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

Proceeding	91213266
Party	Plaintiff ActII Jewelry, LLC d/b/a lia sophia
Correspondence Address	MILTON SPRINGUT SPRINGUT LAW PC 45 ROCKEFELLER PLAZA, 20TH FLOOR NEW YORK, NY 10111 UNITED STATES ms@springutlaw.com, tbenschar@springutlaw.com
Submission	Opposition/Response to Motion
Filer's Name	Tal S. Benschar
Filer's e-mail	tbenschar@springutlaw.com
Signature	/Tal S. Benschar/
Date	09/10/2014
Attachments	Rule 56(d) Motion.pdf(3768044 bytes )

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

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ACT II JEWELRY, LLC d/b/a lia sophia,

*Opposer,*

Opposition No. 91213266

v.

Serial No.: 85/912651

MIALISIA & CO., LLC

Mark: MIALISIA & CO.

*Applicant.*

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**OPPOSER'S MOTION AND DECLARATION, PURUSANT TO RULE 56(d),  
TO CONDUCT DISCOVERY AND DEFER CONSIDERATION OF  
APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

In accordance with Rule 56(d), Fed.R.Civ.P. and TBMP § 528.06, opposer Act II Jewelry LLC d/b/a lia sophia (hereinafter "lia sophia" or "Opposer"), in response to applicant Mialisias & Co., LLC's ("Applicant" or "Mialisias") motion for summary judgment (Dkt. No. 12) hereby makes the following submission requesting that the Board defer or deny Applicant's motion to allow Opposer to take discovery needed to oppose the motion.

**TAL S. BENSCHAR** declares that:

1. I am a partner of Springut Law P.C., counsel for Opposer in the above-captioned proceeding. I make this declaration in accordance with Rule 56(d) to set forth the discovery Opposer needs to obtain in order to oppose Applicant's motion for summary judgment.

**Rule 56(d)**

2. Rule 56(d) (formerly 56(f)) provides:

If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

3. Where a party “has shown a sufficient basis for its need of additional discovery, it can not be deprived of the discovery needed to place at issue material factual questions in opposition to the motion.” *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 852, 23 U.S.P.Q.2d 1471, 1474 (Fed. Cir. 1992). “Thus, when the discovery is reasonably directed to ‘facts essential to justify the party’s opposition,’ . . . such discovery must be permitted or summary judgment refused.” *Id.* See *Orion Group Inc. v. Orion Ins. Co. PLC*, 12 U.S.P.Q.2d 1923, 1924 (TTAB 1989) (Summary judgment “inappropriate where the responding party has been denied discovery needed to enable it to respond to the motion.”)

4. “Where the party opposing the summary judgment informs the court that its diligent efforts to obtain evidence from the moving party have been unsuccessful, ‘a continuance of a motion for summary judgment for purposes of discovery should be granted almost as a matter of course.’” *Intl. Shortstop, Inc. v. Rally’s, Inc.*, 939 F.2d 1257, 1267 (5<sup>th</sup> Cir. 1991) (quoting *Sames v. Gable*, 732 F.2d 49, 51 (3d Cir. 1984)). As shown below, lia sophia has been diligent in seeking discovery, but Applicant’s delaying tactics and the repeated stays of discovery have stymied these efforts.

### **Applicant's Delaying Tactics Have Stymied The Taking Of Discovery**

5. Although discovery opened in this proceeding in January 2014, Applicant's delaying tactics have stymied the taking of discovery, and have prevented Opposer from obtaining some of the discovery needed for Opposer's opposition to the summary judgment motion.

6. On January 23, 2014, we served Opposer's first sets of interrogatories and document requests upon Applicant's counsel. No response was timely served, so on March 23, 2014, Opposer was required to apply to the Board for an order to compel. Such an order issued on June 20, 2014, requiring complete responses within 30 days. That date came and went, with no responses received, and Opposer even moved for default. However, Applicant's responses (and some document production) were belatedly received on July 25, 2014, and Opposer withdrew the motion for default. (*See* Dkt Nos. 5 to 11) Attached as Exhibit A is a true copy of Applicant's interrogatory responses, some of which will be referenced in the below discussion.

7. After negotiating some deficiencies in Applicant's interrogatory responses (which have been only partially remedied), on July 31, 2014, we served a Notice of Deposition on Applicant, a copy of which is attached as Exhibit B. The deposition was directed to Applicant's principals, as well as on Rule 30(b)(6) topics, and noticed for mid-August 2014. (*See id.*)

8. Instead, less than a week before the depositions were scheduled, Applicant filed the motion for summary judgment, and thereafter refused to provide any further discovery.

9. As set forth below, this refusal has deprived Opposer of the ability to obtain evidence that it needs to oppose the motion for summary judgment. Certainly, Opposer has acted diligently in seeking discovery. Moreover, as a practical matter there has been only a short

period of discovery, further favoring a grant of Rule 56(d) discovery. *See Burlington Northern Santa Fe RR Co. v. The Assiniboine and Sioux Tribes of the Fort Peck Reservation*, 323 F.3d 767, 773 (9<sup>th</sup> Cir. 2003) (“Where, however, a summary judgment motion is filed . . . before a party has had any realistic opportunity to pursue discovery relating to its theory of the case, district courts should grant any Rule 56[d] motion fairly freely.”)

### **Discovery Needed For Certain *du Pont* Factors**

10. lia sophia’s opposition is based on Section 2(d) of the Trademark Act, which provides that an application may be refused when use of the applied for mark on the goods or services in the application may cause confusion. *See* 15 U.S.C. § 1052(d). Generally, the Board assesses these issues by reference to the factors set forth in the seminal case *In re E.I. du Pont de Nemours & Co.*, 476 F.3d 1357 , 177 U.S.P.Q. 563 (CCPA 1973), commonly known as the *du Pont* factors.

11. Applicant’s summary judgment motion addresses only two factors: similarity of the marks and similarity of the goods, conceding the latter and asserting that the former is sufficient by itself to grant summary judgment. However, while the Board is not required to address all of the *du Pont* factors, it is required to consider “all factors that are relevant and of record.” *M2 Software, Inc. v. M2 Comms., Inc.*, 450 F.3d 1378, 1382, 78 U.S.P.Q.2d 1944, 1947 (Fed.Cir. 2006).

12. As discussed more fully below, Opposer requires discovery to address the following *du Pont* factors that are relevant to assessing likelihood of confusion:

- (a) The conditions under which and buyers to whom sales are made, *i.e.*, “impulse” vs. careful, sophisticated purchasing.

(b) Applicant's bad faith in adopting the mark at issue.

13. Opposer notes that this list is not complete insofar as what may be relevant to its opposition to Applicant's summary judgment motion; it merely reflects for what *du Pont* factors Opposer needs discovery to oppose the motion. Opposer reserves the right and intends to introduce evidence on other *du Pont* factors in its opposition. However, Opposer may not need discovery as to these other factors, either because such has already been produced, or because it needs no discovery but can produce the relevant evidence on its own (*e.g.*, proving the strength of its own marks).

14. Opposer also notes that, at least initially, as detailed below, it only seeks a deposition of Sean and Annelise Brown, principals and managing agent of Applicant, and a single document request. As further discussed below, however, Opposer may need follow-up discovery once these depositions are taken.

### **Applicant's Bad Faith**

15. The thirteenth *du Pont* factor encompasses evidence of applicant's bad faith in adoption of the mark. *L.C. Licensing, Inc. v. Berman*, 86 U.S.P.Q.2d 1883, 1890 (TTAB 2008). "[B]ad faith is strong evidence that confusion is likely, as such an inference is drawn from the imitator's expectation of confusion." *Id.* See *Roger & Gallet S.A. Venice Trading Co Inc.*, 1 U.S.P.Q.2d 1829, 1832 (TTAB 1987) (Board "may, and ought to" take bad faith into account); *Broadway Catering Corp. v. Carla Inc.*, 215 U.S.P.Q. 462, 465 (TTAB 1982).

16. There are several facts here that strongly suggest bad faith.

17. First, Opposer, who uses the business name "lia sophia," is very prominent and well-known in the jewelry business, and trades exclusively through direct marketing methods.

lia sophia is the leading fashion jewelry direct sales company in the United States. The company is family owned and operated and has been in business for more than thirty years. In that time, lia sophia has achieved a reputation for excellence in design, creativity, quality and customer service in the field of jewelry.

18. lia sophia markets its jewelry products exclusively through its network of Advisors – authorized individual dealers who are expected to sell and promote lia sophia’s jewelry products – who use lia sophia’s direct marketing methods. lia sophia was identified as one of the 20 largest direct selling companies in the United States by the Direct Selling Association, and only one other jewelry company was so named. In some recent years, its sales have reached in the hundreds of millions.

19. lia sophia owns U.S. Registration No. 3,193,032 for the mark “lia sophia” for jewelry, and it is commonly known by that name in the industry.

20. Second, Applicant only began using its mark in April 2013. (Appl. Resp. To Interrog Nos. 2 and 5, Exh. A), long after lia sophia’s use and registration. The commonality between Opposer’s and Applicant’s business is much closer than the fact that they both sell jewelry. Applicant describes itself as a “home party based jewelry company that is using direct sales channel to sell products.” (*Id.* Resp. to Interrog. 1) Applicant has “a team of 1300+ designers who will market the goods using a home party based direct sales method.” (*Id.* Resp. to Interrog. 8) These direct sales team members use Applicant’s mark in connection with promotion of Applicant’s goods. (*Id.* Resp. to Interrog. 14) Thus Applicant, whose business was started long after lia sophia rose to prominence, not only directly competes with lia sophia, but uses the exact same marketing method.

21. Third, the two marks (lia sophia and Mialisia) sound very much alike, have the same cadence and syllable emphasis, number and order:

LEE-ah so-FEE-ah

MEE-ah li-SEE-ah

(The addition of “& Co.” to Applicant’s mark is of no moment, since such designations have “no source-indicating capacity” and must be disclaimed, TMEP § 1213.03(d), as indeed occurred for this very application. *Cf. In re Packaging Specialists, Inc.*, 221 U.S.P.Q. 917, 919 (TTAB 1984) (the element ‘INC.’ has “no source indication or distinguishing capacity.”)).

22. Thus Applicant, which determined to compete directly against lia sophia in the very same marketing channel, adopted a mark with a remarkably similar pronunciation to designate its business.

23. Applicant’s explanation for how it adopted its mark is highly suspect:

Applicant got the name from the word Alisia which was going to be the name of a founder’ first daughter and the founder ended up having 4 boys. So Mialisia means My Alisia in Italian which the founder Sean Brown has a passion for due to being fluent in Italian and having a big love for the country and people of Italy.

(Appl. Resp. To Interrog No. 2 , Exh. A)

24. Also suspect is the fact that Applicant originally was named Alisia & Co., and then at some point changed its name to Mialisia & Co. Apparently, Applicant originally intended to use a different name, and then at some point switched over to the mark which is the subject of the application. No explanation for this change has ever been given.

25. Applicant was founded by Sean and Alise Brown, who own 30% of the company. They were involved, among others, in the determination to adopt Applicant's Mark. (Appl. Resp. To Interrog Nos. 3 and 4, Exh. A)

26. Opposer accordingly seeks a deposition of Mr. and Mrs. Brown to inquire as to the origins and determination to use the mark at issue. Such depositions in the past have yielded significant evidence of bad faith. *See, generally, L.C. Licensing*, 86 U.S.P.Q.2d at 1890-91. (discussing deposition responses of applicant concerning intent to adopt the applied-for mark that "strain[ed] credulity" and suggested bad faith.)

27. Thus the Board should defer or deny summary judgment to permit depositions of Applicant's principals concerning their intent in adopting their mark. *Cf. Diaz v. Servicios de Franquicia Pardos S.A.C.*, 83 U.S.P.Q.2d 1320, 1322 n. 3 (TTAB 2007) (Noting grant of 56(f) motion to take deposition of Applicant's officer on issue of intent). Discovery directed at a moving party's state-of-mind is, particularly, a type for which 56(d) discovery should be liberally granted, since evidence of a party's state of mind is exclusively within its control. *See Intl. Shortstop*, 939 F.2d at 1267 ("Because of the difficulties attendant to rebutting the professed state of mind of a party-opponent through summary judgment evidence, the district court should be generous in its allowance of discovery requests aimed at uncovering evidence of the moving party's state of mind. Oftentimes . . . the evidence which the nonmoving party could offer to create a factual dispute is in the exclusive possession of the moving party.")

28. While in the first instance Opposer would seek to take the depositions of Mr. and Mrs. Brown, in the event that the responses are inadequate, Opposer would also seek to depose the other five persons who were involved in selecting Applicant's mark. (*See* Appl. Resp. To Interrog No. 4, Exh. A) This is one of the forms of follow-up discovery Applicant may need.

### **Conditions of Sales and Degree of Purchasing Care**

29. “The fourth *DuPont* factor examines the conditions under which, and to whom, sales are made. [citation omitted] Purchaser sophistication may tend to minimize likelihood of confusion. Conversely, impulse purchases of inexpensive items may tend to have the opposite effect.” *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 U.S.P.Q.2d 1689, 1695 (Fed. Cir. 2005). “When products are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care.” *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1327, 54 U.S.P.Q.2d 1894, 1899 (Fed.Cir. 2000).

30. Applicant’s jewelry products are marketed at inexpensive prices. Attached as Exhibit C is a copy of documents (produced by Applicant under Bates Nos. A\_85 to \_100), bearing the title “2013 Fall/Winter Insert,” apparently a portion of Applicant’s sales catalog. As the Board can see, all items are listed at less than \$75, the vast majority of items at less than \$40, and many for as little as \$18 to \$25. These prices suggest that the degree of care Applicant’s customers take is minimal and impulse buying a significant part of its business.

31. Applicant has identified its owner/founders Sean and Annelise Brown as persons responsible for marketing of its goods under its trademark. (Appl. Resp. To Interrog Nos. 3 and 8, Exh. A) It also identifies its “team of 1300+ designers” who are responsible for marketing and promote applicant’s goods “pursuant to a policies and procedures manual . . .” (*Id.*, Resp. to Interrog. 8 and 14) That manual, a copy of which was produced by Applicant, prescribes various rules for conduct of the “designers” business, including, *inter alia*, marketing and requirements for training, either by Applicant itself or by more senior designers for others they

have recruited into Applicant's marketing system. Applicant accordingly appears to make significant efforts to control how its goods are marketed.

32. Opposer accordingly seeks to depose Mr. and Mrs. Brown on the additional issue of how Applicant's goods are marketed and policies it promulgates to that end.

33. In addition, Opposer requests that, prior to the deposition it be permitted to serve a single document request to facilitate the deposition. Among the documents produced by Applicant is a document (Bates No. APP\_105), a copy of which is attached as Exhibit D, that lists two "kits" that are provided to its designers for a price, one named a "Basic Designer Kit," the other a "Complete Fashion Kit," which are to be used in their marketing efforts. Opposer proposes to serve a document request providing for production, prior to the deposition, of a sample of each of the kits. (To spare Applicant expense, Applicant could, if it wishes, omit the sample jewelry items from these "kits.")

34. Applicant notes that, depending upon what is revealed by this discovery, it may need to follow up by taking discovery of some of Applicant's "team of 1300+ designers." Applicant has refused to identify these designers (which Opposer has not yet raised with the Board), but Opposer is able to identify some of them from their websites using Applicant's mark, so such discovery can be pursued without Applicant's cooperation.

**Opposer Requests That The Board Deny The Summary Judgment Motion Without Prejudice**

35. As noted above, in response to a properly supported Rule 56(d) motion, the Board may "defer considering the motion [for summary judgment] or deny it." Fed.R.Civ.P. 56(d)(1). In this case, Opposer submits that the more efficient response is to deny the motion without prejudice to renewal at the end of discovery. As noted above, there is a distinct possibility that

follow-up discovery will be needed beyond the two depositions and one document request identified herein. Furthermore, given the dilatory tactics already used by Applicant in dealing with discovery, an open discovery period would allow Opposer to proceed efficiently to obtain all needed discovery in the proceeding.

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

WHEREFORE it is respectfully requested that an order denying Applicant's motion for summary judgment without prejudice to renewal at the end of discovery issue from the Board.

Respectfully Submitted,



Date: September 10, 2014  
New York, New York

By: \_\_\_\_\_  
SPRINGUT LAW PC  
75 Rockefeller Plaza, 19th Floor  
New York, New York 10019  
Tel: (212) 813-1600  
*Attorneys for Opposer*  
*Act II Jewelry LLC d/b/a lia sophia*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the above **OPPOSER'S MOTION AND SUPPORTING DECLARATION PURUSANT TO RULE 56(d) TO TAKE DISCOVERY AND DEFER CONSIDERATION OF APPLICANT'S MOTION FOR SUMMARY JUDGMENT** is being served upon Applicant's attorney of record by email to *chris@daylawfirm.com*, on this 10th day of September 2014, with a copy by first class mail, addressed to Christopher J. Day, Esq., Law Office of Christopher Day, 9977 North 90<sup>th</sup> Street, Suite 155, Scottsdale, AZ 85258.

By:           /S/ Tal S. Benschar            
Tal S. Benschar

OPPOSER'S RULE 56(d) MOTION

EXHIBIT A

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

*In re:*

Mark: MIALISIA & CO.  
Serial No.: 85912651  
TTAB No.: 91213266  
Applicant: Mialisia & Co., LLC

Mialisia & Co., LLC,  
**Applicant,**

**v.**

ActII Jewelry, LLC d/b/a Lia Sophia,  
**Opposer.**

**Opposition No. 91213266**

**APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES**

Applicant responds to Opposer's First Set of Interrogatories as follows:

**INTERROGATORIES**

1. Identify the nature of Applicant's organization.

**RESPONSE:**

Applicant is a home party based jewelry company that is using the direct sales channel to sell products. Applicant has a patent pending jewelry design that uses hooks instead of clasps to

be able to wear necklaces in many different ways (bracelets, boot bling, belts, etc).

Applicant calls it Versastyle Jewelry.

2. State when Applicant first adopted an intent to use Applicant's Mark.

RESPONSE:

Applicant first attempted to use the mark on April 15th 2013. Applicant got the name from the word Alisia which was going to be the name of a founder' first daughter and the founder ended up having 4 boys. So Mialisia means My Alisia in Italian which the founder Sean Brown has a passion for due to being fluent in Italian and having a big love for the country and people of Italy.

3. Identify each of Applicant's members, managing members, principals or other managing agents.

RESPONSE:

Sean and Annelise Brown founded the company and own 30% of the company. The other 70% is owned by QBT which is a group of investors. This group will be identified by ownership documents sent in a separate document.

4. Identify each person who participated in the determination to adopt an intent to use Applicant's Mark.

RESPONSE:

Annelise Brown, Sean Brown, Justin Banner, Craig Johanson, Devin Glazier, Rodney James, Derek Hall.

5. State whether Applicant has made use of Applicant's Mark, and if so when such use completed.

RESPONSE:

Yes Applicant has been using the mark since April 2013 and the use is ongoing.

6. Identify all searches conducted by Applicant regarding Applicant's Mark.

RESPONSE:

Applicant had a trademark availability/registrability search conducted by the Law Office of Christopher Day prior to filing the application, and received a verbal report of the results.

7. State when and how Applicant first became aware of Opposer and Identify all documents and electronic data evidencing or referring to such awareness.

RESPONSE:

On July 16, 2013, Opposer sent a fax to Applicant, copying Applicant's counsel, regarding a sales force recruitment issue. The letter did not mention or hint at any potential trademark issue. A copy of the letter is furnished in connection with Applicant's response to Document Request No. 7.

8. Identify all persons who will be responsible for marketing or intended marketing of the goods and/or services provided under Applicant's Mark.

RESPONSE:

In addition to the owners/founders previously identified, Applicant has a team of 1300+ designers who will market the goods using a home party based direct sales method.

9. Identify all of Applicant's registration(s) or currently pending application(s) for Applicant's Mark, or a mark incorporating "MIA" or "LISIA" or both in the United States Patent and Trademark Office, in any of the States of the United States or in the Trademark Office of any foreign country.

RESPONSE:

In addition to the subject application, Applicant has pending Canadian Application No. 1,659,621 filed on January 14, 2014 for the mark MIALISIA.

10. Identify any expert witness and the substance of the expected testimony of such witness that Applicant intends to obtain testimony from in this proceeding.

RESPONSE:

None are anticipated.

11. Identify each fact witness and the substance of the testimony expected from each such witness that Applicant plans to call as a witness in this proceeding.

RESPONSE:

None are anticipated.

12. In relation to each person identified in response to Interrogatory No.10 and Interrogatory No. 11, identify all communications with each such person, concerning Applicant or this proceeding.

RESPONSE:

Not applicable.

13. Identify any communications with any person, other than employees of Applicant or attorneys for Applicant, concerning Opposer or this proceeding.

RESPONSE:

None.

14. Identify each person or entity licensed to use Applicant's mark, in whole or in part, on goods, advertisements or on a website.

RESPONSE:

Applicant's 1300+ direct sales team members use the mark in connection with promoting Applicant's goods pursuant to a policies and procedures manual furnished as part of Applicant's document production response. Applicant does not believe such use constitutes a license. Applicant has not licensed the mark.

15. Identify all web sites used by Applicant's licensees or any other person affiliated with Applicant, which use or feature Applicant's mark, or MIA or LISIA or both, in their content and/or domain name.

RESPONSE:

Applicant has furnished a list of domain names owned and controlled by Applicant in connection with Document Request No. 15.

16. Identify by name, address, and title, each person who furnished information respecting the answers to the foregoing interrogatories.

RESPONSE:

All answers were completed by Sean Brown 3618 W Paige Ln Cedar Hills UT 84062. Mr. Brown is the President and part owner of Applicant.

Dated July 21, 2014.

/Christopher J. Day/  
Christopher J. Day, Attorney for Applicant  
Law Office of Christopher Day  
9977 North 90th Street, Suite 155  
Scottsdale, AZ 85258  
Telephone: (602) 258-4440  
Facsimile: (602) 258-4441

## CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited on July 21, 2014, in the U.S. mail, first class postage pre-paid, addressed to counsel for Opposer at the following address:

MILTON SPRINGUT  
SPRINGUT LAW PC  
45 ROCKEFELLER PLAZA, 20TH FLOOR  
NEW YORK, NY 10111

/Christopher J. Day/  
Christopher J. Day



**OPPOSER'S RULE 56(d) MOTION**

**EXHIBIT B**

415263.1

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

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ACT II JEWELRY, LLC d/b/a lia sophia,

*Opposer,*

Opposition No. 91213266

v.

Serial No.: 85/912651

MIALISIA & COMPANY, LLC

Mark: MIALISIA & CO.

*Applicant.*

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**NOTICE TO TAKE DEPOSITIONS OF APPLICANT**

To: Christopher J. Day, Esq.  
Law Office of Christopher Day  
9977 North 90<sup>th</sup> Street, Suite 155  
Scottsdale, AZ 85258  
*chris@daylawfirm.com*

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure and TBMP § 404, on the dates and times listed below, at the offices of Alpine Court Reporting, 243 East 400 South, Suite B 101, Salt Lake City, UT 84111 (Office Phone: 801-691-1000), the undersigned will take the deposition upon oral examination of Applicant through the witnesses listed below, before an officer authorized by law to administer oaths, Opposer having reserved August 19 and 20, 2014 for such depositions.

The depositions designated as 30(b)(6) will be of applicant Mialisia & Company, LLC by one or more officers, directors, managing agents or other person(s) who consent to testify on its behalf with respect to the subject matters set forth in the attached Schedule A.

The depositions will be recorded by sound, sound-and-visual and/or stenographic means.

<b>Name</b>	<b>Date &amp; Time</b>
Sean Brown, president, managing member or managing agent	August 19, 2014 at 9 a.m. Mountain Time
Annelise Brown, managing member or managing agent	immediately upon completion of Mr. Brown's deposition
Devin Glazier, as managing agent for QBT Holdings, LLC, Manager of Applicant	immediately upon completion of Mrs. Brown's deposition
30(b)(6)	immediately upon completion of Mr. Glazier's deposition.

You are invited to attend and cross-examine.

New York, New York  
July 31, 2014



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SPRINGUT LAW PC  
45 Rockefeller Plaza, 20<sup>th</sup> Floor  
New York, New York 10111  
Tel: (212) 813-1600  
*Attorneys for Opposer*

## SCHEDULE A

### Definitions

“Applicant” shall mean applicant Mialisia & Company, LLC.

“Applicant’s Mark” shall mean the mark “MIALISIA & CO.” as filed with the United States Patent and Trademark Office and assigned Trademark Application Serial No. 85/912651.

“Applicant’s Goods” shall mean the goods provided by Applicant in relation to Applicant’s Mark as filed with the United States Patent and Trademark Application Serial No. 85/912651.

### Deposition Topics

1. All of Applicant’s responses to Opposer’s First Set of Interrogatories.
2. All of Applicant’s responses to Opposer’s First Set of Document Requests.
3. All documents produced by Applicant in discovery and the search for same.
4. The general nature of Applicant’s business.
5. The decision to adopt and use Applicant’s Mark in connection with Applicant’s Goods.
6. The searches identified in Applicant’s document production.
7. The identity of each of Applicant’s “1300+ Designers.”
8. The websites used by each of Applicant’s “1300+ Designers” and the use of Applicant’s mark thereon.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the above **NOTICE TO TAKE DEPOSITION OF APPLICANT** was served upon Applicant's attorney of record, by first class mail, postage prepaid, and by email, addressed to Christopher J. Day, Esq., Law Office of Christopher Day, 9977 North 90<sup>th</sup> Street, Suite 155, Scottsdale, AZ 85258, *chris@daylawfirm.com* on this 31<sup>st</sup> day of July 2014.

By:           /S/ Tal S. Benschar            
Tal S. Benschar

OPPOSER'S RULE 56(d) MOTION

EXHIBIT C

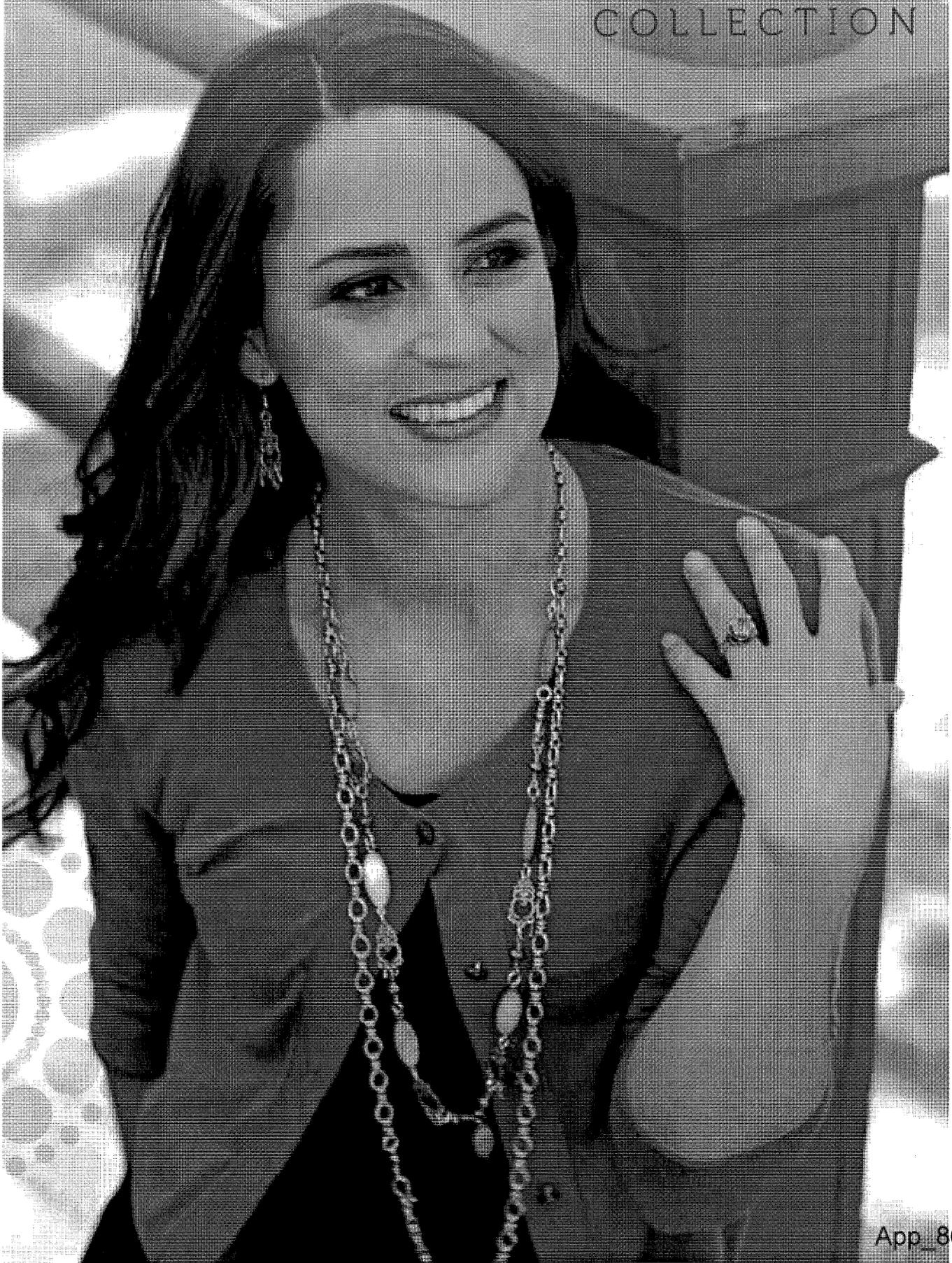
mialisia™

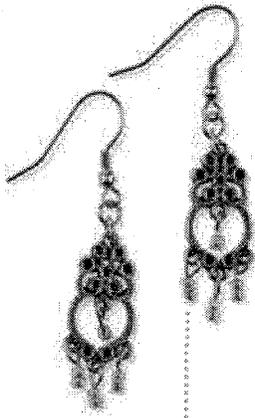
2013  
FALL/  
WINTER  
INSERT

App 85

# *The Intuitive*

COLLECTION





**CHARMING EARRINGS**

(20-0018) | \$23.00

2.25" Scrolling antique silver hoops are accented with golden, amber-hued beads, creating a decidedly charming look. They are an ideal complement to the Ambitious or Bold pieces.

**OPTIMISTIC | \$35.00**

Sizes 6-9 Two layers of scalloped antique silver frame an amber-hued, diamond-cut glass gem on this eye-catching ring.

6

7

8

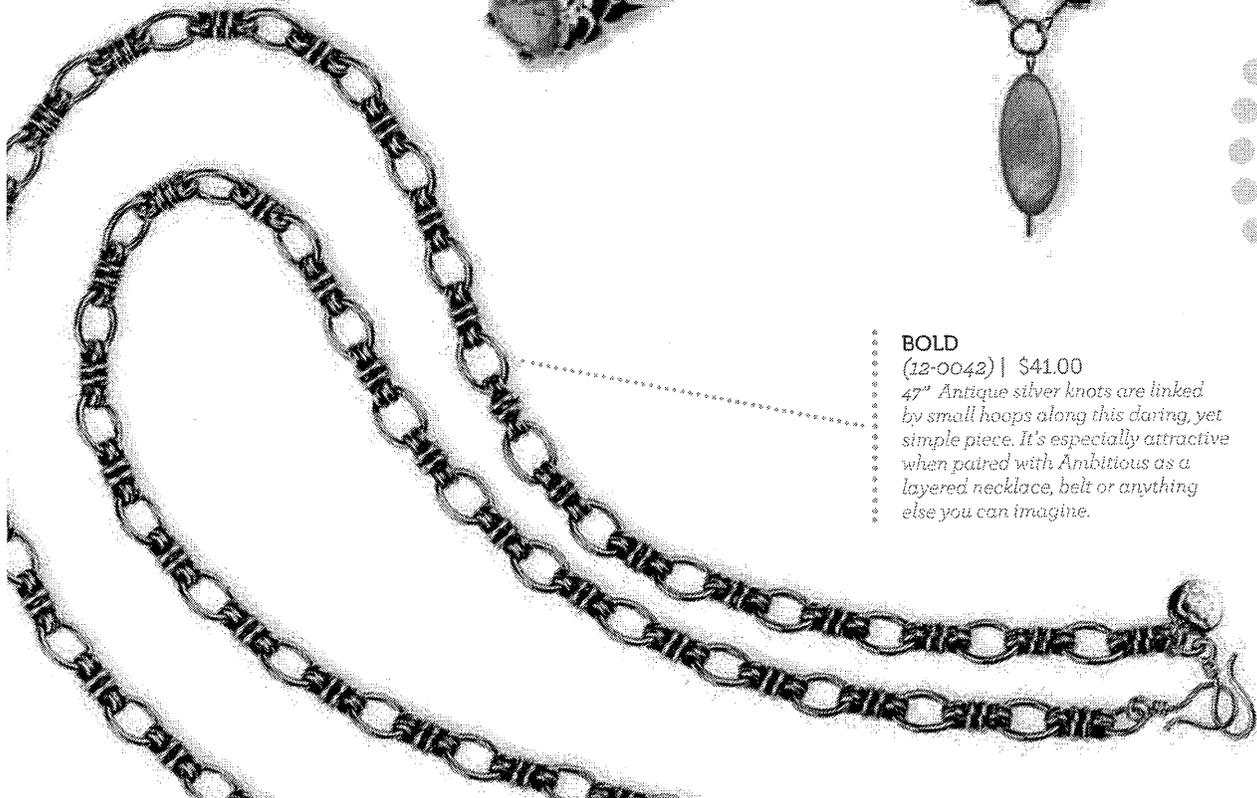
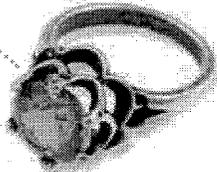
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(30-0076)

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**BOLD**

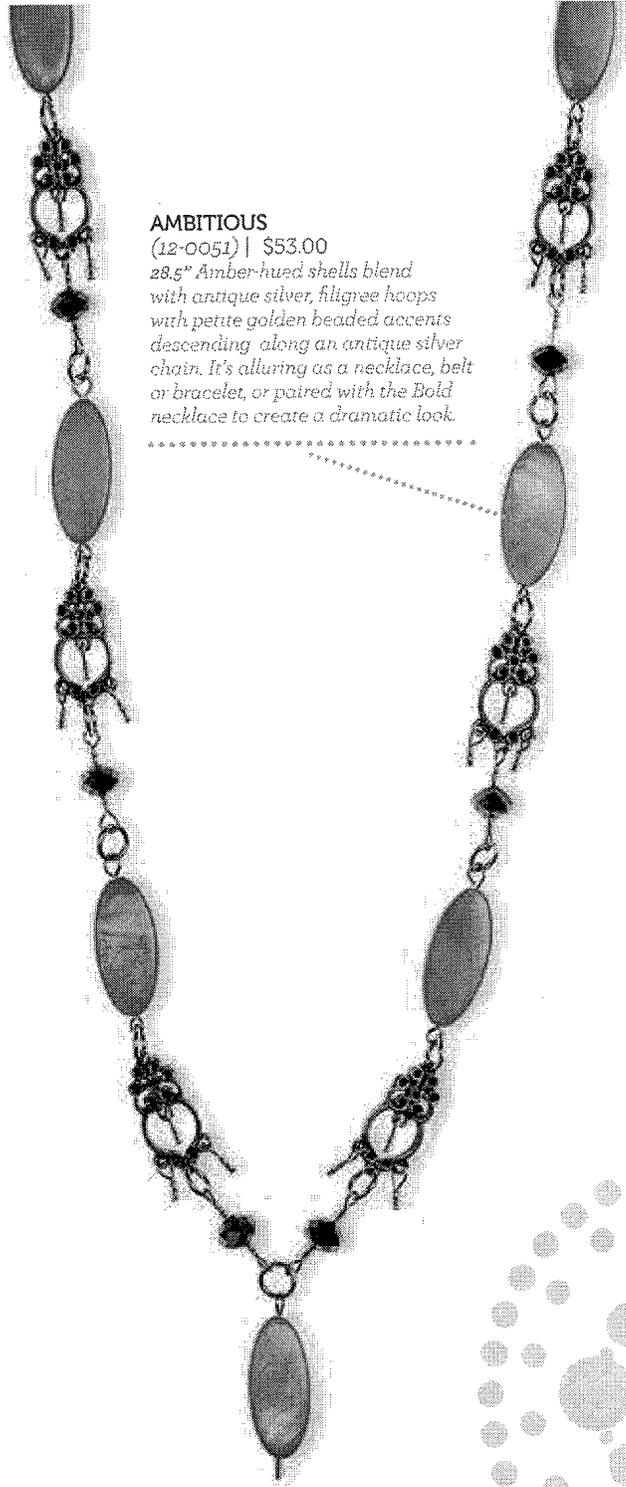
(12-0042) | \$41.00

47" Antique silver knots are linked by small hoops along this daring, yet simple piece. It's especially attractive when paired with Ambitious as a layered necklace, belt or anything else you can imagine.

**AMBITIOUS**

(12-0051) | \$53.00

28.5" Amber-hued shells blend with antique silver, filigree hoops with petite golden beaded accents descending along an antique silver chain. It's alluring as a necklace, belt or bracelet, or paired with the Bold necklace to create a dramatic look.



**DELICATE**  
(12-0005) | \$52.00

34.75" Delicate coral gems wrapped in gold for a touch of classic color.

**PEARL DROP EARRINGS**  
(20-0014) | \$24.00

2.25" Large gold hoops are accented with glass pearls on these classic earrings.

**CORAL GEM EARRINGS**  
(20-0020) | \$17.00

3/4" Coral gems wrapped in gold make a dainty earring that pairs perfectly with the Delicate necklace.

**PRECIOUS PEARLS**  
(12-0043) | \$53.00

48.5" Gold filigree details are mixed with classic white pearls in this infinitely beautiful piece that's sure to be a wardrobe staple. It's lovely long or short, as a bracelet or belt.

**PRINCESS I** | \$28.00

Sizes 6-9 Scrolled gold detail makes this simple yet striking ring a beautiful pairing for any gold necklace.

**PETALS OF GOLD**  
(12-0037) | \$53.00

38" Soft gold petals combine with shimmering gold beads from a delicate gold chain. It's enchanting as a choker, necklace, bracelet or belt.

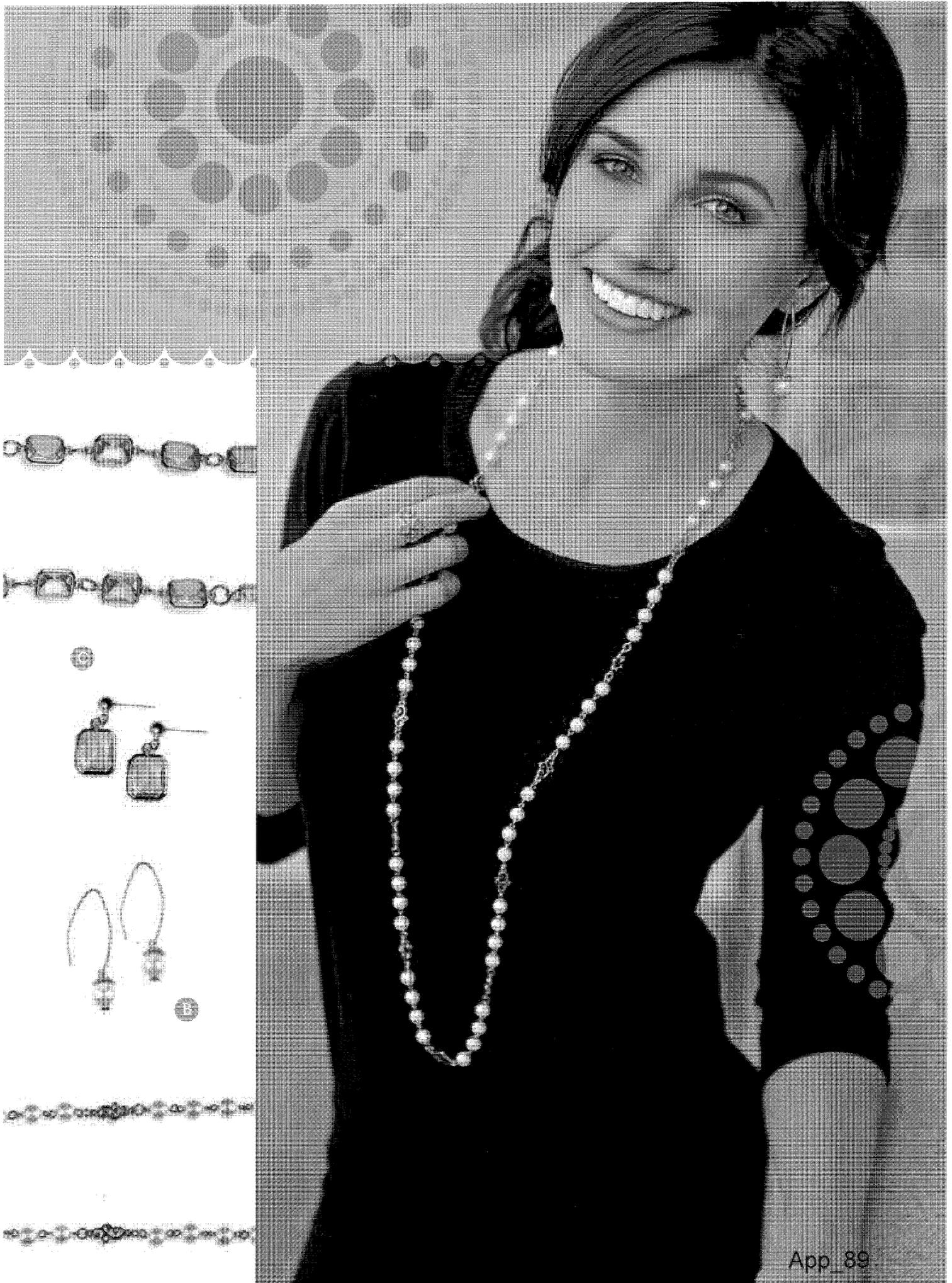
**SUN PETAL EARRINGS**  
(20-0015) | \$23.00

2" Dangling, soft gold petals and a touch of elegance to any gold necklace.

6 (20-0016) 7 (20-0017) 8 (20-0018) 9 (20-0019)

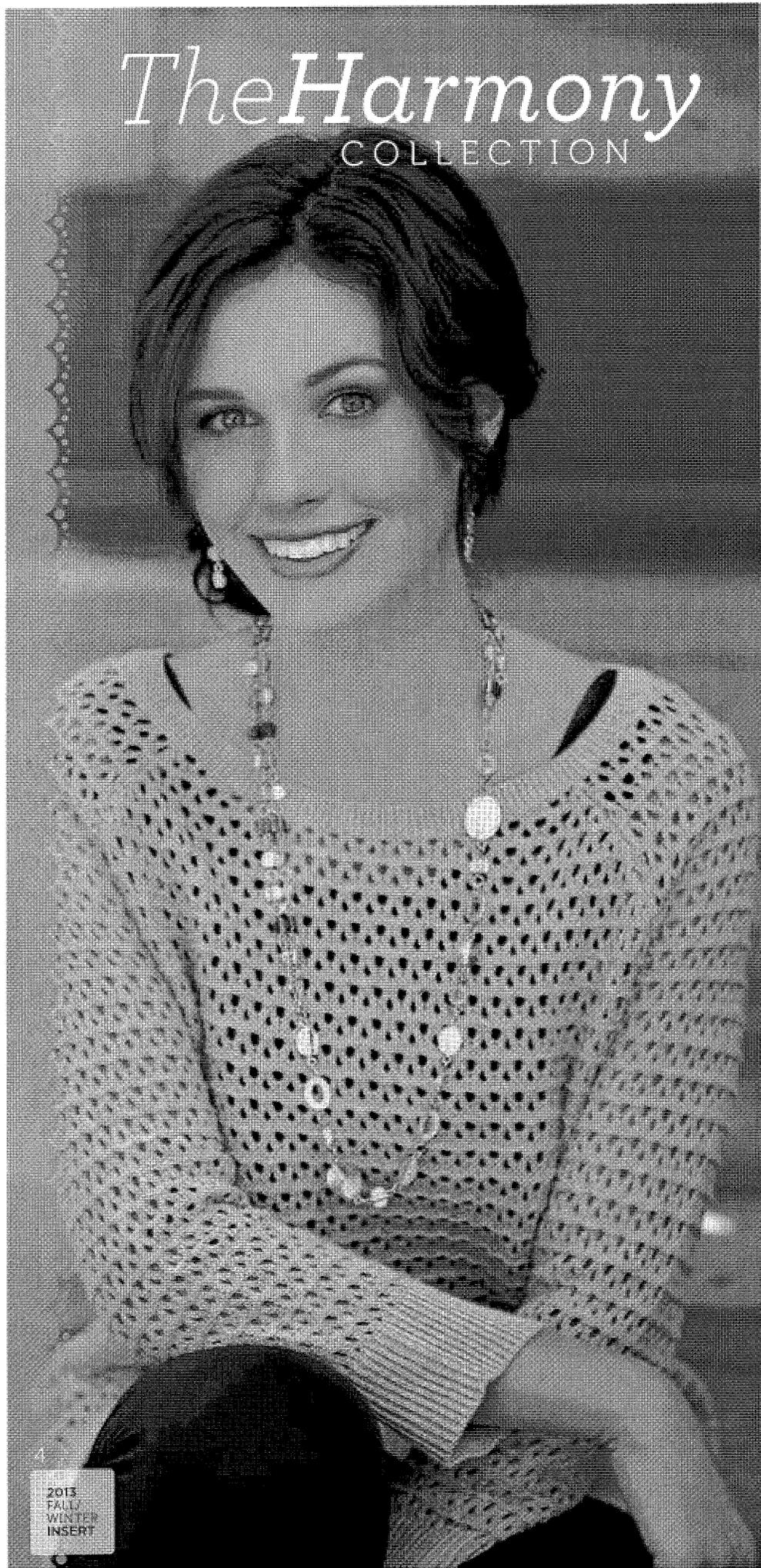


# The Princess COLLECTION



# The Harmony

COLLECTION



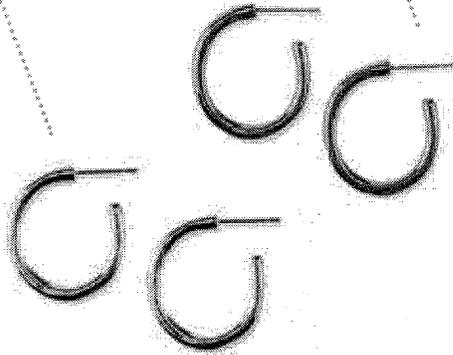
**GOLD DESIRE**  
(12-0039) | \$39.00  
21.5" An intriguing mix of spiral, hammered and stippled gold hoops and discs make this a simple, yet diverse piece that's attractive as a necklace, boot bling or bracelet. Also available in silver.



**SILVER DESIRE**  
(12-0038) | \$39.00  
21.5" An intriguing mix of spiral, hammered and stippled silver hoops and discs make this a simple, yet diverse piece that's attractive as a necklace, boot bling or bracelet. Also available in gold.

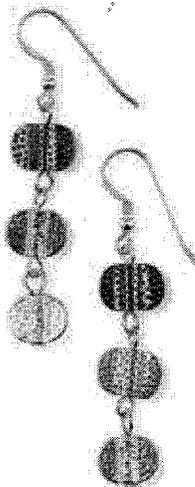
**SILVER HOOP EARRINGS**  
 (20-0010) | \$21.00  
 1" These classic silver hoop earrings complement any silver necklace.

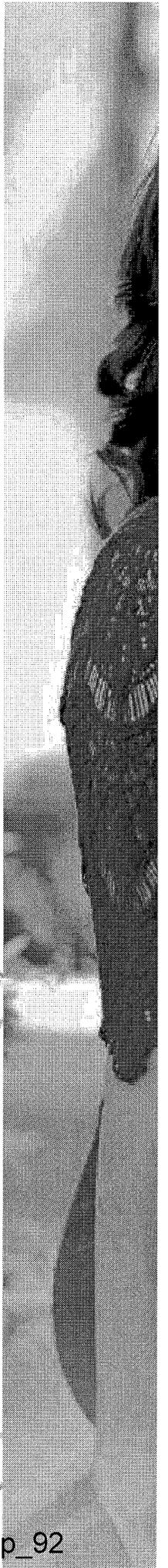
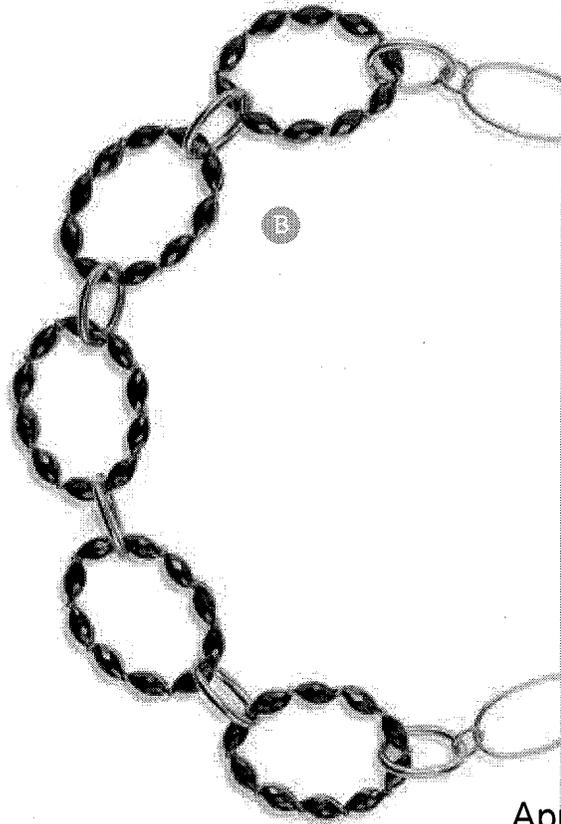
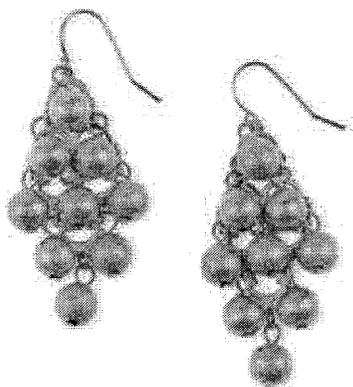
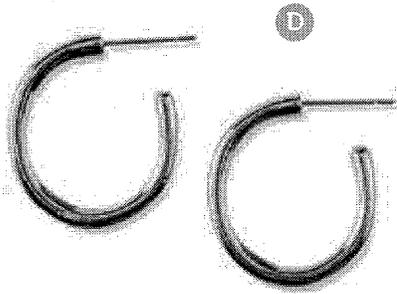
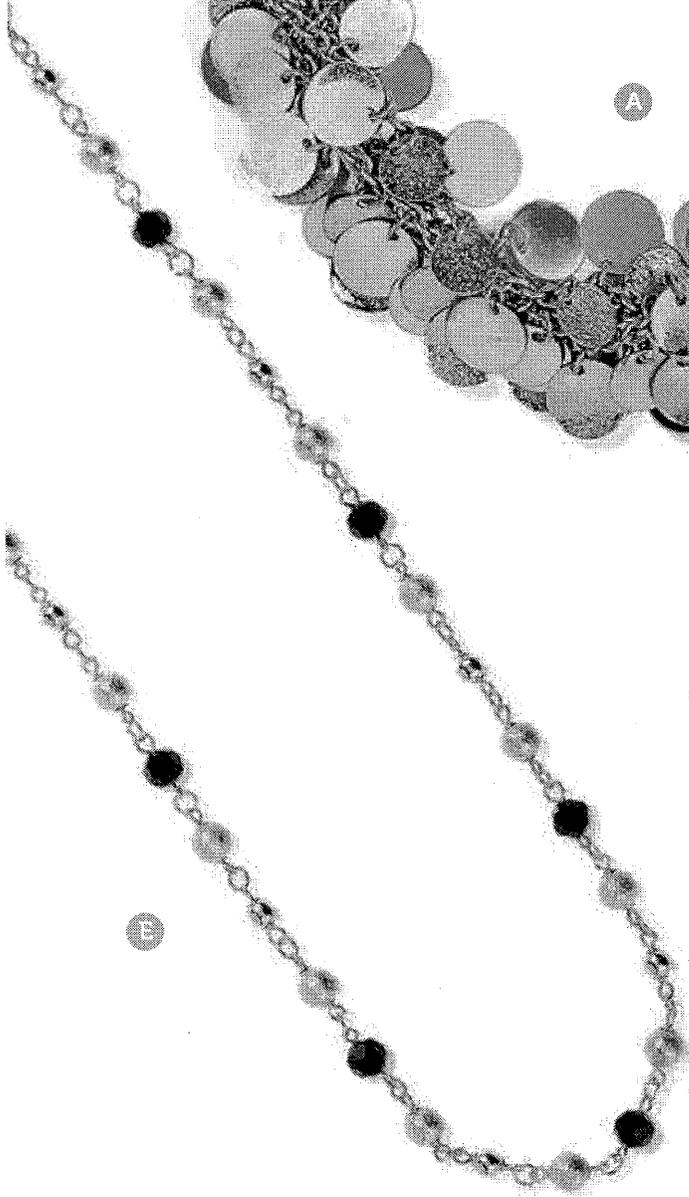
**GUN METAL HOOP EARRINGS**  
 (20-0012) | \$21.00  
 1" These shiny gunmetal hoop earrings complement any silver or gunmetal necklace.



**FANCY NANCY**  
 (12-0036) | \$55.00  
 37" Stippled gunmetal, gold and silver discs descend along this classy, yet assertive piece that goes with everything in your closet. Wear this simple piece as a necklace, bracelet, belt or boot bling.

**TRIFECTION EARRINGS**  
 (20-0016) | \$24.00  
 2" Stippled gunmetal, gold and silver discs dangle in these assertive earrings that pair well with Fancy Nancy.







# The Shimmer Collection

**A**

**ELEGANCE**

(11-004-01) | \$73.00

25K yellow gold-plated curb link necklace with 18K white gold-plated pearls. Includes matching earrings.

**B**

**ENTANGLED**

(12-002-37) | \$48.00

22K gold-plated curb link necklace with 18K white gold-plated pearls. Includes matching earrings.

**C**

**GLOWING EARRINGS**

(6-001) | \$35.00

22K gold-plated curb link earrings with 18K white gold-plated pearls.

**D**

**GOLD HOOP EARRINGS**

(2-0-0-00) | \$21.00

18K white gold-plated curb link earrings with 18K white gold-plated pearls.

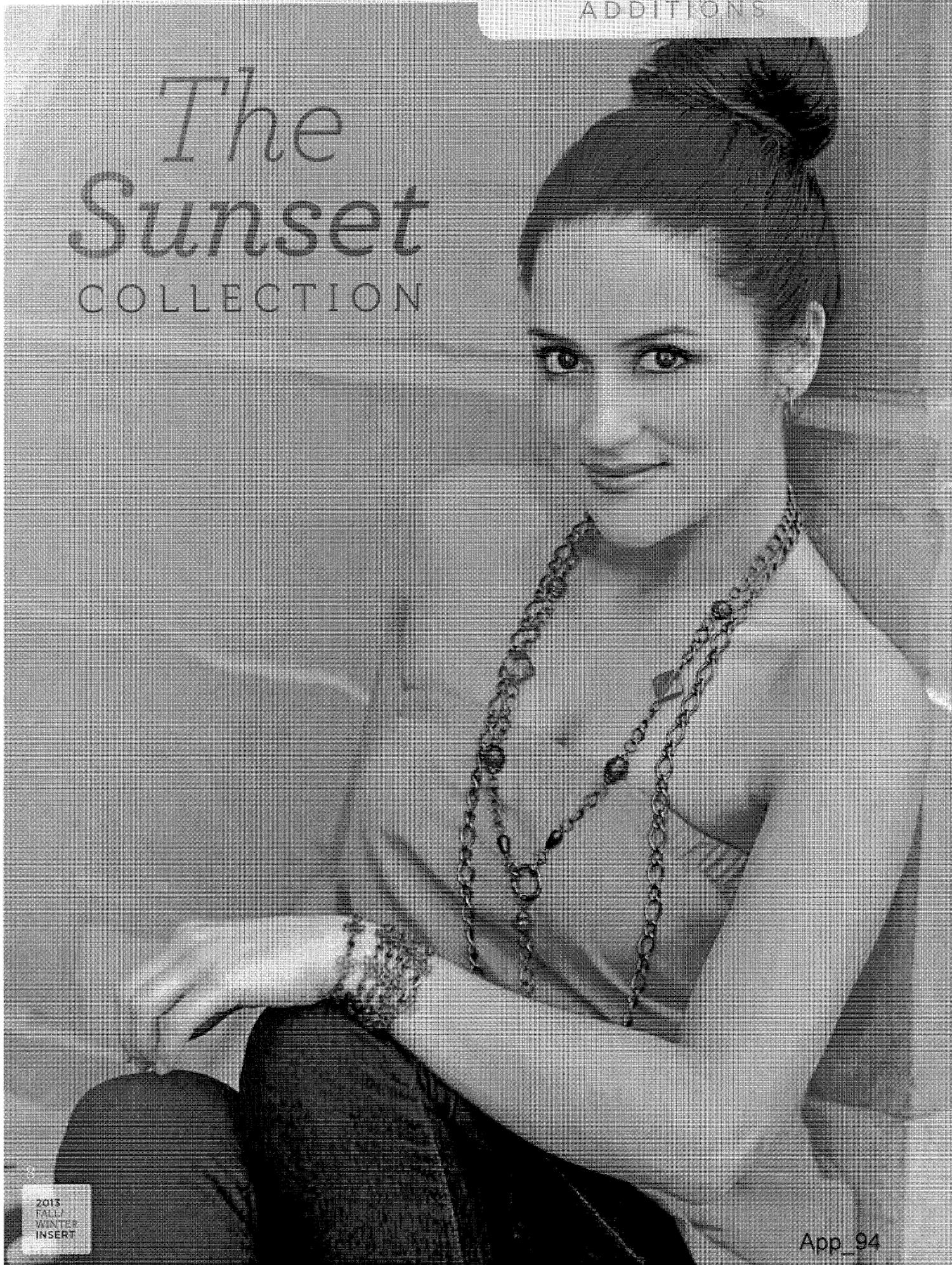
**E**

**RAVEN**

(2-004-3) | \$40.00

22K gold-plated curb link necklace with 18K white gold-plated pearls. Includes matching earrings.

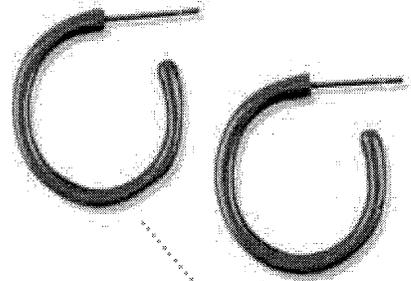
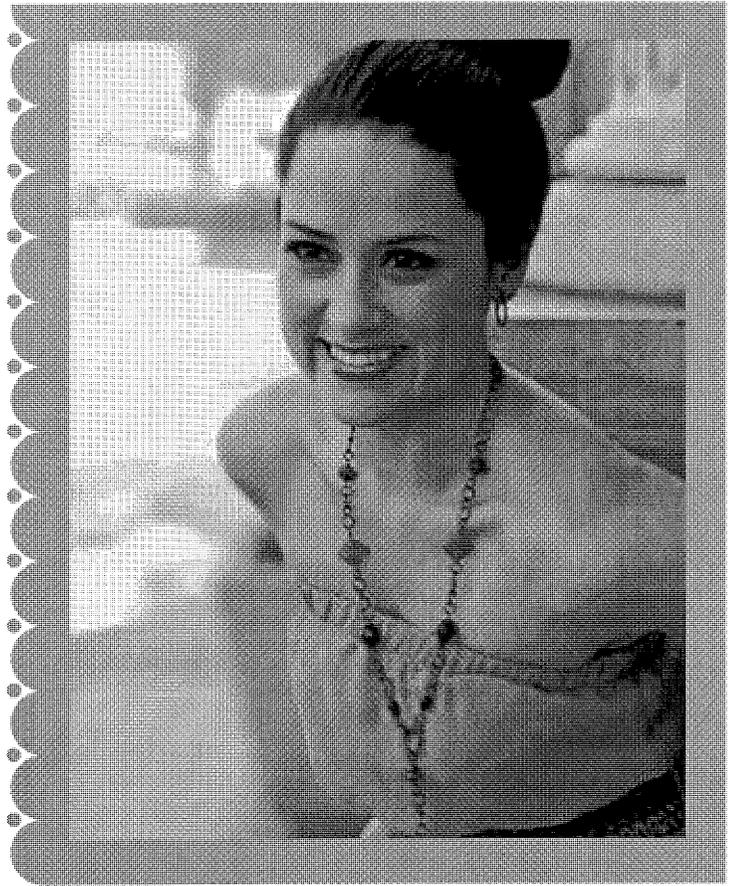
# The Sunset COLLECTION



8  
2013  
FALL/  
WINTER  
INSERT

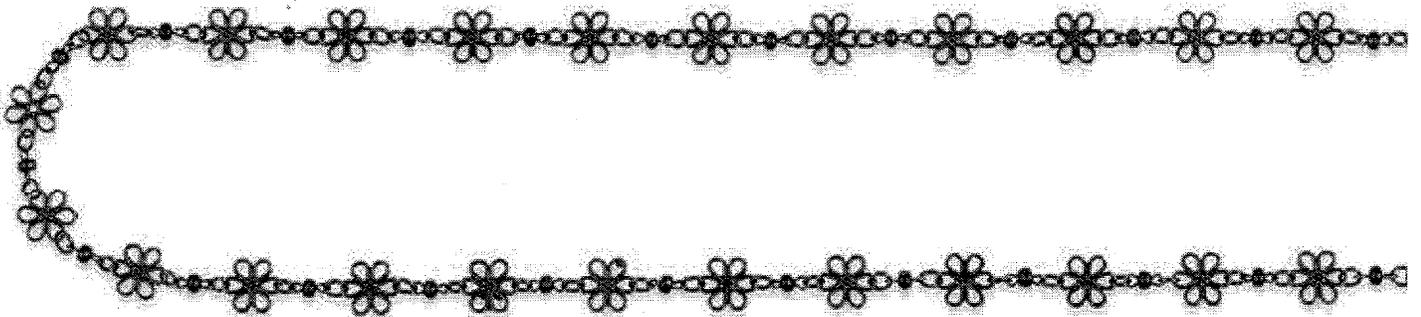


.....  
 AUTUMN DAWN  
 (12-0045) | \$52.00  
 34" Burnt orange glass beads, brick  
 red faceted beads and diamond  
 shaped amber-hued glass beads  
 decorate this antique bronze chain.  
 This fall favorite is attractive as a  
 necklace, belt or bracelet.  
 .....



.....  
 BRONZE HOOP EARRINGS  
 (20-0011) | \$21.00  
 These antique bronze hoop earrings  
 complement any bronze necklace.  
 .....

.....  
 SUMMERS END  
 (12-0046) | \$43.00  
 47.25" Antique bronze daisies blend  
 with petite chocolate wooden beads  
 on this beautiful floral necklace. It's  
 versatile enough to be worn alone  
 or layered with another piece to  
 add more interest.  
 .....





**A** **ITALIAN LACE EARRINGS**  
 (12-0059) | \$22.00  
 2 1/2" Antiqued silver scallops wrap around these simple hoop earrings. Size 5 1/2" plus has low lobe insertion.

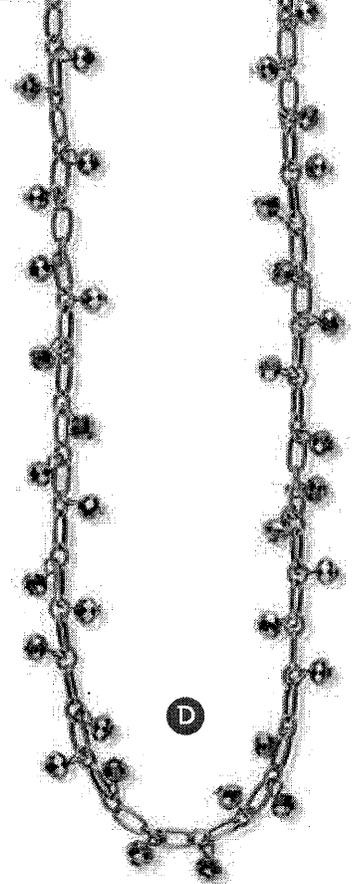
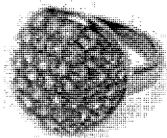
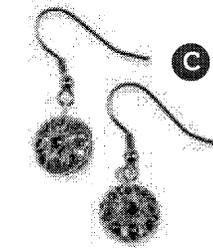
**B** **MILANO**  
 (12-0043) | \$39.00  
 23" Coconut shell beads and rings are set with glass, pearl, and multi-dimensional antique silver accents. Fun & easy get interrupted, set or bracelet. Coordinate it with the Rome necklace for a modern, colorful layered look or wear alone.

**C** **ROME**  
 (12-0050) | \$72.00  
 40.25" Long, antique silver hoops are designed for a versatile neckline that adds interest as a belt, waist tie or scarf sling. It can also be combined with Milano as a layered necklace or belt.

**D** **SICILIAN**  
 (12-0047) | \$31.00  
 32.5" Coconut shell necklace is draped with antique silver links for a modern modern necklace that adds extra interest as a layered necklace or chain. Greenlet, easy sliding or belt.

2013  
 FALL  
 WINTER  
 INSERT





# The Starry Night

COLLECTION



## Coming in November!

- A** **ARIES**  
(12-0052) | \$4700  
28" Dual layers of silver and charcoal grey beads mix with clear, faceted beads on this double-strand piece that's a sophisticated necklace, bracelet or layered with Gemini or Lyra as a belt or necklace.
- B** **AURORA EARRINGS**  
(20-0017) | \$18.00  
1" Glass pearls dangle softly with garnet and silver beads on these earrings that are a perfect pairing for Aries, Polaris or nearly any silver necklace.
- C** **CARINA EARRINGS**  
(20-0021) | \$25.00  
1.85" Charcoal grey stones shimmer enticingly on these lacey, antique silver earrings. They'll add bling to nearly any silver necklace, especially Polaris, Gemini or Aries.
- D** **GEMINI**  
(12-0054) | \$45.00  
36" Shimmering glass, charcoal grey beads dangle playfully from an antique silver chain on this versatile piece that's exquisite as a necklace, bracelet or belt.
- E** **LYRA**  
(12-0053) | \$2700  
45" Shimmering, petite grey beads are scattered along a whisper light, antique silver chain, supplying subtle beauty as a necklace, bracelet or belt.
- F** **POLARIS**  
(12-0044) | \$58.00  
23.5" A rich cascade of garnet and beads with delicate rhinestones spread throughout bring the night sky to you on this exquisite piece that can be worn as a short necklace or layered with another piece as a longer necklace.
- G** **PYXIS EARRINGS**  
(20-0022) | \$18.00  
3" A cluster of shimmering grey beads hang from a whisper light, antique silver chain on these delicate earrings that pair perfectly with the Gemini necklace.
- H** **ORION** | \$38.00  
Sizes 6-9 Climmering rhinestones encrust this garnet ring that's a stunning addition to any piece in the Starry Night Collection.



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 (30-0096) (30-0087) (30-0088) (30-0089)

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## BASIC DESIGNER KIT

~~\$199~~

**\$600**  
VALUE

### KIT PIECES

- 1 LARGE BAG
- 1 NECKLACE FORM 14"
- 3 DISPLAY MAT
- 1 OPPORTUNITY TRIFOLD (15PK)
- 1 CATALOG (10PK)
- 1 DVD
- 1 ORDER FORMS (25PK)
- 1 INVITATIONS (25PK)
- 1 DISPLAY CARDS (4PK)
- 1 WELCOME LETTER
- 1 CONCEPT BOOKLET (25PK)

7 NECKLACES

3 EARRINGS

2 RINGS



## COMPLETE FASHION EVENT KIT

~~\$500~~ \$499

**\$1600**  
VALUE

### KIT PIECES

- 1 LARGE BAG
- 2 NECKLACE FORM 14"
- 6 DISPLAY MAT
- 2 OPPORTUNITY TRIFOLD (15PK)
- 3 CATALOG (10PK)
- 1 DVD
- 2 ORDER FORMS (25PK)
- 2 INVITATIONS (25PK)
- 4 DISPLAY CARDS (4PK)
- 1 WELCOME LETTER
- 1 FREE WEBSITE FOR A YEAR
- 1 CONCEPT BOOKLET (25PK)

23 NECKLACES

7 EARRINGS

3 RINGS

