

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHANEL, INC.,

Case No. 18-cv-2253 (LLS)

Plaintiff,

- against -

WGACA, LLC, WHAT COMES AROUND GOES
AROUND LLC d/b/a/ WHAT GOES AROUND
COMES AROUND, MHW PROPERTIES, INC.,
WGACA WEB, LLC, PINES VINTAGE, INC.,
VINTAGE DESIGNS LTD., and WCAGA LA,
LLC,

**ANSWER OF DEFENDANTS
WGACA, LLC, WHAT COMES
AROUND GOES AROUND LLC ,
MHW PROPERTIES, INC., WGACA
WEB, LLC, PINES VINTAGE, INC.,
VINTAGE DESIGNS LTD., and
WCAGA LA, LLC**

Defendants.

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Defendants, by their attorneys, Lewis Brisbois Bisgaard & Smith LLP, as and for their
Answer to the Second Amended Complaint herein, allege as follows:

SUBSTANCE OF THE ACTION

1. Deny having sufficient knowledge or information to form a belief as to the allegations
contained in paragraph 1.

2. Admit that Defendant WGACA includes in its advertisements the phrase “the leading
global purveyor of authentic luxury vintage accessories and apparel” and “Buy WGACA CHANEL
– 100% Authenticity Guaranteed.” Further admit that Defendant WGACA sells secondhand luxury
products including CHANEL-branded products that it obtains from third parties. Further admit that
Defendant WGACA sells genuine CHANEL-branded point-of-sale items, including tissue box
covers, trays and mirrors. Deny having sufficient knowledge or information to form a belief as to
the allegation that Chanel does not “authorize” sale of point-of-sale branded items. Except as set
forth above, deny the remaining allegations contained in paragraph 2.

3. Deny the allegations contained in paragraph 3.

4. Admit that Defendant WGACA posts on its website the following language “[a]ny piece purchased at What Goes Around Comes Around or one of our retail partners has been carefully selected, inspected and is guaranteed authentic.” Except as set forth above, deny the allegations contained in paragraph 4.

5. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 5.

6. Deny the allegations contained in paragraph 6.

7. Deny the allegations contained in paragraph 7.

8. Deny the allegations contained in paragraph 8, except admit that Plaintiff asserts claims under the various statutes that are identified, except that Plaintiff does not assert a claim for unfair competition under New York common law.

PARTIES

9. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 9.

10. Deny the allegations as to principal place of business. Except as set forth above, admit the remaining allegations contained in paragraph 10.

11. Deny the allegations contained in paragraph 11.

12. Deny that Defendant MHW Properties, Inc. does business as What Goes Around Comes Around. Except as set forth above, admit the remaining allegations contained in paragraph 12.

13. Deny the allegations contained in paragraph 13.

14. Deny the allegations contained in paragraph 14.

15. Deny the allegations contained in paragraph 15.

16. Deny the allegations contained in paragraph 16.
17. Deny the allegations contained in paragraph 17.

JURISDICTION AND VENUE

18. Admit that the Second Amended Complaint purports to state claims for jurisdiction under the various statutes cited. Except as set forth above, deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 18.

19. Admit that the Second Amended Complaint purports to state claims for venue being proper in this district. Except as set forth above, deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 19.

20. Deny the allegations contained in paragraph 20 and refer all allegations of law to the Court.

21. Deny the allegations contained in paragraph 21 and refer all allegations of law to the Court.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

22. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 22.

23. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 23.

24. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 24.

25. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 25.

26. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 26.

27. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 27.

28. Deny the allegations contained in paragraph 28.

29. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 29.

30. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 30.

31. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 31.

32. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 32.

33. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 33.

34. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 34.

35. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 35.

36. Admit that Chanel does not authenticate WGACA's CHANEL-branded products and that WGACA has not obtained the CHANEL products that it offers for sale directly from Chanel. Except as set forth above, deny the remaining allegations contained in paragraph 36.

37. Admit that Defendant WGACA is a retailer specializing in secondhand bags, jewelry and accessories. Except as set forth above, deny the remaining allegations contained in paragraph 37.

38. Admit that Defendant WGACA has held trunk shows at retail locations that include Chanel products and as set forth in Exhibit B to the Second Amended Complaint. Except as set forth above, deny the remaining allegations contained in paragraph 38.

39. Admit that Defendant WGACA offers secondhand CHANEL products on its website and through other retailers in brick and mortar stores and online and secondhand point-of-sale CHANEL-branded items. Defendant WGACA further admits that it reviews all Chanel-branded items it offers for sale for authenticity and genuineness. Except as set forth above, deny the remaining allegations contained in paragraph 39.

40. Admit that Defendant WGACA obtains the CHANEL-branded products it offers for sale from third parties, including consumers and other secondhand resale businesses and not from Chanel. Except as set forth above, deny the remaining allegations contained in paragraph 40.

41. Admit the allegations contained in paragraph 41.

42. Admit the allegations contained in paragraph 42.

43. Admit the allegations as to Exhibit D to the Second Amended Complaint contained in paragraph 43. Except as set forth above, deny the remaining allegations contained in paragraph 43.

44. Admit the WGACA website offers products from other luxury brands in addition to Chanel. Except as set forth above, deny the remaining allegations contained in paragraph 44. .

45. Admit that the WGACA Website does not include a statement that WGACA is not affiliated with or sponsored by Chanel, or any other luxury brand owner. Except as set forth above, deny the remaining allegations contained in paragraph 45.

46. Admit the allegations contained in paragraph 46 as to Exhibit E. Deny that the home (landing) page always contains the image in Exhibit E.

47. Admit the allegations contained in paragraph 47 as to Exhibit F. Deny that “Chanel” is always listed in the manner reflected in Exhibit F.

48. Admit the allegations contained in paragraph 48.

49. Deny having sufficient knowledge or information to form a belief as to the allegations in paragraph 49 as there is no explanation of what is meant by the phrase “recent distribution and sale”.

50. Deny the allegations contained in paragraph 50 as being an incomplete description of the contents of the referenced website.

51. Deny the allegations contained in paragraph 51 as being an incomplete description of the contents of the referenced website.

52. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 52.

53. Deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 53.

54. Deny the allegations contained in paragraph 54.

55. Admit Defendant WGACA has offered for sale through one of its retail partners a CHANEL-branded hand mirror. Except as set forth above, deny the remaining allegations contained in paragraph 55.

56. Admit Defendant WGACA has offered for sale a CHANEL-branded black tray for sale through one of its retail partners. Except as set forth above, deny the remaining allegations contained in paragraph 56.

57. Admit Defendant WGACA has advertised for sale a CHANEL-branded notepad and pencil on its website. Deny having sufficient knowledge or information to form a belief as to the allegations regarding providing the notepad and pencil at a fashion show. Except as set forth above, deny the remaining allegations contained in paragraph 57.

58. Deny that products are advertised and sold as having been acquired by Defendant WGACA directly from Chanel. Except as set forth above, admit the remaining allegations contained in paragraph 58.

59. Admit that Exhibit K was a previous Letter of Authenticity of Defendant WGACA for all products it sold and stated as alleged in paragraph 59. Except as set forth above, deny the remaining allegations contained in paragraph 59.

60. Deny the allegations contained in paragraph 60.

61. Deny having sufficient knowledge or information to form a belief as to the allegations regarding expectations of consumers as alleged in paragraph 61. Except as set forth above, deny the remaining allegations contained in paragraph 61

62. Admit the allegations contained in paragraph 62.

63. Deny the allegations contained in paragraph 63.

64. Admit Defendant WGACA sold through a retail partner a Chanel-branded tissue box holder. Except as set forth above, deny the remaining allegations contained in paragraph 64.

65. Deny having sufficient knowledge or information to form a belief as to the accuracy of the allegations regarding Exhibits O-S. Except as set forth above, deny the remaining allegations contained in paragraph 65.

66. Admit that the Social Media websites of Defendant WGACA include no statement as to the lack of affiliation or authorization by Chanel or the source of the goods being offered for sale

or any reference to the “influencers”. Except as set forth above, deny the remaining allegations contained in paragraph 66.

67. Admit that Exhibits T-V appear to be from three of Defendant WGACA’s brick and mortar stores at a point in time. Except as set forth above, deny the remaining allegations contained in paragraph 67.

68. Deny the allegations contained in paragraph 68

69. Deny the allegations contained in paragraph 69.

70. Deny the allegations contained in paragraph 70.

71. Deny the allegations contained in paragraph 71.

72. Deny the allegations contained in paragraph 72.

73. Deny the allegations contained in paragraph 73.

74. Deny the allegations contained in paragraph 74.

75. Deny the allegations contained in paragraph 75.

76. Deny the allegations contained in paragraph 76.

77. Deny the allegations contained in paragraph 77.

**FIRST CLAIM FOR RELIEF:
TRADEMARK INFRINGEMENT 15 U.S.C. §1114(1)**

78. Re-allege and incorporate by this reference the responses to paragraphs 1 through 77, above, as though fully set forth herein.

79. Deny the allegations contained in paragraph 79.

80. Deny the allegations contained in paragraph 80.

81. Deny the allegations contained in paragraph 81.

82. Deny the allegations contained in paragraph 82.

83. Deny the allegations contained in paragraph 83.

84. Admit Defendant WGACA has used vintage advertisements from previous decades. Admit the secondhand CHANEL goods and CHANEL point-of-sale items offered for sale and sold by Defendant WGACA are identical in type to the fashion designs and accessories sold by Chanel as they are authentic Chanel products. Deny Defendant WGACA's social media images include Chanel's social media. Except as set forth above, deny having sufficient knowledge or information to form a belief as to the remaining allegations contained in paragraph 84.

85. Deny the allegations contained in paragraph 85.

86. Deny having sufficient knowledge or information to form a belief as to the allegations regarding the alleged expectation of social media users who utilize social media websites. Except as set forth above, deny the remaining allegations contained in paragraph 86.

87. Deny the allegations contained in paragraph 87.

88. Deny the allegations contained in paragraph 88 and further deny that Plaintiff has been damaged as alleged, or at all.

**SECOND CLAIM FOR RELIEF:
FALSE ADVERTISING IN VIOLATION OF 15 U.S.C. §1125(a)**

89. Re-allege and incorporate by this reference the responses to paragraphs 1 through 88, above, as though fully set forth herein.

90. Admit that in the communication on July 2, 2015, a representative of Defendant WGACA stated that if Chanel would assist Defendant in ensuring accuracy of items, such could be a value added for customers. Except as set forth above, deny having sufficient knowledge or information to form a belief as to the remaining allegations contained in paragraph 90.

91. Deny the allegations contained in paragraph 91.

92. Deny the allegations contained in paragraph 92.

93. Deny the allegations contained in paragraph 93.

94. Deny the allegations contained in paragraph 94.

95. Deny the allegations contained in paragraph 95.

96. Deny the allegations contained in paragraph 96.

97. Deny the allegations contained in paragraph 97.

98. Deny the allegations contained in paragraph 98.

99. Deny the allegations contained in paragraph 99.

100. Deny the allegations contained in paragraph 100.

101. Deny the allegations contained in paragraph 101.

102. Deny the allegations contained in paragraph 102 and further deny that Plaintiff has been damaged as alleged, or at all.

**THIRD CLAIM FOR RELIEF:
FALSE ASSOCIATION AND ENDORSEMENT/UNFAIR COMPETITION IN
VIOLATION OF 15 U.S.C. §1125(a)**

103. Re-allege and incorporate by this reference the responses to paragraphs 1 through 102, above, as though fully set forth herein.

104. Deny the allegations contained in paragraph 104.

105. Deny the allegations contained in paragraph 105.

106. Deny the allegations contained in paragraph 106.

107. Deny the allegations contained in paragraph 107 and further deny that Plaintiff has been damaged as alleged, or at all.

**FOURTH CLAIM FOR RELIEF:
VIOLATION OF THE NEW YORK DECEPTIVE AND UNFAIR TRADE
PRACTICES ACT IN VIOLATION OF N.Y. GEN. BUS. LAW §349**

108. Re-allege and incorporate by this reference the responses to paragraphs 1 through 107, above, as though fully set forth herein.

109. Deny the allegations contained in paragraph 109.

110. Deny the allegations contained in paragraph 110.

111. Deny the allegations contained in paragraph 111.

112. Deny the allegations contained in paragraph 112 and further deny that Plaintiff has been damaged as alleged, or at all.

**FIFTH CLAIM FOR RELIEF:
FALSE ADVERTISING IN VIOLATION OF N.Y. GEN. BUS. LAW §350**

113. Re-allege and incorporate by this reference the responses to paragraphs 1 through 112, above, as though fully set forth herein.

114. Deny the allegations contained in paragraph 114.

115. Deny the allegations contained in paragraph 115.

116. Deny the allegations contained in paragraph 116 and further deny that Plaintiff has been damaged as alleged, or at all.

**FIRST AFFIRMATIVE DEFENSE
(Failure to State Claim)**

1. The Second Amended Complaint fails to allege facts upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE
(Waiver)**

2. Plaintiff is barred from pursuing its claims based on the equitable doctrine of Waiver.

**THIRD AFFIRMATIVE DEFENSE
(Laches)**

3. Plaintiff is barred from pursuing its claims based on the equitable doctrine of Laches.

**FOURTH AFFIRMATIVE DEFENSE
(Estoppel)**

4. Plaintiff is barred from pursuing its claims based on the equitable doctrine of Estoppel.

**FIFTH AFFIRMATIVE DEFENSE
(Acquiescence)**

5. Plaintiff is barred from pursuing its claims based on the equitable doctrine of Acquiescence.

**SIXTH AFFIRMATIVE DEFENSE
(Consent)**

6. Plaintiff is barred from pursuing its claims because it has consented to the acts complained of.

**SEVENTH AFFIRMATIVE DEFENSE
(Fair Use)**

7. The claims made in the Second Amended Complaint are barred, in whole or in part, as the acts of Defendants alleged therein constitute fair use and nominative fair use.

**EIGHTH AFFIRMATIVE DEFENSE
(First Sale Doctrine)**

8. The claims made in the Second Amended Complaint are barred, in whole or in part, by the first sale doctrine.

**NINTH AFFIRMATIVE DEFENSE
(Adequacy of Remedy at Law)**

9. The alleged injury or damage suffered by Plaintiff, if any, would adequately be compensated by damages. Accordingly, Plaintiff has a complete and adequate remedy at law and is not entitled to seek equitable relief.

**TENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

10. The claims made in the Second Amended Complaint are barred, in whole or in part, because of a failure to mitigate its damages if such exist.

ADDITIONAL DEFENSES

11. In accordance with Federal Rules of Civil Procedure, Rule 11, at the time of the filing of this Answer all possible Affirmative Defenses may not have been alleged inasmuch as sufficient facts and relevant information may not have been available after reasonable inquiry under the circumstances. Therefore, Defendants reserve the right to amend this answer to allege additional defenses if subsequent investigation so warrants.

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff take nothing by way of its Second Amended Complaint.
2. That the Second Amended Complaint be dismissed in its entirety with prejudice;
3. That Defendants be awarded their costs of suit incurred herein in connection with this action, including reasonable attorneys' fees; and
4. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Defendants, and each of them, demand a trial by jury of all issues so triable.

Dated: New York, New York
November 9, 2018

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Peter T. Shapiro
Peter T. Shapiro
Attorneys for Defendants
77 Water Street, Suite 2100
New York, New York 10005
(212) 232-1300

TO: Sheppard Mullin Richter & Hampton LLP
Attorneys for Plaintiff
30 Rockefeller Plaza
New York, NY 10112
(212) 653-8700

CERTIFICATE OF SERVICE

Peter T. Shapiro, an attorney duly admitted to practice before this Court, certifies that on November 9, 2018, he caused the Answer to be filed and served by ECF upon the attorneys of record for plaintiff.

/s/ Peter T. Shapiro
Peter T. Shapiro