

Opposition
150528

TTAB

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September 18, 2002

09-23-2002

U.S. Patent & TMOfr/TM Mail Rcpt Dt. #73

Box TTAB
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Serial #76/066260 in the matter of the trademark application "Skintight"

To the Trademark Trial & Appeals Board:

The parties to this proceeding have reached a settlement. Enclosed is a copy of a signed settlement agreement wherein the parties have each agreed to withdraw their applications for the mark "Skintight."

If you have any questions, please feel free to contact me.

Sincerely,

Mark Litwak
Attorney at Law

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TRADemark TRIAL AND
APPEAL BOARD

cc: Lee Lubin
Greg Thompson

Encl.

SETTLEMENT AGREEMENT

AND

MUTUAL RELEASE

This Agreement is entered into at Los Angeles, California, this 23 day of August, 2002, by, between and among Skin Tight International, Ltd., a California corporation (hereinafter referred to as "STI") and Greg Thompson Productions, Inc., a Washington corporation (hereinafter referred to as "GTP"). STI and GTP are hereinafter referred to individually or collectively as the "**Party**" or the "**Parties**," respectively.

Reference is made to the following facts:

A. STI produces a stage show entitled "Skin Tight" for private parties, conventions, stage and film. STI performs shows in the County of Los Angeles, State of California, and in Clarke County, in the State of Nevada.

B. GTP produces a stage show entitled "Skintight" that is performed daily in casinos owned and operated by Harrah's in Las Vegas, Nevada, and Reno Nevada.

C. On June 7, 2000, STI filed an application (the "**STI Application**") with the United States Patent and Trademark Office ("**USPTO**") for registration of the mark "**SKIN TIGHT**" (hereinafter referred to as the "**Mark**"). The STI Application provided that STI first used the Mark on November 16, 1999. The STI Application was amended on April 2, 2001, to state that the Mark was first used by STI in December 31, 1998.

D. On June 27, 2001, GTP filed an application (the "**GTP Application**") with the USPTO for registration of the Mark "Skintight". The GTP Application provided that GTP first used the Mark on March 12, 1992.

E. On or about November 16, 2001, GTP filed an opposition (the "**Opposition**") to the registration of the Mark by STI.

F. On or about March 4, 2002, STI filed an answer to the complaint in opposition filed by GTP.

G. The Parties wish to continue to use a trademark incorporating the words "Skintight" and "Skin Tight" for their respective shows without misleading or confusing the public as to which Party's show the viewers are seeing, while at the same time obtaining federal trademark protection for

their respective uses of their trademarks. .

WHEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. Withdrawal of Applications; Dismissal of Proceedings at the TTAB

Both parties agree to withdraw their respective applications for the mark "Skintight" and "Skin Tight." Each party will withdraw their application and send written notice of such withdrawal to the Trademark Office within 10 days of the execution of this settlement agreement. Each party will send a copy of such withdrawal to the other party within 10 days of the execution of this settlement agreement. Both parties agree not to re-apply for a federal or state trademark for the trademark "Skintight" and "Skin Tight." The parties agree to dismiss all proceedings before the TTAB.

2. STI New Application

STI may file a new application for the trademark "Paula Harrison's SKIN TIGHT". GTP agrees that it will not oppose such new application by STI.

3. GTP New Application

GTP may file a new application for the trademark "Greg Thompson's SKINTIGHT". STI agrees that it will not oppose such new application by GTP.

4. Waiver of Infringement Claims.

Each party waives any and all claims that each may have against the other for alleged infringement of the other's use of the Mark, prior to the execution of this Agreement, in any area that either Party may claim to have obtained trademark protection by virtue of their use of the Mark.

5. Costs.

Each party shall bear their own costs and attorney's fees associated with the prosecution and defense of the Opposition, and with the preparation of this Agreement.

6. Mutual Release.

Concurrently with the execution of this Agreement, except for the obligations arising out of this Agreement, and in consideration of the terms and provisions of the releases and waivers mutually exchanged under the terms hereof, and for other good and valuable consideration, receipt of all of which is hereby acknowledged, both Parties shall and hereby do relieve, release and forever

discharge each other, and their successors, representatives, officers, directors (including former officers and directors), shareholders, agents, employees, attorneys, assigns and all affiliated parent and subsidiary corporations, and each of them, from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, costs, expenses (including, but not limited to, attorneys' fees), damages, actions or causes of action, of whatsoever kind or nature, whether now known or unknown, or suspected or unsuspected, anticipated or unanticipated which any of the said parties to this Agreement ever had, now have, or may, shall, or can hereinafter have or acquire arising out of or concerning or pertaining to or in any way connected with any contract, tort, statutory violation, representation, non-disclosure, act, omission to act, fact, matter or thing whatsoever, occurring as of or prior to the date of this Agreement, including without limitation, any alleged infringement of the trademark, or other intellectual property rights, or the other, and those arising from the preparation, filing, serving, prosecuting and dismissing of the Opposition.

7. General Release.

Each party expressly waives any and all rights under Section 1542 of the Civil Code of the State of California, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Each party waives and releases any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California to the full extent that it may lawfully waive all such rights and benefits pertaining to the matters and things released herein. In connection with such waiver and relinquishment, each acknowledges that it is aware that it may hereafter discover claims of facts in addition to or different from those which it now knows or believes to be true with respect to the matters related herein, but that it is the intention to hereby fully, finally and forever settle and release all such matters and all claims relative thereto which do exist, may exist or heretofore have existed. In furtherance of such intention, the releases herein given shall be and remain in effect as full and complete releases of any such additional or different claims or facts relative thereto.

8. Governing Law.

This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of California. If any civil action is filed to enforce or interpret any of the terms or provisions of this Agreement, or otherwise, the parties agree that the appropriate venue shall be any state or federal court of competent jurisdiction located in the County of Los Angeles, State of

California.

9. Binding on Successors.

This Agreement shall inure to the benefit of and shall bind the parties hereto and their respective representatives, heirs, executors, administrators, successors, assigns, family, partners, employers, employees, officers, directors, shareholders, agents and attorneys.

10. Warranty of Nonassignment.

The parties hereto represent and warrant that they have not heretofore assigned or transferred, or purported to assign or transfer, to any person, partnership, firm or corporation whatsoever any claims, debt, liability, demand, obligation, cost, expense, action or causes of action covered by this Agreement, and each party acknowledges and agrees that this warranty and representation is an essential and material term of this Agreement without which none of the consideration received in connection herewith would have been made or delivered. The foregoing warranty and representation shall survive the delivery of this Agreement, and each of the parties hereto shall indemnify and hold the others harmless from any claims, demands or actions which have been assigned or transferred, or purported to have been assigned or transferred, in violation of the foregoing representation and warranty.

11. Warranty of Corporate Authority.

Each individual signing this Agreement on behalf of any corporation represents and warrants that he has the right, power, legal capacity and authority to enter into and perform each of the obligations specified under this Agreement, and that no further approval or consent of any person, board of directors, shareholders or entities is necessary for them to enter into and perform each of the obligations under this Agreement.

12. Representation by Counsel.

The parties hereto affirmatively represent the fact that they have been represented herein and throughout by legal counsel of their own choosing. The parties further represent that they have read this Agreement, understand the terms used herein, and the consequences hereof.

13. No Admissions.

Execution of this Agreement does not constitute evidence of and shall not be construed to be an admission of liability and/or wrongdoing by any party hereto. Rather, this is the settlement of a doubtful or disputed claim and all parties expressly deny any liability.

14. Attorneys' Fees.

In the event of any controversy, claims or dispute in connection with the terms or conditions of this Agreement or the subject matter hereof, the prevailing party shall be entitled to recover all costs incurred (including, but not limited to, reasonable attorneys' fees and costs) by the prevailing party in connection therewith, whether or not suit is filed and whether or not any such suit proceeds to judgment.

15. Further Documentation.

All of the parties hereto shall fully and timely do all acts and execute, return and furnish all documents necessary or convenient to effectuate the terms and provisions of this Agreement.

16. Joint Drafting.

It is agreed between the parties that this Agreement was jointly negotiated and jointly drafted by the parties and their respective attorneys, and that it shall not be interpreted or construed in favor of or against any party on the ground that any one party drafted the Agreement.

17. Severability Provision.

If any provision of this Agreement is unenforceable, for any reason, the remaining provisions shall nevertheless be of full force and effect.

18. Modification.

This Agreement may be modified only by a subsequent document in writing, signed by the party to be charged thereunder.

19. Final Agreement.

This Agreement supersedes all prior negotiations and understandings of any kind with respect to the subject matter hereof, and contains all of the terms and provisions of agreement among the parties hereto with respect to the subject matter hereof. Except as herein expressly set forth, there are no oral representations, understandings, statements or stipulations of any kind or character made by any of the parties bearing upon the effect of this Agreement to induce execution of this Agreement, or otherwise, which have not been incorporate herein.

20. Single, Integrated Contract.

This Agreement constitutes a single-integrated written contract expressing the entire agreement of

the parties.

21. Counterparts.

This Agreement may be executed in separate counterparts and shall become effective only after all such separate counterparts have been executed and exchanged between the parties hereto. Each of the separate counterparts shall be deemed an original, and said counterparts shall constitute but one and the same instrument.

22. Paragraph Headings.

The headings and captions of the various paragraphs and subparagraphs hereof are for convenience only and they shall not limit, expand or otherwise affect the construction or interpretation of this Agreement.

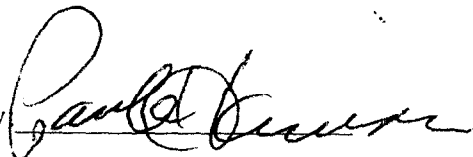
23. No Waiver.

The failure of any party to insist, in any one or more instances, upon strict performance of any one or more of the provisions, terms and conditions of this Agreement, or to exercise any right or rights hereunder, shall not be construed as a waiver thereof, and any and all such provisions, terms, conditions and rights shall continue and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Skin tight International, Ltd.,

A California corporation

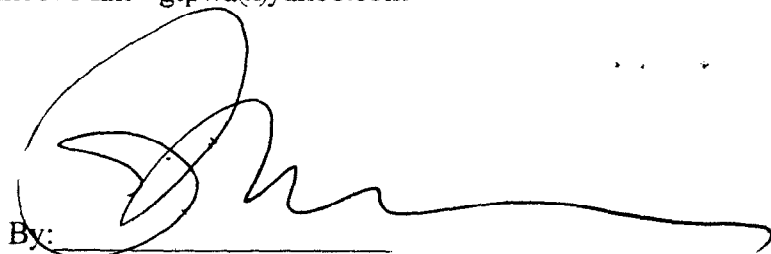
By 

Paula Harrison.

Its President

Greg Thompson Productions, Inc.,

A Washington corporation

By: 

Greg Thompson.

Its President

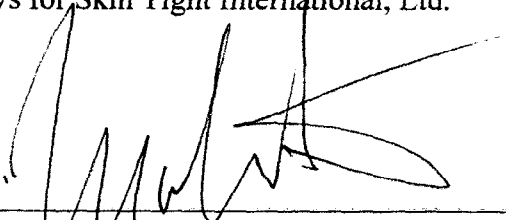
APPROVED AS TO FORM AND CONTENT:

By: 

Lee D. Lubin, Esq.

LEACH, LUBIN & ASSOCIATES

Attorneys for Skin Tight International, Ltd.

By: 

Mark Litwak, Esq.

Attorneys for Greg Thompson Productions, Inc.