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

Proceeding	92042991
Party	Plaintiff HACHETTE FILIPACCHI PRESSE HACHETTE FILIPACCHI PRESSE 149 RUE ANATOLE FRANCE FRX 92534 LEVALLOIS-PERRET CEDEX,
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Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/Kristin B. Whiting/
Date	12/12/2005
Attachments	Hachette Motion to Amend1_1_2.pdf (43 pages)

when he knew that Respondent had never used the Mark on a material number of these goods, and (2) the USPTO would not have registered the ELLE BELLE Mark for the goods identified therein if it knew that Respondent had not in fact used its goods as set forth in Respondent's application to register the ELLE BELLE Mark. (Ex. A, Count III at p. 14.)

I. The Board Should Grant Hachette Leave To Amend Its Petition To Cancel.

Under the liberal standards permitting the amendment of pleadings, the Trademark Trial and Appeal Board (the "Board") should grant Hachette's motion to amend its petition to cancel to add a claim of fraud against Respondent as set forth in Exhibit A hereto, because: (A) leave to amend is "freely granted" by the Board at any stage of the proceedings; (B) Hachette's motion is timely and (C) amendment of Hachette's Petition is in the interests of justice.

A. The Board Should Freely Grant Leave to Amend at Any Stage of the Proceedings.

It is well settled that, under Fed. R. Civ. P. 15(a), the Board "freely grants leave to amend the pleadings at any stage of a proceeding, when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party." Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 507.02; Fed. R. Civ. P. 15(a) ("leave shall be freely given when justice so requires"); *Buffet v. Chi Chi's, Inc.*, 226 U.S.P.Q. 428, 431 (TTAB 1985) (Board has granted leave to amend pleadings with "considerable liberality" where there is no prejudice to the other party).

B. Hachette's Motion is Timely.

Hachette's motion to amend is timely and its proposed amendment will not prejudice Respondent.

Hachette first learned of facts to support its fraud claim on August 15, 2005, when it deposed Respondent's President Paramjit Singh ("Singh"), on the last day of the discovery period.¹ Several months thereafter, the parties agreed to extend the opening dates of their testimony periods to allow them additional time to produce outstanding discovery and to avoid motions to compel their respective discovery responses, as well as to move for summary judgment and prepare for trial. (Consented Motions to Extend and Reset Testimony Periods, filed October 3, 2005 and December 12, 2005).

Here, Hachette files its proposed amendment before either party has taken testimony. The Board has regularly held that a proposed amendment will not prejudice the adverse party if neither party has taken testimony. *See Caron Corp. v. Helena Rubenstein*, 193 U.S.P.Q. 113, 114 (TTAB 1976) (although discovery period closed, no prejudice because neither has yet taken testimony); *Focus 21 Int'l Inc. v. Pola Kasei Koyyo*, 22 U.S.P.Q. 2d 1316, 1318 (TTAB 1992) (no undue prejudice to respondent where motion was filed prior to opening of testimony period.)

¹ Petitioner originally noticed the deposition for November 10, 2004 and rescheduled the deposition several times to accommodate Respondent.

Further, this proceeding is in nearly the same position as it was when Hachette learned of the facts supporting its fraud claim. *See Buffet*, 226 U.S.P.Q. at 431 (holding no prejudice to Respondent because proceeding was in a fairly early stage due to parties' consented motions to extend). Moreover, because this motion is filed prior to the opening of the parties' testimony periods, the Board may reopen discovery to alleviate prejudice, if any, to Respondent. *See Focus 21 Int'l Inc.* 22 U.S.P.Q. 2d at 1318 (discovery period may be reopened without prejudice to respondent where motion was filed prior to opening of petitioner's testimony period).

C. Justice Requires that The Board Grant Hachette Leave to Amend its Complaint.

Finally, justice requires that the Board grant Hachette leave to amend its Petition to Cancel because Hachette's claim of fraud is one upon which it can recover. In the recent case of *Medinol Ltd v. Neuro Vasx Inc.*, the Board stated "a trademark applicant commits fraud in procuring a registration when it makes material misrepresentations of fact in a declaration which it knows or should know to be false or misleading." *Medinol*, Cancellation No. 92040535, TTAB Order, dated May 13, 2003 at 11, 13 (holding that Respondent knew or should have known at the time it submitted statement of use that mark was not in use on all of the goods). Like the petitioner in *Medinol*, Hachette alleges in its new fraud claim that Respondent fraudulently procured its registration for the ELLE BELLE Mark because (1) its President represented that Respondent was using the

ELLE BELLE Mark on all of the goods identified in the application, when he knew that Respondent had not used the Mark on a material number of these goods and (2) the USPTO would not have registered the ELLE BELLE Mark for the goods identified therein if it knew that Respondent had not in fact used its goods as set forth in the application. (Ex. A, Count III at p. 14.) Petitioner's evidence supports this claim.²

Accordingly, in the interest of justice and because entry of Hachette's proposed amendment would not violate settled law or prejudice the rights of the adverse party, the Board should "freely grant[] leave to amend the pleadings." TBMP § 507.02.

II. The Board Should Suspend Proceedings Pending Hachette's Motion to Amend And Reset Testimony Periods.

In addition, Hachette respectfully requests that the Board issue an order suspending proceedings pending resolution of Hachette's motion to amend. *See* 37 C.F.R. § 2.117(c) (providing that "procedures may also be suspended for good cause, upon motion . . . approved by the Board. ") The Board may suspend proceedings for "good cause" upon motion of the parties. *See* TBMP § 510.03(a) ("Suspensions for Other Reasons"). While a motion to amend is not generally

² Singh admitted that Respondent had never used the ELLE BELLE Mark on 18 of the 23 goods identified in Respondent's use-based application and Registration. (*See* Deposition of Paramjit Singh ("Singh Dep."), dated August 15, 2003, pertinent pages of which are annexed hereto as Exhibit B, at pp. 192-93)(admitting that Mark was not used in October 1995 in connection with men's and children's clothing, including trousers, vests, pajamas, T-shirts, socks and stockings, singlets, neckties, underpants, hats, raincoats, overcoats, greatcoats, bathing suits, sports overalls, wind-resistant jackets and ski pants and admitting that Singh also admitted that he knew that Respondent had not used the ELLE BELLE Mark on these goods when he signed the application to register the ELLE BELLE Mark. (*Id.*) (stating that he "knew, in March of 2000, that Elle Belle was not using its mark with respect to these."))

considered a dispositive motion that would trigger automatic suspension, Hachette's motion, if granted, will have a substantial effect on what the parties will be required to prove and defend at trial. Here, the Board should suspend proceedings and reset the parties' testimony periods so that trial begins, at a minimum, only after Respondent responds to Hachette's Amended Petition.

If the Board denies Hachette's motion to amend, Hachette respectfully requests that the Board reset Hachette's testimony period so that the testimony period commences not earlier than 30 days following the service of the Board's decision to that effect.

CONCLUSION

For the foregoing reasons, the Board should grant Hachette leave to amend its Petition to Cancel and, in the meantime, suspend the proceedings.

Respectfully submitted,

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

In the Matter of Registration No. 2,657,739
Registered December 19, 2002
Trademark ELLE BELLE

-----	X
Hachette Filipacchi Presse,	:
	:
Petitioner,	: <u>AMENDED PETITION TO CANCEL</u>
	:
-v-	:
	: Cancellation No. 92042991
Elle Belle, LLC	:
	:
Respondent.	:
-----	X

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Petitioner, Hachette Filipacchi Presse, a joint stock company organized and existing under the laws of France, having an address at 149, rue Anatole France, 92534 Lavallois-Perret Cedex FRANCE, believes that it will be damaged by the continued existence of the above-identified registration for the trademark ELLE BELLE on the Principal Register, and hereby petitions to cancel the same.

As grounds for this Cancellation, Hachette Filipacchi Presse relies upon the rights developed by it and related companies (hereinafter referred to as "Hachette" or "Petitioner") and alleges on knowledge as to itself and otherwise upon information and belief, as follows:

1. Since 1945, Hachette, directly and through its predecessors, has been engaged in the sale of a wide spectrum of goods and services under the mark ELLE, including, but not limited to the publication, distribution, and sale of the world-famous women's magazine entitled *ELLE*. This magazine is a unique mixture of topical events, fashion, beauty and food articles.

2. *ELLE* magazine was originally published as a French-language magazine distributed in France. Since 1952, the French-language edition of *ELLE* magazine has been imported into the United States. Thousands of copies of the French-language edition of this magazine are distributed annually in the United States.

3. The reputation of the French-language edition of *ELLE* magazine in the United States became so favorable that, in 1983, in a special promotion and celebration of the French retail marketplace by a leading New York retailer, Hachette's *ELLE* magazine was selected to represent French women's magazines. Hachette published a special edition of *ELLE* magazine in English for this occasion.

4. Upon receiving favorable reaction to its initial English-language edition of *ELLE* magazine, Hachette commenced publication on a semi-annual basis of an English-language edition of *ELLE* magazine, specifically tailored to the United States market. Due to the popular appeal of this edition, Hachette soon thereafter began monthly publication of an English-language edition of *ELLE* magazine. Hachette sells several hundred thousand copies per month of the English-language edition of *ELLE* magazine in the United States.

5. In addition to the French-language version of *ELLE* magazine and the English-language version sold in the United States, Hachette publishes magazines under the "ELLE" mark in several other languages. Currently, *ELLE* magazine is sold in more than 25 editions throughout the world, including versions in Spanish and Italian.

6. For many years, and long prior to Applicant's filing of its application, Opposer has used the mark ELLE, and variations thereof, in interstate commerce throughout the United States in connection with a variety of goods and services, including, goods and services in the

magazine, apparel, footwear, jewelry, cosmetics, food, home décor, publishing, news, advertising and multimedia fields.

7. Prior to Applicant's filing of its applications, Opposer obtained, *inter alia*, the following registrations (hereinafter the "ELLE registrations," "ELLE marks" or "Opposer's marks"):

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
ELLE	0,758,137	MAGAZINE
ELLE	0,861,159	PROMOTING THE SALE OF WOMEN'S APPAREL BY OTHERS BY STAGING STYLE SHOWS AND BY THE PREPARATION OF VARIOUS TYPES OF ADVERTISING
ELLE	0,862,001	DRESSES, CLOAKS, CAPES, SKIRTS, JACKETS, SUITS, TWO-PIECE COSTUMES OR SUITS, COATS, SWEATERS, BODICES, PULLOVERS, HOUSEGOWNS, SLIPS, COMBINATION UNDERWEAR, PETTICOATS, CORSETS, SHEATH CORSETS, BUST-BODICES, BRASSIERES, UNDERSHIRTS, UNDERWEAR, BATHING SUITS, JODPHURS, KNICKERS, STOCKINGS, TIES, SCARVES, SQUARE SHAWLS, HATS, CAPS, GLOVES & SLIPPERS
ELLE	1,318,319	EARRING OF NONPRECIOUS METALS.
ELLE	1,314,558	STATIONERY-NAMELY, NOTEBOOKS, WRITING PADS, FOUNTAIN PENS, PENCILS, PENCIL HOLDERS, INDEXES, STATIONERY PORTFOLIOS, NOTEBOOKS/WRITING PADS, ADDRESS BOOKS, FOLDERS
ELLE	1,314,706	BATH TOWELS, HAND TOWELS, TABLE CLOTHS, TABLE NAPKINS, SHEETS, BLANKETS AND PILLOWCASES
ELLE	1,322,177	UMBRELLAS; ARTICLES MADE OF LEATHER, IMITATION LEATHER & CANVAS-NAMELY, LUGGAGE, TRAVELING BAGS, TOTE BAGS, HAND BAGS, BEACH TOTE BAGS, SHOULDER BAGS, COSMETIC BAGS SOLD EMPTY, KEY CASES,

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
		SHOPPING TOTE BAGS & WALLETS.
ELLE	1,348,158	FOOTWEAR-NAMELY, SHOES, BOOTS, SLIPPERS, SANDALS AND CLOGS.
ELLE	1,374,805	DISHES, PLATES, CUPS, DRINKING GLASSES BOTTLES, BOTTLE STANDS, COASTERS, BOTTLE OPENERS, JUGS, BRUSHES FOR CLEANING TANKS AND CONTAINERS, BRUSHES FOR FOOTWEAR, ELECTRIC BRUSHES, BRUSHES FOR CLOTHING, HAIR BRUSHES, NAIL BRUSHES; EYEBROW BRUSHES; TOOTH BRUSHES, TRAYS, COFFEE SERVICE IN NON-PRECIOUS METAL, COFFEE POTS, MENU CARD RESTS, COSMETIC WIPES, POTS FOR MAKE-UP SOLD EMPTY, POWDER PUFFS; FRUIT CUPS, STATUES AND FIGURINES OF PORCELAIN, TERRA COTTA AND GLASS; BASINS, COOKING POTS, BUTTER DISHES, GLASS JARS, DRINKING VESSELS, ORNAMENTAL BOXES OF GLASS, ALL-PURPOSE BOXES OF METAL FOR DOMESTIC USE, BASIN BOWLS, CORK SCREWS, SPONGES FOR HOUSEHOLD PURPOSES, TOILET SPONGES, FLASKS IN NON-PRECIOUS METAL, OIL CRUETS IN NON-PRECIOUS METAL, CRUMB TRAYS, FITTED VANITY CASES, PERFUME SPRAYERS, PERFUME VAPORIZERS, COMBS, CURRY COMBS, FITTED PICNIC BASKETS, HAND OPERATED PEPPER MILLS, PEPPER POTS IN NON-PRECIOUS METAL, POWDER COMPACTS IN NON-PRECIOUS METAL SOLD EMPTY, BUCKETS, PAILS, EPERGNES, MUGS, GOBLETS, BASKETS FOR DOMESTIC USE, TRAYS FOR DOMESTIC USE, SAUCERS IN NON-PRECIOUS METAL, CUPS IN NON-PRECIOUS METAL, TABLE PLATES, DECANTERS, DISHES IN NON-PRECIOUS METAL, DECANTER STANDS, GLASS BOWLS, STEW PANS, EGG CUPS IN NON-PRECIOUS METAL, PITCHERS, POTS IN NON-PRECIOUS METAL, KNIFE RESTS FOR THE TABLE.
ELLE	1,396,069	SMOKER'S UTENSILS, NAMELY, MATCHES, LIGHTERS AND ASH TRAYS
ELLE	1,408,531	FURNITURE

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
ELLE	1,408,874	ADVERTISING AGENCY SERVICES
ELLE	1,419,815	SPECTACLES AND VIDEOCASSETTES
ELLE	1,421,118	BAGS FOR STORAGE; SACKS OF TEXTILE FOR PACKAGING; NON-METALLIC WRAPPING OR BINDING BANDS
ELLE	1,429,609	NEWS AGENCY SERVICES-NAMELY, GATHERING & DISSEMINATING NEWS BY ELECTRONIC TRANSMISSION.
ELLE	1,432,718	TABLE UTENSILS NAMELY, KNIVES, FORKS AND SPOONS
ELLE	1,421,118	BAGS FOR STORAGE; SACKS OF TEXTILE FOR PACKAGING; NON-METALLIC WRAPPING OR BINDING BANDS
ELLE	1,454,393	LINGERIE
ELLE	1,454,808	TOILETRIES & COSMETICS, NAMELY PERFUMES; COLOGNES; TOILET WATER; ESSENTIAL OILS; HAIR, SKIN & BATH LOTIONS; TOILET SOAPS; BODY LOTIONS & POWDERS; PERSONAL DEODORANTS; FACE POWDER & LOTIONS, LIPSTICK; LIP LINER; EYE SHADOW; EYEBROW PENCILS; EYE LINERS; LIQUID FOUNDATION; MASCARA; BLUSH; ROUGE; SKIN ASTRINGENTS; CLEANERS & SCRUBS; FACIAL MASKS; SKIN MOISTURIZING LOTION & CREAMS; HAIR SHAMPOO; HAIR CONDITIONING LOTION; EYE MAKEUP REMOVER; NAIL POLISH; NAIL HARDENER; NAIL POLISH REMOVER; CUTICLE REMOVERS & CONDITIONERS; TALCUM POWDER; SHAVING CREAM; HAIR DEPILATORIES; SUN SCREENING CREAMS; FOAMS & LOTIONS; HAIR STYLING MOUSSE & GELS; HAIR SPRAY; BATH GEL & OILS; BUBBLE BATHS; DENTIFRICES.
ELLE	1,465,610	DOLLS; ACTION FIGURES; DOLL AND ACTION

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
		FIGURE CLOTHING AND FURNITURE; TOY TRUCKS AND CARS; EQUIPMENT SOLD AS A UNIT FOR A BOARD GAME; TENNIS, BADMINTON, SQUASH AND RACQUETBALL RACQUETS; BASEBALL GLOVES; BALLS; GOLF CLUBS; STATIONARY EXERCISE BICYCLES; SNOW AND WATER SKIS; BODY BUILDING MACHINES; NON-MOTORIZED SURF AND SAIL BOARDS; PLAY BALLOONS; SWINGS; ROLLER AND ICE SKATES; SKATING BOOTS WITH SKATES ATTACHED
ELLE	1,571,639	ADDING MACHINES AND CALCULATORS
ELLEDECOR	1,654,884	MAGAZINES FEATURING INTERIOR & EXTERIOR DECORATING, ARCHITECTURE, LANDSCAPING, GARDENING & HORTICULTURE; CUISINE; ART & SCULPTURE, ARTIFACTS, ANTIQUES & COLLECTIONS, FURNITURE; HOUSEHOLD ACCESSORIES, ACCOUTREMENTS, & FIXTURES, CRITIQUES OF RESIDENCES; BIOGRAPHICAL SKETCHES; ELECTRONICS FOR THE HOME; NATIONAL & INTERNATIONAL LIFESTYLES, TRAVEL, TOURISM & PHOTOGRAPHY.
ELLE DÉCOR	1,732,988	MAGAZINES FEATURING INTERIOR & EXTERIOR DECORATING, ARCHITECTURE, LANDSCAPING, GARDENING & HORTICULTURE; CUISINE; ART & SCULPTURE, ARTIFACTS, ANTIQUES & COLLECTIONS, FURNITURE; HOUSEHOLD ACCESSORIES, ACCOUTREMENTS, & FIXTURES; CRITIQUES OF RESIDENCES; BIOGRAPHICAL SKETCHES; ELECTRONICS FOR THE HOME; NATIONAL & INTERNATIONAL LIFESTYLES, TRAVEL, TOURISM & PHOTOGRAPHY.
ELLE	1,943,456	PRECIOUS METALS AND THEIR ALLOYS, NAMELY GOLD, SILVER, PLATINUM AND BRONZE; ITEMS MADE OF PRECIOUS METAL AND THEIR ALLOYS OR COATED THEREWITH, NAMELY ASHTRAYS, CIGAR AND CIGARETTE BOXES AND CASES, CIGAR AND CIGARETTE HOLDERS, MATCH BOXES, MATCH HOLDERS, SNUFF BOXES, LIGHTERS, BUCKLES, BUSTS, BOXES FOR NEEDLES AND BOXES FOR SWEETMEATS, BASKETS FOR HOUSEHOLD

Trademark

Registration No.

Goods or Services

		PURPOSES, TRAYS, CANDELABRA, CANDLESTICKS, CANDLE RINGS, COFFEE SERVICES AND MORE GENERALLY HOUSEHOLD UTENSILS, SUCH AS CRUET STANDS (FOR OIL AND VINEGAR) CUPS, EGG CUPS, NAPKINS HOLDERS AND NAPKIN RINGS, NUT CRACKERS, SALT CELLARS AND SALT SHAKERS, SUGARBOWLS, TABLE PLATES, TEA CADDIES AND TEA SERVICES, TOOTHPICK HOLDERS, VASES, SACRED VESSELS, FIGURES AND STATUETTES, MIRROR AND PICTURE FRAMES; JEWELRY, SUCH AS EARRINGS, BRACELETS, NECKLACES, RINGS, LONG CHAIN NECKLACES, BROOCHES, CHAINS, PENDANTS, DECORATIVE BUTTONS, INCLUDING COSTUME JEWELRY; PRECIOUS GEMSTONES; HOROLOGICAL AND CHROMETRIC INSTRUMENTS, NAMELY WATCHES AND CLOCKS AND ACCESSORIES AND PARTS AND FITTINGS THEREOF SUCH AS WATCH CASES, WATCH BANDS, WATCH CHAINS, WATCH GLASSES, CLOCK CASES
ELLE	2,016,657	BLANK, PRERECORDED AND RE-RECORDABLE AUDIO RECORDINGS IN THE NATURE OF COMPACT DISCS COVERING THEMES SUCH AS MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY
ELLE	2,120,688	PROMOTING THE GOODS AND SERVICES OF OTHERS THROUGH THE DISTRIBUTION OF DISCOUNT AND/OR PRIORITY USER CARDS; OFFERING TECHNICAL ASSISTANCE IN THE ESTABLISHMENT AND/OR OPERATION OF FASHION SHOWS AND BEAUTY PAGEANTS, BEAUTY SALONS AND FASHION WEAR BOUTIQUES; COPYRIGHT MANAGEMENT SERVICES; ADVERTISING SLOGAN LICENSING SERVICES; ORGANIZING TRADE SHOW EXPOSITIONS IN THE ENTERTAINMENT ARTS FIELD FEATURING MUSIC, THEATER AND CINEMATOGRAPHIC PRODUCTS; ORGANIZING TRADE SHOW EXPOSITIONS FEATURING HOME AND GARDEN DECORATING PRODUCTS,

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
		LANDSCAPING PRODUCTS AND CULINARY PRODUCTS
ELLE	2,120,702	DAIRY BASED FOOD BEVERAGES AND MILK, ALCOHOLIC AND NON-ALCOHOLIC BEVERAGES, NAMELY BEERS, MINERAL WATER, SPRING WATER, SOFT DRINKS, NAMELY, ORDINARY AND LOW CALORIE SOFT DRINKS, BOTH CARBONATED AND NON-CARBONATED, SPORTS DRINKS, FRUIT DRINKS, FRUIT BASED SYRUPS BOTH FOR CULINARY USE AND FOR MAKING SOFT DRINKS AND COCKTAIL DRINKS
ELLE	2,199,132	AMUSEMENT APPARATUS ADOPTED FOR USE WITH TELEVISION RECEIVERS, NAMELY, AUDIO VISUAL TEACHING APPARATUS, NAMELY, FILM AND VIDEO PROJECTORS FOR USE WITH OR WITHOUT SLIDES, PRECISION BALANCES, WEIGHING APPARATUS; DICTATING MACHINES, RECORD PLAYERS, AUDIOVIDEO RECEIVERS, AUDIO/VIDEO TAPE RECORDERS, VIDEO RECORDERS, REMOTE CONTROL APPARATUS, ELECTRONIC AND COMPUTER PERIPHERAL JUKE BOXES, COMPUTERS, DATA PROCESSORS; DATA BASES CONTAINING STORED INFORMATION IN THE FIELD OF MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY TO BE READ/CONSULTED AND OR USED ON COMPUTER TERMINALS AND VIDEO EQUIPMENT; BLANK MAGNETIC DATA CARRIERS FOR COMPUTER PROGRAMS AND VIDEO EQUIPMENT, FOR OPTICAL, DIGITAL OR AUDIOVISUAL USE, NAMELY, VIDEO DISCS, INTERACTIVE VIDEO DISCS, BLANK AND REREADABLE VIDEO DISC; MAGNETIC CODED CARDS, BLANK AUDIO TAPES, BLANK MAGNETIC COMPUTER TAPES, BLANK VIDEO TAPES, PRERECORDED AUDIO, COMPUTER AND VIDEO TAPES FEATURING THEMES SUCH AS MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; BLANK AUDIO AND BLANK VIDEO CASSETTES,

Trademark

Registration No.

Goods or Services

PRERECORDED AUDIO AND PRERECORDED VIDEO CASSETTES FEATURING THEMES SUCH AS MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; FLOPPY DISCS FOR COMPUTERS; COMPACT DISCS, AND AUDIO AND/OR VIDEO DISCS FEATURING THEMES SUCH AS MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; EXPOSED CAMERA FILM AND MOTION PICTURE FILM FEATURING THEMES SUCH AS MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; COMPUTER SOFTWARE PROGRAMS FOR USE IN THE FIELD OF CONSULTING SERVICES ON INTERIOR AND EXTERIOR DECORATING, ARCHITECTURE, LANDSCAPING, GARDENING AND HORTICULTURE, CUISINE, ART, FURNITURE, CRITIQUES OF RESIDENCES, BIOGRAPHICAL SKETCHES, TRAVEL, TOURISM, PHOTOGRAPHY, FASHION AND SPORTING ACTIVITIES; COMPUTER SOFTWARE PROGRAMS FOR USE IN CULINARY ARTS, HOME DECORATION, FASHION AND BEAUTY FOR HOUSEHOLD AND DOMESTIC USE; COMPUTER SOFTWARE PROGRAMS FOR USE IN REVIEWING DEVELOPMENTS AND CURRENT EVENTS IN THE FIELD OF CINEMA, ARTS, THEATER, DANCE, PANTOMIME, MIME, CIRCUS, MUSICAL AND LITERARY ENTERTAINMENT; COMPUTER SOFTWARE PROGRAMS FOR USE IN THE FIELD OF DOCUMENTARIES CONCERNING SCIENCE, NATURAL SCIENCE, ANIMAL AND PLANT LIFE, THE HUMAN BODY AND ITS FUNCTIONS, HEALTH AND DIET FOR HUMANS AND ANIMALS, LEARNING-A-LANGUAGE PROGRAMS, ARTS, CINEMA AND LITERATURE; CASH REGISTERS AND CALCULATING MACHINES

ELLE

2,242,315

INTERACTIVE VIDEO GAME PROGRAMS; GAMES,

Trademark

Registration No.

Goods or Services

NAMELY, BOARDGAMES, CARD GAMES, MANIPULATIVE GAMES, TOYS, NAMELY, WIND-UP TOYS, BATTERY OPERATED AND NON-BATTERY OPERATED MECHANICAL ACTION TOYS, PLUSH TOYS, INFLATABLE BATH TOYS, BATTERY OPERATED AND NON-BATTERY OPERATED STUFFED TOYS, BATTERY OPERATED AND NON-BATTERY OPERATED DOLLS COMMUNICATION SERVICES, NAMELY, RADIO COMMUNICATION SERVICES, TELEPHONE COMMUNICATIONS SERVICES, TELEGRAPH SERVICES AND VIDEO TELECONFERENCING SERVICES, TELEGRAPH SERVICES AND VIDEO TELECONFERENCING SERVICES; ELECTRONIC TRANSMISSION OF DATA, IMAGES AND SOUNDS AND DOCUMENTS VIA COMPUTER TERMINALS; TELEVISION AND RADIO BROADCASTING SERVICES; INCLUDING CABLE TRANSMISSIONS OF SUCH SERVICES; TELEX TRANSMISSION SERVICES; TELEGRAM TRANSMISSION SERVICES; ELECTRONIC TRANSMISSION OF INFORMATION FROM DATA BANKS VIA COMPUTER TERMINALS; CABLE TELEVISION TRANSMISSION SERVICES HOME AND OFFICE DELIVERY OF MULTIMEDIA AND AUDIOVISUAL PRODUCTS, NAMELY, VIDEODISCS, COMPACT DISCS, INTERACTIVE DISCS, AND COMPACT DISCS WITH READ ONLY MEMORY (CD-ROM) EDUCATIONAL SERVICES, NAMELY, ADMINISTRATION OF CULTURAL EXCHANGE PROGRAMS; ENTERTAINMENT SERVICES, NAMELY, SPONSORING SPORTS COMPETITIONS AND TOURNAMENTS; EDUCATION IN THE FIELD OF MUSIC, THEATER, CINEMA, LITERATURE, ARTS, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY RENDERED THROUGH CORRESPONDENCE COURSES; PROVIDING CLASSES OF INSTRUCTION TO BEGINNERS AND ADVANCED PERSONS IN THE FIELD OF MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND

Trademark

Registration No.

Goods or Services

BEAUTY; CONDUCTING EDUCATIONAL CONFERENCES, WORKSHOPS AND COURSES OF INSTRUCTION IN THE FIELD OF MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; EDUCATIONAL CONFERENCES, FORUMS, CONGRESSES AND COLLOQUIUMS IN THE FIELD OF MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; PUBLICATION OF BOOKS; ENTERTAINMENT IN THE NATURE OF GAMES AND CONTESTS, NAMELY, ESSAY-WRITING AND NOVEL-WRITING CONTESTS; BEAUTY PAGEANTS; INDOOR AND OUTDOOR SPORTS COMPETITIONS FEATURING, HOCKEY, SOCCER, FOOTBALL AND VOLLEYBALL; PRODUCTION OF RADIO AND TELEVISION PROGRAMS; ENTERTAINMENT SERVICES, NAMELY, PROVIDING AN ON-LINE ENTERTAINMENT VARIETY SHOW, FEATURING MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; ENTERTAINMENT SERVICES IN THE NATURE OF A CABLE TELEVISION VARIETY SHOW FEATURING MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; AUDIO RECORDING AND PRODUCTION SERVICES; LIBRARIES AND BOOKS LENDING SERVICES; VIDEO AND GAME LIBRARY SERVICES; VIDEO TAPE FILM PRODUCTION LEGAL CONSULTING SERVICES; CORRESPONDENCE EXCHANGE SERVICES; LICENSING OF INTELLECTUAL PROPERTY; COMPUTER PROGRAMMING SERVICES; PROGRAMMING ELECTRONIC INSTRUMENTS FOR OTHERS; EDITING OF WRITTEN TEXTS; NEWS SYNDICATION REPORTING; LANGUAGE TRANSLATION; PRINTING SERVICES; RENTAL OF COMPUTERS AND RENTAL OF DISPLAY

Trademark

Registration No.

Goods or Services

APPARATUS FOR USE IN MULTIMEDIA PRESENTATIONS USING SLIDES, FILM, TAPE RECORDINGS AND SPECIAL LIGHTING EFFECTS; EDITING OF WRITTEN TEXTS, ILLUSTRATIONS BOOKS, BOOK REVIEWS, NEWSPAPERS, PERIODICALS, MAGAZINES AND PUBLICATIONS OF ALL TYPES REGARDLESS OF THEIR FORM, INCLUDING ELECTRONIC AND DIGITALIZED PUBLICATIONS, DESKTOP PUBLISHING OF SOUND AND/OR VISUAL MEDIA - OR MULTIMEDIA SOFTWARE PROGRAMS FOR OTHERS; COMPILING DATA BASES AND DATA BANKS FOR USE BY OTHERS; PRODUCTION AND RENTAL OF MOTION PICTURE FILM, VIDEO-CASSETTE TAPES AND MULTI-MEDIA ENTERTAINMENT SOFTWARE

Copies of these registrations are attached hereto as Exhibit A.

8. Respondent registered ELLE BELLE, Registration No. 2,657,739 for “Clothing articles for men, women and children namely, shirts, blouses, dresses, evening wear, skirts, trousers, vests, jerseys, pants, pajamas, t-shirts, socks and stockings, singlets, corsets, garters, underpants, petticoats, hats, head scarves, neckties, raincoats, overcoats, great coats, bathing suits, sports overalls, wind resistant jackets and ski pants” in International Class 025, first use in commerce October 1995 (“Respondent’s Mark”).

9. The record owner of the contested registration is Respondent Elle Belle LLC, a New York corporation with an address at 1020 6th Avenue, New York, NY 10018 (“Respondent” or “Elle Belle”).

Count I: Likelihood of Confusion.

10. Petitioner hereby incorporates by reference the allegations in Paragraphs 1 through 9 hereof as if fully set forth herein.

11. Petitioner's date of first use in commerce for its ELLE Marks precedes Respondent's date of first use in commerce for its ELLE BELLE mark.

12. Respondent's Mark, as set forth in the registration to be canceled so resembles Petitioner's Marks as to be likely, when applied to Petitioner's goods, to cause confusion, mistake or to deceive for purposes of Section 2(d) of the Lanham Act.

13. Petitioner has expended substantial amounts of time and effort in advertising and promoting its goods under the ELLE Marks. As a result of such advertising and promotional activities, the ELLE Marks have become famous and the relevant public has come to associate and identify ELLE with Petitioner, and Petitioner derives substantial goodwill from such identification by consumers.

14. Petitioner will be damaged by the continued existence of Respondent's Mark, Reg. No. 2,657,739, on the Register because it will give color of rights to Respondent in violation of Petitioner's prior and superior statutory and common law rights in its Marks.

Count II: Likelihood of Dilution

15. Petitioner hereby incorporates by reference the allegations of Paragraphs 1 through 14 hereof as if fully set forth herein.

16. Because of the high degree of inherent or acquired distinctiveness of the Petitioner's Marks, Petitioner's Marks are "famous" pursuant to Section 43(c) of the Lanham Act.

17. Petitioner's Marks became famous prior to the date that Respondent can first lay claim to any rights in the ELLE BELLE mark.

18. Respondent's Mark will dilute the distinctive quality of Petitioner's Marks, with consequent injury to Petitioner.

19. Petitioner will be damaged by the continued existence of Respondent's Mark, Reg. No. 2,657,739 because such registration will support and assist Respondent in the diluting use of Respondent's mark, and will give color or rights to Respondent in violation of Petitioner's prior and superior statutory and common law rights in its Marks.

Count III: Fraud

20. Respondent procured the registration of the ELLE BELLE mark by making material representations of fact in its application to register the ELLE BELLE mark that Respondent had used the ELLE BELLE mark on all of the goods it identified in its application.

21. Respondent knew or should have known that it had not used its Mark on a material portion of the goods it identified in the application and that these representations were false and misleading.

22. Respondent made these representations to the United States Patent and Trademark Office ("USPTO") with the intent to induce authorized agents of the USPTO to grant Respondent's registration for its ELLE BELLE mark.

21. The authorized agents of the USPTO reasonably relied upon the truth of Respondent's statements to grant Respondent's registration for the ELLE BELLE mark and would not have accepted Respondent's registration for the goods identified therein, but for Respondent's misrepresentations.

22. Respondent's Registration No. 2,657,739 for the ELLE BELLE mark should be cancelled because Respondent committed fraud in the procurement of that Registration.

23. Petitioner will be damaged by the continued existence of Respondent's Mark, Reg. No. 2,657,739, on the Register because it will give color of rights to Respondent in violation of Petitioner's prior and superior statutory and common law rights in its Marks.

WHEREFORE, Petitioner prays that this petition to cancel be granted and that Reg. No. 2,657,739 for the mark ELLE BELLE be cancelled forthwith.

Dated: New York, New York
December 9, 2005

Hachette Filipacchi Presse

By: _____
Perla M. Kuhn
Kristin B. Whiting
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

Attorneys for Petitioner

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513

on _____
HUGHES HUBBARD & REED LLP

Dated: _____ By: _____
Name:

2. *ELLE* magazine was originally published as a French-language magazine distributed in France. Since 1952, the French-language edition of *ELLE* magazine has been imported into the United States. Thousands of copies of the French-language edition of this magazine are distributed annually in the United States.

3. The reputation of the French-language edition of *ELLE* magazine in the United States became so favorable that, in 1983, in a special promotion and celebration of the French retail marketplace by a leading New York retailer, Hachette's *ELLE* magazine was selected to represent French women's magazines. Hachette published a special edition of *ELLE* magazine in English for this occasion.

4. Upon receiving favorable reaction to its initial English-language edition of *ELLE* magazine, Hachette commenced publication on a semi-annual basis of an English-language edition of *ELLE* magazine, specifically tailored to the United States market. Due to the popular appeal of this edition, Hachette soon thereafter began monthly publication of an English-language edition of *ELLE* magazine. Hachette sells several hundred thousand copies per month of the English-language edition of *ELLE* magazine in the United States.

5. In addition to the French-language version of *ELLE* magazine and the English-language version sold in the United States, Hachette publishes magazines under the "ELLE" mark in several other languages. Currently, *ELLE* magazine is sold in more than 25 editions throughout the world, including versions in Spanish and Italian.

6. For many years, and long prior to Applicant's filing of its application, Opposer has used the mark ELLE, and variations thereof, in interstate commerce throughout the United States in connection with a variety of goods and services, including, goods and services in the

magazine, apparel, footwear, jewelry, cosmetics, food, home décor, publishing, news, advertising and multimedia fields.

7. Prior to Applicant's filing of its applications, Opposer obtained, *inter alia*, the following registrations (hereinafter the "ELLE registrations," "ELLE marks" or "Opposer's marks"):

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
ELLE	0,758,137	MAGAZINE
ELLE	0,861,159	PROMOTING THE SALE OF WOMEN'S APPAREL BY OTHERS BY STAGING STYLE SHOWS AND BY THE PREPARATION OF VARIOUS TYPES OF ADVERTISING
ELLE	0,862,001	DRESSES, CLOAKS, CAPES, SKIRTS, JACKETS, SUITS, TWO-PIECE COSTUMES OR SUITS, COATS, SWEATERS, BODICES, PULLOVERS, HOUSEGOWNS, SLIPS, COMBINATION UNDERWEAR, PETTICOATS, CORSETS, SHEATH CORSETS, BUST-BODICES, BRASSIERES, UNDERSHIRTS, UNDERWEAR, BATHING SUITS, JODPHURS, KNICKERS, STOCKINGS, TIES, SCARVES, SQUARE SHAWLS, HATS, CAPS, GLOVES & SLIPPERS
ELLE	1,318,319	EARRING OF NONPRECIOUS METALS.
ELLE	1,314,558	STATIONERY-NAMELY, NOTEBOOKS, WRITING PADS, FOUNTAIN PENS, PENCILS, PENCIL HOLDERS, INDEXES, STATIONERY PORTFOLIOS, NOTEBOOKS/WRITING PADS, ADDRESS BOOKS, FOLDERS
ELLE	1,314,706	BATH TOWELS, HAND TOWELS, TABLE CLOTHS, TABLE NAPKINS, SHEETS, BLANKETS AND PILLOWCASES
ELLE	1,322,177	UMBRELLAS; ARTICLES MADE OF LEATHER, IMITATION LEATHER & CANVAS-NAMELY, LUGGAGE, TRAVELING BAGS, TOTE BAGS, HAND BAGS, BEACH TOTE BAGS, SHOULDER BAGS, COSMETIC BAGS SOLD EMPTY, KEY CASES,

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
		SHOPPING TOTE BAGS & WALLETS.
ELLE	1,348,158	FOOTWEAR-NAMELY, SHOES, BOOTS, SLIPPERS, SANDALS AND CLOGS.
ELLE	1,374,805	DISHES, PLATES, CUPS, DRINKING GLASSES BOTTLES, BOTTLE STANDS, COASTERS, BOTTLE OPENERS, JUGS, BRUSHES FOR CLEANING TANKS AND CONTAINERS, BRUSHES FOR FOOTWEAR, ELECTRIC BRUSHES, BRUSHES FOR CLOTHING, HAIR BRUSHES, NAIL BRUSHES; EYEBROW BRUSHES; TOOTH BRUSHES, TRAYS, COFFEE SERVICE IN NON-PRECIOUS METAL, COFFEE POTS, MENU CARD RESTS, COSMETIC WIPES, POTS FOR MAKE-UP SOLD EMPTY, POWDER PUFFS; FRUIT CUPS, STATUES AND FIGURINES OF PORCELAIN, TERRA COTTA AND GLASS; BASINS, COOKING POTS, BUTTER DISHES, GLASS JARS, DRINKING VESSELS, ORNAMENTAL BOXES OF GLASS, ALL-PURPOSE BOXES OF METAL FOR DOMESTIC USE, BASIN BOWLS, CORK SCREWS, SPONGES FOR HOUSEHOLD PURPOSES, TOILET SPONGES, FLASKS IN NON-PRECIOUS METAL, OIL CRUETS IN NON-PRECIOUS METAL, CRUMB TRAYS, FITTED VANITY CASES, PERFUME SPRAYERS, PERFUME VAPORIZERS, COMBS, CURRY COMBS, FITTED PICNIC BASKETS, HAND OPERATED PEPPER MILLS, PEPPER POTS IN NON-PRECIOUS METAL, POWDER COMPACTS IN NON-PRECIOUS METAL SOLD EMPTY, BUCKETS, PAILS, EPERGNES, MUGS, GOBLETS, BASKETS FOR DOMESTIC USE, TRAYS FOR DOMESTIC USE, SAUCERS IN NON-PRECIOUS METAL, CUPS IN NON-PRECIOUS METAL, TABLE PLATES, DECANTERS, DISHES IN NON-PRECIOUS METAL, DECANTER STANDS, GLASS BOWLS, STEW PANS, EGG CUPS IN NON-PRECIOUS METAL, PITCHERS, POTS IN NON-PRECIOUS METAL, KNIFE RESTS FOR THE TABLE.
ELLE	1,396,069	SMOKER'S UTENSILS, NAMELY, MATCHES, LIGHTERS AND ASH TRAYS
ELLE	1,408,531	FURNITURE

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
ELLE	1,408,874	ADVERTISING AGENCY SERVICES
ELLE	1,419,815	SPECTACLES AND VIDEOCASSETTES
ELLE	1,421,118	BAGS FOR STORAGE; SACKS OF TEXTILE FOR PACKAGING; NON-METALLIC WRAPPING OR BINDING BANDS
ELLE	1,429,609	NEWS AGENCY SERVICES-NAMELY, GATHERING & DISSEMINATING NEWS BY ELECTRONIC TRANSMISSION.
ELLE	1,432,718	TABLE UTENSILS NAMELY, KNIVES, FORKS AND SPOONS
ELLE	1,421,118	BAGS FOR STORAGE; SACKS OF TEXTILE FOR PACKAGING; NON-METALLIC WRAPPING OR BINDING BANDS
ELLE	1,454,393	LINGERIE
ELLE	1,454,808	TOILETRIES & COSMETICS, NAMELY PERFUMES; COLOGNES; TOILET WATER; ESSENTIAL OILS; HAIR, SKIN & BATH LOTIONS; TOILET SOAPS; BODY LOTIONS & POWDERS; PERSONAL DEODORANTS; FACE POWDER & LOTIONS, LIPSTICK; LIP LINER; EYE SHADOW; EYEBROW PENCILS; EYE LINERS; LIQUID FOUNDATION; MASCARA; BLUSH; ROUGE; SKIN ASTRINGENTS; CLEANERS & SCRUBS; FACIAL MASKS; SKIN MOISTURIZING LOTION & CREAMS; HAIR SHAMPOO; HAIR CONDITIONING LOTION; EYE MAKEUP REMOVER; NAIL POLISH; NAIL HARDENER; NAIL POLISH REMOVER; CUTICLE REMOVERS & CONDITIONERS; TALCUM POWDER; SHAVING CREAM; HAIR DEPILATORIES; SUN SCREENING CREAMS; FOAMS & LOTIONS; HAIR STYLING MOUSSE & GELS; HAIR SPRAY; BATH GEL & OILS; BUBBLE BATHS; DENTIFRICES.
ELLE	1,465,610	DOLLS; ACTION FIGURES; DOLL AND ACTION

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
		FIGURE CLOTHING AND FURNITURE; TOY TRUCKS AND CARS; EQUIPMENT SOLD AS A UNIT FOR A BOARD GAME; TENNIS, BADMINTON, SQUASH AND RACQUETBALL RACQUETS; BASEBALL GLOVES; BALLS; GOLF CLUBS; STATIONARY EXERCISE BICYCLES; SNOW AND WATER SKIS; BODY BUILDING MACHINES; NON-MOTORIZED SURF AND SAIL BOARDS; PLAY BALLOONS; SWINGS; ROLLER AND ICE SKATES; SKATING BOOTS WITH SKATES ATTACHED
ELLE	1,571,639	ADDING MACHINES AND CALCULATORS
ELLEDECOR	1,654,884	MAGAZINES FEATURING INTERIOR & EXTERIOR DECORATING, ARCHITECTURE, LANDSCAPING, GARDENING & HORTICULTURE; CUISINE; ART & SCULPTURE, ARTIFACTS, ANTIQUES & COLLECTIONS, FURNITURE; HOUSEHOLD ACCESSORIES, ACCOUTREMENTS, & FIXTURES, CRITIQUES OF RESIDENCES; BIOGRAPHICAL SKETCHES; ELECTRONICS FOR THE HOME; NATIONAL & INTERNATIONAL LIFESTYLES, TRAVEL, TOURISM & PHOTOGRAPHY.
ELLE DÉCOR	1,732,988	MAGAZINES FEATURING INTERIOR & EXTERIOR DECORATING, ARCHITECTURE, LANDSCAPING, GARDENING & HORTICULTURE; CUISINE; ART & SCULPTURE, ARTIFACTS, ANTIQUES & COLLECTIONS, FURNITURE; HOUSEHOLD ACCESSORIES, ACCOUTREMENTS, & FIXTURES; CRITIQUES OF RESIDENCES; BIOGRAPHICAL SKETCHES; ELECTRONICS FOR THE HOME; NATIONAL & INTERNATIONAL LIFESTYLES, TRAVEL, TOURISM & PHOTOGRAPHY.
ELLE	1,943,456	PRECIOUS METALS AND THEIR ALLOYS, NAMELY GOLD, SILVER, PLATINUM AND BRONZE; ITEMS MADE OF PRECIOUS METAL AND THEIR ALLOYS OR COATED THEREWITH, NAMELY ASHTRAYS, CIGAR AND CIGARETTE BOXES AND CASES, CIGAR AND CIGARETTE HOLDERS, MATCH BOXES, MATCH HOLDERS, SNUFF BOXES, LIGHTERS, BUCKLES, BUSTS, BOXES FOR NEEDLES AND BOXES FOR SWEETMEATS, BASKETS FOR HOUSEHOLD

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
		PURPOSES, TRAYS, CANDELABRA, CANDLESTICKS, CANDLE RINGS, COFFEE SERVICES AND MORE GENERALLY HOUSEHOLD UTENSILS, SUCH AS CRUET STANDS (FOR OIL AND VINEGAR) CUPS, EGG CUPS, NAPKINS HOLDERS AND NAPKIN RINGS, NUT CRACKERS, SALT CELLARS AND SALT SHAKERS, SUGARBOWLS, TABLE PLATES, TEA CADDIES AND TEA SERVICES, TOOTHPICK HOLDERS, VASES, SACRED VESSELS, FIGURES AND STATUETTES, MIRROR AND PICTURE FRAMES; JEWELRY, SUCH AS EARRINGS, BRACELETS, NECKLACES, RINGS, LONG CHAIN NECKLACES, BROOCHES, CHAINS, PENDANTS, DECORATIVE BUTTONS, INCLUDING COSTUME JEWELRY; PRECIOUS GEMSTONES; HOROLOGICAL AND CHROMETRIC INSTRUMENTS, NAMELY WATCHES AND CLOCKS AND ACCESSORIES AND PARTS AND FITTINGS THEREOF SUCH AS WATCH CASES, WATCH BANDS, WATCH CHAINS, WATCH GLASSES, CLOCK CASES
ELLE	2,016,657	BLANK, PRERECORDED AND RE-RECORDABLE AUDIO RECORDINGS IN THE NATURE OF COMPACT DISCS COVERING THEMES SUCH AS MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY
ELLE	2,120,688	PROMOTING THE GOODS AND SERVICES OF OTHERS THROUGH THE DISTRIBUTION OF DISCOUNT AND/OR PRIORITY USER CARDS; OFFERING TECHNICAL ASSISTANCE IN THE ESTABLISHMENT AND/OR OPERATION OF FASHION SHOWS AND BEAUTY PAGEANTS, BEAUTY SALONS AND FASHION WEAR BOUTIQUES; COPYRIGHT MANAGEMENT SERVICES; ADVERTISING SLOGAN LICENSING SERVICES; ORGANIZING TRADE SHOW EXPOSITIONS IN THE ENTERTAINMENT ARTS FIELD FEATURING MUSIC, THEATER AND CINEMATOGRAPHIC PRODUCTS; ORGANIZING TRADE SHOW EXPOSITIONS FEATURING HOME AND GARDEN DECORATING PRODUCTS,

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
		LANDSCAPING PRODUCTS AND CULINARY PRODUCTS
ELLE	2,120,702	DAIRY BASED FOOD BEVERAGES AND MILK, ALCOHOLIC AND NON-ALCOHOLIC BEVERAGES, NAMELY BEERS, MINERAL WATER, SPRING WATER, SOFT DRINKS, NAMELY, ORDINARY AND LOW CALORIE SOFT DRINKS, BOTH CARBONATED AND NON-CARBONATED, SPORTS DRINKS, FRUIT DRINKS, FRUIT BASED SYRUPS BOTH FOR CULINARY USE AND FOR MAKING SOFT DRINKS AND COCKTAIL DRINKS
ELLE	2,199,132	AMUSEMENT APPARATUS ADOPTED FOR USE WITH TELEVISION RECEIVERS, NAMELY, AUDIO VISUAL TEACHING APPARATUS, NAMELY, FILM AND VIDEO PROJECTORS FOR USE WITH OR WITHOUT SLIDES, PRECISION BALANCES, WEIGHING APPARATUS; DICTATING MACHINES, RECORD PLAYERS, AUDIOVIDEO RECEIVERS, AUDIO/VIDEO TAPE RECORDERS, VIDEO RECORDERS, REMOTE CONTROL APPARATUS, ELECTRONIC AND COMPUTER PERIPHERAL JUKE BOXES, COMPUTERS, DATA PROCESSORS; DATA BASES CONTAINING STORED INFORMATION IN THE FIELD OF MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY TO BE READ/CONSULTED AND OR USED ON COMPUTER TERMINALS AND VIDEO EQUIPMENT; BLANK MAGNETIC DATA CARRIERS FOR COMPUTER PROGRAMS AND VIDEO EQUIPMENT, FOR OPTICAL, DIGITAL OR AUDIOVISUAL USE, NAMELY, VIDEO DISCS, INTERACTIVE VIDEO DISCS, BLANK AND REREADABLE VIDEO DISC; MAGNETIC CODED CARDS, BLANK AUDIO TAPES, BLANK MAGNETIC COMPUTER TAPES, BLANK VIDEO TAPES, PRERECORDED AUDIO, COMPUTER AND VIDEO TAPES FEATURING THEMES SUCH AS MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; BLANK AUDIO AND BLANK VIDEO CASSETTES,

Trademark

Registration No.

Goods or Services

PRERECORDED AUDIO AND PRERECORDED VIDEO CASSETTES FEATURING THEMES SUCH AS MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; FLOPPY DISCS FOR COMPUTERS; COMPACT DISCS, AND AUDIO AND/OR VIDEO DISCS FEATURING THEMES SUCH AS MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; EXPOSED CAMERA FILM AND MOTION PICTURE FILM FEATURING THEMES SUCH AS MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; COMPUTER SOFTWARE PROGRAMS FOR USE IN THE FIELD OF CONSULTING SERVICES ON INTERIOR AND EXTERIOR DECORATING, ARCHITECTURE, LANDSCAPING, GARDENING AND HORTICULTURE, CUISINE, ART, FURNITURE, CRITIQUES OF RESIDENCES, BIOGRAPHICAL SKETCHES, TRAVEL, TOURISM, PHOTOGRAPHY, FASHION AND SPORTING ACTIVITIES; COMPUTER SOFTWARE PROGRAMS FOR USE IN CULINARY ARTS, HOME DECORATION, FASHION AND BEAUTY FOR HOUSEHOLD AND DOMESTIC USE; COMPUTER SOFTWARE PROGRAMS FOR USE IN REVIEWING DEVELOPMENTS AND CURRENT EVENTS IN THE FIELD OF CINEMA, ARTS, THEATER, DANCE, PANTOMIME, MIME, CIRCUS, MUSICAL AND LITERARY ENTERTAINMENT; COMPUTER SOFTWARE PROGRAMS FOR USE IN THE FIELD OF DOCUMENTARIES CONCERNING SCIENCE, NATURAL SCIENCE, ANIMAL AND PLANT LIFE, THE HUMAN BODY AND ITS FUNCTIONS, HEALTH AND DIET FOR HUMANS AND ANIMALS, LEARNING-A-LANGUAGE PROGRAMS, ARTS, CINEMA AND LITERATURE; CASH REGISTERS AND CALCULATING MACHINES

ELLE

2,242,315

INTERACTIVE VIDEO GAME PROGRAMS; GAMES,

Trademark

Registration No.

Goods or Services

NAMELY, BOARDGAMES, CARD GAMES, MANIPULATIVE GAMES, TOYS, NAMELY, WIND-UP TOYS, BATTERY OPERATED AND NON-BATTERY OPERATED MECHANICAL ACTION TOYS, PLUSH TOYS, INFLATABLE BATH TOYS, BATTERY OPERATED AND NON-BATTERY OPERATED STUFFED TOYS, BATTERY OPERATED AND NON-BATTERY OPERATED DOLLS COMMUNICATION SERVICES, NAMELY, RADIO COMMUNICATION SERVICES, TELEPHONE COMMUNICATIONS SERVICES, TELEGRAPH SERVICES AND VIDEO TELECONFERENCING SERVICES, TELEGRAPH SERVICES AND VIDEO TELECONFERENCING SERVICES; ELECTRONIC TRANSMISSION OF DATA, IMAGES AND SOUNDS AND DOCUMENTS VIA COMPUTER TERMINALS; TELEVISION AND RADIO BROADCASTING SERVICES; INCLUDING CABLE TRANSMISSIONS OF SUCH SERVICES; TELEX TRANSMISSION SERVICES; TELEGRAM TRANSMISSION SERVICES; ELECTRONIC TRANSMISSION OF INFORMATION FROM DATA BANKS VIA COMPUTER TERMINALS; CABLE TELEVISION TRANSMISSION SERVICES HOME AND OFFICE DELIVERY OF MULTIMEDIA AND AUDIOVISUAL PRODUCTS, NAMELY, VIDEODISCS, COMPACT DISCS, INTERACTIVE DISCS, AND COMPACT DISCS WITH READ ONLY MEMORY (CD-ROM) EDUCATIONAL SERVICES, NAMELY, ADMINISTRATION OF CULTURAL EXCHANGE PROGRAMS; ENTERTAINMENT SERVICES, NAMELY, SPONSORING SPORTS COMPETITIONS AND TOURNAMENTS; EDUCATION IN THE FIELD OF MUSIC, THEATER, CINEMA, LITERATURE, ARTS, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY RENDERED THROUGH CORRESPONDENCE COURSES; PROVIDING CLASSES OF INSTRUCTION TO BEGINNERS AND ADVANCED PERSONS IN THE FIELD OF MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND

Trademark

Registration No.

Goods or Services

BEAUTY; CONDUCTING EDUCATIONAL CONFERENCES, WORKSHOPS AND COURSES OF INSTRUCTION IN THE FIELD OF MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; EDUCATIONAL CONFERENCES, FORUMS, CONGRESSES AND COLLOQUIUMS IN THE FIELD OF MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; PUBLICATION OF BOOKS; ENTERTAINMENT IN THE NATURE OF GAMES AND CONTESTS, NAMELY, ESSAY-WRITING AND NOVEL-WRITING CONTESTS; BEAUTY PAGEANTS; INDOOR AND OUTDOOR SPORTS COMPETITIONS FEATURING, HOCKEY, SOCCER, FOOTBALL AND VOLLEYBALL; PRODUCTION OF RADIO AND TELEVISION PROGRAMS; ENTERTAINMENT SERVICES, NAMELY, PROVIDING AN ON-LINE ENTERTAINMENT VARIETY SHOW, FEATURING MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION, HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; ENTERTAINMENT SERVICES IN THE NATURE OF A CABLE TELEVISION VARIETY SHOW FEATURING MUSIC, THEATER, CINEMA, LITERATURE, ARTS, EDUCATION HOME DECORATION, GARDENING, LANDSCAPING, CULINARY ARTS, FASHION AND BEAUTY; AUDIO RECORDING AND PRODUCTION SERVICES; LIBRARIES AND BOOKS LENDING SERVICES; VIDEO AND GAME LIBRARY SERVICES; VIDEO TAPE FILM PRODUCTION LEGAL CONSULTING SERVICES; CORRESPONDENCE EXCHANGE SERVICES; LICENSING OF INTELLECTUAL PROPERTY; COMPUTER PROGRAMMING SERVICES; PROGRAMMING ELECTRONIC INSTRUMENTS FOR OTHERS; EDITING OF WRITTEN TEXTS; NEWS SYNDICATION REPORTING; LANGUAGE TRANSLATION; PRINTING SERVICES; RENTAL OF COMPUTERS AND RENTAL OF DISPLAY

Trademark

Registration No.

Goods or Services

APPARATUS FOR USE IN MULTIMEDIA PRESENTATIONS USING SLIDES, FILM, TAPE RECORDINGS AND SPECIAL LIGHTING EFFECTS; EDITING OF WRITTEN TEXTS, ILLUSTRATIONS BOOKS, BOOK REVIEWS, NEWSPAPERS, PERIODICALS, MAGAZINES AND PUBLICATIONS OF ALL TYPES REGARDLESS OF THEIR FORM, INCLUDING ELECTRONIC AND DIGITALIZED PUBLICATIONS, DESKTOP PUBLISHING OF SOUND AND/OR VISUAL MEDIA - OR MULTIMEDIA SOFTWARE PROGRAMS FOR OTHERS; COMPILING DATA BASES AND DATA BANKS FOR USE BY OTHERS; PRODUCTION AND RENTAL OF MOTION PICTURE FILM, VIDEO-CASSETTE TAPES AND MULTI-MEDIA ENTERTAINMENT SOFTWARE

Copies of these registrations are attached hereto as Exhibit A.

8. Respondent registered ELLE BELLE, Registration No. 2,657,739 for “Clothing articles for men, women and children namely, shirts, blouses, dresses, evening wear, skirts, trousers, vests, jerseys, pants, pajamas, t-shirts, socks and stockings, singlets, corsets, garters, underpants, petticoats, hats, head scarves, neckties, raincoats, overcoats, great coats, bathing suits, sports overalls, wind resistant jackets and ski pants” in International Class 025, first use in commerce October 1995 (“Respondent’s Mark”).

9. The record owner of the contested registration is Respondent Elle Belle LLC, a New York corporation with an address at 1020 6th Avenue, New York, NY 10018 (“Respondent” or “Elle Belle”).

Count I: Likelihood of Confusion.

10. Petitioner hereby incorporates by reference the allegations in Paragraphs 1 through 9 hereof as if fully set forth herein.

11. Petitioner's date of first use in commerce for its ELLE Marks precedes Respondent's date of first use in commerce for its ELLE BELLE mark.

12. Respondent's Mark, as set forth in the registration to be canceled so resembles Petitioner's Marks as to be likely, when applied to Petitioner's goods, to cause confusion, mistake or to deceive for purposes of Section 2(d) of the Lanham Act.

13. Petitioner has expended substantial amounts of time and effort in advertising and promoting its goods under the ELLE Marks. As a result of such advertising and promotional activities, the ELLE Marks have become famous and the relevant public has come to associate and identify ELLE with Petitioner, and Petitioner derives substantial goodwill from such identification by consumers.

14. Petitioner will be damaged by the continued existence of Respondent's Mark, Reg. No. 2,657,739, on the Register because it will give color of rights to Respondent in violation of Petitioner's prior and superior statutory and common law rights in its Marks.

Count II: Likelihood of Dilution

15. Petitioner hereby incorporates by reference the allegations of Paragraphs 1 through 14 hereof as if fully set forth herein.

16. Because of the high degree of inherent or acquired distinctiveness of the Petitioner's Marks, Petitioner's Marks are "famous" pursuant to Section 43(c) of the Lanham Act.

17. Petitioner's Marks became famous prior to the date that Respondent can first lay claim to any rights in the ELLE BELLE mark.

18. Respondent's Mark will dilute the distinctive quality of Petitioner's Marks, with consequent injury to Petitioner.

19. Petitioner will be damaged by the continued existence of Respondent's Mark, Reg. No. 2,657,739 because such registration will support and assist Respondent in the diluting use of Respondent's mark, and will give color or rights to Respondent in violation of Petitioner's prior and superior statutory and common law rights in its Marks.

Count III: Fraud

20. Respondent procured the registration of the ELLE BELLE mark by making material representations of fact in its application to register the ELLE BELLE mark that Respondent had used the ELLE BELLE mark on all of the goods it identified in its application.

21. Respondent knew or should have known that it had not used its Mark on a material portion of the goods it identified in the application and that these representations were false and misleading.

22. Respondent made these representations to the United States Patent and Trademark Office ("USPTO") with the intent to induce authorized agents of the USPTO to grant Respondent's registration for its ELLE BELLE mark.

21. The authorized agents of the USPTO reasonably relied upon the truth of Respondent's statements to grant Respondent's registration for the ELLE BELLE mark and would not have accepted Respondent's registration for the goods identified therein, but for Respondent's misrepresentations.

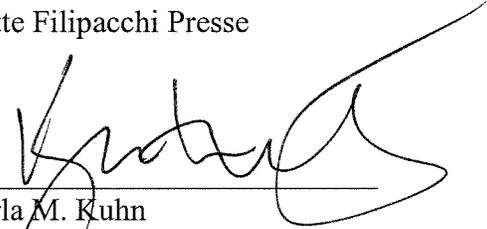
22. Respondent's Registration No. 2,657,739 for the ELLE BELLE mark should be cancelled because Respondent committed fraud in the procurement of that Registration.

23. Petitioner will be damaged by the continued existence of Respondent's Mark, Reg. No. 2,657,739, on the Register because it will give color of rights to Respondent in violation of Petitioner's prior and superior statutory and common law rights in its Marks.

WHEREFORE, Petitioner prays that this petition to cancel be granted and that Reg. No. 2,657,739 for the mark ELLE BELLE be cancelled forthwith.

Dated: New York, New York
December 9, 2005

Hachette Filipacchi Presse

By: 

Perla M. Kuhn

Kristin B. Whiting

Hughes Hubbard & Reed LLP

One Battery Park Plaza

New York, New York 10004

(212) 837-6000

Attorneys for Petitioner

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513

on _____

HUGHES HUBBARD & REED LLP

Dated: _____

By: _____

Name: _____

Exhibit B

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

HACHETTE FILIPACCHI PRESSE,)

)

Petitioner,)

)

VS.)

)

ELLE BELLE, LLC,)

)

Respondent.)

)

)

-----)

DEPOSITION OF PARAMJIT SINGH
New York, New York
Monday, August 15, 2005

Reported by:

Robert X. Shaw, CSR

CSR NO. 817

JOB NO. 176146

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1 P. Singh
2 know with respect to the other party's
3 marks. I am asking Mr. Singh whether
4 there are any facts -- first of all,
5 whether or not he is making this
6 contention.
7 And second, if he has changed his
8 position, what facts he has, and I don't
9 want to know about law. And I don't
10 expect you to know about the law.
11 I am just wondering about the facts
12 about whether or not you think there is
13 anything wrong with the ELLE marks?
14 When I say "wrong," I mean -- is
15 there anything with respect to the
16 registration that Hachette has for the
17 ELLE marks, is there anything that you
18 know that would mean that the
19 registrations are insufficient or any
20 other kind of defect in their rights of
21 the mark?
22 THE WITNESS: No, I -- if they have
23 the registration, legal registration,
24 that is none of my business.
25 Only I know that Elle Belle has a

Page 187

1 P. Singh
2 registration in this country. I know
3 about my company. If they have a
4 registration, they are right.
5 MS. WHITING: Okay.
6 So, it sounds like you have no
7 change; there is still no contention that
8 there is a defect?
9 MS. KIM: At this point in time,
10 there is no such contention.
11 MS. WHITING: Fine.
12 Q. And the same question with respect
13 to interrogatory number 25.
14 "If you contend that Petitioner has
15 discontinued the use of all or part of the
16 goods sold under Petitioner's marks, state all
17 facts concerning that contention."
18 The same question: Do you change
19 your position with respect to that --
20 A. No.
21 Q. -- with respect to that question?
22 A. I don't want to change it.
23 MS. KIM: The same representation.
24 MS. WHITING: Counsel's
25 representation.

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1 P. Singh
2 MS. KIM: At this time, no, we do
3 not.
4 MS. WHITING: Okay.
5 Off the record.
6 (Discussion off the record.)
7 MS. WHITING: This will be Exhibit
8 18. I would like to mark, as
9 Petitioner's Exhibit 18, a document Bates
10 numbered 87 through 96.
11 (Petitioner's Exhibit 18,
12 November 19, 2001 document and
13 attachments, marked for identification
14 as of this date.)
15 MS. WHITING: They appear to be
16 documents that were filed with the United
17 States Patent and Trademark Office
18 concerning the application to register
19 the Elle Belle trademark.
20 A. Thank you.
21 Q. First, I will ask you to flip
22 through the document, and my first question
23 is: Do you recognize the pages that are
24 included in Petitioner's Exhibit 18?
25 A. Yes.

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1 P. Singh
2 Q. And what are these, what are these
3 pages?
4 A. These are regarding my registration
5 of Elle Belle, the Elle Belle trademark. I
6 see that there is a copy of the registration
7 here.
8 Q. Okay. Are you the person at Elle
9 Belle LLC that was responsible for the
10 registration of the Elle Belle mark?
11 A. Yes.
12 Q. Are you the person that worked with
13 Kakkar & Kadish in registering the Elle Belle
14 trademark?
15 A. Yes.
16 Q. Is there anyone else that had
17 anything to do with that application process?
18 A. Nobody.
19 Q. Would you turn to pages marked 94
20 through 96.
21 A. Okay. They are not in order.
22 MS. KIM: They are not in order.
23 A. I can look at this. Okay.
24 Q. Tell me again. Sorry.
25 A. They are not in order.

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1 P. Singh
 2 MS. KIM: When you say 94 through
 3 96, numerically?
 4 MS. WHITING: I apologize. They
 5 include those numbers. They are actually
 6 in different order. And they are
 7 rearranged to be what I think is the
 8 order that the application was submitted
 9 in.
 10 MS. KIM: Do you mean pages 94, 99,
 11 97 and 98 and 95 and 96?
 12 MS. WHITING: Yes. Thank you.
 13 A. All of them.
 14 Q. I will ask you that.
 15 Is this, in fact, the application
 16 that Elle Belle submitted to the United States
 17 Patent and Trademark Office to register the
 18 Elle Belle mark?
 19 A. Yes.
 20 Q. Does it appear to be in the same
 21 order that you remember it being when you
 22 filled out the application?
 23 A. Yes.
 24 Q. I got ahead of myself there. It was
 25 actually you who signed the application?

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1 P. Singh
 2 A. Yes.
 3 Q. On page 99, on the second paragraph,
 4 it says: "The trademark was first used in
 5 connection with said goods on October, 1995.
 6 It was first used in interstate commerce on
 7 October, 1995 and is now in use in such
 8 commerce."
 9 A. Yes.
 10 Q. There is a reference to "said
 11 goods," which, I believe, refers to the goods
 12 that are listed in the prior paragraph. If
 13 you look at them.
 14 A. Yes.
 15 Q. Starting at clothing articles for
 16 men, women and children, and it goes on to
 17 list specific articles of clothing, and it
 18 ends with ski pants. Do you see those lines?
 19 A. Yes.
 20 Q. All right.
 21 Was the mark actually used in
 22 October of 1995 with each of these goods?
 23 A. No. We used it for evening wear
 24 dresses. We used it for tops, skirts,
 25 scarves, pants, all ladies' garments.

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1 P. Singh
 2 Q. Okay.
 3 A. That's how we used it.
 4 Q. All right. So, it was not used for
 5 men's clothing?
 6 A. No, it was not.
 7 Q. For children's clothing?
 8 A. No.
 9 Q. Or trousers?
 10 A. No.
 11 Q. Vests? Was it used on vests?
 12 A. Ah --
 13 Q. I guess that could be women's
 14 clothing?
 15 A. Vests, no.
 16 Q. Some of these we discussed before,
 17 pajamas?
 18 A. Pajamas, no.
 19 Q. T-shirts?
 20 A. No.
 21 Q. Socks and stockings?
 22 A. Not at all, no.
 23 Q. Singlets?
 24 A. No.
 25 Q. Neckties. No? I will just list

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1 P. Singh
 2 them and you tell me.
 3 A. No.
 4 Q. Interrupt me if you have used them
 5 on any of these.
 6 A. No.
 7 Q. Not on underpants?
 8 A. No.
 9 Q. Hats?
 10 A. No.
 11 Q. Raincoats?
 12 A. No.
 13 Q. Overcoats?
 14 A. No.
 15 Q. Greatcoats?
 16 A. No.
 17 Q. Bathing suits?
 18 A. No.
 19 Q. Sports overalls?
 20 A. No.
 21 Q. Wind-resistant jackets and ski
 22 pants?
 23 A. No.
 24 Q. If look on page 98 of that document,
 25 is that your signature?

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1 P. Singh

2 A. Yes.

3 Q. It is dated March 6th, 2000.

4 A. Yes.

5 Q. Is that when you signed the

6 document?

7 A. Yes.

8 Q. You knew, in March of 2000, that

9 Elle Belle was not using its mark with respect

10 to the goods we just discussed -- the

11 trousers, and the bathing suits --

12 A. Yes, I knew.

13 Q. You knew that?

14 A. Yes.

15 Q. On page 91 of that packet, it is a

16 document entitled "notice of publication."

17 A. Yes.

18 Q. Under 12A. Do you have any

19 understanding of what that document is or

20 means?

21 A. Let me read it.

22 Q. Do you know what a notice of

23 publication is?

24 A. Yes, I got it. Yes, I know.

25 Q. What is that?

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1 P. Singh

2 A. It means, I believe, that the

3 Department of Commerce, for this notice.

4 Q. The Patent and Trademark Office?

5 A. The Patent and Trademark Office.

6 Q. The Department of Commerce. Go

7 ahead, sorry.

8 A. The notice that they are going to, I

9 believe, approve this trademark.

10 Let me read it.

11 Q. Okay.

12 MS. KIM: I guess your question was,

13 without reading this, do you just, in

14 general, know what a notice of

15 publication is?

16 THE WITNESS: The Elle Belle mark --

17 MS. KIM: Do you know what that is?

18 THE WITNESS: Yes.

19 MS. KIM: What is that?

20 A. That is my trademark.

21 MS. WHITING: Let me try to fix

22 that.

23 Q. I will ask you this question.

24 A. Okay.

25 Q. Do you know what a notice of

Page 196

1 P. Singh

2 publication is? It is fine if you don't know

3 what a notice of publication is. I am just

4 asking if you know that?

5 A. I don't know what a notice is. I

6 can see it is something about the Elle Belle

7 mark.

8 Q. I will represent to you that a

9 notice of publication is when a mark is

10 published for possible opposition by another

11 party --

12 A. Okay.

13 Q. So, if you look at this document,

14 number 91, it says the publication date is

15 September 17th, 2002.

16 A. Yes.

17 Q. Do you know -- is there anything

18 about the notice of publication, after the

19 mark was published for opposition, after that,

20 after September, 2002, and you don't have

21 to --

22 I will withdraw that question.

23 I will just take the date, after

24 September, 2002 --

25 A. August 28th, 2002?

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1 P. Singh

2 Q. That is August 28th. That is the

3 date of the notice and the actual publication

4 date is September, 2002, which is number 4.

5 A. All right.

6 Q. If you look at number 4 on that.

7 A. Yes.

8 Q. I will restate the question, so that

9 it is understandable. Sorry.

10 I am just looking at that date,

11 September, 2002, which is when the mark was

12 published for possible opposition.

13 Taking that date, September, 2002,

14 is there anything that Elle Belle, the

15 business Elle Belle LLC did differently after

16 September, 2002 with respect to expanding or

17 advertising or anything that, is there

18 anything that it did differently between then

19 and the time that Hachette actually filed its

20 petition to cancel, which was in 2004?

21 A. No.

22 MS. WHITING: I will mark this as

23 Petitioner's Exhibit 19.

24 (Petitioner's Exhibit 19,

25 document Bates No. 1, marked for

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion To Amend Petition To Cancel And Suspend Proceedings is being served on December 12, 2005 by first class mail in a postage prepaid envelope, addressed as follows:

Hui Ri Kim, Esq.
Balram Kakkar, Esq.
Kakkar & Kadish
261 Madison Avenue, 25th Fl.
New York, NY 10016

Dated: December 12, 2005
New York, New York

/Michele Azzarello/
Michele Azzarello

CERTIFICATE OF ONLINE TRANSMISSION

I hereby certify that a copy of the foregoing Motion To Amend Petition To Cancel And Suspend Proceedings is being transmitted online through the website of the United States Patent and Trademark Office on December 12, 2005.

Dated: December 12, 2005
New York, New York

/Kristin B. Whiting/
Kristin B. Whiting