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Filing date: **07/15/2010**

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

Proceeding	92052525
Party	Defendant Peace & Love Jewelry by Nancy Davis LLC
Correspondence Address	TAL GRINBLAT, ESQ LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN 16633 VENTURA BLVD., 11TH FLOOR ENCINO, CA 91436 UNITED STATES tgrinblat@lewitthackman.com, nkanter@lewitthackman.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Tal Grinblat, Esq.
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Signature	/tal grinblat/
Date	07/15/2010
Attachments	Motion to Suspend Petition for Cancellation.pdf (75 pages)(2734837 bytes) Exhibit 3.pdf (44 pages)(1444519 bytes)

MEMORANDUM IN SUPPORT OF
MOTION TO SUSPEND PETITION FOR CANCELLATION

I. INTRODUCTION.

The Petition seeks to cancel Nancy Davis' trademark registrations for: "peace & love" and design of a heart with a superimposed peace symbol (Reg. No. 3,779,506) and a design of a heart with a superimposed peace symbol (Reg. No. 3,779,507) (these two registrations are sometime referred to hereinafter as the "Registrations"). As shown below, the Petition should be suspended pending the outcome of the Civil Action, which involves the same parties, related trademarks, and nearly identical claims as the Petition.

II. FACTS.

Nancy Davis has been, and is, engaged in the manufacture and sale of jewelry, apparel and accessories under her distinctive "Peace & Love" brand, which includes her distinctive heart/peace logo. Currently, Nancy Davis owns at least five trademark registrations for the brand, containing Nancy Davis' distinctive design. These include:

- Reg. No. 2,989,992 for "peace & love jewelry by nancy davis" and design of a heart with a superimposed peace symbol;
- Reg. No. 3,193,106 for "peace & love" and design of a heart with a superimposed peace symbol;
- Reg. No. 3,193,107 for a design of a heart with a superimposed peace symbol;
- Reg. No. 3,779,506 for "peace & love" and design of a heart with a superimposed peace symbol; and
- Reg. No. 3,779,507 for a design of a heart with a superimposed peace symbol.

(Copies of Nancy Davis' trademark registrations are attached as Exhibit "1.")

Nancy Davis' "Peace & Love" branded-products have been continuously advertised and sold throughout the United States since at least as early as 2002. Among other places, Nancy

Davis' "Peace & Love" products have been sold at Saks Fifth Avenue, Neiman Marcus, Kitson, Fred Segal, ICE Accessories, Geary's, Paul Carter, Fortunoff, the Bellagio and MGM Grand hotels in Las Vegas, the QVC television network, as well as many other outlets.

The Civil Action.

On January 20, 2010 Nancy Davis filed the Civil Action alleging, among other things, that Kohl's Department Stores, Inc. ("Kohl's") advertised and sold jewelry, clothing and accessories, and continues to advertise and sell jewelry, clothing and accessories, bearing heart and peace symbol designs that are confusingly similar to Nancy Davis' registered trademarks. A copy of the complaint is attached as Exhibit "2." (See complaint, ¶16). The Civil Action alleges claims for trademark infringement, false designation of origin, statutory unfair competition and common law unfair competition. (See complaint, pgs. 4, 7, 9 and 10).

On March 12, 2010, Kohl's filed an answer and counter-claim in response to Nancy Davis' complaint. In its affirmative defenses, Kohl's alleged that Nancy Davis' trademarks have not acquired distinctiveness and/or are not inherently distinctive. (Eighth Affirmative Defense). (See answer, pg. 7, lines 13-15). Kohl's made the same allegations in its counter-claim, which seeks a declaration of non-infringement as well as an order cancelling Nancy Davis' peace/heart trademarks. (see counter-claim, pg. 10, "Count I"). A copy of the answer and counter-claim is attached as Exhibit "3."

On July 2, 2010 Nancy Davis filed a motion for leave to file a supplemental complaint in the Civil Action. (A copy of the motion is attached as Exhibit "4."). The motion seeks to amend the original complaint to allege that Nancy Davis recently obtained the registrations at issue in the Petition (Reg. Nos. 3,779,506 and 3,779,507). The motion explains that these registrations were issued on April 20, 2010 after the filing of the original complaint on January 20, 2010. Based on the liberal policy of allowing parties to supplement their pleadings to bring the action "up to date" and to set forth new facts affecting the controversy that have occurred since the original complaint was filed, it is anticipated that the Court will grant Nancy Davis' motion and

that the Registrations will be at issue in the Civil Action. See *Manning v. City of Auburn*, 953 F.2d 1355, 1359-1360 (11th Cir. 1992) and *Keith v. Volpe*, 858 F.2d 467, 468 (9th Cir. 1988).

The Trademark Trial and Appeal Board Proceedings.

In addition to this proceeding, Kohl's recently filed an opposition challenging Nancy Davis' trademark application for "peace & love by nancy davis" and design of a heart with a superimposed peace symbol (Application No. 77/813,776) (the "Opposition"). The Opposition, filed on March 12, 2010, was assigned case no. 91194803 and is now pending before the TTAB. Among other things, the Opposition alleges that the applied-for mark is merely descriptive and/or generic. Nancy Davis filed an Answer and moved to suspend the Opposition on June 15, 2010. Kohl's responded to the motion and Nancy Davis intends to file a reply shortly.

On June 2, 2010, Kohl's filed the instant Cancellation Petition. The Petition seeks to cancel the recently issued Registrations. Among other things, the Petition alleges the Registrations are merely generic, descriptive, ornamental, not inherently distinctive and were obtained through fraud. Nancy Davis is concurrently filing an Answer to the Petition with this Motion.

III. ARGUMENT.

When the parties to a proceeding before the Board "are engaged in a civil action... which may have a bearing on the case, proceedings, before the Board may be suspended until termination of the civil action." 37 C.F.R. §2117(a). "To the extent that a civil action in a Federal district court involves issues in common with those in a 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." Trademark Trial and Appeal Board Manual of Procedure §510.02(a) citing *Goya Foods, Inc. v. Tropicana Products, Inc.*, 846 F.2d 848, 6 USPQ2d 1950 (2d Cir.1984).

The Civil Action bears directly on the Cancellation. Once supplemented, the Civil Action will concern the exact same registrations that are at issue in Kohl's Petition (Reg. Nos. 3,779,506 and 3,779,507). Even if the Court does not grant Nancy Davis leave to supplement

her complaint, the Civil Action will still bear directly on the Cancellation Petition. This is because the peace/love symbols and/or words “Peace & Love” in Registration Nos. 3,779,506 and 3,779,507 are the same as the symbols and/or words in Registration Nos. 2,989,992, 3,193,106 and 3,193,107, and Nancy Davis’ complaint already alleges infringement in the clothing and accessories categories. (Complaint, ¶14). Thus, a ruling by the District Court that Nancy Davis’ peace/love logo and words “Peace & Love” are distinctive will, if adopted by the Board, determine the Petition in Nancy Davis’ favor.

In response to the supplemented complaint, it is anticipated that Kohl’s will file an amended answer and counter-claim alleging that Nancy Davis’ Registrations are not inherently distinctive, were fraudulently obtained and were abandoned, as they have alleged in the Petition. Thus, a ruling by the District Court that the peace/love logo and words are distinctive (whether on the complaint or counter-claim), that the Registrations were not fraudulently obtained and that the Registrations were not abandoned, if adopted by the Board, will determine the Petition in Nancy Davis’ favor.

Moreover, the Civil Action goes beyond the scope of the Petition to address other distinct marks/registrations owned by Nancy Davis. As a result, the parties should be able to address all outstanding issues with respect to their respective uses of the marks at issue more completely and more efficiently in the Civil Action as the Civil Action is anticipated to cover all of Nancy Davis’ registrations.

Accordingly, the Petition should be suspended in this instance to avoid inconsistent rulings and expending of the Board’s resources.

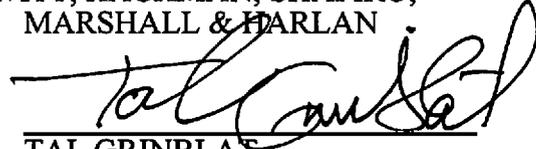
IV. CONCLUSION.

For the foregoing reasons, Nancy Davis respectfully requests that its Motion to Suspend the Petition be granted and that the Petition be suspended for all purposes until the termination of the Civil Action.

DATED: July 13, 2010

LEWITT, HACKMAN, SHAPIRO,
MARSHALL & HARLAN

By:



TAL GRINBLAT

Attorneys for Peace & Love Jewelry by
Nancy Davis, LLC

EXHIBIT “1”

Int. Cl.: 14

Prior U.S. Cls.: 2, 27, 28, and 50

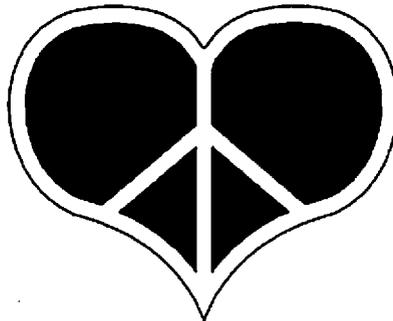
United States Patent and Trademark Office

Reg. No. 2,989,992

Registered Aug. 30, 2005

**TRADEMARK
PRINCIPAL REGISTER**

peace & love



jewelry by nancy davis

**PEACE & LOVE JEWELRY BY NANCY DAVIS
LLC (CALIFORNIA LTD LIAB CO)**

616 NIMES ROAD

LOS ANGELES, CA 90077

**FOR: JEWELRY AND WATCHES, IN CLASS 14
(U.S. CLS. 2, 27, 28 AND 50).**

FIRST USE 9-0-2002; IN COMMERCE 9-0-2002.

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "JEWELRY", APART FROM THE
MARK AS SHOWN.**

**"NANCY DAVIS" IS THE NAME OF A LIVING
INDIVIDUAL WHOSE CONSENT IS OF RECORD.**

SN 76-452,117, FILED 9-24-2002.

MICHAEL ENGEL, EXAMINING ATTORNEY

Int. Cl.: 14

Prior U.S. Cls.: 2, 27, 28 and 50

Reg. No. 3,193,106

United States Patent and Trademark Office

Registered Jan. 2, 2007

Corrected

OG Date May 25, 2010

**TRADEMARK
PRINCIPAL REGISTER**



PEACE & LOVE JEWELRY BY NANCY
DAVIS LLC (CALIFORNIA LIMITED
LIABILITY COMPANY)

616 NIMES ROAD
LOS ANGELES, CA 90077

OWNER OF U.S. REG. NO. 2,989,992.
THE MARK CONSISTS OF THE
WORDS "PEACE & LOVE" AND DESIGN
OF A HEART WITH A SUPERIMPOSED
PEACE SYMBOL.

FOR: JEWELRY AND WATCHES, IN
CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 9-0-2002; IN COMMERCE
9-0-2002.

SER. NO. 78-814,146, FILED 2-14-2006.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on May 25, 2010.*

Int. Cl.: 14

Prior U.S. Cls.: 2, 27, 28 and 50

Reg. No. 3,193,107

United States Patent and Trademark Office

Registered Jan. 2, 2007

Corrected

OG Date May 25, 2010

**TRADEMARK
PRINCIPAL REGISTER**



PEACE & LOVE JEWELRY BY NANCY
DAVIS LLC (CALIFORNIA LIMITED
LIABILITY COMPANY)
616 NIMES ROAD
LOS ANGELES, CA 90077
OWNER OF U.S. REG. NO. 2,989,992.
THE MARK CONSISTS OF A HEART
WITH A SUPERIMPOSED PEACE SYM-
BOL.

FOR: JEWELRY AND WATCHES, IN
CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 9-0-2002; IN COMMERCE
9-0-2002.

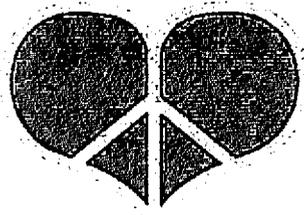
SER. NO. 78-814,170, FILED 2-14-2006.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on May 25, 2010.*

United States of America

United States Patent and Trademark Office

peace & love



Reg. No. 3,779,506

Registered Apr. 20, 2010

Int. Cl.: 18

TRADEMARK

PRINCIPAL REGISTER

PEACE & LOVE JEWELRY BY NANCY DAVIS LLC (CALIFORNIA LIMITED LIABILITY COMPANY)

616 NIMES ROAD
LOS ANGELES, CA 90077

FOR: HANDBAGS, TOTE BAGS, PURSES, SHOULDER BAGS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 6-0-2003; IN COMMERCE 6-0-2003.

OWNER OF U.S. REG. NOS. 2,989,992, 3,193,106, AND 3,193,107.

THE MARK CONSISTS OF THE WORDS "PEACE & LOVE" AND DESIGN OF A HEART WITH A SUPERIMPOSED PEACE SYMBOL.

SN 77-979,071, FILED 6-12-2008.

DAVID MILLER, EXAMINING ATTORNEY

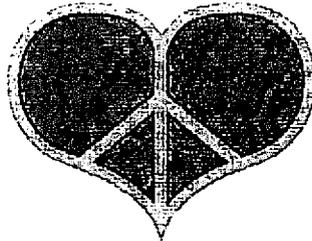


David J. Kyffers

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office



Reg. No. 3,779,507

Registered Apr. 20, 2010

Int. Cls.: 18 and 25

TRADEMARK

PRINCIPAL REGISTER

PEACE & LOVE JEWELRY BY NANCY DAVIS LLC (CALIFORNIA LIMITED LIABILITY COMPANY)

616 NIMES ROAD
LOS ANGELES, CA 90077

FOR: HANDBAGS, TOTE BAGS, PURSES, SHOULDER BAGS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 6-0-2003; IN COMMERCE 6-0-2003.

FOR: CLOTHING, NAMELY, T-SHIRTS, SHIRTS, SWEATPANTS, SWEATSHIRTS, JEANS, PANTS, DRESSES, SHORTS, TOPS, BOTTOMS, HEADWEAR, HEADWEAR ACCESSORIES, NAMELY, SCARVES, HEAD BANDS, BERETS, HATS; FOOTWEAR, BELTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

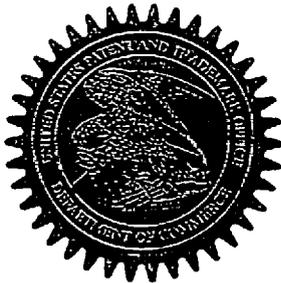
FIRST USE 6-0-2003; IN COMMERCE 6-0-2003.

OWNER OF U.S. REG. NOS. 2,989,992, 3,193,106, AND 3,193,107.

THE MARK CONSISTS OF A HEART WITH A SUPERIMPOSED PEACE SYMBOL.

SN 77-979,072, FILED 6-12-2008.

DAVID MILLER, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT “2”

FILED

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

BY _____

7 Attorneys for Plaintiff
8 Peace & Love Jewelry by Nancy Davis LLC

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

12 PEACE & LOVE JEWELRY BY
13 NANCY DAVIS LLC, a California
14 limited liability company,

14 Plaintiffs

15 vs.

16 KOHL'S DEPARTMENT STORES,
17 INC., a Delaware corporation, and
18 Does 1 through 10, inclusive,

19 Defendants.

Case No. **CV10-0417 GW (VBK*)**

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

**(1) TRADEMARK INFRINGEMENT
[15 U.S.C. § 1114];**

**(2) FALSE DESIGNATION OF
ORIGIN [15 U.S.C. 1125(a)];**

**(3) STATUTORY UNFAIR
COMPETITION [Cal. Bus. & Prof.
Code §§ 17200 et seq.]; and**

**(4) COMMON LAW UNFAIR
COMPETITION**

JURY TRIAL DEMANDED

23
24 Plaintiff Peace & Love Jewelry by Nancy Davis LLC, a California limited
25 liability company, for claims against defendants Kohl's Department Stores, Inc. and
26 Does 1 through 10, inclusive, alleges as follows:
27
28

1 herein alleged, were proximately caused by their conduct.

2 6. Plaintiff is informed and believes, and thereon alleges, that, at all times
3 relevant hereto, each of the defendants was the agent and/or employee of each of
4 the remaining defendants and, in doing the things hereinafter alleged, was acting
5 within the course and scope of such agency and/or employment.

6 **GENERAL ALLEGATIONS**

7 7. At all times relevant hereto, plaintiff Nancy Davis has been, and is,
8 engaged in the manufacture and sale of jewelry, apparel, and accessories under
9 three registered trademarks, one of which consists of a heart design with a peace
10 symbol superimposed inside of it, with the words "peace & love" above it, and the
11 words "jewelry by nancy davis," below it; one of which consists of a heart design
12 with a peace symbol superimposed inside of it, with the words "peace & love"
13 above it; and one of which consists of a heart design with a peace symbol
14 superimposed inside of it, but with no words (the "Marks").

15 8. Ms. Davis launched her "peace & love" jewelry line at Saks Fifth
16 Avenue in November 2002. Ms. Davis created the concept as part of her annual
17 fundraiser for multiple sclerosis, "Race To Erase MS," and incorporated the design
18 into jewelry that she gave as gifts to celebrity participants in the fundraiser in 2002.
19 The jewelry line that followed has been popular among celebrities and entertainers.
20 In 2009, Ms. Davis launched a "peace & love" clothing and accessory line that is
21 being sold in upscale, fashion-forward boutiques, including, among others, Kitson,
22 Fred Segal, and ICE Accessories.

23 9. Nancy Davis first adopted and used the Marks to identify goods in
24 September 2002 and registered the Marks in the United States Patent and
25 Trademark Office on August 30, 2005 under United States Trademark Registration
26 No. 2,989,992, and on January 2, 2007 under United States Trademark Registration
27 Nos. 3,193,106 and 3,193,107. Plaintiff owns the registrations, which are, and
28 continue to be, in full force and effect. Copies of plaintiff's trademark registrations

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1 are appended hereto as Exhibits A, B, and C and incorporated herein by reference.
2 Plaintiff's Marks are valid and protectable.

3 10. Nancy Davis has used the Marks continuously since September 2002
4 to identify its lines of jewelry, apparel, and accessories. Nancy Davis uses the
5 Marks on the jewelry, apparel, and accessories it sells, on boxes in which its
6 jewelry is sold, on labels affixed to the apparel and accessories it sells, on hang tags
7 appended to its products when they are sold, and in advertising and promotional
8 materials.

9 11. Jewelry, apparel, and accessories bearing plaintiff's Marks have been
10 sold to various upscale retail outlets throughout the United States since 2002,
11 including, among many others, Saks Fifth Avenue, Neiman Marcus, Kitson, Fred
12 Segal, ICE Accessories, Geary's, Paul Carter, and Fortunoff, as well as the Bellagio
13 and MGM Grand Hotels in Las Vegas.

14 12. Plaintiff's jewelry, apparel, and accessories have been advertised and
15 sold throughout the United States under the Marks. By virtue of advertising and
16 sales, together with consumer acceptance and recognition, plaintiff's Marks
17 identify plaintiff's jewelry, apparel, and accessories only, and distinguish them from
18 jewelry, apparel, and accessories manufactured and sold by others. Plaintiff's
19 Marks have thus become, and are, a valuable asset symbolizing plaintiff, its quality
20 goods, and its goodwill. Plaintiff's jewelry, apparel, and accessories are regularly
21 worn by high profile celebrities and are often featured in print and broadcast media.

22 **FIRST CLAIM FOR RELIEF**

23 **(Against All Defendants For Trademark Infringement, 15 U.S.C. § 1114)**

24 13. Plaintiff realleges and incorporates herein by reference each and every
25 allegation set forth above in paragraphs 1 through 12, inclusive.

26 14. Nancy Davis is informed and believes, and thereon alleges, that, in or
27 around July 2009, defendant Kohl's began to advertise, sell, or offer for sale,
28 jewelry, clothing, and accessories bearing heart and peace symbol designs that are

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1 reproductions, counterfeits, copies, or colorable imitations of the design contained
2 in the Marks. Plaintiff is further informed and believes, and thereon alleges, that
3 some of the infringing goods sold by Kohl's were, and continue to be, manufactured
4 by Kohl's under various of its brands or labels. True and correct images of
5 exemplars of infringing goods are appended hereto as Exhibit D.

6 15. Defendants are not now, and never have been, authorized by plaintiff
7 to use plaintiff's Marks or any confusingly similar mark in connection with the
8 marketing and/or sale of goods.

9 16. Plaintiff is informed and believes, and thereon alleges, that the
10 products defendants are advertising, selling, or offering for sale that bear a heart
11 and peace symbol design are imitations of plaintiff's Marks and that defendants are
12 advertising, selling, or offering them for sale in interstate commerce or in a manner
13 substantially affecting interstate commerce. As such, defendants' advertising, sale,
14 or offering for sale of those products is likely to cause confusion, mistake, and/or
15 deception among consumers as to the source, quality, and nature of those goods.

16 17. On or about July 2, 2009 plaintiff, by letter, advised defendant Kohl's
17 of plaintiff's ownership of the Marks and the registration therefor and requested that
18 defendant immediately cease and desist from further advertising, sale, or offering
19 for sale of products bearing a heart and peace symbol design like the one contained
20 in the Marks. A true and correct copy of that letter is appended hereto as Exhibit E.
21 Kohl's referred plaintiff's cease and desist letter to various manufacturers of
22 infringing goods sold by Kohl's. One such manufacturer acknowledged that more
23 than twenty of its products infringed plaintiff's trademark and proposed that
24 plaintiff enter into a licensing agreement with it. Plaintiff declined. Kohl's, itself,
25 never responded to plaintiff's July 2, 2009 cease and desist letter. On October 13,
26 2009, plaintiff sent another letter to Kohl's noting that, not only had Kohl's failed to
27 address the infringements referenced in its July 2, 2009 letter, but that its
28 infringements of plaintiff's marks had been much more extensive than originally

1 believed, *i.e.*, Kohl's not only continued selling infringing jewelry, but also, among
2 other infringing items, was selling watches, clothing for girls and juniors, and
3 sleepwear. A true and correct copy of plaintiff's October 13, 2009 letter to Kohl's is
4 appended hereto as Exhibit F. Defendant Kohl's never responded to plaintiff's
5 October 13, 2009 letter, and has failed and refused, and continues to fail and refuse,
6 to comply with plaintiff's requests.

7 18. Plaintiff is informed and believes, and thereon alleges, that, as a
8 proximate result of advantage accruing to defendant Kohl's business from
9 plaintiff's advertising, sales, and consumer recognition, and as a proximate result of
10 confusion, deception, mistake, or a combination thereof caused by defendant Kohl's
11 wrongful advertising and sale of goods bearing the heart and peace symbol design,
12 defendant Kohl's has made substantial sales and/or profits in an amount to be
13 established according to proof.

14 19. Plaintiff is informed and believes, and thereon alleges, that, as a
15 proximate result of advantage accruing to defendant Kohl's business from
16 plaintiff's advertising, sales, and consumer recognition, and as a proximate result of
17 confusion, deception, mistake, or a combination thereof caused by defendants'
18 wrongful advertising and sale of goods bearing the heart and peace symbol design,
19 plaintiff has been deprived of substantial sales of its jewelry, apparel, and
20 accessories and substantial opportunities to license the use of its Marks, and has
21 been deprived of the value of its Marks as commercial assets, in amounts to be
22 established according to proof.

23 20. Defendants' activities have the tendency to confuse and deceive and,
24 plaintiff is informed and believes, and thereon alleges, have already confused and
25 deceived, customers and potential customers for, and potential licensees of,
26 plaintiff's products into believing that defendants' products originate with, are
27 sponsored, endorsed, or licensed by, or are otherwise associated with plaintiff.

28 Plaintiff is informed and believes, and thereon alleges, that customers and potential

1 licensees are, and are likely to continue being, mistaken or deceived as to the true
2 source, origin, sponsorship, and affiliation of the goods advertised, sold, or offered
3 for sale by defendants that bear a heart and peace symbol design.

4 21. Plaintiff is informed and believes, and thereon alleges that, unless
5 restrained by the Court, defendants will continue to infringe plaintiff's registered
6 Marks, thus engendering a multiplicity of judicial proceedings, and that pecuniary
7 compensation will not afford plaintiff adequate relief for the damage to its Marks in
8 the public perception. Plaintiff is further informed and believes, and thereon
9 alleges, that, in the absence of injunctive relief, customers, potential customers, and
10 potential licensees are likely to be deceived or mistaken as to the true source,
11 origin, sponsorship and affiliation of defendants' goods.

12 22. Plaintiff is informed and believes, and thereon alleges, that defendants'
13 acts were committed, and continue to be committed, with actual notice of plaintiff's
14 exclusive rights and with an intent to cause injury to the reputation and goodwill
15 associated with plaintiff and its products. Pursuant to 15 U.S.C. § 1117, plaintiff is,
16 therefore, entitled to recover three times its actual damages or three times
17 defendants' profits, whichever is greater, together with plaintiff's attorneys' fees.
18 In addition, pursuant to 15 U.S.C. § 1118, plaintiff is entitled to an order requiring
19 destruction of all infringing products and promotional materials in defendants'
20 possession.

21 **SECOND CLAIM FOR RELIEF**

22 **(Against All Defendants For False Designation of Origination, 15 U.S.C. §**
23 **1125(a))**

24 23. Plaintiff realleges and incorporates herein by reference each and every
25 allegation set forth above in paragraphs 1 through 12, and 14 through 22, inclusive.

26 24. Defendants have caused goods that bear a heart and peace symbol
27 design similar to the Marks to enter into interstate commerce. Said use of the heart
28 and peace symbol design is a false designation of origin which is likely to cause

1 confusion, to cause mistake, and to deceive as to the affiliation, connection, or
2 association of defendants with plaintiff and as to the origin, sponsorship, or
3 approval of such goods by plaintiff. These acts are in violation of 15 U.S.C.
4 § 1125(a) in that defendants have used a false designation of origin, or a false or
5 misleading description and representation of fact in connection with goods that is
6 likely to cause confusion, to cause mistake, and/or to deceive as to the affiliation,
7 connection, or association of defendants with plaintiff and/or as to the origin,
8 sponsorship, and/or approval of defendants' goods and activities by plaintiff.

9 25. Plaintiff is informed and believes, and thereon alleges, that, as a
10 proximate result of defendants' false designation of the origin of their goods,
11 defendants have made substantial sales and profits in amounts to be established
12 according to proof.

13 26. Plaintiff is informed and believes, and thereon alleges, that, as a
14 proximate result of defendants' false designation of the origin of their goods,
15 plaintiff has been damaged and deprived of substantial sales of its jewelry, apparel,
16 and accessories and has been deprived of the value of its trademarks as commercial
17 assets, in amounts to be established according to proof.

18 27. Plaintiff is informed and believes, and thereon alleges, that, unless
19 restrained by the Court, defendants will continue to designate falsely the origin of
20 their goods, causing irreparable damage to plaintiff and engendering a multiplicity
21 of lawsuits. Pecuniary compensation will not afford plaintiff adequate relief for its
22 resulting damages. Plaintiff is further informed and believes, and thereon alleges,
23 that, in the absence of injunctive relief, customers, potential customers, and
24 potential licensees are likely to continue being mistaken or deceived as to the true
25 source, origin, sponsorship, and affiliation of defendants' goods.

26 28. Plaintiff is informed and believes, and thereon alleges, that,
27 defendants' acts were committed, and continued to be committed, with actual notice
28 of plaintiff's exclusive rights and with an intent to cause confusion, to cause

1 mistake, and/or to deceive, and to cause injury to the reputation and good will
2 associated with plaintiff and his products. Pursuant to 15 U.S.C. § 1117, plaintiff
3 is, therefore, entitled to recover three times its actual damages or three times
4 defendants' profits, whichever is greater, together with plaintiff's attorneys' fees. In
5 addition, pursuant to 15 U.S.C. § 1118, plaintiff is entitled to an order requiring
6 destruction of all infringing products and promotional materials in defendants'
7 possession.

8 **THIRD CLAIM FOR RELIEF**

9 **(Against All Defendants For Statutory Unfair Competition)**

10 29. Plaintiff realleges and incorporates herein by reference each and every
11 allegation set forth above in paragraphs 1 through 12, 14 through 22, and 24
12 through 28, inclusive.

13 30. Defendants' conduct as alleged hereinabove, constitutes unfair,
14 unlawful, and fraudulent business practices prohibited by §§17200 *et seq.* and
15 17500 *et seq.* of the *California Business & Professions Code*.

16 31. Plaintiff is informed and believes, and thereon alleges, that, as a direct
17 and proximate result of defendants' wrongful conduct as alleged above, defendants
18 have obtained property and revenues properly belonging to plaintiff. Plaintiff
19 therefore seeks restitution of those amounts.

20 32. Plaintiff has no adequate remedy at law for the injury that will be
21 caused by defendants' acts of unfair competition and/or fraudulent business
22 practices. Accordingly, plaintiff is entitled to preliminary and permanent
23 injunctions restraining defendants, their officers, agents, and employees, and all
24 persons acting in concert with them, from further engaging in acts of unfair
25 competition and/or fraudulent business acts against plaintiff and its products.

1 **FOURTH CLAIM FOR RELIEF**

2 **(Against All Defendants For Common Law Unfair Competition)**

3 33. Plaintiff realleges and incorporates herein by reference paragraphs 1
4 through 12, 14 through 22, 24 through 28, and 30 through 32, inclusive.

5 34. Defendants' conduct, as alleged hereinabove, constitutes acts of unfair
6 competition under California common law. These acts, including defendants' sale
7 of cheap knock-offs of plaintiff's luxury goods, have caused injury to the reputation
8 and goodwill of plaintiff, and have tarnished and diluted the Marks and caused
9 customer confusion. As a direct and proximate result of defendants' acts, plaintiff
10 has suffered damages, including lost profits, the precise amount of which is
11 presently unknown, but which will be established according to proof.

12 35. Plaintiff has no adequate remedy at law for the injury that will be
13 caused by defendants' acts of unfair competition. Accordingly, plaintiff is entitled
14 to preliminary and permanent injunctions restraining defendants, their officers,
15 agents, and employees, and all persons acting in concert with them, from further
16 engaging in acts of unfair competition against plaintiff and its products.

17 36. Plaintiff is informed and believes, and thereon alleges, that defendants
18 committed the foregoing acts with the intention of depriving plaintiff of its legal
19 rights, with oppression, fraud, and/or malice, and in conscious disregard of
20 plaintiff's rights. Plaintiff is, therefore, entitled to an award of exemplary damages,
21 according to proof.

22
23 **PRAYER FOR RELIEF**

24 WHEREFORE, plaintiff prays for relief against defendants as follows:

25 1. For preliminary and permanent injunctions enjoining and restraining
26 defendants, their agents, employees, representatives, partners, joint venturers,
27 and/or anyone acting on behalf of, or in concert with, defendants, or any of them,

28 from:
240130_1.DOC

1 A. designing, manufacturing, importing, shipping, delivering,
2 selling, marketing, displaying, advertising, or promoting any article of jewelry,
3 clothing, or accessory that simulates, reproduces, or bears the heart and peace
4 symbol design contained in the Marks or that bears any other mark so similar to
5 plaintiff's Marks as to create a likelihood of confusion, mistake, or deception;
6 and/or

7 B. representing or implying, directly or indirectly, to retailers,
8 customers, distributors, licensees, or any other customers or potential customers for
9 defendants' products that defendants' products originate with, are sponsored,
10 endorsed, or licensed by, or are otherwise associated or affiliated with plaintiff;
11 and/or

12 C. using, in connection with the sale of any article of jewelry,
13 clothing, or accessory, any other mark that is confusingly similar to the Marks
14 owned and used by plaintiff.

15 2. For an order requiring the destruction of all units of defendants'
16 infringing goods and all marketing, advertising, or promotional materials depicting
17 defendants' infringing goods;

18 3. For an accounting of all profits obtained by defendants from sales of
19 the infringing goods and an order that defendants hold all such profits in
20 constructive trust for the benefit of plaintiff;

21 4. For an award of all profits obtained by defendants from sales of the
22 infringing goods;

23 5. For statutory damages according to proof;

24 6. For compensatory damages, in an amount exceeding \$10 million,
25 according to proof;

26 7. For restitution of money lost by plaintiff or gained by defendants as a
27 result of defendants' acts of unfair competition, as provided in *Business &*

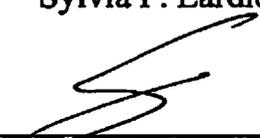
28 *Professions Code* § 17203.

240130_1.DOC

- 1 8. For exemplary and multiple damages, according to proof;
- 2 9. For prejudgment interest on all damages and other amounts awarded
- 3 by the Court
- 4 10. For attorneys' fees;
- 5 11. For costs of suit incurred herein; and
- 6 12. For such other and further relief as the Court deems just and proper.

8 Dated: January 20, 2010

BROWNE WOODS GEORGE LLP
Allan Browne
Peter W. Ross
Sylvia P. Lardiere

11 By 
12 _____
13 Sylvia P. Lardiere

14 Attorneys for Plaintiff Peace & Love Jewelry
15 by Nancy Davis LLC

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: January 20, 2010

BROWNE WOODS GEORGE LLP
Allan Browne
Peter W. Ross
Sylvia P. Lardiere

By 
Sylvia P. Lardiere

Attorneys for Plaintiff Peace & Love Jewelry
by Nancy Davis LLC

EXHIBIT A

Int. Cl.: 14

Prior U.S. Cls.: 2, 27, 28, and 50

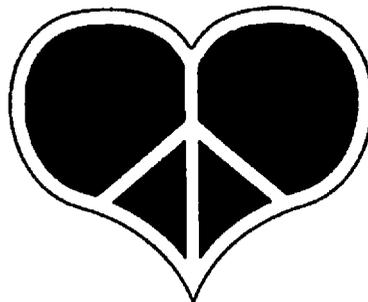
Reg. No. 2,989,992

United States Patent and Trademark Office

Registered Aug. 30, 2005

**TRADEMARK
PRINCIPAL REGISTER**

peace & love



jewelry by nancy davis

**PEACE & LOVE JEWELRY BY NANCY DAVIS
LLC (CALIFORNIA LTD LIAB CO)
616 NIMES ROAD
LOS ANGELES, CA 90077**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "JEWELRY", APART FROM THE
MARK AS SHOWN.**

**FOR: JEWELRY AND WATCHES, IN CLASS 14
(U.S. CLS. 2, 27, 28 AND 50).**

**"NANCY DAVIS" IS THE NAME OF A LIVING
INDIVIDUAL WHOSE CONSENT IS OF RECORD.**

SN 76-452,117, FILED 9-24-2002.

FIRST USE 9-0-2002; IN COMMERCE 9-0-2002.

MICHAEL ENGEL, EXAMINING ATTORNEY

EXHIBIT B

Int. Cl.: 14.

Prior U.S. Cls.: 2, 27, 28 and 50

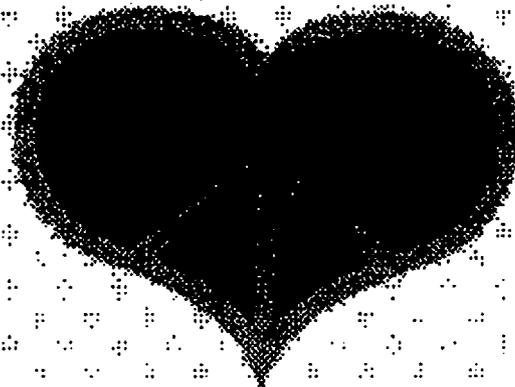
United States Patent and Trademark Office

Reg. No. 3,193,106

Registered Jan. 2, 2007

TRADEMARK
PRINCIPAL REGISTER

peace & love



NANCY DAVIS (CALIFORNIA LTD LIAB CO)
616 NIMES ROAD
LOS ANGELES, CA 90077

FOR: JEWELRY AND WATCHES, IN CLASS 14
(U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 9-0-2002; IN COMMERCE 9-0-2002.

OWNER OF U.S. REG. NO. 2,989,992.

THE MARK CONSISTS OF THE WORDS "PEACE
& LOVE" AND DESIGN OF A HEART WITH A
SUPERIMPOSED PEACE SYMBOL.

SER. NO. 78-814,146, FILED 2-14-2006.

WID C. REHNER, EXAMINING ATTORNEY

EXHIBIT C

Int. Cl.: 14

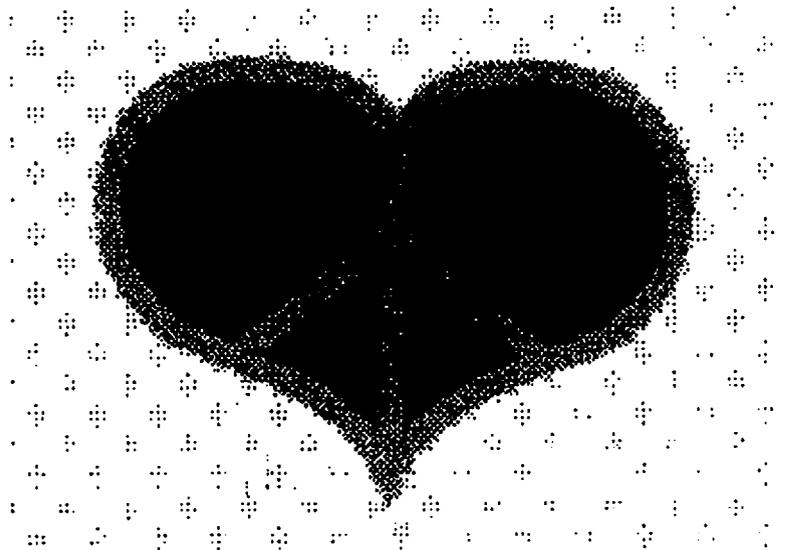
Prior U.S. Cls.: 2, 27, 28 and 50

United States Patent and Trademark Office

Reg. No. 3,193,107

Registered Jan. 2, 2007

**TRADEMARK
PRINCIPAL REGISTER**



**NANCY DAVIS (CALIFORNIA LTD LIAB CO)
616 NIMES ROAD
LOS ANGELES, CA 90077**

**FOR: JEWELRY AND WATCHES, IN CLASS 14
(U.S. CLS. 2, 27, 28 AND 50).**

FIRST USE 9-0-2002 IN COMMERCE 9-0-2002.

OWNER OF U.S. REG. NO. 2,989,992.

**THE MARK CONSISTS OF A HEART WITH A
SUPERIMPOSED PEACE SYMBOL.**

SER. NO. 78-814,170, FILED 2-14-2006.

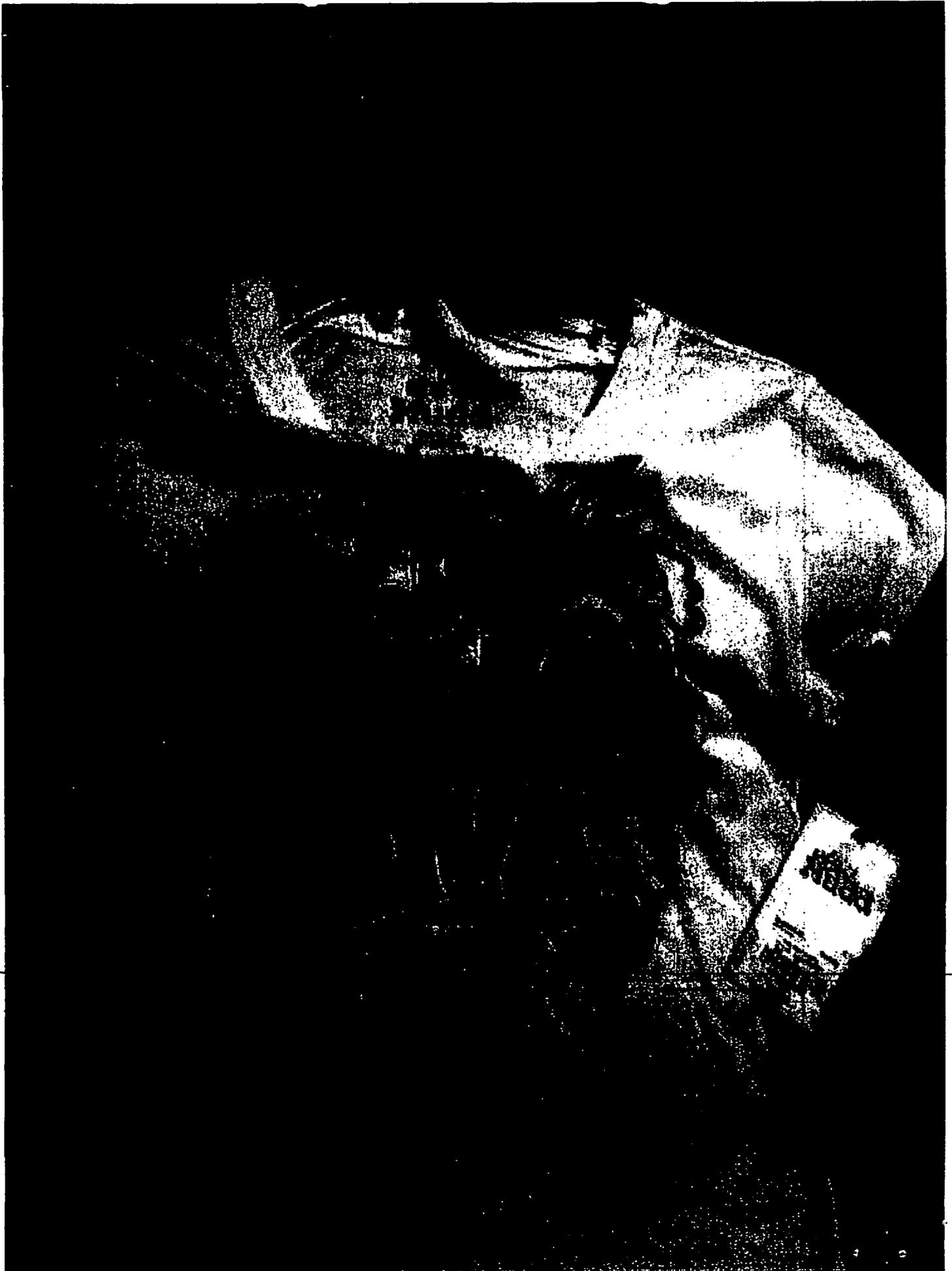
DAVID C. REHNER, EXAMINING ATTORNEY

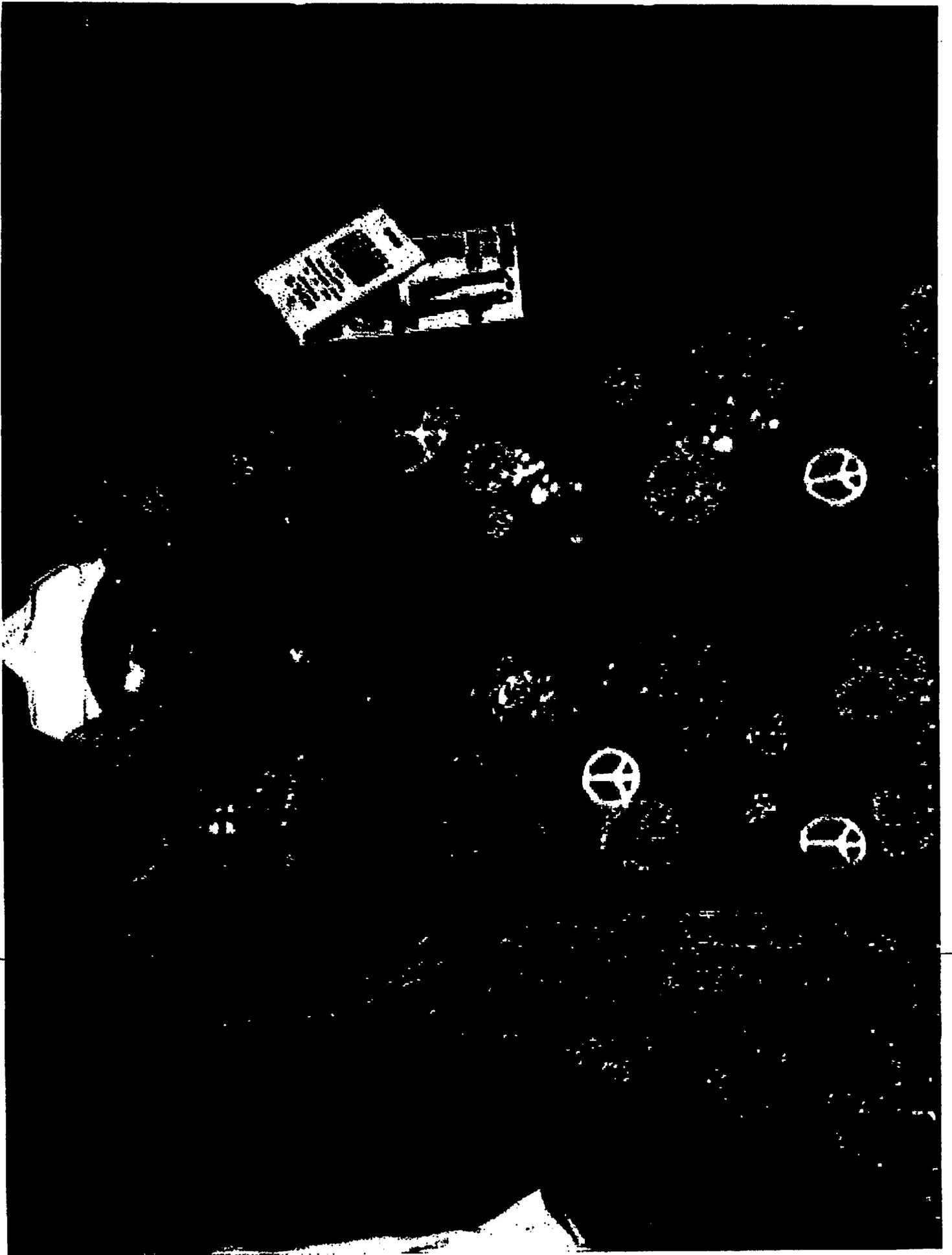


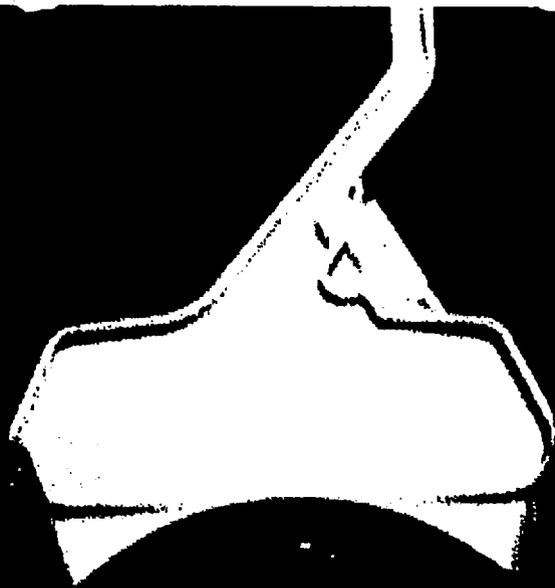
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EXHIBIT D









WORLD'S
440 20 22
STREET NAME
CITY-STATE
ZIP-CITY
E-MAIL ADDRESS
\$42.00

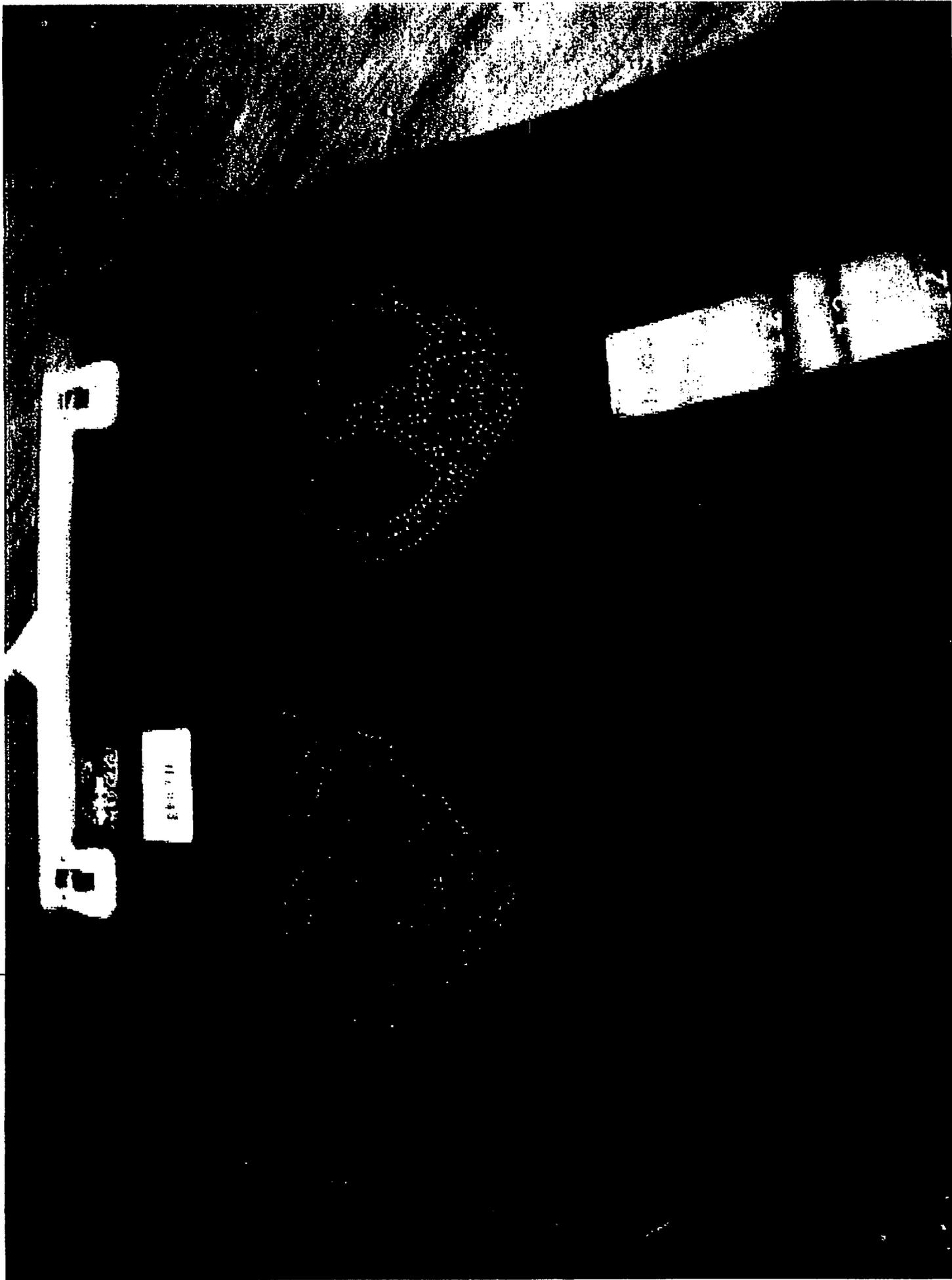


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KORSAK

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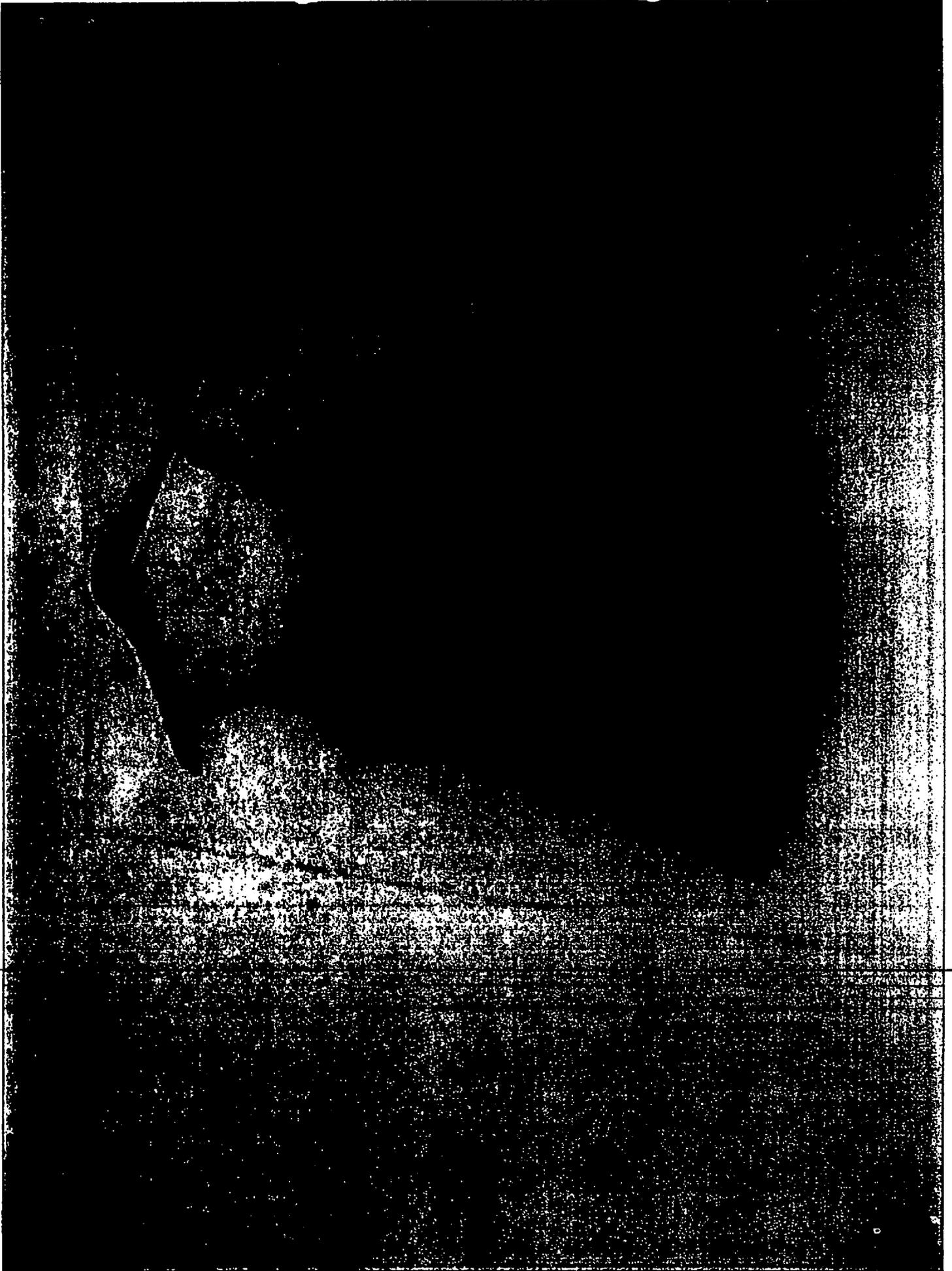


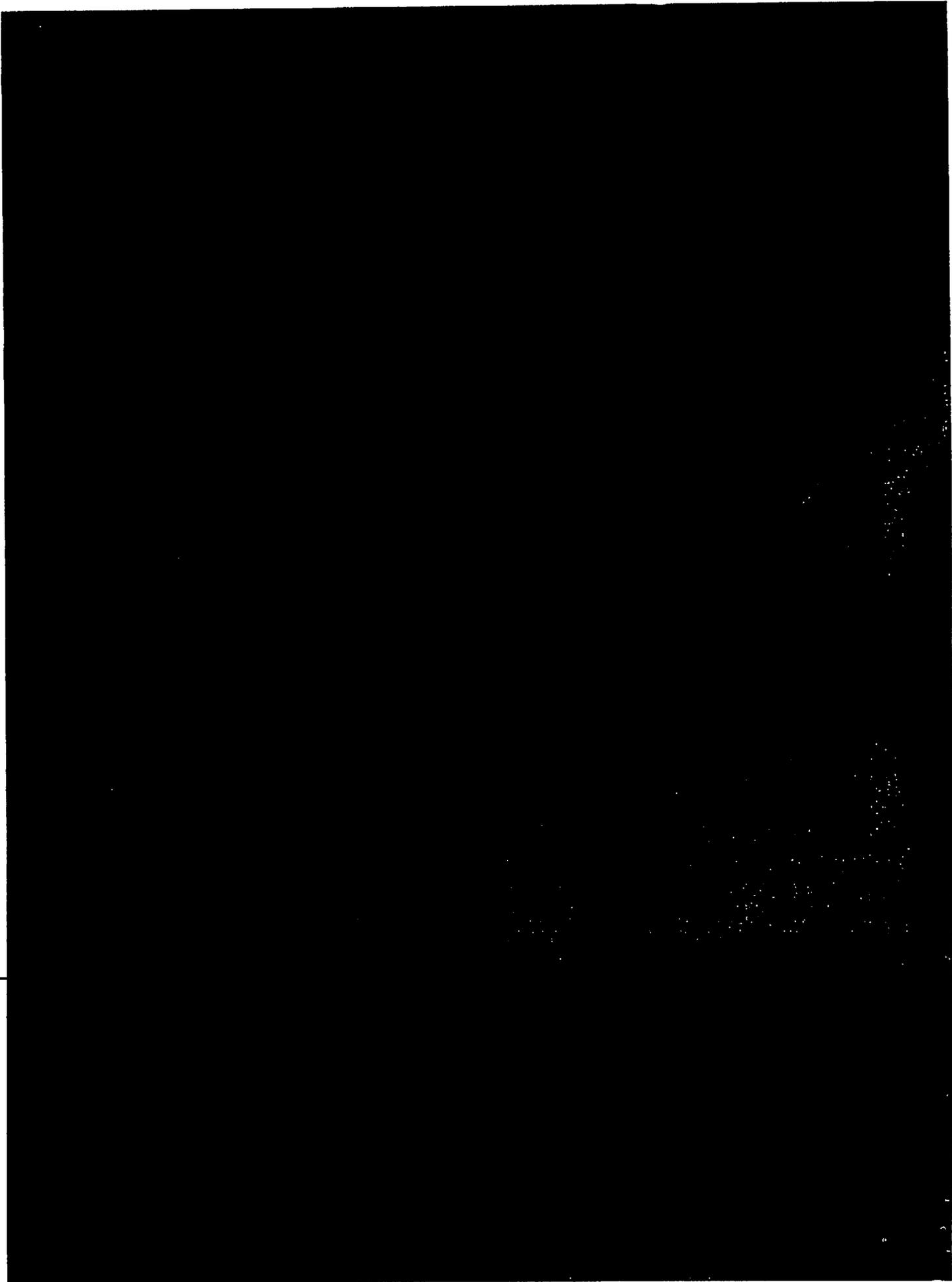


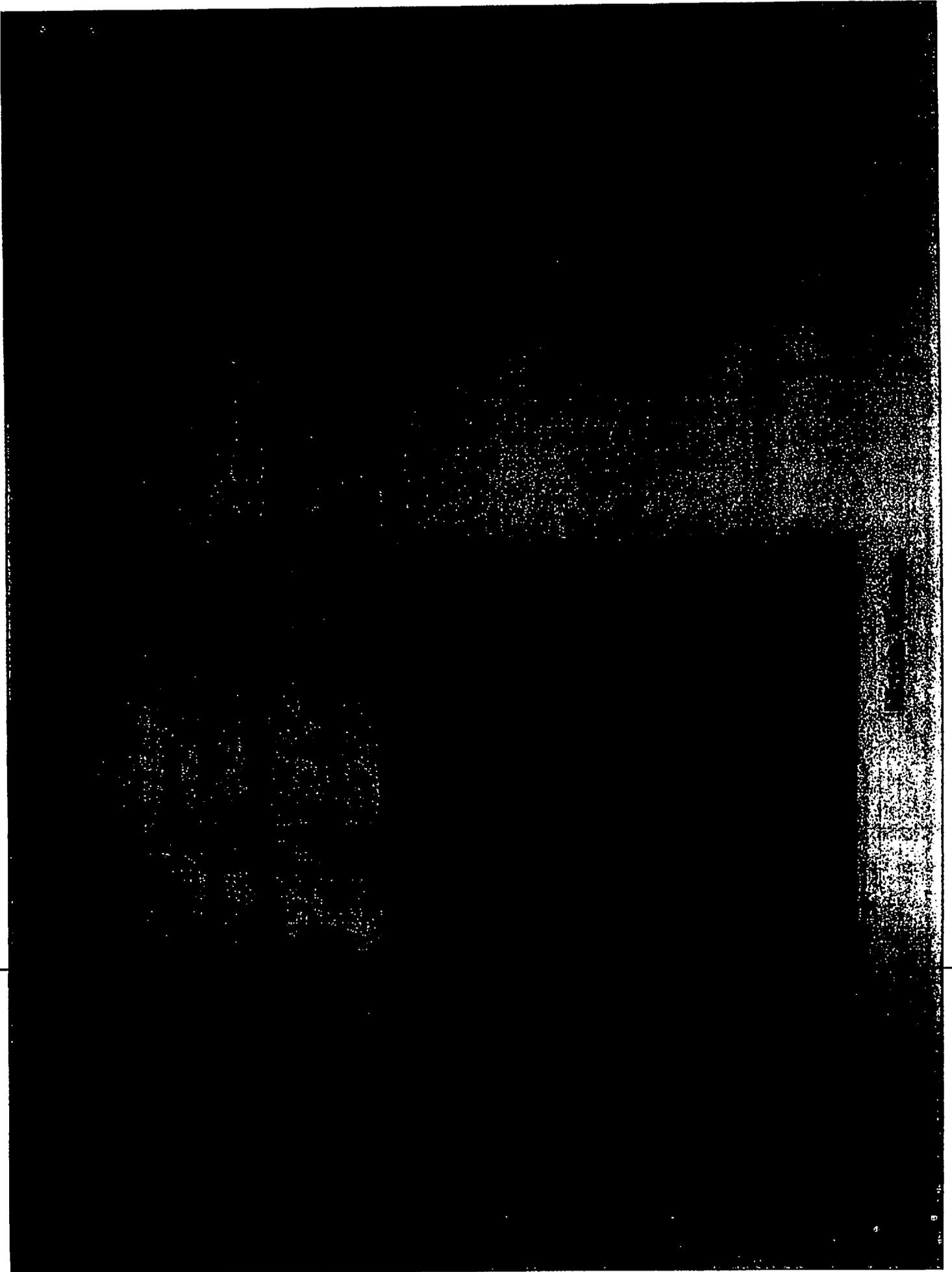


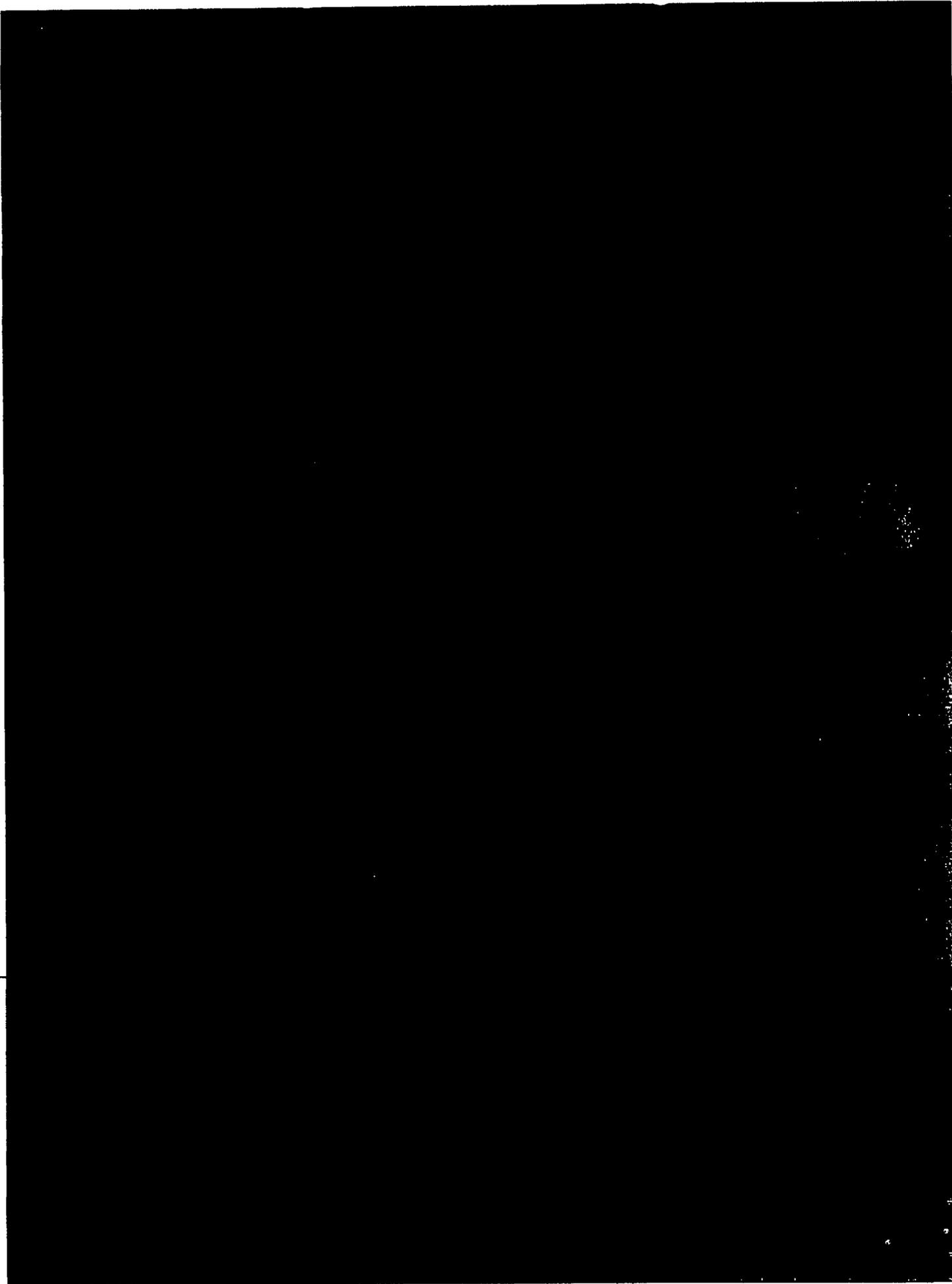
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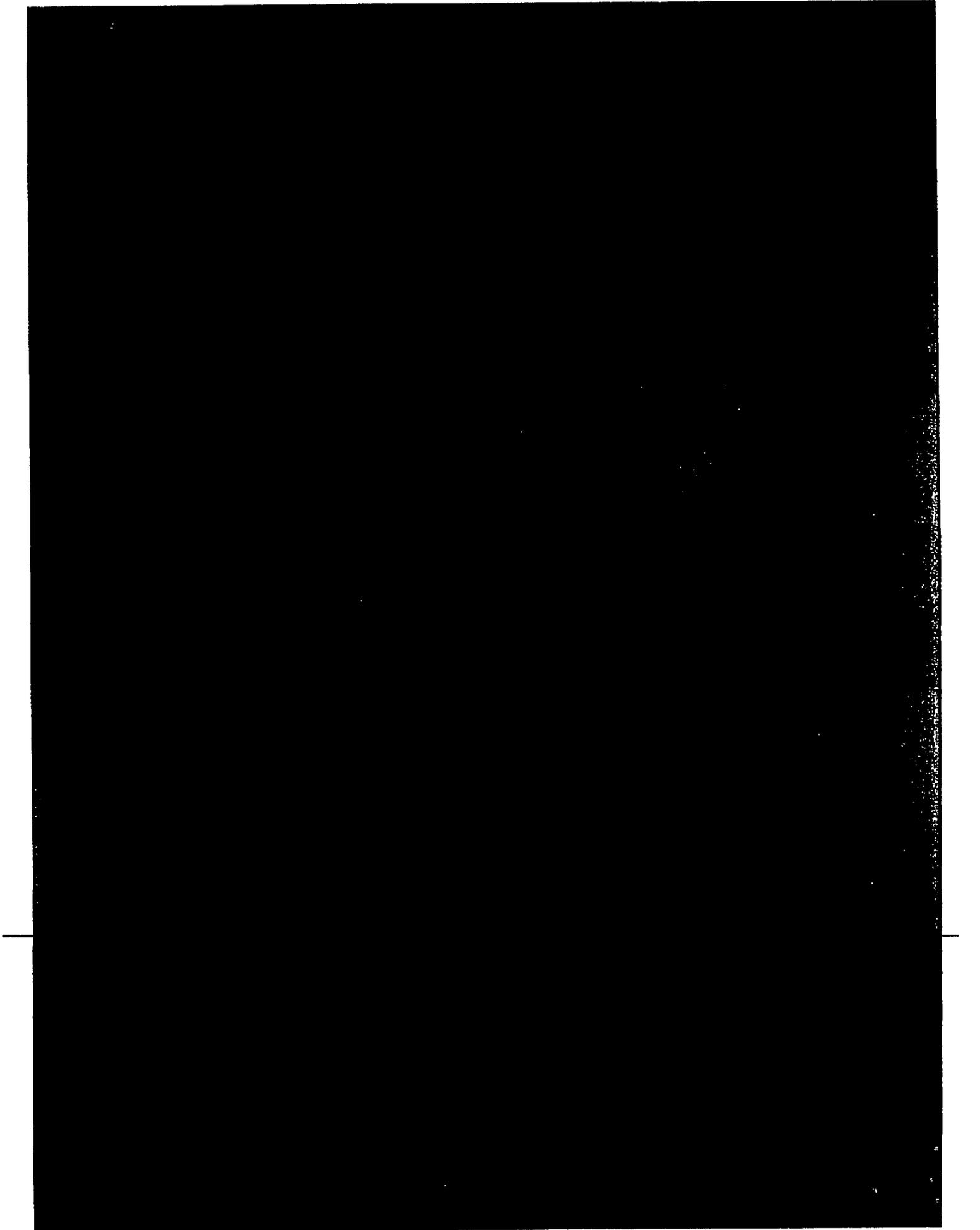


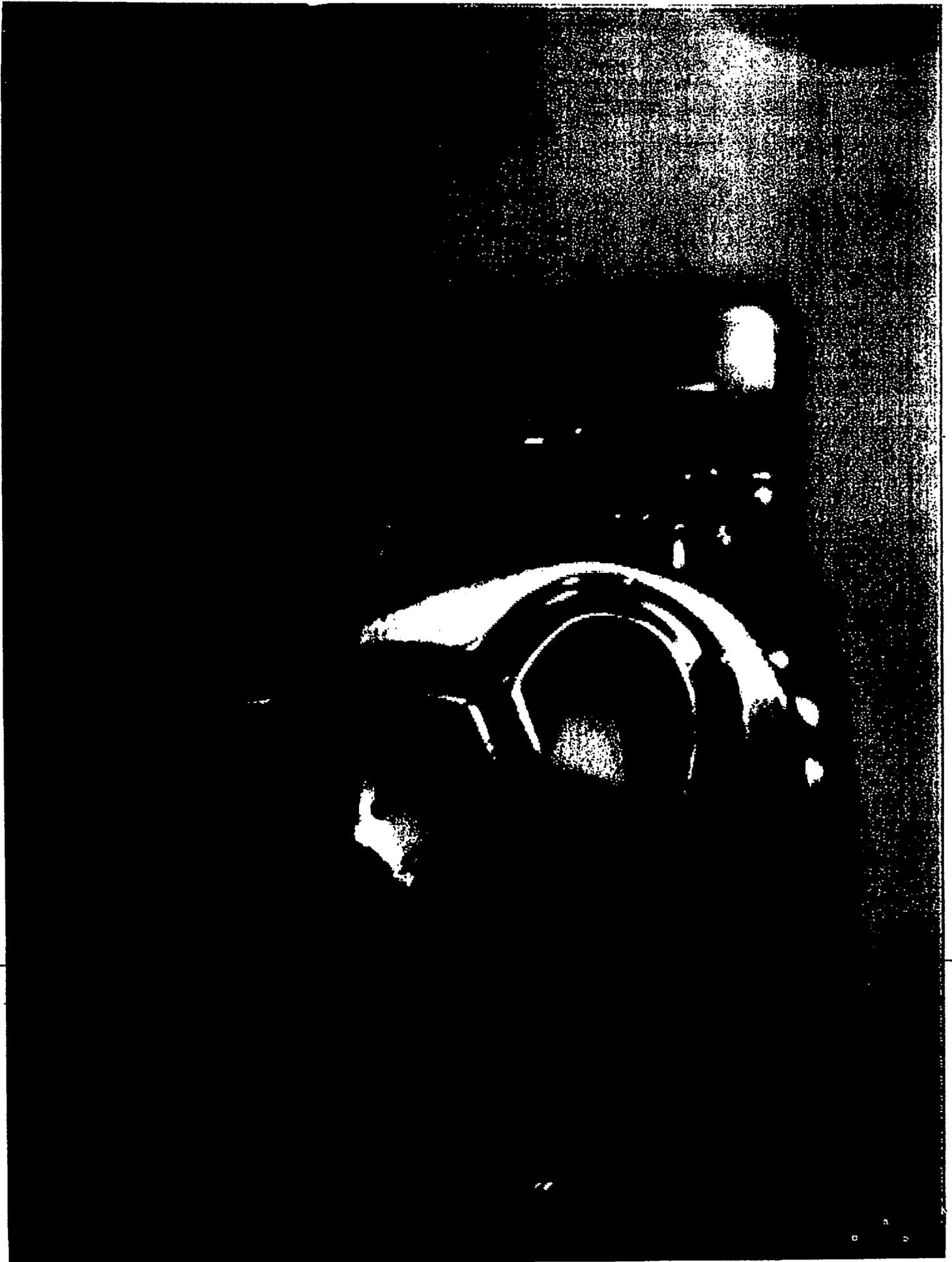












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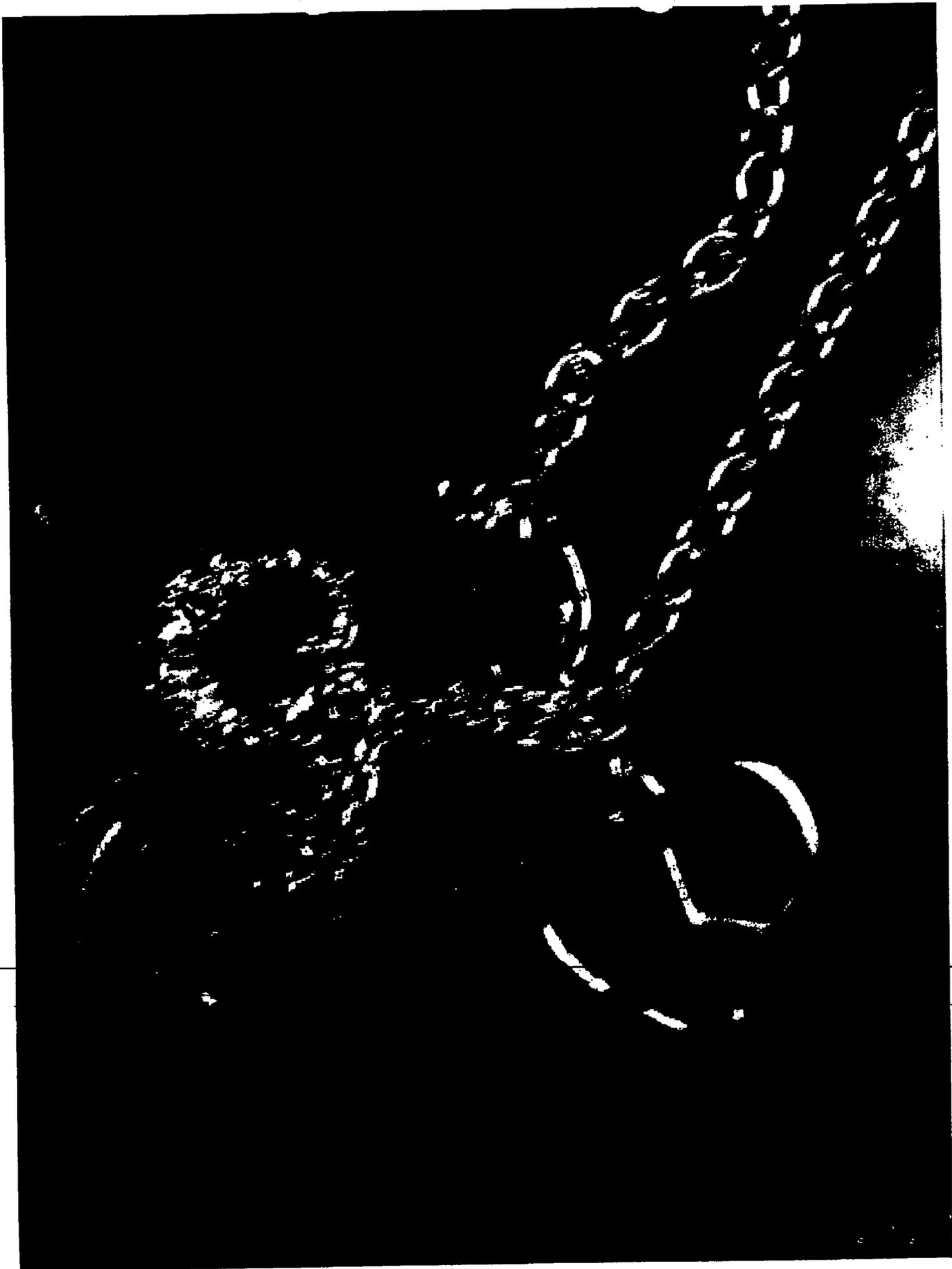
0 30805 24752 4

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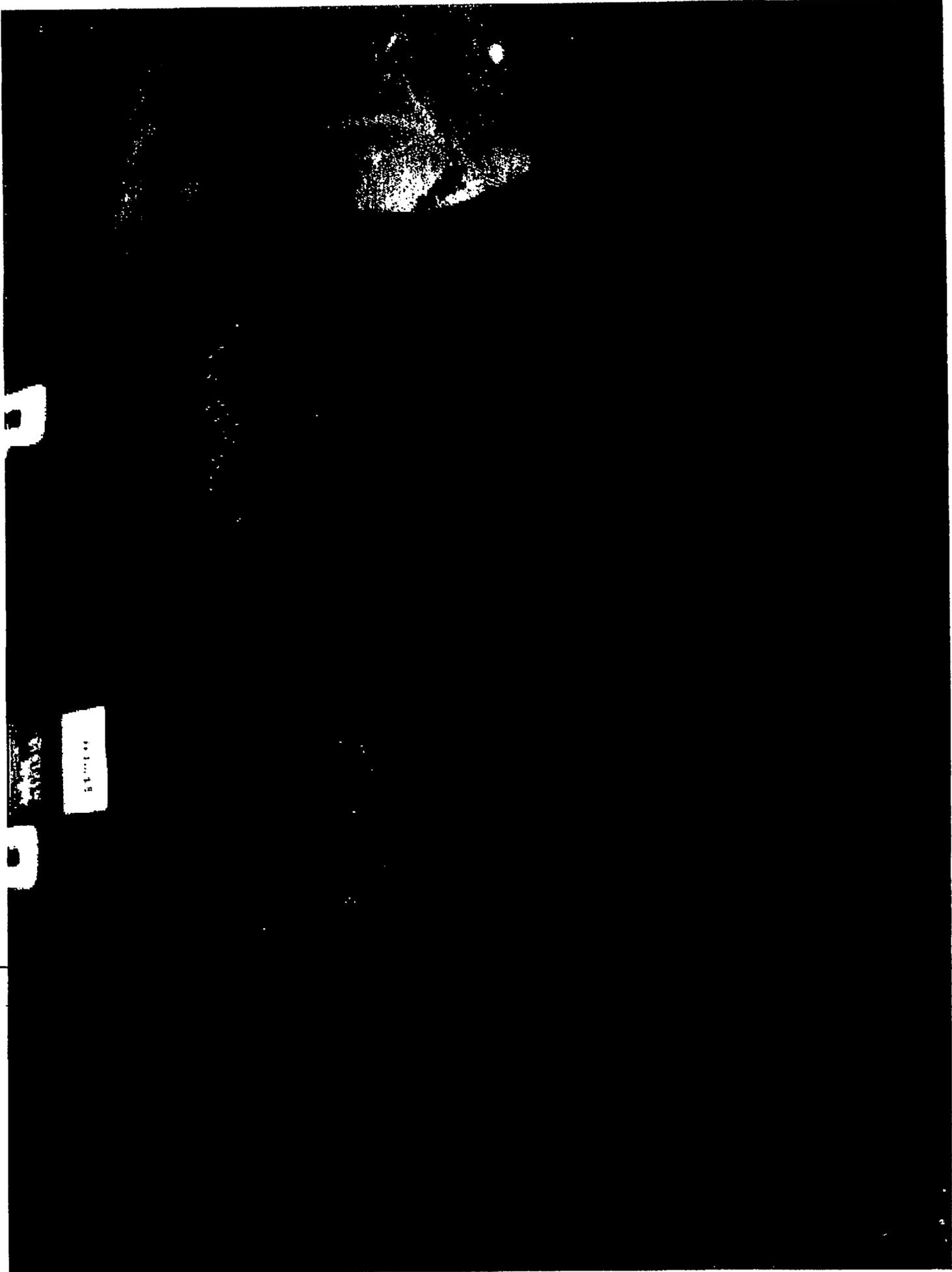




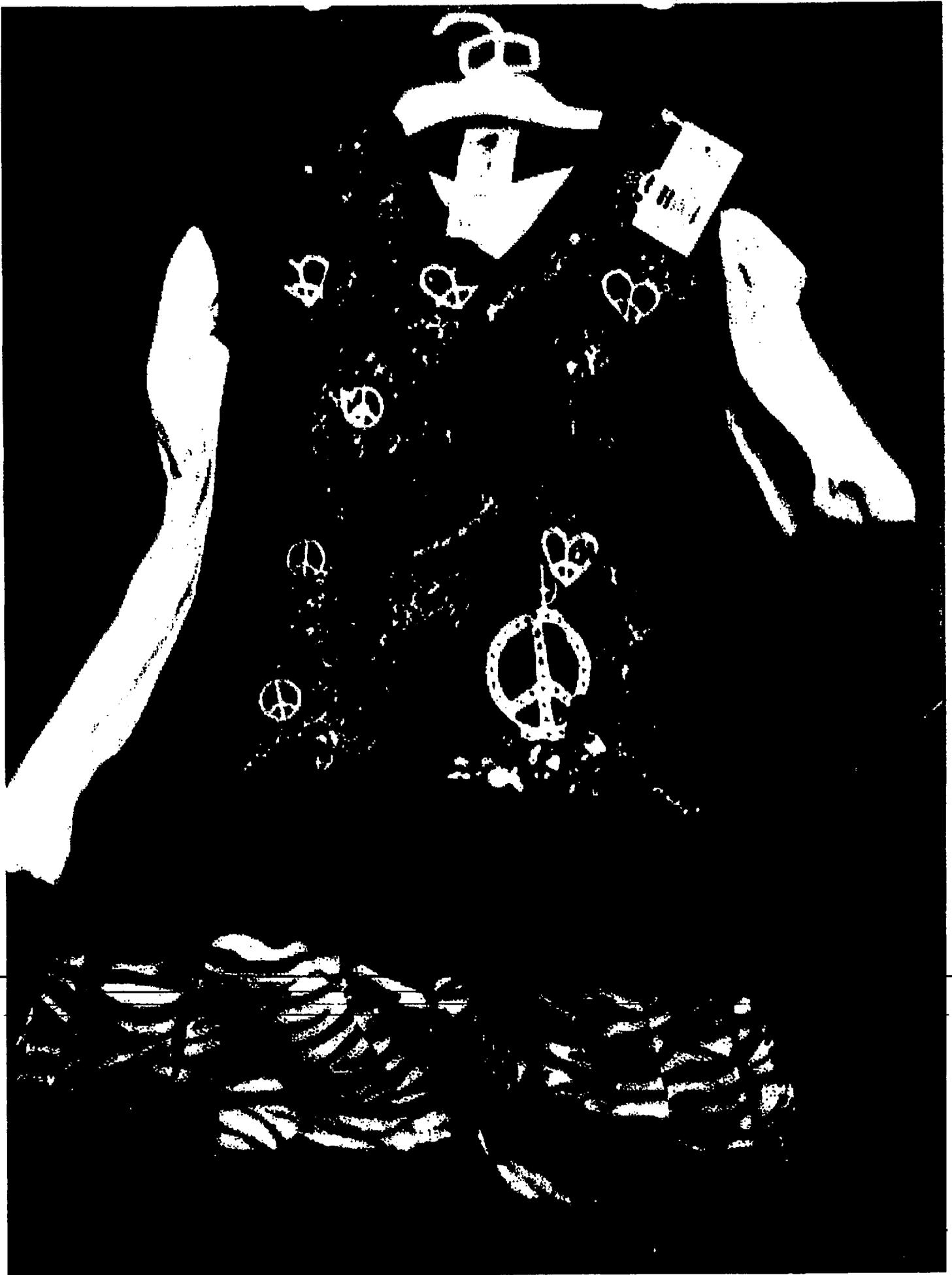
So

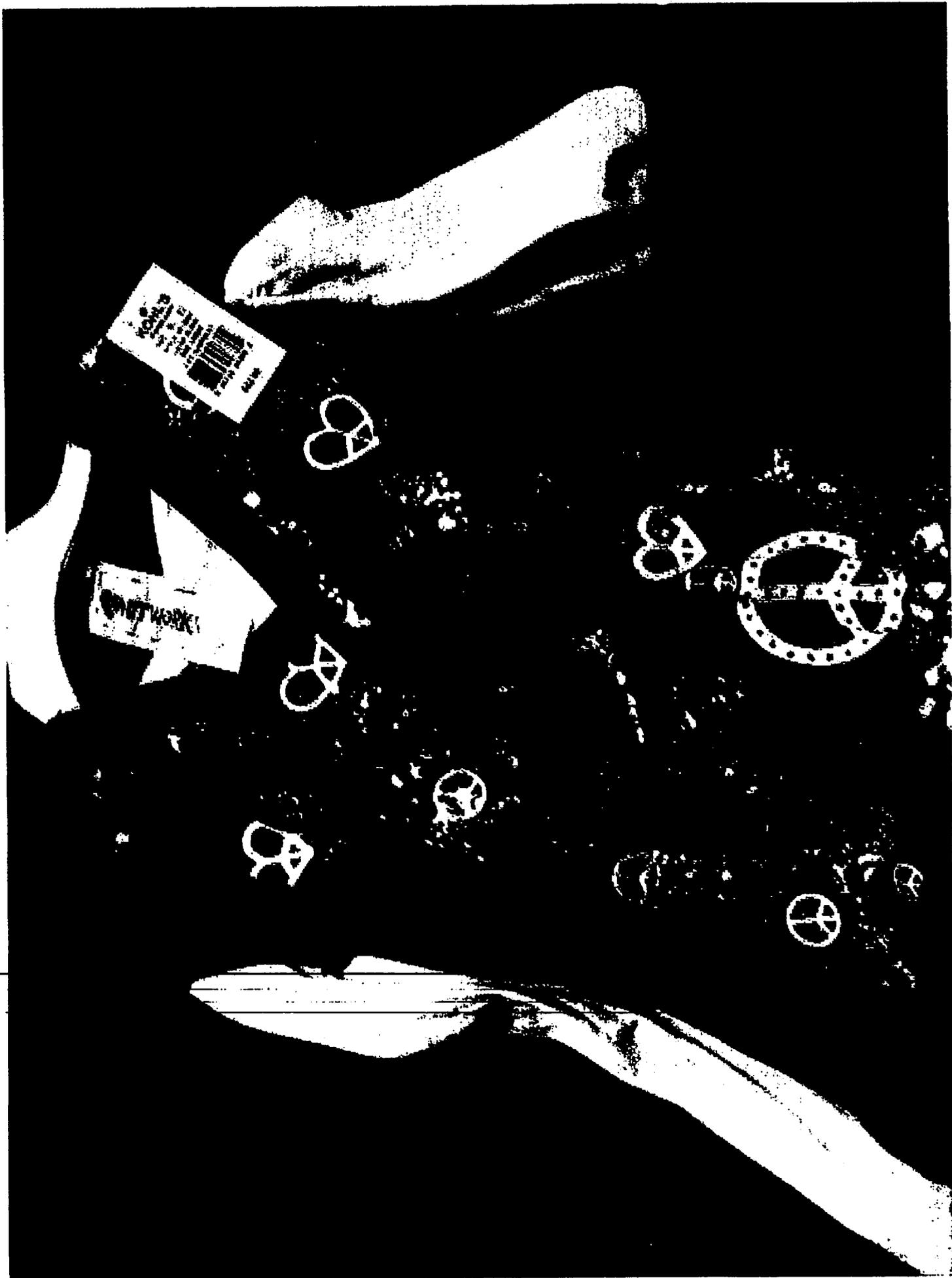
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1/19/84

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1972







KOHLS
Kohls.com

047 10 15

STYLE 288-20000000

COLOR 200-2000

SIZE 8



FREE-2000-2

\$22.00





EXHIBIT E

Law Office of
James D. Pacitti

Attorney At Law
1860 N. Fuller Avenue, # 315
Los Angeles, CA 90046
jpacitti@hotmail.com
310-266-4272 (Tel) ♦ 323-969-9794 (Fax)

*Admitted to practice in California, Florida, New Jersey,
New York and Pennsylvania.

July 2, 2009

VIA FEDERAL EXPRESS

Kohl's Department Stores
ATTN: Legal Department
N56 W17000 Ridgewood Drive
Menomonee Falls, WI 53051

Re: Peace & Love Jewelry by Nancy Davis

Dear Elizabeth:

The undersigned represents Peace & Love Jewelry by Nancy Davis, LLC ("Nancy Davis"). Nancy Davis is among the premier jewelry and accessories designers in the United States.

Nancy Davis is the owner of a prominent design comprised of a heart with a peace sign embedded therein ("Heart/Peace Logo"). The company and its founder have used the Heart/Peace Logo continuously since at least as early as September 2002 in connection with jewelry, watches, clothing, belts, purses, bags and other products. In January 2007, the company obtained two federal trademark registrations for its Heart/Peace Logo for jewelry and watches (registration nos. 3,193,106 and 3,193,107). Copies of the Company's trademark registrations are enclosed. The company also owns various other trademark registrations for the marks internationally. The registrations grant Nancy Davis the exclusive right to use the marks to the exclusion of all others in connection with its products.

Nancy Davis has continuously advertised and promoted its Heart/Peace Logo via print advertising, television, television programs such as QVC, the Internet, and other channels since 2002 and these marks have become well known in the industry. The company's products are sold across the United States primarily through upper

Kohl's Department Stores
July 2, 2009

scale department and fine jewelry stores. The company's products are routinely worn by famous celebrities and have been featured in numerous magazines.

My client recently discovered that Kohl's Department Stores has been selling a virtually identical looking heart and peace design in connection with a jewelry line identified as "SO® Silver-Tone Beaded Peace Sign Pendant" (the "Pendant") a sample of which is enclosed. The similarity between Kohl's Pendant and Nancy Davis' mark are incontrovertible. Both Nancy Davis' mark and the Pendant are comprised of a heart with a stylized rendition of a peace sign embedded with a heart.

Nancy Davis is concerned about Kohl's use of the virtually identical rendition of the Heart/Peace Logo in jewelry. Nancy Davis has invested enormous time, money and effort to build its brand over the years and is concerned that Kohl's use of this virtually identical logo for the same goods sold by Nancy Davis will cause consumer confusion, dilution and tarnishing of the brand. Specifically, Nancy Davis is concerned that consumers viewing Kohl's product may wrongly believe there is a connection or affiliation between the two companies where none exists. Persons wishing to contact Nancy Davis about jewelry and related products may inadvertently contact Kohl's instead. Persons unhappy with Kohl's products may wrongly attribute it to Nancy Davis. Further, Nancy Davis is concerned that Kohl's use of a heart and peace logo is or will dilute the distinctiveness in the minds of the public of Nancy Davis' mark, by blurring and tarnishing Nancy Davis' registered trademark and brand.

The risk of confusion is not only possible, it has actually occurred. After seeing Kohl's website on which the Pendant is depicted, customers have approached the company and asked if Nancy Davis is the manufacturer of the Pendant, which is how Nancy Davis became aware of the infringement by Kohl's. The actual confusion is unacceptable to Nancy Davis and is harming the goodwill Nancy Davis has built in the mark over the years.

As the registered owner of the Heart/Peace Logo, Nancy Davis is entitled to injunctive relief, damages, disgorgement of revenues and/or profits, or both, as well as other relief.

Please be advised that our client is prepared to pursue all necessary legal remedies to protect and enforce its valuable intellectual property rights in the Heart/Peace Logo. To avoid further escalation and unnecessary legal fees, Nancy Davis demands that Kohl's do the following: (1) immediately remove the offending merchandise from its website, catalogs, mailers, stores and store displays; (2) transition

Kohl's Department Stores
July 2, 2009

to another mark that is different from and not confusingly similar to Nancy Davis' marks; and (3) provide an accounting of all revenue derived by Kohl's from use of the Heart/Peace Logo to enable Nancy Davis to assess her damages in connection with Kohl's infringement.

Please confirm in writing on or before July 10, 2009 that Kohl's will comply with the demands in this letter. This letter is not intended to be an exhaustive recitation of our client's legal rights, claims and remedies and all rights, claims and remedies of Nancy Davis are explicitly reserved.

Sincerely,

James D. Pacitti

Cc: Nancy Davis

EXHIBIT F

Law Office of
JAMES D. PACITTI

James D. Pacitti*
jpacitti@pacittilaw.com

9107 WILSHIRE BOULEVARD
SUITE 450
BEVERLY HILLS, CALIFORNIA 90210

310.266.4272 (Tel.)
310.464.9271 (Fax)

www.pacittilaw.com

*Admitted to practice in California, Florida, New Jersey,
New York and Pennsylvania.

October 13, 2009

VIA EMAIL & FEDERAL EXPRESS

Elizabeth Bunzel, Esquire
Kohl's Department Stores
N56 W17000 Ridgewood Drive
Menomonee Falls, WI 53051

Re: Peace & Love Jewelry by Nancy Davis

Dear Ms. Bunzel:

As you know, this firm represents Peace & Love Jewelry by Nancy Davis, LLC ("Nancy Davis"). In a letter dated July 2, 2009 letter (copy enclosed), we notified Kohl's of an infringement of Nancy Davis' trademarks. It has come to our attention that not only has Kohl's failed to address the infringements identified in our July 2, 2009 letter, but that Kohl's infringement has been much more extensive than originally thought. Kohl's has not only continued selling the jewelry, but has added watches (which is jewelry) clothing for girls and juniors and sleepwear amongst other items. Samples of these uses are enclosed as Exhibit 1.

Based on the extent of the infringement and Kohl's disregard of our earlier cease and desist letter, Nancy Davis is prepared to file a lawsuit against Kohl's in federal district in California if the demands contained in this letter are not immediately met.

As previously stated, my client and its founder have used the Heart/Peace Logo continuously since at least as early as September 2002 in connection with jewelry, watches, clothing, belts, purses, bags and other products. In January 2007, the company obtained two federal trademark registrations for its Heart/Peace Logo for jewelry and watches (Registration Nos. 3,193,106 and 3,193,107). Copies of these registration certificates are attached as Exhibit 2.

Nancy Davis has continuously advertised and promoted its Heart/Peace Logo via print advertising, television, television programs such as QVC, the Internet, and other channels since 2002 and these marks have become well known in the industry. The company's products are sold across the United States primarily through upper scale

Elizabeth Bunziel, Esquire
Peace & Love Jewelry by Nancy Davis
October 13, 2009

department and fine jewelry stores. The company's products are routinely worn by famous celebrities and have been featured in numerous magazines both in extensive ad campaigns and editorial coverage.

Kohl's use of Nancy Davis' logo for the same goods sold by Nancy Davis is causing consumer confusion, dilution and is tarnishing Nancy Davis' brand. Nancy Davis has spent years developing high quality products using the Peace/Heart Logo that are of the highest quality. Consumers viewing Kohl's products may wrongly believe there is a connection or affiliation between the two companies where there is none. Persons wishing to contact Nancy Davis about jewelry, clothing, hand bags and related products may inadvertently contact Kohl's instead. Persons unhappy with Kohl's products may wrongly attribute it to Nancy Davis and its products. Further, Kohl's use and sale of various renditions of the heart and peace logo is diluting the distinctiveness in the minds of the public of Nancy Davis' mark, by blurring and tarnishing Nancy Davis' trademarks and brand.

Kohl's conduct is also severely damaging my client's business as Kohl's infringement has caused a lucrative exclusive licensing arrangement to be terminated when the other party learned that Kohl's was using and exploiting the Heart/Peace Logo in a tremendous way with a wide variety of products in its stores. Nancy Davis has expended enormous amounts of time and money on strategic planning in the launch of this new clothing line. Nancy Davis considers this to be part of its damages caused by Kohl's infringement.

To avoid a lawsuit against Kohl's, Nancy Davis demands that Kohl's: immediately do the following: (1) discontinue use of the peace and heart logo on all products; (2) remove peace and heart product listings from your website, catalogs and mailers; (3) transition to another mark that is different from and not confusingly similar to Nancy Davis' marks; and (4) provide an accounting of all revenue derived by Kohl's from use of the Heart/Peace Logo to enable Nancy Davis to assess its damages in connection with your infringement.

Please confirm that Kohl's will comply with the demands in this letter no later than Friday, October 16, 2009. This letter is not intended to be an exhaustive recitation of our ~~client's legal rights, claims and remedies and all rights, claims and remedies of Nancy Davis~~ are reserved.

Sincerely,

James D. Pacitti

cc: Nancy Davis

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge George H. Wu and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

CV10- 417 GW (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location.

~~Western Division~~
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

~~Southern Division~~
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

~~Eastern Division~~
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

BROWNE WOODS GEORGE LLP (310) 274-7100
Allan Browne (SBN 34923)
Peter W. Ross (SBN 109741)
Sylvia P. Lardiere (SBN 107425)
2121 Avenue of the Stars, 24th Floor
Los Angeles, California 90067
abrowne@bwgfirm.com; pross@bwgfirm.com
Attorneys for Plaintiff slardiere@bwgfirm.com

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PEACE & LOVE JEWELRY BY
NANCY DAVIS LLC, a California limited liability
company
PLAINTIFF(S)
v.

CASE NUMBER

CV10-0417 GW (VBKx)

KOHL'S DEPARTMENT STORES, INC., a Delaware
corporation, and Does 1 through 10, inclusive,
DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S): KOHL'S DEPARTMENT STORES, INC. a Delaware corporation, and Does 1 through 10, inclusive

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, BROWNE WOODS GEORGE LLP, whose address is 2121 Avenue of the Stars, 24th Floor, Los Angeles, CA 90067. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: JAN 20 2010

By: NATALIE LONGORIA



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) PEACE & LOVE JEWELRY BY NANCY DAVIS LLC, a California limited liability company	DEFENDANTS KOHL'S DEPARTMENT STORES, INC., a Delaware corporation, and Does 1 through 10, inclusive
--	--

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) BROWNE WOODS GEORGE LLP Allan Browne (SBN 34923) / Sylvia P. Lardiere (SBN 107425) 2121 Avenue of the Stars, 24 th Floor Los Angeles, CA 90067 Telephone: (310) 274-7100	Attorneys (If Known)
--	----------------------

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Foreign Nation</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF	<input type="checkbox"/>	Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/>	Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>																			
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																																
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/>	<input type="checkbox"/>																																
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																																
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>																																
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																																

IV. ORIGIN (Place an X in one box only.)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify):	<input type="checkbox"/> 6 Multi-District Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
---	---	--	---	---	--	---

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$**in excess of \$10 million

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 15 U.S.C. Sec. 1114; 15 U.S.C. 1125(a); 28 U.S.C. 1367(a)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 22 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER/ PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 61 HIA(1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW 405(g) <input type="checkbox"/> 864 SSID Tide XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
---	--	--	---	---	---

FOR OFFICE USE ONLY: Case Number: CV10-0417

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Delaware

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
 Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
 Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date January 20, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

EXHIBIT “3”

COPY

510

1 Matthew R. Orr, Bar No. 211097
 2 Scott P. Shaw, Bar No. 223592
 3 Vonn R. Christenson, Bar No. 244873
 4 CALL & JENSEN
 5 A Professional Corporation
 6 610 Newport Center Drive, Suite 700
 7 Newport Beach, CA 92660
 8 Tel: (949) 717-3000
 9 Fax: (949) 717-3100
 10 morr@calljensen.com
 11 sshaw@calljensen.com
 12 vchristenson@calljensen.com

Attorneys for Defendant/Counterclaimant Kohl's Department Stores, Inc.

2010 MAR 12 PM 12:22
 CLERK, U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES

FILED

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

13 PEACE & LOVE JEWELRY BY NANCY
 14 DAVIS LLC, a California limited liability
 15 company,

Plaintiff,

vs.

17 KOHL'S DEPARTMENT STORES, INC.,
 18 a Delaware corporation, and Does 1
 19 through 10, inclusive,

Defendants.

Case No. CV10-0417 GW (VBKx)

**DEFENDANT KOHL'S
 DEPARTMENT STORES, INC.'S
 ANSWER TO COMPLAINT AND
 COUNTER-CLAIM**

DEMAND FOR JURY TRIAL

20 KOHL'S DEPARTMENT STORES, INC.

Counterclaimant,

vs.

24 PEACE & LOVE JEWELRY BY
 25 NANCY DAVIS LLC, a California
 26 limited liability company, and Roes 1
 27 through 10, inclusive,

Counter-Defendant.

Complaint Filed: January 20, 2010

Trial Date: None Set

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 A PROFESSIONAL CORPORATION

1 Defendant Kohl's Department Stores, Inc. ("Defendant" or "Kohl's") hereby
2 answers Plaintiff Peace & Love Jewelry by Nancy Davis LLC's unverified Complaint
3 ("Complaint") as follows:

4 1. In response to paragraph 1 of the Complaint, Defendant denies that this
5 Court has original jurisdiction under 28 U.S.C. § 1332, since the sum or value alleged to
6 be in controversy is insufficient and under the requirements of 28 U.S.C. § 1332.
7 Defendant admits that Plaintiff's Complaint alleges certain claims which arise under
8 federal trademark law. Defendant is without sufficient knowledge or information to
9 form a belief as to the truth of the remaining statements in this paragraph, and therefore
10 denies the allegations contained therein.

11 2. In response to paragraph 2 of the Complaint, Defendant admits that venue
12 is proper.

13 3. In response to paragraph 3 of the Complaint, Defendant is without
14 sufficient knowledge or information to form a belief as to the truth of the statements in
15 this paragraph, and therefore denies the allegations contained therein.

16 4. In response to paragraph 4 of the Complaint, Defendant admits that it is a
17 corporation organized and existing under the laws of the State of Delaware. Defendant
18 admits that, and at all times relevant hereto was, qualified to do business in the State of
19 California, County of Los Angeles.

20 5. In response to paragraph 5 of the Complaint, Defendant is without
21 sufficient knowledge or information to form a belief as to the truth of the statements in
22 this paragraph, and therefore denies the allegations contained therein.

23 6. In response to paragraph 6 of the Complaint, Defendant is without
24 sufficient knowledge or information to form a belief as to the truth of the statements in
25 this paragraph, and therefore denies the allegations contained therein.

26 7. In response to paragraph 7 of the Complaint, Defendant is without
27 sufficient knowledge or information to form a belief as to the truth of the statements in
28 this paragraph, and therefore denies the allegations contained therein.

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1 8. In response to paragraph 8 of the Complaint, Defendant is without
2 sufficient knowledge or information to form a belief as to the truth of the statements in
3 this paragraph, and therefore denies the allegations contained therein.

4 9. In response to paragraph 9 of the Complaint, Defendant is without
5 sufficient knowledge or information to form a belief as to the truth of the statements in
6 this paragraph, and therefore denies the allegations contained therein.

7 10. In response to paragraph 10 of the Complaint, Defendant is without
8 sufficient knowledge or information to form a belief as to the truth of the statements in
9 this paragraph, and therefore denies the allegations contained therein.

10 11. In response to paragraph 11 of the Complaint, Defendant is without
11 sufficient knowledge or information to form a belief as to the truth of the statements in
12 this paragraph, and therefore denies the allegations contained therein.

13 12. In response to paragraph 12 of the Complaint, Defendant is without
14 sufficient knowledge or information to form a belief as to the truth of the statements in
15 this paragraph, and therefore denies the allegations contained therein.

16 13. In response to paragraph 13 of the Complaint, Defendant reasserts and
17 reincorporates by reference its responses to paragraphs 1 through 12 as though fully set
18 forth herein.

19 14. In response to paragraph 14 of the Complaint, Defendant admits that it
20 began to advertise, sell, or offer for sale jewelry, clothing, and accessories bearing heart
21 and peace symbol designs in or before July 2009. Defendant further admits that some
22 of these goods were manufactured under various brands or labels of Defendant.
23 However, Defendant denies that any such jewelry, clothing, and/or accessories bearing
24 heart and peace symbol designs are reproductions, counterfeits, copies, colorable
25 imitations, or unlawful infringements of any trademarks owned by Plaintiff. Exhibit D
26 speaks for itself, and although the pictures are of poor quality, they do appear to contain
27 images of products sold by Kohl's. As to all other statements contained in paragraph 14
28 of the Complaint, Defendant denies the allegations contained therein.

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1 15. In response to paragraph 15 of the Complaint, Defendant admits the
2 allegations contained therein.

3 16. In response to paragraph 16 of the Complaint, Defendant cannot respond
4 on behalf of unnamed "defendants." However, Defendant denies that its advertising,
5 selling, or offering for sale in interstate commerce products that bear a heart and peace
6 symbol design are imitations of plaintiff's Marks. Defendant further denies that its
7 products are likely to cause confusion, mistake, and/or deception as to the source,
8 quality, and nature of the goods.

9 17. In response to paragraph 17 of the Complaint, Defendant admits that
10 Plaintiff sent a letter to Defendant on or about July 2, 2009 regarding certain products
11 bearing a heart and peace symbol design being advertised, sold, or offered for sale by
12 Defendant. Defendant further admits that Plaintiff sent another letter to Defendant on
13 or about October 13, 2009 regarding alleged infringements of trademarks owned by
14 Plaintiff. Defendant admits that it did not directly respond to the July 2, 2009 or
15 October 13, 2009 letters. Defendant denies that any products which it has advertised,
16 sold, or offered to sell have infringed on any trademarks owned by Plaintiff. Exhibits E
17 and F speak for themselves. As to all other statements contained in paragraph 17 of the
18 Complaint, Defendant is without sufficient knowledge or information to form a belief as
19 to the truth of those statements, and therefore denies the allegations contained therein.

20 18. In response to paragraph 18 of the Complaint, Defendant denies the
21 allegations contained therein.

22 19. In response to paragraph 19 of the Complaint, Defendant denies the
23 allegations contained therein.

24 20. In response to paragraph 20 of the Complaint, Defendant denies the
25 allegations contained therein.

26 21. In response to paragraph 21 of the Complaint, Defendant denies the
27 allegations contained therein.

28

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1 22. In response to paragraph 22 of the Complaint, Defendant denies the
2 allegations contained therein.

3 23. In response to paragraph 23 of the Complaint, Defendant reasserts and
4 reincorporates by reference its responses to paragraphs 1 through 12, and 14 through 22,
5 as though fully set forth herein.

6 24. In response to paragraph 24 of the Complaint, Defendant denies the
7 allegations contained therein.

8 25. In response to paragraph 25 of the Complaint, Defendant denies the
9 allegations contained therein.

10 26. In response to paragraph 26 of the Complaint, Defendant denies the
11 allegations contained therein.

12 27. In response to paragraph 27 of the Complaint, Defendant denies the
13 allegations contained therein.

14 28. In response to paragraph 28 of the Complaint, Defendant denies the
15 allegations contained therein.

16 29. In response to paragraph 29 of the Complaint, Defendant reasserts and
17 reincorporates by reference its responses to paragraphs 1 through 12, 14 through 22, and
18 24 through 28, as though fully set forth herein.

19 30. In response to paragraph 30 of the Complaint, Defendant denies the
20 allegations contained therein.

21 31. In response to paragraph 31 of the Complaint, Defendant denies the
22 allegations contained therein.

23 32. In response to paragraph 32 of the Complaint, Defendant denies the
24 allegations contained therein.

25 33. In response to paragraph 33 of the Complaint, Defendant reasserts and
26 reincorporates by reference its responses to paragraphs 1 through 12, 14 through 22, 24
27 through 28, and 30 through 32, as though fully set forth herein.

28

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1 34. In response to paragraph 34 of the Complaint, Defendant denies the
2 allegations contained therein.

3 35. In response to paragraph 35 of the Complaint, Defendant denies the
4 allegations contained therein.

5 36. In response to paragraph 36 of the Complaint, Defendant denies the
6 allegations contained therein.

7
8 **FIRST AFFIRMATIVE DEFENSE**

9 1. The Complaint, and each and every claim for relief therein, is barred by
10 the doctrine of unclean hands.

11
12 **SECOND AFFIRMATIVE DEFENSE**

13 2. The Complaint, and each and every claim for relief therein, is barred by
14 the doctrines of release, waiver, and estoppel.

15
16 **THIRD AFFIRMATIVE DEFENSE**

17 3. The Complaint, and each and every claim for relief therein, is barred by
18 the doctrine of laches.

19
20 **FOURTH AFFIRMATIVE DEFENSE**

21 4. The Complaint, and each and every claim for relief therein, is barred by
22 the doctrine of acquiescence.

23
24 **FIFTH AFFIRMATIVE DEFENSE**

25 5. The Complaint, and each and every claim for relief therein, fails to allege
26 facts sufficient to state a claim for relief against Defendant.

27 ///

28 ///

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1 **TWELFTH AFFIRMATIVE DEFENSE**

2 12. The Complaint, and each and every claim for relief therein, is barred, and
3 recovery is barred or limited, by the doctrine of consent.

4
5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 13. The Complaint, and each and every claim for relief therein, is barred, and
7 recovery is barred by the doctrine of fair use.

8
9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 14. The Complaint, and each and every claim for relief therein, is barred by
11 the applicable statute of limitations.

12
13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 15. Plaintiff's state law claims are barred because the Lanham Act preempts
15 these claims.

16
17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 16. Defendant reserves the right to allege additional affirmative defenses as
19 they may become known, or as they evolve during the litigation, and to amend this
20 Answer accordingly.

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1 **COUNTERCLAIM**

2
3 **FACTS**

4 1. Kohl's ("Kohl's" or "Counterclaimant"), owns and operates family-
5 oriented department stores throughout the United States, including California. It
6 primarily sells moderately priced apparel, footwear, and accessories for women, men,
7 and children. Kohl's offers for sale and sells products bearing national brands, as well
8 as private and exclusive brands found only at Kohl's.

9 2. Upon information and belief, many fashion companies, including
10 department stores, have sold apparel products and accessories incorporating the "peace
11 and love" theme. The peace symbol is generally representative of the 1970's era, in
12 which many people promoted peace and love. Additionally, the heart symbol is
13 commonly recognized and associated with love. The combination of these two
14 themes—even taken together as a whole—is common in the fashion industry today.

15 3. Kohl's, like many others, has sold apparel, jewelry, and related accessories
16 incorporating the peace symbol and heart design. The generic, descriptive, and
17 ornamental/decorative use of the peace symbol and the heart design is evidenced, in
18 part, by the exemplars attached to Plaintiff's Complaint.

19 4. Nevertheless, Plaintiff alleges that it has acquired all exclusive rights to use
20 a heart and peace symbol in connection with jewelry, apparel, and accessories.
21 Plaintiff's allegations are based on the following three trademark registrations: (1)
22 Registration No. 2,989,922 for "Peace & Love Jewelry by Nancy Davis" with the
23 heart/peace symbol design for jewelry and watches in Class 14 goods ("922 Mark"); (2)
24 Registration No. 3,93,106 for "Peace & Love" with the heart/peace symbol design for
25 jewelry and watches in Class 14 goods ("106 Mark"); and (3) Registration No. 3,93,107
26 for the heart/peace symbol design for jewelry and watches in Class 14 goods
27 (collectively "Subject Marks").
28

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1 “peace and love” theme and used fairly and in good faith only to describe the nature of
2 the marketing/advertising campaign.

3 11. Counterclaimant’s use of the designs is also protected under the fair use
4 doctrine since, among other things: (1) Counterclaimant uses the designs in connection
5 with other well-known brands; (2) there are a number of third parties using “peace and
6 love” phrases and designs in connection with related fashion and jewelry products; and
7 (3) Plaintiff itself uses the Subject Marks descriptively, generically, decoratively, and
8 ornamentally.

9
10 **COUNT II**

11 **Cancellation of the Subject Marks for Failure to Function As a Trademark and for**
12 **Failure to Disclaim Merely Descriptive Portions without Secondary Meaning (15**
13 **U.S.C. §§ 1056, 1064, 1119)**

14 12. Counterclaimant repeats and realleges Paragraphs 1-11 as if fully set forth
15 herein.

16 13. This is a claim to cancel the Subject Marks pursuant to 15 USC §§ 1056,
17 1064, 1119 on the grounds that Plaintiff is not using the marks as trademarks within the
18 meaning of the Lanham Act, and because the 922 and 106 Marks fail to disclaim the
19 merely descriptive terms “peace & love,” which are not inherently distinctive and have
20 not acquired secondary meaning (*i.e.*, they do not function as a source identifier).

21 14. Based on Counterclaimant’s descriptive/ornamental usage, and Plaintiff’s
22 threat to assert the Subject Marks against Counterclaimant in a suit for trademark
23 infringement and related causes of action, Counterclaimant has been, is and will
24 continue to be damaged by the existence of the Subject Marks.

25 15. Upon information and belief, Plaintiff has not used and does not use the
26 Subject Marks as trademarks within the meaning of the Lanham Act.

27 16. Upon information and belief, the words “peace & love” are descriptive as
28 applied to the goods for which the generic heart and peace symbol appear.

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1 17. Upon information and belief, the heart and peace symbol designs are
2 generic and are used extensively in connection with fashion and jewelry products.

3 18. Upon information and belief, Plaintiff will not be able to establish that the
4 Subject Marks have established secondary meaning under Section 2(f), particularly in
5 light of the fact that there is no evidence that the words or designs have become an
6 indication of a particular source of goods or services, and due to extensive third party
7 use.

8 19. Accordingly, the Subject Marks are subject to cancellation pursuant to 15
9 U.S.C. § 1119.

10
11 **PRAYER FOR RELIEF**

12
13 WHEREFORE, Defendant/Counterclaimant prays for judgment as follows:

- 14 1. That Plaintiff take nothing by reason of its Complaint in this matter;
15 2. That judgment be rendered in favor of Defendant/Counterclaimant and that
16 the Complaint be dismissed with prejudice;
17 3. That Defendant/Counterclaimant be awarded its costs of suit in this matter,
18 including reasonable attorneys' fees; and
19 4. For such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY

Defendant/Counterclaimant hereby demands a jury pursuant to FRCP 38 on all issues raised in the Complaint of Plaintiff and Counterclaim.

Dated: March 12, 2010

CALL & JENSEN
A Professional Corporation
Matthew R. Orr
Scott P. Shaw
Vonn R. Christenson

By: /s/Scott P. Shaw
Scott P. Shaw

Attorneys for Defendant/Counterclaimant Kohl's
Department Stores, Inc.

CALL & JENSEN
A PROFESSIONAL CORPORATION

Joy Oates

From: cacd_ecfmail@caed.uscourts.gov
Sent: Saturday, March 13, 2010 12:06 AM
To: ecfnef@caed.uscourts.gov
Subject: Summary of ECF Activity

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Activity has occurred in the following cases:

2:10-cv-00417-GW-VBK Peace & Love Jewelry By Nancy Davis LLC v. Kohl's Department Stores, Inc. et al
Answer to Complaint (Discovery) 10

Docket Text:

ANSWER to Complaint - (Discovery)[1] with JURY DEMAND, COUNTERCLAIM against Peace & Love Jewelry By Nancy Davis LLC, Roes 1 through 10 filed by defendant Kohl's Department Stores, Inc.(esa) (rrey).

2:10-cv-00417-GW-VBK Peace & Love Jewelry By Nancy Davis LLC v. Kohl's Department Stores, Inc. et al
Certificate/Notice of Interested Parties 8

Docket Text:

CERTIFICATE of Interested Parties filed by Defendant/Counterclaimant Kohl's Department Stores, Inc., (Shaw, Scott)

2:10-cv-00417-GW-VBK Peace & Love Jewelry By Nancy Davis LLC v. Kohl's Department Stores, Inc. et al
Corporate Disclosure Statement 9

Docket Text:

CORPORATE DISCLOSURE STATEMENT filed by Defendant Kohl's Department Stores, Inc. identifying Kohl's Corporation as Corporate Parent. (Shaw, Scott)

EXHIBIT “4”

1 BROWNE WOODS GEORGE LLP
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2 Peter W. Ross (State Bar No. 109741)
Sylvia P. Lardiere (State Bar No. 107425)
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6 slardiere@bwgfirm.com

7 Attorneys for Plaintiff
Peace & Love Jewelry by Nancy Davis LLC

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 PEACE & LOVE JEWELRY BY
NANCY DAVIS LLC, a California
13 limited liability company,

14 Plaintiff,

15 vs.

16 KOHL'S DEPARTMENT STORES,
INC., a Delaware corporation, and
17 Does 1 through 10, inclusive,

18 Defendants.
19

20
21 KOHL'S DEPARTMENT STORES,
INC.,

22 Counter-Claimant,

23 vs.

24 PEACE & LOVE JEWELRY BY
NANCY DAVIS LLC, a California
25 limited liability company, and Roes
26 1 through 10, inclusive

27 Counter-Defendants.
28

Case No. CV10-0417 GW (VBKx)

**NOTICE OF MOTION AND
MOTION OF PLAINTIFF PEACE &
LOVE JEWELRY BY NANCY
DAVIS LLC FOR LEAVE TO FILE
SUPPLEMENTAL COMPLAINT;
DECLARATION OF SYLVIA P.
LARDIERE**

[F.R.C.P. 15(d)]

Date: July 26, 2010
Time: 8:30 a.m.
Courtroom: 10

Complaint Filed: January 20, 2010
Trial Date: February 8, 2011

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on July 26, 2010, at 8:30 a.m., or as soon
3 thereafter as the matter may be heard, in Courtroom 10 of the above-entitled Court,
4 located at 312 North Spring Street, Los Angeles, California 90012, plaintiff Peace
5 & Love Jewelry by Nancy Davis LLC will, and hereby does, move the Court for an
6 Order granting it leave to file the Supplemental Complaint that is being lodged
7 concurrently herewith and, if necessary, modifying the Scheduling Order entered by
8 the Court on April 29, 2010 to allow plaintiff to do so.

9 The motion is made pursuant to Federal Rule of Civil Procedure 15(d) on the
10 grounds that, after plaintiff filed its original Complaint for trademark infringement
11 and related claims in this action, plaintiff obtained two additional federal trademark
12 registrations and defendant Kohl's Department Stores, Inc. will not be prejudiced if
13 plaintiff is allowed to file a Supplemental Complaint alleging those subsequent
14 registrations.

15 The motion is based upon this notice, the attached memorandum of points
16 and authorities, the accompanying declaration, the files, records, and pleadings on
17 file in this action, the Supplemental Complaint and Proposed Order being lodged
18 concurrently herewith, and all other evidence or argument that may be presented by
19 plaintiff at, or prior to, the hearing on this motion.

20 This motion is made following the conference of counsel pursuant to Local
21 Rule 7-3, which took place on June 22, 2010.

22 Dated: July 2, 2010

BROWNE WOODS GEORGE LLP
Allan Browne
Peter W. Ross
Sylvia P. Lardiere

23
24
25 By s/Sylvia P. Lardiere
Sylvia P. Lardiere

26
27 Attorneys for Plaintiff Peace & Love Jewelry
by Nancy Davis LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. Introduction**

3 Plaintiff Peace & Love Jewelry by Nancy Davis LLC filed this action on
4 January 20, 2010, alleging claims for trademark infringement, false designation of
5 origin, statutory unfair competition, and common law unfair competition against
6 defendant Kohl's Department Stores, Inc. ("Kohl's") and Does 1 through 10,
7 inclusive. In its Complaint, plaintiff alleges that defendant Kohl's infringed
8 plaintiff's trademarks by advertising, selling, and offering for sale jewelry, apparel,
9 and accessories bearing heart and peace symbol designs that are reproductions,
10 counterfeits, copies, or colorable imitations of the heart and peace symbol designs
11 contained in trademarks adopted and used by plaintiff since 2002.

12 At the time plaintiff filed its Complaint, plaintiff had three federally
13 registered trademarks. Plaintiff also had two applications for federal trademark
14 registrations pending in the United States Patent and Trademark Office. On April
15 20, 2010, which was three months after plaintiff filed its Complaint, the United
16 States Patent and Trademark Office granted plaintiff's applications and issued
17 registrations for the two additional trademarks.

18 By this motion, plaintiff seeks leave to supplement its Complaint to allege
19 that it obtained the two subsequent registrations. Plaintiff requested that defendant
20 stipulate to its filing of a Supplemental Complaint alleging that it obtained those
21 registrations, but defendant refused. As defendant will not be prejudiced by
22 plaintiff's filing of a Supplemental Complaint alleging that it obtained two
23 additional trademark registrations on April 20, 2010, plaintiff's motion should be
24 granted.

25 **2. Statement of Facts**

26 On January 20, 2010, plaintiff filed its Complaint for Damages and
27 Injunctive Relief against Kohl's for Trademark Infringement (15 U.S.C. § 1114);
28 False Designation of Origin (15 U.S.C. § 1125(a); Statutory Unfair Competition

1 (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and Common Law Unfair Competition.

2 In the Complaint, plaintiff alleges that it has been, and is, engaged in the
3 manufacture and sale of jewelry, apparel, and accessories under three federally
4 registered trademarks, the registrations for which were appended to plaintiff's
5 Complaint as Exhibits A, B, and C. (Complaint, ¶ 7.) Plaintiff further alleges that
6 it first adopted and used the trademarks to identify goods in September 2002,
7 registered the trademarks in August 2005 and January 2007 (Complaint, ¶ 9); and
8 has used the trademarks continuously since September 2002 to identify its lines of
9 jewelry, apparel, and accessories (Complaint ¶ 10). Plaintiff further alleges that, in
10 or around July 2009, defendant Kohl's began advertising, selling, or offering for
11 sale, jewelry, apparel, and accessories bearing designs that are reproductions,
12 counterfeits, copies, or colorable imitations of the heart and peace symbol designs
13 contained in plaintiff's trademarks. (Complaint, ¶ 14.)

14 On April 20, 2010, United States Patent and Trademark Office issued
15 plaintiff two additional trademark registrations. Whereas, the three prior
16 registrations plaintiff obtained (in 2005 and 2007) are for jewelry and watches
17 (Class 14), the registrations plaintiff obtained on April 20, 2010 are for clothing,
18 handbags, tote bags, purses, and shoulder bags (Classes 18 and 25). True and
19 correct copies of the trademark registrations plaintiff obtained on April 20, 2010 are
20 appended to the Supplemental Complaint being lodged concurrently herewith as
21 Exhibits D and E.

22 On June 2, 2010, defendant Kohl's filed a Petition for Cancellation in the
23 United States Patent and Trademark Office, seeking to cancel the two trademark
24 registrations plaintiff obtained on April 20, 2010. Plaintiff's Answer to defendant
25 Kohl's Petition for Cancellation is due on July 17, 2010.

26 As noted above, in its Complaint, plaintiff alleges that defendant Kohl's
27 infringed its trademarks by advertising, selling, or offering for sale, jewelry,
28 apparel, and accessories bearing the heart and peace symbol designs that are the

1 subject of plaintiff's trademarks. All that plaintiff seeks to add to its Complaint by
2 this motion are allegations that it obtained the two additional registrations described
3 above on April 20, 2010.

4 Defendant Kohl's will not be prejudiced if this motion is granted. Although
5 plaintiff had not yet obtained registrations in Categories 18 and 25 when the
6 Complaint was filed, it alleged its use of its marks on goods in those categories
7 (apparel and accessories) since 2002 and defendant Kohl's infringement of them.
8 Thus, defendant Kohl's has been on notice of the nature and scope of plaintiff's
9 claims since the outset of this litigation, and will not be prejudiced if plaintiff is
10 allowed to supplement its Complaint in the manner requested.

11 **3. Plaintiff's Motion For Leave To File Its Supplemental Complaint To**
12 **Allege The Registrations It Obtained On April 20, 2010 Should Be**
13 **Granted.**

14 A supplemental pleading is used to allege relevant facts occurring after the
15 original pleading was filed. F.R.C.P. 15(d); *Keith v. Volpe*, 858 F.2d 467, 468 (9th
16 Cir. 1988). A supplemental pleading is designed to bring the action "up to date"
17 and to set forth new facts affecting the controversy that have occurred since the
18 original pleading was filed. *Manning v. City of Auburn*, 953 F.2d 1355, 1359-1360
19 (11th Cir. 1992). Supplemental pleadings can only be filed with leave of Court and
20 upon such terms as are just. F.R.C.P. 15(d).

21 Supplemental pleadings are favored because they enable the Court to award
22 complete relief, avoiding the costs and delays of separate actions. Absent a clear
23 showing of prejudice to the opposing party, supplemental pleadings are liberally
24 allowed. See, *Keith v. Volpe, supra*, 858 F.2d 467 at 473; *Quaratino v. Tiffany &*
25 *Co.*, 71 F.3d 58, 66 (2nd Cir. 1995).

26 Here, plaintiff seeks leave to file its Supplemental Complaint to allege
27 relevant facts (federal trademark registrations) occurring after the original pleading
28 was filed. Plaintiff does not seek to introduce any new claims against defendants,

1 although, under applicable law, plaintiff would be allowed to do so if such new
2 claims were based on facts not in existence when its Complaint was filed. *Cabrera*
3 *v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir. 1998).

4 Given that no new claims for relief are sought and that defendant Kohl's has
5 been aware of both the nature and scope of plaintiff's claims from the outset,
6 defendant cannot possibly establish the prejudice necessary to defeat this motion.
7 Accordingly, plaintiff's motion should be granted and plaintiff should be allowed to
8 file the Supplemental Complaint that is being lodged concurrently herewith.

9 **4. Conclusion**

10 For all of the foregoing reasons, plaintiff Peace & Love Jewelry by Nancy
11 Davis LLC respectfully requests that it be granted leave to file the Supplemental
12 Complaint that is being lodged concurrently herewith and, if necessary, that the
13 Scheduling Order entered by the Court on April 29, 2010 be modified to allow
14 plaintiff to do so.

15
16 Dated: July 2, 2010

BROWNE WOODS GEORGE LLP
Allan Browne
Peter W. Ross
Sylvia P. Lardiere

17
18
19
20 By s/Sylvia P. Lardiere
Sylvia P. Lardiere

21 Attorneys for Plaintiff Peace & Love Jewelry
22 by Nancy Davis LLC
23
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1 5. On June 2, 2010, defendant Kohl's filed a Petition to Cancel the two
2 trademark registrations obtained by plaintiff on April 20, 2010. Plaintiff's Answer
3 to the petition is due on July 17, 2010.

4 6. Neither I, nor my law firm, are plaintiff's trademark counsel. I was
5 engaged in a two-week jury trial in federal court in San Francisco from May 10 -
6 May 21, 2010. During the six weeks that preceded the trial, I was travelling
7 domestically and internationally taking depositions in that action. I did not become
8 aware that plaintiff had obtained the trademark registrations at issue on April 20,
9 2010 until June 11, 2010, when I first learned that Kohl's had filed a petition to
10 cancel them.

11 7. On June 22, 2010, I had a telephone conversation with Scott Shaw,
12 counsel of record for defendant Kohl's in this action. At that time, I advised Mr.
13 Shaw of plaintiff's intent to file a Supplemental Complaint that would include the
14 two trademark registrations it obtained on April 20, 2010. I advised Mr. Shaw that
15 those two registrations were the ones that his client sought to cancel. I further
16 advised Mr. Shaw that, as alleged in plaintiff's original Complaint, the trademarks
17 that are the subject of those two registrations had been used by plaintiff since 2002
18 and that Kohl's infringement of those marks is alleged in plaintiff's original
19 Complaint. I requested that Kohl's stipulate to plaintiff's filing of a Supplemental
20 Complaint alleging the two recent registrations. Mr. Shaw told me that he would
21 discuss it with his client, but was not inclined to so stipulate.

22 8. Later that same day, I sent Mr. Shaw an e-mail confirming plaintiff's
23 intent to file a Supplemental Complaint alleging the two new trademark
24 registrations and of plaintiff's intent to file a motion for leave to do so if defendant
25 Kohl's would not stipulate. A true and correct copy of that e-mail is appended
26 hereto as Exhibit 1.

27 9. A true and correct copy of email Mr. Shaw sent in response to my June
28 22, 2010 email is appended hereto as Exhibit 2.

EXHIBIT 1

Sylvia Lardiere

From: Sylvia Lardiere
Sent: Tuesday, June 22, 2010 4:51 PM
To: Scott Shaw; 'Vonn Christenson'
Cc: Allan Browne; Peter Ross
Subject: Peace & Love Jewelry by Nancy Davis LLC v Kohl's

Scott -

Further to our telephone conversation this afternoon, we request that you:

1. Immediately search Kohl's database (which, from our conversation, I understand to be the email accounts of approximately 36 individuals at Kohl's from approximately January 2008 to the present) for the following "priority 1" terms and produce all documents in which they appear, with attachments and with all artwork in color:

Nancy Davis

Davis

Peace & Love Jewelry by Nancy Davis, or any variation thereof

Peace & Love, Peace and Love, or any variation thereof

peace

love

heart

heart/peace

love/peace

peace and love design, peace & love design, or any variation thereof

peace sign

knock-off, knock off, or any variation thereof

infringe

trademark

2. Identify the 36 individuals whose email accounts you are searching by name and title and confirm the dates to be captured by your searches.

3. Advise us regarding which of the allegedly infringing products the 14 individuals identified in Vonn's letter of June 8 are/were involved with.

4. Let us know if you will stipulate to our filing of a Supplemental Complaint that will include the two additional trademark registrations obtained by our client on or about April 20, 2010, i.e., after the Complaint was filed.

These are the two registrations that your client seeks to cancel. As alleged in the Complaint, the marks that are the subject of those recent registrations have been used by our client since 2002. Your client's infringement of the marks is alleged in the Complaint. The Supplemental Complaint will simply allege the fact that they were registered in April 2010, after the Complaint was filed. Supplemental pleadings are favored because they enable the court to award complete relief in the same action, avoiding the costs and delays of separate suits. Therefore, absent a clear showing of prejudice to the opposing party, they are liberally allowed. See *Keith v. Volpe* 858 F2d 467, 473 (9th Cir. 1988). As there can be no possible prejudice to your client, we request that you so stipulate. Please consider this our effort to "meet and confer" in a good faith effort to resolve this issue without court intervention pursuant to Local Rule 7-3. If you are not willing to stipulate, we will file a motion for leave to file a Supplemental Complaint once the ten days provided for in Local Rule 7-3 expires.

As discussed, we wish to begin taking depositions immediately but need Kohl's documents before we can begin doing so. Based on our discussion this afternoon, I anticipate that we will receive this first round of documents within the next week.

We are still waiting to hear when we can inspect and photograph those of Kohl's products that are at issue. We need to do this soon. Please advise.

Please provide verified responses to plaintiff's interrogatories nos. 1, 2, 3, 4, 5, 6, and 7 indicating that the documents produced as KOH03 00001 -00056 are the reference documents that are responsive to those interrogatories.

We have confirmed that Justice Wallin is available on July 12 to mediate and have reserved that date. We should receive confirmation from his case manager shortly.

Regards,
Sylvia

Sylvia P. Lardiere
BROWNE WOODS GEORGE LLP
2121 Avenue of the Stars, 24th Floor
Los Angeles, CA 90067
Phone: 310-274-7100
Fax: 310-275-5697
slardiere@bwgfirm.com

EXHIBIT 2

Sylvia Lardiere

From: Scott Shaw [sshaw@calljensen.com]
Sent: Tuesday, June 22, 2010 9:59 PM
To: Sylvia Lardiere; Vonn Christenson
Cc: Allan Browne; Peter Ross
Subject: RE: Peace & Love Jewelry by Nancy Davis LLC v Kohl's

Sylvia,

Please see my responses below in CAPS.

Scott P. Shaw

Shareholder

CALL & JENSEN

610 NEWPORT CENTER DRIVE, SUITE 700
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE: (949) 717-3000
FACSIMILE: (949) 717-3100
sshaw@calljensen.com
www.calljensen.com

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Sent: Tuesday, June 22, 2010 4:51 PM
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1. Immediately search Kohl's database (which, from our conversation, I understand to be the email accounts of approximately 36 individuals at Kohl's from approximately January 2008 to the present) for the following "priority 1" terms and produce all documents in which they appear, with attachments and with all artwork in color:

Nancy Davis

Davis

Peace & Love Jewelry by Nancy Davis, or any variation thereof

Peace & Love, Peace and Love, or any variation thereof

peace

love

heart

heart/peace

love/peace

peace and love design, peace & love design, or any variation thereof

peace sign

knock-off, knock off, or any variation thereof

infringe

trademark

WE AGREE TO RUN THESE SEARCH TERMS AGAINST THE DATABASE THAT WE CREATE. I EXPECT TO RECEIVE THE 12+ DVDs FROM MY CLIENT NEXT TUESDAY. WE WILL PROMPTLY LOAD THEM INTO CONCORDANCE AND BEGIN TO RUN THE SEARCHES. TO THE EXTENT THAT A SEARCH RETURNS RESULTS OF OVER 1,000 PAGES, I WILL LET YOU KNOW. WE EXPECT THE TOTAL ELECTRONIC DATA SET TO BE IN THE HUNDREDS OF THOUSANDS OF PAGES.

AS WE DISCUSSED, I AM HAPPY TO RUN YOUR PRIORITY NO. 1 SEARCH TERMS, REVIEW THE DOCUMENTS AND PRODUCE RESPONSIVE DOCUMENTS. IF YOU LATER DETERMINE THAT YOU WANT US TO RUN ADDITIONAL TERMS, PLEASE LET ME KNOW. FOR EXAMPLE, WE CAN AGREE ON TIER 2 AND 3 SEARCH TERMS AFTER YOUR INITIAL REVIEW OF RESPONSIVE E-MAILS.

2. Identify the 36 individuals whose email accounts you are searching by name and title and confirm the dates to be captured by your searches.

WE WILL BE HAPPY TO IDENTIFY THE NAMES OF THE RELEVANT CUSTODIANS. I WILL ASK VONN TO PROVIDE YOU WITH THAT INFORMATION. WITH RESPECT TO THE DATE RANGE, WE AGREED TODAY ON THE CALL TO REACH BACK 13 MONTHS FROM THE INCEPTION OF THIS LAWSUIT. THE 13 MONTH RANGE IS BASED ON KOHL'S STANDARD DOCUMENT RETENTION POLICY FOR E-MAILS.

3. Advise us regarding which of the allegedly infringing products the 14 individuals identified in Vonn's letter of June 8 are/were involved with.

I WILL ASK VONN TO PROVIDE WITH THIS INFORMATION.

4. Let us know if you will stipulate to our filing of a Supplemental Complaint that will include the two additional trademark registrations obtained by our client on or about April 20, 2010, i.e., after the Complaint was filed. These are the two registrations that your client seeks to cancel. As alleged in the Complaint, the marks that are the subject of those recent registrations have been used by our client since 2002. Your client's infringement of the marks is alleged in the Complaint. The Supplemental Complaint will simply allege the fact that they were registered in April 2010, after the Complaint was filed. Supplemental pleadings are favored because they enable the court to award complete relief in the same action, avoiding the costs and delays of separate suits. Therefore, absent a clear showing of prejudice to the opposing party, they are liberally allowed. See *Keith v. Volpe* 858 F2d 467, 473 (9th Cir. 1988). As there can be no possible prejudice to your client, we request that you so stipulate. Please consider this our effort to "meet and confer" in a good faith effort to resolve this issue without court intervention pursuant to Local Rule 7-3. If you are not willing to stipulate, we will file a motion for leave to file a Supplemental Complaint once the ten days provided for in Local Rule 7-3 expires.

PLEASE PROVIDE ME WITH COPIES OF THE REGISTRATIONS YOU SEEK TO INCLUDE. PLEASE EXPLAIN THE DELAY IN SEEKING TO AMEND THE COMPLAINT AFTER THE DEADLINE, ESPECIALLY SINCE THE REGISTRATIONS PRE-DATE THE DEADLINE. WE HAVE PREPARED DISCOVERY REQUESTS, ANALYZED THE LEGAL ISSUES IN THE CASE, AND BASED OUR LITIGATION STRATEGY ON THE REGISTRATIONS ALLEGED IN THE COMPLAINT. THE NEW REGISTRATIONS WOULD CERTAINLY EXPAND AND ENLARGE THE SCOPE OF THIS CASE. FURTHER, THE REGISTRATIONS ARE ALREADY SUBJECT TO TTAB PROCEEDINGS. I DON'T SEE THE COURT ALLOWING PLAINTIFF TO BRING THEM IN AT THIS JUNCTURE. THAT BEING SAID, PLEASE PROVIDE ME WITH THE INFORMATION I REQUESTED AND I WILL DISCUSS WITH MY CLIENT.

As discussed, we wish to begin taking depositions immediately but need Kohl's documents before we can begin doing so. Based on our discussion this afternoon, I anticipate that we will receive this first round of documents within the next week.

WHY WOULD YOU ANTICIPATE RECEIVING THE FIRST ROUND OF DOCUMENTS WITHIN A WEEK? I DON'T RECALL ANYTHING TO THAT EFFECT DURING OUR CONVERSATION. IN FACT, YOU SAID THAT YOU WANTED TO RECEIVE DOCUMENTS IN THE NEXT 2-3 WEEKS BECAUSE THE DISCOVERY DEADLINE IS APPROACHING.

We are still waiting to hear when we can inspect and photograph those of Kohl's products that are at issue. We need to do this soon. Please advise.

VONN ALREADY SENT YOU AN E-MAIL SUGGESTING A TIME TO DISCUSS. PLEASE RESPOND TO HIS E-MAIL AND YOU CAN ARRANGE A DATE FOR THE INSPECTION.

Please provide verified responses to plaintiff's interrogatories nos. 1, 2, 3, 4, 5, 6, and 7 indicating that the documents produced as KOH03 00001 -00056 are the reference documents that are responsive to those interrogatories.

I WILL ASK VONN TO RESPOND SEPERATELY ON THIS POINT.

We have confirmed that Justice Wallin is available on July 12 to mediate and have reserved that date. We should receive confirmation from his case manager shortly.

THANK YOU.

Regards,
Sylvia

Sylvia P. Lardiere
BROWNE WOODS GEORGE LLP
2121 Avenue of the Stars, 24th Floor
Los Angeles, CA 90067
Phone: 310-274-7100
Fax: 310-275-5697
slardiere@bwgfirm.com

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EXHIBIT 3

Sylvia Lardiere

From: Sylvia Lardiere
Sent: Wednesday, June 23, 2010 10:39 AM
To: 'Scott Shaw'; Vonn Christenson
Cc: Allan Browne; Peter Ross
Subject: RE: Peace & Love Jewelry by Nancy Davis LLC v Kohl's

Scott -

Thanks for your prompt response. See my comments in *italics* below.

Regards,
Sylvia

Sylvia P. Lardiere
BROWNE WOODS GEORGE LLP
2121 Avenue of the Stars, 24th Floor
Los Angeles, CA 90067
Phone: 310-274-7100
Fax: 310-275-5697
slardiere@bwgfirm.com

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Sent: Tuesday, June 22, 2010 9:59 PM
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Cc: Allan Browne; Peter Ross
Subject: RE: Peace & Love Jewelry by Nancy Davis LLC v Kohl's

Sylvia,

Please see my responses below in CAPS.

Scott P. Shaw
Shareholder

CALL & JENSEN
610 NEWPORT CENTER DRIVE, SUITE 700
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Sent: Tuesday, June 22, 2010 4:51 PM
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Scott -

Further to our telephone conversation this afternoon, we request that you:

1. Immediately search Kohl's database (which, from our conversation, I understand to be the email accounts of approximately 36 individuals at Kohl's from approximately January 2008 to the present) for the following "priority 1" terms and produce all documents in which they appear, with attachments and with all artwork in color:

Nancy Davis

Davis

Peace & Love Jewelry by Nancy Davis, or any variation thereof

Peace & Love, Peace and Love, or any variation thereof

peace

love

heart

heart/peace

love/peace

peace and love design, peace & love design, or any variation thereof

peace sign

knock-off, knock off, or any variation thereof

infringe

trademark

WE AGREE TO RUN THESE SEARCH TERMS AGAINST THE DATABASE THAT WE CREATE. I EXPECT TO RECEIVE THE 12+ DVDs FROM MY CLIENT NEXT TUESDAY. WE WILL PROMPTLY LOAD THEM INTO CONCORDANCE AND BEGIN TO RUN THE SEARCHES. TO THE EXTENT THAT A SEARCH RETURNS RESULTS OF OVER 1,000 PAGES, I WILL LET YOU KNOW. WE EXPECT THE TOTAL ELECTRONIC DATA SET TO BE IN THE HUNDREDS OF THOUSANDS OF PAGES.

AS WE DISCUSSED, I AM HAPPY TO RUN YOUR PRIORITY NO. 1 SEARCH TERMS, REVIEW THE DOCUMENTS AND PRODUCE RESPONSIVE DOCUMENTS. IF YOU LATER DETERMINE THAT YOU WANT US TO RUN ADDITIONAL TERMS, PLEASE LET ME KNOW. FOR EXAMPLE, WE CAN AGREE ON TIER 2 AND 3 SEARCH TERMS AFTER YOUR INITIAL REVIEW OF RESPONSIVE E-MAILS.

It was my understanding from our conversation that you already had the DVDs. Assuming you don't already have them, there is no reason for it to take your client another week to get them to you. You specifically stated that you could run the priority 1 searches in a day. The documents at issue should have been produced in response to plaintiff's first request for production of documents on May 5, i.e., seven weeks ago. It is shocking that you only spoke with your client yesterday about the "e-discovery protocol." It has become quite clear that Kohl's strategy is to delay and unnecessarily run up the costs of the litigation. That is unfortunate. Please produce these documents within the next week.

2. Identify the 36 individuals whose email accounts you are searching by name and title and confirm the dates to be captured by your searches.

WE WILL BE HAPPY TO IDENTIFY THE NAMES OF THE RELEVANT CUSTODIANS. I WILL ASK VONN TO PROVIDE YOU WITH THAT INFORMATION. WITH RESPECT TO THE DATE RANGE, WE AGREED TODAY ON THE CALL TO REACH BACK 13 MONTHS FROM THE INCEPTION OF THIS LAWSUIT. THE 13 MONTH RANGE IS BASED ON KOHL'S STANDARD DOCUMENT RETENTION POLICY FOR E-MAILS.

Thank you. I did not agree to the date range. You told me that was when the litigation hold was put into effect. We reserve our right to seek earlier documents.

3. Advise us regarding which of the allegedly infringing products the 14 individuals identified in Vonn's letter of June 8 are/were involved with.

I WILL ASK VONN TO PROVIDE WITH THIS INFORMATION.

Thank you.

4. Let us know if you will stipulate to our filing of a Supplemental Complaint that will include the two additional trademark registrations obtained by our client on or about April 20, 2010, i.e., after the Complaint was filed. These are the two registrations that your client seeks to cancel. As alleged in the Complaint, the marks that are the subject of those recent registrations have been used by our client since 2002. Your client's infringement of the marks is alleged in the Complaint. The Supplemental Complaint will simply allege the fact that they were registered in April 2010, after the Complaint was filed. Supplemental pleadings are favored because they enable the court to award complete relief in the same action, avoiding the costs and delays of separate suits. Therefore, absent a clear showing of prejudice to the opposing party, they are liberally allowed. See *Keith v. Volpe* 858 F2d 467, 473 (9th Cir. 1988). As there can be no possible prejudice to your client, we request that you so stipulate. Please consider this our effort to "meet and confer" in a good faith effort to resolve this issue without court intervention pursuant to Local Rule 7-3. If you are not willing to stipulate, we will file a motion for leave to file a Supplemental Complaint once the ten days provided for in Local Rule 7-3 expires.

PLEASE PROVIDE ME WITH COPIES OF THE REGISTRATIONS YOU SEEK TO INCLUDE. PLEASE EXPLAIN THE DELAY IN SEEKING TO AMEND THE COMPLAINT AFTER THE DEADLINE, ESPECIALLY SINCE THE REGISTRATIONS PRE-DATE THE DEADLINE. WE HAVE PREPARED DISCOVERY REQUESTS, ANALYZED THE LEGAL ISSUES IN THE CASE, AND BASED OUR LITIGATION STRATEGY ON THE REGISTRATIONS ALLEGED IN THE COMPLAINT. THE NEW REGISTRATIONS WOULD CERTAINLY EXPAND AND ENLARGE THE SCOPE OF THIS CASE. FURTHER, THE REGISTRATIONS ARE ALREADY SUBJECT TO TTAB PROCEEDINGS. I DON'T SEE THE COURT ALLOWING PLAINTIFF TO BRING THEM IN AT THIS JUNCTURE. THAT BEING SAID, PLEASE PROVIDE ME WITH THE INFORMATION I REQUESTED AND I WILL DISCUSS WITH MY CLIENT.

The registrations are attached to the petition to cancel that you filed on or about June 2, 2010. We are not plaintiff's trademark counsel and did not file the applications for these registrations. I did not become aware that they issued until after I returned from my trial in San Francisco. The marks that are the subject of the registrations are already at issue in plaintiff's Complaint. You have been aware of them from the outset. Even assuming you were not, you still have plenty of time to propound additional discovery if you so desire. You haven't taken a single deposition, not even plaintiff's. Obviously, there will be no prejudice to Kohl's if plaintiff files a Supplemental Complaint alleging registrations that issue after the original Complaint was filed. I disagree with your predictions regarding the motion that you apparently intend to force us to file.

As discussed, we wish to begin taking depositions immediately but need Kohl's documents before we can begin doing so. Based on our discussion this afternoon, I anticipate that we will receive this first round of documents within the next week.

WHY WOULD YOU ANTICIPATE RECEIVING THE FIRST ROUND OF DOCUMENTS WITHIN A WEEK? I DON'T RECALL ANYTHING TO THAT EFFECT DURING OUR CONVERSATION. IN FACT, YOU SAID THAT YOU WANTED TO RECEIVE DOCUMENTS IN THE NEXT 2-3 WEEKS BECAUSE THE DISCOVERY DEADLINE IS APPROACHING.

See my response to paragraph 1, above. I anticipated having all responsive documents, not just priority 1 documents, in the next 2-3 weeks.

There is no excuse for further delay.

We are still waiting to hear when we can inspect and photograph those of Kohl's products that are at issue. We need to do this soon. Please advise.

VONN ALREADY SENT YOU AN E-MAIL SUGGESTING A TIME TO DISCUSS. PLEASE RESPOND TO HIS E-MAIL AND YOU CAN ARRANGE A DATE FOR THE INSPECTION.

How about just providing a substantive response to my request? There is no need for ongoing discussions or email exchanges regarding this very straightforward request.

Please provide verified responses to plaintiff's interrogatories nos. 1, 2, 3, 4, 5, 6, and 7 indicating that the documents produced as KOH03 00001 -00056 are the reference documents that are responsive to those interrogatories.

I WILL ASK VONN TO RESPOND SEPERATELY ON THIS POINT.

OK. Hopefully it will be a substantive response, not a request for further discussions and emails.

We have confirmed that Justice Wallin is available on July 12 to mediate and have reserved that date. We should receive confirmation from his case manager shortly.

THANK YOU.

You're welcome.

Regards,
Sylvia

Sylvia P. Lardiere
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7 Attorneys for Plaintiff
 8 Peace & Love Jewelry by Nancy Davis LLC

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

12 PEACE & LOVE JEWELRY BY
 13 NANCY DAVIS LLC, a California
 limited liability company,

14 Plaintiff,

15 vs.

16 KOHL'S DEPARTMENT STORES,
 17 INC., a Delaware corporation, and
 Does 1 through 10, inclusive,

18 Defendants.
 19

20 KOHL'S DEPARTMENT STORES,
 21 INC.,

22 Counter-Claimant,

23 vs.

24 PEACE & LOVE JEWELRY BY
 25 NANCY DAVIS LLC, a California
 limited liability company, and Roes
 1 through 10, inclusive

26 Counter-Defendants.
 27

Case No. CV10-0417 GW (VBKx)

**[PROPOSED] ORDER GRANTING
 PLAINTIFF PEACE & LOVE
 JEWELRY BY NANCY DAVIS
 LLC'S MOTION FOR LEAVE TO
 FILE SUPPLEMENTAL
 COMPLAINT**

Date: July 26, 2010
 Time: 8:30 a.m.
 Courtroom: 10

Complaint Filed: January 20, 2010
 Trial Date: February 8, 2011

1 Plaintiff Peace & Love Jewelry by Nancy Davis LLC's Motion For Leave to
2 File Supplemental Complaint came on regularly for hearing before the above-
3 entitled Court on July 26, 2010. Plaintiff appeared through counsel, Sylvia P.
4 Lardiere of Browne Woods George LLP. Defendant Kohl's Department Stores,
5 Inc., appeared through counsel, Scott P. Shaw of Call & Jensen.

6 Having read the papers submitted by counsel in support of and in opposition
7 to said motion and having entertained oral argument of counsel, and it appearing
8 that defendant Kohl's Department Stores, Inc. will not be prejudiced by plaintiff's
9 filing of a Supplemental Complaint alleging that it obtained two federal trademark
10 registrations after its original complaint was filed,

11 IT IS HEREBY ORDERED that plaintiff Peace & Love Jewelry by Nancy
12 Davis LLC's Motion For Leave to File Supplemental Complaint shall be and is
13 hereby granted [and that the Scheduling Order entered by the Court on April 29,
14 2010 shall be and hereby is modified to provide that today is the last day to amend
15 pleadings in this action].

16
17
18 Dated: _____
19 The Honorable George Wu

Diane DeRosa

From: cacd_ecfmail@cacd.uscourts.gov
Sent: Friday, July 02, 2010 5:23 PM
To: ecfnef@cacd.uscourts.gov
Subject: Activity in Case 2:10-cv-00417-GW-VBK Peace & Love Jewelry By Nancy Davis LLC v. Kohl's Department Stores, Inc. et al Motion for Leave to File Document

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Lardiere, Sylvia on 7/2/2010 at 5:22 PM PDT and filed on 7/2/2010

Case Name: Peace & Love Jewelry By Nancy Davis LLC v. Kohl's Department Stores, Inc. et al

Case Number: 2:10-cv-00417-GW-VBK

Filer: Peace & Love Jewelry By Nancy Davis LLC

Document Number: 24

Docket Text:

NOTICE OF MOTION AND MOTION for Leave to file First Supplemental Complaint ; Declaration of Sylvia P. Lardiere filed by Plaintiff Peace & Love Jewelry By Nancy Davis LLC. Motion set for hearing on 7/26/2010 at 08:30 AM before Judge George H Wu. (Attachments: # (1) Proposed Order Granting Motion for Leave to File Supplemental Complaint)(Lardiere, Sylvia)

2:10-cv-00417-GW-VBK Notice has been electronically mailed to:

Allan Browne abrowne@bwgfirm.com, joates@bwgfirm.com

Matthew R Orr morr@calljensen.com, dreigel@calljensen.com

Peter W Ross pross@bwgfirm.com, dgallagher@bwgfirm.com, jware@bwgfirm.com

Scott P Shaw sshaw@calljensen.com, kdominick@calljensen.com

Sylvia P Lardiere slardiere@bwgfirm.com, dderosa@bwgfirm.com

Vonn Robert Christenson vchristenson@calljensen.com, cdaly@calljensen.com

2:10-cv-00417-GW-VBK Notice has been delivered by First Class U. S. Mail or by fax to :

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:Motion for Leave to File 1st Supplemental Cpt .PDF

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=7/2/2010] [FileNumber=9968657-0]
[80ef4bedc541f28253c4d80a1e9b863f6c09d9285a221b6b6574cf90926ab5a24393a
a5cef42907b340cc69ddb84a73fd30dfa496d8400f0f314bb4b7c10a38]]

Document description:Proposed Order Granting Motion for Leave to File Supplemental Complaint

Original filename:Proposed Order Re Motion for Leave to File 1st Supplemental Cpt .PDF

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=7/2/2010] [FileNumber=9968657-1]
[b4877626693a3443bde6491bf657da89b879146a378a867a79888b382d84050f097a2
f1bc6e51256a0d8c36b0e6ee7144538f35bea7a5a38634e035848f1f95c]]

Law Offices
LEWITT, HACKMAN, SHAPIRO,
MARSHALL & HARLAN
A LAW CORPORATION

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over 18 years of age and am not a party to the within action or proceeding. My business address is 16633 Ventura Boulevard, 11th Floor, Encino, California 91436-1865.

On July 15, 2010, I served the foregoing document(s) described as:

MOTION TO SUSPEND PETITION FOR CANCELLATION

on the interested party(ies) in this action at the following address, fax number or email address:

Matthew R. Orr, Esq.
Scott P. Shaw, Esq.
Vonn R. Christenson, Esq.
CALL & JENSEN
A Professional Corporation
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
(949)717-3000
Attorneys for: Kohl's Department Stores,
Inc.

- (BY MAIL)** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and place the envelope for collection and mailing, following our ordinary business practices. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
 - (BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
 - (BY FACSIMILE)** I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the report confirming the fax transmission, which I printed out, is attached.
 - (BY EMAIL)** I caused the documents to be sent to the persons at the email addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
 - (PERSONAL SERVICE)** I personally delivered the documents to the person or at the person's office by leaving the documents in an envelope or package clearly labeled to identify the person being served with a receptionist or an individual in charge of the office.
- EXECUTED on July 15, 2010, at Encino, California.
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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(FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.


LISA WHITING

Law Offices
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MARSHALL & HARLAN
A LAW CORPORATION