

Federal Court



Cour fédérale

Date: ~~202302240301~~

Docket: T-232-22

Citation: 2023 FC 217

Ottawa, Ontario, ~~February 24~~ March 1, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

**LOUIS VUITTON MALLETIER and LOUIS  
VUITTON CANADA, INC.**

**Plaintiffs**

**and**

**SHEINE REYES ROSALES AKA ENIEHS SELASOR**

**Defendant**

**AMENDED JUDGMENT AND REASONS**

I. Introduction

[1] The Plaintiffs are a well-known manufacturer and distributor of luxury merchandise – the parent company and its Canadian operation. They learned that the Defendant was marketing and

selling counterfeit Louis Vuitton goods through her online presence, specifically through various Facebook accounts she operated.

[2] The Plaintiffs seek to stop this activity, which they claim infringes their registered Canadian trademarks. The Plaintiffs brought an *ex parte* motion for default judgment, after the period for the filing of the Statement of Defence expired.

[3] For the reasons that follow, I am satisfied that the Plaintiffs have established that the Defendant has engaged in activity that infringes their trademarks, and that this conduct has continued despite receiving a cease and desist letter, followed by a second one accompanying the service of the Statement of Claim relating to the action launched by the Plaintiffs. The motion for default judgment will therefore be granted, although not entirely on the terms proposed by the Plaintiffs regarding the remedy.

## II. Background

[4] The Plaintiffs own the right, title, and interest in the registered Louis Vuitton Trademarks (the Marks), and claim that the Defendant has infringed certain of these Marks, which are set out in Schedule A. The Plaintiffs have used these Marks in association with the goods and services for which they are registered through the marketing and sale of luxury retail products, including women's handbags and accessories. Louis Vuitton Canada is the exclusive distributor of authentic Louis Vuitton merchandise in Canada.

[5] In early 2020, the Plaintiffs learned that the Defendant was advertising various goods for sale, including handbags, small leather goods, and accessories bearing Louis Vuitton labels and

trademarks. This activity was conducted through e-commerce and social media applications associated with the Defendant, including facebook.com.

[6] The Plaintiffs, through their legal representatives and a private investigator hired for this purpose, took steps to contact the Defendant in order to purchase some of the products bearing the Louis Vuitton Marks. The Defendant conducted these sales through a private Facebook group under the name “CANADA BASED Pinoy Community Luxury for Less.” The Defendant’s name (Sheine Reyes-Royales) was associated with this Facebook group. An employee of the law firm that represents the Plaintiffs in this matter joined the private Facebook group, and the evidence shows screenshots of displays of various products bearing the Louis Vuitton Marks, as well as two large boxes, showing labels addressed to the Defendant. On the page displaying the boxes, it appears the Defendant added a caption indicating the goods inside the boxes were already sold.

[7] The Plaintiffs learned that the Defendant was also conducting business through an additional Facebook profile, under the name of “Canada Luxuryforless”, and the evidence includes screen shots taken from this page showing various women’s handbags and other products bearing the Louis Vuitton Marks. Representatives of the law firm arranged to purchase items bearing the Louis Vuitton Marks advertised on this page. The purchases were completed by a private investigator hired by the law firm, who paid for the goods by e-transfer to an email account under the Defendant’s name.

[8] Following this, on March 5, 2020, the Plaintiffs served the Defendant with a cease and desist letter, and the Defendant acknowledged receipt by signing the letter. The private investigator who served the letter states in his affidavit that the Defendant said she did not have

any counterfeit merchandise in her possession, and she denied that she had violated the Plaintiffs' trademark rights. The Defendant said she would cooperate with the Plaintiffs.

[9] However, in June 2020, the Plaintiffs learned that the Defendant continued to market and sell products bearing the Louis Vuitton Marks, this time using her personal Facebook profile under the name "Sheine Rosales." Screenshots taken from this Facebook page show a display of twenty-four women's handbags, some bearing the Louis Vuitton Marks, together with the caption, "[a] glimpse of the stocks coming..." The Defendant also registered an Ontario business under the name "SHEINE'S LUXURYFORLESS" in July 2020.

[10] New activity was discovered in July 2021, this time under the Facebook profile "Sheinerosales Newaccount", and a screenshot from this page shows products offered for sale bearing the Louis Vuitton Marks. In December 2021 and January 2022, the Plaintiffs learned about new Facebook groups set up by the Defendant, under the names "Heather's Closet Toronto" and "Eniehs Selasor" (the Defendant's name spelled backwards).

[11] A representative of the law firm attended a live sale on the Facebook Live platform (which allowed the Defendant to hold live sales events) hosted on the "Heather's Closet Toronto" Facebook page. A digital image of the live sale shows the display of several small handbags and some larger bags bearing the Louis Vuitton Marks, and indicates that the event had been going on for 40 minutes at the time the screenshot was taken. It also shows many comments from participants in the live sale; it appears that purchases were arranged through these comments followed by email exchanges. The representative confirmed that the sale was hosted by the Defendant, whom he recognized from her pictures on previous social media accounts. During the sale, the representative placed an order for two handbags bearing the Louis Vuitton

Marks, and the sale was completed through emails and an e-transfer to email addresses associated with the Defendant.

[12] In October 2022, yet another Facebook page associated with the Defendant was found, and a further purchase of Louis Vuitton merchandise was made during a live sale on this page hosted by Facebook. The representative confirmed that the Defendant hosted the live sale and, once again, the sale was completed through e-transfer to an email account associated with the Defendant.

[13] In addition, evidence shows that the products were shipped from addresses associated with the Defendant, and some of the packages showed a return address with her name and home address. In addition, payments were made for the various purchases by electronic transfers to email accounts associated with the Defendant.

[14] On February 10, 2022, the Plaintiffs served the Defendant with a second cease and desist letter, as well as the Statement of Claim.

[15] No Statement of Defence or other motion or communication from the Defendant has been filed with the Court. On December 30, 2022, the Plaintiffs filed their *ex parte* motion for default judgment.

### III. Issues

[16] The only issue is whether the Plaintiffs have demonstrated that they are entitled to default judgment, and if so, what remedies should be granted.

#### IV. Analysis

##### A. *Legal Principles – Default Judgment*

[17] On a motion for default judgment pursuant to Rule 210, all of the allegations in the Statement of Claim are to be taken as denied (*Ragdoll Productions (UK) Ltd v Doe*, 2002 FCT 918 at paras 23-24). A plaintiff must first establish that the defendant was served with the Statement of Claim and has not filed a Statement of Defence within the deadline specified in Rule 204. Second, the evidence must enable the Court to find, on a balance of probabilities, that the plaintiff has established its claim (*Louis Vuitton Malletier SA v Yang*, 2007 FC 1179 at para 4 [*Louis Vuitton 2007*]). This involves answering two questions: (1) is the defendant in default? and (2) is there evidence to support the plaintiffs' claim? (See, for example *Canada v Zielinski Brother's Farm Inc*, 2019 FC 1532 at para 1).

[18] It must be emphasized that granting default judgment is never automatic; it is a discretionary order: *Johnson v Royal Canadian Mounted Police*, 2002 FCT 917 at para 20; *Chaudhry v Canada*, 2008 FC 356 at para 17. As in all civil cases, and particularly where the matter is *ex parte*, the "evidence must be scrutinized with care by the trial judge" and that evidence "must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test": *FH v McDougall*, 2008 SCC 53 at paras 45-46, cited with approval in *NuWave Industries Inc v Trennen Industries Ltd*, 2020 FC 867 at para 17.

[19] While the judge must carefully review the evidence, it is not the judge's role to raise grounds of defence that the defendant has not put forward: *Trimble Solutions Corporation v Quantum Dynamics Inc*, 2021 FC 63 at paragraphs 35–37.

B. *Applying the Principles*

[20] The following discussion explains why I am satisfied that the Plaintiffs have met their burden to obtain default judgment.

(1) The Defendant is in Default

[21] The Defendant was served with the Plaintiffs' Statement of Claim on February 10, 2022, but has not filed a Statement of Defence or any motion seeking to extend the time for filing it.

[22] The Defendant is therefore in default.

[23] It should be noted here that although the motion for default judgment was technically brought *ex parte*, the Plaintiffs indicated at the hearing that they had sent the Motion Record to the Defendant by email and she acknowledged receipt of it during a telephone conversation that occurred prior to the hearing. Despite this, the Defendant took no part in the hearing.

(2) The Evidence Supports the Plaintiff's Claim

[24] The evidence outlined above demonstrates that the Defendant has been marketing and selling a variety of products bearing the Louis Vuitton Marks, through various Facebook pages and live sales events hosted on Facebook pages with which she is associated.

[25] Representatives of the Plaintiffs, including employees of the law firm that represents them in this proceeding as well as a private investigator hired by the law firm, arranged for purchases of several Louis Vuitton branded products, and the evidence shows email exchanges

relating to these purchases. In addition, e-transfers of funds for these purchases were sent to email addresses associated with the Defendant.

[26] As well, product packaging in which some of the products were delivered displayed the name and home address of the Defendant. In one instance, the Defendant's husband delivered the goods to the private investigator, who recognized him because of their interaction when the private investigator served the Statement of Claim on the Defendant.

[27] The evidence is overwhelming in establishing that the Defendant was engaged in marketing and selling products bearing the Louis Vuitton Marks.

[28] Confirmation that these products are counterfeit was provided by the affidavit of Mr. John Maltbie, the Director of Intellectual Property, Civil Enforcement in Louis Vuitton Malletier's North American Division. He states that he has been trained to recognize the differences between authentic Louis Vuitton merchandise and counterfeit products.

[29] In order to determine whether the goods were counterfeit, Mr. Maltbie viewed pictures taken of the various products purchased by the Plaintiffs' representatives from the Defendant, as described above. Mr. Maltbie provides examples of the ways in which the products displayed in the pictures differ from authentic Louis Vuitton merchandise. It is not necessary to review this in detail; the evidence is clear that there are many *indicia* that the products sold by the Defendant are counterfeit. While, as discussed below, I raised some questions about some aspects of the record, I am satisfied that the evidence is sufficient to demonstrate that the Defendants' products are not authentic Louis Vuitton merchandise.



(3) The Defendant has infringed the Plaintiffs' trademarks

[30] Based on my review of the entirety of the evidence, and considering the written and oral submissions of counsel on the point, I am satisfied that the Plaintiffs have established trademark infringement by the Defendant. The Defendant was marketing and selling products bearing markings that were intended to be replicas of the Plaintiffs' Marks, thereby trading on its reputation in the market. This is the very definition of trademark infringement, contrary to subsections 7(b) and 7(c) of the *Trademarks Act*, RSC, 1985, c T-13 [the *Act*].

[31] Section 19 of the *Act* gives the holder of the trademark the exclusive right to use it in association with the goods for which it was registered. The evidence shows that the goods marketed and sold by the Defendant bore the Louis Vuitton Marks when they were delivered to the purchaser. This constitutes use, as defined by section 4 of the *Act*. The Defendant has therefore breached section 19.

[32] Section 20 prohibits, among other things, the advertisement or sale of goods in association with a trademark that is confusing with a registered trademark. Confusion is to be assessed with reference to the criteria set out in subsection 6(5) of the *Act*. The evidence establishes that the Defendant obtained, marketed, and sold goods bearing likenesses of the Plaintiffs' Marks. These products were intended to be confused with authentic Louis Vuitton merchandise.

[33] Applying the factors set out in subsection 6(5), there is no doubt that the Defendant's sale of these products would cause confusion in the marketplace. A casual consumer could not help

but be confused as to whether the products were genuine or not. The Defendant has therefore breached section 20.

[34] The Defendant's sale of counterfeit goods is also likely to depreciate the value of the goodwill attached to the Plaintiffs' authentic products and to undermine consumers' confidence in the Plaintiffs' merchandise. This has long been accepted by this Court in counterfeit goods cases, and it this finding is equally the applicable here. The presence of more counterfeit Louis Vuitton goods in the marketplace will undoubtedly diminish the value of the brand.

[35] Several of the Defendant's comments on the various Facebook pages through which she conducted her business show that she knew exactly what she was doing. For example, her statements that the products she was selling were "Class A luxury items" or that they were "top grade same as authentic" indicates that she knew she was selling counterfeit goods. In addition, the Defendant continued this activity after she signed the first cease and desist letter, which set out the Plaintiffs' claims in detail.

[36] For these reasons, the Plaintiffs' motion for default judgment will be granted. The only issue that remains is the appropriate remedy.

#### (4) Remedies

[37] The Plaintiffs request an injunction and an order for delivery up of the counterfeit goods, as well as \$80,000 in compensatory damages and \$100,000 in punitive damages, plus costs. I am granting all of the remedies sought by the Plaintiffs, although not exactly on the terms they requested.

(a) *Injunctive Relief:*

[38] The Defendant persisted in her unlawful conduct long after receiving the first cease and desist letter, and she attempted to evade detection in order to be able to carry on her business. The Defendant opened and closed Facebook pages using different names, and shifted her mode of business from static displays to live sales on Facebook. These changes occurred after the Defendant acknowledged receipt of the first cease and desist letter. The Defendant's conduct indicates an intention to avoid the Plaintiffs' efforts to enforce their rights. Injunctive relief is appropriate in order to halt the deliberately unlawful conduct of the Defendant (*Lululemon Athletica Canada Inc v Campbell*, 2022 FC 194 [*Lululemon*] at paras 29-31).

(b) *Delivery Up of Counterfeit Goods*

[39] In trademark infringement cases it is common to order the wrongdoer to deliver up (or confirm destruction of) any counterfeit goods in their possession. In light of the Defendant's persistence in her unlawful conduct, even after providing assurances to the Plaintiffs that she would not engage in infringing activity, such an order is warranted here.

(c) *Damages for Trademark Infringement:*

[40] Where, as here, the Plaintiffs are not in a position to prove actual damages because of the lack of access to information from the Defendant or other reasonable means to quantify the unlawful sales of counterfeit goods, this Court and the Federal Court of Appeal have recognized that a certain amount of minimum compensatory damages may be appropriate (*Popsockets LLC v Case World Enterprises Ltd*, 2019 FC 1154 at para 42, citing *Kwan Lam v Chanel S de RL*,

2016 FCA 111 [*Kwan Lam*] at paras 17-18; *Nintendo of America Inc, v. King of Windows Home Improvements Inc*, 2021 FC 291, at para 8).

[41] Applying this approach, the Plaintiffs claim an amount of \$8,000 for each proven instance of infringement, for a total amount of \$80,000, plus pre- and post-judgment interest. The Plaintiffs' claim for this amount is based on their argument that the Defendant's operation is akin to a "brick and mortar" store, rather than a temporary operation such as a stall at a flea market. Under their approach, the number of infringements they proved (including evidence of displaying or offering for sale counterfeit merchandise, combined with evidence of purchases they made) should be multiplied by the \$8,000 amount. The Plaintiffs' evidence shows ten instances of infringement by purchases of counterfeit products from the Defendants, and thus they claim compensatory damages in the amount of \$80,000.

[42] The Plaintiffs submit that the Defendant operated her business online, and thus her "store" was open to the Canadian public (indeed, it was open to anyone with access to Facebook who joined her group from anywhere in the world). The Defendant actively and continuously advertised these products for sale through displays, static posts, and through live sales – all of which she promoted through multiple online profiles and groups.

[43] Based on this, the Plaintiffs submit that the compensatory damages should be calculated with reference to prior cases involving a retail space, as opposed to those dealing with more temporary locations such as flea markets. The Plaintiffs acknowledge that the cases where much higher awards were granted for large-scale importation and distribution of counterfeit products are not relevant here.

[44] The evolution of the Courts' approach to compensatory damages in counterfeiting cases has been set out in detail in *Louis Vuitton Malletier SA v Wang*, 2019 FC 1389 [*Wang*] and there is no need to repeat that discussion. The line of cases discussed in *Wang* dealt with counterfeiting operations that ranged from large-scale importing and distribution operations (which is not pertinent here), to sales in "brick and mortar" stores, to sales conducted from temporary premises such as flea market stalls. Over time, the Court determined that it is appropriate to set a conventional amount of compensatory damages, given the impossibility of gathering evidence to establish the counterfeiter's profits or the plaintiff's losses to a degree of mathematical certainty. For fixed retail premises, compensatory damages in the range of \$6,000 per infringing activity were found appropriate – more recently adjusted to \$8,000 to account for inflation (*Kwan Lam* at para 18). For temporary operations such as flea market stalls, damages were fixed at \$3,000 per infringing activity. The question here is how to treat infringement that occurs through online operations.

[45] Justice Grammond recently discussed this point in *Lululemon*, which involved online sales under circumstances that bear some similarity to the case at bar. In *Lululemon*, the defendant conducted her business online, and she knowingly imported and sold counterfeit goods. She sold her goods to a group of customers, and in that respect it appears her operation was somewhat similar to the Defendant's use of private Facebook groups and her Facebook Live sales events, which were only open to "members" who joined her groups. I pause to note here that some of the Defendant's sales occurred through Facebook pages that were available to a wider public.

[46] In *Lululemon*, Justice Grammond found it necessary to “adopt a modified version of the lump sum damages method” (at para 50), which involved multiplying a lump sum number by a number of instances of infringement. Based on the evidence in that case, Grammond J. awarded the plaintiff compensatory damages in the amount of \$8,000, calculated at a lump sum amount of \$1,000 per infringement. The key consideration was the evidence of the “order of magnitude” of the infringing activity, including indications that the defendant’s typical order was for \$1,800-\$2,200 worth of counterfeit goods, and a statement that she made \$389 profit from one instance of infringement.

[47] In this case, the problem of determining the appropriate approach to lump sum compensatory damages is magnified because of the lack of evidence of the level of sales or value of orders placed by the Defendant. Unlike in *Lululemon*, the Plaintiffs in this case did not attempt to undertake comprehensive monitoring of the Defendant’s activities on the various Facebook pages.

[48] The problem of assessing damages in the absence of information about sales volume or profits is not a unique circumstance. One of the reasons the Court resorted to the lump sum estimate of damages approach was to avoid rewarding recalcitrant defendants who either do not keep accurate business records or choose not to participate in the proceeding. The doctrine rests, in part, on the idea that such uncooperative or shady Defendants should not gain a financial advantage by denying the Plaintiffs and the Court access to any meaningful information on which damages can be calculated: *Ragdoll Productions (UK) Ltd. v Jane Doe*, 2002 FCT 918 at paras 32 and 44 (see also *Wang* at paras 120-121).

[49] I agree with Justice Grammond that it is necessary to adapt the lump sum award approach from the earlier cases in view of the fact that the infringement in this case occurred through online marketing and sales. In doing so, however, it bears repeating that the dollar thresholds for the various lump sum awards was based on the idea that the amount of damages should take into account the nature and scope of the infringing activities. That is why different lump sums were set for infringement by large-scale importers, through sales at fixed retail premises, or at flea market stands. The scope and scale of the enterprise was a key factor in assessing the magnitude of damages suffered by the trademark owner.

[50] It also bears repeating that “damages awards in counterfeit goods cases seek to compensate depreciation of goodwill rather than lost sales...” (*Lululemon* at para 44). The scope and scale of the infringing activity is relevant to assessing the negative impact of the counterfeit goods on the goodwill accumulated by the trademark owner.

[51] Finally, such compensatory damage awards represent an effort by the Court to set an appropriate quantum, based on whatever evidence is available, combined with a common sense appreciation of the business and the marketplace, but without resorting to pure speculation: *Wang* at para 122. It is, in short, a balancing of factors in order to fix an award that provides just compensation to the plaintiff while neither punishing nor rewarding a recalcitrant defendant.

[52] Turning to the facts in evidence here, the following elements are notable:

- Some of the sales occurred through “private” Facebook groups, so that only members could find or gain access to the group; other sales were more widely available to Facebook users who became friends with the Defendant;

- Many of the screenshots of the various pages used by the Defendant show displays of approximately 20-30 counterfeit products; this would be consistent with the volume of material that would likely fit into the two large cardboard boxes shown on one of the Defendant's pages, and with the separate caption on a different page stating "I'll finish 2 boxes again... then back to [pre-order] basis";
- In terms of the number of potential customers for the products, there is very little information: one of the screenshots shows 694 followers for one of the Facebook pages, and a subsequent screenshot for another Facebook page shows 33 people responded to the Defendant's live sales event, with 15 shown as "Going" and another 18 shown as "Interested". In addition, it appears that the "Heather's Closet Toronto" page had received 11,623 "likes" before Facebook shut it down;
- The sale price of the counterfeit merchandise purchased from the Defendants ranged from \$70 to \$150, with one other product listed at \$170; one of the screenshots shows a counterfeit bag the Defendant sold for \$150, with a comparable bag at the authentic Louis Vuitton site listed at \$1,890. There is no information on the cost of purchasing the counterfeit merchandise.

[53] It is impossible to arrive at an accurate estimate of the volume or value of sales made by the Defendants through these various sites. The evidence shows that over time she sold her inventory and then replaced it, sometimes buying a certain volume in advance while on other occasions she acquired the products only after a customer had made a purchase. Based on the evidence on the record, I can infer that the Defendant was usually selling counterfeit goods in



lots of approximately 25 articles, and the average sale price was \$150, so her total revenue for each lot would be in the range of \$3750. This is comparable to the sales volume and prices in the *Lululemon* case (see para 51).

[54] Applying the factors set out in the case-law, and adopting the approach set out by Justice Grammond in *Lululemon*, I am satisfied that the lump sum amount that is appropriate here is \$1,000 per instance of infringement. This results in an award of compensatory damages of \$10,000, plus pre- and post-judgment interest.

[55] A number of considerations from the evidence in this case lead me to this conclusion. First, the limited evidence in the record before me of the scope and scale of the Defendant's enterprise points to a relatively modest business, more akin to what one might see at a flea market rather than a regular retail store. In the pictures of the Defendant's static displays and the screenshots taken during the Facebook Live sales events, the number of counterfeit goods was not large. There are displays of products arranged on the floor and some placed on shelving, but the overall impression is of an operation that, in another time, would have been found at a flea market. If there were occasions when she displayed a significantly larger number of "knock-off" goods, they are not in evidence before me.

[56] Second, as noted above, a significant portion of the Defendant's business occurred through private Facebook groups, or was otherwise only available to a limited audience. While some of her business was conducted in a more open way, there is no evidence of advertising or business conducted on a larger scale.

[57] Based on all of these considerations, and taking into account the factual similarity between the scale and nature of the business here as compared with the counterfeiting operation in *Lululemon*, I find that an appropriate lump sum amount to compensate the Plaintiffs for the loss of goodwill in their Marks caused by the online marketing and sales by the Defendant in this case is \$1,000 per infringement.

[58] In making this finding, I want to underline that this is a fact-driven exercise, and this is the amount I have found to be appropriate in this case. My reasons should not be interpreted as fixing a new standard that applies to all online sales. For example, evidence of more systematic monitoring of the online sales over an extended period, and more evidence about the “reach” of the online activity or presence of the defendant could provide a better sense of the scale of the operation. Evidence of the impact of low-cost counterfeit “knock-offs” of luxury products on the overall reputation of the trademark owner would also help to calculate the loss of goodwill in the marketplace. These are mentioned only by way of example; there are many types of useful evidence that would assist a future court in assessing the appropriate lump sum amount for online sales of counterfeit goods.

(d) *Punitive Damages*

[59] The rationale for awarding punitive damages in a counterfeiting case has been thoroughly reviewed in *Wang* (at paras 181-192) and *Lululemon* (at paras 55-57), and there is no point in repeating that here. Each case must be assessed on its facts, applying the factors set out in *Whiten v Pilot Insurance Co*, 2002 SCC 18 at paragraph 94, [2002] 1 SCR 595.

[60] The first question is whether punitive damages are warranted, in light of the facts. I have no difficulty concluding that an award of punitive damages is appropriate in this case, in light of the planned and deliberate nature of the Defendant's conduct, the fact that she continued the infringing activity after receiving the cease and desist order, and because she took steps in order to conceal her activity after the initial discovery. This type of behaviour has been found to warrant sanction through punitive damages in previous counterfeiting cases: see *Louis Vuitton 2007* at paras 48-49; *Kwan Lam* at paras 24-26; *Wang* at paras 186-192; *Lululemon* at paras 58-64.

[61] The next step is assessing an appropriate amount of punitive damages, in light of the overall purpose of deterring the Defendant and others who might be inclined to adopt her business model, and considering the size of the compensatory damage award.

[62] The Plaintiffs asked for punitive damages to be fixed at \$100,000, taking into account the nature of the Defendant's conduct, and in recognition that they sought \$80,000 in compensatory damages.

[63] As noted above, I am awarding the Plaintiffs \$10,000 in compensatory damages, based in part on the factors set out by Justice Grammond in *Lululemon*. In that case, he awarded \$30,000 in punitive damages, taking into account the nature of the defendant's blameworthy conduct and considering the relatively small scale of her business.

[64] Similar factors lead me to the conclusion that the amount sought by the Plaintiffs would be excessive in this case. Instead, for the reasons set out above, I will award punitive damages in the amount of \$30,000.

C. *Disposition and Costs*

[65] For the foregoing reasons, the Defendant shall pay to the Plaintiffs \$10,000 in compensatory damages, plus pre- and post-judgment interest at the rate of 5% per annum. In addition, the Defendant shall pay to the Plaintiffs \$30,000 in punitive damages (no interest is payable on this amount). An injunction and order to deliver up any counterfeit merchandise in the Defendant's possession will also issue.

[66] The Plaintiffs seek costs in the amount of \$1,500. I find this to be appropriate in the circumstances.

V. Concluding Remarks

[67] This case involves the evolution of the illegal business of trading in counterfeit luxury goods, from the flea markets or portions of retail stores dealt with in earlier cases to an online business conducted through various platforms. During the hearing, I raised a number of questions regarding the evidence that the Plaintiffs had marshalled in support of their claim, and I will repeat some of this in closing, in the hope that my comments may benefit future plaintiffs who seek to enforce their rights in the context of online sales of counterfeit merchandise.

[68] In this case, the evidence indicates that the online sale of counterfeit goods was initially discovered by a former employee of the law firm that represents the Plaintiffs, or at the least that the former employee came to be aware of the activity. Evidence of the initial discovery as well as evidence about subsequent efforts to find illicit online activity and to initiate purchases was provided by a current employee of the same firm. The Plaintiffs described this as necessary

because some of the Defendant's activity was conducted through private Facebook groups, and so the former employee found it necessary to engage in a ruse in order to be able to gain access to the relevant pages.

[69] While I accept that investigating online activity may involve some challenges not presented by flea market stalls or retail store premises, it remains the case that the Court is bound by the rules of evidence and procedure, and it is entitled to the best evidence available (see *ME2 Productions, Inc. v. Doe*, 2019 FC 214).

[70] In this case, while it would have been preferable to have evidence from individuals who were not employed by the law firm representing the Plaintiffs, I was satisfied that the evidence provided largely described what was observed alongside screenshots to support the statements. Much of the evidence was provided by the private investigator and an employee of the Plaintiffs who was trained to detect counterfeit merchandise. Based on the totality of the evidence in the record, I found that the Plaintiffs had made out their case.

[71] However, in future cases, this type of evidence may not be accepted, and so the Plaintiffs and similar companies seeking to enforce their trademark rights may wish to ensure that their investigation of online counterfeiting, and their efforts to acquire the goods they need to make out their case, are conducted by independent third parties. The difficulty of gaining access to private Facebook groups or to live online sales cannot serve as an excuse to avoid the usual rules, including the general rule that employees of law firms engaged in the litigation should generally not provide affidavit evidence about any contentious or potentially contentious aspect of a case: see the recent discussion in *Rebel News Network Ltd. v Guilbeault*, 2023 FC 121 at paras 50-61.

## **JUDGMENT in T-232-22**

### **THIS COURT'S JUDGMENT is that:**

1. The Plaintiffs' motion for default judgment is granted.
2. The Canadian registered trademarks owned by the Plaintiffs set out in Schedule A (hereinafter collectively referred to as the "Subject Trademarks") have been infringed by the Defendant by virtue of the advertisement, sale, and promotion of merchandise in Canada, bearing one or more of the Subject Trademarks without the consent, license, or permission of the Plaintiffs, contrary to sections 19 and 20 of the *Trademarks Act*.
3. The Defendant is restrained from offering for sale, importing, displaying, advertising, selling, manufacturing, distributing, or otherwise dealing in merchandise not being that of the Plaintiffs, bearing any one or more of the Subject Trademarks.
4. The Defendant must deliver up all Counterfeit Louis Vuitton Merchandise and all goods that bear any of the Subject Trademarks in the Defendant's possession, custody and control.
5. The Plaintiffs are awarded \$10,000 in compensatory damages, plus pre-and post-judgment interest fixed at the rate of 5% per annum.
6. The Plaintiffs are awarded \$30,000 in punitive damages.

7. The Plaintiffs are awarded lump sum, all-inclusive costs of \$1,500.

“William F. Pentney”

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Judge

SCHEDULE "A"

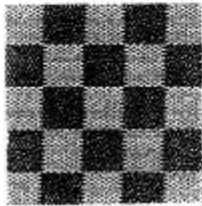


LV DESSIN (TMA287,463)

LOUIS VUITTON (TMA288,667)



TOILE MONOGRAM NsurB (LV & DESSIN) (TMA960,128)



TOILE DAMIER & DESSIN (TMA492,021)



LV (DESSIN) (TMA1,000,891)



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

**DOCKET:** T-232-22

**STYLE OF CAUSE:** LOUIS VUITTON MALLETIER and LOUIS VUITTON  
CANADA, INC. v. SHEINE REYES ROSALES AKA  
ENIEHS SELASOR

**PLACE OF HEARING:** VIDEO CONFERENCE

**DATE OF HEARING:** JANUARY 25, 2023

**JUDGMENT AND REASONS:** PENTNEY J.

**DATED:** FEBRUARY 24, 2023

**AMENDED:** MARCH 1, 2023

**APPEARANCES:**

David S. Lipkus

FOR THE PLAINTIFFS

**SOLICITORS OF RECORD:**

David S. Lipkus  
Kestenberg Siegal Lipkus LLP  
Toronto, Ontario

FOR THE PLAINTIFFS