

CONSENT AGREEMENT

This Consent Agreement dated June 18, 2019 ("Agreement") by and between HABIL COSMETICS, LLC, a California limited liability company, located at 3415 Cross Creek Road, Malibu, CA 90265 (hereinafter "HABIL"), and GIOVANNI COSMETICS, INC., a California corporation, located at 2064 E. University Drive, Rancho Dominguez, California 90220 (hereinafter "GIOVANNI") sets forth the rights and obligations of the parties and their successors and assigns in connection with HABIL's use and registration of the mark *Habit* with respect to the International Class, 003 (Cosmetics), and GIOVANNI's continued use of the mark *Habit* as defined below.

This Agreement shall, and hereby does, confirm that HABIL and GIOVANNI believe and agree that they may co-exist, and that they foresee no likelihood of confusion as a result of the parties' concurrent use of the mark, *Habit*, for their respective goods, services, and businesses subject to the terms of this Agreement. Further, it is the parties' desire to take reasonable steps in good faith to reduce any likelihood of confusion between them.

Accordingly, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Definitions:

(a) "HABIL MARK" means the mark HABIL as used by HABIL for the HABIL's Goods;

(b) "GIOVANNI MARK" means the mark HABIL as used by Giovanni for the GIOVANNI's Goods;

(c) "HABIL's Goods" means the term and mark *Habit* used by HABIL in connection with (003) – "Nail paint; Nail varnish for cosmetic purposes; Facial Make-up"; and

(d) "GIOVANNI's Goods" means the term and mark *Habit* used by GIOVANNI in connection with (003) – "Hair creams; hair conditioners; non-medicated leave-in hair care, hair styling and hair treatment preparations for cosmetic purposes," as well as "hair care products, and body and skin care products";

2. Consent:

(a) GIOVANNI consents to HABIL's use of the Habit Mark in connection with HABIL's Goods, specifically, "Nail paint; Nail varnish for cosmetic purposes; Facial Make-up" pursuant to the terms of this Agreement;

(b) HABIL consents to GIOVANNI's use of the GIOVANNI Mark in connection with GIOVANNI's Goods, specifically, "Hair creams; hair conditioners; non-medicated leave-in hair care, hair styling and hair treatment preparations for cosmetic purposes," as well as "hair care products and body and skin care products" pursuant to the terms of this Agreement;

3. Acknowledgement:

(a) HABIL and GIOVANNI acknowledge that they have determined that no likelihood of confusion exists between their respective marks for their respective goods, including due to the differences in the parties' goods and arrangements undertaken by the parties to avoid any potential for confusion the public.

(b) HABIL and GIOVANNI acknowledge that HABIL's Goods and GIOVANNI's Goods avoid any potential for confusing the public, insomuch as HABIL's Goods and GIOVANNI's Goods are sufficiently distinguishable from each other in marketplace presence, channels of trade, and customer

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base. Specifically, the parties acknowledge that each has been in business for more than five years and both parties are familiar with the relevant marketplace conditions.

(c) HABIT and GIOVANNI acknowledge that they have taken and will continue to take reasonable steps to avoid any actual or likelihood of confusion in connection with the advertising, promotion, distribution, and/or presentation of their respective goods and services. Such steps may include, for example: (1) using different fonts and stylizations from one another; (2) using the marks *Habit* and *Habit* in context-specific manners that distinguishes their respective uses; (3) informing misdirected consumers of the respective identity of the parties; and (4) operating pursuant to the terms of this Agreement.

(d) The parties further agree that, among other things, the fonts and visual styles of their respective marks are dissimilar, and the marketing and promotional efforts of HABILIT's Goods and GIOVANNI's Goods are also dissimilar, which mitigates against any likelihood of confusion.

4. So long as each party is in compliance with this agreement, the parties each agree to refrain from taking any action, making any claim or instituting any proceeding, legal or otherwise, which will hinder the other party in its use of its respective HABILIT mark for such party's goods as set forth above. The parties acknowledge that this mutual agreement constitutes good and valuable consideration, which is received by each party.

5. In the event any current or future federal or state trademark registration or application containing "*Habit*" by HABILIT for the HABILIT's Goods is refused due to a mark owned by GIOVANNI, GIOVANNI agrees to cooperate, to provide its consent and/or to execute and file whatever further documents or agreements as may be reasonably necessary to attempt to overcome the refusal, so long as any such documents or agreements comport with the requirements and limitations of use contained in this Agreement.

6. In the event any current or future federal or state trademark registration or application containing "*Habit*" by GIOVANNI for the GIOVANNI's Goods is refused due to a mark owned by HABILIT, HABILIT agrees to cooperate, to provide its consent and/or to execute and file whatever further documents or agreements as may be reasonably necessary to attempt to overcome the refusal, so long as any such documents or agreements comport with the requirements and limitations of use contained in this Agreement.

7. HABILIT shall not make, print or publish any disparaging comments or remarks about GIOVANNI, or take any steps, or do any acts, to disparage, parody and/or trade on the goodwill of the GIOVANNI Mark. Likewise, GIOVANNI shall not make, print or publish any disparaging comments or remarks about HABILIT, or take any steps, or do any acts, to disparage, parody and/or trade on the goodwill of the HABILIT Mark. The parties agree that this is a material provision of this Agreement.

8. Except as otherwise provided herein, this Agreement is freely assignable by each party and shall bind the successors and assigns of the parties and shall inure to the benefit of their agents, directors, officers, employees, attorneys, successors, and assigns. This Agreement shall apply to the parties' partners, affiliates, venturers, joint venturers, members, successors, assigns, attorneys, agents, employees, and their respective heirs, executors, administrators, and assigns and any person, firm company, or corporation subject to their direct or indirect control.

9. This Agreement may be executed in one or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument, and all of which shall be of equal legal force and effect. Facsimile and electronic signatures shall be deemed binding and will be effective for purposes of execution of this Agreement.

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10. The invalidity or unenforceability or waiver in any instance of any provision of this Agreement shall not affect the validity or enforceability of any other provision or the same provision waived in any other instance. If any provision of this Agreement conflicts with applicable law, or if any provision of this Agreement is held illegal or unenforceable (or partially illegal or unenforceable) by a court of competent jurisdiction, this Agreement will be modified to conform with such law or judicial determination. Such provision will be construed and enforced only to the extent it may be a legal and enforceable provision, and all other provisions of this Agreement will be given full effect and will not be otherwise affected.

11. Whenever in this Agreement one party is required or permitted to give notice, request, demand, consent, or approval to the other, such communication will be given in writing and will be delivered either personally, by an overnight courier service with signed proof of receipt, or forwarded by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to GIOVANNI:

Giovanni Cosmetics, Inc.
2064 E. University Drive
Rancho Dominguez, California 90220

with a copy, via the same mode, addressed to:

LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN
16633 Ventura Blvd., Suite 1100
Encino, California 91436
Attention: Tal Grinblat, Esq.

If to HABIT:

Habit Cosmetics, LLC
3415 Cross Creek Road
Malibu, CA 90265
Attention: Aja Frierson

with a copy, via the same mode, addressed to:

THE FASHION LAW GROUP, P.C.
811 West 7th Street, Suite 946
Los Angeles, CA 90017
Attention: Manoj N. Shah, Esq.

12. This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. This Agreement may not be amended except by a written amendment executed by the parties. No delay, neglect or forbearance on the part of either party in enforcing against the other any term or condition of this Agreement shall be, or be deemed to be, a waiver or in any way prejudice any right of that party under this Agreement.

[SIGNATURE PAGE TO FOLLOW.]

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13. Each of the parties represents and warrants that it has the power and authority to execute, deliver and perform this Agreement, that the signatory on behalf of each such party has been duly authorized by such party, and that the execution, delivery and performance of this Agreement by such party does not conflict with, violate or otherwise breach any agreement to which such party may be bound.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed in duplicate originals by its duly authorized representative.

Habit Cosmetics, LLC

By: 
Print: Aja Frierson
Title: Founder
Date: 06 / 18 / 2019

Giovanni Cosmetics, Inc.

By: 
Print: G. James Guidotti
Title: President
Date: 6 / 20 / 19