

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. : |
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**PETITIONER'S OPPOSITION TO RESPONDENT ELLE BELLE LLC'S
MOTION TO ACCEPT LATE FILED ANSWER**

Petitioner Hachette Filipacchi Presse ("Hachette" or "Petitioner"), through its undersigned attorneys, submits this memorandum of law in opposition to Elle Belle, LLC's ("Elle Belle" or "Respondent") Motion to Accept A Late Filed Answer.

Respondent's Motion Fails To Show Good Cause

Respondent's Motion to Accept Late Filed Answer must be denied because Respondent fails to show good cause for its failure to file a timely answer. Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 508. Pursuant to the order issued by the Trademark Trial and Appeal Board (the "Board" or "TTAB") dated February 15, 2006, Respondent had thirty days, or



05-24-2006

until March 17, 2006, to file its answer to Petitioner's amended petition.

Respondent failed to do so until nearly three months after the Board's order.

Respondent claims that it never received the Board's order and thus was unaware of its deadline to file an answer. (Respondent's Motion to Accept Late Answer Filed ("Respondent's Motion"), annexed hereto as Exhibit A, at 1-2). The Board has the correct address for Respondent's attorney Kakkar & Kadish and Respondent has never had a problem with receipt of prior TTAB orders. (See Exhibit B (annexing TTABVUE page for the proceeding)).

Further, Respondent was aware that Petitioner had filed a Motion to Amend Petition to Cancel and Suspend Proceedings on December 12, 2005. (Exh. A, Respondent's Motion, at 1). Although Respondent was on notice that the Board would be issuing an order that would affect deadlines in the proceeding, it neglected to timely monitor the progress of the proceeding on the TTAB's website or contact the TTAB when it failed to receive a decision on the motion. This negligent conduct falls short of the "good cause" that must be shown by Respondent to prevail on its motion.

Finally, Respondent served its Motion and Late Answer on May 4, 2006 by mail after Hachette had already moved for summary judgment on April 26, 2006. Allowing Respondent to Answer at this late date may prejudice Petitioner because Respondent has changed certain of its prior admissions in its late-filed Answer; for example, by changing its admission that it did not contest the fame of at least some of Petitioner's Marks to now denying their fame. (Compare

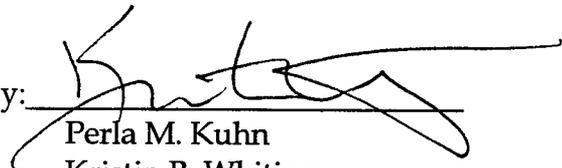
Respondent's Response to Petitioner's First Request for Admissions, Exh. C, ¶ 63;
Answer at Exhibit A, ¶ 4).

Conclusion

Based on the foregoing, Petitioner respectfully requests that the Board
deny Respondent's Motion.

Dated: May 24, 2006

HUGHES HUBBARD & REED LLP

By: 

Perla M. Kuhn

Kristin B. Whiting

One Battery Park Plaza

New York, NY 10004-1482

(212) 837-6000

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petitioner's Opposition To Respondent Elle Belle LLC's Motion to Accept Late Filed Answer was served on May 24, 2006 by first class mail, addressed as follows:

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

Dated: New York, N.Y.
May 24, 2006

By 
Mary Rose Baffi

CERTIFICATE OF MAILING

I hereby certify that this Petitioner's Opposition To Respondent Elle Belle LLC's Motion to Accept Late Filed Answer is being deposited on May 24, 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: New York, New York
May 24, 2006



MaryRose Baffi



**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

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|-----------------------------|---|----------------------------|
| -----X | : | |
| Hachette Filipacchi Presse, | : | |
| | : | |
| Petitioner, | : | MOTION TO ACCEPT |
| | : | LATE FILED ANSWER |
| -v- | : | |
| | : | |
| Elle Belle, LLC | : | Cancellation No.: 92042991 |
| | : | |
| Respondent. | : | |
| -----X | : | |

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Respondent, Elle Belle, LLC, ("Elle Belle") a New York limited liability company, with an address at 1020 6th Avenue, New York, N.Y. 10016, by its attorneys, Kakkar & Associates, submits this motion to request that the Board accept Respondent's late filed Answer to Petitioner's Amended Petition to Cancel (attached as Exhibit A).

On December 12, 2005, Petitioner, Hachette Filipache Presse ("Hachette"), filed a Motion to Amend Petition to Cancel and Suspend Proceedings with an Amended Petition to Cancel attached as an exhibit. By notice dated February 15, 2006 (attached as Exhibit B), the Board determined that Petitioner's Amended Petition to Cancel would be its operative pleading and ordered Respondent to file an answer to the Amended Petition to Cancel within thirty (30) days thereof.

The reason for Respondent's request that the Board accept its late filed Answer to Petitioner's Amended Petition to Cancel is that Respondent never received the Board's notice dated February 15, 2006. Therefore it was unaware of the Board's finding in regards to the

Petitioner's Motion to Amend Petition to Cancel and Suspend Proceedings and the deadline set by the Board upon the Respondent.

While the Petitioner would not suffer any hardship should the Board accept Respondent's attached answer, Respondent would suffer great hardship if Respondent's Answer is rejected by the Board. Moreover, on numerous occasions per the Petitioner's request, Respondent has agreed to extend discovery, testimony and other dates throughout this proceeding.

WHEREFORE, Respondent respectfully prays that the attached Answer to Petitioner's Amended Petition to Cancel be accepted.

Respectfully Submitted,

ELLE BELLE, LLC

By: 

Hui Ri Kim, Esq.

Kakkar & Associates

261 Madison Avenue, 25th Fl.,

New York, N.Y. 10016

(212) 867 2969

EXHIBIT A

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, | : |
| | : |
| -v- | : |
| | : |
| Elle Belle, LLC | : |
| | : |
| Respondent. | : |
| -----X | |

**ANSWER TO PETITIONER'S
AMENDED PETITION TO
CANCEL**

Cancellation No.: 92042991

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Respondent, Elle Belle, LLC, ("Elle Belle") a New York limited liability company, with an address at 1020 6th Avenue, New York, N.Y. 10018, by its attorneys, Kakkar & Associates, responds to the Amended Petition to Cancel ("Petition") filed by the Petitioner, Hachette Filipache Presse ("Hachette") as follows:

1. Responding to the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7 and 13 of the Petition, Respondent has insufficient knowledge and information to admit or deny the allegations contained therein.
2. Respondent admits that the allegations in paragraphs 8 and 9 of the Petition.
3. Responding to the allegations contained in paragraph 10 of the complaint, Respondent incorporates each of its answers to the allegations in paragraphs 1 to 9 as if fully restated herein.
4. Respondent denies the allegations in paragraphs 11, 12, 14 and 16 through 23 of the Petition.

5. Responding to the allegations contained in paragraph 15 of the complaint, Respondent incorporates each of its answers to the allegations in paragraphs 1 to 4 as if fully restated herein.

AFFIRMATIVE DEFENSES

1. Petitioner's claims are barred by the principal of laches.
2. Respondent's marks are sufficiently distinct such that the any likelihood of confusion between the two marks is at most remote.
3. Respondent's marks are sufficiently distinct such that any likelihood that the Respondent's mark would result in any dilution of Petitioner's mark is remote.
4. Petitioner's claims are barred because the interests asserted by Petitioner do not constitute protectable interests as a matter of law.
5. Petitioner's claims are barred because Petitioner has sustained no actual damages.
6. Petitioner has abandoned any rights to the mark "Elle" by its failure to use said mark nationwide in commerce in international class 25 in which Respondent's mark is registered.
7. Petitioner has abandoned any rights to the mark "Elle" by its failure to use the mark nationwide in connection with the goods and services identified in Petitioner's Registration No. 0862001, including "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, brassieres, undershirts, underwear, bathing suits, jodphurs, knickers, stockings, ties, scarves, square shawls, hats, caps, gloves, and slippers. As such Petitioner has no rights to the mark "Elle" for use in said goods and services and there is no likelihood of confusion between Petitioner's "Elle" marks and Respondent's mark "Elle Belle."

8. Petitioner has abandoned any rights to the mark "Elle" by its failure to use the mark nationwide in commerce in connection with the goods and services identified in Petitioner's Registration No. 1348158, including, "footwear-namely, shoes, boots, slippers, sandals and clogs" and as such there is no likelihood of confusion between Petitioner's "Elle" marks and Respondent's mark "Elle Belle."

9. Petitioner has abandoned any rights to the mark "Elle" in connection with lingerie by its failure to use the mark nationwide in connection with lingerie since it obtained Registration No. 1454393 and as such there is no likelihood of confusion between Petitioner's "Elle" marks and Respondent's mark "Elle Belle."

WHEREFORE, Respondent prays that the Petition be dismissed and the relief sought by the Petitioner be denied.

ELLE BELLE, LLC

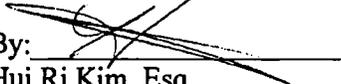
By: 
Hui Ri Kim, Esq.
Kakkar & Associates
261 Madison Avenue, 25th Fl.,
New York, N. Y. 10016
(212) 867 3065

EXHIBIT B

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: February 15, 2006

Cancellation No. 92042991

HACHETTE FILIPACCHI PRESSE

v.

Elle Belle, LLC

Jyll S. Taylor, Attorney:

Petitioner's combined motion, filed December 12, 2005, to amend the petition for cancellation to add a claim of fraud, reset the testimony periods and suspend this proceeding pending the outcome of the motion to amend is granted as uncontested.¹ See Trademark Rule 2.127(a). Accordingly, petitioner's amended petition for cancellation is now petitioner's operative pleading in this case. Respondent is allowed until **thirty days** from the mailing date of this order to file an answer to the amended petition.

Trial dates are reset as indicated below.

THE PERIOD FOR DISCOVERY TO CLOSE: CLOSED

30-day testimony period for party
in position of plaintiff to close: May 31, 2006

¹ In view of the Board's December 15, 2005 suspending this proceeding, petitioner's motion to suspend will be given no further consideration.

30-day testimony period for party
in position of defendant to close:

July 30, 2006

15-day rebuttal testimony period
to close:

September 13, 2006

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

.oOo.

CERTIFICATE OF MAILING

I, Hui Ri Kim, hereby certify that on May 4, 2006, this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Hughes Hubbard & Reed, LLP
Kristin Whiting, Esq.
One Battery Park Plaza
New York, N.Y. 10004-1482



Hui Ri Kim

Dated: May 4, 2006
New York, NY





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TTABVUE. Trademark Trial and Appeal Board Inquiry System

Cancellation**Number:** 92042991**Filing Date:** 02/27/2004**Status:** Pending**Status Date:** 03/03/2004**Interlocutory Attorney:** JYLL S TAYLOR**Defendant****Name:** Elle Belle, LLC**Correspondence:** BALRAM KAKKAR, ESQ.
KAKKAR & KADISH
261 MADISON AVENUE, 25TH FLOOR
NEW YORK, NY 10016
hui@kakkarkadish.com**Serial #:** 76004796**Registration #:** 2657739**Application Status:** Cancellation Pending**Mark:** ELLE BELLE**Plaintiff****Name:** HACHETTE FILIPACCHI PRESSE**Correspondence:** PERLA M. KUHN
HUGHES HUBBARD AND REED LLP
ONE BATTERY PARK PLAZA
NEW YORK, NY 10004-1482
whiting@hugheshubbard.com**Serial #:** 72157211**Registration #:** 758137**Application Status:** Renewed**Mark:** ELLE**Prosecution History**

| # | Date | History Text | Due Date |
|-----------|------------|--|----------|
| <u>29</u> | 05/18/2006 | <u>SUSPENDED PENDING DISP OF OUTSTNDNG MOT</u> | |
| <u>28</u> | 05/04/2006 | <u>ANSWER</u> | |
| <u>27</u> | 04/26/2006 | <u>P'S MOTION FOR SUMMARY JUDGMENT</u> | |
| <u>26</u> | 02/15/2006 | <u>R ALLOWED 30 DAYS TO FILE ANSWER, T.D. RESET</u> | |
| <u>25</u> | 12/15/2005 | <u>SUSPENDED PENDING DISP OF OUTSTNDNG MOT</u> | |
| <u>24</u> | 12/12/2005 | <u>P'S MOTION TO AMEND PLEADING/AMENDED PLEADING</u> | |
| <u>23</u> | 12/12/2005 | <u>STIPULATION FOR AN EXTENSION OF TIME</u> | |
| <u>22</u> | 10/25/2005 | <u>EXTENSION OF TIME GRANTED</u> | |
| <u>21</u> | 10/03/2005 | <u>OTHER FILING</u> | |
| <u>20</u> | 08/26/2005 | <u>STIPULATION NOTED AND APPROVED</u> | |
| <u>19</u> | 08/04/2005 | <u>STIP PROTECTIVE ORDER</u> | |
| <u>18</u> | 06/22/2005 | <u>EXTENSION OF TIME GRANTED</u> | |
| <u>17</u> | 06/22/2005 | <u>STIPULATION FOR AN EXTENSION OF TIME</u> | |
| <u>16</u> | 06/17/2005 | <u>EXTENSION GRANTED</u> | |
| <u>15</u> | 06/01/2005 | <u>STIPULATION FOR AN EXTENSION OF TIME</u> | |

| | | | |
|-----------|------------|---|------------|
| <u>14</u> | 03/01/2005 | <u>EXTENSION GRANTED</u> | |
| <u>13</u> | 02/28/2005 | <u>P'S MOTION FOR AN EXTENSION OF TIME</u> | |
| <u>12</u> | 12/28/2004 | <u>EXTENSION GRANTED</u> | |
| <u>11</u> | 12/22/2004 | <u>P'S MOT FOR EXTEN. OF TIME W/ CONSENT</u> | |
| <u>10</u> | 12/07/2004 | <u>EXTENSION GRANTED</u> | |
| <u>9</u> | 11/16/2004 | <u>P'S MOT FOR EXTEN. OF TIME W/ CONSENT</u> | |
| <u>8</u> | 11/23/2004 | <u>EXTENSION GRANTED</u> | |
| <u>7</u> | 11/03/2004 | <u>P'S MOT FOR EXTEN. OF TIME W/ CONSENT</u> | |
| <u>6</u> | 09/17/2004 | <u>EXTENSION GRANTED</u> | |
| <u>5</u> | 09/13/2004 | <u>P'S MOT FOR EXTEN. OF TIME W/ CONSENT</u> | |
| <u>4</u> | 04/15/2004 | <u>ANSWER</u> | |
| <u>3</u> | 03/03/2004 | <u>PENDING, INSTITUTED</u> | |
| <u>2</u> | 03/03/2004 | <u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u> | 04/12/2004 |
| <u>1</u> | 02/27/2004 | <u>FILED AND FEE</u> | |

Results as of 05/24/2006 02:36 PM

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

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

| | | |
|-----------------------------|---|---|
| Hachette Filipacchi Presse, | X | |
| | : | |
| | : | |
| | : | 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 38th 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.

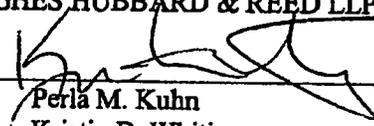
30. Respondent has no documents responsive to Petitioner's Document Request No. 20.
31. Respondent has no documents responsive to Petitioner's Document Request No. 21.
32. Respondent has no documents responsive to Petitioner's Document Request No. 22.
33. Respondent has no documents responsive to Petitioner's 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
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| 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, L.L.C. ("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,



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