

ORIGINAL

CIVIL COVER SHEET

JS 44 (Rev. 12/07) (and rev 1-16-08)

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 PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

LUXE INTERNATIONAL INC., a Delaware corporation; LUSSORI, INC., a Delaware corporation; and VIALUXE INC., a Delaware corp.

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

LATHAM & WATKINS LLP
140 Scott Drive
Menlo Park, CA 94025
(650) 328-4600

DEFENDANTS

JOHN MADSEN, an individual, and DOES 1 THROUGH 10

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

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

Attorneys (If Known)

C08 02241 BZ

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)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| 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 |

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	<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	<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"/> 870 Patent <input checked="" type="checkbox"/> 880 Trademark
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS <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	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"/> 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
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	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

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened
- Transferred from ☐ 5 another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1114, 1125

Brief description of cause:

Trademark Infringement, False Advertising

VII. 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

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND

☒ SAN JOSE

DATE

4/30/08

SIGNATURE OF ATTORNEY OF RECORD

Robert B. Clegg

ORIGINAL
FILED

08 APR 30 PM 2: 01

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA S.J.

COPY

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LUXE INTERNATIONAL INC., LUSSORI, INC.
and VIALUXE INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

C08 02241 BZ

LUXE INTERNATIONAL INC., a Delaware
corporation; LUSSORI, INC., a Delaware
corporation; and VIALUXE INC., a Delaware
corporation,

Plaintiffs,

v.

JOHN MADSEN, an individual, and Does 1
through 10,

Defendants.

CASE NO.

COMPLAINT FOR PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF AND
DAMAGES FOR:

- 1) BREACH OF CONTRACT;
- 2) TRADEMARK INFRINGEMENT;
- 3) FALSE ADVERTISING; AND
- 4) UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

1 Plaintiffs Luxe International Inc. ("Luxe"), Lussori, Inc. ("Lussori"), and Vialuxe Inc.
 2 ("Vialuxe," together with Luxe and Lussori, "Plaintiffs"), for their Complaint against defendants
 3 John Madsen ("Madsen") and Does 1 through 10 (collectively, "Defendants"), hereby allege as
 4 follows:

5 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

6 1. This action is within the jurisdiction of this Court by virtue of the Lanham Act,
 7 15 U.S.C. § 1121(a), and 28 U.S.C. §§ 1331 (federal question jurisdiction) and § 1338 (original
 8 jurisdiction over patent, copyright, and trademark cases, as well as unfair competition claims
 9 joined to those claims). The Court has supplemental jurisdiction over Plaintiffs' state law claims
 10 pursuant to 28 U.S.C. § 1367(a).

11 2. Venue in this Court is proper under 28 U.S.C. § 1391(b), given that a substantial
 12 part of the events giving rise to this action occurred in this district. Moreover, Madsen entered
 13 into a written contract in which he agreed to submit to the jurisdiction and venue of this Court.

14 3. Pursuant to Local Rule 3-2, this action may be assigned to the San Jose division
 15 because the events alleged herein took place in Santa Clara County, or may be assigned district-
 16 wide because the Complaint involves intellectual property.

17 **PARTIES**

18 4. Plaintiff Luxe International Inc. is a Delaware corporation, and has its principal
 19 place of business in Sunnyvale, California. Luxe was formerly known as Lussori, Inc.

20 5. Plaintiff Lussori, Inc. is a Delaware corporation, and has its principal place of
 21 business in Sunnyvale, California. Lussori is a wholly owned subsidiary of Luxe and was
 22 formed after Luxe changed its name from Lussori, Inc. to Luxe International, Inc.

23 6. Plaintiff Vialuxe Inc. is a Delaware corporation, and has its principal place of
 24 business in Sunnyvale, California. Vialuxe is a wholly owned subsidiary of Luxe.

25 7. On information and belief, Madsen is a California resident, and maintains a
 26 consulting and design business called SOI Creative in Redwood City, California. Madsen is a
 27 former employee of Luxe.

28 8. Plaintiffs are ignorant of the true names of defendants Does 1 through 10,

1 inclusive, and therefore sue those defendants by such fictitious names. Plaintiffs are informed
 2 and believe, and on that basis allege, that defendants Does 1 through 10, inclusive, are
 3 responsible for the acts complained of herein. When the true names of such fictitious defendants
 4 are ascertained, Plaintiffs will seek leave of this Court to amend this Complaint to name those
 5 individuals or entities.

6 9. Plaintiffs are informed and believe, and on that basis allege, that each of the
 7 defendants, including the Doe defendants, was the agent and employee of the remaining
 8 defendants and, at all times mentioned, acted within the course and scope of such agency and
 9 employment.

10 **GENERAL ALLEGATIONS**

11 10. Luxe is a luxury goods company that operates subsidiaries that market and sell
 12 luxury goods in retail locations and on the internet. Lussori and Vialuxe are two such
 13 subsidiaries.

14 11. Lussori is a specialty retailer of luxury goods, including timepieces, jewelry, pens
 15 leather goods and other accessories. It maintains a physical store location in downtown Carmel,
 16 California, and operates a retail website at <lussori.com>.

17 12. Vialuxe is an online retailer of timepieces and jewelry, and operates a website at
 18 <vialuxe.com>.

19 13. Lussori is the owner of a federal trademark registration for LUSSORI (No.
 20 3,160,858, issued on October 17, 2006) for "retail and online internet retail store services
 21 specializing in fine jewelry, precious and semi-precious stones, and watches, goods made from
 22 leather, pens, fine goods and accessories." Lussori also owns a federal trademark application for
 23 LUSSORI (Serial No. 78/652855, filed on June 17, 2005) for "jewelry, rings, earrings, cuff links,
 24 bracelets, pendants, brooches, chains, necklaces, tie pins, pins for use as jewelry."

25 14. Vialuxe is the owner of federal trademark applications for VIALUXE (Serial Nos.
 26 77/348113, filed on December 10, 2007, and 77/353894, filed on December 17, 2007) for
 27 jewelry, retail, mail order and online retails services for jewelry and watches, and websites for
 28 jewelry.

1 15. Lussori is the owner of copyrighted materials located at the Lussori website at
2 <lussori.com>, which contains copyrighted site source code, photographs of products, product
3 descriptions, and other specific design elements.

4 16. Vialuxe is the owner of copyrighted materials located at the Vialuxe website at
5 <vialuxe.com>, which contains copyrighted site source code, photographs of products, product
6 descriptions, and other specific design elements.

7 17. Luxe (then known as Lussori, Inc.) hired Madsen on or about January 10, 2005 to
8 be the company's Director of Technology. One of Madsen's main responsibilities in that
9 position was to oversee and participate in the design and operation of the <lussori.com> website
10 and associated content management system, including the creation of the overall website design,
11 the website source code, the content publishing system, the customer relations and sales force
12 management system, and the customer records database.

13 18. On November 16, 2006, Madsen entered into an Employee Confidentiality and
14 Inventions Assignment Agreement (the "ECIA Agreement") with Luxe (then known as Lussori,
15 Inc.). A copy of the ECIA Agreement is attached to this Complaint as Exhibit A and is
16 incorporated herein by reference.

17 19. The ECIA Agreement provides that:

18 a. Madsen will not reproduce, use and/or disclose Luxe's Confidential
19 Information (as that term is defined in the ECIA Agreement), including but not limited to Luxe's
20 designs, technology, inventions, processes, and source code, during or after his employment,
21 except with the express authorization of Luxe (Sections 1.1-1.2);

22 b. Upon termination of his employment, Madsen will cease to use and will
23 return all copies and derivatives of Luxe's Confidential Information (see Section 1.2);

24 c. Upon termination of his employment, Madsen will return all property of
25 the company to Luxe, including notes, memoranda, reports, drawings, blueprints, manuals,
26 materials, data, and other papers and records related to Luxe's Confidential Information and
27 Inventions (as that term is defined in the ECIA Agreement) (see Section 2);

28 d. Madsen assigned to Luxe all right, title and interest in and to all Inventions

1 that related to his employment or which were invented during the period of his employment
2 (Sections 3.1-3.2); and

3 e. Madsen acknowledged that all records related to the Inventions were the
4 sole property of Luxe (Section 3.3).

5 20. During the course of his employment by Luxe, Madsen participated on a team of
6 employees which designed the <lussori.com> website. As part of that team, Madsen had access
7 to Luxe's Confidential Information, including designs, copyrighted materials, source code and
8 customer information.

9 21. On or about April 20, 2007, Madsen terminated his employment with Luxe. On
10 information and belief, Madsen soon thereafter formed his own web design consulting company
11 called SOI Creative.

12 22. On information and belief, one of Madsen's clients was Swiss Watch Gallery, a
13 competitor of Plaintiffs, which operates a website at <swisswatchgallery.com> and sells watches
14 and jewelry. Swiss Watch Gallery hired Madsen to redesign its website.

15 23. Madsen's redesign of Swiss Watch Gallery's website incorporated numerous
16 elements of Luxe's Confidential Information. Madsen created the Swiss Watch Gallery website
17 to look extremely similar to Lussori's currently website, including using the same general design
18 and workflows, the same font, formatting, and headings, and a similar tagline. Madsen also used
19 Luxe's and Lussori's copyrighted materials, including photographs and product descriptions, on
20 the Swiss Watch Gallery site. On information and belief, Madsen also used the Lussori website
21 content management system and source code to design the Swiss Watch Gallery.

22 24. Upon completion of his work for Swiss Watch Gallery, on or about April 13,
23 2008, Madsen sent an email solicitation to several employees of Lussori (and, on information
24 and belief, to numerous third parties) regarding his new company. A copy of that email
25 solicitation is attached to this Complaint as Exhibit B. The solicitation is entitled "From the
26 Designers of Lussori & Vialuxe" and the text includes a section called "Our Recent Experience"
27 which includes references to Lussori, using Lussori's logo, and to Vialuxe, using Vialuxe's logo.
28 Madsen, however, did not work on the Vialuxe website, which was completed after his departure

1 from Luxe.

2 25. On information and belief, Madsen is making similar claims and use of Lussori's
3 and Vialuxe's logos on other marketing materials for his company.

4 26. On information and belief, Madsen is offering similar website design services,
5 which incorporate Plaintiffs' Confidential Information and Inventions, to other potential
6 customers in the industry.

7 27. Plaintiffs sent a cease-and-desist letter to Madsen on April 16, 2008 demanding
8 that he cease from any further use or disclosure of Plaintiffs' Confidential Information. To date,
9 Madsen has not responded to that letter or stopped his unlawful activities as set forth above.

10 **FIRST CAUSE OF ACTION**

11 **(Breach of Contract)**

12 28. Plaintiffs reallege and incorporate by reference paragraphs 1 through 27.

13 29. On or about November 16, 2006, Luxe and Madsen entered into a valid contract
14 in the form of the ECIA Agreement. The consideration for Madsen's agreement was valid and
15 appropriate, and included a payment of \$500.00, which was paid on or about November 30,
16 2006.

17 30. Luxe performed or substantially performed all of its obligations under the ECIA
18 Agreement.

19 31. Madsen breached the ECIA Agreement by using and disclosing Luxe's
20 Confidential Information and Inventions, and failing to return all property of Luxe as required by
21 that agreement.

22 32. As a direct and proximate result of Madsen's breaches of the ECIA Agreement,
23 Plaintiffs have suffered foreseeable damages in an amount to be determined at trial, but in excess
24 of the jurisdictional minimum.

25 33. The full extent of Plaintiffs' injuries caused by Madsen's breaches of the ECIA
26 Agreement are not readily ascertainable, and, without injunctive relief, Plaintiffs have no means
27 by which to control Madsen's misuse of the Confidential Information and Inventions. In
28 addition, Madsen agreed in the ECIA Agreement that Luxe was entitled to injunctive relief

1 should Madsen breach that agreement (see Section 6). Accordingly, Plaintiffs are entitled to a
2 preliminary and permanent injunction against Defendants.

3 **SECOND CAUSE OF ACTION**

4 **(Trademark Infringement of LUSSORI® under 15 U.S.C. § 1114)**

5 34. Plaintiffs reallege and incorporate by reference paragraphs 1 through 33.

6 35. Madsen is using the federally registered LUSSORI® trademark in connection with
7 the advertisement and sale of his design and consulting services without the authorization,
8 license or permission of Lussori. Madsen's use in interstate commerce of the LUSSORI®
9 trademark in connection with his services is likely to cause confusion, mistake or deception as to
10 the source, origin or approval of Madsen's services, in violation of Section 32(a) of the Lanham
11 Act, 15 U.S.C. § 1114.

12 36. Madsen's activities are intended to, and are likely to, lead the public to conclude,
13 incorrectly, that his services are affiliated with, sponsored by or approved by Lussori, to the
14 damage of Lussori and the public. Madsen's conduct constitutes willful and deliberate
15 infringement of Lussori's trademark.

16 37. Lussori is entitled to recover Defendants' profits and a reasonable royalty together
17 with its damages, which may be trebled, as well as its costs pursuant to Section 35(a) of the
18 Lanham Act, 15 U.S.C. § 1117(a).

19 38. Defendants' activities have caused and will cause irreparable harm to Lussori for
20 which Lussori has no adequate remedy at law, in that (i) Lussori's trademark is a unique and
21 valuable property right which has no readily determinable market value; (ii) Defendants'
22 infringement constitutes an interference with Lussori's goodwill and customer relationships and
23 will substantially harm Lussori's reputation as a source of high quality goods as well as dilute the
24 substantial value of Lussori's trademarks; and (iii) Defendants' wrongful conduct, and the
25 damages resulting to Lussori, are continuing. Accordingly, Lussori is entitled to preliminary and
26 permanent injunctive relief pursuant to 15 U.S.C. § 1116(a).

27 39. Defendants' unlawful and willful conduct renders this case an exceptional case,
28 further entitling Lussori to recover its attorneys' fees pursuant to 15 U.S.C. § 1117.

THIRD CAUSE OF ACTION

(False Designation of Origin and Unfair Competition under 15 U.S.C. § 1125(a))

40. Lussori realleges and incorporates by reference paragraphs 1 through 39.

41. Madsen is using Lussori's and Vialuxe's trademarks in connection with the advertisement and sale of his design and consulting services without the authorization, license or permission of Lussori or Vialuxe. Madsen's use in interstate commerce of Lussori's and Vialuxe's trademarks in connection with his services is likely to cause confusion, mistake or deception as to the source, origin or approval of Madsen's services, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

42. Madsen's activities are intended to, and are likely to, lead the public to conclude, incorrectly, that his services are affiliated with, sponsored by or approved by Lussori or Vialuxe, to the damage of Lussori, Vialuxe and the public. Madsen's conduct constitutes willful and deliberate infringement of Lussori's and Vialuxe's trademarks.

43. Lussori and Vialuxe are entitled to recover Defendants' profits and a reasonable royalty together with its damages, which may be trebled, as well as its costs pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

44. Defendants' activities have caused and will cause irreparable harm to Lussori and Vialuxe for which they have no adequate remedy at law. Accordingly, Lussori and Vialuxe are entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116(a).

45. Defendants' unlawful and willful conduct renders this case an exceptional case, further entitling Lussori and Vialuxe to recover attorneys' fees pursuant to 15 U.S.C. § 1117.

FOURTH CAUSE OF ACTION

(False Advertising under 15 U.S.C. § 1125(a))

46. Plaintiffs reallege and incorporate by reference paragraphs 1 through 45.

47. In his advertising and promotional materials for his design consulting business, Madsen falsely claims that he is the "Designer of Lussori and Vialuxe," and further misrepresents that he was the sole designer of the Lussori and Vialuxe websites. These representations are false or misleading in violation of Section 43(a) of the Lanham Act, 15

1 U.S.C. § 1125(a).

2 48. Lussori and Vialuxe are entitled to recover Defendants' profits and a reasonable
3 royalty together with its damages, which may be trebled, as well as its costs pursuant to Section
4 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

5 49. Defendants' activities have caused and will cause irreparable harm to Lussori and
6 Vialuxe for which they have no adequate remedy at law. Accordingly, Lussori and Vialuxe are
7 entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116(a).

8 50. Defendants' unlawful and willful conduct renders this case an exceptional case,
9 further entitling Lussori and Vialuxe to recover attorneys' fees pursuant to 15 U.S.C. § 1117.

10 **FIFTH CAUSE OF ACTION**

11 **(False Advertising under Cal. Bus. & Prof. Code § 17500)**

12 51. Plaintiffs reallege and incorporate by reference paragraphs 1 through 50.

13 52. In his advertising and promotional materials for his design consulting business,
14 Madsen falsely claims that he is the "Designer of Lussori and Vialuxe," and further
15 misrepresents that he was the sole designer of the Lussori and Vialuxe websites. These
16 representations are false or misleading in violation of California Business and Professions Code
17 § 17500.

18 53. The full extent of the injuries caused by Defendants' false and misleading
19 advertising statements are not readily ascertainable. In addition, Madsen agreed in the ECIA
20 Agreement that Plaintiffs were entitled to injunctive relief should Madsen breach that agreement
21 (see Section 6). Accordingly, Plaintiffs are entitled to a preliminary and permanent injunction
22 against Defendants.

23 **SIXTH CAUSE OF ACTION**

24 **(Unfair Competition under Cal. Bus. & Prof. Code § 17200)**

25 54. Plaintiffs reallege and incorporate by reference paragraphs 1 through 53.

26 55. Defendants' misuse of Plaintiffs' Confidential Information, Inventions and
27 trademarks constitutes unfair competition and unfair business practices under California
28 Business and Professions Code § 17200.

56. The full extent of Plaintiffs' injuries caused by Defendants' unlawful, unfair and fraudulent conduct are not readily ascertainable, and, without injunctive relief, Plaintiffs have no means by which to control the misuse of their Confidential Information, Inventions and trademarks. In addition, Madsen agreed in the ECIA Agreement that Plaintiffs were entitled to injunctive relief should Madsen breach that agreement (see Section 6). Accordingly, Plaintiffs are entitled to a preliminary and permanent injunction against Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. A preliminary and permanent injunction ordering Madsen and the Doe defendants, and their agents, employees, servants, co-conspirators, and any persons in active concert or participation with them, to:
 - a. Refrain from using, reproducing or disclosing Plaintiffs' Confidential Information in any manner;
 - b. Refrain from using, reproducing or disclosing Plaintiffs' Inventions in any manner;
 - c. Immediately return to Plaintiffs all Luxe property and documents;
 - d. Discontinue any use of Lussori's trademarks and logos beyond the limited use permitted by law;
 - e. Discontinue any use of Vialuxe's trademarks and logos beyond the limited use permitted by law;
 - f. Immediately destroy all false, misleading and infringing materials; and
 - g. Refrain from making any false or misleading representations in advertising and marketing materials related to work on the Lussori and Vialuxe websites.
2. For an accounting of all profits earned by Madsen due to his use of Plaintiffs' trademarks and disgorgement of such profits;
3. For all costs associated with corrective advertising;
4. For general, special, actual, and/or statutory damages in an amount to be determined at trial;

5. For treble damages;
6. For attorneys' fees and costs;
7. For prejudgment interest on any award; and
8. For such additional relief as the Court deems just and proper.

Dated: April 30, 2008

LATHAM & WATKINS LLP

By: Richard B. Ulmer Jr.
Richard B. Ulmer Jr.
Peter P. Chen
Perry J. Viscounty
Jennifer L. Barry

Attorneys for Plaintiffs
LUXE INTERNATIONAL INC.,
LUSSORI, INC. and VIALUXE INC.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues alleged in this Complaint.

Dated: April 30, 2008

LATHAM & WATKINS LLP

By: Richard B. Ulmer Jr.
Richard B. Ulmer Jr.
Peter P. Chen
Perry J. Viscounty
Jennifer L. Barry

Attorneys for Plaintiffs
LUXE INTERNATIONAL INC.,
LUSSORI, INC. and VIALUXE INC.

LUSSORI INC.**EMPLOYEE CONFIDENTIALITY AND INVENTIONS ASSIGNMENT AGREEMENT**

In consideration of my employment, my continued employment and the payment of additional consideration of \$500.00 by LUSSORI INC., formerly Greenwich Time, Inc. (the "Company") and effective as of the date that my employment by the Company first commenced, I, the undersigned, agree to the following terms of this **EMPLOYEE CONFIDENTIALITY AND INVENTION ASSIGNMENT AGREEMENT** (the "Agreement") as follows:

1. NONDISCLOSURE OF CONFIDENTIAL INFORMATION.

1.1 Confidential Information. During the term of my employment, I may receive and otherwise be exposed to confidential and proprietary information relating to the Company's business, strategies, designs and technologies, or to the Company's suppliers or customers. Such confidential and proprietary information may include but not be limited to confidential and proprietary information supplied to me with the legend "Confidential and Proprietary," or equivalent, and any of the following, whether or not marked as confidential or proprietary: the Company's marketing strategies, any Company customer information or user data, the Company's financial information, including without limitation sales, costs, profits and pricing methods, the Company's internal organization, employee and consultant information and customer lists, the Company's designs, the Company's technology, including discoveries, ideas, Inventions (as defined below), research and development efforts, processes, source code, methods, know-how, and all derivatives, improvements and enhancements related to any of the above which are created or developed by me while I am employed by the Company and information of third parties as to which Company has an obligation of confidentiality (all of the above collectively referred to as "Confidential Information").

1.2 Duties. I acknowledge the confidential and secret character of the Confidential Information, and agree that the Confidential Information is the exclusive and extremely valuable property of Company. Accordingly, I agree not to reproduce any of the Confidential Information without the applicable prior written consent of Company, not to use the Confidential Information

except in the performance of my authorized duties as an employee of Company, and not to disclose all or any part of the Confidential Information in any form to any third party, either during or after the term of my employment. Upon termination of my employment, I agree to cease using and to return to Company all whole and partial copies and derivatives of the Confidential Information, whether in my possession or under my direct or indirect control.

2. PROPERTY OF THE COMPANY. All notes, memoranda, reports, drawings, blueprints, manuals, materials, data and other papers and records of every kind which shall come into my possession at any time after the commencement of my employment with the Company, relating to any Inventions (as defined below) or Confidential Information, shall be the sole and exclusive property of the Company. This property shall be surrendered to the Company upon termination of my employment with the Company, or upon request by the Company, at any other time either during or after the termination of such employment. I further agree that in the event of termination of my employment with the Company I will execute a Termination Certificate, substantially in the form attached hereto as Exhibit A.

3. INVENTIONS.

3.1 Disclosure. I shall disclose promptly in writing to an officer or to attorneys of the Company any idea, invention, work of authorship, whether patentable or unpatentable, copyrightable or uncopyrightable, including, but not limited to, any computer program, code, documentation, improvement, method, process, discovery, concept, algorithm, development, secret process or contribution (any of the foregoing items hereinafter referred to as an "Invention") I may conceive, make, develop or work on, in whole or in part, solely or jointly with others. The disclosure required by this Section applies (a) during the period of my employment with the Company and for one year thereafter; (b) with respect to all Inventions whether or not they are conceived, made, developed or worked on by me during my regular hours of employment with the Company; (c) whether or not the Invention was made at the suggestion of the Company; (d) whether or not the Invention was reduced to drawings, written description,

documentation, models or other tangible form; and (e) whether or not the Invention is related to the general line of business engaged in by the Company.

3.2 Assignment of Inventions to Company; Exemption of Certain Inventions. I hereby assign to the Company without royalty or any other further consideration my entire right, title and interest in and to all Inventions that (a) relate to the subject matters related to my employment or (b) I conceive, make, develop or work on during the period of my employment with the Company and for one (1) year thereafter, except those Inventions that I develop entirely on my own time after the date of my employment with the Company without using the Company's equipment, supplies, facilities or Confidential Information, unless those Inventions either (i) relate at the time of conception or reduction to practice of the Invention to the Company's business, or actual or demonstrably anticipated research or development of the Company; or (ii) result from any work performed by me for the Company. I acknowledge and agree that the Company has hereby notified me that the assignment provided for in Section 3.2(b) does not apply to any Invention which qualifies fully for exemption from assignment under the provisions of Section 2870 of the California Labor Code, a copy of which is attached as Exhibit B.

3.3 Records. I will make and maintain adequate and current written records of all Inventions covered by Section 3.1. These records shall be and remain the property of the Company.

3.4 Patents and Other Rights. Subject to Section 3.2, I will assist the Company in obtaining, maintaining and enforcing patents, invention assignments and copyright assignments, and other proprietary rights in connection with any Invention covered by Section 3.1, and otherwise will assist the Company as reasonably required to perfect in the Company the rights, title and other interests in my work product granted to the Company under this Agreement. Reasonable costs related to such assistance, if required, will be paid by the Company. I further agree that my obligations under this Section 3.4 shall continue beyond the termination of my employment with the Company, but if I am called upon to render such assistance after the termination of such employment, I shall be entitled to a fair and reasonable rate of compensation for such assistance. I

shall, in addition, be entitled to reimbursement of any expenses incurred at the request of the Company relating to such assistance. If the Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions specified above, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act for and in my behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of this Section 3.4 with the same legal force and effect as if executed by me.

3.5 Prior Contracts and Inventions; Information Belonging to Third Parties. I represent and warrant that, except as set forth on Exhibit C hereto, there are no other contracts to assign Inventions that are now in existence between any other person or entity and me. I further represent that (a) I am not obligated under any consulting, employment or other agreement which would affect the Company's rights or my duties under this Agreement, (b) there is no action, investigation, or proceeding pending or threatened, on any basis therefor known to me involving my prior employment or any consultancy or the use of any information or techniques alleged to be proprietary to any former employer, and (c) the performance of my duties as an employee of the Company will not breach, or constitute a default under any agreement to which I am bound, including, without limitation, any agreement limiting the use or disclosure of proprietary information acquired in confidence prior to engagement by the Company. I will not, in connection with my employment by the Company, use or disclose to the Company any confidential, trade secret or other proprietary information of any previous employer or other person to which I am not lawfully entitled. As a matter of record, I attach as Exhibit C of this Agreement a brief description of all Inventions made or conceived by me prior to my employment with the Company which I desire to be excluded from this Agreement ("Background Technology"). I hereby grant Company a non-exclusive, royalty-free, perpetual and irrevocable, worldwide right to use and sublicense the use of Background Technology for the purpose of making, developing, marketing, reproducing, distributing, publicly performing and displaying, selling,

importing and supporting Company products and services, either directly or through multiple tiers of distribution.

4. **ADDITIONAL ACTIVITIES.** I agree that during the period of my employment by the Company I will not, without the Company's express written consent, engage in any employment or business activity which is competitive with, or would otherwise conflict with my employment by, the Company. For purposes of clarity, Company acknowledges and agrees that, subject to compliance with this Agreement, I may do consulting work that is not competitive with, or otherwise conflict with my employment by, Company for WebPoint and SOI Analytics. Additionally, subject to compliance with this Agreement, if I do consulting work for a third party that is not competitive with or does not conflict with my employment by, Company, but later becomes competitive with or conflicts with my employment by, the Company, I will promptly notify Company of same, or Company may notify me of same, and I will work with Company in good faith to resolve the conflict. I agree further that for the period of my employment by the Company and for one (1) year after the date of termination of my employment by the Company I will not, either directly or through others, solicit or attempt to solicit any employee, independent contractor or consultant of the Company to terminate his or her relationship with the Company in order to become an employee, consultant or independent contractor to or for any other person or entity.

5. **EMPLOYMENT.** I agree and understand that nothing in this Agreement shall confer any rights with respect to continuation of employment by the Company, nor shall it interfere in any way with my rights or the Company's rights to terminate my employment at any time with or without cause.

6. **MISCELLANEOUS.** The parties' rights and obligations under this Agreement will bind and inure to the benefit of their respective successors, heirs, executors, and administrators and permitted assigns. I will not assign this Agreement or its obligations hereunder without the prior written consent of the Company and any such purported assignment shall be null and void. The obligations pursuant to Sections

1, 2 and 3 of this Agreement shall apply at any time during which I was previously employed, or am in the future employed, by the Company as a consultant if no other agreement governs non-disclosure and assignment of inventions during such period. This Agreement constitutes the parties' final, exclusive and complete understanding and agreement with respect to the subject matter hereof, and supersede all prior and contemporaneous understandings and agreements relating to its subject matter. This Agreement may not be waived, modified, amended or assigned unless mutually agreed upon in writing by both parties. In the event any provision of this Agreement is found to be legally unenforceable, such unenforceability shall not prevent enforcement of any other provision of the Agreement. I acknowledge that the Company will suffer substantial damages not readily ascertainable or compensable in terms of money in the event of the breach of any of my obligations under this Agreement. I therefore agree that the Company shall be entitled (without limitation of any other rights or remedies otherwise available to the Company) to obtain an injunction from any court of competent jurisdiction prohibiting the continuance or recurrence of any breach of this Agreement. The rights and obligations of the parties under this Agreement shall be governed in all respects by the laws of the State of California exclusively, as such laws apply to contracts between California residents performed entirely within California. I agree that upon Company's request, all disputes arising hereunder shall be adjudicated in the state and federal courts having jurisdiction over disputes arising in Santa Clara County, California, and I hereby agree to consent to the personal jurisdiction of such courts. Any notices required or permitted hereunder shall be given to the appropriate party at the address specified above or at such other address as the party shall specify in writing. Such notice shall be deemed given upon personal delivery, or sent by certified or registered mail, postage prepaid, three (3) days after the date of mailing. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one, and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, I have executed this document as of the 16 day of November, 2006.

John A. Mullen

Employee

AGREED AND ACKNOWLEDGED:

LUSSORI INC.

By: [Signature]

Name: Lawrence Kosick

Title: President

[Signature Page to Employee Confidentiality and Inventions Assignment Agreement]

EXHIBIT A**Termination Certificate**

I, the undersigned, hereby certify that I do not have in my possession, nor have I failed to return, any documents or materials relating to the business of Lussori Inc. or its affiliates (the "Company"), or copies thereof, including, without limitation, any item of Confidential Information listed in Section 3 of the Company's Employee Confidentiality And Inventions Assignment Agreement (the "Agreement") to which I am a party.

I further certify that I have complied with all of the terms of the Agreement signed by me, including the reporting of any Inventions (as defined in the Agreement) covered by the Agreement.

I further agree that in compliance with the Agreement, I will preserve as confidential any information relating to the Company or any of its business partners, clients, consultants or licensees which has been disclosed to me in confidence during the course of my employment by the Company unless authorized in writing to do so by an officer of the Company.

Date: _____

(Employee's Signature)

(Printed or Typed Name of Employee)

EXHIBIT B**California Labor Code**

California Labor Code § 2870. Application of provision providing that employee shall assign or offer to assign rights in invention to employer.

- (a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:
- (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or
 - (2) Result from any work performed by the employee for the employer.
- (b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

I acknowledge receipt of a copy of this notification.

By: _____

(Printed Name of Employee)

Date: _____

NOV 16, 2005

Witnessed By:

Lawrence Kosick

(Printed Name of Representative)

EXHIBIT CBackground Technology

(List here prior contracts to assign Inventions that are now in existence between any other person or entity and you.)

NONE

(List here previous Inventions, which you desire to have specifically excluded from the operation of this Agreement. Continue on reverse side if necessary.)

NONE

J.M.

! SOICREATIVE

SPECIALIZING IN THE GROWTH OF YOUR RETAIL BUSINESS

SOI Creative is founded by John A. Madsen, former Director of Technology of Lussori, a Carmel based retailer. John left early last year to found the design firm SOI Creative, which focuses on the unique demands of luxury retailers.

Our services include:

Print catalogs
Retail website design
Electronic catalogs
Customer management systems

For more information on what we can do to increase your sales, contact us:

SOI Creative 916-627-8299
john@soicreative.com

Our Recent Experience:

Lussori.com



Swisswatchgallery.com



Vialuxe.com

LUSSORI



Swisswatchgallery.com
SWISS WATCH GALLERY
WATCHES & FINE JEWELRY

Vialuxe

1 John Madsen
3223 Donner Way, #2B
2 Sacramento, California 95817
Telephone: 916.627.8299
3 E-mail: johnmadsen37@hotmail.com

4 Defendant in Pro Per

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RICHARD W. WIERING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CAL. S.D.

8 IN THE UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11
12 SAN JOSE DIVISION

12 LUXE INTERNATIONAL INC., a
Delaware corporation; LUSSORI, INC., a
13 Delaware corporation; and VIALUXE INC.,
a Delaware corporation,

14 Plaintiffs,

15 v.

16 JOHN MADSEN, an individual, and Does 1
17 through 10,

18 Defendants.

CASE NO: 08-CV-02241 JF

DEFENDANT JOHN MADSEN'S ANSWER
AND COUNTERCLAIMS

Complaint Filed: April 30, 2008

19
20 ANSWER

21 Defendant John Madsen responds to Plaintiffs Luxe International Inc., Lussori,
22 Inc., and Vialuxe Inc.'s Complaint for Preliminary and Permanent Injunctive Relief and Damages
23 for: 1) Breach of Contract; 2) Trademark Infringement; 3) False Advertising; And Unfair
24 Competition" ("Complaint"), filed on April 30, 2008, as follows:

25 1. In answer to Paragraph 1 of the Complaint, Defendant admits the
26 allegations set forth therein.

27 2. In answer to Paragraph 2 of the Complaint, Defendant admits the
28 allegations set forth therein.

1 3. In answer to Paragraph 3 of the Complaint, Defendant admits the
2 allegations set forth therein.

3 4. In answer to Paragraph 4 of the Complaint, Defendant lacks information or
4 belief sufficient to admit or deny the allegations in said paragraph, and on that basis denies them.

5 5. In answer to Paragraph 5 of the Complaint, Defendant lacks information or
6 belief sufficient to admit or deny the allegations in said paragraph, and on that basis denies them.

7 6. In answer to Paragraph 6 of the Complaint, Defendant lacks information or
8 belief sufficient to admit or deny the allegations in said paragraph, and on that basis denies them.

9 7. In answer to the first sentence of Paragraph 7 of the Complaint, Defendant
10 admits that he is a California resident and that he maintains a business called SOI Creative.
11 However, Defendant denies that SOI Creative is located in Redwood City, California. In answer
12 to the second sentence, Madsen admits that he was formerly employed by a company called
13 "Greenwich Times, Inc," later known as "Lussori, Inc."

14 8. In answer to Paragraph 8 of the Complaint, Defendant lacks information or
15 belief sufficient to admit or deny the allegations in said paragraph, and on that basis denies them.

16 9. In answer to Paragraph 9 of the Complaint, Defendant lacks information or
17 belief sufficient to admit or deny the allegations in said paragraph, and on that basis denies them.

18 10. In answer to Paragraph 10 of the Complaint, Defendant lacks information
19 or belief sufficient to admit or deny the allegations in said paragraph, and on that basis denies
20 them.

21 11. In answer to Paragraph 11 of the Complaint, Defendant admits the
22 allegations set forth therein.

23 12. In answer to Paragraph 12 of the Complaint, Defendant admits that he
24 operates a website at <http://www.vialuxe.com> but denies the remainder of the paragraph.

25 13. In answer to Paragraph 13 of the Complaint, Defendant lacks information
26 or belief sufficient to admit or deny the allegations in said paragraph, and on that basis denies
27 them.

28 14. In answer to Paragraph 14 of the Complaint, Defendant lacks information

1 or belief sufficient to admit or deny the allegations in said paragraph, and on that basis denies
2 them.

3 15. In answer to Paragraph 15 of the Complaint, Defendant denies each and
4 every allegation contained therein.

5 16. In answer to Paragraph 16 of the Complaint, Defendant denies each and
6 every allegation contained therein.

7 17. In answer to Paragraph 17 of the Complaint, Defendant admits that, on or
8 about January 10, 2005, he was hired to be the Director of Technology for "Greenwich Times,
9 Inc.," which later became "Lussori, Inc." Defendant admits the allegations contained in the
10 remainder of the paragraph.

11 18. In answer to Paragraph 18 of the Complaint, Defendant admits that, on
12 November 16, 2006, he signed a document entitled "Employee Confidentiality and Inventions
13 Assignment Agreement" ("ECIA Agreement").

14 19. In answer to Paragraph 19 of the Complaint, Defendant asserts that the
15 ECIA Agreement speaks for itself.

16 20. In answer to Paragraph 20 of the Complaint, Defendant admits that he was
17 part of the team that designed the website now found at <http://www.lussori.com>, and had access
18 to materials necessary to the creation of that website. Defendant denies each and every allegation
19 contained in the remainder of the paragraph.

20 21. In answer to Paragraph 21 of the Complaint, Defendant admits the
21 allegations set forth in the first sentence. In answer to the second sentence, Defendant asserts
22 that SOI Creative was not created until April 2008.

23 22. In answer to Paragraph 22 of the Complaint, Defendant admits the
24 allegations set forth therein.

25 23. In answer to Paragraph 23 of the Complaint, Defendant denies each and
26 every allegation contained therein.

27 24. In answer to the first and second sentences of Paragraph 24 of the
28 Complaint, Defendant admits sending an email to current employees of Plaintiffs as well as to

1 third parties in connection with SOI Creative. However, Defendant denies that the e-mail
2 constitutes a "solicitation." In answer to the third sentence, Defendant asserts that the e-mail
3 speaks for itself. In answer to the fourth sentence, Defendant denies the allegations set forth
4 therein.

5 25. In answer to Paragraph 25 of the Complaint, Defendant denies each and
6 every allegation contained therein.

7 26. In answer to Paragraph 26 of the Complaint, Defendant denies each and
8 every allegation contained therein.

9 27. In answer to Paragraph 27 of the Complaint, Defendant admits the
10 allegation set forth in the first sentence but denies the allegations set forth in the remainder of the
11 paragraph.

12 28. In answer to Paragraph 28 of the Complaint, Defendant incorporates
13 herein by this reference and reasserts every admission, denial and objection he has stated in
14 answering Paragraphs 1 through 56, inclusive, of the Complaint.

15 29. In answer to Paragraph 29 of the Complaint, Defendant asserts that the
16 first sentence consists solely of argument and legal conclusions, not allegation, but to the extent
17 that any allegation can be discerned therein, Defendant denies each and every such allegation. In
18 answer to the second sentence, Madsen admits to having received a payment of \$500.00 on or
19 about November 30, 2006. The remainder of that sentence consists solely of argument and legal
20 conclusions, not allegation, but to the extent that any allegation can be discerned therein,
21 Defendant denies each and every such allegation.

22 30. In answer to Paragraph 30 of the Complaint, Defendant asserts that
23 Paragraph 29 consists solely of argument and legal conclusions, not allegation, but to the extent
24 that any allegation can be discerned therein, Defendant denies each and every such allegation

25 31. In answer to Paragraph 31 of the Complaint, Defendant denies each and
26 every allegation contained therein.

27 32. In answer to Paragraph 32 of the Complaint, Defendant denies each and
28 every allegation contained therein.

1 33. In answer to Paragraph 33 of the Complaint, Defendant denies each and
2 every allegation contained therein.

3 34. In answer to Paragraph 34 of the Complaint, Defendant incorporates
4 herein by this reference and reasserts every admission, denial and objection he has stated in
5 answering Paragraphs 1 through 33, inclusive, of the Complaint.

6 35. In answer to Paragraph 35 of the Complaint, Defendant admits only that
7 the "Lussori" name and logo appear on an e-mail sent by Defendant in connection with SOI
8 creative. As to the remainder of the paragraph, Defendant denies each and every allegation
9 contained therein.

10 36. In answer to Paragraph 36 of the Complaint, Defendant denies each and
11 every allegation contained therein.

12 37. In answer to Paragraph 37 of the Complaint, Defendant denies each and
13 every allegation contained therein.

14 38. In answer to Paragraph 38 of the Complaint, Defendant denies each and
15 every allegation contained therein.

16 39. In answer to Paragraph 39 of the Complaint, Defendant denies each and
17 every allegation contained therein.

18 40. In answer to Paragraph 40 of the Complaint, Defendant incorporates
19 herein by this reference and reasserts every admission, denial and objection he has stated in
20 answering Paragraphs 1 through 39, inclusive, of the Complaint.

21 41. In answer to Paragraph 41 of the Complaint, Defendant admits only that
22 the "Lussori" name and logo and the "Vialuxe" name and logo appear on an email sent by
23 Defendant in connection with SOI Creative. As to the remainder of the paragraph, Defendant
24 denies each and every allegation contained therein.

25 42. In answer to Paragraph 42 of the Complaint, Defendant denies each and
26 every allegation contained therein.

27 43. In answer to Paragraph 43 of the Complaint, Defendant denies each and
28 every allegation contained therein.

1 44. In answer to Paragraph 44 of the Complaint, Defendant denies each and
2 every allegation contained therein.

3 45. In answer to Paragraph 45 of the Complaint, Defendant denies each and
4 every allegation contained therein.

5 46. In answer to Paragraph 46 of the Complaint, Defendant incorporates
6 herein by this reference and reasserts every admission, denial and objection he has stated in
7 answering Paragraphs 1 through 45, inclusive, of the Complaint.

8 47. In answer to Paragraph 47 of the Complaint, Defendant denies each and
9 every allegation contained therein. In particular, Defendant denies that he "falsely" claimed to be
10 the designer of the Lussori and Vialuxe web sites, and further denies that he represented himself
11 to be the "sole" designer of those web sites.

12 48. In answer to Paragraph 48 of the Complaint, Defendant denies each and
13 every allegation contained therein.

14 49. In answer to Paragraph 49 of the Complaint, Defendant denies each and
15 every allegation contained therein.

16 50. In answer to Paragraph 50 of the Complaint, Defendant denies each and
17 every allegation contained therein.

18 51. In answer to Paragraph 51 of the Complaint, Defendant incorporates
19 herein by this reference and reasserts every admission, denial and objection he has stated in
20 answering Paragraphs 1 through 50, inclusive, of the Complaint.

21 52. In answer to the first sentence of Paragraph 52 of the Complaint,
22 Defendant denies each and every allegation contained therein. In particular, Defendant denies
23 that he "falsely" claimed to be the designer of the Lussori and Vialuxe web sites, and further
24 denies that he represented himself to be the "sole" designer of those web sites.

25 53. In answer to the first sentence of Paragraph 53 of the Complaint,
26 Defendant denies that Plaintiffs suffered any injuries. In answer to the second sentence,
27 Defendant asserts that the ECIA Agreement speaks for itself. In answer to the third sentence,
28 Defendant denies each and every allegation contained therein.

1 54. In answer to Paragraph 54 of the Complaint, Defendant incorporates
2 herein by this reference and reasserts every admission, denial and objection he has stated in
3 answering Paragraphs 1 through 53, inclusive, of the Complaint.

4 55. In answer to Paragraph 55 of the Complaint, Defendant denies each and
5 every allegation contained therein.

6 56. In answer to the first sentence of Paragraph 56 of the Complaint,
7 Defendant denies that Plaintiffs suffered any injuries. In answer to the second sentence,
8 Defendant asserts that the ECIA Agreement speaks for itself. In answer to the third sentence,
9 Defendant denies each and every allegation contained therein.

10 **AFFIRMATIVE DEFENSES**

11 **FIRST AFFIRMATIVE DEFENSE**

12 The Complaint fails to state any causes of action upon which relief can be granted.

13 **SECOND AFFIRMATIVE DEFENSE**

14 Any use by Defendant of Plaintiffs' allegedly trademarked and/or copyrighted
15 materials was a fair use under the applicable trademark and copyright laws.

16 **THIRD AFFIRMATIVE DEFENSE**

17 The ECIA Agreement is unconscionable, and hence, unenforceable.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 The ECIA Agreement is unenforceable for lack of adequate consideration.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 Plaintiffs' claims are barred by the doctrine of unclean hands.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 Plaintiffs' claims are barred by the doctrine of waiver.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 Plaintiffs' claims are barred by the doctrine of estoppel.

26 **COUNTERCLAIMS**

27 **FIRST COUNTERCLAIM**

28 (Declaratory Judgment under Copyright Law)

1 1. Defendant John Madsen is a resident of Sacramento, California.

2 2. Defendant is a former employee of "Greenwich Times, Inc.," which later
3 became known as "Lussori, Inc."

4 3. Madsen resigned from Lussori, Inc. in April 2007. After leaving Lussori,
5 Inc., Madsen formed a business specializing in creating web sites and customer management
6 tools for retailers. In January 2008, Madsen was hired to create a web site and customer
7 management system for Swiss Watch Gallery, a retailer of jewelry and watches.

8 4. On April 16, 2008, Plaintiffs sent to Defendant the letter attached hereto as
9 Exhibit A, complaining about the web site that Defendant designed for Swiss Watch Gallery. In
10 that letter, Plaintiffs asserted that Defendant's "use of [Plaintiffs'] copyrighted website materials
11 constitutes copyright infringement under 17 U.S.C. § 501 et seq." Nowhere in that letter,
12 however, did Plaintiffs identify exactly what "website materials" they claim to be copyrighted.
13 Nor did Plaintiffs identify any copyright registration associated with such materials. Rather,
14 Plaintiffs stated generically that the alleged "copyrighted materials" include "design, content and
15 source code." Plaintiffs' letter threatened that "if [Defendant] continue[d] to use
16 Lussori's . . . copyrighted materials after receipt of this letter, such continuing use would
17 unquestionably constitute willful infringement, thereby entitling Lussori to additional remedies in
18 the event that litigation is necessary."

19 5. Since leaving Plaintiffs' employ, Defendant has not used, reproduced, or
20 misappropriated any materials in which Plaintiffs have a copyright interest.

21 6. Nevertheless, Plaintiffs have sent a letter making broad, baseless
22 accusations of copyright infringement against Defendant. Plaintiffs' letter also threatened
23 Defendant with litigation if he fails to comply with the vaguely-stated conditions set forth in that
24 letter (e.g., that Defendant "immediately cease and desist from any further use of [Plaintiffs']
25 proprietary and copyrighted materials, including but not limited to its website designs, content
26 and source code").

27 7. As a result, Defendant is now under the threat of imminent litigation by
28 Plaintiffs for copyright infringement. (Indeed, Plaintiffs' complaint against Defendant in the

1 underlying action makes various references to Plaintiffs' "copyrighted" materials, although the
2 complaint contains no copyright infringement claim.)

3 8. On information and belief, Plaintiffs sent the cease-and-desist letter to
4 Defendant for its *in terrorem* effect, i.e., to intimidate him, to deter him from creating web sites
5 for Plaintiffs' competitors, and to detrimentally affect his ability to pursue his chosen profession.

6 9. Plaintiffs' letter has had that intended effect. Defendant has been
7 paralyzed from pursuing business with Plaintiffs' competitors because of the threat of further
8 litigation by Plaintiffs, and the threat that Plaintiffs would attempt to damage the business
9 relationship between Defendant and any such potential client. Indeed, Plaintiffs have already
10 adversely affected Defendant's business relationship with Swiss Watch Company by bringing
11 their complaints to Swiss Watch Company's management. A letter reflecting such complaints by
12 Plaintiffs to Swiss Watch Company is attached hereto as Exhibit B. In that letter, Plaintiffs
13 complained that the "visual design" for the web site that Defendant designed for Swiss Watch
14 Company is "the property of Lussori."

15 10. For all of these reasons, a justiciable case or controversy now exists
16 between Plaintiffs and Defendant with respect to whether Defendant infringed Plaintiffs'
17 copyrighted materials.

18 WHEREFORE, Defendant requests that this Court find and declare that
19 Defendant has not copied, used, or reproduced any materials in which Plaintiffs have a copyright
20 interest, or otherwise engaged in copyright infringement under 17 U.S.C. § 501 et seq.

21 SECOND COUNTERCLAIM

22 (Declaratory Judgment under the Law of Trade Secret Misappropriation)

23 11. Defendant incorporates herein by this reference and reasserts every
24 allegation he has made in connection with the First Counterclaim.

25 12. On April 16, 2008, Plaintiffs sent to Defendant the letter attached hereto as
26 Exhibit A, complaining about the web site that Defendant designed for Swiss Watch Gallery. In
27 that letter, Plaintiffs asserted that Defendant has used their "confidential" and "proprietary"
28 information. Nowhere in that letter, however, did Plaintiffs identify exactly what materials they

1 claim to be confidential and proprietary and that they claimed were being used by Defendant.
2 Rather, Defendant asserted generically that the alleged confidential and proprietary materials
3 "include[]" Plaintiffs' "technology, know-how, source code and inventions." Plaintiffs' letter
4 threatened that "if [Defendant] continue[d] to use Lussori's proprietary materials after receipt of
5 this letter, such continuing use would unquestionably constitute willful infringement, thereby
6 entitling Lussori to additional remedies in the event that litigation is necessary."

7 13. Since leaving Plaintiffs' employ, Defendant has not used, reproduced, or
8 misappropriated any materials that are proprietary to Plaintiffs, or that is confidential to
9 Plaintiffs, or that is Plaintiffs' trade secret information.

10 14. Nevertheless, Plaintiffs have sent Defendant a letter making broad,
11 baseless accusations that Plaintiffs misappropriated confidential and proprietary information.
12 Plaintiffs' letter also threatened litigation against Defendant if he fails to comply with the
13 vaguely-stated conditions set forth in that letter (e.g., that Defendant immediately cease and
14 desist from any further use of [Plaintiffs'] proprietary and copyrighted materials, including but
15 not limited to its website designs, content and source code")

16 15. As a result, Defendant is now under a threat of imminent litigation for
17 trade secret infringement. On information and belief, Plaintiffs sent the cease-and-desist letter to
18 Defendant for its *in terrorem* effect, i.e., to intimidate him, to deter him from creating web sites
19 for Plaintiffs' competitors, and to detrimentally affect his ability to pursue his chosen profession.

20 16. Plaintiffs' letter has had that intended effect. Defendant has been
21 paralyzed from pursuing business with Plaintiffs' competitors because of the threat of further
22 litigation by Plaintiffs, and the threat the Plaintiffs would attempt to damage the business
23 relationship between Defendant and any such potential client. Indeed, Plaintiffs have already
24 adversely affected Defendant's business relationship with Swiss Watch Company by bringing
25 their complaints to Swiss Watch Company's management. One letter reflecting such complaints
26 by Plaintiffs to Swiss Watch Company is attached hereto as Exhibit B. In that letter, Plaintiffs
27 complained that the "source code" for the web site that Defendant designed for Swiss Watch
28 Company is "the property of Lussori."

1 17. For all of these reasons, a justiciable case or controversy now exists
2 between Plaintiffs and Defendant with respect to whether Defendant misappropriated Plaintiffs'
3 trade secrets.

4 WHEREFORE, Defendant requests that this Court find and declare that
5 Defendant has not misappropriated any trade secrets belonging to Plaintiffs in violation of
6 common law or under California Civil Code section 3426 et seq.

7 **PRAYER FOR RELIEF**

8 Wherefore, Defendant pray for judgment in its favor and against Plaintiffs as
9 follows:

10 1. That judgment be entered in his favor, including declaratory judgment that
11 Defendant (1) has not copied, used, or reproduced any materials in which Plaintiffs have a
12 copyright interest, or otherwise engaged in copyright infringement in violation of 17 U.S.C. §
13 501 et seq., and (2) has not misappropriated any trade secrets belonging to Plaintiffs in violation
14 of common law or under California Civil Code section 3426 et seq.

15 2. That Plaintiffs be denied all monetary and other damages;

16 3. That Plaintiffs be denied any injunctive relief;

17 4. That the Complaint be dismissed with prejudice;

18 5. That Defendant be awarded costs of the suit;

19 6. That Defendant be awarded his reasonable attorneys' fees pursuant to
20 any statutory or contractual grounds; and

21 7. For such other and further relief as the Court deems proper.

22
23 Dated: June 4, 2008


24 
25 John Madsen
26 Defendant in Pro Per
27
28

EXHIBIT A

800 West Broadway, Suite 1800
San Diego, California 92101-3375
Tel: +1.619.238.1234 Fax: +1.619.898.7419
www.hw.com

LATHAM & WATKINS LLP

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Munich	Washington, D.C.

April 16, 2008

VIA EMAIL AND REGISTERED MAIL

Mr. John Madsen
SOI Creative
P.O. Box 7254
Redwood City, CA. 94063-7254
john@soicreative.com

3223 Donner Way # 2B
Sacramento, CA. 95817

Re: Infringement of Lussori Intellectual Property

Dear Mr. Madsen:

This firm represents Luxe International, and its affiliated entities Lussori, Inc. and Vialuxe Inc. (together "Lussori"), in intellectual property matters. Lussori is the owner of valuable intellectual property rights in various trademarks, trade dress and copyrights. These include the federally registered trademark LUSSORI® (No. 3,160,858 and Serial No. 78/652855); the LUSSORI logo that can be found at Lussori's website *lussori.com*; the trade dress of the *lussori.com* and *vialuxe.com* websites; and the copyrighted materials located on those websites, including design, content and source code.

It is our understanding that you are a former employee of Lussori, and, while employed there, you entered into an Employee Confidentiality and Inventions Assignment Agreement (the "Agreement"). As a party to the Agreement, you promised not to disclose any Confidential Information (as that term is defined in the Agreement, and which includes Lussori's technology, know-how, source code and inventions) during or after your employment, and to return all copies and derivatives of the Confidential Information to Lussori upon termination of your employment. See Section 1 of the Agreement. In addition, you assigned to Lussori all right, title and interest in and to all Inventions (as that term is defined in the Agreement) that related to your employment or which were invented during the period of your employment. See Section 3 of the Agreement.

It has come to our attention that you are currently in breach of the Agreement due to your activities in creating, promoting and providing services under your new company, SOI Creative. We have been informed that you have utilized Lussori's website source code, designs and/or content in developing websites for SOI Creative's customers, most particularly for Swiss Watch Gallery. The use of this proprietary material violates Sections 1 and 3 of the Agreement.

Mr. John Madsen
April 16, 2008
Page 2

LATHAM & WATKINS LLP

Furthermore, your use of Lussori's copyrighted website materials constitutes copyright infringement under 17 U.S.C. § 501 *et seq.* In addition, your use of Lussori's trademarks, logo and website design on your website at *soicreative.com* and on your clients' websites constitutes, among other things, trademark infringement, unfair competition, and false designation of origin in violation of 15 U.S.C. §§ 1114 and 1125(a), and trademark infringement and unfair competition under California law and the law of other states.

We also understand that you have promoted yourself as the developer/creator of Lussori's websites at *lussori.com* and *vialuxe.com*, and have made statements to that effect to third parties as part of your advertising efforts for your new company. As you are well aware, these statements are false. You were only one of several individuals to contribute to the development of the *lussori.com* website, and you had no involvement in the development of the *vialuxe.com* website, which was developed after your departure from Lussori. Accordingly, given the falsity of your advertising statements, you may be liable for false advertising under 15 U.S.C. § 1125 and California law.

Accordingly, Lussori demands that you immediately cease and desist from any further use of its proprietary and copyrighted materials, including but not limited to its website designs, content and source code, and that you immediately remove the LUSSORI logo from your website at *soicreative.com* as well as any false statements regarding your contributions to the development of Lussori's website.

So long as you agree to permanently comply with these reasonable demands, we will work with you to try to reach an amicable resolution of this matter. If, however, you fail to abide by these demands, Lussori may have no choice but to protect its valuable intellectual property rights through litigation. If Lussori is forced to engage in litigation, it will seek all available remedies, including but not limited to preliminary and permanent injunctive relief, damages, increased damages, attorneys' fees, and costs. Moreover, if you continue to use Lussori's logo and copyrighted material after receipt of this letter, such continuing use would unquestionably constitute willful infringement, thereby entitling Lussori to additional remedies in the event that litigation is necessary.

Nothing contained in this letter constitutes an express or implied waiver of any right or remedy of Lussori, all of which are expressly reserved.

Best regards,



Jennifer L. Barry
of LATHAM & WATKINS LLP

cc: Perry J. Viscounty, Esq.

EXHIBIT B

From: Lawrence Kosick [mailto:lawrence@lussori.com]
Sent: Monday, April 14, 2008 5:47 PM
To: f_akroush@hotmail.com; arthur@swisswatchgallery.com
Cc: john@soicreative.com; debbie@lussori.com; jonathan.kaplan@lathamwatkins.com
Subject: Swiss Watch Gallery Website - Urgent

To Whom It May Concern,

We have retained legal counsel to review the design and source code for this website and our preliminary review would indicate that the source code and visual design are the property of Lussori. The website you are operating was designed and developed by an employee of Lussori (John Madsen) and this employee and all work performed by this employee were governed by an Intellectual Property Assignment Agreement and accordingly are the sole property of Lussori. Furthermore, Mr Madsen and the work performed by Mr Madsen was governed by a non-disclosure agreement.

Please remove this website from operation in its current design immediately to avoid costly an lengthy litigation process.

Regards,

Lawrence Kosick
CEO, Lussori Inc

LATHAM & WATKINS LLP
Perry J. Viscounty (Bar No. 132143)
650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Telephone: (714) 540-1235
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600 West Broadway, Suite 1800
San Diego, California 92101-3375
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Facsimile: (619) 696-7419
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Attorneys for Plaintiffs and Counterdefendants
LUXE INTERNATIONAL INC., LUSSORI, INC.
and VIALUXE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LUXE INTERNATIONAL INC., a Delaware
corporation; LUSSORI, INC., a Delaware
corporation; and VIALUXE INC., a Delaware
corporation,

Plaintiffs,

v.

JOHN MADSEN, an individual, and Does 1
through 10,

Defendants.

AND RELATED COUNTERCLAIMS

CASE NO. 08-CV-02241 JF

PLAINTIFFS AND COUNTERDEFENDANTS'
REPLY TO COUNTERCLAIMS

Plaintiffs and counterdefendants Luxe International Inc., Lussori, Inc. and Vialuxe
Inc. ("Plaintiffs") reply to the counterclaims brought by defendant and counterclaimant John
Madsen ("Madsen") as follows:

1. Plaintiffs lack knowledge or information sufficient to form a belief
regarding the truth of the allegations of paragraph 1, and on that basis deny each and every

1 allegation of that paragraph.

2 2. Plaintiffs admit the allegations of paragraph 2.

3 3. Plaintiffs admit that Madsen's employment terminated in April 2007.
4 Plaintiffs lack knowledge or information sufficient to form a belief regarding the truth of the
5 remaining allegations of paragraph 3, and on that basis deny those remaining allegations.

6 4. Plaintiffs admit that on April 16, 2008, they sent the letter attached to
7 Madsen's counterclaims as Exhibit A. Plaintiffs deny the remaining allegations of paragraph 4.

8 5. Plaintiffs deny the allegations of paragraph 5.

9 6. Plaintiffs deny the allegations of paragraph 6.

10 7. Plaintiffs deny the allegations of paragraph 7.

11 8. Plaintiffs deny the allegations of paragraph 8.

12 9. Plaintiffs admit that they sent the letter attached to Madsen's
13 counterclaims as Exhibit B to Swiss Watch Gallery. Plaintiffs deny the remaining allegations of
14 paragraph 9.

15 10. Plaintiffs deny the allegations of paragraph 10.

16 11. In answer to the allegations of paragraph 11, Plaintiffs restate the answers
17 contained in paragraphs 1 through 10 respectively and incorporate those answers by reference.

18 12. Plaintiffs admit that on April 16, 2008, they sent the letter attached to
19 Madsen's counterclaims as Exhibit A. Plaintiffs deny the remaining allegations of paragraph 12.

20 13. Plaintiffs deny the allegations of paragraph 13.

21 14. Plaintiffs deny the allegations of paragraph 14.

22 15. Plaintiffs deny the allegations of paragraph 15.

23 16. Plaintiffs admit that they sent the letter attached to Madsen's
24 counterclaims as Exhibit B to Swiss Watch Gallery. Plaintiffs deny the remaining allegations of
25 paragraph 16.

26 17. Plaintiffs deny the allegations of paragraph 17.

27 18. The remaining paragraphs in the counterclaims, as well as the paragraphs
28 located at page 9, lines 18-20 and page 11, lines 4-6, constitute Madsen's prayer for relief to

1 which no answer is required. To the extent that the prayer for relief purports to state any factual
2 allegations, Plaintiffs deny them.

3 **AFFIRMATIVE DEFENSES**

4 As separate and distinct affirmative defenses to Madsen's alleged counterclaims,
5 Plaintiffs allege as follows:

6 **First Affirmative Defense**

7 (Failure to State a Claim)

8 1. Madsen's purported counterclaims fail to state facts sufficient to constitute
9 claims upon which relief can be granted.

10 **Second Affirmative Defense**

11 (Unclean Hands)

12 2. Madsen's purported counterclaims are barred in whole or in part by the
13 doctrine of unclean hands.

14 **Third Affirmative Defense**

15 (Right to Amend)

16 3. Plaintiffs reserve the right to rely on all further affirmative defenses that
17 become available or appear during discovery proceedings in this action, and further reserve the
18 right to amend this Reply for the purpose of asserting any such additional affirmative defenses.

19 WHEREFORE, Plaintiffs pray that Madsen's counterclaims for declaratory relief
20 be denied, for their attorneys' fees and costs incurred in this action, and for such other relief as
21 the Court may deem just and proper.

22 Dated: June 24, 2008

LATHAM & WATKINS LLP

23
24 By: /s/ Jennifer L. Barry
Perry J. Viscounty
Jennifer L. Barry

25
26 Attorneys for Plaintiffs
and Counterdefendants
27 LUXE INTERNATIONAL INC.,
LUSSORI, INC. and VIALUXE INC.
28

CERTIFICATE OF SERVICE

I certify that on June 24, 2008, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System.

I further certify that on this same date, I caused the attached document to be sent via overnight delivery as a courtesy copy to:

Hon. Jeremy Fogel
United States Courthouse
280 South 1st Street
San Jose, CA 95113

I further certify that on this same date, I caused the attached document to be sent via regular U.S. mail to:

John Madsen
3223 Donner Way, #2B
Sacramento, CA 95817

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on June 24, 2008.

/s/ Jennifer L. Barry

Jennifer L. Barry