



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

J. CHRISTOPHER BURCH, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	
TORY BURCH, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	C.A. No. 7921-CS
)	
TORY BURCH LLC,)	
)	
Counterclaim Plaintiff,)	
)	
v.)	
)	
J. CHRISTOPHER BURCH, JCB)	
INVESTMENTS, LLC, C. WONDER LLC and)	
RIVER LIGHT VENTURE PARTNERS LLC,)	
)	
Counterclaim Defendants.)	
)	

COUNTERCLAIMS OF TORY BURCH LLC

Defendant-counterclaim plaintiff Tory Burch LLC (the “company”), by its undersigned attorneys, alleges the following counterclaims against plaintiffs-counterclaim defendants J. Christopher Burch (“Chris” or “Chris Burch”), JCB Investments, LLC, C. Wonder LLC and River Light Venture Partners LLC (“River Light”), upon knowledge as to itself, and otherwise upon information and belief, as follows:

INTRODUCTION

1. In the two-plus years leading up to the opening of his first C. Wonder retail store in October 2011, Chris Burch repeatedly asked for and was given full and complete access to competitively sensitive information about the company and its best-selling products. Acting under a consulting agreement that paid him in excess of \$11 million, Chris claimed that the purpose of these requests was to enable him to assist the company in identifying factories that could manufacture Tory Burch products.

2. While Chris did tell the company that he was developing a new retail brand, he led the company to believe that the brand would be selling an assortment of diverse products, including home goods, electronics, surfboards, motor scooters, refrigerators, washers and dryers, nondescript basic apparel, coffee makers, and vacuum cleaners. He did not in any way, shape or form reveal that he was copying the Tory Burch brand identity or using the company's information to enrich himself at the company's expense.

3. In October 2011, the company learned that Chris had deceived it as to his true plans and intentions. At that time, Chris revealed his first C. Wonder store in SoHo, located just a short walk from the original Tory Burch store. The store copied the Tory Burch brand image — from the lacquered front doors, to the store fixtures, to the furnishings, area rugs and wall treatments, to the packaging design, to the merchandising. The store was stocked with mass-market versions of the top-selling Tory Burch items that the company had identified to Chris pursuant to contracts that required him to keep that information in confidence and use it only to advance the company's interests and not his

own. The trade and popular press and industry observers all recognized C. Wonder for what it was: a cheapened, lower-quality version of the Tory Burch brand. The confidential information that Chris obtained from the company while serving as Co-Chairperson of its board and while making millions of dollars as a company consultant was invaluable to his efforts to launch his knockoff brand.

4. Chris tried to excuse his actions by invoking Section 3.10 of the company's operating agreement. But that provision does not give directors license to knock off the company's brand. To the contrary, it expressly states that the right to compete is qualified and limited by the directors' other contractual and legal obligations. Chris's contracts with the company — specifically the operating agreement itself and his consulting agreement — prohibit him from using the company's confidential information for his own purposes and provide that any ideas and developments relating to Chris's work with the company belong to the company. Chris violated all of these contractual obligations, as well as his fiduciary duties of loyalty and candor. As such, he can find no protection in Section 3.10 of the company's operating agreement.

5. In the months that followed the opening of the first C. Wonder store, the company sought to arrive at a consensual resolution of its dispute with Chris. During that same time, the company continued "Project Amethyst," an effort to find a new investor that would buy half of Chris's stake in the company at a price that he would accept. Five of the company's seven directors — Tory and her designee on the board, the two designees of the company's other major equity holder and an independent director jointly selected by all of the other directors (including Chris) — concluded in good faith

that Chris would have to enter into a settlement agreement that protected the company's brand and confidential information as a condition to approving the deal. Tory personally would have received a substantial personal benefit if Project Amethyst could have been completed. Nonetheless, acting in accordance with her fiduciary duties, Tory joined the majority of the other directors and insisted on a settlement with Chris because it was in the best interests of the company and its investors to do so.

6. The three bidders that preliminarily indicated that they might be willing to meet Chris's valuation demand took the same position. They concluded that it would make no sense to go forward with a transaction in which Chris would receive hundreds of millions of dollars that could be used to fund a business that was trading unfairly on the Tory Burch brand image. As a condition to investing, they required that Chris enter into a settlement agreement with the company. The bidders also took the position that, in any deal, the company's principal equity holders would have to agree to amendments to the company's operating agreement, amendments that would adversely affect their rights and that they had the unilateral right to reject.

7. The settlement effort failed, and with it, Project Amethyst. But contrary to the allegations of plaintiffs' complaint, the condition that Chris enter into a settlement agreement with the company as part of Project Amethyst was not motivated by personal jealousy or animus. Chris is free to compete fairly. What he is *not* free to do is compete unfairly. And he is not entitled to misappropriate information belonging to the company or trade on the company's brand for his personal gain.

8. Tory Burch LLC therefore brings these counterclaims against Chris and his companies seeking injunctive and other equitable relief to protect the interests of the company and its investors from Chris's breach of his contractual and fiduciary obligations, as well as his violation of the laws protecting the company from his and his companies' unfair competition.

PARTIES

9. Counterclaim plaintiff Tory Burch LLC is a Delaware limited liability company with its principal place of business in New York, New York.

10. Counterclaim defendant J. Christopher Burch is a citizen and resident of Miami, Florida.

11. Counterclaim defendant JCB Investments, LLC is a Delaware limited liability company with its principal place of business in New York, New York. It is controlled by Chris Burch.

12. Counterclaim defendant C. Wonder LLC is a Delaware limited liability company with its principal place of business in New York, New York. It is controlled by Chris Burch.

13. Counterclaim defendant River Light has represented that it is a Delaware limited liability company, although no record of its existence can be found with the Delaware Secretary of State. Its principal place of business is in New York, New York. It is controlled by Chris Burch.

FACTS

A. The Tory Burch brand

14. In the early part of the last decade, Tory Burch recognized that an opportunity existed for a new lifestyle brand. Working from her home, Tory set out to develop an accessible luxury collection across multiple product categories, ranging from women's ready-to-wear apparel, handbags, shoes and accessories to candles, umbrellas and beach towels.

15. Tory Burch was the visionary, key strategist and design director of the new brand's look and feel. In developing the brand, including the Tory Burch logo, package design, hang tag design and marketing materials, Tory worked with Sara Rotman at MODCo, a firm that works with companies to create, reposition and extend their brands. Chris was unhappy with Rotman and wanted to fire her.

16. As part of her vision for the business, and despite advice received from many others (including Chris), Tory decided to develop retail boutiques in which to merchandise and display her signature collections. The Tory Burch style is evident in the design and décor of her boutiques. Together with interior designer and architect Daniel Romualdez, Tory incorporated many of the styles and elements found in her home in the store. Romualdez and Tory wanted customers to feel like they were entering a room in Tory's own home instead of a retail store.

17. Tory's first store opened on Elizabeth Street in Manhattan in 2004. The store was an instant success. In 2005, Oprah Winfrey hailed Tory Burch as "the next big thing in fashion."

18. Tory Burch boutiques are instantly recognizable by their oversized orange lacquered doors. Inside, they feature bright colors, bold patterns, luxurious finishes such as lacquer and shagreen, acrylic fittings, brass or gold trim, Grecian key pattern trim, geometric print area rugs, velvet curtains, mirrored walls and store fixtures mixed with home furnishings such as couches, upholstered poufs and armoire-style and inset-wall displays. The Tory Burch boutique design was a major departure from the minimalist style then prevalent in fashion retail. Especially against this backdrop, Tory Burch boutiques were distinctive and immediately memorable.

19. The fashion media and industry participants all remarked on the unique and distinctive design and décor of Tory Burch boutiques:

(i) “Tory Burch boutiques are instantly recognizable by the signature Tory design elements of green carpeting, vast planes of mirrors, Lucite fixtures, white couches, brass chandeliers and orange lacquer front doors.” JetSetJunior, *Shopping At Tory Burch Is A “Beach”*, JETSETSOCIALITE (June 18, 2009).

(ii) “[I]t’s ... worth stopping by her boutique to admire the interior design, which is just as inspirational as the clothing. ... At the Tysons location, a set of orange lacquered double doors opens to reveal a magnetic mix of graphic patterns, reflective surfaces, mirrored walls and a bold palette of plum, brown, orange, green and gold. Sumptuous white sofas with plump ikat cushions create a cozy lounge area for shoppers (or their mates) to take a breather or try on shoes. In the dressing rooms, when

you pull back the heavily lined, purple-patterned curtain panels and spot more plum cushions sitting atop velvet x-benches, don't be surprised if you start coveting a similar luxe dressing space for your own home." Terri Sapienza, *Tory Burch's new store opens in Tyson's Galleria*, WASH. POST (Oct. 19, 2011).

(iii) "Her NoLiTa boutique has huge Mandarin-orange lacquer doors, high mirrors, olive-green carpeting and her gold, Double T signature medallion everywhere — on bags, shoes, walls, doors, garment hooks, belts, jewelry and, of course, on tunics, inspired by outfits her mother wore while vacationing in Morocco." Cintra Wilson, *Be Old Money or Just Look Like It*, N.Y. TIMES (June 12, 2008).

(iv) "Bright color continues to be an integral part of her aesthetic, from store interiors to the collections. ... 'I live in color. My apartment has color, and it just elevates your mood. I'm happy women love color as well.'" Joy Sewing, *Designer Tory Burch resonates with women*, MYSANANTONIO.COM (Nov. 10, 2011).

20. To complete the Tory Burch shopping experience, Tory chose distinctive packaging for use in her boutiques that featured graphic prints and patterns, bright colors and other indicia associated with her signature style. The package design included matte-laminated boxes fashioned to look like dresser drawers and matte-laminated shopping bags with navy blue ribbon handles. Each different size box and bag featured a different exterior pattern, with a contrasting, solid-colored interior.

21. The result of all this was that Tory and her team created a unique and distinctive brand image that identifies and distinguishes the business of Tory Burch LLC and its products and services and a company that has achieved extraordinary commercial success. Starting from scratch, the company has grown to the point that it has nearly 2,000 employees. Its products are sold in 85 company-owned stores and in over 1,000 department and specialty stores. The company has annual revenues approaching \$800 million.

22. The Tory Burch brand is a key driver of this success. The combination of the logo, store design, product selection and design, packaging, visual merchandising and public relations, among other things, all work together to differentiate the company's brand and make its products and services attractive to consumers. The company expended extensive time and resources to bring all of these elements together to make the brand the success that it has become.

23. Tory Burch and the company that she and her colleagues created have been recognized in the fashion industry. Tory won the Rising Star Award from Fashion Group International in the category of "Best New Retail Concept" in 2004. In 2007, the Tory Burch brand received an award for Accessory Brand Launch of the Year by the Accessories Council of Excellence in recognition of the success of the Reva ballerina flat (named for Tory Burch's mother) and Tory was awarded the Accessory Designer of the Year from the Council of Fashion Designers of America in 2008. Tory has joined the ranks of Forbes' 100 Most Powerful Women (in 2010), Crain's 25 People to Watch (in 2010) and Crain's Most Powerful Women in New York (in 2011).

24. Inspired by her mentors, and by her own experience as an entrepreneur and business owner, Tory launched the Tory Burch Foundation in 2009 to support the empowerment of women and families through education, mentoring and microfinance for women entrepreneurs in the United States. In recognition of her work with the Tory Burch Foundation, in 2012, Forbes named Tory one of the 5 Most Powerful Women Changing the World with Philanthropy.

B. Chris's initial role at the company

25. Tory was married to Chris Burch at the time that the company was founded. The couple invested \$2 million in the venture and raised additional seed capital from friends and family.

26. Chris and Tory were legally separated in 2005, and divorced in 2007. Chris maintained his stake in the company following the divorce, with a share equal to Tory's. He retained the title of Co-Chairperson of the board and remained as a director. Chris had unfettered access to highly sensitive company information, including cost and margin data, proprietary market surveys and strategic financial and marketing materials.

27. Chris made sourcing one of his areas of focus. He started his own sourcing services company called 9 Kings Shanghai Limited and other related companies (collectively, "9 Kings") and used his title and association with the company to attempt to develop a network of relationships with factories largely based in Asia.

28. Notwithstanding his efforts, Chris had meager success in sourcing Tory Burch products. Because the factories that Chris worked with were largely known

for producing low-quality goods that did not meet the company's quality standards, the company would not use them. Chris wasted the company's time, money and energy pursuing potential factories that almost never panned out. On one occasion in 2006, Chris presented the company with a copy of the Reva ballet slipper that Chris claimed could be purchased at an 85% discount from the wholesale price that the company was paying. Chris did not even realize that the copy was made of plastic, not leather. On another occasion, Chris presented the company with a copy of its signature gold hardware with the Tory Burch logo, hardware that appears on many of the company's products and is critical to the company's brand and brand image. The copy had been manufactured by a factory that produces door hinges and brass fixtures. Once again, the quality of the copy was totally inadequate. His proposed vendor was rejected — after much effort, time and expense on the company's part to try to make it work.

29. As an accommodation to Chris, the company used 9 Kings to manufacture store fixtures and fittings for its stores. The company had to work extensively with 9 Kings to assist it in producing fixtures and fittings that met the company's quality requirements. Through that long-standing relationship, Chris and 9 Kings became intimately familiar with the design elements and finishes that help define the Tory Burch brand and learned how to produce them.

C. The Management Services Agreement

30. In July 2008, Chris entered into a Management Services Agreement with the company through his company, River Light. Under that agreement, the company paid Chris \$1.5 million in 2008. The amount increased over the following

years; in 2011, he was paid \$3.6 million. The company also reimbursed Chris for his out-of-pocket expenses, including for his trips to Asia. Chris was also given a product allowance that was supposed to be used to promote the company's brand. In the year before the company imposed a \$75,000 cap, Chris gave away merchandise with a retail value of approximately \$500,000.

31. In exchange for those payments, Chris was supposed to consult with the company on "branding and marketing" and "sourcing and distribution" — neither of which he did successfully. The company never once imagined that he would take advantage of its trust by using its confidential information for his own gain.

32. Section 3(c)(i) of the Management Services Agreement contains a provision in which Chris acknowledged and agreed that all "Inventions" that he developed belong to the company. The definition of "Inventions" is extremely broad, and covers all "ideas, methods, inventions, discoveries, improvements, work products or developments" "made or conceived" by Chris, that "relate to" Chris's "work with" the company, "either while performing the Management Consultant's duties with the Company or on the Management Consultant's own time," "whether or not made or conceived prior to, on or after the date of" the agreement. Section 3(c)(ii) of the Management Services Agreement further provides that Chris "waives any and all currently existing and future monetary rights" in all Inventions.

33. In addition to the "Inventions" provision, Section 3(a) of the Management Services Agreement contains a broad confidentiality provision that requires Chris to maintain the confidentiality of all information that he learned in the course of his

engagement with the company and requires him to use that information solely for the benefit of the company.

34. Chris's lawyers offered these provisions to the company at the time the Management Services Agreement was being negotiated, and based them on the language of Tory Burch's employment agreement. These provisions limiting Chris's ability to compete with the company were entered into after the company's Amended and Restated Limited Liability Company Agreement was executed in September 2005. That agreement contains the identical language of Section 3.10 of the Second Amended and Restated Limited Liability Company Agreement (the "LLC Agreement") that Chris is relying upon to justify his misconduct. Section 3.10, as originally drafted, as in force at the time the Management Services Agreement was executed, and as in force today, states that Chris's right to compete is not absolute; each iteration of Section 3.10 starts with the proviso "except as is otherwise required by applicable contract or Law." The Management Services Agreement is just such an "applicable contract."

D. Chris's activities under the Management Services Agreement

35. Both before and after he entered into the Management Services Agreement, Chris urged the company to move down-market and sell lower-priced items at lower price points that would appeal to the mass market. Chris also urged that the company start a second, lower-priced line under another name. His idea was that others would knock off the company's brand and its products and that the company should adopt a strategy of knocking itself off. Both ideas were rejected at the time out of concern that if the company sold lower-priced, lower-quality items, either under the Tory

Burch brand name or under a brand affiliated with Tory Burch, it would dilute the valuable Tory Burch brand.

36. In April 2009, Chris was provided with a confidential report analyzing the company's business strategy, customer base and performance. Chris used the occasion to again push his idea that the company should offer items at lower price points and become more of a mass-market brand than an accessibly priced luxury brand. Chris advocated his idea in an April 7, 2009 e-mail to the four most-senior executives at the company. Chris also pushed these ideas with the company's board at practically every board meeting. The board, like the company's management, rejected Chris's ideas because of the potential harm to the company's brand from attempting to go mass-market.

37. Acting under the Management Services Agreement, Chris ostensibly continued his efforts to locate manufacturing sources for the company, focusing in particular on China, efforts which rarely ever panned out. Between July 2008 and March 2012, when the Management Services Agreement was terminated, Chris took numerous trips to China. He claimed that he visited over 100 factories during the course of those trips. His affiliation with Tory Burch LLC and the Tory Burch brand gave him access to those factories.

38. Purporting to act on behalf of and in the interests of the company under the Management Services Agreement, Chris asked for and was given access to the company's most confidential and competitively sensitive information, often on a daily basis. Chris misrepresented to the company that this information would be used to assist

him in fulfilling his role as a consultant to the company, including identifying manufacturers for the company's most successful products on a more cost-effective basis.

Among the information he sought and obtained was the following:

- (i) the company's top-selling items by size, quantity and price;
- (ii) the company's top-selling shoes overall and in specific subcategories, with the company's wholesale cost;
- (iii) the company's annual top sellers in the ready-to-wear apparel category;
- (iv) the company's top-selling handbags and small leather goods with detailed information on the company's wholesale cost;
- (v) detailed cost information on a number of the company's top-selling jewelry and accessory items;
- (vi) the wholesale cost for one of the company's totes, a top-selling product;
- (vii) the factories that the company was using to manufacture its goods in China with phone numbers; and
- (viii) a detailed breakdown of the cost to construct the company's Valley Fair Store, including general contractor, fixture contractor, lighting and back-of-house equipment costs.

E. The development of the C. Wonder brand

39. Unbeknownst to the company, during the time that Chris was being paid under the Management Services Agreement and claiming to act on behalf of the

company, Chris was actually using the information he received from the company and ideas he was proposing to the company to advance his personal interests. The vehicle for his personal enrichment was originally called Wild Thing, later renamed C. Wonder. In order to advance his efforts, Chris had available to him the \$40 million payment he received in connection with Isla Coral's 2009 purchase of preferred units in the company.

40. A pitch book to potential investors that Chris shared with the company in May 2009 indicated that his new brand would have 50% of its product assortment devoted to home goods, including washers and dryers, motor scooters, refrigerators and other unusual items. The pitch book did not depict any shoes or leather goods, let alone the store design. The only footwear items depicted were \$13 flip flops. The only handbag depicted was a \$19 tote bag. As presented to the company, C. Wonder would sell items that Chris found at the Canton fair.

41. The few women's apparel items included in the investor pitch book were nondescript articles that did not remotely resemble the signature style that consumers associate with the Tory Burch brand:

APPAREL



J CREW WOMEN'S CASHMERE
CARDIGAN \$158
WT PRICE \$79
FOB \$15



J CREW PLUSH FLEECE ZIP HOODIE \$89
WT PRICE \$39
FOB \$8



RALPH LAUREN RUFFLE FRONT
SHIRT \$125
WT PRICE \$49
FOB \$7



COTTON STRETCH LEGGINGS \$35
WT PRICE \$15
FOB \$3

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42. Based on this and similarly misleading representations, the company had no idea whatsoever that Chris was in the process of developing for himself the lower-priced, lower-quality, mass-market version of the Tory Burch brand that he had unsuccessfully presented as a business plan to the company in his capacity as a management consultant.

43. Unaware of his true intentions, the company supported Chris's effort to develop his new brand. For example, it facilitated his hiring of Amy Shecter, a consultant who had been involved in the management of Tory Burch retail stores — and who, in that capacity, was also privy to confidential company information.

44. Thereafter, in May 2011, a director of the company, John Hamlin, visited Chris's offices at Chris's invitation to see his companies, Poppin and C. Wonder. Hamlin spent most of the meeting with the team that was working on the development of Poppin, an office products company with an emphasis on modern design and a low price.

45. At the end of the meeting, Chris brought up C. Wonder. Chris represented to Hamlin that C. Wonder would sell home goods and showed him some sample dishware and decorative accents. Chris showed Hamlin a storyboard format of the store floor plan, emphasizing a monogramming station where plates, mugs, jewelry boxes and other houseware items could be personalized. Chris also showed photographs of products, ranging from bicycles to pet items. Chris did not show Hamlin the key elements of the C. Wonder store design that are in dispute. He also did not show any of the apparel items, footwear, jewelry or accessories that are in dispute.

46. Hamlin left the meeting with no idea that Chris was planning to misappropriate the Tory Burch brand identity or include knockoffs of the company's best-selling signature items in his product assortment. Hamlin believed Chris that the emphasis of the store would be on home goods, not apparel.

47. In this same time frame, Chris remarked to the company's Vice President for Production, Jim Metcalfe, that they should start a company that "knocks

off” Tory Burch and that they “could make a lot of money” doing so. Metcalfe took the comment as a joke.

48. Chris again misled the company as to his true intentions and plans when he met with Tory in Southampton, New York in August 2011. At that meeting, Chris showed Tory images of home goods that he said he was planning to sell at his C. Wonder store, which was slated to open in just a matter of weeks. Tory objected to a few of the homeware items that Chris showed her because they evoked the Tory Burch brand. Chris assured Tory that he would remove the items. Chris did not show Tory any C. Wonder apparel, footwear, jewelry or accessory items. And he did not reveal that he was poised to execute the business strategy that he had repeatedly urged the company to adopt: reposition the Tory Burch brand to attract the mass market by selling Tory Burch knockoffs in a Tory Burch knockoff store.

F. C. Wonder launches and Chris’s wholesale breach of his contractual and fiduciary obligations is finally revealed

49. C. Wonder had a soft opening of its first store on October 19, 2011. In the following months, Chris opened additional C. Wonder stores in malls located in Westchester, New York (just across the way from the Tory Burch store) and Paramus, New Jersey. All of the stores employed substantially the same décor and carried the same product lines. Chris said his plan was to open between 20 and 50 stores around the world in 2012, and to open a total of 300 C. Wonder stores in six years.

50. It was immediately apparent from the first C. Wonder store and the two others that opened in rapid succession that in the two-plus years leading up to the

store opening, the joke that Chris had made to Jim Metcalfe earlier that year turned out to be anything but: Chris had launched a knockoff of the Tory Burch brand. And to help develop that brand, Chris had hired Sara Rotman at MODCo — the branding consultant who had worked with the company on developing the Tory Burch brand — even though Chris had wanted to fire her when she was doing that work for the company.

51. The erroneous impression that C. Wonder is affiliated with Tory Burch starts before customers even enter the store. The green oversized lacquered double doors that shoppers view from the street closely resemble Tory Burch’s orange lacquered double doors — doors that Chris himself has described as “a hallmark of the Tory Burch experience.”

Tory Burch



Tory Burch



C. Wonder



52. Inside the front door, the C. Wonder store features residential-style rooms that include lacquered display tables with nesting stools centered on geometric

print rugs, gold trim, vitrine and armoire-style displays, colors and other signature features of the Tory Burch boutique interior ...

Tory Burch



C. Wonder



... lacquered and brass furniture ...

Tory Burch



C. Wonder



... pintucked upholstered poufs with pleated skirt and contrast trim ...

Tory Burch



C. Wonder



... Grecian key pattern trim awning ...

Tory Burch



C. Wonder



... and velvet curtains.

Tory Burch



C. Wonder



53. To add to the impression that C. Wonder was associated with Tory Burch, Chris dressed mannequins on the floor and in his window displays in clothing and colors that copied the Tory Burch brand's signature style and colors.

54. In addition to borrowing key elements of Tory Burch's distinctive store décor, Chris stocked his C. Wonder stores with signature products that closely resemble Tory Burch's best-selling products, displayed in a manner that accentuated their similarity to Tory Burch's iconic collection, down to the gold logo buttons:

Tory Burch



C. Wonder



55. The product selection in the stores reflected the misuse by Chris of the confidential information that he had obtained about the company's top-selling items. Since the company does not place product in its stores based on sales volume or margin, information about relative sales volume and margins for Tory Burch products would only be knowable to an insider. And Chris did not just select a few popular items and copy them; he did so on a large scale. The overall effect of the C. Wonder product line, which emphasized gold hardware, was to create the impression that C. Wonder was selling lower-quality, lower-priced Tory Burch goods.

Tory Burch



C. Wonder



Tory Burch



C. Wonder



56. The similarities did not end at the entrance, room décor, floor and product merchandising and emphasis on gold hardware. Chris had also co-opted the design of Tory Burch's boxes, shopping bags and gift packaging, using the same style of matte-laminated boxes fashioned to look like dresser drawers and matte-laminated shopping bags with navy blue ribbon handles, bearing a colorful graphic print:

Tory Burch



C. Wonder



57. C. Wonder sales associates promoted the (non-existent) affiliation between the C. Wonder and Tory Burch brands by making false and misleading statements. On October 20, 2011, a C. Wonder sales associate explained that the C. Wonder brand is a “sisterhood store” of Tory Burch. On October 22, 2011, another C. Wonder sales associate stated that C. Wonder was a brand by the “Head Designer of Tory Burch” and that “although it is a different brand, it is within the same company.” Yet another sales associate said that C. Wonder was “a new brand by the CEO of Tory Burch.”

58. When they were not making outright false statements, C. Wonder employees underscored the similarity between the C. Wonder and Tory Burch brands, stating that the C. Wonder collection was “similar to Tory Burch designs,” that “the designers were indeed different but ... it’s the same concept as Tory,” and that C. Wonder is “a similar brand (lots of bright colors) but a lower price point.”

59. So that the association was not lost on the public, Chris embarked upon a public relations campaign to promote C. Wonder stores by publicizing that the founder of C. Wonder was a co-founder of the company and the former husband of Tory Burch. As recently as June 27, 2012, Chris appeared on the *CBS This Morning* news program to claim that C. Wonder was not a copycat brand. The host, Gayle King, told Chris: “When I first looked at your line, I did think it was Tory’s brand.” In the course of claiming that the C. Wonder and Tory Burch brands are distinct, Chris admitted, “I think that the aesthetic is the same.” Chris then tried to explain away his comment: “We do have the same kind of aesthetic from the brightness of the store, but, you know, we’re very different.”

60. The result was a C. Wonder brand that uses a wide range of features — oversized lacquered front doors, store décor, color combinations, patterns, furniture, fixtures, finishes, product assortment and merchandising, emphasis on gold hardware, logo and packaging — that work together with public relations and erroneous statements from C. Wonder employees to create the impression that C. Wonder was a lower-priced, lower-quality version of Tory Burch, sponsored by or affiliated with the company. C. Wonder was able to achieve this only because of Chris’s access to information he learned as a director and consultant to the company. The halo effect that Chris sought to create for C. Wonder has diluted and tarnished the Tory Burch brand and will continue to do so.

G. Consumers, the media, bloggers and industry observers immediately connected the C. Wonder and Tory Burch businesses

61. Immediately after the first C. Wonder store opened and in the days and weeks that followed, the striking similarities between the C. Wonder and Tory Burch brand identities caused actual confusion in the marketplace. For example:

(i) One blogger wrote: "... [A]ll of the Tory Burch stores are amazing and the C. Wonder flagship store does not disappoint."

c.wonder&nyc, CIARA BIRD (Oct. 29, 2011).

(ii) One customer posted a question on the Tory Burch Facebook page asking when a C. Wonder store would open in Washington, D.C.

(iii) Tory received a text message from a friend: "Love ur new store on spring st....just saw it en route to lunch. XX."

(iv) A blogger wrote: "C.Wonder is a tier two concept brand opened by Tory Burch's ex husband, Chris Burch. (I do believe Tory is also a co-owner)." Sunny Shum, *Lately: New York*, PARTLYSUNNY (Nov. 27, 2011).

(v) A C. Wonder customer was overheard stating that "[t]his is the new Tory Burch store."

(vi) A Tory Burch employee wrote: "We receive a lot of calls asking about our association with C Wonder and whilst we clearly communicate it is a completely separate company and brand, the inquiries

continue, the less we are able to keep up with, and the more confused the perception becomes.”

(vii) A Tory Burch employee received a call from a woman who asked about employment opportunities at C. Wonder. The Tory Burch employee informed the woman that Tory Burch was not affiliated with C. Wonder, and the woman seemed very surprised.

62. The common and recurring theme in the media coverage of C.

Wonder was that there was a striking similarity between the C. Wonder and Tory Burch brands:

(i) “The [C. Wonder] stores bear a striking resemblance to Tory’s, as does the merchandise, but at a much lower cost. Even the logos look alike.” Harry Smith, *Rock Center*, NBC (Oct. 18, 2012).

(ii) “Although there is no lawsuit (not that we know of), many have pointed out the similarities between Tory Burch, the label, and that of the designer’s ex husband Chris’s new brand, C-Wonder. To many observers, Tory Burch and C-Wonder echo the same spirit and vibe in terms of merchandise, packaging, store concept and overall brand image. In a review of the C-Wonder store in SoHo directly across from Tory Burch, *The New York Times* wrote, ‘it’s unclear whether this is an amicable homage or a hostile takeover.’” Blue Carreon, *Here’s How You Can Protect Your Brand From Copycats*, FORBES (Apr. 24, 2012).

(iii) “The shop ... has similar imposing doors to Ms. Burch’s first Nolita boutique but in green instead of orange as well as a similar aesthetic when it comes to product.” Marshall Heyman, *C. Wonder’s Rollout in Soho*, WALL ST. J. (Oct. 20, 2011).

(iv) “The inspiration for Chris Burch’s C. Wonder could have been a page torn out of ex-wife Tory’s sketchpad.” *Wonder Lust: A preppy one-stop-shop from Tory Burch’s ex*, PUREWOW (Oct. 28, 2011).

(v) “It looks a lot like his ex-wife Tory Burch’s boutiques.” *Haute fashion + beauty news roundup*, WHAT’S HAUTE (Oct. 2011).

(vi) “Burch’s brightly colored store, similar to his ex Tory Burch’s line, offers ‘value luxury.’” *‘Wonder’ girl*, N.Y. POST (Oct. 22, 2011).

(vii) “With its lime lacquered front doors and its colorful merchandise, at first we thought we were in Oompa Loompa Land. But then its striking resemblance to all things Tory Burch jumped out at us as we watched the ads on the taxi TV network and on the sides of buses all over town.” *Fame Game Update*, FAME GAME NEWSLETTER (Oct. 26, 2011).

63. Blogger commentary included:

(i) “C. Wonder is the new shop by Tory Burch’s x husband, Chris Burch. Let me say it’s got Tory Burch written all over it. I don’t know if he did this out of spite or it was something they created together

when they were together (he cofounded Tory Burch when he was with her).” Kate Collins, *Store Visit: C. Wonder*, KATE COLLINS INTERIORS (Oct. 26, 2011).

(ii) “If you have been to Tory Burch it’s possible you have already seen all the C Wonder has to offer.” Jade Hall, *C Wonder*, JADED & TRADED (Nov. 4, 2011).

(iii) “It all looked a bit fishy from the beginning The bold patterns had Hollywood Regency leanings, the bright colors were all Palm Beach prep. Hollywood Regency? Bold patterns? Palm Beach? Prep? Tory Burch, in a nutshell. Only it wasn’t a Tory Burch ad (so much could have been gleaned from the prices-\$38 for a bangle? Psh).” Emily Goulet, *Watch Your Back, Tory Burch: Your ex-husband is stealing your look*, THE PHILLY POST BLOG (Nov. 4, 2011).

(iv) “It was only a matter of time before someone found a way to replicate the magical preppy brand that Tory Burch created. We just didn’t expect it would be her ex, Chris Burch. And at such a reasonable price point Decked out with chevron rugs, pin tucked sofas, and Chippendale chairs that have become synonymous with Tory Burch’s style, her ex has executed the Upper East side aesthetic in a whole new way.” Eileen Conlan, *First Photos! Tory Burch’s Ex Opens A Rival Clothing Store*, SHEFINDS (Oct. 17, 2011).

(v) “Much of the basic concept design is obviously inspired by the principal behind the Tory Burch brand, which is a modern twist to prep. In place of the Tory Burch cross logo there are lots of C’s branded on a variety of products ranging from housewares, home decor, personal electronics, apparel, shoes, jewelry and accessories. Even the shopping bags have a Tory feel.” Lila Delilah, *C. Wonder Amazes*, MADISON AVENUE SPY (Oct. 18, 2011).

(vi) “Finally checking out c wonder. Chris Burch didn’t stray far from the Tory burch store design. Identical.” MsSmilo, TWITTER (Nov. 18, 2011).

64. Industry veterans and business partners also recognized that Chris had copied the Tory Burch brand identity and urged the company to take steps to protect its brand:

(i) The owner of a specialty store that sells Tory Burch items spoke with a Tory Burch employee about his visit to the C. Wonder store. He “expressed that the store felt like a Tory Burch store, but with product for less money with a different logo.” He “felt it was a very creative atmosphere, but the store was similar in color, and the design reflected the Tory Burch aesthetic.” According to the Tory Burch employee, the specialty store owner stated that “[h]e understood the difference but was concerned that customers may not.”

(ii) Mario Grauso, the president of Vera Wang, e-mailed the following to Tory: “I had an opportunity to spend 30 minutes in the C Wonder store on Spring and Cosby in NYC this past weekend. I went through the entire store and all the product. I was shocked by the similarity that the product and the overall presentation had to TORY. Having worked on the launch of your brand with you, I was shocked that Chris used the exact same road map to develop his own. Tory you need to stop him before he damages your brand.”

H. C. Wonder’s continuing unfair competition

65. Immediately after the first C. Wonder store opened and in the weeks and months thereafter, the company repeatedly expressed its concerns that Chris was engaging in unfair competition and had misappropriated the company’s trade secrets. In her capacity as CEO and as urged by many concerned shareholders, Tory complained to Chris on multiple occasions that he had knocked off and diluted the company’s brand, all for his own personal benefit. Tory also complained that Chris had misused the company’s confidential information and trade secrets for his own benefit.

66. Chris’s initial response was to claim that he had done nothing wrong. In November 2011, however, Chris admitted to Tory that, in retrospect, if he had to do it again he would have done it differently. Chris repeated his admission of wrongdoing on several additional occasions.

67. On December 7, 2011, Chris's counsel made a presentation to the company's board defending Chris's actions and claiming that the company's trade dress and product designs were not unique and distinctive.

68. The board was appalled. Chris and his lawyers had missed the point. The fact that other retailers used isolated design features that have some similarities to the Tory Burch brand identity does not change the fact that the Tory Burch brand identity as a whole is unique and distinctive. By trading on the Tory Burch brand identity with a knockoff brand selling lower-quality products at lower prices, Chris was interfering with the company's ability to control its brand identity and harming the value of the Tory Burch brand. And he was doing so, not as a stranger, but as a fiduciary and insider who had been given some of the most competitively sensitive information that the company possessed.

69. After it became clear that Chris could no longer be trusted with the company's confidential information, the board voted unanimously, with Chris *in absentia* due to his obvious conflict of interest, to restrict Chris's access to confidential information concerning the company to only information routinely provided to board members. The board also voted unanimously, with Chris *in absentia*, to prohibit Chris from communicating with any employees of the company other than Tory and the company's President, CFO and Chief Legal Officer. The board did this to ensure that Chris did not obtain additional confidential information that he could use to compete unfairly with the company and to protect the company's relationships with its employees.

70. Notwithstanding Chris's original protestations that his conduct was blameless, on March 26, 2012, after months of discussions, Chris's lawyer informed the company that Chris was going to make some changes to the store design, color palette and hardware. In that same letter, Chris's lawyer informed the company that Chris was withdrawing from settlement discussions, stating that C. Wonder "does not intend to engage in further discussions or formal agreement" on the subject. To the extent that promised changes have been made, they have not solved the basic problem — *i.e.*, that C. Wonder was launched as and remains a knockoff version of the Tory Burch brand created by Chris with the company's confidential information and in violation of his fiduciary duties and contractual obligations.

CAUSES OF ACTION
Count I — Breach of Fiduciary Duty
(Against J. Christopher Burch)

71. Counterclaim plaintiff Tory Burch LLC repeats and realleges each of the allegations in the preceding paragraphs as if they were fully restated herein.

72. Section 3.10 of the LLC Agreement permits directors of the company to enter into competing businesses. That same section provides, however, that the right to compete is not absolute; the entire section is qualified by the proviso: "Except as may be prohibited by applicable contract or Law."

73. Section 3.4(c) of the LLC Agreement contains one such limitation. It provides that directors of the company must discharge their duties: "(i) in good faith, (ii) in a manner that does not (w) constitute gross negligence or fraud, (x) involve unlawful acts or omissions that the Director knew at the time that they occurred were

clearly unlawful, (y) involve willful misconduct (meaning such acts or omissions that the Director knew at the time they occurred were clearly in conflict with the interests of the Company and the terms of this Agreement), or (z) result in any improper personal benefit to the Director (which shall not include any benefit derived from any activity or investment permitted under Section 3.10 or that is otherwise authorized under this Agreement).”

74. Section 11.24 of the LLC Agreement contains additional limitations on a member’s right to compete. It requires all members of the company to use their “good faith, best efforts to safeguard the secrecy and confidentiality of any confidential information regarding the Company.”

75. This contractual limitation is consistent with, and in addition to, the fiduciary duty of loyalty that all directors owe to safeguard the confidentiality of information that they learn in their capacities as directors and to use that information for the benefit of the company and not for their personal gain.

76. The Management Services Agreement also restricts Chris Burch’s right to use the company’s confidential information to compete against the company and exploit Inventions belonging to the company for his own personal gain.

77. As hereinabove alleged, counterclaim defendant Chris Burch violated his fiduciary duty of loyalty to the company by using confidential information belonging to the company and engaging in unfair competition with the company for his personal benefit. His actions were undertaken in bad faith and involve willful misconduct, and were against the best interests of the company.

78. Counterclaim defendant Chris Burch also violated his fiduciary duty of candor to the company by falsely representing to the company that he was developing a retail brand that would sell nondescript clothing and an eclectic assortment of unusual products, including surfboards, refrigerators, coffee makers, scooters and vacuum cleaners, and by failing to disclose to the company that his C. Wonder brand in fact was going to be a mass-market version of the Tory Burch brand selling knockoff Tory Burch products in a knockoff Tory Burch store.

79. The actions of counterclaim defendant Chris Burch have caused the company irreparable harm.

80. By virtue of the foregoing, the company is entitled to injunctive relief to restrain Chris Burch from engaging in unfair competition with the company and from selling any products that he chose or developed on the basis of confidential information belonging to the company. The company is also entitled to equitable relief requiring Chris Burch to disgorge any and all revenues that he or any of his companies generated as a result of his misconduct, including without limitation all revenues generated from the sales of products that were selected to be sold or from any services rendered in any C. Wonder store on the basis of confidential information misappropriated by Chris Burch from the company.

**Count II — Breach of Contract
(Against J. Christopher Burch,
River Light Venture Partners LLC
and JCB Investments, LLC)**

81. Counterclaim plaintiff Tory Burch LLC repeats and realleges each of the allegations in the preceding paragraphs as if they were fully restated herein.

82. In July 2008, the company entered into a Management Services Agreement with River Light, a company wholly owned and controlled by Chris Burch, pursuant to which he provided management consulting services to the company.

83. Section 3(c)(i) of the Management Services Agreement provides that all “Inventions” made or conceived by River Light belong to the company. The definition of “Inventions” in the Management Services Agreement is extremely broad:

The Management Consultant acknowledges and agrees that all ideas, methods, inventions, discoveries, improvements, work products or developments (“Inventions”), whether patentable or unpatentable, that relate to the Management Consultant’s work with the Company, made or conceived by the Management Consultant, solely or jointly with others, either while performing the Management Consultant’s duties with the Company or on the Management Consultant’s own time, and whether or not made or conceived prior to, on or after the date of this Agreement, shall belong exclusively to the Company (or its designee), whether or not patent or trademark applications are filed thereon.

84. Section 3(c)(ii) of the Management Services Agreement also provides that River Light “hereby waives any and all currently existing and future monetary rights in and to the Inventions and all patents that may issue thereon, including, without limitation, any rights that would otherwise accrue to [River Light’s] benefit by virtue of [River Light] being a service provider to the Company.”

85. Section 3(a) of the Management Services Agreement contains a broad confidentiality provision in which River Light agreed that it would not “directly or indirectly, use, make available, sell, disclose or otherwise communicate to any person, other than in the course of the River Light’s assigned duties and for the benefit of the Company, either during the period of [River Light’s] service or at any time thereafter, any business and technical information or trade secrets, nonpublic, proprietary or confidential information, knowledge or data of the Company, any of its subsidiaries, affiliated companies or businesses, which shall have been learned or created by the Management Consultant.”

86. Section 5 of the Management Services Agreement contains an express acknowledgement by River Light “that the Company’s remedies at law for a breach or threatened breach of any of the provisions of Section 3 or Section 4 hereof would be inadequate and, in recognition of this fact, [River Light] agrees that, in the event of such a breach or threatened breach, in addition to any remedies at law, the Company, without posting any bond, shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy which may then be available.”

87. Section 11.24 of the LLC Agreement also contains limitations on a member’s right to compete, requiring all members of the company to use their “good faith, best efforts to safeguard the secrecy and confidentiality of any confidential information regarding the Company.”

88. Prior to and during the term of the Management Services Agreement, and in connection with his work for the company, Chris Burch developed the idea that the company should turn Tory Burch into a second-tier brand selling lower-priced, lower-quality Tory Burch products in order to appeal to the mass market. He also developed the idea that the company should knock itself off and sell lower-priced, lower-quality products incorporating the Tory Burch look under another brand name in order to appeal to the mass market. C. Wonder is Chris Burch's execution of those ideas.

89. The C. Wonder brand, stores and products constitute Inventions within the meaning of the Management Services Agreement: they are "ideas" and "developments" that "relate to" River Light's "work with the Company" in providing "corporate strategy, branding and marketing." They also constitute "work product" that "relates to" River Light's and Chris Burch's "work with the Company" in consulting on "branding and marketing."

90. Prior to and during the term of the Management Services Agreement, Chris Burch and River Light asked for and obtained confidential information concerning the company's most successful products ostensibly in order to assist them in providing strategic advice to the company and identifying manufacturers that could produce products for the company at lower prices. The idea to develop, and the execution of the development of, a value-oriented brand selling lower-priced, lower-quality Tory Burch products in a knockoff Tory Burch store in order to appeal to the mass market also is based on Chris Burch's and River Light's knowledge of the company, its products and services, and its customers.

91. Chris Burch and River Light misappropriated the Inventions that they developed and the confidential information that was provided to them under the Management Services Agreement and used the Inventions and confidential information to create C. Wonder and develop products for sale in the C. Wonder stores.

92. The actions of Chris Burch and River Light have violated the express terms of the Management Services Agreement and caused the company irreparable harm.

93. The actions of Chris Burch and JCB Investments, LLC have violated the express terms of the LLC Agreement and caused the company irreparable harm.

94. By virtue of the foregoing, the company is entitled to: (a) a declaration that Chris Burch and River Light have violated the Management Services Agreement; (b) a declaration that Chris Burch and JCB Investments, LLC have violated the LLC Agreement; (c) injunctive relief requiring Chris Burch and River Light to stop using the company's Inventions and confidential information in violation of the Management Services Agreement; (d) injunctive relief requiring Chris Burch and JCB Investments, LLC to stop using the company's confidential information in violation of the LLC Agreement; and (e) equitable relief requiring Chris Burch, River Light and JCB Investments, LLC to disgorge any and all revenues that they or any company associated with them generated from the company's Inventions or confidential information, including without limitation all revenues generated from the sales of products that were selected to be sold or any services rendered in any C. Wonder store on the basis of

confidential information or that use or incorporate any Invention belonging to the company.

**Count III — Equitable Relief
(Against All Counterclaim Defendants)**

95. Counterclaim plaintiff Tory Burch LLC repeats and realleges each of the allegations in the preceding paragraphs as if they were fully restated herein.

96. The C. Wonder brand is an Invention and is based on Inventions that belong to the company pursuant to the terms of the Management Services Agreement.

97. The C. Wonder brand is based on confidential business information that was learned and created by Chris Burch and River Light in the course of their duties under the Management Services Agreement.

98. Products sold in the C. Wonder stores were developed and selected on the basis and with the use of Inventions developed by Chris Burch and River Light, as well as confidential information obtained by Chris Burch and River Light from the company pursuant to the Management Services Agreement.

99. Counterclaim defendant C. Wonder LLC has used Inventions and confidential information belonging to the company without any legal right to do so.

100. Counterclaim defendants JCB Investments, LLC, Chris Burch and River Light have acted in concert with counterclaim defendant C. Wonder LLC to violate the company's rights.

101. By virtue of the foregoing, counterclaim plaintiff Tory Burch LLC is entitled to injunctive relief requiring the counterclaim defendants to stop using the

company's Inventions and confidential information in violation of the Management Services Agreement. Counterclaim plaintiff is also entitled to equitable relief requiring the counterclaim defendants to disgorge any and all revenues that they generated as a result of their misconduct.

**Count IV — Unfair Competition
(Common Law)
(Against All Counterclaim Defendants)**

102. Counterclaim plaintiff Tory Burch LLC repeats and realleges each of the allegations in the preceding paragraphs as if they were fully restated herein.

103. Counterclaim defendant Chris Burch misappropriated Tory Burch LLC's confidential information and used it for his and C. Wonder's gain when he created the retail concept that became C. Wonder.

104. Counterclaim defendant Chris Burch concealed from Tory Burch LLC his true intention to create a lower-priced, lower-quality version of Tory Burch LLC's business and brand image, an image that is distinctive and non-functional. Instead, he told the company that he planned to develop a retail concept called Wild Thing, later renamed C. Wonder, that would sell home goods, electronics and nondescript items of apparel that bore no resemblance to the signature products of Tory Burch. He did not disclose that he was planning to misappropriate key elements of the Tory Burch brand identity to create a strong association between his new brand and Tory Burch in the minds of the public.

105. Counterclaim defendants Chris Burch and C. Wonder LLC have used, and unless enjoined will continue to use, words, names, symbols, devices and

combinations of the foregoing that are likely to cause confusion or misunderstanding and to deceive consumers and the public as to the affiliation, connection or association between C. Wonder and Tory Burch LLC, or between their respective products and services.

106. Counterclaim defendants Chris Burch and C. Wonder LLC have made, and unless enjoined will continue to make, false or misleading descriptions of fact and false or misleading representations concerning the affiliation, connection and association of C. Wonder on the one hand and Tory Burch LLC on the other.

107. The company has an expectancy that customers seeking Tory Burch retail services and goods will patronize the company's Tory Burch stores and purchase Tory Burch branded products from Tory Burch. Further, the company has the right to decide whether or not to introduce a brand extension. Through the improper competitive conduct alleged above, counterclaim defendants Chris Burch and C. Wonder LLC have interfered with the company's reasonable expectancy of controlling the Tory Burch brand image and have wrongfully diverted the company's sales and shoppers to C. Wonder.

108. By their wrongful conduct, counterclaim defendants Chris Burch and C. Wonder LLC have willfully and intentionally deceived and misled the public about the lack of connection between the C. Wonder and Tory Burch brands in an attempt to attract Tory Burch customers and trade on the company's goodwill.

109. Counterclaim defendants Chris Burch and C. Wonder LLC have unfairly competed with Tory Burch LLC under the common law of Delaware, New York and other states, and thereby harmed the goodwill and reputation of the company and

interfered with the company's ability to reach its full earnings potential by creating, using and promoting a brand and identity that is similar to the Tory Burch brand and identity. Customers are likely to purchase C. Wonder products and services under the mistaken impression that C. Wonder is affiliated with Tory Burch LLC.

110. The wrongful and unfair activities of counterclaim defendants Chris Burch and C. Wonder LLC, unless enjoined by this Court, will continue to mislead and confuse the members of the trade and public, dilute and tarnish the Tory Burch brand, cause injury to the goodwill and business reputation of Tory Burch LLC and prevent Tory Burch LLC from entering into valid business relationships, for which Tory Burch LLC has no adequate remedy at law.

111. Counterclaim defendants JCB Investments, LLC and River Light have acted in concert with counterclaim defendants Chris Burch and C. Wonder LLC to violate the company's rights.

112. By virtue of the foregoing, the company is entitled to injunctive relief restraining counterclaim defendants from engaging in unfair competition with the company. Counterclaim plaintiff is also entitled to equitable relief requiring the counterclaim defendants to disgorge any and all revenues that they generated as a result of their misconduct.

Count V — Misappropriation of Trade Secrets
(6 Del. C. §§ 2001–2009)
(Against All Counterclaim Defendants)

113. Counterclaim plaintiff Tory Burch LLC repeats and realleges each of the allegations in the preceding paragraphs as if they were fully restated herein.

114. Counterclaim plaintiff Tory Burch LLC is the owner of certain trade secrets, including highly confidential data compilations, business methods, techniques and processes that derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use.

115. Counterclaim plaintiff Tory Burch LLC makes reasonable efforts to maintain the secrecy of its proprietary information.

116. Counterclaim defendant Chris Burch sought and obtained access to Tory Burch LLC's trade secrets as a director and fiduciary of the company and therefore was subject to duties of loyalty and confidentiality to Tory Burch LLC that prohibited his disclosure or use of its trade secrets.

117. Counterclaim defendants Chris Burch and River Light sought and obtained access to Tory Burch LLC's trade secrets pursuant to the Management Services Agreement and the LLC Agreement, both of which contain express confidentiality provisions prohibiting Chris Burch and River Light from disclosing Tory Burch LLC's trade secrets.

118. Counterclaim defendants knew or had reason to know that Chris Burch and River Light used improper means to acquire Tory Burch LLC's trade secrets and/or acquired the trade secrets under circumstances requiring them to maintain the secrecy thereof.

119. Counterclaim defendants misappropriated Tory Burch LLC's trade secrets by disclosing them to each other and third parties and by using them for

counterclaim defendants' own benefit and to the detriment of Tory Burch LLC, all without authorization from Tory Burch LLC. As a result, counterclaim defendants have been unjustly enriched at the expense of Tory Burch LLC and caused actual loss to Tory Burch LLC.

120. By their actions, as alleged above, counterclaim defendants Chris Burch and C. Wonder LLC have willfully and maliciously misappropriated the company's trade secrets in bad faith. Counterclaim defendants have thereby violated 6 *Del. C.* §§ 2001–2009.

121. Therefore, pursuant to 6 *Del. C.* § 2002, counterclaim plaintiff Tory Burch LLC is entitled to injunctive relief to prevent counterclaim defendants' further use or disclosure of the company's trade secrets and to eliminate the commercial advantage that was derived from the misappropriation. Counterclaim plaintiff is also entitled to equitable relief requiring the counterclaim defendants to disgorge any and all revenues generated as a result of their misappropriation.

Count VI — Deceptive Trade Practices
(6 *Del. C.* § 2532)
(Against All Counterclaim Defendants)

122. Counterclaim plaintiff Tory Burch LLC repeats and realleges each of the allegations in the preceding paragraphs as if they were fully restated herein.

123. Counterclaim defendants Chris Burch and C. Wonder LLC have passed off C. Wonder as a brand affiliated or associated with Tory Burch LLC.

124. Counterclaim defendants Chris Burch and C. Wonder LLC have caused likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of C. Wonder goods or services by Tory Burch LLC.

125. Counterclaim defendants Chris Burch and C. Wonder LLC have caused likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by Tory Burch LLC.

126. Counterclaim defendants Chris Burch and C. Wonder LLC have represented that the C. Wonder goods and services have sponsorship, approval and characteristics that they do not have.

127. Counterclaim defendants Chris Burch and C. Wonder LLC have represented that they have sponsorship, approval, status, affiliation and connection with the company that they do not have.

128. By their actions, as alleged above, counterclaim defendants have engaged in a pattern of conduct that has created a likelihood of confusion or misunderstanding in the marketplace as to a relationship between C. Wonder and the Tory Burch brand.

129. By their actions, as alleged above, counterclaim defendants Chris Burch and C. Wonder LLC have willfully engaged in deceptive trade practices in violation of 6 *Del. C.* § 2532(a).

130. The pattern of deceptive conduct by counterclaim defendants Chris Burch and C. Wonder LLC, unless enjoined by this Court, will continue to cause a likelihood of confusion or misunderstanding, deceive members of the public and injure

the reputation and goodwill of Tory Burch LLC for which Tory Burch LLC has no adequate remedy at law.

131. Counterclaim defendants JCB Investments, LLC and River Light have acted in concert with counterclaim defendants Chris Burch and C. Wonder LLC to violate the company's rights.

132. Therefore, pursuant to 6 *Del. C.* § 2533(a), counterclaim plaintiff Tory Burch LLC is entitled to an injunction against counterclaim defendants' deceptive trade practices.

133. As a result of the willful deceptive trade practices alleged above, counterclaim plaintiff Tory Burch LLC also is entitled to recover its attorneys' fees under 6 *Del. C.* § 2533(b).

PRAYER FOR RELIEF

WHEREFORE, counterclaim plaintiff Tory Burch LLC respectfully demands judgment as follows:

- a. Declaring that Chris Burch and River Light have violated the Management Services Agreement;
- b. Declaring that Chris Burch and JCB Investments, LLC have violated the LLC Agreement;
- c. Enjoining counterclaim defendants, and any of their respective employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns and entities owned or controlled by them, and all those in active concert

or participation with them, and each of them who receives notice directly or otherwise of such injunction, from:

(i) using or disclosing the company's Inventions and confidential information in violation of the Management Services Agreement and the LLC Agreement;

(ii) passing off C. Wonder goods or services as those of Tory Burch LLC;

(iii) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of the C. Wonder goods or services;

(iv) representing that C. Wonder's goods and services have sponsorship, approval and characteristics they do not have, or representing that C. Wonder or Chris Burch have sponsorship, approval, status, affiliation or connection that they do not have;

(v) engaging in any other activity that similarly creates a likelihood of confusion or of misunderstanding; or

(vi) instructing, assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (v) above.

d. Directing such other action as the Court may deem appropriate to prevent the trade and public from deriving the erroneous impression that any goods or services offered, advertised or promoted by or on behalf of Chris Burch or C. Wonder are

authorized by Tory Burch LLC or related in any way to the Tory Burch business or its goods and services;

e. Directing that Chris Burch and C. Wonder will file with the Court and serve upon Tory Burch LLC's counsel within thirty (30) days after entry of judgment a report in writing under oath setting forth in detail the manner and form in which Chris Burch and C. Wonder have complied with the above;

f. Declaring that all Inventions developed by Chris Burch and River Light under the Management Services Agreement belong to the company;

g. Requiring counterclaim defendants to disgorge to Tory Burch LLC all revenues realized by virtue of: (i) the breach by Chris Burch and River Light of the Management Services Agreement; (ii) the breach by Chris Burch and JCB Investments, LLC of the LLC Agreement; and (iii) all of the counterclaim defendants' unfair competition with Tory Burch LLC;

h. Requiring counterclaim defendants to disgorge to Tory Burch LLC all revenues realized by counterclaim defendants' misappropriation of Tory Burch LLC's trade secrets;

i. Awarding to Tory Burch LLC interest, including pre-judgment interest, on the foregoing sums;

j. Awarding to Tory Burch LLC its costs in this civil action, including reasonable attorneys' fees and expenses; and

k. Awarding Tory Burch LLC such other relief as the Court may deem just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL
LLP

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November 5, 2012

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*Attorneys for Defendant-Counterclaim
Plaintiff Tory Burch LLC*



VERIFICATION

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

ROBERT ISEN, being duly sworn, deposes and says as follows:

In my capacity as Chief Legal Officer and President of Corporate Development of Tory Burch LLC, the counterclaim plaintiff in this action, I declare that I have read the counterclaims set forth in the foregoing Counterclaims of Tory Burch LLC and that the matters set forth therein are true and correct to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to read "Robert Isen", is written over a horizontal line.

Robert Isen

SWORN TO AND SUBSCRIBED before me
this 5th day of November, 2012.

A handwritten signature in black ink, appearing to read "Elyse H Mitchnick", is written over a horizontal line.

Notary Public

ELYSE H MITCHNICK
Notary Public, State of New York
No. 01MI6230444
Qualified in New York County
Commission Expires Nov. 1, 2014



CERTIFICATE OF SERVICE

The undersigned certifies that on November 5, 2012, she caused the foregoing COUNTERCLAIMS OF TORY BURCH LLC to be served by LexisNexis File & Serve upon the following counsel:

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