

TRADEMARK SETTLEMENT AGREEMENT

This Trademark Settlement Agreement ("Settlement Agreement"), having an Effective Date of 4-10-2016, is made by and between Fuzion Creation International, LLC ("Fuzion"), a limited liability company having an address of 140 58th Street Building A Suite 7A, Brooklyn NY 11220, and Leslie Stevenson Reilly ("Ms. Reilly"), an individual having an address of 1482 East Valley Rd, 305 Santa Barbara, CA 93108 (collectively referred to herein as the "Parties").

RECITALS

Fuzion is the owner of trademark application Serial No. 85901058 for the mark TIARA in International Class 014 for "Jewelry, not including jewelry worn in the hair or tiaras.

Ms. Reilly filed applications for the word mark "TIARA" and stylized depiction of the word TIARA with a crown above it on August 2, 2014, for "Jewelry, not including jewelry worn on top of the head" in International Class 014 (Serial Nos. 86355716 and 86355722).

On or about December 2, 2014, Ms. Reilly filed Opposition No. 91219602, which alleged a likelihood of confusion between Fuzion's TIARA trademark, and the TIARA trademarks applied for by Ms. Reilly. Fuzion timely filed an Answer in response to the Opposition on January 12, 2015.

The Parties desire to resolve the Dispute and have negotiated the terms of an agreement under which they will resolve the Dispute and agree to certain marketplace conditions as set forth in this agreement.

In consideration of the mutual covenants and considerations set forth and any other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS

1. The Parties' Rights and Obligations: As part of this Settlement Agreement, the parties agree to be bound by the following obligations, restrictions and limitations on their use and registration of their marks as follows:

A. Obligations, Restrictions and Limitations upon Ms. Reilly:

- (i) Ms. Reilly agrees to amend the identification of goods for Serial Nos. 86355716 and 86355722, to the following: "Fashion jewelry made of base metals, not including jewelry worn on top of the head" in International Class 014. This proposed amendment shall be filed with the USPTO within ten (10) days of the execution of the instant Settlement Agreement between the parties.
- (ii) Ms. Reilly agrees to stay within her specific channels of trade, namely, retail stores selling fashion jewelry. This is limited to "fast fashion" clothing and accessories stores using a high-fashion/low-cost model as well as high-fashion department stores.
- (iii) Upon acceptance and entry of the amendment described above in U.S. Serial No. 85901058, Ms. Reilly agrees to withdraw Opposition No. 91219602, which she filed against the trademark application for TIARA (Serial No. 85901058), without prejudice. Ms. Reilly agrees to file this withdrawal without prejudice within ten (10) days of acceptance by the Trademark Trial and Appeal Board (TTAB).
- (iv) Ms. Reilly agrees to not attack, interfere with or bring any kind of action or legal or administrative proceeding against Fuzion's right, title, and interest in its TIARA mark (Serial No. 86/304,962) after the mark has been successfully amended and pending approval of the amendment and co-existence agreement by the TTAB or future marks which contain the word TIARA and are filed anywhere in the world for the agreed upon jewelry.
- (v) Ms. Reilly agrees to make all reasonable efforts to avoid any confusion in the marketplace between its TIARA marks and Fuzion's TIARA Mark, and agrees that it will not represent itself as being approved, endorsed, affiliated with, franchised or chosen by Fuzion to represent its goods.

- (vi) Ms. Reilly waives, fully and unconditionally releases and discharges with prejudice any and all claims, demands, causes of action or charges of any nature it may have had against Fuzion, and their officers, directors, employees, agents and attorneys, related to or arising from Fuzion's use of its marks which contain the term "TIARA" occurring prior to the effective date of this Agreement.

B. Obligations, Restrictions and Limitations Upon Fuzion:

- (i) Fuzion agrees to amend the identification of goods for Serial No. 85901058, to the following: "Children's Jewelry in any metal and Specialty jewelry made of precious metals, not including jewelry worn in the hair or tiaras" in International Class 014. This proposed amendment shall be filed with the USPTO within ten (10) days of the execution of the instant Settlement Agreement between the parties.
- (ii) Fuzion agrees to stay within its specific channels of trade. Fuzion agrees that it will only sell within the children, specialty and occasion jewelry market segment.
- (iii) Fuzion agrees to not attack, oppose, cancel, interfere with or otherwise challenge or bring any kind of action or legal or administrative proceeding against Ms. Reilly's right, title, and interest in any of the present or future marks which contain the word TIARA and are filed anywhere in the world for fashion jewelry.
- (iv) Fuzion agrees to make all reasonable efforts to avoid any confusion in the marketplace between its TIARA product and those of Ms. Reilly, and agrees that it will not represent itself as being approved, endorsed, affiliated with, franchised or chosen by Ms. Reilly to represent its goods.
- (v) Fuzion waives, fully and unconditionally releases and discharges with prejudice any and all claims, demands, causes of action or charges of any nature it may have had against Ms. Reilly, and their officers, directors, employees, agents and attorneys, related to or arising from Ms. Reilly's use of its marks which contain the term "TIARA" occurring prior to the effective date of this Agreement.

2. Disposition of Opposition Proceeding

The Parties shall execute and file the consented motion to amend and withdrawal of opposition found in Exhibit B to this Agreement. The Parties shall promptly suspend the Opposition to Application Serial No. 85901058 with consent until the agreed upon amendment has been acted upon and accepted by the Trademark Trial and Appeal Board (the "Board").

3. Termination by Parties:

Either party may terminate this Agreement if the other party materially fails to perform their obligations under this Agreement and does not remedy such failure within thirty (30) days of receipt of written notice of breach.

4. General Provisions:

- (i) **Irreparable Harm:** Either Party's breach of this Agreement will cause the non-breaching Party immediate irreparable harm for which it has no adequate remedy at law and for which it is entitled to immediate injunctive relief, without the posting of any bond.
- (ii) **Governing Law and Jurisdiction:** This Settlement Agreement shall be exclusively governed by the internal laws of the State of California without regard to principles on the conflicts of law. The Parties shall submit to the jurisdiction of the state and federal courts located in Los Angeles County, California to resolve any and all disputes arising out of or related to this Agreement.
- (iii) **Successors and Assigns:** The rights and obligations of this Settlement Agreement shall inure to the benefit of and be binding upon Ms. Reilly, Fuzion, and each and all of their permitted assigns and successors.
- (iv) **Entire Agreement:** This Agreement constitutes the complete and exclusive statement of all mutual understandings between the Parties with respect to their respective marks.
- (v) **Waiver, Amendment, and Modification:** No waiver, amendment or modification, including those by custom, usage of trade, or course of dealing, of any Section will be effective unless in writing and signed by the Party against whom such waiver, amendment or modification is sought to be enforced. No waiver by any Party of any

default in performance by the other Party, or of any breach or series of breaches by the other Party shall constitute a waiver of any subsequent default in performance or breach.

- (vi) **Severability:** If any provision of this Settlement Agreement is found invalid or unenforceable under judicial decree or decision, the remainder shall remain valid and enforceable according to its terms.
- (vii) **Relationship:** This Settlement Agreement does not make either Party the partner, employee, agent or legal representative of the other Party for any purpose whatsoever. Neither Party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party.
- (viii) **Notices:** All notices or approvals required under this Settlement Agreement shall be in writing, and sent by facsimile or delivered or mailed to the respective Parties at the addresses set forth above or at such other address as such Party shall specify to the other Party in writing. Any notice or approval shall be conclusively deemed to have been received on the day it is facsimiled, or on the date it is delivered.

The persons signing below represent and warrant that they have the authority to execute this document on behalf of the respective entities, corporations, partnerships, or for themselves individually. Further, each party has full legal power and authority to enter into and perform this Settlement Agreement in accordance with its terms.

Fuzion, LLC

By: 

Date: 4-10-2016

Name:

Mandy Douch

Title:

CEO

Leslie Stevenson Reilly

By: 

Date:

6.20.2016

Name:

Leslie Stevenson Reilly

Title:

owner