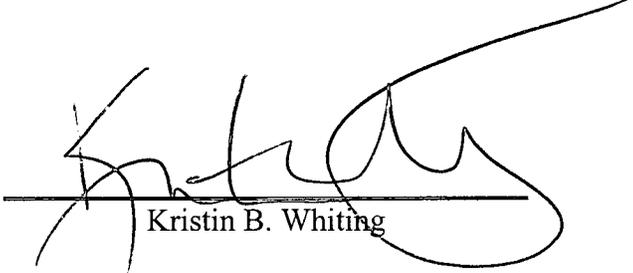


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petitioner's Motion for Summary Judgment And Memorandum of Law In Support Thereof is being served on April 26, 2006 by first class mail in a postage prepaid envelope, addressed as follows:

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

Dated: April 26, 2006  
New York, New York

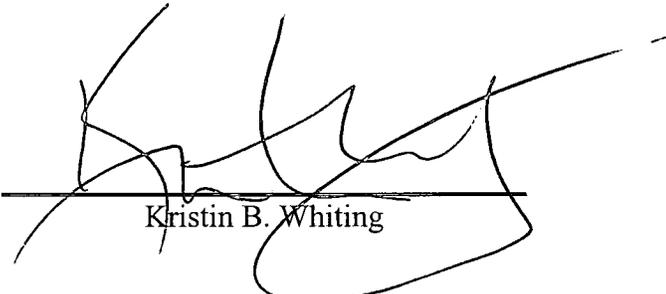


Kristin B. Whiting

CERTIFICATE OF MAILING

I hereby certify that this Petitioner's Motion for Summary Judgment And Memorandum of Law In Support Thereof is being deposited on April 26, 2006 with the United States Postal Service as Express Mail in an envelope addressed to: United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451.

Dated: April 26, 2006  
New York, New York



Kristin B. Whiting



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, : Cancellation No. 92042991  
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 :  
 -v- :  
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 Elle Belle, LLC :  
 :  
 : Respondent. :  
----- x

**PETITIONER'S MOTION FOR SUMMARY JUDGMENT  
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Petitioner Hachette Filipacchi Presse ("Hachette" or "Petitioner"), through its undersigned attorneys, submits this motion for summary judgment, and respectfully requests that the Trademark Trial and Appeal Board (the "Board") cancel the registration for the following mark owned by Respondent Elle Belle LLC ("Elle Belle" or "Respondent"):

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.

(the "ELLE BELLE Mark" or the "ELLE BELLE Registration").

## PRELIMINARY STATEMENT

Respondent admitted under oath that it has *never* used the ELLE BELLE Mark on men's and children's clothing – two of the three categories of goods identified in the use-based application it submitted to the United States Patent and Trademark Office (“USPTO”) in March 2000. In addition, Respondent admitted that it has not used its ELLE BELLE Mark on 16 of the 23 types of clothing identified in its application for any category of clothing (men's, children's or women's) and that it *knew* this at the time it signed and submitted its application to the USPTO. Based on this undisputed evidence of fraud, Hachette respectfully requests that the Board cancel Elle Belle's Registration.<sup>1</sup>

## STATEMENT OF UNDISPUTED MATERIAL FACTS

The following statement of undisputed facts establishes that Respondent fraudulently procured its Registration for the ELLE BELLE Mark:

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<sup>1</sup> Hachette has standing to bring this cancellation proceeding. Respondent has admitted that Hachette owns and has used the ELLE Mark on a variety of goods and services, including apparel, footwear, jewelry and cosmetics. (See Respondent's Response to Petitioner's First Request for Admissions, annexed hereto as Exhibit A, at ¶¶ 63-66 (acknowledging Hachette's propriety rights in its ELLE Marks).) In addition, Hachette has a reasonable basis to believe that it will be damaged by the continued registration of Respondent's Mark, as the two marks are similar in sound, sight meaning and commercial impression and used on similar goods. See Declaration of Fabienne Sultan dated February 23, 2005 and filed in *Hachette v. E.F. Licensing*, Opposition No. 91160096 (TTAB 2004) and produced in this proceeding HFP 2183--2319 annexed hereto as Exhibit A (showing Hachette's use of its ELLE Mark in connection with women's apparel, jewelry and footwear); Deposition of Paramjit Singh, dated August 15, 2005 (“Singh Dep.”) at Exhibits 4-5, annexed hereto as Exhibit B (showing Respondent's use of its ELLE BELLE mark in connection with women's apparel). TBMP § 309.03(b). See e.g., *The Nestle Co. Inc. v. Nash-Finch Co.*, 4 U.S.P.Q.2D 1085, 1087 (T.T.A.B. 1987) (“Opposer has shown that it has standing to oppose the mark sought to be registered by virtue of proving propriety rights in its trademarks and by showing a reasonable basis for its belief in damage, namely, a claim of likelihood of confusion that is not wholly without merit.”); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1029 (C.C.P.A. 1982) (the proper inquiry in determining standing is whether the petitioner has “proved a real commercial interest in its own marks, and a reasonable basis for its belief that it would be damaged”).

1. Respondent's President, Paramjit Singh ("Singh") is the most knowledgeable person concerning Respondent's rights in the ELLE BELLE Mark. (Deposition of Paramjit Singh ("Exh. B, Singh Dep."), dated August 15, 2003, pertinent pages and exhibits to which are annexed hereto as Exhibit B, at 9:8-11:3).
2. Singh was the person responsible for the registration of the Respondent's Mark. (*Id.* at 189:8-11).
3. Singh identified Deposition Exhibit No. 18, as Respondent's application to register the ELLE BELLE Mark with the USPTO. (*Id.* at 190:15-19).
4. Singh signed that application on behalf of Respondent. (*Id.* at 190:24-191:2; 193:24-194:7).
5. The Application contains Singh's sworn statement that Respondent "has adapted and is using [its Mark] on 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." (Exh. B, Singh Dep., Exh. 18 at Bates No. 00099).
6. Respondent has never used its Mark in connection with any men's or children's clothing. (*Id.* at 90:6-10, 156-157 and 192:4-8; *see also* Defendant's Response to Plaintiff's First Set of Interrogatories, annexed hereto as Exhibit C, at Response Nos. 3 and 5 ("Respondent uses its Mark in association with the wholesale and retail sales of women's clothing and accessories.")).
7. Respondent has not used its Mark on the following items of men's children's or women's clothing identified in its use-based application and Registration: "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." (Exh. B, Singh Dep. at 192:8-193:23).
8. Singh knew in March 2000 when he signed the application on behalf of Respondent that Respondent had not used the ELLE BELLE Mark on a

majority of the goods identified in Respondent's application to register that Mark. (*Id.* at 194:3-14).

#### ARGUMENT

The Board will grant summary judgment when there are no disputed material facts. See 37 C.F.R. § 2.127; Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 528; Fed. R. Civ. P. 56(c); *Sweats Fashions, Inc. v. Pannill Knitting Co., Inc.*, 4 U.S.P.Q.2d. 1793, 1797 (Fed. Cir. 1987).

In a cancellation proceeding based on fraud, a petitioner is entitled to judgment when it proves that the respondent: (1) made a representation of fact to the USPTO in its application; (2) that was material; and (3) which it knew or should have known to be false or misleading. See *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 1 U.S.P.Q.2d 1483, 1485 (Fed. Cir. 1986) (finding renewal application fraudulent where the applicant submitted a label "he knew or should have known was not in use that contained a mark clearly different from the one in use" and stated that the mark was in use with three products, when he knew it was in use with only one); *Medinol Ltd. v. Neuro Vasx*, 67 U.S.P.Q.2d 1205, 1209 (T.T.A.B. May 13, 2003) (citing *Torres*, 1 U.S.P.Q.2d 1483, 1484-85) (granting summary judgment pending showing of standing); see also *Standard Knitting Ltd. v. Toyota Kabushki Kaisha*, 77 U.S.P.Q.2d 1917 (T.T.A.B. Jan. 10, 2006) (citing *Torres* and *Medinol* for the required elements of a fraud claim).

#### **I. RESPONDENT FRAUDULENTLY PROCURED ITS REGISTRATION.**

Here, Hachette is entitled to summary judgment of its fraud claim against Respondent because:

- (1) Respondent's President represented in his sworn declaration to the USPTO that Respondent was using the ELLE BELLE Mark on the men's, children's and women's clothing identified in the application;
- (2) he *knew at that time* that Respondent had not used the Mark on a material number of these goods; and
- (3) 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.

Not only has Respondent admitted these facts in its answers to Hachette's interrogatories and through its President's deposition testimony in this proceeding, but it also has never denied Hachette's allegations in its Amended Petition to Cancel including that "Respondent's Registration No. 2,657,739 for the ELLE BELLE Mark should be cancelled because Respondent committed fraud in the procurement of the Registration." (Amended Petition to Cancel, annexed hereto as Exhibit D, at ¶¶ 20-23).<sup>2</sup>

**A. Respondent Made A False Representation Of Fact In Its Declaration.**

First, Respondent represented under penalty of perjury in its application to the USPTO that it was using its ELLE BELLE Mark on the 23 items of men's, children's and women's clothing, when in fact it had not used its Mark on more than two-thirds of

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<sup>2</sup> On February 15, 2006, the Board granted Petitioner's Motion to Amend its Petition and gave Respondent 30 days (or until March 17, 2006) to file its Answer. Respondent has failed to Answer as of the date of this motion. If the Board ultimately denies Petitioner's motion and allows Respondent to file its Answer at this late stage, Hachette respectfully requests that the testimony period be reset to allow it sufficient time to coordinate its foreign-client's testimony, and that it be given the opportunity to supplement its summary judgment papers in response to any Answer filed by Respondent.

these goods. Respondent admitted in its verified responses to Hachette's First Set of Interrogatories that its use of the ELLE BELLE Mark is limited to use "in association with the wholesale and retail sale of women's clothing and accessories." (Exhibit C, at Response Nos. 3 and 5). Indeed, Respondent's President corroborated this admission by testifying under oath in his deposition that Respondent had *never* used its Mark on any men's or children's clothing and had not used its Mark on over one-half of the 23 items of women's clothing it identified in its application. (Exh. B, Singh Dep. at 90:6-10, 156-57, 192:4-193:22).

**B. Respondent's Statement of Fact Was Material.**

Second, there is no question that Respondent's misrepresentations were material to its Registration. The ELLE BELLE Registration would not have issued *but for* Respondent's misrepresentation, because "the USPTO will not issue a registration covering goods upon which the mark has not been used." *Medinol*, 67 U.S.P.Q.2d at 1208; *Standard Knitting*, 77 U.S.P.Q.2d at 1947.<sup>3</sup>

**C. Respondent Knew Or Should Have Known That Its Declaration Was False.**

Finally, Respondent knew or should have known at the time it made its declaration, that it was false.

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<sup>3</sup> Respondent should not be allowed to delete goods upon which the mark has not yet been used, as this cannot remedy an alleged fraud upon the USPTO. *Medinol*, 67 U.S.P.Q.2d at 1208 (noting fraud cannot be cured by the deletion of goods from the registrations); *Standard Knitting*, 77 U.S.P.Q.2d at 1928 (same).

It is well-established that the intent required to be proven in a fraud claim need not be specific, but rather can be established “when an applicant or registrant makes a false material representation that the applicant or registrant *knew or should have known* was false.” *Standard Knitting*, 77 U.S.P.Q.2d at 1928 (emphasis added) (quoting *General Car and Truck Leasing Sys., Inc. v. General Rent-A-Car, Inc.*, 17 USPQ2d 1398, 1400 (S.D. Fla. 1999)); *see also Medinol*, 67 U.S.P.Q.2d at 1209; *Torres*, 1 U.S.P.Q. at 1484-85. In deciding questions of intent on summary judgment, the Board has stated that “the appropriate inquiry is not into the registrant’s subjective intent, but rather into the objective manifestations of that intent.” *Medinol*, 67 U.S.P.Q.2d at 1209. Indeed, the Board has not hesitated to grant summary judgment (even *sua sponte*) when intent can be inferred “from the circumstances and related statement made by that person.” *Medinol*, 67 U.S.P.Q.2d at 1209 (quoting *First Int’l Serv. Corp. v. Chuckles Inc.*, 5 U.S.P.Q.2d 1628, 1636 (TTAB 1988)).

In this case, it is not necessary to reach the issue of whether Respondent “should have known” because Respondent’s President admitted that he actually knew that his declaration was false in March 2000 when he signed Respondent’s application to register the ELLE BELLE Mark.<sup>4</sup> (Exh. B, Singh Dep. at 194:3-14). However, even if

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<sup>4</sup> Singh never asked for clarification of Hachette’s questions concerning the use of Respondent’s Mark. (Exh. B., Singh Dep. at 191:3-25). In fact, he answered twice that he knew that the Mark was not in use as the goods in March 2000, at the time he signed the application and never sought to amend his answer during the deposition, even when counsel for Hachette specifically instructed him at the outset that he was free to amend or clarify his testimony at any time during the deposition and he in fact did so for other answers. (Exh. B, Singh Dep. at 6:22-7:4; 84:9 – 88:12).

Respondent attempts to back-peddle from this sworn testimony, it clearly *should have known* that this representation was false and cannot now deny that it did not read what it signed.

The language in the application that Respondent's mark "'is now in use in commerce' is clear, and its meaning is unambiguous." *Standard Knitting*, 77 U.S.P.Q2d at 1927. As in *Medinol*, the identified goods here (men's, children's and women's clothing) are neither highly technical, nor otherwise confusing. Respondent's President - as the one responsible for the ELLE BELLE Registration and the most knowledgeable person concerning the use of the ELLE BELLE Mark (Exh. B, Singh Dep. at 9:8-11:3, 189:8-11) - was "clearly in a position to know (or to inquire) as to the truth of the statements therein." *Medinol*, 67 U.S.P.Q. 2d at 1210.

Respondent signed its declaration under penalty of "fine or imprisonment, or both . . . and [knowing] that such willful false statements may jeopardize the validity of the application or any resulting registration . . ." *Medinol*, 67 U.S.P.Q.2d at 1209; (Exhibit D at Bates No. 00098 (annexing Respondent's application)). In the face of the "solemnity" of Respondent's sworn declaration and its duty to investigate statements therein, Respondent represented to the USPTO that it was using the ELLE BELLE Mark on the goods it identified in its application, when in fact it had never used its Mark on a vast majority of those goods. Nor did Respondent ever seek at any later date to amend its registration certificate for the ELLE BELLE Mark to delete the goods upon which it has failed to use its Mark, which is itself evidence of intentional conduct. *See Medinol*,

67 U.S.P.Q.2d at 1210 n.12 (noting that the Respondent's failure to point out and correct its misstatement prior to the cancellation proceedings indicates that the misstatement was intentional). *Medinol*, 67 U.S.P.Q.2d at 1209; *Standard Knitting*, 77 U.S.P.Q.2d at 1927-28.

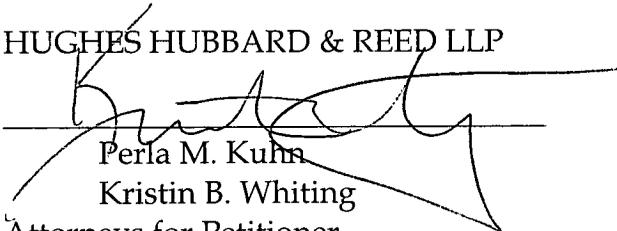
As noted in *Standard Knitting*, the USPTO relies on the honesty of each applicant. It does not inquire as to the use of the mark on each good listed in a single class, but rather relies on applicant's declaration with regard to use on the listed goods and only requires specimens of use as to one of those listed goods. See TMEP Sections 806.01(a) and 904.01(a) (4<sup>th</sup> ed. 2005). If Respondent's Registration is allowed to stand, it will be afforded a legal presumption, which is based in neither fact nor law. See *Standard Knitting*, 77 U.S.P.Q.2d at 1928 n.14. Accordingly, Hachette respectfully requests the Board enter summary judgment against Respondent.

#### CONCLUSION

For the foregoing reasons, the Board should grant Hachette's motion for summary judgment and cancel the Respondent's Registration for the ELLE BELLE Mark.

Dated: April 26, 2006

HUGHES HUBBARD & REED LLP



Perla M. Kuhn  
Kristin B. Whiting  
Attorneys for Petitioner  
One Battery Park Plaza  
New York, NY 10004-1482  
(212) 837-6000



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, : Cancellation No. 92042991  
 :  
 -v- :  
 :  
 :  
 Elle Belle, LLC, :  
 :  
 :  
 Respondent. :  
----- X

**PETITIONER'S FIRST REQUEST FOR ADMISSIONS**

Petitioner, Hachette Filipacchi Presse, pursuant to Rule 36(a), Fed. R. Civ. P., and Trademark Rules 2.116(a) and 2.120(h), hereby requests that Respondent, Elle Belle, LLC, admit the following:

**DEFINITIONS AND INSTRUCTIONS**

- A. The Definitions and Instructions forming a part of Petitioner's First Set of Interrogatories are incorporated herein by reference.
- B. Additionally, if any Request below is denied or objected to, in whole or in part, Petitioner shall state in detail the reasons for such denial or objection.

**REQUESTS FOR ADMISSIONS**

1. Respondent's Mark contains French words that may be translated as "She Beautiful."
2. Respondent's customers for Respondent's Goods are females aged from their teenage years to their 50s.

3. A designer unaffiliated with Respondent suggested the name ELLE BELLE to Paramjit Singh to use for a name for a new business.
4. Respondent has no knowledge of the designer's name.
5. Respondent has no information concerning how to identify the designer.
6. Respondent has no knowledge concerning whether the designer was familiar with the Petitioner's Marks.
7. Starting in 2003, Respondent spent approximately \$2,000 a year annually to advertise its goods under the ELLE BELLE Mark.
8. Respondent received notice of Petitioner's objection to its use of Respondent's Mark in 2000.
9. Respondent opened its store at 39 West 38<sup>th</sup> street in 2002.
10. Respondent has no knowledge concerning whether the third parties listed in Exhibit A use ELLE as a trademark.
11. Respondent has no knowledge concerning whether the third parties listed in Exhibit A use ELLE as a trademark on clothing.
12. Respondent has no knowledge concerning whether the third parties listed in Exhibit A use ELLE as a trademark on goods related to clothing.
13. Respondent has no knowledge concerning whether the third parties listed in Exhibit B use ELLE as a trademark.
14. Respondent has no knowledge concerning whether the third parties listed in Exhibit B use ELLE as a trademark on clothing.
15. Respondent has no knowledge concerning whether the third parties listed in Exhibit B use ELLE as a trademark on goods related to clothing.

16. Respondent has no knowledge concerning whether the third parties listed in Exhibit C use ELLE as a trademark.
17. Respondent has no knowledge concerning whether the third parties listed in Exhibit C use the ELLE Mark as a trademark on clothing.
18. Respondent has no knowledge concerning whether the third parties listed in Exhibit C use the ELLE Mark as a trademark on goods related to clothing.
19. Respondent has no knowledge concerning whether the third parties listed in Exhibit D use the ELLE Mark as a trademark.
20. Respondent has no knowledge concerning whether the third parties listed in Exhibit D use the ELLE Mark as a trademark on clothing.
21. Respondent has no knowledge concerning whether the third parties listed in Exhibit D use the ELLE Mark as a trademark on goods related to clothing.
22. Respondent has no documents responsive to Petitioner's Document Request No. 6 (a) ("all documents concerning "the conception, creation or adoption of Respondent's Mark").
23. Respondent has no documents responsive to Petitioner's Request for Production of Documents No. 7.
24. Respondent has no documents responsive to Petitioner's Document Request No. 12.  
Respondent has no documents responsive to Petitioner's Document Request No. 13.
25. Respondent has no documents responsive to Petitioner's Document Request No. 15.
26. Respondent has no documents responsive to Petitioner's Document Request No. 16.
27. Respondent has no documents responsive to Petitioner's Document Request No. 17.
28. Respondent has no documents responsive to Petitioner's Document Request No. 18.
29. Respondent has no documents responsive to Petitioner's Document Request No. 19.

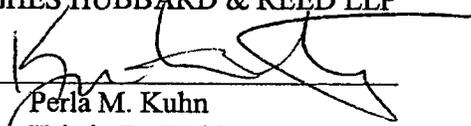
30. Respondent has no documents responsive to Petitioner's Document Request No. 20.
31. Respondent has no documents responsive to Petitioner's Document Request No. 21.
32. Respondent has no documents responsive to Petitioner's Document Request No. 22.
33. Respondent has no documents responsive to Petitioner's Document Request No. 23.
34. Respondent has no documents responsive to Petitioner's Document Request No. 24.
35. Respondent has no documents responsive to Petitioner's Document Request No. 27.
36. Respondent has no documents responsive to Petitioner's Document Request No. 28.
37. Respondent has no documents responsive to Petitioner's Document Request No. 29.
38. Respondent has no documents responsive to Petitioner's Document Request No. 30.
39. Respondent has no documents dated prior the year 2002 that are responsive to  
Petitioner's Document Request No. 32.
40. Respondent has no documents responsive to Petitioner's Document Request No. 35.
41. Respondent has no documents responsive to Petitioner's Document Request No. 38.
42. Respondent has no documents responsive to Petitioner's Document Request No. 39.
43. Respondent has no documents responsive to Petitioner's Document Request No. 40.
44. Respondent has no documents responsive to Petitioner's Document Request No. 41.
45. Respondent has no documents responsive to Petitioner's Document Request No. 42.
46. Respondent has no documents responsive to Petitioner's Document Request No. 43.
47. Respondent has no documents responsive to Petitioner's Document Request No. 44.
48. Respondent has no documents responsive to Petitioner's Document Request No. 45.
49. Respondent has no documents responsive to Petitioner's Document Request No. 46.
50. Respondent has no documents responsive to Petitioner's Document Request No. 47.
51. Respondent has no documents responsive to Petitioner's Document Request No. 48.

52. Exhibit E hereto is authentic, genuine and a true and correct copy of Respondent's original business record.
53. Exhibit F hereto is authentic, genuine and a true and correct copy of Respondent's original business records.
54. Exhibit G hereto is authentic, genuine and a true and correct copy of labels used on Respondent's Goods.
55. Exhibit H hereto is authentic, genuine and a true and correct copy of pages from Respondent's website.
56. Exhibit I hereto is authentic, genuine and a true and correct copy of hand written notes created by Respondent from Respondent's original business records.
57. Exhibit J hereto is authentic, genuine and a true and correct copy of Respondent's original business records.
58. Exhibit K hereto is authentic, genuine and a true and correct copy of Respondent's original business records.
59. Exhibit L hereto is authentic, genuine and a true and correct copy of Respondent's original business records.
60. Exhibit M hereto is authentic, genuine and a true and correct copy of Respondent's original business records.
61. Exhibit N hereto is authentic, genuine and a true and correct copy of Respondent's original business records.
62. Exhibit O hereto is authentic, genuine and a true and correct copy of Respondent's original business records.
63. Respondent does not contend that Petitioner's Marks are not famous.

64. Respondent does not contend that Petitioner has discontinued use of any of Petitioner's Marks.
65. Respondent does not contend that Petitioner has abandoned its rights to any of Petitioner's Marks.
66. Respondent does not contend that there are any defects in Petitioner's Marks.
67. Respondent has obtained no reports from any expert regarding any issue in this proceeding.
68. Respondent has retained no expert to give testimony in this proceeding.

Respectfully submitted,

HUGHES HUBBARD & REED LLP

By 

Perla M. Kuhn

Kristin B. Whiting

Attorneys for Petitioner

One Battery Park Plaza

New York, NY 10004-1482

(212) 837-6000

**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*

Hachette Filipacchi Presse,	X	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92042991
	:	
Elle Belle, LLC,	:	
	:	
Respondent.	:	
	X	

**RESPONDENT'S RESPONSE TO  
PETITIONER'S FIRST REQUEST FOR ADMISSIONS**

Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure and Trademark Rules 2.116(a) and 2.120(h), Respondent, Elle Belle, LLC, ("Respondent" or "Elle Belle"), by its attorneys, Kakkar & Kadish, hereby responds to Petitioner, Hachette Filipacchi Presse's ("Petitioner" or "Hachette"), First Request for Admissions as follows:

- 1) Admitted.
- 2) Admitted that most of Respondent's customers consist of females aged from their teenage years to their 50s.
- 3) Admitted.
- 4) Admitted.
- 5) Admitted.
- 6) Admitted.
- 7) Admitted.
- 8) Admitted.

- 9) Admitted.
- 10) Respondent has no direct knowledge. However, it is Respondent's assumption and belief that at least some of the third parties use ELLE as a trademark.
- 11) Respondent has no direct knowledge. However, it is Respondent's assumption and belief that at least some of the third parties use ELLE as a trademark on clothing, including Elle Fashions Inc.
- 12) Respondent has no direct knowledge. However, it is Respondent's assumption and belief that at least some of the third parties use ELLE as a trademark on goods relating to clothing, including Elle Fashions Inc.
- 13) Denied. Exhibit B, which consists of a list of trademarks and service marks containing the word ELLE that are and have been used by third parties, speaks for itself.
- 14) Denied. Exhibit B, which consists of records of the United States Patent and Trademark Office relating to trademarks and service marks containing the word ELLE that are and have been used by third parties, speaks for itself.
- 15) Denied. Exhibit B, which consists of records of the United States Patent and Trademark Office relating to trademarks and service marks containing the word ELLE that are and have been used by third parties, speaks for itself.
- 16) Respondent has no direct knowledge. However, it is Respondent's assumption and belief that at least some of the third parties may use ELLE as a trademark.
- 17) Respondent has no direct knowledge. However, it is Respondent's assumption and belief that at least some of the third parties may use ELLE as a trademark on clothing.

- 18) Respondent has no direct knowledge. However, it is Respondent's assumption and belief that at least some of the third parties may use ELLE as a trademark on goods relating to clothing.
- 19) Respondent has no direct knowledge. However, it is Respondent's assumption and belief that at least some of the third parties use ELLE as a trademark.
- 20) Respondent has no direct knowledge. However, it is Respondent's assumption and belief that at least some of the third parties use ELLE as a trademark on clothing, including Elle Boutiques located in Monterey Park, California and Jim Elle Ladies Apparel located in San Francisco, California.
- 21) Respondent has no direct knowledge. However, it is Respondent's assumption and belief that at least some of the third parties use ELLE as a trademark on goods relating to clothing, including Elle Boutiques located in Monterey Park, California and Jim Elle Ladies Apparel located in San Francisco, California.
- 22) Admitted that Respondent has not produced any documents responsive to Request No. 6(a), due to the fact that to date, Respondent is not in possession of any responsive documents.
- 23) Denied. Respondent hereby supplements its previous response to Request No. 7 and refers Petitioner to all invoices produced by Respondent as responsive to this Request.
- 24) Admitted that Respondent has not produced any documents responsive to Request Nos. 12 and 13, due to the fact that to date, Respondent is not in possession of any responsive documents.
- 25) Denied. Respondent hereby supplements its previous response to Request No. 15 and refers Petitioner to all invoices produced by Respondent as responsive to this Request.

- 26) Admitted.
- 27) Admitted.
- 28) Admitted.
- 29) Admitted.
- 30) Admitted.
- 31) Admitted.
- 32) Admitted.
- 33) Admitted.
- 34) Denied. Respondent hereby supplements its previous response to Request No. 24 and refers Petitioner to Respondent's response to Request No. 25.
- 35) Admitted.
- 36) Admitted.
- 37) Admitted that Respondent has not produced any documents responsive to Request No. 29, due to the fact that to date, Respondent is not in possession of any responsive documents.
- 38) Admitted that Respondent has not produced any documents responsive to Request No. 30, due to the fact that to date, Respondent is not in possession of any responsive documents.
- 39) Admitted.
- 40) Admitted.
- 41) Admitted.

42) Denied. Respondent hereby supplements its previous response to Request No. 39 and refers Petitioner to all correspondence exchanged between Petitioner's counsel and Respondent's counsel in 2000.

43) Admitted.

44) Admitted.

45) Admitted.

46) Admitted.

47) Admitted.

48) Admitted.

49) Admitted.

50) Admitted.

51) Admitted.

52) Admitted.

53) Admitted.

54) Admitted.

55) Admitted.

56) Admitted.

57) Admitted.

58) Admitted that Exhibit K is an authentic, genuine and a true and correct copy of Respondent's advertisement placed in Prom Guide.

59) Admitted.

60) Admitted.

61) Admitted.

- 62) Admitted.
- 63) Admitted that Respondent does not contend that at least some of Petitioner's Marks are not famous.
- 64) Admitted that at this time Respondent does not contend that Petitioner has discontinued use of any of its marks. However, Respondent maintains its right to make such a contention at a later date should Respondent obtain evidence of discontinuance.
- 65) Admitted that at this time Respondent does not contend that Petitioner has abandoned its rights to any of Petitioner's Marks. However, Respondent maintains its right to make such a contention at a later date should Respondent obtain evidence of abandonment.
- 66) Admitted that at this time Respondent does not contend that there are any defects in Petitioner's Marks. However, Respondent maintains its right to make such a contention at a later date should Respondent obtain evidence of defects.
- 67) Admitted.
- 68) Admitted.

Dated: December 13, 2005  
New York, New York

Respectfully Submitted,



Kakkar & Kadish  
By: Balram Kakkar, Esq.  
Hui Ri Kim, Esq.  
Attorneys for Defendant  
261 Madison, 25<sup>th</sup> Floor  
New York, NY 10016  
(212) 867-2969

**CERTIFICATE OF SERVICE**

I, Hui Ri Kim, under penalty of perjury state that:

1. I am an attorney in good standing, duly admitted to practice law before the courts of the State of New York.
2. On December 13, 2005, I served the within Respondent's Response to Petitioner's First Request for Admissions upon Petitioner, Hachette Filipacchi Presse, by sending it via electronic mail to the party's attorney addressed as follows:

Perla M. Kuhn, Esq.  
Kristin B. Whiting  
One Battery Park Plaza  
New York, NY 10004-1482  
(212) 837-6000

  
Hui Ri Kim, Esq.

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

----- X  
Hachette Filipacchi Presse, :  
 : Opposition No. 91160096  
Opposer, :  
 :  
-v- :  
 :  
E.F. Licensing, LLC, :  
 :  
Applicant. :  
----- X

DECLARATION OF FABIENNE SULTAN

FABIENNE SULTAN declares and says:

1. I am the Intellectual Property Vice Manager of Opposer Hachette Filipacchi Presse ("Hachette"). I make this declaration in support of Hachette's motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, requesting that the Trademark Trial and Appeal Board sustain this opposition against Applicant E.F. Licensing, LLC ("E.F. Licensing") and deny registration of E.F. Licensing's mark ELLA, Ser. No. 76/536,572. The facts set forth herein are my personal knowledge, information contained in Hachette's business records regularly maintained by Hachette in the normal course of its business, or within E.F. Licensing's verified

answers to Hachette's First and Second Set of Interrogatories.

Hachette's Magazine Business

2. Hachette, directly and through its predecessors, has since 1945 published a well-known women's fashion magazine entitled *ELLE*. *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.

Approximately 20,000 copies of the French-language edition of this magazine are distributed annually in the United States. (Attached hereto as Exhibit 1 is a copy of the cover page of one of the French-language editions distributed 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, Bloomingdale's Department Store, a leading New York retailer, selected the magazine to represent French women's magazines in a special promotion and celebration of the French retail marketplace. Hachette published a special edition of *ELLE* magazine in English for this occasion.

4. Upon receiving favorable reaction to its English-language edition of *ELLE* magazine, Hachette commenced publication in 1985 on a semi-annual basis of an English-language edition 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. (Attached hereto as Exhibit 2 is a copy of the cover of one of the English-language editions distributed in the United States.) In

addition to the French-language and the English-language versions sold in the United States, Hachette publishes *ELLE* magazine in several other languages. Currently, *ELLE* magazine is sold in 25 editions throughout the world, including versions in French, Spanish, Italian and other languages.

5. Hachette sells nearly one million copies per month of the English-language edition of *ELLE* magazine in the United States. Those sales place *ELLE* magazine among the top three fashion magazines in the United States after *Cosmopolitan* and *Vogue*.

6. As a result of the popularity generated by Hachette's flagship *ELLE* magazine, Hachette has launched other magazines bearing trademarks derived from the "ELLE" mark. For example, in 1989, Hachette commenced the publication of *ELLE DECOR* magazine directed to the home furnishings market. Currently, Hachette distributes approximately a half million copies of this magazine monthly. In the home furnishings field, *ELLE DECOR* ranks second only to *Architectural Digest*.

Hachette's Advertising and Licensing Services under the "ELLE" Mark

7. Since 1955, Hachette has used the ELLE mark in the United States in connection with advertising services, including the sale of advertising in its *ELLE* magazine, advertising and promoting the sale of clothing and preparing various types of advertising prominently featuring the "ELLE" mark. Since 1984, Hachette has also

used the ELLE mark in the United States in connection with the licensing of various intellectual property in connection with various products, such as clothing, sleepwear, shoes and jewelry. Over the years, Hachette has had approximately twenty-five different licenses in the United States.

8. Among the registrations owned by Hachette for the ELLE mark that are listed below (see paragraph 16, *infra*) are the following: (a) Reg. No. 0,861,159 (the "159 Registration"), registered on November 26, 1968 in connection with "promoting the sale of women's apparel by others by staging style shows and by the preparation of various types of advertising"; (b) Reg. No. 1,408,874, registered on September 9, 1986 in connection with "advertising agency services"; and (c) Reg. No. 2,242,315, registered on May 4, 1999 in connection with, *inter alia*, "licensing of intellectual property." These efforts have permitted Hachette to extend the brand name recognition for the ELLE mark from magazines, to various clothing and related accessory lines that are also the subject of the editorial content in its magazines. For example, in connection with Registration No. 861,159, Hachette had entered into agreements with department stores in which the stores conducted fashion shows in conjunction with Hachette and with the use of Hachette's ELLE marks.

9. Hachette's registrations for advertising and licensing services are valid and subsisting and Registration No. 1,408,874 is incontestable pursuant to Section 15 of

the Lanham Act, 15 U.S.C. § 1065.

Hachette's Sale of ELLE-Branded Clothing

10. Hachette has sold clothing and other items in the United States bearing the mark "ELLE" since at least 1978. Sales of these items in the United States have been generated by advertisements appearing in Hachette's French- and English-language versions of *ELLE* magazine distributed in the United States; in advertising placed in other media, such as *The New York Times*; and in trade media, such as *Women's Wear Daily* and *Sport Style*. (Attached as Exhibit 4 are copies of advertisements for ELLE-branded apparel.)

11. Hachette's licensees distribute catalogs promoting the availability of "ELLE" branded apparel and footwear. (Attached hereto as Exhibit 3 are copies of catalog pages for the "ELLE"-branded apparel.) ELLE-branded apparel has been shown at bi-annual trade shows in the United States since 1995, including the sportswear show known as "Magic" generally held in Las Vegas, Nevada. Hachette's licensees for "ELLE"-branded apparel have also conducted direct mail advertising campaigns to promote goods sold under that mark.

Hachette's Sales Services under the "ELLE" Mark

12. As noted earlier, Hachette has entered into partnerships with department stores and apparel designers to sponsor fashion shows presenting the latest styles of

apparel and accessories, prominently featuring the "ELLE" mark.

13. Hachette has also entered into partnerships with leading manufacturers and retailers of apparel and accessory items. Hachette has created links on its Internet web site, [www.elle.com](http://www.elle.com), through which visitors can link directly to web sites operated by these third parties and purchase apparel and other items. Among the many manufacturers and retailers of the clothing and accessories participating in this partnership program are Banana Republic, J. Crew, Coach, Burberry and Williams Sonoma. (Attached hereto as Exhibit 5 is a copy of Hachette's website, [www.elle.com](http://www.elle.com), as visited on February 25, 2005.)

14. Virtually all of the items sold under the "ELLE" mark prominently feature the mark on those products and on labels attached to the merchandise. In addition, Hachette licenses the "ELLE" mark for use in connection with various items including luggage, bags and footwear. Over the years, Hachette has also merchandised and promoted "ELLE"-branded apparel and accessories through license agreements with third parties. These entities are charged with producing goods bearing the "ELLE" mark, consistent with the high standards employed by Hachette.

#### Sales and Advertising for Products and Services Sold Under the ELLE Mark

15. Over the last five years, Hachette has spent more than \$15 million to promote the sale of its goods and services in the United States under the ELLE mark. During the same period, Hachette has sold approximately \$500 million worth of goods

and services under the ELLE mark in the United States.

16. Hachette's ELLE marks have come to mean to the public in general an indicator of high-quality services and goods originating with Hachette.

Hachette's "ELLE" Marks

17. Hachette has obtained a number of registrations in the United States for its "ELLE" mark. Among these are the following federal registrations:

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
ELLE	1,408,874	ADVERTISING AGENCY SERVICES
ELLE	1,429,609	NEWS AGENCY SERVICES-NAMELY, GATHERING & DISSEMINATING NEWS BY ELECTRONIC TRANSMISSION.
ELLE	758,137	MAGAZINE
ELLE	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	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,

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
ELLE	1,314,706	PENCIL HOLDERS, INDEXES, STATIONERY PORTFOLIOS, NOTEBOOKS/WRITING PADS, ADDRESS BOOKS, FOLDERS 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, 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

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
		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
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	1,432,718	TABLE UTENSILS NAMELY, KNIVES, FORKS AND SPOONS
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;

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
		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 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 &

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
		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 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

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
ELLE	2,016,657	CHAINS, WATCH GLASSES, CLOCK CASES  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.
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

Trademark

Registration No.

Goods or Services

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, 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,

Trademark

Registration No.

Goods or Services

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, 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,

Trademark

Registration No.

Goods or Services

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 BEAUTY; CONDUCTING  
EDUCATIONAL CONFERENCES, WORKSHOPS

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
		INSTRUMENTS FOR OTHERS; EDITING OF WRITTEN TEXTS; NEWS SYNDICATION REPORTING; LANGUAGE TRANSLATION; PRINTING SERVICES; RENTAL OF COMPUTERS AND RENTAL OF DISPLAY 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
ELLE	2,476,981	BANKING SERVICES; CREDIT AND DEBIT CARD SERVICES; INSURANCE UNDERWRITING SERVICES IN THE FIELD OF HEALTH; FINANCIAL PLANNING SERVICES
ELLE	2,708,222	TABLE UTENSILS, NAMELY, KNIVES, FORKS, AND SPOONS SPECTACLES FURNITURE 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, TOOTHBRUSHES, TRAYS, COFFEE SERVICE IN NON-PRECIOUS METAL, COFFEE POTS, MENU CARD RESTS, POTS FOR MAKE-UP

Trademark

Registration No.

Goods or Services

SOLD EMPTY, 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 VAPORIZERS, 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, AND KNIFE RESTS FOR THE TABLE BATH TOWELS, HAND TOWELS, TABLE CLOTHS, TEXTILE TABLE NAPKINS, SHEETS, BLANKETS AND PILLOWCASES FOOTWEAR - NAMELY, SHOES, BOOTS, SLIPPERS, SANDALS AND CLOGS

(Copies of these registrations are attached hereto as Exhibit 6.)

18. Hachette's ELLE mark is comprised of the French word "elle," which means "she" in English. (A copy of an excerpt from the Collins-Robert French

Dictionary showing the English translation of the French term "elle" is attached hereto as Exhibit 7.)

19. Hachette has expended substantial amounts of time and effort in advertising and promoting its goods and services under the ELLE mark. For example, from 1999 to 2003, Hachette expended approximately \$11,674,111 to advertise and promote the sale of its ELLE magazine. Hachette's ELLE marks have come to mean to the public in general an indicator of high-quality services and goods originating with Hachette.

Hachette's Efforts to Police Its Rights in the ELLE Mark

20. Over the years, Hachette has engaged in an active trademark enforcement program to protect its ELLE mark and has on several occasions opposed the registration of confusingly similar marks in the United States Patent and Trademark Office in connection with a wide range of goods and services. (A list of inter partes proceedings or other objections initiated by Hachette in connection with its ELLE mark is attached hereto as Exhibit 8.) For example, Hachette successfully prevailed on third parties to abandon, among others, the following marks: DE ELLA, BEN & ELLE NEW YORK, ELLEL, ELLER, ELEE, X'ELLE, ELLEOVATION and ELLEANCE. Further, Hachette, in a decision issued by the TTAB (unpublished), successfully opposed the registration of the mark, ADDITION ELLE (*Hachette v. Addition-Elle, Inc.*, Opposition No. 91074786). (A copy of that decision is attached hereto as Exhibit 9.)

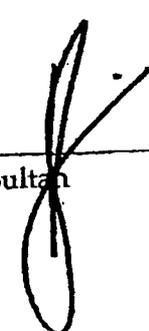
filing a Notice of Opposition with the Board. In its Notice of Opposition, Hachette alleges, *inter alia*, that registration of E.F. Licensing's mark ELLA is likely to cause confusion with Hachette's ELLE marks.

24. On January 27, 2005, E.F. Licensing served upon Hachette Applicant's Responses To Opposer's Second Set Of Interrogatories (hereinafter "E.F. Licensing's Interrogatory Responses"). (A copy of E.F. Licensing's Interrogatory Responses is attached hereto as Exhibit 11.) In those responses, E.F. Licensing admits that it has not commenced actual use of the mark ELLA in connection with the advertising or licensing services identified in its application. (E.F. Licensing's Interrogatory Responses No. 32.)

25. Other than E.F. Licensing's mark, Hachette is unaware of any other marks pending or registered before the PTO that it has not opposed or otherwise objected to, which are as confusingly similar to any of its ELLE marks as is the case with applicant's ELLE mark for goods and services similar or related to those for which Hachette uses and has registered the ELLE mark.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed on this 23 day of February, 2005.  
Paris, France.

  
\_\_\_\_\_  
Fabienne Sultan





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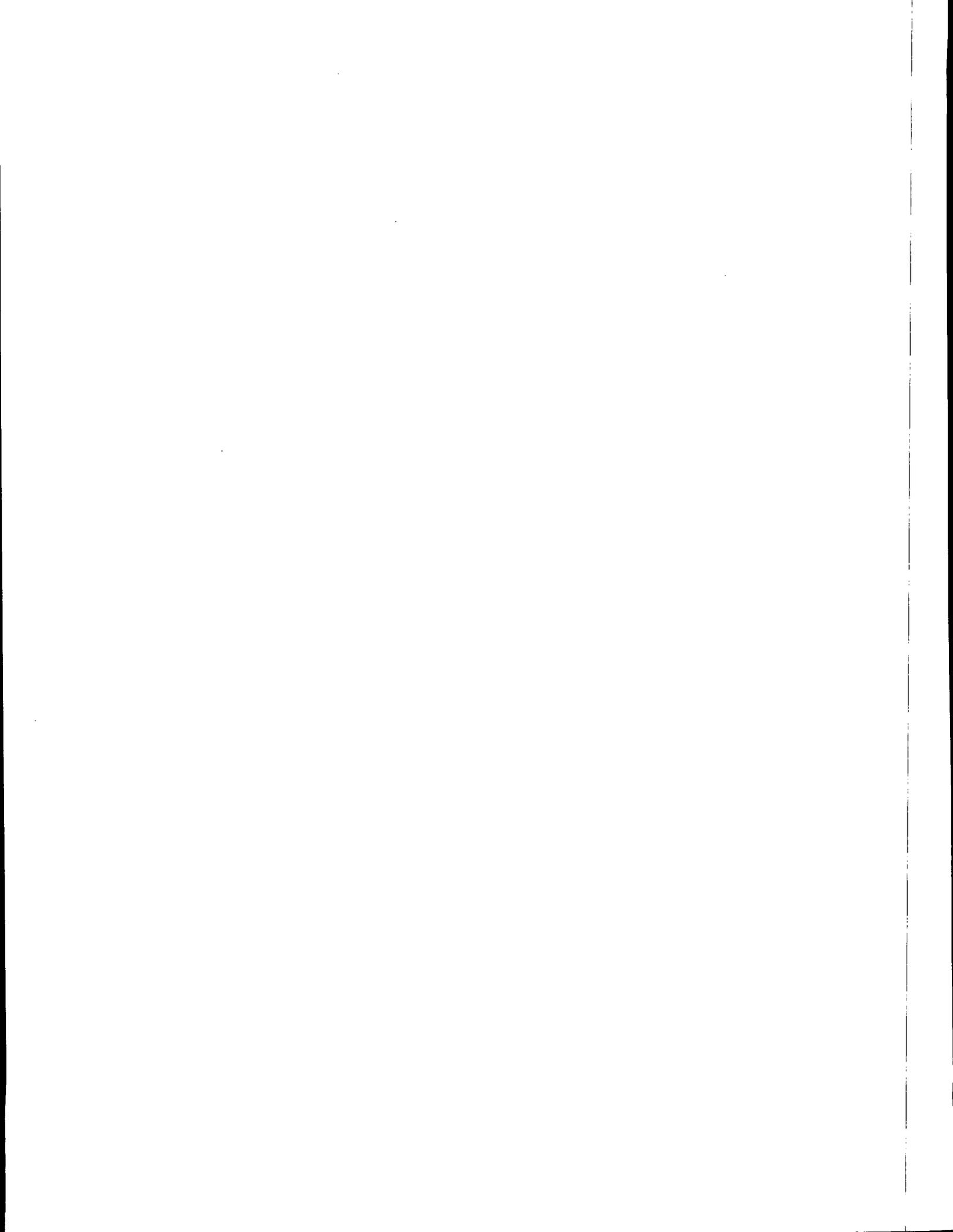


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**FOOD'S NOT  
THE ENEMY—DIETING IS**  
HOW TO MAKE PEACE

**THE SEXIEST  
MAN IN POLITICS—  
AND HE'S SMART, TOO!**



KEYWORD  
ON AOL: ELLE  
JULY 2001  
USA \$3.50





Rick Welts, president of the NBA's consumer products division, is more concerned with "regaining a competitive edge overall" than simply recouping from any damage the lockout is doing. And while NBA business is strong in non-apparel categories, Welts acknowledges that the league's apparel business was suffering even before labor woes erupted.

### Make It Relevant

An executive for The Finish Line, who requested anonymity, is well aware of "the fashion apparel problem." In fact, it's what he points to when explaining why sports licensing "has not been a very good busi-

### 'New growth centers around new product.'

— Brian Jennings, NHL

ness for us in the past few years." He comments, "How many team jackets or sweatshirts does a guy need? When the fan is your only customer, there's a kind of built-in obsolescence."

Not so, say licensors, as well as many manufacturers and retailers, but finding new ways to satisfy consumers can be a big job. It is, however, where growth opportunities lie. "Companies that are relying on core,

basic commodity items are having a hard time," says Rothman. "Fans are saying they don't want more core, traditional products. They want something new and relevant."

Major League Baseball gave its fans just that last year. Smith primarily credits the league's retail sales increase last season to success of "off-colored" baseball jerseys and caps from a handful of licensees, including Starter, New Era, and Majestic. The look's popularity continued into 1998.

With its Pro Player brand, Fruit of the Loom is working to offer retailers and consumers apparel with a higher level of fashion than many sports licensed apparel makers are serving up. "We had to find ways to increase our profitability and drive business, and offering more fashion is one of the ways we have set about doing that," says Kelly.

This fall, for example, Pro Player rolled out its

new, business is down. It's a prophecy."

According to the anonymous goods chain source, product key to enhancing licensing focused on bringing in items wear not on game day, but

Furthermore, notes Rothman, only opportunities to fresh to be willing to take chances markets," she says. "If a yo gets hot, jump on that."

Capitalizing on under-



**'We [the NBA] have a fashion apparel problem.'**

— Rick Welts, NBA Properties

### Tough Calls

Some say that before sports licensing business choices are harder choices to be made

"The leagues need to begin to consolidate their Beckerman says. "They can't everyone. It just doesn't work"

Beckerman is not alone. "Business is over-licensed. Control of their businesses,"

"Key categories like T-shirts are saturated, and that forces companies to drive margins and royalties"

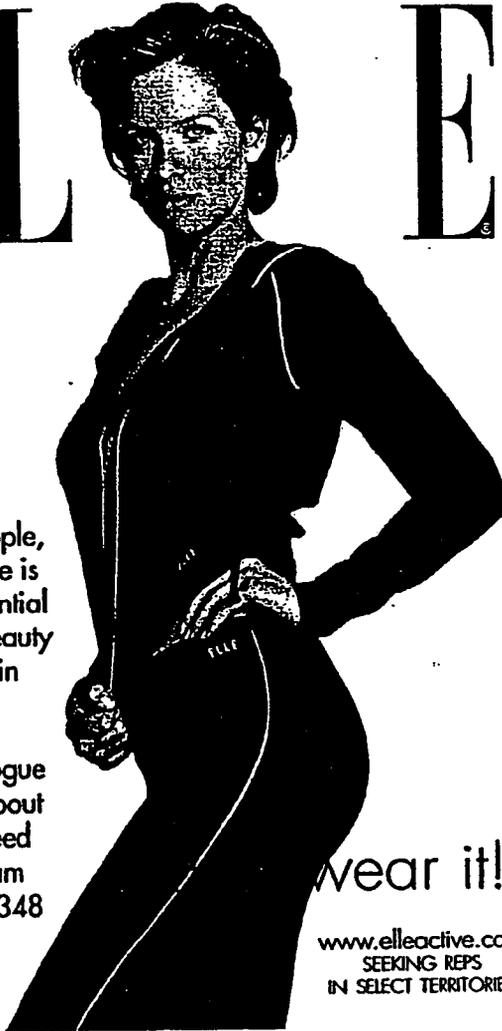
Beckerman, who built

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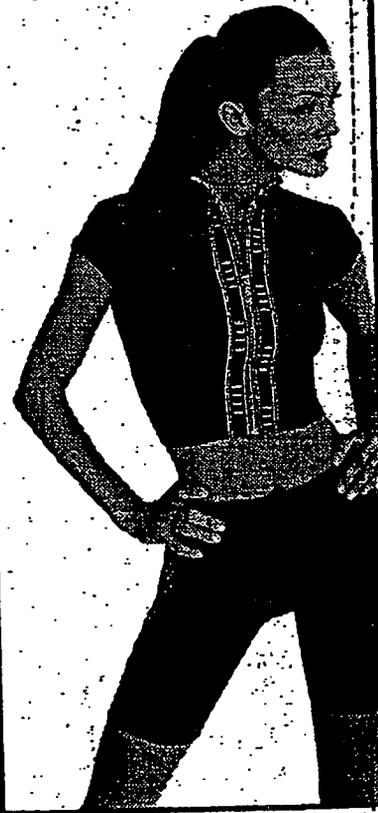


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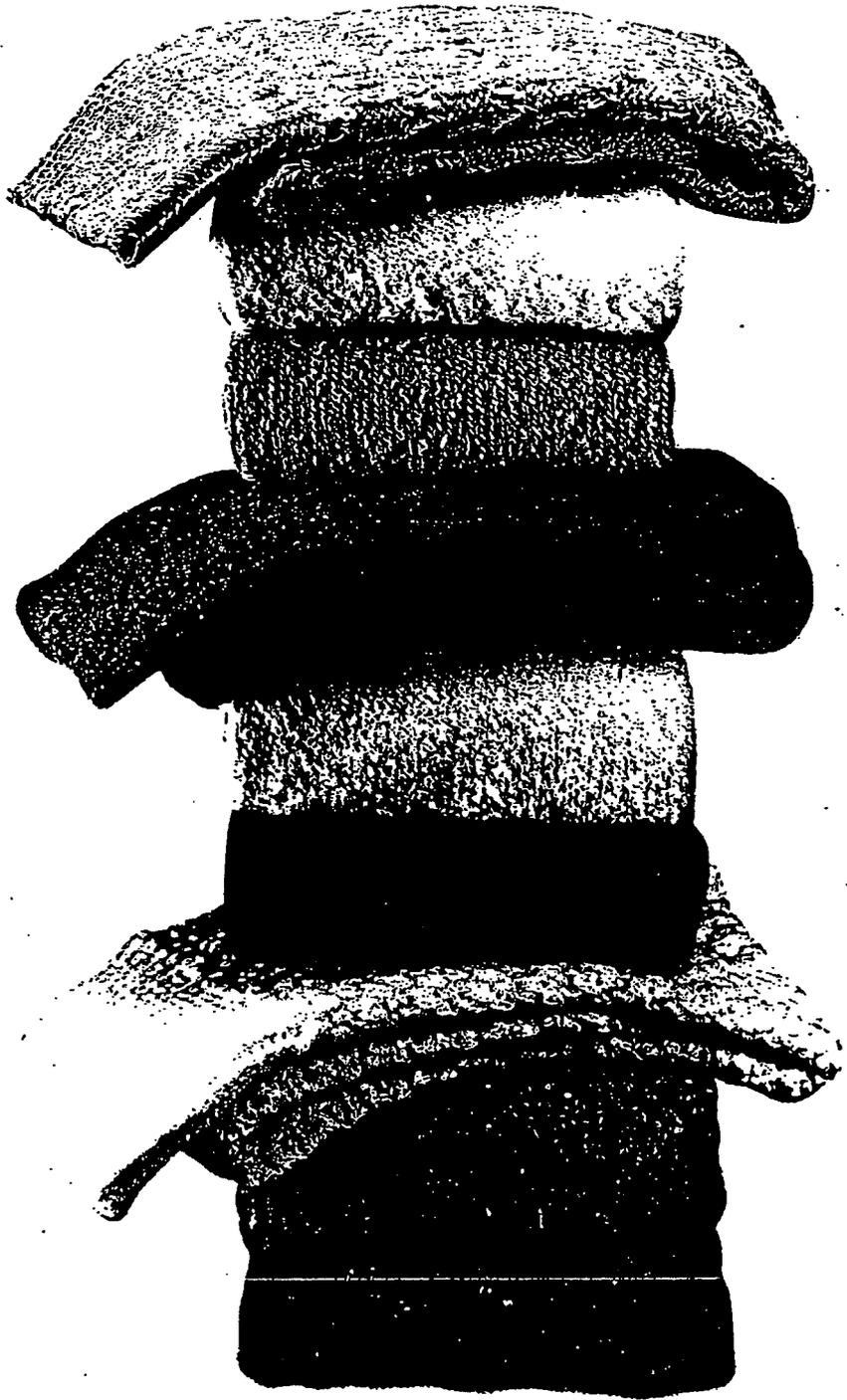
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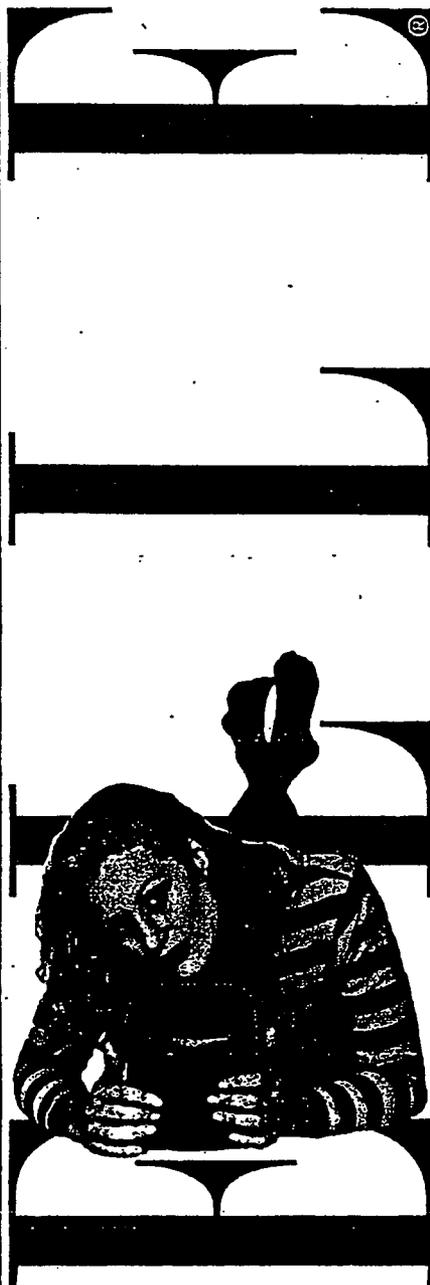
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## PEOPLE CONTINUED

She proudly shows off a satin group that just hit the stores, including '70s-style wrap dresses and long sheaths in shades of champagne, beige and mocha. "It's on fire," she says. "Next, we're going to take it into wear-to-work apparel with satin trim just to give the clothing a little spark. This tells you what people want to buy, and it's not last year's dumb stuff!"

Choosing only a few key items, buying them in massive quantities and making a major statement in them at retail sounds like a risky strategy. But Gibson doesn't see it that way.

"Assortments are always riskier than decisions," she explains. "Assortments seem safe, but they never are because among assortments are usually a lot of mark-downs."

Because the apparel consists primarily of a few must-have items with broad appeal, Gibson sees accessories (which let the customer individualize her selection) as a critical part of the store mix.

"I don't think it would be a surprise to anybody in the industry that I would put more emphasis on accessories because I always have," she says. "Just like accessories are an expression of a person, accessories are an expression of a store. When you walk in, it's something you can get excited about because it's current, it's modern, it's trendy. It can finish very simple clothing."

And she believes strongly in accessories, even jewelry, despite their poor performance at retail of late. "It's probably not selling because it's been pretty boring out there," Gibson asserts. "We have to be careful as an industry not to keep talking about how tough things are when we bore the customer to death. When it gets to be the same old, same old, who needs it? I've personally looked for great accessories all season. They're hard to find."

To get the momentum going, she's

assembled a strong team of accessories merchants led by two men who both left other jobs to join their former boss in the Petrie turnaround: Eric Schumann, who worked with Gibson for several years at The Limited and was most recently president of Liz Claiborne jewelry, is GMM of accessories and lingerie; the merchandise manager of accessories is Art Hunter, who also has a Limited and Liz background (most recently vice president of merchandising and design for jewelry at Liz Claiborne).

Hunter has an almost reverential respect for Gibson. "Eric said, 'Verna's going to put this together with Petrie and you should be part of it.'

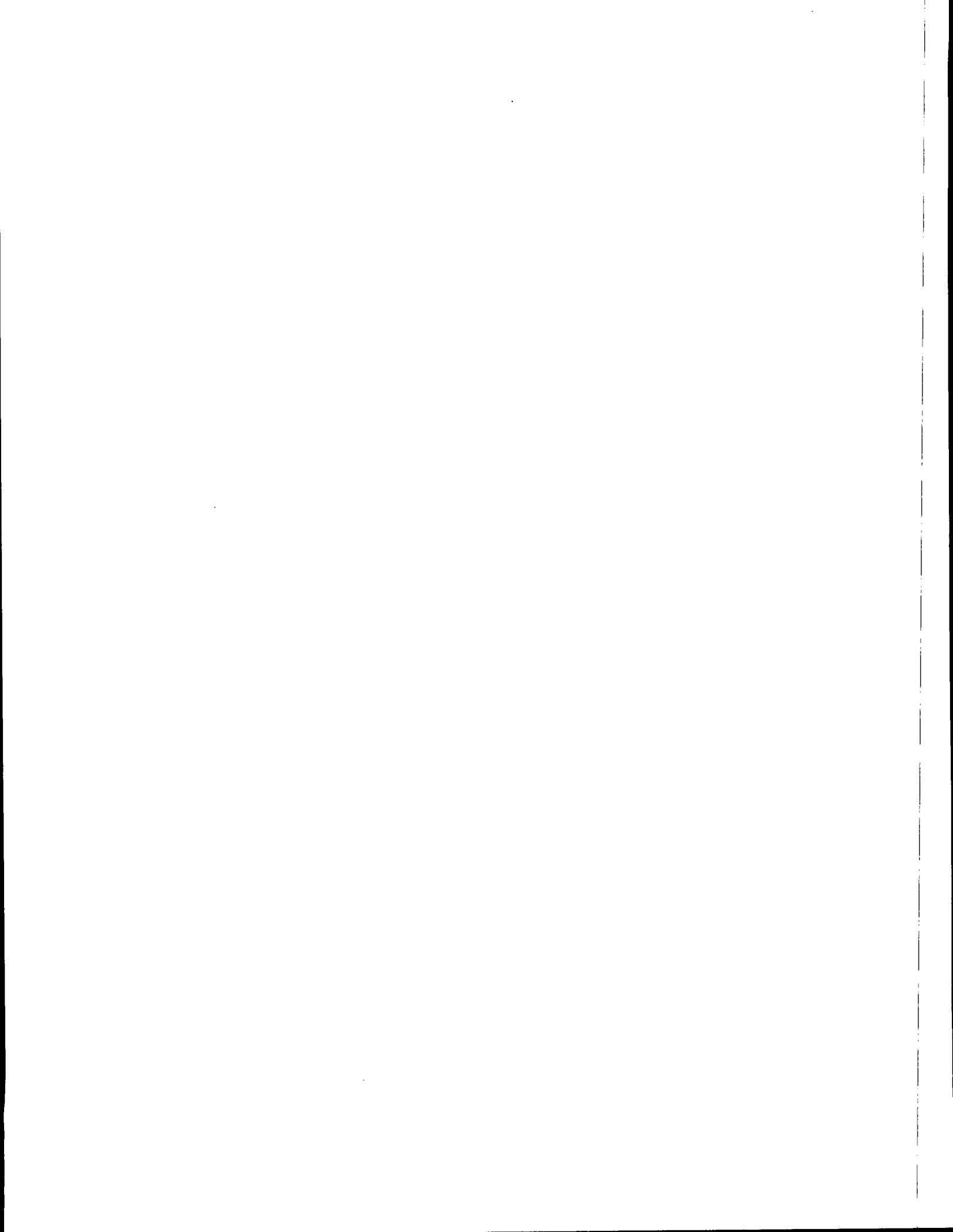
And I said, 'Okay!' Verna changed retail in the '80s with what she did at The Limited and I think that's what this is about here—not just this company, but changing retail," he says.

In many ways, Gibson is not so much changing retail as continuing the revolution she began at The Limited through a

new retail vehicle. For instance, she is intent on establishing strong private label brands for Petrie, as she did at The Limited with Foreza and Outback Red. (Although nearly 100 percent of Petrie's apparel and accessories assortments currently are private label, these labels don't have strong brand identification.) Her first major launch is Forever Wear All, a denim dressing brand that will be in stores for the fall season.

"If you stick a label in something, it's different than having the customer recognize it as a brand. The Limited was famous for it with Foreza and Outback Red. We'll establish that kind of clarity too," she explains. "Each brand that we introduce will represent something to the customer. For example, this is the brand that you would want for career wear, this is what you would want for activewear, etc. That's a

**"I've personally  
looked for  
great accessories  
all season.  
They're  
hard to find."**





*...now wear it!*

VOLUME NO. 6

long  
Vest  
1444

Top  
1344

Top  
1344

1544

Jacket  
044

344

344

# BABY RIB

S P O R T • A C T I V E

HFP 2209



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# SHERPA

WITH SMALL "ELLE" EMBROIDERY

Jacket  
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T-Shirt  
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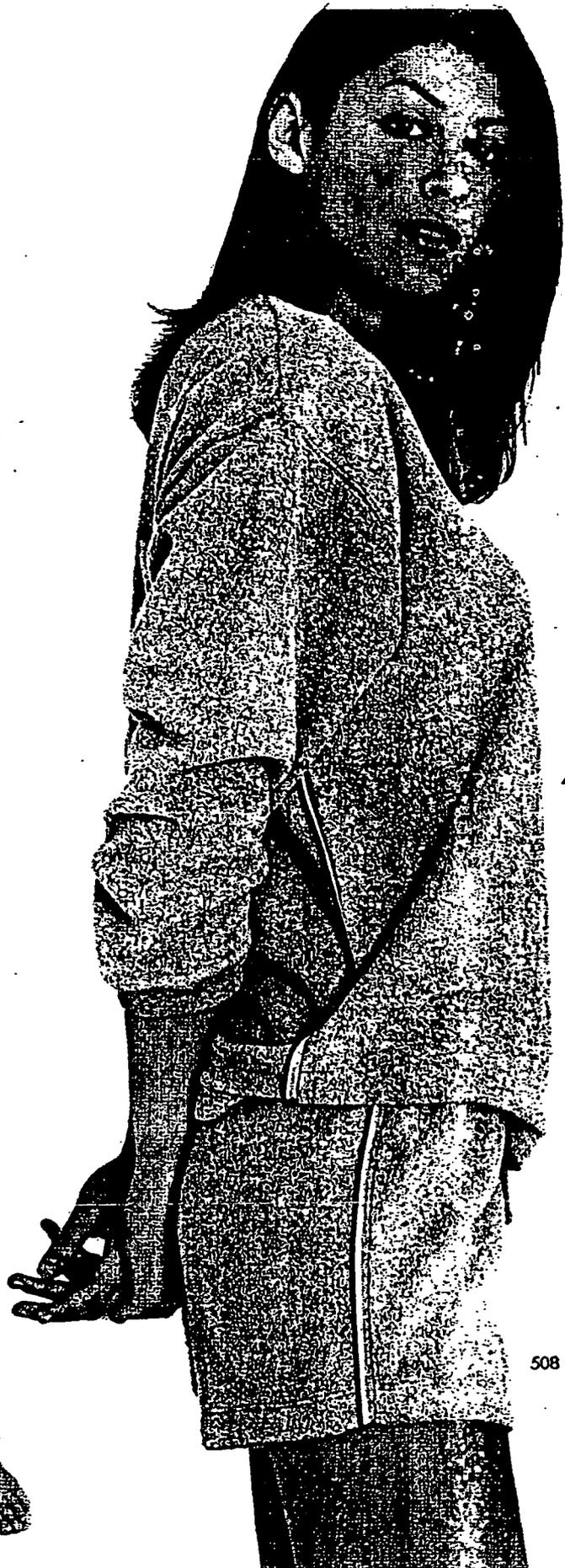
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Top  
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Jacket  
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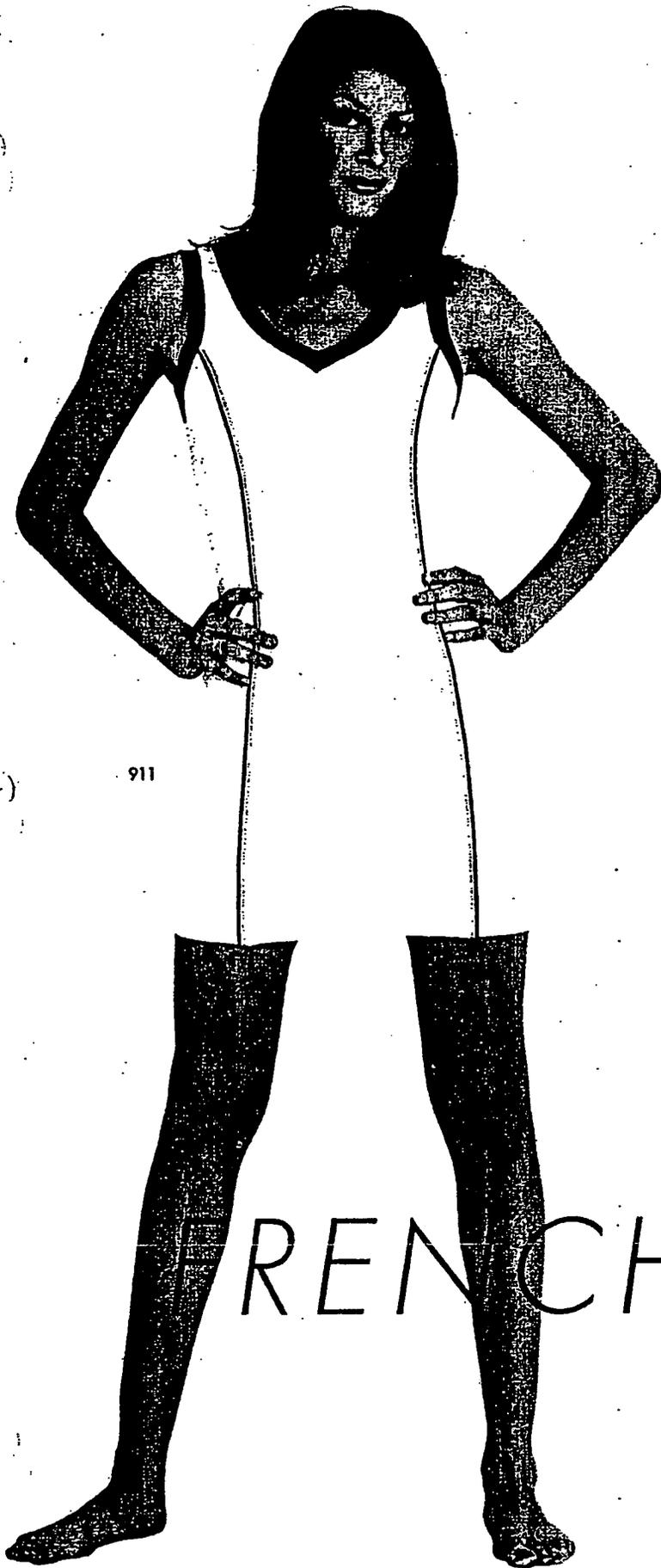
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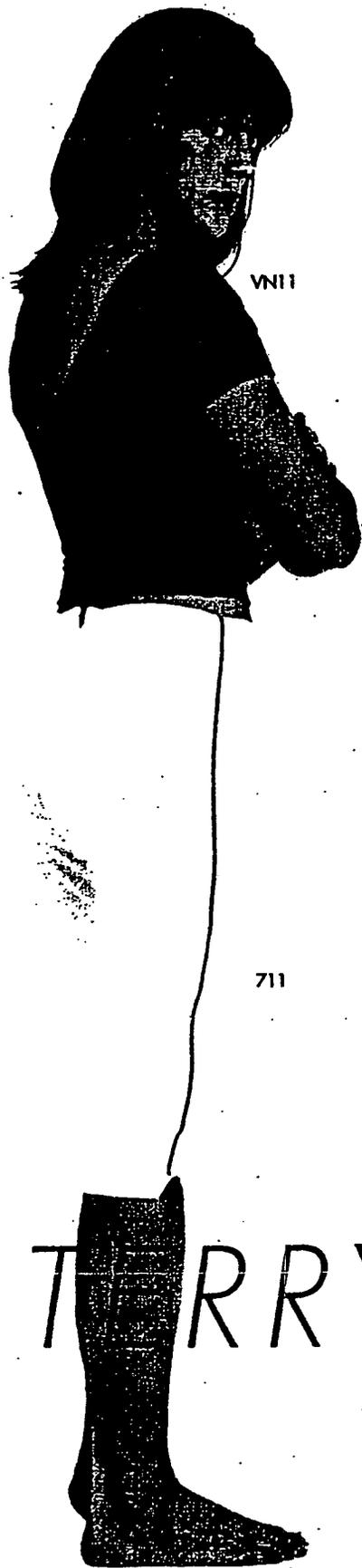
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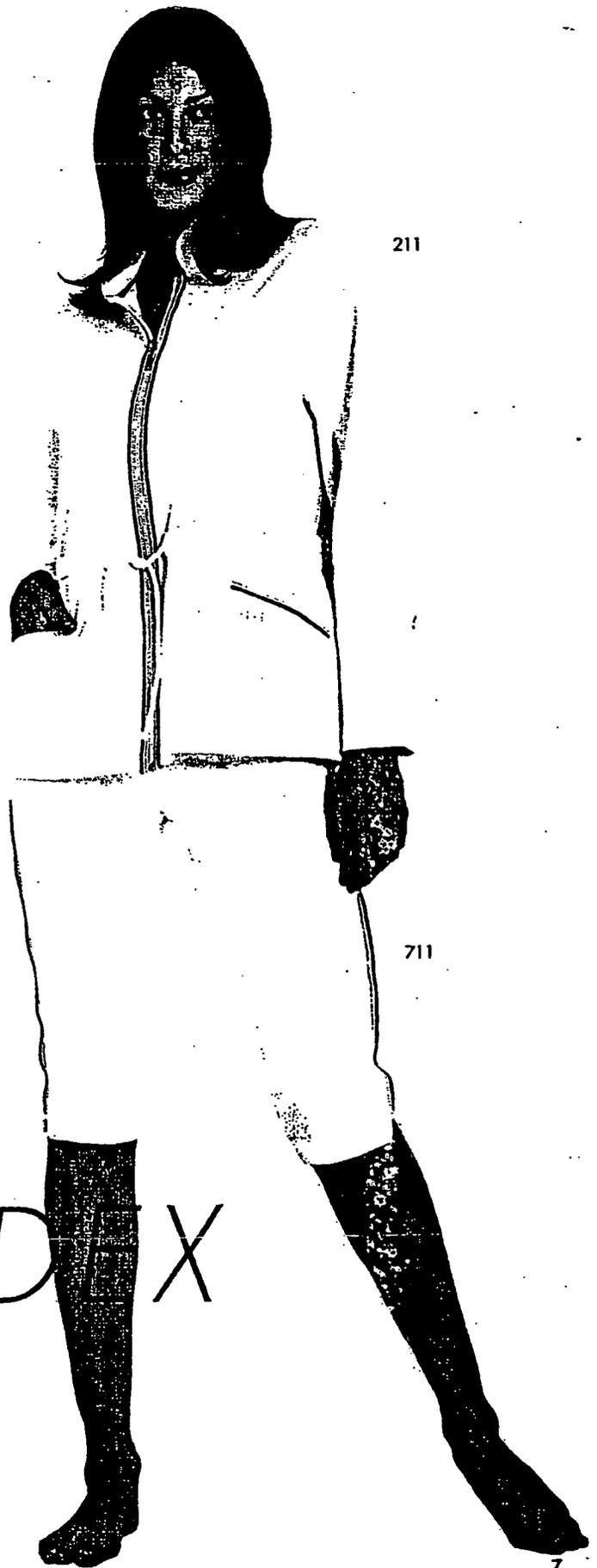
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# FRENCH TERRY



W/SPANDEX

G O L D E N T E N N E S

Jacket 836  
Top 607

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# MESH & MICRO

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Vest 236  
Top 117

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G O L F • T E N N I S

HFP 2216

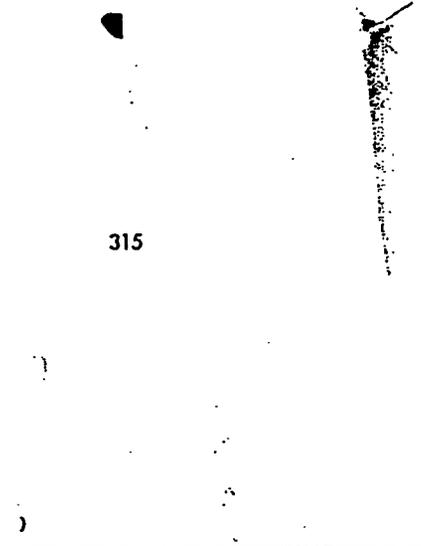




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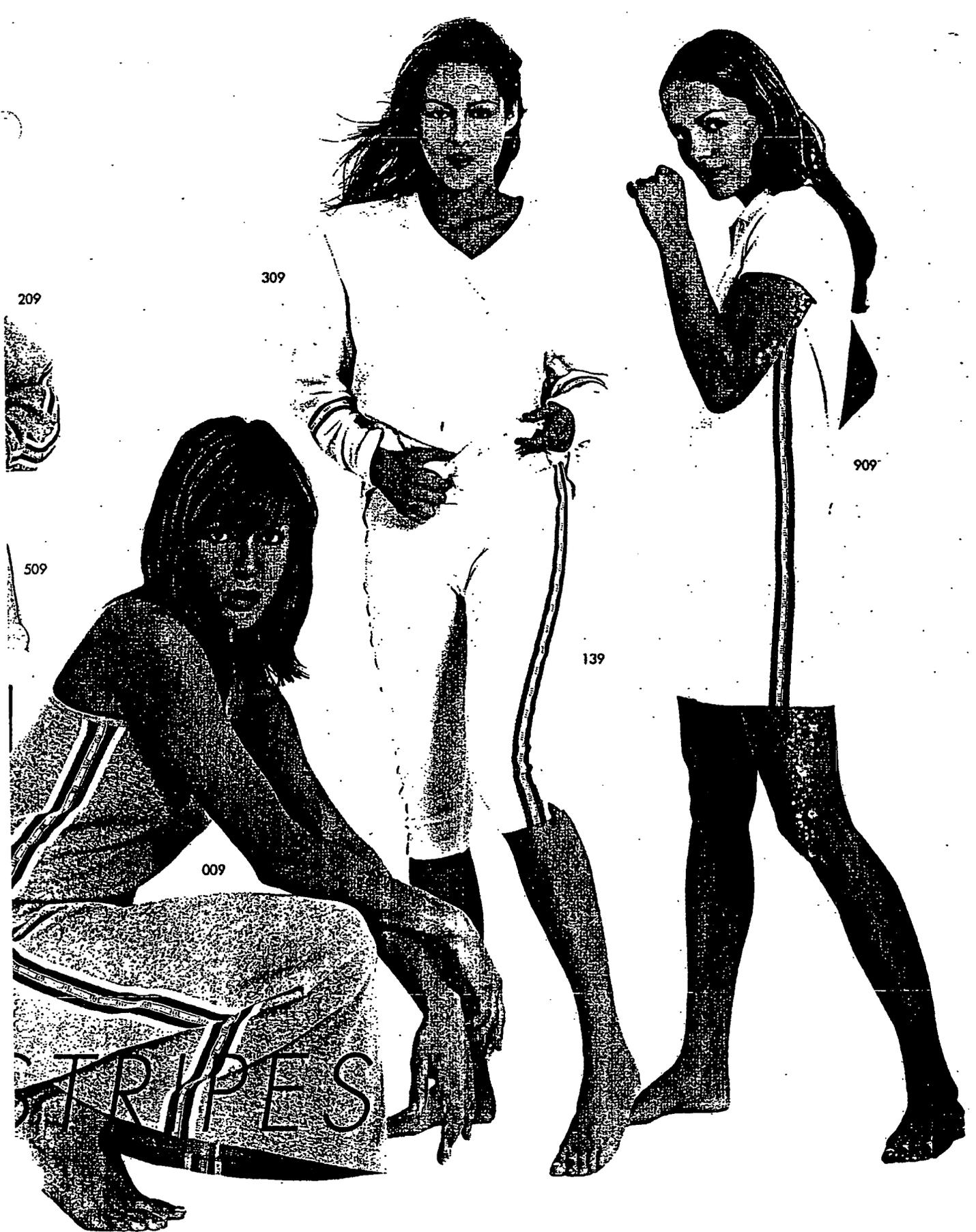
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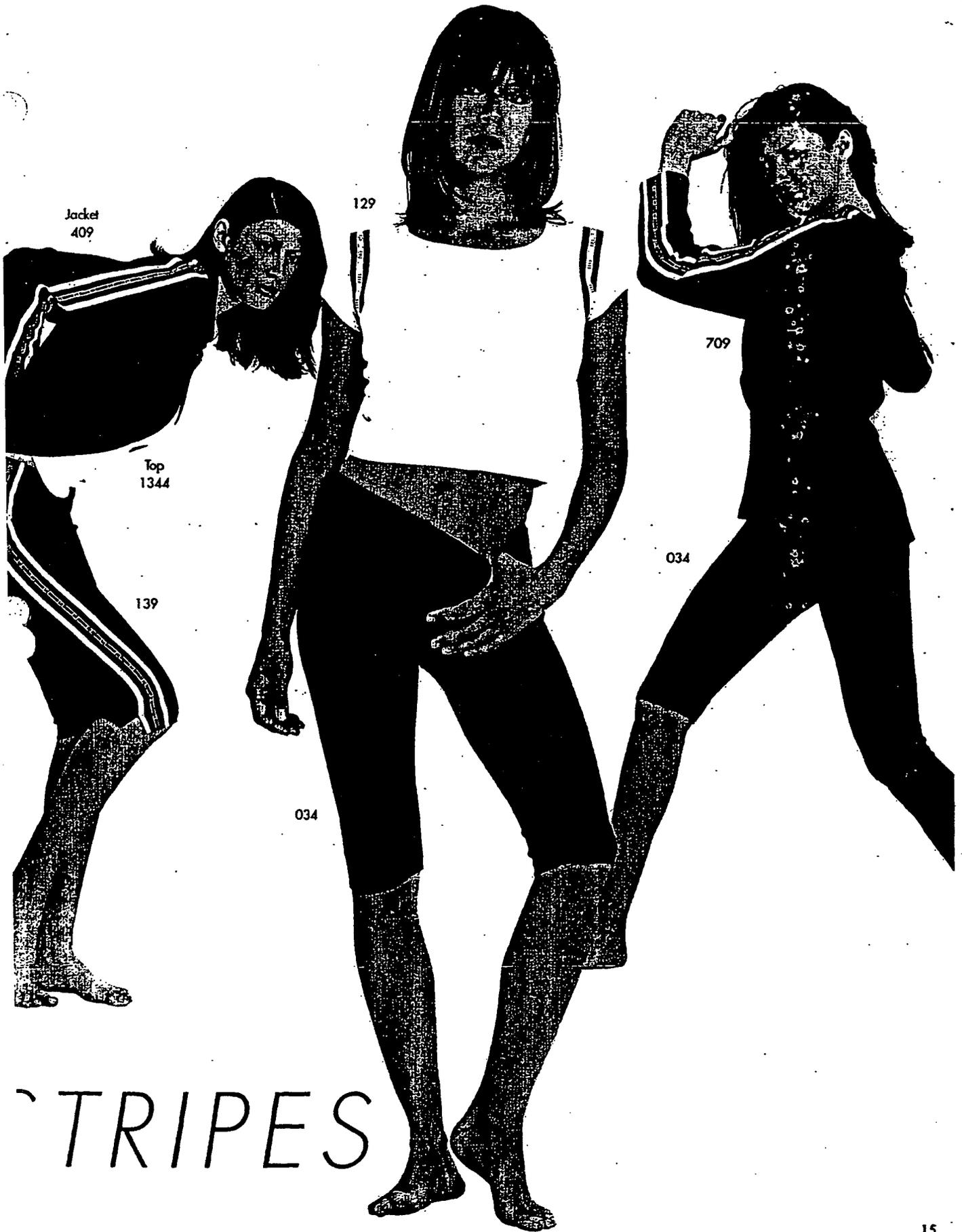


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RIB W / MESH

S P O R T • A C T I V E

HFP 2221



Jacket  
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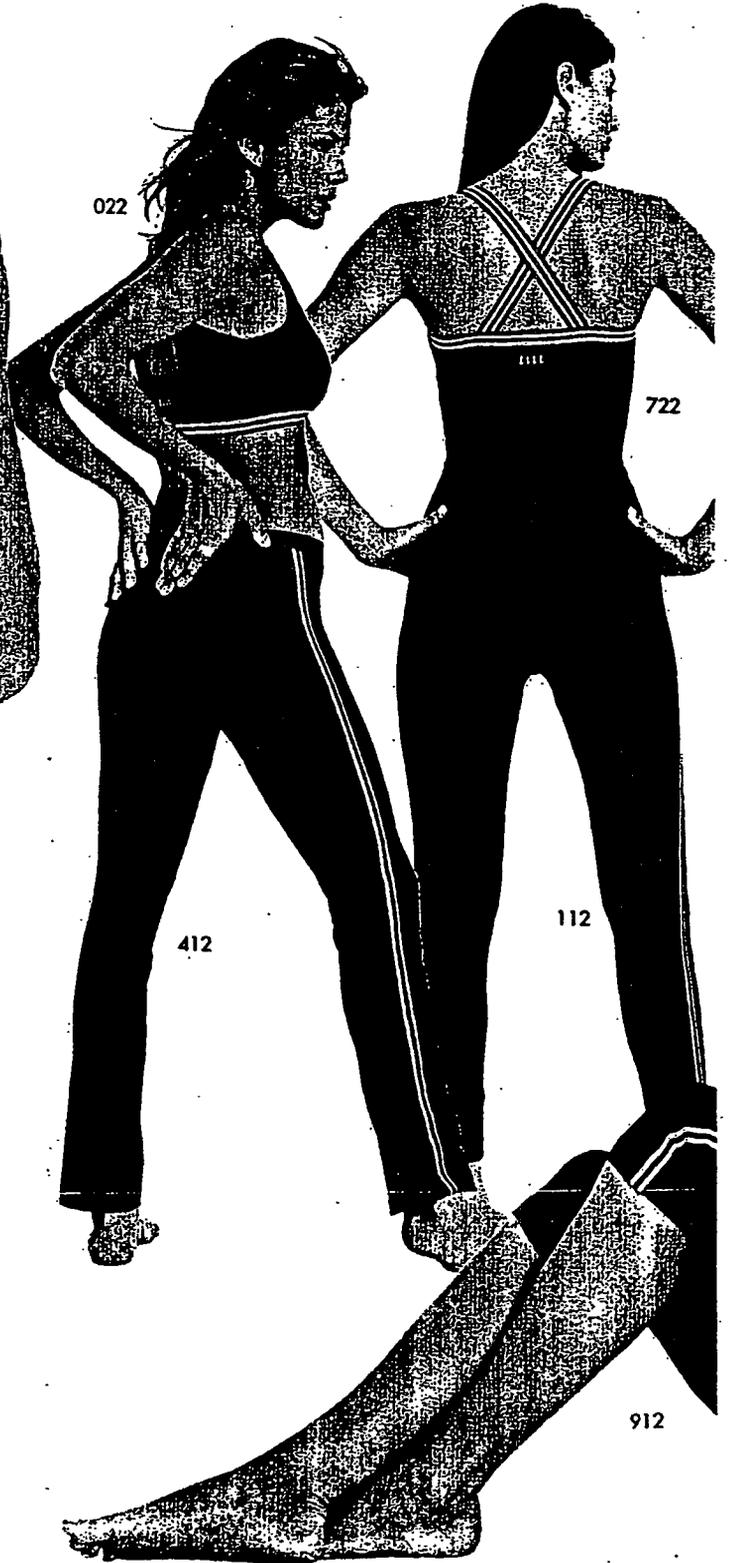
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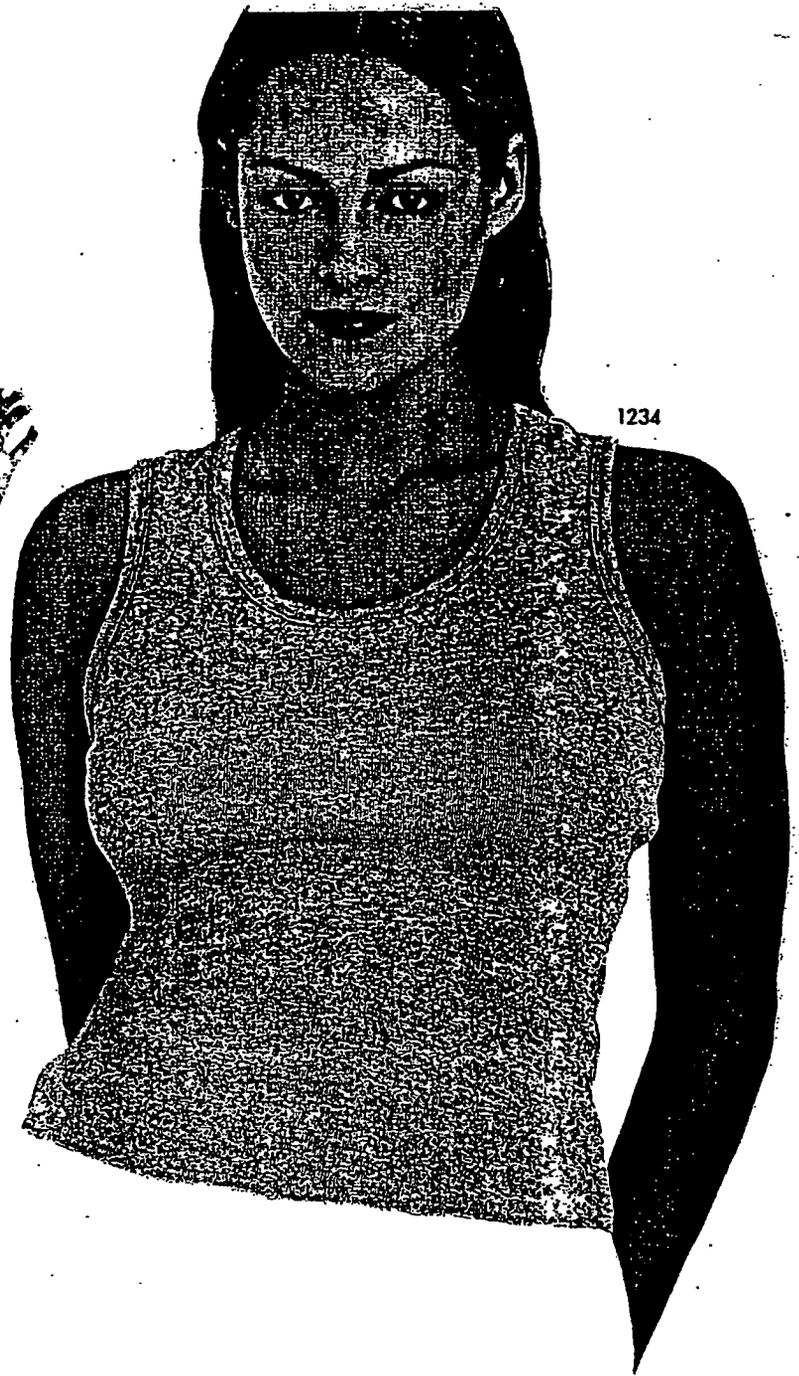


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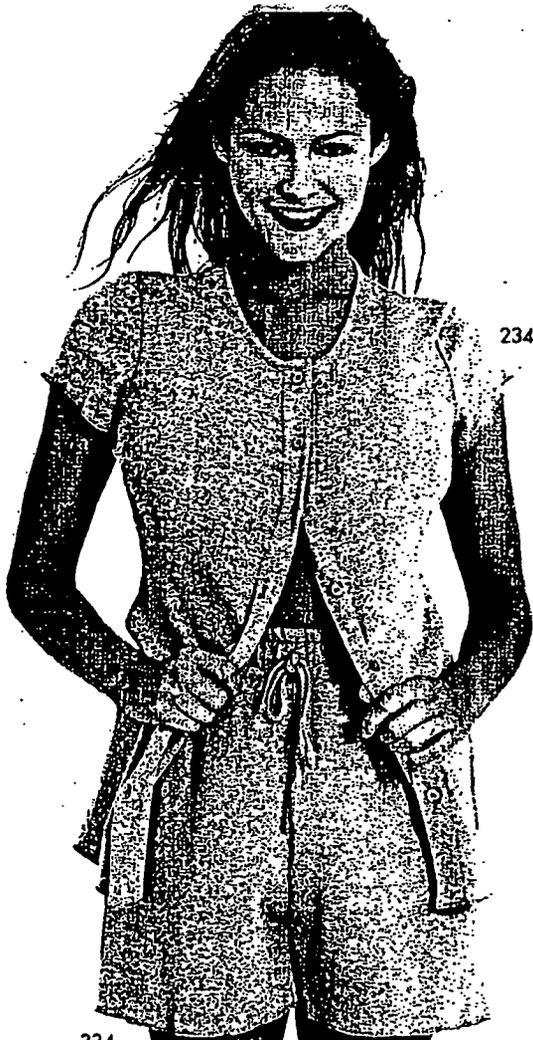
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# NARROW EDGE



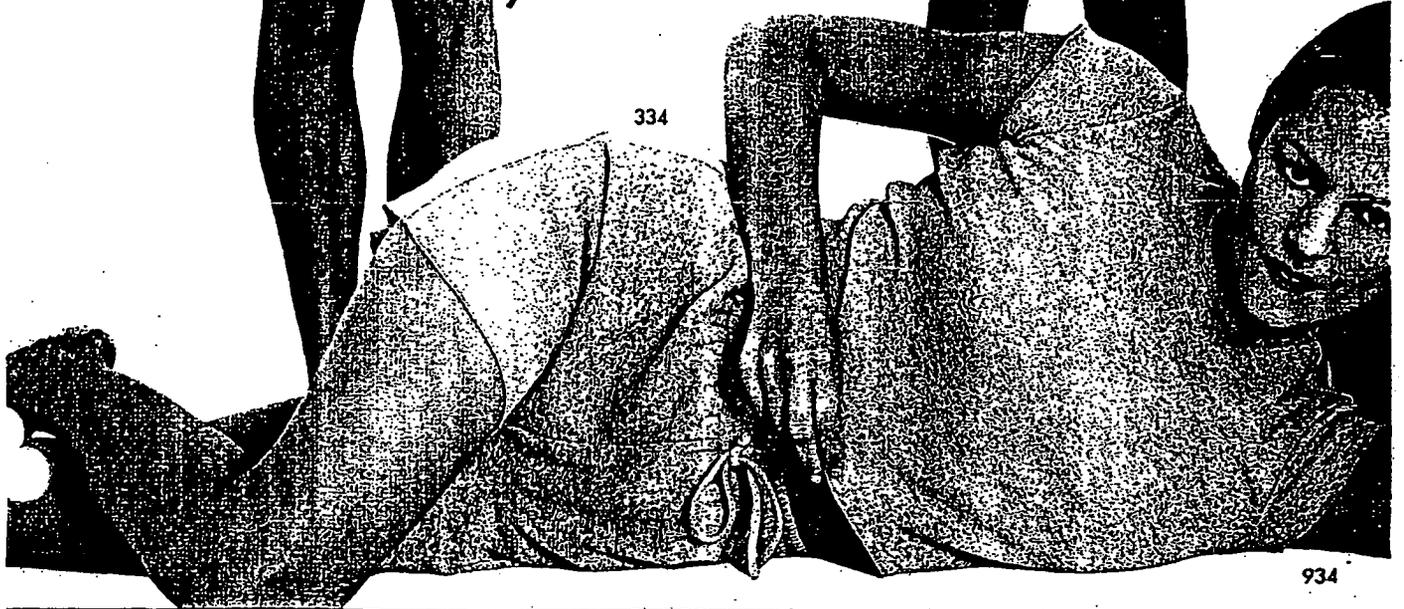
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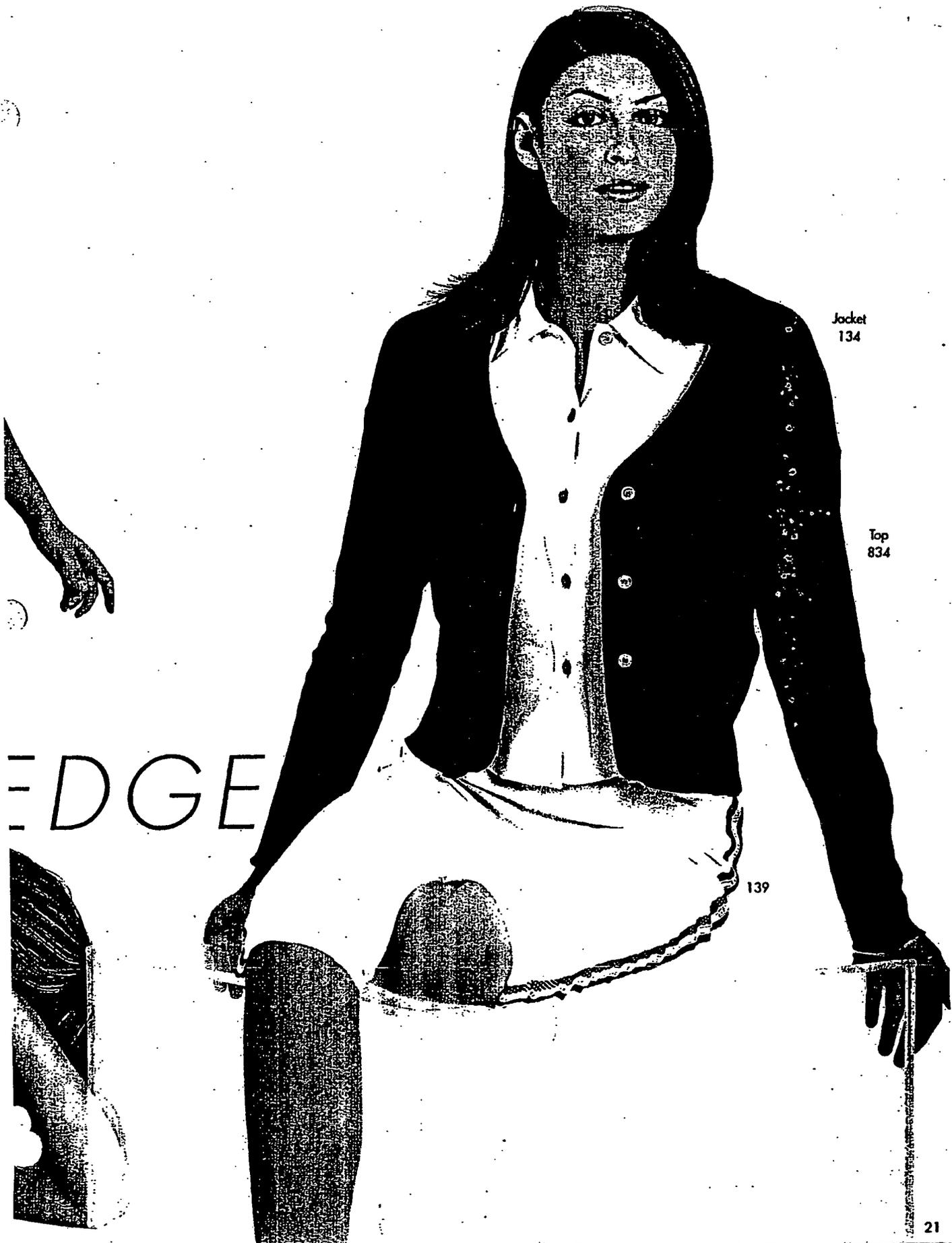
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# RIB / MAR W



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Jacket  
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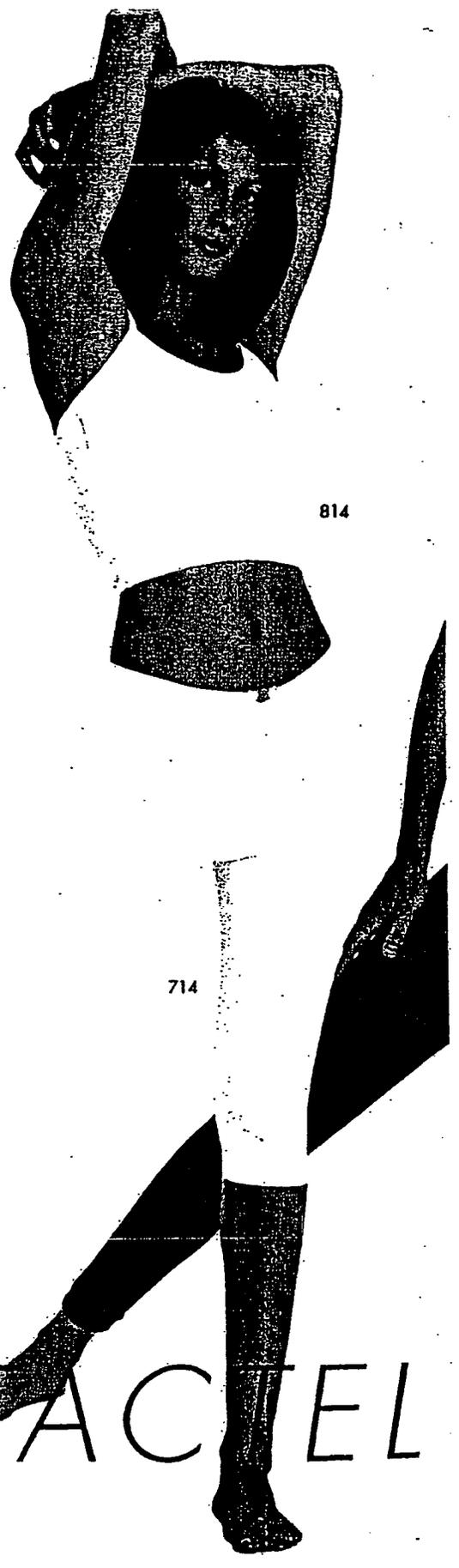
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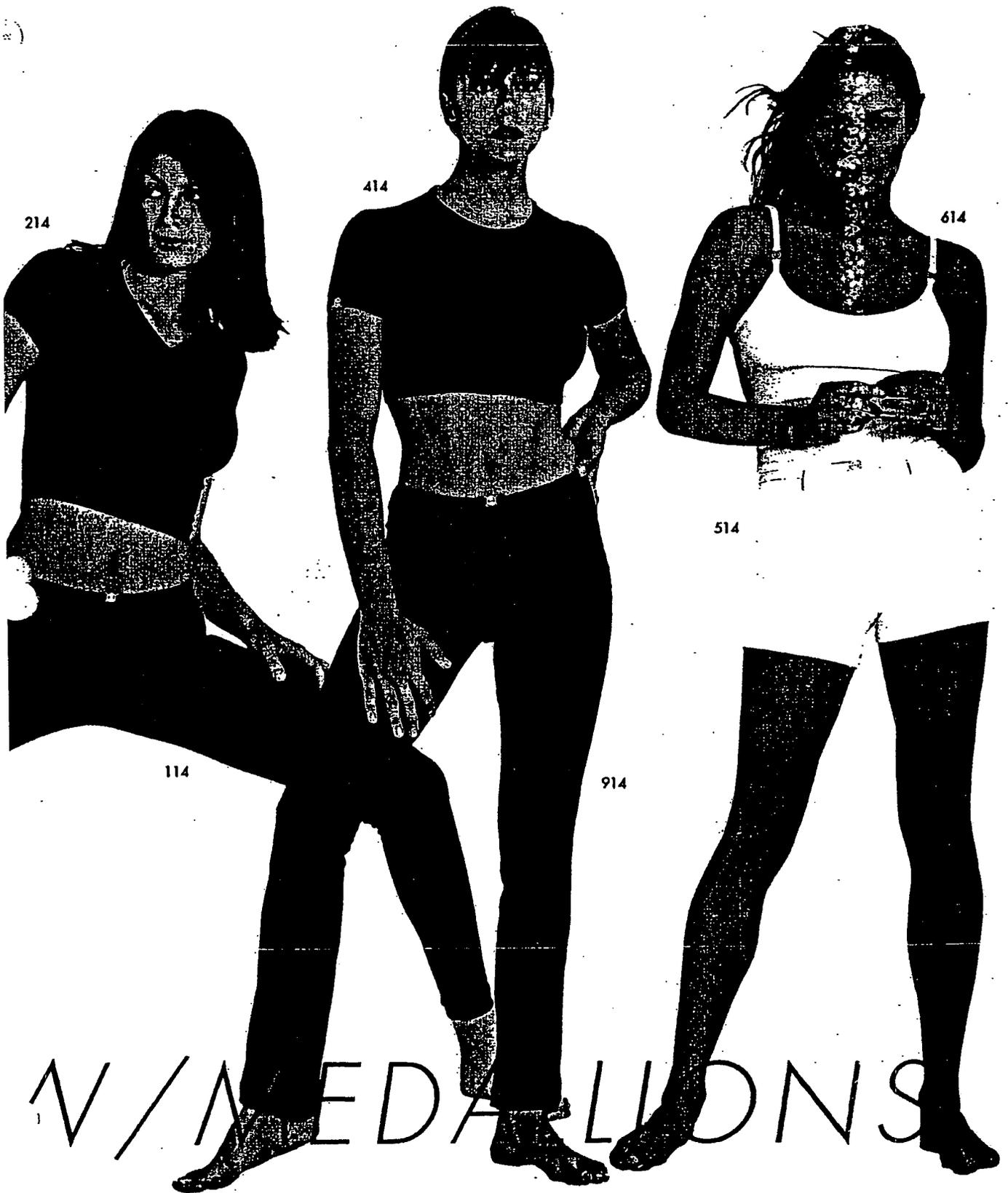


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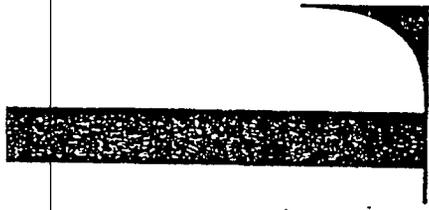
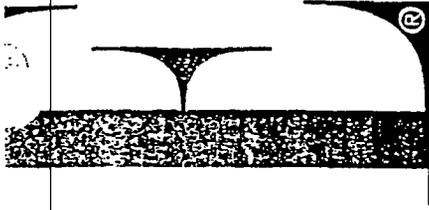
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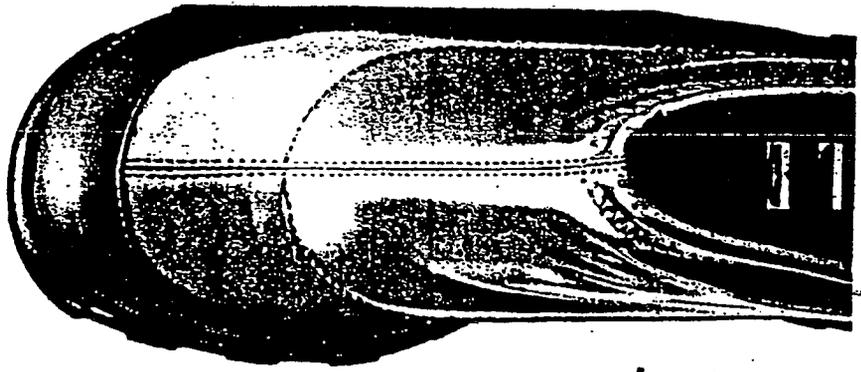
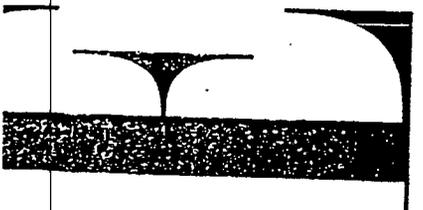
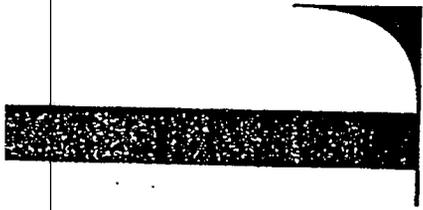


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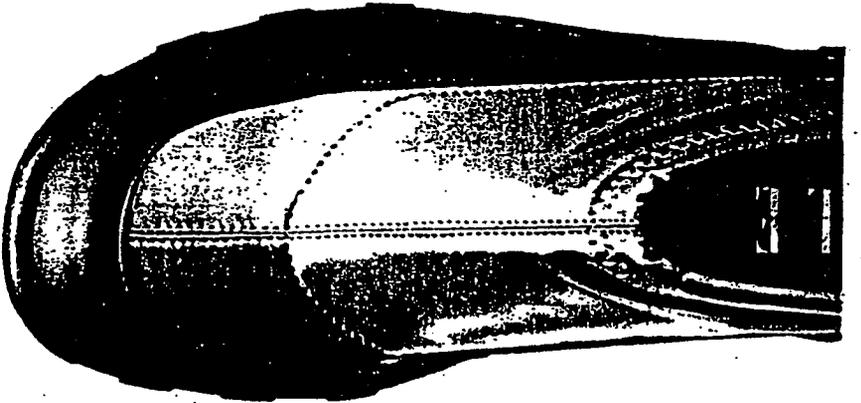
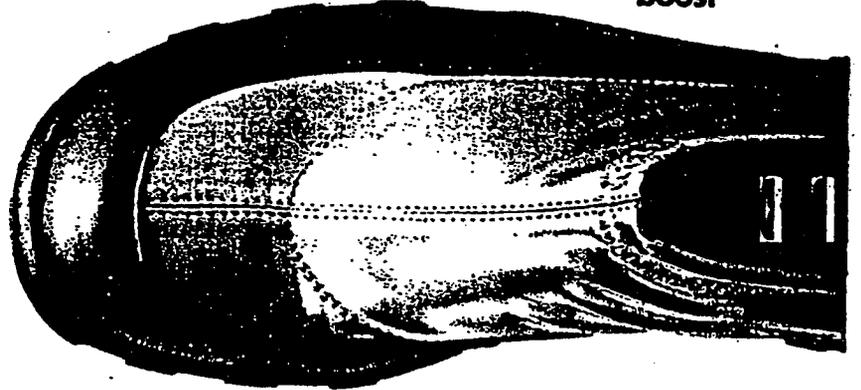
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LL/AUTOMNE  
2000



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Read by 80 million people in over 90 countries, ELLE magazine is the most influential fashion, beauty and lifestyle publication in the world. That special relationship with active young women around the globe has now been developed into a collection of licensed products that reflect, enhance and define the brand: clothing, bags, household goods, watches, shoes and eyewear. All ELLE products are designed to be accessible, modern and adapted to a woman's every day needs...

Lu par 80 millions de personnes dans plus de 90 pays, le magazine ELLE est la publication du monde la plus importante dans le domaine de la mode, de la beauté et du style de vie. Ce lien particulier avec les femmes jeunes et actives du monde entier s'est transformé et compte maintenant une collection de produits homologués qui reflètent, complètent et définissent la marque: vêtements, sacs, articles ménagers, montres, chaussures et lunettes. Tous les produits ELLE se veulent accessibles, modernes et adaptés aux besoins quotidiens des femmes.

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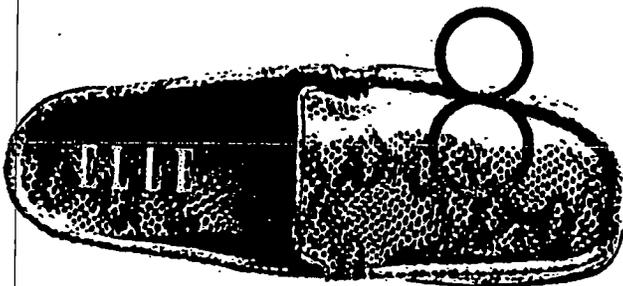
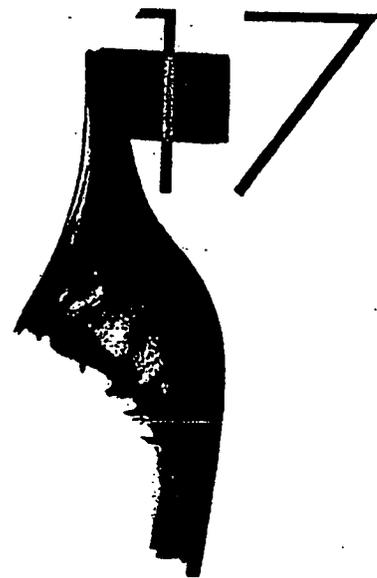
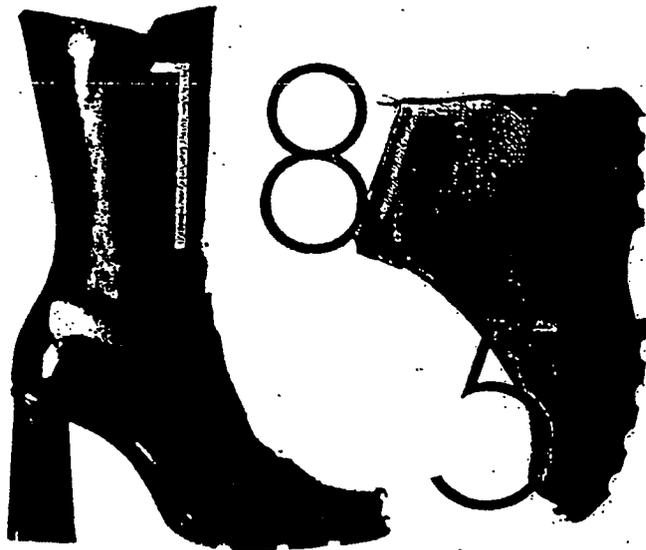
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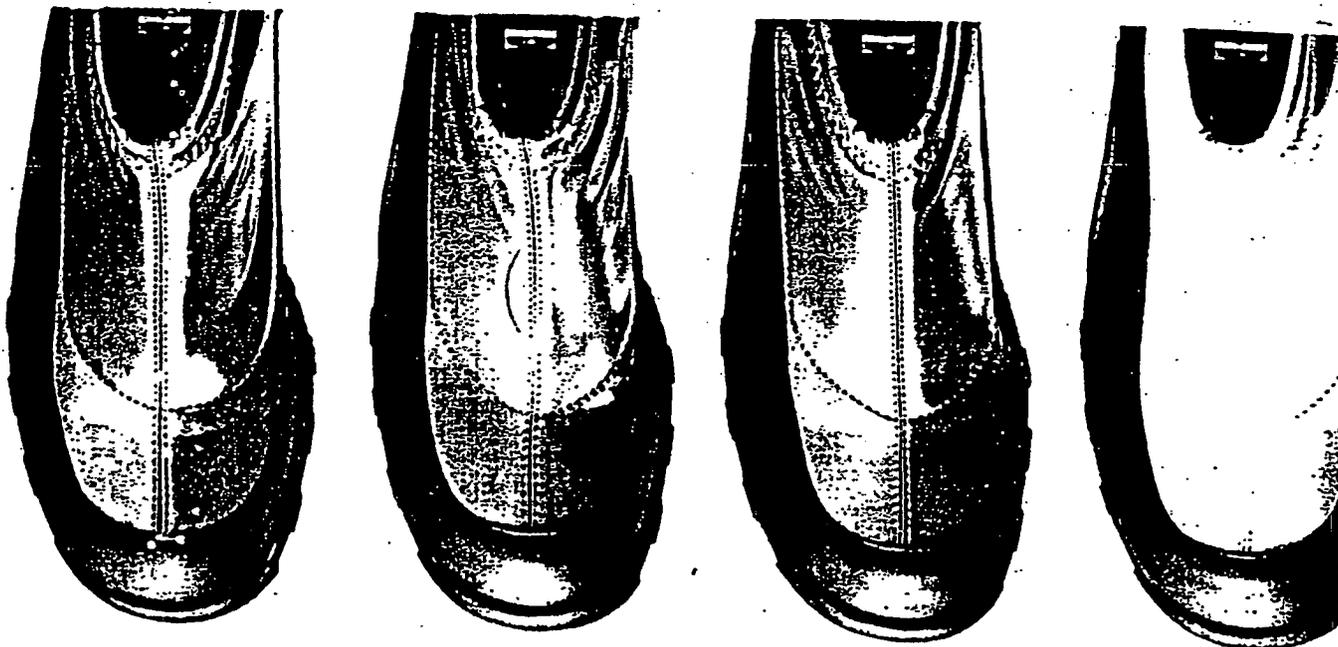
## index sommaire

4-6 ACTIVE SPORT

7-13 SIMPLY CASUAL

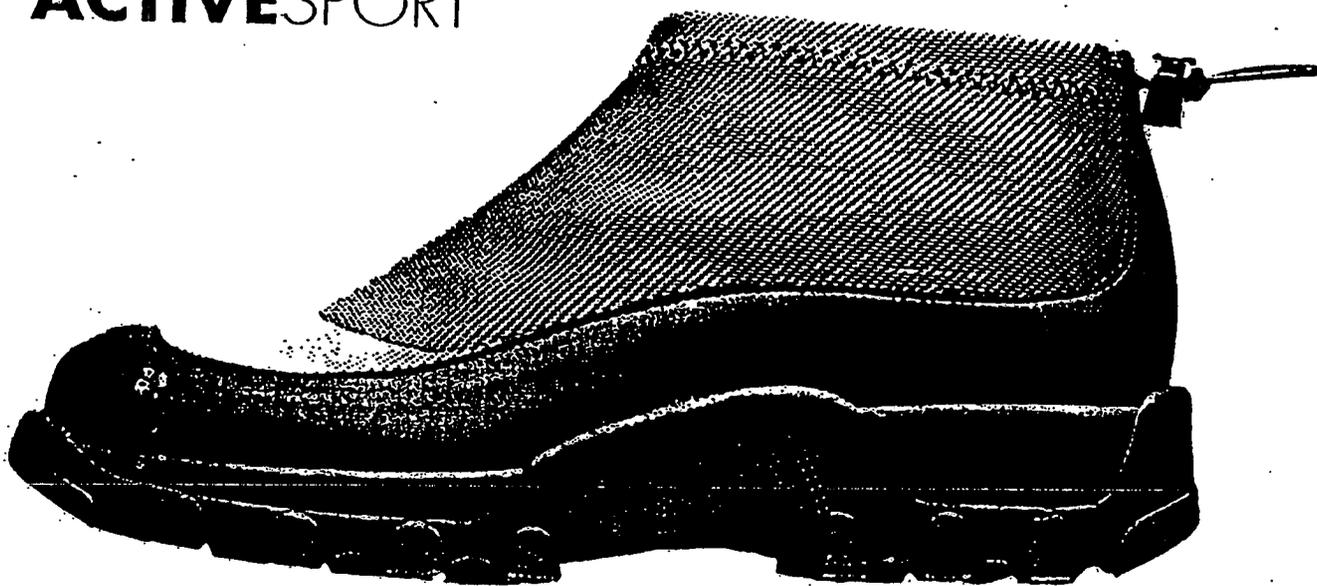
14-18 MODERN IDEAL





boost

# ACTIVESPORT



**brake**

**blur**



# CTIVE SPORT



bounce

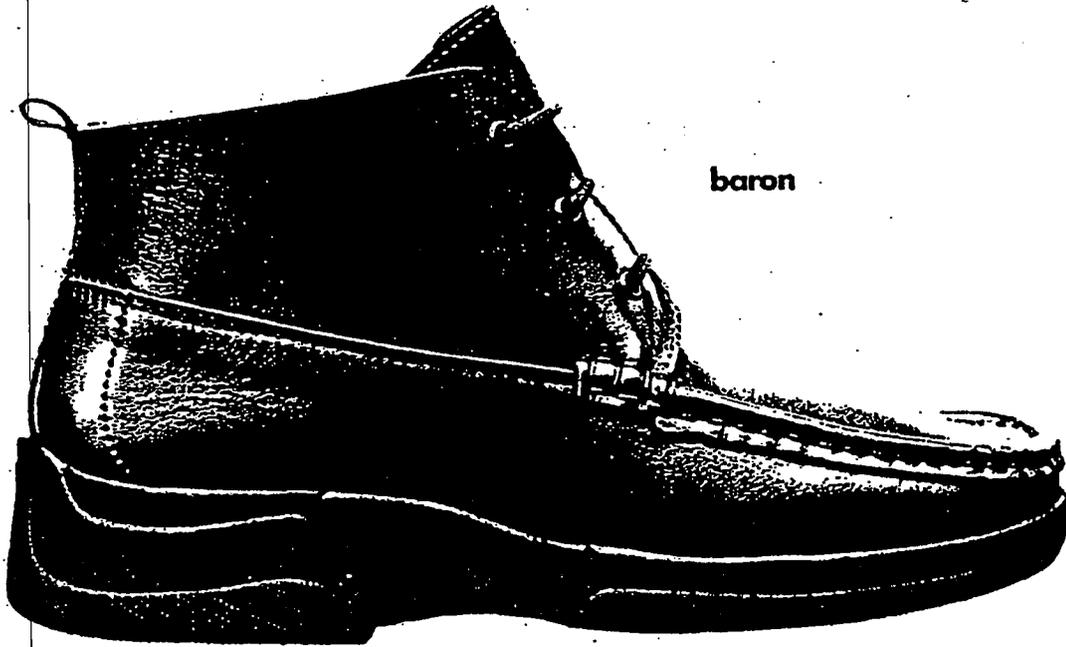


bump

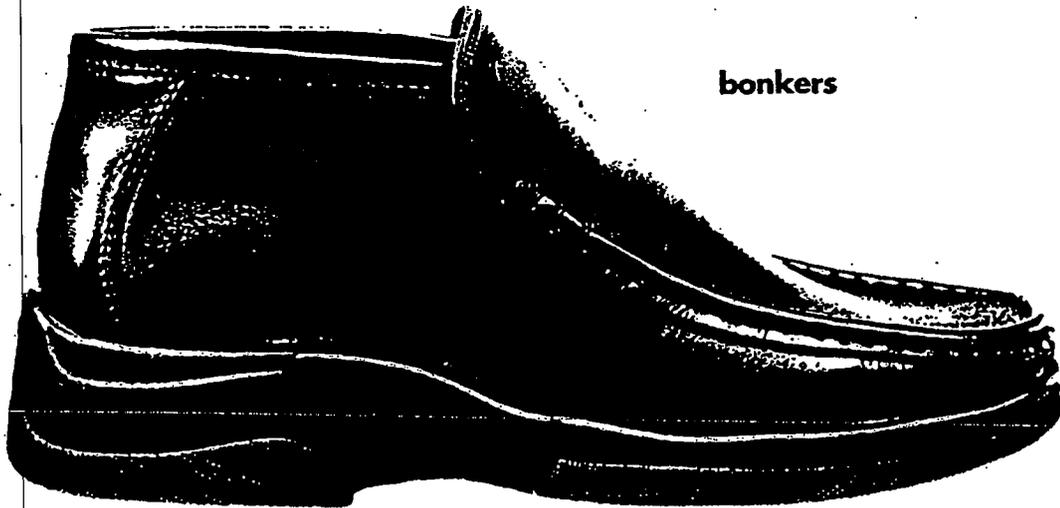


bash

# SIMPLYCASUAL

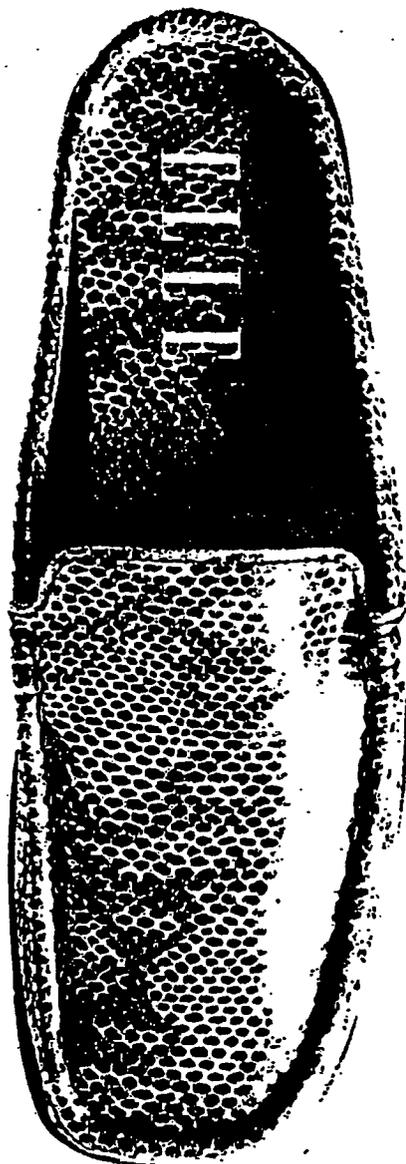
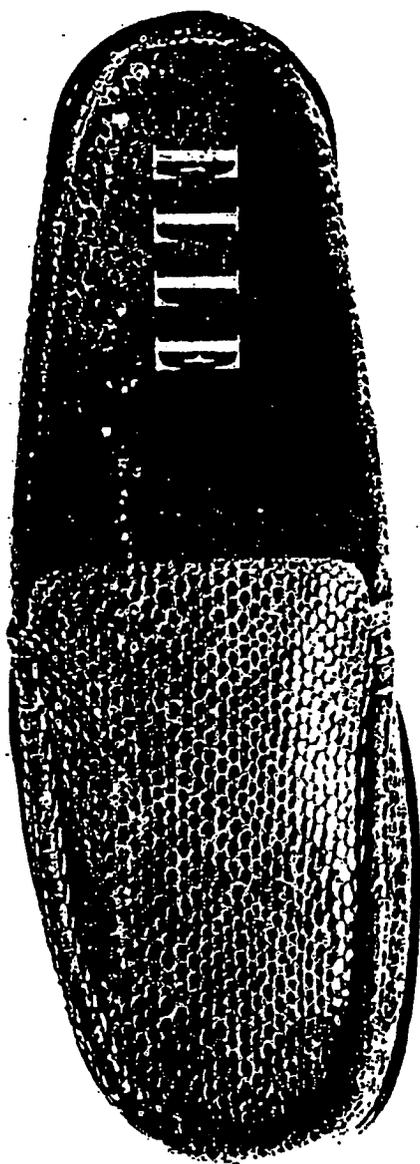


baron



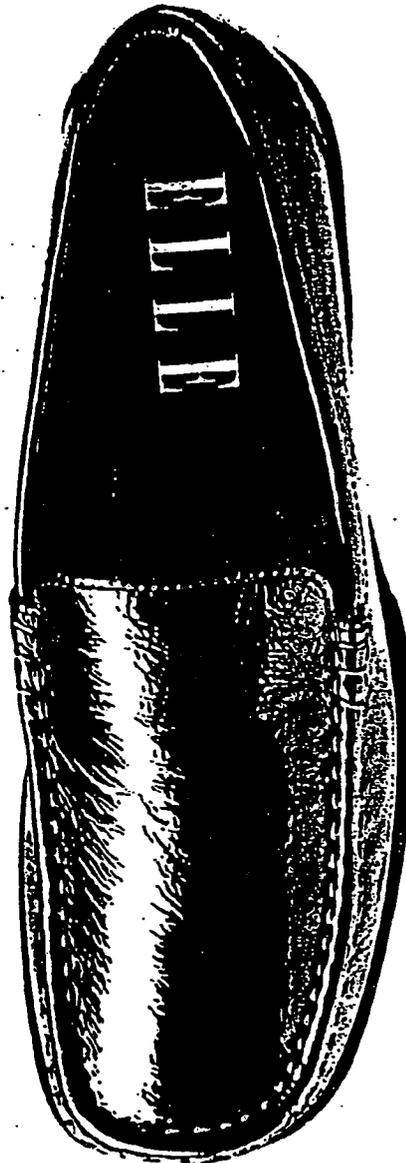
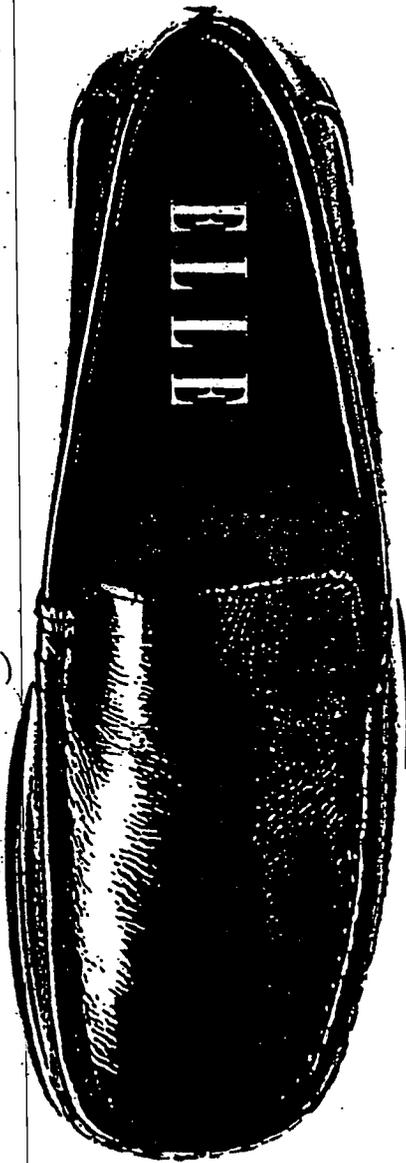
bonkers

7



**accent**

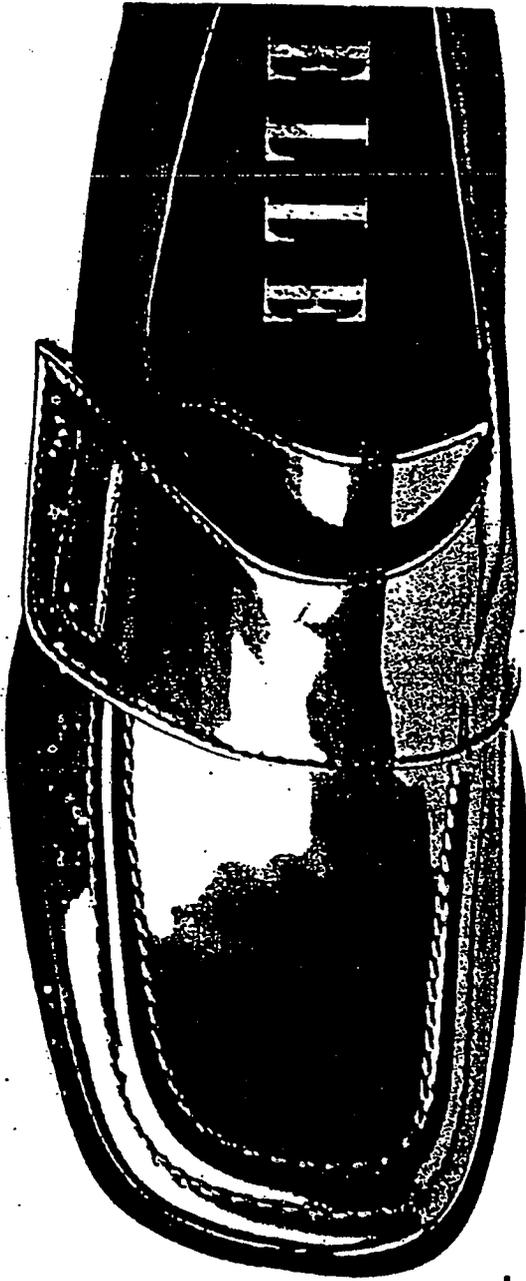
# SIMPLY CASUAL



albeit

9

**SIMPLY CASUAL**

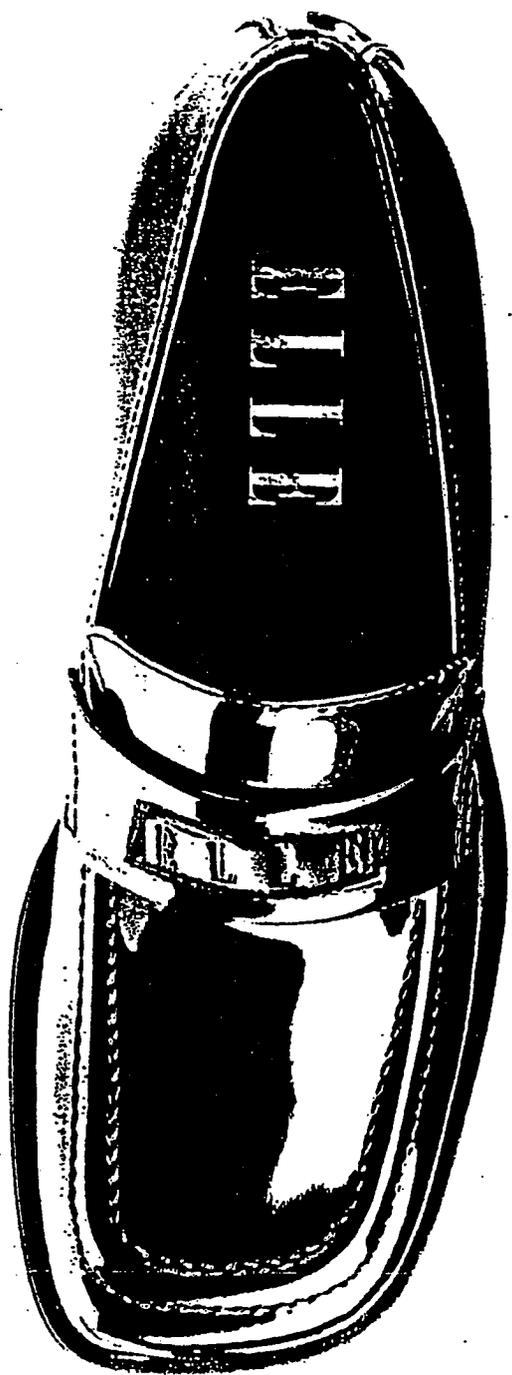


boca





**broadway**



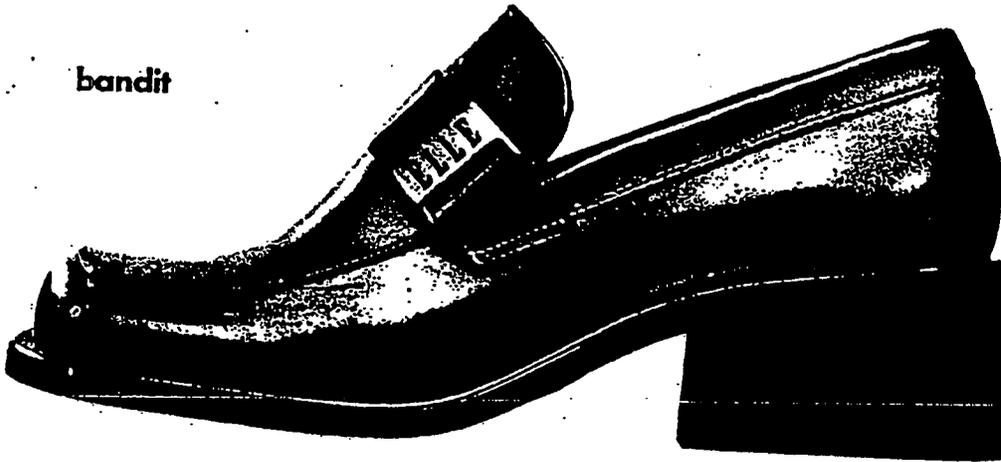
11

# SIMPLYCASUAL

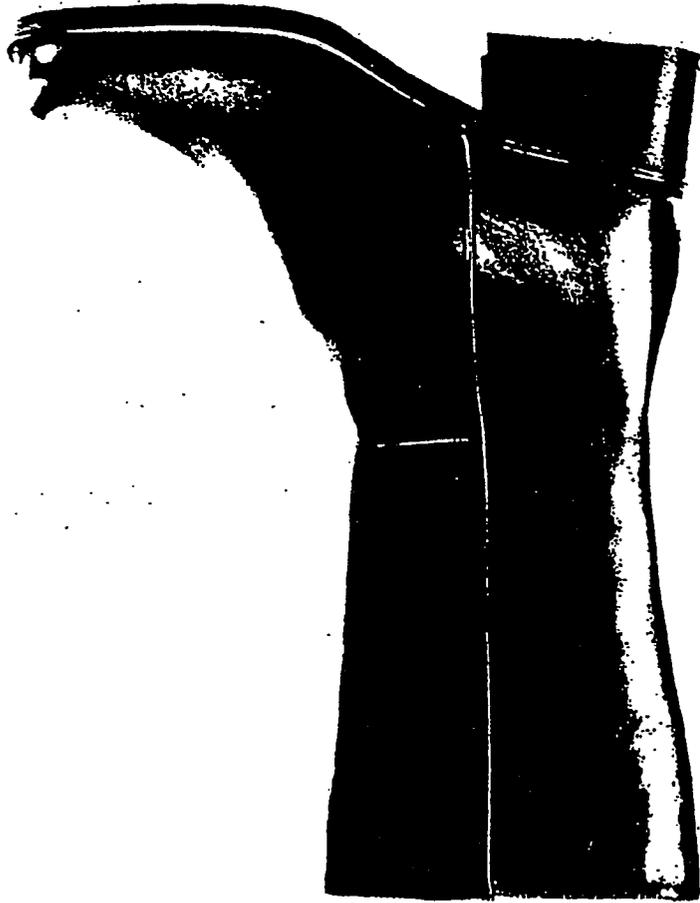
blush



bandit



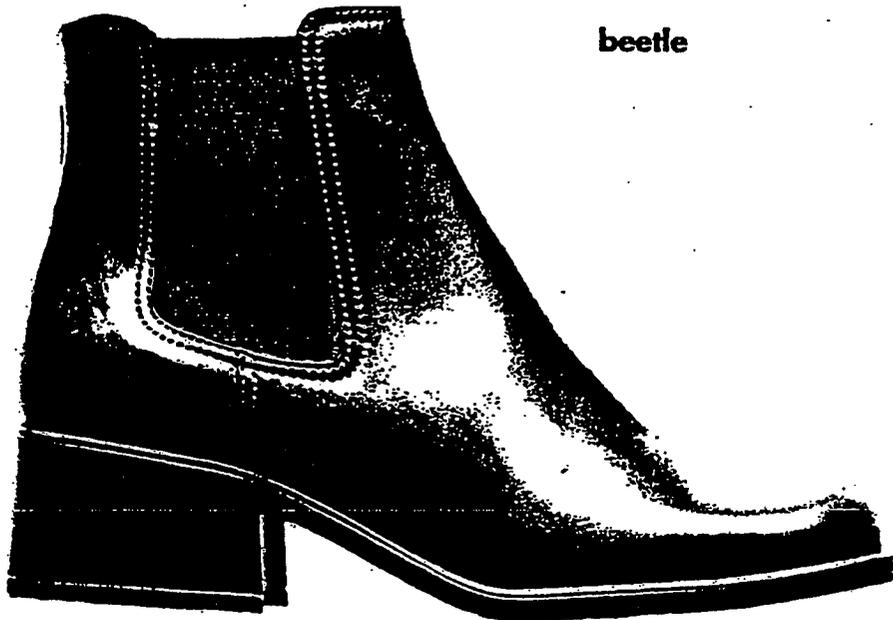
**bronco**



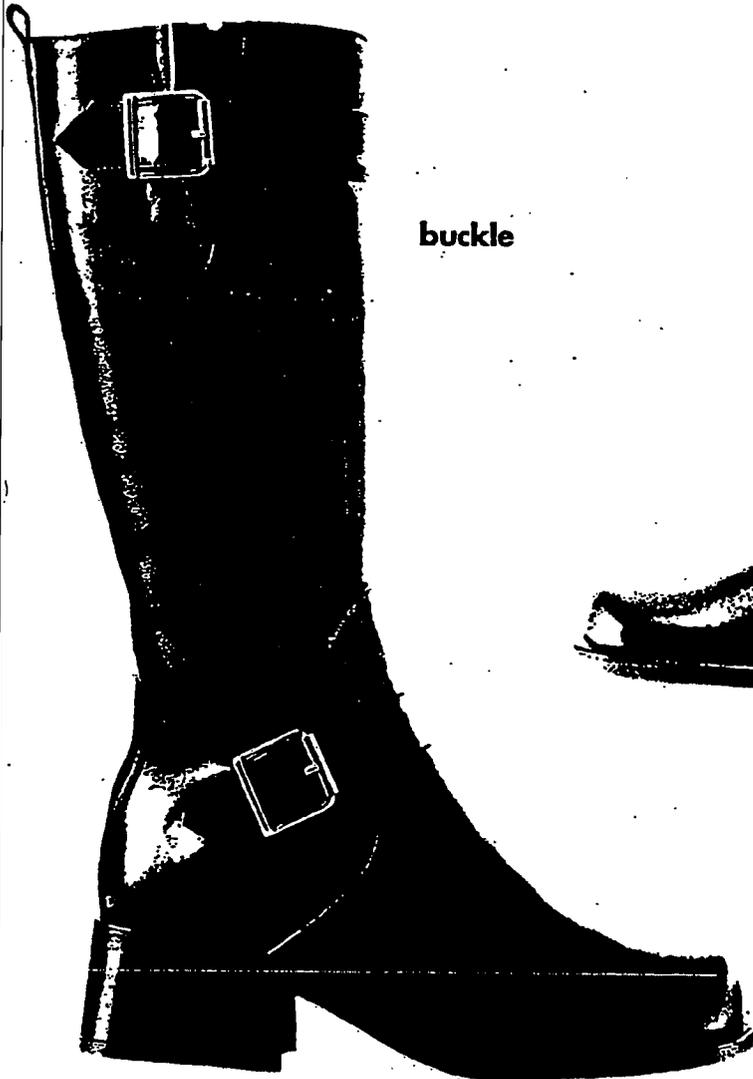
**blink**



**beetle**



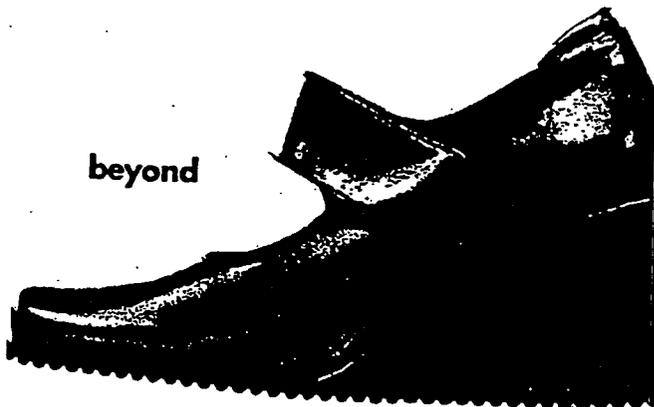
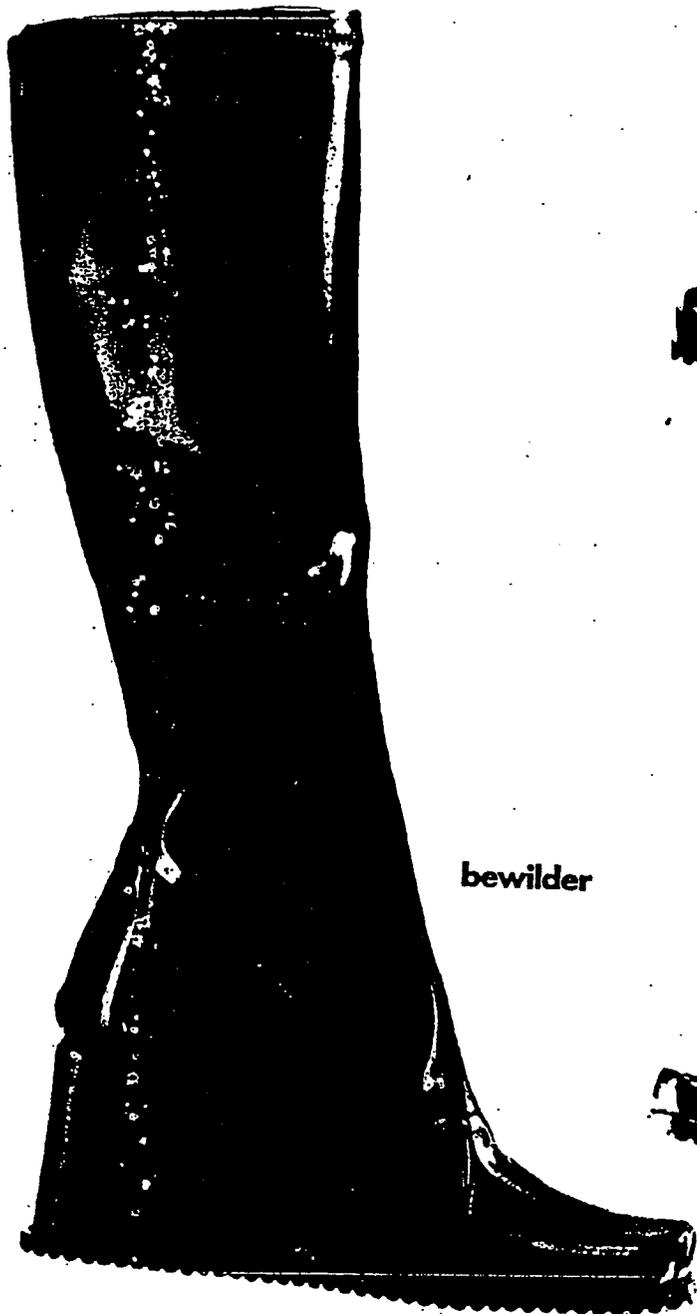
# SIMPLY CASUAL



buckle



berkley



beyond



bewitched

bewilder

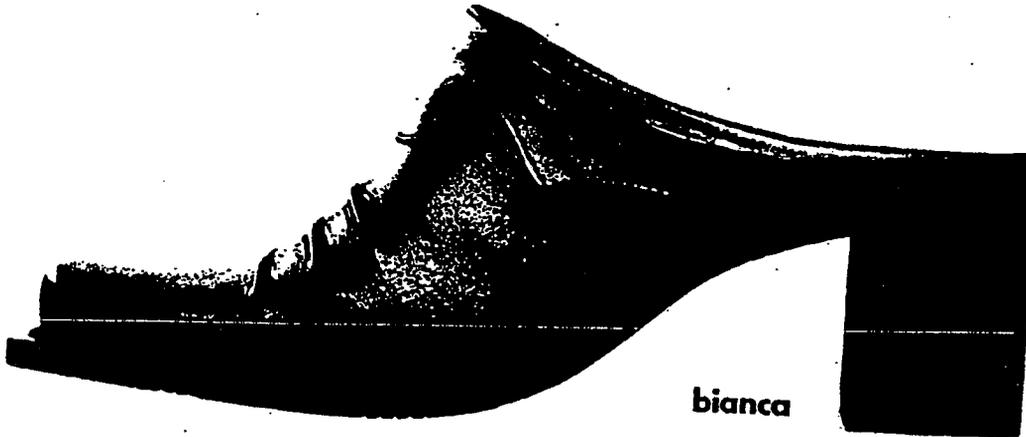
# MODERNIDEAL



billie



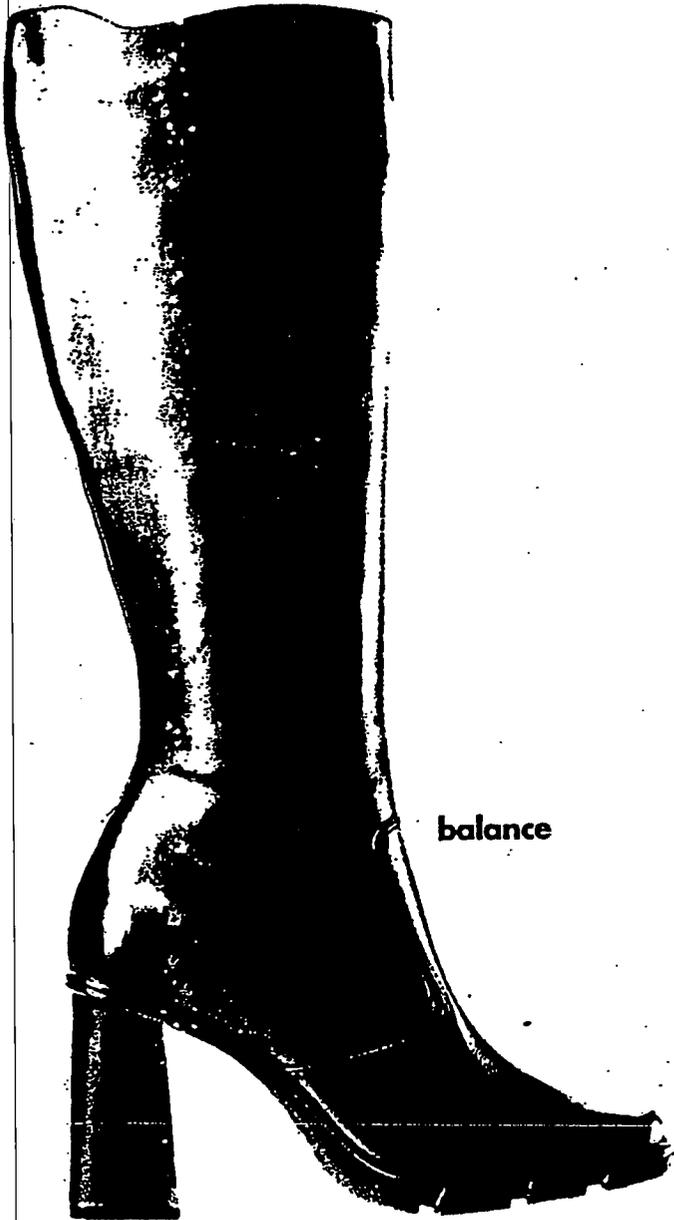
brandy



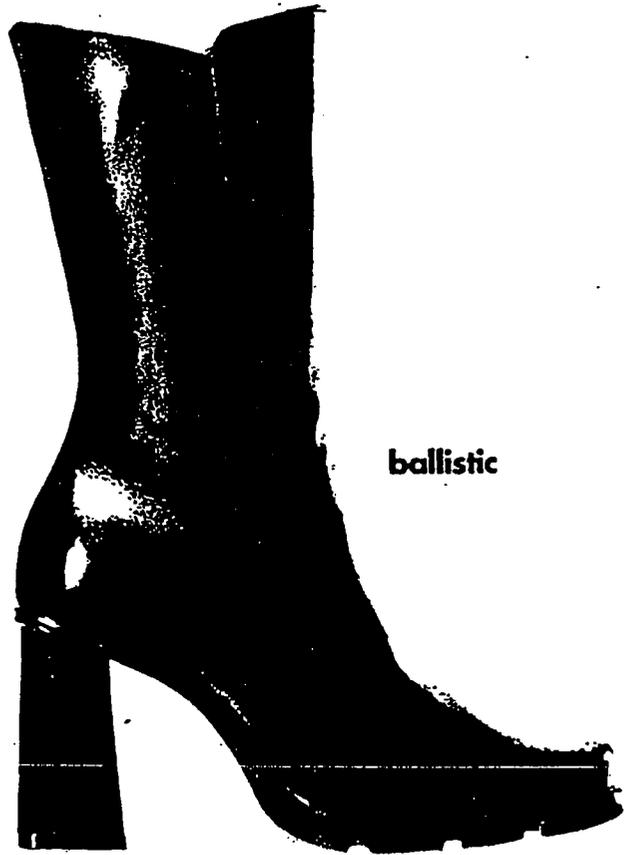
bianca



**bashful**



**balance**

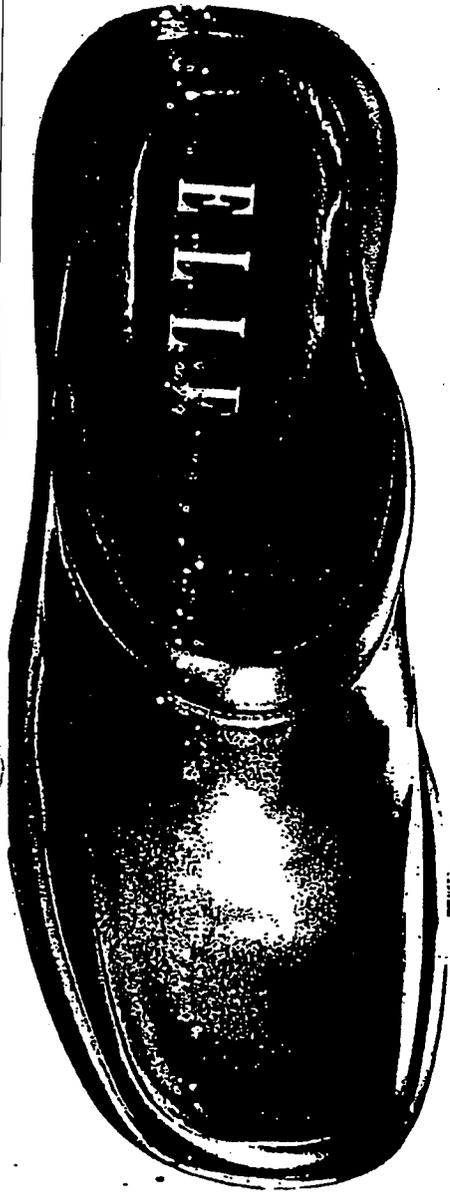


**ballistic**



**beauty**

**boggle**



betty



barbara

## MODERNIDEAL



bullit

# Style Information

# FALL/AUTOMNE ELLE 2000

## MESPORT

10051 Black/Black	10052 Silver/Black	10053 Red/Black	10054 Blue/Black	10055 Green/Black	10056 Yellow/Black
10071 Black/Black	10072 Silver/Black				
10091 Black/Black	10092 Silver/Black				
10121 Black/Black					
10101 Black/Black					
10111 Black/Black					

## BY CASUAL

30071 Black	30298 Chocolate	30299 Cognac	30291 Black Python	30297 Tan Python	30293 Red Python	30294 Blue Python
30081 Black	30398 Chocolate	30399 Cognac	30391 Black Kinkie	30395 Olive Kinkie	30397 Rust Kinkie	
30051 Black	30059 Chocolate					
30131 Black	30139 Chocolate	30138 Cognac				
30261 Black	30262 Black Metallic	30268 Chocolate Metallic	30265 Olive Metallic	30267 Rust Metallic		
30271 Black	30272 Black Metallic	30278 Chocolate Metallic	30275 Olive Metallic			
30221 Black	30229 Chocolate	30225 Olive				
30371 Black	30379 Chocolate	30377 Rust				
30211 Black	30219 Chocolate					
30241 Black	30249 Chocolate					
30251 Black	30259 Chocolate					
30361 Black	30360 Black/Black Snake	30369 Chocolate/Chocolate Snake				

## IDEAL

50211 Black	50219 Chocolate	50215 Olive
50251 Black	50259 Chocolate	50257 Rust
50241 Black	50249 Chocolate	50247 Rust
50231 Black	50239 Chocolate	
50221 Black		
50131 Black		
50151 Black		
50161 Black		
50281 Black	50289 Chocolate	50283 Chant
50291 Black	50299 Chocolate	50293 Chant
50301 Black	50398 Chocolate	50393 Chant
50261 Black	50269 Chocolate	
50031 Black	50039 Chocolate	50035 Olive
50041 Black	50049 Chocolate	

are available Medium Width European Full Sizes 35-42. Styles Albert & Accent available European Full & 1/2 Sizes 35-42.  
 styles sont disponibles en largeur européenne du 35-42 en largeur moyenne. Les styles Albert & Accent sont disponibles Pointe franc  
 du 35-42

ELLE®



**stage 4 international footwear, inc.**

2600 Major Mackenzie Drive • City of Vaughan • Ontario • Canada • L6A 1R8

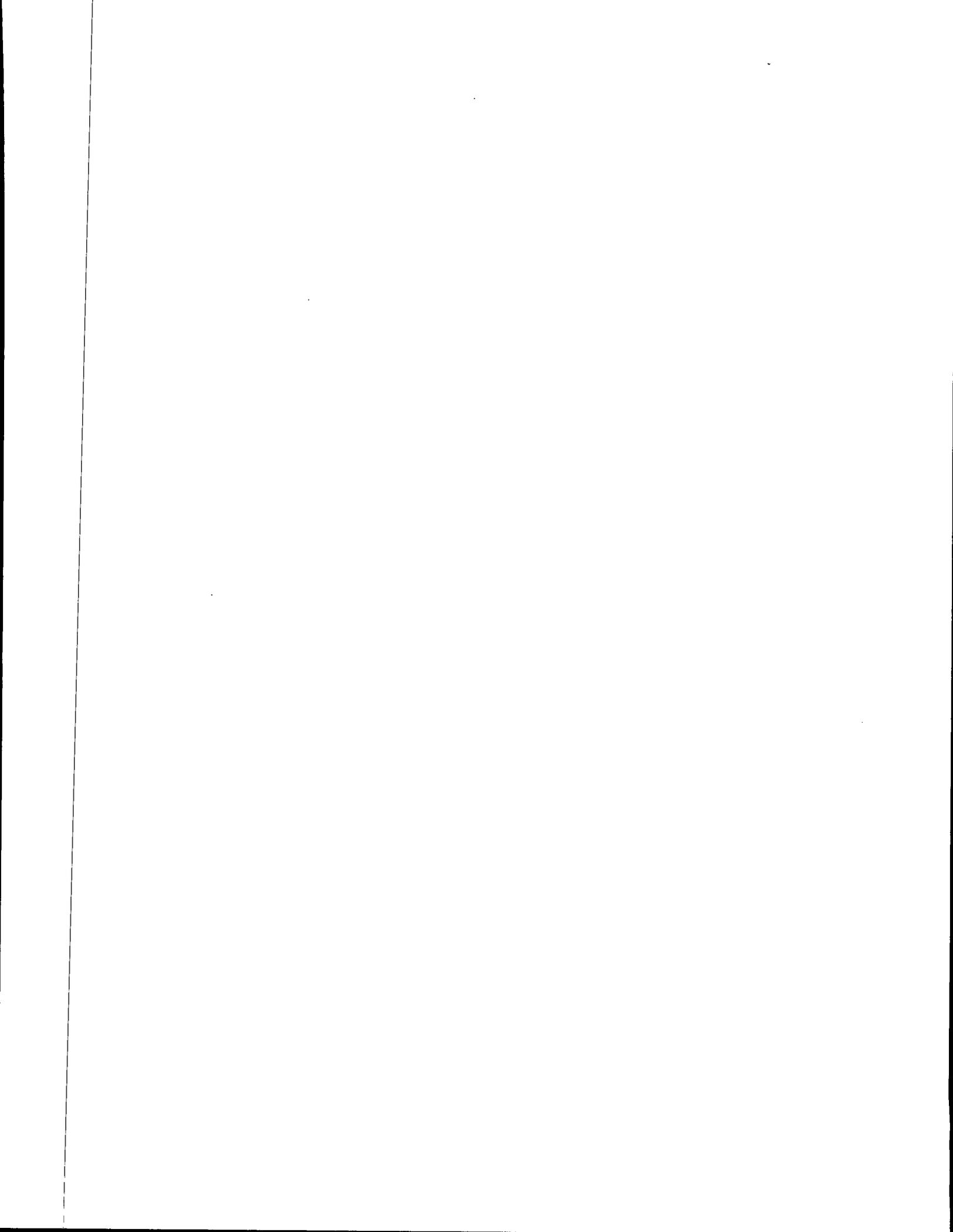
Telephone: 905 879-ELLE (3553) • Toll Free: 877 249-ELLE (3553)

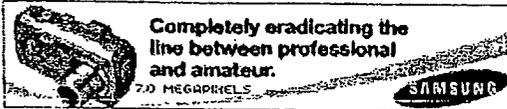
Fax: 905 879-0547 • email: mail@stage4.net

stage 4 international footwear, inc. under license from HACHETTE FIUPACCHI PRESSE, Paris, France, the trademark owner.

ELLE est une marque déposée, propriété d'HACHETTE FIUPACCHI PRESSE fabriquée et distribuée sous licence par stage 4 international footwear, inc.

Printed in Canada / Imprimé du Canada





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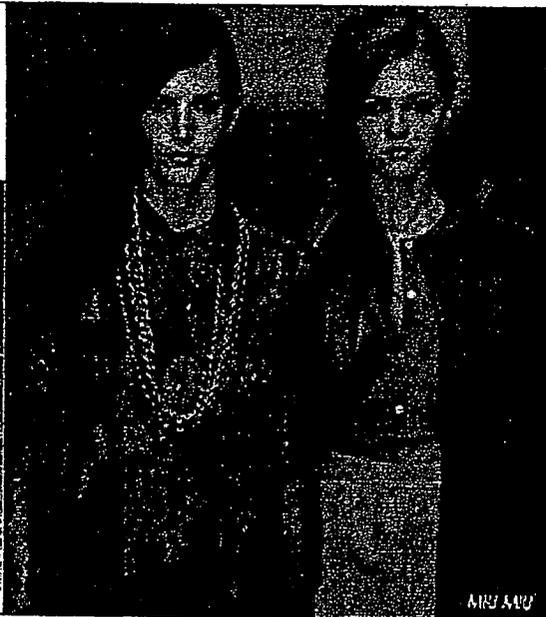
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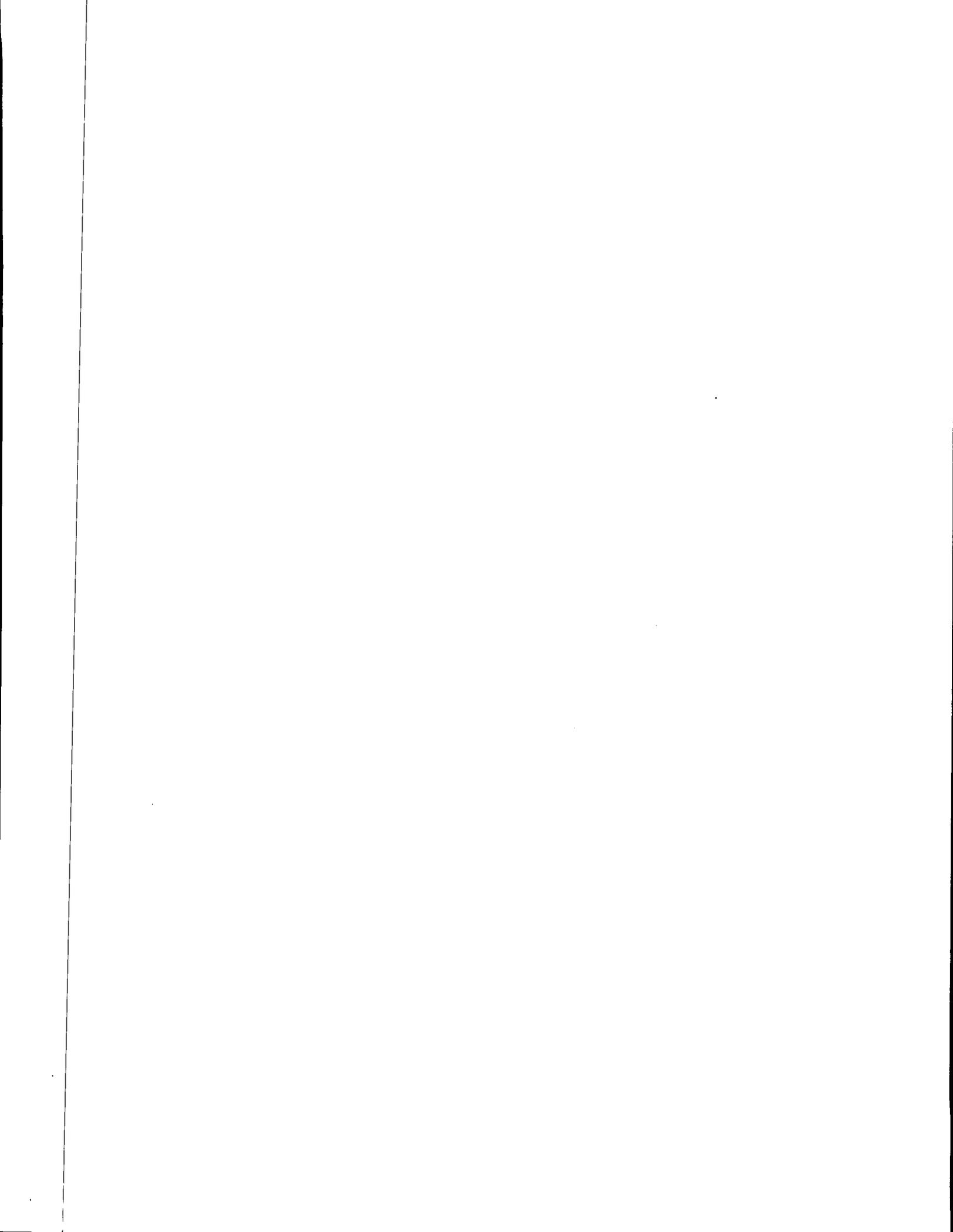
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DISCOVER YOUR MONTHLY COLOR FORECAST

PROMOS/EVENTS SWEEPSTAKES FORUMS NEWSLETTER ABOUT US ELLE WORLDWIDE SEARCH

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Int. Cl.: 35

Prior U.S. Cl.: 101

**United States Patent and Trademark Office**

Reg. No. 1,408,874

Registered Sep. 9, 1986

**SERVICE MARK  
PRINCIPAL REGISTER**

**E L L E**

FRANCE EDITIONS ET PUBLICATIONS  
(FRANCE JOINT STOCK COMPANY)  
6 RUE ANCELLE  
NEUILLY-SUR-SEINE, HAUTS-DE-SEINE,  
FRANCE

OWNER OF FRANCE REG. NO. 926992,  
DATED 6-20-1975, RENEWED AS REG. NO.  
745834, DATED 6-3-1985, EXPIRES 6-3-1995.  
THE ENGLISH TRANSLATION OF THE  
FRENCH WORD "ELLE" IS "SHE".

FOR: ADVERTISING AGENCY SERVICES,  
IN CLASS 35 (U.S. CL. 101).

SER. NO. 566,683, FILED 11-4-1985.

EDWARD NELSON, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 104

Reg. No. 1,429,609

United States Patent and Trademark Office Registered Feb. 17, 1987

SERVICE MARK  
PRINCIPAL REGISTER

ELLE

FRANCE EDITIONS ET PUBLICATIONS  
(FRANCE JOINT-STOCK COMPANY)  
6 RUE ANCELLE  
NEUILLY-SUR-SEINE, HAUTS-DE-SEINE,  
FRANCE

FOR: NEWS AGENCY SERVICES, NAMELY,  
GATHERING AND DISSEMINATING NEWS  
BY ELECTRONIC TRANSMISSION, IN CLASS  
42 (U.S. CLS. 100 AND 104).

OWNER OF FRANCE REG. NO. 926991,  
DATED 6-20-1973, RENEWED AS REG. NO.  
745834, DATED 6-3-1985, EXPIRES 6-20-1995.  
THE ENGLISH TRANSLATION OF THE  
FRENCH WORD "ELLE" IN THE MARK IS  
"SHE".

SER. NO. 566,750, FILED 11-4-1985.

EDWARD NELSON, EXAMINING ATTORNEY

# United States Patent Office

758,137  
Registered Oct. 8, 1963

## PRINCIPAL REGISTER Trademark

Ser. No. 157,211, filed Nov. 14, 1963

**ELLE**

France Editions & Publications (French limited-liability  
company)  
100 Rue Reaumur  
Paris 2<sup>e</sup>, France

For: MAGAZINE, in CLASS 38.  
First use Nov. 1, 1945; in commerce 1945.  
An English translation of the French word "Elle" is  
"she."

# United States Patent Office

861,159  
Registered Nov. 26, 1968

## PRINCIPAL REGISTER Service Mark

Ser. No. 237,754, Filed Feb. 1, 1966

**ELLE**

France Editions & Publications (French corporation)  
100 Rue Reaumur  
Paris 2, France, assignee of  
Societe des Editions Mai (French company)  
Paris, France

For: PROMOTING THE SALE OF WOMEN'S AP-  
PAREL BY OTHERS BY STAGING STYLE SHOWS  
AND BY THE PREPARATION OF VARIOUS TYPES  
OF ADVERTISING, in CLASS 101 (INT. CL. 35).

First use Mar. 20, 1951; in commerce Oct. 13, 1953.  
Priority claimed under Sec. 44(d) or French Reg. No.  
339,700, dated Aug. 2, 1965.  
The word "Elle" means "she" in English.  
Owner of U.S. Reg. No. 758,137.

Renewed for 20 years from Nov. 26, 1988

COMB. AFF. SEC 8 & 15

CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION  
WHICH IS IN FULL FORCE AND EFFECT, WITH NOTATION  
OF ALL STATUTORY ACTIONS TAKEN THEREON, AS DIS-  
CLOSED BY THE RECORDS OF THE UNITED STATES PATENT  
AND TRADEMARK OFFICE. SAID RECORDS SHOW TITLE  
TO BE IN: France Editions & Publications,

ATTEST

a French company

JUN 7 1990  
ATTESTING OFFICER

*Harry F. Manbeck, Jr.*  
COMMISSIONER OF PATENTS  
AND TRADEMARKS

Int. Cl.: 26

Prior U.S. Cl.: 28

**United States Patent and Trademark Office**

**Reg. No. 1,318,319**

Registered Feb. 5, 1985

**TRADEMARK**  
Principal Register

**E L L E**

France Editions & Publications (France corporation)  
6 rue Ancelle  
Neuilly-sur-Seine (Hauts de Seine), France

For: EARRINGS OF NONPRECIOUS METAL,  
in CLASS 26 (U.S. Cl. 28).

Owner of France Reg. No. 1,113,720, dated Jun.  
28, 1979, expires Jun. 28, 1989.

The English translation of the word "Elle" is  
"she".

Ser. No. 452,264, filed Nov. 10, 1983.

SUE CARRUTHERS, Examining Attorney

Int. Cl.: 25

Prior U.S. Cl.: 39

**United States Patent and Trademark Office**

**Reg. No. 1,348,158**

Registered July 9, 1985

**TRADEMARK  
PRINCIPAL REGISTER**

**E L L E**

FRANCE EDITIONS & PUBLICATIONS  
(FRANCE CORPORATION)  
6 RUE ANCELLE NEUILLY-SUR-SEINE,  
HAUTS-DE SEINE, FRANCE

FOR: FOOTWEAR—NAMESLY, SHOES,  
BOOTS, SLIPPERS, SANDALS AND CLOGS, IN  
CLASS 25 (U.S. CL. 39).  
OWNER OF FRANCE REG. NO. 1113720,  
DATED 6-28-1979, EXPIRES 6-28-1989.

OWNER OF U.S. REG. NOS. 758,137 AND  
861,159.

THE MARK ELLE MAY BE TRANSLATED  
INTO ENGLISH AS "SHE".

SER. NO. 512,968, FILED 12-10-1984.

SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 34

Prior U.S. Cls.: 8 and 9

**United States Patent and Trademark Office**

Reg. No. 1,396,069  
Registered June 3, 1986

**TRADEMARK  
PRINCIPAL REGISTER**

**E L L E**

FRANCE EDITIONS ET PUBLICATIONS  
(FRANCE COMPANY)  
6 RUE ANCELLE  
NEUILLY-SUR-SEINE, HAUTS-DE-SEINE,  
FRANCE

OWNER OF FRANCE REG. NO. 113720,  
DATED 6-28-1979, EXPIRES 6-28-1989.  
OWNER OF U.S. REG. NOS. 758,137, 862,001  
AND OTHERS.  
THE ENGLISH TRANSLATION OF THE  
FRENCH WORD "ELLE" IS "SHE".

FOR: SMOKER'S UTENSILS, NAMELY,  
MATCHES, LIGHTERS AND ASH TRAYS, IN  
CLASS 34 (U.S. CLS. 8 AND 9).

SER. NO. 566,684, FILED 11-4-1985.

DEBORAH S. COHN, EXAMINING ATTORNEY

Int. Cl.: 20

Prior U.S. Cl.: 32

**United States Patent and Trademark Office** Reg. No. 1,408,531  
Registered Sep. 9, 1986

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PRINCIPAL REGISTER**

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FRANCE EDITIONS ET PUBLICATIONS  
(FRANCE JOINT STOCK COMPANY)  
6 RUE ANCELLE  
NEULLY-SUR-SEINE, HAUTS-DE-SEINE,  
FRANCE

OWNER OF FRANCE REG. NO. 1113720,  
DATED 6-28-1979, EXPIRES 6-28-1989.  
THE ENGLISH TRANSLATION OF THE  
FRENCH WORD "ELLE" IS "SHE".

SER. NO. 566,636, FILED 11-4-1985.

FOR: FURNITURE, IN CLASS 20 (U.S. CL. 32).

EDWARD NELSON, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21 and 26

**United States Patent and Trademark Office**

Reg. No. 1,419,815  
Registered Dec. 9, 1986

**TRADEMARK  
PRINCIPAL REGISTER**

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FRANCE EDITIONS ET PUBLICATIONS  
(FRANCE JOINT STOCK COMPANY)  
6 RUE ANCELLE, NEUILLY-SUR-SEINE  
HAUTS-DE-SEINE, FRANCE

FOR: SPECTACLES AND VIDEOCAS-  
SETTES, IN CLASS 9 (U.S. CLS. 21 AND 26).  
PRIORITY CLAIMED UNDER SEC. 44(D) ON  
FRANCE APPLICATION NO. 750648, FILED  
7-3-1985, REG. NO. 1315174, DATED 7-3-1985,  
EXPIRES 7-3-1995.

OWNER OF U.S. REG. NOS. 758,137, 862,001  
AND OTHERS.

THE ENGLISH TRANSLATION OF THE  
WORD "ELLE" IN THE MARK IS "SHE".

SER. NO. 566,634, FILED 11-4-1985.

MARILYN MCMAHON, EXAMINING ATTOR-  
NEY

Int. Cl.: 8

Prior U.S. Cl.: 23

**United States Patent and Trademark Office**

Reg. No. 1,432,718

Registered Mar. 17, 1987

**TRADEMARK  
PRINCIPAL REGISTER**

**E L L E**

FRANCE EDITIONS ET PUBLICATIONS  
(FRANCE JOINT STOCK COMPANY)  
6 RUE ANCELLE, NEUILLY-SUR-SEINE  
HAUTS-DE-SEINE, FRANCE

FOR: TABLE UTENSILS NAMELY, KNIVES,  
FORKS AND SPOONS, IN CLASS 8 (U.S. CL.  
23).

OWNER OF FRANCE REG. NO. 1113720,  
DATED 6-28-1979, EXPIRES 6-28-1989.

OWNER OF U.S. REG. NOS. 758,137, 862,001  
AND OTHERS.

THE ENGLISH TRANSLATION OF THE  
FRENCH WORD "ELLE" IS "SHE".

SER. NO. 566,633, FILED 11-4-1985.

CANDICE ABATE, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cl.: 39

**United States Patent and Trademark Office**

Reg. No. 1,454,393  
Registered Aug. 25, 1987

**TRADEMARK  
PRINCIPAL REGISTER**

**ELLE**

FRANCE EDITIONS ET PUBLICATIONS  
(FRANCE JOINT STOCK COMPANY)  
6 RUE ANCELLE A NEUILLY SUR SEINE  
HAUTS DE SEINE, FRANCE

OWNER OF U.S. REG. NOS. 758,137, 862,001  
AND OTHERS.  
THE ENGLISH TRANSLATION OF "ELLE" IS  
"SHE".

FOR: LINGERIE, IN CLASS 25 (U.S. CL. 39).  
FIRST USE 2-0-1986; IN COMMERCE  
2-0-1986.

SER. NO. 633,631, FILED 12-4-1986.  
ERIC WACHSPRESS, EXAMINING ATTORNEY

Int. Cl.: 3

Prior U.S. Cls.: 51 and 52

**United States Patent and Trademark Office**

Reg. No. 1,454,808

Registered Sep. 1, 1987

**TRADEMARK  
PRINCIPAL REGISTER**

**ELLE**

FRANCE EDITIONS ET PUBLICATIONS  
(FRANCE COMPANY)  
6 RUE ANCELLE  
NEUILLY-SUR-SEINE, HAUTE-DE-SEINE,  
FRANCE

FOR: TOILETRIES AND COSMETICS,  
NAMELY PERFUMES; COLOGNES; TOILET  
WATER; ESSENTIAL OILS; HAIR; SKIN AND  
BATH LOTIONS; TOILET SOAPS; BODY LO-  
TIONS AND POWDERS; PERSONAL DEODOR-  
ANTS; FACE POWDER AND LOTIONS; LIP-  
STICK; LIP LINERS; EYE SHADOW; EYE-  
BROW PENCILS; EYE LINERS; LIQUID FOU-  
NDATION; MASCARA; BLUSH; ROUGE; SKIN  
ASTRINGENTS; CLEANSERS AND SCRUBS;  
FACIAL MASKS; SKIN MOISTURIZING  
LOTION; AND CREAMS; HAIR SHAMPOO;  
HAIR CONDITIONING LOTION; EYE MAKE-

UP REMOVER; NAIL POLISH; NAIL HARDEN-  
ER; NAIL POLISH REMOVER; CUTICLE RE-  
MOVERS AND CONDITIONERS; TALCUM  
POWDER; SHAVING CREAM; HAIR DEPILA-  
TORIES; SUN SCREENING CREAMS; FOAMS  
AND LOTIONS; HAIR STYLING MOUSSE AND  
GELS; HAIR SPRAY; BATH GELS AND OILS;  
BUBBLE BATHS; AND DENTRIFICESS, IN  
CLASS 3 (U.S. CLS. 51 AND 52).

OWNER OF FRANCE REG. NO. 1113720,  
DATED 6-28-1979, EXPIRES 6-28-1989.

OWNER OF U.S. REG. NOS. 758,137, 1,348,158  
AND OTHERS.

THE ENGLISH TRANSLATION OF THE  
FRENCH WORD "ELLE" IS "SHE".

SER. NO. 585,396, FILED 2-28-1986.

EDWARD NELSON, EXAMINING ATTORNEY

Int. Cl.: 28

Prior U.S. Cl.: 22

**United States Patent and Trademark Office**

Reg. No. 1,465,610

Registered Nov. 17, 1987

**TRADEMARK  
PRINCIPAL REGISTER**

**E L L E**

FRANCE EDITIONS ET PUBLICATIONS  
(FRANCE JOINT STOCK COMPANY)  
6 RUE ANCELLE  
NEUILLY-SUR-SEINE, HAUTS-DE-SEINE,  
FRANCE

FOR: DOLLS; ACTION FIGURES; DOLL  
AND ACTION FIGURE CLOTHING AND FUR-  
NITURE; TOY TRUCKS AND CARS; EQUIP-  
MENT 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-MO-  
TORIZED SURF AND SAIL BOARDS; PLAY  
BALLOONS; SWINGS; ROLLER AND ICE  
SKATES; SKATING BOOTS WITH SKATES AT-  
TACHED, IN CLASS 28 (U.S. CL. 22).

OWNER OF FRANCE REG. NO. 1113720,  
DATED 6-28-1979, EXPIRES 6-28-1989.

THE ENGLISH TRANSLATION OF THE  
WORD "ELLE" IN THE MARK IS "SHE".

SER. NO. 566,685, FILED 11-4-1985.

EDWARD NELSON, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cl.: 26

**United States Patent and Trademark Office** Reg. No. 1,571,639  
Registered Dec. 19, 1989

**TRADEMARK  
PRINCIPAL REGISTER**

**ELLE**

FRANCE EDITIONS ET PUBLICATIONS  
(FRANCE CORPORATION)  
2, RUE ANCELLE  
NEUILLY-SUR-SEINE, FRANCE

FOR: ADDING MACHINES AND CALCULATORS,  
IN CLASS 9 (U.S. CL. 26).

PRIORITY CLAIMED UNDER SEC. 44(D) ON  
FRANCE APPLICATION NO. 954311, FILED

9-14-1988, REG. NO. 1504810, DATED 9-14-1988,  
EXPIRES 9-14-1998.

OWNER OF U.S. REG. NOS. 758,137, 1,454,393  
AND OTHERS.

THE ENGLISH TRANSLATION OF THE  
FRENCH WORD "ELLE" IS "SHE".

SER. NO. 73-759,067, FILED 10-19-1988.

FRANK HELLWIG, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cl.: 38

Reg. No. 1,732,988

**United States Patent and Trademark Office** Registered Nov. 17, 1992

**TRADEMARK  
PRINCIPAL REGISTER**

**ELLE DECOR**

FRANCE EDITIONS ET PUBLICATIONS  
(FRANCE CORPORATION)  
2 RUE ANCELLE  
92200 NEUILLY-SUR-SEINE, FRANCE

FOR: MAGAZINES FEATURING INTERIOR  
AND EXTERIOR DECORATING, ARCHITEC-  
TURE, LANDSCAPING, GARDENING, AND  
HORTICULTURE; CUISINE; ART AND SCULP-  
TURE, ARTIFACTS, ANTIQUES AND COL-  
LECTIONS, FURNITURE; HOUSEHOLD AC-  
CESSORIES, ACCOUTREMENTS, AND FIX-  
TURES; CRITIQUES OF RESIDENCES; BIO-  
GRAPHICAL SKETCHES; ELECTRONICS FOR  
THE HOME; NATIONAL AND INTERNATION-

AL LIFESTYLES, TRAVEL, TOURISM AND  
PHOTOGRAPHY, IN CLASS 16 (U.S. CL. 38).

FIRST USE 10-3-1989; IN COMMERCE  
10-3-1989.

OWNER OF U.S. REG. NOS. 1,654,884 AND  
1,668,272.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "DECOR", APART FROM THE  
MARK AS SHOWN.

THE ENGLISH TRANSLATION OF THE  
WORD "ELLE" IN THE MARK IS "SHE".

SER. NO. 74-232,527, FILED 12-23-1991.

CHERYL LYNN BLACK, EXAMINING ATTOR-  
NEY

Int. Cl.: 14

Prior U.S. Cls.: 2, 27, 28 and 50

Reg. No. 1,943,456

United States Patent and Trademark Office Registered Dec. 26, 1995

TRADEMARK  
PRINCIPAL REGISTER

ELLE

HACHETTE FILIPACCHI PRESSE (FRANCE  
CORPORATION)  
149 RUE ANATOLE FRANCE  
92334 LEVALLOIS-PERRET CEDEX, FRANCE

FOR PRECIOUS METALS AND THEIR  
ALLOYS, NAMELY GOLD, SILVER, PLATI-  
NUM AND BRONZE; ITEMS MADE OF PRE-  
CIOUS 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 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 CRACK-  
ERS, SALT CELLARS AND SALT SHAKERS,  
SUGAR BOWLS, TABLE PLATES, TEA CAD-

DIES AND TEA SERVICES, TOOTHPICK  
HOLDERS, VASES, SACRED VESSELS, FIG-  
URES AND STATUETTES, MIRROR AND PIC-  
TURE FRAMES; JEWELRY, SUCH AS EAR-  
RINGS, BRACELETS, NECKLACES, RINGS,  
LONG CHAIN NECKLACES, BROOCHES,  
CHAINS, PENDANTS, DECORATIVE BUT-  
TONS, 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,  
IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

OWNER OF FRANCE REG. NO. 1,538,354,  
DATED 6-27-1989, EXPIRES 6-27-1999.

THE WORD "ELLE" MEANS "SHE" IN EN-  
GLISH.

SER. NO 74-498,259. FILED 3-8-1994.

RUSS HERMAN, EXAMINING ATTORNEY

\*\* TOTAL PAGE.06 \*\*



HFP 2271

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

**United States Patent and Trademark Office** Reg. No. 2,016,657  
Registered Nov. 19, 1996

**TRADEMARK  
PRINCIPAL REGISTER**

**E L L E**

HACHETTE FILIPACCHI PRESSE (FRANCE  
CORPORATION)  
149, RUE ANATOLE FRANCE  
92534 LEVALLOIS-PERRET, FRANCE

FOR: 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, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 4-22-1991; IN COMMERCE 4-22-1991.

OWNER OF U.S. REG. NOS. 758,137, 1,767,100 AND OTHERS.

THE WORD "ELLE" MEANS "SHE" IN ENGLISH.

SER. NO. 74-409,899, FILED 7-6-1993.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cls.: 35 and 42

Prior U.S. Cls.: 100, 101 and 102

**United States Patent and Trademark Office**

Reg. No. 2,120,688

Registered Dec. 16, 1997

**SERVICE MARK  
PRINCIPAL REGISTER**

**ELLE**

HACHETTE FILIPACCHI PRESSE (FRANCE CORPORATION)  
149, RUE ANATOLE FRANCE  
92534 LEVALLOIS-PERRET CEDEX, FRANCE

FOR: 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, LANDSCAPING PRODUCTS AND CULINARY PRODUCTS. IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-14-1984; IN COMMERCE 9-14-1984.

FOR: INTERIOR DESIGN SERVICES; ARCHITECTURE SERVICES; LANDSCAPE GARDENING SERVICES; CONSTRUCTION DRAFTING SERVICES; TECHNICAL RESEARCH IN THE FIELDS OF LANDSCAPING, LANDSCAPE GARDENING AND INTERIOR AND EXTERIOR DECORATING; CONSULTING SERVICES IN THE FIELDS OF LANDSCAPING AND LANDSCAPE GARDENING; PROVIDING CONSULTING TO OTHERS IN THE

FIELDS OF BEAUTY, HEALTH AND FASHION WEAR; CONSULTING IN THE FIELDS OF INTERIOR AND EXTERIOR DECORATING; CONSULTING SERVICES IN THE FIELD OF COOKING; PROVIDING TEMPORARY HOUSING ACCOMMODATIONS, PROVIDING BOARDING HOUSES AND CONVALESCENT HOMES; PROVIDING PERSONAL ESCORT SERVICES; PROVIDING BEAUTY AND HAIRDRESSING SALONS; PROVIDING MARRIAGE BUREAUS; PROVIDING COSTUME RENTALS; PROVIDING SOCIAL CLUBS; EDITING WRITTEN TEXTS FOR OTHERS; DATING SERVICES; PRINTING SERVICES; COMPUTER PROGRAMMING SERVICES; PERSONAL LETTER WRITING FOR OTHERS; SETTING UP AND COMPILING DATA BANKS; HOTEL AND RESTAURANT SERVICES; RETAIL CLOTHING BOUTIQUE STORE SERVICES; MAIL ORDER SERVICES RENDERED BY A CLOTHING BOUTIQUE; RETAIL CLOTHING BOUTIQUE STORE SERVICES OFFERED WITHIN A DEPARTMENT STORE, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 9-14-1984; IN COMMERCE 9-14-1984.

OWNER OF FRANCE REG. NO. 1,538,354, DATED 6-27-1989, EXPIRES 6-27-1999.

OWNER OF U.S. REG. NOS. 758,137, 1,419,815 AND OTHERS.

THE WORD "ELLE" MEANS "SHE" IN ENGLISH.

SER. NO. 74-540,441, FILED 4-8-1994.

RUSS HERMAN, EXAMINING ATTORNEY

HOLD 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 PRO-

GRAMS, ARTS, CINEMA AND LITERATURE; CASH REGISTERS AND CALCULATING MACHINES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

OWNER OF FRANCE REG. NO. 1,538,354, DATED 6-27-1989, EXPIRES 6-27-1999.

OWNER OF U.S. REG. NOS. 1,419,815, 1,767,100 AND OTHERS.

THE WORD "ELLE" MEANS "SHE" IN ENGLISH.

SER. NO. 74-411,619, FILED 7-12-1993.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cls.: 28, 38, 39, 41 and 42

Prior U.S. Cls.: 22, 23, 38, 50, 100, 101, 104, 105  
and 107

Reg. No. 2,242,315

**United States Patent and Trademark Office**

Registered May 4, 1999

**TRADEMARK  
SERVICE MARK  
PRINCIPAL REGISTER**

**ELLE**

HACHETTE FILIPACCHI PRESSE (FRANCE  
JOINT STOCK COMPANY)  
149, RUE ANATOLE FRANCE  
92534 LEVALLOIS-PERRET CEDEX, FRANCE

FOR: INTERACTIVE VIDEO GAME PROGRAMS; GAMES, 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, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FOR: 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, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FOR: HOME AND OFFICE DELIVERY OF MULTIMEDIA AND AUDIOVISUAL PRODUCTS, NAMELY, VIDEODISCS, COMPACT DISCS, INTERACTIVE DISCS, AND COMPACT DISCS WITH READ ONLY MEMORY (CD-ROM), IN CLASS 39 (U.S. CLS. 100 AND 105).

FOR: 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 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; PUBLI-

CATION 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, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FOR: 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; LAN-

GUAGE TRANSLATION; PRINTING SERVICES; RENTAL OF COMPUTERS AND RENTAL OF DISPLAY 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, IN CLASS 42 (U.S. CLS. 100 AND 101).

PRIORITY CLAIMED UNDER SEC. 44(D) ON FRANCE APPLICATION NO. 94/543,958, FILED 11-9-1994, REG. NO. 94543958, DATED 11-9-1994, EXPIRES 11-9-2004.

OWNER OF U.S. REG. NOS. 758,137, 1,419,815 AND OTHERS.

THE WORD "ELLE" MEANS "SHE" IN ENGLISH.

SER. NO. 74-671,728, FILED 5-9-1995.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

**United States Patent and Trademark Office**

Reg. No. 2,476,981  
Registered Aug. 14, 2001

**SERVICE MARK  
PRINCIPAL REGISTER**

**E L L E**

HACHETTE FILIPACCHI PRESSE (FRANCE  
JOINT STOCK COMPANY)  
149, RUE ANATOLE FRANCE  
92534 LEVALLOIS-PERRET CEDEX, FRANCE

FOR: BANKING SERVICES; CREDIT AND DEBIT  
CARD SERVICES; INSURANCE UNDERWRITING  
SERVICES IN THE FIELD OF HEALTH; FINAN-  
CIAL PLANNING SERVICES , IN CLASS 36 (U.S.  
CLS. 100, 101 AND 102).

OWNER OF FRANCE REG. NO. 98/714953, DA-  
TED 1-28-1998, EXPIRES 1-28-2008.

OWNER OF U.S. REG. NOS. 1,571,639, 1,767,100  
AND OTHERS.

"ELLE" MEANS "SHE" IN ENGLISH.

SER. NO. 75-526,646, FILED 7-28-1998.

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cls.: 8, 9, 20, 21, 24 and 25

Prior U.S. Cls.: 2, 23, 26, 29, 30, 32, 33, 34, 39 and 42

Reg. No. 2,708,222

United States Patent and Trademark Office

Registered Apr. 22, 2003

**TRADEMARK  
PRINCIPAL REGISTER**

**ELLE**

HACHETTE FILIPACCHI PRESSE (FRANCE CORPORATION)  
92534 LEVALLOIS-PERRET CEDEX, FRANCE  
149, RUE ANATOLE, FRANCE, BY CHANGE OF NAME FRANCE EDITIONS ET PUBLICATIONS (FRANCE CORPORATION) HAUTS DE SEINE, FRANCE

FOR: TABLE UTENSILS, NAMELY, KNIVES, FORKS, AND SPOONS, IN CLASS 8 (U.S. CL. 23).

FOR: SPECTACLES, IN CLASS 9 (U.S. CL. 26).

FOR: FURNITURE, IN CLASS 20 (U.S. CL. 32).

FOR: 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, TOOTHBRUSHES, TRAYS, COFFEE SERVICE IN NON-PRECIOUS METAL, COFFEE POTS, MENU CARD RESTS, POTS FOR MAKE-UP SOLD EMPTY, 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 VAPORIZERS, 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, AND KNIFE RESTS FOR THE TABLE, IN CLASS 21 (U.S. CLS. 2, 23, 29, 30, 33 AND 34).

FOR: BATH TOWELS, HAND TOWELS, TABLE CLOTHS, TEXTILE TABLE NAPKINS, SHEETS, BLANKETS AND PILLOWCASES, IN CLASS 24 (U.S. CL. 42).

FOR: FOOTWEAR - NAMELY, SHOES, BOOTS, SLIPPERS, SANDALS AND CLOGS, IN CLASS 25 (U.S. CL. 39).

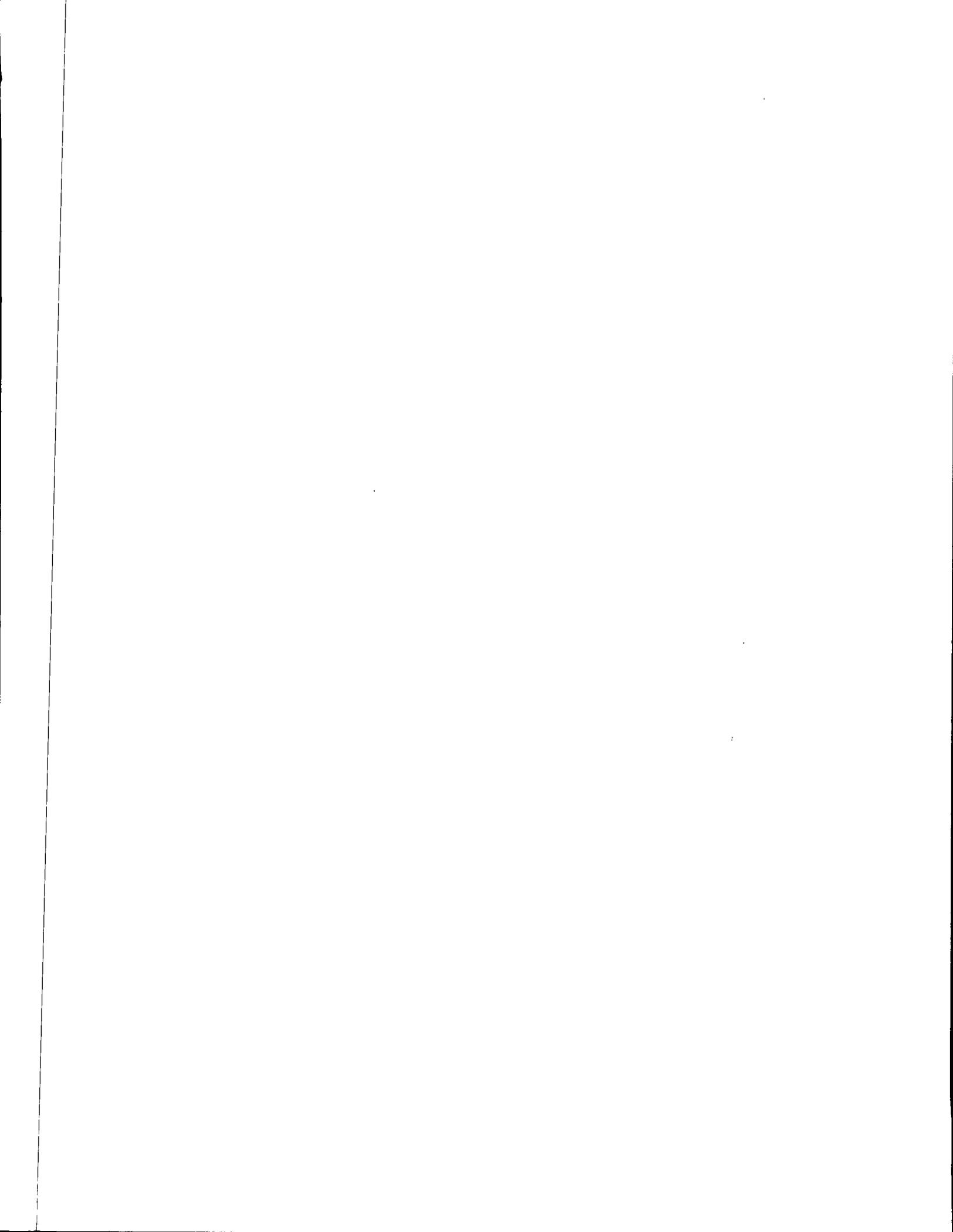
PRIORITY CLAIMED UNDER SEC. 44(D) ON FRANCE APPLICATION NO. 104229, FILED 1-20-1989, REG. NO. 1500024, DATED 1-20-1989, EXPIRES 1-20-1999.

OWNER OF U.S. REG. NOS. 1,374,805 AND 1,408,531.

THE ENGLISH TRANSLATION OF THE WORD "ELLE" IN THE MARK IS "SHE".

SER. NO. 73-814,081, FILED 7-20-1989.

KATHY DE JONGE, EXAMINING ATTORNEY





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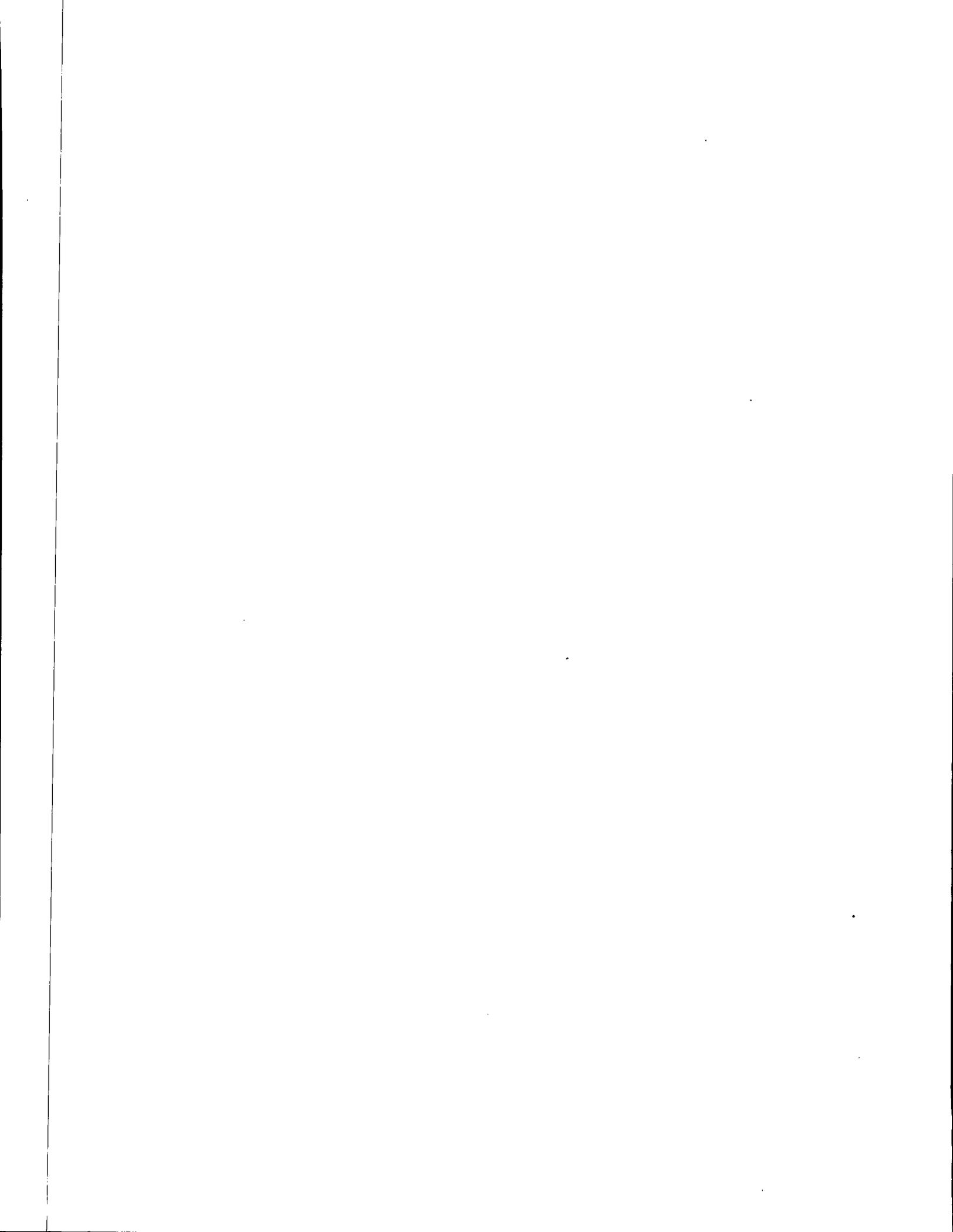
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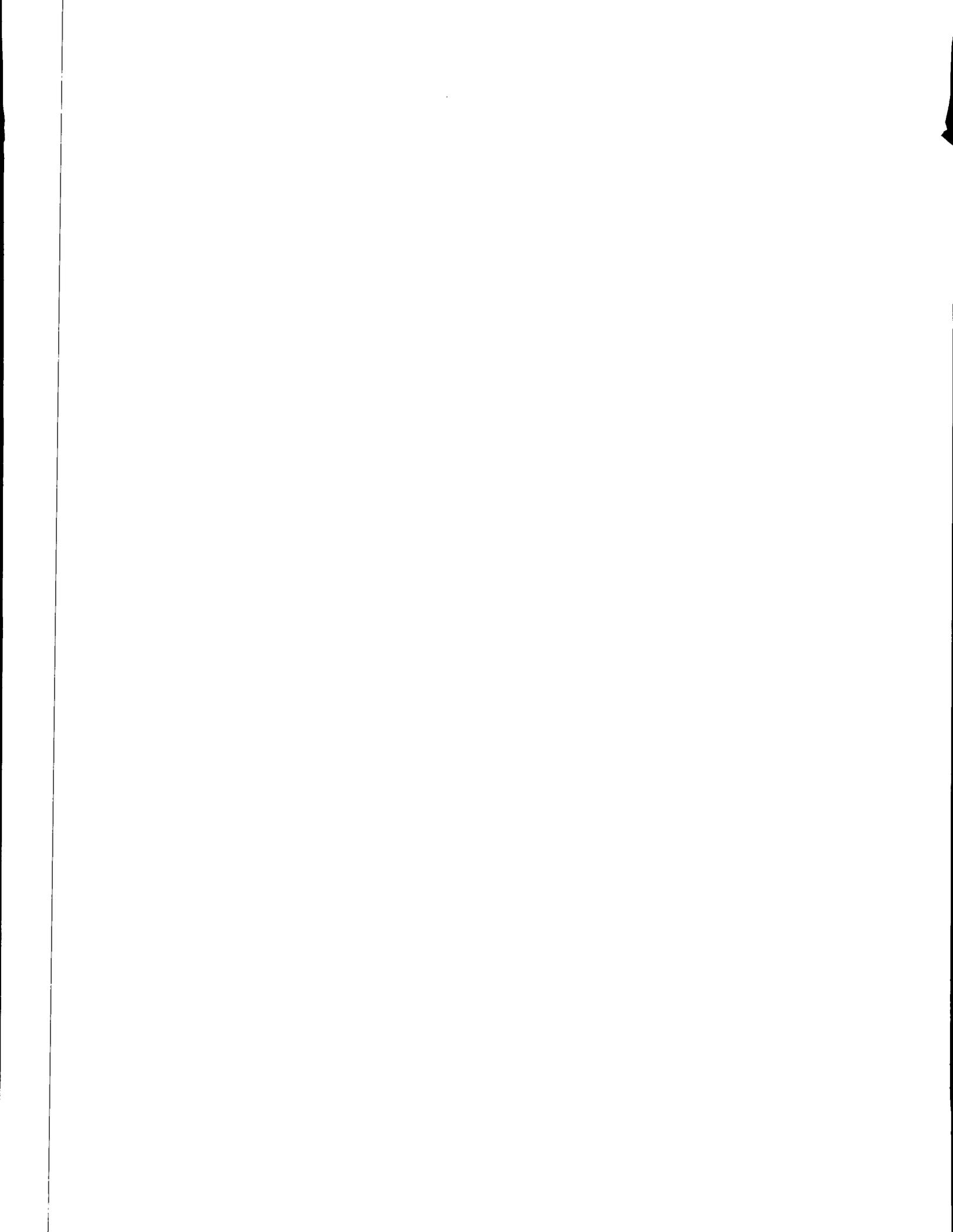
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ADVERSARIAL MATTERS INVOLVING HACHETTE FILIPACCHI PRESSE'S MARK ELLE

	Matter Name	Adversary's Mark	Matter/Proceeding Type	Proceeding No./Application Ser. No.
1.	Hachette Filipacchi Presse v. Ben El Fashions Inc.	BEN & ELLE NEW YORK	Opposition	91111986
2.	Hachette Filipacchi Presse v. The Christian Trust	ELLEL	Opposition	91111458
3.	Hachette Filipacchi Presse v. The Christian Trust	ELLEL	Opposition	91111459
4.	Hachette Filipacchi Presse v. The Christian Trust	ELLEL	Opposition	91111460
5.	Hachette Filipacchi Presse v. The Christian Trust	ELLEL	Opposition	91111499
6.	Hachette Filipacchi Presse vs. Jessard Holdings Ltd.	LAXELLE (STYLIZED)	Extension of Time to Oppose	74/728,448
7.	Hachette Filipacchi Presse vs. Eller Media Company	ELLER	Opposition	91118063
8.	Hachette Filipacchi Presse vs. Eliezer Hadad	ELLEE	Opposition	91120086
9.	Hachette Filipacchi Presse vs. Jenique International, Inc.	JEUIN-ELLE (STYLIZED)	Opposition	91117984
10.	Hachette Filipacchi Presse vs. Golden State Imports International	ELLESIO	Opposition	91120160
11.	Hachette Filipacchi Presse vs. X-Large Licensing LLC	X'ELLE	Opposition	91120133
12.	Hachette Filipacchi Presse vs. X-Large Licensing LLC	X'ELLE	Federal Court Action	01 Civ. 2852 (NRB)
13.	Hachette Filipacchi Presse vs. ElleOvation	ELLEOVATION	Extension of Time to Oppose	75/765,169

	Matter Name	Adversary's Mark	Matter/Proceeding Type	Proceeding No./Application Ser. No.
14.	Hachette Filipacchi Presse vs. DE/ELLA, INC.	DE/ELLA	Opposition	91121497
15.	Elleance Ltd. v France Editions Et Publications	ELLEANCE LTD	Opposition	91089850
16.	France Editions Et Publications vs. Elleance Limited	ELLEANCE	Opposition	91084036
17.	France Editions Et Publications v. Elleance Limited	ELLEANCE	Opposition	91078069
18.	Elleance Ltd. v France Editions Et Publications	ELLEANCE LTD	Opposition	91084728
19.	France Editions Et Publications vs. Elleance Limited	ELLEANCE	Cancellation	92017843
20.	Hachette Filipacchi Presse vs. San Francisco Sales, Inc.	ELLE & KATIE	Opposition	91118384
21.	Hachette Filipacchi Presse vs. Golden Whisk LLC	BISTRO ELLE	Extension of Time to Oppose	76/067,625
22.	Hachette Filipacchi Presse vs. Malecon Tobacco, LLC	ELLA	Opposition	91157672
23.	Hachette vs. Eliezer Hadad	ELLE MENSWEAR	Extension of Time to Oppose	78/152,179
24.	Hachette Filipacchi Presse vs. John O. Robertson	ELLE ELLE BEAN	Opposition	91159085
25.	Hachette Filipacchi Presse v. The Armani Shoes Corporation	ELLA	Opposition	91160341
26.	Hachette Filipacchi Presse v. Ellen J. Schuster	ELLE ELLE STUDIO	Opposition	91159963
27.	Hachette Filipacchi Presse v. Kerry Newsome	MARIE ELLE	Extension of Time to Oppose	78/291,698
28.	Hachette Filipacchi Presse v. Elle Ceramica S.p.A.	ELLE	Cease and Desist Letter	76/561,190



M. Middleton  
Paper No. 47

U. S. DEPARTMENT OF COMMERCE

Trademark Trial and Appeal Board

France Editions Et Publications  
v.  
Shirmax Retail Ltd.

Opposition No. 74,786 to application Serial No. 73/580,550 filed  
January 31, 1986.

Perla M. Kuhn of the firm Kuhn and Muller for France Editions Et  
Publications.

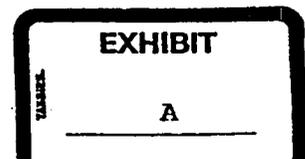
James E. Shlesinger of the firm Shlesinger, Arkwright & Garvey for  
Shirmax Retail Ltd.

Before Rice, Simms and Seeherman, Members.

Opinion by Seeherman, Member:

Shirmax Retail Ltd.-Detaillants Ltee, assignee of  
Addition-Elle Inc., has applied to register ADDITION-ELLE and  
design, as depicted below, for "retail boutique services for  
girls' and ladies' clothing excluding haute couture articles." (1)

(1) Application Serial No. 73/580,550, filed January 31, 1986,  
and based on a Canadian registration under the provisions of Sec-  
tion 44(e) of the Trademark Act.



application contains the statements that the mark consists in part of the letters "ae" in fanciful form, and that the English translation of "additionnelle," which is the phonetic of the word "Addition-Elle," is "additional."

Addition-Elle 

France Editions et Publications has opposed the application, alleging that it is the prior user of the trademark ELLE in connection with the advertising and sale of clothing and fashion magazines, rendering of retail store and mail order services, and promoting the sale of women's apparel; that it owns three federal trademark registrations; and that, in view thereof, applicant's use of its mark for its identified services would be likely to cause confusion or mistake or to deceive.

Applicant has denied the salient allegations in the notice of opposition, and has itself alleged, as an affirmative defense, that the word ELLE has been frequently used by others as the suffix or second term of composite trademarks for clothing and goods associated with clothing, and that this term is descriptive or highly suggestive.

The record includes the pleadings; the file of the opposed application; the testimonial deposition, taken on written questions, of opposer's witness Patrick Lantz; opposer's

registrations for ELLE for the following goods and services:

dresses, cloaks, capes, skirts, jackets, suits, two-piece costumes or suits, coats, sweaters, bodices, pullovers, house-gowns, slips, combination underwear, petticoats, corsets, sheath corsets, bust-bodices, bras-sieres, undershirts, underwear, bathing suits, jodphurs, knickers, stockings, ties, scarves, square shawls, hats, caps, gloves and slippers; (2)

magazine; (3) and

promoting the sale of women's apparel by others by staging style shows and by the preparation of various types of advertising; (4)

and certain third-party registrations and a dictionary definition, relied upon by applicant. The parties have fully briefed the case, (5) but no oral hearing was held.

The record shows that opposer, through its subsidiaries, uses the mark ELLE for magazines, file books, retail store services and for mail order services of clothing products, fashion accessories and other merchandising items. In the United States the mark has been used on clothing since 1965, on magazines since 1945, and for mail order services since 1948. ELLE women's clothing has been sold in the United States primarily by mail order through advertisements published in opposer's American and French

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(2) Registration No. 862,001, issued December 17, 1968; Section 8 affidavit accepted; Section 15 affidavit received; renewed.

(3) Registration No. 758,137, issued October 8, 1963; Section 8 affidavit accepted; Section 15 affidavit received; renewed.

(4) Registration No. 861,159, issued November 26, 1968; Section 8 affidavit accepted; Section 15 affidavit received; renewed.

(5) The excerpt from Strunk and White, The Elements of Style, attached to opposer's reply brief has not been considered as it was not properly made of record and is not information of which we may take judicial notice.

magazines. Direct retail sales were previously made through the ELLE NEW YORK boutique in Manhattan, which was opened in 1984 but is not presently in operation; beginning in 1987, direct sales have been made through stands set up in department stores which organized exhibitions.

Opposer's mail-order sales of clothing result from advertisements placed in its ELLE magazine, which is distributed in the United States. Opposer's exhibits indicate that a variety of clothing items and accessories, including T-shirts, sweatshirts, blouses, T-shirt dresses, jackets, pants, boxer shorts and briefs, hats, umbrellas, ponchos, handbags, duffel bags, pins and earrings, have been advertised in this manner. The mail-order requests are filled by opposer's Paris ELLE boutique, and the label on this clothing is marked "ELLE BOUTIQUE PARIS Made in France." From 1984 through March 1987, the total U.S. sales for ELLE clothing as a result of sales through the American magazine, were \$500,000 and through the French-language publication were \$1,600. Opposer's clothing is sold throughout the United States, at prices which range from twenty to fifty dollars.

Opposer also uses the mark ELLE for its fashion magazines. The magazines were originally sold in a French-language edition, but an English-language, American publication was begun in 1983. Between 1983 and 1986 opposer has sold 220,000 issues per year of its French ELLE magazine and, since 1985, 8.5 million issues per year of the American version. In 1987 the sales were 9.6 million issues for the American monthly publication and 210,000 issues for the French weekly publication sold in the United States.

Priority is not in issue in view of the registrations for ELLE which opposer has made of record. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Turning to the issue of likelihood of confusion, we find that applicant's services are closely related to the goods and services offered by opposer under the mark ELLE. Applicant attempts to distinguish opposer's clothing items from those it sells in its boutiques by arguing that opposer's items are "fashion apparel" while applicant's are specifically identified as excluding haute couture. However, the goods identified in opposer's clothing registration are not limited to haute couture, and the record shows that opposer uses its ELLE mark on items not normally associated with haute couture, such as boxer shorts and sweatshirts, and that the prices at which opposer's clothing is sold would not place it in the category of haute couture.

The evidence of record also shows that opposer offers clothing through mail order under the mark ELLE, has rendered retail store services in Paris under the mark since 1948, and has offered, although such usage has now ceased, retail boutique services in New York under the mark ELLE NEW YORK. Moreover, opposer has since 1945 circulated the ELLE fashion magazine in the United States, and the figures regarding the length of use, the number of issues distributed, and the publicity accorded opposer's publication demonstrate that the mark ELLE has achieved a certain degree of renown as a mark for the fashion magazine.

Despite any relationship between the parties' goods and services, applicant argues that the marks are so different that

there cannot be any likelihood of confusion. We disagree. While applicant's mark contains the additional element ADDITION and the AE design, these elements do not distinguish the marks as to source. That is, consumers are not likely, because of these differences, to regard ELLE and ADDITION-ELLE and design as the marks of different entities. Because of the way applicant's mark is displayed, with the hyphen, the capitalized E in Elle, and the E as part of the design, the element ELLE, which is opposer's mark, is emphasized. As a result, the commercial impression of the mark is of opposer's mark ELLE, with additional information, likely to cause purchases to believe that this mark identifies an addition to opposer's other activities under the mark ELLE.

Applicant argues that its mark, ADDITION-ELLE has the connotation of "additional" (additionnelle in French). To the extent that this meaning would be apparent, we think that it would be viewed as a double entendre, along with the meaning referred to above.

In reaching this conclusion, we have noted the third-party registrations submitted by applicant. These 28 registrations are for marks which end in the letters "elle"; in virtually all of them ELLE forms an integral part of the mark, and is depicted in the same type and not separated by a hyphen, while in the three marks which do have hyphens ELLE is shown in lower case. Because in most of the third-party marks ELLE is not shown as a separable element, we cannot conclude that ELLE is a recognizable term which has a significance in the clothing field. However, to the extent that these registrations can be used to show the significance of

ELLE, it is the significance which is shown by the dictionary definition, i.e., "she" or "her".

While "she" and "her" have a suggestive meaning in connection with women's clothes and a fashion magazine, it does not follow that applicant is free to use ELLE as part of its mark where the manner in which applicant's mark is depicted emphasizes the term ELLE and creates the impression that applicant's mark is a variant of opposer's. For the reasons stated above, that is what has occurred here. As a result, the relevant public is likely to believe that ADDITION-ELLE and design, as used for boutique services for girls' and women's clothing, is a mark adopted by opposer for an additional line of services.

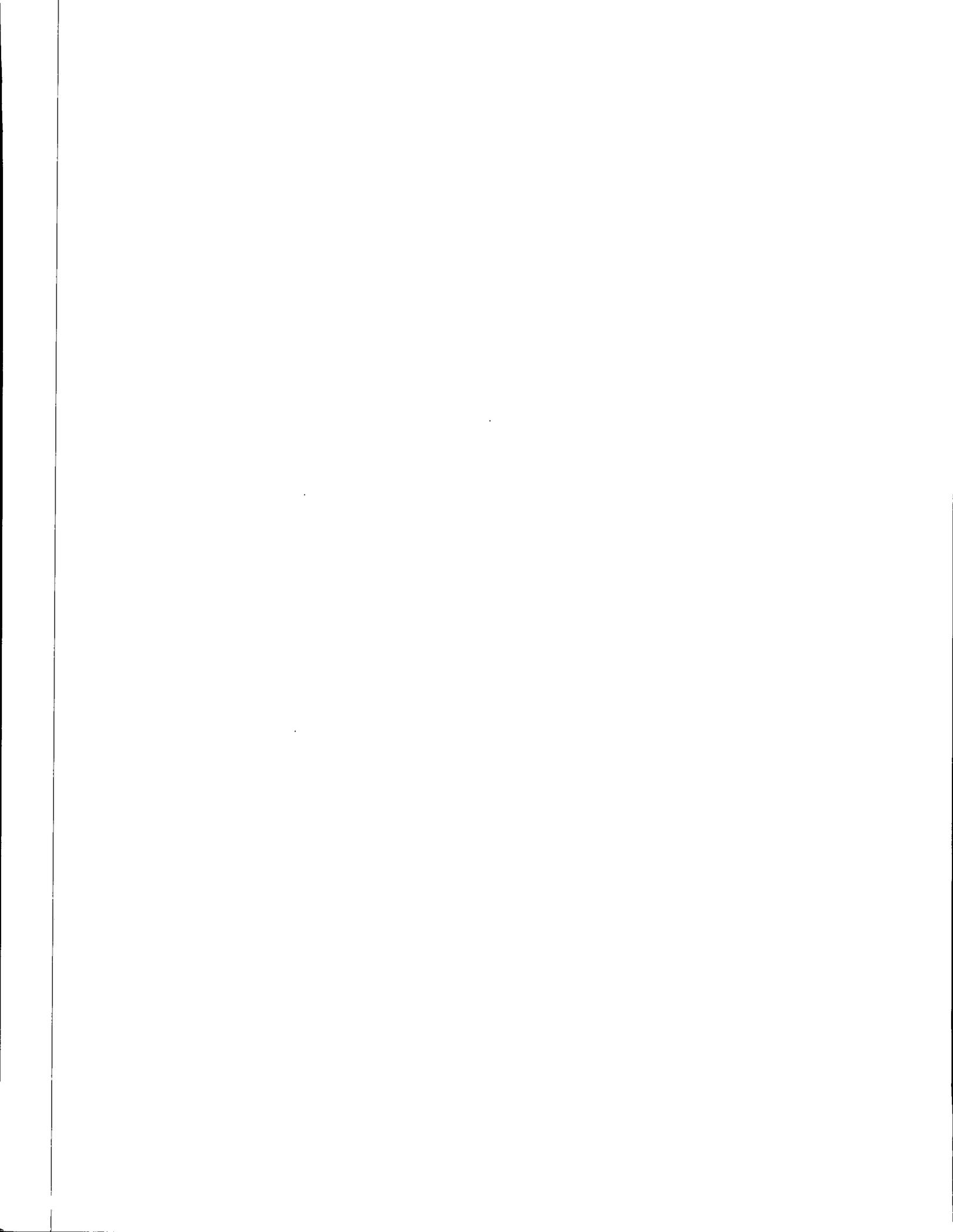
Decision: The opposition is sustained.

*J. E. Rice*  
J. E. Rice

*R. L. Simms*  
R. L. Simms

*E. J. Seeherman*  
E. J. Seeherman  
Members, Trademark  
Trial and Appeal Board

JAN 29 1992



FIFTH EDITION REISED

# APPLETON'S NEW CUYÁS

English-Spanish and Spanish-English

## DICTIONARY

by ARTURO JUY S

*revised and enarge by*

LEWIS E. BRETT (Part I)

and HELEN S. EATON (Part II)

*with the assistance of Walter Bueraggi-Allende*

*Revision editor, Fifth Edition, CATHERINE B. AVERY*

Prentice-Hall, Inc., Englewood Cliffs, New Jersey

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Quinta edición,

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QUINTA EDICIÓN REVISADA

NUEVO  
DICCIONARIO  
CUYÁS

Inglés-Español y Español-Inglés  
de APPLETON

por ARTURO CUYÁS

*corregido y aumentado por*  
**LEWIS E. BRETT (Parte I)**

*y HELEN S. EATON (Parte II)*

*con la colaboración de Walter Beveraggi-Allende*

*Quinta edición, revisión editorial de CATHERINE B. AVERY*

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## PARTE I

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NOMBRES GEOGRÁFI  
NOMBRES PROPIOS  
NOMBRES DIMINUTIV  
ABREVIATURAS MÁS

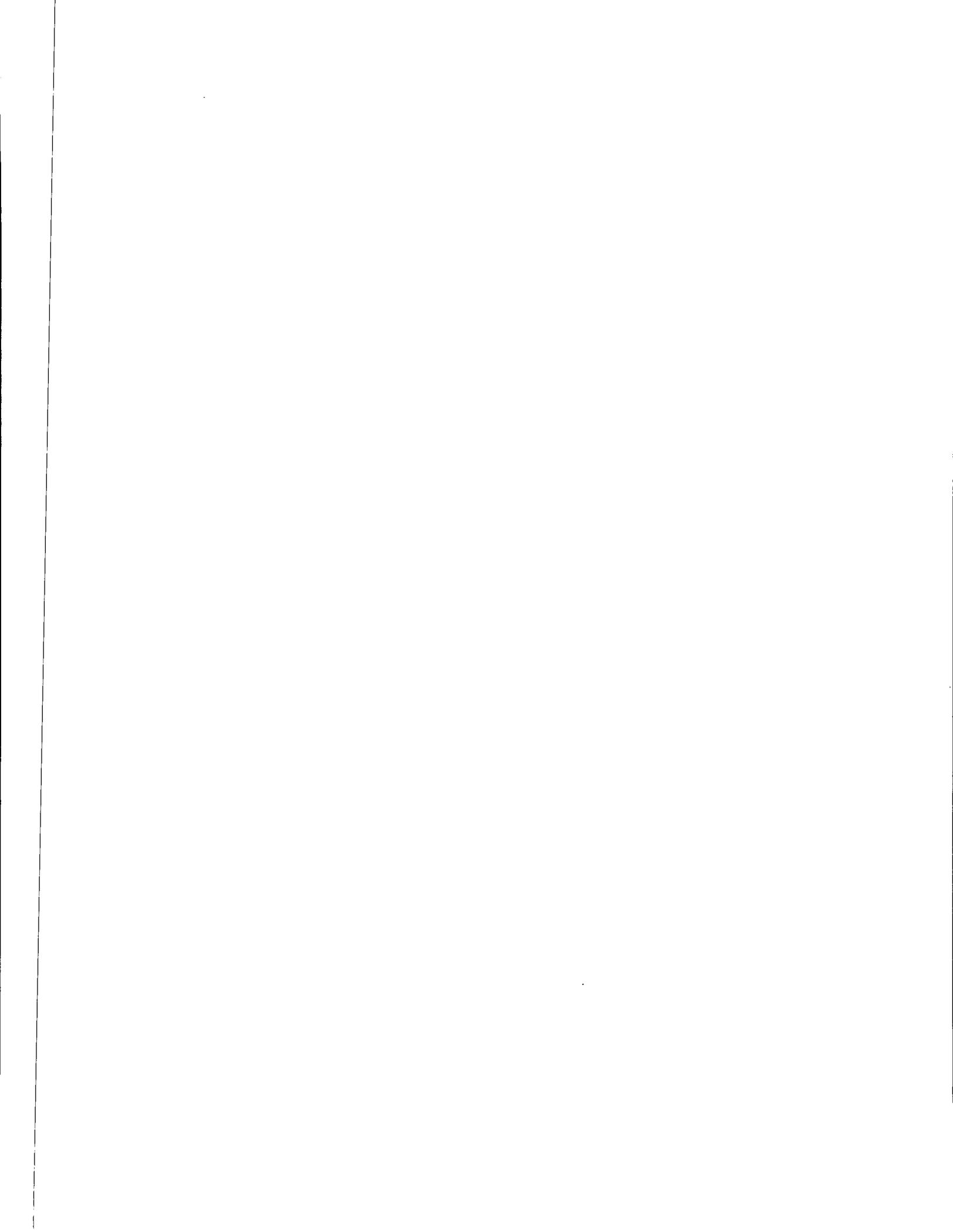
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ABBREVIATIONS  
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ABBREVIATIONS MOS

elegante, *a.* elegant, stylish, tasteful, graceful.  
 elegía, *f.* elegy.  
 elegíaco, *ca.* *a.* elegiac, mournful.  
 elegibilidad, *f.* eligibility.  
 elegible, *a.* eligible.  
 elegido, *da.* I. *pp.* of ELEGIR. II. *a.* elect, chosen.  
 elegir, *va.* (*pp.* ELEGIDO, ELECTO; *ind.* ELIJO; *subj.* ELIGA) to elect; choose, select, prefer.  
 élogo, *ga.* *a.* mournful, plaintive.  
 elemental, *a.* elementary; fundamental.  
 elemental, *a.* elementary.  
 elemento, *m.* element; constituent, ingredient; (*elec.*) element.—*pl.* elements, rudiments.—*e.* inestable, (*atom. ener.*) unstable element.  
 elemi, *m.* elemi, gum resin.  
 elenco, *m.* catalogue, list, table, index; (*theat.*) cast; (*Am.*) personnel, members (of governing body).  
 eleusino, *na.* *a.* Eleusinian.  
 elevación, *f.* elevation; height; rise, ascent; exaltation, dignity; advancement; exaltation of mind, ecstasy, rapture; haughtiness, pride.  
 elevado, *da.* I. *pp.* of ELEVAR. II. *a.* elevated; high; exalted, grand, lofty.  
 elevador, *m.* elevator, lift, hoist.—*e.* de granos, grain elevator.  
 elevamiento, *m.* elevation; ecstasy, rapture.  
 elevar, I. *va.* to raise, elevate, heave, lift, hoist; exalt. II. *v.* to rise, ascend, soar; to be enraptured; to be elated.  
 elfo, *m.* elf.  
 elidir, *va.* to weaken; (*gram.*) to elide.  
 elijable, *a.* (*pharm.*) that can be steeped.  
 elijación, *f.* (*pharm.*) steeping.  
 elijar, *va.* (*pharm.*) to steep.  
 elijo, elija, *v.* V. ELEGIR.  
 eliminación, *f.* elimination.  
 eliminador, *ra.* *n.* & *a.* eliminator(-ing).  
 eliminar, *va.* to eliminate.  
 eliminatorio, *ria.* *a.* eliminatory.  
 elipse, *f.* (*geom.*) ellipse.  
 elipse, *f.* (*gram.*) ellipsis.  
 elipsoidal, (*geom.*) ellipsoidal.  
 elipsoide, *m.* (*geom.*) ellipsoid.  
 elipticidad, *f.* ellipticity.  
 elíptico, *ca.* *a.* elliptic, elliptical.  
 Eliseos, Eliseos (Campos), *m.* *pl.* Elysian (fields).  
 elisión, *f.* (*gram.*) elision.  
 élitro, *m.* (*entom.*) elytron.  
 élixir, *m.* elixir.  
 elocución, *f.* elocution; effective diction, style.  
 elocuencia, *f.* eloquence.  
 elocuent, *a.* eloquent.—*elocuentemente, adv.* eloquently.  
 elogiador, *ra.* *n.* eulogist, encomiast.  
 elogiar, *va.* to praise, extol, eulogize, laud.  
 elogio, *m.* eulogy, praise.  
 elogioso, *sa.* *a.* (*Am.*) eulogistic.  
 elongación, *f.* (*astr.*) elongation.  
 elote, *m.* (*Mex., C. A.*) ear of green corn.  
 El Salvador, *m.* El Salvador.  
 elucidación, *f.* elucidation.  
 elucidar, *va.* to elucidate.  
 eludible, *a.* eludible, avoidable.  
 eludir, *va.* to elude, to evade, avoid.  
 elzeviriano, *na.* *a.* Elsevir.  
 ella, *pron. fem. sing. (pl. ellas)* she.  
 ello, *pron. neuter sing. it.*—*e.* dirá, the event will tell.—*e.* es que, the fact is that (often expletive).  
 ellos, ellas, *pron. m. & f. pl. they.*  
 emaciación, *f.* (*med.*) emaciation.  
 emanación, *f.* emanation; effluvia.  
 emanante, *a.* emanating, issuing.  
 emanatismo, *m.* (*philos.*) emanationism, theory of creation by emanation.  
 emanar, *m.* to emanate, issue; to follow, arise (from).  
 emancipación, *f.* emancipation.  
 emancipador, *ra.* *n.* & *a.* emancipator(-ing).

emancipar, I. *va.* to emancipate. II. *v.* to free oneself; to become free or independent.  
 embablamiento, *m.* (*coll.*) open-mouthed wonder.  
 embace, *v.* V. EMBAZAR.  
 embachar, *va.* to pen (sheep to be shorn).  
 embadurnador, *ra.* *n.* & *a.* dauber(-ing).  
 embadurnar, *va.* to besmear, to bedaub.  
 embaidor, *ra.* *n.* & *a.* swindler(-ing).  
 embaimiento, *m.* delusion, illusion; deceit, imposition, imposture.  
 embair, *va.* *defect.* (only in forms having *i* in the ending) to impose upon, deceive, humbug.  
 embajada, *f.* embassy, legation; (*coll.*) message, errand.  
 embajador, *m.* ambassador.—*e.* cerca de, ambassador to.—embajadora, embajatriz, *f.* ambassador; ambassador's wife.  
 embalador, *m.* packer.  
 embalaje, *m.* packing, baling.  
 embalar, *va.* to bale, pack.  
 embaldosado, *m.* tile floor; pavement.  
 embaldosar, *va.* to pave with tiles or flagstones.  
 embalsadero, *m.* morass, swamp, marsh.  
 embalsamador, *ra.* *m.* embalmer.  
 embalsamamiento, *m.* embalming.  
 embalsamar, *va.* to embalm; to perfume.  
 embalsar, *va.* to put on a raft; to impound, dam (water); (*naut.*) to sling or hoist.  
 embalse, *m.* act of putting into a pond or on a raft; (*naut.*) sling; impounding (of water).  
 embalsumar, I. *va.* to load unequally. II. *v.* to embarrass oneself with business.  
 emballeador, *ra.* *n.* corset maker.  
 emballear, *va.* to stiffen with whalebones.  
 emballestado, *da.* I. *pp.* of EMBALLESTARSE. II. *m.* (*vet.*) contraction of nerves in feet.  
 emballestarse, *v.* to get set to discharge a crossbow.  
 embastar, *va.* to put into a basket.  
 embancarse, *v.* (*metal.*) to stick to the walls of the furnace.  
 embanderar, *va.* to decorate with banners.  
 embanquetar, *va.* (*Mex.*) to build sidewalks for (a street).  
 embaracé, embarace, *v.* V. EMBARAZAR.  
 embarazada, *a.* *f.* pregnant.  
 embarazadamente, *adv.* with embarrassment.  
 embarazador, *ra.* *n.* & *a.* embarrasser(-ing).  
 embarazar, *va.* (*pred.* EMBARACÉ; *subj.* EMBARACE) to embarrass; (*coll.*) to impregnate.  
 embarazo, *m.* impediment; embarrassment, confusion, awkwardness; perplexity; pregnancy.  
 embarazoso, *sa.* *a.* embarrassing, vexatious; difficult, entangled.  
 embarbascado, *da.* I. *pp.* of EMBARBASCAR. II. *a.* difficult, intricate, involved.  
 embarbascar, I. *a.* to stupefy (fish) by throwing hellebore, mullein, etc., into the water; to perplex, confound, embarrass. II. *v.* (of a plow) to become entangled among roots.  
 embarbecear, *m.* (*ind.* EMBARBEZCO; *subj.* EMBARBEZCA) to have a beard appearing.  
 embarbillar, *va.* (*carp.*) to join.  
 embarcación, *f.* vessel, ship, craft; embarkation; navigation.—*e.* de alijo, (*naut.*) lighter.—*e.* menor, small craft.  
 embarcadero, *m.* wharf, quay, pier, ferry; (*Ry.*) freight station.  
 embarcador, *ra.* *n.* shipper.  
 embarcar, I. *va.* (*pred.* EMBARQUE; *subj.* EMBARQUE) to put on board (ship or train); to ship; to embark on an enterprise.—*e.* agua, (*naut.*) to ship a sea. II. *v.* to embark, to go on board (ship or train).  
 embarco, *m.* embarkation (of persons).  
 embardar, *va.* to thatch.  
 embargador, *ra.* *n.* one who lays an embargo.  
 embargante, *a.* arresting, impeding, restraining.—*no e.*, notwithstanding, nevertheless.  
 embargar, *va.* (*pred.* EMBARGUÉ; *subj.* EMBARQUE) to impede, restrain, suspend; (*law*) to embargo, to seize, to attach.

embargo, *m.* indige-  
 tration, seizure, at  
 standing, howeve  
 (que), notwithsta  
 fact that.)  
 embarnizadura, *f.*  
 embarnizar, *va.* to  
 embarque, *m.* ship;  
 embarqué, embarc  
 embarrador, *ra.* *n.*  
 mischief maker.  
 embarradura, *f.* *sc.*  
 embarrancar, I. *v.*  
 to stick in the mud  
 embarrar, I. *va.* to  
 smear with mud; t  
 embarrar.—*v.* to  
 (trides).  
 embarrillador, *m.* *p.*  
 embarrillar, *va.* to b  
 embarroto, *ca.* (*na.*  
 embarrullador, *ra.*  
 a mess of things.  
 embarrullar, *va.* (*col*  
 of; to do carelessly  
 embasamiento, *m.*  
 embastar, *va.* (*sewing*  
 embastecer, I. *m.* t  
 BASTECER) to grov  
 gross or coarse.  
 embate, *m.* dashing  
 petuous attack.—  
 sudden reverse of:  
 embaucador, *m.* sha  
 embaucamiento, *m.*  
 embaucar, *va.* (*pr*  
 BAUCAR) to deceive  
 embaular, *va.* to pac  
 with food.  
 embaucamiento, *m.*  
 embazador, *m.* one  
 thing brown.  
 embazadura, *f.* brov  
 embazador, *f.* (*fig.*)  
 embazar, *va.* (*pred.*  
 dye, tinge, or shade  
 embazar, I. *va.* to as  
 to be dumfounded.  
 disgusted, or satiate  
 embebecer, I. *m.* (*ú*  
 BEBEZCA) to enter;  
 struck with amasam  
 embebecimiento, *m.*  
 embebecer, *ra.* *n.* &  
 embeber, I. *va.* to im  
 soak, saturate; to co  
 introduce, insert; to  
 shorten, reduce, squ  
 contract. III. *v.* to l  
 to be absorbed in tho  
 to master.  
 embebeco, embebez  
 embecadura, *f.* (*arch.*)  
 embecador, *ra.* *n.* in  
 embececar, *va.* (*pred.*  
 QUE) to impose upon  
 embececo, *m.* fraud, in  
 embeledado, *da.* I. *y*  
 enraptured, ravished;  
 embelesar, *va.* to na  
 charm, fascinate.  
 embelesamiento, *m.* r  
 embelesar, I. *va.* to c  
 II. *v.* to be charmed.  
 embeleso, *m.* rapturo  
 ishment; charm.  
 embellececerse, *v.* t  
 embellecer, *va.* (*ind.*  
 BELLEZCA) to beauti  
 cimiento, *m.* embelli  
 embermejar, *va.* —*EM*  
 embermejecer, I. *va.*



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

In the Matter of Trademark  
Application  
Serial No. 76536570  
Filed: July 1, 2003  
For the Mark: ELLA

Published for Opposition in the  
Official Gazette of December 23, 2003

HACHETTE FILIPACCHI PRESSE,

Opposer

Opposition no. 91160163

v.

E.F. LICENSING, LLC,

Applicant

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

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Trademark Rules of Practice, Applicant, E.F. Licensing, LLC, by counsel, provides the following responses and documents, where applicable, to Opposer's interrogatories.

As used herein:

1. "Opposer's mark" means ELLE which is the subject of registration serial numbers 1,314,558; 0,758,137; 0,861,159; 0,862,001; 1,318,319; 1,314,706; 1,322,177; 1,348,158; 1,374,805; 1,396,069; 1,408,531; 1,408,874; 1,419,815; 1,421,118; 1,429,609; 1,432,718; 1,454,393; 1,454,808; 1,465,610; 1,571,639; 1,943,456; 2,016,657; 2,120,688; 2,120,702; 2,199,132; 2,242,315; 2,476,981; 2,708,222; 1,654,884; and 1,732,988, and any other mark which Opposer has used or has ever had an intent to use that is similar thereto.
  - A. "Opposer" shall mean Hachette Filipacchi Presse.

- B. "CMG" shall mean CMG Worldwide, Inc., its predecessors in interest, licensees and assignees.
- C. "Applicant" shall mean E.F. Licensing, LLC, an organization, its predecessors in interest, licensees, assignees and "persons" which may have rights in Applicant's mark.
- D. "Applicant's Mark" shall mean United States Trademark Application No. 76/536,570 for the mark ELLA for "paper articles, namely paper bags, posters, postcards, calendars, greeting cards, trading cards, playing cards, art prints, art cards, photographic prints, lithographic prints, book covers, and stationery."
- E. "Person(s)" shall mean all entities, both natural and artificial.

Interrogatory No. 1: State the nature of Applicant's business with which it has used Applicant's mark and the period of time in which it has conducted this business.

Response to Interrogatory No. 1:

Applicant is the owner of certain personal property rights of Ella Fitzgerald, including Ms. Fitzgerald's right of publicity and certain rights in and to Ms. Fitzgerald's name, voice, signature, likeness and photographs (each particular recorded, photographed and/or rendered instance of which may be subject to third party rights or claims).

Ella Fitzgerald benefited from the use and licensing of her name and likeness during her lifetime, in performances, advertising, and on products and services. Such use began at least as early as 1936, when Ella Fitzgerald's "Love and Kisses" was released under the Decca label. Applicant asserts that Applicant's Mark became famous at least as early as 1939, when the musical recording *Young Ella* was released by Decca.

Applicant works with companies around the world who wish to use the name or likeness of Ella Fitzgerald in any commercial fashion. With Applicant engaged in such business since 2002, coupled with the complementary Ella Fitzgerald Foundation created in 1993 by Ms. Fitzgerald herself, Applicant asserts that use, marketing, and licensing of those intellectual property rights associated with the name, image, likeness, voice, signature, and photographs of Ella Fitzgerald, including Applicant's Mark, has been active and continuous for decades.

Interrogatory No. 2: Identify all variations of Applicant's Mark used by Applicant.

Response to Interrogatory No. 2:

Applicant has used both the "Ella Fitzgerald" and "Ella" marks extensively and consistently in commerce for many years. Additionally, the possessive "Ella's" has appeared in commerce.

Interrogatory No. 3: Identify by common commercial descriptive name each type of good and/or service bearing Applicant's mark which has been offered for sale and for each type of good or service:

- a. state the date of first use
- b. state on an annual basis, the dollar volume of sales; and
- c. state, on an annual basis, the dollar volume expended by Applicant to promote the sale of each such good or service.

Response to Interrogatory No. 3:

Applicant objects to Opposer's use of "each type" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant provides the following non-inclusive list:

Music recording: *Billie, Ella, Lena, Sarah*, Decca, 1935  
Music recording: *Ella: Songs in a Mellow Mood*, Decca, 1954.  
Music recording: *Ella and Basie*, 1963  
Music recording: *Pure Ella*, Verve, 1950  
Music recording: *The Intimate Ella*, Verve, 1960  
Music recording: *Ella swings lightly*, Verve, 1958  
Music recording: *Ella swings brightly with Nelson*, Verve, 1961  
Music recording: *Ella in Rome: The Birthday Concert*, Verve, 1958  
Music recording: *Ella returns to Berlin*, Verve, 1961  
Music recording: *The Complete Ella in Berlin*, Verve, 1960  
Music recording: *Ella*, K-Tel, 1996  
Music recording: *Just Ella*, Decca, 1952  
Music recording: *Young Ella*, Decca, 1939  
Music recording: *Ella and Louie*, Verve, 1956  
Music recording: *Ella and Louie Together*, Verve, 1956  
Music recording: *Ella and Louie Again*, Verve, 1957  
Music recording: *Ella and Billie at Newport*, Verve, 1957  
Music recording: *Ella sings Gershwin*, MCA, 1959  
Music recording: *Ella sings songs from "Let No Man Write My Epitaph"*, Verve, 1960  
Music recording: *Ella Wishes You A Swinging Christmas*, Verve, 1960  
Music recording: *Ella in Hollywood*, Verve, 1961  
Music recording: *Ella sings Broadway*, Verve, 1962  
Music recording: *Ella at Juan Les Pins*, Verve, 1964  
Music recording: *Ella in Hamburg*, Verve, 1965  
Music recording: *Ella at Duke's Place*, Verve, 1965  
Music recording: *Ella & Duke at the Cote D'azur*, Verve, 1966  
Music recording: *Thirty by Ella*, Capitol, 1968  
Music recording: *Ella*, Reprise, 1969  
Music recording: *Ella: A Nice Original*, Jazz, 1971  
Music recording: *Ella in London*, Pablo, 1974  
Music recording: *Ella and Oscar*, Pablo, 1974  
Music recording: *Ella: Things Ain't What They Used to Be*, Reprise, 1991

Music recording: *Ella sings, Chick swings*, Decca, 1937  
Music recording: *Ella and her Fellas*, Decca, 1938  
Music recording: *Ella and Ray, Jazz Live*, 1948  
Music recording: *Lady Be Good . . . for Ella*, Tommy Flanagan, Polygram, 1994  
Music recording: *Ella & Friends*, Verve, 1994  
Music recording: *Pure Ella: The Very Best of Ella Fitzgerald*, Polygram, 1998  
Music recording: *Two Sides of Ella: Her Early Recordings*, Dutton Laboratories, Ltd.,  
2001  
Music recording: *Jukebox Ella: The Complete Verve Singles*, Verve, 2003  
Music recording: *Ella*, Castle Pulse, 2004  
Music recording: *For the Love of Ella*, Polygram, 1990  
Music recording: *The Intimate Ella*, Polygram, 1960  
Music recording: *Ella: The Legendary Decca Recordings*, GRP (Decca), 1995  
Music recording: *Ella à Nice*, Original Jazz Classics, 1971  
Music recording: *Relaxing with Ella: Nos. 1 & 2 (EP)*, RCA, circa 1955  
Music recording: *The Incomparable Ella*, Polydor, 1980

Video recording: *Ella and Basie: Norman Granz Jazz in Montreux* series, 1979

With respect to parts (b) & (c), Applicant objects to this Request as unduly burdensome, in that multiple parties both directly and indirectly associated with Applicant, but not parties to this Opposition, are responsible for, and otherwise control, such information.

Interrogatory No. 4: Identify those persons most familiar with the use of Applicant's Mark.

Response to Interrogatory No. 4:

Richard Rosman  
Jonathan Faber  
Danielle von Luhmann  
Lawrence V. Molnar

Interrogatory No. 5: Identify by name, job, title and address those persons responsible for the promotion, sale and distribution of Applicant's Products.

Response to Interrogatory No. 5:

E.F. Licensing, LLC  
c/o Richard D. Rosman  
11777 San Vicente Boulevard  
Suite 702  
Los Angeles, California 90049

CMG Worldwide, Inc.  
10500 Crosspoint Blvd.  
Indianapolis, IN 46256

Interrogatory No. 6: Identify all distributors or sellers through which Applicant's Products are promoted and sold and the respective territories in which Applicant's Products are promoted and sold.

Response to Interrogatory No. 6:

Applicant objects to Opposer's use of "all distributors or sellers" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant states that, upon information and belief, the following persons distribute or sell products upon which Applicant's Mark appears:

Universal Music Group  
Verve/Polygram/Decca  
2200 Colorado Avenue  
Santa Monica, CA 90404  
ph: (310) 865 5000

Fantasy Records  
Pablo Records  
Tenth and Parker  
Berkeley, CA 94710

Sony Music Entertainment Corporation  
550 Madison Avenue, Sixth Floor  
New York, NY 10022  
ph: (212) 833-8000

Corbis Motion LLC, d/b/a Sekani/Second Line Search  
322 Eight Avenue  
New York, NY 10001

Holiday on Ice Productions  
Zevenend 45-3  
1240 RL Laren  
Netherlands

Young & Rubicam, Inc., as agent for Dr. Pepper/Seven-Up, Inc.  
285 Madison Ave.  
New York, NY 10017

Pyramid  
The Works  
Park Road, Blaby  
Leicester LE8 4EF  
UK

Riddle & Company, LLC  
P.O. Box 2048  
Burlington, NC 27216

Pro Tour Memorabilia, LLC

16556 Arminta St.  
Van Nuys, CA 91406

Katz & Columbus  
814 Baronne St.  
New Orleans, LA 70113

Pomegranate Publications  
210 Classic Court  
Rohnert, CA 94928

UniWorld Group, Inc.  
100 Avenue of the Americas  
New York, NY 10013

American Express Company  
200 Vesey St.  
New York, NY 10285

Ability Shirt Artigos de Vestuaria Ltda.  
Av. das Americas, 500  
bl.06 sl 217  
Rio de Janeiro, Brazil

Upstart Division of Highsmith, Inc.  
W5527 Highway 106  
P.O. Box 800  
Fort Atkinson, WI 53538

Dutton Laboratories Ltd.  
P.O. Box 609  
Watford, Hertfordshire  
WD1 7YA  
UK

LSL Productions, Inc.  
12711 Ventura Blvd.  
Suite 160  
Studio City, CA 91604

Kitcatt Nohr Alexander Shaw Limited  
No. 1 Bermondsey St.  
London  
UK

Tushita Verlags GmbH  
Homberger Straße 50  
Duisberg Hafen  
Germany

Short Pump Town Center

1100 Terminal Tower  
Cleveland, OH 44113

Studio Imports  
2252 Hayes St.  
Hollywood, FL 33020

Image on Air  
50 avenue du Président Wilson  
93214 La Plaine  
Saint Denis  
France

LaSalle Group, Inc., on behalf of Anheuser-Busch, Inc.  
1310 Papin St.  
St. Louis, MO 63103

Cineteve  
4 Quai des Celestins 75004  
Paris, France

Ta Ta For Now  
755 7th Ave. #12u  
New York, NY 10001

HiFi Baby  
1808 Clark Lane  
Redondo Beach, CA 90278

Capstone Press  
151 Good Counsel Dr.  
Mankato, MN 56001

Insight Production Company Limited  
c/o Canadian Idol  
489 King Street West, Suite 101  
Toronto, ON  
M5V 1K4  
Canada

Jazz Age Editions  
P.O. Box 2158  
Temple City, CA 91780

Eisner Communications as agent for Johns Hopkins Medicine  
509 South Exeter St.  
Baltimore, MD 21202

Upon information and belief, Applicant's Products are promoted and sold worldwide.

Interrogatory No. 7: Identify any time periods when the use of Applicant's Mark was discontinued and the reasons for such discontinuance.

Response to Interrogatory No. 7:

Applicant objects to Opposer's use of "any" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant asserts that, upon information and belief, there were no time periods when Applicant's Mark was discontinued.

Interrogatory No. 8: Identify the channels of trade used for Applicant's Products.

Response to Interrogatory No. 8:

Upon information and belief, channels of trade include:

Music recording retailers

Video/DVD retailers

Music-related promotions and advertising

Television and radio promotions and advertising

Print media and advertising

Electronic media and advertising

Music recording out-sourcing distribution (including satellite radio programming)

Various retail markets, including those in clothing, handbags, and related accessories

Applicant also avers the donation of the entire Ella Fitzgerald music collection to the U.S. Library of Congress in 1997, establishing the Ella Fitzgerald Collection.

Applicant avers the donation of artifacts from the Ella Fitzgerald Estate to the Smithsonian Institution's National Museum of American History in 1997; the Ella Fitzgerald Exhibit remains a feature at the Smithsonian, exceeding the normal and customary period for which the Smithsonian displays such exhibits.

Interrogatory No. 9: Identify the nature and geographic location of Applicant's Customers.

Response to Interrogatory No. 9:

Applicant objects to this Request as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant believes Ella Fitzgerald, the namesake of Applicant's Mark, is known worldwide; the nature and geographic location of Applicant's Customers, therefore, extends worldwide.

Interrogatory No. 10: State all facts concerning each instance in which any person has inquired of Applicant whether it or its goods or services are connected in any way with Opposer or Opposer's goods or services or in which any person has indicated such person's belief that Applicant or its goods are connected in any way with Opposer or Opposer's goods or services, including all persons having knowledge thereof.

Response to Interrogatory No. 10:

Applicant objects to Opposer's use of "all facts concerning each instance" as overly broad and unduly burdensome. To the extent not otherwise objected to, upon information and belief, Applicant avers that Applicant cannot provide any instances in which any person inquired of Applicant whether it or its goods or services are connected in any way with Opposer or Opposer's goods or services; or in which any person has indicated such person's belief that Applicant or its goods are connected in any way with Opposer or Opposer's goods or services.

Interrogatory No. 11: Identify all legal proceedings (other than the instant proceeding) instituted by or against Applicant, concerning Applicant's Mark, or any variation thereof.

Response to Interrogatory No. 11:

Applicant objects to Opposer's use of "all" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant asserts that there are no other legal proceedings instituted by or against Applicant, concerning Applicant's Mark, or any variation thereof.

Interrogatory No. 12: Identify all agreements relating to the use of Applicant's mark.

Response to Interrogatory No. 12:

Applicant objects to Opposer's use of "all" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant provides the following as a sample list:

Corbis Motion LLC, d/b/a Sekani/Second Line Search, as agent for Paul McCartney  
2002  
Holiday on Ice Productions 2002  
Young & Rubicam, Inc., as agent for Dr. Pepper/Seven-Up, Inc. 2002  
Pyramid 2002  
Riddle & Company, LLC 2002  
Pro Tour Memorabilia, LLC 2002  
Katz & Columbus 2002  
Pomegranate Publications 2002  
UniWorld Group, Inc. 2002  
American Express Company 2002  
Ability Shirt Artigos de Vestuaria Ltda. 2002  
Upstart Division of Highsmith, Inc. 2002  
Dutton Laboratories Ltd. 2002  
LSL Productions, Inc. 2002  
Kitcatt Nohr Alexander Shaw Limited 2003  
Tushita Verlags GmbH 2003  
Short Pump Town Center 2003  
Studio Imports 2003  
American Express Company 2003  
LSL Productions, Inc. 2003 (2)  
Image on Air 2003

UniWorld Group 2003  
LaSalle Group, Inc., on behalf of Anheuser-Busch, Inc. 2004  
American Express Company 2004  
Cineteve 2004  
Ta Ta For Now 2004  
HiFi Baby 2004  
Capstone Press 2004  
Insight Production Company Limited 2004  
Jazz Age Editions 2004  
Eisner Communications as agent for Johns Hopkins Medicine 2004

Interrogatory No. 13: (a) Identify any trademark service mark, tradename or corporate name search or Market Study conducted by Applicant in connection with Applicant's adoption, use, intent to use, or applicant for registration of Applicant's Mark.  
(b) Identify the person most knowledgeable regarding each such Market Study or trademark search identified in subsection (a) of Interrogatory No. 13.

Response to Interrogatory No. 13:

(a) Trademark search utilizing U.S. Patent & Trademark Office's TESS database: on or around June 1, 2003.  
(b) Lawrence V. Molnar, CMG Worldwide, Inc.

Interrogatory No. 14: (a) State the circumstances under which Applicant first learned of Opposer's use or registration of Opposer's Marks and the individual(s) who have knowledge with respect thereto; and  
(b) State all other information known to Applicant regarding Opposer or Opposer's Marks and the identity of the person having such knowledge.

Response to Interrogatory No. 14:

Applicant objects to Opposer's use of "all other information" in part (b) as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant will only state that, upon information and belief, various persons associated with Applicant have a passing knowledge of the existence of Elle magazine; Applicant cannot identify with certainty the circumstances under which any such individual first learned of Opposer's use or registration of Opposer's Marks.

With respect to (b), Applicant states that it is aware of Japan cases cited as:  
ELLE MARIN case (Tokyo District Court Decision of October 30, 1998, Patent News No. 10009 and 10010, Precedents Bulletin No. 1,673-144)  
ELLE CLUB case (Tokyo District Court Decision of November 27, 1998, Precedents Times No. 992-267)  
ELLE-de-ELLE case (Tokyo High Court Decision of July 21, 1998, Precedents Bulletin No. 1,652-123)

Lawrence V. Molnar  
CMG Worldwide, Inc.  
10500 Crosspoint Blvd.  
Indianapolis, IN 46256

Interrogatory No. 15: Identify all media publications which have mentioned Applicant's Mark.

Response to Interrogatory No. 15:

Applicant objects to Opposer's use of "all media publications" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant will only provide those instances which are sufficient to meet the needs of the Request. As presently advised, please see the attached Documents and Things, as well as Applicant's Response to Interrogatories 27-29.

Interrogatory No. 16: Identify all third party marks that you contend are relevant to the determination of issues in this proceeding, and state all facts pertaining to the use of the marks.

Response to Interrogatory No. 16:

Applicant objects to Opposer's use of "all third party marks" as overly broad and unduly burdensome. Applicant further objects on the grounds that the information requested was developed in anticipation of litigation, includes the mental impressions, conclusions, opinions and legal theories of the Applicant and its attorneys, and is not discoverable under F.R.C.P. 26(B)(3).

Interrogatory No. 17: State the range of prices for the goods or services offered for sale, under Applicant's Mark.

Response to Interrogatory No. 17:

Upon information and belief, Applicant asserts the following:

Range of prices for compact discs (CDs): \$10→  
Range of prices for video recordings (VHS): \$20→  
Range of prices for digital video discs (DVDs): \$20→  
Infant Ringer Tees with an approximate retail price of \$24  
Beanie Hats with an approximate retail price of \$18  
Diaper Covers with an approximate retail price of \$15  
Hoodie Sweatshirts with an approximate retail price of \$35  
Baseball Tees with an approximate retail price of \$26  
Handbags with an approximate retail price range of \$50-\$60  
Posters with an approximate retail price of \$25

Interrogatory No. 18: State all facts concerning Applicant's alleged claim of rights in Applicant's Mark.

Response to Interrogatory No. 18:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant asserts that Applicant is the owner of certain personal property rights of Ella Fitzgerald, including Ms. Fitzgerald's right of publicity and certain rights in and to Ms. Fitzgerald's name, voice, signature, likeness and photographs (each particular recorded, photographed and/or rendered instance of which may be subject to third party rights or claims).

Ella Fitzgerald benefited from the use and licensing of her name and likeness during her lifetime, in performances, advertising, and on products and services. Such use began at least as early as 1936, when Ella Fitzgerald's "Love and Kisses" was released under the Decca label. Applicant asserts that Applicant's Mark became famous at least as early as 1939, when the musical recording *Young Ella* was released by Decca.

Applicant works with companies around the world who wish to use the name or likeness of Ella Fitzgerald in any commercial fashion. With Applicant engaged in such business since 2002, coupled with the complementary Ella Fitzgerald Foundation created in 1993 by Ms. Fitzgerald herself, Applicant asserts that use, marketing, and licensing of those intellectual property rights associated with the name, image, likeness, voice, signature, and photographs of Ella Fitzgerald, including Applicant's Mark, has been active and continuous for decades.

Applicant has registered a claim as a successor-in-interest for those proprietary rights of Ella Fitzgerald in California.

Applicant owns trademark registration no. 2856573 for the "Ella Fitzgerald" mark in "advertising agency services, namely, preparing and placing advertisements for goods and services of others; licensing to others the right to use the name and likeness of a professional musical entertainer," in International Class 35.

Applicant has filed for trademark registration protection for the "Ella Fitzgerald" mark in International Classes 16 and 25.

Applicant has filed for trademark registration protection for the "Ella" mark in International Classes 16, 25, and 35.

Applicant also avers the donation of the entire Ella Fitzgerald music collection to the U.S. Library of Congress in 1997, establishing the Ella Fitzgerald Collection.

Applicant avers the donation of artifacts from the Ella Fitzgerald Estate to the Smithsonian Institution's National Museum of American History in 1997; the Ella Fitzgerald Exhibit remains a feature at the Smithsonian, exceeding the normal and customary period for which the Smithsonian displays such exhibits.

Interrogatory No. 19: State all facts concerning any acquired distinctiveness or secondary meaning obtained by Applicant's Mark in connection with Applicant's Products, including the date that such acquired distinctiveness or secondary meaning was first obtained.

Response to Interrogatory No. 19:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. Applicant further objects on the grounds that the information requested was developed in anticipation of litigation, includes the mental impressions, conclusions, opinions and legal theories of the Applicant and its attorneys, and is not discoverable under F.R.C.P. 26(B)(3).

To the extent not otherwise objected to, Applicant asserts that Applicant's Mark acquired distinctiveness, and therefore, secondary meaning, at least as early as 1939, when the musical recording *Young Ella* was released by Decca. As presently advised, please see the attached Documents and Things, as well as Applicant's Response to Interrogatories 3, 27, and 29.

Interrogatory No. 20: State all facts concerning recognition by Customers of Applicant's Mark concerning the source of Applicant's Products.

Response to Interrogatory No. 20:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant directs Opposer to the attached Documents and Things, as well as Applicant's responses to Interrogatories 3, 19, 27, and 29.

Interrogatory No. 21: If you contend that Applicant's date of first use in commerce for Applicant's Mark precedes Opposer's date of first use in commerce for Opposer's marks, state all facts concerning that contention.

Response to Interrogatory No. 21:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant asserts that Applicant's date of first use was at least as early as 1936, when Ella Fitzgerald made her first recording, *Love and Kisses*, released under the Decca label. As presently advised, please see the attached Documents and Things, as well as Applicant's Response to Interrogatories 3, 27, and 29.

Interrogatory No. 22: If you contend that there is no likelihood of confusion between Opposer's Marks and Applicant's Mark, state all facts concerning that contention.

Response to Interrogatory No. 22:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. Applicant further objects on the grounds that the information requested was developed in anticipation of litigation, includes the mental impressions, conclusions, opinions and legal theories of the Applicant and its attorneys, and is not discoverable under F.R.C.P. 26(B)(3).

Applicant also objects to Opposer's request because it calls for conclusions of law reserved for the Trademark Trial and Appeal Board as factfinder. To the extent not otherwise objected to, Applicant submits the fact that both Applicant's and Opposer's Marks consist of four letters, and the fact that a difference in one letter represents a

portion amounting to a full one-quarter, or 25% of each respective Mark as a whole. Mark.

Applicant further submits the fact that proper pronunciation of Applicant's mark involves two syllables, whereas pronunciation of Opposer's Mark involves but a single syllable.

Interrogatory No. 23: If you contend that Opposer's Marks are not famous, state all facts concerning that contention.

Response to Interrogatory No. 23:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant has insufficient knowledge to form an opinion as to whether Opposer's Marks are famous, or not.

Interrogatory No. 24: If you contend that there is a defect or deficiency in Opposer's rights in Opposer's Marks, state all facts concerning that contention.

Response to Interrogatory No. 24:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. Applicant further objects on the grounds that the information requested was developed in anticipation of litigation, includes the mental impressions, conclusions, opinions and legal theories of the Applicant and its attorneys, and is not discoverable under F.R.C.P. 26(B)(3).

To the extent not otherwise objected to, Applicant avers the following:

Elle, Ltd. v. Elle Est., 388 So.2d 1166 (La. Ct. App. 1980)

Interrogatory No. 25: For each individual likely to have discoverable information that you may use to support your claims or defenses, provide the information required under Rule 26(a)(1)(A) of the Federal Rules of Civil Procedure.

Response to Interrogatory No. 25:

Richard Rosman  
E.F. Licensing, LLC  
11777 San Vicente Boulevard  
Suite 702  
Los Angeles, California 90049

Jonathan L. Faber  
CMG Worldwide, Inc.  
10500 Crosspoint Blvd.  
Indianapolis, IN 46256

Danielle von Luhmann  
CMG Worldwide, Inc.  
10500 Crosspoint Blvd.

Indianapolis, IN 46256

Lawrence V. Molnar  
CMG Worldwide, Inc.  
10500 Crosspoint Blvd.  
Indianapolis, IN 46256

Interrogatory No. 26: Identify every person that participated in providing responses to these interrogatories and documents responsive to Opposer's First Requests for Production of Documents to Applicant.

Response to Interrogatory No. 26:

Richard Rosman  
E.F. Licensing, LLC  
11777 San Vicente Boulevard  
Suite 702  
Los Angeles, California 90049

Lawrence V. Molnar  
CMG Worldwide, Inc.  
10500 Crosspoint Blvd.  
Indianapolis, IN 46256

Interrogatory No. 27: State all facts concerning your statement that Ella Fitzgerald is "instantly and unequivocally recognizable" by her first name alone, as alleged in your First Affirmative Defense.

Response to Interrogatory No. 27:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant provides the following non-inclusive source material:

"The neo-pop divas of the late 20th century may have turned up the glamour, and a few even introduced formidable technical prowess, epitomized by Mariah Carey's seemingly helium-induced falsetto (the bane of canine fans everywhere) or Celine Dion's breast-beating, stentorian climaxes. Yet only a few verses from an earlier, charter member of the *first-name-only club* provides instant perspective: when Ella opened her mouth, that perfectly pitched, luminous voice could leap octaves without breaking a sweat, its tonal purity and immaculate phrasing creating that illusion of "effortlessness" achieved only through true artistry."

Sam Sutherland, editorial review of *Ella Fitzgerald: Something to Live For* (videorecording), available on Amazon.com website (visited September 30, 2004), <<http://www.amazon.com/exec/obidos/tg/detail/-/B000034DDL/104-8194186-3951918?v=glance>> [emphasis added].

"No two artists are more closely identified with producer Norman Granz and with Pablo Records than Ella Fitzgerald and Oscar Peterson. At the time of this recording, the

singer and pianist had shared concert stages on Jazz at the Philharmonic and other Granz touring packages for a quarter-century, building reputations that put each on a *first-name-only* basis with audiences the world over."

Product description for *Ella & Oscar* (music recording) as listed in Fantasy Jazz catalog, available on FantasyJazz.com website (visited September 30, 2004), <[http://www.fantasyjazz.com/catalog/fitzgerald\\_e\\_cat2.html](http://www.fantasyjazz.com/catalog/fitzgerald_e_cat2.html)>. [emphasis added].

"So, is there a spot in your listening repertoire for both Janet and Jazz? Let's face it; being one of the most recognizable female singers in pop culture, I would be hard-pressed to imagine that even the staunchest of jazz-bos have not heard of Janet. Come on, she's attained the first-name-only stature. This feat is only reserved for the biggest names. If I were to utter "Bird" or "Miles" or "Duke" or "Ella," I would venture to guess that 100% of the AAJ readers would know who I was referring to."

Robert Evanoff, concert review of Janet "Jazz" Jackson, available on All About Jazz website (visited September 30, 2004) <<http://www.allaboutjazz.com/beyond/arti1101.htm>>.

"Carmen McRae earned her place in the front rank of the women who sing jazz so many years ago that it is hard to think of them as anything less than a magnificent quartet (*all instantly recognizable by first name only*): Ella, Billie, Sarah and Carmen."

Product description for Carmen McRae, *I'll Be Seeing You* (music recording), available on Verve Music Group website (visited September 30, 2004) <<http://www.vervemusicgroup.com/product.aspx?ob=disc&src=art&pid=9226>>. [emphasis added].

"Whether breezing through a ballad standard or climbing "Knee Deep In The Blues" (the title of one of the four Thornton originals on the CD), Teri Thornton delivers the goods and takes her place alongside the pantheon of first-name only singers like Ella, Dinah, Sarah and Abbey."

Shaun Dale, review of Teri Thornton, *I'll Be Easy to Find* (music recording), available on Cosmik Debris website (visited September 30, 2004) <[http://www.cosmik.com/aa-january00/reviews/review\\_teri\\_thornton.html](http://www.cosmik.com/aa-january00/reviews/review_teri_thornton.html)>.

Applicant reserves the right to augment or otherwise supplement its response to this Interrogatory should circumstances warrant.

Interrogatory No. 28: State all facts concerning your statement that "the word 'Ella' is singularly evocative of and representative of the late, great Ella Fitzgerald," as alleged in your First Affirmative Defense.

Response to Interrogatory No. 28:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant states that there is ample evidence within easy public access supporting Applicant's statement that "the word 'Ella' is singularly evocative of and representative of the late, great Ella Fitzgerald." As presently advised, please see the attached Documents and Things, as well as Applicant's Response to Interrogatories 3, 27, and 29.

Interrogatory No. 29: Identify each material instance in which Ella Fitzgerald has been referred to on a first name-only basis.

Response to Interrogatory No. 29:

Applicant objects to Opposer's use of "each material instance" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant provides the following non-inclusive list:

- Music recording: *Ella: Songs in a Mellow Mood*, Decca, 1954.
- Music recording: *Ella and Basie*, 1963
- Music recording: *Pure Ella*, Verve, 1950
- Music recording: *The Intimate Ella*, Verve, 1960
- Music recording: *Ella swings lightly*, Verve, 1958
- Music recording: *Ella swings brightly with Nelson*, Verve, 1961
- Music recording: *Ella in Rome: The Birthday Concert*, Verve, 1958
- Music recording: *Ella returns to Berlin*, Verve, 1961
- Music recording: *The Complete Ella in Berlin*, Verve, 1960
- Music recording: *Ella*, K-Tel, 1996
- Music recording: *Just Ella*, Decca, 1952
- Music recording: *Young Ella*, Decca, 1939
- Music recording: *Ella and Louie*, Verve, 1956
- Music recording: *Ella and Louie Together*, Verve, 1956
- Music recording: *Ella and Louie Again*, Verve, 1957
- Music recording: *Ella and Billie at Newport*, Verve, 1957
- Music recording: *Ella sings Gershwin*, Decca, 1959
- Music recording: *Ella sings songs from "Let No Man Write My Epitaph"*, Verve, 1960
- Music recording: *Ella Wishes You A Swinging Christmas*, Verve, 1960
- Music recording: *Ella in Hollywood*, Verve, 1961
- Music recording: *Ella sings Broadway*, Verve, 1962
- Music recording: *Ella at Juan Les Pins*, Verve, 1964
- Music recording: *Ella in Hamburg*, Verve, 1965
- Music recording: *Ella at Duke's Place*, Verve, 1965
- Music recording: *Ella & Duke at the Cote D'azur*, Verve, 1966
- Music recording: *Thirty by Ella*, Capitol, 1968
- Music recording: *Ella*, Reprise, 1969
- Music recording: *Ella: A Nice Original*, Jazz, 1971
- Music recording: *Ella in London*, Pablo, 1974
- Music recording: *Ella and Oscar*, Pablo, 1974
- Music recording: *Ella: Things Ain't What They Used to Be*, Reprise, 1991
- Music recording: *Ella sings, Chick swings*, Decca, 1937
- Music recording: *Ella and her Fellas*, Decca, 1938
- Music recording: *Ella and Ray*, Jazz Live, 1948
- Music recording: *Lady Be Good . . . for Ella*, Tommy Flanagan, Polygram, 1994
- Music recording: *Ella & Friends*, Verve, 1994
- Music recording: *Two Sides of Ella: Her Early Recordings*, Dutton Laboratories, Ltd., 2001
- Music recording: *Jukebox Ella: The Complete Verve Singles*, Verve, 2003
- Music recording: *Ella*, Castle Pulse, 2004
- Music recording: *For the Love of Ella*, Polygram, 1990
- Music recording: *The Intimate Ella*, Polygram, 1960
- Music recording: *Ella: The Legendary Decca Recordings*, GRP (Decca), 1995
- Music recording: *Ella à Nice*, Original Jazz Classics, 1971

Music recording: *Relaxing with Ella: Nos. 1 & 2* (EP), RCA, circa 1955  
Music recording: *The Incomparable Ella*, Polydor, 1980

Video recording: *Ella and Basie: Norman Granz Jazz in Montreux* series, 1979

"S[ociety] O[f] S[ingers] is extremely proud of its premier fundraising event, the annual Ella Award, named for its first recipient, Ella Fitzgerald in 1989. Ella honorees are carefully chosen for their contribution to the music world and for their dedicated efforts to benefit the community and worldwide humanitarian causes."

*Previous Recipients*

Frank Sinatra, Tony Martin, Peggy Lee, Steve Lawrence & Eydie Gorme, Lena Horne, Rosemary Clooney, Joe Williams, Tony Bennett, Julie Andrews, Plácido Domingo and Barry Manilow."

Available on Society of Singers website (visited October 1, 2004)  
<<http://www.singers.org/pages/pastevents.htm>>.

Applicant reserves the right to augment or otherwise supplement its response to this Interrogatory should circumstances warrant.

Interrogatory No. 30: State all facts concerning your statement that "Applicant's ELLA Mark became famous prior to the date that Opposer can first lay claim to any rights in the ELLE Mark," as alleged in your Third Affirmative Defense.

Response to Interrogatory No. 30:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. Applicant further objects on the grounds that the information requested was developed in anticipation of litigation, includes the mental impressions, conclusions, opinions and legal theories of the Applicant and its attorneys, and is not discoverable under F.R.C.P. 26(B)(3).

To the extent not otherwise objected to, Applicant asserts that Applicant's Mark became famous at least as early as 1939, when the musical recording *Young Ella* was released by Decca. As presently advised, please see the attached Documents and Things, as well as Applicant's Response to Interrogatories 3, 27, and 29.

I affirm, under the penalties for perjury, that the foregoing answers are true.

*E.F. Licensing, LLC*  
*By Sable Productions, Inc., manager*  
*By Richard D. Krum, President*  
Applicant

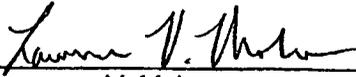
**OBJECTIONS TO INTERROGATORIES**

*Lawrence V. Molnar*

Lawrence V. Molnar (22479-49)  
CMG Worldwide, Inc.  
10500 Crosspoint Blvd.  
Indianapolis, IN 46256  
Attorney for Applicant  
Opposition No. 91160163

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following parties in this matter, postage prepaid, this 14<sup>th</sup> day of December, 2004.



Lawrence V. Molnar  
10500 Crosspoint Blvd.  
Indianapolis, IN 46256  
Attorney for Applicant  
Opposition No. 91160163

Perla M. Kuhn  
Hughes, Hubbard & Reed LLP  
One Battery Park Plaza  
New York, NY 10001

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

In the Matter of Trademark  
Application  
Serial No. 76536570  
Filed: July 1, 2003  
For the Mark: ELLA

Published for Opposition in the  
Official Gazette of December 23, 2003

HACHETTE FILIPACCHI PRESSE,

Opposer

Opposition no. 91160163

v.

E.F. LICENSING, LLC,

Applicant

APPLICANT'S RESPONSE TO OPPOSER'S SECOND SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Trademark Rules of Practice, Applicant, E.F. Licensing, LLC, by counsel, provides the following responses and documents, where applicable, to Opposer's interrogatories.

As used herein:

1. "Opposer's mark" means ELLE which is the subject of registration serial numbers 1,314,558; 0,758,137; 0,861,159; 0,862,001; 1,318,319; 1,314,706; 1,322,177; 1,348,158; 1,374,805; 1,396,069; 1,408,531; 1,408,874; 1,419,815; 1,421,118; 1,429,609; 1,432,718; 1,454,393; 1,454,808; 1,465,610; 1,571,639; 1,943,456; 2,016,657; 2,120,688; 2,120,702; 2,199,132; 2,242,315; 2,476,981; 2,708,222; 1,654,884; and 1,732,988, and any other mark which Opposer has used or has ever had an intent to use that is similar thereto.
  - A. "Opposer" shall mean Hachette Filipacchi Presse.

- B. "CMG" shall mean CMG Worldwide, Inc., its predecessors in interest, licensees and assignees.
- C. "Applicant" shall mean E.F. Licensing, LLC, an organization, its predecessors in interest, licensees, assignees and "persons" which may have rights in Applicant's mark.
- D. "Applicant's Mark" shall mean United States Trademark Application No. 76/536,570 for the mark ELLA for "paper articles, namely paper bags, posters, postcards, calendars, greeting cards, trading cards, playing cards, art prints, art cards, photographic prints, lithographic prints, book covers, and stationery."
- E. "Person(s)" shall mean all entities, both natural and artificial.

Interrogatory No. 31: State all facts concerning the basis for Applicant's claim of rights in Applicant's Mark, including the identification of all documents or oral agreements evidencing any inheritance, assignment or other transfer of the rights in Applicant's Mark to Applicant.

Response to Interrogatory No. 31:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant avers that Applicant owns the personal property rights of Ella Fitzgerald, including Ms. Fitzgerald's right of publicity and certain rights in and to Ms. Fitzgerald's name, voice, signature, likeness and photographs as the result of an assignment of those rights by the Ella Fitzgerald Charitable Foundation to Applicant on February 12, 2002.

As it pertains to California Section 3344.1, Applicant also filed a Registration of Claim as Successor-in-Interest with the State of California on February 12, 2002 for the enumerated rights.

Interrogatory No. 32: State whether Applicant has used Applicant's Mark in commerce in connection with goods or services in Classes 16, 25, or 35, and if so, the respective dates of each such use.

Response to Interrogatory No. 32:

Applicant avers that it has not yet used, nor is it aware of any use of, Applicant's Mark, because Applicant filed Application Serial No. 76/536,570 as an Intent-to-Use application, under Section 1051(b) of the Lanham Act.

Interrogatory No. 33: Identify the wholesalers, distributors or retailers of goods or services bearing Applicant's Mark in Classes 16, 25 or 35.

Response to Interrogatory No. 33:

Applicant avers that, as it relates to Applicant's response to Interrogatory No. 32, Applicant cannot identify, nor is it aware of, any wholesalers, distributors or retailers of goods or services with authorization to use Applicant's mark in Classes 16, 25 or 35, as Applicant filed Application Serial No. 76/536,570 as an Intent-to-Use application, under Section 1051(b) of the Lanham Act.

Interrogatory No. 34: Identify all agreements listed in Applicant's Response to Opposer's Interrogatory No. 12 that concern the use of Applicant's Mark in Classes 16, 25 or 35.

Response to Interrogatory No. 34:

Applicant objects to Opposer's use of "all agreements" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant identifies the following agreements authorizing the use of a form of Applicant's Mark in classes 16, 25, or 35:

Corbis Motion LLC, d/b/a Sekani/Second Line Search, as agent for Paul McCartney  
2002  
Holiday on Ice Productions 2002  
Pyramid 2002  
Pro Tour Memorabilia, LLC 2002  
Katz & Columbus 2002  
Upstart Division of Highsmith, Inc. 2002  
LSL Productions, Inc. 2002  
Studio Imports 2003  
American Express Company 2003  
American Express Company 2004  
LaSalle Group, Inc., on behalf of Anheuser-Busch, Inc. 2004  
Ta Ta For Now 2004  
HiFi Baby 2004  
Capstone Press 2004  
Jazz Age Editions 2004  
Eisner Communications as agent for Johns Hopkins Medicine 2004

Interrogatory No. 35: State all facts concerning the sale of t-shirts, hats, diaper covers, sweatshirts, handbags and posters referred to in Applicant's Response to Interrogatory No. 17.

Response to Interrogatory No. 35:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant submits that the authorized sale of t-

shirts, hats, diaper covers, sweatshirts, handbags and posters referred to in Applicant's Response to Interrogatory No. 17 is the result of licensing agreements identified as follows:

Pyramid 2002  
Pro Tour Memorabilia, LLC 2002  
Katz & Columbus 2002  
Upstart Division of Highsmith, Inc. 2002  
Studio Imports 2003  
American Express Company 2003  
American Express Company 2004  
LaSalle Group, Inc., on behalf of Anheuser-Busch, Inc. 2004  
Ta Ta For Now 2004  
HiFi Baby 2004  
Capstone Press 2004  
Jazz Age Editions 2004

Interrogatory No. 36: State all facts concerning Applicant's ownership of the "personal property rights of Ella Fitzgerald, including Ms. Fitzgerald's right of publicity and certain rights in and to Ms. Fitzgerald's name, voice, signature, likeness and photographs" referred to in Applicant's Response to Interrogatory No. 18.

Response to Interrogatory No. 36:

Applicant objects to Opposer's use of "all facts" as overly broad and unduly burdensome. To the extent not otherwise objected to, Applicant avers that Applicant owns the personal property rights of Ella Fitzgerald, including Ms. Fitzgerald's right of publicity and certain rights in and to Ms. Fitzgerald's name, voice, signature, likeness and photographs as the result of an assignment of those rights by the Ella Fitzgerald Charitable Foundation to Applicant on February 12, 2002.

As it pertains to California Section 3344.1, Applicant also filed a Registration of Claim as Successor-in-Interest with the State of California on February 12, 2002 for the enumerated rights.

I affirm, under the penalties for perjury, that the foregoing answers are true.

*E.F. Liczyński, LLC*  
*Salle Productions, Inc*  
*Manager*  
*Richard D. [Signature]* *President*  
Applicant

OBJECTIONS TO INTERROGATORIES

*Lawrence V. Molnar*

Lawrence V. Molnar (22479-49)  
CMG Worldwide, Inc.  
10500 Crosspoint Blvd.  
Indianapolis, IN 46256  
Attorney for Applicant  
Opposition No. 91160163



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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

Page 6

1 P. Singh  
2 A. Thank you.  
3 Q. The court reporter takes the  
4 testimony; so, please be sure to respond  
5 orally. When you nod your head, it won't  
6 appear on the record as a Yes or a No. Make  
7 sure to say Yes or No.  
8 A. Okay.  
9 Q. If your attorney objects to one of  
10 my questions, you can still answer the  
11 question, and I will ask you to please answer  
12 the question, unless she instructs you not to  
13 answer.  
14 A. Okay.  
15 Q. If at any point you want a break,  
16 that is fine. Just let me know.  
17 A. Okay.  
18 Q. I will ask you, however, that if I  
19 have a question pending, that you answer the  
20 question before we take a break.  
21 A. Okay.  
22 Q. The other thing that might happen is  
23 that, along the way, if you answer one of my  
24 questions and then later remember something  
25 else about the question -- please make sure to

Page 7

1 P. Singh  
2 tell me and we can go back and supplement your  
3 answer.  
4 A. Okay.  
5 Q. Finally, if you think that there are  
6 some documents that might help you remember  
7 something, let me know that a document exists,  
8 I have some documents here and we can use  
9 them, if it will help you remember.  
10 A. Okay.  
11 Q. I need to ask you a few questions  
12 about your competency as a witness and that is  
13 just to make sure that we are not wasting any  
14 time in terms of accuracy and truthfulness of  
15 your deposition today.  
16 A. Okay.  
17 Q. Did you have anything to drink in  
18 the last eight hours? Alcohol.  
19 A. The last eight hours? No.  
20 Q. Are you sick at all today?  
21 A. No.  
22 Q. Are you under a doctor's care for  
23 any illness?  
24 A. No.  
25 Q. Are you taking any medication?

Page 8

1 P. Singh  
2 A. I am taking Lipitor for cholesterol.  
3 Q. Does that affect your memory at all?  
4 A. Not at all.  
5 Q. Is there any reason that you know of  
6 that would affect your ability today to  
7 testify truthfully and accurately?  
8 A. No.  
9 MS. WHITING: Okay. I would like to  
10 mark, as Exhibit 1, the notice of  
11 deposition.  
12 (Petitioner's Exhibit 1, Notice,  
13 marked for identification as of this  
14 date.)  
15 A. Thank you.  
16 Q. Please take a moment to look at  
17 that.  
18 A. Yes.  
19 Q. Have you seen this document before?  
20 A. This one? I don't think so.  
21 Q. This is a notice of deposition for  
22 this matter. It notices the most  
23 knowledgeable person concerning certain issues  
24 under the Federal Rules of Civil Procedure.  
25 A. Yes.

Page 9

1 P. Singh  
2 Q. I am going to ask you, just to make  
3 sure that we have the most knowledgeable  
4 person here, I am going to ask you if you are  
5 the most knowledgeable person concerning  
6 certain issues?  
7 A. Sure.  
8 Q. Are you the most knowledgeable  
9 person concerning the general nature of the  
10 business activities undertaken by Hachette,  
11 with respect to Hachette's mark ELLE, from the  
12 date of first use to the present?  
13 A. Yes.  
14 Q. Are you the most knowledgeable  
15 concerning the creation, the adoption and the  
16 first use of the mark?  
17 A. Yes.  
18 Q. Are you the most knowledgeable  
19 person concerning the first use of the Elle  
20 Belle mark?  
21 A. Yes.  
22 Q. Are you the most knowledgeable  
23 person concerning the advertising and  
24 promotional efforts undertaken in connection  
25 with Elle Belle's trademark, Elle Belle?

Page 10

1 P. Singh  
 2 A. Yes.  
 3 Q. Including the identity of any  
 4 outside agencies used by Elle Belle to conduct  
 5 any advertising or promotional efforts?  
 6 A. Ask the question again?  
 7 Q. Sure. Are you the most  
 8 knowledgeable person concerning advertising  
 9 and promotional efforts concerning the Elle  
 10 Belle trademark?  
 11 A. Yes.  
 12 Q. Are you the most knowledgeable  
 13 person concerning any defenses in your  
 14 response to Hachette's petition to cancel the  
 15 Elle Belle mark?  
 16 A. Yes.  
 17 Q. Are you the most knowledgeable  
 18 person concerning any damages or harm that  
 19 Elle Belle alleges to have suffered as a  
 20 result of Hachette's failure to file a notice  
 21 of opposition in this matter?  
 22 A. Yes.  
 23 Q. Are you the most knowledgeable  
 24 person concerning any consumer understanding  
 25 concerning the Elle Belle mark or the ELLE

Page 11

1 P. Singh  
 2 mark?  
 3 A. Yes.  
 4 Q. Are you the most knowledgeable  
 5 person concerning any third-party use, that  
 6 means any use other than by Hachette or by  
 7 Elle Belle of a mark containing ELLE?  
 8 A. I don't know.  
 9 Q. Do you know of any use of the mark  
 10 ELLE by anyone other than Hachette?  
 11 A. I don't know.  
 12 Q. Is there anyone else that would  
 13 know?  
 14 MS. KIM: She is asking you if you  
 15 are aware of any companies using the mark  
 16 ELLE, other than her company and your  
 17 company?  
 18 THE WITNESS: There are so many  
 19 companies which has the Elle name, yes.  
 20 Q. Is there anyone else at Elle Belle  
 21 that would have any other knowledge about  
 22 these other companies other than you?  
 23 A. Maybe, yes.  
 24 Q. Who would that be?  
 25 A. In the business, business people,

Page 12

1 P. Singh  
 2 they should know there are some other  
 3 companies that are using Elle, this name.  
 4 Q. Other people that work for the  
 5 company, Elle Belle?  
 6 MS. KIM: Excuse me.  
 7 A. No.  
 8 MS. KIM: Can I clear it up? I  
 9 don't think anybody has any specific  
 10 information about any company, but they  
 11 have just seen the word Elle, like in  
 12 advertisements or in phone directories or  
 13 on the Internet, but I don't think  
 14 anybody has any specific information  
 15 about any one of those companies.  
 16 MS. WHITING: Okay.  
 17 MS. KIM: Is that correct?  
 18 THE WITNESS: Correct.  
 19 BY MS. WHITING:  
 20 Q. Did you prepare for your deposition  
 21 today?  
 22 A. Yes.  
 23 Q. How did you prepare?  
 24 A. I am ready, because whatever I will  
 25 tell you is true, it is true. Nothing is

Page 13

1 P. Singh  
 2 hidden. I am ready for everything. The last  
 3 ten years I have had this company. The  
 4 company was registered.  
 5 Q. Sir, I will ask another question to  
 6 clarify that question.  
 7 Did you speak to anyone before your  
 8 deposition today to help you prepare for  
 9 testifying today?  
 10 A. I sat with my attorney, two days  
 11 ago, who told me that we were going to have  
 12 the deposition, and I sat with her. That's  
 13 it.  
 14 Q. You did not speak with anyone else,  
 15 other than your attorney?  
 16 A. No.  
 17 Q. Did you look at any documents in  
 18 preparation for your testimony today?  
 19 A. My attorney gave me documents. She  
 20 obviously gave me whatever she was doing and I  
 21 looked at all of those documents and whatever  
 22 happened in the past.  
 23 Q. What documents did you look at?  
 24 A. The documents -- some  
 25 interrogatories. Some interrogatories, I saw

Page 90

1 P. Singh  
 2 goods that Elle Belle sells under its Elle  
 3 Belle label, and I will just call them the  
 4 Elle Belle goods.  
 5 A. Okay.  
 6 Q. Has Elle Belle ever sold children's  
 7 clothing?  
 8 A. No.  
 9 Q. Men's clothing?  
 10 A. No.  
 11 Q. Has it ever sold pajamas?  
 12 A. No.  
 13 Q. T-shirts?  
 14 A. No. We sell blouses, but no  
 15 T-shirts.  
 16 Q. Any type of lingerie?  
 17 A. What type of lingerie?  
 18 Q. I will break it down. How about  
 19 underwear?  
 20 A. No. Nothing like that.  
 21 Q. All right. Does it sell hats?  
 22 A. No.  
 23 Q. Any other type of men's clothing,  
 24 such as neckties?  
 25 A. Nothing that belongs to men;

Page 91

1 P. Singh  
 2 nothing.  
 3 Q. Any kind of sportswear-like  
 4 jackets or --  
 5 A. No.  
 6 MS. WHITING: I will mark, as  
 7 Plaintiff's Exhibit 5, some pages which  
 8 were printed out from what I believe to  
 9 be the Elle Belle Website.  
 10 (Petitioner's Exhibit 5,  
 11 documents Bates Nos. 17 to 43, marked  
 12 for identification as of this date.)  
 13 Q. Take a look at that and look through  
 14 that exhibit, which is Bates numbered 17  
 15 through 43.  
 16 A. All right.  
 17 Q. Do you recognize what has been  
 18 marked as Plaintiff's Exhibit 5?  
 19 A. Yes.  
 20 Q. And what is it?  
 21 A. These are some pictures of my  
 22 products -- gowns, tops, blouses, shawls, on  
 23 my Website.  
 24 Q. And it looks like this was printed  
 25 around September, 2004, September 24th, 2004?

Page 92

1 P. Singh  
 2 A. Aha.  
 3 Q. Has the Website changed at all since  
 4 then; do you know?  
 5 A. No.  
 6 Q. It says "our updated Website is  
 7 coming soon."  
 8 A. We never did it.  
 9 Q. On the first page, under the name  
 10 Elle Belle, there are different types of  
 11 clothing which are listed.  
 12 A. The very first page?  
 13 Q. The first page, right under Elle  
 14 Belle, it starts "prom dresses, evening wear,  
 15 mother of the bride, after 5 gowns, unique  
 16 fashions." Are all these types of clothing  
 17 sold under the Elle Belle label?  
 18 A. Yes.  
 19 Q. And what are unique fashions; what  
 20 would be considered under that label?  
 21 A. This means, I mean, new designs or  
 22 new dresses, that sort -- that is what it  
 23 means. That is what we thought.  
 24 Q. The others, prom dresses, evening  
 25 wear, mother of the bride, after 5 and gowns,

Page 93

1 P. Singh  
 2 those are all types of evening dresses?  
 3 A. Yes. They are all gowns, but they  
 4 are called different names.  
 5 Q. Okay. Also on that page it says  
 6 "serving consumers in New York and stores  
 7 throughout the United States, South America  
 8 and Europe."  
 9 A. Yes.  
 10 Q. How do stores in South America and  
 11 Europe know about the company, Elle Belle LLC?  
 12 A. As I told you before, the stores in  
 13 fashion district and all of the buyers from  
 14 all over the world they come here, come in  
 15 this district; that is how they know us. So  
 16 we have customers from South America, Europe  
 17 and others in the United States.  
 18 Q. So, they know about the Elle Belle  
 19 goods -- and correct me if I am not stating  
 20 this correctly -- by walking through the  
 21 fashion district?  
 22 A. Yes.  
 23 Q. A few pages in, on the bottom  
 24 right-hand corner, there is a number that says  
 25 24. If you could flip to that one, that page.

Page 154

1 P. Singh  
2 interrogatories request information concerning  
3 the creation of the Elle Belle mark.  
4 A. Yes.  
5 Q. And I will just ask you again  
6 concerning the designer who you have mentioned  
7 in your response to interrogatory number 3.  
8 Do you remember anything about this  
9 designer, other than the fact that it was a  
10 designer that you worked with in your prior  
11 business?  
12 A. No.  
13 Q. Do you have any documents that would  
14 identify this designer?  
15 A. Excuse me?  
16 Q. Any documents that you might have  
17 or -- when I say "you," I mean Elle Belle, LLC  
18 might have concerning this designer's  
19 identity?  
20 A. No.  
21 Q. Is there anyone else who is a  
22 partner of Elle Belle or who works for Elle  
23 Belle that might know the designer's identity?  
24 A. I was the only person that met him.  
25 No.

Page 155

1 P. Singh  
2 Q. Do you have any documents  
3 concerning --  
4 Strike that.  
5 Earlier in our deposition we  
6 discussed generally how the name was adopted,  
7 the Elle Belle name was adopted.  
8 A. Yes.  
9 Q. Do you have any documents that  
10 reflect, you know, how you chose the Elle  
11 Belle name or what other marks were being  
12 considered at the time?  
13 A. No.  
14 Q. If you can look at interrogatory  
15 number 5, your response to interrogatory  
16 number 5.  
17 A. Yes.  
18 Q. I will ask you about that response.  
19 A. Okay.  
20 Q. Interrogatory number 5 asks for the  
21 date of first use concerning each type of good  
22 or service that was offered for sale by Elle  
23 Belle.  
24 A. October, 1995.  
25 Q. Okay.

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1 P. Singh  
2 It says in the response:  
3 "Respondent is in the business of selling  
4 women's clothing -- namely, tops, bottoms,  
5 dresses, and accessories and dance costumes."  
6 With respect to those categories of  
7 goods, do you remember what the date of first  
8 use was?  
9 A. What's the date of?  
10 Q. First use. When those --  
11 A. October of 1995.  
12 Q. Okay. When I am saying "first use,"  
13 what I am referring to is the date that those  
14 types of clothing were identified with an Elle  
15 Belle label.  
16 A. 1996.  
17 Q. 1996. All right.  
18 Just so that I understand, when you  
19 are talking about the first use in 1995, what  
20 are you referring to -- and just correct me if  
21 I am wrong -- it sounds like you might be  
22 referring to your registration.  
23 A. The registration. Reference to the  
24 registration of the company was in October of  
25 1995.

Page 157

1 P. Singh  
2 Q. Okay. With respect to the goods  
3 that were sold under the Elle Belle label,  
4 those goods were first sold in 1996.  
5 A. Yes. 1996.  
6 Q. Were there any other category of  
7 goods, other than the ones identified here --  
8 women's clothing, tops, bottoms, dresses and  
9 accessories and dance costumes -- that were  
10 sold first in 1996?  
11 A. From the start, we are selling this,  
12 plus, as I explained before, we are selling  
13 shawls, scarves, extra things.  
14 Q. Those things, the scarves and the  
15 shawls, were those sold later than 1996?  
16 A. From the start, we are selling this.  
17 Q. Okay. So, to supplement your  
18 response, you are saying, in addition to the  
19 items listed here in response to interrogatory  
20 number 5, you also sold shawls and scarves as  
21 early as 1996?  
22 A. Yes.  
23 Q. When in 1996 did you first start  
24 selling these types of goods with the Elle  
25 Belle label?

Page 186

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.

Page 188

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.

Page 189

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.

Page 190

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?

Page 191

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.

Page 192

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

Page 193

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?

Page 194

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?

Page 195

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?

Page 197

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

50 (Pages 194 to 197)



*Elle Belle. Llc*

PLAINTIFF'S  
EXHIBIT 4  
8/15/05  
PS  
Produced Pursuant to Protective Order

 Elle Belle llc.

*Elle Belle llc.*

*Ellebelle. Llc*

000004



000005

BATES NOS.

000006 - 000010

KAKKAR & KADISH  
ATTORNEYS AT LAW  
261 MADISON AVENUE  
25<sup>TH</sup> FLOOR  
NEW YORK, N.Y. 10016



4



# ELLE BELLE

EVENING WEAR, EVENING BAGS  
ALTERATION A SPECIALTY

1020 6th Ave. (38th St. Corner)  
New York, NY 10018  
Tel: (212) 391-4254  
Fax: (212) 944-0835

e-mail: psbedinyc@hotmail.com  
WEBSITE: ELLE-BELLE.COM

Bedi  
Jassi  
Lady K.

000009

BUSINESS HOURS  
Mon-Sat. 9.30 am To 7:00 pm  
Al Per Mayor  
Wholesale & Retail

*sequins is a normal occurrence.  
A repair kit is, therefore,  
attached to every garment.*

SPOT CLEAN ONLY  
DO NOT WASH OR DRY-CLEAN

STYLE \_\_\_\_\_

COLOUR \_\_\_\_\_

SIZE \_\_\_\_\_

PRICE \_\_\_\_\_

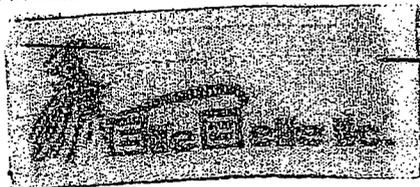
MADE IN CHINA

010 - 1-5

*Elle Belle llc.*

MADE IN  
10  
CALIFORNIA

*Elle Belle llc.*



**Ella Belle llc.**

M A B 8 2 2

2

R E D

MADE IN CHINA

000008



## ELLE BELLE

EVENING WEAR, EVENING BAGS  
ALTERATION A SPECIALTY

Bedi  
Jasat  
Lady K.

1020 6th Ave. (38th St. Corner)  
New York, NY, 10018  
Tel: (212) 391-4254  
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*Ellebelle. Llc*

000006

As this garment is totally hand-made slight irregularities or variations are not to be regarded as defects. Because of the fragile makeup of this garment loss of some beads or sequins is a normal occurrence. A repair kit is, therefore, attached to every garment.

SPOT CLEAN ONLY  
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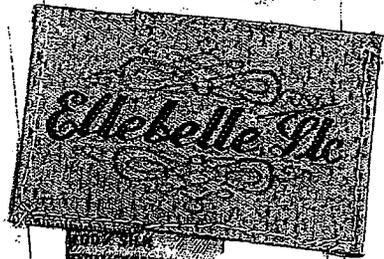
STYLE R1-50121

COLOUR lavender

SIZE 14

PRICE \_\_\_\_\_

MADE IN INDIA



Elle Belle. Llc

1020 6th Ave. (38th St. Corner)  
New York, NY, 10018  
Tel: (212) 391-4254  
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ELLE BELLE  
EVENING WEAR, EVENING BAGS  
ALTERATION A SPECIALTY

Bedi  
Jassi  
Lady K.

COLOUR : BK/RK

This Garment has been  
totally handmade. Slight  
variations and irregularities  
are not to be considered  
as defects.  
Loss of Beeds & Sequins  
are normal occurrence.



# ELLE BELLE. LLC

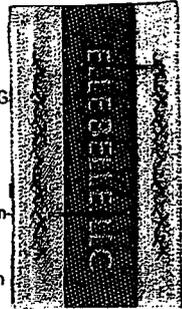
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LLE  
ENING BAG  
PECIALTY

Mon

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*As this garment is totally hand-made slight irregularities or variations are not to be regarded as defects. Because of the fragile makeup of this garment loss of some beads or sequins is a normal occurrence. A repair kit is, therefore, attached to every garment.*

**SPOT CLEAN ONLY  
DO NOT WASH OR DRY-CLEAN**

000007

2  
1



# Elle Belle

Prom Dresses Evening Wear Mother of the Bride  
After-Five Gowns Unique Fashions

featuring beautiful gowns and dresses  
beaded dresses, gowns and evening wear

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Serving consumers in New York,  
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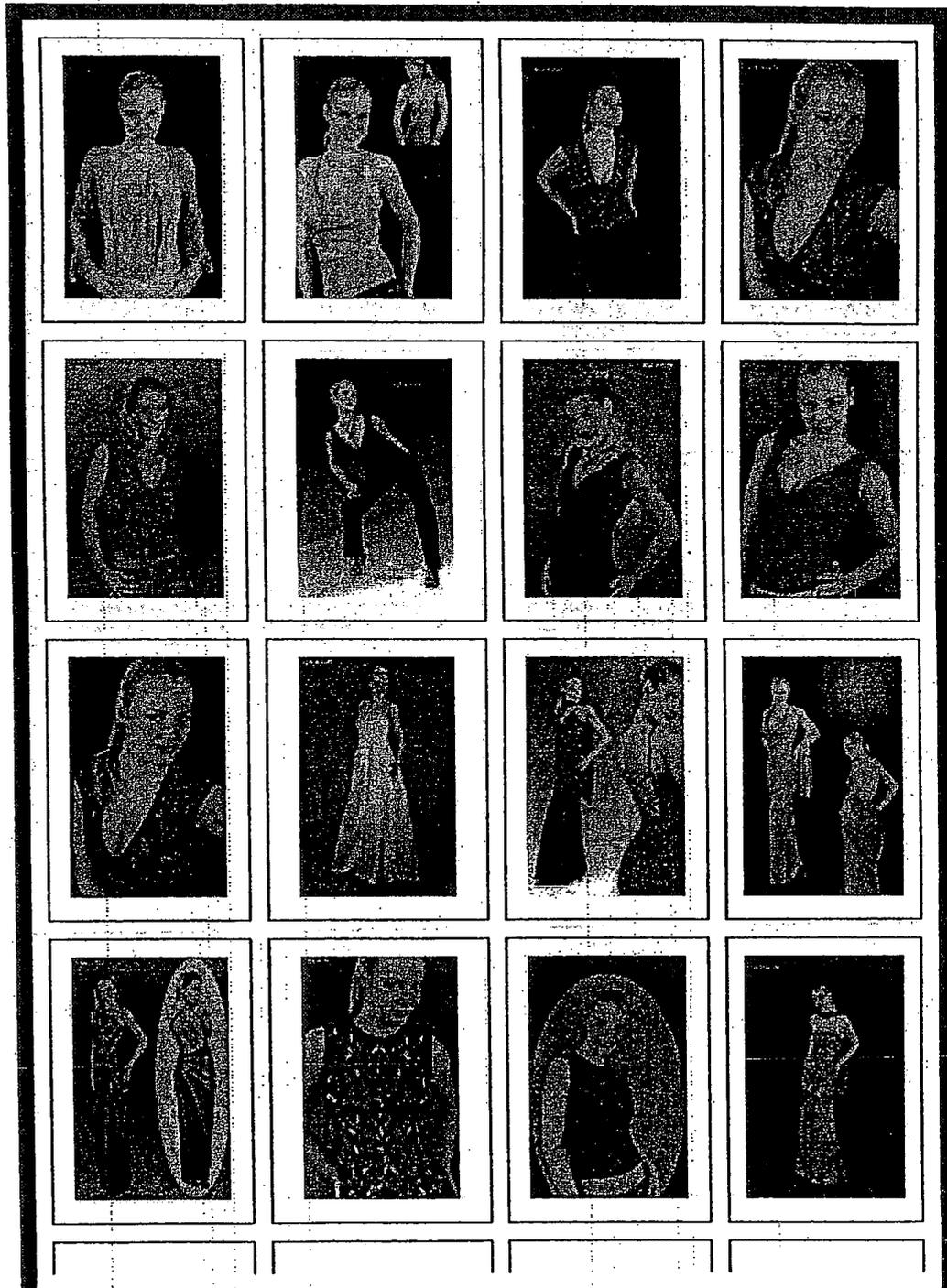


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# Elle Belle - Quality Fashion Dresses and Evening Wear

## Elle Belle Product Line 1

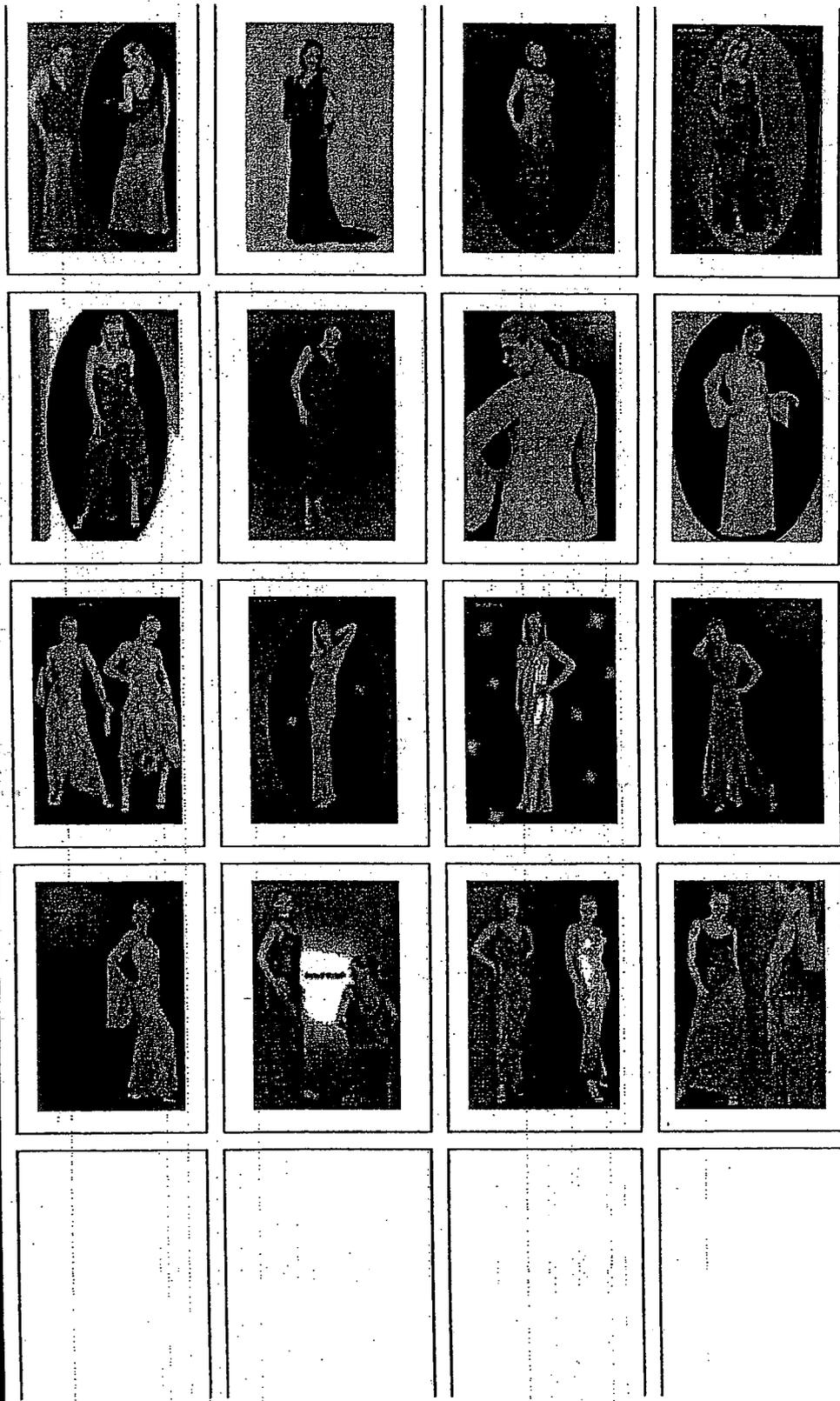
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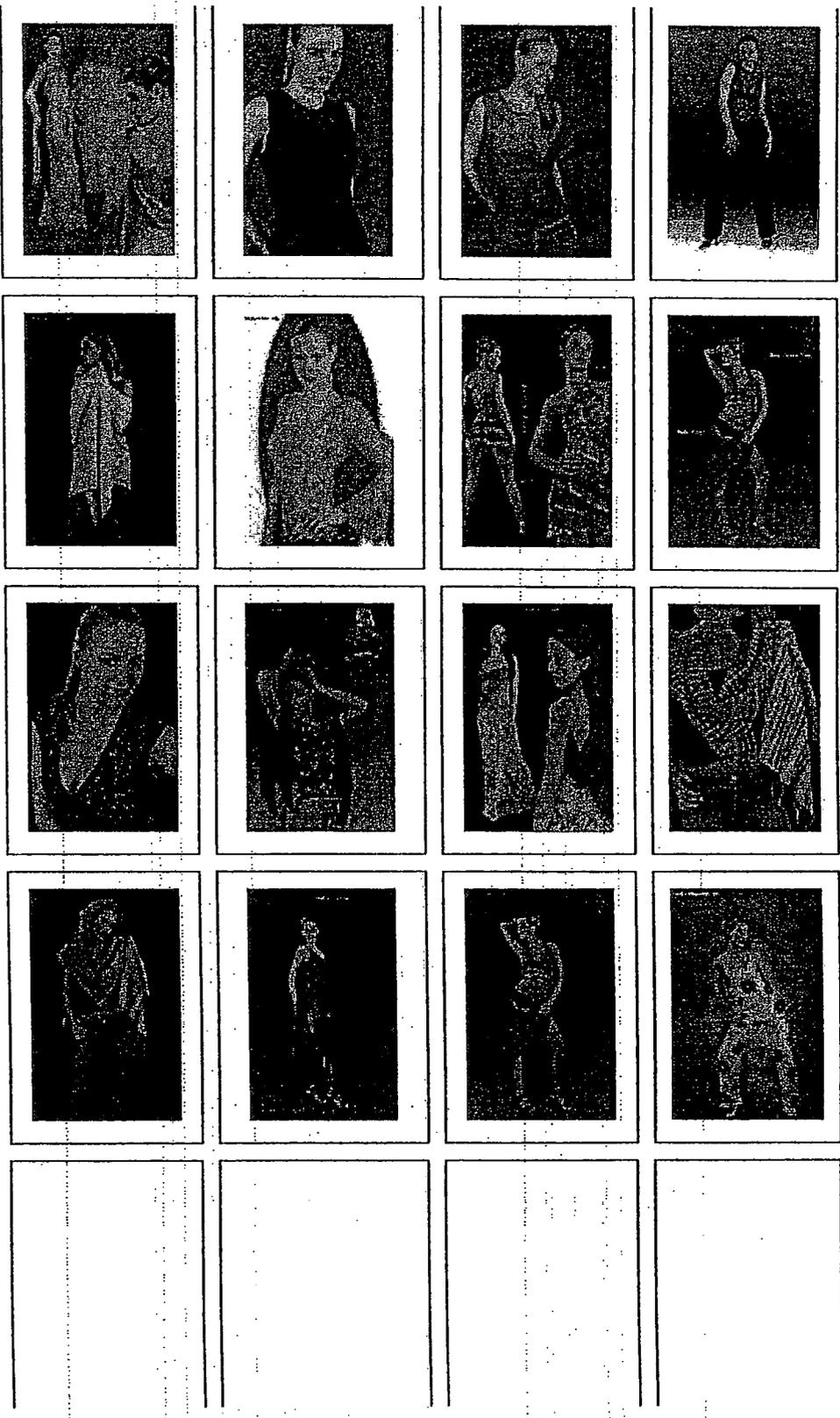
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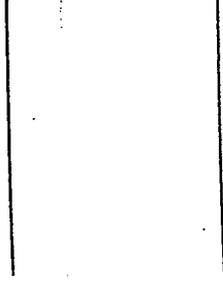
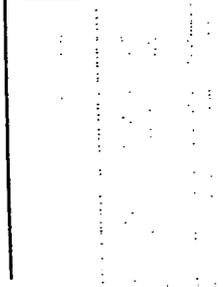
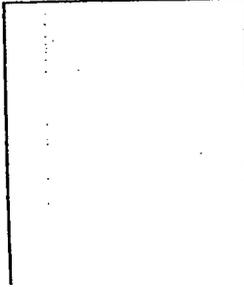
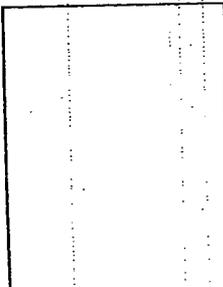
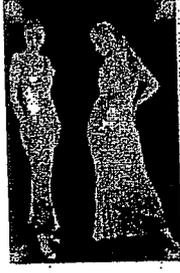
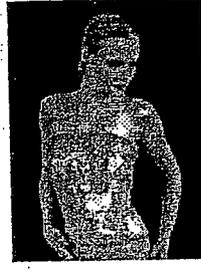
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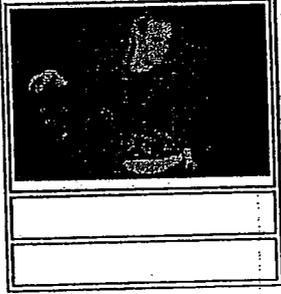
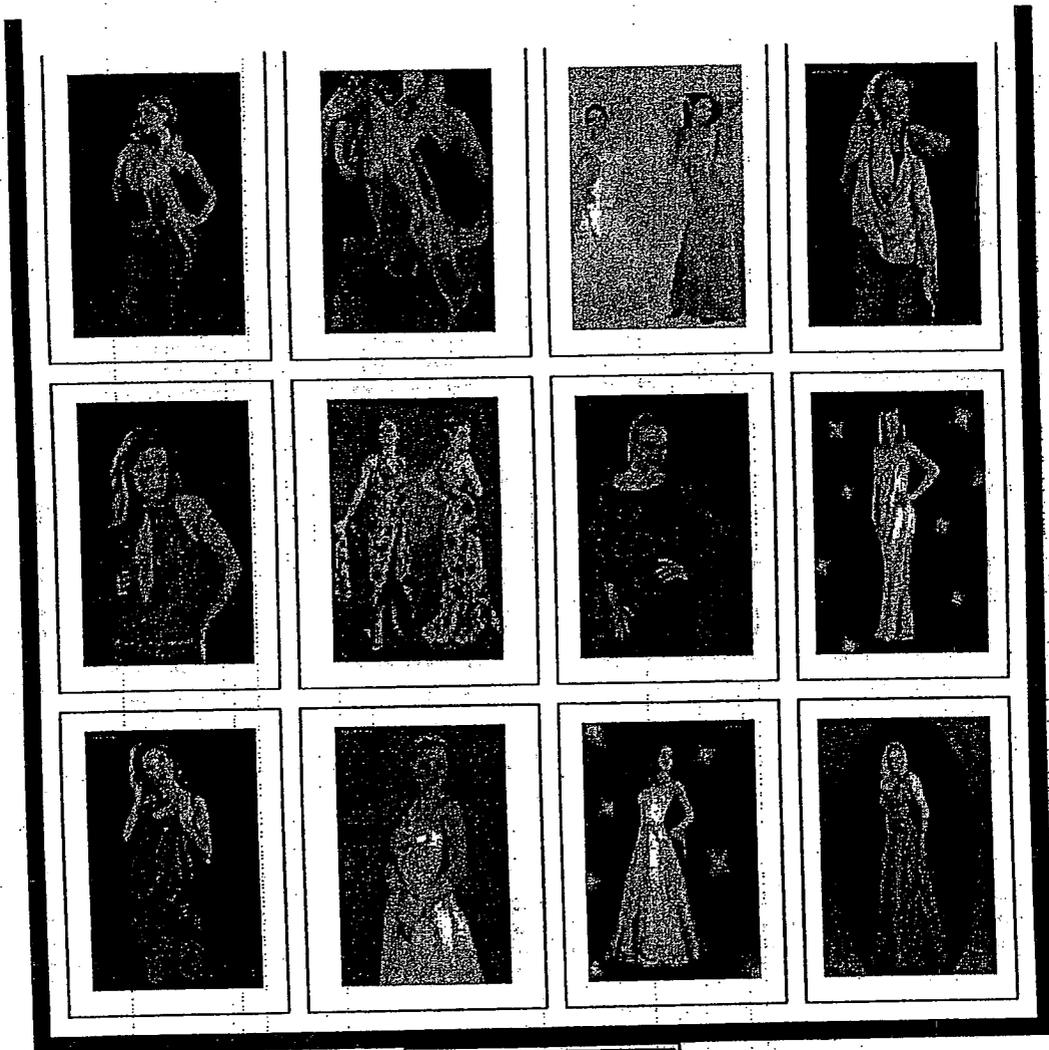
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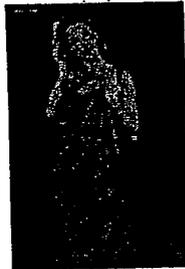
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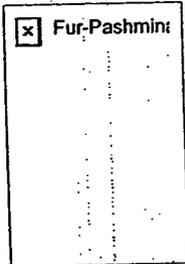
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Fur-Pashmina \$95.00



Check-Shawl \$49.00



One-pc-Swimsuit \$195.00



9199-Pant \$195.00



9199-Top \$79.00

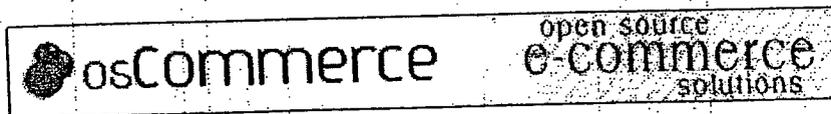


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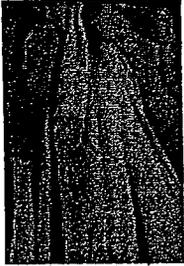
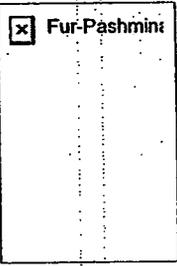
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Product Name+	Price	Buy Now
 Beaded-Pashmina	\$110.00	<b>Buy Now!</b>
 Check-Shawl	\$49.00	<b>Buy Now!</b>
<input checked="" type="checkbox"/> Fur-Pashmina  Fur-Pashmina	\$95.00	<b>Buy Now!</b>
 Ombre/Shawls	\$39.00	<b>Buy Now!</b>
 Self Print	\$39.00	<b>Buy Now!</b>

000025

	Wool-Shawl	\$79.00	<b>Buy Now!</b>
---	------------	---------	-----------------

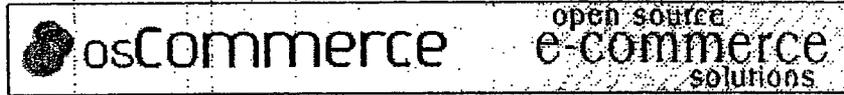
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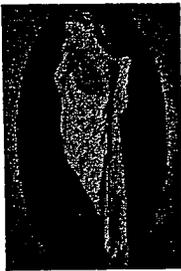
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Ombre/Shawls \$39.00

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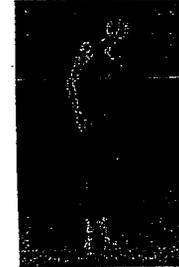
Reviews There are currently no product reviews

Languages



Currencies

US Dollar

Product Name+	Price	Buy Now
 2373	\$349.00	<b>Buy Now!</b>
 2hk105s	\$279.00	<b>Buy Now!</b>
 3001	\$295.00	<b>Buy Now!</b>
 3153	\$349.00	<b>Buy Now!</b>
 3177	\$295.00	<b>Buy Now!</b>

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3511

\$349.00

**Buy Now!**



3525

\$349.00

**Buy Now!**



3752

\$349.00

**Buy Now!**



3804

\$349.00

**Buy Now!**



911942

\$349.00

**Buy Now!**

Celesway-Purple

\$295.00

**Buy Now!**

000029

			
	CLS-Brown	\$295.00	<b>Buy Now!</b>
	Flower-Pant-Set	\$249.00	<b>Buy Now!</b>

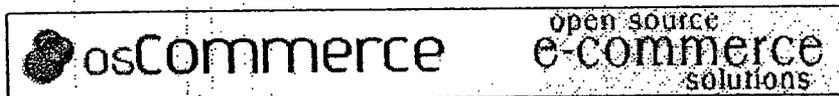
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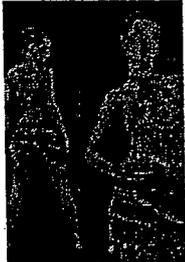
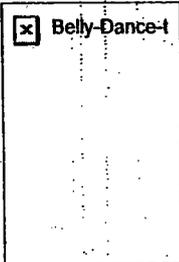
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Currencies

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Product Name+	Price	Buy Now
 Belly-Dance-Belt	\$49.00	<input type="button" value="Buy Now!"/>
 Belly-Dance-top	\$49.00	<input type="button" value="Buy Now!"/>
 Belly-Scarf	\$79.00	<input type="button" value="Buy Now!"/>
 One-pc-Swimsuit	\$195.00	<input type="button" value="Buy Now!"/>

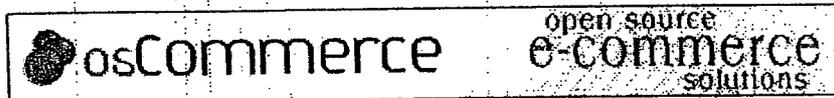
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- Tops-> (13)

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What's New?



Check-Shawl \$49.00

Quick Find

Use keywords to find the product you are looking for. Advanced Search

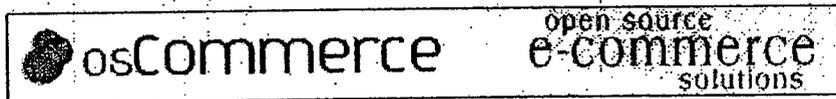
Information

- Shipping & Returns
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# Let's See What We Have Here

Let's See

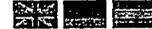
Shopping Cart

0 items

Reviews

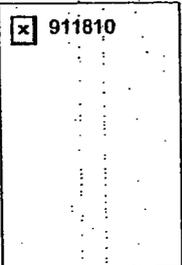
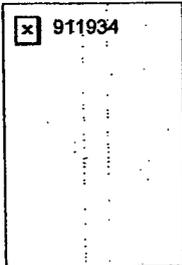
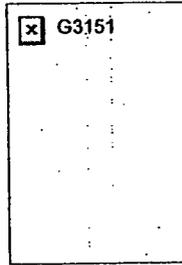
There are currently no product reviews

Languages



Currencies

US Dollar

Product Name+	Price	Buy Now
 911810	911810 \$249.00	<b>BUY NOW!</b>
 911934	911934 \$295.00	<b>BUY NOW!</b>
 G3151	G3151 \$399.00	<b>BUY NOW!</b>

Displaying 1 to 3 (of 3 products)

Result Pages: 1

000032



1534

\$249.00

**Buy Now!**



1535/1532

\$249.00

**Buy Now!**



1543

\$249.00

**Buy Now!**



1550

\$279.00

**Buy Now!**



1551

\$249.00

**Buy Now!**

1553

\$249.00

**Buy Now!**

000034



1554

\$195.00

**Buy Now!**



1555

\$295.00

**Buy Now!**

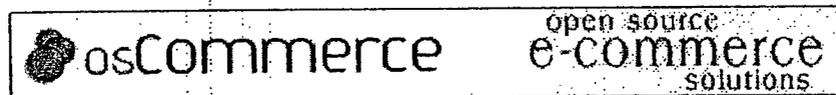
Displaying 1 to 13 (of 13 products)

Result Pages: 1

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000035



Top » Catalog » Prom » Eve

My Account | Cart Contents | Checkout

Categories

- Accessories-> (8)
- Belly Dancing (4)
- Evening-> (16)
- Prom-> (24)
- Eve (10)
- Evening (1)
- Tops-> (13)

Manufacturers

Please Select

What's New?



Check-Shawl \$49.00

Quick Find

Use keywords to find the product you are looking for. Advanced Search

Information

- Shipping & Returns
- Privacy Notice
- Conditions of Use
- Contact Us

# Let's See What We Have Here

Let's See

Shopping Cart 0 items

Reviews There are currently no product reviews

Languages



Currencies

US Dollar

Product Name+	Price	Buy Now
22678	\$295.00	<b>Buy Now!</b>
23325	\$295.00	<b>Buy Now!</b>
23326	\$295.00	<b>Buy Now!</b>
23330	\$349.00	<b>Buy Now!</b>
23738	\$295.00	<b>Buy Now!</b>

000036

<input checked="" type="checkbox"/> JumpSuit	JumpSuit	\$149.00	<b>Buy Now!</b>
<input checked="" type="checkbox"/> Ma7002	Ma7002	\$249.00	<b>Buy Now!</b>
<input checked="" type="checkbox"/> MAB822	MAB822	\$349.00	<b>Buy Now!</b>
<input checked="" type="checkbox"/> X0197	X0197	\$349.00	<b>Buy Now!</b>
<input checked="" type="checkbox"/> X0201	X0201	\$349.00	<b>Buy Now!</b>

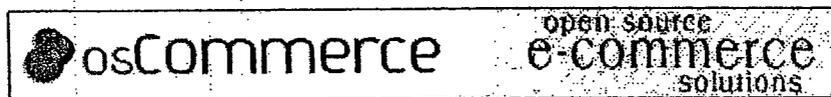
Displaying 1 to 10 (of 10 products)

Result Pages: 1

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000037



Top » Catalog » Prom » Evening

My Account | Cart Contents | Checkout

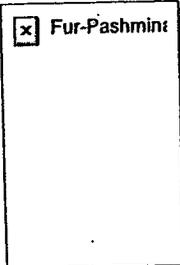
Categories

- Accessories-> (8)
- Belly Dancing (4)
- Evening-> (16)
- Prom-> (24)
- Eve (10)
- Evening (1)
- Tops-> (13)

Manufacturers

Please Select

What's New?



Fur-Pashmina \$95.00

Quick Find

Use keywords to find the product you are looking for. Advanced Search

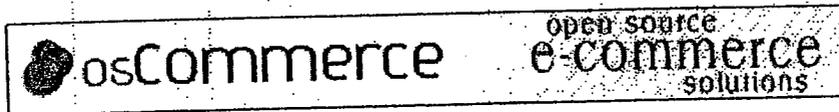
Information

- Shipping & Returns
- Privacy Notice
- Conditions of Use
- Contact Us

Friday 24 September, 2004

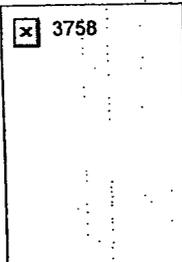
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# Let's See What We Have Here

Let's See

Product Name+	Price	Buy Now
 3758	3758	\$295.00 <b>BUY NOW!</b>

Displaying 1 to 1 (of 1 products)

Result Pages: 1

Shopping Cart

0 items

Reviews

There are currently no product reviews

Languages



Currencies

US Dollar

000038



Top » Catalog » Tops

My Account | Cart Contents | Checkout

Categories

- Accessories-> (8)
- Belly Dancing (4)
- Evening-> (16)
- Prom-> (24)
- Tops-> (13)**
- Accessories (1)

Manufacturers

Please Select

What's New?

Fur-Pashmin

Fur-Pashmina \$95.00

Quick Find

Use keywords to find the product you are looking for.  
[Advanced Search](#)

Information

- [Shipping & Returns](#)
- [Privacy Notice](#)
- [Conditions of Use](#)
- [Contact Us](#)

# Let's See What We Have Here

Let's See

Shopping Cart

0 items

Reviews

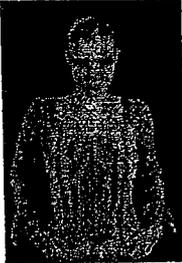
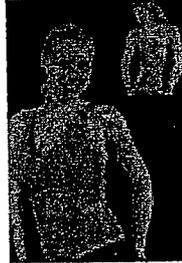
There are currently no product reviews

Languages



Currencies

US Dollar

Product Name+	Price	Buy Now
 10774	\$95.00	<input type="button" value="Buy Now!"/>
 10790	\$79.00	<input type="button" value="Buy Now!"/>
 10791	\$79.00	<input type="button" value="Buy Now!"/>
 10794	\$79.00	<input type="button" value="Buy Now!"/>
 10892	\$129.00	<input type="button" value="Buy Now!"/>

000039



1415-Closeup

\$79.00

**Buy Now!**



1460-Top

\$79.00

**Buy Now!**



2000

\$49.00

**Buy Now!**



9199-Pant

\$195.00

**Buy Now!**



9199-Top

\$79.00

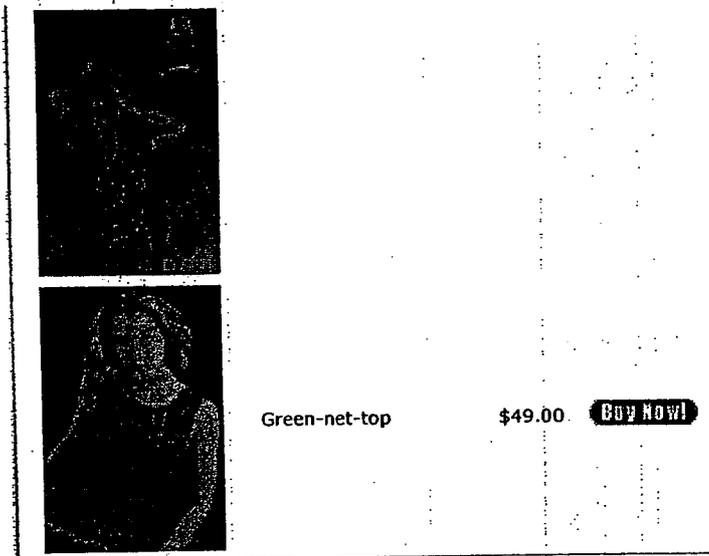
**Buy Now!**

Cape-Top

\$129.00

**Buy Now!**

000040



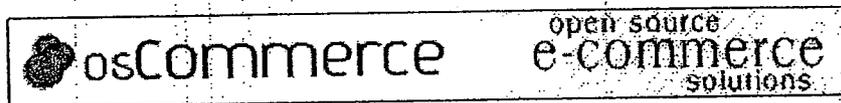
Displaying 1 to 12 (of 12 products)

Result Pages: 1

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000041



Top » Catalog » Tops » Accessories

My Account | Cart Contents | Checkout

Categories

- Accessories-> (8)
- Belly Dancing (4)
- Evening-> (16)
- Prom-> (24)
- Tops-> (13)
- Accessories (1)

Manufacturers

Please Select

What's New?



Check-Shawl \$49.00

Quick Find

Use keywords to find the product you are looking for. Advanced Search

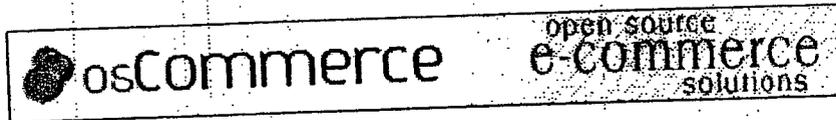
Information

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- Privacy Notice
- Conditions of Use
- Contact Us

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776 requests since Thursday 25 March, 2004

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# Let's See What We Have Here

Let's See

Shopping Cart

0 items

Reviews

There are currently no product reviews

Languages



Currencies

US Dollar

Product Name+	Price	Buy Now
<input checked="" type="checkbox"/> Fringe-Scarf		
Fringe-Scarf	\$49.00	<b>BUY NOW!</b>

Displaying 1 to 1 (of 1 products)

Result Pages: 1

000042



Top » Catalog » Cart Contents

Categories

- Accessories-> (8)
- Belly Dancing (4)
- Evening-> (16)
- Prom-> (24)
- Tops-> (13)

Manufacturers

Please Select

What's New?



Self Print \$39.00

Quick Find

Use keywords to find the product you are looking for. Advanced Search

Information

- Shipping & Returns
- Privacy Notice
- Conditions of Use
- Contact Us

Friday 24 September, 2004

# What's In My Cart?

Your Shopping Cart is empty!

My Account | Cart Contents | Checkout



Shopping Cart

0 items

Reviews

There are currently no product reviews

Languages



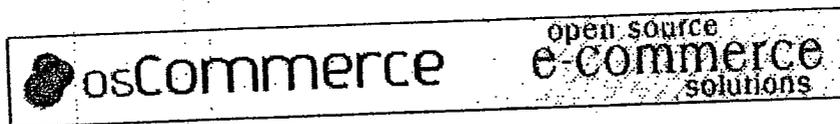
Currencies

US Dollar

Continue

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000043

9/24/2004



TRADEMARK LAW OFFICE 108  
Serial Number: 76/004796  
Mark: ELLE BELLE  
\*\*Please Place on  
\*\*of Response to C

GERALD KADISH\*  
BALRAM KAKKAR\*

OF COUNSEL  
NEAL FELLEBAUM\*  
JEFFREY ZEGEN

\*ALSO MEMBER OF N.J. AND PA. BARS  
\*ALSO MEMBER OF D.C. BAR  
\*\*ALSO MEMBER OF CONN. AND D.C. BARS

**KAKKAR & KADISH**

ATTORNEYS AT LAW  
144 EAST 44<sup>TH</sup> STREET  
SIXTH FLOOR  
NEW YORK, N. Y. 10017

TELEPHONE: (212) 867-2969

FAX: (212) 808-9808

November 19, 2001

VIA CERTIFIED MAIL  
R.R.R.7000 0600 0027 7505 3970

Re: "Box Responses — No Fees"  
Commissioner of Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Att: Douglas M. Lee, Trademark Law Office 108:

Re: Serial Number: 76/004796; Mark: Elle Belle

Dear Mr. Lee:

This office represents Elle Belle Inc.. I am responding to your notice dated July 19, 2001 in connection with the Mark "Elle Belle."

The literal translation of the word "Elle Belle" from French into English is "She Beautiful."

You may reach me at the above numbers should you need to speak to me.

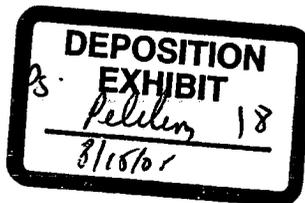
Very truly yours,

*Balram Kakkar*  
Balram Kakkar

Enc.

cc: Elle Belle, Inc.

C:\C:\C:\Elle Belle\Elle Belle PTO Ltr 11 19 01.wpd



00087

# The United States of America



## CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

*The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.*

*The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.*

*A copy of the Mark and pertinent data from the application are part of this certificate.*

*This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.*



A handwritten signature in cursive script, reading "James P. Moore".

Director of the United States Patent and Trademark Office

00088

**Requirements for Maintaining a  
Federal Trademark Registration**

**SECTION 8: AFFIDAVIT OF CONTINUED USE**

The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. §1058, upon the expiration of the following time periods:

- i) At the end of 6 years following the date of registration.
- ii) At the end of each successive 10-year period following the date of registration.

*Failure to file a proper Section 8 Affidavit at the appropriate time will result in the cancellation of the registration.*

**SECTION 9: APPLICATION FOR RENEWAL**

The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. §1059, at the end of each successive 10-year period following the date of registration.

*Failure to file a proper Application for Renewal at the appropriate time will result in the expiration of the registration.*

**No further notice or reminder of these requirements will be sent to the Registrant by the Patent and Trademark Office. It is recommended that the Registrant contact the Patent and Trademark Office approximately one year before the expiration of the time periods shown above to determine the requirements and fees for the filings required to maintain the registration.**

00089

**Int. Cl.: 25**

**Prior U.S. Cls.: 22 and 39**

**United States Patent and Trademark Office**

**Reg. No. 2,657,739**

**Registered Dec. 10, 2002**

**TRADEMARK  
PRINCIPAL REGISTER**

**ELLE BELLE**

**ELLE BELLE, LLC (NEW YORK CORPORATION)  
1020 6TH AVENUE  
NEW YORK, NY 10018**

**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, SINGLET, CORSETS,  
GARTERS, UNDERPANTS, PETTICOATS, HATS,  
HEAD SCARVES, NECKTIES, RAINCOATS, OVER-  
COATS, GREAT COATS, BATHING SUITS, SPORTS**

**OVERALLS, WIND RESISTANT JACKETS AND SKI  
PANTS, IN CLASS 25 (U.S. CLS. 22 AND 39).**

**FIRST USE 10-0-1995; IN COMMERCE 10-0-1995.**

**THE ENGLISH TRANSLATION OF "ELLE  
BELLE" IS "SHE BEAUTIFUL".**

**SER. NO. 76-004,796, FILED 3-15-2000.**

**DOUGLAS LEE, EXAMINING ATTORNEY**

00090



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

ASSISTANT COMMISSIONER FOR TRADEMARKS  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

5008

Aug 28, 2002

*Elle Belle*

NOTICE OF PUBLICATION UNDER 12(a)

- |                                      |                                  |
|--------------------------------------|----------------------------------|
| 1. Serial No.:<br>76/004,796         | 2. Mark:<br>ELLE BELLE           |
| 3. International Class(es):<br>25    |                                  |
| 4. Publication Date:<br>Sep 17, 2002 | 5. Applicant:<br>Elle Belle, LLC |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents  
U.S. Government Printing Office  
PO Box 371954  
Pittsburgh, PA 15250-7954  
Phone: (202)512-1800

By direction of the Commissioner.

00091

50080

UNITED STATES PATENT AND TRADEMARK OFFICE

<b>SERIAL NO.</b> 76/004796		<b>APPLICANT</b> ELLE BELLE, LLC		<b>PAPER NO.</b>	
<b>MARK</b> ELLE BELLE				<b>ADDRESS:</b> Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov	
<b>ADDRESS</b> BALRAM KAKKAR KAKKAR & KADISH 144 EAST 44TH STREET SIXTH FLOOR NEW YORK, N. Y. 10017			<b>ACTION NO.</b> 01		If no fees are enclosed, the address should include the words "Box Responses - No Fee."
			<b>MAILING DATE</b> 07/19/01		
			<b>REF. NO.</b>		
FORM PTO-1525 (5-90)		U.S. DEPT. OF COMM. PAT. & TM OFFICE			
Please provide in all correspondence:					
<ol style="list-style-type: none"> <li>1. Filing Date, serial number, mark and Applicant's name.</li> <li>2. Mailing date of this Office action.</li> <li>3. Examining Attorney's name and Law Office number.</li> <li>4. Your telephone number and ZIP code.</li> </ol>					

**A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT.**  
*For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.*

RE: Serial Number: 76/004796

The assigned trademark attorney has reviewed the referenced application and determined the following.

**NO CONFLICTING MARK FOUND**

The trademark attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

**INFORMALITIES**

Before the application can be considered further, the following informal issue must be addressed.

**TRANSLATION REQUIRED**

The applicant must submit an English translation of the mark. 37 C.F.R. Section 2.61(b); TMEP section 809.

00092

76/004796

-2-

A prompt written response will expedite the prosecution of this application.

  
Douglas M. Lee  
Trademark Examining Attorney  
Law Office 108  
(703) 308-9108 ext. 198  
email: douglas.lee4@uspto.gov

00093

GERALD KADISH\*  
BALRAM KAKKAR\*

OF COUNSEL  
NEAL FELLEBAUM\*  
JEFFREY ZEGEN

\*ALSO MEMBER OF N.J. AND PA. BARS  
\*ALSO MEMBER OF D.C. BAR  
\*\*ALSO MEMBER OF CONN. AND D.C. BARS

**KAKKAR & KADISH**

ATTORNEYS AT LAW  
144 EAST 44TH STREET  
SIXTH FLOOR  
NEW YORK, N. Y. 10017

TELEPHONE: (212) 867-2969

FAX: (212) 808-9808

March 10, 2000

VIA CERTIFIED MAIL  
R.R.R. 7099 3400 0001 8632 3665

Re: Applications to Register  
Elle Belle as a trademark

Commissioner of Patents & Trademarks  
Patent & Trademark Office  
Washington, D.C. 20231

Dear Sir or Madam:

In connection with the above-referenced mark, enclosed is an application for registration on the Principal Register, a typed drawing, specimens of the mark as actually used, a check in the amount of \$325 in payment of the filing fee for each application, and an appointment of myself as counsel in connection with the above-referenced applications.

You may reach me at the above numbers should you need to speak to me.

Very truly yours,

Balram Kakkar

Enc.  
Certified mail, return receipt requested  
cc: Elle Belle, Inc.

D:\Clients\Elle Belle\Elle Belle PTO Ltr 3 10 00.wpd

00094

APPLICATION FOR TRADEMARK REGISTRATION

Mark: ELLE BELLE

Int'l Class No.: 25

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Elle Belle, LLC

A corporation in good standing in the state of New York

1020 6<sup>th</sup> Avenue

New York, N.Y. 10018

The above-identified applicant has adopted and is using the trademark shown in the accompanying drawing on 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, and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.

The trademark was first used in connection with said goods on October 1995; was first used in interstate commerce on October, 1995; and is now in use in such commerce.

The trademark is used by imprinting it on the subject goods, and printing it on labels made of paper and other material and three (3) specimens showing the mark as actually used are presented herewith.

00099

Applicant hereby appoints BALRAM KAKKAR, of 144 E. 44th Street, Sixth Floor, New York, N.Y. 10017, a member of the bar of the States of New York and Connecticut and District of Columbia, to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the certificate of registration.

Elle Belle, LLC

By: \_\_\_\_\_

*Paramjit Singh*  
Paramjit Singh  
President

Elle Belle, LLC  
1020 6<sup>th</sup> Avenue,  
New York, N.Y. 10018

Date of first use: October 1995

Goods: 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.

00097

CERTIFICATION OF MAILING

I hereby certify that the enclosed correspondence concerning the application to register ELLE BELLE as a trademark is being deposited with the United States Postal Service, certified mail, return receipt requested, in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on March 10, 2000.

Dated: March 10 , 2000

By: Balram Kakkar

00095

Elle Belle, LLC  
1020 6<sup>th</sup> Avenue  
New York, N.Y. 10018

Date of first use: October 1995

Date of first use in commerce: October 1995

Goods: 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

International Class: 25

**ELLE BELLE**

00096



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,

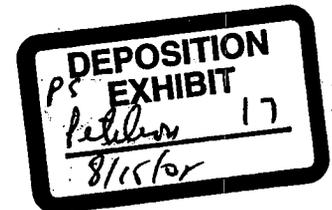
Petitioner,

vs.

Elle Belle, LLC,

Respondent.  
-----X

Cancellation No. 92042991



**DEFENDANTS' RESPONSE TO  
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.116 and 2.120, Respondent, Elle Belle, LLC, ("Respondent" or "Elle Belle"), by its attorneys, Kakkar & Kadish, hereby responds to Petitioner, Hachette Filipacchi Presse's ("Petitioner" or "Hachette"), First Set of Interrogatories as follows:

**GENERAL OBJECTIONS AND RESERVATION OF RIGHTS**

The following objections apply to each of Respondent's responses to Petitioner's Interrogatories and accompanying definitions and instructions:

- 1) Respondent objects to these Interrogatories to the extent they call for information protected by attorney work product or attorney-client privilege or any other applicable privileges or exemptions. Response to any Interrogatory to which a privilege could be have been asserted will not constitute a waiver of any claim of privilege. Respondent

reserves the right to prohibit Petitioner from using such privileged information in any shape, manner or form.

- 2) Respondent objects to these Interrogatories to the extent they are neither relevant to the issues pending in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. In responding to these Interrogatories, Respondent does not concede the relevance thereof to the subject matter of this litigation nor the admissibility of such information.
- 3) Respondent objects to these Interrogatories to the extent they are premature. With respect to the responses set forth herein, Respondent's investigation continues. Respondent reserves the right to supplement or amend any response as necessary or appropriate.
- 4) Respondent objects to these Interrogatories to the extent they are overly broad and unduly burdensome.
- 5) Respondent objects to these Interrogatories to the extent they themselves characterize the evidence to be presented in this litigation.
- 6) Respondent objects to any Interrogatory to the extent it is duplicative of any other Interrogatory.
- 7) Respondent objects to these Interrogatory to the extent that they purport to impose upon Respondent duties and obligations that exceed or differ from those imposed by the Federal Rules of Civil Procedure, any discovery plan that the parties may enter, and any other applicable order or rule. Respondent will answer the Interrogatories and will supplement its responses thereto only to the extent required by the Federal Rules of Civil

Procedure, any discovery plan the parties may enter, and any other applicable order or rule.

- 8) Respondent objects to these Interrogatories to the extent they call for disclosure of information gathered and/or learned in anticipation of litigation and/or trial preparation, without making the showing required by the Federal Rules of Civil Procedure.
- 9) Respondent objects to these Interrogatories to the extent they call for confidential or proprietary commercial information.
- 10) Respondent reserves the right to amend or supplement these objections.
- 11) The following specific responses are subject to and without waiver of the foregoing general responses and objections.

### SPECIFIC RESPONSES

#### Interrogatory 1

State the nature of Respondent's business with which it has used Respondent's Mark and the period of time in which it has conducted this business.

#### Response

Respondent uses its Mark in association with the wholesale and retail sales of women's clothing and accessories. Respondent has conducted such business under its Mark for nearly nine (9) years.

#### Interrogatory 2

Identify all variations of Respondent's Mark used by Respondent.

#### Response

Respondent has not used any other variation of its Mark.

**Interrogatory 3**

State the date of the creation of Respondent's Mark and the circumstances relating to the creation of Respondent's Mark.

**Response**

Respondent's Mark was created no later than October of 1995 at which time a designer with whom Respondent was associated suggested the Mark for Respondent's use.

**Interrogatory 4**

Identify the person involved in the creation of Respondent's Mark.

**Response**

Respondent's Mark was suggested to Respondent by a designer with whom Respondent was associated in October of 1995. Respondent has no recollection of the designer's name.

**Interrogatory 5**

Identify by common commercial descriptive name each type of good and/or service bearing Respondent's Mark that has been offered for sale and for each type of good or service:

- a) State the date of first use;
- b) State on an annual basis, the dollar volume of sales; and
- c) State, on an annual basis, the dollar volume expended by Respondent to promote the sale of each such good or service.

**Response**

Respondent objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and requests confidential proprietary commercial information. Notwithstanding and preserving this objection, Respondent is in the business of selling women's clothing, namely tops, bottoms, dresses and accessories, and dance costumes.

- a) Respondent's Mark has been used in connection with the items listed above no later than October of 1995.
- b) Respondent sells over one million dollars (\$1,000,000) worth of goods annually.
- c) Respondent expends approximately two thousand dollars (\$2,000) annually to promote its good name and Mark in relation to the sale of these goods.

**Interrogatory 6**

Identify those persons most familiar with the use of Respondent's Mark.

**Response**

Respondent objects to this Interrogatory on the grounds that the Interrogatory as drafted is unclear and Respondent is uncertain as to what context Petitioner refers by "persons most familiar." Notwithstanding and preserving its objection, Paramjit Singh, Kuldip Singh and Jaswinder Singh are the individuals most familiar with the use of Respondent's Mark.

**Interrogatory 7**

Identify by name, job, title and address those persons responsible for the promotion, sale and distribution of Respondent's Products.

**Response**

The following individuals are responsible for the promotion, sale and distribution of

**Respondent' Products:**

Paramjit Singh, Kuldip Singh, and Jaswinder Singh  
Partners in Elle Belle, LLC  
30 Juniper Lane  
Muttontown, NY 11791  
212.768.7200

Nancy Quizhipi  
Employee  
41-40 63<sup>rd</sup> St.  
Woodside, NY 11377  
917.683.1544

Maryana Bhowmik  
Employee  
84-29 88<sup>th</sup> St. 2<sup>nd</sup> Fl.  
Woodhaven, NY 11421  
718.805.5993

Rene Peralta  
Employee  
25-03 72<sup>nd</sup> St.  
East Elmhurst, NY  
11370  
718.205.4682

**Interrogatory 8**

Identify all distributors or sellers through which Respondent's Products are promoted and sold and the respective territories in which Respondent's Products are promoted and sold.

**Response**

Respondent's goods are sold only through its wholesale store located at 39 W. 38<sup>th</sup> Street, and its retail store located at 1020 6<sup>th</sup> Avenue, both in New York City. Respondent's products are promoted throughout the United States.

**Interrogatory 9**

State the basis for Respondent's alleged claim of rights in Respondent's Mark.

**Response**

Respondent objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and

requires Respondent to characterize the evidence to be presented in this litigation.

Notwithstanding and preserving this objection, Respondent claims rights in its Mark by virtue of its rightful and continual use of the Mark from October 1995 to date, its federal registration of the Mark, and its registration with the New York Secretary of State of its company, ELLE BELLE, LLC.

**Interrogatory 10**

Identify any time periods when the use of Respondent's Mark was discontinued and the reasons for such discontinuance.

**Response**

There has been no period of discontinuance since Respondent's initial use of the Mark no later than October of 1995.

**Interrogatory 11**

Identify the channels of trade used for Respondent's Products.

**Response**

Respondent's goods are distributed and sold only through its wholesale store located at 39 W. 38<sup>th</sup> Street, its retail store located at 1020 6<sup>th</sup> Avenue, and its internet web site located at *www.elle-belle.com*.

**Interrogatory 12**

Identify the nature and geographic location of Respondent's Customers.

requires Respondent to characterize the evidence to be presented in this litigation.

Notwithstanding and preserving this objection, Respondent claims rights in its Mark by virtue of its rightful and continual use of the Mark from October 1995 to date, its federal registration of the Mark, and its registration with the New York Secretary of State of its company, ELLE BELLE, LLC.

**Interrogatory 10**

Identify any time periods when the use of Respondent's Mark was discontinued and the reasons for such discontinuance.

**Response**

There has been no period of discontinuance since Respondent's initial use of the Mark no later than October of 1995.

**Interrogatory 11**

Identify the channels of trade used for Respondent's Products.

**Response**

Respondent's goods are distributed and sold only through its wholesale store located at 39 W. 38<sup>th</sup> Street, its retail store located at 1020 6<sup>th</sup> Avenue (both in New York City), and its internet web site located at *www.elle-belle.com*.

**Interrogatory 12**

Identify the nature and geographic location of Respondent's Customers.

**Response**

Respondent's customers consist of retailers, wholesalers, and private individuals. These customers are located worldwide, in particular, the United States, South America, Europe, Africa, the Middle East, and the West Indies.

**Interrogatory 13**

State all facts concerning each instance in which any person has inquired of Respondent whether it or its goods or services are connected in any way with Petitioner or Petitioner's goods or services or in which any person has indicated such person's belief that Respondent or its goods are connected in any way with or Petitioner's goods or services, including all persons having knowledge thereof.

**Response**

There have been no such instances.

**Interrogatory 14**

Identify all legal proceedings (other than the instant proceeding) instituted by or against Respondent, concerning Respondent's Mark.

**Response**

Respondent objects to this Interrogatory on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding and preserving this objection, there have been no such legal proceedings to Respondent's best knowledge.

**Interrogatory 15**

Identify all agreements relating to the use of Respondent's Mark.

**Response**

Respondent objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and requests confidential proprietary commercial information. Notwithstanding and preserving its objection, there are no such agreements.

**Interrogatory 16**

- a) Identify any trademark search or Market Study conducted by Respondent in connection with Respondent's adoption, use, intent to use, or application for registration of Respondent's Mark.
- b) Identify the person most knowledgeable regarding each such Market Study or trademark search identified in subsection (a) of Interrogatory 16.

**Response**

- a) Respondent conducted no such searches or studies. However, Respondent's accountant inquired with the New York Secretary of State, Division of Corporations, as to whether the name ELLE BELLE was available for use as the name of a corporate entity, and Respondent's attorney conducted a trademark search on the United States Patent and Trademark Office web site.
- b) Respondent's accountant, G.K. Khurana, and Respondent's attorney, Balram Kakkar, are the individuals most knowledgeable regarding the information provided in subsection (a) above.

**Interrogatory 17**

- a) State the circumstances under which Respondent first learned of Petitioner's use or registration of Petitioner's Marks and the individual(s) who have knowledge with respect thereto; and
- b) State all other information known to Respondent regarding Petitioner or Petitioner's Marks and the identity of the persons having such knowledge.

**Response**

Respondent objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and requests confidential proprietary commercial information. Notwithstanding and preserving its objection:

- a) Respondent first learned of Petitioner's marks upon receipt of Petitioner's infringement notice. Paramjit Singh is the individual with knowledge with respect thereto.
- b) The only other information known to Respondent regarding Petitioner or Petitioner's Marks is the information that has been revealed in connection with this proceeding and the events leading to this proceeding. Paramjit Singh is the individual with knowledge with respect thereto.

**Interrogatory 18**

Identify all media publications which have mentioned Respondent's Mark.

**Response**

Respondent's Mark and goods sold under its Mark were featured on a segment on NBC News.

**Interrogatory 19**

With respect to any of the factors outlined by the Court of Appeals in In re du Pont, 476 F. 2d 1357, set forth each that you contend does not favor a conclusion of likelihood of confusion in this proceeding, and state all facts concerning the contention.

**Response**

Respondent objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome, imposes obligations greater than those imposed by the Federal Rules of Civil Procedure, is not reasonably calculated to lead to the discovery of admissible evidence, and requires Respondent to characterize the evidence to be presented in this litigation.

**Interrogatory 20**

Identify all third party marks that you contend are relevant to the determination of issues in this proceeding, and state all facts pertaining to the use of the marks.

**Response**

Respondent objects to this Interrogatory to the extent it requests Respondent to "state all facts pertaining to the use of the marks" on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence. Respondent also objects to this Interrogatory on the grounds of impossibility as Respondent clearly cannot have knowledge of all facts pertaining to other parties' use of their marks. Notwithstanding and preserving this objection, Respondent contends that any third party mark containing the word "ELLE" or any similar variation thereof is relevant to the determination of this proceeding.

**Interrogatory 21**

State the range of prices for the goods or services offered for sale, under Respondent's Mark.

**Response**

Respondent's goods sold under its Mark range in price from twenty dollars (\$20) to one thousand dollars (\$1000).

**Interrogatory 22**

If you contend that Respondent's Date of First use in commerce for the Elle Belle Mark precedes Petitioner's date of first use in commerce for its Elle Marks, state all facts concerning that contention.

**Response**

Respondent makes no such contention at this time.

**Interrogatory 23**

If you contend that there is no likelihood of confusion between Petitioner's Marks and Respondent's Mark, state all facts concerning that contention.

**Response**

Respondent objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, imposes obligations greater than those imposed by the Federal Rules of Civil Procedure, and requires Respondent to characterize the evidence to be presented in this litigation.

**Interrogatory 24**

If you contend that Petitioner's Petition to Cancel is barred by the doctrine of laches, state all facts concerning that contention.

**Response**

Petitioner's Petition to Cancel is barred by the doctrine of laches because Petitioner has purposely chosen to pursue this Petition almost a decade after Respondent's first use of the Mark in commerce. During this prolonged period, Respondent has invested extensive time, effort and money in developing consumer recognition and confidence in its Mark. Further, Respondent has accumulated large sums of inventory displaying its Mark, as well as labels, tags, packaging, signage, etc., also bearing its Mark. Petitioner's sudden contention against Respondent's rights to its Mark after nearly a decade of Respondent's use without any objection by Petitioner would thereby greatly harm and create undue hardship for Respondent.

**Interrogatory 25**

If you contend that Petitioner has discontinued the use of all or part of the goods sold under Petitioner's Marks, state all facts concerning that contention.

**Response**

Respondent objects to this Interrogatory on the ground that it is premature. As the parties are still in the discovery stage of litigation, Respondent currently has insufficient knowledge to adequately respond to this Interrogatory. Notwithstanding and preserving its objection, Respondent makes no such contention at this time and reserves the right to amend its response upon conclusion of discovery.

**Interrogatory 26**

If you contend that Petitioner's Marks are not famous, state all facts concerning that contention.

**Response**

Respondent objects to this Interrogatory on the ground that it is premature. As the parties are still in the discovery stage of litigation, Respondent currently has insufficient knowledge to adequately respond to this Interrogatory. Notwithstanding and preserving its objection, Respondent makes no such contention at this time and reserves the right to amend its response upon conclusion of discovery.

**Interrogatory 27**

If you contend that there is a defect or deficiency in Petitioner's rights in Petitioner's Marks, state all facts concerning that contention.

**Response**

Respondent objects to this Interrogatory on the ground that it is premature. As the parties are still in the discovery stage of litigation, Respondent currently has insufficient knowledge to adequately respond to this Interrogatory. Notwithstanding and preserving its objection, Respondent makes no such contention at this time and reserves the right to amend its response upon conclusion of discovery.

**Interrogatory 28**

For each individual likely to have discoverable information that you may use to support your claims or defenses, provide the information required under Rule 26(a)(1)(A) of the Federal Rules of Civil Procedure.

**Response**

The individuals listed in Response No. 7 are likely to have discoverable information in support of Respondent's claims or defenses.

**Interrogatory 29**

Identify every person that participated in providing responses to these interrogatories and documents responsive to Petitioner's First Request for Production of Documents to Respondent.

**Response**

Paramjit Singh is the only individual that participated in providing responses to these interrogatories and documents responsive to Petitioner's First Request for Production of Documents.

Dated: September 24, 2004  
New York, New York

Respectfully Submitted,



Kakkar & Kadish

By: Balram Kakkar, Esq.

Hui Ri Kim, Esq.

Attorneys for Defendant

261 Madison, 25<sup>th</sup> Floor

New York, NY 10016

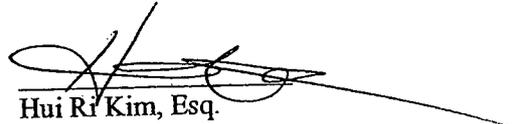
(212) 867-2969

**CERTIFICATE OF SERVICE**

I, Hui Ri Kim, under penalty of perjury state that:

1. I am an attorney in good standing, duly admitted to practice law before the courts of the State of New York.
2. On September 24, 2004, I served the within Respondent's Response to Petitioner's First Set of Interrogatories upon Petitioner, Hachette Filipacchi Presse, by mailing it via Federal Express to the party's attorney addressed as follows:

Perla M. Kuhn, Esq.  
Kristin B. Whiting  
One Battery Park Plaza  
New York, NY 10004-1482  
(212) 837-6000

  
Hui Ri Kim, Esq.

VERIFICATION

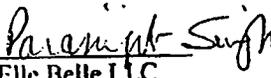
I certify that the statements made by me in the foregoing answers to Interrogatories are true and correct to the best of my knowledge, information and belief.

I certify that the copies of any documents annexed hereto are exact copies of the entire document and that the existence of other versions or renditions of these document sare uknowm to me and, if such become later known or available, I shall serve them promptly upon the propounding party.

I hereby certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire port or reports rendered by them. that the existence of other reports of said experts. either written or oral. are unknown to me and, if such become later known or available, I shall serve them promptly upon the propounding party.

I certify that the foregoing statements made by me are true. I am aware that. if any of the foregoing statements made by me are willfully false, I am subject to punishment for contempt of court.

Dated: May 19, 2005

  
Elle Belle LLC  
By: Paramjit Singh





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.<sup>1</sup> 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.)

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<sup>1</sup> 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.<sup>2</sup>

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

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<sup>2</sup> 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.

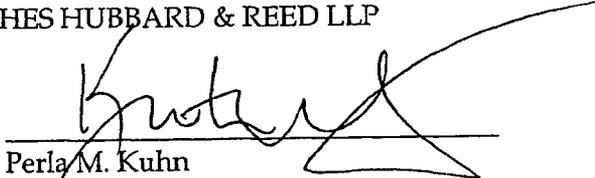
If the Board denies Hachette's motion to amend, Hachette respectfully requests that the Board reset Hachette's testimony period so that the testimony period commences not earlier than 30 days following the service of the Board's decision to that effect.

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,

HUGHES HUBBARD & REED LLP

By: 

Perla M. Kuhn

Kristin B. Whiting

One Battery Park Plaza  
New York, New York 10004  
(212) 837-6000  
*Attorneys for Petitioner*

RECEIVED

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, : AMENDED PETITION TO CANCEL  
 :  
 :  
 -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

ESTTA Tracking number: **ESTTA57294**

Filing date: **12/12/2005**

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,
Correspondence Address	PERLA M. KUHN HUGHES HUBBARD AND REED LLP ONE BATTERY PARK PLAZA NEW YORK, NY 10004-1482  whiting@hugheshubbard.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Kristin B. Whiting
Filer's e-mail	Whiting@hugheshubbard.com
Signature	/Kristin B. Whiting/
Date	12/12/2005
Attachments	Hachette Motion to Amend1_1_2.pdf ( 43 pages )

<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>
ELLE	2,120,702	LANDSCAPING PRODUCTS AND CULINARY PRODUCTS  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

<u>Trademark</u>	<u>Registration No.</u>	<u>Goods or Services</u>
		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 6<sup>th</sup> 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.

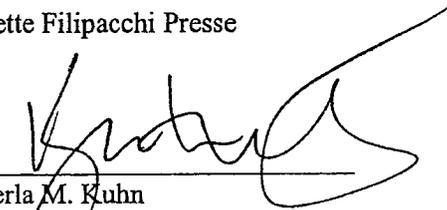
22. Respondent's Registration No. 2,657,739 for the ELLE BELLE mark should be cancelled because Respondent committed fraud in the procurement of that Registration.

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

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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.  
Balam Kakkar, Esq.  
Kakkar & Kadish  
261 Madison Avenue, 25<sup>th</sup> 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