

ESTTA Tracking number: **ESTTA361839**

Filing date: **08/06/2010**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Hachette Filipacchi Presse
Granted to Date of previous extension	08/11/2010
Address	149, rue Anatole France Levallois-Perret Cedex, 92534 FRANCE

Attorney information	Perla M. Kuhn Hughes Hubbard & Reed LLP One Battery Park Plaza New York, NY 10004 UNITED STATES kuhn@hugheshubbard.com, trager@hugheshubbard.com Phone:212-837-6000
----------------------	--

Applicant Information

Application No	77856669	Publication date	04/13/2010
Opposition Filing Date	08/06/2010	Opposition Period Ends	08/11/2010
Applicant	DANIELLE DIFERDINANDO 9220 RUMSEY ROAD COLUMBIA, MD 21045 UNITED STATES		

Goods/Services Affected by Opposition

Class 018. All goods and services in the class are opposed, namely: HANDBAGS

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	758137	Application Date	11/14/1962
Registration Date	10/08/1963	Foreign Priority Date	NONE
Word Mark	ELLE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class U038 (International Class 016). First use: First Use: 1945/11/01 First Use In Commerce: 1945/00/00 Magazine

U.S. Registration No.	1322177	Application Date	11/10/1983
Registration Date	02/26/1985	Foreign Priority Date	NONE

Word Mark	ELLE
-----------	------

Design Mark	
-------------	--

Description of Mark	NONE
---------------------	------

Goods/Services	Class 018. First use: Umbrellas; Articles Made of Leather, Imitation Leather and Canvas-Namely, Luggage, Travelling Bags, Tote Bags, Hand Bags, Beach Tote Bags, Shoulder Bags, Cosmetic Bags Sold Empty, [Key Cases,] Shopping Tote Bags, and Wallets
----------------	---

U.S. Registration No.	1767100	Application Date	08/17/1989
Registration Date	04/27/1993	Foreign Priority Date	03/30/1989

Word Mark	ELLE
-----------	------

Design Mark	
-------------	--

Description of Mark	NONE
---------------------	------

Goods/Services	Class 002. First use: [PAINTS, ENAMELS, COATINGS FOR PAINTS AND PRIMERS; VARNISHES AND GLAZING COMPOUNDS; UNDERCOATINGS FOR PREPARING SURFACES TO BE PAINTED AND WATERPROOFING COMPOSITION FOR INTERIOR AND EXTERIOR SURFACES; WOOD PRESERVATIVES FOR CONSTRUCTION PURPOSES; NATURAL RESINS FOR USE IN THE MANUFACTURE OF ADHESIVES FOR INTERIOR AND EXTERIOR SURFACES; DYES FOR USE IN PREPARING WOOD AND OTHER SURFACE MATERIALS FOR INTERIOR AND EXTERIOR DECORATIVE PURPOSES; METALS IN FOIL AND POWDER FORM FOR PAINTERS, DECORATORS AND ARTISTS; COLORANTS FOR USE IN THE MANUFACTURE OF PAINT AND PAPER] Class 006. First use: [KEY HOLDERS]
----------------	--

Class 011. First use:

[ELECTRIC LAMPS, CANDELABRA AND LIGHTS; FIXTURES FOR ELECTRIC LIGHTING; VENTILATING DUCTS; VENTILATING FANS; CEILING AND ELECTRIC FANS; PLUMBING FITTINGS; NAMELY, VALVES AND PIPES; WATER HEATERS; FILTERING UNITS FOR AIR AND WATER; HOT WATER TANKS; WATER PURIFYING UNITS; AIR PURIFYING UNITS; STEAM GENERATORS; STOVES, ELECTRIC AND GAS RANGES; REFRIGERATORS, FREEZERS, AND AIR CONDITIONING UNITS]

Class 012. First use:

[VEHICLES; LAND, AIR AND WATER LOCOMOTION APPARATUS, PARTICULARLY AUTOMOBILES, WAGONS, CARTS, TRUCKS, STATION WAGONS, TRAILERS, BICYCLES, TRICYCLES, TRI-CARS, AIRPLANES, BOATS, CANOES, BARGES, ROW BOATS, SHIPS, YACHTS, DIRIGIBLES, AIR SHIPS, PARACHUTES, LOCOMOTIVES AND RAILROAD CARS]

Class 022. First use:

[CORDS, THREAD NETTING, TENTS, AWNINGS, SAILS, BAGS (ENVELOPES, POUCHES) OF TEXTILE FOR PACKAGING; SACKS (BAGS) OF TEXTILE FOR PACKAGING; NONMETALLIC WRAPPING OR BINDING BANDS; BEACH TOTE BAGS; LAUNDRY BAGS; PLASTIC BAGS FOR GENERAL USE; VINYL BAGS; STORAGE BAGS AND TRAVELING BAGS MADE OF LAMINATED CANVAS OR NYLON FOR USE IN STORING CLOTHING; AND HAT STORAGE BOXES MADE OF CARDBOARD FOR USE IN THE STORING OF HATS OF ALL TYPES; UPHOLSTERY FABRIC (EXCEPT FOR RUBBER AND PLASTIC); CRUDE TEXTILE FIBER] NYLON BAGS

Class 023. First use:

[THREADS FOR TEXTILE USE]

Class 026. First use:

[LACE AND EMBROIDERY, RIBBONS, SHOE LACES, CLOTHING BUTTONS, HOOKS AND EYES, NEEDLES AND PINS; ARTIFICIAL PLANTS AND FLOWERS]

Class 027. First use:

[CARPETS, AREA RUGS, MATS; NAMELY, DOOR MATS, FLOOR MATS AND STALL SHOWER AND BATH MATS, LINOLEUM AND WALL COVERING NOT MADE OF TEXTILES]

Class 028. First use:

DOLLS; TOY ACTION FIGURES, DOLL AND TOY ACTION FIGURE CLOTHING AND FURNITURE; TOY TRUCKS AND CARS; EQUIPMENT SOLD AS A UNIT FOR PLAYING A BOARD GAME; TENNIS, BADMINTON, SQUASH AND RACQUETBALL RACKETS; BASEBALL GLOVES; BALLS] AND GOLF CLUBS; STATIONARY EXERCISE BICYCLES; SNOW AND WATER SKIS; BODY BUILDING MACHINES; NON-MOTORIZED SURF AND SAIL BOARDS; PLAY BALLOONS; PLAYGROUND EQUIPMENT; NAMELY, SWINGS; ROLLER AND ICE SKATES; SKATING BOOTS WITH SKATES ATTACHED]

Class 031. First use:

[NATURAL PLANTS AND FLOWERS; DRIED PLANTS AND FLOWERS FOR DECORATION; SEEDS, GRAINS AND PLANTS]

Class 034. First use:

[SMOKER'S UTENSILS; NAMELY, TOBACCO, CIGARETTES, CIGARS, CIGARETTE HOLDERS, CIGARETTE CASES (NOT OF PRECIOUS METALS), CIGARETTE PAPER, PIPES, MATCHES, LIGHTERS AND ASH TRAYS]


Class 035. First use:

[ADVERTISING AGENCY SERVICES]

Class 037. First use:

	<p>[CONSTRUCTION SERVICES; NAMELY, PLANNING, LAYING OUT AND CUSTOM CONSTRUCTION OF RESIDENTIAL AND COMMERCIAL COMMUNITIES]</p> <p>Class 038. First use:</p> <p>[AUDIOVISUAL AND VIDEO COMMUNICATION SERVICES; NAMELY, CABLE TELEVISION BROADCASTING SERVICES, AND AUDIO AND VIDEO TELECONFERENCING SERVICES AND VIDEO PERSONAL TELECONSULTING SERVICES VIA TELECOMPUTER AND VIDEO DISPLAY UNITS]</p> <p>Class 039. First use:</p> <p>[AIR TRANSPORTATION SERVICES, MOTOR VEHICLE RENTAL AND LEASING SERVICES, SHIP AND BOAT LEASING SERVICES, CARGO HANDLING AND UNLOADING SERVICES, CRUISE SHIP SERVICES, FREIGHT TRANSPORTATION SERVICES BY AIRPLANE, SHIP, RAIL OR TRUCK; ARRANGING EXCURSIONS FOR TOURISTS, WAREHOUSE STORAGE SERVICES, TRANSPORTATION OF PASSENGERS (OR FREIGHT) BY AIRPLANE, TRUCK AND/OR TRAIN; TRAVEL AGENCY SERVICES]</p> <p>Class 040. First use:</p> <p>[FABRIC BLEACHING SERVICES; CERAMIC GLAZING SERVICES; TREATMENT OF CLOTH, FABRIC AND TEXTILES; APPLYING FINISHES TO CLOTH, FABRIC AND TEXTILES; WATERPROOFING OF CLOTH, FABRIC AND TEXTILES; DRESSMAKING SERVICES; CLOTH AND FABRIC DYEING SERVICES; EMBROIDERY SERVICES; LEATHER STAINING SERVICES; PATTERN PRINTING SERVICES; POTTERY FIRING SERVICES; SEWING SERVICES; CLOTH, FABRIC AND TEXTILE SHRINKING SERVICES; TAILORING SERVICES; MATERIAL TREATMENT SERVICES; DUPLICATING SERVICES IN THE FIELD OF AUDIO AND VIDEO TAPE]</p> <p>Class 041. First use:</p> <p>[RADIO AND TELEVISION ENTERTAINMENT SERVICES; NAMELY, PRODUCTION OF RADIO AND TELEVISION PROGRAMS AND FILM PRODUCTION, INCLUDING] PRODUCTION [OF VIDEO TAPES FOR HOME VIEWING AND] OF SOUND RECORDING FEATURING MUSIC</p> <p>Class 042. First use:</p> <p>NEWS AGENCY SERVICES; NAMELY, GATHERING AND DISSEMINATION OF NEWS[, AND NEWS SYNDICATION SERVICES FOR BROADCASTERS; SILKSCREEN PAINTING SERVICES; ARCHITECTURAL CONSULTING SERVICES; INTERIOR DECORATING SERVICES AND PRINTING SERVICES; LANDSCAPING SERVICES AND INTERIOR AND EXTERIOR DECORATING SERVICES; DRAFTING AND BLUEPRINTING SERVICES; PRINTING AND GRAPHIC SERVICES IN THE FIELD OF ADVERTISING; DESIGN SERVICES IN THE FIELD OF FASHION]</p>
--	---


U.S. Registration No.	1454393	Application Date	12/04/1986
Registration Date	08/25/1987	Foreign Priority Date	NONE
Word Mark	ELLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1986/02/00 First Use In Commerce: 1986/02/00 LINGERIE		

U.S. Registration No.	1348158	Application Date	12/10/1984
Registration Date	07/09/1985	Foreign Priority Date	NONE
Word Mark	ELLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: FOOTWEAR-NAMELY, SHOES [, BOOTS, SLIPPERS, SANDALS AND CLOGS]		


U.S. Registration No.	2708222	Application Date	07/20/1989
Registration Date	04/22/2003	Foreign Priority Date	NONE
Word Mark	ELLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 008. First use: [TABLE UTENSILS, NAMELY, KNIVES, FORKS, AND SPOONS] Class 009. First use: SPECTACLES Class 020. First use: [FURNITURE] Class 021. First use: [DISHES, PLATES,] CUPS, [DRINKING GLASSES, BOTTLES, BOTTLE STANDS, COASTERS, BOTTLE OPENERS, JUGS, BRUSHES FOR CLEANING TANKS AND CONTAINERS, BRUSHES FOR FOOTWEAR, ELECTRIC BRUSHES, BRUSHES FOR CLOTHING, TOOTHBRUSHES, TRAYS, COFFEE SERVICE IN NON-PRECIOUS METAL, COFFEE POTS, MENU CARD RESTS, POTS FOR MAKE-UP SOLD EMPTY, FRUIT CUPS, STATUES AND FIGURINES OF PORCELAIN, TERRA COTTA AND GLASS, BASINS, COOKING POTS, BUTTER DISHES, GLASS JARS, DRINKING VESSELS, ORNAMENTAL BOXES OF GLASS, ALL-PURPOSE BOXES OF METAL FOR DOMESTIC USE, BASIN BOWLS, CORK SCREWS, SPONGES FOR HOUSEHOLD PURPOSES, TOILET SPONGES, FLASKS IN NON-PRECIOUS METAL, OIL CRUETS IN NON-PRECIOUS METAL, CRUMB TRAYS, FITTED VANITY CASES, PERFUME VAPORIZERS, CURRY COMBS, FITTED PICNIC BASKETS, HAND OPERATED PEPPER MILLS, PEPPER POTS IN NON-PRECIOUS METAL, POWDER COMPACTS IN NON-PRECIOUS METAL SOLD EMPTY, BUCKETS, PAILS, EPERGNES,] MUGS, [

	<p>GOBLETs, BASKETS FOR DOMESTIC USE, TRAYS FOR DOMESTIC USE, SAUCERS IN NON-PRECIOUS METAL,] CUPS IN NON-PRECIOUS METAL [, TABLE PLATES, DECANTERS, DISHES IN NON-PRECIOUS METAL, DECANTER STANDS, GLASS BOWLS, STEW PANS, EGG CUPS IN NON-PRECIOUS METAL, PITCHERS, POTS IN NON-PRECIOUS METAL, AND KNIFE RESTS FOR THE TABLE]</p> <p>Class 024. First use: BATH TOWELS, HAND TOWELS [, TABLE CLOTHS, TEXTILE TABLE NAPKINS, SHEETS, BLANKETS AND PILLOWCASES]</p> <p>Class 025. First use: FOOTWEAR - NAMELY, SHOES, BOOTS, [SLIPPERS], SANDALS AND CLOGS</p>
--	--

U.S. Registration No.	862001	Application Date	07/24/1967
Registration Date	12/17/1968	Foreign Priority Date	NONE
Word Mark	ELLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class U039 (International Class 010, 025, 026). First use: First Use: 1949/03/22 First Use In Commerce: 1965/03/22</p> <p>DRESSES, [CLOAKS, CAPES,] SKIRTS, JACKETS, [SUITS, TWO-PIECE COSTUMES OR SUITS,] COATS, SWEATERS, [BODICES, PULLOVERS, HOUSE-GOWNS, SLIPS, COMBINATION UNDERWEAR, PETTICOATS, CORSETS, SHEATH CORSETS, BUST-BODICES, BRASSIERES, UNDERSHIRTS, UNDERWEAR,] BATHING SUITS, [JODPHURS, KNICKERS, STOCKINGS,] TIES, SCARVES, [SQUARE SHAWLS, HATS,] CAPS, GLOVES [, AND SLIPPERS]</p>		

U.S. Registration No.	1318319	Application Date	11/10/1983
Registration Date	02/05/1985	Foreign Priority Date	NONE
Word Mark	ELLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 026. First use: Earrings of Nonprecious Metal		

U.S. Registration No.	1943456	Application Date	03/08/1994
Registration Date	12/26/1995	Foreign Priority Date	NONE
Word Mark	ELLE		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 014. First use:</p> <p>[precious metals and their alloys, namely, gold, silver, platinum and bronze; items made of precious metal and their alloys or coated therewith, namely, ashtrays, cigar and cigarette boxes and cases, cigar and cigarette holders, match boxes, match holders, snuff boxes, lighters, buckles, busts, boxes for needles and boxes for sweetmeats, baskets for household purposes, trays, candelabra, candlesticks, candle rings, coffee services and more generally household utensils, such as cruet stands (for oil and vinegar) cups, egg cups, napkins holders and napkin rings, nut crackers, salt cellars and salt shakers, sugarbowls, table plates, tea caddies and tea services, toothpick holders, vases, sacred vessels, figures and statuettes, mirror and picture frames;] jewelry, such as earrings, [bracelets,] necklaces, rings, [long chain necklaces, brooches, chains, pendants, decorative buttons, including costume jewelry; precious gemstones;] horological and chrometric instruments, namely, watches [and clocks and accessories and parts and fittings thereof such as watch cases, watch bands, watch chains, watch glasses, clock cases]</p>

Attachments	<p>73452261#TMSN.gif (1 page)(bytes) 73512968#TMSN.gif (1 page)(bytes) 73452264#TMSN.gif (1 page)(bytes) 74498259#TMSN.gif (1 page)(bytes) NoticeOfOpp-ELLE_NICOLE.pdf (8 pages)(24683 bytes)</p>
-------------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Josiah S. Trager/
Name	Josiah S. Trager
Date	08/06/2010

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

In the Matter of Application Serial No. 77/856,669
Filed on October 24, 2009
For the Mark ELLE NICOLE
Published in the Official Gazette on April 13, 2010

-----	X
Hachette Filipacchi Presse,	:
	:
Opposer,	:
	:
-v-	:
	:
Danielle DiFerdinando,	:
	:
Applicant.	:
-----	X

NOTICE OF OPPOSITION

Opposer, Hachette Filipacchi Presse (“Hachette”), a joint stock company organized and existing under the laws of France, having an address at 149, rue Anatole France, 92534 Levallois-Perret Cedex, France, believes it will be damaged by the registration of the mark ELLE NICOLE, Application Ser. No. 77/856,669, currently pending registration in the name of Danielle DiFerdinando (“Applicant”), published in the Official Gazette on April 13, 2010. The Trademark Trial Appeal Board granted Hachette’s request for an extension of time to oppose registration of the mark ELLE NICOLE up until and including August 11, 2010.

As grounds for this Opposition, Hachette relies upon the rights developed by it, its related companies and predecessors (hereinafter referred to as “Hachette” or “Opposer”) and alleges on knowledge as to itself and otherwise upon information and belief, as follows:

Hachette's Business And ELLE Marks

1. Since 1945, Hachette, directly and through its predecessors, has been engaged in the sale of a wide spectrum of goods and services under the mark ELLE, including, but not limited to the publication, distribution, and sale of the world-famous women's beauty and fashion magazine entitled ELLE. This magazine is a unique mixture of beauty, fashion, topical events, and food articles.

2. *ELLE* magazine was originally published as a French-language magazine distributed in France. Since 1952, the French-language edition of *ELLE* magazine has been imported into the United States. Thousands of copies of the French-language edition of this magazine are distributed annually in the United States.

3. The reputation of the French-language edition of *ELLE* magazine in the United States became so favorable that, in 1983, in a special promotion and celebration of the French retail marketplace by a leading New York retailer, Hachette's *ELLE* magazine was selected to represent French women's magazines. Hachette published a special edition of *ELLE* magazine in English for this occasion.

4. Upon receiving favorable reaction to its initial English-language edition of *ELLE* magazine, Hachette commenced publication on a semi-annual basis of an English-language edition of *ELLE* magazine, specifically tailored to the United States market. Due to the popular appeal of this edition, in 1985, Hachette began monthly publication of a United States edition of *ELLE* magazine. Hachette sells approximately one million copies of each issue of the United States edition of *ELLE* magazine, and the U.S. edition is read by approximately 4.8 million people each month.

5. In addition to the French and United States editions of *ELLE* magazine, Hachette publishes magazines under the “ELLE” mark in many other countries around the world. Currently, there are 37 editions of *ELLE* magazine in countries ranging over five continents.

6. For many years, and long prior to Applicant’s filing of its application, Hachette has used the mark ELLE in interstate commerce throughout the United States in connection with a variety of goods and services, including, among others, goods and services in the magazine, apparel, footwear, cosmetics, jewelry, home décor, publishing, news, advertising and multimedia fields.

7. Opposer currently licenses the use of the mark ELLE in connection with, *inter alia*, goods in Class 18.

8. Prior to Applicant’s filing of its application, Opposer obtained, *inter alia*, the following registrations (hereinafter the “ELLE Registrations”):

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Goods or Services</u>	<u>Class(es)</u>
ELLE	0,758,137	October 8, 1963	Magazine	016
ELLE	1,322,177	February 26, 1985	Umbrellas; articles made of leather, imitation leather & canvas-namely, luggage, traveling bags, tote bags, hand bags, beach tote bags, shoulder bags, cosmetic bags sold empty, shopping tote bags & wallets.	018
ELLE	1,767,100	April 27, 1993	<i>Inter alia</i> , nylon bags	<i>Inter alia</i> , 022
ELLE	1,454,393	August 25, 1987	Lingerie	025
ELLE (Stylized)	1,348,158	July 9, 1985	Footwear, namely, shoes	025
ELLE	2,708,222	April 22, 2003	<i>Inter alia</i> , footwear - namely, shoes, boots, sandals and clogs	<i>Inter alia</i> , 025
ELLE	0,862,001	December 17, 1968	Dresses, skirts, jackets, coats, sweaters, bathing suits, ties, scarves,	025

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Goods or Services</u>	<u>Class(es)</u>
			caps, gloves	
ELLE	1,318,319	February 5, 1985	Earring of nonprecious metals.	026
ELLE	1,943,456	December 26, 1995	Jewelry, such as earrings, necklaces, rings, horological and chronometric instruments, namely, watches	014

9. The ELLE Registrations are valid and subsisting, unrevoked and uncanceled, and are *prima facie* evidence of the validity of Hachette's exclusive right to use the marks depicted in the ELLE Registrations in commerce in connection with the goods described in the registration, without condition or limitation, and constitute constructive notice of Opposer's ownership of the ELLE Marks for the goods described in the registrations, as provided for by §§ 7(b) and 22 of the Lanham Act, 15 U.S.C.A. §§ 1057(b) and 1072.

10. Hachette has expended substantial amounts of time and effort in advertising and promoting its goods under the marks depicted in the ELLE Registrations and ELLE Applications (hereinafter, the "ELLE Marks"). As a result of such advertising and promotional activities, the ELLE Marks have become famous, the relevant public has come to associate and identify the ELLE Marks with Opposer and Opposer derives substantial goodwill from such identification by consumers.

Applicant's ELLE NICOLE Mark

11. On October 24, 2009, Applicant filed an intent-to-use trademark application for the mark ELLE NICOLE. The application covers "Handbags" in Class 18.

Count I: Likelihood of Confusion

12. Opposer hereby incorporates by reference the allegations in Paragraphs 1 through 11 hereof as if fully set forth herein.

13. Hachette's rights in the ELLE Marks are prior and superior to any rights that Applicant may claim in, and to that marks, in any form or style.

14. The mark ELLE NICOLE, as set forth in the application opposed herein, completely incorporates Opposer's ELLE Marks and/or is confusingly similar to Opposer's ELLE Marks and there is a direct overlap between Hachette's goods and Applicant's goods, as they are identical goods in the identical class (handbags in Class 18).

15. Moreover, because the Applicant intends to use the mark ELLE NICOLE for products in the fashion category (namely, handbags) and Hachette's ELLE mark is and has been in use for, among other goods and services, a magazine about fashion, Applicant's proposed use incorporating Hachette's ELLE mark will create confusion in the marketplace about the association with, or endorsement or sponsorship of Applicant's products by Hachette – of which there is none.

16. Accordingly, the ELLE NICOLE mark is likely to cause confusion, mistake or to deceive under § 2(d) of the Lanham Act.

17. If Applicant were permitted to register or use the mark herein opposed, there would be likely confusion as to the sponsorship of the goods, resulting in damage and injury to Hachette by reason of the similarity between Applicant's mark and Hachette's ELLE Marks. Persons familiar with Hachette's ELLE Marks will be likely to purchase Applicant's goods, believing them to be affiliated or associated with, connected to or sponsored by Hachette. Likewise, people exposed to the mark ELLE NICOLE who subsequently become acquainted with the ELLE Marks are likely to conclude that the goods offered by Hachette under its ELLE Marks are in some manner affiliated or associated with, connected to or sponsored by Applicant. Any such confusion as to sponsorship inevitably would result in damage and injury to Hachette.

18. Hachette will be damaged by registration of the mark ELLE NICOLE because such registration will support and assist Applicant in the confusing and misleading use of Applicant's mark, and will give color of rights to Applicant in violation of Hachette's prior and superior rights in the ELLE Marks.

Count II: Likelihood of Dilution

19. Opposer hereby incorporates by reference the allegations of Paragraphs 1 through 18 hereof as if fully set forth herein.

20. The ELLE Marks have become "famous" within the meaning of Section 43(c) of the Lanham Act, entitling them to protection against diluting its distinctive quality. Hachette's ELLE Marks became famous prior to the date that Applicant can first lay claim to any rights in the ELLE NICOLE mark.

21. The registration and use of the mark ELLE NICOLE by Applicant will likely dilute the distinctive quality of Hachette's famous ELLE Marks by lessening the quality of those marks to identify and distinguish Hachette's goods and by tarnishing the high quality and prestige by which Hachette's goods have come to be known.

22. Hachette will be damaged by registration of the ELLE NICOLE because such registration will support and assist Applicant in the diluting use of Applicant's ELLE NICOLE mark, and will give color or rights to Applicant in violation of Hachette's prior and superior rights in the ELLE Marks.

/

/

/

WHEREFORE, Hachette prays that this Opposition be sustained and that the application for registration of the mark ELLE NICOLE be in all respects denied.

Dated: New York, New York
August 6, 2010

Respectfully submitted,

HUGHES HUBBARD & REED LLP

By: *Perla Kuhn*

Perla M. Kuhn

Josiah S. Trager

One Battery Park Plaza

New York, New York 10004

(212) 837-6000

Attorneys for Opposer

CERTIFICATE OF TRANSMISSION

I hereby certify that an original copy of the foregoing Notice Of Opposition was transmitted online on this 6th day of August, 2010 through the ESTTA page on the website of the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

Dated: New York, New York
August 6, 2010

By: /Josiah S. Trager/
Josiah S. Trager

CERTIFICATE OF SERVICE

I hereby certify that I am over the age of 18 years, not a party to this action, and that on this 6th day of August, 2010, I caused to be served a true and correct copy of the foregoing Notice Of Opposition by Federal Express to the Attorney of Record for Applicant:

Morton J. Rosenberg, Esq.
Rosenberg, Klein & Lee
3458 Ellicott Center Dr., Suite 101
Ellicott City, MD 21043-4178

Dated: New York, New York
August 6, 2010

By: /Josiah S. Trager/
Josiah S. Trager