

ESTTA Tracking number: **ESTTA615228**

Filing date: **07/11/2014**

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

Proceeding	91200183
Party	Defendant Miss G-String International LLC
Correspondence Address	LUKE LIROT LUKE CHARLES LIROT PA 2240 BELLEAIR ROAD, SUITE 190 CLEARWATER, FL 33764 UNITED STATES luke2@lirotlaw.com, jimmy@lirotlaw.com, krista@lirotlaw.com
Submission	Opposition/Response to Motion
Filer's Name	Luke Lirot
Filer's e-mail	luke2@lirotlaw.com, jimmy@lirotlaw.com, krista@lirotlaw.com
Signature	/s/Luke Lirot
Date	07/11/2014
Attachments	Reply to Opposition to Applicants Motion for Summary Judgment and Opposers Motion for Summary Judgment - as filed - 7-11-14.pdf(557384 bytes ) Exhibits to Reply to Opposition to Applicants Motion for Summary Judgment et al. - Part 1- as filed - 7-11-14.pdf(2871629 bytes ) Exhibits to Reply to Opposition to Applicants Motion for Summary Judgment et al. - Part 2- as filed - 7-11-14.pdf(4112026 bytes )

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

THE WORLDS PAGEANTS, LLC and	)	Opposition No. 91,200,183
Camilla Productions, Ltd.	)	
Opposers,	)	
	)	
	)	
v.	)	For: "MISS G-STRING INTERNATIONAL"
	)	
	)	
MISS G-STRING INTERNATIONAL LLC	)	No. 77/753,000
Applicant.	)	Published: December 7, 2010

COMMISSIONER OF TRADEMARKS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPLICANT'S REPLY TO OPPOSER'S OPPOSITION TO APPLICANT'S MOTION  
FOR SUMMARY JUDGMENT AND RESPONSE TO OPPOSER'S MOTION FOR  
SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Section 2.116 and Section 528 of the Trademark Trial and Appeal Board Manual of Procedure, Applicant, Miss G-String International LLC ("Applicant") hereby submits Applicant's Reply to Opposer's Opposition to Applicant's Motion for Summary Judgment and Response to Opposer's Motion for Summary Judgment. Applicant respectfully moves the Trademark Trial and Appeal Board ("Board") grant Applicant's Motion for Summary Judgment against Opposer, The World's Pageants, LLC ("Opposer") as Opposer does not have standing to oppose the registration of Applicant's MISS G-STRING INTERNATIONAL mark and Applicant's MISS G-STRING INTERNATIONAL mark is not confusingly similar to Opposer's purported MISS NUDE INTERNATIONAL mark.

In support of this Reply to Opposer's Opposition to Applicant's Motion for Summary Judgment and Response to Opposer's Motion for Summary Judgment, Applicant would state as follows:

**I. APPLICANT'S RESPONSE IN OPPOSITION TO OPPOSER'S "RELEVANT FACTS," SUPPORTED BY DISCOVERY**

1. Applicant denies its MISS G-STRING INTERNATIONAL mark is similar to Opposer's purported MISS NUDE INTERNATIONAL mark in sight, sound and meaning and that there is no likelihood of confusion between the marks. Applicant irrefutably identified and produced scores of registered trademarks that begin with "MISS" and end with "INTERNATIONAL." For example, Opposer purports to be the lawful owner of the U.S. Registration No. 2047202 for the MISS NUDE WORLD INTERNATIONAL mark. Critically, the MISS NUDE INTERNATIONAL mark had to disclaim the words "NUDE" and "INTERNATIONAL." Consequently, the only language at issue would be the word "MISS" and the impact it would have on the word "G-STRING" as a point of difference. Opposer has no exclusive right to the use of the words "Nude" or "International." Additionally, Opposer's MISS NUDE INTERNATIONAL mark and Applicant's MISS G-STRING INTERNATIONAL mark clearly distinguish the nature of each event. The MISS NUDE INTERNATIONAL mark distinguishes that its main feature is that its contestants appear on stage nude, hence limited to a specific group of adults and the adult entertainment industry only. Conversely, the MISS G-STRING INTERNATIONAL mark distinguishes that its main feature is that its contestants appear on stage while featuring a specific item of clothing presented for the general public at large.

2. Applicant denies that its services under the MISS G-STRING INTERNATIONAL mark are identical or substantially similar to the services offered by Opposer under the MISS NUDE INTERNATIONAL mark and related marks as more fully described in

paragraph 1 above. Applicant further provides three (3) sworn affidavits in support of its position. The first affidavit is from William Eadie, Managing Member of Applicant. (Exhibit A).

Mr. Eadie attests to being involved in the production of all of Applicant's MISS G-STRING INTERNATIONAL contests, has supervised and approved every wardrobe worn by every participant in every contest, has personally photographed the MISS G-STRING INTERNATIONAL contests, created and designed the Applicant's website, and has caused Applicant to become an approved promoter of "**Southern Wine and Spirits**," the largest liquor distributor in the United States. Mr. Eadie further attests that nudity is prohibited as a condition of these alcoholic beverage sponsorships and that no participant in any MISS G-STRING INTERNATIONAL contest has ever appeared on stage nude.

3. The second affidavit is from Joseph Osinski of "**Southern Wine and Spirits**." (Exhibit B). Mr. Osinski attests that he is an Area Manager of "**Southern Wine and Spirits**," that he assisted Applicant in becoming a **Southern Wine and Spirits** authorized promoter, and that he assisted various alcoholic beverage companies to become sponsors of Applicant's MISS G-STRING INTERNATIONAL contests. Mr. Osinski further attests that he personally assisted brand representatives of the alcoholic beverage sponsors to appear on stage as judges at multiple MISS G-STRING INTERNATIONAL contests, that he also has attended multiple MISS G-STRING INTERNATIONAL contests and that no participant of any MISS G-STRING INTERNATIONAL contest has appeared on stage nude.

4. The third affidavit is from Pat Miller, the videographer for Cycle Shotz! Video Productions. (Exhibit C). Mr. Miller attests to filming the MISS G-STRING INTERNATIONAL contest held at the Coca-Cola Pavilion at Bruce Rossmeyer's Destination Daytona, home of Daytona Harley-Davidson, the world's largest Harley-Davidson dealership, on October 19, 2012,

for his own commercial use. Mr. Miller attests that the contestants were never nude and provides five (5) **YouTube.com** links to view his continuous filming of the MISS G-STRING INTERNATIONAL contestants on stage from beginning to end of the contest. Mr. Miller notes that **YouTube.com** prohibits nudity.

5. Applicant denies that its customers, clients, or consumers are identical or substantially similar to Opposer's customer's clients, or consumers as more fully described in paragraphs 1 and 2 above. Applicant denies its use and application for the MISS G-STRING INTERNATIONAL mark has been without the consent of Opposer. Applicant first used the MISS G-STRING INTERNATIONAL mark in commerce on April 29, 2009, prior to Opposer's inception. The records of the **Florida Department of State, Division of Corporations** authenticate that Opposer was filed on May 5, 2009, and was recently administratively dissolved on September 27, 2013. Opposer has never been reinstated. (See Exhibit D).

6. Applicant's response is specific to Opposer, identified in the *NOTICE OF OPPOSITION* as The Worlds Pageants, LLC, a State of Florida, LLC, not the recently created New Hampshire LLC bearing the identical name. It is important to note that the dissolution of the Florida LLC was a "structured dissolution" by Opposer to be replaced by the New Hampshire LLC bearing the same name, as is more fully described below. On June 18, 2013, Attorney Patricia Hatry, a partner at Davis & Gilbert representing MISS WORLD LIMITED in TTAB Opposition 91206024 deposed Gracinda Bento Cardoso, the Managing Member of Opposer (See TTAB 91206024, Filing: 17, Pages 15 through Page 42):

Q. *"Well, what state or states is The Worlds Pageants incorporated in?"*

A. *"It used to be incorporated in Florida. THE WITNESS: (to Mr. Aquilla) Right: It still is, at this moment, and our corporation in New Hampshire. Am I correct? MR. AQUILLA: Uhm-hmm. THE WITNESS: YES"*

Q. *"What is the reason for two corporations (The Worlds Pageants, LLC registered in both Florida and New Hampshire) under the same name?"*

A. *"No reason. I just do business everywhere so I wanted to make sure I'm secure. Right? And I wanted to move it out of Florida."*

Q. *"Which of the company names are you presently using?"*

A. *"The Worlds Pageants, LLC"*

Q. *"Florida or New Hampshire or both?"*

A. *"I'm not using Florida at the moment."*

Q. *"Who owned -- which company owns all of your 400 trademarks?"*

A. *"Well, it's not 400 trademarks...we have over 400 prior use rights and common law rights to it. Trademarks, I don't even know exactly how many we own....But if I'm not mistaken, I believe everything belongs to The Worlds Pageants (New Hampshire)."*

(Next Question is asked by Aquilla)

Q. *"And what do you intend to do with your Florida LLC, The Worlds Pageants, LLC?"*

A. *"Well, I believe that right now, and if I'm not mistaken, we're going to dilute (dissolve) The Worlds Pageants, LLC (Florida) because there is no point of having it."*

7. Opposer, The Worlds Pageants, LLC, a Florida Limited Liability Corporation was indeed administratively dissolved by the **Florida Department of State, Division of Corporations** on September 27, 2013, and never reinstated. See Exhibit D attached hereto and incorporated herein. Opposer's sworn testimony is in direct conflict with the Trademark Assignment Abstract of Title which identifies that Camila Productions, LTD, purportedly

became the lawful owner of the MISS NUDE INTERNATIONAL mark on September 19, 2012, and was recorded as the owner of record by its attorney, also Mr. Aquilla, on December 13, 2016, six (6) months *before* this deposition was taken on June 18, 2013.

8. Applicant denies that it was aware of OPPOSER'S MISS NUDE INTERNATIONAL mark prior to its adoption and use of the MISS G-STRING INTERNATIONAL mark. On January 10, 2014, APPLICANT served Applicant Miss G-String International, LLC's Response to Opposer, The Worlds Pageants, LLC's First Set of Requests for Production of Documents and Things, Doc. 38 reflecting service of same. APPLICANT'S Response to Opposer's Request No. 23 is shown below:

*"Applicant refers to Mr. Eadie's photograph of a woman wearing a g-string undergarment which was used as a graphic design element of the design for the MISS G-STRING INTERNATIONAL mark to identify with specificity and differentiate it from all other marks using the words "MISS" and "INTERNATIONAL." (Exhibit E).*

9. The creation of the logo design including the art file conversion of the photographic image to an artist rendering, font selection, color selection and application and final approval of design was created significantly in advance of Applicant 's first use in commerce on April 29, 2009. The MISS G-STRING INTERNATIONAL mark was designed with the prior knowledge that the MISS HAWAIIAN TROPIC INTERNATIONAL mark uniquely identified its suncare products by its extension to its beauty pageants in which its contestants use Hawaiian Tropic products.

10. The design and use of the MISS G-STRING INTERNATIONAL mark by Applicant likewise uniquely distinguishes the nature of its contests by having each of its contestants appear on stage while featuring a specific item of clothing. Opposer's purported MISS NUDE INTERNATIONAL mark also uniquely distinguishes the nature of its contest that is each of its contestants appears on stage nude, with no feature of any item of clothing. Opposer

has failed to prove an actionable similarity exist between its MISS NUDE INTERNATIONAL mark and Applicant's MISS G-STRING INTERNATIONAL mark, just as Opposer could not plausibly claim an actionable similarity exists between the MISS NUDE INTERNATIONAL mark and the MISS HAWAIIAN TROPIC INTERNATIONAL mark.

11. Applicant's Response to Opposer's Request No. 34 is shown below:

*"Applicant's initial awareness occurred in early May, 2009. Applicant was informed that Gracinda Cardoso telephoned Paradise Lakes Resort, accusing the resort of using photographs of models without her consent in their webpage advertisement for the upcoming Miss G-String International Pageant. She further alleged that they had infringed upon her trademark, Miss Nude International and threatened to terminate the event. William Eadie (of Miss G-String International LLC) was contacted by Christian Schrangl, General Manager of Paradise Lakes Resort the next day. Mr. Eadie was asked to contact Ms. Cardoso, which he did. He informed Ms. Cardoso that the photographs she alleged were used without her consent were, in fact, photographs taken by Mr. Eadie and that he owned the copyrights for the images, to which she held no claim. She immediately conceded to Mr. Eadie's copyright ownership of the images.*

*"On May 5, 2009, Mr. Schrangl e-mailed and mailed via USPS a letter informing her that her allegations of unauthorized use of Mr. Eadie's intellectual property 'are false and without foundation.' Mr. Schrangl further directed Ms. Cardoso to contact APPLICANT'S Attorney, J. Benton Stewart II, Esquire to address any alleged infringement upon her trademark, that her threats to terminate this promotion will not be tolerated, to have no further contact with Paradise Lakes Resort under any circumstances and notified her in writing that If you elect to make any contact with Paradise Lakes Resort in any manner, we and the promoter will immediately file a civil action against you for tortuous interference with an ongoing contractual relationship and pursue all remedies available to us under the law." (Exhibit F).*

12. Applicant used the MISS G-STRING INTERNATIONAL mark before Opposer used the MISS NUDE INTERNATIONAL mark. Applicant first used the MISS G-STRING INTERNATIONAL mark in commerce on April 29, 2009. Opposer's filing date with the Florida Department of State, Division of Corporations did not occur until May 5, 2009. (Exhibit D).

**II. APPLICANT'S RESPONSE IN OPPOSITION TO OPPOSER'S CLAIM OF STANDING TO OPPOSE APPLICANT'S REGISTRATION**

13. Applicant denies Opposer's claim that Opposer has standing to oppose the registration of Applicant's MISS G-STRING INTERNATIONAL mark based upon the Board's order of November 27, 2013. The Board's order of November 27, 2013, specifically states "*A document dated May 17, 2001, and reflecting the assignment of such registration from Cardoso to R&D Promotions, Inc. ("R&D") was recorded on February 22, 2002, with the Assignment branch at Reel 2457/Frame 0887. Thus, when the opposition proceedings were commenced on June 6, 2011, USPTO records identified R&D as the record owner of the Registration No. 2037202. Following the commencement of the opposition proceeding, a document dated September 27, 2011, and reflecting the assignment of such registration from R&D to Cardoso, effective March 31, 2003, was recorded on September 27, 2011, with the Assignment Branch at Reel 4631/Frame 0436.*"

14. As previously found in this action, "The recordation of an assignment document with the Assignment Branch is a ministerial act and is not a determination by the Office of the validity of the assignment document or the effect that document has on the title to the pleaded registration. See Patent and Trademark Rule 3.54; TMEP Section 503.01 and 503.01 (c)." See Item 14, Board's Order of June 21, 2012. footnote 6, page 6.

15. On June 21, 2012, the Board ordered "*opposers assignment documents, which opposer apparently intends to rely upon as evidence to establish that opposer has good chain of title to the pleaded registration, were prematurely filed during the discovery period, and are therefore not properly before the Board.*" The Board further noted Opposer must make its assignment documents of record by introducing them into evidence through a testimony deposition during its testimony period. See Trademark Rule 2.123.

16. The Board further ordered "*applicant's motion to strike is granted to the limited extent that the copies of opposer's assignment documents that opposer filed with the Board on September 27, 2011, will receive no consideration.*" The Board noted that Opposer, however, is not precluded from seeking to properly make those documents of record during its testimony period. Applicant's arguments that Opposer does not own the pleaded registration does not constitute attacks on the validity of that registration. Rather, these arguments are attacks on Opposer's claim of ownership of that registration, which Opposer must establish to rely upon that registration at trial. See *Cunningham v. Laser Golf Corp., supra*; *King Candy Co., Inc., supra*.

17. It is impossible for Opposer to establish ownership of the pleaded registration, MISS NUDE INTERNATIONAL mark, because Opposer failed to establish documentary evidence of a chain of title from the original owner to Opposer, a copy of an executed assignment document, or a statement specifying where documentary evidence of a chain of title from the original owner to Opposer as assignee is recorded in the assignment records of the Office on the date of filing its Notice of Opposition, specifying the reel and frame number, in compliance with 37 C.F.R. 3.73(b).

18. OPPOSER falsely attested to be the assignee of the MISS NUDE INTERNATIONAL mark on June 6, 2011, the date of filing its Notice of Opposition with the Board, and subsequently admitted that an executed assignment document *did not exist* on the date of filing its Notice of Opposition, as required. The Board's order dated November 27, 2013, states that, "*the records of the USPTO identified R&D as the record owner of the MISS NUDE INTERNATIONAL mark when the opposition proceeding was commenced on June 6, 2011.*"

19. These facts are unequivocally verified by Opposer itself. On September 27, 2011, more than three (3) months AFTER Opposer filed its Notice of Opposition with the Board, Opposer contemporaneously filed two (2) *nunc pro tunc* trademark assignment documents in a desperate attempt to authenticate Opposer as the lawful owner of the MISS NUDE INTERNATIONAL mark. R&D was conspicuously identified as the assignor of the first *nunc pro tunc* trademark assignment document. Consequently, Opposer was clearly prohibited from requesting or taking action in a trademark matter pending with the Office when it filed its Notice of Opposition on June 6, 2011.

20. Further, Opposer's first *nunc pro tunc* trademark assignment document included fourteen (14) trademarks purportedly transferred from R&D as assignor to Gracinda Cardoso ("Cardoso") as assignee. Applicant's Motion for Summary Judgment filed May 20, 2014, addresses twelve (12) of these fourteen (14) trademarks with supportive facts declaring that the inclusion and transfer of each trademark is factually false, invalid and thereby excluded, including Opposer's purported MISS NUDE INTERNATIONAL mark. The twelve marks included and purportedly transferred in the first *nunc pro tunc* trademark assignment document executed and filed on September 27, 2011, are:

MISS NUDE UNIVERSE	76/135129
MISS NUDE SOUTHERN USA	78/109613
MISS EXOTIC DANCER USA	78/113024
MISS NUDE USA	78/109630
MISS EROTIC	2666658
MISS EXOTIC	2096819
AMERICAN CENTERFOLD SEARCH	2724191

NORTH AMERICAN CENTERFOLD SEARCH	2879086
MISS EXOTIC GULF COAST	2709433
MISS NUDE WORLD	3039826
MISS NUDE WORLD INTERNATIONAL	2282958
MISS NUDE INTERNATIONAL	2037202

As Opposer failed to deny Applicant's claim that the inclusion and purported transfer of these twelve (12) trademarks are factually false, invalid and therefore excluded from inclusion and transfer in Opposer's first *nunc pro tunc* trademark assignment document, Therefore, Applicant respectfully submits that Opposer has deemed to have consented to Applicant's claims and these twelve (12) trademarks be excluded. The remaining two (2) trademarks included and purportedly transferred from R&D to Cardoso in the first *nunc pro tunc* trademark assignment document are:

MISS NUDE EXOTIC	78/109627
MISS EXOTIC DANCER	78/113009

22. Both trademarks were also included and purportedly transferred from CARDOSO to Opposer in Opposer's second *nunc pro tunc* trademark assignment document effective May 6, 2009, also executed and filed on September 27, 2011. However, the records of the Trademark Electronic Search System ("TESS") revealed that the MISS NUDE EXOTIC mark has an abandonment date of August 11, 2005, more than four (4) years BEFORE the second *nunc pro tunc* trademark assignment document's purported effective date of May 6, 2009.

23. Likewise, the records of the TESS revealed that the MISS EXOTIC DANCER mark has an abandonment date of June 2, 2004, more than five (5) years BEFORE the second *nunc pro tunc* trademark assignment document's purported effective date of May 6, 2009.

24. The inclusion of the MISS NUDE EXOTIC and the MISS EXOTIC DANCER marks and their purported transfer from Cardoso to Opposer in the second *nunc pro tunc* trademark assignment document are factually false, invalid and thereby excluded from inclusion in Opposer's second *nunc pro tunc* trademark assignment document. It is important to note that Opposer executed and filed the second *nunc pro tunc* trademark assignment document on September 27, 2011, more than six (6) years AFTER the MISS NUDE EXOTIC mark's abandonment date of August 11, 2005, and more than seven (7) years AFTER the MISS EXOTIC DANCER mark's abandonment date of June 2, 2004. Applicant submits that these two (2) trademarks be excluded from the second *nunc pro tunc* trademark assignment document, as their transfers are factually and temporally impossible, thereby irrefutably invalid. Accordingly, Applicant respectfully submits that these two (2) remaining trademarks also be deemed excluded.

25. Consequently, Opposer failed to establish a chain of title from the original owner to Opposer as assignee to rely upon at trial for each of the fourteen (14) trademarks included and purportedly transferred in Opposer's *nunc pro tunc* trademark assignment documents executed and filed on September 27, 2011, more than three (3) months *after* Opposer filed its Notice of Opposition with the Board.

26. Specifically, Opposer failed to establish a chain of title from the original owner to Opposer as assignee of the pleaded registration, the MISS NUDE INTERNATIONAL mark, to rely upon at trial on the date of filing its Notice of Opposition with the Board and is thereby

prohibited from requesting or taking action in a trademark matter pending with the Office. Hence, Opposer does not have standing to oppose the registration of Applicant's MISS G-STRING INTERNATIONAL mark. Applicant denies Opposer's claim to have standing to oppose the registration of Applicant's MISS G-STRING INTERNATIONAL mark and therefore denies Opposer's claim *"the sole issue before the Board in this case is whether Applicant's MISS G-STRING INTERNATIONAL mark is likely to cause confusion with Opposer's MISS NUDE INTERNATIONAL mark."* Further, Applicant's denies Opposer's claim *"the evidence produced during discovery shows that Applicant's mark MISS G-STRING INTERNATIONAL is likely to cause confusion with Opposer's MISS NUDE INTERNATIONAL mark."*

### **III. THERE IS NO SIMILARITY OF THE MARKS, SERVICES, TRADE CHANNELS OR CONTESTANTS**

27. Opposer's claims of similarity of the marks, services, trade channels, contests and consumers are factually false and denied by Applicant. Applicant further denies Opposer's unsupported allegations that contestants of MISS G-STRING INTERNATIONAL contests appear on stage nude and that Applicant's beauty contests are "adult-themed."

28. Applicant denies Opposer's meritless attempts to draw a comparison to Applicant by referencing media coverage in Exotic Dancer magazine and The Floating Worlds internet blog. Applicant has no control over what a magazine nor an internet blog publishes, but notes that Applicant's review of Opposer's exhibits failed to provide any evidence to support Opposer's meritless claims. Nothing. Contrarily, Applicant's Motion for Summary Judgment included photographic images of the MISS NUDE INTERNATIONAL contestants appearing on stage nude. (Applicant's Motion for Summary Judgment, Exhibits G-I). Although Opposer admits that it does not have an internet website for its MISS NUDE INTERNATIONAL mark, its contestants' photographic images are plentiful, readily available and irrefutably prove

Opposer's MISS NUDE INTERNATIONAL contestants do, in fact, appear on stage nude. (Exhibits G-L).

29. Applicant denies Opposer's next claim that its MISS G-STRING INTERNATIONAL beauty contests are not for the general public due to its website inclusion of PLAYBOY logos and a page where visitors must accept or deny access to view the "*As Seen on Playboy.com*" page. This page contains photographic images produced by PLAYBOY for its exclusive use of contestants invited to pose nude for an independent PLAYBOY feature pictorial. Opposer's claim is counterintuitive.

30. Applicant's web page *intentionally* restricts access to the "*As Seen on Playboy.com*" page *because* the MISS G-STRING INTERNATIONAL contestants do *not* appear on stage nude. This page's content was clearly identified as the "Women of Miss G-String International" feature pictorial photographed by PLAYBOY for its exclusive use. (Exhibit M).

31. PLAYBOY magazine and PLAYBOY.COM have feature pictorials entitled "*The Girls of \_\_\_\_\_*" and "*The Women of \_\_\_\_\_.*" Attached are PLAYBOY magazine cover images featuring "*The Girls of the Big 10*", "*The Girls of KISS*", "*The Girls of the Hard Rock Casino*", "*The Women of Walmart*", "*The Women of the Olympics*", "*The Women of Starbucks*" and "*The Girls of Hawaiian Tropic.*" (Exhibits N-T).

32. These pictorials were created by PLAYBOY inviting girls related to general public groups to be *photographed nude by PLAYBOY* for its exclusive use. Common sense tells us that a student attending classes at the University of Michigan in the Big Ten Conference is clothed, not nude; a band member appearing on stage during a KISS rock & roll concert is clothed, not nude; a bartender mixing cocktails at a Hard Rock Casino is clothed, not nude; a

cashier working at your local Walmart store is clothed, not nude; an athlete competing in the track and field events at the Olympic games is clothed, not nude; a barista serving gourmet coffee at your neighborhood Starbucks is clothed, not nude, and a contestant appearing on stage during a Hawaiian Tropic beauty contest is clothed, not nude.

34. Identically, a contestant appearing on stage during a MISS G-STRING INTERNATIONAL beauty contest is clothed, not nude. The "*Women of Miss G-String International*" feature pictorial is identical in nature to the afore referenced feature pictorials created by PLAYBOY for its exclusive use. This is not a fair representation.

35. Accordingly, Opposer would have us believe that its claim of a clothed student, a clothed band member, a clothed bartender, a clothed cashier, a clothed athlete, a clothed coffee barista, and a clothed beauty contestant would thereby establish college campuses, rock & roll concert venues, gambling casinos, retail stores, and sports and other venues as "adult-themed," based solely upon the participation by the females' appearance in PLAYBOY feature pictorials. Opposer's claim that Applicant's contests are "adult themed," based on this ancillary third party activity, is simply without merit and Applicant denies that it should either obstruct Applicant's Motion for Summary Judgment or support Opposer's Motion for Summary Judgment.

**IV. MEMORANDUM OF LAW IN SUPPORT OF APPLICANT'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

Based upon the points and authorities set forth above, it is clear that instead of admitting or denying the statements in Applicant's Motion for Summary Judgment, the Opposer simply interposes a series of superfluous issues which neither adequately address the Opposer's lack of standing to legitimately offer any opposition to Applicant, making conclusory allegations citing only case law, or making allegations that have neither evidentiary nor legal value.

Opposer can cite to absolutely no instance of actual confusion, and there is no instance involved where actual consumers were being confused between Applicant's clothed events or Opposer's nude events. Opposer has not undertaken any consumer surveys, and has offered no evidence that it lost any business or revenue to Applicant as a result of confusion between the names. As a matter of law, therefore, the "actual confusion" *Polaroid* factor weighs in Applicant's favor. Based upon the facts elucidated herein, Applicant has thus demonstrated, as a matter of law, that there is no likelihood of confusion between the marks.

"[W]here a non-movant has failed to respond to a movant's properly filed and facially meritorious memorandum of law (submitted in support of its motion for summary judgment), the non-movant is deemed to have 'consented' to the legal arguments contained in that memorandum of law under Local Rule 7.1(b)(3)." *Road Dawgs Motorcycle Club of the U.S., Inc. v. "Cuse" Road Dawgs, Inc.*, 679 F. Supp. 2d 259, 267 (N.D.N.Y. 2009).

Instead of drafting a memorandum of law responsive to the critical arguments in Applicant's motion, Opposer completely fails to respond to these most critical of Applicant's arguments, paving the way for Applicant's Motion for Summary Judgment to be granted.

The gravamen of Opposer's filing still does not create an issue of fact. No support or specificity is given to the vague assertions of confusion, thus there is no basis to deny Applicant's Motion.

"Summary judgment is the 'put up or shut up' time for the party that brought the lawsuit." *Seat Sack, Inc. v. Childcraft Educ. Corp.*, No. 07 Civ. 3344 (DFE), 2010 WL 245576, \*8 (S.D.N.Y. 2010). Rule 56 "does not require the moving party to *negate* the elements of the nonmoving party's case." *Lujan v. National Wildlife Fed.*, 497 U.S. 871, 885 (1990). Rather, "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Conclusory allegations, conjecture, and speculation ... are insufficient to create a genuine issue of fact." *Kenzer v. Kingly Mfg.*, 156 F.3d 396, 400 (2d Cir. 1998).

Opposer bears the burden of proof to establish a protectable mark and a likelihood of

confusion. Yet in response to defendants' timely filed motion, supported by competent evidence and meritorious arguments, Opposer has failed to adduce any proof to show that the "clothed" mark sought by Applicant has any likelihood of confusion with the "nude" mark asserted by Opposer. Under these circumstances, Rule 56(c) mandates the grant of summary judgment in favor of Applicant. By analogy, the absence of proof showing a protectable trademark and actual confusion requires dismissal of a claim for common law trademark infringement, and the absence of bad faith requires dismissal of the claim for common law unfair competition. *See Saratoga Vichy Spring Co., Inc. p. Lehman*, 625 F.2d 1037, 1044 (2d Cir. 1980) (applying New York law).

Opposer's ineffective response to the Applicant's Motion, as well as the "shell game" created by the serial "assignments," and other actions of the Opposer all indicate that this action was commenced and litigated simply as an effort to extort a settlement from Applicant. Rather than a zealous attempt to protect a trademark, which Opposer lacks even the standing to do, Opposer's entire case has resulted only in creating a hardship on Applicant. Applicant's demonstration that Opposer's claims have no real substance, coupled with Opposer's unsupported assumptions and allegations of feigned "confusion," certainly warrant an inference that this opposition was instituted solely as "a competitive ploy," which has been seen in other cases to merit an award of attorney's fees. *See Mennen Co. v. Gillette Co.*, 565 F. Supp. 648, 657 (S.D.N.Y 1983), *aff'd* 742 F.2d 1437 (2d Cir. 1984). Based upon the baseless and unauthorized status of Opposer's efforts, Applicant may thus be entitled to reasonable attorneys' fees under 15 U.S.C. § 1117(a).

### CONCLUSION

For the foregoing reasons, and the points and authorities articulated in Applicant's

Motion for Summary Judgment, Applicant respectfully requests that the Trademark Trial and Appeal Board grant Applicant's Motion for Summary Judgment, dismissing the notice of Opposition (the "Notice of Opposition") dated June 6, 2011, approving Applicant's mark filed under Serial No. 77/753,000 (Applicant's Application") for registration, denies Opposer's Motion for Summary Judgment, and awards Applicant any reasonable attorneys' fees to which Applicant may be entitled.

Respectfully Submitted:

By /s/ Luke Lirot

Dated July 11, 2014

Luke Lirot, Esquire  
Florida Bar Number 714836  
LUKE CHARLES LIROT, P.A.  
2240 Belleair Road, Suite 190  
Clearwater, Florida 33764  
Telephone: (727) 536-2100  
Facsimile: (727) 536-2110  
*Attorney for the Applicant*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Applicant's Reply to Opposer's Opposition to Applicant's Motion for Summary Judgment and Response to Opposer's Motion for Summary Judgment has been served on Thomas T. Aquilla, Esq., as domestic representative of The Worlds Pageants, LLC, and Camilia Productions, Ltd., by mailing said copy on July 11, 2014, via First Class Mail, postage prepaid to:

Thomas T. Aquilla, Esq.  
221 Coe Hill Road  
Center Harbor, New Hampshire 03226.

/s/ Luke Lirot  
Attorney for Applicant  
Signed July 11, 2014

AFFIDAVIT OF WILLIAM EADIE

STATE OF FLORIDA

COUNTY OF VOLUSIA

Before me, the undersigned authority, personally appeared William Eadie, who after being first duly sworn deposes and says:

1. I am William Eadie, I am over eighteen (18) years of age and I have personal knowledge of the subject matter of this affidavit.

2. I live at 1420 Sunningdale Lane, Ormond Beach, Florida 32174.

3. I am the Managing Member of Miss G-String International LLC, a Florida Limited Liability Company, and have been Managing Member since the entity's inception.

4. I have personally been involved in the production of every "Miss G-String International" contest.

5. I have supervised and approved every wardrobe worn by every participant in every "Miss G-String International" beauty contest.

6. This wardrobe includes "Miss G-String International" logo tank tops and apparel bags, logo polo shirts and hats, Halloween costumes, ladies's g-string undergarments, bikinis, various sponsor related apparel worn on stage during the contests and the approval of participant supplied burlesque performance costumes.

7. I have personally photographed the "Miss G-String International" contests.

8. I have personally created and designed the Miss G-String International LLC website, [www.missgstring.com](http://www.missgstring.com), last updated in April of 2014.

Exhibit "A"

9. I have personally caused Miss G-String International LLC to become an approved promoter of Southern Wine and Spirits, the largest liquor distributor in the United States.

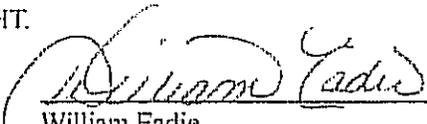
10. I have personally created sponsor relationships with alcoholic beverage companies such as "Jaegermeister", "Stolichnaya" Vodka, "Jim Beam" Bourbon and "Twisted Tea" beverages. These sponsors strictly prohibit nudity as a condition of their sponsorship.

11. I personally provided media credentials to members of the press and free lance photographers to allow them to photograph and publicize the "Miss G-String International" contests.

12. No participant in any "Miss G-String International" contest has ever appeared on stage nude.

All of the above testimony is within my personal knowledge and I have sworn to its truth.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
William Eadie

STATE OF FLORIDA  
COUNTY OF Duval

Sworn to (or affirmed) and subscribed before me this 5 day of July, 2014,  
by William Eadie.

 Hagop Keeklehian  
State of Florida  
My Commission Expires 11/05/2017  
Commission No. FF 68482

  
\_\_\_\_\_  
Notary Public  
Hagop Keeklehian  
Print, type or stamp commissioned name of  
Notary Public

Personally Known \_\_\_\_\_ OR Produced identification

Type of Identification Produced FLDL

AFFIDAVIT OF JOSEPH OSINSKI

STATE OF FLORIDA

COUNTY OF VOLUSIA

Before me, the undersigned authority, personally appeared Joseph Osinski, who after being first duly sworn deposes and says:

1. I am Joseph Osinski, I am over eighteen (18) years of age and I have personal knowledge of the subject matter of this affidavit.
2. I live at 1227 Fernway Drive, Ormond Beach, Florida 32174.
3. I am an Area Manager of Southern Wine and Spirits, the largest liquor distributor in the United States.
4. I have personally assisted Miss G-String International LLC in becoming a Southern Wine and Spirits authorized promoter.
5. I have personally introduced and assisted various alcoholic beverage companies to become sponsors of the "Miss G-String International" contests.
6. The referenced alcoholic beverage sponsors prohibit nudity as a condition of their sponsorship.
7. I have personally assisted alcoholic beverage brand representatives to appeared on stage as judges at multiple "Miss G-String International" contests.
8. I have personally attended multiple "Miss G-String International" contests.

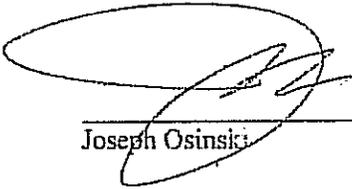
Exhibit "B"

9. I have personally observed the participants of the "Miss G-String International" contests wearing "Miss G-String International" logo tank tops, Halloween costumes, ladies's g-string undergarments, bikinis, various sponsor related apparel and burlesque performance costumes on stage at multiple "Miss G-String International" contests.

10. No participant of any "Miss G-String International" contest has ever appeared on stage nude.

All of the above testimony is within my personal knowledge and I have sworn to its truth.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Joseph Osinski

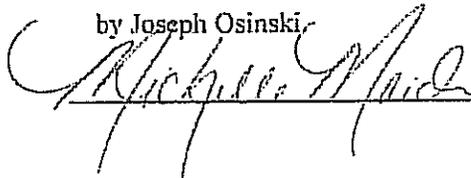
STATE OF FLORIDA

COUNTY OF Volusia

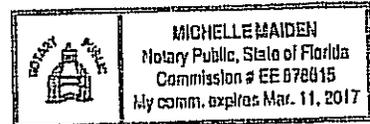
8<sup>th</sup> day of July, 2014.

Sworn to (or affirmed) and subscribed before me this

by Joseph Osinski

  
\_\_\_\_\_

Notary Public



Michelle Maiden

Print, type or stamp commissioned name of  
Notary Public

Personally Known \_\_\_\_\_ OR Produced identification

Type of Identification Produced Florida Driver License

AFFIDAVIT OF PAT MILLER

STATE OF FLORIDA

COUNTY OF PALM BEACH

Before me, the undersigned authority, personally appeared Pat Miller, who after being first duly sworn deposes and says:

1. I am Pat Miller and I have personal knowledge of the subject matter of this affidavit.
2. I live at 2679 Helyn Road #2, Lake Worth, Florida 33461.
3. I am the videographer for Cycle Shotz! Video Productions.
4. On October 19, 2012, I attended Daytona Biketoberfest at Bruce Rossmeyer's Daytona Harley-Davidson at Bruce Rossmeyer's Destination Daytona located at 1637 N. U.S. Highway 1, Ormond Beach, Florida 32174.
5. I personally videotaped the Miss G-String International contest held at Bruce Rossmeyer's Destination Daytona for my own commercial use.
6. I personally videotaped each of four wardrobe changes of the Miss G-String International contestants. The contestants first appeared wearing a Miss G-String International logo tank top and a black g-string undergarment, next, in a sexy Halloween costume, third was the bikini competition and lastly, wearing a black Jaegermeister top with a matching black g-string undergarment.
7. The contestants were never nude.

Exhibit "C"

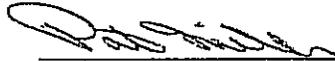
8. I have listed below five (5) YouTube.com links to view my continuous filming of the contestants on stage from beginning to end. YouTube.com prohibits nudity:

- Part 1. <http://www.youtube.com/watch?v=7ZIU1gB8Oag>
- Part 2. <https://www.youtube.com/watch?v=P7YNBToCpvd>
- Part 3. <https://www.youtube.com/watch?v=stEyayrdXzI>
- Part 4. <https://www.youtube.com/watch?v=IT-sy3J-ffQ>
- Part 5. <http://www.youtube.com/watch?v=OXyC-vmpEnY>

9. The event was presented for the general public at large as it was held at the Coca-Cola Pavilion located within Bruce Rossmeyer's Destination Daytona.

All of the above testimony is within my personal knowledge and I have sworn to its truth.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Pat Miller

STATE OF FLORIDA

COUNTY OF PALM BEACH

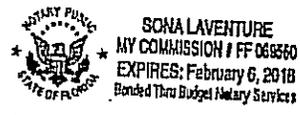
Sworn to (or affirmed) and subscribed before me this 2 day of <sup>July</sup> ~~June~~, 2014,  
by Pat Miller.

  
\_\_\_\_\_  
Notary Public

SONA LAVENTURE  
Print, type or stamp commissioned name of  
Notary Public

Personally Known \_\_\_\_\_ OR Produced identification ✓

Type of Identification Produced Driver License





## Detail by Entity Name

### Florida Limited Liability Company

THE WORLDS PAGEANTS, LLC

### Filing Information

Document Number	L09000043609
FEI/EIN Number	N/A
Date Filed	05/05/2009
State	FL
Status	INACTIVE
Last Event	ADMIN DISSOLUTION FOR ANNUAL REPORT
Event Date Filed	09/27/2013
Event Effective Date	NONE

### Principal Address

1473 HEATHER WAY  
KISSIMMEE, FL 34744

Changed: 05/01/2012

### Mailing Address

1473 HEATHER WAY  
KISSIMMEE, FL 34744

Changed: 05/01/2012

### Registered Agent Name & Address

CARDOSO, GRACINDA  
1473 HEATHER WAY  
KISSIMMEE, FL 34744

Name Changed: 09/26/2011

Address Changed: 05/01/2012

### Authorized Person(s) Detail

#### Name & Address

Title MGR

CARDOSO, GRACINDA



Exhibit "E"



**Paradise Lakes Resort**

PO Box 750  
Lond O'Lakes, FL 34639  
813-949-9327 888-SwimNude  
www.paradiselakes.com  
Fax 813-949-1006

America's Premier  
Clothing Optional Resort

May 5, 2009

Ms. Giacinda Cardoso  
1005 Mebbette  
Kissimmee, FL 34741

RE: MISS G-STRING INTERNATIONAL

Dear Ms. Cardoso,

Paradise Lakes Resort is the host venue of the upcoming MISS G-STRING INTERNATIONAL PAGEANT.

You alleged that the images used on our website to promote this event were unauthorized. As you have been notified, from your conversation with the photographer who has certified ownership of this intellectual property, your allegations are false and without foundation.

Next, you allege an infringement upon your trademark, MISS NUDE INTERNATIONAL. This allegation is one which you need to address with the promoter, MISS G-STRING INTERNATIONAL, LLC. Please direct any and all communication of any nature to the promoter's representative at:

J. Benton Stewart II, Esq.  
STEWART LAW PLLC  
730 S. Sterling Avenue  
Suite 304  
Tampa, FL 33609

Your threats to terminate this promotion will not be tolerated.

You are hereby notified in writing to have no further contact in any form with Paradise Lakes Resort under any circumstances.

This will be your only notice. If you elect to make any contact with Paradise Lakes Resort in any manner, we and the promoter will immediately file a civil action against you for tortious interference with an ongoing contractual relationship and pursue all remedies available to us under the law.

GOVERN YOURSELF ACCORDINGLY.

PARADISE LAKES RESORT

  
Christian Schraff  
General Manager

Exhibit "F"



MISS UNIVERSE INTERNATIONAL 2006

AIX

Exhibit "G"

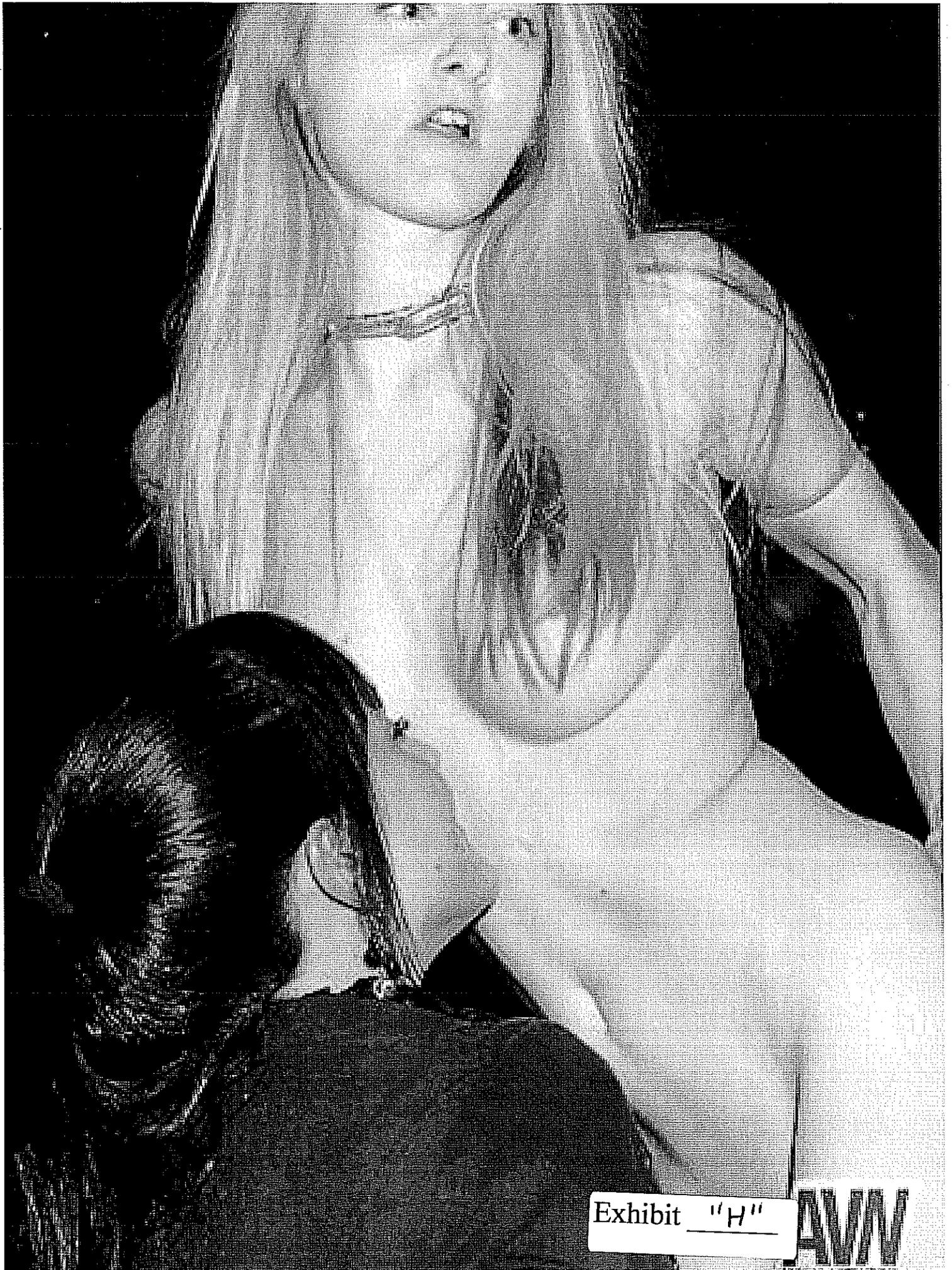


Exhibit "H"





Exhibit "I"

**AMN**  
ASTORIA MEDICAL CENTER



Exhibit "J"

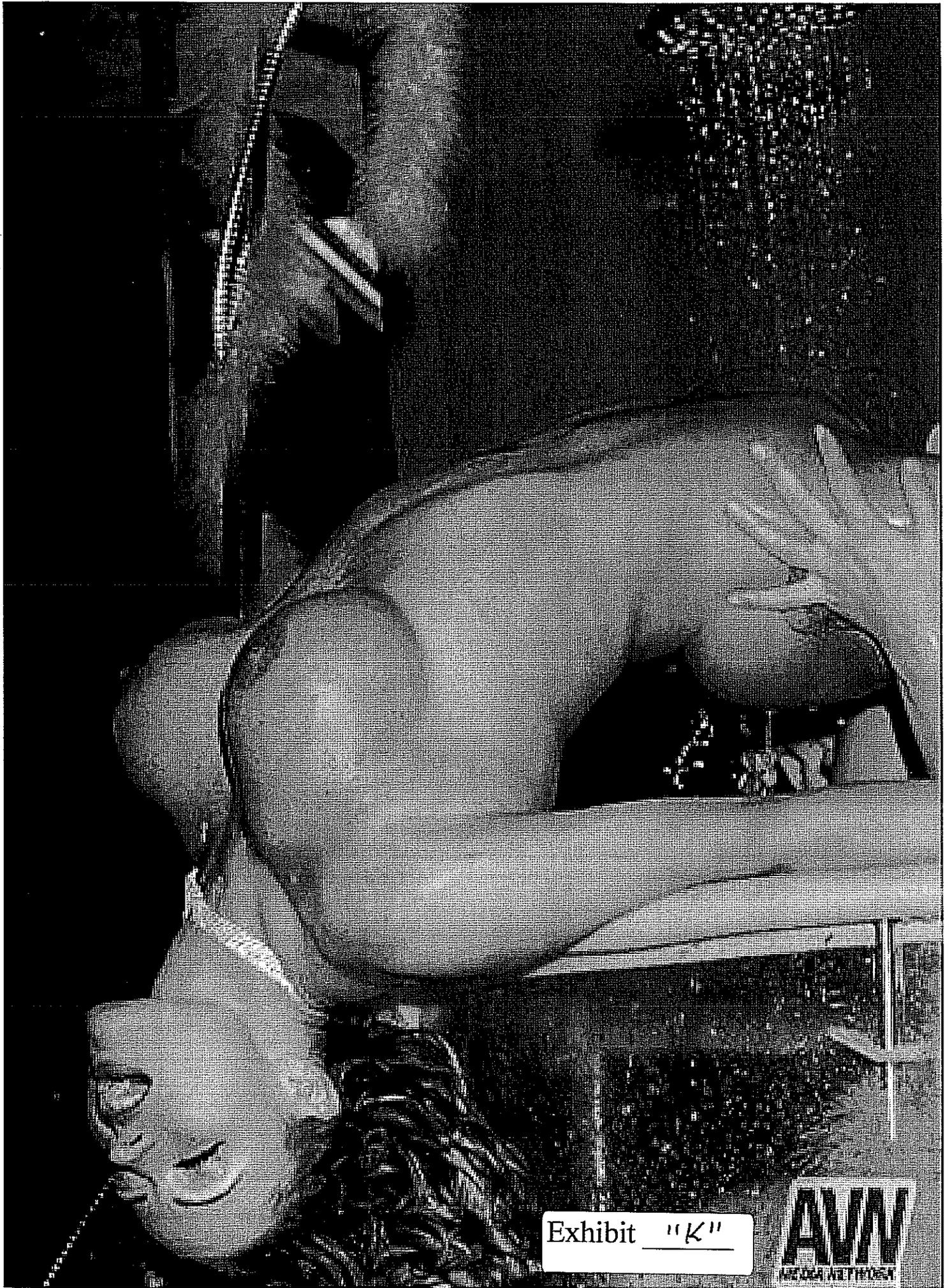


Exhibit "K"

**AWM**  
ARTS AND CULTURE



Exhibit "L"



*New  
Playboy  
International*



**WARNING**

As Seen on Playboy.com" page  
contains nudity.

intended for a mature person.  
It is not to be accessed by anyone under the age of 18 (or the age  
present in the jurisdiction from which it is being accessed). If you are  
under 18, or offended by adult content, please do not continue.

**AGREE** To indicate that you abide by these terms and wish to view the page.

**DANGER** If you do not meet the qualifications or do not agree with these terms.



Exhibit "M"

# PLAYBOY

ENTERTAINMENT WEEKLY

www.playboy.com • OCTOBER 2012

THE College ISSUE

THE INTERVIEW: LEE CHILD

What's with all these COLLEGE KIDS getting RICH in their dorm rooms?

the Girls of the BIG 10

Dax Shepard is REALLY Fung funny!

HARD KNOCKS: WHAT HAPPENS TO YOUR BRAIN AFTER FOOTBALL? 2012 NFL PREVIEW

PLAYBOY'S TOP PARTY SCHOOLS: time to transfer?

Redemption of a Pimp: Sonny Vaccaro comes clean

GET SMARTER: Have a chat with STEPHEN HAWKING

\$6.99

U.S. POSTAGE AND FEES PAID

Exhibit "N"



# PLAYBOY

ENTERTAINMENT FOR MEN

MARCH 1999 • \$4.95

## SEX

## MUSIC ISSUE

THE GIRLS OF  
**K&W**

LAURYN HILL  
BEASTIE BOYS  
MUSIC POLL  
WINNERS

INTERVIEW  
WITH HORNY  
DREW CAREY

SEDUCTIVE  
RUDOLPH GIULIANI  
IRRESISTIBLE  
KEITH OLBERMANN

EXCLUSIVE  
FICTION  
PREVIEW

THE RETURN  
OF LITTLE  
BIG MAN



03  
MARCH

Exhibit "0"

030995

# PLAYBOY

ENTERTAINMENT FOR MEN

APRIL 2001 • www.playboy.com

THE  
PLAYBOY  
INTERVIEW  
METALICA

GIRLS OF THE  
HARD ROCK  
CASINO

HIP-HOP  
TRICKSTER  
WYCLEF  
JEAN

SPRING  
BREAK!  
PARTY TIME  
IN PICTURES

NAPSTER  
THE  
EVOLUTION  
GOES ON

SEX & MUSIC ISSUE

\$4.99



Exhibit "P"

11 70689 35270 1

**PLAYBOY** 

# WOMEN OF WAL-MART

**CLOTHING  
ROLLBACK!**

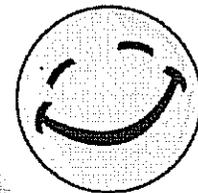


Exhibit "Q"

**DVD**

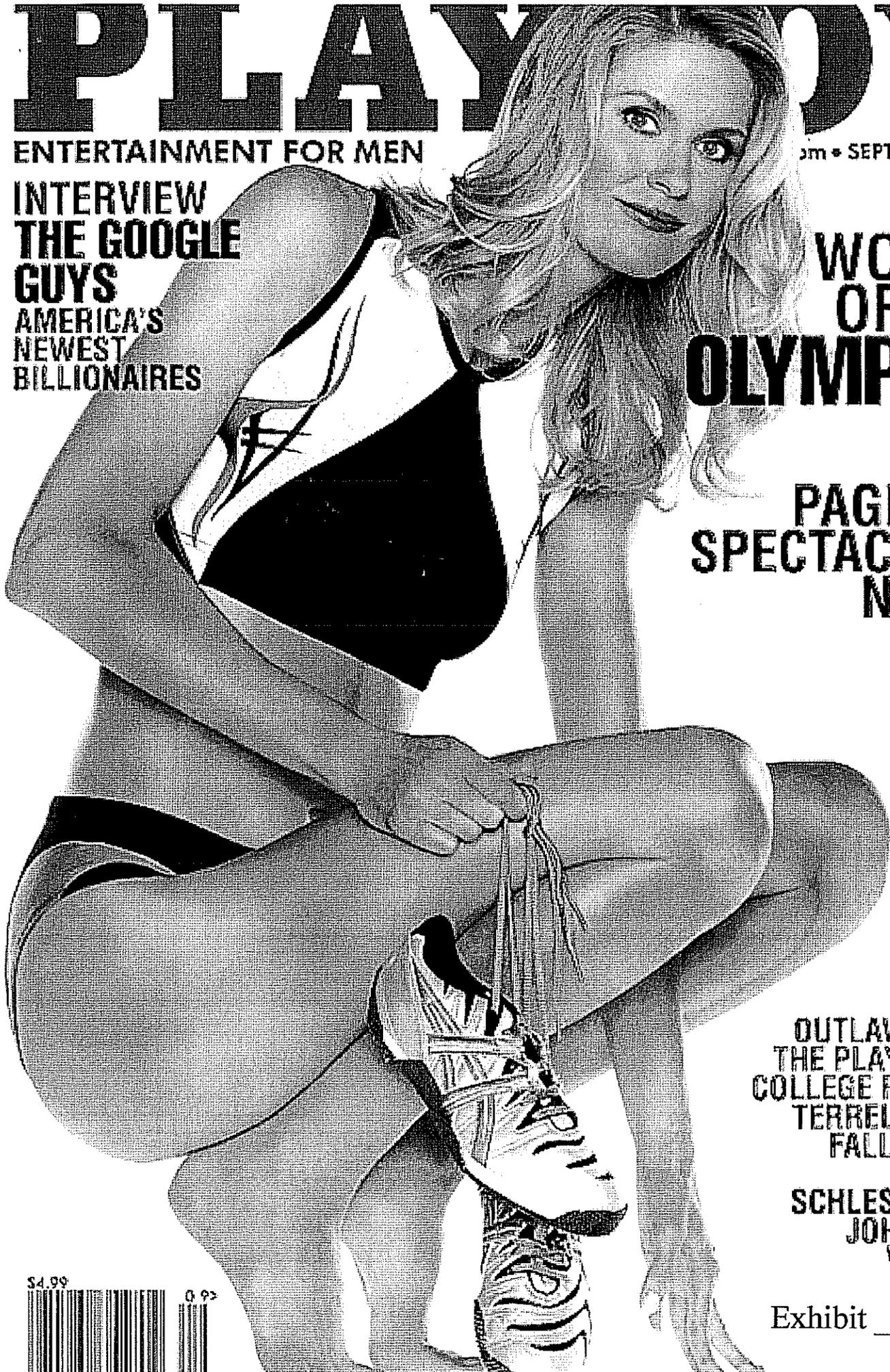
# PLAYBOY

ENTERTAINMENT FOR MEN

3m • SEPTEMBER 2004

INTERVIEW  
**THE GOOGLE  
GUYS**  
AMERICA'S  
NEWEST  
BILLIONAIRES

**THE  
WOMEN  
OF THE  
OLYMPICS**  
**12**  
PAGES OF  
SPECTACULAR  
NUDES



**PLUS**  
E-VOTING  
OUTLAW HUMOR  
THE PLAYBOY BAR  
COLLEGE FOOTBALL  
TERRELL OWENS  
FALL FASHION  
ARTHUR  
SCHLESINGER JR  
JOHN EDGAR  
WIDEMAN



Exhibit  "R"

PLAYBOY



# WOMEN OF STARBUCKS

Warning: Contents REALLY Hot!

Exhibit "S"

# PLAYBOY

ENTERTAINMENT FOR MEN

www.playboy.com

## The Girls Of **HAWAIIAN TROPIC**

**WRESTLING  
MADNESS**

**The Stars  
The Brawls  
The Girl**

**Gay, Jewish, Left-  
Handed, Outspoken  
Congressman**

**BARNEY FRANK  
INTERVIEWED**

**BILL MAHER'S  
Chocolate Fantasies**

**DAY TRADING  
How To Get Rich If You  
Have The Balls For It**

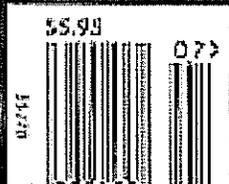


Exhibit "T"