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

V Secret Catalogue, Inc. and Intimate Beauty Corporation, d/b/a Victoria's Secret Beauty,

No. 91162422

Opposers,

MOTION TO WITHDRAW  
NOTICE OF DEFAULT  
JUDGMENT AND FOR  
SUSPENSION OF THE  
PROCEEDINGS

v.

Rick Worobec,



Applicant.

02-16-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

**I. INTRODUCTION**

Applicant, by his attorneys, hereby submits that default judgment should not be entered against him based on inadequate notice, an absence of willful or bad faith conduct on his part, and inadequate assistance of counsel. Additionally, Applicant requests suspension of the present Opposition pending the outcome of a related opposition proceeding.

**II. REQUEST FOR REMOVAL OF DEFAULT**

**A. Facts of this Case**

On October 8, 2004, the Trademark Trial and Appeal Board (hereinafter "the Board") mailed its notification indicating that a notice of opposition to U.S. Trademark Application Nos. 78/315569 (SOSEX) and 78/319291 (OSOSEX) had been received and that an answer was due within forty days. Applicant became aware of the opposition against the present applications in November 2004, and began working with a trademark attorney through Arvic Search Services. See the accompanying Declaration of Rick Worobec ("Worobec Declaration"), ¶ 2.

Communication with his attorneys and Arvic was inconsistent. Moreover, Applicant was out of the country on business for extended periods of time. Worobec Declaration, ¶¶ 2-3. Because Applicant's attorney did not file an answer on his behalf, the Board sent a notice of default on January 12, 2005. Unfortunately, Applicant was not informed until January 28, 2005, that his attorneys were unwilling to represent him in this matter (see Worobec

1 Declaration, ¶ 3, Exhibit A), and only became aware of the notice of default on February 3,  
2 2005 (see Worobec Declaration, ¶ 4, Exhibit B).

3 Applicant, on his own, was unsure of how to respond to the notices from the Board.  
4 While traveling on business, Applicant contacted alternative counsel as soon as he found out  
5 his former counsel was unavailable. Worobec Declaration, ¶ 4.

6 Applicant at this time requests that the Board withdraw the notice of default and reset  
7 the time in which Applicant may answer the notice of opposition, and bases such request on  
8 the following law and analysis.

9 **B. Law and Analysis**

10 The courts and the Board are reluctant to grant judgments by default and tend to  
11 resolve doubt in favor of setting aside a default, or withdrawing a notice of default, since the  
12 law favors deciding cases on their merits. *Morris v. Charnin*, 85 F.R.D. 689 (S.D.N.Y.1980);  
13 *Alopari v. O'Leary*, 154 F.Supp. 78 (E.D.Penn.1957); *Thrifty Corporation v. Bomax*  
14 *Enterprises*, 228 USPQ 62 (TTAB 1985); *Regent Baby Products Corp. v. Dundee Mills, Inc.*,  
15 199 USPQ 571 (TTAB 1978).

16 A motion to set aside default is addressed to the sound discretion of the court, may be  
17 granted for good cause, and "is usually granted when no substantial prejudice will result to the  
18 plaintiff and [when] the defendant, not being guilty of gross neglect, claims the existence of a  
19 meritorious defense." *Kulakowich v. A/S Borgestad*, 36 F.R.D. 185, 186 (E.D.Penn.1964); *see*  
20 *also, Seanor v. Bair Transport Company of Delaware, Inc.*, 54 F.R.D. 35 (E.D.Penn.1971).  
21 In *Heleasco Seventeen, Inc. v. Drake*, 102 F.R.D. 909, 917 (D.Del.1984), the court held it  
22 would be abuse of a court's discretion not to set aside a default when circumstances are such  
23 that a plaintiff would not be prejudiced, the defendant has established a meritorious defense  
24 and defendant did not engage in willful or bad faith conduct leading to default. Finally, where  
25 it is the attorney rather than the party itself that is responsible for the failure to properly  
26 defend an action, as is true of the instant case, courts are likely to vacate a default. *Trust*

1 *Company Bank v. Tingen-Millford Drapery Company, Inc.*, 119 F.R.D. 21, 22 (E.D.N.C.  
2 Raleigh Div.1987).

3 In this case, Opposers V Secret Catalogue, Inc. and Intimate Beauty Corporation, d/b/a  
4 Victoria's Secret Beauty would not be prejudiced by withdrawal of the notice of default. As  
5 shown in the accompanying declaration of Rick Worobec, Applicant's failure to timely file an  
6 answer was in no way willful or in bad faith, but was the result of failed communications  
7 between Applicant and his former counsel. Furthermore, Applicant believes he has  
8 meritorious defense.

9 Applicant hereby requests that default judgment not be entered, and that the time for  
10 him to answer or otherwise plead in response to the opposition filed herein be reset.  
11 Applicant will timely respond to said opposition.

### 12 **III. REQUEST FOR SUSPENSION OF THIS PROCEEDING**

13 Applicant has become aware that Opposers' mark, SO SEXY, is itself subject to  
14 opposition proceedings before the Board in Opposition No. 91125739 by a third party, and  
15 requests that the present Opposition be suspended pending the outcome of Opposition  
16 No. 91125739.

#### 17 **1. Background Facts**

18 According to the Board records, Opposition No. 91125739 was filed by Sexy Hair  
19 Concepts, LLC on July 18, 2002, against the present Opposers' mark as found in U.S.  
20 Trademark App. No. 78/094035 (SO SEXY), based on Sexy Hair Concepts' mark SEXY  
21 HAIR, as found in U.S. Trademark Registration No. 2403396. See accompanying declaration  
22 of Claire Foley, ¶¶ 2-3, Exhibits 1 and 2.

23 Since that time, the parties in that opposition proceeding have exchanged motions and  
24 discovery requests, are just now concluding the testimony period for the party in position of  
25 defendant, and are entering the 15-day rebuttal testimony for the party in the position of  
26 plaintiff. See Foley Declaration, ¶ 4, Exhibit 3.

1 Applicant in the present Opposition No. 91162422 requests a suspension of he present  
2 proceeding pending the outcome of Opposition No. 91125739, and bases such request on the  
3 following arguments.

4 **2. Basis for Suspension**

5 When it comes to the attention of the Board that a party to a pending case is engaged  
6 in another Board proceeding that may have a bearing on the case, proceedings before the  
7 Board may be suspended until termination of the other Board proceeding. Trademark Rule  
8 2.117(a).

9 In this case, because the Opposers' mark that is used as a basis in the present  
10 proceeding is itself the subject of an opposition, the present case should be suspended until  
11 the termination of that proceeding. Conclusions reached by the Board in Opposition  
12 No. 91125739 may have a bearing upon the issues in the present Opposition No. 91162422.

13 **IV. CONCLUSION**

14 For the foregoing reasons, Applicant requests that default judgment not be entered  
15 against him and requests that the time for answer be reset. Further, the present Opposition  
16 should be suspended pending the outcome of related Opposition No. 91125739.

17 Dated this 14 day of February, 2005.

18  
19 CHRISTENSEN O'CONNOR  
20 JOHNSON KINDNESS<sup>PLLC</sup>

21 Claire Foley  
22 Claire Foley  
23 Kevan L. Morgan, Reg. No.42,015  
24 Attorneys for Applicant Rick Worobec

25 I hereby certify that this MOTION TO WITHDRAW NOTICE OF DEFAULT JUDGMENT AND  
26 FOR SUSPENSION OF THE PROCEEDINGS is being deposited with the U.S. Postal Service by Express Mail  
27 No. EV064735075US with postage thereon fully prepaid and addressed to the Trademark Trial and Appeal  
Board, U.S. Patent and Trademark Office, 2900 Crystal Drive, Alexandria, VA 22202-3514, on the below date.

Date: 2/14/05 Shannon Hill

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2005, the original of the MOTION TO WITHDRAW NOTICE OF DEFAULT JUDGMENT AND FOR SUSPENSION OF THE PROCEEDINGS was filed with the Trademark Trial and Appeal Board and a true copy was served in the manner listed below.

Via facsimile and U.S. Mail to:

Frank J. Colucci  
Colucci & Umans  
218 East 50th Street  
New York, New York 10022-7681  
Facsimile No. 212.935.5728

Attorneys for Plaintiff

Executed on FEBRUARY 14, 2005.

  
(signature)

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

V Secret Catalogue, Inc. and Intimate Beauty Corporation, d/b/a Victoria's Secret Beauty,

Opposer,

v.

Rick Worobec,

Applicant.

No. 91162422

DECLARATION OF RICK WOROBEC IN SUPPORT OF MOTION TO WITHDRAW NOTICE OF DEFAULT JUDGMENT AND SUSPENSION OF THE PROCEEDINGS

I, Rick Worobec, being duly sworn, state that:

1. I am the owner of U.S. Trademark Application Nos. 78/315569 and 78/319291, and make this declaration upon my personal knowledge in support of the Motion to Withdraw Notice of Default Judgment and Suspension of the Proceedings.

2. I first became aware of the opposition against the present applications in November 2004, and I began working with trademark attorneys connected with Arvic Search Services. Communication with Arvic Search Services has been difficult and inconsistent.

3. I was out of the country on business in November through December 2004, and again in January through the present. I was informed on January 28, 2005 that Arvic Search Services was unwilling to represent me in this matter (see Exhibit A, attached), and became aware of the notice of default on February 3, 2005 (see Exhibit B, attached).

4. Throughout this time I was hesitant to respond to the notice of opposition by myself—I found it difficult to decipher how to respond to the attorney. I therefore contacted another attorney as soon as I found out my attorneys were unavailable.

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DECLARATION OF RICK WOROBEC IN SUPPORT OF MOTION TO WITHDRAW NOTICE OF DEFAULT JUDGMENT AND SUSPENSION OF THE PROCEEDINGS - 1  
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CHRISTENSEN  
O'CONNOR  
JOHNSON  
KINDNESS

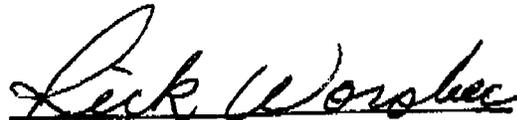
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Seattle, WA 98101-4347  
TELEPHONE: 206.464.8100

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5. I would not like to abandon the present applications. Any failure to answer on my part was unintentional.

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

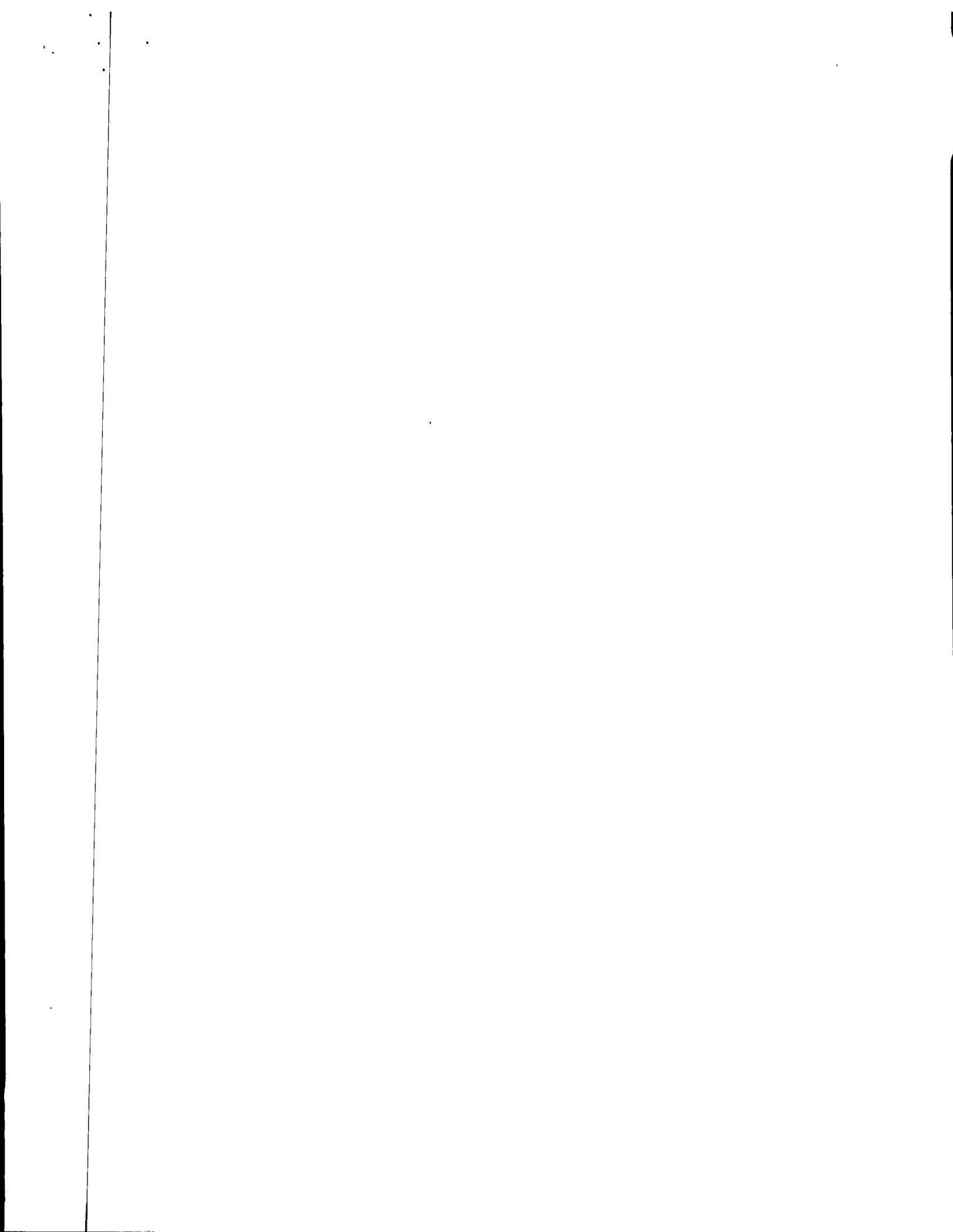
Dated this 11 day of February, 2005.

  
Rick Worobec

DECLARATION OF RICK WOROBEK IN  
SUPPORT OF MOTION TO WITHDRAW NOTICE  
OF DEFAULT JUDGMENT AND SUSPENSION  
OF THE PROCEEDINGS - 2  
R1CW2713PL1.DOC

CHRISTENSEN  
O'CONNOR  
JOHNSON  
KINDNESS

LAW OFFICES  
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Seattle, WA 98101-3147  
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Subject: Trademark Opposition
From: Victor G. Arcuri
To: info@sosexo.ca
Cc: Stewart Neuville

Date: Fri, 28 Jan 2005 13:43:54 -0700

This e-mail is further to my several conversation with you today. While I realize that you are in Hawaii and not able to undertake to find a new lawyer to represent you in this trademark dispute I do not have the time, or inclination, to do so myself.

Unfortunately for you I work almost exclusively in the USA with Stewart. I am not prepared to argue with him over who he should represent as a client. In the course of the events that have recently transpired he has reached the decision that he does not wish to represent you. His decision is final and I respect that.

If you do find other representation then have them contact me and I will forward your files

Sincerely,
Victor G. Arcuri, President
Arvic Search Services Inc.
You can contact me through the Calgary office.

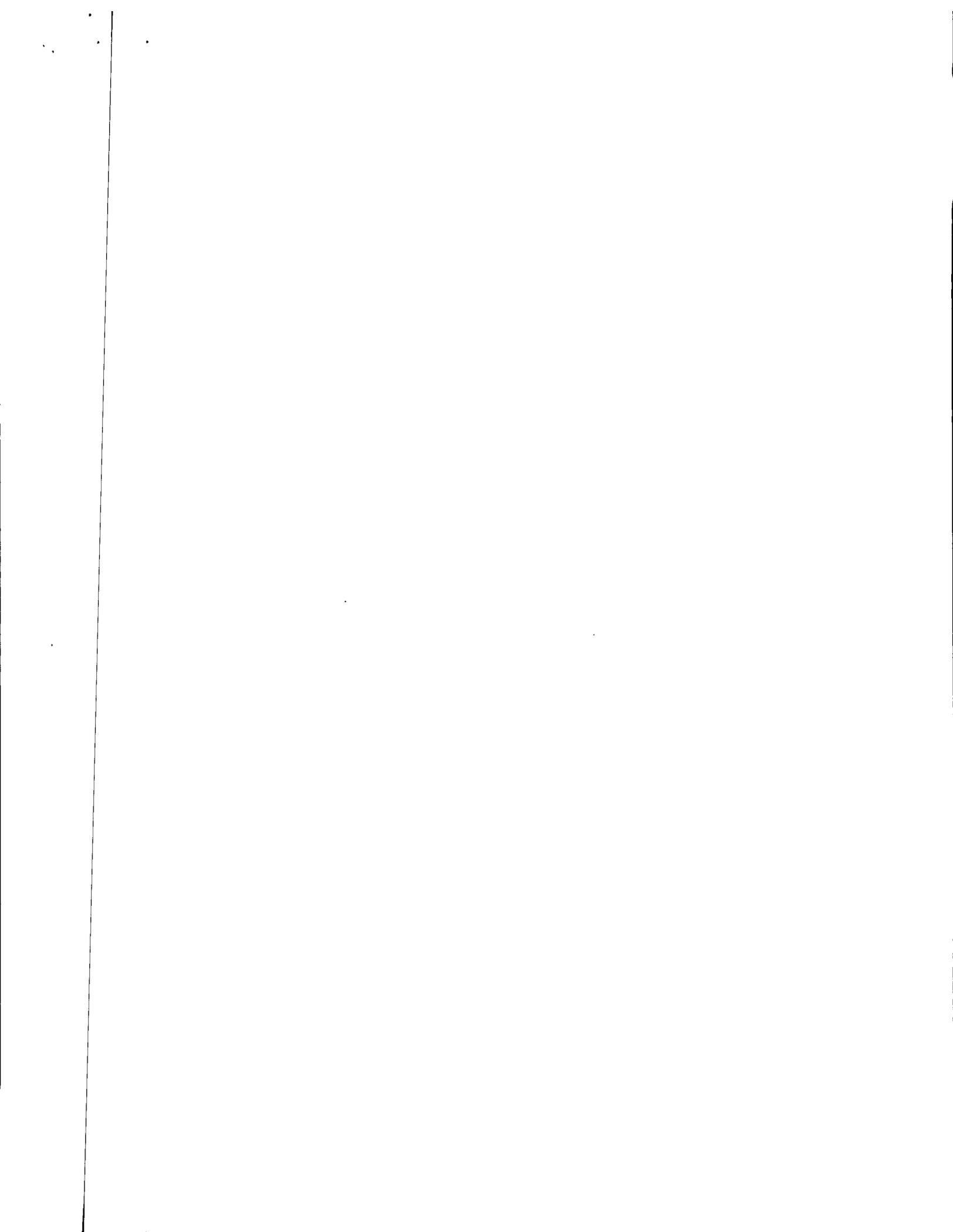


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Edmonton: Suite 509, 10080 Jasper Avenue
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Registered Trade-Mark Agents  
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Page 1 of 1  
Reply to 403-294-0944

**Fax To:**

**Law Firm** Stewart J. Neville  
**Attention** Stewart J. Neville  
**Fax Number** 310-312-8621  
**E-mail address** [stewart@neville.net](mailto:stewart@neville.net)

**Copy To:**

**Applicant** RICK WOROBEK  
**Attention** RICK WOROBEK  
**Fax Number** 780 488-9623  
**E-mail address** [info@sosexe.ca](mailto:info@sosexe.ca)

**Reference:**

**Trademark** OSOSEXE  
**Opposition Number** 91162422  
**Subject** New American trademark Application  
**Date** Thursday, February 3, 2005

I have today received correspondence from the USPTO wherein the Legal assistant has advised me that, inasmuch as we did not file our Answer to the Statement of Opposition by the prescribed date of November 16, 2004, nor have we filed a request for an extension of time, a notice of default has been entered.

We have been given 30 days from January 12, 2005 to show cause why judgement by default should not be entered against you. Therefore, you now have two weeks to sign the retainer letter of Stewart J. Neville and forward him his retainer or this application will be lost forever. Please govern yourself accordingly.

We appreciate the opportunity to be of service in this matter. Please feel free to contact us via e-mail with any questions that you might have.

Sincerely,  
Victor G. Arcuri  
**VGA/pt**

**Arvic Search Services Inc.** Suite 280, 621 - 3<sup>rd</sup> Ave. SW, Calgary Alberta Canada T2P 3T3  
Phone 1-4-3-234-0844 Fax 1-403-294-0944 E-mail [victor@arvic.com](mailto:victor@arvic.com)  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

V Secret Catalogue, Inc. and Intimate Beauty  
Corporation, d/b/a Victoria's Secret Beauty,

Opposers,

v.

Rick Worobec,

Applicant.

No. 91162422

DECLARATION OF CLAIRE  
FOLEY IN SUPPORT OF  
MOTION TO WITHDRAW  
NOTICE OF DEFAULT  
JUDGMENT AND FOR  
SUSPENSION OF THE  
PROCEEDINGS

I, Claire Foley, being duly sworn, state that:

1. I am an attorney representing the Applicant in this case and make this declaration upon my personal knowledge in support of Applicant's Motion to Withdraw Notice of Default Judgment and for Suspension of the Proceedings.

2. Attached as Exhibit 1 is a true and accurate copy of the U.S. Trademark Office's online Opposition index for Opposition No. 91125739, filed July 18, 2002 against V. Secret Catalogue, Inc.'s application for the mark SO SEXY, as found in U.S. Trademark Application No. 78/094035.

3. Attached as Exhibit 2 is a true and accurate copy of the U.S. Trademark Office's online record for U.S. Trademark Registration No. 2403396 for the mark SEXY HAIR, owned by Sexy Hair Concepts, LLC, the opposer in Opposition No. 91125739.

4. Attached as Exhibit 3 is a true and accurate copy of V Secret Catalogue, Inc.'s Motion on Consent to Extend Applicant's Testimony Period and All Other Trial Dates, as submitted on November 19, 2004, showing that the testimony period for applicant in Opposition No. 91125739 ended on February 10, 2005, and that the 15-day rebuttal testimony period for opposer in Opposition No. 91125739 closes on March 27, 2005.

DECLARATION OF CLAIRE FOLEY IN  
SUPPORT OF MOTION TO WITHDRAW NOTICE  
OF DEFAULT JUDGMENT AND FOR  
SUSPENSION OF THE PROCEEDINGS - 1  
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CHRISTENSEN  
O'CONNOR  
JOHNSON  
KINDNESS<sup>SM</sup>

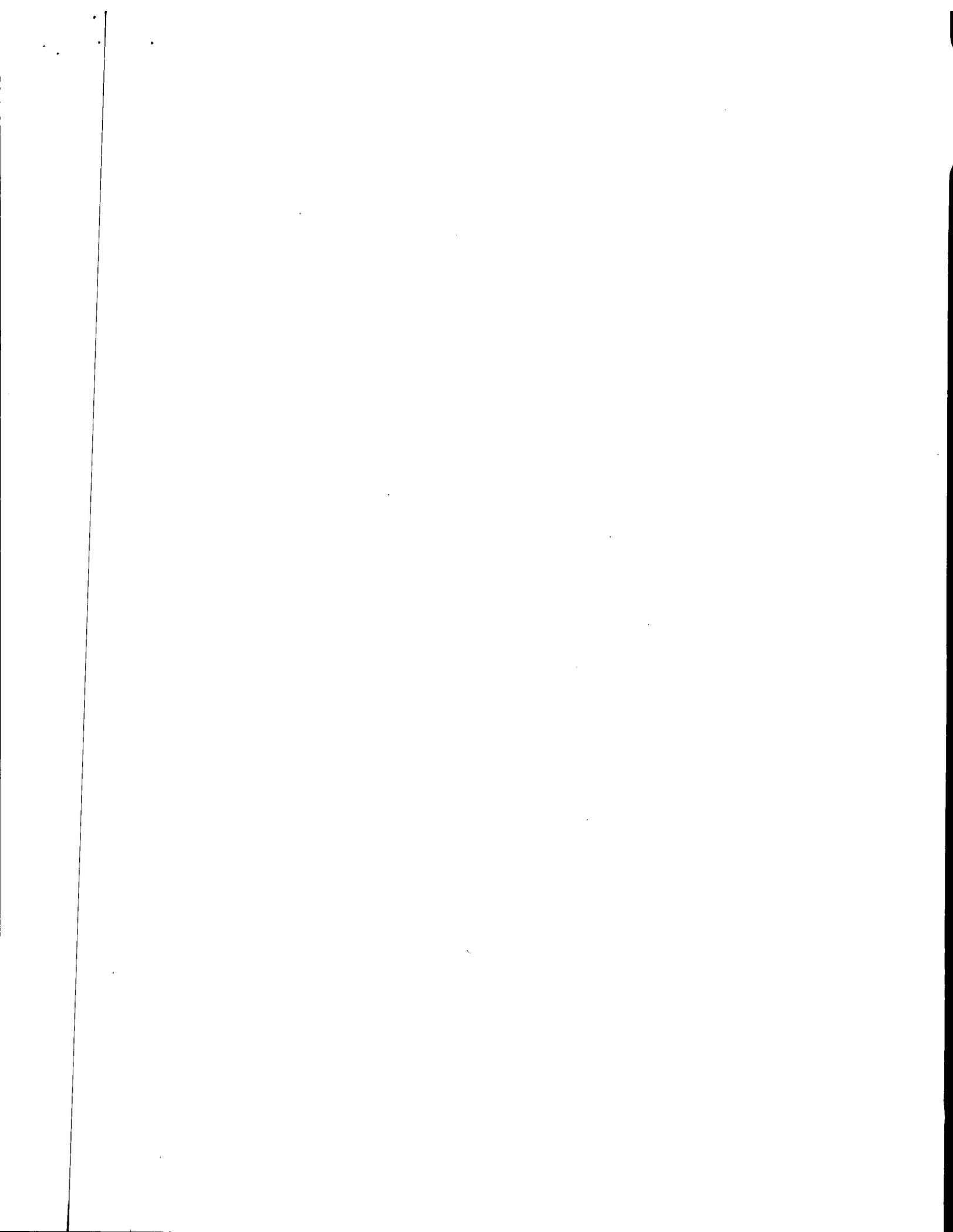
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I declare under penalty of perjury that the foregoing is true and correct.

Dated this 14 day of February, 2005.

  
\_\_\_\_\_  
Claire Foley





Search: \_\_\_\_\_

### Opposition

**Number:** 91125739  
**Status:** Pending

**Filing Date:** 07/18/2002  
**Status Date:** 07/31/2002

**Interlocutory Attorney:** CHERYL A BUTLER

#### Defendant

**Name:** V SECRET CATALOGUE, INC.

**Correspondence:** FRANK J. COLUCCI  
COLUCCI & UMANS  
218 East 50th Street  
NEW YORK, NY 10022-7681  
email@colucci-umans.com

**Serial #:** 78094035

**Application Status:** Opposition Pending  
**Mark:** SO SEXY

#### Plaintiff

**Name:** SEXY HAIR CONCEPTS, LLC

**Correspondence:** ROBERTA JACOBS-MEADWAY  
BALLARD SPAHR ANDREWS & INGERSOLL, LLP  
1735 MARKET STREET, 51ST FLOOR  
PHILADELPHIA, PA 19103-7599

**Serial #:** 75634213

**Registration #:** 2403396

**Application Status:** Registered  
**Mark:** SEXY HAIR

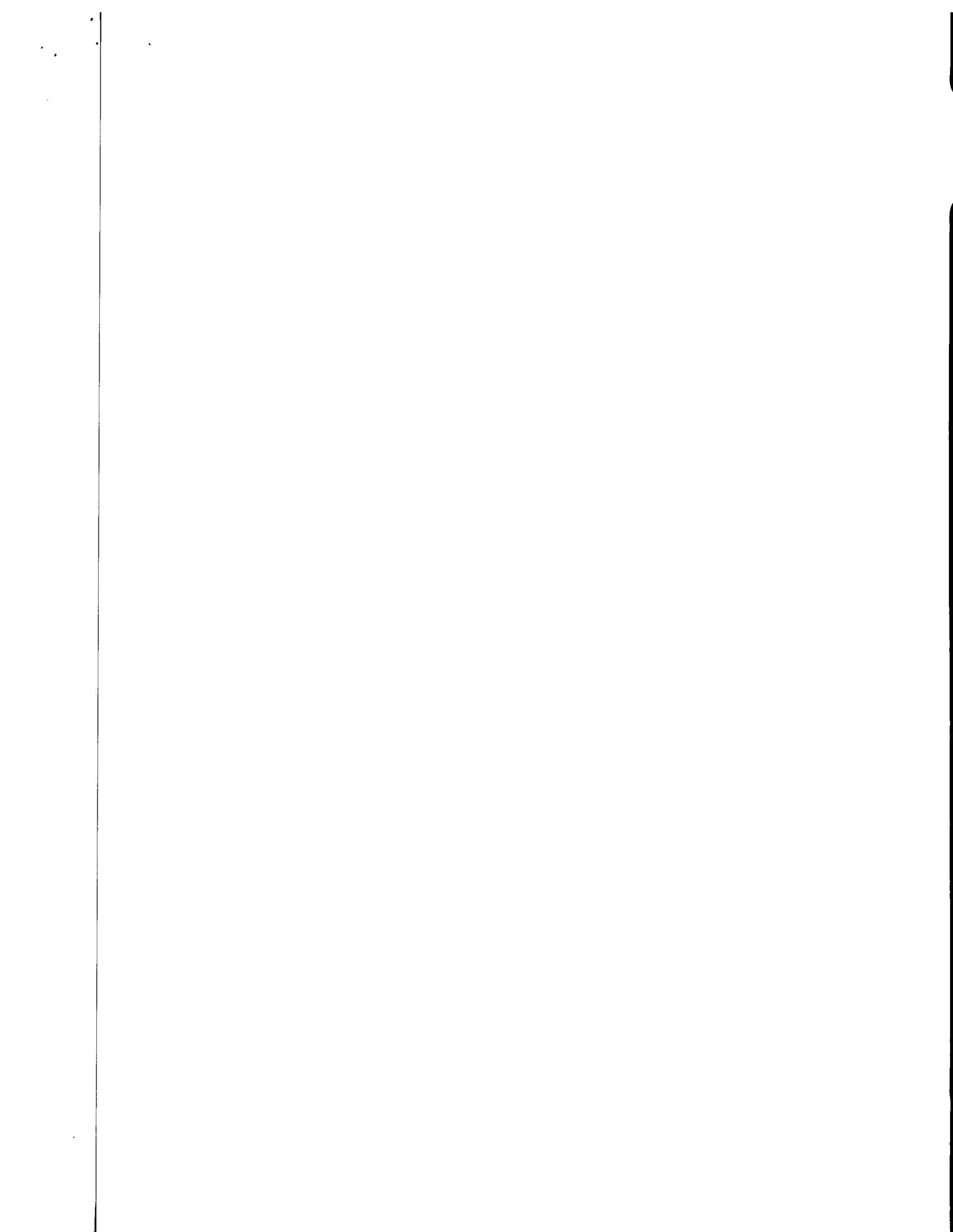
#### Prosecution History

#	Date	History Text	Due Date
34	02/08/2005	<u>CHANGE OF CORRESPONDENCE ADDRESS</u>	
33	01/24/2005	<u>DEF NOTICE OF TESTIMONY</u>	
32	01/12/2005	<u>DEF AMENDED NOTICE OF TESTIMONY</u>	
31	01/06/2005	CONFIDENTIAL - D'S RESPONSES TO P'S REQ FOR ADMISSIONS	
30	12/09/2004	<u>SUPPLEMENTS TO FILED TRANSCRIPTS OF TESTIMONY</u>	
29	11/22/2004	<u>D'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
28	10/28/2004	<u>PLAINTIFF'S NOTICE OF TAKING TESTIMONY</u>	
27	10/14/2004	<u>PLAINTIFF'S NOTICE OF RELIANCE</u>	
26	10/18/2004	PL sub notice of reliance	
25	09/17/2004	CONFIDENTIAL - P'S NOTICE OF RELIANCE	
24	09/27/2004	<u>PLAINTIFF'S NOTICE OF RELIANCE</u>	
23	09/17/2004	<u>PLAINTIFF'S NOTICE OF RELIANCE</u>	
22	09/17/2004	<u>PLAINTIFF'S NOTICE OF RELIANCE</u>	
21	04/20/2004	<u>PROCEEDINGS RESUMED; TRIAL DATES RESET</u>	
20	04/05/2004	<u>P'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
19	12/04/2003	<u>D'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
18	10/01/2003	<u>P'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
17	08/04/2003	<u>Consented mtn to extend dates</u>	

**Prosecution History**

#	Date	History Text	Due Date
16	07/25/2003	<u>OPPOSER'S SEXY HAIR'S OPPOSITION TO VICTORIA'S PETITION FOR RECONSIDERATION</u>	
15	07/17/2003	<u>Def's petition for reconsideration</u>	
14	07/18/2003	<u>DEFENDANT'S MOTION TO STAY</u>	
13	06/14/2003	<u>Def's allowed 30 days to respond; Def's mot to quash is moot; Pls mot to exted granted</u>	
12	03/17/2003	<u>Pl's reply to def's mot to quash</u>	
11	03/10/2003	<u>D'S MOTION TO QUASH</u>	
10	03/15/2003	<u>Opposition Nos. 152,596 and 152,612 dismissed w/o prejudice; opp. 125,739 suspended pending mot</u>	
9	01/27/2003	<u>Bd's consolidated order of opposition nos. 125,739; 152596; 152,612 T/D remain set</u>	
8	02/06/2003	<u>APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL DISCOVERY</u>	
7	01/27/2003	<u>Consolidation order of opp. no. 125,739; 152,596; 152,612</u>	
6	01/15/2003	<u>P'S MOTION TO COMPEL DISCOVERY</u>	
5	09/23/2002	DEF'S MOT TO CONSOLIDATE & MEMO SUPPORT	
4	08/26/2002	ANSWER	
3	07/31/2002	PENDING, INSTITUTED	
2	07/31/2002	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	09/09/2002
1	07/18/2002	FILED AND FEE	

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# UNITED STATES PATENT AND TRADEMARK OFFICE

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## Record 1 out of 1

**Check Status** (TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

### Typed Drawing

**Word Mark** SEXY HAIR  
**Goods and Services** IC 003. US 001 004 006 050 051 052. G & S: Hair care products for men, women and children, namely hair shampoos, hair conditioners, hair lotions, hair cremes, hair gels, hair sprays, hair color, hair dyes, hair rinses, hair mousse. FIRST USE: 19980615. FIRST USE IN COMMERCE: 19981221  
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 75634213  
**Filing Date** February 5, 1999  
**Current Filing Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** August 22, 2000  
**Registration Number** 2403396  
**Registration Date** November 14, 2000  
**Owner** (REGISTRANT) Ecoly International, Inc. CORPORATION CALIFORNIA 9232 Eton Avenue Chatsworth CALIFORNIA 91311  
**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Roberta Jacobs-Meadway

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HAIR" APART FROM THE MARK AS SHOWN

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**This page was generated by the TARR system on 2005-02-10 19:48:15 ET**

**Serial Number:** 75634213 Assignment Information

**Registration Number:** 2403396 Assignment Information

**Mark (words only):** SEXY HAIR

**Standard Character claim:** No

**Current Status:** Registered.

**Date of Status:** 2000-11-14

**Filing Date:** 1999-02-05

**Transformed into a National Application:** No

**Registration Date:** 2000-11-14

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 104

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 900 -File Repository (Franconia)

**Date In Location:** 2004-08-13

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

1. Ecoly International, Inc.

**Address:**

Ecoly International, Inc.  
9232 Eton Avenue  
Chatsworth, CA 91311  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** California

**GOODS AND/OR SERVICES**

**International Class:** 003

Hair care products for men, women and children, namely hair shampoos, hair conditioners, hair lotions, hair cremes, hair gels, hair sprays, hair color, hair dyes, hair rinses, hair mousse

**First Use Date:** 1998-06-15

**First Use in Commerce Date:** 1998-12-21

**Basis:** 1(a)

**ADDITIONAL INFORMATION**

**Disclaimer:** "HAIR"

**MADRID PROTOCOL INFORMATION**

(NOT AVAILABLE)

**PROSECUTION HISTORY**

2000-11-14 - Registered - Principal Register

2000-08-22 - Published for opposition

2000-07-21 - Notice of publication

2000-06-03 - Approved for Pub - Principal Register (Initial exam)

1999-12-14 - Letter of suspension mailed

1999-10-18 - Communication received from applicant

1999-08-17 - Non-final action mailed

1999-08-04 - Case file assigned to examining attorney

1999-07-30 - Case file assigned to examining attorney

**CORRESPONDENCE INFORMATION**

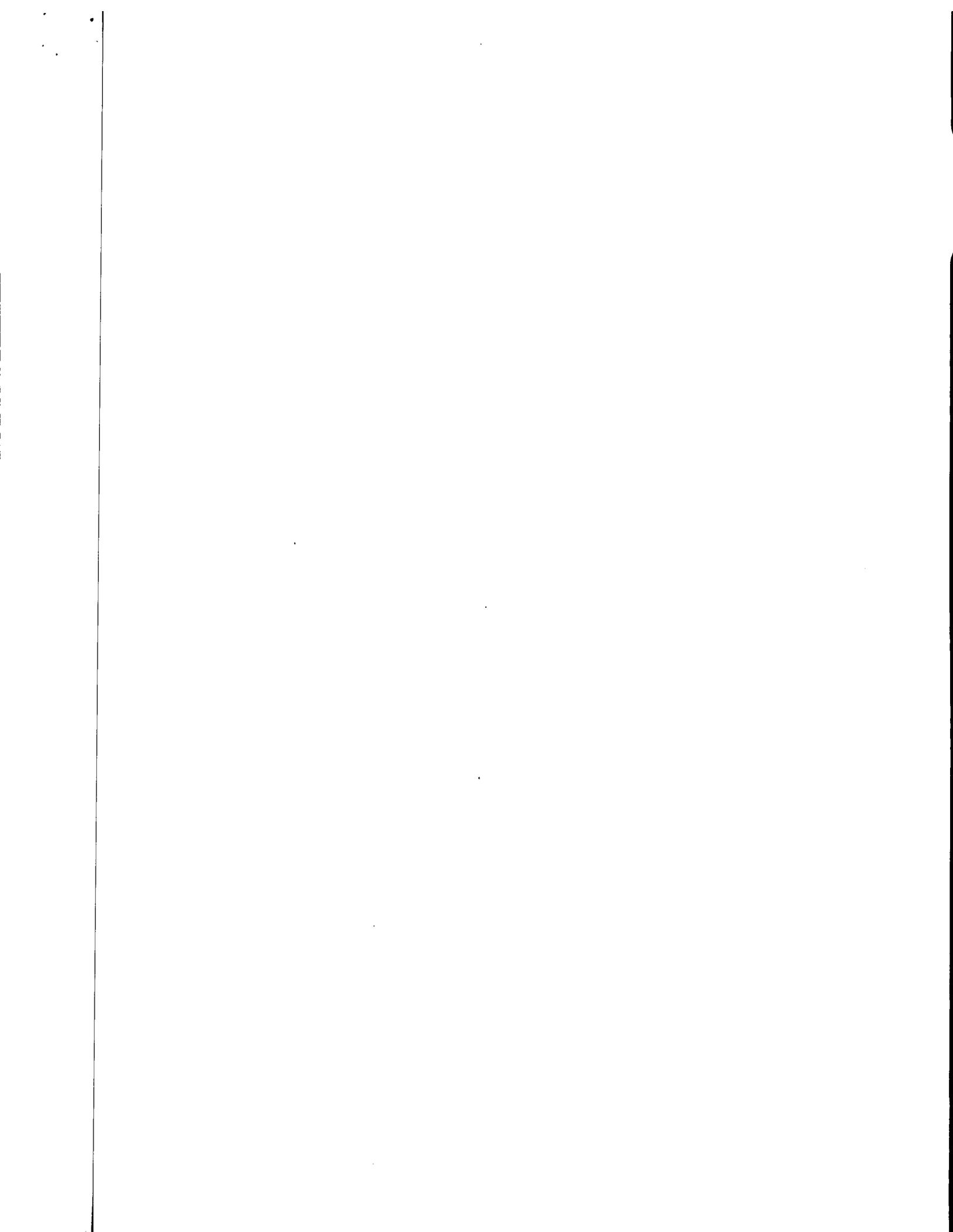
**Correspondent**

Roberta Jacobs-Meadway (Attorney of record)

ROBERTA JACOBS-MEADWAY  
AKIN GUMP STRAUSS HAUER & FELD LLP

ONE COMMERCE SQ STE 2200  
2005 MARKET ST  
PHILADELPHIA PA 19103

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

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SEXY HAIR CONCEPTS, LLC,	:	
Opposer,	:	Opposition No.
	:	125,739
v.	:	(SO SEXY)
V SECRET CATALOGUE, INC.,	:	78/094, 035
Applicant.	:	75/634, 213

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MOTION ON CONSENT TO EXTEND APPLICANT'S TESTIMONY PERIOD  
AND ALL OTHER TRIAL DATES

Applicant, V Secret Catalogue, Inc., hereby moves the Honorable Trademark Trial and Appeal Board to re-set applicant's testimony period and all other trial dates accordingly, as follows:

<u>Current Date</u>	<u>Proposed New Date</u>
Testimony Period for party in position of defendant to close:	Testimony Period for party in position of defendant to close:
12/12/04	02/10/05
<u>Current Date</u>	<u>Proposed New Date</u>
15-day rebuttal testimony period for plaintiff to close:	15-day rebuttal testimony period for plaintiff to close:
01/26/05	03/27/05



The reason the requested extension is to accommodate counsel for opposer's schedule, and is for good cause, and not for the purpose of delay.

In a telephone conference on November 19, 2004, Patricia Cramer of Ballard Spar Andrews & Ingersoll, LLP, 1735 Market Street, 51<sup>st</sup> Floor, Philadelphia, Pennsylvania 19103-7599, attorneys for Opposer, SEXY HAIR CONCEPTS, LLC, has consented to this motion.

Dated: New York, New York  
November 19, 2004

COLUCCI & UMANS

By Frank J. Colucci

Frank J. Colucci  
Attorneys for Applicant  
Manhattan Tower  
101 East 52nd Street  
New York, New York 10022  
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I hereby certify that this correspondence is being  
deposited with the United States Postal Service  
in an envelope addressed to: Assistant Commissioner  
for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-4312

Sherry J. Colucci

Signature

11-19-04

Date of Signature

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing "Motion on Consent to Extend Applicant's Testimony Period and all other Trial Dates" has been forwarded via First Class Mail, postage prepaid, to Opposer's Attorney, Patricia Cramer of Ballard Spahr Andrews & Ingersoll, LLP at 1735 Market Street, 51<sup>st</sup> Floor, Philadelphia, Pennsylvania 19103-7599, this 19<sup>th</sup> day of November, 2004.

A handwritten signature in cursive script, reading "Andrea Pelaez", is written over a horizontal line.