EXHIBIT 104

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J.T. COLBY & COMPANY, INC. d/b/a BRICK TOWER PRESS, J. BOYLESTON & COMPANY, PUBLISHERS LLC and IPICTUREBOOKS LLC,

Plaintiffs,

-against-

APPLE, INC.,

Defendants.

Case No. 11-cv-4060 (DLC)

Expert Report of Robert T. Scherer

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1. ***RETENTION.***

I was retained by attorneys for plaintiffs in the above-referenced litigation to: (i) discuss the necessity and importance of conducting appropriate trademark clearance searches before adopting a new trademark or expanding the use of an existing trademark; (ii) review the validity of Family Systems' assignment of its IBOOK mark to Apple and discuss the nature and requirement of goodwill; (iii) compare the nature of Family Systems' use of its IBOOK mark with Apple's post-acquisition use of the IBOOKS mark (as amended); (iv) review the statements made in Apple's Declaration of Use filed in Reg. No. 2,446,634; (v) review and explain the several applications and registrations filed in the U.S. Patent and Trademark Office ("PTO") by plaintiffs and defendant including Reg No. 2,470,147; Reg. No. 2,446,634; Reg. No. 2,718,222; App. No. 85/008,412; App. No. 85/008,432; App. No. 75/786,490; and App. No. 75/786,491; (vi) discuss whether iBooks[1] is a distinctive/descriptive mark; and (vii) review the validity of the assignment of the iBooks mark out of bankruptcy to plaintiffs.

2. ***QUALIFICATIONS, PRIOR TESTIMONY AND RATE.***

I am a member of the New York State Bar Association and the District of Columbia Bar Association and have been practicing in the area of trademark law since 1972. I retired from active practice in December, 2005, but have continued to stay abreast of developments in the trademark field. I have not previously testified as a trademark expert witness.

Upon graduation from Wayne State University Law School in 1972, I was employed by the U.S. Patent and Trademark Office ("PTO") as a Trademark Examiner. While in that position, I regularly (i) reviewed trademark applications for compliance with the mandatory

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[1] In order to aid in distinguishing between the parties respective marks, whenever possible, I have chosen to display plaintiffs' marks with an initial lower-case letter, followed by a single upper-case letter, *i.e.*, iBooks or iBooks, Inc. and Family Systems' and Apple's marks in all upper-case letters, *i.e.*, IBOOKS or IBOOK.

filing requirements; (ii) conducted searches of the Trademark Register and of pending applications; (iii) reviewed marks for descriptiveness; (iv) prepared PTO Office Actions and reviewed responses thereto; (v) prepared several briefs to the Trademark Trial and Appeal Board ("TTAB") in support of final refusals; and (vi) on a rotating schedule, served with the Post-Registration Branch reviewing registrations for Sections 8 and 15 compliance and Section 9 renewal and as an interlocutory examiner with the TTAB. During my two years and three months with the PTO, I reviewed approximately 2,000 applications.

In August, 1974, I went to work for the intellectual property law firm of Pennie & Edmonds. As an Associate with the firm, I regularly (i) advised clients on basic trademark law and PTO procedures; (ii) conducted trademark clearance searches for conflicting registered, pending and common law marks; (iii) prepared and filed U.S. trademark and service mark applications; (iv) prepared and filed responses to PTO Office Actions; (v) prepared and filed Post-Registration documents including Section 8 and 15 Declarations of Use and Incontestability and Section 9 Renewals; and (vi) prepared and filed assignment and change of name documents. I also participated in several *inter partes* opposition and cancellation proceedings in the PTO and trademark infringement litigation in the federal courts. During almost five years with the firm, I was responsible for filing and prosecuting approximately 500 U.S. trademark/service mark applications.

In 1979, I went to work for PepsiCo, Inc. as a Trademark Attorney. In that position, I advised various subsidiary companies, i.e., Frito-Lay, Pizza Hut and Wilson Sporting Goods, among others, on all trademark related matters, including, but not limited to (i) the selection, searching and clearance of U.S. and foreign trademarks; (ii) the filing and prosecution of U.S. and foreign trademark applications; (iii) the renewal of U.S. and foreign trademark registrations;

(iv) the filing of U.S. and foreign oppositions and cancellation actions; (v) trademark licensing and (vi) the review of advertising and promotional materials for proper trademark use. While at PepsiCo, I filed and prosecuted approximately 100 U.S. trademark applications and was responsible for the maintenance and renewal of approximately 10,000 U.S. and foreign registrations.

In 1983, I moved to Time Inc. as a Trademark Attorney and assumed responsibility for its entire portfolio of U.S. and foreign trademarks. In that position, I oversaw the selection, clearance, filing of applications, prosecution of applications, maintenance and protection of more than 20,000 U.S. and foreign trademark registrations, including such well-known marks as TIME, SPORTS ILLUSTRATED, FORTUNE and PEOPLE Weekly for magazines; HBO and CINEMAX for television programming services; TIME-LIFE, WARNER BOOKS and LITTLE, BROWN for book publishing and the TIME WARNER corporate mark and logo. I also supervised the assignment of several large trademark portfolios during my 22 years with the various Time Warner (a successor company) companies. I was responsible for the daily monitoring of trademarks for infringement and for taking appropriate action when found. I oversaw the licensing of the company's trademarks and the registration and protection of Internet domain names. Through various promotions during my career, when I retired in December, 2005, I was Assistant General Counsel of Time Warner Inc. and had filed approximately 900 U.S. trademark applications on behalf of the company and its subsidiaries.

During my thirty-three years of trademark practice, as a Trademark Examiner in the PTO, as a law firm associate, and as a corporate trademark attorney, I have conducted and reviewed thousands of trademark searches and cleared such now well-known marks as InStyle, ENTERTAINMENT WEEKLY and REAL SIMPLE for use on magazines, as well as the TIME

WARNER mark and corporate name. I have also conducted numerous searches and investigations in connection with the expansion of such existing brands as PEOPLE Weekly, HBO and CINEMAX. I have examined, filed and/or prosecuted more than 3500 applications and been responsible for the maintenance of thousands of registrations in the United States Patent and Trademark Office. In all these positions, I regularly advised clients and participated in such trademark related matters as trademark searching and clearance, trademark application filings and prosecution, trademark maintenance and renewal, trademark assignments and trademark licensing.

My compensation as an expert witness in the above-referenced matter is $500 per hour.

A copy of my current curriculum vitae is attached hereto as Exhibit A.

3. *REVIEW AND INVESTIGATIONS.*

In connection with the preparation of this report, I was provided with and reviewed the following documents and materials:

Court Documents

Complaint and Jury Demand

Answer and Affirmative Defenses of Defendant

Materials Provided by Plaintiffs' Counsel

Archived Materials from Family Systems' "iBook" Website

Archived Materials from urls located via Family Systems' "iBook" Website

Family Systems' "iBook" Instructions and General Information

TESS Search Results for "ibook" Applications/Registrations

Listings from Publishing Industry, Book Seller and Comic Book Websites (1999-2010)

Current Listings from Publishing Industry and Book Seller Websites (Sept./Oct. 2011)

Wikipedia Entry for Byron Preiss

Google Search Results for "iBooks" with "Publisher(s)/Publishing" (2009)

Advanced Search Results for "iBooks" with "Publishers or Publishing" (2009)

Deposition Transcript of Richard S. Goldhor, Ph.D., January 31, 2012

Deposition Transcript of John T. Colby, July 18, 2012

An Article titled "Trademark Searching" by Glenn Gundersen, 1994

Several Saegis Reports of Apple Trademark Searches

Memo Titled APPLE IBOOK AND IBOOKSTORE with Search Strategies

An Invoice for for the IBOOK Settlement Payment, dated January 29, 2010

NY Certificate of Assumed Name iBooks, dated December 12, 2006

iBooks ITD September 2005 C/B Worksheet

J. Boyleston & Company, Publishers Consolidated Income Statement 1999 – 2011

United States Patent and Trademark Office Documents

File Wrapper for Reg. No. 2,446,634 IBOOKS (as amended)

File Wrapper for Reg. No. 2,470,147 IBOOK

File Wrapper for Reg. No. 2,718,222 ipicturebooks.com

File Wrapper for App. No. 85/008,412 IBOOKS

File Wrapper for App. No. 85/008,432 IBOOKSTORE

File Wrapper for App. No. 75/786,490 iBooksinc.com

File Wrapper for App. No. 75/786,491 iBooks

File Wrapper for Patent No. 6,411,993

I also used and reviewed the following PTO databases:

Trademark Electronic Search System (TESS)

Trademark Applications and Registrations Retrieval (TARR)

Trademark Manual of Examining Procedure (TMEP)

Trademark Document Retrieval (TDR)

Trademark Assignment Services

Trademark Rules of Practice

U.S. Trademark Law, 15 U.S.C. Section 1051 et seq. (Lanham Act) In addition to these documents and materials, I reviewed relevant sections of McCarthy on Trademarks and Unfair Competition, 4th edition, J. Thomas McCarthy (2005) and performed advanced searches of the Google and Amazon.com databases.

4. *TRADEMARK PRINCIPLES:*

Trademark Rights are Based on Use, Not Registration.

A trademark is defined as any word, name, symbol or device, or any combination thereof, used to identify and distinguish one's goods from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown. *See* Lanham Act, 15 U.S.C. Section 1127. (The Lanham Act is the federal statute governing trademarks in the U.S.) Trademarks are sometimes referred to as brand names. In the United States, trademark rights are created when the mark is actually used in commerce on or in connection with goods in the ordinary course of trade. Such marks are referred to as common law trademarks. The owner of a common law mark may elect to register it in the PTO, but registration is not required in order to own the mark or to claim a priority of use. While there are some procedural and evidentiary advantages to owning a federal trademark registration, a common law or unregistered mark is entitled to the same substantive rights and protection as a registered mark.

There are two primary bases on which to file an application to register a trademark in the PTO. First, the application may be based upon actual use of the mark in interstate commerce. This is referred to as a use-based application filed under Section 1(a) of the Lanham Act. Second, the application may be based upon a bona fide intent to use the mark in interstate commerce. This is referred to as an intent to use or ITU application and is filed pursuant to

Section 1(b) of the Lanham Act. Even though the ITU application is filed before actual use of the mark begins, the registration will not be granted until the mark has been used in interstate commerce and evidenced to the PTO. While there are other bases for filing trademark applications, they are not relevant to this litigation.

5. *TRADEMARK CLEARANCE RESPONSIBILITY AND PROCEDURES:*

Apple Failed to Conduct an Appropriate Trademark Clearance Search.

When selecting a new trademark or materially expanding the use of an existing mark, it is imperative that the trademark attorney conduct the necessary searches and, if appropriate, follow-up investigations to determine whether the proposed mark is available for the intended use. The question to be answered: "Is the use of the mark likely to cause confusion with an existing third party mark?" There are at least three basic steps in the searching process.

First, the trademark attorney, either in-house or outside counsel, will customarily conduct a screening or "knock- out" search in one or more available databases, including the PTO's Trademark Electronic Search System (TESS) or another commercially available database such as Thomson Compumark's SAEGIS service. By definition, these preliminary or screening searches are limited to PTO and state trademark records, but they do not include any common law or domain name records. A copy of a Thomson Compumark online promotional piece describing the SAEGIS service as a "screening" or "knock-out" search is attached as Exhibit B. Because of these limitations, the clearance process cannot stop here. If the screening search is "clear", in that it did not disclose any confusingly similar third party marks, the second step is to order a more comprehensive "full" search through one of several commercial vendors. Such searches can be performed on a 4 hour turnaround, if necessary, or more commonly on a 2 - 3 day turnaround. The largest commercial trademark search firm is Thomson Compumark, and I have attached a representative example of one of their full search reports as Exhibit C. In addition to

the PTO and state trademark databases discussed above, a full search includes (i) appropriate common law databases; (ii) web databases such as Google and Yahoo; and (iii) domain name databases. Also, because the test for trademark infringement is not limited to identical marks, but includes "confusingly similar" marks, a full search is more comprehensive in that it includes similar marks, variant spellings and phonetic equivalents.

If either the preliminary screening search or the more comprehensive full search disclose a potentially conflicting mark, the third step is for the trademark attorney to undertake a further investigation to determine the nature and extent of use of that mark. The investigation can take several forms. If the mark is the subject of a federal registration (active/cancelled/expired) or an application (active/abandoned), one can order the PTO file history of that mark to try to better determine if and how the mark is being used. It is also possible to conduct an appropriate online search to see if there are any references to the mark on the Internet. Another option is to hire a professional trademark investigator to look into any use of the mark. Only after these searches and any necessary investigations have been completed and there appear to be no confusingly similar marks in use or, if a confusingly similar mark has been found, any likelihood of confusion has been resolved via acquisition, license or consent, should use of the proposed mark begin.

With the foregoing principles in mind, I reviewed Apple's clearance of the IBOOKS mark and found that while it conducted the preliminary screening search of Thomson Compumark's Saegis database and several narrow searches *limited* to the Google search engine (step 1), it completely ignored the comprehensive full search (step 2) and any follow-up investigation (step 3). In my opinion, Apple's failure to conduct an appropriate search/investigation was irresponsible and a serious departure from standard trademark searching

practice, I find it surprising that a large and sophisticated company, like Apple, did not follow-up with a more comprehensive search.

I should mention here that Apple owns a federal registration for the IBOOK mark for "computer hardware" (Reg. No. 2,470,147) and claims to own a second federal registration for the mark IBOOKS (as amended) for "computer software used to support and create interactive user-modifiable electronic books" (Reg. No. 2,446,634). Apple asserts that its use of the IBOOKS mark in connection with downloadable books and the electronic transmission of streamed and downloadable books is simply an expansion of these two earlier registrations so that further searches and/or investigations are unnecessary. In order to see just how far Apple intended to "expand" its use of the IBOOK/IBOOKS mark, I reviewed the list of goods/services recited in Apple's most recent ITU applications to register the IBOOKS mark (App. No. 85/008,412) and the IBOOKSTORE mark (App. No. 85/008,432), both of which were filed on April 7, 2010. As filed, both applications contained a lengthy list of goods and services in six Classes.[2] In addition to "computers" in Class 9, which may qualify as an expansion of the earlier IBOOK registration, the applications go on to state that Apple has a bona fide intention to use the IBOOKS and IBOOKSTORE marks in connection with "printed matter..." in Class 16; "advertising and marketing services... in Class 35; "telecommunications services..." in Class 38; "educational and entertainment services..." in Class 41; and "design and development of computer hardware and software..." in Class 42. In Class 16, for example, Apple included the items "printed publications; periodicals; books; magazines; newsletters...; Class 35 included the items "sales promotion services; promoting the goods and services of others; conducting market

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[2] As we will see in subsequent sections, the PTO has created arbitrary classes of goods and services numbered from 1 – 45. The primary purpose of this classification system is to allow the PTO to charge separate filing fees per class.

research..." and Class 41 included "podcasts in the fields of entertainment, news, current events and activities, hobbies...". (The actual list of goods/services goes on for almost two full single-spaced pages.)

Are we to believe that this long list of new uses "merely seeks to expand Apple's registration of the IBOOKS mark to goods and services related to those for which the mark is already registered"? That's what Apple told the Trademark Examiner in its response to a PTO Office Action. However, it is obvious that this is far more than a mere expansion of the earlier IBOOK/IBOOKS registrations as it encompasses numerous entirely new uses of the mark which require an entirely new comprehensive search and clearance. (It appears that Apple subsequently amended the above-referenced IBOOKS application by deleting Classes 16, 38 and 41, but kept all six Classes in the IBOOKSTORE application. Even with this amendment, the three remaining Classes in the IBOOKS application represent far more than an expansion of the earlier marks and Apple had gone on record as intending to use the IBOOKS mark in connection with all of the goods/services originally listed in the applications.) Also, the fact that Apple found it necessary to conduct even a preliminary screening search of the IBOOKS mark is an indication that this expanded use far exceeds the coverage of the earlier registration. Apple has a duty to properly search and clear new marks or new uses of existing marks; being a very large and successful company does not excuse Apple from responsibility and respect for the trademark rights of others.

I have reviewed copies of several SAEGIS searches which appear to have been conducted by Apple's outside counsel and found that one of those searches disclosed the marks iBooks (App. No. 75/786,491) covering "books, namely, a series of fiction books; non-fiction books in the field of science" and iBooksinc.com (App. No. 75/786,490) for "computerized on-

line ordering services in the field of printed publications" and "providing a website on global computer networks featuring information on the field of printed publications", both filed by the plaintiffs' predecessor-in-title, iBooks, Inc. *see* Exhibit D. Based upon this search, Apple was clearly aware of plaintiffs' iBooks and iBooksinc.com marks and even though the applications were abandoned in 2003 for failure to respond to a PTO action and tagged as "DEAD", they remained as a possible bar to Apple's use of the IBOOKS mark and required further investigation. Since, as noted in Section 4, trademark rights are based on use, not registration. I then conducted my own search of the PTO's TESS database which again disclosed the iBooks and iBooksinc.com applications.

Another search document produced by Apple under the heading "APPLE IBOOK and IBOOKSTORE" referred to the "PRELIMINARY SEARCH STRATEGIES" and listed the strategies used in running several different searches. *See* Exhibit E. Based upon the above references, this document appears to relate only to a preliminary search of the IBOOK and IBOOKSTORE marks and I have seen no other documents indicating that any comprehensive full searches were commissioned.

I also reviewed several documents showing the results of a Google search of such terms as "ibook", "ibookstore", "ebook", "ebookstore","eyebook", "eyebookstore", "mybook" and "mybookstore" in various forms. Sometimes these terms were combined with a list of goods, including "computer", "software", "electronic", "online", "device" or "reader". They were often further broken down into Apple and non-Apple references. It is my understanding that these searches may have been conducted by Apple's outside counsel. All of these searches were made using the Google search engine and no effort was made to search publishing or book related websites such as Amazon.com. While none of these searches disclosed any references to

plaintiffs' iBooks mark, this was not unexpected, because in reviewing the search strategies, it looks as if Apple or its outside attorneys made a concerted effort to avoid any terms which were likely to uncover the plaintiffs' iBooks mark or name. Apple was aware of plaintiffs' presence in the publishing industry based upon a SAEGIS search, see Exhibit D; yet it never conducted a search of the iBooks, Inc. name. If Apple had searched "ibooks" combined with plaintiffs' company name, iBooks, Inc., as I recently did, it would have found numerous articles referring to plaintiffs' ongoing iBooks business. In my search, the first 35 "hits" referred to iBooks and/or iBooks, Inc. Apple could have, and should have, performed the same search. I was left with the impression that Apple specifically designed the search to *avoid* finding references to plaintiffs' business. In addition to this failure to search the appropriate terms/names, Apple also deliberately combined several search terms with the word Apple, which would, of course, eliminate finding any references to plaintiffs' mark/name. Although reference was made to a "TRADEMARK.COM DOMAIN NAME SEARCH in Exhibit E, I have seen no report showing that such a search was ever made.

The appropriate next step was to order the PTO file history to see why the application was abandoned and whether the mark has been used. In reviewing the PTO file, I learned that (i) iBooks, Inc. has been using the iBooks mark since 1999, and was planning to file an amendment to allege use shortly; and (ii) iBooks, Inc. had iBooks sales in excess of and spent over in advertising and promoting the iBooks mark in the first three years of business. This important information was readily available to anyone who took the time and effort to order the PTO file. Even though the application had been abandoned, the iBooks mark was being used and remained a viable and valuable trademark belonging to plaintiffs. The disclosure of iBooks,

Inc.'s iBooks mark in the limited screening search was a "red flag", which required further investigation.

In order to see what an investigation would have found, I again entered "ibooks" with "iBooks, Inc." in Google and found several references to Byron Preiss' and/or iBooks, Inc.'s iBooks mark. Having found that the iBooks mark and the iBooks, Inc. company name are still being reported in online databases, the next step in my investigation was to search several databases devoted to the publishing industry, such as Amazon.com, Bowker's Books in Print and Publishers Weekly, to determine the nature and extent of that use. A search of Amazon.com disclosed more than 600 books published by plaintiffs' predecessor before May 23, 2006 under the iBooks mark, with many of the books offered in a digital format. A search of WorldCat, a database which allows access to the collections of over 10,000 libraries worldwide, for each of the years 1999 - 2009, disclosed hundreds of books published by iBooks, Inc. and using the iBooks mark. A search of My Comic Shop, the world's largest online selection of comic books, for the years 2000 – 2006, disclosed a long list of iBooks' published comic books. Similarly, a search of iBooks at comics.org, which is dedicated to building a database covering all printed comics throughout the world, for the years 2003 – 2005, again revealed numerous comic books using the iBooks mark.

A search of Publishers Weekly ("PW"), which refers to itself as "The International News Magazine of Book Publishing and Bookselling" for each of the years 1999 - 2009, found repeated references to both iBooks and iBooks, Inc. beginning as early as May 24, 1999, with the following reference:

> "Byron Preiss Visual Publications will launch a new imprint in September [1999] that will focus on books with content appropriate for marketing on the Internet. The imprint, ibooks, will be done in cooperation with Pocket Books, which will serve as ibooks' distributor."

The June 7, 1999, issue of PW included the following:

> "...longtime multimedia publisher Byron Preiss discussed his new project, iBooks, which will combine classics of science, science fiction, history and mystery, in trade paper, with free browsable chapters available online."

A PW article on March 3, 2003, stated that:

> "The fastest growing publisher on this year's list is ibooks, the newest publishing venture launched by Byron Preiss in 1999. The company publishes in a mix of segments and formats, including e-books."

After Byron Preiss' tragic death in July, 2005, and the sale of the company's assets in bankruptcy to plaintiffs' on December 13, 2006, PW continued to refer to the iBooks mark and the iBooks, Inc. name in various articles.

A Google search of "ibooks" combined with the words "publisher/publishers/publishing" for each of the months April – December, 2009, which closely preceded Apple's launch of its new IBOOKS product, disclosed numerous references to plaintiffs' iBooks mark. And, finally, a search on Wikipedia of the name "Byron Preiss", the founder of the Ibooks imprint and one of the pioneers of electronic publishing, included several references to the iBooks mark and listed several books published by iBooks, Inc.

I then reviewed the results of more recent online searches conducted in September - October, 2011 of "iBooks" and "iBooks, Inc." The updated search of Amazon.com identified 742 books referring to either iBooks or iBooks, Inc. and included references to the series names "ibooks Fantasy Classics" and "Ibooks Science Fiction Classics". I followed-up with my own search of Amazon.com and found such additional series names as "Ibook Fan Books", "Instructor Ibook", "Law and Order (Ibooks)", "Military History (Ibooks)", "Rabbi Small Mysteries (Ibooks)", "Student Ibook", "Transformers (Ibooks)" and "X-Men (Ibooks)". I also examined the results of an "iBooks" search at barnesandnoble.com which disclosed over 750 iBooks references. Similar searches of Books by ISBN (an ISBN or International Standard Book

Number is assigned to each edition and variation of a book) and Bowker's Books in Print (R.R. Bowker, LLC provides information support for the publishing industry in the United States. Bowker is the official U.S. ISBN Agency, the publisher of Books In Print and other compilations about books and periodical titles.) yielded hundreds of current uses of plaintiffs' iBooks mark. Similar databases are included in the common law portion of a comprehensive full search and would have disclosed many of these same references to plaintiffs' use of the iBooks mark had Apple taken that next all important step to clear the mark.

The pleadings in this case also refer to plaintiffs' ipicturebooks and ipicturebooks.com marks, the latter of which was the subject of a cancelled registration for "books in print in the field of fiction and non-fiction for children" and "computer services, namely, online books in the field of fiction and non-fiction for children", owned by iBooks, Inc. I conducted an online search of three databases to determine the nature and extent of use of these marks. At a website called JacketFlap, which lists the work of 200,000+ authors, illustrators, publishers and other creators of books for children and young adults, I found more than 350 ebooks published by ipicturebooks. A similar search at Amazon.com disclosed more than 90 current books published by ipicturebooks and a search of the Diesel eBook Store listed over 190 ipicturebooks books for sale.

Based upon these several common law searches and investigations, it is evident that plaintiffs' iBooks and ipicturebooks marks are actively used and regularly referenced in a wide variety of databases dedicated to the publishing industry. An appropriate common law search/ investigation would have quickly disclosed plaintiffs' iBooks and ipicturebooks marks. To have either failed to perform these investigations or to have ignored the results of an investigation is highly irresponsible.

I also reviewed a treatise entitled "Trademark Searching", first published in 1994, written by Glenn Gundersen, a copy of which is attached as Exhibit F. I understand that Mr. Gundersen and his firm have on several occasions, including in the early stages of this iBooks/IBOOKS conflict, provided trademark legal services to Apple. The overriding message of this treatise is that "A trademark search is the critical legal step in the process of selecting a new mark." In discussing the mechanics of the search process, Mr. Gundersen states at page 3:3 that:

> "A newcomer to the search process might expect that it would suffice to check the records of the U.S. Patent and Trademark Office. However, one cannot rely solely on such a search because registration with the Trademark Office is not a prerequisite to obtaining trademark rights in the U.S. Many valid trademarks exist at common law without ever appearing on the federal trademark register. Some appear in state registrations (although these registrations do not always reflect actual use); others are not registered at all. Thus, the search must encompass marks beyond those shown in federal applications and registrations."

Later in the same treatise, Mr. Gundersen states at page 3:11 that:

> "The preliminary search uses a limited number of resources and queries the searcher deems most likely to yield relevant marks with minimum effort. It serves to eliminate marks that are clearly unavailable; it does not attempt to reach a definitive answer on the availability of those marks that survive. Thus, while a preliminary search can yield a clear "no" to a proposed mark, it cannot yield a clear "yes". Only the potential for a "yes" can be reached at this point."

And, finally, Mr. Gundersen states at page 3:29 that:

> "When counsel finds a potentially conflicting mark, it is usually necessary to investigate further to determine if the mark has been abandoned, to better understand the nature of the goods or services sold under the mark and the marketing channels used, to ascertain the status of any pending applications and registrations..."

Despite the fact that Apple's attorneys are accomplished trademark professionals with years of experience, they appear to have departed from the recommended protocol of their own outside counsel and proceeded to use the IBOOKS mark in connection with downloadable books based solely upon a preliminary or screening search. They failed to order a more comprehensive full search or to undertake an appropriate investigation into the use of plaintiffs' iBooks mark, even

though they knew of its existence based upon their preliminary SAEGIS search and John Colby's January 29, 2010 e-mail. This failure to follow the customary steps in clearing the IBOOKS mark was a glaring omission and evidences a total disregard for the trademark rights of others.

6. *REGISTRATION NO. 2,446,634, TRADEMARK IBOOK:*

The Nature and Use of Family Systems' IBOOK Product is Significantly Different Than Apple's IBOOKS Product.

(a) On October 8, 1996, a U.K. company called Family Systems Limited filed an ITU application in the PTO (App. No. 75/182,820) to register the trademark IBOOK for "computer hardware and software used to support and create interactive, user-modifiable electronic books". Upon reviewing the application, the Trademark Examiner determined that the application was in order and a search of the Trademark Register and pending applications did not disclose any conflicting marks. The Trademark Examiner subsequently approved the IBOOK mark for publication in the Official Gazette ("OG"). (Publication of a mark in the OG allows any person who believes that they will be damaged by the registration of a mark an opportunity to oppose or object to the registration of that mark.) In this case, no opposition was filed and a Notice of Allowance was sent to Family Systems giving them six months to file a Statement of Use along with evidence that the mark is being used on the recited goods. At the end of the six months, Family Systems filed a First Request for Extension of Time to File a Statement of Use. The extension was granted and the Applicant obtained an additional six months to file a Statement of Use. (Trademark Rules allow for the filing of up to five requests for extensions of time and, since Family Systems had not yet begun to use the IBOOK mark, they eventually filed the maximum number of extensions stating in the second, third, fourth and fifth requests that "Applicant is still actively engaged in research and development in connection with the products

with which the mark will be used.") The PTO accepted the statement of Family Systems' ongoing efforts to use the mark and granted all five requests.

On November 6, 2000, Applicant was finally able to file the required Statement of Use claiming that the mark was first used on "computer hardware and software used to support and create interactive, user-modifiable electronic books" on October 27, 2000. The specimens showing how the mark is used consisted of (i) what appears to be a screenshot from a website maintained by hinmanconsulting which states:

"Welcome to TeamGirl

A Community Dedicated to Girl's Sports and related Activities

If you would like to to [sic] contribute to this site and/or create a personal Ibook on this site related to Girl's Sports, follow the links above to download and install the Family Systems Ibook Controller and to enroll in this site. Click on Identity Ibooks above to see a list of currently available Ibooks on this site.

Powered By Ibook Technology From family systems (Logo)

Send Comments to:webmaster@hinmanconsulting.com"

(ii) what appears to be another screenshot from a videoboy.com website which states:

"Welcome to VideoBoy

The purpose of this site is to provide a collaborative and self-extensible Ibook...
games. This site currently targets the Linux gaming community to assist such...
their Linux system to play Linux video games such as Quake3...
[The text on the right margin was cut-off in the file.]

Powered by Ibook Technology From family systems (Logo)

If you would like to become a contributor:

1) Download the Ibook Controller Setup Program
2) Become a Contributor (requires Ibook Controller)
3) View List of Current Contributors
4) View List of Current Identity Ibooks on this Site"

and (iii) what appears to be a label from an Ibook controller. These specimens were filed in the PTO because they show the actual use of the mark, the nature of the use and the manner in which the IBOOK mark is displayed. It is immediately apparent that the "electronic books" referred to in the registration are created by the user and devoted to specific "communities" of users. The IBOOK product itself does not contain a book or any other published work. It merely provides a framework on which to create one's own content. It is the electronic equivalent of buying a blank piece of paper and then having to write your own story. Upon acceptance of the Statement of Use, the PTO granted registration to the IBOOK mark on April 24, 2001, as Reg. No. 2,446,634.

In order to maintain this registration, Family Systems filed a Combined Declaration of Use and Incontestability Under Sections 8 & 15 on April 27, 2007. Family Systems stated therein that they were still using the IBOOK mark in connection with "all goods or services listed in the existing registration...", except for the item "hardware" which they deleted from the registration. This was presumably done to comply with the Consent Agreement with Apple (See Section 13). As evidence of their then current use of the IBOOK mark in connection with computer software, Family Systems attached a screenshot referring to "topic-rooms" which tells

the user to "Add your content here." With the deletion of "hardware", the PTO accepted the combined Declaration of Use and Incontestability. This was the status of Family Systems' IBOOK registration when it was transferred to Apple (*See* Section 8).

(b) In order to better understand what Family Systems' IBOOK software product is and how it works, I reviewed materials from Family Systems' IBOOK website for the period 1998 - 2010. These materials consist of page after page of references to "The IBook Help Site", "The Family Systems Ibook Ibook", "Family Systems Public Ibook", a repetitive advertisement for "Products Now Available" and "The Family Systems ibook Home Page" which lists "The ibook Family of Products" including:

"The ibook Controller	For creating and managing interactive books on webs. Ibooks enable and encourage collaboration.
The ibook Server	Software for hosting your own ibooks. Family Systems also provides web hosting services.
Fax Processor	Web publishing for documents received by fax
My Sharer	My Sharer automatically publishes files to the Internet.
Audio Recorder	Record, index and access your conferences and personal phone calls.
Progress List	Create and manage task lists"

Another promotional piece called "Welcome to try.ibooks.com" stated that "This site is for users of the Family Systems ibook system. On this site, you can create *your own ibook, and manage the content of that ibook* using the ibook controller and other Family Systems products. It operates under a set of site rules." (emphasis added). One of the few IBOOK sites having any content is called "Vikram's Travels", which appears to consist entirely of content created by a person named Vikram Singh describing his journey to Sri Lanka and India gathering family stories. Mr. Singh went so far as to copyright the content on these Web pages in his own name.

I also reviewed archived material from the http://try.ibook.com website. Family Systems' created this website to give people an opportunity to get a free trial ibook Web space:

> "Enroll for a trial subscription and we'll provide you with Web space on our trial site, try.ibook.com. Once enrolled, you can use our ibook form to create weblogs and begin publishing to the Web right away. With our Web Page Controller, *you can use any HTML editor to immediately create and modify your ibook's pages*, and to import voice recordings made with our Personal Audio Recorder. From try.ibook.com, you can also download our experimental and prerelease products and use them to construct comprehensive systems to share Web pages, chat and voice content alongside traditional PC media."
> (emphasis added).

The materials from the "Try IBOOK" website consist of several hundred "Identity Ibook" sites with personal names or monikers and little, if any, additional content. These web pages were created pursuant to Family Systems' offer to provide free webspace on a trial basis. Examples of weblogs with actual content include:

"UPA Voting Ibook:
IEEE P1583 Voting System Standards

> which was created for "members of the UPA Voting and Usability Project. It contains notes and files on the IEEE P1583 Voting System Standards sections on usability and accessibility and work with Task Group 3 (TG3). This ibook page was contributed by "upavoting".

"US Constitution Identity Ibook"

> with a further contribution titled "Life, Liberty & the Pursuit of Happiness" contributed by "national".
>
> "david ottershaw [ibook identity]" contributed by "yorkshireman"
>
> "Barbara McCandless's Ibook Web Site" contributed by "funwithpix" which includes the statement that "This is a private Web site for the exclusive use of the CM consultants in my downline and others to whom I've given access."

I also reviewed several examples of Family Systems' instruction, marketing and website content materials. Based upon all the aforementioned material, I have concluded that Family Systems' IBOOK system is best described as "a web content publishing tool" which allows users

to create, publish and share information via the Internet or intranet. The website is created by a sponsor who then controls the website and decides who shall be permitted access. Content is placed on the website and edited by the sponsor and other contributors. The IBOOK system can support a shared identity IBOOK which is visible to all enrollees to the site or a private identity IBOOK which is visible only to the owner of the IBOOK. The IBOOK system includes several features to allow the user to perform enhanced tasks, **many of which require the purchase of additional software or hardware**. In summary, Family Systems' IBOOK software system is a very different product with a very different use than Apple's downloadable electronic book or e-book product.[3]

Because Family Systems never used its IBOOK mark for the distribution of existing books, it had no trademark rights in the IBOOK mark for that use. Also, since goodwill is based upon consumers' recognition or mental association of a mark with a single source, there can be no goodwill in a "mark" which was never used.

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[3] I have reviewed the January 31, 2012 deposition transcript of Richard Goldhor, Ph.D., who was a technical consultant to Family Systems from 1996 to 2003/2004. During that time, he was instrumental in the development of the IBOOK software which he described as "an architecture for allowing a community to create material, including text, but not limited to text, and to publish it using web technologies, but to also make it possible for multiple members of the community to edit that material, comment on it, to create their own versions of it, and so forth." Dr. Goldhor describes Family Systems' IBOOK system as having user-generated content similar to Wikipedia, which allows the contribution and editing of shared content. On cross-examination, Dr. Goldhor was asked whether Family Systems' IBOOK technology could be used by commercial publishers to make their books available to others. He stated that the next technology could be used in this manner, but noted that any such books would have been created by users of the Family Systems' software. The several questions regarding the publication of a book via this IBOOK system were all hypothetical in nature. The fact is that Family Systems did not design the IBOOK product for this use and did not intend for it to be used as a vehicle for the distribution of published books. Dr. Goldhor even indicated that it would require a *future* generation of technology to make such a use possible.... a generation that never came! Trademark rights, however, are based on actual use of a mark in commerce in the ordinary course of trade. (emphasis added)

7. ***FAMILY SYSTEMS' U.S. PATENT NO. 6,411,993:***

Apple Failed to Acquire the Underlying Patent for Family Systems' IBOOK Product.

I read the general description of the invention in Family Systems' U. S. Patent No. 6,411,993 entitled "Interactive web book system with attribution and derivation features", which reads as follows:

> "An interactive Web book ("ibook") system is provided that allows material to be contributed to the World Wide Web. *An ibook is a self-extending, self-sustaining information-redistributing Web robot*, which is resident on a data network such as the Internet or an intranet. Users may enroll with an ibook as viewers or contributors. Viewers may view ibook material, such as text or multimedia content. Contributors may contribute original material to the ibook or may create derivations of existing ibook material. Attribution information that identifies the source of material in a derivation is automatically generated. Information concerning the derivation of each work and its characteristics can be used to help the user navigate through ibook material. The ibook system keeps track of how often users access each work within an ibook. Contributors may be automatically rewarded (e.g., by a monetary distribution) based on the extent to which their contributed material is viewed by the users." (emphasis added).

This same document explains the background of the invention in the following excerpt:

> "This invention relates to the Internet, and more particularly, to techniques for creating and viewing material on the World Wide Web in the form of an interactive Web book.
>
> The World Wide Web has made the Internet accessible to a broad range of people. One can search the Web and view a large amount of material using a Web browser. However, there is no satisfactory framework within the Web to encourage contributions of new material while rewarding contributors for their efforts. As a result, many people who might make meaningful contributions of entertaining or educational material to the World Wide Web do not make such contributions.
>
> It is therefore an object of the present invention to provide a way in which to facilitate the contribution of material using a data network such as the World Wide Web and to compensate the contributors of such material."

This patent appears to cover the totality of Family Systems' IBOOK product and to be integral to the continuation of the Family Systems business. The fact that it was not acquired by Apple along with the IBOOK trademark raises questions regarding the transfer of goodwill and the

validity of the trademark assignment (*See* Section 8). According to the PTO Patent Assignment records, this patent is currently owned by FASM Network Services, LLC, which, based upon the acronym, appears to be related to Family Systems Limited.

8. *THE ASSIGNMENT OF REGISTRATON NO. 2,446,634, TRADEMARK IBOOK, AND THE ROLE OF GOODWILL:*

The Assignment of the IBOOK Mark to Apple was an Invalid Assignment in Gross.

On January 29, 2010, Family Systems Limited signed a document transferring and assigning to Apple Inc. "all right, title and interest in and to [Reg. No. 2,446,634], any other rights or registrations that Family Systems may have in the mark and trade name IBOOK, including without limitation any common law rights, and the goodwill of the business pertaining thereto." Apple had known about this Family Systems' mark for almost eleven years and had even discussed the similarity of the marks and negotiated a Letter of Consent with Family Systems in 1999 (See Para .13). Yet Apple did not purchase the Family Systems' mark until the very day that plaintiff, John Colby, sent an e-mail to Mr. Dowling at Apple informing him of plaintiffs' prior use of the iBooks mark. Mr. Colby's e-mail to Apple and the assignment of the IBOOK mark are both dated January 29, 2010. This "coincidence" in timing can best be explained by the fact that Family Systems' IBOOK registration had a priority date of October 8, 1996, the date on which it was filed in the PTO as an ITU application.

I have reviewed an internal Apple invoice stating that Apple paid Family Systems for the IBOOK trademark. *See* Exhibit G. After acquiring the mark, Apple made no effort to continue the business which had reportedly been using the mark since October, 2000. This leads to the question of why did Apple pay so much money for a trademark used in connection with a business which they abandoned? Once Apple received actual notice of plaintiffs' earlier claim to the iBooks mark, there was an urgent need for them to acquire the

earlier priority date of Family Systems' registration. Based upon the timing of the purchase and the exorbitant amount paid, one is left with the clear impression that the sole motivation for Apple's acquisition of the IBOOK mark and registration was in an ill-fated attempt to acquire a priority to defeat plaintiffs' anticipated claim to the iBooks mark. While this is may be a legitimate reason for acquiring a trademark, it calls into question whether the mark was properly assigned.

Trademarks are a type of property and, as such, they may be bought and sold. However, because of the unique nature of trademarks, there are specific rules which must be followed in order for an assignment to be valid and effective. The most important of these rules is the requirement that the goodwill associated with the mark be included in the assignment. While the assignment language quoted in the above paragraph refers to "the goodwill of the business pertaining thereto", we must look beyond the document itself to see whether this requirement was in fact met. If not, the assignment is invalid and Apple's attempt to acquire priority will fail.

What is goodwill? Unlike most property, a trademark has no physical existence except as it may be printed on labels and packaging or as it appears in advertisements, promotional materials and the like. It is a symbol of the source, quality and reputation of the product on which it is used. When a trademark is effectively transferred from one owner to another, it is not only the symbol or trademark which is being transferred, but also the consumer recognition and drawing power represented by that symbol. To illustrate the identifying role of a trademark, we need only imagine entering a grocery store intending to buy ketchup and being faced with shelf after shelf of ketchup made by several different companies... how do we know which ketchup to buy? Fortunately, all of the ketchup bottles bear a trademark which allows the consumer to make an informed decision. This decision is made upon seeing the Heinz label, the Hunts label,

the Del Monte label, the store brand label or some other brand which identifies the product and informs the consumer of the nature and quality of the product. The consumer may choose the Heinz ketchup simply because they have always used it and prefer this brand, they may select the Hunt's brand because it is what their mother always bought, or they may buy the Del Monte brand because they like its flavor. Whatever the reason, the purchasing decision is made upon seeing the trademark. It allows the consumer to make an informed decision which would not be possible without this identifying symbol. The mental association or recognition created by the trademark in the mind of the consumer is called "goodwill". It is this recognition and brand loyalty which makes a trademark so valuable. A leading commentator on trademark law, Professor Thomas McCarthy, explains goodwill as follows:

> "a trademark is merely a symbol of goodwill. But it is not easy to give a simple, sweeping definition of what goodwill is. 'Goodwill' is not a tangible, physical object that can be seen, felt and tasted. Its real existence is in the minds of the buying public."

McCarthy on Trademarks and Unfair Competition, 4th ed., Section 2:17.

Any assignment of a trademark *must* include the accompanying goodwill. Again quoting Prof. McCarthy:

> "Goodwill and its symbol, a trademark, are inseparable. A trademark has no independent significance apart from the goodwill it symbolizes. If there is no business and no goodwill, a trademark symbolizes nothing. For this reason, a trademark cannot be sold or assigned apart from the goodwill it symbolizes."

McCarthy on Trademarks and Unfair Competition, 4th ed., Section 2:20.

If goodwill is an intangible asset, how can we determine whether it has been assigned with the mark? We have to look at the totality of the assignment to see whether any other assets, such as patents, trade secrets, customer lists, specialized equipment and physical inventory, were transferred with the mark. The reason that we look to these types of assets is because they are often essential for the purchaser to continue the stream of business identified by

the mark. Upon reviewing the June 29, 2010 assignment document, it appears that only the trademark, without the requisite *accompanying* goodwill, was assigned to Apple. Apple acquired no other assets that would allow it to continue the business that had been identified by Family Systems' IBOOK mark for many years. Perhaps the most glaring omission was U.S. Patent No. 6,411,993, which was discussed in Section 7. This patent protects the manufacture, distribution and sale of the IBOOK interactive Web book system. That this patent was not assigned is powerful evidence that Apple never intended to use the IBOOK mark on the same goods or in the same business as its predecessor. Apple did the very thing that Prof. McCarthy warned against.... it separated the IBOOK mark from its goodwill. A trademark assignment without the accompanying goodwill in the mark -- an "assignment in gross" -- is an invalid assignment which fails to transfer any rights in the mark to the buyer, including a priority of use.

Another way of determining whether the requisite goodwill remains with the mark is to examine the assignee's use of the mark post-transfer. As previously noted, Family Systems used the IBOOK mark in connection with an interactive Web book system designed to allow material to be created and shared on the Internet. It is a sophisticated system consisting of software and several components which allows users to contribute and/or view material on the World Wide Web. The content on the Family Systems' IBOOK product is created and managed by the user, it is not sold as part of the product. The purchaser is in effect buying a blank online diary or journal onto which they can enter their own content to share with others via the Internet. The benefit to the user is that he/she can write whatever they want via the IBOOK software and then manage it and share it with others. The Family Systems' IBOOK product is not, and never was, a book or a vehicle to purchase finished books published by others.

One of the SAEGIS searches disclosed registrations for Family Systems' IBOOK mark in the European Union (covering the 27 EU member countries) and Japan. *See* Exhibit H. Even though Apple is a multinational corporation with extensive worldwide distribution and sales of its products, it appears to have made no attempt to purchase Family Systems' IBOOK registrations in these jurisdictions. This is yet another indication that Apple had no intention of ever using the IBOOKS mark to continue Family Systems' IBOOK business. Rather it once again appears that the only reason Apple purchased the mark was in an attempt to defeat plaintiffs' earlier rights in the mark. This failure to continue Family Systems' use of the IBOOK mark, but instead to use it on a significantly different product, is further evidence of an assignment in gross.

Apple, on the other hand, uses the IBOOKS and IBOOKSTORE marks to identify a means of distributing previously published books in electronic form. Most everyone is familiar with Apple's IBOOKS and IBOOKSTORE products from its widespread advertising and promotion. These products are described as "A novel way to buy and read books....Download the iBooks app from the App Store. Load up on books from the iBookstore. Take them to more places than you'd ever take a regular book." Apple's IBOOKS and IBOOKSTORE products allow the user to select from a library of over 700,000 existing books and transform those books into a more mobile, more flexible and more convenient form. While Apple's IBOOK is a remarkable product and has met with tremendous commercial success, it is simply another method of marketing and distributing existing books.

A comparison of Family Systems' use of its IBOOK mark and Apple's use of the IBOOKS and IBOOKSTORE marks, shows them to be very different products, with very different uses. McCarthy on Trademarks and Unfair Competition, 4th ed., Section 18:24 states:

> "when the purported assignee does not make products of the same quality and nature as those made by the assignor, then the assignment is in gross and not effective to achieve priority. "

It should also be noted that Apple not only changed the product on which they used the mark, but they also amended the mark as well (from IBOOK to IBOOKS; *see* Section 9) to better fit the "library" concept of the product.

Why is the transfer of the goodwill so important? Professor McCarthy provides the answer:

> "If one obtains a trademark through an assignment in gross, divorced from the goodwill of the assignor, the assignee obtains the symbol, but not the reality. Any subsequent use of the mark by the assignee may be in connection with a different business, a different goodwill and a different type of product. The continuity of the thing symbolized by the mark is broken. Use of the mark by the assignee in connection with a different goodwill and different product may result in a fraud on the purchasing public, who reasonably assume that the mark signifies the same nature and quality of goods or services, whether used by one person or another. The law's requirement that goodwill always go with the trademark is a way of insuring that the assignee's use of the mark will not be deceptive, and will not break the continuity of the thing symbolized by the assigned mark."

McCarthy on Trademark and Unfair Competition, 4th ed., Section 18.3.

Given (i) the initial failure to transfer the goodwill associated with the mark as part of the assignment and (ii) the significant change in the nature and use from the original product, the transfer of the IBOOK mark to Apple was an assignment in gross. As such, it was an invalid assignment which failed to transfer both the mark and the priority to Apple.

9. *APPLE'S AMENDMENT AND RENEWAL OF REGISTRATION NO. 2,446,634, IBOOKS (AS AMENDED):*

Apple's Statements in the Declaration of Use Constituted Fraud on the PTO.

Following the recordal of the assignment of the IBOOK registration in the PTO and the appointment of Apple's in-house counsel as the new attorney of record, Apple filed a request to

amend the mark from IBOOK to IBOOKS on May 17, 2010. In making this request, Apple's attorney stated that:

> "The proposed amendment to the mark does not materially alter the character of the mark in the registration and does not render it sufficiently different to require republication. The new form of the mark has the same meaning as, and contains the essence of, the original mark. The addition of "S" - changing the mark from IBOOK to IBOOKS – creates the impression of being essentially the same mark, so that consumers readily understand the mark to be the same."

The PTO accepted this amendment to the mark so that the mark shown in Registration No. 2,446,634 now reads as IBOOKS. No other changes were made to the subject registration at that time. It is noted that Apple's attorney specifically stated that "consumers readily understand the mark to be the same" as the original IBOOK mark as used by Family Systems. Unfortunately, however, Apple not only changed the mark, but, as discussed in Section 6, contrary to counsel's representation to a government agency, it significantly changed the nature and use of the goods on which the mark had been used by Family Systems.

In order to maintain a registration, the registrant must file a Declaration of Continued Use and/or Excusable Nonuse under Section 8 of the Trademark Law and an Application for Renewal under Section 9 of the Trademark Law during the twelve month period prior to each ten year anniversary of the issuance of the registration. These two documents are often filed together in a Combined Declaration. The purpose of the Section 8 filing is to remove those registered marks which are no longer being used, sometimes referred to as "deadwood", from the Trademark Register. If these documents are not timely filed and accepted by the PTO, the registration will be cancelled pursuant to Section 8 or expire pursuant to Section 9. In this case, Apple timely filed the Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal of Registration of a Mark under Sections 8 & 9 on June 7, 2010.

In the Section 8 Declaration of Use, Apple stated that "the mark is in use in commerce on or in connection with **all** goods or services listed in the existing registration" (emphasis in the original). This statement of continued use of the mark is the essence of the Section 8 filing. The list of goods in the subject registration reads: "Computer software used to support and create interactive, user-modifiable electronic books." The problem is that Apple was not using, and never did use, the IBOOKS mark in connection with the goods recited in the registration. As discussed in Section 6, Apple's use of the IBOOKS mark on downloadable books and the electronic transmission of streamed and downloadable books is a very different product/service from that recited in the subject registration.

Because of these differences, Apple's use cannot possibly support its statement of continued use of the IBOOKS mark in Reg. No. 2,446,634. Cognizant of the differences between the respective products, Apple still signed an official document and filed it in the PTO stating that the IBOOKS mark was in use in connection with "computer software used to support and create interactive, user-modifiable electronic books." To support this statement, Apple submitted a screenshot of its online IBOOKS bookstore. The problem with this specimen, however, is that it shows the IBOOKS mark being used in connection with Apple's library of published books, not with the computer software used for creating user-modifiable books recited in the registration. It does not support the use claimed in the Section 8 Declaration of Use.

These statements were made on June 7, 2010, pursuant to a declaration under the federal False Claims Act and signed by Apple's in-house attorney stating that:

> "The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true."

These false statements raise the question of whether they were knowingly made with the intent to deceive the PTO into maintaining this IBOOKS registration in full force and effect so that Apple could claim priority of use of the IBOOKS mark in defense of this lawsuit. If so, this fraud on the PTO should result in the cancellation of Registration No. 2,446,634.

10. *TRADEMARK DISTINCTIVENESS / DESCRIPTIVENESS:*

Plaintiffs' iBooks Mark is Suggestive and Inherently Distinctive.

In selecting a new trademark, one must consider not only the availability of the mark, but also the strength of the mark. One must determine whether the mark has any descriptive meaning in relation to the goods on which it will be used. The strength of the mark and how it is treated depends upon where it fits on the following spectrum (from the strongest marks to the weakest marks):

(a) Fanciful or arbitrary marks. Fanciful marks consist of those marks which are made up or invented words, such as EXXON, KODAK and GOOGLE, and which are created for the exclusive purpose of functioning as trademarks. Arbitrary marks consist of existing words in the common language, but which have no relationship to the goods on which they are used. They do not describe or even suggest any characteristics, i.e., nature, quality, use, etc., of the goods. Examples of arbitrary marks include SHELL for gasoline, APPLE for computers, YAHOO for computer services and AMAZON for online retail services. Fanciful and arbitrary marks are inherently distinctive and can function as trademarks immediately upon adoption and use in commerce. These are the strongest and easiest marks to protect.

(b) Suggestive marks. As the name says, these marks consist of words which suggest one or more characteristics of the goods on which they are used. Examples of suggestive marks include MOBIL for gasoline, IVORY for white bar soap and IGLOO for coolers. These marks

evoke, but do not actually describe, a feature or use of the goods. Suggestive marks are also inherently distinctive and begin to serve as trademarks immediately upon adoption and use.

(c) Descriptive marks. Unlike suggestive marks, these marks are merely descriptive of a characteristic or feature of the goods on which they are used. These characteristics may include the purpose, use or function of the goods, the ingredients of the goods, the intended users of the goods, or the nature or quality of the goods. It is often difficult to determine whether a mark falls into the suggestive or descriptive category. For a mark to be descriptive, it must *clearly* and *directly* describe a characteristic of the goods. If imagination and thought is required in order to make a connection to the product, the mark will be deemed to be suggestive. The distinction between descriptive and suggestive marks is important because suggestive marks are, as noted above, inherently distinctive and can function as trademarks immediately upon adoption and use, whereas descriptive marks must pass another "test" in order to be recognized and protected as trademarks. Descriptive marks must have acquired distinctiveness or "secondary meaning" before they can function as trademarks.

What is "secondary meaning" and how is it acquired? Consumers are accustomed to seeing descriptive terms freely used in the marketplace by a variety of companies. However, if one of those companies should begin to use, advertise and promote that term as a trademark over an extended period of time, consumers may come to associate that term with a particular product. This consumer association or recognition of the word as a source identifier is called "secondary meaning". While the original descriptive meaning of the word remains, there is now a new or "secondary meaning"of the word. When a descriptive term has acquired secondary meaning, it will be recognized and protected as a proprietary trademark. Rather than being just a descriptive term, the mark now creates a mental association with a particular product from a single source.

It is not necessary that the consumer know the identity of that source or the company behind the product, only that the consumer recognizes the word as an identifying trademark. Secondary meaning is acquired via use, advertising and promotion of the mark usually over a period of years. While there is no specific length of time of use required, in the case of a massive new product launch and advertising campaign, it may be acquired in days, but in most cases it is a gradual process over several years. A good indicator of what is generally required is set forth in Section 2(f) of the Lanham Act and used by the PTO when they encounter an application to register a descriptive mark, which states that:

> "The Director may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made."(emphasis added).

(d) Generic terms. These terms consist of the actual name of the goods. For example, terms such as "e-book" for electronic books, "auto" for a car , "mart" for a supermarket or "guide" for a how-to book, can never function as trademarks. They must remain in the "public domain" for everyone to use.

Where does plaintiffs' iBooks mark fit into this spectrum of distinctiveness? Since the generic name for plaintiffs' goods is "e-book", iBooks is not a generic term. Also, the fact that the PTO has on more than one occasion granted a registration for the IBOOKS mark is further evidence that it is not the generic name for the product.

Having determined that iBooks is not a generic term, one must turn to the question of whether it is a suggestive or a descriptive mark. Plaintiffs' iBooks mark does not convey an immediate, direct and unequivocal description of the goods or of any characteristic of the goods. It is unclear as to what "ibooks" means..... does it refer to "interactive" books, "internet" books, "intelligent" books, "independent" books, "information" books, "imagination" books or some

other type of "i" book? It is not immediately clear as to what the mark means. Because of this lack of clarity, imagination, thought and perception is required in order to establish any direct descriptive reference to the goods. This need for "mental gymnastics" means that the mark is not merely descriptive, but suggestive and inherently distinctive.

The PTO file history of plaintiffs' predecessor's application to register the mark iBooks, which was filed on August 27, 1999 (App. No. 75/786,491, see Section 12 below) provides support for the conclusion that iBooks is not descriptive. In that application, the Trademark Examiner refused registration on the grounds, among others, that the mark iBooks was misdescriptive (emphasis added). If the Trademark Examiner believed the mark to be misdescriptive, which it is not, it cannot possibly be descriptive.[4]

Even if plaintiffs' iBooks mark were to be classified as merely descriptive -- which it is not -- it has acquired secondary meaning based upon thirteen years of substantially exclusive and continuous use. Between 1999 when the mark was first used and June, 2002, plaintiff had iBooks sales of more than $5,000,000, and spent more than $250,000 in advertising and promoting the iBooks product. (*See* Office Action Response to the above-noted PTO refusal of the iBooks application). Total iBooks sales to distributors for the years 2003 – 2011 exceeded $20,000,000. *See* Dep. of John T. Colby, dated July 18, 2012, at 161 – 169; 186 – 190. While sales of plaintiffs' iBooks titles decreased following Byron Preiss' unexpected death, sales have been continuous since 1999, and John Colby's company has been using the mark consistently, selling hundreds of copies of books from the iBooks back catalog and also launching and selling several new iBooks titles every year. *Id.* at 170. These numbers do not approach the massive

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[4] In any event, the application was abandoned before this issue could be finally resolved.

sales and overwhelming advertising and promotional expenditures of Apple's IBOOKS product, but they are more than sufficient to support a finding of secondary meaning.

11. *PLAINTIFFS' ACQUISITION OF THE iBooks TRADEMARK AND BUSINESS:*

Plaintiffs' Properly Acquired the iBooks Trademark Out of Bankruptcy.

As previously noted, the founder of the iBooks, Inc. business, Byron Preiss, died unexpectedly in July, 2005, and despite its best efforts, the iBooks business could not financially weather this loss and declared bankruptcy on February 22, 2006 under Chapter 7. Upon the conclusion of the bidding and auction process, plaintiff, J. Boyleston & Company, Publishers, LLC, purchased all of the assets of iBooks, Inc. on December 13, 2006. The "Amended Terms and Conditions Relating to the Purchase and Sale of the Assets of Byron Preiss Visual and Ibooks" listed all of the assets purchased by plaintiffs including, but not limited to, "Trademarks, imprints, service marks, trade dress, logos, trade names, corporate names, and source identifiers" belonging to Byron Preiss Visual and Ibooks. *See* Exhibit I.

In addition to the trademarks, plaintiffs purchased all of the assets necessary to continue the iBooks business as it had been conducted prior to Mr. Preiss' death. In fact, plaintiffs have continued to publish many of the same works, plus new titles, under the iBooks trademark since acquiring the business. As plaintiffs' purchased the entire iBooks business and continued to publish under the iBooks trademark post-acquisition, the mark and the associated goodwill remained intact and were successfully transferred to the plaintiffs.

Consistent with the purchase of all of the iBooks assets, J. Boyleston & Company, Publishers, LLC immediately filed an assumed name certificate for the name "iBooks" with the New York Department of State. *See* Exhibit J. Unlike Apple, plaintiffs' had every intention of continuing the iBooks business as it had been conducted by Byron Preiss since 1999, and the prompt recordal of the iBooks name is confirmation of this business plan..

12. ***iBooks Inc.'s TRADEMARKS iBooks (APPLICATION NO. 75/786,491) AND iBookstore.com (APPLICATION NO. 75/786,490):***

Although Both Applications Were Abandoned, Plaintiffs Continued to Use the iBooks Mark.

On August 27, 1999, iBooks, Inc., filed an ITU application in the PTO to register the mark iBooks for "books" (App. No. 75/786,491). The application was signed by Byron Preiss, President of iBooks, Inc. The application was subsequently amended to cover "books, namely, a series of fiction books; non-fiction books in the field of science." Upon examination of the application, the Trademark Examiner refused registration on the grounds that the mark is (i) confusingly similar to two prior registered IBOOK and IBOOKS marks and (ii) misdescriptive as used in connection with the goods recited in the application. iBooks, Inc.'s attorneys at the time filed a response to the PTO Action, but the Trademark Examiner continued to refuse registration and the application was abandoned in due course.

iBooks, Inc. filed a second ITU application on the same day to register the mark iBooksinc.com for "computerized on-line ordering services in the field of printed publications" and "providing a website on global computer networks featuring information on the field of printed publications". This application was also signed by Byron Preiss. The Trademark Examiner again refused registration claiming confusingly similarity with the same IBOOK and IBOOKS marks noted above. A second basis for refusal claimed that this mark was descriptive of the recited Internet website services. Much the same response was filed, but it too was rejected and the application was abandoned. Even though iBooks, Inc. failed in its attempt to register these trademarks, plaintiff continued to use the iBooks mark and the iBooks, Inc. name in the ordinary course of trade (*See* Section 5).

Wanting to see if these two marks would be found in a preliminary search, I ran a search of the PTO's Trademark Electronic Search System (TESS). The TESS search system was

created by the PTO to assist trademark attorneys and others in "clearing" new or expanded trademarks. It is available for all to use, free of charge, and it (or a similar commercial database) should be the first place to look when trying to determine whether a proposed mark is available. After entering the TESS website at http://tess2.uspto, selecting the search option "Word and/or Design Mark Search (Free Form) and typing in the search query "ibook", the search disclosed twelve trademark records, four of which belonged to Apple. iBooks, Inc.'s iBooks and iBooksinc.com marks were numbers 9 and 10 on the list, even though the applications had been abandoned. These eight non-Apple owned marks should have triggered a further investigation. Unfortunately, Apple apparently chose to disregard the preliminary search results and failed to take the appropriate next step in clearing the IBOOKS mark.

13. ***APPLE'S TRADEMARK IBOOK (REGISTRATION NO. 2,470,147):***

Apple's Original IBOOK Registration is Limited to Computer Hardware and Required Family Systems Consent to Register.

On November 6, 1998, Apple Computer, Inc. filed an Intent to Use application (App. No. 75/584,233) in the PTO to register the trademark IBOOK for "computers, computer hardware, computer peripherals and users manuals sold therewith." The Trademark Examiner reviewed the application for the mandatory information and conducted a search of the federal Trademark Register and of pending applications for any confusingly similar marks. While the search did not disclose any similar registered marks, it did locate an earlier filed pending application (App. No. 75/182,820) for the mark IBOOK for "computer hardware and software used to support and create interactive, user-modifiable electronic books", filed by Family Systems Limited.

Believing Apple's IBOOK and Family Systems' IBOOK marks to be potentially confusingly similar when used on the goods recited in their respective applications, the Trademark Examiner issued an Office Action dated June 23, 1999, suspending action on Apple's

application pending the disposition of Family Systems' IBOOK mark. The Trademark Examiner stated that if, and when, registration is granted to the earlier filed mark, it may be cited against Apple's IBOOK application as a bar to registration.

In its response to the Office Action, Apple drew a distinction between Apple's IBOOK mark for computers and Family Systems' IBOOK mark for computer hardware and software used to support and create interactive, user- modifiable electronic books. In support of this acknowledgment, Apple submitted a Consent Agreement from Family Systems Limited which recited the differences between the trade channels, stylizations and uses of the respective marks. The Consent Agreement, for which Apple paid (see Goldhor deposition transcript, pages 69-70), stated, in part:

> "The parties agree that their respective products and services, as defined in Paragraphs 1 (Apple's "notebook computers") and 2 (Family Systems' "computer hardware and software used to support and create interactive, user-modifiable electronic books") of this Agreement are distinctively different and, if used in accordance with this Agreement, the parties' use of their respective IBOOK marks are not likely to create a likelihood of confusion..."
>
> "APPLE shall further limit its use of the mark to products and services that come within the description in Paragraph 1 above ("notebook computers") and will specifically not use or attempt to register the mark IBOOK, or any mark similar thereto, on any of the products or services coming within the description in Paragraph 2 above ("computer hardware and software used to support and create interactive, user-modifiable electronic books"). APPLE shall limit its registration of the IBOOK mark or any mark similar thereto to notebook computers and related computer hardware and peripherals used in connection with the notebook computers and users manuals sold therewith."

The Trademark Examiner accepted Apple's argument and specifically relied on the statements made in the supporting Consent Agreement and removed the application from suspension and approved the mark for publication in the Official Gazette ("OG"). A company called Softbook Press, Inc. requested an extension of time to oppose the IBOOK mark, but ultimately elected not to file a Notice of Opposition.

Accordingly, since registration of the mark was not opposed, the PTO issued a Notice of Allowance on February 6, 2001, giving Apple six months to begin bona fide use of the IBOOK mark in interstate commerce on "computers, computer hardware, computer peripherals and user manuals sold therewith." In this instance, Apple was able to file the Statement of Use on February 21, 2001, claiming interstate use of the IBOOK mark on the recited goods beginning as of July 21, 1999. As a specimen, Apple filed a printout of its online store where a consumer can purchase an iBook computer. The Trademark Examiner reviewed the Statement of Use and the accompanying specimen showing use of the mark and approved Apple's IBOOK mark for registration, which was granted on July 17, 2001, as Reg. No. 2,470,147.

As noted in Section 6(a), following the grant of a registration, the registrant is required to file a Declaration of Use between the fifth and sixth anniversary of the registration date or, in this case, between July 17, 2006 and July 17, 2007, in order to maintain the registration. The Declaration of Use must include a statement that the registered mark is still in use on the goods recited in the registration and a specimen showing how the mark is currently being used. Apple, Inc. (by change of name from Apple Computer, Inc., dated January 9, 2007) filed the required Declaration and supporting specimen on July 20, 2006. The specimen submitted with Apple's Declaration of Use shows the mark printed on the display bezel of an IBOOK notebook computer.

In addition to the filing of the Declaration of Use, the owner of the registration must file a Combined Declaration of Use and Application for Renewal of the registration at each ten year anniversary of the registration. Failure to do so will result in the expiration of the registration. Apple filed the requisite documents on January 17, 2012. In doing so, the goods listed in the registration were amended by deleting the items "computers, computer peripherals and users

manuals sold therewith". The registration now covers only "computer hardware." As of the date of this report, Apple's federal registration for the IBOOK mark, limited to computer hardware only, remains in full force and effect.

14. *APPLE'S IBOOKS (APPLICATION NO. 85/008,412), IBOOKSTORE (APPLICATION NO. 85/008,432) AND OTHER PREFIX "i" MARKS:*

Apple's Prefix "i" Marks are Famous Marks That are Immediately Associated with Apple.

In April, 2010, in anticipation of its introduction of the iPad and the IBOOKS e-book library, Apple filed ITU applications in the PTO to register the marks IBOOKS and IBOOKSTORE for a wide variety of goods and services connected to books, including "downloadable electronic publications in the nature of books..." (Class 9); "printed matter; printed publications; periodicals; *books*..." (Class 16); "retail store services in the field of *books*..." (Class 35); "electronic transmission of streamed and downloadable electronic publications for browsing over computer networks, namely *books*, magazines, periodicals..." (Class 38); and "educational and entertainment services; providing electronic *books*..." (emphasis added) (As noted in Section 5, the IBOOKS application was subsequently amended to delete Classes 16, 38 and 42 while the IBOOKSTORE application continues to seek registration in all six of the original Classes.) It is evident from the listing of "books" throughout these applications that Apple intends to use the IBOOKS mark in connection with books.

In reviewing the two applications, the Trademark Examiner refused registration of both marks on the grounds that they "merely describe features and functions of applicant's goods and services." In response to these refusals, Apple argued that consumers will see the IBOOKS and IBOOKSTORE marks as members of "Apple's family of famous marks that begin with the prefix 'i'" and that they will not perceive the prefix "i" as an abbreviation for "Internet." Apple also argued that these marks should be allowed based upon its earlier IBOOK (Reg. No.

2,470,147; *see* Section 14) and IBOOKS (Reg. No. 2,446,634; *see* Sections 6 and 9) registrations both of which were found to be inherently distinctive.

The bulk of the response stressed the fame of Apple's many "i" prefix marks, with Apple arguing that because these brands are so widely recognized by the public, consumers will immediately associate the IBOOKS and IBOOKSTORE marks with Apple. Apple made the following statement:

> "The IBOOK laptop, the IPOD media player, the ITUNES software and iTunes Store service, and the IPHONE digital mobile device were all particularly influential in *cementing the public perception that the 'i'-prefix brand is synonymous with Apple*. Each of them ranks as a landmark product offering, and the IBOOKS mark follows in their footsteps...."

Office Action Response dated December 29, 2010 (emphasis added).

In an attempt to convince the Trademark Examiner of the fame and breadth of their family of prefix-i marks, Apple submitted more than 400 pages of "evidence" (which in my experience is an exceptionally large submission). These materials consist of copies of approximately 60 active federal registrations and pending applications of Apple's prefix-i marks, several articles touting the tremendous success of its iPod, iTunes, and iPhone products/services, and other articles noting that:

> "Apple's 'i'-branding is so widely recognized that the public has come to expect each new Apple product to follow that nomenclature."

> "in light of Apple's longtime identification with the IBOOK mark, and its use of the other famous 'i'-prefix brands, consumers immediately recognize IBOOKS as a member of Apple's family of marks."

An almost identical response was filed in connection with the co-pending IBOOKSTORE application. Despite Apple's arguments and submissions to the contrary, the Trademark Examiner maintained and continued the descriptiveness refusals under Section

2(e)(1) and issued a Final refusal of the IBOOKSTORE application. Apple has until October, 2012 to respond to both PTO Office Actions.

In order to show the extent of Apple's trademark portfolio, I have prepared and attached a Schedule of Apple, Inc.'s Prefix "i" Trademark/Service Mark Registrations and Pending Applications as Exhibit K.

15. ***OTHER INFRINGEMENT CLAIMS INVOLVING APPLE'S PREFIX "i" MARKS: Apple has been Accused of Trademark Infringement on Numerous Occasions.***

In preparing the above-referenced schedule of Apple's prefix "i" trademarks, I reviewed the status/history of several well-known Apple trademarks, including, iAd, iPad, iPhone and iCloud (plus the subject of this litigation, the IBOOKS mark) and found that all of the above-listed marks have at one time or another been the subject of trademark infringement claims against Apple. Specifically:

(i) In January, 2007, Cisco Systems, Inc. filed a trademark infringement lawsuit against Apple in the U.S. District Court for the Northern District of California, claiming that Apple's iPhone mark infringed Cisco's IPHONE mark;

(ii) In January, 2010, Fujitsu Frontech North America, Inc. challenged Apple's use of the iPad mark, claiming that it conflicted with Fujitsu Frontech's earlier iPad mark;

(iii) In June, 2010, Innovate Media Group LLC filed a trademark infringement lawsuit against Apple in the U.S. District Court for the Central District of California, claiming that Apple's iAd mark infringed Innovate Media's iAds mark; and

(iv) In June, 2011, iCloud Communications, LLC filed a trademark infringement lawsuit against Apple in the U.S. District Court for Arizona, claiming that Apple's iCloud mark infringed iCloud Communications' iCloud mark.

In addition to the "i" trademark claims listed above, Apple has encountered challenges to its use of such other marks as Apple and Mighty Mouse. This recurrence of adverse trademark claims is highly unusual and has been widely reported in the media with such comments as:

> "Apple sued for trademark infringement, again."
> (www.macgasm.net/2011/6/10/apple...)
>
> "Apple seems to have a pretty simple philosophy when it comes to announcing new products-announce today, worry about the legalities tomorrow."
> (www.macgasm.net/2011/06/10/apple...)
>
> "Apple has a history of naming its products first, and worrying about trademark infringement later." (PCWorld at www.pcworld/article/188137/ipad.....)
>
> "Trampling the rights of others' again." (The register, posted June 14, 2010
> www.theregister.co.uk/2010/06/14/innovate_media...)
>
> "for the most part, Apple's announce now and deal with the legal ramifications later approach has landed them in some hot water from time to time."
> (www.macgasm.net/2011/06/10/apple-sued;
>
> "iPad: Just the latest Apple Trademark Dispute"
> (www.pcworld.com/article/188137/ipad...).

Apple's pattern of adopting new trademarks and, after the fact, repeatedly encountering conflicting claims can only be the result of either shoddy clearance procedures, corporate arrogance or a blatant disregard for the trademark rights of others'.

16. *OPINIONS.*

For the reasons set forth above, it is my opinion that:

(i) Apple failed to conduct an appropriate clearance search of the IBOOKS mark prior to its use in connection with downloadable books and the electronic transmission of streamed and ownloadable books and thereby disregarded the trademark rights of others.

(ii) Family Systems' assignment of the IBOOK mark and Reg. No. 2,446,634 to Apple was an invalid assignment in gross and failed to give Apple any priority of use.

(iii) Apple's post-acquisition use of the IBOOKS mark was entirely different than Family Systems' use of its IBOOK mark, thus making the transfer an invalid assignment in gross.

(iv) In the Declaration of Use filed in Reg. No. 2,446,634, Apple appears to have knowingly made false statements with the intent to deceive the PTO, which misled the PTO and which should result in the cancellation of said registration.

(v) The iBooks trademark is a suggestive and inherently distinctive mark as applied to plaintiffs' goods.

(vi) The assignment of the iBooks mark in bankruptcy to plaintiffs was a valid transfer of the mark and the goodwill associated therewith.

I understand that Apple employees and others will be providing testimony and may be producing additional documents regarding the subject matter of this report. Therefore, I reserve the right to amend or supplement this report following their testimony or the production of additional documents.

This 17 th day of September, 2012

Robert T. Scherer

Robert T. Scherer

EXHIBIT A

Curriculum Vitae
of
Robert T. Scherer

216 Long Cove Court
Sunset, SC 29685
Phone: (864) 868-4480
Email: robertscherer14@gmail.com

Overview:

Mr. Scherer has 33 years of experience in trademark law as a Trademark Examiner in the U.S. Patent and Trademark Office, as an Associate attorney with Pennie & Edmonds and as a corporate Trademark Attorney with PepsiCo, Inc. and Time Inc./Time Warner Inc. His experience includes trademark selection, trademark searching and clearance, preparation and prosecution of trademark applications in the PTO, international trademark filing programs, maintenance and renewal of U.S. and foreign registrations, trademark assignments, trademark licensing and Internet domain name registration and enforcement programs.

Education:

Bachelor of Arts: Albion College, Albion, MI, 1969
Juris Doctorate: Wayne State University Law School, Detroit, MI, 1972

Licenses:

District of Columbia Bar Association, 1973
New York State Bar Association, 1976

Legal Experience:

U.S. Patent and Trademark Office, 1972 – 1974

Trademark Examiner:

- Examined applications for compliance with mandatory filing requirements.
- Conducted searches of the Federal Register and pending applications for confusingly similar marks under Section 2(d).
- Reviewed marks for descriptiveness, misdescriptiveness, geographic descriptiveness, etc. under Section 2(e).
- Reviewed assignment documents for compliance with filing requirements.
- Reviewed Section 8 Declarations of Use and Section 15 Declarations of Incontestability.
- Reviewed Section 9 Renewal Applications.
- Prepared ex parte appeal briefs to the TTAB.
- Drafted decisions on interlocutory motions filed before the TTAB.

Pennie & Edmonds, 1974 – 1979

Associate Attorney:

- Reviewed preliminary availability searches, comprehensive full searches and investigated potentially conflicting marks.
- Wrote opinion letters re trademark availability and registrability.
- Prepared and filed trademark and service mark applications in the PTO.
- Reviewed PTO Office Actions and prepared responses.
- Prepared consent agreements for trademark registration.
- Prepared and filed Declarations of Use/Excusable Non-Use and Renewal Applications.
- Prepared and recorded trademark assignment and change of name documents.
- Drafted trademark license agreements.
- Prepared and filed ex parte TTAB appeal briefs.
- Prepared and filed notices of opposition and petitions to cancel registrations.
- Prepared and filed inter partes briefs with the TTAB.
- Conducted depositions in inter partes TTAB proceedings.
- Prepared interrogatories and answers to interrogatories in TTAB proceedings.
- Prepared settlement agreements in TTAB proceedings.
- Investigated potential infringement causes of action.
- Wrote and responded to cease and desist letters.
- Participated in litigation in the federal courts.
- Reviewed the Official Gazette and trademark watch notices for conflicting marks.

PepsiCo, Inc., 1979 – 1983

Senior Trademark Attorney:

- Responsible for the trademark portfolios of Frito-Lay, Pizza Hut, Wilson Sporting Goods and PepsiCo International.
- Conducted availability searches and investigations for new and expanded trademarks.
- Prepared, filed and prosecuted trademark applications in the PTO.
- Maintained and renewed approximately 10,000 U.S. and international trademark registrations.
- Managed the licensing of company trademarks for use on non-beverage products.
- Managed the filing and prosecution of trademark applications in approximately 150 countries.
- Investigated potential trademark infringements.
- Wrote and responded to cease and desist letters.
- Managed U.S. and international trademark opposition and cancellation proceedings.
- Reviewed packaging, advertising and promotional materials, and annual reports for proper trademark use.
- Reviewed the Official Gazette and trademark watch notices for conflicting marks.

Time Inc./Time Warner Inc., 1983 – 2005

Senior Trademark Attorney/Assistant General Counsel:

- Responsible for all Time Inc., Time Warner Inc., Time Warner Entertainment, Time-Life, Home Box Office, Little, Brown and Company, and Warner Books trademarks worldwide, among others.
- Advised corporate subsidiaries on all aspects of trademark use and practice.
- Conducted and/or reviewed trademark availability searches and investigations of new and expanded U.S. and international trademarks, clearing such now well-known magazine trademarks as InStyle, ENTERTAINMENT WEEKLY and REAL SIMPLE.
- Prepared, filed and prosecuted trademark applications in the PTO.
- Prepared and filed U.S. opposition and cancellation actions.
- Instructed the filing and managed the prosecution of trademark applications in 160+ countries.
- Responsible for maintaining and renewing approximately 20,000 trademarks worldwide, including such marks as TIME, SPORTS ILLUSTRATED, PEOPLE Weekly and FORTUNE for magazines; TIME-LIFE for books and recorded music; HOME BOX OFFICE, HBO, CINEMAX and COURT TV for television programming services; LITTLE, BROWN and WARNER BOOKS for book publishing.
- Drafted trademark license agreements.
- Drafted trademark settlement and co-existence agreements.
- Cleared and registered the TIME WARNER mark in over 100 countries.
- Prepared, filed and managed several worldwide trademark assignments.
- Managed the registration and expansion of domain names.
- Implemented a domain name protection and enforcement program.
- Wrote the Time Inc. online trademark manual.
- Participated in several trademark infringement litigations in the U.S.

Trade Associations:

International Trademark Association, 1972 – 2005

At various times, served on the Dictionary Listing Committee, State Trademark Committee and International Committee – Latin America, among others.

Summary:

While serving as a Trademark Examiner in the U.S. Patent and Trademark Office, Mr. Scherer reviewed more than 2,000 applications which in every case required (i) a search of both the Federal Register and pending applications and (ii) a determination as to the distinctiveness or descriptiveness of a pending mark. After leaving the PTO, he conducted thousands of trademark clearance searches consisting of preliminary screening searches, full comprehensive searches and, if necessary, investigations into the nature and use of a potentially conflicting mark. These searches led to the filing and prosecution of more than 1,500 applications in the PTO. While at Time Inc./Time Warner Inc., Mr. Scherer managed the worldwide assignment and recordal of several large trademark portfolios. This experience has given Mr. Scherer the expertise to address trademark clearance procedures, application filing and prosecution, trademark assignments and other trademark related issues.

EXHIBIT B

Exhibit B

TRADEMARK SCREENING (SAEGIS ON SERION)

Overview

Want to assess a trademark's viability in specific global markets before you invest in a full search? Need to check the status of a mark or update your intelligence on a competitor's brand? Do all this and more quickly and cost-effectively, with SAEGIS on SERION.

Features

SCREENING MADE EASY AND FLEXIBLE.
Choose the screening approach you need. Go in-depth with SAEGIS trademark databases. Or screen more than 200 countries at once with SAEGIS Identical Screening Search.

INITIAL SCREENING
Perform a quick, cost-effective "knock-out" search for your trademark, prefix or applicant in more than 200 countries and registers worldwide. A Thomson CompuMark exclusive, SAEGIS Identical Screening Search covers trademark records published for the first time since 1976 with direct links to publication copies, plus current status information for the world's most commercially important jurisdictions.

View worldwide coverage (Link to list of countries and regions covered)

DEEPER SCREENING
Use the extensive SAEGIS databases to go deeper in select countries, uncovering detailed information. Access in-depth information, including trademark status and owner information for key jurisdictions worldwide including: U.S., Europe, India, Brazil, Mexico, China, and Singapore.

FLEXIBLE SEARCH OPTIONS
Conduct your own international screening search to meet specific objectives with SAEGIS Cusom Search or simply enter a search term and SAEGIS AutoScreen develops the search criteria for you.

HIGHLIGHT GOODS
Highlight searched goods for faster review: When you search on specific goods, the words entered will automatically be highlighted in the goods/services list of the Hit Lists and Reports.

CUSTOM REPORT TEMPLATES
Allows you to pre-configure database selection options. Speeds up your workflow by saving time from repeatedly having to retype database selections.

FLEXIBLE REPORTING & EXPORTING
Enjoy convenient online access to SAEGIS reports in your SERION Inbox. Easily export reports in Excel, Word or PDF formats, for easy sharing with clients or colleagues.

SAEGIS ON THE IPAD
Have an iPad? Use it to perform initial "knock-out" searches from just about anywhere, anytime. SAEGIS on iPad offers the full power of SAEGIS, letting you screen new marks whenever and wherever you want, saving reports to your Inbox for later access.

EXHIBIT C

Trademark Research Report

THOMSON COMPUMARK

Mark Searched: BRIDGET CLAIRE

Client Name: SAEGIS II TEST INTERNAL
Attention: **SAMPLE SEARCH**

Type Of Search: U.S. Full Search

Our File: 183551611
Date Completed: January 25, 2011
Date Received: January 18, 2011

Goods/Services:

CLOTHING AND JEWELRY

Thomson CompuMark, 500 Victory Road, North Quincy, MA 02171-3145
Telephone (800) 692-8833 • Fax (617) 786-8273 (800) 543-1983

THOMSON REUTERS

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Table of Contents

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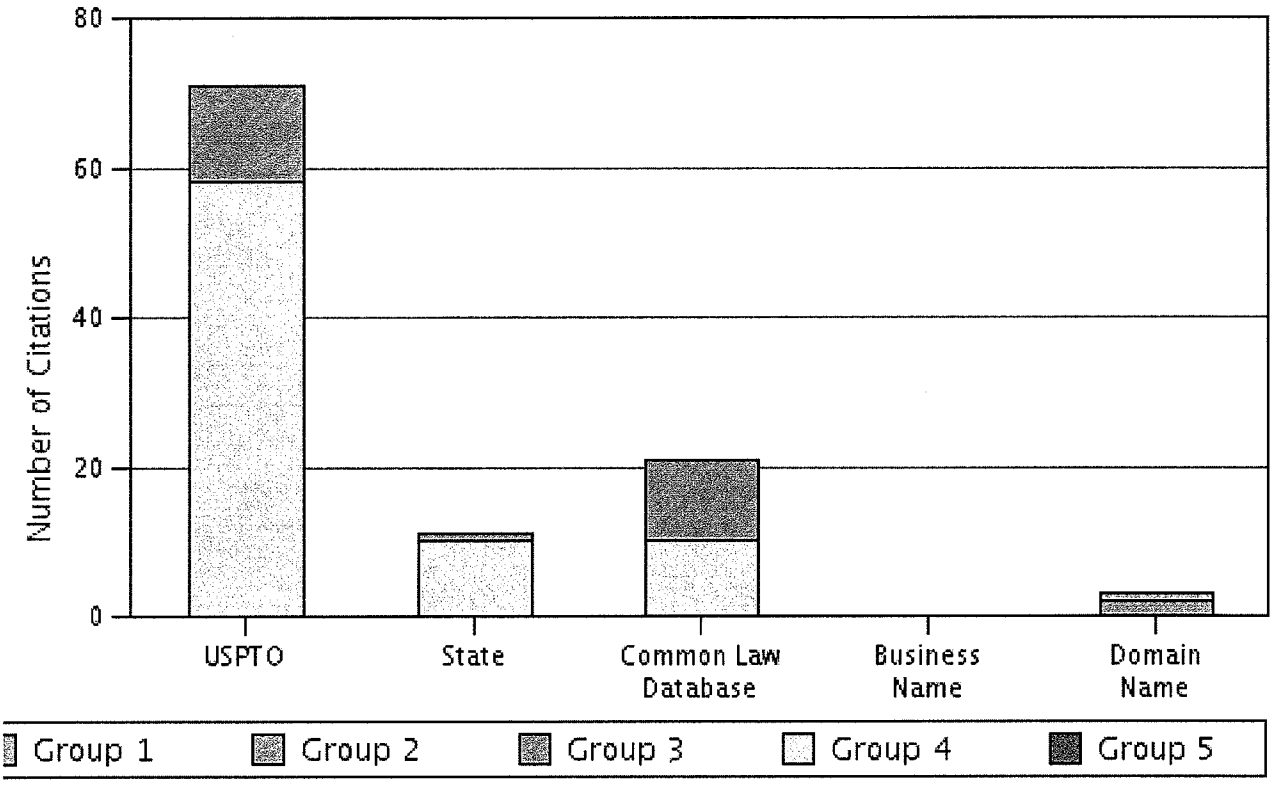
Report Graph & Table



	USPTO	State	Common Law Database	Business Name	Domain Name
Group 1	0	0	0	0	1
Group 2	0	0	0	0	2
Group 3	13	1	11	0	0
Group 4	58	10	10	0	0
Group 5	0	0	0	0	0
Totals	71	11	21	0	3

* Common Law Database citations that make up the report table and graph do not include Pharmaceutical Common Law citations.

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USPTO Summary Page

Citation	Status	Class(es)	Owner	Serial Number	Page	Record of Interest
			GROUP ONE			
			No Group One Matches			
			GROUP TWO			
			No Group Two Matches			
			GROUP THREE			
1. BRIDGETTE	Renewed	9	OPTICS EAST, INC.	75-372,656	16	☐
2. BRIDGET	Abandoned	25	NINE WEST DEVELOPMENT CORPORATION	76-592,133	17	☐
3. CLAIRE'S	Renewed	14	CBI DISTRIBUTING CORP.	74-517,854	19	☐
4. CLAIRE'S	Registered	14	CB1 DISTRIBUTING CORP	78-975,448	23	☐
5. CLAIRE'S	Registered	25	CBI DISTRIBUTING CORP.	78-975,454	25	☐
6. CLAIRE'S	Renewed	25	CBI DISTRIBUTING CORP.	74-512,656	27	☐
7. CLAIRE'S	Registered	35	CBI DISTRIBUTING CORP.	76-064,166	30	☐
8. CLAIRE'S	Registered	3	CBI DISTRIBUTING CORP.	78-975,445	33	☐
9. CLAIRE'S	TTAB Registered	3	CBI DISTRIBUTING CORP.	78-589,527	35	☐
10. CLAIRE'S	Registered	26	CBI DISTRIBUTING CORP.	78-975,455	38	☐
11. CLAIRE'S	Registered	35	CBI DISTRIBUTING CORP.	77-560,510	40	☐
12. CLAIRE'S	Renewed	42	CBI DISTRIBUTING CORP.	74-517,853	42	☐
13. CLAIRE'S	TTAB Registered	35	CBI DISTRIBUTING CORP.	78-149,317	45	☐
			GROUP FOUR			

Citation	Status	Class(es)	Owner	Serial Number	Page	Record of Interest
14. BRIDGET SHUSTER	Registered	25	QB5 PRODUCTIONS, LLC	78-574,033	49	☐
15. THE BRIDGETS OF ERIN BOUTIQUE	Pending	25	CHOTCHKES ABROAD, INC.	85-206,787	51	☐
16. ST BRIDGET'S JUST A LITTLE NAUGHTY	Registered	35	WONG, MILTON K.L.	77-106,350	52	☐
17. BRIDGETTE TATUM	Registered	9, 25, 41	BRIDGETTE TATUM TWEED	77-906,381	54	☐
18. BRIGI	Published	3, 25, 28	BRIDGET E. MACTAVISH	77-269,946	56	☐
19. BRIDGET SHUSTER	Registered	18	QB5 PRODUCTIONS, LLC	78-622,822	58	☐
20. BRIGITTE BAILEY	Pending	14	ZAPPOS IP, INC.	77-956,497	60	☐
21. BRIGITTE VON BOCH	Registered	25	BOCH, OLIVER VON	76-274,835	62	☐
22. BIJOU BRIGITTE	Registered	Multi	BIJOU BRIGITTE MODISCHE ACCESS OIRES AG	79-012,432	63	☐
23. BIJOU BRIGITTE	Registered	Multi	BIJOU BRIGITTE MODISCHE ACCESS OIRES AG	79-013,377	65	☐
24. BIJOU BRIGITTE	Registered	Multi	BIJOU BRIGITTE MODISCHE ACCESS OIRES AG	79-074,543	67	☐
25. FONDATION BRIGITTE BARDOT	Registered	Multi	FONDATION BRIGITTE BARDOT	78-254,544	69	☐
26. BEADS BY BIJOU BRIGITTE	Registered	Multi	BIJOU BRIGITTE; MODISCHE ACCES SOIRES AG	79-064,550	72	☐
27. BB BEADS 925 SILER BY BIJOU BRIGITTE	Pending	14, 16	BIJOU BRIGITTE MODISCHE ACCESS OIRES AG	79-077,831	74	☐
28. BRIGITTE BAILEY	Pending	25	ZAPPOS IP, INC.	77-956,505	76	☐
29. BRIGITTE BARDOT	Pending	18	LANCEL INTERNATIONAL SA	79-089,293	78	☐
30. BRIDGET SHUSTER	Registered	18	QB5 PRODUCTIONS, LLC	78-573,966	80	☐
31. BRIDGET SHUSTER	Abandoned	14	QB5 PRODUCTIONS, LLC	78-622,805	82	☐
32. BRIGITTE BAILEY	Pending	18	ZAPPOS IP, INC.	77-956,501	84	☐

Citation	Status	Class(es)	Owner	Serial Number	Page	Record of Interest
33. MARIE CLAIRE	Pending	25	MARIE CLAIRE ALBUM	77-965,231	86	☐
34. PEACH CLAIRE	TTAB Registered	25	VOUCIA CORPORATION	78-776,498	88	☐
35. MARIE CLAIRE	TTAB Published	14	MARIE CLAIRE ALBUM	78-706,247	90	☐
36. MARIE CLAIRE	Registered	Multi	MARIE CLAIRE ALBUM	79-068,354	92	☐
37. BELLE DE CLAIRE	Published	25	TRADE MARKER INTERNATIONAL INC.	77-868,648	95	☐
38. MC MARIE CLAIRE	Published	9, 14, 18	MARIE CLAIRE ALBUM	77-415,761	97	☐
39. SARA ST. CLAIRE	TTAB Registered	14, 30	AMERICA'S LEMONADE STAND, INC.	75-852,873	99	☐
40. ICING BY CLAIRE'S	Registered	14, 26	CBI DISTRIBUTING CORP.	77-329,708	101	☐
41. AMYCLAIRE	Pending	25	MCCORMICK, AMY CLAIRE	85-183,861	103	☐
42. ANNIE CLAIRE	Pending	25	SAEDI, SAMAN	85-151,422	105	☐
43. ANNE CLAIRE	Registered	25	MAGLIFICIO CHIEMAR S.R.L.	79-005,238	106	☐
44. MARIE CLAIRE	TTAB Registered	25	MARIE CLAIRE ALBUM	74-503,761	108	☐
45. MARIE CLAIRE	Registered	24, 25, 26	MARIE CLAIRE ALBUM	79-063,576	111	☐
46. MARIE CLAIRE	TTAB Renewed	10, 25, 26	BATA BRANDS S.A.R.L. LUXEMBOURG, SUCCURSALE DE LAU ...	72-253,418	114	☐
47. MARIE CLAIRE	TTAB Registered	9	MARIE-CLAIRE ALBUM	74-483,533	118	☐
48. MARIE CLAIRE	TTAB Cancelled	25	MARIE CLAIRE ALBUM S.A.	73-344,261	121	☐
49. MARIE CLAIRE	TTAB Renewed	16	MARIE CLAIRE ALBUM S.A.	73-244,317	123	☐
50. MARIE CLAIRE	TTAB Registered	3, 4	MARIE CLAIRE ALBUM	78-378,119	126	☐
51. MARIE CLAIRE	TTAB Registered	35, 38, 41	MARIE CLAIRE ALBUM	75-107,440	129	☐

Citation	Status	Class(es)	Owner	Serial Number	Page	Record of Interest
52. CLAIRE'S ETC.	Renewed	42	CBI DISTRIBUTING CORP.	75-079,178	132	☐
53. CLAIRE MCCARDELL	TTAB Registered	25	MARYLAND HISTORICAL SOCIETY	74-205,966	135	☐
54. CLAIRE'S ACCESSORIES	Renewed	35	CBI DISTRIBUTING CORP.	75-331,385	137	☐
55. CLAIRE'S CLUB	Registered	14	CBI DISTRIBUTING CORP.	78-975,464	140	☐
56. CLAIRE VESSOT	Registered	14	PAJ, INC.	75-736,980	142	☐
57. CLAIRE & CHARLIE	Registered	25	ANA BIMBI, LLC	77-213,649	143	☐
58. CLAIRE FANG	Published	25	FANG, YING	77-820,620	145	☐
59. CLAIRE PETTIBONE	Registered	25	TOLEY, GUY	76-520,335	147	☐
60. CLAIRE RAWLS	Registered	18, 25	RAWLS, CLAIRE	78-436,843	149	☐
61. CLAIRE'S CLUB	Registered	35	CBI DISTRIBUTING CORP.	78-554,003	151	☐
62. CLAIRE'S CLUB	Registered	25	CBI DISTRIBUTING CORP.	78-975,469	153	☐
63. CLAIRE STEWART	Published	14	W.R. COBB COMPANY	77-550,321	155	☐
64. CLAIRE'S BOUTIQUES	TTAB Cancelled	14	CSL, INC.	73-653,453	156	☐
65. CLAIRE'S ROSE	TTAB Renewed	25	TJX COMPANIES, INC., THE	74-394,289	159	☐
66. CLAIRE'S ETC.	TTAB Renewed	42	CBI DISTRIBUTING CORP.	75-057,738	161	☐
67. KLAR	Registered	25	ULLFROTTE AB	78-167,974	164	☐
68. LUISA CLARE	Registered	18, 25	LUISA CLARE PTY LTD	77-756,804	166	☐
69. ICING BY CLAIRE'S	Registered	35	CBI DISTRIBUTING CORP.	78-618,255	168	☐
70. ...IT'S AT CLAIRE'S	Registered	35	CBI DISTRIBUTING CORP.	77-883,682	170	☐

Citation	Status	Class(es)	Owner	Serial Number	Page	Record of Interest
71. CLAIRE'S ACCESSORIES						
	Renewed	42	CBI DISTRIBUTING CORP.	74-586,876	172	☐

GROUP FIVE

No Group Five Matches

ANALYST REVIEW – USPTO REPORT

Search Information

Type of Search: **U.S. Full Search**
Mark: **BRIDGET CLAIRE**
Goods/Services: **CLOTHING AND JEWELRY**

Data Information

This search report includes information from the USPTO Official Gazette published on **01/18/2011** and pending applications filed through **01/14/2011.** The pending applications are received from the U.S. Patent and Trademark Office and are updated to our database as they are made available.

Our database includes active USPTO text records dating from **1884** to present.

All queries in the Search Strategy below have been applied to all active applications and registrations in our database, as well as inactive USPTO applications and registrations from 01/01/2006 to the present. Inactive USPTO applications and registrations from 01/01/1984 – 01/01/2006 were searched for identical trademarks.

In-Use Information

In-Use Information shows whether and how potentially conflicting trademarks are being used on the Web. We provide information, when available, on the citation, its owner and its use in commerce for up to 25 Group One citations per data source (USPTO, State, Common Law Database and Business Names). The search results included in this section are a selection of the information available at the time of the preparation of this search report, and are not a comprehensive representation of the Web. Any of the Web links included in your search report may become unavailable at any time following the preparations of this report.

Last Reported Owner

"Last Reported Owner" is our best determination of the owner of a trademark, based on a programmatic analysis of USPTO trademark records and any assignment transactions associated with the trademark. In determining "Last Reported Owner", we exclude recorded documents representing security interests, liens and other transactions which ordinarily do not result in a change of ownership.

Owner Matching

The Owner Matching feature is an index within the trademark record showing citations within the report with the same owner. Owner Matching is an alphabetical, word for word match. Inconsistencies in the data coming from providers (i.e., USPTO, State, etc.) may impact results.

Global Filings 

A Global Filings flag indicates how often owners of cited USPTO trademarks have filed for protection of the cited marks outside the United States. We compare the owner and trademark, as listed in our proprietary USPTO database, to our worldwide trademark databases. The worldwide trademark databases include first publications since January 1, 1976. (For China, only trademarks published since January 1, 1986 are included). In most of the over 200 countries, first publications are new applications published in the Official Gazettes for opposition purposes.

Please Note: Global Filings provides an indication of international trademark filings, but should be considered advisory information only, due to possible inconsistencies in the data and the update frequency of trademark records provided by international trademark offices. Furthermore, the documentation does not include renewals or indications about the subsequent fate of the applications retrieved, such as registrations, rejections, withdrawals, amendments and partial cancellations. For additional information, please refer to the electronic version of this search report, accessible through your SAEGIS™ Inbox.

Data Information

Earliest Date in Record

The Earliest Date in Record is a field added by Thomson CompuMark. Thomson CompuMark has derived this date from a programmatic review of all available fields within a given record to estimate the earliest date by which the trademark can claim protection. Fields reviewed can include the Date Filed and First Use Dates for both U.S. and international protection. Please note that not all records with a status of MISASSIGNED will be included, as many of these records do not contain dates. This field is designed to be a helpful reference tool; further research may be required to determine the mark's priority rights.

Analyst Information

Name: **CHRISTY FALETRA**
Comments: **These queries, listed below, retrieved 722 potential references from the database. After careful review and analysis, I have selected 71 records for your review.**

THERE ARE ADDITIONAL "CLAIRE" FORMATIVES FOR CLOTHING AND JEWELRY.

Search Strategy

	Type	Query	Classes	#References
1.	EXACT MARK GOODS PREFIX	BR(I,Y)DGET(C,K)LA(I,Y)R(E,ES) <and> (CLOTH,APPAREL,GARMENT,SPORTSW,FOOTW,JEWEL,GEM,GOLD,SILVER,DIAMOND)	ALL CLASSES	0
2.	EXACT MARK	BR(I,Y)DGET(C,K)LA(I,Y)R(E,ES)	25,14,3,9,18,24,26,35,42,45	0
3.	EXACT MARK	BR(I,Y)DGET(C,K)LA(I,Y)R(E,ES)	ALL CLASSES	0
4.	EXACT MARK	THEBR(I,Y)DGET(C,K)LA(I,Y)R(E,ES)	ALL CLASSES	0
5.	PREFIX GOODS PREFIX	BR(I,Y)DGET(C,K)LA(I,Y)RE <and> (CLOTH,APPAREL,GARMENT,SPORTSW,FOOTW,JEWEL,GEM,GOLD,SILVER,DIAMOND)	ALL CLASSES	0
6.	PREFIX	BR(I,Y)DGET(C,K)LA(I,Y)RE	25,14,3,9,18,24,26,35,42,45	0
7.	PREFIX	BR(I,Y)DGET(C,K)LA(I,Y)RE	ALL CLASSES	0
8.	PREFIX	BR(I,Y)DGET(C,K)LA	ALL CLASSES	0
9.	LETTERSTRING LETTERSTRING	BR(I,Y)DGE <and> (C,K)LA(I,Y)	ALL CLASSES	2
10.	LETTERSTRING LETTERSTRING	BR(I,Y)DGE <and> A(I,Y)RE	ALL CLASSES	0
11.	PREFIX PREFIX	BR(I,Y)D <and> (C,K)LA(I,Y)	ALL CLASSES	0
12.	LETTERSTRING LETTERSTRING	BR(I,Y)(D,G,J) <and> (C,K)L(AI,AY,A)R	ALL CLASSES	8

Search Strategy

	Type	Query	Classes	#References
13.	PREFIX	BR(I,Y)DGET(C,K)	25,14,3,9,18,24,26,35,42,45	0
14.	PREFIX SUFFIX	BR(I,Y)DGET <and> R(E,ES)	25,14,3,9,18,24,26,35,42,45	0
15.	EXACT MARK GOODS PREFIX	BR(I,Y)DGET <and> (CLOTH,APPAREL, GARMENT,SPORTSW, FOOTW,JEWEL,GEM,GOLD, SILVER,DIAMOND)	ALL CLASSES	2
16.	PREFIX GOODS PREFIX	BR(I,Y)DGET <and> (CLOTH,APPAREL, GARMENT,SPORTSW, FOOTW,JEWEL,GEM,GOLD, SILVER,DIAMOND)	ALL CLASSES	21
17.	LETTERSTRING GOODS PREFIX	BR(I,Y)DGET <and> (CLOTH,APPAREL, GARMENT,SPORTSW, FOOTW,JEWEL,GEM,GOLD, SILVER,DIAMOND)	ALL CLASSES	0
18.	EXACT MARK	BR(I,Y)DGET	25,14,3,9,18,24,26,35,42,45	4
19.	PREFIX	BR(I,Y)DGET	25,14,3,9,18,24,26,35,42,45	85
20.	LETTERSTRING	BR(I,Y)DGET	25,14,3,9,18,24,26,35,42,45	1
21.	PREFIX	BR(I,Y)DGE	25,14	124
22.	PREFIX LETTERSTRING	BR(I,Y) <and> (C,K)LA(I,Y)RE	25,14,3,9,18,24,26,35,42,45	0
23.	SUFFIX	GET(C,K)LA(I,Y)R(E,ES)	25,14,3,9,18,24,26,35,42,45	0
24.	SUFFIX	ET(C,K)LA(I,Y)R(E,ES)	25,14,3,9,18,24,26,35,42,45	1
25.	PREFIX LETTERSTRING	B <and> (C,K)LA(I,Y)RE	25,14,3,9,18,24,26,35,42,45	8
26.	EXACT MARK GOODS PREFIX	(C,K)L(AI,AY,A)(R,RE,RES) <and> (CLOTH,APPAREL, GARMENT,SPORTSW, FOOTW,JEWEL,GEM,GOLD, SILVER,DIAMOND)	ALL CLASSES	14
27.	PREFIX GOODS PREFIX	(C,K)L(AI,AY,A)(R,RE,RES) <and> (CLOTH,APPAREL, GARMENT,SPORTSW, FOOTW,JEWEL,GEM,GOLD, SILVER,DIAMOND)	ALL CLASSES	241
28.	LETTERSTRING GOODS PREFIX	(C,K)L(AI,AY,A)(R,RE,RES) <and> (CLOTH,APPAREL, GARMENT,SPORTSW, FOOTW,JEWEL,GEM,GOLD, SILVER,DIAMOND)	ALL CLASSES	39
29.	EXACT MARK	(C,K)L(AI,AY,A)(R,RE,RES)	25,14,3,9,18,24,26,35,42,45	29
30.	PREFIX	(C,K)L(AI,AY,A)(R,RE,RES)	25,14	41
31.	LETTERSTRING	(C,K)L(AI,AY,A)(R,RE,RES)	25,14	22

Search Strategy

	Type	Query	Classes	#References
32.	PHONETIC WORD	BRIDGETCLAIRE	ALL CLASSES	0
33.	PHONETIC PREFIX	BRIDGETCLAIRE	ALL CLASSES	0
34.	LETTERSTRING GOODS PREFIX	BR(I,Y)(DG,DDG,DJ,DDJ,G,GG,J,JJ)(E,I,Y)T <and> (CLOTH,APPAREL,GARMENT,SPORTSW,FOOTW,JEWEL,GEM,GOLD,SILVER,DIAMOND)	ALL CLASSES	12
35.	LETTERSTRING	BR(I,Y)(DG,DDG,DJ,DDJ,G,GG,J,JJ)(E,I,Y)T	25,14,3,9,18,24,26,35,42,45	16
36.	PHONETIC WORD	BR(I,Y)(DG,DDG,DJ,DDJ,G,GG,J,JJ)(E,I,Y)T	25,14,3,9,18,24,26,35,42,45	9
37.	PHONETIC WORD	BR(I,Y)(DG,DDG,DJ,DDJ,G,GG,J,JJ)(E,I,Y)T	ALL CLASSES	21
38.	LETTERSTRING	BR(I,Y)(DG,DDG,DJ,DDJ,G,GG,J,JJ)(E,I,Y)T	ALL CLASSES	22
39.	LETTERSTRING LETTERSTRING	BR(I,Y)(DJ,J,DG,G) <and> (C,K)L(A,AI,AY,AE)R	ALL CLASSES	0
40.	LETTERSTRING	(C,K)L(A,AI,AY,AE)R	25,14	0

Class Identification

03	COSMETICS AND CLEANING PREPARATIONS
09	ELECTRICAL AND SCIENTIFIC APPARATUS
14	JEWELRY
18	LEATHER GOODS
24	FABRICS
25	CLOTHING
26	FANCY GOODS
35	ADVERTISING AND BUSINESS SERVICES
42	SCIENTIFIC, TECHNOLOGICAL AND LEGAL SERVICES
45	PERSONAL, SOCIAL AND SECURITY SERVICES

BRIDGETTE

Status: RENEWED

USPTO Status: REGISTERED AND RENEWED
USPTO Status Date: NOV 20, 2008

Goods/Services: **International Class 9:** EYEGLASS FRAMES
First Used: JAN 01, 1991 (INTL. CL. 9)
In Commerce: JAN 01, 1991

Last Reported Owner: OPTICS EAST, INC.
DBA CONTINENTAL SALES COMPANY
CALIFORNIA CORPORATION
180 WESTGATE DRIVE
WATSONVILLE, CALIFORNIA 95076

We Have Located Other Marks With This Owner

BRIDGETTE Common Law Page 217

Chronology: **Filed:** OCT 14, 1997 **Serial Number:** 75-372,656
Published For Opposition: OCT 06, 1998
Registered: DEC 29, 1998 **Registration Number:** 2,214,370
Affidavit Section: REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED NOV 20, 2008
REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK. FEB 25, 2004
Last Renewed: DEC 29, 2008
Earliest Date in Record: JAN 01, 1991 (First Used)

Ownership Details:

Registrant: OPTICS EAST, INC.
DBA CONTINENTAL SALES COMPANY
CALIFORNIA CORPORATION
180 WESTGATE DRIVE
WATSONVILLE, CALIFORNIA 95076

Filing Correspondent: ROBERT C KIM
OPICS EAST, INC.
1ST FLOOR
180 WESTGATE DRIVE
WATSONVILLE CA 95076

Bridget

BRIDGET

Global Filings = 1

Status: ABANDONED

USPTO Status: ABANDONED-EXPRESS
USPTO Status Date: JUN 11, 2005

Goods/Services: **International Class 25:** SHOES AND ACCESSORIES
First Used: MAR 01, 2003 (INTL. CL. 25)
In Commerce: MAR 01, 2003

Last Reported Owner: NINE WEST DEVELOPMENT CORPORATION
DELAWARE CORPORATION
200 WEST 9TH STREET PLAZA
WILMINGTON, DELAWARE 19801

Chronology: **Filed:** MAY 13, 2004 **Serial Number:** 76-592,133
Abandoned: JUN 07, 2005
Earliest Date in Record: MAR 01, 2003 (First Used)

Ownership Details:

Applicant: NINE WEST DEVELOPMENT CORPORATION
DELAWARE CORPORATION
200 WEST 9TH STREET PLAZA
WILMINGTON, DELAWARE 19801

Assignee
NINE WEST DEVELOPMENT CORPORATION
DELAWARE CORPORATION
200 WEST 9TH STREET PLAZA
WILMINGTON, DELAWARE, 19801

Assignor
QB5 PRODUCTIONS
NEVADA LTD LIAB JT ST CO
Signed: MAR 29, 2005

Brief: ASSIGNS THE ENTIRE INTEREST
Recorded: APR 04, 2005
Reel/Frame: 3058/0753

Correspondent:
KATHERINE BLAUKOPF
1411 BROADWAY
39TH FLOOR LEGAL DEPARTMENT
NEW YORK, NY 10018

Claims: COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

Design Phrase: THE MARK CONSISTS OF THE WORD "BRIDGET" IN STYLIZED SCRIPT WRITING - ALL IN HOT PINK.

Filing Correspondent: JEFFREY F. GERSH
ZIMMERMAN ROSENFELD GERSH & LEEDS LLP
9107 WILSHIRE BLVD STE 300
BEVERLY HILLS CA 90210-5528

Claire's

CLAIRE'S

Global Filings = 50

Status: RENEWED

USPTO Status: REGISTERED AND RENEWED
USPTO Status Date: JAN 03, 2006

Goods/Services: **International Class 14:** JEWELRY, NAMELY EARRINGS, NECKLACES, RINGS, BRACELETS, ORNAMENTAL PINS, AND HAIRORNAMENTS
First Used: JUN 20, 1993 (INTL. CL. 14)
In Commerce: JUN 20, 1993

Last Reported Owner: CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
CORPORATION TRUST CENTER
1209 WEST ORANGE STREET
WILMINGTON, DELAWARE 19801

We Have Located Other Marks With This Owner

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CLAIRE'S	USPTO	Page 27
CLAIRE'S	USPTO	Page 30
CLAIRE'S	USPTO	Page 33
CLAIRE'S	USPTO	Page 35

Additional marks with this owner exist. Please refer to the Owner Index section of this report.

Chronology: **Filed:** APR 28, 1994 **Serial Number:** 74-517,854
Published For Opposition: JAN 24, 1995
Registered: OCT 10, 1995 **Registration Number:** 1,925,359
Affidavit Section: REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED JAN 03, 2006
REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK. SEP 10, 2002
Last Renewed: OCT 10, 2005
Earliest Date in Record: JUN 20, 1993 (First Used)

International Trademark Information:

USPTO Reference Number: Z1230952
Original Filing Date With USPTO: JUN 01, 2004
International Status: ABANDONED - NO RESPONSE TO IRREGULARITY
International Status Date: FEB 06, 2005
Irregularity Reply Date: OCT 14, 2004
Madrid History: #3 IRREGULARITY NOTICE RECEIVED FROM IB (RESPONSE REQUIRED), JUL 22, 2004
Madrid History: #2 MANUALLY CERTIFIED, JUN 02, 2004
Madrid History: #1 NEW APPLICATION FOR IR RECEIVED, JUN 02, 2004

USPTO Reference Number: A0002512
International Registration Number: 0872750
International Registration Date: SEP 09, 2005
Original Filing Date With USPTO: SEP 09, 2005
International Renewal Date: SEP 09, 2015
International Status: APPLICATION FOR IR REGISTERED BY IB
International Status Date: JAN 26, 2006
Madrid History: #13 SUBSEQUENT DESIGNATION PROCESSED BY IB, FEB 05, 2009
Madrid History: #12 SUBSEQUENT DESIGNATION SENT TO IB, NOV 14, 2008
Madrid History: #11 SUBSEQUENT DESIGNATION RECEIVED, NOV 13, 2008
Madrid History: #10 APPLICATION FOR IR REGISTERED BY IB, JAN 26, 2006
Madrid History: #9 IRREGULARITY RESPONSE RECEIVED FROM APPLICANT, JAN 09, 2006
Madrid History: #8 IRREGULARITY RESPONSE SENT TO IB, JAN 04, 2006
Madrid History: #7 RESPONSE TO IRREGULARITY REVIEWED AND ACCEPTED, JAN 04, 2006
Madrid History: #6 IRREGULARITY RESPONSE RECEIVED FROM APPLICANT, DEC 30, 2005
Madrid History: #5 RESPONSE TO IRREGULARITY REVIEWED AND REJECTED, DEC 28, 2005
Madrid History: #4 IRREGULARITY NOTICE RECEIVED FROM IB (RESPONSE REQUIRED), OCT 10, 2005
Madrid History: #3 IR CERTIFIED AND SENT TO IB, SEP 09, 2005
Madrid History: #2 MANUALLY CERTIFIED, SEP 09, 2005
Madrid History: #1 NEW APPLICATION FOR IR RECEIVED, SEP 09, 2005

Ownership Details:

New Registered Owner: CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
CORPORATION TRUST CENTER
1209 WEST ORANGE STREET
WILMINGTON, DELAWARE 19801

Assignee
CREDIT SUISSE, CAYMAN ISLAND BRANCH, AS
ADMINISTRATIVE AGENT
SWITZERLAND CORPORATION
11 MADISON AVENUE
NEW YORK, NEW YORK, 10010

Assignor
CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
Signed: MAY 29, 2007

Brief: SECURITY INTEREST
Recorded: JUN 25, 2007
Reel/Frame: 3566/0667
Correspondent:
TERESA HU
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
FOUR TIMES SQUARE
NEW YORK, NY 10036

Assignee
CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
CORPORATION TRUST CENTER
1209 WEST ORANGE STREET
WILMINGTON, DELAWARE, 19801

Assignor
CLAIRE'S BOUTIQUES, INC.
DELAWARE CORPORATION
Signed: MAY 21, 2004

Brief: ASSIGNS THE ENTIRE INTEREST
Recorded: MAY 21, 2004
Reel/Frame: 2858/0423
Correspondent:
WOLF, GREENFIELD & SACKS, P.C.
DAVID WOLF
FEDERAL RESERVE PLAZA
600 ATLANTIC AVENUE
BOSTON, MA 02210

Assignee
CLAIRE'S BOUTIQUES, INC.
DELAWARE CORPORATION
2400 WEST CENTRAL ROAD
HOFFMAN ESTATES, ILLINOIS, 60195

Assignor
CSI, INC.
DELAWARE CORPORATION
Signed: MAR 05, 2002

Brief: ASSIGNS THE ENTIRE INTEREST
Recorded: MAR 08, 2002
Reel/Frame: 2526/0568

Correspondent:
WOLF, GREENFIELD & SACKS, P.C.
DAVID WOLF
FEDERAL RESERVE PLAZA
600 ATLANTIC AVENUE
BOSTON, MA 02210

Other U.S. Registrations: 1,486,868

Filing Correspondent: MARK I. FELDMAN
DLA PIPER US LLP
P.O. BOX 64807
CHICAGO IL 60664-0807

CLAIRE'S

Status: REGISTERED

USPTO Status: REGISTERED
USPTO Status Date: SEP 13, 2005

Goods/Services: **International Class 14:** JEWELRY, BELLY CHAINS, BRACELETS, TOE RINGS, BODY CLIPS, EAR CUFFS, EARRING HOLDERS
First Used: 1993 (INTL. CL. 14)
In Commerce: 1993

Last Reported Owner: CB1 DISTRIBUTING CORP
DELAWARE CORPORATION
1209 ORANGE STREET
WILMINGTON, DELAWARE 19801

Chronology: **Filed:** JUL 31, 2002 **Serial Number:** 78-975,448
Parent Serial Number: 78-149,323
Published For Opposition: NOV 09, 2004
Registered: SEP 13, 2005 **Registration Number:** 2,996,103
Date Revived/Reinstated: MAR 22, 2004
New Certificate Issued: MAY 23, 2006
Earliest Date in Record: 1993 (First Used)

Ownership Details:

Registrant: CBI DISTRIBUTING CORP
DELAWARE CORPORATION
CORPORATION TRUST CENTER
1209 ORANGE STREET
WILMINGTON, DELAWARE 04232003

Assignee
CREDIT SUISSE, CAYMAN ISLAND BRANCH, AS
ADMINISTRATIVE AGENT
SWITZERLAND CORPORATION
11 MADISON AVENUE
NEW YORK, NEW YORK, 10010

Assignor
CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
Signed: MAY 29, 2007

Brief: SECURITY INTEREST
Recorded: JUN 25, 2007
Reel/Frame: 3566/0667

Correspondent:
TERESA HU
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
FOUR TIMES SQUARE
NEW YORK, NY 10036

Claims: IN THE STATEMENT, COLUMN 1, BEFORE LINE 1, CBI DISTRIBUTING CORP. DELAWARE CORPORATION 1209 ORANGE STREET CORPORATION TRUST CENTER WILMINGTON DE 19801 ASSIGNEE OF SHOULD BE INSERTED.

Filing Correspondent: DAVID WOLF
WOLF, GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210

CLAIRE'S

Global Filings = 50

Status: REGISTERED

USPTO Status: REGISTERED
USPTO Status Date: FEB 08, 2005

Goods/Services: **International Class 25:** CLOTHING, NAMELY SOCKS, HATS, GLOVES, SHIRTS
First Used: JUN 2002 (INTL. CL. 25)
In Commerce: JUN 2002

Last Reported Owner: CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
CORPORATION TRUST CENTER
1209 ORANGE STREET
WILMINGTON, DELAWARE 19801

We Have Located Other Marks With This Owner

CLAIRE'S	USPTO	Page 19
CLAIRE'S	USPTO	Page 27
CLAIRE'S	USPTO	Page 30
CLAIRE'S	USPTO	Page 33
CLAIRE'S	USPTO	Page 35

Additional marks with this owner exist. Please refer to the Owner Index section of this report.

Chronology: **Filed:** JUL 31, 2002 **Serial Number:** 78–975,454
Parent Serial Number: 78–149,323
Published For Opposition: NOV 16, 2004
Registered: FEB 08, 2005 **Registration Number:** 2,925,470
Date Revived/Reinstated: MAR 22, 2004
Earliest Date in Record: JUN 2002 (First Used)

Ownership Details:

Registrant: CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
CORPORATION TRUST CENTER
1209 ORANGE STREET
WILMINGTON, DELAWARE 19801

Assignee
CREDIT SUISSE, CAYMAN ISLAND BRANCH, AS
ADMINISTRATIVE AGENT
SWITZERLAND CORPORATION
11 MADISON AVENUE
NEW YORK, NEW YORK, 10010

Assignor
CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
Signed: MAY 29, 2007

Brief: SECURITY INTEREST
Recorded: JUN 25, 2007
Reel/Frame: 3566/0667
Correspondent:
TERESA HU
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
FOUR TIMES SQUARE
NEW YORK, NY 10036

Claims: IN THE STATEMENT, COLUMN 1, BEFORE LINE 1, "CBI DISTRIBUTING CORP. 1209 ORANGE STREET CORPORATION TRUST CENTER WILMINGTON, DELAWARE 19801" SHOULD BE INSERTED.

Filing Correspondent: DAVID WOLF
WOLF, GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210

CLAIRE'S

Global Filings = 50

Status: RENEWED

USPTO Status: REGISTERED AND RENEWED
USPTO Status Date: JUN 16, 2005

Goods/Services: **International Class 25:** WOMEN'S BELTS, STOCKINGS AND HOSIERY
First Used: JUN 20, 1993 (INTL. CL. 25)
In Commerce: JUN 20, 1993

Last Reported Owner: CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
1209 WEST ORANGE STREET
CORPORATION TRUST CENTER
WILMINGTON, DELAWARE 19801

We Have Located Other Marks With This Owner

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Additional marks with this owner exist. Please refer to the Owner Index section of this report.

Chronology: **Filed:** APR 14, 1994 **Serial Number:** 74-512,656
Published For Opposition: JAN 31, 1995
Registered: APR 25, 1995 **Registration Number:** 1,891,172
Affidavit Section: REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED JUN 16, 2005
REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK. JUL 26, 2001
Last Renewed: APR 25, 2005
Earliest Date in Record: JUN 20, 1993 (First Used)

International Trademark Information:

USPTO Reference Number: Z1230952
Original Filing Date With USPTO: JUN 01, 2004
International Status: ABANDONED - NO RESPONSE TO IRREGULARITY
International Status Date: FEB 06, 2005

Irregularity Reply Date: OCT 14, 2004
Madrid History: #3 IRREGULARITY NOTICE RECEIVED FROM IB (RESPONSE REQUIRED), JUL 22, 2004
Madrid History: #2 MANUALLY CERTIFIED, JUN 02, 2004
Madrid History: #1 NEW APPLICATION FOR IR RECEIVED, JUN 02, 2004

USPTO Reference Number: A0002512
International Registration Number: 0872750
International Registration Date: SEP 09, 2005
Original Filing Date With USPTO: SEP 09, 2005
International Renewal Date: SEP 09, 2015
International Status: APPLICATION FOR IR REGISTERED BY IB
International Status Date: JAN 26, 2006
Madrid History: #13 SUBSEQUENT DESIGNATION PROCESSED BY IB, FEB 05, 2009
Madrid History: #12 SUBSEQUENT DESIGNATION SENT TO IB, NOV 14, 2008
Madrid History: #11 SUBSEQUENT DESIGNATION RECEIVED, NOV 13, 2008
Madrid History: #10 APPLICATION FOR IR REGISTERED BY IB, JAN 26, 2006
Madrid History: #9 IRREGULARITY RESPONSE RECEIVED FROM APPLICANT, JAN 09, 2006
Madrid History: #8 IRREGULARITY RESPONSE SENT TO IB, JAN 04, 2006
Madrid History: #7 RESPONSE TO IRREGULARITY REVIEWED AND ACCEPTED, JAN 04, 2006
Madrid History: #6 IRREGULARITY RESPONSE RECEIVED FROM APPLICANT, DEC 30, 2005
Madrid History: #5 RESPONSE TO IRREGULARITY REVIEWED AND REJECTED, DEC 28, 2005
Madrid History: #4 IRREGULARITY NOTICE RECEIVED FROM IB (RESPONSE REQUIRED), OCT 10, 2005
Madrid History: #3 IR CERTIFIED AND SENT TO IB, SEP 09, 2005
Madrid History: #2 MANUALLY CERTIFIED, SEP 09, 2005
Madrid History: #1 NEW APPLICATION FOR IR RECEIVED, SEP 09, 2005

Ownership Details:

Registrant:

CSL, INC.
DELAWARE CORPORATION
3 S.W. 129TH AVENUE
PEMBROKE PINES, FLORIDA 33027

Assignee
CREDIT SUISSE, CAYMAN ISLAND BRANCH, AS
ADMINISTRATIVE AGENT
SWITZERLAND CORPORATION
11 MADISON AVENUE
NEW YORK, NEW YORK, 10010

Assignor
CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
Signed: MAY 29, 2007

Brief: SECURITY INTEREST
Recorded: JUN 25, 2007
Reel/Frame: 3566/0667
Correspondent:
TERESA HU
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
FOUR TIMES SQUARE
NEW YORK, NY 10036

Assignee
CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
1209 WEST ORANGE STREET
CORPORATION TRUST CENTER
WILMINGTON, DELAWARE, 19801

Assignor
CSL, INC.
DELAWARE CORPORATION
Signed: MAY 21, 2004

Brief: ASSIGNS THE ENTIRE INTEREST
Recorded: MAY 21, 2004
Reel/Frame: 2858/0425
Correspondent:
WOLF, GREENFIELD & SACKS, P.C.
DAVID WOLF
FEDERAL RESERVE PLAZA
600 ATLANTIC AVENUE
BOSTON, MA 02210

Claims:

THE DRAWING IS AMENDED TO APPEAR AS FOLLOWS: CLAIRE'S

Other U.S. Registrations: 1,508,257

Filing Correspondent: MARK I. FELDMAN
DLA PIPER US LLP
P.O. BOX 64807
CHICAGO IL 60664-0807

cl@ire's

CLAIRE'S

Global Filings = 50

Status: REGISTERED

USPTO Status: SECTION 8 & 15 - ACCEPTED AND ACKNOWLEDGED
USPTO Status Date: SEP 13, 2008

Goods/Services: **International Class 35:** RETAIL STORE SERVICES DEALING IN MEN AND WOMEN'S JEWELRY, WALLETS, KEY CHAINS, SUNGLASSES, REMOVABLE TATTOOS, HATS, NOTIONS, CLOTHING, WOMEN'S CLOTHING, WOMEN'S CLOTHING ACCESSORIES, NAMELY, HANDKER CHIEFS, SCARVES, JEWELRY, HAIR BANDS, HAIR GOODS, COSMETICS, AND PERFUMES
First Used: 1994 (INTL. CL. 35)
In Commerce: 1994

Last Reported Owner: CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
2400 WEST CENTRAL ROAD
HOFFMAN ESTATES, ILLINOIS 60195

We Have Located Other Marks With This Owner

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Additional marks with this owner exist. Please refer to the Owner Index section of this report.

Chronology: **Filed:** JUN 06, 2000 **Serial Number:** 76-064,166
Published For Opposition: JUL 02, 2002
Registered: SEP 24, 2002 **Registration Number:** 2,623,039
Affidavit Section: REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK. SEP 13, 2008

Earliest Date in Record: 1994 (First Used)

Ownership Details:

Registrant: CLAIRE'S BOUTIQUES, INC.
DELAWARE CORPORATION
2400 WEST CENTRAL ROAD
HOFFMAN ESTATES, ILLINOIS 60195

Assignee
CREDIT SUISSE, CAYMAN ISLAND BRANCH, AS
ADMINISTRATIVE AGENT
SWITZERLAND CORPORATION
11 MADISON AVENUE
NEW YORK, NEW YORK, 10010

Assignor
CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
Signed: MAY 29, 2007

Brief: SECURITY INTEREST
Recorded: JUN 25, 2007
Reel/Frame: 3566/0667
Correspondent:
TERESA HU
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
FOUR TIMES SQUARE
NEW YORK, NY 10036

Assignee
CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
2400 WEST CENTRAL ROAD
HOFFMAN ESTATES, ILLINOIS, 60195

Assignor
CSL, INC.
DELAWARE CORPORATION
Signed: MAY 18, 2006

Brief: ASSIGNS THE ENTIRE INTEREST
Recorded: MAY 23, 2006
Reel/Frame: 3314/0001
Correspondent:
DAVID WOLF
600 ATLANTIC AVENUE
WOLF, GREENFIELD & SACKS, P.C.
BOSTON, MA 02210-2206

Assignee
CSL, INC.
DELAWARE CORPORATION
3 SOUTHWEST 129TH AVENUE
PEMBROKE PNES, FLORIDA, 33021

Assignor
CLAIRE'S BOUTIQUES, INC.
DELAWARE CORPORATION
Signed: FEB 20, 2001

Brief: ASSIGNS THE ENTIRE INTEREST
Recorded: MAR 09, 2001
Reel/Frame: 2258/0024
Correspondent:
WOLF, GREENFIELD & SACKS, P.C.
DAVID WOLF
FEDERAL RESERVE PLAZA
600 ATLANTIC AVENUE
BOSTON, MA 02210

Other U.S. Registrations: 1,514,045; 1,890,335; 1,946,557; 1,956,047; 2,064,149; 2,065,959; 2294937 AND OTHERS

Filing Correspondent: MARK I. FELDMAN
DLA PIPER LLP (US)
P.O. BOX 64807
CHICAGO IL 60664-0807

CLAIRE'S

Global Filings = 50

Status: REGISTERED

USPTO Status: REGISTERED
USPTO Status Date: MAY 17, 2005

Goods/Services: **International Class 3:** COSMETICS, NAMELY LIP GLOSS WANDS, LIPSTICK, HAIR DYES, BLUSH, ANTIPERSPIRANTS, PERFUME BALM, POWDER HAVING REFLECTIVE QUALITIES FOR TOPICAL APPLICATION TO THE SKIN OR HAIR FOR COSMETIC PURPOSES, BATH AND BODY GELS, BATH AND BODY LOTIONS, NAIL POLISH, HAIR LOTIONS
First Used: JUN 2002 (INTL. CL. 3)
In Commerce: JUN 2002

Last Reported Owner: CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
CORPORATION TRUST CENTER
1209 ORANGE STREET
WILMINGTON, DELAWARE 19801

We Have Located Other Marks With This Owner

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Additional marks with this owner exist. Please refer to the Owner Index section of this report.

Chronology: **Filed:** JUL 31, 2002 **Serial Number:** 78–975,445
Parent Serial Number: 78–149,323
Published For Opposition: FEB 22, 2005
Registered: MAY 17, 2005 **Registration Number:** 2,951,866
Date Revived/Reinstated: MAR 22, 2004
Earliest Date in Record: JUN 2002 (First Used)

Ownership Details:

Registrant: CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
CORPORATION TRUST CENTER

1209 ORANGE STREET
WILMINGTON, DELAWARE 19801

Assignee
CREDIT SUISSE, CAYMAN ISLAND BRANCH, AS
ADMINISTRATIVE AGENT
SWITZERLAND CORPORATION
11 MADISON AVENUE
NEW YORK, NEW YORK, 10010

Assignor
CBI DISTRIBUTING CORP.
DELAWARE CORPORATION
Signed: MAY 29, 2007

Brief: SECURITY INTEREST
Recorded: JUN 25, 2007
Reel/Frame: 3566/0667
Correspondent:
TERESA HU
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
FOUR TIMES SQUARE
NEW YORK, NY 10036

Claims: IN THE STATEMENT, COLUMN 1, BEFORE LINE 1, "CBI DISTRIBUTING CORP. 1209 ORANGE STREET CORPORATION TRUST CENTER WILMINGTON, DELAWARE 19801" SHOULD BE INSERTED.

Filing Correspondent: DAVID WOLF
WOLF, GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210