

ESTTA Tracking number: **ESTTA739237**

Filing date: **04/11/2016**

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

Proceeding	92061916
Party	Plaintiff M/s. Emami Limited
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Signature	/Leo M. Loughlin/
Date	04/11/2016
Attachments	Petitioner's Opposition.pdf(740640 bytes)

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

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

**PETITIONER'S OPPOSITION TO REGISTRANT'S
MOTION FOR SUMMARY JUDGMENT**

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Petitioner, M/s. Emami Limited, submits this memorandum in opposition to Registrant's Motion for Summary Judgment, filed February 22, 2016. In support of its opposition, Petitioner submits the Declaration of Leo M. Loughlin ("Loughlin Dec.").

Registrant's motion should be denied, because the plain language of the Settlement Agreement demonstrates that the parties intended that the mark that is the subject of Petitioner's U.S. Application No. 85/502,259 be included in the definition of "Himani Mark," as that term is used in Paragraph 4 of that agreement. By refusing to consent to Petitioner's application and now challenging Petitioner's right to obtain a registration based on U.S. Application No. 85/502,259, Registrant has breached and repudiated her obligations under Paragraph 4 of the Settlement Agreement. That breach relieves Petitioner of its obligation in Paragraph 6 not to object to Registration No. 4,460,761. Registrant has failed to comply with the terms of the Settlement Agreement by refusing to provide consent for Application No. 85/502,259. Therefore, Petitioner is not contractually estopped from pursuing this cancellation and the motion should be denied on this basis.

Alternatively, if the Board finds that the language of the Settlement Agreement is ambiguous, Registrant's motion should be denied on the basis that genuine issues of material fact exist regarding the interpretation and scope of the Settlement Agreement in the previous opposition. Specifically, the parties have a different interpretation of Paragraphs 4 and 6 of the Settlement Agreement. The interpretation of ambiguous contract language is a question of fact under District of Columbia law (controlling law), therefore, a genuine issue of material fact then exists as to whether Registrant's refusal to provide consent to Petitioner's pending application relieved Petitioner from any obligations in the agreement.

Further, the Settlement Agreement was not properly submitted as evidence for the purposes of summary judgment, because Registrant did not submit a declaration and the motion was not verified. However, Petitioner submits the Settlement Agreement. *See* Loughlin Dec. at 3, Exh. 1.

BACKGROUND

Since long prior to the filing date and first use date listed in Registration No. 4,460,761, Petitioner has used the mark HIMANI for goods in International Class 03. Petitioner is also the owner of pending U.S. Application No. 85/502,259, claiming a first use in commerce date of May 10, 2005, for HIMANI for, “soaps for personal use; shampoo; perfumery; essential oils; cosmetics; hair oils and lotions; dentifrices, namely, talcum powder, petroleum jelly for cosmetic use, cosmetic creams and lotions and toiletries” in International Class 03.

Registrant is the owner of Registration No. 4,460,761 and this registration has been cited by the U.S. Patent and Trademark Office as a bar to registration of Petitioner’s application on the grounds that the marks are so similar as to create a likelihood of confusion.

Registrant correctly notes that the parties previously were involved in Opposition No. 91200679. Petitioner brought this opposition against Registrant’s then pending application based on Petitioner’s ownership of Registration No. 3,005,688 for HIMANI in Class 05. The opposition was resolved by agreement, and the opposition was dismissed without prejudice.

When Petitioner received the refusal for U.S. Application No. 85/502,259, Petitioner contacted Registrant to seek Registrant’s consent for the application. But, inexplicably, Registrant refused to provide her consent.

Paragraph 4 of the Settlement Agreement provides:

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.

See Loughlin Dec. at 3, Exh. 1. Because the mark that is the subject of Application No. 85/502,289 is included within the definition of “Himani Mark,” this provision required Registrant to consent to Petitioner’s application. Application No. 85/502,259 was pending during the opposition, was known to Registrant during the opposition (*see* below) and Petitioner claims prior use in Class 03. The intent of the parties to the Settlement Agreement was to resolve their pending disputes and avoid the costs of litigation. Thus, they arrived at a resolution that would allow co-existence of their respective marks, provided that Registrant always uses “only the HIMANI MAKEUP-SKINCARE and Design mark exactly as it appears in the Gupta application.” *See id.*

In furtherance of this intent, the mark in Application No. 85/502,259 was included in the definition of “Himani Mark,” as is apparent from the second paragraph of the Settlement Agreement, which provides, in part, “WHEREAS, Emami is the owner of the mark “HIMANI” (the “Himani Mark”) for a variety of goods, including but not limited to [list of goods in International Class 05]” (emphasis added). *See* Loughlin Dec. at 3, Exh. 1. The language “including but not limited to” plainly was intended to include the goods of International Class 03 that are specified in Application No. 85/502,259.

Thus, the parties’ broad definition of “Himani Mark” reflected their intention not to exclude from that term the mark that is the subject of Petitioner’s Application No. 85/502,259. To conclude otherwise would make no sense. At the time that the Settlement Agreement was entered, Registrant was well aware of Petitioner’s pending application and claim of first use. In

fact, the parties discussed this application during the discovery conference in the opposition, which occurred on February 16, 2012. *See* Loughlin Dec. at 4. Registrant can point to nothing to suggest that the parties intended that Petitioner would relinquish its rights in Application No. 85/502,259 or that the mark that is the subject of that application would be somehow be carved out of the broad definition of “Himani Mark.”

Registrant’s refusal to consent to Application No. 85/502,259 and her position in this proceeding that Petitioner is not entitled to registration based on that application is a breach of her obligation not to “directly or indirectly, challenge before any . . . adjudicative body . . . the . . . registration by or on behalf of Emami of the Himani Mark.” Settlement Agreement, Paragraph 4 (emphasis added).

Paragraph 6 of the Settlement Agreement is as follows:

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.

See Loughlin Dec. at 3, Exh.1. Registrant’s breach and repudiation of her obligations under Paragraph 4 of the Settlement Agreement relieves Petitioner of its obligation in Paragraph 6 not to object to Registration No. 4,460,761. Registrant has failed to comply with the terms of the Settlement Agreement by refusing to provide consent for Application No. 85/502,259.

Finally, the exhibit attached to the motion for summary judgment is not the entire settlement agreement from Opposition No. 91200679. The parties signed an addendum relating to Registrant’s amendment of goods in Class 3. Moreover, the exhibit contains handwriting that was not part of the agreement. *See* Loughlin Dec. at 3, Exh. 1.

ARGUMENT

A. SUMMARY JUDGMENT STANDARD

Summary judgment is only appropriate where there are no genuine disputes as to any material facts, thus allowing the case to be resolved as a matter of law. Fed. R. Civ. P. 56(a). The party seeking summary judgment bears the burden of demonstrating the absence of any genuine dispute of material fact, and that it is entitled to a judgment under the applicable law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Sweats Fashions, Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 USPQ2d 1793, 1796 (Fed. Cir.1987). A factual dispute is genuine if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party. *See Opryland USA Inc. v. Great Am. Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992); *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992).

Evidence on summary judgment must be viewed in a light most favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. *Lloyd's Food Prods., Inc. v. Eli's, Inc.*, 987 F.2d 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993); *Opryland USA*, 23 USPQ2d at 1472. In deciding a motion for summary judgment, the Board may not resolve genuine disputes as to material facts; it may only ascertain whether genuine disputes as to material facts exist. *See Lloyd's Food Prods.*, 25 USPQ2d at 2029; *Olde Tyme Foods*, 22 USPQ2d at 1542.

B. PETITIONER IS NOT ESTOPPED FROM BRINGING THIS CANCELLATION

The starting point for construing a settlement agreement is discerning the intent of the parties. *Valentino Couture, Inc. v. Vantage Custom Classics, Inc.*, 2003 TTAB LEXIS 413 (TTAB 2003) *citing Buono Sales, Inc. v. Chrysler Motors Corp.*, 239 F.Supp. 839 (D.N.J. 1965),

rev'd on other grounds, 363 F.2d 43 (3rd Cir. 1966), *cert. den.*, 385 U.S. 971, 87 S.Ct. 510 (1966). The intent of the parties is determined from the language used in the agreement. *Buono Sales, Inc., supra*. An ambiguity in a contract exists if the terms of the contract are susceptible to at least two reasonable alternative interpretations." *Valentino Couture, Inc.* 2003 TTAB LEXIS 413 at *12 citing *Schor v. FMS Financial Corp.*, 814 A.2d 1108 (N.J. Super. Ct. App. Div. 2002).

The Settlement Agreement is construed under the law of the District of Columbia and under District of Columbia law the interpretation of ambiguous contract terms is a question of fact. *Flynn v. Dick Corp.*, 481 F.3d 824, 831 n.7, 375 U.S. App. D.C. 328 (D.C. Cir. 2007). "In order to determine the appropriate interpretation of the ambiguous provision, the Court must examine the parties' intention in light of the circumstances surrounding their execution of the agreements and/or by applying rules of construction. Indeed, "interpretation of ambiguous contract language, particularly if it requires consideration of extrinsic evidence, is a question of fact." *Id.*

A plain reading of the Settlement Agreement clearly shows that Registrant is not entitled to summary judgment. Rather, the plain language of the Settlement Agreement demonstrates that Petitioner is not estopped from challenging Registration No. 4,460,761 and Petitioner was with its rights to bring this cancellation as a result of Registrant's breach of the Settlement Agreement.

Indeed, the plain language of the Settlement Agreement clearly demonstrates that the parties intended that Petitioner's goods in U.S. Application No. 85/502,259 in the definition of "Himani Mark." Contrary to Registrant's unsupported statement in her motion, Registrant was aware of U.S. Application No. 85/502,259 during the opposition. *See Loughlin Dec.* at 4.

Registrant's subsequent breach and repudiation of her obligations under Paragraph 4 of the Settlement Agreement relieves Petitioner of its obligation in Paragraph 6 not to object to Registration No. 4,460,761. Registrant has failed to comply with the terms of the Settlement Agreement by refusing to provide consent for Application No. 85/502,259. Therefore, Petitioner is not contractually estopped from pursuing this cancellation.

C. IF THE SETTLEMENT AGREEMENT LANGUAGE IS AMBIGUOUS, GENUINE ISSUES OF MATERIAL FACT EXIST SINCE THE PARTIES DISAGREE ON THE TERMS OF THE AGREEMENT

If the Board finds that the Settlement Agreement is ambiguous, Registrant's motion should be denied as genuine issues of material fact remain since there is ambiguity regarding the interpretation of Paragraphs 4 and 6 of the Settlement Agreement. Petitioner's position is that, pursuant to Paragraph 4, Registrant was required to give consent for the registration of Application Serial No. 85/502,259 as this application was intended to be included in the definition of "Himani Mark" in Paragraph 4. *See* Loughlin Dec. at 3, Exh. 1.

Registrant has a different interpretation of Paragraphs 4 and 6 of the Settlement Agreement. Since the parties' intent is different, the agreement is ambiguous which raises a question of fact under District of Columbia law. *Id.* Thus, a genuine issue of material fact remains as the proper interpretation of the Settlement Agreement and summary judgment must be denied.

CONCLUSION

In view of the foregoing, Petitioner respectfully requests that Registrant's motion for summary judgment be denied.

Date: April 11, 2016

Respectfully submitted,

M/s. Emami Limited



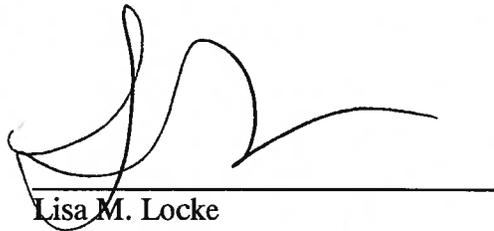
E. Anthony Figg
Leo M. Loughlin
Attorneys for Petitioner
Rothwell, Figg, Ernst & Manbeck, p.c.
607 14th Street, N.W., Suite 800
Washington, D.C. 20005
Phone: (202) 783-6040

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITIONER'S OPPOSITION TO REGISTRANT'S MOTION FOR SUMMARY JUDGMENT was served by first- class mail, postage prepaid, on Registrant's counsel address as follows:

Bruce M. Kanuch
Mitchell Intellectual Property Law, PLLC
1595 Galbraith Avenue SE
Grand Rapids, MI 49546

This 11th day of April, 2016.



Lisa M. Locke

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

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

DECLARATION OF LEO M. LOUGHLIN

I, Leo M. Loughlin, declare and state as follows:

1. I am a member of the bars of New York State and the District of Columbia, and an attorney at the law firm Rothwell, Figg, Ernst & Manbeck, P.C., attorneys for Petitioner.
2. I submit this declaration in opposition to Registrant's Motion for Summary Judgment. I have personal knowledge of the facts stated in this Declaration.
3. Attached as Exhibit 1 is the Settlement Agreement between the parties in Opposition No. 91200679.
4. I reviewed my firm's files for Opposition No. 91200679 which are kept in the ordinary course of business. These files show that the parties discussed U.S. Application No. 85/502,259 during the discovery conference in that opposition on February 16, 2012. Therefore, Registrant was aware of Petitioner's pending U.S. Application No. 85/502,259 at least as early as February 16, 2012.

Cancellation No. 92061916

Page 2

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 11, 2016

A handwritten signature in blue ink, appearing to read "Leo M. Loughlin", written over a horizontal line.

Leo M. Loughlin

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").

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 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.

EMAMI LIMITED

HIMANI GUPTA

Name:

Himani Gupta
Name:

Title:

OWNER
Title:

Date:

5/27/13
Date:

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,


The logo features a crown above the word "HIMANI" in a bold, serif font. Below "HIMANI" are the words "MAKEUP - SKINCARE" in a smaller, sans-serif font.

(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").



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

A circular logo for Emami Limited. The words "Emami Limited" are written in a curved path around the top inner edge of the circle. In the center of the circle, there is a stylized signature or graphic element.

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 HIMANI GUPTA

For Emami Limited

Signature :



Company Secretary & AVP-Legal

Name: Arun Kumar Joshi

Name:

Title : Company Secretary & AVP-Legal

Title:

Date: 30.5.2013

Date:

ADDENDUM TO AGREEMENT

Pursuant to Paragraph 11 of the Agreement, Emami and Gupta hereby agree to this Addendum to the Agreement to reflect an amendment to the identification of goods agreed upon by the parties in Paragraph 1 of the Agreement. The amendment was necessary to comply with the rules for trademark applications of the U.S. Patent and Trademark Office, and enable the Trademark Trial and Appeal Board to approve the amendment to the identification of goods.

Paragraph 1 shall be amended 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: "cosmetics, namely, 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, facial cleaner, facial toner, facial moisturizer, eye cream, and neck and bust moisturizer, in Class 3."

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

For Emami Limited
EMAMI LIMITED

Arum Kumar Joshi
Company Secretary & AVP-Legal

Name: Arum Kumar Joshi

Title: Company Secretary & AVP-Legal

Date: 11.11.2013

HIMANI GUPTA

Himani Gupta
Name:

Title: Owner

Date: 11-18-13