



BULKY DOCUMENTS

(Exceeds 100 pages)

Proceeding/Serial No: 91189629

Filed: 03-02-2010

Title: REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF
APPLICANT'S MOTION FOR
SUMMARY JUDGMENT

Part 1 of 2

PRELIMINARY STATEMENT

This motion is ripe for summary adjudication, because the material facts upon which it is premised are undisputed. Borghese Trademarks, Inc. (“BTI”) speculates, without any basis in fact or logic, that the public will believe that Multi Media Exposure, Inc. (“MME”)’s PRINCE LORENZO BORGHESE’S LA DOLCE VITA trademark and BTI’s PRINCESS MARCELLA BORGHESE and BORGHESE marks (collectively, the “MARCELLA BORGHESE Marks”) emanate from the same source. This proposition, fabricated on false premises, *does not* create a genuine issue of material fact sufficient to preclude summary judgment for at least the following reasons:

First, undisputed evidence overwhelmingly supports the conclusion that Lorenzo Borghese created a private label for PetSmart, the PRINCE LORENZO BORGHESE’S LA DOLCE VITA (“LA DOLCE VITA”) brand, the appearance of which label (in one version of the brand name)¹ clearly shows the “Prince Lorenzo Borghese” element to be in very small font and set apart from the focal, underlined “La Dolce Vita” portion; this manner of graphics presentation is consistent with the labels on Lorenzo Borghese’s other product lines. (2nd Borghese Decl. ¶¶ 2-4, Exs. A, C).

Second, the evidence of record establishes beyond legitimate dispute that Lorenzo Borghese is well known in his own right for creating a high-end bath, body, and skin-care line for pets. (*Id.* ¶ 6, Ex. C.)

Third, in *verified* interrogatory responses, Opposer’s Vice President of Marketing expressly stated that BTI does not use its marks to market or sell goods or services intended for use on pets, nor does BTI have any immediate intention of so doing. (Declaration of Jolie Apicella (“Apicella Decl.”), ¶ 3, Ex. A, (BTI Response Nos. 4, 5, 11)).

¹ Applicant’s LA DOLCE VITA product line launched in 2008 under the name LA DOLCE VITA BY PRINCE LORENZO BORGHESE. (Second Declaration of Lorenzo Borghese (“2nd Borghese Decl.”), ¶ 3.) Products will also be sold by PetSmart under the virtually identical version of the brand name, the applied-for PRINCE LORENZO BORGHESE’S LA DOLCE VITA mark; the graphics for both versions of the trademark will be substantively the same. (*Id.* ¶¶ 2, 3.) For textual ease, both versions of the brand are referenced herein under the LA DOLCE VITA name.

Fourth, because products bearing LA DOLCE VITA mark are *exclusively* sold in retail PetSmart stores or, in the future, consumer confusion is exceedingly unlikely. (2nd Borghese Decl. ¶ 2; (BTI Opp., Ex. C (Applicant Response Nos. 4, 5).)

Finally, there are many other brands using the “Borghese” name, some of which are registered trademarks, besides those of Applicant and Opposer. (Apicella Decl., ¶¶ 5, 6, Exs. C, D.) Courts routinely permit defendants to use their surname together with their first name, even where the products are similar, which they are clearly not here.

In sum, Opposer’s position that Lorenzo Borghese has purposely created an association between Opposer’s human products and Applicant’s line of products for pets is strained. The voluminous exhibits submitted by Opposer are but a desperate ploy to muddy the straightforward and narrow trademark factors that squarely cut against BTI. Because there remain no genuine issues of fact or law, the Board should summarily dismiss BTI’s Opposition.

ARGUMENT

The facts concerning Opposer’s claims are largely undisputed, and accordingly these claims are perfectly poised for resolution, in Applicant’s favor, as a matter of law.

I. OPPOSER CANNOT PROVE THAT CONSUMERS ARE LIKELY TO BE CONFUSED

Opposer has made no credible argument that purchasers of LA DOLCE VITA pet-care products would believe them to emanate from BTI, a manufacturer of cosmetics and personal-care products for humans under the MARCELLA BORGHESE Marks. Critical to this case is the irrefutable principle that trademark law protects only against likelihood of confusion as to source or sponsorship. The mere fact that a “junior user’s mark may call to mind the senior user’s famous mark [] alone is not sufficient for a likelihood of confusion.” 3 McCarthy § 23:9, at 23-24. Nor is the “mere theoretical possibilit[y]” that consumer confusion might occur at some point in the future. *Elec. Design & Sales, Inc. v. Elec. Data Sys. Corp.*, 954 F.2d 713, 716 (Fed. Cir. 1992). The record is entirely devoid of proof that purchasers of

BTI's human products are *even aware* of Applicant's line of pet-care products, sold exclusively at PetSmart, much less that they are likely to believe the products emanate from the same source.

A. Opposer's and Applicant's Marks Are Dissimilar.

The mark at issue here, LA DOLCE VITA,² is dissimilar in sound and appearance to Opposer's MARCELLA BORGHESE Marks. Opposer does not dispute that designations must be compared in their entireties for evaluating the similarity in appearance and commercial impression and that the contextual use of a mark must be considered. (BTI Opp. Br. at 6, 19.) Indeed, such contextual evaluation is particularly enlightening here.

Contextual Appearance

The labels currently in use for the LA DOLCE VITA products display the "Lorenzo Borghese" element in very small font, underneath and set apart from the much larger and more visible words "La Dolce Vita," which are emphasized with underscoring. (*See* 2nd Borghese Decl. at ¶ 3, Ex. A.) On these labels, the words "Prince Lorenzo Borghese" are plainly not dominant.³

² The applied-for LA DOLCE VITA mark is the only trademark at issue in this proceeding. BTI is wrong in its blanket assertion that "Applicant's concurrent use of the mark 'Prince Lorenzo Borghese' on its 'Prince Lorenzo Borghese/Royal Treatment/Italian Pet Spa' pet shampoos, conditioners and sprays" is relevant to whether the applied-for mark is entitled to registration. (*See* BTI Opp. at 1.) The trademark at issue is not "Prince Lorenzo Borghese," but PRINCE LORENZO BORGHESE'S LA DOLCE VITA. It is used only on the LA DOLCE VITA brand of products, not the separate Royal Treatment® and Italian Pet Spa™ brands. (*See* 2nd Borghese Decl., ¶ 3, 4, Ex. A, B.)

³ Identifying the dominant portion of a mark is a visual, contextual determination. *See Specialty Brands, Inc. v. Coffee Bean Distrib., Inc.*, 748 F.2d 669 (Fed. Cir. 1984); *Northwestern Golf Co. v. Acushnet Co.*, 226 USPQ 240, 244 (TTAB 1985)(evidence of the context in which a mark is used is probative of the significance that the mark is likely to project). Lorenzo Borghese did sign a Declaration stating that he believed the statements made by his attorney in a legal document were accurate and thus that, in a *naked comparison* to the mark "La Dolce Vita" alone, the "Prince Lorenzo Borghese's" portion of the full mark PRINCE LORENZO BORGHESE'S LA DOLCE VITA was dominant. (*See* BTI Opp., Friedman Decl., Ex. 3.)

However, Applicant has made *no* statements concerning the prominent elements of its mark as actually used in commerce or as compared to the MARCELLA BORGHESE Marks. At his deposition, Lorenzo Borghese was asked to provide a legal conclusion about the dominant portion of his trademark and honestly responded that he is not an attorney. (Apicella Decl. at ¶ 8, Ex. F, Tr. at 94:12-95:10.) At no time was he asked to comment upon the visual graphics and various elements of the LA DOLCE VITA labels as they appear to consumers in the marketplace.

This minimal manner of usage is consistent with the labels of Lorenzo Borghese's other lines of products, Royal Treatment® and Italian Pet Spa™, where Lorenzo Borghese's full name is used to assist consumers in identifying Lorenzo Borghese as the source.⁴ (*Id.* at ¶ 4.) Viewing the marks in their entirety and within the requisite context of their presentation, there can be no question that the LA DOLCE VITA and PRINCESS MARCELLA BORGHESE Marks are distinct. (*See id.*, at ¶ 3, Ex. A.); Apicella Decl., at ¶ 7, Ex. E.)

Different Marks

Further and significantly, "Prince Lorenzo Borghese" and "Princess Marcella Borghese" are distinct names, referencing different individuals, that impart differing commercial impression and will not result in confusion. BTI has made no showing that the surname "Borghese" alone has achieved secondary meaning that would entitle it to protection. (*See* MME SJ Mot. at 9-10). Moreover, even without the differentiating use of the words "La Dolce Vita" in the mark, Applicant's use of the first name "Lorenzo" eliminates any potential likelihood of confusion. (*See id.* at 21-23); *Conagra, Inc. v. Singleton*, 743 F.2d 1508, 1515 n.9 (11th Cir. 1984) (addressing plaintiff's founder's son's right to use family name); *Abraham Zion Corp. v. Lebow*, 593 F. Supp. 551 (S.D.N.Y. 1984) (permitting Harry Lebow, the son of the founder of Lebow Brothers, a clothing manufacturer that was eventually acquired by plaintiff, to use his full name on clothes he designed and retain a registration for the Harry Lebow trademark), *aff'd*, 761 F.3d 93 (2d Cir. 1985); *Ramsey's Mfg. Jewelers, Inc. v. Ramsey*, 924 So. 2d 1045, 1050-53 (La. Ct. App. 2006) (use of full name in the name of business did not constitute trade name infringement where products were similar).

Particularly on point is *Ramsey's Mfg. Jewelers, Inc. v. Ramsey*, where the plaintiff owner of a jewelry store alleged that his defendant brother's use of their surname for his own competing jewelry

⁴ Since 2002 Lorenzo Borghese has appeared countless times on national and international television shows to promote his Royal Treatment® and Italian Pet Spa™ brands of pet-care and grooming products. (2nd Borghese Decl. at ¶ 6.) He has also been featured in national and international papers and magazines as an authority on pets. (*Id.*, Ex. C.) He is well known in the pet-care industry, not only for his products, but also for his work with the ASPCA and the North Shore Animal League. (*Id.*)

business would result in marketplace confusion. The court found that despite the fact that the Ramsey name had acquired secondary meaning, the defendant's commercial use of his first name together with the surname – "Steve Ramsey's Diamonds Direct, LLC" or "Brilliantov by Steve Ramsey, LLC" – sufficiently distinguished his business and therefore did not constitute infringement. 924 So. 2d at 1050-53. "An individual generally will be given some opportunity to use his own name and establish a reputation for that name, even in the face of a prior user's trademark rights in the name, so long as the person using the name distinguishes his business and use of the name from the business owning the trademark rights." *Conagra*, 743 F.2d at 1515 n.9. Because Applicant's mark clearly identifies the source as "Lorenzo," not "Marcella," Applicant cannot be prevented from using his full name as a trademark to identify his products.

The ability to use one's own name is especially meaningful where, as here, the trademark owner has invested time and effort into developing the brand. *See Taylor Wine Co., v. Bully Hill Vineyards, Inc.*, 569 F.2d 731, 735 (2d Cir. 1978) ("Speaking generally, when the defendant demonstrates a genuine desire to build a business under his own name, courts have been reluctant to proscribe all surname use"). For the past eight years, through his work with animal organizations and developing his line of pet products, Lorenzo Borghese has garnered recognition as someone with extensive knowledge and experience in pet grooming and care. (*See* 2nd Borghese Decl. at ¶ 6, Ex. C.) Particularly in light of Lorenzo Borghese's reputation in the pet care industry, this factor weighs heavily in Applicant's favor.

B. Opposer's and Applicant's Goods Are Substantially Dissimilar

The issue of likelihood of confusion must be determined on the basis of the goods as identified in the application and in the cited registration(s). *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490 (Fed. Cir. 1987). Not only do the goods in Opposer's registrations not include pet products, but Opposer has explicitly conceded that it makes no goods specifically for use by, on, or for pets. (*See* Apicella Decl.; Ex. A (Response No. 4).) Nor does BTI market any of its products towards pets. (*See id.* (No. 5).) Opposer has squarely stated that it "has not commenced planning for sale of its goods to pets." (*See id.*, (No. 11).)

While some *other* companies may brand certain products for people and certain other lines for pets, this fact is irrelevant here, where Opposer admittedly does *not*. (*See id.* (Nos. 4, 5, 11); Opp. Mot., Ex. A at 101:21-22 (“Borghese does not do pet products”).) BTI has not proffered any actual evidence to alter the conclusion that the parties’ products cater to very different customers, and instead has made material concessions to the contrary. (*See Apicella Decl.*, Ex. A (Nos. 4, 5, 11).) BTI targets consumers who are purchasing personal-care products for use on themselves or other people, while Applicant aims to attract customers who are buying products specifically for their pets. *See Computer Assoc. Int’l, Inc. v. AJV Computerized Data Mgmt.*, 889 F. Supp. 630, 637 (E.D.N.Y. 1995) (overlap confusion unlikely where parties’ businesses are geared to different consumers).

Applicant’s goods are specifically formulated only for pets. Opposer’s argument that human products are sometimes used on pets and pet products are sometimes used by people is not only dubious, but also irrelevant to the issue of whether these two distinct goods will cause confusion. Applicant’s goods were created as pet products, for use on dogs in light of extensive research that canine skin has a higher pH and that products suitable for human use may injure a dog’s skin. (*See Borghese Decl.* ¶2, Ex. C; Opp. Mot., Ex. A, Tr. at 12:8-18 (Lorenzo Borghese’s products were based on “extensive research”). Although it may be safe for humans to use LA DOLCE VITA products, these products were designed solely for pets.⁵ The contention that consumers of dog shampoo and other pet products would purchase a BORGHESE cosmetics-line item instead of a specific dog-care product is laughable. Likewise, Opposer cannot argue with a straight face that its consumers would buy LA DOLCE VITA pet products as a

⁵ Lorenzo Borghese’s prior statements regarding the use of his products on humans was in no way any sort of “cross promotion,” as Opposer alleges, but rather were made only to emphasize that the products would not harm, and could even be enjoyed by, dog owners when they applied the products to their pets. (Opp. Mot. at 14; 2nd Borghese Dec. at ¶ 9.) LA DOLCE VITA products are never promoted or advertised as intended for human bodily use. The label for these products provides the benefits and directions for use on pets and clearly states, “FOR TOPICAL USE ON ANIMALS ONLY.” (2nd Borghese Decl. at ¶ 9, Ex. D.)

substitute for BORGHESE personal-care items. Opposer's and Applicant's goods are just too distinct.⁶ The stark differences in the product categories lead this factor to favor Applicant.

C. Remote Trade Channels Preclude Confusion.

Further eviscerating any potential likelihood of confusion is the fact that LA DOLCE VITA products are available *only* at PetSmart retail stores or, in the future, through PetSmart's website, both of which sell exclusively pet products. *See Procter & Gamble Co. v. A. E. Staley Mfg. Co.*, 342 F.2d 476 (C.C.P.A. 1965) (finding difference in goods particularly significant where goods will move in different channels of trade to different classes of purchasers). The LA DOLCE VITA products are private-label products, designed especially for PetSmart and for sale only by PetSmart. (BTI Opp., Ex. C (App. Response Nos. 4, 5); 2nd Borghese Decl. ¶ 5; Apicella Decl., Ex. F, Tr. at 39:9-14.) LA DOLCE VITA branded items are not, and will not be, available anywhere else. (*Id.*) They cannot be found in any other retail stores or elsewhere on the internet, let alone in the same consumer markets and trade channels as Opposer's non-pet products. (*See id.*)

Opposer proffers no evidence demonstrating its blanket assertion that "there is an abundance of evidence to prove that the parties' respective products move in similar trade channels." (Opp. Mot. at 15.) Indeed, to the contrary, BTI admits that it does not sell its goods in pet stores. (Apicella Decl., Ex. A, (BTI Response No. 10).) BTI also has no immediate intention, if any, of selling its products in pet stores or to expand its business to pet care. (*See id.*, (BTI Response No. 11).) Put simply, Opposer's products are not, and will not be, sold at PetSmart, the sole trade channel for Applicant's LA DOLCE VITA products at issue here.

Opposer's supposed showing that some stores sell both human and pet products is flawed, as well as irrelevant, given that no store carries both Opposer's and Applicant's products. First, pet care products

⁶ It is for this reason – the disparate nature of the products involved – that various other BORGHESE brands, some of which are federally registered trademarks, can co-exist in the marketplace. (*See, e.g.*, Apicella Decl., Ex C.) Opposer cannot overreach and claim exclusive right to the commercial use of the Borghese name for any and all goods and services. Where the products are disparate and the likelihood of confusion thus remote, as here, BTI has no recourse under trademark law.

will always move in distinct, pet-specific channels of trade, such as pet shops, pet sections of larger retail stores, pet sections or pages of online retail sites, and pet segments of TV shopping networks. (*See, e.g.*, BTI Opp., Ex. D (Friedman Decl.), Exs. 4-13 (websites proffered by BTI themselves illustrate the separation of pet products from other goods, via (a) explicit headings such as “canine products” or “dog clothes,” (b) restatement of the search term employed, such as “dog” or “pet shampoo,” or (c) internal delineation in the URL itself, as on the Walgreens site (Ex. 11).) Common experience demonstrates that pet goods are never sold in the same sections of a store as human hair-care and cosmetics products. Second, consumers searching for any product that includes the name “Borghese” in its trademark would either use the brand name of the product, such as LA DOLCE VITA, Royal Treatment®, Italian Pet Spa™, or Kirkland Signature®, (*see* Apicella Decl., ¶7, Ex. E.), or quickly discern the presence of such a brand name if searching for a “Borghese”-alone branded item. Anyone seeking out Opposer’s goods and accidentally coming across LA DOLCE VITA products, would immediately determine that Applicant’s products are intended for animals.⁷ (*See* 2nd Borghese Decl., ¶ 9, Ex. D.)

BTI’s has failed to rebut the remoteness of trade channels and absence of consumer overlap, and accordingly this factor favors Applicant.

D. There Is No Genuine Dispute Concerning Buying Conditions

Consumers of pet-grooming products are unlikely to confuse the source of Applicant’s goods. Certain purchasing decisions, regardless of the price level, may be more deliberative. *See, e.g., Tsiolis v. Interscope Records, Inc.*, 946 F.Supp. 1344, 1356 (N.D. Ill. 1996) (finding high degree of care despite price level of CDs, because consumers “are necessarily discriminating between different artists and different musical genres”). Applicant’s consumers take time and care in selecting the right product for

⁷ As a third point, Opposer’s argument that confusion is likely at the Home Shopping Network (“HSN”) internet site is completely shattered by the fact that Opposer *does not sell* any products whatsoever through HSN and that Applicant’s LA DOLCE VITA line also is *not* sold there. Any search for “Borghese” on the HSN site does *not* “redirect” to a website for Lorenzo Borghese’s Royal Treatment® product, (Opp. Mot. at 16); the Royal Treatment® items – which, again, are not the subject of the instant opposition – are simply the separate and distinctly branded products that come up in such a search.

their pets, as do purchasers of Opposer's goods when selecting high-quality beauty and bath products for themselves.

E. There Is No Evidence of Actual Confusion.

Opposer presents no evidence of actual confusion and, in fact, conveniently omits this factor entirely, despite the fact that (an all-but-identical version of) the PRINCE LORENZO BORGHESE'S LA DOLCE VITA mark has been used in the marketplace since 2008. (*See* 2nd Borghese Decl. ¶ 3.) *See Wyeth v. Walgreen Co.*, 2008 WL 3873423 (T.T.A.B. Aug. 5, 2008).

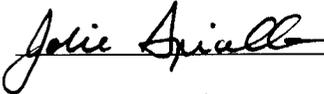
II. BTI'S CLAIMS ARE BARRED BY OTHER FACTORS

Lorenzo Borghese has every right, under both trademark law and the First Amendment, to use his full name in connection with a brand that he has developed and in a distinct industry in which he has built his own reputation.⁸

⁸ BTI strains to avoid summary dismissal by alleging that Applicant adopted the LA DOLCE VITA mark deliberately to create an association with Opposer. This far-fetched and entirely unsubstantiated theory that Applicant wants to confuse the public is false for several reasons: (a) There is no evidence that "Princess Marcella" enjoys any recognition or goodwill in Applicant's trading area, rendering the allegation that Applicant seeks to trade upon the mark nonsensical. (b) Lorenzo Borghese's references to his family history on the <<www.getroyaltreatment.com>> website, from which LA DOLCE VITA products are *not* sold, simply provides consumers with more information about him as the source of the products being offered. Likewise, the background information on the <<www.multimediaexposure.com>> site, which also does not sell LA DOLCE VITA items, is just that, informative. Lorenzo Borghese has every right to operate under his own given name and provide his autobiographical background as evidence of an inherited aptitude for skin and hair ingredients. True and correct statements about his personal history and family experience are protected by the First Amendment. (c) Such autobiographical statements do not constitute trademark use. Significantly, and the only marketing fact of relevance here, PetSmart makes *no mention* of Princess Marcella Borghese or the Borghese family history in its promotion of the LA DOLCE VITA product. (2nd Borghese Decl. ¶ 7.) (d) Lorenzo Borghese removed from his <<www.getroyaltreatment.com>> website a reference to his grandmother Marcella Borghese in a good-faith gesture to pacify Opposer and resolve the contention that his mentioning her name was somehow improper. (*Id.* ¶ 8.) In fact, Lorenzo Borghese is entitled as free speech to say what he wishes about his family. The First Amendment issues at stake outweigh the remote possibility that someone could think of Opposer's products from text on websites that *do not concern* the applied-for mark.

Dated: New York, New York
March 1, 2010

QUINN EMANUEL URQUHART OLIVER
& HEDGES, LLP

By:  _____

Robert Raskopf

robertraskopf@quinnemanuel.com

Claudia Bogdanos

claudiabogdanos@quinnemanuel.com

Jolie Apicella

jolie.apicella@quinnemanuel.com

51 Madison Avenue, 22nd Floor
New York, New York 10010-1601
(212) 849-7000

Attorneys for Applicant Multimedia Exposure, Inc.

CERTIFICATE OF EXPRESS MAILING

I, Jolie Apicella, certify that on March 1, 2010, a copy of Applicant's Reply Memorandum of Law in Further Support of Applicant's Motion for Summary Judgment, together with Declaration of Lorenzo Borghese and Declaration of Jolie Apicella, in *Borghese Trademarks, Inc. v. MultiMedia Exposure, Inc.* (No. 91189629) was filed with the Trademark Trial and Appeal Board by U.S. Express Mail to:

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA
22313-1451

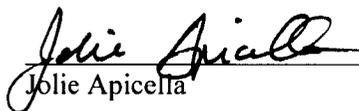


Jolie Apicella

CERTIFICATE OF SERVICE

I, Jolie Apicella, certify that on March 1, 2010, a copy of Applicant's Reply Memorandum of Law in Further Support of Applicant's Motion for Summary Judgment, together with Declaration of Lorenzo Borghese and Declaration of Jolie Apicella, in *Borghese Trademarks, Inc. v. MultiMedia Exposure, Inc.* was served on counsel by First Class Mail to:

Stephen L. Baker
Moira J. Selinka
BAKER and RANNELLS, PA
575 Route 28, Suite 102
Raritan, N.J. 08869



Jolie Apicella

8. Attached hereto as Exhibit F are select pages of the deposition transcript of Lorenzo Borghese, who was deposed in this matter on January 20, 2010.

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

Executed this 1st day of March, 2010.



Jolie Apicella

EXHIBIT A

To Declaration of Jolie Apicella

Applicant's Reply Memorandum of Law in Further Support
of Applicant's Motion for Summary Judgment

Borghese Trademarks, Inc. v. MultiMedia Exposure, Inc., No. 91189629

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

Borghese Trademarks, Inc.

Opposition No. 91189629

Opposer,

Mark: PRINCE LORENZO BORGHESE'S
LA DOLCE VITA

v.

Application No. 77/435,171

Multi Media Exposure, Inc.

Applicant.

OPPOSER'S RESPONSES TO APPLICANT'S INTERROGATORIES

Opposer, Borghese Trademarks, Inc. ("Opposer"), responds to Applicant's Interrogatories served by Applicant, Multi Media Exposure, Inc. ("Applicant") as follows:

GENERAL OBJECTIONS

1. The following general objections are incorporated by reference in Opposer's response to each and every Interrogatory set forth below.
2. The specific responses set forth below are for the purposes of discovery only, and Opposer neither waives nor intends to waive, but expressly reserves, any and all objections it may have to the relevance, competence, materiality, admission, admissibility or use at trial of any information, documents or writing produced, identified or referred to herein, or to the introduction of any evidence at trial relating to the subjects covered by such response.
3. Opposer expressly reserves its right to rely, at any time including trial, upon subsequently discovered information or information omitted from the specific response set forth below as a result of mistake, oversight or inadvertences.
4. The specific responses set forth below are based upon Opposer's interpretation of the language used in the Interrogatories and Opposer reserves its right to amend

- or to supplement its responses in the event Applicant asserts an interpretation that differs from Opposer's interpretation.
5. By making these responses, Opposer does not concede it is in possession of any information responsive to any particular Interrogatory or that any response given is relevant to this action.
 6. Subject to and without waiving the general and specific responses and objections set forth herein, Opposer will provide herewith information that Opposer has located and reviewed to date. Opposer will continue to provide responsive information as such is discovered. Opposer's failure to object to a particular Interrogatory or willingness to provide responsive information pursuant to an Interrogatory is not, and shall not be construed as, an admission of the relevance, or admissibility into evidence, of any such information, nor does it constitute a representation that any such information in fact exists.
 7. Because Opposer may not have discovered all the information that is possibly within the scope of the Interrogatory, Opposer expressly reserves its right to amend or to supplement these responses and Objections with any additional information that emerges through discovery or otherwise.
 8. Opposer objects to the Interrogatories to the extent that they require a response that is protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege or any other applicable privilege or immunities. Opposer responds to the Interrogatories on the condition that the inadvertent response regarding information covered by such privilege, rule or doctrine does not waive any of Opposer's right to assert such privilege, rule or doctrine and the Opposer may withdraw any such response inadvertently made as soon as identified.
 9. Opposer objects to the Interrogatories to the extent that they seek proprietary, sensitive, or confidential commercial information or information made confidential by law or any agreement or that reflects trade secrets. Opposer responds to the Interrogatories on the condition that the inadvertent responses regarding any proprietary, sensitive, or confidential information does not waive

- any of Opposer's rights and that Opposer may withdraw any such response inadvertently made as soon as identified.
10. Opposer objects to the Interrogatories to the extent that they seek information that is not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.
 11. Opposer objects to the Interrogatories to the extent that they exceed the requirements of the Federal Rules of Civil Procedure or the Trademark Rules of Practice.
 12. Opposer objects to the Interrogatories to the extent that they require Opposer to undertake any investigation to ascertain information not presently within its possession, custody or control on the grounds of undue burden and because information from other sources are equally available to Applicant.
 13. Opposer objects to the Interrogatories to the extent that they require Opposer to undertake such an extensive review of information, persons, or documents and are unduly burdensome and that such requests are harassing.
 14. Opposer objects to the Interrogatories to the extent that they are vague, ambiguous and overbroad and therefore not susceptible to a response as propounded. Opposer objects to the Document Requests to the extent that Opposer seeks the residential addresses of individuals, on the grounds that disclosure of such information impinges on the privacy interest of such individuals.
 15. Opposer objects to these Interrogatories to the extent that they are not limited to use and registration of the marks in issue in the United States.
 16. Opposer objects to the definition of "Identify" when used with reference to natural persons as being overly broad. Where natural persons are identified, they will be identified with sufficient information (if known) to enable Opposer to locate and contact such persons.
 17. Opposer objects to the definition of "Identify" when used with reference to documents, as being overly broad. Where documents are identified, they will be identified with sufficient specificity to enable Opposer to request the same pursuant to a request for documents.

18. Opposer objects to the definition of "Opposer" to the extent it includes "predecessors", "directors", "officers", "employees", "agents", "sales representatives," "distributors," and "all other persons acting or purporting to act on its or their behalf or under its or their control." Opposer is under no obligation to serve each of the persons/entities referred to in the definition and Opposer is only obligated to produce information and documents under its possession or control.
19. Opposer objects to the definition of "Opposer" to the extent it includes "predecessors", "directors", "officers", "employees", "agents", "sales representatives," "distributors," and "all other persons acting or purporting to act on its or their behalf or under its or their control." Without such persons or entities being specifically identified to Opposer, the definition is incomprehensible. Applicant is under no obligation to investigate the identities of each such persons or entities prior to responding to the interrogatories.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each of the owners, assignors and assignees of the Opposer's Marks, from the date of their respective trademarks registrations with the PTO to the present.

Response: Opposer objects to this interrogatory on the grounds that it is unclear what Applicant means by "Opposer's Marks." Without waiver of and subject to the foregoing objection and each and every general objection, to the extent Applicant means the marks owned by Opposer and listed in paragraph 1 of the Notice of Opposition, attached at Schedule A are copies of the assignment information page from the USPTO for each of the four marks owned by Opposer that are listed in paragraph 1 of the Notice of Opposition.

INTERROGATORY NO. 2:

Identify any and all agreements and assignments of the Opposer's Marks, from the date of their respective trademark registrations with the PTO to the present.

Response: Opposer objects to use of the term "agreements" as being vague and ambiguous. Without waiver of and subject to the foregoing objection and each and every general objection, for purposes of answering this interrogatory, Opposer assumes that the term "agreements" refers to assignments or other transfers of interest and refers Applicant to the response to Interrogatory No. 1.

INTERROGATORY NO. 3:

Specify all goods and services BTI has sold or provided in connection with the Opposer's Marks that are intended by BTI to be used on, for or by pets.

Response: Opposer's goods, i.e. shampoo, conditioner, hair cleaning preparations, nail polish, shower and bath foam, shower gel, perfume, cologne, body and facial soaps, cleansers could be used on pets. Opposer's products are intended to be used on anyone or anything that may be appropriate.

INTERROGATORY NO. 4:

State all goods and services sold or provided in connection with the Opposer's Marks that are marketed by or on behalf of BTI for use on, for or by pets.

Response: If by "marketed" Applicant means advertised or promoted, there are none directed or targeted to use for pets. If by "marketed" Applicant means sales, Opposer does not limit sales to any particular group of users.

INTERROGATORY NO. 5:

Identify all marketing materials, including advertisements, promotional materials, and websites, in which the Opposer's Marks are marketed to be used on, for or by pets.

Response: Currently, none.

INTERROGATORY NO. 6:

State in detail the basis for alleging that "goods of the type of Opposer's have been used on pets", as set forth in Paragraph 9 of the Notice of Opposition.

Response: Opposer objects to this interrogatory insofar as it asks for attorney work product. Without waiver of and subject to the foregoing objection and each and every general objection, Opposer notes that it is common knowledge that consumers use products such as those identified in the answer to Interrogatory No. 3 above on or with pets.

INTERROGATORY NO. 7:

State in detail the basis for alleging that "Applicant's Goods are related to the goods offered under Opposer's Marks", as set forth in Paragraph 13 of the Notice of Opposition.

Response: Opposer objects to this interrogatory insofar as it asks for attorney work product. Without waiver of and subject to the foregoing objection and each and every general objection, Opposer notes that Applicant's application lists "shampoo" and Opposer's registrations list "shampoo," Applicant's application lists "conditioner" and Opposer's registrations list "conditioner," and Applicant's application lists "body sprays" and Opposer's registrations list "perfume, cologne and fragrances."

INTERROGATORY NO. 8:

State in detail the basis for alleging that "Applicant's Goods are a natural extension of the product line offered under Opposer's Marks", as set forth in Paragraph 14 of the Notice of Opposition.

Response: Opposer objects to this interrogatory insofar as it asks for attorney work product. Without waiver of and subject to the foregoing objection and each and every general objection, Opposer suggests Applicant look at the website for pet products offered by John Paul, a founder of the John Paul Mitchell Systems company.

INTERROGATORY NO. 9:

State in detail any basis for alleging that Opposer's Marks have acquired secondary meaning for (a) pet goods and (b) any other goods that are not set forth in the respective registrations for the Opposer's Marks.

Response: Opposer objects to this interrogatory on the grounds that it is unintelligible. Not alleged.

INTERROGATORY NO. 10:

Identify specific channels of trade through which goods are sold in connection with the Opposer's Marks, including

- (a) Any and all chains of pet goods stores, web sites, or direct television shows targeted to consumers of pet goods, and
- (b) Any other channels of trade.

Response: Opposer's objects to this interrogatory as vague and ambiguous insofar as what Applicant means by "direct television shows." Upon receipt of a definition, Opposer will be happy to reconsider its response.

INTERROGATORY NO. 11:

(a) State in detail any and all goods and services intended for use or on, by or for pets which Opposer has a bona fide intent to sell; (b) state the date Opposer commenced planning for sale of any such goods; and (c) identify any documents concerning any such intent.

Response: Opposer objects to this interrogatory on the grounds that it is unintelligible.

INTERROGATORY NO. 12:

State in detail any and all instances of actual confusion between the goods of Opposer that are sold in connection with the Opposer's Marks and the goods of Applicant that bear any trademark that includes the name "Borghese."

Response: Opposer objects to this interrogatory as vague and ambiguous and not capable of being answered as Applicant's trademark application was filed as intent-to-use and, as far as Opposer is aware, Applicant is not yet selling goods that bear a trademark which includes the name "Borghese."

INTERROGATORY NO. 13:

Identify the person(s) who provided information necessary to answer each of the foregoing interrogatories and specify, for each such person, the interrogatory for which such person(s) provided information.

Response: Neil Petrocelli.

As to Responses:

I, Neil A. Petrocelli, have reviewed the responses to Applicant's Interrogatories set forth above and state that pursuant to 28 U.S.C. § 1746, and under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date: July 22, 2009

By:



Neil A. Petrocelli
Vice President, Marketing of Borghese, Inc.
On behalf of Borghese Trademarks Inc. under the Advisory
Services Agreement between Borghese Inc. and
Borghese Trademarks Inc.

As to Objections Only:

Date: July 22, 2009

By:



Stephen L. Baker
Moira J. Selinka
BAKER and RANNELLS, PA
575 Route 28, Suite 102
Raritan, New Jersey 08869
(908) 722-5640
Attorneys for Opposer, Borghese Trademarks, Inc.

EXHIBIT B

To Declaration of Jolie Apicella

Applicant's Reply Memorandum of Law in Further Support
of Applicant's Motion for Summary Judgment

Borghese Trademarks, Inc. v. MultiMedia Exposure, Inc., No. 91189629

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

-----	X	
BORGHESE TRADEMARKS, INC.,	:	Opposition Proceeding No. 91189629
Applicant-Opposer,	:	
-- against --	:	Mark: PRINCE LORENZO BORGHESE'S LA DOLCE VITA
MULTI MEDIA EXPOSURE, INC.	:	Serial No. 77435171
Defendant-Applicant	:	
-----	X	

**APPLICANT'S RESPONSES TO LIMITED DISCOVERY REQUESTS OF
OPPOSER BORGHESE TRADEMARKS, INC.**

Applicant Multi Media Exposure, Inc. ("Applicant") responds to the First Set of Interrogatories, First Set of Request for Production of Documents, and First Set of Requests for Admission (together "Discovery Requests") of Opposer Borghese Trademarks, Inc. ("Opposer"), as directed and limited by the TTAB's Order dated November 25, 2009, as follows:

GENERAL OBJECTIONS

1. The following general objections are incorporated by reference in Applicant's response to each and every Discovery Request set forth below.
2. The specific responses set forth below are for the purposes of discovery only, and Applicant neither waives nor intends to waive, but expressly reserves, any and all objections it may have to the relevance, competence, materiality, admission, admissibility or use at trial of any information, documents or writing produced, identified

or referred to herein, or to the introduction of any evidence at trial relating to the subjects covered by such response.

3. Applicant expressly reserves its right to rely, at any time including trial, upon subsequently discovered information or information omitted from the specific response set forth below as a result of mistake, oversight or inadvertences.

4. The specific responses set forth below are based upon Applicant's interpretation of the language used in the Discovery Requests and Applicant reserves its right to amend or to supplement its responses in the event Applicant asserts an interpretation that differs from Applicant's interpretation.

5. By making these responses, Applicant does not concede it is in possession of any Information responsive to any particular Discovery Request or that any response given is relevant to this action.

6. Subject to and without waiving the general and specific responses and objections set forth herein, Applicant will provide herewith information that Applicant has located and reviewed to date. Applicant will continue to provide responsive information as such is discovered. Applicant's failure to object to a particular Discovery Request or willingness to provide responsive information pursuant to a Discovery Request is not, and shall not be construed as, an admission of the relevance, or admissibility into evidence, of any such information, nor does it constitute a representation that any such information in fact exists.

7. Because Applicant may not have discovered all the information that is possibly within the scope of the Discovery Request, Applicant expressly reserves its right

to amend or to supplement these responses and Objections with any additional information that emerges through discovery or otherwise.

8. Applicant objects to the Discovery Requests to the extent that they require a response that is protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege or any other applicable privilege or immunities. Applicant responds to the Discovery Requests on the condition that the inadvertent response regarding information covered by such privilege, rule or doctrine does not waive any of Applicant's right to assert such privilege, rule or doctrine and the Applicant may withdraw any such response inadvertently made as soon as identified.

9. Applicant objects to the Discovery Requests to the extent that they seek proprietary, sensitive, or confidential commercial information or information made confidential by law or any agreement or that reflects trade secrets. Applicant responds to the Discovery Requests on the condition that the inadvertent responses regarding any proprietary, sensitive, or confidential information does not waive any of Applicant's rights and that Applicant may withdraw any such response inadvertently made as soon as identified.

10. Applicant objects to the Discovery Requests to the extent that they seek information that is not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

11. Applicant objects to the Discovery Requests to the extent that they exceed the requirements of the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

12. Applicant objects to the Discovery Requests to the extent that they require Applicant to undertake any investigation to ascertain information not presently within its possession, custody or control on the grounds of undue burden and because information and documents from other sources are equally available to Applicant.

13. Applicant objects to the Discovery Requests to the extent that they require Applicant to undertake such an extensive review of information, persons, or documents and are unduly burdensome and that such requests are harassing.

14. Applicant objects to the Discovery Requests to the extent that they are vague, ambiguous and overbroad and therefore not susceptible to a response as propounded.

15. Applicant objects to these Discovery Requests to the extent that they are not limited to use and registration of the marks in issue in the United States.

SPECIFIC RESPONSES TO DISCOVERY REQUESTS

INTERROGATORY NO. 4: Identify all of Applicant's intended distributors, suppliers, sellers, and licensees of Applicant's Goods bearing Applicant's Mark and identify the goods involved.

RESPONSE: PetSmart, Inc. ("PetSmart"). Pet shampoos, pet conditioners, pet spritzes, and paw moisturizing creams.

INTERROGATORY NO. 5: Identify all trade channels through which Applicant's Goods bearing Applicant's Mark will be sold in the United States.

RESPONSE: PetSmart's retail stores and web site.

INTERROGATORY NO. 9: Identify all ingredients to be used in the formulation of Applicant's goods that are pet-specific, that is, to be used only on animals.

RESPONSE: Shampoo: Aqua (water), magnesium laureth sulfate, parfum (fragrance), PEG-120 methyl glucose dioleate, disodium laureth sulfosuccinate, PPG-26-Buteth-26, PEG-40 hydrogenated castor oil, cocamidopropyl betaine, laureth-2, PEG/PPG-120/10 trimethylolpropane trioleate, magnesium sulfate, magnesium nitrate, aloe barbadensis extract (leaf) extract, butyl methoxydibenzoylmethane, carrageenan (chondrus crispus), ethylhexyl methoxycinnamate, glycerin, cucumis sativus extract (cucumis sativus (cucumber) fruit extract), hydrolyzed silk, magnesium chloride, calcium gluconate, glucosamine HCL, hydrolyzed actin, mannitol, sodium chloride, sodium glucuronate, sorbitol, methylchloroisothiazolinone, methylisothiazolinone, CL 42090 (FD&C Blue No. 1).

Vanilla Shampoo: Aqua (water), magnesium laureth sulfate, parfum (fragrance), disodium laureth sulfosuccinate, PPG-26-Buteth-26, PEG-40 hydrogenated castor oil, cocamidopropyl betaine, PEG-120 methyl glucose dioleate, laureth-2, PEG/PPG-120/10 trimethylolpropane trioleate, magnesium sulfate, butyl methoxydibenzoylmethane, ethylhexyl methoxycinnamate, vanilla planifolia extract, hydrolyzed milk protein, hydrolyzed oat protein, hydrolyzed silk, hydrolyzed sweet almond protein, magnesium nitrate, magnesium chloride, methylchloroisothiazolinone, methylisothiazolinone, dextrin, CL 15985 (FD&C Yellow No. 6).

Conditioner: Aqua (water), cetearyl alcohol, dipalmitoylethyl hydroxyethylmonium methosulfate, parfum (fragrance), cetareth-20, cetrimonium chloride, aloe barbadensis extract (leaf), cucumis sativus (cucumis sativus (cucumber) fruit extract), mannitol, sodium chloride, hydrolyzed silk, hydrolyzed actin, calcium gluconate, glucosamine HCL, sodium glucuronate, magnesium nitrate, magnesium

chloride, methylchloroisothiazolinone, methylisothiazolinone, CL 42090 (FD&C Blue No. 1).

Vanilla Conditioner: Aqua (water), cetearyl alcohol, dipalmitoylethyl hydroxyethylmonium methosulfate, parfum (fragrance), cetareth-20, cetrimonium chloride, hydrolyzed oat protein, hydrolyzed silk, hydrolyzed sweet almond protein, ethylhexyl methoxycinnamate, magnesium nitrate, magnesium chloride, dextrin, vanilla planifolia extract, hydrolyzed milk protein, methylchloroisohiazolinone, methylisothiazolinone, dextrin, CL 15985 (FD&C Yellow No. 6).

Spritz: Aqua (water), parfum (fragrance), PEG-40 hydrogenated castor oil, PEG/PPG-20/6 dimthicone, coceth-7, PEG-1-PEG-9 lauryl glycol ether, DMDM hydantoin, aloe barbadensis extract (leaf) extract, ethylhexyl methoxycinnamate, iodopropynyl, butylcarbamate, glycerin, carrageenan (chondrus crispus) sorbitol, cucumis sativus extract (cucumis sativus (cucumber) fruit extract), mannitol, sodium chloride, hydrolyzed silk, hydrolyzed actin, calcium gluconate, glucosamine HCL, sodium glucuronate, CL 42090 (FD&C Blue No. 1).

Vanilla Spritz: Aqua (water), PEG-26-Buteth-26, PEG-40 hydrogenated castor oil, parfum (fragrance), PEG/PPG 20/6 dimethicone, butyl methoxydibenzoylmethane, ethylhexyl methoxycinnamate, hydrolyzed oat protein, hydrolyzed silk, hydrolyzed sweet almond protein, dextrin, vanilla planifolia extract, hydrolyzed milk protein, DMDM hydantoin, iodopropynyl, butylcarbamate, CL 15985 (FD&C yellow no. 6).

Paw moisturizing cream: Aqua (water), glycerin, cyclopentasiloxane, propylheptyl caprylate, parfum (fragrance), simmondsia chinensis(simmondisia chinensis (jojoba) seed oil), cocoglycerides, sodium polyacrylate, phenoxyethanol, myristyl

alcohol, imidazolidinyl urea, olus, allantoin, panthenol, tetrasodium EDTA, carrageenan (chondrus crispus), aloe barbadensis extract (leaf), cucumis sativus (cucumis sativus (cucumber) fruit extract), hydrolyzed silk, calcium gluconate, glucosamine HCL, hydrolyzed actin, mannitol, sodium chloride, sodium glucuronate, sorbitol, methylparaben, butylparaben, ethylparaben, isobutylpaben, propylparaben, CL 42090 (FD&C Blue No. 1).

Vanilla paw moisturizing cream: Aqua (water), glycerin, cyclopentasiloxane, propylheptyl caprylate, parfum (fragrance), simmondsia chinensis(simmondsia chinensis (jojoba) seed oil), cocoglycerides, sodium polyacrylate, phenoxyethanol, myristyl alcohol, imidazolidinyl urea, olus, allantoin, panthenol, hydrolyzed sweet almond protein, hydrolyzed milk protein, hydrolyzed oat protein, hydrolyzed silk, tetrasodium EDTA, methylparaben, butylparaben, ethylparaben, isobutylpaben, propylparaben, CL 15985 (FD&C Yellow No. 6).

INTERROGATORY NO. 10: Identify the facility where Applicant's Goods are produced or are intended to be produced.

RESPONSE: The response to this Interrogatory is deemed TRADE SECRET/COMMERCIALY SENSITIVE, subject to the Protective Order for such information, and will be provided in a supplemental response.

INTERROGATORY NO. 11: Identify all tradeshow in the United States where any of Applicants' Goods bearing Applicant's Mark have been promoted and/or displayed.

RESPONSE: None.

DOCUMENT REQUEST NO. 2: Produce copies of all newspaper, magazine, newsletter, internet, trade journal and other articles in Applicant's possession that were distributed in or published in the United States and that mention or refer to Applicant's Mark.

RESPONSE: None.

DOCUMENT REQUEST NO. 3: Produce copies of all advertisements and/or promotional materials that Applicant plans to distribute or air in the United States concerning Applicant's Goods bearing Applicant's Mark.

RESPONSE: None.

DOCUMENT REQUEST NO. 8: Produce a copy of each business plan and a copy of each marketing plan created at any time that concerns the intended use of Applicant's Mark in the United States.

RESPONSE: None.

DOCUMENT REQUEST NO. 9: Produce documents sufficient to identify each (1) wholesaler, (2) distributor, and (3) retailer that has agreed to sell any of Applicant's Goods bearing Applicant's Mark in the United States.

RESPONSE: Applicant will provide a responsive document.

REQUEST FOR ADMISSION NO. 10: Admit that Applicant did not attempt to obtain Opposer's consent to use Applicant's Mark before filing an application to register Mark.

RESPONSE: Denies that Applicant's Mark required Opposer's consent, and admits that Applicant did not request the same.

REQUEST FOR ADMISSION NO. 18: Admit that the mention of Princess Marcella Borghese on Applicant's website was intentional.

RESPONSE: Assuming that "Applicant's website" refers to www.multimediaexposure.com, Applicant notes that Applicant's Mark is not mentioned thereon, and admits that Applicant intentionally mentioned Princess Marcella Borghese as the mother and grandmother of two of Applicant's staff members, Prince Francesco Borghese and Prince Scipione Borghese.

REQUEST FOR ADMISSION NO. 19: Admit that the mention of Princess Marcella Borghese Cosmetic Line on Applicant's website was intentional.

RESPONSE: Assuming that "Applicant's website" refers to www.multimediaexposure.com, Applicant notes that Applicant's Mark is not mentioned therein, and admits that Applicant intentionally mentioned Princess Marcella Borghese as the mother and grandmother of two of Applicant's staff members, Prince Francesco Borghese and Prince Scipione Borghese, and that the Princess founded the cosmetic line bearing her name.

REQUEST FOR ADMISSION NO. 20: Admit that the mention of Princess Marcella Borghese on Applicant's website could lead potential customers to believe Applicant's goods and Opposer's goods originate from the same source.

RESPONSE: Applicant objects to this request on the grounds that it is overly broad as it refers to goods other than the pet goods at issue in this opposition proceeding, and does not address the fact that Applicant's Mark is not mentioned on the web site www.multimediaexposure.com. Subject to and without waiving any of its objections, Applicant responds as follows: Denied.

REQUEST FOR ADMISSION NO. 21: Admit that the mention of the Princess Marcella Borghese Cosmetic Line on Applicant's website could lead potential Customers to believe Applicant's goods and Opposer's goods originate from the same source.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 22: Admit that the mention of Princess Marcella Borghese on Prince Lorenzo Borghese's Royal Treatment website located at www.getroyaltraetment.com/about.thtm (attached hereto at Exhibit A) could lead Potential customers to believe Applicants goods and Opposer's goods originate from the same source.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 23: Admit that the mention of Princess Marcella Borghese Cosmetic Line on Prince Lorenzo Borghese's Royal Treatment website located at www.getroyaltrayment.com/about.thtm (attached hereto at Exhibit A) could lead Potential customers to believe Applicant's goods and Opposer's goods originate from the same source.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 24: Admit that Applicant's Goods are being formulated in a human cosmetic facility.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 25: Admit that the executive Vice President of Applicant, namely, Prince Lorenzo Borghese, uses the name of Princess Marcella Borghese for publicity purposes.

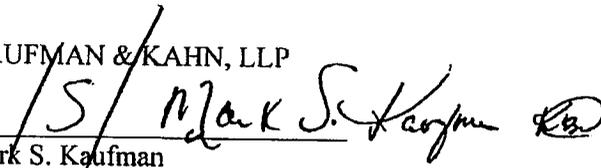
RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 26: Admit that the Executive Vice President of Applicant, namely, Prince Lorenzo Borghese, uses the name of Princess Marcella Borghese Cosmetic Line for publicity purposes.

RESPONSE: Denied.

Dated: New York, New York
January 8, 2010

KAUFMAN & KAHN, LLP


Mark S. Kaufman

747 Third Avenue, 32nd Floor

New York, NY 10017

Tel.: (212) 293-5556

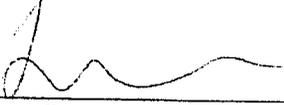
Fax: (212) 355-5009

Email: kaufman@kaufmankahn.com

LORENZO BORGHESE declares that he is the Vice President of Applicant Multi Media Exposure, Inc. (the "Corporation"); that as such he is authorized to execute this declaration on behalf of the Corporation; that he has read and approved the foregoing Responses (the "Responses") to the Limited Discovery Requests (the "Requests") of Opposer Borghese Trademarks, Inc; that the Responses represent the Applicant's best efforts in good faith to respond to the Opposer's Requests; and that the Responses are not interposed for delay or for any improper purpose.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury, that the foregoing is true and correct.

Dated: New York, New York
January 8, 2010



Lorenzo Borghese

EXHIBIT C

To Declaration of Jolie Apicella

Applicant's Reply Memorandum of Law in Further Support
of Applicant's Motion for Summary Judgment

Borghese Trademarks, Inc. v. MultiMedia Exposure, Inc., No. 91189629



ACETO

*Balsamico
di Modena*



VILLA
BORGHESI

Βαλκανικό ξύδι της Μόντενα
Balsamico di Modena
Balsamic Vinegar of Modena
Balsamessig of Modena
Παράγεται στην Μόντενα

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concentrated grape must, dye
sulphites E220. Zutaten:
konzentrierter Traubenmost
E220, Antioxidationsmittel E220
Acidity / Säuregehalt: 6%

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CUTCHOGUE, NY

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750 ML



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Fendi Selleria Small Villa Borghese Handbag

bagborroworsteal.com

A statement of Fendi fashion and the classic symbol of strength, a stately horse is embossed on powder-pink leather with a pebbled finish. The two leather handles of this Fendi handbag are finished...

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Liberty.co.uk

Fendi Villa Borghese Alligator

-

Jan 21, 2006 / Posted in [Fendi Handbags](#) by Vlad Dusil.



It's Fendi time! Our forum member **TheArtofAcquisition** did some research regarding the rare Wisteria Spy Bags at Fendi Hawaii and got a whole bunch of images in return that she kindly shared with us. Thanks a lot! We are still seeing if we can grab the prices on all the bags that I will be sharing with you today, but my feeling tells me that most of them are going to range in the "beyond-affordable" range.

First in the lineup is the **Fendi Villa Borghese in Alligator**, which comes in the pictured two shades, as well as in pink and bordeaux. I'm digging the bowler shape of the bag, I think it would look particularly fantastic in bordeaux red.

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Home > Home & Garden > Furniture > Bedroom Furniture > Dressers & Nightstands > borghese furniture

Borghese furniture in Dressers & Nightstands

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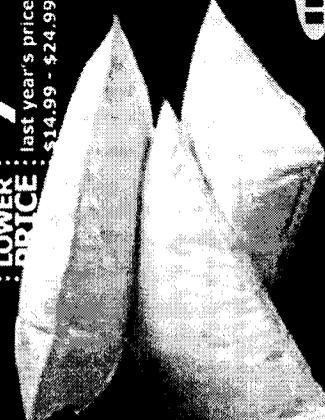
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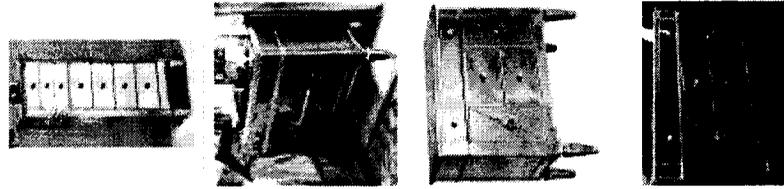


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Over \$1,000

\$ 399 minimum to \$ 1281 maximum

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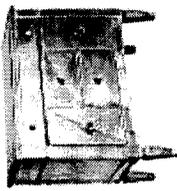
[Borghese Mirrored Hall Chest Mirrored Fu...](#)

\$667.00

go to store

eBay

store rating: ●



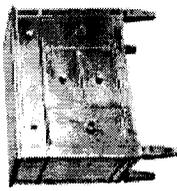
[Borghese Mirrored Nightstand, 35"Hx...](#)

\$699.00

go to store

Amazon Marketplace

store rating: ●



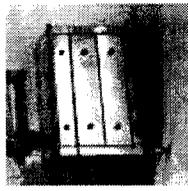
[Borghese Mirrored Nightstand 35"Hx3...](#)

\$699.00

go to store

HOME DECORATORS
collection

store rating: ●

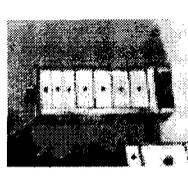


[Bassett Mirror Borghese Hall Chest](#)

\$1,243.39

go to store

Furniture Superstore

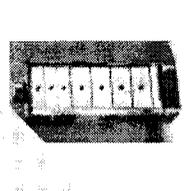


[Bassett Mirror Borghese Lingerie Chest](#)

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The Impulsive Traveler

BY NANCY TREJOS

Shortly after I walked into Long Island's Castello di Borghese vineyard, I found myself in the company of a prince and princess.

It's actually quite common at this small vineyard on the North Fork of Long Island, N.Y., for Castello di Borghese is owned by Italian-born Prince Marco Borghese, whose titled family traces its heritage to 9th-century Tuscany, and his Delaware-born wife, Ann Marie. And they make sure that one of them is always around to greet customers.

That, the princess told me as we sat at a small blue table near the vineyard's tasting room one cold December morning, just before my tour with Marco, is what sets Long Island wine country apart from its more famous counterparts in California. (That would be Napa and Sonoma, but try not to utter those names on the Island.)

"Every single person who comes here is greeted with eye contact," Ann Marie said, her blond hair flowing over her shoulders, her mustard-colored scarf tied delicately around her neck, her gold bee-shaped earrings distracting me with their glow. "It's a region that's much more friendly."

I soon discovered that for myself. All of the other vineyard owners and winemakers I met during my two-day tour of the North Fork in the East End of Long Island, a region overshadowed by the much glitzier Hamptons, were as approachable and friendly as the Borgheses. It was nothing like what I'd experienced during a visit to Napa years ago.

The North Fork's first winery opened in 1973, but only in recent years has the region, a 90-minute drive from Manhattan, become a winemaking force. Each of its more than 30 vineyards produces between 600 and 60,000 cases of wine a year. The region ranked ninth on TripAdvisor's list of the top 10 North American wine destinations (beating Virginia, by the way). Its wines have won numerous awards. Its fresh seafood and produce have attracted a number of highly acclaimed chefs, who have opened restaurants here. In 2009, attendance at the vineyards' tasting rooms was up 20 percent from the year before, said Steven Bate, executive director of the Long Island Wine Council. The annual winterfest called "Jazz on the Vine" draws a number of respected musicians (this year's event kicks off Feb. 13).

The North Fork's unique geography makes it ideal for growing wine. Nestled between the Long Island Sound to the north, the Great Peconic Bay to the south and the Atlantic Ocean to the east, it's protected from frost. Temperatures dip at night, preserving the natural



NANCY TREJOS/THE WASHINGTON POST

Princess Ann Marie Borghese, who owns the Castello di Borghese Vineyard with her husband, Marco, pours out a sample in the winery's tasting room.



LARIS KARKLIS/THE WASHINGTON POST

acidity in the grapes. The sandy soil provides natural drainage.

But geography alone doesn't make a good bottle of wine.

"Grape growers are really hitting their strides in the vineyard," said Lenn Thompson, editor in chief of the blog New York Cork Report. "It seems like more winemakers have also stopped trying to make wines that are 'like' Bordeaux or 'like' California. More of them are making true Long Island wines now that express the uniqueness of the region."

I started my wine tasting in Castello di Borghese's elegant and cozy tasting room in Cutchogue. To begin, Princess Ann Marie poured me some Founder's Field 2007 sauvignon blanc. It smelled of peaches and vanilla and tasted crisp and bright. I tried a few more whites before moving on to the 2005 Estate cabernet franc. It was spicy, with a hint of blackberries and cherries.

At Palmer Vineyards in Aquebogue, I had a different tasting experience. Winemaker Miguel Martin let me try the wines straight out of their stainless-steel tanks. The smell of the freshly pressed grape juice was too pungent for me at first, but the more I sniffed it, the

more I could distinguish the nuances. A rosé smelled of rose petals, bubble gum and peach all at once. A sauvignon blanc tasted a bit like grapefruit and lemon. It was cold and windy outside, and the wines were making me yearn for summer.

I spent the night at Shinn Estate Vineyards in Mattituck, which has a lovely B&B on the grounds. The next morning, after a hearty breakfast that included a duck egg from a nearby farm and bacon cured on the property, I took a tour with co-owner Barbara Shinn. She and her husband, David Page, had owned a restaurant in Greenwich Village called Home, but after a few years in the city, they decided that their real home should be in the country. They bought their property in 1998.

Shinn and Page practice sustainable farming, something many experts had said couldn't be done in the North Fork or on the East Coast because humid conditions make it difficult to grow grapes without the aid of chemicals. They don't use artificial chemicals, and they let the grass grow beneath the vines, which attracts the good bugs that kill the bad bugs, Shinn told me as we strolled through the vineyard. "The farm has become a beautiful wildlife habitat," she said proudly.

Their philosophy extends to the winery. Page told me that they add no tannins, enzymes or coloring to their wines. Though it's not required, they recently started listing the ingredients on each bottle label. "I think it's really important for people to know where their wine is coming from, as much as where their food is coming from," Page said.

Before I left Shinn Estate, I sampled a few wines. I was amused by some of the

The Impulsive Traveler

Long Island wineries hit their stride

names: Rebellion, Wild Boar Doc, Clarity. A 2007 cabernet franc had a lot of structure and spice. A 2006 cabernet sauvignon tasted a bit like red raspberries.

Next, I visited Lisa and Anthony Sannino of Bella Vita Vineyard. These Long Island natives are doing something few other vineyard owners are: letting people become winemakers. For \$4,500 a year, members grow and harvest enough grapes on the Sanninos' five acres in Cutchogue to make 275 bottles of wine. The membership includes winemaking lessons, barrel storage, bottling and labeling. Anthony, a general contractor who took viticulture courses online with the University of California at Davis and trained at several Long Island vineyards, calls what he's doing "hobbies gone wild."

"You have a completely different appreciation of wine" when you grow it yourself, he said.

My appreciation of wine increasing by the minute, I drove to Roanoke Vineyards in Riverhead. Owner Richard Pisacano's vineyard, founded in 2000, produces 2,000 to 3,000 cases a year. What makes his vineyard unique is that he produces only reds. We sampled several cabernet sauvignons, cabernet francs and merlots. Pisacano told me that he wants North Fork wines to gain respect nationwide but that, unlike most of his competitors, who distribute to restaurants and retailers outside Long Island, he refuses to wholesale his wines. "How small can we be to survive?" he said. "The idea is to keep it very, very simple."

For my final stop, I chose the Martha Clara Vineyards, owned by the Entenmann family of baked-goods fame.

I walked into a gift shop as big as many of the tasting rooms I'd been to. The 200-plus-acre property also houses three art galleries and a mini zoo with llamas and donkeys. In warm weather, there are horse-and-carriage rides for kids. The property, in Riverhead, hosts many weddings, fashion shows and film festivals.

General manager Bob Kern knows that Martha Clara has been called the Disney World of the North Fork vineyards, but he doesn't care. "Wine snobs have children, too," he said as we sat in one of the many private tasting rooms. "Our motto is this, and it's simple: We take making wine seriously. We don't take ourselves seriously."

What would you expect from the makers of Frosted Pop'ems?

Still, his comment reminded me of something Pisacano had told me: that the first North Fork vineyards were owned by rich lawyers and venture capitalists who considered winemaking a hobby.

Those days are long gone. It's serious business now.

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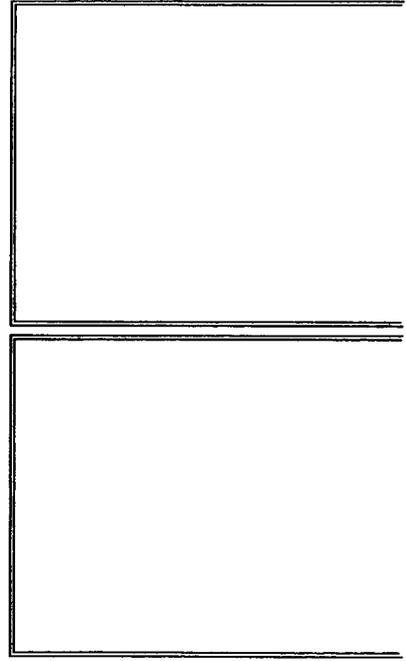
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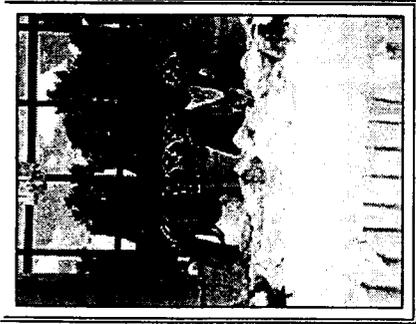


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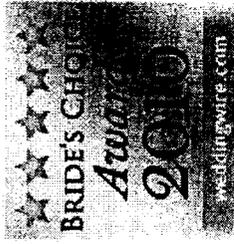
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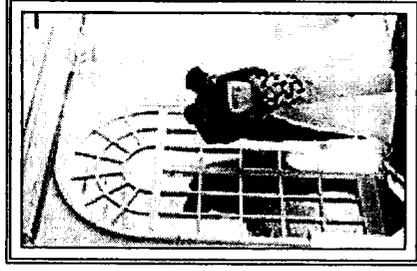


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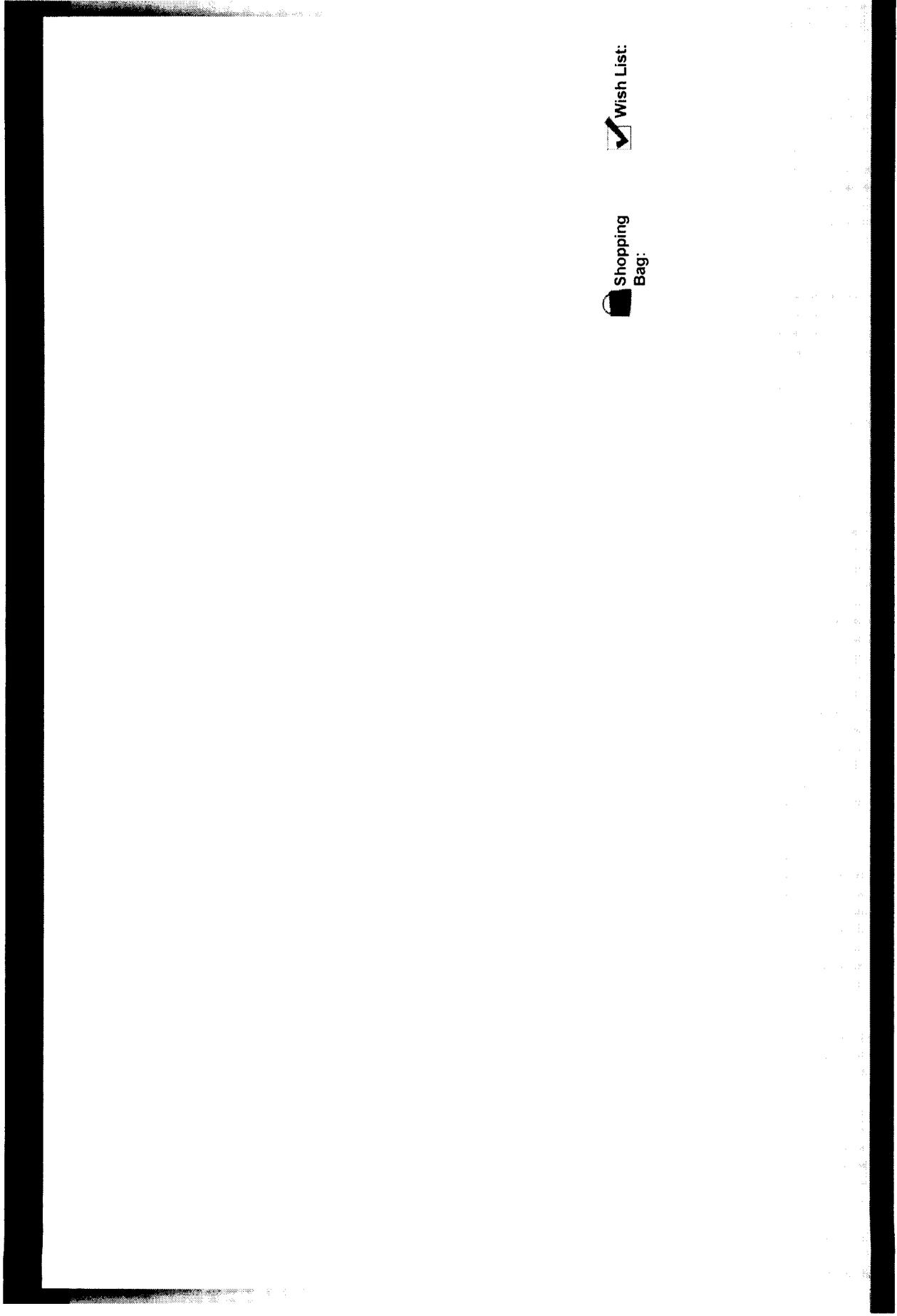


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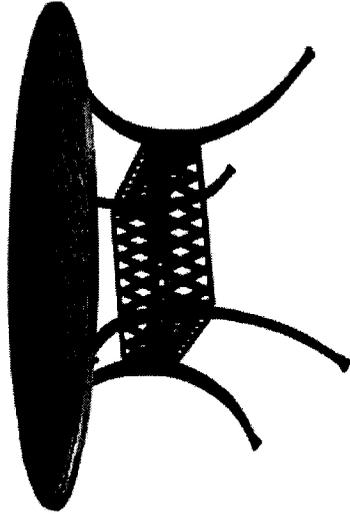
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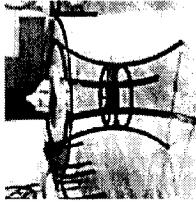
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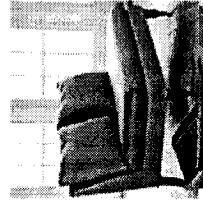
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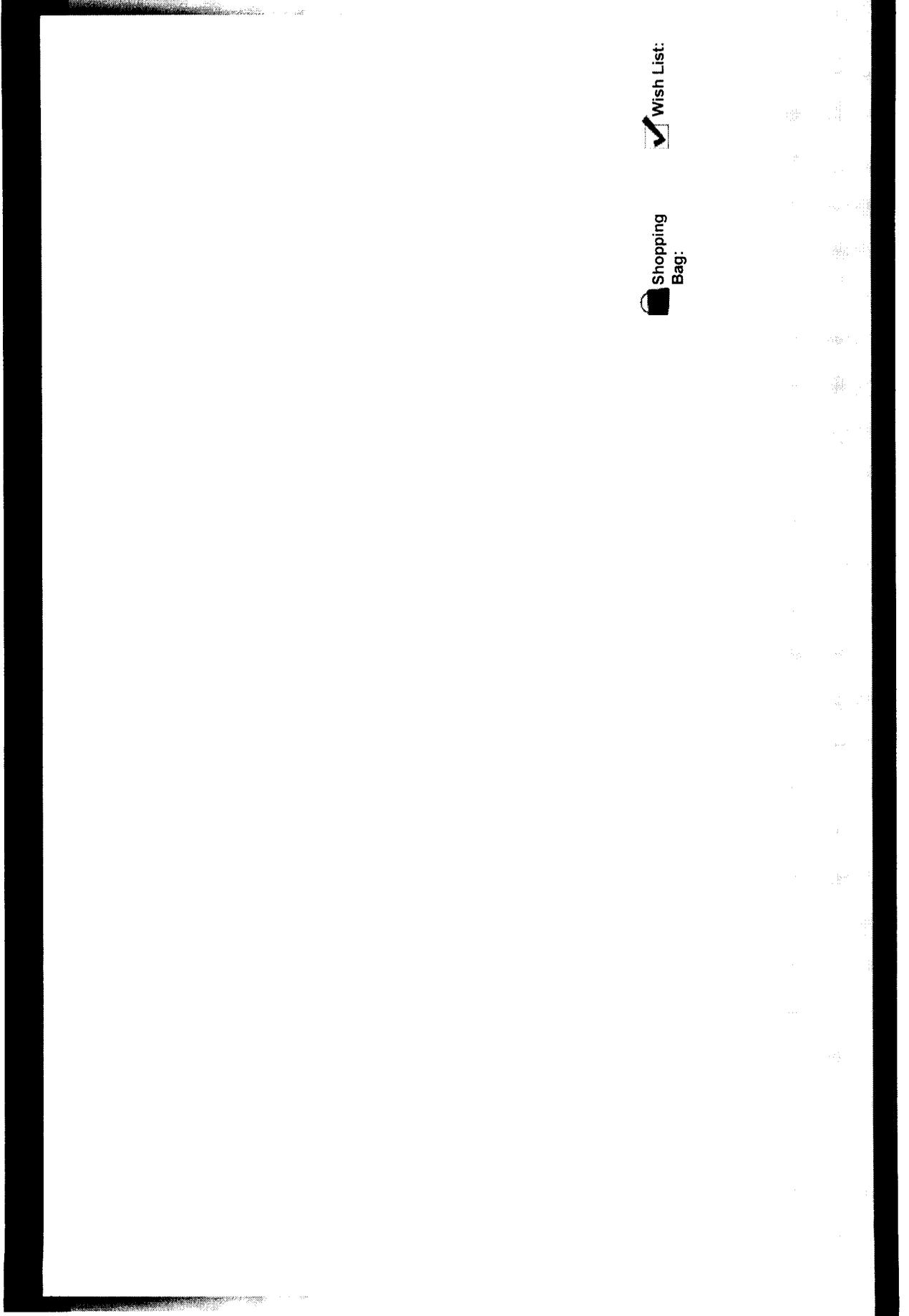
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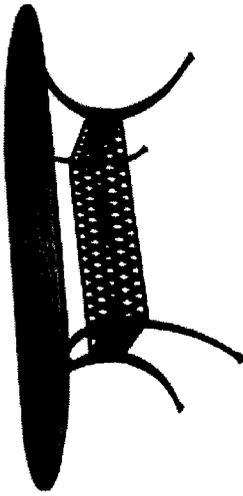
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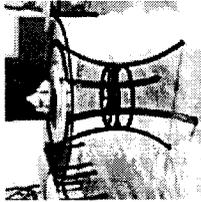


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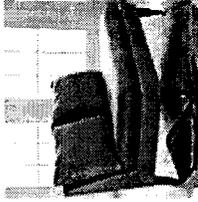
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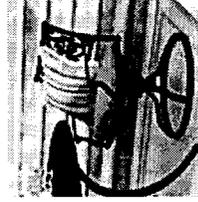
Lucianna Table with Glass Top

HSN Price: \$129.99



Nate Berkus™ Studio Sofa

HSN Price: \$499.90



Amalfi Swivel Rocker

Price: \$299.00

Description

Sculpted curves lend our Amalfi/Borghese Dining Table a refined, European elegance. And because each piece is crafted of extremely strong cast aluminum, the details can be more ornate and finely rendered.

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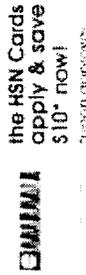
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Applicant's Reply Memorandum of Law in Further Support
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Mark Drawing Code	76692483
Serial Number	August 29, 2008
Filing Date	1A
Current Filing Basis	

Original Filing Basis 1A
 Published for Opposition July 28, 2009
 Registration Number 3694488
 Registration Date October 13, 2009
 Owner (REGISTRANT) Castello Di Borghese, LLC LIMITED LIABILITY COMPANY NEW YORK Route 48 and Alvah's Lane Cutchogue NEW YORK 11935
 Attorney of Record PANAGIOTA BETTY TUFARIELLO
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Registration Date October 13, 2009
Owner (REGISTRANT) Castello Di Borghese, LLC LIMITED LIABILITY COMPANY NEW YORK Route 48 and Alvah's Lane Cutchogue NEW YORK 11935
Attorney of Record PANAGIOTA BETTY TUFARIELLO
Prior Registrations 2660004
Description of Mark Color is not claimed as a feature of the mark.
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

- [TESS HOME](#)
- [NEW USER](#)
- [STRUCTURED](#)
- [FREE FORM](#)
- [BROWSE BY DIST](#)
- [SEARCH OQ](#)
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EXHIBIT E

To Declaration of Jolie Apicella

Applicant's Reply Memorandum of Law in Further Support
of Applicant's Motion for Summary Judgment

Borghese Trademarks, Inc. v. MultiMedia Exposure, Inc., No. 91189629



BORGHESE

CURA DI VITA
PROTETTIVO

PROTECTIVE
MOISTURIZER SPF 15

LOTION HYDRATANTE
PROTECTRICE FPS 15

1.7 FL. OZ./50 ml e

CURA DI VITA PROTETTIVO
PROTECTIVE MOISTURIZER SPF 15
LOTION HYDRATANTE PROTECTRICE FPS 15

Daily protective moisturizer for normal-to-dry skin. Specially formulated to provide maximum moisturization and continuous protection against dehydration. With the exclusive Filtrex™ sunscreen system, this lightweight lotion moisturizes and protects your skin from premature aging caused by environmental hazards, such as UV light and pollution.

WARNING: For external use only. Not to be swallowed. Avoid contact with eyes. If contact occurs, rinse eyes thoroughly with water. Discontinue use if signs of irritation or rash appear. If irritation or rash persists, consult a doctor. Keep out of reach of children.

Un idratante protettivo da usare quotidianamente, per le pelli secche o normali. Concepito in modo particolare per conferire la massima idratazione ed una protezione continua contro la perdita di umidità della pelle. Provvista del sistema di filtro solare esclusivo Filtrex™, questa leggera lozione idratante protegge la pelle dall'invecchiamento precoce causato da fattori ambientali quali i raggi ultravioletti e l'inquinamento.

ATTENZIONE: Solo per uso esterno. Non ingerire. Evitare il contatto con gli occhi. In caso di contatto, risciacquare accuratamente con acqua. Smettere di usare in presenza di segni di irritazione o eruzione cutanea. Se tali segni di irritazione o eruzione cutanea persistono, consultare un medico. Tenere fuori dalla portata dei bambini.

Lotion hydratante et protectrice à l'usage quotidien pour la peau normale ou sèche. Spécialement formulée pour une maximum hydratation et une protection continue contre le dessèchement. Enrichie de l'écran solaire exclusif Filtrex™, cette lotion légère hydrate et protège la peau contre le vieillissement prématuré dû aux agressions des rayons UV et de la pollution.

ATTENTION: Usage externe seulement. Ne pas avaler. Éviter le contact avec les yeux. En cas de contact, rincer les yeux complètement avec d'eau. Cesser l'emploi si une éruption apparaît. Si l'éruption persiste, consulter avec un médecin. Tenir éloignée des enfants.

Made for/Fabriqué pour
© Princess Marcella Borghese®
New York, NY 10016 Milano • London • Tokyo
Made in U.S.A./Fabriqué aux É.U. 4810-17
www.borghese.com



BORGHESE



7 39581 02438 8

Protective Moisturizer SPF 15

Iidratante Protettivo SPF 15

Lotion Hydratante
Protectrice FPS 15

Schützender
Feuchtigkeitsspender SPF 15

Hidratante
Protector Con FPS 15



ACTIVE INGREDIENTS:

ETHYLHEXYL METHOXYMETHANATE 7.5%
BENZOPHENONE-3 5.0
ETHYLHEXYL SALICYLATE 5.0

INACTIVE INGREDIENTS

WATER (AQUA) • ETHYLENE GLYCOL •
PROPYLENE GLYCOL DICAPRYLATE
DICAPRYLATE • ISOSTEARYL NEOPENTANATE
• STEARIC ACID • GLYCERIN •
COCO-CAPRYLATE/CAPRYLATE • POLYSORBATE
80 • RIBES NIGRUM (BLACK CURRANT)
EXTRACT • TOCOPHERYL ACETATE •
FRAGRANCE (PARFUM) • SODIUM PCA •
SEA SALT (MARTINIS) • SQUALANE •
GLYCERYL STEARATE • SORBITAN STEARATE •
TRITHANOLAMINE • HYALURONIC ACID •
MAGNESIUM ASCORBYL PHOSPHATE •
COLLAGEN AMINO ACIDS • HYPOPHOSPHITE
COLLAGEN • B-SITOSTEROL • TOUALENE •
GLYCOURYL LINDOLEIC ACID • LINDOLEIC
ACID • PHYTOSTEROL • ADENOSINE
TRIPHOSPHATE • SODIUM HYALURONATE •
HYDROXYETHYL CELLULOSE • DIMETHICONE
POLYSILOXANE • MAGNESIUM
SULFATE

braun
Required for Return
Return Label
0020097381400





KIEHL'S
BORGHESI

Age-Defying Protective Moisture Lotion SPF 15

- For all skin types
- Dermatologist-tested
- Lightweight daily moisturizer helps refine texture, replenish essential nutrients and hydrate the skin
- SPF 15 helps protect skin from the sun's harmful rays



KEY INGREDIENTS:
Rice Bran Protein, Mineral Salts
& Sea Salts

3.4 FL OZ (100 mL)



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- For all skin types
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EXHIBIT F

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Borghese Trademarks, Inc. v. MultiMedia Exposure, Inc., No. 91189629

1 proposals that you reviewed?

2 MR. RASKOPF: Objection to the form
3 of the question.

4 THE WITNESS: I had to approve it.

5 BY MR. FRIEDMAN:

6 Q Okay. Was there anybody else who was
7 involved in that decision making process?

8 A The PetSmart buyer.

9 Q So you're saying that the Prince
10 Lorenzo Borghese La Dolce Vita branding is a
11 private label for PetSmart?

12 A That is correct.

13 Q Is it only sold at PetSmart?

14 A Yes.

15 Q And, to your knowledge, is it
16 currently being sold in PetSmart at this time?

17 MR. RASKOPF: Asked and answered.

18 THE WITNESS: Are we going to repeat
19 the same questions over again?

20 MR. RASKOPF: He already answered it.

21 MR. FRIEDMAN: Unfortunately, it's my
22 deposition and I get to ask the questions.

23 MR. RASKOPF: You asked and he
24 already answered that question. He
25 already did.

1 today, that you are again under oath and the
2 ramifications that exist with that?

3 A That is correct.

4 Q And, nevertheless, you're saying
5 today that the mark as a whole is the
6 predominant portion, not "Prince Lorenzo
7 Borghese"?

8 MR. RASKOPF: That's not what his
9 testimony was. That's not his
10 characterization of the testimony.

11 BY MR. FRIEDMAN:

12 Q Now, I'm going to read again from
13 page 6:

14 "The Prince Lorenzo Borghese portion of
15 the mark is even more predominant, and
16 eliminates any likelihood of confusion."

17 Okay? Even more predominant than what?
18 Is the question I have.

19 A I don't know. Ask my attorney.

20 Q Well, this submission was made under
21 your direction and with your declaration. You
22 knew what it said.

23 MR. RASKOPF: That's not what the
24 witness said.

1 BY MR. FRIEDMAN:

2 Q Well, if it's made to the trademark
3 office under oath from you, you had to have
4 known what this said.

5 Did you review it?

6 A I answered your question. The way I
7 read it is that the trademark, as a whole, does
8 not create confusion. Period. I'm not an
9 attorney, I don't write like attorneys do.
10 That's how I understood it.

11 Q Now with respect to Multi Media
12 Exposure, other than the pet shampoo products,
13 do you also sell pet carriers or handbags for
14 pets?

15 A I did.

16 Q You don't sell those products any
17 more?

18 A They are still sold.

19 Q Are they sold under the Prince
20 Lorenzo Borghese La Dolce Vita mark?

21 A No.

22 Q What mark were they sold under?

23 A They were sold under a Royal
24 Treatment show. I don't know if they were
25 branded my products.