



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADE-MARKS

Citation: 2013 TMOB 211
Date of Decision: 2013-12-05

**IN THE MATTER OF AN OPPOSITION
by Manufacturier de Bas de Nylon Doris
Ltee/Doris Hosiery Mills Ltd. to
application No. 1,405,835 for the trade-
mark VS A SECRET THAT WOMEN
LOVE and Design in the name of Eclectic
Edge Inc.**

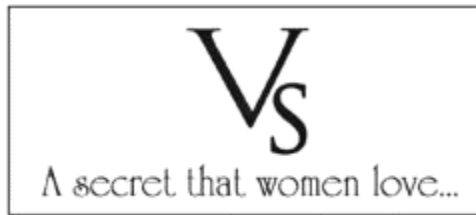
[1] Eclectic Edge, Inc. (the Applicant) has applied to register the trade-mark VS A SECRET THAT WOMEN LOVE and Design (the Mark) based on proposed use in Canada in association with, among other things, brassieres, camisoles, sleepwear, underwear and lingerie.

Manufacturier de Bas de Nylon Doris Ltee/Doris Hosiery Mills Ltd. (the Opponent) has opposed this registration primarily on the basis that there is a reasonable likelihood of confusion between the Mark and the Opponent and/or its licensees' previous use and making known of its SECRET marks in association with a wide variety of wares, including, among other things, ladies' hosiery, intimate apparel and other clothing products.

[2] For the reasons that follow, I have found that there is a reasonable likelihood of confusion between the parties' marks.

Background

[3] On August 1, 2008, the Applicant filed application No. 1,405,835 for the registration of the Mark VS A SECRET THAT WOMEN LOVE and Design, shown below:



[4] The Mark is based on proposed use in Canada in association with the following wares:

bandanas (neckerchiefs); bath robes; bathing drawers; bathing suits, beach clothes; boas (necklets); bodices (lingerie); brassieres; camisoles; clothing for gymnastics; corsets (underclothing); drawers (clothing); dressing gowns; frocks; fur stoles; girdles gloves (clothing); jumpers (shirt fronts); knitwear (clothing); mittens; petticoats; pockets for clothing; pullovers; ready-made clothing, namely, sleepwear, underwear and lingerie; ready-made linings (parts of clothing); robes (bath); scarfs; singlets; skirts; slips (undergarments); suits; suits (bathing -); sweat-absorbent under-clothing (underwear); sweaters; teddies (undergarments); tee-shirts; tights

[5] The application includes a claim to a priority filing date of March 24, 2008.

[6] The application was advertised in the *Trade-marks Journal* on December 23, 2009, and the Opponent filed a statement of opposition on January 29, 2010. Aside from the issue regarding whether the application complies with section 30(i) of the *Trade-marks Act*, RSC 1985, c T-13, the main issue in this opposition is whether there would be a likelihood of confusion between the Mark as applied to the wares covered in the Applicant's application and one, or more, of the Opponent's 59 registered trade marks attached as Annex "A" to this decision.

[7] As its evidence, the Opponent filed the affidavits of Michael Poirier and Kenneth Verdoni. The Opponent was subsequently granted leave to file a second affidavit of Michael Poirier in substitution for the Verdoni affidavit who could not be made available for cross-examination because he was severely ill. Mr. Poirier was cross-examined on both affidavits and the transcript of his cross-examination, as well as any exhibits and answers to undertakings, were also filed. The Applicant did not file any evidence.

[8] Only the Opponent filed a written argument and an oral hearing was not held.

Onus and Material Dates

[9] The Applicant bears the legal onus of establishing, on a balance of probabilities, that its application complies with the requirements of the Act. There is however an initial burden on the Opponent to put forward sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [see *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) at 298; *Dion Neckwear Ltd v Christian Dior, SA* (2002), 20 CPR (4th) 155 (FCA)].

[10] The material dates that apply to the grounds of opposition are as follows:

- Section 38(2)(a)/Section 30 - the filing date of the application [see *Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB) at 475];
- Section 38(2)(b)/Section 16(3) – the filing date of the application [section 16];
- Section 38(2)(b)/Section 12(1)(d) - the date of my decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd. and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)]; and
- Section 38(2)(d)/non-distinctiveness - the date of filing of the opposition [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC)].

Summary of the Opponent's Evidence

[11] The most pertinent parts of the Opponent's evidence may be summarized as follows.

First Poirier Affidavit

[12] Michael Poirier has been employed by the Opponent since 1972 and has been President of the Opponent for four years. He explains that the SECRET trade-mark was adopted by the Opponent in July, 1966 and the use started in 1967 in association with ladies' hosiery. Since 1967, the Opponent, by itself and/or through its licensee has been using the SECRET trade-mark and numerous other trade-marks incorporating the word SECRET (the SECRET family of trade-marks) in association with a variety of hosiery products such as pantyhose, tights, thigh highs,

knee highs, ankle highs, leggings, capris, footlets, toe coverings and socks for women, men and children. Mr. Poirier attaches numerous samples of packaging and specimens showing the manner in which the SECRET trade-marks have been used in association with the SECRET products since 1967.

[13] In 1986, the Opponent expanded its product line to include lingerie wash bags. Photocopies of representative samples of packaging for such bags and hosiery gloves are attached to his affidavit.

[14] The Opponent has also granted as early as June 1990, a license to SOX Marketing Inc. to use the SECRET trade-marks in association with women's, men's and children's hosiery products under the Opponent's control. Mr. Poirier provides photocopies of representative packaging and labelling for various hosiery products sold by SOX under the SECRET trade-marks.

[15] The SECRET products are sold throughout Canada through thousands of retail outlets including The Bay, Sears, Zellers and Wal-Mart, as well as in specialty hosiery stores, lingerie boutiques, drug stores, grocery chains, independent dealers and rack jobbers such as Nivel Inc. (who in turn deal with chain stores or retail accounts such as Jean Coutu). The SECRET products are also sold through catalogue or mail order services provided by entities such as Sears and Avon since at least 1985.

[16] Over the years, the SECRET trade-mark has expanded, in that numerous trade-marks combining the word "secret" with one or more other elements have been subsequently adopted and used by the Opponent and/or its licensees in association with a large variety of products. The Opponent is now the owner of a significant family of trade-marks comprised of the SECRET trade-mark as well as of numerous other trade-marks incorporating the word SECRET.

[17] Sales of SECRET products to retailers in Canada by the Opponent totalled over \$574,619,443 from 1986 to December 31, 2009. A sample of invoices of representative sales of SECRET products to retailers is attached as Exhibit MP-28 to the first Poirier affidavit. Further, since the Opponent posts its sales of SECRET products by category of products and not by trade-marks, Mr. Poirier provides a yearly breakdown of the approximate sales figures of the following

categories of SECRET products to retailers between 1997 and 2009: 1) basic panty hose; 2) knee highs; 3) tights and trouser socks; 4) anklets and footlets; 5) Capri, panty, leggings and garter belt; and 6) wash bags and cotton gloves.

[18] The Opponent has spent over \$37,336,459 between 1986 and 2009 promoting the SECRET products bearing the SECRET trade-mark alone or in combination with other trade-marks which form part of the SECRET family of marks. The means of promotion and advertisement of the SECRET products by the Opponent since 1972 include the following:

- Media, including radio, television, magazines, newspapers;
- Signage such as billboards, mall posters, subway and signs in or on transit shelters;
- Marketing support to retailers by providing product knowledge and assistance in planning sales programs and setting up product displays and other materials, including material used when introducing new SECRET products and offering special promotion on SECRET products; and
- Co-operative advertising with retailers, including advertisement in newspapers and direct mail flyers, cooperative efforts with Sears and Wal-Mart.

Second Poirier Affidavit

[19] In or around December 1998, the Opponent granted a license to Doris Intimates Inc./Lingerie Feminine Doris Inc. (Doris Intimates) to use the following SECRET trade-marks in Canada including, but not limited to, SECRET INTIMATES (TMA531,815); SECRET DELUXE (TMA572,245); HER CHOICE/SON CHOIX (TMA525,747); SECRET Design (TMA285,242); SECRET (TMA603,410); SECRET (TMA649,866); SLIMMERS (TMA146,454) and SECRET FUSION (TMA733,364) (the Licensed Trade-marks) in association with intimate apparel, including but not limited to underwear, undergarments, lingerie, chemises, camisoles, foundation slips, thongs, boxer shorts, bras, sleepwear and loungewear (the Licensed Products). A copy of the license agreement between the Opponent and Doris Intimates was attached to the cross-examination transcript of Mr. Poirier as U-3,

Schedule B. Doris Intimates has been using the licensed marks under the Opponent's control since at least as early as February 1999.

[20] Aggregate sales of the Licensed Products sold by Doris Intimates to retailers in Canada totalled \$35,560,703. These figures are in addition to the figures included in the first Poirier affidavit.

[21] The Licensed Products sold in association with the Licensed Trade-marks are sold through major department and chain stores such as The Bay, Sears, and Wal-Mart; in lingerie boutiques, drug stores such as London Drug, in grocery chains and rack jobbers such as Nivel, Inc. (who in turn deal with chain stores or retail accounts such as Jean Coutu).

Preliminary Issues

State of the Register Evidence

[22] At the Poirier cross-examination, the Applicant's agent introduced various third party SECRET trade-mark registrations. I will not have regard to these registrations for the following reasons.

[23] First, state of the register evidence cannot be considered unless it is filed by way of certified copies of the registrations or an affidavit affixing particulars of the relevant registrations [see *Unitron Industries Ltd v Miller Electronics Ltd* (1983), 78 CPR (2d) 244 at 253 (TMOB), followed in *John Labatt Ltd v WCW Western Canada Water Enterprises Inc* (1991), 39 CPR (3d) 442 (TMOB), followed in *Frank T Ross & Sons (1962) Ltd v Hello Cosmetics Inc* (1994), 53 CPR (3d) 124 (TMOB)].

[24] Second, the law is clear that when adjudicating in an opposition proceeding, the Registrar does not exercise discretion to take cognizance of his own records except to verify whether claimed trade-mark registrations and applications are extant [see *Quaker Oats Co of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB) at 411]. The parties to opposition proceedings are expected to prove each aspect of their case following fairly strict rules of evidence [see *Loblaws Inc v Telecombo Inc* 2004 CarswellNat 5135 at para 13 (TMOB)]. It is

not for the Registrar to exercise his discretion and have regard to anything appearing on the register that is not properly proved by evidence under these circumstances.

[25] In my view, it was inappropriate for the Applicant to introduce third party SECRET registrations as exhibits through the Poirier cross-examination. As noted above, the Applicant could have easily filed certified copies of these registrations or an affidavit attaching these registrations to it as its evidence. The Applicant, however, chose not to file any evidence. I will therefore not have regard to these registrations.

Section 30(i) Ground – Non-Conformity

[26] The Opponent has alleged that the Applicant could not have been satisfied that it was entitled to use the Mark in Canada at the time of filing of the application in association with the applied for wares in view of the prior use and/or registration of the Opponent's SECRET trade-marks.

[27] Section 30(i) of the Act merely requires that an Applicant declare in its application that it is satisfied that it is entitled to registration of its trade-mark. Where an applicant has provided the requisite statement, a section 30(i) ground should only succeed in exceptional cases, such as where there is evidence of bad faith on the part of the applicant [see *Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155].

[28] I note that the Applicant has made the requisite statement and there is no evidence that it did so in bad faith. Further, mere knowledge of the existence of the Opponent's trade-marks does not in and of itself support an allegation that the Applicant could not have been satisfied of its entitlement to use the Mark [see *Woot, Inc v WootRestaruant Inc Les Restaurants Woot Inc* 2012 TMOB 197 (CanLII)]. I am therefore dismissing this ground of opposition.

Section 12(1)(d) Ground – Non-Registrability

[29] The Opponent has pleaded that the Mark is not registrable because it is confusing with 59 of its registered trade-marks as set out in its statement of opposition attached as Annex "A" to this decision.

[30] I consider that the Opponent's case with respect to this ground of opposition is strongest when considering its SECRET registration Nos. TMA151,062, TMA298,736, TMA603,410, TMA649,866 and TMA503,802. I have exercised the Registrar's discretion to confirm that these registrations are in good standing as of today's date. Since the Opponent has discharged its initial burden with respect to this ground of opposition, the burden of proof lies on the Applicant to convince the Registrar, on a balance of probabilities, that there is no reasonable likelihood of confusion. The determination of the issue of confusion between the Mark and the Opponent's SECRET trade-marks (i.e. registration Nos. TMA151,062, TMA298,736, TMA603,410 and TMA649,866, TMA503,802) will effectively decide this ground of opposition. Unless indicated otherwise, any reference to the trade-mark SECRET throughout my assessment of the surrounding circumstances is a collective reference to the Opponent's above identified SECRET registrations.

[31] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates that use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the wares or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.

[32] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act, namely: a) the inherent distinctiveness of the trade-marks and the extent to which they have become known; b) the length of time the trade-marks have been in use; c) the nature of the wares, services or business; d) the nature of the trade; and e) the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them.

[33] This list of enumerated factors is not exhaustive and it is not necessary to give each one of them equal weight [see, in general, *Mattel, Inc v 3894207 Canada Inc.* (2006), 49 CPR (4th) 321 (SCC); *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée* (2006), 49 CPR (4th) 401 (SCC)]. In *Masterpiece Inc v Alavida Lifestyles Inc et al* (2011), 92 CPR (4th) 361 (SCC), the Supreme Court of Canada clearly indicated that the most important factor amongst those listed under section 6(5) of the Act is often the degree of resemblance between the marks.

section 6(5)(a) –the inherent distinctiveness of the trade-marks and the extent to which they have become known

[34] Both of the parties' marks are inherently strong.

[35] The strength of a trade-mark may be increased by means of it becoming known through promotion or use.

[36] I am satisfied from the evidence furnished that the Opponent's SECRET trade-mark has become well known if not famous in Canada in association with hosiery.

[37] Since the Applicant did not file any evidence of use of its Mark, this factor clearly favours the Opponent.

section 6(5)(b) -- the length of time the trade-marks have been in use

[38] This factor clearly favours the Opponent.

sections 6(5)(c) and (d) -- the nature of the wares, services or business and the nature of the trade

[39] It is the statement of wares in the application and the statement of wares in the registrations that govern the assessment of the likelihood of confusion under section 12(1)(d) of the Act [see *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA); *Miss Universe, Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)].

[40] The Opponent's SECRET marks are registered in association with, among other things, ladies' hosiery, men's and ladies' socks and stockings, ladies' pantyhose, undergarments, underwear, undergarments, lingerie and scarves.

[41] Most of the Applicant's wares are either identical to or closely related to the Opponent's wares in that they all comprise articles of clothing.

[42] With respect to the parties' channels of trade, the Opponent's evidence demonstrates that its wares are sold through retail outlets, including department and chain stores, specialty hosiery stores, lingerie boutiques, drug stores, grocery chains, and drugstores. The Applicant did not introduce evidence with respect to the channels of trade associated with the Mark. There is

therefore no reason to assume that there are any significant differences between the channels of trade associated with each of the parties' marks.

section 6(5)(e) – the degree of resemblance between the marks in appearance, sound and idea suggested

[43] When considering the degree of resemblance between the marks, the law is clear that the marks must be considered in their totality; it is not correct to lay the trade-marks side by side and compare and observe similarities or differences among the elements or components of the marks. The Supreme Court in *Masterpiece*, above, advises that the preferable approach when comparing marks is to begin by determining whether there is an aspect of the trade-mark that is particularly striking or unique.

[44] In the present case, there are obvious differences between the Mark VS A SECRET THAT WOMEN LOVE and Design and the Opponent's mark SECRET. In this regard, while the most striking or dominant feature of the Opponent's mark is the word SECRET, I find the most dominant feature of the Mark to be the letters VS. However, in view that the Mark does include the Opponent's mark in its entirety, there is some degree of resemblance between the marks in all respects.

Additional surrounding circumstances

Secret Family of Trade-marks

[45] The Opponent submitted that as a further surrounding circumstance, I should consider that the Opponent's SECRET trade-marks form a "family of marks" and as such, are entitled to a wider measure of protection than would otherwise be the case if the determination were exclusively made on the basis of comparing one particular mark with another particular mark. I agree. From the evidence furnished I am satisfied that the Opponent has established the existence of a family of marks containing the word "secret" for hosiery and undergarments [see *McDonald's Corp v Yogi Yogurt Ltd* (1982), 66 CPR (2d) 101 (FCTD)]. The Opponent's family of SECRET marks was also acknowledged by the Opposition Board in *Manufacturiers de Bas de Nylon Doris Ltee/Doris Hosiery Mills Ltd v Victoria's Secret Inc* (1991), 39 CPR (3d) 131 (*Victoria's Secret*).

[46] I conclude that consumers familiar with the Opponent's marks may be more likely to assume that the Mark is part of the Opponent's family of marks because of the SECRET component. The Opponent's family of marks therefore increases the likelihood of confusion in the present case.

Notoriety of the trade-mark SECRET

[47] The Opponent also submits that, as a further surrounding circumstance, I should consider the notoriety of its SECRET trade-mark. As noted above, I am satisfied from the Opponent's evidence that its SECRET mark has become well known if not famous in Canada in association with hosiery. The fame and reputation of the Opponent's SECRET trade-mark was also acknowledged in the following decisions: *Cortefiel, SA v Doris Inc* (2013 FC 1107), *Victoria's Secret*, above, and *Manufacturier de bas de nylon Doris Ltee/Doris Hosiery Mills Ltd v Suzy's Inc* (2009), 78 CPR (4th) 196 (TMOB).

[48] In view of the fame and reputation of the Opponent's SECRET trade-mark, I agree with the Opponent that it should be afforded a wider ambit of protection [see *United Artists Corp v Pink Panther Beauty Corp* (1998), 80 CPR (3d) 247 (FCA) at 267].

Conclusion

[49] In the present case, the Mark includes the most distinctive and important element of the Opponent's SECRET trade-mark and SECRET family of trade-marks. As in the *Cortefiel* decision, above, the evidence suggests that consumers are sufficiently familiar with the Opponent's SECRET mark such that they would probably believe that identical or closely related wares associated with the Mark derive from the same source.

[50] In applying the test for confusion I have considered it as a matter of first impression and imperfect recollection. Despite the differences between the marks themselves, in view of the similarities between the wares and trades of the parties, the Opponent's family of SECRET trade-marks and the reputation associated with the Opponent's SECRET mark, I arrive at the conclusion that the probabilities of confusion between the marks at issue are evenly balanced between a finding of confusion and no confusion. As the onus is on the Applicant to establish on

a balance of probabilities that the Mark is not confusing with the Opponent's SECRET mark, I must find against the Applicant.

[51] The section 12(1)(d) ground is therefore successful.

Section 16(3)(a) and Non-Distinctiveness Grounds of Opposition

[52] These grounds also turn on a determination of the issue of the likelihood of confusion between the Mark and the Opponent's marks.

[53] As noted above, the material dates for assessing the likelihood of confusion in respect of the non-entitlement and non-distinctiveness grounds are, respectively, the Applicant's filing date and the date of opposition. I am satisfied from the evidence furnished that the Opponent has met its evidentiary burden under the section 16(3)(a) and non-distinctiveness grounds of opposition.

[54] In my view, the differences in material dates do not have any significant impact on the determination of the issue of confusion between the trade-marks of the parties under the section 16(3)(a) and non-distinctiveness grounds of opposition. Thus, my finding above that the trade-marks are likely to be confused applies to these grounds of opposition which also succeed.

Section 16(3)(b) Ground

[55] The specific application relied upon by the Opponent for its section 16(3)(b) ground is application No. 1,377,288 for SECRET POSSESSIONS, applied for in association with clothing, namely lingerie. As I have already decided in favour of the Opponent under three grounds of opposition, I do not find it necessary to consider this ground.

Disposition

In view of the above and pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application pursuant to section 38(8) of the Act.

Cindy R. Folz
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

Annex A

The trade-mark SECRET, registered on May 26, 1967, under number TMA 151,062 with respect to the following wares: "(1) Ladies' hosiery. (2) Men's and ladies' socks and stockings (3) Men's and ladies' sports socks, dress socks and knee socks";

The trade-mark SECRET, registered on January 4, 1985, under number TMA 298,736 with respect to the following wares: "(1) Ladies' hosiery, men's and ladies' socks and stockings, sports socks, dress socks and knee socks. (2) Children's socks and stockings";

The trade-mark SECRET Design, registered on November 25, 1983, under number TMA 285,242 with respect to the following wares: "(1) Ladies' pantyhose. (2) Men's and ladies' socks and stockings. (3) Children's socks and stocking";

The trade-mark SECRET, registered on November 6, 1998, under number TMA 503,802 with respect to the following wares: "Headwear, namely, earmuffs, woven and leather gloves, scarves, umbrellas";

The trade-mark SECRET, registered on February 26, 2004, under number TMA 603,410 with respect to the following wares: "(1) Undergarments";

The trade-mark SECRET, registered on February 1, 2005, under number TMA 631,688 with respect to the following wares: "Children's sleepwear";

The trade-mark SECRET, registered on February 1, 2005, under number TMA 631,647 with respect to the following wares: "Children's underwear and casual wear, namely tops and bottoms";

The trade-mark SECRET, registered on October 6, 2005, under number TMA 649,866 with respect to the following wares: "Underwear, undergarments and lingerie";

The trade-mark SECRET ACTIVE SHEERS, registered on March 20, 1998, under number TMA 491,692 with respect to the following wares: "Clothing, namely hosiery, pantyhose and undergarments";

The trade-mqrk SECRET ACTIVE SLIMMERS, registered on July 2, 1997, under number TMA 478,269 with respect to the following wares: "Clothing, namely hosiery, pantyhose and undergarments";

The trade-mark SECRET ALL-DAY, registered on July 17, 1997, under number TMA 478,681 with respect to the following wares: "Clothing, namely socks, stockings, lingerie, undergarments, kneehighs and tights";

The trade-mark SECRET ALL NUDE, registered on November 21, 1986, under number TMA 320,972 with respect to the following wares: "Ladies' pantyhose and ladies' hosiery";

The trade-mark SECRET ALL NUDE, registered on May 15" 2003, under number TMA 580,442, with respect to the following wares: "Clothing, namely intimate apparel";

The trade-mark SECRET AU NATUREL, registered on October 4, 1999, under number TMA 517,521, with respect to the following wares: "Hosiery, namely panty hose, thigh highs, knee highs, ankle highs, tights, socks and stockings";

The trade-mark SECRET CONTROL PANTY, registered on October 26, 1979, under number TMA 236,847 with respect to the following wares: "Ladies' panty hose and ladies' hosiery";

The trade-mark SECRET CONTROL TOP, registered on October 26, 1979, under number TMA 236,848 with respect to the following wares: "Ladies' panty hose and ladies' hosiery";

The trade-mark SECRET DELUXE registered on December 13, 2002, under number TMA 572,245, with respect to the following wares: "Clothing, namely intimate apparel";

The trade-mark SECRET DURASHEERS, registered on October 11, 2001, under number TMA 552,296, with respect to the following wares: "Men's, ladies' and children's hosiery, namely pantyhose, thigh highs, knee highs, ankle highs, tights, socks and stockings, sports socks, dress socks, trouser socks, and knee socks";

The trade-mark SECRET FIT, registered on October 26, 1998, under number TMA 502,880 with respect to the following wares: "(1) Clothing, namely hosiery, socks, stockings, panty hose, kneehighs, tights, shoes, slippers, panties, underwear and active wear, namely exercise tights, leggings, leotards, sweat pants, sweat shirts, T-shirts, shorts, exercise tops";

The trade-mark SECRET FOR HIM, registered on September 29, 1995, under number TMA 448,331 with respect to the following wares: "Clothing, namely socks and underwear for men";

The trade-mark SECRET FOR HIM POUR LUI & Design, registered on November 3, 1995, under number TMA 449,621 with respect to the following wares: "Clothing, namely socks and underwear for men";

The trade-mark SECRET FUSION, registered on January 27, 2009, under number TMA 733,364 with respect to the following wares: "Clothing, namely intimate apparel, lingerie, undergarments";

The trade-mark SECRET GET HIP, registered on December 18, 2002, under number TMA 572,608, with respect to the following wares: "Clothing, namely undergarments and legwear, namely hosiery, tights, socks and stockings";

The trade-mark SECRET HIPSTER, registered on December 12, 2002, under number TMA 572,221, with respect to the following wares: "Clothing, namely undergarments and legwear, namely hosiery, tights, socks and stockings";

The trade-mark SECRET INTIMATES, registered on August 28, 2000, under number TMA 531,815, with respect to the following wares: "Men's, ladies' and children's hosiery, namely panty hose, thigh highs, knee highs, ankle highs, tights, socks and stockings, sports socks, dress socks and knee socks; intimate apparel, namely bras, panties, slips, bodyliners, bodystockings, bodysuits, garter belts, g-strings, thongs, teddies, chemises, camisoles, foundation slips, half slips, girdles, panty girdles, garters, briefettes and control briefs";

The trade-mark SECRET-KIDS, registered on July 26, 1991, under number TMA 387,178 with respect to the following wares: "(1) Children's pantyhose, hosiery, tights and socks";

The trade-mark SECRET KUSHY, registered on December 14, 2007, under number TMA 703,180 with respect to the following wares: "Footwear, namely slippers, shoes, foot tubes, toe covers, foot covers, sandals, legwear, namely pantyhose, tights, knee highs, leggings";

The trade-mark SECRET LIFT, registered on July 27, 1998, under number TMA 497,878 with respect to the following wares: "Men's, ladies' and children's hosiery, namely pantyhose, thigh highs, knee highs, ankle highs, tights, socks and stockings, sports socks, dress socks and knee socks";

The trade-mark SECRET LUXURY COLLECTION, *registered* on February 23, 2005, under number TMA 633,532, with respect to the following wares: "Clothing, namely hosiery, undergarments, loungewear, intimate apparel";

The trade-mark SECRET MEDI-SUPPORT & Design, registered on May 8,1998, under number TMA 494,307 with respect to the following wares: "Graduated compression medical hosiery for men and women, namely pantyhose, socks, stockings and kneehighs";

The trade-mark SECRET NATURE, registered on January 22, 2009, under number TMA 732,945 with respect to the following wares: "Socks";

The trade-mark SECRET NO-SEAM, registered on July 23, 1999, under number TMA 513,154 with respect to the following wares: "Ladies' panty hose and ladies' hosiery";

The trade-mark SECRET NO-SEAM, registered on April 16, 2003, under number TMA 579,685, with respect to the following wares: "Clothing, namely intimate apparel";

The trade-mark SECRET PAIRE DE SECOURS, registered on July 18,1980, under number TMA 248,329 with respect to the following wares: "Ladies' panty hose and ladies' hosiery";

The trade-mark. SECRET PLUS, registered on August 23, 2001, under number TMA 550,155, with respect to the following wares: "Pantyhose, socks, knee highs and tights; and panties";

The trade-mark SECRET POSSESSIONS, registered on January 13, 2010, under number TMA 757,008, with respect to the following wares "Clothing namely lingerie";

The trade-mark SECRET REVEAL, registered on December 6,2005, under number TMA 654,441, with respect to the following wares: "Clothing, namely intimate apparel, loungewear, namely tops and bottoms, legwear, namely hosiery, tights, socks, stockings, leggings";

The trade-mark SECRET SENSUALS, registered on December 13, 2002, under number TMA 572,244, with respect to the following wares: "Hosiery and intimate apparel";

The trade-mark SECRET SILKY, registered on October 27, 1989, under number TMA 361,546 with respect to the following wares: "Ladies' pantyhose and ladies' hosiery";

The trade-mark SECRET SLIMMERS, registered on August 5, 1966, under number TMA 146,454 with respect to the following wares: "(1) Women's underwear and undergarments, namely, panties and girdles";

The trade-mark SECRET SO SHEER L'INVISIBLE, registered on January 28, 1998, under number TMA 488,430 with respect to the following wares: "(1) Clothing, namely hosiery, socks, stockings, panty hose, lingerie, undergarments, kneehighs and tights";

The trade-mark SECRET SO SLIM, registered on November 24,1995, under number TMA 450,919 with respect to the following wares: "Clothing, namely hosiery, socks, stockings, panty hose, lingerie, undergarments, kneehighs and tights";

The trade-mark SECRET SO SOFT, registered on February 2, 1998, under number TMA 488,951 with respect to the following wares: "Clothing, namely hosiery, socks, stockings, pantyhose, lingerie, undergarments, kneehighs and tights";

The trade-mark SECRET SO SOFT TRES DOUX, registered on February 2, 1998, under number TMA 488,942 with respect to the following wares: "Clothing, namely hosiery, socks, stockings, pantyhose, lingerie, undergarments, kneehighs and tights";

The trade-mark SECRET SPARE PAIR, registered on July 18, 1980, under number TMA 248,327 with respect to the following wares: "Ladies' hosiery";

The trade-mark SECRET TONE-UP, registered on November 24, 1997, under number TMA 486,169 with respect to the following wares: "Underwear, namely: bras, panties, slips, bodyliners, bodystockings, garter belts, g-strings, thongs, teddies, chemises, camisoles; pantyhose and hosiery";

The trade-mark SECRET ULTRA, registered on April 8, 1998, under number TMA 338,864 with respect to the following wares: "Ladies' hosiery";

The trade-mark SECRET UP LIFT, registered on June 18, 1997, under number TMA 477,978 with respect to the following wares: "Pantyhose and panties";

The trade-mark SECRET VIRTUAL SKINNOILE DE PEAU, registered on April 2, 1998, under number TMA 492,220 with respect to the following wares: "Ladies' hosiery, namely thigh highs, knee highs and pantyhose";

The trade-mark CRAZE BY SECRET, registered on April 30, 2003, under number TMA 580,305, with respect to the following wares: "Clothing, namely intimate apparel";

The trade-mark CRAZE BY SECRET, registered on July 22, 2004, under number TMA 615,475, with respect to the following wares: "Clothing, namely sleepwear, casual wear, legwear, namely hosiery, tights, socks, stockings, leggings; footwear, namely slippers, shoes, jogging shoes, boots, sandals";

The trade-mark CRAZE BY SECRET, registered on January 31, 2006, under number TMA 657,696 with respect to the following wares: "Clothing, namely pants and tops, namely blouses, sweaters, shirts, tanks, halters, t-shirts and outerwear, namely jackets, coats, hats, caps, scarves, gloves, mittens";

The trade-mark HER CHOICE BY SECRET, registered on June 16, 1995, under number TMA 444,050 with respect to the following wares: "Clothing, namely panty hose, trousers socks, kneehighs, socks, thigh highs and stockings";

The trade-mark HER CHOICE BY SECRET, registered on July 2, 1997, under number TMA 478,262 with respect to the following wares: "Activewear, namely exercise tights, leggings, exercise leotards, sweat pants, sweat shirts, T-shirts; underwear";

The trade-mark HER CHOICE/SON CHOIX BY/PAR SECRET, registered on August 22, 1997, under number TMA 481,370 with respect to the following wares: "(1) Panty hose, socks, thigh highs and stockings. (2) Trouser socks, ankle highs and knee highs";

The trade-mark HER SECRETS, registered on May 2, 1997, under number TMA 475,612 with respect to the following wares: "Ladies' lingerie, namely, bras, panties, and daywear, namely, slips, camisoles, teddies and loungewear, namely, robes, tops and bottoms not intended as streetwear, sleepwear";

The trade-mark HER SECRETS, registered on January 22, 2009, under number TMA 732,944 with respect to the following wares: "Hosiery, namely socks, stockings, tights, knee-highs and pantyhose";

The trade-mark JOUR À JOUR SECRET, registered on June 30, 1995, under number TMA 444,724 with

respect to the following wares: "Clothing, namely hosiery, socks, stockings, panty hose, lingerie, undergarments, kneehighs and tights";

The trade-mark SUPERSHEER SECRET SUPERFIN, registered on June 1, 1990, under number TMA 369,065 with respect to the following wares: "Ladies' pantyhose and ladies' hosiery".