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

Proceeding	91174863
Party	Plaintiff Newport News Holdings Corp.
Correspondence Address	Edward Weisz Cohen Pontani Lieberman & Pavane LLP 551 Fifth Avenue New York, NY 10176 UNITED STATES dbadanes@cplplaw.com,eweisz@cplplaw.com
Submission	Other Motions/Papers
Filer's Name	David Badanes
Filer's e-mail	dbadanes@cplplaw.com,eweisz@cplplaw.com
Signature	/David Badanes/
Date	08/22/2007
Attachments	Notice of Express Abandonment of 78815011 etc.pdf (1 page)(40843 bytes) Settlement and Consent Agreement for Opposition 91174863.pdf (8 pages)(354377 bytes)

EXHIBIT A

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

In The Matter Of Pending Application Serial No. 78/815,011

NEWPORT NEWS HOLDINGS CORP.	)	
	)	
Opposer	)	
	)	
v.	)	**Opposition No. 91174863**
	)	
BAGIR CO. (1961) LTD.	)	
	)	
Applicant	)	
	)	

FILED VIA ESTTA

Trademark Trial and Appeal Board
P.O. Box 1451
Arlington, Virginia 22313-1451

NOTICE OF EXPRESS ABANDONMENT OF
TRADEMARK APPLICATION SERIAL NO. 78/815,011 AND CONSENTED
WITHDRAWAL OF OPPOSITION NO. 91174863, BOTH WITHOUT PREJUDICE

Pursuant to 37 C.F.R. §§ 2.68 and 2.135, Applicant hereby withdraws application Serial No. 78/815,011, without prejudice, and Opposer hereby consents thereto. On the condition that said application is deemed withdrawn, Opposer hereby withdraws Opposition No. 91174863, without prejudice, and Applicant hereby consents thereto pursuant to 37 C.F.R. § 2.106(c).

Leon Medzhibovsky 8/20/07

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666 Fifth Avenue
New York, NY 10103
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BAGIR CO. (1961) LTD

Edward M. Weisz 8/21/07

Cohen Pontani Lieberman & Pavane LLP
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New York, NY 10176
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Attorney for Opposer
NEWPORT NEWS HOLDINGS CORP.

SETTLEMENT AND CONSENT AGREEMENT

THIS AGREEMENT, entered into as of the date of the last signature is by and between BAGIR CO. (1961) LTD., (which was acquired in July 2007 by Bagir Group Ltd.) an Israeli corporation having a place of business at 44 Israel Pollack Road, Kiryat Gat 82101 Israel ("BAGIR"), and NEWPORT NEWS HOLDINGS CORPORATION, a Delaware corporation having its principal place of business at 711 Third Avenue New York, New York 10017 ("NEWPORT");

WHEREAS, BAGIR applied to register the mark SHAPERFECT (& design) for "clothing, namely, suits for man and woman; jackets, shirts, pants, skirts, coats, underwear, headgear" in International Class 25 on the Principal Register of the United States Patent and Trademark Office ("USPTO"), United States Application Serial No. 78/815,011;

WHEREAS, NEWPORT has two (2) registrations for the mark SHAPE FX for "section of a catalog featuring clothing" in International Class 16, on the Principal Register of the USPTO, United States Registration Numbers 3,268,360 and 2,398,811, and another registration for the mark SHAPE FX for "clothing, namely, pants, shorts, dresses, shirts, blouses, coats, swimsuits and cover-ups" in International Class 25, on the Principal Register of the USPTO, United States Registration Number 2,598,557.

WHEREAS, NEWPORT initiated Opposition No. 91174863 against SHAPERFECT, and said Opposition is currently pending; and

WHEREAS, the parties now desire to resolve all differences between them.

NOW, THEREFORE, in consideration of the mutual covenants and premises exchanged herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties hereto agree as set forth below.

1. To settle and resolve these differences the parties hereto agree as follows:

(a) Within thirty (30) days after execution of this Agreement by both parties, the parties will cause to be filed a Notice of Express Abandonment of trademark application Serial No. 78/815,011 without prejudice and Consented Withdrawal of Opposition No. 91174863 without prejudice, in the form attached hereto as Exhibit A, to effectuate the express abandonment of U.S. Serial No. 78/815,011 and the termination of the opposition proceeding (Opposition No. 91174863).

(b) BAGIR agrees not to attempt to register the SHAPERFECT mark ,or any other mark which is phonetically similar to SHAPERFECT or which otherwise is made up of the term SHAPE and one or more other terms that include the dominant sounds made by either "ph" or "f" in conjunction with either "k" or "x", with the U.S. Patent and Trademark Office or any state (of the United States) trademark authority and that it will not use the SHAPERFECT mark in U.S. interstate or intrastate commerce on clothing products.

(c) Notwithstanding the foregoing, BAGIR may register with the U.S. Patent and Trademark Office and use in U.S. interstate or intrastate commerce the mark SHAPERFECT BY BAGIR in any style or in combination with any design element(s) provided that the terms "BAGIR" and "SHAPERFECT" are of relatively the same size and that the term "BAGIR" is of the same relative prominence as the term "SHAPERFECT", but which terms may be in a size ratio of 66:100 with respect to one another, but BAGIR may not use SHAPERFECT BY BAGIR on goods sold in the U.S. directly to the following companies ("Companies"):

1. Metrostyle/Chadwick's
2. Boston Proper
3. Eddie Bauer
4. Land's End
5. LL Bean
6. Fredericks
7. J. Jill
8. Coldwater Creek, and
9. Victoria's Secret

BAGIR shall not sell goods bearing the SHAPERFECT BY BAGIR mark to any company ("Reseller") which BAGIR reasonably knows will resell such goods to one of the Companies listed above. If BAGIR learns, whether by notice from NEWPORT or otherwise, that a Reseller is selling such goods in violation of this paragraph, then within three (3) business days of acquiring such knowledge BAGIR will notify such Reseller in writing, that such sales are not permitted and in the event the Reseller does not agree in writing to discontinue such sales within five (5) business days of receiving such notice then BAGIR will promptly cease further sales of clothing to the Reseller under the SHAPERFECT BY BAGIR mark. Copies of all notices provided by BAGIR to Reseller and Reseller's responses shall be contemporaneously provided to NEWPORT. Neither BAGIR, Reseller or any of their customers will be required or obligated to recall any product already shipped or distributed, nor will any Reseller or its customers be required to cancel any pending orders. However, regarding any pending orders not already shipped or distributed by BAGIR, BAGIR shall remove the SHAPERFECT BY BAGIR mark from such goods prior to shipment or distribution.

(d) NEWPORT consents to and agrees not to interfere, directly or indirectly, with BAGIR'S registration and use of the SHAPERFECT BY BAGIR mark.

(e) BAGIR consents to and agrees not to interfere, directly or indirectly with NEWPORT'S registrations and use of the SHAPE FX mark.

2. (a) As a material inducement to BAGIR to enter into this Agreement, NEWPORT fully and finally releases, discharges, and covenants not to sue BAGIR, as well as BAGIR'S related companies, officers, agents, servants, employees, attorneys, licensors, licensees, heirs, assigns, successors, legal representatives and insurers, for claims, demands, causes of action, suits, liabilities, obligations, losses, damages, costs, expenses, and any other monetary or other form of relief of whatever kind or nature, whether in law or in equity, that NEWPORT may have against them, individually or jointly, that relate to the subject matter of the Opposition or of this Agreement and

that arose from activities occurring prior to the effective date of this Agreement or from activities thereafter that are consistent with the Agreement, but nothing herein shall release BAGIR from any breach of this Agreement.

(b) As a material inducement to NEWPORT to enter into this Agreement, BAGIR fully and finally releases, discharges, and covenants not to sue NEWPORT, as well as NEWPORT'S related companies, officers, agents, servants, employees, attorneys, licensors, licensees, heirs, assigns, successors, legal representatives and insurers, for claims, demands, causes of action, suits, liabilities, obligations, losses, damages, costs, expenses, and any other monetary or other form of relief of whatever kind or nature, whether in law or in equity, that BAGIR may have against them, individually or jointly, that relate to the subject matter of the Opposition or of this Agreement and that arose from activities occurring prior to the effective date of this Agreement or from activities thereafter that are consistent with the Agreement, but nothing herein shall release NEWPORT from any breach of this Agreement.

3. The parties agree to execute any documents and take any actions that may be necessary to effectuate and fully carry out the terms and purposes of this Agreement. Specifically, the parties agree that should a consent to register be required in connection with a pending application or with any subsequent application for registration of a mark that is not inconsistent with the terms of this Agreement, the party whose consent is required shall promptly provide same to the requesting party.

4. This Agreement pertains to and shall be effective only in the United States.

5. This Agreement and its obligations and restrictions shall remain effective as long as NEWPORT maintains trademark right in the SHAPE FX mark.

6. All notices under this Agreement shall be by an overnight courier, which provides proof of delivery, to the following persons:

for BAGIR:

David Feig, V.P. Marketing
Bagir International, Inc.
350 Fifth Avenue, Suite 2525
New York, New York 10118

for NEWPORT:

Geralynn Madonna, CEO
Newport News Holdings Corporation
711 Third Avenue
New York, New York 10017

Either party may designate a different address or person by notice given pursuant to this paragraph.

7. The trademark rights referred to hereunder may be assigned, licensed or otherwise transferred, subject, however, to all of the terms and conditions herein and any purported assignment, license or transfer in violation hereof shall be null and void.

8. This Agreement is assignable and shall be binding on the parties and their respective officers, agents, servants, employees, affiliated companies, licensors, licensees, heirs, assigns, and successors and all of those acting in concert therewith.

MISCELLANEOUS

9. The failure of either party to enforce at any time any of the provisions of this Agreement, or to exercise any right which is herein provided, or to require at any time performance by the other party of any provision hereof, shall in no way be construed to be a waiver of such provision, or in any way affect the validity of this Agreement or any part thereof, or the right of such party thereafter to enforce each and every such provision.

10. The obligations or restraints imposed on each party by this Agreement shall be separate and separable from each other and shall be deemed to be so notwithstanding that they appear in the same subparagraph or sentence as any other obligation or restraint, or are imposed by the introduction of a word or a phrase conjunctively or disjunctively with or alternatively to other words or phrases.

11. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

12. Any invalidity or unenforceability, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision.

13. This Agreement constitutes the final and complete expression of all of the terms of the agreement between the parties considering the subject matter hereof, and supersedes any and all understandings and negotiations concerning such subject matter No addition to or modification of any provision of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of each party.

14. Each party executing this Agreement and all other documents in connection with the settlement of this matter was represented by counsel during negotiation of the provisions of the

Agreement, and the parties agree that no provision of this Agreement is to be interpreted for or against any party on the basis that one party or its counsel drafted the Agreement.

15 This Agreement and its interpretation shall be governed by the laws of the State of New York, without reference or effect to its choice of law provisions. The parties agree that the United States District Court for the Southern District of New York shall have exclusive jurisdiction concerning any disputes arising out of or in connection with this Agreement and that any action or proceeding concerning any such dispute shall be brought in the United States District Court for the Southern District of New York, but in the event such court lacks jurisdiction, then such action or proceeding shall be brought in a state court in the County of New York, State of New York. In connection with any dispute arising out of or in connection with this Agreement, each party hereby expressly consents and submits to the personal jurisdiction of the federal and state courts in the State of New York.

IN WITNESS WHEREOF, the parties hereby enter into this Agreement as endorsed by their signatures below.

NEWPORT NEWS HOLDINGS CORP.

By: _____

Name: Daniel Ettenmann

Title: CFO

Dated: Aug 21st, 2007

BAGIR GROUP LTD.

By: _____

Name: DAVID FEIG

Title: V.P. MARKETING

Dated: Aug 16th 2007

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In The Matter Of Pending Application Serial No. 78/815,011

NEWPORT NEWS HOLDINGS CORP.	)	
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Opposer	)	
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v.	)	**Opposition No. 91174863**
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BAGIR CO. (1961) LTD.	)	
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Applicant	)	
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Attorney for Opposer
NEWPORT NEWS HOLDINGS CORP.