, including words or other symbols tending falsely to describe or represent Defendants' unauthorized goods or their packaging as being those of Hermès, or sponsored by or associated with Hermès, and from offering such goods into commerce;
- e. Further infringing the Hermès Trademarks or Designs by manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, renting, displaying, or otherwise disposing of any products or their packaging not authorized by Hermès that bear any simulation, reproduction, counterfeit, copy, or colorable imitation of the Hermès Trademarks or Designs;
- f. Using any simulation, reproduction, counterfeit, copy, or colorable imitation of the Hermès Trademarks or Designs in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation, or distribution of any unauthorized products or their packaging in such fashion as to relate or connect, or tend to relate or connect, such products

in any way to Hermès, or to any goods sold, manufactured, sponsored, or approved by, or connected with Hermès;

- g. Making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which may or is likely to lead the trade or public, or individual members thereof, to believe that any products manufactured, distributed, or sold by Defendants are in any manner associated or connected with Hermès, or are sold, manufactured, licensed, sponsored, approved, or authorized by Hermès;
- h. Infringing the Hermès Trademarks or Designs, or Plaintiff's rights therein, or using or exploiting the Hermès Trademarks or Designs, or diluting the Hermès Trademarks or Designs;
- i. Secreting, destroying, altering, removing, or otherwise dealing with the unauthorized products or any books or records that contain any information relating to the importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, renting, or displaying of all unauthorized products that infringe or dilute the Hermès Trademarks or Designs; and
- j. Effecting assignments or transfers, forming new entities or associations, or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in any Final Judgment or Order in this action; and

3. For an entry of an **ORDER** directing that the Defendants deliver up for destruction to Hermès all unauthorized products, advertisements and packaging in their

possession or under their control bearing any of the Hermès Trademarks or Designs or any simulation, reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of production of same pursuant to 15 U.S.C. § 1118.

4. For an entry of an **ORDER** transferring or canceling at Hermès' election, the Infringing Domain names and any other domain names used by the Defendants to engage their counterfeit activities to Hermès 'control so they may no longer be used for illegal purposes; and

5. For entry of an **ORDER** that, upon Hermès request, the Internet Registries shall take all actions necessary to ensure that the Infringing Domain names be transferred and or disabled accordingly;

6. For entry of a **FURTHER ORDER** requiring the Defendants to disseminate corrective advertisements in a form approved by the Court to acknowledge its violations of the law hereunder, and to ameliorate the false and deceptive impressions produced by such violations.

7. For such other relief as the Court may deem appropriate to prevent the trade and public from deriving any erroneous impression that any products or associated packaging manufactured, sold, or otherwise circulated or promoted by the Defendants are authorized by Hermès or related in any way to Hermès' products.

8. For an assessment of the **ACTUAL DAMAGES** suffered by Hermès, trebled, and an award of all profits that Defendants have derived from using the Hermès Trademarks and Designs, trebled, as well as costs and attorneys' fees to the full extent provided for by Section 35 of the Lanham Act, 15 U.S.C. § 1117.

9. Alternatively, that Hermès be awarded **STATUTORY DAMAGES** pursuant to 15 U.S.C. § 1117 of no less than **one hundred million dollars (\$100,000,000.00)**, based on,

inter alia, the maximum amount available of two million dollars (\$2,000,000) per trademark willfully counterfeited and infringed, per type of good and service offered, as well as attorneys' fees and costs; and awarding profits, damages and fees, to the full extent available, pursuant to Sections 349 and 360-1 of the New York General Business Law; and punitive damages to the full extent available under the common law.

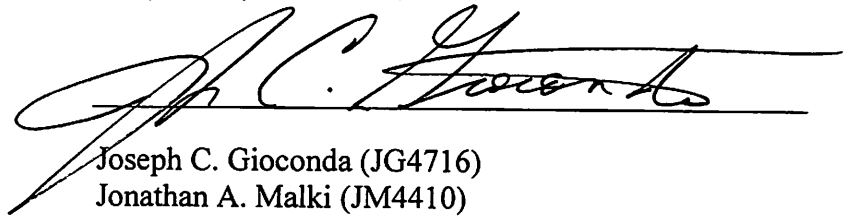
10. For **COSTS OF SUIT**, and for such other and further relief as the Court shall deem appropriate.

A TRIAL BY JURY IS DEMANDED

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all triable issues raised by this Complaint.

February 29, 2012

Respectfully Submitted,



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