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

Proceeding	92049987
Party	Plaintiff Jewelry by S.A. Gauthier, Inc.
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Date	03/05/2009
Attachments	477request.pdf (2 pages)(61205 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Applicant:)
Jewelry by S.A. Gauthier, Inc.)
)
Applicant Address:)
4211 North Marshall Way)
Scottsdale, Arizona 85251)
)
Mark: GAUTHIER)
)
Serial No.: 77/354,477)
_____)

REQUEST TO LIFT
SUSPENSION AND
CONSIDERATION OF
COEXISTENCE AGREEMENT

Dear Ms. Munson-Ott,

Applicant, Jewelry by S.A. Gauthier, Inc., respectfully requests the examining attorney lift the suspension against its GAUTHIER application, Serial No. 77/354,477 for the following reasons. Prior registrations for ROMAIN GAUTHIER, U.S. Reg. 3,196,976, and for R. GAUTHIER, U.S. Reg. No. 3,325,015, have been cited against Applicant. In response, Applicant filed a petition to cancel the registrations based upon its prior use of the GAUTHIER mark in the United States.

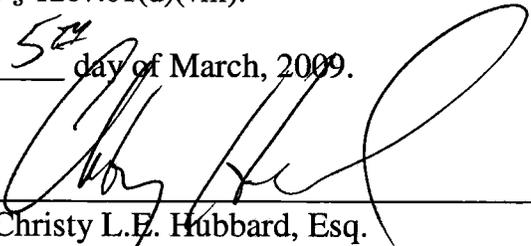
The parties have now entered a coexistence agreement and have asked the TTAB to suspend the cancellation proceedings so that the Examining Attorney can consider the agreement.

Applicant respectfully submits the coexistence agreement entered between the parties and asks the Examining Attorney to remove the 2(d) refusal against its GAUTHIER applications and allow them to proceed to publication.

The coexistence agreement details the reasons why the parties believe no likelihood of confusion exists and undertakes means to avoid confusion, if any, in the

future. Applicant's coexistence agreement is the product of arms-length negotiations executed after both parties carefully considered their respective customer bases, geographic usage, interests and markets. Coexistence agreements entered between the parties most interested in precluding confusion are entitled to "great weight." *Amalgamated Bank of New York v. Amalgamated Trust & Savings Bank*, 842 F.2d 1270, 6 USPQ2d 1305 (Fed. Cir. 1988). "It is at least difficult to maintain a subjective view that confusion will occur when those directly concerned say it won't. A mere assumption that confusion is likely will rarely prevail against uncontroverted evidence from those on the firing line that it is not." T.M.E.P. § 1207.01(d)(viii).

Respectfully submitted this 5th day of March, 2009.



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