

08-22-08
newman//dichter

ATTORNEYS AT LAW

TRADEMARK LITIGATION DEPT

TTAB


Newman Dichter LLP

488 Madison Avenue

New York, New York

10022

phone 212.593.4202

fax 206.274.2801

www.newmandichter.com

info@newmandichter.com

August 21, 2008

Commissioner of Trademarks

TTAB

2900 Crystal Drive

Arlington, VA 22202-3515

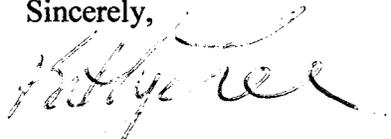
Re: Tiffany (NJ) Inc. v. Tiffany C. Koury, Opposition No.: 91-181,035

Dear Commissioner:

Enclosed for filing please find Applicant's Opposition to Opposer's Motion to Compel and to Determine Sufficiency and Memorandum and Declaration of Kathy Lane with Supporting Exhibits. This item has been filed via Express Mail on the above date, with filing number ET828451863US.

If you should have any questions, please do not hesitate to contact the undersigned directly.

Sincerely,


Kathy Lane



08-21-2008

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

In the Matter of Application Serial No. 78/912,427
Published in the Official Gazette on September 4, 2007

| | | |
|--------------------|---|----------------|
| TIFFANY (NJ) LLC., | : | |
| | : | |
| | : | |
| Opposer, | : | |
| | : | Opposition No. |
| | : | 91181035 |
| | : | |
| TIFFANY C. KOURY, | : | |
| | : | |
| | : | |
| Applicant | : | |

**APPLICANT’S OPPOSITION TO OPPOSER’S MOTION TO
COMPEL AND TO DETERMINE SUFFICIENCY AND
MEMORANDUM**

Applicant respectfully submits the following in Opposition to the Motion to Compel and to Determine the Sufficiency of Applicant’s Discovery Responses filed by the Opposer, Tiffany & Co., LLC, (hereinafter referred to as “Opposer”.)

PRELIMINARY STATEMENT AND BACKGROUND

On or about June 20, 2006, Applicant Tiffany C. Koury filed an application for registration of the mark “TIFFANY KOURY” in International Class 25 for “clothing, namely, dresses, ponchos, bathing suits,

bikinis, swimwear, lingerie, underwear and belts”. After the application was filed, Opposer’s counsel contacted attorney’s for Applicant and essentially demanded that Applicant withdraw the application contending that Applicant’s use of her birthname on clothing was inconsistent with the rights of Opposer. The parties engaged in various settlement discussion which ultimately proved unsuccessful. At the time of the filing of the application, Applicant was represented by counsel and at some point proceeded pro se following her counsel’s motion to withdraw. Once the Mark passed to publication, Opposer filed this opposition alleging fraud in applicant’s date of first use declaration.

On or about December 4, 2007, Opposer filed Notice of Opposition, No.78/912427. The grounds alleged in the Notice of Opposition read “Torres v. Cantine Torresella S.r.l. Fraud, 808 F.2d 46, 1 USPQ2d 1483 (Fed Cir. 1986)”. Opposer alleged that the registration application contained false and fraudulent claims as to the date of first use of the mark. On or about January 12, 2008, Applicant filed an Answer which was later amended in order to address non-substantive issues.

On or about March 25, 2008 Applicant received Opposer’s First Set of Requests for Production of Documents and Things, Opposer’s First Set of Requests for Admission, and Opposer’s First Set of Interrogatories. On or

TTAB resources, Applicant submitted that perhaps the matter was ripe for an amenable settlement. In response, Opposer referred to the prior settlement discussions which had ultimately ended in a “take it or leave it” position by Opposer. Opposer indicated to Applicant that their position remained the same but Applicant was free to make settlement overtures. Attached hereto as Exhibit 3, Lane Decl. Faced with this stance, Applicant continued to defend the opposition.

With the close of discovery approaching, Opposer served on July 20, 2008 a Notice to Take Deposition of Applicant. The Notice was received on July 28, 2008. The date noticed was August 10, 2008. By letter dated, July 20, 2008, Applicant advised Opposer that August 10, 2008 was a Sunday and as such not an appropriate day for the deposition. By email dated July 29, 2008, Opposer advised counsel that it had re-noticed the deposition for August 8, 2008, a mere ten days notice. Despite this short notice, counsel for Applicant advised via telephone voicemail on August 1, 2008 that the deposition could go forward on August 8, 2008 and Applicant would appear. Note the August 8, 2008 date was a mere two days prior to the close of discovery. In response, Opposer decided to reschedule this deposition and file a motion to compel. This, despite previously stating “Yes, we intend to

take the deposition on that date”, a mere five days earlier. See attached as Exhibit 7, Lane Decl.

Applicant has acted in good faith in responding to the numerous discovery demands of Opposer. However, the fact remains that the Interrogatories propounded were excessive. See attached hereto as Exhibit 4, Lane Decl. It appears that Opposer’s stance is to simply decline to review what has been provided to it and to just demand additional documents and information seemingly in an effort to increase the cost and burden of discovery for Applicant.

A. Interrogatories

1. *Verification of Interrogatories.*

The omission of a verification to the interrogatories was inadvertent and applicant did in fact complete verifications to the Second Set of Interrogatories. Counsel has also requested that Applicant complete a verification for the first set of Interrogatories and upon receipt will forward same to Opposer’s counsel.

2. *Documents Produced in Response to Interrogatories.*

In its motion Opposer takes issue most specifically with the responses to Interrogatories 1, 2, and 23. However, in response to Opposer’s Interrogatories 1, 2, and 23, Applicant responded to each

Interrogatory and also referred generally to her document production. Included in applicant's document production was a Spring & Summer 2007 "Look Book". A Look Book is used in the fashion industry to demonstrate an upcoming line of a designer. It is akin to a catalog or line sheet but does not generally include prices or sizes, although same are available on request. Essentially it demonstrates a designer's products

a. Interrogatory No. 1.

It is Applicant's contention that the Look Book is responsive to Interrogatory No. 1. The Look Book clearly demonstrates the nature of the business conducted by Applicant which is fashion in the nature of clothing. Additionally, Applicant's Trademark registration application, the Look Book and the Supplemental Document Production are responsive to this question. Note too, that the Spring & Summer 2007 Look Book contains approximately seventeen (17) different dresses. Additionally, Opposer was referred to Applicant's website which also clearly depicts the nature of Applicant's business. Opposer is clearly

constrained to argue that a company's webpage does not demonstrate the nature of its business or that viewing the webpage poses an of undue burden.

b. Interrogatory No. 2.

Applicant has objected to the Opposer's interrogatories as excessive. Interrogatory No. 2 seeks identification of each product that Applicant has sold under Applicant's Mark to date, and the date of the first sale for each product. It is notable that were Applicant to answer this Interrogatory even for just the 17 dresses in the Look Book and set aside all of her other products, this would at a minimum be a 34 count interrogatory.

Notwithstanding this, on June 3, 2008 applicant did provide sales slips for dresses which were sold at a trunk show October 30, 2005. (See reference to same in Gourvitz Decl. Ex 8.).

c. Interrogatory No. 23.

Interrogatory No. 23 reads as follows: "Describe in detail your basis for the contention in Paragraph 24 or your Amended Answer to Opposer's notice of

opposition that the full name ‘Tiffany Koury’ is associated with couture fashion.” In response applicant provided Opposer with relevant pages of the a report from the Doneger Group, a leading fashion trend forecasting/market research firm, which named Applicant as one of the top designers to watch for 2006. Not only is this response clearly sufficient but having responded to this generally propounded Interrogatory, Applicant submits that she does not have a duty to continue to supplement this response until Opposer decides that the response is sufficient. The response speaks for itself. Further, a review of Applicant’s website reveals numerous mentions of her and her designs in the media and elsewhere.

3. *Opposer’s Interrogatories clearly exceed the amount permitted under Trademark Rule §2.120(d)(1).*

A. Opposer’s Interrogatories are excessive.

Even a cursory review of the Interrogatories propounded by Opposer clearly demonstrates that the Interrogatories exceed the limits of the TBMP. As stated to counsel, at the most conservative the Interrogatories easily reach ninety (90). Further, there are numerous interrogatories that

request information for “each product”. Opposer argues that if an interrogatory asks for a piece of information as to each “product” then it is a single interrogatory pursuant to TBMP.

However, TBMP § 405.03 states “if an interrogatory requests “all relevant facts and circumstances” concerning a single issue, event, or matter; or asks that a particular piece of information, such as, for example, annual sales figures under a mark, be given for multiple years, and/or for each of the responding party's involved marks, it will be counted as a single interrogatory.” Clearly, Opposer’s interrogatories are not of this nature. See also, *Kellogg Co. v. Nugget Distr. Coop.*,¹⁶ U.S.P.Q. 2d (BNA) 1468 (TTAB 1990).

The interrogatories herein request a myriad of information for each “product”, not for each mark as the example in the TBMP highlights. For instance, Interrogatory No. 1 reads “(1) Describe in detail the nature of the business currently conducted by Applicant in connection with Applicant’s Mark, including the product lines (2) sold or (3) provided, or (4) intended to be sold or (5) provided, by Applicant in connection with Applicant’s Mark. This Interrogatory contains five separate parts. Indeed, if Applicant were also to abide by Opposer’s definition of the word “describe” then Applicant would also be required “to state or

identify the date, time of day, duration, location, persons involved, witnesses” etc involved in the business. Thus adding another six pieces of information to its answer.

Interrogatory No. 2 reads “Identify each product that Applicant has sold under Applicant’s Mark to date, and state the date of first sale for each product. If any product category (e.g. dresses, skirts, etc.) have been discontinued, state for the category of goods discontinued the date of discontinuance and the reason for discontinuance.” Thus, Opposer requests a list of (1) each product sold by Applicant, (2) the date of the first sale for each (3) whether a product category has been discontinued and if so (4) the date of discontinuance. Note that the interrogatory is not initially limited to the product categories, rather it demands information for “each product”. To date, Applicant has created approximately 240 separate designs that are offered for sale. It is overreaching at best to expect that a query demanding a response for “each product” item will be counted as a single interrogatory. Further, Applicant queries whether if served with the same interrogatory Opposer would consider it a single interrogatory upon being required to provide this information for each and every product it sells.

Notwithstanding the foregoing, Opposer was referred to the Applicant's document production, part of which is Applicant's website. The website very clearly divides each product by year. Accordingly Opposer would be constrained to complain that it is unable to "figure out" when each product was first offered for sale. Similarly, Interrogatory Numbers 3, 4, and 5 refer to "each product". Note too, Interrogatory No. 3 is directed to products not yet sold under Applicant's Mark. Thus, it is not related whatsoever to the "date of first use" and not related to this opposition.

Contrary to Opposer's allegations Interrogatories 4-6 are actually irrelevant to the date of first use of the Tiffany Koury mark. For instance, the wholesale and resale prices of each and every product are not actually relevant to the date that the mark was used in commerce.

The same is true for the "nature of all advertisements and promotional materials." Rather, these requests seem to be a set up for a likelihood of confusion claim and an analysis of the DuPont factors. Notwithstanding this, Applicant has provided Opposer with copies of invitations to trunk shows, Look Books, and of course her webpage. Additionally, her webpage contains an entire section devoted to magazine references, and fashion shows, including some sponsored by the Forbes family. Further,

some of these entries have numerous photographs of identified persons at the shows and wearing her products. This can lead Opposer to other people with knowledge as Opposer has stated

Accordingly, the webpage will easily lend itself to Opposer's stated purpose of leading it "to people or entities with knowledge of this information" Moreover, Applicant has provided Opposer with sales slips from one of her very first shows, this should sufficiently demonstrate a "sale" and each is dated, thus it sufficiently demonstrates a "use in commerce".

Additionally, and by way of illustration, Interrogatory No. 4 requests eight different pieces of information for "each product in connection with which you have used Applicant's mark, or plan to do so". This is an eight part interrogatory not only for each product (all 240 of them) but also for any products for which Applicant intends to introduce.

Interrogatories 15-18 each demand that Applicant describe the basis for her denial of certain allegations in the Notice of Opposition. Each of Applicant's responses to the aforementioned Interrogatories refers Opposer to Interrogatory 14. In response to Interrogatory 14 Applicant

explains that the Notice of Opposition misstates the date of first use in commerce alleged by Applicant as June 15, 2005. This is not the date given in Applicant's declaration and accordingly any allegation relating to or concerning Opposer's clear erroneous statement is rightfully denied on that basis without elaboration. Furthermore, as the Interrogatories clearly exceed the number permissible, Applicant is not required to respond to same and this also holds true for the remainder of the propounded Interrogatories.

B. Document Requests.

a. *Applicant's Response to Second Set of Document Requests*

Initially, it should be noted that the Response to Second Set of Document Requests was due June 5, 2008 not May 30, 2008. More importantly, it should be noted that Applicant did serve the documents responsive to Opposer's Second Set Second Set of Document Requests via email on June 2, 2008 and via mail with the appropriate Response on June 3, 2008. Accordingly, this portion of Opposer's motion should be disregarded in its entirety.

b. *Electronically Stored Documents*

Initially, Applicant submits that she has submitted sufficient documentation, including her website, to clearly demonstrate that the

mark registered has been used on each category of good before the date of her declaration thereby foreclosing any allegation of fraud made by Opposer. Notwithstanding this, Applicant has taken the time and the expense to have her webpage downloaded to disc as well as a 2006 photoshoot downloaded to disc. Each of those discs will be forwarded to Opposer simultaneously with this Memorandum. Applicant is also investigating her ability to review and then download any relevant emails. It should also be noted that Opposer demanded not only her business emails but her personal emails as well. This is clearly inappropriate. Notwithstanding the foregoing, Applicant submits that Opposer has demanded over three years of emails despite already being given enough information to defeat their claim of fraud.

c. Opposer next itemizes alleged deficiencies with regard to Applicant's document production.

A mere perusal of the Tiffany Koury website not only clearly demonstrates the type of business conducted by Applicant but also contains her fashion lines for Fall 2006, Spring 2007, Fall 2007, Spring 2008, and Fall 2008 as well as her swimwear collection. Additionally, the "workin it" portion of the website discloses numerous instances of press mentions, gallery showing, fashion shows and television

appearances of Applicant and her designs. Thus, the website clearly demonstrates the products of Applicant and the time periods that each of the products were initially offered for sale. It is not necessary for Applicant to produce documents or itemize each and every sale of each and every product and detail the date and amount for each in order to defeat the Opposer's claim of fraud. Applicant has clearly produced discovery sufficient to demonstrate the use of her mark on the items specified in her declaration.

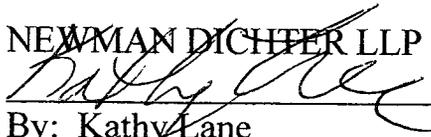
Applicant further notes that Tiffany & Co is a large publicly owned multimillion dollar company and Applicant is a small up and coming fashion designer. It is respectfully submitted that it is likely each party herein keeps their documents and records in somewhat different formats. Applicant's discovery responses to all of Opposer's requests have been made in good faith. Also noteworthy is that as the discovery period was coming to a close, Opposer noticed a deposition of Applicant. Applicant was willing to appear for a deposition despite same being noticed with less than ten days notice. It is Opposer who declined to go forward with this deposition despite just days before indicating that same was a firm date. Instead, Opposer filed this motion to compel.

CONCLUSION

Applicant has made a good faith attempt to comply with Opposer's discovery requests. It is respectfully submitted that a majority of Opposer's requests, whether interrogatories or document requests, are so broad that regardless of how each is answered, opposer would be able to find a ground upon which to make an objection.. For the above stated reasons, Applicant submits that its Responses to Opposer's discovery demands are sufficient and that this motion should be denied in its entirety.

Dated: New York, New York
August 21, 2008

NEWMAN DICHTER LLP


By: Kathy Lane

Attorneys for Applicant
488 Madison Ave, 10th Flr
NY, NY 10022
212)593-4202

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

In the Matter of Application Serial No. 78/912,427
Published in the Official Gazette on September 4, 2007

| | | |
|--------------------|---|----------------|
| TIFFANY (NJ) LLC., | : | |
| | : | |
| | : | |
| Opposer, | : | |
| | : | Opposition No. |
| | : | 91181035 |
| | : | |
| TIFFANY C. KOURY, | : | |
| | : | |
| | : | |
| Applicant | : | |

**DECLARATION OF KATHY LANE IN OPPOSITION TO OPPOSER'S
MOTION TO COMPEL**

Kathy Lane declares, under penalty of perjury, as follows:

1. I am counsel at the firm of Newman Dichter LLP, attorneys for Tiffany C. Koury, (herein referred to as "Applicant") in the above captioned Opposition Proceeding. I submit this declaration in opposition to Opposer's Motion to Compel on the basis of my personal knowledge, my firm's records, and the pleadings and proceedings to date in this matter.
2. On or about March 25, 2008 Applicant received Opposer's First Set of Requests for Production of Documents and Things, Opposer's First

Set of Requests for Admission, and Opposer's First Set of Interrogatories.

3. On or about April 21, 2008, Applicant responded to each. By correspondence dated April 24, 2008 Opposer asserted various objections to Applicant's responses.
4. On or about April 25, 2008, Opposer then served a Second Set of Requests for Production of Documents and Things, a Second Set of Requests for Admission, and a Second Set of Interrogatories.
5. On June 2, 2008, Applicant supplemented her initial document production. Applicant further supplemented her discovery responses by providing a video commercial shot in Fall 2006 depicting her swimwear product. Applicant has also provided other items as same became available to counsel.
6. On June 3, 2008 Applicant served by mail, Applicant's Response to Opposer's Second Set of Requests for Admission, Applicant's Response to Opposer's Second Set of Interrogatories, and Applicant's Response to Opposer's Second Set of Request for Production of Documents and Things. True and Correct Copies of Applicant's Response to Opposer's Second Set of Request for Production of

Documents and Things is attached hereto as Exhibit 1. Each of the other items are attached to Gourvitz Declaration.

7. Following service of the Second Set of Discovery Responses and the Supplemental Discovery Response I contacted counsel via email on June 3, 2008 in order to explore the possibility of settlement. A. True and Correct Copy of this email exchange is attached hereto as Exhibit 2.
8. Opposer indicated that their settlement position remained unchanged since their last correspondence with prior counsel. A true and correct copy of relevant settlement correspondence between Opposer and prior counsel is attached hereto as Exhibit 3.
9. Applicant has attempted in good faith to meet its discovery obligations and to respond to all discovery demands.
10. The fact remains that the number of Interrogatories propounded by Opposer clearly exceed the amount permissible in the within action. Additionally many are irrelevant to the issues at present. A true and correct copy of Opposer's First and Second Set of Interrogatories are attached hereto as Exhibit 4 and each is marked with Applicant's most conservative count. As more fully detailed in the within

Memorandum, the count could easily rise into the hundreds depending upon the reading of these very broad interrogatories.

11. Applicant's good faith is further illustrated by its willingness to appear for a deposition even upon very short notice.
12. Opposer served a Notice to Take Deposition on or about July 20, 2008. This was received by Applicant on July 28, 2008. A true and correct copy of the Notice to Take Deposition is attached hereto as Exhibit 5.
13. Applicant understandably objected to a Deposition on a Sunday but indicated that we would be amenable to scheduling same for a mutually convenient date. A true and correct copy of correspondence dated July 29, 2008 is attached hereto as Exhibit 6.
14. Via email exchange Opposer then stated that they sent out a revised notice for August 8, 2008. While this was a mere ten days notice, I indicated that we would attempt to appear on this date and then on August 1, 2008 I left a voicemail for Evan Gourvitz indicating that we could appear on August 8, 2008 at 12:00 p.m. A true and correct copy of the email exchange is attached hereto as Exhibit 7.
15. As discussed above and in the attached memorandum, Applicant has made a good faith effort to respond to all discovery requests of

Opposer. It is respectfully submitted that while Opposer is a large multi-million dollar, multi-national corporation, Applicant is a small up and coming fashion designer. Accordingly, it must be understood that Applicant does not have the same level of resources at her disposal to continue to respond to Opposer until Opposer concludes it is satisfactory. Moreover, it is clear that Opposer's Interrogatories are excessive and many of its Interrogatories and Discovery Demands are so overbroad that each is open to interpretation.

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

August 21, 2008
New York, NY



Kathy Lane

EXHIBIT 1

Response No.: 43

See documents provided Bates No.:000041, 000043, 000044-000052,
as well as documents previously provided and Applicant's website,
specifically the 2006 collections.

Response No.: 44

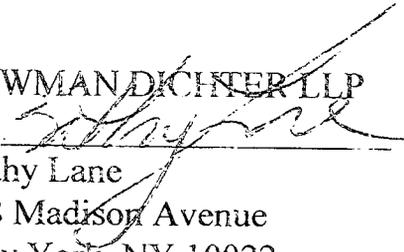
See documents previously provided, as well as Applicant's website,
specifically the 2007 collections.

Response No.: 45

Applicant is not in possession of any documents responsive to this
request.

Dated: New York, New York
June 2, 2008

NEWMAN DICKTER LLP

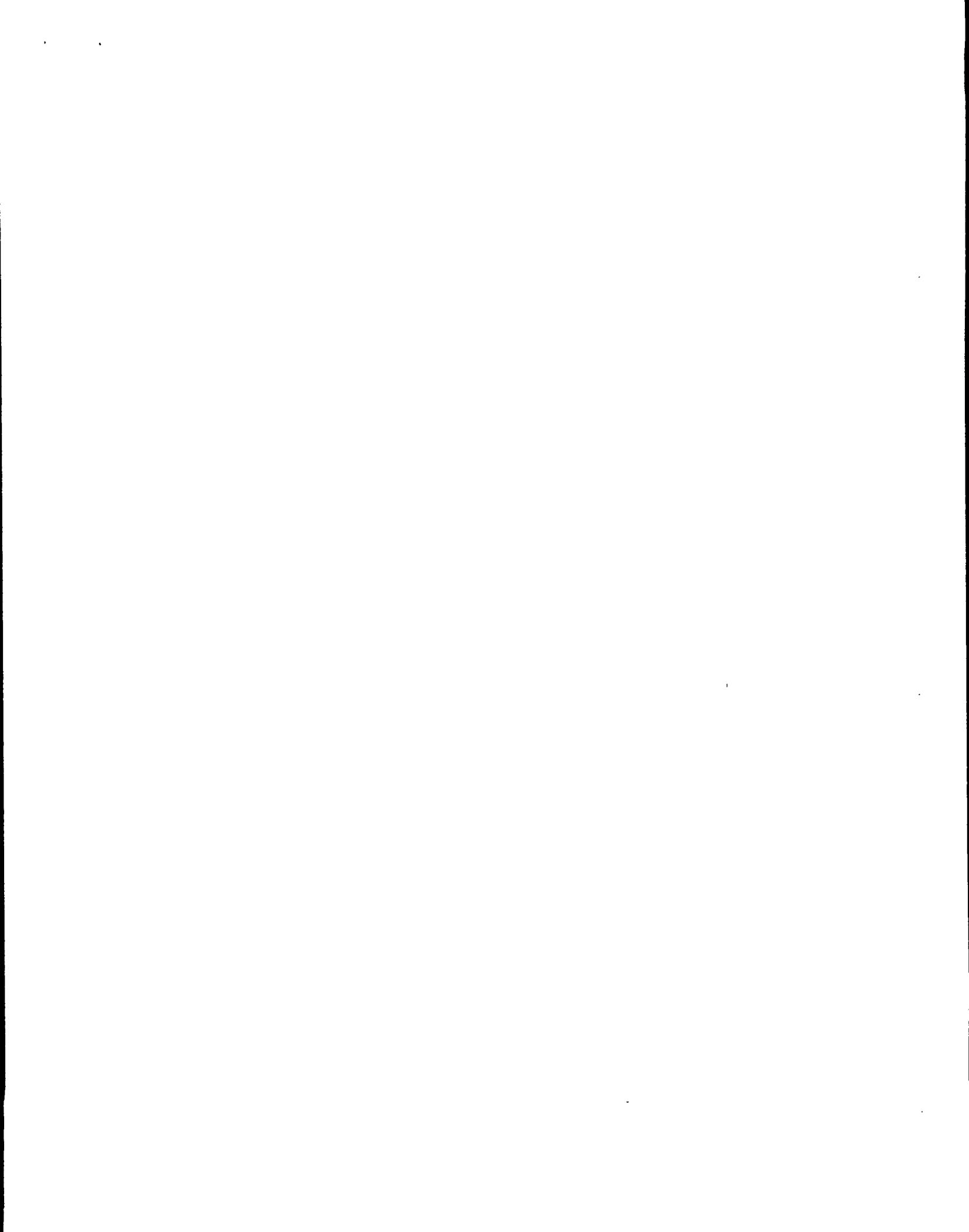
By: 

Kathy Lane

488 Madison Avenue

New York, NY 10022

(212)593-4202





Wendy Koutny

Barbara Beharry
 J.E. # 696 2649
 35 Merwood Ave. CT Trapp
 1st Floor Cyrus Hills Road
 no buzzer

I N V O I C E

Bill To: Ship To:

Invoice #:
 Invoice
 Date:
 Customer

| | | | | | | | |
|---------|----|--|--|--|--|--|--|
| 3/30/05 | 01 | | | | | | |
|---------|----|--|--|--|--|--|--|

| | | | | | | |
|----------|-------|---|--|--|--|--------|
| Markers | Gold | 2 | | | | 90.00 |
| Supplies | Black | 1 | | | | 100.00 |
| Markers | Gold | 1 | | | | 80.00 |
| Markers | Black | 1 | | | | 80.00 |
| Supplies | | 1 | | | | 50.00 |
| Supplies | | 2 | | | | 90.00 |

* Need 2 markers

| | |
|---------------|--|
| Subtotal | |
| Tax | |
| Shipping | |
| Miscellaneous | |
| Balance Due | |

REMITTANCE

Customer ID:
 Date:
 Amount Due:
 Amount Enclosed:

will have to ready
 by show

R. B.

000040

AllCity Label & Tag Co.

261 West 35th Street
 New York, NY 10001
 Tel: (212)244-9293
 Fax: (212)244-9295

Invoice

| Date | Invoice # |
|------------|-----------|
| 11/28/2005 | 5643 |

| |
|--|
| Bill To |
| Tiffany Koury 380 East 10th St., Suite 1A New York, NY 10009 |

| |
|---------|
| Ship To |
| Same |

| P.O. Number | Terms | Salesman | Ship | Via |
|-------------|-------|----------|------------|---------|
| | COD | Marc | 11/28/2005 | Pick-Up |

| Quantity | Item Code | Description | Price Each | Amount |
|---|-----------|-------------------|------------|---------|
| 1,100 | Label | Tiffany Koury | 0.325 | 357.50 |
| | Fedex | FedEx from Plant | 42.00 | 42.00 |
| | Deposit | Customer deposits | -180.00 | -180.00 |
| <p><i>ship logistics</i> <i>MC</i> <i>date 2-2-06</i></p> | | | | |

| | |
|----|----------|
| | \$219.50 |
| ue | \$219.50 |

56

000041

M&M PATTERN SERVICES INC.

108 West 39th. St. 11th. Floor

Suite# 1120

New York, NY 10018

Tel: (212) 764 0202

Fax (212) 938 0668

e-mail: mmpattern@aol.com

BILL TO:

TIFFANY KOURY

INV. # 101

380 East 10th. St. Suite 1A

Date:12-09-2005

New York, NY 10009

| <u>STYLE#</u> | <u>Description</u> | <u>Sizes</u> | <u>price/sizes</u> | <u>Amount</u> |
|---------------|--------------------|--------------|--------------------|-----------------|
| Tina | Grade L.Dress | 4 | \$19.00 | \$76.00 |
| Bridgette | Grade L.Dress | 4 | \$19.00 | \$76.00 |
| Dolores | Grade L.Dress | 6 | \$19.00 | \$114.00 |
| Farah | Grade L.Dress | 4 | \$19.00 | \$76.00 |
| Marlene | Grade L.Dress | 4 | \$19.00 | \$76.00 |
| Kath | Grade L.Dress | 6 | \$19.00 | \$114.00 |
| Marilyn | Grade L.Dress | 6 | \$19.00 | \$114.00 |
| | | | <u>TOTAL:</u> | <u>\$646.00</u> |

000043

201 407 0423

Evelyn Castiglione

333 2nd Ave Apt #40

Lynchhurst NJ ~~07071~~

Same

(1) Baroque 100% Silk of Gold

305 00

Amethyst necklace

8.5% silver box
Ship

25 93
15 00

\$ 345 93

Colfax By 12:50 noon

Had order process -

Not yet paid.

Phn # (917) 650 9544

Tisha Innis
787 ADELAIDE
BROWN NY 10467

Same

| | |
|----------------------------------|--------|
| (1) Greta - Bayon Georgetown | 250.00 |
| Liabata Emerald Green | |
| Lining Gold - 8.5% | 21.25 |
| 8.5% Lining | 15.00 |

total \$ 286.25

Add 10.00 Lining

Credit card Tisha Innis M Card
 ✓ ✓ ✓ 4/04
 5443 6877 1132 1081

ALL SALES FINAL

[Signature]

Pauline Malcolm  hotmail.com

646 415 9435

914 874 4805 cell

Pauline Malcolm

same

23 Winter Grant St.

Yonkers NY 10701

- (1) Farrah silk g. Berry 335.00
- (2) Greta Blumberry silk georgette w Pink lining 325.00

8.5% tax
ship

650.00
55.25
15.00

720.25

All sales final \$720.25

pd / VISA Debit card

4818 6201 1636 9081
exp 08/10

720.25



phone (212) 841-8564 work
(917) 952-1505 - Cell

RAINELDA METIA
189 S Broadway APT 2A
JONKERS, NY 10705

of Natalia
11 W. 19th St. 11th Floor
NY NY 10011

STICK
Greta ~~DAUER~~ Gerowette
Bilalshu w/lor Park
2000 N Park Stading

325 00
~~250 00~~

8.5 / total
S/M/D

27 63
15 00

367 63

ALL SHEETS FIMED

* [Signature]

cell 917 617-2442
phone 212 494-6095

100a Nguyen
Port Plaza
New York NY 10001

Katherine Silk Cosmetics
w silk lines

350 35000

Border of

(any material)

8.50% NY sales tax
shipping

29 75
15 00

394.50

All Sales Final

* Nguyen

000048

John P. Jones

11591 Cell
West Street Apt 2115
NY 10004

100% silk Georgette Josephine - ice blue (M or L) 325.00

1) Audrey - high waist (raise) Silk Georgette Black Base - ~~Pip~~ Ivory Band 375.00

nil salary 8 1/2% 700.00
tip 59.50
15.00

AMEX - John P. Jones
3718 - 245288 71003 \$ 759.50
(3) exp 7/08

ALLSTAR'S FRO!

John P. Jones

johnp@211@tda.com

7879-2408
SINCA Stage
85th St. # 86
NY 10028

Stone

SIN4 - Silk Jersey
Berry

215 00

Any amount

7% SALES TAX 8/2/0
Ship

26.78
15 00

merchandise in Even

341.78

~~pd 341.00~~

Cash

- 78

All Sales FINAL
George

393 01

Mark A. Simon

000050

Estimote (1) mm Blue-G (315.00)

100% Cotton Cellophane

100% Pure Retard
Fibre 15005

Also Marilan
* Sky Blue

www.digmar.com

100% Silk Onnawase 315.00
in Balantine

100% Silk ~~Onnawase~~ 350.00
in ~~Yellow~~ Navy

100% Silk Color #3 325.00
Rose w/ Pink Lining
+ Make Smoking tight

Bank no. 5262 1950 2140 7601

to have fitting before
length & very specific

998.00

Cash 52.00
Balance 946.00
Shipmen

for Pick up

946.00 calculated 1012.50

Handwritten notes at the top of the page, possibly including a date and some illegible text.

Handwritten notes in the upper middle section of the page.

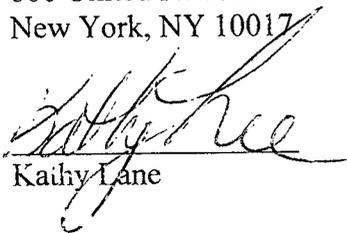
Main body of handwritten notes, consisting of several lines of text.

Lower section of handwritten notes, continuing the text from the previous section.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on June 3, 2008, she caused a copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS to be served via first class mail on Opposer's counsel at:

Evan Gourvitz
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017



Kaihy Lane

EXHIBIT 2

From: "Evan Gourvitz" <EGourvitz@frosszelnick.com>
To: "Lane" <kathy@NewmanDichter.com>
CC: "Barbara Solomon" <BSolomon@frosszelnick.com>
Date: Tuesday - June 10, 2008 4:25 PM
Subject: RE: Tiffany & Co. v Koury

Kathy:

Naturally, we remain open to resolving this matter amicably.

As you have noted, we previously exchanged some correspondence with your client (and her previous counsel) on this issue, which we presume you either have or can obtain. Our client's position remains unchanged since our last letter on the subject.

Please let us know if your client finds these terms acceptable (or if you need another copy of our last letter), or if you have any terms you would like to offer as a counterproposal. Absent settlement, our client will, of course, continue to litigate this opposition.

Thanks,

Evan

-----Original Message-----

From: Lane [mailto:kathy@NewmanDichter.com]
Sent: Monday, June 09, 2008 12:49 PM
To: Evan Gourvitz
Subject: Re: Tiffany & Co. v Koury

Evan:

I have forwarded you additional discovery over the past week and I will continue to supplement as appropriate. I am aware that some settlement discussions were held between your office and the prior counsel although I do not have all the specifics. Frankly, it is difficult for me to view the matter from your client's perspective as my client is not seeking to use the name "Tiffany" on its own. Rather she seeks to use her surname combined with her first name as her mark on her fashion products. Given this, it appears that there is a clear distinction between the marks and the goods. Notwithstanding this, we both know that amicable settlement rather than protracted litigation is more beneficial for both are clients. As such, we are amenable to re-opening the prior discussions, if you would be so kind as to respond and indicate your client's position.

Kathy

>>> "Evan Gourvitz" <EGourvitz@frosszelnick.com> 06/03/08 3:22 PM >>>
Kathy:

We disagree that the documents you have provided to date "clearly substantiate" that your client's application was not fraudulent.

We still await your client's full document production, its supplemented responses to our client's first set of discovery responses, a written response to our deficiency letter, and the basis for your calculation of the number of interrogatories served.

Once your client's outstanding discovery deficiencies have been resolved, we will have a better sense of the merits of your client's arguments and would be happy to discuss settlement. Nevertheless, if you already have a proposal in mind please provide it to us and we will pass it along to our client.

Thanks,

Evan

-----Original Message-----

From: Lane [mailto:kathy@NewmanDichter.com]

Sent: Tuesday, June 03, 2008 11:06 AM

To: Evan Gourvitz

Subject: Tiffany & Co. v Koury

Evan,

Attached you will find documents Bates Stamped 000039-000052.

000039-000040 are each purchase orders for samples, dated March 13, 2005 and March 30, 2005 respectively

000041 is an invoice, dated November 28, 2005 for "tags" which read "Tiffany Koury"

000042 is an order for a dress ("Dolores"), dated June 5, 2005

000043 is an invoice, dated December 9, 2005, for patterns

000044 through 000052 are orders for dress, dated October 30, 2005 which were placed at a trunk show.

We submit that these documents combined with the report of The Doneger Group clearly substantiate our client's use of her name on her product within the category of clothing in accordance with the dates set forth in her application and clearly prior to the date of her application. Our reading of your client's opposition reveals that the basis for said opposition is fraud regarding the date of first use. We submit that it is manifest there was no fraud in our client's application. We submit that it is in each parties best interest to resolve this issue amicably, at this point in time. While we believe that our client will prevail in this proceeding based upon her clear use of the mark in a timely fashion, we would also be amenable to

an earlier resolution that would be satisfactory to both sides.
Your thoughts are welcome.
Thank you.
Kathy

The information contained in this email message may be privileged, confidential, and protected from disclosure. Any unauthorized use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please reply to the sender.

The information contained in this email message may be privileged, confidential, and protected from disclosure. Any unauthorized use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please reply to the sender.

EXHIBIT 3

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

RONALD J. LEHRMAN
DAVID WEILD III
STEPHEN BIGGER
ROGER L. ZISSU
MARIE V. DRIBGOLL
RICHARD Z. LEHV
DAVID W. ENRLIGH
BUSAN UPTON DOUGLASS
JANET L. HOFFMAN
PETER J. SILVERMAN
LAWRENCE ELI APOLZON
BARBARA A. SOLOMON
MARIO AIETA
MARK D. ENGELMANN
NADINE H. JACOBSON
ANDREW H. FREDBECK
ORATIO S. MENDE
J. ALLISON STRICKLAND
JOHN P. MARGIOTTA
MARIA A. SCUNGIO
LYDIA T. GOBENA
CARLOS CUCURELLA

866 UNITED NATIONS PLAZA
AT FIRST AVENUE & 48TH STREET
NEW YORK, N. Y. 10017

TELEPHONE: (212) 813-5900
FACSIMILE: (212) 813-5901
E-MAIL: fzlz@frosszelnick.com

MICHAEL I. DAVIS
SPECIAL COUNSEL

JAMES D. SILBERSTEIN
JOYCE M. FERRARO
PHILIP T. SHANNON
MICHELLE P. FOXMAN
ANGELA KIM
ROBERT A. BECKER
COUNSEL

TAMAR NIV BESSINGER
MICHAEL CHIAPPETTA
EVAN GOURVITZ
NANCY D. DIONZA
ZOE HILDEN
JAMES D. WEINBERGER
DAVID I. GREENBAUM
DAVID DONAHUE
MELISSA A. ANTONCONIA
NANCY E. SABARRA
LAURA POPP-ROSENBERG
CARA A. BOYLE
JOHN M. GALLAHER
MELISSA A. MENDELBOHN
JUSTIN DEABLER
CHARLES T.J. WEIGELL III
ALLISON J. SINGH
MARILYN F. KELLY
CHRISTOPHER M. KINDEL
CAROLINE G. SOENH
VANESSA HWANG LUI
DOROTHY C. ALEVIATOS
TODD MARTIN

*ADMITTED IN NORTH CAROLINA

August 15, 2006

BY EXPRESS MAIL

Theresa S. Dew
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605-1155

Re: Objection to use and registration of TIFFANY KOURY and TIFFY BY
TIFFANY KOURY by Tiffany C. Koury
(Our Ref: TFFJ USA TC-06/06890)

Dear Ms. Dew:

We are outside counsel to Tiffany (NJ) Inc. ("Tiffany"), owner of the world famous, federally registered, trademark TIFFANY used in connection with a wide variety of luxury products including, and retail store services that sell, among other things, clothing and clothing accessories including belts, scarves, and ties. We are writing to you concerning the applications that you filed on behalf of your client Tiffany C. Koury to register TIFFANY KOURY for clothing, shoes, scarves, gloves, suspenders and other goods in International Class 25 (Application Ser. No. 78/912,427) and to register TIFFY BY TIFFANY KOURY (Application Serial No. 78/912,464) for the same goods. Both of the applications claim use of the mark in commerce.

There can be little dispute about the fame of our client's TIFFANY mark which has been in use for more than 150 years. Indeed, in the case *Ty, Inc. v. Ruth Perryman*, 306 F.3d 509 (7th

Theresa S. Dew
August 15, 2006
Page 2

Cir. 2002), the court specifically noted that the TIFFANY trademark is among the most recognized marks in the world and is entitled to a broad scope of protection. Just this summer, in the July 2006 edition of *Women's Wear Daily*, Tiffany was included in the list of the 100 brands Americans know best. While we understand that your client is the designer of the clothing that she is selling, any right that your client may have to use the name TIFFANY KOURY to personally identify herself or to otherwise inform consumers that she has designed the clothing at issue does not extend to obtaining a federal trademark registration for the mark TIFFANY KOURY where use of such registration is inconsistent with our client's prior and exclusive right in its TIFFANY trademarks as well as the presumptions that flow from our client's numerous federal trademark registrations for TIFFANY, TIFFANY & CO. and other TIFFANY formative trademarks. Courts have repeatedly held that there is no absolute right to use one's personal name as a mark where, as here, our client adopted the TIFFANY mark prior to your client's use, our client's mark has become famous and your client's mark is virtually identical to and incorporates in its entirety the TIFFANY trademark. The mere addition of your client's last name to our client's famous trademark does not remedy the problem. See *Nina Ricci S.A.R.L. v. E.T.F. Enterprises, Inc.*, 889 F.2d 1070 (Fed. Cir. 1989) (likelihood of confusion between NINA RICCI and VITTORIO RICCI). Moreover, it is likely that people would pay little attention to the last name of your client and would consider her name and mark to be TIFFANY which of course is our client's very trademark.

To ensure that our client's mark is adequately protected, that your client does not use the TIFFANY KOURY mark in a manner inconsistent with our client's rights, and to avoid conflict now and in the future, we propose the following terms for resolving this matter:

1. Your client will abandon with prejudice Application Serial No. 78/912,427 to register TIFFANY KOURY.
2. Neither your client nor any entity or individual acting on her behalf shall file in any state or foreign trademark office any mark that includes TIFFANY, any alternative spelling or phonetic equivalent of TIFFANY, or any term confusingly similar to TIFFANY for any goods or services, and other than Application Serial No. 78/912,464 for TIFY by TIFFANY KOURY, neither your client nor any entity or individual acting on her behalf shall file any applications to register in the United States Patent and Trademark Office any mark that includes TIFFANY, any alternative spelling or phonetic equivalent of TIFFANY, or any term confusingly similar to TIFFANY for any goods or services.
3. Other than the domain name *tiffanykoury.com*, your client shall not register, use or maintain any domain name, URL or email address for any business or commercial purposes that includes in whole or in part TIFFANY, any alternative spelling or phonetic equivalent of TIFFANY, or any term confusingly similar to TIFFANY.

4. Other than as part of the mark TIFFY BY TIFFANY KOURY, your client shall not commercially use or exploit any business name, trademark or service mark that includes in whole or in part TIFFANY, any alternative spelling or phonetic equivalent of TIFFANY or any term confusingly similar thereto. Notwithstanding this prohibition, your client may use with a different mark a tagline such as "by Tiffany Koury" or a similar phrase provided such tagline appears less prominently than the primary mark and the use of TIFFANY KOURY complies with the requirements of paragraph 7 below.

5. Your client shall limit the goods sold under the mark TIFFY BY TIFFANY KOURY or advertised or promoted at the *tiffanykoury.com* website exclusively to the goods in International Class 25 identified in Application Serial No. 78/912,464.

6. Your client shall not provide any retail store services or open any stores under the name TIFFY BY TIFFANY KOURY or any other name that includes in whole or in part TIFFANY, any alternative spelling or phonetic equivalent of TIFFANY or any term confusingly similar thereto.

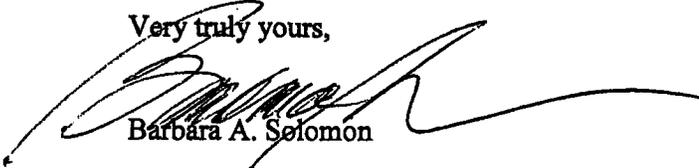
7. When using the TIFFY BY TIFFANY KOURY mark, it shall be presented in a unitary manner with all words of equal size and prominence, and all words displayed in the same color, typeface and graphics. Further, your client shall not use any indicia associated with Tiffany, including but not limited to the robin's egg blue color, our client's blue box and white bow packaging, or our client's graphics.

8. Your client shall not license, sell or franchise the name TIFFANY KOURY or any name that includes TIFFANY.

We believe that the terms set forth above offer an appropriate accommodation between your client's ability to exploit her name in commerce and the protection of our client's rights in the famous TIFFANY mark. Should we be unable to reach an accommodation our client will take all action it deems necessary to protect its famous mark. Toward that end we would note that our client has recently opposed an application to register TIFFFANY DESIGNS in Class 25.

We would ask for your timely response to this proposal. This letter is written without waiver of any of our client's rights and remedies, all of which are expressly reserved.

Very truly yours,



Barbara A. Solomon

BAS/jd/skm

STUART LAW FIRM, PLLC
ATTORNEYS AT LAW

1033 WADE AVENUE
SUITE 202
RALEIGH, NORTH CAROLINA 27605-1155

TELEPHONE: 919-787-6050
FACSIMILE: 919-787-9988
Email: estuart@stuartlawfirm.com

FOR SETTLEMENT PURPOSES ONLY

September 21, 2006

Via Facsimile & Electronic Mail

Barbara A. Solomon
Fross Zelnick Lehrman & Zissu, PC
866 United Nations Plaza
New York, NY 10017

Re: Registration of TIFFANY KOURY and TIFFY BY TIFFANY KOURY

Dear Barbara:

Pursuant to our September 11, 2006 discussion, I have now consulted with my client and offer the following proposal for consideration by your client.

We are well aware of the documented record of your client's attempts to protect its enforceable rights. However, after careful consideration of the facts and applicable law, I am confounded how a tribunal would find any likelihood of confusion between the well-established marks that are registered to Tiffany and Company and my client's fashion designer label that reflects her birth name and her good faith efforts to share her couture designs with the discerning public.

The enforceable rights of your client do not afford unfettered discretion to dictate the business development and or marketing strategy of Tiffany Koury designs. It is not disputed that any doubts as to consumer confusion are often resolved against the newcomer. See Nina Ricci S.A.R.L v. E.T.F. Enterprises, Inc., 889 F.2d 1070, 1074 (Fed. Cir. 1989). However, as you undoubtedly know, a court would be unwilling to accord broader protection than necessary to preserve the rights of an established mark, particularly for marks involving proper names. See Brennan's Inc. v. Brennan's Restaurant, LLC, 360 F. 3d 125, 133 (2nd Cir. 2004). The ultimate issue is the likelihood of consumer confusion. See id. at 129. The factors enunciated in Polaroid would lead to the inexorable conclusion that there would not be any confusion among sophisticated and discriminating consumers of the prestigious silver and jewelry firm founded by Charles Lewis Tiffany and the fashion designs of Tiffany Koury. See Polaroid Corp. v. Polaroid Elecs. Corp., 287 F. 2d 492, 495 (2nd Cir. 1961).

It is interesting to note that when Louis Comfort Tiffany, son of the founder of your client, decided to embark on a career as an artist rather than join the family business, he was seemingly free to explore all avenues of creative endeavors before focusing on interior design and decorative arts. There is no question that his stunning colorful lamps that incorporate elements of nature are gorgeous works of art that are proudly displayed at the Metropolitan Museum of Art and in many other museums across the country. Although the prestigious silver and jewelry firm is registered *inter alia* in Class Codes 11, 14 and 21, your client is obviously not concerned by any potential confusion with its illustrious family member.

However, the selective enforcement of your client's rights is having a chilling effect on Ms. Koury's ability earn a livelihood. The Tiffany Koury mark is significant, because as you know in the fashion industry, a designer's reputation is established by surname. See Ricci, 889 F.2d at 1073. I cannot imagine that your client would knowingly attempt to deprive Ms. Koury of the opportunity to enhance her reputation in the fashion industry.

Moreover, there is no overlap of goods between Ms. Koury and your client. In fact, according to Worsham, the "Tiffany Koury" mark would be distinctive from the "Tiffany" mark even if there were a significant overlap between products. See Worsham Sprinkler Company, Inc. v. Wes Worsham Fire Protection, LLC, 419 F. Supp. 2d 861, 889 (E.D. Va. 2006) (the "Wes Worsham" mark established a distinctive meaning in the fire protection industry in contrast to the use of "Worsham" alone). See also Brennan's, 360 F. 3d at 131-33 (the restaurant's use of the chef's birth name, "Terrence Brennan," as a mark was unlikely to cause consumer confusion with "Brennan's" mark in high-end restaurant industry).

Your August 21, 2006 correspondence seemingly reflects your client's agreement that it will not oppose the registration of Ms. Koury's mark for couture gowns and dresses. However, Ms. Koury is entitled to determine the course of her business development without the interference of the prestigious silver and jewelry firm. Ms. Koury should not be subject to predatory trade practices. Her good faith effort to develop her reputation in the fashion industry has been affected by your attempt to limit her ability to proceed in commerce. Under applicable law, Ms. Koury is entitled to open a retail store or to sell, license, or franchise her designs using her birth name. Cf. Brennan's, 360 F. 3d at 131,133 (acknowledging importance of allowing good faith use of birth name as mark).

Ms. Koury is working diligently to advance her position as a well-respected designer of couture apparel. She has proceeded in good faith using her birth name, which as you must know has no nexus whatsoever with the Tiffany mark. See Brennan's, 360 F. 3d at 131,133. Although your client and Tiffany Koury cater to a luxury goods market, there is no likelihood of confusion between the marks, as sophisticated clientele seek particular product lines and would certainly not confuse a "Tiffany Koury" fashion design or even a retail store or presence in a retail establishment with the protected rights of Tiffany & Co. See Information Clearing House, Inc. v. Find Magazine, 492 F. Supp. 147, 163 (S.D.N.Y 1980). It is axiomatic that the clear difference between the product lines and product focus eliminates any potential for confusion. See Katz v. Modiri, 283 F. Supp. 2d 883, 896-97 (S.D.N.Y 2003).

Ms. Koury is the creator of incomparable fashion designs that are based on her unique vision and talent, following in the footsteps of fellow North Carolinian, Alexander Julian. Her journey from North Carolina to New York arises from her original ideas and tenacity. Her designs reflect her good faith journey and embody her individuality. It is not surprising that she would choose to use her birth name because her designs so beautifully capture her personal style and panache.

You are undoubtedly well informed that the use of a birth name is common in the fashion industry. All of Ms. Koury's work will be identified as "Tiffany Koury" designs and would never be referenced as a "Tiffany" design.

The "Tiffany Koury" mark is distinctive. Ms. Koury's marks would not cause consumer confusion especially in view of the market for the respective products. The knowledgeable and discerning clientele of the prestigious silver and jewelry firm would not be confused by a Tiffany Koury fashion design.

Despite the chilling effect on my client's business enterprise, I am instructed to present a proposal whereby she is willing to execute a Consent or Co-Existence Agreement with your client in accordance with the following terms:

1. Ms. Koury will limit the registration of the "Tiffany Koury" mark to the following goods in Class Code 025: dresses, skirts, T-shirts, tank tops, jerseys, sweatpants, warm-up suits, blazers, pants, jeans, capris, vests, jackets, bathing suits, bikinis, swimwear, sleepwear, pajamas, robes, underwear, lingerie, intimates, and belts.
2. Ms. Koury agrees not to register the "Tiffany Koury" mark in Class Code 14, which includes jewelry and related goods.
3. It is within Ms. Koury's sole discretion whether to provide retail or online store services under "Tiffany Koury" or "Tiffy by Tiffany Koury" or to license, sell, or franchise the "Tiffany Koury" or "Tiffy by Tiffany Koury" marks.
4. None of Ms. Koury's designer apparel would ever be identified as a Tiffany design.
5. Ms. Koury agrees not use the following indicia associated with the "Tiffany" mark in the "Tiffany Koury" or "Tiffy by Tiffany Koury" mark: the robin's egg blue color, the "Tiffany" blue box and white bow packaging, or "Tiffany" graphics in either the "Tiffany Koury" or "Tiffy by Tiffany Koury" mark or any other indicia of the Tiffany mark as long as Ms. Koury is apprised in writing of any marketing or packaging change that your client may choose to adopt from time to time.
6. Ms. Koury agrees to release Tiffany and Co. from any and all actions for damages resulting from lost business opportunities and loss revenues as a result of the actions by Tiffany and Co.

Barbara Solomon
September 21, 2006
Page 4

7. Ms. Koury is willing to execute a Confidentiality Agreement as part of the settlement between the parties.

As I have indicated, I look forward to the opportunity to discuss a reasonable resolution of this matter.

Sincerely,

STUART LAW FIRM, PLLC

A handwritten signature in black ink, appearing to read "Catherine R. Stuart". The signature is fluid and cursive, with a long horizontal stroke at the end.

Catherine R. Stuart

cc: Tiffany Koury
Alexander Shang

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

RONALD J. LEHRMAN
DAVID WEILD III
STEPHEN BIGGER
ROGER L. ZISSU
MARIE V. DRISCOLL
RICHARD Z. LEHV
DAVID W. EHRLICH
SUSAN UPTON DOUGLASS
JANET L. HOFFMAN
PETER J. SILVERMAN
LAWRENCE ELI APOLZON
BARBARA A. SOLOMON
MARIO AIETA
MARK D. ENGELMANN
NADINE H. JACOBSON
ANDREW H. FREDBECK
CRAIG S. MENDE
J. ALLISON STRICKLAND
JOHN P. MARGIOTTA
MARIA A. SCUNGIO
LYDIA T. GOBENA
CARLOS CUCURELLA

866 UNITED NATIONS PLAZA
AT FIRST AVENUE & 48TH STREET
NEW YORK, N. Y. 10017

TELEPHONE: (212) 813-5900
FACSIMILE: (212) 813-5901
E-MAIL: fzlz@frosszelnick.com

MICHAEL I. DAVIS
SPECIAL COUNSEL

JAMES D. SILBERSTEIN
JOYCE M. FERRARO
PHILIP T. SHANNON
MICHELLE P. FOXMAN
ANGELA KIM
ROBERT A. BECKER
COUNSEL

TAMAR NIV BESSINGER
MICHAEL CHIAPPETTA
EVAN GOURVITZ
NANCY C. DICONZA
ZOE HILDEN
JAMES D. WEINBERGER
DAVID I. GREENBAUM
DAVID DONAHUE
MELISSA A. ANTONECCHIA
NANCY E. SABARRA
LAURA POPP-ROSENBERG
CARA A. BOYLE
JOHN M. GALLACHER
MELISSA A. MENDELBOHN
JUSTIN DEABLER
CHARLES T. J. WEIGELL III
ALLISON J. SINGH
MARILYN F. KELLY
CHRISTOPHER M. KINDEL
CAROLINE G. BOEHM
VANESSA HWANG LUI
DOROTHY C. ALEVIZATOS
TODD MARTIN

*ADMITTED IN NORTH CAROLINA

October 6, 2006

BY FAX AND MAIL

Catherine Stuart, Esq.
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605-1155

Re: Objection to use and registration of TIFFANY KOURY and TIFFY BY
TIFFANY KOURY by Tiffany C. Koury
(Our Ref: TFFJ USA TC-06/06890)

Dear Ms. Stuart:

I have now had an opportunity to review your client's September 21, 2006 settlement proposal. The terms are unacceptable. Your letter ignores the significant fact that your client is seeking to do far more than merely use her given name to make a living. By trying to register the name TIFFANY KOURY she seeks to use that term as a brand for luxury products not just as her name. In doing so, your client is violating our client's rights in its long established and famous TIFFANY mark. Such actions by your client distinguish this situation from the cases cited in your letter. Our client, of course, is not insensitive to your client's need to refer to herself by her given name as the designer of clothing products. Indeed, in our original proposal of August 15, 2006 we specifically acknowledged your client's right to use a tag line such as "By Tiffany Koury" with a primary mark that did not include TIFFANY. Your letter ignores this compromise.

Catherine Stuart, Esq.
October 6, 2006
Page 2

As to your allegation that our client's actions are having a "chilling effect" on your client's ability to earn a livelihood, this is completely unfounded. We have never said that your client could not use her name in her business. Yet using her name is far different from registering her name as a brand. As to the coexistence agreement that you have proposed, this actually would have a chilling effect on our client as it essentially requires our client to agree to your client's use of the name TIFFANY KOURY for any goods and services, including jewelry. Your client's willingness, in return for our client's agreement, not to identify her apparel as a "TIFFANY" design and not to use indicia associated with Tiffany, is not a concession on your client's part; your client is precluded from taking these actions as a matter of law.

Accordingly, we will not agree to the terms that you have proposed in your most recent letter. If your client wants to resolve this matter we are willing to do so along the terms set forth in our August 15, 2006 letter. If your client does not wish to settle, then our client reserves its rights not only to object to your client's use of TIFFANY KOURY as a brand name but also to oppose your client's pending applications on any basis should they be published for opposition.

This letter is written without waiver of any of our client's rights or remedies, all of which are expressly reserved.

Very truly yours,



Barbara A. Solomon

BAS/vp/fok

EXHIBIT 4

“you,” furnish all information, which is available to you, including information in the possession of your attorneys or investigators prepared on your behalf. If you cannot answer any of the following interrogatories in full after exercising due diligence to secure the information, state an answer, to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

K. To the extent that any of the following interrogatories may call for information subject to a claim of privilege or attorney work product, answer so much of each interrogatory and each part thereof as does not request privileged or confidential information. With respect to those portions of these interrogatories that request information that you believe is subject to a claim of privilege, set forth the basis for your claim of privilege or any other objection you may have.

L. For the convenience of the Board and the parties, each interrogatory should be quoted in full immediately preceding the response.

M. These discovery requests are intended to be continuing. If, at any time after you prepare and furnish the requested discovery, you ascertain or acquire additional information, you are requested to produce such supplemental information to Opposer within thirty (30) days.

INTERROGATORIES

Interrogatory No. 1:

Describe in detail the nature of the business currently conducted by Applicant in connection with Applicant's Mark, including the product lines sold or provided, or intended to be sold or provided, by Applicant in connection with Applicant's Mark.

5

Interrogatory No. 2:

2 for each product

Identify each product that Applicant has sold under Applicant's Mark to date, and state the date of first sale for each such product. If any product category (e.g., dresses, skirts, etc.) have been discontinued, state for the category of goods discontinued the date of discontinuance and the reason for discontinuance.

4 for each product

Interrogatory No. 3:

Identify each product that Applicant intends to sell or has considered selling, but has not yet sold under Applicant's Mark.

Interrogatory No. 4:

For each product in connection with which you have used Applicant's Mark, or plan to do so, identify all venues, trunk shows, or other avenues where such products are available for sale, have been available for sale, or are to be available for sale.

2
5 response for each prod

Interrogatory No. 5:

Set forth the wholesale and retail prices of each product sold or provided, or intended to be sold or provided, by Applicant under Applicant's Mark.

Interrogatory No. 6:

Describe the nature of all advertisements and promotional materials for goods that you sell and provide, or intend to sell or provide, under Applicant's Mark, and how the mark is used or intended to be used in connection with each (e.g., as part of a logo or slogan, in conjunction with a house mark, etc.)

Interrogatory No. 7:

State the amount of money Applicant has spent to date to advertise and promote goods bearing Applicant's Mark.

min 20 if using 1 product

Interrogatory No. 8:

Set forth all projections for the next five years for (i) ¹ your sales of goods bearing or sold in connection with Applicant's Mark, (ii) ² your profits for goods bearing or sold in connection with Applicant's Mark, and (iii) ³ your advertising expenditures in connection with Applicant's Mark and goods bearing or sold in connection with that mark.

Interrogatory No. 9:

Describe how and when you first became aware of Opposer's Mark.

Interrogatory No. 10:

Identify all third party uses of marks that consist of or include TIFFANY on which you intend to rely in this opposition, and for each such mark, identify (i) ¹ its owner, (ii) ² the goods or services in connection with which it is used, (iii) ³ the consumers for the those goods or services, and (iv) ⁴ any evidence of consumer recognition of the mark.

4 for each of the 5 = 20

Interrogatory No. 11:

Describe in detail any instances of actual confusion between (i) Applicant, Applicant's Mark, or the products sold or intended to be sold in connection with Applicant's Mark, on the one hand, and (ii) Opposer, Opposer's Mark, or the products sold in connection with Opposer's Mark, on the other hand.

Interrogatory No. 12:

Describe in detail the basis for your denial in paragraph 7 of your Amended Answer that "Opposer's registrations for the TIFFANY and TIFFANY & CO. marks are valid, subsisting and in full force and effect, and serve as evidence of Opposer's exclusive right to use the mark in commerce on or in connection with the goods and services identified in the registrations, as provided by Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b)."

Interrogatory No. 13:

Describe in detail the basis for your denial in paragraph 10 of your Amended Answer that “[i]n addition to using TIFFANY as a trademark for more than 150 years, Opposer has used TIFFANY exclusively as its trade name since the company’s creation in 1837. As a result of such use, the TIFFANY name is associated exclusively with Opposer and connotes Opposer as a centuries-old institution.”

Interrogatory No. 14:

Describe in detail the basis for your denial in paragraph 13 of your Amended Answer that “[i]n connection with Application Serial No. 78/912,427, Applicant swore under oath, *inter alia*, that she had been using the TIFFANY KOURY mark in commerce in connection with each of the identified goods as of June 15, 2005.”

Interrogatory No. 15:

Describe in detail the basis for your denial in paragraph 14 of your Amended Answer that “Applicant in fact had not used the TIFFANY KOURY mark in commerce in connection with each of the goods identified in the Application as of the dates alleged in the application.”

Interrogatory No. 16:

Describe in detail the basis for your denial in paragraph 15 of your Amended Answer that “Applicant’s statement in connection with Application Serial No. 78/912,427 that she had been using the TIFFANY KOURY mark in connection with each of the goods identified therein as of the date alleged in the application was therefore false and known to be so when made.”

Interrogatory No. 17:

Describe in detail the basis for your denial in paragraph 16 of your Amended Answer that “Applicant knowingly, willfully and in bad faith made false and fraudulent statements in

connection with Application Serial No. 78/912,427 in an attempt to deceive the PTO and in order to obtain a registration.”

Interrogatory No. 18: |

Describe in detail the basis for your denial in paragraph 17 of your Amended Answer that “Applicant’s allegation of use in connection with all of the items identified in her Application was falsely made and was made for the purpose of inducing the Patent and Trademark Office to register the mark.”

Interrogatory No. 19: |

Describe in detail the basis for your denial in paragraph 18 of your Amended Answer that “Applicant’s conduct constitutes fraud on the Patent and Trademark Office.”

Interrogatory No. 20: |

Describe in detail the basis for your denial in paragraph 19 of your Amended Answer that “As a result of Applicant’s false statement, Applicant’s mark has been passed to publication and may issue to registration.”

Interrogatory No. 21: |

Describe in detail the basis for your denial in paragraph 20 of your Amended Answer that “If Application Serial No. 78/912,427 matures to registration, Opposer would be damaged since it would allow Applicant to claim exclusive rights to the TIFFANY KOURY mark. Such claim of exclusive rights is inconsistent with Opposer’s prior rights in the TIFFANY and TIFFANY CO. trademarks.”

Interrogatory No. 22:

Describe in detail the basis for your denial in paragraph 21 of your Amended Answer that “By reason of the foregoing, Opposer is likely to be harmed by registration of Application Serial No. 78/912,427 for the mark TIFFANY KOURY.”

Interrogatory No. 23:

Describe in detail your basis for the contention in paragraph 24 of your amended answer to Opposer’s notice of opposition that “the full name ‘Tiffany Koury’ is associated with couture fashion.”

Interrogatory No. 24:

Set forth in detail the evidence to support your affirmative defenses of acquiescence and estoppel.

Interrogatory No. 25:

Set forth in detail the evidence to support your affirmative defense that there is no likelihood of confusion.

Interrogatory No. 26:

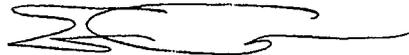
To the extent you contend that jewelry is not related to couture fashion, describe in detail the basis for that contention.

Interrogatory No. 27:

To the extent you contend that no fashion house offers both jewelry and fashion under the same mark, describe in detail the basis for that contention.

Dated: New York, New York
March 19, 2008

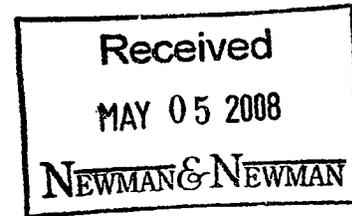
FROSS ZELNICK LEHRMAN & ZISSU, P.C.



By: Barbara A. Solomon
Evan Gourvitz
Attorneys for Opposer
866 United Nations Plaza
New York, New York 10017
Phone: (212) 813-5900
Fax: (212) 813-5901

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

In the Matter of Application Serial No. 78/912,427
Published in the Official Gazette on September 4, 2007



TIFFANY (NJ) INC.,

Opposer,

v.

TIFFANY C. KOURY,

Applicant.

Opposition No. 91181035

OPPOSER'S SECOND SET OF INTERROGATORIES

Pursuant to Rule 2.120(d) of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Opposer Tiffany (NJ) Inc. requests that Applicant Tiffany C. Koury respond to the following interrogatories by serving its responses at the offices of Opposer's attorneys, Fross Zelnick Lehrman & Zissu, P.C., 866 United Nations Plaza, New York, New York 10017, Attention: Evan Gourvitz, within the time permitted by the applicable Federal Rules of Civil Procedure and Trademark Rules of Practice.

DEFINITIONS

Opposer hereby incorporates by reference the Definitions set forth in its First Set of Interrogatories to Applicant.

INTERROGATORIES

Interrogatory No. 28:

Describe in detail your document retention policy, including for electronically-stored information.

Interrogatory No. 29:

8

Describe in detail the manner in which you keep your business records and any personal records relevant to this proceeding, including without limitation (i) whether and the extent to which such documents are kept in electronic form, such as emails, mailing lists, spreadsheets, or PowerPoint presentations, (ii) where such documents are located, (iii) the specific steps you have taken since the commencement of this action to preserve all such documents, and (iv) whether any such documents have been destroyed since the commencement of this action.

Interrogatory No. 30:

Set forth all reasons for deleting skirts, dress shirts, T-shirts, sweatshirts, tank tops, sweaters, jerseys, turtle necks, golf shirts, shorts, sweatpants, warm-up suits, blazers, pants, jeans, capris, overalls, vests, jackets, coats, parkas, windbreakers, sleepwear, pajamas, robes, intimates, socks, hosiery, shoes, boots, sneakers, beach shoes, flip-flops, sandals, slippers, scarves, gloves, and suspenders from the description of goods in your Application Serial No.

78/912,427 (the "Application").

38 items

Interrogatory No. 31:

Identify all goods you sold or offered for sale under or in connection with Applicant's Mark as of (i) June 15, 2005, (ii) October 1, 2005, (iii) June 20, 2006, and (iv) June 4, 2007.

Interrogatory No. 32:

Describe all uses made of Applicant's Mark in connection with each of the goods identified in the Application as of (i) June 15, 2005, (ii) October 1, 2005, (iii) June 20, 2006, and (iv) June 4, 2007.

Dated: New York, New York
April 25, 2008

FROSS ZELNICK LEHRMAN & ZISSU, P.C.



By: Barbara A. Solomon
Evan Gourvitz
Attorneys for Opposer
866 United Nations Plaza
New York, New York 10017
Phone: (212) 813-5900
Fax: (212) 813-5901

CERTIFICATE OF MAILING

The undersigned hereby certifies that on April 30, 2008 she caused a copy of the foregoing Opposer's Second Set of Interrogatories to be served by first class mail on Applicant's counsel at:

Kathy Lane, Esq.
Newman Dichter LLP
505 Fifth Ave South, Suite 610
Seattle, WA 98104

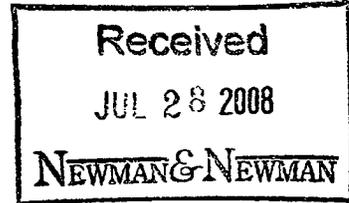


Rhonda Fields

EXHIBIT 5

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

In the Matter of Application Serial No. 78/912,427
Published in the Official Gazette on September 4, 2007



TIFFANY (NJ) LLC, as successor in interest to
TIFFANY (NJ) INC.,

Opposer,

v.

TIFFANY C. KOURY,

Applicant.

Opposition No. 91181035

NOTICE TO TAKE DEPOSITION

To: Kathy Lane, Esq.
Newman Dichter LLP
505 Fifth Ave South, Suite 610
Seattle, WA 98104

Kathy Lane, Esq.
Newman Dichter LLP
488 Madison Avenue, 10th Floor
New York NY 10022

PLEASE TAKE NOTICE that Opposer Tiffany (NJ) LLC, by its counsel, shall take the deposition of Applicant Tiffany C. Koury.

The deposition shall take place on August 10, 2008, beginning at 10 AM and continuing until completion, at Fross Zelnick Lehrman & Zissu, P.C, 866 United Nations Plaza, New York, NY 10017. The deposition shall take place before a certified court reporter or other person authorized by law to transcribe the proceedings, and shall be transcribed stenographically.

You are invited to attend and cross-examine.

Dated: New York, New York
July 20, 2008

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: _____



Barbara A. Solomon
Evan Gourvitz
FROSS ZELNICK LEHRMAN & ZISSU, P.C.
866 United Nations Plaza
New York, New York 10017
Tel.: (212) 813-5900
Fax: (212) 813-5901

Attorneys for Opposer Tiffany (NJ) LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 20, 2008, a true and correct copy of the attached NOTICE TO TAKE DEPOSITION was served by First Class Mail, Postage Prepaid, on

Applicant's counsel at:

Kathy Lane, Esq.
Newman Dichter LLP
505 Fifth Ave South, Suite 610
Seattle, WA 98104

Kathy Lane, Esq.
Newman Dichter LLP
488 Madison Avenue, 10th Floor
New York NY 10022



Rhonda Fields

EXHIBIT 6

newman//dichter

ATTORNEYS AT LAW

Newman Dichter LLP
488 Madison Avenue
New York, New York
10022

phone 212.593.4202

fax 206.274.2801

www.newmandichter.com

info@newmandichter.com

July 29, 2008

Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017

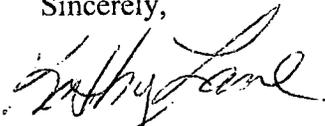
Re: Tiffany (NJ) Inc. v. Tiffany C. Koury, Opposition No.: 91-181,035

Dear Mr. Gourvitz:

We are in receipt of your Notice of Deposition dated July 20, 2008. The deposition is noticed for August 10, 2008. While this does coincide with the close of our discovery period it is also a Sunday. We presume that the designation of this date is an error and we of course object to a deposition on that date.

Please feel free to contact me in order to schedule a mutually convenient date.

Sincerely,



Kathy Lane

EXHIBIT 7

From: "Evan Gourvitz" <EGourvitz@frosszelnick.com>
To: "Lane" <kathy@NewmanDichter.com>
CC: "Barbara Solomon" <BSolomon@frosszelnick.com>
Date: Monday - August 4, 2008 11:28 AM
Subject: RE: Tiffany Koury

Kathy:

Since we have not heard from you in response to the below, and to avoid unnecessary additional expense, please see the attached, which postpones your client's deposition until Tiffany's motion to compel has been resolved.

Thanks,

Evan

-----Original Message-----

From: Evan Gourvitz
Sent: Friday, August 01, 2008 12:49 PM
To: 'Lane'
Cc: Barbara Solomon
Subject: RE: Tiffany Koury

Kathy:

Today we filed our motion to compel, which we served by mail. You should be able to review it on the TTAB website later today.

We intend for the deposition to go forward next Friday. However, since you have not yet confirmed Ms. Koury's availability, and since we will want to re-examine her once we receive the information and materials requested in our motion, if you would like we could discuss rescheduling the deposition for after our motion has been resolved, so we can examine her on all issues and documents at the same time.

Please let us know your availability on Monday to discuss.

Thanks,

Evan

-----Original Message-----

From: Evan Gourvitz
Sent: Wednesday, July 30, 2008 2:03 PM

To: Lane
Cc: Barbara Solomon
Subject: RE: Tiffany Koury

Kathy:

Yes, we expect to take the deposition on that date. Please confirm as soon as possible that Ms. Koury will attend.

Thanks,

Evan

-----Original Message-----

From: Lane [mailto:kathy@NewmanDichter.com]
Sent: Wednesday, July 30, 2008 9:43 AM
To: Evan Gourvitz
Subject: RE: Tiffany Koury

Evan,
Thank you for your email. That is short notice for the deposition but I will see what we can do. Is this a confirmed date on your part?

Thank you.

Kathy

>>> "Evan Gourvitz" <EGourvitz@frosszelnick.com> 07/29/08 1:34 PM >>>
Kathy:

We already renoticed your client's deposition for August 8. If you haven't already received the notice you should get it soon.

Also, please note that this week we intend to move to compel proper discovery responses from your client. Accordingly, if your client still intends to make a settlement proposal it probably would be best to do so as soon as possible.

Thanks,

Evan

-----Original Message-----

From: Lane [mailto:kathy@NewmanDichter.com]
Sent: Tuesday, July 29, 2008 9:20 AM
To: Evan Gourvitz
Subject: Tiffany Koury

Please see attached.
Thank you.

Kathy

The information contained in this email message may be privileged, confidential, and protected from disclosure. Any unauthorized use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please reply to the sender.

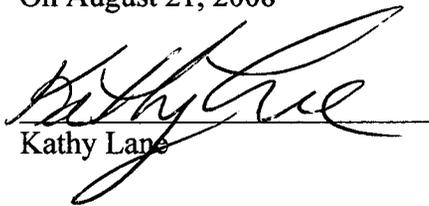
The information contained in this email message may be privileged, confidential, and protected from disclosure. Any unauthorized use, printing, copying, disclosure or dissemination of this communication may be subject to legal restriction or sanction. If you think that you have received this email message in error, please reply to the sender.

CERTIFICATE OF MAILING

I hereby certify that this correspondence APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL AND TO DETERMINE SUFFICIENCY AND MEMORANDUM AND DECLARATION OF KATHY LANE and exhibits is being deposited with the United States Postal Service with sufficient postage as Express Mail in an envelope addressed to:

Commissioner of Trademark
2900 Crystal Drive
Arlington, VA 22202- 3515

On August 21, 2008

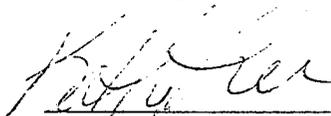

Kathy Lane

Express Mailing Label
ET 82845186345

CERTIFICATE OF MAILING

The undersigned hereby certifies that on August 4, 2008, she caused a copy of the foregoing APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL AND TO DETERMINE SUFFICIENCY AND MEMORANDUM AND DECLARATION OF KATHY LANE and exhibits to be served via first class mail on Opposer's counsel at:

Evan Gourvitz
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017



Kathy Lane