

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CIV - LENARD

/TORRES

08-80164

CHANEL, INC.,
a New York corporation

Plaintiff,

v.

DAN SORO d/b/a ITALIAN ICE,
and DOES 1-10,

Defendants.

COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF

RECEIVED
U.S. DIST. CT.
SOUTHERN DISTRICT OF FLORIDA - FT. L.

2008 FEB -6 PM 12:02

Plaintiff, CHANEL, INC., a New York corporation (“Chanel”) hereby sues Defendants, DAN SORO d/b/a ITALIAN ICE (“Soro”) and DOES 1-10 (collectively, “Defendants”), and alleges as follows:

JURISDICTION AND VENUE

1. This is an action seeking to enforce 15 U.S.C. §§ 1114, 1116, 1121 and 1125(a). Furthermore, this is an action where diversity of citizenship exists and the amount in dispute exceeds \$75,000.00. Accordingly, this Court has jurisdiction under 28 U.S.C. §§ 1331, 1332, and 1338. Venue is proper in this Court pursuant 28 U.S.C. § 1391 since the Defendants’ principal place of business is within this Judicial District and Defendants conduct substantial business activities within this Judicial District. Furthermore, venue is appropriate since a substantial portion of the acts giving rise to this case occurred within this Judicial District.

THE PARTIES

2. Chanel is a corporation duly organized under the laws of the State of New York with its principal place of business in the United States located at Nine West 57th Street, New York, New York 10019. Chanel is, in part, engaged in the business of manufacturing and

distributing throughout the world, including within this Judicial District, costume jewelry, including earrings, necklaces, and rings under the federally registered trademarks CHANEL and CC MONOGRAM (collectively the “Chanel Marks”).

3. Soro is an individual, who upon information and belief, conducts business within this Judicial District at 10564 Arcole Court, Wellington, Florida 33467. Soro uses the name “Italian Ice” as an alias to operate his business.

4. Upon information and belief, Soro is directly and personally engaging in the sale of counterfeit and infringing goods within this Judicial District as alleged herein.

5. Does 1-5 are, upon information and belief, individuals who reside and/or conduct business within this Judicial District. Upon information and belief, Does 1-5 are directly and personally contributing, inducing and engaging in the sale of counterfeit goods as alleged herein as partners or suppliers to the named Defendant. Plaintiff is presently unaware of the identities of Does 1-5. Plaintiff will amend this Complaint upon discovery of the identities of such fictitious defendants.

6. Does 6-10 are business entities which, upon information and belief, reside and/or conduct business within this Judicial District. Upon further information and belief, Does 6-10 are directly engaging in the sale of counterfeit goods as alleged herein as partners or suppliers to the named Defendant. Plaintiff is presently unaware of the identities of Does 6-10. Plaintiff will amend this Complaint upon discovery of the identities of such fictitious defendants.

COMMON FACTUAL ALLEGATIONS

7. Chanel is the owner of the following United States Federal Trademark Registration:

Mark	Reg. No.	Reg. Date
CHANEL	0,612,169	September 13, 1955
CHANEL	0,902,190	November 10, 1970
CC MONOGRAM	1,501,898	August 30, 1988

which are registered in International Classes 14 and 28, and is used in connection with the manufacture and distribution of, among other things, costume jewelry, including earrings, necklaces, and rings.

8. The Chanel Marks have been used in interstate commerce to identify and distinguish its high quality costume jewelry, including earrings, necklaces, and rings and other goods for an extended period of time.

9. The Chanel Marks have never been assigned or licensed to any of the Defendants in this matter.

10. The Chanel Marks are a symbol of Chanel's quality, reputation, and goodwill and have never been abandoned.

11. Further, Chanel has expended substantial time, money, and other resources developing, advertising, and otherwise promoting the Chanel Marks in commerce. The Chanel Marks qualify as famous marks as that term is used in 15 U.S.C. § 1125(c)(1).

12. Chanel has extensively used, advertised, and promoted the Chanel Marks in the United States in association with the sale of costume jewelry, including earrings, necklaces, and rings and other goods, and has carefully monitored and policed the use of the Chanel Marks by third parties.

13. As a result of the Chanel's efforts and the inherent distinctiveness of the Chanel Marks, members of the consuming public readily identify merchandise bearing the Chanel Marks as being high quality merchandise sponsored and approved by Chanel.

14. Accordingly, the Chanel Marks have achieved secondary meaning as an identifier of high quality costume jewelry items, including earrings, necklaces, and rings and other goods.

15. Upon information and belief, at all times relevant hereto, the Defendants in this action had full knowledge of Chanel's ownership of the Chanel Marks, including its exclusive right to use and license the Chanel Marks and the goodwill associated therewith.

16. Chanel has discovered the Defendants are promoting, and otherwise advertising, distributing, selling, and/or offering for sale counterfeit costume jewelry items, including at least earrings, necklaces, and rings, bearing trademarks which are exact copies of the Chanel Marks (the "Counterfeit Goods"). Specifically, upon information and belief, the Defendants are using the Chanel Marks in the same stylized fashion for different quality costume jewelry goods.

17. Upon information and belief, the Defendants' Counterfeit Goods are of a quality substantially different from Chanel's genuine goods. Despite the nature of their Counterfeit Goods and the knowledge that they are without authority to do so, the Defendants, upon information and belief, are actively manufacturing or importing, promoting and otherwise advertising, distributing, selling and offering for sale substantial quantities of their Counterfeit Goods with the knowledge that such goods will be mistaken for the genuine high quality goods offered for sale by Chanel. The net effect of the Defendants' actions will be the confusion of consumers who will believe the Defendants' Counterfeit Goods are genuine goods originating from and approved by Chanel.

18. Upon information and belief, the Defendants import and/or manufacture their Counterfeit Goods and advertise their goods for sale to the consuming public. In so advertising these goods, the Defendants use the Chanel Marks. Indeed, the Defendants herein, upon information and belief, misappropriated Chanel's advertising ideas and entire style of doing business with regard to the advertisement and sale of Chanel's genuine costume jewelry items. Upon information and belief, the misappropriation of Chanel's advertising ideas in the form of the Chanel Marks and associated trade dress occurred, in part, in the course of Defendants' advertising activities and was the proximate cause of damage to Chanel.

19. Upon information and belief, the Defendants are conducting their counterfeiting activities at least within this Judicial District and elsewhere throughout the United States. As a result, the Defendants are defrauding Chanel and the consuming public for the Defendants' own benefit. Defendants' infringement and disparagement of Chanel's trademark rights do not simply amount to the wrong description of their goods or the failure of the goods to conform to the advertised quality or performance.

20. The Defendants' use of the Chanel Marks, including the manufacture or importation, promotion and advertising, distribution, sale, and offering for sale of their Counterfeit Goods, is without Chanel's consent or authorization.

21. Further, the Defendants may be, upon information and belief, engaging in the above-described illegal counterfeiting activities knowingly and intentionally or with reckless disregard for or willful blindness to Chanel's rights for the purpose of trading on the goodwill and reputation of Chanel. If the Defendants' counterfeiting activities are not preliminarily and permanently enjoined by this Court, Chanel and the consuming public will continue to be damaged.

22. The Defendants' above identified infringing activities are likely to cause confusion, deception, and mistake in the minds of consumers, the public, and the trade. Moreover, the Defendants' wrongful conduct is likely to create a false impression and deceive customers, the public, and the trade into believing there is a connection or association between Chanel's genuine goods and the Defendants' Counterfeit Goods.

23. Chanel has no adequate remedy at law.

24. Chanel is suffering irreparable injury and has suffered substantial damages as a result of the Defendants' counterfeiting and infringing activities.

25. The injuries and damages sustained by Chanel have been directly and proximately caused by the Defendants' wrongful importation or manufacture, advertisement, promotion, and sale of their Counterfeit Goods.

26. Chanel has retained the undersigned counsel to represent it in this matter and is obligated to pay said counsel a reasonable fee for such representation.

**COUNT I
TRADEMARK COUNTERFEITING AND INFRINGEMENT**

27. Chanel hereby readopts and realleges the allegations set forth in Paragraphs 1 through 26 above.

28. This is an action for trademark counterfeiting and infringement against the Defendants based on the Defendants' promotion, advertisement, distribution, sale and/or offering for sale of the Counterfeit Goods bearing the Chanel Marks.

29. Specifically, the Defendants, upon information and belief, are promoting and otherwise advertising, selling, offering for sale, and distributing at least counterfeit costume jewelry, including earrings, necklaces, and rings, bearing the Chanel Marks. The Defendants are continuously infringing and inducing others to infringe the Chanel Marks by using the mark to

advertise, promote, and sell at least counterfeit costume jewelry, including earrings, necklaces, and rings.

30. Defendants' counterfeiting activities are likely to cause and actually are causing confusion, mistake, and deception among members of the trade and the general consuming public as to the origin and quality of Defendants' Counterfeit Goods bearing the Chanel Marks.

31. Defendants' unlawful actions have caused and are continuing to cause unquantifiable damages to Chanel.

32. Defendants' above-described illegal actions constitute counterfeiting and infringement of the Chanel Marks in violation of Chanel's rights under § 32 of the Lanham Act, 15 U.S.C. § 1114.

33. Chanel has suffered and will continue to suffer irreparable injury due to the above described activities of the Defendants if the Defendants are not preliminarily and permanently enjoined.

**COUNT II
FALSE DESIGNATION OF ORIGIN
PURSUANT TO § 43(a) OF THE LANHAM ACT**

34. Chanel hereby readopts and realleges the allegations set forth in Paragraphs 1 through 26 above.

35. Defendants' Counterfeit Goods bearing the Chanel Marks have been widely advertised and distributed throughout the United States.

36. Defendants' Counterfeit Goods bearing the Chanel Marks are virtually identical in appearance to Chanel's genuine goods; however, the Counterfeit Goods are substantially different in quality. Accordingly, the Defendants' activities are likely to cause confusion in the trade and among the general public as to the origin or sponsorship of the Counterfeit Goods.

37. Defendants, upon information and belief, have used in connection with their sale of Counterfeit Goods, false designations of origins and false descriptions and representations, including words or other symbols and a trade dress which tend to falsely describe or represent such goods. Further Defendants have caused their goods to enter into commerce with such false designations of origin and such false descriptions and representations, all to the detriment of the Chanel.

38. Specifically, the Defendants, upon information and belief, authorized an infringing use of the Chanel Marks and a substantially similar trade dress in the Defendants' advertisement and promotion of their counterfeit and infringing costume jewelry, including earrings, necklaces, and rings and other goods. The Defendants, upon information and belief, have misrepresented to members of the consuming public that the Counterfeit Goods being advertised and sold by them are genuine, non-infringing goods.

39. The Defendants' above-described actions are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

40. Chanel has sustained injury and damage caused by the Defendants' conduct, and absent an entry of an injunction by this Court, Chanel will continue to suffer irreparable injury to its goodwill and business reputation as well as monetary damages.

PRAYER FOR RELIEF

41. WHEREFORE, Chanel's demand judgment jointly and severally against the Defendants as follows:

a. The Court enter a preliminary and permanent injunction enjoining the Defendants, their agents, representatives, servants, employees, and all those acting in concert or participation therewith, from manufacturing or causing to be manufactured, importing,

advertising or promoting, distributing, selling or offering to sell their Counterfeit Goods; from infringing, counterfeiting, or diluting the Chanel Marks; from using the Chanel Marks, or any mark or trade dress similar thereto, in connection with the sale of any unauthorized goods; from using any logo, trade name or trademark or trade dress which may be calculated to falsely advertise the services or products of the Defendants as being sponsored by, authorized by, endorsed by, or in any way associated with Chanel; from falsely representing themselves as being connected with Chanel, through sponsorship or association, or engaging in any act which is likely to falsely cause members of the trade and/or of the purchasing public to believe any goods or services of the Defendants, or in any way endorsed by, approved by, and/or associated with Chanel; from using any reproduction, counterfeit, copy, or colorable imitation of the Chanel Marks in connection with the publicity, promotion, sale, or advertising of any goods sold by the Defendants, including, without limitation, costume jewelry, including earrings, necklaces, and rings, and other goods; from affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation, including words or other symbols tending to falsely describe or represent Defendants' goods as being those of Chanel, or in any way endorsed by Chanel, and from offering such goods in commerce; and from otherwise unfairly competing with Chanel.

b. The Defendants be required to account to and pay Chanel for all profits and damages resulting from Defendants' trademark infringing and counterfeiting activities and that the award to Chanel be trebled, as provided for under 15 U.S.C. §1117, or, at Chanel's election with respect to Count I, that Chanel be awarded statutory damages from each Defendants in the amount of one million (\$1,000,000.00) dollars per each counterfeit Chanel Mark used and product sold, as provided by 15 U.S.C. §1117(c)(2) of the Lanham Act.

- c. Chanel be awarded punitive damages.
- d. Chanel be awarded pre-judgment interest on its respective judgment.
- e. Chanel be awarded their costs and reasonable attorneys' fees and investigators' fees associated with bringing this action.
- f. Chanel be awarded such other and further relief as the Court may deem just and proper.

DATED this 5th day of February, 2008.

Respectfully submitted,

STEPHEN M. GAFFIGAN, P.A.
312 S.E. 17th Street, Second Floor
Ft. Lauderdale, Florida 33316
Telephone: (954) 767-4819
Facsimile: (954) 767-4821

Counsel for Chanel, Inc.

By: Stephen M. Gaffigan
Stephen M. Gaffigan
Fla. Bar No. 025844
Stephen@smgpa.net

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS
 Chanel, Inc., a New York corporation

(b) County of Residence of First Listed Plaintiff
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Stephen M. Gaffigan, P.A.
 312 SE 17 Street, Second Floor
 Ft. Lauderdale, Florida 33316 (954) 767-4819

DEFENDANTS
 Dan Saro d/b/a Italian Ice, et al.

County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

08-80164

CIV-LENARD
TORRES

FILED BY
 2008 FEB - 6
 CLERK OF DISTRICT COURT
 S.D. OF FLA.

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl: Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Re-filed- (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):

a) Re-filed Case YES NO

b) Related Cases YES NO

JUDGE: _____ DOCKET NUMBER: _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

Trademark infringement pursuant to 15 USC 1114

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD: Stephen M. Gaffigan DATE: 2/6/08

FOR OFFICE USE ONLY
 AMOUNT: 350.00 RECEIPT # _____ IFP: 342218