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

Proceeding	91222377
Party	Defendant Sharon Bar-Noy
Correspondence Address	MORRIS E TUREK YOURTRADEMARKATTORNEY.COM 167 LAMP AND LANTERN VLG, #220 CHESTERFIELD, MO 63017-8208 UNITED STATES pto@yourtrademarkattorney.com
Submission	Other Motions/Papers
Filer's Name	Sharon Bar-Noy
Filer's e-mail	sharon@conartmag.com
Signature	/s// Sharon Bar-Noy
Date	11/23/2015
Attachments	Motion for Relief of Judgment Con Art Magazine.pdf(488029 bytes )

TRADEMARK TRIAL AND APPEAL BOARD

Con Art Magazine / Sharon Bar-Noy

Case number 91222377

Application serial number 86166439

Motion for Relief of Judgment

I am filing for Reinstatement of my application for "Con Art Magazine" due to an original opposition by art.com

I was being represented by a lawyer, who had given me what I believe to be bad or insufficient information causing my mark to become abandoned. I believed I had taken all steps necessary, by firstly amending my mark to reach an amicable agreement with art.com, as well as entering into a settlement agreement with art.com on 06/15/2015. This mark is very important to me and I did not ignore the USPTO, I was not aware of the final steps necessary.

In July and August I corresponded numerous times directly with Bryanne Schmidt, a legal representative of art.com to see if the opposition had been lifted, as previously art.com let me know that they would lift the opposition once the amended mark was approved. They then asked us to file an answer to the USPTO in August, including that we had gone into a settlement agreement. I had forwarded the information to my lawyer who advised me that we had taken all necessary steps and that what they were asking for was "completely unnecessary" On September 24th I received a letter through my lawyer that my mark had been abandoned. I didn't understand why, and after discovering an attachment from the USPTO requesting an "answer to the opposition" I asked my lawyer why he did not file this answer or make me aware of this last step that was to be taken on our behalf. He told me I did not pay him for those services, although he did not make me aware that a) this step was to be taken to complete the process b) that he would charge additional fees to do so, which I would have done, had I been made aware of the full criteria.

I am now representing myself as I had my lawyer remove his power of attorney from my mark on 10/01/2015 and have since spent weeks trying to get in touch with the examiner assigned to my opposition. I was out of the country, presenting additional difficulties, and only getting to a voicemail with each attempt. When I finally received an email reply, I was told that email correspondence is limiting to what information can be given, or advice on which forms to fill out for this motion, I have since been seeking advice how to file a motion of reconsideration myself.

I am requesting that there will be reconsideration to the default causing my mark to become abandoned.

I have taken steps with the intention of diligently protecting my hard work. And to re file the mark would cause the work between 2014 and 2015 to no longer be protected. I have already spent resources and funds to amend the mark to avoid

a legal battle and to keep moving forward with the business, in the merits of avoiding setbacks.

I hope this letter will find you in time as I have been met with obstacles in trying to file this motion without legal representation.

I am attaching the following documents:

1. Settlement Agreement
2. A letter from Art.com stating we had entered into a settlement agreement and we had settled the dispute.
3. Removal of Power of Attorney

Thank you for your attention to this letter, I hope you may rule favorably, so that I won't have to experience any more setbacks in the matter. I am a young business owner in a start-up and these setbacks are significant for me.

(s) Sharon Bar-Noy (Applicant)  
Owner/Creative Director  
Con Art Magazine

# ART.COM

2100 Powell Street, 14<sup>th</sup> Floor  
Emeryville, CA 94608

November 23, 2015

VIA ELECTRONIC & U.S. MAIL

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

**Re: Withdrawal of Opposition No. 91222377**

To Whom it May Concern:

I am an attorney for Art.com, Inc. ("Art.com"). On June 15, 2015, Art.com filed an Opposition to U.S. Application Serial No. 86166439 (the "Applicant Mark"). On June 22, 2015, Art.com and the owner of the Applicant Mark, Sharon Bar-Noy, entered into a Settlement Agreement whereby Art.com agreed to withdraw its Opposition upon notice that Ms. Bar-Noy's application to amend the mark had been accepted. Unfortunately, Art.com did not receive notice that the amendment was accepted until after the answer was due.

Please know that we do not intend to enforce the Opposition against the Applicant Mark as it has been amended to be non-infringing. We wish Ms. Bar-Noy success in her registration and appreciate your reconsideration as per the current developments.

Best Regards,



Bryanne Schmitt  
Associate Corporate Counsel  
**Direct Dial:** (510) 879-4810  
**Email:** bschmitt@art.com

Cc: Sharon Bar-Noy

## SETTLEMENT AGREEMENT

An Agreement between Art.com, Inc., 2100 Powell Street, 14th Floor, Emeryville, California 94608 (hereinafter “Art.com”) and Sharon Bar-Noy (aka Sharon Esther), of 5367 Penfield Avenue, Woodland Hills, California 91364, and founder of CON ART Magazine (hereinafter “Applicant”).

### RECITALS

WHEREAS, Art.com is an online retailer of high-quality wall art and complementary décor and has used its ART.COM mark in commerce since at least as early as 1998 in connection with its online retail store services in the field of art;

WHEREAS, Art.com has used its ART.COM mark in the following form since at least as early as 2012 (which is hereinafter referred to as the “Stacked Format” of the ART.COM mark):

**ART.  
COM**

WHEREAS, Art.com is the owner of U.S. Reg. No. 3601346 for ART.COM, which was registered on April 7, 2009 for use in connection with the following services in International Class 35 since at least as early as 1998: “Online retail store services, mail order catalog services, and catalog ordering services all featuring wall décor, posters, art prints, original art, art reproductions, lithographs, film cells, art etchings, drawings, decorative art objects, wall decals, wall murals, photographs, note cards, signs, plaques, magnets, tapestries, mirrors, calendars, photo frames, art print frames, and t-shirts”; and with the following services in Class 40 since at least as early as 1998 – “Framing, glazing, mounting, canvas transfer, and other fixation or treatment for display purposes, namely, transferring to canvas of original and reproduced pictures, paintings, color prints, posters, fine art prints, limited edition prints, photographs, lithographs, cartoons, film cells, art etchings, drawings, wall decor, sculptures and other decorative art objects; consultation and providing information concerning art framing, mounting and other fixation or treatment for display purposes, materials, dimensions, matting, glazing and art printing.” Art.com is also the owner of U.S. Reg. No. 2586749 for the ART.COM mark and of two pending actual-use based applications for registration of the ART.COM mark in the Stacked Format, U.S. App. Ser. Nos. 86367880 and 86367977, all for the same Class 35 or Class 40 services recited above;

WHEREAS, Applicant filed, on an intent-to-use basis, an application to register the CON ART & Design mark (U.S. Application Serial No. 86166439) for intended use in connection with the following goods in Class 16 -- “Magazines in the field of art, fashion, and culture,” and in connection with the following services in Class 42 – “Creating an online community for artists

and creative people.” A copy of such mark is identified below and hereinafter referred to as the “Applicant Mark.”



WHEREAS, Art.com believes the Applicant Mark has significant potential for confusing consumers in regard to the source of Applicant’s services. Such concerns are based on Art.com’s belief that (1) that the goods and services stated in Applicant’s application are very similar and overlap significantly with the goods and services that Art.com has been providing to consumers for many years, and (2) that the look and feel of Applicant Mark is almost identical to the Stacked Format of the Art.com mark;

WHEREAS, Applicant filed an amendment of U.S. Application Serial No. 86166439 to reflect a linear, non-stacked version of the CON ART logo on June 14, 2015 (the “Amended Applicant Mark”);

WHEREAS, a Trademark Examiner will review the Applicant’s proposed amendment and issue a final determination regarding the Applicant’s changes to the Applicant Mark;

WHEREAS, Art.com filed a Notice of Opposition to the Applicant Mark on June 15, 2015 in order to preserve its rights to oppose the Applicant Mark;

WHEREAS, Art.com and Applicant (hereinafter “the Parties”) desire to fully and finally settle and resolve all disputes and differences which exist between them as of the Settlement Date (as defined below) arising from Applicant’s use or proposed use of the Applicant Mark; and

WHEREAS, the Parties entered into this Settlement Agreement upon full consideration as of June 16, 2015 (hereinafter the “Settlement Date”).

#### **AGREEMENT**

NOW THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. Applicant represents and warrants that it owns and controls the Applicant Mark and that Applicant has the right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
2. Applicant agrees to immediately cease and refrain from, directly or indirectly, using the Applicant Mark or permitting the use of the Applicant Mark by others (such as CON ART Magazine) in connection with Art.com’s goods and services and/or the goods and services stated in U.S. Application Serial No. 86166439 (“Applicant’s Goods and

Services”). As soon as reasonably possible, but in no event later than thirty (30) days from the Settlement Date, Applicant shall remove any use of the Applicant Mark from commerce in and across all media. However, to the extent that the Applicant Mark has been already circulated in connection with Applicant’s Goods and Services prior to the Settlement Date, such as on a previously published magazine, blog post, or advertisement, such use shall not be deemed an infringement of the Stacked Format or a violation of this Agreement.

3. Applicant represents and warrants that on June 14, 2015, it amended U.S. Application Serial No. 86166439 to reflect a linear, non-stacked version of the CON ART logo. If the Trademark examiner accepts the changes to the Applicant Mark, Applicant shall provide Art.com with evidence of the Amended Applicant Mark (“Evidence of Amendment”). If, on the other hand, the Trademark Examiner rejects the changes to the Applicant Mark, Applicant shall immediately file an express abandonment of U.S. Application Serial No. 86166439 and provide Art.com with a filing receipt evidencing such abandonment (the “Evidence of Abandonment”).
4. If the Trademark Examiner does not issue a final determination on the amendment prior to Applicant’s deadline to file an Answer to the Notice of Opposition, Art.com agrees to consent to an extension of Applicant’s deadline to file such Answer while the final determination is pending.
5. In consideration for Applicant’s covenants in paragraphs 1-3 above, and conditioned upon Art.com’s receipt of the Evidence of Amendment or Evidence of Abandonment (as applicable), Art.com agrees to withdraw its Notice of Opposition and agrees not to otherwise contest Applicant’s use of the Applicant Mark prior to the Settlement Date, and agrees to release and discharge Applicant and its respective officers, directors, agents, servants, employees, members, insurers, attorneys and assigns from any and all civil actions, causes of action, claims and demands for damages on account of or in any way arising out of its use of the Applicant Mark prior to the Settlement Date.
6. The above release does not apply to any of Applicant’s activities that occur after the Settlement Date.
7. By entering into this Agreement, Applicant does not admit liability with respect to the allegations of Art.com and nothing herein shall be construed against such parties by virtue of the act of entering into this Agreement.
8. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity,

illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement contains the entire agreement and supersedes all prior agreements and negotiations relating to the subject matter of this Agreement, whether oral or written, between the parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by either party. No modification or amendment of this Agreement shall be of any force or effect unless in writing executed by both the parties. This Agreement shall be governed by the internal substantive law of California, without reference to conflict of laws provisions. In the event of any dispute between the parties arising out of, relating to or in any way in connection with this Agreement, the parties agree to the exclusive jurisdiction of the federal and/or state courts located in the county of Alameda County, California. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. The executing party to this Agreement represents and warrants that they have the authority to enter into this Agreement on behalf of their respective party and principal(s), if any. This Agreement may be simultaneously executed in two or more counterparts, each of which shall be deemed a fully enforceable original.

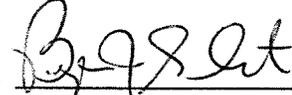
**Applicant**

By: 

Title: Sharon Bar-Noy / Con Art Magazine

Date signed: 06-19-2015

**Art.com**

By: 

Title: Associate Corporate Counsel

Date signed: 6-22-2015

## Update USPTO's Database After Power of Attorney Has Ended

To the Commissioner for Trademarks:

**MARK:** CON ART (stylized and/or with design)

**SERIAL NUMBER:** 86166439

I request to withdraw as the Attorney of Record or update the USPTO's database after a power of attorney has ended for the serial number(s) identified above, for the following reason(s):

Representation has been terminated by owner of abandoned trademark application

I affirm the power of attorney has ended because the mark has registered, ownership has changed, the application has abandoned, or the mark has cancelled or expired; and I have not subsequently appeared on behalf of the owner/holder in a matter related to this application/registration now pending before the USPTO.

**Original Address:**

Morris E. Turek  
YOURTRADEMARKATTORNEY.COM  
167 LAMP AND LANTERN VLG  
#220  
CHESTERFIELD  
Missouri (MO)  
63017-8208  
US

**Proposed Address:**

Sharon Bar-Noy  
5367 Penfield Ave.  
Woodland Hills, California 91364  
United States

### 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 this submission, declares that all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /met20/ Date: 10/01/2015  
Signatory's Name: Morris E. Turek  
Signatory's Position: Attorney of record  
Signatory's Phone: (314) 749-4059

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