

**Date: 20071114**

**Docket: T-1236-07**

**Citation: 2007 FC 1179**

**BETWEEN:**

**LOUIS VUITTON MALLETIER S.A.  
AND LOUIS VUITTON CANADA, INC.**

**Plaintiffs**

**and**

**LIN PI-CHU YANG (also known as PI-CHU LIN,  
WAI YING, MARTINA and COCO) and  
TIM YANG WEI-KAI (also known as WEI-KAI YANG),  
Both doing business as K2 FASHIONS**

**Defendants**

**REASONS FOR JUDGMENT**

**SNIDER J.**

**1. Introduction**

[1] Since at least 2001, the Plaintiffs have been attempting to stop the sale of counterfeit Louis Vuitton products at K2 Fashions, a retail store located in Richmond, British Columbia. In spite of two judgments of this Court, numerous letters, seizures and other actions taken by the Plaintiffs, they have failed to shut down the K2 Fashions illegal actions. Most recently, the Plaintiffs commenced this action on July 5, 2007. The Plaintiffs claim that the Defendants, who

control and operate K2 Fashions, have infringed and passed off counterfeit Louis Vuitton products making use of the Plaintiffs' trade-marks, in contravention of provisions of the *Trade-marks Act*, R.S.C. 1985, c. T-13, and have sold products that infringe the Plaintiffs' copyright, in contravention of the *Copyright Act*, R.S.C. 1985, c. C-42. Having received no response to their Statement of Claim, the Plaintiffs have brought this motion for default judgment.

[2] The Plaintiff, Louis Vuitton Malletier S.A. (Louis Vuitton), is the owner of a number of trade-marks (the Louis Vuitton or LV Trade-marks) related to fashion accessories, which marks have been registered in Canada since 1984 and used in connection with its fashion accessory products. Louis Vuitton also owns copyrights in Canada in association with multi-coloured monogram prints used on various products (the Copyrighted Works). Louis Vuitton is the only authorized manufacturer and distributor of genuine Louis Vuitton products and exclusively sells its products through its Canadian subsidiary, Louis Vuitton Canada, Inc. (Louis Vuitton Canada), who is the second Plaintiff in this action.

[3] The Defendants have been associated with K2 Fashions since at least 2001. As confirmed by a title search, the Defendant, Lin Pi-Chu Yang (also known as Pi-Chu Lin, Wai Ying, Martina and Coco) has been registered as owner in fee simple of the property occupied by the K2 Fashions premises since June 4, 2001. The record of business licence records held by the City of Richmond shows that the Defendant Tim Yang Wei-Kai (also known as Wei-Kai Yang) has been the principal owner of K2 Fashion since 2000.

[4] On a motion for default judgment, where no Statement of Defence has been filed, every allegation in the Statement of Claim must be treated as denied. A plaintiff must first establish that the defendant was served with the Statement of Claim and has not filed a defence within the deadline specified in Rule 204 of the *Federal Courts Rules*, SOR/98-106. Evidence must be led that enables the Court to find, on a balance of probabilities, that infringement has occurred within the meaning of the relevant statute (in this case, the *Trade-marks Act* and the *Copyright Act*.) In this regard, see, for example, *McInnes Natural Fertilizers Inc. v. Bio-Lawn-care Services Inc.*, 2004 FC 1027, 260 F.T.R. 11 at para. 3; *Ragdoll Productions (UK) Ltd. v. Jane Doe*, 2002 FCT 918, 21 C.P.R. (4th) 213 (T.D.) at paras. 23 and 25.

## **2. Service and Time to File Defence**

[5] I direct my mind, first, to the question of service. Were the Defendants served with the Statement of Claim and has the time to file a Statement of Defence passed? I am satisfied that the Defendants were served with the Statement of Claim and that no Statement of Defence has been filed. In the case of the Defendant, Ms. Lin, service was personal. For Mr. Yang, substitutional service was approved by an Order of Prothonotary Lafrèniere, dated August 13, 2007.

[6] The time to file a defence has now elapsed and no Statement of Defence has been filed.

## **3. Infringement**

[7] I next turn to the question of whether the Plaintiffs have established infringement.

[8] The evidence submitted on this motion establishes that the Plaintiffs hold the rights to the LV Trade-marks and the copyright to the Copyrighted Works.

[9] Although the evidence suggests that the sale of the counterfeit items has been continuous since the date of the last judgment of this Court involving the same store and subject matter (June 8, 2004, Court File T-209-04), there have been six distinct incidents after that date that are of direct relevance to this action.

1. On March 17, 2006, an investigator attended at the K2 Fashions store, personally served Mr. Yang with a cease and desist letter and asked him to deliver up all inventory that bore the LV Trade-marks. Mr. Yang delivered up 130 items, including purses, wallets and jewellery, bearing the counterfeit LV Trade-marks or counterfeit copies of the Copyrighted Works.
2. On June 28, 2006, an investigator acting on behalf of Louis Vuitton purchased a counterfeit necklace bearing a LV Trade-mark.
3. On January 24, 2007, an investigator purchased a counterfeit change purse bearing several of the LV Trade-marks and observed a large number of counterfeit bags, wallets, purses and scarves all bearing the LV Trade-marks.
4. On March 12, 2007, an investigator served another cease and desist letter on a clerk at the store and asked the clerk to deliver up all Louis Vuitton inventory. The clerk delivered up 239 items including purses, wallets, key chains and jewellery, bearing the counterfeit Louis Vuitton Trade-marks or counterfeit copies of the Copyrighted Works, along with catalogues offering for sale unauthorized LV items.

5. On May 23, 2007, the investigator again attended at the K2 store and observed more than 50 items bearing LV Trade-marks. The investigator served the Defendant, Ms. Lin, with another cease and desist letter. Ms. Lin immediately instructed an employee to lock up the store. From the behaviour of the Defendant, Ms. Lin, and the prior incidents of infringement, I am satisfied that the products viewed by the investigator were counterfeit.
6. On September 27, 2007, an investigator purchased a necklace bearing one of the LV Trade-marks from the K2 store. During the visit, the investigator observed earrings and other necklaces bearing the LV Trade-marks.

[10] Of significance are the catalogues describing items bearing LV Trade-marks which are available at K2 Fashions. It is evident that a prospective purchaser may select and order many different counterfeit items bearing an LV Trade-mark or copies of the Copyrighted Works through the K2 Fashions store.

[11] In sum, I am persuaded that, on a balance of probabilities, the Defendants knowingly and willingly:

1. imported, advertised, offered for sale or sold counterfeit items bearing the Louis Vuitton Trade-marks, without the authorization of either of the Plaintiffs, in breach of ss. 7(b), 7(c), 7(d), 19, 20 and 22 of the *Trade-marks Act* on at least six separate occasions between March 17, 2006 and September 27, 2007; and

2. imported, possessed for the purpose of selling and sold merchandise bearing the Copyrighted Works, in violation of ss. 3 and 27 of the *Copyright Act*, on at least two separate occasions on March 17, 2006 and May 23, 2007.

#### **4. Entitlement to Default Judgment**

[12] The time for filing a Statement of Defence has expired. I am satisfied that no Statement of Defence has been served or filed by either of the Defendants. Accordingly, pursuant to Rule 210(4) of the *Federal Courts Rules*, I may grant judgment.

[13] The Defendant, Ms. Lin, was personally served.

[14] As noted, Mr. Yang was not personally served with the Statement of Claim. Since he was served substitutionally, I must be satisfied, having regard to all of the circumstances, that it would be just to order default judgment (Rule 211, *Federal Courts Rules*). Mr. Yang's connection to both Ms. Lin and to K2 Fashions is evident from the affidavits filed in support of this motion. His role in the continuing sale of the Louis Vuitton counterfeit goods is apparent. It is, in my view, inconceivable that Mr. Yang is not aware of this action by the Plaintiffs. It would be just to order default judgment against Mr. Yang.

[15] Accordingly, the Plaintiffs are entitled to default judgment against both of the Defendants. Judgment to that effect will issue.

## **5. Entitlement to Relief requested**

[16] The issues that remain relate to the determination of damages and costs. In addition to a permanent injunction and other remedies set out in the Order issued with these reasons, the Plaintiffs seek three types of monetary remedy: (a) statutory damages for infringement of the Copyrighted Works; (b) a recovery of damages or profits in respect of the Trade-mark infringements; and (c) punitive damages. I will consider each of these separately.

### *5.1 Damages for Copyright Infringement*

[17] The Plaintiffs hold the rights to two Copyrighted Works. Copies of both of these Works have been found at the K2 Fashions premises. Thus, the Plaintiffs are entitled to recovery of damages and profits in relation to the infringement by the Defendants of the Copyrighted Works.

[18] As permitted by s. 38.1 of the *Copyright Act*, the Plaintiffs have elected an award of statutory damages. Pursuant to s. 38.1(1) of the *Copyright Act*, the Plaintiffs, as the Copyright owners, may elect an award of statutory damages “in a sum of not less than \$500 or more than \$20,000 as the court considers just”.

[19] The *Copyright Act* provides guidance to the Court in exercising this discretion. Of particular importance in this matter, s. 38.1(5) sets out that the Court shall consider all relevant factors, including:

- (a) the good faith or bad faith of the Defendant;

(b) the conduct of the parties before and during the proceedings; and

(c) the need to deter other infringements of the copyright in question.

[20] Courts, including this Court, have had some opportunity to establish an appropriate level of statutory damages. I have had regard to this jurisprudence (see, for example, *L.S. Entertainment Group Inc. v. Formosa Video (Canada) Ltd.*, 2005 FC 1347; *Wing v. Van Velthuisen* (2000), 9 C.P.R. (4th) 449 (F.C.T.D.); *Ritchie v. Sawmill Creek Golf & Country Club Ltd.*, [2003] O.J. No. 3144 (S.C.J.); *Telewizja Polsat S.A. v. Radiopol Inc.*, 2006 FC 584).

[21] Of all of the jurisprudence on the award of statutory damages, the case of *Microsoft Corp. v. 9038-3746 Quebec Inc.*, 2006 FC 1509 [*Microsoft Corp I*] is most directly relevant. That case involved a copyright and trademark infringement claim where the defendant was found to have breached the plaintiff's intellectual property rights by distributing CDs containing "Microsoft", "Windows", "Office" and "Outlook" software. Justice Harrington awarded the plaintiff \$20,000 for each of the 25 copyrighted works which had been infringed after concluding that: (i) the defendants had not shown that they had reasonable grounds to believe they had not infringed copyright; (ii) the minimum amount of \$500 for each of the infringed works would be grossly out of proportion to the plaintiff; (iii) the defendants had demonstrated bad faith based on their general dismissive attitude to the Court; (iv) the defendants had failed to provide appropriate records, despite a court order; and (v) deterrence was necessary to prevent other infringements of the works in question (*Microsoft Corp I*, above at paras. 106-115).



[22] A review of all the relevant facts in this case, in light of the jurisprudence referred to above, leads me to a conclusion that the maximum statutory award of \$20,000 for each of the discrete acts of infringement of the Copyrighted Works is appropriate. In this case, there are many factors that justify the maximum allowable award.

[23] The first factor to consider is the good or bad faith of the Defendants. The second factor is the conduct of the Defendants. In this case, these factors are linked. I refer to the following:

1. The Defendants have been aware since December 2001, when an Anton Piller Order was executed, that the sale of the counterfeit products was in violation of the Plaintiffs' intellectual property rights. Nevertheless, they have persisted in selling infringing products.
2. The Plaintiffs have obtained two previous judgments, the first on April 26, 2002, the second on June 8, 2004, restraining the sale of infringing products in the K2 Fashions store. The infringing activity has continued.
3. The Defendants have been advised numerous times to stop the sale of products infringing on the Plaintiffs' intellectual property rights since the June 8, 2004 judgment, but have nevertheless persisted in their infringing activities.
4. The Defendants have attempted to conceal and cover-up their actions by placing the counterfeit products in hidden displays and drawers.

[24] These actions demonstrate bad faith and conduct that warrant a higher award of statutory damages.

[25] Next, I turn to the need to deter others. The LV products that are the subject of copyright protection are highly-valued by consumers. Being seen with one of the Plaintiffs' Copyrighted Works is a statement that carries significant societal weight in some sectors of the population. However, the continuing infringement of this and similar high-fashion accessories with similar copyright protection erodes the position that legitimate copyrighted products hold in the marketplace. Why would a person buy the Plaintiffs' Copyrighted Works when "knock-offs" can be sold and bought with few negative consequences? More seriously, why buy the legitimate product when others seeing it will assume that it is not likely a "real" LV Copyrighted Work? Although, to many, this aspect of the infringement is not serious, the erosion of the market for which the Plaintiffs have worked very hard is a serious consequence of the continuing behaviour of the Defendants and others who may also be infringing the Copyrighted Works. Another aspect of deterrence that is relevant is the behaviour of the Defendants. The award in this case should attempt to deter conduct where orders of the Court and other legal remedies are blatantly ignored. In my view, a high award is necessary to deter future infringement and, secondarily, to deter open disrespect for Canada's copyright protection laws.

[26] In sum, I am satisfied that the maximum award of statutory damages in the amount of \$20,000 for each of the two Copyright Works is appropriate. Given that there are two Copyrighted Works, the total amount to be awarded is \$40,000.

## 5.2 *Damages for Trade-mark Infringement*

[27] As noted above, I am satisfied that the Defendants have infringed the LV Trade-marks on at least six occasions since March 17, 2006. The Plaintiffs are entitled to an award in damages or profits in respect of the infringing activities (*Trade-marks Act*, s. 53.2). The only question remaining is to assess the amount of either damages or profits.

[28] In situations such as this, calculation of damages or profits is difficult. However, if damages or profits cannot be estimated with certainty, the best reasonable estimate must be made without being limited to nominal damages (*Ragdoll Productions (UK) Ltd.*, above, at paras. 40-45 (T.D.)).

[29] I will examine the evidence with respect to damages first.

### 5.2.1 *Damages*

[30] Although the Plaintiffs submitted some evidence on the amount of their damages, I think that they would agree that an accurate or even reasonably-close calculation of damages is almost impossible in this situation. There are two aspects of damages in this situation. The first is the depreciation of goodwill (which, indirectly, results in loss of sales of legitimate LV merchandise) and the second is the direct loss of sales. While it is self-evident (at least to any person who is interested in high-fashion accessories) that the sale of counterfeit LV goods results in a depreciation of the goodwill attaching to the LV Trade-marks, quantification of the amount of such depreciation – if at all possible – would require a much more complete record.

[31] The second aspect of damages would be the sales that the Defendants have made that would have been made by the Plaintiffs. Given the nature of this counterfeit business, it is simply not reasonable to assume that someone who buys an LV “knock-off” from K2 Fashions would otherwise have bought a product with the genuine LV Trade-mark. I would think it reasonable to assume that a person buying one the counterfeit LV products would be motivated almost exclusively by price and would not likely pay the full price of the genuine article.

[32] Accordingly, I am unable, on the record before me, to quantify the damages suffered by the Plaintiffs. However, it may be possible to assess the profits made by the Defendants by virtue of their infringement of the rights of the Plaintiffs.

#### *5.2.2 Profits*

[33] The actual profits are not capable of definitive proof due to the failure of the Defendants to defend the claim. Thus, all of the calculations must be based on the best available evidence, reasonable inferences, the Plaintiffs’ experiences in similar situations and a dose of common sense.

[34] The Plaintiffs have presented affidavit evidence which, in their opinion, provides a strong evidentiary basis for the Court to find that the Defendants’ profits have been at least \$60,000 to \$90,000 per year since December 2003. Thus, they submit that the total profits are in the range of \$240,000 to \$360,000 for the four-year period. The totals are calculated by determining an approximate average profit for the two batches of inventory delivered up (roughly \$15,000) and

assuming that this amount would be realized in profits at least four – and up to six – times per year.

[35] In spite of careful and detailed analysis by the affiants, I have some difficulties with the calculations.

[36] I can agree with the sales calculations for each of the occasions when counterfeit goods were delivered up. The Plaintiffs have put forward evidence as to the value of the LV goods that were delivered up on March 17, 2006. The total sale price of the items with price tags was \$10,664. I accept these numbers. I also accept that, adding in conservative approximate values to the goods without price tags, the total sale value of the 130 counterfeit items delivered up on March 17, 2006 would have been approximately \$14,000. The Plaintiffs carried out similar calculations for the 193 saleable items delivered up on March 12, 2007. I am satisfied that a reasonable total sale value for the items seized on March 12, 2007 would have been approximately \$14,970 or \$23,000 adding in conservative approximate values without price tags.

[37] With respect to estimates of the costs of these goods, the affidavit of the Senior Anticounterfeiting Manager for North America of Louis Vuitton was very comprehensive and persuasive. Using her calculations, I would agree that a cost to the Defendants would likely be no more than \$18 per item. Thus, the Plaintiffs' estimate of \$31,186 for profits for goods delivered up in March 2006 and March 2007 events is reasonable. This amount is calculated by subtracting the costs per item seized from the sale value of items seized.

[38] Up to this point, I have been in agreement with the Plaintiffs' methodology and calculations. The difficulties that I have arise from the fact that the Plaintiffs would have me extrapolate this estimate of approximate average profit to an assumed number of turnovers a year and to apply it from 2003.

[39] The first problem is the calculations begin before the date of the last judgment of this Court. On June 8, 2004, this Court granted judgment to the Plaintiffs and awarded injunctive relief and damages in respect of the infringements up to that date. Admittedly, the Defendants have ignored the Order, have continued to infringe and have failed to pay the amounts awarded. The Plaintiffs may have had recourse to the Court to enforce the earlier judgment. However, failure to comply with earlier injunctions and awards of damages does not permit the Plaintiffs to bring forward amounts of alleged profits from before the earlier judgment. On the other hand, the Defendants' conduct is certainly something to consider in assessing the appropriateness of punitive damages; that is considered later in these reasons. The evidence before me in this action can only establish that the infringing activities commenced on March 17, 2006; an accounting of profits can only begin from that date. The period of infringement is, therefore, approximately 18 months or 1.5 years. Based on the Plaintiffs' calculations on an annual basis, that would reduce the total profits claimed to a range of \$90,000 to \$135,000.

[40] The next difficulty that I have with the Plaintiffs' submissions is their assumption that the Defendants turn over their stock of counterfeit LV inventory at least four to six times per year. I have carefully reviewed the affidavits on this point and cannot identify any evidence that would support such a statement. While I am prepared to assume that the goods seized or delivered up

would, at some point, have been sold, I am not persuaded that I ought to make an assumption that the same volume of counterfeit goods would be sold some four to six times per year.

[41] The only evidence that is helpful in this difficult job is the evidence from the investigators that, on at least three of the other occasions when they attended at K2 Fashions, other accessories bearing the LV Trade-mark were seen. Thus, I am prepared to conclude, applying some logic to the situation, that the goods that were seen in the store or were likely present or available for purchase were, in fact, sold. A conservative estimate of profits for the items available for sale on those occasions is, in my view, roughly \$15,000 per incident – for a total of \$45,000.

[42] Using the foregoing analysis, I project a profit of approximately \$76,000 for the period commencing March 17, 2006. This, in my view, would be the minimum award to be awarded against the Defendants for their infringement of the trade-mark rights of the Plaintiffs. The true profit is almost certainly higher, although how much higher is almost impossible to assess.

[43] As submitted by the Plaintiffs, the Court has, as an alternative, applied a “nominal” award per infringing activity. In this case, that calculation would result in an award of \$72,000 (at \$6000 per infringing activity for each Plaintiff). The \$6000 was first set in 1997 to represent a fair approximation of damages (*Nike Canada Ltd. v. Goldstar Design Ltd. et al.*, T-1951-95 (F.C.T.D.)). The Plaintiffs have presented evidence to demonstrate that the \$6000 scale amount, when adjusted for inflation, would now be approximately \$7250. I agree with their calculations

of the inflation adjustment. Accordingly, on the basis of a “nominal” award, I would assess the damages as \$87,000.

[44] The amount of \$87,000 is, in my view, justifiable on either the evidence presented by the Plaintiffs and on the use of the “nominal” damages approach. With either approach, I am hampered by the conduct of the Defendants who have refused to come forward to determine a more accurate assessment of damages. While it appears that the Plaintiffs are suffering in the award of damages through no fault of their own, I believe that punitive damages may be helpful in leveling the playing field and resulting in a total award that is just.

### 5.3 *Exemplary or Punitive Damages*

[45] I turn then to consider whether, on the facts of this case, exemplary or punitive damages should be awarded. I note first that there is no statutory impediment to assessing punitive damages in addition to profits or damages calculated in the usual manner. With respect to the Copyrighted Works, the Court’s ability to award punitive damages in addition to an election to statutory damages is enshrined in s. 38.1(7) of the *Copyright Act*. (See also *Telewizja*, above at para. 34.)

[46] The leading case on punitive damages is the Supreme Court decision in *Whiten v. Pilot Insurance Co.*, [2002] 1 S.C.R. 595. As stated by Justice Binnie, punitive damages will be awarded against a defendant:



... in exceptional cases for "malicious, oppressive and high-handed" misconduct that "offends the court's sense of decency": *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at para. 196. The test thus limits the award to misconduct that represents a marked departure from ordinary standards of decent behaviour. Because their objective is to punish the defendant rather than compensate a plaintiff (whose just compensation will already have been assessed), punitive damages straddle the frontier between civil law (compensation) and criminal law (punishment) (*Whitten*, above at para. 36)

[47] Justice Binnie also developed general principles in *Whiten* relating to punitive damages. As summarized by the Nova Scotia Supreme Court in *2703203 Manitoba Inc. v. Parks*, 47 C.P.R. (4th) 276 at para. 38 (rev'd in part 57 C.P.R. (4th) 391(N.S.C.A.)), the relevant factors to consider are as follows:

- Whether the conduct was planned and deliberate;
- The intent and motive of the defendant;
- Whether the defendant persisted in the outrageous conduct over a lengthy period of time;
- Whether the defendant concealed or attempted to cover up its misconduct;
- The defendants awareness that what he or she was doing was wrong; and
- Whether the defendant profited from its misconduct.

[48] Justice Binnie also developed general principles in *Whiten* relating to punitive damages. Having regard to the factors cited in the jurisprudence, I find the following facts indicate that that the Defendants have acted in a "malicious, oppressive and high-handed" manner in the case at bar and that punitive damages should therefore be awarded:

- The Defendants have been aware since December 2001, when an Anton Piller Order was executed against them, that their sale of counterfeit LV products was in violation of the Plaintiff's intellectual property rights. Nevertheless, they have persisted in selling infringing products;
- In spite of two previous judgments, the first on April 26, 2002, the second on June 8, 2004, the infringing activities have continued;
- The monetary awards contained in the April 26, 2002 and the June 8, 2004 judgments have not been paid;
- The Defendants have been advised numerous times to stop the sale of products infringing on the Plaintiffs' intellectual property rights since the June 8, 2004, judgment, but have nevertheless persisted in their infringing activity;
- The Defendants have attempted to conceal and cover-up their actions by placing the counterfeit products in hidden displays and drawers; and
- As discussed above, the Plaintiffs are unable, due to the actions of the Defendants in failing to defend their actions, to provide the evidence necessary to establish adequate compensatory damages.

[49] In sum, the actions of the Defendants can justify the award of punitive damages. In the circumstances, it will be "rational to use punitive damages to relieve [the Defendant] wrongdoer[s] of [their] profits where compensatory damages would amount to nothing more than a licence fee to earn greater profits through outrageous disregard of the legal or equitable rights of others" (*Whiten*, above at para. 72).

[50] What would be an appropriate quantum of punitive damages in this case? The Plaintiffs have asked for punitive damages of \$100,000. In *Whiten*, above, at para.111, Justice Binnie held that a proper award of punitive damages must be proportionate to the end sought to be achieved and set out a number of applicable principles. I have considered these principles in considering the question of quantum of punitive damages

[51] The conduct of the Defendants in this action justifies a high quantum of punitive damages. It is also important and relevant that the Defendants' behaviour has made an accurate assessment of profits impossible. The \$87,000 that I will award in respect of the trade-mark infringement is almost certainly below the actual profits. A higher quantum of punitive damages can provide for an overall award that is more proportionate to the actual profits of the Defendants.

[52] Finally, I observe that an award of \$100,000 is well within the range awarded in the post-*Whiten* cases of *Evocation Publishing Corp. v. Hamilton* (2002), 24 C.P.R. (4th) 52 (B.C.S.C.) and *Microsoft Corp 1*.

[53] In sum, an award of \$100,000 for punitive or exemplary damages is justified on the record before me.

#### 5.4 *Solicitor-Client Costs*

[54] The Plaintiffs seek their costs on a solicitor and client basis.

[55] Rule 400(1) of the *Federal Courts Rules* gives the Federal Court the discretionary power to award solicitor-client costs. However, the awarding of solicitor-client costs should only be made where a party has displayed reprehensible, scandalous or outrageous conduct (*Young v. Young*, [1993] 4 S.C.R. 3 at para. 251; *Mackin v. New Brunswick (Minister of Finance)*; *Rice v. New Brunswick*, [2002] 1 S.C.R. 405 at para. 86; *Apotex Inc. v. Canada (Minister of National Health and Welfare)* (2000), 9 C.P.R. (4th) 289 at para. 7 (F.C.A.)). Reasons of public interest may also justify making an award of solicitor-client costs (*Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 at 80).

[56] Justice Harrington defined “reprehensible”, “scandalous” and “outrageous” conduct in *Microsoft Corp. v. 9038-3746 Quebec Inc.*, 2007 FC 659 at para. 16 [*Microsoft Corp 2*] as follows:

"Reprehensible" behaviour is that deserving of censure or rebuke; blameworthy. "Scandalous" comes from scandal which may describe a person, thing, event or circumstance causing general public outrage or indignation. Among other things, "outrageous" behaviour is deeply shocking, unacceptable, immoral and offensive (see: *Oxford Canadian Dictionary*).

[57] The Plaintiffs have submitted substantial evidence with respect to why solicitor-client costs should be awarded in the case at bar. The evidence noted earlier in these reasons demonstrating that the Defendants have knowingly and intentionally infringed the Plaintiffs' intellectual property rights over a long period of time is relevant to this issue.

In addition to that conduct, further examples were provided by the Plaintiffs:

- When approached by the Plaintiffs' hired investigator on May 23, 2007, the Defendant Pi-Chu Lin stated she did not speak English, stated that her name was "Coco" and locked the K2 Fashions store rather than cooperate.
- The Defendant Pi-Chu Lin ran from K2 Fashions when the Plaintiffs attempted to serve her on July 9, 2007. Ms. Lin and other employees at K2 Fashions stated they could not speak English when confronted by a private investigator hired by the Plaintiffs.
- The Defendant, Mr. Yang, stated on April 4, 2006 that he would leave the country if the Plaintiffs pursued him. On May 2007 the Plaintiffs telephoned Mr. Yang who advised he was in Taiwan.

[58] Also, it is evident from the record that the Defendants' behaviour in trying to avoid service and failing to defend the action has caused the Plaintiffs to incur unnecessary legal fees and disbursements.

[59] Based on the evidence before the Court, I find the Defendants' dismissive attitude towards this proceeding and past judgments of this Court and the continued flagrant infringement of the Plaintiffs' intellectual property rights to be worthy of rebuke. The conduct of the Defendants is reprehensible, scandalous and outrageous. Further, the public interest in this case justifies an award of solicitor-client costs. Accordingly, I find this Court should award solicitor-client costs.

[60] As to the amount of such solicitor-client costs, I am satisfied that a lump sum award is warranted. This award would compensate for legal fees incurred to date, legal fees not yet billed and estimated legal fees for preparing and arguing this motion for default judgment. The award will also cover disbursements of \$6879.14. Having reviewed the evidence submitted, I am satisfied that the costs and disbursements claimed have been reasonably incurred in pursuit of this action. Accordingly, in respect of solicitor-client costs and disbursements and based on the evidence filed, I will award a lump sum of \$36,699.14.

## **6. Conclusion**

[61] In conclusion, judgment in favour of the Plaintiffs will issue, in the form issued concurrently with these Reasons. The following key components will be reflected in the award:

- \$40,000 for infringement of the rights of the Plaintiffs to the Copyrighted Works;
- \$87,000 for infringement of the LV Trade-marks;
- \$100,000 in punitive or exemplary damages; and
- A lump sum of \$36,699.14 in respect of solicitor-client costs and disbursements.

“Judith A. Snider”

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Judge

Ottawa, Ontario  
November 14, 2007

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1236-07

**STYLE OF CAUSE:** LOUIS VUITTON MALLETIER S.A. et al. v. LIN PI-  
CHU YANG et al.

**PLACE OF HEARING:** Vancouver, B.C.

**DATE OF HEARING:** October 15, 2007

**REASONS FOR JUDGEMENT:** Snider J.

**DATED:** November 14, 2007

**APPEARANCES:**

Michael Manson and  
Karen MacDonald

FOR THE PLAINTIFFS

NO ONE REPRESENTING

FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

Smart & Biggar

FOR THE PLAINTIFFS

NO ONE REPRESENTING

FOR THE RESPONDENTS