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

Proceeding	91205046
Party	Plaintiff Christina Sukljian
Correspondence Address	CHRISTINA SUKLJIAN 13 MANOR STREET ALBANY, NY 12207 UNITED STATES info@zela.com
Submission	Opposition/Response to Motion
Filer's Name	Christina Sukljian
Filer's e-mail	info@zela.com
Signature	/Christina Sukljian/
Date	08/27/2014
Attachments	Respondent's Response to Petitioner's Renewed Motion for Judgment cancellation 92055279.pdf(4483121 bytes)

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

In the Matter of U.S. Registration No. 2898544
Mark: GAGA PURE PLATINUM

-----X

CHRISTINA SUKLJIAN,	:	
	:	Opposition No. 91205046
Opposer,	:	
	:	
v.	:	
	:	
ATE MY HEART, INC.,	:	
	:	
Applicant.	:	

ATE MY HEART, INC.,	:	
	:	Cancelation No. 92055279
Petitioner,	:	
	:	
v.	:	
	:	
CHRISTINA SUKLJIAN,	:	
	:	
Respondent.	:	

-----X

**RESPONDENT’S RESPONSE TO PETITIONER ATE MY HEART, INC.’S RENEWED
MOTION FOR DEFAULT JUDGMENT**

Respondent/Opposer, Christina Sukljian (“Sukljian” Respondent” or “Opposer”), hereby replies to Petitioner/Applicant Ate My Heart, Inc.’s (“AMH” “Petitioner” or “Applicant”) renewed motion for default judgment seeking an order cancelling Respondent/Opposer, Christina Sukljian’s in use and non-abandoned trademark GAGA PURE PLATINUM, U.S. Registration No. 2898544, and to register AMH’s mark, HAUS OF GAGA, U.S. Serial No. 85215017 and Respondent requests that judgment be denied in

its entirety against Petitioner/Applicant, Ate My Heart, Inc. and in favor of Respondent/Opposer, Christina Sukljian in both the consolidated Cancellation and Opposition proceedings.

STATEMENT OF FACTS AND RESPONSE

Ate My Heart, Inc. unilaterally scheduled its notice of deposition for June 26, 2014, a date in which the Petitioner was notified in advance of Respondent's unavailability on set date. On June 20, 2014 Respondent received Petitioner's notice delivered on June 18, 2014 and phone messages left on June 17, 2014, due to Respondent's being out of the office during the course of those days. Petitioner set a deposition date for June 26, 2014. On June 20, 2014, Respondent notified Petitioner of Respondent's unavailability for the deposition scheduled on June 26, 2014, provided alternative dates of availability and requested a written confirmation reply via mail, which was the mutually agreed upon method of communication set by both parties during the discovery conference. Respondent mailed its letter on Friday June 20, 2014 and delivered on Monday June 23, 2014 via USPS Priority Mail. Annexed hereto is Exhibit A.

Respondent was unable to return Petitioner's telephone call or email on June 24, 2014, because Respondent was unavailable and out of the office as communicated to Petitioner by Respondent's receptionist. In its June 24, 2014 email, cited in Petitioner's motion, the only way the Petitioner would consider changing the scheduled deposition date of June 26, 2014, was if Respondent responded on the same day before 4:00 pm. Petitioner was not willing to consider Respondent's dates of availability or the fact that respondent was unable to respond on the same day - their June 24, 2014 4:00 pm deadline. Petitioner had knowledge that Respondent was unable to communicate on June 24, 2014, yet Petitioner set a deadline of a matter of hours knowing Respondent was unable to respond. By the time Petitioner's email was read, the deposition already took place. Petitioner's behavior in this matter was inimical and unwarranted making a non-issue, an issue. Rather than working amicably, Petitioner was dictating when Respondent could respond and setting a ridiculous window of a few hours, whereby demanding a

response only on their schedule and only on their time.

Also, in the same email AMH stated that they were going to proceed anyway with the unilaterally set deposition, knowing in advance that Respondent was not able to attend. Petitioner went forward with the deposition because in its first noticed deposition scheduled for September 19, 2013 Petitioner did not attend by claiming they were, “hoping to avoid the cost of a reporter, videographer and an overnight stay by AMH’s counsel.” However, on June 26, 2014 the Petitioner incurred these costs and went ahead with the deposition in order to file this motion for judgment against Respondent. It’s also perplexing that Petitioner is claiming that “there would have been no time” to file an extension when in fact discovery was open through June 30, 2014.

Petitioner has noticed three depositions to date. Petitioner’s first unilaterally scheduled deposition was set by Petitioner for September 19, 2013. Respondent attended the scheduled deposition, however Petitioner did not attend. On January 28, 2014, The Board allocated the Petitioner a 40 day extension of time to depose. The second unilaterally scheduled deposition was set by the Petitioner for March 5, 2014. Petitioner canceled the second deposition. Petitioner requested a second extension of time. On June 12, 2014 The Board granted another extension of time to depose through June 30, 2014. Petitioner unilaterally scheduled a third notice of deposition for June 26, 2014. Petitioner has not attended the first deposition, canceled the second one, and when Respondent notified Petitioner in advance of its inability to attend the third deposition, while requesting a rescheduling to the provided alternate dates, Petitioner now seeks judgment against Respondent? Judgment against Respondent is unjust.

To the contrary of AMH’s motion, AMH is in fact in receipt of numerous documents and admissible evidence provided to them in discovery of the use of the GAGA PURE PLATINUM Trademark including the following Discovery requests: product packaging, product logos, color schemes, channels of trade, domain name registrations, product samples, and retail price points. AMH is deliberately not disclosing these facts. During discovery, zela.com and gagapureplatinum.com were identified as channels of trade of GAGA PURE PLATINUM’s goods to AMH. GAGA PURE

PLATINUM's goods are available on the parent website, www.zela.com, since 2001 and registered on December 9, 1999, and on www.gagapureplatinum.com, since February 2011 and registered on February 10, 2011. Annexed hereto is Exhibit B. AMH chooses to ignore the fact that GAGA PURE PLATINUM's goods were always available since 2001 on the main parent site, www.Zela.com. This evidence was provided to AMH in discovery, but they choose to only mention a screen shot of gagapureplatinum.com. AMH's claim that this screen shot provided in discovery of the gagapureplatinum.com website somehow infers that it was "launched in the Spring of 2012" is ludicrous. In AMH's motion dated September 26, 2013 on page 9, AMH states, "...the website she launched in the spring of 2011," further illustrating AMH's inconsistencies. AMH is knowingly presenting manufactured dates to The Board, but cannot keep their lies straight. Furthermore, although the launch date was prior to their petition to cancel, the launch date is irrelevant. AMH is manufacturing dates and falsely presenting it to The Board as 'fact' when it is categorically untrue. Annexed hereto is Exhibit C.

In its petition to cancel, AMH states, *'In 2008, Lady Gaga catapulted to fame from the moment of her debut single Just Dance...was released.'* Petitioner also states, *"Respondent is no longer using Respondent's Mark in commerce in connection with the goods covered in her registration...Respondent has not had valid trademark use of Respondent's Mark on those items for several years."* However, on January 23, 2013 in its reply brief, on page 2, AMH states, *"Once Lady Gaga rose to international fame and began receiving virtually unparalleled publicity, Ms. Sukljan decided to capitalize on Lady Gaga's fame and goodwill by commencing use of the mark in commerce."* AMH contradicts its claims of abandonment by stating that GAGA PURE PLATINUM'S mark was in use. While AMH's claim of 'commencing use' is egregiously and categorically false, AMH concedes that the GAGA PURE PLATINUM Trademark was in use in commerce for years prior to its Petition To Cancel. Annexed hereto is Exhibit C.

Furthermore, Respondent has a well documented history of policing its Trademark and has filed

three accepted Letters of Protest with The USPTO as early as 2010 against AMH. Serial Number 85115004 for the mark Lady Gaga was denied registration by the USPTO on December 7, 2010 under SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION with GAGA PURE PLATINUM. However, in its 'Response To Office Action' letter dated December 28, 2010, AMH does not claim that the GAGA PURE PLATINUM Trademark was not in use or abandoned, rather that it *'disagrees with the assertion that a likelihood of confusion could be caused by the existence of the Cited Registration.'* Annexed hereto is Exhibit D.

AMH then applied for the mark Haus of Gaga on Jan. 11, 2011, Application Serial Number 85215017, with Respondent's letter of protest accepted by USPTO on March 31, 2011 due to likelihood of confusion. Again, AMH applied for the mark Lady Gaga Fame on March 31, 2011, Application Serial Number 85282752, with Respondent's letter of protest accepted by USPTO on August 29, 2011 due to likelihood of confusion. Three times, AMH did not make any claims of abandonment to Respondent's Registration beginning with its first refusal in 2010 for all three of its applications. Ate My Heart, Inc. views Respondent's Trademark GAGA PURE PLATINUM as its entitlement due to their "fame" and filed its Petition To Cancel on March 5, 2012 as a malicious retaliatory tactic only after Respondent policed its trademark by filing a 60 Day Request for Extension of Time To Oppose Application Serial Number 85215017 for the mark Haus of Gaga, filed and granted by the USPTO on February 29, 2012, just 5 days prior to their Petition. Ate My Heart, Inc. initiated this cancellation proceeding on March 5, 2012 with claims of 'abandonment' all while possessing the full knowledge that Respondent's Trademark GAGA PURE PLATINUM was not abandoned and in use all prior to AMH's petition to cancel. AMH is unwilling to respect the intellectual property of Respondent, and the GAGA PURE PLATINUM Trademark nor willing to honor and uphold the validity of the United States Patent and Trademark Office and Registered Trademarks.

STATEMENT OF FACTS AND RESPONSE CONTINUED

The facts underlying these proceedings are set forth in the Notice of Opposition No. 91205046 however, for the Board's convenience a brief recitation of the facts is repeated here.

GAGA PURE PLATINUM® is a federally registered trademark, used in commerce, U.S. Registration No. 2898544 in International Class 003, invented and created in the year 2000, filed for registration on August 22, 2001, registered on November 2, 2004, renewed and accepted under Sections 8 & 15, and owned by the internationally recognized second generation cosmetics purveyor, Christina Sukljian p/k/a Cristina Samuels. Annexed hereto is Exhibit E. In 2000 Respondent spearheaded the creation of GAGA PURE PLATINUM®, an avant-garde cosmetics brand. Named after her brother's childhood nickname Gaga, GAGA PURE PLATINUM® combined fashion, style and art with passion for color. Respondent has achieved prominence and accolades in the global cosmetics industry and has gained the attention of leading beauty editors of both consumer and industry magazines, including *Allure*, *GCI*, *Drug Store News*, and *WWD*, beauty and fashion websites and bloggers, and through media appearances. She has been lauded for her fresh perspective in the beauty industry and as a result of her efforts and achievements she has garnered the distinct honor and recognition of *GCI*® magazine (*Global Cosmetic Industry* magazine) as being selected as 1 of '20 To Know' in the global cosmetics industry and as a member of the magazine's advisory board. *GCI*® magazine has stated, "Cristina Samuels epitomizes the strengths of the beauty industry – continuity and tradition propelled by innovation and evolution." GAGA PURE PLATINUM®'s originality and uniqueness of the coined and invented mark, invented by Respondent, establishes it as a commercial brand name and as a result GAGA PURE PLATINUM® is uniquely associated with Respondent. As a result of the unique association of the GAGA mark to the GAGA PURE PLATINUM® brand, Plaintiff's effort's to register multiple applications have been denied by the USPTO due to likelihood of confusion with GAGA PURE PLATINUM®. Defendant is vigilant in policing its GAGA PURE PLATINUM® Trademark and is resolute in its pursuit of infringers who attempt to trade off and dilute the distinctiveness associated with the GAGA PURE PLATINUM® brand.

Petitioner AMH is in receipt of, but not limited to, the following admissible evidence provided by Respondent in Discovery and annexed hereto as Exhibit F.

Interrogatory No.6

For each of Respondent's Goods bearing or offered in connection with Respondent's Mark in the United States, please state the following:

- (a) Respondent's channels of trade, including all former, current or prospective retail establishments, wholesale establishments and websites;
- (b) Respondent's targeted consumer group and/or targeted demographics;
- (c) The price points at which Respondent's Goods bearing Respondent's Mark are sold to consumers; and
- (d) The amount of money Respondent has earmarked or dedicated to the manufacture and, separately, the promotion of the Respondent's Goods bearing Respondent's Mark for 2012.

Response To Interrogatory No. 6

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is overly broad and unduly burdensome. Respondent further objects to this Interrogatory to the extent that it seeks information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections Respondent states the Interrogatories listed above in (a) is overly broad and unduly burdensome, however Respondent identifies the following current two websites as www.gagapureplatinum.com and www.zela.com (c) \$12.50 - \$22.00.

Interrogatory No. 9

Identify all cease and desist demand letters and responses thereto, litigations, trademark actions or proceedings, ICANN proceedings and/or other challenges concerning Respondent's Mark in any way. When responding to this interrogatory, include: (a) the dates of such challenge; (b) the third-party mark

involved; (c) the adversarial party; and (d) the outcome of each challenge.

Response To Interrogatory No. 9

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is overly broad and unduly burdensome. Respondent further objects to this Interrogatory to the extent that it seeks information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections Respondent states that no cease and desist demand letters or responses thereto, litigations, trademark actions or ICANN proceedings exist concerning the use of the mark GAGA PURE PLATINUM. Respondent identifies the following USPTO Action: Respondent's Opposition No. 91205046 filed with the USPTO.

Interrogatory No. 15

Identify each item sold by or on behalf of Respondent since 2004 that bears Respondent's Mark.

Response To Interrogatory No. 15

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is overly broad and unduly burdensome. Respondent further objects to this Interrogatory to the extent that it seeks information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections Respondent identifies the items as cosmetics, including nail polish, blush, mascara, face powder, eye shadow, concealer, lip gloss, eye liner, lip liner, lipstick, face luminizer.

Document Request No. 4:

All documents concerning packaging for Respondent's Goods bearing Respondent's Mark.

Response To Document Request No. 4:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome, confusing, vague and ambiguous.

Respondent further objects to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party.

Subject to and without waiving the forgoing objections, Respondent responds that electronic documents printed from www.gagapureplatinum.com responsive to this request showing product packaging are annexed hereto as Exhibit A – Document Request No 4.

Document Request No. 5:

All documents concerning any logos, color schemes or other distinctive identifiers for Respondent's Goods

Response To Document Request No. 5:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome, confusing, vague and ambiguous. Respondent further objects to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections, Respondent responds that documents responsive to this request showing the logo were provided above as Exhibit A. Please refer to Exhibit A.

Document Request No. 35:

Samples of each of Respondent's Goods sold or offered for sale under Respondent's Mark.

Response To Document Request No. 35:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome and harassing and that the information is publicly available and/or equally available to Petitioner. Subject to and without waiving the forgoing objections, Respondent responds that a variety of Respondent's cosmetic samples including one piece of each of the following below are annexed hereto as Exhibit B – Box of Samples Document Request No. 35.

1. GAGA PURE PLATINUM® ART DÉCORATIF LIPSTICK IN SPRING LOVE
2. GAGA PURE PLATINUM® STAR CONCEALER IN LIGHT
3. GAGA PURE PLATINUM® ETHEREAL FINISH MASCARA
4. GAGA PURE PLATINUM® 58 FACETS BRILLIANT LIP GLOSS
5. GAGA PURE PLATINUM® NAIL COSMETIC IN AVEC MOI
6. GAGA PURE PLATINUM® NEO-POP™ CREAM BLUSH IN SHOW ME
7. GAGA PURE PLATINUM® ETERNALLY CHIC SET BOX

Document Request No. 41:

All documents sufficient to identify any and all domain names registered by or on behalf of Respondent incorporating Respondent's Mark, including but not limited to applications, registrations, agreements, correspondence and e-mails.

Response To Document Request No. 41:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome. Respondent further objects to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections, Respondent responds that the electronic document printed from www.internic.com responsive to this request showing registration of domain name www.gagapureplatinum.com is annexed hereto as Exhibit C – Document Request No 41.

Document Request No. 58:

All documents concerning Respondent's efforts to enforce Respondent's Mark.

Response To Document Request No. 58:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome, confusing, vague and ambiguous.

Respondent further objects to this request as it seeks information that is already in the possession of the Petitioner, equally available to Petitioner, publicly available and is a matter of public record. Subject to and without waiving the forgoing objections, Respondent responds that Respondent has filed the following documents with the USPTO in an effort to enforce Respondent's Mark and are annexed hereto as Exhibit D.

- 1) Respondent's Letter of Protest filed against Application Serial No. 85115004 for the mark Lady Gaga due to likelihood of confusion and accepted by the USPTO on November 5, 2010.
- 2) Respondent's Letter of Protest filed against Application Serial Number 85215017 for the mark Haus of Gaga due to likelihood of confusion and accepted by USPTO on March 31, 2011.
- 3) Respondent's Letter of Protest filed against Application Serial Number 85282752 for the mark Lady Gaga Fame due to likelihood of confusion and accepted by USPTO on August 29, 2011.
- 4) Respondent's Initial 30 Day Request for Extension of Time To Oppose Application Serial Number 85215017 for the mark Haus of Gaga filed and granted by the USPTO on February 1, 2012
- 5) Respondent's 60 Day Request for Extension of Time To Oppose Application Serial Number 85215017 for the mark Haus of Gaga filed and granted by the USPTO on February 29, 2012.
Respondent's Notice of Opposition No. 91205046 filed with the USPTO on May 1, 2012.

Document Request No. 65:

All documents concerning registration of the domain name gagapureplatinum.com

Response To Document Request No. 65:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome, confusing and vague. Respondent

further objects to this request as it seeks information that is equally available to Petitioner, publicly available and is a matter of public record. Subject to and without waiving the forgoing objections, Respondent responds that the document responsive to this request was already provided above as Exhibit C. Please refer to Exhibit C.

Pro se Respondent holds the United States Patent and Trademark Office, The Trademark Trial and Appeal Board, and these proceedings with the utmost respect, has never ‘game played’, ‘thumbed her nose’, or “evaded” as Petitioner Ate My Heart, Inc. falsely states. Petitioner attempts to portray Respondent in bad light because Respondent is not well versed in the law due to being pro se, however, Respondent understands that ignorance to not knowing the law is not an excuse. Petitioner filed for sanctions for her discovery answers; however, Respondent was sanctioned for not properly formatting answers in discovery. When Respondent understood and learned of her error, she amended her answers according to the proper format. Respondent has been diligent in her efforts to defend and has never intentionally behaved in a manner which could be construed as unfavorable. Respondent is neither a ‘schemer’ nor ‘evader’ as Petitioner falsely paints to The Board.

Petitioner is in receipt of overwhelming admissible evidence that the GPP TM is in use and not abandoned. AMH’s statements and Petition To Cancel illustrate that its intentions are malicious, ill intended and harassing in nature placing undue burden on Respondent in this case. By conjuring manufactured false claims of abandonment, newcomer AMH confirms its lack of standing and validity in its Cancellation Proceeding and further confirms that AMH is unwilling to respect the intellectual property and rights of the Respondent.

Newcomer and Petitioner AMH is a singer. Respondent is a cosmetics designer and creator in the cosmetics industry. Petitioner covets Respondent’s Trademark because Petitioner warrants they are ‘entitled’ to it due to ‘fame’ and therefore has initiated this cancellation proceeding. AMH’s petition To Cancel is meritless and void and Respondent respectfully requests that The Board issue an order to cancel Petitioner’s petition to cancel. Respondent further prays that The Board issue an order denying

Petitioner's motion for default judgment in its entirety and issue summary judgment in favor of Respondent Christina Sukljan in its entirety in both the consolidated cancelation and opposition proceedings.

WHEREFORE, for the reasons set forth herein, Respondent respectfully requests that judgment be entered in its entirety in favor of Respondent/Opposer in both the cancelation proceeding and opposition proceeding, and Petitioner's motion for default judgment be denied in its entirety, AMH's Petition to Cancel be denied in its entirety and judgment entered against Petitioner/Applicant Ate My Heart, Inc. and in favor of Respondent/Opposer Christina Sukljan for both Opposition No. 91205046 and Cancelation No. 92055279.

Dated: Albany, New York

August 27, 2014

Respectfully Submitted,

By:

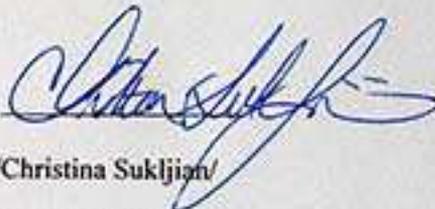


Christina Sukljan
Christina Sukljan
GAGA PURE PLATINUM
13 Manor Street
Albany, New York 12207

CERTIFICATE OF PROOF OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONDENT'S RESPONSE TO PETITIONER ATE MY HEART, INC.'S RENEWED MOTION FOR DEFAULT JUDGMENT** has been served on Ate My Heart, Inc. by mailing said copy on August 27, 2014 via The United States Postal Service Priority Mail with Signature Confirmation in a USPS Priority Mail Envelope postage prepaid to: Ate My Heart, Inc. c/o Lisa Buckley Pryor Cashman LLP, 7 Times Square, New York, NY 10036.

By:



/Christina Sukljian/

Christina Sukljian

13 Manor Street

Albany, NY 12207

Date of Deposit: August 27, 2014
USPS Priority Mail

CERTIFICATE OF MAILING THROUGH ESTTA

I, Christina Sukljian, hereby certify that this **RESPONDENT'S RESPONSE TO PETITIONER ATE MY HEART, INC.'S RENEWED MOTION FOR DEFAULT JUDGMENT** is being filed electronically through ESTTA with The Trademark Trial And Appeal Board, United States Patent And Trademark Office, Alexandria, VA 22313-1451 on the date indicated below.

Date of Deposit: August 27, 2014

Signed: /Christina Sukljian/

EXHIBIT A

Christina Sukljan
13 Manor Street
Albany, NY 12207
Telephone (518) 436-1833

June 20, 2014

VIA USPS PRIORITY MAIL

Ryan S. Klarberg
Pryor Cashman LLP
7 Times Square
New York, NY 10036

Re: Christina Sukljan v. Ate My Heart Inc. | Ate My Heart Inc. v. Christina Sukljan
Opposition No. 91205046 and Cancellation No. 92055279

Dear Mr. Klarberg:

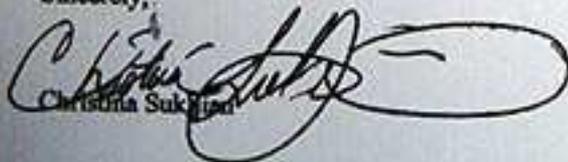
This letter is in response to your deposition notice scheduled for June 26, 2014. This letter is to notify you that I object to your scheduled date because I will not be available on June 26, 2014.

I am in receipt of your deposition notice as of today June 20, 2014. I am also in receipt of your telephone messages left with my office, at 3:30 p.m. and 4:57 p.m. from June 17, 2014 as of today June 20, 2014. As you know, the receptionist communicated directly to you that I was unavailable with respect to your two telephone calls. You did not allow me the common courtesy and time to receive your message, check my schedule and set a mutually convenient date and time. Instead, less than an hour after your initial phone call, you already set a date solely convenient for you and mailed your deposition notice via Fedex at 4:26 p.m. the same day.

Please amend your schedule to reflect my availability which will be after August 15, 2014. I will be available on August 22, 2014 and August 29, 2014. Please let me know if any of these dates are mutually convenient for you. Please confirm by mail.

Thank you for your attention.

Sincerely,


Christina Sukljan

[Ship a Package](#)[Send Mail](#)[Manage Your Mail](#)[Shop](#)[Buy](#)

USPS Tracking™

Customer Service
Have questions?

Tracking Number: 9410803699300057702003

Expected Delivery Day: Monday, June 23, 2014

Signed for By: C JACKSON // NEW YORK, NY 10036 // 3:30 pm

Product & Tracking Information

Available Actions

Postal Product:
Priority Mail 2-Day™Features:
\$50 insurance included

Signature Confirmation™

[Proof of Delivery](#)

DATE & TIME	STATUS OF ITEM	LOCATION
June 23, 2014 , 3:30 pm	Delivered	NEW YORK, NY 10036
Your item was delivered at 3:30 pm on June 23, 2014 in NEW YORK, NY 10036. The item was signed for by C JACKSON.		
June 23, 2014 , 10:03 am	Out for Delivery	NEW YORK, NY 10036
June 23, 2014 , 9:53 am	Sorting Complete	NEW YORK, NY 10036
June 23, 2014 , 9:27 am	Arrived at Post Office	NEW YORK, NY 10036
June 22, 2014 , 4:37 am	Departed USPS Facility	BETHPAGE, NY 11714
June 22, 2014 , 2:28 am	Arrived at USPS Facility	BETHPAGE, NY 11714
June 21, 2014 , 4:10 am	Departed USPS Facility	SPRINGFIELD, MA 01152
June 20, 2014 , 11:49 pm	Arrived at USPS Origin Facility	SPRINGFIELD, MA 01152
June 20, 2014 , 5:38 pm	Departed Post Office	ALBANY, NY 12207
June 20, 2014 , 5:07 pm	Picked Up	ALBANY, NY 12207
June 20, 2014	Pre-Shipment Info Sent to USPS	

Track Another Package

What's your tracking (or receipt) number?

EXHIBIT B



ZELA INTERNATIONAL CO.

QUALITY. PERFORMANCE. INTEGRITY.

EXPERTISE SINCE 1968

[our brands](#)

[mission and values](#)

[history](#)

[creation](#)

[contact us](#)

g a g a

GAGA
PURE PLATINUM®

A unisex line of edgy sophistication, GAGA Pure Platinum offers a wide selection of unconventional products and color palettes. Designed and infused with precious gems in sharp urban packaging. The color selection is more avant-garde than conventional standards, eternally fashion forward.

For a unique sense of individualistic style, GAGA is it.



[click here to visit the official website: www.gagapureplatinum.com](http://www.gagapureplatinum.com)



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contact us

For all inquiries:
email: info@zela.com
phone: 518.436.1833





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our brands



*Mode
Couleurs*

Christina

Little
Gems

GAGA
PURE PLATINUM®

MODE
NEW YORK

Whois Search Results

Search again (.aero, .arpa, .asia, .biz, .cat, .com, .coop, .edu, .info, .int, .jobs, .mobi, .museum, .name, .net, .org, .pro, or .travel) :

- Domain (ex internic.net)
- Registrar (ex ABC Registrar, Inc.)
- Nameserver (ex ns.example.com or 192.16.0.192)

Whois Server Version 2.0

Domain names in the .com and .net domains can now be registered with many different competing registrars. Go to <http://www.internic.net> for detailed information.

Domain Name: ZELA.COM
Registrar: 1 & 1 INTERNET AG
Whois Server: whois.schlund.info
Referral URL: <http://1and1.com>
Name Server: NS27.1AND1.COM
Name Server: NS28.1AND1.COM
Status: ok
Updated Date: 10-dec-2013
Creation Date: 09-dec-1999
Expiration Date: 09-dec-2014

>>> Last update of whois database: Wed, 27 Aug 2014 15:42:00 UTC <<<

NOTICE: The expiration date displayed in this record is the date the registrar's sponsorship of the domain name registration in the registry is currently set to expire. This date does not necessarily reflect the expiration date of the domain name registrant's agreement with the sponsoring registrar. Users may consult the sponsoring registrar's Whois database to view the registrar's reported date of expiration for this registration.

TERMS OF USE: You are not authorized to access or query our Whois database through the use of electronic processes that are high-volume and automated except as reasonably necessary to register domain names or modify existing registrations; the Data in VeriSign Global Registry Services' ("VeriSign") Whois database is provided by VeriSign for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. VeriSign does not guarantee its accuracy. By submitting a Whois query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail, telephone, or facsimile; or (2) enable high volume, automated, electronic processes that apply to VeriSign (or its computer systems). The compilation, repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of VeriSign. You agree not to use electronic processes that are automated and high-volume to access or

InterNIC

[Home](#)[Registrars](#)[FAQ](#)[Whois](#)

Whois Search Results

Search again (.aero, .arpa, .asia, .biz, .cat, .com, .coop, .edu, .info, .int, .jobs, .mobi, .museum, .name, .net, .org, .pro, or .travel) :

- Domain (ex. internic.net)
- Registrar (ex. ABC Registrar, Inc.)
- Nameserver (ex. ns.example.com or 192.16.0.192)

Whois Server Version 2.0

Domain names in the .com and .net domains can now be registered with many different competing registrars. Go to <http://www.internic.net> for detailed information.

Domain Name: GAGAPUREPLATINUM.COM
Registrar: 1 & 1 INTERNET AG
Whois Server: whois.schlund.info
Referral URL: <http://land1.com>
Name Server: NS51.LAND1.COM
Name Server: NS52.LAND1.COM
Status: ok
Updated Date: 11-feb-2014
Creation Date: 10-feb-2011
Expiration Date: 10-feb-2015

>>> Last update of whois database: Wed, 27 Aug 2014 15:49:33 UTC <<<

NOTICE: The expiration date displayed in this record is the date the registrar's sponsorship of the domain name registration in the registry is currently set to expire. This date does not necessarily reflect the expiration date of the domain name registrant's agreement with the sponsoring registrar. Users may consult the sponsoring registrar's Whois database to view the registrar's reported date of expiration for this registration.

TERMS OF USE: You are not authorized to access or query our Whois database through the use of electronic processes that are high-volume and automated except as reasonably necessary to register domain names or modify existing registrations; the Data in VeriSign Global Registry Services' ("VeriSign") Whois database is provided by VeriSign for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. VeriSign does not guarantee its accuracy. By submitting a Whois query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail, telephone, or facsimile; or (2) enable high volume, automated, electronic processes that apply to VeriSign (or its computer systems). The compilation, repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of VeriSign. You agree not to use electronic processes that are automated and high-volume to access or

EXHIBIT C

Preliminary Statement

Parsing through Ms. Sukljian's irrelevant ramblings, one thing is clear: Ms. Sukljian agrees that the only information produced to AMH in response to its comprehensive discovery requests and *after* the Board issued its Order to Compel, was a link to her website. Nothing else. For all of her boasting about her publicity (none of which she alleges is actually related to her supposed mark) as well as her naked claims of continuous use since 2001, Ms. Sukljian did not produce one invoice, one shipping document, any customer lists or any advertising examples proving that the mark was ever in use in commerce. These items were properly and reasonably requested by AMH and are not subject to any privilege, as she claimed in her tardy responses. In fact, during multiple calls between the parties, counsel for AMH repeatedly implored Ms. Sukljian to provide AMH with evidence of her use – even informally – but Ms. Sukljian refused.

Here is what is really going on: Ms. Sukljian registered a trademark, which she never used and never had any intention to use. Once Lady Gaga rose to international fame and began receiving virtually unparalleled publicity, Ms. Sukljian decided to capitalize on Lady Gaga's fame and good will by commencing use of the mark in commerce. Indeed, her domain name for the gagapureplatinum.com website was registered in 2011 – three years after Lady Gaga achieved worldwide renown. More specifically, the actual website associated with the domain did not go “live” until *after* AMH filed the cancellation action against Ms. Sukljian's registration – something she admitted on the phone during discussions with counsel. Put simply, Ms. Sukljian will not produce responsive documents illustrating that she has been actively using her mark in commerce since 2001 because, in fact, there are none.

Ms. Sukljian cannot use her registration as both a shield and a sword. She cannot continue to rely on the registration to oppose AMH's trademark without proving that the

use of the mark since 2001, Sukljian did not produce one invoice, one shipping document, one customer list, or one advertisement to show that the mark was ever in use in commerce prior to the website she launched in the spring of 2011, after AMH applied to register its mark.

Sukljian's August 25, 2013 Discovery Responses To AMH's Interrogatories

On August 25, 2013, Sukljian served her discovery responses, in which she objected to the following thirty-four (34) interrogatories, as to the merits, while providing no responses that could constitute a proper discovery response under the Board's Order:

Petitioner's First Set of Interrogatories:

- Interrogatory Nos. 1, 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 16, 17, 18, 19, and 21

Applicant's First Set of Interrogatories:

- Interrogatory Nos. 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 21

The following are just a few examples of Sukljian's inadequate response to the merits to AMH's interrogatories:

(i) In response to Petitioner's (AMH) Interrogatory No. 4 requesting Respondent (Sukljian) to describe in detail the actual use of Respondent's Mark on Respondent's Goods by identifying each type of item that bears Respondent's Mark and identifying the manner in which Respondent's Mark is affixed to or used in connection with each such item, Sukljian stated:

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome and confusing.

(ii) In response to Applicant's (AMH) Interrogatory No. 7 requesting Opposer (Sukljian) to state the annual volume of business in the United States for each type of item bearing her Mark by identifying the annual volume of sales in units and dollars from the date of first sale(s) to the date of Opposer's response, Sukljian stated:

EXHIBIT D

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85115004

MARK: LADY GAGA

85115004

CORRESPONDENT ADDRESS:

Brad D. Rose
Pryor Cashman LLP
7 Times Square
New York NY 10036

CLICK HERE TO RESPOND TO THIS LETTER:
<http://www.uspto.gov/teas/eTEASpageD.htm>

APPLICANT: Ate My Heart Inc.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE:

In addition to the issues raised in the Office action dated November 29, 2010, which are incorporated by reference herein, applicant must also address the issue(s) below. Applicant must respond to all issues raised in this Office action, as well as in the previous Office action of November 29, 2010, within six (6) months of the date of issuance of this Office action. 37 C.F.R. §2.62(a). If applicant does not respond within this time limit, the application will be abandoned. The examining attorney apologizes for any confusion this may cause the applicant.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

THIS PARTIAL REFUSAL APPLIES TO CLASS(ES) 3 and 35 ONLY

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 2898544. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

The applicant's proposed mark is **LADY GAGA** for "**Fragrances and perfumery; personal care products; fragrance products; perfumes; colognes; eau de toilette; body wash; body spray; body scrubs; body powder; fragrance and body oils and mists; body moisturizers; body creams; soaps; body butter; bath gels; skin care products; body and foot care products; body and shower products; preparations for the care and conditioning of the body, skin, scalp, and hair; toilet soap; body lotions; deodorants; hair preparations; shampoo; bubble bath, bath oil and shower gel; nail polish, nail polish remover; false eyelashes; decorative transfers for cosmetic purposes; Cosmetics, cosmetic preparations; make-up; Lipsticks; Candles, prayer candles; Metal key chains; Cellular phone accessory charms; Protective covers for portable media players; pre-recorded flash drives featuring audio and audiovisual recordings, a digital booklet, photographs and links to the websites of others; Sunglasses; Lighted party-themed decorations, electric light decorative strings; Light wands; Charm bracelets; Necklaces, rings, plastic rings, bracelets; rubber or silicone wristbands in the nature of a bracelet; Jewelry; Gift wrapping paper; Christmas cards, holiday cards; writing instruments, pen sets; Greeting cards; decalcomanias; stickers; folders; notebooks; Temporary tattoos; posters; lenticular posters; Calendars; souvenir programs concerning musical events; Cosmetic cases sold empty; cosmetic carrying cases sold empty; Wallets; cosmetic bags sold empty; textile shopping bags; umbrellas; Tote bags; Cosmetic accessories including cosmetic brushes; Lanyards for holding badges; Sports towels; Santa hats; masquerade costumes; masquerade costumes and masks sold therewith; Halloween costumes; Halloween costumes and masks sold therewith; clothing including undergarments, board shorts, hot pants, crop shirts, wrap around hoods; gloves; Shirts, t-shirts, tank tops, hooded jackets, hooded sweatshirts; headwear, hats, raglans; Wigs; hair accessories; headbands; Novelty buttons; Christmas tree ornaments and decorations; bubbles, namely, bubble making wand and solution sets; Costume masks; **Online retail store services featuring merchandise, fragrances and perfumery, personal care products, fragrance products, perfumes, colognes, eau de toilette, body wash, body spray, body scrubs, body powder, fragrance and body oils and mists, body moisturizers, body creams, soaps, body butter, bath gels, skin care products, body and foot care products, body and shower products, preparations for the care and conditioning of the body, skin, scalp, and hair, cosmetics, cosmetic preparations, make-up, toilet soap, body lotions, deodorants, hair preparations, shampoo, bubble bath, bath oil and shower gel,****

nail polish, nail polish remover, false eyelashes, decorative transfers for cosmetic purposes, cellular phone accessory charms, lighted party-themed decorations, electric light decorative strings, charm bracelets, gift wrapping paper, Christmas cards, holiday cards, greeting cards, decalcomanias, stickers, folders, notebooks, writing instruments, pen sets, wallets, cosmetic cases sold empty, cosmetic carrying cases sold empty, cosmetic bags sold empty, textile shopping bags, umbrellas, Santa hats, masquerade costumes, masquerade costumes and masks sold therewith, Halloween costumes, Halloween costumes and masks sold therewith, clothing including undergarments, board shorts, hot pants, crop shirts, wrap around hoods, gloves, wigs, hair accessories, headbands, Christmas tree ornaments and decorations, bubbles, namely, bubble making wand and solution sets. Online retail store services featuring candles, prayer candles, calendars, key chains, clothing, headphones, musical sound recordings, downloadable musical sound recordings, posters, sunglasses, jewelry, sports towels, costume masks, temporary tattoos, tote bags, light wands, ornamental buttons, songbooks, headwear, souvenir programs concerning musical events, pre-recorded flash drives featuring audio and audiovisual recordings, a digital booklet, photographs and links to the websites of others, and music merchandise.” Relevant class in bold.

The registrant’s mark is **GAGA PURE PLATINUM** for “Cosmetics; namely nail polish, lipstick, lip-gloss, eye-liner, lip-liner, eye shadow, face powder, blush, mascara..”

The marks are highly similar because they both include the word, GAGA.

Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant’s and registrant’s mark. *See Crocker Nat’l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff’d sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat’l Ass’n*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and “21” CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §1207.01(b)(ii)-(iii).

The applicant’s goods and retail services and the registrant’s goods include cosmetics and/or personal care products and thus, likely to be encountered by the same purchasers and found in the same channels of trade. The average consumer who encounters the marks LADY GAGA and GAGA PURE PLATINUM for highly related goods/services is likely to believe that such goods/services come from a common source. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993), and cases cited therein.

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient that the goods and/or services are related in some manner and/or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Attached are copies of printouts from the USPTO X-Search database, which show third-party registrations of marks used in connection with the same or similar goods and/or services as those of applicant and registrant in this case. These printouts have probative value to the extent that they serve to suggest that the goods and/or services listed therein, namely nail polish, lipstick, eye liner, eye shadow, blush, mascara, fragrances, perfumes, bath gels, soaps, body lotions, shampoo, and cosmetics, are of a kind that may emanate from a single source. *In re Infinity Broad. Corp. of Dallas*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

Accordingly, applicant's proposed mark for LADY GAGA is refused registration under Section 2(d) of the Trademark Act. Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

If the applicant has any questions regarding this Office action, please telephone the assigned examining attorney

Lana H. Pham /lhp/
Trademark Attorney
Law Office 115
United States Patent and Trademark Office
(571) 272-9478
Lana.Pham@uspto.gov (informal)

TO RESPOND TO THIS LETTER: Use the Trademark Electronic Application System (TEAS) response form at <http://teasroa.uspto.gov/roa/>. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-

9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

DESIGN MARK

Serial Number

76305015

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

GAGA PURE PLATINUM

Standard Character Mark

No

Registration Number

2898544

Date Registered

2004/11/02

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Sukljian, Christina INDIVIDUAL UNITED STATES 13 Manor Street Albany
NEW YORK 12207

Goods/Services

Class Status -- ACTIVE. IC 003. US 001 004 006 050 051 052. G & S:
Cosmetics; namely nail polish, lipstick, lip-gloss, eye-liner,
lip-liner, eye shadow, face powder, blush, mascara. First Use:
2000/07/23. First Use In Commerce: 2001/06/07.

Filing Date

2001/08/27

Examining Attorney

GARDNER, BERYL

GAGA PURE PLATINUM

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85115004
LAW OFFICE ASSIGNED	LAW OFFICE 115
MARK SECTION (no change)	
ARGUMENT(S)	
December 28, 2010	
<u>VIA TEAS</u> Commissioner for Trademarks P.O. Box 1451 Alexandria, VA 22313-1451 Attn: Lana H. Pham, Esq. Examining Attorney, Law Office 115	
Re: Response to Office Actions issued on November 29, 2010 and December 8, 2010 in connection with Application of Ate My Heart Inc. <u>for the Mark LADY GAGA, Appl. Ser. No. 85/115,004</u>	
Dear Ms. Pham:	
In response to the Office Actions issued on November 29, 2010 and December 8, 2010 (collectively, "Office Actions"), Ate My Heart Inc. (hereinafter "Applicant") respectfully requests reconsideration of the above-referenced serial number (hereinafter "Application") for the mark LADY GAGA (hereinafter "Mark") in cls. 3, 4, 6, 9, 11, 14, 16, 18, 21, 22, 24, 25, 26, 28 and 35 in view of the following Amendment (hereinafter "Amendments") and Remarks hereby submitted (hereinafter "Response").	
<u>AMENDMENT</u>	

Please amend, *without prejudice*, the current description of goods in the noted classes as set forth below:

--“Cellular phone accessory charms; protective covers for portable media players; pre-recorded flash drives featuring audio and audiovisual musical recordings; a digital booklet, photographs and links to the web sites of others; sunglasses” in cl. 9; and

“Cosmetic accessories, namely, cosmetic brushes, applicator sticks for applying make-up, facial sponges for applying make-up, and cosmetic accessory cup holders” in cl. 21.--

For the time being, all other goods and services presently covered in the remaining classes are hereby retained; however, Applicant intends to address the open issues where the Examiner raised indefiniteness concerns in such other classes.

REMARKS

In addition to issues concerning Applicant’s proposed description of goods and services, the Office Actions cited the following references as a basis for refusal: (1) LADY GAGA LG *with Design* as set forth under Appl. Ser. No. 85/033,835 (hereinafter “Ser. No. ‘835”), LADY GAGA *with Design* as set forth under Appl. Ser. No. 85/032,486 (hereinafter “Ser. No. ‘486”) (Ser. Nos. ‘835 and ‘486 are hereinafter collectively referred to as the “LADY GAGA Applications”); (2) GAGA as set forth under Appl. Ser. No. 77/822,441 (hereinafter “Ser. No. ‘441”); (3) GAGA as set forth under Appl. Ser. No. 85/005,202 (hereinafter “Ser. No. ‘202”); (4) GAGA MILANO *with Design* as set forth under Appl. Ser. No. 79/083,773 (hereinafter “Ser. No. ‘773”); (5) BABY GAGA as set forth under Appl. Ser. No. 77/949,907 (hereinafter “Ser. No. ‘907”); (6) GAGABANDS as set forth under Appl. Ser. No. 85/068,520 (hereinafter “Ser. No. ‘520”); (7) GAGA as set forth under Appl. Ser. No. 85/068,466 (hereinafter “Ser. No. ‘466”); and (8) GAGA PURE PLATINUM as set forth under Reg. No. 2,898,544 (hereinafter “Cited Registration”). (Ser. No. ‘773, Ser. No. ‘907, Ser. No. ‘520 and Ser. No. ‘466 are hereinafter collectively referred to as the “Cited Applications”).

Aside from the fact that the owners of the LADY GAGA Applications have inappropriately filed for and fraudulently sought to register marks that falsely suggest a connection with Applicant and its founder/CEO, Stefani Germanotta, Applicant respectfully requests that the Examiner

withdraw citation of the LADY GAGA Applications given that Applicant's foreign filing priority date, namely, March 3, 2010, **pre-dates** the filing date of the LADY GAGA Applications, namely, May 7, 2010 and May 10, 2010, as shown in the T.A.R.R. print-outs attached hereto as **Exhibit A.**

Applicant also respectfully requests that the Examiner withdraw citation of Ser. No. '441 and Ser. No. '202 given their subsequent abandonment as shown in the T.A.R.R. print-outs attached hereto as **Exhibit B.**

Further, while Applicant respectfully disagrees with the assertion that a likelihood of confusion could be caused by the existence of the Cited Applications (and Cited Registration) should Applicant's Mark proceed on to registration, Applicant hereby requests that the instant Application be suspended for a period of six (6) months pending disposition of the Cited Applications, and further expressly preserves its right to submit substantive arguments relative to same as well as with respect to the Cited Registration.

CONCLUSION

Should there be any remaining questions or comments, or if there are any additional issues that can be resolved through an Examiner's Amendment, the Examining Attorney is encouraged to telephone the undersigned at the below-referenced number.

Respectfully submitted,

By: /tlee/
Teresa Lee

PRYOR CASHMAN LLP
7 Times Square
New York, NY 10036-6569
Direct dial: 212 326 0831
Direct fax: 212 798 6915
tlee@pryorchashman.com

Attorney for Applicant
Ate My Heart Inc.

EVIDENCE SECTION

EXHIBIT E

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51 and 52

Reg. No. 2,898,544

United States Patent and Trademark Office

Registered Nov. 2, 2004

**TRADEMARK
PRINCIPAL REGISTER**

GAGA PURE PLATINUM

SUKLJIAN, CHRISTINA (UNITED STATES INDIVIDUAL)
13 MANOR STREET
ALBANY, NY 12207

FIRST USE 7-23-2000; IN COMMERCE 6-7-2001.

SER. NO. 76-305,015, FILED 8-27-2001.

FOR: COSMETICS; NAMELY NAIL POLISH, LIP-STICK, LIP-GLOSS, EYE-LINER, LIP-LINER, EYE SHADOW, FACE POWDER, BLUSH, MASCARA, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

BERYL GARDNER, EXAMINING ATTORNEY

Side - 1

**NOTICE OF ACCEPTANCE AND
ACKNOWLEDGEMENT OF §§8 & 15
DECLARATION
MAILING DATE: Jun 5, 2010**

The combined declaration of use and incontestability filed in connection with the registration identified below meets the requirements of Sections 8 and 15 of the Trademark Act, 15 U.S.C. §1058 and 1065. The combined declaration is accepted and acknowledged. The registration remains in force.

For further information about this notice, visit our website at: <http://www.uspto.gov>. To review information regarding the referenced registration, go to <http://tarr.uspto.gov>.

REG NUMBER: 2898544
MARK: GAGA PURE PLATINUM
OWNER: Sukljan, Christina

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

FIRST-CLASS
MAIL
U.S POSTAGE
PAID

CHRISTINA SUKLJIAN
13 MNR ST
ALBANY, NY 12207

EXHIBIT F

INTERROGATORY NO.4

Describe in detail the actual use of Respondent's Marks on Respondent's Goods by identifying each type of item that bears Respondent's Mark and identifying the manner in which Respondent's Mark is affixed to or used in connection with each such item.

RESPONSE TO INTERROGATORY NO.4

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome and confusing.

INTERROGATORY NO.5

Identify the date of first use in the United States of Respondent's Mark on each item identified in the Registration.

RESPONSE TO INTERROGATORY NO.5

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is overly broad. Respondent further objects to this Interrogatory to the extent that it seeks information that is publicly available and equally available to Petitioner. Subject to and without waiving the forgoing objections Respondent responds that the date of first use of Respondent's Mark in the United States, as identified in the Registration located on the United States Patent and Trademark Office's website, is identified as first Use in Commerce: Jun. 07, 2001 and First Use: Jul. 23, 2000.

INTERROGATORY NO.6

For each of Respondent's Goods bearing or offered in connection with Respondent's Mark in the United States, please state the following:

- (a) Respondent's channels of trade, including all former, current or prospective retail establishments, wholesale establishments and websites;
- (b) Respondent's targeted consumer group and/or targeted demographics;
- (c) The price points at which Respondent's Goods bearing Respondent's Mark are sold to consumers; and
- (d) The amount of money Respondent has earmarked or dedicated to the manufacture and, separately, the promotion of the Respondent's Goods bearing Respondent's Mark for 2012.

RESPONSE TO INTERROGATORY NO.6

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is overly broad and unduly burdensome. Respondent further objects to this Interrogatory to the extent that it seeks information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections Respondent states the Interrogatories listed above in (a) is overly broad and unduly burdensome, however Respondent identifies the following current two websites as www.gagapureplatinum.com and www.zela.com

(c) \$12.50 - \$22.00.

INTERROGATORY NO.7

For each type of item identified in response to Interrogatory No. 7 above, state Respondent's annual volume of business in the United States by identifying the annual volume of sales in units and dollars from the date of first sale(s) to the date of Respondent's response.

RESPONSE TO INTERROGATORY NO.7

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is incomprehensible and confusing.

INTERROGATORY NO.8

Identify any and all persons Respondent has authorized, licensed or otherwise granted the right to use Respondent's Marks in commerce in connection with Respondent's Goods. For each person identified, identify the date of commencement and termination of each such authorization, license or grant, and identify any written license agreements or franchise agreements granting rights to use Respondent's Mark.

RESPONSE TO INTERROGATORY NO.8

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is overly broad and unduly burdensome. Respondent further objects to this Interrogatory to the extent that it seeks information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party.

INTERROGATORY NO.9

Identify all cease and desist demand letters and responses thereto, litigations, trademark actions or proceedings, ICANN proceedings and/or other challenges concerning Respondent's Mark in any way. When responding to this interrogatory, include: (a) the dates of such challenge; (b) the third-party mark involved; (c) the adversarial party; and (d) the outcome of each challenge.

RESPONSE TO INTERROGATORY NO.9

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is overly broad and unduly burdensome. Respondent further objects to this Interrogatory to the extent that it seeks information that is

neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections Respondent states that no cease and desist demand letters or responses thereto, litigations, trademark actions or ICANN proceedings exist concerning the use of the mark GAGA PURE PLATINUM. Respondent identifies the following USPTO Action: Respondent's Opposition No. 91205046 filed with the USPTO.

INTERROGATORY NO.10

Identify all of Respondent's market competitors for Respondent's Goods and state why Respondent believes that each identified entity is a competitor.

RESPONSE TO INTERROGATORY NO.10

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is ambiguous, harassing, overly broad, vague, and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO.11

Identify the total number of sales of all Respondent's Goods bearing Respondent's Mark each year from 2001 to present.

RESPONSE TO INTERROGATORY NO.11

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is overly broad and unduly burdensome. Respondent further objects to this Interrogatory to the extent that it seeks information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party.

RESPONSE TO INTERROGATORY NO.14

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is vague, overly broad and unduly burdensome. Respondent further objects to this Interrogatory to the extent that it seeks information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party.

INTERROGATORY NO.15

Identify each item sold by or on behalf of Respondent since 2004 that bears Respondent's Mark.

RESPONSE TO INTERROGATORY NO.15

Respondent objects to this Interrogatory for the reasons set forth in the General Objections and specifically to the extent that it is overly broad and unduly burdensome. Respondent further objects to this Interrogatory to the extent that it seeks information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections Respondent identifies the items as cosmetics, including nail polish, blush, mascara, face powder, eye shadow, concealer, lip gloss, eye liner, lip liner, lipstick, face luminizer.

INTERROGATORY NO.16

Identify all web designers and developers and persons affiliated with use and registration of the domain name gagapureplatinum.com.

under Respondent's Mark for each year in the United States since Respondent's first use of Respondent's Mark in 2001.

RESPONSE TO DOCUMENT REQUEST NO. 2:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome. Respondent further objects to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections, Respondent responds that there are no documents responsive to this request in its possession, custody or control.

DOCUMENT REQUEST NO. 3:

All documents and things sufficient to show the use of Respondent's Mark in connection with each of Respondent's Goods each year since Respondent's date of first use in 2001.

RESPONSE TO DOCUMENT REQUEST NO. 3:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome. Respondent further objects to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections, Respondent responds that there are no documents responsive to this request in its possession, custody or control.

DOCUMENT REQUEST NO. 4:

All documents concerning packaging for Respondent's Goods bearing Respondent's Mark.

RESPONSE TO DOCUMENT REQUEST NO. 4:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome, confusing, vague and ambiguous. Respondent further objects to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections, Respondent responds that electronic documents printed from www.gagapureplatinum.com responsive to this request showing product packaging are annexed hereto as Exhibit A – Document Request No 4.

DOCUMENT REQUEST NO. 5:

All documents concerning any logos, color schemes or other distinctive identifiers for Respondent's Goods

RESPONSE TO DOCUMENT REQUEST NO. 5:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome, confusing, vague and ambiguous. Respondent further objects to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections, Respondent responds that documents responsive to this request showing the logo were provided above as Exhibit A. Please refer to Exhibit A.

DOCUMENT REQUEST NO. 6:

All documents concerning use of Respondent's Mark in 2001 on (a) nail polish; (b) lipstick; (c) lip-gloss; (d) eye-liner; (e) lip-liner; (f) eye shadow; (g) face powder; (h) blush; (i)

to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections, Respondent responds that there are no documents responsive to this Request in its possession, custody, or control.

DOCUMENT REQUEST NO. 35:

Samples of each of Respondent's Goods sold or offered for sale under Respondent's Mark.

RESPONSE TO DOCUMENT REQUEST NO. 35:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome and harassing and that the information is publicly available and/or equally available to Petitioner. Subject to and without waiving the forgoing objections, Respondent responds that a variety of Respondent's cosmetic samples including one piece of each of the following below are annexed hereto as Exhibit B – Box of Samples Document Request No. 35.

1. GAGA PURE PLATINUM® ART DÉCORATIF LIPSTICK IN SPRING LOVE
2. GAGA PURE PLATINUM® STAR CONCEALER IN LIGHT
3. GAGA PURE PLATINUM® ETHEREAL FINISH MASCARA
4. GAGA PURE PLATINUM® 58 FACETS BRILLIANT LIP GLOSS
5. GAGA PURE PLATINUM® NAIL COSMETIC IN AVEC MOI
6. GAGA PURE PLATINUM® NEO-POP™ CREAM BLUSH IN SHOW ME
7. GAGA PURE PLATINUM® ETERNALLY CHIC SET BOX

DOCUMENT REQUEST NO. 40:

All documents sufficient to identify the geographic regions of the United States in which any of Respondent's Goods sold under Respondent's Marks are currently offered for sale or will be offered for sale.

RESPONSE TO DOCUMENT REQUEST NO. 40:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome. Respondent further objects to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections, Respondent responds that there are no documents responsive to this Request in its possession, custody, or control.

DOCUMENT REQUEST NO. 41:

All documents sufficient to identify any and all domain names registered by or on behalf of Respondent incorporating Respondent's Mark, including but not limited to applications, registrations, agreements, correspondence and e-mails.

RESPONSE TO DOCUMENT REQUEST NO. 41:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome. Respondent further objects to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections, Respondent responds that the electronic document printed from www.internic.com responsive to this request showing registration of domain name www.gagapureplatinum.com is annexed hereto as Exhibit C – Document Request No 41.

RESPONSE TO DOCUMENT REQUEST NO. 56:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome. Respondent further objects to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections, Respondent responds that there are no documents responsive to this Request in its possession, custody, or control.

DOCUMENT REQUEST NO. 57:

All documents concerning any goods in International Class 3 that are offered for sale or sold by any third party and which use the term GAGA or any term substantially similar thereto including, but not limited to, in the name of the product and/or, packaging of the product.

RESPONSE TO DOCUMENT REQUEST NO. 57:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome, confusing and incomprehensible. Respondent further objects to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections, Respondent responds that there are no documents responsive to this Request in its possession, custody, or control.

DOCUMENT REQUEST NO. 58:

All documents concerning Respondent's efforts to enforce Respondent's Mark.

RESPONSE TO DOCUMENT REQUEST NO. 58:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome, confusing, vague and ambiguous. Respondent further objects to this request as it seeks information that is already in the possession of the Petitioner, equally available to Petitioner, publicly available and is a matter of public record. Subject to and without waiving the forgoing objections, Respondent responds that Respondent has filed the following documents with the USPTO in an effort to enforce Respondent's Mark and are annexed hereto as Exhibit D.

- 1) Respondent's Letter of Protest filed against Application Serial Number 85115004 for the mark Lady Gaga due to likelihood of confusion and accepted by the USPTO on November 5, 2010.
- 2) Respondent's Letter of Protest filed against Application Serial Number 85215017 for the mark Haus of Gaga due to likelihood of confusion and accepted by USPTO on March 31, 2011.
- 3) Respondent's Letter of Protest filed against Application Serial Number 85282752 for the mark Lady Gaga Fame due to likelihood of confusion and accepted by USPTO on August 29, 2011.
- 4) Respondent's Initial 30 Day Request for Extension of Time To Oppose Application Serial Number 85215017 for the mark Haus of Gaga filed and granted by the USPTO on February 1, 2012
- 5) Respondent's 60 Day Request for Extension of Time To Oppose Application Serial Number 85215017 for the mark Haus of Gaga filed and granted by the USPTO on February 29, 2012.
- 6) Respondent's Notice of Opposition No. 91205046 filed with the USPTO on May 1, 2012.

RESPONSE TO DOCUMENT REQUEST NO. 64

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome. Respondent further objects to this Request on the ground that it seeks documents and information that is neither relevant nor at issue in this proceeding nor relevant to the claims or defenses of either party. Subject to and without waiving the forgoing objections, Respondent responds that there are no documents responsive to this Request in its possession, custody, or control.

DOCUMENT REQUEST NO. 65:

All documents concerning registration of the domain name gagapureplatinum.com

RESPONSE TO DOCUMENT REQUEST NO. 65:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is overly broad, unduly burdensome, confusing and vague. Respondent further objects to this request as it seeks information that is equally available to Petitioner, publicly available and is a matter of public record. Subject to and without waiving the forgoing objections, Respondent responds that the document responsive to this request was already provided above as Exhibit C. Please refer to Exhibit C.

DOCUMENT REQUEST NO. 66:

All documents concerning any press releases concerning this Action or concerning the dispute between Petitioner and Respondent.

RESPONSE TO DOCUMENT REQUEST NO. 66:

Respondent objects to this Request for the reasons set forth in the General Objections and specifically to the extent that it is vague, confusing, and ambiguous. Respondent further objects

EXHIBIT A

DOCUMENT REQUEST(S) NO. 4 AND NO. 5

CANCELATION NO. 92055279

HOME > SHOP > FACE > POP OFF NEO-POP BLUSH™ CREAM CHEEK COLOUR

Face

FREE SHIPPING over \$50

POP OFF NEO-POP™ CREAM BLUSH CREAM CHEEK COLOUR

\$20.00

ADD TO MY BAG

This superbly smooth cream blush provides a gorgeous pop of healthy color to cheeks that naturally moisturizes delicate skin with a blend of antioxidant rich barbery fig and pomegranate superfruits at the same time. Neo-Pop blends easily to gives cheeks that fresh and long lasting 'pinch me I'm dreaming' flush.

Product Details

- cream dewy finish
- nutrient and vitamin rich superfruits
- skin nourishing barbery fig
- made with love in USA
- .38 oz - 11 g

• [VIEW INGREDIENTS](#)

INGREDIENT SPOTLIGHT



Candy pink



You Will Also Love...



HOME > SHOP > NAILS > MEEP MEEP MOXIE NAIL COSMETIC

Nails

FREE SHIPPING over \$50

MEEP MEEP MOXIE NAIL COSMETIC

\$14.00

ADD TO MY BAG

GAGA Pure Platinum Nail Cosmetic is liquid jewelry for the nails with finely crushed, silky smooth GEMLUST™ powder in every bottle. Nails are lacquered in concentrated fashion-forward color for superior wear and gloss with every beautiful coat. This advanced formula provides chip resistant wear while the 600+hair luxe brush delivers strengthening and streak free results for days on end.

Product Details

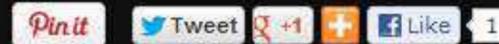
- *prismatic satin finish*
- *advanced 3 free formula*
- *luxe 600+ hair brush*
- *made with love in USA*
- *1/2 fl oz - 15 ml*

• [VIEW INGREDIENTS](#)

INGREDIENT SPOTLIGHT



Rollover To View Product Detail



You Will Also Love...



HOME > SHOP > NAILS

Nails

FREE SHIPPING over \$50

Nails are lacquered in this advanced formula with concentrated color for superior wear and gloss with every beautiful coat.



Meep Meep Moxie
NAIL COSMETIC

SHOP NOW



Hullabaloo
NAIL COSMETIC

SHOP NOW



Prim & Awkward
NAIL COSMETIC

SHOP NOW



Old Flame
NAIL COSMETIC

SHOP NOW



Zenith
NAIL COSMETIC

SHOP NOW



Beam Me Up
NAIL COSMETIC

SHOP NOW



Spendthrift Jungle
NAIL COSMETIC

SHOP NOW



Lock Me Up
NAIL COSMETIC

SHOP NOW



Love Addict
NAIL COSMETIC

SHOP NOW



Big Bang Boom
NAIL COSMETIC

SHOP NOW



Yowza
NAIL COSMETIC

SHOP NOW



White Hot Shock
NAIL COSMETIC

SHOP NOW

This universally flattering creamed peach nude coats nails in fortified luxury in our advanced long wear, chip resistant formula.



Avec Moi Nail Cosmetic
PART OF THE ETERNALLY CHIC SET

SHOP NOW

HOME > SHOP > COMPLEXION > STAR CONCEALER FAIR

Face

FAIR STAR CONCEALER

\$18.00

ADD TO MY BAG

This full coverage exceptionally pigment rich concealer is a star performer. With the lasting skin benefits of Moroccan argan and avocado, this creamy lightweight formula brightens while blending to perfection. Conceals dark spots, under eye circles, discolorations, blemishes, and any other flaw you would rather not see.

Product Details

- *super concentrated pigment*
- *skin nourishing superfruit oils*
- *skin protecting vitamin E*
- *made with love in USA*
- *.11 oz - 3 g*

• [VIEW INGREDIENTS](#)

INGREDIENT SPOTLIGHT



FREE SHIPPING over \$50



Rollover To View Product Detail



You Will Also Love...



HOME > SHOP > FACE > LUNAR FLASH PRISM PAVE™ LUMINIZER

Face

FREE SHIPPING over \$50

LUNAR FLASH PRISM PAVE™ LUMINIZER

\$22.00

ADD TO MY BAG

This weightless cream luminizer provides luxurious satin luminosity and superb radiance to your complexion. Prism Pave™ instantly brightens and enhances skin's appearance with natural optical reflectors that bend with the light to provide beautiful radiance to cheeks, brow-bones and face.

Product Details

- *super silky satin luminosity*
- *antioxidant rich pomegranate*
- *skin restoring Moroccan argan*
- *made with love in USA*
- *.38 oz - 11 g*

• [VIEW INGREDIENTS](#)

BENEFICIAL INGREDIENTS



Satin champagne



You Will Also Love...



HOME > SHOP > LIPS > PINK PARIS LIP LUST LUXE COLOR GLOSS

Lips

FREE SHIPPING over \$50

PINK PARIS LIP LUST LUXE COLOR GLOSS

\$12.50

ADD TO MY BAG

The performance of glamorous color and uber shine of a gloss fused with the benefits of a conditioning, protective balm - that's Lip Lust. Nourishing botanicals hydrate lips in a divine buttery-rich formula.

Product Details

- lasting high gloss finish
- moisture and condition with rich shea butter
- sooth lips with nourishing sweet almond
- made with love in USA
- .11 oz - 3 g

• [VIEW INGREDIENTS](#)

INGREDIENT SPOTLIGHT



Shimmering golden fuchsia



You Will Also Love



HOME > SHOP > LIPS > RIVE GAUCHE ART DÉCORATIF HYDRATING LIPSTICK

Lips

RIVE GAUCHE ART DÉCORATIF HYDRATING LIPSTICK

\$16.00

ADD TO MY BAG

Exceptionally creamy and long-lasting, Art Decoratif Hydrating Lipstick instantly delivers high impact powerful color in just one effortless stroke. Lock in natural moisture with conditioning essential fruit oils for supple, kiss me now lips.

Product Details

- *hydrating long wearing color in one stroke*
- *condition with essential açai fruit oil*
- *enhanced with orchid flower extract*
- *made with love in USA*
- *.13 oz - 3.7 g*

• [VIEW INGREDIENTS](#)

INGREDIENT SPOTLIGHT



FREE SHIPPING over \$50



Real sultry red



You Will Also Love...



HOME > SHOP > SETS > ETERNALLY CHIC SET

Sets

FREE SHIPPING over \$50

ETERNALLY CHIC SET 3 PIECE TRAVEL COMPANION

\$20.00

ADD TO MY BAG

The perfect three-piece set that has everything you need for instant sophistication. Infused with our signature GEMLUST™ Jewels, this set is the ultimate companion for any destination. Polish lips, tips, and lashes in this universally flattering color palette.

Product Details

NAIL COSMETIC IN AVEC MOI

- *creamed peach nude, the go to color for any occasion*
- *advanced 3 free formula*
- *made with love in USA*
- *.34 fl oz - 10 ml*

ETHEREAL FINISH MASCARA

- *provides perfectly groomed and polished lashes*
- *pampers lashes with nourishing Moroccan argan*
- *made with love in USA*
- *.1 fl oz - 3 ml*

58 FACETS BRILLIANT LIP GLOSS

- *highlight lips with sparkling dimension*
- *moisturize with sweet almond*
- *refreshing essential grapefruit aroma*
- *made with love in USA*
- *.1 fl oz - 3 ml*

• [VIEW INGREDIENTS](#)

INGREDIENT SPOTLIGHT



Rollover To View Product Detail



You Will Also Love...



EXHIBIT B

DOCUMENT REQUEST NO. 35

CANCELATION NO. 92055279



EXHIBIT B

DOCUMENT REQUEST NO. 35

CANCELATION NO. 92055279



EXHIBIT B

DOCUMENT REQUEST NO. 35

ETERNALLY CHIC SET

The perfect three-piece set that has everything you need for instant sophistication. Infused with our signature GEMLUST™ JEWELS, this set is the ultimate companion for any destination. Polish lips, tips, and lashes in this universally flattering color palette.

NAIL COSMETIC - AVEC MOI / NET WEIGHT: 0.34 FL. OZ. - 10 ml e / KEEP FROM HEAT AND FLAME
INGREDIENTS: BUTYL ACETATE · ETHYL ACETATE · NITROCELLULOSE · ACETYL TRIBUTYL CITRATE · ISOPROPYL ALCOHOL · ADIPIC ACID/NEOPENTYL GLYCOL/TRIMELLITIC ANHYDRIDE COPOLYMER · STEARALKONIUM HERTORITE · ACRYLATES COPOLYMER · BENZOPHENONE-1 · AMETHYST POWDER · NEPHRITE POWDER · TOURMALINE POWDER · RUBY POWDER · PEARL POWDER · CORAL POWDER · AMBER POWDER, [+/-] TOSYLAMIDE/FORMALDEHYDE RESIN · CI 77891/TITANIUM DIOXIDE · CI 77491, CI 77492, CI 77499/IRON OXIDES]

ETHEREAL FINISH MASCARA / NET WEIGHT: 0.1 FL. OZ. - 3 ml e

INGREDIENTS: BUTYL ACETATE · ETHYL ACETATE · NITROCELLULOSE · ACETYL TRIBUTYL CITRATE · ISOPROPYL ALCOHOL · ADIPIC ACID/NEOPENTYL GLYCOL/TRIMELLITIC ANHYDRIDE COPOLYMER · STEARALKONIUM HERTORITE · ACRYLATES COPOLYMER · BENZOPHENONE-1 · AMETHYST POWDER · NEPHRITE POWDER · TOURMALINE POWDER · RUBY POWDER · PEARL POWDER · CORAL POWDER · AMBER POWDER, [+/-] TOSYLAMIDE/FORMALDEHYDE RESIN · CI 77891/TITANIUM DIOXIDE · CI 77491, CI 77492, CI 77499/IRON OXIDES
*ECCOERT™ CERTIFIED

GAGA®
PURE PLATINUM

ZELA INT'L. ALBANY, NY 12207 www.GAGAPUREPLATINUM.com
★ MADE WITH ♥ IN NY USA ★

EXHIBIT B

DOCUMENT REQUEST NO. 35

CANCELATION NO. 92055279

EXHIBIT C

DOCUMENT REQUEST(S) NO. 41 AND NO. 65

CANCELATION NO. 92055279

InterNIC

[Home](#) [Registrars](#) [FAQ](#) [Whois](#)

Whois Search Results

Search again (.aero, .arpa, .asia, .biz, .cat, .com, .coop, .edu, .info, .int, .jobs, .mobi, .museum, .name, .net, .org, .pro, or .travel) :

- Domain (ex. internic.net)
- Registrar (ex. ABC Registrar, Inc.)
- Nameserver (ex. ns.example.com or 192.16.0.192)

Whois Server Version 2.0

Domain names in the .com and .net domains can now be registered with many different competing registrars. Go to <http://www.internic.net> for detailed information.

Domain Name: GAGAPUREPLATINUM.COM
Registrar: 1 & 1 INTERNET AG
Whois Server: whois.schlund.info
Referral URL: <http://land1.com>
Name Server: NS51.LAND1.COM
Name Server: NS52.LAND1.COM
Status: ok
Updated Date: 11-feb-2013
Creation Date: 10-feb-2011
Expiration Date: 10-feb-2014

>>> Last update of whois database: Wed, 21 Aug 2013 16:19:01 UTC <<<

NOTICE: The expiration date displayed in this record is the date the registrar's sponsorship of the domain name registration in the registry is currently set to expire. This date does not necessarily reflect the expiration date of the domain name registrant's agreement with the sponsoring registrar. Users may consult the sponsoring registrar's Whois database to view the registrar's reported date of expiration for this registration.

TERMS OF USE: You are not authorized to access or query our Whois database through the use of electronic processes that are high-volume and automated except as reasonably necessary to register domain names or modify existing registrations; the Data in VeriSign Global Registry Services' ("VeriSign") Whois database is provided by VeriSign for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. VeriSign does not guarantee its accuracy. By submitting a Whois query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail, telephone, or facsimile; or (2) enable high volume, automated, electronic processes that apply to VeriSign (or its computer systems). The compilation, repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of VeriSign. You agree not to use electronic processes that are automated and high-volume to access or

EXHIBIT D

DOCUMENT REQUEST NO. 58

CANCELATION NO. 92055279



Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

November 5, 2010

Ms. Christina Sukljian
13 Manor Street
Albany, NY 12207

Re: Letter of protest filed against Trademark Application Serial No. 85115004 for the mark
LADY GAGA

Dear Ms. Sukljian:

Your letter of protest was received in the U.S. Patent and Trademark Office on October 14, 2010. 2010 and was referred to me for review.

Decision: The letter of protest is hereby ACCEPTED.

Your letter of protest is accepted for the record because the submitted evidence is of the type which may be given to an examining attorney for consideration during *ex parte* examination. *Trademark Manual of Examining Procedure* (TMEP) §1715.02(a). Although the above-mentioned application has not yet been assigned to an examining attorney, the application record will be updated to provide notification of the acceptance of this letter of protest and the existence of U.S. Registration No. 2898544 for the mark "GAGA PURE PLATINUM" for cosmetics; namely nail polish, lipstick, lip-gloss, eye-liner, lip-liner, eye shadow, face powder, blush, mascara.

The forwarding of the evidence attached to your letter of protest does not entitle you to communicate directly with the examining attorney, either orally or in writing, with regard to this application. Further, the acceptance of a letter of protest filed before publication is not a legal determination by the USPTO of registrability, nor is it meant to compromise the integrity of the *ex parte* examination process. It merely serves to bring the submitted evidence to the attention of the examining attorney, who determines whether a refusal or requirement should be raised or ultimately made final. TMEP §1715.02(b).

Please note that if the application is approved for publication, the acceptance of your letter of protest does not stay the time for filing an opposition with the Trademark Trial and Appeal Board (TTAB) after it has published in the *Official Gazette*. 37 C.F.R. §§2.101-2.107. You must file a Notice of Opposition, or a request for an extension of time to file an opposition, within thirty days of the date of publication if you wish to oppose registration of the mark. You may obtain further information regarding proceedings before the TTAB by calling (571) 272-8500 or at <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

You must continue to monitor the status of the application if you wish to be informed of its final disposition. You can find status information on all trademark applications and registrations on the USPTO website at <http://tarr.uspto.gov>.

Sincerely,

Dawnmarie D. Sanok

/Dawnmarie D. Sanok/

Staff Attorney

Office of the Deputy Commissioner for

Trademark Examination Policy

(571) 272-9577



Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

March 31, 2011

Ms. Christina Sukljian
GAGA PURE PLATINUM
13 Manor Street
Albany, NY 12207

Re: Letter of protest filed against Trademark Application Serial No. 85215017 for the mark HAUS OF GAGA

Dear Ms. Sukljian:

Your letter of protest was received in the U.S. Patent and Trademark Office on February 18, 2011 and was referred to me for review.

Decision: The letter of protest is hereby ACCEPTED.

Your letter of protest is granted because the evidence submitted is of the type which may be given to an examining attorney for consideration during *ex parte* examination. *Trademark Manual of Examining Procedure* (TMEP) §1715.02(a). The examining attorney will be forwarded information regarding the registration cited in your letter.

The forwarding of the evidence attached to your letter of protest does not entitle you to communicate directly with the examining attorney, either orally or in writing, with regard to this application. Further, the acceptance of a letter of protest filed before publication is not a legal determination by the USPTO of registrability, nor is it meant to compromise the integrity of the *ex parte* examination process. It merely serves to bring the submitted evidence to the attention of the examining attorney, who determines whether a refusal or requirement should be raised or ultimately made final. TMEP §1715.02(b).

Please note that if the application is ultimately approved for publication, the acceptance of your letter of protest does not stay the time for filing an opposition with the Trademark Trial and Appeal Board (TTAB) after it has published in the *Official Gazette*. 37 C.F.R. §§2.101-2.107. You must file a notice of opposition, or a request for an extension of time to file an opposition, within thirty days of the date of publication if you wish to oppose registration of the mark. You may obtain further information regarding proceedings before the TTAB by calling (571) 272-8500 or at <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

You must continue to monitor the status of the application if you wish to be informed of its final disposition. You can find status information on all trademark applications and registrations on the USPTO website at <http://tarr.uspto.gov>.

Sincerely,

/Montia Givens Pressey/

Montia Givens Pressey

Staff Attorney

Office of the Commissioner for Trademarks

(571) 272 8944 (phone)

(571) 273 8944 (fax)

montia.presse@uspto.gov (email)



Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

August 29, 2011

Christina Sulkjian
GAGA PURE PLATINUM
13 Manor Street
Albany, NY 12207

Re: Letter of protest filed against Trademark Application Serial No. 85-282752 for the mark "LADY GAGA FAME"

Dear Ms Sulkjian:

Your letter of protest was received in the United States Patent and Trademark Office (USPTO) on July 19, 2011 and was recently referred to me for review.

Decision: The letter of protest is hereby ACCEPTED.

Your letter of protest is accepted for the record because the submitted evidence is of the type which may be given to an examining attorney for consideration during *ex parte* examination. *Trademark Manual of Examining Procedure* (TMEP) §1715.02(a). The examining attorney will be forwarded information regarding Registration No. 2,898,544.

The forwarding of the evidence attached to your letter of protest does not entitle you to communicate directly with the examining attorney, either orally or in writing, with regard to this application. Further, the acceptance of a letter of protest filed before publication is not a legal determination by the USPTO of registrability, nor is it meant to compromise the integrity of the *ex parte* examination process. It merely serves to bring the submitted evidence to the attention of the examining attorney, who determines whether a refusal or requirement should be raised or ultimately made final. TMEP §1715.02(b).

Please note that if the application is approved for publication, the acceptance of your letter of protest does not stay the time for filing an opposition with the Trademark Trial and Appeal Board (TTAB) after it has published in the *Official Gazette*. 37 C.F.R. §§2.101-2.107. You must file a notice of opposition, or a request for an extension of time to file an opposition, within thirty days of the date of publication if you wish to oppose registration of the mark. You may obtain further information regarding proceedings before the TTAB by calling (571) 272-8500 or at <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

You must continue to monitor the status of the application if you wish to be informed of its final disposition. You can find status information on all trademark applications and registrations on the USPTO website at <http://tarr.uspto.gov>.

Sincerely,

Jennifer Chicoski

/Jennifer D. Chicoski/

Staff Attorney

Office of the Deputy Commissioner for

Trademark Examination Policy

(571) 272-8943

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

Christina Sukljian

13 Manor Street
Albany, NY 12207

Mailed: February 1, 2012

Serial No. : 89215017
ESTTA TRACKING NO: ESTTA454249

The request to extend time to oppose is granted until
3/3/2012 on behalf of potential opposer ChristinaSukljian

Please do not hesitate to contact the Trademark Trial and
Appeal Board at 571.272-8500 if you have any questions
relating to this extension

Note from the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to
oppose, notices of opposition, petition for cancellation, notice
of ex parte appeal, and inter partes filings are now available
at [http //estta.uspto.gov](http://estta.uspto.gov) Images of TTAB proceeding files can
be viewed using TTABVue at [http //ttabvue.uspto.gov](http://ttabvue.uspto.gov)

ESTTA Tracking number: **ESTTA459134**

Filing date: **02/29/2012**

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

Applicant:	Ate My Heart Inc.
Application Serial Number:	85215017
Application Filing Date:	01/11/2011
Mark:	HAUS OF GAGA
Date of Publication:	01/03/2012

60 Day Request for Extension of Time to Oppose for Good Cause

Pursuant to 37 C.F.R. Section 2.102, Christina Sukljian, 13 Manor Street, Albany, NY 12207, UNITED STATES respectfully requests that he/she/it be granted an additional 60-day extension of time to file a notice of opposition against the above-identified mark for cause shown .

Potential opposer believes that good cause is established for this request by:

- The potential opposer needs additional time to investigate the claim

The time within which to file a notice of opposition is set to expire on 03/03/2012. Christina Sukljian respectfully requests that the time period within which to file an opposition be extended until 05/02/2012.

Respectfully submitted,
/Christina Sukljian/
02/29/2012

Christina Sukljian
13 Manor Street
Albany, NY 12207
UNITED STATES
info@zela.com

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

Christina Sukljian

13 Manor Street
Albany, NY 12207

Mailed: February 29, 2012

Serial No.: 85215017
ESTTA TRACKING NO: ESTTA459134

The request to extend time to oppose is granted until
5/2/2012 on behalf of potential opposer **ChristinaSukljian**

Please do not hesitate to contact the Trademark Trial and
Appeal Board at (571)272-8500 if you have any questions
relating to this extension.

Note from the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to
oppose, notices of opposition, petition for cancellation, notice
of ex parte appeal, and inter partes filings are now available
at <http://estta.uspto.gov>. Images of TTAB proceeding files can
be viewed using TTABVue at <http://ttabvue.uspto.gov>.

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

In the Matter of Application Serial No. 85215017
Mark: HAUS OF GAGA
Published in the Official Gazette on January 3, 2011

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Christina Sukljian, :
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 Opposer, :
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 v. :
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Ate My Heart Inc., :
 :
 :
 Applicant. :
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NOTICE OF OPPOSITION

By order of the Board dated February 29, 2012, Christina Sukljian, Opposer and Owner of the federally registered trademark GAGA PURE PLATINUM®, was allowed until May 2, 2012 in which to oppose the above-reference application. Christina Sukljian, an individual at 13 Manor Street, Albany, NY 12207, believes that she would be damaged by the issuance of a registration for the mark, shown in Application Serial No. 85215017, HAUS OF GAGA in International Class 003, covering identical and related cosmetics goods and therefore opposes the same. As grounds for its opposition, Opposer, alleges as follows:

I: Background on Christina Sukljian

- 1) GAGA PURE PLATINUM® is a federally registered trademark, U.S. Registration No. 2898544 in International Class 003, invented and created in the year 2000, filed for registration on August 22, 2001 and registered on November 2, 2004 with a date of first use in commerce of June 7, 2001, owned by the Opposer, internationally recognized cosmetics and beauty industry maven and second generation cosmetics purveyor, Christina Sukljian p/k/a Cristina Samuels.
- 2) Christina Sukljian p/k/a Cristina Samuels has more than 17 years of experience in the cosmetics industry with a broad background in product development, marketing and sales. Before joining Zela International formally in 1995 she honed her skills and was educated in all facets of the cosmetics industry in her family cosmetics company, Zela International. In 1996 she joined the marketing team and developed and implemented innovative product packaging and marketing programs to increase the company's sales and profits for various color cosmetics lines including Mode Couleurs and Little Gems. Under her leadership she created Mode, a natural color cosmetics line which pioneered the use of natural ingredients with fashion forward style, the first concept of its kind in the industry.
- 3) In 2000 Christina Sukljian p/k/a Cristina Samuels spearheaded the creation of GAGA PURE PLATINUM, an avant-garde cosmetics brand. Named after her brother's childhood nickname Gaga, GAGA PURE PLATINUM combined fashion, style and art with passion for color.
- 4) Christina Sukljian p/k/a Cristina Samuels has achieved prominence and accolades in the global cosmetics industry and has gained the attention of leading beauty editors of both consumer and industry magazines, including *Allure*, *GCI*, *Drug Store News*, and *WWD*, beauty and fashion websites and bloggers, including *Bella Sugar*, and through media appearances including Wnyt, Wten, Wrgb. She has been lauded for her fresh perspective in the beauty industry and as a result

of her efforts and achievements she has garnered the distinct honor and recognition of *GCI*® magazine (*Global Cosmetic Industry* magazine) as being selected as 1 of '20 To Know' in the global cosmetics industry. *GCI*® magazine has stated, "Cristina Samuels epitomizes the strengths of the beauty industry – continuity and tradition propelled by innovation and evolution."

- 5) In addition to her fresh perspective, as described by *GCI*® magazine (*Global Cosmetic Industry* magazine), and as a result of her achievements in the cosmetics industry, in 2008 Cristina Samuels was welcomed as the youngest member to join the magazine's editorial advisory board proudly contributing to one of the most respected and influential business magazines for the global beauty industry.

II: Applicant's Mark is *Confusingly Similar* to Registered Mark GAGA PURE PLATINUM

- 6) Since a date long prior to any date which Applicant can rely and before the existence of the Applicant, Opposer has been using the trademark GAGA PURE PLATINUM for Cosmetics; namely nail polish, lipstick, lip gloss, eye liner, lip liner, eye shadow, face powder, blush, mascara in International Class 3 for well over 11 years.
- 7) Opposer owns U.S. Registration No. 2898544 for the mark GAGA PURE PLATINUM, registered on November 2, 2004 in International Class 003 for Cosmetics; namely nail polish, lipstick, lip gloss, eye liner, lip liner, eye shadow, face powder, blush, mascara in International Class 003 with a date of first use in commerce of June 7, 2001. This registration is valid and in full force and effect and has become incontestable under Section 15 of the Lanham Act.
- 8) As a result of Opposer's use and registration of the GAGA PURE PLATINUM mark when used in connection with cosmetics and related goods in International Class 003 GAGA PURE PLATINUM has become uniquely associated with Opposer.

9) Applicant has applied for registration for the mark HAUS OF GAGA, U.S. Application Serial No. 85215017, as Intent to Use under 1B filing basis, in International Class 003 on January 11, 2011, a date long subsequent, in fact 10 years subsequent, to Opposer's date of first use of the GAGA PURE PLATINUM mark and thus, Opposer has priority over Applicant, for the following identical and related goods as identified by Applicant, Soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; color cosmetics; facial cosmetics; decorative transfers for cosmetic purposes; non-mediated skin care preparations; body and foot care products, namely, beauty milks, skin moisturizers and skin moisturizer masks, skin conditioners, hand creams, massage oils, essential oils for personal use, talcum powder, perfumed powders, face wash, skin cleansers, skin highlighting cream, body scrubs, body fragrances, fragrances for personal use, body and hand lotions, body gels, body oils, body powders, body exfoliants, body masks, body mask creams and lotions, shaving preparations, after shave lotions, shaving balm, shaving cream, shaving gel, skin abrasive preparations, non-medicated skin creams and skin lotions for relieving razor burns, non-medicated lip care preparations, lip cream, non-medicated sunscreen preparations, suntanning preparations and after-sun lotions; fragrances; bath salts; cosmetic preparations for baths; body and shower products, namely, bath beads, bath crystals, bath foam, bath gels, bath oils, bath powders, shower gels, cosmetic soaps, perfumed soaps, liquid soaps, hand, facial and bath soaps, deodorant soaps, shaving soaps, soap powder, toilet soaps, soaps for body care, soaps for personal use, shampoos, conditioners, hair mousse, hair frosts, hair rinses, hair sprays, hair color, hair waving lotion, permanent wave preparations, hair lighteners, hair dyes, hair emollients, hair mascara, hair pomades, hair color removers, hair relaxing preparations, hair styling preparations, hair removing cream, and hair care preparations; body, face, skin and foot lotions and creams; non-medicated toiletries; colognes; eau de toilettes; body firming gels and lotions; nail varnishes; lipsticks; makeup; sun block. deodorants for personal use; perfumed paper in the nature of pot pourri and pomanders containing perfumed preparations and mixtures; eau de parfum; toilet water; talcum powder; hair care preparations; non-medicated preparations

for the care and conditioning of the body, skin, and scalp; bubble bath, bath gel, bath oil and shower gel.

- 10) Opposer will be damaged by trademark infringement and confusion and the presumptions flowing from the registration of the mark HAUS OF GAGA for identical and related goods, appearance, sound, connotation, and overall commercial impression as such registration diminishes the distinctiveness of the GAGA PURE PLATINUM trademark, an invented mark, invented by the Opposer long before Applicant was in existence, for which Opposer has exclusive rights for cosmetics and related products in International Class 3.
- 11) Applicant seeks to register an identical name, for identical and related goods, in an identical class as Opposer's registered mark and the similarities between the marks and the goods are so great that they create a likelihood of confusion. The GAGA PURE PLATINUM mark, Registration No. 2898544, will be adversely impacted, impeded, and gravely harmed because consumers will be confused and deceived by Applicant's identical pending mark HAUS OF GAGA, a newcomer, and will falsely believe with deception that Applicant's HAUS OF GAGA is of the same name and is connected and part of the brand GAGA PURE PLATINUM.
- 12) In addition, Applicant's pending mark, HAUS OF GAGA, is confusingly similar to Opposer's registered GAGA PURE PLATINUM mark and intended use of Applicant's mark, in International Class 003, for the goods identified in Applicant's registration is likely to cause confusion to the Opposer's registered mark GAGA PURE PLATINUM, as it deceives the purchasing public by creating the mistaken belief that Applicant's goods are connected, approved, endorsed, or sponsored by Opposer's GAGA PURE PLATINUM mark and that the registered GAGA PURE PLATINUM is the source of pending HAUS OF GAGA's goods and that the goods of pending HAUS OF GAGA are, in some other way, associated with GAGA PURE PLATINUM and is an extension or in some other way part of the GAGA PURE PLATINUM

brand all to grave injury and harm to business and adverse commercial impact to GAGA PURE PLATINUM due to use of an identical and similar mark by a newcomer. Applicant's English translation of HAUS OF GAGA is HOUSE OF GAGA and further implicates that HAUS OF GAGA is wholly part of, under the house or umbrella of GAGA PURE PLATINUM and or in some way connected and or affiliated with the federally registered mark GAGA PURE PLATINUM.

- 13) The uniqueness of the invented mark GAGA PURE PLATINUM, Registration No. 2898544, created by Christina Sukljan p/k/a Cristina Samuels in the year 2000 and registered in November 2, 2004, long before Applicant was in existence, and the uniqueness and originality of the invented GAGA PURE PLATINUM mark, in International Class 003, creates the overall commercial impression. GAGA PURE PLATINUM's originality and uniqueness of the coined and invented mark establishes it as a commercial brand name in International Class 003 which is impressed upon the minds of purchasers and remembered and referred to when making purchasing decisions. GAGA PURE PLATINUM is the trademark which is impressed upon the minds of purchasers and remembered and referred to when making purchasing decisions.
- 14) GAGA PURE PLATINUM's originality and uniqueness of the coined and invented mark, invented by the Opposer more than 10 years prior to Applicant, establishes it as a commercial brand name in International Class 3. GAGA is the first part of the mark GAGA PURE PLATINUM which is impressed upon the minds of purchasers and remembered and referred to when making purchasing decisions. Consumers associate and refer to the GAGA PURE PLATINUM brand as GAGA and GAGA Cosmetics. GAGA PURE PLATINUM is an invented mark, invented by Opposer in 2000, and GAGA PURE PLATINUM is the first and only brand name in International Class 3 that uses the invented GAGA mark in commerce for cosmetics.
- 15) Applicant has unsuccessfully attempted to register two (2) prior applied-for-marks in International Class 003 for cosmetics and related goods, LADY GAGA Serial No. 85115004 on

August 24, 2010 and LADY GAGA FAME Serial No. 85282752 on March 21, 2011, both of which were refused registration under Section 2(d) of the Trademark Act due to Likelihood Of Confusion with GAGA PURE PLATINUM because of the significant fact that the marks are highly similar because they both include the identical word, GAGA, in the same International Class 003 for identical and similar goods and refusal is maintained and continued under Section 2(d) based upon Registration No. 2898544 GAGA PURE PLATINUM.

- 16) Furthermore, this is Applicant's 3rd (third) attempt to register a mark that includes the significant identical word GAGA in International Class 003 for cosmetics and related goods and Applicant's applied mark HAUS OF GAGA will damage and cause severe Likelihood of Confusion, cause dilution, and cause deception with federally registered mark GAGA PURE PLATINUM.

WHEREFORE, Opposer requests that its Notice of Opposition be granted and that Application Serial No. 85215017 be denied and refused and that the Mark therein sought for the goods therein specified in International Class 3 be denied and refused.

The \$300 filing fee to file this Notice of Opposition has been paid electronically through ESTTA

Dated: Albany, New York
May 1, 2012

Respectfully submitted,

/Christina Sukljian/
Christina Sukljian
Owner
GAGA PURE PLATINUM
13 Manor Street
Albany, New York 12207
(518) 436-1833

CERTIFICATE OF PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Ate My Heart, Inc. by mailing said copy on May 1, 2012 via The United States Postal Service Priority Mail with Signature Confirmation in a USPS Priority Mail Envelope postage prepaid to: Ate My Heart, Inc. c/o Pryor Cashman LLP, 7 Times Square, New York, NY 10036.

Christina Sukljian

/Christina Sukljian/

13 Manor Street

Albany, NY 12207

Date of Deposit: May 1, 2012
USPS Priority Mail

CERTIFICATE OF MAILING THROUGH ESTTA

I, Christina Sukljian, hereby certify that this NOTICE OF OPPOSITION is being filed electronically through ESTTA with The Trademark Trial And Appeal Board, United States Patent And Trademark Office, Alexandria, VA 22313-1451 on the date indicated below.

Date of Deposit: May 1, 2012

Signed: /Christina Sukljian/