

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

TTAB

76 275 014

KRISTALL CLASSICS, INC.,

Petitioner,

vs.

THE DIAMONDS OF RUSSIA, LTD.,

Registrant.

Cancellation No. 92/044,751

CERTIFICATE OF MAILING

The undersigned declares under the penalty of perjury the within MOTION TO SUSPEND was forwarded to BOX NO FEE - TTAB, Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, by depositing same with the United States Postal Service as first class mail, postage prepaid, this 29th day of January, 2007.

  
SHERYL R. CONAWAY

MOTION TO SUSPEND

BOX NO FEE - TTAB  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Sir:

In accordance with 37 C.F.R. §2.117(a), Petitioner, KRISTALL CLASSICS, INC., hereby moves for a suspension of this proceeding on the ground that Petitioner and Registrant are presently are engaged in a civil action before the United States District Court for

the Central District of California entitled Kristall, Inc. v. The Diamonds of Russia, Inc., et al, Case No. CV07-0647-JFW(RCx) in which Kristall, Inc. alleges that Applicant is in breach of an Agreement pursuant to which it unequivocally agreed to cancel Certificates of Registration No. 2,728,636 for the mark CLEARLY SUPERIOR KRISTALL THE DIAMONDS OF RUSSIA. A resolution of the aforesaid civil action will be dispositive of the issues in this proceeding. A copy of the Complaint of said action is attached hereto.

Whenever the Board receives notice that the parties to an inter partes proceeding are involved in a civil action which may have a bearing on the case before the Board, the proceedings before the Board may be suspended until the final determination of the civil action. TBMP, §510.02(a); 37 C.F.R. §2.117(a); General Motors Corp. v. Cadillac Club Fashions, Inc., 22 U.S.P.Q.2d 1933 (TTAB, 1992). To the extent that a civil action in a federal district court involves issues in common with those in an inter partes proceeding before the Board, the decision of the federal district court is often binding upon the Board while the decision of the Board is not binding upon the Court. TBMP §510.02(a).

In the present case, Kristall not only filed a Petition to Cancel Registration No. 2,728,636 for the mark CLEARLY SUPERIOR KRISTALL THE DIAMONDS OF RUSSIA, it filed a Petition to Cancel Registration No. 2,920,296 for the mark KRISTALL THE DIAMONDS OF RUSSIA. A copy of the postcard evidencing receipt of the Petition for Cancellation evidencing receipt on July 11, 2005. Despite the frequent inquiries made by Kristall's counsel, the Board has yet to take any action whatsoever on this matter. The civil action seeks to cancel both Certificates of Registration.

In addition to seeking cancellation of Certificate of Registration Nos. 2,728,636 and 2,920,296, the civil action also seeks injunctive relief to permanently enjoin the Registrant from using the marks covered by the Certificates of Registration. Where the civil action seeks relief (e.g., an injunction) that cannot be raised before the Board, the inter partes proceeding will be stayed pending the outcome of the judicial action. The Toro Company v. Hardigg Industries, Inc., 187 U.S.P.Q. 689, 693 (TTAB, 1975).

It is therefore respectfully requested the instant proceeding be suspended pending a decision in the identified litigation.

Respectfully submitted,

ISAACMAN, KAUFMAN & PAINTER  
A Professional Corporation

By:



Michael A. Painter  
Attorneys for Petitioner

/src  
Attachment  
Dated: January 29, 2007  
8484 Wilshire Boulevard, Suite 850  
Beverly Hills, California 90211  
(323) 782-7700

FILED

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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

8 Attorneys for Plaintiff,  
9 KRISTALL, INC.

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

13 KRISTALL, INC., a Nevada  
14 corporation,

15 Plaintiff,

16 vs.

17 THE DIAMONDS OF RUSSIA,  
18 LTD., a Delaware corporation;  
19 DOES I - X, Inclusive,

20 Defendant.

CV. 07 0647  
CASE NO.



COMPLAINT FOR  
CANCELLATION OF UNITED  
STATES CERTIFICATES OF  
TRADEMARK REGISTRATION  
NOS. 2,728,636 AND 2,920,296

21 Plaintiff, KRISTALL, INC., through its attorneys of record,  
22 alleges as follows:

23 JURISDICTION AND VENUE

24 1. Jurisdiction in this Court arises under the trademark laws of  
25 the United States, 15 U.S.C. §1051, et seq and provisions of 15 U.S.C. §1119.  
26 This Court has jurisdiction over these claims pursuant to 28 U.S.C. §1338(b).

27 2. Venue is proper in this District under 28 U.S.C. §1391(b) in  
28 that a substantial part of the events giving rise to the claim occurred within the  
Central District of California.

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**PARTIES**

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3. Plaintiff, KRISTALL, INC., "(Kristall)" is a corporation organized under the laws of the State of Nevada and has its principal place of business in the County of Los Angeles, State of California. Kristall is in the business of designing, manufacturing, selling and distributing fine jewelry products throughout the United States in general and this district in particular.

4. Kristall is informed and believes and, based upon such information and belief, alleges that defendant, THE DIAMONDS OF RUSSIA LTD. ("DOR") is a corporation organized under the laws of the State of Delaware and has its principal place of business in Las Vegas, Nevada. DOR is in the business of designing, manufacturing, selling and distributing jewelry products through the United States in general and this district in particular.

5. The true names or capacities, whether individual, corporate, associate, representative, or otherwise, of the defendants named herein as DOES I - X, inclusive, are unknown to plaintiff who therefore, pursuant to Local Rule 19-1 of this Court, sues said defendants by such fictitious names and plaintiff will amend this Complaint to show their true names and capacities when the same have been ascertained.

**INTRODUCTORY ALLEGATIONS**

6. On January 29, 2003, Kristall Jewelers, Inc., the predecessor-in-interest to DOR, instituted an action in the United States District Court for the Central District of California against Kristall, said action being identified by the Court as Kristall Jewelers, Inc. v. Kristall Classics, Inc., Case No. CV03-860-CJC(VBKx), said action relating in part to ownership of the KRISTALL trademark (hereinafter referred to as the "Kristall Litigation").

7. On or about September 3, 2004, the Kristall Litigation was dismissed, with prejudice, based upon a written Settlement Agreement.

1 (hereinafter referred to as the "Agreement") between the parties, the pertinent  
2 portion thereof providing:

3 (a) All rights, title and interest in and to the trademark  
4 KRISTALL & Design (Registration No. 2,676,728) together with the good will  
5 of the business symbolized by the mark, were assigned by Kristall Jewelers,  
6 Inc. to Kristall.

7 (b) Kristall Jewelers, Inc. would take all steps necessary to  
8 abandon Certificate of Registration No. 2,728,636 for the trademark  
9 CLEARLY SUPERIOR KRISTALL THE DIAMONDS OF RUSSIA  
10 (hereinafter referred to as the "'636 Registration"); and

11 (c) Kristall Jewelers, Inc. would take all steps necessary to  
12 abandon trademark application Serial No. 76/276,016 for the trademark  
13 KRISTALL THE DIAMONDS OF RUSSIA or cancel any registration issued  
14 thereon, said application now having matured into Certificate of Registration  
15 No. 2,920,296 (hereinafter referred to as the "'296 Registration").

16 8. On November 16, 2004, Kristall Jewelers, Inc. assigned to  
17 DOR its entire interest in the '636 and '296 registrations. A copy of the  
18 Agreement is attached hereto as Exhibit 1.

19 **COUNT I FOR CANCELLATION OF THE '636 REGISTRATION**

20 9. Kristall repeats and incorporates Paragraphs 1 - 8, inclusive,  
21 of this Complaint as though set forth in full herein again.

22 10. DOR has refused to take any steps whatsoever to cancel the  
23 '636 registration.

24 11. Since long prior to the date of execution of the Agreement,  
25 Kristall has continuously used the KRISTALL trademark and formatives thereof  
26 to conduct its business.

27 12. Plaintiff is likely to be damaged by the continued existence of  
28 the '636 registration of the trademark CLEARLY SUPERIOR KRISTALL THE

1 DIAMONDS OF RUSSIA in that a likelihood of confusion exists between  
2 plaintiff's mark and that of the DOR. Plaintiff's legal use of the KRISTALL  
3 trademark will be impaired by the continued existence of the '636 registration.

4 13. Unless the '636 Registration is cancelled pursuant to 15  
5 U.S.C. §1119, it is a source of damage and injury to Kristall.

6 **COUNT II FOR CANCELLATION OF THE '296 REGISTRATION**

7 14. Kristall repeats and incorporates Paragraphs 1 - 8, inclusive,  
8 and Paragraph 11 of Count I of this Complaint as though set forth in full herein  
9 again.

10 15. DOR has refused to take any steps whatsoever to cancel the  
11 '296 registration.

12 16. Plaintiff is likely to be damaged by the continued existence of  
13 the '296 registration of the trademark KRISTALL THE DIAMONDS OF  
14 RUSSIA in that a likelihood of confusion exists between plaintiff's mark and  
15 that of the DOR. Plaintiff's legal use of the KRISTALL trademark will be  
16 impaired by the continued existence of the '296 registration.

17 17. Unless the '296 Registration is cancelled pursuant to 15  
18 U.S.C. §1119, it is a source of damage and injury to Kristall.

19 **PRAYER FOR JUDGMENT**

20 **WHEREFORE**, plaintiff, Kristall, Inc., prays that this Court  
21 adjudge and decree as follows:

22 1. That United States Trademark Certificate of Registration No.  
23 2,728,636 be ordered cancelled and that a copy of said Order be certified and  
24 delivered to the United States Department of Commerce, Director of Patents  
25 and Trademarks, directing the appropriate entry in the records of the United  
26 States Patent and Trademark Office;

27 2. That United States Trademark Certificate of Registration No.  
28 2,920,296 be ordered cancelled and that a copy of said Order be certified and

1 delivered to the United States Department of Commerce, Director of Patents  
2 and Trademarks, directing the appropriate entry in the records of the United  
3 States Patent and Trademark Office;

4 3. That DOR, its agents, servants, employees, assigns,  
5 attorneys, representatives, successors-in-interest, confederates and those persons  
6 in active concert or participation with them, be permanently enjoined from any  
7 and all use of the trademark CLEARLY SUPERIOR KRISTALL THE  
8 DIAMONDS OF RUSSIA for the purpose of designating jewelry;

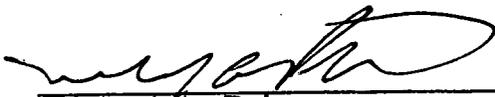
9 4. That DOR, its agents, servants, employees, assigns,  
10 attorneys, representatives, successors-in-interest, confederates and those persons  
11 in active concert or participation with them, be permanently enjoined from any  
12 and all use of the trademark KRISTALL THE DIAMONDS OF RUSSIA for  
13 the purpose of designating jewelry;

14 5. That plaintiff be awarded its costs, disbursements and  
15 reasonable attorneys' fees incurred in connection with this action;

16 6. That the Court grant such other and further relief as it deems  
17 just and proper.

18 Respectfully submitted,

19 ISAACMAN, KAUFMAN & PAINTER

20  
21 By:   
22 Michael A. Painter  
23 Attorneys for Plaintiff,  
24 KRISTALL, INC.

25 Dated: January 26, 2007

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**CONFIDENTIAL SETTLEMENT AGREEMENT**

THIS CONFIDENTIAL SETTLEMENT AGREEMENT (the "Agreement") is made and entered as of the \_\_\_th day of August 2004 between Millennium Diamond USA, Inc., dba GemDiam Corporation, and GemDiam Corporation (collectively, "Millennium"), Leon Fingergut ("Fingergut"), Smolensk Diamond Israel, Ltd. ("SDI"), Vsevolod Bobovnikov ("Bobovnikov"), Kristall Classics, Inc. ("Kristall Classics"), Kristall Jeweler, Inc. ("Kristall Jeweler"), and Smolensk Unitary Company, Kristall Production Company ("Kristall Smolensk").

WHEREAS, there is now pending in the United States District Court for the Central District of California a civil action entitled *Kristall Jeweler, Inc. v. Kristall Classics, Inc., and related Counter-Claims*, C.D. Cal. Case No. CV 03-666 (GAF) (VBKx) (the "Kristall Federal Lawsuit").

WHEREAS, there is now pending in the Superior Court of the State of California for the County of Los Angeles a civil action entitled *Smolensk Diamond Israel, Ltd. v. Millennium Diamond USA, Inc.; dba GemDiam Corp., GemDiam Corp., and Leon Fingergut aka Lev Fingergut, and Related Cross-Claims*, L.A.S.C. Case No. BC 287742 (the "SDI v. Millennium Lawsuit");

WHEREAS, the Kristall Federal Lawsuit involves claims by Kristall Jeweler against Kristall Classics and claims by Kristall Classics against Kristall Jeweler;

WHEREAS, the SDI v. Millennium Lawsuit involves claims by SDI against Millennium and Fingergut and claims by Millennium against SDI and against Bobovnikov;

WHEREAS, Kristall Classics denies any wrongdoing with respect to the claims asserted by Kristall Jeweler in the Kristall Federal Lawsuit;

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WHEREAS, Kristall Jeweler denies any wrongdoing with respect to the claims asserted by Kristall Classics in the Kristall Federal Lawsuit;

WHEREAS, Millennium denies any wrongdoing with respect to the claims asserted by SDI in the SDI v. Millennium Lawsuit;

WHEREAS, Fingergut denies any wrongdoing with respect to the claims asserted by SDI in the SDI v. Millennium Lawsuit;

WHEREAS, SDI denies any wrongdoing with respect to the claims asserted by Millennium in the SDI v. Millennium Lawsuit;

WHEREAS, Bobovnikov denies any wrongdoing with respect to the claims asserted by Millennium and Fingergut in the SDI v. Millennium Lawsuit;

WHEREAS, Millennium, Fingergut, SDI, Bobovnikov, Kristall Classics, and Kristall Jeweler (collectively, the "Parties") want to avoid further litigation risks and expenses and resolve the currently pending Kristall Federal Lawsuit and the SDI v. Millennium Lawsuit (collectively, the "Lawsuits") on the terms and conditions set forth below.

NOW, THEREFORE, in accordance with the foregoing recitals, and in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. **Dismissal of Kristall Federal Lawsuit.** The Kristall Federal Lawsuit shall be dismissed with prejudice as set forth in the Stipulated Dismissal With Prejudice attached hereto as Exhibit A, which shall be duly executed by Kristall Jeweler and Kristall Classics and filed with the Court by August \_\_, 2004.

2. Dismissal of SDI v. Millennium Lawsuit. The SDI v. Millennium Lawsuit shall be dismissed with prejudice, as set forth in the Stipulated Dismissal With Prejudice attached hereto as Exhibit B, which shall be duly executed by Millennium, Fingergut, SDI, and Bobovnikov and filed with the Court by August \_\_, 2004.

3. Representations and Warranties. Each of the Parties warrants and represents that is fully entitled and duly authorized to enter into this Agreement. Each of the Parties executes this Agreement freely and voluntarily and are not acting under any duress or in reliance upon any threat made by or on behalf of any other Party. In addition, each of the Parties warrants and represents that it has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement.

4. Mutual General Releases.

(a) Kristall Jeweler, on behalf of itself and its current officers, directors, employees, shareholders, attorneys, assigns, subsidiaries, and Leon Fingergut (the "Kristall Jeweler Parties") on the one hand and Kristall Classics, on behalf of itself and its current officers, directors, employees, shareholders, attorneys, assigns, affiliates, and subsidiaries (the "Kristall Classics Parties") on the other hand each hereby mutually releases and forever discharges each other from any and all liability and claims, debts, rights, actions, suits, damages, losses, costs, expenses, and demands whatsoever, in law or equity, of every kind, nature or description, whether known or unknown, fixed or contingent, which the Kristall Jeweler Parties, the Kristall Classics Parties, or any of them, ever had, now has, or may hereafter acquire, by reason of any matter, cause or thing whatsoever accruing, occurring, or arising at any time prior to the execution of this Agreement, including but not limited to any claims relating to the Kristall Federal Lawsuit.

(b) SDI, on behalf of itself and its current officers, directors, employees, shareholders, attorneys, assigns, subsidiaries, and Vsevolod Bobovnikov (the "SDI Parties") on the one hand and Millennium, on behalf of itself and its current officers, directors, employees, shareholders, attorneys, assigns, affiliates, subsidiaries, and Leon Fingergut (the "Millennium

Parties") on the other hand each hereby mutually releases and forever discharges each other from any and all liability and claims, debts, rights, actions, suits, damages, losses, costs, expenses, and demands whatsoever, in law or equity, of every kind, nature or description, whether known or unknown, fixed or contingent, which the SDI Parties, the Millennium Parties, or any of them, ever had, now has, or may hereafter acquire, by reason of any matter, cause or thing whatsoever accruing, occurring, or arising at any time prior to the execution of this Agreement, including but not limited to any claims relating to the SDI v. Millennium Lawsuit.

(c) It is understood and agreed to by the Parties that the releases set forth in this Section 4 herein constitute a full, complete, and final general release of any and all claims described in Subparagraphs (a) and (b), and each Party agrees that it shall apply to all unknown, unanticipated, unsuspected and undisclosed claims, demands, liabilities, actions, or causes of action, in law, equity, or otherwise, as well as those that are now known, anticipated, suspected, or disclosed.

Notwithstanding the foregoing and any provisions of Agreement to the contrary, it is understood and agreed to by the Parties that the mutual general releases of this Section 4 do not release the Parties from their respective obligations going forward as set forth herein.

**5. Assignment of "KRISTALL" Trademark and "KRISTALL ELITE" Trademark Application.**

(a) Subject to rights retained by Kristall Jeweler as set forth in Section 6 below, Kristall Jeweler hereby assigns to Kristall Classics, with the consent and approval or Kristall-Smolensk, all rights, title and interest in the composite trademark KRISTALL (and crown design), including but not limited to any and all rights recognized by a State of the United States at common law, and all good-will associated with such composite trademark subject to and as set forth in Certificate of Registration No. 2,676,728 (hereinafter collectively referred to as the "KRISTALL Trademark") pursuant to the Trademark Assignment Agreement attached hereto as Exhibit C for good and valuable consideration, receipt of which is hereby acknowledged.

(b) Subject to rights retained by Kristall Jeweler as set forth in Section 5

below, Kristall Jeweler hereby assigns to Kristall Classics, with the consent and approval of Kristall Smolensk, all rights, title and interest in the trademark KRISTALL ELITE and all good will associated therewith subject to and as set forth in Application No. 76/350,828 for good and valuable consideration, receipt of which is hereby acknowledged.

**6. Limited License of "KRISTALL" Trademark.**

Subject to the payment of royalties in a manner to be determined in accordance with Subparagraph (e) of this Section 6, Kristall Classics hereby grants to Kristall Jeweler a limited non-transferrable exclusive license to use the KRISTALL Trademark solely for the purpose of sales of goods and services, as defined and set forth in Certificate of Registration No. 2,676,728 (namely, any precious metals and their alloys and goods in precious metals or coated therewith, namely, jewelry, precious gemstones, rings, bracelets, earrings, necklaces, pendants, cuff links; horological and chronometrical instruments, namely, clocks, watches and chronometers; ashtrays and powder compacts made of precious metals) (collectively "Goods"), made by Kristall Jeweler to the Louis Vuitton Moët Hennessy ("LVMH") Group.

(a) The limited license of Kristall Jeweler to use the KRISTALL Trademark as set forth in this Section 6 is personal to Kristall Jeweler and shall not be conveyed, assigned, hypothecated or in any way transferred to any third party without the express written consent of Kristall Classics.

(b) The KRISTALL Trademark shall be used by Kristall Jeweler only with respect to Goods sold by Kristall Jeweler to LVMH. Kristall Jeweler agrees to maintain such quality standards as shall be prescribed by Kristall Classics for the Goods sold by Kristall Jeweler to LVMH. Kristall Jeweler agrees that it will display the KRISTALL Trademark in such form or manner as shall be approved by Kristall Classics. Kristall Jeweler also shall cause to appear on all materials on or in connection with which the KRISTALL Trademark is used in sales of Goods made by Kristall Jeweler to LVMH such legends, markings, and notices as Kristall Classics may request in order to assure appropriate notice any trademark rights therein. In addition, Kristall Classics shall have the right to inspect Kristall Jeweler's business operations

conducted under the KRISTALL Trademark and the limited license defined in Section 5 herein in order to assure Kristall Classics that the provisions of this agreement are being observed, subject to the terms and conditions in and as necessary pursuant to any subsequent royalty rate agreement between the Parties as described in Subparagraph (e) of this Section 6.

(c) Kristall Jeweler confirms Kristall Classics's ownership of the rights to the KRISTALL Trademark pursuant to the assignment of Section 5 herein and Kristall Jeweler agrees that all use by Kristall Jeweler of the KRISTALL Trademark shall inure to the Kristall Classics's benefit. Kristall Jeweler renounces any claim to any goodwill accrued by the use of the KRISTALL Trademark and any and all goodwill accrued by the use of the KRISTALL Trademark shall pass to Kristall Classics and not build in the mark for Kristall Jeweler. Kristall Jeweler also agrees not to take any action that could be detrimental to the goodwill associated with the KRISTALL Trademark.

(d) Kristall Jeweler shall at no time adopt or use, without Kristall Classics' prior written consent, the KRISTALL Trademark, or any variation thereof, or any word or mark likely to be confusingly similar to the KRISTALL Trademark. Kristall Jeweler further agrees that it shall not use, represent, or otherwise employ the KRISTALL Trademark to indicate that it is the owner of the KRISTALL Trademark or to create customer confusion as to the source of its products.

(e) In the event Kristall Jeweler makes sales of Goods to LVMH or its affiliates in accordance with the limited license specified above, Kristall Jeweler shall pay a royalty to Kristall Classics in an amount to be agreed upon by the parties or, if no agreement can be reached, Kristall Jeweler shall pay a royalty rate that is determined to be reasonable in accordance with industry standards by an arbitrator from the Commercial Arbitration Panel of the American Arbitration Association (see [www.adr.org](http://www.adr.org)) in Los Angeles, California under such reasonable industry standards. Such an arbitration will be instituted under and pursuant to the Commercial Rules of the American Arbitration Association. The Parties agree that the prevailing party shall be awarded attorneys' fees, costs and expenses of the arbitration.

7. Discontinuance of Use of KRISTALL Trademark by Kristall Jeweler.

Within ninety (90) days from the date of execution of this Agreement, Kristall Jeweler, shall take all necessary steps to change its corporate name from Kristall Jeweler, Inc. to "The Diamonds of Russia, Inc." pursuant to Article 10 of the New York Business Corporation Law, or if not permissible under applicable law, then to some other name not including the term "Kristall."

With the exception of the limited license set forth in Section 6 of this Agreement, Kristall Jeweler, Fingergut, or any entity in which Kristall Jeweler or Fingergut has or claims to have a controlling or an ownership interest, including but not limited to Millennium Diamond USA, Inc., shall cease all use of the KRISTALL Trademark or any variation thereof, or any word or mark likely to be confusingly similar to the KRISTALL Trademark. In addition, Kristall Jeweler shall take all necessary steps to amend, or if necessary to abandon or to cancel, Certificate of Registration No. 2,728,636 for the trademark CLEARLY SUPERIOR KRISTALL THE DIAMONDS OF RUSSIA (and design), and Application Serial No. 76/275,016 for KRISTALL THE DIAMONDS OF RUSSIA to permanently delete or otherwise permanently remove the word "Kristall" and design therefrom. Fingergut and/or Kristall Jeweler shall also take all necessary steps to cancel its registration to the Internet addresses or domain names www.kristalljeweler.com, www.kristallclassics.com, and www.kristalljeweler.tv or assign such registrations to Kristall Classics. Fingergut and/or Kristall Jeweler shall cease using such Internet addresses or domain names and any other Internet addresses or domain names that are confusingly similar to such Internet addresses or domain names.

Notwithstanding any provisions of Agreement to the contrary, it is understood and agreed to by the Parties that Kristall Jeweler is entitled to identify its products as diamonds and to identify the type and/or source of its diamonds so long as such identifying language is not used as a trademark that are confusingly similar to the trademarks set forth in Sections 5 and 7 (subject to Sections 5 and 7).

It is understood and agreed to by the Parties that such agreement to cease all use

of the KRISTALL Trademark applies from the date of this Agreement going forward and does not apply to any future use by third parties (not including any entity in which Kristall Jeweler or Fingergut has or claims to have a controlling or an ownership interest, including but not limited to Millennium Diamond USA, Inc.) of the KRISTALL Trademark found on or displayed in materials, displays, videos, products, or brochures previously used by the Parties and now in the possession and control of such third parties over which the Parties have no control.

**8. Limited License of "DIAMONDS OF RUSSIA" Trademarks.**

The Parties agree that by the adoption and continual use by Kristall Jeweler of the mark "THE DIAMONDS IN RUSSIA" in connection with certain goods, Kristall Jeweler owns any and all rights recognized by a State of the United States at common law to the mark "THE DIAMONDS OF RUSSIA" and all good will associated therewith subject to and as set forth in Application No. 76/309,019 (hereinafter referred to as the "THE DIAMONDS OR RUSSIA Trademark").

Subject to the payment of royalties in a manner to be determined in accordance with Subparagraph (b) of this Section 8, Kristall Classics shall have a limited non-transferrable exclusive license to use THE DIAMONDS OF RUSSIA Trademark solely for the purpose of sales of goods and services, as defined and set forth in Application No. 76/309,019 (namely, any precious metals and their alloys and goods in precious metals or coated therewith, namely, jewelry, precious gemstones, rings, bracelets, earrings, necklaces, pendants, cuff links; horological and chronometrical instruments, namely, clocks, watches and chronometers; ashtrays and powder compacts made of precious metals) (collectively "Goods"), made by Kristall Classics to one major retail chain selected by Kristall Classics (the "Selected Major Retail Chain").

(a) The limited license of Kristall Classics to use the DIAMONDS OF RUSSIA Trademark as set forth in this Section 8 is personal to Kristall Classics and shall not be conveyed, assigned, hypothecated or in any way transferred to any third party without the express written consent of Kristall Jeweler.

(b) The THE DIAMONDS OF RUSSIA Trademark shall be used by Kristall Classics only with respect to Goods sold by Kristall Classics to the Selected Major Retail Chain. Kristall Classics agrees to maintain such quality standards as shall be prescribed by for the Goods sold by Kristall Classics to the Selected Major Retail Chain. Kristall Classics agrees that it will display the THE DIAMONDS OF RUSSIA Trademark in such form or manner as shall be approved by Kristall Jeweler. Kristall Classics also shall cause to appear on all materials on or in connection with which the THE DIAMONDS OF RUSSIA Trademark is used in sales of Goods made by Kristall Classics to the Selected Major Retail Chain such legends, markings, and notices as Kristall Jeweler may request in order to assure appropriate notice any trademark rights therein. In addition, Kristall Jeweler shall have the right to inspect Kristall Classics' business operations conducted under the THE DIAMONDS OF RUSSIA Trademark and the limited license defined in Section 8 herein in order to assure Kristall Jeweler that the provisions of this agreement are being observed, subject to the terms and conditions in and as necessary pursuant to any subsequent royalty rate agreement between the Parties as described in Subparagraph (e) of this Section 8.

(c) Kristall Classics confirms Kristall Jeweler's ownership of the rights to the THE DIAMONDS OF RUSSIA Trademark as described in this Section 8 herein and Kristall Classics agrees that all use by Kristall Classics of the THE DIAMONDS OF RUSSIA Trademark shall inure to Kristall Jeweler's benefit. Kristall Classics renounces any claim to any goodwill accrued by the use of the THE DIAMONDS OF RUSSIA Trademark and any and all goodwill accrued by the use of the THE DIAMONDS OF RUSSIA Trademark shall pass to Kristall Jeweler and not build in the mark for Kristall Classics. Kristall Classics also agrees not to take any action that could be detrimental to the goodwill associated with the THE DIAMONDS OF RUSSIA Trademark.

(d) With the exception of the limited license set forth in this Section 8, Kristall Classics, Kristall Smolensk, and Bobovnikov or any entity in which Kristall Classics, Kristall Smolensk, or Bobovnikov has or claims to have a controlling or an ownership interest,

including but not limited to SDI, shall cease all use of the THE DIAMONDS OF RUSSIA Trademark, or any variation thereof, or any word or mark likely to be confusingly similar with the THE DIAMONDS OF RUSSIA Trademark. Kristall Classics shall take all necessary steps to cancel its registration to the Internet address and domain name www.diamondsofrussia.com or assign such registration to Kristal Jeweler. Kristall Classics shall cease using such Internet address or domain name and any other Internet addresses or domain names that are confusingly similar to such Internet address or domain name.

It is understood and agreed to by the Parties that such agreement to cease all use of the THE DIAMONDS OF RUSSIA Trademark applies from the date of this Agreement going forward and does not apply to any future use by third parties (not including any Kristall Classics' affiliated entities, Kristall Smolensk's affiliated entities, and any entity in which Bobovnikov has or claims to have a controlling or an ownership interest, including but not limited to SDI) of the THE DIAMONDS OF RUSSIA Trademark found on or displayed in materials, displays, videos, products, or brochures previously used by the Parties and now in the possession and control of such third parties over which the Parties have no control.

In addition, Kristall Classics shall at no time adopt or use, without Kristall Jeweler's prior written consent, any variation of the THE DIAMONDS OF RUSSIA Trademark or any word or mark likely to be confusingly similar with the THE DIAMONDS OF RUSSIA Trademark. Kristall Classics further agrees that it shall not represent or otherwise employ the THE DIAMONDS OF RUSSIA Trademark to indicate, that it is the owner of the common law rights to the THE DIAMONDS OF RUSSIA Trademark.

Notwithstanding any provisions of Agreement to the contrary, it is understood and agreed to by the Parties that Kristall Classics is entitled to identify its products as diamonds and to identify the type and/or source of its diamonds so long as such identifying language is not used as a trademark that are confusingly similar to the trademarks set forth in Section 8(f) (subject to Sections 7 and 8 (f)).

(e) In the event Kristall Classics uses the THE DIAMONDS OF RUSSIA

Trademark in accordance with this Section 8, Kristall Classics shall pay to Kristall Jeweler a royalty in an amount to be agreed upon by the parties or, if no agreement can be reached, Kristall Classics shall pay a royalty rate that is determined to be reasonable in accordance with industry standards or by an arbitrator from the Commercial Arbitration Panel of the American Arbitration Association (see www.adr.org) in Los Angeles, California under such reasonable industry standards. Such an arbitration will be instituted under and pursuant to the Commercial Rules of the American Arbitration Association. The Parties agree that the prevailing party shall be awarded attorneys' fees, costs and expenses of the arbitration.

(f) The Parties agree that any and all forms of the following trademarks and all good will associated therewith are owned solely by Kristall Jeweler subject to the provisions of Section 7 above and this Section 8:

- (i) THE DIAMONDS OF RUSSIA, Application No. 76/309,019;
- (ii) KRISTALL THE DIAMONDS OF RUSSIA (and design), Application No. 76/275,016 (subject to Kristall Jeweler's amendment, or if necessary abandonment or cancellation of such application pursuant to Section 7 above);
- (iii) CLEARLY SUPERIOR KRISTALL THE DIAMONDS OF RUSSIA (and design), Application No. 76/275,014 (Registration No. 2,728,636) (subject to Kristall Jeweler's amendment, or if necessary abandonment or cancellation of such application pursuant to Section 7 above);
- (iv) FOREVER RUSSIAN, Application No. 76/309,010; and
- (v) THE JEWEL OF RUSSIA, Application No. 78,145,152.

9. Ownership Of Kristall Jeweler.

(a) By entering into this agreement, the SDI Parties, Bobovnikov, the Kristall Classics Parties, and Kristall Smolensk assign, quitclaim, and otherwise transfer any claim, if any, to an ownership interest in Kristall Jeweler. The SDI Parties, Bobovnikov, the Kristall

Classics Parties, and Kristall Smolensk further agree that Fingergut is the sole shareholder of and owns all interest in Kristall Jeweler.

(b) By entering into this agreement, Fingergut does not admit that there is any validity or merit of any such claims, if any, to an ownership interest in Kristall Jeweler by SDI Parties, Bobovnikov, the Kristall Classics Parties, and/or Kristall Smolensk.

**10. Ownership Of Millennium (and GemDiam).**

(a) By entering into this agreement, the SDI Parties, Bobovnikov, and the Kristall Classics Parties assign, quitclaim, and otherwise transfer any claim, if any, to an ownership interest in Millennium Diamond USA, Inc., including GemDiam Corporation. The SDI Parties, Bobovnikov, and the Kristall Classics Parties further agree that Fingergut is the sole shareholder of and owns all interest in Millennium Diamond USA, Inc., including GemDiam Corporation.

(b) By entering into this agreement, Fingergut does not admit that there is any validity or merit of any claims, if any, to an ownership interest in Millennium Diamond USA, Inc., including GemDiam Corporation by the SDI Parties; Bobovnikov, and/or the Kristall Classics Parties.

**11. "Grace Period" With Respect to Internet Addresses and Domain Names.** In consideration of the fact that the respective Parties are currently using Internet web sites with Internet addresses and domain names that they will be canceling or assigning and no longer using as set forth in Sections 7 and 8(d) herein, the Parties agree that there shall be a "grace period" up to and including December 31, 2004, during which the respective Parties may continue to use the Internet addresses and domain names identified and described in Sections 7 and 8(d). All cancellations, assignments, and discontinuance of use of such Internet addresses and domain names under Sections 7 and 8(d) must be completed by the respective Parties by December 31, 2004.

**12. Public Disclosure of Agreement Prior To Dismissal Date.** After execution of this Settlement Agreement, but prior to the date(s) on which the Lawsuits are dismissed, and

except to the extent set forth in the script attached as Exhibit D as permitted in this Paragraph below, the Parties agree not to disclose to anyone, publicly or privately, including, but not limited to, the press or news media, the terms or substance of any part of the Agreement or the discussions between the Parties; provided, however, that such disclosure is permitted: (a) to officers or necessary employees of the Parties or of parent or subsidiary entities of the Parties; (b) to professional individuals or entities providing the Parties specific advice (such as accountants or lawyers) who reasonably must be informed of its terms; (c) as required by law; or (d) as may be required to enforce the terms of the Agreement. Notwithstanding the foregoing provisions of this Paragraph, however, in response to inquiries from customers or potential customers about the Lawsuits, the Parties may inform such customers or potential customers (but may not issue any written press release or otherwise take steps to publicize such matters to the press or news media) solely of the specific points set forth in the script attached as Exhibit D.

13. **Public Disclosure of Agreement Following Dismissal Date.** Following the date(s) on which the Lawsuits are dismissed in accordance with Paragraphs 1 and 2 herein, and except to the extent set forth in the script attached as Exhibit E as permitted in this Paragraph below, the Parties agree not to disclose to anyone, publicly or privately, including, but not limited to, the press or news media, the terms or substance of any part of the Agreement or the discussions between the Parties; provided, however, that such disclosure is permitted: (a) to officers or necessary employees of the Parties or of parent or subsidiary entities of the Parties; (b) to professional individuals or entities providing the Parties specific advice (such as accountants or lawyers) who reasonably must be informed of its terms; (c) as required by law; or (d) as may be required to enforce the terms of the Agreement. Notwithstanding the foregoing provisions of this Paragraph, however, in response to inquiries from customers or potential customers about the Lawsuit, the Parties may inform such customers or potential customers (but may not issue any written press release or otherwise take steps to publicize such matters to the press or news media) solely of the specific points set forth in the script attached as Exhibit E.

14. **Assignment of Lawsuit Claims.** The Parties hereby represent that no claims

arising from, referring to, or in any manner related to the Lawsuit have been assigned or otherwise transferred to any third party.

**15. Waiver of Section 1542.** It is understood and agreed that this Agreement is intended to cover and does cover all claims or possible claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, or hereafter discovered or ascertained, and all rights under Section 1542 of the Civil Code of California are hereby expressly waived. The Parties hereto acknowledge that they are familiar with Section 1542, which reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

The Parties hereto expressly, knowingly, and intentionally waive and relinquish any and all rights which they have under Section 1542, as well as under any other similar state or federal statute or common law principle.

**16. Agreement Not An Admission.** This Agreement reflects a compromise of disputed claims. It does not constitute, and may not be construed as, an admission of the merit or lack of merit as to any claim or defense by any of the Parties.

**17. Entire Agreement.** This Agreement represents the entire understanding and agreement among the Parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, representations and agreements made by and between such Parties with respect thereto, including but not limited to the ten-point settlement agreement dated June 8, 2004 and signed by Chad Haggart on behalf of the Kristall Classics Parties, Leon Fingergut on behalf of himself and the Millennium Parties, and Maksim Shkadov on behalf of SDI on June 9, 2004. The Parties acknowledge that they have not relied upon any representation whatsoever of the other which is not contained in the Agreement and that there are no understandings, obligations, representations or warranties except as provided for herein. This Agreement may not be modified except by a writing signed by all Parties.

18. **Binding Effect.** The Parties agree and warrant that this Agreement shall be binding upon and inure to the benefit of the Parties and their licensees, agents and assigns.

19. **Construing Agreement.** Ambiguities, inconsistencies, or conflicts in this Agreement shall not be strictly construed against the drafter of the language but will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the Parties' intentions at the time this Agreement is entered into. Where the context of this Agreement requires, singular terms shall be considered plural, and plural terms shall be considered singular.

20. **Fees and Expenses.** Each Party shall bear its own attorneys' fees, costs and expenses in connection with the Lawsuits.

21. **Severability.** If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

22. **Counterparts.** This Agreement may be signed in counterparts and, as fully executed, shall have the efficacy of a signed original and shall constitute one Agreement, binding upon all parties.

23. **Headings.** The underlined headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

24. **Applicable Law.** This Agreement and all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed in all respects and exclusively by the laws of the State of California.

WHEREFORE, the Parties hereby acknowledge their agreement and consent to the terms and conditions set forth above through their respective signatures contained below:

MILLENNIUM DIAMOND USA, INC., dba  
GEMDIAM CORPORATION

By: [Signature]  
Leon Fingergut  
President

Date: 8-12-04

GEMDIAM CORPORATION

By: [Signature]  
Leon Fingergut  
President

Date: 8-12-04

LEON FINGERGUT

By: [Signature]  
Leon Fingergut

Date: 8-12-04

KRISTALL JEWELER, INC.

By: [Signature]  
Leon Fingergut  
President

Date: 8-12-04

SMOLENSK DIAMOND ISRAEL, LTD.

By: [Signature]  
Vsevolod Bobovnikov  
President

Date: \_\_\_\_\_

VSEVOLOD BOBOVNIKOV

By: [Signature]  
Vsevolod Bobovnikov

Date: \_\_\_\_\_

SMOLENSK UNITARY COMPANY,  
KRISTALL PRODUCTION COMPANY

By: [Signature]  
Maksim Shkadov  
First Deputy Director General

Date: \_\_\_\_\_

KRISTALL CLASSICS, INC.

By: [Signature]  
Chad Haggar  
President

Date: \_\_\_\_\_

MILLENNIUM DIAMOND USA, INC., dba  
GEMDIAM CORPORATION

By: \_\_\_\_\_  
Leon Fingergut  
President

Date: \_\_\_\_\_

GEMDIAM CORPORATION

By: \_\_\_\_\_  
Leon Fingergut  
President

Date: \_\_\_\_\_

LEON FINGERGUT

By: \_\_\_\_\_  
Leon Fingergut

Date: \_\_\_\_\_

KRISTALL JEWELER, INC.

By: \_\_\_\_\_  
Leon Fingergut  
President

Date: \_\_\_\_\_

SMOLENSK DIAMOND ISRAEL, LTD.

By: \_\_\_\_\_  
Vsevolod Bobovnikov  
President

Date: 16/08/2004

VSEVOLOD BOBOVNIKOV

By: \_\_\_\_\_  
Vsevolod Bobovnikov

Date: 16/08/2004

SMOLENSK UNITARY COMPANY,  
KRISTALL PRODUCTION COMPANY

By: \_\_\_\_\_  
Maksim Shkadov  
First Deputy Director General

Date: \_\_\_\_\_

KRISTALL CLASSICS, INC.

By: \_\_\_\_\_  
Chad Haggan  
President

Date: \_\_\_\_\_

MILLENNIUM DIAMOND USA, INC., dba  
GEMDIAM CORPORATION

SMOLENSK DIAMOND ISRAEL, LTD.

By: \_\_\_\_\_  
Leon Fingergut  
President

By: \_\_\_\_\_  
Vsevolod Bobovnikov  
President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

GEMDIAM CORPORATION

VSEVOLOD BOBOVNIKOV

By: \_\_\_\_\_  
Leon Fingergut  
President

By: \_\_\_\_\_  
Vsevolod Bobovnikov

Date: \_\_\_\_\_

Date: \_\_\_\_\_

LEON FINGERGUT

SMOLENSK UNITARY COMPANY,  
KRISTALL PRODUCTION COMPANY

By: \_\_\_\_\_  
Leon Fingergut

By: \_\_\_\_\_  
*Maksim Sikadov*  
Maksim Sikadov  
First Deputy Director General

Date: \_\_\_\_\_

Date: \_\_\_\_\_

KRISTALL JEWELER, INC.

KRISTALL CLASSICS, INC.

By: \_\_\_\_\_  
Leon Fingergut  
President

By: \_\_\_\_\_  
Chad Haggar  
President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

MILLENNIUM DIAMOND USA, INC., dba  
GEMDIAM CORPORATION

By: Leon Fingergut  
President

Date: \_\_\_\_\_

GEMDIAM CORPORATION

By: Leon Fingergut  
President

Date: \_\_\_\_\_

LEON FINGERGUT

By: Leon Fingergut

Date: \_\_\_\_\_

KRISTALL JEWELER, INC.

By: Leon Fingergut  
President

Date: \_\_\_\_\_

SMOLENSK DIAMOND ISRAEL, LTD.

By: Vsevolod Bobovnikov  
President

Date: \_\_\_\_\_

VSEVOLOD BOBOVNIKOV

By: Vsevolod Bobovnikov

Date: \_\_\_\_\_

SMOLENSK UNITARY COMPANY,  
KRISTALL PRODUCTION COMPANY

By: Maksim Shkadov  
First Deputy Director General

Date: \_\_\_\_\_

KRISTALL CLASSICS, INC.

By: Chad Haggan  
President

Date: \_\_\_\_\_

**EXHIBIT A**

**(Stipulated Dismissal of Kristall Federal Lawsuit)**

**EXHIBIT B**

**(Stipulated Dismissal of *SDJ v. Millennium* Lawsuit)**

02999/600067.1

-18-

Exhibit " 1 " - Page 21

**EXHIBIT C**

**(Trademark Assignment Agreement re: KRISTALL Trademark)**

ASSIGNMENT

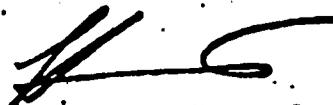
WHEREAS, KRISTALL JEWELER, INC., of 9601 Wilshire Boulevard, Suite 730, Beverly Hills, California, 90212 is a corporation organized and existing under the laws of the State of New York ("Assignor"), has adopted, used and registered the trademark KRISTALL & Design, Registration No. 2,676,728;

WHEREAS, KRISTALL CLASSICS, INC., of 611 West Sixth Street, Suite 1800, Los Angeles, California 90017, a corporation organized under the laws of the State of Nevada, ("Assignee"), is desirous of acquiring said mark and the registration thereof;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, KRISTALL JEWELER, INC. does hereby assign unto the said KRISTALL CLASSICS, INC., all rights, title and interest in and to the said mark and registration, together with the good will of the business symbolized by the mark.

KRISTALL JEWELER, INC.

By:

  
Title: *President.*

Dated: 26 AUGUST 2004

MAP-TM-6296

**EXHIBIT D**

The following is the script that should be utilized regarding the resolution of the disputes between Millennium Diamond USA, Inc., dba GemDiam Corporation, and GemDiam Corporation, Leon Fingergut, Smolensk Diamond Israel, Ltd., Vsevolod Bobovnikov, Kristall Classics, Inc., Kristall Jeweler, Inc., and Smolensk Unitary Company, Kristall Production Company (collectively the "Parties") after execution of this Settlement Agreement, but prior to the date(s) on which the Lawsuits are dismissed:

1. The disputes between the Parties have been resolved amicably.
2. Pursuant to a confidential settlement agreement, the Parties have agreed to dismiss with prejudice all claims asserted in the two cases captioned (i) *Smolensk Diamond Israel, Ltd. v. Millennium Diamond USA, Inc., dba GemDiam Corp., GemDiam Corp., and Leon Fingergut aka Lev Fingergut, and Related Cross-Claims*, L.A.S.C. Case No. BC 287742 and (ii) *Kristall Jeweler, Inc. v. Kristall Classics, Inc., and related Counter-Claims*, C.D. Cal. Case No. CV 03-666 (GAF) (VBKx).
3. Pursuant to a confidential settlement agreement, the Parties have also agreed that Leon Fingergut is the sole owner of Kristall Jeweler, Inc., which in turn is the sole owner of the rights to the THE DIAMONDS OF RUSSIA trademark.
4. Pursuant to a confidential settlement agreement, the Parties have also agreed that Kristall Classics, Inc. is the sole owner of the rights to the KRISTALL trademark.
5. The details and other terms of the settlement agreement are confidential.

**EXHIBIT E**

The following is the script that should be utilized regarding the resolution of the disputes between Millennium Diamond USA, Inc., dba GemDiam Corporation, and GemDiam Corporation, Leon Fingergut, Smolensk Diamond Israel, Ltd., Vsevolod Bobovnikov, Kristall Classics, Inc., Kristall Jeweler, Inc., and Smolensk Unitary Company, Kristall Production Company (collectively the "Parties") following the date(s) on which the Lawsuits are dismissed in accordance with Paragraphs 1 and 2 of the Settlement Agreement:

1. The disputes between the Parties have been resolved amicably.
2. Pursuant to a confidential settlement agreement, the Parties have dismissed with prejudice all claims asserted in the two cases captioned (i) *Smolensk Diamond Israel, Ltd. v. Millennium Diamond USA, Inc., dba GemDiam Corp., GemDiam Corp., and Leon Fingergut aka Lev Fingergut, and Related Cross-Claims*, L.A.S.C. Case No. BC 287742 and (ii) *Kristall Jeweler, Inc. v. Kristall Classics, Inc., and related Counter-Claims*, C.D. Cal. Case No. CV 03-666 (GAF) (VBKx).
3. Pursuant to a confidential settlement agreement, the Parties have also agreed that Leon Fingergut is the sole owner of Kristall Jeweler, Inc., which in turn is the sole owner of the rights to the THE DIAMONDS OF RUSSIA trademark.
4. Pursuant to a confidential settlement agreement, the Parties have also agreed that Kristall Classics, Inc. is the sole owner of the KRISTALL trademark.
5. The details and other terms of the settlement agreement are confidential.

KRISTALL CLASSICS, INC. V. THE DIAMONDS OF RUSSIA,  
LTD.

PETITION FOR CANCELLATION (IN TRIPLICATE) AND  
CHECK FOR \$300.00 MAILED: April 29, 2005

RECEIVED:

MAP:src  
22139.025



05-02-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #66

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

KRISTALL CLASSICS, INC., a  
Nevada corporation,

Petitioner,

v.

THE DIAMONDS OF RUSSIA, LTD.,  
a California corporation,

Registrant.

Cancellation No. \_\_\_\_\_  
Reg. No. 2,920,296  
Dated: January 25, 2005

CERTIFICATE OF MAILING

The undersigned declares under the penalty of perjury the within PETITION FOR CANCELLATION (IN TRIPPLICATE) AND FILING FEE were forwarded to BOX FEE - TTAB, Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, by depositing same with the United States Postal Service as first class mail, postage prepaid, this 29th day of April, 2005.

  
\_\_\_\_\_  
SHERYL R. CONWAY

PETITION FOR CANCELLATION

BOX FEE - TTAB  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Sir:

Petitioner, KRISTALL CLASSICS, INC., is a Nevada corporation having its principal place of business in Los Angeles, California. Petitioner believes that it is or will be damaged by Registration No. 2,920,296 and hereby petitions to cancel same.

The grounds for cancellation are as follows:

1. The Registrant's application was filed by a predecessor-in-interest, Gemdiam Corporation, on June 22, 2001 for the mark KRISTALL THE DIAMONDS OF RUSSIA & Design in International Class 14 to designate goods made wholly or significantly in part of diamonds from Russia and precious metals and their alloys and goods in precious metals or coated therewith, specifically, jewelry, precious gemstones, rings, bracelets, earrings, necklaces, pendants, cuff links, horological and chronological instruments, namely, clocks, watches and chronometers, and ashtrays and powder compacts made of precious metals, the application having been designated as Application Serial No. 76/275,016.

2. On or about March 20, 2002, Gemdiam Corporation assigned all rights, title and interest in and to Application Serial No. 76/275,016 to Kristall Jeweler, Inc., a New York corporation.

3. On or about November 16, 2004, Kristall Jeweler, Inc. assigned all rights, title and interest in and to Application Serial No. 76/275,016 to The Diamonds of Russia, Ltd., a Delaware corporation.

4. On January 29, 2003, Kristall Jewelers, Inc. instituted an action in the United States District Court for the Central District of California against Petitioner, said action being identified by the Court as Kristall Jewelers, Inc. v.

Kristall Classics, Inc., Case No. CV03-860-CJC(VBKx), said action relating to ownership of the KRISTALL trademark (hereinafter referred to as the "Kristall Litigation").

5. On or about September 3, 2004, the Kristall Litigation was dismissed, with prejudice, based upon a written agreement between the parties, the pertinent portion thereof providing:

(a) All rights, title and interest in and to the trademark KRISTALL & Design (Registration No. 2,676,728) together with the good will of the business symbolized by the mark, were assigned by Kristall Jeweler, Inc. to Petitioner, a copy of the Assignment and the Recordation Form Cover Sheet therefor being attached hereto as Exhibit A;

(b) Kristall Jewelers, Inc. would take all steps necessary to change its corporate name from Kristall Jewelers, Inc. to The Diamonds of Russia Ltd.; and

(c) Kristall Jewelers, Inc. would take all steps necessary to abandon Application Serial No. 76/275,016.

6. That neither Kristall Jewelers, Inc. nor The Diamonds of Russia, Ltd. took any steps that were necessary to abandon Application Serial No. 76/275,016 and, as a direct result thereof, Application Serial No. 76/275,016 matured into and was issued as Registration No. 2,920,296.

7. Petitioner is likely to be damaged by the continued registration of KRISTALL THE DIAMONDS OF RUSSIA in that a likelihood of confusion exists between Petitioner's mark and that of

the Registrant. That since long prior to any of the acts complained of in this Petition, Petitioner has continuously used the mark KRISTALL and formatives thereof to conduct its business and Petitioner's continued and legal use of said mark will be impaired by the continued registration of the KRISTALL THE DIAMONDS OF RUSSIA mark.

WHEREFORE, Petitioner respectfully prays that the Petition for Cancellation be sustained and Registration No. 2,920,296 obtained by Registrant be cancelled.

The requisite filing fee is enclosed herewith.

Please address all correspondence to MICHAEL A. PAINTER, ESQ. of ISAACMAN, KAUFMAN & PAINTER, A Professional Corporation, with offices at 8484 Wilshire Boulevard, Suite 850, Beverly Hills, California 90211 (323) 782-7700.

Respectfully submitted,

ISAACMAN, KAUFMAN & PAINTER  
A Professional Corporation

By: MS/  
Michael A. Painter

MAP:src  
Dated: April 29, 2005  
8484 Wilshire Boulevard, Suite 850  
Beverly Hills, California 90211  
(323) 782-7700

EH450559371US

Form PTO-1594 (Rev. 06/04)  
OMB Collection 0651-0027 (exp. 6/30/2005)

U.S. DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

**KRISTALL JEWELER, INC.**

- Individual(s)
- General Partnership
- Corporation-State
- Other
- Association
- Limited Partnership

Citizenship (see guidelines) New York Corp.

Execution Date(s) August 26, 2004

Additional names of conveying parties attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached?  Yes  No

Name: KRISTALL CLASSICS, INC.

Internal

Address:

Street Address: 611 W 6th Street

City: Los Angeles

State: CA

Country: U.S.A. Zip: 90017

- Association Citizenship
- General Partnership Citizenship
- Limited Partnership Citizenship
- Corporation Citizenship Nevada
- Other Citizenship

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,676,728

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

**KRISTALL & Design**

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: Michael A. Painter

Internal Address:

Isaacman, Kaufman & Painter

Street Address: 8484 Wilshire Blvd.  
Suite 850

City: Beverly Hills

State: CA Zip: 90211

Phone Number: 323-782-7700

Fax Number: 323-782-7744

Email Address: painter@ikplaw.com

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 40.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_

b. Deposit Account Number 16-0070

Authorized User Name Michael Painter

9. Signature:

Michael A. Painter  
Signature

December 20, 2004  
Date

Name of Person Signing

Total number of pages including cover sheet, attachments, and document:

3

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

EXHIBIT A

A S S I G N M E N T

WHEREAS, KRISTALL JEWELER, INC., of 9601 Wilshire Boulevard, Suite 730, Beverly Hills, California, 90212 is a corporation organized and existing under the laws of the State of New York ("Assignor"), has adopted, used and registered the trademark KRISTALL & Design, Registration No. 2,676,728;

WHEREAS, KRISTALL CLASSICS, INC., of 611 West Sixth Street, Suite 1800, Los Angeles, California 90017, a corporation organized under the laws of the State of Nevada, ("Assignee"), is desirous of acquiring said mark and the registration thereof;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, KRISTALL JEWELER, INC. does hereby assign unto the said KRISTALL CLASSICS, INC., all rights, title and interest in and to the said mark and registration, together with the good will of the business symbolized by the mark.

KRISTALL JEWELER, INC.

By:



Title:

*PRESIDENT*

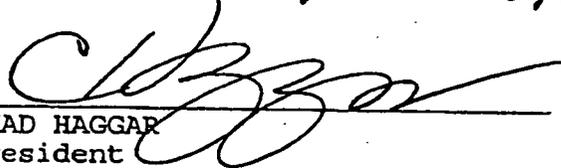
Dated: 26 AUGUST 2004

POWER OF ATTORNEY

Assignee hereby appoints MICHAEL A. PAINTER, ESQ. of ISAACMAN, KAUFMAN & PAINTER, A Professional Corporation, with offices at 8484 Wilshire Boulevard, Suite 850, Beverly Hills, California 90211, (323)782-7700, with full power of substitution, the power of appointment of an associate attorney, and the power of revocation, to record this Assignment, to transact all business in the Patent and Trademark Office in connection therewith and to receive all documents.

KRISTALL CLASSICS, INC. ; KRISTALL, INC

By:

  
CHAD HAGGAR  
President

Dated: *DEC 19, 2004*

KRISTALL, INC.

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** a true and correct copy of the within **MOTION TO SUSPEND** was forwarded to Registrant, The Diamonds of Russia, Ltd., 848 North Rainbow Boulevard, Suite 1052, Las Vegas, Nevada 89107, via first class mail, postage prepaid, this 29th day of January, 2007.

  
SHERYL E. CONAWAY