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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 FACEBOOK, INC., a Delaware corporation,
and GUCCI AMERICA, INC., a New York
19 corporation

CASE NO. 3:21-cv-3036

COMPLAINT; DEMAND FOR JURY TRIAL

20 Plaintiffs,

21 v.

22 Natalia Kokhtenko,

23 Defendant.

1 Plaintiffs Facebook, Inc. (“Facebook”) and Gucci America, Inc. (“Gucci”) assert the following:

2 **INTRODUCTION**

3 1. Facebook and Gucci jointly bring this action in response to Defendant’s unlawful use
4 of Facebook and Instagram to perpetuate an online counterfeiting business that sells, among other
5 imitated brands, fake Gucci products. Since at least April 2020 and continuing until at least April 26,
6 2021, Defendant Natalia Kokhtenko has operated an international online business, trafficking in
7 illegal counterfeit goods. Defendant used Facebook and Instagram to promote her websites selling
8 counterfeit products, including counterfeit Gucci-branded handbags, shoes, clothing, and
9 accessories, in violation of Facebook and Instagram’s terms and policies. Facebook has previously
10 disabled Defendant’s accounts and removed posts for promoting the sale of counterfeit goods in
11 violation of Facebook’s and Instagram’s terms and policies, which prohibit violating the intellectual
12 property rights of others. Despite Facebook’s enforcement efforts, Defendant continued to use
13 Facebook and Instagram to promote the sale of Gucci-branded counterfeit goods and the
14 unauthorized use of several of Gucci’s registered trademarks, including its house mark GUCCI, a
15 number of Gucci’s stylized Gucci and GG marks, and Gucci’s Green/Red/Green Signature Webbing.

16 2. Facebook brings this action to stop Defendant’s ongoing violation of Facebook’s and
17 Instagram’s terms and policies. Gucci brings this action to stop Defendant’s continuing trademark
18 infringement and counterfeiting under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1); unfair
19 competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); unfair competition under
20 California State Law, Cal. Bus. & Prof. Code §§ 17200 et seq; and unfair competition under
21 California common law.

22 **PARTIES**

23 3. Plaintiff Facebook, Inc. is a Delaware corporation with its principal place of business
24 in Menlo Park, California. Facebook products include the Facebook and Instagram apps.

25 4. Plaintiff Gucci America, Inc. is a New York corporation with its principal place of
26 business in New York, New York.

27 5. Defendant Natalia Kokhtenko is a citizen and resident of Moscow, Russia. Defendant
28 used multiple aliases and online monikers, including “AgentRomanova,” “Brends-MSK,”

1 “gucci_sumo4kina_,” “Luxprime,” “Luxprimer,” “Luxprimes,” “luxprime_gucci,” “Natalia
2 Sumochkina,” “Natalya Romanova,” “Romanova,” “Sumo4kina,” and “sumo4kina_shop1.”

3 6. Defendant used multiple Facebook and Instagram accounts to promote her online
4 stores available at brends-msk.ru, luxprimer.ru¹, and agentromanova.ru (collectively, “Defendant
5 Websites”), where she operated an international business that sold counterfeit goods, including
6 counterfeit Gucci-branded products, in violation of Facebook and Instagram’s terms and policies.
7 Defendant’s Websites specifically promoted “luxury copies,” “fashion from pirates,” “high-precision
8 copies of branded clothing,” and copies that are “difficult . . . to distinguish [Defendant’s] copies
9 from the originals” for various brands, including Gucci. **Exhibit 1.** The Defendant Website [brends-
msk.ru](http://brends-
10 msk.ru) referred to Defendant as the “founder, ideological inspirer, and director” of her counterfeit
11 business. **Exhibit 2.**

12 JURISDICTION AND VENUE

13 7. The Court has federal question jurisdiction over the federal causes of action alleged in
14 this Complaint pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a).

15 8. The Court has supplemental jurisdiction over the state law causes of action alleged in
16 this Complaint pursuant to 28 U.S.C. § 1367 because these claims arise out of the same nucleus of
17 operative fact as the federal claims.

18 9. The Court also has jurisdiction over all the causes of action alleged in this Complaint
19 pursuant to 28 U.S.C. § 1332 because complete diversity between the Plaintiffs and Defendant
20 exists, and because the amount in controversy exceeds \$75,000.

21 10. Defendant had multiple Facebook accounts and thereby agreed to Facebook’s Terms
22 of Service (“TOS”) and Commercial Terms. The Court has personal jurisdiction over Defendant
23 because Facebook’s TOS and Commercial Terms both contain a forum selection clause that requires
24 this complaint be resolved by this Court, and that Defendant submit to the personal jurisdiction of
25 this Court.

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28 ¹ As of April 14, 2021, each of the domains luxprime.ru, lux-prime.ru, luxprimes.ru, and [lux-
prime.ru](http://lux-
prime.ru) direct to the domain luxprimer.ru.

1 11. Defendant also agreed to the Instagram Terms of Use (“TOU”) (collectively with the
2 Facebook TOS, the “Terms”). The Instagram TOU contain a forum selection clause that requires this
3 complaint be resolved by this Court, and that Defendant submit to the personal jurisdiction of this
4 Court.

5 12. In addition, the Court has personal jurisdiction over Defendant because she
6 knowingly directed and targeted her actions at California and at Facebook, which has its principal
7 place of business in California. Defendant transacted business and engaged in commerce in
8 California by, among other things, accepting payment via a California-based payment service and
9 hosting the Defendant Websites on a California-based hosting provider. Defendant promoted her
10 ability to ship counterfeit goods to the United States and shipped counterfeit goods to California.
11 Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part
12 of the events giving rise to the claims alleged occurred in this District. Venue is proper pursuant to
13 28 U.S.C. § 1391(b)(3) because Defendant is subject to the Court’s personal jurisdiction. Venue is
14 also proper with respect to Defendant pursuant to 28 U.S.C. §1391(c)(3) because no defendant
15 resides in the United States.

16 13. Pursuant to Civil L.R. 3-2(c), this case may be assigned to either the San Francisco or
17 Oakland division because Facebook is located in San Mateo County.

18 **FACTUAL ALLEGATIONS**

19 **A. Background on Facebook and Instagram**

20 14. Facebook offers a social networking website and mobile application that enables its
21 users to create their own personal profiles and connect with each other on their personal computers
22 and mobile devices. As of December 2020, Facebook daily active users averaged 1.84 billion and
23 monthly active users averaged 2.80 billion, worldwide. Facebook has several products, including
24 Instagram.

25 15. Instagram is a photo and video sharing service, mobile application, and social
26 network. Instagram is owned and operated by Facebook, Inc. Since April 2018, the Instagram TOU
27 have stated that Instagram is a Facebook product and that the TOU constitute an agreement between
28 Instagram users and Facebook.

1 16. Instagram users can post photos and videos to their profile. They can also view,
2 comment on, and like posts shared by others on Instagram. As of 2020, Instagram had over one
3 billion active accounts worldwide.

4 **B. Facebook’s and Instagram’s Terms and Policies (the “Terms”)**

5 17. All Facebook users agree to Facebook’s TOS (available at
6 <https://www.facebook.com/terms/php>) and other rules that govern access to and use of Facebook,
7 which also include the Facebook Commercial Terms. Facebook Commercial Terms apply to access
8 and use of Facebook, Instagram, and other Facebook Products for any business or commercial
9 purpose.

10 18. All Instagram users agree to Instagram’s TOU (available at
11 https://help.instagram.com/478745558852511/?helpref=hc_fnay) and to other rules that govern
12 access to and use of Instagram.

13 19. Section 3.1 of the Facebook TOS requires users to “[c]reate only one account ([their]
14 own)” and use that account “for personal purposes,” and prohibits users from using Facebook if
15 Facebook “previously disabled [a user’s] account for violations of [the TOS] or [Facebook]
16 Policies.”

17 20. Section 3.2.1 of the Facebook TOS prohibits users from: (a) doing anything
18 “unlawful, misleading, [] or fraudulent”; (b) doing anything that “infringes or violates someone
19 else’s rights, including their intellectual property rights”; and (c) “breach[ing] [the Facebook TOS],
20 [Facebook] Community Standards, and other Terms and Policies that apply to [a user’s] use of
21 Facebook.”

22 21. Section 3.2.3 of the Facebook TOS prohibits users from “access[ing] or collect[ing]
23 data from [Facebook] Products using automated means (without [Facebook’s] prior permission).”

24 22. Section 3.2 of the Facebook TOS authorizes Facebook to remove content of users
25 who “seriously or repeatedly violate the[] [TOS]” without giving the user an opportunity to “request
26 [] review.”

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