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

| | |
|-------------------------------|--|
| Proceeding | 92044209 |
| Party | Defendant Eres Eres S.A. 2 Rue Tronchet FRX 75008 Paris, |
| Correspondence Address | MICHAEL CHIAPETTA FROSS ZELNICK LEHRMAN & ZISSU PC 866 UNION NATIONS PLAZA NEW YORK, NY 10017 |
| Submission | Reply in Support of Motion |
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| Signature | /s/ |
| Date | 05/18/2005 |
| Attachments | REPLY BRIEF & DECLARATION.pdf (20 pages) |

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

In the Matter of Trademark Registration No. 2,320,998
For the Mark ERES

| | | |
|----------------------------|---|---------------------------|
| -----X | | |
| SAMUEL ROSENBLATT & HELENE | : | |
| ROZENBLAT d/b/a "ERES," | : | Cancellation No. 92044209 |
| | : | |
| Petitioners, | : | |
| | : | |
| -against- | : | |
| | : | |
| ERES, | : | |
| | : | |
| Registrant. | : | |
| -----X | | |

**REGISTRANT'S REPLY BRIEF IN FURTHER SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT**

In its motion for summary judgment, Registrant established that Petitioners' cancellation action is barred under the doctrine of claim preclusion. In their brief in opposition, Petitioners have failed to raise a triable issue of material fact to preclude entry of summary judgment. Instead, Petitioners rely on misstatements, mischaracterizations of documents, and misreadings of the law. Their attempt to avoid summary judgment must fail. As shown in Registrant's moving brief, there was a previous cancellation action between the identical parties or parties in privity with them that resulted in a final judgment against the Petitioners, and this newest cancellation action is based on the same set of transactional facts as the prior action. Under these circumstances, summary judgment must be granted.

I. PETITIONERS' MISSTATEMENT OF THE FACTS

Much of what is contained in Petitioner's statement of facts is either irrelevant or erroneous. The undisputed facts that are relevant to the motion for summary judgment are: (1) in or about 1979, Petitioners filed a petition to cancel the mark ERES TOP SHOP for clothing, which mark was owned by Madame Irene Pinkus; (2) the cancellation proceeding was dismissed

with prejudice; (3) Registrant, who is the successor-in-interest to Madame Irene Pinkus as clearly shown in the Declaration of Irene Charlotte Pinkus Harrington sworn to on March 15, 2005 and submitted in support of the motion for summary judgment (“Harrington Decl.”), filed an application to register the mark ERES for a variety of clothing which application matured into a registration without any objection or opposition by Petitioners; (4) the same Petitioners who sought to cancel ERES TOP SHOP and lost now seek to cancel Registrant’s ERES registration; and (5) the allegations set forth in the newest cancellation action are identical to the allegations previously made in the ERES TOP SHOP cancellation action.

The other “facts” that Petitioners set forth in their opposition brief and on which they base much reliance are simply wrong. For example, Petitioners claim that at some point in time the mark ERES TOP SHOP was owned by a corporation called S.A. Collon. Petitioner’s Brief in Opposition to Summary Judgment (“Opp. Br.”) at 3. While a French registration for ERES TOP SHOP may have been owned by S.A. Collon, this has nothing to do with the ownership of the ERES TOP SHOP mark in the U.S. which undisputably was owned by Madame Irene Pinkus, the predecessor to the current Registrant.¹ Petitioners also argue that Madame Pinkus assigned her rights in the ERES mark for the U.S. and Canada to S.A. Collon. *See* Opp. Br. at 6. This is flat out wrong and Petitioners know it. Indeed, three pages earlier in their brief they admit that all that was granted was a license. *See* Opp. Br. at 3. More significantly, the documents submitted by Petitioners show conclusively that all that was granted was a license for a limited period. *See* Harrington Reply Decl. at ¶¶ 3-4, Exh. A, at pp. 1, 3, 5.

In addition to their misstatements of facts, Petitioners also rely heavily on obfuscation and confusion, referring to activities and marks that have no bearing on this proceeding. For example, Petitioners refer to activities and ownership of marks outside the United States. *See* Opp. Br. at 3, Rozenblat Decl. at ¶ 12 and Exh. 5. Petitioners also attempt to throw mud on

¹ Had Petitioners done a bit more research, they also would have learned that S.A. Collon was a company fully controlled by Ms. Pinkus’ family. *See* Reply Declaration of Irene Harrington sworn to on May 16, 2005 (“Harrington Reply Dec.”) ¶ 5.

Madame Pinkus by insinuating that she committed fraud upon the Patent and Trademark Office in connection with a registration both not involved in this proceeding and long expired. Rozenblat Decl. at 14-15 and Exh. 7. None of this is even tangentially relevant to the singular issue before the Board, namely, whether the decision in the previous proceeding between the parties precludes Petitioners' current action. The Board should not be misdirected by Petitioners' tactics.

II. ARGUMENT

A. **Petitioners Have Not Met Their Burden On Summary Judgment**

In order to defeat a motion for summary judgment, the nonmoving party must show that there is a genuine issue as to one or more material fact. "To create a genuine issue of fact, the nonmovant must do more than present *some* evidence on an issue it asserts is disputed." *Avia Group Int'l v. L.A. Gear Calif.*, 7 U.S.P.Q.2d 1548, 1550 (Fed. Cir. 1988) (emphasis in original). The nonmovant must present evidence sufficient for the fact finder to resolve the question in the nonmovant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251, 106 S. Ct. 2505, 2511 (1986). "If the evidence [of the nonmovant] is merely colorable, or is not significantly probative, summary judgment may be granted." 477 U.S. at 249-50, 106 S. Ct. at 2511 (internal citations omitted). Petitioners here have failed to offer any evidence that would create any issue of fact concerning the elements of res judicata or its applicability to this action.

B. **Petitioners Have Not Created Any Triable Issue Of Material Fact To Avoid A Finding That Their Claim Is Barred By The Doctrine Of Res Judicata**

1. ***A clear showing of privity has been made between Madame Pinkus and Eres, the Registrant here***

As stated in Registrant's moving brief, on February 17, 1984, Madame Irene Pinkus – the Registrant in Petitioners' prior cancellation action – assigned her rights in the ERES mark to the Registrant here. This fact shows successive ownership and, therefore, privity. *Int'l Nutrition Co.*

v. Horphag Research, Ltd., 55 U.S.P.Q.2d 1492, 1495 (Fed. Cir. 2000) (parties in privity “when they hold successive interests in the same property”) (citing *Litchfield v. Crane*, 123 U.S. 549, 551 (1887)). Petitioners offer no facts or evidence to the contrary. Instead, they resort to misstating the ownership history, asserting that Madame Pinkus assigned her ownership rights to another company, S.A. Collon, before she assigned those rights to Registrant. *See* Opp. Br. at 6. This assertion is completely contradicted by the documents on which Petitioners rely.

As Exhibit 6 to the Rozenblat Declaration clearly shows, Madame Pinkus never assigned any rights in the ERES mark to S.A. Collon, but rather merely granted S.A. Collon a limited license to use and exploit the mark. *See* Declaration of Helene Rozenblat, submitted in support of Opp. Br., Exh. 6; *see also* Harrington Reply Decl. at ¶¶ 3-4.² Thus, the evidence remains uncontradicted that Madame Pinkus was the owner of the ERES mark at all times since Petitioners’ first cancellation action through the date of assignment to the Registrant here. The privity requirement is satisfied, and Petitioners have failed to raise a genuine issue of material fact in this regard.³

2. *There was an earlier final judgment against Petitioners*

Petitioners do not contest that the earlier cancellation proceeding between the parties, Cancellation No. 12,343, resulted in a final judgment against Petitioners, and thus concede that Registrant has met its burden on this element of the *res judicata* inquiry. Opp. Br. at 6.⁴

² Moreover, S.A. Collon was at all times under the full and exclusive control of Madame Pinkus’s family. Harrington Reply Decl. at ¶ 5.

³ Petitioners do not dispute that there is privity on their own side.

⁴ To the extent that Petitioners seek relief from the effect of the earlier judgment on the grounds that it was “essentially” a default judgment, Opp. Br. at 2, 6, if the equities are to be considered, they clearly favor Registrant. Having failed in their first attempt in 1979 to cancel Registration No. 1,049,649 for the mark ERES TOP SHOP, the Rosenblatts did nothing for more than 20 years, sitting back without objection while Registrant and its predecessors-in-interest grew the ERES brand into a nationally recognized company, applied for and received registrations for the ERES mark for clothing and for retail store services, and extensively advertised, promoted and sold ERES branded products throughout the United States, including in California. It was only after Registrant and its predecessors-in-interest expended extraordinary capital, resources and time to build the brand that Petitioners decided to object. Having lost their first attempt 25 years

3. *The marks in the prior proceeding and in this proceeding are legal equivalents*

In arguing that ERES TOP SHOP and ERES are not legal equivalents for purposes of res judicata, Petitioners turn to the wholly inapposite standards imposed under Section 44(e) of the Lanham Act, 15 U.S.C. § 1126(e). *See* Opp. Br. at 7. Section 44(e) of the Lanham Act allows a foreign national to obtain a United States trademark registration even though the foreign national has never used the mark in American interstate or foreign commerce. The Trademark Rules of Practice state that in an application under Section 44 of the Lanham Act, “the drawing of the mark must be a *substantially exact representation* of the mark as it appears in the drawing in the registration certification of a mark duly registered in the applicant’s country of origin.” 37 C.F.R. § 2.51(c); *see also T.M.E.P. 1101; In re Hacot-Colombier*, 41 U.S.P.Q.2d 1523, 1525 (Fed. Cir. 1997); *United Rum Merchants Ltd. v. Distillers Corp.*, 9 U.S.P.Q.2d 1481, 1483 (T.T.A.B. 1988).

The requirement that the foreign registration be a “substantially exact representation” of the U.S. mark is not the standard used to determine whether two marks are sufficiently similar for purposes of res judicata. For res judicata, the standard is whether the marks create the same overall commercial impression. *Institut National des Apellations d’ Origine v. Brown-Forman Corp.*, 47 U.S.P.Q. 2d 1875, 1894 (T.T.A.B. 1998); *see also Miller Brewing Co. v. Coy Int’l Corp.*, 230 U.S.P.Q. 675 (T.T.A.B. 1986) (prior decision involving LITE and design estops application seeking to register LITE and new design with disclaimed terminology); *J.I. Case Co. v. F. L. Industries, Inc.*, 229 U.S.P.Q. 697 (T.T.A.B. 1986) (prior decision involving HI in typed form estops applicant seeking registration of HI in stylized form mark); *Kiwi Polish Co.*

ago and having sat on their putative rights for more than two decades, Petitioner’s newest attempt to cancel Registrant’s longstanding ERES mark is simply inequitable and unreasonable. Moreover, while Petitioners make the same claims here that they made 25 years ago, it is far from clear that Petitioners have any rights in their ERES mark. As of May 2004, Petitioners admit that they closed their only store. Rozenblat Decl. at ¶ 16. Although Petitioners blame the closing on a construction project, the article provided by Petitioners does not show that any company or store other than the one owned by Petitioners was closed due to the construction project. *Id.*, Exh. 8. It is obvious that the construction project is being used as an excuse for Petitioners’ abandonment of rights.

Proprietary Ltd. v. Northern Mercantile, Inc., 1985 TTAB LEXIS 137 (T.T.A.B. March 29, 1985) (prior decision involving KIWI with bird design estops applicant seeking registration of KIWI alone).

ERES and ERES TOP SHOP (“TOP SHOP” disclaimed) satisfy this test. In both marks the commercial impression created is of the identical mark ERES. Unlike the marks in *Chromalloy American Corporation v. Kenneth Gordon (New Orleans) Ltd.*, 222 U.S.P.Q. 187, (Fed. Cir. 1984) on which Petitioners rely (Opp. Br. at 7), ERES is the first term in both of the marks at issue here. This gives the term primary significance. See *Presto Products, Inc. v. Nice-Pak Products, Inc.*, 9 U.S.P.Q.2d 1895, 1897 (T.T.A.B. 1988). That ERES is the term of primary significance in both marks, thereby resulting in both marks having the same commercial impression, is further shown by the undisputed facts that (1) in the ERES TOP SHOP registration, ERES was by far the most visually prominent feature of the mark, see Declaration of Michael Chiappetta in Support of Registrant’s Motion for Summary Judgment, ¶ 2, Ex. 1; and (2) because TOP SHOP was disclaimed, ERES is the only source-identifying feature of both marks. *In re Dixie Restaurants, Inc.*, 41 U.S.P.Q.2d 1531 (Fed. Cir. 1997) (descriptive, disclaimed portion of mark not dominant feature); J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 23:45 (4th ed. 2004) (“A disclaimed segment of a composite mark is not the ‘dominant’ part.”). The fact that in this proceeding the mark is ERES and does not include the less prominent and generic descriptor TOP SHOP does not constitute a material alteration of the ERES TOP SHOP mark in the prior action or create a mark with a new commercial impression. See *In re CTB Inc.*, 52 U.S.P.Q.2d 1471, 1476 (T.T.A.B. 1999); cf. *In re Dixie Restaurants Inc.*, 41 U.S.P.Q.2d 1531, 1534 (Fed. Cir. 1997) (addition of “generic term ‘café’” did not “offer[] substantial distinctiveness to create a different commercial impression”).

Also ignored by Petitioners is the fact that the ERES mark sought to be canceled is presented in the virtually identical stylized lettering as the prior ERES TOP SHOP mark. The identical lettering style and identical presentation of the mark in the two proceedings distinguish this case from *Polaroid Corporation v. C&E Vision Services, Inc.*, 52 U.S.P.Q.2d 1954 (T.T.A.B.

1999) relied on by Petitioners. Opp. Br. at 8. In *Polaroid*, the Board noted that because the mark in the pending action differed from the mark in the prior opposition due to the addition of prominent design elements and a distinctive lettering style, the second mark had a wholly different commercial impression from the first. 52 U.S.P.Q. 2d at 1957. By contrast, here both ERES TOP SHOP and ERES feature virtually identical design elements and stylization. For Petitioners to argue that the marks at issue here have different commercial impressions, they obviously turned a blind eye to the marks. When you look at the undisputed evidence, consisting as it does of the marks shown in the two registrations, it is clear that the two marks have the same commercial impression. Petitioners offer no evidence to the contrary.

4. *The goods involved in the two proceedings are legally equivalent*

Petitioners make a formulistic argument in claiming that the goods involved in the prior cancellation action and the pending cancellation action are sufficiently distinct such that res judicata should not apply. Opp. Br. at 9-10. They are wrong. While the goods listed in the ERES registration that is the subject of the current cancellation action are not identical in all respects to the goods listed in the prior ERES TOP SHOP registration, the goods are substantially the same and highly related. Petitioners point to the fact that the ERES registration includes shirts, blouses, t-shirts and loungewear, for example. Yet all of these fit within the definition of a tunic, which is one of the items listed in the ERES TOP SHOP registration.⁵ The other items, namely jumpsuits, shorts, sleepwear, lingerie, body suits and underwear are part and parcel of beachwear and women's sportswear, items that were listed in the ERES TOP SHOP registration. Compare *J.I. Case Co.*, *supra*, 229 U.S.P.Q.2d at 700 and n.8 (applying res judicata where all goods served same lubricating purpose even though goods were not identical).

Petitioners' reliance on *La Fara Importing Co. v. F. Lli de Cecco di Filippo Fara S. Martino S.p.A.*, 8 U.S.P.Q.2d 1143 (T.T.A.B. 1988), is misplaced. There, the original application

⁵ According to *The Random House Dictionary of the English Language*, The Unabridged Edition (1967), a tunic is "a woman's upper garment," "a gownlike outer garment," and "a garment worn by women for sports."

was exclusively for alimentary pastes (defined as shaped and dried dough prepared from semolina, farina or wheat flour mixed with water or milk and with or without eggs). 8 U.S.P.Q.2d at 1144 n.2. The application in the subsequent proceeding went far beyond alimentary pastes to include such items as cake, candy, fruit ices, honey, baking powder, salt, mustard, pepper and vinegar. *Id.* The Board noted that those goods were “neither identical, substantially the same, or so related so as to present in law a distinction without a difference.” *Id.* at 1147. Here, Petitioners do not even attempt to argue that the clothing items identified in the two registrations are not substantially the same or related, nor can they. *See, e.g., In re M. Sherman & Co., Inc.*, 223 U.S.P.Q. 52, 53 (T.T.A.B. 1984) (various items of women’s clothing “highly related” and/or “virtually identical”); *David Crystal, Inc. v. Glamorise Foundations, Inc.*, 189 U.S.P.Q. 740, 741 (T.T.A.B. 1975) (dresses, suits, skirts and blouses closely related goods to lingerie); *Ship 'N Shore Inc. v. Stafford-Higgins Co.*, 129 U.S.P.Q. 240 (T.T.A.B. 1961) (blouses and shirts in same category of goods as swimsuits).⁶ Quite simply, there is no evidence to support Petitioners’ claim that the clothing identified in the ERES TOP SHOP registration and the clothing identified in the ERES registration are “significantly” different. Not only does the argument by Petitioners lack factual support but also it is devoid of any common sense.

III. CONCLUSION

The question of whether Registrant should be able to maintain a registration for the ERES mark was conclusively answered in the affirmative by the Board nearly 20 years ago, and affirmed by the Federal Circuit. Petitioners offer no evidence to create any material issue of fact on the elements of res judicata. Now, as then, Petitioners seek to cancel a registration for ERES

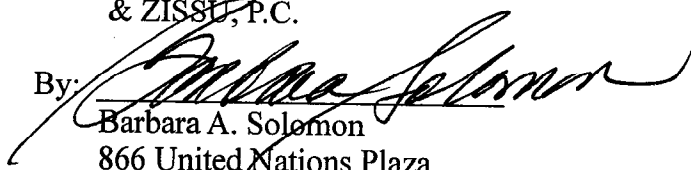
⁶ At a minimum, because of the prior proceeding, Petitioners cannot attack Registrant’s rights in the ERES mark for the goods in the ERES registration that are the same as those listed in the prior ERES TOP SHOP registration, namely bathing suits (swimwear), beachwear, pants, and tunics. *La Fara Importing Co.*, 8 U.S.P.Q.2d at 1146.

for clothing. Having already decided the issue against Petitioners, the Board should grant summary judgment to Registrant on the basis of claim preclusion.

Dated: New York, New York
May 18, 2005

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By:

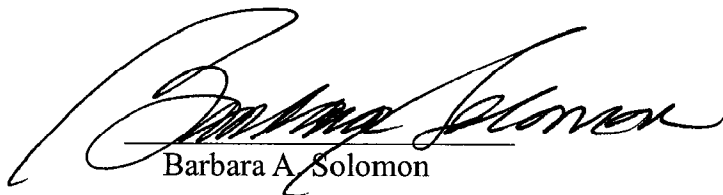


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New York, New York 10017
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*Attorneys for Registrant,
Eres*

CERTIFICATE OF SERVICE

The undersigned, counsel for Registrant Eres, hereby certifies that a true and correct copy of REGISTRANT'S REPLY BRIEF IN FURTHER SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT together with the Reply Declaration of Irene Harrington dated May 16, 2005 and the Exhibit thereto was served by First Class Mail, postage prepaid, on counsel for Petitioner on May 18, 2005 by mailing the same to (1) Sanford Astor, Esq., Birch, Stewart, Kolasch & Birch, LLP, 650 Town Center Drive, Suite 620, Costa Mesa, California 92626-7125; and (2) Robert J. Kenney, Esq., Birch, Stewart, Kolasch & Birch, LLP, 8110 Gatehouse Road, Suite 100E, Falls Church, Virginia 22042.


Barbara A. Solomon

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

In the Matter of Trademark Registration No. 2,320,998
For the Mark ERES

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SAMUEL ROSENBLATT & HELENE :
ROZENBLAT d/b/a "ERES," : Cancellation No. 92044209
: :
Petitioners, : :
: :
-against- : :
: :
ERES, : :
: :
Registrant. : :
-----X

**REPLY DECLARATION OF IRENE HARRINGTON IN
SUPPORT OF REGISTRANT'S MOTION FOR SUMMARY JUDGMENT**

I, Irene Charlotte Pinkus Harrington, declare as follows:

1. I am the President of Registrant, Eres. I previously submitted a declaration in support of Eres' Motion for Summary Judgment in this cancellation proceeding. I now submit this reply declaration in further support of that motion and to clear up and correct some misstatements made by Petitioners in their brief in opposition to Eres' motion. This declaration is based on my personal knowledge or on the records of my company to which I have access.

2. In their opposition papers, Petitioners claim that I was not the owner of rights in the ERES mark as of February 17, 1984, when I assigned all of my rights and interest in the ERES mark to Eres, including all of my rights in Registration No. 1,049,649. Specifically, they state that I assigned my ownership rights in the ERES mark in the United States and in Canada to a corporation called S.A. Collon on January 16, 1976. For support, Petitioners relied on the documents attached to Helene Rozenblat's declaration as Exhibit 6 and reproduced here as Exhibit A. Petitioners are simply wrong.

3. I am fluent in English and French and have read the documents relied on by Petitioners. All of them clearly state that S.A. Collon received only a license of limited duration. Specifically, Article 1 of the agreement reproduced from Petitioner's papers, at page 3 of the attached Exhibit A, states what was being granted was "Une licence exclusive d'usage et d'exploitation" or, as translated, "an exclusive license to use and exploit" the ERES mark. Nothing in the document relied upon by Petitioners makes any mention of an assignment. Indeed, the fact that Article 4 states, in English, that the agreement has an expiration date of March 17, 1974 makes it clear that there was no assignment of rights but rather a license to use the ERES mark.

4. The other documents relied on by Petitioners and reproduced at page 1 and page 5 of Exhibit A are to the same effect. The document on page 5 states that I granted to Vivelotte, formerly known as Collon (in the document it states "anciennement COLLON") a "Licence d'usage et d'exploitation de la marque . . . pour une durée limitée au 1er septembre 1980 à compter du 20 octobre 1968." This translates to my granting a license, not an assignment, to a company formerly known as Collon for the use and exploitation of the ERES mark for the limited period beginning October 20, 1968 and ending September 1980. Similarly the document on page 1 of Exhibit A only granted a license for a limited period. Again, if I were assigning the mark, as Petitioners wrongly claim, there would not have been a termination date.

5. S.A. Collon, the entity to whom the exclusive license was granted, was a company purchased by my parents in May, 1968 and was under my family's full and exclusive control. In 1973, Collon changed its name to Vivelotte. Ultimately Eres S.A., the entity to whom I assigned my rights, merged into Vivelotte and the surviving company changed its name to ERES, the registrant here.

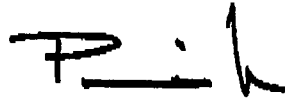
6. In the U.S. the only registrations for ERES or ERES TOP SHOP were owned by me or my successor Eres. S.A. Collon never owned a U.S. registration for any ERES mark. The only assignment I or my predecessors ever made of the rights in the ERES mark were to the predecessor in interest of the Registrant. Nothing in the documents relied upon by Petitioners says anything to the contrary and nothing contradicts the showing of privity previously made.

7. In truth, I am at a loss as to what the basis is for Petitioners' claim that there is a likelihood of confusion caused by the registration of the ERES mark for the clothing items identified in that registration. The ERES mark at issue in the cancellation proceeding has been used in the United States on the clothing identified in the registration for over 30 years. As we advised Petitioners' prior counsel (*see* Exhibit 4 to the Declaration of Helene Rozenblat), the application which matured into the registration now sought to be cancelled was never opposed by or objected to by Petitioners. In addition, we never have received any objection by Petitioners to the use of the ERES mark on or in connection with any of the goods in the registration sought to be cancelled despite our use of the mark in the U.S. for decades. As we detailed in our letter to Petitioners' counsel, since at least 1977 product under the ERES mark has been sold in Los Angeles. Since at least 2000, catalogs for ERES-branded merchandise have been sent to customers in California. Since at least 2000, customers, including those from California, could purchase ERES-brand products through a toll-free 800 number. And going back early as 1975, there have been editorial references and articles about the clothing sold under the ERES brand in national publications including, for example, *Glamour*, *Allure*, *Travel & Leisure*, *Elle* and *Vogue*. Yet despite all of this use, Petitioners have never claimed a likelihood of confusion arising out of our use of the ERES mark. For them to suddenly seek to cancel our registration for ERES for clothing that has been in existence for five years suggests that the action may be

prompted by something other than a bona fide concern that there is a likelihood of confusion caused by our longstanding registration of the ERES mark.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this ___ day of May 2005 in Paris, France.

May 16.05



Irene Charlotte Pinkus Harrington

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EXHIBIT A

INSTITUT NATIONAL
de la
PROPRIETE INDUSTRIELLE

BUREAU DES REGISTRES NATIONAUX
DES BREVETS ET DES MARQUES
ET DES DECHEANCES

INSCRIPTION **86237**
DATE : **-1 OCT. 1973**

DEMANDE d'INSCRIPTION au REGISTRE NATIONAL des MARQUES d'un ACTE PORTANT :
Bureau des Registres Nationaux
des Brevets et des Marques
et des déchéances

MINISTRE DU DEVELOPPEMENT
INDUSTRIEL ET SCIENTIFIQUE

concessions (1)
concessions
concessions de licence
~~concessions de licence~~
~~concessions de licence~~
~~concessions de licence~~

| (2) Dénomination des marques | Lieu de dépôt | Date du dépôt | N° du dépôt | N° d'enregistrement à l'I.N.P.I. |
|------------------------------|------------------|---------------|--------------------|----------------------------------|
| " BRES " | T.C. de la Seine | 16 Mars 1959 | 479.097 479.098 | 122.892 122.893 |

1 - Nom, prénom, profession, domicile du titulaire actuel Indivision Léopold FINKUS représentée par Mesdames Francine et Irène FINKUS, 98, Boulevard des Batignolles, PARIS 17^{ème}

2 - Nom, prénom, profession, domicile du bénéficiaire du droit

/ au 17 Mars 1973

ou s'il s'agit d'une société :

Dénomination, nature juridique et siège social "COLLON" société anonyme, dont le siège social est à PARIS 8^{ème}, 2, rue Tronchet,

3 - Nature et étendue du droit ~~concessions~~ ~~concessions~~ ainsi que sa durée, liasses relatives à l'usage et d'exploitation de la marque pour une durée limitée à compter du 20 Octobre 1968, limitée aux départements de la Seine, S.-et-O. et S.-et-M.

4 - Nature et date des documents justificatifs fournis :

Acte S.S.F. du 17 Décembre 1968
" " " 5 Avril 1972

Date : *P. P. P.* Signature : *P. P. P.*

(1) Biffer la mention inutile
(2) Si la demande d'inscription concerne plusieurs marques et si le cadre est insuffisant joindre liste en annexe.

CONTRAT DE CONCESSION DE MARQUE

ENTRE LES SOUSSIGNES :

L'Indivision Léopold PINKUS, représentée par Madame Irène Charlotte PINKUS, divorcée de Monsieur Daniel ROUKHOMOVSKY, demeurant à PARIS (17ème), 98, Boulevard des Batignolles, agissant tant en son nom personnel qu'en celui de Madame Francine PINKUS née KAHN, seules héritières de Monsieur Léopold PINKUS et ce, en vertu d'un pouvoir qui lui a été donné à cet effet,

L'UNE PART,

Et la S.A. COLLON, au capital de 200.000 francs dont le siège social est à PARIS (8ème), 2, Rue Tronchet, immatriculée au registre du commerce de la Seine sous le numéro 58 B 11417 et à l'INSEE sous le numéro 754 75 108 0 930, représentée par Madame Francine KAHN, veuve de Monsieur Léopold PINKUS, Président Directeur Général,

D'AUTRE PART,

IL A TOUT D'ABORD ETE EXPOSE CE QUI SUIT :

EXPOSE

Aux termes d'un acte S.S.P. en date à Paris du 15 Décembre 1968, enregistré à Paris 8ème Baux, le 23 Décembre 1968, bordereau 8, n° 230, C 27, aux droits de 96.000 francs, Madame Irène, Charlotte PINKUS divorcée de Monsieur ROUKHOMOVSKY, demeurant 98, Boulevard des Batignolles, agissant tant en son nom personnel qu'en celui de Madame Francine PINKUS née KAHN, seules héritières de Monsieur Léopold PINKUS, ont cédé à compter du 20 Octobre 1968, à la S.A. COLLON, un fonds de commerce de bonneterie au détail situé à PARIS (8ème), 4, rue Tronchet avec possibilité pour la S.A. COLLON d'exploiter la marque "ERES", propriété de l'Indivision PINKUS.

CECI EXPOSE, IL A ETE CONVENU CE QUI SUIT :

Article 1

Madame Irène PINKUS, au nom de l'Indivision Léopold PINKUS, concède par les présentes à la S.A. COLLON représentée par Madame Francine PINKUS, Président Directeur Général, qui accepte :

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A.P.

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e National
rques
36237
le - 1 OCT. 1973
et de Bureau

J. Chouet

Une licence exclusive d'usage et d'exploitation pour les départements de la Seine, Seine et Oise, Seine et Marne, de la marque de fabrique consistant dans la dénomination "ERES" déposée par Madame Francine PINKUS née KAHN et Monsieur Léopold PINKUS au Greffe du Tribunal de Commerce de la Seine le 17 Mars 1959 sous les numéros 479 097 et 479 098 désignant :

- fils et tissus en tous genres, vêtements confectionnés en tous genres sous-vêtements, pull-over, cardigans, survêtements tricotés en tous genres, collants, combinaisons, Jupons, tous articles de lingerie de corps, tous articles de bonneterie en tous genres, bas, mi-bas, corsets, gaines, porte-jarretelles, soutien-gorge, slips, culottes, maillots de bain en tous genres et de toutes formes, chemisiers, corsages, déshabillés, vêtements de nuit, vêtements d'intérieur, ganterie, foulards.

Toutefois, il est ici précisé que Madame Francine PINKUS en accord avec Madame Irène PINKUS, se réserve le droit d'utiliser personnellement la dénomination "ERES" pour le commerce de bonneterie et nouveautés dont elle est propriétaire et qu'elle exploite à PARIS (9ème), 108, Boulevard Haussmann, tout en s'interdisant de céder ou de concéder ladite marque à des successeurs dans l'exploitation de son fonds de commerce et qu'en cas de cessation d'activité pour quelque cause que ce soit de Madame Francine PINKUS, l'exploitation exclusive de la marque, limitée à la région sus-désignée, reviendrait de plein droit à la S. A. COLLON.

Article 2

La présente concession est consentie en conséquence de l'acte sus-énoncé du 15 Décembre 1968.

Article 3

La S. A. COLLON restera libre de faire et de choisir toute publicité qu'elle jugera utile, et sous quelque forme que ce soit, dans les limites imposées par la réglementation en vigueur.

Article 4

17 Mars 1974.

Les présentes conventions prendront fin le

Article 5

La présente concession est strictement personnelle et ne pourra être transférée, directement ou indirectement, totalement ou partiellement, à qui que ce soit, sans le consentement exprès et par écrit des propriétaires de la marque.

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La présente concession ne pourra être considérée comme faisant partie de l'actif de la S.A. COLLON. Elle ne pourra être exploitée par un administrateur judiciaire ou syndic, ni être mise en vente ou en adjudication, sous quelque forme que ce soit.

En conséquence, toute modification de la situation de la S.A. COLLON qui serait de nature à l'empêcher d'exploiter elle-même et librement la présente concession, telle que faillite, liquidation judiciaire, interdiction ou dissolution, entraînera de plein droit la résiliation de la présente concession.

Article 6

Les contractants auront la faculté de dénoncer à tout moment les présentes conventions, à la condition d'avertir par lettre recommandée le cocontractant au moins un an avant la date à laquelle ils entendent fixer la résiliation du contrat.

Tous les différends ou divergences d'interprétation au sujet d'une clause du présent contrat, ou tout cas imprévu pouvant surgir pendant l'exécution, sur lesquels les contractants n'arriveraient pas à se mettre d'accord, devront être soumis au Tribunal de la Seine.

Article 7

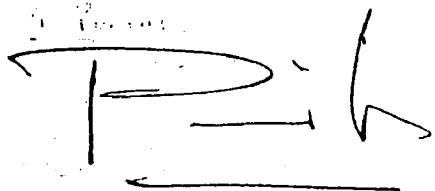
Aux fins de présentes, les parties font élection de domicile au lieu de leur domicile et siège respectifs énoncés en tête des présentes.

Article 8

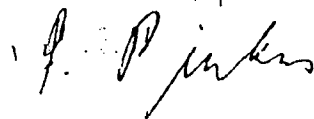
Les frais de préparation et d'établissement des présentes conventions, ainsi que les frais d'enregistrement, sont supportés par la S.A. COLLON.

Fait à PARIS, en quatre exemplaires,
Le quinze décembre mil neuf cent soixante huit

lu et approuvé



lu et approuvé



| | |
|--|--------|
| INSCRIPTION N° | |
| INSCRIPTION au REGISTRE NATIONAL des MARQUES | DATE |
| DATE | 102073 |
| 10 MAR. 77 | |
| Le Chef de Bureau <i>J. Thuret</i> | |

DEMANDE d'INSCRIPTION au REGISTRE NATIONAL des MARQUES d'un ACTE PORTANT :

XXXXXX (1)

XXXXXX

avenant à

concession de licence

*fortuit de n° d'inscription 86237 de
 1/10/1973*

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXX

XXXXXXXXXXXX

*Observation faite que les dépôts de la
 marque en cause ne sont pas cités
 dans l'acte fourni*

| (2) Dénomination des marques | Lieu de dépôt | Date de dépôt | N° du dépôt | N° d'enregistrement à l'I.N.P.I. |
|------------------------------|---------------|----------------|-------------|----------------------------------|
| ERES | I.N.P.I. | 27 novembre 73 | 163 247 | 889 810 |
| | | | 163 248 | 889 811 |
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1 - Nom, prénom, profession, domicile du titulaire *actuellement Leopold PINKUS, représenté*
 Mme Francine KAHN, veuve de Mr Léopold PINKUS,
 Mme Irène PINKUS, 98 boulevard des Batignolles - 75017 PARIS
 ou s'il s'agit d'une société : *Mme Irène PINKUS, agissant en son nom personnel qui*
 Dénomination, nature juridique et siège social *nom et comme mandataire de Mme*
FRANCINE PINKUS nee KAHN

2 - Nom, prénom, profession, domicile du bénéficiaire du droit

ou s'il s'agit d'une société :
 Dénomination, nature juridique et siège social VIVELLOTTE, Société anonyme (anciennement
COLLON) 2 rue Tronchet - PARIS 8ème *exclusive*

3 - Nature et étendue du droit transféré, concédé ou nanti, ainsi que sa durée : Licence d'usage et d'ex
 ploitation de la marque pour une durée limitée au 1er septembre 1980 à compter du 20 octobre
 1968 limitée aux départements de la Seine, Yvelines, Essonne, Hauts de Seine, Seine Saint
 Denis, Val de Marne, Val d'Oise et pour les Etats Unis et le Canada, avec droit de sous
 4 - Nature et date des documents justificatifs fournis *conceder uniquement pour les USA et le Canada*

Acte sous seings privés du 16 juin 1976

(1) Biffer la mention inutile
 (2) Si la demande d'inscription concerne plusieurs marques et si le cadre est insuffisant joindre liste en annexe.