

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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Hachette Filipacchi Presse, :  
 :  
 Petitioner, : RESPONSE TO PETITION  
 : TO CANCEL  
 :  
 -v- :  
 : Cancellation No.: 92042991  
 :  
 Elle Belle, LLC :  
 :  
 Respondent. :  
-----X

TO THE COMMISSIONER OF PATENTS AND TRADEMARS:

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 & Kadish responds to the Petition to Cancel filed by the Petitioner, Hachette Filipache Presse (“Hachette”) as follows:

1. Responding to the allegations in Paragraph 1, 2, 3, 4, 5 and 6 of the petition, Elle Belle denies that it has knowledge or information sufficient to form an opinion as to the allegations contained in this paragraph and therefore denies the same.
2. Responding to the allegations in paragraph 7 of the Petition, Elle Belle is unable to admit or deny the allegations therein, except to state that this paragraph and the exhibit A attach to the petition cite several registrations purported to have been secured by the petitioner under the mark “Elle” and appear to have been reproduced from the records maintained by the Patent and Trademark Office.

3. Respondent admits that the allegations in paragraph 8 and 9 of the Petition.
4. 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.
5. Respondent denies the allegations in paragraphs 11, 12 and 14 of the Petition.
6. Respondent denies that it has sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13 of the Petition and therefore denies them.
7. 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.
8. Respondent denies the allegations in paragraphs 16, 17, 18 and 19 of the Petition.

#### **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. Respondents' claims are barred because the interests asserted by Respondents do not constitute protectable interests as a matter of law.
5. Respondents' claims are barred because Respondents has sustained no actual damages.
6. Petitioner has abandoned any rights to the mark Elle by its failure to use said mark in commerce in international class 25 in which Respondent's marks is registered.

7. Petitioner has abandoned any rights to the mark "Elle," evidenced by its current registration number 862001, or prior registration number 758137, by its failure to use the marks on goods and services, namely "dresses, cloaks, capes, skirts, jackets, suits, two-piece costumes or suits, coats, sweaters, bathing suits, jodhurs, knickers, ties, scarves, square sold by the Respondent nationwide and as such Petitioner has no rights to the mark "Elle" for use in said goods and services and therefore, there is no likelihood of confusion between the marks "Elle" and "Elle Belle."

8. Petitioner has abandoned any rights to the mark "Elle" evidenced by its prior registration numbers 758137 and 861159 or its current registration number 1348158 or serial number 73512968 by its failure to use the mark on "footwear, namely, shoes, boots, slippers, sandals and clogs." nationwide and as such there is no likelihood of confusion between the marks "Elle" and "Elle Belle".

9. Petitioner has abandoned any rights to the mark "Elle" evidenced by its registration number 1454393 by its failure to use the mark on Lingerie nationwide since its registration of said mark.

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

ELLE BELLE, LLC

By:   
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April 12, 2004

VIA CERTIFIED FIRST CLASS MAIL

Tammy Logan  
U.S. Patent & Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia

Re: Cancellation No.: 92042991; Reg. No.: 2657739;  
Mark "Elle Belle"

Dear Ms. Logan:

This office represents Elle Belle, LLC. Enclosed please find a copy of Elle Belle's response to the referenced petition for cancellation. Please file the same.

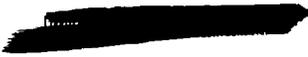
Do not hesitate to contact me should you have any questions or concerns.

Very truly yours,



Balram Kakkar

Enc.  
BK/akk



04-15-2004

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