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

Proceeding	92061916
Party	Defendant Himani Gupta
Correspondence Address	HIMANI GUPTA 6914 VISTA DR SAGINAW, MI 48603 UNITED STATES himanigupta0@gmail.com
Submission	Answer
Filer's Name	Bruce M. Kanuch
Filer's e-mail	trademarks@mitchelliplaw.com
Signature	/Bruce M. Kanuch/
Date	11/24/2015
Attachments	151124 Answer Gupta.pdf(171618 bytes) Exhibit 1 to Answer.pdf(1469375 bytes)

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

In the matter of Registration No. 4460761
Date of Issue: January 7, 2014
Trademark HIMANI Makeup – Skincare

M/s. Emami Limited)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92061916
)	
Himani Gupta)	
Registrant.)	

ANSWER OF REGISTRANT TO PETITION TO CANCEL

Registrant, Himani Gupta, by and through her undersigned counsel, responds to the petition for cancellation as follows:

1. On information and belief, Registrant denies paragraph 1 of the petition for cancellation at least as to cosmetics or preparations for cosmetic purposes. Registrant is without knowledge or information sufficient to form a belief as to the remainder of paragraph 1.
2. Registrant admits that Petitioner is the owner of said pending application, but on information and belief, Registrant denies of paragraph 2 at least as to cosmetics or preparations for cosmetic purposes. Registrant is without knowledge or information sufficient to form a belief as to the remainder of paragraph 2.
3. Registrant is without knowledge or information sufficient to form a belief as to paragraph 3 of the petition for cancellation and therefore denies the same.
4. Registrant admits the allegations of paragraph 4 of the petition for cancellation to the extent they accurately reflect the current and updated records of the U.S. Patent and Trademark Office and denies all other allegations based upon insufficient knowledge

Petitioner's use of its mark and any other information not of record.

5. Registrant denies the allegation of paragraph 5 of the petition for cancellation.
6. Registrant denies the allegation of Paragraph 6, because Petitioner and Registrant are related by contract, in that they are parties to an Agreement of May 30, 2013. It is admitted that Petitioner and Registrant are not related by corporate structure.
7. Registrant is without information sufficient to form a belief as to the allegations of paragraph 7 of the petition for cancellation.
8. Registrant is without information sufficient to form a belief as to the allegations of paragraph 8 of the petition for cancellation.
9. Registrant denies the allegations of paragraph 9 and the unnumbered paragraph set forth just prior to the "WHEREFORE" clause of the petition for cancellation.

AFFIRMATIVE DEFENSES

Background Facts

1. On July 13, 2011, Petitioner filed opposition no. 91200679, opposing Registrant's application serial number 85/218,544, which is now registration 4460761.
2. On May 30, 2013, Petitioner entered into Agreement with Registrant (Registrant Exhibit 1), whereby Registrant agreed to narrow its then application to the goods as now set forth in Registration 4460761, and Petitioner agreed to withdraw its opposition and to refrain from challenging "the registration of the Gupta Application and any resulting registration and usage rights of [the mark covered by Registration 4460761]."
3. Registrant has at all times performed her obligations under the terms of said Agreement.

4. Registrant has at all times continued the operation of and investment in her business under her Registration 4460761, in reliance on Petitioner's heretofore continued performance under the terms of said Agreement, and continued recognition of Registrant's rights in and to her Registration 4460761, and the mark covered by said Registration.

5. Registrant's actions in connection with the matter which is the subject of this Petition to cancel are in violation of its agreement to refrain from challenging "the registration of the Gupta Application and any resulting registration and usage rights of [the mark covered by Registration 4460761.]"

6. Registrant will be damaged by cancellation of her Registration 4460761, and by acts of petitioner likely to follow such cancellation.

Defenses

7. Petitioner is barred from seeking cancellation of the registrant's trademark under the doctrine of accord and satisfaction

8. Petitioner is barred from seeking cancellation of the registrant's trademark under the doctrine of contract estoppel.

9. Petitioner is barred from seeking cancellation of the registrant's trademark under the doctrine of acquiescence.

10. Petitioner is barred from seeking cancellation of the registrant's trademark under the doctrine of laches.

11. Petitioner is barred from seeking cancellation of the registrant's trademark under the doctrine of waiver.

12. Petitioner has not and will not be damaged by the registration of the trademark Registration 4460761 and therefore lacks standing to petition to cancel the

registration.

WHEREFORE, Registrant prays this Cancellation Petition be dismissed with prejudice.

Respectfully Submitted,

/Bruce M. Kanuch/

Bruce M. Kanuch P15689 State of Michigan
Attorney for Registrant
Mitchell Intellectual Property Law, PLLC
1595 Galbraith Avenue, SE
Grand Rapids, MI 49546

AGREEMENT

THIS AGREEMENT is between **Emami Limited**, an Indian Limited Company, (hereinafter "Emami") with an address at Emami Tower, 687, Anandapur, EM Bypass, Kolkata – 700107, West Bengal, India , and **Himani Gupta**, a Michigan individual, with an address at 6914 Vista Drive, Saginaw, Michigan 48603 ("Gupta"), and is effective as of the date last signed below (the "Effective Date").

WHEREAS, Emami is the owner of the mark "HIMANI" (the "Himani Mark") for a variety of goods, including but not limited to, Ayurvedic preparations, namely, medicated oils, soaps, creams, powders and balms made from herbs and plants for medicinal use, namely for healing cuts, burns, minor wounds, skin rashes, cracked skin, dry skin diseases, relieving headaches, tension, insomnia, muscular and joint pain, relaxation of muscles, and curing cough and cold; medicated preparations, namely, medicated oils, soaps, creams, powders and balms for healing cuts, burns, minor wounds, skin rashes, cracked skin, dry skin diseases, relieving headaches, tension, insomnia, muscular and joint pain, relaxation of muscles, and curing cough and cold.

WHEREAS, the Himani Mark is the subject of federal trademark registration no. 3,005,688;

WHEREAS, Gupta filed a U.S. trademark application for the mark,



(hereinafter, "HIMANI MAKEUP- SKINCARE and Design"), assigned Serial No. 85/218,544 for "Cosmetics" in International Class 3 (the "Gupta Application");

WHEREAS, Emami filed a Notice of Opposition before the Trademark Trial & Appeal Board, which has been assigned Opposition No. 91200679 opposing the Gupta Application;

WHEREAS, the parties are desirous of settling this matter; and

WHEREAS, each party warrants and represents that it has the sole right and exclusive authority to execute this agreement and has not sold, assigned, transferred, conveyed or otherwise disposed of (or purported to do so) any claim, right, debt, liability, demand, obligation, account, reckoning, cost, expense, lien, loss, damage, action or cause of action, or any portion thereof of interest therein, relating to or arising out of any matter covered in this agreement ("Agreement").

A handwritten signature in black ink is written over a circular stamp. The stamp contains the text "39" and "Emami" and is partially obscured by the signature.

NOW, THEREFORE, in consideration of the foregoing recitals, including warranties and representations, and the promises and other consideration hereinafter given, Emami and Gupta agree as follows:

1. Gupta agrees to amend the Gupta Application for HIMANI MAKEUP-SKINCARE and Design to narrow the identification of goods to the following: "nonayurvedic preparations solely for cosmetic purposes, namely, make-up foundation, lipstick, lip balm, lip gloss, eye shadow, lip primer, blush, eye liners, face finishing powder, skin bronzer, make-up-brushes, facial cleaner, facial toner, facial moisturizer, eye cream, and neck and bust moisturizer, in Class 3."

2. Gupta undertakes and agrees to always use only the HIMANI MAKEUP-SKINCARE and Design mark exactly as it appears in the Gupta application, namely



as , on the goods identified in Paragraph 1. Gupta agrees to not use the mark HIMANI alone for as long as Emami owns and uses the Himani Mark in the U.S.

3. Gupta undertakes and agrees to use the HIMANI MAKEUP—SKINCARE and Design mark for only the Class 3 goods listed in Paragraph 1 above, namely, non-ayurvedic preparations solely for cosmetic purposes, namely, make-up foundation, lipstick, lip balm, lip gloss, eye shadow, lip primer, blush, eye liners, face finishing powder, skin bronzer, make-up-brushes, facial cleaner, facial toner, facial moisturizer, eye cream, and neck and bust moisturizer, and not for any other Class 3 or Class 5 goods.

4. Gupta shall not, directly or indirectly, challenge before any court, adjudicative body, arbitrator and/or in any judicial or quasi-judicial proceeding, the use and/or registration by or on behalf of Emami of the Himani Mark as well as any use or registration of the mark EMAMI.

5. Emami agrees to withdraw on a without prejudice basis its opposition to the Gupta Application within ten days following receipt of the notice from the United States Patent and Trademark Office that it accepts the amendment as set forth in Paragraph 1 of this Agreement.

6. Emami agrees that as long as Gupta complies with the terms of this Agreement, Emami will not challenge the registration of the Gupta Application and any resulting registration and usage rights of the HIMANI MAKEUP—SKINCARE and Design mark.

7. The terms of this Agreement shall be binding upon, and inure to the benefit of, the respective successors, assigns, parent, subsidiaries, affiliated companies and officers of the

EXHIBIT 1
TO ANSWER OF REGISTRANT TO PETITION TO CANCEL

parties hereto.

8. Each party shall bear all of its own attorney fees, costs and expenses incurred in connection with this Agreement and all matters covered herein.

9. No waiver or any breach of this Agreement shall be construed to be a continuing waiver or consent to any subsequent breach thereof. If any provision of this Agreement is invalid or unenforceable, it shall not affect the validity or enforceability of the other provisions.

10. This Agreement shall be construed in accordance with the federal trademark laws and the laws of the District of Columbia and without regard to the party responsible for the preparation of same or clauses in same and shall be deemed as prepared jointly by the parties hereto. Any ambiguity or uncertainty existing in this Agreement shall not be interpreted or construed against any party hereto.

11. This Agreement is limited to the United States of America.

This is the entire Agreement of the parties with respect to the subject matter hereof. This Agreement shall not be modified except by written agreement of all the parties hereto.

12. This Agreement may be executed in counterparts, each of which may be deemed an original, and all of which together constitute the Agreement.

IN WITNESS WHEREOF, the parties hereto execute this document on the dates set forth below.

FOR EMAMI LIMITED

For Emami Limited

Signature :


Company Secretary & AVP-Legal

Name: Arun Kumar Joshi

Title : Company Secretary & AVP-Legal

Date: 30.5.2013

FOR HIMANI GUPTA


Name:

Title: *Owner*

Date: