


FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

2007 DEC 14 PM 4:56
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY

COMMEMORATIVE BRANDS, INC.,

Plaintiff,

v.

INTERNATIONAL WATCH GROUP, INC.

Defendant.

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A07CA1014LY
Civil Action No. _____

COMPLAINT

Plaintiff Commemorative Brands, Inc. ("Commemorative") (formerly known as CJC Holdings, Inc.) files this Complaint for declaratory relief, trademark infringement, dilution, and unfair competition and states as follows:

THE PARTIES

1. Plaintiff Commemorative is a Delaware corporation that maintains its principal place of business within this district at 7211 Circle S Road, Austin, Texas 78745. Commemorative is a leading manufacturer and distributor of jewelry in the United States.

2. Although American Achievement Corporation is not a party to this Civil Action, pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiff Commemorative identifies American Achievement Corporation, a Delaware corporation, as its parent corporation.

3. According to records filed with the United States Patent and Trademark Office (“PTO”), Defendant International Watch Group, Inc. (“IWG” or “Defendant”) is a corporation organized and existing under the laws of the State of New York having a principal place of business at 868 Kent Avenue, Brooklyn, New York 11205. However, the online records of the New York Secretary of State show no evidence that any such corporation exists, or has ever existed, in New York. **Upon information and belief, IWG is a corporation organized and existing under the laws of the State of New Jersey having a principal place of business at 26 10th Street, Lakewood, New Jersey 08701. Defendant IWG can be served with process by serving its registered agent for service of process, Joshua Friedman at 26 10th Street, Lakewood, New Jersey 08701.** In the alternative, IWG is a corporation organized and existing under the laws of the State of New York, or an unincorporated association, having a principal place of business at 868 Kent Avenue, Brooklyn, New York 11205.

NATURE OF THE ACTION

4. This is an action for declaratory relief, trademark infringement, dilution, unfair competition and tortious interference with contractual relations under the Federal trademark laws, 15 U.S.C. § 1051 *et seq.*, and the statutes and common law of the State of Texas.

JURISDICTION AND VENUE

5. This action arises under the trademark laws of the United States, Title 15 United States Code, and the statutes and common law of the State of Texas. The jurisdiction of this Court is proper under 15 U.S.C. § 1121 *et seq.*, and 28 U.S.C. §§

1331, 1338, and 1367. The jurisdiction of this Court is also proper under 28 U.S.C. § 1332 in that the matter arises between citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest and costs. Venue is properly laid in this Court pursuant to 28 U.S.C. § 1391(b).

6. On information and belief, and subject to further discovery, Defendant IWG's activities in and affecting this district and in and affecting the State of Texas are sufficient to constitute doing business for jurisdictional purposes and IWG has sufficient contacts with this judicial district and the State of Texas to subject it to the jurisdiction of this Court. As described in more detail below (and incorporated here by reference): (i) IWG has filed an "intent to use" application with the United States Patent and Trademark Office ("USPTO") to register the mark "KEEPSAKE" in connection with watches and clocks; (ii) IWG through its counsel in communications with the USPTO has confirmed its intention to use the mark "KEEPSAKE" in connection with watches in interstate commerce; (iii) on information and belief, IWG has proposed to a prominent national retailer ("Retailer") (which retailer has scores of retail outlets in Texas and several outlets in this District) that the Retailer stock Keepsake-branded watches provided by IWG in its stores; (iv) on information and belief, IWG has asserted to said Retailer that IWG has the rights to use the mark "KEEPSAKE" in connection with watches, thereby clouding Plaintiff's rights in its marks and diluting the value of Plaintiff's marks; and (v) IWG has ignored Plaintiff's requests to cease and desist from its infringing activity. Each of the foregoing has injured, injures and/or has the potential to injure Plaintiff in Texas and within this District.

FACTUAL BACKGROUND

7. Plaintiff Commemorative repeats and re-alleges paragraphs 1-6.

8. Commemorative, through its predecessors in interest and title, has been engaged in the manufacture and sale of jewelry and related items, directly or indirectly through its licensees, for over 70 years.

9. Nationwide, millions of dollars in jewelry and related items are marketed and sold by Commemorative or its authorized licensees. This distribution and marketing of jewelry and related items has been supported by advertising and promotional expenditures in excess of one million dollars (\$1,000,000).

10. On October 19, 1993, U.S. Trademark Registration No. 1,799,274 for the KEEPSAKE mark on "jewelry" was duly and legally issued to CJC Holdings, Inc. of Austin, Texas (A true and correct copy of the Registration is attached hereto as Exhibit P-1).

11. Commemorative is the owner by assignment of U.S. Trademark Registration No. 1,799,274 for the KEEPSAKE mark for "jewelry," registered on the Principal Register on October 19, 1993, which registration is based on an application filed in the U.S. Patent and Trademark Office on July 2, 1992 (referred to hereinafter as the "274 mark").

12. On November 11, 1930, U.S. Trademark Registration No. 277,153 for the KEEPSAKE mark for "finger rings" was legally issued to A. H. Pond Co, Inc. (A true and correct copy of the Registration is attached hereto as Exhibit P-2).

13. Commemorative is the owner by assignment of U.S. Trademark Registration No. 277,153 for the KEEPSAKE mark for “finger rings” registered on the Principal Register on November 11, 1930, subsequently renewed and valid, which registration is based on an application filed in the U.S. Patent and Trademark Office on June 16, 1930 (referred to hereinafter as the “153 mark”).

14. On May 2, 1995, U.S. Trademark Registration No. 1,892,645 for the KEEPSAKE mark for “jewelry” was legally issued to CJC Holdings, Inc., the legal predecessor to Commemorative. (A true and correct copy of the Registration is attached hereto as Exhibit P-3).

15. Commemorative is the owner by assignment of U.S. Trademark Registration No. 1,892,645 for the KEEPSAKE mark for “jewelry” registered on the Principal Register on May 2, 1995, subsequently renewed and valid, which registration is based on an application filed in the U.S. Patent and Trademark Office on April 12, 1993 (referred to hereinafter as the “645 mark”).

16. Commemorative is the owner by assignment of U.S. Trademark Registration No. 2,598,355 for the ONLY A KEEPSAKE SAYS LOVE, ALWAYS mark on goods, such as “diamond engagement rings; wedding rings,” registered on the Principal Register on July 23, 2002, which registration is based on an application filed in the U.S. Patent and Trademark Office on December 31, 1998 (referred to hereinafter as “the ’355 mark”). (A true and correct copy of the Registration is attached hereto as Exhibit P-4).

17. The '274 mark, the '153 mark, the '645 mark, and the '355 mark are referred to hereinafter collectively as the "KEEPSAKE marks."

18. Commemorative has use-based trademark rights in the KEEPSAKE marks under common law.

19. Commemorative has been using directly, or indirectly through its licensees, the KEEPSAKE marks, in connection with the manufacture and sale of jewelry and related items since at least as early as June 11, 1930. For example, jewelry and related items are sold under the Commemorative's KEEPSAKE marks in more than 2700 Wal-Mart stores.

20. Commemorative's KEEPSAKE marks have been identified with Commemorative and have appeared on a substantial amount of product packaging, advertising, national television commercials, in-store display racks, signage, point-of-sale materials, and Internet websites, for example.

21. Commemorative has built up a high level of consumer recognition of its KEEPSAKE marks through extensive use, advertising, and promotion. As a result, the KEEPSAKE marks have acquired and now possess a favorable reputation and distinctiveness with a significant amount of consumer goodwill.

22. Since at least October 2001 Commemorative has been developing a business strategy for the expansion of its product offerings under the KEEPSAKE marks to include, among other things, additional items of jewelry and related items, including watches.

23. Watches and similar items are related to Plaintiff's current jewelry products and are therefore within the logical "zone of expansion" of Plaintiff's KEEPSAKE marks, such that purchasers are likely to be confused about the source of watches marketed and sold under the KEEPSAKE mark by a party unrelated to Plaintiff.

24. On November 20, 2006 IWG filed an application with the United States Patent and Trademark Office ("IWG Application") for registration on the principal register of a trademark in KEEPSAKE in connection with watches and clocks. A true and correct copy of a Web page downloaded from the PTO website concerning IWG's trademark application is attached hereto as Exhibit P-5.

25. The IWG Application is filed on an "intent to use" basis under § 1B of the Lanham Act (15 U.S.C. § 1051(b)), meaning that IWG asserts that it has a bona fide intention to use the mark in commerce. IWG initially failed to state a filing basis in its application for registration. On or about August 29, 2007, IWG amended its application to aver that "Applicant has a bona fide intention to use the mark in commerce." IWG then re-affirmed its intention to use the mark "KEEPSAKE" in connection with watches in interstate commerce by filing an Amendment on or about November 6, 2007 in which IWG's counsel avers that IWG "has had a bona fide intention to use the mark in commerce on or in connection with the goods and services listed in the application as of the filing date of [the] application." A true and correct copy of the Amendment is attached hereto as Exhibit P-6.

26. On information and belief, IWG has proposed to a prominent national retailer ("Retailer") (which retailer has scores of retail outlets in Texas and in this District) that the Retailer sell Keepsake-branded watches provided by IWG.

27. On information and belief, in communications within the last couple of months with Retailer, IWG has claimed ownership of the "Keepsake" brand in connection with watches.

28. Since 1998 Retailer has sold plaintiff Commemorative's KEEPSAKE brand jewelry in thousands of Retailer's stores throughout the nation. Sixty-nine (69) items of plaintiff Commemorative's KEEPSAKE brand line of family jewelry, including rings, pendants and bracelets, and 38 items of plaintiff Commemorative's KEEPSAKE brand line of fine jewelry, including wedding and engagement rings, are currently featured on Retailer's web site. Indeed, Plaintiff's relationship with Retailer has been so successful that Plaintiff recently presented to Retailer its plan for expansion of the KEEPSAKE line of products to include watches and other related items. It was during such discussions that Plaintiff learned of IWG's assertion of its right to use the mark "KEEPSAKE" in connection with watches.

29. Upon information and belief, and subject to discovery, the absence of an agreement between Retailer and plaintiff Commemorative regarding the sale of plaintiff's KEEPSAKE brand watches in Retailer's stores is due at least in part to assertions by IWG that IWG owns trademark rights in KEEPSAKE in connection with use with watches. Upon information and belief plaintiff Commemorative's past, present and

future losses due to its inability to promote and sell its KEEPSAKE branded watches through Retailer exceed \$75,000.

30. On or about March 22, 2007, Plaintiff Commemorative made written demand to IWG to cease and desist or refrain from commencing its use of Plaintiff's Keepsake marks (attached hereto as Exhibit P-7). Because IWG failed to respond to such demand, Plaintiff Commemorative reiterated its demand in writing on or about April 27, 2007 (attached hereto as Exhibit P-8). A telephone conversation with IWG'S counsel initiated by Plaintiff Commemorative's counsel when the second demand also failed to divert IWG from its confirmed intention to infringe plaintiff Commemorative's KEEPSAKE marks, and it has become clear through IWG'S actions since such conversation that it intends to proceed with its plans to market watches under the KEEPSAKE mark despite Plaintiff's repeated cease and desist requests.

First Claim For Relief
(Declaratory Judgment Under 28 U.S.C. §§ 2201-02)

31. Plaintiff Commemorative repeats and re-alleges paragraphs 1-30.

32. IWG's activities described herein have given rise to a case of actual controversy within the jurisdiction of this Court, pursuant to 28 U.S.C. §§ 2201-02.

33. IWG's assertions regarding its right and intent to use the KEEPSAKE marks in connection with jewelry-related items such as watches irreparably injures plaintiff Commemorative and adversely affects, and unless prevented by this Court will continue to adversely affect, Plaintiff Commemorative's business and the immense investment it has made in its marks and attendant good will. To resolve the legal and

factual questions raised by IWG and to afford relief from the uncertainty and controversy precipitated by IWG, plaintiff Commemorative is entitled to a declaratory judgment of its rights under 28 U.S.C. §§2201-02, including but not limited to declarations that plaintiff Commemorative has exclusive trademark rights in the KEEPSAKE marks as used with jewelry-related items such as watches, that IWG has no trademark rights in the KEEPSAKE mark as used with jewelry-related items such as watches, that IWG is not entitled to registration by the Patent and Trademark Office of the KEEPSAKE mark for use with jewelry-related items such as watches, and that any use by IWG of the KEEPSAKE marks in connection with jewelry-related items such as watches would infringe one or more of plaintiff Commemorative's trademarks.

34. Further, plaintiff Commemorative is entitled under 28 U.S.C. § 2202 to all further necessary or proper relief against IWG arising out of the declaratory judgments requested herein, including but not limited to injunctive relief, damages and other remedies, and/or cancellation of any registrations issued to IWG for the KEEPSAKE mark for use with jewelry-related items such as watches.

Second Claim For Relief
(Trademark Infringement Under Federal and Common Law)

35. Plaintiff Commemorative repeats and re-alleges paragraphs 1-30.

36. Under 15 U.S.C. § 1057(b), registrations of the KEEPSAKE marks on the Principal Register are *prima facie* evidence of the validity and Plaintiff's ownership of these marks.

37. Under 15 U.S.C. § 1072, registrations of the KEEPSAKE marks on the Principal Register provide constructive notice to Defendant as to Plaintiff's claim of ownership.

38. On information and belief, Defendant has been engaged in the infringement of, is infringing, or intends to and if not enjoined will continue to infringe Plaintiff's KEEPSAKE marks under federal law, 15 U.S.C. § 1114, and/or common law, by using, in commerce within the United States, at least a colorable imitation of the KEEPSAKE marks in connection with watches and other jewelry-related items in such a way as is likely to cause confusion, or to cause mistake, or to deceive.

39. On information and belief, and subject to further discovery, IWG's actual or intended infringement of the KEEPSAKE marks has been, is and/or will be willful.

Third Claim For Relief
(Unfair Competition Under Section 43(a) of the Lanham Act and Common Law)

40. Plaintiff Commemorative repeats and re-alleges paragraphs 1-30.

41. Defendant's promotion, offers of sale, intent to sell and/or sale of watches and other jewelry-related items, and its assertions of ownership of the KEEPSAKE brand for use with watches, constitute a false designation of origin, false description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Plaintiff with Defendant, as to the origin, sponsorship, or approval of Defendant's goods and/or commercial activities at issue. (15 U.S.C. § 1125(a)).

42. Defendant's promotion, offers of sale, intent to sell and/or sale of watches and other jewelry-related items, and its assertions of ownership of the KEEPSAKE brand for use with watches, also constitute a false designation of origin, false description of fact, or false or misleading representation of fact, which in commercial advertising or promotion is likely to misrepresent the nature, characteristics, qualities of goods and/or commercial activities at issue, under 15 U.S.C. § 1125(a).

43. Defendant's promotion, offers of sale, intent to sell and/or sale of watches and other jewelry-related items, and its assertions of ownership of the KEEPSAKE brand for use with watches, enables Defendant to confuse or deceive the public and others by passing off the watches and other jewelry-related items sold by Defendant as manufactured by, sold by, licensed by, or otherwise sponsored or approved by, Plaintiff. Such conduct constitutes unfair competition with Plaintiff at common law.

Fourth Claim For Relief
(Dilution Under Section 43(c) of the Lanham Act)

44. Plaintiff Commemorative repeats and re-alleges paragraphs 1-30.

45. Plaintiff's KEEPSAKE marks are and have become distinctive and famous.

46. Defendant's use and/or intended use of the KEEPSAKE marks began after Plaintiff's marks became famous.

47. Defendant's use and/or intended use of the KEEPSAKE marks on its products and/or services causes dilution of the distinctive quality of Plaintiff's mark.

48. Upon information and belief, and subject to further discovery, Defendant willfully intend to trade on Plaintiff's reputation and/or cause dilution of Plaintiff's famous marks.

Fifth Claim For Relief
(Dilution And/Or Injury Under Tex. Bus. & Comm. Code § 16.29)

49. Plaintiff Commemorative repeats and re-alleges paragraphs 1-30.

50. Plaintiff has developed and acquired a good business reputation, including a reputation for the quality of its products.

51. Plaintiff's KEEPSAKE marks have distinctive qualities protected under Texas law.

52. Unless enjoined, Defendant's continued or intended use of the KEEPSAKE marks on its products and/or services is likely to injure a business reputation or the distinctive quality of Plaintiff's KEEPSAKE marks, including the federally-registered marks and any common-law trademarks, within the meaning of Texas Business & Commerce Code § 16.29.

53. Plaintiff is entitled to injunctive relief, under Texas Business & Commerce Code § 16.29, because the potential injury to Plaintiff's business reputation and/or the distinctive quality of Plaintiff's KEEPSAKE marks is irreparable and leaves Plaintiff with no adequate remedy at law.

54. Upon information and belief, and subject to further discovery, Defendant willfully intended to trade on Plaintiff's reputation and/or cause dilution of Plaintiff's distinctive marks.

Sixth Claim For Relief
(Tortious Interference with Contractual Relations)

55. Plaintiff Commemorative repeats and re-alleges paragraphs 1-30.

56. Upon information and belief, and subject to discovery, there was, and is, a reasonable probability that plaintiff Commemorative would have, or will, enter into a business relationship with Retailer, a third person, to *inter alia* market and sell plaintiff Commemorative's KEEPSAKE brand watches in Retailer's retail outlets throughout Texas and the rest of the United States.

57. Upon information and belief, and subject to discovery, IWG was aware of plaintiff's Commemorative's rights in the KEEPSAKE marks and extensive trade relationship with Retailer and IWG intentionally interfered with the relationship by *inter alia* falsely stating to Retailer that it had trademark rights in the KEEPSAKE mark in connection with watches, which conduct is independently tortious and/or unlawful. The interference has harmed plaintiff Commemorative by *inter alia* depriving plaintiff Commemorative of a valuable market for its products, and plaintiff Commemorative has suffered, and will suffer actual damage or loss.

PRAYER FOR RELIEF

Plaintiff Commemorative respectfully requests the following relief:

- A. That the Court declare and that a judgment be entered that:
 - a. Plaintiff Commemorative has exclusive trademark rights in the KEEPSAKE marks as used with jewelry-related items such as watches;

- b. IWG has no trademark rights in the KEEPSAKE mark as used with jewelry-related items such as watches;
- c. IWG is not entitled to registration by the Patent and Trademark Office of the KEEPSAKE mark for use with jewelry-related items such as watches; and
- d. any use by IWG of the KEEPSAKE marks in connection with jewelry-related items such as watches would infringe one or more of plaintiff Commemorative's trademarks.

B. The Court enter judgment that Defendant has infringed Plaintiff's exclusive trademark rights in the KEEPSAKE marks under at least 15 U.S.C. §§ 1051 *et seq.*, 1117 *et seq.*, and 1121 *et seq.* and/or common law;

C. The Court enter judgment that the Defendant has competed unfairly, and continues to do so, with Plaintiff under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) and common law;

D. The Court enter judgment that the Defendant has diluted Plaintiff's famous marks, and will continue to do so, under Section 43(c) of the Lanham Act (15 U.S.C. § 1125(c));

E. The Court enter judgment that the Defendant has injured a business reputation or diluted Plaintiff's distinctive famous marks, and will continue to do so, under § 16.29 of the Texas Business & Commerce Code;

F. That the Court enter a preliminary injunction and a permanent injunction against the Defendant's use of the KEEPSAKE marks in connection with sale and/or distribution of jewelry-related items such as watches;

G. That the Court enter a preliminary injunction and a permanent injunction against the Defendant's unfair competition with Plaintiff including Defendant's sale and/or distribution of jewelry-related items such as watches and representations that IWG owns rights in the KEEPSAKE marks in connection with sale and/or distribution of jewelry-related items such as watches;

C. That the Court enter a preliminary and permanent injunction restraining and enjoining Defendant and its agents, servants, employees, attorneys, officers, and those persons in active concert with them, from using the KEEPSAKE marks to sell or distribute jewelry-related items such as watches through any trade channel;

D. That the Court award Commemorative damages adequate to compensate for the trademark infringement and/or dilution by IWG of the KEEPSAKE marks, including damages based on Defendant's profits and/or any actual damages sustained by Plaintiff under 15 U.S.C. § 1117;

E. That the Court award interest on the damages;

F. That the Court, under section 36 of the Lanham Act (15 U.S.C. § 1118), direct Defendant to deliver up for destruction or alteration all advertisements, price lists, product brochures, labels, signs, prints, decals, packages, boxes, cartons, wrappers, and any other materials that use the KEEPSAKE marks;

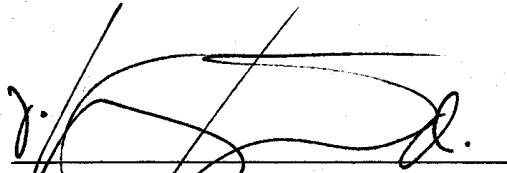
G. That the Court find the infringement of the KEEPSAKE marks by Defendant willful under Section 43(c) of the Lanham Act;

H. That the Court award to Commemorative its attorney fees;

I. That the Court award Commemorative its costs of this action; and

J. That the Court award such other relief as it deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Roger Williams, Jr.", is written over a horizontal line. The signature is stylized and somewhat cursive.

J. ROGER WILLIAMS, JR.

State Bar No. 21555650

ANDREWS KURTH LLP

111 Congress Ave., Ste. 1700

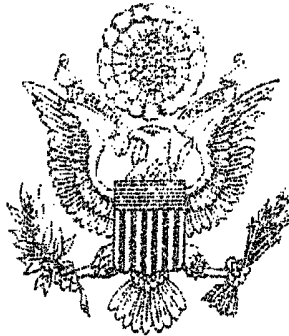
Austin, TX 78701

(512) 320-9200

(512) 320-9292 (fax)

ATTORNEY FOR
COMMEMORATIVE BRANDS, INC.

The United States of America



Nº 1799274

CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, as amended, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER

to the registrant named herein.

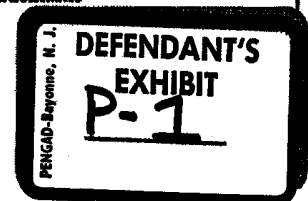
This registration shall remain in force for TEN years unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this nineteenth day of October 1993.

Bence Lehman

Commissioner of Patents and Trademarks





Int. Cl.: 14

Prior U.S. Cl.: 28

United States Patent and Trademark Office **Reg. No. 1,799,274**
Registered Oct. 19, 1993

**TRADEMARK
PRINCIPAL REGISTER**

KEEPSAKE

**CJC HOLDINGS, INC. (TEXAS CORPORATION)
7211 CIRCLE S ROAD
AUSTIN, TX 78743**

**OWNER OF U.S. REG. NOS. 277,153, 917,169,
AND 1,476,898.**

**FOR: JEWELRY, IN CLASS 14 (U.S. CL. 28).
FIRST USE 1-1-1986; IN COMMERCE
1-1-1986.**

SER. NO. 74-290,509, FILED 7-2-1992.

THOMAS V. SHAW, EXAMINING ATTORNEY

NOTICE

This Registration will be canceled by the Commissioner of Patents and Trademarks at the end of six years following the date of registration, unless within one year next preceding the expiration of such six years, the registrant files in the Patent and Trademark Office an affidavit showing that said mark is in use in Commerce or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. A fee of \$100.00 for each class must accompany the affidavit.

Registered Nov. 11, 1930

Trade-Mark 277,153

Renewed November 11, 1950 to A. H. Pond Co., Inc., of Syracuse, New York, a corporation of New York.

UNITED STATES PATENT OFFICE

A. H. POND CO., INC., OF SYRACUSE, NEW YORK

ACT OF FEBRUARY 20, 1905

Application filed June 16, 1930. Serial No. 302,473.

Keepsake

STATEMENT

To the Commissioner of Patents:

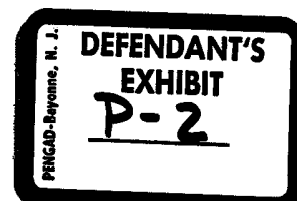
A. H. Pond Co., Inc., a corporation duly organized and existing under and by virtue of the laws of the State of New York, and doing business at Syracuse, New York, has adopted and used the trade-mark shown in the accompanying drawing, for FINGER RINGS, in Class 28, Jewelry and precious-metal ware, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office

in accordance with the law in such cases made and provided.

The trade-mark has been continuously used in applicant's business since June 11th, 1930.

The trade-mark is applied or affixed to the goods and to the boxes containing the goods by means of a printed label on which the trade-mark is shown.

A. H. POND CO., INC.,
By ROBERT A. POND,
Secretary.



Int. Cl.: 14

Prior U.S. Cl.: 28

United States Patent and Trademark Office
10 Year Renewal

Reg. No. 277,153
Registered Nov. 11, 1930
Renewal Approved Mar. 20, 1991

TRADEMARK
PRINCIPAL REGISTER

Keepsake

CJC HOLDINGS, INC. (TEXAS CORPORATION)
P.O. BOX 149107
AUSTIN, TX 787149107, ASSIGNEE BY
ASSIGNMENT, MERGER AND
CHANGE OF NAME FROM A. H.
POND CO., INC. (NEW YORK CORPORATION)
SYRACUSE, NY

FOR: FINGER RINGS, IN CLASS 28
(INT. CL. 14).

FIRST USE 6-11-1930; IN COMMERCE
6-11-1930.

SER. NO. 71-302,473. FILED 6-16-1930.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Apr. 30, 1991.*

COMMISSIONER OF PATENTS AND TRADEMARKS

The United States of America



CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, as amended, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER

to the registrant named herein.

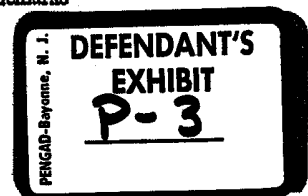
This registration shall remain in force for TEN years unless sooner terminated as provided by law.



In Testimony whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this second day of May 1995.

Bruce Lehman

Commissioner of Patents and Trademarks



Int. Cl.: 14

Prior U.S. Cl.: 28

United States Patent and Trademark Office

Reg. No. 1,892,645
Registered May 2, 1995

TRADEMARK
PRINCIPAL REGISTER

◆ **KEEPSAKE** ◆

CJC HOLDINGS, INC. (TEXAS CORPORATION)
P.O. BOX 149107
AUSTIN, TX 78714

OWNER OF U.S. REG. NOS. 277,153, 917,169,
AND 1,476,898.

FOR: JEWELRY, IN CLASS 14 (U.S. CL. 28).
FIRST USE 10-1-1993; IN COMMERCE
10-1-1993.

SN 74-377,452, FILED 4-12-1993.

JILL C. ALT, EXAMINING ATTORNEY

NOTICE

This Registration will be canceled by the Commissioner of Patents and Trademarks at the end of six years following the date of registration, unless within one year next preceding the expiration of such six years, the registrant files in the Patent and Trademark Office an affidavit showing that said mark is in use in Commerce or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. A fee of \$100.00 for each class must accompany the affidavit.

Int. Cl.: 14

Prior U.S. Cls.: 2, 27, 28, and 50

Reg. No. 2,598,355

United States Patent and Trademark Office

Registered July 23, 2002

**TRADEMARK
PRINCIPAL REGISTER**

ONLY A KEEPSAKE SAYS, LOVE ALWAYS

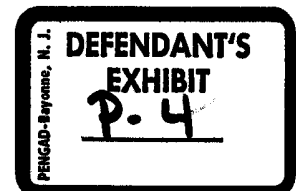
FREDERICK GOLDMAN, INC. (NEW YORK
CORPORATION)
154 W. 14TH ST.
NEW YORK, NY 10011

FIRST USE 11-5-1999; IN COMMERCE 11-5-1999.

SN 75-614,491, FILED 12-31-1998.

FOR: DIAMOND ENGAGEMENT RINGS, WED-
DING RINGS, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND
50).

ANN E. SAPPENFIELD, EXAMINING ATTORNEY





Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Dec 14 04:04:44 EST 2007

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT SEARCH OG BOTTOM HELP PREV LIST CURR LIST NEXT LIST
 FIRST DOC PREV DOC NEXT DOC LAST DOC

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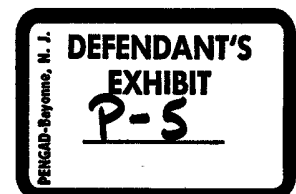
List At: OR to record: **Record 1 out of 3**

TARR Status ASSIGN Status TDR TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)

KEEPSAKE

Word Mark	KEEPSAKE
Goods and Services	IC 014. US 002 027 028 050. G & S: Watches and clocks
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77047538
Filing Date	November 20, 2006
Current Filing Basis	1B
Original Filing Basis	NO FILING BASIS
Published for Opposition	January 15, 2008
Owner	(APPLICANT) International Watch Group, Inc. CORPORATION NEW YORK 868 Kent Avenue Brooklyn NEW YORK 11205
Attorney of Record	Bernard Malina
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT SEARCH OG TOP HELP PREV LIST CURR LIST NEXT LIST
 FIRST DOC PREV DOC NEXT DOC LAST DOC



IWG-134

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : **International Watch Group, Inc.**
Mark : **KEEPSAKE**
Serial No. : **77/047,538**
Filing Date : **November 20, 2006**
Examiner : **Brian Neville**
Law Office : **114**

Mail Stop Amendment
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

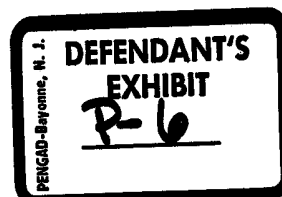
Sir:

AMENDMENT

Responsive to the outstanding Office Action dated October 26, 2007, please amend the above-entitled application as follows.

Please insert the filing basis as follows:

--Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the filing date of this application--.



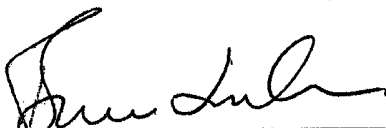
11-08-2007

In view of the foregoing amendment and the Declaration submitted herewith, Applicant respectfully submits that the instant application is now in condition to be passed to publication and early notification to such effect is earnestly solicited.

Dated: November 6, 2007

Respectfully submitted,

MALINA & ASSOCIATES, PLLC

By: 

Bernard Malina
60 East 42nd Street
New York, NY 10165
(212) 986-7410
Attorneys for Applicant
bmalina@malinalaw.com

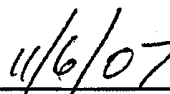
Certificate of Mailing Under 37 C.F.R. 1.8(a)

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, Mail Stop Amendment.



BERNARD MALINA

c:\mydocs\amendment-iwg134



DATE

IWG-134

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : **International Watch Group, Inc.**
Mark : **KEEPSAKE**
Serial No. : **77/047,538**
Filing Date : **November 20, 2006**
Examiner : **Brian Neville**
Law Office : **114**

DECLARATION OF BERNARD MALINA

Bernard Malina declares that he is an attorney as defined in 37 C.F.R. 10.1 who has actual and/or implied written and/or verbal power of attorney from the Applicant and is thus authorized to execute this document under Trademark Rule 2.33(a) as amended.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom, declares that the facts set forth in this document are true; all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the filing date of the application.

Dated: November 6, 2007

A handwritten signature in cursive script, appearing to read "Bernard Malina", written in black ink.

BERNARD MALINA

c:\mydocs\declaration-1wg134

copy

ANDREWS
ATTORNEYS **KURTH** LLP

111 Congress Avenue, Suite 1700
Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

Clarissa Marischen
512.320.9247 Phone
512.542.5229 Fax
cmarischen@andrewskurth.com

Certified Article Number
7160 3901 9849 2016 7597
SENDERS RECORD

March 22, 2007

**VIA EMAIL TO bmalina@malinalaw.com and
U.S. CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Bernard Malina
Malina & Associates, P.C.
60 E. 42nd Street, Room 501
New York, New York 10165-0501

Re: Demand to Cease Infringement of **KEEPSAKE®** Trademark

Dear Mr. Malina:

This firm represents Commemorative Brands, Inc. ("Commemorative"), a leading manufacturer, distributor, and seller of jewelry. Commemorative and its predecessors in interest have been extensively using **KEEPSAKE®** in the United States in connection with its jewelry products since at least as early as June 11, 1930. Commemorative's products can be found nationwide. Like other sophisticated companies, Commemorative respects the intellectual property laws of the United States and, therefore, owns multiple trademark registrations for marks consisting of or incorporating **KEEPSAKE®**, including Registration Nos. 277,153, 1,799,274 1,892,645 and 2,598,355, for a variety of jewelry products in Class 14.

We recently discovered that, on November 20, 2006, you filed an application for registration of **KEEPSAKE** on behalf of International Watch Group, Inc. for goods described as "watches and clocks." Although we cannot determine from your application whether use of the **KEEPSAKE®** mark in connection with the goods described in the application has commenced, the purpose of this letter is to inform you that any use by your client of the **KEEPSAKE®** mark in connection with products relating to jewelry will create substantial confusion and will constitute trademark infringement and unfair competition.

The infringement of the **KEEPSAKE®** mark must stop immediately. If the infringement of the **KEEPSAKE®** mark does not immediately stop, we will assert against you all of our client's rights under the laws of the United States. As you may know, the owner of an infringed mark has potent remedies for infringement including recovery of the defendant's profits, damages sustained by the plaintiff and, potentially, an enhancement or multiplication of damages as well as attorneys' fees.

**DEFENDANT'S
EXHIBIT**
P-7

March 22, 2007

Page 2

To resolve this dispute, International Watch Group, Inc. must certify to us in writing, within ten (10) days of receipt of this letter, that: (a) a Request for Express Abandonment of United States Application Serial No. 77/047,538 has been filed; (b) it has ceased (or will not commence) use of the KEEPSAKE® mark in connection with jewelry products and related goods and will refrain from use of the KEEPSAKE® mark in the future in any manner relating to jewelry products and related goods; (c) if use has commenced, it has instructed all of its sales agents, distributors and reseller customers in writing to immediately cease such use; and (d) if use has commenced, it has destroyed all infringing product packaging, inserts and other marketing materials. Such certification must include a copy of the notice it has sent to its agents, distributors, and resellers with respect to certification (c) above.

Very truly yours,

Andrews Kurth LLP

By: Clarissa Marischen

Clarissa Marischen

cc: Mr. Clyde Walls, Commemorative Brands, Inc.

7160 3901 9849 2016 7597

TO:
 Bernard Malina
 Malina & Associates, P.C.
 60 E. 42nd Street, Room 501
 New York, NY 10165-0501

SENDER: Clarissa Marischen
REFERENCE: Matter No. 0146466

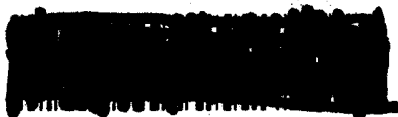
PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	2.40
	Restricted Delivery	1.85
	Total Postage & Fees	0.00

US Postal Service
Receipt for Certified Mail
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 Do Not Use for International Mail

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2. Article Number



7160 3901 9849 2016 7597

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

Bernard Malina
 Malina & Associates, P.C.
 60 E. 42nd Street, Room 501
 New York, NY 10165-0501

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. MALINA	B. Date of Delivery 3/2
C. Signature <i>[Signature]</i>	<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

0146466

Clarissa Marischen

ANDREWS
ATTORNEYS **KURTH** LLP

111 Congress Avenue, Suite 1700
Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

Clarissa Marischen
512.320.9247 Phone
512.542.5229 Fax
cmarischen@andrewskurth.com

April 27, 2007

VIA EMAIL TO itruyol@malinalaw.com and
U.S. CERTIFIED MAIL RETURN RECEIPT REQUESTED

Bernard Malina
Malina & Associates, P.C.
60 E. 42nd Street, Room 501
New York, New York 10165-0501

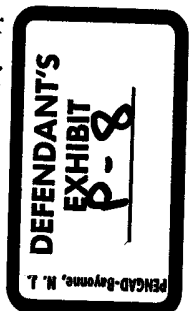
Re: Demand to Cease Infringement of KEEPSAKE® Trademark

Dear Mr. Malina:

The purpose of this letter is to follow up on our March 22, 2007 letter to you regarding your client International Watch Group's misappropriation of Commemorative Brand's intellectual property. Enclosed is a copy of that letter for your reference.

As of this date, we have not received a response from you regarding the demands set forth in the referenced letter. In fact, it has recently come to Commemorative's attention that International Watch Group has been soliciting customers for a "Keepsake" line of watches and that, in connection with such solicitations, it has represented that it has received "initial approval" for use of "Keepsake" in connection with watches. My review of the March 23, 2007 office action issued against International Watch Group's pending Application Serial No. 77/047,538 for the mark KEEPSAKE indicates that such representation is clearly misleading and untrue. The application has yet to be approved for publication, much less allowed. The application is actually still a long way from being allowed for registration, since upon any publication of the application, our client will immediately file an opposition action with the Trademark Trial and Appeal Board and will vigorously pursue such action.

Furthermore, the information that we have regarding your client's activities indicates that use of "Keepsake" in connection with watches has commenced -- unless such use ceases immediately, we are prepared to commence legal action to protect our client's intellectual property rights in its valuable KEEPSAKE® mark. Court and administrative decisions support our position that jewelry, watches and clocks are sufficiently related that, when sold under identical or similar marks, confusion is likely to occur among purchasers in the marketplace.



April 27, 2007

Page 2

See, e.g., Monocraft, Inc. v. Leading Jewelers Guild, 173 USPQ 506 (TTAB 1972); and Gruen Industries, Inc. v. Ray Curran & Co., 152 USPQ 778 (TTAB 1967).

In conclusion, I am hereby reiterating the demands made in our March 22 letter. Because you have thus far failed to respond to our demands and due to the extreme importance of this matter, if I don't hear from you before next Friday, May 4, 2007, I will be calling you to discuss your client's intentions with respect to the KEEPSAKE® mark. I can only assume that you will have discussed this matter with your client and will be prepared to discuss its position at such time.

Very truly yours,

Andrews Kurth LLP

By: Clarissa Marischen

Clarissa Marischen

cc: Mr. Clyde Walls, Commemorative Brands, Inc.

copy

ANDREWS
ATTORNEYS **KURTH** LLP

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Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

Certified Article Number
7160 3901 9849 2016 7597
SENDERS RECORD

Clarissa Marischen
512.320.9247 Phone
512.542.5229 Fax
cmarischen@andrewskurth.com

March 22, 2007

**VIA EMAIL TO bmalina@malinalaw.com and
U.S. CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Bernard Malina
Malina & Associates, P.C.
60 E. 42nd Street, Room 501
New York, New York 10165-0501

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The infringement of the **KEEPSAKE®** mark must stop immediately. If the infringement of the **KEEPSAKE®** mark does not immediately stop, we will assert against you all of our client's rights under the laws of the United States. As you may know, the owner of an infringed mark has potent remedies for infringement including recovery of the defendant's profits, damages sustained by the plaintiff and, potentially, an enhancement or multiplication of damages as well as attorneys' fees.

March 22, 2007
Page 2

To resolve this dispute, International Watch Group, Inc. must certify to us in writing, within ten (10) days of receipt of this letter, that: (a) a Request for Express Abandonment of United States Application Serial No. 77/047,538 has been filed; (b) it has ceased (or will not commence) use of the KEEPSAKE® mark in connection with jewelry products and related goods and will refrain from use of the KEEPSAKE® mark in the future in any manner relating to jewelry products and related goods; (c) if use has commenced, it has instructed all of its sales agents, distributors and reseller customers in writing to immediately cease such use; and (d) if use has commenced, it has destroyed all infringing product packaging, inserts and other marketing materials. Such certification must include a copy of the notice it has sent to its agents, distributors, and resellers with respect to certification (c) above.

Very truly yours,

Andrews Kurth LLP

By: Clarissa Marischen

Clarissa Marischen

cc: Mr. Clyde Walls, Commemorative Brands, Inc.

7160 3901 9849 2016 7597

TO:
 Bernard Malina
 Malina & Associates, P.C.
 60 E. 42nd Street, Room 501
 New York, NY 10165-0501

SENDER: Clarissa Marischen
REFERENCE: Matter No. 0146466

PS Form 3800, January 2005

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	Return Receipt Fee	1.85
	Restricted Delivery	0.00
	Total Postage & Fees	

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2. Article Number



7160 3901 9849 2016 7597

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

Bernard Malina
 Malina & Associates, P.C.
 60 E. 42nd Street, Room 501
 New York, NY 10165-0501

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) <i>B. MALINA</i>	B. Date of Delivery <i>12/12</i>
C. Signature <i>[Signature]</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? If YES, enter delivery address below:	<input type="checkbox"/> Yes <input type="checkbox"/> No

/0146466

Clarissa Marischen