

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

U.S. Trademark Application Serial No. 78/350,085  
For the Trademark: JACK & JONES

AKTIESELSKABET AF 21. NOVEMBER 2001, :  
Opposer, :

OPPOSITION NO. 91163436

v. :

FAME JEANS, INC., :  
Applicant. :

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR TRADEMARKS, P.O. BOX 1451, ALEXANDRIA, VA 22313-1451 ON THE DATE INDICATED BELOW.

By: *James F. Beall, Jr.*

Date: *June 17, 2005*

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

**APPLICANT'S MOTION FOR SUMMARY JUDGMENT  
WITH SUPPORTING MEMORANDUM OF LAW**

Applicant, Fame Jeans, Inc., moves, under Rule 2.127 of the Trademark Rules of Practice, and Federal Rule of Civil Procedure 56, for summary judgment and dismissal of the opposition proceeding, on the ground that Applicant has prior rights to the mark because the filing date of its Application Serial No. 78/350,085 predates the filing date of Opposer's Application Serial No. 78/527,823.

Opposer, a Danish entity, has not used its mark in the United States and may rely only on the filing date of its application for priority purposes. Applicant's motion is supported by Opposer's admissions and other attached exhibits which demonstrate the lack of reasonable



06-20-2005

doubt or possible dispute as to the material fact that Applicant has prior rights to the JACK & JONES mark in the United States.

The interests of judicial economy and fairness to both parties are best served by concluding this opposition now. As set forth below, the undisputable facts warrant granting of summary judgment to Applicant.

### **STATEMENT OF UNDISPUTED FACTS**

Opposer instituted its opposition to federal registration of Applicant's JACK & JONES mark for "clothing, namely jeans, pants, slacks with strap under foot, shorts, skirts, boxer shorts, culottes, blouses, waistcoats, jackets, coats, tunics, blazers, dresses; corsages, namely, bodices to be incorporated into clothing; bustiers, overalls, pullovers; t-shirts; underpants; vests, short sleeved vests, sweat shirt tops, and dungarees; scarves; shawls, ties; leg warmers; gloves; stockings and socks; tights; swim wear, namely bathing costumes, bathing trunks and bikinis; hats, caps; denim jackets; ski wear, namely ski trousers, ski dungarees, ski overalls, ski jackets, ski vests and ski jackets with detachable sleeves; head scarves, neck scarves; heavy woolen clothing, namely, knitted pants, knitted shorts, and knitted tops; double breasted jackets, overcoat, polo shirts, jogging suits, hats; caps and toques; fleece wear, namely jogging suits, hooded pullover tops with pouch pockets, muscle tops, shorts, trousers, sweatshirts, sweatpants, vests and tank tops; dresses; shoes; hosiery; lingerie, namely underskirts, panties, bras, and underwear; men's ladies and children's dress pants, dresses, suits and dress shirts," in International Class 25. Thus far in the proceeding, both parties have served discovery requests and provided/received responses.

In the Notice of Opposition, in averment 1, Opposer asserts that it has used the JACK & JONES mark throughout Europe and "international commerce well prior to Applicant's filing date," without stating that international commerce includes commerce between Denmark and

United States. Opposer filed an application to register its JACK & JONES mark with the U.S. Patent and Trademark Office, Serial No. 78/527,823, under section 44(e) of the Trademark Act based on its 1990 Danish registration (06.569.1990), for “men's, women's and children's suits, jackets, trousers, skirts, blouses, dresses, sweaters, vests, underpants, shorts, articles of sports clothing, hats and headgear, neckties, scarves, jeans, caps, gloves, belts, footwear, aprons, swimwear, sleeping garments, knitted articles of clothing and articles of clothing made from knitted material” in International Class 25. See a copy of the file history for Opposer’s Application Serial No. 78/527,823 attached as Exhibit A; see also the Notice of Opposition, averment 2.

Opposer has not used the JACK & JONES mark in the United States. See generally Applicant’s First Set of Interrogatories, Applicant’s First Set of Requests for Production of Documents and Things, Applicant’s First Requests for Admissions, attached as Exhibits B, C, and D, respectively (“Applicant’s Initial Discovery”). Opposer’s responses to Applicant’s Initial Discovery are attached as Exhibits E (responses to interrogatories), F (production of documents), and G (admissions). See specifically Response No. 1, Exhibit G; Answers Nos. 2 through 6, Exhibit E.

Opposer admits that it has not sold goods and/or services under the JACK & JONES mark in the United States. See Response No. 1, Exhibit G; Answers Nos. 2 through 6, Exhibit E. Opposer admits that it does not have any of the following in the United States: (i) its own or leased office or commercial space (see Responses Nos. 4 and 5, Exhibit G), (ii) U.S. telephone number in its name (see Response No. 6, Exhibit G), (iii) mailing address (see Response No. 11, Exhibit G), or (iv) retail store (see Responses Nos. 3 and 5, Exhibit G). Opposer has filed no U.S. tax returns. See Response No. 10, Exhibit G.

Furthermore, Opposer has not advertised its goods or services under the JACK & JONES mark in the United States. Opposer has refused to admit that no advertisement or display of the mark was published in print, television or radio media in the United States from 1990 through 2004. See Response 12, Exhibit G. However, in response to Interrogatory 8 requesting to state the amount, if any, spent by Opposer for advertising in the United States, Opposer states that it has not made any expenditures to advertise goods under the JACK & JONES mark in the U.S. See Exhibit E. Moreover, Opposer admits it has not planned specific advertising or promotional activities in connection with its JACK & JONES mark for goods to be sold and/or distributed in the United States, and it *hopes* to market its products under the JACK & JONES mark in the U.S. using a promotional campaign similar to its 2004-2005 Canadian marketing efforts (emphasis added). See Answer No. 9, Exhibit E.

Opposer allegedly marketed products under its JACK & JONES mark in Canada in 2004, and asserts that “materials from said marketing campaign may have appeared in the U.S.” See Response 12, Exhibit G. Opposer maintains a website on the Internet, but this website apparently is not specifically directed to U.S. customers. It does not provide any contact information in the United States. It lists no retail store in the U.S. See Responses Nos. 2 and 3 in Exhibit G and a copy of printout from Opposer’s website [www.jackjones.com](http://www.jackjones.com), printed on June 2, 2005, attached as Exhibit H.

There is no issue as to a likelihood of confusion. Opposer admits that its mark is identical with Applicant’s JACK & JONES mark in appearance, meaning and commercial impression, and that Opposer’s and Applicant’s respective applications identify virtually identical or substantially similar goods. See Responses to Requests Nos. 8 and 16, Exhibit E.

Essentially, the only issue raised by Opposer is priority. To establish prior rights to the JACK & JONES mark, Opposer relies on its use of the mark outside the United State and foreign registrations. See Notice of Opposition, averments 1 through 3, see also Response 1, Exhibit F (“... Opposer’s intended use of its JACK & JONES mark in the United States is premised upon its long-standing use of the mark in other areas of the world.”) The U.S. priority dates are not in dispute. Opposer admits that the filing date of Applicant’s U.S. Trademark Application Serial No. 78/350,085 (January 9, 2004) predates the filing date of Opposer’s U.S. Trademark Application Serial No. 78/527,823 (December 6, 2004). See Response to Request No. 15, Exhibit G.

## ARGUMENT

### I. STANDARDS FOR SUMMARY JUDGMENT

Summary judgment is appropriate where there are no genuine issues of material fact to be tried and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. The Supreme Court has held that the “[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); see also *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1562 (Fed. Cir. 1987). The evidence must be sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party. *First Nat’l Bank v. Cities Service Co.*, 391 U.S. 253 (1968).

Summary judgment is proper if the non-movant fails to show a genuine issue of fact concerning an element essential to its case. Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-50 (1986). To overcome a summary judgment motion, the non-movant must “do more than simply show that there is some metaphysical doubt as to the material facts.”

*Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Furthermore, simple conclusory denials are insufficient to defeat a summary judgment motion. *See, e.g., Wilson Sporting Goods Co. v. Northwestern Golf Co.*, 172 U.S.P.Q. 182, 184 (T.T.A.B. 1971); *Spin Physicas, Inc. v. Matsushita Elec. Indus. Co.*, 168 U.S.P.Q. 605 (T.T.A.B. 1970).

Summary judgment is particularly appropriate where, as here, actual testimony is unlikely to address any new or additional evidence which might bear on the critical factual issues or which would reasonably be expected to change the result. *Pure Gold, Inc. v. Syntex (U.S.A.) Inc.*, 222 U.S.P.Q. 741, 743 (Fed. Cir. 1984); *Person's Co., Ltd v. Christman*, 9 U.S.P.Q.2d 1477, 1478 (T.T.A.B. 1988), *aff'd*, 900 F.2d 1565 (Fed. Cir. 1990). There is no basis to believe that further proceedings can possibly controvert the fact that Applicant has prior rights to the JACK & JONES mark based on the earlier filing date of its application.

**II. THE MOTION FOR SUMMARY JUDGMENT MUST BE GRANTED AS A MATTER OF LAW ON THE GROUND THAT APPLICANT HAS PRIOR RIGHTS**

There is only one issue in this opposition and it is priority. There is no genuine issue of material fact on the issue of priority. Opposer has admitted that the filing date of Applicant's U.S. Trademark Application Serial No. 78/350,085 (January 9, 2004) predates the filing date of Opposer's U.S. Trademark Application Serial No. 78/527,823 (December 6, 2004). *See* Response to Request No. 15, Exhibit G. Opposer has not pleaded nor has it offered any evidence to establish its priority date in the United States other than the filing date of its Application Serial No. 78/527,823.

Priority of trademark rights in the United States generally depends solely upon priority of use in the United States, not on priority of use anywhere in the world. Prior use in a foreign nation does not establish priority of use in the U.S. *Linville v. Rivard*, 26 USPQ2d 1508, 1512 (TTAB1993)(activity outside of the U.S. is ineffective to create rights in marks within the U.S.),

*Person's Co. v. Christman*, 14 USPQ2d 1477 (Fed. Cir. 1990); see also 4 J. Thomas McCarthy, *Trademarks and Unfair Competition*, §29:2, at p. 29-7 through 29-10 (2003).

*Linville* is particularly instructive here. There, respondent, a Canadian national, obtained a registration for the ULTRACUTS mark for hair dressing and beauty salon services under Section 44(e) of the Trademark Act. All of the respondent's salons were located in Canada. The respondent did not use the mark in the U.S. Petitioner, a U.S. person, applied to register the identical mark and was refused because of the respondent's registration. The petitioner petitioned to cancel respondent's registration alleging non-use of the mark by respondent in the U.S. The TTAB granted summary judgment and canceled respondent's registration. The TTAB rejected respondent's arguments that its advertisements on various Canadian radio stations and in Canadian newspapers, close to the northern U.S., some of which are heard or read by U.S. residents, constitute use of the mark. Despite respondent's argument that U.S. residents availed themselves of respondent's services in Canada, the TTAB held that such activity does not constitute "use in commerce." Likewise, here, advertisements on the Internet and in other media circulating in Canada, which may reach U.S. residents, do not suffice to establish Opposer's use of the mark in the United States. Since use of the mark outside the U.S. generally is irrelevant, Applicant should be entitled to summary judgment.

Accordingly, Applicant has prior rights in the JACK & JONES mark and moves for summary judgment based on Opposer's admission of non-use of its mark in the United States.

CONCLUSION

Applicant respectfully requests that this motion for summary judgment be granted, and that Opposition No. 91163436 be dismissed.

Date: June <sup>17</sup>~~16~~, 2005

DUANE MORRIS LLP

By:   
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing APPLICANT'S MOTION FOR SUMMARY JUDGMENT WITH SUPPORTING MEMORANDUM OF LAW was served on this <sup>17<sup>th</sup></sup>~~16<sup>th</sup>~~ day of June, 2005 via first class mail, postage prepaid and addressed to:

Oliver N. Blaise, III, Esq.  
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Jack & Jones

Search Another:  
Serial Number or Registration  
Number

**TRADEMARK GENERAL QUERY AS OF: 05/31/05 13:59:00**

<b>SERIAL NUMBER:</b> 78527823 <u>FEES</u>	<b>FILING DATE:</b> 12/06/2004	<b>TEAS PLUS FILED:</b> NO	<u>ASSIGNMENTS</u>
<b>REG. NUMBER:</b> 0000000	<b>REG. DATE:</b>	<b>TEAS PLUS CURRENT:</b> NO	<u>TICRS</u>
<b>REGISTER:</b> PRINCIPAL	<b>MARK TYPE:</b> TRADEMARK		
<b>FILED USE:</b> NO	<b>CURRENTLY USE:</b> NO	<b>AMENDED USE:</b> NO	
<b>FILED ITU:</b> NO	<b>CURRENTLY ITU:</b> NO	<b>AMENDED ITU:</b> NO	
<b>FILED 44D:</b> NO	<b>CURRENTLY 44D:</b> NO	<b>AMENDED 44D:</b> NO	
<b>FILED 44E:</b> YES	<b>CURRENTLY 44E:</b> YES	<b>AMENDED 44E:</b> NO	
<b>FILED 66A:</b> NO	<b>CURRENTLY 66A:</b> NO		
<b>FILED NO BASIS:</b> NO	<b>CURRENTLY NO BASIS:</b> NO		

**TM ATTORNEY:** TM ATTORNEY NOT ASSIGNED

**TM ATTY LO:** N/A

**LO ASSIGNED:**  
NONE

**WORK LOCATION:** L6R-TMEG LAW OFFICE 106 - LEGAL  
INSTRUMENTS EXAMINER

**DATE IN LOC:** 01/08/2005

**CHRG TO LOC:** N-NOTFOUND

**CHRG TO:** NONE

**PHYSICAL LOCATION:** MADCD-ALEX. CENTRAL DOCKET

HISTORY

**DATE IN PHYS LOC:** 12/16/2004

**STATUS:** 630 - NEW APPLICATION - RECORD INITIALIZED NOT  
ASSIGNED TO EXAMINER

**STATUS DATE:** 12/16/2004

**TM PARALEGAL:** PARALEGAL NOT ASSIGNED

**TM LIE:** 69712-SATCHER, IRMA J

**PUB DATE:**            **DATE ABANDONED:**            **DATE CANCELLED:**  
**SECTION 8: NO**    **SECTION 15: NO**            **ASSIGNMENT: NO**  
**RENEWAL**            **RENEWAL DATE:**            **DATE AMENDED**  
**FILED: NO**            **REG:**  
**CLASSES**            **LAST ACTION DATE:**  
**ACTIVE: 01**            12/15/2004

**MARK: JACK & JONES**  
**STANDARD CHARACTERS CLAIMED: YES**  
**MARK DRAWING CD: 4-STANDARD CHARACTER MARK**  
**COLOR DRAWING CURRENT: NO**

**CURRENT OWNER INFORMATION**

**PARTY TYPE: 10-ORIGINAL APPLICANT**  
**NAME:**            Aktieselskabet af 21. november 2001  
**ADDRESS:**        Fredskovvej  
                          BRANDE DENMARK DK-7330  
**ENTITY:**            03-CORPORATION  
**CITIZENSHIP: DENMARK**

**GOODS AND SERVICES**

**The following symbols indicate that the goods and services have been amended after registration of the Mark.**

**Double parenthesis ((..)) identify any "less goods";**

**Single brackets [..] indicate deleted goods; and,**

**Single asterisks \*.\* identify additional (new) wording in the goods.**

**FOR:**    Men's, women's and children's suits, jackets, trousers, skirts, blouses, dresses, sweaters, vests, underpants, shorts, articles of sports clothing, hats and headgear, neckties, scarves, jeans, caps, gloves, belts, footwear, aprons, swimwear, sleeping garments, knitted articles of clothing and articles of clothing made from knitted material

**INT. CLASS 025 (U.S. CLASSES 022 and 039)**

**FIRST USE: None        USE IN COMMERCE: None        CLASS STATUS: 6**

**MISCELLANEOUS INFORMATION**

**SECTION 2F: NO SECTION 2F IN PART: NO**

**FOREIGN INFORMATION**

**COUNTRY OF ORIGIN: DENMARK**

**FOREIGN REG NUM: 065691990        FOREIGN REG DATE: 09/28/1990**

**FOREIGN RNWL REG NUM:**                      **DATE OF FOREIGN RNWL:**  
**FOREIGN EXPIRATION:** 09/28/2010 **FOREIGN RNWL EXPIRATION:**

**PROSECUTION HISTORY**

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM	PRCD NUM
01/05/2005	AMPX	O	APPLICANT AMENDMENT PRIOR TO EXAMINATION - ENTERED	006	069712
01/08/2005	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	005	069712
01/05/2005	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	004	069712
01/08/2005	ALIE	A	ASSIGNED TO LIE	003	069712
01/05/2005	PARI	I	TEAS PRELIMINARY AMENDMENT RECEIVED	002	000000
12/15/2004	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001	000000

**CORRESPONDENCE**

**Attorney:** Michael F. Brown  
**Attorney Docket Number:** dkb.1  
**Email Address:** docket@bpmlegal.com  
**Email Authorized:** YES  
**Correspondence Address:** MICHAEL F. BROWN  
BROWN & MICHAELS PC  
400 M&T BANK BUILDING 118 N. TIOGA STRE  
ITHACA, NY 14850  
  
**Email Address:** docket@bpmlegal.com  
**Email Authorized:** YES  
**Phone:** 607-256-2000  
**Fax:** 607-256-3628

**OTHER INFORMATION**

**Pseudomark:** JACK AND JONES  
**Section 8 In Part:** NO  
**Repub Sec 12C:** NO                      **Pub Date 12C:**  
**Change In Registration:** NO  
**TTAB Decision:** NO  
**Lost Case:** NO  
**In TICRS:** YES

PTO Form 1478 (Rev 4/98)

OMB Control #0651-0009 (Exp. 06/30/2005)

## Trademark/Service Mark Application, Principal Register

**Serial Number: 78527823**

**Filing Date: 12/06/2004**

**The table below presents the data as entered.**

Input Field	Entered
<b>MARK SECTION</b>	
MARK	Jack & Jones
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Jack & Jones
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>OWNER SECTION</b>	
NAME	Aktieselskabet af 21. november 2001
STREET	Fredskovvej
CITY	Brande
ZIP/POSTAL CODE	DK-7330
COUNTRY	Denmark
AUTHORIZED EMAIL COMMUNICATION	No
<b>LEGAL ENTITY SECTION</b>	
TYPE	CORPORATION
STATE/COUNTRY OF INCORPORATION	Denmark
<b>GOODS AND/OR SERVICES SECTION</b>	
INTERNATIONAL CLASS	025
	Men's, women's and children's suits, jackets, trousers, skirts, blouses, dresses, sweaters, vests, underpants,

DESCRIPTION	shorts, articles of sports clothing, hats and headgear, neckties, scarves, jeans, caps, gloves, belts, aprons, swimwear, sleeping garments, knitted articles of clothing and articles of clothing made from knitted material;
FILING BASIS	Not Specified
<b>GOODS AND/OR SERVICES SECTION</b>	
INTERNATIONAL CLASS	025
DESCRIPTION	Men's, women's and children's suits, jackets, trousers, skirts, blouses, dresses, sweaters, vests, underpants, shorts, articles of sports clothing, hats and headgear, neckties, scarves, jeans, caps, gloves, belts, aprons, swimwear, sleeping garments, knitted articles of clothing and articles of clothing made from knitted material;
FILING BASIS	Section 44(e)
FOREIGN REGISTRATION NUMBER	065691990
FOREIGN REGISTRATION COUNTRY NAME	Denmark
FOREIGN REGISTRATION DATE	09/28/1990
FOREIGN EXPIRATION DATE	09/28/2010
<b>SIGNATURE SECTION</b>	
SIGNATURE	/mfb #29619/
SIGNATORY NAME	Michael F. Brown
SIGNATORY DATE	12/06/2004
SIGNATORY POSITION	Attorney
<b>PAYMENT SECTION</b>	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	335
TOTAL AMOUNT	335
<b>ATTORNEY</b>	
NAME	Michael F. Brown
FIRM NAME	Brown & Michaels PC

STREET	400 M&T Bank Building 118 N. Tioga Street
CITY	Ithaca
STATE	NY
ZIP/POSTAL CODE	14850
COUNTRY	United States
PHONE	607-256-2000
FAX	607-256-3628
EMAIL	docket@bpmlegal.com
AUTHORIZED EMAIL COMMUNICATION	Yes
ATTORNEY DOCKET NUMBER	dkb.1
OTHER APPOINTED ATTORNEY(S)	Christopher A. Michaels; Eugene S. Stephens; Steven R. Scott; Meghan VanLeeuwen
<b>CORRESPONDENCE SECTION</b>	
NAME	Michael F. Brown
FIRM NAME	Brown & Michaels PC
STREET	400 M&T Bank Building 118 N. Tioga Street
CITY	Ithaca
STATE	NY
ZIP/POSTAL CODE	14850
COUNTRY	United States
PHONE	607-256-2000
FAX	607-256-3628
EMAIL	docket@bpmlegal.com
AUTHORIZED EMAIL COMMUNICATION	Yes
<b>FILING INFORMATION</b>	
SUBMIT DATE	Mon Dec 06 17:19:54 EST 2004
TEAS STAMP	USPTO/BAS-216710190-20041 206171954043519-78527823- 200912a12cab74030f72e6ce5 a6431b43a-CC-375-20041206 171628560324

.....

PTO Form 1478 (Rev 4/98)

OMB Control #0651-0009 (Exp. 06/30/2005)

**Trademark/Service Mark Application, Principal Register****Serial Number: 78527823****Filing Date: 12/06/2004****To the Commissioner for Trademarks:****MARK:** (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of Jack & Jones.

The applicant, Aktieselskabet af 21. november 2001, a corporation of Denmark, residing at Fredskovvej, Brande, Denmark, DK-7330, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant has not specified a filing basis at the time of submission of the application. The following goods and/or services have been identified:

International Class 025: Men's, women's and children's suits, jackets, trousers, skirts, blouses, dresses, sweaters, vests, underpants, shorts, articles of sports clothing, hats and headgear, neckties, scarves, jeans, caps, gloves, belts, aprons, swimwear, sleeping garments, knitted articles of clothing and articles of clothing made from knitted material;

Based on Foreign Registration: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of Denmark registration number 065691990, registered 09/28/1990 with a renewal date of \_\_\_\_\_ and an expiration date of 09/28/2010, and translation thereof, if appropriate. 15 U. S.C. Section 1126(e), as amended.

International Class 025: Men's, women's and children's suits, jackets, trousers, skirts, blouses, dresses, sweaters, vests, underpants, shorts, articles of sports clothing, hats and headgear, neckties, scarves, jeans, caps, gloves, belts, aprons, swimwear, sleeping garments, knitted articles of clothing and articles of clothing made from knitted material;

The applicant hereby appoints Michael F. Brown and Christopher A. Michaels; Eugene S. Stephens; Steven R. Scott; Meghan VanLeeuwen of Brown & Michaels PC400 M&T Bank Building 118 N. Tioga Street, Ithaca, NY, United States, 14850 to submit this application on behalf of the applicant. The attorney docket/reference number is dkb.1.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: [docket@bpmlegal.com](mailto:docket@bpmlegal.com).

A fee payment in the amount of \$335 will be submitted with the application, representing payment for 1 class(es).

**Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /mfb #29619/ Date: 12/06/2004  
Signatory's Name: Michael F. Brown  
Signatory's Position: Attorney

Mailing Address:  
Michael F. Brown  
400 M&T Bank Building 118 N. Tioga Street  
Ithaca, NY 14850

RAM Sale Number: 375  
RAM Accounting Date: 12/07/2004

Serial Number: 78527823  
Internet Transmission Date: Mon Dec 06 17:19:54 EST 2004  
TEAS Stamp: USPTO/BAS-216710190-20041206171954043519  
-78527823-200912a12cab74030f72e6ce5a6431  
b43a-CC-375-20041206171628560324

**Jack & Jones**

PTO Form 1966 (Rev 9/2002)

OMB Control #0651-0050 (Exp. 04/30/2008)

## Preliminary Amendment

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	78527823
<b>MARK SECTION (no change)</b>	
<b>GOODS AND/OR SERVICES SECTION (current)</b>	
INTERNATIONAL CLASS	025
DESCRIPTION	
Men's, women's and children's suits, jackets, trousers, skirts, blouses, dresses, sweaters, vests, underpants, shorts, articles of sports clothing, hats and headgear, neckties, scarves, jeans, caps, gloves, belts, aprons, swimwear, sleeping garments, knitted articles of clothing and articles of clothing made from knitted material	
FILING BASIS	Section 44(e)
FOREIGN REGISTRATION NUMBER	065691990
FOREIGN REGISTRATION COUNTRY NAME	DK
FOREIGN REGISTRATION DATE	09/28/1990
FOREIGN EXPIRATION DATE	09/28/2010
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
INTERNATIONAL CLASS	025
DESCRIPTION	
Men's, women's and children's suits, jackets, trousers, skirts, blouses, dresses, sweaters, vests, underpants, shorts, articles of sports clothing, hats and headgear, neckties, scarves, jeans, caps, gloves, belts, footwear, aprons, swimwear, sleeping garments, knitted articles of clothing and articles of clothing made from knitted material	
FILING BASIS	Section 44(e)
FOREIGN REGISTRATION NUMBER	065691990
FOREIGN REGISTRATION	Denmark

COUNTRY NAME	
FOREIGN REGISTRATION DATE	09/28/1990
FOREIGN EXPIRATION DATE	09/28/2010
<b>SIGNATURE SECTION</b>	
SIGNATURE	/mfb #29,619/
SIGNATORY NAME	Michael F. Brown
SIGNATORY POSITION	Attorney
SIGNATORY DATE	01/05/2005
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Wed Jan 05 16:42:05 EST 2005
TEAS STAMP	USPTO/PA-216710190-200501 05164205997019-78527823-2 00d38bbfdff75d89efcd8c058 23ab564-N-N-2005010516404 4975111

PTO Form 1966 (Rev 9/2002)

OMB Control #0651-0050 (Exp. 04/30/2006)

### Preliminary Amendment

#### To the Commissioner for Trademarks:

Application serial no. 78527823 is amended as follows:

#### Classification and Listing of Goods/Services

**Applicant hereby amends the following class of goods/services in the application as follows:**

Current: Class 025 for Men's, women's and children's suits, jackets, trousers, skirts, blouses, dresses, sweaters, vests, underpants, shorts, articles of sports clothing, hats and headgear, neckties, scarves, jeans, caps, gloves, belts, aprons, swimwear, sleeping garments, knitted articles of clothing and articles of clothing made from knitted material

Original Filing Basis: 44(e).

Proposed: Class 025 for Men's, women's and children's suits, jackets, trousers, skirts, blouses, dresses, sweaters, vests, underpants, shorts, articles of sports clothing, hats and headgear, neckties, scarves, jeans, caps, gloves, belts, footwear, aprons, swimwear, sleeping garments, knitted articles of clothing and articles of clothing made from knitted material

**Section 44(e)** Based on Foreign Registration: Applicant has a bona fide intention to use the mark in

commerce on or in connection with the identified goods and /or services, and will submit a copy of [ Denmark registration number 065691990 registered 09/28/1990 with a renewal date of \_\_\_\_\_ and an expiration date of 09/28/2010 ], and translation thereof, if appropriate, before the application may proceed to registration. 15 U.S.C. Section 1126(e), as amended.

**Preliminary Amendment Signature**

Signature: /mfb #29,619/ Date: 01/05/2005

Signatory's Name: Michael F. Brown

Signatory's Position: Attorney

Serial Number: 78527823

Internet Transmission Date: Wed Jan 05 16:42:05 EST 2005

TEAS Stamp: USPTO/PA-216710190-20050105164205997019-

78527823-200d38bbfdff75d89efcd8c05823ab5

64-N-N-20050105164044975111

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

U.S. Trademark Application Serial No. 78/350,085  
For the Trademark: JACK & JONES

AKTIESELSKABET AF 21. NOVEMBER 2001,	:	
Opposer,	:	
	:	<b>OPPOSITION NO. 91163436</b>
v.	:	
	:	
FAME JEANS, INC.,	:	
Applicant.	:	

**APPLICANT'S FIRST SET OF INTERROGATORIES**

Fame Jeans, Inc., ("Applicant"), under 37 C.F.R. § 2.120 and Rule 33 of the Federal Rules of Civil Procedure, directs the following Interrogatories to Aktieselskabet af 21. November 2001, a Danish corporation having its principal place of business at Fredskovvej 5, 7330 Brande, Denmark ("Opposer"), to be answered within thirty (30) days of the date of service hereof:

**DEFINITIONS**

Unless the context clearly requires otherwise, the following definitions shall apply:

1. The term "document" means any document in the possession or control of Opposer or known to Opposer, and the term is used in its customary broad sense to include, without limitation, the following items, whether printed, or recorded, or copied or reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged or confidential or personal: books, ledgers, notebooks, letters, faxes, telexes, e-mail messages, correspondence, telegrams, contracts, agreements, notes, memoranda, analyses, reports, projections, charts, graphs, drawings, photographs, checks, statements, statements of accounts, inter-office and intra-office communications, offers, notes of conversations, notes of meetings, notes of telephone calls, bulletins, computer

programs, computer databases, computer discs, magnetic or optical, or tapes, computer printouts, teletypes, invoices, work sheets, work papers, diaries, calendars, minutes, reports of investigations, office manuals, and any other communications fixed in a tangible medium, including, but not limited to, material stored electronically, electromagnetically or on optical media, as well as all mechanical and electronic sound recordings, or transcripts thereof, from which information can be obtained, as defined by the Federal Rules of Evidence, Rule 1001(1) and (2); "document" shall also include all drafts, alterations, modifications, changes, and amendments of any of the foregoing; "documents" shall also include any and all things subject to discovery pursuant to Rule 34(a) of the Federal Rules of Civil Procedure; "document" shall also include all "documents" (as defined herein) now in the possession, custody or control of Opposer or in the possession, custody or control of the present or former counsel, agents, employees or other persons acting on behalf of Opposer, and shall also include all "documents" (as defined herein) known by Opposer to exist, whether or not ever in the possession of Opposer; "document" shall also include all copies of all documents by whatever means made. "Document" also includes and refers to information recorded and/or stored on microfilm, microfiche and the like. "Document" also includes and refers to the file or any container holding or which once held any documents, as well as to any writing or printing which might appear on such file or container.

2. The term "Opposer" means Aktieselskabet af 21.November 2001, and its agents, officers, employees, representatives and attorneys, and any and all predecessor or successor companies, corporations, or business entities; "Opposer" shall also include any division, company, corporation or other business entity affiliated with Aktieselskabet af 21.November 2001, in whole or in part, and the directors, officers, agents, employees and attorneys of any of them, including all persons acting or purporting to act on behalf of, or who are subject to the direction or control of, any of the foregoing.

3. A document or communication "refers or relates to" a given subject matter where that document or communication constitutes, embodies, comprises, reflects, identifies, states, deals with, comments on, responds to, describes, analyzes, contains

information concerning, or is in any way pertinent to the subject matter, including, but not limited to, documents concerning the presentation of other documents.

4. Whenever appropriate in these Interrogatories and Requests, the singular form of a word should be interpreted as plural and vice versa.

5. The conjunctions "and" and "or" shall be individually interpreted in every instance as meaning "and/or" and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any Interrogatory and Request.

6. The term "each" shall be interpreted in every instance as including both "each" and "every" and shall not be interpreted to exclude any information otherwise within the scope of and Interrogatory or Request.

7. The masculine gender shall be interpreted in every instance as including the feminine. Likewise, the feminine gender shall be interpreted in every instance as including the masculine.

8. The word "identify" when used in conjunction with an individual means to state the individual's full name, last known home address, last known home and business telephone numbers, present or last known business affiliation or employer, business address or job title, exact or approximate date and place of death if deceased. Further, it means state whether or not there is, or has ever been, an employer/employee relationship, a principal/agent relationship, a licensor/licensee relationship, or an assignee/assignor relationship between such person and you and, if so, the nature of the relationship and the dates during which it existed.

9. The word "identify" with respect to a person other than an individual means to state its name and type of organization or entity, address and telephone number and the name of the principal individuals with knowledge of the subject matter of these Interrogatories and Requests.

10. The word "identify" when used with respect to a document or documents means to state its custodian, location and a general description of the document or

documents, including specification of: (a) the nature or type of the document (e.g., letter, memorandum, etc.); (b) the date it was prepared; (c) the date that it was sent, if applicable; (d) the name and address of the person(s), if any, to whom the document was addressed; (e) the names and addresses of all persons to whom copies of the document were or have been sent; (f) the firm or firms with which each of the persons identified in (d) & (e) were associated at the time of receipt of the document in question; (g) its general subject matter; (h) the author; and (i) the title, file number or other designation thereof; and (j) state whether or not Opposer is in possession of the original, master, or a copy of the document, and, if not in possession of the original, master, or a copy, furnish the name and address of the custodian of the original, master, or a copy.

11. The word "identify" when used with respect to a trademark or trademark application or registration means to state its country or state, registration number and date, the application number and date, its date of first use in that country or state and the goods on which used, and the identity of the alleged trademark owner.

12. The word "identify" when used with respect to a product, device or goods means to state the catalog, stock or like number, the trademark, name, type, grade, and any other designation customarily used by the party concerned and the trade to designate such product, device or goods and to distinguish it from others made or sold by the same or a different producer or vendor.

13. The word "identify" when used with respect to an event means to state the date of such event, the location of such event, identify each person present at the event, and what was said and/or done by each person present at the event.

14. The term "identify" as used in connection with an "oral statement or communication" means state the date and place where it occurred, its substance, the method of communication (e.g., in person or by telephone), and identify each person to whom such statement or communication was made and each person who was present when such statement was made.

15. The term "relating to" means consisting of, referring to, reflecting or being in any way logically or factually connected with the matter discussed.

16. "Person" or "Persons" means any individual, association, partnership, corporation, proprietorship, joint venture, company, firm, organization, or other identifiable entity, including governmental bodies and agencies.

17. The term "license" means any authorization (including any document that embodies an authorization) to use any United States trademark--either state or federal--or any foreign trademark whether such trademarks are registered or un-registered, including but not limited to:

(a) any agreement or other arrangement (whether in the form of a grant, sublicense, bilateral contract, option, offer to make a unilateral contract, stipulation in a legal action or other proceeding, statement that trademark rights will not be asserted in respect of a particular subject matter, agreement to use any trademark) embodying such authorization, and

(b) any schedule, addendum, or amendment thereto, and any modification thereof.

18. The term "communication" means and refers to any transmission of information orally, by documents, or by any other medium, including but not limited to any of the following: conversations, discussions, interviews, meetings, and conferences, whether in person, or by telephone, or by some other medium, letters, memoranda, telegrams, e-mail, telefax, teletypes and telexes, mailgrams, and transmission of information by computer or word processing systems.

19. The term "licensee" means any company, person, or other entity obtaining a license.

20. The term "agreement" means any express or implied, written or oral, formal or informal, contract, agreement, arrangement, or amendment thereto, or any modification thereof.

21. The term "Opposer's JACK & JONES mark" or any variations thereof means any word designation, name, symbol or device, or any combination thereof incorporating the term "JACK & JONES," including but not limited to the mark identified in U.S. Application No. 78/527,823, to identify and distinguish Opposer's goods and services.

22. The term "Applicant's JACK & JONES mark" or any variations thereof means any word designation, name, symbol or device, or any combination thereof incorporating the term "JACK & JONES," including but not limited to the mark identified in U.S. Application No. 78/350,085, to identify and distinguish Applicant's goods and services.

## INSTRUCTIONS

1. With respect to the answer to each interrogatory, or subpart thereof, state the source of the information given therein, with as much particularity as is reasonably possible, including without limitation, the nature and designation of any files that contain such information, and identify each person who provided any information included in such answer.

2. In responding to these Interrogatories and Requests, Opposer is requested to furnish all information known or available to it regardless of whether such information is directly in its possession or that of its representative attorneys, experts, as well as their respective agents, employees or representatives.

3. If any of these Interrogatories and Requests cannot be responded to fully and completely, Opposer shall respond to the extent possible, specifying the reasons for its inability to respond to the remainder and stating the substance of its knowledge, information or belief concerning the subject matter of the unanswered portion.

4. If the answer to any request or any part thereof is "none" or is "not applicable," so indicate.

5. Unless otherwise specified, supply all annual data requested on a calendar year basis, or if a fiscal year is used on a fiscal year basis.

6. These discovery requests seek answers as of the date hereof. These Interrogatories and Requests shall be continuing in nature and supplemental answers shall be required promptly to the full extent required by the Federal Rules of Civil Procedure if Opposer directly or indirectly obtains further or different information from the time the responses to these Interrogatories and Requests are served.

7. With respect to each document which Opposer contends is privileged or otherwise excludable from discovery, state the basis for the privilege or other grounds for exclusion, the name and address of the author and the addressee, the date, the general subject matter, the name and address of every recipient of the original or any copy of the document, the name and address of each person who now has the original or any copy

and the identification and location of the files where the original and each copy are normally kept.

8. Where a document is requested to be produced, the entire document, along with all attachments, appendices and exhibits, is to be produced.

9. If Opposer claims that any document or tangible thing requested to be identified herein was in existence at one time but has been lost, discarded or destroyed, identify such document or thing as completely as possible including any explanation of what type of document or thing it was; the addressor and addressee(s), if any; the documents date; who knows its contents; who knows or knew of its existence; the general subject matter of the document; number of pages and any attachments or appendices; when and how it was lost or destroyed; why it was disposed of or destroyed; who lost or destroyed it; and whether any copies of the document presently exist and if so, the name of the custodian of each copy.

10. If Opposer knows of any document requested but cannot produce it, so state, and give the particular reasons for Opposer's inability, and identify every person who you believe has possession, custody or control of the document.

11. All non-identical copies of documents are to be produced.

## INTERROGATORIES

### **Interrogatory No. 1**

1. Identify all persons who either assisted in the preparation of the answers to these discovery requests, provided information for said answers, or provided documents in response to the requests for production of documents.

ANSWER:

### **Interrogatory No. 2**

2. Has Opposer sold any goods under its JACK & JONES mark in the United States and, if so, describe in detail the goods sold and the volume of sales for each year since 1990, including the names of any distributors and retailers through which the sales were made in the United States?

ANSWER:

### **Interrogatory No. 3**

3. Identify and describe each product sold and/or distributed by Opposer under its JACK & JONES mark in the United States.

ANSWER:

### **Interrogatory No. 4**

4. State the earliest date of first use, if any, by Opposer of its JACK & JONES mark in connection with all goods sold and/or distributed in the United States.

ANSWER:

**Interrogatory No. 5**

5. Identify all documents, purchase orders, invoices, labels, or any writing whatsoever which Opposer will rely upon to establish the date(s) specified in answer to Interrogatory No. 4.

ANSWER:

**Interrogatory No. 6**

6. With respect to the first use(s) of its JACK & JONES mark in connection with the sale and distribution of each item identified in Interrogatory No. 3, state:

- (a) the manner in which the JACK & JONES mark was used, e.g., by affixation to containers, or labels, etc.;
- (b) whether the product was sold;
- (c) whether the product was distributed free of charge;
- (d) the name and address of the person to whom the product was sold or distributed;
- (e) whether Opposer itself manufactured each of the items sold under its JACK & JONES mark;
- (f) whether the sale and/or distribution of each item under its JACK & JONES mark has been continuous from the date specified in Interrogatory No. 4 to the present;

(g) if the answer to Interrogatory No. 6(f) is in the negative, state the periods of time during which Opposer has not used its JACK & JONES mark in connection with the sale or distribution of goods in the United States.

ANSWER:

**Interrogatory No. 8**

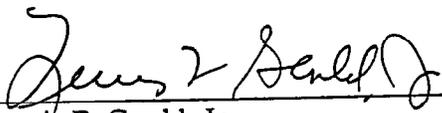
7. For each calendar year since commencement of use of the JACK & JONES mark in the United States, if any, state the amount expended by Opposer in the United States in the advertisement of each item described in answer to Interrogatory No. 3.

ANSWER:

**Interrogatory No. 9**

8. Identify and describe all planned or intended advertising or promotional activities in connection with the JACK & JONES mark for any goods to be sold and/or distributed in the United States

ANSWER:

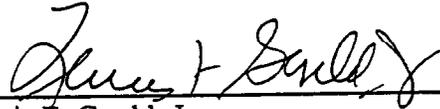
  
Lewis F. Gould, Jr.  
Duane Morris LLP  
Attorney for Applicant  
One Liberty Place  
Philadelphia, PA 19103-7396  
Tel. : (215) 979-1282  
Fax: (215) 979-1020  
Email: lfgould@duanemorris.com

Attorney Docket No. D4858-00037

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Applicant's First Set of Interrogatories was served on this 26<sup>th</sup> day of January, 2005 via first class mail, postage prepaid and addressed to:

**Oliver N. Blaise, III, Esq.**  
**COUGHLIN & GERHART, LLP**  
**20 HAWLEY St., 8<sup>th</sup> Floor East Tower**  
**P.O. Box 2039**  
**Binghamton, New York 13902-2039**  
**Email: oblaise@cglawllp.com**



Lewis F. Gould, Jr.  
Duane Morris LLP  
Attorney for Applicant  
One Liberty Place  
Philadelphia, PA 19103-7396  
Tel. : (215) 979-1282  
Fax: (215) 979-1020  
Email: lfgould@duanemorris.com

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

U.S. Trademark Application Serial No. 78/350,085  
For the Trademark: JACK & JONES

AKTIESELSKABET AF 21. NOVEMBER 2001, :  
Opposer, :  
 : **OPPOSITION NO. 91163436**  
v. :  
 :  
 :  
FAME JEANS, INC., :  
Applicant. :

**APPLICANT'S FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS AND THINGS**

Fame Jeans, Inc., ("Applicant"), under 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, directs the following Requests for the Production of Documents and Things to Aktieselskabet af 21. November 2001, a Danish corporation having its principal place of business at Fredskovvej 5, 7330 Brande, Denmark ("Opposer"), to be answered within thirty (30) days of the date of service hereof.

**DEFINITIONS & INSTRUCTIONS**

The Definitions and Instructions set forth in Applicants' First Set of Interrogatories, served contemporaneously herewith, are incorporated herein and made a part hereof.

**REQUEST FOR PRODUCTION OF DOCUMENTS**

**Request No. 1**

1. All documents and things relating to the selection, adoption and use of the JACK & JONES mark in the United States, including other marks considered, but not selected.

**Request No. 2**

2. All documents and things referring or relating directly or indirectly to the first and present use by Opposer of its JACK & JONES mark in the United States.

**Request No. 3**

3. All documents and things showing all types of goods and/or services upon which the JACK & JONES mark was, is currently, or will be used.

**Request No. 4**

4. All documents and things that refer or relate to Applicant.

**Request No. 5**

5. All assignments, licenses, franchises or other agreements referring or relating to the use of the JACK & JONES mark by a party other than Opposer.

**Request No. 6**

6. Representative samples of advertising or promotional material, including but not limited to: television advertisements, radio advertisements, internet advertisements, newspaper advertisements, magazine advertisements, press releases, catalogs, brochures, mailings, order forms, and displays produced by or on behalf of Opposer in connection with any goods sold and services provided by Opposer including but not limited to the goods identified in U.S. Trademark Application Serial No. 78/527,823.

**Request No. 7**

7. Representative specimens of each label, plaque, sign, letterhead, packaging, or other document or thing bearing the JACK & JONES mark which is being or has been used by Opposer in connection with any goods sold and services provided by Opposer including but not limited to the goods identified in U.S. Trademark Application Serial No. 78/527,823.

**Request No. 8**

8. All documents and things referring or relating to or comprising any claim of ownership or any rights, whether established by a predecessor or not, in any word or design or designation which includes the JACK & JONES mark or any formative thereof.

**Request No. 9**

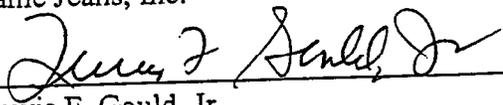
9. All documents and things referring or relating to any litigation or opposition settlements or agreements that in any way relate to Opposer's use of or alleged rights in the JACK & JONES mark or any formative thereof.

**Request No. 10**

10. All documents and things not previously produced, but identified in response to Applicant's First Set of Interrogatories and Applicant's First Requests for Admissions to Opposer, or which were referred to for purposes of preparing a response to Applicant's First Set of Interrogatories and Applicant's First Requests for Admissions to Opposer.

Fame Jeans, Inc.

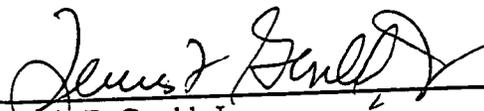
Date: January 21 2005

  
\_\_\_\_\_  
Lewis F. Gould, Jr.  
Attorney for Applicant  
Duane Morris LLP  
One Liberty Place  
Philadelphia, PA 19103-7396  
(215) 979-1282

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Applicant's First Set of Requests for Production of Documents and Things was served on this 21<sup>st</sup> day of January, 2005 via first class mail, postage prepaid and addressed to:

**Oliver N. Blaise, III, Esq.  
COUGHLIN & GERHART, LLP  
20 HAWLEY St., 8<sup>th</sup> Floor East Tower  
P.O. Box 2039  
Binghamton, New York 13902-2039  
Email: oblaise@cglawllp.com**



Lewis F. Gould, Jr.  
Duane Morris LLP  
Attorney for Applicant  
One Liberty Place  
Philadelphia, PA 19103-7396  
Tel. : (215) 979-1282  
Fax: (215) 979-1020  
Email: lfgould@duanmorris.com

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

U.S. Trademark Application Serial No. 78/350,085  
For the Trademark: JACK & JONES

AKTIESELSKABET AF 21. NOVEMBER 2001, :  
Opposer, :  
: **OPPOSITION NO. 91163436**  
v. :  
: :  
FAME JEANS, INC., :  
Applicant. :

**APPLICANTS' FIRST REQUESTS FOR ADMISSIONS TO OPPOSER**

Fame Jeans, Inc., ("Applicant"), under Rules 26 and 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, directs the following Requests for Admissions to Aktieselskabet af 21. November 2001, a Danish corporation having its principal place of business at Fredskovvej 5, 7330 Brande, Denmark ("Opposer"), to be answered within thirty (30) days of the date of service hereof.

**DEFINITIONS AND INSTRUCTIONS**

The Definitions and Instructions set forth in Applicants' First Set of Interrogatories, served contemporaneously herewith, are incorporated herein and made a part hereof.

**REQUESTS**

**REQUEST NO. 1**

Admit that Opposer never has sold goods and/or services under the JACK & JONES designation in the United States.

**RESPONSE TO REQUEST NO. 1**

**REQUEST NO. 2**

Admit that Opposer owns and operates the website <[www.jackjones.com](http://www.jackjones.com)> through which Opposer promotes its goods worldwide.

**RESPONSE TO REQUEST NO. 2**

**REQUEST NO. 3**

Admit that Opposer's website <[www.jackjones.com](http://www.jackjones.com)> does not list any stores in the United States on the Store Locator page at <<http://www.jackjones.com/storelocator.aspx>>.

**RESPONSE TO REQUEST NO. 3**

**REQUEST NO. 4**

Admit that Opposer has no permanent office in the United States.

**RESPONSE TO REQUEST NO. 4**

**REQUEST NO. 5**

Admit that Opposer does not lease any office or other commercial space in the United States.

**RESPONSE TO REQUEST NO. 5**

**REQUEST NO. 6**

Admit that Opposer has no U.S. telephone number in its name in the United States.

**RESPONSE TO REQUEST NO. 6**

**REQUEST NO. 7**

Admit that as of January 9, 2004, Opposer did not sell any goods and/or services under the JACK & JONES mark in the United States.

**RESPONSE TO REQUEST NO. 7**

**REQUEST NO. 8**

Admit that Opposer's JACK & JONES mark is identical with Applicant's JACK & JONES trademark in appearance, pronunciation, meaning and commercial impression.

**RESPONSE TO REQUEST NO. 8**

**REQUEST NO. 9**

Admit that Opposer sold no goods identified in U.S. Trademark Application Serial No. 78/527,823 in the United States under the JACK & JONES designation in:

- (a) 1990
- (b) 1991
- (c) 1992
- (d) 1993
- (e) 1994
- (f) 1995
- (g) 1996
- (h) 1997
- (i) 1998
- (j) 1999
- (k) 2000
- (l) 2001

(m) 2002

(n) 2003

(o) 2004

**RESPONSE TO REQUEST NO. 9**

**RESPONSE TO REQUEST NO. 10**

Admit that Opposer filed no U.S. tax return in:

(a) 1990

(b) 1991

(c) 1992

(d) 1993

(e) 1994

(f) 1995

(g) 1996

(h) 1997

(i) 1998

(j) 1999

(k) 2000

(l) 2001

(m) 2002

(n) 2003

(o) 2004

**RESPONSE TO REQUEST NO. 10**

**REQUEST NO. 11**

Admit that Opposer has no mailing address in the United States.

**RESPONSE TO REQUEST NO. 11**

**REQUEST NO. 12**

Admit that no advertisement or display of the JACK & JONES mark was published in print, television or radio media in the United States in:

- (a) 1990
- (b) 1991
- (c) 1992
- (d) 1993
- (e) 1994
- (f) 1995
- (g) 1996
- (h) 1997
- (i) 1998
- (j) 1999
- (k) 2000
- (l) 2001

- (m) 2002
- (n) 2003
- (o) 2004

**RESPONSE TO REQUEST NO. 12**

**REQUEST NO. 13**

Attached as Exhibit 1 is a copy of the file history of U.S. Trademark Application Serial No. 78/527,823, filed on December 6, 2004 under 15 U.S.C. Section 1126(e), owned by Opposer.

**RESPONSE TO REQUEST NO. 13**

**REQUEST NO. 14**

Admit that Opposer states in its application Serial No. 78/527,823 that it has a bona fide intention to use the mark in commerce in the United States.

**RESPONSE TO REQUEST NO. 14**

**REQUEST NO. 15**

Admit that the filing date of Applicant's U.S. Trademark Application Serial No. 78/350,085 (January 9, 2004) predates the filing date of Opposer's U.S. Trademark Application Serial No. 78/527,823 (December 6, 2004).

**RESPONSE TO REQUEST NO. 15**

**REQUEST NO. 16**

Admit that Applicant's U.S. Trademark Application Serial No. 78/350,085 and Opposer's U.S. Trademark Application Serial No. 78/527,823 identify virtually identical or substantially similar goods.

**RESPONSE TO REQUEST NO. 16**

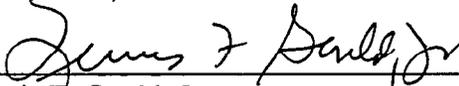
**REQUEST NO. 17**

Admit that the only issue in this Opposition is priority.

**RESPONSE TO REQUEST NO. 17**

Date: January 21<sup>st</sup> 2005

Fame Jeans, Inc.

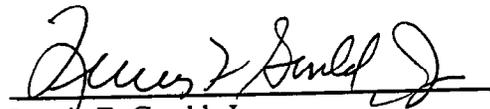


Lewis F. Gould, Jr.  
Attorney for Applicant  
Duane Morris LLP  
One Liberty Place  
Philadelphia, PA 19103-7396  
(215) 979-1282

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Applicant's First Requests for Admissions to Opposer was served on this 21 day of January, 2005 via first class mail, postage prepaid and addressed to:

**Oliver N. Blaise, III, Esq.  
COUGHLIN & GERHART, LLP  
20 HAWLEY St., 8<sup>th</sup> Floor East Tower  
P.O. Box 2039  
Binghamton, New York 13902-2039  
Email: oblaise@cglawllp.com**



Lewis F. Gould, Jr.  
Duane Morris LLP  
Attorney for Applicant  
One Liberty Place  
Philadelphia, PA 19103-7396  
Tel. : (215) 979-1282  
Fax: (215) 979-1020  
Email: lfgould@duanemorris.com

GENERAL INFORMATION

SER NO 78/527823 REG NO 0000000 FIL DT 12/06/2004 REG DT  
 EXAMINING ATTORNEY LAW OFFICE CHLO LOCC 042 LOC DT 12/16/2004  
 00000 CHEM STAC 630 STA DT 12/16/2004  
 MARK JACK & JONES (STD CHAR) CLASS CT 01  
 INT CL 025 DRAW 4 REGISTER PRINCIPAL  
 US CL 022 039 AMDED TO  
 GOODS/ (025) - Men's, women's and children's su MK TYPE TM  
 SERVICES its, jackets, trousers, skirts, blouses, ABAN DT  
 dresses, sweaters, vests, underpants, s ETC CAN DT  
 OWNER Aktieselskabet af 21. november 2001 PUB DT

OWNER Brands  
 ADDRESS DENMARK DK-7330

TTAB PROCEEDING- NO  
 SEC 8 NO  
 SEC 15 NO  
 REPUB 12C NO  
 FOREIGN REG/APPL  
 DATA AVAILABLE-  
 USE TRANSACTIONS  
 7946-7947

PROSECUTION HISTORY

002/01/05/05 TEAS PRELIMINARY AMENDMENT RECEIVED  
 001 12/15/04 NEW APPLICATION ENTERED IN TRAM

OWNER-CORRESPONDENCE INFORMATION

SER NO 78/527823 REG NO 0000000 FIL DT 12/06/2004 REG DT  
 EXAMINING ATTORNEY LAW OFFICE CHLO LOCC 042 LOC DT 12/16/2004  
 00000 CHEM STAC 630 STA DT 12/16/2004  
 MARK JACK & JONES (STD CHAR) CLASS CT 01  
 PRTT 10 ENTRY 01 OF 01 OTHER PRTT 10  
 APPL ATTORNEY Michael F. Brown CITIZENSHIP/INCORP.  
 CORRESPOND. MICHAEL F. BROWN DENMARK  
 ADDRESS BROWN & MICHAELS PC ENTITY  
 400 M&T BANK BUILDING 118 N. TIOGA STRE CORPORATION  
 ITHACA, NY 14850

OWNER Fredskovvej  
 ADDRESS

Brands  
 DENMARK DK-7330

OWNER Aktieselskabet af 21. november 2001

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

U.S. Trademark Application Serial No. 78/350,085  
For the Trademark: JACK & JONES

AKTIESELSKABET AF 21. NOVEMBER 2001,	:	
	:	
Opposer,	:	<b>Opposition No. 91163436</b>
	:	
vs.	:	
	:	
FAME JEANS, INC.,	:	
	:	
Applicant.	:	

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

Opposer, Aktieselskabet af 21. November 2001, through its attorneys, Coughlin & Gerhart, LLP, responds to the First Set of Interrogatories of the Applicant, Fame Jeans, Inc., as follows:

- Answer No. 1:** The following persons assisted in the preparation of the answers to Applicant's discovery requests, provided information for said answers, or provided documents in response to the requests of production of documents: Daniela Gomig-Hansen, Esq., Kjeld Skov, Esq., and Oliver N. Blaise, III, Esq.
- Answer No. 2:** Opposer has not sold or distributed any goods under its JACK & JONES mark in the United States.
- Answer No. 3:** Opposer has not sold or distributed any goods under its JACK & JONES mark in the United States.
- Answer No. 4:** Opposer has not sold or distributed any goods under its JACK & JONES mark in the United States.

- Answer No. 5:** Opposer has not sold or distributed any goods under its JACK & JONES mark in the United States.
- Answer No. 6:** Opposer has not sold or distributed any goods under its JACK & JONES mark in the United States.
- Answer No. 7:** Opposer has no answer as no question was posed for Interrogatory No. 7.
- Answer No. 8:** Opposer has not made any expenditures to advertise goods under its JACK & JONES mark in the United States.
- Answer No. 9:** While Opposer has not planned specific advertising or promotional activities in connection with its JACK & JONES mark for goods to be sold and/or distributed in the United States, it hopes to market its products under the JACK & JONES mark in the United States using a promotional campaign similar to its 2004-2005 Canadian marketing efforts upon further development of the present litigation.

PLEASE TAKE NOTICE THAT Opposer reserves the right to supplement or amend its responses herein should additional information become available.

Dated: March 23, 2005

  
Oliver N. Blaise, III, Esq.  
COUGHLIN & GERHART, LLP  
*Attorneys for Opposer*  
20 Hawley Street, P.O. Box 2039  
Binghamton, New York 13902-2039  
Tel: (607) 723-9511  
Fax: (607) 723-1530  
E-mail: [oblaise@cglawllp.com](mailto:oblaise@cglawllp.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing, Opposer's Answer to Applicant's First Set of Interrogatories, was served on March 23, 2005 via first class mail, postage prepaid, addressed to:

Louis F. Gould, Jr., Esq.  
DUANE MORRIS LLP  
*Attorneys for Applicant*  
One Liberty Place  
Philadelphia, Pennsylvania 19103-7396



Oliver N. Blaise, III, Esq.  
COUGHLIN & GERHART, LLP  
*Attorneys for Opposer*  
20 Hawley Street, P.O. Box 2039  
Binghamton, New York 13902-2039  
Tel: (607) 723-9511  
Fax: (607) 723-1530  
E-mail: [oblaise@cglawllp.com](mailto:oblaise@cglawllp.com)

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

U.S. Trademark Application Serial No. 78/350,085  
For the Trademark: JACK & JONES

AKTIESELSKABET AF 21. NOVEMBER 2001,	:	
	:	
Opposer,	:	<b>Opposition No. 91163436</b>
	:	
vs.	:	
	:	
FAME JEANS, INC.,	:	
	:	
Applicant.	:	

**OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET  
OF REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Opposer, Aktieselskabet af 21. November 2001, through its attorneys, Coughlin & Gerhart, LLP, responds to the First Set of Requests for Production of Documents and Things of the Applicant, Fame Jeans, Inc., as follows:

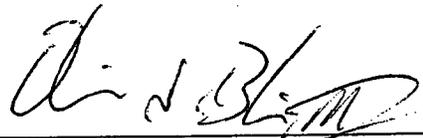
- Response No. 1:** No such documents exist as Opposer's intended use of its JACK & JONES mark in the United States is premised upon its long-standing use of the mark in other areas of the world.
- Response No. 2:** No such documents exist as Opposer has not yet used its JACK & JONES mark in the United States.
- Response No. 3:** The types of goods and/or services upon which Opposer will use its JACK & JONES mark in the United States can be viewed at Opposer's website, [www.jackjones.com](http://www.jackjones.com).
- Response No. 4:** Opposer will supply documents and things it has referring or relating to Applicant.

- Response No. 5:** Attached as Exhibit A is a license agreement relating or referring to the use of JACK & JONES mark by Opposer's related corporation, Bestseller Wholesale A/S.
- Response No. 6:** Opposer will supply representative samples of promotional materials produced by or on behalf of Opposer in connection with goods sold and services provided by Opposer concerning its JACK & JONES mark, including the goods identified in U.S. Trademark Application Serial No. 78/527,823. Samples of such promotional materials can be viewed at Opposer's website, [www.jackjones.com](http://www.jackjones.com).
- Response No. 7:** Opposer will supply representative specimens of labels, packaging, *etc.*, which is being or has been used by Opposer in connection with goods sold and services provided by Opposer concerning its JACK & JONES mark, including the goods identified in U.S. Trademark Application Serial No. 78/527,823. Samples of such promotional materials can be viewed at Opposer's website, [www.jackjones.com](http://www.jackjones.com).
- Response No. 8:** Attached as Exhibit B are documents relating to or comprising Opposer's claim of ownership or rights to the JACK & JONES mark, specifically registration of the JACK & JONES mark in Denmark, the European Union, and Egypt.
- Response No. 9:** Opposer will supply a summary of litigation relating to Opposer's use of and rights in the JACK & JONES mark. Opposer objects to

producing the records from said litigation on the grounds that such material would be unduly burdensome to compile and reproduce, is irrelevant to the current proceedings, and contains privileged material.

**Response No. 10:** Opposer has or will produce all relevant documents concerning its responses to Applicant's First Request for Admissions and First Set of Interrogatories.

Dated: March 23, 2005



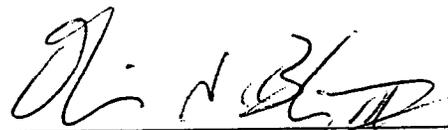
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Oliver N. Blaise, III, Esq.  
COUGHLIN & GERHART, LLP  
*Attorneys for Opposer*  
20 Hawley Street, P.O. Box 2039  
Binghamton, New York 13902-2039  
Tel: (607) 723-9511  
Fax: (607) 723-1530  
E-mail: [oblaise@cglawllp.com](mailto:oblaise@cglawllp.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing, Opposer's Response to Applicant's First Requests Set of Requests for Production of Documents and Things, was served on March 23, 2005 via first class mail, postage prepaid, addressed to:

Louis F. Gould, Jr., Esq.  
DUANE MORRIS LLP  
*Attorneys for Applicant*  
One Liberty Place  
Philadelphia, Pennsylvania 19103-7396



Oliver N. Blaise, III, Esq.  
COUGHLIN & GERHART, LLP  
*Attorneys for Opposer*  
20 Hawley Street, P.O. Box 2039  
Binghamton, New York 13902-2039  
Tel: (607) 723-9511  
Fax: (607) 723-1530  
E-mail: [oblaise@cglawllp.com](mailto:oblaise@cglawllp.com)

Jour. no.: 024060-0001 12-fg iks/iks

On \_\_\_\_\_ [date]

“Aktieselskabet af 21. november 2001”  
CVR no. 26332389  
Industrivej 28  
DK-7330 Brande  
(hereinafter also referred to as “the Licensor”)

and

“Bestseller Wholesale A/S”  
CVR no. 88216512  
Industrivej 28  
DK-7330 Brande  
(hereinafter also referred to as “the Licensee”)

have entered this

## LICENCE AGREEMENT

### 1. Background

- 1.1 When “Holdingselskabet af 25/3 1983 A/S”, CVR no. 71803716, was divided, all trademarks were transferred to “MTHP A/S”. The registration of “MTHP A/S” as the owner of the trademarks has been carried out with respect to the Danish and the EU trademarks, and the registration is in the process of being carried out with respect to other foreign trademarks.
- 1.2 With effect from 1<sup>st</sup> December 2001, the ownership of the trademarks was passed from “MTHP A/S” to “Aktieselskabet af 21. november 2001”. The process of registration of “Aktieselskabet af 21. november 2001” as the owner of the trademarks has been initiated

for the Danish and the EU trademarks, and will subsequently be carried out with respect to the other foreign trademarks.

- 1.3 The trademarks are primarily used by "Bestseller Wholesale A/S", a subsidiary of "Bestseller Holding A/S" in its marketing and sale of clothes, shoes, and accessories from the Bestseller Group.
- 1.4 Based on this, the parties agree that the right of use for the trademarks specified in articles 2.1 and 2.2 of this agreement shall be passed from "Aktieselskabet af 21. november 2001" to "Bestseller Wholesale A/S" according to the provisions of this agreement (hereinafter referred to as the "Licence Agreement").

## 2. Subject

- 2.1 The Licence Agreement covers all trademarks belonging to "MTHP A/S" in Denmark, the EU and all other countries, with the exception of the trademarks specified in article 2.8 of this agreement, irrespective of whether the trademarks have been registered, are being registered or have simply been in use.
- 2.2 Moreover, the Licence Agreement covers such trademarks that will subsequently be passed to the Licensor and those trademarks that are developed by the Licensee.
- 2.3 The trademarks that are covered by the Licence Agreement shall hereinafter be referred to as "the Trademarks".
- 2.4 A list of the Trademarks that have been registered in Denmark or for which an application for registration has been made is enclosed as appendix 1.
- 2.5 A list of the Trademarks that have been registered in the EU or for which an application for registration has been made is enclosed as appendix 2.
- 2.6 A list of the Trademarks that have been registered in all other countries or for which an application for registration has been made is enclosed as appendix 3.
- 2.7 The abovementioned list of the Trademarks, cf. appendices 1, 2 and 3, shall be updated once a year in August, and be attached as new appendices to the Licence Agreement. This update of the appendices to the Licence Agreement shall further include such Trademarks

that have subsequently been passed to "Aktieselskabet af 21. november 2001" as well as those Trademarks that are developed by the Licensee.

- 2.8 The Licence Agreement does not cover the trademarks, "Vila" and "Vita Verde", regardless of whether they have been registered, are in the process of being registered, or are simply in use in Denmark as well as in the EU and all other countries.
- 2.9 A list of the registered trademarks "Vila" and "Vita Verde" in Denmark, the EU, and other countries is enclosed as appendix 4.

### **3. Right of use**

- 3.1 The Licensee shall have a limited right to use the Trademarks for marketing and sale of goods and services from the Bestseller Group anywhere in the world when the Trademarks are registered, in the process of being registered or in use for the goods and services in question.
- 3.2 The Licensee is not entitled to use the Trademarks in any other way, unless a written agreement concerning such use is entered into.
- 3.3 However, the Licensee is entitled to pass on his right of use as specified in art. 3.1 to any subsidiary or affiliate in the Bestseller Group. Where such sub-licence agreements are entered into, the Licensee must ensure that the sub-licensees observe the provisions of this Licence Agreement, in particular articles 6.1 – 6.4. In the case where the Licensee enters into sub-licence agreements with businesses that are not owned 100% by the Bestseller Group, any such sub-licence agreements must be approved in writing by the Licensor before they are entered into.

### **4. Commencement**

- 4.1 The Licence Agreement commences with effect from 1<sup>st</sup> December 2001 when signed by both parties.

### **5. Obligations of Licensor**

- 5.1 The Licensor has initiated registration of the transfer of the Trademarks from "MTHP A/S" and shall pay the expenses thus occurred. The Licensor shall carry out whatever action is necessary in order to facilitate the registration of this transfer, and he shall inform the Licensee about the completion of such registration.
- 5.2 The Licensor shall maintain and renew the registration of the Trademarks and do whatever is necessary in order to protect the Trademarks against infringements.
- 5.3 The Licensor is entitled to and shall act as party in dispute and infringement actions concerning the Trademarks, though following an agreement with the Licensee, he may authorise the Licensee to act as party in such actions.
- 5.4 Any current actions concerning the Trademarks shall be effected by the Licensor or by the former owner of the Trademarks.
- 5.5 A list of current actions concerning the Trademarks is enclosed as appendix 5.

**6. Obligations of Licensee**

- 6.1 The Licensee shall use the Trademarks in accordance with the general and specific guidelines that are set down by the Licensor.
- 6.2 The Licensee shall assist in providing documentation for use in dispute and infringement actions, and shall provide other assistance to the Licensor as agreed. The Licensee will not receive any payment for this.
- 6.3 The Licensee shall ensure that the Licensor is maintained as the owner of the Trademarks by making use of the Trademarks to keep the registration valid. The Licensee shall periodically register the extent of the marketing and sale of goods and services in the countries where the Trademarks are used.
- 6.4 The Licensee shall immediately inform the Licensor of any disputes against the Trademarks and of any noted infringements concerning the Trademarks.
- 6.5 On request from the Licensor, the Licensee shall be under obligation to act as a party in the dispute and infringement actions concerning the Trademarks.

6.6 The Licensee must at all times be covered by the necessary product liability insurance that has been approved by the Licensor.

6.7 The Licensee is entitled to and under obligation to continue to develop the Trademarks and shall cover the expenses thus occurred. The Licensor must immediately be informed of newly developed trademarks, and those shall be passed to the Licensor. The Licensee may make use of newly developed trademarks pursuant to the provisions of this License Agreement.

## 7. Procedures

7.1 At the end of each financial year, which runs from 1<sup>st</sup> of August until 31<sup>st</sup> of July for both the Licensee and the Licensor, a meeting between the Licensee and the Licensor will be held in the month of August if required. The purpose of the meeting is to ensure the best possible collaboration on the use of the Trademarks.

7.2 The Licensee shall compile the following for the meeting:

- (a) Information on new Trademarks, (compiled by the Licensee).
- (b) Information on the countries in which the Trademarks are used, and the extent of the use of the Trademarks.
- (c) Information on additional countries in which to apply for registration of the Trademarks
- (d) Information on product liability insurance.

7.3 The Licensor shall compile the following for the meeting:

- (a) Updated lists of the Trademarks, cf. appendices 1, 2 and 3.
- (b) A list of those countries in which the license is registered.
- (c) Information on current dispute and infringement actions.

7.4 At the meeting it will further be discussed to what extent, the Licensee may assist with dispute and infringement actions.

## 8. License fee

8.1 From the date of commencement of the License Agreement, the Licensee shall cover all expenses incurred with maintaining and using the Trademarks as payment for the use of the Trademarks, unless such expenses are expressly included in the License Agreement.

8.2 Thus, the Licensee covers all expenses for e.g. the following:

- (a) Continuous registration and renewal of the Trademarks.
- (b) Registration of the license concerning the Trademarks.
- (c) Registration of the Trademarks in other countries.
- (d) Registration of newly developed Trademarks.
- (e) All expenses in connection with disputes brought against the Trademarks.
- (f) All expenses in connection with protesting infringement to the Trademarks and bringing such infringements to a close.
- (g) An amount that corresponds to the Licensor's depreciation on the Trademarks.
- (h) An amount that corresponds to the Licensor's return on the book value of the Trademarks. The opening balance for the year carry interest at the rate of 8 %.
- (i) All expenses in connection with the Licensor's administration of the Trademarks.

8.3 Any compensation and payment made in connection with infringements of the Trademarks is payable to the Licensee.

8.4 The License fee is to be paid on account every month with an amount of DKK 100,000.00 plus VAT.

- 8.5 On the first day of every month, the Licensor forwards an invoice for the on account payment of the licence fee, which is due for payment on the 15<sup>th</sup> day of the month. The first invoice will be sent out on 1<sup>st</sup> of December 2001.
- 8.6 At the end of each financial year, the Licensor compiles a statement giving details of all expenses covered during the year for maintenance and use of the Trademarks, cf. article 8.1, and of the on account license fee payments made by the Licensee.
- 8.7 This statement forms the basis for the final adjustment to the licence fee for the financial year in question. VAT is added to the adjusted amount, which is due to be paid by the Licensor or the Licensee not later than 30 days after the statement has been sent out.
- 8.8 In the case of late payment of the licence fee, interest is added according to the normal business terms of the Licensor.
- 8.9 The Licensee may demand that the statement is endorsed by the Licensor's auditor. Should the statement compiled by the Licensor contain material errors, any expenses for assistance by an accountant shall be covered by the Licensor. Otherwise, such expenses shall be covered by the Licensee.

## 9. Guarantees

- 9.1 The Licensor declares being the rightful owner of all the transferred Trademarks, but otherwise gives no guarantees with regard to the value of the Trademarks.
- 9.2 The Licensor does not accept responsibility toward the Licensee and/or any third party that the use of the Trademarks cannot infringe on the rights of a third party, or that registration of the Trademarks may be maintained.
- 9.3 The Licensee shall indemnify the Licensor for any demand made by a third party as a result of the use of the Trademarks by the Licensee.

## 10. Duration and expiry

- 10.1 The License Agreement shall not be terminable by either party for a period of three years. At the end of this three-year period, both parties shall initiate negotiations with a view to reaching agreement to extend the License Agreement.

- 10.2 When the parties do not agree to extend the License Agreement, it may be terminated by either party giving six months notice to begin on the first day of a calendar month.
- 10.3 At the end of a financial year, both parties may insist on initiating negotiations in order to make changes to the License Agreement.
- 10.4 However, where use is made of the tax reservation provided in the agreement on passing the Trademarks from "MTHP A/S" to the Licensor, the Licensor is entitled to cancel the License Agreement so that both parties are in the same situation as if the License Agreement had never been entered into. The Licensee shall be entitled to use the Trademarks on the same conditions, since "MTHP A/S" shall be the Licensor of the License Agreement.
- 10.5 In case of the License Agreement being terminated for whatever reason, the Licensee shall cease to use the Trademarks, cf., however, article 10.4.
- 10.6 Moreover, the Licensee shall pass all documentation concerning the Trademarks to the Licensor and provide the Licensor with the information specified in article 7.2 at the time of the termination of the agreement.

## **11. Transfer of rights and obligations**

- 11.1 The Licensor is entitled to transfer the License Agreement in full.
- 11.2 The Licensee shall not be entitled to transfer, fully or in part, his rights and obligations under the License Agreement, unless he has previously been given written permission from the Licensor to do so, cf., however, article 3.3.

## **12. Arbitration**

- 12.1 Any dispute that may arise under this agreement shall be settled by an arbitration tribunal set up under the Danish Institute of Arbitration with three arbitrators, of whom each of the parties appoints one arbitrator and the institute appoints the chairman of the tribunal.
- 12.2 Disputes shall be settled in accordance with the current Danish legislation and by using the set of rules, "Regler for behandling af sager ved Den Almindelige Voldgiftsret i Danmark" ("Rules for settling disputes by the Common Arbitration Tribunals in Denmark").

12.3 The parties agree that, before a dispute is brought before an arbitration tribunal, they shall seek to settle the dispute by mutual, obliging negotiations, and the parties may agree that the arbitration tribunal shall be staffed by one arbitrator appointed by the parties mutually, or appointed by the Danish Institute of Arbitration.

13. Appendices

- Appendix 1 A list of the Trademarks that have been registered in Denmark or for which an application for registration has been made.
- Appendix 2 A list of the Trademarks that have been registered in the EU or for which an application for registration has been made.
- Appendix 3 A list of the Trademarks that have been registered in all other countries or for which an application for registration has been made.
- Appendix 4 A list of the registered trademarks "Vila" and "Vita Verde".
- Appendix 5 A list of current actions concerning the Trademarks.

, 200 [date]

\_\_\_\_\_  
Aktieselskabet af 21. November 2001

\_\_\_\_\_  
Bestseller Wholesale A/S

Entered into pursuant to article 10.4 of the License Agreement by:

, 200 [date]

\_\_\_\_\_  
MTHP A/S

**DANMARK**

Application Date	Registration Nr.	Registration Date	Renewal	
01.10.1990	VR 03.000 1991	17.05.1991	17.05.2011	
02.06.1995	VR 00.538 1996	26.01.1996	26.01.2006	
16.06.1989	VR 03.588 1992	01.05.1992	01.05.2012	
02.08.1982	VR 01.686 1983	03.06.1983	03.06.2013	
27.10.1994	VR 05.400.1996	27.09.1996	27.09.2006	
22.12.1989	VR 06.569 1990	28.09.1990	28.09.2010	
15.01.1997	VR 00.845 1997	21.02.1997	21.02.2007	
05.05.1995	VR 04.276 1995	30.06.1995	30.06.2005	
28.04.1995	VR 2000 02183	17.05. 2000	17.05.2010	
13.10.1995	VR 07.396 1995	27.10.1995	27.10.2005	
24.08.1990	VR 1991 01131	15.02.1991	15.02.2011	
28.06.2001	VR 2001 03359	10.08.2001	10.08.2011	
06.06.1991	VR 00.760 1992	07.02.1992	07.02.2012	
02.07.1984	VR 01.685 1985	31.05.1985	25.06.2013	
14.04.1993	VR 04.585 1993	25.06.1993	25.06.2003	
22.11.1994	VR 00.886 1995	03.02.1995	03.02.2005	
18.06.1999	VR 1999 04638	14.12.1999	14.12.2009	
25.10.1995	VR 08.234 1995	01.12.1995	01.12.2005	
08.04.1988	VR 1989 01649	21.04.1989	21.04.2009	
20.01.1987	VR 1988 03946	11.11.1988	11.11.2008	
16.05.2001	VR 2001 03654	03.09.2001	03.09.2011	
31.01.2003	VR 2003 00 714	25.02.2003	25.02.2013	
	vr2003302697	07.08. 2003	07.08. 2013	
27/8 2003	vr2003 03293	30.09. 2003	30.09. 2013	
	VR199401598	17.06.1994	17.06.2014	
09.08.2004	VR2004 03115	24.09.2004	24.09.2014	
09.08.2004	VR2004 03018	14.09.2004	14.09.2014	

Trademark	Owner	Application Nr.
BESTSELLER <fig> (25)	A/S af 21/11/2001	VA 07.447 1990
DELICATE <w> (25)	A/S af 21/11/2001	VA 1995 04151
EXIT <w> (25 minus fodtøj)	A/S af 21/11/2001	VA 1989 04 390
EXIT <w> (25) jeans	A/S af 21/11/2001	VA 1982 03.420
GABSTAR <w> (25)	A/S af 21/11/2001	VA 07.492 1994
JACK & JONES <w> (25)	A/S af 21/11/2001	VA 1988 09.497
NAME IT <w> (25)	A/S af 21/11/2001	VA 00.197 1997
O.N.L.Y JEANS WEAR <fig> (2)	A/S af 21/11/2001	VA 03.479 1995
ONLY <w> (25)	A/S af 21/11/2001	VA 1995 03267
ONLY JEANS WEAR <w> (25)	A/S af 21/11/2001	VA 07.756 1995
ONLY U <fig> (25)	A/S af 21/11/2001	VA 1990 06492
ONLY <w> (3 og 9)	A/S af 21/11/2001	VA 2001 02469
PALLADIO <w> (25)	A/S af 21/11/2001	VA 03.947 1991
PIGALLE <w> (23)	A/S af 21/11/2001	VA 03.674 1984
PIGALLE <w> (25)	A/S af 21/11/2001	VA 02.417 1993
SCOTT'N' BLUE <w> (25)	A/S af 21/11/2001	VA 1994 08.168
SELECTED <fig> (25)	A/S af 21/11/2001	VA 1999 02573
VERO MODA N.Y.C. <fig> (3)	A/S af 21/11/2001	VA 08.073 1995
VERO MODA <w> (25)	A/S af 21/11/2001	VA 1988 02465
ZENZA COMPANY <w> (25)	A/S af 21/11/2001	VA 1987 00292
ZULU <w> (25)	A/S af 21/11/2001	VA 2001 01872
PHINK <w> (9, 14, 18, 25)	A/S af 21/11/2001	VA 2003 00 388
OBJECT COLLECTORS ITEM	A/S af 21/11/2001	va2003 02515
KL. 3, 9, 14, 18 OG 25		
BESTSELLER <w>, KL. 25.35	A/S af 21/11/2001	
PIECES BY BESTSELLER	A/S af 21/11/2001	VA2003 03092
KL. 3, 9, 14, 18 OG 25		
VITA VERDE <fig>,kl.25	A/S af 21/11/2001	
DUST BY JACK & JONES		
KL. 3, 18, 25	A/S af 21/11/2001	
DISCREET BY JACK & JONES		
KL. 3, 18, 25	A/S af 21/11/2001	

## EU

Application Date	Registration Nr.	Registration Date	Renewal
02.11.2000	CTM 001937119	20.06.2002	02.11.2010
20.08.1996	CTM 000362558	30.11.1999	20.08.2006
16.03.1999	CTM 001107747	14.06.2000	16.03.2009
15.01.1997	CTM 0004 24523	29.05.2000	15.01.2007
25.09.1997	CTM 000638833	07.01.2000	25.09.2007
28.06.2001			
04.08.1998	CTM 000895771	31.05.1999	04.08.2008
16.10.1997	CTM 000654236	10.03.2003	16.10.2007
25.09.1997	CTM 000639443	13.04.1999	25.09.2007
21.06.1999	CTM 001215219	16.06.2000	21.06.2009
09.10.1997	CTM 000647263	13.04.1999	09.10.2007
21.06.1999			
13.12.2000	CTM 001997683	17.03.2003	13.12.2010
15.11.2000		20.08.2004	15.11.2010
28.08.2002	2834208	15.03.2004	28.08.2012
04.07.2002	ctm002767788	04.07.2002	04.07.2012
28.08.2002	2832491	15.03.2004	28.08.2012
29.01.2003	3035326	17.09.2004	29.01.2013
20.05.2003	3195302	11.08.2004	22.05.2013
02.06.2003			
17.03.2003			
18.06.2003			
18.06.2003			
01.07.2003			
25.08.2003			
22.09.2003			
22.10.2003			
13.06.2004			
20.12.2004			
10.08.2004			
10.08.2004			
13.09.2004			
20.11.2002	2945301	30.06.2004	30.6.2009/20.11.2012
20.11.2002	29545723	04.06.2004	04.06.2009/20.11.2012
25.01.2005			

Trademark	Owner	Application Nr.
DENIM TECHNIC <w> (14, 18, 25)	A/S af 21/11/2001	CTM 001937119
EXIT <w> (25)	A/S af 21/11/2001	CTM 000362558
JACK & JONES <w> (3, 18, 25)	A/S af 21/11/2001	CTM 001107747
NAME IT <w> (25)	A/S af 21/11/2001	CTM 0004 24523
ONLY <w> (14, 18, 25)	A/S af 21/11/2001	CTM 000638833
ONLY <w> (3, 9)	A/S af 21/11/2001	CTM 002370724
ONLY JEANS WEAR <fig> (14, 18, 25)	A/S af 21/11/2001	CTM 000895771
ONLY JEANS WEAR <w> (14, 18)	A/S af 21/11/2001	CTM 000654236
PAPERWORK <w> (18, 25)	A/S af 21/11/2001	CTM 000639443
PH INDUSTRIES <w> (25)	A/S af 21/11/2001	CTM 001215219
S.N.B <w> (18, 25)	A/S af 21/11/2001	CTM 000647263
TDK <w> (25)	A/S af 21/11/2001	CTM 001214675
VERO MODA <fig> (18, 25, 35)	A/S af 21/11/2001	CTM 001997683
VERO MODA <w> (18, 25, 35)	A/S af 21/11/2001	CTM 001954353
JACK & JONES <w> (9,14,18,25)	A/S af 21/11/2001	CTM 02834208
one world one philosophy one family	A/S af 21/11 2001	CTM002767788
JACK JONES logo (9, 14, 18, 25)	A/S af 21/11/2001	CTM002832491
PHINK INDUSTRIES <w> (9, 14, 18,	A/S af 21/11/2001	CTM003035326
PH Department <w> (9, 18,25)	A/S af 21/11/2001	CTM003195302
ONLY COSMETICS<w>(3,8,9,18,21,	A/S af 21/11 2001	ctm003186616
CAMILLA STAERK<w>(9,14,18,25)	A/S af 21/11 2001	ctm003085181
HAY <w>(14,20,21)	A/S af 21/11 2001	ctm003215282
ROLF HAY <w>(14,20,21)	A/S af 21/11 2001	ctm003215274
OBJECT COLLECTORS ITEM	A/S af 21/11 2001	ctm003238375
KL. 3, 9, 14, 18 OG 25		
PIECES BY BESTSELLER	A/S af 21/11 2001	ctm003322161
KL. 3, 9, 14, 18 OG 25		
Exit PH Industries <fig>	A/S af 21/11 2001	ctm03362773
KL. 3, 9, 14, 18 OG 25		
Vero Moda <fig>,kl.3,9,14,18,25	A/S af 21/11 2001	ctm3407285
WILD DAYS,kl. 3,25,35	A/S af 21/11 2001	ctm003868882
BESTSELLER <FIG>	A/S AF 21/11 2001	ctm002985695
DUST BY JACK & JONES		
KL. 3, 18, 25	A/S AF 21/11 2001	
DISCREET BY JACK & JONES		
KL. 3, 18, 25	A/S AF 21/11 2001	
BESTSELLER <W>,3,9,14,18,	A/S af 21/11 2001	4017984
FLYING A <fig>, 14,18,25,26,35	A/S af 21/11 2001	2945301
FLYING A <w> 14,18,25,26,35	A/S af 21/11 2001	2945723
MAMALICIOUS,kl.14,18,25	A/S af 21/11 2001	ctm004255378

## Egypt

Trademark	Owner	Application Nr.	Application Date	Registration Nr.	Registration Date	Renewal
ONLY, kl.3,9,14,18,25	A/S af 21/11 2004	153136-153140	02.07.2004			
VERO MODA,						
kl. 3,9,14,18,25	A/S af 21/11 2004	153141-153145	02.07.2004			
PIECES BY BEST-						
SELLER,3,9,14,18,25,26	A/S af 21/11 2004					
OBJECT COLLECTORS						
ITEM,3,9,14,18,25	A/S af 21/11 2004					
ONLY COSMETICS						
kl.3,8,9,18,21,25	A/S af 21/11 2004					
DISCREET BY JACK						
& JONES,kl.3,16,25	A/S af 21/11 2004					
DUST BY JACK &						
JONES, kl.3,18,25	A/S af 21/11 2004					
PH INDUSTRIES <w>, 9	A/S af 21/11 2004	171948	17.01.2005			
PH INDUSTRIES <w>, 18	A/S af 21/11 2004	171949	17.01.2005			
PH INDUSTRIES <w> 25	A/S af 21/11 2004	171950	17.01.2005			
PHINK INDUSTRIES <w>	A/S af 21/11 2004	171941	17.01.2005			
PHINK INDUSTRIES <w>	A/S af 21/11 2004	171942	17.01.2005			
PHINK INDUSTRIES <w>	A/S af 21/11 2004	171943	17.01.2005			
PHINK INDUSTRIES <w>	A/S af 21/11 2004	171944	17.01.2005			
NAME IT, <w> 25	A/S af 21/11 2004	172023	25.01.2005			

DENIM TECHNIC <w> 18	A/S af 21/11 2004	172024	25.01.2005				
DENIM TECHNIC <w> 25	A/S af 21/11 2004	172025	25.01.2005				
SELECTED <w> 9	A/S af 21/11 2004	172038	25.01.2005				
SELECTED <w> 14	A/S af 21/11 2004	172039	25.01.2005				
SELECTED <w> 18	A/S af 21/11 2004	172040	25.01.2005				
SELECTED <w> 25	A/S af 21/11 2004	172041	25.01.2005				
JACK logo JONES 9	A/S af 21/11 2004	172030	25.01.2005				
JACK logo JONES 14	A/S af 21/11 2004	172031	25.01.2005				
JACK logo JONES 18	A/S af 21/11 2004	172032	25.01.2005				
JACK logo JONES 25	A/S af 21/11 2004	172033	25.01.2005				
JACK JONES logo 9	A/S af 21/11 2004	172026	25.01.2005				
JACK JONES logo 14	A/S af 21/11 2004	172027	25.01.2005				
JACK JONES logo 18	A/S af 21/11 2004	172028	25.01.2005				
JACK JONES logo 25	A/S af 21/11 2004	172029	25.01.2005				
JACK & JONES <w> 9	A/S af 21/11 2004	172034	25.01.2005				
JACK & JONES <w> 14	A/S af 21/11 2004	172035	25.01.2005				
JACK & JONES <w> 18	A/S af 21/11 2004	172036	25.01.2005				
JACK & JONES <w> 25	A/S af 21/11 2004	172037	25.01.2005				
EXIT <w> 9	A/S af 21/11 2004	171945	17.01.2005				
EXIT <w> 18	A/S af 21/11 2004	171946	17.01.2005				
EXIT <w> 25	A/S af 21/11 2004	171947	17.01.2005				

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

U.S. Trademark Application Serial No. 78/350,085  
For the Trademark: JACK & JONES

AKTIESELSKABET AF 21. NOVEMBER 2001,	:	
	:	
Opposer,	:	<b>Opposition No. 91163436</b>
	:	
vs.	:	
	:	
FAME JEANS, INC.,	:	
	:	
Applicant.	:	

**OPPOSER'S RESPONSE TO APPLICANT'S  
FIRST REQUEST FOR ADMISSIONS**

Opposer, Aktieselskabet af 21. November 2001, through its attorneys, Coughlin & Gerhart, LLP, responds to the First Request for Admissions of the Applicant, Fame Jeans, Inc., as follows:

**Response No. 1:** Opposer admits that it has not sold goods and/or services under the JACK & JONES designation in the United States.

**Response No. 2:** Opposer admits that it owns and operates the website [www.jackjones.com](http://www.jackjones.com) through which it promotes its good worldwide.

**Response No. 3:** Opposer admits that its website [www.jackjones.com](http://www.jackjones.com) does not list any stores in the United States on the Store Locator page at <http://jackjones.com/storelocator.aspx>.

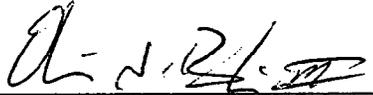
**Response No. 4:** Opposer admits that it has no permanent office in the United States.

- Response No. 5:** Opposer admits that it does not lease any office or other commercial space in the United States.
- Response No. 6:** Opposer admits that it has no U.S. telephone number in its name in the United States.
- Response No. 7:** Opposer admits that it did not sell any goods and/or services under its JACK & JONES mark in the United States as of January 9, 2004.
- Response No. 8:** Opposer admits that its JACK & JONES mark is identical with Applicant's JACK & JONES mark in appearance, pronunciation, meaning and commercial impression.
- Response No. 9:** Opposer admits that it did not sell any goods identified in Trademark Application Serial No. 78/527,823 in the United States under the JACK & JONES designation from 1990 through 2004.
- Response No. 10:** Opposer admits that it filed no U.S. tax return from 1990 through 2004.
- Response No. 11:** Opposer admits that it has no mailing address in the United States.
- Response No. 12:** Opposer denies that no advertisement or display of the JACK & JONES mark was published in print, television or radio media in the United States from 1990 through 2004. Opposer marketed products under its JACK & JONES mark in Canada in 2004 and materials from said marketing campaign may have appeared in the United States.

- Response No. 13:** Opposer has no response as no question was posed in Request No. 13.
- Response No. 14:** Opposer admits that it states in its application, Serial No. 78/527,823, that it has a bona fide intention to use the mark in commerce in the United States.
- Response No. 15:** Opposer admits that the filing date of Applicant's U.S. Trademark Application Serial No. 78/350,085 (January 9, 2004) predates the filing date of Opposer's U.S. Trademark Application Serial No. 78/527,823 (December 6, 2004).
- Response No. 16:** Opposer admits that Applicant's U.S. Trademark Application Serial No. 78/350,085 and Opposer's U.S. Trademark Application Serial No. 78/527,823 identify virtually identical or substantially similar goods.
- Response No. 17:** Opposer denies that the only issue in this Opposition is priority.

PLEASE TAKE NOTICE THAT Opposer reserves the right to supplement or amend its responses herein should additional information become available.

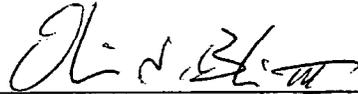
Dated: March 23, 2005

  
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*Attorneys for Opposer*  
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Binghamton, New York 13902-2039  
Tel: (607) 723-9511  
Fax: (607) 723-1530  
E-mail: [oblaise@cglawllp.com](mailto:oblaise@cglawllp.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing, Opposer's Response to Applicant's First Requests for Admission, was served on March 23, 2005 via first class mail, postage prepaid, addressed to:

Louis F. Gould, Jr., Esq.  
DUANE MORRIS LLP  
*Attorneys for Applicant*  
One Liberty Place  
Philadelphia, Pennsylvania 19103-7396



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