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

Proceeding	91227749
Party	Plaintiff Lori Burton
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Submission	Testimony For Plaintiff
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Date	06/01/2017
Attachments	Notice of Filing of Opposer Depo.pdf(2175789 bytes) Burton plfs exh 1.pdf(1889324 bytes) Burton defts exh 1.pdf(537723 bytes)

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

BURTON, LORI

*

Opposer,

*

OPPOSITION NO. 91227749

SERIAL NO. 86718933

vs.

*

TRADE MARK: Bootique Envie

MCINTOSH, MIRANDA

*

Applicant.

*

NOTICE OF FILING OF DEPOSITION UPON ORAL EXAMINATION OF
LORI BURTON, OPPOSER

On May 4, 2017, Lori Burton, Opposer, appeared before the undersigned, an officer authorized to administer oaths, and read and signed her deposition upon oral examination, taken pursuant to 37 CFR Section 2.123, and stenographically recorded on April 13, 2017. Attached hereto is her deposition with her signature.

Respectfully Submitted,

/s/Joseph W. Stadnicar

Joseph W. Stadnicar (OH 0046851)

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JOSEPH W. STADNICAR, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 O. R. C.

CERTIFICATE OF SERVICE

I hereby certify that on 06-01-2017 I served a true and correct copy of the foregoing NOTICE OF FILING OF DEPOSITION UPON ORAL EXAMINATION OF LORI BURTON, OPPOSER, upon the following by regular U.S. mail and electronic mail:

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In The Matter Of:
BURTON, LORI v.
McINTOSH, MIRANDA

LORI BURTON
April 14, 2017

Blair Reporting Services, Inc.

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

BURTON, LORI	:	
	:	
Opposer,	:	
	:	CASE # 91227749
-vs-	:	SERIAL # 86718933
	:	TRADEMARK: Bootique
McINTOSH, MIRANDA	:	Envie
	:	
Applicant	:	

Deposition of LORI BURTON, the
Opposer herein, taken by the Applicant as
upon cross examination and pursuant to the
Ohio Rules of Civil Procedure as to the time
and place and stipulations hereinafter set
forth, at the offices of Hammond, Stier &
Stadnicar, 3836 Dayton-Xenia Road,
Beavercreek, Ohio, at 1:06 p.m. on
April 14, 2017, before Janie L. Blair, a
Registered Professional Reporter, Certified
Realtime Reporter and Notary Public within
and for the State of Ohio.

* * * * *

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None

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14

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1
2 (Whereupon, the Deposition
3 commenced at 1:06 p.m.)

4 WHEREUPON:

5
6 LORI BURTON,
7 the Opposer herein, having been duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. STADNICAR:

11 Q. Please state your name and address
12 for the record.

13 A. My name is Lori Burton, 6446
14 Oregonia Road, Oregonia, Ohio 45054.

15 MR. MANCINO: Okay. Before we
16 start, I'd like to put a couple things on the
17 record. This is David Mancino with Baker &
18 Hostetler. The lead attorney on this
19 trademark opposition, John Mueller is on
20 vacation this week in Florida. So, I am
21 sitting in on this testimony for Mr. Mueller.

22 We are attending the
23 testimony, but we still reserve our rights to
24 have the testimony stricken for failure to
25 prosecute and failure to meet many of the

1 rules. But we can proceed.

2 BY MR. STADNICAR:

3 Q. Lori, you are the opposer in this
4 case, the case of Lori Burton versus Miranda
5 McIntosh, Opposition Number 91227749, Serial
6 Number 86718933. The trademark being
7 Bootique Envie, spelled capital
8 B-O-O-T-I-Q-U-E, space, capital E-N-V-I-E, in
9 the United States Patent and Trademark Office
10 before the Trademark Trial and Appeal Board,
11 is that correct?

12 A. Yes.

13 MR. STADNICAR: Mark this as
14 Exhibit 1 for the Plaintiff.

15 (Whereupon, Plaintiff's
16 Deposition Exhibit 1 was marked for
17 identification.)

18 BY MR. STADNICAR:

19 Q. Lori, let's start off with how do
20 you know Miranda McIntosh?

21 A. I was introduced to her, yeah,
22 introduced to her by a mutual friend.

23 Q. Okay. And were you -- or what was
24 the purpose of that introduction?

25 A. My original friend that introduced

1 us, we had been making boot purses and she
2 thought Miranda would be a good source for
3 selling the purses because she is a horse
4 trainer and she is involved with a lot of
5 people that are into western everything,
6 horses and stuff like that.

7 Q. Okay. When you say boot purses,
8 can you describe what you're talking about?

9 A. We take an old pair of boots and
10 redesign them into a nice pretty purse.

11 Q. All right. Now, tell us how that,
12 your relationship with Miranda began and
13 where the name Bootique Envie came from.

14 A. It was -- my friend, Anna and I had
15 started making the purses in the spring of
16 2014. And by that fall, she had come up with
17 the idea and the thought that maybe Miranda
18 would be a good outlet for the purses. And I
19 eventually met with Miranda in January
20 of 2015 and decided that we would go into a
21 venture together.

22 And then once we had started talking
23 and discussed the, the basics of the business
24 and how we wanted it to run, then we were
25 shooting names back and forth and I came up

1 with the name Bootique Envie and she agreed.

2 Q. And approximately when did that
3 occur?

4 A. The name?

5 Q. Yes.

6 A. I'm thinking probably, it was
7 probably late February, early March of 2015.

8 Q. Okay. You named another young lady
9 or woman?

10 A. Uh-huh.

11 Q. Her name, what is her full name?

12 A. Anna Fleckenstein.

13 Q. Was she part of this venture at
14 that point in time?

15 A. Yes.

16 Q. Okay. What happened with her, did
17 she continue to be part of it?

18 A. She had decided that once Miranda
19 and I had, you know, kind of got the ball
20 rolling after January, that she kind of
21 wanted to step back a little bit. She had
22 her own business that she was involved with
23 and children that she was taking care of.
24 And it was a little bit much.

25 But she was still in the mix. You

1 know, like I would ask her for business
2 advice and then we would kind of just shoot
3 things back and forth. But as far as the
4 running of the operation of the business, she
5 had stepped back.

6 Q. Well, how about with, coming up
7 with the name Bootique Envie?

8 A. No, she had nothing to do with the
9 name.

10 Q. Now, when you say you came up with
11 the name, what part did Ms. McIntosh play in
12 coming up with the name?

13 A. She just agreed to it.

14 Q. Okay.

15 A. I did the research on, you know,
16 what names were available, like, you know, I
17 would go on the internet and I would punch in
18 a name and if something popped up, then we
19 would go to something different. But this
20 name and the way that it's spelled was my
21 idea.

22 Q. Okay.

23 A. I did the research, I found out
24 that that was available and then we went with
25 it.

1 Q. Okay. So, this would have been,
2 you said January of 2015?

3 A. Probably, I'm thinking more like
4 February --

5 Q. All right.

6 A. -- is when we finally decided to
7 come up with a, a name for the venture.

8 Q. And then how did your relationship
9 with Miranda proceed from there? Mrs.
10 McIntosh -- Ms. McIntosh, excuse me.

11 A. Well, things were going fine at
12 first. I was producing the purses, she was
13 buying the boots and giving them to me. And
14 she made a couple of sales. And then she
15 decided to put the purses into a boutique,
16 which took away from what she was actually
17 supposed to be doing. And then it, things
18 just started falling apart.

19 There were things that she was doing
20 that I didn't agree with. And whenever I
21 would mention that I didn't agree with the
22 way that things were going, she would get
23 aggravated and then she would call Anna and
24 then she would, Anna would call me. And it
25 just turned into a whole big mess.

1 Q. At some point in time, you and Ms.
2 McIntosh decided to end your relationship?

3 A. Yes.

4 Q. Business relationship.

5 A. Yes.

6 Q. About when was that?

7 A. July 23rd of 2015.

8 Q. Okay. And how did that take place?

9 A. Well, again, she had a problem with
10 something that I didn't agree with that she
11 was, that she wanted to do with the business.
12 And she went to Anna and told Anna that she
13 didn't know what she was going to do with me.
14 And so, Anna called me and asked me what was
15 going on. And I had had enough.

16 I had had enough of being told that
17 I couldn't run my business the way that I
18 wanted to run it or have any input in it, so
19 I text Miranda and I told her that I was
20 finished, that I didn't want to work with her
21 anymore. That the supplies that I had, that
22 I would continue and make the purses that she
23 was involved with, but then after that that
24 we would be done.

25 Q. Was there any discussion with

1 regard to the name Bootique Envie?

2 A. Not at that -- well, I told her
3 that I was going to continue making purses
4 under the name because it was my business.

5 Q. And did she respond to that?

6 A. She didn't respond that day. She
7 ignored my texts.

8 Q. And did you find out later that Ms.
9 McIntosh was using the name?

10 A. Yes.

11 Q. And what did you learn from her use
12 of the name?

13 A. That she went and trademarked the
14 name to prevent me from using it.

15 Q. And --

16 A. Or she went, she actually -- first
17 off I found out that she had registered the
18 name solely in her name. And then a couple
19 weeks later I found out that she filed for a
20 trademark.

21 Q. All right. And is that why then
22 you're opposing the trademark to be Ms.
23 McIntosh's at this time?

24 A. Yes.

25 Q. All right. Before you is

1 Plaintiff's Exhibit 1. Would you take a look
2 at that, please? And just for the record,
3 how many pages is that, including the front
4 page?

5 A. Four.

6 Q. All right. The front page, it has
7 the name Bootique Envie. Is that the name as
8 you came up with it?

9 A. Yes.

10 Q. All right. Now, the next page, can
11 you tell us what that item is?

12 A. That's a purse that I made.

13 Q. How do you know that's a purse that
14 you made?

15 A. Because I made it.

16 Q. Are there identifying marks on it
17 that makes it indicate that you made it?

18 A. I'm not sure if that one has a tag.
19 I, at one point we had embroidered tags made.
20 And then I sewed them into the inside of the
21 purses. I'm not sure if this one does. It
22 might have been one of the earlier ones.
23 But, yeah, I mean, it's a purse that I made.
24 Every purse that I made is individual,
25 unique. I never make two the same. And that

1 was one that I made.

2 Q. There's no doubt in your mind that
3 that's one of yours?

4 A. Absolutely.

5 Q. Now, there appears to be a tag on
6 the strap that says Bootique Envie?

7 A. Correct.

8 Q. Have you seen that before?

9 A. Yes.

10 Q. Tell me about that.

11 A. Well, after we came up with the
12 name, she had found this place that engraves
13 brass tags. It's actually a halter tag, so
14 it goes along with the whole western horse
15 thing. She commissioned someone to make them
16 and then that's how we were identifying our
17 purses as purses that we made.

18 Q. And you were aware of that? And
19 this is --

20 A. Yes.

21 Q. -- this was during the process that
22 the two of you were still working together,
23 right?

24 A. Yes.

25 Q. Let's go to the next page.

1 Describe what's in that photograph there.

2 A. Those are more purses that I made
3 that we had taken to a photographer so that
4 we could have like a cover page for our
5 Facebook page.

6 Q. And it also indicates on there the
7 name Bootique Envie?

8 A. Yes.

9 Q. Is that the same way you had --

10 A. Uh-huh.

11 Q. -- envisioned it and developed it?

12 A. Yes.

13 Q. Are you certain those purses in
14 this photograph are those purses you created?

15 A. Yes. This one right here is mine
16 (indicating). That's my personal purse.

17 Q. All right. And when you say this
18 one --

19 A. It's in the back. You can barely
20 see it in the picture. But it's a -- has a
21 white piping around the top.

22 Q. And it's a dark boot?

23 A. It's a black boot with purple
24 stitching. I have that in my possession.

25 Q. Let's move on to the next page.

1 And it looks like, is that the same --

2 A. Uh-huh.

3 Q. -- picture of the purse as the
4 previous one?

5 A. Yes.

6 Q. Now, do these photographs
7 reasonably and accurately depict those purses
8 that you created?

9 A. Yes.

10 Q. And do they -- I guess you've
11 already indicated that the Bootique Envie
12 name is the same as you had discussed it with
13 Miranda McIntosh, is that correct?

14 A. Correct.

15 Q. Are you claiming then that the name
16 Bootique Envie is a creation of yours and
17 that therefore Ms. McIntosh is not entitled
18 to trademark the name?

19 A. Yes.

20 MR. STADNICAR: All right.

21 All right. I have no further questions for
22 her.

23 MR. MANCINO: Okay. Can I
24 have five minutes?

25 MR. STADNICAR: Sure.

1 CROSS EXAMINATION

2 BY MR. MANCINO:

3 Q. You mentioned, Ms. Burton, that at
4 the time of coming up with the trademark, the
5 disputed trademark, Bootique Envie, you and
6 Ms. McIntosh were in a venture together at
7 that time?

8 A. I never was, I had nothing to do
9 with the trademark. She did that without me.

10 Q. Well, maybe I should say at the
11 time that you came up with the name Bootique
12 Envie --

13 A. Correct.

14 Q. -- for the products --

15 A. Right.

16 Q. -- in February, March of 2015, you
17 and Ms. McIntosh were in a venture together,
18 right?

19 A. Yes.

20 Q. And you said that you came up with
21 the name?

22 A. Yes.

23 Q. And she agreed to it --

24 A. Yes.

25 Q. -- as part of that venture, right?

1 A. Uh-huh.

2 Q. And then it was later, say late
3 2015, that the venture fell apart --

4 A. In July.

5 Q. -- correct?

6 A. Correct.

7 Q. Okay.

8 MR. STADNICAR: Wait for him
9 to answer the full -- ask the full question,
10 okay?

11 BY MR. MANCINO:

12 Q. And as part of the venture with you
13 and Miranda McIntosh, while it was still
14 going -- while it was still I guess
15 successfully going on, can I say that, I
16 guess? Okay. So, while it was -- before it
17 was broken up, you would sew the boots or sew
18 the purses or other bags and Ms. McIntosh
19 would sell the bags or at least some of the
20 bags, right?

21 A. Correct.

22 Q. And you sold some of the bags
23 yourself, right?

24 A. Correct.

25 Q. And Ms. McIntosh would also provide

1 you with the materials for stitching the
2 bags, correct?

3 A. Some of the materials.

4 Q. Some of the materials?

5 A. Correct.

6 Q. Do you know approximately how much
7 money Ms. McIntosh spent in, in purchasing or
8 providing those materials?

9 A. No. Because she never gave me that
10 information.

11 Q. Okay. She never --

12 MR. STADNICAR: I was going to
13 just object to the relevance, but go ahead.

14 MR. MANCINO: Okay.

15 MR. STADNICAR: You can
16 continue.

17 MR. MANCINO: Okay.

18 BY MR. MANCINO:

19 Q. So, she never communicated to you
20 how much she spent on the materials that she
21 provided to you?

22 A. No.

23 Q. Okay. Have you heard from your
24 attorney about how much Ms. McIntosh claims
25 to have spent on the materials she provided

1 to you?

2 MR. STADNICAR: Objection.

3 That would be between her attorney and her.

4 And in addition, it's just not relevant. I'm

5 not going to allow her to testify. We'll

6 claim a privilege. I'm not allowing her to

7 testify --

8 BY MR. MANCINO:

9 Q. Okay. So, you're going to follow
10 your attorney's instructions and not answer?

11 A. Yes.

12 Q. Okay. And you mentioned that she
13 had provided leather and other materials for
14 you, at some point during your testimony, and
15 that as part of the winding down of the
16 relationship, you would continue to, to
17 stitch the bags and then sell them yourself
18 and then refund Ms. McIntosh?

19 A. That's not what I said.

20 Q. What did you say?

21 A. I said that I would, with her
22 supplies, with what she had given me, I would
23 produce the bags and I would sell them to her
24 wholesale and then she could do whatever she
25 wanted to do with them.

1 Q. And did you sell them to Ms.
2 McIntosh at wholesale?

3 A. She never replied to me.

4 Q. So, what did you do with those bags
5 that you stitched with her materials?

6 MR. STADNICAR: Objection,
7 relevance.

8 THE WITNESS: I did nothing
9 with them. I still have all of her supplies.
10 They're in inventory at my shop.

11 BY MR. MANCINO:

12 Q. Okay.

13 A. I have sold nothing since
14 July 23rd.

15 Q. Okay. Of what year?

16 A. 2015.

17 Q. And --

18 A. I also told her -- never mind.

19 Q. You can go ahead.

20 A. I also told her I was keeping the
21 name on July 23rd.

22 Q. Okay. Anything else?

23 A. No.

24 Q. And Ms. Fleckenstein, you said at
25 some part she was -- at some time she was

1 part of the mutual joint venture?

2 A. She was my original partner.

3 Q. She was your original partner?

4 A. She was the original person that I
5 started this company with.

6 Q. So, at the time that Ms. McIntosh
7 and you decided upon the name Bootique Envie,
8 Ms. Fleckenstein was not part of the venture?

9 A. Not an active part.

10 MR. MANCINO: Okay. Let's go
11 ahead and mark it --

12 (Whereupon, Defendant's
13 Deposition Exhibit 1 was marked for
14 identification.)

15 BY MR. MANCINO:

16 Q. Ms. Burton, have you ever seen this
17 exhibit, Defendant's Exhibit 1 before?

18 MR. STADNICAR: Why don't you
19 go ahead and use this one here (indicating).

20 THE WITNESS: I'm not sure.

21 BY MR. MANCINO:

22 Q. Did you write any of this
23 statement, that you can recollect?

24 MR. STADNICAR: I'm going to
25 object as this being the document that's been

1 submitted to the court by Opposer's attorney.
2 This is the Complaint, in essence, and it's
3 not evidence in the trial.

4 BY MR. MANCINO:

5 Q. You can answer.

6 MR. STADNICAR: Go ahead and
7 answer.

8 THE WITNESS: Did I write
9 this?

10 BY MR. MANCINO:

11 Q. Any part of it.

12 A. No.

13 Q. Do you see here number three, it
14 says Applicant was merely a distributor for
15 Opposer, do you see that?

16 A. Yes.

17 Q. What do you mean, what do you think
18 that means?

19 A. That she was to sell the purses.

20 Q. Uh-huh. Merely a distributor,
21 right? That means only a distributor, is
22 that your correct -- is that your opinion?

23 MR. STADNICAR: Objection.
24 You can go ahead and answer.

25 THE WITNESS: Was my opinion

1 that she was only to sell the purses? That
2 was her main purpose.

3 BY MR. MANCINO:

4 Q. You testified earlier that you were
5 in a joint venture?

6 A. Correct.

7 Q. So, but in here it says she's only
8 a distributor. How is that the same thing?

9 MR. STADNICAR: Objection.
10 That's for the court to decide, but go ahead
11 and answer.

12 THE WITNESS: Her main job as
13 part of the business was to sell purses.

14 BY MR. MANCINO:

15 Q. But you also testified that she
16 also supplied materials for you, right?

17 A. Yes.

18 Q. Is that the role of a distributor?

19 A. It depends on how you set your
20 business up, I suppose.

21 Q. Well, how do you define
22 distributor?

23 MR. STADNICAR: Objection. Go
24 ahead and answer.

25 THE WITNESS: To sell purses.

1 BY MR. MANCINO:

2 Q. And not to supply materials?

3 A. Again, it depends on how you set
4 your business up.

5 Q. How did you set your business up?

6 A. For her to sell the purses.

7 Q. And --

8 A. That was her job, was to sell the
9 purses.

10 Q. Anything else?

11 A. Well, if she wanted to buy the
12 boots, she could buy them. I bought them
13 too. That was not her sole purpose.

14 Q. Do you have a distributorship
15 agreement with Ms. McIntosh?

16 A. No.

17 Q. Do you have a distributorship
18 arrangement with Ms. McIntosh?

19 A. We had a verbal agreement.

20 Q. What were the terms of that
21 agreement?

22 A. The agreement was, is that I would
23 make the purses and she would sell them.

24 Q. And what part of the agreement had
25 to do with supplying the materials?

1 A. We were both supplying the
2 materials.

3 Q. Was that part of the agreement?

4 A. Uh-huh.

5 MR. STADNICAR: You have to
6 answer yes or no.

7 THE WITNESS: Yes. Sorry.

8 BY MR. MANCINO:

9 Q. You don't like Ms. McIntosh, do
10 you?

11 A. I have no opinion.

12 Q. You're not going to answer that?

13 A. No.

14 MR. STADNICAR: Objection,
15 asked and answered.

16 BY MR. MANCINO:

17 Q. Why not?

18 MR. STADNICAR: Why not what?
19 Can you clarify that question, please?

20 MR. MANCINO: She -- I asked
21 if she's going to answer that and she said
22 no.

23 MR. STADNICAR: She did answer
24 it. She said she doesn't have an opinion.
25 That's an answer.

1 BY MR. MANCINO:

2 Q. Is that your answer?

3 A. Yes, my answer is I have no
4 opinion.

5 Q. Why not?

6 MR. STADNICAR: Objection,
7 irrelevant. You can go ahead and answer if
8 you can.

9 THE WITNESS: Why do I not
10 have an opinion or why am I not answering?

11 BY MR. MANCINO:

12 Q. Why don't you have an opinion?

13 A. Because it is pointless to have an
14 opinion.

15 Q. So, you're not answering because
16 it's pointless?

17 MR. STADNICAR: Objection.
18 Now you're restating her answers incorrectly.
19 We ask that you move on or I'll continue to
20 object to this line of questioning.

21 BY MR. MANCINO:

22 Q. You can answer.

23 MR. STADNICAR: She's already
24 answered the question. Asked and answered.

25 MR. MANCINO: Are you coaching

1 her on how to answer a question, sir?

2 MR. STADNICAR: No, I'm making
3 the objection.

4 MR. MANCINO: Okay.

5 MR. STADNICAR: So, your
6 question is?

7 MR. MANCINO: Would you read
8 it back, please?

9 (Whereupon, the requested
10 portion of the record was read.)

11 THE WITNESS: Yes.

12 BY MR. MANCINO:

13 Q. And what is your understanding of
14 the outcome of this opposition should you
15 succeed?

16 MR. STADNICAR: Objection.
17 Not relevant.

18 THE WITNESS: I don't
19 understand the question.

20 BY MR. MANCINO:

21 Q. What are you trying to achieve with
22 this opposition proceeding?

23 MR. STADNICAR: And objection,
24 not relevant. You can answer.

25 THE WITNESS: Trying to get

1 what's rightfully mine.

2 BY MR. MANCINO:

3 Q. And what is rightfully yours?

4 A. The name of my business.

5 Q. So, the purpose of this opposition
6 proceeding, in your mind, is to obtain the
7 ownership of the trademark Bootique Envie?

8 MR. STADNICAR: Objection,
9 asked and answered. You can go ahead and
10 answer.

11 THE WITNESS: Yes.

12 BY MR. MANCINO:

13 Q. Do you have an opinion of whether
14 or not the joint venture, as of February,
15 March of 2015, owned the mark Bootique Envie?

16 A. Are you saying did we both own it
17 at that point?

18 Q. The joint venture, the business.

19 MR. STADNICAR: Objection,
20 calls for a legal conclusion, but you can go
21 ahead and answer if you know.

22 THE WITNESS: The name of the
23 business was the name of the business.

24 BY MR. MANCINO:

25 Q. And what was the name of the

1 business?

2 A. Boutique Envie.

3 Q. And that business ended in late --
4 or July, 2015, is that what you testified?

5 A. Yes.

6 (Whereupon, Defendant's
7 Deposition Exhibit 2 was marked for
8 identification.)

9 BY MR. MANCINO:

10 Q. I'm going to hand you what has been
11 marked Defendant's Exhibit 2. And --

12 MR. STADNICAR: Do you have a
13 copy for me?

14 MR. MANCINO: Yes.

15 BY MR. MANCINO:

16 Q. And I am going to represent that
17 what is shown in Defendant's Exhibit 2 are
18 printouts of text messages, conversations
19 between you and Ms. McIntosh taken from Ms.
20 McIntosh's cell phone. I would ask you to
21 please take your time to review the contents
22 of Exhibit 2 and let me know when you're
23 ready.

24 A. Okay.

25 Q. Do you recognize the contents of

1 Exhibit 2 as cell phone conversations between
2 you and Ms. McIntosh?

3 A. Yes.

4 MR. MANCINO: Okay. I have no
5 further questions.

6 REDIRECT EXAMINATION

7 BY MR. STADNICAR:

8 Q. Lori, Defendant's -- I'll go in for
9 redirect. Lori, the items in Defendant's 2,
10 have you reviewed each of the pages and each
11 of the words and statements made in these
12 copies?

13 A. No.

14 Q. All right. Why did you testify
15 that you agreed that these were conversations
16 between you and Ms. McIntosh?

17 A. Because I know that they were. I
18 know that, I know what I said. I have the
19 same copies.

20 Q. Well, have you -- without reviewing
21 these, can you then testify that these are in
22 fact, each page is that conversation or
23 conversations?

24 A. Not every page. It's a large
25 stack.

1 Q. Okay. So --

2 A. From first glance, they are
3 conversations -- the, they're conversations
4 between Miranda and I.

5 Q. Okay. What I want you to do is go
6 through each page and I want you to be able
7 to confirm then that in fact these are those
8 conversations.

9 (Whereupon, a discussion was
10 held off the record.)

11 BY MR. STADNICAR:

12 Q. All right. We're back on the
13 record. Lori, now have you had a chance to
14 go through Defendant's Exhibit 2 and review
15 the pages?

16 A. Yes.

17 Q. Now, this is a stack of papers.
18 Did you count or do you know how many pages
19 there are?

20 A. No.

21 Q. And they're not stapled in any way,
22 is that correct?

23 A. No.

24 Q. They're not page numbered in any
25 way?

1 A. No.

2 Q. Do they appear to be communications
3 between you and Ms. McIntosh, however?

4 A. Yes.

5 Q. From this exhibit, can you tell if
6 these communications are complete?

7 A. I can tell if they're complete,
8 yes.

9 Q. Are, are these complete
10 communications?

11 A. No.

12 Q. Okay. It appears that some of the
13 pages, some of the communications are cut
14 off, is that correct?

15 A. Yes.

16 Q. All right. And can you tell
17 whether or not the pages are in order so that
18 the communications follow from, temporally,
19 meaning from -- throughout time, can you tell
20 that?

21 A. No.

22 MR. STADNICAR: All right. I
23 have no further questions.

24 RECROSS EXAMINATION

25 BY MR. MANCINO:

1 Q. Just a couple questions. Just for
2 clarification, when you're looking, say
3 looking at the first page, are the -- do you
4 see how the conversation is, there's one
5 person on the right and one person on the
6 left?

7 A. Yes.

8 Q. Which one is you?

9 A. I would be on the left.

10 Q. And is that consistent throughout?

11 A. Yes.

12 Q. And after reviewing Defendant's
13 Exhibit 2, did that change in any way your
14 testimony that you've given today?

15 MR. STADNICAR: Objection,
16 goes beyond the scope of redirect. You can
17 answer.

18 THE WITNESS: No.

19 MR. MANCINO: I am done.

20 MR. STADNICAR: She's going to
21 have to read.

22 (Whereupon, a discussion was
23 held off the record.)

24 MR. STADNICAR: At this time,
25 I'd seek the admission of Plaintiff's

1 Exhibit 1 that was testified to.

2 MR. MANCINO: And the
3 trademark owner seeks the admission of
4 Defendant's Exhibits 1 and 2.

5 MR. STADNICAR: And I'd just
6 object to 1 and 2. 1 being part of the
7 Complaint, which is not part of the trial.
8 And as to Exhibit 2, Defendant's Exhibit 2,
9 we would object to improper foundation. That
10 is not a complete indication of the
11 conversations. There's no indication of
12 time, whether or not they're in proper order.
13 Clearly some of the conversations are cut
14 off.

15 MR. MANCINO: Defendants
16 disagree. The witness has identified them as
17 her conversation.

18 (Whereupon, the Deposition
19 concluded at 2:01 p.m.)
20
21
22
23

24 LORI BURTON
25

1 CERTIFICATE

2 STATE OF OHIO)
3 COUNTY OF MONTGOMERY)

4 I, Janie L. Blair, a Registered
5 Professional Reporter and Notary Public in
6 and for the State of Ohio, hereby certify
7 that the matters set forth in the caption to
8 the foregoing deposition are true and
9 accurate; that the said Opposer, LORI BURTON,
10 appeared before me at the time and place set
11 forth; that said witness was first duly sworn
12 by me to tell the truth, the whole truth and
13 nothing but the truth and thereupon proceeded
14 to testify in said cause; that the questions
15 of counsel and the answers of said witness
16 were taken down in machine shorthand by me
17 and thereafter reduced to typewriting under
18 my direction; that the transcribed deposition
19 was submitted to the witness for her
20 examination and signature and that signature
21 was not expressly waived; and that the
22 foregoing pages comprise a true, complete and
23 correct transcript of the testimony given and
24 the proceedings had during the taking of said
25 deposition.

I further certify that I am not a
relative or employee or attorney or counsel
of any of the parties hereto, nor a relative
or employee of such attorney or counsel; nor
do I have any interest in the outcome or
events of the action; nor do I have any
financial interest under a contract as
defined in Civil Rule 28(D).

WITNESS MY HAND AND OFFICIAL SEAL OF
OFFICE, this 27th of April, 2017.

/s/ Janie L. Blair
Janie L. Blair
Registered Professional Reporter
and Certified Realtime Reporter
Notary Public, State of Ohio

My Commission expires August 15, 2019.

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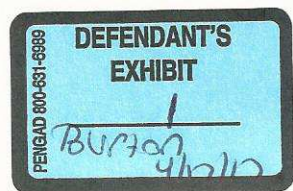
BOOTIQUE ENVIE











STATEMENT

1. Applicant is not the owner of the Word Mark "Boutique Envie" and the goods upon which the Word Mark is associated with or attached to.
2. Opposer is the owner of the Word Mark and associated goods.
3. Applicant was merely the distributor for Opposer.
4. There are no exceptions that would allow Applicant to register the Word Mark.
5. Opposer through her counsel has attempted resolve this issue with Applicants Trademark counsel and local counsel to no avail.
6. Opposer will be damaged if the registration is processed as Opposer intends to continue to use the Word Mark in her business and confusion will occur.

"A distributor, importer, or other distributing agent of the goods of a manufacturer or producer does not acquire a right of ownership in the manufacturer's or producer's mark merely because it moves the goods in trade. See *In re Bee Pollen from Eng. Ltd.*, 219 USPQ 163 (TTAB 1983) ; *Audioson Vertriebs - GmbH v. Kirksaeter Audiosonics, Inc.*, 196 USPQ 453 (TTAB 1977) ; *Jean D'Albret v. Henkel-Khasana G.m.b.H.*, 185 USPQ 317 (TTAB 1975) ; *In re Lettmann*, 183 USPQ 369 (TTAB 1974); *Bakker v. Steel Nurse of America Inc.*, 176 USPQ 447 (TTAB 1972). A party that merely distributes goods bearing the mark of a manufacturer or producer is neither the owner nor a related-company user of the mark."

"If the applicant merely distributes or imports goods for the owner of the mark, registration must be refused under §1 of the Trademark Act, except in the following situations:

(1) If a parent and wholly owned subsidiary relationship exists between the distributor and the manufacturer, then the applicant's statement that such a relationship exists disposes of an ownership issue. See TMEP §1201.03(b).

(2) If an applicant is the United States importer or distribution agent for a foreign manufacturer, then the applicant can register the foreign manufacturer's mark in the United States, if the applicant submits one of the following:

(a) written consent from the owner of the mark to registration in the applicant's name, or

(b) written agreement or acknowledgment between the parties that the importer or distributor is the owner of the mark in the United States, or

(c) an assignment (or true copy) to the applicant of the owner's rights in the mark as to the United States together with the business and good will appurtenant thereto."

See In re Pharmacia Inc., 2 USPQ2d 1883 (TTAB 1987); In re Geo. J. Ball, Inc., 153 USPQ 426 (TTAB 1967).