**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | |
|---|---|
| QUAD INT'L, INCORPORATED, | |
| Opposer, | **Opposition No.: 91160119** |
| vs. | **Serial No.:** 76/516972 |
| ANDREA FISCHER, | **Mark:** CHLOE VEVRIER |
| Applicant. | |

TTAB

**CERTIFICATE OF MAILING**

I hereby certify that on **September 10, 2004**, this paper is being deposited with the U.S. Postal Service by "Express Mail Post Office to Addressee" service with Express Mail Label No. ER 216466705 US, for delivery to the Commissioner for Trademarks, BOX TTAB NO FEE, 2900 Crystal Drive, Arlington, VA, 22202-3513.

LAURA GANOZA

## OPPOSER'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND TO COMPEL PRODUCTION OF DOCUMENTS

Opposer, QUAD INT'L, INCORPORATED, ("Opposer"), by and through its undersigned counsel, and pursuant to Rule 37 of the Federal Rule of Civil Procedure and 37 C.F.R. 2.120(e), hereby moves the Board for an order compelling Applicant, ANDREA FISCHER ("Applicant"), to answer Interrogatories Nos. 7 and 8 of Opposer's First Set of Interrogatories on Applicant, and to produce documents in response to Request Nos. 10, 11 and 15 of Opposer's First Request for Production. In support thereof, Opposer states as follows:

## INTRODUCTION

In the opposed application, Applicant seeks registration of the mark "CHLOE VEVRIER" (the "Trademark") for certain entertainment services in International Class 41. Opposer has opposed the application because Applicant is not the owner or exclusive user of the Trademark, and in fact, Opposer has prior rights in the Trademark. In fact, Opposer conceived of, created and was first to use the Trademark back in 1992. Although the application alleges a

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first use date of March, 2003, Applicant now asserts that she has been using the Trademark since February of 1992. In discovery, Opposer is seeking information aimed directly at Applicant's alleged use. Specifically, Opposer is seeking information and documents relating to sales and advertising expenditures during the period Applicant alleges exclusive use of the Trademark. Applicant has asserted frivolous objections and refuses to provide this highly relevant information. This Board should compel Applicant to provide this information forthwith.

## ARGUMENT

1. On June 7, 2004, Opposer served Applicant with its First Set of Interrogatories and First Request for Production of Documents, copies of which are attached hereto as Exhibits "A" and "B," respectively.

2. On August 9, 2004, Applicant's served its Objection and Responses to the Interrogatories and Request for Production, copies of which are attached hereto as Exhibits "C" and "D," respectively.

3. In her responses, Applicant asserted several objections and failed to respond to certain interrogatories and document requests concerning annual sales and advertising expenses for the Trademark. Specially, Applicant objected to Nos. 7 and 8 of the Interrogatories, and Requests Nos. 10 and 11 of the document request, and refused to provide any annual sales and advertising expenditure information or documents on the grounds that the requested information/documents are confidential and irrelevant. Both of these objections are frivolous and should be overruled.

4. As to the confidentiality issue, the parties entered into Stipulated Protective Order in order to address this very issue. When negotiating the form and content of the Order, the parties expressly discussed the exchange of this type of confidential information and agreed that

this information would be protected in accordance with the Order. Since the Stipulation has been signed by both parties and filed with the Board, there is absolutely no reason to withhold sales and advertising information on grounds that it is confidential.

5. Applicant's objection that the information is irrelevant is similarly frivolous. The Board has held that annual sales and advertising figures are proper matters for discovery in an opposition proceeding. See e.g., Sunkist Growers, Inc. v. Benjamin Ansehl Company, 229 USPQ 147, 149 (TTAB 1985) (ordering applicant to provide annual gross sales figures and related documents); American Optical Corp. v. Exomet, Inc., 181 USPQ 120, 123 (TTAB 1974)[1] (applicant required to furnish round figures concerning sales under mark for period of five years as well as advertising expenditures relating thereto); see also TBMP § 414(18), and the cases cited therein.

6. In this case, Applicant is alleging that she conceived of and has utilized the Trademark since February of 1992. Given these assertions, Opposer is entitled to discovery pertaining to the amount of revenue she generated from using the Trademark, as well as information concerning the extent of her advertising during this time period. Accordingly, the information is highly relevant and should be provided forthwith. If Applicant has no sales revenue and/or advertising expenses for certain time periods, then she must clearly so state. See En Fleur Corp. v. Microsoft Corp., 1998 WL 197595 (TTAB April 21, 1998).

7. Lastly, Applicant must be required to provide documents in response to Document Request No. 15, which seeks documents related to Applicant's business plans and forecasts that relate to the services offered under the Trademark. Applicant has raised a

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1 This decision was overruled on other, unrelated grounds in Johnson & Johnson v. Rexall Drug Co., 186 U.S.P.Q. 167 (TTAB 1975) (overruling portion of decision relating to the disclosure of third-party legal proceedings and settlement agreements).

confidentiality objection, but stated that "[u]pon the entry of an appropriate Protective Order, Applicant shall supplement this Response to Request for Production No. 15." See Exhibit D, Response to Request No. 15. Since both parties have signed the Protective Order and it has been filed with the Board, there is no reason to withhold this documentation and it should be produced immediately.

8. On August 19, 2004, after receipt of Applicant's responses, undersigned counsel corresponded with Applicant's counsel in a good faith attempt to resolve each of the foregoing issues. Opposer gave Applicant until August 27, 2004 to provide the responsive information. Applicant did not even respond to the August 19, 2004 letter, much less provide any of the requested documents or information.

9. In a further attempt to resolve these matters, undersigned counsel has called Applicant's counsel on two separate occasions, but counsel for Applicant has not returned undersigned counsel's calls, nor confirmed in writing that the requested documents would be provided. Accordingly, Opposer has been forced to file the instant motion.

10. There being no grounds for withholding the information requested by Opposer, Applicant should be compelled to provide all responsive information and documentation forthwith.

## CONCLUSION

For all the foregoing reasons, Applicant should be compelled to provide annual sales and advertising expenditure information in response to Interrogatories Nos. 7 and 8 of Opposer's First Set of Interrogatories on Applicant, and to produce sales and advertising documents in response to Request Nos. 10 and 11. In addition, Applicant must supplement her response to Request No. 15.

Respectfully submitted,

Laura Ganoza
BUCHANAN INGERSOLL P.C.
Attorneys for Applicant
Bank of America Tower, Suite 2100
100 Southeast Second Street
Miami, Florida 33131
Tel: (305) 347-4080
Fax: (305) 347-4089
e-mail: fernandezl@bipc.com

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on this 10 day of September, 2004 upon the following counsel of record by first class mail, postage prepaid:

Michael A. Painter, Esq.
Isaacman, Kaufman & Painter
8484 Wilshire Boulevard, Suite 850
Beverly Hills, California 90211

Laura Ganoza

#167633-v1

Exhibit A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|---|
| QUAD INT'L, INCORPORATED, | : | |
| | : | **Opposition No.: 91160119** |
| Opposer, | : | **Serial No.:** 76/516972 |
| | : | **Mark:** CHLOE VEVRIER |
| vs. | : | **Published:** March 23, 2004 |
| ANDREA FISCHER, | : | |
| Applicant. | : | |

## OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer, Quad Int'l Incorporated, hereby directs the following interrogatories to Applicant, Andrea Fischer, and requests that separate numbered answers be made by Applicant under oath in accordance with Rule 33 of the Federal Rules of Civil Procedure. These interrogatories are to be answered within thirty (30) days of the date of service.

## DEFINITIONS

As used herein:

A. "Document" shall have the broad meaning set forth in Rule 34(a), Fed.R.Civ.P., and shall include without limitation all writings, drawings, graphs, charts, photographs, mechanical or electronic recordings, and other data compilations from which information can be obtained, translated, if necessary, by Applicant through detection devices into reasonably usable form, and shall include any drafts, retained copies, originals, and all file copies, even if there are multiple copies of the same document.

B. "Identify" or give the "identity" of, means,

1. In the case of an individual, to state the individual's full name, present or last known residence or business addresses, present position, business affiliation and job description and, if different from the latter, the last position occupied with Applicant and if applicable, the date the individual was last employed by or for Applicant.

2. In the case of a document, to state such information as would be sufficient for the characterization of such a document in a request for production of documents under Rule 34, Fed.R.Civ.P., and should include, without limitation, the following information:

a. the identity of the person(s) originating it and the sender;

b. the identity of the addressees and distributees, if any;

c. its date and general type (e.g., letters, memo, report, invoice, etc.), title, identifying number, if any, and the general nature of its subject matter; a copy of the document may be produced in lieu of item c;

d. the identity of the present custodian; and

e. for each document which Applicant contends is privileged or otherwise excludable from discovery, the specific basis for such claim of privilege or other grounds for exclusion, and identification of such document as required in B. 2, subparts a through e.

C. "You" or "Your" or "Applicant" shall mean Applicant Andrea Fischer, and all agents, attorneys, accountants, consultants, representatives, private investigators, independent contractors, officers, directors, employees, predecessors, successors, subsidiaries, affiliates, parent corporations, or persons acting on behalf of Applicant.

D. The terms "referring" and/or "relating" and/or "relate" and/or "refer" as used herein shall include, but is not necessarily limited to, concerning, alluding to, responding to,



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pertaining to, connected with, commenting on, in respect to, discussing, describing, reflecting, analyzing, projecting, evidencing and constituting.

E. "Trademark" shall mean CHLOE VEVRIER, Serial No. 76/516972.

## INTERROGATORIES

1. Specify the date Applicant "created, adopted and commenced the use of the name CHLOE VEVRIER" as alleged in paragraph 32 of Applicant's Answer to Notice of Opposition, and identify any documents referring to or evidencing this date.

2. Explain how you decided to adopt the name CHLOE VEVRIER as alleged in paragraph 32 of Applicant's Answer to Notice of Opposition.

3. Identify all individuals who have knowledge of when, and under what circumstances, Applicant "created, adopted and commenced the use of the name CHLOE VEVRIER" as alleged in paragraph 32 of Applicant's Answer to Notice of Opposition, and for each person identified, set forth the nature of their knowledge.

4. Describe the manner in which the services offered under the Trademark are sold including the channels of trade, description of purchasers and potential purchasers and manner in which the services are advertised and/or promoted.

5. Identify all documents which will be relied upon by Applicant in connection with the allegations of Paragraph 32 of the Applicant's Answer to Notice of Opposition.

6. Identify all documents which will be relied upon by Applicant in connection with the allegations of Paragraph 33 of the Applicant's Answer to Notice of Opposition.

7. State the annual United States sales in terms of dollars for the services offered under the Trademark, since the date of first use.

8. State the total amount spent each year by Applicant to advertise in the United States the services sold under the Trademark, since the date of first use.

9. Is Applicant or its counsel aware of any instance of actual confusion between Opposer's trademark CHLOESWORLD or services used in connection with the mark and the Trademark or services bearing that mark? If so, describe such instance(s).

10. Is Applicant or its counsel aware of any instance where a purchaser of Applicant's services believed that Applicant's services were sponsored by, associated with, or originated with Opposer? If so, describe such instance(s).

11. Set forth the basis for the contention in Paragraphs 32 of your Answer to Notice of Opposition that "prior to any act of Opposer alleged in the Notice of Opposition, Applicant created, adopted and commenced the use of the name CHLOE VEVRIER" and identify any documents that support this contention.

12. Set forth the basis for the contention in Paragraphs 33 of your Answer to Notice of Opposition that Opposer has "followed a course of conduct and made specific representations acknowledging Applicant's use and ownership of the name CHLOE VEVRIER" and identify any documents that support this contention.

13. List any and all names used by Applicant (whether before, contemporaneous with or following the use of the name "Chloe Vevrier") and set forth the dates when Applicant was known by those names.

14. Identify all persons involved Applicant's decision to use the name "Chloe Vevrier."

15. Identify all names considered during the process of selecting the name "Chloe Vevrier."

16. Identify all persons who made the decision to file the application for the Trademark.

17. Identify all lawsuits, oppositions, cancellations or the like involving in any way Applicant's Trademark.

18. State whether there has ever been a period in which use of the Trademark has been discontinued in the United States and, if so, for each of the periods state:

(1) the inclusive dates

(2) whether the discontinuance was temporary or permanent

(3) the reason the term was not used; and

(4) identify all documents relating to such discontinuance.

19. Identify all persons who participated in any way in the preparation of the answers or responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person.

Respectfully submitted,

Laura Fernandez
BUCHANAN INGERSOLL P.C.
Attorneys for Applicant
Bank of America Tower, Suite 2100
100 Southeast Second Street
Miami, Florida 33131
Tel: (305) 347-4080
Fax: (305) 347-4089
e-mail: fernandezl@bipc.com

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on this 7th day of June, 2004 upon the following counsel of record by first class mail, postage prepaid:

Michael A. Painter, Esq.
Isaacman, Kaufman & Painter
8484 Wilshire Boulevard, Suite 850
Beverly Hills, California 90211

Laura Fernandez

#162669-v1



BUCHANAN INGERSOLL PROFESSIONAL CORPORATION Bank of America Tower | 100 S.E. Second Street, Suite 2100 | Miami, FL 33131-2150 | T 305 347 4080 | F 305 347 4089

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|---|
| QUAD INT'L, INCORPORATED, | : | |
| | : | **Opposition No.: 91160119** |
| Opposer, | : | **Serial No.:** 76/516972 |
| | : | **Mark:** CHLOE VEVRIER |
| vs. | : | **Published:** March 23, 2004 |
| ANDREA FISCHER, | : | |
| Applicant. | : | |

**OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO APPLICANT**

Opposer, Quad Int'l Incorporated, hereby directs the following Request for Production of Documents to Applicant, Andrea Fischer, and requests that Applicant produce the documents listed below to: Buchanan Ingersoll Professional Corporation, 2100 Bank of America Tower, 100 Southeast Second Street, Miami, Florida 33131, within thirty (30) days of service of this Request in accordance with the following definitions and Rule 34 of the Federal Rules of Civil Procedure.

**DEFINITIONS**

As used herein:

A. "Document" shall have the broad meaning set forth in Rule 34(a), Fed.R.Civ.P., and shall include without limitation all writings, drawings, graphs, charts, photographs, mechanical or electronic recordings, and other data compilations from which information can be obtained, translated, if necessary, by Applicant through detection devices into reasonably usable form, and shall include any drafts, retained copies, originals, and all file copies, even if there are multiple copies of the same document.

B. "You" or "Your" or "Applicant" shall mean Applicant Andrea Fischer, and all agents, attorneys, accountants, consultants, representatives, private investigators, independent contractors, officers, directors, employees, predecessors, successors, subsidiaries, affiliates, parent corporations, or persons acting on behalf of Applicant.

C. The terms "referring" and/or "relating" and/or "relate" and/or "refer" as used herein shall include, but is not necessarily limited to, concerning, alluding to, responding to, pertaining to, connected with, commenting on, in respect to, discussing, describing, reflecting, analyzing, projecting, evidencing and constituting.

D. "Trademark" shall mean the mark CHLOE VEVRIER, Serial No. 76/516972.

**REQUESTS**

1. All documents requested to be identified in response to Opposer's First Set of Interrogatories to Applicant.

2. All documents referring or relating to Applicant's alleged selection of the name "Chloe Vevrier."

3. All documents referring or relating to the date of Applicant's first use of the name "Chloe Vevrier."

4. All federal and state trademark or service mark application and any domain name applications for registration filed by Applicant in connection with the Trademark, and any and all documents referring or relating to any such attempts to register.

5. All documents referring or relating to any opinion from counsel, whether or not such counsel was employed by Applicant, concerning Applicant's right to use the Trademark and

any and all documents referring or relating to any action taken by Applicant following any such opinion.

6. All documents which relate to Applicant's decision to use the name "Chloe Vevrier."

7. All documents relating or referring to the services and/or goods offered by Applicant under the Trademark.

8. All documents relating or referring to any written or oral agreements by which Applicant granted to any other person, company or entity the right to use the Trademark, including, but not limited to, license agreements, assignments, or registered user agreements.

9. All documents relating or referring to measures taken by Applicant to monitor the quality of the goods/services rendered or supplied under the Trademark.

10. All documents evidencing Applicant's annual United States sales for the services offered under the Trademark, since the date of first use.

11. All documents evidencing the total amount spent each year by Applicant to advertise in the United States the services sold under the Trademark, since the date of first use.

12. All documents supporting Applicant's contention as referred to in paragraph 32 of the Answer to Notice of Opposition that "Applicant created, adopted and commenced the use of the name CHLOE VEVRIER for the purpose of identifying her professional and entertainment activities."

13. All documents referring to, relating to or evidencing Opposer's "course of conduct" and "specific representations acknowledging Applicant's use and ownership of the name CHLOE VEVRIER" as referenced in paragraph 33 of Applicant's Answer to Notice of Opposition.

14. All documents, including but not limited to, correspondence, agreements, contracts, memoranda, etc., between Opposer and Applicant relating to the modeling services rendered by Applicant to Opposer, the Trademark and/or the name "Chloe Vevrier."

15. All of Applicant's business plans and forecasts that relate to the services offered under the Trademark.

16. All documents evidencing the channels of trade for the services offered under the Trademark.

17. All documents evidencing the type of purchasers and/or potential purchasers of the services offered under the Trademark.

18. All documents evidencing the manner in which the services offered under the Trademark are advertised and/or promoted.

19. All documents evidencing any and all lawsuits, oppositions, cancellations or the like involving in any way Applicant's Trademark.

20. Any market surveys conducted by Applicant relating to or referring to Opposer's mark CHLOESWORLD, the Trademark and/or the name "Chloe Vevrier."

21. All documents relating to, referring to or evidencing any instance of actual confusion between Opposer's mark CHLOESWORLD or services used in connection with Opposer's mark and the Trademark.

22. All documents relating to, referring to or evidencing any instance where a purchaser of Applicant's services believed that Applicant's services were sponsored by, associated with, or originated with Opposer.

23. All documents that support your responses to Opposer's First Set of Interrogatories to Applicant.

Respectfully submitted,

Laura Fernandez
BUCHANAN INGERSOLL P.C.
Attorneys for Applicant
Bank of America Tower, Suite 2100
100 Southeast Second Street
Miami, Florida 33131
Tel: (305) 347-4080
Fax: (305) 347-4089
e-mail: fernandezl@bipc.com

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on this 7th day of June, 2004 upon the following counsel of record by first class mail, postage prepaid:

Michael A. Painter, Esq.
Isaacman, Kaufman & Painter
8484 Wilshire Boulevard, Suite 850
Beverly Hills, California 90211

Laura Fernandez

#162668-v1

Exhibit C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|---|---|---|
| QUAD INT'L., INCORPORATED,<br>Opposer,<br>vs.<br>ANDREA FISCHER,<br>Applicant. | : | Opposition No. 91/160,119 |

**APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES**

Applicant, ANDREA FISCHER, hereby objects and responds to Opposer's First Set of Interrogatories as follows:

GENERAL CONDITIONS AND OBJECTIONS

1. Applicant's objections to Opposer's First Set of Interrogatories are made to the best of her present knowledge, information and belief. Said objections are at all times subject to such additional or different information that discovery or further investigation may disclose and, while based on the present state of her recollection, are subject to such refreshing of recollection and such additional knowledge of facts, as may result from its further discovery or investigation. Therefore,



MAP-AF-2442

ANDREA FISCHER reserves the right to make use of, or to introduce at any hearing or trial, information and/or documents responsive to Opposer's First Set of Interrogatories but discovered subsequent to the date of this response, including, but not limited to any such information or documents obtained in discovery hearing.

2. Applicant reserves all objections or other questions as to the competency, relevance, materiality, privilege or admissibility as evidence at trial.

3. Applicant objects to interrogatories seeking information protected by the attorney-client privilege or the work-product doctrine. Such information shall not be provided in response to Opposer's First Set of Interrogatories and any inadvertent disclosure shall not be deemed a waiver of any privilege with respect to such information.

4. Applicant objects to any interrogatory containing subparts, or which is compound, conjunctive or disjunctive. Any such interrogatory will be broken down into its individual questions for purposes of determining Opposer's compliance with the Rules directed to the number of interrogatory requests which may be propounded.

5. Applicant objects to any interrogatory which seeks information and/or the identification of documents provided in confidence to it by third parties which embody material that is private, business confidential, proprietary, or a trade secret,

and which she has agreed not to disclose or disseminate, on the grounds that such information and/or documents are privileged.

6. Applicant objects to any interrogatory which fails to define a relevant time period or limit herself to information regarding activities within the United States. Any such interrogatories are overly broad, seek irrelevant information not calculated to lead to the discovery of admissible evidence, and would subject Applicant to unreasonable and undue annoyance, oppression, burden and expense.

7. Applicant objects to all instructions, definitions and interrogatories to the extent they purport to impose discovery obligations beyond those imposed by the Federal Rules of Civil Procedure.

8. Applicant objects to these interrogatories to the extent they seek information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. To the extent that Applicant responds to these interrogatories, Applicant does not concede the information provided is relevant to this proceeding.

9. Applicant objects to all instructions, definitions or interrogatories to the extent that they use or define terms inconsistently with Applicant's interpretation of those terms. Applicant in no way adopts or accepts any of Opposer's definitions by responding to these interrogatories or otherwise.

"1. Specify the date Applicant "created, adopted and commenced the use of the name CHLOE VEVRIER" as alleged in paragraph 32 of Applicant's Answer to Notice of Opposition, and identify any documents referring to or evidencing this date."

**RESPONSE TO INTERROGATORY NO. 1:**

February, 1992.

"2. Explain how you decided to adopt the name CHLOE VEVRIER as alleged paragraph 32 of Applicant's Answer to Notice of Opposition."

**RESPONSE TO INTERROGATORY NO. 2:**

Prior to 1992, Applicant had gained substantial popularity as a result of photographs that appeared in leading magazines throughout the world. As a result of publicity, Applicant elected to use a professional name in lieu of her given name. Applicant created and selected to use the name CHLOE VEVRIER for the purpose of designating her professional activities.

"3. Identify all individuals who have knowledge of when, and under what circumstances, Applicant "created, adopted and commenced the use of the name CHLOE VEVRIER" as alleged in paragraph 32 of Applicant's Answer to Notice of Opposition, and

for each person identified, set forth the nature of their knowledge."

**RESPONSE TO INTERROGATORY NO. 3:**

Dr. Dieter Broers, 3962 Unterlembach 67 Austria;

Jo Sass, current address unknown;

Roman Leitner, Erich Weinert Str. 8, 10439 Berlin, Germany.

"4. Describe the manner in which the services offered under the Trademark are sold including the channels of trade, description of purchasers and potential purchasers and manner in which the services are advertised and/or promoted."

**RESPONSE TO INTERROGATORY NO. 4:**

Applicant's services under the trademark are marketed on the Internet site designated by the domain name chloevevrier.com, through the marketing of photographic images to magazines, and through appearances in video products and merchandising.

"5. Identify all documents which will be relied upon by Applicant in connection with the allegations of Paragraph 32 of the Applicant's Answer to Notice of Opposition."

RESPONSE TO INTERROGATORY NO. 5:

As of the date of this Response, it is Applicant's intent to rely upon model releases, publications in which Applicant's photographs appeared and contracts. See Bates Nos. AF1 - AF101, inclusive.

"6. Identify all documents which will be relied upon by Applicant in connection with the allegations of Paragraph 33 of the Applicant's Answer to Notice of Opposition."

RESPONSE TO INTERROGATORY NO. 6:

Model Release and Agreement between Applicant and Opposer dated October 1, 2000 (See Bates Nos. AF2, AF7 - AF9).

"7. State the annual United States sales in terms of dollars for the services offered under the Trademark, since the date of first use."

RESPONSE TO INTERROGATORY NO. 7:

Applicant objects to Interrogatory No. 7 on the grounds the information sought is confidential business information. Applicant further objects to Interrogatory No. 7 on the grounds the information sought is neither relevant to this proceeding nor will it lead to the discovery of admissible evidence.

"8. State the total amount spent each year by Applicant to advertise in the United States the services sold under the Trademark, since the date of first use."

**RESPONSE TO INTERROGATORY NO. 8:**

Applicant objects to Interrogatory No. 8 on the grounds the information sought is confidential business information. Applicant further objects to Interrogatory No. 8 on the grounds the information sought is neither relevant to this proceeding nor will it lead to the discovery of admissible evidence

"9. Is Applicant or its counsel aware of any instance of actual confusion between Opposer's trademark CHLOESWORLD or services used in connection with the mark and the Trademark or services bearing that mark? If so, describe such instance(s)."

**RESPONSE TO INTERROGATORY NO. 9:**

Opposer previously referred to the site designated as CHLOESWORLD as the official site of Chloe Vevrier. This led some users of the site to believe there was a connection between the services rendered by Applicant under the trademark and the site CHLOESWORLD.

"10. Is Applicant or its counsel aware of any instance where a purchaser of Applicant's services believed that

Applicant's services were sponsored by, associated with, or originated with Opposer? If so, describe such instance(s)."

**RESPONSE TO INTERROGATORY NO. 10:**

No.

"11. Set forth the basis for the contention in Paragraphs 32 of your Answer to Notice of Opposition that "prior to any act of Opposer alleged in the Notice of Opposition, Applicant created, adopted and commenced the use of the name CHLOE VEVRIER" and identify any documents that support this contention."

**RESPONSE TO INTERROGATORY NO. 11:**

See Response to Interrogatory No. 2. See Response to Request for Production of Documents No. 6.

"12. Set forth the basis for the contention in Paragraphs 33 of your Answer to Notice of Opposition that Opposer has "followed a course of conduct and made specific representations acknowledging Applicant's use and ownership of the name CHLOE VEVRIER" and identify any documents that support this contention."

**RESPONSE TO INTERROGATORY NO. 12:**

From at least May 20, 1995 through October 1, 2000, Opposer has at all times known and recognized that all photographs of Applicant that appeared in publications and/or on

Internet sites were to be designated by the professional name I had selected, CHLOE VEVRIER. (See Bates Nos. AF2 and AF7 - AF9, inclusive.)

"13. List any and all names used by Applicant (whether before, contemporaneous with or following the use of the name "Chloe Vevrier") and set forth the dates when Applicant was known by those names."

**RESPONSE TO INTERROGATORY NO. 13**:

Andrea Fischer.

"14. Identify all persons involved Applicant's decision to use the name 'Chloe Vevrier.'"

**RESPONSE TO INTERROGATORY NO. 14**:

Applicant and Dr. Dieter Broers.

"15. Identify all names considered during the process of selecting the name 'Chloe Vevrier.'"

**RESPONSE TO INTERROGATORY NO. 15**:

None.

"16. Identify all persons who made the decision to file the application for the Trademark."

RESPONSE TO INTERROGATORY NO. 16:

Applicant.

"17. Identify all lawsuits, oppositions, cancellations or the like involving in any way Applicant's Trademark."

RESPONSE TO INTERROGATORY NO. 17:

Applicant's Trademark has been involved in no litigation. In addition to the instant proceeding, a second opposition proceeding has been instituted and is designated as Thomas Anderson v. Andrea Fischer, Opposition No. 91/161,452.

"18. State whether there has ever been a period in which use of the Trademark has been discontinued in the United States and, if so, for each of the periods state:

(1) the inclusive dates

(2) whether the discontinuance was temporary or permanent

(3) the reason the term was not used; and

(4) identify all documents relating to such discontinuance."

RESPONSE TO INTERROGATORY NO. 18:

No.

"19. Identify all persons who participated in any way in the preparation of the answers or responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person."

**RESPONSE TO INTERROGATORY NO. 19:**

Applicant and Jason Seifert.

Respectfully submitted,

Dated: 8/6/04

ANDREA FISCHER

As to the objections.

Respectfully submitted,

ISAACMAN, KAUFMAN & PAINTER
A Professional Corporation

Dated 8/9/04

By:
Michael A. Painter
Attorneys for Applicant

# VERIFICATION

STATE OF CALIFORNIA )
) ss.
COUNTY OF LOS ANGELES )

I have read the foregoing **APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES** and know its contents. I am the Applicant in this action; and am authorized to make this Verification for and on my own behalf, and I make this Verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6 day of August, 2004 at Los Angeles, California.

ANDREA FISCHER

## CERTIFICATE OF SERVICE

The undersigned declares under the penalty of perjury the within APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES was forwarded to counsel for Opposer as follows:

Richard A. Morgan, Esq.
Laura Fernandez, Esq.
Buchanan Ingersoll, P.C.
100 Southeast Second Street, Suite 2100
Miami, Florida 33131

Michael L. Dever, Esq.
Buchanan Ingersoll, P.C.
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, Pennsylvania 15219

via first class mail, postage prepaid, this 9th day of August, 2004.

SHERYL R. CONAWAY

Exhibit D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|---|---|---|
| QUAD INT'L., INCORPORATED, | : | |
| Opposer, | : | |
| vs. | : | Opposition No. 91/160,119 |
| ANDREA FISCHER, | : | |
| Applicant. | : | |

**APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil procedure Applicant, ANDREA FISCHER, submits the following objections and response to Opposer's First Request for Production of Documents.

CONDITIONS AND OBJECTIONS

1. Applicant makes this response and objections to the best of her present knowledge, information and belief. These objections and response are at all times subject to additional or different information that discovery or further investigation may disclose.

2. Applicant reserves all objections or other questions as to the competency, relevance, materiality, privilege or

admissibility of information responsive to Opposer's First Request for Production of Documents.

3. Applicant objects to requests seeking documents protected by the attorney-client privilege or the work product doctrine. Such documents shall not be provided in response to Opposer's First Request for Production of Documents and any inadvertent disclosure shall not be deemed a waiver of any privilege with respect to such information.

4. Applicant objects to any request containing subparts, or which is compound, conjunctive or disjunctive. Any such request will be broken down into its individual questions or subparts for purposes of determining compliance with any applicable rules or orders directed to the number of requests which may be propounded.

5. Applicant objects to any document request which seeks information and/or the identification of documents provided in confidence to it by third parties which embody material that is private, business confidential, proprietary or a trade secret, and which she has agreed not to disclose or disseminate, on the grounds that such information and/or documents are privileged and/or confidential.

6. Applicant objects to any document request which fails to define a relevant time period or limit itself to documents regarding activities within the United States. Any such

document requests are overly broad, seek irrelevant information not calculated to lead to the discovery of admissible evidence, and would subject Applicant to unreasonable and undue annoyance, oppression, burden and expense.

7. Applicant objects to all instructions, definitions and requests to the extent they purport to impose discovery obligations beyond those imposed by the Federal Rules of Civil Procedure or any other applicable rules or orders.

8. Applicant objects to all instructions, definitions or request to the extent that they use or define terms inconsistently with Applicant's interpretation of those terms. Applicant in no way adopts or accepts any of Opposer's definitions by responding to this request or otherwise.

9. Applicant objects to this request to the extent it seeks information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. To the extent that Applicant responds to this request, Applicant does not concede that the information provided is relevant to this litigation.

"1. All documents requested to be identified in response to Opposer's First Set of Interrogatories to Applicant."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

See Bates Nos. AF1 - AF101, inclusive.

"2. All documents referring or relating to Applicant's alleged selection of the name 'Chloe Vevrier.'"

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

Applicant has reviewed all documents in her possession, custody and control and can find no documents responsive to Request for Production No. 2.

"3. All documents referring or relating to the date of Applicant's first use of the name 'Chloe Vevrier.'"

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

Applicant has reviewed all documents in her possession, custody and control and can find no documents that refer or relate to the date of first use of the name CHLOE VEVRIER. In further response to Request for Production No. 3, see Model Release dated November 1, 1995 (Bates No. AF1).

"4. All federal and state trademark or service mark application and any domain name applications for registration filed by Applicant in connection with the Trademark, and any and

all documents referring or relating to any such attempts to register."

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

(a) Application to the United States Patent and Trademark Office for registration of the trademark (Bates Nos. AF100 - AF103).

(b) Transfer of domain name registration (Bates Nos. AF105 - AF108, inclusive).

"5. All documents referring or relating to any opinion from counsel, whether or not such counsel was employed by Applicant, concerning Applicant's right to use the Trademark and any and all documents referring or relating to any action taken by Applicant following any such opinion."

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Applicant has searched all records in her possession, custody and control and can find no documents responsive to Request for Production No. 5.

"6. All documents which relate to Applicant's decision to use the name 'Chloe Vevrier.'"

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

Applicant has searched all records in her possession, custody and control and can find no documents responsive to Request for Production No. 6.

"7. All documents relating or referring to the services and/or goods offered by Applicant under the Trademark."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

(a) Model Releases (Bates Nos. AF1 - AF5)

(b) Home page of The Fantasy Café (Bates No. AF6)

(c) Agreement between Applicant and Opposer dated October 1, 2000 (Bates Nos. AF7 - AF9)

(d) Copies of video tape packaging and magazine photographs/articles (Bates Nos. AF19 - AF99).

"8. All documents relating or referring to any written or oral agreements by which Applicant granted to any other person, company or entity the right to use the Trademark, including, but not limited to, license agreements, assignments, or registered user agreements."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

(a) With respect to rights granted to use the trademark, see Bates Nos. AF1 - AF9, inclusive.

(b) With respect to license agreements, assignments and/or registered user agreements, Applicant has searched all records in her possession, custody and control and can find no documents responsive to these subjects.

"9. All documents relating or referring to measures taken by Applicant to monitor the quality of the goods/services rendered or supplied under the Trademark."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9**:

Applicant objects to Request for Production No. 9 on the grounds the identification of the documents sought is ambiguous and unintel-ligible. Without waiving the objection, and to the extent it is understood, Applicant has reviewed all records in her possession, custody and control and can find no documents responsive to Request for Production No. 9.

"10. All documents evidencing Applicant's annual United States sales for the services offered under the Trademark, since the date of first use."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10**:

Applicant hereby adopts Objection No. 9. In further response to Request for Production No. 10, Applicant objects to said Request on the grounds the information sought constitutes confidential business information. Applicant further objects to

Request for Production No. 10 on the ground the information sought is neither relevant to the subject matter of this proceeding nor will it lead to the discovery of admissible evidence.

"11. All documents evidencing the total amount spent each year by Applicant to advertise in the United States the services sold under the Trademark, since the date of first use."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

Applicant hereby adopts Objection No. 9. In further response to Request for Production No. 11, Applicant objects to said Request on the grounds the information sought constitutes confidential business information. Applicant further objects to Request for Production No. 11 on the ground the information sought is neither relevant to the subject matter of this proceeding nor will it lead to the discovery of admissible evidence

"12. All documents supporting Applicant's contention as referred to in paragraph 32 of the Answer to Notice of Opposition that 'Applicant created, adopted and commenced the use of the name CHLOE VEVRIER for the purpose of identifying her professional and entertainment activities.'"

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

See Bates Nos. AF1 - AF101, inclusive.

"13. All documents referring to, relating to or evidencing Opposer's 'course of conduct' and 'specific representations acknowledging Applicant's use and ownership of the name CHLOE VEVRIER' as referenced in paragraph 33 of Applicant's Answer to Notice of Opposition."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

See Bates Nos. AF7 - AF9, inclusive.

"14. All documents, including but not limited to, correspondence, agreements, contracts, memoranda, etc., between Opposer and Applicant relating to the modeling services rendered by Applicant to Opposer, the Trademark and/or the name 'Chloe Vevrier.'"

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

See Bates Nos. AF2, AF7 - AF9, inclusive.

"15. All of Applicant's business plans and forecasts that relate to the services offered under the Trademark."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

Applicant objects to Request for Production No. 15 on the grounds the information sought is confidential business information. Upon the entry of an appropriate Protective Order, Applicant shall supplement this Response to Request for Production No. 15.

"16. All documents evidencing the channels of trade for the services offered under the Trademark."

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

See Bates Nos. AF1 - AF99, inclusive.

"17. All documents evidencing the type of purchasers and/or potential purchasers of the services offered under the Trademark."

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

See Bates Nos. AF1 - AF101, inclusive.

"18. All documents evidencing the manner in which the services offered under the Trademark are advertised and/or promoted."

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

See Bates Nos. AF1 - AF101, inclusive.

"19. All documents evidencing any and all lawsuits, oppositions, cancellations or the like involving in any way Applicant's Trademark."

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

In response to Request for Production No. 19, Applicant incorporates Objection No. 6. In further response to Request for Production No. 19, all documents responsive to Request for

Production No. 19 are publically available from the United States Patent and Trademark Office.

"20. Any market surveys conducted by Applicant relating to or referring to Opposer's mark CHLOESWORLD, the Trademark and/or the name 'Chloe Vevrier.'"

**RESPONSE TO REQUEST FOR PRODUCTION NO. 20**:

Applicant has reviewed all documents in her possession, custody and control and can find no documents responsive to Request for Production No. 20.

"21. All documents relating to, referring to or evidencing any instance of actual confusion between Opposer's mark CHLOESWORLD or services used in connection with Opposer's mark and the Trademark."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 21**:

Applicant has reviewed all documents in her possession, custody and control and can find no documents responsive to Request for Production No. 21.

"22. All documents relating to, referring to or evidencing any instance where a purchaser of Applicant's services believed that Applicant's services were sponsored by, associated with, or originated with Opposer."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

Applicant has reviewed all documents in her possession, custody and control and can find no documents responsive to Request for Production No. 22.

"23. All documents that support your responses to Opposer's First Set of Interrogatories to Applicant."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

See Response to Request for Production No. 1.

Respectfully submitted,

ISAACMAN, KAUFMAN & PAINTER
A Professional Corporation

By: _____
Michael A. Painter
Attorneys for Applicant,
ANDREA FISCHER

Dated: August 9, 2004
8484 Wilshire Boulevard, Suite 850
Beverly Hills, California 90211
(323) 782-7700

## CERTIFICATE OF SERVICE

The undersigned declares under the penalty of perjury the within **APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** was forwarded to counsel for Opposer as follows:

Richard A. Morgan, Esq.
Laura Fernandez, Esq.
Buchanan Ingersoll, P.C.
100 Southeast Second Street, Suite 2100
Miami, Florida 33131

Michael L. Dever, Esq.
Buchanan Ingersoll, P.C.
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, Pennsylvania 15219

via first class mail, postage prepaid, this 9th day of August, 2004.

Sheryl R. Conaway
SHERYL R. CONAWAY