

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

KARIN MODELS,  
S.A.R.L.,  
A Societa A Responsabilita  
Limitata,

Cancellation Number: 92044040  
Registration Numbers: 2,114,051 and 2,115,957  
Mark: KARIN and KARIN MODELS (and design)  
International Class: 035

Petitioner,

vs.

JEAN LUC BRUNEL,  
An Individual,

Respondent.

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**KARIN MODELS, S.A.R.L.'S REPLY TO MOTION TO STAY AND  
RESPONSE TO MOTION TO COMPEL DISCOVERY AND MOTION FOR  
ENLARGEMENT TO RESPOND TO MOTION FOR SUMMARY JUDGMENT**

Petitioner Karin Models, S.A.R.L. ("Karin") by and through its undersigned attorneys and pursuant to Trademark Trial and Appeal Board Manual of Procedure § 502.02 (b) hereby files its reply to Respondent Jean Luc Brunel's ("Brunel") Motion to Stay and files its Response to Brunel's Motion to Compel Discovery and Motion for Enlargement to Respond to Motion for Summary Judgment and in support thereof states as follows:

**INTRODUCTION**

Karin filed a petition to cancel based upon fraud on the Patent and Trademark Office ("PTO"). Karin is the assignee of the marks and registrations at issue herein. The marks were assigned by Models Management Group, Inc. ("MMG") to Karin in 1996. The assignments were filed with the PTO. The marks were licensed back from Karin to MMG. In 2004, a person purportedly acting on behalf of MMG, executed assignments that purportedly assigned the registrations and goodwill of the marks to Brunel. The assignments were recorded with the PTO.

05-08-2006

Karin's Reply To Response To Motion For Summary Judgment and Motion To Stay and Response To Motion To Compel Discovery And Motion For Enlargement  
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Brunel then submitted Section 8 & 15 Declarations in his own name. Said conduct constitutes a fraud on the PTO.

Thus, Karin filed a Motion for Summary regarding the legal issue of whether Brunel committed fraud. Instead of responding to the substance of Karin's Motion for Summary Judgment, Brunel filed a Response to the Motion to Stay and Incorporated Motion to Compel Discovery and Motion for Enlargement of Time to Respond to Summary Judgment ("Response"), arguing that summary judgment is premature and that he needs responses to discovery. This is merely Brunel's attempt to divert the Board's attention from the fact that Brunel has no argument in opposition to Karin's Motion for Summary Judgment and there exist no material facts in dispute.

The parties have engaged in some discovery. Brunel accuses Karin of delay in that it sought extensions of time to respond to written discovery and then filed a Motion for Summary Judgment and Motion to Stay. However, at the same time the responses to the written discovery were due, depositions were being taken. The depositions of two employees that work for Brunel, Jeffrey Fuller and Maritza Vazquez, were taken. After these depositions, it became clear that further discovery was irrelevant and that this dispute turned on undisputed facts and legal issues. Thus, Karin filed its Motion for Summary Judgment.

However, to avoid legal wrangling over the relevance of the requested discovery, Karin has simultaneously herewith responded to all of the outstanding discovery referenced in Brunel's Response. Therefore, all delaying issues are moot and Brunel should be ordered to respond to the Motion for Summary Judgment ten (10) days from the date of the issuance of the Order by the Honorable Board.

## HISTORY OF DISCOVERY

By way of background, early on in the proceedings, the parties had been engaged in settlement discussions, thus, little discovery had been taken. When the discussions failed and new counsel for Brunel appeared, the parties began to engage in discovery. Ironically, Brunel accuses Karin of delay, yet Brunel has done nothing but delay discovery. The very first piece of discovery emanated from Karin back on August 10, 2005 - Karin served a Notice of Taking Deposition duces tecum on Brunel.<sup>1</sup> Karin has taken two depositions in this case, one of Jeff Fuller,<sup>2</sup> director, president, secretary, and treasurer of MMG and employee of the other corporate entities owned and operated by Brunel and one of Maritza Vazquez,<sup>3</sup> comptroller of the

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<sup>1</sup> The deposition did not go forward as Brunel claimed to be unavailable. Brunel's deposition has never been taken.

<sup>2</sup> On September 9, 2005, Karin issued a subpoena for the deposition of Jeffrey Fuller. After rescheduling, the deposition of Jeffrey Fuller began on December 14, 2005. Jeffrey Fuller didn't show up with any documents nor did he look for any documents in preparation for his deposition. Jeffrey Fuller admitted in his deposition that he did not review the subpoena and only retained counsel the day before. Jeffrey Fuller took the position that he was subpoenaed in his "individual" capacity and thus, didn't have to produce documents. Undersigned counsel began the deposition, but could not complete it because of the need for the documents. Counsel for Karin asked if Jeffrey Fuller would appear for deposition and give responsive documents without the need for another subpoena. Brunel would not agree and forced Karin to incur more unnecessary expenses and required that Karin subpoena Jeffrey Fuller as "Director, President, Secretary, and Treasurer of: Models Management Group, Inc." Karin has been forced to issue twelve subpoenas in this case and has not yet received one scrap of paper from Brunel or any of these related parties under Brunel's control. Karin re-noticed Jeffrey Fuller's deposition, but it was never completed.

Undersigned counsel painstakingly inquired during that deposition as to the location of the document responsive to the subpoena duces tecum wherein Jeffrey Fuller repeatedly testified that the documents were on the "third floor" of their office on Lincoln Road in Miami Beach. Jeffrey Fuller went on to testify that he didn't have the key to the third floor and that his direct underling, Maritza Vazquez, was the only person with a key and the ability to access the third floor.

<sup>3</sup> In an effort to overcome Brunel's "hide the documents" games, on January 6, 2006, Karin was forced to and did issue a subpoena (the same that was issued for Jeffrey Fuller) for Maritza Vazquez and also for the corporate representatives of MMG, MC2 Models Management,

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corporate entities owned and operated by Brunel. After these depositions, it became clear that further discovery was irrelevant and that this dispute turned on undisputed facts and legal issues.

Notably, Brunel hasn't bothered to take discovery until very recently. He served Requests for Production and Interrogatories in January 2006. He only recently began to seek dates for the deposition of the principal of Karin, Mr. Etienne des ROYS and seemingly, only in response to Karin's pressure to take the deposition of Brunel and the other parties controlled by Brunel. After these depositions, it became clear that further discovery was irrelevant and that the dispute turned on undisputed facts and legal issues.

**BRUNEL HAS SERVED RESPONSES TO THE DISCOVERY,  
RENDERING REGISTRANT'S ARGUMENT MOOT**

**I. Brunel must be directed to respond to the Motion for Summary Judgment.**

Attached hereto as Exhibit "A" are responses to Brunel's Request for Production and Interrogatories. Thus, Brunel's argument is moot and his "motion to stay" portion of the Response should be denied and Brunel should be directed to respond to Karin's Motion for Summary judgment within ten (10) days of the date of the Order.

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LLC, and MC2 Models Miami, LLC. After rescheduling, the deposition of Maritza Vazquez took place. Maritza Vazquez likewise failed to show up with any documents. She testified, despite Jeffrey Fuller's testimony regarding responsive documents being located on the "third floor" that there were no responsive documents on the "third floor." Her testimony was in a constant state of flux regarding the existence and/or location of documents. She also testified that the documents didn't exist, that the documents were in Paris, that the documents were in a warehouse in Miami, that the documents were in New York, and that some of the documents were with her lawyers and/or accountant. She also admitted that she did not contact those lawyers and accountants to obtain copies of those documents. Karin has not received any responsive documents from Brunel or any of these employees or companies to date, despite all of them having been served with subpoenas that included 72 document requests.

**II. Brunel does not need to take the deposition of Mr. Etienne des ROYS in order to respond to the Motion for Summary Judgment.**

Brunel states that he needs to take the deposition of Mr. Etienne des ROYS in order to refute the declaration that was filed in support of the Motion for Summary Judgment. This is simply untrue. Brunel is free to submit his own declaration to contradict the facts stated in Mr. Etienne des ROYS' declaration. Brunel does not need Mr. Etienne des ROYS' deposition in order to do so.

Moreover, the "facts" in Mr. des ROYS' declaration are simply a time line of events of filings with the PTO along with attached documents that are in the public record. Mr. Etienne des ROYS declaration was submitted merely to authenticate said documents. Notably and not mentioned in the Response, Mr. des ROYS' declaration does not contain any "new" information or facts. The declaration and documents relate to the December 12, 1996 assignment of the marks from MMG to Karin ("First Assignments"); the recordation of the First Assignments with the PTO; the license agreement relating to the trademarks of December 12, 1996 ("License Agreement"); the January 14, 2004 assignment from MMG to Brunel ("Fraudulent Second Assignments"); and the recordation of the Fraudulent Second Assignments with the PTO. These documents were all attached to the original Petition to Cancel and the Amended Petition to Cancel, which were filed 1 ½ years ago and 7 month ago, respectively.

**KARIN'S MOTION TO STAY DISCOVERY WAS IN GOOD FAITH AND SUPPORTED BY THE TRADEMARK RULES AND THUS, ANY OBJECTIONS TO THE DISCOVERY SHOULD NOT BE DEEMED WAIVED**

Brunel accuses Karin of delay in that it sought extensions of time to respond to written discovery and asks that Karin's objections be waived. Karin did not engage in delay and in fact acted in good faith.<sup>4</sup> Karin did seek and obtain three extensions of time to respond to the written discovery. At the same time, depositions were being taken. After these depositions, it became clear that further discovery was irrelevant and that this dispute turned on undisputed facts and legal issues. Then Karin filed its Motion for Summary Judgment and Motion to Stay Discovery.

It is proper to stay proceedings when a Motion for Summary Judgment is filed. Although suspension of proceedings to all matters not germane to the motion is not automatic, Trademark Rule 2.127(d) provides that "when any party files a motion to dismiss, or a motion for judgment on the pleadings, or a motion for summary judgment, or any other motion which is potentially dispositive of a proceeding, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion except as otherwise specified in the Board's suspension order. If the

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<sup>4</sup> Although Karin has already responded to the outstanding discovery, to demonstrate why Brunel does not need the responses, Karin will briefly address a couple of the arguments raised in the Response. Brunel states that he needs discovery regarding the License Agreement in that he needs documentation regarding invoices and payments under the License Agreement. Response, p. 7. Whether there are any invoices or payments regarding the License Agreement is irrelevant to whether there was a License Agreement as such evidence is only relevant to the issue of breach of the License Agreement, which is not alleged in the Amended Petition to Cancel and is not at issue in this case. Brunel does not need discovery regarding invoices and payments under the License Agreement as the issue of breach of contract has nothing to do with the issue of whether Brunel committed a fraud on the PTO.

Brunel also asserts that he needs a copy of Mr. des ROYS' schedule. Mr. des ROYS' schedule cannot possibly relate to whether Brunel committed a fraud on the PTO because Mr. des ROYS' conduct is not at issue here.

Karin's Reply To Response To Motion For Summary Judgment and Motion To Stay and Response To Motion To Compel Discovery And Motion For Enlargement  
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case is not disposed of as a result of the motion, proceedings will be resumed pursuant to an order of the Board when the motion is decided." Thus, in an abundance of caution, Karin requested that the TTAB stay the instant proceedings, including engaging in and/or responding to any outstanding discovery requests. Thus, Karin has acted in good faith and any objections to the discovery should not be deemed waived.

### **CONCLUSION**

There are no material facts in dispute. Summary judgment is proper. Brunel wrongfully states that "this matter is really an action to quiet title brought under the guise of a cancellation proceeding" and that the ownership and title of the marks is materially disputed. Response, p.6. That is clearly not the case here. The question is whether Brunel executed and filed the Second Fraudulent Assignments and related Section 8 & 15 Declarations. Brunel executed said documents and filed them with the PTO, which is a fraud on the PTO. Karin's Motion for Summary Judgment should be granted. .

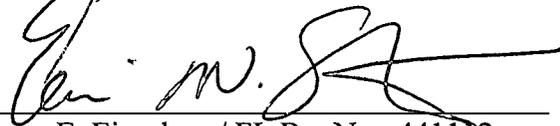
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Since Karin has responded to Brunel's outstanding discovery requests, the "motion to stay" portion of the Response is rendered moot and thus, Brunel should be directed to respond to the Motion for Summary Judgment in ten (10) days.

Respectfully submitted,

**Karin Models, S.A.R.L.**

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



Steven E. Eisenberg/ FL Bar No.: 441112  
Henry S. Kaplan / USPTO No.: 25,346  
Erica W. Stump/ FL Bar No.: 427632

Dated: May 5, 2006

Feldman Gale, P.A.  
201 South Biscayne Boulevard  
Miami Center – Suite 1920  
Miami, Florida 33131  
Telephone (305) 358-5001  
Facsimile (305) 358-3309

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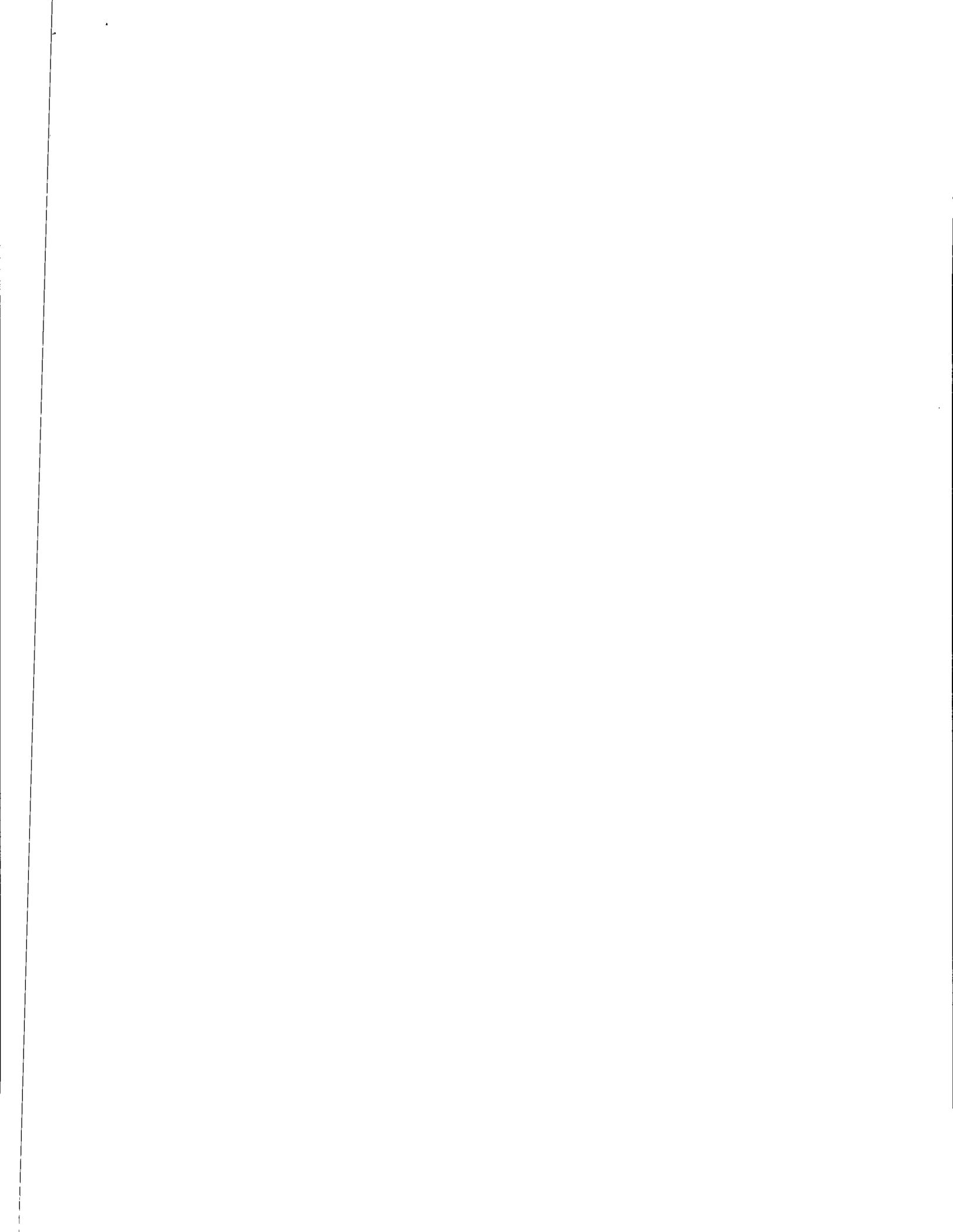
**CERTIFICATE OF MAIL AND CERTIFICATE OF SERVICE**

Date of Deposit: May 5, 2006

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service via regular mail with sufficient pre-paid postage, as First Class Mail in an envelope addressed to: Commissioner for Trademarks, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451. I further certify that a copy of the foregoing Reply to Opposition to Motion for Summary Judgment and Response to Motion to Compel Discovery and Motion for Enlargement of Time to Respond to Motion for Summary Judgment has been served on Steven Kozlowski, Esq., by mailing said copy on March 16, 2006 via First Class Mail, postage prepaid to Steven Kozlowski, Esq., Kozlowski Law Firm, P.A., 927 Lincoln Road, Suite 118, Miami Beach, Florida, 33139.



Erica W. Stump



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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**KARIN MODELS S.A.R.L.'S RESPONSE TO  
REQUEST FOR PRODUCTION**

Petitioner, KARIN MODELS, S.A.R.L., by and through its undersigned attorneys, files its response to Registrant, JEAN LUC BRUNEL's Request for Production dated January 17, 2006 as follows:

**REQUEST NO. 1**

A true and correct copy of all correspondence between you and Jean Luc Brunel relating to the trademarks described in your Petition.

**RESPONSE:**

Responsive documents will be made available at a mutually convenient time at the offices of Feldman Gale.

**REQUEST NO. 2**

A true and correct copy of all correspondence between you and Etienne des Roys relating to the trademarks described in your Petition.

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**Exhibit "A"**

**RESPONSE:**

Responsive documents will be made available at a mutually convenient time at the offices of Feldman Gale.

**REQUEST NO. 3**

A true and correct copy of your stock ledger.

**RESPONSE:**

Objection, documents responsive to this request are irrelevant.

**REQUEST NO. 4**

A true and correct copy of your corporate minutes of any meeting at which the trademarks described in your Petition were discussed.

**RESPONSE:**

None.

**REQUEST NO. 5**

A true and correct copy of your corporate minutes of any meeting at which the claims of Jean Luc Brunel against you were discussed.

**RESPONSE:**

None.

**REQUEST NO. 6**

A true and correct copy of all correspondence between you and Jean Luc Brunel referring to Brunel's claims against you.

**RESPONSE:**

Objection, documents responsive to this request are irrelevant. Notwithstanding the foregoing, none.

**RESPONSE:**

Objection, documents responsive to this request are irrelevant. Notwithstanding the foregoing, none.

**REQUEST NO. 7**

A true and correct copy of all correspondence between you and Etienne des Roys relating to Brunel's claims against you.

**RESPONSE:**

Objection, documents responsive to this request are irrelevant. Notwithstanding the foregoing, none.

**REQUEST NO. 8**

A true and correct copy of any settlement agreements between you and Jean Luc Brunel.

**RESPONSE:**

None.

**REQUEST NO. 9**

A true and correct copy of any specimen you could use to show that you used the marks described in your Petition in commerce after December, 1996.

**RESPONSE:**

Objection, this request is unintelligible.

**REQUEST NO. 10**

A true and correct copy of any document you could use to show your receipt of payments from Models Management Group, Inc. for the use of the trademarks described in your Petition after December, 1996.

**RESPONSE:**

Objection, documents responsive to this request are irrelevant. None

**REQUEST NO. 11**

A true and correct copy of any document which would tend to show that the license agreement between you and Models Management Group, Inc. was ever terminated.

**RESPONSE:**

None.

**REQUEST NO. 12**

A true and correct copy of all correspondence between you and Models Management Group, Inc.

**RESPONSE:**

Objection, this request is overbroad.

**REQUEST NO. 13**

A true and correct copy of all correspondence between you and Jeffrey Fuller.

**RESPONSE:**

Objection, this request is overbroad.

**REQUEST NO. 14**

A true and correct copy of all documents related to the adoption and use of the trademarks described in your Petition, including and correspondence with and memoranda between you and any consultant, design firm, advertising agency, advertising media, suppliers and printers.

**RESPONSE:**

None.

**REQUEST NO. 15**

A true and correct copy of all search and investigation reports prepared by or for you concerning the trademarks described in your Petition.

**RESPONSE:**

None.

**REQUEST NO. 16**

A true and correct copy of any correspondence between you and any person relating to any alleged or suspected infringement of the trademarks described in your Petition.

**RESPONSE:**

None.

**REQUEST NO. 17**

A true and correct copy of any schedule or calendar maintained by you relating to Etienne de Roys.

**RESPONSE:**

Objection, this request is overbroad.

**REQUEST NO. 18**

A true and correct copy of any correspondence received by you from Jeff Fuller.

**RESPONSE:**

Objection, this request is overbroad.

**REQUEST NO. 19**

A true and correct copy of any documents referring to Etienne des Roys created in 1997 or 1997 (sic).

**RESPONSE:**

Objection, this request is overbroad and unintelligible.

**REQUEST NO. 20**

A true and correct copy of any documents by which you received notice of the use of the trademarks described in your Petition to Brunel.

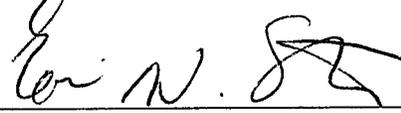
**RESPONSE:**

Objection, this request is unintelligible.

Respectfully submitted,

**Karin Models, S.A.R.L.**

By:



Steven E. Eisenberg/ FL Bar No.: 441112

Erica W. Stump/ FL Bar No.: 427632

Attorneys for Petitioner

Dated: May 5, 2006

Feldman Gale, P.A.  
201 South Biscayne Boulevard  
Miami Center – Suite 1920  
Miami, Florida 33131  
Telephone (305) 358-5001  
Facsimile (305) 358-3309

**CERTIFICATE OF SERVICE**

Date of Deposit: 5/5/2006

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Erica W. Stump  
(Printed name)

  
(Signature)

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**KARIN MODELS S.A.R.L.'S NOTICE OF SERVING ANSWERS TO  
REGISTRANT'S INTERROGATORIES**

Petitioner, KARIN MODELS, S.A.R.L., ("Karin") by and through its undersigned attorneys, files the attached Answers to Registrant, JEAN LUC BRUNEL's Interrogatories numbered 1 through 13 dated January 20, 2006

Respectfully submitted,

**Karin Models, S.A.R.L.**

By: 

Steven E. Eisenberg/ FL Bar No.: 441112

Erica W. Stump/ FL Bar No.: 427632

Attorneys for Petitioner

Dated: May 5, 2006

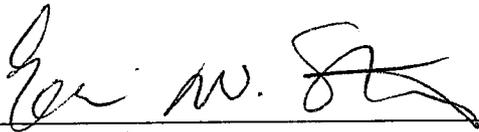
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Erica W. Stump  
(Printed name)

  
(Signature)

**KARIN'S ANSWERS TO INTERROGATORIES**

**INTERROGATORY NO. 1**

What is the name and address of the person answering these interrogatories, and if applicable, the person's official title or relationship with the party to whom the interrogatories are directed?

**ANSWER:**

Etienne des ROYS, the gerant of Karin.

**INTERROGATORY NO. 2**

List the names and addresses of all persons who are believed or known by you, your agents or attorneys to have any knowledge concerning any of the issues in this lawsuit; specify the matter about which the witness has knowledge.

**ANSWER:**

Etienne des ROYS.

**INTERROGATORY NO. 3**

Have you ever heard or do you know about any statement or remark made on behalf of any party to this lawsuit, other than yourself, concerning any issue in this lawsuit? If so, state the name and address of each person who heard it, and the date, time, place and substance of each statement.

**ANSWER:**

No.

**INTERROGATORY NO. 4**

State the name and address of every person known to you, your agents or attorneys who has knowledge about, or possession, custody or control of any document or other item pertaining to any fact or issue involved in this controversy; and describe as to each, what such person has, the name and address of the person who prepared it, and the date it was prepared.

**ANSWER:**

Objection, overbroad. Notwithstanding the foregoing, Etienne des ROYS has knowledge. Responsive documents are being produced in response to the Request for Production.

**INTERROGATORY NO. 5**

Please state if you have ever been a party, either plaintiff or defendant, in any court or administrative action, civil or criminal, other than the present matter, and if so, state whether you were plaintiff or defendant, the nature of the action, the date and court or agency in which such matter was filed, and the disposition of the matter.

**ANSWER:**

Not in the United States.

**INTERROGATORY NO. 6**

Please state if Etienne des Roys has ever been a party, either plaintiff or defendant, in any court or administrative action, civil or criminal, other than the present

matter, and if so, state whether he was plaintiff or defendant, the nature of the action, the date and court or agency in which such matter was filed, and the disposition of the matter.

**ANSWER:**

Not in the United States.

**INTERROGATORY NO. 7**

Identify any expert witnesses who you intend to call in any trial of this matter and set forth as to each such expert: a) the area in which you will seek to have him designated as an expert; b) his qualifications as an expert in that area; c) his conclusions as an expert; and d) the facts or opinions upon which the expert has relied to reach that conclusion.

**ANSWER:**

None.

**INTERROGATORY NO. 8**

Please provide a chart of all your officers, directors, and shareholders from 1995 to present.

**ANSWER:**

Objection to providing the information in the form of a "chart" as unnecessary.  
Notwithstanding the foregoing:

Etienne des ROYS has been a shareholder and gerant from 1995 - present;

Jean Luc Brunel was a gerant from 1995 – June 2003;

Jean Luc Brunel has been a shareholder from 1995 – present;

Ruth Malkagnes Sernet was a shareholder from 1995 – present.

**INTERROGATORY NO. 9**

Please describe all procedures you have used since December, 1996 to monitor the use of the trademarks described in your complaint.

**ANSWER:**

Karin monitored Models Management Group, Inc.'s ("MMG") use of the marks pursuant to the December 12, 1996 license agreement entered into by the parties. Etienne des ROYS would speak to principals at MMG regarding use of the marks. Karin would monitor use of the marks on the Internet. Etienne des ROYS would speak to others in the industry regarding use of the marks. Etienne des ROYS would visit New York and Miami from time to time to monitor use of the marks.

**INTERROGATORY NO. 10**

Please provide an accounting of all monies paid to you pursuant to the Service Mark License Agreement attached as Exhibit D to your amended petition in this action.

**ANSWER:**

\$20,000 was paid.

**INTERROGATORY NO. 11**

Please describe the circumstances by which you contend you became aware of the assignment of the trademarks described in your amended petition to Registrant.

**ANSWER:**

Objection: unintelligible. There are two assignments described in the Amended Petition to Cancel.

**INTERROGATORY NO. 12**

Please describe the offices and positions held by Etienne de Roys in you (sic) since 1996 and describe his duties in each position.

**ANSWER:**

Etienne des ROYS has been a shareholder and gerant since 1996. As a shareholder, he has no "duties." As a gereant, his duties include oversight of the operations of Karin.

**INTERROGATORY NO. 13**

If you used the trademarks described in your petition in commerce during the time period from December 1996 through the filing of your petition, please state how the marks were used and the time period during which the marks were used in each way described.

**ANSWER:**

Objection, this interrogatory is unintelligible. Notwithstanding the foregoing, Karin has used the marks in France from December 1996 through the filing of the petition in conjunction with modeling services. MMG has used the marks in the Untied States pursuant to the license agreement dated December 12, 1996, which use inures to the benefit of the licensor, Karin.

**VERIFICATION**

COUNTRY OF FRANCE            )  
  ) ss.:  
COUNTY OF                    )

BEFORE ME, the undersigned authority, personally appeared Etienne des ROYS who ( )  
is personally known to me or ( ) has produced \_\_\_\_\_ as identification and who  
( ) did or ( ) did not take an oath and swears and deposes the he/she has read the  
foregoing and that same is true and correct to the best of his/her information and belief.

SWORN TO AND SUBSCRIBED before me this \_\_\_ day of May, 2006

\_\_\_\_\_  
NOTARY PUBLIC, FRANCE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
COMMISSION NO. \_\_\_\_\_

MY COMMISSION EXPIRES: