

TTAB

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November 17, 2005

BY FIRST CLASS MAIL

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Re: *L.C. Licensing, Inc. v. Cary Berman*  
Opp. No. 91162330  
Our Ref.: 019200/25101

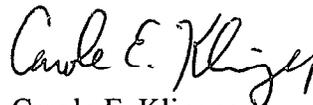
Dear Sir or Madam:

Enclosed for filing are Opposer L.C. Licensing, Inc.'s:

- (1) Opposer's Motion for Summary Judgment;
- (2) Statement of Facts and Memorandum in Support of Opposer's Motion for Summary Judgment (with Exhibits A through K); and
- (3) Declaration of Rolando Felix (with Exhibits 1 through 7).

It is Opposer L.C. Licensing, Inc.'s understanding that no fee is due for filing this motion. In the event that Opposer is mistaken in this regard, please charge any associated fees to Deposit Account No. 50-0540. Please acknowledge receipt of the enclosed papers by returning the enclosed self-addressed stamped postcard.

Very truly yours,

  
Carole E. Klinger

Enclosures

cc: Mr. Cary Berman



11-21-005

U.S. Patent & TMO/TM Mail Rcpt Dt. #01

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IN ALLIANCE WITH BERWIN LEIGHTON PAISNER: LONDON \* BRUSSELS

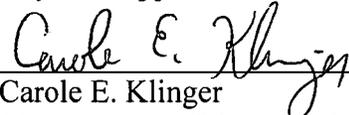


Pursuant to Fed. R. Civ. P. 56 and 37 C.F.R. § 2.116, Opposer L.C. Licensing, Inc., by its undersigned attorneys, hereby moves for summary judgment for refusal of registration of U.S. Application Serial Number 78/320,850 for the mark ENYCE, filed as an intent-to-use application by Applicant Cary Berman.

In support of this Motion, Opposer relies upon the enclosed Statement of Facts and Memorandum in Support of Opposer's Motion for Summary Judgment (with Exhibits A through K) and Declaration of Orlando Felix (with Exhibits 1 through 7), showing continuous use of Opposer's marks well before the filing date of Applicant's intent-to-use application and a likelihood of confusion between Applicant's mark and Opposer's marks as a matter of law.

Respectfully submitted,

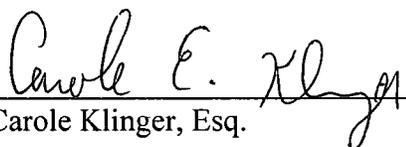
KRAMER LEVIN NAFTALIS & FRANKEL LLP  
Attorneys for Opposer

By:   
Carole E. Klinger  
1177 Avenue of the Americas  
New York, New York 10036  
(212) 715-9357 (telephone)  
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cklinger@kramerlevin.com

**CERTIFICATE OF SERVICE**

I hereby certify that on November 17, 2005, I caused one true copy of  
OPPOSER'S MOTION FOR SUMMARY JUDGMENT to be served by first class mail upon  
Applicant Cary Berman by causing a true and correct copy thereof to be deposited in the United  
States mail, postage prepaid, addressed to Applicant as follows:

Cary Brett Berman  
1917 Lafayette Road  
Gladwyne, PA 19035

  
\_\_\_\_\_  
Carole Klinger, Esq.



**TABLE OF AUTHORITIES**

**CASES**

*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)..... 3

*On-Line Careline, Inc. v. America Online, Inc.*, 229 F.3d 1080, 56 U.S.P.Q.2d 1471  
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*In re E.I. Du Pont DeNemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973)..... 4

*Interstate Brands Corp. v. McKee Foods Corp.*, 53 U.S.P.Q.2d 1910 (T.T.A.B. 2000) ..... 10

**STATUTES**

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15 U.S.C. § 1072 ..... 10

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## STATEMENT OF FACTS

L.C. Licensing, Inc. (hereinafter "Opposer") files this memorandum in support of its Motion for Summary Judgment to refuse registration of intent-to-use Application Serial No. 78/320,850 (hereinafter "the Application"), filed by Cary Berman (hereinafter "Applicant"), for the mark ENYCE.

As stated in its Notice of Opposition, Opposer is the owner of the following federal trademark registrations: (1) Registration No. 2,093,751, for the mark ENYCE, issued September 2, 1997, for "apparel and headwear for men, women and children, namely, hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, T-shirts, shorts, tanktops, skirts, warm-up suits, sweatshirts and sweatpants," in International Class 25; (2) Registration No. 2,351,411, for the mark ENYCE & Design, issued May 23, 2000, for "apparel and headwear for men, women and children, namely hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, t-shirts, shorts, tank tops, skirts, warm up suits, sweatshirts and sweatpants," in International Class 25; and (3) Registration No. 2,338,404, for the mark LADY ENYCE, issued April 4, 2000, for "women's clothing, namely, shirts, tops, bottoms, pants, jackets, coats, jogging suits, warm-up suits, T-shirts, polo shirts, tank tops, skirts, shorts, denim shirts, denim pants, denim tops, denim bottoms, denim shorts, denim skirts, sweat shirts, sweat pants, sweat shorts, headwear, caps, hats," in International Class 25. True copies of these registrations for these marks (collectively, "Opposer's Marks") are attached to this Motion as Exhibits A, B, and C. (All of the above goods being collectively referred to hereinafter as "Opposer's Goods.")

Opposer's Marks identify Opposer as a source of a variety of contemporary urban fashion goods. (Felix Decl., ¶ 6.) Opposer's Marks and products have been the subject of extensive press and media coverage. (Felix Decl., ¶ 11.) In part due to the media attention given

to Opposer's Marks, and in part due to Opposer's extensive use of Opposer's Marks, they have acquired enormous value and good will and have become well-known and famous. (*Id.*, ¶ 12.)

The Application seeks registration of Opposer's highly distinctive, identical mark ENYCE for "custom automotive accessories, namely, fitted car covers, shift knobs, brake pads and wheels for land vehicles, license plate holders and spoilers for vehicles," in International Class 12 (hereinafter "Applicant's Goods").

Given the highly unique nature of Opposer's Marks and the related nature of Opposer's Goods and Applicant's Goods, there is a strong likelihood that consumers, viewing the mark ENYCE in respect of the goods for which registration is sought, are likely to believe that such goods derive from the same source as the goods sold under Opposer's Marks, or are affiliated, connected, associated, sponsored, approved or authorized by Opposer. Accordingly, issuance of a registration of the ENYCE mark to Applicant would seriously damage Opposer in that it would be likely to cause confusion, deception or mistake among consumers and dilute the distinctiveness of Opposer's Marks.

## ARGUMENT

### STANDARD FOR SUMMARY JUDGMENT

As procedure and practice in inter partes proceedings are governed by the Federal Rules of Civil Procedure, summary judgment is a proper procedural device in proceedings before the Trademark Trial and Appeal Board. 37 C.F.R. § 2.116; T.B.M.P. § 528. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

## LIKELIHOOD OF CONFUSION

Refusal of registration is proper if a mark consists of a registered mark and is “likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1052(d). “Whether likelihood of confusion exists is a question of law, based on underlying factual determinations.” *On-Line Careline, Inc. v. America Online, Inc.*, 229 F.3d 1080, 1084, 56 U.S.P.Q.2d 1471, 1474 (Fed. Cir. 2000).

The issue of whether a likelihood of confusion exists between two marks, decided on a case-by-case basis, is aided by application of the factors enumerated in *In re E.I. Du Pont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 567 (C.C.P.A. 1973). *On-Line Careline*, 229 F.3d at 1084, 56 U.S.P.Q.2d at 1474. Of the thirteen factors set out in *Du Pont*, nine are relevant to the instant case. These nine factors, which are analyzed below, include:

1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression (*Du Pont* Factor #1);
2. The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use (*Du Pont* Factor #2);
3. The similarity or dissimilarity of established, likely-to-continue trade channels (*Du Pont* Factor #3);
4. The conditions under which and buyers to whom sales are made, i.e., "impulse" vs. careful, sophisticated purchasing (*Du Pont* Factor #4);
5. The fame of the prior mark (sales, advertising, length of use) (*Du Pont* Factor #5);
6. The number and nature of similar marks in use on similar goods (*Du Pont* Factor #6);
7. The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark) (*Du Pont* Factor #9);
8. The extent of potential confusion, i.e., whether de minimis or substantial. (*Du Pont* Factor #12); and

9. Any other established fact probative of the effect of use (*Du Pont* Factor #13).

***Du Pont* Factor #1: The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression**

In the present case, the mark sought to be registered – ENYCE – is identical to Opposer’s registered mark ENYCE. As identical marks, it cannot reasonably be disputed that they are very similar in appearance, sound, connotation and commercial impression.

Furthermore, ENYCE is a coined word, and Opposer is not aware of any other company, other than counterfeiters of Opposer’s Goods, using the mark ENYCE. (Felix Decl., ¶ 4.) Taking into account the highly unique nature of Opposer’s mark and that the mark sought to be registered is identical to Opposer’s mark ENYCE, evidence on *Du Pont* Factor #1 strongly supports a finding of likelihood of confusion. Further, for the core of consumers of Opposer’s contemporary urban street wear apparel, custom automotive accessories and apparel are both fashion articles.

***Du Pont* Factor #2: The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use**

While the description of goods in the Application and the goods offered by Applicant differ, the consumers to whom the goods are marketed are the very similar. The urban streetwear fashion consumer goods offered under Opposer’s ENYCE mark are targeted to the same 15-30 year old demographic that constitutes a significant percentage of the purchasers of the goods described in the Application – “custom automotive accessories, namely, fitted car covers, shift knobs, brake pads and wheels for land vehicles, license plate holders and spoilers for vehicles.” (See Felix Decl., ¶¶ 10, 13-14.) Further, for the core of consumers of Opposer’s

contemporary urban street wear apparel, custom automotive accessories and apparel are both fashion articles.

For example, DUB magazine – one of the magazines in which ENYCE products are regularly featured – is a magazine devoted to the urban automotive universe, including vehicles and automotive accessories such as those which Applicant intends to market under the ENYCE name. (Felix Decl., ¶ 13.) (Representative examples of ENYCE advertisements in DUB magazine are attached as Exhibits 1 through 7 to the Declaration of Rolando Felix.)

DUB magazine is also targeted to young men aged approximately 15-30. (Felix Decl., ¶ 14.) Accordingly, Opposer’s consumers overlap with purchasers of automotive accessories, which are very popular in the urban lifestyle market. (*Id.*, ¶ 10.) It is for this very reason that Opposer selected DUB magazine to feature advertisements of its ENYCE products. (*Id.*, ¶ 14)

This connection is further supported by the fact that other well-known vendors of urban streetwear fashion goods have used and/or have filed applications with the Trademark Office to register marks first registered and used for goods in International Class 25 for automotive-related goods in International Class 12 – the same class in which Applicant seeks registration of Opposer’s mark. For example, Sean Combs – the original registrant of Registration No. 2,466,699 for the mark SEAN JOHN for “T-shirts, jackets, pants, shirts, coats, bandannas, sweatshirts, headwear and fashion accessories, namely, underwear, boxer shorts” in International Class 25 – has filed Application Serial No. 78/154,174 to register for goods in International Class 12, namely “[a]utomobiles, trucks, and sports utility vehicles and accessories and furnishings for the same.” (Exhibits D, E.) GTFM, Inc. – owner of Registration No. 2,403,324 for the mark FUBU for “clothing, namely shirts, vests, sweaters, shoes, caps,

bandannas, shorts, sweat shirts, pants, belts for clothing, socks, swimwear, jackets, rainwear, blouses, dresses, footwear, hosiery, scarves, hats, head bands, pajamas and sleepwear” in International Class 25 – has filed Application Serial No. 76/529,104, for the same mark in International Class 12 for “[a]utomotive accessories, namely, wheels, shift knobs, fitted or semi-fitted car covers and car bras, pedal pads and tire covers.” (Exhibits F, G.) Phat Fashions, LLC – owner of Registration No. 1,809,325 for the mark PHAT FARM for “clothing; namely, denim jeans, denim jackets, shirts; namely, sweatshirts, T-shirts, and dress shirts, sweatshorts, army jackets” in International Class 25 – has filed Application Serial No. 76/600,637, for the same mark in International Class 12 for “automobile seat cushions; spoilers for vehicles; automobile windshield sunshades; ... hub caps and hub cap covers; insignia for vehicles; license plate frames; [and] license plate holders,” among other goods. (Exhibits H, I.)

Based on the foregoing, evidence on *Du Pont* Factor #2 supports a finding of likelihood of confusion.

***Du Pont* Factor #3: The similarity or dissimilarity of established, likely-to-continue trade channels**

As discussed above, Opposer’s Goods and Applicant’s Goods are marketed to the same core consumers. (Felix Decl., ¶¶ 10, 13-14.) Further, the respective goods are advertised and marketed through similar channels. (*See id.*) Therefore, evidence on *Du Pont* Factor #3 supports a finding of likelihood of confusion.

***Du Pont* Factor #4: The conditions under which and buyers to whom sales are made, i.e., "impulse" vs. careful, sophisticated purchasing**

Applicant's Goods and the Opposer's Goods are aimed at ordinary purchasers and are not costly products for which consumers would exercise a high degree of care in selecting products. Accordingly, evidence on *Du Pont* Factor #4 supports a finding of likelihood of confusion.

***Du Pont* Factor #5: The fame of the prior mark (sales, advertising, length of use)**

The mark ENYCE has been used to identify apparel since 1996. (Felix Decl., ¶¶ 1, 6.) For the past four years, gross sales of products sold under the ENYCE and LADY ENYCE marks have exceeded \$75 million per year. (*Id.*, ¶ 8) Opposer's Products under the ENYCE mark are sold in more than 1,000 retail outlets, including well known department stores, such as Bloomingdale's, Burdines, Macy's, and May Department Stores. (*Id.*, ¶ 9) The ENYCE mark has been featured in numerous advertisements in magazines such as THE SOURCE, VIBE, DUB, and XXL. (Felix Decl., ¶ 11.) On account of the aforescribed use, promotion and publicity, the ENYCE marks have acquired enormous value, and inestimable goodwill, and have become well-known to the consuming public in the U.S. (Felix Decl., ¶ 12.) Accordingly, evidence on *Du Pont* Factor #5 supports a finding of likelihood of confusion.

***Du Pont* Factor #6: The number and nature of similar marks in use on similar goods**

ENYCE is a coined word, and Opposer is not aware of any other company using the mark ENYCE. (Felix Decl., ¶ 4.) Therefore, as the ENYCE mark is a very distinctive mark, evidence on *Du Pont* Factor #6 supports a finding of likelihood of confusion.

***Du Pont* Factor #9: The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark)**

Opposer designs, manufactures and sells apparel, footwear, bags, hats, belts and other fashion-related products in the United States and internationally, inter alia, the marks ENYCE and LADY ENYCE (the women's line of apparel). (Felix Decl., ¶ 6.) As the ENYCE mark is not one used in connection with one specific product, but rather a full line of men's and women's contemporary urban clothing that is an expression of the hip hop urban lifestyle, the ENYCE mark is viewed by consumers as a "house mark" that is used in connection with a large range of fashion products. (*See id.*, ¶ 6.) As a result, evidence on *Du Pont* Factor #9 supports a finding of likelihood of confusion.

***Du Pont* Factor #12: The extent of potential confusion, i.e., whether de minimis or substantial**

Given the identical nature of Applicant's proposed mark and Opposer's registered mark ENYCE and the fashion connection between Opposer's Goods and Applicant's Goods, the extent of potential confusion among consumers is substantial. The use of the mark ENYCE by Applicant will only serve to confuse consumers and suggest that Opposer has licensed their registered mark for use by Applicant and lead to the assumption by consumers that the parties are affiliated in some way.

In an obvious attempt to benefit from the goodwill generated by the Opposer in its ENYCE marks over the past nine years, Applicant has filed an application for an identical mark for products whose target consumer demographic heavily overlaps with that of the products offered by Opposer under the ENYCE mark. Accordingly, evidence on *Du Pont* Factor #12 supports a finding of likelihood of confusion.

**Du Pont Factor #13: Any other established fact probative of the effect of use**

Of the myriad possible marks available, Applicant chose Opposer's unique mark ENYCE to identify his goods while failing to exercise any duty of care in selecting his mark. Under 15 U.S.C. § 1072, a registration of a mark on the principal register serves as constructive notice of the registrant's claim of ownership thereof.

In response Applicant claims that he "independently thought to use ENYCE on automobile products and was not aware that ENYCE was ever used on anything." (Exhibit J, Answer to Opposer's First Set of Interrogatories to Applicant, ¶ 33.) Applicant also states that no documents exist regarding any investigative efforts on his part to determine the availability of the ENYCE mark. (Exhibit K, Answer to Opposer's First Set of Requests for Production of Documents and Things, ¶ 9.) However, a simple search of the popular Internet search engine "www.google.com" would have yielded hundreds of thousands of web page "hits" containing references to Opposer's Goods. (Felix Decl., ¶ 5.)

As it is well-established principle that one who adopts a mark similar or identical to the mark for the same or closely related goods does so at his own peril, any doubt as the similarity of the marks must be resolved against Applicant and in favor of the existing mark holder. *Interstate Brands Corp. v. McKee Foods Corp.*, 53 U.S.P.Q.2d 1910, 1915 (T.T.A.B. 2000). Accordingly, Applicant's dereliction of his duty of care in the selection and adoption of the ENYCE mark further supports a finding of likelihood of confusion.

**CONCLUSION**

In view of the foregoing, as all of the relevant *Du Pont* factors favor a finding of likelihood of confusion, no genuine issue of material fact exists as to that issue. Opposer respectfully requests that summary judgment be granted and registration of Applicant's mark be refused.

Respectfully submitted,

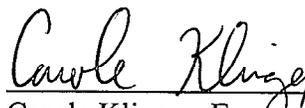
KRAMER LEVIN NAFTALIS & FRANKEL LLP  
Attorneys for Opposer

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Carole E. Klinger  
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New York, New York 10036  
(212) 715-9357 (telephone)  
(212) 715-8000 (fax)  
cklinger@kramerlevin.com

**CERTIFICATE OF SERVICE**

I hereby certify that on November 17, 2005, I caused one true copy of  
STATEMENT OF FACTS AND MEMORANDUM IN SUPPORT OF OPPOSER'S MOTION  
FOR SUMMARY JUDGMENT (with Exhibits A through K) to be served by first class mail  
upon Applicant Cary Berman by causing a true and correct copy thereof to be deposited in the  
United States mail, postage prepaid, addressed to Applicant as follows:

Cary Brett Berman  
1917 Lafayette Road  
Gladwyne, PA 19035

  
\_\_\_\_\_  
Carole Klinger, Esq

Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT A**

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,093,751

**United States Patent and Trademark Office**

Registered Sep. 2, 1997

**TRADEMARK  
PRINCIPAL REGISTER**

**ENYCE**

FILA U.S.A., INC. (DELAWARE CORPORATION)  
11350 MCCORMICK ROAD  
HUNT VALLEY, MD 21031

FOR: APPAREL AND HEADWEAR FOR MEN, WOMEN AND CHILDREN, NAMELY, HATS, CAPS, VISORS, HEADBANDS, SHIRTS, JACKETS, JOGGING SUITS, PANTS, COATS, T-SHIRTS, SHORTS, TANKTOPS, SKIRTS,

WARM-UP SUITS, SWEATSHIRTS AND SWEATPANTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 8-31-1996; IN COMMERCE 8-31-1996.

·SN 75-976,355, FILED 6-24-1996.

CARYN HINES, EXAMINING ATTORNEY

Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT B**

**Int. Cl.: 25**

**Prior U.S. Cls.: 22 and 39**

**Reg. No. 2,351,411**

**United States Patent and Trademark Office**

**Registered May 23, 2000**

**TRADEMARK  
PRINCIPAL REGISTER**



**ENYCE, INC. (DELAWARE CORPORATION)  
8 WEST 40TH STREET  
THIRD FLOOR  
NEW YORK, NY 10018**

**FOR: APPAREL AND HEADWEAR FOR MEN,  
WOMEN AND CHILDREN, NAMELY HATS, CAPS,  
VISORS, HEADBANDS, SHIRTS, JACKETS, JOG-  
GING SUITS, PANTS, COATS, T-SHIRTS, SHORTS,**

**TANK TOPS, SKIRTS, WARM-UP SUITS,  
SWEATSHIRTS AND SWEATPANTS, IN CLASS 25  
(U.S. CLS. 22 AND 39).**

**FIRST USE 8-0-1996; IN COMMERCE 8-0-1996.**

**SER. NO. 75-579,695, FILED 10-30-1998.**

**JANEL PERNELL, EXAMINING ATTORNEY**

Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT C**

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,338,404

**United States Patent and Trademark Office**

Registered Apr. 4, 2000

**TRADEMARK  
PRINCIPAL REGISTER**

**LADY ENYCE**

ENYCE, INC. (DELAWARE CORPORATION)  
8 WEST 40TH STREET, THIRD FLOOR  
NEW YORK, NY 10018

FOR: WOMEN'S CLOTHING, NAMELY,  
SHIRTS, TOPS, BOTTOMS, PANTS, JACKETS,  
COATS, JOGGING SUITS, WARM-UP SUITS, T-  
SHIRTS, POLO SHIRTS, TANK TOPS, SKIRTS,  
SHORTS, DENIM SHIRTS, DENIM PANTS,  
DENIM TOPS, DENIM BOTTOMS, DENIM  
SHORTS, DENIM SKIRTS, SWEAT SHIRTS,  
SWEAT PANTS, SWEAT SHORTS, HEAD-

WEAR, CAPS, HATS, IN CLASS 25 (U.S. CLS. 22  
AND 39).

FIRST USE 7-0-1998; IN COMMERCE  
7-0-1998.

OWNER OF U.S. REG. NO. 2,093,751.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "LADY", APART FROM THE  
MARK AS SHOWN.

SER. NO. 75-694,719, FILED 4-30-1999.

JANEL PERNELL, EXAMINING ATTORNEY

Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT D**



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**TARR Status** **ASSIGN Status** **TDR** **TTAB Status** ( Use the "Back" button of the Internet Browser to return to TESS)

**Typed Drawing**

**Word Mark** SEAN JOHN  
**Goods and Services** IC 025. US 022 039. G & S: T-shirts, jackets, pants, shirts, coats, bandannas, sweatshirts, headwear and fashion accessories, namely, underwear, boxer shorts. FIRST USE: 19990200. FIRST USE IN COMMERCE: 19990200  
**Mark Drawing Code** (1) TYPED DRAWING  
**Design Search Code**  
**Serial Number** 75979813  
**Filing Date** August 27, 1997  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** February 9, 1999  
**Registration Number** 2466699  
**Registration Date** July 3, 2001  
**Owner** (REGISTRANT) Combs, Sean Puffy INDIVIDUAL UNITED STATES 8-10 West 19th Street, 9th Floor New York NEW YORK 10011  
 (LAST LISTED OWNER) CHRISTIAN CASEY LLC NEW YORK LIMITED LIABILITY COMPANY 1710 BROADWAY NEW YORK NEW YORK 10019  
**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** LAWRENCE E APOLZON  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Other Data** The mark identifies "SEAN PUFFY COMBS" whose consent is of record.  
**Live/Dead Indicator** LIVE

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Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT E**



United States Patent and Trademark Office

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**Record 1 out of 1**

[TARR Status](#) [ASSIGN Status](#) [TDR](#) [TTAB Status](#) ( Use the "Back" button of the Internet Browser to return to TESS)

**Typed Drawing**

**Word Mark** SEAN JOHN

**Goods and Services** IC 012. US 019 021 023 031 035 044. G & S: Sports utility vehicles, automobiles and trucks; accessories and furnishings for the same, namely, hub caps and wheel rims for vehicles. FIRST USE: 20050600. FIRST USE IN COMMERCE: 20050600

**Mark Drawing Code** (1) TYPED DRAWING

**Design Search Code**

**Serial Number** 78154174

**Filing Date** August 14, 2002

**Current Filing Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** April 20, 2004

**Owner** (APPLICANT) Combs, Sean INDIVIDUAL UNITED STATES c/o Bad Boy Entertainment, Inc. 1540 Broadway, 30th Fl. New York NEW YORK 10036

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** Lawrence E. Apolzon

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Other Data** The name "SEAN JOHN" is derived from the applicant's given name whose consent is of record.

**Live/Dead Indicator** LIVE

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Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT F**



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#### Typed Drawing

<b>Word Mark</b>	FUBU
<b>Goods and Services</b>	IC 025. US 022 039. G & S: Clothing, Namely Shirts, Vests, Sweaters, Shoes, Caps, Bandannas, Shorts, Sweat Shirts, Pants, Belts For Clothing, Socks, Swimwear, Jackets, Rainwear, Blouses, Dresses, Footwear, Hosiery, Scarves, Hats, Head Bands, Pajamas and Sleepwear. FIRST USE: 19920900. FIRST USE IN COMMERCE: 19920900
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Design Search Code</b>	
<b>Serial Number</b>	75600277
<b>Filing Date</b>	December 7, 1998
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	October 19, 1999
<b>Registration Number</b>	2403324
<b>Registration Date</b>	November 14, 2000
<b>Owner</b>	(REGISTRANT) GTFM, INC. CORPORATION NEW YORK 350 Fifth Avenue Suite 6617 New York NEW YORK 10118
<b>Attorney of Record</b>	William H. Cox
<b>Prior Registrations</b>	1910169;2068059;2069058;AND OTHERS
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT G**



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#### Typed Drawing

Word Mark FUBU

Goods and Services IC 012. US 019 021 023 031 035 044. G & S: Automotive accessories, namely, wheels, shift knobs, fitted or semi-fitted car covers and car bras, pedal pads and tire covers

IC 022. US 001 002 007 019 022 042 050. G & S: Automotive accessories, namely unfitted car covers, car bras and tire covers

IC 027. US 019 020 037 042 050. G & S: Vehicle floor mats

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 76529104

Filing Date July 2, 2003

Current Filing Basis 1B

Original Filing Basis 1B

Published for Opposition February 24, 2004

Owner (APPLICANT) GTFM, INC. CORPORATION NEW YORK 350 Fifth Avenue, Suite 6617 New York NEW YORK 10118

Attorney of Record William H. Cox

Prior Registrations 1910169;2065987;2068058;2068059;2352438;2403324;2415190;2504042;2504043;2513433;2571725;2607764;2645436;AND OTHERS

Type of Mark TRADEMARK

Register PRINCIPAL

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Opposer L.C. Licensing, Inc.  
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**EXHIBIT H**



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#### Typed Drawing

<b>Word Mark</b>	PHAT FARM
<b>Goods and Services</b>	IC 025. US 039. G & S: clothing; namely, denim jeans, denim jackets, shirts; namely, sweatshirts, T-shirts, and dress shirts, sweatshorts, army jackets. FIRST USE: 19930330. FIRST USE IN COMMERCE: 19930330
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Design Search Code</b>	
<b>Serial Number</b>	74377988
<b>Filing Date</b>	April 8, 1993
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	September 14, 1993
<b>Registration Number</b>	<b>1809325</b>
<b>Registration Date</b>	December 7, 1993
<b>Owner</b>	(REGISTRANT) PHAT FASHIONS INC. CORPORATION NEW YORK Padell, Nadell, Fine,, Weinberger & Co. 1775 Broadway, 7th Floor New York NEW YORK 10019  (LAST LISTED OWNER) PHAT FASHIONS LLC CORPORATION BY ASSIGNMENT NEW YORK 512 SEVENTH AVENUE, 43RD FLOOR NEW YORK NEW YORK 10018
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	BRAD D. ROSE,
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20031229.
<b>Renewal</b>	1ST RENEWAL 20031229
<b>Live/Dead Indicator</b>	LIVE

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Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
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**EXHIBIT I**



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# PHAT FARM

**Word Mark** PHAT FARM

**Goods and Services** IC 012. US 019 021 023 031 035 044. G & S: Airbags for vehicles, SUVs and trucks; bicycles and bicycle bells and horns; bicycle pumps; bicycle racks for vehicles; rims for bicycle wheels; bicycle water bottle cages; anti theft alarms and devices for vehicles; automobile seat cushions; spoilers for vehicles; automobile windshield sunshades; car-top luggage carriers; luggage racks for cars; ski racks for vehicles; spare tire carriers for vehicles; children's car seats; cup holders for use in vehicles; hub caps and hub cap covers; insignia for vehicles; license plate frames; license plate holders; steps for attachment to land vehicles; tire pumps; tires; truck bed liners

**Standard Characters Claimed****Mark Drawing Code** (4) STANDARD CHARACTER MARK**Design Search Code****Serial Number** 76600637**Filing Date** July 2, 2004**Current Filing Basis** 1B**Original Filing Basis** 1B**Published for Opposition** April 19, 2005**Owner** (APPLICANT) Phat Fashions, LLC LTD LIAB CO NEW YORK 512 Seventh Avenue, 43rd Floor New York NEW YORK 10018**Attorney of Record** Brad D. Rose**Type of Mark** TRADEMARK**Register** PRINCIPAL**Live/Dead Indicator** LIVE[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSER DICT](#) | [SEARCH OG](#) | [TOP](#) | [HELP](#)



Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT J**

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

Cary Brett Berman  
1917 Lafayette Road  
Gladwyne, PA 19035  
(610) 227-5600

L. C. Licensing, Inc.

Opposer,

Opposition No. 91162330  
Serial No. 78320850

**ANSWER TO OPPOSER'S FIRST SET  
OF INTERROGATORIES TO  
APPLICANT**

---

v.

CARY B. BERMAN

Applicant

In re Application Serial No. : 78/320850  
Mark : ENYCE  
International Class : 12  
Applicant : Cary Berman  
Filed : October 30, 2003  
Published : August 24, 2004

Applicant, representing himself pro se submits this revised ANSWER to Opposer's FIRST SET OF INTERROGATORIES.

The Applicant is Cary Berman. Cary Berman is a law abiding U.S. citizen living at 1917 Lafayette Rd., Gladwyne, Pa. 19035. Applicant is not represented by council and represents himself pro se. Applicant respectfully asks that all parties please correspond directly with Applicant at the address listed.

Applicant believes that it should receive registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004.

Answers to Opposer's FIRST SET OF INTERROGATORIES by numbered paragraph.

1. Applicant does not understand the question "affiliated or involved" but has ownership in one corporation. C. Berman Associates inc., incorporated in Pennsylvania and located at 1917 Lafayette Rd. , Gladwyne, Pa 19035.

2. Currently the only product or service offered by C. Berman Associates are Vehicle Service Contracts from General Electric Auto Warranty Services (GEAWS) .

3. GEAWS 5 Star, GEAWS 4 Star and GEAWS 3 Star.

4. A Service Contract may be considered a Product or a Service. Applicant does not maintain individual sales figures for each type of Service Contract. Applicant does not keep specific gross sales figures as Applicant only receives commissions. Applicant will offer estimated gross sales figures per year as follows in an effort to hopefully satisfy the Opposer. 2002- in excess of \$100,000; 2003- in excess of \$1,000,000; 2004- in excess of \$2,000,000.

5. A Service Contract may be considered a Product or a Service. Applicant does not maintain individual sales figures for each type of Service Contract. Applicant does not keep specific gross sales figures as Applicant only receives commissions. Applicant will offer estimated gross sales figures per year as follows in an effort to hopefully satisfy the Opposer. 2002- in excess of \$100,000; 2003- in excess of \$1,000,000; 2004- in excess of \$2,000,000.

6. A Service Contract may be considered a Product or a Service. Applicant does not maintain individual sales figures for each type of Service Contract. Applicant does not keep specific gross sales figures as Applicant only receives commissions. Applicant will offer estimated gross sales figures per year as follows in an effort to hopefully satisfy the Opposer. 2002- in excess of \$100,000; 2003- in excess of \$1,000,000; 2004- in excess of \$2,000,000.

7. Vehicle Service Contracts are sold to an individual buyer of a Vehicle. C Berman Associates has thousands of customers.

8. Applicant does not understand this question.

9. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

10. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

11. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant has not decided on the intended use.

12. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. The reason Applicant has not used it's Mark is due to this pending Opposition.

13. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

14. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant has not decided on the intended use..

15. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant has not decided on the intended use.

16. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant has not decided on the intended use..

17. Applicant has not made any decisions about the issues asked in this question pending resolution of this matter in the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board.

18. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant has not made any decisions about the future issues asked in this question pending resolution of this matter in the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board.

19. Applicant has not promoted or advertised it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

20. Applicant has not used and will not use its Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

21. Applicant has not used and will not use its Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant does not have any affiliates or made any other business arrangements pending resolution of this matter.

22. Applicant has not promoted and will not promote its Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

23. Applicant is not aware of any litigation (other than this litigation) involving Applicant's Mark.

24. Applicant has not received any such correspondence.

25. Applicant has not sent any such correspondence.

26. Applicant received a letter from Opposer's council in July of 2004. Applicant took no action.

27. Confusion does not exist as the products are dissimilar.

28. Confusion does not exist as the products are dissimilar. Applicant finds it difficult to understand why a clothing company thinks that automobile products are similar to clothing products.

29. Applicant finds it difficult to understand why automobile products would "cause injury and damage" a clothing company.

30. No one other than Applicant.

31. Cary Berman.

32. Cary Berman.

33. Applicant independently thought to use ENYCE on automobile products and was not aware that ENYCE was ever used on anything if it actually has been used. ENYCE is simply an abbreviation for New York City with the letter "E" on each side to represent electronic commerce. Applicant has a history in the automotive product industry. Specifically Applicant has utilized the internet to show a consumer what the automotive product will look like if installed on an automobile. Applicant respectfully asks that the parties review U. S. Patent Application 09/400.600 and U.S. Patent Application serial No. 09/625,950.

34. In an effort to better answer this question Applicant conducted two separate informal studies of 20 individuals each on street corners in Philadelphia, Pa. and in NYC, NY. No one in said studies had ever heard of opposer's clothing company.

35. Cary Berman.

36. None.

37. Cary Berman.

38. Cary Berman, Evan Davis, Rolando Felix, a current or former employee from the Internal Revenue Service and an expert witness.

SUBMITTED this 12<sup>th</sup> day of September, 2005.

CARY BRETT BERMAN



---

Cary Brett Berman  
1917 Lafayette Road  
Gladwyne, PA 19035  
Phone-610-227-5600  
Fax- 610-667-9517  
autocary@aol.com

Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT K**

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

Cary Brett Berman  
1917 Lafayette Road  
Gladwyne, PA 19035  
(610) 227-5600

L. C. Licensing, Inc.

Opposer,

Opposition No. 91162330

Serial No. 78320850

**ANSWER TO FIRST SET  
OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS AND THINGS**

v.

CARY B. BERMAN

---

Applicant

In re Application Serial No. : 78/320850  
Mark : ENYCE  
International Class : 12  
Applicant : Cary Berman  
Filed : October 30, 2003  
Published : August 24, 2004

Applicant, representing himself pro se submits this revised Answer to  
OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND  
THINGS.

The Applicant is Cary Berman. Cary Berman is a law abiding U.S. citizen living  
at 1917 Lafayette Rd., Gladwyne, Pa. 19035. Applicant is not represented by council and  
represents himself pro se.

Applicant believes that it should receive registration and approval to utilize  
Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on  
October 30, 2003 and Published for opposition on August 24, 2004.

Answers to OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS by numbered paragraph.

1. Applicant does not understand the question "affiliated or involved" but has ownership in one corporation. C. Berman Associates inc., incorporated in Pennsylvania and located at 1917 Lafayette Rd. , Gladwyne, Pa 19035. Corporate documents are located at it's accountant's office. Applicant is in possession of the corporate seal which is impossible to provide with this answer.

2. Specimen versions of the Vehicle Service Contracts offered are Attached as Exhibits A, B & C.

3. Specimen versions of the Vehicle Service Contracts offered are Attached as Exhibits A &B.

4. Specimen versions of the Vehicle Service Contracts offered are Attached as Exhibits A &B.

5. No documents exist in Applicant's possession.

6. No documents exist in Applicant's possession.

7. No documents other than those submitted to the United States Department of Commerce Patent and Trademark Office exist.

8. No documents other than those submitted to the United States Department of Commerce Patent and Trademark Office exist.

9. No documents exist that are responsive to this request.

10. No documents other than those received from the United States Department of Commerce Patent and Trademark Office exist.

11. No documents other than those received from opposer exist.

12. No documents exist that are responsive to this request.

13. No documents exist that are responsive to this request.

14. No documents exist that are responsive to this request.

15. No documents other than those submitted to or received from the United States Department of Commerce Patent and Trademark Office exist.

16. No documents exist that are responsive to this request.

17. No documents exist that are responsive to this request.

18. No documents exist that are responsive to this request.

19. No documents exist that are responsive to this request.

20. No documents exist that are responsive to this request.

21. No documents exist that are responsive to this request.

22. No documents exist that are responsive to this request.

23. No documents exist that are responsive to this request.

24. No documents other than those received from opposer exist.

25. No documents exist that are responsive to this request.

26. No documents exist that are responsive to this request.

27. No documents exist that are responsive to this request.

28. No documents exist that are responsive to this request.

29. No documents exist that are responsive to this request.

30. No documents exist that are responsive to this request.

31. No documents exist that are responsive to this request.

32. No documents exist that are responsive to this request.

33. No documents exist that are responsive to this request.

34. No documents exist in Applicant's possession, however applicant works from a home office at 1917 Lafayette rd., Gladwyne, Pa. 19035.

35.No documents exist that are responsive to this request.

36.No documents exist that are responsive to this request.

37.No documents exist that are responsive to this request.

38.No documents exist that are responsive to this request.

39. Applicant reserves the right to bring automobile products (wheels, brake pads,etc.) to the testimony period and hold said products up next to Opposer's clothing products to determine if confusion would exist between the products.

40.No documents exist that are responsive to this request.

41.No documents exist that are responsive to this request.

42.No documents exist that are responsive to this request.

43.No documents exist that are responsive to this request.

44.No documents exist that are responsive to this request.

45.No documents exist that are responsive to this request.

46.No documents exist that are responsive to this request.

47.No documents other than those received from the United States Department of Commerce Patent and Trademark Office exist.

48. Applicant received a letter from Opposer's council in July of 2004. Applicant did not keep a copy of said letter.

49.No documents other than those received from Opposer exist.

50. No documents exist that are responsive to this request.

51.No documents exist that are responsive to this request.

52. Applicant is an individual representing himself pro se. Applicant does not have a document policy.

53. Applicant intends to hire an expert witness and utilize an expert witness report and testimony.

SUBMITTED this 12<sup>th</sup> day of September, 2005.

CARY BRETT BERMAN



---

Cary Brett Berman  
1917 Lafayette Road  
Gladwyne, PA 19035  
Phone-610-227-5600  
Fax- 610-667-9517  
autocary@aol.com



1. I am one of the co-founders of Enyce, L.L.C. (“Enyce”), and have been with Enyce since its inception in 1996. I am currently Executive Vice President of Enyce and have held this position since 2001. Additionally, I have worked in the fashion industry for over fifteen years and, accordingly, I am familiar with many aspects of the fashion industry including development, branding and marketing of apparel and accessories. The facts and information contained in my declaration are either known to me personally or were obtained from corporate files and records to which I have access.
2. Enyce is the trade name of the company which sells ENYCE products, and ENYCE is also the name by which the ENYCE brand is commonly known.
3. In addition to being one of the co-founders of the ENYCE company/brand, I am also co-creator of the ENYCE line of clothing and fashion accessories which feature high quality contemporary sportswear that is popular with the urban hip hop consumer.
4. I coined the term ENYCE, which I believe to be an invented word. Although I acknowledge that part of our inspiration for creating the mark ENYCE was combining E+NYC+E, the word so created is different than the sum of its parts. Further, although I closely monitor the marketplace, I am not aware of any other company in the United States which uses the mark ENYCE for any goods, other than trademark counterfeiters who have copied my company’s apparel products and mark. Whenever possible, we aggressively pursue such trademark counterfeiters.
5. Despite that ENYCE is a coined word, searching ENYCE with the popular search engine GOOGLE produces over 500,000 hits. A quick perusal of these hits indicates

almost without exception they reference ENYCE products or Enyce (or Liz Claiborne).

6. Products in association with the ENYCE mark have been sold in the U.S. since at least as early as August 31, 1996, and in connection with LADY ENYCE (the women's line of apparel) since at least as early as July 1998. Enyce's product lines include apparel, footwear, bags, hats, belts and other fashion-related products under the marks ENYCE and LADY ENYCE. The ENYCE brand is a contemporary urban clothing brand which is an expression of the hip hop urban lifestyle.
7. In 2003, Enyce, L.L.C. was acquired by Liz Claiborne, Inc. After the acquisition of Enyce by Liz Claiborne, Enyce's trade marks were assigned to Liz Claiborne's licensing subsidiary, L.C. Licensing, Inc. (LCL). LCL is the owner of the ENYCE marks, and trademark registrations therefore in the United States and in many other countries. LCL licenses the ENYCE marks to Enyce, and under this license LCL has direct control over the character and quality of all goods sold and services offered in association with all of the ENYCE marks. LCL is the owner of U.S. Registration No. 2093751 for ENYCE, 2351411 for ENYCE & Design, and 2338404 for LADY ENYCE.

### **SALES**

8. Enyce began use of the mark ENYCE to identify apparel in 1996. Sales of apparel under the brand increased rapidly. In fact, for the past four (4) years gross sales of ENYCE/LADY ENYCE products have exceeded \$75 million per year.

## CHANNELS OF TRADE

9. The ENYCE clothing brand that has been sold in the U.S. in department stores such as Bloomindale's, Burdines, Macy's, May Department Stores, and numerous independent specialty stores all over the country. ENYCE products are sold in over one thousand stores nationwide and on many websites. For example, the following web sites sell ENYCE products in the U.S.: "www.drjays.com", "www.urbanmall.com" and "www.macys.com".
10. The target consumer for ENYCE is predominantly young men between the ages of 15-30. The ENYCE target consumer substantially overlaps with the core consumer for automobile accessories, such as license plate holders, wheels and spoilers for vehicles. In fact, the hip hop and car accessories markets are closely intertwined in that hip hop glamorizes the car culture and its accessories to a degree that it has become part of the hip hop lifestyle, along with the urban wear clothing. Thus, while at first glance the car accessories identified in Applicant's application may appear distinct from those in LCL's ENYCE registrations, car accessories are in fact related to hip hop lifestyle to such an extent that the core consumers for both products are substantially the same. In fact, several other popular hip hop urban wear clothing companies, such as Sean John, also sell custom car accessories similar to those that Applicant intends to sell.

## PUBLICITY AND PROMOTION/OVERLAPPING CHANNELS OF TRADE

11. From very early on, Enyce benefited from a great deal of publicity. It is also regularly featured in numerous advertisements in magazines such as THE SOURCE, VIBE, DUB, and XXL. Additionally, press booklets for ENYCE and LADY ENYCE seasonal lines are regularly distributed to the press.
12. On account of the aforescribed use, promotion and publicity, the ENYCE marks have acquired enormous value, and inestimable goodwill, and have become well-known to the consuming public in the U.S.
13. Additionally, DUB magazine – one of the magazines in which ENYCE products are regularly featured – is a magazine devoted to the urban automotive universe, including vehicles and automotive accessories such as those that Applicant intends to market under the ENYCE name. (Representative examples of advertisements in DUB magazine are attached hereto as Exhibits 1 through 7).
14. DUB magazine is also targeted to young men aged approximately 15-30 and its readers are my company's target customers for the ENYCE brand apparel. It is for this very reason that Enyce selected DUB magazine to feature advertisements of its ENYCE products.
15. Therefore, I believe that if ENYCE was to be used in connection with automotive accessories, a substantial number of reasonable consumers would believe that such products were either produced or sponsored by my company.
16. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or

document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: 17 NOVEMBER 2005

By: 

Name: Rolando Felix

Title: Executive Vice President of Enyce, L.L.C.

**CERTIFICATE OF SERVICE**

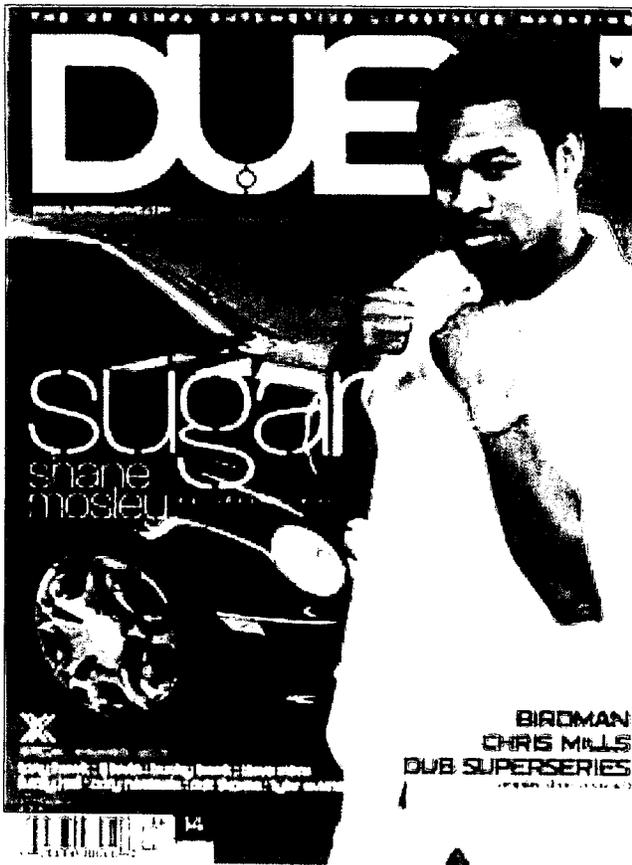
I hereby certify that on November 17, 2005, I caused one true copy of  
DECLARATION OF ORLANDO FELIX (with Exhibits 1 through 7) to be served by first class  
mail upon Applicant Cary Berman by causing a true and correct copy thereof to be deposited in  
the United States mail, postage prepaid, addressed to Applicant as follows:

Cary Brett Berman  
1917 Lafayette Road  
Gladwyne, PA 19035

  
\_\_\_\_\_  
Carole Klinger, Esq.

Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT 1**

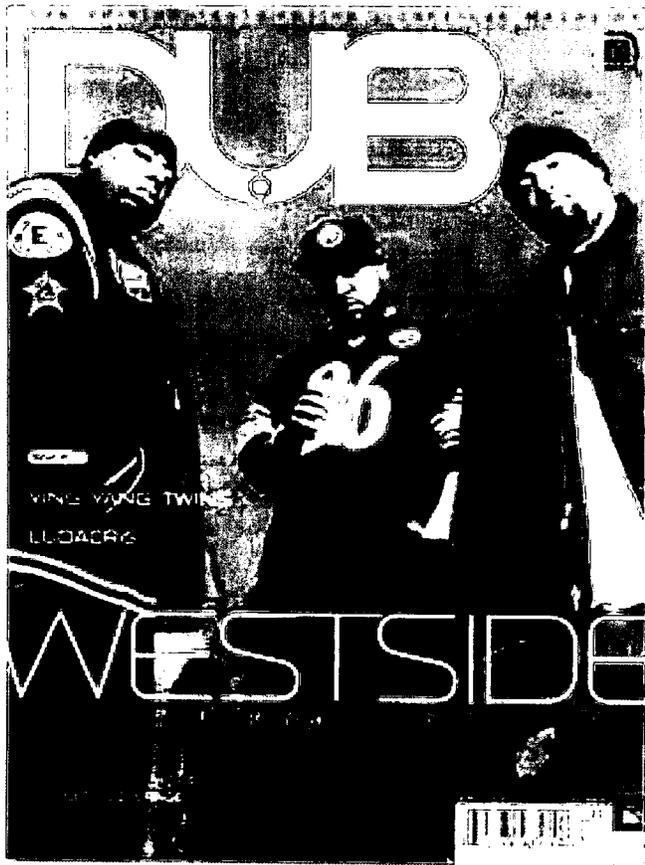


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**EXHIBIT 2**



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SPRING 03



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**EXHIBIT 3**



EMINEM & DIZ  
ERIC SERMON  
LIL FLIP  
AND MORE

44 MIDNIGHT CLUB

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SUMMER 04



REVISITING TOKYO'S KINGPIN

nigo

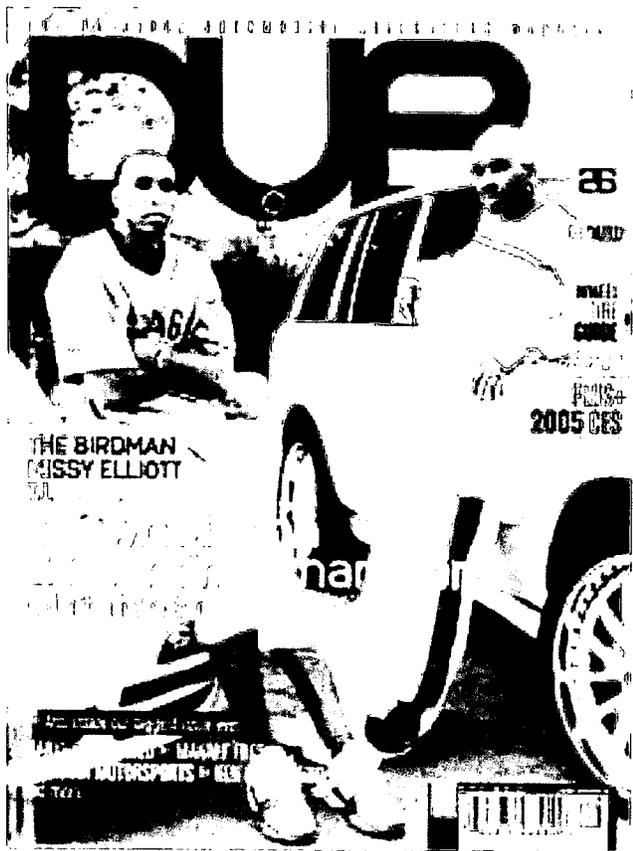


THE ENYCECLOTHING COMPANY

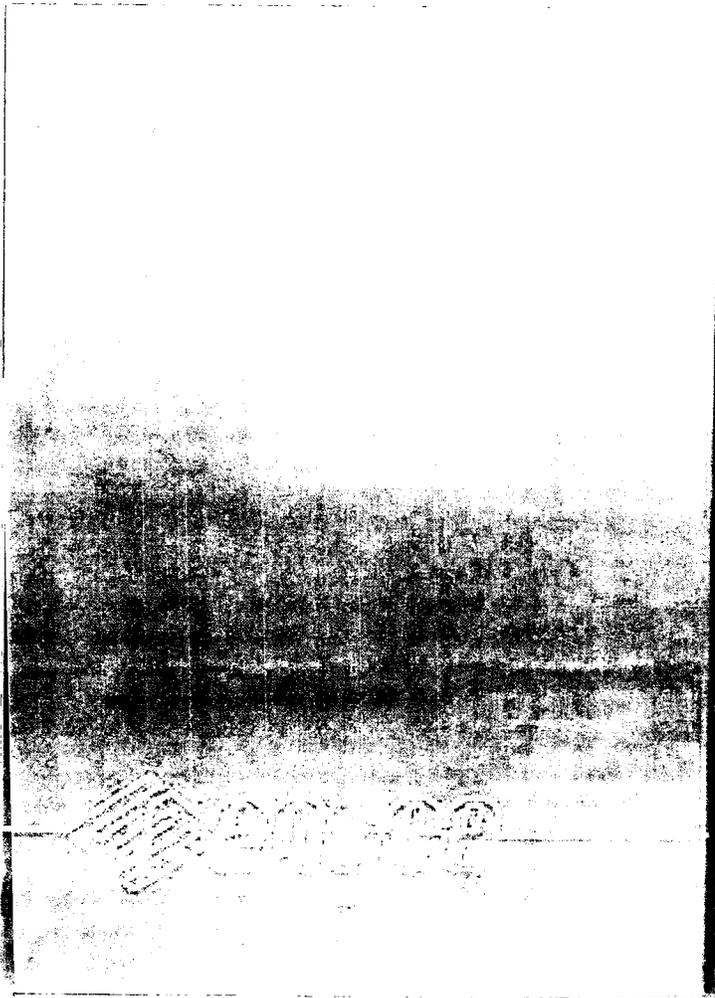


Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT 4**

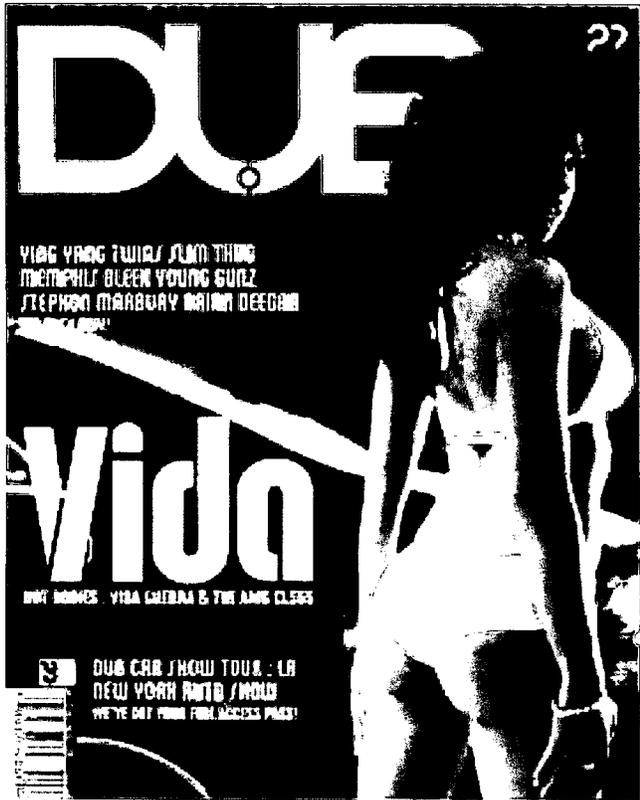


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Opposer L.C. Licensing, Inc.  
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**EXHIBIT 5**

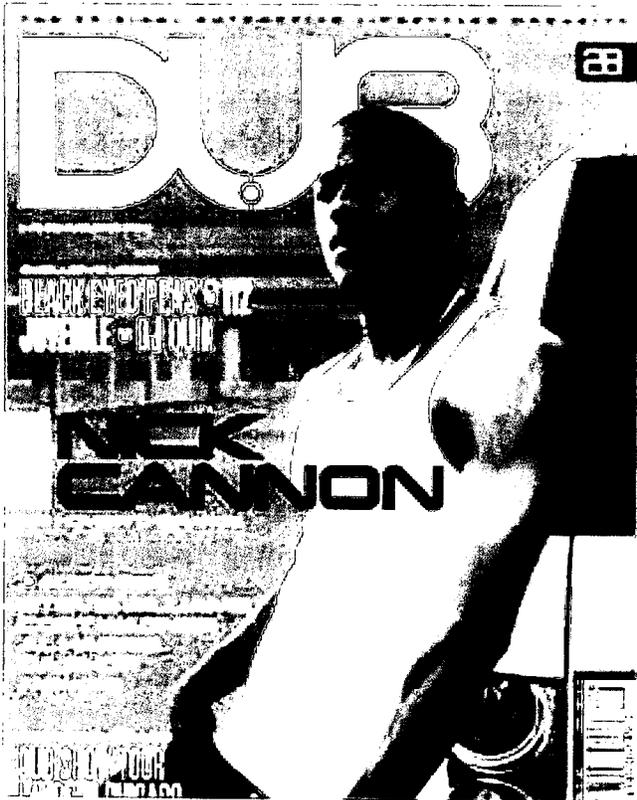


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SUMMER 05

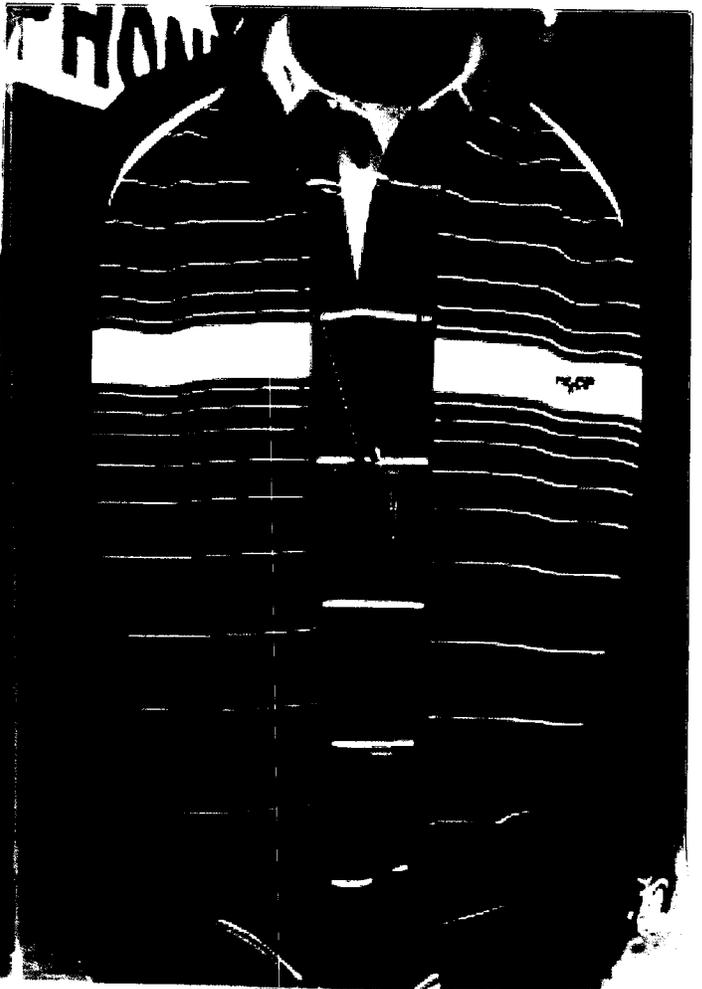


Opposer L.C. Licensing, Inc.  
Opposition No. 91162330  
*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT 6**



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Opposer L.C. Licensing, Inc.  
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*L.C. Licensing, Inc. v. Cary Berman*

**EXHIBIT 7**



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