# Louis Vuitton Bags K2 – The Rising Cost of Counterfeiting

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The recent decision of the Federal Court in *Louis Vuitton Malletier S.A. et al.* v. *Lin Pi-Chu Yang et al.* (2007 FC 1179) awarded extensive damages against counterfeiters that had exhibited a pattern of such behavior. The decision, released on November 14, 2007, reinforces the position taken by the court in *Microsoft Corporation* v. *Cerelli et al.* [2006] FC 1509.

The plaintiff, Louis Vuitton, is the well-known maker of fashion accessories. The defendants, Lin Pi-Chu Yang and Tim Yang Wei-Kai (both also known under aliases) have, since at least 2001, controlled and operated a retail store named K2 Fashions, located in Richmond, British Columbia.

Louis Vuitton had been pursuing the defendants since 2001, in relation to alleged trade-mark and copyright infringement through the sale of counterfeit Louis Vuitton goods at K2 Fashions. Two previous judgments had been entered against the defendants, though the awards given therein have not been paid. Subsequent to those judgments, Louis Vuitton has orchestrated the seizure of numerous counterfeit copies from the defendants, and have repeatedly advised the defendants to cease their infringing activities. These attempts by the plaintiffs to curb the infringing activities of the defendants have been largely unsuccessful.

The plaintiffs commenced the present action July 5, 2007, alleging trade-mark infringement and copyright infringement, by K2 Fashions' sale of counterfeit Louis Vuitton goods. The defendants failed to defend the action, and Louis Vuitton brought a motion for default judgment. The Court granted default judgment, easily finding that both trade-mark and copyright infringement had occurred.

Louis Vuitton elected an award of statutory damages in relation to infringement of its copyrighted works. Such damages range between $500 and $20,000 per infringed work. There were two infringed works in this case. Looking to the analysis performed in the *Microsoft* case, the Court found that the full $40,000 was appropriate, given that the defendants had acted in bad faith and had persistently engaged in infringing activities despite being advised numerous times to stop such activities. Justice Snider also found a high award to be "necessary to deter future infringement and, secondarily, to deter open disrespect for Canada's copyright protection laws."

Apart from the number of infringed works, a "nominal" award of $6,000 per instance of infringement is often given to each plaintiff in actions for trade-mark infringement – i.e., as an approximation of damages, where neither damages nor profit can be accurately quantified (as is commonly the situation when defendants do not defend or participate in the action). In this case, the Court found such a "nominal" award to be appropriate – with an adjustment to $7,250 per infringing instance to account for inflation – and awarded a further $87,000 to the plaintiffs (i.e., six instances each at $7,250 per plaintiff).

Using the test set out by the Supreme Court of Canada in *Whiten* v. *Pilot Insurance Co.* [2002] 1 S.C.R. 595, additional punitive and exemplary damages of $100,000 were awarded, noting such an award to be consistent with that given in the *Microsoft* case. Here, the Court found such an award was justified in view of the egregious conduct of the defendants, and the disproportionally low award of damages for trade-mark infringement when compared to the profits that were probably made (and which profits could not be determined due to the non-participation of the defendants in the action).

The plaintiffs were also awarded $36,699.14 in costs, bringing the total award of damages and costs to $263,699.14.

The similarity of scale for the statutory and punitive damage awards in this case in comparison with those in *Microsoft* serves to reinforce the message that holders of intellectual property rights are now in a strong position to seek extensive damages against counterfeiters. This decision is also a further warning to counterfeiters of the high risk of taking a flippant attitude to court proceedings and other attempts to curtail their infringing activities.

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