

# **BULKY DOCUMENT**

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Proceeding No.	91221338
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Filing Date	2/22/2016
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Part	1	of	4
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<b>91221338</b>
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TTAB

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NV ref: 6429-12

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

PRL USA HOLDINGS, INC.,	)	
	)	
Opposer	)	Opposition No. 91221338
	)	Ser. Nos. 86412883
v.	)	86412886
	)	86488070
POLO GEAR LLC,	)	
	)	
Applicant	)	
	)	

**REVOCATION AND NEW POWER OF ATTORNEY**

Applicant, POLO GEAR LLC ("POLO GEAR"), hereby appoints Sheryl De Luca, Robert A. Rowan, and the other attorneys of the firm of Nixon & Vanderhye P.C., 901 North Glebe Road, 11th Floor, Arlington, VA 22203-1808, telephone 1-703-816-4000, facsimile 1-703-816-4100, email [nixonptomail@nixonvan.com](mailto:nixonptomail@nixonvan.com), to represent POLO GEAR in this proceeding, with full power of substitution and revocation with respect to the previous attorneys of Shutts & Bowen, LLP and Kammerer Mariani, and to transact all business in the United States Patent and Trademark Office in connection therewith. Every attorney at law associated with Nixon & Vanderhye P.C. is hereby authorized to sign any paper or conduct any business on its behalf.

POLO GEAR hereby revokes all powers of attorney previously granted with respect to its representation in this proceeding.

Please forward all correspondence and communications intended for POLO GEAR to:



\*02-22-2016\*

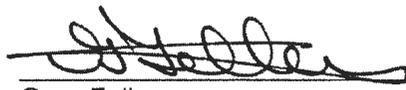
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Sheryl De Luca  
Nixon & Vanderhye P.C.  
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Arlington, Virginia 22203  
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Authorized email: [nixonpl@mail@nixonvan.com](mailto:nixonpl@mail@nixonvan.com)

Thank you for your attention to this matter.

POLO GEAR LLC

By:   
Name: Gary Fellers  
Position: CEO  
Date: 9/3/16

**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2016, the foregoing "Revocation and New Power of Attorney" was served on counsel of record for Opposer via first-class mail to:

Daniel I. Schloss  
Greenberg Traurig LLP  
200 Park Avenue  
New York, NY 10166

**NIXON & VANDERHYE, PC**

By: Sheryl De Luca  
Sheryl De Luca

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

_____		)	
PRL USA HOLDINGS, INC.,		)	
	Opposer	)	
	v.	)	
POLO GEAR INTELLECTUAL PROPERTIES, INC.		)	Opposition No. 91207805
and		)	Ser. No. 85458112
POLOGEAR LLC,		)	
	Applicants	)	
_____		)	

**REVOCATION AND NEW POWER OF ATTORNEY**

The current Applicant, POLOGEAR LLC and previous assignee, POLO GEAR INTELLECTUAL PROPERTIES, INC. (collectively "POLO GEAR") hereby appoint Sheryl De Luca, Robert A. Rowan, and the other attorneys of the firm of Nixon & Vanderhye P.C., 901 North Glebe Road, 11th Floor, Arlington, VA 22203-1808, telephone 1-703-816-4000, facsimile 1-703-816-4100, email [nixonptomail@nixonvan.com](mailto:nixonptomail@nixonvan.com), to represent POLO GEAR in this proceeding, with full power of substitution and revocation with respect to the previous attorneys of Shutts & Bowen, LLP and Kammerer Mariani, and to transact all business in the United States Patent and Trademark Office in connection therewith. Every attorney at law associated with Nixon & Vanderhye P.C. is hereby authorized to sign any paper or conduct any business on its behalf.

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Thank you for your attention to this matter.

POLOGEAR LLC and  
POLO GEAR INTELLECTUAL PROPERTIES,  
INC.

By:   
Name: Gary Fellers  
Position: CEO  
Date: 2/3/16

**CERTIFICATE OF SERVICE**

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**NIXON & VANDERHYE, PC**

By:   
Sheryl De Luca

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

PRL USA HOLDINGS, INC.,	)	
	)	
Opposer,	)	Opposition No. 91207805 (Parent)
	)	Opposition No. 91221338
v.	)	(Serial Nos. 85/458,112, 86/412,883,
	)	86/412,886 and 86/488,070)
POLO GEAR INTELLECTUAL PROPERTIES, INC.	)	
and	)	
POLO GEAR LLC,	)	
	)	
Applicants.	)	
	)	
	)	

**MOTION FOR RECONSIDERATION  
 AND RELIEF FROM JUDGMENT**

Applicants Polo Gear LLC and Polo Gear Intellectual Properties Inc., (collectively “PoloGear”) move this Board to reconsider its order of January 20, 2016 and to set aside or vacate the default judgment granted therein. These motions are brought pursuant to and within the time prescribed by 37 CFR §§ 2.116(a), and 2.127(b); Rules 60(b)(1), (6) and 55(c), Fed. Rules Civ. P.; and TBMP §§ 518, 543, and 544.

There is good cause for reconsidering and setting aside the default judgment: The default was not willful; PoloGear has meritorious defenses; and Opposer PRL USA Holdings, Inc. (“PRL”) will suffer no legally cognizable prejudice as a result of setting aside the default judgment. Contrary to the central assumption of the Board’s November 30, 2015 Order to Show Cause, PoloGear has not, by any means, “los[t] interest in this proceeding” and has multiple meritorious defenses to present. Because there will be no cognizable prejudice to Opposer in

granting the requested relief, equity and fairness dictate that this case be decided on the facts and law.

As explained in detail in the attached February 22, 2016 Declaration of PoloGear's President, Gary Fellers (the "2/22 Fellers Decl."), PoloGear is a victim of its former counsel, John Mariani, who failed to file an appearance of counsel despite repeated, specific assurances to PoloGear that he had done so; failed to respond to the TTAB's orders in these proceedings, despite specific and repeated assurances that he had done so; and who made repeated, deliberate misrepresentation to PoloGear regarding the favorable status of these proceedings and the asserted inaccuracy of the negative written communications PoloGear was receiving from the PTO. Mr. Mariani's actions were not just careless, neglectful or even grossly negligent, they were deliberately deceitful. He completely abandoned his client, then lied about it. For all intents and purposes, PoloGear was (worse than) unrepresented by counsel.

### **DESCRIPTION OF THE RECORD**

This is a consolidated proceeding. Opp. No. 91207805, the Parent proceeding, addressing Ser. No. 85/458,112 and the mark POLOGEAR and design, was consolidated on July 2, 2015 with Opp. No. 91221338, addressing Ser. Nos. 86/412,883, 86/412,886 and 86/488,070 and the marks POLOGEAR and POLOGEAR and design. The record in Opp. 91207805, summarized below, includes a lengthy series of motions to extend and suspend, filed by the Opposer, PRL totaling in excess of 20 months, for the stated purpose of accommodating ongoing settlement negotiations. A similar series of extensions and suspensions is found in consolidated Opp. 91221388. Both file histories demonstrate either: (1) serious negotiations to settle this case; or (2) more cynically, a series of delays by the Opposer, PRL. Importantly, neither interpretation supports a conclusion that PoloGear "los[t] interest in this proceeding."

This record also demonstrates that PRL cannot credibly assert that any prejudice would result from any delay due to PoloGear's inadvertent default or this Board's vacation of the resultant default judgment. The Board's July 2, 2015 Order setting deadlines, including the conclusion of trial on June 20, 2016, further confirms this look of prejudice.

10/24/2012	Notice of Opposition filed
12/11/2012	PoloGear timely filed its Answer
06/13/2013	PoloGear moved for a 60-day extension of discovery
09/04/2013	PRL moved to extend discovery for an additional 30 days
10/07/2013	PRL again moved to extend discovery 30 days
10/29/2013	PRL moved to suspend proceeding pending settlement negotiations
10/29/2013	Opposition suspended by Board
12/24/2013	PRL again moved to suspend pending settlement negotiations
02/07/2014	PRL again moved to suspend pending settlement negotiations
05/03/2014	PRL again moved to suspend pending settlement negotiations
07/23/2014	PRL again moved to suspend pending settlement negotiations
10/01/2014	PRL again moved to suspend pending settlement negotiations
04/09/2015	PRL again moved to suspend pending settlement negotiations
04/13/2015	Extension of time for close of discovery and subsequent dates granted until July 29, 2015
06/11/2015	PRL moved to consolidate with opposition 91221338
07/02/2015	Proceedings were consolidated and trial set to conclude on 06/20/2016
10/09/2015	PoloGear's counsel filed a request to withdraw as attorney
10/14/2015	Request to withdraw was refiled
10/21/2015	Board granted the motion to withdraw and required PoloGear to find new counsel or to indicate that it was proceeding <i>pro se</i> within 30 days
11/30/2015	Board entered show cause order, directing PoloGear to respond within 30 days
01/20/2016	Board entered order of default judgment and sustained the opposition

### **RELATED PROCEEDINGS**

The parties are also involved in Opposition, No. 91224180 addressing the mark POLO GEAR and POLOGEAR and design in two underlying applications, 86/488,079 and 86/488,086. PoloGear also has pending trademark registration applications for related marks and goods in Serial Nos. 85/458,112; 86/519,898; 86/519,939; 86/519,959; 86/488,079; 86/488,086; 86/412,883; 86/412,886; 86/488,070; 86/519,612; 86/519,990; 86/519,674; and 86/488,059.

## STATEMENT OF FACTS

### Applicant's Fact Basis for the Motions

Applicant respectfully submits that , as set forth in Applicant's President's affidavit (Fellers 2/22 Decl., ¶¶ 2-5, 17-47); 1) Applicant is a victim of its former counsel (John Mariani) deceitful misconduct; 2) the status of these proceedings before the Trademark Trial and Appeal Board was due to Applicant's former counsel (John Mariani): (i) lying to and misleading Applicant as to the favorable status of these proceedings, filings that were said to be made for Applicant but were not made, false representations to Applicant that the status of these proceedings were in good order and current and that the Patent & Trademark Office warnings and negative written communications were not accurate and were bureaucratic mix-ups; and (ii) engaging in continuous false and misleading activity relating to this proceeding, which, in my opinion, is either intentional misconduct to Applicant or he has serious personal problems that caused the conduct; and 3) Applicant was for all intents and purposes unrepresented by counsel.

### Applicant's Business and Trademark History

PoloGear was incorporated under that name on April 12, 1994. It has used the name Polo Gear and mark POLOGEAR since 1993. During that time, PoloGear has openly, actively and continuously sold more than \$20 million of POLOGEAR branded products, including technical equipment and apparel used in the sport of polo, as well as apparel products and accessories sold to the general market, in all 50 states and in more than 40 countries around the world. See February 16, 2016 Declaration of Gary Fellers ("Fellers 2/16 Decl.") which is Exh. A to PoloGear's February 16<sup>th</sup> Amendment in Serial No. 86/519,959, which is attached hereto as Exh. A, at ¶¶ 9, 12. During that same period, PoloGear spent over one million dollars advertising its POLOGEAR brand and, since 1997, has extensively used the domain www.pologearusa.com to

advertise and promote its POLOGEAR branded products as authentic, genuine products used in and reflecting the sport of polo. *Id.*, at ¶¶ 12-15.

### **Applicant's and Opposer's Relationship History**

Starting in 1997, PoloGear and PRL had a significant business relationship, lasting almost two decades, during which PRL purchased and displayed more than \$100,000.00 worth of Applicant's POLOGEAR products, without a single incident of confusion. See Exh. A, at pgs. 18-19, and attached Fellers 2/16 Decl., ¶¶ 17-19. As part of that lengthy customer relationship, PRL displayed Applicant's POLOGEAR goods at PRL's flagship store in New York City, in a window showcasing both parties branded products side-by-side, again with no instances of confusion. See Amendment, Exh. A, fn. 1 and pg. 7; Fellers 2/16 Decl., at ¶¶ 17, 18.

Notwithstanding this lengthy relationship, two different law firms representing PRL contacted PoloGear, on two separate occasions in 2002 and 2007, demanding that PoloGear cease use of its POLOGEAR mark and related trademarks on various products. However, in each instance, when these two separate law firms were apprised of all the facts, including the nature and length of the business relationship between the parties, with no incidents of confusion, both law firms abandoned their efforts, thereby condoning PoloGear's use of its POLOGEAR marks. PRL made no further objection to Applicant's use of its POLOGEAR mark until this proceeding. See, Amendment, at fn. 1 and pgs. 7 and 8; and Fellers 2/16 Decl., ¶ 19. Relying on PRL's fully informed acquiescence, PoloGear continued and expanded its activities under its POLOGEAR marks in reliance on PRL's actions. *Id.*

### **Applicant's Prior Counsel – Shutts & Bowen and John Mariani**

From at least October 12, 2012 through October 9, 2015, PoloGear's trademark applications and the instant TTAB oppositions were handled by the West Palm Beach law firm

of Shutts Bowen and, specifically, by attorney Daniel Barsky. See February 22, 2016 Declaration of Gary Fellers (“Fellers 2/22 Decl.”), attached hereto as Exh. B, at ¶ 3.

Mr. Barsky’s superior at Shutts Bowen, was Mr. John Mariani, a senior partner at that firm who monitored and directed all PoloGear activities and was the primary point of contact with PoloGear on all trademark and other matters. Fellers 2/22 Dec., at ¶ 7. Mr. Mariani was the experienced counsel upon which PoloGear’s principals, Mr. Fellers and Ms. Sassoon relied. On September 29, 2015, Mr. Mariani met with Mr. Fellers and Ms. Sassoon, to advise them that he was leaving the Shutts Bowen firm to start a new law firm, but wanted to continue his attorney client relationship with PoloGear, which encompassed many matters aside from trademarks. Fellers 2/22 Dec., at ¶ 14. Mr. Fellers and Ms. Sassoon, having dealt almost exclusively with Mr. Mariani rather than Mr. Barsky, agreed that Mr. Mariani should continue his representation of PoloGear and to take over all of the pending applications and oppositions at the USPTO and TTAB, including representation of Mr. Fellers at his October 22, 2015 deposition in Opposition No. 91224180. Fellers 2/22 Dec., at ¶ 16. Messrs. Fellers and Mariani met again a week later on October 7, 2015 to discuss that deposition. See Fellers 2/22 Decl., ¶ 21 and Exh. 8.

On October 12, 2015, Mr. Fellers received a notice of Shutts Bowen’s 10/9 application to withdraw from representation of PoloGear at the USPTO and immediately forwarded it to Mr. Mariani at his new firm with explicit instructions for Mr. Mariani to enter an appearance at the USPTO and address all required issues in all pending applications and oppositions. Mr. Mariani was to relay that decision to Shutts Bowen. *Id.*, at 23.

Notwithstanding the filing of Shutts Bowen’s October 9 and 14 Requests to Withdraw at the USPTO, PoloGear did not receive a formal request from Shutts Bowen and Mr. Mariani seeking PoloGear’s written acquiescence to a change of counsel until October 28, 2015. That

document was signed and returned to Shutts Bowen and Mr. Mariani on October 30, 2015. Fellers 2/22 Decl., ¶ 26 and Exh. 13. It was PoloGear's understanding that Mr. Mariani was going to immediately notify the USPTO that he was now representing PoloGear. Fellers 2/22 Decl. at ¶ 27.

Three days later, PoloGear received an email notice from Mr. Barsky notifying PoloGear of various pending deadlines at the USPTO. Mr. Fellers forwarded this email to Mr. Mariani even though he was already shown as a recipient. See Fellers 2/22 Decl., ¶ 29, Exh. 15. The next day, Mr. Fellers met with Mr. Mariani to go over the various USPTO cases, and the exhibits that Mr. Fellers was actively organizing and preparing pursuant to prior instructions Mr. Barsky and now from Mr. Mariani. Fellers 2/22 Dec., at ¶ 30.

The following day, November 4, 2015, PoloGear received Mr. Barsky's October 14 request to withdraw from the USPTO. Mr. Fellers scanned and emailed that document to Mr. Mariani, again with the explicit understanding that Mr. Mariani was in the process of applying to represent PoloGear at the USPTO. Fellers 2/22 Dec., ¶ 31. Yet, on November 16, 2015, Mr. Fellers received a notice from the USPTO advising PoloGear of the need for counsel, which Mr. Fellers again forwarded to Mr. Mariani, with explicit instructions that Mr. Mariani needed to appear on behalf of PoloGear by November 21, 2015. Mr. Mariani responded on the same day, November 16, 2015, that he would be "doing so this week." Fellers 2/22 Decl., ¶ 33.

On the basis of Mr. Mariani's explicit and repeated advice, Mr. Fellers and PoloGear logically and reasonably assumed that this matter was being properly taken care of and shared that fact with its agents and potential licensees, with whom it was then negotiating multi-million dollar licenses, assuring those licensees that everything was under control with respect to the various trademarks being licensed at the USPTO. Fellers 2/22 Decl., ¶ 33.

Diligently following up on this matter, Mr. Fellers again inquired of Mr. Mariani on December 10, 2015, requesting a status update on all matters at the USPTO. Fellers 2/22 Decl., ¶ 34, Exh. 21. Mr. Mariani again assured Mr. Fellers that all matters at the USPTO were under control. Nevertheless, on December 22, 2015, PoloGear received notices of abandonment in various pending trademark applications. These were sent to Mr. Mariani with an urgent notice, questioning what was happening. Fellers 2/22 Decl., ¶ 36, Exh. 23. Again, Mr. Mariani assured PoloGear that everything was under control and directed Mr. Fellers and Ms. Sassoon to focus on the affidavit and supporting evidence that was being prepared, for use in the pending applications and oppositions. Fellers 2/22 Decl., ¶ 37, Exh. 24.

On January 3 and January 6, 2016 Mr. Fellers again asked Mr. Mariani to provide status updates, probing Mr. Mariani with specific questions regarding that status. Fellers 2/22 Decl. at ¶¶ 39 and 40, Exhs. 26 and 27. Mr. Mariani again assured Mr. Fellers that everything was under control at the USPTO. *Id.*, at 41.

PoloGear nevertheless received further notices of abandonment from the USPTO on January 18, 2016, which Mr. Fellers transmitted to Mr. Mariani on January 19, 2016. Fellers 2/22 Decl., ¶¶ 41 and 43. Again, Mr. Mariani assured PoloGear's principal, Mr. Fellers, that Mr. Mariani had matters under control and that all applications would be prosecuted and/or reinstated as necessary and that PoloGear's defenses in the oppositions were being preserved. *Id.* at 44-47.

Thereafter, on January 25, 2016, Mr. Fellers met with a respected acquaintance, Mr. Merle Jenkins, who had recommended Mr. Mariani to PoloGear (and others) in 2012. Mr. Jenkins advised Mr. Fellers that he had discovered that Mr. Mariani was also neglecting the legal work of other clients (to whom Mr. Jenkins had recommended Mr. Mariani) and that Mr. Jenkins had learned that Mr. Mariani was having difficulties in his personal life which may

be affecting Mr. Mariani's ability to take required actions in the legal matters entrusted to him. Fellers 2/22 Decl., ¶ 49. At that point, it became clear to PoloGear's principals that PoloGear had no choice but to find new counsel to replace Mr. Mariani. *Id.*, at ¶ 50.

**Applicant's Diligent Effort to Obtain New Counsel**

On January 25, 2016, PoloGear contacted Mr. John Cross who in turn contacted Mr. John Eisenhardt of Nixon & Vanderhye PC, an intellectual property firm in Arlington, Virginia, for assistance. Mr. Eisenhardt is primarily a patent attorney and brought in one of his partners, Mrs. Sherri De Luca, who is a trademark specialist. She in turn brought in Mr. Robert Rowan, one of the senior partners of Nixon & Vanderhye PC, to help undo Mr. Mariani's neglect of PoloGear's applications and oppositions at the USPTO. Fellers 2/22 Decl., ¶¶ 51 and 52.

In addition to Mrs. De Luca and Mr. Rowan, PoloGear also retained Mr. James Whisenand, a prominent Miami attorney who had previously represented PoloGear, to assist in PoloGear's all-out effort to rectify Mr. Mariani's errors and omissions. Mr. Whisenand, Mrs. De Luca and Mr. Rowan then engaged in a non-stop effort to investigate the facts and law necessary to reinstate the six abandoned applications, to prepare responses to each of the six overdue Office Actions as well as two other Office Actions due March 2, 2016, and to prepare this motion and a companion Motion for Relief from Judgment at the TTAB. Mr. Whisenand, Mr. Rowan, and Mrs. De Luca first concentrated on the abandonment and overdue and soon-to-be due responses to Office Actions in Serial Nos. 86/519,898; 86/519,939; 86/519,959; 86/519,612; 86/519,990; and 86/519,674, which had 60-day reinstatement deadlines of February 16, 2016. Those reinstatement requests and responses to Office Actions were filed on February 16, 2016. Mr. Fellers, Mr. Whisenand, Mr. Rowan, and Mrs. De Luca then immediately turned their attention to this matter.

## LEGAL STANDARD FOR RULE 60(B) MOTIONS AT THE TTAB

TBMP § 312.03 summarizes the appropriate standard in a case such as this one:

Because default judgments for failure to timely answer the complaint are not favored by the law, a motion under Fed. R. Civ. P. 55(c) and Fed. R. Civ. P. 60(b) seeking relief from such a judgment is generally treated with more liberality by the Board than are motions under Fed. R. Civ. P. 60(b) for relief from other types of judgments. [Cites omitted]. Among the factors to be considered in determining a motion to vacate a default judgment for failure to answer the complaint are (1) whether the plaintiff will be prejudiced, (2) whether the default was willful, and (3) whether the defendant has a meritorious defense to the action.

Although the above quote specifically refers to “failure to timely answer the complaint,” the cases cited in support of this statement make clear that the same standard applies to other defaults by Applicants, as opposed to failures to prosecute by Opposers. The cases supporting TBMP § 312.03 illustrate this point. See, *Information Systems and Networks Corp. v. United States*, 994 F.2d 792, 795 (Fed. Cir. 1993)<sup>1</sup> holding that “Rule 60(b) is applied most liberally to judgments in default,” citing *Seven Elms v. Eskenazi*, 635 F.2d 396, 403 (5<sup>th</sup> Cir. 1981); and *Ruiz v. Quarterman*, 504 F.3d 523, 532 (5<sup>th</sup> Cir. 2007) (“[T]his lesser standard of review has been applied most liberally to motions to re-open default judgments”). See also 10 A. C. Wright, A. Miller & M. Cane, *Federal Practice & Procedure Civ.* 3D § 2693 (2014).

Applying the § 312.03 standard, the default in this case was clearly not willful; there will be absolutely no cognizable prejudice to PRL; and PoloGear has clearly meritorious defenses. Accordingly, the default judgment should be vacated.

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<sup>1</sup> The Federal Circuit is the TTAB’s “primary reviewing court”: *In re Thor Tech*, 90 USPQ2d 1634, 1637 (TTAB 2009); *Giersch v. Scripps Networks Inc.*, 90 USPQ2d 1020, 1024 (TTAB 2009); *Grand Canyon West Ranch LLC v. Hualapai Tribe*, 88 USPQ2d 1501, n.2 (TTAB 2008); *Carefirst of Maryland Inc. v. FirstHealth of the Carolinas Inc.*, 77 USPQ2d 1492, 1514 (TTAB 2005), *aff’d* 479 F.3d 825, 81 USPQ2d 1919 (Fed. Cir. 2007); TBMP § 101.03 (Board proceedings are governed by decisions of the Federal Circuit.)

## ARGUMENT

### A. The TBMP and Federal Circuit Precedent Equate “Excusable Neglect” to the Absence of Willful Conduct or Gross Negligence.

According to the official commentary at TBMP 312.02 and 544:

Good cause why default judgment should not be entered against the defendant, for failure to file a timely answer to the complaint is usually found when the defendant shows that (1) the delay in filing an answer was **not the result of willful conduct or gross neglect** on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action. The showing of a meritorious defense does not require an evaluation on the merits of the case. All that is required is a plausible response to the allegations of the claim.

Significantly, this standard equates “excusable neglect” to the absence of “willful conduct” or “gross neglect.” Here, Mr. Fellers’ repeated and insistent efforts to get Mr. Mariani to file an appearance of counsel and substantively respond to the TTAB cannot possibly be described as a “willful” abandonment of PoloGear’s trademark rights, nor can Mr. Fellers or PoloGear’s conduct plausibly be characterized as “gross neglect.” At worst, PoloGear’s President, Mr. Fellers was too trusting or naïve. He simply could not believe he was being lied to by his own attorney.

In the *Info. Sys.* case discussed *supra*, the Federal Circuit observed that, for purposes of Rule 60(b), “excusable neglect” can encompass situations in which the failure to comply with a filing deadline is attributable to “negligence,” further instructing that “one should inquire whether the defaulting party willfully declined to follow a court's rules and procedures.” *Info. Sys. and Networks Corp.*, 994 F.2d at 796, emphasis added. Reversing the trial court’s denial of a motion to vacate, the *Info. Sys.* court stated: “This case is not an extreme one deserving of the drastic step of default judgment.” *Id.*, emphasis added. “[T]he entry of default judgment for marginal failure to comply with the time requirements imposed by the [Federal] Rules ... must be distinguished from dismissals or other sanctions imposed by the district courts for willful

violation of court rules and orders, contumacious conduct or intentional delay." *Id.* at 797, citing *See Gross v. Stereo Component Sys., Inc.*, 700 F.2d 120, 124 (3d Cir. 1983) (emphasis added).

The TBMP and Federal Circuit view is also shared by other Circuits and the Court of Federal Claims. In *United Coin Meter Co. v. Seaboard Coastline R.R.*, 705 F.2d 839, 845 (6<sup>th</sup> Cir. 1983), the Sixth Circuit noted that "Judgment by default is a drastic step which should be resorted to only in the most extreme cases." See also *G.G.M. v. Sec'y of Health & Human Servs.*, 122 Fed. Cl. 199, 204 (2015), explaining that ("As a remedial provision, Rule 60(b) is to be 'liberally construed for the purposes of doing substantial justice,'" citing *Patton v. Sec'y of HHS*, 25 F.3d 1021, 1030 (Fed. Cir. 1994) (emphasis added), and 6A James W. Moore and Jo Desha Lucas, *Moore's Federal Practice* ¶¶ 60.18[8], 60.19 (2d ed. 1993)).

See also, *Weiss v. St. Paul Fire and Marine Insurance Co.*, 62 USPQ2d 1195 (6th Cir. 2002), upholding the district court's discretion in vacating a default judgment, and noting that the case "[was] clearly not one of those most extreme cases where the default judgment is the result of deliberate, willful conduct" and therefore "presents an appropriate instance for the district court to exercise its discretion to achieve substantial justice through the liberal application of Rule 60(b)." *Id.*, at 1199, emphasis added.

*De Lorme Publishing Co. v. Eartha's Inc.*, 60 USPQ.2d 1222, 1224 (TTAB 2000) is also instructive by negative example. In that case willful conduct was shown by the fact that the party defaulted admittedly intended not to answer for 6 months. This is exactly the opposite of the situation here where Mr. Fellers' steady stream of correspondence with PoloGear's chosen attorney showed that PoloGear clearly intended to respond to the TTAB (and to the USPTO in other proceedings) and, took immediate actions to rectify the situation, including this timely filed motion, as soon as new counsel was secured.

Conversely, in *Paolo's Associates L.P. v. Bodo*, 21 USPQ.2d 1899, 1903-04 (Comm'r 1990), the court found no evidence that the failure to respond was willful and that the Opposer's cost in preparing and filing papers was not sufficient to support a finding of prejudice. This case is instructive for both reasons: PoloGear's failure to respond was not willful and there is no legally cognizable prejudice to PRL in having to defend its position on the merits, particularly in light of the file history of this case involving numerous extensions initiated by PRL and the fact that, if the case had proceeded exactly as scheduled absent to the default, trial would not have been completed until June, 2016, in any event.

*Fred Hayman Beverly Hills Inc. v. Jacques Bernier, Inc.*, 21 USPQ.2d 1556, 1557 (TTAB 1991), establishing the same points i.e., that an applicant's failure to answer (which, in that case, had been prepared and reviewed, but counsel inadvertently failed to file it) did not establish the requisite willful failure to justify denial of a Rule 60(b) motion.. The *Fred Hayman* court further found that a delay of less than 2 weeks would cause minimal prejudice and that the Answer ultimately filed stated a meritorious defense. These same points favor granting the motion for relief from stay here - where PoloGear did everything it possibly could to urge its selected counsel to make an appearance and to file the appropriate papers. Indeed, PoloGear's President was simultaneously working diligently on an affidavit that Mr. Mariani had indicated would be helpful in the case. See Fellers 2/22 Decl., ¶ 24.

See also *Djeredjian v. Kashi Co.*, 21 USPQ2d 1613, 1615 (TTAB 1991), also involving a motion to set aside judgment under Fed.R.Civ.P. 60(b), where the TTAB held that, inadvertence and lack of prejudice having been shown, the applicant was allowed time to show a meritorious defense by submission of an answer.

Here, PoloGear's failures to respond to the Board's directive to find counsel and its subsequent Order to Show Cause were obviously not willful or intentional. On the contrary, PoloGear, who was repeatedly deceived by its carefully selected counsel, Mr. Mariani, attempted over and over again, to prod Mr. Mariani into action and, failing those repeated efforts, retained new counsel who promptly investigated the facts and the law and filed this motion.

**B. Defaults Against Defendants or Applicants Are Not Favored**

Motions under Fed.R.Civ.P.55(c) or 60(b) seeking relief from default judgments against defendants or trademark applicants are generally treated with more liberality than motions for relief from judgments entered against plaintiffs or opposers for failure to prosecute their case. See cases supporting TBMP § 312.03 discussed at page 10, *supra*.

**C. PoloGear was Essentially *Pro Se***

For all intents and purposes, PoloGear essentially had no attorney and was acting *pro se* prior to the retention of Nixon & Vanderhye and Mr. Whisenand. Mr. Barsky withdrew in October, 2015 and Mr. Mariani never appeared. In fact, Mr. Mariani was far worse than no help at all. He was essentially a trap for the unwary; a hidden land mine for PoloGear to fall prey to. Completely abusing the trust and confidence built up over a four year attorney-client relationship, Mr. Mariani lied to and very effectively deceived his erstwhile client, PoloGear, into believing that: (1) he had filed an appearance of counsel; (2) he was actively representing PoloGear in these proceedings; and (3) PoloGear's status in these proceedings was all in good order. Applicant, being completely unfamiliar with trademark registration or opposition proceedings, relied on these deliberate deceptions by Mr. Mariani to its detriment.

Neither of the principals of PoloGear had any prior experience with the USPTO or TTAB or had any idea whatsoever how to prepare or file the papers that should have been filed in these

various pending applications and oppositions in late 2015 and January 2016. Fellers 2/22 Dec., at ¶¶ 9, and 48. The TTAB and the courts have shown significant flexibility, and even leniency, in setting aside default judgments in several similar situations where the applicant or litigant was effectively representing itself *pro se*. See e.g., *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 96 (2nd Cir. 1993), vacating a default judgment against a *pro se* defendant who failed to file a timely answer:

“[C]oncerns regarding the protection of a litigant's rights are heightened when the party held in default appears *pro se*. A party appearing without counsel is afforded extra leeway in meeting the procedural rules governing litigation, and trial judges must make some effort to protect a party so appearing from waiving a right to be heard because of his or her lack of legal knowledge.... Hence, as a general rule a district court should grant a default judgment sparingly and grant leave to set aside the entry of default freely when the defaulting party is appearing *pro se*.”

See also, *Malibu Media, LLC v. Doe*, 2013 WL 1080603, at \*1-2 (S.D. Ind., March 13 2013) where the court granted a defendant's motion to set aside entry of default under 55(c), based in part on the following reasoning:

Contrary to [plaintiff's] assertion that Mr. DiMizio willfully ignored the litigation, it appears to the Court that he made some incorrect assumptions about the litigation process. . . . Upon receipt of the Complaint [Mr. DiMizio] sought advice from three attorneys and investigated similar cases on the Internet. . . . While one may argue he should have taken his actions a step further and actually responded to the Complaint, his failure to do so does not necessarily mean he willfully ignored the lawsuit. At that time, Mr. DiMizio was a *pro se* litigant and as such receives some latitude from the court not afforded to attorney-represented litigants. "While *pro se* litigants are not entitled to a general dispensation from the rules of procedure or court imposed deadlines, this court is inclined to be more lenient toward the *pro se* litigant's mistakes, at least where no willful disregard for duties exists." (Citations omitted). Mr. DiMizio did take steps, albeit mistaken steps, to respond to the Complaint. Based upon that effort, the Court finds he has demonstrated good cause for the default.... Mr. DiMizio also retained an attorney and filed his Motion twenty days after the Entry of Default. These actions are sufficiently prompt to meet the requirements to set aside a default entry.

**D. PoloGear's Abandonment by its Selected Counsel Justifies Vacating the Default Judgment**

Even if PoloGear is not regarded as a *pro se* litigant, there can be no question that it was effectively abandoned by the carefully selected attorney it sought to represent it, and the courts consistently allow for discretion under Rule 60 (b) when an attorney's extraordinary actions and/or misleading assurances effectively show an abandonment of their client. *See Primbs v. United States*, 4 Cl. Ct. 366, 369-370 (1984), *aff'd* 765 F.2d 159 (Fed. Cir. 1985), where the court held that:

“Relief is based on facts ... that established plaintiff's failure to respond to defendant's motion and the court's order was directly attributable to his attorney's inexcusable neglect and dishonesty”; Plaintiff's affidavits established that his attorney was not merely negligent in his handling of the plaintiff's suit. “[Plaintiff's attorney] actively misled and lulled his client into believing this case was proceeding smoothly.” [Emphasis added].

These statements could just as easily be describing the instant facts.

The *Primbs* court also distinguished *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962), which noted that parties are ordinarily bound by the acts of their lawyer, as follows:

The usual understanding of the attorney-client agency relationship, however, should not bar relief under Rule 60(b) when the evidence is clear that the attorney and his client were not acting as one. The agency analysis is particularly inappropriate when the plaintiff has proven that his diligent efforts to prosecute the suit were, without his knowledge, thwarted by his attorney's deceptions and negligence. *Jackson v. Washington Monthly Co.*, 569 F.2d 119, 122-23 (D.C. Cir. 1977); *Vindigni v. Meyer*, 441 F.2d 376, 377 (2d Cir. 1971). As noted in *Jackson v. Washington Monthly Co.*, 569 F.2d at 122 – so serious a dereliction by an attorney, when unaccompanied by a similar default by the client, may furnish a basis for relief under Rule 60(b)(6). That is the more so where, as apparently here, little if any prejudice has befallen the other part to the litigation.

*Primbs*, at 370, footnotes omitted, emphasis added. The affidavit in *Primbs* further showed that the attorney did not advise his client of the Court's actions and orders; that throughout the proceedings the plaintiff was always in regular contact with him; that the plaintiff consistently urged the attorney to diligently prosecute the action; and that the plaintiff had even prepared an

eighteen page affidavit in response to the defendant’s motion in the case. On the basis of these facts, which are virtually identical to the instant case, relief was granted under Rule 60(b)(6), which provides for relief from a judgment for “any other reason that justifies relief.”

*See also, G.G.M. v. Sec’y of Health & Human Servs.*, 122 Fed. Cl. 199, 204 (2015) (reviewing cases providing relief under Rule 60(b) when attorney conduct was so egregious that the courts concluded that counsel had effectively abandoned and/or affirmatively misled their clients). One such case was *Community Dental Services v. Tani*, 282 F.3d 1164, 1171–72 (9th Cir. 2002), relying on counsel's gross neglect to reverse a district court’s denial of a defendant's Rule 60(b)(6) motion, noting that several circuits had “distinguished a client's accountability for his counsel's neglectful or negligent acts—too often a normal part of representation—and his responsibility for the more unusual circumstance of his attorney's extreme negligence or egregious misconduct” (*Id.* at 1168, emphasis added), adding that “These courts have concluded that an unknowing client should not be held liable on the basis of a default judgment resulting from an attorney's grossly negligent conduct, and that in such cases sanctions should be imposed on the lawyer, rather than on the faultless client.” *Id.* at 1169. *Community Dental* concluded that “extraordinary circumstances” existed to justify granting relief from the default judgment because the defendant's attorney had ignored court orders, neglected motions, missed hearings and other court appearances, failed to file pleadings or serve them on opposing counsel, and otherwise “virtually abandoned his client.” *Id.* at 1170–71.

The Ninth Circuit in *Cnty. Dental Servs.* further observed that its holding was:

“consistent with the well-established polity considerations that we have recognized as underlying default judgments and Rule 60(b). First, the rule is remedial in nature and thus must be liberally applied; and judgment by default is an extreme measure and a case should, ‘whenever possible, be decided on the merits.’”

*Id.* at 1169.

The *G.G.M.* case also cited *Lal v. California*, 610 F.3d 518, 524 (9th Cir. 2010) (granting relief from dismissal for failure to prosecute where the attorney virtually abandoned his client and misled him); *Boughner v. Secretary of Health, Education & Welfare*, 572 F.2d 976, 978 (3d Cir. 1978), (vacating judgment where attorney's "egregious conduct amounted to nothing short of leaving his clients unrepresented"); and *Jackson v. Washington Monthly Co.*, 569 F.2d 119, 122 (D.C. Cir. 1977) (Rule 60(b)(6) relief is appropriate where the client's attorney was "grossly rather than just mildly negligent toward his client" and "might also have misled the client by reassuring him that the litigation was continuing smoothly when in fact it was suffering severely from lack of attention").

The *G.G.M.* court further observed that: "The [Federal Circuit's] ruling in *Primbs*, like the decisions of the courts of appeals in the cases cited above, are predicated on the notion that an attorney's gross negligence should not be imputed to the client where the attorney has affirmatively misled the client, and/or effectively abandoned the client so that the attorney is no longer acting as the client's agent." *G.G.M.* at \*209. See also FN. 6, citing "*Shepard Claims Service, Inc. v. William Darrah & Associates*, 796 F.2d 190, 195 (6th Cir. 1986), and *L.P. Steuart, Inc. v. Matthews*, 329 F.2d 234, 235 (D.C. Cir. 1964), to the same effect. See also *Herring v. Merit Sys. Prot. Bd.*, 778 F.3d 1011, 1018 (Fed. Cir. 2015), holding that "a serious ... dereliction by an attorney, when unaccompanied by a similar default by the client, may furnish a basis for relief [from a dismissal] under Rule 60(b)(6)," and that "[t]hat is the more so where, as apparently here, little if any prejudice has befallen the other party to the litigation." *Id.* at 1018.

To the same effect, is *General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933 (TTAB 1992), where Rule 60(b) relief was found appropriate where the movant:

(1) retained a reputable law firm that had previously rendered satisfactory representation;

(2) made reasonable inquiries about the status of the proceedings; (3) had no reason to believe that counsel would provide anything other than proper representation; and (4) counsel nevertheless failed to prosecute the movant's case and failed to keep movant apprised of the status of the proceedings and affirmatively concealed critical facts from the movant.

Although some subsequent Board cases have not fully embraced *General Motors* (see *CTRL Systems Inc. v. Ultraphonics of North America Inc.*, 52 USPQ2d 1300, 1302 (TTAB 1999) and *Gaylord Entertainment Co. v. Calvin Gilmore Productions Inc.*, 59 USPQ2d 1369 (TTAB 2000)), both of those cases involved factual situations distinguishable from the present one. This point is best illustrated by the statement in *CTRL* that:

The plaintiff in *General Motors* called counsel for status reports; in contrast, Mr. Roche apparently failed to inquire as to the status of this case even while discussing bills attributable to the case with opposer's law firm's accountants and partners. Critical facts were actively concealed from the plaintiff in *General Motors*; in contrast, this case involves no allegations that opposer's counsel actively concealed information from opposer. The plaintiff in *General Motors* filed its motion to reopen within weeks of learning of the dismissal of its case; in contrast, opposer waited at least four months, and possibly as many as six, before moving to reopen.... Mr. Roche's declarations reveal a lax approach to this case for months after he learned of its dismissal.

In addition, the defaulted entity in *CTRL* was the opposer, not the applicant who, as previously noted, is entitled to greater literality under the TBMP and supporting case law. This was also the case in *Gaylord*, where the opposer demonstrated a similar lack of personal involvement, in marked contrast to Mr. Fellers in this case. As the TTAB further noted in *Gaylord*:

As applicant has pointed out, opposer's motion only points to the fact that former trademark counsel failed to take testimony and failed to file a brief. We have no explanation of the specific reason why former counsel failed to take testimony or present evidence in this case. Also, in view of the procedural history of this case, including the fact that opposer successfully appealed the Board's grant of applicant's motion for summary judgment, we do not believe that opposer should escape the consequences of its failure to maintain adequate communications with its former trademark counsel. What we said in the *CTRL* case, at 1303, seems applicable to this case: Opposer has shown that

its inaction and failure to maintain a proper level of interest in the case contributed as much to dismissal of the case as did the neglect of counsel.

Subsequent appellate court opinions show that the reasoning of *General Motors* remains sound, particularly in egregious cases such as this one. See, e.g., *Robb v. Norfolk & Western Ry. Co.*, 122 F.3d 354 (7<sup>th</sup> Cir., 1997) (Under the approach set forth by the Supreme Court in *Pioneer*, we think it is clear that a trial court has discretion to consider the equities and then determine whether a missed filing deadline attributable to an attorney's negligence is (or is not) "excusable neglect." See also *Cheney v Anchor Glass Container Corp.*, 71 F.3d 848, 850 (11<sup>th</sup> Cir. 1996), holding that a breakdown in communication between an associate attorney and lead counsel was sufficient to reverse and remand the denial of a Rule 60 motion.

**E. Vacating the Default Judgment is Further Justified by the lack of Prejudice to PRL or Any Other Entity**

As previously noted, a significant factor in granting or denying a motion for relief from a judgment is the prejudice that reopening judgment might cause to the other litigant and whether any actions have been taken by that litigant in reliance on the judgment. See, e.g., *Jack Lenor Larson Inc. v. Chas. O. Larson Co.*, 44 USPQ2d 1950, 1952 (TTAB 1997). Here, an extremely small amount of time has passed since the Order to Show Cause. In light of the long file history in this case, it cannot be plausibly argued that re-opening this case would cause any cognizable hardship to PRL, or that PRL has possibly taken any actions in reliance on the short period of default in this case.

**F. PoloGear Has a Meritorious Defense to the Opposition**

As shown by the attached Amendment filed on February 16, and the Declaration and exhibits thereto, PoloGear has extremely meritorious defenses. These defenses can be briefly summarized:

- The marks are different, particularly when assessed in their entirety, rather than simply focusing on one particular aspect or sub-portion of the mark. See attached Amendment, at pgs. 9-10.
- The marks are also different in their connotation. *Id.*, at 10.
- The element POLO, particularly in light of numerous third party POLO marks and the common use of “polo shirts” to refer to casual knit shirts (which predated Opposer’s use by decades), is not the dominant portion of PoloGear’s POLOGEAR mark, but enjoys equal weight with GEAR.
- There are dozens of PTO “POLO” registrations indicating that the PTO obviously considers the term “POLO,” at least when used in combination with other words or designs, to be a weak term. A partial listing of such third party registrations is set out at pages 12 and 13 of the attached Amendment.
- The TTAB routinely relies on third party registrations to limit the scope of protection provided to a given mark. See e.g., *In re Hamilton*, 25 USPQ 174, 175-177 (TTAB 1984); and *Keebler Co. v. Associated Biscuits Ltd.*, 207 USPQ 1034, 1038 (TTAB 1980). See also TMEP Section 1207.01(d)(iii) (third party registrations can establish that the term in question is so commonly used that the public will look to other elements to distinguish the source of the goods).
- There are also a multitude of POLO-formative marks on current Internet sites showing actual use of such POLO-formative marks in connection with goods closely related to those at issue in the instant case.
- In a “crowded field” of entities using similar marks, “customers will not likely be confused between any two of the crowd and may have learned to carefully pick out one from the other.” *Miss World (UK), Ltd. v. Mrs America Pageant Inc.*, 856 F.2d 1445, 1449 (9<sup>th</sup> Cir. 1998). In such situations, each member of the “crowd” is considered “weak” in its ability to prevent use by others in the crowd. See 1 J. McCarthy, *McCarthy on Trademarks and Unfair Competition* § 11:26, at 511; See also *Petro Shopping Centers at L.P. v. James River Petroleum, Inc.*, 130 F.3d 88, 93 (4<sup>th</sup> Cir. 1997) (evidence of third party use is a sign of a weak mark).
- The PTO has approved six of Applicant PoloGear’s other POLOGEAR marks for publication, while fully aware of the Opposer’s POLO marks. See Serial No.

85/458,112 (POLOGEAR & Design in Classes 18 and 25); Serial No. 86/488,079 (POLOGEAR Stylized in Class 24); Serial No. 86/488,086 (POLOGEAR & Design in Class 24); Serial No. 86/412,883 (POLOGEAR word mark) in Class 24); Serial No. 86/412,886 (POLOGEAR & Design in Class 24); Serial No. 86/488,070 (POLOGEAR word mark) in Class 24, the class at issue here.

- On two previous occasions in 2002 and 2007, two separate law firms representing PRL sent cease and desist letters to PoloGear with respect to its use of POLOGEAR for related goods. In each instance those law firms abandoned their efforts when the relevant facts were brought to their attention. See Amendment, at fn. 1 and pg. 8 and the Fellers 2/16 Decl., at Exhs. 25 and 26 (showing correspondence with those law firms in 2002 and 2007).
- Since 1993, PoloGear has openly, actively and continuously sold more than \$20 million of POLOGEAR branded products in all 50 states and in more than 40 countries around the world without a single instance of confusion with PRL's products. If there was a likelihood of confusion between PoloGear's mark and the cited marks, it would have happened by now.
- PoloGear also purchased over a million dollars in advertising of its POLOGEAR brand since 1993 and has continuously used the domain [www.pologearusa.com](http://www.pologearusa.com) since 1997 to advertise its POLOGEAR branded products.
- PoloGear and PRL had a lengthy business relationship for over 20 years during which Opposer purchased directly more than \$100,000.00 worth of POLOGEAR products from PoloGear, without any confusion ever occurring. See the attached Amendment at pgs. 18-19, and the Fellers 2/16 Decl., at ¶¶ 9 and 12.
- As part of its lengthy vendor-customer relationship with PRL, PoloGear and PRL actually displayed PoloGear goods at Opposer's principal flagship store in New York City, showcasing both PRL's POLO branded products and PoloGear's POLOGEAR branded products side-by-side in the store window, again with no instance of confusion. See Exh. A, fn. 1 and pg. 7.
- Based on their 20-year relationship and the parties' co-display of products, PRL has obviously determined, prior to the instant opposition (and companion opposition), that there was no likelihood of confusion. This was particularly

made clear in 2002 and 2007, when PRL's attorneys, when apprised of all the facts, abandoned their attempts to require PoloGear to cease and desist its use of POLOGEAR.

- PRL must be made to explain why there was no actual or likelihood of confusion for over 20 years, but there is now. That issue can only be presented to the Board if this case is reopened, discovery is taken, and testimony is submitted to the Board.
- The courts have addressed PRL's POLO marks on several occasions. In *U.S. Polo Association Inc. v. Polo Fashions Inc.*, 1984 WL 1309, 84-Civ. 1142, at \*17, 19 (SDNY Dec. 6, 1984), the court noted that "[t]here are many ways in which the sport of Polo and equestrian figures can be depicted and can be utilized, even on wearing apparel and other products in general, without infringing upon [PRL's] trademarks."
- See also *Polo Ralph Lauren USA Holdings, Inc. v. US Polo Ass'n.*, 99-CV 10119, at \*4 (SDNY July 2006), *aff'd* 520 F.3d 109 (2<sup>nd</sup> Cir. 2008) where the court affirmed a jury's finding, via denial of a motion for new trial, that no confusion existed between the parties' polo player marks on leather goods and watches.

Section 19 of the Lanham Act, 15 U.S.C. § 1069, makes clear that "In all inter partes proceedings equitable principles of laches, estoppel, and acquiescence, where applicable may be considered and applied." Here, the parties' long business relationship, PRL's purchase and side-by-side display of PoloGear's POLOGEAR branded products, PRL's acquiescence to PoloGear's use of its POLOGEAR mark in 2002 and 2007, and PRL's failure to object to PoloGear's use of its POLOGEAR mark for the last 8 years, are all strong evidence of laches, estoppel and acquiescence. It would be a travesty of justice if PoloGear were not allowed to present these defenses and to establish its right to register its long-held common law POLOGEAR trademarks.

**CONCLUSION**

The Broad's entry of default judgment should be vacated, allowing PoloGear the opportunity to present its multiple meritorious defenses.

Dated: February 22, 2016

Respectfully submitted,



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*Attorneys for Plaintiff  
Polo Gear Intellectual Properties Inc. and  
Polo Gear LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2016, the foregoing “Motion For Reconsideration  
And Relief From Judgment” was served on counsel of record for Opposer via first-class mail to:

Daniel I. Schloss  
Greenberg Traurig LLP  
200 Park Avenue  
New York, NY 10166

**NIXON & VANDERHYE, PC**

By:   
Sheryl De Luca

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

PRL USA HOLDINGS, INC.,	)	
	)	
Opposer	)	Opposition No. 91207805 (Parent)
v.	)	Opposition No. 91221338 (Serial
	)	Nos. 85/458,112, 86/412,883,
	)	86/412,886 and 86/488,070)
POLO GEAR INTELLECTUAL PROPERTIES, INC.	)	
and	)	
POLOGEAR LLC,	)	
	)	
Applicants	)	
	)	
	)	

**DECLARATION OF GARY FELLERS**

I, Gary Fellers, hereby declare and state as follows:

1. I am Founder and Chief Executive Officer of Polo Gear LLC and Polo Gear Intellectual Properties Inc (“PoloGear”), located at 3500 Fairlane Farms Road Wellington FLORIDA 33414. I am submitting this declaration in support of Polo Gear LLC’s Motion for Reconsideration and Motion for Relief from Judgment with respect to the Board’s Order of January 20, 2016 entering judgment against Applicant and refusing registration due to Applicant’s “apparent loss of interest” in responding to the Board’s November 30, 2015 Order to show cause.

2. As detailed herein, PoloGear’s failure to respond to the Board’s notices was due to Applicant’s former counsel (John Mariani) deliberately: 1) lying to and misleading applicant as to the favorable status of these proceedings, falsely assuring Applicant that filings that were made for PoloGear when they were not made, making false representations that the status of these proceedings were in good order and current and that the Patent & Trademark Office warnings and negative written communications were not accurate; and 2) engaging in continuous

false and misleading activity relating to this proceeding, which, in my opinion, is either intentional misconduct to Applicant or he has serious personal problems that caused the conduct.

3. Applicant is a victim of deceit by its retained but non-appearing former counsel and respectfully requests that this opposition be adjudicated on the merits and that Applicant not suffer additional penalties due to the lies, misleading conduct and deceit of Applicant's former attorney.

4. Applicant has retained new counsel and is expeditiously correcting the errors of prior counsel related to all of Applicant's trade mark proceedings. Applicant respectfully requests the opportunity to have these decided on the merits and not be a further victim of deceit and lying of its prior counsel.

5. Notwithstanding the deceit, abandonment, and gross neglect of PoloGear prior counsel, Applicant has sincere active and serious interest in our trademarks, our registrations and conducting proper, timely activities with the United States Patent and Trademark Office. I have devoted more than 23 years of my life to create the PoloGear marks and brand as the authentic, real, genuine brand of polo. PoloGear has 22 years and over 20 million dollars of sales in all 50 states and over 40 countries around the world of our distinctive trade marks in many important international trademark categories. Our marks represent a lifetime of work and a very serious endeavor for myself and my family. Please see the February 16, 2016 filings with the PTO in the six applications that had gone abandoned under Attorney Mariani's watch for a complete explanation of the unique circumstances of the 22 years of common law rights and use of these marks and the unique open and cordial business relationship that had existed for almost 20 years between Applicants and Opposer Ralph Lauren. It would be a travesty for this issue not be determined on the merits. We are convinced that examination on the merits will lead to successful approval of the registration of our PoloGear common law marks that have been in uncontested use for 23 years without one instance of confusion. EXHIBIT 1 (Feb. 16, 2016 filing in App. Ser. No. 86/519,959).

6. In 2012 Applicant commenced registration of its trademarks in the United States. We have active common law use of our marks dating from 1993. Prior to the commencement of these proceedings, we had no trademark registration experience so I inquired to friends with registration experience if they could recommend legal counsel to assist us. Attorney John Mariani was recommended by an attorney friend. Mr. Mariani had successfully guided that

friend through complex trademark registration and litigation issues. He strongly recommended Mr. Mariani. In June of 2012 we started sharing information with Mr. Mariani and in August of 2012 Mr. Mariani was hired to represent PoloGear in its trademark registration and other issues. EXHIBIT 2.

7. John Mariani has been counsel for PoloGear (as well as myself and my partner, Jeannette Sassoon) since August of 2012. Mr. Mariani was a senior partner at the firm of Shutts Bowen, a large and respected regional firm, and the lead attorney on all of PoloGear's trademark and other legal matters since that time. Ms Sassoon and I choose Mr. Mariani because of the strong experience he professed to have in trademark issues and the recommendation of our friend as to his working experience with Mr. Mariani as his trademark attorney. To my knowledge, Mr. Mariani had a good reputation in the legal community. EXHIBIT 3.

8. Mr. Mariani had continuously represented PoloGear since August of 2012, in at least half a dozen legal matters at any one time. The USPTO was just one of the areas in which he was representing us. Even though we were sometimes assigned other attorneys at Shutts Bowen, Mr. Mariani had always been our lead counsel and our contact point.

9. I had no experience in the technical matters of trademark registrations and I knew PoloGear must rely on a trusted legal counsel to guide us and protect us in these complex matters. Mr. Mariani assured us of his and the firms substantial trade mark legal experience prior to our engagement. Also, at (and after via email) our December 2012 first in person meeting with Mr. Mariani, Ms. Sassoon and I again demanded strong trademark experience (we were not confident Shutts junior attorney had such experience). Mr. Mariani assured us that he, and his firm had such credentials and he would make sure his expertise, and that of his senior trademark specialist Joe Englander would be diligently applied toward all PoloGear matters from that time forward. We believed Mr. Mariani's pledge to apply himself and senior trademark specialist Joe Englander seriously to all PoloGear trademark activities. EXHIBIT 4.

10. Over the next three years we trusted very important trademark, corporate and personal matters to Mr. Mariani as our legal counsel. He represented us in a variety of business and personal matters. During that time, to the best of our knowledge, he always met filing and procedural deadlines.

11. From June 2015 until the end of September 2015 we were planning on working from our office in Wyoming on an important business project in the Montana Wyoming area.

Just prior to our departure Ms Sassoon and I completed production of information Mr. Mariani had requested from us relating to the PoloGear trademark registration process..

12. Throughout the period of June 2015 thru September 2015 I was in regular contact with Mr. Mariani regarding our collection of additional trade mark proceedings materials and he assured me he was actively working on our trademark registration files and that all was ok. We were trying to confirm dates for depositions of Jeanette and myself with Ralph Lauren attorneys and we were anxious to move our registration issues forward. Deposition's dates were finally agreed to and were set for October 22, 2015 when we returned to Florida. During this period Jeanette and I worked on the collection of business materials and history.

13. On September 24, 2015, we started the drive back to Florida with the Wyoming PoloGear business materials in hand. We arrived on September 28, 2015 and immediately scheduled our meeting with Mr. Mariani for the next day to begin the preparation for the October 22, 2015 depositions and the consolidation and organization of the historical PoloGear materials we had assembled. These October 22, 2015 depositions and our trademark registrations were extremely important to us and our first order of business upon our return to Florida. We had diligently been collecting the balance of the historical materials over the summer months to be fully prepared to move forward in the PoloGear trade mark proceedings under Mr. Mariani's guidance and legal representation

14. Ms. Sassoon and I met with Mr. Mariani on September 29, 2015 at our home in Indiantown, Florida. That meeting lasted about 4 hours or more. The purpose of the meeting was to review the information we had compiled and plan for our depositions. Mr. Mariani announced that he was leaving the Shutts Bowen law firm where he was a senior partner. He explained his desire to work closer to and with entrepreneurial companies such as PoloGear. He stated he believed strongly in PoloGear and enjoyed working with Jeanette and me. He explained the Shutts firm pushed him away from the small companies toward the larger better healed companies where greater revenue opportunity existed. Mr. Mariani stated he really enjoyed helping the entrepreneurial companies grow. He told us he was a major producer for the Shutts firm. As Jeanette and I donated a large amount of time to charitable endeavors that resonated with us. We were flattered he might want to leave his successful and lucrative practice at Shutts Bowen to work closer with us and with PoloGear. We were honored he believed in our company and our company vision and opportunity. We were excited to have more attention. We were

pleased that he was seeing the importance of altruism. It seemed to be a positive situation for PoloGear. Mr. Mariani made it sound like he was leaving Shutts to work closer with and focus more on PoloGear. EXHIBIT 5.

15. Mr. Mariani was bullish on the historical information we had gathered on PoloGear and felt confident in the success of our mark registration and his ability to protect our marks. He was surprised by the amount of historical and factual information of our 23 year business history that we had been able to collect.

16. Mr. Mariani said he was joining with his friend, respected attorney Charles Kammerer, to form a new firm, to be called Kammerer Mariani. He gave us the impression that the closeness of that relationship would bring additional attention to PoloGear matters also by Mr. Kammerer, who we did not know, but received great accolades by Mr. Mariani. Mr. Mariani asked Jeanette and me if we would to continue forward under his guidance and counsel with his new firm Kammerer Mariani. We agreed, based upon the assurances offered at that meeting, that we would leave Shutts Bowen with Mr. Mariaini and continue entrusting our important trademark and other legal matters with Mr. Mariani at his new firm Kammerer Mariani. He told us that the move would officially be October 31, 2015. He assured us we would have diligent attention during the transition.

17. After our September 29, 2015 meeting we had continuous contact with Mr. Mariani by email, text and phone. We were continually told everything was on schedule, under control, and ok. He was positive about our chances of success to have our trademarks registered soon. We relied on Mr. Mariani and trusted him to protect us and PoloGear with timely filings and careful prudent representation in all matters. At all times Mr. Mariani stated that he was representing us and doing all that needed to be done.

18. While we knew we had a deposition scheduled for October 22, 2015 with Ralph Lauren attorneys and we had to produce discovery evidence for them, Mr. Mariani instructed us to gather historical information. It was the same with the PTO filing activities of our registrations. He just said there were filing dates coming up and he had them covered. He did not discuss or educate us as to the specific activities and filing requirements. We relied on him to attend to the details as we always had during our almost 4 year relationship.

19. At this meeting Mr. Mariani also reviewed the boxes of materials we had collected illustrating PoloGears 22 year business history. It was very roughly organized at that point. Mr.

Mariani instructed us to organize the historical information on PoloGear's business activities we had collected. He felt the material was extremely compelling. He asked us to focus on this information organization and leave all other matters to him. Jeanette and I agreed and committed to immediately attend to it.

20. On October 5, 2015 we received a copy of a Notice of Opposition filed from Ralph Lauren from Mr. Mariani's secretary Jodi-Ann Tillman at Shutts Bowen, who was also secretary for Mr. Dan Barsky, a junior colleague of Mr. Mariani's who was also working on our trademark matters. We forwarded that notice to Mr. Mariani on the same day and asked for his comments and explanation. He told us not to worry that he would take care of what had to be done. That was a typical response during our almost 4 year relationship with Mr. Mariani. EXHIBIT 7.

21. We met again with John Mariani on October 7, 2015 to have more discussion about the pending trademark issues. Mr. Mariani again confirmed that all PoloGear trademark applications and our defense of the oppositions filed by Ralph Lauren would continue to be handled by Mr. Mariani without interruption. He assured us that all was ok. We also discussed how our organizing the historical materials was coming. EXHIBIT 8

22. On October 9, 2015 we again received a copy of another Notice of Opposition from Ralph Lauren from Mr. Mariani's soon to be former law firm which we forwarded to Attorney Mariani also asking about the upcoming depositions with Ralph Lauren attorneys scheduled for October 22, 2015. We had returned to Florida specifically to prepare for depositions with Ralph Lauren that were scheduled for October 22, 2015 and to prepare the required interrogatory responses. EXHIBIT 9

23. On October 12, 2015 we received notice that Shutts Bowen was withdrawing as counsel in our trademark matters with the USPTO. That was anticipated as per our September 29, 2016 meeting where we agreed we would continue to be represented by Mr. Mariani at his new firm and that he would notify Shutts. As per our September 29 and October 7 meetings and various phone calls, texts, and emails with Mr. Mariani, we understood that he would immediately do what was necessary to make sure that PoloGear had continuous counsel and legal protection with the USPTO and in all other matters that PoloGear had entrusted to him and that there would be no adverse effects to PoloGear because of this change in law firms. The notice regarding Shutts Bowen's withdrawal was immediately forwarded to John Mariani at his new firm with the explicit understanding that he would be taking care of any required issues including registering

as counsel and making sure all items were properly and timely handled. We had no specific knowledge of what specifically Mr. Mariani was responsible to do but we believed his promises that what was needed would be done to protect PoloGears interests. In our almost 4 years of having Mr. Mariani represent us he had never abandoned or misled us so we believed his assurances. EXHIBIT 10

24. During this period we took our responsibilities of organizing and editing the 22 years of PoloGear activities very seriously. Mr. Mariani had assigned us that job. We spent time daily and all weekends working on this. We organized the historical information, relationship with Ralph Lauren and our correspondence with Ralph Lauren attorneys, and affidavit and provided Mr. Mariani daily updates and edits. He had assigned us that task and we took it seriously and performed diligently. EXHIBIT 11

25. On several occasions I had mentioned to Mr. Mariani that I was receiving mail from the PTO. He assured me that was in the process of being transferred to his address but in the meantime to send him copies of anything I received via email just for safety. On October 24, 2015 I again mentioned to Mr. Mariani receiving mail from the USPTO and again inquired how should I handle it. He advised me to scan the mail and email to him, which I did. I was careful to make sure I always sent him information to the new firm and his direct email address he had instructed me to send to. This became standard procedure on any and all mail I received from the USPTO. Having no experience with the PTO I assumed there may be a time delay in implementing a change of council changes explaining the delay in mail change. EXHIBIT 12.

26. On October 28, 2015 we received a formal request from John Mariani and Shutts Bowen asking us to authorize a change of counsel. EXHIBIT 13.

27. On October 30, 2015, I signed and emailed back the form notifying Shutts Bowen and Attorney Mariani that it was our wish to continue to be represented by Mr. Mariani at his new firm as we had agreed in our September 29, 2015 meeting. EXHIBIT 14. Based on Mr. Mariani's representations, it was our understanding Mr. Mariani would immediately notify the USPTO that he was representing us and there would be no interruption of representation for PoloGear. We were certainly not capable of understanding the complex filing issues at hand or properly responding to them. We relied upon Mr. Mariani and all his representations to us based on our years of attorney client working relationship.

28. On November 2, 2015 I reached out to Attorney Mariani asking for guidance on organization of historical materials. I provided him with my suggested outline of organization. EXHIBIT 15.

29. On November 2, 2015, both Mr. Mariani and I received an email notice from Shutts attorney Dan Barsky, notifying us of pending deadlines with the USPTO over the next couple of weeks. While I didn't really understand the content I did forward an additional copy to Mr. Mariani even though he was shown as a recipient on Mr. Barsky's email to make sure we were covered. I did this to make sure attorney Mariani received it and realized the importance attorney Barsky placed on those matters he pointed out in his letter. EXHIBIT 16. Again Mr. Mariani assured me all was under control and he had done all that needed to be done, and that Mr. Mariani was representing Jeanette, PoloGear and me.

30. On November 3, 2015, Jeanette Sassoon and I again met with attorney Mariani at our house to go over the case with the USPTO and the exhibits and affidavits we were working on. We were reassured at that time that Mr. Mariani was appearing as counsel at the USPTO and everything was OK. We trusted Mr. Mariani that this was in fact true. After all, he was working with us on preparing the historical exhibits on almost a daily basis. He assured us when this was filed all would be correct. EXHIBIT 17.

31. On November 4, 2015, I received Shutts Bowen's official request to withdraw. I scanned that and emailed it to Mr. Mariani.

32. On November 4, 2016 Mr. Mariani instructed me via text message to my phone to make sure all emails were sent to his new firm email address so he would be sure to receive them immediately on his phone and computer. I was careful from that point forward to always make sure the new firm email was used. I double checked each email before it was sent to confirm the proper address. EXHIBIT 18.

33. On November 16, 2015, I received a notice from the USPTO regarding the need for counsel. EXHIBIT 19. After reviewing this correspondence, I again notified Mr. Mariani that he must appear and emailed him the notice from the USPTO. He responded on the same day, November 16, 2015, that he would be "DOING SO THIS WEEK." EXHIBIT 20. Based on that explicit representation, Ms. Sassoon and I assumed this matter was taken care of and we assured our agents and potential licensees, with whom we were then negotiating multiple multi-million dollar licenses, that all was under control. We trusted Mr. Mariani to look after our personal and

business interests. He had assured us PoloGear and we were important to him and in his new capacity he would be available to do an even better job for us by focusing more attention on our needs. We were still operating under the premise that this was the case.

34. On December 10, 2015, I again asked Mr. Mariani for an update with the status of matters at the USPTO. EXHIBIT 21. He assured us everything is alright.

35. On December 13, 2015, we completed organizing the historical information. Mr. Mariaini responds that he needs the material on disc or thumb drive. EXHIBIT 22.

36. On December 22, 2015, I received notices of abandonment of our trademark application(s). I sent copies and an urgent notice to attorney Mariani questioning what was going on. He continued to assure us all is ok and that it was just a bureaucratic error or time lag in filing. EXHIBIT 23.

37. On December 26, 2015 we met with Mr. Mariani at our home in Indiantown, Florida to review the organized files. At that meeting we discussed an affidavit from me should accompany the historical information. I worked diligently on it. Mr. Mariani continued to assure us that all was OK and directed me to focus on my affidavit. EXHIBIT 24.

38. On December 27, 2015 I sent Mr. Mariani the first draft of the affidavit. Followed by updated versions on January 1, January 2 and January 6, 2016. EXHIBIT 25.

39. On January 3, 2016, I again sent an email to Mr. Mariani inquiring about the current status of matters at the USPTO. EXHIBIT 26.

40. January 6, 2016, I again asked Mr. Mariani for answers to very specific questions regarding our status at the USPTO. EXHIBIT 27.

41. On January 18, 2016, Mr. Mariani again assured me not to worry even though we were receiving notices from the USPTO that our application(s) had been refused and abandoned. We understood from him that all was ok and that it was just normal bureaucratic issues. EXHIBIT 28. EXHIBIT 28a.

42. On January 18, 2016, I pointed out to Mr. Mariani that if our trademark application(s) are rejected, we would lose our 2 million dollar trademark infringement policy insurance. Attorney Mariani was aware that the premium for that unusual policy was almost \$40,000 per year. EXHIBIT 29.

43. On January 19, 2016, I sent more concerned emails to attorney Mariani. Attorney Mariani continues to assume me that all is fine and our potential licensing partners are relaying

to me points of concern that they and their attorneys are finding on the PTO website. I am embarrassed and now extremely concerned. EXHIBIT 30.

44. Each concerned response regarding the abandonment and neglect we were feeling was met with a phone call or text from Mr. Mariani assuring me all was OK. At this point I was not convinced I was receiving accurate information from Mr. Mariani. I share with him my concerns and express need additional trademark council to provide clarification to my concerns. I must have confirmation that PoloGear is not at jeopardy. I suggest it would be appropriate to have a Washington based IP firm that specializes in trademark law to clarify Mr. Mariani's positions and to relay my concerns. Mr. Mariani says he will reach out to firms he know have good reputations. EXHIBIT 31.

45. On January 20, 2016, Mr. Mariani assured me by email "PoloGear will refreshed it"? He explained by phone that that meant whatever he was filing with our historical information and affidavit included would revive and refresh all our rights without prejudice. We assumed that to mean our application(s) and our opposition defenses will be reinstated but whatever activities he was conducting and filing on our behalf. EXHIBIT 32.

46. On January 20, 2016 I ask for clarification. Mr. Mariani's assurances and the information I am receiving from the PTL just do not seem to be in concert. EXHIBIT 33.

47. Again we were told by Mr. Mariani that when we filed the affidavit and exhibits that we were working on diligently, all would be OK. We continued working daily on categorizing and organizing our affidavit on a daily basis. It represented hundreds of hours of diligent work. Mr. Mariani suggests edits to the affidavits and acts that all is fine. EXHIBIT 34.

48. At this point; despite Mr. Mariani's repeated assurances, his 40 year impressive legal career, and our almost 4 year personal history with him, things did not appear correct. Even though I knew nothing of the technical process at hand on January 20, 2016, I called the PTO and began to try to understand what was going on. The woman I spoke with at the PTO was most helpful and patient. She reviewed the record and informed me that we had missed critical filing dates, that Mr. Mariani's new firm had not in fact registered as counsel, and they we had some critical dates coming up shortly by which we must respond to save another series of registrations that would be abandoned by Mr. Mariani's failure to file required responses. That was the first time I became aware that important filing dates had been missed and that Mr. Mariani had not in fact done what he had promised. I felt neglected and abandoned and Jeanette and I were shocked.

It also came to light that there were perhaps delinquencies that occurred farther back under Shutts Bowen watch. Because of that I was uncomfortable in discussing any matters with Shutts and I began to question whether Mr. Mariani's departure from Shutts could have been for other reasons than those shared with Jeanette and I. I resolved to immediately find other reputable Trademark counsel to quickly advise PoloGear so I could have a clear understanding of our status and what an appropriate course of action would be to salvage Mr. Mariani's neglect. I knew this was completely unfamiliar ground and we needed professional help immediately. I was in complete disbelief attorney Mariani would abandon our life's work, neglect us and disappear when we needed him the most.

49. Armed with this new information, I reached out to friend, Merle Jenkins, who had originally recommended Mr. Mariani. Mr. Jenkins said he would do some research and get back to me. At a private meeting at Mr. Jenkins home on January 25, 2016 Mr. Jenkins informed me that he had looked into the other cases being handled by Mr. Mariani of which he was a party. He discovered the same type of serious neglect that we were experiencing in the PoloGear matters existing in the other cases he had recommended to Mr. Mariani. He was distraught. He categorized the activities as malpractice and felt they were very serious and actionable. He felt personally responsible as he had recommended Mr. Mariani to other friends of his who were now in serious jeopardy because of Mr. Mariani's abandonment. He suggested that PoloGear immediately hire another firm to give us an opinion as to where we were. He advised not to rely on any further assistance from Mr. Mariani. I told him that process was already underway and I would proceed as quickly as possible in that direction. . It was obvious that something was drastically wrong with Mr. Marini and as a result of his neglect and misleading PoloGear was not being represented properly.

50. On January 25, 2016, we decided to immediately and as quickly as possible to seek other counsel. EXHIBIT 35.

51. At this point, we heard back from Washington businessman friend John Cross, who recommended John Eisenhardt of Nixon & Vanderhye PC, an intellectual property law firm in Arlington, Virginia, for assistance. Mr. Eisenhardt was primarily a patent attorney and brought in one of his partners, Sherri De Luca, who is a trademark specialist. She, in turn, brought in Robert Rowan, one of the senior partners of Nixon & Vanderhye PC to assist in the all-out effort to correct Mr. Mariani's neglect of our legal affairs.

52. In addition to Mrs. De Luca and Mr. Rowan, Polo Gear also retained Mr. James Whisenand, a prominent Miami attorney who had previously represented Polo Gear, to assist in Polo Gear's all-out effort to rectify Mr. Mariani's errors and omissions. Mr. Whisenand, Mrs. De Luca and Mr. Rowan then engaged in a non-stop effort to investigate the facts and law necessary to reinstate the applications, to prepare responses to each of the six overdue Office Actions, and to prepare this motion and a companion Motion for Relief from Judgment in the oppositions pending at the PTO and TTAB between Polo Gear and PRL. Mr. Whisenand, Mr. Rowan, and Mrs. De Luca first concentrated on the abandonment and overdue responses to Office Actions in Serial Nos. 86/519,898; 86/519,939; 86/519,959; 86/519,612; 86/519,990; and 86/519,674; and each of which had 60-day reinstatement deadlines of February 16, 2016. Those reinstatement requests and Polo Gear's Office Actions were filed very close to midnight on February 16, 2016. Mr. Whisenand, Mr. Rowan, and Mrs. De Luca then immediately turned their attention to this matter.

53. By divulging the information contained in this declaration for this official proceeding, Applicant is not waiving any attorney client privilege. Applicant is disclosing information to prevent a denial of due process and the loss of its most valuable rights, privileges and assets, including the right to have the merits of its trade mark rights adjudicated on the merits.

54. I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements and the like are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration issuing therefrom.

POLOGEAR LLC and  
POLO GEAR INTELLECTUAL PROPERTIES,  
INC.

By:

Name: Gary Fellers

Position: CEO

Date:

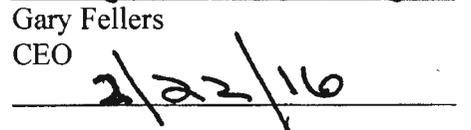
  


EXHIBIT 1  
TO  
DECLARATION OF GARY FELLERS  
OF FEBRUARY 22, 2016

Trademark Electronic Application System (TEAS) filing receipt

We have received your Petition To Revive Abandoned Application - Failure To Respond Timely To Office Action form below.

To the Commissioner for Trademarks:

Application serial no. **86519959** POLOGEAR (Stylized and/or with Design, see <http://tmng-al.uspto.gov/resting2/api/img/86519959/large>) has been amended as follows:

**PETITION**

**Petition Statement**

Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional, and requests the USPTO to revive the abandoned application.

**RESPONSE TO OFFICE ACTION**

**EVIDENCE**

Evidence in the nature of Response to Office Action Exhibit A Exhibit B has been attached. 1

[evi\_17388145-20160216195206291012\_.\_6429-5\_amendment\_Feb\_16\_2016\_.pdf ]

2 [evi\_17388145-20160216233842537190\_.\_6429-1.Exhibit\_A.pdf ]

3 [evi\_17388145-20160216233842537190\_.\_6429-1.Exhibit\_B.pdf ]

**CLASSIFICATION AND LISTING OF GOODS/SERVICES**

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 018 for Sport bags; athletic bags; carry bags; harnesses; bits; bridles; briefcases; carry alls; clothing for animals; dog apparel; duffle bags; equine boots; equine leg wraps; exercise sheets for horses; fanny packs; garment bags for travel; girths; grooming organizers; handbags; harness; horse bits; horse blankets; horse bridles; horse tack; horse wraps; key cases; knitted bags; leather briefcases; leather wallets; leather bags; leather credit card holder; luggage; muzzles; overnight bags; pet clothing; dogs; purses; leather purses; riding saddles; saddle covers; saddles; tote bags; travel baggage; travel bags; umbrellas; wallets; whips

Original Filing Basis:

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/31/1993 and first used in commerce at least as early as 12/31/1993 , and is now in use in such commerce.

**Proposed:**

**Tracked Text Description:** Sport bags; athletic bags; ~~carry bags~~; carry bags for horse tack; harnesses; bits; bridles; briefcases; ~~carry alls~~; carry-all bags; clothing for animals; dog apparel; duffle bags; equine boots; equine leg wraps; exercise sheets for horses; fanny packs; garment bags for travel; girths; ~~grooming organizers~~; grooming organizers for travel; handbags; harness; horse bits; horse blankets; horse bridles; ~~horse tack~~; horse tack, namely, bridles, reins, leads, bits, breastplates, martingales, lunge lines, halters, saddle fittings, namely, stirrups, stirrup leathers and girth straps; horse wraps; key cases;

~~knitted bags; knitted bags, not made of precious metals; leather briefcases; leather wallets; leather bags; leather credit card holder; luggage; muzzles; overnight bags; pet clothing, dogs; pet clothing, for dogs;~~ purses; leather purses; riding saddles; saddle covers; saddles; tote bags; travel baggage; travel bags; umbrellas; wallets; whips

Class 018 for Sport bags; athletic bags; carry bags for horse tack; harnesses; bits; bridles; briefcases; carry-all bags; clothing for animals; dog apparel; duffle bags; equine boots; equine leg wraps; exercise sheets for horses; fanny packs; garment bags for travel; girths; grooming organizers for travel; handbags; harness; horse bits; horse blankets; horse bridles; horse tack, namely, bridles, reins, leads, bits, breastplates, martingales, lunge lines, halters, saddle fittings, namely, stirrups, stirrup leathers and girth straps; horse wraps; key cases; knitted bags, not made of precious metals; leather briefcases; leather wallets; leather bags; leather credit card holder; luggage; muzzles; overnight bags; pet clothing, for dogs; purses; leather purses; riding saddles; saddle covers; saddles; tote bags; travel baggage; travel bags; umbrellas; wallets; whips

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/31/1993 and first used in commerce at least as early as 12/31/1993 , and is now in use in such commerce.

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 025 for Athletic apparel, namely shirts, pants, jackets, footwear, hats and caps; athletic uniforms; baby tops; baseball caps and hats; bathing suits; bathrobes; belts; berets; Bermuda shorts; blazers; board shorts; bomber jackets; boots; boxer shorts; breeches; business clothing, namely jackets, trousers, blazers, button down shirts, camisoles; children's clothing; clothing for athletic use; coats; crew neck sweaters; sweaters; denim jackets; denims; dress pants; dress shirts; fleece bottoms; fleece pullovers; fleece tops; footwear; gloves; golf shirts; graphic T-shirts; T-shirts; horse riding boots; horse-riding pants; hosiery; jackets; jeans; knit shirts; leather jackets; knit shirts; socks; underwear; overcoats; pajamas; pique shirts; polo shirts; pullovers; rain jackets; riding boots; riding coats; riding gloves; rugby shirts; running suits; scarves; shirts; sweaters

Original Filing Basis:

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/31/1993 and first used in commerce at least as early as 12/31/1993 , and is now in use in such commerce.

**Proposed:**

**Tracked Text Description:** Athletic apparel, namely shirts, pants, jackets, footwear, hats and caps; athletic uniforms; baby tops; baseball caps and hats; bathing suits; bathrobes; belts; berets; Bermuda shorts; blazers; board shorts; bomber jackets; boots; boxer shorts; breeches; business clothing, namely jackets, trousers, blazers, button down shirts, camisoles; ~~children's clothing;~~ children's clothing, namely, shirts, pants, coats, dresses, shorts, sweatshirts, fleeces, namely shirts, pants, jackets, hats and caps; clothing for athletic use; clothing for athletic use, namely, shirts, sweatshirts, tee shirts, sweat pants, active wear, namely shirts, shorts, pants, jackets made of performance fabrics that wick moisture; coats; crew neck sweaters; denim jackets; denims; dress pants; dress shirts; fleece bottoms; fleece pullovers; fleece tops; footwear; gloves; golf shirts; graphic T-shirts; T-shirts; horse riding boots; horse-riding pants; hosiery; jackets; jeans; knit shirts; leather jackets; socks; ~~knit shirts;~~ underwear; overcoats;

pajamas; pique shirts; polo shirts; pullovers; rain jackets; riding boots; riding coats; riding gloves; rugby shirts; running suits; scarves; shirts; sweaters; ~~sweaters~~

Class 025 for Athletic apparel, namely shirts, pants, jackets, footwear, hats and caps; athletic uniforms; baby tops; baseball caps and hats; bathing suits; bathrobes; belts; berets; Bermuda shorts; blazers; board shorts; bomber jackets; boots; boxer shorts; breeches; business clothing, namely jackets, trousers, blazers, button down shirts, camisoles; children's clothing, namely, shirts, pants, coats, dresses, shorts, sweatshirts, fleeces, namely shirts, pants, jackets, hats and caps; clothing for athletic use, namely, shirts, sweatshirts, tee shirts, sweat pants, active wear, namely shirts, shorts, pants, jackets made of performance fabrics that wick moisture; coats; crew neck sweaters; denim jackets; denims; dress pants; dress shirts; fleece bottoms; fleece pullovers; fleece tops; footwear; gloves; golf shirts; graphic T-shirts; T-shirts; horse riding boots; horse-riding pants; hosiery; jackets; jeans; knit shirts; leather jackets; socks; underwear; overcoats; pajamas; pique shirts; polo shirts; pullovers; rain jackets; riding boots; riding coats; riding gloves; rugby shirts; running suits; scarves; shirts; sweaters

**Filing Basis: Section 1(a), Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/31/1993 and first used in commerce at least as early as 12/31/1993 , and is now in use in such commerce.

**ATTORNEY ADDRESS**

Applicant proposes to amend the following:

**Proposed:**

Sheryl De Luca of Nixon & Vanderhye P.C., having an address of  
901 N. Glebe Road, 11th Floor Arlington, Virginia 22203

United States

nixonptomail@nixonvan.com

(703) 816-4000

(703) 816-4100

The attorney docket/reference number is sld-6429-3 .

The Other Appointed Attorney(s): All other attorneys of Nixon & Vanderhye P.C..

**CORRESPONDENCE ADDRESS CHANGE**

Applicant proposes to amend the following:

**Current:**

Polo Gear LLC

3500 Fairlane Farms Road

Wellington

Florida

US

33414

**Proposed:**

Sheryl De Luca of Nixon & Vanderhye P.C., having an address of  
901 N. Glebe Road, 11th Floor Arlington, Virginia 22203

United States

nixonptomail@nixonvan.com

(703) 816-4000

(703) 816-4100

The docket/reference number is sld-6429-5 .

#### **ADDITIONAL STATEMENTS**

##### **SECTION 2(f) Claim of Acquired Distinctiveness, BASED ON EVIDENCE**

The mark has become distinctive of the goods/services, as demonstrated by the attached evidence.

- 1 [e2f-17388145-195206291\_.\_Fellers\_Declaration\_Signed\_86519959.pdf ]
- 2 [e2f-17388145-233842537\_.\_EXHIBIT\_1-First\_PoloGear\_Store\_1993\_copy.pdf ]
- 3 [e2f-17388145-233842537\_.\_EXHIBIT\_3-Original\_PoloGear\_Store\_Construction\_1993\_copy.pdf ]
- 4 [e2f-17388145-233842537\_.\_EXHIBIT\_4-Second\_PoloGear\_Store\_Wellington\_1998\_copy.pdf ]
- 5 [e2f-17388145-233842537\_.\_EXHIBIT\_5-Branded\_All\_Sales\_copy.pdf ]
- 6 [e2f-17388145-233842537\_.\_EXHIBIT\_6-PoloGear\_Marks\_copy.pdf ]
- 7 [e2f-17388145-233842537\_.\_EXHIBIT\_7-Texas\_and\_Founder-The\_PoloGear\_Logo\_copy.pdf ]
- 8 [e2f-17388145-233842537\_.\_EXHIBIT\_8-The\_PoloGear\_Logo-Where\_Did\_It\_Come\_From\_copy.pdf ]

##### **Miscellaneous Statement**

Power of Attorney form Additional Exhibits to Gary Fellers Exhibits will be supplemented

- 1 [mis-17388145-20160216195206291012\_.\_6429-5.POA.pdf ]

##### **SECTION 2(f) Claim of Acquired Distinctiveness, based on Five or More Years' Use**

The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use of the mark in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.

##### **FEE(S)**

Fee(s) in the amount of \$100 is being submitted.

##### **Petition Signature**

Signature: /Sheryl De Luca/ Date: 02/16/2016

Signatory's Name: Sheryl De Luca

Signatory's Position: Attorney of record, VA bar member

Signatory's Phone Number: (703) 816-4063

##### **Declaration Signature**

**DECLARATION: The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that, if the applicant submitted the application or allegation of use (AOU) unsigned, all statements in the application or AOU and this submission based on the signatory's own knowledge are true, and all statements in the application or AOU and this submission made on information and belief are believed to be true.**

**STATEMENTS FOR UNSIGNED SECTION 1(a) APPLICATION/AOU:** If the applicant filed an unsigned application under 15 U.S.C. §1051(a) or AOU under 15 U.S.C. §1051(c), the signatory additionally believes that: the applicant is the owner of the mark sought to be registered; the mark is in use in commerce and was in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; the original specimen(s), if applicable, shows the mark in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; *for a collective trademark, collective service mark, collective membership mark application, or certification mark application*, the applicant is exercising legitimate control over the use of the mark in commerce and was exercising legitimate control over the use of the mark in commerce as of the filing date of the application or AOU; *for a certification mark application*, the applicant is not engaged in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.**

**STATEMENTS FOR UNSIGNED SECTION 1(b)/SECTION 44 APPLICATION AND FOR SECTION 66(a) COLLECTIVE/CERTIFICATION MARK APPLICATION:** If the applicant filed an unsigned application under 15 U.S.C. §§ 1051(b), 1126(d), and/or 1126(e), or filed a collective/certification mark application under 15 U.S.C. §1141f(a), the signatory additionally believes that: *for a trademark or service mark application*, the applicant is entitled to use the mark in commerce on or in connection with the goods/services specified in the application; the applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date; *for a collective trademark, collective service mark, collective membership mark, or certification mark application*, the applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce and had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce as of the application filing date; the signatory is properly authorized to execute the declaration on behalf of the applicant; *for a certification mark application*, the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.**

Signature: /Sheryl De Luca/ Date: 02/16/2016  
Signatory's Name: Sheryl De Luca/  
Signatory's Position: Attorney of record, VA bar member

Signatory's Phone Number: (703) 816-4063

**Response Signature**

Signature: /Sheryl De Luca/ Date: 02/16/2016

Signatory's Name: Sheryl De Luca/

Signatory's Position: Attorney of record, VA bar member

Signatory's Phone Number: (703) 816-4063

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

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Thank you,

The TEAS support team

Tue Feb 16 23:45:13 EST 2016

STAMP: USPTO/POA-173.8.8.145-20160216234513540339-86519959-

5501435b9581db0055b0c4843aecdd4627f756c16971c3afd85bf6bddccba7e60-CC-8874-

20160216233842537190

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Law Office: 107  
Serial No.: 86/519,959  
Mark: POLOGEAR & design

In re Trademark Application of

POLO GEAR LLC

Atty. Ref.: SLD-6429-5

Filed: January 30, 2015

Attorney: Michelle E. Dubois

\* \* \* \* \*

February 16, 2016

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

Sir:

**AMENDMENT**

In response to the Official Action, mailed May 8, 2015, please amend the above-identified trademark application as follows:

**IN THE STATEMENT**

Please amend the identification of goods to read as follows:

Class 14 (no change);

Class 18: Sport bags; athletic bags; carry bags for horse tack; harnesses; bits; bridles; briefcases; carry-all bags; clothing for animals; dog apparel; duffle bags; equine boots; equine leg wraps; exercise sheets for horses; fanny packs; garment bags for travel; girths; grooming organizers for travel; handbags; harness; horse bits; horse blankets; horse bridles; horse tack, namely, bridles, reins, leads, bits, breastplates, martingales, lunge lines, halters, saddle fittings, namely, stirrups, stirrup leathers and girth straps;

horse wraps; key cases; knitted bags, not made of precious metals; leather briefcases; leather wallets; leather bags; leather credit card holder; luggage; muzzles; overnight bags; pet clothing, for dogs; purses; leather purses; riding saddles; saddle covers; saddles; tote bags; travel baggage; travel bags; umbrellas; wallets; whips, in International Class 18

Class 25: Athletic apparel, namely shirts, pants, jackets, footwear, hats and caps; athletic uniforms; baby tops; baseball caps and hats; bathing suits; bathrobes; belts; berets; Bermuda shorts; blazers; board shorts; bomber jackets; boots; boxer shorts; breeches; business clothing, namely jackets, trousers, blazers, button down shirts, camisoles; children's clothing, namely, shirts, pants, coats, dresses, shorts, sweatshirts, fleeces, namely shirts, pants, jackets, hats and caps; clothing for athletic use, namely, shirts, sweatshirts, tee shirts, sweat pants, active wear, namely shirts, shorts, pants, jackets made of performance fabrics that wick moisture; coats; crew neck sweaters; denim jackets; denims; dress pants; dress shirts; fleece bottoms; fleece pullovers; fleece tops; footwear; gloves; golf shirts; graphic T-shirts; T-shirts; horse riding boots; horse-riding pants; hosiery; jackets; jeans; knit shirts; leather jackets; socks; underwear; overcoats; pajamas; pique shirts; polo shirts; pullovers; rain jackets; riding boots; riding coats; riding gloves; rugby shirts; running suits; scarves; shirts; sweaters, in International Class 25

Please add the following sentences to the statement:

- Applicant Claims Acquired Distinctiveness for POLOGEAR under Trademark Act §2(f) based on Five or More Years' Use: The mark has become distinctive of the goods through the applicant's substantially exclusive and continuous use of the

mark in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement and since 1993.

Applicant now simply seeks registration of its decades old common law marks.

- Applicant Claims Acquired Distinctiveness for POLOGEAR under Trademark Act §2(f) based on Evidence: The mark has become distinctive of the goods, as demonstrated by the attached evidence.

### **REMARKS**

In response to the Examiner's requirement, Applicant has amended the identification of goods to more clearly identify them. Applicant respectfully submits that, as amended, the identifications are sufficiently definite for registration.

#### **1. THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN APPLICANT'S MARK AND THE CITED MARKS<sup>1</sup>**

Registration has been refused on the basis of a likelihood of confusion with the following marks:

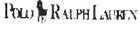
- Reg. No. 2857837 (for POLO SPORT for handbags in Class 18),

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<sup>1</sup> See page 8, *infra*. In 2002 and 2007 two independent law firms of Ralph Lauren conducted two independent legal investigations each initially demanding POLOGEAR cease and desist the use of POLOGEAR's marks. In each instance both law firms concluded that no action was warranted and abandoned any legal claims asserted in their letters against POLOGEAR. Since 2007, Ralph Lauren has never contacted POLOGEAR to make any adverse mark assertion, which is a clear showing of abandonment of any such assertions. In addition, Ralph Lauren has, since 1997, purchased POLOGEAR branded products and used the POLOGEAR branded products to merchandise Ralph Lauren products in Ralph Lauren retail stores and street windows.

- Reg. No. 1363459 (for POLO for Clothing-Namely, Suits, Slacks, Trousers, Shorts, Wind Resistant Jackets, Jackets, Blazers, Dress Shirts, Sweatshirts, Sweaters, Hats, Belts, Socks, Blouses, Skirts, Coats, and Dresses in Class 25),
- Reg. No. 1468420 (for POLO for men's women's, children's and athletic shoes, in Class 25),
- Reg. No. 1508314 (for POLO BY RALPH LAUREN & design,  for men's suits, slacks, ties, sweaters, jackets, coats, shoes, shirts, hats, in Class 25),
- Reg. No. 1951601 (for POLO SPORT for wearing apparel, namely pants, shorts, jackets, T-shirts, sport shirts, knit shirts, sweatshirts, hats, socks and footwear in Class 25),
- Reg. No. 2049948 (for POLO JEANS CO. for wearing apparel, namely, jeans, T-shirts, knit shirts, sweatshirts, overalls, blouses, skirts, dresses and hats in Class 25),
- Reg. No. 2686291 (for POLO GOLF for wearing apparel, namely, shirts, sweaters, pants),
- Reg. No. 3066068 (for POLO TENNIS for Wearing apparel, namely, tennis wear, shorts, pants, shirts, t-shirts, tank tops, socks, jackets, sweaters, fleece pullovers, caps, slacks, jeans, in Class 25),
- Reg. No. 3733341 (for POLO RALPH LAUREN for Sweaters, shirts, sweatshirts, pants, shorts, jackets, coats, vests, hats, scarves, gloves, belts,

ties, underwear, socks, shoes, sneakers, boots, sleepwear, robes, men's suits in Class 25),

- Reg. No. 3306101 (for POLO RALPH LAUREN & design  for Clothing, namely, knit shirts, polo shirts, sweaters, shirts, t-shirts, hats, swimwear, pants, jackets, belts, ties, footwear, socks; outerwear, namely, coats, sport coats, raincoats in Class 25),
- Reg. No. 1935665 (for POLO RALPH LAUREN for infants and childrens clothing, namely layettes, bibs, slippers, sleepwear, underwear, rompers, shorts, shirts, coveralls, pants, socks, booties in Class 25), and
- Reg. No. 1622636 (for POLO RALPH LAUREN SPORTSMAN for men's and women's clothing, namely, pants, jackets, shirts, sweaters, skirts, and hats, in Class 25).

In addition, the examiner has cited as potential bars to registration:

- Application Serial No. 85913418 (for POLO U.S.A. for Sweatshirts; T-shirts in Class 25, which has now issued as Registration No. 4739611), and
- Reg. No. 85745696 (POLO SPORT for wrist watches in Class 14).

Numerous POLO word marks and equestrian logo marks, including the applied-for and the cited marks, have been co-existing for decades. *See e.g., U.S. Polo Assoc. Inc. v. Polo Fashions, Inc.*, 1984 WL 1309, 84-civ.1142, at \*17, 19 (S.D.N.Y. Dec. 6, 1984), where the court, in a dispute between the U.S. Polo Association and the then-owner of the cited registrations, noted “[t]here are many ways in which the sport of polo and equestrian figures can be depicted and can be utilized even on wearing apparel and

other products in general without infringing upon defendant's [the Ralph Lauren POLO] trademarks"; "In our vast society there is clearly room for both the United States Polo Association and Polo Fashions Inc. to engage in licensing activities, including licensing activities in the apparel field which do not conflict with each other. Nothing contained in this opinion should be construed as precluding such activities." This clear judicial directive is equally applicable to POLOGEAR and this proceeding especially considering that Ralph Lauren paid two independent law firms to make a legal inquiry of POLOGEAR and both independently abandoned any claim assertion after due inquiry.

*See also, Polo Ralph Lauren USA Holdings, Inc. v. U.S. Polo Ass'n, Inc.*, 99-cv-10199, at \*4 (S.D.N.Y. July 7, 2006), *aff'd*, *PRL USA Holdings, Inc.*, 520 F.3d 109 (2d Cir. 2008), where the court denied (and the Second Circuit agreed) a motion for new trial filed by Ralph Lauren ("PRL" or "Ralph Lauren") challenging the jury's findings that the defendant's use of three equestrian marks; a solid double horsemen mark with "USPA," an outline double horsemen mark, and an outline double horsemen mark with "USPA," in the markets for apparel, leather goods and watches, did not infringe PRL's registered horse logo trademarks because PRL had not proven that use of the competing equestrian marks were likely to cause confusion, the touchstone of infringement and the rejection at issue. Obviously, not every use of POLO or an equestrian design, including as a trademark, even for apparel, leather goods and watches, infringes the Ralph Lauren POLO marks.<sup>2</sup>

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<sup>2</sup> The Courts have long recognized that the Sport of Polo is the "glow" the market recognizes and not the cited registrant as the Fifth Circuit observed in rejecting Ralph Lauren's asserted preemption of the word "Polo":

"PRL products became famous by basking in the reflected glow of an elegant sport. PRL now asserts that it, not the sport, is the source of the

Additionally, the cited registrant has purchased Applicant's products for use in the cited registrant's retail store merchandising windows for almost 20 years, with the cited registrant displaying POLOGEAR brands in its retail merchandising, without one instance of actual confusion. See Gary Fellers Decl. at paras. 17-19. The cited registrant obviously had no fear of confusion or dilution between the parties' POLO and POLOGEAR branded goods, at least by the actual clientele of the Ralph Lauren stores, the principal channel of trade the Examiner should be concerned about. Moreover, that judgment by the cited registrant proved to be correct, as proven by the total lack of actual confusion over the 20 year span of the parties' relationship. That lack of confusion is corroborated, not just by Mr. Feller's declaration, but also by Ralph Lauren's own continuation, for over 20 years, of purchasing the Applicant's POLOGEAR branded products to display in the cited registrant's retail shop windows and by two independent law firms of the cited registrant commencing threats of enforcement against POLOGEAR and then abandoning those legal claims with a response from POLOGEAR. Obviously, the cited registrant would not have continuously for 20 years used Applicant's POLOGEAR branded products in its retail shop windows if it created confusion with, or even dilution of, Ralph Lauren's POLO marks in 2002 and 2007.

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glow. While PRL's primary claim is the essence of the ordinary trademark case, we cannot be blind, when balancing the equities, to the fact that PRL is arrogating the very name of a sport from the players' publication. In a sense, PRL is biting the hand that fed it." *Westchester Media v. PRL USA Holdings, Inc.*, 214 F.3d 658 (5th Cir. 2000).

Applicant's mark epitomizes this judicial observation since Applicant and Applicant's products are derived from actual experiences and uses in the Sport of Polo by the principals of Applicant and are reflective of the elegant Sport of Polo and its associated polo lifestyle. Indeed, the mark sought to be registered is itself derived from a 1988 photo of Applicant's principal (Gary Fellers) playing polo.

From this evidence, one can only conclude that the relevant consuming public, which, among others, includes rather well-heeled consumers who have or, more likely, want to be seen as having some connection to upscale activities, such as the Sport of Polo (or tennis or golf in the case of some of the cited registrant's goods), can readily discern the difference between Applicant's POLOGEAR branded products and the cited registrant's POLO branded goods, even when displayed side-by-side on similar or related goods in the same stores.

Equally probative of the unlikelihood of confusion between Applicant's mark and the cited registrant's marks are the conclusions in 2002 and 2007 by two different independent law firms representing the cited registrant, who abandoned their respective efforts to require Applicant to cease and desist its use of all POLOGEAR marks. See Gary Fellers Declaration, ¶19 and Exhibits 25 and 26. In each instance after and based on lengthy communications with Applicant, each of the two independent law firms at two different periods of time made the same independent legal conclusions: 1) take no action against Applicant since no lawful claim exists; and 2) abandon any such legal efforts once they understood POLOGEAR'S compelling facts including their common law marks. Since 2007, Applicant has not received any such legal communications from either of the cited registrant's law firms. During this entire time period Applicant has not changed its material business practices and has continued sales in all 50 States in the United States and more than 40 countries utilizing the same well-recognized common law marks it has been using since 1993.

Applicant now simply seeks registration of its decades-old common law marks.

Under well-established case law, such a long history of co-existence (and, in this case, cooperative business relationship) with no actual confusion among the Applicant's and the cited registrant's discerning customers, demonstrates that there is no likelihood of confusion between Applicant's mark and the cited marks. See, e.g., *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357 (CCPA 1973), noting, along with hundreds of other cases, that the presence or absence of actual confusion is a significant factor in determining likelihood of confusion, by either a court or a trademark examiner.

As the Examining Attorney is also aware, the assessment of similarity of marks, another *Du Pont* factor, must be based not on isolated elements (e.g., POLO), but on the total impression of the marks under comparison. See *Franklin Mint Corp. v. Master Mfg. Co.*, 212 U.S.P.Q. 233, 234 (CCPA 1981) ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion."). Although Applicant's mark and the cited marks share the word portion "POLO" and a horse and rider engaged in the sport of polo, there are more than sufficient differences in the marks as a whole (as well as the horse and rider design itself) and the commercial impression created by those marks, particularly in light of the plethora of other "POLO" – formative registrations and polo player designs and actual uses, to preclude any likelihood of confusion in the trade.

All of the cited marks and Applicant's POLOGEAR & Design mark are visually and orally different in both word or design, and particularly so when considered as a whole. The cited marks of Reg. Nos. 2857837, 1951601, 2686291, 1508314, 2049948, 3066068, 3733341, 1935665, 3306101, 1622636, 4739611 and App. No. 85745696 all contain additional word elements (SPORT, GOLF, TENNIS, JEANS CO., BY RALPH

LAUREN, RAPH LAUREN, RALPH LAUREN SPORTSMAN and U.S.A.). These additional word elements very dramatically change the visual impression of the marks as well as the lengths and numbers of syllables of the marks and the way they are pronounced.

The marks of cited Reg. Nos. 1508314 and 3306101 also include very prominent design elements (the stylized word Polo within a separate rectangle with the stylized words “By Ralph Lauren” underneath, lined for the colors blue and silver and depicting a solid horse with a rider holding a raised mallet). In marked contrast, Applicant’s mark includes a circle, not a rectangle, is not lined for color, depicts a rider<sup>3</sup> in outline form with the polo mallet in the lowered position and, obviously, contains no mention of “Ralph Lauren” or the RL initials. As the court noted in the 1984 *USPA v Polo Fashions* case, “[t]here are many ways in which the sport of polo and equestrian figures can be depicted and can be utilized even on wearing apparel and other products in general without infringing upon defendant’s [the Ralph Lauren POLO] trademarks.” *U.S. Polo Assoc. Inc. v. Polo Fashions, Inc.*, 1984 WL 1309, 84-civ.1142, at \*17, 19.

Applicant’s distinctive POLOGEAR and design mark also conveys a very different visual impression from each of the cited marks. Those design elements include a dark ring, stars disposed inside the dark ring (three stars on the right and three stars on the left), the letters GEAR and an outline of a horse and rider where the rider is striking a ball with a lowered mallet. Even without the distinctive ring and star design of Applicant’s mark, the differences in the horse element of the parties’ marks are

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<sup>3</sup> The drawing of the rider is a replica of a 1988 photo of Applicant’s principal, Gary Fellers, playing polo in an actual polo game. See Fellers Decl. ¶10.

significantly sufficient to differentiate Applicant's mark from the cited design marks.

With the distinctive ring and star design, the marks are as different as they can possibly be while still evoking a relationship to the sport of polo, which, as noted by several court decisions, Applicant has every right to do.

The case law, including with respect to polo and equestrian marks, makes clear that such distinctions are critical to the likelihood of confusion determination. *See U.S. Polo Assoc. Inc.*, 1984 WL 1309, *supra*; *Polo Ralph Lauren USA Holdings, Inc. v. U.S. Polo Ass'n, Inc.*, 99-cv-10199, at \*4 (S.D.N.Y. July 7, 2006), *aff'd*, *PRL USA Holdings, Inc.*, 520 F.3d 109 (2d Cir. 2008), *supra*.

The competing marks at issue also differ in connotation. The additional element GEAR, which is an integral part of Applicant's mark, suggests equipment and other functional items associated with the sport of polo. In contrast, none of the cited marks contain the word GEAR or any equivalent word or term and most of them contain words that convey an association with other sports such as tennis and golf, or with jeans, or with the well-known fashion designer, Ralph Lauren, and/or USA. Applicant makes none of these references or connections.

The element POLO, particularly in light of its use in numerous third party marks for various products, and its common use for "polo shirts" when referring to casual knit shirts of the type typically worn by polo players and polo teams (which use predated Ralph Lauren by many decades), is not at all dominant in Applicant's mark, but, rather enjoys equal weight with GEAR and has even less overall weight when the prominent design elements are considered. Conversely, the term RALPH LAUREN is obviously the dominant aspect of Registration Nos. 1508314 (POLO BY RALPH LAUREN & design),

3733341 (POLO RALPH LAUREN), 3306101 (POLO RALPH LAUREN & design), 1935665 (POLO RALPH LAUREN), 1622636 (POLO RALPH LAUREN SPORTSMAN). There is obviously no similarity or connection whatsoever between Applicant's GEAR and the dominant portion of these cited marks, i.e., RALPH LAUREN.

The Examining Attorney concluded that the owner of the cited registrations has a house mark with POLO as a dominant element; and that, "given this registrant's series of registrations with descriptive wording added to this house mark, such as "SPORT," "JEANS CO.," "GOLF," and "TENNIS," consumers are likely to believe that applicant's mark POLOGEAR is another product line from this registrant." This is an impermissible conclusion in *ex parte* proceedings. In such proceedings, examining attorneys do not have access to the evidence and information needed to establish whether a house mark or family of marks exists. *In re Mobay Chem. Co.*, 166 USPQ 218, 219 (TTAB 1970) ("the mere fact of registration does not prove a 'family of marks'"). Thus, the USPTO advises in the Trademark Manual of Examining Procedure ("TMEP"), Section 1207.01(d)(xi), that examining attorneys should refrain from invoking the family of marks doctrine or from referring to a family of marks in a likelihood of confusion analysis. *See also In re Hitachi High-Techs. Corp.*, 109 USPQ2d 1769, 1772 (TTAB 2014) ("The mere existence of similar registrations does not establish a family, but rather there must be recognition by the public that the shared characteristic (or 'family surname') is indicative of a common origin); *In re Mobay Chem. Co.*, 166 USPQ at 219. There is no evidence of that required recognition in this *ex parte* proceeding.

Moreover, as evidenced by the sheer number of “POLO” registrations which the United States Patent and Trademark Office (“PTO”) has allowed, the PTO obviously considers the term “POLO,” (as do the relevant Courts in the cited cases in pages 6, 7, 10, 11, *supra*) at least when used in connection with other words or design elements, to be a weak term, particularly for goods in Classes 14, 18 and 25. In light of the ubiquitous presence of the word “POLO” in so many marks, both registered and unregistered, consumers are required to, and do, look to other indicia of origin when seeing the term “POLO.” This multitude of POLO registrations indicates that multiple examiners have viewed marks containing POLO as readily distinguishable from one another based on the other words or terms in the mark. A partial listing of such third party registrations is provided below (a status printout from the PTO website for each of these marks is attached as Exhibit A):

<u>Mark</u>	<u>Reg. No.</u>
JON POLO	3,292,597
BEVERLY HILLS POLO CLUB	1,947,244
POLO ARGENTINO and Design	4,110,909
POLO NATION and Design	3,885,688
SANTA MARIA POLO and Design	3,665,467
SPA SARATOGA POLO and Design	3,474,707
U.S. OPEN POLO CHAMPIONSHIP	3,939,462
U.S. POLO ASSN.	2,908,391
U.S. POLO and Design	2,629,444
NEW FOREST POLO CLUB	4,891,939

HAWAII POLO CLUB	4,884,411
POLOSTAR	4,638,035
TEXAS POLO	4,746,038
MONSTERPOLO	4,743,327
PERFECT POLO	4,705,580
CNK BIKE POLO and Design	4,698,184
INTERNATIONAL POLO CLUB PALM BEACH	4,612,149
HV POLO and Design	4,554,004

The marks of the above registrations (and there are dozens more) are obviously no more dissimilar to each other and to the cited registrations than Applicant's proposed POLOGEAR and design mark. For instance, POLOSTAR is obviously no more distinctive from the cited marks, even without the very distinctive design element discussed above. The point can also be made with respect to TEXAS POLO and PERFECT POLO, which only combine POLO with a geographic reference and a common superlative, respectively. The PTO would never have allowed these registrations to issue if there was even a perceived likelihood of confusion between any or all these "POLO" registrations. The discerning consumers of the Applicant's and registrant's products, will be at least as capable of distinguishing the source of origin of Applicant's goods sold under its POLOGEAR and design mark and those sold under the cited POLO registrations as other consumers are in distinguishing between the plethora of POLO-formative marks presently subsisting on the Principal Register and the cited registrations.

The Trademark Trial and Appeal Board (“TTAB”) has routinely relied upon the existence of third-party registrations to limit the scope of protection provided to a given mark. See, e.g., *In re Hamilton*, 25 U.S.P.Q. 174, 175-77 (T.T.A.B. 1984); *Keebler Co. v. Associated Biscuits Ltd.*, 207 U.S.P.Q. 1034, 1038 (T.T.A.B. 1980). Given the sheer number of POLO-formative marks already registered, it is clear that each mark must be accorded a very narrow scope of protection. All of these marks have the same similarity, i.e., the word POLO. But, when viewed in their totalities, no confusion is likely to result (or there would be rampant confusion already allowed by the PTO).

This point is also recognized in TMEP Section 1207.01(d)(iii) (Third-party registrations may be relevant to show that a mark or a portion of a mark is descriptive, suggestive, or so commonly used that the public will look to other elements to distinguish the source of the goods). As indicated by the PTO’s prior grant of many, many POLO-formative registrations, consumers are very capable of distinguishing between each cited POLO-formative registration for clothing, bags, leather goods and jewelry. Therefore, it would be highly illogical to now conclude that consumers will be confused between these various POLO registrations, the cited RALPH LAUREN marks, and Applicant’s POLOGEAR and design mark.

Applicant also submits, as Exhibit B, multiple examples of various actual uses of POLO-formative marks taken from current Internet cites showing use of those POLO-formative marks in connection with apparel and accessories. These numerous uses of marks which include the term POLO are also probative that no likelihood of confusion will be created by the use and registration of Applicant’s mark. The case law recognizes that where there is a “crowded field” of many entities using similar marks for their

product or service, “customers will not likely be confused between any two of the crowd and may have learned to carefully pick out one from the other.” *Miss World (UK), Ltd. V. Mrs., America Pageants, Inc.*, 856 F.2d 1445, 1449 (9<sup>th</sup> Cir. 1988). That is obviously the case here, as evidenced by the long history of co-existence between the cited marks and Applicant’s mark with no evidence of confusion.

In a crowded field of similar marks, each member of the crowd is relatively weak in its ability to prevent use by others in the crowd. *Id.*, citing 1 J. McCarthy, *McCarthy on Trademarks and Unfair Competition* § 11:26, at 511; see also *Petro Stopping Centers L.P. v. James River Petroleum, Inc.*, 130 F.3d 88, 93 (4th Cir. 1997) (evidence of third party use of the same mark is a sign of a weak mark). This is extremely germane in the instant case, as shown by the large number of registered marks and actual uses containing the term POLO for clothing, bags/leather goods, and jewelry/watches on the Principal Register and in the marketplace. The fact that Applicant’s mark incorporates distinctive design elements, as well as the word GEAR, further reduces the chance for confusion.

The case law clearly recognizes that even superficially small differences in either the goods or the marks can be sufficient to distinguish competing marks. The overall impression created by Applicant’s mark is not simply POLO and then GEAR – it is the unitary phrase POLOGEAR. When used as a unitary phrase, this mark carries with it a significantly different commercial impression. Just as the term “PUNCH DRUNK” has a very different connotation and impression from the word “PUNCH” alone, so too Applicant’s mark has a completely different impression and meaning because it is “POLOGEAR” and not simply POLO GEAR. Numerous other POLO marks have registered precisely because they all have a different commercial impressions, as a whole,

including TEXAS POLO, PERFECT POLO, MONSTERPOLO, JON POLO, POLO ARGENTINO and POLO NATION, none of which are more distinctive than Applicant's mark. See Exhibit A.

Where the trademarks at issue are sufficiently different, even in superficially small ways, relevant TTAB and CCPA decisions make clear that the use of such marks for the same or very closely related goods or services will not create a likelihood of confusion. See, *Burns Philp Food, Inc. v. Modern Products, Inc.*, 24 U.S.P.Q.2d 1157 (T.T.A.B. 1992) (no likelihood of confusion between the Applicant's mark SPICE GARDEN (and Design), compared with the registrant's famous SPICE ISLANDS registration, both for spices; the differences in the sound, appearance and meaning of the marks was sufficient to avoid any likelihood of confusion, even though the goods were relatively inexpensive, the Opposer's mark was famous, and the goods and trade channels were identical); *Red Carpet Corp. v. Johnstown American Enterprises, Inc.*, 7 U.S.P.Q.2d 1404 (T.T.A.B. 1988) (no likelihood of confusion between two pentagonal designs, even though both were for real estate services, since the designs were visually dissimilar); *Tektronix, Inc. v. Daktronics, Inc.*, 189 U.S.P.Q. 693 (C.C.P.A. 1976) (the mere presence of a common, suggestive element in the two marks is usually not enough upon which to base a finding of a likelihood of confusion); *Daimler-Benz Aktiengesellschaft v. Mitsubishi Jukogyo Kabushiki-Kaisha*, 172 U.S.P.Q.86 (T.T.A.B. 1971) (finding no likelihood of confusion between the Mercedes-Benz star emblem and various triangular emblems, all for motor vehicles); *In re Anderson Electric Corp.*, 152 U.S.P.Q. 245 (C.C.P.A. 1967) (no likelihood of confusion between two "A" marks, both for electrical clamp accessories, where the marks were different); *In re Rodix, Inc.*, 187 U.S.P.Q.255

(T.T.A.B. 1975) (finding no likelihood of confusion between two stylized “R” marks, both for printed circuits, where the marks were different).

See also, *Plus Products v. Natural Organics, Inc.*, 204 U.S.P.Q. 773 (T.T.A.B. 1979) (finding no confusing similarity between PLUS vitamins as compared with NATURE’S PLUS vitamins); *Plus Products v. General Mills, Inc.*, 188 U.S.P.Q. 520 (T.T.A.B. 1975), *aff’d* 534 F.2d 336 (C.C.P.A. 1975) (finding no likelihood of confusion between PROTEIN PLUS and PLUS for the same products); *Lever Bros. Co. v. Barcolene Co.*, 463 F.2d 1107, 174 U.S.P.Q. 392 (C.C.P.A. 1972) (no likelihood of confusion between ALL and ALL CLEAR household cleaners; “Considering appellee’s mark in its entirety, we are convinced that there is no likelihood of confusion” even when both marks were used for identical product); *In re Hearst Corp.*, 982 F.2d 493, 25 U.S.P.Q.2d 1238 (Fed. Cir. 1992) (finding no likelihood of confusion from the contemporaneous use of VARGAS and VARGA GIRL for calendars); *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 432 F.2d 1400, 167 U.S.P.Q. 529, 530 (C.C.P.A. 1970) (“The difference in appearance and sound of the marks in issue [PEAK AND PEAK PERIOD] is too obvious to render detailed discussion necessary. In their entireties they neither look nor sound alike.”).

It is also significant that the PTO previously approved six of Applicant’s marks for publication: Application Serial No. 85458112 for POLOGEAR and design in Classes 18 and 25 (published on June 26, 2012); POLOGEAR (stylized) of Application Serial No. 86488079 in Class 24 (published on September 22, 2015); POLOGEAR and design of Application Serial No. 86488086 in Class 24 (published on September 22, 2015); POLOGEAR (word mark) of Application Sererial No. 86412883 in Class 24 (published

on March 3, 2015); POLOGEAR and design of Application Serial No. 86412886 in Class 24 (published on March 3, 2015); and POLOGEAR (word mark) of Application Serial No. 86488070 in Class 24 (published on March 3, 2015).

In light of Applicant's strong showing in this proceeding that there is no likelihood of confusion between Applicant's mark and the cited registrations, including Applicant's evidence of a lengthy history of co-existence and cooperative sales without confusion and the plethora of other POLO registrations and actual uses, the appropriate course of action for the Examining Attorney at this point would be to allow the application to be published for opposition. If the owner of the cited marks, who is assuredly monitoring this application, finds it appropriate to oppose, it can do so, thereby allowing a considered determination on the merits by the TTAB after full discovery has taken place, including with respect to the long history of interaction between the parties with no instances of actual confusion.

As previously discussed, the Declaration of Gary Fellers attached as Exhibit C affirmatively shows that the Applicant has used the mark at issue since 1993 with not a single incident of actual confusion between Applicant's mark and the cited marks (or any other POLO mark), which have co-existed side by side for decades. In addition, Mr. Fellers' Declaration shows that between 1994 and the present, Applicant openly, actively and continuously sold more than 20 million dollars worth of POLOGEAR branded products in all 50 states and in more than 40 countries around the globe. *Id.* at ¶9. If there was going to be any confusion between Applicant's mark and the cited marks (or any other POLO marks), it surely would have happened by now. In addition to its extensive sales Applicant has, for 22 years, had broad exposure to the general market

worldwide through prolific advertising and press coverage. *Id.* at ¶12. During that period of time, Applicant has purchased over a million dollars of advertising promoting its brand. *Id.* Applicant has also owned and extensively used the domain www.pologearusa.com since 1997 to broadcast its message that its POLOGEAR products are the authentic, genuine, real polo products, and are actually used by polo players.

In that latter regard, Applicant has also provided the United States Polo Association (“USPA”) with apparel products since the mid 2000’s. All of Applicant’s products produced for USPA carry the distinctive POLOGEAR logos on them. *Id.* at ¶13.

As part of Ralph Lauren’s customer relationship with Applicant, Ralph Lauren has purchased directly and indirectly more than \$100,000 worth of products from Applicant bearing Applicant’s distinctive PoloGear trademarks for use in Ralph Lauren’s retail stores. *Id.* at ¶17.

Finally, the Lanham Act requires that the possibility for confusion be probable, not merely “possible.” (See, e.g., *Estee Lauder, Inc. v. The Gap, Inc.*, 108 F.3d 1503, 42 U.S.P.Q.2d 1737 (5th Cir. 1998) (“Likelihood of confusion means a probability of confusion; it is not sufficient if confusion is merely ‘possible’”); *Witco Chem Co. v. Whitfield Chem Co.*, 164 U.S.P.Q. 43, 44-45 (CCPA 1969)(“We are not concerned with the mere theoretical possibilities of confusion, deception or mistake or with *de minimis* situations, but with the practicalities of the commercial world, with which the trademark laws deal”).

Here, the clear visual and phonetic differences between the cited registrations and Applicant’s mark make any level of potential confusion in the market unlikely, and

certainly not "probable." *Estee Lauder, supra*. A theoretical or *de minimis* possibility of confusion is not a sufficient basis for refusal to register Applicant's mark. *Whitco Chem., supra*. Here, products sold using Applicant's mark have co-existed with the cited registrations for more than 22 years without any evidence of confusion. See Fellers Declaration, Exhibit C, at ¶¶ 9, 17, 20. There can be no better evidence that any no such confusion is likely in the future.

## II. POLOGEAR IS DISTINCTIVE OF APPLICANT'S GOODS

The Examining Attorney has required that Applicant disclaim the wording "POLO GEAR" asserting that it merely describes an ingredient, quality, characteristic, function, feature, purpose, or use of applicant's goods and/or services, and thus is an unregistrable component of the mark. In support, the examiner cited several allegedly descriptive uses. In fact, at least some of the Examining Attorney's internet attachments show uses by Applicant's own wholesale accounts, customers and representatives using POLO GEAR as a trademark, not in a descriptive fashion. See, e.g., the examiner's JC Western Wear attachment, which was a wholesale account of Applicants and at the time shown in the web page article of July 11, 2012, was actually referring to a collaboration JC Western Wear did with Applicant (Gary Fellers Declaration, ¶25). The Jackson Hole Horse Emporium attachment also shows a wholesale account of Applicant. In fact, the attachment shows one of our POLO GEAR branded bags. *See Id.* The Escue-Polo attachment shows another of Applicant's customers. PoloGear has made products for Escue-Polo for 20 years. The Examiner's attachment also shows use of the POLO GEAR mark in connection with a photo of Applicant PoloGear's brand spokesman, Nic Roldan. *Id.*

In further response to the Examiner's rejection, Applicant asserts a claim of acquired distinctiveness under Trademark Act Section 2(f) and provides evidence of such acquired distinctiveness with this Response. See Fellers Declaration and attachments. This evidence traces the long history of Applicant's use of its mark from the opening of the first PoloGear store 22 years ago to the present (Fellers Decl., ¶¶ 2-24). Even more significantly, Mr. Fellers' sworn testimony also explains that when PoloGear started in 1993, the word "gear" was not used to describe polo equipment. PoloGear's mark added "gear" to the polo vocabulary 22 years ago and it has been used in global polo advertising and marketing for Applicant's goods ever since. *Id.* at ¶ 7. In the polo world, both POLOGEAR and POLO GEAR are references to Applicant's polo equipment and goods. Fellers Decl., ¶¶ 7, 8, 10, 11, 13).

Mr. Fellers' Declaration also testifies to the extensive sales dollars of Applicant's products under the POLOGEAR mark, including more than 20 million dollars of POLOGEAR product in all 50 states and in more than 40 countries around the globe (Fellers Decl., ¶ 9). Applicant's sales of POLOGEAR apparel and accessories during the past 22 years were continuous. (Fellers Decl., ¶ 11). Mr. Fellers also discusses the creation of the POLOGEAR Teamshop in 1994, a service that makes team clothing for actual polo players and teams as well as accessories for horses and custom apparel products (Fellers Decl., ¶ 11). Mr. Fellers also testifies to Applicant's more than 100 wholesale accounts for its POLOGEAR products (Fellers Decl. ¶ 16).

Mr. Fellers also testifies to Applicant's purchase of over a million dollars of advertising promoting its POLOGEAR brand. (Fellers Decl., ¶ 12). Applicant has also received favorable press from prestigious publications around the globe. (Fellers Decl., ¶

12). Mr. Fellers further points out that Applicant's website, [www.pologearusa.com](http://www.pologearusa.com), was one of the first polo websites on the internet and has generated millions of impressions and hundreds of thousands of viewers. *Id.* at ¶¶12, 15. PoloGear branded products have been used by royalty, celebrities, business magnates and most top global polo players for the past three decades. *Id.* at ¶ 12. Mr. Fellers also notes that Applicant provides POLOGEAR products for polo teams around the world. (Fellers Decl. ¶ 13).

Mr. Fellers further testifies that Applicant has used POLOGEAR in U.S. commerce in connection with the Class 14 goods since at least as early as Dec. 31, 1997, and in Classes 18 and 25 since at least as early as Dec. 31, 1993 (Fellers Decl., ¶ 4). Mr. Fellers' declaration also documents Applicant's participation with the Sport of Polo and with other companies that have supplied the polo industry for over 20 years (Fellers Decl., ¶¶ 6, 11-16, 21-24).

Documents showing the promotion and sale of Applicant's POLOGEAR/POLO GEAR products are attached at Fellers Decl., Exhibits 1-29.

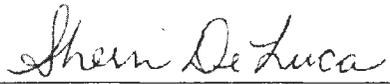
In view of this highly relevant evidence, it is respectfully requested that Applicant's claim of acquired distinctiveness be accepted and that the Examining Attorney withdraw the requirement to enter any disclaimer.

### **III. CONCLUSION**

Applicant respectfully submits that the present application is now in condition for allowance and should be published for opposition. If any other matters remain outstanding, Applicant requests that the Examining Attorney contact the undersigned to resolve those matters by telephone.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:   
Sheryl De Luca

901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100

EXHIBIT A  
TO  
AMENDMENT



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# New Forest Polo Club

<b>Word Mark</b>	NEW FOREST POLO CLUB
<b>Goods and Services</b>	IC 025. US 022 039. G & S: Shoes. FIRST USE: 20130909. FIRST USE IN COMMERCE: 20130909
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	86604385
<b>Filing Date</b>	April 21, 2015
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	44E
<b>Published for Opposition</b>	November 10, 2015
<b>Registration Number</b>	<b>4891939</b>
<b>Registration Date</b>	January 26, 2016
<b>Owner</b>	(REGISTRANT) Grupo Nalaim, S.A. De C.V. JOINT STOCK COMPANY MEXICO 6807 Theall Road, Suite C Houston TEXAS 77066
<b>Attorney of Record</b>	Leslie Wm. Adams
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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**Word Mark** BEVERLY HILLS POLO CLUB

**Goods and Services** IC 003. US 001 004 006 050 051,052. G & S: perfume [, cologne, toilet water, soap, skin moisturizer and creams] ,shower gel, [ shaving cream, shaving lotion, shaving gel, shampoo, baby powder, body powder, face powder, talcum powder, nail polish, nail polish remover, cosmetic pencils, bath and body oil, make-up, lipstick, lip gloss, skin lotions, facial lotions, body lotions, hand cream, ] deodorants and anti-perspirants and and after shave lotions. FIRST USE: 19961000. FIRST USE IN COMMERCE: 19961000

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 02.09.17 - Humans, including men, women and children, depicted riding horses and other animals; Riding animals, humans  
21.03.04 - Croquet mallets; Lacrosse sticks; Mallets (sports); Mallets, croquet; Mallets, polo; Polo mallets

**Serial Number** 74715704

**Filing Date** August 15, 1995

**Current Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** August 27, 1996

**Registration Number** 2091892

**Registration Date** August 26, 1997

**Owner** (REGISTRANT) BHPC Marketing, Inc. CORPORATION CALIFORNIA 27129 Calle Arroyo Suite 1821 San Juan Capistrano CALIFORNIA 92675

(LAST LISTED OWNER) BHPC ASSOCIATES LLC LIMITED LIABILITY CORPORATION DELAWARE 1370 BROADWAY NEW YORK NEW YORK 10018

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** Mark J. Seelig

**Prior Registrations** 1429311;1687874;1751058;1947244;AND OTHERS

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BEVERLY HILLS" APART FROM THE MARK AS SHOWN

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20070720.

**Renewal** 1ST RENEWAL 20070720

**Live/Dead Indicator** LIVE

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# Typed Drawing

<b>Word Mark</b>	BEVERLY HILLS POLO CLUB
<b>Goods and Services</b>	IC 025. US 022 039. G & S: ties; intimate apparel, namely bras, bustiers, camisoles, lingerie, panties, and loungewear; sleepwear; bodywear, namely bathing suits, body shapers, and body suits; and footwear, namely shoes, boots, slippers, athletic shoes, and golf shoes. FIRST USE: 19820000. FIRST USE IN COMMERCE: 19860000
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	74430340
<b>Filing Date</b>	August 27, 1993
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	December 6, 1994
<b>Registration Number</b>	<b>1947244</b>
<b>Registration Date</b>	January 9, 1996
<b>Owner</b>	(REGISTRANT) BHPC Marketing, Inc. CORPORATION CALIFORNIA 27129 Calle Arroyo , Suite 1821 San Juan Capistrano CALIFORNIA 92675  (LAST LISTED OWNER) BHPC ASSOCIATES LLC LIMITED LIABILITY COMPANY DELAWARE 1370 BROADWAY NEW YORK NEW YORK 10018
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Mark J. Seelig
<b>Prior</b>	

**Registrations** 1429311;1687874  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BEVERLY HILLS" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20160123.  
**Renewal** 2ND RENEWAL 20160123  
**Live/Dead Indicator** LIVE

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# JON POLO

**Word Mark** JON POLO

**Goods and Services** IC 025. US 022 039. G & S: clothing for wear in equestrian activities, namely, pants, shorts, shirts, underwear, socks, belts, suspenders, gloves, hats, and caps; and clothing for wear in sports activities, namely, pants, shorts, shirts, underwear, socks, belts, suspenders, gloves, hats and caps. FIRST USE: 20050300. FIRST USE IN COMMERCE: 20050300

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 76657898

**Filing Date** April 5, 2006

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** May 29, 2007

**Registration Number** 3292597

**Registration Date** September 18, 2007

**Owner** (REGISTRANT) IDLEWILD STABLES, INC. CORPORATION FLORIDA 13501 Southshore Blvd.

Suite 102 Wellington FLORIDA 33414

**Attorney of Record** A. Yates Dowell, III

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POLO" APART FROM THE MARK AS SHOWN

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Affidavit Text** SECT 15. SECT 8 (6-YR).

**Other Data** The name JON POLO does not identify a living individual.

**Live/Dead Indicator** LIVE

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# BEVERLY HILLS POLO CLUB

**Word Mark** : BEVERLY HILLS POLO CLUB

**Goods and Services** IC 018. US 001 002 003 022 041. G & S: Tote bags and handbags. FIRST USE: 19850900. FIRST USE IN COMMERCE: 19850900

IC 024. US 042 050. G & S: Towels. FIRST USE: 19850900. FIRST USE IN COMMERCE: 19850900

IC 025. US 022 039. G & S: Clothing for men, women and children, namely T-shirts, sweatshirts, sweat suits, sweaters, shirts, pants, shorts, tops, underwear, caps, jackets, leotards, dresses, ponchos, neckties, bathrobes, nightgowns, pajamas and swimwear. FIRST USE: 19850920. FIRST USE IN COMMERCE: 19850920

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 76513521

**Filing Date** May 12, 2003

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** March 30, 2004

**Registration Number** 2855713

**Registration Date** June 22, 2004

**Owner** (REGISTRANT) BHPC Marketing, Inc. CORPORATION CALIFORNIA 27129 Calle Arroyo, Suite 1821 San Juan Capistrano CALIFORNIA 92675

(LAST LISTED OWNER) BHPC ASSOCIATES LLC LIMITED LIABILITY COMPANY DELAWARE 1370 BROADWAY NEW YORK NEW YORK 10018

#### Assignment

**Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Mark J. Seelig  
**Prior Registrations** 1429311;1687874;1751058;1947244;2091892;2181220;2214846;AND OTHERS  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL-2(F)-IN PART  
**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20140624.  
**Renewal** 1ST RENEWAL 20140624  
**Live/Dead Indicator** LIVE  
**Distinctiveness Limitation Statement** as to "Beverly Hills"

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**SARATOGA POLO**

<b>Word Mark</b>	SPA SARATOGA POLO
<b>Goods and Services</b>	IC 025. US 022 039. G & S: T-shirts. FIRST USE: 20040630. FIRST USE IN COMMERCE: 20040630
	IC 041. US 100 101 107. G & S: Polo club services. FIRST USE: 20040630. FIRST USE IN COMMERCE: 20040630
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	09.05.01 - Caps, including visors, military caps and baseball caps 21.03.04 - Croquet mallets; Lacrosse sticks; Mallets (sports); Mallets, croquet; Mallets, polo; Polo mallets 21.03.18 - Australian footballs; Elliptical shaped balls; Footballs; Rugby balls 26.01.17 - Circles, two concentric; Concentric circles, two; Two concentric circles 26.01.21 - Circles that are totally or partially shaded.
<b>Trademark Search Facility Classification Code</b>	ART-09.05 Headwear ART-21.03 Sporting articles; merry-go-rounds LETTER-3-OR-MORE SPA Combination of three or more letters as part of the mark SHAPES-CIRCLE Circle figures or designs including semi-circles and incomplete circles SHAPES-CROSSES Cross or cross-like designs
<b>Serial Number</b>	77173142
<b>Filing Date</b>	May 4, 2007
<b>Current Basis</b>	1A
<b>Original Filing</b>	

**Basis** 1A  
**Published for Opposition** May 13, 2008  
**Registration Number** 3474707  
**Registration Date** July 29, 2008  
**Owner** (REGISTRANT) Green Fields Development, LLC LIMITED LIABILITY COMPANY NEW YORK 511 Broadway Saratoga Springs NEW YORK 12866  
**Attorney of Record** Robert Lippman  
**Prior Registrations** 1707312  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SARATOGA POLO" APART FROM THE MARK AS SHOWN  
**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of Crossed polo mallets on a circular field with a jockey's hat above the mallets, polo balls on either side and the letters "SPA" beneath; below the circular field and other design elements appear the words "SARATOGA POLO". The stippling is for shading purposes only.  
**Type of Mark** TRADEMARK. SERVICE MARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR).  
**Live/Dead Indicator** LIVE

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**Word Mark** SANTA MARÍA POLO

**Translations** The English translation of "SANTA MARIA" is SAINT MARY.

**Goods and Services**

IC 003. US 001 004 006 050 051 052. G & S: Perfumery products, namely, perfume, cologne, and toilet water

IC 014. US 002 027 028 050. G & S: Watches and cufflinks

IC 018. US 001 002 003 022 041. G & S: Wallets and travel bags

IC 025. US 022 039. G & S: Clothing, namely, shirts, pants, jeans, trousers, skirts, shorts, T-shirts, sweaters, pullovers, sweat-shirts, vests, cardigans, blazers, blouses, dresses, suits, tuxedos, jackets, sport jackets, over coats, rain coats, fur coats, waistcoats, tracksuits, sweatpants, sport shirts, polo shirts, scarves, ties, gloves, shawls, belts, pajamas, underwear, bras, undershirts, underpants, briefs, hosiery, corsets, girdles, panties, bodysuits, leotards, stockings, tights, socks, swimwear, bathing suits, bathing trunks, bathing caps, beach robe, bath robes; and headgear, namely, hats, caps, bonnets, berets, ear muffs, bandanas, and visors

IC 041. US 100 101 107. G & S: Organizing sporting events in the nature of polo competitions and exhibitions

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 21.03.04 - Croquet mallets; Lacrosse sticks; Mallets (sports); Mallets, croquet; Mallets, polo; Polo mallets

**Trademark Search Facility Classification Code** ART-21.03 Sporting articles; merry-go-rounds  
 NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks

**Serial Number** 77178905

**Filing Date** May 11, 2007

**Current Basis** 44E

**Original Filing Basis** 1B;44D

**Published for Opposition** March 3, 2009

**Registration Number** 3665467

**Registration Date** August 11, 2009

**Owner** (REGISTRANT) Poloten Textil, S.L. Sociedad Limitada SPAIN Jose Abascal, 44 Madrid SPAIN 28003

**Attorney of Record** Kevin S. Costanza

**Priority Date** May 4, 2007

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POLO" WITH REGARD TO CLASSES 25 AND 41 ONLY APART FROM THE MARK AS SHOWN

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of the terms "Santa Maria" and "Polo" positioned in the proximity of a curved polo mallet.

**Type of Mark** TRADEMARK. SERVICE MARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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## U.S. OPEN POLO CHAMPIONSHIP

**Word Mark** U.S. OPEN POLO CHAMPIONSHIP  
**Goods and Services** IC 025. US 022 039. G & S: Shirts. FIRST USE: 20041231. FIRST USE IN COMMERCE: 20041231  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 77700241  
**Filing Date** March 26, 2009  
**Current Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** January 18, 2011  
**Registration Number** 3939462  
**Registration Date** April 5, 2011  
**Owner** (REGISTRANT) United States Polo Association CORPORATION ILLINOIS 1400 Centrepark Blvd., Suite 200 West Palm Beach FLORIDA 33401  
**Attorney of Record** Steven R. Gursky, Mary L. Grieco, Safia A. Anand  
**Prior Registrations** 1801139;3358528;AND OTHERS  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL-2(F)  
**Live/Dead Indicator** LIVE

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**Word Mark** U.S.POLO  
**Goods and Services** IC 025. US 022 039. G & S: Clothing, namely shirts [ , shoes, pants, shorts, socks, jackets, sweaters, coats, ties, belts, headwear, footwear, swimwear and underwear ]. FIRST USE: 20020312. FIRST USE IN COMMERCE: 20020312  
**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS  
**Design Search Code** 03.05.01 - Horses  
 03.05.16 - Heads of horses, donkeys, zebras  
 03.05.24 - Stylized horses, donkeys, zebras  
 09.05.25 - Batting helmets; Caps, nurses; Caps, swimming; Dunce caps; Football helmets; Helmets, athletic; Helmets, construction; Helmets, military; Helmets, protective; Safety helmets  
 21.03.25 - Archery arm guards; Athletic supporters; Badminton shuttlecocks (birdies); Bags, punching; Balance beams (gymnastic); Basketball backboards; Basketball hoops; Batons, twirling; Billiard cue sticks; Boxing bags; Catcher's mask; Cues, billiard; Decoys, hunting; Diving boards; Face masks (sports); Face Masks, catcher's; Fins, swim; Goal posts, football; Gym bars (jungle gyms, monkey bars); Gymnastic apparatus; Handgrips, exercise; Hockey pucks; Horse apparatus (gymnastic); Masks, athletic; Masks, catcher's; Masks, fencing; Masks, scuba; Pads, protection (athletic); Parallel bars; Playground equipment; Pool cues; Pucks; Scuba fins or flippers; Scuba masks; Scuba snorkels; Shuttlecocks, badminton birdies; Supporters, athletic; Swim fins; Swim masks; Tees, kicking; Tennis ball throwers (mechanical device); Tetherball game; Trampolines; Twirling batons; Vaulting horses, gymnastic  
 26.03.08 - Letters, numerals or punctuation forming the perimeter of an oval or bordering the perimeter of an oval; Ovals having letters or numerals as a border; Ovals having punctuation as a

border

**Serial Number** 78063141

**Filing Date** May 11, 2001

**Current Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** November 6, 2001

**Registration Number** 2629444

**Registration Date** October 1, 2002

**Owner** (REGISTRANT) United States Polo Association CORPORATION ILLINOIS 1400 Centrepark Blvd., Suite 200 West Palm Beach FLORIDA 33401

**Attorney of Record** Steven R. Gursky, Mary L. Grieco, Safia A. Anand

**Prior Registrations** 1181651;1304236;1506038;1782369;1804895;1808138;2147956;2160727;2188594;2270317;2273469;2310882;AND OTHERS

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20121016.

**Renewal** 1ST RENEWAL 20121016

**Live/Dead Indicator** LIVE

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# Typed Drawing

**Word Mark** U.S. POLO ASSN.

**Goods and Services** IC 025. US 022 039. G & S: Clothing, namely, t-shirts, polo shirts, sport shirts, knit shirts, sweat shirts, jeans, pants, sport coats, jackets, socks, headwear, belts, ties, footwear, suits, shorts, sweaters, and swimwear. FIRST USE: 20020201. FIRST USE IN COMMERCE: 20020201

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 78265305

**Filing Date** June 20, 2003

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** September 14, 2004

**Registration Number** 2908391

**International Registration Number** 0863539; 0881158

**Registration Date** December 7, 2004

**Owner** (REGISTRANT) United States Polo Association CORPORATION ILLINOIS 1400 Centrepark Blvd., Suite 200 West Palm Beach FLORIDA 33401

**Attorney of Record** Steven R. Gursky, Mary L. Grieco, Safia A. Anand

**Prior Registrations** 1181651;1506038;1782639;1785546;1804895;1808138;2147956;2160727

**Type of Mark Register** TRADEMARK  
PRINCIPAL-2(F)

**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20141201.  
**Renewal** 1ST RENEWAL 20141201  
**Live/Dead Indicator** LIVE

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# HV POLO

**Word Mark** HV POLO  
**Goods and Services** IC 018. US 001 002 003 022 041. G & S: Whips and saddlery; saddles for the equestrian sports; harness; the aforementioned products for use in equestrian, polo, horse riding and horse racing sports

IC 025. US 022 039. G & S: Clothing for the equestrian, polo and horse riding sport, namely, coats, trousers, sweaters, pants, shirts, shorts, polo shorts, socks, jackets, scarves, shawls, skirts; footwear for the equestrian, polo and horse riding sports; headgear for the equestrian, polo and horse riding sports, namely, caps and hats

IC 028. US 022 023 038 050. G & S: Articles for the equestrian, horse riding and horse racing sports, namely, horseshoes, chest protectors, polo balls, kidney belts, polo mallets

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 03.05.01 - Horses  
21.03.04 - Croquet mallets; Lacrosse sticks; Mallets (sports); Mallets, croquet; Mallets, polo; Polo mallets

**Serial Number** 79139879

**Filing Date** October 4, 2013

**Current Basis** 66A

**Original Filing Basis** 66A

**Published for Opposition** April 8, 2014  
**Registration Number** 4554004  
**International Registration Number** 1119677  
**Registration Date** June 24, 2014  
**Owner** (REGISTRANT) Steef Duijndam Beheer B.V. LIMITED LIABILITY COMPANY NETHERLANDS  
 Gouderakstraat 63 NL-3079 DB ROTTERDAM NETHERLANDS  
 (LAST LISTED OWNER) Horse Center Holland B.V. UNKNOWN Rijn 12 NL-2491 BG 'S-  
 GRAVENHAGE NETHERLANDS  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POLO" APART FROM THE MARK  
 AS SHOWN  
**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of the stylized wording "HV  
 POLO" with two mallets displayed between two horses.  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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<b>Word Mark</b>	POLO NATION
<b>Goods and Services</b>	IC 025. US 022 039. G & S: Clothing, namely, polo shirts, t-shirt, jerseys, sweat shirt, sweaters, tops, jackets, coat, pants, trousers; footwear; headgear, namely, hats and caps
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	02.01.02 - Men depicted as shadows or silhouettes of men; Silhouettes of men 16.03.05 - Binoculars; Glasses, field; Microscopes; Opera glasses; Telescopes 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters
<b>Trademark Search Facility Classification Code</b>	ART-09.03 Clothing ART-09.07 Footwear ART-16.03 Photography; cinematography; optics HUM Accurate representation of a human form, or any portion of a human form SHAPES-BAR-BANDS Designs with bar, bands or lines SHAPES-MISC Miscellaneous shaped designs
<b>Serial Number</b>	79081369
<b>Filing Date</b>	March 22, 2010
<b>Current Basis</b>	66A
<b>Original Filing Basis</b>	66A
<b>Published for Opposition</b>	September 21, 2010

**Registration Number** 3885688  
**International Registration Number** 1035480  
**Registration Date** December 7, 2010  
**Owner** (REGISTRANT) POLO NATION SARL LIMITED LIABILITY COMPANY FRANCE 18 rue Rolland F-33000 Bordeaux FRANCE  
**Priority Date** September 22, 2009  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POLO" APART FROM THE MARK AS SHOWN  
**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of the design of the silhouette of a man looking through a telescope and separating the underlined words "POLO NATION".  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECTION 71  
**Live/Dead Indicator** LIVE

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## INTERNATIONAL POLO CLUB PALM BEACH

**Word Mark** INTERNATIONAL POLO CLUB PALM BEACH

**Goods and Services**

IC 009. US 021 023 026 036 038. G & S: Binoculars, blank USB flash drives. FIRST USE: 20100000. FIRST USE IN COMMERCE: 20100000

IC 012. US 019 021 023 031 035 044. G & S: License plates. FIRST USE: 20060000. FIRST USE IN COMMERCE: 20060000

IC 016. US 002 005 022 023 029 037 038 050. G & S: Printed magazines in the field of polo; stationery; notebooks; pens; paper shopping bags; printed polo program guides. FIRST USE: 20060000. FIRST USE IN COMMERCE: 20060000

IC 021. US 002 013 023 029 030 033 040 050. G & S: Beverageware; insulated coffee cups with lids; champagne and wine glasses. FIRST USE: 20060000. FIRST USE IN COMMERCE: 20060000

IC 025. US 022 039. G & S: Clothing, namely, t-shirts, sweatshirts, fleece pullovers, shirts, jackets, belts; polo shirts; caps; headwear; ties. FIRST USE: 20060000. FIRST USE IN COMMERCE: 20060000

IC 026. US 037 039 040 042 050. G & S: Cloth patches for clothing. FIRST USE: 20100000. FIRST USE IN COMMERCE: 20100000

IC 028. US 022 023 038 050. G & S: Polo balls; polo mallets. FIRST USE: 20060000. FIRST USE IN COMMERCE: 20060000

IC 035. US 100 101 102. G & S: Online retail store services featuring clothing, beverage ware, pens, stationery, jewelry, license plates and frames, binoculars and blank USB flash drives; promotional sponsorship of sports and charitable events; promoting the goods and services of others by arranging for businesses to affiliate their goods and services with the goods and services of third parties by means of sponsorship relationships. FIRST USE: 20050100. FIRST USE IN COMMERCE: 20050100

IC 041. US 100 101 107. G & S: Hosting polo events and tournaments; providing facilities for sports events; polo club services; providing fitness and exercise facilities; hosting social entertainment events, namely, parties for others, the proceeds of which benefit charitable causes; sports lessons, namely, sports instruction services; library services; providing a website containing information and news about the sport of polo; entertainment services, namely, live music concerts, fashion shows; arranging and conducting social receptions and parties; educational services, namely, conducting lectures in the field of polo, in the nature of a library lecture series; providing on-line non-downloadable magazine in the field of polo. FIRST USE: 20040104. FIRST USE IN COMMERCE: 20040104

IC 043. US 100 101. G & S: Restaurant and bar services; catering services. FIRST USE: 20050100. FIRST USE IN COMMERCE: 20050100

IC 044. US 100 101. G & S: Health and beauty spa services, namely, cosmetic body care services; health spa services for health and wellness of the body. FIRST USE: 20040104. FIRST USE IN COMMERCE: 20040104

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 85938413

**Filing Date** May 21, 2013

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** July 15, 2014

**Registration Number** 4612149

**Registration Date** September 30, 2014

**Owner** (REGISTRANT) Palm Beach International Polo Club, LLC LIMITED LIABILITY COMPANY FLORIDA 3667 120th Avenue South Wellington FLORIDA 33414

**Attorney of Record** Susan Neuberger Weller

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POLO CLUB" APART FROM THE MARK AS SHOWN

**Type of Mark** TRADEMARK. SERVICE MARK

**Register** PRINCIPAL-2(F)

**Live/Dead Indicator** LIVE

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<b>Word Mark</b>	POLO ARGENTINO
<b>Translations</b>	The English translation of "ARGENTINO" in the mark is "ARGENTINE".
<b>Goods and Services</b>	IC 025. US 022 039. G & S: Boots; Caps; Dresses; Hats; Jackets; Jeans; Neckerchiefs; Pants; Polo shirts; Raincoats; Scarfs; Shawls; Shirts; Shoes; Skirts; Sneakers; Socks; Sweaters; Swimsuits; T-shirts; Ties; Turtle neck shirts; Underwear
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	03.05.01 - Horses 03.05.16 - Heads of horses, donkeys, zebras 03.05.24 - Stylized horses, donkeys, zebras
<b>Serial Number</b>	85143872
<b>Filing Date</b>	October 3, 2010
<b>Current Basis</b>	44E
<b>Original Filing Basis</b>	44E
<b>Published for Opposition</b>	September 20, 2011
<b>Change In Registration</b>	CHANGE IN REGISTRATION HAS OCCURRED
<b>Registration Number</b>	4110909
<b>Registration</b>	

**Date** March 13, 2012  
**Owner** (REGISTRANT) ASOCIACION ARGENTINA DE CRIADORES DE CABALLOS DE POLO CORPORATION ARGENTINA Florida 460, 4to Floor C1005AAJ-Buenos Aires ARGENTINA  
**Attorney of Record** Arturo Pérez-Guerrero  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POLO ARGENTINO" APART FROM THE MARK AS SHOWN  
**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of the words "POLO ARGENTINO" in stylized letters below the head of a horse.  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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**CNK BIKE POLO**

**Word Mark** CNK BIKE POLO

**Goods and Services** IC 025. US 022 039. G & S: Ankle socks; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic pants; Athletic shirts; Athletic tops and bottoms for Bike Polo; Baseball caps and hats; Belts; Body shirts; Bottoms; Clothing for athletic use, namely, padded elbow compression sleeves being part of an athletic garment; Clothing for athletic use, namely, padded pants; Clothing for athletic use, namely, padded shirts; Clothing for athletic use, namely, padded shorts; Clothing, namely, arm warmers; Clothing, namely, athletic sleeves; Clothing, namely, base layers; Collared shirts; Denims; Dress shirts; Footwear; Gloves as clothing; Golf pants, shirts and skirts; Hats; Headbands for clothing; Headgear, namely, Hats, Caps; Hooded sweat shirts; Horse-riding pants; Jackets; Jerseys; Jogging pants; Pants; Polo shirts; Rugby shirts; Shirts; Shirts and short-sleeved shirts; Short sets; Shorts; Socks; Socks and stockings; Sports caps and hats; Sports pants; Sports shirts; Sweat shirts; T-shirts; Tops; Trousers. FIRST USE: 20091110. FIRST USE IN COMMERCE: 20091201

IC 028. US 022 023 038 050. G & S: Bags specially adapted for sports equipment; Balls for sports; Cases specially adapted for sports equipment. FIRST USE: 20091110. FIRST USE IN COMMERCE: 20091201

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 02.01.02 - Men depicted as shadows or silhouettes of men; Silhouettes of men  
 02.01.19 - Athletes (men); Golfer; Men, athletes, strongmen; Strongmen  
 18.03.01 - Bicycles; Tricycles; Unicycles

21.03.01 - Balls including playground balls, beach balls, billiard balls, tennis balls, bingo balls and lottery balls; Beach balls; Billiard balls; Bingo balls; Lottery balls; Paddle balls; Playground balls;

Table tennis balls; Tennis balls  
21.03.04 - Croquet mallets; Lacrosse sticks; Mallets (sports); Mallets, croquet; Mallets, polo; Polo mallets

**Serial Number** 86144756

**Filing Date** December 16, 2013

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** December 23, 2014

**Registration Number** 4698184

**Registration Date** March 10, 2015

**Owner** (REGISTRANT) FreshSide Ltd AKA CHUNK; CHUNK CLOTHING CO; CNK LIMITED LIABILITY COMPANY UNITED KINGDOM Trevor Callaghan/Legal 1-3 North Rd, #1, Hanover Trading Est. London UNITED KINGDOM N79HD

**Prior Registrations** 4474964

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BIKE POLO" APART FROM THE MARK AS SHOWN

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a design element consisting of a stylized human on a bicycle playing bike-polo with a polo mallet and a ball with the stylized wording "CNK BIKE POLO" below.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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# Perfect Polo

<b>Word Mark</b>	PERFECT POLO
<b>Goods and Services</b>	IC 025. US 022 039. G & S: Polo shirts. FIRST USE: 20140613. FIRST USE IN COMMERCE: 20140613
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	86386335
<b>Filing Date</b>	September 5, 2014
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Date Amended to Current Register</b>	January 21, 2015
<b>Registration Number</b>	4705580
<b>Registration Date</b>	March 17, 2015
<b>Owner</b>	(REGISTRANT) Vantage Custom Classics, Inc. CORPORATION NEW JERSEY 100 Vantage Drive Avenel NEW JERSEY 07001
<b>Attorney of Record</b>	Randy T. Pearce
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POLO" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	SUPPLEMENTAL

Live/Dead Indicator      LIVE

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# MONSTERPOLO

**Word Mark** MONSTERPOLO  
**Goods and Services** IC 025. US 022 039. G & S: Bathing caps; Caps; Hats; Headgear, namely, water polo caps; Headwear; Hooded sweatshirts; Parkas; Skull caps; Sweat shirts; Sweatshirts; Swim caps; Swim suits; Swim trunks; Swim wear; Swim wear for gentlemen and ladies; Swimming caps; Swimming costumes; Swimming trunks; Swimsuits; Swimwear; T-shirts. FIRST USE: 20051201. FIRST USE IN COMMERCE: 20051201

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 86416275

**Filing Date** October 6, 2014

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** March 10, 2015

**Registration Number** 4743327

**Registration Date** May 26, 2015

**Owner** (REGISTRANT) Monsterpolo, Inc. CORPORATION CALIFORNIA P.O. Box 1515 Summerland CALIFORNIA 93067

**Attorney of Record** Andrew J. Cavanaugh

**Prior Registrations** 3685507

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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# TEXAS POLO

**Word Mark** TEXAS POLO

**Goods and Services** IC 018. US 001 002 003 022 041. G & S: Briefcases and Wallets. FIRST USE: 19800303. FIRST USE IN COMMERCE: 19800303

IC 025. US 022 039. G & S: Clothing, Namely, Shirts, Pants, and Shoes. FIRST USE: 19800303. FIRST USE IN COMMERCE: 19800303

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 86148172

**Filing Date** December 19, 2013

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** June 10, 2014

**Registration Number** 4746038

**Registration Date** June 2, 2015

**Owner** (REGISTRANT) Texas Polo, Inc. CORPORATION TEXAS 703 McKinney Ave., Suite 100 Dallas TEXAS 75202

**Attorney of Record** Richard W. Hanes

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TEXAS" APART FROM THE

**Type of Mark** MARK AS SHOWN  
**Register** TRADEMARK  
**Live/Dead Indicator** PRINCIPAL  
LIVE

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**Word Mark** SPA ESTABLISHED 1898 SPA SARATOGA POLO ASSOCIATION

**Goods and Services** IC 025. US 022 039. G & S: Baseball caps; Collared shirts; Golf caps; T-shirts. FIRST USE: 20120504. USED IN ANOTHER FORM The mark was first used anywhere in a different form other than that sought to be registered at least as early as 08/31/1979. FIRST USE IN COMMERCE: 20120505

IC 041. US 100 101 107. G & S: Polo club services. FIRST USE: 20120504. USED IN ANOTHER FORM The mark was first used anywhere in a different form other than that sought to be registered at least as early as 08/31/1979. FIRST USE IN COMMERCE: 20120505

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 09.05.01 - Caps, including visors, military caps and baseball caps  
 21.03.01 - Balls including playground balls, beach balls, billiard balls, tennis balls, bingo balls and lottery balls; Beach balls; Billiard balls; Bingo balls; Lottery balls; Paddle balls; Playground balls; Table tennis balls; Tennis balls  
 21.03.04 - Croquet mallets; Lacrosse sticks; Mallets (sports); Mallets, croquet; Mallets, polo; Polo mallets  
 26.01.17 - Circles, two concentric; Concentric circles, two; Two concentric circles  
 26.01.21 - Circles that are totally or partially shaded.

**Serial Number** 86426980

**Filing Date** October 17, 2014

**Current Basis** 1A

**Original Filing**

**Basis** 1A  
**Published for Opposition** May 5, 2015  
**Registration Number** 4775891  
**Registration Date** July 21, 2015  
**Owner** (REGISTRANT) GREEN FIELDS DEVELOPMENT, LLC LIMITED LIABILITY COMPANY NEW YORK 511 BROADWAY SARATOGA SPRINGS NEW YORK 12866  
**Attorney of Record** Claire Murphy  
**Prior Registrations** 1707312;3474707  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ESTABLISHED 1898" OR "ASSOCIATION" APART FROM THE MARK AS SHOWN  
**Description of Mark** The color(s) RED, WHITE AND BLUE is/are claimed as a feature of the mark. The mark consists of a red ring outlined in blue with the words "ESTABLISHED 1898" in the color white appearing on the top half of the ring and the words "SARATOGA POLO ASSOCIATION" in the color white appearing in the bottom half of the ring, a white ring bordering the inside the aforesaid red ring, and within the white ring, a blue disk featuring a stylized logo, in the color white, consisting of crossed polo mallets, a polo helmet above the mallets, polo balls on either side of the mallets and the letters "SPA" below mallets.  
**Type of Mark** TRADEMARK. SERVICE MARK  
**Register** PRINCIPAL-2(F)-IN PART  
**Live/Dead Indicator** LIVE  
**Distinctiveness Limitation Statement** as to "SARATOGA POLO ASSOCIATION"

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# POLOSTAR

**Word Mark** POLOSTAR

**Goods and Services** IC 025. US 022 039. G & S: Clothing, namely, shirts, tops, bottoms, sweaters, dresses, jackets, coats, jerseys, hooded sweatshirts, hats, caps, scarves, pants, shorts, socks and shoes all related to the sport of polo. FIRST USE: 20140801. FIRST USE IN COMMERCE: 20140801

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 86003740

**Filing Date** July 8, 2013

**Current Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** December 31, 2013

**Registration Number** 4638035

**Registration Date** November 11, 2014

**Owner**  
(REGISTRANT) Schwetz, Dale INDIVIDUAL UNITED STATES P O Box 446 Loxahatchee FLORIDA 334700446

(LAST LISTED OWNER) POLO STAR, LLC LIMITED LIABILITY COMPANY FLORIDA PO BOX  
446 LOXAHATCHEE FLORIDA 334700446

**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Ross A. Epstein  
**Prior Registrations** 4370029  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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# HAWAII POLO CLUB

**Word Mark** HAWAII POLO CLUB  
**Goods and Services** IC 025. US 022 039. G & S: Hats; Hooded sweatshirts; Jackets; Polo shirts; Shirts; Shorts; Sweat shirts; T-shirts; Tank-tops; Tops. FIRST USE: 19630701. FIRST USE IN COMMERCE: 19630701

IC 041. US 100 101 107. G & S: Polo club services. FIRST USE: 19630701. FIRST USE IN COMMERCE: 19630701

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 86543398

**Filing Date** February 23, 2015

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** July 21, 2015

**Registration Number** 4884411

**Registration Date** January 12, 2016

**Owner** (REGISTRANT) Mokuleia Polo Farm, LLC LIMITED LIABILITY COMPANY HAWAII 68-411 Farrington Hwy Waiialua HAWAII 96791

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POLO CLUB" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK, SERVICE MARK  
**Register** PRINCIPAL-2(F)  
**Live/Dead Indicator** LIVE

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TO  
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STORE LOCATOR



## THE BRAND

Along the polo field is where it all began. Polo and its horses are the roots of HV POLO. This sport has worked its magical attraction for everyone who wants to enjoy the good life to its fullest. HV POLO is a fashionable lifestyle brand with a rich equestrian history in clothing, accessories and horseriding equipment.

At HV POLO we approach our business the same way a polo player approaches the challenge of playing polo: with passion, commitment, creativity and courage! Our life style collection has a long list of new & fresh objectives from colour, silhouettes, fabrics, yarns, artwork & updates on seasonal classic for men, women, kids and horses.

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***HV POLO: where sport meets fashion!***

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In 1980, it all started with opening one shop in horseriding gear in Holland. The company did grow enormously during the years, also profitable wholesale activities were added. This passion for horses gave a drive for competition and teamspirit. In 2004 HV POLO was born, now successfully distributed in more than 15 countries.

The polo field and horses. That is an experience we are always more than happy to share.

So, welcome to our GAME!





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EXHIBIT C  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Law Office: 107  
Serial No.: 86/519,959  
Mark: POLOGEAR & design

In re Trademark Application of

POLO GEAR LLC

Atty. Ref.: SLD-6429-5

Filed: January 30, 2015

Attorney: Michelle E. Dubois

\* \* \* \* \*

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

I Gary Fellers, hereby declare and state as follows:

1. I am the founder of Polo Gear LLC and am presently employed as President and CEO of Polo Gear LLC. I am submitting this declaration in support of Polo Gear LLC's Application Serial No. 86/519,959 for the mark POLOGEAR & Design.
2. In 1993 PoloGear, Inc. was formed and officially incorporated in Florida. (EXHIBIT 1-First PoloGear Store 1993). Polo Gear, Inc. later became Polo Gear LLC.
3. I started Polo Gear in 1993 after twenty years of polo equipment and apparel background, which afforded me familiarity and experience with such equipment and apparel as well as trademarks and in particular equestrian trademarks. From the inception the company pledged to make PoloGear clearly different from all other polo brands by establishing PoloGear as the real working polo brand that was unique and separate from any other. The company pledged to respect all other intellectual property and strove to differentiate ourselves by our direct and personal daily

involvement on the polo field and our carefully designed logos as a clear strategy of distinction. We would make our brand unique and desirable as the real, authentic, genuine polo brand which would be and is currently our calling card and business model. Throughout we focused on real polo products and real clothing the players wear on the field and in their lives. For 22 years our consistent, clear, precise message, strategy and positioning regarding our brand has been that PoloGear is authentic, genuine, real polo. We even created bumper stickers and artwork to brand our ads, hang tags, and brochures proudly disclaiming us as the real brand. (EXHIBIT 2-Real Polo). Since 1993, POLOGEAR technical and apparel products have been derived from and designed from the real polo experience of the Sport of Polo as the principal of POLOGEAR has experienced. POLOGEAR products have been sold in all 50 States and more than 40 countries.

4. As President of Polo Gear, I have performed marketing and sales functions for our products under the mark POLOGEAR & Design in the U.S. since at least as early as Dec. 31, 1993 with respect to clothing and equestrian equipment and bags; and since at least as early as December 31, 1997 with respect to jewelry, cufflinks and watches.
5. I have firsthand knowledge of the products being produced and sold by PoloGear using the mark POLOGEAR & Design covered by Application Serial No. 86/519,959.
6. The first PoloGear store that opened 22 years ago featured a diverse product offering that included a strong emphasis on clothing and accessories as well as technical products for polo. The business plan always envisioned a 50/50 mix of apparel/accessories and technical products for polo. The attached photographic

- exhibits show the large variety of clothing, leather goods and non-technical products we offered in our first store in 1994. (EXHIBIT 3-Original PoloGear store construction 1993). PoloGear continued with this broad variety of apparel and technical products in our second location. (EXHIBIT 4-Pictures second store).
7. When PoloGear started in 1993 the word “gear” was not used to describe polo equipment. PoloGear’s mark added “gear” to the polo vocabulary 22 years ago and it has been used in global polo advertising and marketing for our goods ever since. In the polo world, PoloGear has notoriety only in reference to our own polo equipment and goods.
  8. The Company first created the Polo Gear trademark as two words. As newer marks evolved we combined the words PoloGear together without the space in between. In either instance Polo Gear™ or PoloGear™ have served as our distinctive calling card establishing and announcing our trademark and brand.
  9. Since 1994 PoloGear has sold more than 20 million dollars’ worth of PoloGear branded product in all 50 states and in more than 40 countries around the globe. (EXHIBIT 5-Sales of branded product). During that 22 years we have not had one instance of trademark confusion with Ralph Lauren or any other polo brand.<sup>1</sup>
  10. PoloGear logos are original. (EXHIBIT 6-PoloGear marks). PoloGear is a term I created. It did not exist prior to our use. The main PoloGear logo originates from an

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<sup>1</sup> As noted in Paragraph 19, in 2002 and in 2007, two different Polo Ralph Lauren law firms made separate independent legal inquiries of POLOGEAR and initially demanded that POLOGEAR cease and desist in the use of POLOGEAR marks. Both firms concluded their investigatory legal – fact review with an abandonment of their infringement and dilution claims against POLOGEAR. Since 2007, no Polo Ralph Lauren law firm has challenged our use of POLOGEAR. Accordingly, Polo Ralph Lauren obviously concluded that no legal issue existed and abandoned pursuit of legal claims against POLOGEAR. It is my clear belief that had either or both of these Polo Ralph Lauren law firms believed there was a credible claim against POLOGEAR, each of the law firms would have continued to assert such claims. Instead, each law firm abandoned pursuit of such claims.

actual photo of me playing polo on one of my favorite horses. (EXHIBIT 7-Photo mark derived from). This personal story has been shared with the world on our website since 1997. (EXHIBIT 8-The story of the PoloGear trademark). Our other logos were originally created by us with no reference or similarity to any other marks. These marks are different colors, designs and conformity from any other brands with no attempt to copy or confuse. PoloGear marks are infused with genuine, real, authentic inspiration derived from the ancient and noble sport of polo. Each of these marks were derived from my personal involvement in or derived from participation in the sport of polo.

11. PoloGear sales during the past 22 years have averaged approximately 50% apparel/accessories/non equipment and approximately 50% technical equipment. (EXHIBIT 9-Branded Sales). During this time, PoloGear always kept an inventory of apparel and related accessory items and sales of apparel and accessories were continuous in a broad range of apparel classifications. (EXHIBIT 10-(A-C) Advertising examples). PoloGear catalogs emphasize apparel products. (EXHIBIT 11-(A-B) Examples of catalogs). We created the PoloGear Teamshop in 1994 to make team clothing for actual polo players and teams as well as clothing accessories for horses and custom apparel products for the “polo way of life.” In the PoloGear Teamshop we make the jerseys the players wear on the field as well as the shirts and clothes the grooms and staff wear. Our clothing line also extends to the families of the patrons, team members and ancillary staff. Those clothing articles typically come from the PoloGear team shop with the names and logos of the teams proudly embellished on them. All products also carry the distinct PoloGear tags, labels and

logos. The PoloGear Teamshop features a complete graphics and design department, a cut and sew facility, as well as embroidery, screen printing, heat transfer and sublimation capabilities. PoloGear TeamShop has operated continuously since 1994. (EXHIBIT 12-TeamShop Brochure).

12. PoloGear marks have been broadly used for over 22 years. We have sold millions of dollars of product and have purchased over a million dollars of advertising promoting our brand. (See EXHIBIT 13A-C-PG advertising). We have also received favorable press from prestigious publications around the globe creating millions of impressions. (EXHIBIT 14[A-D]-PG press). Our website was one of the first polo websites on the internet generating millions of impressions and hundreds of thousands of viewers. PoloGear branded products have been used by royalty, celebrities, business magnates and most top global polo players for the past three decades. (EXHIBIT 15-PG Royalty, Celebrities, Corporate VIP's). For 22 years we have had broad exposure to the general market worldwide through our prolific advertising and press coverage.
13. PoloGear has created thousands of unique copyrighted designs featuring PoloGear marks and polo themed products. PoloGear designs, authenticity and quality have created the standard on the polo field and in the general retail apparel market sold in all 50 states in the United States and over 40 countries globally - since 1994. We supply many of the polo teams and polo clubs around the world. We also supply other polo brands including the United States Polo Association, Texas Polo, Hawaiian Polo Association, PoloStar, International Polo Club, Palm Beach Polo Club, Saratoga Polo Association and many others with polo products including polo clothing and polo team jerseys. We have provided the United States Polo Association with apparel

products since the mid 2000's or earlier. All products produced for USPA carry the distinct PoloGear logos on them. (EXHIBIT 16-USPA Shirts designed and produced by PoloGear).

14. We have created and produced thousands of PoloGear designs over 23 years. The inspiration for this product comes from the designs we do for the actual polo teams and the items are worn on and off the polo field as general apparel.
15. PoloGear had one of the first commercial polo websites. We have had our URL [www.pologearusa.com](http://www.pologearusa.com) since 1997. Since 1997 we have broadcast the PoloGear products, trademarks and message of being the only authentic, genuine, real polo company to the world via the world wide web. During most of that time we dominated the polo category for all polo search engine queries. That dominance of the polo category, polo technical products and general apparel products continues today. (EXHIBIT 17-Search Engine results point to PoloGear). My perception, perspective and vision for polo is in our original message to our website customers and the world when we launched our [www.pologearusa.com](http://www.pologearusa.com) website in September of 1997. See (EXHIBIT 18-The Message From the Founders). Part 2 was added later when the [www.pologearuse.net](http://www.pologearuse.net) site was added.
16. During our 22 years PoloGear has had well over 100 wholesale accounts predominately in the United States and Canada. The vast majority of our wholesale customer accounts are non-polo customers. These accounts were typically specialty stores and specialty riding stores catering to audiences other than polo players. Our objective from the inception was to create a "polo way of life" apparel that appealed to a broad general retail audience, not just polo players, and the extension of our

business to wholesale and licensing avenues was always part of that business plan. The products sold to these accounts were mostly PoloGear apparel products. Less than 8 percent of our wholesale accounts sold any technical equipment for polo, which is representative of our wholesale business over 22 years. PoloGear also has a handful of technical wholesale polo equipment accounts in the United States, England and Argentina that sell polo equipment and apparel.

17. Since 1997 Ralph Lauren has been a customer of PoloGear. Ralph Lauren directly solicited PoloGear products from us for use in their stores and in Ralph Lauren photo shoots. Ralph Lauren has purchased directly and indirectly more than \$100,000 worth of products from PoloGear bearing the distinctive PoloGear trademarks. Attached are some of Ralph Lauren receipts from the 19 year period documenting these purchases. (EXHIBIT 19-Sales to Ralph Lauren). We estimate this the dollar figure represents only 25-35% of actual sales to Ralph Lauren because many times purchases were made by Ralph Lauren under individual store names for Ralph Lauren or under the personal names of individual Ralph Lauren store merchandisers. Between 1997 and 2002 we sold PoloGear branded products to Miller's Harness, a wholesale account, located at 117 E 24<sup>th</sup> Street, New York, New York 10010 to be sold to and used by Ralph Lauren in Ralph Lauren stores. On numerous occasions Miller's personnel called us on behalf of Ralph Lauren for specific products for Ralph Lauren. On several occasions we became directly involved with Ralph Lauren to fill those orders. PoloGear products were shipped directly to Ralph Lauren in New York City. The invoices and shipping information are attached. In December of 2001 I also

received a call from Miller's manager Terry Hubener who informed me he had a customer for a large order of PoloGear products. Because of the size of the order he worked directly with me to procure the large order for Ralph Lauren. It consisted of mallets, helmets and boots. Attached are Miller's sales, notes, invoices and shipping records from that time. (EXHIBIT 20-Sales to Miller's Harness). The PoloGear products that were shipped directly and those sold through our wholesale accounts were all used to merchandise displays at Ralph Lauren stores and windows including the Flagship Madison Avenue stores in New York City. In addition, Ralph Lauren used our products labeled with our trademarks in advertising shoots such as the order of January 27, 2015. (EXHIBIT 21-Sales to Ralph Lauren for Advertising Shoot) (EXHIBIT 22-PoloGear Products in Ralph Lauren Advertising.)

18. Some of the products sold to Ralph Lauren by PoloGear consist of technical polo equipment (mallets, boots, helmets, and kneepads). Ralph Lauren has displayed these PoloGear branded product in their stores, store windows and advertisements around the country and worldwide often next to or in close proximity with Ralph Lauren logos on Ralph Lauren apparel items including at their flagship stores in New York. EXHIBIT 23 (Products in Ralph Lauren stores); EXHIBIT 24 (Pictures showing the placement of PoloGear products and the PoloGear logos adjoined, surrounding and comingled with the Ralph Lauren logoed products.
19. We have correspondence with two different Ralph Lauren law firms concerning trademark use with each commencing their inquiry by demanding POLOGEAR cease and desist in using POLOGEAR's marks and concluding their review by abandoning

such assertions and not making any judicial claim. The first ultimately abandoned inquiry was in 2002. (EXHIBIT 25-Ralph Lauren Correspondence 2002-2004). The second ultimately abandoned inquiry was in 2007. (EXHIBIT 26-Ralph Lauren Correspondence 2006-2007). The law firms made unsupported trademark infringement accusations and provided no clarification or examples of any confusion or infringement. In both instances PoloGear denied the accusations, asserted our common law trade mark rights and called for a retraction. (EXHIBIT 27-Mr. Fellers' response letters). PoloGear also educated Ralph Lauren's attorneys about the unique on-going business relationship that existed between Ralph Lauren and PoloGear. In addition, we provided pictures of PoloGear products and marks that were currently in Ralph Lauren flagship store windows on Madison Avenue in New York during the respective times of the two separate Polo Ralph Lauren law firms abandoned legal inquiries. In both instances, Ralph Lauren backed down. Despite the continuation of our open transparent use of our marks, and Ralph Lauren's continuous use of PoloGear products in Ralph Lauren stores, and with full knowledge of two Ralph Lauren law firms and numerous Ralph Lauren top executive level business representatives who were copied on all correspondence, no other efforts were made by Ralph Lauren to interfere with the continuation of PoloGear's open and active sales and marketing activities in global commerce. After 13 years and 8 years respectively of silence, Ralph Lauren's abandonment of these legal investigations clearly illustrates that no confusion existed between our marks. If any legitimate legal concern existed, the two independent Ralph Lauren law firms would have

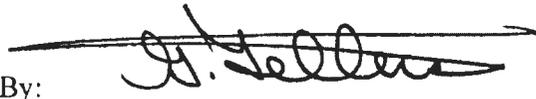
pursued legal claims against PoloGear. The two independent law firms clearly abandoned any legal claim because no fact basis exists to support such a claim.

20. For twenty years we have existed side by side with Ralph Lauren and have been doing business with Ralph Lauren for 19 years. During that time there has not been one instance of trademark confusion between the brands. (EXHIBIT 28-PG Marks).
21. PoloGear has always wholeheartedly believed and supported the sport of polo. We support young players, charities and events and we try to share our passion for the sport with those who care to listen.
22. The Sport of Real Polo provides the underpinnings for PoloGear's 23 years of success which are distinct and clearly different from that of Polo Ralph Lauren. Billions of dollars of commerce are done each year by other non Ralph Lauren entities with other polo themed marks. These examples clearly establish the legal right and viability of POLOGEAR to the registration of its marks.
23. No company has a monopoly of the Sport of Polo or a right to preclude other companies, including PoloGear who have legitimately been conducting business with names that include "polo." PoloGear has a unique niche in the world of real polo, and has always had a clear policy of respect for other intellectual property and a very unique relationship and history with the Ralph Lauren brand. PoloGear is well known not only in the affluent audience that travels worldwide in the equestrian circles, but also with customers who appreciate its designs, quality and basis in reality.
24. Our products are derived from participation in and made for the Sport of Polo but have developed a following that extends far beyond the polo fields. Our competitive

advantage is that real genuine polo uniqueness. For more than 23 years, we have worked hard to create unique completely independent logos derived from our actual polo activity to make sure there was no confusion with any brands, in particular Polo Ralph Lauren. We have conducted ourselves with integrity and transparency and in accordance with this philosophy for 23 years without variation or one instance of trademark confusion with any other brand. (EXHIBIT 29-PoloGear Founder and Mark).

25. I have reviewed the office action issued on May 8, 2015 in connection with this application and the attachments thereto. Some of the Examiner's third-party websites attached to allegedly show descriptive use of the term "POLO GEAR" to describe equipment, including clothing and bags, for use in association with playing the sport of polo are actually used by our own wholesale accounts, customers and representatives in a non-descriptive fashion. For instance, JC Western Wear was a wholesale account of ours. The web page article attached by the Examiner, was published July 11, 2012 and announces information related to an event they did with PoloGear. The Jackson Hole Horse Emporium attachment also shows a wholesale account of Applicant's. The attachment shows one of our Polo Gear branded bags. The Escue-Polo attachment shows another of our customers. PoloGear has made products for Escue-Polo for 20 years. The attachment shows use of the mark in connection with a photo of Applicant's PoloGear brand spokesman, Nic Roldan.
26. I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements and the like are made with the knowledge that willful false

statements and the like so made are punishable by fine or imprisonment, or both,  
under Section 1001 of Title 18 of the United States Code and that such willful false  
statements may jeopardize the validity of the application or document or any  
registration issuing therefrom.

By:   
Name: Gary Fellers  
Title: President

Date: February 16, 2016

EXHIBIT 1  
TO  
DECLARATION OF GARY FELLERS  
OF FEBRUARY 16, 2016



EXHIBIT 1 PG 00001



EXHIBIT



EXHIBIT 2  
TO  
DECLARATION OF GARY FELLERS  
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00002

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EXHIBIT 2 PG00003

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This is a genuine REAL POLO GEAR™ article designed and manufactured to withstand the rigors of the game of polo by Polo Gear, Inc. of Wellington, FL. Polo Gear™ manufactures, and sells products and apparel for the ancient and noble game of polo.

EXHIBIT 3  
TO  
DECLARATION OF GARY FELLERS  
OF FEBRUARY 16, 2016







EXHIBIT 3 P. 0000





EXHIBIT





EXHIBIT 3 PG 0007







EXHIBIT 4  
TO  
DECLARATION OF GARY FELLERS  
OF FEBRUARY 16, 2016



EXHIBIT 4 PG 00001



EXHIBIT 4 PG 00002



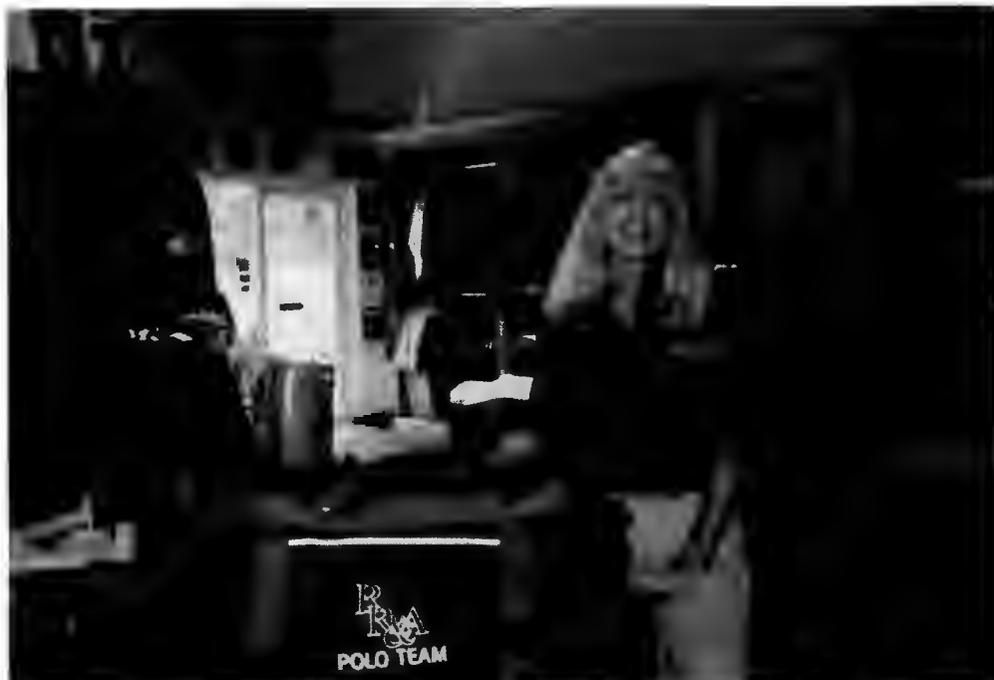










EXHIBIT 5  
TO  
DECLARATION OF GARY FELLERS  
OF FEBRUARY 16, 2016

PoloGear Sales	1994	1995	1996	1997	1998	1999	2000
Textile	\$ 56,007	\$ 78,830	\$ 143,114	\$ 117,395	\$ 194,501	\$ 326,000	\$ 88,101
Team	\$ -	\$ 75,075	\$ 137,033	\$ 131,168	\$ 84,892	\$ 174,501	\$ 509,445
Apparel and Team	\$ 56,007	\$ 153,905	\$ 280,147	\$ 248,563	\$ 279,393	\$ 500,501	\$ 597,546
Technical	\$ 188,135	\$ 181,460	\$ 158,784	\$ 153,018	\$ 279,256	\$ 572,862	\$ 680,142
Total	\$ 244,142	\$ 335,365	\$ 438,931	\$ 401,581	\$ 558,649	\$1,073,363	\$1,277,688

PoloGear Sales	2001	2002	2003	2004	2005	2006	2007
Textile	\$ 104,145	\$ 114,500	\$ 155,119	\$ 203,962	\$ 249,659	\$ 347,056	\$ 311,696
Team	\$ 254,513	\$ 197,433	\$ 421,978	\$ 603,025	\$ 578,296	\$ 384,420	\$ 400,215
Apparel and Team	\$ 358,658	\$ 311,933	\$ 577,097	\$ 806,987	\$ 827,955	\$ 731,476	\$ 711,911
Technical	\$ 784,578	\$ 906,793	\$ 626,059	\$ 617,029	\$ 533,965	\$ 473,886	\$ 459,955
Total	\$ 1,143,236	\$1,218,726	\$1,203,156	\$1,424,016	\$1,361,920	\$1,205,362	\$1,171,866

PoloGear Sales	2008	2009	2010	2011	2012	2013	2014
Textile	\$ 184,450	\$ 132,187	\$ 68,365	\$ 47,002	\$ 42,348	\$ 44,275	\$ 43,470
Team	\$ 356,123	\$ 317,426	\$ 309,693	\$ 399,316	\$ 426,822	\$ 504,583	\$ 450,520
Apparel and Team	\$ 540,573	\$ 449,613	\$ 378,058	\$ 446,318	\$ 469,170	\$ 548,858	\$ 493,990
Technical	\$ 413,606	\$ 324,960	\$ 360,057	\$ 286,821	\$ 654,660	\$ 782,437	\$1,119,486
Total	\$ 954,179	\$ 774,573	\$ 738,115	\$ 733,139	\$1,123,830	\$1,331,295	\$1,613,476

PoloGear Sales TOTAL

	% Thru 2014	% Thru 2013
Textile		
Team		
Apparel and Team	\$ 9,768,659	48%
Technical	\$ 10,557,949	52%
Total	\$ 20,326,608	

EXHIBIT 6  
TO  
DECLARATION OF GARY FELLERS  
OF FEBRUARY 16, 2016

1.



2.



3.

**PoloGear.**

4.

*PoloGear.*

5.



6.



EXHIBIT 7  
TO  
DECLARATION OF GARY FELLERS  
OF FEBRUARY 16, 2016



EXHIBIT 7

EXHIBIT 8  
TO  
DECLARATION OF GARY FELLERS  
OF FEBRUARY 16, 2016

## The Polo Gear Logo - Where Did It Come From?

Founder, Gary Fellers, played polo for almost 40 years. During that time he had owned many horses, some good, a few great, others not so good. As with any player they say you can count the great ones on one hand. He would concur that was his experience.

One on the greats for him is Texas shown in the picture below. Texas was a brown gelding from Texas. We know little else about his background. He was purchased from Vicki Armour.



### Texas, a Brown Gelding

Texas was a character. In the spring Gary nearly always got bucked off at least once, sometimes two or three times in the first week of conditioning. It was kind of a spring ritual. It was a bonding experience and was like Texas was telling Gary that this is what he could do if he wanted but he chose to do otherwise.

After this first week and from that point on, every day, every game, every minute of every chucker, Texas was perfect. If you thought he went. Never a moment's hesitation, never a question of intention. He was a great horse, a great friend and a great partner. He was an alter ego. On Texas you could all the sudden run 40 miles an hour and weighted a 1000 pounds. Communication was by telepathy. You though, he went. On Texas one was able to experience the ultimate in equestrian/human bond and communication and the ultimate experience in polo, where the horse and the rider become one.

### About the Polo Gear Logo

Back in 1993 Jeanette and Gary were discussing what the logo for Polo Gear should be and Jeanette opined that it should of course be Texas. She then produced the photo below which was taken at the 26 goal season in Saratoga. Gary was playing back and the play was heading toward the goal from the right side of the field. Instead of backing the ball into the traffic, he chose to neck it to the opposite side of the field and move to offence. This is not often the chosen move for a 3-goal player, with a 9-goaler and an 8-goaler behind you. Texas instilled this confidence. This just happened to be toward the press and celebrity tent.

As was typical of Texas he timed the shot so he had his total power in it with all four feet off the ground. The ball sailed 120 yards directly at the AP photographer who just happened to snap the shot at the exact moment Gary hit the ball. AP picked it up and the photo made the rounds in the newspapers and now makes the rounds on all Polo Gear merchandise.

### A Salute to Texas

To us at Polo Gear, the logo is a salute to Texas and all the great horses who have played the game. Texas was retired to Boone Hall plantation where he greeted guests in his gentlemanly manner with but still with a sparkle of mischief in his eye. He will remain in our hearts, and on our products forever.



EXHIBIT 9  
TO  
DECLARATION OF GARY FELLERS  
OF FEBRUARY 16, 2016

PoloGear Sales                    1994                    1995                    1996                    1997                    1998                    1999                    2000

Textile	\$ 56,007	\$ 78,830	\$ 143,114	\$ 117,395	\$ 194,501	\$ 326,000	\$ 88,101
Team	\$ -	\$ 75,075	\$ 137,033	\$ 131,168	\$ 84,892	\$ 174,501	\$ 509,445
Apparel and Team	\$ 56,007	\$ 153,905	\$ 280,147	\$ 248,563	\$ 279,393	\$ 500,501	\$ 597,546
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Total	\$ 244,142	\$ 335,365	\$ 438,931	\$ 401,581	\$ 558,649	\$1,073,363	\$1,277,688

PoloGear Sales                    2001                    2002                    2003                    2004                    2005                    2006                    2007

Textile	\$ 104,145	\$ 114,500	\$ 155,119	\$ 203,962	\$ 249,659	\$ 347,056	\$ 311,696
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Apparel and Team	\$ 540,573	\$ 449,613	\$ 378,058	\$ 446,318	\$ 469,170	\$ 548,858	\$ 493,990
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Total	\$ 954,179	\$ 774,573	\$ 738,115	\$ 733,139	\$1,123,830	\$1,331,295	\$1,613,476

PoloGear Sales    TOTAL

Textile		% Thru 2014	% Thru 2013
Team			
Apparel and Team	\$ 9,768,659	48%	50%
Technical	\$ 10,557,949	52%	50%
Total	\$ 20,326,608		

EXHIBIT 10A  
TO  
DECLARATION OF GARY FELLERS  
OF FEBRUARY 16, 2016

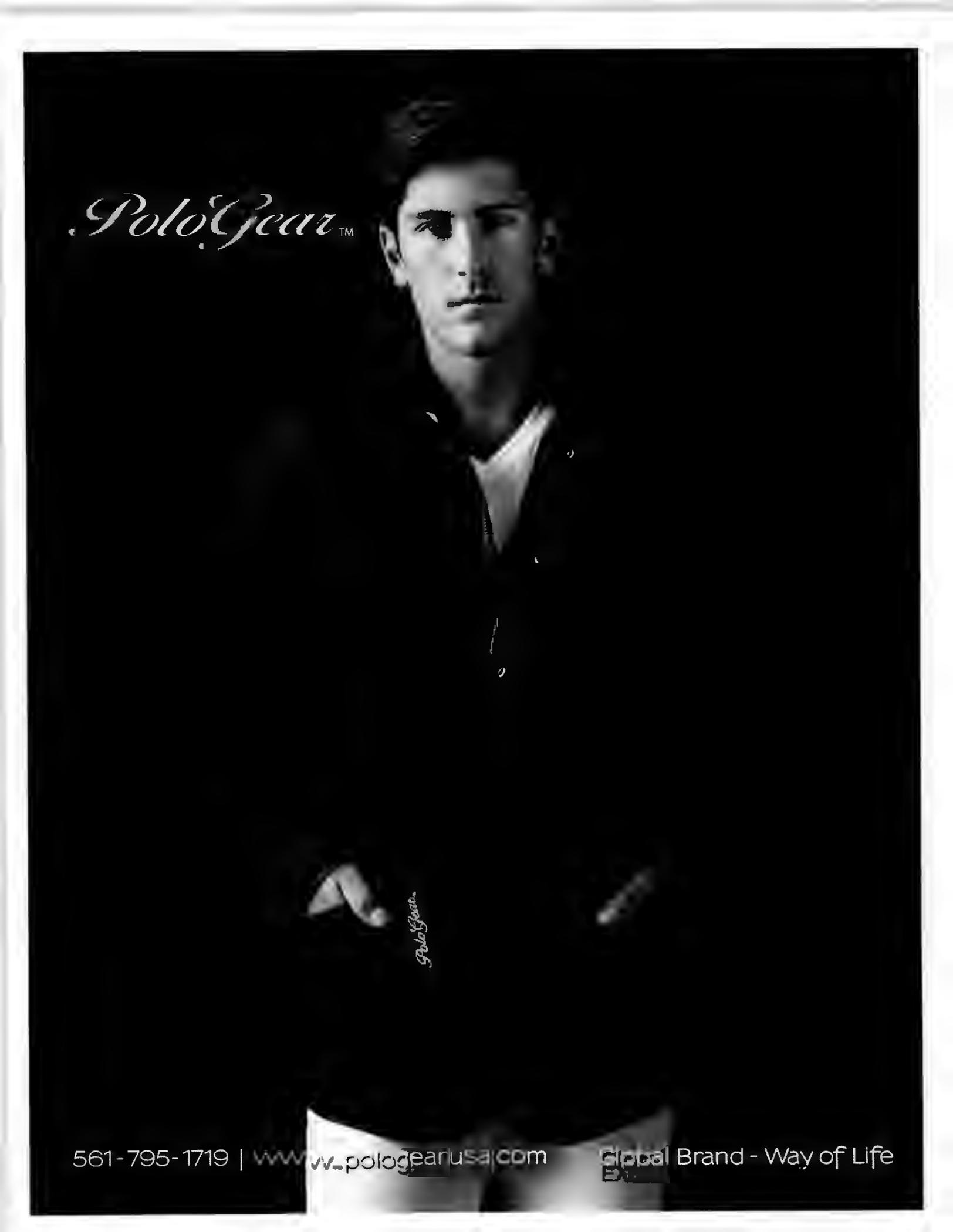
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Dave Roberts, former 4 goal player, Club manager for top polo clubs, America's first and most respected mallet maker and founder of Le Trebol mallets, which for years supplied mallets to top players including Gonzalo Pieres Sr, has now joined Polo Gear Mallet Shop to once again bring to you top quality, individually handcrafted mallets, personally made by Dave himself. Davo's mallets will meet and exceed your expectations for customer service, quality, speedy turn around and price.

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Watch for more information and look for the opening of the new Polo Gear Mallet shop location in the fall. In the mean time send us your repairs or buy custom made mallets made exactly to your individual specification. Call Dave (Davo) or Raul Roldan if you need new canes as well. Raul Cell 561-308-6286.

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**Reined Cow Horse - Aug. 30th**



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6:00 - 7:00 PM Mixed Event	2nd World Polo June 28th 2014
7:00 - 9:00 PM Polo Match	USA World Cup Polo Series 30th 6PM
9:00 - 11:00 PM Laser Party	4th Team Sorting Herd Work Sept 27th 6PM
	5th Ranch Horse October 25th 6PM

For more info contact team Polo West - 561-846-1010

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## NACHO FIGUERAS

Black Watch

"There are a lot of dinner parties in the Hamptons. And you always meet new and interesting people. But, yes, I was a bit surprised," says Nacho Figueras as he tells me about the night his modeling career began.

Like a lot of Argentine polo players, the 6-goaler bounces back and forth between his home outside of Buenos Aires and Palm Beach, where he plays for Neil Hirsch's Black Watch Polo. Each summer, he and his wife, Delfina, and their family migrate to New York where he plays in the Hamptons for Black Watch as well. That's where he met one of Madison Avenue's top fashion photographers, Bruce Weber.

"Bruce likes to spend time out in the Hamptons, which is how I got to know him. I'd seen him around, met him before. We were at this dinner

party and had been talking a while. Bruce asked me if I'd be interested in doing some modeling. Of course, I said, "Yes, why wouldn't?" Figueras asks.

Almost immediately, Figueras was working alongside one of Hollywood's leading ladies. Weber's client list includes Ralph Lauren, and the photographer thought the polo player would pair up perfectly with the Spanish star for the Glamour magazine. "Not a bad way to start a new career," he says.

Figueras has worked with Weber on many subsequent shoots, including Ralph Lauren Purple Label. Most recently, the two have been collaborating on an ambitious new line for Ralph Lauren, Polo Black. Figueras is the face of this men's line. Weber's photographs of him can be found in most magazines, anchoring two-page spreads.

Not surprisingly, Figueras is now represented by the Agency out of the New York office. Yet Figueras quickly admits that modeling is not his top priority.

"Polo's my game," he says.

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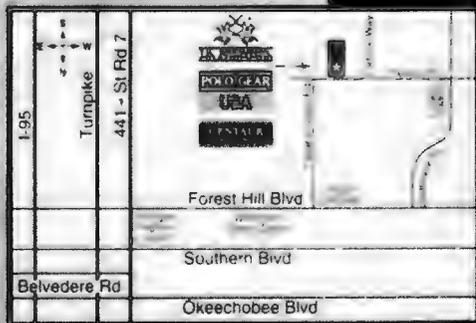


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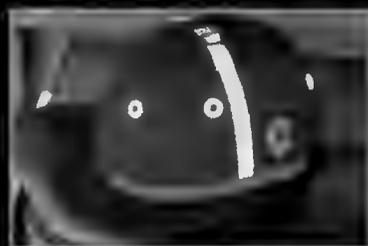
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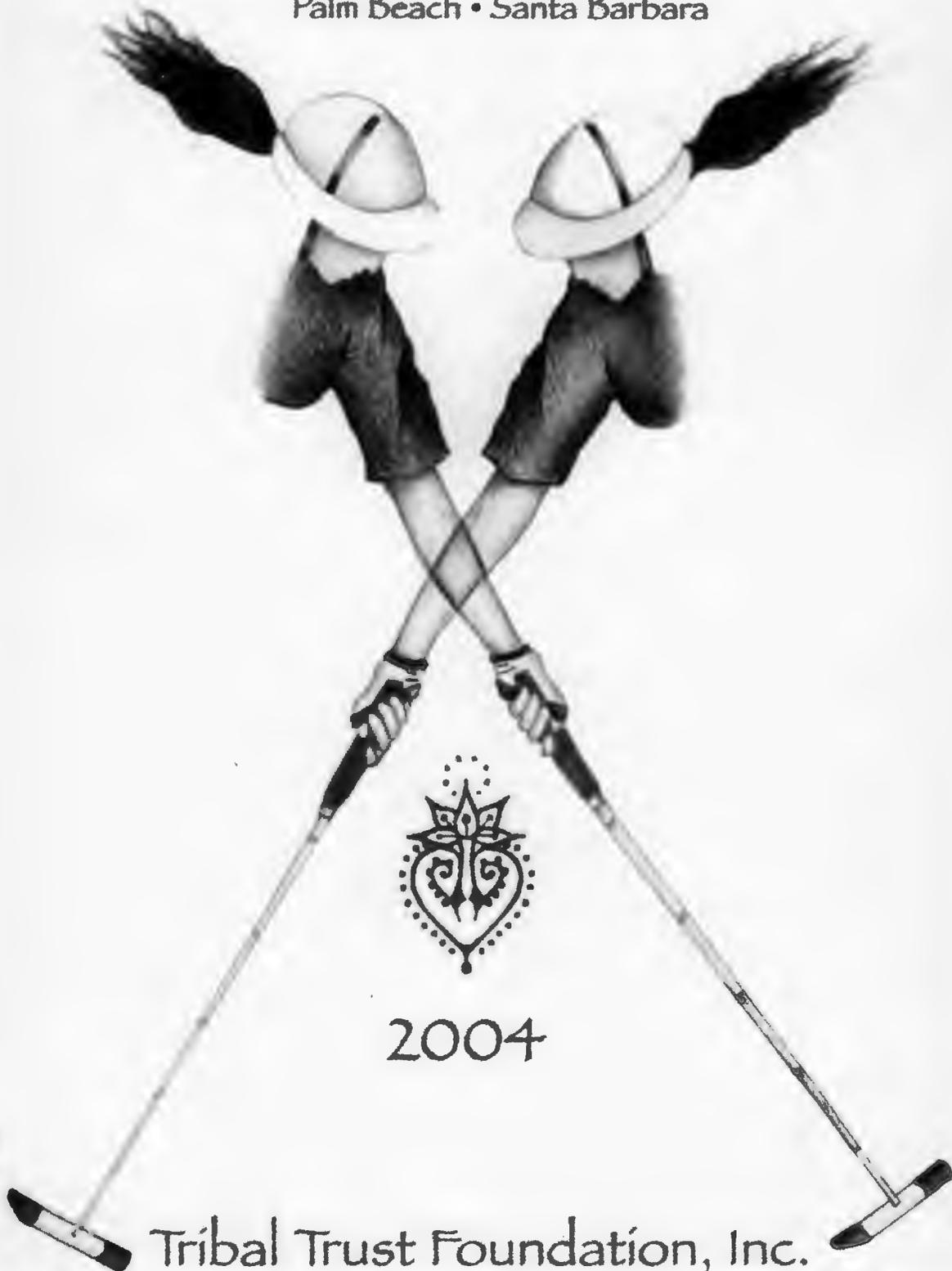


POLO



# THE TRIBAL CUP

Palm Beach • Santa Barbara



2004

Tribal Trust Foundation, Inc.



# Tribal Trust

The Tribal Trust Foundation, a 501(c)(3) non-profit organization, is helping to preserve the living arts and culture of indigenous people worldwide. The survival of ancient cultures could mean the survival of all mankind. The vision of the foundation is to bring honor, awareness, and empowerment to tribes whose cultures are in jeopardy of disappearing.

Drawings Courtesy of:  
Tina Marrero - Artist and Beginning Polo Player

EXHIBIT 19A GP 000031

Dear Friends:

Welcome to the Tribal Trust Foundation's annual invitational women's tournament. My personal thanks goes to the sponsors, volunteers and spectators who shared in making this year's Tribal Cup a memorable one. The Tribal Cup is a team effort to bring awareness and honor to indigenous people and to raise money for projects that help preserve the living arts of endangered tribes from around the world. The Tribal Cup also offers an opportunity to keep the ancient tradition of women in polo alive. Through our joint efforts on the playing field or in the bush, I hope we inspire future generations to recognize the importance of their culture.

The Tribal Trust Foundation has discovered that through efforts to help preserve indigenous people's cultures, we can help build community and give hope to the most disenfranchised and displaced peoples of the world. This year we are helping San Bushmen of the Kalahari Desert in Southern Africa. By supporting "Dawid's Dream," the Tribal Trust Foundation is giving hope and a voice to those who struggle for survival. Dawid Kuiper is the leader of South Africa's last thirty-five traditionally living San Bushmen. His dream is to bring understanding from our native American Indians who share a similar history. By coming to the United States, Dawid provides voice and a face for thousands of Bushmen who are lost in resettlement camps. More than half of the San Bushmen have been displaced from their land and stripped of their traditional way of life as hunters and gatherers. Women and children in particular have lost self-esteem and purpose in their lives. Their culture was their power.

I believe in the power of dreams. May Dawid's Dream be a celebration and a testament to the tenacity and resilience of human culture. May his courage bring honor and awareness to the San Bushmen's cultural identity. May our dream be one of creating a world that values our global human heritage.

Together we will make a difference.

Sincerely



Barbara Savage

President

Tribal Trust Foundation, Inc.

TRIBAL TRUST FOUNDATION, INC.

P.O. Box 5687 MONTECITO, CA 93150 USA TEL: (805) 688-5994 FAX: (805) 686-4486

THE TRIBAL TRUST FOUNDATION, INC., IS A 501(C)(3) NON-PROFIT ORGANIZATION.

WWW.TRIBALTRUSTFOUNDATION.COM EXHIBIT 19A GP 000032



## Dawid's Dream

This year's third annual Tribal Cup is a fund raiser for "Dawid's Dream." Dawid Kuiper is the traditional leader of the Xhmani tribe, South Africa's last traditionally living San Bushmen. Dawid's dream is to come to the United States to publicize the plight of the San Bushmen in the wider Kalahari Desert, most of whom are currently under the threat from mineral mining and cattle ranching. He will also meet with and learn from Native American leaders and healers who have survived a similar history. Dawid believes that the United States is the power center of the world and wants to lead an expedition of a group of San Bushmen to "the place from which everything happens." The Tribal Trust Foundation is partnering with others to fulfill this dream of global significance. The Tribal Cup will raise money and awareness of the San Bushmen who live in peace and balance with nature, but struggle for survival within the global community.

# Schedule of Events



9 a.m.	Gates Open
9 a.m. to 1:30 p.m.	Polo Matches
Noon to 2 p.m.	WCI Champagne reception field side
12:30 p.m. to 1:30 p.m.	Exhibition Match on field 2
1:30 p.m.	Team Photos
2 p.m. to 4 p.m.	Trophy Presentation in Patrons Tent Best Playing Pony Award Most Valuable Player Award Best Sportswomanship Award
Following Awards Ceremony at Patron's Tent - High Tea	
	Keynote Speaker - Rupert Isaacson
	Film Presentation - Jeff Kazmark
	Safari Boutique
	Fashion Show

## Board of Directors

President	Barbara Savage
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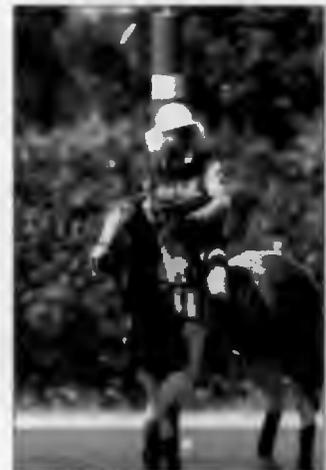
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# Special Thanks

Especially to Robin du Toit - Tribal Cup Tournament Director

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Thank you to all volunteers and supporters

EXHIBIT 19A GP 000037



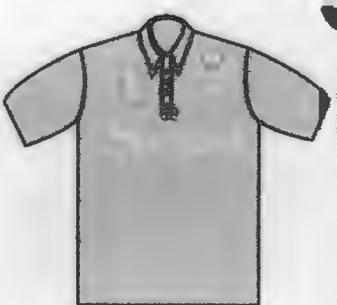
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EXHIBIT - 9A GE 000016



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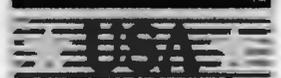


EXHIBIT 10A GP 000030

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| <input type="checkbox"/> \$25  | <input type="checkbox"/> \$50  | <input type="checkbox"/> \$75   | <input type="checkbox"/> \$100    |
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EXHIBIT 19A GP 000041

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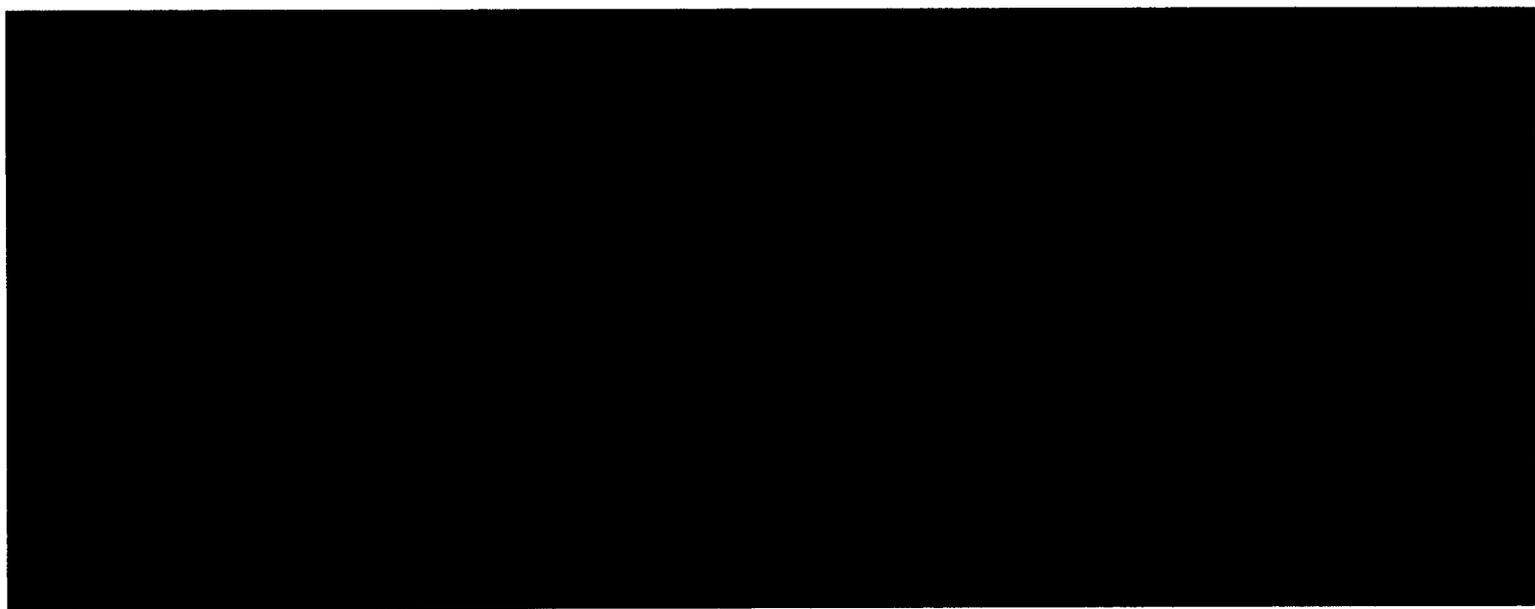


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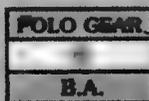
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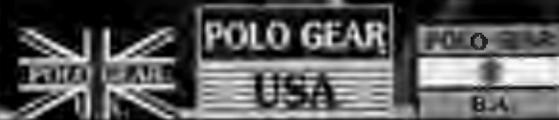
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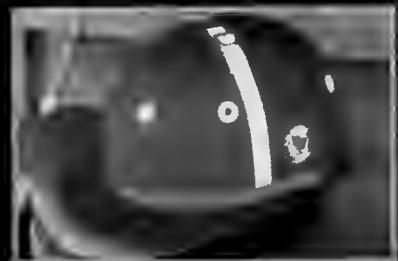
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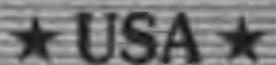
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EXHIBIT 79A GE 000058-3

**SALES PROGRESS REPORT**

*Pat - Fax to  
Charlie & Jim  
Eagan*

Date 12/19/2003

Company Name: Polo Gear

Week of Sale 2.5

City/State/Province: Wellington, FL

Wks Remain 3

Beginning Inventory \$175,000

Consultant Pat Jackson

Sale Title: Wall to Wall

Sale Type PR

Daily Sales:

		<i>walk In Sales</i>	<i>walk In + Phone</i>
	Date	Gross Receipt:	Total Sales
Friday	12/12	\$1,692.89	\$3,507.11
Saturday	12/13	\$2,259.16	\$3,826.30
Sunday	12/14	\$0.00	
Monday	12/15	\$1,977.16	\$4,923.70
Tuesday	12/16	\$859.57	\$11,985.48
Wednesday	12/17	\$656.94	\$3,256.52
Thursday	12/18	\$1,013.94	\$2,545.98
Total Sales This Wk		\$8,459.66	\$30,045.09
Total sales to Date			
From LAST WEEK		\$3,808.26	\$5,004.00
Current Total-to-Date:		\$12,267.92	\$35,049.09

Advertising This Week

Init. Mail	
Newspaper	12/18
Wkly Mail	66
Flyers	
Radio	
TV	
Contest #	104
Special Events:	
Newspaper Palm Bch	
Post 1/4 page	

Comments by client concerning the progress of the sale performance and consultant:

*we are doing nowhere near the volume the consultant predicted. I would like a plan as to how we can meet our sales goals immediately*

Consulting FEE \$2,200.00

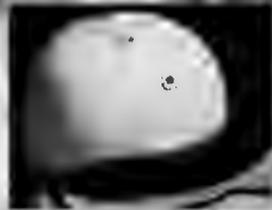
Ad copy & weekly letter attached? YES NO

Client's signature: *[Signature]*

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# EQUESTRIAN

Saturday, Nov. 30, 2002 • 7

All the Equestrian News that's Fit to Show

Editor & Publisher: Frederic Roy - Ptr: 561 793 7800, Fax: 561 793 6835 - email: info@themorningline.com - © 2002 Trophy, Inc. all rights reserved

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## THE 119TH NATIONAL HORSE SHOW

Tomorrow is the final day at the National Horse Show with decisive morning competition starting at 8:00 AM and the National Jumper Championship beginning at 2:30.

Each rider will have to choose only one mount to compete in the Championship. The entries for the Grand Prix will be closed this afternoon.

Incidentally, the rule of one horse per rider will be applied for the first time at the Winter Equestrian Festival this coming season for all Grand Prix Sundays, much easier to follow for the spectators and more competitive for the riders.

National Horse Show - Schedule of Competition through Sunday

Saturday, Nov. 30 - 8:00 AM - International Arena

- 2552 Small Junior Working Hunter 16-17 Round 2
- 2553 Small Junior Handy Hunter 16-17 Round 3
- 2652 Large Junior Working Hunter 16-17 Round 2
- 2653 Large Junior Handy Hunter 16-17 Round 3
- 2702 Amateur-Owner Hunter 18-35 Round 2
- 2703 Amateur-Owner Hunter 18-35 Round 3
- 2722 Amateur-Owner Hunter 36-50 Round 2
- 2723 Amateur-Owner Hunter 36-50 Round 3
- 2752 Amateur-Owner Hunter Over 50 Round 2
- 2753 Amateur-Owner Hunter Over 50 Round 3
- 3101 Ladies Hunter Side Saddle Over Fences
- 1003 The National Open Speed Stake

DENEMETHY ARENA - 9:00 AM

- 1402 The National Children's Speed Classic
- 1302 The National Adult Speed Classic
- 1103 The National Amateur Speed Classic

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EXHIBIT 19A GP 000062

# EQUESTRIAN

Wednesday, Nov. 27, 2002 • 4

All the Equestrian News that's Fit to Show

Editor & Publisher: Frederic Roy - Ph: 561 793 7800, Fax: 561 793 6835 - email: info@themorningline.com - © 2002 Trophy, Inc. all rights reserved

## THE NATIONAL HORSE SHOW SUCCESSFULLY OPENS TO EXCITING, SUPERB COMPETITION

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Works on Paper



Chisholm Gallery  
561-371-1503

Yesterday, Hunter classes dominated the opening day of the 119th annual National Horse Show as it began its first ever show at an

outdoor venue at the Palm Beach Polo Equestrian Club.

Scott Stewart of Wellington, riding Chopard, and Nancy Green

Free of Seattle, Washington, aboard Ghaeli, were the only double winners on opening day.

General admission tickets are available by phone at (561) 753-3389 or at the entrance. Tickets are \$10 for adults on Wednesday, Friday and Saturday and \$7 for seniors. Children under 12 are free.

Tomorrow, Thursday, the admission is free for everyone. Tickets for the grand final on Sunday are \$15 for adults, \$7 for seniors and children under 12 are free.

Please turn to page 2 for results and page 4 for schedule.



Hunter Class at the National Horse Show (ph. Frederic Roy)

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## EQUESTRIAN

Thursday, Nov. 28, 2002 • 5

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## AARON VALE AND NONIX LE PARC WIN FIRST GRAND PRIX AT THE NATIONAL YESTERDAY

Aaron Vale of Camden, South Carolina defeated 29 other riders to finish first in the National Welcome Qualifying Stake Grand Prix at the 119th annual National Horse Show yesterday at the Palm Beach Polo Equestrian Club.

Aaron Vale, aboard Nonix Le Parc, a 15-year-old Australian Thoroughbred, cleared the final obstacle, a large green and white oxer on the shortened course in 33.23 seconds to earn \$7,500 first place money.

Laura Linback, riding Grand 2, placed second and received \$5,500 while Norman Dello Joio



A bold move by Aaron Vale—cutting the angle of the turn at the second jump of the jump-off yesterday—may have been decisive to give Aaron and Nonix Le Parc that early lead for a very strong 33.23-sec. victory, ahead of a group of 5 riders by more than 3 seconds. (ph. Frederic Roy)

aboard Glasgow, finished third and received \$3,250. Norman Dello Joio placed 4th with this second horse Quriel, just ahead of Debbie Stephens.

A note for Sunday's final Grand Prix at the National: for the first time in Wellington, each rider will have to choose one horse to compete in the Grand Prix, a class of 28 to 30 rider and horse, much easier to follow for the spectators and a one-chance only for the riders to make it even more competitive.

General admission tickets are available by phone at (561) 753-3389. Friday night, under the stars, full evening of competition ending with the National High Jump Challenge.

Photo coverage continues page 3 and 4. Wed. results are page 2.

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The winning Winchester Capital team and Runner-up Las Banditas with their big prize money from the Shim Match.

don (2), Paul von Gortard (A), Abby Riggs (1), Augustin Zavaleta (5).  
**AMSA/International Polo**—Steve Crowder (4), Andrew Bossom (A), Pablo Spinacci (4), Kristy Waters (A).  
**Malibu Vice**—Geoff Palmer (1), John Clark (A), Topo Mendez (4), Mathew Fonseca (4).  
**Glenoak Ford**—Kelly Armstrong (A), Joe Neave (1), Richard Mansfield (2), Mark Prinsloo (3).  
**Buckelgh**—Peter Bibeau (A), Kelly Torks (1), Gaston Rodrigo (3), Paul Dedios (4).

**JR. OFFICER'S CUP**

**Photo Polo**—Ed Masterton (A), Diego Cossio (3), Jennifer Anakar (A), Brent Mirikitani (3).  
**Playa Grande**—Dennis Ver (B), Thierry Vetois (2), Kevin Ittig (1), Steve Wayda (1).  
**Magellan**—Dempsey Mork (A), Melesio Soto (3), Victor Soto (1), Ted Okie (A).  
**Park Lane**—Greg Atkinson (A), Glenn Atkinson (A), Craig Ramsby (3), Bull Gartock (1).  
**Portola**—Scott Gundlach (4), Gary Poffack (B), Brent Lance (A), Dick Tauber (A).  
**Mento**—Bill Gerard (B), Erik Wright (1), Craig Leary (4), Laura Lintoot (A).  
**BTA**—Karlene Garber (B), Susan Stovall (1), James Hanley (A), Caroline Anier (4).  
**Gypsum**—Bob Anderson (A), Lule Echezareta (2), Mehrdad Bagnai (1), Randy Hill (1).  
**Payne Farm**—Ashley Payne (A), Hernan Tejera (4), Glen Hart (A), George Gilstrap (A).  
**Frogue**  
**Predators**—Cameron Diggon (A), Pedro Orellana (4), John Millford (B), Christian Moon (1).

**MARCH 12-GOAL**

**Duende**—Mike Hakan (A), Pablo Spinacci (4), Mariano Gonzalez (8), Jason Crowder (A).  
**Gehache**—Glen Holden/sit. A. Gernino (A), Alfonso Giannico (5), F.D. Walton (5), Gerry Knapp (2).  
**Empire**—Al Haagen (A), Bob Puetz (3), Miguel Torres (6), Gaston Rodriguez (3).  
**Stone Canyon**—Brad Schlei (A), Gaston Listoil (6), Henrique Zavaleta (6), John Mason (A).  
**Blue Lightning**—Robert Reid (A), Abby Riggs (1), Santiago Puetz (7), Topo Mendez (4).  
**Bulldogs**—Bob Bradley (1), Dayolle Fargey (1), Justo del Camil (6), Pedro Orellana (4).

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can be traced to some "grooms" who spend far more time in "Laurel" than they do with the horses. It is no small wonder that spectators stay away in droves. This, by the way, is one of the biggest polo clubs in the United States.

I could fill pages of examples of U.S. polo players who return from the United Kingdom and actually ridicule the British system. I have a neighbor who is a local "pro." Due to heavy rains we were forced back to roadwork on a route past his ranch. He is one of the few local players who feeds his horses. This day he had another player's horses on his property. When we returned, my groom, a young English girl, remarked on the skinny, underweight horses. She wanted to report them. I had to explain that this is what a "playing fit" polo pony looks like in the United States.

I have been receiving reports from the United Kingdom over the last decade that the high standards of polo there are gradually getting lower, and I only assume that this is due to the U.S. influence. Polo is a wonderful spectator sport, and the vast majority of spectators are far more interested in the horses than in the players. Again I must urge the HPA to take note. The USPA can only show how things should not be done.

I thank God that I learned my polo in the United Kingdom from the likes of Billy Walsh, Peggy Healy and Alan Kent, for had I started playing in the United States I wouldn't know the difference. It is such a rush to play polo that this exhilaration can take over, and who can blame the Americans when they are taught bad habits from the very beginning? The vast majority of Americans do not even know how to mount and dismount correctly. As many of the HPA members would recall, I had some very hard lessons to learn myself 20 years ago. For polo's sake keep up the high standards and ignore the USPA cowboys.

*Clayton Baker, rated 1 goal, is a member of the HPA and lives in Parker, Colorado.*

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## AWARDS

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Overall, San Saba was the big winner with a total of seven goals, followed by New Orleans and Houston with four goals each.

Dawn Laurel was the recipient of the most valuable player award, while Tommy Lee Jones' American



*Groom Tony Fonseca, Carlos Herñan Bonorino, Tommy Lee Jones, daughter Victoria and a friend with BPP, Belle*

Thoroughbred mare, Belle, won best playing pony honors.

"The tournament was very well organized and the facilities at San Saba are very good," said Herñan Bonorino, who came from Florida to play, after the match. "Our game plan was to play open, the old-fashioned way, instead of holding the ball. That made the game much faster and exciting. We won because we had the best horses."

—Karen Martino

### MAMA CUP

San Saba—Dawn Laurel (B), Susan Stovall (1), Clarissa Echezaretta (2), Carlene Garber (B). San Antonio—Ursula Pari (B), Kathryn Nowell (A), Barlee Flanders (1), Brigett Trabits (A). Houston—Charlie Bartholomew (B), Abbey Riggs (1), Tammy McCutcheon-Saxe (1), Candace Smith (A).

### SUMMER CUP

San Saba White—Dawn Laurel (B), Topo Mendez (4), Sebastian Bonorino (5), Luis Echezaretta (2). San Saba Red—Clarissa Echezaretta (2), Tommy Higgins (2), Mateo Fonseca (4), Hernan Tejera (4).

### BILL BARRY CUP

San Saba—Dawn Laurel (B), Herñan Bonorino (4), Sebastian Bonorino (5), Tommy Lee Jones (2). New Orleans—Clarissa Echezaretta (2), Tommy Higgins (2), Topo Mendez (4), Luis Echezaretta (2). Houston—Van Conover (A), Bob McCen (2), Herñan Tejera (4), Mateo Fonseca (4).

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This season competitors and spectators of the WEF will be able to commemorate their stay in South Florida with officially licensed Stadium Jumping and Winter Equestrian Festival products.

Sports Group International, and their subsidiary Polo Gear, Inc., and Stadium Jumping, Inc. have entered into a three year licensing agreement whereby SGI will develop products specifically designed for hunter, jumper and dressage markets and will feature the official logos of Stadium Jumping and The Winter Equestrian Festival.

According to SGI president, Gary Fellers, this arrangement is part of a five year plan to take SGI knowledge of manufacturing performance equestrian products and tailor specific products to the dressage and jumping disciplines.

SGI is known primarily for its polo products as manufacturer and distributor for Polo Gear and La Martina apparel and equipment.

"For the past three years," Fellers commented, "we have been working to develop a line of apparel specifically for our jumping and dressage customers. We want to take our experience in

manufacturing performance polo gear and develop products that meet the specific demands of other equestrian pursuits. We have been getting fabulous input from top competitors and we're looking to them to help us provide attractive, functional clothing for individual disciplines."

Building functional apparel is not new to Fellers. For 10 years, he was involved with a little ski-wear company from Vermont, CB Sports, which became the largest in the world during the 80's. "CB" made significant inroads into the equestrian business during that time.

Since then, Fellers has been focusing on polo, first with La Martina, and now, with Polo Gear. The SGI companies have grown to become the leading supplier of premium polo equipment in America.

Now SGI is devoting a tremendous amount of energy to Stadium Jumping and WEF products. "Working closely with Stadium Jumping president, Gene Mische and top competitors, we have an exciting line of products to present this season," Fellers said. Last year SGI tested a few introductory ideas

were well received by Stadium Jumping participants. Products were then assembled with very short notice, according to Fellers. "This year, with months to plan, we have a first year product offering we are very proud of," he said.

The Stadium Jumping and WEF products will be unveiled in an eight page catalog that will be mailed to Stadium Jumping participants in October. Sales will be administered from the SGI showroom in Wellington and on the grounds at The Winter Equestrian Festival.

While more and more of its products are manufactured in its Florida facility, SGI continues to source products from all over the world. SGI constantly reviews all avenues possible to provide its customers the finest products at the lowest price. All apparel is finished and embroidered in the Florida facility. Controlling production assures that SGI can guarantee quality and quick delivery for special orders and reorders.

If you're looking for exciting equestrian products, keep your eyes peeled for the new catalog coming in October, or call SGI for information at 561-795-1719.

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Tim Walilko

Chief Engineer, Wayne State University Bioengineering Center



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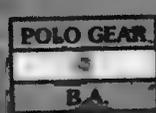


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# MCLAIN WARD

This week's **CIRCUIT STAR UP CLOSE AND PERSONAL** column features **McLain Ward**

Those who follow world class professional riders know of **McLain** and his many accomplishments in the Grand Prix ring. Our interview with him is not about all of that, rather it's focus is to bring you a personal insight.

**Full Name:** McLain Lindsey Ward

**Education:** High School

**Original Ambition:** To be the best rider/sell more horses than anybody else

**First Job:** Worked for my Father

**Favorite Pony:** Dina Dam

**First Time on a Horse:** Between 1 and 2 years old

**First Instructor:** Mom and Dad/Paul Valliere

**Favorite Teacher/Role Model/Rider:** My Father. The finest horseman I have ever come in contact with is Paul Schockenmuller

**Favorite Food:** Pasta

**Favorite Movie:** "In The Line Of Fire"

**Favorite TV Show:** "ER"

**Last Book Read:** "The Green Mile"

**Favorite Car:** Porshe Carera

**Favorite Color:** Blue

**Favorite Music :** Soft rock

Please See **MCLAIN** page 8

## UP CLOSE AND PERSONAL



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# ROBERT DOVER

This week's **CIRCUIT STAR UP CLOSE AND PERSONAL** column features Dressage rider **Robert Dover**.

Those who follow world class professional riders know of **Robert**, and his many accomplishments in the dressage ring. Our interview with him is not about all of that, rather it's focus is to bring you a personal insight.

**Full Name:** Robert Jeffrey Dover

**Birthplace:** Chicago, Illinois

**Original Ambition:** To be a vet, then to be a 'British Lord' because Lord Dover sounded so good!

**First Job:** Bag boy at the supermarket

**Favorite Horse:** Ebony Cash

**First Instructor:** Mira Wagner

**Favorite Teacher/Role Model/Rider:** Col. Bengt Ljungquist

**Favorite Foods:** Tai

**Favorite TV Show:** *I Love Lucy*

**Favorite Movie:** *The Color Purple*

**Last Books Read:** *This Much I Know to be True*

**Favorite Car:** Porsche 911 Convertible

**Favorite Color:** Blue

**Favorite Music Artist/Group:** I love Jen Holiday and Barbara Streisand

**Hobbies:** Playing tennis and running

**Person You'd Most Like To Meet:** Barbara Streisand

Please See **ROBERT** page 8

## UP CLOSE AND PERSONAL



Robert Dover and Everest in Grand Prix competition

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Tim Walilko  
Chief Engineer, Wayne State University Bioengineering Center



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# ODD DERALD MINIKUS

## UP CLOSE AND PERSONAL

week's **CIRCUIT STAR UP AND PERSONAL** column featured Minikus..

who follow world class professionals know of Todd, and his accomplishments in the show interview with him is not of that, rather it's focus is to a personal insight.

**Name:** Todd Derald Minikus

**Home:** Waterloo, Iowa

**Occupation:** Miles and miles of riding

**Goal/Ambition:** Race rider

**Favorite Activity:** Watering horses at 11 years old

**Favorite Pony:** Tonto, birthday

**First Experience on a Horse:** As an infant, he horse

**Instructor:** Audrey Holt

**Teacher/Role Model/Rider:** Howard, Rich Rogers

**Foods:** Goulash and pizza

**Movie:** "Dances With

**TV Show:** "60 Minutes"

**Books Read:** "Gold Buckle", a story of Ty Murray, the bullrider

**Car:** 1962 Corvette

**Color:** Green

**Music Artist/Group:** Rolling

**Songs:** "Satisfaction"

**Other Interests:** Golf

**See **TODD** page 10**



Todd Minikus up on Ravel.

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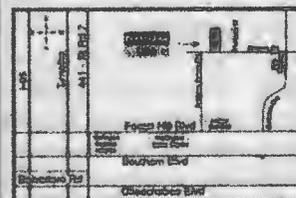
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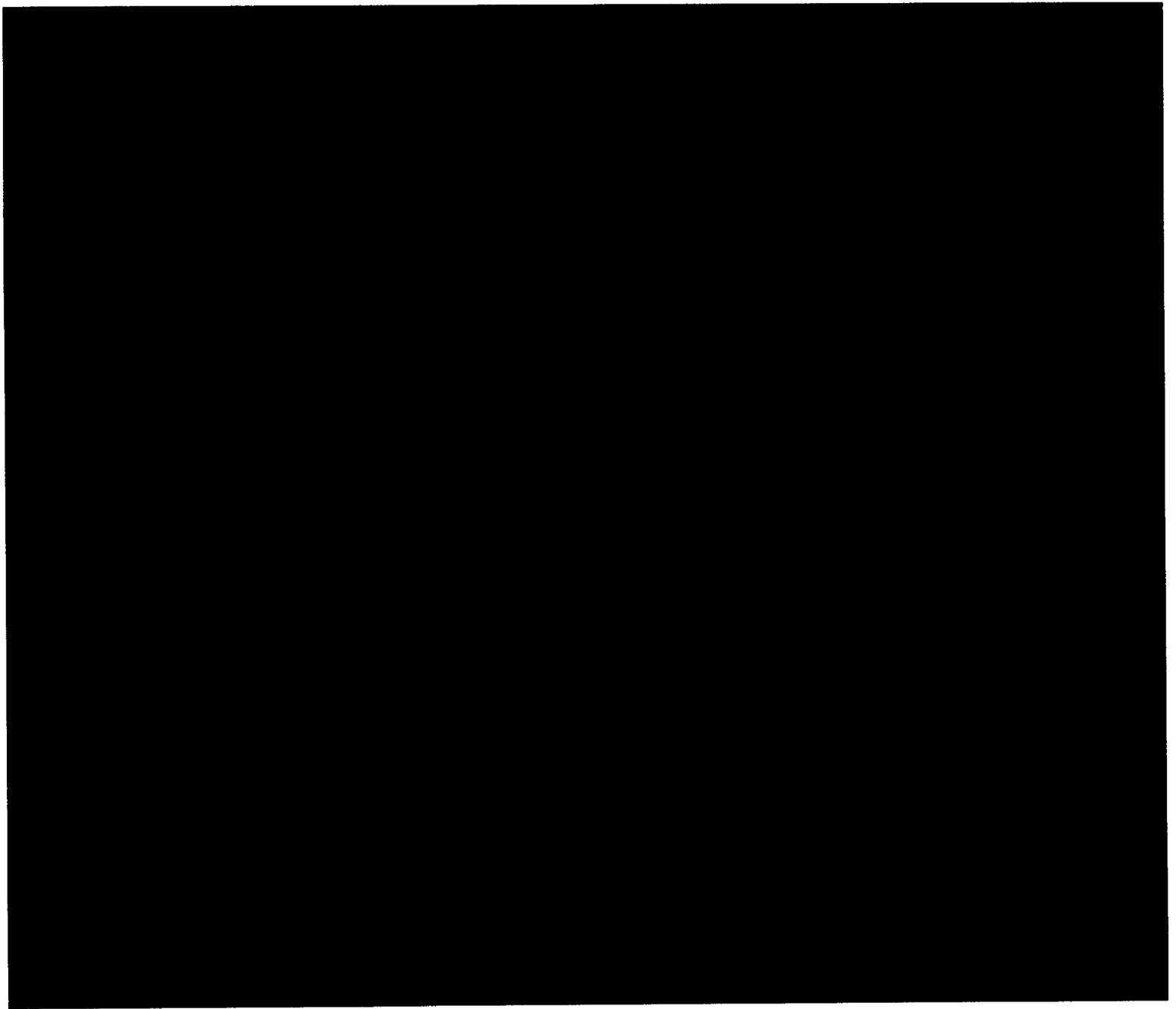


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EXHIBIT 19A GP 000089

EXHIBIT 10B  
TO  
DECLARATION OF GARY FELLERS  
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December 16-18, 1998 EXHIBIT 198-00002

# Aspen Snow Polo Classic



St. Regis Polo, 1998



### Aspen Snow Polo Event Committee

**Event Chairman:** Gary Fellers, 1998 Aspen Snow Polo Champion, President Polo Gear USA  
**Executive Event Director:** Robert Foster, MESH Inc.  
**Polo Operations Director:** Jimmy Newman, Palm Beach Polo Club  
**Polo Operations Manager:** Bob Koehler, Colorado Polo at Columbine  
**Challenge Aspen Director:** Houston Cowan  
**Scarlott Adams, Mary Jane Garth, Jack Kaufmann, Susan Koehler**  
MESH Inc., Rob Ganger



CHALLENGE ASPEN



THE ST. REGIS



EXHIBIT 19B PG00009D  
Dear Friend,

It seems strange for an Easterner to be inviting you to Aspen for snow polo this December, yet it is such a charming place and one I have come to think of as home, given numerous ski trips over the years and most recently our annual snow polo event.

As the Aspen Snow Polo Classic Event Chairman, I'm honored to be involved and hope you will join us for the wonderful fun the committee has planned as well as to support the various charities involved including Challenge Aspen and the Aspen Ski Club.

I think you'll be thrilled with the competition on the field as we are fortunate to have the best players in the world competing, and a first ever with Switzerland's Adriano Agosti representing his home country at the Aspen Snow Polo Classic, along with returning players from Europe, Canada and the United States.

I hope you'll join us in celebrating the last great polo event of the century and help us to set the stage for snow polo in 2000 and beyond.

Sincerely,

Gary Fellers

Event Chairman

1998 Snow Polo Championship Team Captain

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EXHIBIT

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# POLO THE MORNING LINE

Monday, April 13, 1998

Wellington Edition • 103

The Morning Line  
11884 Pebblewood Drive  
Wellington, FL 33414  
Phone: 561 753 8882  
Fax: 561 793 6835  
email: <worldnews@thepolotline.com>  
Editor: Frédéric Roy  
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## ESCUE WINS THE U.S. OPEN



Escue with the U.S. Open trophy

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Carlos Gracida and Pite Merlos

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[Article published in Sunday's edition of The Morning Line]

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Then, one miss each on attacks by Isla Carroll and Escue (both teams defended very well collectively throughout the game) followed by a beautiful work by Nicolas Roldan, hooking then attempting to back the ball from the nearside, successfully keeping Carlos Gracida from going to goal or centering the ball to a teammate. Even though he wore the #1 shirt,

Roldan—Raul Roldan is the polo manager for Bob Daniels' Pony Express—Nicolas Roldan was an accomplished soccer player at the age of 8. At 12, he switched to hockey where he has excelled just as well.

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Continued page 2, 2nd column



On the podium of the U.S. Open final, from left to right: for Escue, Nicolas Roldan, Sebastian Merlos (passing the champagne cup to his brother), Pite

Merlos, Shimmy Qureshi, Sugar Erskine; for Isla Carroll, Carlos Gracida, John Goodman, Memo Gracida, Tiger Kneee and Joe Barry.

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Continued page 2, 1st column



Pite Merlos was Most Valuable Player and his chestnut mare Torcata was Best Playing Pony, here with grooms Gabriel Romero and Tomas Navarro.

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Editor: Frédéric Roy  
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Continued page 2, 2nd column



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Continued page 2, 1st column

### POLO SCHEDULE & RESULTS

SUNDAY AT PALM BEACH POLO RR&A DEF. SYMPATICO 7-5 (16G)

BLACKMATCH DEF. BLUE STAR 10-8 (16G)

US OPEN FINAL: ESCUE DEF. ISLA CARROLL 13-10

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Pite Merlos was Most Valuable Player and his chestnut mare Torozana was Best Playing Pony, here with groomers Gabriel Romero and Tivvas Navari.

Merlos, Shinney Quareshi, Sugar Erskine; for Isla Carroll, Carlos Gracida, John Goodrum, Memo Gracida, Tiger Knocca and Joe Barry.

10) and win 13-10.  
 (More Open coverage in the next issue published Friday, April 17)

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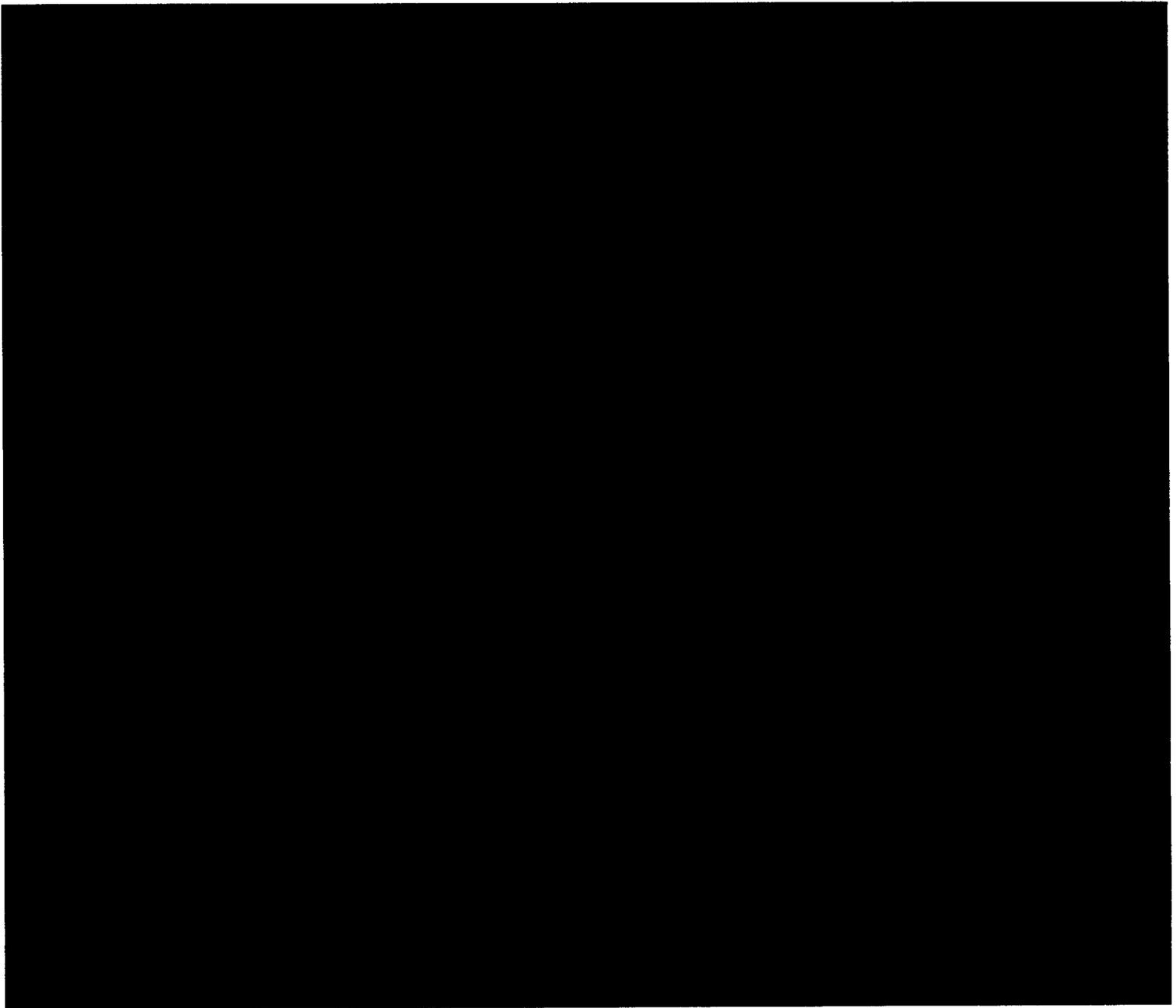
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